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Vol. 59 No. 1

federal register

Monday
January 3, 1994

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federal register

Briefings on How To Use the Federal Register
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WHO: The Office of the Federal Register.

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Presidential Documents

Title 3—

The President

Presidential Determination No. 94–7 of December 18, 1993

Drawdown of Commodities and Services From the Inventory and Resources of the Department of Defense To Maintain Egypt's Military Readiness and Security

Memorandum for the Secretary of State [and] the Secretary of Defense

Pursuant to the authority vested in me by section 552(c)(2) of the Foreign Assistance Act of 1961, as amended, 22 U.S.C. 2348a(c)(2) (the "Act"), I hereby determine that:

(1) as a result of an unforeseen emergency, the provision of assistance under Chapter 6 of Part II of the Act in amounts in excess of funds otherwise available for such assistance is important to the national interests of the United States; and

(2) such unforeseen emergency requires the immediate provision of assistance under Chapter 6 of Part II of the Act.

I therefore direct the drawdown of commodities and services from the inventory and resources of the Department of Defense of an aggregate value not to exceed $13.5 million to maintain Egypt's military readiness and security in view of the dedication of Egyptian resources to the United Nations Operations in Somalia (UNOSOM II).

The Secretary of State is authorized and directed to report this determination to the Congress and to arrange for its publication in the **Federal Register.**

William J. Clinton

THE WHITE HOUSE,
Washington, December 18, 1993.

[FR Doc. 93–32104
Filed 12–29–93; 2:14 pm]
Billing code 4710–01–M

Rules and Regulations

Federal Register
Vol. 59, No. 1
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–ANE–08; Amendment 39–8781; AD 93–25–17]

Airworthiness Directives; General Electric CT7 Series Turboprop and Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to General Electric (GE) CT7 series turboprop and turboshaft engines. This proposal would require the removal from service of certain gas generator turbine (GGT) rotor assembly parts that were plasma-sprayed during manufacture. This amendment is prompted by material testing that indicates that the plasma-spray process reduces the low cycle fatigue (LCF) capability of the material. The actions specified by this AD are intended to prevent fatigue cracks that can result in uncontained engine failure.

DATES: Effective February 2, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register, as of February 2, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, Massachusetts 01910. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 92–ANE–08, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Barbara G. Caufield, Aerospace Engineer, Engine Certification Branch, ANE–141, Engine Certification Office, FAA, New England Region, Engine and Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803–5299; telephone (617) 238–7146; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to General Electric CT7 series turboprop and turboshaft engines was published in the **Federal Register** on November 13, 1992 (57 FR 53862). That action proposed to require the removal from service of certain gas generator turbine (GGT) rotor assembly parts that were plasma-sprayed during manufacture, and replacement with serviceable parts. The actions would be required to be accomplished in accordance with GE CT7 Turboprop Service Bulletin (SB) A72–252, dated August 31, 1990; and GE CT7 Turboshaft SB A72–17 and SB A72–18, both dated September 10, 1990.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the rule as proposed.

One commenter observes that the economic analysis in the proposed AD is based on 23 engines being affected by the AD, when, in fact, there are only 11 engines containing a combination of 23 parts. The FAA concurs. The wording of the economic analysis for the final rule has been changed accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 11 engines (containing 23 affected parts) installed on aircraft of U.S. registry will be affected by this AD, that it will take approximately 7 work hours per engine to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $8,255 per engine. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $95,040. The manufacturer has advised the FAA that a pro-rata credit allowance will be granted for labor and parts required to accomplish these removals and replacements at a GE authorized service or overhaul facility. Based on this information, the FAA has determined that the total cost impact of the AD on U.S. operators would be approximately $5,940 ($540 per engine).

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–17. General Electric: Amendment 39–8781. Docket No. 93–ANE–08.

Applicability: General Electric (GE) Models CT7–5A2, –7A, and –9C Turboprop Engines; and Models CT7–2A, and –6 Turboshaft Engines, incorporating gas generator turbine (GGT) disks and cooling plates, as listed by Part Number (P/N) and Serial Number (S/N) in GE CT7 Turboprop Service Bulletin (SB) A72–252, dated August 31, 1990; GE CT7 Turboshaft SB A72–17, and GE CT7 Turboshaft SB A72–18, both dated September 10, 1990, installed on, but not limited to, Saab 340A, Casa CN235–10, Bell 214ST, and European Helicopter Industries EH101.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracks that can result in uncontained engine failure, accomplish the following:

(a) Remove from service the affected GE Model(s) CT7–5A2, –7A, and –9C engines GGT rotor stage 1 and 2 disks, and stage 2 forward and aft cooling plates, prior to exceeding the "Max total allowable cycles"; as listed in GE CT7 Turboprop SB A72–252, dated August 31, 1990, and replace with serviceable parts.

(b) Remove from service the affected GE Model(s) CT7–6 engine GGT rotor stage 1 disk and stage 2 forward cooling plate prior to exceeding the "Max total allowable cycles"; as listed in GE CT7 Turboprop SB A72–17, dated September 10, 1990, and replace with serviceable parts.

(c) Remove from service the affected GE Model(s) CT7–2A engine GGT rotor stage 2 disk and stage 2 forward cooling plate prior to exceeding the "Max total allowable cycles"; as listed in GE CT7 Turboshaft SB A72–8, dated September 10, 1990, and replace with serviceable parts.

(d) An alternative method of compliance, or adjustment of the compliance time, that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(e) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The removals and replacements of the affected rotor stage disks and cooling plates shall be done in accordance with the following service bulletins:

Document No.	Page No.	Issue	Date
GE CT7 Turboprop SB A72–252 ..... Total pages: 13	1–13	Original	Aug 31, 1990
GE CT7 Turboshaft SB A72–17 ..... Total pages: 4	1–4	Original	Sep 10, 1990
GE CT7 Turboshaft SB A72–18 ..... Total pages: 4	1–4	Original	Sep 10, 1990

This incorporation by reference was approved by the Director of the Federal Register, in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from General Electric Aircraft Engines, 1000 Western Avenue, Lynn, Massachusetts 01910. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 92–ANE–08, 12 New England Executive Park, Burlington, Massachusetts; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(g) This amendment becomes effective on February 2, 1994.

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Monoger, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–31908 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–ANE–71; Amendment 39–8780; AD 93–25–16]

Airworthiness Directives; Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Allied-Signal Aerospace Company, Garrett Engine Division, TFE731 series turbofan engines, that currently requires an improved, more definitive eddy current inspection, and replacement, if necessary, of certain fan disks for cracks. This amendment requires an additional 30 fan disks to be inspected. This amendment is prompted by the examination of fan disk eddy current inspection tapes using more definitive inspection criteria. The actions specified by this AD are intended to prevent an uncontained fan disk failure.

DATES: Effective January 18, 1994.

The incorporation by reference of Allied-Signal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, is approved by the Director of the **Federal Register** as of January 18, 1994.

The incorporation by reference of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, was approved previously by the Director of the **Federal Register** as of April 9, 1993 (58 FR 16113, March 25, 1993).

Comments for inclusion in the Rules Docket must be received on or before March 4, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–71, 12 New England Executive Park, Burlington, MA 01803–5299.

The service information referenced in this AD may be obtained from AlliedSignal Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Joseph Costa, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, CA 90806–2425; telephone (310) 988–5246, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: On February 19, 1993, the Federal Aviation Administration (FAA) issued AD 92–26–09, Amendment 39–8503 (58 FR 16113, March 25, 1993), to require an improved, more definitive eddy current inspection of certain fan disks for cracks, and replacement, if necessary, of these fan disks. That action was prompted by reports of an uncontained

failure of a fan disk on an Allied-Signal Aerospace Company, Garrett Engine Division, Model TFE731–3 turbofan engine. The FAA investigation determined that a fatigue crack originated in the aft acute corner of the dovetail slot. The fan disk had accumulated a total of 5291 cycles in service (CIS) at the time of the failure, and had been eddy current inspected in 1990 when the disk had accumulated 4055 CIS. The fan disk displayed evidence of broaching grooves produced during the manufacture of the blade dovetail slots. These machining grooves may have contributed to the disk failure. From a metallurgical analysis, the FAA has determined that the failed fan disk had dovetail cracks which were not detected at the time of the eddy current inspection. A review of the eddy current inspection process used to inspect this disk and all disks inspected prior to May 1991 revealed that the process will not reliably detect this type of crack on these disks. Fan disk cracks, if not detected, could result in an uncontained fan disk failure.

Since the issuance of that AD, the FAA has determined that an additional 30 fan disks will require inspection, or replacement, if necessary. In addition, the Applicability Section of AD 92–26–09 identified the Learjet 55 series as one aircraft that might have an affected engine installed. The FAA has since learned that no Learjet 55 series aircraft has an affected engine, and therefore, deletes the Learjet 55 series from that list of aircraft. Finally, AlliedSignal Propulsion Engines has issued Revision 1 to AlliedSignal Propulsion Engines Alert Service Bulletin (ASB) No. TFE731–A72–3504. This AD incorporates this revision.

The FAA has reviewed and approved the technical contents of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, and AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, that describe procedures for an improved, more definitive eddy current inspection of these fan disks for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other engines of this same type design, this AD supersedes AD 92–26–09 to require inspection of an additional 30 fan disks. Fan disks inspected in accordance with the existing AD, 92–26–09, need not be inspected again. The inspection schedule for fan disks not yet inspected in accordance with the existing AD, however, remains the same, using April 9, 1993, the effective date of AD 92–26–09 as the starting point. The actions are required to be accomplished in accordance with the service bulletins described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–71." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing Amendment 39–8503, (58 FR 16113, March 25, 1993), and by adding a new airworthiness directive, Amendment 39–8780, to read as follows:

93–25–16 Allied-Signal Aerospace Company, Garrett Engine Division: Amendment 39–8780. Docket 93–ANE–71. Supersedes AD 92–26–09, Amendment 39–8503.

Applicability: Allied-Signal Aerospace Company, Garrett Engine Division, TFE731–2, –3, and –3R series turbofan engines installed on but not limited to Sabreliner NA–265–65 (Sabreliner 65); Israel Aircraft Industries 1124 series (Westwind); Avions Marcel Dassault Falcon 10, 50, 100 series; Learjet 35, 36, and 31 (M31) series; British Aerospace BAe HS125 series; and Lockheed 1329–23, –25 series (731 Jetstar, Jetstar II) aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained fan disk failure, accomplish the following:

(a) For all disks previously eddy current inspected in accordance with the requirements of AD 92–26–09, no further action is required.

(b) Remove prior to further flight fan disk Part Number (P/N) 3073539–2 or 3072162–2 with Serial Number (S/N) 8–18040–6300, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, Alert Service Bulletin (ASB) No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, and replace with a serviceable disk.

(c) Eddy current inspect fan disks, P/N 3072162–1 through –4, 3073436–1 through –4, 3073539–2, and 3074529–2, in accordance with Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, and if necessary, replace with a serviceable disk, as follows:

(1) For fan disks listed by S/N in Table 2 of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, or AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable disk within 50 cycles in service (CIS) after April 9, 1993 (effective date of AD 92–26–09).

(2) For the 10 added fan disks listed by S/N in Table 3 of AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with 5000 or more CIS since new on the effective date of this AD, inspect, and if necessary, replace with a serviceable disk, within the next 50 CIS after the effective date of this AD.

(3) For fan disks listed by S/N in Table 3 of AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan disks, with 5000 or more CIS since new on April 9, 1993, (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable disk, within the next 50 CIS after April 9, 1993 (effective date of AD 92–26–09).

(4) For the 10 added fan disks listed by S/N in Table 3 of Allied-Signal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, with less than 5000 CIS since new on the effective date of this AD, inspect, and if necessary, replace with a serviceable disk within the next 100 CIS after the effective date of this AD, or prior to accumulating 5050 CIS since new, whichever occurs first.

(5) For fan disks listed by S/N in Table 3 of AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, other than the 10 added fan disks, with less than 5000 CIS since new on April 9, 1993, (effective date of AD 92–26–09), inspect, and if necessary, replace with a serviceable disk, within the next 100 CIS after April 9, 1993 (effective date of AD 92–26–09), or prior to accumulating 5050 CIS since new, whichever occurs first.

(6) For fan disks listed by S/N in Table 4 of Allied-Signal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, inspect, and if necessary, replace with a serviceable disk, within the next 100 CIS after the effective date of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Los Angeles Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(f) The inspection, and replacement, if necessary, shall be done in accordance with the following service documents:

Document No.	Pages	Revision	Date
Allied-Signal Propulsion Engines ASB No. TFE731-A72-3504 ..... Total pages: 28..	1–28	1	July 2, 1993.
Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731-A72-3504. Total pages: 24..	1–24	Original	November 25, 1992.

The incorporation by reference of AlliedSignal Propulsion Engines ASB No. TFE731–A72–3504, Revision 1, dated July 2, 1993, is approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. The incorporation by reference of Allied-Signal Aerospace Company, Garrett Engine Division, ASB No. TFE731–A72–3504, dated November 25, 1992, was approved previously by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of April 9, 1993 (58 FR 16113, March 25, 1993). Copies may be obtained from AlliedSignal Engines, Aviation Services Division, Data Distribution, Dept. 64–3/2102–1M, P.O. Box 29003, Phoenix, AZ 85038–9003; telephone (602) 365–2548. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 18, 1994.

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–31907 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Technical Information Service

15 CFR Part 1180

[Docket No. 921242–3202]

RIN 0692–AA12

Transfer by Federal Agencies of Scientific, Technical and Engineering Information to the National Technical Information Service

AGENCY: National Technical Information Service, Technology Administration, Commerce.

ACTION: Final rule.

SUMMARY: This final rule establishes procedures for federal agencies to transfer unclassified scientific, technical and engineering information resulting from federally funded research and development activities to the National Technical Information Service. This rule is issued pursuant to the American Technology Preeminence Act of 1991. Its purpose is to facilitate public access to the vast amount of scientific, technical and engineering information that is produced by and for federal agencies.

EFFECTIVE DATE: This regulation is effective February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donald W. Corrigan (703) 487–4636.

SUPPLEMENTARY INFORMATION: On May 11, 1993, the National Technical Information Service (NTIS) published a proposed rule (58 FR 27681) to implement Section 108 of the American Technology Preeminence Act (ATPA) of 1991 (Pub. L. 102–245). Section 108 of the ATPA requires all federal agencies to submit to NTIS in a timely manner unclassified scientific, technical and engineering information (STEI) resulting from federally funded research and development activities. This final rule establishes procedures for employees of agencies to follow and those contractors and grantees who are authorized by agencies to transfer products directly to NTIS.

These regulations should significantly expand NTIS' collection of more than two million printed reports and documents, videotapes, computer software and computerized data files on tape, diskette, and CD–ROM. Such information can be purchased from NTIS by the research and development community, business, and the general public. This expansion should significantly improve public access to STEI and contribute to NTIS's ability to operate on a self-sustaining basis without appropriations.

The major features of these regulations include (a) a system of "affiliates" to serve as NTIS agents to receive information on behalf of NTIS; (b) a system of federal agency "liaisons" to work with NTIS to ensure cost-effective compliance; (c) an optional system by which agencies may allow their contractors and grantees to transfer information directly to NTIS; (d) an optional system by which agencies may allow NTIS to ride their production orders; (e) a method for granting waivers if transfer of STEI products would be inappropriate; and (f) a requirement that certain copyright information be provided to NTIS so that it does not inadvertently make available a product for which the Government lacks appropriate dissemination rights.

A number of technical and clarifying changes have been made to the proposed regulations, most of which are intended to make it clearer that certain provisions are optional at the discretion of individual agencies. The most important amendment alerts agencies that compliance with these procedures in no way relieves them of their responsibilities for distributing publications to the Depository Library Program established by Chapter 19 of Title 44 of the United States Code and establishes a procedure through which NTIS can assist agencies in meeting that responsibility with respect to STEI submitted to NTIS under this regulation.

Comments and Decisions

A number of comments involved inquiries relating to internal NTIS processes or procedures of the commenting agency and did not propose specific changes to the regulation. They are included in this section to the extent they raise matters of general interest.

General Comments

Comment: Authors should clear publications printed by contractors and grantees prior to public dissemination.

NTIS Response: These regulations apply only to products that are available for public dissemination. How that determination is made is up to individual agencies and is beyond the scope of the ATPA and these regulations.

Comment: The regulations do not appear to take into account that some government-funded research products may be published in professional journals and other publications produced by the private sector or that some STEI produced by non-federal employees may be protected by copyright.

NTIS Response: Section 1180.7(a) of the final regulations now explicitly states that agencies are not required to take any action to transfer to NTIS agency generated articles published in privately produced journals or federally funded STEI for which no license permitting distribution by NTIS has been reserved to the Government. Both categories had been included in § 1180.7(b) as examples of potentially inappropriate transfers, so no significant substantive change is intended.

Comment: NTIS and the Government Printing Office should exchange electronic bibliographic records to facilitate bibliographic control activities.

NTIS Response: The recommendation, if implemented, should provide the customers of each agency with enhanced ability to find and order government information. NTIS will be pleased to discuss an exchange of tapes with the Superintendent of Documents at any time.

Section 1180.2

Comment: The definition of "agency" permits certain subunits of the parent agency to deal directly with NTIS and bypass the cabinet officer above them.

NTIS Response: To ensure general consistency with other Technology Administration programs, the final regulations adopt the definition of "federal agency" employed in the Stevenson-Wydler Technology Innovation Act of 1980. However, NTIS recognizes that this definition contributes to the problem described in the comment at least insofar as it specifically identifies the military departments as agencies even though they are part of the Department of Defense, which is itself an agency within the meaning of that Act. Accordingly, the final regulations include a statement in section 1180.11 ("Relation to Other Laws and Procedures") clarifying that agencies that are subunits of other agencies must comply with the procedures of the parent agency. NTIS will not deal directly with these subunits as freestanding agencies except as approved by the parent.

Comment: By referring to STEI "which results from federally funded research and development activities" in the definition of the phrase "federally funded," the regulation may be interpreted to refer only to products generated under R&D funding categories.

NTIS Response: The quoted language appears in section 108 of the ATPA and nothing in that section suggests a narrow reading that conditions the requirement on technical funding categories.

Comment: The definition of "final" should not automatically exclude interim STEI reports as they often contain valuable information and the final report may not be issued for some time.

NTIS Response: The definition of "final" in section 1180.2 has been modified to indicate that such reports may be transferred.

Comment: The definition of "product" should not include software because that would unduly disrupt the agency's software distribution mechanism.

NTIS Response: Section 108 of the ATPA expressly refers to software and NTIS cannot read that out of the statute. Section 1180.7 contains a procedure for exempting products or categories of products in appropriate cases, such as harm to a dissemination program.

Comment: The definition of STEI is too broad in that it sweeps in significant amounts of business-related information.

NTIS Response: The definition of STEI is not intended to cover all business-related information. The second part of the defipition is obtained from a 1954 Comptroller General opinion (34 Comp. Gen. 58) construing the Act of September 9, 1950, 64 Stat. 823, as amended (15 U.S.C. 1151 et seq.), which required the Secretary of Commerce to maintain a clearinghouse for the collection and dissemination of STEI. According to the opinion, "technical information" can embrace matters beyond the restricted field of applied science and mechanical arts. However, the definition in the Comptroller General opinion should itself be read as limited to information which has a *direct* relationship to business, industry or technology. Also, the second part of the definition in the

rule limits STEI to information that would be of value to consumers of scientific or engineering information, as determined by the agency transferring the information. Most importantly, NTIS will work with liaison officers to ensure that the results of applying the definition under this rule are not burdensome to agencies or to NTIS.

Section 1180.4

Comment: The requirement that product formats conform to NTIS guidelines is burdensome.

NTIS Response: The guidelines simply catalog existing formats in order of preference by NTIS. However, they are only guidelines, not requirements. The language has been modified to make it clearer that the formats are to be used to the extent practicable.

Comment: The requirement to advise NTIS of the terms of copyright licenses reserved to the Government are unnecessary because some agencies surrender all rights in exchange from royalty-free government purpose rights.

NTIS Response: The regulation in no way tells agencies what rights they should or should not retain. Agency practices vary and the regulation is simply intended to ensure that nothing is transferred to NTIS that NTIS is precluded from disseminating because the Government lacks appropriate dissemination rights.

Note: Section 1180.4(a) also contains a new paragraph relating to material not printed by the Government Printing Office. The purpose of this addition is explained more fully in the analysis of comments pertaining to § 1180.11.

Section 1180.5

Comment: The regulation requires final STEI products to be submitted within fifteen days of public dissemination but is silent as to when summaries of new and on-going research described in section 1180.3 is to be submitted.

NTIS Response: The final regulation clarifies that the fifteen day requirement also pertains to unclassified research summaries that have been made available for public dissemination through any distribution channel.

Comment: Transfer within fifteen days of public dissemination may be impractical or inappropriate.

NTIS Response: Providing NTIS with a copy of a product two weeks after it has been made available for public dissemination is not unreasonable and reflects the direction in section 108 of the ATPA that federal agencies transfer covered materials in a timely manner.

Section 1180.6

Comment: The size and scope of the agency's programs make it difficult to give NTIS pre-production notice so as to allow it to ride printing orders.

NTIS Response: Section 1180.6 has been slightly modified to make it clear that this procedure is permissive and need not be used by agencies that conclude that it would be unduly burdensome.

Comment: The regulation should exempt the commenting agency from the requirement to allow NTIS to ride its production orders for security reasons.

NTIS Response: Section 1180.6 has been modified to clarify that this requirement is not mandatory. However, agencies that do not use this method must find alternative means of ensuring that NTIS receives copies of all products required to be transferred.

Comment: NTIS should work with the commenting agency to ride its printing requisitions and make arrangements to share costs recovered from the dissemination of products.

NTIS Response: NTIS will consider all appropriate proposals from agencies to achieve these purposes.

Section 1180.7

Comment: The regulation should not apply to STEI products available through the Government Printing Office.

NTIS Response: NTIS has a statutory mandate to maintain an STEI information clearinghouse, to establish and maintain a permanent repository of unclassified STEI, and to operate on a cost recovery basis without recourse to appropriations. NTIS achieves these different objectives by maintaining a comprehensive collection that is of particular value to business and other consumers who want access to a broad range of materials in and out of print, who want them quickly, and to whom time spent shopping in various places is a significant cost. The practical effect of this suggestion would be to reduce the value of NTIS' collection and essentially leave it with those unprofitable items that GPO cannot sell. The enactment of Section 108 of the ATPA suggests that Congress wanted to strengthen, not weaken, NTIS' ability to serve the needs of STEI users and industry and to operate on a self-sustaining basis.

Comment: This section inappropriately allows NTIS to overrule agency decisions as to whether information ought to be released and to overrule agency decisions to use dissemination channels other than NTIS.

NTIS Response: The regulation leaves discretion to agencies to determine whether information should be released. The regulation expressly disclaims the intent to preclude agencies from also using other channels (Section 1180.11(b)). However, the regulation does preclude agencies from unilaterally bypassing NTIS when the agency has decided that the information should be disseminated. It is expected that agencies and NTIS will negotiate cooperatively to identify products or classes of products that the agency intends to make available through channels other than NTIS.

Comment: Provisions calling for agreement between the agency head and NTIS regarding alternative methods of compliance or whether transfers would be inappropriate are issues that should be in the sole discretion of the agency.

NTIS Response: NTIS has an obligation to ensure that the basic requirements of the American Technology Preeminence Act are satisfied and does not believe that agencies can unilaterally exempt themselves from its provisions. NTIS will work closely with agency liaisons to resolve problems that may from time to time arise. However, as noted above, the basic issue of whether a product should be publicly disseminated is up to the agency and is unaffected by Section 1180.7.

Comment: The regulation should specifically exempt the commenting agency's ongoing research because national security concerns preclude public dissemination.

NTIS Response: The regulations apply only to unclassified information and only to information intended for public dissemination.

Section 1108.8

Comment: A reference in § 1180.8(a)(1) to items produced at Government facilities should be changed to refer to items produced by the Government as the latter is more inclusive and production site is largely irrelevant.

NTIS Response: NTIS has made the suggested change.

Comment: To preclude proliferation of affiliates within an agency, the concurrence of an agency's initial and primary affiliate should be required before additional affiliates are appointed.

NTIS Response: Section 1180.8 has been amended to adopt this recommendation.

Comment: A commenting agency requested that the regulation explicitly designate it as an affiliate.

NTIS Response: NTIS will designate a number of affiliates over time. Designating them by regulation is impractical. NTIS expects that the Department of Energy's Office of Scientific and Technical Information, the Department of Defense's Defense Technical Information Center and the National Aeronautics and Space Administration's Scientific and Technical Information Office will be among those organizations initially designated as affiliates by NTIS.

Section 1180.11

Comment: This section should be expanded to clarify the relation of the regulation to a number of other laws and procedures relating to the release, protection, and dissemination of Government information, such as the Freedom of Information Act, requirements to protect certain sensitive material, and requirements to make information available for distribution to Depository Libraries (which issue is discussed in more detail in the following comments).

NTIS Response: NTIS has made the suggested changes and has reorganized § 1180.4 to reflect them more clearly.

Comment: To ensure compliance with agency clearance procedures, the regulation should specify for certain agencies the identity of the offices that are required to approve direct transmissions of STEI products to NTIS by contractors, grantees, and employees.

NTIS Response: NTIS has concluded that the identification of an agency's appropriate clearance officials should be left to individual agencies through their internal procedures and should not be covered by NTIS regulations. The final regulation does not adopt this recommendation but NTIS has modified the proposed regulation to delete the one specific reference that had been included.

Comment: The regulation will weaken the effectiveness of the Depository Library (DL) Program if agencies erroneously assume that STEI products submitted to NTIS will automatically be supplied to the Libraries by NTIS. Various recommendations were made, such as clarifying that submission to NTIS in no way relieved agencies of their obligations to provide documents to the Libraries or requiring NTIS to make such products available to the Libraries on behalf of the originating agencies.

NTIS Response: NTIS has added new provisions that (1) reemphasize agency responsibilities for compliance with all DL requirements (Section 1180.11(a)(5)); (2) provide DL's with information about new products added to NTIS' inventory (Section 1180.11(d) (1)–(2)); and (3) establish a procedure through which NTIS can assist agencies in meeting their DL requirements with respect to STEI submitted to NTIS under this regulation (Section 1180.4(a) and 1180(d) (3)–(6)).

The final regulations contain a new § 1180.4(a)(4) which requires agencies, when preparing a product for transfer to NTIS, to advise NTIS as to whether products not printed by GPO have been made available for depository distribution by GPO. In addition, it has added a new § 1180.11(d) which establishes a general framework for handling products so identified.

Under this framework, DL's will be provided free online access to a current listing of all products that NTIS accepts as part of its permanent respository (Section 1180.11(d)(1)). They will be given a reasonable time to order products not previously made available to them (Section 1180.11(d)(2)). NTIS will bundle the requests and refer them back to the originating agency to be filled (new § 1180.11(d)(3)) or fill the order itself if NTIS and the originating agency have entered into appropriate agreements regarding reimbursement (Section 1180.11(d)(4)).

In the near future NTIS expects to develop a system through which DL's, at no charge to them, may have electronic access to full texts of STEI products. When this is operational, agencies will be able to fulfill their obligations to the DL's effortlessly and at no additional cost simply by providing NTIS with the product in a format prescribed by NTIS as suitable for online dissemination under this system (Section 1180.11(d)(5)).

The new regulations will also obligate DL's to protect the information provided to them (Section 1180.11(d)(6)). This is important because the improper disclosure of this valuable information could seriously erode NTIS's ability to operate on a self-sustaining basis. For example, improper dissemination of the list of products could significantly reduce the rental value of NTIS's bibliographic database as an income-producing asset.

Comment: The regulation should clarify that the requirement to make publications available under the Depository Library Program extends to publications in electronic formats.

NTIS Response: NTIS cannot issue interpretations of statutes it does not administer and that would be binding on other egencies. Such matters are more appropriately covered by OMB Circular A–130.

Appendix

Comment: The Appendix should be modified to indicate that it is inapplicable to a commenting agency's contractors and grantees.

NTIS Response: The Appendix includes model language that agencies may choose to employ if they elect to allow their contractors and grantees to submit products directly to NTIS. The regulations already make clear that contractors and grantees of this agency must obtain prior agency approval from an identified office before submitting such information directly to NTIS.

Executive Order 12866

This regulation has been reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget under Executive Order 12866.

Executive Order 12372

NTIS has determined that these procedures do not affect directly any state or local government and that consultations with state and local officials are not required.

Executive Order 12612

NTIS has determined that these procedures do not contain policies with any federalism implications within the meaning of this Order.

Regulatory Flexibility Act

The General Counsel has certified to the Chief Counsel for Advocacy of the Small Business Administration that this rule, which applies only to the transfer by federal agencies of federally funded STEI, will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

This rule does not contain any information collection requirement subject to the Paperwork Reduction Act.

Environmental Evaluation

NTIS has determined that this regulation will have no significant impact on the quality of the environment and that neither an environmental assessment nor an Environmental Impact Statement is needed.

List of Subjects in 15 CFR Part 1180

Scientific, technical and engineering information.

Issued in Springfield, Virginia, on December 28, 1993.

Ron Lawson,

Acting Director.

Accordingly, title 15 of the Code of Federal Regulations is amended by adding part 1180 as follows:

PART 1180—TRANSFER BY FEDERAL AGENCIES OF SCIENTIFIC, TECHNICAL AND ENGINEERING INFORMATION TO THE NATIONAL TECHNICAL INFORMATION SERVICE

Sec.

1180.1 Purpose and scope.
1180.2 Definitions.
1180.3 General rule.
1180.4 Preparing a product for transfer.
1180.5 Timeliness.
1180.6 Production of additional copies.
1180.7 Exceptions.
1180.8 Appointment of Agency Liaison Officers.
1180.9 Affiliates.
1180.10 NTIS permanent repository.
1180.11 Relation to other laws and procedures.

Appendix to Part 1180—Sample Funding Agreement Clause for Direct Submission of Products

Authority: Sec. 108 of Pub. L. 102–245, 106 Stat. 7 (15 U.S.C. 3704b–2).

§1180.1 Purpose and scope.

(a) The purpose of this regulation is to facilitate public access to the vast amount of scientific, technical and engineering information (STEI) that is produced by and for federal agencies.

(b) This regulation provides a variety of methods for federal agencies to adopt to ensure the timely transfer to the National Technical Information Service (NTIS) of all unclassified STEI that is available for public dissemination and that results from federal funding. It is issued pursuant to the authority contained in Section 108 of the American Technology Preeminence Act (Pub. L. 102–245).

§1180.2 Definitions.

Agency means a federal agency, as that term is defined in Section 4 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3703(8));

Director means the Director of the National Technical Information Service.

Federally funded refers to STEI which results from federal research and development activities funded in whole or in part with federal funds, whether performed by the agency itself or by contractors, grantees, cooperative research partners, joint venture partners, or under any similar arrangement involving federal funds.

Final when used to describe an STEI product means a product that the originating agency or contractor/grantee thereof intends for public dissemination and may exclude interim status reports routinely furnished to agencies by contractors and grantees for monitoring and other internal purposes and which are not intended for public dissemination.

Product includes, but is not limited to, any report, manual, standard, specification, book, paper, chart, map, graph, data collection, data file, data compilation, software, audio/video production, technology application assessment generated pursuant to Section 11(c) of the Stevenson-Wydler Technology Innovation Act of 1980 (15 U.S.C. 3710(c)), as well as materials pertaining to training technology and other federally owned or originated technologies, and applies to items produced in-house or outside the agency through the Government Printing Office, its contractors, Federal Prison Industries or any other producer, provided that such material is intended by the agency for public dissemination.

Scientific, technical and engineering information means—

(1) Basic and applied research that results from the efforts of scientists and engineers in any medium (including new theory and information obtained from experimentation, observation, instrumentation or computation in the form of text, numeric data or images), and

(2) Information that bears on business and industry generally, such as economic information, market information and related information, if the agency determines such information would be of value to consumers of the information described in paragraph (1) of this definition.

Summary means information relating to an ongoing research project likely to result in a final product.

§1180.3 General rule.

Unless an exception applies under section 1180.7, each federal agency shall, within the time period specified in this regulation, transfer to NTIS—

(a) At least one copy of every final STEI product resulting from the agency's federally funded research and development activities, and

(b) A summary of the agency's new and on-going research that is likely to result in a final STEI product

if such final product or summary is unclassified and is intended by the agency for public dissemination.

§1180.4 Preparing a product for transfer.

(a) Every final STEI product or summary shall, to the extent practicable, be prepared in a format that is consistent with one of the various formats found in NTIS guidelines. In addition, every such product shall—

(1) Be accompanied by a report documentation page (SF 298) or its electronic equivalent;

(2) Be in a form capable of high quality reproduction appropriate to the medium;

(3) In the case of software, be accompanied by relevant documentation, such as operating manuals, but not including printed source code; and

(4) In the case of a product not printed by the Government Printing Office, be accompanied by a statement as to whether the product has been made available for depository distribution by the Government Printing Office.

(b) Each federal agency shall transfer or have transferred to NTIS those STEI products funded by it that are protected by copyright only if there is a license reserved to the Government. In such cases, the agency shall inform NTIS of the terms of the license. Suggested language for inclusion in agency funding instruments is contained in the Appendix to this part.

(c) If an agency has generated or funded an STEI product which should be available for public dissemination but has embedded within it any copyrighted material, the designated liaison appointed pursuant to §1180.8 should work with NTIS to determine if it would be appropriate to seek a license from the copyright holder in order to make the STEI product available.

§1180.5 Timeliness.

A single copy of a final product or summary described in §1180.3 must be transferred to NTIS within fifteen days of the date it is first made available for public dissemination through any distribution channel, and, whenever practical, as soon as it has been approved by the agency for final printing or other reproduction, unless the agency and the Director have otherwise agreed.

§1180.6 Production of additional copies.

Unless the agency determines that such action would not be feasible, it shall make appropriate arrangements to enable NTIS, from time to time and at NTIS's own discretion and expense, to ride agency printing and other reproduction orders.

§1180.7 Exceptions.

(a) An agency shall not be required to take any further action to submit a copy of a final STEI product to NTIS or one of its affiliates if—

(1) It has designated NTIS to receive a single copy of each STEI product once it has been produced, has made the arrangements specified in §1180.6, if appropriate, and has made arrangements to receive appropriate certification from a contractor, grantee or other external performer of federally funded research that a copy has been sent to NTIS or one of its affiliates within the appropriate time period pursuant to obligations incurred in the applicable funding agreement (see Appendix to this part) or pursuant to such other system as the agency has established to ensure timely transfer;

(2) The agency and the Director have executed an appropriate agreement or memorandum of understanding establishing an alternative system for compliance; or

(3) The federally funded STEI is protected by copyright for which no license has been reserved to the Government that would allow distribution by NTIS;

(4) The product is an agency generated article that is published in a privately produced journal; or

(5) The agency and the Director, pursuant to paragraph (b) of this section, have agreed that the transfer of a product otherwise covered by these regulations would not be appropriate.

(b) An agency and the Director shall be deemed to be in agreement within the meaning of paragraph (a)(3) of this section if the Director has not objected within 30 days to an agency's written notification of its determination that timely transfer of a product or category of products would not be appropriate under section 108 of the American Technology Preeminence Act. Examples of inappropriate transfers include:

(1) Transfers that could cause significant harm to an agency's existing dissemination program that is operating on a cost recovery basis, is operating in compliance with the policies described by OMB Circular A–130, and for which special arrangements that would permit supplemental distribution by NTIS cannot be negotiated.

(2) Federally funded STEI that has received, or is likely to receive, widespread distribution to most potential users at no charge.

§1180.8 Appointment of Agency Liaison Officers.

The head of each agency shall appoint or designate an officer or employee to serve as the STEI Liaison. The Liaison shall, to the extent authorized by the head of the agency—

(1) In cooperation with the Director, determine what products or summaries produced by the Government shall be transferred to NTIS on an ongoing basis;

(2) Determine which funding agreements are to require contractors and grantees to submit products directly to NTIS (for which purpose the Appendix to this part contains suggested language that agencies may wish to include in applicable funding instruments);

(3) Appoint additional liaison officers for major units or components of an agency if the Director and Liaison officer agree this would further the purposes of this regulation; and

(4) Enter into appropriate agreements with the Director and perform any other agency responsibilities described in this regulation.

§1180.9 Affiliates.

(a) The Director may recognize any federal agency or component of an agency as an affiliate for the purpose of receiving, on behalf of NTIS, any STEI product that is required to be transferred under these regulations if NTIS has entered into a memorandum of understanding with the Liaison Officer under which the recognized affiliate agrees to the ongoing transfer of all STEI products to NTIS in a timely manner and otherwise agrees to assume the role of an affiliate.

(b) A transfer by an agency to an approved affiliate shall be deemed a transfer to NTIS within the meaning of these regulations.

§1180.10 NTIS permanent repository.

A product, or category of product, will normally be accepted and maintained as part of NTIS' permanent repository as a service to agencies unless the Director advises the Liaison Officer that it has not been so accepted. In general, transferred products will not be accepted if they have not been properly prepared as required by Section 1180.4 or if NTIS believes that the cost of adding them to the repository will significantly exceed anticipated benefits to the public as measured by foreseeable demand. A product announced by NTIS as being available from NTIS shall be deemed to have been accepted by NTIS as part of its permanent repository.

§1180.11 Relation to other laws and procedures.

(a) Nothing in these regulations shall be deemed to exempt an agency from any of the following requirements:

(1) Compliance with the Freedom of Information Act (5 U.S.C. 552);

(2) Compliance with any requirements to protect material that contains classified national security information;

(3) Compliance with requirements to protect personal or other information that may not be disclosed without appropriate authority under applicable laws and procedures, such as the Privacy Act (5 U.S.C. 552a);

(4) Compliance with laws and regulations applicable to federal records under Title 44 of the United States Code or regulations issued by the National Archives and Records Administration (36 CFR, chapter XII);

(5) Compliance with requirements to distribute publications through the Depository Library Program either directly or through NTIS as prescribed in subsection (d) of this section; and

(6) In the case of an agency that is also a component of an agency as that term is defined in §1180.2, compliance with all applicable requirements and procedures of the parent agency regarding these regulations.

(b) Nothing in these regulations shall be deemed to require an agency to take any of the following actions:

(1) To use NTIS as an agency's exclusive distribution channel;

(2) To transfer to NTIS information on matters that are specifically authorized under criteria established by an Executive Order to be kept secret in the interest of national defense or foreign policy and are in fact properly classified pursuant to such Executive Order; or

(3) to transfer, produce, or disseminate any other information that is required by law to be withheld, which the agency is authorized to withhold, or which is not intended by the agency for public dissemination.

(c) No contractor, grantee, or employee of a Federal agency shall submit a final STEI product directly to NTIS unless authorized to do so by the Liaison or the Liaison's designate, which authorization may be provided in an approved funding agreement (see Appendix to this part).

(d) In order to facilitate cooperation between agencies and the Depository Libraries—

(1) NTIS will, as soon as possible, but not later than six months from the effective date of these regulations, provide each Depository Library at no charge, online access to a current list of all final STEI products provided to NTIS under these regulations that have been entered into the NTIS system.

(2) The online system described in subsection (d) of this section will include an option that will allow each Depository Library thirty days from the date a product is added to the online listing to identify a product that it wishes to receive and that has not otherwise been made available to it.

(3) NTIS will accumulate these requests and, within a reasonable time, transfer them to the originating agency for fulfillment of each of the identified products.

(4) In lieu of the procedures described in paragraph (d)(3) of this section, NTIS will offer to enter into simple cost recovery arrangements with the

originating agency to duplicate and ship the identified products to the requesting Libraries in the format that the agency determines to be most cost effective, including microfiche, paper, diskette, or disc.

(5) NTIS will also establish, as soon as practical, a system of full text online access to final STEI products for the Depository Libraries at no charge to them. Those final STEI products provided to NTIS in a format prescribed by NTIS as suitable for online dissemination under this system will be made available to the Libraries at no charge to the originating agency, will be maintained online indefinitely, and will be available to the Libraries without regard to the thirty day selection time limit described in paragraph (d)(2) of this section.

(6) The services in this paragraph will be provided to Depository Libraries on the condition that they agree to ensure that online access to the NTIS listing described in paragraph (d)(1) of this section is restricted to the Library and its staff and that the full text products provided online pursuant to paragraph (d)(5) of this section are available only to the community served by that Library.

Appendix to Part 1180—Sample Funding Agreement Clause for Direct Submission of Products

Agencies electing to allow for their contractors, grantees, etc. to submit final products directly to NTIS are encouraged to employ a provision similar to the following in the applicable funding agreement:

"The (contractor)/(recipient) shall certify to the (contracting) (grants) officer—

"(1) a copy of all scientific, technical and engineering information products created or finalized in whole or in part with the funds requested has been or will be transferred to NTIS or a recognized affiliate (at the same time that it is provided to the sponsoring agency) (when the agency has determined that the product is approved for public dissemination) but no later than fifteen days after it is first made available for public dissemination through any other distribution channel, and

"(2) NTIS, or a recognized affiliate, has been advised as to whether the product is protected by copyright and, if so, a copy of the terms of any licenses reserved to the Government has been sent to NTIS, along with a copy of the SF 298."

[FR Doc. 93–32098 Filed 12–29–93; 1:02 pm]

BILLING CODE 3510–04–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 341, 342, 343, 344, 345, 347, 360, 361, and 375

[Docket No. RM93–11–001]

Revisions to Oil Pipeline Regulations Pursuant to the Energy Policy Act of 1992

Issued December 22, 1993

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule; briefs on limited issue.

SUMMARY: On October 22, 1993, the Commission issued a final rule in this proceeding, revising its regulations of oil pipelines to provide a simplified and generally applicable method for regulating oil pipeline rates by use of an index for setting rate ceilings for such rates. On December 9, 1993, Sinclair Oil Corporation and the National Council of Farmer Cooperatives filed a brief addressing the issue of the selection of an index for use in the indexing system adopted in the final rule. The Commission has determined that additional information on the choice of an index will add to the record of this rulemaking; therefore, the Commission is affording an opportunity for others to file briefs on this issue.

DATES: Briefs are due on or before January 21, 1994.

ADDRESSES: All filings should refer to Docket No. RM93–11–001 and should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Harris S. Wood, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0696.

Order Granting Rehearing for the Purpose of Further Consideration and Allowing Briefs on Limited Issue

On October 22, 1993, the Commission issued Order No. 561, its Final Rule in this proceeding.[1] Rehearing of Order No. 561 has been requested by numerous parties.

In order to afford additional time for consideration of the issues raised in the requests for rehearing, it is necessary to grant rehearing for the limited purpose of further consideration.

On December 9, 1993, Sinclair Oil Corporation and the National Council of Farmer Cooperatives filed a motion to file a "Brief in Response to Certain Issues Raised in Requests for Rehearing of Order No. 561." The brief addresses the issue of the selection of an index for use in the indexing system adopted in the Final Rule. On December 16, 1993, Phillips Pipe Line Company filed an answer in opposition to the motion.

Under Rule 713(d)(2) of the Commission's Rules of Practice and Procedure,[2] the Commission may allow parties to file briefs on one or more issues presented by a request for rehearing. Thus, although answers to rehearing requests are not permitted by the rules, the consideration of briefs is an accepted procedure. The Commission has determined that additional information on the choice of an index will add to the record of this rulemaking. Therefore, the brief filed by Sinclair and the Farmer Cooperatives will be accepted for filing, and the Commission will afford an opportunity for others to file briefs on this issue.

The Commission orders:

(A) Rehearing of the Commission's order issued on October 22, 1993, is hereby granted for the purpose of further consideration.

(B) Interested parties may file briefs no later than January 21, 1994, addressing the issue of what index should be used in the indexing system adopted in the Final Rule.

By the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32044 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[1] 65 FERC ¶ 61,109 (1993); 58 FR 58753 (November 4, 1993).

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 8508]

RIN 1545–AE26

Adjustments to Basis of Stock and Indebtedness to Shareholders of S Corporations and Treatment of Distributions by S Corporations to Shareholders

AGENCY: Internal Revenue Service, Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations under section 1367 of the Internal Revenue Code relating to adjustments to the basis of a shareholder's stock in an S corporation and the basis of indebtedness of an S corporation to a shareholder. This document also contains final regulations under section 1368 of the Internal Revenue Code relating to the treatment of distributions by an S corporation to its shareholders. Changes to the applicable law were made by the Subchapter S Revision Act of 1982, the Technical Corrections Act of 1982, the Tax Reform Act of 1984, and the Tax Reform Act of 1986. The final regulations affect S corporations and their shareholders and are necessary to provide them with the guidance they need to comply with the applicable tax law.

EFFECTIVE DATE: These regulations are effective on January 1, 1994 and apply to taxable years beginning on and after January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Deane M. Burke (202) 622–3080 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the requirements of the Paperwork Reduction Act (44 U.S.C. 3504(h)) under control number 1545–1139. The estimated annual burden per respondent varies from .05 to .2 hour, depending on individual circumstances, with an estimated average of .1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the Internal Revenue Service. Individual respondents may require greater or less time, depending on their particular circumstances.

Comments concerning the accuracy of this burden estimate and suggestions for reducing this burden should be directed to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224, and to the Office of Management and Budget, Attention: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Background

This document amends 26 CFR part 1 that provides rules under sections 1367 and 1368 of the Internal Revenue Code of 1986 (Code), as amended. The amendments conform the regulations to amendments made to sections 1367 and 1368 by sections 2 and 6 of the Subchapter S Revision Act of 1982, section 305 of the Technical Corrections Act of 1982, sections 721(d), (r), and (w) and 722(e)(2) of the Tax Reform Act of 1984, and section 1879(m)(1)(B) of the Tax Reform Act of 1986.

On June 9, 1992, the **Federal Register** published a notice of proposed rulemaking (57 FR 24426) (the proposed regulations) concerning adjustments to basis of stock and indebtedness to shareholders of S corporations and treatment of distributions by S corporations to shareholders. Because no one requested to testify, the Service cancelled a public hearing scheduled for September 14, 1992. The Service, however, received written comments on the proposed regulations. After consideration of all of the comments, the proposed regulations are adopted as revised by this Treasury decision.

Explanation of Provisions

The final regulations provide rules under section 1367 regarding adjustments to the basis of a shareholder's stock in an S corporation and the basis of indebtedness of an S corporation to a shareholder. The final regulations also provide rules under section 1368 regarding the treatment of distributions by an S corporation to its shareholders. Except for modifications in response to the comments, which were generally favorable, these final regulations generally provide the same rules as the proposed regulations.

I. Adjustments to Basis of Stock

A. Separate Basis Approach

The proposed regulations provided a separate basis approach (comparable to the basis of a shareholder in C corporation stock) for determining adjustments to the basis of a shareholder's stock in an S corporation. The proposed regulations also provided a *spillover rule* that allowed a shareholder to apply losses and deductions in excess of the basis of a share of stock to which such items are attributable against the remaining bases of all other shares of stock owned by a shareholder. The Service invited and received comments on whether another approach such as an aggregate/average basis (comparable to the basis of a partner in a partnership interest) should be used for purposes of sections 1367, 1368, and 1012.

Commentators generally favored the separate basis approach with the spillover rule in the proposed regulations. The final regulations therefore retain this rule. In response to comments, the final regulations clarify that the spillover rule applies to basis adjustments for distributions to shareholders as well as to adjustments for pro rata shares of passthrough items of losses or deductions.

B. Ordering Rule

Under the proposed regulations, adjustments are made to the basis of a share of stock in the following order: (1) increases for income items (including tax-exempt income) and The excess of deductions for depletion over basis for non-oil and gas properties; (2) decreases for noncapital, nondeductible expenses and certain oil and gas depletion deductions; (3) decreases for items of loss or deduction; and (4) decreases for distributions. The Service invited and received several comments regarding the ordering rules.

Some commentators suggested that decreases to basis for distributions should occur prior to decreases for any losses or deductions, noncapital, nondeductible expenses, and oil and gas depletion deductions. The legislative history on this issue is contradictory. On the one hand, the committee reports state that the S corporation rules for adjusting basis generally will be analogous to those provided for partnerships (which adjust basis first for distributions, then for losses and deductions). On the other hand, the reports also state that "income and loss for any corporate taxable year will apply to adjust basis before the distribution rules apply for that year." See H.R. Rep. No. 826, 97th Cong., 2d Sess. 17 (1982); S. Rep. No. 640, 97th Cong., 2d Sess. 18 (1982). The language of the loss limitation rule of section 1366(d)(1) suggests that losses are to be applied against basis prior to distributions. Section 1366(d)(1) provides that "[t]he aggregate amount of losses and deductions taken into account by a shareholder * * * for a taxable year shall not exceed the sum of (A) the adjusted basis of the shareholder's stock in the S corporation (determined with regard to [increases for income and depletion items]), and (B) the shareholder's adjusted basis in any debt of the S corporation * * * " Because of the specific statement in the legislative history, and the implication in section 1366(d)(1), the Service and the Treasury Department believe that it is appropriate to require adjustments for losses and deductions prior to adjustments for distributions. Thus, the final regulations retain the ordering rule of the proposed regulations.

Commentators also suggested that decreases to basis for items of loss or deduction should occur prior to

[2] 18 CFR 385.713(d)(2).

decreases for noncapital, nondeductible expenses and oil and gas depletion deductions. In response to the comments, the final regulations provide that decreases for items of loss or deduction may precede decreases for noncapital, nondeductible expenses and oil and gas depletion deductions if a shareholder agrees that noncapital, nondeductible expenses in excess of basis and certain oil and gas depletion deductions will reduce basis in succeeding taxable years.

II. Adjustments to Debt Basis and Open Account Debt

The Service invited comments regarding the proper treatment of open account debt (advances to an S corporation by a shareholder that are not represented by separate written instruments and that are typically treated as one account by the S corporation) for purposes of reducing and restoring basis in indebtedness. In particular, the Service asked for comments on whether it is appropriate to treat each advance as a separate debt or all advances as a single debt. Several commentators suggested that the final regulations should provide a rule treating open account debt as a single debt for all advances by a shareholder. In response to comments, and for reasons of administrative simplicity, the final regulations provide that all open account debt held by a shareholder is to be treated as a single debt for purposes of reducing and restoring basis of debt.

III. Elections Under Section 1368

The proposed regulations provide that if a shareholder disposes of 20 percent or more of the corporation's issued shares of stock in one or more transactions during any thirty-day period during the taxable year of the corporation (*qualifying disposition*), the corporation may elect to treat the taxable year as if it consists of separate taxable years, the first of which ends on the date on which the shareholder disposes of 20 percent or more of the corporation's issued stock. Some commentators suggested that the election for qualifying dispositions of stock should be expanded to include any 20 percent or greater disposition of stock (whether by a sale or exchange, by a redemption treated as an exchange, or by a stock issuance). In response to comments, the final regulations modify the rule in the proposed regulations to permit the election for other dispositions of an S corporation's stock.

IV. Rules Relating to the Accumulated Adjustments Account

Under the final regulations, only S corporations with earnings and profits must maintain an accumulated adjustments account (*AAA*) to determine the tax effect of distributions during S years and the post-termination transition period as defined in section 1377(b)(1). An S corporation without earnings and profits does not need to maintain the AAA in order to determine the tax effect of distributions. Nevertheless, if an S corporation without earnings and profits engages in certain transactions to which section 381(a) applies, such as a merger into an S corporation with C corporation earnings and profits, the S corporation must be able to calculate its AAA at the time of the merger for purposes of determining the tax effect of post-merger distributions.

A. Adjustments to AAA

One commentator suggested that adjustments to the AAA should mirror the statutory scheme for adjustments to basis in stock under section 1367, at least in the context of dividend distributions. Under the proposed regulations, a distribution taxed to a shareholder under section 1368(b)(2) (because it exceeds a shareholder's stock basis) reduces the AAA balance. The commentator recommended that the AAA should be decreased only by the portion of a distribution to which section 1368(b)(1) applies. In effect, under the commentator's suggestion, adjustments to the AAA would mirror adjustments to a shareholder's basis in stock and would limit reduction of the AAA to nontaxable distributions.

Section 1368(e)(1)(A) provides that the AAA is adjusted in a manner similar to basis in stock and S corporation debt, but does not require that it mirror shareholder level adjustments to basis in stock and S corporation debt. Furthermore, the rule in the proposed regulations is more consistent with the fact that the AAA is a corporate level account. The Service and the Treasury Department believe that the commentator's approach would create unnecessary complexity and uncertainty in the administration of the statute. The AAA is a corporate level account and an S corporation, which does not generally need to track a shareholder's basis in its stock, would need to determine a shareholder's basis to adjust the AAA upon a distribution. Therefore, the final regulations do not adopt this commentator's suggested approach regarding adjustments to the AAA for distributions.

B. Redemption Distributions

Section 1368(e)(1)(B) provides that in the case of a redemption distribution that is treated as an exchange of stock under section 302(a) or section 303(a) (*redemption distribution*), the corporation's AAA is adjusted in an amount equal to the ratable share of the corporation's AAA attributable to the redeemed stock. In the case of a taxable year in which ordinary distributions and redemption distributions occur, the proposed regulations require an S corporation to determine the ratable share of the AAA attributable to redeemed stock under the method used to determine the pro rata portion of total earnings and profits attributable to shares redeemed in a C corporation. See Rev. Rul. 74–338, 1974–2 C.B. 101, and Rev. Rul. 74–339, 1974–2 C.B. 103. The Service invited and received comments regarding alternative approaches that appropriately reduce the AAA in the case of ordinary and redemption distributions.

While commentators generally acknowledged that the redemption rule in the proposed regulations is workable, they suggested the rule is unnecessarily complex. In response to comments, the final regulations modify the redemption rule. Under the final regulations, adjustments to the AAA are made first for passthrough items, second for ordinary distributions, and third for redemption distributions. For redemption distributions, an S corporation is required to adjust the AAA in an amount equal to the ratable share of the AAA attributable to the redeemed stock. The corporation also independently adjusts earnings and profits under the normal rules for C corporations.

V. Effective Date and Transition Rule

The final regulations under sections 1367 and 1368 apply to taxable years of the corporation beginning on or after January 1, 1994. For taxable years beginning before January 1, 1994, both the adjustments to the basis of a shareholder's stock and any indebtedness of the S corporation to a shareholder and the treatment of distributions by the S corporation to its shareholders must be determined in a reasonable manner. For purposes of the preceding sentence, return positions consistent with §§ 1.1367–1, 1.1367–2, 1.1368–1, 1.1368–2, and 1.1368–3 (other than the deemed dividend election under § 1.1368–1(f)(3)) are reasonable.

Special Analysis

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Deane M. Burke of the Office of Assistant Chief Counsel (Passthroughs and Special Industries), Internal Revenue Service. However, other personnel from the Internal Revenue Service and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding the following citations in numerical order:

Authority: 26 U.S.C. 7805 * * *

Section 1.1368–1(f) and (g) also issued under 26 U.S.C. 1377(c).

Section 1.1368–2(b) also issued under 26 U.S.C. 1368(c).

Par. 2. Sections 1.1367–0 through 1.1367–3 and 1.1368–0 through 1.1368–4 are added to read as follows:

§ 1.1367–0 Table of contents.

The following table of contents is provided to facilitate the use of §§ 1.1367–1 through 1.1367–3.

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) In general.
(1) Adjustments under section 1367.
(2) Applicability of other Internal Revenue Code provisions.
(b) Increase in basis of stock.
(1) In general.
(2) Amount of increase in basis of individual shares.
(c) Decrease in basis of stock.
(1) In general.
(2) Noncapital, nondeductible expenses.
(3) Amount of decrease in basis of individual shares.
(d) Time at which adjustments to basis of stock are effective.
(1) In general.
(2) Adjustment for nontaxable item.
(3) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Ordering rules.
(f) Elective ordering rule.
(g) Examples.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) In general.
(b) Reduction in basis of indebtedness.
(1) General rule.
(2) Termination of shareholder's interest in corporation during taxable year.
(3) Multiple indebtedness.
(c) Restoration of basis.
(1) General rule.
(2) Multiple indebtedness.
(d) Time at which adjustments to basis of indebtedness are effective.
(1) In general.
(2) Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).
(e) Examples.

§ 1.1367–3 Effective date and transition rule.

§ 1.1367–1 Adjustments to basis of shareholder's stock in an S corporation.

(a) *In general*—(1) *Adjustments under section 1367.* This section provides rules relating to adjustments required by section 1367 to the basis of a shareholder's stock in an S corporation. Paragraph (b) of this section provides rules concerning increases in the basis of a shareholder's stock, and paragraph (c) of this section provides rules concerning decreases in the basis of a shareholder's stock.

(2) *Applicability of other Internal Revenue Code provisions.* In addition to the adjustments required by section 1367 and this section, the basis of stock is determined or adjusted under other applicable provisions of the Internal Revenue Code.

(b) *Increase in basis of stock*—(1) *In general.* Except as provided in § 1.1367–2(c) (relating to restoration of basis of indebtedness to the shareholder), the basis of a shareholder's stock in an S corporation is increased by the sum of the items described in section 1367(a)(1). The increase in basis described in section 1367(a)(1)(C) for the excess of the deduction for depletion over the basis of the property subject to depletion does not include the depletion deduction attributable to oil or gas property. See section 613(A)(c)(11).

(2) *Amount of increase in basis of individual shares.* The basis of a shareholder's share of stock is increased by an amount equal to the shareholder's pro rata portion of the items described in section 1367(a)(1) that is attributable to that share, determined on a per share, per day basis in accordance with section 1377(a).

(c) *Decrease in basis of stock*—(1) *In general.* The basis of a shareholder's stock in an S corporation is decreased (but not below zero) by the sum of the items described in section 1367(a)(2).

(2) *Noncapital, nondeductible expenses.* For purposes of section 1367(a)(2)(D), expenses of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account (*noncapital, nondeductible expenses*) are only those items for which no loss or deduction is allowable and do not include items the deduction for which is deferred to a later taxable year. Examples of noncapital, nondeductible expenses include (but are not limited to) the following: illegal bribes, kickbacks, and other payments not deductible under section 162(c); fines and penalties not deductible under section 162(f); expenses and interest relating to tax-exempt income under section 265; losses for which the deduction is disallowed under section 267(a)(1); the portion of meals and entertainment expenses disallowed under section 274; and the two-thirds portion of treble damages paid for violating antitrust laws not deductible under section 162.

(3) *Amount of decrease in basis of individual shares.* The basis of a shareholder's share of stock is decreased by an amount equal to the shareholder's pro rata portion of the passthrough items and distributions described in section 1367(a)(2) attributable to that share, determined on a per share, per day basis in accordance with section 1377(a). If the amount attributable to a share exceeds its basis, the excess is applied to reduce (but not below zero) the remaining bases of all other shares of stock in the corporation owned by the shareholder in proportion to the remaining basis of each of those shares.

(d) *Time at which adjustments to basis of stock are effective*—(1) *In general.* The adjustments described in section 1367(a) to the basis of a shareholder's stock are determined as of the close of the corporation's taxable year, and the adjustments generally are effective as of that date. However, if a shareholder disposes of stock during the corporation's taxable year, the adjustments with respect to that stock are effective immediately prior to the disposition.

(2) *Adjustment for nontaxable item.* An adjustment for a nontaxable item is determined for the taxable year in which the item would have been includible or deductible under the corporation's method of accounting for

federal income tax purposes if the item had been subject to federal income taxation.

(3) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a qualifying disposition) is made with respect to the taxable year of a corporation, this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which either the shareholder's interest is terminated or a qualifying disposition occurs, whichever the case may be.

(e) *Ordering rules.* For any taxable year, except as provided in paragraph (f) of this section, the adjustments required by section 1367(a) are made in the following order:

(1) Any increase in basis attributable to the income items described in section 1367(a)(1) (A) and (B) and the excess of the deductions for depletion described in section 1367(a)(1)(C);

(2) Any decrease in basis attributable to noncapital, nondeductible expenses described in section 1367(a)(2)(D) and the oil and gas depletion deduction described in section 1367(a)(2)(E);

(3) Any decrease in basis attributable to items of loss or deduction described in section 1367(a)(2) (B) and (C); and

(4) Any decrease in basis attributable to a distribution by the corporation described in section 1367(a)(2)(A).

(f) *Elective ordering rule.* A shareholder may elect to decrease basis under paragraph (e)(3) of this section prior to decreasing basis under paragraph (e)(2) of this section. If a shareholder makes this election, any amount described in paragraph (e)(2) of this section that is in excess of the shareholder's basis in stock and indebtedness is treated, solely for purposes of this section, as an amount described in paragraph (e)(2) of this section in the succeeding taxable year. A shareholder makes the election under this paragraph by attaching a statement to the shareholder's timely filed original or amended return that states that the shareholder agrees to the carryover rule of the preceding sentence. Once a shareholder makes an election under this paragraph with respect to an S corporation, the shareholder must continue to use the rules of this paragraph for that S corporation in future taxable years unless the shareholder receives the permission of the Commissioner.

(g) *Examples.* The following examples illustrate the principles of § 1.1367–1. In each example, the corporation is a calendar year S corporation:

Example 1. Adjustments to basis of stock in general. (i) On December 31, 1994, A owns a block of 50 shares of stock with an adjusted basis per share of $6 in Corporation S. On December 31, 1994, A purchases for $400 an additional block of 50 shares of stock with an adjusted basis of $8 per share. Thus, A holds 100 shares of stock for each day of the 1995 taxable year. For S's 1995 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1)(A) (relating to increases in basis of stock) is $300, and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) and (D) (relating to decreases in basis of stock) is $500. S makes a distribution to A in the amount of $100 during 1995.

(ii) Pursuant to the ordering rules of paragraph (e) of this section, A increases the basis of each share of stock by $3 ($300/100 shares) and decreases the basis of each share of stock by $5 ($500/100 shares). Then A reduces the basis of each share by $1 ($100/100 shares) for the distribution. Thus, on January 1, 1996, A has a basis of $3 per share in his original block of 50 shares ($6+$3 − $5 − $1) and a basis of $5 per share in the second block of 50 shares ($8+$3 − $5 − $1).

Example 2. Adjustments attributable to basis of individual shares of stock. (i) On December 31, 1993, B owns one share of S corporation's 10 outstanding shares of stock. The basis of B's share is $30. On July 2, 1994, B purchases from another shareholder two shares for $25 each. During 1994, S corporation has no income or deductions but incurs a loss of $365. Under section 1377(a)(1)(A) and paragraph (c)(3) of this section, the amount of the loss assigned to each day of S's taxable year is $1.00 ($365/365 days). For each day, $.10 is allocated to each outstanding share ($1.00 amount of loss assigned to each day/10 shares).

(ii) B owned one share for 365 days and, therefore, reduces the basis of that share by the amount of loss attributable to it, *i.e.*, $36.50 ($.10 x 365 days). B owned two shares for 182 days and, therefore, reduces the basis of each of those shares by the amount of the loss attributable to each, *i.e.*, $18.20 ($.10 x 182 days).

(iii) The bases of the shares are decreased as follows:

Share	Original basis	Decrease	Adjusted basis	Excess basis reduction
No. 1	$30.00	$36.50	$0	$6.50
No. 2	25.00	18.20	6.80	0
No. 3	25.00	18.20	6.80	0
Total remaining basis			13.60	

(iv) Because the decrease in basis attributable to share No. 1 exceeds the basis of share No. 1 by $6.50 ($36.50 − $30.00), the excess is applied to reduce the bases of shares No. 2 and No. 3 in proportion to their remaining bases. Therefore, the bases of share No. 2 and share No. 3 are each decreased by an additional $3.25 ($6.50 x $6.80/$13.60). After this decrease, Share No. 1 has a basis of zero, Share No. 2 has a basis of $3.55, and Share No. 3 has a basis of $3.55.

Example 3. Effects of section 1377(a)(2) election and distribution on basis of stock. (i) On January 1, 1994, individuals B and C each own 50 of the 100 shares of issued and outstanding stock of Corporation S. B's adjusted basis in each share of stock is $120, and C's is $80. On June 30, 1994, S distributes $6,000 to B and $6,000 to C. On June 30, 1994, B sells all of her S stock for $10,000 to D. S elects under section 1377(a)(2) to treat its 1994 taxable year as consisting of two taxable years, the first of which ends at the close of June 30, the date on which B terminates her interest in S.

(ii) For the period January 1, 1994, through June 30, 1994, S has nonseparately computed income of $6,000 and a separately stated deduction item of $4,000. Therefore, on June 30, 1994, B and C, pursuant to the ordering rules of paragraph (e) of this section, increase the basis of each share by $60 ($6,000/100 shares) and decrease the basis of each share by $40 ($4,000/100 shares). Then B and C reduce the basis of each share by $120 ($12,000/100 shares) for the distribution.

(iii) The basis of B's stock is reduced from $120 to $20 per share ($120+$60 − $40 − $120). The basis of C's stock is reduced from $80 to $0 per share ($80+$60 − $40 − $120). See section 1368 and § 1.1368–1 (c) and (d) for rules relating to the tax treatment of the distributions.

(iv) Pursuant to paragraph (d)(3) of this section, the net reduction in the basis of B's shares of the S stock required by section 1367 and this section is effective immediately prior to B's sale of her stock. Thus, B's basis for determining gain or loss on the sale of the S stock is $20 per share, and B has a gain on the sale of $180 ($200 − $20) per share.

§ 1.1367–2 Adjustments to basis of indebtedness to shareholder.

(a) *In general.* This section provides rules relating to adjustments required by subchapter S to the basis of indebtedness of an S corporation to a shareholder. For purposes of this section, shareholder advances not evidenced by separate written instruments and repayments on the advances (*open account debt*) are treated as a single indebtedness. The basis of indebtedness of the S corporation to a shareholder is reduced as provided in paragraph (b) of this section and restored as provided in paragraph (c) of this section.

(b) *Reduction in basis of indebtedness*—(1) *General rule.* If, after making the adjustments required by section 1367(a)(1) for any taxable year of the S corporation, the amounts specified in section 1367(a)(2) (B), (C), (D), and (E) (relating to losses, deductions, noncapital, nondeductible expenses, and certain oil and gas depletion deductions) exceed the basis of a shareholder's stock in the corporation, the excess is applied to reduce (but not below zero) the basis of any indebtedness of the S corporation to the shareholder held by the shareholder at the close of the corporation's taxable year. Any such indebtedness that has been satisfied by the corporation, or disposed of or forgiven by the shareholder, during the taxable year, is not held by the shareholder at the close of that year and is not subject to basis reduction.

(2) *Termination of shareholder's interest in corporation during taxable year.* If a shareholder terminates his or her interest in the corporation during the taxable year, the rules of this paragraph (b) are applied with respect to any indebtedness of the S corporation held by the shareholder immediately prior to the termination of the shareholder's interest in the corporation.

(3) *Multiple indebtedness.* If a shareholder holds more than one indebtedness at the close of the corporation's taxable year or, if applicable, immediately prior to the termination of the shareholder's interest in the corporation, the reduction in basis is applied to each indebtedness in the same proportion that the basis of each indebtedness bears to the aggregate bases of the indebtedness to the shareholder.

(c) *Restoration of basis*—(1) *General rule.* If, for any taxable year of an S corporation beginning after December 31, 1982, there has been a reduction in the basis of an indebtedness of the S corporation to a shareholder under section 1367(b)(2)(A), any *net increase* in any subsequent taxable year of the corporation is applied to restore that reduction. For purposes of this section, *net increase* with respect to a shareholder means the amount by which the shareholder's pro rata share of the items described in section 1367(a)(1) (relating to income items and excess deduction for depletion) exceed the items described in section 1367(a)(2) (relating to losses, deductions, noncapital, nondeductible expenses, certain oil and gas depletion deductions, and certain distributions) for the taxable year. These restoration rules apply only to indebtedness held by a shareholder as of the beginning of the taxable year in which the net increase arises. The reduction in basis of indebtedness must be restored before any net increase is applied to restore the basis of a shareholder's stock in an S corporation. In no event may the shareholder's basis of indebtedness be restored above the adjusted basis of the indebtedness under section 1016(a), excluding any adjustments under section 1016(a)(17) for prior taxable years, determined as of the beginning of the taxable year in which the net increase arises.

(2) *Multiple indebtedness.* If a shareholder holds more than one indebtedness as of the beginning of a corporation's taxable year, any net increase is applied first to restore the reduction of basis in any indebtedness repaid (in whole or in part) in that taxable year to the extent necessary to offset any gain that would otherwise be realized on the repayment. Any remaining net increase is applied to restore each outstanding indebtedness in proportion to the amount that the basis of each outstanding indebtedness has been reduced under section 1367(b)(2)(A) and paragraph (b) of this section and not restored under section 1367(b)(2)(B) and this paragraph (c).

(d) *Time at which adjustments to basis of indebtedness are effective*—(1) *In general.* The amounts of the adjustments to basis of indebtedness provided in section 1367(b)(2) and this section are determined as of the close of the corporation's taxable year, and the adjustments are generally effective as of the close of the corporation's taxable year. However, if the shareholder is not a shareholder in the corporation at that time, these adjustments are effective immediately before the shareholder terminates his or her interest in the corporation. If a debt is disposed of or repaid in whole or in part before the close of the taxable year, the basis of that indebtedness is restored under paragraph (c) of this section, effective immediately before the disposition or the first repayment on the debt during the taxable year.

(2) *Effect of election under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of the termination of a shareholder's interest) or under § 1.1368–1(g)(2) (to terminate the year in the case of a qualifying disposition), this paragraph (d) applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder either terminates his or her interest in the corporation or disposes of a substantial amount of stock, whichever the case may be.

(e) *Examples.* The following examples illustrate the principles of § 1.1367–2. In each example, the corporation is a calendar year S corporation. The lending transactions described in the examples do not result in foregone interest (within the meaning of section 7872(e)(2)), original issue discount (within the meaning of section 1273), or total unstated interest (within the meaning of section 483(b)).

Example 1. Reduction in basis of indebtedness. (i) A has been the sole shareholder in Corporation S since 1992. In 1993, A loans S $1,000 (Debt No. 1), which is evidenced by a ten-year promissory note in the face amount of $1,000. In 1996, A loans S $5,000 (Debt No. 2), which is evidenced by a demand promissory note. On December 31, 1996, the basis of A's stock is zero; the basis of Debt No. 1 has been reduced under paragraph (b) of this section to $0; and the basis of Debt No. 2 has been reduced to $1,000. On January 1, 1997, A loans S $4,000 (Debt No. 3), which is evidenced by a demand promissory note. For S's 1997 taxable year, the sum of the amounts specified in section 1367(a)(1) (in this case, nonseparately computed income and the excess deduction for depletion) is $6,000, and the sum of the amounts specified in section 1367(a)(2) (B), (D), and (E) (in this case, items of separately stated deductions and losses, noncapital, nondeductible expenses, and certain oil and gas depletion deductions—there is no nonseparately computed loss) is $10,000. Corporation S makes no payments to A on any of the loans during 1997.

(ii) The $4,000 excess of loss and deduction items is applied to reduce the basis of each indebtedness in proportion to the basis of that indebtedness over the aggregate bases of the indebtedness to the shareholder (determined immediately before any adjustment under section 1367(b)(2)(A) and paragraph (b) of this section is effective for the taxable year). Thus, the basis of Debt No. 2 is reduced in an amount equal to $800 ($4,000 (excess)x$1,000 (basis of Debt No. 2)/ $5,000 (total basis of all debt)). Similarly, the basis in Debt No. 3 is reduced in an amount equal to $3,200 ($4,000x$4,000/$5,000). Accordingly, on December 31, 1997, A's basis in his stock is zero and his bases in the three debts are as follows:

Debt	1/1/96 basis	12/31/96 reduction	1/1/97 basis	12/31/97 reduction	1/1/98 basis
No. 1	$1,000	$1,000	$0	$0	$0
No. 2	5,000	4,000	1,000	800	200
No. 3	.....	.....	4,000	3,200	800

Example 2. Restoration of basis of indebtedness. (i) The facts are the same as in *Example 1*. On July 1, 1998, S completely repays Debt No. 3, and, for S's 1998 taxable year, the net increase (within the meaning of paragraph (c) of this section) with respect to A equals $4,500.

(ii) The net increase is applied first to restore the bases in the debts held on January 1, 1998, before any of the net increase is applied to increase A's basis in his shares of S stock. The net increase is applied to restore first the reduction of basis in indebtedness repaid in 1998. Any remaining net increase is applied to restore the bases of the outstanding debts in proportion to the amount that each of these outstanding debts have been reduced previously under paragraph (b) of this section and have not been restored. As of December 31, 1998, the total reduction in A's debts held on January 1, 1998 equals $9,000. Thus, the basis of Debt No. 3 is restored by $3,200 (the amount of the previous reduction) to $4,000. A's basis in Debt No. 3 is treated as restored immediately before that debt is repaid. Accordingly, A does not realize any gain on the repayment. The remaining net increase of $1,300 ($4,500 − $3,200) is applied to restore the bases of Debt No. 1 and Debt No. 2. As of December 31, 1998, the total reduction in these outstanding debts is $5,800 ($9,000 − $3,200). The basis of Debt No. 1 is restored in an amount equal to $224 ($1,300×$1,000/$5,800). Similarly, the basis in Debt No. 2 is restored in an amount equal to $1,076 ($1,300×$4,800/$5,800). On December 31, 1998, A's basis in his S stock is zero and his bases in the two remaining debts are as follows:

Original basis	Amount reduced	1/1/98 basis	Amount restored	12/31/98 basis
$1,000	$1,000	$0	$224	$224
5,000	4,800	200	1,076	1,276

Example 3. Full restoration of basis in indebtedness when debt is repaid in part during the taxable year. (i) C has been a shareholder in Corporation S since 1992. In 1997, C loans S $1,000. S issues its note to C in the amount of $1,000, of which $950 is payable on March 1, 1998, and $50 is payable on March 1, 1999. On December 31, 1997, C's basis in all her shares of S stock is zero and her basis in the note has been reduced under paragraph (b) of this section to $900. For 1998, the net increase (within the meaning of paragraph (c) of this section) with respect to C is $300.

(ii) Because C's basis of indebtedness was reduced in a prior taxable year under § 1.1367–2(b), the net increase for 1998 is applied to restore this reduction. The restored basis cannot exceed the adjusted basis of the debt as of the beginning of the first day of 1998, excluding prior adjustments under section 1367, or $1,000. Therefore, $100 of the $300 net increase is applied to restore the basis of the debt from $900 to $1,000 effective immediately before the repayment on March 1, 1998. The remaining net increase of $200 increases C's basis in her stock.

Example 4. Determination of net increase—distribution in excess of increase in basis. (i) D has been the sole shareholder in Corporation S since 1990. On January 1, 1996, D loans S $10,000 in return for a note from S in the amount of $10,000 of which $5,000 is payable on each of January 1, 2000, and January 1, 2001. On December 31, 1997, the basis of D's shares of S stock is zero, and his basis in the note has been reduced under paragraph (b) of this section to $8,000. During 1998, the sum of the items under section 1367(a)(1) (relating to increases in basis of stock) with respect to D equals $10,000 (in this case, nonseparately computed income), and the sum of the items under section 1367(a)(2)(B), (C), (D), and (E) (relating to decreases in basis of stock) with respect to D equals $0. During 1998, S also makes distributions to D totaling $11,000. This distribution is an item that reduces basis of stock under section 1367(a)(2)(A) and must be taken into account for purposes of determining whether there is a net increase for the taxable year. Thus, for 1998, there is no net increase with respect to D because the amount of the items provided in section 1367(a)(1) do not exceed the amount of the items provided in section 1367(a)(2).

(ii) Because there is no net increase with respect to D for 1998, none of the 1997 reduction in D's basis in the indebtedness is restored. The $10,000 increase in basis under section 1367(a)(1) is applied to increase D's basis in his S stock. Under section 1367(a)(2)(A), the $11,000 distribution with respect to D's stock reduces D's basis in his shares of S stock to $0. See section 1368 and § 1.1368–1 (c) and (d) for the tax treatment of the $1,000 distribution in excess of D's basis.

Example 5. Distributions less than increase in basis. (i) The facts are the same as in *Example 4*, except that in 1998 S makes distributions to D totaling $8,000. On these facts, for 1998, there is a net increase with respect to D of $2,000 (the amount by which the items provided in section 1367(a)(1) exceed the amount of the items provided in section 1367(a)(2)).

(ii) Because there is a net increase of $2,000 with respect to D for 1998, $2,000 of the $10,000 increase in basis under section 1367(a)(1) is first applied to restore D's basis in the indebtedness to $10,000 ($8,000 + $2,000). Accordingly, on December 31, 1998, D has a basis in his shares of S stock of $0 ($0 + $8,000 (increase in basis remaining after restoring basis in indebtedness)—$8,000 (distribution)) and a basis in the note of $10,000.

§ 1.1367–3 Effective date and transition rule.

Sections 1.1367–1 and 1.1367–2 apply to taxable years of a corporation beginning on or after January 1, 1994. For taxable years beginning before January 1, 1994, the adjustments to the basis of a shareholder's stock and the basis of indebtedness of an S corporation to a shareholder must be determined in a reasonable manner, taking into account the statute and the legislative history. Return positions consistent with §§ 1.1367–1 and 1.1367–2 are reasonable.

§ 1.1368–0 Table of contents.

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§ 1.1368–3 Examples.

§ 1.1368–4 Effective date and transition rule.

§ 1.1368–1 Distributions by S corporations.

(a) *In general.* This section provides rules for distributions made by an S corporation with respect to its stock which, but for section 1368(a) and this section, would be subject to section 301(c) and other rules of the Internal Revenue Code that characterize a distribution as a dividend.

(b) *Date distribution made.* For purposes of section 1368, a distribution is taken into account on the date the corporation makes the distribution, regardless of when the distribution is treated as received by the shareholder.

(c) *S corporation with no earnings and profits.* A distribution made by an S corporation that has no accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(b).

(d) *S corporation with earnings and profits*—(1) General treatment of distribution. Except as provided in paragraph (d)(2) of this section, a distribution made with respect to its stock by an S corporation that has accumulated earnings and profits as of the end of the taxable year of the S corporation in which the distribution is made is treated in the manner provided in section 1368(c)(1), (2), and (3). See section 316 and § 1.316–2 for provisions relating to the allocation of earnings and profits among distributions.

(2) *Previously taxed income.* This paragraph (d)(2) applies to distributions by a corporation that has both accumulated earnings and profits and previously taxed income (within the meaning of section 1375(d)(2), as in effect prior to its amendment by the Subchapter S Revision Act of 1982, and the regulations thereunder) with respect to one or more shareholders. In the case of such a distribution, that portion remaining after the application of section 1368(c)(1) (relating to distributions from the accumulated adjustments account (AAA) as defined in § 1.1368–2(a)) is treated in the manner provided in section 1368(b) (relating to S corporations without earnings and profits) to the extent that portion is a distribution of money and does not exceed the shareholder's net share immediately before the distribution of the corporation's previously taxed income. The AAA and the earnings and profits of the corporation are not decreased by that portion of the distribution. Any distribution remaining after the application of this paragraph (d)(2) is treated in the manner provided in section 1368(c)(2) and (3).

(e) *Certain adjustments taken into account.* Paragraphs (c) and (d) of this section are applied only after taking into account—

(1) The adjustments to the basis of the shares of a shareholder's stock described in section 1367 (without regard to section 1367(a)(2)(A)) (relating to decreases attributable to distributions not includible in income) for the S corporation's taxable year; and

(2) The adjustments to the AAA required by section 1368(e)(1)(A) (but without regard to the adjustments for distributions under § 1.1368–2(a)(3)(iii)) for the S corporation's taxable year.

(f) *Elections relating to source of distributions*—(1) *In general.* An S corporation may modify the application of paragraphs (c) and (d) of this section by electing (pursuant to paragraph (f)(5) of this section)—

(i) To distribute earnings and profits first as described in paragraph (f)(2) of this section;

(ii) To make a deemed dividend as described in paragraph (f)(3) of this section; or

(iii) To forego previously taxed income as described in paragraph (f)(4) of this section.

(2) *Election to distribute earnings and profits first*—(i) *In general.* An S corporation with accumulated earnings and profits may elect under this paragraph (f)(2) for any taxable year to distribute earnings and profits first as provided in section 1368(e)(3). Except as provided in paragraph (f)(2)(ii) of this section, distributions made by an S corporation making this election are treated as made first from earnings and profits under section 1368(c)(2) and second from the AAA under section 1368(c)(1). Any remaining portion of the distribution is treated in the manner provided in section 1368(b). This election is effective for all distributions made during the year for which the election is made.

(ii) *Previously taxed income.* If a corporation to which paragraph (d)(2) of this section (relating to corporations with previously taxed income) applies makes the election provided in this paragraph (f)(2) for the taxable year, and does not make the election to forego previously taxed income under paragraph (f)(4) of this section, distributions by the S corporation during the taxable year are treated as made first, from previously taxed income under paragraph (d)(2) of this section; second, from earnings and profits under section 1368(c)(2); and third, from the AAA under section 1368(c)(1). Any portion of a distribution remaining after the previously taxed income, earnings and profits, and the AAA are exhausted is treated in the manner provided in section 1368(b).

(iii) *Corporation with subchapter C and subchapter S earnings and profits.* If an S corporation that makes the election provided in this paragraph (f)(2) has both subchapter C earnings and profits (as defined in section 1362(d)(3)(B)) and subchapter S earnings and profits in a taxable year of the corporation in which the distribution is made, the distribution is treated as made first from subchapter C earnings and profits, and second from subchapter S earnings and profits. *Subchapter S earnings and profits* are earnings and profits accumulated in a taxable year beginning before January 1, 1983 (or in the case of a qualified casualty insurance electing small business corporation or a qualified oil corporation, earnings and profits

accumulated in any taxable year), for which an election under subchapter S of chapter 1 of the Internal Revenue Code was in effect.

(3) *Election to make a deemed dividend.* An S corporation may elect under this paragraph (f)(3) to distribute all or part of its subchapter C earnings and profits through a deemed dividend. If an S corporation makes the election provided in this paragraph (f)(3), the S corporation will be considered to have made the election provided in paragraph (f)(2) of this section (relating to the election to distribute earnings and profits first). The amount of the deemed dividend may not exceed the subchapter C earnings and profits of the corporation on the last day of the taxable year, reduced by any actual distributions of subchapter C earnings and profits made during the taxable year. The amount of the deemed dividend is considered, for all purposes of the Internal Revenue Code, as if it were distributed in money to the shareholders in proportion to their stock ownership, received by the shareholders, and immediately contributed by the shareholders to the corporation, all on the last day of the corporation's taxable year.

(4) *Election to forego previously taxed income.* An S corporation may elect to forego distributions of previously taxed income. If such an election is made, paragraph (d)(2) of this section (relating to corporations with previously taxed income) does not apply to any distribution made during the taxable year. Thus, distributions by a corporation that makes the election to forego previously taxed income for a taxable year under this paragraph (f)(4) and does not make the election to distribute earnings and profits first under paragraph (f)(2) of this section are treated in the manner provided in section 1368(c) (relating to distributions by corporations with earnings and profits). Distributions by a corporation that makes both the election to distribute earnings and profits first under paragraph (f)(2) of this section and the election to forego previously taxed income under this paragraph (f)(4), are treated in the manner provided in paragraph (f)(2)(i) of this section.

(5) *Time and manner of making elections*—(i) *For earnings and profits.* If an election is made under paragraph (f)(2) of this section to distribute earnings and profits first, see section 1368(e)(3) regarding the consent required by shareholders.

(ii) *For previously taxed income and deemed dividends.* If an election is made to forego previously taxed income under paragraph (f)(4) of this section or to make a deemed dividend under paragraph (f)(3) of this section, consent by each "affected shareholder," as defined in section 1368(e)(3)(B), is required.

(iii) *Corporate statement regarding elections.* A corporation makes an election for a taxable year under this paragraph (f) by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for that taxable year. In the statement, the corporation must identify the election it is making under § 1.1368–1(f) and must state that each shareholder consents to the election. An officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. A statement of election to make a deemed dividend under this paragraph must include the amount of the deemed dividend that is distributed to each shareholder.

(iv) *Irrevocable elections.* The elections under this paragraph (f) are irrevocable and are effective only for the taxable year for which they are made. In applying the preceding sentence to elections under this paragraph (f), an election to terminate the taxable year under section 1377(a)(2) or § 1.1368–1(g)(2) is disregarded.

(g) *Special rules*—(1) *Election to terminate year under section 1377 or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year when a shareholder terminates his or her interest in the corporation) or under paragraph (g)(2) of this section (to terminate the year when there is a qualifying disposition), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminates his or her interest in the corporation or on which there is a qualifying disposition of stock, whichever the case may be.

(2) *Election in case of a qualifying disposition*— (i) *In general.* In the case of a qualifying disposition, a corporation may elect under this paragraph (g)(2)(i) to treat the year as if it consisted of separate taxable years, the first of which ends at the close of the day on which the qualifying disposition occurs. A *qualifying disposition* is—

(A) A disposition by a shareholder of 20 percent or more of the outstanding stock of the corporation in one or more transactions during any thirty-day period during the corporation's taxable year;

(B) A redemption treated as an exchange under section 302(a) or section 303(a) of 20 percent or more of the outstanding stock of the corporation from a shareholder in one or more transactions during any thirty-day period during the corporation's taxable year; or

(C) An issuance of an amount of stock equal to or greater than 25 percent of the previously outstanding stock to one or more new shareholders during any thirty-day period during the corporation's taxable year.

(ii) *Effect of the election.* A corporation making an election under paragraph (g)(2)(i) of this section must treat the taxable year as separate taxable years for purposes of allocating items of income and loss; making adjustments to the AAA, earnings and profits, and basis; and determining the tax effect of distributions under section 1368(b) and (c). An election made under paragraph (g)(2)(i) of this section may be made upon the occurrence of any qualifying disposition. Dispositions of stock that are taken into account as part of a qualifying disposition are not taken into account in determining whether a subsequent qualifying disposition has been made.

(iii) *Time and manner of making election.* A corporation makes an election under paragraph (g)(2)(i) of this section for a taxable year by attaching a statement to a timely filed original or amended return required to be filed under section 6037 for a taxable year (without regard to the election under paragraph (g)(2)(i) of this section). In the statement, the corporation must state that it is electing for the taxable year under § 1.1368–1(g)(2)(i) to treat the taxable year as if it consisted of separate taxable years. The corporation also must set forth facts in the statement relating to the qualifying disposition (e.g., sale, gift, stock issuance, or redemption), and state that each shareholder who held stock in the corporation during the taxable year (without regard to the election under paragraph (g)(2)(i) of this section) consents to this election. An officer of the corporation must sign under penalties of perjury the statement on behalf of the corporation. For purposes of this election, a shareholder of the corporation for the taxable year is a shareholder as described in section 1362(a)(2). A single election statement may be filed for all elections made under paragraph (g)(2)(i) of this section for the taxable year. An election made under paragraph (g)(2)(i) of this section is irrevocable.

§ 1.1368–2 Accumulated adjustments account (AAA).

(a) *Accumulated adjustments account*—(1) *In general.* The accumulated adjustments account is an account of the S corporation and is not apportioned among shareholders. The AAA is relevant for all taxable years beginning on or after January 1, 1983, for which the corporation is an S corporation. On the first day of the first year for which the corporation is an S corporation, the balance of the AAA is zero. The AAA is increased in the manner provided in paragraph (a)(2) of this section and is decreased in the manner provided in paragraph (a)(3) of this section. For the adjustments to the AAA in the case of redemptions, reorganizations, and corporate separations, see paragraph (d) of this section.

(2) *Increases to the AAA.* The AAA is increased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year:

(i) The items of income described in section 1366(a)(1)(A) other than income that is exempt from tax,

(ii) Any nonseparately computed income determined under section 1366(a)(1)(B); and

(iii) The excess of the deductions for depletion over the basis of property subject to depletion unless the property is an oil or gas property the basis of which has been allocated to shareholders under section 613A(c)(11).

(3) *Decreases to the AAA*—(i) *In general.* The AAA is decreased for the taxable year of the corporation by the sum of the following items with respect to the corporation for the taxable year—

(A) The items of loss or deduction described in section 1366(a)(1)(A);

(B) Any nonseparately computed loss determined under section 1366(a)(1)(B);

(C) Any expense of the corporation not deductible in computing its taxable income and not properly chargeable to a capital account, other than—

(*1*) Federal taxes attributable to any taxable year in which the corporation was a C corporation; and

(*2*) Expenses related to income that is exempt from tax; and

(D) The sum of the shareholders' deductions for depletion for any oil or gas property held by the corporation described in section 1367(a)(2)(E).

(ii) *Extent of allowable reduction.* The AAA may be decreased under paragraph (a)(3)(i) of this section below zero. The AAA is decreased by noncapital, nondeductible expenses under paragraph (a)(3)(i)(C) of this section even though a portion of the noncapital, nondeductible expenses is not taken into account by a shareholder under § 1.1367–1(f) (relating to the elective ordering rule). The AAA is also decreased by the entire amount of any loss or deduction even though a portion of the loss or deduction is not taken into account by a shareholder under section 1366(d)(1) or is otherwise not currently deductible under the Internal Revenue Code. However, in any subsequent taxable year in which the loss or deduction or noncapital, nondeductible expense is treated as incurred by the corporation with respect to the shareholder under section 1366(d)(2) or § 1.1367–1(f) (or in which the loss or deduction is otherwise allowed to the shareholder), no further adjustment is made to the AAA.

(iii) *Decrease to the AAA for distributions.* The AAA is decreased (but not below zero) by any portion of a distribution to which section 1368(b) or (c)(1) applies.

(4) *Ordering Rules for the AAA.* For any taxable year, the adjustments to the AAA are made in the following order:

(i) The AAA is increased under paragraph (a)(2) of this section before it is decreased under paragraph (a)(3) of this section for the taxable year;

(ii) The AAA is decreased under paragraph (a)(3)(i) of this section before it is decreased under paragraph (a)(3)(iii) of this section;

(iii) The AAA is decreased (but not below zero) by any portion of an ordinary distribution to which section 1368(b) or (c)(1) applies; and

(iv) The AAA is adjusted (whether negative or positive) for redemption distributions under paragraph (d)(1) of this section.

(b) *Distributions in excess of the AAA*—(1) *In general.* A portion of the AAA (determined under paragraph (b)(2) of this section) is allocated to each of the distributions made for the taxable year if—

(i) An S corporation makes more than one distribution of property with respect to its stock during the taxable year of the corporation (including an S short year as defined under section 1362(e)(1)(A));

(ii) The AAA has a positive balance at the close of the year; and

(iii) The sum of the distributions made during the corporation's taxable year exceeds the balance of the AAA at the close of the year.

(*2*) *Amount of the AAA allocated to each distribution.* The amount of the AAA allocated to each distribution is determined by multiplying the balance of the AAA at the close of the current taxable year by a fraction, the numerator of which is the amount of the distribution and the denominator of which is the amount of all distributions made during the taxable year. For purposes of this paragraph (b)(2), the term *all distributions made during the taxable year* does not include any distribution treated as from earnings and profits or previously taxed income pursuant to an election made under section 1368(e)(3) and § 1.1368–1(f)(2). See paragraph (d)(1) of this section for rules relating to the adjustments to the AAA for redemptions and distributions in the year of a redemption.

(c) *Distribution of money and loss property*—(1) *In general.* The amount of the AAA allocated to a distribution under this section must be further allocated (under paragraph (c)(2) of this section) if the distribution—

(i) Consists of property the adjusted basis of which exceeds its fair market value on the date of the distribution and money;

(ii) Is a distribution to which § 1.1368–1(d)(1) applies; and

(iii) Exceeds the amount of the corporation's AAA properly allocable to that distribution.

(2) *Allocating the AAA to loss property.* The amount of the AAA allocated to the property other than money is equal to the amount of the AAA allocated to the distribution multiplied by a fraction, the numerator of which is the fair market value of the property other than money on the date of distribution and the denominator of which is the amount of the distribution. The amount of the AAA allocated to the money is equal to the amount of the AAA allocated to the distribution reduced by the amount of the AAA allocated to the property other than money.

(d) *Adjustment in the case of redemptions, reorganizations, and divisions*—(1) *Redemptions*—(i) *General Rule.* In the case of a redemption distribution by an S corporation that is treated as an exchange under section 302(a) or section 303(a) (a *redemption distribution*), the AAA of the corporation is adjusted in an amount equal to the ratable share of the corporation's AAA (whether negative or positive) attributable to the redeemed stock as of the date of the redemption.

(ii) *Special rule for years in which a corporation makes both ordinary and redemption distributions.* In any year in which a corporation makes one or more distributions to which section 1368(a) applies (*ordinary distributions*) and makes one or more redemption distributions, the AAA of the corporation is adjusted first for any ordinary distributions and then for any redemption distributions.

(iii) *Adjustments to earnings and profits.* Earnings and profits are adjusted under section 312 independently of any adjustments made to the AAA.

(2) *Reorganizations.* An S corporation acquiring the assets of another S corporation in a transaction to which section 381(a)(2) applies will succeed to and merge its AAA (whether positive or

negative) with the AAA (whether positive or negative) of the distributor or transferor S corporation as of the close of the date of distribution or transfer. Thus, the AAA of the acquiring corporation after the transaction is the sum of the AAAs of the corporations prior to the transaction.

(3) *Corporate separations to which section 368(a)(1)(D) applies.* If an S corporation with accumulated earnings and profits transfers a part of its assets constituting an active trade or business to another corporation in a transaction to which section 368(a)(1)(D) applies, and immediately thereafter the stock and securities of the controlled corporation are distributed in a distribution or exchange to which section 355 (or so much of section 356 as relates to section 355) applies, the AAA of the distributing corporation immediately before the transaction is allocated between the distributing corporation and the controlled corporation in a manner similar to the manner in which the earnings and profits of the distributing corporation are allocated under section 312 (h). See § 1.312–10(a).

(e) *Election to terminate year under section 1377(a)(2) or § 1.1368–1(g)(2).* If an election is made under section 1377(a)(2) (to terminate the year in the case of termination of a shareholder's interest) or § 1.1368–1(g)(2) (to terminate the year in the case of a qualifying disposition), this section applies as if the taxable year consisted of separate taxable years, the first of which ends at the close of the day on which the shareholder terminated his or her interest in the corporation or makes a substantial disposition of stock, whichever the case may be.

§ 1.1368–3 Examples.

The principles of §§ 1.1368–1 and 1.1368–2 are illustrated by the examples below. In each example Corporation S is a calendar year corporation:

Example 1. Distributions by S corporations without C corporation earnings and profits. (i) Corporation S, an S corporation, has no earnings and profits as of January 1, 1996, the first day of its 1996 taxable year. S's sole shareholder, A, holds 10 shares of S stock with a basis of $1 per share as of that date. On March 1, 1996, S makes a distribution of $38 to A. For S's 1996 taxable year, A's pro rata share of the amount of the items described in section 1367(a)(1) (relating to increases in basis of stock) is $50 and A's pro rata share of the amount of the items described in section 1367(a)(2) (B) through (D) (relating to decreases in basis of stock for items other than distributions) is $26.

(ii) Under section 1368(d)(1) and § 1.1368–1(e)(1), the adjustments to the bases of A's stock in S described in section 1367 are made before the distribution rules of section 1368 are applied. Thus, A's basis per share in the stock is $3.40 ($1 + [($50–$26) / 10 shares]) before taking into account the distribution. Under section 1367(a)(2)(A), the basis of A's stock is decreased by distributions to A that are not includible in A's income. Under § 1.1367–1(c)(3), the amount of the distribution that is attributable to each share of A's stock is $3.80 ($38 distribution / 10 shares). However, A only has a basis of $3.40 in each share, and basis may not be reduced below zero. Therefore, the basis of each share of his stock is reduced by $3.40 to zero, and the remaining $4.00 of the distribution ([$3.80–$3.40] x 10 shares) is treated as gain from the sale or exchange of property. As of January 1, 1997, A has a basis of $0 in his shares of S stock.

Example 2. Distributions by S corporations with C corporation earnings and profits. (i) Corporation S properly elects to be an S corporation beginning January 1, 1997, and as of that date has accumulated earnings and profits of $30. B, an individual and sole shareholder of Corporation S, has 10 shares of S stock with a basis of $12 per share. In addition, B lends $30 to S evidenced by a demand note.

(ii) During 1997, S has a nonseparately computed loss of $150. S makes no distributions to B during 1997. Under section 1366(d)(1), B is allowed a loss equal to $150, the amount equal to the sum of B's bases in his shares of stock and his basis in the debt. Under section 1367, the loss reduces B's adjusted basis in his stock and debt to $0. Under § 1.1368–2(a)(3), S's AAA as of December 31, 1997, has a deficit of $150 as a result of S's loss for the year.

(iii) For 1998, S has $220 of separately stated income and distributes $110 to B. The balance in the AAA (negative $150 from 1997) is increased by $220 for S's income for the year and decreased to $0 for the portion of the distribution that is treated as being from the AAA ($70). Under § 1.1367–2(c), B's net increase is $150, determined by reducing the $220 of income by the $70 of the distribution not includible in income by B. Thus, B's basis in the debt is fully restored to $30, and B's basis in S stock (before accounting for the distribution) is increased from zero to $19 per share ([$220–$30 applied to the debt] / 10). Thirty dollars of the distribution is considered a dividend to the extent of S's $30 of earnings and profits, and the remaining $10 of the distribution reduces B's basis in the S stock. Thus, B's basis in the S stock as of December 31, 1998, is $11 per share ($19–[$70 AAA distribution / 10]—[10 distribution treated as a reduction in basis / 10]). The balance in the AAA is $0, S's earnings and profits are $0, and B's basis in the loan is $30.

Example 3. Election in case of disposition of substantial amount of stock. (i) Corporation S, an S corporation, has earnings and profits of $3,000 and a balance in the AAA of $1,000 on January 1, 1997. C, an individual and the sole shareholder of Corporation S, has 100 shares of S stock with a basis of $10 per share. On July 3, 1997, C sells 50 shares of his S stock to D, an individual, for $250. For 1997, S has taxable income of $1,000, of which $500 was earned on or before July 3, 1997, and $500 earned after July 3, 1997. During its 1997 taxable year, S distributes $1,000 to C on February 1 and $1,000 to each of C and D on August 1. S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA. S makes the election under § 1.1368–1(g)(2) to treat its taxable year as if it consisted of separate taxable years, the first of which ends at the close of July 3, 1997, the date of the qualifying disposition.

(ii) Under section § 1.1368–1(g)(2), for the period ending on July 3, 1997, S's AAA is $500 ($1,000 (AAA as of January 1, 1997) + $500 (income earned from January 1, 1997 through July 3, 1997)—$1,000 (distribution made on February 1, 1997)). C's bases in his shares of stock is decreased to $5 per share ($10 (original basis) + $5 (increase per share for income)—$10 (decrease per share for distribution)).

(iii) The AAA is adjusted at the end of the taxable year for the period July 4 through December 31, 1997. It is increased from $500 (AAA as of the close of July 3, 1997) to $1,000 for the income earned during this period and is decreased by $1,000, the portion of the distribution ($2,000 in total) made to C and D on August 1 that does not exceed the AAA. The $1,000 portion of the distribution that remains after the AAA is reduced to zero is attributable to earnings and profits. Therefore C and D each have a dividend of $500, which does not affect their basis or S's AAA. The earnings and profits account is reduced from $3,000 to $2,000.

(iv) As of December 31, 1997, C and D have bases in their shares of stock of zero ($5 (basis as of July 4)+$5 ($500 income/100 shares)—$10 ($1,000 distribution/100 shares)). C and D each will report $500 as dividend income, which does not affect their basis or S's AAA.

Example 4. Election to distribute earnings and profits first. (i) Corporation S has been a calendar year C corporation since 1975. For 1982, S elects for the first time to be taxed under subchapter S, and during 1982 has $60 of earnings and profits. As of December 31, 1995, S has an AAA of $10 and earnings and profits of $160, consisting of $100 of subchapter C earnings and profits and $60 of subchapter S earnings and profits. For 1996, S has $200 of taxable income and the AAA is increased to $210 (before taking distributions into account). During 1996, S distributes $240 to its shareholders. With its 1996 tax return, S properly elects under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) Because S elected to distribute its earnings and profits before its AAA, the first $100 of the distribution is characterized as a distribution from subchapter C earnings and profits; the next $60 of the distribution is characterized as a distribution from subchapter S earnings and profits. Because $160 of the distribution is from earnings and profits, the shareholders of S have a $160 dividend. The remaining $80 of the distribution is a distribution from S's AAA and is treated by the shareholders as a return of capital or gain from the sale or exchange of property, as appropriate, under § 1.1368–1(d)(1). S's AAA, as of December 31, 1996, equals $130 ($210–$80).

Example 5. Distributions in excess of the AAA. (i) On January 1, 1995, Corporation S has $40 of earnings and profits and a balance in the AAA of $100. S has two shareholders, E and F, each of whom own 50 shares of S's stock. For 1995, S has taxable income of $50, which increases the AAA to $150 as of December 31, 1995 (before taking into account distributions made during 1995). On February 1, 1995, S distributes $60 to each shareholder. On September 1, 1995, S distributes $30 to each shareholder. S does not make the election under section 1368(e)(3) and § 1.1368–1(f)(2) to distribute its earnings and profits before its AAA.

(ii) The sum of the distributions exceed S's AAA. Therefore, under § 1.1368–2(b), a portion of S's $150 balance in the AAA as of December 31, 1995, is allocated to each of the February 1 and September 1 distributions based on the respective sizes of the distributions. Accordingly, S must allocate $100 ($150 (AAA)×[$120 (February 1 distribution)/$180 (the sum of the distributions)]) of the AAA to the February 1 distribution, and $50 ($150×[$60/$180]) to the September 1 distribution. The portions of the distributions to which the AAA is allocated are treated by the shareholder as a return of capital or gain from the sale or exchange of property, as appropriate. The remainder of the two distributions is treated as a dividend to the extent that it does not exceed S's earnings and profits. E and F must each report $10 of dividend income for the February 1 distribution. For the September 1 distribution, E and F must each report $5 of dividend income.

Example 6. Ordinary and redemption distributions in the same taxable year. (i) On January 1, 1995, Corporation S, an S corporation, has $20 of earnings and profits and a balance in the AAA of $10. S has two shareholders, G and H, each of whom owns 50 shares of S's stock. For 1995, S has taxable income of $16, which increases the AAA to $26 as of December 31, 1995 (before taking into account distributions made during 1995). On February 1, 1995, S distributes $10 to each shareholder. On December 31, 1995, S redeems for $13 all of shareholder G's stock in a redemption that is treated as a sale or exchange under section 302(a).

(ii) The sum of the ordinary distributions does not exceed S's AAA. Therefore, S must reduce the $26 balance in the AAA by $20 for the February 1 ordinary distribution. The portions of the distribution by which the AAA is reduced are treated by the shareholders as a return of capital or gain from the sale or exchange of property. S must adjust the remaining AAA, $6, in an amount equal to the ratable share of the remaining AAA attributable to the redeemed stock, or $3 (50%×$6).

(iii) S also must adjust the earnings and profits of $20 in an amount equal to the ratable share of the earnings and profits attributable to the redeemed stock. Therefore, S adjusts the earnings and profits by $10 (50%×$20), the rateble share of the earnings and profits attributable to the redeemed stock.

§ 1.1368–4 Effective date and transition rule.

Sections 1.1368–1, 1.1368–2, and 1.1368–3 apply to taxable years of a corporation beginning on or after January 1, 1994. For taxable years beginning before January 1, 1994, the treatment of distributions by an S corporation to its shareholders must be determined in a reasonable manner, taking into account the statute and the legislative history. Except with regard to the deemed dividend rule under § 1.1368–1(f)(3), return positions consistent with §§ 1.1368–1, 1.1368–2, and 1.1368–3 are reasonable.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 12. The authority citation for part 602 continues to read:

Authority: 26 U.S.C. 7805.

Par. 13. Section 602.101(c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB Control numbers.

* * * * *

(c) * * *

CFR part or section where identified	Current OMB control Number
. . .	. . .
1.1367–1(f)	1545–1139
1.1368–1(f)(2)	1545–1139
1.1368–1(f)(3)	1545–1139
1.1368–1(f)(4)	1545–1139
1.1368–1(g)(2)	1545–1139
. . .	. . .

Margaret Milner Richarson,
Commissioner of Internal Revenue.

Approved: December 21, 1993.

Leslie Samuels,
Assistant Secretary of the Treasury (Tax Policy).

[FR Doc. 93–31928 Filed 12–30–93; 8:45 am]

BILLING CODE 4830–01–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

29 CFR Part 1650

Collection of Debts by Federal Tax Refund Offset

AGENCY: Equal Employment Opportunity Commission.

ACTION: Interim final rule.

SUMMARY: The Equal Employment Opportunity Commission (EEOC) is amending its regulations, pursuant to the Deficit Reduction Act of 1984, to add regulations on procedures for the collection of debts by Federal tax refund offset. This rule outlines the procedures that EEOC will follow for collection of a past-due, legally enforceable debt owed to EEOC by referring such debt to the internal Revenue Service (IRS) for offset against any overpayment of tax.

DATES: The interim final rule is effective on January 3, 1994. Comments must be received by March 4, 1994.

ADDRESSES: Written comments should be addressed to Frances Hart, Executive Officer, Office of Executive Secretariat, Equal Employment Opportunity Commission, room 10402, 1801 L Street, NW., Washington, DC 20507.

FOR FURTHER INFORMATION CONTACT: Nicholas M. Inzeo, Associate Legal Counsel, Thomas J. Schlageter, Assistant Legal Counsel, or Daniel T. Riordan, Staff Attorney, at (202) 663–4669.

Copies of this interim final rule are available, upon request, in the following alternate formats: Large print, braille, electronic file on computer disk, and audio-tape. Copies may be obtained from the EEOC Publications Center by calling (800) 669–3362 (voice) or (800) 800–3302 (TDD).

SUPPLEMENTARY INFORMATION: Section 2653 of the Deficit Reduction Act of 1984, 31 U.S.C. 3720A, was designed to make significant improvements in a Federal agency's ability to collect a past-due, legally enforceable debt owed by a taxpayer through offset by the IRS against an overpayment of Federal tax. The Deficit Reduction Act also amended the Internal Revenue Code of 1954 by adding subsection 6402(d) providing that the Secretary of the Treasury shall: (1) Reduce the amount of any overpayment due any person by the amount of a past-due, legally enforceable debt owed to any Federal agency upon receiving notice from the agency that such person owes the debt, (2) pay the reduction to the agency, and (3) notify the person making the overpayment that the overpayment has been reduced to satisfy such debt.

These regulations contain the procedures for collecting debts due to the Commission. The individual owing the past-due, legally enforceable debt will be notified of the debt and given the opportunity to submit evidence concerning the existence or amount of the debt. Any evidence received will be considered by Commission officials prior to submitting any claim to the IRS for collection.

The Commission has determined that this rule does not constitute a major rule for the purposes of Executive Order 12291. The Commission also certifies

under 5 U.S.C. 605(b), enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that the rule will not result in a significant impact on a substantial number of small employers. For this reason, a regulatory flexibility analysis is not required.

For the Commission.

Tony E. Gallegos,

Chairman.

For the reasons set forth in the preamble, title 29, chapter XIV of the Code of Federal Regulations is amended by adding part 1650 to read as follows:

PART 1650—DEBT COLLECTION

Subpart A—[Reserved]

Subpart B—Procedures for the Collection of Debts by Federal Tax Refund Offset

Sec.

1650.201 Purpose.
1650.202 Past-due legally enforceable debt.
1650.203 Notification of intent to collect.
1650.204 Reasonable attempt to notify.
1650.205 Consideration of evidence submitted as a result of notification of intent
1650.206 Notification to Internal Revenue Service.
1650.207 Administrative charges.

Authority: 31 U.S.C. 3720A

Subpart A—[Reserved]

Subpart B—Procedures for the Collection of Debts by Federal Tax Refund Offset

Authority: 31 U.S.C. 3720A.

§ 1650.201 Purpose.

This subpart establishes procedures for EEOC to refer past-due legally enforceable debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EEOC. It specifies the agency procedures and the rights of the debtor applicable to claims referred under the Federal Tax Refund Offset Program for the collection of debts owned to EEOC.

§ 1650.202 Past-due legally enforceable debt.

A past-due legally enforceable debt for referral to the IRS is a debt that resulted from any statute administered by EEOC and:

(a) Is an obligation of a debtor who is a natural person;

(b) Except in the case of a judgment debt, has been delinquent at least 3 months but not more than 10 years at the time the offset is made;

(c) Is at least $25.00;

(d) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(e) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the EEOC against amounts payable to or on behalf of the debtor by or on behalf of the EEOC;

(f) With respect to which EEOC has given the debtor at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or legally enforceable, has considered evidence presented by such debtor, and has determined that an amount of such debt is past-due and legally enforceable;

(g) Has been disclosed by EEOC to a consumer reporting agency is authorized by 31 U.S.C. 3711(f), unless the consumer reporting agency would be prohibited from reporting such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(h) EEOC's records do not contain evidence that the person owing that debt (or his or her spouse) has filed for bankruptcy under title 11 of the United States Code; and

(i) EEOC can clearly establish at the time of the referral that the automatic stay under 11 U.S.C. 362 has been lifted or is no longer in effect with respect to the person owing the debt or his or her spouse, and the debt was not discharged in the bankruptcy proceeding.

§ 1650.203 Notification of intent to collect.

(a) *Notification before submission to the IRS.* A request for reduction of an IRS income tax refund will be made only after EEOC makes a determination that an amount is owed and past-due and gives or makes a reasonable attempt to give the debtor 60 days written notification of intent to collect by Federal tax refund offset.

(b) *Contents of Notification.* EEOC's notification of intent to collect by Federal tax refund offset shall provide:

(1) The amount of the debt;

(2) That unless the debt is repaid within 60 days from the date of EEOC's notification of intent, EEOC intends to collect the debt by requesting the IRS to offset an amount equal to the amount of the debt and all accumulating interest and other charges against any overpayment of tax after liabilities subject to 26 U.S.C. 6402(a) and (c) have been satisfied;

(3) A mailing address for forwarding any written correspondence and a contact and a toll-free or collect telephone number for any questions; and

(4) That the debtor may present evidence to EEOC that all or part of the debt is not past due or legally enforceable by—

(i) Sending a written request for a review of the evidence to the address provided in the notification;

(ii) Stating in the request for review the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; or

(iii) Including in the request for review any documents that the debtor wishes to be considered to stating that the additional information will be submitted within the remainder of the 60-day period.

§ 1650.204 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, EEOC must have used a mailing address for the debtor obtained from the IRS pursuant to 26 U.S.C. 6103(m)(2) within a period of 1 year preceding the attempt to notify the debtor, unless EEOC receives clear and concise notification from the debtor that notices from the agency are to be sent to an address different from the address obtained from IRS. Clear and concise notification means that the debtor has provided the agency with written notification, including the debtor's name and identifying number (as defined in 26 CFR 301.6109–1), the debtor's new address, and the debtor's intent to have the agency notices sent to the new address.

§ 1650.205 Consideration of evidence submitted as a result of notification of intent.

(a) *Consideration of evidence.* If, as a result of the notification of intent, EEOC receives notice that the debtor will submit additional evidence or receives additional evidence from the debtor within the prescribed time period, any referral to the IRS will be stayed until EEOC—

(1) Considers the evidence presented by the debtor;

(2) Determines whether or not all or a portion of the debt is still past-due and legally enforceable; and

(3) Notifies the debtor of its determination.

Failure to submit the evidence within 60 days from the date of notification will result in an automatic referral of the debt to IRS without further action by EEOC.

(b) *Notification to the debtor.* Following its review of the evidence, EEOC will issue a written decision notifying the debtor whether EEOC has sustained, amended, or canceled its determination that the debt is past-due and legally enforceable. The notice will advise the debtor of any further action to be taken and explain the supporting rationale for the decision.

(1) EEOC will notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund if it sustains its decision that the debt is past-due and legally enforceable. EEOC will also notify the debtor whether the amount of the debt remains the same or is modified.

(2) EEOC will not refer the debt to the IRS for offset against the debtor's Federal income tax refund if it reverses its decision that the debt is past-due and legally enforceable.

§ 1650.206 Notification to Internal Revenue Service.

(a) Except as noted in paragraph (b) of this section, after EEOC's initial notification and referral of a debt to IRS for offset against a debtor's Federal income tax refund, EEOC will promptly notify IRS of any changes in the notification, if EEOC—

(1) Determines that an error has been made with respect to the information contained in the notification;

(2) Receives a payment or credits a payment to the account of the debtor named in the notification that reduces the amount of the debt referred to IRS for offset;

(3) Receives notification that the individual owing the debt has filed for bankruptcy under title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged;

(4) Receives notification that an offset was made at a time when the automatic stay provisions of 11 U.S.C. 362 were in effect; or

(5) Refunds all or part of the offset amount to the debtor.

(b) EEOC shall not request the IRS to increase the amount of a debt owed by a debtor named in EEOC's original notification to IRS.

(c) If the amount of a debt is reduced after referral by EEOC and offset by the IRS, EEOC will refund to the debtor any excess amount and will promptly notify the IRS of any refund made by EEOC.

§ 1650.207 Administrative charges.

All administrative charges incurred in connection with the referral of the debts to the IRS will be assessed on the debt and thus increase the amount of the offset.

[FR Doc. 93–31710 Filed 12–30–93; 8:45 am]

BILLING CODE 6570–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 305

[FRL–4818–1]

RIN 2050–AC26

CERCLA Administrative Hearing Procedures for Claims Asserted Against the Superfund

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Environmental Protection Agency (EPA or the Agency) is promulgating a final rule to implement section 112 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA). CERCLA section 112 outlines procedures for payments of claims authorized pursuant to CERCLA section 111. Furthermore, EPA uses the procedures authorized by CERCLA section 112 to reimburse parties for response costs incurred pursuant to CERCLA section 122. EPA reimburses the parties through payment of claims asserted against the Hazardous Substance Superfund (the Fund). The claims authority allows EPA to reimburse a person for the costs incurred for responding to an actual or threatened release of hazardous substances, pollutants, or contaminants if that person has received prior approval (preauthorization) from EPA to conduct a response action. If EPA denies all or part of a claim against the Fund for the costs incurred in conducting a preauthorized response action, the adversely affected claimant may request an administrative hearing to review that decision. This final rule establishes procedures to request such a hearing and governs the course of the proceeding following the request.

EFFECTIVE DATE: This final rule is effective February 2, 1994.

ADDRESSES: The official record for this rulemaking is in the Superfund Docket, located at the United States Environmental Protection Agency, 401 M Street, SW., Room M 2615, Washington, DC 20460. The record is available for inspection by appointment only (Telephone—202–260–3046) between the hours of 9 a.m. and 4 p.m., Monday through Friday, excluding legal holidays. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

FOR FURTHER INFORMATION CONTACT: Hugo Paul Fleischman, U.S. Environmental Protection Agency, Office of Emergency and Remedial Response, Hazardous Site Control Division, (Mail Code—5203G), 401 M Street, SW., Washington, DC 20460; Telephone—703–603–8769. An alternative contact is the Superfund Hotline; 1–800–424–9346 (TDD 800–553–7672), or in the Washington, DC area, (703) 920–9810 (TDD 703–486–3323).

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Background
II. Response to Comments
III. Summary of Supporting Analyses

I. Background

EPA is today promulgating the final CERCLA administrative hearing procedures for claims asserted against the Superfund. Today's rule is based on an interim final rule with request for comments promulgated on February 8, 1993, at 58 FR 7704. The rationale for the rule and a discussion of its background and procedures may be found there. One commenter made two specific comments on the interim final rule.

II. Response to Comments

EPA received one comment in two specific areas. The first portion of the comment noted that "most procedures litigation rules, including the Federal Rules of Civil Procedure (FRCP), provide that Saturdays, Sundays, and legal holidays shall not be counted in calculating short time limits (e.g., ten days or less)." The commenter went on to note that the rule was at odds with such procedures. EPA notes that while the rule is not identical to the FRCP, there is a good reason for such departure. The procedures in this rule are designed to allow expedited hearings in accord with the time frames provided in CERCLA section 112. Nevertheless, litigants may seek an extension of the time for the Presiding Officer to render a final order in the case, or may extend that time frame by agreement of all parties. See 40 CFR 305.4(c). Furthermore, litigants may seek extensions of time for the filing of pleadings, documents, or motions. See 40 CFR 305.6(b). Therefore, because of the need for expedition, and the availability of extensions provided elsewhere in the rule, EPA believes that no change to the rule is necessary.

The second portion of the comment noted that the "service" rules "do not provide for service of documents on Federal agencies . . . from which we infer that the rules are not intended to apply to such." That inference is incorrect. Because the rule applied to Federal agencies that are potentially

responsible parties, EPA has corrected the final rule by adding procedures to serve Federal agencies at § 305.5(b)(1)(v). The amended rule provides that "(S)ervice upon an officer or agency of the United States shall be made by delivering a copy of the document to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the document shall be served as prescribed in paragraph (iii) of this section." Like the rest of the rule, the new service provision is modeled on 40 CFR part 22.

The commenter also raised a "related question" regarding the manner and means by which Federal agencies are to be compensated for the costs they incur pursuant to the NCP and related plans. Such comment does not relate to the interim final rule and has been directed to the appropriate EPA official for response.

III. Summary of Supporting Analyses

Proposed and final rules issued by Federal Agencies are subject to several statutes and executive orders. These include Executive Order 12291 (superseded by Executive Order 12866 on September 1, 1993), the Regulatory Flexibility Act, and the Paperwork Reduction Act.

A. Executive Order Review

This rulemaking was submitted and reviewed by the Office of Management and Budget under Executive Order 12291. The rulemaking was non-major under the requirements of that Executive Order. Therefore, no Regulatory Impact Analysis was prepared.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires that a Regulatory Flexibility Analysis be performed for all rules that are likely to have a "significant economic impact on a substantial number of small entities." EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities because all authorized costs and expenses are payable from the Fund. Further, this final rule imposes no capital expenditures, nor any compliance requirements on any business.

C. Paperwork Reduction Act

The final rule contains no information collection requirements which require approval by the Office of Management and Budget pursuant to 44 U.S.C. 3501 *et seq.*

List of Subjects in 40 CFR Part 305

Environmental protection, Administrative practice and procedures, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Superfund, Waste treatment and disposal.

Dated: December 16, 1993.

Carol M. Browner,

Administrator.

40 CFR part 305 is amended as follows:

PART 305—COMPREHENSIVE ENVIRONMENTAL RESPONSE, COMPENSATION, AND LIABILITY ACT (CERCLA) ADMINISTRATIVE HEARING PROCEDURES FOR CLAIMS AGAINST THE SUPERFUND

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 9601 *et seq.*; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp. p. 193.

2. Section 305.5 is amended by adding paragraph (b)(2)(v) to read as follows:

§ 305.5 Filing, service, and form of pleadings and documents.

* * * * *

(b) * * *

(2) * * *

(v) Service upon an officer of agency of the United States shall be made by delivering a copy of the document to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the document shall be served as prescribed in paragraph (b)(2)(iii) of this section.

* * * * *

[FR Doc. 93–32034 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–60–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931243–3343; I.D. No. 112293A]

Northeast Multispecies Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule.

SUMMARY: The Secretary of Commerce (Secretary) amends the regulations implementing the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This emergency interim rule implements: A 500-pound (226.8 kg) possession limit of haddock for all vessels permitted under 50 CFR 651.4 and to all vessels in possession of haddock from or in the exclusive economic zone (EEZ), except scallop dredge vessels, which are prohibited from possessing or landing haddock; a January through May closure of the area known as Closed Area II, except for lobster pot vessels and scallop dredge vessels; an expansion of Closed Area II by 20 minutes longitude to the west and 15 minutes latitude to the south, along its existing western and southern boundaries, intersecting with the Regulated Mesh Boundary line; a suspension of the February through May closure of the area known as Closed Area I, except for vessels using sink gillnet gear; a prohibition on transfer of fish at sea; and a ban on pair trawling in the multispecies fishery. The intended effect of this rule is to provide protection to depleted haddock and cod stocks.

EFFECTIVE DATES: January 3, 1994, through April 2, 1994.

ADDRESSES: Copies of the Environmental Assessment (EA) supporting this action may be obtained from Richard B. Roe, Regional Director, National Marine Fisheries Service, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Patricia A. Kurkul (Senior Fishery Policy Analyst, Northeast Region, NMFS), 508–281–9252.

SUPPLEMENTARY INFORMATION: The primary Northeast multispecies (groundfish) species have declined to record or near record low levels of stock abundance due largely to record high fishing mortality caused by increased fishing effort. To correct this, the New England Fishery Management Council (Council) developed Amendment 5 to the FMP, which has been submitted to the Secretary for review under the Magnuson Fishery Conservation and Management Act (Magnuson Act) and other applicable law. Amendment 5 contains proposals that the Council believes will eliminate the overfished condition of cod and yellowtail flounder over a 5-year period and haddock over a 10-year period. The measures proposed include: Reductions in fishing time; a moratorium on new permits; an increased minimum net mesh size; modifications to existing closed areas; additional closed areas and control areas for juvenile fish; possession limits on regulated species when possessing small mesh on board; and a possession limit on haddock. A proposed rule to implement these measures was published on October 27, 1993 (58 FR 57774). However, a proposed possession limit of 5,000 pounds (2,268 kg) for haddock contained in Amendment 5 was disapproved on September 30, 1993. The Director, Northeast Region, NMFS (Regional Director) advised the Council on September 30, 1993, that the proposed haddock possession limit offered inadequate protection for that species, and the Council should seriously consider whether any haddock should be landed.

The Council previously recommended that an emergency action implemented last June, which prohibited the use of pair trawls and imposed a 2,500-pound (1,134-kg) haddock trip limit, be extended for an additional 90 days. This request was denied and the emergency action expired on September 7, 1993. The disapproval was based on the fact that haddock are not concentrated during the period of time covered by the extension and, therefore, the recommended management measures were not warranted under emergency rulemaking. The Regional Director requested the Council to consider more restrictive measures, including a meaningful trip limit for haddock. This was reiterated when the Council was informed that the 5,000-pound (2,268-kg) haddock trip limit proposed in Amendment 5 had been disapproved.

Of particular concern are the haddock stocks on both Georges Bank and in the Gulf of Maine, which are at all-time low levels of abundance. Adult stock biomass is lower now than at any point since the inception of stock assessments. Haddock landings in 1993, which reflect stock condition, are expected to be the lowest in recorded history. The stock condition and landings will continue to decline until such time that meaningful measures are implemented that will eliminate the overfished condition of the stocks and reduce the exploitation rate to levels that will allow significant rebuilding to take place.

The Council discussed this issue at its October 1993 meeting in conjunction with its discussion of an amendment to replace the disapproved portions of Amendment 5. The Council voted to develop an amendment to implement a 4,000-pound (1,814-kg) haddock trip limit and to increase the annual Closed Area II closed season from February through May, to January through June. The Council also voted to rescind the geographical expansion of Closed Area II proposed in Amendment 5, in part, as a compromise to the industry for imposing a longer time period for the closure. This represented a departure from Amendment 5, which calls for immediate expansion of the size of Closed Area II and, in year 3 and thereafter, an expansion in the duration of the closed season.

After adopting amended language for the disapproved measure in Amendment 5, the Council voted to request emergency Secretarial action to implement the same measures beginning January 1, 1994. In addition, the Council requested emergency implementation, beginning January 1, 1994, of a suspension of the closure of Closed Area I to vessels using other than sink gillnet gear and a prohibition on pair trawling, both of which are proposed in Amendment 5. NMFS determined, however, that some of the emergency measures recommended by the Council were inadequate to provide sufficient protection of these stocks, and that more restrictive measures must be implemented to provide essential protection particularly in light of new analysis of the condition of the haddock stocks.

The Regional Director presented the new analysis of the condition of the stocks to the Council at its November 23 Multispecies Oversight Committee meeting and at its December 8–9 Council meeting and, in response, the Council amended its recommendation on emergency action. The Council proposed: An immediate closure of the expanded Closed Area II (beginning January 1, 1994); a prohibition on pair trawling; a haddock possession limit between 500 (226.8 kg) and 1,000 pounds (453.6 kg), at the discretion of the Regional Director, and a request that the Regional Director consider whether scallop dredges should be prohibited from the haddock spawning area during the closure of Area II.

The Secretary concurs with the Council's recommendation and the Regional Director's determination that the haddock possession limit should be 500 pounds (226.8 kg). In making these determinations, the Secretary took into consideration that the haddock stocks are severely depleted. The 1992 spawning stock level for the Georges Bank stock is estimated to be 13,000 metric tons (mt), which is significantly lower than the 130,000 mt required to provide a maximum sustainable yield of 50,000 mt. The most recent assessment of the Georges Bank haddock stock conducted by the NMFS Stock Assessment Workshop determined that the fishing mortality rate in 1991 was 0.52. More recent information from a Canadian assessment indicates that the 1992 fishing mortality rate was 0.6 and is likely to be higher in 1993.

In determining an overfishing definition for the Georges Bank haddock stock, the Council chose a percent maximum spawning potential (%MSP) of 30 percent, which is equivalent to a fishing mortality rate of 0.4. If this rate were achieved, it would maintain the stock at its present level over the long term. Given the low stock level, though, this would not be enough to allow rebuilding to take place. Rebuilding can only be achieved if the fishing mortality rate is reduced well below this level. Based upon past history, it is estimated that an exploitation rate of about 0.1 (10 percent annual removal of the stock each year) would allow rebuilding to occur. This occurred for several years prior to a large incoming year class of haddock in 1975, which allowed the spawning stock to rebuild.

The current exploitation rate of haddock is approximately 0.37. A 500-pound (226.8 kg) haddock possession limit is expected to reduce the exploitation rate to about 0.1. Achieving this rate will be possible only if the trip limit is low enough to discourage targeting of haddock and highgrading, and it does not compromise enforcement efforts. The 500-pound (226.8 kg) possession limit is considered to be the average number of pounds of haddock per trip that would still be caught incidental to fishing for other species. Although any possession limit can provide incentive to target a species, 500 pounds (226.8 kg) is believed to be low enough to discourage targeting if vessel operators comply with the limit. A trip limit could also encourage "highgrading," (i.e., filling the trip limit with the highest value fish and discarding the rest). The prevalence of this problem will depend to some extent on the willingness of vessel operators to move out of an area with concentrations of haddock. Both of these potential situations will be closely monitored and appropriate action taken by the Regional Director in the event they are determined to be problems. Finally, a trip limit is expected to make enforcement of these haddock measures problematic. Compliance with the measures will also be closely monitored, and should enforceability become compromised, appropriate action will be taken by the Regional Director, including the possibility of implementing a prohibition on the possession of haddock by all vessels. To improve enforceability, this rule prohibits transfer of fish at sea, requires haddock to be stored separately from other fish, and requires all vessels to carry a standardized tote so the amount of haddock on board can be measured at sea.

The expansion of Closed Area II in area and time will provide additional

protection to the concentrations of haddock that occur in the area in this time period. The January closure will ensure that haddock beginning to concentrate in the area are provided the fullest protection. The expansion in size of the closed area is based on information obtained from interviews with fishermen, which indicate that large amounts of haddock are taken just outside the closed area.

Allowing the use of mobile gear in Closed Area I is justified because there have been few if any haddock present in the area for the last 10 years. This has been confirmed by research trawl surveys conducted by the NMFS Northeast Fisheries Science Center (NEFSC). The closure remains in effect for sink gillnet gear because of possible interaction between the gear and endangered or threatened marine mammals.

In addition to the expansion and early closure, the Secretary has determined that, because scallop vessels fish in Closed Area II during the period when haddock are congregated to spawn, all scallop dredge vessels should be prohibited from landing or possessing haddock to ensure that such vessels do not target these concentrations of haddock. While the Council requested that the Regional Director consider the question of whether scallop dredges should be prohibited from the area during the closure, and not a prohibition on landings, the information provided by the NEFSC does not support precluding scallopers from the closed area. Therefore, the lesser action is taken to reduce the impact on scallopers yet provide some protection to spawning haddock.

The Secretary has determined that it is appropriate to include a pair trawl prohibition in this emergency rule. Many in the fishing industry believe that a prohibition on pair trawl gear in the multispecies fishery is warranted as an emergency measure because it is a highly efficient gear, and its unlimited use during a period of severely declining haddock and cod stocks is counterproductive to the goal of reducing effort in an overfished fishery. Information from the NEFSC for 1992 indicates that, for some vessel classes, catch rates increase by a factor of 5.85 when using the gear. As a result, there has been an increase in its use in recent years. This prohibition is also included in proposed Amendment 5.

Classification

The Secretary has determined that this rule is necessary to respond to an emergency situation and is consistent with the Magnuson Act and other applicable law.

The Secretary finds for good cause that the reasons justifying promulgation of this rule on an emergency basis also make it impracticable and contrary to the public interest to provide notice and opportunity for public comment upon, or to delay for 30 days the effective date of these emergency regulations, under the provisions of sections 553(b) and (d) of the Administrative Procedure Act. However, all of the measures have received some public comment during Council meetings and in connection with the development of Amendment 5 to the FMP. Implementation of these emergency measures will provide much needed immediate protection to the declining haddock and cod stocks.

This rule is exempt from the requirements of the Regulatory Flexibility Act to prepare a regulatory flexibility analysis because the rule is issued without opportunity for prior public comment, and none has been prepared.

List of Subjects in 50 CFR Part 651

Fishing, Fisheries, Vessel permits and fees.

Dated: December 27, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 651 is amended as follows:

PART 651—NORTHEAST MULTISPECIES FISHERY

1. The authority citation for part 651 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 651.2, the definitions for *bottom-tending gillnet or sink gillnet gear, dredge or dredge gear, offload, pair trawl or pair trawling, scallop dredge vessel, standard box, standard tote,* and *transfer* are temporarily added, in alphabetical order, effective January 3, 1994 through April 2, 1994, to read as follows:

§ 651.2 Definitions.

* * * * *

Bottom-tending gillnet or sink gillnet means any gillnet, anchored or otherwise, that is designed to be, capable of being, or is fished on or near the bottom in the lower third of the water column.

Dredge or dredge gear means gear consisting of a mouth frame attached to a holding bag constructed of metal rings, or any other modification to this design, that can or is used in the harvest of Atlantic sea scallops.

Offload means to begin to remove, to remove, to pass over the rail, or otherwise take away fish from any vessel.

Pair trawl or pair trawling means to tow or towing a single net between two vessels for the purpose of, or that is capable of, catching multispecies finfish.

Scallop dredge vessel means any fishing vessel that uses or is equipped for using dredge gear and that has been issued or has applied for a Federal scallop permit.

Standard box means a box, typically constructed of wax-saturated cardboard or wood, designed to hold 125 pounds (56.6 kg) of fish plus ice, and that has a volume of not more than 5,100 cubic inches (2.95 cubic feet or 83.57 cubic dm).

Standard tote means a box typically constructed of plastic, designed to hold 100 pounds (45.3 kg) of fish plus ice, and that has a liquid capacity of 70 liters, or a volume of not more than 4320 cubic inches (2.5 cubic feet or 70.79 cubic dm).

Transfer means to begin to remove, to pass over the rail, or otherwise take away fish from any vessel and move them to another conveyance.

* * * * *

3. In § 651.7, paragraphs (a)(3), (a)(4), (a)(5), (a)(6), (a)(7), (b)(15), (b)(16), (b)(17), (b)(18), (b)(19), (b)(20), and (b)(21) are temporarily added and paragraph (b)(11) is temporarily suspended effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.7 Prohibitions.

(a) * * *

(3) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.28(a).

(4) Land, or possess on board a vessel, more than 500 pounds (226.8 kg) of haddock as specified in § 651.28(b) or violate any of the other provisions specified in § 651.28(b).

(5) Land or possess multispecies finfish harvested by means of pair trawling except under the provisions of § 651.20(d).

(6) Fish for multispecies finfish by means of pair trawling.

(7) Land, offload, remove, or otherwise transfer or attempt to land, offload, remove, or otherwise transfer fish from one vessel to another vessel.

(b) * * *

(15) Use, set, haul back, fish with, or have on board a vessel a sink gillnet in the area and during the time period described in § 651.21(c)(1).

(16) Enter the area described in § 651.21(c)(2) on a fishing vessel during the time period specified in § 651.21(c)(2), except as specified in § 651.21(c)(3).

(17) Land haddock from, or possess haddock on board, a sea scallop dredge vessel as specified in § 651.28(a).

(18) Land, or possess on board a vessel, more than 500 pounds (226.8 kg) of haddock in, or harvested from, the EEZ as specified in § 651.28(b) or violate any of the other provisions specified in § 651.28(b).

(19) Land or possess multispecies finfish harvested in, or from, the EEZ by means of pair trawling, except under the provisions of § 651.20(d).

(20) Fish for multispecies finfish in the EEZ by means of pair trawling.

(21) Land, offload, remove, or otherwise transfer, or attempt to land, offload, remove or otherwise transfer multispecies finfish from one vessel to another vessel, unless the multispecies finfish were harvested by a recreational fishing vessel or such vessels have not been issued a Federal multispecies permit and fish for multispecies finfish exclusively in state waters.

* * * * *

4. In § 651.20, paragraph (g) is temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.20 Regulated mesh area and gear limitations.

* * * * *

(g) No vessel issued a permit under § 651.4 may pair trawl for multispecies finfish, as defined under § 651.2, except under the provisions of paragraph (d) of this section.

5. In § 651.21, paragraphs (a) introductory text, (a)(1), (a)(2), and (a)(3) are temporarily suspended, and paragraph (c) is temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.21 Closed areas.

* * * * *

(c) *Georges Bank.* No person or vessel may fish within the following areas subject to the conditions and/or exceptions of this section.

(1) *Closed Area I.* No fishing vessel or person on a fishing vessel may use, set, haul back, fish with, or have on board a vessel a sink gillnet during the months of February through May in the area known as Closed Area I (Figure 6), which is bounded by six straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CI1	40°53′ N.	68°53′ W.
CI2	41°35′ N.	68°30′ W.
CI3	41°50′ N.	68°45′ W.
CI4	41°50′ N.	69°00′ W.
CI5	41°30′ N.	69°00′ W.
CI6	41°30′ N.	69°23′ W.
CI1	40°53′ N.	68°53′ W.

(2) *Closed Area II.* No fishing vessel or person on a fishing vessel may fish in, or be in, the area known as Closed Area II (Figure 6) during the months of January through May, except as specified in paragraph (c)(3) of this section. Closed Area II is bounded by four straight lines connecting the following points in the order stated:

Point	Latitude	Longitude
CII1	41°00′ N.	67°20′ W.
CII2	41°00′ N.	66°35.8′ W.
G5	41°18.6′ N.	66°24.8′ W. (the U.S.-Canada Maritime Boundary)
CII3	42°22′ N.	67°20′ W. (the U.S.-Canada Maritime Boundary)
CII1	41°00′ N.	67°20′ W.

(3) *Exceptions.* Paragraph (c)(2) of this section does not apply to persons on fishing vessels or fishing vessels:

(i) Fishing with or using pot gear designed and used to take lobsters;

(ii) Fishing with or using dredges designed and used to take scallops; or

(iii) Seeking safe haven from storm conditions in waters adjacent to the western edge of Closed Area II. Such fishing vessels may transit through Closed Area II providing that:

(A) Gale, storm or hurricane conditions are posted for the area by the National Weather Service;

(B) Such vessels do not fish in the area;

(C) Fishing gear is stowed in accordance with § 651.20(f); and

(D) The vessel provides notice to patrolling U.S. Coast Guard aircraft or vessel in the vicinity of Georges Bank by high frequency radio (2.182 khz) of its intention to transit the closed area and the time and position when the vessel enters the area and the time and position when the vessel exits the closed area.

6. Sections 651.28 and 651.29 are temporarily added effective January 3, 1994, through April 2, 1994, to read as follows:

§ 651.28 Haddock possession limits.

(a) *Scallop dredge vessels.*

(1) No person owning or operating a scallop dredge vessel issued a permit under § 651.4 may land, or possess on board a vessel, haddock.

(2) No person operating a scallop dredge vessel may possess haddock in, or harvested from, the EEZ.

(b) *Other vessels.*

(1) No person owning or operating a vessel issued a permit under § 651.4 may land, or possess on a vessel, more than 500 pounds (226.8 kg) of haddock.

(2) No person may possess on a vessel more than 500 pounds (226.8 kg) of haddock in, or harvested from, the EEZ.

(3) Vessels subject to the haddock possession limit shall have on board the vessel at least one standard box or one standard tote.

(4) The haddock stored on board the vessel shall be retained separately from the rest of the catch and shall be readily available for inspection and for measurement by placement of the haddock in a standard box or standard tote if requested by an authorized officer.

(5) The haddock possession limit is equal to 500 pounds (226.8 kg) or its equivalent as measured by the volume of 4 standard boxes or 5 standard totes.

§ 651.29 Transfer-at-sea.

(a) Vessels permitted under § 651.4 are prohibited from transferring or attempting to transfer fish from one vessel to another vessel.

(b) All vessels are prohibited from transferring or attempting to transfer multispecies finfish from one vessel to another vessel.

7. Figure 2 to part 651 is temporarily suspended, effective January 3, 1994, through April 2, 1994, and Figure 6 is temporarily added effective January 3, 1994, through April 2, 1994.

BILLING CODE 3510-22-P

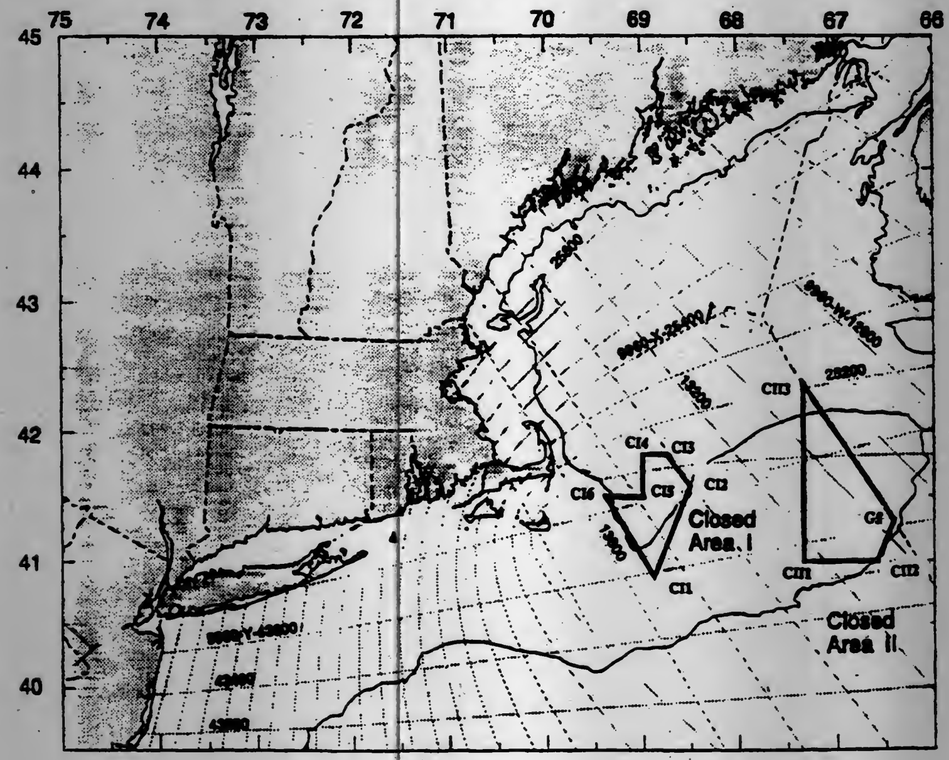


Figure 6: Closed Areas

[FR Doc. 93–32010 Filed 12–28–93; 3:22 pm]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 59, No. 1
Monday, January 3, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–20]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR Part 11), this notice contains the substance of a petition for rulemaking filed by the Experimental Aircraft Association, (EAA). EAA filed this petition in the form of notice of proposed rulemaking, and the FAA is publishing the substance of EAA's proposal verbatim, in order to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information is intended to affect the legal status of any petition or its finel disposition. The FAA is publishing EAA's petition without comment or endorsement.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by March 4, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. 27517, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on December 22, 1993.

Donald P. Byrne,
Assistant Chief Counsel, Regulations Division.

Petitions for Rulemaking

Docket No.: 27517.
Petitioner: Experimental Aircraft Association.
Regulations Affected: 14 CFR Part 61.
Description of Rulechange Sought:

SUMMARY: Experimental Aircraft Association (EAA) submits this NPRM as a proposal to amend several sections of the Federal Aviation Regulations (FAR) as they apply to student and recreational pilot activity. Specifically, student and recreational pilots will be permitted to hold at least a current third-class medical certificate issued under part 67 of this chapter or certify that he or she has no known medical defect that makes him or her unable to pilot an aircraft, all certificated pilots will be permitted the same option when exercising the privileges of a recreational pilot certificate. Further, the holder of a flight instructor certificate with an appropriate category and class rating, while holding at least a current third-class medical certificate issued under part 67 of this chapter or certifying that he or she has no known medical defect that makes him or her unable to pilot an aircraft, will be permitted to instruct student pilots seeking a recreational pilot certificate or the holder of a recreational pilot certificate seeking advanced training. The proposed amendments will permit additional flight activity, encouraged increased proficiency by lowering the cost of recreational flying and assist in the revitalization of general and sport aviation by relieving a burdensome and expensive regulation, without a degradation of aviation safety. The Federal Aviation Administration (FAA) publishes this NPRM without comment.

Background

Current medical certification requirements have existed for decades and have remained unchanged in the face of medical advancement. In fact, accident summary data from 1986 through 1992 indicates that the percentage of accidents involving medical causal factors is lower for those recreational type activities that do not require medical certification than those activities that do require medical certification. During those seven years, there were 761 accidents in lighter-than-air aircraft and sailplanes. These operations do not require FAA medical certification. Only one of these 761 accidents showed a medical cause resulting in a .13% of total accidents. Of general aviation operations requiring medical certification, there were 46,976 total accidents, 99 of which (.21%) showed medical cause. During this same time frame, medical causal accidents as a part of the total were 19% for amateur-built aircraft and .16% for airplanes less than 12,500 pounds. A safety problem is *not* evident for basic aircraft used for limited recreational purposes. (See the following chart):

ACCIDENT SUMMARY
[January 1, 1988 to December 31, 1992]

	Total accidents all causes	Medical cause accidents	Percent of accidents medical causal
Lighter-than-air	327	0	0 00
Sailplanes	434	1	0 23
All "No Medical Req."	761	1	0 13

ACCIDENT SUMMARY—Continued
[January 1, 1986 to December 31, 1992]

	Total accidents all causes	Medical cause accidents	Percent of accidents medical causal
Rotorcraft	2126	5	0.24
Other < 12,500	36831	58	0.16
Other > 12,500	5983	32	0.53
Amateur-built	2036	4	0.20
All "Medical Req."	46976	99	0.21

Data source: Ben Morrow (ACE–103)

This proposal would amend the regulations to permit qualified airmen to operate U.S. registered general aviation airplanes for sport and recreational purposes with self-certification medicals. Pilots would also be permitted to receive appropriate instruction from appropriately-rated individuals with an active interest in small aircraft operated for sport and recreation. Current requirements for a third class medical certificate for individuals engaged in recreational flying in small, slow airplanes is without justification from a safety standpoint. There is documented information that safety is not being compromised by the operation of other recreational aircraft (such as sailplanes and hot air balloons) as well as ultralight vehicles by those not regulatorily encumbered by a requirement for a third class medical certificate.

There is widespread concern about the current health and future growth opportunities for sport and general aviation. Sport and general aviation are the foundation of the entire air transportation system in the United States. The activities of sport and general aviation provide the support of the aviation infrastructure including maintenance, airport operators, airport service companies (fixed base operators), and the pipeline of requirement replacement parts. It is general and sport aviation that provide the involvement of the majority of individuals involved in aviation; provide the training necessary for all segments of aviation, including business, corporate, commercial and military aviation; and provide the proficiency for most flight personnel.

Trends and statistics of new airplane manufacturing and pilot certificates issued are well known to the FAA and to the aviation community. These statistics along with a deteriorating condition of airport facilities availability clearly show the current state of affairs for general aviation.

Well publicized as contributing factors to this condition are issues of product liability for aircraft and parts manufacturing, and operating cost factors. Other major factors—not so well publicized—are those of regulatory burden and costs. These regulatory costs continue to increase through requirements for additional flight training, mandatory equipment on aircraft, mandatory inspections and airspace requiring avoidance which results in added flight time and operating expense. All of these economic cost factors are doubly burdensome on the recreational segment of general aviation since these costs are not deductible or justified as a "business expense." Opening the opportunity of flight through this amendment could assist in reversing the negative trends in general aviation.

The Proposal

This NPRM proposes to amend part 61 of the FAR (14 CFR Part 61) to permit student pilots seeking a recreational pilot certificate, the holder of a recreational pilot certificate, and those appropriately certificated pilots (private, commercial and airline transport pilot) while exercising the privileges of a recreational pilot certificate to operate U.S. registered general aviation aircraft (as limited by the recreational pilot certificate) with at least a third class medical certificate issued under part 67 of the FAR or to certify that he or she has no known medical defects that makes him or her unable to pilot an aircraft. Additionally, a certificated flight instructor with at least a third class medical certificate issued under part 67 of the FAR or certify that he or she has no known medical defects that makes him or her unable to pilot an aircraft may give flight instruction to student pilots seeking a recreational pilot certificate or the holder of a recreational pilot certificate seeking advanced training.

The exercise of the recreational pilot privileges permitting flight without the requirement for a third class medical certification will continue to be very limited in scope. Section 61.101 "Recreational pilot privileges and limitations" presently states:

(a) A recreational pilot may—

(1) Carry not more than one passenger; and

(2) Share the operating expenses of the flight with the passenger.

(3) Act as pilot-in-command of an aircraft only when—

(i) The flight is within 50 nautical miles of an airport at which the pilot has received ground and flight instruction from an authorized instructor certificated under this part;

(ii) The flight lands at an airport within 50 nautical miles of the departure airport; and

(iii) The pilot carries, in that pilot's personal possession, a logbook that has been endorsed by the instructor attesting to the instruction required by paragraph (a)(3)(i) of this section.

(b) Except as provided in paragraphs (f) and (g) of this section, a recreational pilot may not act as pilot-in-command of an aircraft—

(1) That is certificated—

(i) For more than four occupants,

(ii) With more than one powerplant;

(iii) With a powerplant of more than 180 horsepower; or

(iv) With retractable landing gear.

(2) That is classified as a glider, airship, or balloon;

(3) That is carrying a passenger or property for compensation or hire;

(4) For compensation or hire;

(5) In furtherance of a business;

(6) Between sunset and sunrise;

(7) In airspace in which communication with air traffic control is required;

(8) At an altitude of more than 10,000 feet MSL or 2,000 feet AGL, whichever is higher;

(9) When the flight or surface visibility is less than 3 statute miles;

(10) Without visual reference to the surface;

(11) On a flight outside the United States;

(12) To demonstrate that aircraft in flight to a prospective buyer;

(13) That is used in a passenger-carrying airlift and sponsored by a charitable organization; and

(14) That is towing any object.

(c) A recreational pilot may not act as a required pilot flight crew member on any aircraft for which more than one pilot is required by the type certificate of the aircraft or the regulations under which the flight is conducted, except when receiving flight instruction from an authorized flight instructor on board an airship and no person other than a required flight crew member is carried on the aircraft.

(d) A recreational pilot who has logged fewer than 400 flight hours and who has not logged pilot-in-command time in an aircraft within the preceding 180 days may not act as pilot-in-command of an aircraft until the pilot has received flight instruction from an authorized flight instructor who certifies in the pilot's logbook that the pilot is competent to act as pilot-in-command of the aircraft. This requirement can be met in combination with the requirements of section 61.56 and 61.57 at the discretion of the instructor.

(e) The recreational pilot certificate issued under this subpart carries the notation "Holder does not meet ICAO requirements."

(f) For the purpose of obtaining additional certificates or ratings, while under the supervision of an authorized flight instructor, a recreational pilot may fly as sole occupant of an aircraft—

(1) For which the pilot does not hold an appropriate category or class rating;

(2) Within airspace that requires communication with air traffic control; or

(3) Between sunset and sunrise, provided the flight or surface visibility is at least 5 statute miles.

(g) In order to fly solo as provided in paragraph (f) of this section, the recreational pilot must meet the appropriate aeronautical knowledge and flight training requirements of section 61.87 for that aircraft. When operating an aircraft under the conditions specified in paragraph (f) of this section, the recreational pilot shall carry the logbook that has been endorsed for each flight by an authorized pilot instructor who—

(1) Has given the recreational pilot instruction in the make and model of aircraft in which the solo flight is to be made;

(2) Has found that the recreational pilot has met the applicable requirements of section 61.87; and

(3) Has found that the recreational pilot is competent to make solo flights in accordance with the logbook endorsement.

(h) Notwithstanding paragraph 61.101(a)(3), a recreational pilot may for the purpose of obtaining an additional certificate or rating, while under the supervision of an authorized flight instructor, act as pilot-in-command of an aircraft on a flight in excess of 50 nautical miles from an airport at which flight instruction is received if the pilot meets the flight training requirements of section 61.93 and in that pilot's personal possession is the logbook that has been endorsed by an authorized instructor attesting that:

(1) The recreational pilot has received instruction in solo cross-country flight and the training described in section 61.93 applicable to the aircraft to be operated, and is competent to make solo cross-country flights in the make and model of aircraft to be flown, and

(2) The instructor has reviewed the student's preflight planning and preparation for the specific solo cross-country flight and the recreational pilot is prepared to make the flight safely under the known circumstances and subject to any conditions listed in the logbook by the instructor.

The only amendments to section 61.101 by this proposal would be to provide for the removal of the 50 nautical mile limitation as an *option* for the holder of a recreational pilot certificate. To remove this limitation the recreational pilot would be required to meet the flight training requirements of section 61.93, the aeronautical experience requirements of sections 61.109(a) (1) and (b) or 61.113(a)(1) (i) and (a)(2)(i), as appropriate, and receives and endorsement from an authorized flight instructor in his or her logbook to remove the 50 mile limitation.

It is proposed that any certificated pilot exercising the flight privileges of a recreational pilot certificate would be limited by the privileges and limitations of a recreational pilot certificate. These limitations provide an equivalent level of safety in that operations of basic aircraft for sport and recreation only are permitted. Of course, for those pilots who have received flight training and certification for cross-country, night flight and flight into airspace requiring communication with air traffic control—private, commercial and airline transport—those specific recreational pilot limitations would not apply.

EAA unequivocally states that this rulemaking does not promote the operation of aircraft envisioned under this proposed amendment to part 61 could only arise out of the exercise of an FAA pilot certificate, the customary self-certification of a proper physiological condition prior to flight will ensure aircraft operations by only medically qualified airmen. Further, the usual pilot-peer-group observation, as well as typical FAA surveillance activities, will act as a cross-check to identify the rare individual who, when not medically qualified, might attempt to operate an aircraft.

EAA endorses and encourages all FAA enforcement efforts which promote safe flying activities. Flying is a privilege which requires responsibility on the part of the airmen. Historically, those who have invested the time and money to earn an FAA Airman Certificate display the responsibility to avoid operations which could lead to the loss of that certificate. Those unwilling to act accordingly can lose their privileges to FAA enforcement measures. While EAA promotes the expansion of flying privileges to a greater number of participants, it does not endorse flight by those medically unqualified to act as pilot-in-command of an aircraft.

It should be specifically noted that the federal government, in section 67.19(c), already acknowledges the need for a private pilot "to accept reasonable risks to his or her person and property that is not acceptable in the exercise of commercial or airline transport privileges . . . " Further, a pilot must "self certify" his or her physiological condition for the safe conduct of *each* flight prior to exercising the privileges of *any* pilot certificate. The immediate proposal is based on these existing regulations.

Additional Issues and Statements

There are a number of issues concerning the subject of flight instruction under this amendment. These include medical qualifications of the individual providing the instruction, documentation for student pilot certification and transition of an individual instructed only for recreational pilot purposes to a fully-privileged private pilot.

There has been discussion as to what qualifications will be necessary to provide instruction in this situation. This question has arisen largely because: a number of sportplane models currently undergoing FAA certification have been available in the past as "two-place ultralight trainers;" and, under an exemption to the FARs for flight instruction, individuals without an FAA flight instructor certificate and FAA medical certificate have been permitted to provide flight instruction.

Since under the amendments called for in this NPRM, the aircraft will be a certificated airplane being operated by a certificated pilot or candidate for a

pilot's certificate, flight instruction would be appropriately given an individual holding an FAA flight instructor certificate. The medical certification of a flight instructor in this situation will be as currently required by the FAR. Section 61.19(d)(1) provides that "a flight instructor certificate is effective only while the holder has a current pilot certificate and a medical certificate appropriate to the pilot privileges being exercised . . . " Therefore, an individual with a current CFI certificate, and otherwise appropriately rated, but without a medical certificate, could provide instruction to a candidate for a recreational pilot certificate or to the holder of a recreational pilot certificate seeking additional training. Additionally, current regulations permit that flight instructions can be provided by a CFI without a valid medical certificate if that instruction is being provided to a certificated individual with a current medical certificate who is qualified to serve as pilot-in-command of that aircraft. An example of this would be a "make and model" check-out or a biennial or annual flight review.

Further, this amendment would not preclude an individual from providing ultralight vehicle flight instruction under an FAA-recognized ultralight training program in a vehicle make and model identical to a sportplane that is being operated legally as an ultralight vehicle trainer. Therefore, this action should in no way affect the existence of ultralight vehicle trainer. Therefore, this action should in no way affect the existence of ultralight vehicle training opportunities for individuals participating in any FAA-recognized ultralight training programs.

As this amendment would eliminate the need for the paperwork involved in the issuance of a third class medical, there would need to be a method provided for documenting the student pilot status. Currently a medical certificate (issued by an AME) has a dual purpose of providing a student pilot's license after appropriate endorsements by a flight instructor. A replacement of this method would have to be provided. EAA recommends the system currently in place for sailplane student pilots, with the student pilot license being issued by an FAA inspector or designated pilot examiner.

The final issue is that of transition by an individual from recreational pilot privileges to a private pilot certificate. Should an individual desire to expand to the full privileges of a private pilot (for example, to operate at night and/or in areas requiring communication with air traffic control), additional flight instruction, logbook entries and examination as currently delineated in the FARs would be required. All instructional flight hours received and other logged hours would be credited towards any regulations necessary to provide for the additional privileges.

Regulatory Evaluation

Regulatory Evaluation Summary

This section summarizes the regulatory evaluation on the proposed amendments to 14 CFR part 61—to provide expanded recreational flight privileges. This summary and full regulatory evaluation quantify, to the extent practicable, estimated costs to the private sector, consumers, and Federal, State and local governments as well as anticipated benefits.

Executive Order 12291, February 17, 1981, directs Federal agencies to promulgate new regulations or modify existing regulations only if potential benefits to society for each regulatory change outweighs potential costs. The Executive Order requires the preparation of a Regulatory Impact Analysis of all "major" rules except those responding to emergency situations or other narrowly defined emergencies. A "major" rule is one that is likely to result in an annual effect on the economy of $100 million or more, a major increase in consumer costs, or a significant adverse effect on competition, or that is highly controversial.

This proposed rule is not "major" as defined in the Executive Order; therefore, a full regulatory impact analysis that includes the identification and evaluation of cost-reducing alternatives to this proposed rule has not been prepared. This section contains a Regulatory Flexibility Determination required by the Regulatory Flexibility Act (P.L. 96–354) and an International Trade Impact Assessment.

Benefit Analysis

Activity under the amended regulation would be limited to recreational pilot privileges and limitations. The equivalent level of safety will be assured due to a number of factors:

- The flight activities proposed compare reasonably with the complexity of existing operations of hot air balloons, gliders and motorized gliders—that is, for recreational purposes (and appropriate flight instruction) only. Other private pilot, commercial and airline transport pilot privileges include the opportunity for IFR operations and operation of complex aircraft. These complexities which include higher stress situations than recreational flying, would not be permitted under the amended regulation; thereby ensuring a current level of safety for those operations.
- This amendment would permit holders of airman certificates to operate airplanes of *less* complexity that are currently operated by those same individuals. The amendment would permit certificated private pilots, for example, to operate a simple, light sportplane or equivalent without a valid third class medical certificate. The complexity of the operation would, in fact, be limited by the regulations governing recreational pilots. If such an individual does hold an appropriate FAA medical certificate, they may exercise the *full* privileges of their certificate in any aircraft in which they are rated.
- Operation under this amendment would be limited to sport and recreational purposes only with the understanding that flight instruction could be received by such an individual in furtherance of these limited privileges.
- An equivalent level of safety should also be evident since the operation of mechanically similar two-seat aircraft has been ongoing for a number of years (in ultralight flight training under exemptions to Part 103 of the FAR) without any significant accident or incidents caused by pilot incapacitation.

Further, safety would be enhanced as a result of the increased flying that will be promoted by this regulatory relief. It is commonly known that increased proficiency contributes to safe flight operations. By the encouragement of more flight activity, this proposal will improve aviation safety.

This amendment is in the public interest in that it serves as only an option—not a requirement—for appropriately qualified individuals to operate aircraft with specific limitations. In this regard, the requested action would not serve as a burden nor infringement on any other individual or group of individuals.

Finally, the amendment would be the opportunity to assist in the revitalization of the economically distressed general aviation industry. Singularly, the requested action will not fix all of general aviation ills, however, in conjunction with and support of other activities, such as the eminent availability of new aircraft models under the primary category sportplane certification opportunities, the proposal will serve a vital function in the larger picture of general aviation revitalization. As noted earlier, general and sport aviation are the foundation upon which the United States air transportation system rests. This community provides the flight training, proficiency and infrastructure support that comprise the total system. Additional justification of the public value of healthy general aviation activity in the United States can be found in the FAA's General Aviation Action Plan.

Cost Analysis

Considerable regulatory and economic relief would be provided by this amendment. It is conservatively estimated that ten percent of all certificated pilots would take advantage of the reduced regulatory burden of this amendment in exchange for the limited recreational privileges. Assuming a third class medical examination to cost $50.00, this amendment to the regulation would relieve $3.415 million in regulatory cost every two years (based on 683,000 pilots). Additionally, the thousands of pilots that have discontinued flying and certificated flight instructors who have discontinued instructing over the years for a variety of personal and fiscal reasons, may be encouraged to return to the ranks of those enjoying flying as a recreational outlet and teaching flying at that level. This would also provide tens of thousands of dollars of regulatory relief per year.

Added public benefit would be gained by eventual reduction in FAA manpower to administer the airmen medical certification records. While this "government cost savings may not occur during the near term, eventually the rule change would reduce the administrative burden of medical certification for certain limited flight activities thereby reducing costs for the FAA.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (Pub. L. 96–511, there are no requirements for information collection associated with this proposed rule.

Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) ensures that small entities are not unnecessarily and disproportionately burdened by Government regulations. The RFA requires agencies to review rules that may have a significant economic impact on a substantial number of small entities.

The small entities that this amendment could potentially affect are the aviation service providers (fixed base operators) and suppliers of general aviation parts. These providers and suppliers will be positively affected by the increased flight activity that results from this rulemaking. The additional requirement for replacement parts, fuel, flight training and maintenance services will be a positive economic benefit from the flight activity.

International Trade Impact Assessment

The proposed rule would have negligible effect on the sale of foreign aviation products or services in the United States. However, there could be a positive indirect impact on the sale of U.S. products or services in foreign countries. This indirect benefit will result from the positive impact this regulation will have on the fiscal health of U.S. product and service providers as an outcome of increased flight activity.

Federalism Implications

This proposed regulation would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

Conclusion

In view of the overall benefit to aviation, EAA believes that the proposed rule to provide expanded recreational flight privileges is cost-beneficial. For the reasons discussed under "Regulatory Evaluation," EAA has determined that this proposed regulation is not a "major rule" under Executive Order 12291 and is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). It is certified that this proposal, if adopted, would have a positive impact on a number of small entities.

A summary of the petitioner's proposed changes follows:

§ 61.3(c) Medical certificate. Except for free balloon pilots piloting balloons, glider pilots piloting gliders, and pilots piloting aircraft while exercising the privileges and limitations in § 61.101 for recreational pilot, no person may * * *

§ 61.83(c) Hold at least a current third-class medical certificate issued under part 67 of this chapter, or, in the case of glider or free balloon operations or while seeking a recreational pilot certificate, certify that he or she has no known * * *

§ 61.85(b) An FAA operations inspector or designated pilot examiner, accompanied by a current FAA medical certificate, or in the case of an application for a glider or free balloon or recreational pilot certificate it may be accompanied * * *

§ 61.96(c) Hold at least a current third-class medical certificate issued under part 67 of this chapter or certify that he or she has no known medical defect that makes him or her unable to pilot the aircraft.

§ 61.103(3) Except as provided in paragraph (i) of this section, act as pilot-in-command * * *

§ 61.101(i) Notwithstanding paragraph 61.101(a)(3), a recreational pilot may operate an aircraft in excess of 50 nautical miles without authorization by a flight instructor for each flight when the pilot meets the flight training requirements of § 61.93, the aeronautical experience requirements of § 61.109(a)(1) and (b) or 61.113(a)(1)(i) and (e)(2)(1), as appropriate, and receives an endorsement in his or her logbook to remove the 50 mile limitation from an authorized flight instructor.

[FR Doc. 93–31871 Filed 12–30–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–ANE–48]

Airworthiness Directives; Textron Lycoming Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede an existing airworthiness directive (AD), applicable to certain Textron Lycoming reciprocating engines, that currently requires replacement of sintered iron impellers in oil pumps. This action would continue to require replacement of sintered iron impellers, but would also require replacement of aluminum impellers. This proposal is prompted by reports of additional oil pump failures caused by aluminum impellers, which do not have the reliability of the hardened steel impellers. The actions specified by the proposed AD are intended to prevent an oil pump failure due to impeller failure, which could result in an engine failure.

DATES: Comments must be received by March 4, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–48, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Textron Lycoming, Reciprocating Engine Division, 652 Oliver St., Williamsport, PA 17701. This

information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Nicholas Minniti, Aerospace Engineer, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Ave., Room 202, Valley Stream, NY 11581; telephone (516) 791–7421, fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–48." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–48, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion:

On August 14, 1981, the Federal Aviation Administration (FAA) issued AD 81–18–04, Amendment 39–4199 (46 FR 43134, August 27, 1981), to require replacement of sintered iron oil pump impellers and oil pump shafts with impellers and shafts made of aluminum or hardened steel in certain Textron Lycoming reciprocating engines. That action was prompted by reports of oil pump failures. Subsequent to the publication of AD 81–18–04, the FAA issued two revisions to AD 81–18–04 they are: 81–18–04R1, Amendment 39–4258 (46 FR 56157, November 16, 1981), effective November 19, 1981, and AD 81–18–04R2, Amendment 39–4395 (47 FR 23691, June 1, 1982), effective June 7, 1982. That condition, if not corrected, could result in an oil pump failure due to impeller failure, which could result in an engine failure.

Since the issuance of AD 81–18–04R2, the FAA has received reports of additional oil pump failures. The FAA has determined that some sintered iron impellers and shafts are still in service, as some engines have not reached the replacement time specified in that AD. The FAA has also determined that the aluminum impellers and shafts do not have the reliability of the hardened steel impellers and shafts. Therefore, aluminum impellers and shafts must be replaced with hardened steel impellers and shafts after no more than 750 hours time in service.

The FAA has reviewed and approved the technical contents of the following service bulletins (SB): Avco Lycoming SB No. 381, Revision C, dated November 7, 1975; Avco Lycoming SB No. 385, Revision C, dated October 3, 1975; Avco Lycoming Textron SB No. 454, Revision B, dated January 2, 1987; Avco Lycoming Textron SB No. 455, Revision D, dated January 2, 1987; and Textron Lycoming SB No. 456, Revision F, dated February 8, 1993. These SB's describe procedures for replacing sintered iron and aluminum impellers and shafts with hardened steel impellers and shafts.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would supersede AD 81–18–04 R2 to require replacing sintered iron and aluminum impellers and shafts with hardened steel impellers and shafts. Engines affected by Textron Lycoming SB No. 456, Revision F, dated February 8, 1993, must have their sintered iron impellers replaced with hardened steel impellers and shafts within 100 hours time in service, or no later than one year after the effective date of this AD, whichever occurs first. This calendar end-date has been determined based on Textron Lycoming's analysis that the sintered iron impellers suffer from rust, and consequently a loss in strength, after an extended period of time in service. Some of these impellers have been in service for up to 20 years.

There are approximately 4,000 engines of the affected design in the worldwide fleet. The FAA estimates that 2,400 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 9 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $740 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $2,964,000. This figure is based on the assumption that none of the affected engines installed on U.S. Registry, have hardened steel impellers installed.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–4395, and by adding a new airworthiness directive to read as follows:

Textron Lycoming: Docket No. 93–ANE–48. Supersedes AD 81–18–04 R2, Amendment 39–4395.

Applicability: Textron Lycoming O–235, O–290–D, O–290–D2, O–320, IO–320, AIO–320, AEIO–320, LIO–320, O–340, O–360, IO–360, AIO–360, AEIO–360, AEIO–360, HO–360, HIO–360, LO–360, LIO–360, TIO–360, TO–360, LTO–360, VO–360, IVO–360, O–540, and IO–540 series reciprocating engines, except for the following models: O–320–H2AD, O–360–E1A6D, LO–360–E1A6D, TO–360–E1A6D, LTO–360–E1A6D, IO–540–P1A5, IO–540–R1A5, IO–540–S1A5, and O–540 and IO–540 series engines built with large capacity oil pumps and dual magnetos designated with "5D" in the model suffix; for example, IO–540–K1A5D. These engines are installed on but not limited to the following aircraft: various models of single and twin engine powered Cessna, Piper, Mooney, Beech, Gulfstream American, Maule, and Socata.

Note: This AD may not contain an exhaustive list of aircraft that utilize the affected engines because other aircraft may have an affected engine installed through, for example, approvals made by Supplemental Type Certificate, or FAA Form 337, "Major Repair and Alteration." It is the responsibility of each aircraft owner, operator, and person returning that aircraft to service to determine if that aircraft has an affected engine.

Compliance: Required as indicated, unless accomplished previously.

To prevent oil pump failure due to impeller failure, which could result in an engine failure, accomplish the following:

(a) For Textron Lycoming Model HIO–360–D1A, –E1AD, –E1BD, and –F1AD engines with serial numbers (S/N) of L–22579–51A or prior, except for the following: S/N L–22311–51A through L–22313–51A, L–22396–51A, L–22397–51A, L–22416–51A, L–22546–51A through L–22549–51A, L–22563–51A, L–22566–51A through L–22571–51A; for Textron Lycoming Model HIO–360–D1A, –E1AD, –E1BD, and –F1AD engines that were overhauled in the field or remanufactured prior to April 1, 1981, regardless of S/N; and for engines listed by S/N in Textron Lycoming Service Bulletin (SB) No. 455, Revision D, dated January 2, 1987; accomplish the following:

(1) Replace the sintered iron oil pump impeller and shaft with a hardened steel impeller and shaft in accordance with Avco Lycoming Textron SB No. 454, Revision B, dated January 2, 1987, or Avco Lycoming Textron SB No. 455, Revision D, dated January 2, 1987, as applicable, within 25 hours time in service (TIS) after the effective date of this AD.

(2) No action is required if engines have complied with AD 81–18–04, 81–18–04 R1, or 81–18–04 R2, and have incorporated oil pumps with a hardened steel impeller and shaft. Engines that incorporate oil pumps fitted with an aluminum impeller and shaft must comply with paragraph (c) of this AD.

(b) For engines listed by S/N in Textron Lycoming SB No. 456, Revision P, dated February 8, 1993, that incorporate a sintered iron impeller, accomplish the following:

(1) Replace any sintered iron oil pump impeller and shaft with a hardened steel impeller and shaft in accordance with Textron Lycoming SB No. 456, Revision F, dated February 8, 1993, within 100 hours TIS after the effective date of this AD, or one year after the effective date of this AD, whichever occurs first.

(2) No action is required if engines have complied with AD 81–18–04, 81–18–04 R1, or 81–18–04 R2, and have incorporated oil pumps with a hardened steel impeller and shaft. Engines that incorporate oil pumps fitted with an aluminum impeller and shaft must comply with paragraph (c) of this AD.

(c) For all other affected engines, replace any aluminum oil pump impeller and shaft with a hardened steel impeller and shaft in accordance with Avco Lycoming Textron SB No. 455, Revision D, dated January 2, 1987, or Textron Lycoming SB No. 456, Revision F, dated February 8, 1993, as applicable, as follows:

(1) For oil pumps that have accumulated 650 hours or more TIS on the effective date of this AD, replace within 100 hours TIS after the effective date of this AD.

(2) For oil pumps that accumulated less than 650 hours TIS on the effective date of this AD, replace prior to accumulating 750 hours TIS.

(3) No action is required if engines have complied with AD 81–18–04, 81–18–04 R1, or 81–18–04 R2, and have incorporated oil pumps with a hardened steel impeller and shaft.

Note: Engines originally manufactured prior to 1970 did not incorporate sintered iron impellers. For further information, refer to engine maintenance/overhaul logbook records, Lycoming build records, and the following SB's provide additional guidance: Avco Lycoming SB No. 381, Revision C, dated November 7, 1975, and Avco Lycoming SB No. 385, Revision C, dated October 3, 1975, describe a method for determining if the early design oil pump with aluminum/steel impellers are installed. Avco Lycoming SB No. 455, Revision A, dated August 18, 1981, and Avco Lycoming SB No. 455, Revision B, dated January 2, 1987, and Avco Lycoming SB No. 456, dated August 21, 1981, and Avco Lycoming SB No. 456, Revision A, dated September 25, 1981, introduced steel driving impeller, P/N 60746, and aluminum driven impeller, P/N LW13775.

(d) Sintered iron and aluminum impellers approved under FAA Parts Manufacturer Approval (PMA) are replacements for affected part numbers of Lycoming impellers and must also be replaced in accordance with paragraphs (a), (b), or (c), as applicable, of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the New York Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–32026 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 81

[AG Order No. 1833–93]

Designation of Agencies To Receive and Investigate Reports Required Under the Victims of Child Abuse Act

AGENCY: Department of justice.

ACTION: Proposed rule.

SUMMARY: This proposed rule is intended to carry out the Attorney General's responsibilities under the child abuse reporting provisions of the Victims of Child Abuse Act of 1990 (VCAA). The VCAA requires persons engaged in certain specified professions and activities on Federal lands or facilities to report incidents of child abuse to the appropriate Federal, State, or local agency designated by the Attorney General. In order to facilitate effective reporting, the VCAA requires the Attorney General to "designate an agency" to receive and investigate such reports to child abuse. This proposed rule sets forth the Attorney General's proposed designations and certain other matters covered by the VCAA's reporting requirements.

DATES: Comments must be received by February 2, 1994.

ADDRESSES: All comments on this proposed rule should be sent to: George C. Burgasser, Acting Chief, Child Exploitation and Obscenity Section, Criminal Division, Department of Justice, Washington, DC 20530. Comments received will be available for public inspection at Washington Center Building, 1001 G Street, NW, suite 310,

Washington, DC, between the hours of 10 a.m. and 4 p.m., Monday through Friday. No oral hearings are contemplated.

FOR FURTHER INFORMATION CONTACT: George C. Burgasser, Acting Chief, CEOS, Criminal Division, Washington, DC 20530, (202) 514–5780.

SUPPLEMENTARY INFORMATION: The child abuse reporting provisions of the Victims of Child Abuse Act (VCAA) were enacted as section 226 of the Crime Control Act of 1990, Public Law 101–647, 104 Stat. 4806, codified at 42 U.S.C. 13001–13031, 3796aa–3796aa–8, and 18 U.S.C. 403, 2258, and 3509. As set forth at 42 U.S.C. 13031, the VCAA requires persons engaged in certain professional capacities or activities on Federal lands or on federally operated facilities (as well as certain facilities covered by Federal contracts) to report incidents of child abuse occurring on such lands or facilities to an agency designated by the Attorney General to receive and investigate such reports. Set forth below for public comment is the proposed rule promulgating the Attorney General's designation of the agencies to receive and investigate these reports of child abuse. Under the provisions of 42 U.S.C. 13031(d), the Attorney General may designate non-Federal agencies to receive and investigate the child abuse reports, provided that the designations is formalized by a written agreement. Under the proposed rule, reports of child abuse made pursuant to 42 U.S.C. 13031 are to be submitted to the Federal State, or local law enforcement or child protective services agency that currently has jurisdiction to investigate reports of child abuse or protect child abuse victims in the Federal land area or facility in question. Where no agency currently qualifies for designation under the rule, the rule designates the Federal Bureau of Investigation to receive and investigate the reports of child abuse until another agency qualifies for such designation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12286. This rule does not have federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612. This rule meets the applicable standards provided in sections 2(a) and 2(b) of Executive Order 12778.

List of Subjects in 28 CFR Part 81

Child abuse, Federal buildings and facilities.

By virtue of the authority vested in me as Attorney General, including 28 U.S.C. 509 and 510, 5 U.S.C. 301, 42 U.S.C. 13031, and Public Law 101–647 (104 Stat. 4806), part 81 of Chapter I of Title 28 of the Code of Federal Regulations is proposed to be added as follows:

PART 81—CHILD ABUSE REPORTING DESIGNATIONS AND PROCEDURES

Sec.
81.1 Purpose.
81.2 Submission of reports; designation of agencies to receive reports of child abuse.
81.3 Designation of FBI in absence of other agreement.
81.4 Referral of reports.
81.5 Definitions.

Authority: 28 U.S.C. 509, 510; 42 U.S.C. 13031.

§ 81.1 Purpose.

The regulations in this part designate the agencies that are authorized to receive and investigate reports of child abuse under the provisions of 42 U.S.C. 13031.

§ 81.2 Submission of reports; designation of agencies to receive reports of child abuse.

Reports of child abuse required by 42 U.S.C. 13031 shall be made to the local law enforcement agency or local child protective services agency that has jurisdiction to investigate reports of child abuse or to protect child abuse victims in the land area or facility in question. Such agencies are hereby respectively designated as the agencies to receive and investigate such reports, pursuant to 42 U.S.C. 13031(d), with respect to Federal lands and federally operated or contracted facilities within their respective jurisdictions, provided that such agencies, if non-Federal, enter into formal written agreements to do so with the Attorney General, her delegate, or a Federal agency with jurisdiction for the area or facility in question.

§ 81.3 Designation of FBI.

For Federal lands, federally operated facilities, or federally contracted facilities where no agency qualifies for designation under § 81.2 of this part, the Federal Bureau of Investigation is hereby designated as the agency to receive and investigate reports of child abuse made pursuant to 42 U.S.C. 13031 until such time as another agency qualifies as a designated agency under § 81.2.

§ 81.4 Referral of reports.

Where a report of child abuse received by a designated agency that is not a law enforcement agency involves allegations of sexual abuse, serious physical injury, or life-threatening neglect of a child, that agency shall immediately report such occurrence to a law enforcement agency with authority to take emergency action to protect the child.

§ 81.5 Definitions.

Local child protective services agency means that agency of the Federal Government, of a State, or of a local government that has the primary responsibility for child protection within a particular portion of the Federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

Local law enforcement agency means that Federal, State, or local law enforcement agency that has the primary responsibility for the investigation of an instance of alleged child abuse occurring within a particular portion of the Federal lands, a particular federally operated facility, or a particular federally contracted facility in which children are cared for or reside.

Dated: December 23, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–32086 Filed 12–30–93; 8:45 am]

BILLING CODE 4410–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 721

[OPPTS–50610A; FRL–4752–1]

Certain Acrylate Esters; Extension of Comment Period for a Proposed Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Extension of comment period.

SUMMARY: EPA is extending the comment period for a proposed significant new use rule (SNUR) for certain acrylate esters. As initially published in the **Federal Register** of November 22, 1993 (58 FR 61649), the comments were to be received on or before December 22, 1993. Two commenters who intend to submit comments concerning this proposed rule have requested additional time to prepare their responses. EPA is therefore extending the comment period 30 days in order to give all interested persons the opportunity to comment fully.

DATES: Written comments must be submitted to EPA by January 21, 1994.

ADDRESSES: All comments should be sent in triplicate to: U.S. Environmental Protection Agency, ATTN: OPPT Document Receipt Officer (7407), 401 M St., SW., Rm. E–G99, Washington, DC 20460. All comments which are claimed confidential must be clearly marked as such. Three additional sanitized copies of any comments containing confidential business information (CBI) must also be submitted. Nonconfidential versions of comments on the rule will be placed in the rulemaking record and will be available for public inspection.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543A, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: This extension of the comment period will allow interested parties who may comment on the proposed rule additional time to prepare their responses.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Recordkeeping and reporting requirements, Significant new uses.

Dated: December 23, 1993.

Denise M. Keehner,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–32058 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–1, 201–3, 201–20, and 201–39

RIN 3090–AF04

Amendment of FIRMR Provisions Relating to FIRMR Applicability, FIRMR Bulletins, Present Value Analysis, and Recycled Federal Information Processing (FIP) Resources

AGENCY: Information Resources Management Service, GSA.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Federal Information Resources Management Regulation (FIRMR) to: Revise FIRMR applicability provisions relating to the replacement of embedded Federal information processing (FIP) equipment, the delivery of a small amount of FIP resources under non-FIP procurements, and the availability of guidance on interpreting FIRMR applicability provisions; explain the nonmandatory nature of FIRMR bulletins; and require the use of OMB Circular A–94 in performing present value analysis when evaluating bids and proposals.

DATES: Comment are due March 4, 1994.

ADDRESSES: Comments may be mailed to GSA/KMR, 18th and F Streets, NW., room 3224, Washington, DC 20405, Attn: Anne Horth, or delivered to that address between 8 a.m. and 4:30 p.m.

FOR FURTHER INFORMATION CONTACT: Anne Horth, GSA, Office of Information Resources Management Policy, Regulations Analysis Division (KMR), 18th and F Streets, NW., room 3224, Washington, DC 20405, telephone FTS/Commercial (202) 501–0960 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) Part 201–1 and subpart 201–39.1 are being amended to revise FIRMR provisions regarding applicability. Currently, FIRMR applicability extends to the acquisition of FIP equipment embedded in other products. Agencies have questioned whether such acquisitions should be applicable, given that the FIRMR was not applicable to the initial acquisition and the FIP equipment will only be put back in the original excepted produce. Accordingly, the FIRMR is being revised to grant an exception to FIRMR applicability for the replacement of any FIP equipment in a product that has already been granted an exception under § 201–1.002–2(e). FIP software or related supplies used in the embedded FIP equipment is also being exempted for FIRMR coverage.

Another issue creating confusion relates to the delivery of FIP resources. Now, the FIRMR applies whenever FIP resources are delivered to a Federal agency or users designated by the agency. Problems have arisen when the solicitation or contract is primarily for other than FIP resources, but FIP resources are also being delivered. The FIRMR currently always applies to the acquisition of the FIP resources, no matter how small the amount of FIP resources being delivered. Given the legislative exceptions for FIP resources that are not "significant" or are "incidental to the performance of a Federal contract," GSA believes that a FIRMR exception would also be appropriate for acquisitions of FIP resources with a relatively low dollar value when the solicitation or contract is predominantly for non-FIP resources. Accordingly, the FIRMR is being revised to except such acquisitions when the value of the FIP resources does not exceed $500,000.

A new § 201–1.002–3 is being added to show that guidance on understanding FIRMR applicability provisions is available in FIRMR Bulletin A–1. Some agencies have asked for additional information on how to interpret FIRMR applicability provisions because they have been unaware of the existence of the guidance already available in Bulletin A–1. The addition of this section will correct that deficiency.

(2) Subpart 201–3.001 is being amended to explain the nonmandatory nature of FIRMR bulletins. There is a perception, among some users of the FIRMR, that FIRMR bulletins are regulatory in nature. FIRMR bulletins are not regulatory. They are issued to: provide information and guidance that helps agencies acquire or manage FIP resources; explain procedures for using GSA programs; and assist in interpreting the provisions of the Brooks Act.

(3) Sections 201–20.203–2, 201–39.14–1 and 201–39.1501–1 are being amended to reflect the fact that OMB Circular No. A–94 will now be used not only as the basis of analyzing the cost of each alternative when doing analyses of alternatives, but also in calculating bid and proposal prices/costs. Heretofore, OMB Circular No. A–94 has only been used to perform analyses of alternatives and the guidance in OMB Circular No. A–104 has been used in the evaluation of bids and proposals. OMB A–104 has been rescinded, and OMB A–94 has been revised to provide for making both types of determinations.

(4) GSA has determined that this rule is not a significant rule for the purposes of Executive Order 12866 of October 4, 1993, because it is not likely to result in any of the impacts noted in Executive Order 12866, affect the rights of specified individuals, or raise issues arising from the policies of the Administration. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and consequences of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

List of Subjects in 41 CFR Parts 201–1, 201–3, 201–20, and 201–39.

Archives and records, Computer technology, Telecommunications, Government procurement, Property

management, Records management, and Federal information processing resources activities.

Accordingly, 41 CFR parts 201–1, 201–3, 201–20 and 201–39 are proposed to be amended as follows:

PART 201–1—APPLICABILITY AND AUTHORITY

1. The authority citation for part 201–1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f)

2. Section 201–1.002–2 is amended by revising § 201–1.002–2(c) and adding new § 201–1.002–2(f) as follows:

§ 201–1.002–2 Exceptions.

* * * * *

(c) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources. However, the FIRMR does not apply to solicitations and contracts predominantly for non-FIP resources when the dollar value of the FIP resources does not exceed $500,000.

* * * * *

(f) The FIRMR does not apply to the acquisition, management, and use of FIP resources that will be used in or as embedded FIP equipment in products excepted from FIRMR coverage under § 201–1.002–2(e), including replacement FIP resources.

3. A new § 201–1.002–3 is added as follows:

§ 201–1.002–3 Procedures.

FIRMR Bulletin A–1 provides an analytical framework and examples for use in determining whether the FIRMR applies to an acquisition. Agencies should use this bulletin to assist them in understanding FIRMR applicability provisions.

PART 201–3—THE FIRMR SYSTEM

4. The authority citation for part 201–3 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

5. Section 201–3.001 is amended by revising § 201–3.001(b)(1) to read:

§ 201–3.001 General.

* * * * *

(b) * * *

(1) FIRMR bulletins contain guidance and information on various information resources management subjects. FIRMR bulletins do not constitute binding authority, but should be used as an aid in understanding GSA programs and the FIRMR. FIRMR bulletins are published in appendix B of the looseleaf edition of the FIRMR and are available along with the FIRMR from GPO by subscription or on GSA's CD–ROM.

* * * * *

PART 201–20—ACQUISITION

6. The authority citation for part 201–20 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

7. Section 201–20.203–2 is amended by revising § 201–20.203–2(c) as follows:

§ 201–20.203–2 Cost for each alternative.

* * * * *

(c) Agencies shall follow guidance in OMB Circular No. A–94, Revised Transmittal Memorandum No. 64, "Benefit-Cost Analysis of Federal Programs; Guidelines and Discounts," when calculating the cost of each alternative.

PART 201–39—ACQUISITION OF FEDERAL INFORMATION PROCESSING RESOURCES (FIP) BY CONTRACTING

8. The authority citation for part 201–39 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

9. Section 201–39.101–3 is amended by revising § 201–39.101–3(b)(3) and adding a new § 201–39.101–3(b)(6) as follows:

§ 201–39.101–3 Applicability.

* * * * *

(b) *Exceptions.*

* * * * *

(3) When both FIP and other resources are being acquired under the same solicitation or contract and the FIRMR applies to the solicitation or contract, the FIRMR applies only to the FIP resources. However, the FIRMR does not apply to solicitations and contracts predominantly for non-FIP resources when the dollar value of the FIP resources does not exceed $500,000.

(6) The FIRMR does not apply to the acquisition, management, and use of FIP resources that will be used in or as embedded FIP equipment in products excepted from FIRMR coverage under § 201–1.002–2(e), including replacement FIP equipment.

* * * * *

10. Section 201–39.1402–1 is amended by revising paragraph (b) to read as follows:

§ 201–39.1402–1 Policies.

* * * * *

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies shall consider the need to adjust all prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A–94 regarding present value calculations.

11. Section 201–39.1501–1 is amended by revising § 201–39.1501–1(b) to read as follows:

§ 201–39.1501–1 Policies.

(b) When payments are expected to vary among the alternatives being considered, or where payments will be made over an extended period, agencies shall consider the need to adjust all prices and costs to present value and apply the results in source selection. Agencies should follow the guidance in OMB Circular A–94 regarding present value calculations.

Dated: December 10, 1993.

Francis A. McDonough,

Assistant Commissioner for Federal Information Resources Management.

[FR Doc. 93–31152 Filed 12–30–93; 8:45 am]

BILLING CODE 6820–25–M

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 403

RIN 1006–AA30

Revenues Management

AGENCY: Bureau of Reclamation, Interior.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) is proposing to publish rules and guidelines detailing the authorized crediting of revenues derived from the incidental use of Reclamation water projects and project lands under the jurisdiction of Reclamation. Due to existing confusion in revenues crediting criteria, rules will be utilized to clearly define front-end, tail-end, and general credit and when each is appropriate. Rules are necessary to define statutory language which may seem ambiguous and which may have caused confusion in the past. The rules will also govern the treatment of the contractors who have received unauthorized credits in the past.

DATES: Reclamation invites the public to submit written comments on the proposed rulemaking action. Comments must be submitted on or before February 2, 1994.

ADDRESSES: Written comments on the proposed rules and guidelines should be addressed to J. William McDonald, Assistant Commissioner-Resources Management, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver, CO 80225–0007.

FOR FURTHER INFORMATION CONTACT: Ms. Jaralyn Beek, Head, Revenues, Section, Bureau of Reclamation, D–5612, P.O. Box 25007, Denver, CO 80225–000 of telephone (303) 236–1061, extension 227.

SUPPLEMENTARY INFORMATION: The passage of the 1902 Reclamation Act, as amended and supplemented provided for the creation of a fund within the United States Treasury (Reclamation fund) to be used to finance water projects in the arid West. Subsequently, water projects were constructed under a variety of statutory authorities with the beneficiaries generally repaying those costs determined to be reimbursable through scheduled payments.

Revenues are generated from the incidental use of Reclamation water projects and the lands under the jurisdiction of Reclamation. These uses are authorized by Reclamation law and the disposition of the revenues generated by the uses are mandated by law. These uses include, but are not limited to, grazing, the leasing of minerals such as oil and gas, commercial uses, cabin sites, storage of non-project water, sale of surplus water, etc. Generally, these revenues are credited in one of three ways. These are:

(1) Revenues which may be distributed as a general credit to the Reclamation fund;

(2) Revenues which may be distributed as a "tail-end" credit to the construction costs; and

(3) Revenues which may be distributed as a "front-end" or direct credit to the annual obligations of the water users.

The revenues which are distributed as a general credit to the Reclamation fund are not meant to be spent on specific functions or projects, but rather are accessible only as directed by the laws which govern the Reclamation fund.

The second type of disbursement, a tail-end credit (also termed a credit to the project), involves application of the funds against the last payment due in the repayment schedule. The reimbursable portion of a water project's construction cost is amortized and repaid by the beneficiaries (districts). With this type of revenues crediting the net result is accelerated repayment of the project's construction cost, without relieving the project users of their requirement to pay some or all of their annual obligation.

The third type of revenue crediting is termed a front-end or direct credit. This method allows the "direct" crediting of specific revenues on the annual construction repayment and operation and maintenance obligations of the water districts. Under the general legislative authority which provided for front-end crediting the water user could receive benefit from the direct crediting of revenues only from specified sources:

(1) Power plants;

(2) Leasing of project grazing and farm lands; and

(3) The sale or use of town sites.

The primary difference between the tail-end credit and a front-end credit is that the front-end or direct credit is used to satisfy a water user's current construction payment. Any revenues in excess of the annual construction payment are to be applied first against the annual operation and maintenance expenses of the district and then as the water users direct. This crediting assists the water user or district in meeting current obligations rather than accelerating the repayment of the construction obligation and applies to only a limited number of contracts written between 1924 and 1938.

Exceptions to the general revenue disposition requirements are revenue crediting criteria directed by project specific legislation.

The specific method used to disburse the revenues is dependent upon the particular statute which authorizes the activity and mandates the crediting of revenues, the activity generating the revenue, and the status of the lands involved (whether the lands are withdrawn public domain lands or lands purchased/acquired for the project).

Inasmuch as Reclamation does not have the latitude to dispose of revenues differently than is required by law, Reclamation has recently completed the first stage of a review of general and project-specific legislation, repayment contracts and amendments, and current Reclamation practices as they pertain to collection and crediting of revenues. The intent of the initial review was to ensure that revenues crediting fully complies with statutory requirements and focused primarily on those revenues from which the water users receive direct benefit. Reclamation has determined that there have been instances where revenues may have been credited (direct credits) to the benefit of the water users (districts) rather than to reduce the total construction repayment obligation. This improper crediting is a result of incomplete or inaccurate guidelines within Reclamation and, in some instances, inappropriate contract provisions.

Reclamation intends to propose rules that would clearly set forth when direct or front-end credits, tail-end credits, and credits to the Reclamation fund are authorized, and will define ambiguous statutory terms that have caused confusion in the past. In addition, the rules would propose to establish an appeal process for districts who are notified of improper past crediting. Reclamation also will propose to require districts to pay interest on unpaid balances once notified of underpayment.

Dated: December 23, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–32028 Filed 12–30–93; 8:45 am]

BILLING CODE 4310–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–310, RM–8395]

Radio Broadcasting Services; Chester, Virginia

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Hoffman Communications, Inc., licensee of Station WDYL–FM, Channel 226A, Chester, Virginia, proposing the substitution of Channel 289A for Channel 226A at Chester and modification of its license to specify operation on the alternate Class A channel. Channel 289A can be allotted to Chester in compliance with the Commission's minimum distance separation requirements with a site restriction of 4.2 kilometers (2.6 miles) northwest. The coordinates for Channel 289A at Chester are 37–23–11 and 77–28–26. We will not accept competing expressions of interest in the use of Channel 289A at Chester because the procedures outlined in Modification of FM and TV Licenses, 98 FCC 2nd 916 (1984), and § 1.420(g) of the Commission's Rules, do not apply in this case since no upgrade in facilities is contemplated.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: David M Silverman, Esq.,

Cole, Raywid & Braverman, 1919 Pennsylvania Avenue, NW., Suite 200, Washington, DC 20006 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–310, adopted December 8, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32036 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–309, RM–8393]

Radio Broadcasting Services; Buhl, Minnesota

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Public Radio proposing the allotment of Channel 223C2 to Buhl, Minnesota, and reservation of the channel for noncommercial educational use. Canadian concurrence has been requested for the allotment of Channel *223C2 at Buhl without a site restriction at coordinates 47–29–37 and 92–46–40.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Bodorff, Todd M. Stansbury, Wiley, Rein & Fielding, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–309, adopted December 8, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32037 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–308, RM–8383]

Radio Broadcasting Services; Butte, Montana

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by The Montana College of Mineral Sciences and Technology, proposing the substitution of Channel 295A for Channel *218A at Butte, Montana, reservation of the Channel for noncommercial educational use and modification of the license for Station KMSM–FM, to specify operation on Channel *295A. The coordinates for Channel *295A are 46–00–43 and 112–33–23. We shall propose to modify the license for Station KMSM–FM in accordance with the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Neal J. Friedman, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–308, adopted December 8, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73:

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32038 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–313, RM–8390]

Radio Broadcasting Services; Bay Minette and Daphne, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Baldwin Broadcasting Company, licensee of Station WFMI(FM), Channel 293C3, Bay Minette, Alabama, seeking the reallotment of Channel 293C3 to Daphne, Alabama, and modification of its license accordingly. Petitioner proposes no reception change in the present technical facilities of Station WFMI(FM) to accommodate its proposal, and is therefore requested to provide additional information to demonstrate the public interest benefits that would result from the proposed change in community of license. Coordinates for this proposal are 30–40–45 and 87–50–24.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry D. Wood, Esq., Jones, Waldo, Holbrook & McDonough, P.C, Suite 900, 2300 M Street, NW., Washington, DC 20037.

FOR FURTHER INFORMATON CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–313, adopted December 7, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW. Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32039 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–312, RM–8394]

Radio Broadcasting Services; Gallup, New Mexico

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Lewis J. Wallach seeking the allotment of Channel 268A to Gallup, New Mexico, as the community's fifth local commercial FM broadcast service. Channel 268A can be allotted to Gallup in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 35–31–30 and West Longitude 108–44–30.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before December 28, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Lewis J. Wallach, 4310 Pan American, suite 208, Albuquerque, New Mexico 87107 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–312, adopted December 7, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32040 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–311, RM–8382]

Radio Broadcasting Services; Bagdad, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed by Chris Sarros requesting the allotment of FM Channel 276C3 to Bagdad, Arizona, as that community's second local FM service. Coordinates for Channel 276C3 are 34–28–50 and 113–20–08. Bagdad is located within 320 kilometers (199 miles) of the United States-Mexico border, and therefore, the Commission must obtain concurrence of the Mexican government to this proposal.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Secretary, Federal Communications Commission,

Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Chris Sarros, 3815 Northfield Avenue, Kingman, Arizona 86401.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–311, adopted December 7, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32041 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–314, RM–8396]

Radio Broadcasting Services; Cadiz and Oak Grove, Kentucky

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Ham Broadcasting, Inc., licensee of Station WKDZ(FM), Channel 292A, Cadiz, Kentucky, seeking the substitution of Channel 293C3 for Channel 292A at Cadiz, Kentucky, and the reallotment of Channel 293C3 from Cadiz, Kentucky to Oak Grove, Kentucky, and the modification of the license for Station WKDZ(FM) to specify Oak Grove as its community of license, in accordance with § 1.420(i) of the Commission's rules. The coordinates for Channel 293C3 at Oak Grove are North Latitude 36–45–05 and West Longitude 87–27–02.

DATES: Comments must be filed on or before February 18, 1994, and reply comments on or before March 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Tannenwald, Arent, Fox, Kintner, Plotkin & Kahn, 1050 Connecticut Avenue, NW., Washington, DC 20036–5339 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–314, adopted December 3, 1993, and released December 28, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all ex parte contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible ex parte contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–32042 Filed 12–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC17

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Three Puerto Rican Plants

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine *Mitracarpus maxwelliae*, *Mitracarpus polycladus*, and *Eugenia woodburyana* to be endangered species pursuant to the Endangered Species Act (Act) of 1973, as amended. *M. maxwelliae* and *E. woodburyana* are endemic to Puerto Rico. *M. polycladus* has been reported from only one other island, Saba, in the Lesser Antilles. Both species of *Mitracarpus* are small shrubs that are each limited in distribution to one area in Guánica, located in southwestern Puerto Rico. *E. woodburyana* is known only from approximately 45 individuals at three locations in southwestern Puerto Rico. These species are variously threatened by road construction, recreational activities, wildfires, and land clearing associated with development for agriculture and other purposes. This proposal, if made final, would provide *M. maxwelliae*, *M. polycladus* and *E. woodburyana* with the Federal protection and recovery provisions afforded by the Act for listed species.

DATES: Comments from all interested parties must be received by March 4, 1994. Public hearing requests must be received by February 17, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours at this office, and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Silander at the Caribbean Field Office address (809/851–7297) or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3580).

SUPPLEMENTARY INFORMATION:

Background

Mitracarpus maxwelliae was discovered on March 8, 1925, by Nathaniel L. Britton on a limestone hill in the municipality of Guánica, Puerto Rico. The site was later rediscovered by Alain Liogier in 1982 and again by George R. Proctor and Miguel Canals in 1987. The species has never been found at any other location but the type locality. At this locality, it is found along an unpaved road, growing on dry exposed gravel. Approximately 1,443 plants, including mature flowering individuals and seedlings, were counted within an area of about 7,500 square meters (Proctor 1991a).

Mitracarpus maxwelliae is a low, densely-branching, moundlike shrub that may reach approximately 20 centimeters in height. The somewhat woody branches are striate and sharply 4-angled. The leaves are opposite, sessile, linear or linear-lanceolate, densely scabrous, and from 1 to 3 centimeters long and 2 to 5 millimeters wide. The flower heads are terminal, dense, sub-globose, and from .8 to 1.3 centimeters in diameter. The corolla is white, narrowly funnelform, minutely glandular-papillose, 5 to 6 millimeters long. The capsule is about 1.5 millimeter in diameter, opening by a transverse circular split at about the middle. The seeds are ellipsoid, brownish-black, and 1.2 millimeters long and .8 millimeter wide.

Mitracarpus polycladus was first discovered growing on coastal rocks near Caña Gorda, Guánica, Puerto Rico, in 1886 by Paul Sintenis. It was also located on the island of Saba in the lesser Antilles by the Dutch botanist Boldingh. Today it is still known only from these two locations, where it grows in crevices and soil pockets of coastal rocks in arid areas. Exact numbers of individuals have been difficult to estimate due to extreme drought conditions in recent years (Proctor 1991b).

Mitracarpus polycladus is a suffrutescent perennial. It is branched near the base, and the erect or spreading stems may reach up to 45 centimeters in height. The branches are 4-angled and glabrous. Leaves are opposite, linear to linear-lanceolate, 2 to 4.5 centimeters long, .3 to .5 centimeters wide, glabrous and often with an inrolled margin and decurrent base. The inflorescence is terminal and capitate, 8 to 13 millimeters in diameter, many flowered and subtended by 3 bract-like leaves. The corolla is white, about 5 millimeters long, with ovate leaves. The seed capsule is 1.5 millimeter in diameter, splitting open transversely below the middle, and contains black seeds.

Eugenia woodburyana, a small evergreen tree, is endemic to Puerto Rico and currently known from only the Sierra Bermeja in the municipalities of Cabo Rojo and Lajas and from the Guánica Commonwealth Forest in Guánica, all in southwestern Puerto Rico. An additional individual has been reported from the Cabo Rojo National Wildlife Refuge, in Cabo Rojo, adjacent to the Sierra Bermeja. Approximately 45 individuals are known from these three locations. The species was only recently discovered and described by Alain Liogier (Liogier 1980).

Eugenia woodburyana may reach 6 meters in height. The leaves are opposite, obovate, pilose on both sides, glandular-punctate below, and from 1.5 to 2 centimeters long and 1 to 1.5 centimeters wide. The inflorescence is axillary, 2 to 5 flowered and with a peduncle 1 to 3 millimeters long. The calyx is 4-lobed and the petals are white, 4 millimeters long and 3.5 millimeters wide. The striking fruit is red upon maturity, 8-winged and 2 centimeters in diameter.

Mitracarpus maxwelliae and *M. polycladus* were recommended for Federal listing in a report prepared by the Smithsonian Institution as directed by section 12 of the Endangered Species Act of 1973. The report was presented to Congress in 1975 as House Document No. 94–51. The species were subsequently included among the plants being considered as endangered or threatened by the Service, as published in the **Federal Register** notice of review dated December 15, 1980 (45 FR 82480); the November 28, 1983 update (48 FR 53680), the revised notice of September 27, 1985 (50 FR 39526), and the February 21, 1990 (55 FR 6184) notice of review. In the February 21, 1990, notice, *M. maxwelliae* was designated as a category 1 species (a species for which the Service has substantial information supporting the appropriateness of proposing to list them as endangered or threatened) and *M. polycladus* as a category 2 species (a taxon for which there is evidence of vulnerability, but for which there was not enough data to support listing). *Eugenia woodburyana* was included as a category 2 candidate for listing in the September 30,1993, plant notice of review. It has been included in the Center for Plant Conservation's Report on Rare Plants in Puerto Rico (Center for Plant Conservation 1992) as a taxon that may become extinct within the next 10 years. All three species are considered to be critical plants by the Natural Heritage Program of the Puerto Rico Department of Natural Resources (Department of Natural Resources 1993).

Based on status survey reports completed in 1991, and in conjunction with other recent field work, the Service recently reclassified *Mitracarpus polycladus* and *Eugenia woodburyana* as category 1 candidates.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Mitracarpus maxwelliae* and *M. polycladus*, because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1992, the Service has found that the petitioned listing of these species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. This proposed rule constitutes the final 1-year finding for these two species in accordance with section 4(b)(3)(B)(ii) of the Act.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Mitracarpus maxwelliae* Britton & Wilson, *M. polycladus* Urban and *Eugenia woodburyana* Alain are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

In the Sierra Bermeja, *Eugenia woodburyana* is found on privately owned land subject to intense pressure for agricultural, rural and tourist development. The land is currently being cleared for grazing by cattle and goats. Adjacent land is being subdivided for sale in small farms, some destined for tourist and urban development. All three species are also found within the Guánica Commonwealth Forest; however, *Mitracarpus maxwelliae* and *M. polycladus* are found along infrequently used roadways where they may be adversely impacted in the future. Any road improvement, widening, or increase in traffic along these roads would result in the loss of a significant portion of the only known populations. The sites of these two species are near preferred recreational

areas, heavily utilized during the summer months.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species.

C. Disease or Predation

Disease and predation have not been documented as factors in the decline of these species.

D. The Inadequacy of Existing Regulatory Mechanisms

The Commonwealth of Puerto Rico has adopted a regulation that recognizes and provides protection for certain Commonwealth listed species. However, *Mitracarpus maxwelliae, Mitracarpus polycladus* and *Eugenia woodburyana* are not yet on the Commonwealth list. Federal listing would provide immediate protection and, if the species are ultimately placed on the Commonwealth list, enhance their protection and possibilities for funding needed research.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting the continued survival of these species is their limited distribution. Because so few individuals are known to occur in a limited area, the risk of extinction is extremely high. Wildfires are a frequent occurrence in this extremely dry portion of southwestern Puerto Rico, particularly in the coastal roadside areas of Guánica where *Mitracarpus maxwelliae* and *Mitracarpus polycladus* are found.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these species in determining to propose this rule. Based on this evaluation, the preferred action is to list *Mitracarpus maxwelliae, M. polycladus* and *Eugenia woodburyana* as endangered. *M. maxwelliae* and *M. polycladus* are known from only one location in the Guánica area of southwestern Puerto Rico. In this area they are threatened by road construction, recreational activities and wildfires. *E. woodburyana* is known from only approximately 45 individuals at three locations in southwestern Puerto Rico. Deforestation for rural, agricultural, and tourist development are imminent threats to the survival of the species. Therefore, endangered rather than threatened status seems an accurate assessment of the species' condition. The reasons for not proposing critical habitat for these species are discussed below in the "Critical Habitat" section.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. Title 50, part 424 of the Code of Federal Regulations, § 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *Mitracarpus maxwelliae, Mitracarpus polycladus* and *Eugenia woodburyana*.

Critical habitat would not be beneficial in terms of adding additional protection for the species under section 7 of the Act. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of these species and their precarious status, any Federal action that would destroy or have any significant adverse affect on their habitat would likely result in a jeopardy biological opinion under section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

The Service also finds that designation of critical habitat is not prudent for these species due to the potential for taking. The number of individuals of *Mitracarpus maxwelliae, Mitracarpus polycladus* and *Eugenia woodburyana* is sufficiently small that vandalism and collection could seriously affect the survival of the species. Publication of critical habitat descriptions and maps in the **Federal Register** would increase the likelihood of such activities. These species are not protected by Commonwealth law and, since they do not occur on Federal lands, would receive no protection from taking under the Endangered Species Act. The Service believes that Federal involvement in the areas where these plants occur can be identified without the designation of critical habitat. All involved parties and landowners have been notified of the location and importance of protecting these species' habitat. Protection of these species' habitat will also be addressed through the recovery process and through the section 7 jeopardy standard.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The only currently known Federal involvement is through the occurrence of *Eugenia woodburyana* on the Cabo Rojo National Wildlife Refuge. Other Federal involvement may occur in the future through the funding of housing (Farmer's Home Administration or Housing and Urban Development) or funding utilized for the management of the Guánica Commonwealth Forest (U.S. Department of Agriculture, Forest Service).

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any endangered plant, transport it in interstate or foreign commerce in the course of commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any Commonwealth law or regulation, including Commonwealth criminal trespass law. Certain exceptions can apply to agents of the Service and Commonwealth conservation agencies.

The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits for these three species will ever be sought or issued, since the species are not known to be in cultivation and are uncommon in the wild. Requests for copies of the regulations on listed plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Mitracarpus maxwelliae, Mitracarpus polycladus* and *Eugenia woodburyana;*

(2) The location of any additional populations of these three species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on these three species.

Final promulgation of the regulation on *Mitracarpus maxwelliae, Mitracarpus polycladus* and *Eugenia woodburyana* will take into consideration the comments and any additional information received by the Service, and such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Center for Plant Conservation. 1992. Report on the rare plants of Puerto Rico. Missouri Botanical Garden, St. Louis, Missouri.

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Liogier, Alain H. 1980. Novitates Antillanae. VIII. Phytologia 47(3):167–198.

Proctor, G. R. 1991a. Status report on *Mitracarpus maxwelliae* Britton & Wilson. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Proctor, G. R. 1991b. Status report on *Mitracarpus polycladus* Urban. In Publicación Científica Miscelánea No. 2, Departamento de Recursos Naturales de Puerto Rico. 196 pp.

Author

The primary author of this proposed rule is Ms. Susan Silander, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.12(h) is amended by adding the following, in alphabetical order, under Myrtaceae and Rubiaceae, to the list of Endangered and Threatened Plants to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
.	.	.	.	.	.	.
Myrtaceae—Myrtle family:						
Eugenia woodburyana.	None	U.S.A. (PR)	E		NA	NA
.	.	.	.	.	.	.
Rubiaceae—Coffee family:						

Species		Historic range	Status	When listed	Critical habitat	Special rules
Scientific name	Common name					
•	•	•	•	•	•	•
Mitracarpus maxwelliae.	None	U.S.A. (PR)	E		NA	NA
Mitracarpus polycladus.	None	U.S.A. (PR)	E		NA	NA
•	•	•	•	•	•	•

Dated: November 22, 1993.

Richard N. Smith,

Acting Deputy Director, Fish and Wildlife Service.

[FR Doc. 93–32053 Filed 12–30–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC12

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for the Puerto Rican Broad-winged Hawk and the Puerto Rican Sharp-shinned Hawk

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine the Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*) and the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*) to be endangered pursuant to the Endangered Species Act (Act) of 1973, as amended. These uncommon woodland raptors are restricted to montane, government-owned forests along the Cordillera Central, Sierra de Cayey and Sierra de Luquillo. There are approximately 155 sharp-shinned hawks and 124 broad-winged hawks island-wide. Both species are currently threatened by: Timber harvest and management practices in the forests; road construction in relation to timbering and recreational activities; increase in numbers of recreational facilities, and the disturbance associated with public use; mortality and habitat destruction from hurricanes; the lack of comprehensive management plans for the Commonwealth forests; possible loss of genetic variation due to low population levels; and the potential for illegal shooting. The Puerto Rican sharp-shinned hawk is also affected by warble fly parasitism. This proposal, if made final, would provide these species with the Act's protection and recovery provisions. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by May 3, 1994. Public hearing requests must be received by February 17, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622. Comments and materials received will be available for public inspection, by appointment, during normal business hours, at the Caribbean Field Office and at the Service's Southeast Regional Office, suite 1282, 75 Spring Street, SW., Atlanta, Georgia 30303.

FOR FURTHER INFORMATION CONTACT: Ms. Marelisa Rivera at the Caribbean Field Office address (809/851–7297), or Mr. Dave Flemming at the Atlanta Regional Office address (404/331–3583).

SUPPLEMENTARY INFORMATION:

Background

The broad-winged hawk (*Buteo platypterus*) was first reported in Puerto Rico by Gundlach (1878). He reported this species as "common" in the "interior" of Puerto Rico. Stahl (1883) reported the species as "transient". In the first half of the 20th century, the species was not reported by other naturalists that visited the island (Bowdish 1902, Wetmore 1914, and Danforth 1931). Wetmore (1927) believed the species extinct. Danforth and Smyth (1935) collected a specimen in Luquillo (Caribbean National Forest) and described it as a distinct resident subspecies, the Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*). Danforth (1936) reported sightings of broad-winged hawks from Utuado. Leopold (1963) reported the species from Luquillo, Utuado and Maricao forests.

The Puerto Rican broad-winged hawk is a dark chocolate brown, small-sized hawk that measures approximately 39 centimeters (15.5 inches). It is smaller than *Buteo platypterus platypterus* but larger than the Lesser Antillean subspecies. This is the darkest subspecies of the broad-winged hawk. In adults, the tail, broadly banded with black and white, and the rufous breast are characteristic. Immature birds have dark bars on the breast and lack the distinctive tail bands of the adult. Broadwings flap more than the similar but larger red-tailed hawk (Raffaele 1989). Knowledge of the biology of the Puerto Rican broad-winged hawk is limited. Snyder et al. (1987) conducted food-habit studies on one of the three nests found in the Caribbean National Forest in 1976 and one nest found in Río Abajo in 1978. The prey types taken included centipedes, frogs, lizards, mice, rats and birds (including some as large as 200 grams). Studies of breeding biology, habitat requirements and other aspects of this species' biology are not available in the literature.

The Puerto Rican broad-winged hawk is an uncommon and extremely local resident. Extant populations are restricted to montane habitats of three forests: Río Abajo Commonwealth Forest, Carite Commonwealth Forest and Caribbean National Forest. Breeding has not been documented in the Carite forest (Hernández 1980, Snyder et al. 1987). In the mid-1980's, the population in the Caribbean National Forest was estimated to be 40–60 individuals and 15–20 breeding pairs (Santana and Temple 1984, Snyder et al. 1987). The broad-winged hawks were more often seen in the eastern side of the Caribbean National Forest, and the tabonuco and palo colorado forest types were reported to be the preferred habitats for the species (Wiley and Bauer 1985). In 1992, 12 broad-winged hawks were sighted in the Caribbean National Forest and the population was estimated at 22 individuals (Delannoy 1992). These individuals were observed to be clustered in the north-central part of the forest within the subtropical wet forest and subtropical rain forest life zones, where the tabonuco is the dominant forest type.

Very little is known about the Río Abajo and Carite forest populations. However, it appears that the existence of the Río Abajo population was known by Danforth (1936) and Leopold (1963) since they both reported sightings of broad-winged hawks from Utuado.

Snyder et al. (1987) believed that the Río Abajo forest sustains not more than 50 individuals. Delannoy (1992) reported 26 broad-winged hawks, or an estimated population of 52 individuals, in the Río Abajo forest. The Puerto Rican broad-winged hawk was unknown from the Carite forest until 1980, when the existence of a resident population present year-round was reported (Hernández 1980). In 1992, 20 broad-winged hawks were censused in the Carite forest and a population of 22 individuals was estimated (Delannoy 1992). In the Carite forest the species has been reported from the elfin, caimitillo, granadillo, tabonuco, and slope forest types (Hernández 1980, Delannoy 1992).

The 206.4 square kilometers censused in three forests (Río Abajo, Carite and Caribbean National Forest) in 1992 yielded a count of 58 broad-winged hawks, and a total population estimate of 124 individuals (Delannoy 1992). Sightings of the broad-winged hawk have been reported from other areas, such as Cayey (next to the Carite forest), Utuado, Jayuya, Adjuntas, Villalba, and the Maricao and Toro Negro forests (Leopold 1963, Pérez-Rivera and Cotte-Santana 1977). Nevertheless, Delannoy (1991) established that the Maricao and Toro Negro forests do not have resident populations. Broad-winged hawks have been searched for, but not sighted, in upland forested habitats in Utuado, Jayuya, Adjuntas, Orocovis, and Barranquitas (Delannoy 1992).

The sharp-shinned hawk (*Accipiter striatus*) is a polytypic species with nine subspecies distributed in the western hemisphere, from Alaska to Canada south to Argentina and to the West Indies (Cuba, Hispaniola and Puerto Rico) (Wattel 1973). The Puerto Rican sharp-shinned hawk was first discovered in 1912 in the Maricao Commonwealth Forest, and described as a distinct subspecies, *Accipiter striatus venator* (Wetmore 1914).

The Puerto Rican sharp-shinned hawk is a small hawk measuring approximately 28–33 centimeters (11–13 inches). The dark slate gray upper parts and heavily barred rufous underparts of the adults are distinctive. Immatures are brown above and heavily streaked below. It has a short, squared tail, often appearing notched when folded, and a small head and neck. In flight, the short, rounded wings and long, narrow tail are characteristic (Raffaele 1989).

Extant breeding populations of the Puerto Rican sharp-shinned hawk were located in the mountain forest of the Maricao Commonwealth Forest, Toro Negro Commonwealth Forest, Guilarte Commonwealth Forest, Carite Commonwealth Forest and Caribbean National Forest (Cruz and Delannoy 1986). Sixty individuals were counted in island-wide surveys conducted in 1983, and a breeding density of .73 hawks/km^2 was estimated (Cruz and Delannoy 1988). In 1985, 72 individuals were counted and a breeding population of .76 hawk/km^2 (230–250 island-wide) were estimated in island-wide surveys (Cruz and Delannoy 1986). In 1992, 285.6 square kilometers censused yielded 82 sharp-shinned hawks; 40 were counted in Maricao, 30 in Toro Negro, 10 in Carite and 2 in the Caribbean National Forest. An overall population of 129 individuals has been estimated for these forests (Delannoy 1992). Although the Guilarte forest population was not censused in 1992, a population of 25 individuals was estimated for the forest in 1985 (Cruz and Delannoy 1986).

Studies on breeding and nesting habitat of this species, conducted by Cruz and Delannoy (1986) showed that the sharp-shinned hawk population in Maricao nests in both natural and modified (*Calophyllum* plantation) habitats. Plantation nest sites tended to have large canopy trees and fewer understory trees than natural forest nest sites. Sharp-shinned hawks appear to select plantation and natural forest nest sites with similar vegetative structure and topography. Results suggested that special vegetation structural requirements (closed canopies and dense stands) are sought by the Puerto Rican sharp-shinned hawks in the selection of nest sites in Maricao and apparently in other parts of its range in Puerto Rico (Cruz and Delannoy 1986). Furthermore, these authors reported low reproductive success, high desertion of eggs, and high nestling mortality due to parasitism by the warble fly *Philornis* spp.

The center of sharp-shinned hawk courtship and territorial activities in Maricao forest was located in the north-central and eastern parts, within the subtropical lower montane wet forest and subtropical wet forest life zones. In the Carite forest, territorial and courtship activities occurred in the northeastern and north-central parts, within the caimitillo-granadillo forest types (Delannoy 1992). In Toro Negro, these activities took place in the elfin woodland, sierra palm, caimitillo-granadillo and tabonuco forest types. In the Caribbean National Forest, the only two sharp-shinned hawks sighted (a solitary territorial pair) were detected in the south-central part of the forest, confined to the palo colorado forest type of the lower montane forest life zone (Delannoy 1992).

Although the sharp-shinned hawk was previously known from the karst region of Río Abajo and Guajataca Commonwealth Forests, Cruz and Delannoy (1986) did not find any evidence of its presence in these areas. Fossil evidence indicates that the species was once more widespread in the karst region (Wetmore 1922). Sharp-shinned hawks have been searched for and not sighted in Cambalache, Vega, Susua, and Guánica forests (Cruz and Delannoy 1986).

On November 24, 1980, the Service received a petition from Dr. Warren B. King from the International Council for Bird Preservation requesting that the Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk (and other bird species) be added to the List of Endangered and Threatened Wildlife. On May 12, 1981, the Service published a notice of petition acceptance and status review in the **Federal Register** (46 FR 26464).

In the case of any petition accepted by the Service as containing substantial information, Section 4(b)(3) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*), as amended in 1982, requires that a subsequent finding be made within 12 months as to whether the measure is warranted, not warranted, or warranted but precluded by higher priority listing actions. In regard to the Puerto Rican broad-winged hawk, the Service has made administrative findings of "warranted but precluded" each year, beginning in October of 1983, as required by the Act. In the case of the Puerto Rican sharp-shinned hawk, a status survey completed in 1986 resulted in a final petition finding of "not warranted" that was announced in the **Federal Register** of April 25, 1990 (55 FR 17475).

In the Service's notice of review for vertebrate candidates published in the **Federal Register** of December 30, 1982 (47 FR 58454) and September 18, 1985 (50 FR 37958), both hawks were included as category 2 species, i.e., taxa for which there is information to indicate that listing may be appropriate, but for which there is insufficient data to support a listing proposal. In the animal notice of review published January 6, 1989 (54 FR 554), the Puerto Rican sharp-shinned hawk was moved to category 3C based on status information gathered in 1986. Category 3C taxa are those that do not presently qualify for the Act's protection due to absence of significant threats. The Puerto Rican broad-winged hawk was retained in category 2 for the 1989 notice of review and for the subsequent

notice published November 21, 1991 (56 FR 58804).

Status surveys conducted in 1991 and 1992 indicated that both species have experienced recent population declines, exist in low numbers, have restricted distribution and currently face significant threats. Based on this information, the Service recently that elevated both hawks to category 1 and is now proposing them for endangered status. The current proposed rule represents the final finding on the petitioned action for the Puerto Rican broad-winged hawk.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Endangered Species Act and regulations (50 CFR Part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in Section 4(a)(1). These factors and their application to the Puerto Rican broad-winged hawk (*Buteo platypterus brunnescens*) and the Puerto Rican sharp-shinned hawk (*Accipiter striatus venator*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk are uncommon and extremely local residents. Extant populations of the broad-winged hawk and the sharp-shinned hawk are restricted to three and five montane forests, respectively. The destruction and modification of forested habitats in Puerto Rico may be one of the most significant factors affecting the numbers and distribution of these hawk species. The patchy distribution of both species may have resulted from the fragmentation of forested habitats. During the first half of the 20th century, forested areas were drastically reduced for intensive agricultural uses. Only small areas of the montane forests remained. In the last half of this century early secondary forests have developed in areas that are no longer under intensive cultivation, and these secondary forests connect patches of more mature forests that were previously isolated. Nevertheless, both hawk species are restricted to the mature montane forests and have not been observed in these secondary forests (Delannoy, pers. comm.). Both species were searched for, but not sighted, in other upland forested habitats in central parts of Puerto Rico.

Extant populations of these species occur in low numbers. The total population estimate of 124 broad-winged hawks island-wide is very low. Broad-winged hawks have experienced a local population decline of approximately 50 percent in the Caribbean National Forest (Delannoy 1992). Total population numbers are significantly low in both the Carite and Río Abajo forests. The sharp-shinned hawk has experienced a 60 percent decline in the Carite forest and 93 percent decline in the Caribbean National Forest (Delannoy 1992).

Timber harvest and management practices that would result in a reduction in numbers or in the diminishing of habitat quality of species already limited in their abundance and distribution could be detrimental. Cruz and Delannoy (1986) found that 50 percent of the nesting areas in the Maricao forest were in plantations of maría (*Calophyllum brasiliense*). They established that timber harvest and management practices could have negative effects on sharp-shinned hawks if vegetation structural features such as high stem density and canopy closure were not maintained. Adequate nest site habitat in the Maricao forest was considered to be in limited supply. Any activities that modify required structural features of vegetation in sharp-shinned hawk nesting areas could result in the reduction of the effective population size. Sharp-shinned hawks showed a strong nest site tenacity and returned year after year to the same nesting areas (Cruz and Delannoy 1986).

Road construction in the forests (related to timber programs and/or recreational activities) could result in substantial habitat alteration and fragmentation. Also, roads could provide a chronic source of human disturbance, reducing habitat effectiveness for species with a strong need for isolation. Roads could increase animal harvest and the introduction of exotic fauna. Road construction and/or road repair have been proposed in the Caribbean National Forest. In the Río Abajo forest, the construction of highway P.R. 10 from Arecibo to Ponce, which has been under way for several years, could affect the broad-winged hawk population. Delannoy (1992) documented, from the P.R. Highway and Transportation Authority files, that approximately 2.5 kilometers of the P.R. 10 will enter and cut through forest land in the northeastern corner, where high densities of broad-winged hawks were detected. Bulldozer activities were reported less than 500 meters from lookout sites in the forest. He estimated that approximately 3.79 hectares of apparently prime broad-winged hawk habitat will be destroyed by the road.

Construction of recreational facilities has been proposed for the western and northern sides of the Caribbean National Forest, areas where both species occur. Such recreation facilities could potentially eliminate habitat or bring human activities too close to preferred nesting areas. Raptors are particularly sensitive to disturbance near their nesting territories. In the Carite forest increasing pressure for new recreation facilities has been identified (Delannoy 1992). In the Maricao forest, Cruz and Delannoy (1986) found that nest failures related to direct human harassment ranked third in importance among all causes. Five nesting areas in Maricao forest are in, or less than 100 meters from, the camping and picnic areas. Some of the traditional nesting areas for the Puerto Rican sharp-shinned hawk in the Toro Negro forest lie near recreation facilities (Cruz and Delannoy 1986). Increased pressure for recreation from a growing human population could bring about frequent and regular human disturbance near nest sites.

Increased pressure for new right-of-way access to farms through the Carite forest land, and the establishment of new communication facilities, could also destroy prime habitat or bring human activities too close to broad-winged hawks. Delannoy (1992) documented that destruction of substantial caimitillo-granadillo habitat occurred in the right-of-way access through Camino El Seis in the north-central part of the Carite forest. This author also reported the establishment of new communication facilities along an access road through sector Farallón in the northwestern part of the forest where the highest broad-winged hawk densities have been reported.

In the Maricao forest, the Puerto Rico Energy Power Authority has a power substation located in the lower montane wet forest life zone, the center of sharp-shinned hawk nesting habitat. Many kilometers of aerial power lines run through forest lands. The access road for the substation is located adjacent to sharp-shinned hawk habitat in the subtropical wet forest life zone (Delannoy 1992). The construction of this access road resulted in the destruction of approximately 2.6 hectares of sharp-shinned hawk habitat (Delannoy 1992). The construction of new communication infrastructure or the enlargement of the existing infrastructure could potentially eliminate important sharp-shinned hawk habitat.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Taking for these purposes has not been a documented factor in the decline of these species. Nevertheless, the size and the appearance of these birds make them a potentially attractive target for some hunters.

C. Disease or Predation

The mortality of sharp-shinned hawk nestlings due to parasitism by the warble fly *Philornis* spp. has been documented. Studies conducted in Maricao forest attributed 61 percent of nestling mortality to *Philornis* parasitism (Cruz and Delannoy 1986).

D. The Inadequacy of Existing Regulatory Mechanism

The Puerto Rican sharp-shinned hawk was designated by the Commonwealth Department of Natural Resources as a threatened species in 1985. Existing Commonwealth regulations for the protection of threatened and endangered species have not been effective at preventing habitat destruction or alteration. The Puerto Rican broad-winged hawk is not protected by Commonwealth regulations.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

One of the most important factors affecting these species in Puerto Rico is their limited distribution and low numbers. The Puerto Rican broad-winged hawk experienced a local population decline of approximately 50 percent in the Caribbean National Forest (from 50 individuals in 1984 to 22 in 1992). The Puerto Rican sharp-shinned hawk experienced a 40 percent population decline in a period of 7 years (from 250 individuals in 1985 to 150 in 1992). Locally, the Carite population experienced a 60 percent decline, and the Caribbean National Forest population a 93 percent decline. Decline of both species has been attributed to possible direct and indirect effects from hurricane Hugo in 1989.

The extensive devastation from hurricanes may be particularly detrimental to species with small population size and long generation time, such as the broad-winged hawk and sharp-shinned hawk. Additionally, there may also be a long-term reduction in effective population size if the hawks prove to require habitat characteristics not presently available in the storm-damaged forest.

The lack of comprehensive management plans for the Commonwealth forests could be considered a serious threat for these species. In absence of such plans, policy makers and managers lack basic information on which to base decisions related to the best use and management of forest resources.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by these two species in determining to propose this rule. Based on this evaluation, the preferred action is to list the Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk as endangered.

The Puerto Rican broad-winged hawk populations are extremely small and limited to only three montane forests. Significant adverse effects to this species or its habitat could drive it to extinction. The potential for illegal shooting, increased human disturbance and the loss of prime habitat in the forests constitute serious threats to the continued survival of the species. The Puerto Rican sharp-shinned hawk has experienced a 40 percent decline in a period of 7 years. The potential for alteration of the species' habitat, human disturbance, illegal shooting, and nestling parasitism by warble flies constitute serious threats to the continued survival of the species. A decision to determine only threatened status would not adequately reflect the evident rarity and threats confronting these species. A decision to take no action would exclude these species from benefits provided by the Endangered Species Act. Endangered status is therefore appropriate.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time a species is proposed to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that, in the case of the latter situation, designation of critical habitat is not prudent for these species due to lack of benefit.

Section 7(a)(2) and regulations codified at 50 CFR part 402 require Federal agencies to ensure, in consultation with and with the assistance of the Service, that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of listed species or destroy or adversely modify their critical habitat, if designated. (See "Available Conservation Measures" section for a further discussion of Section 7.) As part of the development of this proposed rule, the U.S. Forest Service and the Puerto Rico Department of Natural Resources (DNR) were provided available information on the distribution and threats to the two hawks. Should any future projects be proposed in areas inhabited by these hawks, the two agencies will already have the information needed to determine if the species may be impacted by the proposed action.

Regulations promulgated for implementing Section 7 provide for both a jeopardy standard, based on listing alone, and for a destruction or adverse modification standard, in cases where critical habitat has been designated. The Puerto Rican broad-winged and sharp-shinned hawks occupy restricted areas within the borders of the Caribbean National Forest and several Commonwealth forests. Any significant adverse modification or destruction of their habitat would likely jeopardize their continued existence. Under these conditions, the standards for jeopardy and adverse modification are essentially equivalent. Therefore, no additional protection for the species would accrue from critical habitat designation that would not also accrue from listing these species. Once listed, the Service believes that protection of their habitat can be accomplished through the Section 7 jeopardy standard, and through Section 9 prohibitions against take. It is more likely, however, that any federally related actions of concern will receive early review and any problems will be resolved informally.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, Commonwealth, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the Commonwealth, and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the

prohibitions against taking are discussed in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may adversely affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

In the case of the two hawks, Federal involvement relates to activities to be conducted or permitted by the U.S. Forest Service in the Caribbean National Forest, or by other Federal agencies in Commonwealth forests. Federal funds or permits could be involved in the construction, maintenance or enlargement of facilities such as power substations, communication towers, and roads and trails in Commonwealth forests. Federal funds could be utilized by the Department of Resources in the management of Commonwealth forests.

The Act and implementing regulations found at 50 CFR 17.21 set forth a series of general prohibitions and exceptions that apply to all endangered wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (includes harass, harm, pursue, hunt, shoot, wound, hill, trap, or collect; or to attempt any of these), import or export, ship in interstate commerce in the course of commercial activity, or sell or offer it for sale in interstate or foreign commerce any listed species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and Commonwealth conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with otherwise lawful activities.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk;

(2) The location of any additional populations of these two species, and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of these species; and

(4) Current or planned activities in the subject areas and their possible impacts on any of these two species.

Final promulgation of a regulation on the Puerto Rican broad-winged hawk and the Puerto Rican sharp-shinned hawk will take into consideration the comments and any additional information received by the Service, and such communications may lead to a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Field Supervisor, U.S. Fish and Wildlife Service, Caribbean Field Office, P.O. Box 491, Boquerón, Puerto Rico 00622.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to Section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Author

The primary author of this proposed rule is Ms. Marelisa Rivera, Caribbean Field Office, U.S. Fish and Wildlife Service, P.O. Box 491, Boquerón, Puerto Rico 00622 (809/851–7297).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, it is hereby proposed to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625. Stat. 3500; unless otherwise noted.

2. § 17.12(h) is amended by adding the following, in alphabetical order, under BIRDS, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
.	.	.	.	.	.	.	.
Birds							
.	.	.	.	.	.	.	.
Hawk, Puerto Rican broad-winged.	*Buteo platypterus brunnescens.*	U.S.A. (PR)	Entire	E		NA	NA
Hawk, Puerto Rican sharp-shinned.	*Accipiter striatus venator.*	U.S.A. (PR)	Entire	E		NA	NA
.	.	.	.	.	.	.	.

Dated: December 2, 1993

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–32052 Filed 12–30–93; 8:45 am]

BILLING CODE 4310–55–P

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50 CFR Part 17

RIN 1018–AC27

Endangered and Threatened Wildlife and Plants; Proposed Endangered Status for Arabis perstellata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to determine endangered status for the rock cress, *Arabis perstellata*. There are 2 varieties of *Arabis perstellata*. The small rock cress, *Arabis perstellata* var. *perstellata*, is currently known from 27 populations in Kentucky—24 in Franklin County, 2 in Owen County, and 1 in Henry County. The large rock cress, *Arabis perstellata* var. *ampla*, is known from only two populations in Rutherford County, Tennessee. The species is endangered because of either potential or current threats from habitat alteration due to residential, commercial, or industrial development; timber harvesting; grazing and trampling; and competition with native and exotic weedy species, especially the European garlic mustard (*Alliaria petiolata*). This proposal, if made final, would extend the protection of the Endangered Species Act of 1973, as amended (Act), to *Arabis perstellata*.

DATES: Comments from all interested parties must be received by March 4, 1994. Public hearing requests must be received by February 17, 1994.

ADDRESSES: Comments, materials, and requests for a public hearing concerning this proposal should be sent to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Caroline 28806. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. J. Allen Ratzlaff at the above address (704/665–1195, Ext. 229).

SUPPLEMENTARY INFORMATION:

Background

Both varieties of *Arabis perstellata*, var. *ampla* (large rock cress) and var. *perstellata* (small rock cress) are perennial members of the mustard family (Brassicaceae). The large rock cress is known from only two counties in Tennessee, and the small rock cress is known from only three counties in Kentucky. Both varieties have round stems and alternate leaves. Their stems and foliage have a grayish coloration due to the large quantity of hairs. Their stems arise from horizontal bases and grow up to 80 centimeters (cm) (31.5 inches) long, often drooping from rock ledges. Each year a basal rosette of leaves is produced, and the new branches emerge from the old rosette of the previous season. Their lower leaves vary from 4 to 15 cm (1.6 to 5.9 inches) long and are obovate to oblanceolate with slightly toothed and pinnatifid margins. Their upper leaves are

smaller—up to 3.5 cm (1.4 inches) long—and are elliptic to oblanceolate, with coarse teeth along the margin. Both surfaces of their leaves are stellate-pubescent. The inflorescence is an elongate raceme with numerous flowers. Their flowers have four petals that are 3 to 4 millimeters (mm) (0.12 to 0.16 inch) long, are white to lavender, and have four pale green sepals that are 2 to 3 mm (0.08 to 0.12 inch) long. There are six stamens, with two shorter than the other four. The ovary is elongate, two-chambered, and develops into a silique. Fruiting stalks are about 1 cm (0.4 inch) long at maturity; siliques are up to 4 cm (1.6 inches) long and are covered with both simple and stellate hairs. Flowering occurs from late March to early May. Fruits mature from mid-May to early June. Their oblong seeds are reddish brown; somewhat flattened; about 1 mm (0.04 inch) long; and, in places, minutely hairy (Jones 1991).

Arabis perstellata was named by E. L. Braun from plants collected between 1936 and 1939 on wooded hillsides along Elkhorn Creek in Franklin County, Kentucky. Braun (1940) distinguished the new taxon from the similar *Arabis dentata* (Torr.) T. & G. (now called *Arabis shortii* [Fern.] Gleason) by its perennial habit; grayer, stellate pubescence of stems and leaves; and longer pedicels. Fernald (1946) treated *A. shortii* as a variety of *A. perstellata*, though it is now generally accepted that they represent two species (Kartesz and Kartesz 1980). In 1959, plants were discovered on steep limestone cliffs above the Stones River in Davidson County, Tennessee, by Dr. R. B. Channel. Rollins (1960) described these plants as *Arabis perstellata* var. *ampla* and distinguished them from the typical variety by their generally larger size, thinner and more entire leaves, and lesser pubescence. Rollins also reported the chromosome number of the Tennessee plants as n=7; the chromosome number of the Kentucky plants has yet to be determined.

Arabis perstellata is typically found on wooded steep slopes with limestone outcrops. The outcrops tend to be moist but not wet; rarely, plants can be found on seepy outcrops. They also may be found in protected areas, such as around the bases of larger trees, or in areas where there is little competition, such as around areas regularly scoured by talus movement or erosion. The plants have a well-developed system of rootstocks that allow them to persist in these inhospitable sites. Sometimes the plants display a weedy tendency, colonizing recent road cuts or animal paths through the woodlands. The plants exhibit definite shade/light requirements, surviving in full shade or filtered light, but are not found in full sunlight (Jones 1991).

The distribution of *Arabis perstellata* var. *perstellata* shows a strong correlation with the Kentucky River and its tributaries (primarily Elkhorn Creek), with the greater majority of sites occurring in Franklin County. No sites have been found south of Frankfort along the Kentucky River, although appropriate habitat appears to be present. *Arabis perstellata* var. *ampla* is also associated with calcareous bluff habitat of a specific river—the Stones River. The two extant populations are somewhat atypical compared to historic sites because they occur on rocky knobs about 15 miles from the Stones River (Jones 1991). The following is a description of the status of each variety of the species within each State where the species occurs; the information is primarily from Jones (1991).

All known *Arabis perstellata* var. *ampla* populations in Tennessee are from the Cumberland River Subsection of the Central Basin Physiographic Region. Prior to the status survey conducted by Jones (1991), there were three records of large rock cress in Davidson County and two in Rutherford County. All three of the sites in Davidson County have been extirpated, and one of the sites in Rutherford County could not be relocated. One additional population was discovered in Rutherford County during the status survey. Of the two remaining populations, one is small—about 25 plants—and covers about 0.06 acre. The other population contains several hundred plants scattered over about 2.2 acres. Both sites are on private land and are threatened by competition by weedy invaders.

All known *Arabis perstellata* var. *perstellata* populations in Kentucky are from the Eden Shale Belt Subsection of the Blue Grass Physiographic Region. Prior to the status survey conducted by Jones (1991), there were three counties in Kentucky with occurrence records for the small rock cress—1 in Henry County, 2 in Owen County, and 26 in Franklin County. One site in Owen County and seven sites in Franklin County have been extirpated. There was insufficient information to locate four other historic records (2 in Franklin County and 2 from unknown counties). However, 8 new populations were discovered during the status survey, and the 27 known small rock cress sites in Kentucky are distributed as follows: 1 population from Henry County, 2 populations from Owen County, and 24 populations from Franklin County. Of these 27 populations, 22 of them have fewer than 100 individual plants and 12 have 20 or fewer. The immediate threats to the 27 remaining populations include the following: (1) Eight are threatened by weedy competitors, (2) four by weedy competitors and trampling, (3) two by trampling, (4) one by logging, and (5) one by road work. The remaining 11 populations do not appear to have any immediate threats but are vulnerable to the aforementioned threats as well as other habitat alterations and potential inbreeding problems as neighboring populations decline. All of the Kentucky populations are privately owned. Three receive limited protection through their inclusion in State designated natural areas.

Federal government actions on these species began with section 12 of the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*), which directed the Secretary of the Smithsonian Institution to prepare a report on those plants considered endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to Congress on January 9, 1975. On July 1, 1975, the Service published a notice (40 FR 27823) that formally accepted the Smithsonian report as a petition within the context of section 4(c)(2) (now section 4(b)(3)) of the Act. By accepting this report as a petition, the Service also acknowledged its intention to review the status of those plant taxa named within the report. *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* were included in the Smithsonian report and in the July 1, 1975, Notice of Review. On June 16, 1976, the Service published a proposed rule (41 FR 24523) to determine approximately 1,700 vascular plant taxa to be endangered species pursuant to Section 4 of the Act; *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* were included in that proposal.

The 1978 amendments to the Act required that all proposals over 2 years old be withdrawn. In the December 10, 1979, **Federal Register** (44 FR 70796), the Service published a notice withdrawing plants proposed on June 16, 1976. The revised Notice of Review for Native Plants published on December 15, 1980 (45 FR 82480), included *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* as category 1 candidates. Category 1 candidates are those for which the Service has on file substantial information on biological vulnerability and threats to support the appropriateness of proposing to list the taxa as threatened or endangered. These species were retained in their respective categories when the Notice of Review for Native Plants was revised in 1983 (48 FR 53640) and 1985 (50 FR 39526), but *Arabis perstellata* var. *ampla* was then thought to be possibly extinct. In the 1990 Notice of Review (55 FR 6184), *Arabis perstellata* var. *ampla* was changed to a category 2 species due to the uncertainty of its status. Category 2 species are those for which the Service has information indicating that proposing to list them as endangered or threatened may be appropriate but for which substantial data on biological vulnerability and threats are not currently known or on file to support the preparation of rules. The Service funded surveys in 1989 to determine the status of *Arabis perstellata* var. *perstellata* in Kentucky. The contractors conducting the status survey for *Arabis perstellata* var. *perstellata* included a review of *Arabis perstellata* var. *ampla* in Tennessee. Final reports on these surveys were accepted by the Service in 1991.

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make certain findings on pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* because of the acceptance of the 1975 Smithsonian report as a petition. On October 13, 1983, and in October of each year thereafter, through 1992, the Service found that the petitioned listing of *Arabis perstellata* var. *perstellata* and *Arabis perstellata* var. *ampla* was warranted but precluded by work on higher priority species. The Service's present decision to propose *Arabis perstellata* for listing is based on results of the above-mentioned status survey and current priorities, and it represents the final petition finding for the large and small rock cresses.

Summary of Factors Affecting the Species

Section 4(a)(1) of the Act and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal lists. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the 2 varieties of rock cress, *Arabis perstellata* var. *ampla* (large rock cress) and *Arabis perstellata* var. *perstellata* (small rock cress), are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

Arabis perstellata var. perstellata—Of the 27 known populations of small rock cress, 18 are threatened with destruction or adverse modification of their habitat—8 by weedy competitors, 4 by weedy competitors and trampling, 2 by trampling, 1 by logging, and 1 by road work. The remaining 11 populations do not appear to have any immediate threats but are vulnerable to the aforementioned threats as well as other habitat alterations and potential inbreeding problems as neighboring populations decline. Active management is required to ensure that the species continues to survive at all sites.

Arabis perstellata var. *ampla*—Both of the remaining large rock cress populations in Tennessee are threatened from competition by weedy invaders and potentially by livestock grazing and trampling. Also, the smaller site appears to be made up of older individuals, and there is little evidence of reproduction (Jones 1991).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

At this time there is little or no commercial trade in *Arabis perstellata* var. *ampla* or *Arabis perstellata* var. *perstellata*. Most populations of the species are very small and cannot support the collection of plants for scientific or other purposes. Collecting for scientific purposes or as a novelty could pose a threat to the species.

C. Disease or Predation

Disease and predation do not appear to be factors affecting the continued existence of the species at this time (Jones 1991).

D. The Inadequacy of Existing Regulatory Mechanisms

The large rock cress is listed as endangered in Tennessee by Collins et al. (1978) and Somers (1989). Endangered species in Tennessee receive some protection through the "Rare Plant Protection and Conservation Act of 1985" (Tennessee Department of Conservation, 1987). The removal of plants from State properties for scientific, educational, or propagative purposes is controlled, as is the disturbance of the species on private lands without the landowner's consent. There is no protection for the species if its presence conflicts with public works projects (e.g., road building).

In Kentucky, the small rock cress is listed as endangered by the Kentucky Academy of Science and Kentucky State Nature Preserves Commission (Branson et al. 1981, Warren et al. 1986). These lists, however, have no legal standing in the State.

Should *Arabis perstellata* be added to the Federal list of endangered and threatened species, additional protection from taking will be provided to any populations of rock cress that may be discovered on Federal land and to other populations when the taking is in violation of any State law, including State trespass laws. Protection from inappropriate commercial trade would also be provided.

E. Other Natural or Manmade Factors Affecting the Species' Continued Existence

Both varieties of rock cress, *Arabis perstellata* var. *ampla* and *Arabis perstellata* var. *perstellata* could be facing potential inbreeding problems as neighboring populations decline.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by *Arabis perstellata* in determining to propose this rule. Based on this evaluation, the preferred action is to list *Arabis perstellata* as an endangered species. Both varieties of the plant face imminent threats and are in danger of extinction throughout their range. In accordance with the definition found in section 3(6) of the Act, such a species would qualify for designation as endangered. Proposing threatened status would not be consistent with the apparent status of the species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary designate any habitat of a species, which is considered to be critical habitat, at the time the species is determined to be endangered or threatened. The Service's regulations (50 CFR 424.12(a)(1)) state that designation of critical habitat is not prudent when one or both of the following situations exist: (1) The species is threatened by taking or other activity and the identification of critical habitat can be expected to increase the degree of threat to the species or (2) such designation of critical habitat would not be beneficial to the species. The Service finds that designation of critical habitat is not prudent for this species due to both situations.

Most populations of this species are small, and the loss of even a few individuals to activities such as collection for scientific purposes could

extirpate the species from some locations. Taking, without permits, is prohibited by the Act from locations under Federal jurisdiction; however, none of the known populations of *Arabis perstellata* is under Federal jurisdiction. Therefore, publication of a critical habitat description and maps would increase the vulnerability of the species without significantly increasing protection.

Regulations promulgated for the implementation of Section 7 of the Act provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Due to the highly precarious status of this species, any significant adverse modification or destruction of the species' habitat would also likely jeopardize the species' continued existence, thereby triggering both standards. Therefore, no additional protection for the plant would accrue from critical habitat designation that would not also accrue from listing of the species.

The owners and managers of all the known populations of *Arabis perstellata* will be made aware of the plant's locations and of the importance of protecting the plant and its habitat even though critical habitat is not being designated. No additional benefits would result from a determination of critical habitat. If listed, habitat protection for this plant would be accomplished through the section 7 "jeopardy" standard and section 9 prohibitions against take.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in the destruction or adverse modification of proposed critical habitat. If a species is subsequently listed, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

All *Arabis perstellata* populations are on privately owned land or in road rights-of-way. No current Federal actions have been identified that would affect these plants. However, Federal involvement associated with such actions as road construction may have limited potential for affecting these plants in the future.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62, and 17.63 set forth a series of general prohibitions and exceptions that apply to all endangered plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, would apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale this species in interstate or foreign commerce, or to remove and reduce to possession the species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or resolution, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances. It is anticipated that few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, Room 420–C, Arlington, Virginia 22203 (703/358–2104).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned government agencies, the scientific community, industry, or any other interested party concerning these proposed rules are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to *Arabis perstellata;*

(2) The location of any additional populations of *Arabis perstellata* and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act;

(3) Additional information concerning the range and distribution of this species; and

(4) Current or planned activities in the subject area and their possible impacts on *Arabis perstellata.*

Final promulgation of regulations on *Arabis perstellata* will take into consideration the comments and any additional information received by the Service, and such communications may lead to the adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of this proposal. Such requests must be made in writing and should be addressed to the Field Supervisor, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806.

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

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Author

The primary author of these proposed rules is Mr. J. Allen Ratzleff, Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806 (704/665–1195, Ext. 229).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. § 17.12(h) is amended by adding the following, in alphabetical order, under Brassicaceae, to the List of Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants.

* * * * *

(h) * * *

Species						
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
Brassicaceae—Mustard family:						
. . . . .						
Arabis perstellata	Rock cress	U.S.A. (TN, KY)	E	NA		NA
. . . . .						

Dated: December 2, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service

[FR Doc. 93–32077 Filed 12–30–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register

Vol. 59, No. 1

Monday, January 3, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

[TMD–93–00–5]

Notice of Meeting for National Organic Standards Board and the Livestock Committee of the Board

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice.

SUMMARY: In accordance with the Federal Advisory Committee Act (Public Law 92–463), as amended, the Agricultural Marketing Service (AMS) announces a forthcoming meeting of the National Organic Standards Board (NOSB).

DATES AND TIMES: January 29, 1994 from 10 a.m. to 5 p.m. for the Livestock Committee and noon January 30, 1994 to noon February 2, 1994 for the entire NOSB. Adjournment for the day and reconvening times for the next day will be determined at the meetings.

PLACE: Westpark Hotel, 1900 North Fort Meyer Drive, Rosslyn, Virginia. All meetings of the NOSB for the week will be held at that address.

FOR FURTHER INFORMATION CONTACT: Dr. Harold S. Ricker, Staff Director, NOSB, Room 4006 South Building, USDA, AMS, Transportation and Marketing Division, P.O. Box 96456, Washington, DC 20090–6456. Phone (202) 720–2704.

SUPPLEMENTARY INFORMATION: Section 2119 (7 U.S.C. 6518) of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACT Act), as amended (7 U.S.C. Section 6501 *et seq.*) requires establishment of a NOSB. The purpose of the Board is to assist in the development of standards for substances to be used in organic production and to advise the Secretary on any other aspects of the implementation of Title XXI of the FACT Act. The NOSB met for the first time in Washington, D.C. in March 1992 and formed six committees to work on various aspects of the program. The committees are: Crops Standards; Processing, Labelling and Packaging; Livestock Standards; Accreditation; National Materials List; and International Issues.

PURPOSE AND AGENDA: The Livestock Committee will convene to discuss and review processing and slaughter practices, a position on parasiticides, and responses to the committee position on antibiotics. The main focus of the meetings of the entire Board is to provide opportunities for discussion of issues being considered by working committees. The last meeting of the NOSB in September 1993 provided considerable time for the committees to present their issues and papers for discussion with the full Board. This meeting will continue to have the committees presenting their draft positions to the full Board for discussion and possible concurrence.

The full Board will be addressing administrative procedures for completion of documents as final recommendations to the Secretary in addition to discussing Committee papers. Topics to be covered in the full Board meeting include processing standards and processing materials needed for the National List of approved and prohibited substances; continued work on the development of the accreditation requirements and criteria for a peer review panel and for certifying agents; and material inputs for organic crop production, developed by the Crops Committee; antibiotics position and parasiticides position papers by the Livestock Committee; import requirements for organic products; and discussion of materials being developed by the various committees for consideration for the National List. A final agenda will be available on January 10, 1994. Persons requesting copies should contact Ms. Faith Ashton at the above address or phone number.

TYPE OF MEETING: All meetings will be open to the public. Individuals and organizations wishing to provide written comments on these issues or to express public comment on any organic issues should forward the request to Harold S. Ricker at the above address or faxed to (202) 690–0338 by January 21, 1994, in order to be scheduled. The NOSB has scheduled time for public input on Monday, January 31, 1994, beginning at 9 a.m. and continuing until noon. While people may sign up to speak at the door, advance scheduling assures an opportunity in the time allowed and helps the NOSB plan its activities. Each individual or organization will be allocated 10 minutes for presenting orally the key issues of concern, and should provide copies of written material elaborating on those issues for the Committees.

Dated: December 27, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–32029 Filed 12–30–93; 8:45 am]

BILLING CODE 3410–02–P

Farmers Home Administration

Housing Preservation Grants

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces that it is soliciting competitive applications under its Housing Preservation Grant (HPG) program. This action is taken to comply with Agency regulations found in 7 CFR part 1944, Subpart N, which requires the Agency to announce the opening and closing dates for receipt of preapplications for HPG funds from eligible applicants. The intended effect of this Notice is to provide public agencies, private nonprofit organizations, and other eligible entities notice of these dates. The HPG program will be available to provide repair and rehabilitation assistance to owner(s) of single or multi-unit rental properties and cooperative housing projects, as well as homeowners. This is the first time the HPG program will be available to provide repair and rehabilitation assistance to owners of rental properties. Also, the selection criteria has been changed from the previous year.

DATES: FmHA hereby announces that it will begin receiving preapplications on January 3, 1994. The closing date for acceptance by FmHA of preapplications is on April 4, 1994. This period will be the only time during the current fiscal year that FmHA accepts preapplications. Preapplications must be received by or postmarked on or before this date.

ADDRESSES: Submit preapplications to FmHA field offices; applications must contact their FmHA State Office for this information.

FOR FURTHER INFORMATION CONTACT: Sue M. Harris, Senior Loan Officer, Multi-family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1606 (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: 7 CFR part 1944, Subpart N provides details on what information must be contained in the preapplication package. Entities wishing to apply for assistance should contact the FmHA State Office to receive further information and copies of the application package. Eligible entities for these competitively awarded grants include State and local governments, nonprofit corporations, Federally recognized Indian Tribes, and consortia of eligible entities.

This program is listed in the Catalog of Federal Domestic assistance under No. 10.443, Housing Preservation Grants. This program is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (7 CFR part 3015, subpart V; 48 FR 29115, June 24, 1983). Applicants are also referred to 7 CFR part 1944, Sections 1944.674 and 1944.676 (d) and (e) for specific guidance on these requirements relative to the HPG program.

The funding instrument for the HPG program will be a grant agreement. The term of the grant can vary from 1 to 2 years, depending on available funds and demand. No maximum or minimum grant levels have been set, although based on fiscal year (FY) 1991 and FY 92 experience, the Agency anticipates that the average grant will be between $100,000 and $150,000 for 1 year proposal. For FY 94, $23,000,000 is available and has been distributed under a formula allocation to States pursuant to 7 CFR part 1940, subpart L, "Methodology and Formulas for Allocation of Loan and Grant Funds."

Decisions on funding will be based on the preapplications, and notices of action on the preapplications should be made no earlier than 66 days prior to the closing date.

Dated: November 30, 1993.

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–30302 Filed 12–30–93; 8:45 am]

BILLING CODE 3410–07–M

Forest Service

BlueGrass Bound Timber Sale; Idaho Panhandle National Forests; Boundary County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; cancellation of notice of intent to prepare an environmental impact statement.

SUMMARY: On August 31, 1993, notice was published in the **Federal Register** (FR 45879) that an environmental impact statement would be prepared to assess the effects of timber harvest and road construction within the Boundary Creek Drainage on the Bonners Ferry Ranger District, Idaho Panhandle National Forests.

That notice is hereby cancelled.

Changes in Agency direction will result in significant changes to the proposed action and the purpose and need for the proposed action. A new Notice of Intent to prepare an environmental impact statement will appear in the **Federal Register** in the early 1994.

DATE: This action is effective on January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Mark Grant, NEPA Coordinator, Bonners Ferry Ranger District, Route 4 Box 4860, Bonners Ferry, Idaho 83805, (208) 267–5561.

Dated: December 17, 1993.

Debbie Henderson-Norton,

District Ranger, Bonners Ferry Ranger District, Idaho Panhandle National Forests.

[FR Doc. 93–32024 Filed 12–30–93; 8:45 am]

BILLING CODE 3410–11–M

Food and Nutrition Service

Food Distribution Program; Level of Assistance From October 1, 1993 to September 30, 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice announces the initial level of per-meal assistance for the Nutrition Program for the Elderly (NPE) for Fiscal Year 1994. The initial level of assistance is set at $.6146 for each eligible meal in accordance with section 311(a)(4) of the Older Americans Act of 1965, as amended by section 310 of the Older Americans Act Amendments of 1992.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, Alexandria, Virginia 22302–1594 or telephone (703) 305–2660.

SUPPLEMENTARY INFORMATION:

Classification

This program is listed in the Catalog of Federal Domestic Assistance under Nos. 10.550 and 10.570 and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983.)

This notice imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act.

Legislative Background

On September 30, 1992, the President signed Public Law 102–375, the Older Americans Act Amendments of 1992. Section 310 of this law amended section 311(a)(4) of the Older Americans Act of 1965, 42 U.S.C. 3030a(a)(4), to require the Secretary of Agriculture to maintain an annually programmed level of assistance equal to the greater of: (1) The current appropriation divided by the number of meals served in the preceding fiscal year; or (2) 61 cents per meal adjusted annually beginning with Fiscal Year 1993 to reflect changes in the Consumer Price Index (CPI). Section 311(c)(2) of the Older Americans Act was amended to provide that the final reimbursement claims shall be adjusted to use the full amount appropriated for the fiscal year.

Notwithstanding the initial rates established by the Older Americans Act, the Department must comply with the spending clause of the U.S. Constitution and 31 U.S.C. 1341(a)(1)(A) (known as the Antideficiency Act), which prohibit the obligation or expenditure of funds in excess of the available appropriation. Thus the Department is required to establish (and, if necessary, adjust) rates in such a manner as to not exceed the program appropriation.

In Fiscal Year 1994, a situation exists similar to that at the beginning of Fiscal Year 1993, i.e., the Fiscal Year 1994 appropriation will not sustain reimbursement at the mandated annually adjusted rate. However, the Agriculture, Rural Development, Food and Drug Administration, and Related

Agencies Act of 1993 (Public Law 103–111), which appropriated NPE funding for Fiscal Year 1994, imposed additional rate management requirements for this year. Title IV, *Domestic Food Programs*, of the Act provides that " * * * a maximum rate of reimbursement to States will be established by the Secretary, subject to reduction if obligations would exceed the amount of available funds, with any unobligated funds to remain available for obligation in the fiscal year beginning October 1, 1994." Thus the Department cannot increase the initially announced Fiscal Year 1994 rate, and can decrease this rate only if it cannot be sustained throughout the year.

Fiscal Year 1994 Rate and Procedures

Senate Report No. 102, 103rd Cong., 1st Sess., at 125 (July 20, 1993) clarifies the congressional intent of Public Law 103–111 with regard to the 1994 level of NPE funding by identifying the FY 1994 rate as " * * * the maximum reimbursement per meal permitted by law as estimated by the Secretary at the beginning of the fiscal year within the level of available funds." Thus the Department is required to establish the highest initial per-meal reimbursement rate which it believes can be sustained throughout the fiscal year.

Accordingly, the Department hereby announces an initial rate of $.6146 per meal, which will not be increased, and which can be decreased only if necessary to keep expenditures within the limit of the $150 million NPE appropriation established by Public Law 103–111. This consistent and stable rate will enable State agencies to better plan and budget their operations, and local project operators can, in turn, depend on a steady, uniform flow of meal service support during the fiscal year. Any funds not paid out for Fiscal Year 1994 reimbursement will, in accordance with legislative mandate, be carried over into Fiscal Year 1995 and expended in per-meal reimbursement for that year. In the unlikely event that the rate needs to be decreased, the adjustment will be announced in the **Federal Register**.

Dated: December 10, 1993.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 93–32047 Filed 12–30–93; 8:45 am]

BILLING CODE 3410–30–U

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 667]

Star Enterprise, (Oil Refinery), Convent, LA; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the South Louisiana Port Commission, grantee of Foreign-Trade Zone 124, for authority to establish a special-purpose subzone for the refinery facilities of Star Enterprise, Convent, Louisiana, was filed by the Board on March 21, 1991, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 16–91, 56 FR 13797, 4–4–91); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 124C) at the Star Enterprise refinery facilities in Convent, Louisiana, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign crude oil or products used as fuel for the refinery shall be dutiable.

2. Star shall elect privileged foreign status on foreign crude oil and other foreign products admitted to the subzone, except as indicated below.

3. Star may elect nonprivileged foreign status with respect to foreign crude oil that is associated with sulfur by-product that results from the refining process, based on an appropriate allocation method to be determined by Customs. This initial approval is limited to a period of three years beginning from the date of activation, subject to extension.

Signed at Washington, DC, this 21st day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–32074 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 666]

Sanden International (U.S.A.), Inc., (Automotive Air-Conditioner Components), Wylie, TX; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Dallas/Fort Worth International Airport Board, grantee of Foreign-Trade Zone 39, for authority to establish a special-purpose subzone at the automotive air-conditioner components manufacturing plant of Sanden International (U.S.A.), Inc., in Wylie, Texas (Dallas/Fort Worth Customs port of entry area), was filed by the Board on December 21, 1992, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 37–92, 58 FR 78, 01–04–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 39C) at the Sanden International (U.S.A.), Inc., plant in Wylie, Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December, 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–32073 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 668]

Star Enterprise (Oil Refinery), Port Arthur, TX; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Foreign-Trade Zone of Southeast Texas, grantee of Foreign-Trade Zone 116, for authority to establish a special-purpose subzone for the refinery facilities of Star Enterprise, in Jefferson and Hardin Counties (Port Arthur area), Texas, was filed by the Board on March 21, 1991, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 17–91, 56 FR 13799, 4–4–91); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval is subject to the conditions listed below;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 116A) at the Star Enterprise refinery facilities in Jefferson and Hardin Counties (Port Arthur area), Texas, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the following conditions:

1. Foreign crude oil or products used as fuel for the refinery shall be dutiable.

2. Star shall elect privileged foreign status on foreign crude oil and other foreign products admitted to the subzone, except as indicated below.

3. Star may elect nonprivileged foreign status with respect to foreign crude oil that is associated with sulfur by-product that results from the refining process, based on an appropriate allocation method to be determined by Customs. This initial approval is limited to a period of three years beginning from the date of activation, subject to extension.

Signed at Washington, DC, this 21st day of December.1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–32075 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 670]

Expansion of Foreign-Trade Zone 84, Houston, TX

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a—81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, an application from the Port of Houston Authority, Texas, grantee of Foreign-Trade Zone No. 84, for authority to expand its Zone Site 11 at the liquid bulk storage facility of Oiltanking of Houston, Inc., Houston, Texas, within the Houston Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on December 22, 1992 (Docket 38–92, 58 FR 3532, 9/30/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval would be in the public interest, provided that the restrictions in Board Order 409 authorizing the site apply to the expanded site;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28, and further subject to the restrictions contained in Board Order 409 (53 FR 53042, 12–30–88).

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–32076 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–791–502]

Brazing Copper Wire and Rod From South Africa; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on brazing copper wire and rod from South Africa.

Domestic interested parties who object to this revocation must submit their comments in writing no later than January 31, 1994.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1986, the Department of Commerce (the Department) published an antidumping duty order on brazing copper wire and rod from South Africa (51 FR 3640). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it

is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than January 31, 1994, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by January 31, 1994, or domestic interested parties do not object to the Department's intent to revoke by January 31, 1994, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–32067 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–814]

Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China; Affirmative Preliminary Determination of Circumvention of Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of affirmative preliminary determination of circumvention of antidumping duty order.

SUMMARY: On July 21, 1993, the Department of Commerce received an application for a circumvention inquiry of the antidumping duty order on certain carbon steel butt-weld pipe fittings from the People's Republic of China. Pursuant to that application, the Department of Commerce initiated a circumvention inquiry on September 2, 1993, which was published in the **Federal Register** on September 13, 1993 (58 FR 47859).

We preliminarily determine that imports into the United States of pipe fittings that were finished in Thailand from unfinished pipe fittings produced in the People's Republic of China constitute circumvention of the antidumping duty order on certain carbon steel butt-weld pipe fittings from the People's Republic of China, within the meaning of section 781(b) of the Tariff Act of 1930, as amended. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Karin Price, Donald Little, or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On July 6, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 29702) the antidumping duty order on certain carbon steel butt-weld pipe fittings (pipe fittings) from the People's Republic of China (PRC). On July 21, 1993, the petitioner, the U.S. Fittings Group, alleged that the antidumping duty order on pipe fittings from the PRC was being circumvented, and requested that the Department investigate the matter. The U.S. Fittings Group is an ad hoc trade association of domestic producers of pipe fittings; its members currently consist of Hackney, Inc.; Ladish Company, Inc.; L.A. Boiler Works, Inc.; Mills Iron Works, Inc.; Steel Forgings, Inc.; and Tube Forgings of America, Inc.

The petitioner alleged that the antidumping duty order on pipe fittings from the PRC is being circumvented through the shipment of unfinished pipe fittings produced in the PRC to Awaji Sangyo (Thailand) Company, Ltd. (AST), located in Thailand, which then finishes the pipe fittings and exports them to the United States free of antidumping duties. AST was excluded from the antidumping duty order on pipe fittings from Thailand (57 FR 29702, July 6, 1992) due to the finding of a *de minimis* margin for AST in the less-than-fair-value (LTFV) investigation of that case.

The petitioner requested, in accordance with section 781(b) of the Tariff Act of 1930, as amended, (the Tariff Act), that the Department conduct a circumvention inquiry. On September 2, 1993, pursuant to the petitioner's application, the Department initiated a circumvention inquiry in this matter. The notice of initiation of circumvention inquiry of the antidumping duty order on pipe fittings from the PRC was published in the **Federal Register** on September 13, 1993 (58 FR 47859).

On September 24, 1993 and September 28, 1993, respectively, the Department issued circumvention questionnaires to AST, and to the Ministry of Foreign Trade and Economic Cooperation (MFTEC) in the PRC on behalf of all manufacturers and sellers of pipe fittings in the PRC. AST responded to Part 1 of the questionnaire on October 4, 1993 and to Part 2 of the questionnaire on November 8, 1993. Mitsui & Company (Mitsui), on behalf of Shenzhen Fittings Manufacturing Factory (Shenzhen Factory), the Chinese supplier of unfinished pipe fittings to AST, responded to Part 1 of the questionnaire on October 15, 1993 and to Part 2 of the questionnaire on November 8, 1993. Shenzhen Factory is a limited partnership, in which Mitsui is the general partner. Neither MFTEC nor other Chinese manufacturers or sellers of the subject merchandise responded to the Department's questionnaire. The Department issued supplemental questionnaires to AST and to Mitsui on November 12, 1993 and November 16, 1993, respectively. The Department received AST's response to its supplemental questionnaire on November 23, 1993, and Mitsui's response to its supplemental questionnaire on November 29, 1993. The Department issued additional supplemental questionnaires to AST and Mitsui on December 3, 1993; responses were received on December 10, 1993.

The Department also issued a circumvention questionnaire to Thai Benkan Company, Ltd. (Thai Benkan), a Thai importer of unfinished tees manufactured by Shenzhen Factory, on November 8, 1993. The Department received a response from Thai Benkan on November 30, 1993, which was revised on December 2, 1993. Thai Benkan stated in its response that it has made no shipments of pipe fittings to the United States after November 1991.

The Department also issued a questionnaire to Silbo Industries, Inc. (Silbo), a U.S. importer of subject merchandise from Thailand and the PRC, on November 18, 1993. Silbo responded to part of the questionnaire on December 8, 1993. The remaining portion of its response is due to the Department on January 4, 1994. Additionally, the Department sent a questionnaire to another company whose name is proprietary. However, the response was untimely and was returned and not considered for our determination.

Scope of the Antidumping Duty Order

Imports covered by the antidumping duty order are shipments of carbon steel butt-weld pipe fittings, having an inside diameter of less than 14 inches, imported in either finished or unfinished form. These formed or forged pipe fittings are used to join sections in piping systems where conditions require permanent, welded connections, as distinguished from fittings based on other fastening methods (e.g., threaded, grooved, or bolted fittings). Carbon steel butt-weld pipe fittings are currently classified under subheading 7307.93.30 of the Harmonized Tariff Schedule (HTS). Although the HTS subheading is provided for convenience and Customs purposes, our written description of the scope of this order remains dispositive.

Scope of the Anti-Circumvention Inquiry

The products subject to this circumvention inquiry are pipe fittings, as described above in the "Scope of the Antidumping Duty Order" section, which are exported in unfinished form from the PRC to Thailand, where some finishing is performed. We requested data for the period January 1, 1991 through August 31, 1993, except for pattern of trade data, which were requested for the period January 1, 1988 through August 31, 1993.

Nature of the Anti-Circumvention Inquiry

Section 781(b)(1) of the Tariff Act provides that if:

(A) Merchandise imported into the United States is of the same class or kind as any merchandise produced in a foreign country that is the subject of an antidumping duty order,

(B) Before importation into the United States, such imported merchandise is completed or assembled in another foreign country from merchandise which (i) is subject to such order, or (ii) is produced in the foreign country with respect to which such order applies,

(C) The difference between the value of such imported merchandise and the value of the merchandise completed or assembled in another foreign country is small, and

(D) The administering authority determines that action is appropriate under this paragraph to prevent evasion of such order,

the Department, after taking into account any advice provided by the U.S. International Trade Commission (ITC) under section 781(e), may include such imported merchandise within the scope of such order.

In determining whether to include merchandise assembled or completed in a foreign country within an order, section 781(b)(2) of the Tariff Act directs the Department to consider such other factors as (1) the pattern of trade, (2) whether the manufacturer or exporter of the merchandise produced in the country to which the order applies is related to the entity who uses such merchandise to essemble or complete in the foreign country the merchandise that is subsequently imported into the United States, and (3) whether imports into the foreign country of the merchandise produced in the country to which the order applies have increased after issuance of that order.

I. Statutory Criteria

(1) Class or Kind of Merchandise

In this inquiry, the merchandise completed in Thailand and exported to the United States is pipe fittings having an inside diameter of less than 14 inches. Thus, the product exported to the United States is of the same class or kind of merchandise as the product subject to the antidumping duty order.

(2) Merchandise Imported Into the United States Completed From Merchandise Subject to an Order

The pipe fittings finished in Thailand and exported to the United States were completed from unfinished "as-formed" pipe fittings manufactured in the PRC. Therefore, the merchandise exported to the United States is completed from merchandise subject to the antidumping duty order and produced in the country with respect to which the antidumping duty order applies.

(3) Difference in Value

In this anti-circumvention inquiry, we based our analysis of the difference in value on both a quantitative analysis of the value of the finishing process in Thailand, and a qualitative analysis of the nature of the processing performed in Thailand and the level of investment in Thailand. Such an analysis is consistent with our analysis in previous anti-circumvention inquiries. See, e.g., Granular Polytetrafluoroethylene Resin from Italy; Final Affirmative Determination of Circumvention of Antidumping Duty Order (58 FR 26100, April 30, 1993).

(a) Value of the Completed Merchandise. We used the selling price of the finished tees sold by AST to the United States on a model-specific, per kilogram basis to represent the value of the finished pipe fittings sold to the United States, as reported in AST's questionnaire response. The terms of sale for these sales were CIF U.S. port duty unpaid.

(b) Value of Thai Completion. In order to determine the value of the Thai completion, we used the cost of manufacturing at AST's factory which finished the tees from unfinished Chinese tees for each month during the period January 1, 1991 through August 31, 1993 in which the finishing occurred, as provided by AST. We allocated selling, general, and administrative expenses and profit from AST's financial statements, as well as an amount of Awaji Sangyo K.K. of Japan's export selling expenses as provided in AST's November 23, 1993 response, to AST's cost of manufacturing.

We used the value of the Thai completion, as provided by AST, because it was the most complete, verifiable information available. Complete factors data were unavailable for constructing the cost of the unfinished Chinese tees. For example, Shenzhen Factory was not able to provide the consumption rates of raw material inputs, other than steel pipe, used in manufacturing the unfinished tees or the number of labor hours used in the production process. Public data on electricity consumption for producing unfinished tees were also not available.

We calculated the difference in value percentage by dividing the value added in Thailand by the value of the completed merchandise. We preliminarily determine that the difference in value is 15 percent of the value of the completed merchandise. (Since the precise figure is business proprietary, the stated percentage is within a range of plus or minus 10 percent.) See December 22, 1993 proprietary analysis memorandum from case analyst to the File. In order to determine whether 15 percent is "small" within the meaning of the Tariff Act, we examined the nature of the processing performed in Thailand and the level of investment in Thailand.

Nature of Processing

According to the description of the manufacturing process provided by the ITC in its final affirmative determination of injury concerning imports of pipe fittings from the PRC and Thailand (see Certain Carbon Steel Butt-Weld Pipe Fittings from China and Thailand; Determinations of the Commission in Investigations Nos. 731–TA–520 and 521 (Final) Under the Tariff Act of 1930, Together With the Information Obtained in the Investigations, USITC Publication 2628,

June 1992 at I–7 through I–10), the cold process is the most efficient process for forming tees which are less than 12 inches in diameter. In the cold process, the raw material pipe is first cut to length, and the section is enclosed in a die that matches the shape and size of the finished tee within a press. The die is then closed, plugs are used to seal the ends, and a fluid, such as water or a light oil, forces under pressure the metal into the shape of the die. This process produces the unfinished tee. Finishing steps re-round, resize, and anneal the unfinished tee.

The finishing steps involved in the production of pipe fittings include one or more of the following: shot blasting, machine beveling, boring and tapering, grinding, die stamping, inspection, and painting. According to the ITC, beveling, boring, and tapering add an estimated 11–20 percent of value, and the remaining finishing operations add an estimated 3–9 percent of value.

Mitsui's response indicates that Shenzhen Factory produces unfinished tees using a cold-forming method. After Shenzhen Factory cuts the raw material carbon steel pipe to a pre-determined length and lubricates the pipe on the exterior surface, it cold forms the pipe using the "Bulge Method," a process in which a hydraulic press is used.

AST receives the unfinished tees in this as-formed condition, with the bulging head closed. AST then cuts the bulging head off the tee, heat treats the "decapped" as-formed tee in order to prevent the steel material from becoming brittle from the stress of cold-forming, shot blasts the tees to remove heat scales from the surface, and bevels and precision machines the ends of the tees. These processes are then followed by cleaning, coating with an oxidizing agent or paint, and marking. AST does not provide any additional materials to the unfinished pipe fitting.

Based on the above description of the manufacturing process for tees and other pipe fittings, we preliminarily determine that the finishing operations performed by AST, or by any other Thai company, to finish pipe fittings are of minor value when compared to the production of the unfinished pipe fittings.

Level of Investment

AST has stated that it began in 1991 its tees conversion operation, i.e., the conversion of unfinished tees into finished tees, pursuant to a formal corporate decision made in the prior year. This was an interim step with the goal of producing tees in an integrated process, from the raw material pipe, by the end of 1993. The level of investment undertaken by AST, or which will be undertaken by AST, toward this goal indicates that the plant and equipment required to produce the as-formed tee from the raw material pipe is substantial as compared to that required for the finishing operations. See December 22, 1993 proprietary analysis memorandum from case analyst to the File.

We have determined that the finishing operations performed to finish unfinished tees provide limited value to the finished tee relative to the production process used to manufacture the unfinished tee. Moreover, the level of investment required to produce unfinished tees is significant when compared to that required to finish the unfinished tee. Accordingly, based on the qualitative factors discussed above, we preliminarily determine that the calculated difference in value percentage is "small" within the meaning of section 781(b) of the Tariff Act.

(4) Action is Appropriate to Prevent Evasion of the Order We preliminarily determine that action is appropriate to prevent the circumvention of the antidumping duty order on pipe fittings from the PRC. The Department has no other means to ensure that entries of Chinese pipe fittings finished by AST are suspended and any appropriate duties ultimately collected thereon, or to ensure that proper cash deposits are collected on entries of Chinese pipe fittings finished by other companies in Thailand.

II. Factors

(1) Pattern of Trade

To evaluate the pattern of trade factors in this case, we examined the timing and quantities of exports of pipe fittings from AST to the United States during the period January 1, 1988 through August 1, 1993. AST began exporting finished tees to the United States in 1991. Data on AST's exports of finished tees to the United States show a significant increase in the volume of these exports subsequent to the issuance of the antidumping duty order on pipe fittings from the PRC. We also examined data on Shenzhen Factory's exports to the United States for the period January 1, 1991 through August 31, 1993. These data indicate that the volume of Shenzhen Factory's exports to the United States decreased significantly subsequent to the issuance of the antidumping duty order on pipe fittings from the PRC.

Therefore, this factor indicates that circumvention may have been occurring during the period. See December 22, 1993 analysis memorandum from case analyst to the File.

Because an antidumping duty order on pipe fittings from Thailand was issued by the Department at the same time as the order on pipe fittings from the PRC, any comparison of the quantity of exports from Thailand to the United States with the quantity of exports from the PRC to the United States prior to and subsequent to the issuance of the orders would be meaningless. Therefore, we have not included such a comparison in our analysis.

(2) Relationship

Generally, we consider circumvention to be more likely when the manufacturer of the covered merchandise is related to the third country assembler. Our inquiry indicates that the relationship between AST, the third country assembler and exporter of the finished pipe fittings to the United States, and Mitsui and Shenzhen Factory, the entity which produced the unfinished pipe fittings sold to AST, was limited to the purchase/sale of the unfinished pipe fittings. Therefore, in this inquiry, no purchases of Chinese unfinished pipe fittings occurred between related parties within the meaning of section 773(e)(4) of the Tariff Act.

(3) Increase in Imports

Data on imports of unfinished pipe fittings into Thailand from Chinese manufacturers/sellers other than Shenzhen Factory were not available, and public data on imports of pipe fittings from the PRC into Thailand were not available for the period after June 1992. Therefore, to measure the increase in imports, we examined export data supplied by Shenzhen Factory for the period January 1, 1991 through August 31, 1993. It is clear that an increase in exports of unfinished tees from Shenzhen Factory to Thailand occurred after the issuance of the antidumping duty order on pipe fittings from the PRC. This increase corresponds to the increase of AST's exports of finished tees to the United States during the same period. See December 22, 1993 analysis memorandum from the case analyst to the File. Accordingly, this factor indicates that circumvention activities may have occurred.

Affirmative Preliminary Determination of Circumvention

After consideration of the factors discussed above, we preliminarily determine that circumvention of the antidumping duty order on pipe fittings from the PRC has occurred within the meaning of section 781(b) of the Tariff Act. We base this determination on the following. First, the items completed in Thailand and sold to the United States are of the same class or kind of merchandise as that covered by the order, and are completed from merchandise produced in the PRC and covered by the order. Second, the difference in value between the unfinished pipe fittings sold to Thailand and the value of the finished pipe fittings exported to the United States is small. We note that our determination of "small" in this case is not necessarily synonymous with the determination of "small" that the Department has used in the past or that the Department will use in future anti-circumvention inquiries, because Congress has directed us to make such determinations on a case-by-case basis. Further, we find the pattern of trade and level of imports into Thailand indicate a finding of circumvention of the antidumping duty order. Finally, we find that action is appropriate to prevent evasion of the antidumping duty order. To this end, and in accordance with the purposes of section 781, we are applying this finding to all Thai manufacturers/exporters of the class or kind of merchandise, i.e., pipe fittings, subject to the certification requirements described below.

Requirement of Certification

Considered within the scope of the antidumping duty order on pipe fittings from the PRC are all imports from all producers into the United States of pipe fittings from Thailand, as defined in the "Scope of the Inquiry" section of this notice, unless accompanied by a certificate stating that such pipe fittings have not been produced from unfinished Chinese pipe fittings.

Suspension of Liquidation

In accordance with 19 CFR 353.29(j)(2), we are directing the U.S. Customs Service to suspend liquidation of all entries of pipe fittings from Thailand. The merchandise subject to suspension of liquidation is pipe fittings, as defined in the "Scope of Circumvention Inquiry" section of this notice, that are entered or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. (We note that entries of pipe fittings from Thailand, with the exception of AST's pipe fittings, are currently being suspended pursuant to the antidumping duty order on pipe fittings from Thailand (57 FR 29702, July 6, 1992).) For all such imports which are accompanied by a certificate stating that such pipe fittings have not been produced from unfinished Chinese pipe fittings, the U.S. Customs Service shall require a cash deposit or posting of a bond in the amount of the company-specific rate for the Thai manufacturer/exporter, or, if there is no company-specific rate for the Thai manufacturer or exporter, the "All Others" rate for pipe fittings from Thailand. For all such imports which are accompanied by a certificate stating that the merchandise was manufactured using Chinese unfinished pipe fittings and the name of the manufacturer of the Chinese unfinished pipe fittings, the U.S. Customs Service shall require a cash deposit or posting of a bond in the amount of the company-specific rate of the manufacturer of the Chinese unfinished pipe fittings. For all such imports which are accompanied by a certificate stating that such pipe fittings have been produced from unfinished Chinese pipe fittings, but do not provide the specific Chinese manufacturer, the U.S. Customs Service shall require a cash deposit or posting of a bond in the amount of the highest rate for pipe fittings from the PRC. For all other imports of pipe fittings from Thailand which are accompanied by an inadequate certificate, or no certificate, the U.S. Customs Service shall require a cash deposit or posting of a bond in an amount based on the higher of (1) the highest rate for any manufacturer/exporter of pipe fittings from the PRC, or (2) the rate for the Thai manufacturer/exporter, or, if there is no company-specific rate for the Thai manufacturer or exporter, the "All Others" rate for pipe fittings from Thailand.

This suspension of liquidation shall remain in effect until further notice.

Notification of the International Trade Commission

The Department, consistent with section 781(e)(1)(B) of the Tariff Act, will notify the ITC of this preliminary determination to include merchandise subject to this inquiry within the antidumping duty order on pipe fittings from the PRC. Pursuant to section 781(e)(2) of the Tariff Act, the ITC may request consultation concerning the Department's proposed inclusion of the subject merchandise. If, after consultations, the ITC believes that a significant injury issue is presented by the proposed inclusion, the ITC will have 60 days from the date of notification to provide written advice to the Department.

Public Comment

Interested parties may request disclosure within 5 days of the date of publication of this determination, and may request a hearing within 10 days of publication. Case briefs and/or written comments from interested parties may be submitted not later than February 16, 1994. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those briefs or comments, may be filed not later than February 22, 1994. Any hearing, if requested, will be held on February 24, 1994. The Department will publish its final determination with respect to this anti-circumvention inquiry, including the results of its analysis of any written or oral comments.

This preliminary affirmative circumvention determination is in accordance with section 781(b) of the Tariff Act (19 U.S.C. 1677j(b)) and 19 CFR 353.29(f).

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–32068 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–503]

Preliminary Results of Antidumping Duty Administrative Review; Iron Construction Castings From Canada

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review.

SUMMARY: In response to a request by the Municipal Castings Fair Trade Council and its individually-named members (petitioner), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on iron construction castings from Canada. The review covers 11 manufacturers and/or exporters of the subject merchandise to the United States during the period March 1, 1992, through February 28, 1993. For these preliminary results, we applied best information available (BIA) for 10 of the manufacturers/exporters. The review indicates the existence of dumping margins during the period.

We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 3, 1994

FOR FURTHER INFORMATION CONTACT: Lisa Raisner, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3518.

SUPPLEMENTARY INFORMATION:

Background

On March 5, 1986, the Department published in the **Federal Register** (51 FR 17220) the antidumping duty order on iron construction castings from Canada. The petitioner requested in accordance with 19 CFR 353.22(a) that we conduct an administrative review. We published the notice of initiation on May 6, 1993 (58 FR 26960). The Department has now conducted that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

Imports covered by this review are shipments of certain iron construction castings from Canada, limited to manhole covers, rings, and frames, catch basin grates and frames, cleanout covers and frames used for drainage or access purposes for public utility, water, and sanitary systems, classifiable as heavy castings under Harmonized Tariff Schedule (HTS) item numbers 7325.10.0010 and 7325.10.0050 and to valve, service, and meter boxes which are placed below ground to encase water, gas, or other valves, or water and gas meters, classifiable as light castings under HTS item numbers 8306.29.0000 and 8310.00.0000. The HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

This review covers sales of certain Canadian iron construction castings by Associated Foundry Ltd., Bibby Foundry Ltd., Bibby Waterworks Inc., Dobney Foundry Ltd., Fonderie Bibby St. Croix, LaPerle Foundry Division (LaPerle), McCoy Foundry Company, Penticton Foundry Ltd., Titan Foundry Ltd., Titan Supply Ltd., and Trojan Industries, Inc., during the period March 1, 1992, through February 28, 1993.

Analysis

We received only one questionnaire response, and that was from LaPerle. Based on our analysis of this response, we have determined that LaPerle is related to other respondents in this review. LaPerle and its related entities meet all five criteria, in addition to ownership, that the Department considers in determining whether to collapse related parties, as laid out in Certain Granite Products for Spain, 53 FR 24335, 1988; Certain Granite Products for Italy 53 FR 27187, 1988; Steel Wheels from Brazil, 54 FR 8780, 1989; Cellular Mobile Telephones and Subassemblies from Japan, 54 FR 48011, 1989; and Final Determinations of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, Certain Corrosion-Resistant Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate from Canada, 58 FR 37099 (July 9, 1993). The five criteria, in addition to ownership, are as follows:

- Interlocking boards of directors;
- Similar production processes, facilities or equipment so as to facilitate shifting of production between facilities;
- Do not operate as separate and distinct entities;
- Share of marketing and sales information or offices; and
- Involvement in the pricing or production decisions of the other entity.

In conducting our analysis of related parties in this review, we issued two supplemental questionnaires and granted extensions for several of the responses. In spite of this, LaPerle did not provide us with enough information to adequately support its position as an independent entity. In addition, it did not consolidate all information for itself, including information for its U.S. affiliate(s) and related home market or third country firms whose information would be used in this review, as outlined in our questionnaire. Therefore, we have determined that LaPerle significantly impeded the proceedings. LaPerle was deemed uncooperative and, in accordance with section 776(c) of the Tariff Act, we applied BIA to LaPerle and its related parties.

Best Information Available

In accordance with section 776(c) of the Tariff Act, we have used BIA in cases where a party refused or was unable to produce information requested in a timely manner and in the form required, or otherwise significantly impeded these proceedings. The Department generally uses a two-tiered approach in its choice of BIA. For uncooperative respondents or respondents who substantially impede the proceedings (first tier), the Department uses the higher of (1) the highest rate for any company from the original investigation or prior administrative review or (2) the highest rate found in the current review for any company. For respondents which attempt to cooperate (second tier), the Department uses the higher of (1) the highest rate ever applicable to the firm for the subject merchandise or (2) the highest calculated rate in the current review for any firm (see Antifriction Bearings (Other than Tapered Roller Bearings) and Parts Thereof from France, et al., 58 FR 39729, July 26, 1993). For parties refusing to respond or parties who substantially impeded the administrative review, the first-tier BIA rate we applied in these preliminary results is 9.9 percent, which is the highest of the rates found for any firm in the original investigation (see Iron Construction Castings from Canada; Amendment to Final Determination of Sales at Less than Fair Value and Amendment to Antidumping Duty Order, 51 FR 34110, September 25, 1986).

For more information on these BIA applications to the above companies, see the analysis memorandum.

Preliminary Results of the Review

As a result of our review, we preliminarily determine that margins exist for the period March 1, 1992 through February 28, 1993, as follows.

Manufacturer/Exporter	Percent Margin
Associated Foundry Ltd.	9.9
Bibby Foundry Ltd	9.9
Bibby Waterworks Inc	9.9
Dobney Foundry Ltd	9.9
Fonderie Bibby St. Croix	9.9
LaPerle Foundry, Inc	9.9
McCoy Foundry Company	[1]7.5
Penticton Foundry Ltd	9.9
Titan Foundry Ltd	9.9
Titan Supply Ltd	9.9
Trojan Industries, Inc	9.9

[1] No shipments during the period; since there was no prior review of this company, we assigned the all other rate from the less-than-fair-value (LTFV) investigation.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication or the first business day thereafter. Case briefs and/or written comments from interested parties may be submitted no later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after the date of publication of this notice. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any such written comments or at a hearing.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective, upon publication of the notice of final results of this administrative review, for all shipments of the subject merchandise from Canada that are entered, or withdrawn from warehouse, for consumption on or after the publication date of this notice, as provided by section 751(a)(1) of the Tariff Act:

(1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be their company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) if neither the exporter nor the manufacturer is a firm covered in this or any previous review, the cash deposit rate will be 7.5 percent, which is the "all other" rate established in the LTFV investigation, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

These administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1) and 19 CFR 353.22(c).

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–32070 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–122–701]

Potash From Canada; Intent To Terminate Suspended Investigation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to terminate suspended investigation.

SUMMARY: The Department of Commerce is notifying the public of its intent to terminate the suspended investigation on potash from Canada. Domestic interested parties who object to this termination must submit their comments in writing no later than January 31, 1994.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Eric Hassman or Melissa Skinner, Office of Agreements Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–3793.

SUPPLEMENTARY INFORMATION:

Background

On January 19, 1988, the Department of Commerce (the Department) published a suspension of investigation on potash from Canada (53 FR 1393). The Department has not received a request to conduct an administrative review of this suspended investigation for the most recent four consecutive annual anniversary months.

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that a suspended investigation is no longer of interest to interested parties and will terminate the suspended investigation if no domestic interested party objects to termination and no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as request by § 353.25(d)(4)(i) of the Department's regulations, we are notifying the public of our intent to terminate this suspended investigation.

Opportunity to Object

No later than January 31, 1994, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to terminate this suspended investigation.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review (in accordance with the Department's notice of opportunity to request administrative review) by January 31, 1994, or domestic interested parties do not object to the Department's intent to terminate by January 31, 1994, we shall conclude that the suspension agreement is no longer of interest to interested parties and shall proceed with the termination.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–32071 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–583–603]

Stainless Steel Cooking Ware From Taiwan; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on stainless steel cooking ware from Taiwan. Domestic interested parties who object to this revocation must submit their comments in writing no later than January 31, 1994.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Valerie Turoscy or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 485–5253.

SUPPLEMENTARY INFORMATION:

Background

On January 20, 1987, the Department of Commerce (the Department) published an antidumping duty order on stainless steel cooking ware from Taiwan (52 FR 2138). The Department has not received a request to conduct an administrative review of this order for the most recent four consecutive annual anniversary months.

The Department may revoke an antidumping duty order or finding if the Secretary of Commerce concludes that it is no longer of interest to interested parties. Accordingly, as required by § 353.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this antidumping duty order.

Opportunity to Object

No later than January 31, 1994, domestic interested parties, as defined in § 353.2(k) (3), (4), (5), and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

If interested parties do not request an administrative review in accordance with the Department's notice of opportunity to request administrative review by January 31, 1994, or domestic interested parties do not object to the Department's intent to revoke by January 31, 1994, we shall conclude that the order is no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d)(4)(i).

Dated: December 23, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–32069 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–351–037]

Cotton Yarn From Brazil; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on cotton yarn from Brazil. We are terminating the review with respect to Companhia Brasileira de Fiacao, (CBF) and benefits received by this company are not included in the net subsidy rate of the Department's preliminary results.

We preliminarily determine the net subsidy to be 0.30 percent *ad valorem* for all producers and exporters of cotton yarn from Brazil for the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.50 percent *ad valorem* is *de minimis*. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gayle Longest or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1993, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (58 FR 13583) of the countervailing duty order on cotton yarn from Brazil (42 FR 14089; March 15, 1977) for the period January 1, 1992 through December 31, 1992. On March 31, 1993, the Government of Brazil requested an administrative review for that period. We initiated the review on May 6, 1993 (58 FR 26960). The Department is conducting this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). When examining Brazilian customs information at verification, we found that export information for non-subject merchandise, combed cotton yarn, had been inadvertently included in the questionnaire response. Brazilian officials were not aware that the Harmonized Tariff Schedule (HTS) numbers that covered combed cotton yarn were not included in the scope of this order. At verification, we found that one respondent, CBF, had no shipments of the subject merchandise to the United States during the review period. Therefore, we are terminating the review with respect to this company. The final results of the last administrative review of this order were published in the **Federal Register** on February 2, 1993 (58 FR 6779).

Scope of Review

Imports covered by this review are shipments of Brazilian yarn, carded but not combed, wholly of cotton. During the review period, such merchandise was classifiable under item numbers 5205.11.10, 5205.11.20, 5205.12.10, 5205.12.20, 5205.13.10, 5205.13.20, 5205.14.10, 5205.14.20, 5205.15.10, 5205.15.20, 5205.31.00, 5205.32.00, 5205.33.00, 5205.34.00, and 5205.35.00 of the HTS. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1992 through December 31, 1992, seven programs and the following eight producers/exporters of cotton yarn from Brazil: Companhia Industrial e Agricola Boyes, Companhia Textil do Vale, Cotonificio Guilherme Giorgi S.A., Fiacao Nordeste do Brasil S.A.—Finobrasa, Fiacao e Tecelagem Kanedo do Brasil S.A., Nisshinbo do Brasil Industria Textil Ltda., Toyobo do Brasil Industria Textil, and Unitika do Brasil Industria Textil Ltda.

Calculation Methodology for Assessment and Cash Deposit Purposes

In calculating the benefits received during the review period, we followed the methodology described in the preamble to 19 CFR 355.20(d) (53 FR 52325; December 27, 1988). First, we calculated a country-wide rate, weight-averaging the subsidy rates of the eight companies subject to review to determine the overall subsidy from all countervailing programs benefitting exports of the subject merchandise to the United States. Because the overall weighted-average country-wide rate was *de minimis*, as defined by 19 CFR 355.7, we did not proceed any further in our analysis.

Analysis of Programs

(1) Program That Provided Benefits During the Period of Review

a. Reductions of Taxes and Import Duties Through BEFIEX

The Commission for the Granting of Fiscal Benefits to Special Export Programs (BEFIEX) allows Brazilian exporters, in exchange for export commitments, to take advantage of several types of benefits, such as import duty reductions and accelerated depreciation for machinery used in the production of exports. Because this program provides tax reductions that are limited to exporters, we preliminarily determine that this program is countervailable. Brazilian Law 8.032 of April 12, 1990, eliminated this program for new projects. However, the Department has determined that residual benefits may continue due to outstanding BEFIEX contracts.

Four cotton yarn exporters received import duty tax reductions and two of these cotton yarn exporters also received merchant marine freight tax reductions by virtue of their BEFIEX contracts during the review period.

To calculate the benefit, we divided the amount of each firm's import duty reductions and merchant marine tax exemptions received in 1992 by that firm's total exports in 1992. We then weight-averaged the benefits by each respondent's share of exports of the subject merchandise to the United States. On this basis, we preliminarily determine the benefit to be 0.30 percent *ad valorem* for all firms.

(2) Terminated Programs With No Residual Benefits During the Period of Review

a. Income Tax Reduction for Export Earnings

This program was terminated effective April 12, 1990, by Decree Law 8034 which established a uniform tax rate of 30 percent for domestic and export earnings beginning with tax year 1990. Since the last tax returns on which these benefits could be claimed were filed in 1991, there are no residual benefits from this program. (See Cotton Yarn From Brazil; Preliminary Results of Countervailing Duty Administrative Review, (56 FR 47456) and Cotton Yarn From Brazil; Final Results of Countervailing Duty Administrative Review, (57 FR 1454).)

b. CACEX (Carteira de Comercio Exterior) Preferential Working Capital Financing for Exports

This program was terminated effective August 30, 1990, by Central Bank Resolution 1744. In accordance with Resolution 1744, there are no residual benefits from this program since all non-used portions of financing were cancelled when the program was eliminated. At verification, we saw no evidence of this financing at the companies.

c. IPI (Tax on Industrialized Products) for Imports of Machinery or Equipment Under Decree Law 2324

This program was terminated effective December 28, 1989, by Decree-Law 7988. Companies could benefit from the tax exemption until December 31, 1990, and no residual benefits were provided after this date. At verification, we saw no evidence of IPI tax exemptions under Law 2324 at the companies.

(3) Programs Not Used

We also examined the following programs and preliminarily determine that the respondents did not use them during the review period:

A. SUDENE Corporate Income Tax Reduction for Companies Located in the Northeast of Brazil.

B. Preferential Export Financing under CIC-OPCRE of the Banco do Brasil.

C. Preferential Financing for Industrial Enterprises by the Banco do Brasil (FST and EGF loans).

Verification

As required under 19 CFR 355.38(a)(1)(iv)(B) of the Department's regulations, we verified Brazilian cotton yarn exporters because no verification had been conducted in either of the two immediately preceeding administrative reviews. We selected several companies for verification of both programs that were used and programs that were not used. When conducting verification of Brazilian customs information, we found that Brazilian officials had inadvertently reported export information for shipments of non-subject merchandise, combed cotton yarn, to the United States. According to Brazilian government records, CBF, a company originally included in this review, had no shipments of the subject merchandise to the United States during the review period. At the company, we examined company records and found no evidence of shipments of the subject merchandise to the United States during the review period.

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 0.30 percent *ad valorem* for all firms for the period January 1, 1992 through December 31, 1992. In accordance with 19 CFR 355.7, any rate less than 0.5 percent *ad valorem* is *de minimis*.

Therefore, in accordance with section 706(a)(1) of the Act (19 U.S.C. 1671e(a)(1)), the Department intends to instruct the Customs Service to liquidate, upon publication of the final results of this review in the **Federal Register**, without regard to countervailing duties, all shipments of the subject merchandise from Brazil exported on or after January 1, 1992, and on or before December 31, 1992.

The Department also intends to instruct the Customs Service not to collect cash deposits of estimated countervailing duties on any shipments of this merchandise from Brazil entered or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held within seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs, under § 355.38(c), are due. The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–32072 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 102693A]

Notice of Availability for Loan of Fish and Wildlife Items

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability.

SUMMARY: This notice lists fish and wildlife items that have been abandoned or forfeited to the United States and are available for loan to qualified institutions, organizations, and individuals through each NOAA Regional Enforcement Office. The notice also describes the qualifications necessary to obtain loan of an item, the means of applying for a loan, and the general conditions under which a loan will be made.

ADDRESSES: For availability of items currently available, see Regional Enforcement Office addresses under supplementary information.

FOR FURTHER INFORMATION CONTACT: Special Agent Alan Mager (Office of Enforcement) (301) 427–2010 x110.

SUPPLEMENTARY INFORMATION: Under the Fish and Wildlife Improvement Act of 1978, (16 U.S.C. 7421), NOAA may make loans of fish and wildlife items

that have been seized and subsequently abandoned or forfeited to the United States Regulations appearing at 15 CFR part 904, subpart F, govern the conditions under which loans of items are made and the procedures for making loans. Items available for loan are most commonly seized under the Marine Mammal Protection Act (16 U.S.C. 1361–1404) and the Endangered Species Act (16 U.S.C. 1531–1543). Loans will be made for educational, scientific, and public display purposes.

All such loans will be made through loan agreements, which will provide, among other things, that title to the items remain with the United States, that the items may not be transferred without permission of NOAA, and that violation of a loan agreement may subject the violator to penalties under the applicable statute. In order to qualify for a loan, an applicant must intend to use the item only for non-commercial scientific, educational, or public display purposes and demonstrate the ability to provide adequate security for the item.

Loan recipients will be selected so as to ensure wide distribution through the scientific, educational, public display, and museum communities. Priority in granting application will be given in the following order: NOAA and other Government agencies; educational, scientific, or other public or private institutions; and private individuals.

Those interested in applying for a loan of an item should apply at the Regional Enforcement Office where the item is available, as listed below. In order to give those interested adequate opportunity to apply, no loan will be executed for 45 days from the date of this publication. Update lists will be published periodically.

A list of items currently available at each Enforcement Office follows.

Northeast Region

Apply to: Mr. John McCarthy, MNFS Law Enforcement Regional Office, 1 Blackburn Drive, room 206, Gloucester, MA 01930, (508) 281–9213.

Control # Description

NE7513004A SPERM WHALE TEETH, RAW
NE761082A (3) SEALSKIN COATS, FULL LENGTH
NE761082A (1) SEALSKIN COAT, JACKET
NE771007A (1) SEALSKIN COAT
NE771071A (1) SEALSKIN PARKA, SIZE 8
NE781108A (1) SEALSKIN COAT
NE791007A (2) SEALSKIN PELTS
NE801067A (1) SEA LION COAT
NE811010A (1) SEALSKIN COAT
NE811011A (1) SEALSKIN COAT
NE811013A (1) SEALSKIN COAT
NE811022A (1) SEALSKIN JACKET
NE841006A SPERM WHALE TEETH, CLEANED
NE841010A (1) BLACK FUR SEAL COAT
NE871001A (1) SEALSKIN COAT
NE871011A (3) SEALSKIN DOLLS
NE871012A (2) SEALSKIN COATS
NE871014A (1) SEALSKIN PURSE
NE871029A (1) SEALSKIN TOY
NE871030A (3) SEALSKIN COATS
NE881025A (3) SEALSKIN MINIATURES
NE881034A (1) SEALSKIN KEY CHAIN
NE881035A (1) SEALSKIN TOY
NE881036A (1) SEALSKIN SEAL SOUVENIR
NE881037A (1) SEALSKIN JACKET
NE881039A (2) SEALSKIN DOLLS
NE881040A (1) SEALSKIN TOY DOLL
NE881041A (1) SEALSKIN KEY CHAIN
NE881043A (2) SEALSKIN DOLLS
NE881044A (1) SEALSKIN COAT, BLACK
NE881051A (1) SEALSKIN DOLL
NE881052A (1) SEALSKIN DOLL
NE881052A (1) SEALSKIN DOLL
NE881052A (1) PAIR SEALSKIN BOOTIES
NE881054A (4) SEALSKIN KEY CHAINS
NE891001A (1) SEALSKIN MINIATURE
NE891003A (1) SEALSKIN KEY CHAIN
NE891004A (1) SEALSKIN DOLL
NE891005A (5) SEALSKIN DOLLS
NE891006A (2) SEALSKIN DOLLS
NE891007A (1) SEALSKIN DOLL
NE891008A (1) SEALSKIN KEY CHAIN
NE891008A (1) SEALSKIN DOLL
NE891010A (1) SEALSKIN TOY
NE891011A (1) SEALSKIN DOLL
NE891016A (1) SEALSKIN DOLL
NE891023A (2) PAIRS SEALSKIN BOOTS
NE891026A (1) SEALSKIN DOLL
NE891028A (1) PAIRS SEALSKIN SLIPPERS
NE891032A (3) SEALSKIN MINIATURES
NE901002A (1) SEALSKIN HAT
NE901010A (4) SEALSKIN MINIATURES
NE901011A (2) SEALSKIN MINIATURES
NE901017A (2) SEALSKIN MINIATURES
NE901023A (1) SEALSKIN PURSE
NE901025A (1) PAIR SEALSKIN BOOTS, MINIATIRE
NE901025A (1) SEALSKIN DOLL
NE901026A (1) SEALSKIN MINIATURE
NE901027A (1) SEALSKIN MINIATURE
NE901028A (1) SEALSKIN MINIATURE
NE901029A (1) SEALSKIN KEY RING
NE901030A (1) SEALSKIN MINIATURE
NE901031A (1) SEALSKIN MINIATURE
NE901032A (2) SEALSKIN CHANGE PURSES
NE901033A (1) SEALSKIN MINIATURE
NE901034A (2) SEALSKIN SCRAPS
NE901035A (2) SEALSKIN CHANGE PURSES
NE901036A (1) SEALSKIN KEY RING
NE901037A (1) SEALSKIN MINIATURE
NE901039A (1) SEALSKIN KEY RING
NE901040A (2) SEALSKIN MINIATURES
NE901041A (1) SEALSKIN MINIATURE
NE901042A (2) SEALSKIN MINIATURES
NE901043A (1) SEALSKIN MINIATURE
NE901047A (1) SEALSKIN MINIATURE
NE901048A (1) SEALSKIN PURSE
NE901049A (1) SEALSKIN MINIATURE
NE901050A (3) SEALSKIN MINIATURES
NE901052A (1) SEALSKIN MINIATURE
NE901053A (1) SEALSKIN MINIATURE
NE901054A (5) SEALSKIN KEY RINGS
NE901055A (1) SEALSKIN MINIATURE
NE901056A (6) SEALSKIN CHANGES PURSES
NE901062A (5) SEALSKIN CHANGE PURSES W/KEY RINGS
NE901062A (2) SEALSKIN PURSES
NE901062A (5) SEALSKIN CHANGE PURSES
NE901063A (1) SEALSKIN CHANGE PURSE
NE901064A (1) SEALSKIN MINIATURE
NE901065A (1) SEALSKIN MINIATURE
NE901066A (1) SEALSKIN KEY CHAIN
NE901067A (1) SEALSKIN ANIMAL
NE901068A (1) SEALSKIN PURSE
NE901069A (1) SEALSKIN MINIATURE
NE901070A (1) SEALSKIN ANIMAL
NE901071A (1) SEALSKIN ANIMAL
NE901072A (1) SEALSKIN CHANGE PURSE W/MINIATURE
NE901073A (3) SEALSKIN CHANGE PURSES W/MINIATURES
NE901073A (1) SEALSKIN PURSE

NE901074A (2) SEALSKIN ANIMALS W/MINIATURES
NE901075A (1) SEALSKIN MINIATURE
NE901076A (2) SEALSKIN MINIATURES
NE901077A (1) SEALSKIN CHANGE PURSE
NE901078A (1) SEALSKIN MINIATURE
NE901079A (1) SEALSKIN ANIMAL
NE901080A (1) SEALSKIN KEY CHAIN
NE901081A (1) SEALSKIN MINIATURE
NE901082A (2) SEALSKIN KEY CHAINS
NE901083A (1) SEALSKIN KEY CHAIN
NE901084A (1) SEALSKIN ANIMAL
NE901086A (1) SEALSKIN ANIMAL
NE901087A (2) SEALSKIN MINIATURES
NE901088A (1) SEALSKIN MINIATURE
NE901089A (1) SEALSKIN MINIATURE
NE911006A (1) SEALSKIN KEY CHAIN
NE911007A (2) SEALSKIN MINIATURES
NE911008A (3) SEALSKIN MINIATURES
NE911009A (1) SEALSKIN TOY
NE911010A (1) SEALSKIN TOY
NE911011A (1) SEALSKIN TOY
NE911012A (1) SEALSKIN TOY
NE911013A (1) SEALSKIN TOY
NE911014A (1) SEALSKIN MINIATURE
NE911015A (1) SEALSKIN MINIATURE
NE911016A (36) SEALSKIN KEY CHAINS/(2) SEALSKIN MINIATURES
NE911017A (1) DESK DISPLAY W/(2) SEAL, MOUNTED
NE911020A (2) WHALE BALEEN/(4) WHALE BONE, VERTEBRAE
NE911023A (1) SEALSKIN MINIATURE
NE911026A (1) SEALSKIN JACKET
NE911027A (1) DESK DISPLAY W/(2) SEALS, MOUNTED
NE911029A (2) CANS SEAL MEAT
NE911030A (3) SEALSKIN TOYS/(1) SEALSKIN MINIATURE
NE911040A (2) SEALSKIN TOYS W/(2) MINIATURES
NE911041A (1) DESK DISPLAY W/(3) SEALS MOUNTED
NE911043A (1) CAN SEAL MEAT
NE911045A (1) SEALSKIN TOY W/(2) MINIATURES
NE911046A (1) PAIR SEALSKIN GLOVES, MINIATURE
NE911052A (2) BLACK LEATHER JACKETS W/SEALSKIN TRIM
NE911053A (1) SEALSKIN TOY W/(1) SEALSKIN MINIATURE
NE911054A (2) SEALSKIN TOYS
NE921006A (1) DESK DISPLAY W/(2) SEALS, MOUNTED
NE921011A (1) SEALSKIN MINIATURE

Northwest Region

Apply to: Mr. Wayne C. Lewis, NMFS Law Enforcement Regional Office, 7600 and Point Way NE., C15700, Seattle, WA 98115, (206) 526–6133.

Control # Description

NW910018 (1) SEALSKIN PURSE
NW910019 (1) PAIR OF SEALSKIM ALASKAN YO-YOS
NW910053 (1) PAIR SEALSKIN SLIPPERS
NW911220 (1) SEALSKIN JACKET
NW911245 (1) SMALL SEALSKIN PURSE
NW911524 (1) SEALSKIN TOY
NW911525 (1) STUFFED HARP SEAL

Southwest Region

Apply to: Mr. Gene Proulx, NMFS Law Enforcement Regional Officer, 501 W Ocean Blvd. Suite 4400A, Long Beach, CA 90802–4213, (310) 980–4050.

Control # Description

SW750011A (1) CARVED SPERM WHALE TOOTH
SW750015A (25) RAW SPERM WHALE TEETH
SW750020A (1) SPERM WHALE TOOTH WITH CARVED LION
SW750026A (2) SPERM WHALE TOOTH PENDANTS
SW760006A (2) CARVED WHALE TEETH
SW760021A (1) SPERM WHALE TOOTH
SW760026A (1) SPERM WHALE TOOTH
SW760033A (100) POLISHED SPERM WHALE TEETH
SW761004A (6) SPERM WHALE TEETH
SW761008A (26) SPERM WHALE TEETH
SW761025A (1) SPERM WHALE TOOTH
SW770001A (9) WHALE TEETH PENDANTS, (2) RINGS
SW770001A (1) SCRIMSHAW WHALE TOOTH PENDANT
SW770010A (80) PIECES SCRIMSHAW WHALE IVORY
SW770010A (7) ASSORTED PIECES OF IVORY
SW770015A (1) WHALE TOOTH
SW770030A (1) SCRIMSHAWED TOOTH
SW771001A (1) PLASTIC CARVED LION & STAND
SW771037A (6) RAW SPERM WHALE TEETH
SW780002A (30) ASSORTED WHALE IVORY CARVINGS
SW780027A (2) SPERM WHALE TOOTHBIRD CARVING
SW780031A (40) WHALE TOOTH PENDANTS
SW780068A (1) SEALSKIN COAT
SW780071A (1) WHALE BONE PENDANT
SW780096A (51) SEALSKIN TOYS
SW780096A (3) SEALSKIN TOYS
SW781009A (1) SCRIMSHAWED SPERM WHALE TOOTH
SW781017A (3) SCRIMSHAW WHALE TEETH
SW781026A (3) TEETH (1 POLISHED) (2 SCRIMSHAWED)
SW790020A (2) SPERM WHALE TEETH (7 IN.)
SW790059A (46) BALEEN TONGUE SCRAPERS
SW790081A (21) SPERM WHALE TEETH PENDANT JEWELRY
SW790085A (6) SPERM WHALE TEETH (3 WORKED, 3 UNWORKED)
SW790170A (7) SPERM WHALE TEETH
SW790184A (2) RAW SPERM WHALE TEETH
SW790185A (1) TAN CARRYING CASE
SW790185A (27) WOOD BOXES, (24) SCRIM TEETH, (1) POLISHED TOOTH
SW790185A (10) WHALE TEETH, (3) WHALE BONES
SW790185A (3) SCRIMSHAWED WHALE TEETH
SW790198A (3) RAW SPERM WHALE TEETH
SW790200A (3) PIECES SPERM WHALEPENDANTS
SW790206A (1) CARVED SPERM WHALETOOTH
SW790217A (1) HAWKSBILL TURTLE (STUFFED)
SW800023A (1) WHALE BONE PENDANT
SW800041A (2) SPERM WHALE TEETH ON STANDS
SW800046A (9) SPERM WHALE TEETH
SW800047A (1) SPERM WHALE TOOTH
SW800063A (2) SCRIMSHAWED & SPERM WHALE TEETH
SW800085A (1) TANNED SEAL SKIN
SW800093A (1) IVORY PENDANT
SW800099A (1) WHALE TOOTH PENDANT
SW800102A (2) SPERM WHALE CARVINGS, (1) WHALE TOOTH
SW800123A (1) SCRIMSHAWED TOOTH
SW800128A (1) IVORY PENDANT
SW810019A (2) RAW SPERM WHALE TEETH, PENDANT
SW810085A (1) HAWKSBILL SEA TURTLE
SW810089A (3) HAWKSBILL TURTLES

SW810089A (2) GREEN SEA TURTLES
SW810092A (1) GREEN SEA TURTLE
SW810094A (1) GREEN SEA TURTLE
SW810094A (2) HAWKSBILL TURTLES
SW810095A (1) HAWKSBILL TURTLE
SW810097A (1) HAWKSBILL SEA TURTLE
SW810098A (2) HAWKSBILL TURTLES
SW820037A (1) POLISHED SPERM WHALE TOOTH
SW820096A (1) RAW SPERM WHALE TOOTH
SW820156A (3) RAW SPERM WHALE TEETH
SW830123A (7) PCS TURTLE JEWELRY
SW840005A (1) RAW SPERM WHALE TOOTH
SW850020A (6) WHALE TEETH, (2) CARVINGS
SW860046A (2) CANS WHALE MEAT
SW860226A (7) SPERM WHALE TEETH (SCRIMSHAW)
SW860245A (7) SCRIMSHAWED SPERM WHALE TEETH
SW860246A (1) SCRIMSHAW PENDANT AND TOOTH
SW860302A (1) WHALE TOOTH
SW860327A (16) HAWKSBILL TURTLE SHELL TRAYS
SW860355A (1) ETCHED WHALE BONE PENDANT
SW860361A (4) WHALE TEETH
SW860395A (55) SPERM WHALE IVORYNETSUKES
SW860395A (1) SCRIMSHAW SPERM WHALE TOOTH
SW870006A (85) SPERM WHALE IVORYNETSUKES
SW870007A (66) SPERM WHALE IVORYNETSUKES
SW870224A (2) WHALE TEETH SCRIMSHAW
SW870449A BRASS COPPER NAILS
SW870601A (12) BRACELETS, (4) RINGS, (1) STORYBOARD, (1) HAIR CLIP, (2) EARRINGS
SW880045A (1) TRAY, (TOLUK)
SW880119A (3) SCRIMSHAW SPERM WHALE TEETH
SW880170A (1) TRAY HAWKSBILL TURTLE SHELL
SW880198A (3) TRAYS HAWKSBILL TURTLE SHELL
SW880200A (1) FUR SEAL COAT
SW880317A (1) SCRIMSHAWED SPERM WHALE TOOTH
SW880360A (1) TANNED SEAL SKIN
SW890424A (5) SPERM WHALE BONE CARVINGS
SW890430A (1) CARVED EAGLE HEAD SPERM WHALE TOOTH
SW900011A WHALE TEETH (SCRIMSHAWED) #9492 2 US
SW900063A (1) SPERM WHALE TOOTH
SW900451A (3) HAWKSHELL SEA TURTLE SHELL "TOLUK" TRAYS
SW910034A (1) SPERM WHALE TOOTH (SCRIMSHAW)

Alaska Region

Apply to: Mr. David Flannagan, NMFS Law Enforcement Regional Office, P.O. Box 21668, Juneau, AK 99802–1668, (907) 586–7225.

Control # Description

AK800113A (1) HARBOR SEAL HEAD
AK810051A (1) PAIR SEALSKIN MUKLUKS
AK820064A (36) KILLER WHALE TEETH
AK820064A (6) KILLER WHALE TEETH
AK820135A (1) WALRUS TUSK
AK830003A (1) FUR COAT WITH SEAL SKIN SECTION
AK830060A (1.5) SEAL HIDES
AK830085A (1) SEA LION HIDE
AK830085A ASSORTED PIECES OF SEA LION HIDE AND MEAT
AK830231A (1) TANNED SEAL SKIN
AK830243A (1) UNTANNED HARBOR SEAL SKIN
AK830296A (1) BALEEN FROND, 12 INCHES
AK840173A (2) SEAL HIDES
AK840262A (1) FROND OF BOWHEAD BALEEN
AK840318A (4) VERTEBRAE AND (1) RIB FROM GREY WHALE
AK850018A (1) UNTANNED SEAL SKIN
AK850244A (2) SEAL SKINS
AK850250A (1) WHALE RIB
AK850289A (3) PIECES OF BALEEN
AK850300A (1) SCRIMSHAWED WHALE TOOTH
AK860042A (1) WHALE VERTEBRA
AK860060A (2) BALEEN WHALE VERTEBRAE
AK860072A (1) SEAL SKIN PARKA
AK860073A (1) SEAL SKIN VEST
AK860171A (1) GREY WHALE RIB BONE AND VERTEBRAE
AK860227A (2) SEAL SKIN VESTS
AK860262A (1) SEAL SKIN AND LEATHER VEST
AK860267A (2) VERTEBRAE AND (2) RIBS FROM HUMPBACK WHALE
AK870034A (1) WHALE VERTEBRA
AK870053A (1) PAIR SEAL SKIN BOOTS
AK870060A (1) WHALE BONE
AK870085A (2) HAND PUPPERTS WITH SEAL SKIN MITTENS
AK870201C (2) TOTEMIC KILLER WHALES
AK870201D (1) TOTEMIC WHALE
AK880010A (1) KILLER WHALE TOOTH
AK880092A (1) STUFFED BABY SEAL SKIN
AK880168A (2) WALRUS TUSKS
AK880186A (1) SEAL SKIN WALLET
AK880187A (1) PURSE MADE PARTLY OF SEAL SKIN
AK880297A (2) LARGE PIECES OF GREY WHALE BALEEN
AK880360A (1) BALEEN FROND
AK890038A (5) SEAL SKIN WALLETS
AK890070A (1) PILLOW/(2) PAINTINGS/ (1) PLAQUE/ (2) PURSES/ (1) PAIR GLOVES
AK890070A (1) WALRUS TOOTH/ (5) BALEEN ART PIECES
AK890308A (4) WHALE BONES
AK890308A (1) SEAL SKIN COIN PURSE
AK890308A (3) SEAL SKIN PILLOWS
AK890308A (1) SEAL SKIN HANDBAG
AK890308A (3) PAIR SEAL SKIN SLIPPERS
AK890308A (1) SEAL SKIN EYEGLASS CASE
AK890308A (1) SEAL SKIN ORNAMENT
AK890308A (1) SEAL SKIN DOLL
AK900062A (8) BALEEN PLATES (5–10 FEET LONG)
AK900068A (1) GRAY WHALE RIB BONE/1 GRAY WHALE JAW BONE
AK900181A (1) PAIR SEAL SKIN MUKLUKS/(2) PIECES SEAL SKIN SCRAPS
AK900498A (6) WHALE VERTEBRAE/ (3) WHALE RIBS
AK900540A (3) WHALE RIB BONE/(1) VERTEBRAE
AK900542A (3) WALE VERTEBRAE/ (1) ADULT WALRUS SKULL
AK910193A (1) HANDICRAFT ITEM MADE FROM SEAL SKIN
AK910194A ADULT AND MINIATURE SEAL HIDE SLIPPERS/IVORY TRINKET
AK910210A (1) SEA LION TOOTH/(2) SMALL WALRUS TEETH
AK910240A (1) CLUTCH PURSE MADE FROM SEAL HIDE
AK910294A WOODEN CARVING AND PURSE MADE FROM SEAL HIDE
AK910295A (1) WHALE BONE CARVING
AK910295A (1) NECKLACE MADE FROM SEAL HIDE
AK910296A (1) PURSE MADE FROM SEAL HIDE
AK910297A (1) PURSE MADE FROM SEAL HIDE
AK910298A (1) HANDBAG MADE FROM SEAL HIDE
AK910299A (1) PIN MADE FROM SEAL SKIN
AK910300A (1) TASSEL MADE FROM SEAL HIDE
AK910302A (1) PURSE MADE FROM SEAL HIDE
AK910303A (1) NECKLACE MADE FROM SEAL HIDE
AK911099A (1) DOLL MADE WITH SEAL SKIN
AK911100A (1) LEATHER BAG MADE FROM MARINE MAMMAL PRODUCTS
AK911291A (7) DOLLS MADE OF SEAL SKIN
AK911322A (1) PAIR SEAL SKIN BOOTS/(1) SEAL SKIN HAT
AK911324A (2) SEAL HIDE WALL HANGINGS/ (8) SEAL HIDE DOLLS
AK920022A (2) WHALE VERTEBRAE
AK920175A (2) WHALE RIBS AND (5) VERTEBRAE
AK920254A (1) SEAL HIDE PICTURE
AK920256A SEAL HIDE SLIPPERS
AK920257A (3) PAIR SEAL HIDE SLIPPERS
AK920258A (2) SEAL HIDE WALLETS
AK920259A (1) SEAL HIDE PURSE
AK920260A (2) SEAL HIDE AND BALEEN PLAQUES
AK920261A (12) SEAL HIDE PIECES
AK920262A (1) SEAL HIDE HANGING
AK920263A (1) SEAL HIDE PIN CUSHION
AK920264A (2) SEAL HIDE SLIPPERS
AK920265A SEAL HIDE PLAQUE
AK920266A (2) SEAL HIDE NECKLACES/ (2) BROOCHES/(2) WALLETS
AK920268A SEAL HIDE WALLET
AK920321A SEAL HIDE PURSE
AK920322A (1) SEAL HIDE PLAQUE
AK920324A (1) SEAL HIDE PLAQUE
AK920325A SEAL HIDE PLAQUE
AK920326A HERBAL REMEDY MADE IN PART OF SEAL
AK920327A (3) SEAL HIDE PLAQUES
AK920328A (1) PAIR SEAL HIDE SLIPPERS
AK920459A GREAT WHALE PARTS (1 SHOULDER BLADE, 2 RIBS, 1 VERTEBRAE)
AK920478A (3) SEAL HIDE DOLLS
AK920479A SEAL HIDE
AK920480A SEAL HIDE PLAQUE
AK920481A SEAL HIDE WALL HANGING
AK920482A (2) SEAL HIDE WALL HANGINGS
AK920485A SEAL HIDE PLAQUE
AK920486A SEAL HIDE PLAQUE
AK920644A (1) STELLAR SEA LION SKULL (3 PIECES)
AK920665A SEAL HIDE WALL HANGING
AK920668A SEAL HIDE WALL HANGING
AK920867A (1) WHALE SCAPULA, (4) WHALE VERTEBRAE
AK920672A (2) SEAL HIDE DOLLS

Classification

Because this notice involves the disposition of public property, the Assistant Administrator for Fisheries, NOAA, has determined that this notice is not a rule subject to 5 U.S.C. 553.

Dated: December 19, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

[FR Doc. 93–31997 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–22–M

Technology Administration

National Medal of Technology Nomination Evaluation Committee; Meeting

AGENCY: Technology Administration, Commerce.

ACTION: Notice of closed meeting.

SUMMARY: This notice announces the forthcoming closed meeting of the National Medal of Technology Nomination Evaluation Committee. The Committee was rechartered on September 15, 1993.

The Committee shall make recommendations to the Secretary of Commerce, through a Steering Committee, concerning award of the National Medal of Technology.

The Committee will meet only in executive session to discuss matters concerned with applying the criteria for determining the relative merits of all persons and companies nominated for the Medal as a result of a public solicitation.

TIME AND PLACE: The meeting will begin at 10 a.m. and end at 3:30 p.m. on January 21, 1994. The meeting will be held in room 4830 at the U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Paul Braden, Manager, National Medal of Technology Nomination Evaluation Committee, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 4418, Washington, DC 20230, (202) 482–5572.

SUPPLEMENTARY INFORMATION: A Notice of Determination to close the meetings of the Committee to the public on the basis of Section 10(d) of the Federal Advisory Committee Act, 5 U.S.C. app. 2, as amended, section 552b(c)(9)(B) of title 5, United States Code was approved by the Chief Financial Officer and Assistant Secretary for Administration, with the concurrence of the General Counsel on (December 22, 1993), in accordance with the Federal Advisory Committee Act, since premature publicity about candidates under consideration for the Medal, who may or may not ultimately receive the award, would be likely to discourage nominations for the Medal. This would be likely to significantly frustrate implementation of a proposed agency action. A copy of the Notice of Determination is available for public inspection and copying in the Central Reference and Records Inspection Facility, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Herbert C. Hoover Building, room 6628, Washington, DC 20230. (202) 482–4120.

Dated: December 23, 1993.

Gary Bachula,

Deputy Under Secretary for Technology.

[FR Doc. 93–32023 Filed 12–30–93; 8:45 am]

BILLING CODE 3510–18–M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 2, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small

organizations that will furnish the commodities to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities.

3. The action will result in authorizing small entities to furnish the commodities to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities to the Procurement List for production by the nonprofit agency listed:

Pallet, Wood
3990–00–NSH–0072
(Requirements for Federal Prison Industries, Washington, DC)
Nonprofit Agency: Handi-Shop Industries, Inc., Tomah, Washington.

Cabinet, Tool, Mobile
5140–00–030–6617
5140–00–870–4796
5140–01–010–4775
5140–01–010–4776
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

Tool Box, Portable
5140–00–319–5079
5140–00–494–2015
Nonprofit Agency: Custom Manufacturing Services, Inc., Louisville, Kentucky.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–32080 Filed 12–30–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received a proposal to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 2, 1994.

ADDRESS: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed action.

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Coveralls, Safety
8415–00–939–7879
8415–00–939–7880
8415–00–939–7881
8415–00–939–7882
8415–00–926–5113
Nonprofit Agency: Human Technologies Corporation, Utica, New York.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–32079 Filed 12–30–93; 8:45 am]
BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to Procurement List.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 2, 1994.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, Suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 29 and November 5, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 F.R. 58156 and 39013) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Poly Bag, White
8105–LL–S04–9869
8105–LL–S04–8762

(Requirements for the Fleet and Industrial Supply Center, Bremerton, Washington)

Services

Administrative Service, Federal Highway Administration, 610 East 5th Street, Vancouver, Washington

Janitorial/Custodial, Building 1028, Kirtland Air Force Base, New Mexico

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,
Executive Director.
[FR Doc. 93–32078 Filed 12–30–93; 8:45 am]
BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Defense Laboratory Management

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Defense Laboratory Management will meet in closed session on January 19–20, January 28, and February 24, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will develop a strategy for restructuring and substantially reducing the size of the defense laboratory infrastructure while simultaneously maintaining its generic capabilities and improving product quality.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concern matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

Dated: December 27, 1993.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.
[FR Doc. 93–32001 Filed 12–30–93; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army

Military Traffic Management Command, Defense Transportation Tracking System

AGENCY: Military Traffic Management Command, DoD.

ACTION: Notice.

SUMMARY: Since its inception in February 1989, the Defense Transportation Tracking System (DTTS) has been expanded to cover a large number of shipments involving more Security Risk Categories (SRC) of munitions. The DTTS provides electronic tracking of shipments while enroute and increases security and response capability in the event of accident or incident. It is Department of Defense policy to track all SRC I through IV munitions shipments using Satellite Motor Surveillance Service (SM). Shipments of Uncategorized Division 1.1 through 1.3 munitions will use SM at the option of the DOD shipper service headquarters. The rates charged by munitions carriers for SM will be expressed as a separate accessorial charge and considered along with linehaul ratend other accessorial charges to determine the overall low rate for rating and routing purposes under Chapter 17 of the Defense Traffic Management Regulation (AR 55–355); NAVSUPINST 4600.70S; AFR 75–2; MCO P4600; DLAR 4500.3).

DATE: The effective date for this notice is 1 January 1994.

ADDRESS: Headquarters, Military Traffic Management Command, 5611.

FOR FURTHER INFORMATION CONTACT: Mr. John Piparato, (703) 756–1094. Columbia Pike, Falls Church, VA 22041–5050.

SUPPLEMENTARY INFORMATION: HQMTMC published notice of proposed policy change describing Phase III and the Final Phase of the DTTS expansion in the **Federal Register** on July 6, 1993, 58 FR 36188. Comments were submitted by the Munitions Carriers Conference, Inc., on behalf of its members.

Munitions corriers conference comment: Carriers should not be required to incorporate SM charges into linehaul rates. All services that are not an ordinary or normal incident of the linehaul service, require a separate tariff or schedule provision.

MTMC response: The proposed expansion of the DTTS envisioned a final phase beginning on 1 January 1994 which would have required SM for every DOD munitions shipment. Because the requirement for SM was to be an indivisible or essential element from origin to destination for every category of munitions being shipped, MTMC believed the rate for SM service should be included in the linehaul rate. In view of the fact that MTMC has been unable to fully implement the DTTS expansion within established program guidelines, SM will continue to be regarded as an accessorial service to be used on all SRC I through IV shipments. It will be used for "Uncategorized" munitions shipments when DOD shipper service headquarters so dictate. MTMC will continue to receive rate tenders listing SM as a separate accessorial service instead of requiring its incorporation into the linehaul rate.

Munitions carriers conference comment: MTMC's proposal to include SM charges into the linehaul rate unreasonably discriminates against munitions motor carriers. Rail carriers provide rail surveillance service (RS) as a separate accessorial service.

MRMC response: MTMC's proposal to expand the DTTS was done in recognition of evolving satellite tracking technology and shipping requirements. By seeking to integrate SM service into the linehaul rate and to consider SM as an integral part of transporting munitions shipments, MTMC was departing from past practices within the motor carrier industry. MTMC does not believe that RS is the same as SM. RS includes Military Traffic Expediting Service and inspection of a conveyance at major terminels by rail personnel for evidence of tampering with seals or security devices. SM provides DTTS with truck location reports, in transit truck status changes, and emergency situation notification. Therefore, in view of the difference in the two types of Transportation Protective Services, continuing RS as a separate accessorial service would not have constituted unreasonable discrimination against motor carriers in favor of rail carriers. However, because MTMC's initial SM program objectives have not been completely implemented, MTMC has decided to continue SM as a separate accessorial service.

MTMC's policy for determining accessorial charges and linehaul rates on munitions shipments is through free and open competition. Once rates are submitted, DOD's policy is to procure transportation services that meet its requirements at the lowest overall cost to the Government. Carriers participating in the transport of DOD munitions are advised that this provides

final notice on all phases and concludes the DTTS expansion program.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93-32092 Filed 12-30-93; 8:45 am]

BILLING CODE 5000-04-M

Army Science Board; Notice of Partially Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92-463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 11 and 12 January 1994.

Time of Meeting: 11 January.

0900-1100 Hours (Open)
1100-1130 Hours (Closed)
1300-1700 Hours (Closed)

12 January

0830-1130 Hours (Closed)
1300-1330 Hours (Closed)
1330-1350 Hours (Open)
1400-1700 Hours (Closed)

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's Ad Hoc Study on "Innovation in Artillery Force Structure" will hold an initial meeting of the Panel Members. The intent of the meeting is to present general and specific information to the panel pertaining to force structure development within the Army. It will consist of primarily classified briefings. This meeting will be closed to the public (where indicated) in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and Title 5, U.S.C., Appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting.

The open portion of the meeting will be open to the public. Any person may attend, appear before or file statement with the committee at the time and in the matter permitted by the committee. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695-0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93-32105 Filed 12-30-93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-273-000, et al.]

Cambridge Electric Light Co., et al.; Electric Rate and Corporate Regulation Filings

December 23, 1993.

Take notice that the following filings have been made with the Commission:

1. Cambridge Electric Light Company

[Docket No. ER94-273-000]

Take notice that on December 14, 1993, Cambridge Electric Light Company tendered for filing its fifth annual informational filing with the Commission to set forth the actual Net Annual Costs of constructing, owning and maintaining its Transmission System for the twelve month period pending December 31, 1992.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. PacifiCorp

[Docket No. ER94-272-000]

Take notice that PacifiCorp, on December 16, 1993, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93-2-002, the Letters of Agreement between the City of Ashland (City) and PacifiCorp.

Copies of this filing were supplied to the City, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER94-271-000]

Teke notice that on December 16, 1993, New England Power Company (NEP) tendered for filing Amendments to Service Agreements Nos. 9 and 21 under FERC Electric Tariff Original Volume No. 1. Pursuant to the Commission's Final Order in Docket No. PL93-2-000, dated July 31, 1993, NEP requests waiver of the Commission's notice requirements so that the Contracts can be made effective in accordance with their terms.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New York State Electric & Gas Corporation

[Docket No. ER94-270-000]

Take notice that on December 16, 1993, New York State Electric & Gas Corporation (NYSEG) tendered for filing an agreement with Otsego Electric Cooperative, Inc. (Cooperative). Pursuant to the agreement, NYSEG agreed to construct a certain tap facilities to facilitate transmission service to the Cooperative. NYSEG requests that the Commission consider the Agreement an expired CIAC agreement. In the alternative, NYSEG is filing the agreement as an initial rate schedule, and NYSEG requests an effective date of February 21, 1973. Accordingly, it has requested waiver of the Commission's notice requirements for good cause shown.

NYSEG states that a copy of this filing has been served by mail upon the Cooperative and upon the Public Service Commission of the State of New York.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. St. Joseph Light & Power Company

[Docket No. ER94-244-000]

Take notice that on December 14, 1993, St. Joseph Light & Power Company (St. Joseph) tendered for filing the June 17, 1991, Microwave Communication Agreement By and Among Associated Electric Cooperative, Inc., Midwest Power Systems, Inc. (formerly Iowa Power Inc.), Kansas City Power & Light Company, City of Lincoln, Nebraska Public Power District, Omaha Public Power District, and St. Joseph Light & Power Company (Agreement).

St. Joseph states that this Agreement addresses the installation and maintenance by St. Joseph of microwave communication facilities which are required and used to operate the Cooper—Fairport—St. Joseph 345 Kv Interconnection, the coordinating agreement for which was filed in Docket No. ER91-41-000, St. Joseph Rate Schedule FERC No. 19.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. PacifiCorp

[Docket No. ER94-266-000]

Take notice that PacifiCorp on December 16, 1993, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93-2-002, the Transmission Service Agreement between Southern California Edison Company and PacifiCorp, effective October 15, 1993.

Copies of this filing were supplied to Southern California Edison Company, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Tex-La Electric Cooperative of Texas, Inc.

[Docket No. TX94-4-000]

On December 15, 1993, Tex-La Electric Cooperative of Texas, Inc., filed with the Commission an application requesting that the Commission order Texas Utilities Electric Company (TU Electric) and Southwestern Electric Service Company (SESCO) to provide transmission services pursuant to Sections 211 and 212 of the Federal Power Act.

The names of the affected parties are as follows:

Affected State regulatory authority: Public Utility Commission of Texas.

Affected Federal power marketing agency: Southwestern Power Administration.

Affected electric utilities:

Brazos Electric Power Cooperative, Inc.
Central Power & Light Company
Southwestern Electric Service Company
Texas Utilities Electric Company
Tex-La Electric Cooperative of Texas, Inc.
West Texas Utilities Company

Tex-La currently receives wholesale electric service at 28 points of delivery (PODS) on TU Electric's system and 5 PODs on SESCO's system, all within the load control area of TU Electric. Tex-La seeks transmission services from TU Electric and SESCO which will enable Tex-LA to move the operational control of these 33 PODs from the load control area of TU Electric to the load control area of West Texas Utilities Company (WTU) using remote control telemetry equipment.

The proposed date for initiating the requested transmission service is June 29, 1994, or as soon thereafter as the operational control of all Tex-La PODs on TU Electric's and SESCO's systems has been transferred to WTU and service by WTU commences. The proposed date for terminating the requested transmission services is February 1, 2025, except that, as to any such POD which Tex-La transfers prior to such date to the Southwest Power Pool, transmission service shall cease at the time of such transfer.

During 1992, the sum of the non-coincident peak demands at the 28 Tex-La PODs on the TU Electric system was 92.5 MW, and a total of 358,760 MWH of energy was delivered to Tex-La by TU Electric at such PODs. At the 5 PODs on SESCO's system, the sum of Tex-La's 1992 non-coincident peak demands was 22.9 MW, and a total of 93,367 MWH of energy was delivered to Tex-La SESCO. The transmission service being requested by Tex-La is firm network transmission service, over the TU Electric and SESCO transmission systems at a level and quantity sufficient for Tex-La to meet its loads at the PODs with (1) 27.5 MW of power and energy sold by the Southwestern Power Administration from the Denison Dam hydroelectric facility, (2) when Denison Dam is unavailable, 27.5 MW of backup power from Brazos Electric Power Cooperative, Inc., (3) 6 MW of power sold by Central Power and Light Company, and (4) wholesale power purchased from WTU for the balance of Tex-La's requirements.

Comment date: January 17, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. PacifiCorp

[Docket No. ER94-253-000]

Take notice that PacifiCorp, on December 15, 1993, tendered for filing Amendment No. 1, dated November 29, 1993 (Amendment), to the Long-Term Sales Agreement between PacifiCorp and Western Area Power Administration (Western), PacifiCorp Rate Schedule FERC No. 313.

The Amendment revises the yearly load factor at which PacifiCorp will make firm energy available to Western.

PacifiCorp requests an effective date of November 1, 1993, be assigned to the Amendment.

Copies of this filing were supplied to Western, the Public Utility Commission of Oregon and the Public Utilities Commission of the State of California.

Comment date: January 10, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Florida Power Corporation

[Docket No. ER94-34-000]

Take notice that on December 17, 1993, Florida Power Corporation (FPC) tendered for filing an amendment to its October 15, 1993, filing in this docket. This amendment contains the development of the rate charge for transmission related plant, a calculation of portion of Windemere substation breakers assignable to Orlando Cogen, the procedure for calculating contribution in aid of construction and a map of the interconnection.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER94-279-000]

Take notice that PacifiCorp, on December 17, 1993, tendered for filing in accordance with 18 CFR part 35 of the Commission's Rules and Regulations, a request for a change in rate for energy storage services under the September 5, 1986, Energy Storage Agreement between PacifiCorp and The Public Utility District No. 1 of Snohomish County (Snohomish), PacifiCorp Rate Schedule FERC No. 243.

PacifiCorp requests a waiver of prior notice be granted and that an effective date of September 5, 1986, be assigned to the change in rate.

Copies of this filing were supplied to Snohomish and the Washington Utilities and Transportation Commission.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Northeast Utilities Service Company

[Docket Nos. ER93-94-001 and ER93-417-001]

Take notice that on December 15, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a response to a deficiency letter issued by the Commission Staff and Amendments to two Service Agreements regarding service under NUSCO's Transmission Tariff No. 1. These Service Agreements provide for transmission to the NU System Companies for their power sales to Rowley Municipal Lighting Plant and Fitchburg Gas and Electric Light Company. NUSCO does not foresee the incurrence of Out of Rate Costs associated with this transmission service. NUSCO states that its filing is in accordance with the Commission's filing requirements and that copies of the filing have been mailed to Rowley and Fitchburg.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Canal Electric Company

[Docket No. ER94-257-000]

Take notice that on December 15, 1993, Canal Electric Company (Canal) filed three documents under Section 205 of the Federal Power Act: (1) A Capacity Disposition Commitment between itself and Commonwealth,

which implements the terms of the Capacity Acquisition and Disposition Agreement (FERC Rate Schedule No. 21, Supplement No. 25) with respect to the assignment by Commonwealth to Canal of a portion of Commonwealth's entitlement in Canal Unit No. 2 Canal will sell a portion of Commonwealth's entitlement to the output of Canal Unit No. 2 to Washington Electric Cooperative Incorporated (WEC) over the period January 1, 1994 through January 1, 2000. This entitlement is referred to herein as the "WEC Quota;" (2) a Power Contract between itself and Commonwealth, which provides that Canal will credit all revenues from the sale of the WEC Quota to Commonwealth; and (3) a Power Sale Agreement between itself and WEC with respect to the sale of the WEC Quota.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Northern Indiana Public Service Company

[Docket No. EL94–15–000]

Take notice that on December 15, 1993, Northern Indiana Public Service Company (Northern Indiana), tendered for filing a petition requesting a Commission determination that it will not exercise its jurisdiction, granted by the Federal Power Act (FPA), over service provided by Northern Indiana to Greenfield Mills, Inc. (Greenfield Mills), the owner and operator of a hydroelectric facility in Lagrange County, Indiana. Northern Indiana purchases power generated by Greenfield Mills and, should Greenfield Mills need electricity for its operations, Northern Indiana provides such "backfeed" power from its system supply. Northern Indiana will purchase power generated by Greenfield Mills during the 18-hour period from 6 a.m. to midnight at a rate of 7 mills per kilowatt hour (Kwh); power generated during the remaining six hours of the day will be purchased by Northern Indiana at a rate of 3 mills per Kwh. Northern Indiana sells backfeed to Greenfield Mills by offsetting two Kwh of power purchased for every one Kwh of power sold.

Northern Indiana seeks a declaratory order regarding Commission jurisdiction due to the *de minimis* nature of the Greenfield Mills transaction. Over the past 10 years, Northern Indiana's annual revenue from the contract has been about $865 per year and, during the past decade, Northern Indiana has sold only 615,200 Kwh of power to Greenfield Mills, representing only 38 ten-thousandths of one percent of its total sales for resale. Copies of Northern Indiana's petition for declaratory order are on file with the Commission and are available for public inspection.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. Public Service Company of New Mexico

[Docket No. EC94–5–000]

Take notice that on December 21, 1993, Public Service Company of New Mexico (PNM) filed an application seeking an Order or other appropriate determination approving the sale by PNM to Utah Associated Municipal Power Systems (UAMPS) of an undivided ownership interest in a PNM Main Power Transformer (step-up transformer) associated with San Juan Generating Station Unit 4, located in San Juan County, New Mexico.

Copies of this filing have been served upon UAMPS and the New Mexico Public Utility Commission.

Comment date: January 13, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Power Company

[Docket No. ER94–61–000]

Take notice that on December 16, 1993, Kentucky Power Company (Kentucky Power) filed, as an amendment to the filing made in this Docket on October 28, 1993, a proposed form of service agreement for proposed tariff MRS–D, and a service agreement executed by the City of Olive Hill, Kentucky (Olive Hill). The amendment was submitted in compliance with a request by the Commission's Staff. Kentucky Power requests an effective date of January 1, 1994.

Kentucky Power states that a copy of its filing was served upon Olive Hill and the Kentucky Public Service Commission.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. Portland General Electric Company

[Docket No. ER94–277–000]

Take notice that on December 16, 1993, Portland General Electric Company (PGE) tendered for filing a Power Sales Contract under which PGE purchases power from the Bonneville Power Administration (BPA). The Power Sales Contract includes provisions under which PGE may, in certain conditions, take energy from BPA and return the energy at a later time.

Under the provisions of 18 CFR 35.11, PGE requests that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the Agreement to take effect on August 25, 1982.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Tampa Electric Company

[Docket No. ER94–285–000]

Take notice that on December 17, 1993, Tampa Electric Company (Tampa Electric) tendered for filing a Service Agreement with the City of St. Cloud, Florida (St. Cloud) under Tampa Electric's FERC Electric Tariff, First Revised Volume No. 1, and a related revised tariff sheet.

Tampa Electric proposes that the tendered documents be made effective on February 15, 1994.

Copies of the filing have been served on St. Cloud, the other customers under Tampa Electric's tariff, and the Florida Public Service Commission.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. PacifiCorp

[Docket No. ER94–280–000]

Take notice that PacifiCorp, on December 17, 1993, tendered for filing, in accordance with Commission's Order pertaining to agreements involving amnesty for jurisdictional service and waiver of notice, issued July 30, 1993, under Docket No. PL93–2–002, the Operation, Construction and Ownership Agreements of the Jim Bridger Project between Idaho Power Company and PacifiCorp.

Copies of this filing were supplied to Idaho Power Company, the Public Utility Commission of Oregon, the Utah Public Service Commission, the Idaho Public Utilities Commission and the Wyoming Public Service Commission.

PacifiCorp requests in accordance with 18 CFR 35.11 of the Commission's Rules and Regulations and that a waiver of prior notice requirements be granted.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. New England Power Company

[Docket No. ER94–278–000]

Take notice that on December 17, 1993, New England Power Company (NEP), tendered for filing a supplement to its FPC Rate Schedule No. 77. The supplement, dated August 14, 1967, recognizes an additional pint of interconnection between NEP and Public Service of New Hampshire. NEP seeks waiver of notice under the Commission's guidelines published in Final Order, Docket No. PL93–2–000, so that the supplement may be deemed effective in accordance with its terms.

Comment date: January 11, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Entergy Services, Inc.

[Docket No. ER94–104–000]

Take notice that on November 23, 1993, Entergy Services, Inc., on behalf of Arkansas Power & Light Company, supplemented its earlier filing in this docket by filing Exhibit 2 to the Contract Between the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, and Arkansas Power & Light Company.

Comment date: January 6, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32011 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 10684; Michigan]

City of Lansing, Michigan's Board of Water & Light; Availability of Final Environmental Assessment

December 27, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the existing, unlicensed Moores Park Dam Hydroelectric Project, located on the Grand River, in the City of Lansing, Ingham County, Michigan, and has prepared a Final Environmental Assessment (FEA) for the project. In the FEA, the Commission's staff has analyzed the potential environmental impacts of the project and has concluded that approval of the project, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

The Notice of Availability of Draft Environmental Assessment for the Moores Park Dam Hydroelectric Project was issued on September 22, 1993. In response, the Commission received two comment letters which were reviewed by the Commission's staff and addressed in the FEA.

Copies of the FEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32015 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RM84–6–038]

Refunds Resulting From Btu Measurement Adjustments; Commission Action

December 27, 1993.

Take notice that for the reasons set forth below, the Federal Energy Regulatory Commission (Commission) is ceasing further efforts to recover overdue Btu refunds that are due in 147 cases where the first seller is in bankruptcy proceedings under Chapter 7 or Chapter 11 of the Bankruptcy Code.[1] The Commission believes that further efforts are not warranted because they are not likely to result in any additional recovery, and the Commission's resources are better utilized in other areas. The Commission emphasizes, however, that by this action it is not waiving or extinguishing the Btu refund obligation required to be paid by any bankruptcy court order.

Background

In 1983, the United States Court of Appeals for the District of Columbia Circuit vacated the Commission's regulations which permitted first sellers to measure the Btu content of natural gas based on the condition of the gas as actually delivered (the "dry rule") and required maximum lawful prices under the Natural Gas Policy Act of 1978 (NGPA) to be calculated by measuring the Btu content under the "wet" rule that had been in effect under the Natural Gas Act.[2]

Order No. 399, et seq.,[3] which implemented the court's decision, required first sellers to refund all overcharges resulting from the use of the "dry rule" by November 5, 1986. In addition, interstate and intrastate pipelines were required to file reports identifying first sellers who had not paid their Btu refunds,[4] and interstate pipelines were required to flow the Btu refunds through to their customers.[5]

More than $1 billion of Btu overcharges have been refunded to customers pursuant to Order No. 399, *et seq.* The pipelines' refund reports initially showed 5,610 cases totalling over $140 million where the Btu refunds had not been paid. Staff's efforts pursuing payment of outstanding Btu refund obligations reduced the number of pending Btu refund cases to 560 and the total of unpaid Btu refunds to approximately $9.8 million. These numbers do not include 553 cases where the Commission previously determined to cease further collection efforts because such efforts were not likely to result in payment of the Btu refund.[6]

Discussion

As a result of its efforts pursuing the payment of outstanding Btu refund obligations, the Commission has determined that the first sellers in the 147 cases listed on Appendix A are in bankruptcy proceedings under Chapter 7 or Chapter 11 of the Bankruptcy Code. The refund obligation in these cases range from $112.61 to $709,463.38, and

[1] The bankruptcy code is contained in Title 11 of the U.S. Code. The first sellers are listed on Appendix A. Since some first sellers owe refunds to more than one pipeline, the number of first sellers is less than the number of cases.

[2] Interstate Natural Gas Association of America v. Federal Energy Regulatory Commission 16 F.2d 1 (D.C. Cir. 1983), *cert. denied*, 465 U.S. 1108 (1984).

[3] Order No. 399, 49 FR 37735 (Sept. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,597 (Sept. 20, 1984); Order No. 399–A, 49 FR 46353 (Nov. 26, 1984), FERC Stats. & Regs. [Regulations Preambles 1982–1985] ¶ 30,612 (Nov. 20, 1984); Order No. 399–B, 50 FR 30141 (July 24, 1985), FERC Stats. & Regs. [Regulation Preambles 1982–1985], ¶ 30,651 (July 18, 1985).

[4] Pipelines were required to file the reports by December 18, 1984, June 17, 1985, and January 5, 1987.

[5] The Commission held that the state regulatory agency that regulates an intrastate pipeline may determine the disposition of Btu refunds received by those pipelines.

[6] *See* Notices published in the **Federal Register** on August 8, 1990 (55 FR 32,028), February 14, 1991 (56 FR 6,000), and June 16, 1992 (57 FR 26,836). These cases consisted of 467 cases where staff could not locate the first seller; 26 cases where the first seller filed for bankruptcy under Chapter 11 and the debt was less than $2,000; and 56 cases where the first seller's assets had been liquidated under Chapter 7. The notices emphasized that if the first sellers were subsequently located, the cases would be reactivated.

totals $3,533,636.05. The Commission does not know the actual disposition of the bankruptcy proceedings of the first sellers listed on Appendix A. However, such knowledge is not necessary for the action that the Commission is now taking. Most of the bankruptcy proceedings were filed more than 4 years ago, and the Btu refund obligation will have been treated in those proceedings in accordance with the applicable provisions of the Bankruptcy Code. Accordingly, the Commission believes that no purpose would be served by the Commission continuing to process these cases. Therefore, the Commission will not expend any further staff resources on these cases, and they will be considered closed. This action, however, does not waive or extinguish the payment of any Btu refund obligation that is required to be paid by any order of the bankruptcy court.

The dollar range in these cases follows:

Dollar range	No. of cases	Refund obligation
$100,001–$710,000	8	$1,761,854.11
50,001–100,000	9	637,526.63
25,001–50,000	13	480,179.61
2,001–25,000	80	631,442.18
100–2,000	37	22,633.52

By direction of the Commission.

Lois D. Cashell,

Secretary.

Appendix A—First Sellers That Filed Chapter 7 or 11 Bankruptcy

A. Rex Jasper Jr.
Alan J. Antweil
Amarex Inc.
Ambra Oil & Gas Co.
Amcole Energy Corp.
American Public Energy Co.
Amquest Corp.
Arapaho Petroleum Inc.
Arrowhead Energy Co.
Bridge Oil (USA) Inc. (pred: Nucorp Energy Inc.)
Cayman Production Co.*
Clerk U.S. Bankruptcy Court of DC Reg. Bank 83–B–O
Damar
Delta Energy Resources
Eads Exploration Inc.
Earth Energy Resources 19
Earth Energy Resources Inc.
Energy Resources Oil
Enico Pipeline
Equipment Inc.
Fritz, J.F. (Payee Erin Baker, Trustee)
Frontier Exploration Inc.
G. Murrell (A/C Allied Bank of TX)
George Schurman
Great Western Resources
Herbert E. Russell
Heston Oil Co.
Ike Lovelady
Johnson Oil & Gas Corp.
L & L Operating Co.
League Minerals
Lingen Oil & Gas Inc.
Magic Circle Energy Corp.
Majestic Energy Corp.
Marine Contractors & Supply Inc.
Marion Corp.
McMurrey Petroleum Inc.
Mgf Mansfield Inc.
Mgf Oil Corp.
Milton Wessels/Constructive Trust/ Uriah Exploration
Monterrey Petroleum
Morris R. Antweil
O'Connor & Young Drilling & Chapman Drilling
Ohio Partners Oil Co.
Originala Petroleum
Owen, J.P. & Co. Inc.
Partners Oil Co.
Pecos Irrigation Co.
Petromark Resources Co.
Pickard Oil Co. & J.W. Kirk Inc.
Placid Oil Co.
Pontchartrain Oil & Gas Corp. #2
Ports of Call Oil Co.
Quintex Petroleum Corp.
R. N. Hillin d/b/a Hillin Production Co.
Ramsey Property Mgmts, Inc. (Champion Reserve-CRI)
Resources Investment Corp.
Richland Resources Corp.
Robinson Brothers
Robinson Brothers Drilling Inc.
Royce Lawson *
S & J Operating Co.
Seneca Oil Co.
Smith Petroleum Co.
Stockton Oil and Gas
Taylor Operating Co.
Tex-OK Petroleum Inc.
Texas General Petroleum Corp.
Texas General Resources Inc.
Tomlinson Oil Co. Inc.
Tondu Energy Corp.*
Trans-Western Exploration Inc. (A/C MBank Dallas N)
Transcontinental Oil Corp. (C/O Paul v. Degenhart)
William W. Hamilton (Attn: Brett Martin)
Winter Hawk Ltd.

*Filed Chapter 7 Bankruptcy.

[FR Doc. 93–32043 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01657T; Oklahoma–59]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 27, 1993.

Take notice that on December 20, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the basal Spiro Sandstone member of the Atoka Formation (Basal Atoka Formation), underlying a portion of Latimer County, Oklahoma, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area is described as Sections 4, 8, and 17 of T6N, R18E, in Latimer County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32016 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01659T; Oklahoma–61]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 27, 1993.

Take notice that on December 20, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the basal Spiro Sandstone member of the Atoka Formation (Basal of the Union Valley Formation (Cromwell Formation), at a depth of 9,800 feet, underlying a portion of Haskell County, Oklahoma, qualify as tight formations under Section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area is the same for both formations and is described as all of Section 7, the E/2 of Section 18, the E/2 of Section 19 and all of Section 20 in T7N, R20E, in Haskell County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32017 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01658T; Oklahoma–60]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

December 27, 1993.

Take notice that on December 20, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Booch Sandstones of the McAlester Formation (Booch Formation), at a depth of 2,225 feet, and the Hartshorne Formation, at a depth of 2,625 feet, underlying a portion of Latimer County, Oklahoma, qualify as tight formations under Section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area for both formations is the same and is described as Sections 9 and 10 of T6N, R19E, in Latimer County, Oklahoma.

The notice of determination also contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32018 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–139–000, et al.]

Tennessee Gas Pipeline Company, et al.; Natural Gas Certificate Filings

December 20, 1993.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP94–139–000]

Take notice that on December 17, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–139–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities in Alcorn County, Mississippi to enable Tennessee to implement an interruptible transportation service for Eastex Hydrocarbons, Inc. (Eastex), under the blanket certificate issued in Docket No. CP82–413–000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Tennessee states that it entered into an interruptible transportation agreement with Eastex for service under Tennessee's Rate Schedule IT. Tennessee indicates that, in order to implement the delivery of gas to Eastex of up to 600 dt equivalent of natural gas per day, it proposes to install, own, operate and maintain a two-inch hot tap assembly, interconnect piping and measurement facilities in Alcorn County, Mississippi. It is indicated that the tie-in assembly would be constructed on Tennessee's existing right of way and that the measurement facility would be installed on a site adjacent to Tennessee's right of way. Tennessee states that the facilities would cost an estimated $19,142, which would be 100% reimbursable to Tennessee.

Tennessee states that construction of the proposed delivery point is not prohibited by its existing tariff. Tennessee further states that the addition of the delivery facilities would have no impact on Tennessee's peak day and annual deliveries.

Comment date: February 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket No. CP94–133–000]

Take notice that on December 15, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–133–000, a request pursuant to §§ 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct, own and operate a new delivery tap and associated facilities for Illinois Power Company (Illinois Power), a local distribution company, located in Moultrie County, Illinois, under the authorization issued in Docket No. CP83–83–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Panhandle proposes to install a hot tap, approximately 800 feet of 10-inch pipeline and a M&R Station in order to deliver up to 75,000 Mcf per day of natural gas to Illinois Power. Panhandle estimates that the cost of the proposed facilities is approximately $832,000. Panhandle states that the volumes to be delivered through the proposed facilities are within the certificated entitlements of Illinois Power's current transportation agreements under Rate Schedules EIT and EFT. Panhandle submits that there will be no impact on Panhandle's peak day or annual deliveries to Illinois Power.

Comment date: February 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Mississippi River Transmission Corporation

[Docket No. CP94–136–000]

Take notice that on December 15, 1993, Mississippi River Transmission Corporation (MRT), 9900 Clayton Road, St. Louis, Missouri 63124, filed in Docket No. CP94–136–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade a delivery point used to serve Illinois Power Company (IP), an existing transportation customer, under MRT's blanket certificate issued in Docket No. CP82–489–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

MRT proposes to upgrade its existing delivery point serving IP's Wood River Power Plant in East Alton, Illinois, by replacing two 4-inch control valves with two 6-inch control valves. MRT explains that the proposed facilities would reduce the pressure drop associated with deliveries to the Wood River Power Plant and thereby enable MRT to serve increased peak hourly demands of that facility. MRT advises that the upgrade

would not result in an increase in the maximum daily or annual volumes which MRT would transport for IP under current agreements and authority. MRT estimates that the cost of the facilities would be $9,200 which would be reimbursed.

Comment date: February 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32013 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–137–000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificate Filings

December 23, 1993.

Take notice that the following filings have been made with the Commission:

1. Tennessee Gas Pipeline Company

[Docket No. CP94–137–000]

Take notice that on December 16, 1993, Tennessee Gas Pipeline (Tennessee), P.O. Box 2511, Houston, Texas, 77252, filed in Docket No. CP94–137–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon certain facilities by sale to Kinder Gas Processing Corporation (Kinder), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Tennessee seeks authorization to abandon by sale to Kinder, a 3.6 mile 4.5-inch diameter gathering line that extends west from Tennessee's K–N Line into the LeBlanc field in Allen Parish, Louisiana.

Comment date: January 13, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Northwest Pipeline Corporation

[Docket No. CP94–134–000]

Take notice that on December 15, 1993, Northwest Pipeline Corporation (Northwest), 295 Chipeta Way, Salt Lake City, Utah 84158, filed in Docket No. CP94–134–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon by sale to The Washington Water Power Company (Water Power) its existing laterals located in Whitman, Washington and Union Counties, Oregon, under Northwest's blanket certificate issued in Docket No. CP82–433–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northwest proposes to abandon by sale to Water Power its existing La Crossee, Rosalia and St. Johns Laterals which are located in Whitman County, Washington and its existing Union Lateral in Union County, Oregon at a price of $8,667.

Comment date: February 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. CNG Producing Company

[Docket No. CP94–146–000]

Take notice that on December 17, 1993, CNG Producing Company (CNG Producing), 1450 Poydras Street, New Orleans, Louisiana 70112–6000, filed in Docket No. CP94–146–000 a petition pursuant to section 16 of the Natural Gas Act (NGA) and rule 207(a)(2) of the Commission's Rules of Practice and Procedure (18 CFR 385.207(a)(2)), for a declaratory order disclaiming Commission jurisdiction over certain facilities and the services provided through them, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

CNG Producing seeks a declaratory order from the Commission finding that certain facilities would be gathering facilities, exempt from the Commission's jurisdiction under section 1(b) of the NGA, at such time as the facilities are acquired from CNG Transmission Corporation (CNGT). CNG Producing states that CNGT has agreed to sell to CNG Producing at net book value its interest in nine offshore compressors (a total of 11,125 horsepower with the largest compressor being rated at 3,500 horsepower) at six locations, seven offshore pipelines (ranging from 378 feet to 7.3 miles in length and 12 to 20 inches in diameter), and associated measurement and regulation facilities.[1]

CNG Producing explains that the facilities are part of CNGT's miscellaneous facilities located in the Gulf of Mexico that were constructed between 1974 and 1981 to move purchased gas from the wellhead to third-party pipeline facilities for transportation to onshore transmission facilities in Louisiana. CNG Producing advises that the facilities are currently used to move gas into offshore pipelines for redelivery onshore. CNG Producing states that, upon acquisition, the facilities would be used by CNG Producing to gather and market natural gas, including its own production. CNG Producing further states that the facilities are not owned in their entirety by CNGT, but each facility is jointly owned by at least one other party.

Comment date: January 13, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is

[1] CNGT filed in Docket No. CP93–340–000 to abandon the facilities by sale to CNG Producing. See notice of filing issued by the Commission on May 17, 1993 (58 FR 29573, May 21, 1993).

filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32012 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP93–36–007 and RS92–45–011]

Natural Gas Pipeline Co. of America; Filing To Implement Revised Compliance Rates

December 27, 1993.

Take notice that on December 22, 1993, Natural Gas Pipeline Company of America (Natural) filed in the captioned dockets to implement revised base rates in response to changes ordered by the Commission in its Order No. 636 restructuring compliance plan. Specifically, Natural has requested that the revised Tariff sheets listed on Exhibit A to the filing be made effective in these dockets on January 1, 1994.

Natural states that the purpose of the filing is to reflect a discount adjustment in its restructuring compliance rates. The need for this adjustment arises because the Commission has required Natural to design rates under its special cost recovery procedure for Account No. 858 costs based on contract demands for all open access firm contracts, irrespective of discounting, and to take discounting into consideration in base rates. Natural's filing herein restores the discounting adjustment which had previously been eliminated when Natural removed Account No. 858 costs from base rates.

Natural states that copies of its filing were served on parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a motion to protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before January 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32019 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–M

Docket No. RP94–87–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC GAS Tariff

December 27, 1993.

Take notice that on December 22, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, First Revised Sheet No. 1, First Revised Sheet No. 14 and Original Sheet No. 25, to be effective January 1, 1994.

Natural states that the filing is submitted to commence recovering effective January 1, 1994, approximately $21 million in known and measurable gas supply realignment (GSR) costs which will be incurred by Natural as a consequence of Order No. 636.

Natural requested specific waivers of Section 38 of its Tariff and the Commission's Regulations, including the requirements of § 154.63, to the extent necessary to permit the tariff sheets as submitted herein to become effective January 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Natural states that it has reached a tentative settlement with members of the Natural Customer Group (NCG) regarding recovery from them for GSR costs. Members of the NCG may preserve their rights by filing an abbreviated protest which may be supplemented if the settlement is not finalized and approved.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before January 4, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32020 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–86–000]

Natural Gas Pipeline Co. of America; Proposed Changes in FERC Gas Tariff

December 27, 1993.

Take notice that on December 22, 1993, Natural Gas Pipeline Company of America (Natural) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Second Revised Sheet No. 1, Sheet No. 23 and Original Sheet No. 24, to be effective January 1, 1994.

Natural states that the filing is submitted pursuant to Section 21 of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1, as a limited rate filing under Section 4 of the Natural Gas Act and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission) promulgated thereunder. The rate adjustments filed for are designed to recover approximately $50.2 million of annual fixed Account No. 858 costs incurred by Natural under contracts for transportation capacity on other pipelines. No buyout and buydown costs are reflected in this filing.

Natural states that, due to ongoing discussions with the Natural Customer Group regarding Gas Supply Realignment Costs and Account No. 858 costs, it was mutually agreed to let the effective date of its filing slip to January

1, 1994 with recovery of costs over a five-month period rather than six months.

Natural requested specific waivers of Section 21 of its Tariff and the Commission's Regulations, including the requirements of § 154.63, to the extent necessary to permit the tariff sheets to become effective January 1, 1994.

Natural states that copies of the filing are being mailed to Natural's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the commission's Rules and Regulations. All such Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32021 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–154–000]

Tennessee Gas Pipeline Company Southern Natural Gas Co.; Application

December 27, 1993.

Take notice that on December 22, 1993, Tennessee Gas Pipeline Company (Tennessee), P.O. Box 2511, Houston, Texas 77252–2511 and Southern Natural Gas Company (Southern), P.O. Box 2563, Birmingham, Alabama 35202–2563, jointly referred to as Applicants, filed in Docket No. CP94–154–000 an application pursuant to section 7(b) of the Natural Gas Act, for permission and approval to abandon an emergency gas exchange service, effective September 1, 1993, all as more fully set forth in the application on file with the Commission and open to public inspection.

The Applicants were authorized in Docket No. CP63–146, to construct and operate two emergency interconnections between the pipeline facilities of the two companies, and to use those facilities to provide an emergency exchange of natural gas between Tennessee and Southern. The facilities were constructed at a point where Southern's 24 inch Second North Main Line crossed Tennessee's 30 inch Delta Portland Line in Lowndes County, Mississippi, and at a point where Southern's 18 inch line crossed Tennessee's 30 inch line in Clarke County, Mississippi. The facilities were only to be used two accommodate a gas-for-gas emergency exchange. It is stated that the Applicants performed the emergency exchange service under agreements, denoted as Tennessee's Rate Schedule X–13 and Southern's Rate Schedule X–15, which were both dated November 1, 1962, as amended. It is further stated that the emergency gas-for-gas exchange was designed to be used when either Southern or Tennessee was confronted with an emergency on its system, which could be alleviated by deliveries of natural gas from the system of the other.

The Applicants state that they are proposing to abandon the emergency service because, the restructure of services under Order No. 636 has rendered the above-referenced agreement unnecessary and obsolete.

No facilities are proposed to be abandoned herein.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 18, 1994, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Applicants to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–32014 Filed 12–30–93; 8:45 am]

BILLING CODE 6717–01–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4820–9]

Notice of Assessment of Need for Supplement to Supplemental Environmental Impact Statement on Long Term Residuals Management for Metropolitan Boston

AGENCY: Environmental Protection Agency (Region I).

ACTION: Notice.

SUMMARY: During 1989, the United States Environmental Protection Agency, Region I, Boston, (EPA) prepared Draft and Final Supplemental Environmental Impact Statements (DEIS and FSEIS, respectively) evaluating the Massachusetts Water Resources Authority's (MWRA) Long-Term Residuals Management Program for Metropolitan Boston under the National Environmental Policy Act (NEPA). The DSEIS and FSEIS evaluated a variety of alternative sites and technologies for managing sewage residuals, including the program then proposed by MWRA. Based on this evaluation, EPA ultimately approved the MWRA's chosen plan which included a primary program and a backup program. In March, 1990 EPA issued its record of Decision (ROD) completing the NEPA review.

The MWRA's primary program consisted of dewatering and heat drying sludge into pellets for marketing for beneficial uses (specifically, for land application as a fertilizer or soil conditioner). EPA and others supported the MWRA's beneficial use program as an environmentally progressive approach to sludge management because the sludge was to be converted from a disposable waste to a usable product. The backup program, consisted of disposal of dewatered sludge and/or sludge pellets on an as-needed basis at an MWRA-owned and operated landfill which was to be constructed in Walpole, Massachusetts. The backup program was designed in recognition of the possibilities that (1) technical problems at the heat drying facility could result in the MWRA needing to dispose of dewatered sludge; (2) pellet marketing success could fluctuate over time due to changing demand or competition from other producers; and (3) problems with meeting land application regulations could occur.

Recently, the MWRA proposed a modification to the backup program for sludge management. More specifically, MWRA proposed replacing immediate construction of the Walpole landfill with a new multi-faceted alternative. The new alternative consists of three principal elements. First, the MWRA has entered into a contract reserving disposal capacity for its entire sludge output over 30 years, whether in pellet or cake form, at a commercial landfill in Utah owned and operated by the East Carbon Development Corporation Environmental, L.C. (ECDC). This contract also provides the MWRA with backup disposal capacity, if needed, at a landfill in North Dakota owned and operated by USPCI, Inc. (USPCI). Second, the MWRA has developed an "Emergency Preparedness Plan" (EPP) designed to ensure that the MWRA is immediately able to secure alternative commercial disposal services in the event that both the Utah and North Dakota landfills were to become unavailable. Third, the MWRA has committed to retain ownership of the Walpole landfill site, and to maintain the necessary permits and approvals so that the landfill could promptly be built if commercial backup services became unavailable or unreliable.

Notice is hereby given that in accordance with its responsibilities under NEPA, EPA has assessed the need for a supplement to the Supplemental Environmental Impact Statement on Residuals Management for the Boston Metropolitan Area, in light of the recently proposed modifications made by the MWRA.

EPA has concluded that the MWRA's modified backup disposal program appears to be environmentally sound and adequately reliable to support the overall residuals management program. EPA has also determined that the new backup program will not affect the quality of the human environment in a significant manner or to a significant extent not already considered in the FSEIS. Therefore, preparation of a supplement to the FSEIS is not required and will not be prepared.

Essentially, just as MWRA residuals were determined to be safe for landfilling at the proposed Walpole landfill, the materials should also be safe for landfilling at other permitted landfills, such as the ECDC or USPCI landfills. In addition, while the transportation impacts of the original plan were acceptable, such impacts should actually be reduced under the new plan because the MWRA will rely on rail transport to the ECDC landfill.

In addition, EPA believes that the MWRA's modifications to the backup plan do not significantly reduce the reliability of the residuals management plan. Therefore, the MWRA residuals management program is still reasonably and sufficiently reliable. The program continues to focus on heat drying and pellet marketing for reuse as its primary option, while providing for environmentally sound landfilling as the backup. The key change is that the Walpole landfill has been relegated to the status of a tertiary backup, while out-of-state commercial landfills (i.e., the ECDC, USPCI and EPP landfills) have become the primary and secondary backups. While the new program raises concerns such as the potential for commercial landfills going out-of-business or disposal at out-of-state landfills being subject to political problems, the MWRA has developed a program that reasonably addresses those concerns in light of current conditions. Moreover, the new program has one element of added reliability in that the ECDC/USPCI contract provides substantially greater disposal capacity than would have been provided by the Walpole landfill alone.

To obtain a copy of EPA's Assessment of Need For Supplement to The Supplemental Environmental Impact Statement on Long Term Residuals Management For Metropolitan Boston contact: Ann Rodney, U.S. EPA, Region I, JFK Federal Building, Boston, MA 02203, (617) 565–4424.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–32061 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–60–P

[FRL–4821–5]

Draft Guidance Document on Indirect Exposure Assessment

AGENCY: Environmental Protection Agency.

ACTION: Notice of Extension of Public Comment Period.

SUMMARY: This notice announces the extension of the public comment period for the external review draft of a draft guidance document entitled, Addendum to the Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions. This draft Addendum provides revisions and updates to the Agency's 1990 interim final document, Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions.

DATES: In the November 22, 1993, **Federal Register** (58 FR 61688–61689), EPA announced that the public comment period for the external review draft of this document would be from November 22 through January 7, 1994. The Agency is now extending the public comment period to February 15, 1994. Comments must be in writing and postmarked by the February date.

ADDRESSES: To obtain a copy of the draft Addendum or the 1990 interim final Methodology, interested parties should write the ORD Publications Center, CERI–FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268, or telephone 513–569–7562; facsimile 513–569–7566. Please provide your name, mailing address, and the EPA document number. The titles are as follows: external review draft of the Addendum to the Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA/600/AP–93/003); Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA/600/6–90/003).

The draft Addendum and the interim final Methodology document will also be available for inspection at the RCRA Docket, the ORD Public Information Shelf/EPA Headquarters Library, and all of the EPA Regional and Laboratory Libraries. The EPA Headquarters Library is located in room M2904, and is open between the hours of 10 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays.

Commenters must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (5305), Docket Number F–93–AMCA–FFFFF, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number F–93–AMCA–FFFFF. The RCA docket is located in Room M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling 202–260–9327. Copies cost $0.15 per page; charges under $25.00 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street, SW, Washington, DC 20460; telephone 800–424–9346; TDD 800–553–7672 (hearing impaired);

in the Washington, DC, metropolitan area, the number is 703–412–9810; TDD 703–412–3323. For technical information, the Hotline will provide a specific contact person, depending on the particular subject matter.

Dated: December 27, 1993.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–32060 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4821–1]

Illinois: Final Determination of Adequacy of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of final determination of full program adequacy for Illinois' application.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (USEPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which the USEPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals are an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria will apply to all permitted and unpermitted MSWLF facilities.

Illinois applied for a determination of adequacy under section 4005 of RCRA. The USEPA reviewed Illinois' application and tentatively determined that Illinois' permit program is adequate to ensure compliance with the revised Federal MSWLF Criteria. After consideration of all comments received, the USEPA is today issuing a final determination that the State's program is adequate.

EFFECTIVE DATE: The determination of adequacy for Illinois shall be effective on January 3, 1994.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Federal MSWLF Criteria (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that facilities comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the USEPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The USEPA intends to approve State/Tribal MSWLF permit programs prior to promulgation of STIR. The USEPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Second, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. Third, the State/Tribe must also provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Fourth, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF permit program.

The USEPA Regional offices will determine whether a State/Tribe has submitted an "adequate" program based on the interpretation outlined above. The USEPA plans to provide more specific criteria for this evaluation when it proposes the STIR. The USEPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it grants full approval to a program.

B. State of Illinois

On March 31, 1993, Illinois submitted an application to obtain an adequacy determination for the State's municipal solid waste landfill permit program. On October 20, 1993, the USEPA published a tentative determination of adequacy for all portions of Illinois program. Further background information on the tentative determination of adequacy appears in 58 FR 54145, October 20, 1993. The combination of the State's existing permit program, the incorporation of certain portions of the revised Federal Criteria, and the interim period of IEPA enforcement created by Public Law 88–496, will ensure full compliance with all of the revised Federal Criteria. In its application, Illinois demonstrated that the State's permit program adequetely meets the location restrictions, operating criteria, design criteria, groundwater monitoring and corrective action requirements, closure and post-closure care requirements, and financial assurance criteria in the revised Federal Criteria.

In addition, Illinois demonstrated that the State's MSWLF permit program has the authority to issue permits incorporating the requirements of the revised Federal Criteria for all MSWLFs in the State. The USEPA determined that the Illinois' permit program contains provisions for public participation, compliance monitoring, and enforcement.

The revised Federal Criteria that is incorporated into the Illinois permit program will eventually be replaced by equivalent regulations developed by the Illinois Pollution Control Board (IPCB). As previously discussed in 58 FR 54145, October 20, 1993, the USEPA has received the proposed IPCB regulations. The USEPA started its review and had submitted comments to the IPCB. The IPCB has indicated that it will issue revised regulations in December 1993. The USEPA will continue its review when it receives the revised regulations.

Along with the tentative determination, the USEPA announced the availability of the application for public comment and the date of a public hearing on the application. The public hearing was held at the USEPA Region 5 office in Chicago, Illinois, on November 29, 1993.

The USEPA received public comment concerning the tentative determination of full program adequacy for Illinois' MSWLF permit program. One commenter asked whether the regulatory flexibility found in 40 CFR 258.50(b) would be utilized by the State. In the application, Illinois indicated that the Illinois rules do not provide for suspension of groundwater monitoring requirements by the Agency. However, an operator may petition the IPCB for an adjusted standard from the regulations of general applicability. In granting an adjusted standard from groundwater monitoring requirements, the IPCB may consider contaminant, fate, and transport requirements, as well as other factors deemed relevant. An adjusted standard must be justified and consistent with applicable Federal law, and it cannot result in environmental or health effects significantly more adverse than those considered by the IPCB in general rulemaking.

C. Decision

After reviewing the public comment, I conclude that Illinois' application for adequacy determination meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Illinois is granted a determination of adequacy for all portions of its municipal solid waste permit program.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provision of section 7002 of RCRA to enforce the revised Federal Criteria independent of any State/Tribal enforcement program. As the USEPA explained in the preamble to the revised Federal Criteria, the USEPA expects that any owner or operator complying with provisions in a State/Tribal program approved by the USEPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Today's action takes effect on the date of publication. The USEPA believes it has good cause under section 553(d) of the Administrative Procedures Act, 5 U.S.C. 553(d), to put this action into effect less than 30 days after publication in the **Federal Register**. All of the requirements and obligations in the State's program are already in effect as a matter of State law. The USEPA's action today does not impose any new requirements that the regulated community must begin to comply with. Nor do these requirements become enforceable by the USEPA as Federal law. Consequently, the USEPA finds that it does not need to give notice prior to making its approval effective.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: December 20, 1993.

Valdus V. Adamkus,

Regional Administrator.

[FR Doc. 93–32062 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–60–M

[FRL–4820–6]

State of Maryland's Submission of a Substantial Program Revision to Its Authorized National Pollutant Discharge Elimination System (NYDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Correction.

SUMMARY: This document contains corrections to the Maryland NPDESW substantial program modification published Wednesday, November 10, 1993. (58 FR 59724). On page 59725, in the first column under DATES, third line, the date for providing comments and/or requests for public hearing published in the **Federal Register** was December 5, 1993. In order to provide for ample opportunity to comment, the date for providing comments and/or requests for public hearing is corrected to read "thirty days from the date of this notice." EPA will continue to accept public comment and requests for public hearing for thirty days from the date of this notice.

DATES: Comments and/or requests for public hearings must be received by February 2, 1994.

ADDRESSES: Comments should be addressed to Denise Hakowski, U.S. EPA, Region III, 3WM55, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Denise Hakowski at (215) 597–8242.

Dated: December 21, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 93–32033 Filed 12–30–93; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL COMMUNICATIONS COMMISSION

[Gen. Docket No. 89–573; DA 93–1530]

Private Land Mobile Radio Services; Philadelphia Metropolitan Area Public Safety Plan Amendment

AGENCY: Federal Communications Commission.

ACTION: Notice.

SUMMARY: The Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division released this Order amending the Public Safety Radio Plan for the Philadelphia Metropolitan Area (Region 28). As a result of accepting the amendment for the Plan for Region 28, the interests of the eligible entities within the region will be furthered.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Woolford, Private Radio Bureau, Policy and Planning Branch, (202) 632–6497.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 16, 1993.
Released: December 27, 1993.

By the Chief, Land Mobile and Microwave Division and the Acting Chief, Spectrum Engineering Division:

1. The Private Radio Bureau and the Office of Engineering and Technology, acting under delegated authority, accepted the Philadelphia Metropolitan Area (Region 28) Public Safety Plan (Plan) on February 2, 1990, 5 FCC Rcd 3067 (1990).

2. By letter dated June 28, 1993, the Region proposed to amend its Plan. The proposed amendment would revise the current channel allotments. The Commission placed the letter on Public Notice for comments due on August 27, 1993, 58 FR 40818 (July 30, 1993). The

Commission received comments from the Tri-State Radio Planning Committee (Region 8) and several groups associated with it. As a result of these comments, Region 28 and Region 8 held a meeting to resolve the differences between the two regions. A new amendment was filed by Region 28 on November 3, 1993, to reflect the agreements reached as a result of the meeting between the two regions.

3. We have reviewed the proposed amendment to the Region 28 Plan and conclude it furthers the interests of the eligible entities within the Region.

4. Accordingly, it is ordered that the Public Safety Radio Plan for the Philadelphia Metropolitan Area (Region 28) is amended, as set forth in the Region's letter of June 28 and its subsequent letter of November 3, 1993. This Amendment is effective immediately.

Federal Communications Commission.

Richard J. Shiben,

Chief, Land Mobile & Microwave Division.

[FR Doc. 93-31998 Filed 12-30-93; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Privacy Act of 1974; Proposed New System of Records

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed system of records—"Affordable Housing Program Records System."

SUMMARY: In accordance with the Privacy Act of 1974 (5 U.S.C. 552a), the FDIC gives notice of the proposed establishment of a new system of records entitled "Affordable Housing Program Records System"

DATES: Comments on the establishment of the system must be submitted by February 11, 1994. The system will become effective February 28, 1994 unless a superseding notice to the contrary is published before that date.

ADDRESSES: Comments should be addressed to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550–17th Street, NW., Washington, DC 20429, or hand-delivered to room F–400 at 1776 F Street, NW., Washington, DC, Monday through Friday, between the hours of 9 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Frederick N. Ottie, Attorney, FDIC, 550–17th Street, NW., Washington, DC 20429, (202) 898–6679.

SUPPLEMENTARY INFORMATION: The FDIC is proposing to establish a new system of records pursuant to the Privacy Act of 1974 (5 U.S.C. 552a), entitled "Affordable Housing Program Records System". The system will consist of the purchaser's or prospective purchaser's income qualification form and substantiating documents (such as financial statements, income tax returns, assets or collateral verifications, appraisals, and sources of income); copies of sales contracts, deeds, or other recorded instruments; intra-agency forms, memoranda, or notes related to the property and purchaser's participation in the FDIC's Affordable Housing Program; correspondence; and any other documents related to the FDIC's Affordable Housing Program.

Accordingly, the Board of Directors of the FDIC proposes to establish the system to read as follows:

FDIC 30–64–0023

SYSTEM NAME:

Affordable Housing Program Records System.

SYSTEM LOCATION:

Designated FDIC service centers, regional offices, and consolidated field offices. A list of the designated locations is available from the FDIC's Division of Depositor and Asset Services, 550–17th Street, NW., Washington, DC 20429.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Purchasers and prospective purchasers of residential properties offered for sale through the FDIC's Affordable Housing Program. To be considered a prospective purchaser for purposes of this records system, the party must have (1) completed and signed an FDIC "Certification of Income Eligibility" and (2) delivered the form to an authorized representative of the FDIC's Affordable Housing Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains the purchaser's or prospective purchaser's income qualification form and substantiating documents (such as financial statements, income tax returns, assets or collateral verifications, appraisals, and sources of income); copies of sales contracts, deeds, or other recorded instruments; intra-agency forms, memoranda, or notes related to the property and purchaser's participation in the FDIC's Affordable Housing Program; correspondence; and any other documents related to the FDIC's Affordable Housing Program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Sections 9, 11, 13, and 40 of the Federal Deposit Insurance Act (12 U.S.C. 1819, 1821, 1823, 1831q).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Information in this system may be disclosed:

(1) To a congressional office in response to an inquiry made at the request of the individual to whom the record pertains;

(2) To a court, magistrate, or administrative tribunal in the course of presenting evidence, including disclosures to counsel or witnesses in the course of civil discovery, litigation, or settlement negotiations or in connection with criminal proceedings;

(3) To the appropriate federal, state, or local agency or authority responsible for investigating or prosecuting a violation of or for enforcing or implementing a statute, rule, regulation, or order, when the information indicates a violation or potential violation of law, whether civil, criminal, or regulatory in nature, and whether arising by general statute or particular program statute, or by regulation, rule, or order issued pursuant thereto;

(4) To persons or firms retained by the FDIC to perform services in connection with the implementation of the Affordable Housing Program such as brokers, appraisers, mortgage lenders, outside counsel, and outside consultants; and

(5) To mortgage companies, financial institutions, federal agencies (such as the Federal Housing Administration, the Farmers Home Administration, and the Veterans Administration), or state and local government housing agencies where information is relevant to an application or request for a loan, grant, financial benefit, or other type of assistance or entitlement.

DISCLOSURES TO CONSUMER REPORTING AGENCIES:

Disclosure may be made from this system pursuant to 5 U.S.C. 552a(b)(12) to "consumer reporting agencies" as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)).

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer disks and in file folders.

RETRIEVABILITY:

Retrieved by name of purchaser or prospective purchaser of affordable housing property, and by address of the property purchased.

SAFEGUARDS:

File folders are maintained in lockable metal file cabinets. Computer disks are accessed by authorized personnel.

RETENTION AND DISPOSAL:

Affordable Housing Program files and information maintained in an online capacity are destroyed six years after termination of receivership of the closed bank from which the property was acquired if no longer needed by FDIC and in accordance with state or federal banking laws.

SYSTEM MANAGER(S) AND ADDRESS:

The appropriate FDIC regional director for records maintained in FDIC service centers and regional offices, and the appropriate FDIC bank liquidation specialist-in-charge for records maintained in consolidated field offices.

NOTIFICATION PROCEDURE:

Requests must be in writing and addressed to the Office of the Executive Secretary, FDIC, 550–17th Street, NW., Washington, DC 20429. The request must contain the purchaser's or the prospective purchaser's name and address.

RECORDS ACCESS PROCEDURES:

Same as "Notification" above.

CONTESTING RECORD PROCEDURES:

Same as "Notification" above.

RECORD SOURCE CATEGORIES:

Information is obtained principally from the individual upon whom the record is maintained; information pertaining to an individual may, in some cases, be supplemented with reports from credit bureaus and/or other services.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

By direction of the Board of Directors.

Dated at Washington, DC, this 20th day of December 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–32025 Filed 12–30–93; 8:45 am]

BILLING CODE 6714–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 2722
Name: Consolidated International Forwarding Co. dba CIFCO
Address: 345 W. 74th Place, Hialeah, FL 33014
Date revoked: April 24, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3114
Name: Great Bear Transportation, Inc.
Address: 10612 Shoemaker Ave., Unit B, Santa Fe Springs, CA 90670
Date revoked: July 1, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3649
Name: Worldwide Transportation International, Inc.
Address: 600 W. Hillsboro Blvd., Ste. 372, Deerfield Beach, FL 33441
Date revoked: November 22, 1993
Reason: Surrendered license voluntarily

License Number: 897
Name: Dyson Shipping Company, Inc.
Address: One World Trade Center, Ste. 1907, New York, NY 10048
Date revoked: November 30, 1993
Reason: Surrendered license voluntarily

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–32000 Filed 12–30–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/Address	Date Reissued
2456R	Export Forwarding Company, 2213 Royal Lane, Dallas, TX 75229	December 10, 1993

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–31999 Filed 12–30–93; 8:45 am]

BILLING CODE 6730–01–M

GENERAL SERVICES ADMINISTRATION

Availability of Draft Environmental Assessment; Secret Service Headquarters Building, Washington, DC

Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR part 1500–1508), the General Services Administration (GSA) has filed with the Environmental Protection Agency, and made available to other governmental and private bodies, a Draft Environmental Assessment (DEA) for the proposed construction of the United States Secret Service (USSS) Headquarters Building in Washington, DC.

The project proposes the construction of an approximately 461,000 gross square foot building, with associated parking. The Headquarters Building will house 1,288 employees. The USSS Headquarters currently occupies space in one Government-owned building and three leased buildings.

Written comments on the DEA may be submitted until February 7, 1994, and should be addressed to: General Services Administration, Planning Staff (WPL), room 7618, 7th & D Streets, SW., Washington, DC 20407, Attention: Sonia I. Rivera-Hersha. Additional copies of the DEA are available for public review at the following locations:

General Services Administration, Bid Room, room 1701, 7th & D Streets, SW., Washington, DC 20407.

Martin Luther King, Jr. Memorial Library, 901 G Street, NW., Washington, DC 20001.

June V. Huber,

Acting Regional Administrator.

[FR Doc. 93–32046 Filed 12–30–93; 8:45 am]

BILLING CODE 6820–23–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review; Office of Child Support and Enforcement

Under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35), we have submitted to the Office of Management and Budget (OMB) a request to approve a revised questionnaire for the April 1994 Current Population Survey Supplement on Child Support. This inquiry, to be conducted by the Census Bureau, is sponsored by the Office of Child Support Enforcement (OCSE) of the U.S. Department of Health and Human Services.

The Administration for Children and Families is requesting an expedited review by the Office of Management and Budget in order to have the questionnaire available in time for the April 1994 survey. Therefore, as prescribed by the Federal Paperwork Reduction Act of 1980, Office on Management and Budget's Regulations and the Department of Health and Human Services IRM Circular #15 issued on September 14, 1992 for expedited review of information collections activities, we are including in this notice the entire information collection materials for review by the general public.

The following is a copy of the package in its entirety. Written comments and questions regarding the requested approval for information collection should be sent by January 31, 1994, directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street, NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: April 1994 Current Population Survey Supplement on Child Support.

OMB No.: 0992–0272.

Description: This collection of information is authorized by Title IV–D of the Social Security Act. An Office of Management and Budget letter dated July 1, 1983, also directs the Office of Child Support Enforcement to collect this information. OMB previously approved this data collection under OMB approval number 0992–0272.

The Survey of Child Support is designated to obtain information on the characteristics of individuals eligible to receive child support and the types of financial arrangements made to assist in the support of such individuals and any children for whom they retain custody. These data will assist legislators and policymakers in determining how effective their policy making efforts have been over time in applying the various child support legislation to the overall child support enforcement picture.

Survey Instrument: 1994 CHILD SUPPORT SUPPLEMENT, OMB No. 0992–0272, Expires:

All items in the instrument have a blind Don't Know and Refusal option.

UNIVERSE QUESTIONS TO DETERMINE ELIGIBILITY

(102 is asked of Married respondents)

102. This month we are also asking questions about children who do not live with both of their parents. I have listed that (NAMES OF CHILDREN) are all under the age of 21. Which of these children, IF ANY have a (father/mother/father or mother) who lives outside of this house?

SCREEN SHOWS ROSTER OF CHILDREN. ENTER LINE NUMBERS OF CHILDREN

<N> for None, No More, Parent temporarily absent GO TO 104

(103a is asked of Never Married, Divorced, Widowed, and Separated respondents)

103a. Does (Child) have a (father/mother) who lives outside this household?

Yes GO TO 104
No

103b. There are many reasons why children may not live with both of their biological or adoptive parents. Why doesn't (CHILD) have a biological or adoptive (mother/father) living outside the household?

Other parent has died	1	END
Child was adopted by a single parent.	2	END
Other parent terminated their parental rights.	3	END
Other parent is living in the household.	4	END
Other parent is no longer recognized as a parent by this household.	5	
Other (Specify)_____	6	

103c. Did (Child's) (mother/father) ever have any type of child support agreement or ever attempt to have any type of child support agreement with (Child's) (mother/father)?

Yes
No END

104. (Are you/Which of the adults in this household is) LEGALLY responsible for CHILD?

Enter Liner Number_____
or <N> for None ____ GO TO 104b

104a. What is (Name for adult from Q104)'s relationship to (CHILD)?

Grandparent	1	END INTERVIEW
Aunt or Uncle	2	END INTERVIEW
Sister or Brother	3	END INTERVIEW
Foster Parent	4	END INTERVIEW
Parent	5	
Other (Specify) _____	6	END INTERVIEW

104b. What is (REFERENCE PERSON's) relationship to (CHILD)?

Grandparent	1	END INTERVIEW
Aunt or Uncle	2	END INTERVIEW
Sister or Brother	3	END INTERVIEW
Foster Parent	4	END INTERVIEW
Parent	5	
Other (Specify) _____	6	END INTERVIEW

(105–108 are asked or married respondents)

105. Are you CHILD's natural biological (mother/father)?

Yes GO TO 107
No GO TO 105

106. Did you ever legally adopt CHILD?

Yes
No

107. Is (NAME OF MOTHER/FATHER) CHILD's natural biological (mother/father)?

Yes GO TO 150
No GO TO 108

108. Did (NAME OF MOTHER/FATHER) ever legally adopt (CHILD)?

Yes
No

SECTION 1—ROSTER OF CHILD SUPPORT ARRANGEMENTS

Lead-in. A *legal* arrangement about financial support for a child could be called many things, for example, a court order, a court award, a divorce or separation agreement, or a legal agreement.

150. Has there *ever* been *any* kind of *legal arrangement* that says that (CHILD)'s (father/mother) should provide *any kind* of financial support for (him/her)?

Yes	GO TO 151
No	GO TO 152
Legal arrangement pending	GO TO 154
There is an arrangement, but R does not know if it is legal	GO TO 153

151. Would you call it a court order, a court award, or a legal agreement?

Court order	GO TO 154
Court award	GO TO 154
Legal agreement	GO TO 154

152. Has there *ever* been any *other* kind of agreement or understanding that says that (CHILD)'s (father/mother) should help support (him/her)?

Yes
No

153. Would you call it an agreement or an understanding?

Agreement
Understanding

154. Payments that are made for the support of a child are called child support, even if there is no legal agreement.

Did this agreement ever say that (CHILD)'s (father/mother) should make child support payments?

Yes
No

156. Which of your other children were *ever* covered by the *same* agreement?

SCREEN SHOWS ROSTER OF CHILDREN, ENTER LINE NUMBERS OF CHILDREN

<N> for None, No More, Parent temporarily absent

SECTION 2—HISTORY OF MOST RECENT AGREEMENT

249. I am going to ask you questions about (NAME ALL COVER CHILDREN).

251. An agreement about child support can be made legal by going through a court, before a judge, or through an official legal process.

Was this agreement about child support payments for (NAME ALL COVERED CHILDREN) *ever* made legal?

Yes GO TO 258
No

253. In what year did you *first* (have this agreement/have this understanding)?

19 _____

255. And in what year was (the children's) (father/mother) supposed to begin making child support payments?

19 _____

257. What month was that? _____

258. Some parents agree to the amount of child support before making the agreement legal.

Did you and the (children's) (father/mother) do this?

Yes
No

259. In what year was the (agreement) *first* made *legal*?

19 _____

261. And in what year was the children's (father/mother) supposed to begin making child support payments?

19 _____

263. What month was that? _____

266. Since the (agreement) was *first* made legal, has there been a change in the amount of child support that (the children's) (father/mother) is *legally required* to pay?

Yes	1	
No	2	GO TO 271
Yes, but don't know if it is legal.	3	

267. Did the amount change because a child was too old to receive support?

Yes
No

268. In what year was (the children's) (father/mother) supposed to begin paying the new amount?

PROBE IF NEEDED: For the most recent legal change.

19 _____

270. What month was that? _____

271. Have you and (the children's) (father/mother) ever *agreed* to change the amount of child support that (he/she) is supposed to pay (*without* going through a judge or legal process)?

Yes
No GO TO 300

273. In what year was (the children's) (father/mother) supposed to begin paying the new amount?

PROBE IF NEEDED: The last time this happened.

19 _____

275. What month was that? _____

SECTION 3A—SUPPORT AGREEMENT AND BEHAVIOR PREVIOUS CALENDAR YEAR

300. The next questions ask about the (agreement about) child support for (NAME ALL COVERED CHILDREN). The questions ask about what was supposed to happen, even if the (agreement) was not followed exactly.

Between January 1 and December 31, 1992, was (the children's) (father/mother) *supposed to* make *any* child support payments for (any of them)?

Yes	1	GO TO 302
No	2	
Yes, if he has a job.	3	GO TO 302
DK because Child Support Enforcement Office filed the paper work	4	

301. Why was that?

Child(ren) too old in 1992.	1	GO TO 340
Other parent died before 1992.	2	END INTERVIEW
Family lived together in all or part of 1992.	3	GO TO 375
Child(ren) lived with other parent in all or part of 1992.	4	GO TO 375
Other (Specify) _____	5	GO TO 375

302. During 1992, were any of the child support payments *supposed to* be deducted from (his/her) paycheck?

Yes
No

303. And during 1992, were any of these payments *supposed* to be sent to you (READ ALL CATEGORIES):

PROBE IF NEEDED: For most of 1992.

By a child support, welfare or other public agency	1
By a court	2
or did the payments come directly from (him/her) (or (his/her) place of employment)?	3
Other (Specify) _____	4

306. The following questions ask about the child support (the children's) (father/mother) was *supposed to* pay, whether or not you received it. During 1992, how often was (he/she) *supposed to* make these payments?

PROBE IF NEEDED: Would that be every week, every month, or some other way?

Every week	1	GO TO 312
Every other week	2	GO TO 312
Twice a month	3	GO TO 312
Every month or Monthly	4	GO TO 312
Every quarter	5	GO TO 312
For the year	6	GO TO 312
Other (Specify)	7	GO TO 314

312. Sometimes child support that was not paid in previous years is added to the amount of support owed today. This is called back support. Did the amount that (the children's) (father/mother) was supposed to pay in 1992 include back support?

Yes
No

313. (How) much was (the weekly) payment for (NAME ALL COVERED CHILDREN) supposed to be, during 1992?

ENTER AMOUNT $_____.00
OTHER (Specify) _____

314. Sometimes child support that was not paid in previous years is added to the amount of support owed today. This is called back support. Did the amount that (the children's) (father/mother) was supposed to pay in 1992 include back support?

Yes
No

315. About how much altogether was (he/she) *supposed to* pay for (NAME ALL COVERED CHILDREN) during 1992?

ENTER AMOUNT $_____.00
OTHER (Specify) _____ GO TO 326

316. The following questions ask about the child support (CHILD/the children's) (father/mother) was *supposed* to pay, whether or not you received it. (Before the change was made in 1992, how often was (he/she) *supposed to* make these payments?

PROBE IF NEEDED: Would that be every week, every month, or some other way?

Every week	1	
Every other week	2	
Twice a month	3	
Every month or monthly	4	
Every quarter	5	
For the year	6	
None	7	GO TO 319
Other (Specify) _____	8	GO TO 319

317 Sometimes child support that was not paid in previous years is added to the amount of support owed today. This is called back support. Did the amount that (the children's) (father/mother) was supposed to pay (before the change was made in 1992 include back support?

Yes
No

318. (Before was made, how much was (the weekly) payment for (NAME ALL COVERED CHILDREN) *supposed* to be?

ENTER AMOUNT $_____.00	GO TO 321 or 325b
AMOUNT VARIED	GO TO 320
OTHER (Specify) _____	GO TO 320

319. Sometimes child support that was not paid in previous years is added to the amount of support owed today. This is called back support. Did the amount that (the childrens's) (father/mother) was supposed to pay (before the change from in 1992 include back support?

Yes
No

320. About how much *altogether* was (he/she) *supposed to* pay for (NAME ALL COVERED CHILDREN) before the change was made in 1992?

ENTER AMOUNT $_____.00
OTHER (Specify) _____

321. Next, (after the change was made in through December) 1992, how often was (the children's) (father/mother) *supposed to* make these payments?

PROBE IF NEEDED: Would that be every week, every month, or some other way?

Every week	1	
Every other week	2	
Twice a month	3	
Every month or monthly	4	
Every quarter	5	
For the year	6	
None	7	GO TO 326
Other (Specify) _____	8	GO TO 324

322. Did the amount that (he/she) was supposed to pay (after the change was made in 1992 include back support?

Yes
No

323. (After the change was made), how much was (the weekly) payment for (NAME ALL COVERED CHILDREN) *supposed to* be)?

ENTER AMOUNT $_____.00
OTHER (Specify) _____ GO TO 326

324. Did the amount that (the children's) (father/mother) was supposed to pay (after the change was made in 1992 include back support?

Yes
No

325. About how much *altogether* was (he/she) *supposed to* pay for (NAME ALL COVERED CHILDREN) (after the change was made in) 1992?

ENTER AMOUNT $_____.00
OTHER (Specify) _____

325b. Altogether, you were supposed to receive (X$ from output variable) during 1992. Is that correct?

Yes
No

325c. (About) how much altogether was (he/she) *supposed to* pay for (NAME ALL COVERED CHILDREN) during 1992?

ENTER AMOUNT $_____.00
OTHER (Specify) _____

326. Someone receiving A.F.D.C. may get up to $50 of child support each month in addition to A.F.D.C.. This money is sometimes called a bonus or a pass through. This child support bonus may come with an A.F.D.C. check or in a separate check.

Between January 1 and December 31, 1992, was *any* child support passed on to you by A.F.D.C. for (NAME ALL COVERED CHILDREN)?

Yes	1
No	2
No, I was not on A.F.D.C. in 1992	3
Other (Specify) _____	4

327. (The next questions ask about the amount of child support you received during 1992. Please include any child support forwarded to you by a court, or a child support enforcement agency, and any payments made directly to you. Between) January 1 and December 31, 1992, did you *actually* receive *any* child support payments—even one—for (NAME ALL COVERED CHILDREN)?

Yes	1	IF 328=1, GO TO 333, ELSE GO TO 340
No	2	IF 326=1, GO TO 333, ELSE GO TO 340
Other (Specify) _____.	3	IF 326=1, GO TO 333, ELSE GO TO 340

328. In 1992, did you receive *every single one* of the child support payments you were supposed to receive for (the children)?

Yes
No

329. Of the child support payments you received in 1992, how many of them were received *on time*. Would you say all of them were on time, most of them, some of them or none of them?

All	1
Most	2
Some	3
None	4

330. And of the child support payments you received, how many of them were for the *full* amount you were supposed to receive? Would you say all of them, most of them, some of them, or none of them?

All	1
Most	2
Some	3
None	4

331. So you received ($ from 313) (every week) for (NAME ALL COVERED CHILDREN) in 1992. Is this correct?

Yes GO TO 340
No

332. How much child support did you actually receive *altogether* in 1992 for (the children)?

ENTER AMOUNT $_____ ALL
SKIP TO 340

333. The next questions ask about the amount of child support you received between January 1 and December 31, 1993. (Please include any back support and any child support passed through the welfare agency in addition to you regular A.F.D.C. payment.)

How much child support did you actually receive *altogether* in 1992 for (NAME ALL COVERED CHILDREN)?

ENTER AMOUNT $_____

334. So you received (Total amount from 333) dollars *altogether* in 1992. Is this correct?

Yes SKIP TO 340
No

335. What is the correct amount of child support you *actually* received in 1992?

ENTER AMOUNT $_____

340. The next questions are about health insurance.

Does the child support (agreement) say who is supposed to provide health insurance for (NAME ALL COVERED CHILDREN)?

Yes
No SKIP TO 342

341 According to the (agreement), who was *supposed to* provide health insurance for (NAME ALL COVERED CHILDREN)?

Respondent for all children	1	
Other parent for all children	2	
Both parents for all children	3	
Parents each cover different children	4	
Not specified in the award	5	
DK—because the Child Support Enforcement Office filed the paper work	6	
Other _____		

342. During 1992, did (the children's) father/mother) *actually have* health insurance that covered (the children)—through an HMO, a regular insurance policy, or some other plan?

PROBE: FOR MOST OF 1992
Yes GO TO 400
No GO TO 400

343. Someone receiving A.F.D.C. may get up to $50 for child support each month in addition to A.F.D.C.. This money is sometimes called a bonus or a pass through. This child support bonus may come with an A.F.D.C. check or in a separate check.

Between January 1 and December 31, 1992, was *any* child support passed on to you by A.F.D.C. for (CHILD)?

Yes	1	
No	2	IF 341=1 GO TO 345, ELSE GO TO 355
Other (Specify) _____.	3	GO TO 355

345. How much child support did you actually receive *altogether* in 1992 for (CHILD)?

ENTER AMOUNT $_____

346. So you received ($ from 345) dollars *altogether* in 1992. Is this correct?

Yes 1 SKIP TO 355
No 2

347. What is the correct amount of child support you *actually* received in 1992?

ENTER AMOUNT $_____

348. The next question is about health insurance.

During 1992, did (CHILD)'s (father/mother) *actually have* health insurance that covered (CHILD)—through an HMO, a regular insurance policy, or some other plan?

PROBE: FOR MOST OF 1992?

Yes GO TO 378
No GO TO 376

SECTION 3B—REASON FOR NO LEGAL AGREEMENT

376. YOUNGEST CHILD ON ROSTER IS REFERENCE CHILD.

Is there a legal agreement about child support for (CHILD) pending now?

Yes	1	GO TO 400
No	2	
DK Because Child Enforcement Office or A.F.D.C. Office may have filed papers	3	

377. Here are some reasons a parent might not have a legal arrangement about child support. Please tell me which of these reasons describe why *you* do *not* have a legal arrangement about child support for (CHILD).

PROBE: Was that a reason you did not have a legal arrangement about child support?

	YES	NO	DK	REF
A. Did you not have a child support order because (IF AGE CHILD > 17) (CHILD) was too old for child support.	1	2	3	4
B. Did you not have a child support order because (CHILD) stays with (his/her) (father/mother) part of the time.	1	2	3	4
C. Did you not have a child support order because (CHILD)'S (father/mother) provides what (he/she) can.	1	2	3	4
D. Did you not have a child support order because you did not feel the need to get legal, that is go to court.	1	2	3	4
E. Did you not have a child support order because you did not want (CHILD) or yourself to have contact with (CHILD)'s (father/mother).	1	2	3	4
F. Did you not have a child support order because you did not want (Child)'s (father/mother) to pay child support.				
G. Did you not have a child support order because (CHILD)'s (father/mother) could not afford to pay child support.	1	2	3	4
H. Did you not have a child support order because (IF R=FEMALE) you did not have a legal ruling about who the father was, that is you did not legally establish paternity.	1	2	3	4
I. Did you not have a child support order because you could not locate (CHILD)'s (father/mother).	1	2	3	4

378. Why did you not have a legal agreement about child support for (CHILD)?

FIELD CODE OTHERS

Other parent in jail/prison	1	GO TO 400
Other parent died before 1992	2	END INTERVIEW
Other parent lives in another country	3	GO TO 400
Split custody	4	GO TO 400
Respondent able to support the child	5	GO TO 400
Recently separated	6	GO TO 400
Other (Specify)_____	7	GO TO 400

379. Other than the reasons you have already told me about, was there any other reason you did not have a legal agreement or court order about child support for (CHILD)?

Yes
No GO TO 400

380. What was that?

FIELD CODE OTHERS

Other parent in jail/prison	1	GO TO 400
Other parent died before 1992	2	END INTERVIEW
Other parent lives in another country	3	GO TO 400
Split custody	4	GO TO 400
Respondent able to support the child	5	GO TO 400
Recently separated	6	GO TO 400
Other (Specify)_____	7	GO TO 400

SECTION 4—HELP GETTING SUPPORT

400. Have you ever contacted a child support enforcement or 4D office, a department of social services, a welfare office, or any state or local government agency about anything to do with child support?

Yes GO TO 402
No

401. Have you ever *been contacted by* one of these agencies about anything to do with child support?

Yes
No IF 400–1 GO TO 402, ELSE GO TO 406

402. Which of the following things did you have contact about:

	YES	NO	DK	REF
A. Were you in contact about finding the other parent	1	2	3	4
B. Were you in contact about (IF R=FEMALE) getting a legal ruling about who the father is, that is establishing paternity.	1	2	3	4
C. Were you in contact about getting a *legal* agreement or court award for the other parent to pay child support.	1	2	3	4
D. Were you in contact about collecting child support that the other parent owed	1	2	3	4
E. Were you in contact about changing the amount of child support the other parent was legally required to pay.	1	2	3	4
F. Were you in contact about getting an agreement for the other parent to provide health insurance.	1	2	3	4
G. Were you in contact about getting A.F.D.C. or Medicaid	1	2	3	4

405. In what year did you last have contact with one of these agencies?
19_____

406. Next, thinking about the government programs that help families with children, between January 1 and December 31, 1992:

	YES	NO	DK	REF
A. Did you have Medicaid or any other state provided health insurance coverage at any time?	1	2	3	4
B. Did you receive any food stamps?	1	2	3	4
C. Did you receive any A.F.D.C. or A.D.C. payments?	1	2	3	4

SECTION 5—AGREEMENT ABOUT CUSTODY AND VISITATION

501. The next questions are about the relationship between (CHILD) and (his/her) (father/mother).

Does (CHILD)'s (father/mother) have visitation privileges?
Yes
No GO TO 503

502. Did you ever go to court, before a judge, or through a legal process to make the visitation privileges legal?
Yes
No

503. Sometimes children live with each parent for part of the time. This is called joint physical custody.

Did a court or judge *ever* give you and (CHILD)'s (father/mother) joint *physical* custody?
Yes
No

504. Joint legal custody of a child means that both parents have the right to help make decisions about the child

Did a court or judge *ever* give you and (CHILD)'s (father/mother) joint *legal* custody?
Yes
No

SECTION 6—PARENT-CHILD CONTACT

601. Did you and (CHILD)'s (father/mother) live in the same state during 1992?

PROBE IF NEEDED: As far as you know, did you live in the same state during *most of* 1992?

Yes GO TO 603
No

602. In what state did (CHILD)'s (father/mother) live during 1992?

PROBE IF NEEDED: Where did (he/she) live during most of 1992?
ENTER NAME OF STATE _____
Outside of the United States

603. Did either you or (CHILD) have *any kind* of contact *at all* with (CHILD)'s (father/mother) during 1992?

Yes
No GO TO 700

604. Did (CHILD) spend time with (his/her) (father/mother) on at least one day in 1992?

Yes
No SKIP TO 611

605. Including birthdays, holidays and vacation days, between January 1, 1992 and December 31, 1992, *on* how many days altogether did (CHILD) spend time with (his/her) (father/mother)?

PROBE IF NEEDED: ON HOW MANY DAYS EACH WEEKEND WAS THAT, WOULD THAT BE FRIDAY, SATURDAY AND SUNDAY?

_____

611. (Other than the child support you told me about, between) January 1 and December 31, 1992 did (the children's) (father/mother) do any of the following for (NAME ALL COVERED CHILDREN):

	YES	NO	DK	REF
A. Give any birthday, holiday or other gifts to (CHILD/the children	1	2	3	4
B. Provide clothes (IF REFERENCE CHILD OR ANY CHILD W/ AGREE = 1 has AGE <4, diapers,) or shoes for (NAME ALL COVERED CHILDREN).	1	2	3	4
C. Provide food or groceries REFERENCE CHILD OR ANY CHILD W/ AGREE = 1 has AGE < 2 or formula) for (NAME ALL COVERED CHILDREN.	1	2	3	4
D. Pay for child care or summer camp	1	2	3	4
E. Pay for medical expenses, such as medicine or visits to the doctor or dentist, other than health insurance.	1	2	3	4

SECTION 7—BACKGROUND QUESTIONS

700. CHECK ITEM: Current martial status?

Never Married	1 END INTERVIEW
Currently Married.	2 GO TO 701
Divorced	3 GO TO 702
Separated	4 GO TO 703
Widowed	5 GO TO 704

701. Last, I have a couple of background questions. Have you been married before or is your current marriage your first marriage?

Married before	1 GO TO 705
First marriage	2 GO TO 720
Other _____	3 END INTERVIEW

702. Last, I have a couple of background questions. Have you been married more than once?

Yes GO TO 705
No GO TO 705

703. Last, I have a couple background questions. In what year did your separation take place?

19 _____ GO TO 706

704. Last, I have a couple of background questions. Have you ever been divorced?

Yes, divorced	1 GO TO 705
No	3 END INTERVIEW

705. In what year did your (most recent) (divorce) take place?

19_____

706. What was the year of that marriage
19_____

707. At the time you separated, were you working?

Yes GO TO 708
No GO TO 709

708. Were you working 35 hours or more per week or less than 35 hours per week?

35 hours or more.	1 GO TO 710
Less than 35 hours.	2 GO TO 710

709. Did you work at any time during the five years before your last separation?

Yes GO TO 710
No GO TO 701

710. CHECK ITEM:

Total Number of kids in household:

One	1 GO TO 711
Other	2 GO TO 710

711. Is (CHILD) from (the marriage before this one)?

Yes	1 END INTERVIEW
No	2 END INTERVIEW

712. Which of your children living here are from (the marriage before this one)?

None END INTERVIEW
All END INTERVIEW

Annual Number of Respondents: 56,000.

Annual Frequency: 1.

Average Burden Hours per Response: .0241.

Burden Hours: 1,350.

Dated: December 22, 1993.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 93–31968 Filed 12–30–93; 8:45 am]
BILLING CODE 4184–01–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage In Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

Parent Corporation

Inland Container Corporation, Delaware, 4030 Vincennes Road, Indianapolis, IN 46268–0937.

Wholly Owned Subsidiaries Which Will Participate in the Operations and States of Incorporation

Crockett Container Corporations, California
El Morro Corrugated Box Corporation, Delaware
El Morro Corrugated Box Corporation, Puerto Rico
Georgia Kraft Company, Delaware
Inland Container Corporation Foundation, Inc., Indiana
Inland Container FSC, Inc., United States Virgin Islands
Inland Corrugados de Mexico, S.A. de C.V., Mexico City, D.F.
Inland de Mexico Holding Co., S.A. de C.V., Mexico City, D.F.
Inland International Holding Company, Delaware
Inland Paper Company, Inc., Indiana
Inland Real Estate Investments, Inc., Indiana
King Container Company, California
Pakway Container Corporation, Indiana

Sabine River & Northern Railroad Company, Texas

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–32045 Filed 12–30–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Controlled Substances: Established 1994 Aggregate Production Quota

AGENCY: Drug Enforcement Administration, DOJ.

ACTION: Notice of established 1994 aggregate production quotas.

SUMMARY: This notice establishes 1994 aggregate production quotas for controlled substances in Schedule I of the Controlled Substances Act.

DATE: This order is effective January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act (CSA) (21 U.S.C. 826) requires that the Attorney General establish aggregate production quotas for all controlled substances in Schedule I and II each year. This responsibility has been delegated to the Administrator of the DEA pursuant to § 0.100 of Title 28 of the Code of Federal Regulations.

On October 8, 1993, a notice of the proposed 1994 aggregate production quotas for certain Schedule I controlled substances was published in the **Federal Register** (58 FR 52510). All interested persons were invited to comment on or object to these proposed aggregate production quotas on or before November 8, 1993. No comments or objections were received.

This notice is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

This action has been analyzed in accordance with the principles and criteria contained in the Executive Order 12612 and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this matter will have no significant impact upon small entities within the meaning of and intent of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The establishment of annual production quotas for Schedules I and II controlled substances is mandated by law and by the international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substances.

Therefore, under the authority vested in the Attorney General by section 306 of the Controlled Substances Act of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby establishes the 1994 aggregate production quotas for the following controlled substances, expressed in grams of anhydrous base, be established as follows:

Basic class	Established 1994 quotas (in grams)
4-Methoxyamphetamine	10
3-Methylfentanyl	10
Cathinone	2

Dated: December 22, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 93–32003 Filed 12–30–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Open Meeting

SUMMARY: Pursuant to Title II of the Civil Rights Act of 1991 (Pub. L. 102–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a meeting of the Commission which is to take place on Thursday, February 10, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of:

(a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled;

(b) Conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and

(c) Recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and place: The meeting will be held on Thursday, February 10, 1994 from 3 p.m. until 6 p.m. at the Hotel InterContinental, 251 S. Olive Street, Los Angeles, California 90012.

Agenda: The agenda for the meeting is as follows: Introduction of Commissioners, Review of Hearing Agenda, Review Briefing Book, Discussion of Rules of Procedure, Report on Research, Discussion of Perkins-Dole Award, Discussion of Final Report.

There will be a 15 minute break in the meeting between 4:30 p.m. and 4:45 p.m.

Public participation: The meeting will be open to the public. Seating will be available on a first-come, first-served basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than February 1, 1994, if special accommodations are needed. Individuals or organizations wishing to submit written statements should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, postmarked no later than February 1, 1994.

For further information contact: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC, this 27th day of December 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–32083 Filed 12–30–93; 8:45 am]

BILLING CODE 4510–23–M

Glass Ceiling Commission; Open Site Hearing

SUMMARY: Pursuant to title II of the Civil Rights Act of 1991 (Pub. L. 1-2–166) and section 9 of the Federal Advisory Committee Act (FACA) (Pub. L. 92–462, 5 U.S.C. app. II) a Notice of establishment of the Glass Ceiling Commission was published in the **Federal Register** on March 30, 1992 (57 FR 10776). Pursuant to section 10(a) of FACA, this is to announce a public hearing of the Commission which is to take place on Friday, February 11, 1994. The purpose of the Commission is to, among other things, focus greater attention on the importance of eliminating artificial barriers to the advancement of minorities and women to management and decisionmaking positions in business. The Commission has the practical task of:

(a) Conducting basic research into practices, policies, and manner in which management and decisionmaking positions in business are filled;

(b) Conducting comparative research of businesses and industries in which minorities and women are promoted or are not promoted to management and decisionmaking positions; and

(c) Recommending measures designed to enhance opportunities for and the elimination of artificial barriers to the advancement of minorities and women to management and decisionmaking positions.

Time and place: The hearing will be held on Friday February 11, 1994 from 8 a.m. until 6 p.m. in the Los Angeles County Board of Supervisors Hearing Room, room 381B, Kenneth Hahn Hall of Administration, 500 West Temple Street, (Corner of Temple and Grand), Los Angeles, California 90012.

Issues: Testimony should highlight successful initiatives and/or recommendations for addressing the areas discussed below. The Commission is especially interested in hearing about procedures, practices and systems that have been put in place to make sure that goals are achieved in work force diversity.

Recruitment: What systems are in place to ensure that external recruiting for decisionmaking positions will produce a pool of applicants which provides opportunities for minorities and women? Similarly, does the process for considering promotion of current employees to decisionmaking positions ensure consideration of minorities and women?

Developmental practices and credential building experiences: How are minorities and women ensured that they will be given the kinds of experiences that will make them competitive for decisionmaking positions, including not only advanced education, but also developmental assignments such as to corporate committees and task forces, special projects, etc.

Accountability for equal employment opportunity responsibilities: How are senior level executives, line managers, and corporate decision makers held accountable for EEO responsibilities?

Compensation systems: How is the total compensation package including bonuses, stock options and other incentives evaluated for fairness for minorities and women? How is the appraisal system/performance rating system protected from subjective decisions which impact compensation? Do management and supervisory compensation systems depend upon or reward managers' achieving work force diversity goals, and, if so, how does that work?

Placement patterns: What kind of monitoring is done to ensure that minorities and women are placed in the line positions that will provide better opportunity for promotion to decisionmaking positions?

Testimony on successful initiatives may include discussion on the elements above and how other factors are combined to create a complete initiative resulting in the advancement of minorities and women.

Agenda: The agenda for the meeting is as follows:

8 a.m. Introduction of Commissioners
8:30 a.m. Welcome by government officials
8:45 a.m. Witnesses
12 Noon Lunch break
1:30–4 p.m. Witnesses
4:30 p.m. Open microphone session

Public participation: The hearing will be open to the public. Seating will be available on a first-come, first-serve basis. Seats will be reserved for the media. Disabled individuals should contact the Commission no later than February 1, 1994, if special accommodations are needed.

Individuals or organizations wishing to testify orally must provide written testimony or an executive summary of testimony in advance of the hearing. Send Twenty (20) copies, postmarked on or before January 25, 1994, to: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2233, Washington, DC 20210.

The written testimony must contain the following information:

(1) The name, address, and telephone number of each person to appear;

(2) The capacity in which the person will appear;

(3) The approximate amount of time requested for presentation;

(4) The issues that will be addressed.

(5) Twenty (20) copies of testimony or executive summary. (Written material may be longer in length than oral comments.)

As many people as time allows will be permitted to testify. The amount of time requested for each presentation will be reviewed in light of the number of persons or groups wishing to appear. To provide all interested parties an opportunity to present their views, the Glass Ceiling Commission may impose an appropriate time restriction for each presentation or limit presentations to only one person for an organization or group.

A videotape may be made of the hearing, and minutes of the hearing will be taken.

Materials submitted at this hearing should not be submitted at any subsequent Glass Ceiling Commission hearings.

Those individuals or organizations wishing to submit written statements, but not testify orally, should send twenty (20) copies to Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2233, Washington, DC 20210. Written statements should be postmarked on or before January 25, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Joyce D. Miller, Executive Director, Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue NW., room S–2233, Washington, DC 20210, (202) 219–7342.

Signed at Washington, DC, this 27th day of December 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–32081 Filed 12–30–93; 8:45 am]

BILLING CODE 4510–23–M

Employment Standards Administration

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a

part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S-3014, Washington, DC 20210.

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

Massachusetts:
MA930001 (Feb. 19, 1993)
MA930002 (Feb. 19, 1993)
Pennsylvania:
PA930004 (Feb. 19, 1993)

Volume II:

None

Volume III:

Arizona:
AZ930006 (Aug. 27, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783-3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 23rd day of December 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93-32051 Filed 12-30-93; 8:45 am]

BILLING CODE 4510-27-M

Employment and Training Administration

[TA-W-29,097]

FD Services, Inc., Casper, WY; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at FD Services, Incorporated, Casper, Wyoming. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA-W-29,097; FD Services, Incorporated Casper, Wyoming (December 17, 1993)

Signed at Washington, DC, this 21st day of December 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 93-32085 Filed 12-30-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 13, 1994.

Interested persons are invited to submit written Comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 13, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 20th day of December 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Shade/Allied, Inc. (Workers)	Petersburg, WV	12/20/93	12/06/93	29,327	Business Forms.
Tetra-Pak, Inc. (Workers)	Minneapolis, MN	12/20/93	12/01/93	29,328	Liquid Filling Machines.
Continental Airlines (Workers)	Denver, CO	12/20/93	12/02/93	29,329	Aircraft Maintenance.
J.M. Huber Corp. (Co.)	Houston, TX	12/20/93	12/06/93	29,330	Oil and Gas.
Exolon-Esk Co. (USWA)	Tonawanda, NY	12/20/93	12/22/93	29,331	Aluminum Oxide & Silicon Carbide.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Recycled Aluminum Metals Co. (Co.)	Dallesport, WA	12/20/93	12/07/93	29,332	Recycling Service.
CTS Connector Division (Workers)	New Hope, NM	12/20/93	12/03/93	29,333	Electronic Components.
Washington Scientific, Inc. (IBT)	Long Lake, MN	12/20/93	11/30/93	29,334	Computer Components.
Restaura, Inc. (Workers)	Wentzville, MO	12/20/93	10/30/93	29,335	Food Vending Services.
Williamette Industrial Forms Div (Workers).	Beaverton, OR	12/20/93	11/02/93	29,336	Computer Paper.
Union Texas Petroleum (Workers)	Midland, TX	12/20/93	11/29/93	29,337	Oil & Gas Drilling.
Lockheed Corp./Fort Worth Co. (Workers).	Abilene, TX	12/20/93	12/08/93	29,338	Aircraft Wire Harnesses.
Tuboscope Pipeline Services (Workers)	Houston, TX	12/20/93	12/06/93	29,339	Pipeline Inspection Services
Mobil Corp. Research & Dev (Co.)	Princeton, NJ	12/20/93	12/06/93	29,340	Engineering & Research—Oil Gas
Olsken Services (Workers)	Ogdensburg, NY	12/20/93	12/01/93	29,341	Aluminum Ingot.
Elliott Turbomachinary Co. (USWA)	Jeannette, PA	12/20/93	12/10/93	29,342	Turbines and Compressors
Philips Lighting Co. (IUE)	Fairmont, WV	12/20/93	12/09/93	29,343	Home Lighting Products.
Alliant Techsystems, Inc. (Workers)	Hopkins, MN	12/20/93	12/10/93	29,344	Munitions.
Camco Products & Services (Workers)	Houston, TX	12/20/93	12/10/93	29,345	Oilfield Equipment.
Pennington Seismic Exchange (Workers)	Tulsa, OK	12/20/93	11/23/93	29,346	Seismic Data, Profiles & Surveys
Pennington Seismic Exchange, Inc. (Workers)	Oklahoma City OK	12/20/93	11/23/93	29,347	Seismic Data, Profiles & Surveys.
Mobil Corp./Research & Dev (Co.)	Paulsboro, NJ	12/20/93	12/06/93	29,348	Research & Dev —Oil and Gas

[FR Doc. 93-32084 Filed 12-30-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Submission of Proposed Information Collections to OMB

AGENCY: National Archives and Records Administration

ACTION: Notice of proposed information collections submitted to OMB for approval.

SUMMARY: The National Archives and Records Administration (NARA) is giving notice that the proposed collections of information described in this notice have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act and 5 CFR part 1320. Public comment is invited on these collections.

DATES: Comments should be submitted by February 2, 1994.

ADDRESSES: Copies of the proposed information collections and supporting documentation can be obtained from the Policy and Program Analysis Division (NAA), National Archives at College Park, 8601 Adelphi Road, College Park, MD 20704-6001. Telephone requests may be made to (301) 713-6730.

Written comments should be sent to Director, Policy and Program Analysis Division (NAA), at the above address. A copy of the comments should be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for NARA, Washington, DC 20503

FOR FURTHER INFORMATION CONTACT:

Mary Ann Hadyka or Nancy Allard at (301) 713-6730.

The following proposed information collections have been submitted to OMB:

1. National Historical Publications and Records Commission Budget Form (NA Form 17001)

Description: The information collection is a budget form used in lieu of SF 242-A. It is part of a grant application prepared by nonprofit organizations and institutions, state and local government agencies, Federally acknowledged or state recognized Native American tribes or groups, and individuals to apply for National Historical Publications and Records Program (NHPRC) support of projects in documentary editing and historical records preservation and planning.

Purpose. The information is used for evaluation of grant applications.

Frequency of response: One time with grant application.

Number of respondents. 200.

Reporting hours per response. 3 hours.

Annual reporting burden hours: 600.

Dated: December 21, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-32006 Filed 12-30-93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94-098]

NASA Advisory Council, Minority Business Resource Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Minority Business Resource Advisory Committee.

DATES: January 27, 1994, 9 a.m. to 4 p.m.

ADDRESSES: Ames Research Center, Mail Auditorium, Building 201, Moffett Field, California.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph C. Thomas, III, Office of Small and Disadvantaged Business Utilization, National Aeronautics and Space Administration, room 9K70, 300 E Street, SW., Washington, DC 20546, (202) 358-2088.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows.

—Review of Fiscal Year (FY) 1993 MBRAC Activities and Accomplishments
—Priority Issues for FY 1994
—Report of the Associate Administrator for Small and Disadvantaged Business Utilization
—Participation from the Public

—Chairman's Report
—Committee Reports
—Wrap-up/Annual Schedule of Committee Meetings.

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated December 28, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc 93–32068 Filed 12–30–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Challenge and Advancement Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Literature Section) to the National Council on the Arts will be held on January 13, 1994 from 9 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 5:30 p.m. for a policy discussion.

The remaining portion of this meeting from 9 p.m. to 3 p.m. is for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6) (B) of section 552b of title 5, United States Code.

Any person amy observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: December 27, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 93–32050 Filed 12–30–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL LABOR RELATIONS BOARD

Appointments of Individuals to Serve as Members of Performance Review Boards

5 U.S.C. 4314(c)(4) requires that the appointments of individuals to serve as members of performance review boards be published in the **Federal Register**. Therefore, in compliance with this requirement, notice is hereby given that the individuals whose names and position titles appear below have been appointed to serve as members of performance review boards in the National Labor Relations Board for the rating year beginning October 1, 1992 and ending September 30, 1993.

Name and Title

Robert E. Allen—Associate General Counsel, Advice
Frank V. Battle—Deputy Director of Administration
Harold J. Datz—Chief Counsel to Board Member
Yvonne T. Dixon—Acting Deputy General Counsel
Frederick Freilicher—Chief Counsel to Board Member
John E. Higgins—Solicitor
Susan Holik—Chief Counsel to Board Member
Gloria Joseph—Director of Administration
Nicholas E. Karatinos—Acting Associate General Counsel, Enf. Lit.
Barry J. Kearney—Deputy Associate General Counsel, Advice
Joseph E. Moore—Deputy Executive Secretary
W. Garrett Stack—Associate General Counsel, Operations-Management
Elinor H. Stillman—Chief Counsel to the Chairman
Berton B. Subrin—Director, Office of Representation Appeals
John C. Truesdale—Executive Secretary

Dated: Washington, DC, November 8, 1993.

By Direction of the Board.

John C. Truesdale,

Executive Secretary.

[FR Doc. 93–32004 Filed 12–30–93; 8:45 am]

BILLING CODE 7545–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–261]

Carolina Power & Light Co.; H.B. Robinson Steam Electric Plant, Unit No. 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of a scheduler exemption from the requirements of 10 CFR part 50, Appendix E, to Carolina Power & Light Company (CP&L or the licensee), for H.B. Robinson Steam Electric Plant, Unit No. 2 (HBR), located in Darlington County, South Carolina.

Environmental Assessment

Identificotion of the Proposed Action

The proposed exemption would allow temporary relief from the requirements of 10 CFR part 50, Appendix E, Section IV.F.2., for the licensee at HBR to annually exercise its emergency plan. By letter dated November 21, 1993, as supplemented November 22, 1993, the licensee requested an exemption from the requirements of 10 CFR part 50 Appendix E, to conduct an annual exercise of the HBR Radiological Emergency Plan in 1993. The licensee had planned to conduct a full-participation exercise involving the State of South Carolina and local response organizations on November 30 1993. The licensee requested that an exemption be granted for the conduct of the onsite portion of the exercise because the licensee would not have sufficient staff to conduct a meaningful exercise of the HBR Emergency Plan due to resource constraints caused by an unscheduled outage to investigate and address core design issues. This proposed delay will prevent HBR from meeting the requirement to conduct an annual exercise of the HBR Emergency Plan. However, the licensee proposed that the offsite portion of the exercise involving the State of South Carolina and local governmental authorities be conducted as scheduled on November 30, 1993. The licensee requested a delay of the onsite portion of the 1993 annual exercise from November 30, 1993, to the week of March 21, 1994. The request to move the exercise date was originated by the licensee because they would be unable to participate on November 30, 1993, as a result of their involvement at that time in addressing safety issues identified during startup after refueling outage 15. The reactor was ascending to full power operation after a refueling outage when low power physics testing revealed an improper configuration emanating from the design of the new fuel. The new fuel consisted of 44 fuel assemblies, 5 of which were found to be configured improperly against design specifications. As a result, the NRC dispatched an Augmented Inspection Team to the site and the licensee formed three investigative teams. The licensee stated that all of these efforts to develop corrective actions for core reconfiguration and to investigate and resolve any industry implications of fuel configuration problems diverted focus and resources. The offsite portion of the exercise involving the State of South Carolina and local governmental authorities would be conducted as scheduled on November 30, 1993. This proposed delay will prevent the licensee from meeting the requirement to annually exercise the HBR Radiological Emergency Plan, as specified in Appendix E to 10 CFR part 50, and, therefore, the licensee requested a scheduler exemption.

The previous emergency preparedness exercise at HBR was successfully conducted on November 17, 1992, and included the partial participation of State and local agencies for notifications and communications only. The licensee had scheduled, planned, and coordinated the 1993 exercise with participating Federal, State, and local agencies for November 30, 1993. The scope and objectives, and the final scenario documentation for the November 1993 exercise were submitted to the NRC on September 13, 1993, and October 14, 1993, respectively, which is within the time frame established for their submittal in support of a November 1993 exercise. In addition, the licensee states that a training exercise with the State of South Carolina and local governmental agencies was conducted on November 16, 1993, which activated all emergency facilities and included participation from all major responder groups.

The Need for the Proposed Action

The proposed exemption is needed because the licensee would not have sufficient staff to meaningfully exercise the HBR Emergency Plan due to resource constraints caused by an unscheduled outage to investigate and address core design issues.

Environmental Impacts of the Proposed Action

The proposed exemption does not involve any measurable environmental impacts since the exemption deals with the exercise of the licensee's emergency plan. Plant configuration and operations are not changed. Thus, the proposed exemption would not affect the probability or consequences of a potential reactor accident and would not otherwise affect radiological plant effluents. Consequently, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves only the emergency plan exercises. It does not affect nonradiological plant effluents and there are no other nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the staff has concluded that there are no measurable environmental impacts associated with the proposed exemption, any alternatives with equal or greater environmental impact need not be evaluated.

The principal alternative to the exemption would be to require strict compliance with 10 CFR part 50, Appendix E, Section IV.F.2., for the licensee at HBR to annually exercise its emergency plan. This would not reduce environmental impacts of plant operation and would result in a diversion of plant resources from addressing important health and safety issues.

Alternative Use of Resources

This exemption from the scheduled exercise in November 1993 does not reduce the use of resources since the schedule for future exercises will not be affected by this exemption. The licensee has stated it will conduct the previously scheduled 1994 exercise in November 1994, as planned. Thus, the requested exemption would provide only temporary relief from the requirement to conduct an annual exercise.

Agencies and Persons Consulted

The staff consulted with the State of South Carolina regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action would not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, see the application dated November 21, 1993, as supplemented November 22, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the local public document room located at the Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, SC 29550.

Dated at Rockville, Maryland, this 28th day of December 1993.

For the Nuclear Regulatory Commission.

George F. Wunder,

Acting Director, Project Directorate II–I, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–32089 Filed 12–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–352, 50–353, 50–322] [DD–93–22]

Shipments of Fuel From Long Island Power Authority's Shoreham Nuclear Power Station to Philadelphia Electric Company's Limerick Generating Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Material Safety and Safeguards, has taken action with regard to the Petition of October 8, 1993, filed by Fred DeVesa, Esq., Acting Attorney General of New Jersey, on behalf of the New Jersey Department of Environmental Protection and Energy (Petitioner). The Petitioner requested that the Commission: (1) Amend Long Island Power Authority's (LIPA's) decommissioning plan to specifically address the transfer and transport of LIPA's fuel to Philadelphia Electric Company (PECo); (2) perform an Environmental Assessment (EA), pursuant to 10 CFR 51.30, and make a determination based on the EA, pursuant to 10 CFR 51.31, regarding the proposed transfer and transport of the fuel by barge, from LIPA to PECo, which addresses the risks associated with the shipment of the fuel along and through New Jersey's coastal zone; (3) perform a Consideration of Alternatives, in accordance with section 102(2)(E) of the National Environmental Policy Act (NEPA) and 40 CFR 1509(b), which addresses alternative means of transporting fuel from LIPA to PECo; and (4) immediately stay PECo's June 23, 1993, license amendments, the Certificate of Compliance regarding the IF–300 issued to Pacific Nuclear Systems, and LIPA's license and general license to transfer the fuel pursuant to 10 CFR 71.12 pending completion of the above actions and compliance with the consistency process under the Coastal Zone Management Act (CZMA). The Petitioner asserted, in support of these

requests, that the U.S. Nuclear Regulatory Commission has violated NEPA, the CZMA, and the Atomic Energy Act by allowing the transfer and transport of LIPA's fuel to proceed absent any consideration of the potential effects on New Jersey's coastal zone, any case-specific environmental impact analysis, or any consideration of alternatives to the means of transport. Specifically, the Petitioner asserted that: (1) The NRC failed to consider alternatives under NEPA for the proposed action; (2) the NRC failed to perform an EA for the transfer and barge transport of LIPA's fuel; (3) the NRC's EA for PECo's license amendments was inadequate; (4) the NRC violated NEPA by segmenting the approval of the transfer and transport by barge; (5) the NRC failed to require LIPA to obtain necessary approvals; and (6) the NRC violated the CZMA by failing to require necessary consistency reviews. The Notice of Receipt of Petition for Director's Decision, under 10 CFR 2.206, was published in the **Federal Register** on October 29, 1993 (58 FR 58203).

The Director of the Office of Nuclear Material Safety and Safeguards has determined to deny the Petition. The reasons for this denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–93–22), which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW. (Lower Level), Washington, DC 20555.

A copy of this decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by this regulation, the decision will constitute the final action of the Commission 25 days after the date of issuance of the decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 23rd day of December 1993.

For the Nuclear Regulatory Commission.

Robert M. Bernero,

Director, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–32031 Filed 12–30–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Identification of Priority Foreign Countries: Request for Public Comment

AGENCY: Office of the United States Trade Representative.

ACTION: Request for written submissions from the public concerning acts, policies, and practices to be considered with respect to identification of countries under section 182 of the Trade Act of 1974, as amended (Trade Act).

SUMMARY: Section 182 of the Trade Act requires the United States Trade Representative (USTR) to identify countries that deny adequate and effective protection of intellectual property rights or deny fair and equitable market access to U.S. persons that rely on intellectual property protection. (19 U.S.C. 2242.) In addition, the USTR is required to determine which of those countries identified are priority foreign countries. Such priority countries could be subject to initiation of a "special" 301 investigation.

The USTR requests written submissions from the public concerning foreign countries' acts, policies, and practices that are relevant to the decision whether particular trading partners should be identified under section 182 of the Trade Act.

DATES: Submission must be received on or before 12 noon on Friday, February 18, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph Papovich, Deputy Assistant USTR for Intellectual Property (202) 395–6864; Gilbert Donahue at (202) 395–6864; or Thomas Robertson, Associate General Counsel (202) 395–6800, Office of the United States Trade Representative.

SUPPLEMENTARY INFORMATION: Pursuant to section 182 of the Trade Act of 1974, as amended by the Omnibus Trade and Competiveness Act of 1988, the USTR must identify those countries that deny adequate and effective protection for intellectual property rights or deny fair and equitable market access to U.S. persons that rely on intellectual property protection. Those countries that have the most onerous or egregious acts, policies or practices have the greatest adverse impact (actual or potential) on relevant U.S. products are to be identified as priority foreign countries.

The USTR may not identify a country as a priority foreign country if it is entering into good faith negotiations, or making significant progress in bilateral or multilateral negotiations, to provide adequate and effective protection of intellectual property rights.

The USTR must decide whether to identify countries as priority foreign countries each year and issue a decision within 30 days after publication of the National Trade Estimate (NTE) report, i.e., no later than April 30, 1993. Priority foreign countries are potentially subject to initiation of an investigation under section 301 of the Trade Act.

Requirements for Submissions

Submissions should include a description of the problems experienced and the effect of the acts, policies, and practices on U.S. industry. Submissions should be as detailed as possible and should provide all necessary information for assessing the effect of the acts, policies and practices. Any submissions that include quantitative loss claims should be accompanied by the methodology used in calculating such estimated losses. Comments must be filed in accordance with the requirements set forth in 15 CFR 2006.8(b) (55 FR 20593) and must be sent to Dorothy Balaban, Special Assistant to the Section 301 Committee, room 223, 600 17th Street, NW., Washington, DC 20506, no later than 12 noon on Friday, February 18, 1994. Because submissions will be placed in a file open to public inspection at USTR, business-confidential information should not be submitted.

Public Inspection of Submissions

Within one business day of receipt, submissions will be placed in a public file, open for inspection at the USTR Reading Room, in room 101, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC. An appointment to review the file may be made by calling Brenda Webb, (202) 395–6186. The USTR Reading Room is open to the public from 10 a.m. to 12 noon and from 1 p.m. to 4 p.m., Monday through Friday.

Gordana S. Earp,

Acting Assistant USTR for Services, Investment and Intellectual Property.

[FR Doc. 93–32030 Filed 12–30–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33390; File No. 265–18]

Market Transactions Advisory Committee; Meeting

AGENCY: Securities and Exchange Commission.

ACTION: Notice of meeting of the Securities and Exchange Commission ("Commission") Market Transactions Advisory Committee ("Committee").

SUMMARY: This is to give notice that the Securities and Exchange Commission Market Transactions Advisory Committee will meet on January 19, 1994, in Room 1C30 at the Commission's main offices, 450 Fifth Street NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public. This notice also serves to invite the public to submit written comments to the Committee.

ADDRESSES: Written comments should be submitted in triplicate and should refer to File No. 265–18. Comments should be submitted to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Jack Drogin, Division of Market Regulation at (202) 272–2775, or Ari Burstein, Division of Market Regulation at (202) 504–2933; Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: In accordance with Section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. app 10a, the Securities and Exchange Commission Market Transactions Advisory Committee hereby gives notice that it will meet on January 19, 1994, in Room 1C30 at the Commission's main offices, 450 Fifth Street, NW., Washington, DC, beginning at 10 a.m. The meeting will be open to the public.

The Committee was formed under Section 17A(f) of the Securities Exchange Act of 1934. The Committee's responsibilities include assisting the Commission in identifying State and Federal laws that impede the safe and efficient clearance and settlement of securities transactions and in advising the Commission on the use of the Commission's authority under the Market Reform Act of 1990 to adopt uniform federal rules regarding the transfer and pledge of securities.

The purpose of the meeting will be to discuss the progress of the Committee's subgroups and to plan the continued progression of the Committee's work. In addition, the Committee will discuss the status of the project to revise Article 8 of the Uniform Commercial Code undertaken by the National Conference of Commissioners on Uniform State laws.

Dated: December 28, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–32059 Filed 12–30–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Incorporated

December 23, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Grupo Financiero Serfin S.A. de C.V.
American Depositary Shares, No Par Value (File No. 7–11719)
Detroit Diesel Corp.
Common Stock, $.01 Par Value (File No. 7–11720)
Emerging Markets Telecommunication Fund
Common Stock, $.001 Par Value (File No. 7–11721)
Golden Star Resources, Ltd.
Common Stock, $.01 Par Value (File No. 7–11722)
Talbots, Inc.
Common Stock, $.01 Par Value (File No. 7–11723)
Trans World Airlines
Voting Trust Cert., No Par Value (File No. 7–11724)
Trans World Airlines
Cum. Preferred, $.01 Par Value (File No. 7–11725)
Torch Energy Royalty Trust
Common Stock, No Par Value (File No. 7–11726)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 18, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW, Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–32055 Filed 12–30–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 23, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49328.
Date filed: December 20, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 18, 1994.
Description: Application of Katmailand, Inc. d/b/a Katmai Air, pursuant to section 401(d)(1) of the Act, and subpart Q of the Regulations, applies for a certificate of public convenience and necessity authorizing interstate and overseas scheduled air transportation between the points of Brooks Camp, Katmai National Park, Alaska and King Salmon, Alaska.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–32048 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–62–P

Aviation Proceedings; Agreements Filed During the Week Ended December 23, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49331.
Date filed: December 21, 1993.
Parties: Members of the International Air Transport Association.
Subject: TC2 Reso/P 1493 dated October 19, 1993, Middle East-Africa Resos r–1 to r–19.
Proposed Effective Date: April 1, 1994.

Docket Number: 49332.
Date filed: December 21, 1993.
Parties: Members of the International Air Transport Association.

Subject: TC2 Reso/P 1485 dated October 1, 1993, Europe-Middle East Resos r–1 to r–29.

Proposed Effective Date: April 1, 1994.

Docket Number: 49333.

Date filed: December 21, 1993.

Parties: Members of the International Air Transport Association.

Subject: TC3 Reso/P 0611 dated October 8, 1993, Europe-Japan/Korea Resos r–1 to r–54.

Proposed Effective Date: January 12, 1994.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–32049 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 39]

New Car Assessment Program; Consideration of a Public Meeting

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: This notice requests comments on NHTSA's consideration of a public meeting to review and discuss issues concerning, and options for, the New Car Assessment Program (NCAP) and on the agenda for the meeting. In 1972, Congress enacted the "Motor Vehicle Information and Cost Savings Act" which includes requirements for the development and dissemination of comparative information on the crashworthiness of motor vehicles. In 1978, NCAP with the primary purpose of partially fulfilling this requirement. In NCAP frontal crash tests of approximately 35 passenger vehicles are conducted each year and the test results are made available to the public. To be responsive to Congress and to further benefit the public, NHTSA is considering convening a public meeting on the program to review the present NCAP and to invite information that could improve the program.

DATES: Written comments on this notice must be submitted no later than March 4, 1994.

ADDRESSES: Comments on this notice must refer to the docket and notice numbers set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Jim Hackney, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–1740).

SUPPLEMENTARY INFORMATION: In December 1993, the agency submitted a report to Congress on NCAP. This report can be found in this Docket and is titled Response to the NCAP FY 1992 Congressional Requirements.

This report provides:

- The results of an 18-month study to assess consumer and media needs and preferences for better understanding and more effective use of NCAP data. This included a summary of several consumer focus group and media studies. These studies indicated that consumers and the media desire comparative safety information on vehicles, a simplified NCAP format to better understand and utilize the crash test results, and expansion of NCAP to include other crash modes, such as side crashes and rollovers. Plans for implementing the findings of these studies are included in the report.
- Studies of real-world crashes versus NCAP crash tests. These studies tentatively conclude that NCAP test conditions approximate real-world crash conditions covering a major segment of the frontal crash safety problem. The studies also conclude that there is a significant correlation between NCAP results and real-world fatality risks for restrained drivers. In high speed frontal crashes, fatality risks to restrained drivers of cars that perform well in NCAP may be as much as 30 percent lower than fatality risks to restrained drivers of cars that do not perform well in NCAP. A more detailed report on this subject will soon be published for public comment.
- A study on the efficacy of allowing manufacturers to choose between the Hybrid III and the Hybrid II crash test dummy. NCAP data were utilized in this study along with an analysis of comments to **Federal Register** notices on the mandatory use of the Hybrid III crash test dummy in Federal Motor Vehicle Safety Standard (FMVSS) No. 208 and in NCAP. After considering data analysis and reviewing the comments to the two notices, NHTSA has concluded that exclusive use of the Hybrid III in NCAP should begin with MY 1996 vehicles. This is two years earlier than required by the recent amendment to FMVSS No. 208. Beginning with MY 1994 vehicles, the Hybrid III is being used exclusively for all seating positions in which the occupant is protected by an air bag.

The report also includes a review of NCAP historical performance and the following future goals for NCAP.

- Reach a larger group of the population with simplified data that will assist consumers in their vehicles purchases.
- Expand the collection of safety information by utilizing the additional injury-measuring capebilities of the more advance Hybrid III dummy.
- Expand NCAP to provide comparative side impact information to consumers along with the frontal NCAP information.
- Monitor rollover safety activities to determine the potential for providing consumers with comparative information on levels of protection in the rollover crash mode and on vehicle roll stability.

In the report, the agency also referred to the possibility of convening a public meeting on NCAP. A public meeting could provide an open forum for consumer groups, media, foreign governments, national and international safety organizations, universities, and motor vehicle manufecturers to discuss the above NCAP goals and relevant new suggestions. Comments could be solicited on any of the materiel in the Congressional report and opportunities could be given for interested parties to suggest alternative or additional NCAP goals and activities. If it is determined that such a meeting is desirable, it could be scheduled for the late spring of 1994.

Comments are therefore solicited on:

(1) The desirability and need for such a public meeting and

(2) The topics for consideration if a meeting is conducted. These topics may include all items discussed above that are included in the Congressional report and others such as:

- Additional frontal crash modes and/or higher frontal test speeds. Efforts in the U.S. and internationally are exploring the applicability of various frontal crash tests in assessing occupant protection. Offset and angled frontal tests into deformable and rigid barriers are being conducted and assessed. What implications do these additional crash modes and/or higher test speeds have for vehicle crashworthiness assessment and for vehicle manufacturers?
- Additional injury measures. As discussed in the Congressional report, the Hybrid III crash test dummy provides the capability to measure additional parameters including neck loads, chest compression, lower leg loads, and, potentially, abdominal loads. How would these measures be used to enhance consumer information? Should such measures be used in consumer information prior to possible introduction in regulations?
- Whether crashworthiness assessment programs should precede or follow the rulemaking process. For example, the present NCAP preceded mandatory dynamic frontal crash requirements of FMVSS No. 208 by eight years. (Note: The test procedures and test devices for 30 mph testing had received prior rulemaking review.) However, in the case of side impact, expansion of NCAP has awaited completed rulemaking action prior to the possible initiation of a consumer information program. As early as May 1984, NHTSA had established the feasibility for improving occupant protection in side impacts (SAE Paper No. 840886, presented at the Government/Industry Meeting in May 1984). What are the implications to consumers and vehicle manufacturers if crashworthiness assessment programs precede the rulemaking process?
- Review of the simplified format. In December 1993, NHTSA issued the first news release for the model year 1994 vehicles. A simplified format that utilized a star classification system was introduced in this release. A copy of the news release can be obtained by contacting the NHTSA Office of Public and Consumer Affairs. This classification system is based on a combined probability of life-threatening head and chest injury to the driver and passenger in the frontal NCAP test. Is this format effective in providing information to consumers? Is there agreement on its scientific basis?
- Any other relevant issues that the consumers, consumer organizations, vehicle manufacturers, or other interested parties may suggest.

Commenters who favor such a meeting should also indicate whether they might be interested in providing a public statement at the meeting and on what subjects. If it is decided to conduct a meeting, an additional public notice will be provided.

Issued on December 27, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–32022 Filed 12–30–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 27, 1993.

The Department of Treasury has made revisions and resubmitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.

Form Number: IRS Form 8840.

Type of Review: Resubmission.

Title: State of Closer Connection Exception (Under Section 7701(b)).

Description: Form 8840 is used by an alien individual, who otherwise meets the substantial presence test, to explain the basis of the individual's claim that he or she is able to satisfy the closer connection exception described in Regs. sec. 301.7701(b)–2.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 350,000:

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—13 minutes
Learning about the law or the form—7 minutes
Preparing the form—1 hour, 19 minutes
Copying, assembling, and sending the form to the IRS—35 minutes

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 756,000 hours.

OMB Number: New.

Form Number: IRS Form 8843.

Type of Review: Resubmission.

Title: Statement of Exempt Individuals (Under section 7701(b)).

Description: Form 8843 is used by an alien individual to explain the basis of the individual's claim that he or she is able to exclude days of presence in the U.S. because the individual is a teacher/trainee or student; professional athlete; or has a medical condition or problem.

Respondents: Individuals or households.

Estimated Number of Respondents/ Recordkeepers: 150,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 8843 Pt. I & II	Form 8843 Pt. I & III	Form 8843 Pt. I & II	Form 8843 Pt. I & V
Recordkeeping	13 min.	13 min.	13 min.	13 min.
Learning about the law or the form	5 min.	5 min.	5 min.	5 min.
Preparing the form	29 min.	34 min.	24 min.	34 min.
Copying, assembling, and sending the form to the IRS	17 min.	17 min.	17 min.	17 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 172,485 hours.

Clearance Officer: Garrick Shear, (202) 535–4297, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–32056 Filed 12–30–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

December 27, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance

Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0023.
Form Number: IRS Form 720.

Type of Review: Revision.
Title: Quarterly Federal Excise Tax Return.

Description: Form 720 is used to report excise taxes due from retailers and manufacturers on the sale or manufacture of various articles, to report taxes on facilities and services, and taxes on certain products and commodities (gasoline and vaccines, etc.). It enables IRS to monitor excise tax liability for various categories on a single form and to collect the tax quarterly in compliance with the law and regulations (Internal Revenue Code 6011).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 338,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Form	Recordkeeping	Learning about the law or the form	Preparing and sending the form to the IRS
720	25 hr., 35 min.	2 hr., 20 min.	8 hr., 51 min.
Sch. A	2 hr., 23 min.		2 min.
Sch. C Part I	2 hr., 38 min.		2 min.
Sch. C Part II	7 hr., 10 min.		7 min.
Sch. C Part III	14 min.		

Frequency of Response: Quarterly.
Estimated Total Reporting/ Recordkeeping Burden: 9,917,620 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,
Departmental Reports Management Officer

[FR Doc. 93–32057 Filed 12–30–93; 8:45 am]
BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 1
Monday, January 3, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Thursday, January 6, 1994 at 10:00 a.m.
PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)
STATUS: This Meeting Will be Open to the Public.

ITEMS TO BE DISCUSSED:

Advisory Opinion 1993–22: The Honorable Robert A. Roe.
December 21, 1993 Letter to The Honorable Robert L. Livingston: Provision of Commission services and office space to Special Deputies and their staffs.

DATE AND TIME: Wednesday, January 12, 1994 at 10:00 a.m.
PLACE: 999 E Street, N.W. Washington, D.C. (Ninth Floor.)
STATUS: This Oral Hearing Will Be Open to the Public.
MATTERS BEFORE THE COMMISSION: Public Hearing on Personal Use of Campaign Funds.
PERSON TO CONTACT FOR INFORMATION: FEC Press Officer, Telephone: (202) 219–4155.

Marjorie W. Emmons,
Secretary of the Commission.

[FR Doc. 93–32096 Filed 12–29–93; 2:52 pm]
BILLING CODE 6715–01–M

Corrections

Federal Register
Vol. 59, No. 1
Monday, January 3, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 488 and 489

[HSQ–159–F]
RIN 0938–AF17

Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations

Correction

In rule document 93-28436 beginning on page 61816 in the issue of Tuesday, November 23, 1993, make the following correction:

On page 61816, in the second column, in **EFFECTIVE DATE:**, in the second line, "February 22, 1993." should read "February 22, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 6986

[OR-943-4210-06; GP3-219; OR-47417]

Withdrawal of National Forest System Lands To Protect the Scenic Segment of the Illinois Wild and Scenic River; Oregon

Correction

In rule document 93-14594 beginning on page 35408 in the issue of Thursday, July 1, 1993, make the following correction:

1. On page 35409, in the second column, before the signature, insert "June 8, 1993.".

BILLING CODE 1505-01-D

federal register

Monday
January 3, 1994

Part II

Department of the Treasury

Customs Service

19 CFR Part 4, et al.
Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the NAFTA and Rules of Origin Applicable to Imported Merchandise; Rule and Proposed Rule

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 12, 102, and 134

RIN 1515–AB34

[T.D. 94–4]

Rules for Determining the Country of Origin of a Good for Purposes of Annex 311 of the North American Free Trade Agreement

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: Interim regulations; solicitation of comments.

SUMMARY: This document establishes the rules for determining when the country of origin of a good is one of the parties to the North American Free Trade Agreement for purposes of Annex 311 of that Agreement. This agreement was implemented under the North American Free-Trade Agreement Implementation Act, Public Law 103–182, 107 Stat. 437 (December 8, 1993).

DATES: This interim rule is effective January 1, 1994. Comments must be received on or before April 4, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229, and they may be inspected at the Regulations Branch located at 1099 14th St. NW., Suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

Paragraph 1 of Annex 311 of the North American Free-Trade Agreement (NAFTA), entitled "Country of Origin Marking," provides that the parties shall establish "MARKING RULES" to determine when a good is a good of a NAFTA country, i.e., whether the country of origin of a good is either the United States, Canada, and Mexico, for the following purposes specified in that Annex: (1) country of origin marking; (2) Annex 300–B (Textile and Apparel Goods); and (3) Annex 302.2 (Tariff Elimination).

The interim regulations established in this document represent fulfillment of the United States obligations under Annex 311. These interim regulations will be effective on January 1, 1994, for all goods imported into the United States for purposes of determining whether or not the country of origin of such goods is either Canada, Mexico or the United States.

In a separate Notice of Proposed Rulemaking published in today's **Federal Register**, the Customs Service is proposing to establish identical rules for determining the country of origin of all imported goods for all purposes under the Customs and related laws.

The Customs Service, however, will also honor all existing written rulings issued pursuant to part 177 of this chapter (19 CFR part 177) during the interim period of these regulations.

Discussion of Interim Regulations

Section 102.0 Scope

Section 102.0 sets forth the purposes previously identified under Annex 311, for which the rules in this part will be used. These rules are considered the "Marking Rules" for purposes of that Annex.

Section 102.1 Definitions

Section 102.1, "Definitions", sets forth the definitions of terms that will be used in part 102. It is of note that some of the defined terms, such as "wholly obtained or produced" in paragraph (g) will be used only in § 102.11, "General Rules", while other terms, such as the definition for "material," will be used in several sections in this part, including in many of the specific rules in § 102.20. Of special note is the definition of "material", another term that is used throughout this part. Under paragraph (k), the term, "material" is defined as including "parts", "ingredients", subassemblies", and "components", terms which are used interchangeably in this part.

Section 102.11 General Rules

Section 102.11, "General Rules," sets forth the required hierarchy for determining country of origin under this part, unless otherwise specified in another provision of this part. Paragraphs (a)(1) through (a)(3) of § 102.11 set forth the three common circumstances in which the country of origin of a good is determined. First, the country of origin can be the country in which the good is "wholly obtained or produced" as defined in § 102.1(g). For example, cattle born and raised in Texas are wholly obtained or produced in the United States. If the good is not wholly obtained or produced in a single country, paragraph (a)(2) provides that the country of origin can be the country in which the good is produced exclusively from domestic materials. For example, if a desk is produced in Canada from Canadian lumber and from hardware produced in Canada from imported steel, which under part 102, became a product of Canada, the desk is produced in Canada "exclusively from domestic materials." If, however, a good is neither wholly obtained or produced in a single country, nor produced in a country exclusively from domestic materials, the country of origin of a good may be determined to be the country in which the foreign materials contained in the good met the requirements of the specific rules provided under § 102.20 for the good. For example, imported textile rubberized thread classified under heading 5604, Harmonized Tariff Schedule of the United States (HTSUS), which is produced in Mexico from synthetic yarn of Taiwanese origin (classified under heading 5509, HTSUS) and from Malaysian rubber thread (classified under heading 4007, HTSUS) is a product of Mexico. The rule under § 102.20 that is applicable to the imported good (heading 5604, HTSUS) states: "A change to heading 5602 through 5605 from a heading outside that group." Since the non-Mexican origin (i.e., foreign) materials contained in the good were classified in headings outside the group of headings 5602 through 5605, HTSUS, a change from these materials to the textile rubberized thread in heading 5604, HTSUS, is allowed, and the country in which this change occurred, i.e., Mexico, is the country of origin.

Paragraphs (b) through (d) of § 102.11, set forth the circumstances and criteria for determining the country of origin of goods when such determination cannot be made pursuant to § 102.11(a). Under current practice and case law, if a good is not wholly obtained or produced in a single country and the processes to which the foreign materials in the good were subjected, did not result in a substantial transformation of such materials, country of origin generally is determined on the basis of the component or material which imparts the essential character of the good. Consistent with current practice in this regard, paragraph (b) of § 102.11 provides that unless the good is classified under the HTSUS as a "set", the country or countries of origin of the good is the country or countries of origin of the single material that imparts the essential character of the good. This paragraph further provides that if the single material imparting the essential character to the good is fungible and commingled, the country of origin may be determined on the basis of an inventory management method, such as ("FIFO" or "LIFO") as provided under the Appendix to part 181 of the Customs Regulations.

Paragraph (c) of § 102.11 reflects current practice whereby multiple countries of origin may exist for goods that are classified as "sets", and for goods classified as "mixtures" or "composite goods" to which no single component can be found to impart their essential character. However, only the countries of origin of the materials meriting equal consideration for determining the essential character of the good would constitute the country or countries of origin of the good. For example, the countries of origin of a cutlery and dinnerware packaged set from Mexico, which includes 12 knives from Mexico, 12 forks from Korea, 12 spoons from Taiwan, and a plastic case from Japan would be as follows: Mexico, Taiwan and Korea. The plastic case from Japan did not merit equal consideration in determining the essential character of the set.

If a good is not a set, mixture or composite good and the country of origin of the good is not determined under paragraphs (a) and (b) of § 102.11, paragraph (d) provides that the country of origin of the good is the last country in which the good underwent production, other than "minor processing" as defined in § 102.1(l) or "simple assembly" as defined in § 102.1(h), unless the assembled materials originate in different countries. In the latter instance, the country of origin, indeed, will be the country of assembly even if the assembly was simple. It is important to note, however, that the determination of country of origin on the basis of the country in which a "simple assembly" has occurred, will only be reached after it has been concluded that no single material imparts the essential character to the good and the good is not classified as a set, mixture or composite good under the HTSUS.

Section 102.12 Fungible Goods

Section 102.12 sets forth the requirement that in all cases, the country of origin of commingled fungible goods (e.g., Canadian and Russian wheat or U.S. and Mexican raw or frozen corn), shall be the country or countries of origin of all of the commingled goods. If, however, direct physical identification of the country of origin is impractical, as in § 102.11(b)(2), this section allows the country or countries of origin to be determined on the basis of an inventory management method provided under the Appendix to part 181 of the Customs Regulations.

Section 102.13 De Minimis

Section 102.13 also codifies a common practice in country of origin determinations based upon the substantial transformation rule, whereby foreign materials of de minimis amounts are disregarded in determinations of whether the processing of foreign materials resulted in "a new and different article." Similarly, § 102.13 provides that foreign materials, which do not meet the requirements of the specific tariff rules under § 102.20 and which do not exceed the specified minimum values or quantities, shall be disregarded for purposes of determining whether the requirements of § 102.18 are met. Of note, however, is the fact that this provision will not apply to many food and agricultural products provided in the first several chapters of the HTSUS.

Section 102.14 Goods Returned

Note 2(a), Subchapter II, Chapter 98, HTSUS, provides that goods of U.S. origin which are exported from, and returned to, the United States after having been advanced in value or improved in condition by any process of manufacture or other means are to be treated as "foreign articles" and subject to full duty upon return to the United States, unless otherwise exempt under that subchapter. Section 102.14 incorporates this rule of law into the general context of the rules of origin. Under this section, any good which is advanced in value or improved in condition outside of the United States shall not be considered a product of the United States. Rather, the last foreign country in which "production" occurred is the country of origin of such goods. The terms "production," "advanced in value," and "improved in condition" are defined in § 102.1. For example, unassembled T-shirt components of U.S. origin, which are exported to Mexico for assembly into T-shirts (an advancement in value and/or improvement in condition), upon return are goods of Mexico, notwithstanding that under §§ 102.11(a) and 102.20, the country of origin of the assembled T-shirts would have been determined to be of U.S. origin. Of particular note, is the fact that when § 102.14 is applicable, it is the basis for determining origin, notwithstanding any other provision of part 102.

In connection with this provision, certain provisions of part 134 ("Country of Origin Marking") of this Chapter are amended. Section 134.43 is amended to allow special types of marking of goods for which country of origin is determined under this provision. In addition, § 134.32 is amended to except from country of origin marking requirements, non-textile goods that are exported from and returned to the United States after having been advanced in value and improved in condition as a result of repairs and alterations.

Section 102.15 Disregarded Materials

This section reflects existing practice by identifying those materials normally associated with a good, which are routinely disregarded in determining whether the good is a new and different article of commerce. Section 102.15 codifies existing practice by specifying those insignificant materials such as, packaging, accessories that are classified with the good, etc., which should be disregarded when determining whether or not the specific tariff rules under § 102.20 have been met.

Section 102.16 Goods and Its Parts; Parts of Parts

This section is intended to reconcile the new rules based upon the tariff classification approach with the systemic problems that arise when a good and its parts are classified in the same HTSUS heading or subheading or where there exist a specific tariff classification for parts which can include anything from the most minor or insignificant part to the most highly developed subassembly. In these instances, this section proposes to allow country of origin determinations to be made on a case-by-case basis, as they are now. Thus, when the specific tariff classification rule cannot be met because the good and its parts are classified in the same heading or subheading, this rule will allow significant operations to be recognized as conferring origin, when such operations result in new and different article, having a new name, character, and use. Of note is the fact that this section does not apply to textile and apparel goods (chapters 50–63, HTSUS).

Section 102.17 Non-Qualifying Operations

This section reflects existing practice not to allow simple operations which do not materially alter the good to cause a change in the country of origin of the good, even though there may have been a change in some minor aspect of the good. For example, simple packaging of components of a set without the manufacture of any of such components will not be allowed to make the country of origin of the set, the country in which the packaging occurred, even if requirements under the specific rules set forth in § 102.20 were met. Also of

note in this provision is the anti-circumvention rule, which disqualifies any operation, the sole object of which is to circumvent the proper operation of these rules. In such instances, the operation usually will be viewed as one having no practical business purpose and resulting in no material change in the good.

Section 102.18 Rules of Interpretation

This section provides the interpretation of two concepts that are common in the operation of these rules: *Essential Character* and *General Rules of Interpretation 2(a).*

The General Rule of Interpretation (GRI) 2(a) of the HTSUS generally provides that any reference in a heading to an article shall be taken to include a reference to that article incomplete or unfinished, provided that, as entered, the incomplete or unfinished article has the essential character of the complete or finished article (or failing to be classified as complete finished by virtue of this rule), entered unassembled or disassembled.

Paragraph (a) clarifies that when GRI 2(a) is stated as a condition or *proviso* in a specific rule, such proviso will operate to disallow changes from a part to a unfinished good or to an unassembled good which is classified as the good pursuant to GRI 2(a). Such changes in classification can occur as a result of simple operations or as a result of collecting all of the parts for a good in a single country and such collection is classified as the good in its unassembled state pursuant to GRI 2(a). You will note that the GRI 2(a) proviso appears more often in the specific tariff rules for the machinery chapters, and that this rule is specifically applicable to all of the specific rules for chapters 84 and 85, HTSUS.

Paragraph (b) regarding "essential character" is included in the Rules of Interpretation and not under § 102.1 Definitions, because of its significant place in the hierarchy of these rules. It is the "essential character" concept which is used to determine country of origin, whenever a good is not wholly obtained or produced in a single country or does not meet the specific tariff rules in § 102.20. For purposes of promoting uniformity in these determinations, this provision includes as examples, the specific factors identified in the Explanatory Notes for General Rule of Interpretation 3(b) of the HTSUS, which have been applied for nearly five years. Of particular note, however, is the fact that this provision expressly requires that one first look to the origin of the material that did not meet the requirement under the specific rules in determining which material imparts the "essential character" of a good. If there is a single material that imparts the essential character of a good and that material originates in a single country, then by operation of § 102.11(b), the country of origin of that material, will be the country of origin of the good, unless the good is classified as a set.

Section 102.19 NAFTA Preference Override

This provision is only applicable to goods for which a claim for duty preference under the NAFTA has been made. Thus, if a good is not covered by a NAFTA certificate of origin, this provision is not applicable in any way. The provision ensures that in the event that the application of the rules under § 102.11 (a) or (b) results in a good not being determined to be a good of a single NAFTA party (Mexico, Canada or United States), the country of origin of such good, if claimed for NAFTA preference, will be the last NAFTA country in which the good underwent any "production" other than "minor processing". Both "production" and "minor processing" are defined in § 102.1.

Section 102.20 Specific Tariff Rules

Section 102.20 presents the specific tariff classification changes and/or other operations, which are specifically required in order for country of origin to be determined on the basis of operations performed on the foreign materials contained in a good. This section, which is applicable only to goods that are not "wholly obtained or produced entirely in a single country" or are not produced in a single country exclusively from domestic materials, codifies the current "substantial transformation" standard. The rules in this section are set forth for each HTSUS chapter. The applicable rule is determined by the HTSUS tariff classification that is applicable to the finished good at the time the country of origin determination is being made. The specific rules for certain HTSUS chapters contain notes which govern the operation of the rules specified thereunder. See, for example, § 102.20(k), the specific tariff rules for section XI—Chapters 50–63, HTSUS, and § 102.20(f), the specific tariff rules for certain chemical chapters in Section VI, HTSUS.

Finally, it is important to note the specific rules do not operate in a vacuum. All of these rules are subject to the restrictions which appear in other sections of this part, such as § 102.17 "Non-Qualifying Operations" and section 102.14 "Goods Returned."

Comments

Before adopting these interim regulations as a final rule, consideration will be given to any written comments timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), § 1.4, Treasury Department Regulations (31 CFR 1.4), and § 103.11(b), Customs Regulations (19 CFR 103.11(b)), on regular business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations Branch, Office of Regulations and Rulings, U.S. Customs Service, Franklin Court, 1099 14th Street, NW., Suite 4000, Washington, DC.

Comments submitted in response to this **Federal Register** document, need not be duplicated in response to the Notice of Proposed Rulemaking document relating to the Rules of Origin published in today's **Federal Register.** Comments in response to one document will be considered during the review of both documents.

Inapplicability of Notice and Delayed Effective Date Requirements, the Regulatory Flexibility Act, and Executive Order 12866

Pursuant to the provisions of 5 U.S.C. 553(a), public notice is inapplicable to these interim regulations because they are within the foreign affairs function of the United States. A failure to have regulations in place, setting forth the procedures implementing the preferential tariff treatment and related provisions of the North American Free Trade Agreement, on the date the North American Free Trade Agreement Implementation Act is effective, January 1, 1994, would provoke undesirable international consequences. In addition, because these regulations establish procedures which the public needs to know in order to claim the benefit of a tariff preference under the North American Free Trade Agreement Implementation Act, it is determined pursuant to 5 U.S.C. 553(b)(B), that notice and public procedures are impracticable, unnecessary, and contrary to the public interest. Furthermore, for the above reasons, it is determined that good cause exists under the provisions of 5 U.S.C. 553 (d)(1) and (d)(3) for dispensing with a delayed effective date. Because no notice of proposed rulemaking is required for interim regulations, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) do not apply. Because this document involves a foreign affairs function of the United States and implements an international agreement, it is not subject to the provisions of E.O. 12866.

List of Subjects

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 134

Country of origin, Customs duties and inspection, Imports, Labeling, Marking, Packaging and containers.

Amendments to the Regulations

For the reasons set forth above, chapter 1 of title 19, Code of Federal Regulations (19 CFR chapter 1) is amended by adding part 102 and amending parts 12 and 134 as set forth below:

PART 12—SPECIAL CLASSES OF MERCHANDISE

1 The general authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. In § 12.130:

a. paragraph (b) is amended by adding a sentence at the end;

b. paragraph (d) is amended by adding a sentence at the end of the introductory text; and

c. paragraph (e)(1) is amended by removing the word "An" and adding, in its place, the words "Except for products of which the origin is Canada or Mexico (the origin of such products is determined pursuant to the procedures set forth in Part 102 of this chapter), an".

The additions read as follows:

§ 12.130 Textiles and textile products country of origin.

* * * * *

(b) *Country of origin.* * * * However, the origin of products of Canada and Mexico are determined pursuant to the procedures set forth in part 102 of this chapter.

* * * * *

(d) *Criteria for determining country of origin.* * * * However, the origin of products of Canada and Mexico are determined pursuant to the procedures set forth in part 102 of this chapter.

* * * * *

3. A new part 102 is added to read as follows:

PART 102—RULES OF ORIGIN

Sec.

102.0 Scope.

Subpart A—General

102.1 Definitions.

Subpart B—Rules of Origin

102.11 General rules.
102.12 Fungible goods.
102.13 De Minimis.
102.14 Goods returned.
102.15 Disregarded materials.
102.16 Goods and its parts; parts of parts.
102.17 Non-qualifying operations.
102.18 Rules of interpretation.
102.19 NAFTA preference override.
102.20 Specific rules by tariff classification.

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, and the North American Free-Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057.

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods, i.e., when a good is a good of a party for the purposes specified in paragraph 1 of Annex 311 of the North American Free-Trade Agreement ("NAFTA"). These specific purposes are: (1) Country of origin marking; (2) determining the rate of duty and staging category applicable to originating textile and apparel goods as set out in Section 2 (Tariff Elimination) of Annex 300–B (Textile and Apparel Goods); (3) determining the rate of duty and staging category applicable to an originating good as set out in Annex 302.2 (Tariff Elimination).

Subpart A—General

§ 102.1 Definitions.

(a) *Advanced in Value.* "Advanced in value" means an increase in the value of a good as a result of production with respect to that good.

(b) *Commingled.* "Commingled" means physically combined or mixed.

(c) *Direct Physical Identification.* "Direct physical identification" means identification by visual or other organoleptic examination.

(d) *Domestic Material.* "Domestic material" means a material whose country of origin as determined under these rules is the same country as the country in which the good is produced.

(e) *Foreign Material.* "Foreign material" means a material whose country of origin as determined under these rules is not the same country as the country in which the good is produced.

(f) *Fungible Goods or Fungible Materials.* "Fungible goods or fungible materials" means goods or materials that are interchangeable for commercial purposes and whose properties are essentially identical.

(g) *A Good Wholly Obtained or Produced.* "A good wholly obtained or produced" in a country means:

(1) A mineral good extracted in that country;

(2) A vegetable or plant good harvested in that country;

(3) A live animal born and raised in that country;

(4) A good obtained from hunting, trapping or fishing in that country;

(5) A good (fish, shellfish and other marine life) taken from the sea by vessels registered or recorded with that country and flying its flag;

(6) A good produced on board factory ships from the goods referred to in paragraph (g)(5) of this section, provided such factory ships are registered or recorded with that country and fly its flag;

(7) A good taken by that country or a person of that country from the seabed or beneath the seabed outside territorial waters, provided that country has rights to exploit such seabed;

(8) A good taken from outer space, provided they are obtained by that country or a person of that country;

(9) Waste and scrap derived from:

(i) Production in a country, or

(ii) Used goods collected in that country provided such goods are fit only for the recovery of raw materials; and

(10) A good produced in that country exclusively from goods referred to in paragraphs (g)(1) through (10) of this section or from their derivatives, at any stage of production.

(h) *Harmonized System.* "Harmonized System" means the Harmonized Commodity Description and Coding System, including its general rules of Interpretation, Section Notes and Chapter Notes, as adopted and implemented by the United States.

(i) *Improved in Condition.* "Improved in condition" means the enhancement of the physical condition of a good as a result of production with respect to that good.

(j) *Incorporated.* "Incorporated" means physically incorporated into a good as a result of production with respect to that good.

(k) *Indirect Materials.* "Indirect materials" means a good used in the production, testing or inspection of another good but not physically incorporated into that other good, or a

good used in the maintenance of buildings or the operation of equipment associated with the production of that other good, including:
(1) Fuel and energy;
(2) Tools, dies and molds;
(3) Spare parts and materials used in the maintenance of equipment and buildings;
(4) Lubricants, greases, compounding materials and other materials used in production or used to operate equipment and buildings;
(5) Gloves, glasses, footwear, clothing, safety equipment and supplies;
(6) Equipment, devices, and supplies used for testing or inspecting the goods;
(7) Catalysts and solvents; and
(8) Any other goods that are not incorporated into the good but whose use in the production of the good can reasonably be demonstrated to be a part of that production.

(l) *Material.* "Material" means a good that is incorporated into another good as a result of production with respect to that other good, and includes parts, ingredients, subassemblies, and components.

(m) *Minor processing.* "Minor processing" means the following:
(1) Mere dilution with water or another substance that does not materially alter the characteristics of the good;
(2) Cleaning, including removal of rust, grease, paint, or other coatings;
(3) Application of preservative or decorative coatings, including lubricants, protective encapsulation, preservative or decorative paint, or metallic coatings;
(4) Trimming, filing or cutting off small amounts of excess materials;
(5) Unloading, reloading or any other operation necessary to maintain the good in good condition;
(6) Putting up in measured doses, packing, repacking, packaging, repackaging;
(7) Testing, marking, sorting, or grading;
(8) Ornamental or finishing operations incidental to textile good production designed to enhance the marketing appeal or the ease of care of the product, such as dyeing and printing, embroidery and appliques, pleating, hemstitching, stone or acid washing, permanent pressing, or the attachment of accessories notions, findings and trimmings; or
(9) Repairs and alterations, washing, laundering, or sterilizing.

(n) *Production.* "Production" means growing, mining, harvesting, fishing, trapping, hunting, manufacturing, processing or assembling a good.

(o) *Simple Assembly.* "Simple assembly" means the fitting together of five or fewer parts all of which are foreign (excluding fasteners such as screws, bolts, etc.) by bolting, gluing, soldering, sewing or by other means without more than minor processing.

(p) *Substantial Transformation.* "Substantial transformation" means production which results in a new and different article, with a new name, character, and use.

(q) *Value.* "Value" means, with respect to § 102.13,
(1) In the case of a good, its customs value or transaction value within the meaning of the Appendix to part 181 of this chapter; or
(2) In the case of a material, its customs value or value within the meaning of the Appendix to part 181 of this chapter.

Subpart B—Rules of Origin

§ 102.11 General rules.

(a) The country of origin of a good is the country in which:
(1) The good is wholly obtained or produced;
(2) The good is produced exclusively from domestic materials; or
(3) Each foreign material incorporated in that good undergoes an applicable change in tariff classification set out in § 102.20 and satisfies any other applicable requirements of that section, and all other applicable requirements of these rules are satisfied.

(b) Except for a good that is specifically described in the Harmonized System as a set, or is classified as a set pursuant to General Rule of Interpretation 3, where the country of origin cannot be determined under paragraph (a), the country of origin of the good:
(1) Is the country or countries of origin of the single material that imparts the essential character of the good, or
(2) If the material that imparts the essential character of the good is fungible, has been commingled, and direct physical identification of the origin of the commingled material is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the Appendix to part 181 of the Customs Regulations.

(c) Where the country of origin cannot be determined under paragraph (b)(1) or (2) and the good is specifically described in the Harmonized System as a set or mixture, or classified as a set, mixture or composite good pursuant to General Rule of Interpretation 3, the country of origin of the good is the country or countries of origin of all materials that merit equal consideration for determining the essential character of the good.

(d) Where the country of origin of a good cannot be determined under paragraph (b) (1) through (3), the country of origin of the good is:
(1) The last country in which the good underwent production, other than by simple assembly or minor processing, or
(2) If the good is produced by simple assembly:
(i) The country in which the good is assembled if the parts that merit equal consideration as imparting the essential character of the good do not have the same country of origin, or
(ii) The country of origin of the parts assembled into the good that merit equal consideration as imparting the essential character of the good if all those parts have the same country of origin.

§ 102.12 Fungible goods.

When fungible goods of different countries of origin are commingled the country of origin of the goods:
(a) Is the countries of origin of those commingled goods; or
(b) If the good is fungible, has been commingled, and direct physical identification of the origin of the commingled good is not practical, the country or countries of origin may be determined on the basis of an inventory management method provided under the Appendix to part 181 of the Customs Regulations.

§ 102.13 De Minimis.

(a) Except as otherwise provided in paragraphs (b) and (c), foreign materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good shall be disregarded in determining the country of origin of the good if the value of those materials is no more than 7 percent of the value of the good or 10 percent of the value of a good of Chapter 22, Harmonized System.

(b) Paragraph (a) does not apply to a foreign material incorporated in a good provided for in Chapters 1, 2, 3, 4, 7, 8, 11, 12, 15, 17, or 20 of the Harmonized System.

(c) Foreign components or materials that do not undergo the applicable change in tariff classification set out in § 102.20 or satisfy the other applicable requirements of that section when incorporated into a good classified in Chapter 50 through 63 of the Harmonized System shall be disregarded in determining the country of origin of the good if the total weight of those components or materials is not more than 7 percent of the total weight of the good.

§ 102.14 Goods returned.

No good, last advanced in value or improved in condition outside the United States has United States origin. If under either § 102.11 or 102.16 such a good is determined to be a good of the United States, that determination will be disregarded and the country of origin of the good will be the last foreign country in which the good underwent production, other than minor processing. However, if the good undergoes only minor processing outside the United States, the country of origin of the good is the last country in which the good underwent production, including minor processing.

§ 102.15 Disregarded materials.

(a) The following materials shall be disregarded when determining whether the good undergoes the applicable change in tariff classification set out in § 102.20, or satisfies the other applicable requirements of that section:
(1) Packaging materials and containers in which a good is packaged for retail sale that are classified with the good;
(2) Accessories, spare parts or tools delivered with the good that are classified with the good and shipped with the good;
(3) Packing materials and containers in which a good is packed for shipment; and
(4) Indirect materials.

§ 102.16 Good and its parts; parts of parts.

(a) If a good is produced in one country but one or more of the foreign materials incorporated into the good do not undergo an applicable change in tariff classification provided in § 102.20 because:
(1) The good was imported into the country in an unassembled or disassembled form but was classified as an assembled good pursuant to General Rule of Interpretation 2(a) of the Harmonized System, the country of origin of a good is the country in which the good was produced provided that the production of the good results in a substantial transformation of those parts; or
(2) The heading for the good provides for both the good itself and its parts and is not further subdivided into subheadings, or the subheading for the good provides for both the good itself and its parts, the country of origin of a good is the country in which the good was produced provided that the production of the good results in a substantial transformation of those parts.

(b) If a subassembly and its parts are classified together in a parts heading that is not further subdivided into subheadings or in a parts subheading, the country of origin of the subassembly is the country in which the subassembly is produced, provided, that production results in a substantial transformation.

(c) This section does not apply to chapters 50–63, Harmonized System.

§ 102.17 Non-qualifying operations.

A foreign material shall not be considered to have undergone the applicable change in tariff classification set out in § 102.20, or satisfy the other applicable requirements of that Section by reason of:
(a) A change in end-use;
(b) Dismantling or disassembly;
(c) Simple packing, repacking or retail packaging without more than minor processing;
(d) Mere dilution with water or another substance that does not materially alter the characteristics of the material; or
(e) Any process or work in respect of which it may be demonstrated, on the basis of the preponderance of evidence, that the sole object was to circumvent these rules.

§ 102.18 Rules of Interpretation.

(a) *General Rule of Interpretation 2(a).* (1) When General Rule of Interpretation 2(a) is stated under a rule for a good in § 102.20 as a basis for disallowing a specific change in tariff classification under that rule this means the change will be disallowed if it is made from one tariff provision to another by virtue of:
(i) The collection of parts being classified as if it were an assembled good pursuant to General Rule of Interpretation 2(a); or
(ii) The assembly of parts into a subassembly that is still not a complete or finished good, but is classified as a complete or finished good pursuant to General Rule of Interpretation 2(a).

(2) Paragraph (a) shall not apply to assembled goods that were previously assembled into a good, and then disassembled for convenience of packing, handling or transport.

(b) *Essential Character.* (1) For purposes of determining essential character of a good under § 102.11, various factors may be examined depending upon the type of the good. These include one or more of the following:
(i) The nature of the material or component;
(ii) Bulk;
(iii) Quantity;
(iv) Weight;
(v) Value;
(vi) Role of a constituent material in relation to the use of the goods; or
(vii) Other relevant factors.

(2) For purposes of applying § 102.11, only domestic and foreign materials (including self-produced materials) that are classified in a tariff provision from which a change in tariff classification is not allowed in the rule for the good set out in § 102.20 shall be taken into consideration in determining the parts or materials that determine the essential character of the good.

§ 102.19 NAFTA preference override.

Notwithstanding any provision of these rules other than § 102.11(a) or (b) or § 102.14, if a good originates under Chapter Four of the NAFTA, and the country of origin of that good is not determined to be a single NAFTA country under § 102.11(a) or (b), the country of origin of the good is the last NAFTA country in which the good underwent production other than minor processing, provided that a Certificate of Origin has been completed and signed for the good.

§ 102.20 Specific rules by tariff classification.

The following rules are the rules specified in § 102.11(a)(3) and other sections of this part:

HTSUS	Tariff shift and/or other requirements
(a)	Section I: Chapters 1 through 5
01.01–01.06	A change to heading 01.01 through 01.06 from any other chapter.
02.01–02.09	A change to heading 02.01 through 02.09 from any other chapter.
0210.11–0210.20	A change to subheading 0210.11 through 0210.20 from any other chapter.
0210.90	A change to subheading 0210.90 from any other chapter; or A change to edible meals and flours of subheading 0210.90 from any product other than edible meals and flours of chapter 2.
03.01–03.03	A change to heading 03.01 through 03.03 from any other chapter.
03.04	A change to heading 03.04 from any other chapter; or

HTSUS	Tariff shift and/or other requirements
	A change to fillets of heading 03.04 from any other heading.
0305.10	A change to subheading 0305.10 from any other subheading.
0305.20	A change to subheading 0305.20 from any other chapter.
0305.30	A change to subheading 0305.30 from any other subheading.
0305.41–0305.69	A change to subheading 0305.41 through 0305.69 from any other chapter; or
03.06	A change to heading 03.06 from any other chapter.
03.07	A change to heading 03.07 from any other chapter; or
	A change to edible meals and flours from within Chapter 3.
04.01	A change to heading 04.01 from any other chapter.
0402.10–0402.29	A change to subheading 0402.10 through 0402.29 from any other chapter.
0402.91–0402.99	A change to subheading 0402.91 through 0402.99 from any other chapter.
0403.10	A change to subheading 0403.10 from any other subheading.
0403.990	A change to subheading 0403.90 from any other chapter; or
	A change to sour cream, or kephir from any other product of Chapter 4.
0404	A change to heading 0404 from any other heading.
0405–0406	A change to heading 0405 through 0406 from any other heading, including another heading witnin that group.
0407–0410	A change to heading 0407 through 0410 from any other chapter.
05.01–05.11	A change to heading 05.01 through 05.11 from any other chapter.
(b)	**Section II: Chapters 6 through 14**
Note: Nothwithstanding the specific rules of this section, an agricultural or horticultural good grown in the territory of a country shall be treated as a good of that country even if grown from seed or bulbs, root stock, cuttings, slips or other live parts of plants, imported from a foreign country.	
06.01–06.02	A change to heading 06.01 through 06.02 from any other heading, including another heading within that group.
06.03–06.04	A change to heading 06.03 through 06.04 from any other heading, including another heading within that group, except from heading 06.02.
07.01–07.09	A change to heading 07.01 through 07.09 from any other chapter.
07.10	A change to heading 07.10 from any other chapter.
07.11	A change to heading 07.11 from any other chapter.
07.12	A change to heading 07.12 from any other chapter, or
	A change to powdered vegetables of 07.12 from any other product of chapter 7, if put up for retail sale.
07.13–07.14	A change to heading 07.13 through 07.14 from any other chapter.
08.01–08.10	A change to heading 08.01 through 08.10 from any other chapter.
08.11	A change to heading 08.11 from any other chapter.
08.12	A change to heading 08.12 from any other chapter.
08.13	A change to heading 08.13 from any other chapter.
08.14	A change to heading 08.14 from any other chapter.
0901.11–0901.12	A change to subheading 0901.11 through 0901.12 from any other chapter.
0901.21–0901.22	A change to subheading 0901.21 through 0901.22 from any subheading outside that group.
0901.30	A change to subheading 0901.30 from any other chapter.
0901.40	A change to subheading 0901.40 from any other chapter.
09.02–09.03	A change to heading 09.02 through 09.03 from any other chapter.
09.04–09.10	A change to heading 09.04 through 09.10 from any other chapter, or
	A change to crushed, ground, or powdered products of heading 09.04 through 09.10 from within chapter 9, if put up for retail sale; or
	A change to subheading 0910.91 from any other subheading, provided that a single spice ingredient of foreign origin constitutes no more than 60 percent by weight of the good.
10.01–10.08	A change to heading 10.01 through 10.8 from any other chapter.
11.01–11.06	A change to heading 11.01 through 11.06 from any other chapter.
11.07	A change to heading 11.07 from any other chapter.
11.08–11.09	A change to heading 11.08 through 11.09 from any other heading, including another heading within that group.
12.01–12.07	A change to heading 12.01 through 12.07 from any other chapter.
12.08	A change to heading 12.08 from any other heading.
12.9–12.14	A change to heading 12.09 through 12.14 from any other chapter.
13.01–13.02	A change to heading 13.01 through 13.02 from any other chapter.
14.01–14.04	A change to heading 14.01 through 14.04 from any other chapter.
(c)	**Section III: Chapter 15**
15.01–15.06	A change to heading 15.01 through 15.06 from any other chapter.
1507.10	A change to subheading 1507.10 from any other chapter.
1507.90	A change to subheading 1507.90 from any other chapter.
1508.10	A change to subheading 1508.10 from any other chapter.
1508.90	A change to subheading 1508.90 from any other chapter.
1509.10	A change to subheading 1509.10 from any other chapter.
1509.90	A change to subheading 1509.90 from any other chapter.
15.10	A change to heading 15.10 from any other chapter.
1511.10	A change to subheading 1511.10 from any other chapter.
1511.90	A change to subheading 1511.90 from any other chapter.
1512.11	A change to subheading 1512.11 from any other chapter.
1512.19	A change to subheading 1512.19 from any other chapter.
1512.21	A change to subheading 1512.21 from any other chapter.

HTSUS	Tariff shift and/or other requirements
1512.29	A change to subheading 1512.29 from any other chapter.
1513.11	A change to subheading 1513.11 from any other chapter.
1513.19	A change to subheading 1513.19 from any other chapter.
1513.21	A change to subheading 1513.21 from any other chapter.
1513.29	A change to subheading 1513.29 from any other chapter.
1514.10	A change to subheading 1514.10 from any other chapter.
1514.90	A change to subheading 1514.90 from any other chapter.
1515.11	A change to subheading 1515.11 from any other chapter.
1515.19	A change to subheading 1515.19 from any other chapter.
1515.21	A change to subheading 1515.21 from any other chapter.
1515.29	A change to subheading 1515.29 from any other chapter.
15.16	A change to heading 15.16 from any other chapter.
1517.10	A change to subheading 1517.10 from any other heading.
1517.90	A change to subheading 1517.90 from any other chapter.
1518	A change to heading 15.18 from any other heading.
1519.11–1519.13	A change to subheading 1519.11 through 1519.13 from any other heading, except from heading 15.20.
1519.19	A change to subheading 1519.19 from any other subheading.
1519.20	A change to subheading 1519.20 from any other heading, except from heading 15.20.
1520.10	A change to subheading 1520.10 from any other heading, except from heading 15.19.
1520.90	A change to subheading 1520.90 from any other subheading.
15.21–15.22	A change to heading 15.21 through 15.22 from any other chapter.
(d)	**Section IV: Chapters 16 through 24**
16.01–16.05	A change to heading 16.01 through 16.05 from any other chapter.
17.01–17.02	A change to heading 17.01 through 17.02 from any other chapter.
17.03	A change to heading 17.03 from any other chapter.
17.04	A change to heading 17.04 from any other heading.
18.01–18.03	A change to heading 18.01 through 18.03 from any other chapter.
18.04	A change to heading 18.04 from any other heading, except from heading 1803.
18.05	A change to heading 18.05 from any other heading, except from subheading 1803.20.
1806.10	A change to subheading 1806.10 from any other heading except from heading 1805 or from Chapter 17; or
	A change from Chapter 17 provided that the good contains less than 65 percent by dry weight of sugar
1806.20	A change to subheading 1806.20 from any other heading except from Chapter 17; or
	A change from Chapter 17 provided that the good contains less than 65 percent by dry weight of sugar
1806.31	A change to subheading 1806.31 from any other subheading.
1806.32	A change to subheading 1806.32 from any other subheading.
1806.90	A change to subheading 1806.90 from any other subheading.
1901 10	A change to subheading 1901.10 from any other subheading.
1901.20	A change to subheading 1901.20 from any other subheading.
1901.90	A change to subheading 1901.90 from any other heading, or;
	A change to a product of subheading 1901.90 from any other product within heading 19.01 if that change results in a substantial transformation.
1902.11–1902.19	A change to subheading 1902.11 through 1902.19 from any other heading.
1902.20	A change to subheading 1902.20 from any other subheading.
1902.30–1902.40	A change to subheading 1902.30 through 1902.40 from any other heading.
19.03–19.05	A change to heading 19.03 through 19.05 from any other heading, including another heading within that group.
Chapter 20 Note: Notwithstanding the specific rules of this chapter, fruit, nut and vegetable preparations of Chapter 20 that have been prepared or preserved merely by freezing, by packing (including canning) in water, brine or natural juices, or by roasting, either dry or in oil (including processing incidental to freezing, packing, or roasting), shall be treated as a good of the country in which the fresh good was produced.	
20.01–20.07	A change to heading 20.01 through 20.07 from any other chapter.
2008.11	A change to subheading 2008.11 from any other chapter, provided that change is not the result of mere blanching of peanuts.
2008.19–2008.99	A change to subheading 2008.19 through 2008.99 from any other chapter, [US provided that change is not the result of mere blanching of nuts].
2009.11–2009.30	A change to subheading 2009.11 through 2009.30 from any other chapter.
2009.40–2009.80	A change to subheading 2009.40 through 2009.80 from any other chapter.
2009.90	A change to subheading 2009.90 from any other chapter; or
	A change to subheading 2009.90 from any other subheading; provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
21.01	A change to heading 21.01 from any other heading.
21.02	A change to heading 21.02 from any other heading.
2103.10	A change to subheading 2103.10 from any other heading.
2103.20	A change to subheading 2103.20 from any other heading.
2103.30	A change to subheading 2103.30 from any other subheading; or
	A change to prepared mustard of subheading 2103.30 from mustard flour or meal.
2103.90	A change to subheading 2103.90 from any other subheading; or
	A change to any item of subheading 2103.90 from within subheading 2103.90, if that change results in a substantial transformation.
2104.10	A change to subheading 2104.10 from any other subheading.

HTSUS	Tariff shift and/or other requirements
2104.20	A change to subheading 2104.20 from any other subheading.
21.05	A change to heading 21.05 from any other heading.
2106.10	A change to subheading 2106.10 from any other subheading.
2106.90	A change to subheading 2106.90 from any other subheading except from Chapter 4, Chapter 17, heading 2009, subheading 1901.90 or subheading 2202.90; or
	A change to subheading 2106.90 from Chapter 4 or subheading 1901.90 provided that the good contains no more than 50 percent of milk solids by weight; or
	A change to subheading 2106.90 from Chapter 17 provided that the good contains less than 65 percent by dry weight of sugar; or
	A change to subheading 2106.90 from heading 2009 or subheading 2202.90 provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
22.01	A change to heading 22.01 from any other chapter.
2202.10	A change to sweetened and/or flavored waters of subheading 2202.10 from any other chapter; or
	A change to other beverages of subheading 2202.10 from any other heading.
2202.90	A change to subheading 2202.90 from any other subheading, except from Chapter 4 or heading 19.01, 20.09 or 21.06; or
	A change to subheading 2106.90 from Chapter 4 or heading 19.01 provided that the good contains no more than 50 percent of milk solids by weight; or
	A change to subheading 2202.90 from heading 20.09 or subheading 2106.90 provided that a single juice ingredient of foreign origin, or juice ingredients from a single foreign country, constitute in single strength form no more than 60 percent by volume of the good.
22.03	A change to heading 22.03 from any other heading.
2204.10–2204.29	A change to subheading 2204.10 through 2204.29 from any other subheading outside that group.
2204.30	A change to subheading 2204.30 from any other heading.
22.05	A change to heading 22.05 from any other heading, except from heading 22.04; or
	A change to vermouth of heading 22.05 from heading 2204.
22.06	A change to heading 22.06 from any other heading.
22.07	A change to heading 22.07 from any other heading except from heading 22.08.
2208.10–2208.50	A change to subheading 2208.10 through 2208.50 from any other subheading outside that group.
2208.90	A change to subheading 2208.90 from any other subheading, except from subheading 2208.10; or
	A change to cordials, liqueurs, kirschwasser or ratafia of subheading 2208.90 (2208.90.45) from any other product.
22.09	A change to heading 22.09 from any other heading.
23.01–23.08	A change to heading 23.01 through 23.08 from any other chapter.
2309.10	A change to subheading 2309.10 from any other heading.
2309.90	A change to subheading 2309.90 from any other heading, except from Chapter 4 or heading 1901, or
	A change to subheading 2309.90 from Chapter 4 or heading 1901 provided that the good contains no more than 50 percent of milk solids by weight.
24.01	A change to heading 24.01 from any other chapter.
24.02–24.03	A change to heading 24.02 through 24.03 from any other heading, including another heading within that group.
(e)	**Section V: Chapters 25 through 27**
25.01–25.16	A change to heading 25.01 through 25.16 from any other heading, including another heading within that group.
2517.10–2517.20	A change to heading 2517.10 through 2517.20 from any other heading.
2517.30	A change to subheading 2517.30 from any other subheading.
2517.41–2517.49	A change to heading 2517.41 through 2517.49 from any other heading.
25.18–25.30	A change to heading 25.18 through 25.30 from any other heading.
26.01–26.21	A change to heading 26.01 through 26.21 from any other heading, including another heading within that group.
(1)	For purposes of this chapter, a "*chemical reaction*" is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bond/s no longer link the same chemical element/s or functional group/s.
2701–2706	A change to heading 2701 through 2706 from any other heading, including any heading within the group.
2707.10–2707.99	A change to subheading 2707.10 through 2707.99 from any other heading; or
	A change to subheading 2707.10 through 2707.99 from any other subheading, including any subheading within the group, provided that the good resulting from such change is the product of a "*chemical reaction*" as defined in Note 1.
2708–2709	A change to heading 2708 through 2709 from any other heading, including any heading within the group.
2710	A change to heading 2710 from any other heading; or
	A change to any good of heading 2710 from any other good of heading 2710, provided that the good resulting from such change is the product of a "*chemical reaction*" as defined in Note 1.
2711.11	A change to subheading 2711.11 from any other subheading, except from subheading 2711.21.
2711.12–2711.19	A change to subheading 2711.12 through 2711.19 from any other subheading, including any subheading within the group, except from subheading 2711.29.
2711.21	A change to subheading 2711.21 from any other subheading, except from subheading 2711.11.
2711.29	A change to subheading 2711.29 from any other subheading, except from subheading 2711.12 through 2711.21.
2712–2714	A change to heading 2712 through 2714 from any other heading, including any heading within the group.
2715	A change to heading 2715 from any other heading, except from heading 2714 or subheading 2713.20.
2716	A change to heading 2716 from any other heading.

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(f)	**Section VI: Chapters 28 through 38**

Notes: 1. Chemical reaction origin rule—

Any good of chapters 28, 29, 31, 32 or 38 that is the product of a chemical reaction shall be considered to be a good of the country in which the reaction occurred.

A chemical reaction is defined as a process in which chemical bonds in molecules are broken and new chemical bonds are formed between the fragmented molecules and/or added elements so that one or more of the original bond/s no longer link the same chemical element/s or functional group/s.

Notwithstanding any of the line-by-line rules, the "chemical reaction" rule may be applied to any good classified in the above chapters.

2. Separation Prohibition—

A foreign material/component will not be deemed to have satisfied all applicable requirements of these marking rules by reason of a change from one classification to another merely as the result of the separation of one or more individual materials or components from a man-made mixture unless the isolated material/component, itself, also underwent a chemical reaction.

2801.10–2801.30	A change to subheading 2801.10 through 2801.30 from any other subheading, including any subheading within the group.
2802	A change to heading 2802 from any other heading, except from heading 2503.
2803	A change to heading 2803 from any other heading.
2804.10–2804.50	A change to subheading 2804.10 through 2804.50 from any other subheading, including any subheading within the group.
2804.61–2804.69	A change to subheading 2804.61 through 2804.69 from any other subheading outside the group.
2804.70–2804.90	A change to subheading 2804.70 through 2804.90 from any other subheading, including any subheading within the group.
2805	A change to heading 2805 from any other heading.
2806.10–2806.20	A change to subheading 2806.10 through 2806.20 from any other subheading, including any subheading within the group.
2807–2808	A change to heading 2807 through 2808 from any other heading, including any heading within the group.
2809.10–2809.20	A change to subheading 2809.10 through 2809.20 from any other subheading, including any subheading within the group.
2810	A change to heading 2810 from any other heading.
2811.11	A change to subheading 2811.11 from any other subheading.
2811.19	A change to subheading 2811.19 from any other subheading, except from subheading 2811.22.
2811.21	A change to subheading 2811.21 from any other subheading.
2811.22	A change to subheading 2811.22 from any other subheading, except from subheading 2505.10, 2506.10, or 2811.19.
2811.23–2811.29	A change to subheading 2811.23 through 2811.29 from any other subheading, including any subheading within the group.
2812.10–2813.90	A change to subheading 2812.10 through 2813.90 from any other subheading, including any subheading within the group.
2814	A change to heading 2814 from any other heading.
2815.11–2815.12	A change to subheading 2815.11 through 2815.12 from any other subheading outside the group.
2815.20–2815.30	A change to subheading 2815.20 through 2815.30 from any other subheading, including any subheading within the group.
2816.10	A change to subheading 2816.10 from any other subheading.
2816.20	A change to subheading 2816.20 from any other subheading, except from subheading 2530.90.
2816.30	A change to subheading 2816.30 from any other subheading.
2817	A change to heading 2817 from any other heading, except from heading 2608.
2818.10–2818.30	A change to subheading 2818.10 through 2818.30 from any other subheading, including any subheading within the group, except from heading 2606 or subheading 2620.40.
2819.10–2819.90	A change to subheading 2819.10 through 2819.90 from any other subheading, including any subheading within the group.
2820.10–2820.90	A change to subheading 2820.10 through 2820.90 from any other subheading, including any subheading within the group, except from subheading 2530.90 or from heading 2602.
2821.10	A change to subheading 2821.10 from any other subheading.
2821.20	A change to subheading 2821.20 from any other subheading, except from subheading 2530.30, or 2601.11 through 2601.20.
2822	A change to heading 2822 from any other heading, except from heading 2605.
2823	A change to heading 2823 from any other heading.
2824.10–2824.90	A change to subheading 2824.10 through 2824.90 from any other subheading, including any subheading within the group, except from heading 2607.
2825.10–2825.40	A change to subheading 2825.10 through 2825.40 from any other subheading, including any subheading within the group.
2825.50	A change to subheading 2825.50 from any other subheading, except from heading 2603.
2825.60	A change to subheading 2825.60 from any other subheading, except from subheading 2615.10.
2825.70	A change to subheading 2825.70 from any other subheading, except from subheading 2613.10.
2825.80	A change to subheading 2825.80 from any other subheading, except from subheading 2617.10.
2825.90	A change to subheading 2825.90 from any other subheading, provided that the good of this subheading is the product of a "*chemical reaction*" as defined in Note 1.
2826.11–2833.19	A change to subheading 2826.11 through 2833.19 from any other subheading, including any subheading within the group.
2833.21	A change to subheading 2833.21 from any other subheading, except from subheading 2530.20.
2833.22–2833.26	A change to subheading 2833.22 through 2833.26 from any other subheading, including any subheading within the group.
2833.27	A change to subheading 2833.27 from any other subheading, except from subheading 2511.10.
2833.29	A change to subheading 2833.29 from any other subheading, except from heading 2520.

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2833.30–2833.40	A change to subheading 2833.30 through 2833.40 from any other subheading, including any subheading within the group.
2834.10–2834.29	A change to subheading 2834.10 through 2834.29 from any other subheading, including any subheading within the group.
2835.10–2835.25	A change to subheading 2835.10 through 2835.25 from any other subheading, including any subheading within the group.
2835.26	A change to subheading 2835.26 from any other subheading, except from heading 2510.
2835.29–2935.39	A change to subheading 2835.29 through 2835.39 from any other subheading, including any subheading within the group.
2836.10	A change to subheading 2836.10 from any other subheading.
2836.20	A change to subheading 2836.20 from any other subheading, except from subheading 2530.90.
2836.30–2836.40	A change to subheading 2836.30 through 2836.40 from any other subheading, including any subheading within the group.
2836.50	A change to subheading 2836.50 from any other subheading, except from heading 2509, subheading 2517.41 or 2517.49, heading 2521, or subheading 2530.90.
2836.60	A change to subheading 2836.60 from any other subheading, except from subheading 2511.20.
2836.70	A change to subheading 2836.70 from any other subheading, except from heading 2607.
2836.91	A change to subheading 2836.91 from any other subheading.
2836.92	A change to subheading 2836.92 from any other subheading, except from subheading 2530.90.
2836.93	A change to subheading 2836.93 from any other subheading, except from subheading 2617.99.
2836.99	A change to subheading 2836.99 from any other subheading, provided that the good of this subheading is the product of a "chemical reaction" as defined in Note 1.
2837.11–2837.20	A change to subheading 2837.11 through 2837.20 from any other subheading, including any subheading within the group.
2838	A change to heading 2838 from any other heading.
2839.11–2839.19	A change to subheading 2839.11 through 2839.19 from any other subheading, outside the group.
2839.20–2839.90	A change to subheading 2839.20 through 2839.90 from any other subheading, including any subheading within the group.
2840.11–2840.20	A change to subheading 2840.11 through 2840.20 from any other subheading outside the group, except from subheading 2528.10.
2840.30	A change to subheading 2840.30 from any other subheading.
2841.10–2841.40	A change to subheading 2841.10 through 2841.40 from any other subheading, including any subheading within the group.
2841.50	A change to subheading 2841.50 from any other subheading, except from heading 2610.
2841.60	A change to subheading 2841.60 from any other subheading.
2841.70	A change to subheading 2841.70 from any other subheading, except from subheading 2613.90.
2841.80	A change to subheading 2841.80 from any other subheading, except from heading 2611.
2841.90	A change to subheading 2841.90 from any other subheading, provided that the good of this subheading is the product of a "chemical reaction" as defined in Note 1.
2842.10	A change to subheading 2843.10 from any other subheading.
2842.90	A change to subheading 2842.90 from any other subheading, provided that the good of this subheading is the product of a "chemical reaction" as defined in Note 1.
2843.10	A change to subheading 2843.10 from any other subheading, except from heading 7106, 7108, 7110, or 7112.
2843.21–2843.29	A change to subheading 2843.21 through 2843.29 from any other subheading, including any subheading within the group.
2843.30–2843.90	A change to subheading 2843.30 through 2843.90 from any other subheading, including any subheading within the group, except from subheading 2616.90.
2844.10	A change to subheading 2844.10 from any other subheading, except from subheading 2612.10.
2844.20	A change to subheading 2844.20 from any other subheading.
2844.30	A change to subheading 2844.30 from any other subheading, except from subheading 2844.20.
2844.40–2844.50	A change to subheading 2844.40 through 2844.50 from any other subheading, including any subheading within the group.
2845	A change to heading 2845 from any other heading.
2846	A change to heading 2846 from any other heading, except from subheading 2530.90.
2847	A change to subheading 2847 from any other heading.
2848.10–2849.90	A change to subheading 2848.10 through 2849.90 from any other subheading, including any subheading within the group.
2850–2851	A change to heading 2850 through 2851 from any other heading, including any heading within the group.
2901.10–2901.90	A change to subheading 2901.10 through 2901.90 from any other subheading, including any subheading within the group, except from acyclic petroleum oils of heading 2710, or subheading 2711.13, 2711.14, 2711.19 or 2711.29.
2902.11	A change to subheading 2902.11 from any other subheading.
2902.19	A change to subheading 2902.19 from any other subheading, except from non-aromatic cyclic petroleum oils of subheading 2707.50, 2707.99, or heading 2710.
2902.20	A change to subheading 2902.20 from any other subheading, except from subheading 2707.10, 2707.50, or 2707.99.
2902.30	A change to subheading 2902.30 from any other subheading, except from subheading 2707.20, 2707.50, or 2707.99.
2902.41–2902.44	A change to subheading 2902.41 through 2902.44 from any other subheading, including any subheading within the group, except from subheading 2707.30, 2707.50 or 2707.99.
2902.50	A change to subheading 2902.50 from any other subheading.
2902.60	A change to subheading 2902.60 from any other subheading, except from subheading 2707.30, 2707.50, 2707.99, or heading 2710.00.
2902.70–2902.90	A change to subheading 2902.70 through 2902.90 from any other subheading, including any subheading within the group, except from subheading 2707.50, 2707.99 or heading 2710.
2903.11–2904.90	A change to subheading 2903.11 through 2904.90 from any other subheading, including any subheading within the group.

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2905.11–2905.21	A change to subheading 2905.11 through 2905.21 from any other subheading, including any subheading within the group.
2905.22–2905.29	A change to subheading 2905.22 through 2905.29 from any other subheading, including any subheading within the group, except from subheading 1301.90, 3301.90 or 3805.90.
2905.31–2905.50	A change to subheading 2905.31 through 2905.50 from any other subheading, including any subheading within the group.
2906.11	A change to subheading 2906.11 from any other subheading, except from subheading 3301.24 or 3301.25.
2906.12–2906.13	A change to subheading 2906.12 through 2906.13 from any other subheading, including any subheading within the group.
2906.14	A change to subheading 2906.14 from any other subheading, except from heading 3805.
2906.19	A change to subheading 2906.19 from any other subheading, except from subheading 3301.90 or 3805.90.
2906.21	A change to subheading 2906.21 from any other subheading.
2906.29	A change to subheading 2906.29 from any other subheading, except from subheading 2707.60 or 3301.90.
2907.11	A change to subheading 2907.11 from any other subheading, except from subheading 2707.60.
2907.12–2907.22	A change to subheading 2907.12 through 2907.22 from any other subheading, including any subheading within the group, except from subheading 2707.99.
2907.23	A change to subheading 2907.23 from any other subheading.
2907.29–2907.30	A change to subheading 2907.29 through 2907.30 from any other subheading, including any subheading within the group, except from subheading 2707.99.
2908	A change to heading 2908 from any other heading.
2909.11–2909.49	A change to subheading 2909.11 through 2909.49 from any other subheading, including any subheading within the group.
2909.50	A change to subheading 2909.50 from any other subheading, except from subheading 3301.90.
2909.60	A change to subheading 2909.60 from any other subheading.
2910.10–2910.90	A change to subheading 2910.10 through 2910.90 from any other subheading, including any subheading within the group.
2911	A change to heading 2911 from any other heading.
2912.11–2912.13	A change to subheading 2912.11 through 2912.13 from any other subheading, including any subheading within the group.
2912.19–2912.49	A change to subheading 2912.19 through 2912.49 from any other subheading, including any subheading within the group, except from subheading 3301.90.
2912.50–2912.60	A change to subheading 2912.50 through 2912.60 from any other subheading, including any subheading within the group.
2913	A change to heading 2913 from any other heading.
2914.11–2914.19	A change to subheading 2914.11 through 2914.19 from any other subheading, including any subheading within the group, except from subheading 3301.90.
2914.21–2914.22	A change to subheading 2914.21 through 2914.22 from any other subheading, including any subheading within the group.
2914.23	A change to subheading 2914.23 from any other subheading, except from subheading 3301.90.
2914.29	A change to subheading 2914.29 from any other subheading, except from subheading 3301.90 or 3805.90.
2914.30–2914.70	A change to subheading 2914.30 through 2914.70 from any other subheading, including any subheading within the group, except from subheading 3301.90.
2915.11–2915.35	A change to subheading 2915.11 through 2915.35 from any other subheading, including any subheading within the group.
2915.39	A change to subheading 2915.39 from any other subheading, except from subheading 3301.90.
2915.40–2915.90	A change to subheading 2915.40 through 2915.90 from any other subheading, including any subheading within the group.
2916.11–2916.20	A change to subheading 2916.11 through 2916.20 from any other subheading, including any subheading within the group.
2916.31–2916.39	A change to subheading 2916.31 through 2916.39 from any other subheading, including any subheading within the group, except from subheading 3301.90.
2917.11–2917.39	A change to subheading 2917.11 through 2917.39 from any other subheading, including any subheading within the group.
2918.11–2918.22	A change to subheading 2918.11 through 2918.22 from any other subheading, including any subheading within the group.
2923	A change to subheading 2918.23 from any other subheading, except from subheading 3301.90.
2918.29–2918.30	A change to subheading 2918.29 through 2918.30 from any other subheading, including any subheading within the group.
2918.90	A change to subheading 2918.90 from any other subheading, except from heading 3301.90.
2919	A change to subheading 2919 from any other heading.
2920.10–2926.90	A change to subheading 2920.10 through 2926.90 from any other subheading, including any subheading within the group.
2927–2928	A change to heading 2927 through 2928 from any other heading, including any heading within the group.
2929.10–2930.90	A change to subheading 2929.10 through 2930.90 from any other subheading, including any subheading within the group.
2931	A change to heading 2931 from any other heading.
2932.11–2932.90	A change to subheading 2932.11 through 2932.90 from any other subheading, including any subheading within the group, except from subheading 3301.90.
2933.11–2934.90	A change to subheading 2933.11 through 2934.90 from any other subheading, including any subheading within the group.
2935	A change to heading 2935 from any other heading.
2936.10–2936.29	A change to subheading 2936.10 through 2936.29 from any other subheading, including any subheading within the group.
2936.90	A change to subheading 2936.90 from any other subheading, except from subheading 2936.10 through 2936.29.

HTSUS	Tariff shift and/or other requirements
2937–2941	A change to heading 2937 through 2941 from any other heading, including any heading within the group.
2942	A change to heading 2942 from any other chapter.
3001.10	A change to subheading 3001.10 from any other subheading, except from subheading 0206.10 through 0208.90 or 0305.20, heading 0504 or 0510, or subheading 0511.99, unless the change from these provisions is to a powder of this subheading.
3001.20–3001.90	A change to subheading 3001.20 through 3001.90 from any other subheading, including any subheading with the group.
3002.10–3002.90	A change to subheading 3002.10 through 3002.90 from any other subheading, including any subheading within the group.
3003.10	A change to subheading 3003.10 from any other subheading, except from subheading 2941.10, 2941.20 or 3003.20.
3003.20	A change to subheading 3003.20 from any other subheading, except from subheading 2941.30 through 2941.90.
3003.31	A change to subheading 3003.31 from any other subheading, except from subheading 2937.91.
3003.39	A change to subheading 3003.39 from any other subheading, except from hormones or their derivatives classified in chapter 29.
3003.40	A change to subheading 3003.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, or from any alkaloids or their derivatives classified in chapter 29.
3003.90	A change to subheading 3003.90 from any other subheading, provided that the domestic content of the therapeutic or prophylactic component(s) is no less than 40 percent by weight of the total therapeutic or prophylactic content.
3004.10	A change to subheading 3004.10 from any other subheading, except from subheading 2941.10, 2941.20, 3003.10 or 3003.20.
3004.20	A change to subheading 3004.20 from any other subheading, except from subheading 2941.30 through 2941.90, or 3003.20.
3004.31	A change to subheading 3004.31 from any other subheading, except from subheading 2937.91, 3003.31 or 3003.39.
3004.32	A change to subheading 3004.32 from any other subheading, except from subheading 3003.39, or any adrenal cortical hormone/s classified in chapter 29.
3004.39	A change to subheading 3004.39 from any other subheading, except from subheading 3003.39, or any hormone/s or its/their derivative/s classified in chapter 29.
3004.40	A change to subheading 3004.40 from any other subheading, except from heading 1211, subheading 1302.11, 1302.19, 1302.20, 1302.39, 3003.40, or any alkaloid/s or its/their derivative/s provided for in chapter 29.
3004.50	A change to subheading 3004.50 from any other subheading, except from subheading 3003.90, or any vitamin/s classified in chapter 29, or products of heading 2936.
3004.9	A change to subheading 3004.90 from any other subheading, except from subheading 3003.90, provided that the domestic content of the therapeutic or prophylactic component/s is no less than 40 percent by weight of the total therapeutic or prophylactic content.
3005.10	A change to subheading 3005.10 from any other subheading.
3005.90	A change to subheading 3005.90 from any other subheading, except from Section XI, Harmonized System, unless the change is to a good of this subheading that is impregnated or coated with pharmaceutical substance/s.
3006.10	A change to subheading 3006.10 from any other subheading, except from subheading 1212.20 or 4206.10.
3006.20–3006.60	A change to subheading 3006.20 through 3006.60 from any other subheading, including any subheading within the group.
3101	A change to heading 3101 from any other heading, except from subheading 2301.20 or powders and meals of subheading 0506.90, heading 0508, or subheading 0511.91 or 0511.99.
3102.10–3102.21	A change to subheading 3102.10 through 3102.21 from any other subheading, including any subheading within the group.
(g)	**Section VII: Chapters 39 through 40**
3901–3915	A change to heading 3901 through 3915 from any other heading, including any heading within the group, provided that the domestic polymer content is no less than 40 percent by weight of the total polymer content.
3916.10–3918.90	A change to subheading 3916.10 through 3918.90 from any other subheading, including any subheading within the group.
3919.10–3919.90	A change to subheading 3919.10 through 3919.90 from any other subheading outside the group.
3920.10–3921.90	A change to subheading 3920.10 through 3921.90 from any other subheading including any subheading within the group.
3922–3926	A change to heading 3922 through 3926 from any other heading, including any heading within the group.
4001.10–4001.22	A change to subheading 4001.10 through 4001.22 from any other subheading, including any subheading within the group.
4001.29	A change to subheading 4001.29 from any other subheading, except from subheading 4001.21 or 4001.22.
4001.30	A change to subheading 4001.30 from any other subheading.
4002.11–4002.70	A change to subheading 4002.11 through 4002.70 from any other subheading, including any subheading within the group.
4002.80–4002.99	A change to subheading 4002.80 through 4002.99 from any other subheading, including any subheading within the group, provided that the domestic rubber content is no less than 40 percent by weight of the total rubber content.
4003–4004	A change to heading 4003 through 4004 from any other heading, including any heading within the group.
4005	A change to heading 4005 from any other heading, except from heading 4001 or 4002.
4006–4010	A change to heading 4006 through 4010 from any other heading, including any heading within the group.
4011.10–4012.90	A change to subheading 4011.10 through 4012.90 from any other subheading, including any subheading within the group.
4013	A change to heading 4013 from any other heading.
4014.10–4014.90	A change to subheading 4014.10 through 4014.90 from any other subheading, including any subheading within the group.
4015	A change to heading 4015 from any other heading.
4016.10–4016.99	A change to subheading 4016.10 through 4016.99 from any other subheading, including any subheading within the group.
4017	A change to heading 4017 from any other heading.

HTSUS	Tariff shift and/or other requirements
(h)	**Section VIII: Chapters 41 through 43**
4104–4103	A change to heading 41.01 through 41.03 from any other chapter.
4104–4107	A change to heading 41.04 through 41.07 from any other heading, including another heading within that group; or A change to finished leather of heading 4104 through 4107 from wet blue hides or leather.
4108–4111	A change to heading 41.08 through 41.11 from any other heading, including another heading within that group.
4201	A change to heading 42.01 from any other heading.
4202.11	A change to subheading 4202.11 from any other heading.
4202.12–4202.22	A change to subheadings 4202.12 through 4202.22 from any other heading provided that the change does not result from the assembly of imported cut components.
4202.29	A change to subheading 4202.29 from any other heading.
4202.31–4202.32	A change to subheadings 4202.31 through 4202.32 from any other heading provided that the change does not result from the assembly of imported cut components.
4202.39	A change to subheading 4202.39 from any other heading.
4202.91–4202.99	A change to subheadings 4202.91 through 4202.99 from any other heading provided that the change does not result from the assembly of imported cut components.
4203–4206	A change to headings 42.03 through 42.06 from any other heading, including another heading within the group.
43.01	A change to heading 43.01 from any other chapter.
4302.11–4302.20	A change to subheading 4302.11 through 4302.20 from any other heading.
4302.30	A change to subheading 4302.30 from any other subheading provided that the change does not result from the assembly of imported cut fur components.
4303–4304	A change to headings 43.02 through 43.04 from any other heading, including another heading within that group.
(i)	**Section IX: Chapters 44 through 46**
4401–4411	A change to headings 44.01 through 44.11 from any other heading, including another heading within that group.
4412	A change to headings 4412 from any other heading; or A change to surface-covered plywood of 4412 from any other plywood that is not surface-covered, or is surface-covered only with a clear or transparent material which does not obscure the grain, texture, or markings of the face ply.
4413–4421	A change to headings 44.13 through 44.21 from any other heading, including another heading within that group.
4501	A change to heading 45.01 from any other heading.
4502	A change to heading 45.02 from any other heading except from heading 4501.
4503–4504	A change to headings 45.03 through 45.04 from any other heading, including another heading within that group.
4601	A change to subheading 4601.10 through 4601.99 from any other subheading, including another subheading within that group.
4602	A change to heading 46.02 from any other heading.
(j)	**Section X: Chapters 47 through 49**
4701–4702	A change to headings 47.01 through 47.02 from any other heading including a heading within that group.
4703.11–4704.29	A change to subheadings 4703.11 through 4704.29 from any other subheading, including another subheading within that group.
4705–4707	A change to headings 47.05 through 47.07 from any other heading, including another heading within that group.
4801–4807	A change to headings 48.01 through 48.07 from any other heading, including another heading within that group.
4808.10	A change to subheadings 4808.10 from any other heading.
4808.20–4808.30	A change to subheadings 4808.20 through 4808.30 from any other heading except from 4804.
4808.90	A change to subheading 4808.90 from any other chapter.
4809	A change to heading 48.09 from any other heading.
4810–4814	A change to headings 48.10 through 48.14 from any other heading, including another heading within that group.
4815	A change to heading 48.15 from any other heading.
4816	A change to heading 48.16 from any other heading, except from heading 48.09.
4817–4822	A change to headings 48.17 through 48.22 from any other heading, including another heading within that group.
4823.11	A change to 4823.11 from any other subheading.
4823.19	A change to 4823.19 from any other subheading.
4823.20–4823.59	A change to subheading 4823.20 through 4823.59 from any other chapter; or A change to 4823.20 through 4823.59 from within chapter 48 if that change is a result of a substantial transformation.
4823.60	A change to 4823.60 from any other subheading.
4823.70–4823.90	A change to subheading 4823.70 through 4823.90 from any other chapter; or A change to 4823.70 through 4823.90 from within chapter 48 if that change is a result of a substantial transformation.
4901–4911	A change to heading 49.01 through 49.11 from any other heading, including another heading within that group.

HTSUS	Tariff shift and/or other requirements
(k)	**SECTION XI: Chapters 50 through 63**

Notes: (1) For the purposes of Chapters 50 through 63, the following definitions will apply:

a. The term "greige", as used in chapters 50 through 55, 58, and 60, means that the fabric has not been subjected to any wet or dry finishing operations after it was formed.

b. The phrase "major parts", as used in chapters 61 and 62, means integral components of the garment, but does not include such parts as collars, cuffs, waistbands, plackets, pockets, linings, paddings, accessories, or the like.

c. The phrase "knit to shape", as used in chapters 61 and 62, refers to any made up major part (as defined above) of a garment which, prior to the fabric being cut, has the same shape, or closely resembles the shape, of that component as used in the garment.

d. The phrase "fully lined, fully padded, or fully insulated", as used in chapters 61 and 62, means that the body of the garment, together with its sleeves and/or legs, is entirely lined, padded, or insulated, but this does not include waistbands less than fifteen centimeters wide, cuffs less than ten centimeters wide, plackets, collars, shoulder straps, and the like).

e. The term "tailored", as used in chapters 61 and 62, refers to noncasual garments of the type normally worn for business or social purposes where some degree of formality is required, and garments of virtually identical construction. These garments have been permanently shaped and usually have trim, fitted lines obtained by careful cutting, seaming, and pressing.

(2) Where a tariff shift rule in chapters 61 or 62 involves the assembly of a garment, the rule is satisfied only when the entire assembly of all major parts occurs in one country.

(3) For the purposes of Section 102.11(b) of the General Rules, except for sets, where a good classifiable in Chapter 61 through 63 does not meet the tariff shift requirements of the heading or subheading under which it is classifiable, the country of origin of that good shall be the single country where the component which determines the classification of that good was cut or formed (e.g. knit to shape), provided all major parts were cut or formed in a single country.

5001–5003	A change to heading 5001 through 5003 from any other chapter.
5004–5006	A change to heading 5004 through 5006 from any heading outside that group.
5007	A change to heading 5007 from any other heading; or A change from greige fabric of heading 5007 to finished fabric of heading 5007 by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5101–5105	A change to heading 5101 through 5105 from any other chapter.
5106–5110	A change to heading 5106 through 5110 from any heading outside that group.
5111–5113	A change to heading 5111 through 5113 from any heading outside that group; or A change from greige fabric of headings 5111 through 5113 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5201–5203	A change to heading 5201 through 5203 from any other chapter.
5204–5207	A change to heading 5204 through 5207 from any heading outside that group.
5208–5212	A change to heading 5208 through 5212 from any heading outside that group; or A change from greige fabric of heading 5208 through 5512 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5301–5305	A change to heading 5301 through 5305 from any other chapter.
5306–5308	A change to heading 5306 through 5308 from any heading outside that group.
5309–5311	A change to heading 5309 through 5311 from any heading outside that group; or A change from greige fabric of heading 5309 through 5311 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5401–5403	A change to heading 5401 through 5403 from any other chapter.
5404–5405	A change to heading 5404 through 5405 from any other chapter except from headings 3920 and 3921.
5406	A change to heading 5406 from any other chapter.
5407–5408	A change to heading 5407 through 5408 from any heading outside that group; or A change from greige fabric of heading 5111 through 5113 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5501–5507	A change to heading 5501 through 5507 from any other heading except heading 5401 through 5405.
5508–5511	A change to heading 5508 through 5511 from any heading outside that group.
5512–5516	A change to heading 5512 through 5516 from any heading outside that group; or A change from greige fabric of heading 5512 through 5516 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5601	A change to heading 5601 from any other heading.
5602–5605	A change to heading 5602 through 5605 from any heading outside that group.
5606	A change to heading 5606 from any other heading except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, 5401 through 5406, and 5508 through 5511.
5607	(1) A change to twine, cordage, ropes, and cables, neither plaited or braided, nor covered or sheathed with rubber or plastics, of heading 5607, from any other heading except heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, 5401 through 5406, and 5508 through 5511; or (2) A change to twine, cordage, ropes, and cables, either plaited or braided, or covered or sheathed with rubber or plastics, of heading 5607, from any other heading.
5608	A change to heading 5608 from any other heading except heading 5804.
5609	A change to heading 5609 from any other heading except from heading 5004 through 5007, 5106 through 5113, 5204 through 5212, 5306 through 5311, 5401 through 5408, 5508 through 5516, and 5607.
5701–5705	A change to heading 5701 through 5705 from any other chapter.
5801–5802	A change to heading 5801 through 5802 from any heading outside that group; or

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	A change from greige fabric of heading 5801 to 5802 to finished fabric of those same headings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5803	A change to heading 5803 from any other heading.
5804	A change to heading 5804 from any other heading; or A change from greige fabric of heading 5804 to finished fabric of that same heading by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5805	A change to heading 5805 from any other heading.
5806.10–5806.39	A change to subheading 5806.10 through 5806.39 from any heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, and 5512 through 5516; or A change from greige fabric of subheading 5806.10 to 5806.39 to finished fabric of those same subheadings by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, fulling, napping, decating, permanent stiffening, weighting, permanent embossing, or moireing.
5806.40	A change to subheading 5806.40 from any other heading.
5807	(1) For labels and similar articles, a change to heading 5807 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, and heading 5806. (2) For badges and similar articles, a change to heading 5807 from any other heading except subheading 6307.90.
5808.10	A change to subheading 5808.10 from any other heading.
5808.90	(1) For ornamental trimmings, a change to subheading 5808.90 from any other heading. (2) For tassels, pompons and similar articles, a change to subheading 5808.90 from any heading except from heading 5004 through 5006, 5106 through 5110, 5204 through 5207, 5306 through 5308, 5401 through 5406, and 5508 through 5511.
5809	A change to heading 5809 from any other heading.
5810	(1) Where the weight of the embroidery equals or exceeds the weight of the ground fabric, a change of the ground fabric to heading 5810 from any other heading; or (2) Where the weight of the embroidery is less than the weight of the ground fabric, a change of the ground fabric to heading 5810 from any other chapter except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602, 5603, 5608, 5903, 5907, 6001, and 6002.
5811	A change to heading 5811 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5601 through 5603, 5806, 5809 through 5810, 6002, and subheading 6307.90; or A change to heading 5811 from any other heading, provided that the outer fabric or fabrics are dyed and printed in the same country where the quilting is done.
5901–5902	A change to heading 5901 through 5902 from any other heading.
5903	A change to heading 5903 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806.31 through 5806.39, 5808, and 6002; or (1) For woven fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 15 percent of the total weight of the fabric; or (2) For knit fabric, a change to heading 5903 from any other heading, provided that the impregnation, coating covering, or lamination accounts for at least 20 percent of the total weight of the fabric.
5904–5906	A change to heading 5904 through 5906 from any other heading.
5907	A change to heading 5907 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5803, 5806, 5808, and 6002; or (1) For woven fabric, a change to heading 5907 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 15 percent of the total weight of the fabric; or (2) For knit fabric, a change to heading 5907 from any other heading, provided that the impregnation, coating, covering, or lamination accounts for at least 20 percent of the total weight of the fabric.
5908–5910	A change to heading 5908 through 5910 from any other heading.
5911	A change to heading 5911 from any other heading except heading 5602 through 5603.
6001	A change to heading 6001 from any other heading; or A change from greige fabric of heading 6001 to finished fabric of that same heading by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, compacting, napping, shearing, or calendering; or A change to fabric of heading 6001 impregnated, coated, covered, or laminated with rubber, plastics, or other substances, from fabric of that same heading provided that the impregnation, coating, covering, or lamination accounts for at least 20 percent of the weight of the entire fabric.
6002	A change to heading 6002 from any heading outside that group; or A change from greige fabric of heading 6002 to finished fabric of heading 6002 by dyeing and printing, plus two or more of the following finishing operations—bleaching, shrinking, compacting, napping, shearing, or calendering.
6101	A change to heading 6101 from any other chapter; or A change to assembled garments of heading 6101, except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change from unassembled garment components classified in heading 6101 as a result of the application of GRI 2(a), except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, to assembled garments, provided that no major part has been knit to shape.
6102	A change to heading 6102 from any other chapter; or A change to assembled garments of heading 6102, except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change from unassembled garment components classified in heading 6102 as a result of the application of GRI 2(a), except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, to assembled garments, provided that no major part has been knit to shape.
6103	A change to heading 6103 from any other chapter; or

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6103.11–6103.19—	A change to assembled garments of subheading 6103.11 through 6103.19 from subheading 6117.90; or A change to assembled garments from unassembled parts classified in subheading 6103.11 through 6103.19 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6103.21–6103.29—	Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered;
6103.31–6103.39—	A change to assembled garments of subheading 6103.31 through 6103.39 from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled garments from unassembled parts classified in subheading 6103.31 through 6103.39 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6103.41–6103.49—	A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls or to fully lined tailored trousers, of subheading 6103.41 through 6103.49, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, from unassembled parts classified in subheading 6103.41 through 6103.49 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6104	A change to heading 6104 from any other chapter; or
6104.11–6104.19—	A change to assembled garments of subheading 6104.11 through 6104.19 from subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled garments from unassembled parts classified in subheading 6104.11 through 6104.19 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6104.21–6104.29—	Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered;
6104.31–6104.39—	A change to assembled garments of subheading 6104.31 through 6104.39 from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled garments from unassembled parts classified in subheading 6104.31 through 6104.39 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6104.41–6104.49—	A change to assembled tailored garments consisting of five or more major parts, of subheading 6104.41 through 6104.49, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled tailored garments consisting of five or more major parts from unassembled parts classified in subheading 6104.41 through 6104.49 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6104.51–6104.59—	A change to subheading 6104.51 through 6104.59 from any other chapter.
6104.61–6104.69—	A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, of subheading 6104.61 through 6104.69 from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, from unassembled parts classified in subheading 6104.61 through 6104.69 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6105	A change to heading 6105 from any other chapter; or A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded or fully insulated shirts, of heading 6105, from subheading either 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled fully lined, fully padded or fully insulated shirts from unassembled parts classified in heading 6105 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6106	A change to heading 6106 from any other chapter; or A change to assembled tailored long sleeve shirts, or shirt blouses, with collars, cuffs, full-front openings with plackets, and yokes, or to tailored long sleeve blouses without full front openings, with collars, cuffs, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, or heading 6106, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled tailored long sleeve shirts, or shirt blouses, with collars, cuffs, full-front openings with plackets, and yokes, or to tailored long sleeve blouses without full front openings, with collars, cuffs, and yokes, or to assembled fully lined, fully padded, or fully insulated shirts, from unassembled parts classified in heading 6106 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6107–6109	A change to heading 6107 through 6109 from any other chapter.
6110	A change to heading 6110 from any other chapter; or A change to assembled fully lined, fully padded, or fully insulated long sleeve garments of heading 6110, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated long sleeve garments from unassembled parts classified in heading 6110 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6111	A change to heading 6111 from any other chapter, except chapter 95; or A change to assembled fully lined, fully padded, or fully insulated outer garments of heading 6111 from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assemble fully lined, fully padded, or fully insulated outer garments from unassembled parts classified in heading 6111 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6112	A change to heading 6112 from any other chapter; or
6112.11–6112.20—	A change to assembled fully lined garments of subheading 6112.11 through 6112.20, from either subheading 6117.90 of subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled fully lined garments from unassembled parts classified in subheading 6112.11 through 6112.20 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6113	A change to heading 6113 from any other chapter; or A change to assembled fully lined, fully padded, or fully insulated garments of heading 6113, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or

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	A change to assembled fully lined, fully padded, or fully insulated garments from unassembled parts classified in heading 6113 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6114	A change to heading 6114 from any other chapter; or A change to assembled fully lined, fully padded, or fully insulated garments, consisting of five or more major parts, of heading 6114, from either subheading 6117.90 or subheading 6217.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated garments, consisting of five or more major parts, from unassembled parts classified in heading 6114 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6115–6117	A change to heading 6115 through 6117 from any other chapter.
6201	A change to heading 6201 from any other chapter, provided that no major part has been knit to shape; or A change to assembled garments of heading 6201, except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change from unassembled garment components classified in heading 6201 as a result of the application of GRI 2(a), except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, to assembled garments, provided that no major part has been knit to shape.
6202	A change to heading 6202 from any other chapter; or A change to assembled garments of heading 6202, except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change from unassembled garment components classified in heading 6202 as a result of the application of GRI 2(a), except (1) Anoraks, windbreakers, and similar articles, not fully lined, fully padded, or fully insulated, and (2) capes, cloaks, and similar articles, to assembled garments, provided that no major part has been knit to shape.
6203	A change to heading 6203 from any other chapter, provided that no major part has been knit to shape; or
6203.11–6203.19	A change to assembled garments of subheading 6203.11 through 6203.19 from subheading 6217.90; or A change to assembled garments from unassembled parts classified in subheading 6203.11 through 6203.19 as a result of the application of GRI 2(a);
6203.21–6203.29—	Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered;
6203.31–6203.39—	A change to assembled garments of subheading 6203.31 through 6203.39 from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled garments from unassembled parts classified in subheading 6203.31–6203.39 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6203.41–6203.49—	A change to subheading 6203.41 through 6203.49 from any other chapter, provided that no major part has been knit to shape; A change to assembled fully lined, fully padded, or fulling insulated bib and brace overalls, or to fully lined tailored trousers, of subheading 6203.41 through 6203.49 from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, from unassembled parts classified in subheading 6203.41 through 6203.49 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6204	A change to heading 6204 from any other chapter, provided that no major part has been knit to shape; or
6204.11–6204.19—	A change to assembled garments of subheading 6204.11 through 6203.14 from subheading 6217.90; or A change to assembled garments from unassembled parts classified in subheading 6204.11 through 6204.19 as a result of the application of GRI 2(a);
6204.21–6204.29—	Each garment in an ensemble shall be treated separately and the marking rule applicable to each garment is the rule that would apply if the garment were separately entered;
6204.31–6204.39—	A change to assembled garments of subheading 6204.31 through 6204.39 from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled garments from unassembled parts classified in subheading 6204.31 through 6204.39, as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6204.41–6204.49—	A change to assembled tailored garments consisting of five or more major parts, of subheading 6204.41 through 6204.49, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled tailored garments consisting of five or more major parts, from unassembled parts classified in subheading 6204.41–6204.49 as a result of the application of GRI 2(a), provided that no major part has been knit to shape;
6204.51–6204.59—	A change to subheading 6204.51 through 6204.59 from any other chapter, provided that no major part has been knit to shape;
6204.61–6204.69—	A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, of subheading 6204.61 through 6204.69, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled fully lined, fully padded, or fully insulated bib and brace overalls, or to fully lined tailored trousers, from unassembled parts classified in subheading 6204.61 through 6204.69 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6205	A change to heading 6205 from any other chapter, provided that no major part has been knit to shape; or A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and shoulder yokes, or to assembled fully lined, fully padded, or fully insulted shirts, of heading 6205, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and shoulder yokes, or to assembled fully lined, fully padded, or fully insulated shirts from unassembled parts classified in heading 6205 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6206	A change to heading 62.06 from any other chapter, provided that no major part has been knit to shape; or

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	A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled tailored long sleeve blouses without full front openings, with collars, cuffs, and yokes, or to assembled fully lined, fully padded, fully insulated shirts of heading 6206, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
	A change to assembled tailored long sleeve shirts with collars, cuffs, full-front openings with plackets, and yokes, or to assembled tailored long sleeve blouses without full-front openings, with collars, cuffs, and yokes, or to assembled fully lined, fully padded, fully insulated shirts, from unassembled parts classified in heading 6206 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6207–6208	A change to heading 6207 through 6208 from any other chapter, provided that no major part has been knit to shape.
6209	A change to heading 6209 from any other chapter except from chapter 95, provided that no major part has been knit to shape; or
	A change to assembled fully lined, fully padded, or fully insulated outer garments of heading 6209, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
	A change to assembled fully lined, fully padded, or fully insulated outer garments from unassembled parts classified in heading 6209 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6210	A change to heading 6210 from any other chapter, provided that no major part has been knit to shape; or
	A change to assembled fully lined, fully padded, or fully insulated long sleeve garments of heading 6210, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
	A change to assembled fully lined, fully padded, or fully insulated long sleeve garments, from unassembled parts classified in heading 6210 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6211	A change to heading 6211 from any other chapter, provided that no major part has been knit to shape; or
6211.20—	A change to assembled garments of subheading 6211.20 from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
	A change to assembled garments from unassembled parts classified in subheading 6211.20 as a result of the application of GRI 2(a), provided that no major part has been knit to shape; or
6211.31–6211.49—	A change to assembled fully lined, fully padded, or fully insulated garments consisting of five or more major parts, of subheading 6211.31 through 6211.49, from either subheading 6217.90 or subheading 6117.90, provided that no major part has been knit to shape; or
	A change to assembled fully lined, fully padded, or fully insulated garments consisting of five or more major parts, from unassembled parts classified in subheading 6211.20 as a result of the application of GRI 2(a), provided that no major part has been knit to shape.
6212	A change to heading 6212 from any other chapter, provided that no major part has been knit to shape.
6213–6214	A change to heading 6213 through 6214 from any other chapter except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5806, 5808 through 5811, 5901, 5903, and 5906 through 5907, provided that no major part has been knit to shape.
6215–6217	A change to heading 6215 through 6217 from any other chapter.
6301.10	A change to subheading 6301.10 from any other heading.
6301.20–6301.90	A change to subheading 6301.20 through 6301.90 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5802, 5809 through 5811, 5903, 5907, and 6001 through 6002.
6302	(1) Except for quilted goods provided for in (2) below, a change to heading 6302 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002;
	(2) For quilted goods, either (a) A change to heading 6302 from any other heading except subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country; or (b) If (a) is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods.
6303	(1) For quilted goods, a change to heading 6303 from any other heading except subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods; or
	(2) For curtains, drapes, or valances, except for goods provided for in (1) Above, a change to heading 6303 from any other heading, provided that the change is the result of at least cutting on all sides, hemming the cut edges, and a significant sewing or assembly operation.
	(3) For goods not meeting paragraphs (1) or (2) above, and all other goods, a change to heading 6303 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903, 5906 through 5907, and 6001 through 6002.
6304	(1) Except for quilted goods, pillow covers, and pillow shams provided for in (2) and (3) below, a change to heading 6304 from any other heading except heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5810, 5901, 5903 through 5904, 5906 through 5907, and 6001 through 6002;
	(2) For quilted goods, a change to heading 6304 from any other heading except subheading 6307.90, provided that both the cutting of the top and bottom fabrics, and the entire assembly of the quilted goods, are done in one country. If this rule is not satisfied, then the country of origin shall be the country which produced the fabric, or fabrics, which impart the essential character to the goods;
	(3) For pillow covers and pillow shams, a change to heading 6304 from any other heading.
6305	A change to heading 6305 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5802, 5809 through 5811, 5903, 5907, and 6001 through 6002.
6306.11–6306.19	For tarpaulins and sunblinds, a change to subheading 6306.11 through 6306.19 from any other heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 56.03, 5801 through 5802, 5809 through 5811, 5903, 5906 through 5907, and 6001 through 6002.
	(2) For awnings, a change to subheading 6306.11 through 6306.19 from any other chapter.

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6306.21–6306.49	A change to subheading 6306.21 through 6306.49 from any other chapter.
6306.91–6306.99	A change to subheading 6306.91 through 6306.99 from any other heading, except subheading 6307.90, provided that the change is the result of more than cutting and hemming processes.
6307.10	A change to subheading 6307.10 from any heading except from heading 5007, 5111 through 5113, 5208 through 5212, 5309 through 5311, 5407 through 5408, 5512 through 5516, 5602 through 5603, 5801 through 5804, 5806, 5809 through 5811, 5903, 5907, and 6001 through 6002.
6307.20	A change to subheading 6307.20 from any other heading.
6307.90	A change to subheading 6307.90 from any other heading provided that the change is the result of at least cutting and a significant sewing or assembly operation.
6308	The country of origin of each article in the set which merits consideration in the determination of the essential character of the set.
6309	The country where the goods were last collected and packaged for shipment.
6310	For worn out articles, the country where the goods were last collected and packaged for shipment;
	For all other goods, a change to heading 6310 from any other heading.
(l)	**Section XII: Chapters 64 through 67**
Chapter 64: Note: For purposes of this chapter, the term "formed uppers" means uppers, with closed bottoms, which have been shaped by lasting, molding or otherwise but not by simply closing at the bottom.	
6401–6405	A change to heading 6401 through 6405 from any tariff item outside that group, except from formed uppers
6406.10.	A change to 6406.10 from any other subheading.
6406.20–6406.99	A change to subheadings 6406.20 through 6406.99 from any other chapter.
6501–6502	A change to headings 6501–6502 from any other heading outside that group.
6503–6506	A change to headings 6503–6506 from any other heading outside that group, except headings 6501 through 6502; or
	A change to headings 6503–6506 from heading 6501 by means of a blocking process; or
	A change to headings 6503–6506 from heading 6502, provided that the change is the result of at least three processing steps (e.g. dyeing, blocking, trimming, or adding a sweatband).
6507	A change to heading 6507 from any other heading.
6601	A change to heading 6601 from any other heading.
6602	A change to heading 6602 from any other heading.
6603.10	A change to heading 6603.10 from any other heading.
6603.20	A change to heading 6603.20 from any other heading; or
	A change from 6603.90 except when that change is pursuant to GRI 2(a).
6603.90	A change to heading 6603.90 from any other heading.
6701	A change to heading 6701 from any other heading; or
	A change to articles of feather or down of heading 6701 from feathers or down.
6702–6704	A change to heading 6702–6704 from any other heading, including another heading within that group.
(m)	**Section XIII: Chapters 68 through 70**
6801–6811	A change to heading 6801 through 6809 from any other heading, including another heading within that group.
6809.11	A change to subheading 6809.11 from any other heading.
6809.19	A change to subheading 6809.19 from any other heading.
6809.90	A change to subheading 6809.90 from any other subheading.
6810.11	A change to subheading 6810.11 from any other heading.
6810.19	A change to subheading 6810.19 from any other heading.
6810.91	A change to subheading 6819.91 from any other subheading.
6810.99	A change to subheading 6810.99 from any other heading.
6811.10	A change to subheading 6811.10 from any other heading.
6811.20	A change to subheading 6811.20 from any other heading.
6811.30	A change to subheading 6811.30 from any other heading.
6811.90	A change to subheading 6811.90 from any other heading; or
	A change to 6811.90 from any other subheading, if that change results in a substantial transformation.
6812.10	A change to subheading 6812.10 from any other heading.
6812.20	A change to subheading 6812.20 from any other subheading.
6812.30	A change to subheading 6812.30 from any other subheading, except subheading 6812.20.
6812.40	A change to subheading 6812.40 from any other subheading.
6812.50	A change to subheading 6812.50 from any other subheading.
6812.60–6812.70	A change to subheading 6812.60 through 6812.70 from any subheading outside that group.
6812.90	A change to subheading 6812.90 from any other heading; or
	A change to 6812.90 from within 6812 if that change results in a substantial transformation.
6813	A change to heading 6813 from any other heading.
6814.10	A change to subheading 6814.10 from any other heading.
6814.90	A change to subheading 6814.90 from any other heading; or
	A change to 6814.90 from 6814.10 if that change results in a substantial transformation.
6815	A change to subheading 6815.10 through 6815.99 from any other subheading, including within that group.
6901–6914	A change to heading 6901 through 6914 from any other chapter.
7001	A change to heading 7001 from any other heading.
7002	A change to heading 7002 from any other heading.
7003–7006	A change to heading 7003 through 7006 from any heading outside that group.
7007	A change to heading 7007 from any other heading.
7008	A change to heading 7008 from any other heading.
7009.10	A change to heading 7009.10 from any other subheading.

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7009.91–7009.92	A change to heading 7009.91 through 7009.92 from any other heading.
7010–7018	A change to heading 7010 through 7018 from any other heading, except from heading 7020; or A change to heading 7010 through 7018 from heading 7020 if that change results in a substantial transformation.
7019.10	A change to heading 7019.10 from any other heading.
7019.20	A change to heading 7019.20 from any other subheading.
7019.31–7019.32	A change to heading 7019.31 through 7019.32 from any other subheading outside that group.
7019.39	A change to heading 7019.39 from any other subheading.
7019.90	A change to heading 7019.90 from any other heading; or A change to heading 7019.90 from within 7019 if that change results in a substantial transformation.
7020	A change to heading 7020 from any other heading, except from heading 7010 through 7018; or A change to heading 7020 from heading 7010 through 7018 if that change results in a substantial transformation.
(n)	**Section XIV: Chapter 71**
7101	A change to heading 7101 from any other heading, except heading 0307.
7102–7103	A change to heading 7102 through 7103 from any other chapter.
7104–7105	A change to heading 7104 through 7105 from any other heading, including another heading within that group.
7106	A change to heading 7106 from any other chapter.
7107	A change to heading 7107 from any other chapter, except from chapter 72 through 76, or chapter 78 through 83.
7108	A change to heading 7108 from any other chapter.
7109	A change to heading 7109 from any other chapter, except from chapter 72 through 76, or chapter 78 through 83.
7110	A change to heading 7110 from any other chapter.
7111	A change to heading 7111 from any other chapter, except from chapter 72 through 76, or chapter 78 through 83.
7112	A change to heading 7112 from any other heading.
7113–7115	A change to subheading of heading 7113 through 7115 from any other subheading, including to a subheading within that group.
7116	A change to heading 7116 from any other heading, except that pearls, temporarily or permanently strung but without the addition of clasps or other ornamental features of precious metals or stones, shall have the origin of the pearls.
7117–7118	A change to heading 7117–7118 from any other heading, including a heading within that group.
(o)	**Section XV: Chapters 72 through 83**
72.01–72.06	A change to heading 72.01 through 72.06 from any other heading, including another heading within that group.
72.07	A change to heading 72.07 from any other heading except 7206.
72.08	A change to heading 72.08 from any other heading.
72.09	A change to heading 72.09 from any other heading except 7208 or 7211.
72.10	A change to heading 72.10 from any other heading except 7208–7212.
72.11	A change to heading 72.11 from any other heading except 7208–7209.
72.12	A change to heading 72.12 from any other heading except 7208–7211.
72.13	A change to heading 72.13 from any other heading.
72.14	A change to heading 72.14 from any other heading except from heading 72.13.
72.15	A change to heading 72.15 from any other heading, except from heading 72.13 through 72.14.
72.16	A change to heading 72.16 from any other heading, except from heading 72.08 through 72.15.
72.17	A change to heading 72.17 from any other heading, except from heading 72.13 through 72.15.
72.18	A change to heading 72.18 from any other heading.
72.19–72.20	A change to heading 72.19 through 72.20 from any other heading outside that group.
72.21–72.22	A change to heading 72.21 through 72.22 from any other heading outside that group.
72.23	A change to heading 72.23 from any other heading, except from heading 72.21 through 72.22.
72.24	A change to heading 72.24 from any other heading.
72.25–72.26	A change to heading 72.25 through 72.26 from any other heading outside that group.
72.27–72.28	A change to heading 72.27 through 72.28 from any other heading outside that group.
72.29	A change to heading 72.29 from any other heading, US: except from heading 72.27 through 72.28.
73.01–73.07	A change to heading 73.01 through 73.07 from any other heading, including within that group.
73.08	A change to heading 73.08 from any other heading, except for changes resulting from the following processes performed on angles, shapes, or sections of heading 72.16: (a) drilling, punching, notching, cutting, cambering, or sweeping, whether performed individually or in combination: (b) adding attachments or weldments for composite construction; (c) adding attachments for handling purposes; (d) adding weldments, connectors or attachments to H-sections or I-sections; provided that the maximum dimension of the weldments, connectors, or attachments is not greater than the dimension between the inner surfaces of the flanges of the H-sections or I-sections. (e) painting, galvanizing, or otherwise coating; or (f) adding a simple base plate without stiffening elements, individually or in combination with drilling, punching, notching, or cutting, to create an article suitable as a column.
73.09–73.14	A change to heading, 73.12 through 73.14 from any other heading, including another heading within that group.
7315.11–7315.12	A change to subheading 7415.11 through 7315.12 from any other heading; or A change to subheading 7315.11 through 7315.12 from subheading 7315.19 or 7315.90 except when that change is pursuant to General Rule of Interpretation 2(a).
7315.19	A change to subheading 7315.19 from any other subheading.
7315.20–7315.89	A change to subheading 7315.20 through 7315.89 from any other heading; or A change to subheading 7315.20 through 7315.89 from subheading 7315.90 except when that change is pursuant to General Rule of Interpretation 2(a).
7315.90	A change to subheading 7315.90 from any other subheading.
73.16	A change to heading 73.16 from any other heading, except from heading 73.12 or 73.15.

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73.17–73.18	A change to heading 73.17 through 73.18 from any other heading, including another heading within that group.
73.19	A change to heading 73.19 from any other heading.
73.20	A change to heading 73.20 from any other heading.
7321.11–7321.83	A change to subheading 7321.11 through 7321.83 from any other heading; or A change to subheading 7321.11 through 7321.83 from heading 7321.90 except when classified pursuant to General Rule of Interpretation 2(a).
7321.90	A change to subheading 7321.90 from any other heading.
73.22–73.23	A change to heading 73.22 through 73.23 from any other heading, including another heading within that group.
7324.10–7324.29	A change to subheading 7324.10 through 7324.29 from any other subheading, including another subheading within that group.
7324.90	A change to subheading 7324.90 from any other subheading.
73.25–73.26	A change to heading 73.25 through 73.26 from any other heading, including another heading within that group.
74.01–74.07	A change to heading 74.01 through 74.07 from any other heading, including another heading within that group.
7408	A change to heading 7408 from any other heading US: except from heading 74.07.
74.09	A change to heading 74.09 from any other heading.
74.10	A change to heading 74.10 from any other heading, except from plate, sheet or strip of heading 7409 of a thickness less than 5mm.
74.11–74.18	A change to heading 74.11 through 74.18 from any other heading, including another heading within that group.
7419.10–7419.99	A change to subheading 7419.10–7419.99 from any other subheading, including another subheading within that group.
75.01	A change to heading 75.01 from any other heading.
7502	A change to subheading 7502 from any other heading.
75.03	A change to heading 75.03 from any other heading.
75.04	A change to heading 75.04 from any other heading.
7505.11–7505.22	A change to heading 75.05 from any other heading subheading, including another subheading within that group.
75.06	A change to heading 75.06 from any other heading; or A change to foil, not exceeding 0.15mm in thickness from any other good of heading 7506, provided that there has been a reduction in thickness of no less than 50 percent.
7507.11–7508.00	A change to subheading 7507.11–7508.00 from any other subheading, including another subheading within that group.
76.01–76.04	A change to heading 76.01 through 76.04 from any other heading, including another heading within that group.
76.05	A change to heading 76.05 from any other heading, except from heading 76.04.
76.06–76.15	A change to heading 76.06 through 76.15 from any other heading, including another heading within that group.
7616.10–7616.90	A change to subheading 7616.10–7616.90 from any other subheading, including another subheading within that group.
78.01–78.03	A change to heading 78.01 through 78.03 from any other heading, including another heading within that group.
7804.11–7804.20	A change to subheading 7804.11–7804.20 from any other subheading, including another subheading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading; powder except from flakes; flakes except from powder; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate.
78.05–78.06	A change to heading 78.05 through 78.06 from any other heading, including another heading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
79.01–79.06	A change to heading 79.01 through 79.06 from any other heading, including another heading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading; matte; unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; foil; except from sheet or strip, tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes;
7907.10–7907.90	A change to subheading 7907.10–7907.90 from any other subheading, including another subheading within that group.
8001	A change to heading 8001 from any other heading.
80.02–80.04	A change to heading 80.02 through 80.04 from any other heading, including another heading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading: bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod, plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate.
8005.10–8005.20	A change to subheading 8005.10–8005.20 from any other subheading, including another subheading within that group.
80.06–80.07	A change to heading 80.06 through 80.07 from any other heading, including another heading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.

Chapter 81 Note: Waste and scrap are products of the country in which they are collected.

8101.10–8101.92	A change to subheading 8101.10 through 8101.92 from any other subheading, including another subheading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading: matte; unwrought; bars except from rods or profiles; rods except from bars or rofiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet and strip.
8 01.93	A change to subheading 8101.93 from any other subheading, except subheading 8101.92.
8101.99	A change to subheading 8101.99 from any other subheading; or A change to any of the following goods of this heading, including from materials also classified under this heading: tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
8 02.10–8102.92	A change to subheading 8102.10 through 8102.92 from any other subheading, including another subheading within that group; or

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	A change to any of the following goods of this heading, including from materials also classified under this heading: matte; unwrought; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet and strip.
8102.93	A change to subheading 8102.93 from any other subheading, except from subheading 8102.92.
8102.99	A change to subheading 8102.99 from any other subheading.
8103.10–8113.00	A change to subheading 8103.10–8113.00 from any other subheading, including another subheading within that group; or A change to any of the following goods of this heading, including from materials also classified under this heading: matte; Unwrought; powder except from flakes; flakes except from powder; bars except from rods or profiles; rods except from bars or profiles; profiles except from rods or bars; wire except from rod; plates except from sheets or strip; sheets except from plate or strip; strip except from sheets or plate; foil except from sheet or strip; tubes except from pipes; pipes except from tubes; tube or pipe fittings except from tubes or pipes; cables/stranded wire/plaited bands.
8201.10–8202.40	A change to subheading 8201.10–8202.40 from any other subheading, including another subheading within that group.
8202.91	A change to subheading 8202.91 from any other subheading, except subheading 8202.99.
8202.99	A change to subheading 8202.99 from any other heading.
8203.10–8207.90	A change to subheading 8203.10–8207.90 from any other subheading, including another subheading within that group.
82.08–82.15	A change to heading 82.08 through 82.15 from any other heading, including another heading within that group.
8301.10–8301.50	A change to subheading 8301.10 through 8301.40 from any other subheading, including within that group, except a change from subheading 8301.60 when that change is pursuant to GRI 2(a).
8301.60–8301.70	A change to subheading 8301.60 through 8301.70 from any other chapter.
8302.10–8302.60	A change to subheading 8302.10 through 8302.60 from any other subheading, including another subheading within that group.
83.03–83.04	A change to heading 83.03 through 83.04 from any other heading, including another heading within that group.
8305.10–8305.90	A change to subheading 8305.10 through 8305.90 from any other subheading, including another subheading within that group.
83.06–83.07	A change to heading 83.06 through 83.07 from any other heading, including another heading within that group.
8308.10–8308.90	A change to subheading 8308.10 through 8308.90 from any other subheading, including another subheading within that group.
83.09–83.10	A change to heading 83.09 through 83.10 from any other heading, including another heading within that group.
8311.10–8311.90	A change to subheading 8311.10 through 8311.90 from any other subheading, including another subheading within that group.
(p)	**Section XVI: Chapters 84 through 85**
Note: Tariff changes within Chapters 84 and 85 which occur only as a result of the application of General Rule of Interpretation 2(a) of the HTS shall not be sufficient to confer origin.	
8401.10	A change to subheading 8401.10 from any other subheading.
8401.20	A change to subheading 8401.20 from any other subheading or from parts provided for in 8401.20.
8401.30	A change to subheading 8401.30 from any other subheading.
8401.40	A change to subheading 8401.40 from any other heading.
8402.11–8402.12	A change to subheading 8402.11 through 8402.12 from any other subheading outside that group.
8402.19–8402.20	A change to 8402.19 through 8402.20 from any other subheading, including a subheading within that group.
8402.90	A change to subheading 8402.90 from any other heading, except headings 7303, 7304, 7305 or 7306, unless the change from these headings involve bending to shape.
8403.10	A change to subheading 8403.10 from any other subheading.
8403.90	A change to subheading 8403.90 from any other heading.
8404.10–8404.20	A change to subheading 8404.10 through 8404.20 from any other subheading, including another subheading within that group.
8404.90	A change to subheading 8404.90 from any other heading.
8405.10	A change to subheading 8405.10 from any other subheading.
8405.90	A change to subheading 8405.90 from any other heading.
8406.11–8406.19	A change to subheading 8406.11 through 8406.19 from any other subheading, including another subheading within that group.
8406.90	A change to subheading 8406.90 from any other heading.
84.07	A change to heading 84.07 from any other heading.
84.08	A change to heading 84.08 from any other heading.
8409.10	A change to subheading 8409.10 from any other heading.
8409.91–8409.99	A change to subheading 8409.91 through 8409.99 from any other heading, except a change resulting from a simple assembly.
8410.11–8410.13	A change to subheading 8410.11 through 8410.13 from any other subheading outside that group.
8410.90	A change to subheading 8410.90 from any other heading.
8411.11–8411.82	A change to subheading 8411.11 through 8411.82 from any other subheading outside that group.
8411.91–8411.99	A change to subheading 8411.91 through 8411.99 from any other heading.
8412.10–8412.80	A change to subheading 8412.10 through 8412.80 from any other subheading, including another subheading within that group.
8412.90	A change to subheading 8412.90 from any other heading.
8413.11–8413.82	A change to subheading 8413.11 through 8413.82 from any other subheading, including another subheading within that group.
8413.91	A change to subheading 8413.91 from any other heading.
8413.92	A change to subheading 8413.92 from any other heading.
8414.10–8414.80	A change to subheading 8414.10 through 8414.80 from any other subheading, including another subheading within that group.
8414.90	A change to subheading 8414.90 from any other heading.

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8415.10–8415.83	A change to subheading 8415.10 through 8415.83 from any other subheading, except a change within that group resulting from a simple assembly.
8415.90	A change to subheading 8415.90 from any other heading, except a change resulting from a simple assembly.
8416.10–8416.30	A change to subheading 8416.10 through 8416.30 from any other subheading, including another subheading within that group.
8416.90	A change to subheading 8416.90 from any other heading.
8417.10–8417.80	A change to subheading 8417.10 through 8417.80 from any other subheading, including another subheading within that group.
8417.90	A change to subheading 8417.90 from any other heading.
8418.10–8418.91	A change to subheading 8418.10 through 8418.91 from any other subheading, including another subheading within that group.
8418.99	A change to subheading 8418.99 from any other heading, except headings 7303, 7304, 7305 or 7306, unless the change from these headings involves bending to shape.
8419.11–8419.89	A change to subheading 8419.11 through 8419.89 from any other subheading, including another subheading within that group.
8419.90	A change to subheading 8419.90 from any other heading, except headings 7303, 7304, 7305, or 7306, unless the change from these headings involves bending to shape, and except a change from headings 8404 or 8501, when resulting from a simple assembly.
8420.10	A change to subheading 8420.10 from any other subheading.
8420.91	A change to subheading 8420.91 from any other heading.
8420.99	A change to subheading 8420.99 from any other heading, except heading 8501 when resulting from a simple assembly.
8421.11–8421.39	A change to subheading 8421.11 through 8421.39 from any other subheading, including another subheading within that group.
8421.91	A change to subheading 8421.91 from any other heading.
8421.99	A change to subheading 8421.99 from any other heading.
8422.11–8422.40	A change to subheading 8422.11 through 8422.40 from any other subheading, including another subheading within that group.
8422.90	A change to subheading 8422.90 from any other heading, except heading 8501.
8423.10–8423.89	A change to subheading 8423.10 through 8423.89 from any other subheading, including another subheading within that group.
8423.90	A change to subheading 8423.90 from any other heading.
8424.10–8424.89	A change to subheading 8424.10 through 8424.89 from any other subheading, including another subheading within that group.
8424.90	A change to subheading 8424.90 from any other heading, except subheadings 8414.40 or 8414.80
8425.11–8430.69	A change to subheading 8425.11 through 8430.69 from any other subheading, including another subheading within that group.
84.31	A change to heading 84.31 from any other heading, except heading 8501 when resulting from a simple assembly.
8432.10–8432.80	A change to subheading 8432.10 through 8432.80 from any other subheading, including another subheading within that group.
8432.90	A change to subheading 8432.90 from any other heading.
8433.11–8433.60	A change to subheading 8433.11 through 8433.60 from any other subheading, including another subheading within that group.
8433.90	A change to subheading 8433.90 from any other heading, except headings 8407 or 8408 when resulting from a simple assembly.
8434.10–8434.20	A change to subheading 8434.10 through 8434.20 from any other subheading, including another subheading within that group.
8434.90	A change to subheading 8434.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8435.10	A change to subheading 8435.10 from any other subheading.
8435.90	A change to subheading 8435.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8436.10–8436.80	A change to subheading 8436.10 through 8436.80 from any other subheading, including another subheading within that group.
8436.91	A change to subheading 8436.91 from any other heading.
8436.99	A change to subheading 8436.99 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly.
8437.10–8437.80	A change to subheading 8437.10 through 8437.80 from any other subheading, including another subheading within that group.
8437.90	A change to subheading 8437.90 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly
8438.10–8438.80	A change to subheading 8438.10 through 8438.80 from any other subheading, including another subheading within that group.
8438.90	A change to subheading 8438.90 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly
8439.10–8439.30	A change to subheading 8439.10 through 8439.30 from any other subheading, including another subheading within that group.
8439.91	A change to subheading 8439.91 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly.
8439.99	A change to subheading 8439.99 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly.
8440.10	A change to subheading 8440.10 from any other subheading.
8440.90	A change to subheading 8440.90 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly.
8441.10–8441.80	A change to subheading 8441.10 through 8441.80 from any other subheading, including another subheading within that group.

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8441.90	A change to subheading 8441.90 from any other heading, except for headings 8407, 8408 or 8501 when resulting from a simple assembly.
8442.10–8442.30	A change to subheading 8442.10 through 8442.30 from any other subheading outside that group.
8442.40	A change to subheading 8442.40 from any other heading, except for heading or 8501 when resulting from a simple assembly.
8442.50	A change to subheading 8442.50 from any other heading.
8443.11–8443.60	A change to subheading 8443.11 through 8443.60 from any other subheading outside that group.
8443.90	A change to subheading 8443.90 from any other heading, except for heading 8501 when resulting from a simple assembly.
84.44	A change to heading 84.44 from any other heading.
8445.11–8447.90	A change to subheading 8445.11 through 8447.90 from any other subheading outside that group.
8448.11–8448.19	A change to subheading 8448.11 through 8448.19 from any other subheading, except a change resulting from a simple assembly.
8448.19	A change to subheading 8448.19 from any other subheading, except a change resulting from a simple assembly.
8448.20–8448.59	A change to subheading 8448.20 through 8448.59 from any other heading, except for heading 8501.
84.49	A change to subheading 84.49 from any other heading.
8450.11–8450.20	A change to subheading 8450.11 through 8450.20 from any other subheading, including another subheading within that group.
8450.90	A change to subheading 8450.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8451.10–8451.80	A change to subheading 8451.10 through 8451.80 from any other subheading, including another subheading within that group.
8451.90	A change to subheading 8451.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8452.10–8452.29	A change to subheading 8452.10 through 8452.29 from any other subheading outside that group.
8452.30–8452.40	A change to subheading 8452.30–8452.40 from any other subheading, including another subheading within that group.
8452.90	A change to subheading 8452.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8453.10–8453.80	A change to subheading 8453.10 through 8453.80 from any other subheading, including another subheading within that group.
8453.90	A change to subheading 8453.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8454.10–8454.30	A change to subheading 8454.10 through 8454.30 from any other subheading, including another subheading within that group.
8454.90	A change to subheading 8454.90 from any other heading.
8455.10–8455.22	A change to subheading 8455.10 through 8455.22 from any other subheading, including another subheading within that group.
8455.30	A change to subheading 8455.30 from any other heading.
8455.90	A change to subheading 8455.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8456.10–8456.90	A change to subheading 8456.10 through 8456.90 from any other heading.
8457.10	A change to subheading 8457.10 from any other heading except from headings 84.58 through 8465 when resulting from a simple assembly.
8457.20–8465.99	A change to subheading 8457.20 through 8465.99 from any other heading, including another heading within that group.
8466.10–8466.94	A change to subheading 8466.10 through 8466.94 from any other heading outside that group, except heading 8501 when resulting from a simple assembly.
8467.11–8467.89	A change to subheading 8467.11 through 8467.89 from any other subheading, including another subheading within that group.
8467.91–8467.99	A change to subheading 8467.91 through 8467.99 from any other heading, except heading 8407.
8468.10–8468.80	A change to subheading 8468.10 through 8468.80 from any other subheading, including another subheading within that group.
8468.90	A change to subheading 8468.90 from any other heading.
8469.10–8469.39	A change to subheading 8469.10 through 8469.39 from any subheading outside that group.
8470.10–8471.91	A change to subheading 8470.10 through 8471.91 from any other subheading, except when resulting from a simple assembly.
8471.92–8472.90	A change to subheading 8471.92 through 8472.90 from any other subheading, except when resulting from a simple assembly.
8473	A change to heading 8473 from any other heading, except heading 8501.
8474.10–8474.80	A change to subheading 8474.10 through 8474.80 from any other subheading, except when resulting from a simple assembly.
8474.90	A change to subheading 8474.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8475.10–8475.20	A change to subheading 8475.10 through 8475.20 from any other subheading, including another subheading within that group.
8475.90	A change to subheading 8475.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8476.11–8476.19	A change to subheading 8476.11 through 8476.19 from any other subheading outside that group.
8476.90	A change to subheading 8476.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8477.10–8477.80	A change to subheading 8477.10 through 8477.80 from any other subheading, including another subheading within that group.
8477.90	A change to subheading 8477.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8478.10	A change to subheading 8478.10 from any other subheading.
8478.90	A change to subheading 8478.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8479.10–8479.89	A change to subheading 8479.10 through 8479.89 from any other subheading, including another subheading within that group.
8479.90	A change to subheading 8479.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8480	A change to heading 8480 from any other heading.
8481.10–8481.80	A change to subheading 8481.10 through 8481.80 from any other heading, or from subheading 8481.90 except when resulting from a simple assembly.
8481.90	A change to subheading 8481.90 from any other heading.
8482.10–8482.80	(i) A change to subheading 8482.10 through 8482.80 from any other heading, or;

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	(ii) A change to subheading 8482.10 through 8482.80 from any other subheading, including another subheading within that group, *provided* that either the inner *and* outer races are domestic materials, or the balls/rollers are domestic materials.
8482.91–8482.99	A change from 8482.91 through 8482.99 from any other heading.
8483.10	A change to subheading 8483.10 from any other subheading.
8483.20	A change to subheading 8483.20 from any other subheading, except from subheading 8482.10 through 8482.80.
8483.30–8483.60	A change to subheading 8483.30 through 8483.60 from any other subheading, including another subheading within that group.
8483.90	A change to subheading 8483.90 from any other heading.
8484.10–8484.90	A change to subheading 8484.10 through 8484.90 from any other subheading, including another subheading within that group.
8485	A change to subheading 8485 from any other heading.
8501	A change to heading 8501 from any other heading.
8502	A change to heading 8502 from any other heading.
8503	A change to heading 8503 from any other heading.
8504.10–8504.50	A change to subheading 8504.10 through 8504.50 from any other subheading, outside that group.
8504.90	A change to subheading 8504.90 from any other heading.
8505.11–8505.30	A change to subheading 8505.11 through 8505.30 from any other subheading, including another subheading within that group.
8505.90	A change to subheading 8505.90 from any other heading.
8506.11–8506.20	A change to subheading 8506.11 through 8506.20 from any other subheading, including another subheading within that group.
8506.90	A change to subheading 8506.90 from any other heading.
8507.10–8507.80	A change to subheading 8507.10 through 8507.80 from any other subheading, including another subheading within that group.
8507.90	A change to subheading 8507.90 from any other heading.
8508.10–8508.80	A change to subheading 8508.10 through 8508.80 from any other subheading, including another subheading within that group.
8508.90	A change to subheading 8508.90 from any other heading, except heading 8501 when resulting from simple assembly.
8509.10–8509.80	A change to subheading 8509.10 through 8509.80 from any other subheading, including another subheading within that group.
8509.90	A change to subheading 8509.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8510.10–8510.20	A change to subheading 8510.10 through 8510.20 from any other subheading, including another subheading within that group.
8510.90	A change to subheading 8510.90 from any other heading, except heading 8501 when resulting from a simple assembly.
8511.10–8511.80	A change to subheading 8511.10 through 8511.80 from any other subheading, including another subheading within that group.
8511.90	A change to subheading 8511.90 from any other heading.
8512.10–8512.30	A change to subheading 8512.10 through 8512.30 from any subheading outside that group.
8512.40	A change to subheading 8512.40 from any other subheading, except when resulting from a simple assembly.
8512.90	A change to subheading 8512.90 from any other heading.
8513.10	A change to subheading 8513.10 from any other subheading.
8513.90	A change to subheading 8513.90 from any other heading.
8514.10–8514.40	A change to subheading 8514.10 through 8514.40 from any other subheading, including another subheading within that group.
8514.90	A change to subheading 8514.90 from any other heading.
8515.11–8515.80	A change to subheading 8515.11 through 8515.80 from any other subheading, outside that group.
8515.90	A change to subheading 8515.90 from any other heading.
8516.10–8516.79	A change to subheading 8516.10 through 8516.79 from any other subheading, including another subheading within that group.
8516.80	A change to subheading 8516.80 from any other heading.
8516.90	A change to subheading 8516.90 from any other heading.
8517.10–8517.82	A change to subheading 8517.10 through 8517.82 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8517.90	A change to subheading 8517.90 from any other heading.
8518.10–8518.50	A change to subheading 8518.10 through 8518.50 from any other heading.
8518.90	A change to subheading 8518.90 from any other heading.
8519.10–8521.90	A change to subheading 8519.10 through 8521.90 from any other subheading, including another subheading within that group.
8522	A change to heading 8522 from any other heading.
8523	A change to heading 8523 from any other heading.
8524	A change to heading 8524 from any other heading.
8525.10–8525.20	A change to subheading 8525.10 through 8525.20 from any other subheading outside that group.
8525.30	A change to subheading 8525.30 from any other subheading.
8526.10–8526.92	A change to subheading 8526.10 through 8526.92 from any other subheading, including another subheading within that group.
8527.11–8527.90	A change to subheading 8527.11 through 8527.90 from any other subheading, including another subheading within that group.
8528.10–8528.20	A change to subheading 8528.10 through 8528.20 from any other subheading, including another subheading within that group.
8529	A change to heading 8529 from any other heading.
8530.10–8530.80	A change to subheading 8530.10 through 8530.80 from any other subheading, including another subheading within that group.
8530.90	A change to subheading 8530.90 from any other heading.

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8531.10–8531.80	A change to subheading 8531.10 through 8531.80 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8531.90	A change to subheading 8531.90 from any other heading.
8532.10–8532.30	A change to subheading 8532.10 through 8532.30 from any other subheading, including another subheading within that group.
8532.90	A change to subheading 8532.90 from any other heading.
8533.10–8533.40	A change to subheading 8533.10 through 8533.40 from any other subheading, including another subheading within that group.
8533.90	A change to subheading 8533.90 from any other heading.
8534	A change to heading 8534 from any other heading.
8535.10–8535.90	A change to subheading 8535.10 through 8535.90 from any other subheading, including another subheading within that group.
8536.10–8536.90	A change to subheading 8536.10 through 8536.90 from any other subheading, including another subheading within that group.
8537	A change to heading 8537 from any other heading.
8538	A change to heading 8538 from any other heading.
8539.10–8539.40	A change to subheading 8539.10 through 8539.40 from any other subheading, including another subheading within that group.
8539.90	A change to subheading 8539.90 from any other heading.
8540.11–8540.89	A change to subheading 8540.11 through 8540.89 from any other subheading, including another subheading within that group.
8540.91–8540.99	A change to subheading 8540.91 through 8540.99 from any other subheading, including another subheading within that group, except when resulting from a simple assembly.
8541–8542	A change to heading 8541 through 8542 from any other subheading including another subheading within that group, or from an unmounted chip, die or wafer provided for in 8541 or 8542, or, a change to any programmed chips from any unprogrammed chips.
8543.10–8543.80	A change to subheading 8543.10 through 8543.30 from any other subheading, including another subheading within that group.
8543.90	A change to subheading 8543.90 from any other heading.
8544.11–8544.70	A change to subheading 8544.11 through 8544.70 from any other subheading, except when resulting from a simple assembly.
8545–8548	A change to heading 8545 through 8548 from any other subheading, including another subheading within that group.
(q)	**Section XVII: Chapters 86 through 89**
8601	A change to heading 8601 from any other heading.
8602	A change to heading 8602 from any other heading.
8603–8606	A change to heading 8603 through 8606 from any heading including a heading within that group, except from heading 8607 when that change is pursuant to GRI 2(a).
8607.11	A change to subheading 8607.11 from any other subheading, except from subheading 8607.12, and except from subheading 8607.19 when that change is pursuant to GRI 2(a).
8607.12	A change to subheading 8607.12 from any other subheading, except subheading 8607.11, and except from subheading 8607.19 when that change is pursuant to GRI 2(a).
8607.19	A change to subheading 8607.19 from any other subheading.
8607.21–8607.99	A change to subheading 8607.21 through 8607.99 from any other heading, except to mounted brake linings and pads of subheading 8607.21 through 8607.99 from subheading 6813.10.
8608	A change to heading 8608 from any other heading.
8609	A change to heading 8609 from any other heading, except heading 7309 through 7311.
8701–8705	A change to heading 8701–8705 from any other heading except heading 8706.
8706	A change to heading 8706 from any other heading.
8707	A change to heading 8707 from any other heading, except a change from subheading 8708.29 if that change is pursuant to GRI 2(a).

Note: Any change to heading 8708 from subheadings 8709.90, 8716.90, 8431.20 and 8431.49 shall not be considered to satisfy a required change in tariff classification.

8708.10–8708.29	A change to subheading 8708.10 through 8708.29 from any other subheading.
8708.31	A change to subheading 8708.31 from any other heading, except to mounted brake linings and pads of subheading 8708.31 from subheading 6813.10.
8708.39	A change to subheading 8708.39 from any other heading.
8708.40	A change to subheading 8708.40 from any other subheading, except from subheading 8708.99 when that change is pursuant to GRI 2(a).
8708.50	A change to subheading 8708.50 from any other subheading, except from subheading 8708.99 when that change is pursuant to GRI 2(a).
8708.60	A change to subheading 8708.60 from any other subheading.
8708.70	A change to subheading 8708.70 from any other subheading.
8708.80	A change to subheading 8708.80 from any other subheading, except from subheading 8708.99 when that change is pursuant to GRI 2(a).
8708.91	A change to subheading 8708.91 from any other subheading, except from subheading 8708.99 when that change is pursuant to GRI 2(a).
8708.92	A change to subheading 8708.92 from any other subheading.
8708.93	A change to subheading 8708.93 from any other subheading.
8708.94	A change to subheading 8708.94 from any other subheading, except from subheading 8708.99 when that change is pursuant to GRI 2(a).

HTSUS	Tariff shift and/or other requirements
8708.99	A change to subheading 8708.99 from any other chapter; or A change to subheading 8708.99 from any other subheading US/Mex [provided there is a substantial transformation].
8709.11–8709.19	A change to subheading 8709.11 through 8709.19 from any other subheading outside that group, except a change from subheading 8709.90 if that change is pursuant to GRI 2(a).
8709.90	A change to subheading 8709.90 from any other heading, except subheading 8431.20 or heading 8708
8710	A change to heading 8710 from any other heading.
8711–8713	A change to heading 8711 through 8713 from any other heading, including another heading within that group, except a change from heading 8714 if that change is pursuant to GRI 2(a).
8714	A change to heading 8714 from any other heading, except a change from subheading 6813.10 to mounted brake linings or pads of heading 8714.
8715	A change to heading 8715 from any other heading.
8716.10–8716.80	A change to subheading 8716.10 through 8716.80 from any other heading, except a change from subheading 8716.90 if that change is pursuant to GRI 2(a).
8716.90	A change to subheading 8716.90 from any other heading except a change from subheading 8709.90, and 8431.49
8801–8802	A change to heading 8801 through 8802 from any heading outside that group, except from subheading 8803 pursuant to GRI 2(a).
8803.10–8803.90	A change to subheading 8803.10 through 8803.90 from any other subheading within that group
8804–8805	A change to heading 8804 through 8805 from any other heading, within that group.
8901–8903	A change to heading 8901 through 8903 from any heading outside that group.
8904	A change to heading 8904 from any other heading.
8905	A change to heading 8905 from any other chapter.
8906–8907	A change to heading 8906 through 8907 from any other heading, including another heading within that group except from heading 8903 and 8905.
8908	A change to heading 8908 from any other chapter.
(r)	**Section XVIII: Chapters 90 through 92**
9001.10	A change to subheading 9001.10 from any other subheading, including another subheading within that group, except from subheading 8544.70.
9001.20–9001.30	A change to subheading 9001.20 through 9001.30 from any other subheading, including another subheading within that group.
9001.40–9001.90	A change to subheading 9001.40 through 9001.90 from any other subheading, including another subheading within that group, except from lens blanks of subheadings 7014.00 and 7015.10.
9002.11–9002.90	A change to subheading 9002.11 through 9002.90 from any other subheading, including another subheading within that group, except from subheading 9001.90 and lens blanks of subheading 7014.00.
9003.11–9003.19	(i) A change to subheading 9003.11 through 9003.19 from any other heading, or (ii) A change to subheading 9003.11 through 9003.19 from any other subheading, including another subheading within that group, except from subheading 9003.90, unless the temples or fronts are domestically produced.
9003.90	A change to subheading 9003.90 from any other heading.
9004	A change to heading 9004 from any other heading, except from subheading 9001.40 or 9001.50.
9005.10–9005.80	A change to subheading 9005.10 through 9005.80 from any other subheading, including another subheading within that group.
9005.90	A change to subheading 9005.90 from any other heading, except from headings 9001 and 9002.
9006.10–9006.69	A change to subheading 9006.10 through 9006.69 from any other subheading, including another subheading with that group.
9006.91–9006.99	A change to subheading 9006.91 through 9006.99 from any other heading.
9007.11–9007.29	A change to subheading 9007.11 through 9007.29 from any other subheading, including another subheading within that group.
9007.91–9007.92	A change to subheading 9007.91 through 9007.92 from any other heading, except from lenses of heading 9002, when resulting from a simple assembly.
9008.10–9008.40	A change to subheading 9008.10 through 9008.40 from any other subheading, including another subheading within that group.
9008.90	A change to subheading 9008.90 from any other heading, except from lenses of heading 9002, when resulting from a simple assembly.
9009.11–9009.30	A change to subheading 9009.11 through 9009.30 from any other subheading, including another subheading within that group.
9009.90	A change to subheading 9009.90 from any other heading.
9010.10–9010.30	A change to subheading 9010.10 through 9010.30 from any other subheading, including another subheading within that group.
9010.90	A change to subheading 9010.90 from any other heading.
9011.10–9011.80	A change to subheading 9011.10 through 9011.80 from any other subheading, including another subheading within that group.
9011.90	A change to subheading 9011.90 from any other heading.
9012.10	A change to subheading 9012.10 from any other subheading, including another subheading within that group.
9012.90	A change to subheading 9012.90 from any other heading.
9013.10	A change to subheading 9013.10 from any other subheading, including another subheading within that group, except from optical telescopes of subheading 9005.80.
9013.20–9013.80	A change to subheading 9013.20 through 9013.80 from any other subheading, including another subheading within that group.
9013.90	A change to subheading 9013.90 from any other subheading, including another subheading within that group, except from subheading 9002.19, when resulting from a simple assembly.
9014.10–9014.80	A change to subheading 9014.10 through 9014.80 from any other subheading, including another subheading within that group.
9014.90	A change to subheading 9014.90 from any other heading.

HTSUS	Tariff shift and/or other requirements
9015.10–9015.80	A change to subheading 9015.10 through 9015.80 from any other subheading, including another subheading within that group.
9015.90	A change to subheading 9015.90 from any other heading.
9016	A change to heading 9016 from any other heading.
9017.10–90'7.80	A change to subheading 9017.10 through 9017.80 from any other subheading, including another subheading within that group.
9017.90	A change to subheading 9017.90 from any other heading.
9018.11–9018.19	A change to subheading 9018.11 through 9018.19 from any other subheading, including another subheading within that group, except from electrocardiographs, or patient monitoring systems from printed circuit assemblies, when resulting from a simple assembly.
9018.20–9018.32	A change to subheading 9018.20 through 9018.32 from any other subheading, including another subheading within that group.
9018.39	A change to subheading 9018.39 from any other subheading, including another subheading within that group, except from surgical tubing of subheading 4009.10, when resulting from a simple assembly.
9018.41–90'8.50	A change to subheading 9018.41 through 9018.50 from any other subheading, including another subheading within that group.
9018.90	A change to subheading 9018.90 from any other subheading, including another subheading within that group, except from subheading 9001.90, when resulting from a simple assembly, or synthetic rubber of heading 4002, when resulting from a simple assembly; or A change to defibrillators from printed circuit assemblies, except when resulting from a simple assembly.
9019.10–9019.20	A change to subheading 9019.10 through 9019.20 from any other subheading, including another subheading within that group.
9020	A change to heading 9020 from any other heading.
9021.11	A change to subheading 9021.11 from any other subheading, including another subheading within that group.
9021.19	A change to subheading 9021.19 from any other subheading, including another subheading within that group, except from nails of heading 7317, when resulting from a simple assembly or screws of heading 7318, when resulting from a simple assembly.
9021.21–902'.90	A change to subheading 9021.21 through 9021.90 from any other subheading, including another subheading within that group.
9022.11–9022.90	A change to subheading 9022.11 through 9022.90 from any other subheading, including another subheading within that group.
9023	A change to heading 9023 from any other heading.
9024.10–9024.80	A change to subheading 9024.10 through 9024.80 from any other subheading, including another subheading within that group.
9024.90	A change to subheading 9024.90 from any other heading.
9025.11–9025.80	A change to subheading 9025.11 through 9025.80 from any other subheading, including another subheading within that group.
9025.90	A change to subheading 9025.90 from any other heading.
9026.10–9026.80	A change to subheading 9026.10 through 9026.80 from any other subheading, including another subheading within that group.
9026.90	A change to subheading 9026.90 from any other heading.
9027.10–9027.90	A change to subheading 9027.10 through 9027.90 from any other subheading, including another subheading within that group.
9028.10–9028.30	A change to subheading 9028.10 through 9028.30 from any other subheading, including another subheading within that group.
9028.90	A change to subheading 9028.90 from any other heading.
9029.10–9029.20	A change to subheading 9029.10 through 9029.20 from any other subheading, including another subheading within that group.
9029.90	A change to subheading 9029.90 from any other heading.
9030.10–9030.89	A change to subheading 9030.10 through 9030.89 from any other subheading, including another subheading within that group.
9030.90	A change to subheading 9030.90 from any other heading.
9031.10–9031.80	A change to subheading 9031.10 through 9031.80 from any other subheading, including another subheading within that group.
9031.90	A change to subheading 9031.90 from any other heading.
9032.10–9032.89	A change to subheading 9032.10 through 9032.89 from any other subheading, including another subheading within that group.
9032.90	A change to subheading 9032.90 from any other subheading, including another subheading within that group, except from heading 8537, when resulting from a simple assembly.
9033	A change to heading 9033 from any other heading.
9101–9107	A change to heading 9101 through 9107 from any heading outside that group, except heading 9108 through 9110.
9108–9109	A change to heading 9108 through 9109 from any heading outside that group, except heading 9110.
9110	A change to heading 9110 from any other heading, except from subheading 9114.90; or A change to heading 9110 from subheading 9114.90 if there had been a substantial transformation.
9111.10–9111.80	A change to subheading 9111.10 through 9111.80 from any subheading outside that group, except from subheading 9111.90 when the change is pursuant to GRI 2(a).
9111.90	A change to subheading 9111.90 from any other heading.
9112.10–9112.80	A change to subheading 9112.10 through 9112.80 from any subheading outside that group, except from subheading 9112.90 if the change is pursuant to GRI 2(a).
9112.90	A change to subheading 9112.90 from any other heading.
9113	A change to heading 9113 from any other heading.
9114	A change to heading 9114 from any other heading.
9201–9208	A change to heading 9201 through 9208 from any other heading, including a heading within that group, except a change from heading 9209 if that change is pursuant to GRI 2(a).

HTSUS	Tariff shift and/or other requirements
9209	A change to heading 9209 from any other heading.
(s)	**Section XIX: Chapter 93**
9301–9304	A change to heading 9301 through 9304 from any other heading, including a heading within that group, except from a change to heading 9305 when that change is pursuant to GRI 2(a).
9305	A change to heading 9305 from any other heading.
9306	A change to heading 9306 from any other heading.
9307	A change to heading 9307 from any other heading.
(t)	**Section XX: Chapters 94 through 96**
9401.10–9401.80	A change to subheading 9401.10 through 9401.80 from any subheading outside that group, except subheading 9403.10 through 9403.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a).
9401.90	A change to subheading 9401.90 from any other heading, except from subheading 9403.90; or A change to subheading 9401.90 from subheading 9403.90 if that change results in a substantial transformation.
9402	A change to heading 9402 from any other heading, except from subheading 9401.10–9401.80, 9403.10–9403.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a).
9403.10–9403.80	A change to subheading 9403.10 through 9403.80 from any subheading outside that group, except from subheading 9401.10 through 9401.80, and except a change from subheading 9401.90 or 9403.90 when that change is pursuant to GRI 2(a).
9403.90	A change to subheading 9403.90 from any other heading, except from subheading 9401.90; or A change to subheading 9403.90 from subheading 9403.90 if that change results in a substantial transformation.
9404.10–9404.30	A change to subheading 9404.10 through 9404.30 from any subheading outside that group.
9404.90	A change to subheading 9404.90 from any other heading.
9405.10–9405.60	A change to subheading 9405.10 through 9405.60 from any subheading outside that group, except a change from subheading 9405.91 through 9405.99 if that change pursuant to GRI 2(a).
9405.91–9405.99	A change to subheading 9405.91 through 9405.99 from any other heading.
9406	A change to heading 9406 from any other heading.
9501	A change to heading 9501 from any other chapter except from heading 6714 if that change is pursuant to GRI 2(a).
9502.10	A change to subheading 9502.10 from any other subheading, except from skins for stuffed dolls (9502.99.10).
9502.91	A change to subheading 9502.91 from any other chapter except from heading 6111 and 6209.
9502.99	A change to subheading 9502.99 from any other heading, except from subheadings 9503.41 through 9503.49.
9503.10–9503.30	A change to subheading 9503.10 through 9503.30 from any other subheading including another subheading within that group.
9503.41–9503.49	A change to toys of subheading 9503.41 through 9503.49 from any other heading; or A change to toys of subheading 9503.41 through 9503.49 from parts and accessories of subheading 9503.41 through 9503.49; or A change to parts and accessories of 9503.41 through 9503.49 from any other heading, except from heading 9502, 6111, or 6209.
9503.50–9503.60	A change to subheading 9503.50 through 9503.60 from any other subheading, including another subheading within that group.
9503.70–9503.90	A change to subheading 9503.70 through 9503.90 from any other chapter.
9504.10–9506.99	A change to heading 9504.10 through 9506.99 from any other subheading, including within that group.
9507.10–9507.30	A change to subheading 9507.10 through 9507.30 from any other chapter.
9507.10–9507.30	A change to subheading 9507.10 through 9507.30 from any other chapter.
9507.90	A change to subheading 9507.90 from any other subheading, except from heading 5004 through 5006, 5402.10 through 5402.49, 5406.10 through 5406.20, 5603 and 5404.
9508	A change to heading 9508 from any other heading.
9601	A change to heading 9601 from any other heading.
9602	A change to heading 9602 from any other heading.
9603	A change to heading 9603 from any other heading.
9604–9605	A change to heading 9604 through 9605 from any other heading, including another heading within that group.
9606.10	A change to subheading 9606.10 from any other heading.
9606.21–9606.29	A change to subheading 9606.21 through 9606.29 from any other heading; or A change to subheading 9606.21 through 9606.29 from any other subheading if there is a substantial transformation.
9606.30	A change to subheading 9606.30 from any other heading.
9607.11–9607.19	A change to subheading 9607.11 through 9607.19 from any other subheading, except a change from subheading 9607.20 when that change is pursuant to GRI 2(a).
9607.20	A change to subheading 9607.20 from any other subheading.
9608.10–9608.40	A change to subheading 9608.10 through 9608.40 from any other subheading including another subheading within that group, except from subheading 9608.60.
9608.50	A change to 9608.50 from any other heading.
9608.60–9608.99	A change to subheading 9608.60 through 9608.99 from any other subheading including another subheading within that group.
9609.10	A change to subheading 9609.10 from any other subheading.
9609.20	A change to subheading 9609.20 from any other chapter.
9609.90	A change to subheading 9609.90 from any other chapter.
9610–9612	A change to heading 9610 through 9612 from any other heading, including another heading within that group.
9613.10–9613.20	A change to subheading 9613.10 through 9613.20 from any other subheading outside that group.
9613.30–9613.80	A change to subheading 9613.30 through 9613.80 from any other subheading, including from a subheading within that group.
9913.90	A change to subheading 9613.90 from any other heading.
9614.10	A change to subheading 9614.10 from any other heading except from heading 4407.

HTSUS	Tariff shift and/or other requirements
9614.20	A change to subheading 9614.20 from any other subheading.
9614.90	A change to subheading 9614.90 from any other heading.
9615.11–9615.90	A change to subheading 9615.11 through 9615.90 from any other subheading including another subheading within that group.
9616–9618	A change to heading 9616 through 9618 from any other heading, including another heading within that group
(u)	Section XXI: Chapter 97
9701–9706	A change to 9701 through 9706 from any other subheading, including another subheading within that group.

PART 134—COUNTRY OF ORIGIN MARKING

4. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

5. Section 134.32 is amended by adding a new paragraph (r) to read as follows:

§ 134.32 General exceptions to marking requirements.

* * * * *

(r) Except for articles that are included within the scope of § 12.130 of this Chapter, articles of United States origin (determined as such under part 102 of this Chapter prior to exportation from the U.S.) that are exported for repairs or alterations and returned.

* * * * *

6. Section 134.43 is amended by adding a new paragraph (e) to read as follows:

§ 134.43 Methods of marking specific articles.

* * * * *

(e) *Articles returned to the U.S. after having been advanced in value or improved in condition outside the United States.* Where the country of origin of an article is determined in accordance with § 102.14, part 102 of this Chapter, such article, at the choice of the importer, exporter or producer of the good, may be marked, as appropriate, in a manner such as the following:

(1) Assembled in (name of foreign country) from U.S components;

(2) Further processed in (name of country of origin) from U.S. materials;

(3) Product of (name of foreign country) made from U.S. components; or

(4) Product of (name of foreign country).

George J. Weise,

Commissioner of Customs.

Approved: December 17, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

[FR Doc. 93–31852 Filed 12–30–93; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4, 10, 12, 102, 134, and 177

RIN 1515–AB19

Rules of Origin Applicable to Imported Merchandise

AGENCY: U S. Customs Service, Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document proposes to amend the Customs Regulations to set forth uniform rules governing the determination of the country of origin of imported merchandise. These rules would codify existing principles used for determining when under the customs laws an article "is wholly the growth, product or manufacture" of a country or when an article is "a new and different article" [or article of commerce] as a result of a manufacturing process in a given country. The proposed rules are intended to codify the present country of origin rules in order to provide rules that are more objective and transparent and thereby to provide greater certainty and predictability for both the trade community and the Customs Service in making country of origin determinations required under existing laws and regulations.

DATES: Comments must be received on or before April 4, 1994.

ADDRESSES: Written comments (preferably in triplicate) may be addressed to U.S. Customs Service, 1301 Constitution Avenue, NW., Franklin Court, Washington, DC 20229, and they may be inspected at the Regulations Branch located at 1099 14th St. NW., suite 4000, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Sandra L. Gethers, Office of Regulations and Rulings (202–482–6980).

SUPPLEMENTARY INFORMATION:

Background

On September 25, 1991, a document was published in the **Federal Register** (56 FR 48448) proposing to amend the Customs Regulations to set forth a uniform rule governing the determination of the country of origin of imported merchandise which is wholly obtained or produced in a single country. The document also proposed to amend the Customs Regulations to establish rules, for determining the country of origin of imported goods, and solicited comments on those proposals. Customs has refined the original proposal and has decided to issue this second proposal regarding uniform rules for the determination of the country of origin of imported merchandise.

All goods imported into the United States are subject to a determination as to their country of origin because origin determinations affect the treatment of imported goods under various laws. Examples of laws that involve country of origin determinations include laws regarding admissibility, duty assessment, country of origin marking, and quota administration.

The rules of origin as historically applied in the United States reflect tests and criteria developed through the years in judicial decisions and in Customs interpretations of those judicial decisions. In more recent years, the importance of rules of origin has been demonstrated by the adoption of statutory or regulatory origin rules applicable in specific contexts, including for purposes of government procurement, certain duty-preference programs, and the U.S. textile import program.

An article may be grown or mined or otherwise extracted from the ground in a country and not be further processed prior to exportation. Such an article is "wholly the growth or product" of that country and as such has its origin in that country because it reflects no materials or processing attributable to any other country. Similarly, an article may be processed or manufactured exclusively in a country from materials wholly grown or produced in that same country. In such a case the article is "wholly the product or manufacture" of that country and thus has its origin in that country because, again, it reflects no materials or processing attributable to any other country. The U.S. origin rule in these cases is expressed by the phrase "wholly the growth, product, or manufacture of a country" (or "wholly grown, produced, or manufactured in a country").

The more problematic origin determinations arise when an article is not wholly the growth, product, or manufacture of a country. In these other, more problematic determinations, the product in question incorporates or reflects materials and/or processing which are attributable to two or more countries. In such cases origin is determined based on the effect of processing performed on materials or articles which originated in another country. Under the current judicially-developed test, a case-by-case determination is made as to whether the processing is such that it results in a "new and different article" (or "new and different article of commerce") having a "new name, character, and use" which is different from that which existed prior to the processing; Customs has expressed this test as the "substantial transformation" rule. Under this rule, the country of origin of an imported article is considered to be the last country in which a substantial transformation took place (in other words, the country in which the imported article assumed its final and distinctive identity prior to importation).

Notwithstanding the long history of the substantial transformation rule, its administration has not been without problems. These problems devolve from the fact that application of the substantial transformation rule is on a case-by-case basis and often involves subjective judgments as to what constitutes a new and different article or as to whether processing has resulted in a new name, character, and use. As a result, application of the substantial transformation rule has remained essentially non-systematic in that a judicial or administrative determination in one case more often than not has little or no bearing on another case involving a different factual pattern. Thus, while judicial and administrative decisions involving the substantial transformation rule may have some value as restatements or refinements of the basic rule, they are often of little assistance in resolving individual cases involving the myriad of issues or tests that have arisen, such as the distinction between producer's goods and consumer's goods, the significance of further manufacturing or finishing operations, and the issue of dedication to use. The very fact that the substantial transformation rule has been the subject of a large number of judicial and administrative determinations is testament to the basic problem: The case-by-case approach, involving application of the rule based on specific sets of facts, has led to varied case-specific interpretations of the basic rule, resulting in a lack of predictability which in turn has engendered a significant degree of uncertainty both within Customs and in the trade community as regards the effect that a particular type of processing should have on an origin determination.

The United States-Canada Free-Trade Agreement (CFTA), Public Law 100–449, 102 Stat. 1851 (codified at 19 U.S.C. 2112 note), sets forth rules for determining the origin of goods for purposes of duty preference under the CFTA. Those rules, which are set forth in General Note 3 HTSUS, and the rules of origin in Chapter 4 of the North American Free Trade Agreement

(NAFTA), which will supplant the CFTA rules, provide that goods will have their origin (1) in the country in which they are wholly obtained or produced, or (2) in the case of goods not wholly obtained or produced in a country, in the country in which they were transformed so as to be subject to a specified change in tariff classification (with minimum value-added requirements applying in addition to a tariff classification change in certain cases). The change in tariff classification standard was specifically developed as an alternative to the traditional substantial transformation rule in order to obviate the problems described above. Customs believes that rules based upon the change in tariff classification approach, would provide by virtue of their greater specificity, more objectivity, transparency, and predictability in origin determinations. Consequently, Customs is proposing to adopt a system of country of origin determination rules based on change in tariff classification that would be applicable to all merchandise imported into the United States. To that end, this document would amend interim regulations (19 CFR part 102) published in today's **Federal Register**, that follow the change in tariff classification approach applicable to North American products.

Discussion of Proposals

This document proposes to amend the interim regulations as set forth in part 102 of the Customs Regulations, published elsewhere in today's issue of the **Federal Register**, to make them uniformly applicable to all merchandise imported into the United States. The background section of the interim regulations as well as the regulatory text of part 102, is applicable to this document. This document proposes to amend § 102.0 to set forth the scope of areas for which the rules of origin set forth in part 102 are proposed to be used to make country of origin determinations. These proposed rules of origin will be applicable for all purposes for which the "product of" or "country of origin" criterion is prescribed by statute. As this position would be consistent (except in the case of waste and scrap which are treated as if they originated as raw materials) with the position Customs has always taken regarding the concept of goods "wholly grown, produced or manufactured" in one country, including under preferential trade arrangements, such as the Generalized System of Preferences (GSP) and Caribbean Basin Initiative (CBI) statutes and regulations, Customs proposes that this definition apply for all purposes under the Customs and related laws and the navigation laws of the United States (for example, for duty assessment and country of origin marking purposes). Consequently, this document proposes to amend all provisions where the phrase, "wholly the growth, product or manufacture", or "wholly obtained or produced" or a similar phrase, is used in the current regulations for origin purposes, by including cross-references to the definition of "wholly obtained or produced in a country" set forth in the proposed § 102.1(g).

Moreover, since the new rules of origin include specific tariff rules (tariff classification change and/or specific operations) which codify the "substantial transformation" rule, i.e., the criteria for determining whether a good has become a "new and different article of commerce" as a result of a manufacturing process in a given country, and provide the results that would be reached under a case-by-case application of the substantial transformation rule, the new rules would apply for all purposes where "substantial transformation" currently is specified in the Customs Regulations as the test for determining origin under Customs law. This does not include origin determinations under antidumping, countervailing duty, or government procurement statutes, although the authorities responsible for promulgating determinations under those statutes may avail themselves of these rules if they so choose. The proposed amendments to part 134 concerning country of origin marking also clarify that the substantial transformation rule currently used for identifying an ultimate purchaser is the same rule that is used for determining the country of origin of a foreign article imported into the United States. Proposed changes were also made to parts 4, 10, 12, and 177, Customs Regulations (19 CFR parts 4, 10, 12, and 177).

The Interim Regulations set forth in Part 102 also are proposed to be used to determine whether a good meets the "product of" criterion for receiving duty preferences under General Note 3(a)(iv), 3(c)(ii), (viii), (ix) (Insular Possessions, Generalized System of Preferences (GSP), Caribbean Basin Economic Recovery Act (CBERA), Freely Associated States, Andean Trade Preferences Act (ATPA) and following bilateral consultations now underway, under General Note 3(c)(vi) [the United States-Israel Free-Trade Agreement]. The value content requirements under these provisions, however, must still be met in order for a good to qualify for the duty preference.

Comments

Before adopting the proposed amendments, consideration will be given to any written comments (preferably in triplicate) timely submitted to Customs. Comments submitted will be available for public inspection in accordance with the Freedom of Information Act (5 U.S.C. 552), and applicable Treasury Department Regulations (31 CFR 1.4) and Customs Regulations (19 CFR 103.11(b)), on normal business days between the hours of 9 a.m. and 4:30 p.m. at the Regulations and Disclosure Law Branch.

Comments submitted in response to this **Federal Register** document, need not be duplicated in response to the Interim Rulemaking document relating to the Rules of Origin for the NAFTA published in today's **Federal Register** Comments in response to one document will be considered during the review of both documents.

Executive Order 12866

This document does not meet the criteria for a "significant regulatory action" as specified in E.O. 12866.

Regulatory Flexibility Act

Pursuant to the provisions of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), it is certified that the proposed regulations amendments will not have a significant economic impact on a substantial number of small entities. Accordingly, the proposed amendments are not subject to the regulatory analysis or other requirements of 5 U.S.C. 603 and 604.

List of Subjects

19 CFR Part 4

Customs duties and inspection, Freight, Harbors, Imports, Maritime carriers, Reporting and recordkeeping requirements, Vessels.

19 CFR Part 10

Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

19 CFR Part 12

Customs duties and inspection, Labeling, Marking, Reporting and recordkeeping requirements, Textiles and textile products.

19 CFR Part 102

Customs duties and inspections, Imports, Reporting and recordkeeping requirements, Rules of origin, Trade agreements.

19 CFR Part 134

Country of origin, Customs duties and inspections, Imports, Labeling, Marking, Packaging and containers.

19 CFR Part 177

Administrative practice and procedures, Customs duties and inspection, Imports, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, it is proposed to amend Chapter I of Title 19, Code of Federal Regulations (19 CFR Chapter I), by amending parts 4, 10, 12, 102, 134, and 177 as set forth below:

PART 4—VESSELS IN FOREIGN AND DOMESTIC TRADES

1. The general authority citation for part 4 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1624; 46 U.S.C. App. 3.

2. Section 4.80b is amended by adding a sentence at the end of paragraph (a) to read as follows:

§ 4.80b Coastwise transportation of merchandise.

(a) * * * For purposes of determining whether merchandise is manufactured or processed into a new and different product under this section, the rules set forth in part 102 of this chapter (regarding the determination of whether goods are substantially transformed in a country) shall apply.

* * * * *

PART 10—ARTICLES CONDITIONALLY FREE, SUBJECT TO A REDUCED RATE, ETC.

1. The general authority citation for Part 10 continues to read as follows:

Authority: 19 U.S.C. 66, 1202, 1481, 1484, 1498, 1508, 1623, 1624;

2. Section 10.12 is amended by revising the last sentence of paragraph (e) to read as follows:

§ 10.12 Definitions.

* * * * *

(e) * * * If the article consists wholly or partially of foreign components or materials, the manufacturing process must be such that the foreign components or materials have been substantially transformed as provided in § 10.14(b) of this part.

3. Section 10.14 is amended by revising the text in paragraph (b) preceding the examples to read as follows:

§ 10.14 Fabricated components subject to the exemption.

* * * * *

(b) *Substantial transformation of foreign-made articles or materials.* Foreign-made articles or materials will become products of the United States if they undergo a process of manufacture in the United States which results in their substantial transformation. Substantial transformation occurs when under part 102 of this Chapter, the country of origin of a good which is produced in the United States from foreign materials is determined to be the United States.

* * * * *

4. Section 10.171 is amended by adding a new paragraph (c) to read as follows:

§ 10.171 General.

* * * * *

(c) *Wholly the growth, product, or manufacture defined.* For purposes of §§ 10.171 through 10.178, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

5. Section 10.176(a) is revised to read as follows:

§ 10.176 Country of origin criteria.

(a) Any article which is (1) either wholly the growth, product, or manufacture of a beneficiary developing country or of any two or more countries which are members of the same association of countries, or a new or different article of commerce which has been grown, produced, or manufactured in a beneficiary developing country and (2) imported directly from such beneficiary developing country or member countries, may qualify for duty-free entry under the Generalized System of Preferences (GSP). However, duty free entry under GSP may be accorded only if: (i) The sum of the cost or value of the materials produced in the beneficiary developing country or any two or more countries which are members of the same association of countries which is treated as one country under section 502(a)(3), Trade Act of 1974, as amended (19 U.S.C. 2462(a)(3)), plus (ii) the direct costs of processing operations performed in such beneficiary developing country or member countries, is not less than 35 percent of the appraised value of the article at the time of its entry into the customs territory of the United States. For purposes of this section, a "new and different article of commerce" exists when under part 102 of this Chapter, the country of origin of a good, which is produced in a beneficiary developing country from foreign materials, is determined to be that beneficiary developing country.

* * * * *

6. Section 10.191 is amended by revising paragraph (b)(3) to read as follows:

§ 10.191 General.

* * * * *

(b) *Definitions.*

* * * * *

(3) *Wholly the growth, product, or manufacture.* For purposes of § 10.191 through § 10.198, the expression "wholly the growth, product, or manufacture" refers to articles and materials wholly obtained or produced within the meaning of § 102.1(g) of this chapter.

* * * * *

7. Section 10.195 is amended by adding a statement at the end of the existing text in paragraph (a)(1) to read as follows:

§ 10.195 Country of origin criteria.

(a) *Articles produced in a beneficiary country—*

(1) * * * For purposes of this section, a "new and different article of commerce" exists when under part 102 of this Chapter, the country of origin of a good, which is produced in a beneficiary country from foreign materials, is determined to be that beneficiary country.

* * * * *

PART 12—SPECIAL CLASSES OF MERCHANDISE

1. The general authority citation for part 12 continues to read as follows:

Authority: 5 U.S.C. 301; 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. Section 12.130 is amended by removing paragraphs (d) and (e) and redesignating paragraphs (f) through (i) as paragraphs (d) through (g), and by revising paragraph (b) to read as follows.

§ 12.130 Textiles and textile products country of origin.

* * * * *

(b) *Country of origin.* For the purpose of this section and except as provided in paragraph (c) a textile or textile product, subject to section 204, Agricultural Act of 1956, as amended, imported into the customs territory of the United States shall be a product of a particular foreign territory or country, insular possession of the U.S., if it is wholly obtained or produced (as defined under § 102.1(g), part 102, of this Chapter) in that foreign territory or

country, or insular possession. However, except as provided in paragraph (c), a textile or textile product, subject to section 204, which consists of materials produced or derived from, or processed in, more than one foreign territory or country, or insular possession of the U.S., shall be a product of that foreign territory or country, or insular possession where it last underwent a substantial transformation. A textile or textile product will be considered to have undergone a substantial transformation when under part 102 of this Chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

* * * * *

PART 102—NON-PREFERENCE RULES OF ORIGIN

1. The authority citation for part 102 continues to read as follows:

Authority: 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1624, and the North American Free-Trade Agreement Implementation Act, Pub.L. 103–182, 107 Stat. 2057.

2. Section 102.0 is revised to read as follows:

§ 102.0 Scope.

This part sets forth rules for determining the country of origin of imported goods for purposes of the Customs and related laws and the navigation laws of the United States. The rules in this part regarding goods wholly obtained or produced in a country are intended to apply for all such purposes. The rules in this part which determine when a good becomes a new and different article or a new or different article of commerce as a result of manufacturing processes in a given country, also are intended to apply for all purposes where this requirement exists for "country of origin" or "product of" determinations under the Customs laws. The rules in this part also will be applied by the United States for determining when a good is a good of a North American Free-Trade Agreement (NAFTA) country for the purposes specified under Annex 311 of the NAFTA.

PART 134—COUNTRY OF ORIGIN MARKING

1. The authority citation for part 134 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States (HTSUS)), 1304, 1624.

2. Section 134.1 is amended by revising paragraph (b); redesignating current paragraphs (d) through (f) as (e) through (g); adding a new paragraph (d); and revising newly designated paragraphs (e) (1) and (2) to read as follows:

§ 134.1 Definitions.

* * * * *

(b) *Country of origin.* "Country of origin", when used with reference to any article of foreign origin imported into the United States, means the country in which the article was wholly obtained or produced within the meaning of § 102.1(e) of this chapter, or, in the case of an article not wholly obtained or produced in one country, the country where the article last underwent a substantial transformation prior to its importation into the United States.

* * * * *

(d) *Substantial transformation.* "Substantial transformation" occurs when, under part 102 of this Chapter, the country of origin of a good, which is produced in a country from foreign materials, is determined to be that country.

(e) *Ultimate purchaser.* * * *

(1) If an imported article will be used in further processing, the processor will be the "ultimate purchaser" if he subjects the imported article to a process which results in a substantial transformation of the article.

(2) If the process does not result in a substantial transformation of the imported article, the consumer or user of the article, who obtains the article after the processing, will be regarded as the "ultimate purchaser."

* * * * *

3. Section 134.35 is revised to read as follows:

§ 134.35 Articles substantially transformed after importation.

If an imported article will be used in further processing in the United States, the processor will be considered the ultimate purchaser if such article is determined to be a good of the United States under part 102 of this Chapter. In such a case, the imported article is excepted from individual marking pursuant to 19 U.S.C. 1304(a)(3)(D) and § 134.32(d) of this part, provided the container in which it is imported will reasonably indicate the country of origin of the article to the ultimate purchaser.

PART 177—ADMINISTRATIVE RULINGS

1. The general authority citation for part 177 continues to read as follows:

Authority: 5 U.S.C. 301, 19 U.S.C. 66, 1202 (General Note 8, Harmonized Tariff Schedule of the United States), 1624, unless otherwise noted.

§ 177.22 [Amended]

2. Section 177.22(a) is amended by adding at the end the following sentence: "The expression "wholly the growth, product, or manufacture" refers to articles wholly obtained or produced within the meaning of § 102.1(g) of this chapter."

Approved: December 17, 1993.

John P. Simpson,

Deputy Assistant Secretary of the Treasury.

George J. Weise,

Commissioner of Customs.

[FR Doc. 93–31853 Filed 12–30–93; 8:45 am]

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federal register

Monday
January 3, 1994

Part III

Department of Labor

Occupational Safety and Health Administration

29 CFR Parts 1915 and 1926

Standard for Cadmium in Shipyard Employment and in Construction Work; Reprint With Corrections and Technical Amendments; Final Rule

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Parts 1915 and 1926

Occupational Safety and Health Standards for Cadmium in Shipyard Employment and Construction

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule; miscellaneous corrections, technical amendments, and redesignation.

SUMMARY: The Occupational Safety and Health Administration (OSHA) is correcting an error stemming from the wording of the amendatory language of the final rule that incorporated applicable General Industry standards for toxic substances into the Occupational Safety and Health Standards for Shipyard Employment. The final rule, which appeared in the **Federal Register** on July 1, 1993, had the effect of mistakenly inferring that the cadmium standard for shipyard employment from the Code of Federal Regulations was being deleted though the preamble made it clear it was retained. This correction reprints the full text of the cadmium standard as published on September 14, 1992, and incorporates changes from an April 23, 1993, document that made corrections and amendments to the original publication. In addition, several cross-references regarding employee records are being amended to reflect the designation of a new section in the shipyard employment standards, and a number of effective dates are being converted to dates certain.

In addition, OSHA is redesignating the cadmium standard for construction employment, also published in the same September 14 document, into a different subpart. The redesignation merges it in with the newly created subpart that contains specific toxic substance standards for construction.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. James F. Foster, OSHA Office of Public Affairs, Room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–8151.

SUPPLEMENTARY INFORMATION:

Background

The final regulations which are the subject of this action was published in the **Federal Register** on June 30 and July 1, 1993 (58 FR 35076 and 35512, respectively). Up until then, most health standards applicable to shipyard employment and construction were not codified in the parts of title 29 of the Code of Federal Regulations that contained the bulk of the standards applicable to shipyards (part 1915) and construction (part 1926). These toxic substance standards were made applicable by cross-reference to subpart Z of the general industry standards (part 1910) and other parts and documents.

The Shipyard Employment Standard Advisory Committee (SESAC) recommended that OSHA incorporate all toxic substance standards covering shipyards into 29 CFR part 1915. As a first step to carry out this recommendation, when OSHA issued the cadmium standard on September 14, 1992 (57 FR 42102), it created a subpart Z in part 1915 to include health standards applicable to shipyards and included the cadmium standard in subpart Z as § 1915.1027. On April 23, 1993 (58 FR 21780), OSHA published a document that made corrections and amendments to the September 14 document. As a second step, OSHA published a technical amendment in the July 1, 1993, issue of the **Federal Register**, which incorporated a comprehensive subpart Z into 29 CFR part 1915. The July 1 document included the other toxic substance standards besides cadmium, and added certain related standards applicable to shipyards.

In similar fashion to what SESAC sought, the Advisory Committee for Construction Safety and Health also asked that OSHA incorporate the general industry standards deemed applicable to construction into OSHA's construction standards. This incorporation of the pertinent 1910 standards into part 1926 was accomplished on June 30, 1993 (58 FR 35076), and in doing so, OSHA created a subpart Z in part 1926, for the applicable specific toxic substance standards.

Need for Correction

As published, the July 1 final regulation contained amendatory language that had the effect of removing the regulatory text and appendixes of § 1915.1027—Cadmium, by mistake. The preamble of that document made it clear that the Cadmium standard remained applicable to shipyard employment (58 FR 35513). This document reinserts the regulatory text and appendices of § 1915.1027 into subpart Z—Toxic and Hazardous Substances of part 1915 along with the corrections and amendments made on April 23, 1993.

In addition, in the July 1 document, the text of existing § 1910.20, entitled "Access to employee exposure and medical records," was reprinted as an additional standard in part 1915, to add it to the shipyard employment standards as new § 1915.1120. OSHA is changing cross-references in paragraphs (m) and (n) of the cadmium standard to reflect the designation for the new section regarding employee records within part 1915. These changes are to § 1915.1027(m)(4)(iii)(H), where the reference to "§ 1910.20(g) (1) and (2)" is changed to read "§ 1915.1120(g) (1) and (2)"; in § 1915.1027(n) (1)(iii), (3)(iii), and (5)(i), the reference to "29 CFR 1910.20" is changed to read "§ 1915.1120 of this part"; and in § 1915.1027(n)(6), the reference to "29 CFR 1910.20(h)" is changed to read "§ 1915.1120(h) of this part."

In this document, OSHA is also converting a number of effective dates that were not computed to dates certain. As published on September 14, 1992, the standard included over a dozen effective dates that were based on the effective dates of the cadmium document, such as for 60 and 90 days after the section or standard became effective. These dates, set out in paragraphs (p)(2)(i)–(viii) (57 FR 42399) are being computed in this document. The following list details the specific instances where these changes are made:

- In § 1915.1027(p)(2)(i), the words "60 days after the effective date of this standard" are changed to read "February 12, 1993";
- In § 1915.1027(p)(2)(vi)(A), the words "60 days after the effective date of this section" are changed to read "February 12, 1993";
- In § 1915.1027(p)(2) (ii) and (iii), the words "90 days after the effective date of this section" are changed to read "March 15, 1993";
- In § 1915.1027(p)(2) (vii) and (viii), the words "90 days after the effective date of this standard" are changed to read "March 15, 1993";
- In § 1915.1027(p)(2)(i), the words "120 days after the effective date of this standard" are changed to read "April 14, 1993";
- In § 1915.1027(p)(2) (ii) and (iii), the words "150 days after the effective date of this section" are changed to read "May 14, 1993";
- In § 1915.1027(p)(2) (vii) and (viii), the words "180 days after the effective date of this standard" are changed to read "June 14, 1993";
- In § 1915.1027(p)(2) (iv) and (iv)(B), the words "1 year after the effective date of this section" are changed to read "December 14, 1993"; and
- In § 1915.1027(p)(2)(v), the words "two (2) years after the effective date of this section" are changed to read "December 14, 1994."

When it was published in the same September 14, 1992, document, at 57 FR 42452, the cadmium standard for construction was codified as § 1926.63 in subpart D, which covers occupational health and environmental controls. With the publication of the June 30, 1993, document that created a separate subpart Z for specific toxic substances within OSHA's construction standards, it follows that the cadmium standard belongs with the new subpart. Therefore, this document is redesignating § 1926.63 as § 1926.1127, to place it in the appropriate place subpart Z of the construction standards.

In addition, in the June 30 document, the text of existing § 1910.20, entitled "Access to employee exposure and medical records," was reprinted as an additional standard in part 1926, to add it to the construction standards as new § 1926.33. OSHA is amending cross-references in paragraphs (m) and (n) of the cadmium standard (redesignated as § 1926.1127) to reflect the designation for the new section regarding employee records within part 1926. These changes are to paragraph (m)(4)(iii)(H), where the reference to "§ 1910.20(g) (1) and (2)" is changed to read "§ 1926.33(g) (1) and (2)", in paragraphs (n) (1)(iii), (3)(iii), and (5)(i), where the reference to "29 CFR 1910.20" is changed to read "§ 1926.33 of this part"; and in paragraph (n)(6), the reference to "29 CFR 1910.20(h)" is changed to read "§ 1926.33(h) of this part."

The corrections and technical amendments in this document are not substantive regulatory actions, and therefore are not required to have notice, comment, or an advance effective date. They are being made retroactively effective, as of July 1, 1993, to make it clear that the cadmium standard has been in effect covering shipyard employment since December 14, 1992. The cadmium standard remained in effect subsequent to the July 1, 1993, **Federal Register** document, as was OSHA's clearly expressed intent.

List of Subjects

29 CFR Part 1915

Air contaminants, Hazardous materials, Hazard communication, Laboratories, Medical records, Occupational safety and health, Recordkeeping, Shipyards, Shipbuilding, Ship repairing, Shipbreaking, Toxic chemicals.

29 CFR Part 1926

Construction industry, Hazardous materials, Occupational safety and health, Protective equipment.

Authority and Signature

This document was prepared under the direction of Joseph A. Dear, Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Accordingly, pursuant to sections 4, 6, and 8 of the Occupational Safety and Health Act (29 U.S.C. 653, 655, and 657); section 107 of the Contract Work Hours and Safety Standards Act (Construction Safety Act) (40 U.S.C. 333); section 41 Longshore and Harbor Workers Compensation Act (33 U.S.C. 941); section 4 of the Administrative Procedure Act (5 U.S.C. 553); and Secretary of Labor's Order No. 1–90 (55 FR 9033); OSHA is issuing these corrections and technical amendments.

Signed at Washington, DC, 17th day of December, 1993.

Joseph A. Dear,

Assistant Secretary of Labor

Accordingly, 29 CFR part 1915, subpart Z is corrected by the following amendment:

PART 1915—OCCUPATIONAL SAFETY AND HEALTH STANDARDS FOR SHIPYARD EMPLOYMENT

1. The authority citation for subpart Z of part 1915 continues to read as follows:

Authority: Sections 4, 6, 8 Occupational Safety and Health Act, 29 U.S.C. 653, 655, 657; Sec. 4 of the Administrative Procedure Act, 5 U.S.C. 553; Secretary of Labor's Orders 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736), or 1–90 (55 FR 9033), as applicable; and 29 CFR part 1911.

Subpart Z—Toxic and Hazardous Substances [Amended]

2. Subpart Z of part 1915 is corrected by adding the text and appendices of § 1915.1027 as follows:

§ 1915.1027 Cadmium.

(a) *Scope.* This standard applies to all occupational exposures to cadmium and cadmium compounds, in all forms, and in all industries covered by the Occupational Safety and Health Act, except the construction-related industries, which are covered under 29 CFR 1926.63.

(b) *Definitions.*

Action level (AL) is defined as an airborne concentration of cadmium of 2.5 micrograms per cubic meter of air (2.5 μg/m³), calculated as an 8-hour time-weighted average (TWA).

Assistant Secretary means the Assistant Secretary of Labor for Occupational Safety and Health, U.S. Department of Labor, or designee.

Authorized person means any person authorized by the employer and required by work duties to be present in regulated areas or any person authorized by the OSH Act or regulations issued under it to be in regulated areas.

Director means the Director of the National Institute for Occupational Safety and Health (NIOSH), U.S. Department of Health and Human Services, or designee

Employee exposure and similar language referring to the air cadmium level to which an employee is exposed means the exposure to airborne cadmium that would occur if the employee were not using respiratory protective equipment.

Final medical determination is the written medical opinion of the employee's health status by the examining physician under paragraphs (l)(3)-(12) of this section or, if multiple physician review under paragraph (l)(13) of this section or the alternative physician determination under paragraph (l)(14) of this section is invoked, it is the final, written medical finding, recommendation or determination that emerges from that process.

High-efficiency particulate air (HEPA) filter means a filter capable of trapping and retaining at least 99.97 percent of mono-dispersed particles of 0.3 micrometers in diameter.

Regulated area means an area demarcated by the employer where an employee's exposure to airborne concentrations of cadmium exceeds, or can reasonably be expected to exceed the permissible exposure limit (PEL).

This section means this cadmium standard.

(c) *Permissible Exposure Limit (PEL).* The employer shall assure that no employee is exposed to an airborne concentration of cadmium in excess of five micrograms per cubic meter of air (5 μg/m³), calculated as an eight-hour time-weighted average exposure (TWA).

(d) *Exposure monitoring*—(1) *General.* (i) Each employer who has a workplace or work operation covered by this section shall determine if any employee may be exposed to cadmium at or above the action level.

(ii) Determinations of employee exposure shall be made from breathing zone air samples that reflect the monitored employee's regular, daily 8-hour TWA exposure to cadmium.

(iii) Eight-hour TWA exposures shall be determined for each employee on the basis of one or more personal breathing

zone air samples reflecting full shift exposure on each shift, for each job classification, in each work area. Where several employees perform the same job tasks, in the same job classification, on the same shift, in the same work area, and the length, duration, and level of cadmium exposures are similar, an employer may sample a representative fraction of the employees instead of all employees in order to meet this requirement. In representative sampling, the employer shall sample the employee(s) expected to have the highest cadmium exposures.

(2) *Specific.* (i) Initial monitoring. Except as provided for in paragraphs (d)(2)(ii) and (d)(2)(iii) of this section, the employer shall monitor employee exposures and shall base initial determinations on the monitoring results.

(ii) Where the employer has monitored after September 14, 1991, under conditions that in all important aspects closely resemble those currently prevailing and where that monitoring satisfies all other requirements of this section, including the accuracy and confidence levels of paragraph (d)(6) of this section, the employer may rely on such earlier monitoring results to satisfy the requirements of paragraph (d)(2)(i) of this section.

(iii) Where the employer has objective data, as defined in paragraph (n)(2) of this section, demonstrating that employee exposure to cadmium will not exceed the action level under the expected conditions of processing, use, or handling, the employer may rely upon such data instead of implementing initial monitoring.

(3) *Monitoring Frequency (periodic monitoring).* (i) If the initial monitoring or periodic monitoring reveals employee exposures to be at or above the action level, the employer shall monitor at a frequency and pattern needed to represent the levels of exposure of employees and where exposures are above the PEL to assure the adequacy of respiratory selection and the effectiveness of engineering and work practice controls. However, such exposure monitoring shall be performed at least every six months. The employer, at a minimum, shall continue these semi-annual measurements unless and until the conditions set out in paragraph (d)(3)(ii) of this section are met.

(ii) If the initial monitoring or the periodic monitoring indicates that employee exposures are below the action level and that result is confirmed by the results of another monitoring taken at least seven days later, the employer may discontinue the monitoring for those employees whose exposures are represented by such monitoring.

(4) *Additional monitoring.* The employer also shall institute the exposure monitoring required under paragraphs (d)(2)(i) and (d)(3) of this section whenever there has been a change in the raw materials, equipment, personnel, work practices, or finished products that may result in additional employees being exposed to cadmium at or above the action level or in employees already exposed to cadmium at or above the action level being exposed above the PEL, or whenever the employer has any reason to suspect that any other change might result in such further exposure.

(5) *Employee notification of monitoring results.* (i) Within 15 working days after the receipt of the results of any monitoring performed under this section, the employer shall notify each affected employee individually in writing of the results. In addition, within the same time period the employer shall post the results of the exposure monitoring in an appropriate location that is accessible to all affected employees.

(ii) Wherever monitoring results indicate that employee exposure exceeds the PEL, the employer shall include in the written notice a statement that the PEL has been exceeded and a description of the corrective action being taken by the employer to reduce employee exposure to or below the PEL.

(6) *Accuracy of measurement.* The employer shall use a method of monitoring and analysis that has an accuracy of not less then plus or minus 25 percent (± 25%), with a confidence level of 95 percent, for airborne concentrations of cadmium at or above the action level, the permissible exposure limit (PEL), and the separate engineering control air limit (SECAL).

(e) *Regulated areas*—(1) *Establishment.* The employer shall establish a regulated area wherever an employee's exposure to airborne concentrations of cadmium is, or can reasonably be expected to be in excess of the permissible exposure limit (PEL)

(2) *Demarcation.* Regulated areas shall be demarcated from the rest of the workplace in any manner that adequately establishes and alerts employees of the boundaries of the regulated area.

(3) *Access.* Access to regulated areas shall be limited to authorized persons.

(4) *Provision of respirators.* Each person entering a regulated area shall be supplied with and required to use a respirator, selected in accordance with paragraph (g)(2) of this section.

(5) *Prohibited activities.* The employer shall assure that employees do not eat, drink, smoke, chew tobacco or gum, or apply cosmetics in regulated areas, carry the products associated with these activities into regulated areas, or store such products in those areas.

(f) *Methods of compliance*—(1) *Compliance hierarchy* (i) Except as specified in paragraphs (f)(1) (ii), (iii) and (iv) of this section the employer shall implement engineering and work practice controls to reduce and maintain employee exposure to cadmium at or below the PEL, except to the extent that the employer can demonstrate that such controls are not feasible.

(ii) Except as specified in paragraphs (f)(1) (iii) and (iv) of this section, in industries where a separate engineering control air limit (SECAL) has been specified for particular processes (See Table 1 in this paragraph (f)(1)(ii)), the employer shall implement engineering and work practice controls to reduce and maintain employee exposure at or below the SECAL, except to the extent that the employer can demonstrate that such controls are not feasible.

TABLE 1.—SEPARATE ENGINEERING CONTROL AIRBORNE LIMITS (SECALS) FOR PROCESSES IN SELECTED INDUSTRIES

Industry	Process	SECAL (µg/m³)
Nickel cadmium battery	Plate making, plate preparation	50
	All other processes	15
Zinc/Cadmium refining*	Cadmium refining, casting, melting, oxide production, sinter plant	50
Pigment manufacture	Calcine, crushing, milling, blending	50
	All other processes	15
Stabilizers*	Cadmium oxide charging, crushing, drying, blending	50
Lead smelting*	Sinter plant, blast furnace, baghouse, yard area	50

TABLE 1.—SEPARATE ENGINEERING CONTROL AIRBORNE LIMITS (SECALS) FOR PROCESSES IN SELECTED INDUSTRIES—Continued

Industry	Process	SECAL (µg/m³)
Plating*	Mechanical plating	15

*Processes in these industries that are not specified in this table must achieve the PEL using engineering controls and work practices as required in f(1)(i).

(iii) The requirement to implement engineering and work practice controls to achieve the PEL or, where applicable, the SECAL does not apply where the employer demonstrates the following:

(A) The employee is only intermittently exposed; and

(B) The employee is not exposed above the PEL on 30 or more days per year (12 consecutive months).

(iv) Wherever engineering and work practice controls are required and are not sufficient to reduce employee exposure to or below the PEL or, where applicable, the SECAL, the employer nonetheless shall implement such controls to reduce exposures to the lowest levels achievable. The employer shall supplement such controls with respiratory protection that complies with the requirements of paragraph (g) of this section and the PEL.

(v) The employer shall not use employee rotation as a method of compliance.

(2) *Compliance program.* (i) Where the PEL is exceeded, the employer shall establish and implement a written compliance program to reduce employee exposure to or below the PEL by means of engineering and work practice controls, as required by paragraph (f)(1) of this section. To the extent that engineering and work practice controls cannot reduce exposures to or below the PEL, the employer shall include in the written compliance program the use of appropriate respiratory protection to achieve compliance with the PEL.

(ii) Written compliance programs shall include at least the following:

(A) A description of each operation in which cadmium is emitted; e.g., machinery used, material processed, controls in place, crew size, employee job responsibilities, operating procedures, and maintenance practices;

(B) A description of the specific means that will be employed to achieve compliance, including engineering plans and studies used to determine methods selected for controlling exposure to cadmium, as well as, where necessary, the use of appropriate respiratory protection to achieve the PEL;

(C) A report of the technology considered in meeting the PEL;

(D) Air monitoring data that document the sources of cadmium emissions;

(E) A detailed schedule for implementation of the program, including documentation such as copies of purchase orders for equipment, construction contracts, etc.;

(F) A work practice program that includes items required under paragraphs (h), (i), and (j) of this section;

(G) A written plan for emergency situations, as specified in paragraph (h) of this section; and

(H) Other relevant information.

(iii) The written compliance programs shall be reviewed and updated at least annually, or more often if necessary, to reflect significant changes in the employer's compliance status.

(iv) Written compliance programs shall be provided upon request for examination and copying to affected employees, designated employee representatives as well as to the Assistant Secretary, and the Director.

(3) *Mechanical ventilation.* (i) When ventilation is used to control exposure, measurements that demonstrate the effectiveness of the system in controlling exposure, such as capture velocity, duct velocity, or static pressure shall be made as necessary to maintain its effectiveness.

(ii) Measurements of the system's effectiveness in controlling exposure shall be made as necessary within five working days of any change in production, process, or control that might result in a significant increase in employee exposure to cadmium.

(iii) Recirculation of air. If air from exhaust ventilation is recirculated into the workplace, the system shall have a high efficiency filter and be monitored to assure effectiveness.

(iv) Procedures shall be developed and implemented to minimize employee exposure to cadmium when maintenance of ventilation systems and changing of filters is being conducted.

(g) *Respirator protection*—(1) *General* Where respirators are required by this section, the employer shall provide them at no cost to the employee and shall assure that they are used in compliance with the requirements of this section. Respirators shall be used in the following circumstances:

(i) Where exposure levels exceed the PEL, during the time period necessary to install or implement feasible engineering and work practice controls;

(ii) In those maintenance and repair activities and during those brief or intermittent operations where exposures exceed the PEL and engineering and work practice controls are not feasible or are not required;

(iii) In regulated areas, as prescribed in paragraph (e) of this section;

(iv) Where the employer has implemented all feasible engineering and work practice controls and such controls are not sufficient to reduce exposures to or below the PEL;

(v) In emergencies;

(vi) Wherever an employee who is exposed to cadmium at or above the action level requests a respirator;

(vii) Wherever an employee is exposed above the PEL in an industry to which a SECAL is applicable; and

(viii) Wherever an employee is exposed to cadmium above the PEL and engineering controls are not required under paragraph (f)(1)(iii) of this section.

(2) *Respirator selection.* (i) Where respirators are required under this section, the employer shall select and provide the appropriate respirator as specified in Table 2 in this paragraph (g)(2)(i). The employer shall select respirators from among those jointly approved as acceptable protection against cadmium dust, fume, and mist by the Mine Safety and Health Administration (MSHA) and by the National Institute for Occupational Safety and Health (NIOSH) under the provisions of 30 CFR part 11.

TABLE 2.—RESPIRATORY PROTECTION FOR CADMIUM

Airborne concentration or condition of use[a]	Required respirator type[b]
10 × or less	A half mask, air-purifying respirator equipped with a HEPA[c] filter.[d]
25 × or less	A powered air-purifying respirator ("PAPR") with a loose-fitting hood or helmet equipped with a HEPA filter, or a supplied-air respirator with a loose-fitting hood or helmet facepiece operated in the continuous flow mode.
50 × or less	A full facepiece air-purifying respirator equipped with a HEPA filter, or a powered air-purifying respirator with a tight-fitting half mask equipped with a HEPA filter, or a supplied air respirator with a tight-fitting half mask operated in the continuous flow mode.
250 × or less	A powered air-purifying respirator with a tight-fitting full facepiece equipped with a HEPA filter, or a supplied-air respirator with a tight-fitting full facepiece operated in the continuous flow mode.
1000 × or less	A supplied-air respirator with half mask or full facepiece operated in the pressure demand or other positive pressure mode.
>1000 × or unknown concentrations	A self-contained breathing apparatus with a full facepiece operated in the pressure demand or other positive pressure mode, or a supplied-air respirator with a full facepiece operated in the pressure demand or other positive pressure mode and equipped with an auxiliary escape type self-contained breathing apparatus operated in the pressure demand mode.
Fire fighting	A self-contained breathing apparatus with full facepiece operated in the pressure demand or other positive pressure mode.

[a] Concentrations expressed as multiple of the PEL.
[b] Respirators assigned for higher environmental concentrations may be used at lower exposure levels. Quantitative fit testing is required for all tight-fitting air purifying respirators where airborne concentration of cadmium exceeds 10 times the TWA PEL (10×5 μg/m³=50 μg/m³). A full facepiece respirator is required when eye irritation is experienced.
[c] HEPA means High Efficiency Particulate Air.
[d] Fit testing, qualitative or quantitative, is required.
SOURCE: *Respiratory Decision Logic*, NIOSH, 1987.

(ii) The employer shall provide a powered, air-purifying respirator (PAPR) in lieu of a negative pressure respirator wherever:

(A) An employee entitled to a respirator chooses to use this type of respirator; and

(B) This respirator will provide adequate protection to the employee.

(3) *Respirator program.* (i) Where respiratory protection is required, the employer shall institute a respirator protection program in accordance with 29 CFR 1910.134.

(ii) The employer shall permit each employee who is required to use an air purifying respirator to leave the regulated area to change the filter elements or replace the respirator whenever an increase in breathing resistance is detected and shall maintain an adequate supply of filter elements for this purpose.

(iii) The employer shall also permit each employee who is required to wear a respirator to leave the regulated area to wash his or her face and the respirator facepiece whenever necessary to prevent skin irritation associated with respirator use.

(iv) If an employee exhibits difficulty in breathing while wearing a respirator during a fit test or during use, the employer shall make available to the employee a medical examination in accordance with paragraph (l)(6)(ii) of this section to determine if the employee can wear a respirator while performing the required duties.

(v) No employee shall be assigned a task requiring the use of a respirator if, based upon his or her most recent examination, an examining physician determines that the employee will be unable to continue to function normally while wearing a respirator. If the physician determines the employee must be limited in, or removed from his or her current job because of the employee's inability to wear a respirator, the limitation or removal shall be in accordance with paragraphs (l) (11) and (12) of this section.

(4) *Respirator fit testing.* (i) The employer shall assure that the respirator issued to the employee is fitted properly and exhibits the least possible facepiece leakage.

(ii) For each employee wearing a tight-fitting, air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that do not exceed 10 times the PEL (10 × 5 μg/m³ = 50 μg/m³), the employer shall perform either quantitative or qualitative fit testing at the time of initial fitting and at least annually thereafter. If quantitative fit testing is used for a negative pressure respirator, a fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved at testing.

(iii) For each employee wearing a tight-fitting air purifying respirator (either negative or positive pressure) who is exposed to airborne concentrations of cadmium that exceed 10 times the PEL (10 × 5 μg/m³ = 50 μg/m³), the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. For negative-pressure respirators, a fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing.

(iv) For each employee wearing a tight-fitting, supplied-air respirator or self-contained breathing apparatus, the employer shall perform quantitative fit testing at the time of initial fitting and at least annually thereafter. This shall be accomplished by fit testing an air purifying respirator of identical type facepiece, make, model, and size as the supplied air respirator or self-contained breathing apparatus that is equipped with HEPA filters and tested as a surrogate (substitute) in the negative pressure mode. A fit factor that is at least 10 times the protection factor for that class of respirators (Table 2 in paragraph (g)(2)(i) of this section) shall be achieved during quantitative fit testing. A supplied-air respirator or self-contained breathing apparatus with the same type facepiece, make, model, and size as the air purifying respirator with which the employee passed the quantitative fit test may then be used by that employee up to the protection factor listed in Table 2 for that class of respirators.

(v) Fit testing shall be conducted in accordance with appendix C of this section.

(h) *Emergency situations.* The employer shall develop and implement a written plan for dealing with emergency situations involving substantial releases of airborne cadmium. The plan shall include provisions for the use of appropriate respirators and personal protective equipment. In addition, employees not essential to correcting the emergency situation shall be restricted from the area and normal operations halted in that area until the emergency is abated.

(i) *Protective work clothing and equipment*—(1) *Provision and use.* If an employee is exposed to airborne cadmium above the PEL or where skin or eye irritation is associated with cadmium exposure at any level, the employer shall provide at no cost to the employee, and assure that the employee uses, appropriate protective work clothing and equipment that prevents contamination of the employee and the employee's garments. Protective work clothing and equipment includes, but is not limited to:

(i) Coveralls or similar full-body work clothing;

(ii) Gloves, head coverings, and boots or foot coverings; and

(iii) Face shields, vented goggles, or other appropriate protective equipment that complies with 29 CFR 1910.133.

(2) *Removal and storage.* (i) The employer shall assure that employees remove all protective clothing and equipment contaminated with cadmium at the completion of the work shift and do so only in change rooms provided in accordance with paragraph (j)(1) of this section.

(ii) The employer shall assure that no employee takes cadmium-contaminated protective clothing or equipment from the workplace, except for employees authorized to do so for purposes of laundering, cleaning, maintaining, or disposing of cadmium contaminated protective clothing and equipment at an appropriate location or facility away from the workplace.

(iii) The employer shall assure that contaminated protective clothing and equipment, when removed for laundering, cleaning, maintenance, or disposal, is placed and stored in sealed, impermeable bags or other closed, impermeable containers that are designed to prevent dispersion of cadmium dust.

(iv) The employer shall assure that bags or containers of contaminated protective clothing and equipment that are to be taken out of the change rooms or the workplace for laundering, cleaning, maintenance or disposal shall bear labels in accordance with paragraph (m)(3) of this section.

(3) *Cleaning, replacement, and disposal.* (i) The employer shall provide the protective clothing and equipment required by paragraph (i)(1) of this section in a clean and dry condition as often as necessary to maintain its effectiveness, but in any event at least weekly. The employer is responsible for cleaning and laundering the protective clothing and equipment required by this paragraph to maintain its effectiveness and is also responsible for disposing of such clothing and equipment.

(ii) The employer also is responsible for repairing or replacing required protective clothing and equipment as needed to maintain its effectiveness. When rips or tears are detected while an employee is working they shall be immediately mended, or the worksuit shall be immediately replaced.

(iii) The employer shall prohibit the removal of cadmium from protective clothing and equipment by blowing, shaking, or any other means that disperses cadmium into the air.

(iv) The employer shall assure that any laundering of contaminated clothing or cleaning of contaminated equipment in the workplace is done in a manner that prevents the release of airborne cadmium in excess of the permissible exposure limit prescribed in paragraph (c) of this section.

(v) The employer shall inform any person who launders or cleans protective clothing or equipment contaminated with cadmium of the potentially harmful effects of exposure to cadmium and that the clothing and equipment should be laundered or cleaned in a manner to effectively prevent the release of airborne cadmium in excess of the PEL.

(j) *Hygiene areas and practices*—(1) *General.* For employees whose airborne exposure to cadmium is above the PEL, the employer shall provide clean change rooms, handwashing facilities, showers, and lunchroom facilities that comply with 29 CFR 1910.141.

(2) *Change rooms.* The employer shall assure that change rooms are equipped with separate storage facilities for street clothes and for protective clothing and equipment, which are designed to prevent dispersion of cadmium and contamination of the employee's street clothes.

(3) *Showers and handwashing facilities.* (i) The employer shall assure that employees who are exposed to cadmium above the PEL shower during the end of the work shift.

(ii) The employer shall assure that employees whose airborne exposure to cadmium is above the PEL wash their hands and faces prior to eating, drinking, smoking, chewing tobacco or gum, or applying cosmetics.

(4) *Lunchroom facilities.* (i) The employer shall assure that the lunchroom facilities are readily accessible to employees, that tables for eating are maintained free of cadmium, and that no employee in a lunchroom facility is exposed at any time to cadmium at or above a concentration of 2.5 μg/m³.

(ii) The employer shall assure that employees do not enter lunchroom facilities with protective work clothing or equipment unless surface cadmium has been removed from the clothing and equipment by HEPA vacuuming or some other method that removes cadmium dust without dispersing it.

(k) *Housekeeping.* (1) All surfaces shall be maintained as free as practicable of accumulations of cadmium.

(2) All spills and sudden releases of material containing cadmium shall be cleaned up as soon as possible.

(3) Surfaces contaminated with cadmium shall, wherever possible, be cleaned by vacuuming or other methods that minimize the likelihood of cadmium becoming airborne.

(4) HEPA-filtered vacuuming equipment or equally effective filtration methods shall be used for vacuuming. The equipment shall be used and emptied in a manner that minimizes the reentry of cadmium into the workplace.

(5) Shoveling, dry or wet sweeping, and brushing may be used only where vacuuming or other methods that minimize the likelihood of cadmium becoming airborne have been tried and found not to be effective.

(6) Compressed air shall not be used to remove cadmium from any surface unless the compressed air is used in conjunction with a ventilation system designed to capture the dust cloud created by the compressed air.

(7) Waste, scrap, debris, bags, containers, personal protective equipment, and clothing contaminated with cadmium and consigned for disposal shall be collected and disposed of in sealed impermeable bags or other closed, impermeable containers. These bags and containers shall be labeled in accordance with paragraph (m)(2) of this section.

(l) *Medical surveillance*—(1) *General*—(i) *Scope.* (A) Currently exposed—The employer shall institute a medical surveillance program for all employees who are or may be exposed to cadmium at or above the action level unless the employer demonstrates that the employee is not, and will not be, exposed at or above the action level on 30 or more days per year (twelve consecutive months); and,

(B) Previously exposed—The employer shall also institute a medical surveillance program for all employees who prior to the effective date of this section might previously have been exposed to cadmium at or above the action level by the employer, unless the employer demonstrates that the employee did not prior to the effective date of this section work for the employer in jobs with exposure to cadmium for an aggregated total of more than 60 months.

(ii) To determine an employee's fitness for using a respirator, the employer shall provide the limited medical examination specified in paragraph (l)(6) of this section.

(iii) The employer shall assure that all medical examinations and procedures required by this standard are performed by or under the supervision of a licensed physician, who has read and is familiar with the health effects section of appendix A to this section, the regulatory text of this section, the protocol for sample handling and laboratory selection in appendix F to this section, and the questionnaire of appendix D to this section. These examinations and procedures shall be provided without cost to the employee and at a time and place that is reasonable and convenient to employees.

(iv) The employer shall assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is done in a manner that assures their reliability and that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees under this section is performed in laboratories with demonstrated proficiency for that particular analyte. (See appendix F to this section.)

(2) *Initial examination.* (i) The employer shall provide an initial (preplacement) examination to all employees covered by the medical surveillance program required in paragraph (l)(1)(i) of this section. The examination shall be provided to those employees within 30 days after initial assignment to a job with exposure to cadmium or no later than 90 days after the effective date of this section, whichever date is later.

(ii) The initial (preplacement) medical examination shall include:

(A) A detailed medical and work history, with emphasis on: Past, present, and anticipated future exposure to cadmium; any history of renal, cardiovascular, respiratory, hematopoietic, reproductive, and/or musculo-skeletal system dysfunction; current usage of medication with potential nephrotoxic side-effects; and smoking history and current status; and

(B) Biological monitoring that includes the following tests:

(1) Cadmium in urine (CdU), standardized to grams of creatinine (g/Cr);

(2) Beta-2 microglobulin in urine (β_2-M), standardized to grams of creatinine (g/Cr), with pH specified, as described in appendix F to this section; and

(3) Cadmium in blood (CdB), standardized to liters of whole blood (lwb).

(iii) Recent Examination: An initial examination is not required to be provided if adequate records show that the employee has been examined in accordance with the requirements of paragraph (l)(2)(ii) of this section within the past 12 months. In that case, such records shall be maintained as part of the employee's medical record and the prior exam shall be treated as if it were an initial examination for the purposes of paragraphs (l)(3) and (4) of this section.

(3) *Actions triggered by initial biological monitoring.* (i) If the results of the initial biological monitoring tests show the employee's CdU level to be at or below 3 μg/g Cr, β_2-M level to be at or below 300 μg/g Cr and CdB level to be at or below 5 μg/lwb, then:

(A) For currently exposed employees, who are subject to medical surveillance under paragraph (l)(1)(i)(A) of this section, the employer shall provide the minimum level of periodic medical surveillance in accordance with the requirements in paragraph (l)(4)(i) of this section; and

(B) For previously exposed employees, who are subject to medical surveillance under paragraph (l)(1)(i)(B) of this section, the employer shall provide biological monitoring for CdU, β_2-M, and CdB one year after the initial biological monitoring and then the employer shall comply with the requirements of paragraph (l)(4)(v) of this section.

(ii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to exceed 3 μg/g Cr, the level of β_2-M to exceed 300 μg/g Cr, or the level of CdB to exceed 5 μg/lwb, the employer shall:

(A) Within two weeks after receipt of biological monitoring results, reassess the employee's occupational exposure to cadmium as follows:

(*1*) Reassess the employee's work practices and personal hygiene;

(*2*) Reevaluate the employee's respirator use, if any, and the respirator program;

(*3*) Review the hygiene facilities;

(*4*) Reevaluate the maintenance and effectiveness of the relevant engineering controls;

(*5*) Assess the employee's smoking history and status;

(B) Within 30 days after the exposure reassessment, specified in paragraph (l)(3)(ii)(A) of this section, take reasonable steps to correct any deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium; and,

(C) Within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. If the physician determines that medical removal is not necessary, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(*1*) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a semiannual basis; and

(*2*) Provide annual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iii) For all employees who are subject to medical surveillance under paragraph (l)(1)(i) of this section, if the results of the initial biological monitoring tests show the level of CdU to be in excess of 15 μg/g Cr, or the level of CdB to be in excess of 15 μg/lwb, or the level of β_2-M to be in excess of 1,500 μg/g Cr, the employer shall comply with the requirements of paragraphs (l)(3)(ii)(A)–(B) of this section. Within 90 days after receipt of biological monitoring results, the employer shall provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 15 μg/g Cr; or CdB exceeds 15 μg/lwb; or β_2-M exceeds 1500 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall:

(A) Periodically reassess the employee's occupational exposure to cadmium;

(B) Provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and

(C) Provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(iv) For all employees to whom medical surveillance is provided, beginning on January 1, 1999, and in lieu of paragraphs (l)(3)(i)–(iii) of this section:

(A) If the results of the initial biological monitoring tests show the employee's CdU level to be at or below 3 μg/g Cr, β_2-M level to be at or below 300 μg/g Cr and CdB level to be at or below 5 μg/lwb, then for currently exposed employees, the employer shall comply with the requirements of paragraph (l)(3)(i)(A) of this section, and for previously exposed employees, the employer shall comply with the requirements of paragraph (l)(3)(i)(B) of this section;

(B) If the results of the initial biological monitoring tests show the level of CdU to exceed 3 μg/g Cr, the level of β_2-M to exceed 300 μg/g Cr, or the level of CdB to exceed 5 μg/lwb, the employer shall comply with the requirements of paragraphs (l)(3)(ii)(A)–(C) of this section; and,

(C) If the results of the initial biological monitoring tests show the level of CdU to be in excess of 7 μg/g Cr, or the level of CdB to be in excess of 10 μg/lwb, or the level of β_2-M to be in excess of 750 μg/g Cr, the employer shall: Comply with the requirements of paragraphs (l)(3)(ii)(A)–(B) of this section; and, within 90 days after receipt of biological monitoring results, provide a full medical examination to the employee in accordance with the requirements of paragraph (l)(4)(ii) of this section. After completing the medical examination, the examining physician shall determine in a written medical opinion whether to medically remove the employee. However, if the initial biological monitoring results and the biological monitoring results obtained during the medical examination both show that: CdU exceeds 7 μg/g Cr; or CdB exceeds 10 μg/lwb; or β_2-M exceeds 750 μg/g Cr, and in addition CdU exceeds 3 μg/g Cr or CdB exceeds 5 μg/liter of whole blood, then the physician shall medically remove the employee from exposure to cadmium at or above the action level. If the second set of biological monitoring results obtained during the medical examination does not show that a mandatory removal trigger level has been exceeded, then the employee is not required to be removed by the mandatory provisions of this paragraph. If the employee is not required to be removed by the mandatory provisions of this paragraph or by the physician's determination, then until the employee's CdU level falls to or below 3 μg/g Cr, β_2-M level falls to or below 300 μg/g Cr and CdB level falls to or below 5 μg/lwb, the employer shall: periodically reassess the employee's occupational exposure to cadmium; provide biological monitoring in accordance with paragraph (l)(2)(ii)(B) of this section on a quarterly basis; and provide semiannual medical examinations in accordance with paragraph (l)(4)(ii) of this section.

(4) *Periodic medical surveillance.* (i) For each employee who is covered under paragraph (l)(1)(i)(A) of this section, the employer shall provide at least the minimum level of periodic medical surveillance, which consists of periodic medical examinations and periodic biological monitoring. A periodic medical examination shall be provided within one year after the initial examination required by paragraph (l)(2) of this section and thereafter at least biennially. Biological sampling shall be provided at least annually, either as part of a periodic medical examination or separately as periodic biological monitoring.

(ii) The periodic medical examination shall include:

(A) A detailed medical and work history, or update thereof, with emphasis on: Past, present and anticipated future exposure to cadmium; smoking history and current status; reproductive history; current use of medications with potential nephrotoxic side-effects; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculo-skeletal system dysfunction; and as part of the medical and work history, for employees who wear respirators, questions 3–11 and 25–32 in Appendix D to this section;

(B) A complete physical examination with emphasis on: Blood pressure, the respiratory system, and the urinary system;

(C) A 14 inch by 17 inch, or a reasonably standard sized posterior-anterior chest X-ray (after the initial X-ray, the frequency of chest X-rays is to be determined by the examining physician);

(D) Pulmonary function tests, including forced vital capacity (FVC) and forced expiratory volume at 1 second (FEV1);

(E) Biological monitoring, as required in paragraph (l)(2)(ii)(B) of this section;

(F) Blood analysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including blood urea nitrogen, complete blood count, and serum creatinine;

(G) Urinalysis, in addition to the analysis required under paragraph (l)(2)(ii)(B) of this section, including the determination of albumin, glucose, and total and low molecular weight proteins;

(H) For males over 40 years old, prostate palpation, or other at least as effective diagnostic test(s); and

(I) Any additional tests deemed appropriate by the examining physician.

(iii) Periodic biological monitoring shall be provided in accordance with paragraph (l)(2)(ii)(B) of this section.

(iv) If the results of periodic biological monitoring or the results of biological monitoring performed as part of the periodic medical examination show the level of the employee's CdU, β_2-M, or CdB to be in excess of the levels specified in paragraphs (l)(3) (ii) or (iii); or, beginning on January 1, 1999, in excess of the levels specified in paragraphs (l)(3) (ii) or (iv) of this section, the employer shall take the appropriate actions specified in paragraphs (l)(3)(ii)–(iv) of this section.

(v) For previously exposed employees under paragraph (l)(1)(i)(B) of this section:

(A) If the employee's levels of CdU did not exceed 3 μg/g Cr, CdB did not exceed 5 μg/lwb, and β_2-M did not exceed 300 μg/g Cr in the initial biological monitoring tests, and if the results of the followup biological monitoring required by paragraph (l)(3)(i)(B) of this section one year after the initial examination confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(B) If the initial biological monitoring results for CdU, CdB, or β_2-M were in excess of the levels specified in paragraph (l)(3)(i) of this section, but

subsequent biological monitoring results required by paragraph (l)(3)(ii)–(iv) of this section show that the employee's CdU levels no longer exceed 3 μg/g Cr, CdB levels no longer exceed 5 μg/lwb, and β_2-M levels no longer exceed 300 μg/g Cr, the employer shall provide biological monitoring for CdU, CdB, and β_2-M one year after these most recent biological monitoring results. If the results of the followup biological monitoring, specified in this paragraph, confirm the previous results, the employer may discontinue all periodic medical surveillance for that employee.

(C) However, if the results of the follow-up tests specified in paragraph (l)(4)(v)(A) or (B) of this section indicate that the level of the employee's CdU, β_2-M, or CdB exceeds these same levels, the employer is required to provide annual medical examinations in accordance with the provisions of paragraph (l)(4)(ii) of this section until the results of biological monitoring are consistently below these levels or the examining physician determines in a written medical opinion that further medical surveillance is not required to protect the employee's health.

(vi) A routine, biennial medical examination is not required to be provided in accordance with paragraphs (l)(3)(i) and (l)(4) of this section if adequate medical records show that the employee has been examined in accordance with the requirements of paragraph (l)(4)(ii) of this section within the past 12 months. In that case, such records shall be maintained by the employer as part of the employee's medical record, and the next routine, periodic medical examination shall be made available to the employee within two years of the previous examination.

(5) *Actions triggered by medical examinations.* (i) If the results of a medical examination carried out in accordance with this section indicate any laboratory or clinical finding consistent with cadmium toxicity that does not require employer action under paragraph (l)(2), (3) or (4) of this section, the employer, within 30 days, shall reassess the employee's occupational exposure to cadmium and take the following corrective action until the physician determines they are no longer necessary:

(A) Periodically reassess: The employee's work practices and personal hygiene; the employee's respirator use, if any; the employee's smoking history and status; the respiratory protection program; the hygiene facilities; and the maintenance and effectiveness of the relevant engineering controls;

(B) Within 30 days after the reassessment, take all reasonable steps to correct the deficiencies found in the reassessment that may be responsible for the employee's excess exposure to cadmium;

(C) Provide semiannual medical reexaminations to evaluate the abnormal clinical sign(s) of cadmium toxicity until the results are normal or the employee is medically removed; and

(D) Where the results of tests for total proteins in urine are abnormal, provide a more detailed medical evaluation of the toxic effects of cadmium on the employee's renal system.

(6) *Examination for respirator use.* (i) To determine an employee's fitness for respirator use, the employer shall provide a medical examination that includes the elements specified in paragraph (l)(6)(i) (A)–(D) of this section. This examination shall be provided prior to the employee's being assigned to a job that requires the use of a respirator or no later than 90 days after this section goes into effect, whichever date is later, to any employee without a medical examination within the preceding 12 months that satisfies the requirements of this paragraph.

(A) A detailed medical and work history, or update thereof, with emphasis on: Past exposure to cadmium; smoking history and current status; any history of renal, cardiovascular, respiratory, hematopoietic, and/or musculoskeletal system dysfunction; a description of the job for which the respirator is required; and questions 3–11 and 25–32 in appendix D to this section;

(B) A blood pressure test;

(C) Biological monitoring of the employee's levels of CdU, CdB and β_2-M in accordance with the requirements of paragraph (l)(2)(ii)(B) of this section, unless such results already have been obtained within the previous 12 months; and

(D) Any other test or procedure that the examining physician deems appropriate.

(ii) After reviewing all the information obtained from the medical examination required in paragraph (l)(6)(i) of this section, the physician shall determine whether the employee is fit to wear a respirator.

(iii) Whenever an employee has exhibited difficulty in breathing during a respirator fit test or during use of a respirator, the employer, as soon as possible, shall provide the employee with a periodic medical examination in accordance with paragraph (l)(4)(ii) of this section to determine the employee's fitness to wear a respirator.

(iv) Where the results of the examination required under paragraph (l)(6)(i), (ii), or (iii) of this section are abnormal, medical limitation or prohibition of respirator use shall be considered. If the employee is allowed to wear a respirator, the employee's ability to continue to do so shall be periodically evaluated by a physician.

(7) *Emergency examinations.* (i) In addition to the medical surveillance required in paragraphs (l)(2)–(6) of this section, the employer shall provide a medical examination as soon as possible to any employee who may have been acutely exposed to cadmium because of an emergency.

(ii) The examination shall include the requirements of paragraph (l)(4)(ii) of this section, with emphasis on the respiratory system, other organ systems considered appropriate by the examining physician, and symptoms of acute overexposure, as identified in paragraphs II (B)(1)–(2) and IV of appendix A to this section.

(8) *Termination of employment examination.* (i) At termination of employment, the employer shall provide a medical examination in accordance with paragraph (l)(4)(ii) of this section, including a chest X-ray, to any employee to whom at any prior time the employer was required to provide medical surveillance under paragraphs (l)(1)(i) or (l)(7) of this section. However, if the last examination satisfied the requirements of paragraph (l)(4)(ii) of this section and was less than six months prior to the date of termination, no further examination is required unless otherwise specified in paragraphs (l)(3) or (l)(5) of this section;

(ii) However, for employees covered by paragraph (l)(1)(i)(B) of this section, if the employer has discontinued all periodic medical surveillance under paragraph (l)(4)(v) of this section, no termination of employment medical examination is required.

(9) *Information provided to the physician.* The employer shall provide the following information to the examining physician:

(i) A copy of this standard and appendices;

(ii) A description of the affected employee's former, current, and anticipated duties as they relate to the employee's occupational exposure to cadmium;

(iii) The employee's former, current, and anticipated future levels of occupational exposure to cadmium;

(iv) A description of any personal protective equipment, including respirators, used or to be used by the employee, including when and for how long the employee has used that equipment; and

(v) relevant results of previous biological monitoring and medical examinations.

(10) *Physician's written medical opinion.* (i) The employer shall promptly obtain a written, signed medical opinion from the examining physician for each medical examination performed on each employee. This written opinion shall contain:

(A) The physician's diagnosis for the employee;

(B) The physician's opinion as to whether the employee has any detected medical condition(s) that would place the employee at increased risk of material impairment to health from further exposure to cadmium, including any indications of potential cadmium toxicity;

(C) The results of any biological or other testing or related evaluations that directly assess the employee's absorption of cadmium;

(D) Any recommended removal from, or limitation on the activities or duties of the employee or on the employee's use of personal protective equipment, such as respirators;

(E) A statement that the physician has clearly and carefully explained to the employee the results of the medical examination, including all biological monitoring results and any medical conditions related to cadmium exposure that require further evaluation or treatment, and any limitation on the employee's diet or use of medications.

(ii) The employer promptly shall obtain a copy of the results of any biological monitoring provided by an employer to an employee independently of a medical examination under paragraphs (l)(2) and (l)(4) of this section, and, in lieu of a written medical opinion, an explanation sheet explaining those results.

(iii) The employer shall instruct the physician not to reveal orally or in the written medical opinion given to the employer specific findings or diagnoses unrelated to occupational exposure to cadmium.

(11) *Medical Removal Protection (MRP)*—(i) *General.* (A) The employer shall temporarily remove an employee from work where there is excess exposure to cadmium on each occasion that medical removal is required under paragraph (l)(3), (l)(4), or (l)(6) of this section and on each occasion that a physician determines in a written medical opinion that the employee should be removed from such exposure. The physician's determination may be based on biological monitoring results, inability to wear a respirator, evidence of illness, other signs or symptoms of cadmium-related dysfunction or disease, or any other reason deemed medically sufficient by the physician.

(B) The employer shall medically remove an employee in accordance with paragraph (l)(11) of this section regardless of whether at the time of removal a job is available into which the removed employee may be transferred.

(C) Whenever an employee is medically removed under paragraph (l)(11) of this section, the employer shall transfer the removed employee to a job where the exposure to cadmium is within the permissible levels specified in that paragraph as soon as one becomes available.

(D) For any employee who is medically removed under the provisions of paragraph (l)(11)(i) of this section, the employer shall provide follow-up biological monitoring in accordance with (l)(2)(ii)(B) of this section at least every three months and follow-up medical examinations semi-annually at least every six months until in a written medical opinion the examining physician determines that either the employee may be returned to his/her former job status as specified under paragraph (l)(11)(iv)–(v) of this section or the employee must be permanently removed from excess cadmium exposure.

(E) The employer may not return an employee who has been medically removed for any reason to his/her former job status until a physician determines in a written medical opinion that continued medical removal is no longer necessary to protect the employee's health.

(ii) Where an employee is found unfit to wear a respirator under paragraph (l)(6)(ii) of this section, the employer shall remove the employee from work where exposure to cadmium is above the PEL.

(iii) Where removal is based on any reason other than the employee's inability to wear a respirator, the employer shall remove the employee from work where exposure to cadmium is at or above the action level.

(iv) Except as specified in paragraph (l)(11)(v) of this section, no employee who was removed because his/her level of CdU, CdB and/or β_2-M exceeded the medical removal trigger levels in paragraph (l)(3) or (l)(4) of this section may be returned to work with exposure to cadmium at or above the action level until the employee's levels of CdU fall to or below 3 μg/g Cr, CdB falls to or below 5 μg/lwb, and β_2-M falls to or below 300 μg/g Cr.

(v) However, when in the examining physician's opinion continued exposure to cadmium will not pose an increased risk to the employee's health and there are special circumstances that make continued medical removal an inappropriate remedy, the physician shall fully discuss these matters with the employee, and then in a written determination may return a worker to his/her former job status despite what would otherwise be unacceptably high biological monitoring results. Thereafter, the returned employee shall continue to be provided with medical surveillance as if he/she were still on medical removal until the employee's levels of CdU fall to or below 3 μg/g Cr, CdB falls to or below 5 μg/lwb, and β_2-M falls to or below 300 μg/g Cr.

(vi) Where an employer, although not required by paragraph (l)(11)(i)–(iii) of this section to do so, removes an employee from exposure to cadmium or otherwise places limitations on an employee due to the effects of cadmium exposure on the employee's medical condition, the employer shall provide the same medical removal protection benefits to that employee under paragraph (l)(12) of this section as would have been provided had the removal been required under paragraph (l)(11)(i)–(iii) of this section.

(12) *Medical Removal Protection Benefits (MRPB).* (i) The employer shall provide MRPB for up to a maximum of 18 months to an employee each time and while the employee is temporarily medically removed under paragraph (l)(11) of this section.

(ii) For purposes of this section, the requirement that the employer provide MRPB means that the employer shall maintain the total normal earnings, seniority, and all other employee rights and benefits of the removed employee, including the employee's right to his/her former job status, as if the employee had not been removed from the employee's job or otherwise medically limited.

(iii) Where, after 18 months on medical removal because of elevated biological monitoring results, the employee's monitoring results have not declined to a low enough level to permit the employee to be returned to his/her former job status:

(A) The employer shall make available to the employee a medical examination pursuant to this section in order to obtain a final medical determination as to whether the employee may be returned to his/her former job status or must be permanently removed from excess cadmium exposure; and

(B) The employer shall assure that the final medical determination indicates whether the employee may be returned to his/her former job status and what

steps, if any, should be taken to protect the employee's health.

(iv) The employer may condition the provision of MRPB upon the employee's participation in medical surveillance provided in accordance with this section.

(13) *Multiple physician review.* (i) If the employer selects the initial physician to conduct any medical examination or consultation provided to an employee under this section, the employee may designate a second physician to:

(A) Review any findings, determinations, or recommendations of the initial physician; and

(B) Conduct such examinations, consultations, and laboratory tests as the second physician deems necessary to facilitate this review.

(ii) The employer shall promptly notify an employee of the right to seek a second medical opinion after each occasion that an initial physician provided by the employer conducts a medical examination or consultation pursuant to this section. The employer may condition its participation in, and payment for, multiple physician review upon the employee doing the following within fifteen (15) days after receipt of this notice, or receipt of the initial physician's written opinion, whichever is later:

(A) Informing the employer that he or she intends to seek a medical opinion; and

(B) Initiating steps to make an appointment with a second physician.

(iii) If the findings, determinations, or recommendations of the second physician differ from those of the initial physician, then the employer and the employee shall assure that efforts are made for the two physicians to resolve any disagreement.

(iv) If the two physicians have been unable to quickly resolve their disagreement, then the employer and the employee, through their respective physicians, shall designate a third physician to:

(A) Review any findings, determinations, or recommendations of the other two physicians; and

(B) Conduct such examinations, consultations, laboratory tests, and discussions with the other two physicians as the third physician deems necessary to resolve the disagreement among them.

(v) The employer shall act consistently with the findings, determinations, and recommendations of the third physician, unless the employer and the employee reach an agreement that is consistent with the recommendations of at least one of the other two physicians.

(14) *Alternate physician determination.* The employer and an employee or designated employee representative may agree upon the use of any alternate form of physician determination in lieu of the multiple physician review provided by paragraph (l)(13) of this section, so long as the alternative is expeditious and at least as protective of the employee.

(15) *Information the employer must provide the employee.* (i) The employer shall provide a copy of the physician's written medical opinion to the examined employee within two weeks after receipt thereof.

(ii) The employer shall provide the employee with a copy of the employee's biological monitoring results and an explanation sheet explaining the results within two weeks after receipt thereof.

(iii) Within 30 days after a request by an employee, the employer shall provide the employee with the information the employer is required to provide the examining physician under paragraph (l)(9) of this section.

(16) *Reporting.* In addition to other medical events that are required to be reported on the OSHA Form No. 200, the employer shall report any abnormal condition or disorder caused by occupational exposure to cadmium associated with employment as specified in Chapter (V)(E) of the Reporting Guidelines for Occupational Injuries and Illnesses.

(m) *Communication of cadmium hazards to employees*—(1) *General.* In communications concerning cadmium hazards, employers shall comply with the requirements of OSHA's Hazard Communication Standard, 29 CFR 1910.1200, including but not limited to the requirements concerning warning signs and labels, material safety data sheets (MSDS), and employee information and training. In addition, employers shall comply with the following requirements:

(2) *Warning signs.* (i) Warning signs shall be provided and displayed in regulated areas. In addition, warning signs shall be posted at all approaches to regulated areas so that an employee may read the signs and take necessary protective steps before entering the area.

(ii) Warning signs required by paragraph (m)(2)(i) of this section shall bear the following information:

DANGER
CADMIUM
CANCER HAZARD
CAN CAUSE LUNG AND KIDNEY DISEASE
AUTHORIZED PERSONNEL ONLY
RESPIRATORS REQUIRED IN THIS AREA

(iii) The employer shall assure that signs required by this paragraph are illuminated, cleaned, and maintained as necessary so that the legend is readily visible.

(3) *Warning labels.* (i) Shipping and storage containers containing cadmium, cadmium compounds, or cadmium contaminated clothing, equipment, waste, scrap, or debris shall bear appropriate warning labels, as specified in paragraph (m)(3)(ii) of this section.

(ii) The warning labels shall include at least the following information:

DANGER
CONTAINS CADMIUM
CANCER HAZARD
AVOID CREATING DUST
CAN CAUSE LUNG AND KIDNEY DISEASE

(iii) Where feasible, installed cadmium products shall have a visible label or other indication that cadmium is present.

(4) *Employee information and training.* (i) The employer shall institute a training program for all employees who are potentially exposed to cadmium, assure employee participation in the program, and maintain a record of the contents of such program.

(ii) Training shall be provided prior to or at the time of initial assignment to a job involving potential exposure to cadmium and at least annually thereafter.

(iii) The employer shall make the training program understandable to the employee and shall assure that each employee is informed of the following:

(A) The health hazards associated with cadmium exposure, with special attention to the information incorporated in appendix A to this section;

(B) The quantity, location, manner of use, release, and storage of cadmium in the workplace and the specific nature of operations that could result in exposure to cadmium, especially exposures above the PEL;

(C) The engineering controls and work practices associated with the employee's job assignment;

(D) The measures employees can take to protect themselves from exposure to cadmium, including modification of such habits as smoking and personal hygiene, and specific procedures the employer has implemented to protect employees from exposure to cadmium such as appropriate work practices, emergency procedures, and the provision of personal protective equipment;

(E) The purpose, proper selection, fitting, proper use, and limitations of respirators and protective clothing;

(F) The purpose and a description of the medical surveillance program required by paragraph (l) of this section;

(G) The contents of this section and its appendices; and

(H) The employee's rights of access to records under § 1915.1120 (e) and (g).

(iv) Additional access to information and training program and materials.

(A) The employer shall make a copy of this section and its appendices readily available without cost to all affected employees and shall provide a copy if requested.

(B) The employer shall provide to the Assistant Secretary or the Director, upon request, all materials relating to the employee information and the training program.

(n) *Recordkeeping*—(1) *Exposure monitoring.* (i) The employer shall establish and keep an accurate record of all air monitoring for cadmium in the workplace.

(ii) This record shall include at least the following information:

(A) The monitoring date, duration, and results in terms of an 8-hour TWA of each sample taken;

(B) The name, social security number, and job classification of the employees monitored and of all other employees whose exposures the monitoring is intended to represent;

(C) A description of the sampling and analytical methods used and evidence of their accuracy;

(D) The type of respiratory protective device, if any, worn by the monitored employee;

(E) A notation of any other conditions that might have affected the monitoring results.

(iii) The employer shall maintain this record for at least thirty (30) years, in accordance with § 1915.1120 of this part.

(2) *Objective data for exemption from requirement for initial monitoring.* (i) For purposes of this section, objective data are information demonstrating that a particular product or material containing cadmium or a specific process, operation, or activity involving cadmium cannot release dust or fumes in concentrations at or above the action level even under the worst-case release conditions. Objective data can be obtained from an industry-wide study or from laboratory product test results from manufacturers of cadmium-containing products or materials. The data the employer uses from an industry-wide survey must be obtained under workplace conditions closely resembling the processes, types of material, control methods, work practices and environmental conditions in the employer's current operations.

(ii) The employer shall establish and maintain a record of the objective data for at least 30 years.

(3) *Medical surveillance.* (i) The employer shall establish and maintain an accurate record for each employee covered by medical surveillance under paragraph (l)(1)(i) of this section.

(ii) The record shall include at least the following information about the employee:

(A) Name, social security number, and description of the duties;

(B) A copy of the physician's written opinions and an explanation sheet for biological monitoring results;

(C) A copy of the medical history, and the results of any physical examination and all test results that are required to be provided by this section, including biological tests, X-rays, pulmonary function tests, etc., or that have been obtained to further evaluate any condition that might be related to cadmium exposure;

(D) The employee's medical symptoms that might be related to exposure to cadmium; and

(E) A copy of the information provided to the physician as required by paragraph (l)(9)(ii)–(v) of this section.

(iii) The employer shall assure that this record is maintained for the duration of employment plus thirty (30) years, in accordance with § 1915.1120 of this part.

(4) *Training.* The employer shall certify that employees have been trained by preparing a certification record which includes the identity of the person trained, the signature of the employer or the person who conducted the training, and the date the training was completed. The certification records shall be prepared at the completion of training and shall be maintained on file for one (1) year beyond the date of training of that employee.

(5) *Availability.* (i) Except as otherwise provided for in this section, access to all records required to be maintained by paragraphs (n)(1)–(4) of this section shall be in accordance with the provisions of § 1915.1120 of this part.

(ii) Within 15 days after a request, the employer shall make an employee's medical records required to be kept by paragraph (n)(3) of this section available for examination and copying to the subject employee, to designated representatives, to anyone having the specific written consent of the subject employee, and after the employee's death or incapacitation, to the employee's family members.

(6) *Transfer of records.* Whenever an employer ceases to do business and there is no successor employer to receive and retain records for the prescribed period or the employer intends to dispose of any records required to be preserved for at least 30 years, the employer shall comply with the requirements concerning transfer of records set forth in § 1915.1120(h) of this part.

(o) *Observation of monitoring*—(1) *Employee observation.* The employer shall provide affected employees or their designated representatives an opportunity to observe any monitoring of employee exposure to cadmium.

(2) *Observation procedures.* When observation of monitoring requires entry into an area where the use of protective clothing or equipment is required, the employer shall provide the observer with that clothing and equipment and shall assure that the observer uses such clothing and equipment and complies with all other applicable safety and health procedures.

(p) *Dates*—(1) *Effective date.* This section shall become effective December 14, 1992.

(2) *Start-up dates.* All obligations of this section commence on the effective date except as follows:

(i) *Exposure monitoring.* Except for small businesses (nineteen (19) or fewer employees), initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible and in any event no later than February 12, 1993. For small businesses, initial monitoring required by paragraph (d)(2) of this section shall be completed as soon as possible and in any event no later than April 14, 1993.

(ii) *Regulated areas.* Except for small business, defined under paragraph (p)(2)(i) of this section, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than March 15, 1993. For small businesses, regulated areas required to be established by paragraph (e) of this section shall be set up as soon as possible after the results of exposure monitoring are known and in any event no later than May 14, 1993.

(iii) *Respiratory protection.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than 90 days after the effective date of this section. For small businesses, respiratory protection required by paragraph (g) of this section shall be provided as soon as possible and in any event no later than March 15, 1993.

(iv) *Compliance program.* Written compliance programs required by paragraph (f)(2) of this section shall be completed and available for inspection and copying as soon as possible and in any event no later than December 14, 1993.

(v) *Methods of compliance.* The engineering controls required by paragraph (f)(1) of this section shall be implemented as soon as possible and in any event no later than December 14, 1994. Work practice controls shall be implemented as soon as possible. Work practice controls that are directly related to engineering controls to be implemented in accordance with the compliance plan shall be implemented as soon as possible after such engineering controls are implemented.

(vi) *Hygiene and lunchroom facilities.* (A) Handwashing facilities, permanent or temporary, shall be provided in accordance with 29 CFR 1910.141 (d)(1) and (2) as soon as possible and in any event no later than February 12, 1993.

(B) Change rooms, showers, and lunchroom facilities shall be completed as soon as possible and in any event no later than December 14, 1993.

(vii) *Employee information and training.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, employee information and training required by paragraph (m)(4) of this section shall be provided as soon as possible and in any event no later than March 15, 1993. For small businesses, employee information and training required by paragraph (m)(4) of this standard shall be provided as soon as possible and in any event no later than June 14, 1993.

(viii) *Medical surveillance.* Except for small businesses, defined under paragraph (p)(2)(i) of this section, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than March 15, 1993. For small businesses, initial medical examinations required by paragraph (l) of this section shall be provided as soon as possible and in any event no later than June 14, 1993.

(q) *Appendices.* (1) Appendix C to this section is incorporated as part of this section, and compliance with its contents is mandatory.

(2) Except where portions of appendices A, B, D, E, and F to this section are expressly incorporated in requirements of this section, these appendices are purely informational and are not intended to create any additional obligations not otherwise imposed or to detract from any existing obligations.

Appendix A to § 1915.1027—Substance Safety Data Sheet

Cadmium

I. Substance Identification

A. Substance: Cadmium.

B. 8-Hour, Time-weighted-average, Permissible Exposure Limit (TWA PEL):

1. TWA PEL: Five micrograms of cadmium per cubic meter of air 5 μg/m³, time-weighted average (TWA) for an 8-hour workday.

C. Appearance: Cadmium metal—soft, blue-white, malleable, lustrous metal or grayish-white powder. Some cadmium compounds may also appear as a brown, yellow, or red powdery substance.

II. Health Hazard Data

A. Routes of Exposure. Cadmium can cause local skin or eye irritation. Cadmium can affect your health if you inhale it or if you swallow it.

B. Effects of Overexposure.

1. Short-term (acute) exposure: Cadmium is much more dangerous by inhalation than by ingestion. High exposures to cadmium that may be immediately dangerous to life or health occur in jobs where workers handle large quantities of cadmium dust or fume; heat cadmium-containing compounds or cadmium-coated surfaces; weld with cadmium solders or cut cadmium-containing materials such as bolts.

2. Severe exposure may occur before symptoms appear. Early symptoms may include mild irritation of the upper respiratory tract, a sensation of constriction of the throat, a metallic taste and/or a cough. A period of 1–10 hours may precede the onset of rapidly progressing shortness of breath, chest pain, and flu-like symptoms with weakness, fever, headache, chills, sweating and muscular pain. Acute pulmonary edema usually develops within 24 hours and reaches a maximum by three days. If death from asphyxia does not occur, symptoms may resolve within a week.

3. Long-term (chronic) exposure. Repeated or long-term exposure to cadmium, even at relatively low concentrations, may result in kidney damage and an increased risk of cancer of the lung and of the prostate.

C. Emergency First Aid Procedures.

1. Eye exposure: Direct contact may cause redness or pain. Wash eyes immediately with large amounts of water, lifting the upper and lower eyelids. Get medical attention immediately.

2. Skin exposure: Direct contact may result in irritation. Remove contaminated clothing and shoes immediately. Wash affected area with soap or mild detergent and large amounts of water. Get medical attention immediately.

3. Ingestion: Ingestion may result in vomiting, abdominal pain, nausea, diarrhea, headache and sore throat. Treatment for symptoms must be administered by medical personnel. Under no circumstances should the employer allow any person whom he retains, employs, supervises or controls to engage in therapeutic chelation. Such treatment is likely to translocate cadmium from pulmonary or other tissue to renal tissue. Get medical attention immediately.

4. Inhalation: If large amounts of cadmium are inhaled, the exposed person must be moved to fresh air at once. If breathing has stopped, perform cardiopulmonary resuscitation. Administer oxygen if available. Keep the affected person warm and at rest. Get medical attention immediately.

5. Rescue: Move the affected person from the hazardous exposure. If the exposed person has been overcome, attempt rescue only after notifying at least one other person of the emergency and putting into effect established emergency procedures. Do not become a casualty yourself. Understand your emergency rescue procedures and know the location of the emergency equipment before the need arises.

III. Employee Information

A. Protective Clothing and Equipment.

1. Respirators: You may be required to wear a respirator for non-routine activities; in emergencies; while your employer is in the process of reducing cadmium exposures through engineering controls; and where engineering controls are not feasible. If respirators are worn in the future, they must have a joint Mine Safety and Health Administration (MSHA) and National Institute for Occupational Safety and Health (NIOSH) label of approval. Cadmium does not have a detectable odor except at levels well above the permissible exposure limits. If you can smell cadmium while wearing a respirator, proceed immediately to fresh air. If you experience difficulty breathing while wearing a respirator, tell your employer.

2. Protective Clothing: You may be required to wear impermeable clothing, gloves, foot gear, a face shield, or other appropriate protective clothing to prevent skin contact with cadmium. Where protective clothing is required, your employer must provide clean garments to you as necessary to assure that the clothing protects you adequately. The employer must replace or repair protective clothing that has become torn or otherwise damaged.

3. Eye Protection: You may be required to wear splash-proof or dust resistant goggles to prevent eye contact with cadmium.

B. Employer Requirements.

1. Medical: If you are exposed to cadmium at or above the action level, your employer is required to provide a medical examination, laboratory tests and a medical history according to the medical surveillance provisions under paragraph (l) of this standard. (See summary chart and tables in this appendix A.) These tests shall be provided without cost to you. In addition, if you are accidentally exposed to cadmium under conditions known or suspected to constitute toxic exposure to cadmium, your employer is required to make special tests available to you.

2. Access to Records: All medical records are kept strictly confidential. You or your representative are entitled to see the records of measurements of your exposure to cadmium. Your medical examination records can be furnished to your personal physician or designated representative upon request by you to your employer.

3. Observation of Monitoring: Your employer is required to perform measurements that are representative of your exposure to cadmium and you or your designated representative are entitled to observe the monitoring procedure. You are entitled to observe the steps taken in the measurement procedure, and to record the results obtained. When the monitoring procedure is taking place in an area where respirators or personal protective clothing and equipment are required to be worn, you or your representative must also be provided with, and must wear the protective clothing and equipment.

C. Employee Requirements.—You will not be able to smoke, eat, drink, chew gum or tobacco, or apply cosmetics while working with cadmium in regulated areas. You will also not be able to carry or store tobacco products, gum, food, drinks or cosmetics in regulated areas because these products easily become contaminated with cadmium from the workplace and can therefore create another source of unnecessary cadmium exposure.

Some workers will have to change out of work clothes and shower at the end of the day, as part of their workday, in order to wash cadmium from skin and hair. Handwashing and cadmium-free eating facilities shall be provided by the employer and proper hygiene should always be performed before eating. It is also recommended that you do not smoke or use tobacco products, because among other things, they naturally contain cadmium. For further information, read the labeling on such products.

IV Physician Information

A. Introduction.—The medical surveillance provisions of paragraph (1) generally are aimed at accomplishing three main interrelated purposes: First, identifying employees at higher risk of adverse health effects from excess, chronic exposure to cadmium; second, preventing cadmium-induced disease; and third, detecting and minimizing existing cadmium-induced disease. The core of medical surveillance in this standard is the early and periodic monitoring of the employee's biological indicators of: (a) Recent exposure to cadmium; (b) cadmium body burden; and (c) potential and actual kidney damage associated with exposure to cadmium.

The main adverse health effects associated with cadmium overexposure are lung cancer and kidney dysfunction. It is not yet known how to adequately biologically monitor human beings to specifically prevent cadmium-induced lung cancer. By contrast, the kidney can be monitored to provide prevention and early detection of cadmium-induced kidney damage. Since, for non-carcinogenic effects, the kidney is considered the primary target organ of chronic exposure to cadmium, the medical surveillance provisions of this standard effectively focus on cadmium-induced kidney disease. Within that focus, the aim, where possible, is to prevent the onset of such disease and, where necessary, to minimize such disease as may already exist. The by-products of successful prevention of kidney disease are anticipated to be the reduction and prevention of other cadmium-induced diseases.

B. Health Effects.—The major health effects associated with cadmium overexposure are described below.

1. Kidney: The most prevalent non-malignant disease observed among workers chronically exposed to cadmium is kidney dysfunction. Initially, such dysfunction is manifested as proteinuria. The proteinuria associated with cadmium exposure is most commonly characterized by excretion of low-molecular weight proteins (15,000 to 40,000 MW) accompanied by loss of electrolytes, uric acid, calcium, amino acids, and phosphate. The compounds commonly excreted include: beta-2-microglobulin (β_2-M), retinol binding protein (RBP), immunoglobulin light chains, and lysozyme. Excretion of low molecular weight proteins are characteristic of damage to the proximal tubules of the kidney (Iwao *et al.*, 1980).

It has also been observed that exposure to cadmium may lead to urinary excretion of high-molecular weight proteins such as albumin, immunoglobulin G, and glycoproteins (Ex. 29). Excretion of high-molecular weight proteins is typically indicative of damage to the glomeruli of the kidney. Bernard *et al.*, (1979) suggest that damage to the glomeruli and damage to the proximal tubules of the kidney may both be linked to cadmium exposure but they may occur independently of each other.

Several studies indicate that the onset of low-molecular weight proteinuria is a sign of irreversible kidney damage (Friberg *et al.*, 1974; Roels *et al.*, 1982; Piscator 1984; Elinder *et al.*, 1985; Smith *et al.*, 1986). Above specific levels of β_2-M associated with cadmium exposure it is unlikely that β_2-M levels return to normal even when cadmium exposure is eliminated by removal of the individual from the cadmium work environment (Friberg, Ex. 29, 1990).

Some studies indicate that such proteinuria may be progressive; levels of β_2-M observed in the urine increase with time even after cadmium exposure has ceased. See, for example, Elinder *et al.*, 1985. Such observations, however, are not universal, and it has been suggested that studies in which proteinuria has not been observed to progress may not have tracked patients for a sufficiently long time interval (Jarup, Ex. 8–661).

When cadmium exposure continues after the onset of proteinuria, chronic nephrotoxicity may occur (Friberg, Ex. 29). Uremia results from the inability of the glomerulus to adequately filter blood. This leads to severe disturbance of electrolyte concentrations and may lead to various clinical complications including kidney stones (L–140–50).

After prolonged exposure to cadmium, glomerular proteinuria, glucosuria, aminoaciduria, phosphaturia, and hypercalciuria may develop (Exs. 8–86, 4–28, 14–18). Phosphate, calcium, glucose, and amino acids are essential to life, and under normal conditions, their excretion should be regulated by the kidney. Once low molecular weight proteinuria has developed, these elements dissipate from the human body. Loss of glomerular function may also occur, manifested by decreased glomerular filtration rate and increased serum creatinine. Severe cadmium-induced renal damage may eventually develop into chronic renal failure and uremia (Ex. 55).

Studies in which animals are chronically exposed to cadmium confirm the renal effects observed in humans (Friberg *et al.*, 1986). Animal studies also confirm problems with calcium metabolism and related skeletal effects which have been observed among humans exposed to cadmium in addition to the renal effects. Other effects commonly reported in chronic animal studies include anemia, changes in liver morphology, immunosuppression and hypertension. Some of these effects may be associated with co-factors. Hypertension, for example, appears to be associated with diet as well as cadmium exposure. Animals injected with cadmium have also shown testicular necrosis (Ex. 8–86B).

2. Biological Markers

It is universally recognized that the best measures of cadmium exposures and its effects are measurements of cadmium in biological fluids, especially urine and blood. Of the two, CdU is conventionally used to determine body burden of cadmium in workers without kidney disease. CdB is conventionally used to monitor for recent exposure to cadmium. In addition, levels of CdU and CdB historically have been used to predict the percent of the population likely to develop kidney disease (Thun *et al.*, Ex. L–140–50; WHO, Ex. 8–674; ACGIH, Exs. 8–667, 140–50).

The third biological parameter upon which OSHA relies for medical surveillance is Beta-2-microglobulin in urine (β_2-M), a low molecular weight protein. Excess β_2-M has been widely accepted by physicians and scientists as a reliable indicator of functional damage to the proximal tubule of the kidney (Exs. 8–447, 144–3–C, 4–47, L–140–45, 19–43–A).

Excess β_2-M is found when the proximal tubules can no longer reabsorb this protein in a normal manner. This failure of the proximal tubules is an early stage of a kind of kidney disease that commonly occurs among workers with excessive cadmium exposure. Used in conjunction with biolcgical test results indicating abnormal levels of CdU and CdB, the finding of excess β_2-M can establish for an examining physician that any existing kidney disease is probably cadmium-related (Trs. 6/6/90, pp. 82–86, 122, 134). The upper limits of normal levels for cadmium in urine and cadmium in blood are 3 μg Cd/gram creatinine in urine and 5 μgCd/liter whole blood, respectively. These levels were derived from broad-based population studies.

Three issues confront the physicians in the use of β_2-M as a marker of kidney dysfunction and material impairment. First, there are a few other causes of elevated levels of β_2-M not related to cadmium exposures, some of which may be rather common diseases and some of which are serious diseases (e.g., myeloma or transient flu, Exs. 29 and 8–086). These can be medically evaluated as alternative causes (Friberg, Ex. 29). Also, there are other factors that can cause β_2-M to degrade so that low levels

would result in workers with tubular dysfunction. For example, regarding the degradation of β_2-M, workers with acidic urine (pH<6) might have β_2-M levels that are within the "normal" range when in fact kidney dysfunction has occurred (Ex. L–140–1) and the low molecular weight proteins are degraded in acid urine. Thus, it is very important that the pH of urine be measured, that urine samples be buffered as necessary (See appendix F.), and that urine samples be handled correctly, i.e., measure the pH of freshly voided urine samples, then if necessary, buffer to pH>6 (or above for shipping purposes), measure pH again and then, perhaps, freeze the sample for storage and shipping. (See also appendix F.) Second, there is debate over the pathological significance of proteinuria, however, most world experts believe that β_2-M levels greater than 300 µg/g Cr are abnormal (Elinder, Ex. 55, Friberg, Ex. 29). Such levels signify kidney dysfunction that constitutes material impairment of health. Finally, detection of β_2-M at low levels has often been considered difficult, however, many laboratories have the capability of detecting excess β_2-M using simple kits, such as the Phadebas Delphia test, that are accurate to levels of 100 µg β_2-M/g Cr U (Ex. L–140–1).

Specific recommendations for ways to measure β_2-M and proper handling of urine samples to prevent degradation of β_2-M have been addressed by OSHA in appendix F, in the section on laboratory standardization. All biological samples must be analyzed in a laboratory that is proficient in the analysis of that particular analyte, under paragraph (l)(1)(iv). (See appendix F). Specifically, under paragraph (l)(1)(iv), the employer is to assure that the collecting and handling of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees is collected in a manner that assures reliability The employer must also assure that analysis of biological samples of cadmium in urine (CdU), cadmium in blood (CdB), and beta-2 microglobulin in urine (β_2-M) taken from employees is performed in laboratories with demonstrated proficiency for that particular analyte. (See appendix F.)

3. Lung and Prostate Cancer

The primary sites for cadmium-associated cancer appear to be the lung and the prostate (L–140–50). Evidence for an association between cancer and cadmium exposure derives from both epidemiological studies and animal experiments. Mortality from prostate cancer associated with cadmium is slightly elevated in several industrial cohorts, but the number of cases is small and there is not clear dose-response relationship. More substantive evidence exists for lung cancer.

The major epidemiological study of lung cancer was conducted by Thun *et al.*, (Ex. 4–68). Adequate data on cadmium exposures were available to allow evaluation of dose-response relationships between cadmium exposure and lung cancer. A statistically significant excess of lung cancer attributed to cadmium exposure was observed in this study even when confounding variables such as co-exposure to arsenic and smoking habits were taken into consideration (Ex. L–140–50).

The primary evidence for quantifying a link between lung cancer and cadmium exposure from animal studies derives from two rat bioassay studies; one by Takenaka *et al.*, (1983), which is a study of cadmium chloride and a second study by Oldiges and Glaser (1990) of four cadmium compounds.

Based on the above cited studies, the U.S. Environmental Protection Agency (EPA) classified cadmium as "B1", a probable human carcinogen, in 1985 (Ex. 4–4). The International Agency for Research on Cancer (IARC) in 1987 also recommended that cadmium be listed as "2A", a probable human carcinogen (Ex. 4–15). The American Conference of Governmental Industrial Hygienists (ACGIH) has recently recommended that cadmium be labeled as a carcinogen. Since 1984, NIOSH has concluded that cadmium is possibly a human carcinogen and has recommended that exposures be controlled to the lowest level feasible.

4. Non-carcinogenic Effects

Acute pneumonitis occurs 10 to 24 hours after initial acute inhalation of high levels of cadmium fumes with symptoms such as fever and chest pain (Exs. 30, 8–86B). In extreme exposure cases pulmonary edema may develop and cause death several days after exposure. Little actual exposure measurement data is available on the level of airborne cadmium exposure that causes such immediate adverse lung effects, nonetheless, it is reasonable to believe a cadmium concentration of approximately 1 mg/m^3 over an eight hour period is "immediately dangerous" (55 FR 4052, ANSI; Ex. 8–86B).

In addition to acute lung effects and chronic renal effects, long term exposure to cadmium may cause other severe effects on the respiratory system. Reduced pulmonary function and chronic lung disease indicative of emphysema have been observed in workers who have had prolonged exposure to cadmium dust or fumes (Exs. 4–29, 4–22, 4–42, 4–50, 4–63). In a study of workers conducted by Kazantzis *et al.*, a statistically significant excess of worker deaths due to chronic bronchitis was found, which in his opinion was directly related to high cadmium exposures of 1 mg/m^3 or more (Tr 6/8/90, pp. 156–157).

Cadmium need not be respirable to constitute a hazard. Inspirable cadmium particles that are too large to be respirable but small enough to enter the tracheobronchial region of the lung can lead to bronchoconstriction, chronic pulmonary disease, and cancer of that portion of the lung. All of these diseases have been associated with occupational exposure to cadmium (Ex. 8–86B). Particles that are constrained by their size to the extra-thoracic regions of the respiratory system such as the nose and maxillary sinuses can be swallowed through mucocillary clearance and be absorbed into the body (ACGIH, Ex. 8–692). The impaction of these particles in the upper airways can lead to anosmia, or loss of sense of smell, which is an early indication of overexposure among workers exposed to heavy metals. This condition is commonly reported among cadmium-exposed workers (Ex. 8–86–B).

C. Medical Surveillance

In general, the main provisions of the medical surveillance section of the standard, under paragraphs (l)(1)–(17) of the regulatory text, are as follows:

1. Workers exposed above the action level are covered;
2. Workers with intermittent exposures are not covered;
3. Past workers who are covered receive biological monitoring for at least one year;
4. Initial examinations include a medical questionnaire and biological monitoring of cadmium in blood (CdB), cadmium in urine (CdU), and Beta-2-microglobulin in urine (β_2-M);
5. Biological monitoring of these three analytes is performed at least annually; full medical examinations are performed biennially;
6. Until five years from the effective date of the standard, medical removal is required when CdU is greater than 15 µg/gram creatinine (g Cr), or CdB is greater than 15 µg/liter whole blood (lwb), or β_2-M is greater than 1500 µg/g Cr, and CdB is greater than 5 µg/lwb or CdU is greater than 3 µg/g Cr;
7. Beginning five years after the standard is in effect, medical removal triggers will be reduced;
8. Medical removal protection benefits are to be provided for up to 18 months;
9. Limited initial medical examinations are required for respirator usage;
10. Major provisions are fully described under section (l) of the regulatory text; they are outlined here as follows:

A. Eligibility
B. Biological monitoring
C. Actions triggered by levels of CdU, CdB, and β_2-M (See Summary Charts and Tables in Attachment-1.)
D. Periodic medical surveillance
E. Actions triggered by periodic medical surveillance (See appendix A Summary Chart and Tables in Attachment-1)
F Respirator usage
G. Emergency medical examinations
H. Termination examination
I. Information to physician
J. Physician's medical opinion
K. Medical removal protection
L. Medical removal protection benefits
M. Multiple physician review
N. Alternate physician review
O. Information employer gives to employee
P. Recordkeeping
Q. Reporting on OSHA form 200

11. The above mentioned summary of the medical surveillance provisions, the summary charts and tables for the actions triggered at different levels of CdU, CdB and β_2-M (in appendix A Attachment-1) are included only for the purpose of facilitating understanding of the provisions of paragraphs (l)(3) of the final cadmium standard. The summary of the provisions, the summary chart, and the tables do not add to or reduce the requirements in paragraph (l)(3).

D. Recommendations to Physicians

1. It is strongly recommended that patients with tubular proteinuria are counseled on. The hazards of smoking; avoidance of nephrotoxins and certain prescriptions and over-the-counter medications that may exacerbate kidney symptoms; how to control diabetes and/or blood pressure; proper hydration, diet, and exercise (Ex. 19–2). A list of prominent or common nephrotoxins is attached. (See appendix A Attachment-2.)

2. DO NOT CHELATE; KNOW WHICH DRUGS ARE NEPHROTOXINS OR ARE ASSOCIATED WITH NEPHRITIS.

3. The gravity of cadmium-induced renal damage is compounded by the fact there is no medical treatment to prevent or reduce the accumulation of cadmium in the kidney. (Ex. 8–619). Dr. Friberg, a leading world expert on cadmium toxicity, indicated in 1992, that there is no form of chelating agent that could be used without substantial risk. He stated that tubular proteinuria has to be treated in the same way as other kidney disorders (Ex. 29).

4. After the results of a workers' biological monitoring or medical examination are received the employer is required to provide an information sheet to the patient, briefly explaining the significance of the results. (See Attachment 3 of this appendix A.)

5. For additional information the physician is referred to the following additional resources:

a. The physician can always obtain a copy of the preamble, with its full discussion of the health effects, from OSHA's Computerized Information System (OCIS).

b. The Docket Officer maintains a record of the rulemaking. The Cadmium Docket (H–057A), is located at 200 Constitution Ave. NW., room N–2625, Washington, DC 20210; telephone: 202–219–7894.

c. The following articles and exhibits in particular from that docket (H–057A):

Exhibit No.	Author and paper title
8–447	Lauwerys *et. al.*, Guide for physicians, "Health Maintenance of Workers Exposed to Cadmium," published by the Cadmium Council.
4–67	Takenaka, S., H. Oldiges, H. Konig, D. Hochrainer, G. Oberdorster. "Carcinogenicity of Cadmium Chloride Aerosols in Wistar Rats". *JNCI* 70:367–373, 1983. (32)
4–68	Thun, M.J., T.M. Schnoor, A.B. Smith, W.E. Halperin, R.A. Lemen. "Mortality Among a Cohort of U.S. Cadmium Production Workers—An Update." *JNCI* 74(2):325–33, 1985. (8)
4–25	Elinder, C.G., Kjellstrom, T., Hogstedt, C., *et al.*, "Cancer Mortality of Cadmium Workers." *Brit. J. Ind. Med.* 42:651–655, 1985. (14)
4–26	Ellis, K.J. *et al.*, "Critical Concentrations of Cadmium in Human Renal Cortex: Dose Effect Studies to Cadmium Smelter Workers." *J. Toxicol. Environ. Health* 7:691–703, 1981. (76)
4–27	Ellis, K.J., S.H. Cohn and T.J. Smith. "Cadmium Inhalation Exposure Estimates: Their Significance with Respect to Kidney and Liver Cadmium Burden." *J. Toxicol. Environ. Health* 15:173–187, 1985.
4–28	Falck, F.Y., Jr., Fine, L.J., Smith, R.G., McClatchey, K.D., Annesley, T., England, B., and Schork, A.M. "Occupational Cadmium Exposure and Renal Status." *Am. J. Ind. Med.* 4:541, 1983. (64)
8–86A	Friberg, L., C.G. Elinder, *et al.*, "Cadmium and Health a Toxicological and Epidemiological Appraisal, Volume I, Exposure, Dose, and Metabolism." CRC Press, Inc., Boca Raton, FL, 1986. (Available from the OSHA Technical Data Center)
8–86B	Friberg, L., C.G. Elinder, *et al.*, "Cadmium and Health: A Toxicological and Epidemiological Appraisal, Volume II, Effects and Response." CRC Press, Inc., Boca Raton, FL, 1986. (Available from the OSHA Technical Data Center)
L–140–45	Elinder, C.G., "Cancer Mortality of Cadmium Workers", *Brit. J. Ind. Med.*, 42, 651–655, 1985.
L–140–50	Thun, M., Elinder, C.G., Friberg, L, "Scientific Basis for an Occupational Standard for Cadmium, *Am. J. Ind. Med.*, 20; 629–642, 1991.

V. Information Sheet

The information sheet (appendix A Attachment-3.) or an equally explanatory one should be provided to you after any biological monitoring results are reviewed by the physician, or where applicable, after any medical examination.

Appendix A

Attachment 1—Appendix A Summary Chart and Tables A and B of Actions Triggered by Biological Monitoring

Appendix A Summary Chart: Section (1)(3) Medical Surveillance

Categorizing Biological Monitoring Results

(A) Biological monitoring results categories are set forth in Appendix A Table A for the periods ending December 31, 1998 and for the period beginning January 1, 1999.

(B) The results of the biological monitoring for the initial medical exam and the subsequent exams shall determine an employee's biological monitoring result category.

Actions Triggered by Biological Monitoring

(A)

(i) The actions triggered by biological monitoring for an employee are set forth in Appendix A Table B.

(ii) The biological monitoring results for each employee under section (1)(3) shall determine the actions required for that employee. That is, for any employee in biological monitoring category C, the employer will perform all of the actions for which there is an X in column C of Appendix A Table B.

(iii) An employee is assigned the alphabetical category ("A" being the lowest) depending upon the test results of the three biological markers.

(iv) An employee is assigned category A if monitoring results for all three biological markers fall at or below the levels indicated in the table listed for category A.

(v) An employee is assigned category B if any monitoring result for any of the three biological markers fall within the range of levels indicated in the table listed for category B, providing no result exceeds the levels listed for category B.

(vi) An employee is assigned category C if any monitoring result for any of the three biological markers are above the levels listed for category C.

(B) The user of Appendix A Tables A and B should know that these tables are provided only to facilitate understanding of the relevant provisions of paragraph (l)(3) of this section. Appendix A Tables A and B are not meant to add to or subtract from the requirements of those provisions.

Appendix A Table A

Categorization of Biological Monitoring Results

APPLICABLE THROUGH 1998 ONLY

Biological marker	Monitoring result categories		
	A	B	C
Cadmium in urine (CdU) (µg/g creatinine)	≤3	>3 and ≤15	>15
β_2-microglobulin (β_2-M) (µg/g creatinine)	≤300	>300 and ≤1500	>1500*
Cadmium in blood (CdB) (µg/liter whole blood)	≤5	>5 and ≤15	>15

* If an employee's β_2-M levels are above 1,500 µg/g creatinine, in order for mandatory medical removal to be required (See Appendix A Table B.), either the employee's CdU level must also be >3 µg/g creatinine or CdB level must also be >5 µg/liter whole blood.

APPLICABLE BEGINNING JANUARY 1, 1999

Biological marker	Monitoring result categories		
	A	B	C
Cadmium in urine (CdU) (µg/g creatinine)	≤3	>3 and ≤7	>7
β_2-microglobulin (β_2-M) (µg/g creatinine)	≤300	>300 and ≤750	>750*
Cadmium in blood (CdB) (µg/liter whole blood)	≤5	>5 and ≤10	>10

* If an employee's β_2-M levels are above 750 µg/g creatinine, in order for mandatory medical removal to be required (See Appendix A Table B.), either the employee's CdU level must also be >3 µg/g creatinine or CdB level must also be >5 µg/liter whole blood.

Appendix A Table B—Actions Determined by Biological Monitoring

This table presents the actions required based on the monitoring result in Appendix A Table A. Each item is a separate requirement in citing non-compliance. For example, a medical examination within 90 days for an employee in category B is separate from the requirement to administer a periodic medical examination for category B employees on an annual basis.

Required actions	Monitoring result category		
	A[1]	B[1]	C[1]
(1) Biological monitoring:			
(a) Annual.	X		
(b) Semiannual		X	
(c) Quarterly			X
(2) Medical examination:			
(a) Biennial	X		
(b) Annual.		X	
(c) Semiannual.			X
(d) Within 90 days		X	X
(3) Assess within two weeks:			
(a) Excess cadmium exposure		X	X
(b) Work practices		X	X
(c) Personal hygiene		X	X
(d) Respirator usage		X	X
(e) Smoking history		X	X
(f) Hygiene facilities		X	X
(g) Engineering controls		X	X
(h) Correct within 30 days		X	X
(i) Periodically assess exposures			X
(4) Discretionary medical removal		X	X
(5) Mandatory medical removal			X[2]

[1] For all employees covered by medical surveillance exclusively because of exposures prior to the effective date of this standard, if they are in Category A, the employer shall follow the requirements of paragraphs (l)(3)(i)(B) and (l)(4)(v)(A). If they are in Category B or C, the employer shall follow the requirements of paragraphs (l)(4)(v)(B)–(C).

[2] See footnote Appendix A Table A.

Appendix A—Attachment–2: List of Medications

A list of the more common medications that a physician, and the employee, may wish to review is likely to include some of the following: (1) Anticonvulsants: Paramethadione, phenytoin, trimethadone; (2) antihypertensive drugs: Captopril, methyldopa; (3) antimicrobials: Aminoglycosides, amphotericin B, cephalosporins, ethambutol; (4) antineoplastic agents: Cisplatin, methotrexate, mitomycin-C, nitrosoureas, radiation; (4) sulfonamide diuretics: Acetazolamide, chlorthalidone, furosemide, thiazides; (5) halogenated alkanes, hydrocarbons, and solvents that may occur in some settings: Carbon tetrachloride, ethylene glycol, toluene; iodinated radiographic contrast media; nonsteroidal anti-inflammatory drugs; and, (7) other miscellaneous compounds: Acetominophen, allopurinol, amphetamines, azathioprine, cimetidine, cyclosporine, lithium, methoxyflurane, methysergide, D-penicillamine, phenacetin, phenendione. A list of drugs associated with acute interstitial nephritis includes: (1) Antimicrobial drugs: Cephalosporins, chloramphenicol, colistin, erythromycin, ethambutol, isoniazid, para-aminosalicylic acid, penicillins, polymyxin B, rifampin, sulfonamides, tetracyclines, and vancomycin; (2) other miscellaneous drugs: Allopurinol, antipyrene, azathioprine, captopril, cimetidine, clofibrate, methyldopa, phenindione, phenylpropanolamine, phenytoin, probenecid, sulfinpyrazone, sulfonamid diuretics, triamterene; and, (3) metals: Bismuth, gold.

This list have been derived from commonly available medical textbooks (e.g., Ex. 14–18). The list hes been included merely to facilitate the physician's, employer's, and employee's understanding. The list does not represent an official OSHA opinion or policy regarding the use of these medications for particular employees. The use of such medications should be under physician discretion.

Attachment 3—Biological Monitoring and Medical Examination Results

Employee _____
Testing Date _____
Cadmium in Urine _____ µg/g Cr—Normal Levels: ≤3 µg/g Cr.
Cadmium in Blood _____ µg/lwb—Normal Levels: ≤5 µg/lwb.
Bete-2-microglobulin in Urine _____ µg/g Cr—Normal Levels: ≤300 µg/g Cr.
Physical Examination Results: N/A _____ Satisfactory _____ Unsatisfactory _____ (see physician again).
Physician's Review of Pulmonary Function Test: N/A _____ Normal _____ Abnormal _____.
Next biological monitoring or medical examination scheduled for _____

The biological monitoring program has been designed for three main purposes: 1) to identify employees at risk of adverse health effects from excess, chronic exposure to cadmium; 2) to prevent cadmium-induced disease(s); and 3) to detect and minimize existing cadmium-induced disease(s).

The levels of cadmium in the urine and blood provide an estimate of the total amount of cadmium in the body. The amount of a specific protein in the urine (beta-2-microglobulin) indicates changes in kidney function. All three tests must be evaluated together. A single mildly elevated result may not be important if testing at a later time indicates that the results are normal and the workplace has been evaluated to decrease possible sources of cadmium exposure. The levels of cadmium or beta-2-microglobulin may change over a period of days to months and the time needed for those changes to occur is different for each worker.

If the results for biological monitoring are above specific "high levels" [cadmium urine greater than 10 micrograms per gram of creatinine (µg/g Cr), cadmium blood greater than 10 micrograms per liter of whole blood (µg/lwb), or beta-2-microglobulin greater than 1000 micrograms per gram of creatinine (µg/g Cr)], the worker has a much greater chance of developing other kidney diseases.

One way to measure for kidney function is by measuring bete-2-microglobulin ir. the urine. Beta-2-microglobulin is a protein which is normally found in the blood as it is being filtered in the kidney, and the kidney reabsorbs or returns almost all of the beta-2-microglobulin to the blood. A very small amount (less than 300 µg/g Cr in the urine) of beta-2-microglobulin is not reabsorbed into the blood, but is released in the urine. If cadmium damages the kidney, the amount of beta-2-microglobulin in the urine increases because the kidney cells are unable to reabsorb the beta-2-microglobulin normally. An increase in the amount of beta-2-microglobulin in the urine is a very early sign of kidney dysfunction. A small increase in beta-2-microglobulin in the urine will serve as an early warning sign that the worker may be absorbing cadmium from the air, cigarettes contaminated in the workplace, or eating in areas that are cadmium contamineted.

Even if cadmium causes permanent changes in the kidney's ability to reabsorb beta-2-microglobulin, and the beta-2-microglobulin is above the "high levels", the loss of kidney function may not lead to any serious he:lth problems. Also, renal function naturally declines as people age. The risk for changes in kidney function for workers who have biological monitoring results between the "normal values" and the "high levels" is not well known. Some people are more cadmium-tolerant, while others are more cadmium-susceptible.

For anyone with even a slight increase of beta-2-microglobulin, cadmium in the urine, or cadmium in the blood, it is very important to protect the kidney from further damage. Kidney damage can come from other sources than excess cadmium-exposure so it is also recommended that if a worker's levels are "high" he/she should receive counseling about drinking more water; avoiding cadmium-tainted tobacco and certain medications (nephrotoxins, acetaminophen); controlling diet, vitamin intake, blood pressure and diabetes; etc.

Appendix B to § 1915.1027—Substance Technical Guidelines for Cadmium

I. Cadmium Metal.

A. *Physical and Chemical Data.*
1. *Substance Identification.*
Chemical name: Cadmium.
Formula: Cd.
Molecular Weight: 112.4.
Chemical Abstracts Service (CAS) Registry No.: 7740–43–9.
Other Identifiers: RETCS EU9800000; EPA D006; DOT 2570 53.
Synonyms: Colloidal Cadmium: Kadmium (German): CI 77180.
2. *Physical data.*
Boiling point: (760 mm Hg): 765 degrees C.
Melting point: 321 degrees C.
Specific Gravity: (H_2O=@ 20 °C): 8.64.
Solubility: Insoluble in water; soluble in dilute nitric acid and in sulfuric acid.
Appearance: Soft, blue-white, malleable, lustrous metal or grayish-white powder.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: The finely divided metal is pyrophoric, that is the dust is a severe fire hazard and moderate explosion hazard when exposed to heat or flame. Burning material reacts violently with extinguishing agents such as water, foam, carbon dioxide, and halons.
Flash point: Flammable (dust).
Extinguishing media: Dry sand, dry dolomite, dry graphite, or sodimum chloride.
2. *Reactivity.*
Conditions contributing to instability: Stable when kept in sealed containers under normal temperatures and pressure, but dust may ignite upon contact with air. Metal tarnishes in moist air.
Incompatibilities: Ammonium nitrate, fused: Reacts violently or explosively with cadmium dust below 20 °C. Hydrozoic acid: Violent explosion occurs after 30 minutes. Acids: Reacts violently, forms hydrogen gas. Oxidizing agents or metals: Strong reaction with cadmium dust. Nitryl fluoride at slightly elevated temperature: Glowing or white incandescence occurs. Selenium: Reacts exothermically. Ammonia: Corrosive reaction. Sulfur dioxide: Corrosive reaction. Fire extinguishing agents (water, foam, carbon dioxide, and halons): Reacts violently. Tellurium: Incandescent reaction in hydrogen atmosphere.
Hazardous decomposition products: The heated metal rapidly forms highly toxic, brownish fumes of oxides of cadmium.
C. *Spill, Leak and Disposal Procedures.*
1. *Steps to be taken if the materials is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. Do not get water inside container. For large spills, dike spill for later disposal. Keep unnecessary people away. Isolate hazard area and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (1 pound) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC metropolitan area (202) 426–2675.
II. Cadmium Oxide.
A. *Physical and Chemical Date.*
1. *Substance identification.*
Chemical name: Cadmium Oxide.
Formula: CdO.
Molecular Weight: 128.4.
CAS No.: 1306–19–0.
Other Identifiers: RTECS EV1929500.
Synonyms: Kadmu tlenek (Polish).
2. *Physical data.*
Boiling point (760 mm Hg): 950 degrees C decomposes.
Melting point: 1500 °C.
Specific Gravity: (H_2O=1@20 °C): 7.0.
Solubility: Insoluble in water; soluble in acids and alkalines.
Appearance: Red or brown crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Negligible fire hazard when exposed to heat or flame.
Flash point: Nonflammable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Stable under normal temperatures and pressures.
Incompatibilities: Magnesium may reduce CdO_2 explosively on heating.
Hazardous decomposition products: Toxic fumes of cadmium.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the material is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small spills, take up with sand or other absorbent material and place into containers for later disposal. For small dry spills, use a clean shovel to place material into clean, dry container and then cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people eway. Isolate hazard area and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (1 pound) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC metropolitan area (202) 426–2675.
III. Cadmium Sulfide.
A. *Physical and Chemical Data.*
1. *Substance Identification.*
Chemical name: Cadmium sulfide.
Formula: CdS.
Molecular weight: 144.5.
CAS No. 1306–23–6.
Other Identifiers: RTECS EV3150000.
Synonyms: Aurora yellow; Cadmium Golden 366; Cadmium Lemon Yellow 527; Cadmium Orange; Cadmium Primrose 819; Cadmium Sulphide; Cadmium Yellow; Cadmium Yellow 000; Cadmium Yellow Conc. Deep; Cadmium Yellow Conc. Golden; Cadmium Yellow Conc. Lemon; Cadmium Yellow Conc. Primrose; Cadmium Yellow Oz. Dark; Cadmium Yellow Primrose 47–1400; Cadmium Yellow 10G Conc.; Cadmium Yellow 892; Cadmopur Golden Yellow N; Cadmopur Yellow: Capsebon; C.I. 77199; C.I. Pigment Orange 20; CI Pigment Yellow 37; Ferro Lemon Yellow; Ferro Orange Yellow; Ferro Yellow; Greenockite; NCI–C02711.
2. *Physical data.*
Boiling point (760 mm. Hg): sublines in N_2 at 980 °C.

Melting point: 1750 degrees C (100 atm).
Specific Gravity: (H_2O=1@ 20 °C): 4.82.
Solubility: Slightly soluble in water; soluble in acid.
Appearance: Light yellow or yellow-orange crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Neglible fire hazard when exposed to heat or flame.
Flash point: Nonflammable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Generally non-reactive under normal conditions. Reacts with acids to form toxic hydrogen sulfide gas.
Incompatibilities: Reacts vigorously with iodinemonochloride.
Hazardous decomposition products: Toxic fumes of cadmium and sulfur oxides.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the material is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small, dry spills, with a clean shovel place material into clean, dry container and cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people away. Isolate hazard and deny entry:
IV. Cadmium Chloride.
A. *Physical and Chemical Data.*
1. *Substance Identification.*
Chemical name: Cadmium chloride.
Formula: $CdCl_2$.
Molecular weight: 183.3.
CAS No. 10108–64–2.
Other Identifiers: RTECS EY0175000.
Synonyms: Caddy; Cadmium dichloride; NA 2570 (DOT); UI-CAD; dichlorocadmium.
2. *Physical data.*
Boiling point (760 mm Hg): 960 degrees C.
Melting point: 568 degrees C.
Specific Gravity: (H_2O=1 @ 20 °C): 4.05.
Solubility: Soluble in water (140 g/100 cc); soluble in acetone.
Appearance: Small, white crystals.
B. *Fire, Explosion and Reactivity Data.*
1. *Fire.*
Fire and Explosion Hazards: Negligible fire and negligible explosion hazard in dust form when exposed to heat or flame.
Flash point: Nonflamable.
Extinguishing media: Dry chemical, carbon dioxide, water spray or foam.
2. *Reactivity.*
Conditions contributing to instability: Generally stable under normal temperatures and pressures.
Incompatibilities: Bromine triflouride rapidly attacks cadmium chloride. A mixture of potassium and cadmium chloride may produce a strong explosion on impact.
Hazardous decomposition products: Thermal ecompostion may release toxic fumes of hydrogen chloride, chloride, chlorine or oxides of cadmium.
C. *Spill Leak and Disposal Procedures.*
1. *Steps to be taken if the materials is released or spilled.* Do not touch spilled material. Stop leak if you can do it without risk. For small, dry spills, with a clean shovel place material into clean, dry container and cover. Move containers from spill area. For larger spills, dike far ahead of spill for later disposal. Keep unnecessary people away. Isolate hazard and deny entry. The Superfund Amendments and Reauthorization Act of 1986 Section 304 requires that a release equal to or greater than the reportable quantity for this substance (100 pounds) must be immediately reported to the local emergency planning committee, the state emergency response commission, and the National Response Center (800) 424–8802; in Washington, DC Metropolitan area (202) 426–2675.

Appendix C to §1915.1027—Qualitative and Quantitative Fit Testing Procedures

I. Fit Test Protocols

A. General: The employer shall include the following provisions in the fit test procedures. These provisions apply to both qualitative fit testing (QLFT) and quantitative fit testing (QNFT). All testing is to be conducted annually.

1. The test subject shall be allowed to pick the most comfortable respirator from a selection including respirators of various sizes from different manufacturers. The selection shall include at least three sizes of elastomeric facepieces of the type of respirator that is to be tested, i.e., three sizes of half mask; or three sizes of full facepiece. Respirators of each size must be provided from at least two manufacturers.

2. Prior to the selection process, the test subject shall be shown how to put on a respirator, how it should be positioned on the face, how to set strap tension and how to determine a comfortable fit. A mirror shall be available to assist the subject in evaluating the fit and positioning the respirator. This instruction may not constitute the subject's formal training on respirator use; it is only a review.

3. The test subject shall be informed that he/she is being asked to select the respirator which provides the most comfortable fit. Each respirator represents a different size and shape, and if fitted, maintained end used properly, will provide substantial protection.

4. The test subject shall be instructed to hold each facepiece up to the face and eliminate those which obviously do not give a comfortable fit.

5. The more comfortable facepieces are noted; the most comfortable mask is donned and worn at least five minutes to assess comfort. Assistance in assessing comfort can be given by discussing the points in item 6 below. If the test subject is not familiar with using a particular respirator, the test subject shall be directed to don the mask several times and to adjust the straps each time to become adept at setting proper tension on the straps.

6. Assessment of comfort shall include reviewing the following points with the test subject and allowing the test subject adequate time to determine the comfort of the respirator:
(a) Position of the mask on the nose;
(b) Room for eye protection;
(c) Room to talk; and
(d) Position of mask on face and cheeks.

7. The following criteria shall be used to help determine the adequacy of the respirator fit:
(a) Chin properly placed;
(b) Adequate strap tension, not overly tightened;
(c) Fit across nose bridge;
(d) Respirator of proper size to span distance from nose to chin;
(e) Tendency of respirator to slip; and
(f) Self-observation in mirror to evaluate fit and respirator position.

8. The test subject shall conduct the negative and positive pressure fit checks as described below or in ANSI Z88.2–1980. Before conducting the negative or positive pressure test, the subject shall be told to seat the mask on the face by moving the head from side-to-side and up and down slowly while taking in a few slow deep breaths. Another facepiece shall be selected and retested if the test subject fails the fit check tests.

(a). *Positive pressure test.* Close off the exhalation valve and exhale gently onto the facepiece. The face fit is considered satisfactory if a slight positive pressure can be built up inside the facepiece without any evidence of outward leakage of air at the seal. For most respirators this method of leak testing requires the wearer to first remove the exhalation valve cover before closing off the exhalation valve and then carefully replacing it after the test.

(b). *Negative pressure test.* Close off the inlet opening of the canister or cartridge(s) by covering with the palm of the hand(s) or by replacing the filter seal(s). Inhale gently so that the facepiece collapses slightly, and hold the breath for ten seconds. If the facepiece remains in its slightly collapsed condition and no inward leakage of air is detected, the tightness of the respirator is considered satisfactory.

9. The test shall not be conducted if there is any hair growth between the skin and the facepiece sealing surface, such as stubble beard growth, beard, or long sideburns which cross the respirator sealing surface. Any type of apparel which interferes with a satisfactory fit shall be altered or removed.

10. If a test subject exhibits difficulty in breathing during the tests, she or he shall be referred to a physician trained in respiratory disease or pulmonary medicine to determine, in accordance with paragraph (I)(2) and (3) of this standard, whether the test subject can wear a respirator while performing her or his duties.

11. The test subject shall be given the opportunity to wear the successfully fitted respirator for a period of two weeks. If at any time during this period the respirator becomes uncomfortable, the test subject shall be given the opportunity to select a different facepiece and to be retested.

12. The employer shall maintain a record of the fit test administered to an employee. The record shall contain at least the following information:
(a) Name of employee;
(b) Type of respirator;
(c) Brand, size of respirator;
(d) Date of test; and
(e) Where QNFT is used, the fit factor and strip chart recording or other recording of the results of the test. The record shall be maintained until the next fit test is administered.

13. Exercise regimen. Prior to the commencement of the fit test, the test subject shall be given a description of the fit test and the test subject's responsibilities during the test procedure. The description of the process shall include a description of the test exercises that the subject will be performing. The respirator to be tested shall be worn for at least 5 minutes before the start of the fit test.

14. Test Exercises. The test subject shall perform exercises, in the test environment, in the manner described below:
(a) Normal breathing. In a normal standing position, without talking, the subject shall breathe normally.
(b) Deep breathing. In a normal standing position, without talking, the subject shall breathe slowly and deeply, taking care so as to not hyperventilate.
(c) Turning head side to side. Standing in place, the subject shall slowly turn his/her head from side to side between the extreme positions on each side. The head shall be held at each extreme momentarily so the subject can inhale at each side.
(d) Moving head up and down. Standing in place, the subject shall slowly move his/her head up and down. The subject shall be instructed to inhale in the up position (i.e., when looking toward the ceiling).
(e) Talking. The subject shall talk out loud slowly and loud enough so as to be heard clearly by the test conductor. The subject can read from a prepared text such as the Rainbow Passage, count backward from 100, or recite a memorized poem or song.
(f) Grimace. The test subject shall grimace by smiling or frowning.
(g) Bending over. The test subject shall bend at the waist as if he/she were to touch his/her toes. Jogging in place shall be substituted for this exercise in those test environments such as shroud type QNFT units which prohibit bending at the waist.
(h) Normal breathing. Same as exercise 1. Each test exercise shall be performed for one minute except for the grimace exercise which shall be performed for 15 seconds. The test subject shall be questioned by the test conductor regarding the comfort of the respirator upon completion of the protocol. If it has become uncomfortable, another model of respirator shall be tried.

B. Qualitative Fit Test (QLFT) Protocols

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator qualitative fit test program.
(b) The employer shall assure that persons administering QLFTs are able to prepare test solutions, calibrate equipment and perform tests properly, recognize invalid tests, and assure that test equipment is in proper working order.
(c) The employer shall assure that QLFT equipment is kept clean and well maintained so as to operate within the parameters for which it was designed.

2. Isoamyl Acetate Protocol

(a) Odor threshold screening. The odor threshold screening test, performed without wearing a respirator, is intended to determine if the individual tested can detect the odor of isoamyl acetate.
(1) Three 1-liter glass jars with metal lids are required.
(2) Odor free water (e.g. distilled or spring water) at approximately 25 degrees C shall be used for the solutions.
(3) The isoamyl acetate (IAA) (also known as isopentyl acetate) stock solution is prepared by adding 1 cc of pure IAA to 800 cc of odor free water in a 1 liter jar and shaking for 30 seconds. A new solution shall be prepared at least weekly.
(4) The screening test shall be conducted in a room separate from the room used for actual fit testing. The two rooms shall be well ventilated and shall not be connected to the same recirculating ventilation system.
(5) The odor test solution is prepared in a second jar by placing 0.4 cc of the stock solution into 500 cc of odor free water using a clean dropper or pipette. The solution shall be shaken for 30 seconds and allowed to stand for two to three minutes so that the IAA concentration above the liquid may reach equilibrium. This solution shall be used for only one day.
(6) A test blank shall be prepared in a third jar by adding 500 cc of odor free water.
(7) The odor test and test blank jars shall be labeled 1 and 2 for jar identification. Labels shall be placed on the lids so they can be periodically peeled, dried off and switched to maintain the integrity of the test.
(8) The following instruction shall be typed on a card and placed on the table in front of the two test jars (i.e., 1 and 2): "The purpose of this test is to determine if you can smell banana oil at a low concentration. The two bottles in front of you contain water. One of these bottles also contains a small amount of banana oil. Be sure the covers are on tight, then shake each bottle for two seconds. Unscrew the lid of each bottle, one at a time, and sniff at the mouth of the bottle. Indicate to the test conductor which bottle contains banana oil."
(9) The mixtures used in the IAA odor detection test shall be prepared in an area separate from where the test is performed, in order to prevent olfactory fatigue in the subject.
(10) If the test subject is unable to correctly identify the jar containing the odor test solution, the IAA qualitative fit test shall not be performed.
(11) If the test subject correctly identifies the jar containing the odor test solution, the test subject may proceed to respirator selection and fit testing.
(b) Isoamyl acetate fit test—
(1) The fit test chamber shall be similar to a clear 55-gallon drum liner suspended inverted over a 2-foot diameter frame so that the top of the chamber is about 6 inches above the test subject's head. The inside top center of the chamber shall have a small hook attached.
(2) Each respirator used for the fitting and fit testing shall be equipped with organic vapor cartridges or offer protection against organic vapors. The cartridges or masks shall be changed at least weekly.
(3) After selecting, donning, and properly adjusting a respirator, the test subject shall wear it to the fit testing room. This room shall be separate from the room used for odor threshold screening and respirator selection, and shall be well ventilated, as by an exhaust fan or lab hood, to prevent general room contamination.
(4) A copy of the test exercises and any prepared text from which the subject is to read shall be taped to the inside of the test chamber.
(5) Upon entering the test chamber, the test subject shall be given a 6-inch by 5-inch piece of paper towel, or other porous, absorbent, single-ply material, folded in half and wetted with 0.75 cc of pure IAA. The test subject shall hang the wet towel on the hook at the top of the chamber.
(6) Allow two minutes for the IAA test concentration to stabilize before starting the fit test exercises. This would be an appropriate time to talk with the test subject; to explain the fit test, the importance of his/her cooperation, and the purpose for the head exercises; and to demonstrate some of the exercises.
(7) If at any time during the test, the subject detects the banana like odor of IAA, the respirator fit is inadequate. The subject shall quickly exit from the test chamber and leave the test area to avoid olfactory fatigue.
(8) If the respirator fit was inadequate, the subject shall return to the selection room and remove the respirator, repeat the odor sensitivity test, select and put on another respirator, return to the test chamber and again begin the procedure described in paragraph (I)(B)(2)(b) (1) through (7) of this appendix. The process continues until a respirator that fits well has been found. Should the odor sensitivity test be failed, the subject shall wait about 5 minutes before retesting. Odor sensitivity will usually have returned by this time.
(9) When a respirator is found that passes the test, its efficiency shall be demonstrated for the subject by having the subject break the face seal and take a breath before exiting the chamber.
(10) When the test subject leaves the chamber, the subject shall remove the saturated towel and return it to the person conducting the test. To keep the test area from becoming contaminated, the used towels shall be kept in a self sealing bag so there is no significant IAA concentration build-up in the test chamber during subsequent tests.

3. Irritant Fume Protocol

(a) The respirator to be tested shall be equipped with high-efficiency particulate air (HEPA) filters.
(b) The test subject shall be allowed to smell a weak concentration of the irritant smoke before the respirator is donned to become familiar with its characteristic odor.
(c) Break both ends of a ventilation smoke tube containing stannic oxychloride, such as the MSA part No. 5645, or equivalent. Attach one end of the smoke tube to a low flow air pump set to deliver 200 milliliters per minute.
(d) Advise the test subject that the smoke can be irritating to the eyes and instruct the subject to keep his/her eyes closed while the test is performed.
(e) The test conductor shall direct the stream of irritant smoke from the smoke tube

towards the face seal area of the test subject. He/she shall begin at least 12 inches from the facepiece and gradually move to within one inch, moving around the whole perimeter of the mask.

(f) The exercises identified in section I. A. 14 above shall be performed by the test subject while the respirator seal is being challenged by the smoke.

(g) Each test subject passing the smoke test without evidence of a response shall be given a sensitivity check of the smoke from the same tube once the respirator has been removed to determine whether he/she reacts to the smoke. Failure to evoke a response shall void the fit test.

(h) The fit test shall be performed in a location with exhaust ventilation sufficient to prevent general contamination of the testing area by the test agent.

4. Saccharin Solution Aerosol Protocol

The entire screening and testing procedure shall be explained to the test subject prior to the conduct of the screening test.

(a) Taste threshold screening. The saccharin taste threshold screening, performed without wearing a respirator, is intended to determine whether the individual being tested can detect the taste of saccharin.

(1) Threshold screening as well as fit testing subjects shall wear an enclosure about the head and shoulders that is approximately 12 inches in diameter by 14 inches tall with at least the front portion clear and that allows free movements of the head when a respirator is worn. An enclosure substantially similar to the 3M hood assembly, parts # FT 14 and # FT 15 combined, is adequate.

(2) The test enclosure shall have a ¾ inch hole in front of the test subject's nose and mouth area to accommodate the nebulizer nozzle.

(3) The test subject shall don the test enclosure. Throughout the threshold screening test, the test subject shall breathe through his/her wide open mouth with tongue extended.

(4) Using a DeVilbiss Model 40 Inhalation Medication Nebulizer the test conductor shall spray the threshold check solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the fit test solution nebulizer.

(5) The threshold check solution consists of 0.83 grams of sodium saccharin USP in 1 cc of warm water. It can be prepared by putting 1 cc of the fit test solution (see (b)(5) below) in 100 cc of distilled water.

(6) To produce the aerosol, the nebulizer bulb is firmly squeezed so that it collapses completely, then released and allowed to fully expand.

(7) Ten squeezes are repeated rapidly and then the test subject is asked whether the saccharin can be tasted.

(8) If the first response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(9) If the second response is negative, ten more squeezes are repeated rapidly and the test subject is again asked whether the saccharin is tasted.

(10) The test conductor will take note of the number of squeezes required to solicit a taste response.

(11) If the saccharin is not tasted after 30 squeezes (step 10), the test subject may not perform the saccharin fit test.

(12) If a taste response is elicited, the test subject shall be asked to take note of the taste for reference in the fit test.

(13) Correct use of the nebulizer means that approximately 1 cc of liquid is used at a time in the nebulizer body.

(14) The nebulizer shall be thoroughly rinsed in water, shaken dry, and refilled at least each morning and afternoon or at least every four hours.

(b) Saccharin solution aerosol fit test procedure

(1) The test subject may not eat, drink (except plain water), or chew gum for 15 minutes before the test.

(2) The fit test uses the same enclosure described in (a) above.

(3) The test subject shall don the enclosure while wearing the respirator selected in section (a) above. The respirator shall be properly adjusted and equipped with a particulate filter(s).

(4) A second DeVilbiss Model 40 Inhalation Medication Nebulizer is used to spray the fit test solution into the enclosure. This nebulizer shall be clearly marked to distinguish it from the screening test solution nebulizer.

(5) The fit test solution is prepared by adding 83 grams of sodium saccharin to 100 cc of warm water.

(6) As before, the test subject shall breathe through the open mouth with tongue extended.

(7) The nebulizer is inserted into the hole in the front of the enclosure and the fit test solution is sprayed into the enclosure using the same number of squeezes required to elicit a taste response in the screening test.

(8) After generating the aerosol the test subject shall be instructed to perform the exercises in section I.A. 14 above.

(9) Every 30 seconds the aerosol concentration shall be replenished using one half the number of squeezes as initially.

(10) The test subject shall indicate to the test conductor if at any time during the fit test the taste of saccharin is detected.

(11) If the taste of saccharin is detected, the fit is deemed unsatisfactory and a different respirator shall be tried".

C. Quantitative Fit Test (QNFT) Protocol

1. General

(a) The employer shall assign specific individuals who shall assume full responsibility for implementing the respirator quantitative fit test program.

(b) The employer shall ensure that persons administering QNFT are able to calibrate equipment and perform tests properly, recognize invalid tests, calculate fit factors properly and assure that test equipment is in proper working order.

(c) The employer shall assure that QNFT equipment is kept clean and well maintained so as to operate at the parameters for which it was designed.

2. Definitions

(a) Quantitative fit test. The test is performed in a test chamber. The normal air-purifying element of the respirator is replaced by a high-efficiency particulate air (HEPA) filter in the case of particulate QNFT aerosols or a sorbent offering contaminant penetration protection equivalent to high-efficiency filters where the QNFT test agent is a gas or vapor.

(b) Challenge agent means the aerosol, gas or vapor introduced into a test chamber so that its concentration inside and outside the respirator may be measured.

(c) Test subject means the person wearing the respirator for quantitative fit testing.

(d) Normal standing position means standing erect and straight with arms down along the sides and looking straight ahead.

(e) Maximum peak penetration method means the method of determining test agent penetration in the respirator as determined by strip chart recordings of the test. The highest peak penetration for a given exercise is taken to be representative of average penetration into the respirator for that exercise.

(f) Average peak penetration method means the method of determining test agent penetration into the respirator utilizing a strip chart recorder, integrator, or computer. The agent penetration is determined by an average of the peak heights on the graph or by computer integration, for each exercise except the grimace exercise. Integrators or computers which calculate the actual test agent penetration into the respirator for each exercise will also be considered to meet the requirements of the average peak penetration method.

(g) "Fit Factor" means the ration of challenge agent concentration outside with respect to the inside of a respirator inlet covering (facepiece or enclosure).

3. Apparatus

(a) Instrumentation. Aerosol generation, dilution, and measurement systems using corn oil or sodium chloride as test aerosols shall be used for quantitative fit testing.

(b) Test chamber. The test chamber shall be large enough to permit all test subjects to perform freely all required exercises without disturbing the challenge agent concentration or the measurement apparatus. The test chamber shall be equipped and constructed so that the challenge agent is effectively isolated from the ambient air, yet uniform in concentration throughout the chamber.

(c) When testing air-purifying respirators, the normal filter or cartridge element shall be replaced with a high-efficiency particulate filter supplied by the same manufacturer.

(d) The sampling instrument shall be selected so that a strip chart record may be made of the test showing the rise and fall of the challenge agent concentration with each inspiration and expiration at fit factors of at least 2,000. Integrators or computers which integrate the amount of test agent penetration leakage into the respirator for each exercise may be used provided a record of the readings is made.

(e) The combination of substitute air-purifying elements, challenge agent and challenge agent concentration in the test chamber shall be such that the test subject is not exposed in excess of an established exposure limit for the challenge agent at any time during the testing process.

(f) The sampling port on the test specimen respirator shall be placed and constructed so that no leakage occurs around the port (e.g. where the respirator is probed), a free air flow is allowed into the sampling line at all times and so that there is no interference with the fit or performance of the respirator.

(g) The test chamber and test set up shall permit the person administering the test to observe the test subject inside the chamber during the test.

(h) The equipment generating the challenge atmosphere shall maintain the concentration of challenge agent inside the test chamber constant to within a 10-percent variation for the duration of the test.

(i) The time lag (interval between an event and the recording of the event on the strip chart or computer or integrator) shall be kept to a minimum. There shall be a clear association between the occurrence of an event inside the test chamber and its being recorded.

(j) The sampling line tubing for the test chamber atmosphere and for the respirator sampling port shall be of equal diameter and of the same material. The length of the two lines shall be equal.

(k) The exhaust flow from the test chamber shall pass through a high-efficiency filter before release.

(l) When sodium chloride aerosol is used, the relative humidity inside the test chamber shall not exceed 50 percent.

(m) The limitations of instrument detection shall be taken into account when determining the fit factor

(n) Test respirators shall be maintained in proper working order and inspected for deficiencies such as cracks, missing valves and gaskets, etc.

4. Procedural Requirements

(a) When performing the initial positive or negative pressure test the sampling line shall be crimped closed in order to avoid air pressure leakage during either of these tests.

(b) An abbreviated screening isoamyl acetate test or irritant fume test may be utilized in order to quickly identify poor fitting respirators which passed the positive and/or negative pressure test and thus reduce the amount of QNFT time. When performing a screening isoamyl acetate test, combination high-efficiency organic vapor cartridges/canisters shall be used.

(c) A reasonably stable challenge agent concentration shall be measured in the test chamber prior to testing. For canopy or shower curtain type of test units the determination of the challenge agent stability may be established after the test subject has entered the test environment.

(d) Immediately after the subject enters the test chamber, the challenge agent concentration inside the respirator shall be measured to ensure that the peak penetration does not exceed 5 percent for a half mask or 1 percent for a full facepiece respirator.

(e) A stable challenge concentration shall be obtained prior to the actual start of testing.

(f) Respirator restraining straps shall not be overtightened for testing. The straps shall be adjusted by the wearer without assistance from other persons to give a reasonable comfortable fit typical of normal use.

(g) The test shall be terminated whenever any single peak penetration exceeds 5 percent for half masks and 1 percent for full facepiece respirators. The test subject shall be refitted and retested. If two of the three required tests are terminated, the fit shall be deemed inadequate.

(h) In order to successfully complete a QNFT, three successful fit tests are required. The results of each of the three independent fit tests must exceed the minimum fit factor needed for the class of respirator (e.g. half mask respirator, full facepiece respirator).

(i) Calculation of fit factors.

(1) The fit factor shall be determined for the quantitative fit test by taking the ratio of the average chamber concentration to the concentration inside the respirator.

(2) The average test chamber concentration is the arithmetic average of the test chamber concentration at the beginning and at the end of the test.

(3) The concentration of the challenge agent inside the respirator shall be determined by one of the following methods:

(i) Average peak concentration;

(ii) Maximum peak concentration;

(iii) Integration by calculation of the area under the individual peak for each exercise. This includes computerized integration.

(j) Interpretation of test results. The fit factor established by the quantitative fit testing shall be the lowest of the three fit factor values calculated from the three required fit tests.

(k) The test subject shall not be permitted to wear a half mask, or full facepiece respirator unless a minimum fit factor equivalent to at least 10 times the hazardous exposure level is obtained.

(l) Filters used for quantitative fit testing shall be replaced at least weekly, or whenever increased breathing resistance is encountered, or when the test agent has altered the integrity of the filter media. Organic vapor cartridges/canisters shall be replaced daily (when used) or sooner if there is any indication of breakthrough by a test agent.

Appendix D to § 1915.1027—Occupational Health History Interview With Reference to Cadmium Exposure

Directions

(To be read by employee and signed prior to the interview)

Please answer the questions you will be asked as completely and carefully as you can. These questions are asked of everyone who works with cadmium. You will also be asked to give blood and urine samples. The doctor will give your employer a written opinion on whether you are physically capable of working with cadmium. Legally, the doctor cannot share personal information you may tell him/her with your employer. The following information is considered strictly confidential. The results of the tests will go to you, your doctor and your employer. You will also receive an information sheet explaining the results of any biological monitoring or physical examinations performed.

If you are just being hired, the results of this interview and examination will be used to:

(1) Establish your health status and see if working with cadmium might be expected to cause unusual problems,

(2) Determine your health status today and see if there are changes over time,

(3) See if you can wear a respirator safely.

If you are not a new hire:

OSHA says that everyone who works with cadmium can have periodic medical examinations performed by a doctor. The reasons for this are:

(a) If there are changes in your health, either because of cadmium or some other reason, to find them early,

(b) to prevent kidney damage.

Please sign below.

I have read these directions and understand them.

Employee signature

Date

Thank you for answering these questions.

(Suggested Format)

Name _____

Age _____

Social Security # _____

Company _____

Job _____

Type of Preplacement Exam:

[ ] Periodic

[ ] Termination

[ ] Initial

[ ] Other

Blood Pressure _____

Pulse Rate _____

1. How long have you worked at the job listed above?

[ ] Not yet hired

[ ] Number of months

[ ] Number of years

2. Job Duties etc.

_____

_____

_____

3. Have you *ever* been told by a doctor that you had bronchitis?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Number of months

[ ] Number of years

4. Have you *ever* been told by a doctor that you had emphysema?

[ ] Yes

[ ] No

If yes, how long ago?

[ ] Number of years

[ ] Number of months

5. Have you ever been told by a doctor that you had other lung problems?

[ ] Yes

[ ] No

If yes, please describe type of lung problems and when you had these problems

6. In the past year, have you had a cough?
[ ] Yes
[ ] No
If yes, did you cough up sputum?
[ ] Yes
[ ] No
If yes, how long did the cough with sputum production last?
[ ] Less than 3 months
[ ] 3 months or longer
If yes, for how many years have you had episodes of cough with sputum production lasting this long?
[ ] Less than one
[ ] 1
[ ] 2
[ ] Longer than 2

7 Have you ever smoked cigarettes?
[ ] Yes
[ ] No

8. Do you now smoke cigarettes?
[ ] Yes
[ ] No

9. If you smoke or have smoked cigarettes, for how many years have you smoked, or did you smoke?
[ ] Less than 1 year
[ ] Number of years
What is or was the greatest number of packs per day that you have smoked?
[ ] Number of packs
If you quit smoking cigarettes, how many years ago did you quit?
[ ] Less than 1 year
[ ] Number of years
How many packs a day do you now smoke?
[ ] Number of packs per day

10. Have you ever been told by a doctor that you had a kidney or urinary tract disease or disorder?
[ ] Yes
[ ] No

11. Have you ever had any of these disorders?

Kidney stones	[ ] Yes	[ ] No
Protein in urine	[ ] Yes	[ ] No
Blood in urine	[ ] Yes	[ ] No
Difficulty urinating	[ ] Yes	[ ] No
Other kidney/Urinary disorders.	[ ] Yes	[ ] No

Please describe problems, age, treatment, and follow up for any kidney or urinary problems you have had:

12. Have you ever been told by a doctor or other health care provider who took your blood pressure that your blood pressure was high?
[ ] Yes
[ ] No

13. Have you ever been advised to take any blood pressure medication?
[ ] Yes
[ ] No

14. Are you presently taking any blood pressure medication?
[ ] Yes
[ ] No

15. Are you presently taking any other medication?
[ ] Yes
[ ] No

16. Please list any blood pressure or other medications and describe how long you have been taking each one:
Medicine:

How Long Taken

17. Have you ever been told by a doctor that you have diabetes? (sugar in your blood or urine)
[ ] Yes
[ ] No
If yes, do you presently see a doctor about your diabetes?
[ ] Yes
[ ] No
If yes, how do you control your blood sugar?
[ ] Diet alone
[ ] Diet plus oral medicine
[ ] Diet plus insulin (injection)

18. Have you ever been told by a doctor that you had:

Anemia	[ ] Yes	[ ] No
A low blood count?	[ ] Yes	[ ] No

19. Do you presently feel that you tire or run out of energy sooner than normal or sooner than other people your age?
[ ] Yes
[ ] No
If yes, for how long have you felt that you tire easily?
[ ] Less than 1 year
[ ] Number of years

20. Have you given blood within the last year?
[ ] Yes
[ ] No
If yes, how many times?
[ ] Number of times
How long ago was the last time you gave blood?
[ ] Less than 1 month
[ ] Number of months

21. Within the last year have you had any injuries with heavy bleeding?
[ ] Yes
[ ] No
If yes, how long ago?
[ ] Less than 1 month
[ ] Number of months
Describe:

22. Have you recently had any surgery?
[ ] Yes
[ ] No
If yes, please describe:

23. Have you seen any blood lately in your stool or after a bowel movement?
[ ] Yes
[ ] No

24. Have you ever had a test for blood in your stool?
[ ] Yes
[ ] No
If yes, did the test show any blood in the stool?
[ ] Yes
[ ] No
What further evaluation and treatment were done?

The following questions pertain to the ability to wear a respirator. Additional information for the physician can be found in The Respiratory Protective Devices Manual.

25. Have you ever been told by a doctor that you have asthma?
[ ] Yes
[ ] No
If yes, are you presently taking any medication for asthma? Mark all that apply
[ ] Shots
[ ] Pills
[ ] Inhaler

26. Have you ever had a heart attack?
[ ] Yes
[ ] No
If yes, how long ago?
[ ] Number of years
[ ] Number of months

27. Have you ever had pains in your chest?
[ ] Yes
[ ] No
If yes, when did it usually happen?
[ ] While resting
[ ] While working
[ ] While exercising
[ ] Activity didn't matter

28. Have you ever had a thyroid problem?
[ ] Yes
[ ] No

29. Have you ever had a seizure or fits?
[ ] Yes
[ ] No

30. Have you ever had a stroke (cerebrovascular accident)?
[ ] Yes
[ ] No

31. Have you ever had a ruptured eardrum or a serious hearing problem?
[ ] Yes
[ ] No

32. Do you now have a claustrophobia, meaning fear of crowded or closed in spaces or any psychological problems that would make it hard for you to wear a respirator?
[ ] Yes
[ ] No

The following questions pertain to reproductive history

33. Have you or your partner had a problem conceiving a child?
[ ] Yes
[ ] No
If yes, specify
[ ] Self
[ ] Present mate
[ ] Previous mate

34. Have you or your partner consulted a physician for a fertility or other reproductive problem?
[ ] Yes
[ ] No
If yes, specify who consulted the physician:
[ ] Self
[ ] Spouse/partner
[ ] Self and partner
If yes, specify diagnosis made:

35. Have you or your partner ever conceived a child resulting in a miscarriage, still birth or deformed offspring?
[ ] Yes
[ ] No
If yes, specify:
[ ] Miscarriage
[ ] Still birth
[ ] Deformed offspring
If outcome was a deformed offspring, please specify type:

36. Was this outcome a result of a pregnancy of:
[ ] Yours with present partner
[ ] Yours with a previous partner

37 Did the timing of any abnormal pregnancy outcome coincide with present employment?
[ ] Yes
[ ] No
List dates of occurrences:

38. What is the occupation of your spouse or partner?

For Women Only

39. Do you have menstrual periods?
[ ] Yes
[ ] No
Have you had menstrual irregularities?
[ ] Yes
[ ] No
If yes, specify type:

If yes, what was the approximate date this problem began?

Approximate date problem stopped?

For Men Only

40. Have you ever been diagnosed by a physician as having prostate gland problem(s)?
[ ] Yes
[ ] No
If yes, please describe type of problem(s) and what was done to evaluate and treat the problem(s):

Appendix E to § 1915.1027—Cadmium in Workplace Atmospheres

Method Number: ID–189
Matrix: Air
OSHA Permissible Exposure Limits: 5 μg/m³ (TWA), 2.5 μg/m³ (Action Level TWA)
Collection Procedure: A known volume of air is drawn through a 37-mm diameter filter cassette containing a 0.8-μm mixed cellulose ester membrane filter (MCEF).
Recommended Air Volume: 960 L
Recommended Sampling Rate: 2.0 L/min
Analytical Procedure: Air filter samples are digested with nitric acid. After digestion, a small amount of hydrochloric acid is added. The samples are then diluted to volume with deionized water and analyzed by either flame atomic absorption spectroscopy (AAS) or flameless atomic absorption spectroscopy using a heated graphite furnace atomizer (AAS-HGA).
Detection Limits:
Qualitative: 0.2 μg/m³ for a 200 L sample by Flame AAS, 0.007 μg/m³ for a 60 L sample by AAS–HGA
Quantitative: 0.70 μg/m³ for a 200 L sample by Flame AAS, 0.025 μg/m³ for a 60 L sample by AAS–HGA
Precision and Accuracy: (Flame AAS Analysis and AAS–HGA Analysis):
Validation Level: 2.5 to 10 μg/m³ for a 400 L air vol, 1.25 to 5.0 μg/m³ for a 60 L air vol
CV_T (pooled): 0.010, 0.043
Analytical Bias: +4.0%, −5.8%
Overall Analytical Error: ±6.0%, ±14.2%
Method Classification: Validated
Date: June, 1992

Inorganic Service Branch II, OSHA Salt Lake Technical Center, Salt Lake City, Utah

Commercial manufacturers and products mentioned in this method are for descriptive use only and do not constitute endorsements by USDOL-OSHA. Similar products from other sources can be substituted.

1. Introduction

1.1. Scope

This method describes the collection of airborne elemental cadmium and cadmium compounds on 0.8-μm mixed cellulose ester membrane filters and their subsequent analysis by either flame atomic absorption spectroscopy (AAS) or flameless atomic absorption spectroscopy using a heated graphite furnace atomizer (AAS-HGA). It is applicable for both TWA and Action Level TWA Permissible Exposure Level (PEL) measurements. The two atomic absorption analytical techniques included in the method do not differentiate between cadmium fume and cadmium dust samples. They also do not differentiate between elemental cadmium and its compounds.

1.2. Principle

Airborne elemental cadmium and cadmium compounds are collected on a 0.8-μm mixed cellulose ester membrane filter (MCEF). The air filter samples are digested with concentrated nitric acid to destroy the organic matrix and dissolve the cadmium analytes. After digestion, a small amount of concentrated hydrochloric acid is added to help dissolve other metals which may be present. The samples are diluted to volume with deionized water and then aspirated into the oxidizing air/acetylene flame of an atomic absorption spectrophotometer for analysis of elemental cadmium.

If the concentration of cadmium in a sample solution is too low for quantitation by this flame AAS analytical technique, and the sample is to be averaged with other samples for TWA calculations, aliquots of the sample and a matrix modifier are later injected onto a L'vov platform in a pyrolytically-coated graphite tube of a Zeeman atomic absorption spectrophotometer/graphite furnace assembly for analysis of elemental cadmium. The matrix modifier is added to stabilize the cadmium metal and minimize sodium chloride as an interference during the high temperature charring step of the analysis (5.1., 5.2.).

1.3. History

Previously, two OSHA sampling and analytical methods for cadmium were used concurrently (5.3., 5.4.). Both of these methods also required 0.8-μm mixed cellulose ester membrane filters for the collection of air samples. These cadmium air filter samples were analyzed by either flame atomic absorption spectroscopy (5.3.) or inductively coupled plasma/atomic emission spectroscopy (ICP-AES) (5.4.). Neither of these two analytical methods have adequate sensitivity for measuring workplace exposure to airborne cadmium at the new lower TWA and Action Level TWA PEL levels when consecutive samples are taken on one employee and the sample results need to be averaged with other samples to determine a single TWA.

The inclusion of two atomic absorption analytical techniques in the new sampling and analysis method for airborne cadmium permits quantitation of sample results over a broad range of exposure levels and sampling periods. The flame AAS analytical technique included in this method is similar to the previous procedure given in the General Metals Method ID–121 (5.3.) with some modifications. The sensitivity of the AAS-HGA analytical technique included in this method is adequate to measure exposure levels at 1/10 the Action Level TWA, or lower, when less than full-shift samples need to be averaged together.

1.4. Properties (5.5.)

Elemental cadmium is a silver-white, blue-tinged, lustrous metal which is easily cut with a knife. It is slowly oxidized by moist air to form cadmium oxide. It is insoluble in water, but reacts readily with dilute nitric acid. Some of the physical properties and other descriptive information of elemental cadmium are given below:

CAS No.	7440–43–9
Atomic Number	48
Atomic Symbol	Cd
Atomic Weight	112.41
Melting Point	321 °C
Boiling Point	765 °C
Density	8.65 g/mL (25 °C)

The properties of specific cadmium compounds are described in reference 5.5.

1.5. Method Performance

A synopsis of method performance is presented below. Further information can be found in Section 4.

1.5.1. The qualitative and quantitative detection limits for the flame AAS analytical technique are 0.04 μg (0.004 μg/mL) and 0.14 μg (0.014 μg/mL) cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.2 μg/m³ and 0.70 μg/m³ for a 200 L air volume.

1.5.2. The qualitative and quantitative detection limits for the AAS-HGA analytical technique are 0.44 ng (0.044 ng/mL) and 1.5

ng (0.15 ng/mL) cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.007 µg/m³ and 0.025 µg/m³ for a 60 L air volume.

1.5.3. The average recovery by the flame AAS analytical technique of 17 spiked MCEF samples containing cadmium in the range of 0.5 to 2.0 times the TWA target concentration of 5 µg/m³ (assuming a 400 L air volume) was 104.0% with a pooled coefficient of variation (CV_1) of 0.010. The flame analytical technique exhibited a positive bias of +4.0% for the validated concentration range. The overall analytical error (OAE) for the flame AAS analytical technique was ±6.0%.

1.5.4. The average recovery by the AAS-HGA analytical technique of 18 spiked MCEF samples containing cadmium in the range of 0.5 to 2.0 times the Action Level TWA target concentration of 2.5 µg/m³ (assuming a 60 L air volume) was 94.2% with a pooled coefficient of variation (CV_1) of 0.043. The AAS-HGA analytical technique exhibited a negative bias of −5.8% for the validated concentration range. The overall analytical error (OAE) for the AAS-HGA analytical technique was ±14.2%.

1.5.5. Sensitivity in flame atomic absorption is defined as the characteristic concentration of an element required to produce a signal of 1% absorbance (0.0044 absorbance units). Sensitivity values are listed for each element by the atomic absorption spectrophotometer manufacturer and have proved to be a very valuable diagnostic tool to determine if instrumental parameters are optimized and if the instrument is performing up to specification. The sensitivity of the spectrophotometer used in the validation of the flame AAS analytical technique agreed with the manufacturer specifications (5.6.); the 2 µg/mL cadmium standard gave an absorbance reading of 0.350 abs. units.

1.5.6. Sensitivity in graphite furnace atomic absorption is defined in terms of the characteristic mass, the number of picograms required to give an integrated absorbance value of 0.0044 absorbance-second (5.7.). Data suggests that under Stabilized Temperature Platform Furnace (STPF) conditions (see Section 1.6.2.), characteristic mass values are transferable between properly functioning instruments to an accuracy of about 20% (5.2.). The characteristic mass for STPF analysis of cadmium with Zeeman background correction listed by the manufacturer of the instrument used in the validation of the AAS-HGA analytical technique was 0.35 pg. The experimental characteristic mass value observed during the determination of the working range and detection limits of the AAS-HGA analytical technique was 0.41 pg.

1.6. Interferences

1.6.1. High concentrations of silicate interfere in determining cadmium by flame AAS (5.6.). However, silicates are not significantly soluble in the acid matrix used to prepare the samples.

1.6.2. Interferences, such as background absorption, are reduced to a minimum in the AAS-HGA analytical technique by taking full advantage of the Stabilized Temperature Platform Furnace (STPF) concept. STPF includes all of the following parameters (5.2.):

a. Integrated Absorbance,
b. Fast Instrument Electronics and Sampling Frequency,
c. Background Correction,
d. Maximum Power Heating,
e. Atomization off the L'vov platform in a pyrolytically coated graphite tube,
f. Gas Stop during Atomization,
g. Use of Matrix Modifiers.

1.7. Toxicology (5.14.)

Information listed within this section is synopsis of current knowledge of the physiological effects of cadmium and is not intended to be used as the basis for OSHA policy. IARC classifies cadmium and certain of its compounds as Group 2A carcinogens (probably carcinogenic to humans). Cadmium fume is intensely irritating to the respiratory tract. Workplace exposure to cadmium can cause both chronic and acute effects. Acute effects include tracheobronchitis, pneumonitis, and pulmonary edema. Chronic effects include anemia, rhinitis/anosmia, pulmonary emphysema, proteinuria and lung cancer. The primary target organs for chronic disease are the kidneys (non-carcinogenic) and the lungs (carcinogenic).

2. Sampling

2.1. Apparatus

2.1.1. Filter cassette unit for air sampling: A 37-mm diameter mixed cellulose ester membrane filter with a pore size of 0.8-µm contained in a 37-mm polystyrene two- or three-piece cassette filter holder (part no. MAWP 037 A0, Millipore Corp., Bedford, MA). The filter is supported with a cellulose backup pad. The cassette is sealed prior to use with a shrinkable gel band.

2.1.2. A calibrated personal sampling pump whose flow is determined to an accuracy of ±5% at the recommended flow rate with the filter cassette unit in line.

2.2. Procedure

2.2.1. Attach the prepared cassette to the calibrated sampling pump (the backup pad should face the pump) using flexible tubing. Place the sampling device on the employee such that air is sampled from the breathing zone.

2.2.2. Collect air samples at a flow rate of 2.0 L/min. If the filter does not become overloaded, a full-shift (at least seven hours) sample is strongly recommended for TWA and Action Level TWA measurements with a maximum air volume of 960 L. If overloading occurs, collect consecutive air samples for shorter sampling periods to cover the full workshift.

2.2.3. Replace the end plugs into the filter cassettes immediately after sampling. Record the sampling conditions.

2.2.4. Securely wrap each sample filter cassette end-to-end with an OSHA Form 21 sample seal.

2.2.5. Submit at least one blank sample with each set of air samples. The blank sample should be handled the same as the other samples except that no air is drawn through it.

2.2.6. Ship the samples to the laboratory for analysis as soon as possible in a suitable container designed to prevent damage in transit.

3. Analysis

3.1. Safety Precautions

3.1.1. Wear safety glasses, protective clothing and gloves at all times.

3.1.2. Handle acid solutions with care. Handle all cadmium samples and solutions with extra care (see Sect. 1.7.). Avoid their direct contact with work area surfaces, eyes, skin and clothes. Flush acid solutions which contact the skin or eyes with copious amounts of water.

3.1.3. Perform all acid digestions and acid dilutions in an exhaust hood while wearing a face shield. To avoid exposure to acid vapors, do not remove beakers containing concentrated acid solutions from the exhaust hood until they have returned to room temperature and have been diluted or emptied.

3.1.4. Exercise care when using laboratory glassware. Do not use chipped pipets, volumetric flasks, beakers or any glassware with sharp edges exposed in order to avoid the possibility of cuts or abrasions.

3.1.5. Never pipet by mouth.

3.1.6. Refer to the instrument instruction manuals and SOPs (5.8., 5.9.) for proper and safe operation of the atomic absorption spectrophotometer, graphite furnace atomizer and associated equipment.

3.1.7 Because metallic elements and other toxic substances are vaporized during AAS flame or graphite furnace atomizer operation, it is imperative that an exhaust vent be used. Always ensure that the exhaust system is operating properly during instrument use.

3.2. Apparatus for Sample and Standard Preparation

3.2.1. Hot plate, capable of reaching 150 °C, installed in an exhaust hood.

3.2.2. Phillips beakers, 125 mL.

3.2.3. Bottles, narrow-mouth, polyethylene or glass with leakproof caps: used for storage of standards and matrix modifier.

3.2.4. Volumetric flasks, volumetric pipets, beakers and other associated general laboratory glassware.

3.2.5. Forceps and other associated general laboratory equipment.

3.3. Apparatus for Flame AAS Analysis

3.3.1. Atomic absorption spectrophotometer consisting of a(an):
Nebulizer and burner head
Pressure regulating devices capable of maintaining constant oxidant and fuel pressures
Optical system capable of isolating the desired wavelength of radiation (228.8 nm)
Adjustable slit
Light measuring and amplifying device
Display, strip chart, or computer interface for indicating the amount of absorbed radiation
Cadmium hollow cathode lamp or electrodeless discharge lamp (EDL) and power supply

3.3.2. Oxidant: compressed air, filtered to remove water, oil and other foreign substances.

3.3.3. Fuel: standard commercially available tanks of acetylene dissolved in acetone; tanks should be equipped with flash arresters.

Caution: Do not use grades of acetylene containing solvents other than acetone because they may damage the PVC tubing used in some instruments.

3.3.4. Pressure-reducing valves: two gauge, two-stage pressure regulators to maintain fuel and oxidant pressures somewhat higher than the controlled operating pressures of the instrument.

3.3.5. Exhaust vent installed directly above the spectrophotometer burner head.

3.4. Apparatus for AAS–HGA Analysis

3.4.1. Atomic absorption spectrophotometer consisting of a(an):
Heated graphite furnace atomizer (HGA) with argon purge system
Pressure-regulating devices capable of maintaining constant argon purge pressure
Optical system capable of isolating the desired wavelength of radiation (228.8 nm)
Adjustable slit
Light measuring and amplifying device
Display, strip chart, or computer interface for indicating the amount pf absorbed radiation (as integrated absorbance, peak area)
Background corrector: Zeeman or deuterium arc. The Zeeman background corrector is recommended
Cadmium hollow cathode lamp or electrodeless discharge lamp (EDL) and power supply
Autosampler capable of accurately injecting 5 to 20 µL sample aliquots onto the L'vov Platform in a graphite tube

3.4.2. Pyrolytically coated graphite tubes containing solid, pyrolytic L'vov platforms.

3.4.3. Polyethylene sample cups, 2.0 to 2.5 mL, for use with the autosampler.

3.4.4. Inert purge gas for graphite furnace atomizer: compressed gas cylinder of purified argon.

3.4.5. Two gauge, two-stage pressure regulator for the argon gas cylinder.

3.4.6. Cooling water supply for graphite furnace atomizer.

3.4.7. Exhaust vent installed directly above the graphite furnace atomizer.

3.5. Reagents

All reagents should be ACS analytical reagent grade or better.

3.5.1. Deionized water with a specific conductance of less than 10 µS.

3.5.2. Concentrated nitric acid, HNO_3.

3.5.3. Concentrated hydrochloric acid, HCl.

3.5.4. Ammonium phosphate, monobasic, $NH_4H_2PO_4$.

3.5.5. Magnesium nitrate, $Mg(NO_3)_2 \cdot 6H_2O$.

3.5.6. Diluting solution (4% HNO_3, 0.4% HCl): Add 40 mL HNO_3 and 4 mL HCl carefully to approximately 500 mL deionized water and dilute to 1 L with deionized water.

3.5.7. Cadmium standard stock solution, 1,000 µg/mL: Use a commercially available certified 1,000 µg/mL cadmium standard or, alternatively, dissolve 1.0000 g of cadmium metal in a minimum volume of 1:1 HCl and dilute to 1 L with 4% HNO_3. Observe expiration dates of commercial standards. Properly dispose of commercial standards with no expiration dates or prepared standards one year after their receipt or preparation date.

3.5.8. Matrix modifier for AAS–HGA analysis: Dissolve 1.0 g $NH_4H_2PO_4$ and 0.15 g $Mg(NO_3)_2 \cdot 6H_2O$ in approximately 200 mL deionized water. Add 1 mL HNO_3 and dilute to 500 mL with deionized water.

3.5.9 Nitric Acid, 1:1 HNO_3/DI H_2O mixture: Carefully add a measured volume of concentrated HNO_3 to an equal volume of DI H_2O.

3.5.10. Nitric acid, 10% v/v: Carefully add 100 mL of concentrated HNO_3 to 500 mL of DI H_2O and dilute to 1 L.

3.6. Glassware Preparation

3.6.1. Clean Phillips beakers by refluxing with 1:1 nitric acid on a hot plate in a fume hood. Thoroughly rinse with deionized water and invert the beakers to allow them to drain dry.

3.6.2. Rinse volumetric flasks and all other glassware with 10% nitric acid and deionized water prior to use.

3.7. Standard Preparation for Flame AAS Analysis

3.7.1. Dilute stock solutions: Prepare 1, 5, 10 and 100 µg/mL cadmium standard stock solutions by making appropriate serial dilutions of 1,000 µg/mL cadmium standard stock solution with the diluting solution described in Section 3.5.6.

3.7.2. Working standards: Prepare cadmium working standards in the range of 0.02 to 2.0 µg/mL by making appropriate serial dilutions of the dilute stock solutions with the same diluting solution. A suggested method of preparation of the working standards is given below.

Working standard (µg/mL)	Standard solution (µg/mL)	Aliquot (mL)	Final vol. (mL)
0.02	1	10	500
0.05	5	5	500
0.1	10	5	500
0.2	10	10	500
0.5	10	25	500
1	100	5	500
2	100	10	500

Store the working standards in 500-mL, narrow-mouth polyethylene or glass bottles with leak proof caps. Prepare every twelve months.

3.8. Standard Preparation for AAS–HGA Analysis

3.8.1. Dilute stock solutions: Prepare 10, 100 and 1,000 ng/mL cadmium standard stock solutions by making appropriate ten-fold serial dilutions of the 1,000 µg/mL cadmium standard stock solution with the diluting solution described in Section 3.5.6.

3.8.2. Working standards: Prepare cadmium working standards in the range of 0.2 to 20 ng/mL by making appropriate serial dilutions of the dilute stock solutions with the same diluting solution. A suggested method of preparation of the working standards is given below.

Working standard (ng/mL)	Standard solution (ng/mL)	Aliquot (mL)	Final vol. (mL)
0.2	10	2	100
0.5	10	5	100
1	10	10	100
2	100	2	100
5	100	5	100
10	100	10	100
20	1,000	2	100

Store the working standards in narrow-mouth polyethylene or glass bottles with leakproof caps. Prepare monthly.

3.9. Sample Preparation

3.9.1. Carefully transfer each sample filter with forceps from its filter cassette unit to a clean, separate 125-mL Phillips beaker along with any loose dust found in the cassette. Label each Phillips beaker with the appropriate sample number.

3.9.2. Digest the sample by adding 5 mL of concentrated nitric acid (HNO_3) to each Phillips beaker containing an air filter sample. Place the Phillips beakers on a hot plate in an exhaust hood and heat the samples until approximately 0.5 mL remains. The sample solution in each Phillips beaker should become clear. If it is not clear, digest the sample with another portion of concentrated nitric acid.

3.9.3. After completing the HNO_3 digestion and cooling the samples, add 40 µL (2 drops) of concentrated HCl to each air sample solution and then swirl the contents. Carefully add about 5 mL of deionized water by pouring it down the inside of each beaker.

3.9.4. Quantitatively transfer each cooled air sample solution from each Phillips beaker to a clean 10-mL volumetric flask. Dilute each flask to volume with deionized water and mix well.

3.10. Flame AAS Analysis

Analyze all of the air samples for their cadmium content by flame atomic absorption spectroscopy (AAS) according to the instructions given below.

3.10.1. Set up the atomic absorption spectrophotometer for the air/acetylene flame analysis of cadmium according to the SOP (5.8.) or the manufacturer's operational instructions. For the source lamp, use the cadmium hollow cathode or electrodeless discharge lamp operated at the manufacturer's recommended rating for continuous operation. Allow the lamp to warm up 10 to 20 min or until the energy output stabilizes. Optimize conditions such as lamp position, burner head alignment, fuel and oxidant flow rates, etc. See the SOP or specific instrument manuals for details. Instrumental parameters for the Perkin-Elmer Model 603 used in the validation of this method are given in Attachment 1.

3.10.2. Aspirate and measure the absorbance of a standard solution of cadmium. The standard concentration should be within the linear range. For the instrumentation used in the validation of this method a 2 µg/mL cadmium standard gives a net absorbance reading of about 0.350 abs. units (see Section 1.5.5.) when the instrument and the source lamp are performing to manufacturer specifications.

3.10.3. To increase instrument response, scale expand the absorbance reading of the aspirated 2 µg/mL working standard approximately four times. Increase the integration time to at least 3 seconds to reduce signal noise.

3.10.4. Autozero the instrument while aspirating a deionized water blank. Monitor the variation in the baseline absorbance reading (baseline noise) for a few minutes to insure that the instrument, source lamp and associated equipment are in good operating condition.

3.10.5. Aspirate the working standards and samples directly into the flame and record their absorbance readings. Aspirate the deionized water blank immediately after every standard or sample to correct for and monitor any baseline drift and noise. Record the baseline absorbance reading of each deionized water blank. Label each standard and sample reading and its accompanying baseline reading.

3.10.6. It is recommended that the entire series of working standards be analyzed at the beginning and end of the analysis of a set of samples to establish a concentration-response curve, ensure that the standard readings agree with each other and are reproducible. Also, analyze a working standard after every five or six samples to monitor the performance of the spectrophotometer. Standard readings should agree within ±10 to 15% of the readings obtained at the beginning of the analysis.

3.10.7. Bracket the sample readings with standards during the analysis. If the absorbance reading of a sample is above the absorbance reading of the highest working standard, dilute the sample with diluting solution and reanalyze. Use the appropriate dilution factor in the calculations.

3.10.8. Repeat the analysis of approximately 10% of the samples for a check of precision.

3.10.9. If possible, analyze quality control samples from an independent source as a check on analytical recovery and precision.

3.10.10. Record the final instrument settings at the end of the analysis. Date and label the output.

3.11. AAS–HGA Analysis

Initially analyze all of the air samples for their cadmium content by flame atomic absorption spectroscopy (AAS) according to the instructions given in Section 3.10. If the concentration of cadmium in a sample solution is less than three times the quantitative detection limit [0.04 µg/mL (40 ng/mL) for the instrumentation used in the validation] and the sample results are to be averaged with other samples for TWA calculations, proceed with the AAS–HGA analysis of the sample as described below.

3.11.1. Set up the atomic absorption spectrophotometer and HGA for flameless atomic absorption analysis of cadmium according to the SOP (5.9.) or the manufacturer's operational instructions and allow the instrument to stabilize. The graphite furnace atomizer is equipped with a pyrolytically coated graphite tube containing a pyrolytic platform. For the source lamp, use a cadmium hollow cathode or electrodeless discharge lamp operated at the manufacturer's recommended setting for graphite furnace operation. The Zeeman background corrector and EDL are recommended for use with the L'vov platform. Instrumental parameters for the Perkin-Elmer Model 5100 spectrophotometer and Zeeman HGA–600 graphite furnace used in the validation of this method are given in Attachment 2.

3.11.2. Optimize the energy reading of the spectrophotometer at 228.8 nm by adjusting the lamp position and the wavelength according to the manufacturer's instructions.

3.11.3. Set up the autosampler to inject a 5-µL aliquot of the working standard, sample or reagent blank solution onto the L'vov platform along with a 10-µL overlay of the matrix modifier.

3.11.4. Analyze the reagent blank (diluting solution, Section 3.5.6.) and then autozero the instrument before starting the analysis of a set of samples. It is recommended that the reagent blank be analyzed several times during the analysis to assure the integrated absorbance (peak area) reading remains at or near zero.

3.11.5. Analyze a working standard approximately midway in the linear portion of the working standard range two or three times to check for reproducibility and sensitivity (see sections 1.5.5. and 1.5.6.) before starting the analysis of samples. Calculate the experimental characteristic mass value from the average integrated absorbance reading and injection volume of the analyzed working standard. Compare this value to the manufacturer's suggested value as a check of proper instrument operation.

3.11.6. Analyze the reagent blank, working standard, and sample solutions. Record and label the peak area (abs-sec) readings and the peak and background peak profiles on the printer/plotter.

3.11.7. It is recommended the entire series of working standards be analyzed at the beginning and end of the analysis of a set of samples. Establish a concentration-response curve and ensure standard readings agree with each other and are reproducible. Also, analyze a working standard after every five or six samples to monitor the performance of the system. Standard readings should agree within ±15% of the readings obtained at the beginning of the analysis.

3.11.8. Bracket the sample readings with standards during the analysis. If the peak area reading of a sample is above the peak area reading of the highest working standard, dilute the sample with the diluting solution and reanalyze. Use the appropriate dilution factor in the calculations.

3.11.9. Repeat the analysis of approximately 10% of the samples for a check of precision.

3.11.10. If possible, analyze quality control samples from an independent source as a check of analytical recovery and precision.

3.11.11. Record the final instrument settings at the end of the analysis. Date and label the output.

3.12. Calculations

Note: Standards used for HGA analysis are in ng/mL. Total amounts of cadmium from calculations will be in ng (not µg) unless a prior conversion is made.

3.12.1. Correct for baseline drift and noise in flame AAS analysis by subtracting each baseline absorbance reading from its corresponding working standard or sample absorbance reading to obtain the net absorbance reading for each standard and sample.

3.12.2. Use a least squares regression program to plot a concentration-response curve of net absorbance reading (or peak area for HGA analysis) versus concentration (µg/mL or ng/mL) of cadmium in each working standard.

3.12.3. Determine the concentration (µg/mL or ng/mL) of cadmium in each sample from the resulting concentration-response curve. If the concentration of cadmium in a sample solution is less than three times the quantitative detection limit [0.04 µg/mL (40 ng/mL) for the instrumentation used in the validation of the method] and if consecutive samples were taken on one employee and the sample results are to be averaged with other samples to determine a single TWA, reanalyze the sample by AAS–HGA as described in Section 3.11. and report the AAS–HGA analytical results.

3.12.4. Calculate the total amount (µg or ng) of cadmium in each sample from the sample solution volume (mL) :

W=(C)(sample vol, mL)(DF)

Where:

W=Total cadmium in sample
C=Calculated concentration of cadmium
DF=Dilution Factor (if applicable)

3.12.5. Make a blank correction for each air sample by subtracting the total amount of cadmium in the corresponding blank sample from the total amount of cadmium in the sample.

3.12.6. Calculate the concentration of cadmium in an air sample (mg/m³ or µg/m³) by using one of the following equations:

$mg/m^3=W_{bc}/(\text{Air vol sampled, L})$

or

$\mu g/m^3=(W_{bc})(1{,}000\ ng/\mu g)/(\text{Air vol sampled, L})$

Where:

W_{bc}=blank corrected total µg cadmium in the sample. (1µg=1,000 ng)

4. Backup Data

4.1. Introduction

4.1.1. The purpose of this evaluation is to determine the analytical method recovery, working standard range, and qualitative and quantitative detection limits of the two atomic absorption analytical techniques included in this method. The evaluation consisted of the following experiments:

1. An analysis of 24 samples (six samples each at 0.1, 0.5, 1 and 2 times the TWA–PEL) for the analytical method recovery study of the flame AAS analytical technique.

2. An analysis of 18 samples (six samples each at 0.5, 1 and 2 times the Action Level TWA–PEL) for the analytical method recovery study of the AAS–HGA analytical technique.

3. Multiple analyses of the reagent blank and a series of standard solutions to determine the working standard range and the qualitative and quantitative detection limits for both atomic absorption analytical techniques.

4.1.2. The analytical method recovery results at all test levels were calculated from

concentration-response curves and statistically examined for outliers at the 99% confidence level. Possible outliers were determined using the Treatment of Outliers test (5.10.). In addition, the sample results of the two analytical techniques, at 0.5, 1.0 and 2.0 times their target concentrations, were tested for homogeneity of variances also at the 99% confidence level. Homogeneity of the coefficients of variation was determined using the Bartlett's test (5.11.). The overall analytical error (OAE) at the 95% confidence level was calculated using the equation (5.12.):

OAE=±[|Bias|+(1.96)(CV_t(pooled))(100%)]

4.1.3. A derivation of the International Union of Pure and Applied Chemistry (IUPAC) detection limit equation (5.13.) was used to determine the qualitative and quantitative detection limits for both atomic absorption analytical techniques:

$C_{ld}=k(sd)/m$ (Equation 1)

Where:

C_{ld}=the smallest reliable detectable concentration an analytical instrument can determine at a given confidence level.
k=3 for the Qualitative Detection Limit at the 99.86% Confidence Level
=10 for the Quantitative Detection Limit at the 99.99% Confidence Level.
sd=standard deviation of the reagent blank (Rbl) readings.
m=analytical sensitivity or slope as calculated by linear regression.

4.1.4. Collection efficiencies of metallic fume and dust atmospheres on 0.8-µm mixed cellulose ester membrane filters are well documented and have been shown to be excellent (5.11.). Since elemental cadmium and the cadmium component of cadmium compounds are nonvolatile, stability studies of cadmium spiked MCEF samples were not performed.

4.2. Equipment

4.2.1. A Perkin-Elmer (PE) Model 603 spectrophotometer equipped with a manual gas control system, a stainless steel nebulizer, a burner mixing chamber, a flow spoiler and a 10 cm. (one-slot) burner head was used in the experimental validation of the flame AAS analytical technique. A PE cadmium hollow cathode lamp, operated at the manufacturer's recommended current setting for continuous operation (4 mA), was used as the source lamp. Instrument parameters are listed in Attachment 1.

4.2.2. A PE Model 5100 spectrophotometer, Zeeman HGA–600 graphite furnace atomizer and AS–60 HGA autosampler were used in the experimental validation of the AAS–HGA analytical technique. The spectrophotometer was equipped with a PE Series 7700 professional computer and Model PR–310 printer. A PE System 2 cadmium electrodeless discharge lamp, operated at the manufacturer's recommended current setting for modulated operation (170 mA), was used as the source lamp. Instrument parameters are listed in Attachment 2.

4.3. Reagents

4.3.1. J.T. Baker Chem. Co. (Analyzed grade) concentrated nitric acid, 69.0–71.0%, and concentrated hydrochloric acid, 36.5–38.0%, were used to prepare the samples and standards.

4.3.2. Ammonium phosphate, monobasic, $NH_4H_2PO_4$ and magnesium nitrate, $Mg(NO_3)_2$ $6H_2O$, both manufactured by the Mallinckrodt Chem. Co., were used to prepare the matrix modifier for AAS–HGA analysis.

4.4. Standard Preparation for Flame AAS Analysis

4.4.1. Dilute stock solutions: Prepared 0.01, 0.1, 1, 10 and 100 µg/mL cadmium standard stock solutions by making appropriate serial dilutions of a commercially available 1,000 µg/mL cadmium standard stock solution (RICCA Chemical Co., Lot# A102) with the diluting solution (4% HNO_3, 0.4% HCl).

4.4.2. Analyzed Standards: Prepared cadmium standards in the range of 0.001 to 2.0 µg/mL by pipetting 2 to 10 mL of the appropriate dilute cadmium stock solution into a 100-mL volumetric flask and diluting to volume with the diluting solution. (See Section 3.7.2.)

4.5. Standard Preparation for AAS–HGA Analysis

4.5.1. Dilute stock solutions: Prepared 1, 10, 100 and 1,000 ng/mL cadmium standard stock solutions by making appropriate serial dilutions of a commercially available 1,000 µg/mL cadmium standard stock solution (J.T Baker Chemical Co., Instra-analyzed, Lot# D22642) with the diluting solution (4% HNO_3, 0.4% HCl).

4.5.2. Analyzed Standards: Prepared cadmium standards in the range of 0.1 to 40 ng/mL by pipetting 2 to 10 mL of the appropriate dilute cadmium stock solution into a 100-mL volumetric flask and diluting to volume with the diluting solution. (See Section 3.8.2.)

4.6. Detection Limits and Standard Working Range for Flame AAS Analysis

4.6.1. Analyzed the reagent blank solution and the entire series of cadmium standards in the range of 0.001 to 2.0 µg/mL three to six times according to the instructions given in Section 3.10. The diluting solution (4% HNO_3, 0.4% HCl) was used as the reagent blank. The integration time on the PE 603 spectrophotometer was set to 3.0 seconds and a four-fold expansion of the absorbance reading of the 2.0 µg/mL cadmium standard was made prior to analysis. The 2.0 µg/mL standard gave a net absorbance reading of 0.350 abs. units prior to expansion in agreement with the manufacturer's specifications (5.6.).

4.6.2. The net absorbance readings of the reagent blank and the low concentration Cd standards from 0.001 to 0.1 µg/mL and the stetistical analysis of the results are shown in Table I. The standard deviation, sd, of the six net absorbance readings of the reagent blank is 1.05 abs. units. The slope, m, as calculated by a linear regression plot of the net absorbance readings (shown in Table II) of the 0.02 to 1.0 µg/mL cadmium standards versus their concentration is 772.7 abs. units/(µg/mL).

4.6.3. If these values for sd and the slope, m, are used in Eqn. 1 (Sect. 4.1.3), the qualitative end quantitative detection limits as determined by the IUPAC Method are:

C_{ld}=(3)(1.05 abs. units)/(772.7 abs. units/(µg/mL))
= 0.0041 µg/mL for the qualitative detection limit.
C_{ld}=(10)(1.05 abs. units)/(772.7 abs. units/µg/mL))
=0.014 µg/mL for the quantitative detection limit.

The qualitative and quantitative detection limits for the flame AAS analytical technique are 0.041 µg and 0.14 µg cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.2 µg/m³ and 0.70 µg/m³ for a 200 L air volume.

4.6.4. The recommended Cd standard working range for flame AAS analysis is 0.02 to 2.0 µg/mL. The net absorbance readings of the reagent blank and the recommended working range standards and the statistical analysis of the results are shown in Table II. The standard of lowest concentration in the working range, 0.02 µg/mL, is slightly greater than the calculated quantitative detection limit, 0.014 µg/mL. The standard of highest concentration in the working range, 2.0 µg/mL, is at the upper end of the linear working range suggested by the manufacturer (5.6.). Although the standard net absorbance readings are not strictly linear at concentrations above 0.5 µg/mL, the deviation from linearity is only about 10% at the upper end of the recommended standard working range. The deviation from linearity is probably caused by the four-fold expansion of the signal suggested in the method. As shown in Table II, the precision of the standard net absorbance readings are excellent throughout the recommended working range; the relative standard deviations of the readings range from 0.009 to 0.064.

4.7. Detection Limits and Standard Working Range for AAS–HGA Analysis

4.7.1. Analyzed the reagent blank solution and the entire series of cadmium standards in the range of 0.1 to 40 ng/mL according to the instructions given in Section 3.11. The diluting solution (4% HNO_3, 0.4% HCl) was used as the reagent blank. A fresh aliquot of the reagent blank and of each standard was used for every analysis. The experimental characteristic mass value was 0.41 pg, calculated from the average peak area (abs-sec) reading of the 5 ng/mL standard which is approximately midway in the linear portion of the working standard range. This agreed within 20% with the characteristic mass value, 0.35 pg, listed by the manufacturer of the instrument (5.2.).

4.7.2. The peak area (abs-sec) readings of the reagent blank and the low concentration Cd standards from 0.1 to 2.0 ng/mL and statistical analysis of the results are shown in Table III. Five of the reagent blank peak area readings were zero and the sixth reading was 1 and was an outlier. The near lack of a blank signal does not satisfy a strict interpretation of the IUPAC method for determining the detection limits. Therefore, the standard deviation of the six peak area readings of the 0.2 ng/mL cadmium standard, 0.75 abs-sec, was used to calculate the detection limits by the IUPAC method. The slope, m, as

calculated by a linear regression plot of the peak area (abs-sec) readings (shown in Table IV) of the 0.2 to 10 ng/mL cadmium standards versus their concentration is 51.5 abs-sec/(ng/mL).

4.7.3. If 0.75 abs-sec (sd) and 51.5 abs-sec/(ng/mL) (m) are used in Eqn. 1 (Sect. 4.1.3.), the qualitative and quantitative detection limits as determined by the IUPAC method are:

C_{id}= (3)(0.75 abs-sec)/(51.5 abs-sec/(ng/mL) = 0.044 ng/mL for the qualitative detection limit.

C_{id}= (10)(0.75 abs-sec)/(51.5 abs-sec/(ng/mL) = 0.15 ng/mL for the quantitative detection limit.

The qualitative and quantitative detection limits for the AAS-HGA analytical technique are 0.44 ng and 1.5 ng cadmium, respectively, for a 10 mL solution volume. These correspond, respectively, to 0.007 µg/m³ and 0.025 µg/m³ for a 60 L air volume.

4.7.4. The peak area (abs-sec) readings of the Cd standards from 0.2 to 40 ng/mL and the statistical analysis of the results are given in Table IV. The recommended standard working range for AAS-HGA analysis is 0.2 to 20 ng/mL. The standard of lowest concentration in the recommended working range is slightly greater than the calculated quantitative detection limit, 0.15 ng/mL. The deviation from linearity of the peak area readings of the 20 ng/mL standard, the highest concentration standard in the recommended working range, is approximately 10%. The deviations from linearity of the peak area readings of the 30 and 40 ng/mL standards are significantly greater than 10%. As shown in Table IV, the precision of the peak area readings are satisfactory throughout the recommended working range; the relative standard deviations of the readings range from 0.025 to 0.083.

4.8. Analytical Method Recovery for Flame AAS Analysis

4.8.1. Four sets of spiked MCEF samples were prepared by injecting 20 µL of 10, 50, 100 and 200 µg/mL dilute cadmium stock solutions on 37 mm diameter filters (part no. AAWP 037 00, Millipore Corp., Bedford, MA) with a calibrated micropipet. The dilute stock solutions were prepared by making appropriate serial dilutions of a commercially available 1,000 µg/mL cadmium standard stock solution (RICCA Chemical Co., Lot# A102) with the diluting solution (4% HNO_3, 0.4% HCl). Each set contained six samples and a sample blank. The amount of cadmium in the prepared sets were equivalent to 0.1, 0.5, 1.0 and 2.0 times the TWA PEL target concentration of 5 µg/m³ for a 400 L air volume.

4.8.2. The air-dried spiked filters were digested and analyzed for their cadmium content by flame atomic absorption spectroscopy (AAS) following the procedure described in Section 3. The 0.02 to 2.0µ g/mL cadmium standards (the suggested working range) were used in the analysis of the spiked filters.

4.8.3. The results of the analysis are given in Table V. One result at 0.5 times the TWA PEL target concentration was an outlier and wes excluded from statistical analysis. Experimental justification for rejecting it is that the outlier value was probably due to a spiking error. The coefficients of variation for the three test levels at 0.5 to 2.0 times the TWA PEL target concentration passed the Bartlett's test and were pooled.

4.8.4. The average recovery of the six spiked filter samples at 0.1 times the TWA PEL target concentration was 118.2% with a coefficient of variation (CV_t) of 0.128. The average recovery of the spiked filter samples in the range of 0.5 to 2.0 times the TWA target concentration was 104.0% with a pooled coefficient of variation (CV_t) of 0.010. Consequently, the analytical bias found in these spiked sample results over the tested concentration range was +4.0% and the OAE was ±6.0%.

4.9. Analytical Method Recovery for AAS-HGA Analysis

4.9.1. Three sets of spiked MCEF samples were prepared by injecting 15µ L of 5, 10 and 20 µg/mL dilute cadmium stock solutions on 37 mm diameter filters (part no. AAWP 037 00, Millipore Corp., Bedford, MA) with a calibrated micropipet. The dilute stock solutions were prepared by making appropriate serial dilutions of a commercially available certified 1,000 µg/mL cadmium standard stock solution (Fisher Chemical Co., Lot# 913438–24) with the diluting solution (4% HNO_3, 0.4% HCl). Each set contained six samples and a sample blank. The amount of cadmium in the prepared sets were equivalent to 0.5, 1 and 2 times the Action Level TWA target concentration of 2.5 µg/m³ for a 60 L air volume.

4.9.2. The air-dried spiked filters were digested and analyzed for their cadmium content by flameless atomic absorption spectroscopy using a heated graphite furnace atomizer following the procedure described in Section 3. A five-fold dilution of the spiked filter samples at 2 times the Action Level TWA was made prior to their analysis. The 0.05 to 20 ng/mL cadmium standards were used in the analysis of the spiked filters.

4.9.3. The results of the analysis are given in Table VI. There were no outliers. The coefficients of variation for the three test levels at 0.5 to 2.0 times the Action Level TWA PEL passed the Bartlett's test and were pooled. The average recovery of the spiked filter samples was 94.2% with a pooled coefficient of variation (CV_t) of 0.043. Consequently, the analytical bias was −5.8% and the OAE was ±14.2%.

4.10. Conclusions

The experiments performed in this evaluation show the two atomic absorption analytical techniques included in this method to be precise and accurate and have sufficient sensitivity to measure airborne cadmium over a broad range of exposure levels and sampling periods.

5. References

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TABLE I.—CD DETECTION LIMIT STUDY

[Flame AAS Analysis]

STD (µg/mL)	Absorbance reading at 228.8 nm		Statistical analysis
Reagent blank	5	2	n=6.
	4	3	mean=3.50.
	4	3	std dev=1.05.
			CV=0.30.
0.001	6	6	n=6.
	2	4	mean=5.00.
	6	6	std dev=1.67.
			CV=0.335.
0.002	5	7	n=6.
	7	3	mean=5.50.
	7	4	std dev=1.76.
			CV=0.320.
0.005	7	7	n=6.
	8	8	mean=7.33.
	8	6	std dev=0.817.
			CV=0.111.
0.010	10	9	n=6.
	10	13	mean=10.3.
	10	10	std dev=1.37.
			CV=0.133.
0.020	20	23	n=6.
	20	22	mean=20.8.
	20	20	std dev=1.33.
			CV=0.064.
0.050	42	42	n=6.
	42	42	mean=42.5.
	42	45	std dev=1.22.
			CV=0.029.
0.10		84	n=3.
		80	mean=82.3.
		83	std dev=2.08.
			CV=0.025.

TABLE II.—CD STANDARD WORKING RANGE STUDY

[Flame AAS Analysis]

STD (µg/mL)	Absorbance reading at 228.8 nm		Statistical analysis
Reagent blank	5	2	n=6.
	4	3	mean=3.50.
	4	3	std dev=1.05.
			CV=0.30.
0.020	20	23	n=6.
	20	22	mean=20.8.
	20	20	std dev=1.33.
			CV=0.064.
0.050	42	42	n=6.
	42	42	mean=42.5.
	42	45	std dev=1.22.
			CV=0.029.
0.10		84	n=3.
		80	mean=82.3.
		83	std dev=2.08.
			CV=0.025.
0.20		161	n=3.
		161	mean=160.0.
		158	std dev=1.73.
			CV=0.011.
0.50		391	n=3.
		389	mean=391.0.
		393	std dev=2.00.
			CV=0.005.
1.00		760	n=3.
		748	mean=753.3.
		752	std dev=6.11.
			CV=0.008.
2.00		1416	n=3.

TABLE II.—CD STANDARD WORKING RANGE STUDY—Continued
[Flame AAS Analysis]

STD (µg/mL)	Absorbance reading at 228.8 nm	Statistical analysis
	1426 1401	mean=1414.3. std dev=12.6. CV=0.009.

TABLE III.—CD DETECTION LIMIT STUDY
[AAS–HGA Analysis]

STD (ng/mL)	Peak area readings x 10^3 at 228.8 nm	Statistical analysis
Reagent blank	0 0	n=6.
	0 1	mean=0.167.
	0 0	std dev=0.41.
		CV=2.45.
0.1	8 6	n=6.
	5 7	mean=7.7.
	13 7	std dev=2.8.
		CV=0.366.
0.2	11 13	n=6.
	11 12	mean=11.8.
	12 12	std dev=0.75.
		CV=0.064.
0.5	28 33	n=6.
	26 28	mean=28.8.
	28 30	std dev=2.4.
		CV=0.083.
1.0	52 55	n=6.
	56 58	mean=54.8.
	54 54	std dev=2.0.
		CV=0.037.
2.0	101 112	n=6.
	110 110	mean=108.8.
	110 110	std dev=3.9.
		CV=0.036.

TABLE IV.—CD STANDARD WORKING RANGE STUDY
[AAS-HGA Analysis]

STD (ng/mL)	Peak area readings x 10^3 at 228.8 nm	Statistical analysis
0.2	11 13	n=6.
	11 12	mean=11.8.
	12 12	std dev=0.75.
		CV=0.064.
0.5	28 33	n=6.
	26 28	mean=28.8.
	28 30	std dev=2.4.
		CV=0.083.
1.0	52 55	n=6.
	56 58	mean=54.8.
	54 54	std dev=2.0.
		CV=0.037.
2.0	101 112	n=6.
	110 110	mean=108.8.
	110 110	std dev=3.9.
		CV=0.036.
5.0	247 265	n=6.
	268 275	mean=265.5.
	259 279	std dev=11.5.
		CV=0.044.
10.0	495 520	n=6.
	523 513	mean=516.7.
	516 533	std dev=12.7.
		CV=0.025.
20.0	950 953	n=6.

TABLE IV.—CD STANDARD WORKING RANGE STUDY—Continued
[AAS-HGA Analysis]

STD (ng/mL)	Peak area readings x 10^3 at 228.8 nm	Statistical analysis
	951 958	mean=941.8.
	949 890	std dev=25.6.
		CV=0.027.
30.0	1269 1291	n=6.
	1303 1307	mean=1293.
	1295 1290	std dev=13.3.
		CV=0.010.
40.0	1505 1567	n=6.
	1535 1567	mean=1552.
	1566 1572	std dev=26.6.
		CV=0.017.

TABLE V.—ANALYTICAL METHOD RECOVERY
[Flame AAS Analysis]

Test level µg taken	0.5x µg found	Percent rec.	µg taken	1.0x µg found	Percent rec.	µg taken	2.0x µg found	Percent rec.
1.00	1.0715	107.2	2.00	2.0688	103.4	4.00	4.1504	103.8
1.00	1.0842	108.4	2.00	2.0174	100.9	4.00	4.1108	102.8
1.00	1.0842	108.4	2.00	2.0431	102.2	4.00	4.0581	101.5
1.00	*1.0081	*100.8	2.00	2.0431	102.2	4.00	4.0844	102.1
1.00	1.0715	107.2	2.00	2.0174	100.9	4.00	4.1504	103.8
1.00	1.0842	108.4	2.00	2.0045	100.2	4.00	4.1899	104.7
n=		5			6			6
mean=		107.9			101.6			103.1
std dev=		0.657			1.174			1.199
CV_t=		0.006			0.011			0.012
		CV_i (pooled)=0.010						

*Rejected as an outlier—this value did not pass the outlier T-test at the 99% confidence level.

Test level µg taken	0.1x µg found	Percent rec.
0.200	0.2509	125.5
0.200	0.2509	125.5
0.200	0.2761	138.1
0.200	0.2258	112.9
0.200	0.2258	112.9
0.200	0.1881	94.1
n=		6
mean=		118.2
std dev=		15.1
CV_t=		0.128

TABLE VI.—ANALYTICAL METHOD RECOVERY
[AAS–HGA analysis]

Test level ng taken	0.5x ng found	Percent rec.	ng taken	1.0x ng found	Percent rec.	ng taken	2.0x ng found	Percent rec.
75	71.23	95.0	150	138.00	92.0	300	258.43	86.1
75	71.47	95.3	150	138.29	92.2	300	258.46	86.2
75	70.02	93.4	150	136.30	90.9	300	280.55	93.5
75	77.34	103.1	150	146.62	97.7	300	288.34	96.1
75	78.32	104.4	150	145.17	96.8	300	261.74	87.2
75	71.96	95.9	150	144.88	96.6	300	277.22	92.4

n=	6	6	6
mean=	97.9	94.4	90.3
std dev=	4.66	2.98	4.30
CV_I=	0.048	0.032	0.048
	CV_I(pooled)=0.043		

Attachment 1

Instrumental Parameters for Flome AAS Analysis

Atomic Absorption Spectrophotometer (Perkin-Elmer Model 603)

Flame: Air/Acetylene—lean, blue
Oxidant Flow: 55
Fuel Flow: 32
Wavelength: 228.8 nm
Slit: 4 (0.7 nm)
Range: UV
Signal: Concentration (4 exp)
Integration Time: 3 sec

Attachment 2

Instrumental Parameters for HGA Analysis

Atomic Absorption Spectrophotometer (Perkin-Elmer Model 5100)

Signal Type: Zeeman AA
Slitwidth: 0.7 nm
Wavelength: 228.8 nm
Measurement: Peak Area
Integration Time: 6.0 sec
BOC Time: 5 sec
BOC=Background Offset Correction.

ZEEMAN GRAPHITE FURNACE (PERKIN-ELMER MODEL HGA–600)

Step	Ramp time (sec)	Hold time (sec)	Temp. (°C)	Argon flow (mL/min)	Read (sec)
1) Predry	5	10	90	300	.....
2) Dry	30	10	140	300	.....
3) Char	10	20	900	300	.....
4) Cool Down	1	8	30	300	.....
5) Atomize	0	5	1600	0	−1
6) Burnout	1	8	2500	300	.....

Appendix F to §1915.1027—Nonmandatory Protocol for Biological Monitoring

1.00 Introduction

Under the final OSHA cadmium rule (29 CFR part 1910), monitoring of biological specimens and several periodic medical examinations are required for eligible employees. These medical examinations are to be conducted regularly, and medical monitoring is to include the periodic analysis of cadmium in blood (CDB), cadmium in urine (CDU) and beta-2-microglobulin in urine (B2MU). As CDU and B2MU are to be normalized to the concentration of creatinine in urine (CRTU), then CRTU must be analyzed in conjunction with CDU and B2MU analyses.

The purpose of this protocol is to provide procedures for establishing and maintaining the quality of the results obtained from the analyses of CDB, CDU and B2MU by commercial laboratories. Laboratories conforming to the provisions of this nonmandatory protocol shall be known as "participating laboratories." The biological monitoring data from these laboratories will be evaluated by physicians responsible for biological monitoring to determine the conditions under which employees may continue to work in locations exhibiting airborne-cadmium concentrations at or above defined actions levels (see paragraphs (l)(3) and (l)(4) of the final rule). These results also may be used to support a decision to remove workers from such locations.

Under the medical monitoring program for cadmium, blood and urine samples must be collected at defined intervals from workers by physicians responsible for medical monitoring; these samples are sent to commerical laboratories that perform the required analyses and report results of these analyses to the responsible physicians. To ensure the accuracy and reliability of these laboratory analyses, the laboratories to which samples are submitted should participate in an ongoing and efficacious proficiency testing program. Availability of proficiency testing programs may vary with the analyses performed.

To test proficiency in the analysis of CDB, CDU and B2MU, a laboratory should participate either in the interlaboratory comparison program operated by the Centre de Toxicologie du Quebec (CTQ) or an equivalent program. (Currently, no laboratory in the U.S. performs proficiency testing on CDB, CDU or B2MU.) Under this program, CTQ sends participating laboratories 18 samples of each analyte (CDB, CDU and/or B2MU) annually for analysis. Participating laboratories must return the results of these analyses to CTQ within four to five weeks after receiving the samples.

The CTQ program pools analytical results from many participating laboratories to derive consensus mean values for each of the samples distributed. Results reported by each laboratory then are compared against these consensus means for the analyzed samples to determine the relative performance of each laboratory. The proficiency of a participating laboratory is a function of the extent of agreement between results submitted by the participating laboratory and the consensus values for the set of samples analyzed.

Proficiency testing for CRTU analysis (which should be performed with CDU and B2MU analyses to evaluate the results properly) also is recommended. In the U.S., only the College of American Pathologists (CAP) currently conducts CRTU proficiency testing; participating laboratories should be accredited for CRTU analysis by the CAP.

Results of the proficiency evaluations will be forwarded to the participating laboratory by the proficiency-testing laboratory, as well as to physicians designated by the participating laboratory to receive this information. In addition, the participating laboratory should, on request, submit the results of their internal Quality Assurance/Quality Control (QA/QC) program for each analytic procedure (i.e., CDB, CDU and/or B2MU) to physicians designated to receive the proficiency results. For participating laboratories offering CDU and/or B2MU analyses, QA/QC documentation also should be provided for CRTU analysis. (Laboratories should provide QA/QC information regarding CRTU analysis directly to the requesting physician if they perform the analysis in-house; if CRTU analysis is performed by another laboratory under contract, this information should be provided to the physician by the contract laboratory.)

QA/QC information, along with the actual biological specimen measurements, should be provided to the responsible physician using standard formats. These physicians then may collate the QA/QC information with proficiency test results to compare the relative performance of laboratories, as well as to facilitate evaluation of the worker monitoring data. This information supports decisions made by the physician with regard to the biological monitoring program, and for mandating medical removal.

This protocol describes procedures that may be used by the responsible physicians to identify laboratories most likely to be proficient in the analysis of samples used in the biological monitoring of cadmium; also provided are procedures for record keeping and reporting by laboratories participating in proficiency testing programs, and recommendations to assist these physicians in interpreting analytical results determined by participating laboratories. As the collection and handling of samples affects the quality of the data, recommendations are made for these tasks. Specifications for analytical methods to be used in the medical monitoring program are included in this protocol as well.

In conclusion, this document is intended as a supplement to characterize and maintain the quality of medical monitoring data collected under the final cadmium rule promulgated by OSHA (29 CFR part 1910). OSHA has been granted authority under the Occupational Safety and Health Act of 1970 to protect workers from the effects of exposure to hazardous substances in the work place and to mandate adequate monitoring of workers to determine when adverse health effects may be occurring. This nonmandatory protocol is intended to provide guidelines and recommendations to improve the accuracy and reliability of the procedures used to analyze the biological samples collected as part of the medical monitoring program for cadmium.

2.0 Definitions

When the terms below appear in this protocol, use the following definitions.

Accuracy: A measure of the bias of a data set. Bias is a systematic error that is either inherent in a method or caused by some artifact or idiosyncracy of the measurement system. Bias is characterized by a consistent deviation (positive or negative) in the results from an accepted reference value.

Arithmetic Mean: The sum of measurements in a set divided by the number of measurements in a set.

Blind Samples: A quality control procedure in which the concentration of analyte in the samples should be unknown to the analyst at the time that the analysis is performed.

Coefficient of Variation: The ratio of the standard deviation of a set of measurements to the mean (arithmetic or geometric) of the measurements.

Compliance Samples: Samples from exposed workers sent to a participating laboratory for analysis.

Control Charts: Graphic representations of the results for quality control samples being analyzed by a participating laboratory.

Control Limits: Statistical limits which define when an analytic procedure exceeds acceptable parameters; control limits provide a method of assessing the accuracy of analysts, laboratories, and discrete analytic runs.

Control Samples: Quality control samples.

F/T: The measured amount of an analyte divided by the theoretical value (defined below) for that analyte in the sample analyzed; this ratio is a measure of the recovery for a quality control sample.

Geometric Mean: The natural antilog of the mean of a set of natural log-transformed data.

Geometric Standard Deviation: The antilog of the standard deviation of a set of natural log-transformed data.

Limit of Detection: Using a predefined level of confidence, this is the lowest measured value at which some of the measured material is likely to have come from the sample.

Mean: A central tendency of a set of data; in this protocol, this mean is defined as the *arithmetic mean* (see definition of *arithmetic mean* above) unless stated otherwise.

Performance: A measure of the overall quality of data reported by a laboratory.

Pools: Groups of quality-control samples to be established for each target value (defined below) of an analyte. For the protocol provided in attachment 3, for example, the theoretical value of the quality control samples of the pool must be within a range defined as plus or minus (±) 50% of the target value. Within each analyte pool, there must be quality control samples of at least 4 theoretical values.

Precision: The extent of agreement between repeated, independent measurements of the same quantity of an analyte.

Proficiency: The ability to satisfy a specified level of analyte performance.

Proficiency Samples: Specimens, the values of which are unknown to anyone at a participating laboratory, and which are submitted by a participating laboratory for proficiency testing.

Quality or Data Quality: A measure of the confidence in the measurement value.

Quality Control (QC) Samples: Specimens, the value of which is unknown to the analyst, but is known to the appropriate QA/QC personnel of a participating laboratory; when used as part of a laboratory QA/QC program, the theoretical values of these samples should not be known to the analyst until the analyses are complete. QC samples are to be run in sets consisting of one QC sample from each pool (see definition of "pools" above).

Sensitivity: For the purposes of this protocol, the limit of detection.

Standard Deviation: A measure of the distribution or spread of a data set about the mean; the standard deviation is equal to the positive square root of the variance, and is expressed in the same units as the original measurements in the data set.

Standards: Samples with values known by the analyst and used to calibrate equipment and to check calibration throughout an analytic run. In a laboratory QA/QC program, the values of the standards must exceed the values obtained for compliance samples such that the lowest standard value is near the limit of detection and the highest standard is higher than the highest compliance sample or QC sample. Standards of at least three different values are to be used for calibration, and should be constructed from at least 2 different sources.

Target Value: Those values of CDB, CDU or B2MU which trigger some action as prescribed in the medical surveillance section of the regulatory text of the final cadmium rule. For CDB, the target values are 5, 10, and 15 µg/l. For CDU, the target values are 3, 7, and 15 µg/g CRTU. For B2MU, the target values are 300, 750, and 1500 µg/g CRTU. (Note that target values may vary as a function of time.)

Theoretical Value (or Theoretical Amount): The reported concentration of a quality-control sample (or calibration standard) derived from prior characterizations of the sample.

Value or Measurement Value: The numerical result of a measurement.

Variance: A measure of the distribution or spread of a data set about the mean; the variance is the sum of the squares of the differences between the mean and each discrete measurement divided by one less than the number of measurements in the data set.

3.0 Protocol

This protocol provides procedures for characterizing and maintaining the quality of analytic results derived for the medical monitoring program mandated for workers under the final cadmium rule.

3.1 Overview

The goal of this protocol is to assure that medical monitoring data are of sufficient quality to facilitate proper interpretation. The data quality objectives (DQOs) defined for the medical monitoring program are summarized in Table 1. Based on available information, the DQOs presented in Table 1 should be achievable by the majority of laboratories offering the required analyses commercially; OSHA recommends that only laboratories meeting these DQOs be used for the analysis of biological samples collected for monitoring cadmium exposure.

TABLE 1.—RECOMMENDED DATA QUALITY OBJECTIVES (DQOS) FOR THE CADMIUM MEDICAL MONITORING PROGRAM

Analyte/concentration pool	Limit of detection	Precision (CV) (%)	Accuracy
Cadmium in blood	0.5 µg/l	.....	±1 µg/l or 15% of the mean.
≤2 µg/l	.....	40	
>2 µg/l	.....	20	
Cadmium in urine	0.5 µg/g creatinine	.....	±1 µg/l or 15% of the mean.
≤2 µg/l creatinine	.....	40	
>2 µg/l creatinine	.....	20	
β-2-microglobulin in urine: 100 µg/g creatine	100 µg/g creatinine	5	±15% of the mean.

To satisfy the DQOs presented in Table 1, OSHA provides the following guidelines:

1. Procedures for the collection and handling of blood and urine are specified (Section 3.4.1 of this protocol);

2. Preferred analytic methods for the analysis of CDB, CDU and B2MU are defined (and a method for the determination of CRTU also is specified since CDU and B2MU results are to be normalized to the level of CRTU).

3. Procedures are described for identifying laboratories likely to provide the required analyses in an accurate and reliable manner;

4. These guidelines (Sections 3.2.1 to 3.2.3, and Section 3.3) include recommendations regarding internal QA/QC programs for participating laboratories, as well as levels of proficiency through participation in an interlaboratory proficiency program;

5. Procedures for QA/QC record keeping (Section 3.3.2), and for reporting QC/QA results are described (Section 3.3.3); and,

6. Procedures for interpreting medical monitoring results are specified (Section 3.4.3).

Methods recommended for the biological monitoring of eligible workers are:

1. The method of Stoeppler and Brandt (1980) for CDB determinations (limit of detection: 0.5 µg/l);

2. The method of Pruszkowska et al. (1983) for CDU determinations (limit of detection: 0.5 µg/l of urine); and,

3. The Pharmacia Delphia test kit (Pharmacia 1990) for the determination of B2MU (limit of detection: 100 µg/l urine).

Because both CDU and B2MU should be reported in µg/g CRTU, an independent determination of CRTU is recommended. Thus, both the OSHA Salt Lake City Technical Center (OSLTC) method (OSHA, no date) and the Jaffe method (Du Pont, no date) for the determination of CRTU are specified under this protocol (i.e., either of these 2 methods may be used). Note that although detection limits are not reported for either of these CRTU methods, the range of measurements expected for CRTU (0.9-1.7 µg/l) are well above the likely limit of detection for either of these methods (Harrison, 1987).

Laboratories using alternate methods should submit sufficient data to the responsible physicians demonstrating that the alternate method is capable of satisfying the defined data quality objectives of the program. Such laboratories also should submit a QA/QC plan that documents the performance of the alternate method in a manner entirely equivalent to the QA/QC plans proposed in Section 3.3.1.

3.2 Duties of the Responsible Physician

The responsible physician will evaluate biological monitoring results provided by participating laboratories to determine whether such laboratories are proficient and have satisfied the QA/QC recommendations. In determining which laboratories to employ for this purpose, these physicians should review proficiency and QA/QC data submitted to them by the participating laboratories.

Participating laboratories should demonstrate proficiency for each analyte (CDU, CDB and B2MU) sampled under the biological monitoring program. Participating laboratories involved in analyzing CDU and B2MU also should demonstrate proficiency for CRTU analysis, or provide evidence of a contract with a laboratory proficient in CRTU analysis.

3.2.1 Recommendations for Selecting Among Existing Laboratories

OSHA recommends that existing laboratories providing commercial analyses for CDB, CDU and/or B2MU for the medical monitoring program satisfy the following criteria:

1. Should have performed commercial analyses for the appropriate analyte (CDB, CDU and/or B2MU) on a regular basis over the last 2 years;

2. Should provide the responsible physician with an internal QA/QC plan;

3. If performing CDU or B2MU analyses, the participating laboratory should be accredited by the CAP for CRTU analysis, and should be enrolled in the corresponding CAP survey (note that alternate credentials may be acceptable, but acceptability is to be determined by the responsible physician); and,

4. Should have enrolled in the CTQ interlaboratory comparison program for the appropriate analyte (CDB, CDU and/or B2MU).

Participating laboratories should submit appropriate documentation demonstrating compliance with the above criteria to the responsible physician. To demonstrate compliance with the first of the above criteria, participating laboratories should submit the following documentation for each analyte they plan to analyze (note that each document should cover a period of at least 8 consecutive quarters, and that the period designated by the term "regular analyses" is at least once a quarter):

1. Copies of laboratory reports providing results from regular analyses of the appropriate analyte (CDB, CDU and/or B2MU);

2. Copies of 1 or more signed and executed contracts for the provision of regular analyses of the appropriate analyte (CDB, CDU and/or B2MU); or,

3. Copies of invoices sent to 1 or more clients requesting payment for the provision of regular analyses of the appropriate analyte (CDB, CDU and/or B2MU). Whatever the form of documentation submitted, the specific analytic procedures conducted should be identified directly. The forms that are copied for submission to the responsible physician also should identify the laboratory which provided these analyses.

To demonstrate compliance with the second of the above criteria, a laboratory should submit to the responsible physician an internal QA/QC plan detailing the standard operating procedures to be adopted for satisfying the recommended QA/QC procedures for the analysis of each specific analyte (CDB, CDU and/or B2MU). Procedures for internal QA/QC programs are detailed in Section 3.3.1 below.

To satisfy the third of the above criteria, laboratories analyzing for CDU or B2MU also should submit a QA/QC plan for creatinine analysis (CRTU); the QA/QC plan and characterization analyses for CRTU must come from the laboratory performing the CRTU analysis, even if the CRTU analysis is being performed by a contract laboratory.

Laboratories enrolling in the CTQ program (to satisfy the last of the above criteria) must remit, with the enrollment application, an initial fee of approximately $100 per analyte. (Note that this fee is only an estimate, and is subject to revision without notice.) Laboratories should indicate on the application that they agree to have proficiency test results sent by the CTQ directly to the physicians designated by participating laboratories.

Once a laboratory's application is processed by the CTQ, the laboratory will be assigned a code number which will be provided to the laboratory on the initial confirmation form, along with identification of the specific analytes for which the laboratory is participating. Confirmation of participation will be sent by the CTQ to physicians designated by the applicant laboratory.

3.2.2 Recommended Review of Laboratories Selected to Perform Analyses

Six months after being selected initially to perform analyte determinations, the status of participating laboratories should be reviewed by the responsible physicians. Such reviews should then be repeated every 6 months or whenever additional proficiency or QA/QC documentation is received (whichever occurs first).

As soon as the responsible physician has received the CTQ results from the first 3 rounds of proficiency testing (i.e., 3 sets of 3 samples each for CDB, CDU and/or B2MU) for a participating laboratory, the status of the laboratory's continued participation should be reviewed. Over the same initial 6-month period, participating laboratories also should provide responsible physicians the results of their internal QA/QC monitoring program used to assess performance for each analyte (CDB, CDU and/or B2MU) for which the laboratory performs determinations. This information should be submitted using appropriate forms and documentation.

The status of each participating laboratory should be determined for each analyte (i.e., whether the laboratory satisfies minimum proficiency guidelines based on the proficiency samples sent by the CTQ and the results of the laboratory's internal QA/QC program). To maintain competency for analysis of CDB, CDU and/or B2MU during the first review, the laboratory should satisfy performance requirements for at least 2 of the 3 proficiency samples provided in each of the 3 rounds completed over the 6-month period. Proficiency should be maintained for the analyte(s) for which the laboratory conducts determinations.

To continue participation for CDU and/or B2MU analyse, laboratories also should either maintain accreditation for CRTU analysis in the CAP program and participate in the CAP surveys, or they should contract the CDU and B2MU analyses to a laboratory which satisfies these requirements (or which can provide documentation of accreditation/participation in an equivalent program).

The performance requirement for CDB analysis is defined as an analytical result within ±1 µg/l blood or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 µg/l, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 µg/l. The purpose for redefining the acceptable interval for low CDB values is to encourage proper reporting of the actual values obtained during measurement; laboratories, therefore, will not be penalized (in terms of a narrow range of acceptability) for reporting measured concentrations smaller than 1 µg/l.

The performance requirement for CDU analysis is defined as an analytical result within ±1 µg/l urine or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 µg/l urine, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 µg/l urine. Laboratories also should demonstrate proficiency in creatinine analysis as defined by the CAP Note that reporting CDU results, other than for the CTQ proficiency samples (i.e., compliance samples), should be accompanied with results of analyses for CRTU, and these 2 sets of results should be combined to provide a measure of CDU in units of µg/g CRTU

The performance requirement for B2MU is defined as analytical results within ± 15% of the consensus mean. Note that reporting B2MU results, other than for CTQ proficiency samples (i.e., compliance samples), should be accompanied with results of analyses for CRTU, and these 2 sets of results should be combined to provide a measure of B2MU in units of µg/g CRTU

There are no recommended performance checks for CRTU analyses. As stated previously, laboratories performing CRTU analysis in support of CDU or B2MU analyses should be accredited by the CAP, and participating in the CAP's survey for CRTU.

Following the first review, the status of each participating laboratory should be reevaluated at regular intervals (i.e., corresponding to receipt of results from each succeeding round of proficiency testing and submission of reports from a participating laboratory's internal QA/QC program).

After a year of collecting proficiency test results, the following proficiency criterion should be added to the set of criteria used to determine the participating laboratory's status (for analyzing CDB, CDU and/or B2MU): A participating laboratory should not fail performance requirements for more than 4 samples from the 6 most recent consecutive rounds used to assess proficiency for CDB, CDU and/or B2MU separately (i.e., a total of 8 discrete proficiency samples for each analyte). Note that this requirement does not replace, but supplements, the recommendation that a laboratory should satisfy the performance criteria for at least 2 of the 3 samples tested for each round of the program.

3.2.3 Recommendations for Selecting Among Newly-Formed Laboratories (or Laboratories that Previously Failed to Meet the Protocol Guidelines)

OSHA recommends that laboratories that have not previously provided commercial analyses of CDB, CDU and/or B2MU (or have done so for a period less than 2 years), or which have provided these analyses for 2 or more years but have not conformed previously with these protocol guidelines, should satisfy the following provisions for each analyte for which determinations are to be made prior to being selected to analyze biological samples under the medical monitoring program:

1. Submit to the responsible physician an internal QA/QC plan detailing the standard operating procedures to be adopted for satisfying the QA/QC guidelines (guidelines for internal QA/QC programs are detailed in Section 3.3.1);

2. Submit to the responsible physician the results of the initial characterization analyses for each analyte for which determinations are to be made;n

3. Submit to the responsible physician the results, for the initial 6-month period, of the internal QA/QC program for each analyte for which determinations are to be made (if no commercial analyses have been conducted previously, a minimum of 2 mock standardization trials for each analyte should be completed per month for a 6-month period);

4. Enroll in the CTQ program for the appropriate analyte for which determinations are to be made, and arrange to have the CTQ program submit the initial confirmation of participation and proficiency test results directly to the designated physicians. Note that the designated physician should receive results from 3 completed rounds from the CTQ program before approving a laboratory for participation in the biological monitoring program,

5. Laboratories seeking participation for CDU and/or B2MU analyses should submit to the responsible physician documentation of accreditation by the CAP for CRTU analyses performed in conjunction with CDU and/or B2MU determinations (if CRTU analyses are conducted by a contract laboratory, this laboratory should submit proof of CAP accreditation to the responsible physician); and,

6. Documentation should be submitted on an appropriate form.

To participate in CDB, CDU and/or B2MU analyses, the laboratory should satisfy the above criteria for a minimum of 2 of the 3 proficiency samples provided in each of the 3 rounds of the CTQ program over a 6-month period; this procedure should be completed for each appropriate analyte. Proficiency should be maintained for each analyte to continue participation. Note that laboratories seeking participation for CDU or B2MU also should address the performance requirements for CRTU, which involves providing evidence of accreditation by the CAP and participation in the CAP surveys (or an equivalent program).

The performance requirement for CDB analysis is defined as an analytical result within ±1 µg/l or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 µg/l, the performance requirement is defined as a concentration between the detection limit of the analysis and a maximum of 2 µg/l. The purpose of redefining the acceptable interval for low CDB values is to encourage proper reporting of the actual values obtained during measurement; laboratories, therefore, will not be penalized (in terms of a narrow range of acceptability) for reporting measured concentrations less than 1 µg/l.

The performance requirement for CDU analysis is defined as an analytical result within ±1 µg/l urine or 15% of the consensus mean (whichever is greater). For samples exhibiting a consensus mean less than 1 µg/l urine, the performance requirement is defined as a concentration that falls between the detection limit of the analysis and a maximum of 2 µg/l urine. Performance requirements for the companion CRTU analysis (defined by the CAP) also should be met. Note that reporting CDU results, other than for CTQ proficiency testing should be accompanied with results of CRTU analyses, and these 2 sets of results should be combined to provide a measure of CDU in units of µg/g CRTU.

The performance requirement for B2MU is defined as an analytical result within ±15% of the consensus mean. Note that reporting B2MU results, other than for CTQ proficiency testing should be accompanied with results of CRTU analysis, these 2 sets of results should be combined to provide a measure of B2MU in units of µg/g CRTU.

Once a new laboratory has been approved by the responsible physician for conducting analyte determinations, the status of this approval should be reviewed periodically by the responsible physician as per the criteria presented under Section 3.2.2.

Laboratories which have failed previously to gain approval of the responsible physician for conducting determinations of 1 or more analytes due to lack of compliance with the criteria defined above for existing laboratories (Section 3.2.1), may obtain approval by satisfying the criteria for newly-formed laboratories defined under this section; for these laboratories, the second of the above criteria may be satisfied by submitting a new set of characterization analyses for each analyte for which determinations are to be made.

Reevaluation of these laboratories is discretionary on the part of the responsible physician. Reevaluation, which normally takes about 6 months, may be expedited if the laboratory can achieve 100% compliance with the proficiency test criteria using the 6 samples of each analyte submitted to the CTQ program during the first 2 rounds of proficiency testing.

For laboratories seeking reevaluation for CDU or B2MU analysis, the guidelines for CRTU analyses also should be satisfied, including accreditation for CRTU analysis by the CAP, and participation in the CAP survey program (or accreditation/participation in an equivalent program).

3.2.4 Future Modifications to the Protocol Guidelines

As participating laboratories gain experience with analyses for CDB, CDU and B2MU, it is anticipated that the performance achievable by the majority of laboratories should improve until it approaches that reported by the research groups which developed each method. OSHA, therefore, may choose to recommend stricter performance guidelines in the future as the overall performance of participating laboratories improves.

3.3 Guidelines for Record Keeping and Reporting

To comply with these guidelines, participating laboratories should satisfy the above-stated performance and proficiency recommendations, as well as the following internal QA/QC, record keeping, and reporting provisions.

If a participating laboratory fails to meet the provisions of these guidelines, it is recommended that the responsible physician disapprove further analyses of biological samples by that laboratory until it demonstrates compliance with these guidelines. On disapproval, biological samples should be sent to a laboratory that can demonstrate compliance with these guidelines, at least until the former laboratory is reevaluated by the responsible physician and found to be in compliance.

The following record keeping and reporting procedures should be practiced by participating laboratories.

3.3.1 Internal Quality Assurance/Quality Control Procedures

Laboratories participating in the cadmium monitoring program should develop and maintain an internal quality assurance/quality control (QA/QC) program that incorporates procedures for establishing and maintaining control for each of the analytic procedures (determinations of CDB, CDU and/or B2MU) for which the laboratory is seeking participation. For laboratories analyzing CDU and/or B2MU, a QA/QC program for CRTU also should be established.

Written documentation of QA/QC procedures should be described in a formal QA/QC plan; this plan should contain the following information: Sample acceptance and handling procedures (i.e., chain-of-custody); sample preparation procedures; instrument parameters; calibration procedures; and, calculations. Documentation of QA/QC procedures should be sufficient to identify analytical problems, define criteria under which analysis of compliance samples will be suspended, and describe procedures for corrective actions.

3.3.1.1 *QA/QC procedures for establishing control of CDB and CDU analyses*

The QA/QC program for CDB and CDU should address, at a minimum, procedures involved in calibration, establishment of control limits, internal QC analyses and maintaining control, and corrective-action protocols. Participating laboratory should develop and maintain procedures to assure that analyses of compliance samples are within control limits, and that these procedures are documented thoroughly in a QA/QC plan.

A nonmandatory QA/QC protocol is presented in Attachment 1. This attachment is illustrative of the procedures that should be addressed in a proper QA/QC program.

Calibration. Before any analytic runs are conducted, the analytic instrument should be calibrated. Calibration should be performed at the beginning of each day on which QC and/or compliance samples are run. Once calibration is established, QC or compliance samples may be run. Regardless of the type of samples run, about every fifth sample should serve as a standard to assure that calibration is being maintained.

Calibration is being maintained if the standard is within ±15% of its theoretical value. If a standard is more than ±15% of its theoretical value, the run has exceeded control limits due to calibration error; the entire set of samples then should be reanalyzed after recalibrating or the results should be recalculated based on a statistical curve derived from that set of standards.

It is essential that the value of the highest standard analyzed be higher than the highest sample analyzed; it may be necessary, therefore, to run a high standard at the end of the run, which has been selected based on results obtained over the course of the run (i.e., higher than any standard analyzed to that point).

Standards should be kept fresh; as samples age, they should be compared with new standards and replaced if necessary.

Internal Quality Control Analyses. Internal QC samples should be determined interspersed with analyses of compliance samples. At a minimum, these samples should be run at a rate of 5% of the compliance samples or at least one set of QC samples per analysis of compliance samples, whichever is greater. If only 2 samples are run, they should contain different levels of cadmium.

Internal QC samples may be obtained as commercially-available reference materials and/or they may be internally prepared. Internally-prepared samples should be well characterized and traced, or compared to a reference material for which a consensus value is available.

Levels of cadmium contained in QC samples should not be known to the analyst prior to reporting the results of the analysis.

Internal QC results should be plotted or charted in a manner which describes sample recovery and laboratory control limits.

Internal Control Limits. The laboratory protocol for evaluating internal QC analyses per control limits should be clearly defined. Limits may be based on statistical methods (e.g., as $2\hat{\sigma}$ from the laboratory mean recovery), or on proficiency testing limits (e.g., ±1 µg or 15% of the mean, whichever is greater). Statistical limits that exceed ±40% should be reevaluated to determine the source error in the analysis.

When laboratory limits are exceeded, analytic work should terminate until the source of error is determined and corrected; compliance samples affected by the error should be reanalyzed. In addition, the laboratory protocol should address any unusual trends that develop which may be biasing the results. Numerous, consecutive results above or below laboratory mean recoveries, or outside laboratory statistical limits, indicate that problems may have developed.

Corrective Actions. The QA/QC plan should document in detail specific actions taken if control limits are exceeded or unusual trends develop. Corrective actions should be noted on an appropriate form, accompanied by supporting documentation.

In addition to these actions, laboratories should include whatever additional actions are necessary to assure that accurate data are reported to the responsible physicians.

Reference Materials. The following reference materials may be available:

Cadmium in Blood (CDB)

1. Centre de Toxicologie du Quebec, Le Centre Hospitalier de l'Universite Laval, 2705 boul. Laurier, Quebec, Que., Canada G1V 4G2. (Prepared 6 times per year at 1–15 µg Cd/l.)
2. H. Marchandise, Community Bureau of Reference-BCR, Directorate General XII, Commission of the European Communities, 200, rue de la Loi, B–1049, Brussels, Belgium. (Prepared as Bl CBM–1 at 5.37 µg Cd/l, and Bl CBM–2 at 12.38 µg Cd/l.)
3. Kaulson Laboratories Inc., 691 Bloomfield Ave., Caldwell, NJ 07006; tel. (201) 226–9494, FAX (201) 226–3244. (Prepared as #0141 [As, Cd, Hg, Pb) at 2 levels.)

Cadmium in Urine (CDU)

1. Centre de Toxicologie du Quebec, Le Centre Hospitalier de l'Universite Laval, 2705 boul. Laurier, Quebec, Que., Canada G1V 4G2. (Prepared 6 times per year.)
2. National Institute of Standards and Technology (NIST), Dept. of Commerce, Gaithersburg, MD; tel: (301) 975–6776. (Prepared as SRM 2670 freeze-dried urine [metals); set includes normal and elevated levels of metals; cadmium is certified for elevated level of 88.0 µg/l in reconstituted urine.)
3. Kaulson Laboratories Inc., 691 Bloomfield Ave., Caldwell, NJ 07006, tel (201) 226–9494, FAX (201) 226–3244. (Prepared as #0140 [As, Cd, Hg, Pb] at 2 levels.)

3.3.1.2 *QA/QC procedures for establishing control of B2MU*

A written, detailed QA/QC plan for B2MU analysis should be developed. The QA/QC plan should contain a protocol similar to those protocols developed for the CDB/CDU analyses. Differences in analyses mey warrant some differences in the QA/QC protocol, but procedures to ensure analytical integrity should be developed and followed.

Examples of performance summaries that can be provided include measurements of accuracy (i.e., the means of measured values versus target values for the control samples) and precision (i.e., based on duplicate analyses). It is recommended that the accuracy and precision measurements be compared to those reported as achievable by the Pharmacia Delphia kit (Pharmacia 1990) to determine if and when unsatisfactory analyses have arisen. If the measurement error of 1 or more of the control samples is more than 15%, the run exceeds control limits. Similarly, this decision is warranted when the average CV for duplicate samples is greater than 5%.

3.3.2 Procedures for Record Keeping

To satisfy reporting requirements for commercial analyses of CDB, CDU and/or B2MU performed for the medical monitoring program mandated under the cadmium rule participating laboratories should maintain the following documentation for each analyte:

1. For each analytic instrument on which analyte determinations are made, records relating to the most recent calibration and QC sample analyses;
2. For these instruments, a tabulated record for each analyte of those determinations found to be within and outside of control limits over the past 2 years;
3. Results for the previous 2 years of the QC sample analyses conducted under the internal QA/QC program (this information should be: Provided for each analyte for which determinations are made and for each analytic instrument used for this purpose, sufficient to demonstrate that internal QA/QC programs are being executed properly, and consistent with data sent to responsible physicians.
4. Duplicate copies of monitoring results for each analyte sent to clients during the previous 5 years, as well as associated information; supporting material such as chain-of-custody forms also should be retained; and,
5. Proficiency test results and related materials received while participating in the CTQ interlaboratory program over the past 2 years; results also should be tabulated to provide a serial record of relative error (derived per Section 3.3.3 below).

3.3.3 Reporting Procedures

Participating laboratories should maintain these documents: QA/QC program plans; QA/QC status reports; CTQ proficiency program reports; and, analytical data reports. The information that should be included in these reports is summarized in Table 2; a copy of each report should be sent to the responsible physician.

TABLE 2.—REPORTING PROCEDURES FOR LABORATORIES PARTICIPATING IN THE CADMIUM MEDICAL MONITORING PROGRAM

Report	Frequency (time frame)	Contents
1 QA/QC Program Plan	Once (initially)	A detailed description of the QA/QC protocol to be established by the laboratory to maintain control of analyte determinations.
2 QA/QC Status Report	Every 2 months	Results of the QC samples incorporated into regular runs for each instrument (over the period since the last report).
3 Proficiency Report	Attached to every data report	Results from the last full year of proficiency samples submitted to the CTQ program and Results of the 100 most recent QC samples incorporated into regular runs for each instrument.
4 Analytical Data Report	For all reports of data results	Date the sample was received; Date the sample was analyzed; Appropriate chain-of-custody information; Types of analyses performed; Results of the requested analyses and Copy of the most current proficiency report.

As noted in Section 3.3.1, a QA/QC program plan should be developed that documents internal QA/QC procedures (defined under Section 3.3.1) to be implemented by the participating laboratory for each analyte; this plan should provide a list identifying each instrument used in making analyte determinations.

A QA/QC status report should be written bimonthly for each analyte. In this report, the results of the QC program during the reporting period should be reported for each analyte in the following manner: The number (N) of QC samples analyzed during the period; a table of the target levels defined for each sample and the corresponding measured values; the mean of F/T value (as defined below) for the set of QC samples run during the period; and, use of $\bar{X}\pm2\hat{\sigma}$ (as defined below) for the set of QC samples run during the period as a measure of precision.

As noted in Section 2, an F/T value for a QC sample is the ratio of the measured concentration of analyte to the established (i.e., reference) concentration of analyte for that QC sample. The equation below describes the derivation of the mean for F/T values, X (with N being analyzed the total number of samples analyzed):

$$X = \frac{\Sigma(F/T)}{N}$$

The standard deviation, $\hat{\sigma}$, for these measurements is derived using the following equation (note that $2\hat{\sigma}$ is twice this value):

$$\hat{\sigma} = \left[\frac{\Sigma(F/T-X)^2}{N-1}\right]^{\frac{1}{2}}$$

The nonmandatory QA/QC protocol (see Attachment 1) indicates that QC samples should be divided into several discrete pools, and a separate estimate of precision for each pools then should be derived. Several precision estimates should be provided for concentrations which differ in average value. These precision measures may be used to document improvements in performance with regard to the combined pool.

Participating laboratories should use the CTQ proficiency program for each analyte. Results of the this program will be sent by CTQ directly to physicians designated by the participating laboratories. Proficiency results from the CTQ program are used to establish the accuracy of results from each participating laboratory, and should be provided to responsible physicians for use in trend analysis. A proficiency report consisting of these proficiency results should accompany data reports as an attachment.

For each analyte, the proficiency report should include the results from the 6 previous proficiency rounds in the following format:

1. Number (N) of samples analyzed;
2. Mean of the target levels, $(1/N)\Sigma T_i$, with T_i being a consensus mean for the sample;
3. Mean of the measurements, $(1/N)\Sigma M_i$, with M_i being a sample measurement;
4. A measure of error defined by:

$(1/N)\Sigma(T_i - M_i)^2$

Analytical data reports should be submitted to responsible physicians directly. For each sample, report the following information: The date the sample was received; the date the sample was analyzed; appropriate chain-of-custody information; the type(s) of analyses performed; and, the results of the analyses. This information should be reported on a form similar to the form provided an appropriate form. The most recent proficiency program report should accompany the analytical data reports (as an attachment).

Confidence intervals for the analytical results should be reported as $X\pm2\hat{\sigma}$, with X being the measured value and $2\hat{\sigma}$ the standard deviation calculated as described above.

For CDU or B2MU results, which are combined with CRTU measurements for proper reporting, the 95% confidence limits are derived from the limits for CDU or B2MU, (p), and the limits for CRTU, (q), as follows:

$$\frac{X}{Y} \pm \left(\frac{1}{Y^2}\right)(Y^2 \times p^2 + X^2 \times q^2)^{\frac{1}{2}}$$

For these calculations, X±p is the measurement and confidence limits for CDU or B2MU, and Y±q is the measurement and confidence limit for CRTU.

Participating laboratories should notify responsible physicians as soon as they receive information indicating a change in their accreditation status with the CTQ or the CAP. These physicians should not be expected to wait until formal notice of a status change has been received from the CTQ or the CAP.

3.4 Instructions to Physicians

Physicians responsible for the medical monitoring of cadmium-exposed workers must collect the biological samples from workers; they then should select laboratories

to perform the required analyses, and should interpret the analytic results.

3.4.1 Sample Collection and Holding Procedures

Blood Samples. The following procedures are recommended for the collection, shipment and storage of blood samples for CDB analysis to reduce analytical variablility; these recommendations were obtained primarily through personal communications with J.P. Weber of the CTQ (1991), and from reports by the Centers for Disease Control (CDC, 1986) and Stoeppler and Brandt (1980).

To the extent possible, blood samples should be collected from workers at the same time of day. Workers should shower or thoroughly wash their hands and arms before blood samples are drawn. The following materials are needed for blood sample collection: Alcohol wipes; sterile gauze sponges; band-aids; 20-gauge, 1.5-in. stainless steel needles (sterile); preprinted labels; tourniquets; vacutainer holders; 3-ml "metal free" vacutainer tubes (i.e., dark-blue caps), with EDTA as an anti-coagulant; and, styrofoam vacutainer shipping containers.

Whole blood samples are taken by venipuncture. Each blue-capped tube should be labeled or coded for the worker and company before the sample is drawn. (Blue-capped tubes are recommended instead of red-capped tubes because the latter may consist of red coloring pigment containing cadmium, which could contaminate the samples.) Immediately after sampling, the vacutainer tubes must be thoroughly mixed by inverting the tubes at least 10 times manually or mechanically using a Vortex device (for 15 sec). Samples should be refrigerated immediately or stored on ice until they can be packed for shipment to the participating laboratory for analysis.

The CDC recommends that blood samples be shipped with a "cool pak" to keep the samples cold during shipment. However, the CTQ routinely ships and receives blood samples for cadmium analysis that have not been kept cool during shipment. The CTQ has found no deterioration of cadmium in biological fluids that were shipped via parcel post without a cooling agent, even though these deliveries often take 2 weeks to reach their destination.

Urine Samples. The following are recommended procedures for the collection, shipment and storage of urine for CDU and B2MU analyses, and were obtained primarily through personal communications with J.P. Weber of the CTQ (1991), and from reports by the CDC (1986) and Stoeppler and Brandt (1980).

Single "spot" samples are recommended. As B2M can degrade in the bladder, workers should first empty their bladder and then drink a large glass of water at the start of the visit. Urine samples then should be collected within 1 hour. Separate samples should be collected for CDU and B2MU using the following materials: Sterile urine collection cups (250 ml); small sealable plastic bags; preprinted labels; 15-ml polypropylene or polyethylene screw-cap tubes; lab gloves ("metal free"); and, preservatives (as indicated).

The sealed collection cup should be kept in the plastic bag until collection time. The workers should wash their hands with soap and water before receiving the collection cup. The collection cup should not be opened until just before voiding and the cup should be sealed immediately after filling. It is important that the inside of the container and cap are not touched by, or come into contact with, the body, clothing or other surfaces.

For CDU analyzes, the cup is swirled gently to resuspend any solids, and the 15-ml tube is filled with 10-12 ml urine. The CDC recommends the addition of 100 µl concentrated HNO_3 as a preservative before sealing the tube and then freezing the sample. The CTQ recommends minimal handling and does not acidify their interlaboratory urine reference materials prior to shipment, nor do they freeze the sample for shipment. At the CTQ, if the urine sample has much sediment, the sample is acidified in the lab to free any cadmium in the precipitate.

For B2M, the urine sample should be collected directly into a polyethylene bottle previously washed with dilute nitric acid. The pH of the urine should be measured and adjusted to 8.0 with 0.1 N NaOH immediately following collection. Samples should be frozen and stored at –20°C until testing is performed. The B2M in the samples should be stable for 2 days when stored at 2–8°C, and for at least 2 months at –20°C. Repeated freezing and thawing should be avoided to prevent denaturing the B2M (Pharmacia 1990).

3.4.2 Recommendations for Evaluating Laboratories

Using standard error data and the results of proficiency testing obtained from CTQ, responsible physicians can make an informed choice of which laboratory to select to analyze biological samples. In general, laboratories with small standard errors and little disparity between target and measured values tend to make precise and accurate sample determinations. Estimates of precision provided to the physicians with each set of monitoring results can be compared to previously-reported proficiency and precision estimates. The latest precision estimates should be at least as small as the standard error reported previously by the laboratory. Moreover, there should be no indication that precision is deteriorating (i.e., increasing values for the precision estimates). If precision is deteriorating, physicians may decide to use another laboratory for these analyses. QA/QC information provided by the participating laboratories to physicians can, therefore, assist physicians in evaluating laboratory performance.

3.4.3 Use and Interpretation of Results

When the responsible physician has received the CDB, CDU and/or B2MU results, these results must be compared to the action levels discussed in the final rule for cadmium. The comparison of the sample results to action levels is straightforward. The measured value reported from the laboratory can be compared directly to the action levels; if the reported value exceeds an action level, the required actions must be initiated.

4.0 Background

Cadmium is a naturally-occurring environmental contaminant to which humans are continually exposed in food, water, and air. The average daily intake of cadmium by the U.S. population is estimated to be 10–20 µg/day. Most of this intake is via ingestion, for which absorption is estimated at 4–7% (Kowal et al. 1979). An additional nonoccupational source of cadmium is smoking tobacco; smoking a pack of cigarettes a day adds an additional 2–4 µg cadmium to the daily intake, assuming absorption via inhalation of 25–35% (Nordberg and Nordberg 1988; Friberg and Elinder 1988; Travis and Haddock 1980).

Exposure to cadmium fumes and dusts in an occupational setting where air concentrations are 20–50 µg/m³ results in an additional daily intake of several hundred micrograms (Friberg and Elinder 1988, p. 563). In such a setting, occupational exposure to cadmium occurs primarily via inhalation, although additional exposure may occur through the ingestion of material via contaminated hands if workers eat or smoke without first washing. Some of the particles that are inhaled initially may be ingested when the material is deposited in the upper respiratory tract, where it may be cleared by mucociliary transport and subsequently swallowed.

Cadmium introduced into the body through inhalation or ingestion is transported by the albumin fraction of the blood plasma to the liver, where it accumulates and is stored principally as a bound form complexed with the protein metallothionein. Metallothionein-bound cadmium is the main form of cadmium subsequently transported to the kidney; it is these 2 organs, the liver and kidney, in which the majority of the cadmium body burden accumulates. As much as one half of the total body burden of cadmium may be found in the kidneys (Nordberg and Nordberg 1988).

Once cadmium has entered the body, elimination is slow; about 0.02% of the body burden is excreted per day via urinary/fecal elimination. The whole-body half-life of cadmium is 10–35 years, decreasing slightly with increasing age (Travis and Haddock 1980).

The continual accumulation of cadmium is the basis for its chronic noncarcinogenic toxicity. This accumulation makes the kidney the target organ in which cadmium toxicity usually is first observed (Piscator 1964). Renal damage may occur when cadmium levels in the kidney cortex approach 200 µg/g wet tissue-weight (Travis and Haddock 1980).

The kinetics and internal distribution of cadmium in the body are complex, and depend on whether occupational exposure to cadmium is ongoing or has terminated. In general, cadmium in blood is related principally to recent cadmium exposure, while cadmium in urine reflects cumulative exposure (i.e., total body burden) (Lauwerys et al. 1976; Friberg and Elinder 1988).

4.1 Health Effects

Studies of workers in a variety of industries indicate that chronic exposure to cadmium may be linked to several adverse

health effects including kidney dysfunction, reduced pulmonary function, chronic lung disease and cancer (Federal Register 1990). The primary sites for cadmium-associated cancer appear to be the lung and the prostate.

Cancer. Evidence for an association between cancer and cadmium exposure comes from both epidemiological studies and animal experiments. Pott (1965) found a statistically significant elevation in the incidence of prostate cancer among a cohort of cadmium workers. Other epidemiology studies also report an elevated incidence of prostate cancer; however, the increases observed in these other studies were not statistically significant (Meridian Research, Inc. 1989).

One study (Thun et al. 1985) contains sufficiently quantitative estimates of cadmium exposure to allow evaluation of dose-response relationships between cadmium exposure and lung cancer. A statistically significant excess of lung cancer attributed to cadmium exposure was found in this study, even after accounting for confounding variables such as coexposure to arsenic and smoking habits (Meridian Research, Inc. 1989).

Evidence for quantifying a link between lung cancer and cadmium exposure comes from a single study (Takenaka et al. 1983). In this study, dose-response relationships developed from animal data were extrapolated to humans using a variety of models. OSHA chose the multistage risk model for estimating the risk of cancer for humans using these animal data. Animal injection studies also suggest an association between cadmium exposure and cancer, particularly observations of an increased incidence of tumors at sites remote from the point of injection. The International Agency for Research on Cancer (IARC) (Supplement 7, 1987) indicates that this, and related, evidence is sufficient to classify cadmium as an animal carcinogen. However, the results of these injection studies cannot be used to quantify risks attendant to human occupational exposures due to differences in routes of exposure (Meridian Research, Inc. 1989).

Based on the above-cited studies, the U.S. Environmental Protection Agency (EPA) classifies cadmium as "B1," a probable human carcinogen (USEPA 1985). IARC in 1987 recommended that cadmium be listed as a probable human carcinogen.

Kidney Dysfunction. The most prevalent nonmalignant effect observed among workers chronically exposed to cadmium is kidney dysfunction. Initially, such dysfunction is manifested by proteinuria (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Proteinuria associated with cadmium exposure is most commonly characterized by excretion of low-molecular weight proteins (15,000–40,000 MW), accompanied by loss of electrolytes, uric acid, calcium, amino acids, and phosphate. Proteins commonly excreted include β-2-microglobulin (B2M), retinol-binding protein (RBP), immunoglobulin light chains, and lysozyme. Excretion of low molecular weight proteins is characteristic of damage to the proximal tubules of the kidney (Iwao et al. 1980).

Exposure to cadmium also may lead to urinary excretion of high-molecular weight proteins such as albumin, immunoglobulin G, and glycoproteins (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Excretion of high-molecular weight proteins is indicative of damage to the glomeruli of the kidney. Bernard et al. (1979) suggest that cadmium-associated damage to the glomeruli and damage to the proximal tubules of the kidney develop independently of each other, but may occur in the same individual.

Several studies indicate that the onset of low-molecular weight proteinuria is a sign of irreversible kidney damage (Friberg et al. 1974; Roels et al. 1982; Piscator 1984; Elinder et al. 1985; Smith et al. 1986). For many workers, once sufficiently elevated levels of B2M are observed in association with cadmium exposure, such levels do not appear to return to normal even when cadmium exposure is eliminated by removal of the worker from the cadmium-contaminated work environment (Friberg, exhibit 29, 1990).

Some studies indicate that cadmium-induced proteinuria may be progressive; levels of B2MU increase even after cadmium exposure has ceased (Elinder et al. 1985). Other researchers have reached similar conclusions (Frieburg testimony, OSHA docket exhibit 29, Elinder testimony, OSHA docket exhibit 55, and OSHA docket exhibits 8–86B). Such observations are not universal, however (Smith et al. 1986; Tsuchiya 1976). Studies in which proteinuria has not been observed, however, may have initiated the reassessment too early (Meridian Research, Inc.1989; Roth Associates, Inc. 1989; Roels 1989).

A quantitative assessment of the risks of developing kidney dysfunction as a result of cadmium exposure was performed using the data from Ellis et al. (1984) and Falck et al. (1983) Meridian Research, Inc. (1989) and Roth Associates, Inc. (1989) employed several mathematical models to evaluate the data from the 2 studies, and the results indicate that cumulative cadmium exposure levels between 5 and 100 µg-years/m³ correspond with a one-in-a-thousand probability of developing kidney dysfunction.

When cadmium exposure continues past the onset of early kidney damage (manifested as proteinuria), chronic nephrotoxicity may occur (Meridian Research, Inc. 1989; Roth Associates, Inc. 1989). Uremia, which is the loss of the glomerulus' ability to adequately filter blood, may result. This condition leads to severe disturbance of electrolyte concentrations, which may result in various clinical complications including atherosclerosis, hypertension, pericarditis, anemia, hemorrhagic tendencies, deficient cellular immunity, bone changes, and other problems. Progression of the disease may require dialysis or a kidney transplant.

Studies in which animals are chronically exposed to cadmium confirm the renal effects observed in humans (Friberg et al. 1986). Animal studies also confirm cadmium-related problems with calcium metabolism and associated skeletal effects, which also have been observed among humans. Other effects commonly reported in chronic animal studies include anemia, changes in liver morphology, immunosuppression and hypertension. Some of these effects may be associated with cofactors; hypertension, for example, appears to be associated with diet, as well as with cadmium exposure. Animals injected with cadmium also have shown testicular necrosis.

4.2 Objectives for Medical Monitoring

In keeping with the observation that renal disease tends to be the earliest clinical manifestation of cadmium toxicity, the final cadmium standard mandates that eligible workers must be medically monitored to prevent this condition (as well as cadmimum-induced cancer). The objectives of medical-monitoring, therefore, are to: Identify workers at significant risk of adverse health effects from excess, chronic exposure to cadmium; prevent future cases of cadmium-induced disease; detect and minimize existing cadmium-induced disease; and, identify workers most in need of medical intervention.

The overall goal of the medical monitoring program is to protect workers who may be exposed continuously to cadmium over a 45-year occupational lifespan. Consistent with this goal, the medical monitoring program should assure that:

1. Current exposure levels remain sufficiently low to prevent the accumulation of cadmium body burdens sufficient to cause disease in the future by monitoring CDB as an indicator of recent cadmium exposure;

2. Cumulative body burdens, especially among workers with undefined historical exposures, remain below levels potentially capeble of leading to damage and disease by assessing CDU as an indicator of cumulative exposure to cadmium; and,

3. Health effects are not occurring among exposed workers by determining B2MU as an early indicator of the onset of cadmium-induced kidney disease.

4.3 Indicators of Cadmium Exposure and Disease

Cadmium is present in whole blood bound to albumin, in erythrocytes, and as a metallothionein-cadmium complex. The metallothionein-cadmium complex that represents the primary transport mechanism for cadmium delivery to the kidney. CDB concentrations in the general, nonexposed population average 1 µg Cd/l whole blood, with smokers exhibiting higher levels (see Section 5.1.6). Data presented in Section 5.1.6 shows that 95% of the general population not occupationally exposed to cadmium have CDB levels less than 5 µg Cd/l.

If total body burdens of cadmium remain low, CDB concentrations indicate recent exposure (i.e., daily intake). This conclusion is based on data showing that cigarette smokers exhibit CDB concentrations of 2–7 µg/l depending on the number of cigarettes smoked per day (Nordberg and Nordberg 1988), while CDB levels for those who quit smoking return to general population values (approximately 1 µg/l) within several weeks (Lauwerys et al. 1976). Based on these observations, Lauwerys et al. (1976) concluded that CDB has a biological half-life of a few weeks to less than 3 months. As indicated in Section 3.1.6, the upper 95th percentile for CDB levels observed among

those who are not occupationally exposed to cadmium is 5 µg/l, which suggests that the absolute upper limit to the range reported for smokers by Nordberg and Nordberg may have been affected by an extreme value (i.e., beyond 2σ above the mean).

Among occupationally-exposed workers, the occupational history of exposure to cadmium must be evaluated to interpret CDB levels. New workers, or workers with low exposures to cadmium, exhibit CDB levels that are representative of recent exposures, similar to the general population. However, for workers with a history of chronic exposure to cadmium, who have accumulated significant stores of cadmium in the kidneys/liver, part of the CDB concentrations appear to indicate body burden. If such workers are removed from cadmium exposure, their CDB levels remain elevated, possibly for years, reflecting prior long-term accumulation of cadmium in body tissues. This condition tends to occur, however, only beyond some threshold exposure value, and possibly indicates the capacity of body tissues to accumulate cadmium which cannot be excreted readily (Friberg and Elinder 1988; Nordberg and Nordberg 1988).

CDU is widely used as an indicator of cadmium body burdens (Nordberg and Nordberg 1988). CDU is the major route of elimination and, when CDU is measured, it is commonly expressed either as µg Cd/l urine (unadjusted), µg Cd/l urine (adjusted for specific gravity), or µg Cd/g CRTU (see Section 5.2 1). The metabolic model for CDU is less complicated than CDB, since CDU is dependentin large part on the body (i.e., kidney) burden of cadmium. However, a small proportion of CDU still be attributed to recent cadmium exposure, particularly if exposure to high airborne concentrations of cadmium occurred. Note that CDU is subject to larger interindividual and day-to-day variations than CDB, so repeated measurements are recommended for CDU evaluations.

CDU is bound principally to metallothionein, regardless of whether the cadmium originates from metallothionein in plasma or from the cadmium pool accumulated in the renal tubules. Therefore, measurement of metallothionein in urine may provide information similar to CDU, while avoiding the contamination problems that may occur during collection and handling urine for cadmium analysis (Nordberg and Nordberg 1988). However, a commercial method for the determination of metallothionein at the sensitivity levels required under the final cadmium rule is not currently available; therefore, analysis of CDU is recommended.

Among the general population not occupationally exposed to cadmium, CDU levels average less than 1 µg/l (see Section 5.2.7). Normalized for creatinine (CRTU), the average CDU concentration of the general population is less than 1 µg/g CRTU. As cadmium accumulates over the lifespan, CDU increases with age. Also, cigarette smokers may eventually accumulate twice the cadmium body burden of nonsmokers, CDU is slightly higher in smokers than in nonsmokers, even several years after smoking cessation (Nordberg and Nordberg 1988). Despite variations due to age and smoking habits, 95% of those not occupationally exposed to cadmium exhibit levels of CDU less than 3 µg/g CRTU (based on the data presented in Section 5.2.7).

About 0.02% of the cadmium body burden is excreted daily in urine. When the critical cadmium concentration (about 200 ppm) in the kidney is reached, or if there is sufficient cadmium-induced kidney dysfunction, dramatic increases in CDU are observed (Nordberg and Nordberg 1988). Above 200 ppm, therefore, CDU concentrations cease to be an indicator of cadmium body burden, and are instead an index of kidney failure.

Proteinuria is an index of kidney dysfunction, and is defined by OSHA to be a material impairment. Several small proteins may be monitored as markers for proteinuria. Below levels indicative of proteinuria, these small proteins may be early indicators of increased risk of cadmium-induced renal tubular disease. Analytes useful for monitoring cadmium-induced renal tubular damage include:

1. β-2-Microglobulin (B2M), currently the most widely used assay for detecting kidney dysfunction, is the best characterized analyte available (Iwao et al. 1980; Chia et al. 1989);

2. Retinol Binding Protein (RBP) is more stable than B2M in acidic urine (i.e., B2M breakdown occurs if urinary pH is less than 5.5; such breakdown may result in false [i.e., low] B2M values [Bernard and Lauwerys, 1990]);

3. N-Acetyl-B-Glucosaminidase (NAG) is the analyte of an assay that is simple, inexpensive, reliable, and correlates with cadmium levels under 10 µg/g CRTU, but the assay is less sensitive than RBP or B2M (Kawada et al. 1989);

4. Metallothionein (MT) correlates with cadmium and B2M levels, and may be a better predictor of cadmium exposure than CDU and B2M (Kawada et al. 1989);

5. Tamm-Horsfall Glycoprotein (THG) increases slightly with elevated cadmium levels, but this elevation is small compared to increases in urinary albumin, RBP, or B2M (Bernard and Lauwerys 1990);

6. Albumin (ALB), determined by the biuret method, is not sufficiently sensitive to serve as an early indicator of the onset of renal disease (Piscator 1962);

7. Albumin (ALB), determined by the Amido Black method, is sensitive and reproducible, but involves a time-consuming procedure (Piscator 1962);

8. Glycosaminoglycan (GAG) increases among cadmium workers, but the significance of this effect is unknown because no relationship has been found between elevated GAG and other indices of tubular damage (Bernard and Lauwerys 1990);

9. Trehalase seems to increase earlier than B2M during cadmium exposure, but the procedure for analysis is complicated and unreliable (Iwata et al. 1988); and,

10. Kallikrein is observed at lower concentrations among cadmium-exposed workers than among normal controls (Roels et al. 1990).

Of the above analytes, B2M appears to be the most widely used and best characterized analyte to evaluate the presence/absence, as well as the extent of, cadmium-induced renal tubular damage (Kawada, Koyama, and Suzuki 1989; Shaikh and Smith 1984; Nogawa 1984). However, it is important that samples be collected and handled so as to minimize B2M degradation under acidic urine conditions.

The threshold value of B2MU commonly used to indicate the presence of kidney damage 300 µg/g CRTU (Kjellstrom et al. 1977a; Buchet et al. 1980; and Kowal and Zirkes 1983). This value represents the upper 95th or 97.5th percentile level of urinary excretion observed among those without tubular dysfunction (Elinder, exbt L–140–45, OSHA docket H057A). In agreement with these conclusions, the data presented in Section 5.3.7 of this protocol generally indicate that the level of 300 µg/g CRTU appears to define the boundary for kidney dysfunction. It is not clear, however, that this level represents the upper 95th percentile of values observed among those who fail to demonstrate proteinuria effects.

Although elevated B2MU levels appear to be a fairly specific indicator of disease associated with cadmium exposure, other conditions that may lead to elevated B2MU levels include high fevers from influenza, extensive physical exercise, renal disease unrelated to cadmium exposure, lymphomas, and AIDS (Iwao et al. 1980; Schardun and van Epps 1987). Elevated B2M levels observed in association with high fevers from influenza or from extensive physical exercise are transient, and will return to normal levels once the fever has abated or metabolic rates return to baseline values following exercise. The other conditions linked to elevated B2M levels can be diagnosed as part of a properly-designed medical examination. Consequentiy, monitoring B2M, when accompanied by regular medical examinations and CDB and CDU determinations (as indicators of present and past cadmium exposure), may serve as a specific, early indicator of cadmium-induced kidney damage.

4.4 Criteria for Medical Monitoring of Cadmium Workers

Medical monitoring mandated by the final cadmium rule includes a combination of regular medical examinations and periodic monitoring of 3 analytes: CDB, CDU and B2MU. As indicated above, CDB is monitored as an indicator of current cadmium exposure, while CDU serves as an indicator of the cadmium body burden; B2MU is assessed as an early marker of irreversible kidney damage and disease.

The final cadmium rule defines a series of action levels that have been developed for each of the 3 analytes to be monitored. These action levels serve to guide the responsible physician through a decision-making process. For each action level that is exceeded, a specific response is mandated. The sequence of action levels, and the attendant actions, are described in detail in the final cadmium rule.

Other criteria used in the medical decision-making process relate to tests performed during the medical examination (including a determination of the ability of a worker to wear a respirator). These criteria, however, are not affected by the results of the analyte determinations addressed in the above paragraphs and, consequently, will not be considered further in these guidelines.

4.5 Defining to Quality and Proficiency of the Analyte Determinations

As noted above in Sections 2 and 3, the quality of a measurement should be defined along with its value to properly interpret the results. Generally, it is necessary to know the accuracy and the precision of a measurement before it can be properly evaluated. The precision of the date from a specific laboratory indicates the extent to which the repeated measurements of the same sample vary within that laboratory. The accuracy of the data provides an indication of the extent to which these results deviate from average results determined from many laboratories performing the same measurement (i.e., in the absence of an independent determination of the true value of a measurement). Note that terms are defined operationally relative to the manner in which they will be used in this protocol. Formal definitions for the terms in italics used in this section can be found in the list of definitions (Section 2).

Another data quality criterion required to properly evaluate measurement results is the limit of detection of that measurement. For measurements to be useful, the range of the measurement which is of interest for biological monitoring purposes must lie entirely above the limit of detection defined for that measurement.

The overall quality of a laboratory's results is termed the performance of that laboratory. The degree to which a laboratory satisfies a minimum performance level is referred to as the proficiency of the laboratory. A successful medical monitoring program, therefore, should include procedures developed for monitoring and recording laboratory performance; these procedures can be used to identify the most proficient laboratories.

5.0 Overview of Medical Monitoring Tests for CDB, CDU, B2MU and CRTU

To evaluate whether available methods for assessing CDB, CDU, B2MU and CRTU are adequate for determining the parameters defined by the proposed action levels, it is necessary to review procedures available for sample collection, preparation and analysis. A variety of techniques for these purposes have been used historically for the determination of cadmium in biological matrices (including CDB and CDU), and for the determination of specific proteins in biological matrices (including B2MU). However, only the most recent techniques are capable of satisfying the required accuracy, precision and sensitivity (i.e., limit of detection) for monitoring at the levels mandated in the final cadmium rule, while still facilitating automated analysis and rapid processing.

5.1 Measuring Cadmium in Blood (CDB)

Analysis of biological samples for cadmium requires strict analytical discipline regarding collection and handling of samples. In addition to occupational settings, where cadmium contamination would be apparent, cadmium is a ubiquitous environmental contaminant, and much care should be exercised to ensure that samples are not contaminated during collection, preparation or analysis. Many common chemical reagents are contaminated with cadmium at concentrations that will interfere with cadmium analysis; because of the widespread use of cadmium compounds as colored pigments in plastics and coatings, the analyst should continually monitor each manufacturer's chemical reagents and collection containers to prevent contamination of samples.

Guarding against cadmium contamination of biological samples is particularly important when analyzing blood samples because cadmium concentrations in blood samples from nonexposed populations are generally less than 2 µg/l (2 ng/ml), while occupationally-exposed workers can be at medical risk to cadmium toxicity if blood concentrations exceed 5 µg/l (ACGIH 1991 and 1992). This narrow margin between exposed and unexposed samples requires that exceptional care be used in performing analytic determinations for biological monitoring for occupational cadmium exposure.

Methods for quantifying cadmium in blood have improved over the last 40 years primarily because of improvements in analytical instrumentation. Also, due to improvements in analytical techniques, there is less need to perform extensive multi-step sample preparations prior to analysis. Complex sample preparation was previously required to enhance method sensitivity (for cadmium), and to reduce interference by other metals or components of the sample.

5.1.1 Analytical Techniques Used to Monitor Cadmium in Biological Matrices

TABLE 3.—COMPARISON OF ANALYTICAL PROCEDURES/INSTRUMENTATION FOR DETERMINATION OF CADMIUM IN BIOLOGICAL SAMPLES

Analytical procedure	Limit of detection [ng/(g or ml)]	Specified biological matrix	Reference	Comments
Flame Atomic Absorption Spectroscopy (FAAS).	≥1.0	Any matrix	Perkin-Elmer (1982)	Not sensitive enough for biomonitoring without extensive sample digestion, metal chelation and organic solvent extraction.
Graphite Furnace Atomic Absorption Spectroscopy (GFAAS).	0.04	Urine	Pruszkowska et al. (1983).	Methods of choice for routine cadmium analysis.
	≥0.20	Blood	Stoeppler and Brandt (1980).	
Inductively-Coupled Argon-Plasma Atomic Emission Spectroscopy (ICAP AES).	2.0	Any matrix	NIOSH (1984A)	Requires extensive sample preparation and concentration of metal with chelating resin. Advantage is simultaneous analyses for as many as 10 metals from 1 sample.
Neutron Activation Gamma Spectroscopy (NA).	1.5	In vivo (liver)	Ellis et al. (1983)	Only available *in vivo* method for direct determination of cadmium body tissue burdens; expensive; absolute determination of cadmium in reference materials.
Isotope Dilution Mass Spectroscopy (IDMS).	<1.0	Any matrix	Michiels and DeBievre (1986).	Suitable for absolute determination of cadmium in reference materials; expensive.
Differential Pulse Anodic Stripping Voltammetry (DPASV).	<1.0	Any matrix	Stoeppler and Brandt (1980).	Suitable for absolute determination of cadmium in reference materials; efficient method to check accuracy of analytical method.

A number of analytical techniques have been used for determining cadmium concentrations in biological materials. A summary of the characteristics of the most widely employed techniques is presented in Table 3. The technique most suitable for medical monitoring for cadmium is atomic absorption spectroscopy (AAS).

To obtain a measurement using AAS, a light source (i.e., hollow cathode or lectrode-free discharge lamp) containing the element of interest as the cathode, is energized and the lamp emits a spectrum that is unique for that element. This light source is focused through a sample cell, and a selected wavelength is monitored by a monochrometer and photodetector cell. Any ground state atoms in the sample that match those of the lamp element and are in the path of the emitted light may absorb some of the light and decrease the amount of light that reaches the photodetector cell. The amount of light absorbed at each characteristic wavelength is proportional to the number of ground state atoms of the corresponding element that are in the pathway of the light between the source and detector.

To determine the amount of a specific metallic element in a sample using AAS, the sample is dissolved in a solvent and aspirated into a high-temperature flame as an aerosol. At high temperatures, the solvent is rapidly evaporated or decomposed and the solute is initially solidified; the majority of the sample elements then are transformed into an atomic vapor. Next, a light beam is focused above the flame and the amount of metal in the sample can be determined by measuring the degree of absorbance of the atoms of the target element released by the flame at a characteristic wavelength.

A more refined atomic absorption technique, flameless AAS, substitutes an electrothermal, graphite furnace for the flame. An aliquot (10–100 µl) of the sample is pipetted into the cold furnace, which is then heated rapidly to generate an atomic vapor of the element.

AAS is a sensitive and specific method for the elemental analysis of metals; its main drawback is nonspecific background absorbtion and scattering of the light beam by particles of the sample as it decomposes at high temperatures; nonspecific absorbance reduces the sensitivity of the analytical method. The problem of nonspecific absorbance and scattering can be reduced by extensive sample pretreatment, such as ashing and/or acid digestion of the sample to reduce its organic content.

Current AAS instruments employ background correction devices to adjust electronically for background absorbtion and scattering. A common method to correct for background effects is to use a deuterium arc lamp as a second light source. A continuum light source, such as the deuterium lamp, emits a broad spectrum of wavelengths instead of specific wavelengths characteristic of a particular element, as with the hollow cathode tube. With this system, light from the primary source and the continuum source are passed alternately through the sample cell. The target element effectively absorbs light only from the primary source (which is much brighter than the continuum source at the characteristic wavelengths), while the background matrix absorbs and scatters light from both sources equally. Therefore, when the ratio of the two beams is measured electronically, the effect of nonspecific background absorption and scattering is eliminated. A less common, but more sophisticated, background correction system is based on the Zeeman effect, which uses a magnetically-activated light polarizer to compensate electronically for nonspecific absorbtion and scattering.

Atomic emission spectroscopy with inductively-coupled argon plasma (AES–ICAP) is widely used to analyze for metals. With this instrument, the sample is aspirated into an extremely hot argon plasma flame, which excites the metal atoms; emission spectra specific for the sample element then are generated. The quanta of emitted light passing through a monochrometer are amplified by photomultiplier tubes and measured by a photodetector to determine the amount of metal in the sample. An advantage of AES–ICAP over AAS is that multi-elemental analyses of a sample can be performed by simultaneously measuring specific elemental emission energies. However, AES–ICAP lacks the sensitivity of AAS, exhibiting a limit of detection which is higher than the limit of detection for graphite-furnace AAS (Table 3).

Neutron activation (NA) analysis and isotope dilution mass spectrometry (IDMS) are 2 additional, but highly specialized, methods that have been used for cadmium determinations. These methods are expensive because they require elaborate and sophisticated instrumentation.

NA analysis has the distinct advantage over other analytical methods of being able to determine cadmium body burdens in specific organs (e.g., liver, kidney) in vivo (Ellis et al. 1983). Neutron bombardment of the target transforms cadmium-113 to cadmium-114, which promptly decays ($<10^{-14}$ sec) to its ground state, emitting gamma rays that are measured using large gamma detectors; appropriate shielding and instrumentation are required when using this method.

IDMS analysis, a definitive but laborious method, is based on the change in the ratio of 2 isotopes of cadmium (cadmium 111 and 112) that occurs when a known amount of the element (with an artificially altered ratio of the same isotopes [i.e., a cadmium 111 "spike"] is added to a weighed aliquot of the sample (Michiels and De Bievre 1986).

5.1.2 Methods Developed for CDB Determinations

A variety of methods have been used for preparing and analyzing CDB samples; most of these methods rely on one of the analytical techniques described above. Among the earliest reports, Princi (1947) and Smith et al. (1955) employed a colorimetric procedure to analyze for CDB and CDU. Samples were dried and digested through several cycles with concentrated mineral acids (HNO_3 and H_2SO_4) and hydrogen peroxide (H_2O_2). The digest was neutralized, and the cadmium was complexed with diphenylthiocarbazone and extracted with chloroform. The dithizone-cadmium complex then was quantified using a spectrometer.

Colorimetric procedures for cadmium analyses were replaced by methods based on atomic absorption spectroscopy (AAS) in the early 1960s, but many of the complex sample preparation procedures were retained. Kjellstrom (1979) reports that in Japanese, American and Swedish laboratories during the early 1970s, blood samples were wet ashed with mineral acids or ashed at high temperature and wetted with nitric acid. The cadmium in the digest was complexed with metal chelators including diethyl dithiocarbamate (DDTC), ammonium pyrrolidine dithiocarbamate (APDC) or diphenylthiocarbazone (dithizone) in ammonia-citrate buffer and extracted with methyl isobutyl ketone (MIBK). The resulting solution then was analyzed by flame AAS or graphite-furnace AAS forcadmium determinations using deuterium-lamp background correction.

In the late 1970s, researchers began developing simpler preparation procedures. Roels et al. (1978) and Roberts and Clark (1986) developed simplified digestion procedures. Using the Roberts and Clark method, a 0.5 ml aliquot of blood is collected and transferred to a digestion tube containing 1 ml concentrated HNO_3. The blood is then digested at 110 °C for 4 hours. The sample is reduced in volume by continued heating, and 0.5 ml 30% H_2O_2 is added as the sample dries. The residue is dissolved in 5 ml dilute (1%) HNO_3, and 20 µl of sample is then analyzed by graphite-furnace AAS with deuterium-background correction.

The current trend in the preparation of blood samples is to dilute the sample and add matrix modifiers to reduce background interference, rather than digesting the sample to reduce organic content. The method of Stoeppler and Brandt (1980), and the abbreviated procedure published in the American Public Health Association's (APHA) *Methods for Biological Monitoring* (1988), are straightforward and are nearly identical. For the APHA method, a small aliquot (50–300 µl) of whole blood that has been stabilized with ethylenediaminetetraacetate (EDTA) is added to 1.0 ml 1MHNO_3, vigorously shaken and centrifuged. Aliquots (10–25 µl) of the supernatant then are then analyzed by graphite-furnace AAS with appropriate background correction.

Using the method of Stoeppler and Brandt (1980), aliquots (50–200 µl) of whole blood that have been stabilized with EDTA are pipetted into clean polystyrene tubes and mixed with 150-600 µl of 1 M HNO_3. After vigorous shaking, the solution is centrifuged and a 10–25 µl aliquot of the supernatant then is analyzed by graphite-furnace AAS with appropriate background correction.

Claeys-Thoreau (1982) and DeBenzo et al. (1990) diluted blood samples at a ratio of 1:10 with a matrix modifier (0.2% Triton X–100, a wetting agent) for direct determinations of CDB. DeBenzo et al. also demonstrated that aqueous standards of cadmium, instead of spiked, whole-blood samples, could be used to establish calibration curves if standards and samples are treated with additional small volumes of matrix modifiers (i.e., 1% HNO_3, 0.2% ammonium hydrogenphosphate and 1 mg/ml magnesium salts).

These direct dilution procedures for CDB analysis are simple and rapid. Laboratories can process more than 100 samples a day using a dedicated graphite-furnace AAS, an auto-sampler, and either a Zeeman- or a deuterium-background correction system. Several authors emphasize using optimum settings for graphite-furnace temperatures during the drying, charring, and atomization processes associated with the flameless AAS method, and the need to run frequent QC samples when performing automated analysis.

5.1.3 Sample Collection and Handling

Sample collection procedures are addressed primarily to identify ways to minimize the degree of variability that may be introduced by sample collection during medical monitoring. It is unclear at this point the extent to which collection procedures contribute to variability among CDB samples. Sources of variation that may result from sampling procedures include time-of-day effects and introduction of external contamination during the collection process. To minimize these sources, strict edherence to a sample collection protocol is recommended. Such a protocol must include provisions for thorough cleaning of the site from which blood will be extracted; also, every effort should be made to collect samples near the same time of day. It is also important to recognize that under the recent OSHA blood-borne pathogens standard (29 CFR 1910.1030), blood samples and certain body fluids must be handled and treated as if they are infectious.

5.1.4 Best Achievable Performance

The best achievable performance using a particular method for CDB determinations is assumed to be equivalent to the performance reported by research laboratories in which the method was developed.

For their method, Roberts and Clark (1986) demonstrated a limit of detection of 0.4 µg Cd/l in whole blood, with a linear response curve from 0.4 to 16.0 µg Cd/l. They report a coefficient of variation (CV) of 6.7% at 8.0 µg/l.

The APHA (1988) reports a range of 1.0–25 µg/l, with a CV of 7.3% (concentration not stated). Insufficient documentation was available to critique this method.

Stoeppler and Brandt (1980) achieved a detection limit of 0.2 µg Cd/l whole blood, with a linear range of 0.4–12.0 µg Cd/l, and a CV of 15–30%, for samples at <1.0 µg/l. Improved precision (CV of 3.8%) was reported for CDB concentrations at 9.3 µg/l.

5.1.5 General Method Performance

For any particular method, the performance expected from commercial laboratories may be somewhat lower than that reported by the research laboratory in which the method was developed. With participation in appropriate proficiency programs and use of a proper in-house QA/QC program incorporating provisions for regular corrective actions, the performance of commercial laboratories is expected to approach that reported by research laboratories. Also, the results reported for existing proficiency programs serve as a gauge of the likely level of performance that currently can be expected from commercial laboratories offering these analyses.

Weber (1988) reports on the results of the proficiency program run by the Centre de Toxicologie du Quebec (CTQ). As indicated previously, participants in that program receive 18 blood samples per year having cadmium concentrations ranging from 0.2–20 µg/l. Currently, 76 laboratories are participating in this program. The program is established for several analytes in addition to cadmium, and not all of these laboratories participate in the cadmium proficiency-testing program.

Under the CTQ program, cadmium results from individual laboratories are compared against the consensus mean derived for each sample. Results indicate that after receiving 60 samples (i.e., after participation for approximately three years), 60% of the laboratories in the program are able to report results that fall within ±1 µg/l or 15% of the mean, whichever is greater. (For this procedure, the 15% criterion was applied to concentrations exceeding 7 µg/l.) On any single sample of the last 20 samples, the percentage of laboratories falling within the specified range is between 55 and 80%.

The CTQ also evaluates the performance of participating laboratories against a less severe standard: ±2 µg/l or 15% of the mean, whichever is greater (Weber 1988); 90% of participating laboratories are able to satisfy this standard after approximately 3 years in the program. (The 15% criterion is used for concentrations in excess of 13 µg/l.) On any single sample of the last 15 samples, the percentage of laboratories falling within the specified range is between 80 and 95% (except for a single test for which only 60% of the laboratories achieved the desired performance).

Based on the data presented in Weber (1988), the CV for analysis of CDB is nearly constant at 20% for cadmium concentrations exceeding 5 µg/l, and increases for cadmium concentrations below 5 µg/l. At 2 µg/l, the reported CV rises to approximately 40%. At 1 µg/l, the reported CV is approximately 60%.

Participating laboratories also tend to overestimate concentrations for samples exhibiting concentrations less than 2 µg/l (see Figure 11 of Weber 1988). This problem is due in part to the proficiency evaluation criterion that allows reporting a minimum ±2.0 µg/l for evaluated CDB samples. There is currently little economic or regulatory incentive for laboratories participating in the CTQ program to achieve greater accuracy for CDB samples containing cadmium at concentrations less than 2.0 µg/l, even if the laboratory has the experience and competency to distinguish among lower concentrations in the samples obtained from the CTQ.

The collective experience of international agencies and investigators demonstrate the need for a vigorous QC program to ensure that CDB values reported by participating laboratories are indeed reasonably accurate. As Friberg (1988) stated:

"Information about the quality of published data has often been lacking. This is of concern as assessment of metals in trace concentrations in biological media are fraught with difficulties from the collection, handling, and storage of samples to the chemical analyses. This has been proven over and over again from the results of interlaboratory testing and quality control exercises. Large variations in results were reported even from 'experienced' laboratories."

The UNEP/WHO global study of cadmium biological monitoring set a limit for CDB accuracy using the maximum allowable deviation method at Y=X±(0.1X+1) for a targeted concentration of 10 µg Cd/l (Friberg and Vahter 1983). The performance of participating laboratories over a concentration range of 1.5–12 µg/l was reported by Lind et al. (1987). Of the 3 QC runs conducted during 1982 and 1983, 1 or 2 of the 6 laboratories failed each run. For the years 1983 and 1985, between zero and 2 laboratories failed each of the consecutive QC runs.

In another study (Vahter and Friberg 1988), QC samples consisting of both external (unknown) and internal (steted) concentrations were distributed to laboratories participating in the epidemiology research. In this study, the maximum acceptable deviation between the regression analysis of reported results and reference values was set at Y=X±(0.05X+0.2) for a concentration range of 0.3–5.0 µg Cd/l. It is reported that only 2 of 5 laboratories had acceptable data after the first QC set, and only 1 of 5 laboratories had acceptable data after the second QC set. By the fourth QC set, however, all 5 laboratories were judged proficient.

The need for high quality CDB monitoring is apparent when the toxicological and biological characteristics of this metal are considered; an increase in CDB from 2 to 4 µg/l could cause a doubling of the cadmium accumulation in the kidney, a critical target tissue for selective cadmium accumulation (Nordberg and Nordberg 1988).

Historically, the CDC's internal QC program for CDB cadmium monitoring program has found achievable accuracy to be ±10% of the true value at CDB concentrations ≥5.0 µg/l (Paschal 1990). Data on the performance of laboratories participating in this program currently are not available.

5.1.6 'Observed CDB Concentrations

As stated in Section 4.3, CDB concentrations are representative of ongoing levels of exposure to cadmium. Among those who have been exposed chronically to cadmium for extended periods, however, CDB may contain a component attributable to the general cadmium body burden.

5.1.6.1 *CDB Concentrations Among Unexposed Samples*

Numerous studies have been conducted examining CDB concentrations in the general population, and in control groups used for comparison with cadmium-exposed workers. A number of reports have been published that present erroneously high values of CDB (Nordberg and Nordberg 1988). This problem was due to contamination of samples during sampling and analysis, and to errors in analysis. Early AAS methods were not sufficiently sensitive to accurately estimate CDB concentrations.

Table 4 presents results of recent studies reporting CDB levels for the general U.S. population not exposed occupationally to cadmium. Other surveys of tissue cadmium using U.S. samples and conducted as part of a cooperative effort among Japan, Sweden and the U.S., did not collect CDB data because standard analytical methodologies were unavailable, and because of analytic problems (Kjellstrom 1979; SWRI 1978).

TABLE 4.—BLOOD CADMIUM CONCENTRATIONS OF U.S. POPULATION NOT OCCUPATIONALLY EXPOSED TO CADMIUM[a]

Study No.	No. in study (n)	Sex	Age	Smoking habits[b]	Arithmetic mean (±S.D.)[c]	Absolute range or (95% CI)[d]	Geometric mean (GSD)[e]	Lower 95th percentile of distribution[f]	Upper 95th percentile of distribution[f]	Reference
1	80	M	4 to 69	NS,S	1.13	0.35–3.3	0.98±1.71	0.4	2.4	Kowal et al. (1979).
	88	F	4 to 69	NS,S	1.03	0.21–3.3	0.91±1.63	0.4	2.0	
	115	M/F	4 to 69	NS	0.95	0.21–3.3	0.85±1.59	0.4	1.8	
	31	M/F	4 to 69	S	1.54	0.4–3.3	1.37±1.65	0.6	3.2	
2	10	M	Adults	(?)	2.0±2.1	(0.5–5.0)		‡(0)	‡(5.8)	Ellis et al. (1983).
3	24	M	Adults	NS			0.6±1/87	0.2	1.8	Frieberg and Vahter (1983).
	20	M	Adults	S			1.2±2.13	0.3	4.4	
	64	F	Adults	NS			0.5±1.85	0.2	1.4	
	39	F	Adults	S			0.8±2.22	0.2	3.1	
4	32	M	Adults	S,NS			1.2±2.0	0.4	3.9	Thun et al. (1989).
5	35	M	Adults	(?)	2.1±2.1	(0.5–7.3)		‡(0)	‡(5.6)	Mueller et al. (1989).

[a] Concentrations reported in µg Cd/l blood unless otherwise stated.
[b] NS—never smoked; S—current cigarette smoker.
[c] A.S.D.—Arithmetic Standard Deviation.
[d] C.I.—Confidence Interval.
[e] G.S.D.—Geometric Standard Deviation.
[f] Based on assumed lognormal distribution.
‡ Based on assumed normal distribution.

Arithmetic and/or geometric means and standard deviations are provided in Table 4 for measurements among the populations defined in each study listed. The range of reported measurements and/or the 95% upper and lower confidence intervals for the means are presented when this information was reported in a study. For studies reporting either an arithmetic or geometric standard deviation along with a mean, the lower and upper 95th percentile for the distribution also were derived and reported in the table.

The data provided in Table 4 from Kowal et al. (1979) are from studies conducted between 1974 and 1976 evaluating CDB levels for the general population in Chicago, and are considered to be representative of the U.S. population. These studies indicate that the average CDB concentration among those not occupationally exposed to cadmium is approximately 1 µg/l.

In several other studies presented in Table 4, measurements are reported separately for males and females, and for smokers and nonsmokers. The data in this table indicate that similar CDB levels are observed among males and females in the general population, but that smokers tend to exhibit higher CDB levels than nonsmokers. Based on the Kowal et al. (1979) study, smokers not occupationally exposed to cadmium exhibit an average CDB level of 1.4 µg/l.

In general, nonsmokers tend to exhibit levels ranging to 2 µg/l, while levels observed among smokers range to 5 µg/l. Based on the data presented in Table 4, 95% of those not occupationally exposed to cadmium exhibit CDB levels less than 5 µg/l.

5.1.6.2 CDB *Concentrations Among Exposed Workers*

Table 5 is a summary of results from studies reporting CDB levels among workers exposed to cadmium in the work place. As in Table 4, arithmetic and/or geometric means and standard deviations are provided if reported in the listed studies. The absolute range, or the 95% confidence interval around the mean, of the data in each study are provided when reported. In addition, the lower and upper 95th percentile of the distribution are presented for each study in which a mean and corresponding standard deviation were reported. Table 5 also provides estimates of the duration, and level, of exposure to cadmium in the work place if these data were reported in the listed studies. The data presented in Table 5 suggest that CDB levels are dose related. Sukuri et al. (1983) show that higher CDB levels are observed among workers experiencing higher work place exposure. This trend appears to be true of every one of the studies listed in the table.

CDB levels reported in Table 5 are higher among those showing signs of cadmium-related kidney damage than those showing no such damage. Lauwerys et al. (1976) report CDB levels among workers with kidney lesions that generally are above the levels reported for workers without kidney lesions. Ellis et al. (1983) report a similar observation comparing workers with and without renal dysfunction, although they found more overlap between the 2 groups than Lauwerys et al.

TABLE 5—BLOOD CADMIUM IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE

Study number	Work environment (worker population monitored)	Number in study	Employment in years (mean)	Mean concentration of cadmium in air (µg/m³)	Concentrations of Cadmium in blood[a]					Reference
					Arithmetic mean (±S.D.)[b]	Absolute range or (95% C.I.)[c]	Geometric mean (GSD)[d]	Lower 95th percentile of range[e] ( )[f]	Upper 95th percentile of range[e] ( )[f]	
1	Ni-Cd battery plant and Cd production plant:		3–40	≤90						Lauweys et al. 1976.
	(Workers without kidney lesions)	96			21.4±1.9	.....	.....	(18)	(25)	
	(Workers with kidney lesions)	25			38.6±3.8	.....	.....	(32)	(45)	
2	Ni-Cd battery plant:									Adamsson et al. (1979).
	(Smokers)	7	(5)	10.1	22.7	7.3–67.2				
	(Nonsmokers)	8	(9)	7.0	7.0	4.9–10.5				
3	Cadmium alloy plant:									Sukuri et al. 1982.
	(High exposure group)	7	(10.6)	[1,000–5 yrs;	20.8±7.1	.....	.....	(7.3)	(34)	
	(Low exposure group)	9	(7.3)	40–5 yrs]	7.1±1.1	.....	.....	(5.1)	(9.1)	
4	Retrospective study of workers with renal problems:	19	15–41							Roels et al. 1982.
	(Before removal)	.....	(27.2)	.....	39.9±3.7	11–179	.....	(34)	(46)	
	(After removal)	.....	(4.2)[g]	.....	14.1±5.8	5.7–27.4	.....	(4.4)	(24)	
5	Cadmium production plant:									Ellis et al. 1983.
	(Workers without renal dysfunction)	33	1–34	.....	15±5.7	7–31	.....	(5.4)	(25)	
	(Workers with renal dysfunction)	18	10–34	.....	24±8.5	10–34	.....	(9.3)	(39)	
6	Cd-Cu alloy plant	75	Up to 39	.....	.....	.....	8.8±1.1	7.5	10	Mason et al. 1988.
7	Cadmium recovery operation—Current (19) and former (26) workers.	45	(19.0)	.....	.....	.....	7.9±2.0	2.5	25	Thun et al. 1989.
8	Cadmium recovery operation	40	.....	.....	10.2±5.3	2.2–18.8	.....	(1.3)	(19)	Mueller et al. 1989.

[a] Concentrations reported in µg Cd/l blood unless otherwise stated.
[b] S.D.—Standard Deviation.
[c] C.I.—Confidence Interval.
[d] G.S.D.—Geometric Standard Deviation.
[e] Based on assumed lognormal distribution.
[f] Based on assumed normal distribution.
[g] Years following removal.

The data in Table 5 also indicate that CDB levels are higher among those experiencing current occupational exposure than those who have been removed from such exposure. Roels et al. (1982) indicate that CDB levels observed among workers experiencing ongoing exposure in the work place are almost entirely above levels observed among workers removed from such exposure. This finding suggests that CDB levels decrease once cadmium exposure has ceased.

A comparison of the data presented in Tables 4 and 5 indicates that CDB levels observed among cadmium-exposed workers is significantly higher than levels observed among the unexposed groups. With the exception of 2 studies presented in Table 5 (1 of which includes former workers in the sample group tested), the lower 95th percentile for CDB levels among exposed workers are greater than 5 µg/l, which is the value of the upper 95th percentile for CDB levels observed among those who are not occupationally exposed. Therefore, a CDB level of 5 µg/l represents a threshold above which significant work place exposure to cadmium may be occurring.

5.1.7 Conclusions and Recommendations for CDB

Based on the above evaluation, the following recommendations are made for a CDB proficiency program.

5.1.7.1 *Recommended Method*

The method of Stoeppler and Brandt (1980) should be adopted for analyzing CDB. This method was selected over other methods for its straightforward sample-preparation procedures, and because limitations of the method were described adequately. It also is the method used by a plurality of laboratories currently participating in the CTQ proficiency program. In a recent CTQ interlaboratory comparison report (CTQ 1991), analysis of the methods used by laboratories to measure CDB indicates that 46% (11 of 24) of the participating laboratories used the Stoeppler and Brandt methodology (HNO_3 deproteinization of blood followed by analysis of the supernatant by GF–AAS). Other CDB methods employed by participating laboratories identified in the CTQ report include dilution of blood (29%), acid digestion (12%) and miscellaneous methods (12%).

Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that the alternate methods meet the data quality objectives defined for the Stoeppler and Brandt method (see section 5.1.7.2 below).

5.1.7.2 *Data Quality Objectives*

Based on the above evaluation, the following data quality objectives (DQOs) should facilitate interpretation of analytical results.

Limit of Detection. 0.5 µg/l should be achievable using the Stoeppler and Brandt method. Stoeppler and Brandt (1980) report a limit of detection equivalent to ≤0.2 µg/l in whole blood using 25 µl aliquots of deproteinized, diluted blood samples.

Accuracy. Initially, some of the laboratories performing CDB measurements may be expected to satisfy criteria similar to the less severe criteria specified by the CTQ program, i.e., measurements within 2 µg/l or 15% (whichever is greater) of the target value. About 60% of the laboratories enrolled in the CTQ program could meet this criterion on the first proficiency test (Weber 1988).

Currently, approximately 12 laboratories in the CTQ program are achieving an accuracy for CDB analysis within the more severe constraints of ±1 µg/l or 15% (whichever is greater). Later, as laboratories gain experience, they should achieve the level of accuracy exhibited by these 12 laboratories. The experience in the CTQ program has shown that, even without incentives, laboratories benefit from the feedback of the program; after they have analyzed 40–50 control samples from the program, performance improves to the point where about 60% of the laboratories can meet the stricter criterion of ±1 µg/l or 15% (Weber 1988). Thus, this stricter target accuracy is a reasonable DQO.

Precision. Although Stoeppler and Brandt (1980) suggest that a coefficient of variation (CV) near 1.3% (for a 10 µg/l concentration) is achievable for within-run reproducibility, it is recognized that other factors affecting within- and between-run comparability will increase the achievable CV. Stoeppler and Brandt (1980) observed CVs that were as high as 30% for low concentrations (0.4 µg/l), and CVs of less than 5% for higher concentrations.

For internal QC samples (see section 3.3.1), laboratories should to attain an overall precision near 25%. For CDB samples with concentrations less than 2 µg/l, a target precision of 40% is reasonable, while precisions of 20% should be achievable for concentrations greater than 2 µg/l. Although these values are more strict than values observed in the CTQ interlaboratory program reported by Webber (1988), they are within the achievable limits reported by Stoeppler and Brandt (1980).

5.1.7.3 *Quality Assurance/Quality Control*

Commercial laboratories providing measurement of CDB should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the selected method, including all calibration requirements; regular incorporation of QC samples during actual runs; a protocol for corrective actions, and documentation of these actions; and, participation in an interlaboratory proficiency program. Note that the nonmandatory QA/QC program presented in Attachment 1 is based on the Stoeppler and Brandt method for CDB analysis. Should an alternate method be adopted, the laboratory should develop a QA/QC program satisfying the provisions of Section 3.3.1.

5.2 Measuring Cadmium in Urine (CDU)

As in the case of CDB measurement, proper determination of CDU requires strict analytical discipline regarding collection and handling of samples. Because cadmium is both ubiquitous in the environment and employed widely in coloring agents for industrial products that may be used during sample collection, preparation and analysis, care should be exercised to ensure that samples are not contaminated during the sampling procedure.

Methods for CDU determination share many of the same features as those employed for the determination of CDB. Thus, changes and improvements to methods for measuring CDU over the past 40 years parallel those used to monitor CDB. The direction of development has largely been toward the simplification of sample preparation techniques made possible because of improvements in analytic techniques.

5.2.1 Units of CDU Measurement

Procedures adopted for reporting CDU concentrations are not uniform. In fact, the situation for reporting CDU is more complicated than for CDB, where concentrations are normalized against a unit volume of whole blood.

Concentrations of solutes in urine vary with several biological factors (including the time since last voiding and the volume of liquid consumed over the last few hours); as a result, solute concentrations should be normalized against another characteristic of urine that represents changes in solute concentrations. The 2 most common techniques are either to standardize solute concentrations against the concentration of creatinine, or to standardize solute concentrations against the specific gravity of the urine. Thus, CDU concentrations have been reported in the literature as "uncorrected" concentrations of cadmium per volume of urine (i.e., µg Cd/l urine), "corrected" concentrations of cadmium per volume of urine at a standard specific gravity (i.e., µg Cd/l urine at a specific gravity of 1.020), or "corrected" mass concentration per unit mass of creatinine (i.e., µg Cd/g creatinine). (CDU concentrations (whether uncorrected or corrected for specific gravity, or normalized to creatinine) occasionally are reported in nanomoles [i.e., nmoles] of cadmium per unit mass or volume. In this protocol, these values are converted to µg of cadmium per unit mass or volume using 89 nmoles of cadmium=10 µg.)

While it is agreed generally that urine values of analytes should be normalized for reporting purposes, some debate exists over what correction method should be used. The medical community has long favored normalization based on creatinine concentration, a common urinary constituent. Creatinine is a normal product of tissue catabolism, is excreted at a uniform rate, and the total amount excreted per day is constant on a day-to-day basis (NIOSH 1984b). While this correction method is accepted widely in Europe, and within some occupational health circles, Kowals (1983) argues that the use of specific gravity (i.e., total solids per unit volume) is more straightforward and practical (than creatinine) in adjusting CDU values for populations that vary by age or gender.

Kowals (1983) found that urinary creatinine (CRTU) is lower in females than males, and also varies with age. Creatinine excretion is highest in younger males (20–30 years old), decreases at middle age (50–60 years), and may rise slightly in later years. Thus, cadmium concentrations may be underestimated for some workers with high CRTU levels.

Within a single void urine collection, urine concentration of any analyte will be affected by recent consumption of large volumes of liquids, and by heavy physical labor in hot environments. The absolute amount of analyte excreted may be identical, but concentrations will vary widely so that urine must be corrected for specific gravity (i.e., to normalize concentrations to the quantity of total solute) using a fixed value (e.g., 1.020 or 1.024). However, since heavy-metal exposure may increase urinary protein excretion, there is a tendency to underestimate cadmium concentrations in samples with high specific gravities when specific-gravity corrections are applied.

Despite some shortcomings, reporting solute concentrations as a function of creatinine concentration is accepted generally; OSHA therefore recommends that CDU levels be reported as the mass of cadmium per unit mass of creatinine (µg/g CTRU).

Reporting CDU as µg/g CRTU requires an additional analytical process beyond the analysis of cadmium: Samples must be analyzed independently for creatinine so that results may be reported as the ratio of cadmium to creatinine concentrations found in the urine sample. Consequently, the overall quality of the analysis depends on the combined performance by a laboratory on these 2 determinations. The analysis used for CDU determinations is addressed below in terms of µg Cd/l, with analysis of creatinine addressed separately. Techniques for assessing creatinine are discussed in Section 5.4.

Techniques for deriving cadmium as a ratio of CRTU, and the confidence limits for independent measurements of cadmium and CRTU, are provided in Section 3.3.3.

5.2.2 Analytical Techniques Used to Monitor CDU

Analytical techniques used for CDU determinations are similar to those employed for CDB determinations; these techniques are summarized in Table 3. As with CDB monitoring, the technique most suitable for CDU determinations is atomic absorption spectroscopy (AAS). AAS methods used for CDU determinations typically employ a graphite furnace, with background correction made using either the deuterium-lamp or Zeeman techniques; Section 5.1.1 provides a detailed description of AAS methods.

5.2.3 Methods Developed for CDU Determinations

Princi (1947), Smith et al. (1955), Smith and Kench (1957), and Tsuchiya (1967) used colorimetric procedures similar to those described in the CDB section above to estimate CDU concentrations. In these methods, urine (50 ml) is reduced to dryness by heating in a sand bath and digested (wet ashed) with mineral acids. Cadmium then is complexed with dithiazone, extracted with chloroform and quantified by spectrophotometry. These early studies typically report reagent blank values equivalent to 0.3 µg Cd/l, and CDU concentrations among nonexposed control groups at maximum levels of 10 µg Cd/l—erroneously high values when compared to more recent surveys of cadmium concentrations in the general population.

By the mid-1970s, most analytical procedures for CDU analysis used either wet ashing (mineral acid) or high temperatures (>400 °C) to digest the organic matrix of urine, followed by cadmium chelation with APDC or DDTC solutions and extraction with MIBK. The resulting aliquots were analyzed by flame or graphite-furnace AAS (Kjellstrom 1979).

Improvements in control over temperature parameters with electrothermal heating devices used in conjunction with flameless AAS techniques, and optimization of temperature programs for controlling the drying, charring, and atomization processes in sample analyses, led to improved analytical detection of diluted urine samples without the need for sample digestion or ashing. Roels et al. (1978) successfully used a simple sample preparation, dilution of 1.0 ml aliquots of urine with 0.1 N HNO_3, to achieve accurate low-level determinations of CDU.

In the method described by Pruszkowska et al. (1983), which has become the preferred method for CDU analysis, urine samples were diluted at a ratio of 1:5 with water; diammonium hydrogenphosphate in dilute HNO_3 was used as a matrix modifier. The matrix modifier allows for a higher charring temperature without loss of cadmium through volatilization during pre-atomization. This procedure also employs a stabilized temperature platform in a graphite furnace, while nonspecific background absorbtion is corrected using the Zeeman technique. This method allows for an absolute detection limit of approximately 0.04 µg Cd/l urine.

5.2.4 Sample Collection and Handling

Sample collection procedures for CDU may contribute to variability observed among CDU measurements. Sources of variation attendant to sampling include time-of-day, the interval since ingestion of liquids, and the introduction of external contamination during the collection process. Therefore, to minimize contributions from these variables, strict adherence to a sample-collection protocol is recommended. This a protocol should include provisions for normalizing the conditions under which urine is collected. Every effort also should be made to collect samples during the same time of day.

Collection of urine samples from an industrial work force for biological monitoring purposes usually is performed using "spot" (i.e., single-void) urine with the pH of the sample determined immediately. Logistic and sample-integrity problems arise when efforts are made to collect urine over long periods (e.g., 24 hrs). Unless single-void urines are used, there are numerous opportunities for measurement error because of poor control over sample collection, storage and environmental contamination.

To minimize the interval during which sample urine resides in the bladder, the following adeption to the "spot" collection procedure is recommended: The bladder should first be emptied, and then a large glass of water should be consumed; the sample may be collected within an hour after the water is consumed.

5.2.5 Best Achievable Performance

Performance using a particular method for CDU determinations is assumed to be equivalent to the performence reported by the research laboratories in which the method was developed. Pruszkowska et al. (1983) report a detection limit of 0.04 µg/l CDU, with a CV of <4% between 0–5 µg/l. The CDC reports a minimum CDU detection limit of 0.07 µg/l using a modified method based on Pruszkowska et al. (1983). No CV is stated in this protocol; the protocol contains only rejection criteria for internal QC parameters used during accuracy determinations with known standards (Attachment 8 of exhibit 106 of OSHA docket H057A). Stoeppler and Brandt (1980) report a CDU detection limit of 0.2 µg/l for their methodology.

5.2.6 General Method Performance

For any particular method, the expected initial performance from commercial laboratories may be somewhat lower than that reported by the research laboratory in which the method was developed. With participation in appropriate proficiency programs, and use of a proper in-house QA/QC program incorporating provisions for regular corrective actions, the performance of commercial laboratories may be expected to improve and approach that reported by a research laboratories. The results reported for existing proficiency programs serve to specify the initial level of performance that likely can be expected from commercial laboratories offering analysis using a particular method.

Weber (1988) reports on the results of the CTQ proficiency program, which includes CDU results for laboratories participating in the program. Results indicate that after receiving 60 samples (i.e., after participating in the program for approximately 3 years), approximately 80% of the participating laboratories report CDU results ranging between ±2 µg/l or 15% of the consensus mean, whichever is greater. On any single sample of the last 15 samples, the proportion of laboratories falling within the specified range is between 75 and 95%, except for a single test for which only 60% of the laboratories reported acceptable results. For each of the last 15 samples, approximately 60% of the laboratories reported results within ±1 µg or 15% of the mean, whichever is greater. The range of concentrations included in this set of samples was not reported.

Another report from the CTQ (1991) summarizes preliminary CDU results from their 1991 interlaboratory program. According to the report, for 3 CDU samples with values of 9.0, 16.8, 31.5 µg/l, acceptable results (target ±2 µg/l or 15% of the consensus mean, whichever is greater) were achieved by only 44–52% of the 34 laboratories participating in the CDU program. The overall CVs for these 3 CDU samples among the 34 participating laboratories were 31%, 25%, and 49%, respectively. The reason for this poor performance has not been determined.

A more recent report from the CTQ (Weber private communication) indicates that 36% of the laboratories in the program have been able to achieve the target of ±1 µg/l or 15% for more than 75% of the samples analyzed over the last 5 years, while 45% of participating laboratories achieved a target of

±2 µg/l or 15% for more than 75% of the samples analyzed over the same period.

Note that results reported in the interlaboratory programs are in terms of µg Cd/l of urine, unadjusted for creatinine. The performance indicated, therefore, is a measure of the performance of the cadmium portion of the analyses, and does not include variation that may be introduced during the analysis of CRTU.

5.2.7 Observed CDU Concentrations

Prior to the onset of renal dysfunction, CDU concentrations provide a general indication of the exposure history (i.e., body burden)(see Section 4.3). Once renal dysfunction occurs, CDU levels appear to increase and are no longer indicative solely of cadmium body burden (Friberg and Elinder 1988).

5.2.7.1 *Range of CDU Concentrations Observed Among Unexposed Samples*

Surveys of CDU concentrations in the general population were first reported from cooperative studies among industrial countries (i.e., Japan, U.S. and Sweden) conducted in the mid-1970s. In summarizing these data, Kjellstrom (1979) reported that CDU concentrations among Dallas, Texas men (age range: <9–59 years; smokers and nonsmokers) varied from 0.11–1.12 µg/l (uncorrected for creatinine or specific gravity). These CDU concentrations are intermediate between population values found in Sweden (range: 0.11–0.80 µg/l) and Japan (range: 0.14–2.32 µg/l).

Kowal and Zirkes (1983) reported CDU concentrations for almost 1,000 samples collected during 1978–79 from the general U.S. adult population (i.e., nine states; both genders, ages 20–74 years). They report that CDU concentrations are lognormally distributed; low levels predominated, but a small proportion of the population exhibited high levels. These investigators transformed the CDU concentrations values, and reported the same data 3 different ways: µg/l urine (unadjusted), µg/l (specific gravity adjusted to 1.020), and µg/g CRTU. These data are summarized in Tables 6 and 7.

Based on further statistical examination of these data, including the lifestyle characteristics of this group, Kowal (1988) suggested increased cadmium absorption (i.e., body burden) was correlated with low dietary intakes of calcium and iron, as well as cigarette smoking.

CDU levels presented in Table 6 are adjusted for age and gender. Results suggest that CDU levels may be slightly different among men and women (i.e., higher among men when values are unadjusted, but lower among men when the values are adjusted, for specific gravity or CRTU). Mean differences among men and women are small compared to the standard deviations, and therefore may not be significant. Levels of CDU also appear to increase with age. The data in Table 6 suggest as well that reporting CDU levels adjusted for specific gravity or as a function of CRTU results in reduced variability.

TABLE 6—URINE CADMIUM CONCENTRATIONS IN THE U.S. ADULT POPULATION: NORMAL AND CONCENTRATION-ADJUSTED VALUES BY AGE AND SEX [1]

	Geometric means (and geometric standard deviations)		
	Unadjusted (µg/l)	SG-adjusted [2] (µg/l at 1.020)	Creatine-adjusted (µg/g)
Sex:			
Male (n=484)	0.55 (2.9)	0.73 (2.6)	0.55 (2.7)
Female (n=498)	0.49 (3.0)	0.86 (2.7)	0.78 (2.7)
Age:			
20–29 (n=222)	0.32 (3.0)	0.43 (2.7)	0.32 (2.7)
30–39 (n=141)	0.46 (3.2)	0.70 (2.8)	0.54 (2.7)
40–49 (n=142)	0.50 (3.0)	0.81 (2.6)	0.70 (2.7)
50–59 (n=117)	0.61 (2.9)	0.99 (2.4)	0.90 (2.3)
60–69 (n=272)	0.76 (2.6)	1.16 (2.3)	1.03 (2.3)

[1] From Kowal and Zirkes 1983.
[2] SC-adjusted is adjusted for specific gravity.

TABLE 7—URINE CADMIUM CONCENTRATIONS IN THE U.S. ADULT POPULATION: CUMULATIVE FREQUENCY DISTRIBUTION OF URINARY CADMIUM (N=982) [1]

[In percentage]

Range of concentrations	Unadjusted (µg/l)	SG-adjusted (µg/l at 1.020)	Creatine-adjusted (µg/g)
<0.5	43.9	28.0	35.8
0.6–1.0	71.7	56.4	65.6
1.1–1.5	84.4	74.9	81.4
1.6–2.0	91.3	84.7	88.9
2.1–3.0	97.3	94.4	95.8
3.1–4.0	98.8	97.4	97.2
4.1–5.0	99.4	98.2	97.9
5.1–10.0	99.6	99.4	99.3
10.0–20.0	99.8	99.6	99.6

[1] Source: Kowal and Zirkes (1983).

The data in the Table 6 indicate the geometric mean of CDU levels observed among the general population is 0.52 µg Cd/l urine (unadjusted), with a geometric standard deviation of 3.0. Normalized for creatinine, the geometric mean for the population is 0.66 µg/g CRTU, with a geometric standard deviation of 2.7. Table 7 provides the distributions of CDU concentrations for the general population studied by Kowal and Zirkes. The data in this table indicate that 95% of the CDU levels observed among those not occupationally exposed to cadmium are below 3 µg/g CRTU.

5.2.7.2 *Range of CDU Concentrations Observed Among Exposed Workers.*

Table 8 is a summary of results from available studies of CDU concentrations observed among cadmium-exposed workers. In this table, arithmetic and/or geometric means and standard deviations are provided if reported in these studies. The absolute range for the data in each study, or the 95% confidence interval around the mean of each study, also are provided when reported. The lower and upper 95th percentile of the distribution are presented for each study in which a mean and corresponding standard deviation were reported. Table 8 also provides estimates of the years of exposure, and the levels of exposure, to cadmium in the work place if reported in these studies. Concentrations reported in this table are in µg/g CRTU, unless otherwise stated.

TABLE 8—URINE CADMIUM CONCENTRATIONS IN WORKERS EXPOSED TO CADMIUM IN THE WORKPLACE

Study number	Work environment (worker population monitored)	Number in Study (n)	Employment in years (mean)	Mean Concentration of cadmium in air (µg/m³)	Concentration of cadmium in Urine[a]				Reference
					Arithmetic mean (±S.D.)[b]	Absolute range or (95% C.I.)[c]	Geometric mean (GSD)[d]	Lower 95th percentile of range[e] ( )[f]	Upper 95th percentile of range[e] ( )[f]	
1	Ni-Cd battery plant and Cd production plant.		3–40	≤ 90						Lauwerys et al. 1976.
	(Workers without kidney lesions).	96			18.3±16.7			(0)	(44)	
	(Workers with kidney lesions)	25			48.2±42.6			(0)	(120)	Adamsson et al. (1979).
2	Ni-Cd battery plant									
	(Smokers)	7	(5)	10.1	5.5	1.0–14.7				Butchet et al. 1980. Roels et al. 1982.
	(Nonsmokers)	8	(9)	7.0	3.6	0.5–9.3				
3	Cadmium salts production facility	148	(15.4)		15.6	2–150				
4	Retrospective study of workers with renal problems.	19	15–41							
	(Before removal)		(27.2)		39.4±28.1	10.8–117		(0)	(88)	
	(After removal)		(4.2)[g]		16.4±9.0	80–42.3		(1.0)	(32)	Ellis et al. 1983.
5	Cadmium production plant		1–34		9.4±6.9	2–27		(0)	(21)	
	(Workers without renal dysfunction).	33								
	(Workers with renal dysfunction).	18	10–34		22.8±12.7	8–55		(1)	(45)	
6	Cd-Cu alloy plant	75	Up to 39 (19)	Note h 87	6.9±9.4			(0)	(23)	Mason et al. 1988. Thun et al. 1989.
7	Cadmium recovery operation	45			9.3±6.9			(0)	(21)	
8	Pigment manufacturing plant	29	(12.8)	0.18–3.0		0.2–9.5	1.1			Mueller et al. 1989.
9	Pigment manufacturing plant	26	(12.1)	≤3.0			1.25±2.45	0.3	6	Kawada et al. 1990.

[a] Concentrations are reported in µg/g Cr.
[b] S.D.—Standard Deviation.
[c] C.I.—Confidence Interval.
[d] G.S.D.—Geometric Standard Deviation.
[e] Based on assumed lognormal distribution.
[f] Based on assumed normal distribution.
[g] Years following removal.
[h] Equivalent to 50 for 20–22 yrs.

Data in Table 8 from Lauwerys et al. (1976) and Ellis et al. (1983) indicate that CDU concentrations are higher among those exhibiting kidney lesions or dysfunction than among those lacking these symptoms. Data from the study by Roels et al. (1982) indicate that CDU levels decrease among workers removed from occupational exposure to cadmium in comparison to workers experiencing ongoing exposure. In both cases, however, the distinction between the 2 groups is not as clear as with CDB; there is more overlap in CDU levels observed among each of the paired populations than is true for corresponding CDB levels. As with CDB levels, the data in Table 8 suggest increased CDU concentrations among workers who experienced increased overall exposure.

Although a few occupationally-exposed workers in the studies presented in Table 8 exhibit CDU levels below 3 µg/g CRTU, most of those workers exposed to cadmium levels in excess of the PEL defined in the final cadmium rule exhibit CDU levels above 3 µg/g CRTU; this level represents the upper 95th percentile of the CDU distribution observed among those who are not occupationally exposed to cadmium (Table 7).

The mean CDU levels reported in Table 8 among occupationally-exposed groups studied (except 2) exceed 3 µg/g CRTU. Correspondingly, the level of exposure reported in these studies (with 1 exception) are significantly higher than what workers will experience under the final cadmium rule. The 2 exceptions are from the studies by Mueller et al. (1989) and Kawada et al. (1990); these studies indicate that workers exposed to cadmium during pigment manufacture do not exhibit CDU levels as high as those levels observed among workers exposed to cadmium in other occupations. Exposure levels, however, were lower in the pigment manufacturing plants studied. Significantly, workers removed from occupational cadmium exposure for an average of 4 years still exhibited CDU levels in excess of 3 µg/g CRTU (Roels et al. 1982). In the single-exception study with a reported level of cadmium exposure lower than levels proposed in the final rule (i.e., the study of a pigment manufacturing plant by Kawada et al. 1990), most of the workers exhibited CDU levels less than 3 µg/g CRTU (i.e., the mean value was only 1.3 µg/g CRTU). CDU levels among workers with such limited cadmium exposure are expected to be significantly lower than levels of other studies reported on Table 8.

Based on the above data, a CDU level of 3 µg/g CRTU appear to represent a threshold above which significant work place exposure to cadmium occurs over the work span of those being monitored. Note that this threshold is not as distinct as the corresponding threshold described for CDB. In general, the variability associated with CDU measurements among exposed workers appears to be higher than the variability associated with CDB measurements among similar workers.

5.2.8 Conclusions and Recommendations for CDU

The above evaluation supports the following recommendations for a CDU proficiency program. These recommendations address only sampling and analysis procedures for CDU determinations specifically, which are to be reported as an unadjusted µg Cd/l urine. Normalizing this result to creatinine requires a second analysis for CRTU so that the ratio of the 2 measurements can be obtained. Creatinine analysis is addressed in Section 5.4. Formal procedures for combining the 2 measurements to derive a value and a confidence limit for CDU in µg/g CRTU are provided in Section 3.3.3.

5.2.8.1 *Recommended Method*

The method of Pruszkowska et al. (1983) should be adopted for CDU analysis. This method is recommended because it is simple, straightforward and reliable (i.e., small variations in experimental conditions do not affect the analytical results).

A synopsis of the methods used by laboratories to determine CDU under the interlaboratory program administered by the CTQ (1991) indicates that more than 78% (24 of 31) of the participating laboratories use a dilution method to prepare urine samples for CDU analysis. Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that the alternate methods provide results of comparable quality to the Pruszkowska method.

5.2.8.2 *Data Quality Objectives*

The following data quality objectives should facilitate interpretation of analytical results, and are achievable based on the above evaluation.

Limit of Detection. A level of 0.5 µg/l (i.e., corresponding to a detection limit of 0.5 µg/g CRTU, assuming 1 g CRT/l urine) should be achievable. Pruszkowska et al. (1983) achieved a limit of detection of 0.04 µg/l for CDU based on the slope the the curve for their working standards (0.35 pg Cd/0.0044, A signal=1% absorbance using GF-AAS).

The CDC reports a minimum detection limit for CDU of 0.07 µg/l using a modified Pruszkowska method. This limit of detection was defined as 3 times the standard deviation calculated from 10 repeated measurements of a "low level" CDU test sample (Attachment 8 of exhibit 106 of OSHA docket H057A).

Stoeppler and Brandt (1980) report a limit of detection for CDU of 0.2 µg/l using an aqueous dilution (1:2) of the urine samples.

Accuracy. A recent report from the CTQ (Weber, private communication) indicates that 36% of the laboratories in the program achieve the target of ±1 µg/l or 15% for more than 75% of the samples analyzed over the last 5 years, while 45% of participating laboratories achieve a target of ±2 µg/l or 15% for more than 75% of the samples analyzed over the same period. With time and a strong incentive for improvement, it is expected that the proportion of laboratories successfully achieving the stricter level of accuracy should increase. It should be noted, however, these indices of performance do not include variations resulting from the ancillary measurement of CRTU (which is recommended for the proper recording of results). The low cadmium levels expected to be measured indicate that the analysis of creatinine will contribute relatively little to the overall variability observed among creatinine-normalized CDU levels (see Section 5.4). The initial target value for reporting CDU under this program, therefore, is set at ±1 µg/g CRTU or 15% (whichever is greater).

Precision. For internal QC samples (which are recommended as part of an internal QA/QC program, Section 3.3.1), laboratories should attain an overall precision of 25%. For CDB samples with concentrations less than 2 µg/l, a target precision of 40% is acceptable, while precisions of 20% should be achievable for CDU concentrations greater than 2 µg/l. Although these values are more stringent than those observed in the CTQ interlaboratory program reported by Webber (1988), they are well within limits expected to be achievable for the method as reported by Stoeppler and Brandt (1980).

5.2.8.3 *Quality Assurance/Quality Control*

Commercial laboratories providing CDU determinations should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the selected method, including calibration requirements; regular incorporation of QC samples during actual runs; a protocol for corrective actions, and documentation of such actions; and, participation in an interlaboratory proficiency program. Note that the nonmandatory program presented in Attachment 1 as an example of an acceptable QA/QC program, is based on using the Pruszkowska method for CDU analysis. Should an alternate method be adopted by a laboratory, the laboratory should develop a QA/QC program equivalent to the nonmandatory program, and which satisfies the provisions of Section 3.3.1.

5.3 Monitoring β-2-Microglobulin in Urine (B2MU).

As indicated in Section 4.3, B2MU appears to be the best of several small proteins that may be monitored as early indicators of cadmium-induced renal damage. Several analytic techniques are available for measuring B2M.

5.3.1 Units of B2MU Measurement

Procedures adopted for reporting B2MU levels are not uniform. In these guidelines, OSHA recommends that B2MU levels be reported as µg/g CRTU, similar to reporting CDU concentrations. Reporting B2MU normalized to the concentration of CRTU requires an additional analytical process beyond the analysis of B2M: Independent analysis for creatinine so that results may be reported as a ratio of the B2M and creatinine concentrations found in the urine sample. Consequently, the overall quality of the analysis depends on the combined performance on these 2 analyses. The analysis used for B2MU determinations is described in terms of µg B2M/l urine, with analysis of creatinine addressed separately. Techniques used to measure creatinine are provided in Section 5.4. Note that Section 3.3.3 provides techniques for deriving the value of B2M as function of CRTU, and the confidence limits for independent measurements of B2M and CRTU.

5.3.2 Analytical Techniques Used to Monitor B2MU

One of the earliest tests used to measure B2MU was the radial immunodiffusion technique. This technique is a simple and specific method for identification and quantitation of a number of proteins found in human serum and other body fluids when the protein is not readily differentiated by standard electrophoretic procedures. A quantitative relationship exists between the concentration of a protein deposited in a well that is cut into a thin agarose layer containing the corresponding monospecific antiserum, and the distance that the resultant complex diffuses. The wells are filled with an unknown serum and the standard (or control), and incubated in a moist environment at room temperature. After the optimal point of diffusion has been reached, the diameters of the resulting precipition rings are measured. The diameter of a ring is related to the concentration of the constituent substance. For B2MU determinations required in the medical monitoring program, this method requires a process that may be insufficient to concentrate the protein to levels that are required for detection.

Radioimmunoassay (RIA) techniques are used widely in immunologic assays to measure the concentration of antigen or antibody in body-fluid samples. RIA procedures are based on competitive-binding techniques. If antigen concentration is being measured, the principle underlying the procedure is that radioactive-labeled antigen competes with the sample's unlabeled antigen for binding sites on a known amount of immobile antibody. When these 3 components are present in the system, an equilibrium exists. This equilibrium is followed by a separation of the free and bound forms of the antigen. Either free or bound radioactive-labeled antigen can be assessed to determine the amount of antigen in the sample. The analysis is performed by measuring the level of radiation emitted either by the bound complex following removal of the solution containing the free antigen, or by the isolated solution containing the residual-free antigen. The main advantage of the RIA method is the extreme sensitivity of detection for emitted radiation and the corresponding ability to detect trace amounts of antigen. Additionally, large numbers of tests can be performed rapidly.

The enzyme-linked immunosorbent assay (ELISA) techniques are similar to RIA techniques except that nonradioactive labels are employed. This technique is safe, specific and rapid, and is nearly as sensitive as RIA techniques. An enzyme-labeled antigen is used in the immunologic assay; the labeled antigen detects the presence and quantity of unlabeled antigen in the sample. In a representative ELISA test, a plastic plate is coated with antibody (e.g., antibody to B2M). The antibody reacts with antigen (B2M) in the urine and forms an antigen-antibody complex on the plate. A second anti-B2M antibody (i.e., labeled with an enzyme) is added to the mixture and forms an antibody-antigen-antibody complex. Enzyme activity is measured spectrophotometrically after the addition of a specific chromogenic substrate which is activated by the bound enzyme. The results of a typical test are calculated by comparing the spectrophotometric reading of a serum sample to that of a control or reference serum. In general, these procedures are faster and require less laboratory work than other methods.

In a fluorescent ELISA technique (such as the one employed in the Pharmacia Delphia test for B2M), the labeled enzyme is bound to a strong fluorescent dye. In the Pharmacia Delphia test, an antigen bound to a fluorescent dye competes with unlabeled antigen in the sample for a predetermined amount of specific, immobile antibody. Once equilibrium is reached, the immobile phase is removed from the labeled antigen in the sample solution and washed; an enhancement solution then is added that liberates the fluorescent dye from the bound antigen-antibody complex. The enhancement solution also contains a chelate that complexes with the fluorescent dye in solution; this complex increases the fluorescent properties of the dye so that it is easier to detect.

To determine the quantity of B2M in a sample using the Pharmacia Delphia test, the intensity of the fluorescence of the enhancement solution is measured. This intensity is proportional to the concentration of labeled antigen that bound to the immobile antibody phase during the initial competition with unlabeled antigen from the sample. Consequently, the intensity of the fluorescence is an inverse function of the concentration of antigen (B2M) in the original sample. The relationship between the fluorescence level and the B2M concentration in the sample is determined using a series of graded standards, and extrapolating these standards to find the concentration of the unknown sample.

5.3.3 Methods Developed for B2MU Determinations

B2MU usually is measured by radioimmunoassay (RIA) or enzyme-linked immunosorbent assay (ELISA); however, other methods (including gel electrophoresis, radial immunodiffusion, and nephelometric assays) also have been described (Schardun and van Epps 1987). RIA and ELISA methods are preferred because they are sensitive at concentrations as low as micrograms per liter, require no concentration processes, are highly reliable and use only a small sample volume.

Based on a survey of the literature, the ELISA technique is recommended for monitoring B2MU. While RIAs provide greater sensitivity (typically about 1 µg/l, Evrin et al. 1971), they depend on the use of radioisotopes; use of radioisotopes requires adherence to rules and regulations established by the Atomic Energy Commission, and necessitates an expensive radioactivity counter for testing. Radioisotopes also have a relatively short half-life, which corresponds to a reduced shelf life, thereby increasing the cost and complexity of testing. In contrast, ELISA testing can be performed on routine laboratory spectrophotometers, do not necessitate adherence to additional rules and regulations governing the handling of radioactive substances, and the test kits have long shelf lives. Further, the range of sensitivity commonly achieved by the recommended ELISA test (i.e., the Pharmacia Delphia test) is approximately 100 µg/l (Pharmacia 1990), which is sufficient for monitoring B2MU levels resulting from cadmium exposure. Based on the studies listed in Table 9 (Section 5.3.7), the average range of B2M concentrations among the general, nonexposed population falls between 60 and 300 µg/g CRTU. The upper 95th percentile of distributions, derived from studies in Table 9 which reported standard deviations, range between 180 and 1,140 µg/g CRTU. Also, the Pharmacia Delphia test currently is the most widely used test for assessing B2MU.

5.3.4 Sample Collection and Handling

As with CDB or CDU, sample collection procedures are addressed primarily to identify ways to minimize the degree of variability introduced by sample collection during medical monitoring. It is unclear the extent to which sample collection contributes to B2MU variability. Sources of variation include time-of-day effects, the interval since consuming liquids and the quantity of liquids consumed, and the introduction of external contamination during the collection process. A special problem unique to B2M sampling is the sensitivity of this protein to degradation under acid conditions commonly found in the bladder. To minimize this problem, strict adherence to a sampling protocol is recommended. The protocol should include provisions for normalizing the conditions under which the urine is collected. Clearly, it is important to minimize the interval urine spends in the bladder. It also is recommended that every effort be made to collect samples during the same time of day.

Collection of urine samples for biological monitoring usually is performed using "spot" (i.e., single-void) urine. Logistics and sample integrity become problems when efforts are made to collect urine over extended periods (e.g., 24 hrs). Unless single-void urines are used, numerous opportunities exist for measurement error because of poor control over sample collection, storage and environmental contamination.

To minimize the interval that sample urine resides in the bladder, the following adaption to the "spot" collection procedure is recommended: The bladder should be emptied and then a large glass of water should be consumed; the sample then should be collected within an hour after the water is consumed.

5.3.5 Best Achievable Performance

The best achievable performance is assumed to be equivalent to the performance reported by the manufacturers of the Pharmacia Delphia test kits (Pharmacia 1990). According to the insert that comes with these kits, QC results should be within ±2 SDs of the mean for each control sample tested; a CV of less than or equal to 5.2% should be maintained. The total CV reported for test kits is less than or equal to 7.2%.

5.3.6 General Method Performance

Unlike analyses for CDB and CDU, the Pharmacia Delphia test is standardized in a commercial kit that controls for many sources of variation. In the absence of data to the contrary, it is assumed that the achievable performance reported by the manufacturer of this test kit will serve as an achievable performance objective. The CTQ proficiency testing program for B2MU analysis is expected to use the performance parameters defined by the test kit manufacturer as the basis of the B2MU proficiency testing program.

Note that results reported for the test kit are expressed in terms of µg B2M/l of urine, and have not been adjusted for creatinine. The indicated performance, therefore, is a measure of the performance of the B2M portion of the analyses only, and does not include variation that may have been introduced during the analysis of creatinine.

5.3.7 Observed B2MU Concentrations

As indicated in Section 4.3, the concentration of B2MU may serve as an early indicator of the onset of kidney damage associated with cadmium exposure.

5.3.7.1 *Range of B2MU Concentrations Among Unexposed Samples*

Most of the studies listed in Table 9 report B2MU levels for those who were not occupationally exposed to cadmium. Studies noted in the second column of this table (which contain the footnote "d") reported B2MU concentrations among cadmium-exposed workers who, nonetheless, showed no signs of proteinuria. These latter studies are included in this table because, as indicated in Section 4.3, monitoring B2MU is intended to provide advanced warning of the onset of kidney dysfunction associated with cadmium exposure, rather than to distinguish relative exposure. This table, therefore, indicates the range of B2MU levels observed among those who had no symptoms of renal dysfunction (including cadmium-exposed workers with none of these symptoms).

TABLE 9—B-2-MICROGLOBULIN CONCENTRATIONS OBSERVED IN URINE AMONG THOSE NOT OCCUPATIONALLY EXPOSED TO CADMIUM

Study No.	No. in study	Geometric mean	Geometric standard deviation	Lower 95th percentile of distribution[a]	Upper 95th percentile of distribution[a]	Reference
1	133 m[b]	115 µg/g[c]	4.03	12	1,140 µg/g[c]	Ishizaki et al. 1989.
2	161 f[b]	146 µg/g[c]	3.11	23	940 µg/g[c]	Ishizaki et al. 1989.
3	10	84 µg/g				Ellis et al. 1983.
4	203	76 µg/l				Stewart and Hughes 1981.
5	9	103 µg/g				Chia et al. 1989.
6	47[d]	86 µg/L	1.9	30 µg/l	250 µg/L	Kjellstrom et al. 1977.
7	1,000[e]	68.1 µg/gr Cr[f]	3.1 m & f	<10 µg/gr Cr[h]	320 µg/gr Cr[h]	Kowal 1983.
8	87	71 µg/g[i]		7[h]	200[h]	Buchet et al. 1980.
9	10	0.073 mg/24h				Evrin et al. 1971.
10	59	156 µg/g	1.1[j]	130	180	Mason et al. 1988.
11	8	118 µg/g				Iwao et al. 1980.
12	34	79 µg/g				Wibowo et al. 1982.
13	41 m				400 µg/gr Cr[k]	Falck et al. 1983.
14	35[e]	67				Roels et al. 1991.
15	31[d]	63				Roels et al. 1991.
16	36[d]	77[i]				Miksche et al. 1981.
17	18[n]	130				Kawada et al. 1989.
18	32[p]	122				Kawada et al. 1989.
19	18[d]	295	1.4	170	510	Thun et al. 1989.

a—Based on an assumed lognormal distribution
b—m = males, f = females
c—Aged general population from non-polluted area; 47.9% population aged 50–69; 52.1% ≥ 70 years of age; values reported in study
d—Exposed workers without proteinuria
e—492 females, 484 males
f—Creatinine-adjusted; males = 68.1 µg/g Cr, females = 64.3 µg/g Cr
h—Reported in the study
i—Arithmetic mean
j—Geometric standard error
k—Upper 95% tolerance limits: for Falck this is based on the 24 hour urine sample
n—Controls
p—Exposed synthetic resin and pigment workers without proteinuria; Cadmium in urine levels up to 10 µg/g Cr

To the extent possible, the studies listed in Table 9 provide geometric means and geometric standard deviations for measurements among the groups defined in each study. For studies reporting a geometric standard deviation along with a mean, the lower and upper 95th percentile for these distributions were derived and reported in the table.

The data provided from 15 of the 19 studies listed in Table 9 indicate that the geometric mean concentration of B2M observed among those who were not occupationally exposed to cadmium is 70–170 µg/g CRTU. Data from the 4 remaining studies indicate that exposed workers who exhibit no signs of proteinuria show mean B2MU levels of 60–300 µg/g CRTU. B2MU values in the study by Thun et al. (1989), however, appear high in comparison to the other 3 studies. If this study is removed, B2MU levels for those who are not occupationally exposed to cadmium are similar to B2MU levels found among cadmium-exposed workers who exhibit no signs of kidney dysfunction. Although the mean is high in the study by Thun et al., the range of measurements reported in this study is within the ranges reported for the other studies.

Determining a reasonable upper limit from the range of B2M concentrations observed among those who do not exhibit signs of proteinuria is problematic. Elevated B2MU levels are among the signs used to define the onset of kidney dysfunction. Without access to the raw data from the studies listed in Table 9, it is necessary to rely on reported standard deviations to estimate an upper limit for normal B2MU concentrations (i.e., the upper 95th percentile for the distributions measured). For the 8 studies reporting a geometric standard deviation, the upper 95th percentiles for the distributions are 180–1140 µg/g CRTU. These values are in general agreement with the upper 95th percentile for the distribution (i.e., 631 µg/g CRTU) reported by Buchet et al. (1980). These upper limits also appear to be in general agreement with B2MU values (i.e., 100–690 µg/g CRTU) reported as the normal upper limit by Iwao et al. (1980), Kawada et al. (1989), Wibowo et al. (1982), and Schardun and van Epps (1987). These values must be compared to levels reported among those exhibiting kidney dysfunction to define

a threshold level for kidney dysfunction related to cadmium exposure.

5.3.7.2 *Range of B2MU Concentrations Among Exposed Workers*

Table 10 presents results from studies reporting B2MU determinations among those occupationally exposed to cadmium in the work place; in some of these studies, kidney dysfunction was observed among exposed workers, while other studies did not make an effort to distinguish among exposed workers based on kidney dysfunction. As with Table 9, this table provides geometric means and geometric standard deviations for the groups defined in each study if available. For studies reporting a geometric standard deviation along with a mean, the lower and upper 95th percentiles for the distributions are derived and reported in the table.

TABLE 10.—β_2-MICROGLOBULIN CONCENTRATIONS OBSERVED IN URINE AMONG OCCUPATIONALLY-EXPOSED WORKERS

Study number	N	Concentration of β_2-microglobulin in urine				Reference
		Geometric mean (µg/g)[a]	Geom. Std. Dev.	L 95% of range[b]	U 95% of range[b]	
1	1,424	160	6.19	8.1	3,300	Ishizaki et al. 1989.
2	1,754	260	6.50	12	5,600	Ishizaki et al. 1989.
3	33	210	.....	.....	.....	Ellis et al. 1983.
4	65	210	.....	.....	.....	Chia et al. 1989.
5	[c]44	5,700	6.49	[d]300	[d]98,000	Kjellstrom et al. 1977.
6	148	[e]180	.....	[f]110	[f]280	Buchet et al. 1980.
7	37	160	3.90	17	1,500	Kenzaburo et al. 1979.
8	[c]45	3,300	8.70	[d]310	[d]89,000	Mason et al. 1988.
9	[c]10	8,100	5.99	[f]650	[f]57,000	Falck et al. 1983.
10	[c]11	3,900	2.96	[d]710	[d]15,000	Elinder et al. 1985.
11	[c]12	300	.....	.....	.....	Roels et al. 1991.
12	[g]8	7,400	.....	.....	.....	Roels et al. 1991.
13	[c]23	[h]1,800	.....	.....	.....	Roels et al. 1989.
14	10	690	.....	.....	.....	Iwao et al. 1980.
15	34	71	.....	.....	.....	Wibowo et al. 1982.
16	[c]15	4,700	6.49	[d]590	[d]93,000	Thun et al. 1989.

[a] Unless otherwise stated.
[b] Based on an assumed lognormal distribution.
[c] Among workers diagnosed as having renal dysfunction; for Elinder this means β_2 levels greater than 300 micrograms per gram creatinine (µg/gr Cr); for Roels, 1991, range=31–35, 170 µgβ_2/gr Cr and geometric mean=63 among healthy workers; for Mason β_2>300 µg/gr Cr.
[d] Based on a detailed review of the data by OSHA.
[e] Arithmetic mean.
[f] Reported in the study.
[g] Retired workers.
[h] 1,800 µgβ_2/gr Cr for first survey; second survey=1,600; third survey=2,600; fourth survey=2,600; fifth survey=2,600.

The data provided in Table 10 indicate that the mean B2MU concentration observed among workers experiencing occupational exposure to cadmium (but with undefined levels of proteinuria) is 160–7400 µg/g CRTU. One of these studies reports geometric means lower than this range (i.e., as low as 71 µg/g CRTU); an explanation for this wide spread in average concentrations is not available.

Seven of the studies listed in Table 10 report a range of B2MU levels among those diagnosed as having renal dysfunction. As indicated in this table, renal dysfunction (proteinuria) is defined in several of these studies by B2MU levels in excess of 300 µg/g CRTU (see footnote "c" of Table 10); therefore, the range of B2MU levels observed in these studies is a function of the operational definition used to identify those with renal dysfunction. Nevertheless, a B2MU level of 300 µg/g CRTU appears to be a meaningful threshold for identifying those having early signs of kidney damage. While levels much higher than 300 µg/g CRTU have been observed among those with renal dysfunction, the vast majority of those not occupationally exposed to cadmium exhibit much lower B2MU concentrations (see Table 9). Similarly, the vast majority of workers not exhibiting renal dysfunction are found to have levels below 300 µg/g CRTU (Table 9).

The 300 µg/g CRTU level for B2MU proposed in the above paragraph has support among researchers as the threshold level that distinguishes between cadmium-exposed workers with and without kidney dysfunction. For example, in the guide for physicians who must evaluate cadmium-exposed workers written for the Cadmium Council by Dr. Lauwerys, levels of B2M greater than 200–300 µg/g CRTU are considered to require additional medical evaluation for kidney dysfunction (exhibit 8–447, OSHA docket H057A). The most widely used test for measuring B2M (i.e., the Pharmacia Delphia test) defines B2MU levels above 300 µg/l as abnormal (exhibit L–140–1, OSHA docket H057A).

Dr. Elinder, chairman of the Department of Nephrology at the Karolinska Institute, testified at the hearings on the proposed cadmium rule. According to Dr. Elinder (exhibit L–140–45, OSHA docket H057A), the normal concentration of B2MU has been well documented (Evrin and Wibell 1972; Kjellstrom et al. 1977a; Elinder et al. 1978, 1983; Buchet et al. 1980; Jawald et al. 1983; Kowal and Zirkes, 1983). Elinder stated that the upper 95 or 97.5 percentiles for B2MU among those without tubular dysfunction is below 300 µg/g CRTU (Kjellstrom et al. 1977a; Buchet et al. 1980; Kowal and Zirkes, 1983). Elinder defined levels of B2M above 300 µg/g CRTU as "slight" proteinuria.

5.3.8 *Conclusions and Recommendations for B2MU*

Based on the above evaluation, the following recommendations are made for a B2MU proficiency testing program. Note that the following discussion addresses only sampling and analysis for B2MU determinations (i.e., to be reported as an unadjusted µg B2M/l urine). Normalizing this result to creatinine requires a second analysis for CRTU (see section 5.4) so that the ratio of the 2 measurements can be obtained.

5.3.8.1 *Recommended Method*

The Pharmacia Delphia method (Pharmacia 1990) should be adopted as the standard method for B2MU determinations. Laboratories may adopt alternate methods, but it is the responsibility of the laboratory to demonstrate that alternate methods provide results of comparable quality to the Pharmacia Delphia method.

5.3.8.2 *Data Quality Objectives*

The following data quality objectives should facilitate interpretation of analytical results, and should be achievable based on the above evaluation.

Limit of Detection. A limit of 100 µg/l urine should be achievable, although the insert to the test kit (Pharmacia 1990) cites a detection limit of 150 µg/l; private conversations with representatives of Pharmacia, however, indicate that the lower limit of 100 µg/l should be achievable provided an additional standard of 100 µg/l B2M is run with the other standards to derive the calibration curve (section 3.3.1.1). The lower detection limit is desirable due to the proximity of this detection limit to B2MU values defined for the cadmium medical monitoring program.

Accuracy. Because results from an interlaboratory proficiency testing program are not available currently, it is difficult to define an achievable level of accuracy. Given the general performance parameters defined by the insert to the test kits, however, an accuracy of ±15% of the target value appears achievable.

Due to the low levels of B2MU to be measured generally, it is anticipated that the analysis of creatinine will contribute relatively little to the overall variability observed among creatinine-normalized B2MU levels (see section 5.4). The initial level of accuracy for reporting B2MU levels under this program should be set at ±15%.

Precision. Based on precision data reported by Pharmacia (1990), a precision value (i.e., CV) of 5% should be achievable over the defined range of the analyte. For internal QC samples (i.e., recommended as part of an internal QA/QC program, section 3.3.1), laboratories should attain precision near 5% over the range of concentrations measured.

5.3.8.3 *Quality Assurance/Quality Control*

Commercial laboratories providing measurement of B2MU should adopt an internal QA/QC program that incorporates the following components: Strict adherence to the Pharmacia Delphia method, including calibration requirements; regular use of QC samples during routine runs; a protocol for corrective actions, and documentation of these actions; and, participation in an interlaboratory proficiency program. Procedures that may be used to address internal QC requirements are presented in Attachment 1. Due to differences between analyses for B2MU and CDB/CDU, specific values presented in Attachment 1 may have to be modified. Other components of the program (including characterization runs), however, can be adapted to a program for B2MU.

5.4 *Monitoring Creatinine in Urine (CRTU)*

Because CDU and B2MU should be reported relative to concentrations of CRTU, these concentrations should be determined in addition CDU and B2MU determinations.

5.4.1 *Units of CRTU Measurement*

CDU should be reported as µg Cd/g CRTU, while B2MU should be reported as µg B2M/g CRTU. To derive the ratio of cadmium or B2M to creatinine, CRTU should be reported in units of g crtn/l of urine. Depending on the analytical method, it may be necessary to convert results of creatinine determinations accordingly.

5.4.2 *Analytical Techniques Used To Monitor CRTU*

Of the techniques available for CRTU determinations, an absorbance spectrophotometric technique and a high-performance liquid chromatography (HPLC) technique are identified as acceptable in this protocol.

5.4.3 *Methods Developed for CRTU Determinations*

CRTU analysis performed in support of either CDU or B2MU determinations should be performed using either of the following 2 methods:

1. The Du Pont method (i.e., Jaffe method), in which creatinine in a sample reacts with picrate under alkaline conditions, and the resulting red chromophore is monitored (at 510 nm) for a fixed interval to determine the rate of the reaction; this reaction rate is proportional to the concentration of creatinine present in the sample (a copy of this method is provided in Attachment 2 of this protocol); or

2. The OSHA SLC Technical Center (OSLTC) method, in which creatinine in an aliquot of sample is separated using an HPLC column equipped with a UV detector; the resulting peak is quantified using an electrical integrator (a copy of this method is provided in Attachment 3 of this protocol).

5.4.4 *Sample Collection and Handling*

CRTU samples should be segregated from samples collected for CDU or B2MU analysis. Sample-collection techniques have been described under section 5.2.4. Samples should be preserved either to stabilize CDU (with HNO_3) or B2MU (with NaOH). Neither of these procedures should adversely affect CRTU analysis (see Attachment 3).

5.4.5 *General Method Performance*

Data from the OSLTC indicate that a CV of 5% should be achievable using the OSLTC method (Septon, L private communication). The achievable accuracy of this method has not been determined.

Results reported in surveys conducted by the CAP (CAP 1991a, 1991b and 1992) indicate that a CV of 5% is achievable. The accuracy achievable for CRTU determinations has not been reported.

Laboratories performing creatinine analysis under this protocol should be CAP accredited and should be active participants in the CAP surveys.

5.4.6 *Observed CRTU Concentrations*

Published data suggest the range of CRTU concentrations is 1.0–1.6 g in 24-hour urine samples (Harrison 1987). These values are equivalent to about 1 g/l urine.

5.4.7 *Conclusions and Recommendations for CRTU*

5.4.7.1 *Recommended Method*

Use either the Jaffe method (Attachment 2) or the OSLTC method (Attachment 3). Alternate methods may be acceptable provided adequate performance is demonstrated in the CAP program.

5.4.7.2 *Data Quality Objectives*

Limit of Detection. This value has not been formally defined; however, a value of 0.1 g/l urine should be readily achievable.

Accuracy. This value has not been defined formally; accuracy should be sufficient to retain accreditation from the CAP.

Precision. A CV of 5% should be achievable using the recommended methods.

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Attachment 1—Nonmandatory Protocol for an Internal Quality Assurance/Quality Control Program

The following is an example of the type of internal quality assurance/quality control program that assures adequate control to satisfy OSHA requirements under this protocol. However, other approaches may also be acceptable.

As indicated in Section 3.3.1 of the protocol, the QA/QC program for CDB and CDU should address, at a minimum, the following:

- Calibration;
- Establishment of control limits;
- Internal QC analyses and maintaining control; and
- Corrective action protocols.

This illustrative program includes both initial characterization runs to establish the performance of the method and ongoing analysis of quality control samples intermixed with compliance samples to maintain control.

Calibration

Before any analytical runs are conducted, the analytic instrument must be calibrated. This is to be done at the beginning of each day on which quality control samples and/or compliance samples are run. Once calibration is established, quality control samples or compliance samples may be run. Regardless of the type of samples run, every fifth sample must be a standard to assure that the calibration is holding.

Calibration is defined as holding if every standard is within plus or minus (±) 15% of its theoretical value. If a standard is more than plus or minus 15% of its theoretical value, then the run is out of control due to calibration error and the entire set of samples must either be reanalyzed after recalibrating or results should be recalculated based on a statistical curve derived from the measurement of all standards.

It is essential that the highest standard run is higher than the highest sample run. To assure that this is the case, it may be necessary to run a high standard at the end of the run, which is selected based on the results obtained over the course of the run.

All standards should be kept fresh, and as they get old, they should be compared with new standards and replaced if they exceed the new standards by ± 15%.

Initial Characterization Runs and Establishing Control

A participating laboratory should establish four pools of quality control samples for each of the analytes for which determinations will be made. The concentrations of quality control samples within each pool are to be centered around each of the four target levels for the particular analyte identified in Section 4.4 of the protocol.

Within each pool, at least 4 quality control samples need to be established with varying concentrations ranging between plus or minus 50% of the target value of that pool. Thus for the medium-high cadmium in blood pool, the theoretical values of the quality control samples may range from 5 to 15 µg/l, (the target value is 10 µg/l). At least 4 unique theoretical values must be represented in this pool.

The range of theoretical values of plus or minus 50% of the target value of a pool means that there will be overlap of the pools. For example, the range of values for the medium-low pool for cadmium in blood is 3.5 to 10.5 µg/l while the range of values for the medium-high pool is 5 to 15 µg/l. Therefore, it is possible for a quality control

sample from the medium-low pool to have a higher concentration of cadmium than a quality control sample from the medium-high pool.

Quality control samples may be obtained as commercially available reference materials, internally prepared, or both. Internally prepared samples should be well characterized and traced or compared to a reference material for which a consensus value for concentration is available. Levels of analyte in the quality control samples must be concealed from the analyst prior to the reporting of analytical results. Potential sources of materials that may be used to construct quality control samples are listed in Section 3.3.1 of the protocol.

Before any compliance samples are analyzed, control limits must be established. Control limits should be calculated for every pool of each analyte for which determinations will be made and control charts should be kept for each pool of each analyte. A separate set of control charts and control limits should be established for each analytical instrument in a laboratory that will be used for analysis of compliance samples.

At the beginning of this QA/QC program, control limits should be based on the results of the analysis of 20 quality control samples from each pool of each analyte. For any given pool, the 20 quality control samples should be run on 20 different days. Although no more than one sample should be run from any single pool on a particular day, a laboratory may run quality control samples from different pools on the same day. This constitutes a set of initial characterization runs.

For each quality control sample analyzed, the value F/T (defined in the glossary) should be calculated. To calculate the control limits for a pool of an analyte, it is first necessary to calculate the mean, $\bar{X}$, of the F/T values for each quality control sample in a pool and then to calculate its standard deviation, $\hat{\sigma}$. Thus, for the control limit for a pool, $\bar{X}$ is calculated as:

$$\bar{X} = \frac{\left(\sum \frac{F}{T}\right)}{N}$$

and $\hat{\sigma}$ is calculated as

$$\hat{\sigma} = \left[\frac{\sum\left(\frac{F}{T} - \bar{X}\right)^2}{(N-1)}\right]^{\frac{1}{2}}$$

where N is the number of quality control samples run for a pool.

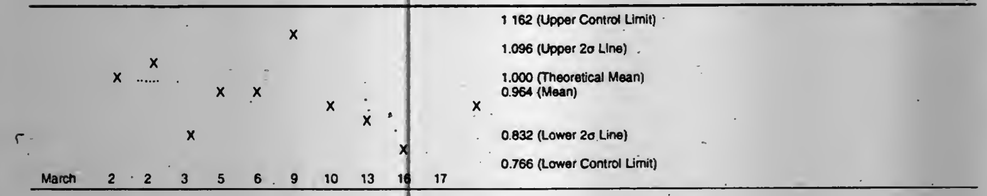
The control limit for a particular pool is then given by the mean plus or minus 2 standard deviations ($\bar{X} \pm 2\hat{\sigma}$). The control limits may be no greater than 40% of the mean F/T value. If three standard deviations are greater than 40% of the mean F/T value, then analysis of compliance samples may not begin.[1] Instead, an investigation into the causes of the large standard deviation should begin, and the inadequacies must be remedied. Then, control limits must be reestablished which will mean repeating the running 20 quality control samples from each pool over 20 days.

Once control limits have been established for each pool of an analyte, analysis of compliance samples may begin. During any run of compliance samples, quality control samples are to be interspersed at a rate of no less than 5% of the compliance sample workload. When quality control samples are run, however, they should be run in sets consisting of one quality control sample from each pool. Therefore, it may be necessary, at times, to intersperse quality control samples at a rate greater than 5%.

There should be at least one set of quality control samples run with any analysis of compliance samples. At a minimum, for example, 4 quality control samples should be run even if only 1 compliance sample is run. Generally, the number of quality control samples that should be run are a multiple of four with the minimum equal to the smallest multiple of four that is greater than 5% of the total number of samples to be run. For example, if 300 compliance samples of an analyte are run, then at least 16 quality control samples should be run (16 is the smallest multiple of four that is greater than 15, which is 5% of 300).

Control charts for each pool of an analyte (and for each instrument in the laboratory to be used for analysis of compliance samples) should be established by plotting F/T versus date as the quality control sample results are reported. On the graph there should be lines representing the control limits for the pool, the mean F/T limits for the pool, and the theoretical F/T of 1.000. Lines representing plus or minus (±) 2$\hat{\sigma}$ should also be represented on the charts. A theoretical example of a control chart is presented in Figure 1

FIGURE 1.—THEORETICAL EXAMPLE OF A CONTROL CHART FOR A POOL OF AN ANALYTE



All quality control samples should be plotted on the chart, and the charts should be checked for visual trends. If a quality control sample falls above or below the control limits for its pool, then corrective steps must be taken (see the section on corrective actions below). Once a laboratory's program has been established, control limits should be updated every 2 months.

The updated control limits should be calculated from the results of the last 100 quality control samples run for each pool. If 100 quality control samples from a pool have not been run at the time of the update, then the limits should be based on as many as have been run provided at least 20 quality control samples from each pool have been run over 20 different days.

[1] Note that the value, "40%" may change over time as experience is gained with the program.

The trends that should be looked for on the control charts are:

1. 10 consecutive quality control samples falling above or below the mean;
2. 3 consecutive quality control samples falling more than 2$\hat{\sigma}$ from the mean (above or below the 2$\hat{\sigma}$ lines of the chart); or
3. the mean calculated to update the control limits falls more than 10% above or below the theoretical mean of 1.000.

If any of these trends is observed, then all analysis must be stopped, and an investigation into the causes of the errors must begin. Before the analysis of compliance samples may resume, the inadequacies must be remedied and the control limits must be reestablished for that pool of an analyte. Reestablishment of control limits will entail running 20 sets of quality control samples over 20 days.

Note that alternative procedures for defining internal quality control limits may also be acceptable. Limits may be based, for example, on proficiency testing, such as ± 1 µg or 15% of the mean (whichever is greater). These should be clearly defined.

Corrective Actions

Corrective action is the term used to describe the identification and remediation of errors occurring within an analysis. Corrective action is necessary whenever the result of the analysis of any quality control sample falls outside of the established control limits. The steps involved may include simple things like checking calculations of basic instrument maintenance, or it may involve more complicated actions like major instrument repair. Whatever the source of error, it must be identified and corrected (and a Corrective Action Report (CAR) must be completed. CARs should be kept on file by the laboratory.

Attachment 2—Creatinine in Urine (JAFFE PROCEDURE)

* Note: Numbered superscripts refer to the bibliography.

Intended use: The CREA pack is used in the Du Pont ACA® discrete clinical analyzer to quantitatively measure creatinine in serum and urine.

Summary: The CREA method employs a modification of the kinetic Jaffe reaction reported by Larsen. This method has been reported to be less susceptible than conventional methods to interference from non-creatinine, Jaffe-positive compounds.[2]

A split sample comparison between the CREA method and a conventional Jaffe procedure on Autoanalyzer® showed a good correlation. (See SPECIFIC PERFORMANCE CHARACTERISTICS).

Autoanalyzer,® is a registered trademark of Technicon Corp., Tarrytown, NY.

Principles of Procedure: In the presence of a strong base such as NaOH, picrate reacts with creatinine to form a red chromophore. The rate of increasing absorbance at 510 nm due to the formation of this chromophore during a 17.07-second measurement period is directly proportional to the creatinine concentration in the sample.

$$\text{Creatinine} + \text{Picrate} \xrightarrow{\text{NaOH}} \text{Red chromophore (absorbs at 510 nm)}$$

Reagents:

Compartment[a]	Form	Ingredient	Quantity[b]
No. 2, 3, & 4, 6	Liquid	Picrate	0.11 mmol.
	Liquid	NaOH (for pH adjustment)[c].	

[a] Compartments are numbered 1–7, with compartment #7 located closest to pack fill position #2.

[b] Nominal value at manufacture.
[c] See PRECAUTIONS.

Precautions: Compartment #6 contains 75µL of 10 N NaOH; avoid contact; skin irritant; rinse contacted area with water. Comply with OSHA'S Bloodborne Pathogens Standard while handling biological samples (29 CFR 1910.1039).

Used packs contain human body fluids; handle with appropriate care.

FOR IN VITRO DIAGNOSTIC USE

MIXING & DILUTING

Mixing and diluting are automatically performed by the ACA® discrete clinical analyzer. The sample cup must contain sufficient quantity to accommodate the sample volume plus the "dead volume"; precise cup filling is not required.

SAMPLE CUP VOLUMES (µL)

Analyzer	Standard		Microsystem	
	Dead	Total	Dead	Total
II, III	120	3000	10	500
IV, SX	120	3000	30	500
V	90	3000	10	500

Storage of Unprocessed Packs: Store at 2–8°C. Do not freeze. Do not expose to temperatures above 35°C or to direct sunlight.

Expiration: Refer to EXPIRATION DATE on the tray label.

Specimen Collection: Serum or urine can be collected and stored by normal procedures.[3]

Known Interfering Substances[4]

• Serum Protein Influence—Serum protein levels exert a direct influence on the CREA assay. The following should be taken into account when this method is used for urine samples and when it is calibrated:

Aqueous creatinine standards or urine specimens will give CREA results depressed by approximately 0.7 mg/dL [62 µmol/L] [5] and will be less precise than samples containing more than 3 g/dL [30 g/L] protein.

All urine specimens should be diluted with an albumin solution to give a final protein concentration of at least 3 g/dL [30 g/L]. Du Pont Enzyme Diluent (Cat. #790035–901) may be used for this purpose.

• High concentration of endrogenous bilirubin (>20 mg/dL [>342 µmol/L]) will give depressed CREA results (average depression 0.8 mg/dL [71 µmol/L]).[6]

• Grossly hemolyzed (hemoglobin >100 mg/dL (>62 µmol/L]) or visibly lipemic specimens may cause falsely elevated CREA results.[7,8]

• The following cephalosporin antibiotics do not interfere with the CREA method when present at the concentrations indicated. Systematic inaccuracies (bias) due to these substances are less than or equal to 0.1 mg/dL [8.84 µmol/L] at CREA concentrations of approximately 1 mg/dL [88 µmol/L].

Antibiotic	Peak serum level[a, b, c]		Drug concentration	
	mg/dL	[mmol/L]	mg/dL	[mmol/L]
Cephaloridine	1.4	0.3	25	6.0
Cephalexin	0.6–2.0	0.2–0.6	25	7.2
Cephamandole	1.3–2.5	0.3–0.5	25	4.9
Cephapirin	2.0	D0.4	25	5.6
Cephradine	1.5–2.0	0.4–0.6	25	7.1
Cefazolin	2.5–5.0	0.55–1.1	50	11.0

[a] Physicians' Desk Reference, Medical Economics Company, 33 Edition, 1979.

[2] Larsen, K. Clin Chem Acta 41, 209 (1972).

[3] Tietz, NW, Fundamentals of Clinical Chemistry, W. B. Saunders Co., Philadelphia, PA. 1976, pp 47–52, 1211.

[4] Supplementary information pertaining to the effects of various drugs and patient conditions on in vivo or in vitro diagnostic levels can be found in "Drug Interferences with Clinical Laboratory Tests," Clin. Chem 21 (5) (1975), and "Effects of Disease on Clinical Laboratory Tests," Clin Chem, 26 (4) 1D–476D (1980).

[5] Systeme International d'unites (S.I. Units) are in brackets.

[6] Watkins, R. Fieldkamp, SC. Thibert, RJ, and Zak, B, Clin Chem, 21, 1002 (1975).

[7] Kawas, EE, Richards, AH, and Bigger, R. An Evaluation of a Kinetic Creatinine Test for the Du Pont ACA. Du Pont Company, Wilmington, DE (February 1973). (Reprints available from DuPont Company, Diagnostic Systems)

[8] Westgard, JO, Effects of Hemolysis and Lipemia on ACA Creatinine Method, 0.200 µL, Sample Size, Du Pont Company, Wilmington, DE (October 1972)

[b] Henry, JB, Clinical Diagnosis and Management by Laboratory Methods, W.B. Saunders Co., Philadelphia, PA 1979, Vol. III.
[c] Krupp, MA, Tierney, LM Jr., Jawetz, E, Roe, RI, Camargo, CA, Physicians Handbook, Lange Medical Publications, Los Altos, CA, 1982 pp 635–636.

• The following cephalosporin antibiotics have been shown to affect CREA results when present at the indicated concentrations. System inaccuracies (bias) due to these substances are greater that 0.1 mg/dL [8.84 µmol/L] at CREA concentrations of:

Antibiotic	Peak serum level[a,b]		Drug concentration		
	mg/dL	[mmol/L]	mg/dL	[mmol/L]	Effect
Cephalothin	1–6	0.2–1.5	100	25.2	↓20–25%
Cephoxitin	20	0.5	5.0	1.2	↑35–40%

[a] Henry, JB, Clinical Diagnosis and Management by Laboratory Methods, W.B. Saunders Co., Philadelphia, PA 1979, Vol. III.
[b] Sarah, AJ, Koch, TR, Drusano, GL, Celoxitin Falsely Elevates Creatinine Levels, JAMA 247, 205–206 (1982).

• The single wavelength measurement used in this method eliminates interference from chromophores whose 510 nm absorbance is constant throughout the measurement period.

• Each laboratory should determine the acceptability of its own blood collection tubes and serum separation products. Variations in these products may exist between manufacturers and, at times, from lot to lot.

Procedure:

TEST MATERIALS

Item	II, III Du Pont Cat. No.	IV, SX Du Pont Cat. No.	V Du Pont Cat. No.
ACA® CREA Analytical Test Pack	701976901	701976901	701976901
Sample System Kit or	710642901	710642901	713697901
Micro Sample System Kit and	702694901	710356901	NA
Micro Sample System Holders	702785000	NA	NA
DYLUX® Photosensitive	.....	.....	.....
Printer Paper	700036000	NA	NA
Thermal Printer Paper	NA	710639901	713645901
Du Pont Purified Water	704209901	710615901	710815901
Cell Wash Solution	701864901	710664901	710864901

Test Steps

The operator need only load the sample kit and appropriate test pack(s) into a properly prepared ACA® discrete clinical analyzer. It automatically advances the pack(s) through the test steps and prints a result(s). See the Instrument Manual of the ACA® analyzer for details of mechanical travel of the test pack(s).

Preset Creatinine (CREA)—Test Conditions

- Sample Volume: 200 µL
- Diluent: Purified Water
- Temperature: 37.0 ± 0.1°C
- Reaction Period: 29 seconds
- Type of Measurement: Rate
- Measurement Period: 17.07 seconds
- Wavelength: 510 nm
- Units: mg/dL [µmol/L]

CALIBRATION

The general calibration procedure is described in the Calibration/Verification chapter of the Manuals.

The following information should be considered when calibrating the CREA method.

- Assay Range: 0–20 mg/mL [0–1768 µmol/L] [9].
- Reference Material: Protein containing primary standards[10] or secondary calibrators such as Du Pont Elevated Chemistry Control (Cat. #790035903) and Normal Chemistry Control (Cat.#790035905)[11].
- Suggested Calibration Levels: 1,5,20, mg/mL [88, 442, 1768 µmol/L].
- Calibration Scheme: 3 levels, 3 packs per level.
- Frequency: Each new pack lot. Every 3 months for any one pack lot.

[9] For the results in S.I. units [µmol/L] the conversion factory is 88.4.

PRESET CREATININE (CREA) TEST CONDITIONS

Item	ACA® II analyzer	ACA® III, IV, SX, V analyzer
Count by	One (1) ..... [Five (5)]	NA
Decimal point location.	0.0 mg/dL ..... [000.0 µmol/L] .	000.0 mg/dL [000 µmol/L]
Assigned starting point or offset C_o	999.8 ..... [9823.]	−1.000 E1 [−8.840 E2]
Scale factor or assigned.	0.2000 ..... mg/dL/count• ...	2.004 E-1 •

[10] Refer to the Creatinine Standard Preparation and Calibration Procedure available on request from a Du Pont Representative.
[11] If the Du Pont Chemistry Controls are being used, prepare them according to the instructions on the product insert sheets.

PRESET CREATININE (CREA) TEST CONDITIONS—Continued

Item	ACA® II analyzer	ACA® III, IV, SX, V analyzer
Linear Term C_1• .	[0.3536 µmol/L/count].	[1.772E1]

• The preset scale factor (linear term) was derived from the molar absorptivity of the indicator and is based on an absorbance to activity relationship (sensitivity) of 0.596 (mA/min)/(U/L). Due to small differences in filters and electronic components between instruments, the actual scale factor (linear term) may differ slightly from that given above.

Quality Control

Two types of quality control procedures are recommended:

• General Instrument Check. Refer to the Filter Balance Procedure and the Absorbance Test Method described in the ACA Analyzerinstrument Manual. Refer also to the ABS Test Methodology literature.

Creatinine Method Check. At least once daily run a CREA test on a solution of known creatinine activity such as an assayed control or calibration standard other than that used to calibrate the CREA method. For further details review the Quality Assurance Section of the Chemistry Manual. The result obtained should fall within acceptable limits defined by the day-to-day variability of the system as measured in the user's laboratory. (See SPECIFIC PERFORMANCE CHARACTERISTICS for guidance.) If the result falls outside the laboratory's acceptable limits, follow the procedure outlined in the Chemistry Troubleshooting Section of the Chemistry Manual.

A possible system malfunction is indicated when analysis of a sample with five consecutive test packs gives the following results:

Level	SD
1 mg/dL	>0.15 mg/dL
[88 µmol/L]	[>13 µmol/L]
20 mg/dL	>0.68 mg/dL
[1768 µmol/L]	[>60 µmol/L]

Refer to the procedure outlined in the Trouble Shooting Section of the Manual.

Results

The ACA® analyzer automatically calculates and prints the CREA result in mg/dL (µmol/L).

Limitation of Procedure

Results >20 mg/dL [1768 µmol/L]:

• Dilute with suitable protein base diluent. Reassay. Correct for diluting before reporting.

The reporting system contains error messages to warn the operator of specific malfunctions. Any report slip containing a letter code or word immediately following the numerical value should not be reported. Refer to the Manual for the definition of error codes.

Reference Interval

SERUM:[a, b]	
Males	0.8–1.3 md/dL [71–115 µmol/L]
Females	0.6–1.0 md/dL [53–88 µmol/L]
URINE:[c]	
Males	0.6–2.5 g/24 hr [53–221 mmol/24 hr]
Females	0.6–1.5 g/24 hr [53–133 mmol/24 hr]

[a] Gadsden, RH, and Phelps, CA, A Normal Range Study of Amylase in Urine and Serum on the Du Pont ACA, Du Pont Company, Wilmington, DE (March 1978). (Reprints available from DuPont Company, Diagnostic Systems)
[b] Reference Interval data obtained from 200 apparently healthy individuals (71 males, 129 females) between the ages of 19 and 72.
[c] Dicht, JJ, Reference Intervals for Serum Amylase and Urinary Creatinine on the Du Pont ACA® Discrete Clinical Analyzer, Du Pont Company, Wilmington, DE (November 1984).

Each laboratory should establish its own reference intervals for CREA as performed on the analyzer.

Specific Performance Characteristics[12]

REPRODUCIBILITY[a]

Material	Mean	Standard deviation (% CV)	
		Within-run	Between-day
Lyophilized	1.3	0.05 (3.7)	0.05 (3.7)
Control	[115]	[4.4]	[4.4]
Lyophilized	20.6	0.12 (0.6)	0.37 (1.8)
Control	[1821]	[10.6]	[32.7]

[a] Specimens at each level were analyzed in duplicate for twenty days. The within-run and between-day standard deviations were calculated by the analysis of variance method.

CORRELATION—REGRESSION STATISTICS[a]

Comparative method	Slope	Intercept	Correlation coefficient	n
Autoanalyzer®	1.03	0.03[2.7]	0.997	260

[a] Model equation for regression statistics is:

Result of ACA® Analyzer = Slope (Comparative method result) + intercept

Assay Range •

0.0–20.0 mg/dl
[0–1768 µmol]

• See REPRODUCIBILITY for method performance within the assay range.

Analytical Specificity

See KNOWN INTERFERING SUBSTANCES section for details.

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Gadsden, RH, and Phelps, CA, A Normal Range Study of Amylase in Urine and Serum on the Du Pont ACA, Du Pont Company, Wilmington, DE (March 1978). (Reprints available from DuPont Company, Diagnostic Systems)
Dicht, JJ, Reference Intervals for Serum Amylase and Urinary Creatinine on the Du Pont ACA® Discrete Clinical Analyzer, Du Pont Company, Wilmington, DE (November 1984).

[12] All specific performance characteristics tests were run after normal recommended equipment quality control checks were performed (see Instrument Manual).

Attachment 3—Analysis of Creatinine for the Normalization of Cadmium and Beta–2–Microglobulin Concentrations in Urine (OSLTC Procedure)

Matrix: Urine

Target Concentration: 1.1 g/L (this amount is representative of creatinine concentrations found in urine).
Procedure: A 1.0 mL aliquot of urine is passed through a C18 SEP-PAK® (Waters Associates). Approximately 30 mL of HPLC (high performance liquid chromatography) grade water is then run through the SEP-PAK. The resulting solution is diluted to volume in a 100–mL volumetric flask and analyzed by HPLC using an ultraviolet (UV) detector.
Special Requirements: After collection, samples should be appropriately stabilized for cadmium (Cd) analysis by using 10% high purity (with low Cd background levels) nitric acid (exactly 1.0 mL of 10% nitric acid per 10 mL of urine) or stabilized for *Beta–2–* Microglobulin (B2M) by taking to pH 7 with dilute NaOH (exactly 1.0 mL of 0.11 N NaOH per 10 mL of urine). If not immediately analyzed, the samples should be frozen and shipped by overnight mail in an insulated container
Date: January 1992.

Chemists: David B. Armitage,
Duane Lee,
Organic Service Branch II, OSHA Technical Center, Salt Lake City, Utah.

1. General Discussion

1.1. Background
1.1.1. History of procedure
Creatinine has been analyzed by several methods in the pest. The earliest methods were of the wet chemical type. As an example, creatinine reacts with sodium picrate in basic solution to form a red complex, which is then analyzed colorimetrically (Refs. 5.1. and 5.2.).
Since industrial hygiene laboratories will be analyzing for Cd and B2M in urine, they will be normalizing those concentrations to the concentration of creatinine in urine. A literature search revealed several HPLC methods (Refs. 5.3., 5.4., 5.5. and 5.6.) for creatinine in urine and because many industrial hygiene laboratories have HPLC equipment, it was desirable to develop an industrial hygiene HPLC method for creatinine in urine. The method of Hausen, Fuchs, and Wachter was chosen as the starting point for method development. SEP-PAKs were used for sample clarification and cleanup in this method to protect the analytical column. The urine aliquot which has been passed through the SEP-PAK is then analyzed by reverse-phase HPLC using ion-pair techniques.
This method is very similar to that of Ogata and Taguchi (Ref. 5.6.), except they used centrifugation for sample clean-up. It is also of note that they did a comparison of their HPLC results to those of the Jaffe method (a picric acid method commonly used in the health care industry) and found a linear relationship of close to 1:1. This indicates that either HPLC or colorimetric methods may be used to measure creatinine concentrations in urine.
1.1.2. Physical properties (Ref. 5.7.)
Molecular weight: 113.12
Molecular formula: C_4–H_7–N_3–O
Chemical name: 2–amino–1,5–dihydro–1–methyl–4H–imidazol–4–one
CAS#: 60–27–5
Melting point: 300 °C (decomposes)
Appearance: white powder
Solubility: soluble in water; slightly soluble in alcohol; practically insoluble in acetone, ether, and chloroform
Synonyms: 1–methylglycocyamidine, 1–methylhydantoin–2–imide
Structure: see Figure #1

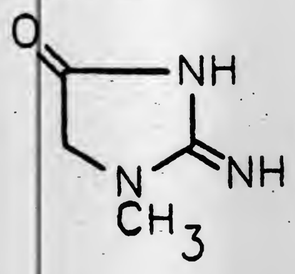


Figure #1

1.2 Advantages
1.2.1. This method offers a simple, straightforward, and specific alternative method to the Jaffe method.
1.2.2. HPLC instrumentation is commonly found in many industrial hygiene laboratories.

2. Sample Stabilization Procedure

2.1. Apparatus
Metal-free plastic container for urine sample.
2.2. Reagents
2.2.1. Stabilizing Solution—1) Nitric acid (10%, high purity with low Cd background levels) for stabilizing urine for Cd analysis or 2) NaOH, 0.11 N, for stabilizing urine for B2M analysis
2.2.2. HPLC grade water
2.3. Technique
2.3.1. Stabilizing solution is added to the urine sample (see section 2.2.1.). The stabilizing solution should be such that for each 10 mL of urine, add exactly 1.0 mL of stabilizer solution. (Never add water or urine to acid or base. Always add acid or base to water or urine.) Exactly 1.0 mL of 0.11 N NaOH added to 10 mL of urine should result in a pH of 7. Or add 1.0 mL of 10% nitric acid to 10 mL of urine.
2.3.2. After sample collection seal the plastic bottle securely and wrap it with an appropriate seal. Urine samples should be frozen and then shipped by overnight mail (if shipping is necessary) in an insulated container. (Do not fill plastic bottle too full. This will allow for expansion of contents during the freezing process.)
2.4. The Effect of Preparation and Stabilization Techniques on Creatinine Concentrations
Three urine samples were prepared by making one sample acidic, not treating a second sample, and adjusting a third sample to pH 7 The samples were analyzed in duplicate by two different procedures. For the first procedure a 1.0 mL aliquot of urine was put in a 100-mL volumetric flask, diluted to volume with HPLC grade water, and then analyzed directly on an HPLC. The other procedure used SEP–PAKs. The SEP–PAK was rinsed with approximately 5 mL of methanol followed by approximately 10 mL of HPLC grade water and both rinses were discarded. Then, 1.0 mL of the urine sample was put through the SEP–PAK, followed by 30 mL of HPLC grade water. The urine and water were transferred to a 100-mL volumetric flask, diluted to volume with HPLC grade water, and analyzed by HPLC. These three urine samples were analyzed on the day they were obtained and then frozen. The results show that whether the urine is acidic, untreated or adjusted to pH 7, the resulting answer for creatinine is essentially unchanged. The purpose of stabilizing the urine by making it acidic or neutral is for the analysis of Cd or B2M respectively.

COMPARISON OF PREPARATION AND STABILIZATION TECHNIQUES

Sample	w/o SEP-PAK (g/L creatinine)	with SEP- PAK (g/L creatinine)
Acid	1.10	1.10
Acid	1.11	1.10
Untreated	1.12	1.11
Untreated	1.11	1.12
pH7	1.08	1.02
pH7	1.11	1.08

2.5. Storage
After 4 days and 54 days of storage in a freezer, the samples were thawed, brought to room temperature and analyzed using the same procedures as in section 2.4. The results of several days of storage show that the resulting answer for creatinine is essentially unchanged.

STORAGE DATA

Sample	4 days		54 days	
	W/o SEP–PAK g/L creatinine	With SEP–PAK g/L creatinine	W/o SEP–PAK g/L creatinine	With SEP–PAK g/L creatinine
Acid	1.09	1.09	1.08	1.09
Acid	1.10	1.10	1.09	1.10
Untreated			1.09	1.09
Untreated	1.13	1.14	1.09	1.11
Untreated	1.15	1.14	1.10	1.10
pH 7			1.09	1.10
pH 7	1.14	1.13	1.12	1.12
pH 7	1.14	1.13	1.12	1.12
			1.12	1.12

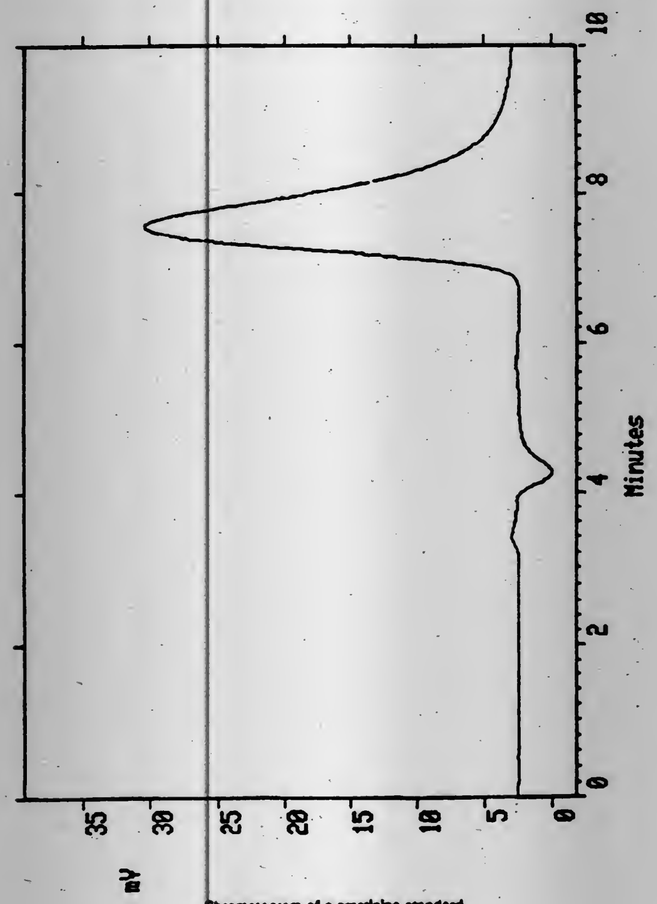
2.6. Interferences
None.
2.7. Safety precautions
2.7.1. Make sure samples are properly sealed and frozen before shipment to avoid leakage.
2.7.2. Follow the appropriate shipping procedures.
The following modified special safety precautions are based on those recommended by the Centers for Disease Control (CDC)(Ref. 5.8.) and OSHA's Bloodborne Pathogens standard (29 CFr 1910.1039).
2.7.3. Wear gloves, leb coat, and safety glasses while handling all human urine products. Disposeble plastic, glass, and paper (pipet tips, gloves, etc.) that contact urine should be placed in a biohazard autoclave bag. These bags should be kept in appropriate containers until sealed and autoclaved. Wipe down all work surfaces with 10% sodium hypochlorite solution when work is finished.
2.7.4. Dispose of all biological samples and diluted specimens in a biohazard autoclave bag at the end of the analytical run.
2.7.5. Special care should be taken when handling and dispensing nitric acid. Always remember to add acid to water (or urine). Nitric acid is a corrosive chemical capable of severe eye and skin damage. Wear metal-free gloves, a lab coat, and safety glasses. If the nitric acid comes in contact with any part of the body, quickly wash with copious quantities of water for at least 15 minutes.
2.7.6. Special care should be taken when handling and dispensing NaOH. Always remember to add base to water (or urine). NaOH can cause severe eye and skin damage. Always wear the appropriate gloves, a lab coat, and safety glasses. If the NaOH comes in contact with any part of the body, quickly wash with copious quantities of water for at least 15 minutes.

3. Analytical Procedure

3.1. Apparatus
3.1.1. A high performance liquid chromatograph equipped with pump, sample injector and UV detector.
3.1.2. A C18 HPLC column; 25 cm × 4.6 mm I.D.
3.1.3. An electronic integrator, or some other suitable means of determining analyte response.
3.1.4. Stripchart recorder.
3.1.5. C18 SEP–PAKs (Waters Associates) or equivalent.
3.1.6. Luer-lock syringe for sample preparation (5 mL or 10 mL).
3.1.7. Volumetric pipettes and flasks for standard and sample preparation.
3.1.8. Vacuum system to aid sample preparation (optional).
3.2. Reagents
3.2.1. Water, HPLC grade.
3.2.2. Methanol, HPLC grade.
3.2.3. PIC B–7® (Waters Associates) in small vials.
3.2.4. Creatinine, anhydrous, Sigma Chemical Corp., purity not listed.
3.2.5. 1-Heptanesulfonic acid, sodium salt monohydrate.
3.2.6. Phosphoric acid.
3.2.7. Mobile phase. It can be prepared by mixing one vial of PIC B–7 into a 1 L solution of 50% methanol and 50% water. The mobile phase can also be made by preparing a solution that is 50% methanol and 50% water with 0.005M heptanesulfonic acid and adjusting the pH of the solution to 3.5 with phosphoric acid.
3.3. Standard preparation
3.3.1. Stock standards are prepared by weighing 10 to 15 mg of creatinine. This is transferred to a 25-mL volumetric flask and diluted to volume with HPLC grade water.
3.3.2. Dilutions to a working range of 3 to 35 µg/mL are made in either HPLC grade water or HPLC mobile phase (standards give the same detector response in either solution).
3.4. Sample preparation
3.4.1. The C18 SEP–PAK is connected to a Luer-lock syringe. It is rinsed with 5 mL HPLC grade methanol and then 10 mL of HPLC grade water. These rinses are discarded.
3.4.2. Exactly 1.0 mL of urine is pipetted into the syringe. The urine is put through the SEP–PAK into a suitable container using a vacuum system.
3.4.3. The walls of the syringe are rinsed in several stages with a total of approximately 30 mL of HPLC grade water. These rinses are put through the SEP–PAK into the same container. The resulting solution is transferred to a 100-mL volumetric flask and then brought to volume with HPLC grade water.
3.5. Analysis (conditions and hardware are those used in this evaluation.)
3.5.1. Instrument conditions

Column	Zorbax® ODS, 5–6 µm particle size; 25 cm × 4.6 mm I.D.
Mobile phase	See Section 3.2.7.
Detector	Dual wavelength UV; 229 nm (primary) 254 nm (secondary),
Flow rate	0.7 mL/minute.
Retention time.	7.2 minutes.
Sensitivity	0.05 AUFS.
Injection volume.	20 µL.

3.5.2. Chromatogram (See Figure #2).
3.6. Interferences
3.6.1. Any compound that has the same retention time as creatinine and absorbs at 229 nm is an interference.
3.6.2. HPLC conditions may be varied to circumvent interferences. In addition, analysis at another UV wavelength (i.e. 254 nm) would allow a comparison of the ratio of response of a standard to that of a sample. Any deviations would indicate an interference.



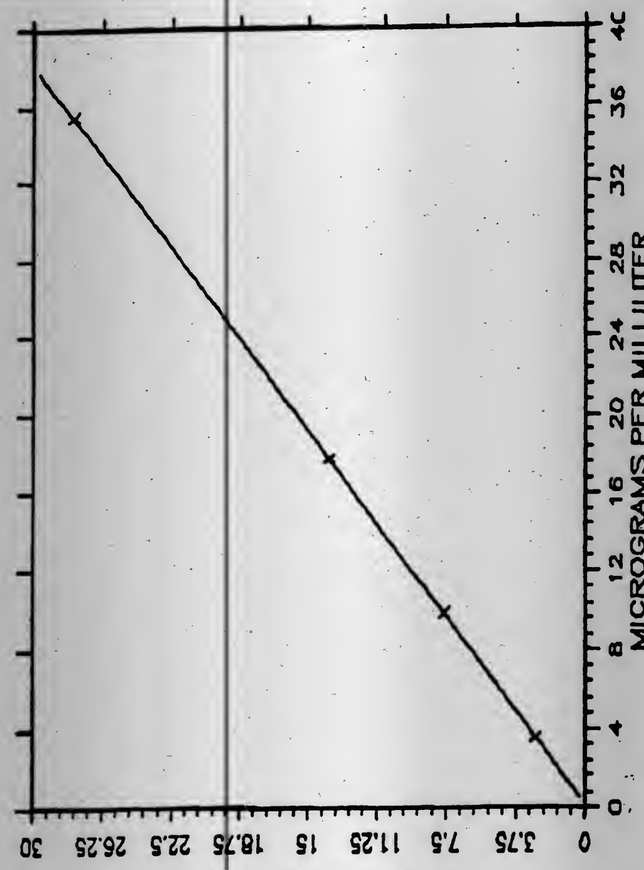
Chromatogram of a creatinine standard
Figure #2

3.7. Calculations

3.7.1. A calibration curve is constructed by plotting detector response versus standard concentration (See Figure #3).

3.7.2. The concentration of creatinine in a sample is determined by finding the concentration corresponding to its detector response. (See Figure #3).

3.7.3. The µg/mL creatinine from section 3.7.2. is then multiplied by 100 (the dilution factor). This value is equivalent to the micrograms of creatinine in the 1.0 mL stabilized urine aliquot or the milligrams of creatinine per liter of urine. The desired unit, g/L, is determined by the following relationship:



Calibration curve for creatinine
Figure #3

$$g/L = \frac{\mu g/mL}{1000} = \frac{mg/L}{1000}$$

3.7.4. The resulting value for creatinine is used to normalize the urinary concentration of the desired analyte (A) (Cd or B2M) by using the following formula.

$$\mu g\ A/g\ creatinine = \frac{\mu g\ A/L\ (experimental)}{g/L\ creatinine}$$

Where A is the desired analyte. The protocol of reporting such normalized results is µg A/g creatinine.

3.8. Safety precautions. See section 2.7.

4. Conclusions

The determination of creatinine in urine by HPLC is a good alternative to the Jaffe method for industrial hygiene laboratories. Sample clarification with SEP-PAKs did not change the amount of creatinine found in urine samples. However, it does protect the analytical column. The results of this creatinine in urine procedure are unaffected by the pH of the urine sample under the conditions tested by this procedure. Therefore, no special measures are required for creatinine analysis whether the urine sample has been stabilized with 10% nitric acid for the Cd analysis or brought to a pH of 7 with 0.11 NaOH for the B2M analysis.

5. References

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5.2. Peters, J.H.; *J. Biol. Chem.* 1942, 146, 176.

5.3. Hausen, V.A.; Fuchs, D.; Wachter, H.; *J. Clin. Chem. Clin. Biochem.* 1981, 19, 373–378.

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5.8. Kimberly, M.; "*Determination of Cadmium in Urine by Graphite Furnace Atomic Absorption Spectrometry with Zeeman Background Correction.*" Centers for Disease Control, Atlanta, Georgia, unpublished, update 1990.

PART 1926 — [Amended]

Subpart Z—Toxic and Hazardous Substances

1. The authority citation for subpart Z of 29 CFR part 1926 continues to read as follows:

Authority: Sections 6 and 8, Occupational Safety and Health Act, 29 U.S.C. 655, 657; Secretary of Labor's Orders Nos. 12–71 (36 FR 8754), 8–76 (41 FR 25059), 9–83 (48 FR 35736) or 1–90 (55 FR 9033) as applicable; and 29 CFR part 1911.

Section 1926.1102 not issued under 29 U.S.C. 655 or 29 CFR part 1911; also issued under 5 U.S.C. 653.

Section 1926.1103 through 1926.1118 also issued under 29 U.S.C. 653.

Section 1926.1128 also issued under 29 U.S.C. 653.

Section 1926.1145 and 1926.1147 also issued under 29 U.S.C. 653.

Section 1926.1148 also issued under 29 U.S.C. 653.

2. In part 1926, § 1926.63, *Cadmium*, is redesignated as § 1926.1127.

3. In paragraph (m)(4)(iii)(H) of (newly redesignated) § 1926.1127, the reference to "§ 1910.20(g)(1) and (2)" is changed to read "§ 1926.33(g) (1) and (2)"; in § 1926.1127(n) (1)(iii), (3)(iii), and (5)(i), the reference to "29 CFR 1910.20" is changed to read "§ 1926.33 of this part"; and in § 1926.1127(n)(6), the reference to "29 CFR 1910.20(h)" is changed to read "§ 1926.33(h) of this part."

[FR Doc. 93-31820 Filed 12-30-93; 8:45 am]

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January 3, 1994

Part IV

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Cumulative List of Public Laws
103d Congress, First Session

CUMULATIVE LIST OF PUBLIC LAWS

This is the cumulative list of public laws for the 103d Congress. The List of Public Laws will resume when bills are enacted into public law during the second session of the 103d Congress, which convenes on January 25, 1994. Any comments may be addressed to the Director, Office of the Federal Register, Washington, DC 20408.

Public Law	Title	Approved	107 Stat.
103–1	To authorize the United States Secret Service to continue to furnish protection to the former Vice President or his spouse.	Jan. 15, 1993	3
103–2	To ensure that the compensation and other emoluments attached to the office of Secretary of the Treasury are those which were in effect on January 1, 1989.	Jan. 19, 1993	4
103–3	Family and Medical Leave Act of 1993	Feb. 5, 1993	6
103–4	To designate the Federal Judiciary Building in Washington, D.C., as the "Thurgood Marshall Federal Judiciary Building".	Feb. 8, 1993	30
103–5	To designate February 21 through February 27, 1993, as "National FFA Organization Awareness Week".	Feb. 25, 1993	31
103–6	Emergency Unemployment Compensation Amendments of 1993	Mar. 4, 1993	33
103–7	Aircraft Equipment Settlement Leases Act of 1993	Mar. 17, 1993	36
103–8	Designating March 25, 1993, as "Greek Independence Day: A National Day of Celebration of Greek and American Democracy".	Mar. 20, 1993	37
103–9	To proclaim March 20, 1993, as "National Agriculture Day"	Mar. 20, 1993	38
103–10	To extend the Export Administration Act of 1979 and to authorize appropriations under that Act for fiscal years 1993 and 1994.	Mar. 27, 1993	40
103–11	To extend the suspended implementation of certain requirements of the food stamp program on Indian reservations, and for other purposes.	Apr. 1, 1993	41
103–12	To provide for a temporary increase in the public debt limit	Apr. 6, 1993	42
103–13	To amend the Airport and Airway Safety, Capacity, Noise Improvement, and Intermodal Transportation Act of 1992 with respect to the establishment of the National Commission to Ensure a Strong Competitive Airline Industry.	Apr. 7, 1993	43
103–14	Designating April 2, 1993, as "Education and Sharing Day, U.S.A."	Apr. 12, 1993	45
103–15	Concerning the dedication of the United States Holocaust Memorial Museum	Apr. 12, 1993	47
103–16	To authorize the adjustment of the boundaries of the South Dakota portion of the Sioux Ranger District of Custer National Forest, and for other purposes.	Apr. 12, 1993	49
103–17	Idaho Land Exchange Act of 1993	Apr. 12, 1993	50
103–18	To amend title 38, United States Code, and title XIX of the Social Security Act to make technical corrections relating to the Veterans Health Care Act of 1992.	Apr. 12, 1993	53
103–19	Providing for the appointment of Hanna Holborn Gray as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 12, 1993	55
103–20	Providing for the appointment of Barber B. Conable, Jr., as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 12, 1993	56
103–21	Providing for the appointment of Wesley S. Williams, Jr. as a citizen regent of the Board of Regents of the Smithsonian Institution.	Apr. 12, 1993	57
103–22	Designating March 1993 and March 1994 both as "Women's History Month"	Apr. 12, 1993	58
103–23	To amend the Stock Raising Homestead Act to resolve certain problems regarding subsurface estates, and for other purposes.	Apr. 16, 1993	60
103–24	Making emergency supplemental appropriations for the fiscal year ending September 30, 1993, and for other purposes.	Apr. 23, 1993	67
103–25	To revise the boundaries of the George Washington Birthplace National Monument, and for other purposes.	May 3, 1993	68
103–26	To provide for the rehabilitation of historic structures within the Sandy Hook Unit of Gateway National Recreation Area in the State of New Jersey, and for other purposes.	May 3, 1993	70
103–27	To designate the weeks of April 25 through May 2, 1993, and April 10 through 17, 1994, as "Jewish Heritage Week".	May 3, 1993	72
103–28	To authorize the President to proclaim the last Friday of April 1993 as "National Arbor Day"	May 6, 1993	74
103–29	To designate the week beginning April 25, 1993, as "National Crime Victims' Rights Week"	May 6, 1993	75
103–30	To designate the weeks beginning April 18, 1993, and April 17, 1994, each as "Nancy Moore Thurmond National Organ and Tissue Donor Awareness Week".	May 7, 1993	76
103–31	National Voter Registration Act of 1993	May 20, 1993	77
103–32	To authorize the construction of a memorial on Federal land in the District of Columbia or its environs to honor members of the Armed Forces who served in World War II and to commemorate United States participation in that conflict.	May 25, 1993	90
103–33	To authorize the conduct and development of NAEP assessments for fiscal year 1994	May 25, 1993	93
103–34	Designating May 30, 1993, through June 7, 1993, as a "Time for the National Observance of the Fiftieth Anniversary of World War II".	May 31, 1993	95
103–35	To amend title 10, United States Code, to revise the applicability of qualification requirements for certain acquisition workforce positions in the Department of Defense, to make necessary technical corrections in that title and certain other defense-related laws, and to facilitate real property repairs at military installations and minor military construction during fiscal year 1993.	May 31, 1993	97
103–36	Central Intelligence Agency Voluntary Separation Pay Act	June 8, 1993	104
103–37	To amend the Immigration and Nationality Act to authorize appropriations for refugee assistance for fiscal years 1993 and 1994.	June 8, 1993	107
103–38	Designating the weeks beginning May 23, 1993, and May 15, 1994, as "Emergency Medical Services Week".	June 8, 1993	108

Public Law	Title	Approved	107 Stat.
103–39	To designate the months of May 1993 and May 1994 as "National Trauma Awareness Month"	June 8, 1993	110
103–40	Government Printing Office Electronic Information Access Enhancement Act of 1993	June 8, 1993	112
103–41	Designating the week beginning June 6, 1993, and June 5, 1994, "Lyme Disease Awareness Week".	June 8, 1993	115
103–42	National Cooperative Production Amendments of 1993	June 10, 1993	117
103–43	National Institutes of Health Revitalization Act of 1993	June 10, 1993	122
103–44	To amend the Federal Deposit Insurance Act to improve the procedures for treating unclaimed insured deposits, and for other purposes.	June 28, 1993	220
103–45	Forest Resources Conservation and Shortage Relief Amendments Act of 1993	July 1, 1993	223
103–46	Big Thicket National Preserve Addition Act of 1993	July 1, 1993	229
103–47	To designate July 1, 1993, as "National NYSP Day"	July 1, 1993	232
103–48	To resolve the status of certain lands relinquished to the United States under the Act of June 4, 1897 (30 Stat. 11, 36), and for other purposes.	July 2, 1993	234
103–49	To provide authority for the President to enter into trade agreements to conclude the Uruguay Round of multilateral trade negotiations under the auspices of the General Agreement on Tariffs and Trade, to extend tariff proclamation authority to carry out such agreements, and to apply congressional "fast track" procedures to a bill implementing such agreements.	July 2, 1993	239
103–50	Supplemental Appropriations Act of 1993	July 2, 1993	241
103–51	To designate the facility of the United States Postal Service located at 20 South Main in Beaver, Utah, as the "Abe Murdock United States Post Office Building".	July 16, 1993	270
103–52	Designating July 2, 1993 and July 2, 1994 as "National Literacy Day"	July 16, 1993	271
103–53	Designating July 17 through July 23, 1993, as "National Veterans Golden Age Games Week"	July 22, 1993	273
103–54	To authorize the transfer of naval vessels to certain foreign countries	July 28, 1993	274
103–55	Armored Car Industry Reciprocity Act of 1993	July 28, 1993	276
103–56	Cave Creek Canyon Protection Act of 1993	Aug. 2, 1993	278
103–57	To provide for planning and design of a National Air and Space Museum extension at Washington Dulles International Airport.	Aug. 2, 1993	279
103–58	To modify the boundary of Hot Springs National Park	Aug. 2, 1993	280
103–59	To extend the operation of the migrant student record transfer system	Aug. 2, 1993	281
103–60	Designating April 9, 1994, as "National Former Prisoner of War Recognition Day"	Aug. 2, 1993	282
103–61	To designate August 1, 1993, as "Helsinki Human Rights Day"	Aug. 2, 1993	283
103–62	Government Performance and Results Act of 1993	Aug. 3, 1993	285
103–63	Spring Mountains National Recreation Area Act	Aug. 4, 1993	297
103–64	To establish the Snake River Birds of Prey National Conservation Area in the State of Idaho, and for other purposes.	Aug. 4, 1993	302
103–65	To extend the period during which chapter 12 of title 11 of the United States Code remains in effect, and for other purposes.	Aug. 6, 1993	311
103–66	Omnibus Budget Reconciliation Act of 1993	Aug. 10, 1993	312
103–67	To provide for the conveyance of certain lands and improvements in Washington, District of Columbia, to the Columbia Hospital for Women to provide a site for the construction of a facility to house the National Women's Health Resource Center.	Aug. 11, 1993	686
103–68	To amend the Securities Exchange Act of 1934 to permit members of national securities exchanges to effect certain transactions with respect to accounts for which such members exercise investment discretion.	Aug. 11, 1993	691
103–69	Legislative Branch Appropriations Act, 1994	Aug. 11, 1993	692
103–70	To authorize the Administrator of the Federal Aviation Administration to conduct appropriate programs and activities to acknowledge the status of the county of Fond du Lac, Wisconsin, as the "World Capital of Aerobatics", and for other purposes.	Aug. 11, 1993	714
103–71	To designate September 13, 1993, as "Commodore John Barry Day"	Aug. 11, 1993	715
103–72	Fluid Milk Promotion Amendments Act of 1993	Aug. 11, 1993	717
103–73	Rehabilitation Act Amendments of 1993	Aug. 11, 1993	718
103–74	Designating September 9, 1993, and April 21, 1994, each as "National D.A.R.E. Day"	Aug. 11, 1993	737
103–75	Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993.	Aug. 12, 1993	739
103–76	Depository Institutions Disaster Relief Act of 1993	Aug. 12, 1993	752
103–77	Colorado Wilderness Act of 1993	Aug. 13, 1993	756
103–78	To amend title 38, United States Code, to codify the rates of disability compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for survivors of such veterans as such rates took effect on December 1, 1992.	Aug. 13, 1993	767
103–79	To authorize major medical facility construction projects for the Department of Veterans Affairs for fiscal year 1994, and for other purposes.	Aug. 13, 1993	770
103–80	Nutrition Labeling and Education Act Amendments of 1993	Aug. 13, 1993	773
103–81	Small Business Guaranteed Credit Enhancement Act of 1993	Aug. 13, 1993	780
103–82	National and Community Service Trust Act of 1993	Sep. 21, 1993	785
103–83	To designate the weeks of September 19, 1993, through September 25, 1993, and of September 18, 1994, through September 24, 1994, as "National Rehabilitation Week".	Sep. 21, 1993	924
103–84	To designate October 1993 as "National Breast Cancer Awareness Month"	Sep. 21, 1993	926
103–85	Designating September 10, 1993, as "National POW/MIA Recognition Day" and authorizing the display of the National League of Families POW/MIA flag.	Sep. 21, 1993	928
103–86	To extend the current interim exemption under the Marine Mammal Protection Act for commercial fisheries until April 1, 1994.	Sep. 30, 1993	930

Public Law	Title	Approved	107 Stat.
103–87	Making appropriations for foreign operations, export financing, and related programs for the fiscal year ending September 30, 1994, and making supplemental appropriations for such programs for the fiscal year ending September 30, 1993, and for other purposes.	Sep. 30, 1993	931
103–88	Making continuing appropriations for the fiscal year 1994, and for other purposes	Sep. 30, 1993	977
103–89	Performance Management and Recognition System Termination Act	Sep. 30, 1993	981
103–90	To designate the Federal building to be constructed between Gay and Market Streets and Cumberland and Church Avenues in Knoxville, Tennessee, as the "Howard H. Baker, Jr. United States Courthouse".	Oct. 1, 1993	986
103–91	Gallatin Range Consolidation and Protection Act of 1993	Oct. 1, 1993	987
103–92	To designate the month of August as "National Scleroderma Awareness Month", and for other purposes.	Oct. 1, 1993	994
103–93	Utah Schools and Lands Improvement Act of 1993	Oct. 1, 1993	995
103–94	Hatch Act Reform Amendments of 1993	Oct. 6, 1993	1001
103–95	To designate the United States courthouse located at 10th and Main Streets in Richmond, Virginia, as the "Lewis F. Powell, Jr. United States Courthouse".	Oct. 6, 1993	1012
103–96	To designate the Federal building in Jacksonville, Florida, as the "Charles E. Bennett Federal Building".	Oct. 6, 1993	1013
103–97	To redesignate the Pulaski Post Office located at 111 West College Street in Pulaski, Tennessee, as the "Ross Bass Post Office".	Oct. 6, 1993	1014
103–98	To continue the authorization of appropriations for the East Court of the National Museum of Natural History, and for other purposes.	Oct. 6, 1993	1015
103–99	To designate the week of October 3, 1993, through October 9, 1993, as "Mental Illness Awareness Week".	Oct. 6, 1993	1016
103–100 ..	To designate October 6, 1993 and 1994, as "German-American Day"	Oct. 6, 1993	1018
103–101 ..	To authorize appropriations for the American Folklife Center for fiscal years 1994 and 1995	Oct. 8, 1993	1020
103–102 ..	To provide that certain property located in the State of Oklahoma owned by an Indian housing authority for the purpose of providing low-income housing shall be treated as Federal property under the Act of September 30, 1950 (Public Law 874, 81st Congress).	Oct. 8, 1993	1021
103–103 ..	Federal Employees Leave Sharing Amendments Act of 1993	Oct. 8, 1993	1022
103–104 ..	To establish the Jemez National Recreation Area in the State of New Mexico, and for other purposes.	Oct. 12, 1993	1025
103–105 ..	To provide for the reauthorization of the collection and publication of quarterly financial statistics by the Secretary of Commerce through fiscal year 1998, and for other purposes.	Oct. 12, 1993	1030
103–106 ..	National Forest Foundation Act Amendment Act of 1993	Oct. 12, 1993	1031
103–107 ..	To designate the months of October 1993 and October 1994 as "Country Music Month"	Oct. 12, 1993	1033
103–108 ..	Designating October 16, 1993, and October 16, 1994, each as World Food Day	Oct. 18, 1993	1034
103–109 ..	To designate October 19, 1993, as "National Mammography Day"	Oct. 18, 1993	1036
103–110 ..	Military Construction Appropriations Act, 1994	Oct. 21, 1993	1037
103–111 ..	Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations Act, 1994.	Oct. 21, 1993	1046
103–112 ..	Departments of Labor, Health and Human Services, and Education, and Related Agencies Appropriations Act, 1994.	Oct. 21, 1993	1082
103–113 ..	Making further continuing appropriations for the fiscal year 1994, and for other purposes	Oct. 21, 1993	1114
103–114 ..	To amend title 5, United States Code, to extend the Federal Physicians Comparability Allowance Act of 1978, and for other purposes.	Oct. 26, 1993	1115
103–115 ..	To amend the definition of a rural community for eligibility for economic recovery funds, and for other purposes.	Oct. 26, 1993	1117
103–116 ..	Catawba Indian Tribe of South Carolina Land Claims Settlement Act of 1993	Oct. 27, 1993	1118
103–117 ..	Designating October 21, 1993, as "National Biomedical Research Day"	Oct. 27, 1993	1139
103–118 ..	Designating the week beginning September 18, 1994 as "National Historically Black Colleges and Universities Week".	Oct. 27, 1993	1141
103–119 ..	To designate the month of October 1993 as "National Down Syndrome Awareness Month"	Oct. 27, 1993	1142
103–120 ..	HUD Demonstration Act of 1993	Oct. 27, 1993	1144
103–121 ..	Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1994.	Oct. 27, 1993	1153
103–122 ..	Department of Transportation and Related Agencies Appropriations Act, 1994	Oct. 27, 1993	1198
103–123 ..	Treasury, Postal Service, and General Government Appropriations Act, 1994	Oct. 28, 1993	1226
103–124 ..	Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act, 1994.	Oct. 28, 1993	1275
103–125 ..	Middle East Peace Facilitation Act of 1993	Oct. 28, 1993	1309
103–126 ..	Energy and Water Development Appropriations Act, 1994	Oct. 28, 1993	1312
103–127 ..	Making appropriations for the government of the District of Columbia and other activities chargeable in whole or in part against the revenues of said District for the fiscal year ending September 30, 1994, and for other purposes.	Oct. 29, 1993	1336
103–128 ..	Making further continuing appropriations for the fiscal year 1994, and for other purposes	Oct. 29, 1993	1355
103–129 ..	Rural Electrification Loan Restructuring Act of 1993	Nov. 1, 1993	1356
103–130 ..	To amend the National Wool Act of 1954 to reduce the subsidies that wool and mohair producers receive for the 1994 and 1995 marketing years and to eliminate the wool and mohair programs for the 1996 and subsequent marketing years, and for other purposes.	Nov. 1, 1993	1368
103–131 ..	Designating the beach at 53 degrees 53'51"N, 166 degrees 34'15"W to 53 degrees 53'48"N, 166 degrees 34'21"W on Hog Island, which lies in the Northeast Bay of Unalaska, Alaska as "Arkansas Beach" in commemoration of the 206th regiment of the National Guard, who served during the Japanese attack on Dutch Harbor, Unalaska on June 3 and 4, 1942.	Nov. 1, 1993	1370

Public Law	Title	Approved	107 Stat.
103–132 ..	To direct the Secretary of Agriculture to convey certain lands to the town of Taos, New Mexico	Nov. 2, 1993	1371
103–133 ..	To approve the extension of nondiscriminatory treatment with respect to the products of Romania.	Nov. 2, 1993	1373
103–134 ..	To designate the Pittsburgh Aviary in Pittsburgh, Pennsylvania as the National Aviary in Pittsburgh.	Nov 8, 1993	1374
103–135 ..	To modify the project for flood control, James River Basin, Richmond, Virginia	Nov. 8, 1993	1375
103–136 ..	Designating the week beginning October 31, 1993, as "National Health Information Management Week".	Nov 8, 1993	1376
103–137 ..	Designating November 22, 1993, as "National Military Families Recognition Day"	Nov. 8, 1993	1377
103–138 ..	Department of the Interior and Related Agencies Appropriations Act, 1994	Nov. 11, 1993	1379
103–139 ..	Department of Defense Appropriations Act, 1994	Nov. 11, 1993	1418
103–140 ..	Veterans' Compensation Rates Amendments of 1993	Nov. 11, 1993	1485
103–141 ..	Religious Freedom Restoration Act of 1993	Nov. 16, 1993	1488
103–142 ..	To amend title 18, United States Code, to authorize the Federal Bureau of Investigation to obtain certain telephone subscriber information.	Nov. 17, 1993	1491
103–143 ..	To designate the Federal building located at 280 South First Street in San Jose, California, as the "Robert F. Peckham United States Courthouse and Federal Building".	Nov. 17, 1993	1493
103–144 ..	El Camino Real de Tierra Adentro Study Act of 1993	Nov. 17, 1993	1494
103–145 ..	El Camino Real Para Los Texas Study Act of 1993	Nov. 17, 1993	1496
103–146 ..	Designating the week beginning November 14, 1993, and the week beginning November 13, 1994, each as "Geography Awareness Week".	Nov. 17, 1993	1498
103–147 ..	To designate the third Sunday in November of 1993 as "National Children's Day"	Nov. 17, 1993	1500
103–148 ..	Designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week".	Nov. 17, 1993	1502
103–149 ..	South African Democratic Transition Support Act of 1993	Nov. 23, 1993	1503
103–150 ..	To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii.	Nov. 23, 1993	1510
103–151 ..	To authorize the Board of Regents of the Smithsonian Institution to plan, design, and construct the West Court of the National Museum of Natural History building.	Nov. 24, 1993	1515
103–152 ..	Unemployment Compensation Amendments of 1993	Nov. 24, 1993	1516
103–153 ..	To authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week".	Nov. 24, 1993	1521
103–154 ..	To designate the month of November in 1993 and 1994 as "National Hospice Month"	Nov. 24, 1993	1522
103–155 ..	To amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations.	Nov. 24, 1993	1523
103–156 ..	United States Grain Standards Act Amendments of 1993	Nov. 24, 1993	1525
103–157 ..	To designate the periods commencing on November 28, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, as "National Home Care Week".	Nov. 24, 1993	1532
103–158 ..	To authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, Virginia, to honor the 270 victims of the terrorist bombing of Pan Am Flight 103.	Nov. 24, 1993	1533
103–159 ..	To provide for a waiting period before the purchase of a handgun, and for the establishment of a national instant criminal background check system to be contacted by firearms dealers before the transfer of any firearm.	Nov. 30, 1993	1536
103–160 ..	National Defense Authorization Act for Fiscal Year 1994	Nov. 30, 1993	1547
103–161 ..	To amend title 38, United States Code, to increase the rate of special pension payable to persons who have received the Congressional Medal of Honor.	Nov. 30, 1993	1967
103–162 ..	To designate portions of the Maurice River and its tributaries in the State of New Jersey as components of the National Wild and Scenic Rivers Systems.	Dec. 1, 1993	1968
103–163 ..	To authorize the Air Force Memorial Foundation to establish a memorial in the District of Columbia or its environs.	Dec. 2, 1993	1973
103–164 ..	Designating January 16, 1994, as "National Good Teen Day"	Dec. 2, 1993	1974
103–165 ..	To express appreciation to W. Graham Claytor, Jr., for a lifetime of dedicated and inspired service to the Nation.	Dec. 2, 1993	1975
103–166 ..	To extend authorities under the Middle East Peace Facilitation Act of 1993 by six months	Dec. 2, 1993	1978
103–167 ..	Designating January 2, 1994, through January 8, 1994, as "National Law Enforcement Training Week".	Dec. 2, 1993	1979
103–168 ..	Designating December 1993 as "National Drunk and Drugged Driving Prevention Month"	Dec. 2, 1993	1981
103–169 ..	Lechuguilla Cave Protection Act of 1993	Dec. 2, 1993	1983
103–170 ..	Red River Designation Act of 1993	Dec. 2, 1993	1986
103–171 ..	Older Americans Act Technical Amendments of 1993	Dec. 2, 1993	1988
103–172 ..	Federal Employees Clean Air Incentives Act	Dec. 2, 1993	1995
103–173 ..	International Parental Kidnapping Crime Act of 1993	Dec. 2, 1993	1998
103–174 ..	To authorize the leasing of naval vessels to certain foreign countries	Dec. 2, 1993	2000
103–175 ..	To authorize and direct the Secretary of the Interior to convey certain lands in Cameron Parish, Louisiana, and for other purposes.	Dec. 2, 1993	2002
103–176 ..	Indian Tribal Justice Act	Dec. 3, 1993	2004
103–177 ..	American Indian Agricultural Resource Management Act	Dec. 3, 1993	2011
103–178 ..	Intelligence Authorization Act for Fiscal Year 1994	Dec. 3, 1993	2024
103–179 ..	Patent and Trademark Office Authorization Act of 1993	Dec. 3, 1993	2040
103–180 ..	Negotiated Rates Act of 1993	Dec. 3, 1993	2044
103–181 ..	Hazard Mitigation and Relocation Assistance Act of 1993	Dec. 3, 1993	2054

Public Law	Title	Approved	107 Stat.
103–182 ..	North American Free Trade Agreement Implementation Act	Dec. 8, 1993	2057
103–183 ..	Preventive Health Amendments of 1993	Dec. 14, 1993	2226
103–184 ..	To provide for the addition of the Truman Farm Home to the Harry S Truman National Historic Site in the State of Missouri.	Dec. 14, 1993	2243
103–185 ..	To provide increased flexibility to States in carrying out the Low-Income Home Energy Assistance Program.	Dec. 14, 1993	2244
103–186 ..	To require the Secretary of the Treasury to mint coins in commemoration of the 250th anniversary of the birth of Thomas Jefferson, Americans who have been prisoners of war, the Vietnam Veterans Memorial on the occasion of the 10th anniversary of the Memorial, and the Women in Military Service for America Memorial, and for other purposes.	Dec. 14, 1993	2245
103–187 ..	Designating December 15, 1993, as "National Firefighters Day"	Dec. 14, 1993	2255
103–188 ..	Egg Research and Consumer Information Act Amendments of 1993	Dec. 14, 1993	2256
103–189 ..	Watermelon Research and Promotion Improvement Act of 1993	Dec. 14, 1993	2259
103–190 ..	Fresh Cut Flowers and Fresh Cut Greens Promotion and Information Act of 1993	Dec. 14, 1993	2266
103–191 ..	To amend the Thomas Jefferson Commemoration Commission Act to extend the deadlines for reports.	Dec. 14, 1993	2291
103–192 ..	To extend arbitration under the provisions of chapter 44 of title 28, United States Code, and for other purposes.	Dec. 14, 1993	2292
103–193 ..	To provide for the extension of certain authority for the Marshal of the Supreme Court and the Supreme Court Police.	Dec. 14, 1993	2293
103–194 ..	Lime Research, Promotion, and Consumer Information Improvement Act	Dec. 14, 1993	2294
103–195 ..	To make a technical amendment, and for other purposes	Dec. 14, 1993	2297
103–196 ..	Designating January 16, 1994, as "Religious Freedom Day"	Dec. 14, 1993	2299
103–197 ..	To provide for additional development at War in the Pacific National Historical Park, and for other purposes.	Dec. 17, 1993	2301
103–198 ..	Copyright Royalty Tribunal Reform Act of 1993	Dec. 17, 1993	2304
103–199 ..	Act For Reform In Emerging New Democracies and Support and Help for Improved Partnership with Russia, Ukraine, and Other New Independent States or the FRIENDSHIP Act.	Dec. 17 1993	2317
103–200 ..	Domestic Chemical Diversion Control Act of 1993	Dec. 17, 1993	2333
103–201 ..	To clarify the regulatory oversight exercised by the Rural Electrification Administration with respect to certain electric borrowers.	Dec. 17, 1993	2342
103–202 ..	Government Securities Act Amendments of 1993	Dec. 17, 1993	2344
103–203 ..	Making a technical amendment of the Clayton Act	Dec. 17, 1993	2368
103–204 ..	Resolution Trust Corporation Completion Act	Dec. 17, 1993	2369
103–205 ..	To extend the suspended implementation of certain requirements of the food stamp program on Indian reservations, to suspend certain eligibility requirements for the participation of retail food stores in the food stamp program, and for other purposes.	Dec. 17, 1993	2418
103–206 ..	Coast Guard Authorization Act of 1993	Dec. 20, 1993	2419
103–207 ..	Providing for the convening of the Second Session of the One Hundred Third Congress	Dec. 20, 1993	2456
103–208 ..	Higher Education Technical Amendments of 1993	Dec. 20, 1993	2457
103–209 ..	National Child Protection Act of 1993	Dec. 20, 1993	2490
103–210 ..	To amend title 38, United States Code, to provide additional authority for the Secretary of Veterans Affairs to provide health care for veterans of the Persian Gulf War.	Dec. 20, 1993	2496

NOTE: The text of laws may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone, 202–512–2470). Some laws may not yet be available for purchase.

federal register

Monday
January 3, 1994

Part V

Environmental Protection Agency

Sole Source Aquifer Designation; Pierce County, WA; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4821–4]

Sole Source Aquifer Designation of the Central Pierce County Aquifer System, Pierce County, WA

AGENCY: Environmental Protection Agency.

ACTION: Final determination.

SUMMARY: Pursuant to section 1424(e) of the Safe Drinking Water Act, the Region 10 Administrator of the U.S. Environmental Protection Agency (EPA) has determined that the Central Pierce County Aquifer System is the principal source of drinking water for the designated area, and that the aquifer system, if contaminated, would create a significant hazard to public health. As a result of this determination, all federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

EFFECTIVE DATE: This determination shall be promulgated for purposes of judicial review at 1 Eastern time on January 18, 1994.

ADDRESSES: The information upon which this determination is based is available to the public and may be inspected during normal business hours at the main and satellite branches of the Pierce County Library System, and at the EPA Library, 10th Floor, Park Place Building, 1200 Sixth Avenue, Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Scott E. Downey, Environmental Protection Specialist, Ground Water Section, WD–133, U.S. Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101, 206–553–0682.

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to Section 1424(e) of the Safe Drinking Water Act (42 United States Code, 300f, 300h–3(e), Pub. L. 93–523), the Region 10 Administrator of U.S. Environmental Protection Agency has determined that the Central Pierce County Aquifer System is the principal source of drinking water for the designated area, and that the aquifer system, if contaminated, would create a significant hazard to public health. As a result of this determination, federal financially-assisted projects proposed in the designated area will be subject to EPA review to ensure that they do not create a significant hazard to public health.

The information upon which EPA is issuing this final determination has been summarized in the "Support Document for Sole Source Aquifer Designation of the Central Pierce County Aquifer System", EPA 910/R–93–001, prepared by the EPA Region 10 Ground Water Section.

I. Background

Section 1424(e) of the Safe Drinking Water Act states:

> If the Administrator determines, on his own initiative or upon petition, that an area has an aquifer which is the sole or principal drinking water source for the area and which, if contaminated, would create a significant hazard to public health, he shall publish notice of that determination in the **Federal Register**. After the publication of any such notice, no commitment for federal financial assistance (through a grant, contract, loan guarantee, or otherwise) may be entered into for any project which the Administrator determines may contaminate such aquifer through a recharge zone so as to create a significant hazard to public health, but a commitment for federal assistance may, if authorized under another provision of law, be entered into to plan or design the project to assure that it will not so contaminate the aquifer.

EPA defines a sole or principal source aquifer as one which supplies at least 50 percent of the drinking water in the area overlying the aquifer. Current EPA guidelines also stipulate that these areas can have no alternative drinking water source(s) which could physically, legally, and economically supply all those who depend upon the aquifer for drinking water. For convenience, all EPA designated sole or principal source aquifers are usually referred to simply as "sole source aquifers". Although EPA has the statutory authority to initiate sole source aquifer designations, the Agency has a longstanding policy of acting only in response to petitions. These petitions may be submitted to EPA by any individual or organization and must document and meet all designation criteria as outlined in the "Sole Source Aquifer Designation Petitioner Guidance", EPA 440/6–87–003.

On June 23, 1987, EPA Region 10 received a sole source aquifer petition from the Tacoma-Pierce County Health Department (TPCHD). The petition requested EPA designation of the "Clover/Chambers Creek Aquifer", an area of approximately 144 square miles of central Pierce County in the State of Washington. On July 29, 1987, EPA requested additional information from the TPCHD. A revised petition was submitted on February 1, 1988. On February 24, 1988, EPA sent the TPCHD a letter which acknowledged that the petition was considered complete, and that the technical review phase would begin.

EPA guidance allows sole source aquifer designations to be delineated for an entire aquifer, an aquifer system, or part of an aquifer that is hydrogeologically separated from the rest of the aquifer. The EPA Region 10 technical review determined that the petitioned Clover/Chamber Creek area was not an entire aquifer or a hydrogeologically separate unit of an aquifer but was located within a larger aquifer system. Thus, the boundaries were extended to those now designated. On July 25, 1988, the TPCHD provided EPA with drinking water consumption estimates for the larger area.

II. Basis for Determination

Pursuant to section 1424(e), the EPA Regional Administrator has determined that the Central Pierce County Aquifer System is the principal drinking water source for the area, and which, if contaminated, would create a significant hazard to public health. Based on the information available to this Agency, the Regional Administrator has made the following findings which are the bases for the determination noted above:

1. The Central Pierce County Aquifer System supplies approximately 60 percent of the average drinking water demand for the area, and approximately 84 percent of the peak drinking water demand for the area.

2. No alternative source or combination of sources can physically, legally, and economically supply all those who depend upon the aquifer system for drinking water.

3. Based upon these two findings, contamination of the Central Pierce County Aquifer System would create a significant hazard to public health.

III. Description of the Central Pierce County Aquifer System

Note: Some information in this section represents an unfootnoted summary from the "Support Document for Sole Source Aquifer Designation of the Central Pierce County Aquifer System", EPA 910/R–93–001, prepared by the EPA Region 10 Ground Water Section.

The EPA technical review determined that the Central Pierce County Aquifer System consists primarily of unconsolidated sediments deposited by glaciers and associated meltwater during the Quaternary Period. Ground water originates almost entirely as precipitation upon the land surface. Recharge to the aquifer system is greatest where the precipitation falls on permeable glacial outwash sediments such as sand or gravel. The ground water moves regionally toward the Puget Sound and river valleys that constitute the aquifer system boundaries. Locally, the direction and gradient of ground water movement can vary dramatically from the overall regional trend.

Depth to ground water varies from zero to hundreds of feet. The greatest depth to ground water occurs in recharge areas where the unsaturated zone is composed of highly permeable glacial outwash materials. Ground water occurs at or near the land surface in discharge areas and where materials with low permeability, such as glacial till (an unsorted assemblage of clay, silt, sand, pebbles, cobbles, and/or boulders), restricts recharge during the wet season. Seasonal variations in water table elevations of 20 to 30 feet have been observed in some parts of the aquifer system.

Deep wells drilled within the area penetrate multiple productive aquifers of permeable glacial outwash separated by relatively impermeable aquitards of glacial till or non-glacial sediments. The degree of hydrologic connection between individual aquifer units can vary greatly. Ground water discharge occurs to surface water bodies and wetlands within the area (which can also recharge the ground water system), and to surface water bodies which bound the area. Ground water from the aquifer system is naturally low in dissolved solids and can be used for drinking, irrigation, and most industrial purposes without treatment.

The natural sensitivity of the aquifer system to contamination is influenced by the permeability of geologic materials that overlie and occur within the aquifer system, the amount of recharge from precipitation, and the depth to ground water. The potential for contamination is greatest where sediments are permeable, recharge is high, and ground water is shallow.

The relative vulnerability of ground water to contamination also increases from various human activities which provide the opportunity for anthropogenic sources of contamination to enter the system. Subsurface disposal of waste and wastewater is the chief threat to ground water quality over much of the aquifer system. The Tacoma-Pierce County Health Department has identified individual and community septic systems, the subsurface disposal of urban stormwater, and solid waste landfills as principal concerns. Although concentrations of nonpoint contaminants (such as nitrate and chloride) are still generally below drinking water standards, they have increased significantly over time throughout parts of the aquifer system. Man-induced contamination which has exceeded drinking water standards has been documented is some industrial and commercial areas. Several of these areas have been selected for clean-up under the federal Superfund program.

The sole source aquifer boundaries selected by EPA are primarily surface water boundaries located in lowland areas that have eroded downward through aquifer system glacial materials and which receive discharging ground water from the aquifer system. The Puget Sound forms the western boundary of the aquifer system. The Puyallup River forms the northern boundary and also the eastern boundary as far south as the Town of Electron (just northeast of Lake Kapowsin). South of Electron, the eastern boundary follows the ancestral Puyallup River Valley which is now occupied by Lake Kapowsin, Ohop Lake, and Ohop Creek. The Nisqually River forms the southern boundary of the aquifer system from its intersection with Ohop Creek downstream to the Puget Sound.

The petitioner estimates that about 400,000 people live within the aquifer system boundaries or in nearby areas which at least partly utilize ground water from the system. Ground water generally supplies about 60 percent of the drinking water used within the designated area. During peak demands, ground water supplies approximately 84 percent of the drinking water consumed within the area. The petitioner and EPA have determined that although alternative sources of drinking water are physically available, they cannot legally and economically serve all those who now depend upon the aquifer system.

IV. Project Reviews

Designation of a sole source aquifer authorizes EPA to review, at the Agency's discretion, federal financially-assisted projects proposed within the designated area. The principal mechanism used by EPA Region 10 to identify projects for review are Memorandums of Understanding (MOUs) with federal funding agencies. These MOUs stipulate procedures for screening and referring projects to EPA in order to ensure that only projects which may have a significant impact to ground water quality are reviewed. Should the EPA Administrator determine that a project may contaminate an aquifer through its recharge zone so as to create a significant hazard to public health, no commitment for federal financial assistance may be entered into.

EPA also learns of and coordinates the review of proposed projects with other offices within EPA and with various federal, state, local, and tribal agencies that have a responsibility for ground water quality protection. Information obtained from such sources is given full consideration in the sole source aquifer review process. Through such coordination, EPA project reviews can complement, support, and strengthen existing ground water protection mechanisms.

V. Public Comments

In order to obtain public comment on the proposed designation, EPA issued a public notice that was published in the Morning News Tribune on April 22, 1993. The notice was also distributed by mail to various federal, state, tribal, and local officials. The notice stated that (1) EPA was proposing to designate the Central Pierce County Aquifer System as a sole source aquifer based on the petition from the TPCHD and the EPA review; (2) a public hearing would be held if sufficient interest were expressed to EPA by May 25, 1993; (3) a public comment period would remain open until June 15, 1993; and (4) a document that summarized the bases for the proposal was available for review. EPA also issued a press release with similar information on April 23, 1993.

EPA did not receive any requests to hold a public hearing before the period expired and the hearing was cancelled. Three written comments were received by EPA prior to the June 15, 1993 deadline. A letter from the Ground Water Quality Unit Supervisor, Washington Department of Ecology, expressed support for the designation. A letter from the Pacific Northwest Regional Director, U.S. Department of the Interior, Bureau of Reclamation, documented the Bureaus's review of the support document but offered no additional comment.

A letter received on June 11, 1993 from the Chair of the Tacoma-Pierce County Board of Health offered support for the designation, but also requested a 30 day extension of the public comment period and EPA participation in an informal public meeting to hear concerns from interested parties about the impacts of the designation on the community. In response to this request, EPA issued a second public notice on June 18, 1993 that extended the public comment period until July 19, 1993.

Two additional letters were received during the second public comment period. Another member of the Ground Water Quality Unit, Washington Department of Ecology, offered support for the designation but requested additional information on the hydrogeologic analyses which led to the

revision of the petitioned boundary. This information was provided to the Unit Supervisor by a Region 10 Ground Water Section hydrogeologist. A letter from the Water Division Superintendent, Tacoma Public Utilities, stated support for the designation citing the increase in public awareness on the importance and vulnerability of ground water resources.

In response to the Tacoma-Pierce County Board of Health letter of June 11, 1993, EPA participated in an informal public meeting in Tacoma on July 14, 1993. At the meeting, an EPA representative presented an overview of the sole source aquifer program and outlined the Agency's technical review process and basis for selecting the boundaries. Some participants raised questions regarding EPA's determination of aquifer system boundaries. In response, the boundaries selected by EPA are primarily surface water boundaries which act as regionally important ground water discharge areas for aquifer system materials. A detailed description of aquifer system boundaries and the reasons for their selection can be found in the "Support Document for Sole Source Aquifer Designation of the Central Pierce County Aquifer System", EPA 910/R–93–001.

A number of persons at the meeting expressed economic concerns about the designation, some contending that EPA's review authority could hinder economic development by blocking or delaying proposed projects. In response, sole source aquifer designations are not based on economic criteria other than the potential cost of alternative drinking water supplies needed to replace the petitioned aquifer should it become contaminated, i.e, economic impacts from post-designation project reviews are not relevant in the Agency's designation decision.

Regardless, based on past experience, EPA considers fears about dire economic impacts from sole source aquifer project reviews to be largely unfounded. Under the sole source aquifer program, EPA has the authority to review only federal financially-assisted projects proposed over a designated aquifer area. Of these, only those projects with the potential to create a significant hazard to public health have typically been referred to EPA for review. The majority of these reviews have resulted in an approval of funding without any project modification. When EPA has required changes, project proponents seeking federal financial assistance have usually been willing and able to modify projects in order to protect ground water quality. To date, since Region 10's first sole source aquifer designation in 1978, only one project proponent has been either unwilling or unable to modify the project design in order to receive EPA approval of federal funding.

EPA acknowledges that ground water quality protection measures may increase costs to a project or cause delays if modifications are required. Increased project costs or significant delays due to EPA reviews are not common because most projects are already designed in accordance with existing standards established by federal, state, or local entities, and such standards are often adequate. Involving EPA early on in the planning and design phases of a project greatly facilitates a more timely and efficient review, and increases the likelihood of EPA approval without modification. Where EPA requires project modifications, the Agency believes that such measures represent an investment that will pay for itself many times over. The high cost of replacing contaminated drinking water supplies or cleaning up polluted ground water (when possible) underscores the wisdom of taking steps to prevent or reduce the possibility of contamination from occurring in the first place.

VI. Summary

Today's action affects only the Central Pierce County Aquifer System located in the State of Washington. This action provides a review process that allows ground water quality protection measures to be incorporated into federal financially-assisted projects.

Gerald A. Emison,

Acting Regional Administrator, U.S. Environmental Protection Agency, Region 10.

[FR Doc. 93–32035 Filed 12–30–93; 8:45 am]

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January 3, 1994

Part VI

Department of Commerce

International Trade Administration

19 CFR Part 356

Panel Review Under Article 1904 of the North American Free Trade Agreement; Final Rule

DEPARTMENT OF COMMERCE

International Trade Administration

19 CFR Part 356

Docket No. 931247–3347

Panel Review Under Article 1904 of the North American Free Trade Agreement

AGENCY: International Trade Administration, Department of Commerce.

ACTION: Interim-final rule and request for comments.

SUMMARY: Title IV of the North American Free Trade Agreement Implementation Act of 1993 ("NAFTA Act"), establishes procedures for review by a binational panel of United States antidumping and countervailing duty final determinations involving products from Canada or the United Mexican States ("free trade area countries" as defined by 19 U.S.C. 1516a(f)(10)) and for requesting panel review of free trade area country antidumping and countervailing duty final determinations involving products of the United States. Title IV of the NAFTA Act implements Chapter Nineteen of the North American Free Trade Agreement ("Agreement"). As authorized by section 402(g) of the NAFTA Act, these regulations are intended to implement certain administrative procedures required by Article 1904 of the Agreement and the NAFTA Act. These regulations replace corresponding regulations issued pursuant to the United States-Canada Free Trade Agreement.

DATES: These regulations take effect on January 1, 1994, or on the date that the Agreement enters into force if that date is subsequent to January 1, 1994. The International Trade Administration will publish a document giving notice of the effective date of these regulations if the effective date is not January 1, 1994.

Written comment must be received not later than March 2, 1994.

ADDRESSES: Address written comments to Stacy J. Ettinger, Attorney-Advisor, Office of the Chief Counsel for Import Administration, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Lisa B. Koteen, 202–482–0836, or Stacy J. Ettinger, 202–482–4618.

SUPPLEMENTARY INFORMATION:

Background

Chapter Nineteen of the Agreement establishes a mechanism for resolving disputes between the United States and free trade area countries with respect to antidumping and countervailing duty cases. The central feature of the mechanism is the replacement of domestic judicial review of determinations in antidumping and countervailing duty cases involving imports from free trade area countries with review by independent binational panels. The United States and the involved free trade area country will continue to apply their own national antidumping and countervailing duty laws to goods imported from the other country. In such cases, independent binational panels acting in place of national courts will expeditiously review final determinations under these laws to decide whether they are consistent with the antidumping or countervailing duty law of the country that made the determination. These determinations include final antidumping and countervailing duty determinations by the Department of Commerce ("the Department"), and final injury determinations by the International Trade Commission.

The Agreement provides that only the involved governments may invoke the panel review process; however, the governments of the involved countries will automatically trigger panel review in response to a timely request from any person who otherwise could have challenged the determination in court. Counsel for (or representative of) interested parties that were parties to the administrative proceeding that is being challenged will argue before the panel, as they would before a court. The Agreement also requires that the United States and the free trade area countries protect sensitive business information against unlawful disclosure in the panel review process.

Title IV of the NAFTA Act (Pub. L. 103–182, 107 Stat. 2057) amends United States law to implement Chapter Nineteen of the Agreement by limiting judicial review in cases involving free trade area country merchandise, establishing procedures whereby private parties may request binational panel review, providing an organizational structure for administering United States responsibilities under Chapter Nineteen, and making other conforming amendments to United States law. More specifically, section 402(g) of the NAFTA Act authorizes the Department, as the administering authority under Title VII of the Tariff Act of 1930 ("Act"), to issue regulations to implement Chapter Nineteen of the Agreement.

These regulations are intended to implement certain administrative procedures required by Chapter Nineteen of the Agreement before an administrative proceeding has been sent to the Court of International Trade or a binational panel, as well as the administrative responsibilities of the Department that continue during and after panel review. These regulations replace corresponding regulations issued pursuant to the United States-Canada Free Trade Agreement. These regulations are necessary to provide for notice of intent to seek judicial review, request for panel review, notice of receipt by the Government of a free trade area country of scope determinations, continued suspension of liquidation, release of business proprietary and privileged information under protective order during a panel review, and sanctions for violations of such protective orders. The Department currently is reviewing procedures for release of business proprietary information under protective order during antidumping and countervailing duty administrative proceedings. Any changes made in procedures as a result of that review will be considered for incorporation into these regulations. The procedures for proceedings before binational panels are being implemented through Rules of Procedure negotiated by the United States and the free trade area countries. These regulations complement the Rules of Procedure and should be used in conjunction with the Rules.

Administrative Procedure Act

This interim rule is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553), including notice and opportunity to comment and delay of the effective date, because it implements Chapter Nineteen of the Agreement and thus relates to a foreign affairs function of the United States.

Executive Order 12866

This rule was not reviewed by the Office of Management and Budget under Executive Order 12866.

Paperwork Reduction Act

This rule does not contain a collection of information subject to the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The collections of information contained in these regulations occur within the course of ongoing investigations or actions initiated prior to the determinations that are reviewable by binational panels under the Agreement. Thus they are not covered by the Paperwork Reduction Act. See 5 CFR 1320.3(c).

Regulatory Flexibility Act

The Regulatory Flexibility Act does not apply to this rule because the rule was not required to be promulgated as a proposed rule before issuance as a final rule by section 553 of the Administrative Procedure Act or by any other law. Accordingly, neither an initial nor final Regulatory Flexibility Analysis has been or will be prepared.

Executive Order 12612

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612 (52 FR 41685, October 30, 1987).

Entry Into Force

It is anticipated that the Agreement will enter into force on January 1, 1994. The Office of the United States Trade Representative will confirm in a **Federal Register** notice the precise date of the Agreement's entry into force.

List of Subjects in 19 CFR Part 356

Antidumping, Canada, Countervailing duty, Imports, Judicial review, Penalties, Trade agreements, United Mexican States.

19 CFR Part 356 is revised to read as follows:

PART 356—PROCEDURES AND RULES FOR IMPLEMENTING ARTICLE 1904 OF THE NORTH AMERICAN FREE TRADE AGREEMENT

Subpart A—Scope and Definitions

Sec.
356.1 Scope.
356.2 Definitions.

Subpart B—Procedures for Commencing Review of Final Determinations

356.3 Notice of intent to commence judicial review.
356.4 Request for panel review.
356.5 [Reserved]
356.6 Receipt of notice of a scope determination by the Government of a FTA country.
356.7 Request to determine when the Government of a FTA country received notice of a scope determination.
356.8 Continued suspension of liquidation.

Subpart C—Proprietary and Privileged Information

356.9 Persons authorized to receive proprietary information.
356.10 Procedures for obtaining access to proprietary information.
356.11 Procedures for obtaining access to privileged information.

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

356.12 Sanctions for violation of a protective order or disclosure undertaking.
356.13 Suspension of rules.
356.14 Report of violation and investigation.
356.15 Initiation of proceedings.
356.16 Charging letter.
356.17 Request to charge.
356.18 Interim sanctions.
356.19 Request for a hearing.
356.20 Discovery.
356.21 Subpoenas.
356.22 Prehearing conference.
356.23 Hearing.
356.24 Proceeding without a hearing.
356.25 Witnesses.
356.26 Initial decision.
356.27 Final decision.
356.28 Reconsideration.
356.29 Confidentiality.
356.30 Sanctions for violations of a protective order for privileged information.

Authority: 19 U.S.C. 1516a and 1677f(f), unless otherwise noted.

Subpart A—Scope and Definitions

§ 356.1 Scope.

This part sets forth procedures and rules for the implementation of Article 1904 of the North American Free Trade Agreement under the Tariff Act of 1930, as amended by title IV of the North American Free Trade Agreement Implementation Act of 1993 (19 U.S.C. 1516a and 1677f(f)). This part is authorized by section 402(g) of the North American Free Trade Agreement Implementation Act of 1993.

§ 356.2 Definitions.

For purposes of this part:

(a) *Act* means the Tariff Act of 1930, as amended;

(b) *Administrative law judge* means the person appointed under 5 U.S.C. 3105 who presides over the taking of evidence as provided by subpart D of this part;

(c) *Affected party* means a person against whom sanctions have been proposed for alleged violation of a protective order or disclosure undertaking but who is not a charged party;

(d) *Agreement* means the North American Free Trade Agreement between Canada, the United Mexican States and the United States, signed on December 17, 1992; or, with respect to binational panel or extraordinary challenge proceedings underway as of such date, or any binational panel or extraordinary challenge proceedings that may proceed between Canada and the United States following any withdrawal from the Agreement by Canada or the United States, the United States-Canada Free Trade Agreement between Canada and the United States, which came into force on January 1, 1989;

(e) *APO Sanctions Board* means the Administrative Protective Order Sanctions Board;

(f) *Article 1904 Panel Rules* means the NAFTA Article 1904 Panel Rules, negotiated pursuant to Article 1904 of the North American Free Trade Agreement between Canada, the United Mexican States and the United States, and any subsequent amendments; or, with respect to binational panel proceedings underway as of such date, or any binational panel proceedings that may proceed between the Canada and the United States following any withdrawal from the Agreement by Canada or the United States, the *Article 1904 Panel Rules*, as amended, which came into force on January 1, 1989;

(g) *Authorized agency of a free trade area country* means:

(1) In the case of Canada, any Canadian government agency that is authorized by Canadian law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking; and

(2) In the case of Mexico, any Mexican government agency that is authorized by Mexican law to request the Department to initiate proceedings to impose sanctions for an alleged violation of a disclosure undertaking;

(h) *Binational panel* means a binational panel established pursuant to Annex 1901.2 to Chapter Nineteen of the Agreement for the purpose of reviewing a final determination;

(i) *Charged party* means a person who is charged by the Deputy Under Secretary with violating a protective order or a disclosure undertaking;

(j) *Chief Counsel* means the Chief Counsel for Import Administration, U.S. Department of Commerce, or designee;

(k) *Days* means calendar days, except that a deadline which falls on a weekend or holiday shall be extended to the next working day;

(l) *Department* means the U.S. Department of Commerce;

(m) *Deputy Under Secretary* means the Deputy Under Secretary for International Trade, U.S. Department of Commerce;

(n) *Director* means an Office Director under the Deputy Assistant Secretary for Investigations, U.S. Department of Commerce, or designee, if the panel review is of a final determination by the Department under section 751 of the Act, or an Office Director under the Deputy Assistant Secretary for Compliance, or designee, if the panel

review is of a final determination by the Department under section 705(a) or 735(a) of the Act;

(o) *Disclosure undertaking* means:

(1) In the case of Canada, the Canadian mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by subsection 77.21(2) of the Special Import Measures Act, as amended; and

(2) In the case of Mexico, the Mexican mechanism for protecting proprietary or privileged information during proceedings pursuant to Article 1904 of the Agreement, as prescribed by the Ley de Comercio Exterior and its regulations;

(p) *Extraordinary challenge committee* means the committee established pursuant to Annex 1904.13 to Chapter Nineteen of the Agreement to review decisions of a panel or conduct of a panelist;

(q) *Final determination* means "final determination" as defined by Article 1911 of the Agreement;

(r) *Free trade area country* or *FTA country* means "free trade area country" as defined by section 516A(f)(10) of the Act (19 U.S.C. 1516a(f)(10));

(s) *Investigating authority* means the competent investigating authority that issued the final determination subject to review and includes, in respect of the issuance, amendment, modification or revocation of a protective order or disclosure undertaking, any person authorized by the investigating authority;

(t) *Lesser-included sanction* means a sanction of the same type but of more limited scope than the proposed sanction for violation of a protective order or disclosure undertaking; thus, a one-year bar on representation before the Department is a lesser-included sanction of a proposed seven-year bar;

(u) *Letter of transmittal* means a document marked according to the requirements of 19 CFR 353.31(e)(2)(i)–(v) or 355.31(e)(2)(i)–(v);

(v) *Official publication* means:

(1) In the case of Canada, the *Canada Gazette;*

(2) In the case of Mexico, the Diario Oficial de la Federacion; and

(3) In the case of the United States, the **Federal Register**;

(w) *Panel review* means review of a final determination pursuant to Chapter Nineteen of the Agreement;

(x) *Party to the proceeding* means a person that would be entitled, under section 516A of the Act (19 U.S.C. 1516a), to commence proceedings for judicial review of a final determination;

(y) *Participant* means a party to the proceeding that files a Complaint or a Notice of Appearance in a panel review, and the Department;

(z) *Parties* means, in an action under subpart D of this part, the Department and the charged party or affected party;

(aa) *Person* means, an individual, partnership, corporation, association, organization, or other entity;

(bb) *Privileged information* means:

(1) With respect to a panel review of a final determination made in Canada, information of the investigating authority that is subject to the solicitor-client privilege under the laws of Canada, or that constitutes part of the deliberative process with respect to the final determination, and with respect to which the privilege has not been waived;

(2) With respect to a panel review of a final determination made in Mexico:

(i) Information of the investigating authority that is subject to attorney-client privilege under the laws of Mexico; or

(ii) Internal communications between officials of the Secretaria de Comercio y Fomento Industrial in charge of antidumping and countervailing duty investigations or communications between those officials and other government officials, where those communications constitute part of the deliberative process with respect to the final determination; and

(3) With respect to a panel review of a final determination made in the United States, information of the investigating authority that is subject to the attorney-client, attorney work product or government deliberative process privilege under the laws of the United States and with respect to which the privilege has not been waived;

(cc) *Proprietary information* means:

(1) With respect to a panel review of a final determination made in Canada, information referred to in subsection 84(3) of the Special Import Measures Act, as amended, or subsection 45(3) of the Canadian International Trade Tribunal Act, as amended, with respect to which the person who designated or submitted the information has not withdrawn the person's claim as to the confidentiality of the information;

(2) With respect to a panel review of a final determination made in Mexico, informacion confidencial, as defined under article 80 of the Ley de Comercio Exterior and its regulations; and

(3) With respect to a panel review of a final determination made in the United States, business proprietary information under section 777(f) of the Act (19 U.S.C. 1677f(f)) and information the disclosure of which the Department has decided is limited under the procedures adopted pursuant to Article 1904.14 of the Agreement, including business or trade secrets; production costs; terms of sale; prices of individual sales, likely sales, or offers; names of customers, distributors, or suppliers; exact amounts of the subsidies received and used by a person; names of particular persons from whom proprietary information was obtained; and any other business information the release of which to the public would cause substantial harm to the competitive position of the submitter;

(dd) *Protective order* means a protective order issued by the Department under 19 CFR 356.10(c) or 356.11(c);

(ee) *Scope determination* means a determination by the Department, reviewable under section 516A(a)(2)(B)(vi) of the Act (19 U.S.C. 1516a(a)(2)(B)(vi), as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or an antidumping or countervailing duty order covering free trade area country merchandise;

(ff) *Secretariat* means the Secretariat established pursuant to Article 2002 of the Agreement and includes the Secretariat sections located in Canada, Mexico and the United States;

(gg) *Secretary* means the Secretary of the Canadian section of the Secretariat, the Secretary of the Mexican section of the Secretariat, or the Secretary of the United States section of the Secretariat and includes any person authorized to act on behalf of the Secretary;

(hh) *Service address* means the address of the counsel of record for a person, including any facsimile number submitted with that address, or, where a person is not represented by counsel, the address set out by the person in a Request for Panel Review, Complaint or Notice of Appearance as the address at which the person may be served, including any facsimile number submitted with that address, or where a Change of Service Address has been filed by a person, the new service address set out as the service address in that form, including any facsimile number submitted with that address;

(ii) *Service list* means, with respect to a panel review of a final determination made in the United States, the list maintained by the investigating authority of persons who have been served in the proceeding leading to the final determination;

(jj) *Under Secretary* means the Under Secretary for International Trade, U.S. Department of Commerce, or designee;

(kk) *United States section of the Secretariat* means, for the purposes of filing, United States Secretary, NAFTA Secretariat, room 2061, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230.

Subpart B—Procedures for Commencing Review of Final Determinations

§ 356.3 Notice of intent to commence judicial review.

A party to a proceeding who intends to commence judicial review of a final determination made in the United States shall file a Notice of Intent to Commence Judicial Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 1904 Panel Rules, within 20 days after:

(a) The date of publication in the **Federal Register** of the final determination; or

(b) The date on which the notice of the final determination was received by the Government of the FTA country if the final determination was not published in the **Federal Register**.

§ 356.4 Request for panel review.

A party to a proceeding who seeks panel review of a final determination shall file a Request for Panel Review, which shall contain such information, and be in such form, manner, and style, including service requirements, as prescribed by the Article 1904 Panel Rules, within 30 days after:

(a) The date of publication in the official publication of the final determination; or

(b) The date on which the notice of the final determination was received by the United States Government or the Government of the FTA country if the final determination was not published in the official publication.

§ 356.5 [Reserved.]

§ 356.6 Receipt of notice of a scope determination by the Government of a FTA country.

(a) Where the Department has made a scope determination, notice of such determination shall be deemed received by the Government of a FTA country when a certified copy of the determination is delivered to the chancery of the Embassy of the FTA country during its normal business hours.

(b) Where feasible, the Department, or an agent therefor, will obtain a certificate of receipt signed by a person authorized to accept delivery of documents to the Embassy of the FTA country acknowledging receipt of the scope determination. The certificate will describe briefly the document being delivered to the Embassy of the FTA country, state the date and time of receipt, and include the name and title of the person who signs the certificate. The certificate will be retained by the Department in its public files pertaining to the scope determination at issue.

§ 356.7 Request to determine when the Government of a FTA country received notice of a scope determination.

(a) Pursuant to section 516A(g)(10) of the Act (19 U.S.C. 1516a(g)(10)), any party to the proceeding may request in writing from the Department the date on which the Government of a FTA country received notice of a scope determination made by the Department.

(b) A request shall be made by filing a written request and the correct number of copies in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31(d) and (e)(2) with the Secretary of Commerce, Attention: Import Administration, Central Records Unit, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. A letter of transmittal must be bound to the original and each copy as the first page of the request.

(c) The requesting party shall serve a copy of the Request to Determine When the Government of [insert name of applicable FTA country] Received Notice of a Scope Determination by first class mail or personal service on any interested party on the Department's service list in accordance with the service requirements listed in 19 CFR 353.31(g) or 355.31(g).

(d) The Department will respond to the request referred to in paragraph (b) of this section within five business days of receipt.

§ 356.8 Continued suspension of liquidation.

(a) *In general.* In the case of an administrative determination specified in clause (iii) or (vi) of section 516A(a)(2)(B) of the Act (19 U.S.C. 1516a(a)(2)(B)(iii) and (vi)) and involving free trade area country merchandise, the Department shall not order liquidation of entries of merchandise covered by such a determination until the forty-first day after the date of publication of the notice described in clause (iii) or receipt of the determination described in clause (vi), as appropriate. If requested, the Department will order the continued suspension of liquidation of such entries in accordance with the terms of paragraphs (b), (c), and (d) of this section.

(b) *Eligibility to request continued suspension of liquidation.* (1) A participant in a binational panel review that was a domestic party to the proceeding, as described in section 771(9)(C), (D), (E), (F), or (G) of the Act (19 U.S.C. 1677(9)(C), (D), (E), (F) and (G)), may request continued suspension of liquidation of entries of merchandise covered by the administrative determination under review by the panel and that would be affected by the panel review.

(2) A participant in a binational panel review that was a party to the proceeding, as described in section 771(9)(A) of the Act (19 U.S.C. 1677(9)(A)), may request continued suspension of liquidation of the merchandise which it manufactured, produced, exported, or imported and which is covered by the administrative determination under review by the panel.

(c) *Request for continued suspension of liquidation.* A request for continued suspension of liquidation must include:

(1) The name of the final determination subject to binational panel review and the case number assigned by the Department;

(2) The caption of the binational panel proceeding;

(3) The name of the requesting participant;

(4) The requestor's status as a party to the proceeding and as a participant in the binational panel review; and

(5) The specific entries to be suspended by name of manufacturer, producer, exporter, or U.S. importer.

(d) *Filing and service.* (1) A request for Continued Suspension of Liquidation must be filed with the Assistant Secretary for Import Administration, room B–099, 14th and Constitution Avenue, NW., Washington, DC 20230, in accordance with the requirements set forth in 19 CFR 353.31(d) and (e)(2) or 355.31(d) and (e)(2). A letter of transmittal must be bound to the original and each copy as the first page of the request. The envelope and the first page of the request must be marked: Panel Review—Request for Continued Suspension of Liquidation. The request may be made no earlier than the date on which the first request for binational panel review is filed.

(2) The requesting party shall serve a copy of the Request for Continued Suspension of Liquidation on the United States Secretary and all parties to the proceeding in accordance with the requirements of 19 CFR 353.31(g) or 19 CFR 355.31(g).

(e) *Termination of Continued Suspension.* Upon completion of the panel review, including any panel review of remand determinations and any review by an extraordinary

challenge committee, the Department will order liquidation of entries, the suspension of which was continued pursuant to this section.

Subpart C—Proprietary and Privileged Information

§ 356.9 Persons authorized to receive proprietary information.

Persons described in paragraphs (a), (d), (e), (f) and (g) of this section shall, and persons described in paragraphs (b) and (c) of this section may, be authorized by the Department to receive access to proprietary information if they comply with this subpart and such other conditions imposed upon them by the Department:

(a) The members of, and appropriate staff of, a binational panel or extraordinary challenge committee;

(b) Counsel to participants in panel reviews and professionals retained by, or under the direction or control of such counsel, provided that the counsel or professional does not participate in competitive decision-making activity (such as advice on production, sales, operations, or investments, but not legal advice) for the participant represented or for any person who would gain competitive advantage through knowledge of the proprietary information sought;

(c) Other persons who are retained or employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as paralegals, law clerks, and secretaries, if such other persons are:

(1) Not involved in the competitive decision-making of a participant to the panel review or for any person who would gain competitive advantage through knowledge of the proprietary information sought; and

(2) Have agreed to be bound by the terms set forth on the application for protective order of the counsel or professional, panelist, or committee member;

(d) Each Secretary and every member of the staff of the Secretariat;

(e) Such officials of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) as the United States Trade Representative informs the Department require access to proprietary information for the purpose of evaluating whether the United States should seek an extraordinary challenge committee review of a panel determination;

(f) Such officials of the Government of a FTA country as an authorized agency of the FTA country informs the Department require access to proprietary information for the purpose of evaluating whether the FTA country should seek an extraordinary challenge committee review of a panel determination; and

(g) Every court reporter, interpreter and translator employed in a panel or extraordinary challenge committee review.

§ 356.10 Procedures for obtaining access to proprietary information.

(a) *Persons who must file an application for disclosure under protective order.* In order to be permitted access to proprietary information in the administrative record of a final determination under review by a panel, all persons described in §§ 356.9 (a), (b), (d), (e), (f) and (g) shall file an application for a protective order. The procedures for applying for a protective order described in paragraph (b) of this section apply as well to amendments or modifications filed by persons described in § 356.9.

(b) *Procedures for applying for a protective order—(1) Contents of applications.* (i) The Department has adopted application forms for disclosure of proprietary information which are available from the United States section of the Secretariat or the Central Records Unit, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC 20230. The application forms may be amended from time to time.

(ii) Such forms require the applicant to submit a personal sworn statement stating, in addition to such other terms as the Department may require, that the applicant shall:

(A) Not disclose any proprietary information obtained under protective order and not otherwise available to the applicant, to any person other than:

(*1*) An official of the Department involved in the particular panel review in which the proprietary information is part of the administrative record;

(*2*) The person from whom the information was obtained;

(*3*) A person who has been granted access to the proprietary information at issue under § 356.9; and

(*4*) A person employed by and under the direction or control of a counsel or professional, panelist, or committee member who has been issued a protective order, such as a paralegal, law clerk, or secretary if such person:

(*i*) Is not involved in competitive decision-making for a participant in the panel review or for any person that would gain competitive advantage through knowledge of the proprietary information sought; and

(*ii*) Has agreed to be bound by the terms set forth in the application for protective order by the counsel, professional, panelist, or committee member;

(B) Not use any of the proprietary information not otherwise available to the applicant for purposes other than proceedings pursuant to Article 1904 of the Agreement;

(C) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the protective order and all other documents containing the proprietary information (such as briefs, notes, or charts based on any such information received under the protective order); and

(D) Acknowledge that breach thereof may subject the signatory to sanctions under § 356.12.

(2) *Timing of application for disclosure under protective order—*(i) *Persons described in § 356.9(a) (panelists, etc.).* A person described in § 356.9(a) may file an application after a Notice of Request for Panel Review has been filed with the Secretariat.

(ii) *Persons described in § 356.9(b) (counsel, etc.).* A person described in § 356.9(b) may file an application at any time but not before that person files a Complaint or a Notice of Appearance.

(iii) *Persons described in § 356.9(d) (Secretaries, etc.).* A person described in § 356.9(d) shall file an application immediately upon assuming official responsibilities in the Secretariat.

(iv) *Persons described in § 356.9 (e), (f) or (g) (designated Government officials or court reporters, etc.).* A person described in § 356.9 (e), (f) or (g) shall file an application before seeking or obtaining access to proprietary information.

(3) *Filing of applications.* A person described in § 356.9 (a), (b), (d), (e), (f) or (g) shall file the completed original and five copies of an application with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department. A letter of transmittal must be bound to the original and each copy as the first page of the document.

(4) *Service of applications—*(i) *Persons described in §§ 356.9(b) (counsel, etc.).* A person described in § 356.9(b) who files an application before the expiration of the time period fixed under the Article 1904 Panel Rules for filing a Notice of Appearance in the panel review shall serve one copy of the application on each person listed on the service list in accordance with paragraphs (b)(4) (ii) and (iii) of this section. In any other case, such person shall serve one copy of the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(ii) *Method of service.* A document may be served by:

(A) Delivering a copy of the document to the service address of the participant;

(B) Sending a copy of the document to the service address of the participant by facsimile transmission or by expedited delivery courier or expedited mail service; or

(C) Personal service on the participant.

(iii) *Proof and date of service.* A proof of service shall appear on, or be affixed to, the document. Where a document is served by expedited delivery courier or expedited mail service, the date of service set out in the affidavit of service or certificate of service shall be the day on which the document is consigned to the expedited delivery courier service or expedited mail service.

(5) *Release to employees of panelists, committee members, and counsel or professionals.* A person described in § 356.9(c), including a paralegal, law clerk, or secretary, may be permitted access to proprietary information disclosed under protective order by the counsel, professional, panelist, or extraordinary challenge committee member who retains or employs such person, if such person has agreed to the terms of the protective order issued to the counsel, professional, panelist, or extraordinary challenge committee member, by signing and dating a completed copy of the application for protective order of the representative counsel, professional, panelist or extraordinary challenge committee member in the location indicated in that application.

(6) *Counsel or professional who retains access to proprietary information under a protective order issued during the administrative proceeding.* A person described in § 356.9(b) who has been granted access to proprietary information under protective order during an administrative proceeding that resulted in a final determination that becomes the subject of panel review may, if permitted by the terms of the protective order previously issued by the Department, retain such information until the applicant receives a protective order under this part.

(c) *Issuance and service of protective orders—*(1) *Persons described in § 356.9(a) (panelists, etc.).* (i) Upon receipt by the Department of an application from a person described in § 356.9(a), the Department will issue a protective order authorizing disclosure of proprietary information included in the administrative record of the final determination that is the subject of the panel review at issue. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat which, in turn, shall transmit the original to the applicant and serve one copy of the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(ii) A member of a binational panel or extraordinary challenge committee proceeding initiated under the United States-Canada Free Trade Agreement to whom the Department issues a protective order must countersign the protective order and return one copy of the countersigned protective order to the United States section of the Secretariat.

(2) *Persons described in §§ 356.9 (b) or (c) (counsel, etc., or paralegals, etc.)—*(i) *Opportunity to object to disclosure.* The Department will not rule on an application filed by a person described in § 356.9(b) until at least ten days after the request is filed, unless there is compelling need to rule more expeditiously. Unless the Department has indicated otherwise, any person may file an objection to the application within seven days of filing of the application. Any such objection shall state the specific reasons in the view of such person why the application should not be granted. One copy of the objection shall be served on the applicant and on all persons who were served with the application. Service shall be made in accordance with paragraphs (b)(4) (ii) and (iii) of this section. Any reply to an objection will be considered if it is filed before the Department renders a decision.

(ii) *Timing of decisions on applications.* Normally, the Department will render a decision to approve or deny an application within 14 days. If any person files an objection, the Department will normally render the decision within 30 days.

(iii) *Approval of applications.* If appropriate, the Department will issue a protective order permitting the release of proprietary information to the applicant.

(iv) *Denial of applications.* If the Department denies an application, it shall issue a letter notifying the applicant of its decision and the reasons therefor.

(v) *Issuance of protective orders.* If the Department issues a protective order to a person described in § 356.9(b), that person shall immediately file four copies of the protective order with the United States section of the Secretariat and shall serve one copy of the order on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(3) *Persons described in § 356.9 (d) or (g) (Secretaries, etc., or court reporters, etc.).* Upon receipt by the Department of an application from a person described in § 356.9 (d) or (g), the Department will issue a protective order authorizing disclosure of proprietary information to the applicant. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat.

(4) *Persons described in § 356.9 (e) or (f) (designated Government officials).* (i) Upon receipt by the Department of an application from a person described in § 356.9 (e) or (f), the Department will issue a protective order authorizing disclosure of proprietary information included in the record of the panel review at issue. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat which, in turn, shall transmit the original to the applicant and serve one copy of the document on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(d) *Modification or revocation of protective orders—*(1) *Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a protective order issued pursuant to paragraph (c) of this section be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the protective order was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a protective order pursuant to paragraph (d) of this section, the Department shall transmit the original

and four copies of the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the original to the person to whom the protective order was issued and serve one copy on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

§ 356.11 Procedures for obtaining access to privileged information.

(a) *Persons who may apply for access to privileged information under protective order and filing of applications*—(1) *Panelists.* (i) If a panel decides that *in camera* examination of a document containing privileged information in an administrative record is necessary in order for the panel to determine whether the document, or portions thereof, should be disclosed under a Protective Order for Privileged Information, each panelist who is to conduct the *in camera* review, pursuant to the rules of procedure adopted by the United States and the free trade area countries to implement Article 1904 of the Agreement, shall submit an application for disclosure of the privileged information under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department; and

(ii) If a panel orders disclosure of a document containing privileged information, any panelist who has not filed an application pursuant to paragraph (a)(1)(i) of this section shall submit an application for disclosure of the privileged information under a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(2) *Designated officials of the United States Government.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the United States should request an extraordinary challenge committee, each official of the United States Government (other than an officer or employee of the investigating authority that issued the final determination subject to review) whom the United States Trade Representative informs the Department requires access for the purpose of such evaluation shall file the completed original and five copies of an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department.

(3) *Designated officials of the government of a FTA country.* Where, in the course of a panel review, the panel has reviewed privileged information under a Protective Order for Privileged Information, and the issue to which such information pertains is relevant to the evaluation of whether the Government of an involved FTA country should request an extraordinary challenge committee, each official of the Government of the involved FTA country whom an authorized agency of the involved FTA country informs the Department requires access for the purpose of such evaluation shall file the completed original and five copies of an application for a Protective Order for Privileged Information with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department.

(4) *Members of an extraordinary challenge committee.* Where an extraordinary challenge record contains privileged information and a Protective Order for Privileged Information was issued to counsel or professionals representing participants in the panel review at issue, each member of the extraordinary challenge committee shall submit an application for a Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(5) *Counsel or a professional under the direction or control of counsel.* If the panel decides, in accordance with the Article 1904 Rules, that disclosure of a document containing privileged information is appropriate, a counsel or a professional under the direction or control of counsel identified in such a decision as entitled to release of information under a Protective Order for Privileged Information shall submit an application for a Protective Order for Privileged Information. Any such person shall:

(i) File the completed original and five copies of an application with the United States section of the Secretariat which, in turn, shall submit the original and one copy of the application to the Department; and

(ii) As soon as the deadline fixed under the Article 1904 Panel Rules for filing a Notice of Appearance in the panel review has passed, shall serve a copy of the application on each participant, other than the investigating authority, in accordance with paragraphs (b)(4) (ii) and (iii) of this section.

(6) *Other designated persons.* If the panel decides, in accordance with the Article 1904 Panel Rules, that disclosure of a document containing privileged information is appropriate, any person identified in such a decision as entitled to release of information under a Protective Order for Privileged Information, *e.g.*, a Secretary, Secretariat staff, court reporters, interpreters and translators, or a member of the staff of a panelist or extraordinary challenge committee member, shall submit an application for release under Protective Order for Privileged Information to the United States section of the Secretariat for filing with the Department.

(b) *Contents of applications for release under protective order for privileged information.* (1) The Department has adopted application forms for disclosure of privileged information which are available from the United States section of the Secretariat and the Central Records Unit, room B–099, U.S. Department of Commerce, 14th and Constitution Avenue NW., Washington, DC 20230. These forms may be amended from time to time.

(2) Such forms require the applicant for release of privileged information under Protective Order for Privileged Information to submit a personal sworn statement stating, in addition to such other conditions as the Department may require, that the applicant shall:

(i) Not disclose any privileged information obtained under protective order to any person other than:

(A) An official of the Department involved in the particular panel review in which the privileged information is part of the record;

(B) A person who has furnished a similar application and who has been issued a Protective Order for Privileged Information concerning the privileged information at issue; and

(C) A person retained or employed by counsel, a professional, a panelist or extraordinary challenge committee member who has been issued a Protective Order for Privileged Information, such as a paralegal, law clerk, or secretary, if such person has agreed to be bound by the terms set forth in the application for Protective Order for Privileged Information of the counsel, professional, panelist or extraordinary challenge committee member by signing and dating the completed application at the location indicated in such application;

(ii) Use such information solely for purposes of the proceedings under Article 1904 of the Agreement;

(iii) Upon completion of the panel review, or at such earlier date as may be determined by the Department, return to the Department or certify to the Department the destruction of all documents released under the Protective Order for Privileged Information and all other documents containing the privileged information (such as briefs, notes, or charts based on any such information received under the Protective Order for Privileged Information); and

(iv) Acknowledge that breach thereof may subject the signatory to sanctions under §§ 356.12 and 356.30.

(c) *Issuance of protective orders for privileged information.*—(1) *Panelists, designated government officials and members of an extraordinary challenge committee.* (i) Upon receipt of an application for protective order under this section from a panelist, designated government official or member of an extraordinary challenge committee, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat which, in turn, shall transmit the original to the applicant and serve one copy of the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

(ii) If the Department issues a Protective Order for Privileged Information to a member of a binational panel or extraordinary challenge proceeding initiated under the United States-Canada Free Trade Agreement, that person must countersign the protective order and return one copy of the countersigned protective order to the United States section of the Secretariat.

(2) *Counsel or a professional under the direction or control of counsel.* Upon receipt of an application for protective order under this section from a counsel or a professional under the direction or control of counsel, the Department shall issue a Protective Order for Privileged Information. If the Department issues a protective order to such person, that person shall immediately file four copies of the protective order with the United States section of the Secretariat and shall serve one copy of the order on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

(3) *Other designated persons described paragraph (a)(6) of this section.* Upon receipt of an application for protective order under this section from a designated person described in paragraph (a)(6) of this section, the Department shall issue a Protective Order for Privileged Information. The Department shall transmit the original and four copies of the protective order to the United States section of the Secretariat.

(d) *Modification or revocation of protective order for privileged information.*—(1) *Notification.* If any person believes that changed conditions of fact or law, or the public interest, may require that a Protective Order for Privileged Information be modified or revoked, in whole or in part, such person may notify the Department in writing. The notification shall state the changes desired and the changed circumstances warranting such action and shall include materials and argument in support thereof. Such notification shall be served by the person submitting it upon the person to whom the Protective Order for Privileged Information was issued. Responses to the notification may be filed within 20 days after the notification is filed unless the Department indicates otherwise. The Department may also consider such action on its own initiative.

(2) *Issuance of modification or revocation.* If the Department modifies or revokes a Protective Order for Privileged Information pursuant to paragraph (d) of this section, the Department shall transmit the original and four copies of the modification or Notice of Revocation to the United States section of the Secretariat which, in turn, shall transmit the original to the person to whom the protective order was issued and serve one copy on each participant, other than the investigating authority, in accordance with §§ 356.10(b)(4) (ii) and (iii).

Subpart D—Violation of a Protective Order or a Disclosure Undertaking

§ 356.12 Sanctions for violation of a protective order or disclosure undertaking.

(a) A person, other than a person exempted from this part by the provisions of section 777f(f)(4) of the Act (19 U.S.C. 1677f(f)(4)), determined under this part to have violated a protective order or a disclosure undertaking may be subjected to any or all or the following sanctions:

(1) Liable to the United States for a civil penalty not to exceed $100,000 for each violation;

(2) Barred from appearing before the Department to represent another for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(3) Denied access to proprietary information for a designated time period from the date of publication in an official publication of a notice that a violation has been determined to exist;

(4) Other appropriate administrative sanctions, including striking from the record of the panel review any information or argument submitted by, or on behalf of, the violating party or the party represented by the violating party; terminating any proceeding then in progress; or revoking any order then in effect; and

(5) Required to return material previously provided by the investigating authority, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or a disclosure undertaking.

(b) (1) The firm of which a person determined to have violated a protective order or a disclosure undertaking is a partner, associate, or employee; any partner, associate, employer, or employee of such person; and any person represented by such person may be barred from appearing before the Department for a designated time period from the date of publication in an official publication of notice that a violation has been determined to exist or may be subjected to the sanctions set forth in paragraph (a) of this section, as appropriate.

(2) Each person against whom sanctions are proposed under paragraph (b)(1) of this section is entitled to all the administrative rights set forth in this subpart separately and apart from rights provided to a person subject to sanctions under paragraph (a) of this section, including the right to a charging letter, right to representation, and right to a hearing, but subject to joinder or consolidation by the administrative law judge under § 356.23(b).

§ 356.13 Suspension of rules.

Upon request by the Deputy Under Secretary, a charged or affected party, or the APO Sanctions Board, the administrative law judge may modify or waive any rule in this subpart upon determining that no party will be unduly prejudiced and the ends of justice will thereby be served and upon notice to all parties.

§ 356.14 Report of violation and investigation.

(a) An employee of the Department or any other person who has information indicating that the terms of a protective order or a disclosure undertaking have been violated will provide the information to a Director or the Chief Counsel.

(b) Upon receiving information which indicates that a person may have

violated the terms of a protective order or an undertaking, the Director will conduct an investigation concerning whether there was a violation of a protective order or a disclosure undertaking, and who was responsible for the violation, if any. For purposes of this subpart, the Director will be supervised by the Deputy Under Secretary with guidance from the Chief Counsel. The Director will conduct an investigation only if the information is received within 30 days after the alleged violation occurred or, as determined by the Director, could have been discovered through the exercise of reasonable and ordinary care.

(c) The Director will provide a report of the investigation to the Deputy Under Secretary, after review by the Chief Counsel, no later than 180 days after receiving information concerning a violation. Upon the Director's request, and if extraordinary circumstances exist, the Deputy Under Secretary may grant the Director up to an additional 180 days to conduct the investigation and submit the report.

(d) The following examples of actions that constitute violations of an administrative protective order shall serve as guidelines to each person subject to a protective order. These examples do not represent an exhaustive list. Evidence that one of the acts described in the guidelines has been committed, however, shall be considered by the Director as reasonable cause to believe a person has violated a protective order within the meaning of § 356.15.

(1) Disclosure of proprietary information to any person not granted access to that information by protective order, including an official of the Department or member of the Secretariat staff not directly involved with the panel review pursuant to which the proprietary information was released, an employee of any other United States, foreign government or international agency, or a member of the United States Congress, the Canadian Parliament, or the Mexican Congress.

(2) Failure to follow the detailed procedures outlined in the protective order for safeguarding proprietary information, including maintaining a log showing when each proprietary document is used, and by whom, and requiring all employees who obtain access to proprietary information (under the terms of a protective order granted their employer) to sign and date a copy of that protective order.

(3) Loss of proprietary information.

(4) Failure to return or destroy all copies of the original documents and all notes, memoranda, and submissions containing proprietary information at the close of the proceeding for which the data were obtained by burning or shredding of the documents or by erasing electronic memory, computer disk, or tape memory, as set forth in the protective order.

(5) Failure to delete proprietary information from the public version of a brief or other correspondence filed with the Secretariat.

(6) Disclosure of proprietary information during a public hearing.

(e) Each day of a continuing violation shall constitute a separate violation.

§ 356.15 Initiation of proceedings.

(a) If the Deputy Under Secretary concludes, after an investigation and report by the Director under § 356.14(c) and consultation with the Chief Counsel, that there is reasonable cause to believe that a person has violated a protective order or a disclosure undertaking and that sanctions are appropriate for the violation, the Deputy Under Secretary will, at the Deputy Under Secretary's discretion, either initiate a proceeding under this subpart by issuing a charging letter as set forth in § 356.16 or request that the authorized agency of the involved FTA country initiate a proceeding by issuing a request to charge as set forth in § 356.17. In determining whether sanctions are appropriate and, if so, what sanctions to impose, the Deputy Under Secretary will consider the nature of the violation, the resulting harm, and other relevant circumstances of the case. The Deputy Under Secretary will decide whether to initiate a proceeding no later than 60 days after receiving a report of the investigation.

(b) If the Department receives a request to charge from an authorized agency of a FTA country, the Deputy Under Secretary will promptly initiate proceedings under this part by issuing a charging letter as set forth in § 356.16.

§ 356.16 Charging letter.

(a) *Contents of letter.* The Deputy Under Secretary will initiate proceedings by issuing a charging letter to each charged party and affected party which includes:

(1) A statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof;

(2) A statement of the proposed sanctions;

(3) A statement that the charged or affected party is entitled to review the documents or other physical evidence upon which the charge is based and the method for requesting access to, or copies of, such documents;

(4) A statement that the charged or affected party is entitled to a hearing before an administrative law judge if requested within 30 days of the date of service of the charging letter and the procedure for requesting a hearing, including the name, address, and telephone number of the person to contact if there are further questions;

(5) A statement that the charged or affected party has a right, if a hearing is not requested, to submit documentary evidence to the Deputy Under Secretary and an explanation of the method for submitting evidence and the date by which it must be received; and

(6) A statement that the charged or affected party has a right to retain counsel at the party's own expense for purposes of representation.

(b) *Settlement and amendment of the charging letter.* The Deputy Under Secretary may amend, supplement, or withdraw the charging letter at any time with the approval of an administrative law judge if the interests of justice would thereby be served. If a hearing has not been requested, the Deputy Under Secretary will ask the Under Secretary to appoint an administrative law judge to make this determination. If a charging letter is withdrawn after a request for a hearing, the administrative law judge will determine whether the withdrawal will bar the Deputy Under Secretary from seeking sanctions at a later date for the same alleged violation. If there has been no request for a hearing, or if supporting information has not been submitted under § 356.28, the withdrawal will not bar future actions on the same alleged violation. The Deputy Under Secretary and a charged or affected party may settle a charge brought under this Subpart by mutual agreement at any time after service of the charging letter; approval of the administrative law judge or the APO Sanctions Board is not necessary.

(c) *Service of charging letter on a resident of the United States.* (1) Service of a charging letter on a United States resident will be made by:

(i) Mailing a copy by registered or certified mail addressed to the charged or affected party at the party's last known address;

(ii) Leaving a copy with the charged or affected party or with an officer, a managing or general agent, or any other agent authorized by appointment or by law to receive service for the party; or

(iii) Leaving a copy with a person of suitable age and discretion who resides at the party's last known dwelling.

(2) Service made in the manner described in paragraph (c)(1) (ii) or (iii) of this section shall be evidenced by a certificate of service signed by the person making such service, stating the method of service and the identity of the person with whom the charging letter was left.

(d) *Service of charging letter on a non-resident.* If applicable laws or intergovernmental agreements or understandings make the methods of service set forth in paragraph (c) of this section inappropriate or ineffective, service of the charging letter on a person who is not a resident of the United States may be made by any method that is permitted by the country in which the person resides and that, in the opinion of the Deputy Under Secretary, satisfies due process requirements under United States law with respect to notice in administrative proceedings.

§ 356.17 Request to charge.

Upon deciding to initiate a proceeding pursuant to § 356.15, the Deputy Under Secretary will request the authorized agency of the involved FTA country to initiate a proceeding for imposing sanctions for violation of a protective order or a disclosure undertaking by issuing a letter of request to charge that includes a statement of the allegation that a protective order or a disclosure undertaking has been violated and the basis thereof.

§ 356.18 Interim sanctions.

(a) If the Deputy Under Secretary concludes, after issuing a charging letter under § 356.16 and before a final decision is rendered, that interim sanctions are necessary to protect the interests of the Department, an authorized agency of the involved FTA country, or others, including the protection of proprietary information, the Deputy Under Secretary may petition an administrative law judge to impose such sanctions.

(b) The administrative law judge may impose interim sanctions against a person upon determining that:

(1) There is probable cause to believe that there was a violation of a protective order or a disclosure undertaking and the Department is likely to prevail in obtaining sanctions under this subpart;

(2) The Department, authorized agency of the involved FTA country, or others are likely to suffer irreparable harm if the interim sanctions are not imposed; and

(3) The interim sanctions are a reasonable means for protecting the rights of the Department, authorized agency of the involved FTA country, or others while preserving to the greatest extent possible the rights of the person against whom the interim sanctions are proposed

(c) Interim sanctions which may be imposed include any sanctions that are necessary to protect the rights of the Department, authorized agency of the involved FTA country, or others, including, but not limited to:

(1) Denying a person further access to proprietary information;

(2) Barring a person from representing another person before the Department;

(3) Barring a person from appearing before the Department; and

(4) Requiring the person to return material previously provided by the Department or the investigating authority of the involved FTA country, and all other materials containing the proprietary information, such as briefs, notes, or charts based on any such information received under a protective order or disclosure undertaking.

(d) The Deputy Under Secretary will notify the person against whom interim sanctions are sought of the request for interim sanctions and provide to that person the material submitted to the administrative law judge to support the request. The notice will include a reference to the procedures of this section.

(e) A person against whom interim sanctions are proposed has a right to oppose the request through submission of material to the administrative law judge. The administrative law judge has discretion to permit oral presentations and to allow further submissions.

(f) The administrative law judge will notify the parties of the decision on interim sanctions and the basis therefor within five days of the conclusion of oral presentations or the date of final written submissions.

(g) If interim sanctions have been imposed, the investigation and any proceedings under this Subpart will be conducted on an expedited basis.

(h) An order imposing interim sanctions may be revoked at any time by the administrative law judge and expires automatically upon the issuance of a final order.

(i) The administrative law judge may reconsider imposition of interim sanctions on the basis of new and material evidence or other good cause shown. The Deputy Under Secretary or a person against whom interim sanctions have been imposed may appeal a decision on interim sanctions to the APO Sanctions Board, if such an appeal is certified by the administrative law judge as necessary to prevent undue harm to the Department or authorized agency of the involved FTA country, a person against whom interim sanctions have been imposed or others, or is otherwise in the interests of justice. Interim sanctions which have been imposed remain in effect while an appeal is pending, unless the administrative law judge determines otherwise.

(j) The Deputy Under Secretary may request an administrative law judge to impose emergency interim sanctions to preserve the status quo. Emergency interim sanctions may last no longer than 48 hours, excluding weekends and holidays. The person against whom such emergency interim sanctions are proposed need not be given prior notice or an opportunity to oppose the request for sanctions. The administrative law judge may impose emergency interim sanctions upon determining that the Department or authorized agency of the involved FTA country is, or others are, likely to suffer irreparable harm if such sanctions are not imposed and that the interests of justice would thereby be served. The administrative law judge will promptly notify a person against whom emergency sanctions have been imposed of the sanctions and their duration.

(k) If a hearing has not been requested, the Deputy Under Secretary will request that the Under Secretary appoint an administrative law judge for making determinations under this section.

(l) The Deputy Under Secretary will notify the Secretariat concerning the imposition or revocation of interim sanctions or emergency interim sanctions.

§ 356.19 Request for a hearing.

(a) Any party may request a hearing by submitting a written request to the Under Secretary within 30 days after the date of service of the charging letter. However, the Deputy Under Secretary may request a hearing only if the interests of justice would thereby be served.

(b) Upon timely receipt of a request for a hearing, the Under Secretary will appoint an administrative law judge to conduct the hearing and render an initial decision.

§ 356.20 Discovery.

(a) *Voluntary discovery.* All parties are encouraged to engage in voluntary discovery procedures regarding any matter, not privileged, which is relevant to the subject matter of the pending sanctions proceeding.

(b) *Limitations on discovery.* The administrative law judge shall place such limits upon the kind or amount of discovery to be had or the period of time during which discovery may be carried out as shall be consistent with the time limitations set forth in this Part.

(c) *Interrogatories and requests for admissions or production of documents.* A party may serve on any other party interrogatories, requests for admissions, or requests for production of documents for inspection and copying, and the party may then apply to the administrative law judge for such enforcement or protective order as that party deems warranted concerning such discovery. The party will serve a discovery request at least 20 days before the scheduled date of a hearing, if a hearing has been requested and scheduled, unless the administrative law judge specifies a shorter time period. Copies of interrogatories, requests for admissions, and requests for production of documents and responses thereto will be served on all parties. Matters of fact or law of which admission is requested will be deemed admitted unless, within a period designated in the request (at least 10 days after the date of service of the request, or within such further time as the administrative law judge may allow), the party to whom the request is directed serves upon the requesting party a sworn statement either admitting or denying specifically the matters of which admission is requested or setting forth in detail the reasons why the party cannot truthfully either admit or deny such matters.

(d) *Depositions.* Upon application of a party and for good cause shown, the administrative law judge may order the taking of the testimony of any person who is a party, or under the control or authority of a party, by deposition and the production of specified documents or materials by the person at the deposition. The application shall state the purpose of the deposition and shall set forth the facts sought to be established through the deposition.

(e) *Supplementation of responses.* A party who has responded to a request for discovery with a response that was complete when made is under no duty to supplement the party's response to include information thereafter acquired, except as follows:

(1) A party is under a duty to seasonably supplement the party's response with respect to any question directly addressed to:

(i) The identity and location of persons having knowledge of discoverable matters; and

(ii) The identity of each person expected to be called as an expert witness at a hearing, the subject matter on which the witness is expected to testify, and the substance of the testimony.

(2) A party is under a duty to seasonably amend a prior response if the party obtains information upon the basis of which the party:

(i) Knows the response was incorrect when made; or

(ii) Knows that the response, though correct when made, is no longer true, and the circumstances are such that a failure to amend the response is in substance a knowing concealment.

(3) A duty to supplement responses may be imposed by order of the administrative law judge, agreement of the parties, or at any time prior to a hearing through new requests for supplementation of prior responses.

(f) *Enforcement.* The administrative law judge may order a party to answer designated questions, to produce specified documents or items, or to take any other action in response to a proper discovery request. If a party does not comply with such an order, the administrative law judge may make any determination or enter any order in the proceedings as the administrative law judge deems reasonable and appropriate. The administrative law judge may strike related charges or defenses in whole or in part, or may take particular facts relating to the discovery request to which the party failed or refused to respond as being established for purpose of the proceeding in accordance with the contentions of the party seeking discovery. In issuing a discovery order, the administrative law judge will consider the necessity to protect proprietary information and will not order the release of information in circumstances where it is reasonable to conclude that such release will lead to unauthorized dissemination of such information.

§ 356.21 Subpoenas.

(a) *Application for issuance of a subpoena.* An application for issuance of a subpoena requiring a person to appear and depose or testify at the taking of a deposition or at a hearing shall be made to the administrative law judge. An application for issuance of a subpoena requiring a person to appear and depose or testify and to produce specified documents, papers, books, or other physical exhibits at the taking of a deposition, at a prehearing conference, at a hearing, or under any other circumstances, shall be made in writing to the administrative law judge and shall specify the material to be produced as precisely as possible, showing the general relevancy of the material and the reasonableness of the scope of the subpoena.

(b) *Use of subpoena for discovery.* Subpoenas may be used by any party for purposes of discovery or for obtaining documents, papers, books, or other physical exhibits for use in evidence, or for both purposes. When used for discovery purposes, a subpoena may require a person to produce and permit the inspection and copying of nonprivileged documents, papers, books, or other physical exhibits which constitute or contain evidence relevant to the subject matter involved and which are in the possession, custody, or control of such person.

(c) *Application for subpoenas for nonparty department records or personnel or for records or personnel of other Government agencies.* (1) An application for issuance of a subpoena requiring the production of nonparty documents, papers, books, physical exhibits, or other material in the records of the Department, or requiring the appearance of an official or employee of the Department, or requiring the production of records or personnel of other Government agencies shall specify as precisely as possible the material to be produced, the nature of the information to be disclosed, or the expected testimony of the official or employee, and shall contain a statement showing the general relevancy of the material, information, or testimony and the reasonableness of the scope of the application, together with a showing that such material, information, or testimony or their substantial equivalent could not be obtained without undue hardship by alternative means.

(2) Such applications shall be ruled upon by the administrative law judge. To the extent that the motion is granted, the administrative law judge shall provide such terms and conditions for the production of the material, the disclosure of the information, or the appearance of the official or employee as may appear necessary and appropriate for the protection of the public interest.

(3) No application for a subpoena for production of documents grounded upon the Freedom of Information Act (5 U.S.C. 552) shall be entertained by the administrative law judge.

(d) *Motion to limit or quash.* Any motion to limit or quash a subpoena shall be filed within 10 days after service thereof, or within such other time as the administrative law judge may allow.

(e) *Ex parte rulings on applications for subpoenas.* Applications for the issuance of subpoenas pursuant to this section may be made *ex parte*, and, if so made, such applications and rulings thereon shall remain *ex parte* unless otherwise ordered by the administrative law judge.

(f) *Role of the Under Secretary.* If a hearing has not been requested, the party seeking enforcement will ask the Under Secretary to appoint an administrative law judge to rule on applications for issuance of a subpoena under this section.

§ 356.22 Prehearing conference.

(a)(1) If an administrative hearing has been requested, the administrative law judge will direct the parties to attend a prehearing conference to consider:

(i) Simplification of issues;

(ii) Obtaining stipulations of fact and of documents to avoid unnecessary proof;

(iii) Settlement of the matter;

(iv) Discovery; and

(v) Such other matters as may expedite the disposition of the proceedings.

(2) Any relevant and significant stipulations or admissions will be incorporated into the initial decision.

(b) If a prehearing conference is impractical, the administrative law judge will direct the parties to correspond with each other or to confer by telephone or otherwise to achieve the purposes of such a conference.

§ 356.23 Hearing.

(a) *Scheduling of hearing.* The administrative law judge will schedule the hearing at a reasonable time, date, and place, which will be in Washington, DC, unless the administrative law judge determines otherwise based upon good cause shown, that another location would better serve the interests of justice. In setting the date, the administrative law judge will give due regard to the need for the parties adequately to prepare for the hearing and the importance of expeditiously resolving the matter.

(b) *Joinder or consolidation.* The administrative law judge may order joinder or consolidation if sanctions are proposed against more than one party or if violations of more than one protective order or disclosure undertaking are alleged if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

(c) *Hearing procedures.* Hearings will be conducted in a fair and impartial manner by the administrative law judge, who may limit attendance at any hearing or portion thereof if necessary or advisable in order to protect proprietary information from improper disclosure. The rules of evidence prevailing in courts of law shall not apply, and all evidentiary material the administrative law judge determines to be relevant and material to the proceeding and not unduly repetitious may be received into evidence and given appropriate weight. The administrative law judge may make such orders and determinations regarding the admissibility of evidence, conduct of examination and cross-examination, and similar matters as are necessary or appropriate to ensure orderliness in the proceedings. The administrative law judge will ensure that a record of the hearing will be taken by reporter or by electronic recording, and will order such part of the record to be sealed as is necessary to protect proprietary information.

(d) *Rights of parties.* At a hearing each party shall have the right to:

(1) Introduce and examine witnesses and submit physical evidence;

(2) Confront and cross-examine adverse witnesses;

(3) Present oral argument; and

(4) Receive a transcript or recording of the proceedings, upon request, subject to the administrative law judge's orders regarding sealing the record.

(e) *Representation.* Each charged or affected party has a right to represent himself or herself or to retain private counsel for that purpose. The Chief Counsel will represent the Department, unless the General Counsel of the Department determines otherwise. The administrative law judge may disallow a representative if such representation constitutes a conflict of interest or is otherwise not in the interests of justice and may debar a representative for contumacious conduct relating to the proceedings.

(f) *Ex parte communications.* The parties and their representatives may not make any *ex parte* communications to the administrative law judge concerning the merits of the allegations or any matters at issue, except as provided in § 356.18(j) regarding emergency interim sanctions.

§ 356.24 Proceeding without a hearing.

If no party has requested a hearing, the Deputy Under Secretary, within 40 days after the date of service of a charging letter, will submit for inclusion into the record and provide each charged or affected party information supporting the allegations in the charging letter. Each charged or affected party has the right to file a written response to the information and supporting documentation within 30 days after the date of service of the information provided by the Deputy Under Secretary unless the Deputy Under Secretary alters the time period for good cause. The Deputy Under Secretary may allow the parties to submit further information and argument.

§ 356.25 Witnesses.

Witnesses summoned before the Department shall be paid the same fees and mileage that are paid witnesses in the courts of the United States.

§ 356.26 Initial decision.

(a) *Initial decision.* The administrative law judge, if a hearing was requested, or the Deputy Under Secretary will submit an initial decision to the APO Sanctions Board, providing copies to the parties. The administrative law judge or the Deputy Under Secretary will ordinarily issue the decision within 20 days of the conclusion of the hearing, if one was held, or within 15 days of the date of service of final written submissions. The initial decision will be based solely on evidence received into the record and the pleadings of the parties.

(b) *Findings and conclusions.* The initial decision will state findings and conclusions as to whether a person has violated a protective order or a disclosure undertaking; the basis for those findings and conclusions; and whether the sanctions proposed in the charging letter, or lesser included sanctions, should be imposed against the charged or affected party. The administrative law judge or the Deputy Under Secretary may impose sanctions only upon determining that the preponderance of the evidence supports a finding of violation of a protective order or a disclosure undertaking and that the sanctions are warranted against the charged or affected party.

(c) *Finality of decision.* If the APO Sanctions Board has not issued a decision on the matter within 60 days after issuance of the initial decision, the initial decision becomes the final decision of the Department.

§ 356.27 Final decision.

(a) *APO Sanctions Board.* Upon request of a party, the initial decision will be reviewed by the members of the APO Sanctions Board. The Board consists of the Under Secretary for International Trade, who shall serve as Chairperson, the Under Secretary for Economic Affairs, and the General Counsel.

(b) *Comments on initial decision.* Within 30 days after issuance of the initial decision, a party may submit written comments to the APO Sanctions Board on the initial decision, which the Board will consider when reviewing the initial decision. The parties have no right to an oral presentation, although the Board may allow oral argument in its discretion.

(c) *Final decision by the APO Sanctions Board.* Within 60 days but not sooner than 30 days after issuance of an initial decision, the APO Sanctions Board may issue a final decision which adopts the initial decision in its entirety; differs in whole or in part from the initial decision, including the imposition of lesser included sanctions; or remands the matter to the administrative law judge or the Deputy Under Secretary for further consideration. The only sanctions that the Board can impose are those sanctions proposed in the charging letter or lesser included sanctions.

(d) *Content's of final decision.* If the final decision of the APO Sanctions Board does not remand the matter and differs from the initial decision, it will state findings and conclusions which differ from the initial decision, if any, the basis for those findings and conclusions, and the sanctions which are to be imposed, to the extent they differ from the sanctions in the initial decision.

(e) *Public notice of sanctions.* If the final decision is that there has been a violation of a protective order or a disclosure undertaking and that sanctions are to be imposed, notice of the decision will be published in the **Federal Register** and forwarded to the United States section of the Secretariat. Such publication will be no sooner than 30 days after issuance of a final decision or after a motion to reconsider has been denied, if such a motion was filed. If the final decision is made in a proceeding based upon a request to charge by an authorized agency of an FTA country, the decision will be forwarded to the Secretariat of the involved FTA country for transmittal to the authorized agency of the FTA country for publication in the official publication or other appropriate action. The Deputy Under Secretary will also provide such information to the ethics panel or other disciplinary body of the appropriate bar associations or other professional associations whenever the Deputy Under Secretary subjects a charged or affected party to a sanction under § 356.12(a)(2) and to any Federal agency likely to have an interest in the matter and will cooperate in any disciplinary actions by any association or agency.

§ 356.28 Reconsideration.

Any party may file a motion for reconsideration with the APO Sanctions Board. The party must state with particularity the grounds for the motion, including any facts or points of law which the party claims the APO Sanctions Board has overlooked or misapplied. The party may file the motion within 30 days of the issuance of the final decision or the adoption of the initial decision as the final decision, except that if the motion is based on the discovery of new and material evidence which was not known, and could not reasonably have been discovered through due diligence prior to the close of the record, the party shall file the motion within 15 days of the discovery of the new and material evidence. The party shall provide a copy of the motion to all other parties. Opposing parties may file a response within 30 days of the date of service of the motion. The response shall be considered as part of the record. The parties have no right to an oral presentation on a motion for reconsideration, but the Board may permit oral argument at its discretion. If the motion to reconsider is granted, the Board will review the record and affirm, modify, or reverse the original decision or remand the matter for further consideration to an administrative law judge or the Deputy Under Secretary, as warranted.

§ 356.29 Confidentiality.

(a) All proceedings involving allegations of a violation of a protective order or a disclosure undertaking shall be kept confidential until such time as the Department makes a final decision under these regulations, which is no longer subject to reconsideration, imposing a sanction.

(b) The charged party or counsel for the charged party will be, to the extent possible, granted access to proprietary information in these proceedings, as necessary, under administrative protective order, consistent with the provisions of § 356.10.

§ 356.30 Sanctions for violations of a protective order for privileged information.

The provisions of this subpart shall apply to persons who are alleged to have violated a Protective Order for Privileged Information.

Dated: December 28, 1993.

Jeffrey E. Garten,

Under Secretary for International Trade.

[FR Doc. 93–32063 Filed 12–30–93; 8:45 am]

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At the end of each month, the Office of the Federal Register publishes separately a List of CFR Sections Affected (LSA), which lists parts and sections affected by documents published since the revision date of each title.

LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress is in Part IV of this issue of the **Federal Register.**

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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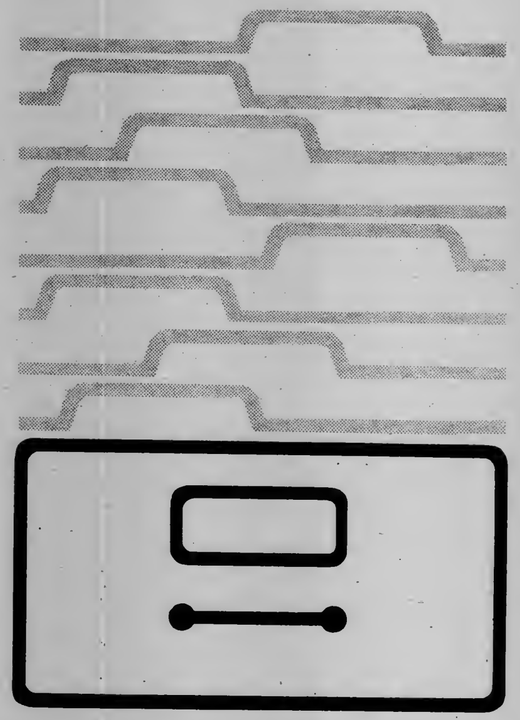
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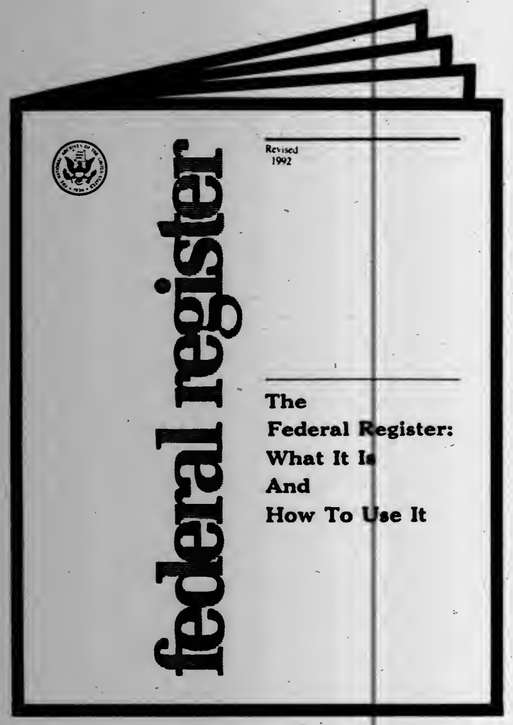
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Vol. 59, No. 2
Tuesday, January 4, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 907 and 908

[FV93-907-1FIR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Change in Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule changing reporting requirements prescribed under the California-Arizona navel and Valencia orange marketing orders. The marketing orders regulate the handling of navel and Valencia oranges grown in Arizona and designated parts of California and are administered locally by the Navel and Valencia Orange Administrative Committees (committees). This rule modifies language in the orders' rules and regulations to discontinue the use of Form 38 (Weekly Report of By-Product Oranges) and specify that Form 3 (Daily Manifest Report of Oranges Subject to Allotment) only be utilized for reporting rail car shipments. These actions reduce the burden of information collection requirements under the marketing orders.

EFFECTIVE DATE: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522-S, P.O. Box 96456, Washington, DC 20090-6456; telephone: (202) 720-5127; or Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Order Nos. 907 and 908 (7 CFR parts 907 and 908), as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 140 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 3,750 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. In addition, there are about 35 by-product manufacturers that will be affected by this rule. Small agricultural service firms, which includes handlers and by-product manufacturers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers, producers, and processors of California-Arizona navel and Valencia oranges may be classified as small entities.

This action finalizes changes in the reporting requirements prescribed under the California-Arizona orange marketing orders. This rule modifies language in the orders' rules and regulations to discontinue the use of Form 38 (Weekly Report of By-Product Oranges) and specify that Form 3 (Daily Manifest Report of Oranges Subject to Allotment) only be utilized for reporting rail car shipments. These changes were unanimously recommended by the committees.

The interim final rule was issued on October 8, 1993, and published in the **Federal Register** (58 FR 53112, October 14, 1993), with an effective date of October 14, 1993. That rule amended §§ 907.131, 907.141, 908.131, and 908.141 of the rules and regulations in effect under the orders. That rule provided a 30-day comment period which ended November 15, 1993. No comments were received.

Sections 907.67 and 908.67 of the navel and Valencia orange marketing orders provide authority for the exemption from order regulation the handling of oranges to commercial processors for processing into products, including juice. Sections 907.131 and 908.131 of the orders' rules and regulations prescribe procedures governing the exemption from order regulation of such by-product oranges.

Included in these procedures are certain reporting requirements imposed on handlers and by-product manufacturers to help ensure that order requirements and regulations governing the exemption for by-product oranges are being followed.

For example, persons who wish to acquire oranges as an approved by-products manufacturer for commercial processing into by-products exempt from regulation must submit an application to the committee on Form 14 (Application to be Placed on Approved List of Orange By-Product Manufacturers). These applications are referred to the committees' compliance department for investigation and then, if appropriate, referred to the committees for approval to be placed on an approved list of by-product manufacturers. Commercial processors are also required to submit to the committees copies of Form 15 (Orange Diversion Report) which specify how the oranges were disposed. Finally, approved by-product manufacturers were required to submit Form 38 (Weekly Report of By-Product Oranges) during the crop year when processing is occurring.

The committees have recommended that submission of Form 38 no longer be required under the marketing orders. Submission of Form 38 was added to the orders' rules and regulations in 1990 because the committees believed that the additional information would help to ensure that oranges exempted under the by-products exemption did not enter the fresh fruit market. It was believed that comparisons of the total amount of oranges received by processors with the total amount of by-products manufactured would give the committees a method to verify that all oranges received were manufactured into by-products.

However, the committees have found that the information collected on Form 38 is not necessary to ensure compliance with order requirements. In addition, much of the information on Form 38 is collected on other reports required to be submitted under the orders. The committees believe that submission of Form 38 creates an additional burden on by-product manufacturers that is not necessary. Thus, the committees recommended revising the orders' rules and regulations to discontinue the use of Form 38. The Department has also made some minor modifications to § 907.131 and 908.131 for the purpose of clarity.

The second change that the committees recommended concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Sections 907.71 and 908.71 of the orange marketing orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada.

Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit, on Form 3, a manifest report of oranges shipped within a 24 hour period. Prior to the effective date of the interim final rule, handlers were required to include both truck and rail car shipments on Form 3. However, identical information regarding truck shipments is submitted by handlers on Form 8 (Certificate of Assignment of Allotment). According to the committees, this duplication of information created an added burden for handlers and was not necessary. Thus, the committees recommended modifying the orders' rules and regulations to require that handlers only report rail car shipments on Form 3. Handlers are still required to submit rail manifests and other appropriate documentation to the committees to substantiate rail car shipments.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges.

This rule reduces the reporting burden on approximately 25 processors of navel and Valencia oranges who had been completing Form 38, taking about 0.33 hour to complete each report. This rule also reduces the reporting burden on approximately 210 handlers who ship primarily by truck, taking about 0.40 hour to complete each report. About 80 handlers who ship by rail at some point during a season will continue to use Form 3, taking approximately 0.20 hour to complete the report.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant material presented, the information and recommendations submitted by the committees, and other information, it is found that finalizing the interim final rule, without change, as published in the **Federal Register** (58 FR 53112, October 14, 1993) will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR part 907, which was published at 58 FR 53112 on October 14, 1993, is adopted as a final rule without change.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PART OF CALIFORNIA

3. Accordingly, the interim final rule amending 7 CFR part 908, which was published at 58 FR 53112 on October 14, 1993, is adopted as a final rule without change.

Dated: December 27, 1993

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division

[FR Doc. 94–55 Filed 1–3–94; 8:45 am]

BILLING CODE 3410–02–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 239

[Release No. 33–7040; International Series Release No. 625; File No. S7–16–93]

RIN 3235–AF83

Amendments to the Multijurisdictional Disclosure System for Canadian Issuers

AGENCY: Securities and Exchange Commission

ACTION: Final amendments to Form F–9

SUMMARY: The Securities and Exchange Commission (the "Commission") has adopted amendments to Form F–9 under the multijurisdictional disclosure system ("MJDS") for Canadian issuers which will recognize investment grade ratings by securities rating organizations recognized by Canadian securities regulators for purposes of filings on Forms F–9 and 40–F. These amendments have been adopted in light of the Commission's experience with the MJDS and should further facilitate transnational capital formation. They are being made effective in light of the adoption by Canadian securities regulators of parallel amendments to the MJDS in Canada for U.S. issuers.

EFFECTIVE DATE: January 4, 1994.

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Amendments to Form F–9

On November 3, 1993, the Commission adopted several amendments to the MJDS.[1] In the November 3 Release, the Commission stated that the amendments to Form F–9[2] relating to recognition of investment grade ratings by securities rating organizations recognized by Canadian securities regulators would not become effective until such time as the Canadian securities regulators had adopted parallel amendments to the multijurisdictional disclosure system in Canada for U.S. issuers.

The Canadian securities regulators have now adopted such amendments with an effective date of December 31, 1993. As a result, the Commission is publishing this release to make effective the amendments to Form F–9 described above.

II. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605], at the time the Commission issued its release proposing the amendments being adopted hereby, the Chairman of the Commission certified that such amendments will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, was attached as an Appendix to such release and was published in the **Federal Register**.

III. Cost-Benefit Analysis

No specific data were provided in response to the Commission's request regarding the costs and benefits of the amendments being adopted today. Some commenters indicated that these amendments would save Canadian issuers the expense of obtaining a securities rating from those rating organizations currently specified under Form F–9.

[1] Securities Act Release No. 7025 [November 3, 1993] [58 FR 62028] [the "November 3 Release").

[2] 17 CFR 239.39.

IV. Effective Date

The amendments to Form F–9 shall be effective on the date of publication in the **Federal Register** in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

V. Statutory Bases

The amendments to the Commission's rule and form are being proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, and Sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Part 239

Peporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

1. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78o(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

2. By amending § 239.39 by revising the Instruction following paragraph (a)(2) to read as follows:

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

(a) * * *

(2) * * *

Instruction

Securities shall be "investment grade" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) or at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators, as the same may be amended from time to time) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

* * * * *

3. By amending Form F–9 (§ 239.39) by revising the Instruction following paragraph A. of General Instruction I, to read as follows:

Note: Form F–9 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–9

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–9

A. * * *

Instruction Securities shall be "investment grade" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act")) or at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators, as the same may be amended from time to time) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

* * * * *

By the Commission.

Dated: December 27, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–14 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket Nos. RM87–5–012 and CP87–238–003; Order No. 497–E]

Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines and Ozark Gas Transmission System; Order on Rehearing and Extending Sunset Date

Issued December 23, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule; order on rehearing and extending sunset date.

SUMMARY: This order rules on requests for rehearing of the Commission's order on remand issued following the decision of the U.S. Court of Appeals for

the D.C. Circuit which upheld in substantial part the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. The order on remand, among other things, narrowed the scope of the contemporaneous disclosure requirement by pipelines with respect to sales and marketing information and extended the sunset date of the final rule's reporting requirements. The order on rehearing, among other things, deletes the remaining categories of gas sales and marketing information from the contemporaneous disclosure requirement and further extends the sunset date.

EFFECTIVE DATE: This final rule is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: David Faerberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1275.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

On December 4, 1992, the Commission issued Order No. 497–D[1] in response to the opinion issued by the United States Court of Appeals for the District of Columbia Circuit in *Tenneco Gas* v. *Federal Energy Regulatory Commission (Tenneco)*[2] which upheld in substantial part Order Nos. 497 and 497–A,[3] the Commission's final rule governing the relationship between interstate natural gas pipelines and their marketing or brokering affiliates. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f)[4] of the Commission's regulations to gas sales and marketing information. Further, in its review of Ozark Gas Transmission System (Ozark),[5] a consolidated case, the court found that, based upon the evidence in the record, the Commission erred in finding Order No. 497 applicable to Ozark Gas Transmission System (Ozark), a joint venture. Accordingly, the court remanded the proceeding to the Commission. In response to the court's remand, the Commission issued Order No. 497–D which revised § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information, and found that Ozark is subject to the requirements of Order No. 497. In addition, Order No. 497–D extended the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993. However, the order stated that 90 days after the Commission has determined that an individual pipeline is in full compliance with Order No. 636,[6] the pipeline would not be required to submit the affiliated transportation log (FERC Form No. 592) to the Commission. The order stated that the pipeline must continue to maintain and provide its affiliated transportation log information on its electronic bulletin board (EBB).

This order (1) deletes the remaining categories of gas sales and marketing information from the contemporaneous disclosure requirement, (2) affirms the Commission's decision to eliminate the filing of Form 592, (3) affirms the Commission's decision that Ozark is subject to Order No. 497, (4) rejects Hadson Gas Systems, Inc.'s (Hadson) argument that the Commission's procedures for acting on §§ 161.3(j) and 284.286(e) filings prohibit public participation, (5) requires all future standards of conduct filings made under section 161.3(j) and all requests for waiver of the standards to include form notices, suitable for publishing in the **Federal Register**, (6) clarifies what type of employee is an "operating employee" for purposes of the Order No. 497 regulations, and (7) extends the sunset date of Order No. 497's reporting requirements until June 30, 1994, because concurrently with this order the Commission is issuing a notice of proposed rulemaking (NOPR) in Docket No. RM94–6–000 which proposes to revise Order No. 497's reporting requirements.

II. Public Reporting Burden

The public reporting burden under FERC–592, Marketing Affiliates of Interstate Pipelines, as revised by Order Nos. 497–D and 636, is expected to remain unchanged. Currently, the reporting burden is estimated to average 9.94 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Annual reporting requirements under FERC–592 are expected to total 7,882 hours, based on an estimated 793 responses from approximately 61 respondents.

Issued concurrently with this order is a NOPR in Docket No. RM94–6–000.[7] The NOPR proposes to significantly reduce the FERC–592 information reporting requirements and burden. Extending the sunset date for FERC–592 through June 30, 1994, will give interested parties and the Commission time to evaluate the NOPR comments and allow the Commission time to prepare a final rule.

Interested persons may send comments regarding the burden estimates or any other aspect of this information collection, including suggestions for reductions to the reporting burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]. Comments on these reporting requirements may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, D.C. 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880].

Hard copy and/or electronic formats for any data collection required by this order may be obtained by contacting: La Dorn Systems Corporation, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

III. Background

On July 21, 1992, the United States Court of Appeals for the District of Columbia Circuit issued its opinion in *Tenneco*, upholding in substantial part Order Nos. 497 and 497–A. However, the court found that the Commission did not adequately justify its extension of the contemporaneous disclosure requirement of § 161.3(f) to gas sales and marketing information. The court stated that "[o]n remand the Commission should reconsider its justification for applying [the contemporaneous disclosure requirement of § 161.3(f)] to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[8] In a related matter, the court stated that "[a]pplying [the contemporaneous disclosure requirement of § 161.3(f)] to released-gas information prior to the issuance of Order No. 497–A might well be fundamentally unfair" and that the Commission could avoid "the expense of litigation over this issue by announcing that it will not retroactively apply [§ 161.3(f)] to released gas information."[9] Further, in its review of *Ozark*, the court found that the Commission erred in finding Order No. 497 applicable to Ozark, a joint venture partnership composed of subsidiaries of four natural gas pipelines, each of which has a 25 percent ownership and voting interest. The court stated that the Commission failed to consider relevant evidence regarding the ability of the owner pipelines with affiliates to control the partnership.

On December 4, 1992, in response to the court's opinion in *Tenneco*, the Commission issued Order No. 497–D, an order on remand and extending sunset date. Based upon the court's opinion, and in light of the structural changes in the gas industry that were to occur as a result of Order No. 636, the Commission revised § 161.3(f) to narrow the scope of the contemporaneous disclosure requirement with respect to sales and marketing information. Under revised standard (f), pipelines are still required to contemporaneously disclose information related to transportation of natural gas. However, with respect to information related to gas sales or marketing, pipelines are only required to disclose information relating to sales or marketing on its system or the system of an affiliated pipeline. There are two categories of gas sales or marketing information that are not required to be contemporaneously disclosed: (1) Gas sales or marketing information that is available from public sources and (2) information related to gas sales off a pipeline's system, but not involving the system of an affiliated pipeline. Section 161.3(f) now reads:

> To the extent [a pipeline] provides to a marketing affiliate information related to transportation of natural gas, or information related to gas sales or gas marketing on its system or the system of an affiliated pipeline, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system. Pipelines are not required to contemporaneously disclose: (1) Gas sales or gas marketing information that is available from public sources and (2) Information related to gas sales or gas marketing off a pipeline's system, but not involving the system of an affiliated pipeline.

In a related matter, based upon the court's advice, the Commission stated that it will not retroactively apply the contemporaneous disclosure requirement of standard (f) to released gas information, that is, standard (f)'s application to released gas information would begin with the issuance of Order No. 497–A.

With respect to the issue of Order No. 497's applicability to Ozark, the Commission found that despite the fact that there is a unanimous approval provision in the Ozark partnership agreement, the two partners that have parent companies with marketing affiliates shipping on Ozark's line can still exercise "control" as defined by § 161.2 of the Commission's regulations.[10] The Commission found that even with a unanimous approval provision in the partnership agreement, Ozark Pipeline Company and Tennessee Ozark Gas Company, the two partners whose parent companies have marketing affiliates, can each act alone to direct or effect the management or policies of Ozark Gas Transmission System. The Commission stated that since there is a unanimous approval requirement, each partner has veto power over any decision by simply withholding its vote. The Commission stated that such power could be exercised in a manner that could unduly prefer the marketing affiliates related to Ozark's partners, for example, by either or both partners refusing to engage in an action that would benefit an independent marketer in competition with one of Ozark's partners' affiliates. The Commission stated that it believed that control can be exercised in a negative manner, *i.e.*, by withholding approval of a specific policy or transaction, as well as in an affirmative manner, *i.e.*, by actually approving a decision that would unduly prefer a marketing affiliate.

Finally, the Commission extended the sunset date of Order No. 497's reporting requirements from December 31, 1992, until December 31, 1993, because of the important role they will play in the regulatory structure created by Order No. 636. The Commission stated that although Order No. 636 does not change the requirements governing the relationship between pipelines and their marketing affiliates, the structural changes engendered by full compliance with the rule would remove the need to continue filing the affiliated transportation log (FERC Form No. 592) with the Commission. The Commission stated that Order No. 636's Electronic Bulletin Board (EBB) requirements ensure certain minimum standards for maintaining and communicating information about a pipeline's available capacity, current capacity release offers, and affiliate marketing-related information. The order stated that unless further case-specific action is taken by the Commission, 90 days after the Commission has determined that a pipeline is in full compliance with the requirements of Order No. 636, that pipeline will not be required to submit Form 592 to the Commission. The order further stated that the pipeline must continue to maintain and to provide its affiliated transportation log information on its EBB. Finally, the order stated, in practice, this means that pipelines remain subject to the standards of conduct and will continue to maintain the information mandated by Order Nos.

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[1] 57 FR 58978 (December 14, 1992), III FERC Stats. & Regs. ¶ 30,958 (1992).

[2] 969 F.2d 1187 (D.C. Cir. 1992).

[3] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), *order on rehearing*, Order No. 497–A, 54 FR 52781 (December 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), *order extending sunset date*, Order No. 497–B, 55 FR 53291 (December 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), *order extending sunset date and amending final rule*, Order No. 497–C, 57 FR 9 (January 2, 1992), III FERC Stats. & Regs ¶ 30,934 (1991), reh'g denied, 57 FR 5815, 58 FERC ¶ 61,139 (1992), *aff'd in part and remanded in part*, Tenneco Gas v. Federal Energy Regulatory Commission, 969 F.2d 1187 (D.C. Cir. 1992).

[4] 18 CFR 161.3(f).

[5] 49 FERC ¶ 61,247 (1989).

[6] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (April 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (April 8, 1992), *order on reh'g*, Order No. 636–A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992); *order on reh'g*, Order No. 636–B, 57 FR 57911 (December 8, 1992), 61 FERC ¶ 61,272 (1992), *reh'g denied*, 62 FERC ¶ 61,007 (January 8, 1993).

[7] Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions

[8] *Tenneco Gas* v. *Federal Energy Regulatory Commission*, 969 F.2d 1187, 1201 (DC Cir. 1992).

[9] Id. at 1202.

[10] 18 CFR 161.2.

497 and 636, but will not be required to file Form 592 with the Commission.

On January 4, 1993, requests for rehearing were filed by the Indicated Parties (consisting of Conoco, Inc., Anadarko Petroleum Corp., Chevron U.S.A., Inc., and Texaco Inc.), Hadson Gas Systems, Inc. (Hadson), National Fuel Gas Supply Corporation (National Fuel), the Interstate Natural Gas Association of America (INGAA), ANR Pipeline Company and Colorado Interstate Gas Company (ANR and CIG), the Joint Parties (consisting of Williams Gas Marketing Company, Consolidated Natural Gas Company, Midcon Marketing Corp., and Enron Gas Marketing, Inc.), CNG Transmission Corporation (CNG), Northwest Pipeline Corporation (Northwest), and Ozark Gas Transmission System (Ozark). Their requests are discussed below.

IV. Discussion

A. The Revised Contemporaneous Disclosure Requirement

1. Requests for Rehearing

A number of pipelines (National Fuel, INGAA, ANR, CIG, Tenneco, CNG, and Northwest) and the Joint Parties assert that the Commission should eliminate from § 161.3(f) the requirement that sales and marketing information given to a marketing affiliate must be contemporaneously disclosed to all potential shippers because it is inconsistent with the court's decision in *Tenneco*.

The pipelines and the Joint Parties contend that the revised standard provides a limited exclusion for sales and marketing information that is available from public sources or is related to off-system sales or marketing transactions not involving the system of an affiliated pipeline but there is no explanation in Order No. 497–D as to how so limited an exclusion can be interpreted as responsive to the court's remand. The pipelines and Joint Parties argue that the Commission's assumption that pipelines obtain sales and marketing information in connection with or when combined with transportation is not responsive to the court's directive to provide an independent justification for barring the exchange of sales or marketing information that is wholly unrelated to transportation information. The pipelines and the Joint Parties submit that Order No. 497–D evidences neither the independent justification required by the court, nor a consideration of the action on remand which was suggested by the court. The pipelines and the Joint Parties assert that the Commission has not examined the relevant data and articulated a satisfactory explanation for its action including a rational connection between the facts found and the choice made. They argue that the result is an arbitrary and capricious order which is unsupported by substantial evidence.

The pipelines and the Joint Parties contend that Order No. 497–D is inconsistent with Order No. 636. They assert that the Commission has unequivocally found in Order No. 636 that sales services are competitive and has set in motion a restructuring of the pipeline industry that is intended to result in competition for sales on an even basis by producers, pipelines, and marketers. The pipelines and the Joint Parties submit that Order No. 497–D is at odds with Order No. 636 in its assumption (which is unsupported by record evidence) that pipelines possess sales and marketing information which flows from the pipelines' anticompetitive market power. They state that, as the Commission documented in Order No. 636, most pipeline industry market power has already been eliminated, and some individual companies have completed the transition to competitiveness by unbundling. They further state that to remove the last vestiges of pipeline market power, as the Commission sees it in Order No. 636, an industry-wide unbundling is to be in place by the start of the 1993–94 heating season.

The pipelines and the Joint Parties assert that in light of unbundling under Order No. 636, it is inexplicable how the Commission could see a need to re-promulgate standard (f) with regard to sales and marketing information. They state that when Order No. 497 was issued, prior to unbundling, the Commission's intent was to prevent preferential treatment of an affiliated marketer by an interstate pipeline in the provision of transportation services. The pipelines and the Joint Parties state that, as recognized by the Commission, pipelines have no monopoly power over sales. They assert that it is only a pipeline's transportation function which even arguably puts it in a position of being able to favor its own marketing affiliates. Consequently, they argue that the standards of conduct under Order No. 497 should only apply to pipeline transportation information.

The pipelines and the Joint Parties contend that the new contemporaneous disclosure requirement in Order No. 497–D imposes unnecessary and unreasonable burdens upon pipelines. They state that, as Chair Moler noted in her dissent to Order No. 497–D, the standards of conduct under Order No. 497 already preclude pipelines from disclosing to marketing affiliates any information obtained from non-affiliated shippers, or otherwise giving any advantages or preferences to their marketing affiliates in the provision of transportation service. The pipelines and the Joint Parties assert that these requirements effectively prevent pipelines from using any remaining market power they have over transportation services to benefit their marketing affiliates, and make the Order No. 497–D disclosure requirements unnecessary. The pipelines and the Joint Parties do not believe that in light of all of the current competition in the natural gas industry, pipelines have significant market power over transportation service. However, to the extent there is any remaining market power over transportation service, the pipelines and the Joint Parties argue that the Order No. 497 standards of conduct adequately address this issue without a need for the contemporaneous disclosure requirement for sales and marketing information. They submit that the Commission's imposition of the Order No. 497–D contemporaneous disclosure requirement only serves to benefit pipeline competitors, and imposes unnecessary burdens on pipelines.

The pipelines and the Joint Parties argue that the Commission cites no evidence to support its critical conclusion that the sales and marketing information that a pipeline derives from its ongoing relationship with its customers is a product of either past or present anticompetitive market power. They assert that the Commission's error on this point is exacerbated by its lack of jurisdiction to regulate the disclosure of sales or marketing information at all. The pipelines and Joint Parties state, as the court noted, because the Commission is authorized to regulate only those practices that are unduly discriminatory or preferential, the Commission appears to lack the authority to prevent pipelines from preferring their affiliates with exclusive access to sales or marketing information unless that sort of preference is undue. The pipelines and Joint Parties contend that the Commission cannot resolve questions about the very existence of its authority based on nothing more than its sense that the informational advantages that a gas marketer derives from an affiliated pipeline result from anticompetitive market power rather than the economic efficiencies of vertical integration. The pipelines and the Joint Parties submit that the contemporaneous disclosure requirement also exceeds the Commission's lawful authority because the Commission is only empowered to act with respect to any transportation or sale of natural gas subject to the jurisdiction of the Commission. They state that the contemporaneous disclosure requirement apparently applies to the sharing of information regardless of whether a jurisdictional service is being performed. The pipelines and the Joint Parties assert that there is plainly no lawful basis for the Commission to extend its regulation to non-jurisdictional services.

The pipelines and the Joint Parties argue that even assuming that the pipeline generates certain sales and marketing information that is not publicly available, mere sharing of this information with an affiliate does not translate into a transportation advantage for an affiliate, *i.e.*, even if the pipeline informs an affiliate of a potential sales market, that does not mean that the pipeline can automatically provide the affiliate with the transportation capacity necessary to complete the deal. Indeed, they assert that the affording of such a preference is precluded under § 161.3(c) which states that a pipeline may not give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation, including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority. The pipelines and the Joint Parties contend that all the Commission's contemporaneous disclosure requirement does is to limit the flow of information in the market in a manner which hinders competition and serves no legitimate purpose.

The pipelines and the Joint Parties assert that with the issuance of Order No. 636, and the restructuring of all interstate pipelines, pipelines will no longer retain any transportation capacity. They state that Order No. 636 prohibits a pipeline from retaining or obtaining capacity downstream of the point of unbundling on its system except for storage needed for system management and balancing for no-notice service, and thus all capacity will be allocated to the pipeline's shippers. The pipelines and the Joint Parties state that with all of the pipeline's capacity in the hands of its shippers, the pipeline will have no control over when the capacity will become available. They state that availability will depend, to a large degree, on its release by firm shipper through the pipeline's capacity release program. Moreover, they state when the capacity does become available (either through the release program or as interruptible transportation), the pipeline will have no control over who will get the capacity. They state that the decision will be solely determined by price paid and other objective criteria as specified by the releasing shipper and/or in the pipeline's tariff. The pipelines and the Joint Parties submit that even if a pipeline knew of a particular gas supply and a demand for gas in a particular location and proceeded to pass that information on to its affiliate, no preferential treatment with respect to the provision of transportation services could result. The pipelines and the Joint Parties assert that as Order No. 636 has dispelled the potential for a pipeline to grant an undue preference with respect to transportation services (the purported reason behind Order No. 497), the Commission's newly revised contemporaneous disclosure requirement constitutes nothing more than an arbitrary prohibition against the normal interactions between affiliates, in a manner which places pipeline marketing affiliates at an unjustified disadvantage.

Northwest requests that the Commission clarify that it will not apply standard (f) to any conduct regarding sales or marketing information prior to the effective date of Order No. 497–D.

Tenneco requests that the Commission clarify that the contemporaneous disclosure requirement for information regarding on-system sales and marketing information conveyed by the pipeline to its marketing affiliate applies only to the transmission of information by the transportation personnel of the pipeline and not to transmission of information by the unbundled merchant personnel of the pipeline. Tenneco believes that such a clarification is reasonable because in the post-Order No. 636 environment the unbundled merchant will be the functional equivalent of a marketing affiliate because it will not have market power over the sale of natural gas. Further, the pipeline merchant personnel will be required to operate under the exact same restraints with respect to the pipeline transportation personnel that marketing affiliate personnel are required to abide by.

2. Commission Ruling

In *Tenneco*, the court found that "the contemporaneous disclosure requirement—at least as it affects information regarding transportation, where pipelines have monopolistic market power—reflects a reasonable effort to promote a competitive market without significantly harming existing efficiencies."[11] However, with respect to the contemporaneous disclosure of gas sales and marketing information, the court stated that based on the record it was "unable to conclude that standard (f)'s application to sales and marketing is justified; nor can we be confident that FERC possessed the statutory authority to regulate the transfer of sales and marketing information from pipelines to their affiliates."[12] The court remanded the proceeding to the Commission and stated that "[o]n remand, the Commission should consider its justification for applying standard (f) to sales and marketing information and ensure that the final requirement is reasonably tailored to meet the Commission's goals of improving the market and benefitting consumers, as well as preventing undue discrimination."[13] Upon further review of the issues raised with respect to the disclosure of certain categories of sales and marketing information and in light of the court's findings, the substantive protection of other standards of conduct (particularly standard(e)),[14] structural changes in the industry, and the restructuring mandated by Order No. 636, the Commission will delete from the contemporaneous disclosure requirement of standard (f) the remaining categories of gas sales and marketing information. Pipelines with marketing affiliates will only be required to contemporaneously disclose information related to the transportation of natural gas. The Commission now believes that to impose a general requirement of contemporaneous disclosure of non-transportation information could have a chilling effect on pipelines marketing their gas and does not with any degree of certainty improve the market nor benefit consumers. But while we are limiting the reach of standard (f), pipelines are not relieved of their obligations to refrain from unduly discriminatory conduct that is prohibited under the Natural Gas Act or the Natural Gas Policy Act, whether or not that conduct is covered by standard (f) or any of the other standards. Moreover, while the Commission does not choose to continue a standard requiring contemporaneous disclosure of certain categories of sales and marketing information at this time, this does not bar the Commission from examining

[11] Tenneco at 1199.

[12] *Id.* at 1199.

[13] *Id.* at 1201.

[14] Section 161.3(e) states that a pipeline "may not disclose to its affiliate any information the pipeline receives from a nonaffiliated shipper or potential nonaffiliated shipper."

such questions, if relevant and necessary, in specific cases.

The court questioned standard (f)'s applicability to information generated by the pipeline "from public sources, or other sources entirely unrelated to a pipeline's transportation service." [15] The court also questioned the Commission's assertion "that the sales and marketing information pipelines use today is a result of their *'past* monopoly power over transportation.'" [16] Noting that the marketing of gas depended on current—not past—information, the court found the Commission's position "counter-intuitive." [17] The court stated:

> The Commission appears to believe that *any* advantage a pipeline gives its marketing affiliate is improper * * *. But advantages a pipeline gives its affiliate are improper only to the extent that they flow from the pipeline's anti-competitive market power.[18]

Examined in this light, the Commission now believes that standard (f) should be narrowed to affect only the disclosure of information related to the transportation of gas.

Historically, the pipeline collected and maintained extensive data on natural gas supply and markets. As the primary—if not exclusive—buyer and seller of natural gas, pipelines had all of the data on production, consumption and markets for the areas they served. However, pipelines today are not the dominant sellers of natural gas they were a decade ago. About 80 percent of the natural gas pipelines deliver today is shipper-owned gas. Indeed, after the Order No. 636-mandated restructuring process is complete, nearly 100 percent of natural gas deliveries will be shipper-owned gas. Also, other structural changes in the industry further weaken the pipeline's knowledge base. Increasingly, contract pricing relies on nationwide competitive and financial market determinations, such as the NYMEX futures market, and published spot prices. Also, Order No. 636 establishes a short-term capacity release program for transactions less than 30 days in duration where even the EBB bidding requirements are waived. Pipelines will be afforded substantially less information about these types of transactions than traditionally required. For these transactions pipelines know where the gas is entering their system, and where it is redelivered, but may know nothing about the extent of reserves, the producers' or consumers' circumstances, or the commercial terms of the sale itself. Often the pipeline does not even know the identity of the ultimate consumer. Indeed the theory underlying Order No. 636 is that shippers would have more access to producers and marketers to make their decisions.

But just as important is the fact that other shippers and producers will know where gas is entering and being redelivered throughout the system. Order No. 636 requires that this type of information be provided during the restructuring process, and through the EBB posting requirement required during the right-of-first-refusal, and capacity release programs.

To the extent that a pipeline collects sales and marketing information from public sources, or from sources outside its transportation role, release of this information to its marketing affiliate generally does not in any way relate to the pipeline's monopoly power over transportation. Unnecessary interference with communications between a pipeline and its marketing affiliates would actually reduce competition, by inhibiting one segment of the industry from vigorously competing with other natural gas sellers. To do otherwise would create an unlevel playing field tilted against pipeline merchant service units or marketing affiliates and towards producers, nonaffiliated marketers, local distribution companies (LDCs), and others. Rather than a balanced approach, this tilted playing field would give an unfair advantage to non-pipeline merchants.

The pipeline obtains sales and marketing information from the public domain, its bundled merchant function or its transportation activities. The public domain information should not trigger standard (f), following the *Tenneco* court's reasoning. The bundled merchant information is outdated and does not meet the current information standard mentioned by the court. And finally, the transportation-generated sales and marketing information cannot be shared with the affiliate in the first instance given the standard (e) prohibition.[19]

Standards (f) and (e) are compatible with respect to transportation information—pipelines could generate and communicate transportation information to their marketing affiliates without violating standard (e). For example, as a result of its own engineering flow analysis, a pipeline could develop information concerning capacity availability. If that information is shared with a marketing affiliate, standard (f) is triggered. But since the information was not obtained by the pipeline from a nonaffiliated shipper or potential shipper, standard (e) is not violated.

In addition to the protections provided by standard (e), standard (c) also provides an adequate safeguard against affiliate abuse. Standard (c) states:

> [A pipeline] may not, through a tariff provision or otherwise, give its marketing affiliate preference over nonaffiliated customers in matters relating to part 284 transportation including, but not limited to, scheduling, balancing, transportation, storage, or curtailment priority.[20]

While these reasons themselves compel modification of standard (f), further changes in the industry structure, and in pipelines' operations mandated by Order No. 636 provide additional support. Order No. 636 will both level the playing field for all competitors, and increase the amount of capacity information available from EBBS to all potential shippers—marketing affiliates and all other sellers, marketers, transporters and consumers alike.

First, Order No. 636 requires pipelines to unbundle their own sales from the transportation service. To do this each pipeline is required to establish separate operating staffs for pipeline (transportation) operations and merchant operations (merchant function operating unit). Each pipeline is also required to treat its merchant function operating unit as if it were a marketing affiliate, for purposes of compliance with the standards of conduct and reporting requirements of Order No. 497, *et seq.* In practice, many pipelines are establishing separate affiliates to provide the merchant services required by Order No. 636. This change should further reduce the likelihood that a pipeline would even have sales or marketing information to pass along to its marketing affiliate (or merchant function operating unit). Indeed, whatever sales and marketing information a pipeline would have developed from public sources would, for the most part, be available to all other competitors on a similar basis.

In *Tenneco* the court found

> [N]o evidence in the record—and FERC points to none—for the assertion that the sales and marketing information pipelines use today is a result of their "*past* monopoly over transportation." The [FERC's] assertion strikes us as counter-intuitive. The sales and marketing of gas would seem to depend on *current* information—a surmise that *is* supported by evidence in the record that pipelines' sales and marketing information includes information developed through ongoing customer calls and reviews of filings with state and federal regulatory agencies, trade publications, and market reports.[21]

This represents a significant change from past practices. When pipelines were the primary merchants in the interstate marketplace, merchant services were provided under long-term contracts on an "on demand" basis. While the pipelines had all of the industry's information available to them, and operational control over all of the functions, this information was aggregated over both time (monthly) and markets. Increasingly, today's merchant services focus on individual customers and are adjustable on a daily or even hourly basis. The information needed to drive the old-style merchant services is neither compatible with nor sufficient to meet the demands of today's marketplace.

Second, all future sales of gas will take place at pipeline receipt or pooling points. This requires that the pipeline, acting as a merchant, and the pipeline's marketing affiliates must sell gas at the same point on the system as other gas sellers. This places all other natural gas sellers on a level playing field with marketing affiliates and the pipeline as a merchant. And because the Commission has mandated that pipelines allow all shippers flexible receipt, pooling, and delivery point authority, all shippers should have equal access to available capacity throughout the system. The designation of pooling points, the pipeline's point of sale for merchant services, and the terms and conditions governing flexible point authority are all subject to negotiations among the pipeline and the parties in individual restructuring proceedings—not subject to the pipeline's sole discretion to decide. The result of negotiations over these significant operating terms and conditions must ultimately be filed by the pipelines as part of their FERC tariffs and apply equitably to all shippers whether they purchase from the pipeline or anyone else.

Third, pipelines are encouraged in the Order No. 636 restructuring process to minimize transition costs by assigning—on a voluntary non-discriminatory basis—gas supply contracts to their former sales customers. Pipelines are also allowed 100 percent recovery of transition costs. These transition provisions are designed to fairly distribute the burden of the historic legacy of uncompetitive pipeline purchase arrangements. Coupled with removal of burdensome regulatory pricing structures, pipeline merchant function operating units should be left in a position to compete fairly with other merchants without being saddled with the costs of uncompetitive purchase contracts.

Fourth, Order No. 636 requires pipelines to establish and maintain EBBs and requires that EBB personnel function independently of the gas marketing personnel to the maximum extent practicable. Identification of some of the data to be maintained on the EBB is the subject of negotiation between the pipeline and the parties to the restructuring proceedings. However, other data are required by Order No. 636 to be on the EBB at all times, *e.g.*, length of release, rate, quantity, criteria for bid evaluation (which criteria was determined during the restructuring proceeding) and the pipeline must identify all capacity on its system which is available directly from the pipeline. Implementation of these EBBs will give all shippers and potential shippers instant access to the most current information about the availability of pipeline capacity.

Finally, Order No. 636 creates a capacity releasing program. Under this program, firm shippers of the pipeline are allowed to resell their capacity, in whole or in part, and under terms and conditions they choose, to the highest bidding replacement shipper. Releasing shippers are also allowed to include specific provisions for the recall of released capacity, *e.g.*, when temperatures drop below a pre-set minimum level. Releases may be either permanent or temporary, firm or interruptible. Coupled with flexible receipt and delivery point authority, the capacity release program will allow existing firm shippers to sell their capacity in the pipeline to others. This will create competition for capacity against the pipeline itself. Although the pipeline would continue to operate the system, it would no longer be in sole control over who has access to capacity. Again, the pipelines and their shippers are expected to work together in implementing the Order No. 636 restructuring process to decide how the pipeline will operate in the new unbundled world.

With respect to Northwest's request, the Commission clarifies that it will not apply standard (f) to any conduct regarding sales or marketing information prior to the effective date of Order No. 497–D.

Tenneco's request that the Commission clarify that the contemporaneous disclosure requirement for information regarding on-system sales and marketing information conveyed by the pipeline to its marketing affiliate applies only to the transmission of information by the transportation personnel of the pipeline and not to transmission of information by the unbundled merchant personnel of the pipeline is moot. The Commission notes, however, that standard (f), in any form, applies only to the pipeline in its relationship with its marketing affiliate, and now, because of Order No. 636, its unbundled merchant division is the functional equivalent of a marketing affiliate.

B. The Elimination of the Filing of Form 592

1. Requests for Rehearing

The Indicated Parties assert that the Commission erred in permitting interstate pipelines to cease to submit the affiliated transportation log (Form 592) 90 days after the Commission has determined that an individual pipeline is in full compliance with Order No. 636. The Indicated Parties submit that the information available on Form 592 may be more essential after a pipeline complies fully with Order No. 636 than it is now. The Indicated Parties state that following full compliance with Order No. 636, an interstate pipeline will be permitted to sell natural gas at negotiated prices. In this environment, the Indicated Parties argue that such a pipeline may be motivated to favor its own sales of gas as well as sales made by its marketing affiliates. For example, the Indicated Parties contend that to obtain a sale at the expense of other sellers, a pipeline could sell its gas at a loss or a very low price, but charge the full transportation rate. The Indicated Parties assert that this would allow the pipeline to avoid the correlative discount rule under § 161.3(i), and charge all other sellers the maximum transportation rate rather than discounting to obtain the transportation business. The Indicated Parties argue that to remain competitive, non-affiliated sellers would be forced to reduce their gas prices below what they would charge if the pipeline discounted its transportation rates rather than the price at which the pipeline merchant function sells its gas. The Indicated Parties contend that the non-affiliated sellers would suffer a loss because they would be forced to sell their gas at a loss and pay the full transportation rate. The

[15] *Id.* at 1200.
[16] *Id.*
[17] *Id.*
[18] *Id.* at 1201.
[19] The only sales and marketing information which could result from a pipeline abusing its monopoly transportation position by sharing with a marketing affiliate would come from nonaffiliated shippers or potential shippers. Since standard (e) prohibits the pipeline from sharing any information derived from those sources with its marketing affiliate, the act of sharing such sales and marketing information both violates standard (e) and triggers the requirement to comply with standard (f).
[20] 18 CFR 161.3(c).
[21] *Id.* at 1200.

Indicated Parties assert that the pipeline, however, would not suffer the same economic detriment because it would receive the full transportation rate on the movement of its gas. The Indicated Parties submit that they and other competing merchants will be unable to monitor and detect such favoritism without the information provided on Form 592.

The Indicated Parties assert that the difficulty with the elimination of the filing of Form 592 is that the Commission and the industry have no experience with the operation of EBBs by a pipeline in full compliance with Order No. 636. The Indicated Parties argue that the Commission cannot find that the EBBs will prove to be a reliable and accurate source of the information now supplied on Form 592. The Indicated Parties state that in light of this practical experience, the Commission recently requested comments on the configuration and operation of EBBs in Docket No. RM93–4–000. The Indicated Parties state that in the list of questions on which comments were requested the Commission asked whether "any of this information [available on the EBBs can] be used to fulfill existing FERC reporting requirements?" The Indicated Parties contend that this request demonstrates that the EBBs are an unproven means of communicating the information now available on Form 592. The Indicated Parties state that even though it had requested comments on whether it could eliminate any of its current reporting requirements, the Commission, without even waiting for an answer to its question, erroneously assumed in Order No. 497–D that the answer would be "yes" and eliminated one of its reporting requirements. The Indicated Parties submit that the disparity between the requests for comments and the elimination of a reporting requirement in Order No. 497–D demonstrates that the Commission acted in an arbitrary and capricious manner without substantial evidence in eliminating the filing of Form 592. The Indicated Parties assert that the Commission has failed to protect the public interest with its elimination of the requirement that pipelines file Form 592. The Indicated Parties argue that the Commission should grant rehearing and reinstate the requirement that pipelines file Form 592.

Hadson also asserts that the Commission erred in eliminating the filing of Form 592. Hadson states that under Order No. 636 pipelines will be able to conduct an essentially deregulated gas merchant business under the pipeline's corporate entity and while sharing key personnel. Hadson contends that this arrangement, which it does not oppose in and of itself, nonetheless creates additional opportunities for the pipeline-transporter to favor both its own merchant division as well as its affiliates and that this increases rather than diminishes the need for public scrutiny. Hadson argues that, at a minimum, deregulating the pipeline-merchant can certainly not be invoked as grounds for a decrease in the need for public monitoring by the industry watchdog. Finally, Hadson notes that even requiring the same information to be disclosed on an EBB is materially different from requiring the information to be filed with the Commission under the Natural Gas Act since filings with the Commission are subject to 18 U.S.C. 1001 while postings on an EBB are probably not.

Tenneco asserts that while the Commission recognized in Order No. 497–D that the EBB requirements in Order No. 636 obviate the need for pipelines to file Form 592 with the Commission, the Commission failed to recognize that certain information currently required in Form 592 will have little use to anyone in the post-Order No. 636 world.

Tenneco states that Item Nos. 7 and 8 require that a pipeline report the position of its marketing affiliate in the pipeline's transportation queue and the total number of requests in the queue respectively. Tenneco submits that in the unbundled world pipelines will allocate available capacity among requesting shippers not on a first-come, first-served basis, but on the basis of the relative value of the request to the pipeline. Tenneco states that the value of the requests for transportation will involve a calculation based on the price offered and the term of the request, and the precise method of determining which offer has the highest value to the pipeline will be stated in the pipeline's tariff. Tenneco asserts that without a first-come, first-served queue in effect, there is no advantage to be gained by maintaining these two information requirements. Tenneco further asserts that the pipeline capacity release programs will provide yet another avenue through which shippers desiring firm transportation capacity can obtain it, thus further reducing the utility of the required information. Tenneco contends that these changes brought about by Order No. 636 will thus eliminate the need for pipelines to report the queue position of their marketing affiliates and the total number of requests in the queue.

Tenneco states that Item Nos. 23 and 24 require pipelines to report whether or not the pipeline will receive take-or-pay credits for transporting an affiliate's gas and what percentage of the gas transported will be subject to credit. Tenneco states that because the Commission's take-or-pay crediting program terminated on December 31, 1990, pipelines have not been able to receive take-or-pay credits since December 31, 1990. Therefore, Tenneco asserts that maintaining this requirement serves no purpose.

Tenneco states that Item No. 32 requires pipelines to identify the location of the producing fields from which gas requested to be transported for an affiliate originates. Tenneco argues that with the implementation of flexible receipt and delivery points and capacity release, this information becomes useless. Tenneco contends that shippers will be using secondary receipt points on their own contracts and acquiring each other's capacity much more than they have historically. Tenneco asserts that this is precisely the outcome that the Commission is trying to bring about by mandating flexible receipt and delivery points and capacity release. Tenneco submits that with this increase in the number of transportation transactions that involve the use of points other than the primary receipt or delivery point of the entity requesting transportation, requiring pipelines to report this information serves no purpose.

Tenneco states that Record No. 3 requires pipelines to report requested receipt and delivery points for transportation requests of their marketing affiliates. Tenneco asserts that the advent of flexible receipt and delivery points renders this information useless. Tenneco argues that the marketing affiliate, like any other shipper, will have the firm right to use any receipt or delivery point on the system to the extent that capacity is available. Thus, Tenneco contends the utility of maintaining a list of requested receipt and delivery points is vastly diminished.

Because the information required by Item Nos. 7, 8, 23, 24, and 32 of Schedule 2 and all of Schedule 3 will no longer have value after full compliance with Order No. 636, Tenneco requests that the Commission clarify that this information need not be maintained on pipelines' EBBs. Tenneco asserts that eliminating the requirement to report it is consistent with the Commission's goal to decrease needlessly burdensome regulation. Tenneco requests expedited action on this issue as pipelines are currently

setting up their EBBs, and a swift affirmative response will enable the new EBBs to more accurately reflect the required information.

2. Commission Ruling

The Commission denies the Indicated Parties' and Hadson's requests for rehearing. Their arguments lose sight of the fact that the Form 592 information must still be provided electronically, thus allowing interested parties and the Commission staff to monitor the activities of pipelines and their affiliates and to initiate the appropriate action when evidence of discrimination in favor of affiliates exists. The Indicated Parties' concerns about obtaining reliable and accurate Form 592 information are unfounded. Section 250.16(g)(2) states that:

> An interstate pipeline must provide 24-hour access, by electronic means, to the data specified in paragraph (b)(2) of this section. Access to the information must be provided once the service has begun. A pipeline must, on a daily basis, either update the information or indicate that no changes have occurred in the log information.

Most pipelines satisfied this requirement through the use of EBBs in the past, and Order No. 636 now mandates EBBs. Interested parties have been receiving and will continue to receive the Form 592 information electronically. Thus, the Indicated Parties' argument that the Commission and the industry have no experience with EBBs is inaccurate. Moreover, the requirements of Order No. 636 ensure that each pipeline's Order No. 497 EBB must provide for: (a) Downloading by users; (b) daily back-up of information, which must be available for at least three years; (c) purging information on completed transactions from current files; (d) display of most recent entries ahead of information posted earlier; and (e) on-line help, a search function and a menu that permits users to separately access records in the transportation log and standards of conduct information.[22] These features allow shippers to take the information that is currently filed on Form 592s off the pipelines' EBBs and obtain access to the information up to three years after it is posted.[23] In these circumstances, the burden on the pipelines from filing Form 592s and the administrative burden on the Commission from collecting them outweighs any benefits of collecting the data in hard copy.

The Commission also does not believe that Hadson's argument relying on 18 U.S.C. 1001 is a valid reason for maintaining the Form 592 filing requirement. Section 1001 states:

> Whoever, in any matter within the jurisdiction of any department or agency of the United States knowingly and willfully falsifies, conceals or covers up by any trick, scheme, or device a material fact, or makes any false, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain false, fictitious or fraudulent statement or entry, shall be fined not more than $10,000 or imprisoned not more than five years, or both.

Hadson's argument implies that because a hard copy of the Form 592 information will not be filed with the Commission pipelines will knowingly provide inaccurate or incorrect information through electronic means. The Commission believes that the language of the statute is broad enough to cover electronic postings. However, in order to prevent any such fraudulent conduct, the Commission deems the electronic posting of the Form 592 information equivalent to a filing for purposes of 18 U.S.C. 1001.

Since contemporaneously with this order the Commission is issuing a Notice of Proposed Rulemaking (NOPR) which proposes to revise Order No. 497's reporting requirements, including Form 592, the Commission will not address Tenneco's request to delete certain parts of Form 592.

C. Application of Order No. 497 to Ozark

1. Request for Rehearing

Ozark asserts that the Commission's order on remand ignores the court's instructions requiring the Commission to consider the effect of Ozark's evidence on the question of control. Ozark contends that it simply relies upon an equally deficient rationale for concluding, without reference to any evidence, that Tennessee Ozark and Ozark Pipeline Corporation each, individually, "controls" Ozark, thereby making the marketing affiliates of those partners marketing affiliates of Ozark. Ozark submits that to avoid problems inherent in finding that these partners can exercise "affirmative control" over Ozark, the Commission concluded that they can exercise "negative control" by simply withholding their vote and vetoing any transportation transaction that would compete with their respective marketing affiliates.

Ozark argues that the ability to withhold a vote or "veto" any particular transaction does not exist as far as open access transportation arrangements are concerned. Ozark states that open access pipelines, including Ozark, are required by §§ 284.8(b) and 284.9(b) to transport natural gas on an open and non-discriminatory basis. Ozark asserts that it is clearly prohibited from taking actions that would unduly prefer the marketing affiliates of Ozark's partners and Ozark's partners have an obligation to the partnership to operate the pipeline within legal parameters.

Ozark submits that its Commission-approved firm and interruptible rate schedules establish the criteria which control who receives transportation service from Ozark. Ozark contends that decisions as to who will be permitted to ship on Ozark may not be made at the whim of a particular Ozark partner. Ozark asserts that if the tariff criteria are met, the request must be granted. Ozark states that, in fact, at a Management Committee meeting held on June 26, 1991, Ozark's Management Committee, consisting of representatives of each of the partners, voted unanimously to approve a resolution authorizing the President of Ozark or his designee to execute interruptible transportation agreements on behalf of Ozark. Thus, Ozark contends, each of the partners ceded to the Operator the authority to enter into interruptible transportation agreements. Ozark argues that no partnership vote is required and the Operator is bound by the tariff. Ozark asserts that it should be obvious that not only are Tennessee Ozark and Ozark Pipeline Corporation not free to veto transportation transactions but each has relinquished any right it might otherwise have to vote on such transactions.

Ozark submits that the record before the Commission shows an absence of control. Ozark asserts that the record before the Commission shows a complete absence of any vetoing of any transportation transaction by any Ozark partner, consistent with the delegation of authority to enter into such transportation agreements. Ozark argues that the Operator is required to act in accordance with its fiduciary responsibilities to the partnership, not inconsistent with those responsibilities. Ozark contends that the Commission's finding here that one partner could prefer its marketing affiliate by vetoing transportation for others is directly contrary to the Commission's prior findings in this case that "[t]here are no facts before us in this proceeding which indicate that Ozark has discriminated in offering transportation services to any party."[24]

Ozark submits that previously the Commission assumed that the Ozark partners would act together to provide

[22] 18 CFR 284.8(b)(4) and 284.9(b)(4).
[23] 18 CFR 284.8(b)(4) and 284.9(b)(4).

[24] *Citing*, Ozark Gas Transmission System, 43 FERC ¶ 61,443 at 62,106 (1988).

preferences to marketing affiliates of one of the partners or that one of the Ozark partners would be willing to grant preferences to their Ozark partners in the hopes of obtaining reciprocal preferences. Ozark states that here the Commission assumes that one of the partners will simply veto transactions that would benefit the partnership because the transaction might compete with a transaction of one of its affiliates. Ozark asserts that there is no evidence to support any such assumption. Ozark contends that to make such a finding the Commission would have to assume that Ozark would violate its tariff, the Commission's regulations, and Texas partnership law. Ozark argues that the Commission would also have to assume that its prior finding that there are no facts showing discrimination in Ozark's offering of transportation is wrong. Ozark submits that not one of these assumptions is logical, consistent with any information relating to Ozark, or supported by evidence in the record. Ozark asserts that all of the evidence shows that such control does not exist including the fact that numerous transportation transactions have been conducted by Ozark for independent marketers which compete with the marketing affiliates of Ozark partners.

Ozark states that its decisions as to who it will ship for are subject to review by this Commission and this Commission's complaint procedures. Ozark contends that if the Commission were to find that Ozark had engaged in such conduct, enforcement proceedings would commence and Ozark would either be ordered to provide the service required or its blanket certificate would be revoked.

Finally, Ozark argues that it does not control any of its individual partners, is not controlled by any of its individual partners, and is not under common control with any of its individual partners. It asserts that nothing in the record before the Commission suggests the contrary.

Ozark also contends that the Commission erred to the extent that it relied on the modified definition of "control." Ozark states that in Order No. 497–A the Commission modified the definition of "control" in § 161.2. Ozark states that on January 16, 1990, it sought rehearing of Order No. 497–A. Ozark states that the Commission issued an order granting rehearing for purpose of further consideration but the Commission has never, to the best of Ozark's knowledge, issued an order on the merits of Ozark's rehearing request. Ozark states that three years have passed and numerous orders utilizing the definition have issued, including the order in this proceeding, and it considers its request for rehearing as having been denied. However, to the extent that the Commission is applying the revised definition to support the result here, Ozark seeks rehearing.

Ozark asserts that the Commission's order is not at all clear whether it is relying upon the modified definition of "control" to support its decision here. If the Commission's decision rests at all on "whether acting alone or in conjunction with others" language, Ozark submits that the Commission's decision is in error. Ozark argues that the effect of the additional language is to establish "control" in a 1% voting interest owner of a corporation. Ozark asserts that the language creates an irrebuttable presumption of "control" by anyone holding at least a 10% voting interest in a corporation, contrary to the clear statement in the balance of the regulation that the presumption of control is rebuttable. Ozark contends these two effects result from the indisputable fact that any interest holder must act with the requisite plurality in order for any particular action to be taken by a corporation or a partnership. Ozark states that in its case unanimity is required for most actions so all partners must vote in the affirmative in order for particular action to be taken. Ozark asserts that the fact that unanimity is required, again, does not constitute control but, rather, evidences a lack of control. Accordingly, Ozark submits that the modified definition is inconsistent with the existence of a rebuttable presumption, is arbitrary and capricious, and lacks any basis in reasoned decisionmaking.

2. Commission Ruling

The Commission rejects Ozark's request for rehearing. Ozark argues that the Commission's definition of "control" is inconsistent with the existence of a rebuttable presumption. We disagree. Section 161.2 states that "control (including the terms 'controlling,' 'controlled by,' and 'under common control with') includes, but is not limited to, the possession, directly or indirectly and whether acting alone or in conjunction with others, of the authority to direct or cause the direction of the management or policies of a company. A voting interest of 10 percent or more creates a rebuttable presumption of control."[25] In Order No. 497–A, the Commission specifically addressed the issue of joint venture pipelines and stated that overlapping interests create an incentive to grant an affiliate preference.[26] The Commission applied the definition in section 161.2 to several pipelines that had requested rehearing, including High Island Offshore System, U–T Offshore System, Trailblazer Pipeline Company, Sea Robin Pipeline Company, Northern Border Pipeline Company and Great Lakes Gas Transmission Company.[27] In *Tenneco*, the court upheld the definition of control and the way in which the Commission applied it to Northern Border Pipeline Company. In considering Ozark's petition for review, the court remanded the Commission's *application* of the term "control" but not the definition of the term. Thus, Ozark's request for review of the definition of control is a collateral attack on Order No. 497–A and the Commission rejects it.

To consider whether there is control here, we will review all the evidence Ozark has submitted on the issue. On March 10, 1987, Ozark filed an application under section 7 of the Natural Gas Act for a certificate of public convenience and necessity. In that application, Ozark stated that it is a partnership and submitted its partnership agreement, which shows that Ozark is jointly owned by four partners,[28] that the partnership will be managed by a management committee, which will consist of equal representatives from each partner, and will be operated by OPGC. In addition, OPGC selects the President of Ozark, who also acts as the CEO and the Chairman of the management committee. On July 5, 1988, Ozark emphasized that its General Partnership agreement specifies that no action may be taken by the management committee except by unanimous approval. On January 3, 1993, Ozark presented, for the first time, a partial copy of a corporate resolution dated June 26, 1991. This states that "the President of Ozark or his designee is hereby authorized to execute interruptible transportation agreements on behalf of Ozark." Because Ozark's partners ceded to the President the authority to enter into interruptible transportation agreements, no partnership vote is required. All of Ozark's firm capacity is committed to Tennessee Gas Pipeline Company and Columbia Gas Transmission Corporation. Therefore, Ozark claims that its partners cannot "control" transportation either affirmatively or negatively through veto power.

We disagree. The partners still have authority to direct the management and policies of Ozark and could, at any time, revoke the authority over interruptible transportation from the President. Moreover, under the terms of the partnership agreement, OPGC selects the President of Ozark and operates Ozark. OPGC's marketing affiliates ship on Ozark. OPGC has the requisite control described in section 161.2 of the Commission's regulations because it operates Ozark and, through the President it selects, manages the pipeline.

In addition, "control" is not limited to authority over firm or interruptible transportation. Informal actions of the management committee or the partners could provide the marketing affiliates with significant advantages, such as non-public transportation information. For example, if Ozark intends to build a new pipeline under Part 284 of the Commission's regulations, the partners could convey that information to their marketing affiliates, and the marketing affiliates would have an advantage over nonaffiliated marketers in obtaining customers. Likewise, information with respect to the addition of new receipt of delivery points could be of significant advantage to the marketing affiliates.

Ozark also states that it has not discriminated in the past and that no Ozark partner has vetoed any transportation transactions. Ozark asserts that its operating structure together with its history should serve to successfully rebut a presumption of control. But the partners' ability to control the management and policies of the pipeline is not linked to whether Ozark has discriminated in the past. In Order No. 497, the Commission found sufficient anticompetitive conduct industry-wide to substantiate the need for the rule. The court upheld the rule in *Tenneco*. The Commission need not produce evidence of discrimination with respect to each pipeline to justify application of the rule to any one pipeline.

Finally, Ozark argues that it is subject to the undue discrimination provisions of section 4 of the NGA and therefore will not discriminate in favor of its affiliates.[29] Despite these prohibitions, the Commission found the need for additional guidelines to deter anticompetitive conduct and concluded in Order No. 497 that standards of conduct and reporting requirements were appropriate.[30] Ozark's argument that it should not be subject to Order No. 497 because it is subject to other regulations is inconsistent with the purposes of Order No. 497.

D. Standards of Conduct Filings

1. Request for Rehearing

Hadson asserts that the Commission's procedures for acting on §§ 161.3(j) and 284.286(e) filings are illegal. Hadson states that the Commission treats these filings as non-tariff filings which are assigned an MG docket prefix. Hadson states that according to § 161.3(j) the filings are made to enable shippers and the Commission to determine how the pipeline is complying with the substantive standards of conduct. Hadson submits that the filings cannot achieve this purpose, however, since they are withheld from public notice in the **Federal Register** and in the Commission's daily orders. Hadson contends that they are effectively concealed from public view in the great majority of cases since shippers and other interested members of the public have no way of knowing when to look to find a new or revised MG filing.

Hadson states that, moreover, the Commission has ruled that the MG filings are non-adversarial and that the Commission may therefore rely upon non-public and off-the-record communications in determining whether a pipeline is in compliance with the substantive standards or not.[31] Hadson states that the Commission has further ruled that no one may protest or intervene in the non-public proceedings. Hadson states that any attempt to assert that a compliance filing is not in compliance with the law will be redocketed in a new proceeding and treated as a complaint in which the erstwhile protestant bears the burden of conducting discovery to prove that a pipeline's compliance filing is not in compliance with the law, rather than the pipeline being responsible for showing compliance.[32]

Hadson argues that similar problems taint the filings under section 284.286 since Order No. 636 appears to generally incorporate the existing procedures and relies upon them to support the effective deregulation of the unbundled pipeline merchants under the Subpart J certificates. Hadson states that the basis for this conclusion is that Order No. 636 appears to maintain the dichotomy between tariff provisions (which presumably would be made in an MT or successor docket) and procedures (which filing requirement, the Commission states, would be similar to that of § 161.3(j)).[33] Hadson asserts that the primary difference between the new and the current procedures, and the only apparent reason for not incorporating § 161.3(j) along with the various other sections which were incorporated by reference, is that the new rules have deleted the statement that the filing will enable shippers and the Commission to determine how a pipeline is complying with the standards of conduct.

Hadson contends that the deletion of the phrase is apparently not accidental since it accurately reflects the fact that the new filing will not enable shippers or any other member of the public to (1) learn how a given pipeline defines "operating employee" or how it interprets the phrase "practicable," (2) receive notice of any such filing, (3) have an opportunity to comment thereon, or (4) obtain a decision based upon public evidence compiled in a public record in accordance with applicable law.

Hadson states that faced with the Commission's determination to leave the definitional difficulties to be resolved in the individual restructuring dockets, it did not seek judicial review of Order No. 636 on these issues and has diligently raised these points in its comments on various pipelines' proposed Order No. 636 compliance plans.

Hadson asserts that the issue here is whether the Commission may rely upon what Hadson calls the stealth procedures of section 161.3(j) for purposes of making its decision in this docket to eliminate the publicly available monitoring requirement. For

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[25] 18 CFR 161.2.

[26] Order No. 497–A at 31,593.

[27] 49 FERC ¶ 61,340 (1989).

[28] Ozark's owners are:

1. Ozark Gas Pipeline Corporation (OPGC), which is a direct subsidiary of USX Corporation. Other subsidiaries include, TXO Production Company, Marathon Oil Company and Delhi Gas Marketing Corporation. The activities of TXO Production Company, the marketing affiliate, have been subsumed into Marathon Oil Company. However, TXO Production Corporation still ships on Ozark, as does Delhi Gas Marketing Corporation, another marketing affiliate.

2. Tennessee Ozark Gas Pipe Company, which is a wholly-owned subsidiary of Tennessee Gas Pipeline Company, which is in turn, a wholly owned subsidiary of Tenneco, Inc. Tennessee's marketing affiliate is Tenngasco Corporation (Tenngasco), which is a shipper on Ozark.

3. Columbia Gulf Transmission, which is a wholly-owned subsidiary of the Columbia Gas System, Inc. Columbia Gas' marketing affiliate, Columbia Gas Development Corporation ships on Ozark; and

4. Caney River Transmission Company, which is a wholly-owned subsidiary of ONEOK, Inc.

[29] Section 4 of the NGA as well as 18 CFR 284.8(b) and 284.9(b) generally prohibit a pipeline from granting an undue preference to any person.

[30] Notice of Proposed Rulemaking on Inquiry Into Alleged Anti-Competitive Practices Related to Marketing Affiliates of Pipelines, 52 FR 21578 (June 8, 1987), FERC Stats. & Regs. ¶ 32,445 at 33,563–5 (1987).

[31] *Citing*, ANR Pipeline Co., *et al.*, 55 FERC ¶ 61,260 at 61,833, n. 6 (1991), *order on reh'g and clarification sub nom.*, Algonquin Gas Transmission Co., *et al.*, 58 FERC ¶ 61,143 (1992).

[32] *Id.*

[33] *Citing*, Order No. 636, III FERC Stats. & Regs. at 30,442, n. 232

the reason set forth above, Hadson submits that the Commission cannot do so.

2. Commission Ruling

The Commission rejects Hadson's argument that its procedures for acting on § 161.3(j) and § 284.286(e) filings prohibit public participation. Hadson misinterprets § 284.286(e). It requires pipelines to file procedures for complying with standards of conduct as part of their publicly noticed compliance filings.[34] Any interested person can participate in those proceedings and protest pipelines' proposals for complying with the standards. All the pipelines' compliance filings have been publicly available and Hadson, as well as other interested persons, have had ample opportunity to comment on those procedures. In fact, Hadson intervened in 91 restructuring proceedings and filed comments with respect to several pipelines' standards of conduct.[35] Contrary to Hadson's claims of "stealth," the Commission's decisions with respect to the standards of conduct will be reviewed in the context of the restructuring proceedings.

The public also participated in the proceedings in which the Commission reviewed the standards of conduct pipelines had filed before Order No. 636 required restructuring. Although the Commission labeled these proceedings as "non-adversarial,"[36] and invited the public to file complaints,[37] it also addressed all requests for rehearing of the May 1991 standards of conduct decisions (these dockets have the prefix MG).[38] Eight parties sought rehearing of the May 1991 MG orders.[39] Of those, IGM asked the Commission to address its previous protests.[40] In the Order on Rehearing, the Commission individually addressed each of IGM's previous allegations concerning pipelines' implementation of the standards.[41] Hadson had the same opportunity to file comments and protests in the pipelines' pre-Order No. 636 standards of conduct (MG) proceedings and did not.

Finally, Hadson incorrectly states that the Commission treated the MG filings as non-public. These filings are public and are available through the Commission's Records Information and Management System. In addition, all conversations that occurred between the Commission staff and pipelines were memorialized in memoranda that were placed in the Commission's public files.[42] The public had an opportunity to raise issues concerning those conversations during rehearing of the May 1991 orders.

Therefore, not only are the MG filings public, but contrary to Hadson's assertions, they have no real relation to our decision to eliminate the requirement to file Form 592s. The MG dockets concern the pipelines' general implementation of the standards of conduct. In contrast, Form 592 is a log of specific transportation transactions. As stated, we are eliminating the requirements to file Form 592s because the information contained in them will be available on pipelines' EBBs.[43]

However, the Commission does agree that, prospectively, it can facilitate access to pipelines' standards of conduct filings by publicly noticing them. As a result, the Commission will require all future standards of conduct filings made under § 161.3(j) and all requests for waiver of the standards to include form notices suitable for publishing in the **Federal Register**.

E. Interpretation of "Operating Employee"

In response to questions raised by Hadson and other companies and in order to assist pipelines in their compliance with the separation of operating personnel as required by Standard G and the reporting requirements of § 250.16(b), the Commission will clarify what type of employee it considers an "operating employee."

Standard G, 18 CFR 161.3(g), states that "[t]o the maximum extent practicable a [pipeline's] operating employees and the operating employees of its marketing affiliate must function independently of each other." In addition, under the reporting requirements of § 250.16(b), "[a]n interstate pipeline must file * * * (1)[n]ew and existing tariff provisions containing * * * (i) [a] complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company."

While not mandating organizational separation, Standard G ensures against affiliate preference and the discriminatory dissemination of information by requiring a pipeline to provide, to the maximum extent practicable, for the independent functioning of "operating personnel" of the pipeline and its marketing affiliate. The contemporaneous disclosure mandate of Standard F requires that to the extent a pipeline provides to a marketing affiliate any information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system. Standard G's requirement that operating employees are to function independently to the maximum extent practicable will help ensure that the opportunity to share such information is minimized. If, for example, a pipeline and its marketing affiliate could evade the contemporaneous disclosure requirement simply by using the same person to arrange transportation on the pipeline and market gas for the affiliate, the rule would be substantially undermined.

Throughout the rulemaking proceeding, however, the Commission has held that complete divestment, divorcement, or organizational separation of pipelines and their marketing affiliates is not necessary to prevent the abuses at which the marketing affiliates rule is aimed. The independent functioning requirement does not require a pipeline to separate all of its employees from those of a marketing affiliate, but rather only operating employees. This determination is consistent with the Commission's finding that complete organizational separation is unnecessary and may even be harmful where divestment chills essential day-to-day communications between the pipeline and its affiliate.

The Commission stated in Order No. 497–A that the phrase " 'operating employees' can include officers, directors and managers as well as non-management employees."[44] However, without further clarification of that phrase, pipelines may not be able to identify properly every "operating employee," especially those shared with their affiliate. Since different pipelines are faced with different practical circumstances, a person's status as an "operating employee" will, in many situations, depend not on his or her occupation or title, but on his or her actual function within the company.

To provide further guidance, the Commission interprets "operating employee" to mean an individual who has day-to-day duties and responsibilities for planning, directing, organizing, or carrying out gas-related operations, including gas transportation, gas sales or gas marketing activities. Examples of operating employees include any member of the board of directors, officers, managers, supervisors, regulatory and technical personnel with duties involving day-to-day gas purchasing, marketing, sales, transportation, operations, dispatching, storage, or related activities. Such operating employees may be expected to receive and use information concerning such functions for the benefit of the specific entity for which they work directly. Under normal circumstances, employees, including highly-placed operatives such as members of the board of directors or officers of the corporations, who do not have such duties would not be likely to receive or use transportation-related information subject to Standard F. To the extent a non-operating person obtains such information and provides it to the marketing affiliate, the pipeline would be required to disclose the information contemporaneously pursuant to Standard F.

Employees with no direct operational responsibilities and whose duties are only supportive in nature need not be considered operating employees. Examples of non-operating employees include support personnel not engaged in the day-to-day marketing, sales, transportation or other gas-related operations of the affiliated companies, clerical and secretarial staff, general office building maintenance personnel, and payroll and general accounting staff.

F. Extension of Reporting Requirements

Finally, the Commission will only extend the sunset date of Order No. 497's reporting requirements from December 31, 1993, until June 30, 1994, because contemporaneously with this order the Commission is issuing a NOPR in Docket No. RM94–6–000 which, among other things, substantially revises Order No. 497's reporting requirements. The Commission believes that extending the sunset provision to June 30, 1994, will allow the Commission enough time to issue a final rule setting forth the new reporting requirements and will also prevent any gaps in the reporting requirements which would occur if the Commission simply let the sunset provision lapse.

V. Information Collection Statement

Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[45] The subject order does not establish any new information collection requirements and does not reduce the reporting requirements under FERC–592, Marketing Affiliates of Interstate Pipelines, as revised by Commission Order Nos. 497–D and 636 (OMB Control No. 1902–0157).

The information required under FERC–592 enables the Commission to carry out its legislative mandate under the NGA and NGPA and will help ensure a viable capacity release market under the Commission's Order No. 636. Specifically, the required information allows the Commission to review/monitor pipeline transportation, sales, and storage transactions with its marketing affiliates to deter undue discrimination and to take appropriate action, where and when necessary. The information is also used by others to indicate whether or not there has been discrimination in pipeline/affiliate/nonaffiliate transactions.

The Commission is notifying OMB that there is no change in the FERC–592 reporting requirements as a result of the subject order and requesting that OMB extend its approval of FERC–592 through June 30, 1994. The 180-day extension of FERC–592 is necessary to allow the Commission adequate time to prepare a final rule based on the related NOPR, issued concurrently with this order, in Docket No. RM94–6–000 (Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions).

Interested persons may obtain further information by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the FERC–592 reporting requirements may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

VI. Effective Date

Section 553(d) of the Administrative Procedure Act (APA)[46] generally requires a rule to be effective not less than 30 days after publication in the **Federal Register** unless good cause is found to shorten the time period. The sunset date for the reporting requirements will expire before the APA's 30 day publication requirement has been fulfilled thus causing a gap in the reporting requirements. Therefore, in order to prevent a gap in the rule's reporting requirements, this final rule is effective January 1, 1994.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends parts 161 and 250, chapter I, title 18 Code of Federal Regulations as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraph (f) is revised to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(f) To the extent it provides to a marketing affiliate information related to transportation of natural gas, it must provide that information contemporaneously to all potential shippers, affiliated and nonaffiliated, on its system.

* * * * *

PART 250—FORMS

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 250.16, paragraphs (a)(3), (c)(1), (c)(2) and (d)(1) are revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) Who must comply. * * *

(3) Maintain all information required under this section from the time the

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[34] Order No. 636–A, III FERC Stats. & Regs. Preambles, ¶ 30,950 at 30,623–4 (1992).

[35] See Hadson's comments in Florida Gas Transmission Company in Docket No. RS92–16–000, *et al.*, Texas Gas Transmission Corp. in Docket No. RS92–24–000, Natural Gas Pipeline Company of America in Docket No. RS92–45–000.

[36] Algonquin Gas Transmission Co., *et al.*, 55 FERC ¶ 61,260 at 61,833, n. 6 (1991).

[37] Algonquin Gas Transmission Co., *et al.*, 55 FERC ¶ 61,261 at 61,836 (1991).

[38] Section 385.713 of the Commission's regulations gives parties 30 days to request rehearing after the Commission issues a final order 18 CFR 385.713 (1993).

[39] Algonquin Gas Transmission Company, Carnegie Natural Gas Company, Independent Gas Marketers (IGM), Panhandle Eastern Pipeline Company, Southwest Gas Storage Company, Trunkline Gas Company, Texas Eastern Transmission Corporation, and Vesta Energy Company.

[40] 58 FERC ¶ 61,143 at 61,455 (1992).

[41] *Id.*, at 61,455–60.

[42] ANR Pipeline Co. *et. al.*, 55 FERC ¶ 61,260 at 61,833, n. 6.

[43] See discussion at Section IV.B.

[44] Order No. 497–A at 31,598.

[45] 5 CFR 1320.14.

[46] 5 U.S.C. 553(d).

information is received until June 30, 1994.

* * * * *

(c) *What to maintain.* (1) An interstate pipeline must maintain the information in paragraph (b)(2) of this section for all requests for transportation services made by nonaffiliated shippers or in which a nonaffiliated shipper is involved from the time the information is received until June 30, 1994.

(2) The information required to be maintained by this section will be available from September 12, 1988, and should be maintained consistent with the requirements of § 284.8(b)(4)(ii) of the Commission's regulations.

* * * * *

(d) *When to file.* (1) The information in paragraph (b)(1) of this section and entries in the log specified in paragraph (b)(2) of this section relating to transportation requests for which transportation has commenced 30 days or more previously, which have been denied, or which have been pending for more than six months, must be filed initially with the Commission by September 19, 1988, and thereafter as required by paragraphs (d)(2) and (d)(4) until the earlier of: 90 days after the Commission has determined that the pipeline is in full compliance with the requirements of Order No. 636; or June 30, 1994. This requirement applies to transportation service that commenced or transportation requests that were denied after July 14, 1988, or that were pending for six months or more on July 14, 1988.

* * * * *

[FR Doc. 94–32 Filed 1–3–94; 8:45 a.m.]

BILLING CODE 6717–01–P

DEPARTMENT OF COMMERCE

Patent and Trademark Office

37 CFR Part 2

[Docket No. 930508–3327]

RIN 0651–AA61

Revision of Trademark Fees

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The Patent and Trademark Office (PTO) is amending the rules of practice in trademark cases. The PTO is announcing that the fee for filing a trademark application is $245, in accordance with the applicable provisions of the Patent and Trademark Office Authorization Act of 1993. No other fees will be affected by this rulemaking.

EFFECTIVE DATE: December 3, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Kopson by telephone at (703) 305–8510 or by mail marked to his attention and addressed to the Commissioner of Patents and Trademarks, Washington, DC 20231.

SUPPLEMENTARY INFORMATION: This rule change adjusts the fee for filing a trademark application in accordance with the provisions of Public Law 103–179. The trademark fee increase is required to address long-term funding needs of the trademark functions of the PTO which cannot be satisfied with the current fee structure.

Statutory Provisions

Section 31 of the Trademark (Lanham) Act of 1946, as amended (15 U.S.C. 1113), authorizes the Commissioner to establish fees for the filing and processing of an application for the registration of a trademark or other mark, and for all other services and materials furnished by the PTO relating to trademarks and other marks.

Public Law 103–179 established the fee for filing a trademark application at $245 per class. Public Law 103–179 took effect on December 3, 1993.

Recovery Level Determinations

The existing fee schedule, along with the adjustment to the trademark application fee, will recover $518,692,000 in fiscal year 1994, of which $4,830,000 is attributable to the increase in the trademark application fee. The enacted 1994 budget is $504,021,000. An additional $14,671,000 of patent statutory fees will be collected in 1994 and will be deposited to the Fee Surcharge Fund.

Patent statutory fees are subject to the provisions of the Omnibus Budget Reconciliation Act of 1990, as amended by Public Law 102–204. Of the total amount of income expected to be collected in 1994 under 35 U.S.C. 41 (a) and (b), $103,000,000 must be deposited to the Fee Surcharge Fund for deficit reduction purposes in lieu of seeking general taxpayer funds from the U.S. Treasury. The $103,000,000 is deposited in a special account in the U.S. Treasury, reserved exclusively for use by the PTO, and is made available to the PTO through the appropriation process. For 1994, the Congress appropriated $88,329,000 from the Fee Surcharge Fund.

General Procedures

There will be a grace period of 60 days, beginning December 3, 1993, and ending January 31, 1994. During the grace period, any party who submits a trademark application, which is otherwise sufficient, with a fee of at least $210, but less than $245, will be notified of the fee deficiency and permitted to supplement it within a 30-day period set by the notice of the insufficient fee. If the applicant submits the amount by which the fee is deficient within the 30-day period, the application will retain its original filing date. If the amount by which the fee is deficient is not submitted within 30 days, the application papers and fee will be returned to the applicant. Any trademark application submitted after January 31, 1994 with a deficient fee payment will be returned to the applicant.

Discussion of Specific Rules

37 CFR 2.6 Trademark fees

Section 2.6, subparagraph (a)(1), is revised to adjust the fee authorized by the Trademark (Lanham) Act of 1946 in accordance with the provisions of Public Law 103–179.

Other Considerations

This rule change is in conformity with the requirements of Executive Order 12612, and the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.* There are no information collection requirements relating to patent and trademark fee rules.

This regulation was reviewed by the Office of Information and Regulatory Affairs of the Office of Management and Budget under Executive Order 12866.

The PTO has determined that this rule change has no Federalism implications affecting the relationship between the National Government and the States as outlined in Executive Order 12612.

Notice and opportunity for comment are unnecessary under 5 U.S.C. 553(6)(b) because this rule change merely restates a Congressionally-mandated fee change. Because notice of proposed rulemaking is not required for this rule, the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply.

The PTO published a notice of proposed rulemaking on July 21, 1993, (58 FR 39102) to increase the trademark fee to $245 based on pending legislation that would have given PTO the authority to raise trademark fees in excess of the Consumer Price Index. The legislation as passed (Pub. L. 103–179) simply increased the trademark application filing fee to $245 effective the date of enactment.

List of Subjects in 37 CFR Part 2

Administrative practice and procedure, Courts, Lawyers, Trademarks.

For the reasons set forth in the preamble, the PTO is amending title 37 of the Code of Federal Regulations, Chapter I, as set forth below.

PART 2—RULES OF PRACTICE IN TRADEMARK CASES

1. The authority citation for part 2 continues to read as follows:

Authority: 15 U.S.C. 1123; 35 U.S.C. 6, unless otherwise noted.

2. Section 2.6 is amended by revising paragraph (a)(1) to read as follows:

§ 2.6 Trademark fees.

* * * * *

(a) Trademark process fees.

(1) For filing an application, per class: $245.00.

* * * * *

Dated: December 23, 1993.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–1021 Filed 1–3–94; 8:45 am]

BILLING CODE 3510–16–M

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 921230–3020; I.D 122793C]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota transfer and commercial quota availability.

SUMMARY: NMFS issues this notification to announce that 10,000 pounds (4,536 kg) of summer flounder commercial quota available to the State of North Carolina has been transferred to the State of Rhode Island. This transfer adjusts the commercial quota for the State of North Carolina to 3,121,750 pounds (1,416,016 kg) and adjusts the Rhode Island quota to 1,946,851 pounds (883,086 kg). As a result of this transfer, NMFS announces that vessels issued a Federal fisheries permit for the summer flounder fishery may resume landing summer flounder in the State of Rhode Island until further notice.

EFFECTIVE DATES: December 28, 1993 through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations implementing the Fishery Management Plan for the Summer Flounder Fishery (FMP) are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require an annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year is set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The percent allocated to each state was adjusted by Amendment 4 to the FMP (September 24, 1993, 58 FR 49937) with 15.68298 percent or 1,936,851 pounds (878,550 kg) allocated to Rhode Island, and 27.44584 percent, or 3,389,565 pounds (1,537,497 kg) allocated to North Carolina.

An emergency interim rule published August 26, 1993, (58 FR 45075), and extended on November 29, 1993 (58 FR 62556), allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS, (Regional Director), to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20 in the evaluation of requests for quota transfers or combinations.

The 1993 coastwide commercial quota apportioned to North Carolina effective on January 1, 1993 (58 FR 5658; January 22, 1993), in the amount of 3,435,214 pounds (1.56 million kg) was revised by Amendment 4 to the FMP effective October 25, 1993 (58 FR 49937), reducing the amount by 45,649 pounds (20,706 kg) totalling 3,389,565 pounds (1.54 million kg). North Carolina made three transfers during 1993 totalling 257,815 pounds (116,942 kg) of summer flounder, reducing the amount to 3,131,750 pounds (1.42 million kg). Two transfers were made to Virginia for 125,000 pounds (56,699 kg) each; one was effective on November 3, 1993 (58 FR 59196; November 8, 1993), and the other was effective on November 19, 1993 (58 FR 62050). The third transfer was made to New Jersey in the amount of 7,815 pounds (3,545 kg) and was effective on November 18, 1993 (58 FR 61844; November 23, 1993).

Further, the Regional Director is required to publish a notification in the **Federal Register** advising a state, and notifying Federal vessel and dealer permit holders that, effective upon a specific date, a portion of a state's commercial quota has been transferred to, or combined with, the commercial quota of another state.

North Carolina and Rhode Island have agreed to transfer 10,000 pounds (4,536 kg) of North Carolina's commercial quota to Rhode Island. The Regional Director has determined that the criteria set forth in § 625.20 have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1993 are: North Carolina—3,121,750 pounds (1,416,016 kg); Rhode Island—1,946,851 pounds (883,086 kg).

As a result of this quota transfer, the previous notice of closure effective December 22, 1993, is rescinded and vessels may again land summer flounder in Rhode Island until the available 1993 quota is harvested.

Classification

This action is required by 50 CFR part 625.

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 28, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–32091 Filed 12–28–93; 4:41 pm]

BILLING CODE 3510–22–M

50 CFR Part 642

[Docket No. 930791–3191; I.D. UP30]

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Trip limit reduction.

SUMMARY: NMFS reduces the commercial trip limit in the Florida west coast zone to 50 king mackerel per day in or from the exclusive economic zone (EEZ). This trip limit reduction is necessary to protect the overfished Gulf king mackerel resource.

EFFECTIVE DATES: The 50-fish commercial trip limit is effective 12:01 p.m., local time, December 29, 1993, and remains in effect through June 30, 1994, unless the commercial fishery for king mackerel in the Florida west coast zone is closed before June 30 by

publication of a notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Mark F. Godcharles, 813–893–3161.

SUPPLEMENTARY INFORMATION: The fishery for coastal migratory pelagic fish (king mackerel, Spanish mackerel, cero, cobia, little tunny, dolphin, and, in the Gulf of Mexico only, bluefish) is managed under the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) and is implemented by regulations at 50 CFR part 642, under the authority of the Magnuson Fishery Conservation and Management Act.

Catch limits recommended by the Councils and implemented by NMFS for the Gulf of Mexico migratory group of king mackerel for the current fishing year (July 1, 1993, through June 30, 1994, 58 FR 58509, November 2, 1993) set the commercial quota of king mackerel in the Florida west coast zone at 865,000 pounds (392,361 kg). In accordance with 50 CFR 642.31(a)(2), from the date that 75 percent of the zone's commercial quota has been harvested until a closure of the Florida west coast zone has been effected, king mackerel in or from the EEZ may be possessed aboard or landed from a permitted vessel in amounts not exceeding 50 per day. Such 50-fish trip limit remains in effect through June 30, 1994, the end of the fishing year, unless 100 percent of the commercial quota is reached before June 30, in which case the commercial fishery for king mackerel in the Florida west coast zone is closed by publication of a notice in the **Federal Register**.

NMFS has determined that 75 percent of the commercial quota for Gulf group king mackerel from the Florida west coast zone was reached on December 28, 1993. Accordingly, a 50-fish trip limit applies to king mackerel in or from the EEZ in the Florida west coast zone effective 12:01 p.m., local time, December 29, 1993.

The Florida west coast zone extends from the Alabama/Florida boundary (87°31'06"W. longitude) to: (1) the Dade/Monroe County, Florida boundary (25°20.4'N. latitude) from November 1 through March 31; and (2) the Monroe/Collier County, Florida boundary (25°48'N. latitude) from April 1 through October 31.

Classification

This action is required by 50 CFR 642.31(a)(2) and (b).

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 642

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 29, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–32097 Filed 12–29–93; 3:44 pm]

BILLING CODE 3510–22–M

50 CFR Part 663

[Docket No. 931244–3344; ID. No. 121493A]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule; suspension of effectiveness.

SUMMARY: On November 16, 1992, NMFS promulgated regulations, effective January 1, 1993, establishing a license-limitation-limited-entry system for the Pacific Coast commercial groundfish fishery. The regulations, among other things, require that an owner of a vessel wishing to participate in the limited-entry fishery have a Federally issued limited-entry permit endorsed with an appropriate vessel size endorsement. In view of a delay in issuing certain other regulations necessary to fully implement this system, this action suspends until April 1, 1994, the effectiveness of the vessel size endorsement requirement, which limits variances in vessel length from the length specified in a permit. The intent of this action is to allow vessel owners to participate in the limited-entry fishery who would otherwise be barred from the fishery by the size endorsement requirement.

EFFECTIVE DATE: Effective December 29, 1993, the effectiveness of 50 CFR 633.33(f)(2) is suspended until April 1, 1994.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: On November 16, 1992, NMFS promulgated regulations codified at 50 CFR 663.30–663.43, and effective January 1, 1993, establishing a license-limitation-limited-entry system for the Pacific Coast commercial groundfish fishery. The regulations, among other things, require that an owner of a vessel wishing to participate in the limited-entry fishery, have a Federally issued limited-entry permit endorsed with an appropriate vessel size endorsement.

In general, each limited-entry permit is endorsed with the overall length of the vessel with which it initially qualified for a permit. Under 50 CFR 663.33(f)(2), a limited-entry permit endorsed for gear other than trawl gear may be registered for use with a vessel up to 5 feet (1.52 m) longer than, the same length as, or any length shorter than, the size endorsed on the existing permit. A limited-entry permit endorsed for trawl gear may be registered for use with a vessel between 5 feet (1.52 m) shorter, and 5 feet (1.52 m) longer, than the size endorsed on the existing permit.

Where the owner would like to use a limited entry permit with a vessel of a length that exceeds the variance, § 663.33(g) allows the owner to combine two or more limited-entry permits from smaller vessels, in order to "step-up" to a permit for the larger vessel. However, before any permits may be combined, § 663.33(g) also requires the Director, Northwest Region, NMFS (Regional Director), with the professional advice of marine architects and other qualified individuals, and after consultation with the Pacific Fishery Management Council (Council), to develop and implement, through amendment of the regulations, a standardized measure of harvest capacity for the purpose of determining the appropriate endorsed lengths for limited-entry permits created by combining two or more permits with smaller size endorsements.

While the Regional Director has completed the process of consultation with the appropriate persons and the Council, and has developed regulations to implement the required standardized measure of harvest capacity and associated rules for combining permits, the regulations have not yet been proposed. However, this proposal will soon be published in the **Federal Register** for public comment, and a final rule is expected to be published and to be effective by April 1, 1994.

In anticipation of issuance by January 1, 1994, of the regulations governing the combining of permits, some vessel owners have acquired larger vessels and additional limited-entry permits. NMFS estimates that by January 1, 1994, 30 or more vessel owners will have limited entry permits endorsed with the size of a qualifying vessel that has been replaced by a vessel more than 5 feet (1.52m) longer than the qualifying vessel. Under § 663.33(f)(2), none of these vessel owners could participate in the fishery until he/she obtains a single permit endorsed with the size of the larger vessel.

In order to allow limited-entry permit holders in the situation just described to participate in the limited-entry fishery until the date by which the Regional Director is expected to have issued the necessary final rule, NMFS is suspending, until April 1, 1994, the effectiveness of 663.33(f)(2)—the provision of the regulations imposing limitations of endorsed length on the use of limited-entry permits.

Failure to take this action would result in limited-entry permit owners who have already obtained, or are in the process of obtaining, additional limited entry permits for combination into a larger permit being unable to participate in the limited-entry fishery until the Regional Director issues the necessary final rule. The limited-entry program is not intended to prevent permit owners from participating in a fishery for which they have obtained the appropriate limited-entry permits.

NMFS does not expect this suspension will result in much, if any, additional harvest capacity entering the limited-entry fishery during the time of the suspension. The harvest of all major species taken in the limited-entry fishery during the first 3 months of the calendar year is controlled with restrictive trip limits that serve as a disincentive to any permit holders bringing new, large-capacity fishing vessels into the fishery.

Classification

This final rule is issued under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* Because this rule must be in effect at the time limited-entry permits are required for participation in the limited-entry fishery (January 1, 1994) in order to allow vessel owners who intend to combine permits to participate in the limited-entry fishery pending establishment of a system to combine permits, it is unnecessary and not in the public interest to provide prior public comment under 5 U.S.C. 553(b)(B). Also, because this rule temporarily relieves a restriction, it is being made effective immediately without a 30-day delay in effectiveness under 5 U.S.C. 553(d)(1).

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 29, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, the effectiveness of 50 CFR 663.33 (f)(2) is suspended until April 1, 1994.

[FR Doc. 93–32102 Filed 12–29–93; 3:44 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 59, No. 2
Tuesday, January 4, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1030, 1065, 1068, 1076, and 1079

[Docket Nos. AO–361–A31, etc.; DA–92–27]

Milk in the Chicago Regional and Other Marketing Areas; Notice of Hearing on Proposed Amendments to Tentative Marketing Agreements and Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearing on proposed rulemaking.

7 CFR Part	Marketing Area	AO Nos.
1030	Chicago Regional	AO–361–A31
1065	Nebraska-Western Iowa.	AO–86–A50
1068	Upper Midwest	AO–178–A48
1076	Eastern South Dakota	AO–260–A32
1079	Iowa	AO–295–A44

SUMMARY: This hearing is being held to consider proposals to amend five Federal milk marketing orders. The proposals would establish a multiple component pricing plan for pricing producer milk under the orders. Producer milk utilized in Class II and Class III would be priced to handlers on the basis of three components. The components priced would be butterfat, protein and solids-not-fat other than protein. Under some of the proposals, producer prices or protein prices would be adjusted for quality attributes of milk, such as somatic cell content. The hearing was requested by a dairy trade association and several cooperative associations that represent a substantial number of dairy farmers who supply these markets. A number of other dairy cooperative associations and dairy organizations submitted proposals to be considered at the hearing. The proponents maintain that the proposed payment plans would give producers a direct economic incentive to produce the components valued by the marketplace.

DATES: The hearing will convene at 9 a.m. local time on January 25, 1994.

ADDRESSES: The hearing will be held at the Sheraton Inn Airport, 2500 E. 79th Street, Bloomington, Minnesota 55425, telephone (612) 854–1771.

FOR FURTHER INFORMATION CONTACT: Constance M. Brenner, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2971, South Building, P. O. Box 96456, Washington, DC 20090–6456, (202) 720–7183.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of title 5 of the United States Code and therefore, is excluded from the requirements of Executive Order 12866.

Notice is hereby given of a public hearing to be held at the Sheraton Inn Airport, 2500 E. 79th Street, Bloomington, Minnesota 55425 (telephone 612/854–1771), beginning at 9 a.m. on January 25, 1994, with respect to proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the aforesaid marketing areas.

The hearing is called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

The purpose of the hearing is to receive evidence with respect to the economic and marketing conditions which relate to the proposed amendments, hereinafter set forth, and any appropriate modifications thereof, to the tentative marketing agreements and to the orders.

Actions under the Federal milk order programs are subject to the Regulatory Flexibility Act (Pub. L. 96–354). This Act seeks to ensure that, within the statutory authority of a program, the regulatory and information requirements are tailored to the size and nature of small businesses. For the purpose of the Act, a dairy farm is a "small business" if it has an annual gross revenue of less than $500,000, and a dairy products manufacturer is a "small business" if it has fewer than 500 employees. Most parties subject to a milk order are considered as a small business. Accordingly, interested parties are invited to present evidence on the probable regulatory and informational impact of the hearing proposals on small businesses. Also, parties may suggest modifications of these proposals for the purpose of tailoring their applicability to small business.

The amendments to the rules proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have a retroactive effect. If adopted, the proposed amendments would not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with these rules.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district courts of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Interested parties who wish to introduce exhibits should provide the Presiding Officer at the hearing with 6 copies of such exhibits for the Official Record. Also, it would be helpful if additional copies are available for the use of other participants at the hearing.

List of Subjects in 7 CFR Parts 1030, 1065, 1068, 1076, and 1079

Milk marketing orders.

The authority citation for 7 CFR parts 1030, 1065, 1068, 1076, and 1079 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31 as amended; 7 U.S.C. 601–674.

The proposed amendments, as set forth below, have not received the approval of the Secretary of Agriculture.

Proposed by National All-Jersey, Inc., and supported by a number of cooperative associations and other dairy organizations:

Proposal No. 1

For the Chicago Regional, Upper Midwest and Iowa Federal milk orders (Orders 30, 68 and 79), establish a multiple component pricing plan for producer milk by revising each of the orders to incorporate the pricing plan included in detail in this notice for part 1030, to include the following provisions:

Change the introductory text and add paragraphs (e) and (f) to § 1030.20, as follows:

§ 1030.20 Product prices.

The following product prices shall be used in calculating the basic Class II formula price pursuant to § 1030.51(b) and the component prices defined in § 1030.50 as follows:

* * * * *

(e) Monthly Cheddar Cheese Price. The Monthly Cheddar Cheese Price means the National Cheese Exchange (Green Bay) monthly average price for 40 pound blocks of cheddar cheese as calculated and reported each month by the Dairy Division, Agricultural Marketing Service in Dairy Market News.

(f) Whey Protein Concentrate Price. The Whey Protein Concentrate Price means the monthly average whey protein concentrate price (central and western (f.o.b.) edible 34 percent protein) calculated and reported each month by the Dairy Division, Agricultural Marketing Service in Dairy Market News.

Revise § 1030.30 to read as follows:

§ 1030.30 Reports of receipts and utilization.

On or before the 10th day after the end of each month, each handler shall report for such month to the market administrator, in the detail and on the forms prescribed by the market administrator as follows:

(a) Each handler described in § 1030.9(a), (b) and (c) shall report for each plant of the handler (except if a handler requests and is approved by the market administrator, a handler may file a consolidated report for supply plants and/or a consolidated report for distributing plants) the following information:

(1) Product pounds, pounds of butterfat, pounds of protein and pounds of solids-not-fat other than protein contained in:

(i) Receipts of producer milk, including producer milk diverted by the handler, and

(ii) Receipts of milk from handlers described in § 1030.9(c).

(2) Product pounds of butterfat contained in:

(i) Receipts of fluid milk products not included in (a)(1) above and bulk fluid cream products from any source;

(ii) Receipts of other source milk;

(iii) Inventories at the beginning and end of the month of fluid milk products and products specified in § 1030.40(b)(1);

(iv) The utilization or disposition of all milk, filled milk, and milk products required to be reported pursuant to this paragraph.

(b) Each handler operating a partially regulated distributing plant shall report with respect to such plant in the same manner as prescribed for reports required by paragraph (a) of this section. Receipts of milk that would have been producer milk if the plant had been fully regulated shall be reported in lieu of producer milk. Such report shall show also the quantity of any reconstituted skim milk in route disposition in the marketing area.

(c) Each handler not specified in paragraphs (a) and (b) of this section shall report with respect to its receipts and utilization of milk, filled milk, and milk products in such manner as the market administrator may prescribe.

Revise § 1030.31 to read as follows:

§ 1030.31 Payroll reports.

(a) On or before the 25th day after the end of each month, each handler described in § 1030.9(a), (b), and (c) shall report to the market administrator its producer payroll for such month, in the detail prescribed by the market administrator, showing for each producer:

(1) Name and address;

(2) The total pounds of milk received from such producer;

(3) The pounds of butterfat contained in such milk;

(4) The pounds of protein contained in such milk;

(5) The pounds of solids-not-fat other than protein (Other Solids) contained in such milk;

(6) The price per pound of butterfat, protein and Other Solids, the gross amount due, the amount and nature of any deductions, and the net amount paid.

(b) Each handler operating a partially regulated distributing plant who elects to make payment pursuant to § 1030.76(b) shall report for each dairy farmer who would have been a producer if the plant had been fully regulated in the same manner as prescribed for reports required by paragraph (a) of this section.

Class and Component Prices

In § 1030.50, change the introductory sentence and add four component prices following the existing three paragraphs for Class prices as follows:

§ 1030.50 Class prices and component prices.

The Class prices for the month per hundredweight of milk containing 3.5 percent butterfat subject to the provisions of § 1030.52, and the component prices for the month shall be as follows:

* * * * *

(d) Skim Milk Price. The skim milk price per hundredweight, rounded to the nearest one-hundredth cent shall be the Class III price less an amount computed by multiplying the butterfat differential computed pursuant to § 1030.74 by 35.

(e) Butterfat Price. The butterfat price per pound rounded to the nearest one-hundredth cent, shall be the sum of (1) the skim milk price per hundredweight for the month computed pursuant to paragraph (d) of this section, divided by 100 and (2) the butterfat differential for the month, computed pursuant to § 1030.74 multiplied by 10.

(f) Protein Price. The protein price per pound, rounded to the nearest one-hundredth cent, shall be 1.32 times the monthly cheddar cheese price pursuant to § 1030.20(e) plus .735 times the whey protein concentrate price pursuant to § 1030.20(f) and subject to (g) of this section.

(g) Other Solids Price. The other solids price per pound, rounded to the nearest one-hundredth cent, shall be the basic formula price pursuant to § 1030.52(a) less the sum of (1) 3.5 times the butterfat price pursuant to § 1030.50(e) and (2) the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division times the protein price pursuant to § 1030.50(f), and dividing the resulting price by the difference between (i) the average solids-not-fat content of the milk on which the basic formula price is based for the previous month as reported by the Department, and adjusted for the current month by the Dairy Division and (ii) the average protein content of the milk on which the basic formula price is based for the previous month as reported by the Department and adjusted for the current month by the Dairy Division. If the resulting price is less than zero, then the protein value shall be adjusted so that the other solids price equals zero.

(h) Class I Differential Price. The Class I differential price shall be the difference between the current month's Class I and Class III prices (this price may be negative).

(i) Class II Differential Price. The Class II differential price shall be the difference between the current month's Class II and III prices (this price may be negative).

Revise § 1030.51 to read as follows:

§ 1030.51 Basic formula prices.

(a) Basic Formula Price.

Include all material now contained in § 1030.51 without change.

(b) Basic Class II Formula Price.

Include all material now contained in § 1030.51a without change.

Revise § 1030.53 to read as follows:

§ 1030.53 Announcement of class and component prices.

(a) On or before the 5th of the month, the market administrator shall announce the following prices and any other prices deemed appropriate:

(1) The Class I price for the following month;

(2) The Class III price for the preceding month;

(3) The skim milk price for the preceding month;

(4) The butterfat price for the preceding month;

(5) The protein price for the preceding month;

(6) The other solids price for the preceding month.

(7) The butterfat differential for the preceding month.

(b) On or before the 15th day of the month, the market administrator shall announce the Class II price for the following month computed pursuant to § 1030.50(b)

Handler Obligations and Producer Prices

In § 1030.60, revise paragraphs (a) and (f) to read as follows:

§ 1030.60 Handler's obligation and producer prices.

For the purpose of computing a handler's obligation for producer milk, the market administrator shall determine for each month the value of milk of each handler described in § 1030.9 (a), (b), and (c) as follows:

(a) The handler's obligation for producer milk shall be computed as follows:

(1) Multiply the total hundredweight of producer milk in Class I as determined by § 1030.44 by an amount equal to the Class I differential price pursuant to § 1030.50(h) for the month (this amount may be negative);

(2) Add an amount obtained by multiplying the total hundredweight of producer milk in Class II as determined by § 1030.44 by an amount equal to the Class II differential price pursuant to § 1130.50(i) for the month (this amount may be negative);

(3) Add an amount obtained by multiplying the hundredweight of skim milk in Class I as determined pursuant to § 1030.44 by the skim milk price pursuant to § 1030.50(d);

(4) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average protein content of producer skim milk received by the handler (reported pursuant to § 1030.30(e)), and multiplying the resulting pounds of protein by the protein price specified in § 1030.50(f);

(5) Add an amount obtained by multiplying the pounds of skim milk in Class II and Class III as determined pursuant to § 1030.44(a) by the average other solids content of producer skim milk received by the handler and multiplying the resulting pounds of other solids by the other solids price specified in § 1030.50(g);

* * * * *

(f) Add the amount obtained from multiplying the Class I price applicable at the location of the nearest unregulated supply plants from which an equivalent volume was received less the Class III price by the pounds of skim milk and butterfat in receipts of concentrated fluid milk products assigned to Class I pursuant to § 1030.43(d) and § 1030.44(a)(7)(i) and the pounds of skim milk and butterfat subtracted from Class I pursuant to § 1030.44(a)(11) and the corresponding steps of § 1030.44(b), excluding such skim milk and butterfat in receipts of bulk fluid milk products from an unregulated supply plant to the extent that an equivalent amount of skim milk or butterfat disposed of to such plant by handlers fully regulated under any Federal milk order is classified and priced as Class I milk and is not used as an offset for any other payment obligation under any order;

In § 1030.61, redesignate paragraphs (b), (c), (d), and (e) as (c), (d), (e) and (f); revise the introductory language and paragraph (a), add a new paragraph (b), and revise redesignated paragraph (e) to read as follows:

§ 1030.61 Producer price differential.

For each month the market administrator shall compute a producer price differential per hundredweight for Zone 1 (this price may be negative). If the unreserved cash balance in the producer settlement fund to be included in the computation is less than 2 cents per hundredweight of producer milk on all reports, the payments required pursuant to § 1030.71 for the preceding month shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation of the uniform price. The report of such handler shall not be included in the computation for succeeding months until he has made full payment of outstanding monthly obligations Subject to the aforementioned conditions, the market administrator shall compute the producer price differential in the following manner

(a) Combine the values computed pursuant to § 1030.60 (a)(1), (a)(2), and (b) through (k) for all handlers;

(b) Add the values computed pursuant to § 1030.60 (a)(3), (a)(4), and (a)(5) and subtract the value obtained by multiplying the protein price by the handlers' total pounds of protein and by multiplying the other solids price by the handlers' total pounds of other solids.

* * * * *

(e) Divide the resulting amount by the sum of (1) the total hundredweight of producer milk and (2) the total hundredweight of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f); and

* * * * *

Revise § 1030.62 to read as follows:

§ 1030.62 Statistical uniform price

The statistical uniform price is the sum of the basic formula price and the producer price differential pursuant to § 1030.61.

Add a new § 1030.63 to read as follows:

§ 1030.63 Announcement of producer prices.

(a) On or before the 5th day after the end of each month, the market administrator shall announce the butterfat differential pursuant to § 1130.74 for such month.

(b) On or before the 14th day after the end of each month, the market administrator shall announce the following prices:

(1) The statistical uniform price for milk containing 3.5 percent butterfat and the average protein and other solids content of producer milk;

(2) The producer price differential;

(3) The butterfat price;

(4) The protein price;

(5) The other solids price; and

(6) The butterfat differential.

Payments for Milk

Revise paragraph (a) of § 1030.71 to read as follows:

§ 1030.71 Payments to the producer-settlement fund.

(a) On or before the 16th day after the end of the month, each handler shall pay to the market administrator the amount, if any, by which the amount specified in paragraph (a)(1) of this section exceeded the amount specified in paragraph (a)(2) of this section:

(1) The total value of milk of the handler for such month as determined pursuant to § 1030.60.

(2) The sum of:

(i) An amount obtained by multiplying the total hundredweight of producer milk as determined pursuant to § 1030.44 by the producer price differential calculated pursuant to § 1030.61 as adjusted by § 1030.75;

(ii) An amount obtained by multiplying the total pounds of protein contained in producer milk by the protein price;

(iii) An amount obtained by multiplying the total pounds of other solids contained in producer milk by the other solids price; and

(iv) An amount obtained by multiplying the pounds of skim milk and butterfat for which a value was computed pursuant to § 1030.60(f) by the producer price differential as adjusted for plant location by § 1030.52.

* * * * *

In § 1030.73, paragraphs (a), (c) and (d) are revised, and a new paragraph (e) is added, to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

(a) * * *

(1) On or before the 3rd day after the end of each month, to each producer who has not discontinued shipping milk to such handler before the end of the month, for producer milk received during the first 15 days of the month at a rate per hundredweight not less than the Class III price under the order for milk of 3.5 percent butterfat for the preceding month, less proper deductions authorized in writing by such producer; and

(2) On or before the 18th day after the end of each month, for producer milk received during such month, an amount not less than the sum of:

(i) The pounds of milk received from the producer times the producer price differential for the month pursuant to § 1030.61, adjusted pursuant to § 1030.75 and § 1030.86;

(ii) The pounds of butterfat received from the producer times the butterfat price for the month,

(iii) The pounds of protein received from the producer times the protein price for the month;

(iv) The pounds of other solids received from the producer times the other solids price for the month;

(v) Less any payments made pursuant to paragraph (a) of this section; and

(vi) Less proper deductions authorized in writing by such producer and plus or minus adjustments for errors in previous payments made to such producer.

(vii) If by such date the handler has not received full payment from the market administrator pursuant to § 1030.72 for such month, he may reduce pro rata his payments to producers by not more than the amount of such underpayment. Payment to producers shall be completed thereafter not later than the date for making payments pursuant to this paragraph next following receipt of the balance due from the market administrator.

(b) * * *

(c) Each handler shall pay a cooperative association for milk received by the handler from a pool plant(s) operated by a cooperative association as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which the milk was received at a rate per hundredweight not less than the Class III price under the order for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of Class I milk received times the Class I differential for the month plus the pounds of Class I skim milk times the skim milk price for the month;

(ii) The hundredweight of Class II milk received times the Class II differential for the month;

(iii) The pounds of butterfat received times the butterfat price for the month;

(iv) The pounds of protein received in Class II and III times the protein price for the month;

(v) The pounds of other solids received in Class II and III times the other solids price for the month,

(vi) Less any payment made pursuant to paragraph (c)(1) of this section; and

(vii) Less proper authorized deductions.

(d) Each handler shall pay a cooperative association acting as a handler described under § 1030.9(c) as follows:

(1) For milk received during the first 15 days of the month, the handler shall pay the cooperative association on or before the 1st day after the end of the month during which milk was received at a rate per hundredweight not less than the Class III price under the order for milk of 3.5 percent butterfat for the preceding month; and

(2) For milk received during the month the handler shall pay the cooperative association on or before the 16th day after the end of the month during which the milk was received as follows:

(i) The hundredweight of milk received times the producer price differential for the month as adjusted pursuant to § 1030.75;

(ii) The pounds of butterfat received times the butterfat price for the month,

(iii) The pounds of protein received times the protein price for the month;

(iv) The pounds of other solids received times the other solids price for the month;

(v) Less any payment made pursuant to paragraph (d)(1) of this section; and

(vi) Less proper authorized deductions.

(e) In making payments for producer milk pursuant to paragraph (a)(2) or (b)(2) of this section, each handler shall furnish each producer or cooperative association to whom such payment is made a supporting statement in such form that it may be retained by the recipient. Such statement shall show:

(1) The month and the identity of the producer;

(2) The daily and total pounds of milk for each producer;

(3) The total pounds of butterfat contained in the producer's milk;

(4) The total pounds of protein contained in the producer's milk;

(5) The total pounds of other solids contained in the producer's milk;

(6) The minimum rate or rates (for total pounds and components) at which payment to the producer is required pursuant to the order;

(7) The rate that is used in making the payment if such rate is other than the applicable minimum rate;

(8) The amount, or the rate per hundredweight, or rate per pound of component, and nature of each deduction claimed by the handler; and

(9) The net amount of payment to such producer or cooperative association.

Revise § 1030.74 to read as follows:

§ 1030.74 Butterfat differential.

The butterfat differential shall be 138 times the butter price less .0028 times the average price per hundredweight, at test, for manufacturing grade milk, f.o.b. plants in Minnesota and Wisconsin, as reported by the Department for the

month. The butter price means the simple average for the month of the daily prices per pound of Grade A (92 score) butter. The prices used shall be those of the Chicago Mercantile Exchange as reported and published weekly by the Dairy Division, Agricultural Marketing Service. The average shall be computed by the Director of the Dairy Division, using the price reported each week as the daily price for that day and for each following day until the next price is reported.

Proposed by Land O' Lakes, Inc.:

Proposal No. 2

Adopt Proposal Number 1 for the Nebraska-Western Iowa and Eastern South Dakota Federal milk orders (Orders 65 and 76) in addition to the three orders included in Proposal No. 1.

Proposal No. 3

In § 1030.73, add a new paragraph (e) to read as follows:

§ 1030.73 Payments to producers and to cooperative associations.

* * * * *

(e) In making payments to producers, deductions may be made to individual producers for variations in quality or volume of milk relative to an announced norm of up to 10 percent, provided that such deductions are offset by premiums paid to other individual producers of equal or greater value.

Proposed by Central Milk Producers Cooperative and supported by Mid-America Dairymen, Inc., and Associated Milk Producers, Inc.:

Proposal No. 4

Adopt Proposal No. 2 with the following modifications:

a. Compute the protein price by multiplying the barrel cheddar cheese price, instead of the cheddar cheese price for 40-pound blocks, by 1.32, and eliminate the plus adjustment based on the whey protein concentrate price.

b. Include an adjustment for the somatic cell count of producer milk and for milk used in Classes II, III, and III-A. Class I milk would not have a somatic cell adjustment. The adjustment for somatic cells would be on a hundredweight basis and would be a positive adjustment beginning with a somatic cell count of 500,000, increasing as the somatic cell count approaches zero. No adjustment would be applied for somatic cell counts greater than 500,000. The somatic cell adjustment would be computed by subtracting the actual somatic cell count (in thousands) from 500 and multiplying by .0005 times the barrel cheese price.

Formula:

Somatic cell adjustment=(500 − SCC)×(.0005×CP)

SCC=actual somatic cell count in thousands

CP − National Cheese Exchange monthly average barrel cheese price.

Proposed by Kraft General Foods:

Proposal No. 5

Adjust the protein or other component price on the basis of somatic cell content (and any other relevant quality characteristic) of producer milk.

Proposed by Wagner's Weyauwega Milk Products, Inc.:

Proposal No. 6

Modify Proposal No. 4 to include negative somatic cell adjustments for somatic cell levels between 500,000 and 750,000.

Proposed by the Wisconsin Cheese Makers Association:

Proposal No. 7

Adopt Proposal No. 4 with the following modifications:

a. Apply the somatic cell adjustment contained in Proposal No 4 to all milk, including Class I.

b. Apply the somatic cell adjustment to producers' protein price, rather than on a hundredweight basis.

c. In calculating the protein price, subtract an appropriate make allowance per pound of barrel cheddar cheese from the cheese price before multiplying by 1.32. This modification may require creation of a separate residual "component" in addition to the butterfat, protein and other solids components, which would require a formula to determine the value of other milk solids (not protein).

Proposed by the National Cheese Institute:

Proposal No. 8

Adopt Proposal No. 4 with the following modifications:

a. Calculate a "residual fluid price" instead of an "other solids price" by subtracting the values of butterfat and protein from the Minnesota-Wisconsin price.

b. Instead of including in the order a somatic cell price per hundredweight, allow handlers to submit a plan for the market administrator's approval to pay premiums or make deductions based on somatic cell count or other quality considerations so long as the total payment to all producers reflects the monthly minimum pay price under the Order.

c. Payouts to producers should be made on the basis of the same factors as determine the cost of milk to handlers.

Proposed by the Trade Association of Proprietary Plants, Inc.

Proposal No. 9

Adopt a multiple component pricing plan that closely resembles Proposal No. 4, modified in the following ways:

a. Protein value per hundredweight to be expressed as a protein differential.

b. Protein value per hundredweight to be adjusted by a positive somatic cell adjustment of approximately 1 cent per 15,000 somatic cells as somatic cell counts decline below 300,000, and a negative adjustment of approximately 1 cent per 15,000 somatic cells as somatic cell counts increase above 350,000, up to a maximum adjustment of plus or minus 10 cents to the value of protein per hundredweight of milk.

c. Sweetened condensed milk to be reclassified as Class III or exempted from the protein pool obligation.

Proposed by the Galloway Company

Proposal No. 10

Milk used for the manufacture of ice cream, ice cream mixes, and various Class II sweetened condensed milks shall continue to be priced as under the current regulations and shall not be priced using multiple component pricing.

Proposed by Dairy Division, Agricultural Marketing Service

Proposal No. 11

Make such changes as may be necessary to make the entire marketing agreement and order conform with any amendments thereto that may result from this hearing.

Copies of this notice of hearing and the orders may be procured from the Market Administrator of each of the aforesaid marketing areas, or from the Hearing Clerk, room 1083, South Building, United States Department of Agriculture, Washington, DC 20250, or may be inspected there.

Copies of the transcript of testimony taken at the hearing will not be available for distribution through the Hearing Clerk's Office. If you wish to purchase a copy, arrangements may be made with the reporter at the hearing.

From the time that a hearing notice is issued and until the issuance of a final decision in a proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. For this particular proceeding, the prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture
Office of the Administrator, Agricultural Marketing Service
Office of the General Counsel
Dairy Division, Agricultural Marketing Service (Washington office only)
Office of the Market Administrator, Chicago Regional, Nebraska-Western Iowa, Upper Midwest, Eastern South Dakota and Iowa Marketing Areas

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Dated: December 22, 1993.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 94-56 Filed 1-3-94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-174-AD]

Airworthiness Directives; Boeing Model 747 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the supersedure of an existing airworthiness directive (AD), applicable to certain Boeing Model 747 series airplanes, that currently requires that the FAA-approved maintenance inspection program include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI). This action would require the inclusion of additional airplanes to the candidate fleet. This proposal is prompted by a recommendation from the Airworthiness Assurance Task Force, Model 747 Structures Working Group. The actions specified by the proposed AD are intended to ensure the continued structural integrity of the total Boeing Model 747 fleet.

DATES: Comments must be received by March 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-174-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124-2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Steven Fox, Aerospace Engineer, Airframe Branch, ANM-120S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2777; fax (206) 227-1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-174-AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-174-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

Discussion

On March 18, 1993, the FAA issued AD 93-06-01, Amendment 39-8526 (58 FR 19571, April 15, 1993), applicable to certain Boeing Model 747 series airplanes, to require that the FAA-approved maintenance inspection program be revised to include inspections which will give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI). That action was prompted by a structural re-evaluation by the manufacturer which identified additional structural elements where, if damage should occur, supplemental inspections may be required for timely detection. The requirements of that AD are intended to ensure the continued structural integrity of the total Boeing Model 747 fleet.

Since the issuance of that AD, the FAA has reviewed and approved Boeing Document No. D6-35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993, that revises the effectivity by adding airplanes to the candidate fleet on which supplemental inspections that give no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) must be performed. This document also clarifies the selection criteria for candidate airplanes. The original Model 747-100 and -200 series airplanes in the candidate fleet were selected based on having accumulated 10,000 flight cycles by June 30, 1983. Subsequently, selected high time airplanes were added to the candidate fleet to replace out-of-service airplanes. Incorporation of the inspections described in this document will ensure the continuing structural integrity of the total Boeing Model 747 fleet.

Since the failure of an SSI can compromise the structural integrity of these airplanes, and since such conditions are likely to exist or develop on other Model 747 series airplanes, the proposed AD would supersede AD 93-06-01 to expand the applicability to require that the inspections identified in the Boeing document, described previously, be performed on the airplanes in the candidate fleet to provide no less than the required damage tolerance rating (DTR) for each Structural Significant Item (SSI) listed in Revision E of the SSID.

Moreover, the FAA has identified eight additional airplanes that are not listed in Revision E of the Boeing Document, and that must be added to the candidate fleet to replace certain airplanes that were removed from the candidate fleet. Some of these newly identified airplanes were operated as short range (SR) airplanes and have now been converted to freighters. Therefore, the FAA has determined that these airplanes must be included in the SSID

program, and that supplemental inspections must also be performed on these additional airplanes to ensure safety of the entire Boeing Model 747 fleet. The AD proposes to expand the applicability by adding these eight airplanes.

There are approximately 128 Boeing Model 747 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 87 airplanes of U.S. registry and 8 U.S. operators would be affected by this proposed AD. Incorporation of the SSID program into an operator's maintenance program, as required by AD 93–06–01, and retained in this proposal, is estimated to necessitate 1,000 work hours (per operator) at an average labor rate of $55 per work hour. Based on these figures, the total cost to the 8 affected U.S. operators to incorporate the SSID program is estimated to be $440,000, or $55,000 per U.S. operator.

The recurring inspections costs, as required by AD 93–06–01, and retained in this proposal, is estimated to be 1,275 work hours per airplane at an average labor rate of $55 per work hour. Based on these figures, the annual recurring cost required by AD 93–06–01, and retained in this proposal, is estimated to be $6,100,875 for the affected U.S. fleet, or $70,125 per airplane.

Since no new operators have been added by this proposal, there will be no new costs associated with incorporating the SSID program into an operator's maintenance program. Therefore, the future economic cost impact of this proposal on U.S. operators is now only the cost of the recurring inspections for these additional airplanes.

The number of required work hours for the recurring inspections in this proposal, as indicated above, is presented as if the accomplishment of the actions were to be conducted as "stand alone" action. However, in actual practice, these actions, for the most part, would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8526 (58 FR 19571, April 15, 1993), and by adding a new airworthiness directive (AD), to read as follows:

Boeing: Docket 93–NM–174–AD. Supersedes AD 93–06–01, Amendment 39–8526.

Applicability: Model 747 series airplanes, as listed in Section 3.0 of Boeing Document No. D6–35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993; and manufacturer's line numbers 42, 174, 221, 231, 234, 239, 242, and 254; certificated in any category.

Compliance: Required as indicated, unless accomplished previously

To ensure the continued structural integrity of the total Boeing Model 747 fleet, accomplish the following:

(a) For airplanes listed in Boeing Document No. D6–35022, Volumes I and II, "Supplemental Structural Inspection Document (SSID)," Revision D, dated February 1992: Within 12 months after May 17, 1993 (the effective date of AD 93–06–01, Amendment 39–8526), incorporate a revision into the FAA-approved maintenance inspection program which provides no less than the required Damage Tolerance Rating (DTR) for each Structural Significant Item (SSI) listed in Boeing Document No. D6–35022, Revision D, dated February 1992. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include Sections 5.0 and 6.0 of the SSID and shall be implemented in accordance with the procedures contained in those sections.

(b) For airplanes listed in Boeing Document No. D6–35022, Volumes 1 and 2 "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17 1993; and manufacturer's line numbers 42, 174 221 231, 234, 239, 242, and 254: Within 12 months after the effective date of this AD, replace the revision of the FAA-approved maintenance inspection program required by paragraph (a) of this AD with a revision that provides no less than the required DTR for each SSI listed in Boeing Document No D6–35022, Volumes 1 and 2, "Supplemental Structural Inspection Document (SSID) for Model 747 Airplanes," Revision E, dated June 17, 1993. (The required DTR value for each SSI is listed in the document.) The revision to the maintenance program shall include Sections 5.0 and 6.0 of the SSID and shall be implemented in accordance with the procedures contained in those sections.

(c) Cracked structure must be repaired, prior to further flight, in accordance with an FAA-approved method.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–23 Filed 1–3–94, 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–NM–157–AD]

Airworthiness Directives; de Havilland, Inc., Model DHC–7 Series Airplanes

AGENCY: Federal Aviation Administration, DOT

ACTION: Supplemental notice of proposed rulemaking; reopening of comment period.

SUMMARY: This document revises an earlier proposed airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, that would have required a one-time inspection to assess the adequacy of the clearance between various adapter plates and seal retaining angles on the fuselage side access panel, and modification, if necessary. That proposal was prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. This action revises the proposed rule by requiring modification of both the forward and rear seal retention angles, regardless of whether damage is found. The actions specified by this proposed AD are intended to prevent degradation of the structural capabilities of the affected airplanes.

DATES: Comments must be received by February 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from de Havilland, Inc., Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York.

FOR FURTHER INFORMATION CONTACT: Sol Maroof, Aerospace Engineer, Airframe Branch, ANE–172, FAA, New York Aircraft Certification Office, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6220; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 92–NM–157–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 92–NM–157–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A proposal to amend part 39 of the Federal Aviation Regulations to add an airworthiness directive (AD), applicable to certain de Havilland Model DHC–7 series airplanes, was published as a notice of proposed rulemaking (NPRM) in the **Federal Register** on March 4, 1993 (58 FR 12349). That NPRM would have required a one-time inspection to assess the adequacy of the clearance between: (1) The wing forward pick-up adapter plate and the seal retaining angle on the fuselage side access panel, and (2) the wing rear mounting adapter plates and the seal retaining angle on the fuselage side access panel; and modification, if necessary. That NPRM was prompted by reports of incidents involving corrosion and fatigue cracking in commuter-class airplanes that are approaching or have exceeded their economic design goal. That condition, if not corrected, could result in degradation of the structural capabilities of the affected airplanes.

Since the issuance of that NPRM, the FAA has received a comment that has caused the FAA to reconsider its position on certain aspects of the proposed rule.

The commenter requests that the proposal be revised to require modification of the forward and rear retention angles and adapter plates, regardless of whether damage is found in the adapter plates. The commenter contends that if the forward and rear seal retainers are not trimmed, they may be inadvertently interchanged with seal retainers from other airplanes in an operator's fleet. The FAA concurs. The FAA has reviewed all available data and has determined that in order to preclude the possibility for installing an untrimmed seal retainer in an airplane that lacks sufficient clearance, the forward and rear seal retainers must be trimmed. Although the referenced service bulletins do not specify trimming the forward and rear seal retainers when the seal retainers are found undamaged, the FAA finds that safety can be best assured when the seal retainers are trimmed, regardless of whether damage is found, to avoid the possibility for inadvertently interchanging seal retainers from other airplanes. Therefore, proposed paragraph (a) of the previously issued NPRM has been revised to propose requiring that Modification 7/2319 (forward adapter plates and seal retaining angle), and paragraph (b) of the NPRM has been revised to propose requiring that Modification 7/2355 (rear adapter plates and seal retaining angle) be accomplished.

Further, this commenter indicates that the proposed 6-month compliance time to accomplish the inspection was unnecessarily stringent in light of the age of the service bulletins. From this comment, the FAA infers that the commenter requests an extension to the compliance time, although the commenter does not specify an alternative. The FAA concurs that the compliance time may be extended somewhat. The FAA has determined that extending the compliance time by 6 additional months will not adversely affect safety, and will allow the inspection to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available. It will also provide additional time to accomplish the additional modification proposed in this action. Therefore, paragraphs (a) and (b) of this supplemental NPRM have been revised to require that the inspection be accomplished within 12 months.

Since certain of these changes expand the scope of the originally proposed rule, the FAA has determined that it is necessary to reopen the comment period

to provide additional opportunity for public comment.

The FAA estimates that 44 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 8 work hours per airplane to accomplish the modifications and inspections, and that the average labor rate is $55 per work hour. Required parts would be nominal in cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $19,360, or $440 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

De Havilland, Inc.: Docket 92–NM–157–AD.

Applicability: Model DHC–7 airplanes having serial numbers 1 through 99 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent structural failure, accomplish the following:

(a) For airplanes having serial numbers 1 through 77 inclusive, 79 through 83 inclusive, 85, and 86: Within 12 months after the effective date of this AD, inspect the clearance between the wing forward pick-up adapter plates and the seal retaining angle on the fuselage side access panel in accordance with de Havilland Service Bulletin 7–57–11, dated December 17, 1982.

(1) If the adapter plates are undamaged or if scoring on the adapter plates does not exceed 0.050 inch in depth, prior to further flight, accomplish Modification 7/2319 in accordance with the service bulletin.

(2) If scoring on the adapter plates is equal to or exceeds 0.050 inch in depth, prior to further flight, repair in accordance with a method approved by the Manager, New York Aircraft Certification Office (ACO), ANE–170, FAA, Engine and Propeller Directorate.

(b) For airplanes having serial numbers 1 through 99, inclusive: Within 12 months after the effective date of this AD, inspect the clearance between the rear mounting adapter plates and the seal retaining angle on the fuselage side access panel in accordance with de Havilland Service Bulletin 7–57–19, dated February 24, 1984.

(1) If the adapter plates are undamaged or if scoring on the adapter plates does not exceed 0.050 inch in depth, prior to further flight, accomplish Modification 7/2355 in accordance with the service bulletin.

(2) If scoring on the adapter plates is equal to or exceeds 0.050 inch in depth, prior to further flight, repair in accordance with a method approved by the Manager, New York ACO, ANE–170, FAA, Engine and Propeller Directorate.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York ACO, ANE–170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on December 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service

[FR Doc. 94–22 Filed 1–3–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 161 and 250

[Docket No. RM94–6–000]

Standards of Conduct and Reporting Requirements for Transportation and Affiliate Transactions

Issued December 23, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking

SUMMARY: The Federal Energy Regulatory Commission (Commission) is proposing to revise its regulations governing standards of conduct and reporting requirements for transportation and affiliate transactions. The Commission is proposing to reduce the reporting requirements based on changes in the way pipelines will be allocating capacity after implementation of Order No. 636 and the Commission's experience with the reporting requirements.

DATES: Comments are due February 3, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Michael Goldenberg, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the Federal Register, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

The Federal Energy Regulatory Commission (Commission) is proposing to amend its regulations governing standards of conduct and reporting requirements for transportation and affiliate transactions. The Commission is proposing to reduce the reporting requirements significantly based on changes in the way pipelines will be allocating capacity after implementation of Order No. 636 [1] and the Commission's experience with the reporting requirements.

I. Reporting Requirements

The Commission estimates the public reporting burden for this collection of information under the proposed rule to average 66.2 hours per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The information will be collected under FERC–592, Marketing Affiliates of Interstate Pipelines. In lieu of being physically filed with the Commission on a periodic basis as a "response" or "filing", the data will be updated continuously and made available to customers/shippers, the public, and the Commission by Electronic Bulletin Boards (EBBs) established and maintained by the pipeline respondents pursuant to Order No. 636. The annual reporting burden for some 61 respondents under the proposed rule is estimated to total 4,038.2 hours.

Because the proposed rule provides for fewer information items, the burden estimate for FERC–592 in the subject Notice of Proposed Rulemaking (NOPR) represents a burden reduction of 63 hours per respondent—or a total reduction of 3,843 hours. The current annual reporting burden attributable to the FERC–592 information collection is 7,882 hours. A copy of this proposed rule is being provided to the Office of Management and Budget (OMB).

Interested persons may send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for further reductions of this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]. Comments on the requirements of this proposed rule may also be sent to the Office of Information and Regulatory Affairs of OMB, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission (202) 395–6880].

II. Background

The Commission, in Order No. 497,[2] issued a rule intended to prevent pipelines from providing preferential treatment to their marketing or brokering affiliates. The rule adopted standards of conduct (codified at part 161 of the Commission's regulations)[3] and tariff and reporting requirements (codified in § 250.16).[4] The reporting requirements required the pipelines to file FERC Form No. 592, a log containing information relating to transportation for affiliated marketers, and to maintain the same information for nonaffiliated shippers. The Commission imposed a sunset provision requiring a reevaluation of the requirements of the rule within one year to determine whether increased competition in transportation had mitigated the concerns about affiliate abuse. The Commission has extended the sunset provision until December 31, 1993, and, contemporaneously with this NOPR, is issuing Order No. 497–E which extends the reporting requirements until June 30, 1994.[5]

In Order No. 636, the Commission created a new operating environment for interstate pipelines and shippers by requiring pipelines to unbundle their sale of gas from their transportation service and implementing changes in the terms and conditions for providing transportation. One of the principal changes introduced by Order No. 636 was the initiation of capacity release mechanisms through which firm shippers can release their firm transportation capacity, including storage capacity, to others wanting to obtain the capacity. The Commission mandated that all allocations of firm capacity, both firm capacity available from the pipeline and released capacity, be implemented through Electronic Bulletin Boards (EBBs) operated by the pipelines (or operated on their behalf by third parties). The Commission also has begun the process, in Docket No. RM93–4–000, of standardizing the methods by which pipelines will provide information about available capacity through their EBBs.

Another significant change in Order No. 636 was the Commission's determination that pipelines must provide shippers with flexible receipt and delivery points. The Commission provided this flexibility to promote efficient use of pipeline capacity particularly through the capacity releasing mechanism. A shipper obtaining released capacity (replacement shipper) is not restricted to using the receipt or delivery points of the releasing shipper; it is able to select alternate receipt or delivery points for that capacity to accord with its requirements for transportation service.

The Commission previously has addressed the effect of EBBs and capacity release on the Order No. 497 requirements. In Order No. 497–D, the Commission eliminated the requirement that pipelines file the Form No. 592 containing the affiliated transportation log with the Commission, requiring instead that they provide this information on their EBBs.[6] The Commission also determined that Order No. 497 does not apply to temporary capacity releases, because such releases are not a request for transportation to

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13,267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), order on reh'g, Order No. 636–A, 57 FR 36,128 (Aug. 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (Aug. 3, 1992), order on reh'g, Order No. 636–B, 57 FR 57,911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), appeal pending sub nom., *Atlanta Gas Light Co. and Chattanooga Gas Co.* v. *FERC*, No. 92–8782 (11th Cir. Aug. 13, 1992).

[2] Inquiry Into Alleged Anticompetitive Practices Related to Marketing Affiliates of Interstate Pipelines, Order No. 497, 53 FR 22139 (June 14, 1988), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,820 (1988), order on rehearing, Order No. 497–A, 54 FR 52781 (Dec. 22, 1989), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,868 (1989), order extending sunset date, Order No. 497–B, 55 FR 53291 (Dec. 28, 1990), FERC Stats. & Regs. [Regulations Preambles 1986–1990] ¶ 30,908 (1990), order extending sunset date and amending final rule, Order No. 497–C, 57 FR 9 (Jan. 2, 1992), III FERC Stats. & Regs. ¶ 30,934 (1991), reh'g denied, 57 FR 5815 (Feb. 18, 1992), 58 FERC ¶ 61,139 (1992), aff'd in part and remanded in part, *Tenneco Gas* v. *Federal Energy Regulatory Commission*, 969 F.2d 1187 (D.C. Cir. 1992), order on remand, Order No. 497–D, 57 FR 58978 (Dec. 14, 1992), III FERC Stats. & Regs. ¶ 30,958 (1992).

[3] 18 CFR part 161.

[4] 18 CFR 250.16.

[5] Order No. 497–E also revises § 161.3(f) of the standards of conduct dealing with the contemporaneous disclosure to nonaffiliates of transportation, sales, and marketing information provided to affiliates.

[6] Order No. 497–D, III FERC Stats. & Regs. Preambles at 30,737.

the pipeline.[7] The releasing shipper, not the pipeline, controls and makes the determination to release capacity; the pipeline merely facilitates the transaction.

Now that Order No. 636 has been implemented on virtually all pipelines, the Commission finds this to be the opportune time to do a comprehensive reevaluation of the Order No. 497 requirements in light of the requirements of Order No. 636 as well as the Commission's experience under Order No. 497. In Order No. 636, the Commission stated that increased competition resulting from the unbundling of gas sales from transportation service might reduce the pipelines' incentive for granting preferences to affiliates, but it concluded such competition probably would not eliminate the incentive altogether.[8] Similarly, the implementation of capacity release may reduce the pipelines' incentive to provide its marketing affiliates with preferences for interruptible transportation, because shippers seeking interruptible service are not restricted to the pipeline as the sole avenue for such service, as they were in the past; they now can obtain firm service through capacity release which is superior to the pipelines' interruptible service.

At this juncture, the Commission does not deem the evidence sufficient to warrant rescission of the Order No. 497 standards of conduct and tariff and reporting requirements. As part of its continuing assessment of the need for these regulations, the Commission will consider in the final rule any comments relating to the need for, and retention of, these regulations as a whole. Nevertheless, the significant changes wrought by Order No. 636 do appear to warrant substantial revision of the Order No. 497 standards of conduct and tariff and reporting requirements to eliminate unnecessary information and to reduce and streamline the compliance burden. Modifications to the Order No. 497 filing requirements also are needed to conform the regulations with the requirement that affiliate information be posted on pipeline EBBs.[9]

[7] Northwest Pipeline Corporation, 65 FERC ¶61,007 (1993). A temporary capacity release occurs when the releasing shipper retains its rights to the capacity when the release period ends. A permanent release ends the releasing shipper's rights and responsibilities under the contract and the contract is transferred to the replacement shipper.

[8] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,621.

[9] The Commission is proposing to eliminate current § 161.3(h), §§ 250.16(b)(1) (ii) and (iv), and §§ 250.16(b)(2) (ii), (iv), and (vii)–(xiv). It proposes to modify current § 250.16(a), §§ 250.16(b)(1)(i), §§ 250.16(b)(2) (iii), (vi), and (xvii), and §§ 250.16(c)–(e).

[10] Order No. 636, III FERC Stats. & Regs. Preambles at 30,458.

[11] For the same reason, the Commission is proposing to eliminate current § 250.16(b)(2)(xiii) requiring pipelines to include in their transportation log a statement of whether the gas being transported is subject to take-or-pay relief.

III. The Proposed Rule

A. Standards Of Conduct

The Commission proposes to eliminate § 161.3(h) of the regulations which prohibits pipelines from conditioning or tieing an agreement to release gas subject to take-or-pay relief to the purchase of services from a marketing affiliate. The Commission in Order No. 636 established procedures for dealing with gas supply realignment costs resulting from the reformation or termination of take-or-pay contracts after the unbundling of sales from transportation service.[10] Accordingly, a standard of conduct provision relating to take-or-pay relief should no longer be needed.[11]

B. Tariff And Reporting Requirements

1. Revisions To Coordinate With Other Regulatory Changes

The reporting requirements currently apply to interstate pipelines transporting gas pursuant to subparts B, G, H, or K of part 284. The Commission proposes to remove the references to subparts H and K. Subpart H applies to capacity release transactions and is an unnecessary and duplicative reference, since, by its own terms, it applies only to pipelines transporting gas under subparts B and G. Subpart K, which applies to pipelines transporting gas on the outer continental shelf, is similarly unnecessary because, it too, requires such pipelines to transport gas pursuant to subpart G.

2. Tariff Provisions

Current § 250.16(b)(1) presently requires pipelines to include in their tariffs information about shared operating personnel and facilities, the information and format for a request for service, the procedures used to address complaints, and the procedures used to inform shippers about the availability and pricing of transportation service. Current § 250.16(g)(1) requires pipelines to maintain and follow certain procedures to make the tariff information available to the public.

The Commission proposes to eliminate the requirement, in current § 250.16(b)(1)(ii), that pipelines include in their tariffs the information required for a valid request for service, including the information required for the Form No. 592 affiliate transportation log. This provision was intended to ensure that pipelines obtained from a shipper requesting service information known to the shipper, but not to the pipeline, which the pipeline was required to maintain by the regulations.[12] The information which pipelines needed to obtain included items such as the supplier of gas, the end-user, and whether or not the gas was subject to take-or-pay relief. The requirement for pipelines to include the request for service information in their tariff no longer appears necessary, because pipeline tariffs already include procedures for requesting service, and more important, this NOPR is proposing to eliminate the information which the pipelines previously had to obtain from the transportation request form Under the proposed regulations, pipelines should know all the relevant information, without having to obtain additional information from the requesting shipper.

The Commission proposes to eliminate the requirement, in current § 250.16(b)(1)(iv), that requires pipeline tariffs to include the procedures used to inform affiliated and nonaffiliated shippers of the availability and pricing of transportation service and of the capacity available for transportation. This requirement appears superfluous since pipelines are required under Order No. 636 to provide equal and timely access on their EBBs to information relevant to the availability of service on their systems.[13]

The Commission also is proposing to eliminate the requirement, in current § 250.16(g)(1), that pipelines maintain and make available to the public (at the pipelines' offices and through the mail) the tariff information they file with the Commission. This provision merely duplicates existing provisions. Section 4(c) of the Natural Gas Act requires pipeline tariff information to be publicly available and the Commission's regulations already require that the information be made available at the pipelines' offices as well as through the mail.[14]

3. Reporting Transportation Transactions

Current § 250.16(b)(2) requires pipelines to file with the Commission a transportation log reporting a variety of information related to affiliate

[12] See Order No. 497, FERC Stats. & Regs. (Regulations Preambles 1986–1990] at 31,147 (transportation request must include the items to be disclosed).

[13] 18 CFR 284.8(b)(3), (4); 18 CFR 284.9(b)(3), (4).

[14] 15 U.S.C. 717c(c) (1988); 18 CFR 154.16, 154.22.

transactions, and § 250.16(c) requires pipelines to maintain the same information for nonaffiliate transactions. The Commission is proposing to reduce the amount of information that must be maintained and to clarify the filing requirements in light of the requirement, promulgated in Order No. 497–D, that pipelines post the information on their EBBs in lieu of filing it with the Commission.[15]

a. Information requirements. The Commission is proposing to eliminate the requirement that pipelines maintain information relating to firm transportation under § 250.16. As a result of Order No. 636, the posting and awarding of firm service, including the reservation charge for that service, will be conducted through, and reported on, the pipelines' EBBs.[16] Since all the details regarding an affiliate's or other shipper's acquisition of firm service will be on the EBB, a similar posting requirement for affiliate information under § 250.16 appears unnecessary.[17]

For interruptible transportation, however, the EBBs will not provide the relevant discount information, because, unlike firm service, the EBBs will not be used to allocate interruptible capacity or establish a shipper's rate for interruptible service.[18] The allocation of interruptible transportation and the rate for individual transactions usually takes place during the pipelines' monthly and daily nomination and scheduling process. Accordingly, the Commission is retaining the current requirement to maintain and post information for discounts on interruptible service (proposed § 250.16(c)).

The Commission is proposing to eliminate a number of reporting requirements relating to requests for interruptible service.[19] The Commission's experience in administering Order No. 497 is that the most important information for monitoring potential undue discrimination is the discount information for individual transactions. Once that information is known, the Commission can obtain information regarding the transportation request during an investigation if it is needed. Indeed, some of the information on the request, such as the extent of affiliation between pipelines and suppliers or shippers, would appear to be well known to the parties transacting business on the pipelines and should not need to be posted.[20]

The Commission is proposing to eliminate a series of requirements for posting information obtained from the transportation request on the source and destination of gas.[21] Information from the transportation request form on source and destination should no longer be of much value since the Commission has required pipelines to provide for flexible receipt and delivery points. By making use of alternate receipt or delivery points, shippers will be able to transport gas between a variety of sources and destinations, regardless of the source or destination information provided on the transportation request form. The Commission, however, is retaining the requirement that pipelines post the quantity of gas at each delivery point for discounts actually granted.

The Commission has not proposed to delete certain information relating to requests for service, such as the position of the request in the transportation queue and the disposition of the request. Nevertheless, the Commission is unsure about the value of retaining the requirements for posting information concerning the requests for service and solicits comments on whether they should be deleted as well.

In Order No. 636–A, the Commission addressed the requirement in current § 250.16(b)(2)(xiv) for reporting whether gas sales are being made below cost.[22] A commenter had requested additional protection against affiliate abuse, contending that, after unbundling, a pipeline could avoid the Order No. 497 requirement to post transportation discounts by charging its affiliate the maximum transportation rate to deliver the gas, but selling gas to its affiliate at a loss. As part of its response, the Commission stated that concealment of such an arrangement would be difficult in light of the § 250.16(b)(2)(xiv) requirement for pipelines to report whether affiliated marketers or their blanket sales operating units were selling gas below cost.

However, after further consideration and review of experience under Order No. 497, the Commission is proposing to eliminate the sales below cost provision, because it has not proved meaningful in evaluating discounts granted by pipelines. The Commission understands the pipelines obtain the information on below cost sales from the affiliated marketer in its initial request for service. The information reported by the pipeline, therefore, would not provide current below cost sales information that can be directly related to the current transportation arrangements posted in the log. Experience also shows that 98% of the time pipelines report this information as "no" or "unknown".

The Commission has no evidence that the manipulation of gas and transportation prices, as suggested by the comment in Order No. 636–A, has occurred or resulted in discrimination. Moreover, the Commission seriously doubts whether, in the competitive market for gas sales, any pipeline reporting requirement would permit monitoring of the ever-changing price which shippers, whether affiliated marketers or others, will be paying for gas. Shippers in the market are in a better position to obtain information on gas prices and to file complaints with the Commission if they believe a manipulation of gas and transportation prices results in an undue discrimination relating to the transportation component.

The Commission also is proposing to clarify the reporting requirements by requiring the provision of information on whether an affiliate or sales operating unit is involved in the transportation transaction and its role. Current § 250.16(b)(2) (revised § 250.16(d)) already requires pipelines to report transactions in which an affiliated marketer is involved, even if it is not the shipper. For example, an affiliate or pipeline sales operating unit could be involved in a transaction as a seller of gas or as an agent, but not as the shipper. The requirement to report the extent of such involvement would

[15] Order No. 497–D, III FERC Stats. & Regs. Preambles at 30,737; 18 CFR 250.16(d)(1).

[16] 18 CFR 284.8(b)(3), 284.8(b)(4); Order No. 636, III FERC Stats. & Regs. Preambles at 30,419–20.

[17] The Commission recognizes that pipelines may offer firm shippers discounts on the reservation charge after the capacity is awarded and also may discount the firm usage charge. But the Commission does not deem the potential for such discounting sufficient to warrant the continuation of the reporting requirements under § 250.16. Such discounting has not proven to have been extensive in the past. Moreover, information on any firm discounts that pipelines do provide affiliates will be available on pipeline EBBs under former standard 1 and under the Commission's Part 284 discount reporting requirements, although without as much detail as required by § 250.16. See 18 CFR 161.3(i)(revised § 161.3(h)); 18 CFR .8(b)(4)(v) (requiring standards of conduct information to be posted on EBBs); 18 CFR 284.7(d)(5)(4). In addition, the Commission's adoption of straight-fixed-variable (SFV) rate design in Order No. 636 virtually eliminates the pipelines' ability to discount the firm usage rate as well as the impact of any discounts if they did occur. Under SFV, the usage rate reflects only variable costs (and applicable volumetric surcharges), and pipelines cannot discount below variable cost.

[18] Order No. 636 only required pipelines to post their available interruptible capacity on their EBBs, but it did not mandate that the awarding of interruptible capacity take place on the EBBs. 18 CFR 284.9(b)(3).

[19] The Commission is proposing to eliminate current §§ 250.16(b)(2)(ii), (iii), (v), (vi), (xiv), (xv), (xvii).

[20] For the same reason, the Commission is proposing to eliminate the reporting of corporate affiliation in the discount reporting requirement under current § 250.16(b)(2)(xix).

[21] Current §§ 250.16(b)(2) (vii), (ix), (xi).

[22] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,622–23.

ensure that those obtaining the affiliate information would know the role of the pipeline affiliate when it is not a shipper.

b. Access to the affiliate and nonaffiliate information. The existing regulations require pipelines to file transportation logs at the Commission. The Commission is proposing to conform these filing requirements to the requirement, established in Order Nos. 497–D and 497–E, that pipelines post affiliate information on their EBBs rather than submitting it to the Commission.[23]

To conform the Order No. 497 regulations with the requirements for EBBs, the new regulations would require pipelines to post affiliate information on their EBBs in conformity with the requirements of § 284.8(b)(4) and their tariffs and to provide access to the affiliate information using the same procedures and protocols as used for accessing their EBBs.[24] Pipelines, therefore, must ensure that their EBBs for affiliate information are user-friendly and incorporate the same features as apply to the other aspects of the pipelines' EBBs.[25] They also must permit users to obtain the affiliate information by using the same phone number and log-on procedures they would use to access and obtain information about available capacity from the pipelines' EBBs.[26]

The Commission previously had required pipelines to file their affiliate transportation logs with the Commission on magnetic tape or computer disks according to specified data formats.[27] The Commission similarly required the pipelines to maintain nonaffiliate information in electronic form and to provide this information to the Commission upon request or to the public under the Commission's discovery procedures.[28] Since pipelines are now required to comply with the Part 284 EBB requirements for posting of the affiliate information, they must make this information available through downloadable files. The regulations have been revised to reflect this requirement.

The Commission is also proposing to modify the requirements for providing both affiliate and nonaffiliate information to the Commission upon request. Under the proposal, pipelines would only have to maintain the information and be prepared to make it available electronically within a reasonable time upon request, according to specifications and formats promulgated by the Commission. Under the proposal, pipelines would not have to maintain the nonaffiliate information in one computer file. They could maintain the information in different files so long as they could extract the information and provide it, upon request, in electronic form. The Commission proposes to revise Form No. 592 to set forth the specifications and formats to be used for downloading and for providing the information to the Commission upon request.[29]

Current § 250.16(d)(4)(ii) provides that filing the discounted rate report for affiliate transactions within 15 days of the close of the billing period satisfies a pipeline's obligation to file discount reports under § 284.7(d)(5)(iv). Since pipelines are no longer required routinely to file transportation logs with the Commission, they must now fully comply with § 284.7(d)(5)(iv) for affiliate transactions.

IV. Sunset Date

The Commission is not proposing to include a sunset provision in this rule. The proposed revisions reduce the compliance burden significantly, and a firm sunset date, such as one year from issuance, would not necessarily provide sufficient time for the Commission fully to evaluate the effect of Order No. 636 on the pipelines' incentive to favor affiliates. The Commission always can reevaluate the rule when sufficient information is available. For example, after evaluation of the impact of the capacity release mechanism, the Commission may find that the availability of released capacity has so reduced the significance of interruptible discounts from the pipeline that the regulations are no longer needed. But, the Commission cannot predict when it would have sufficient data to make such a determination. The Commission notes that even without a sunset provision, it must review these regulations within three years because the Paperwork Reduction Act does not permit OMB to approve an information collection requirement for a period in excess of three years.[30]

V. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[31] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[32] The action taken here falls within categorical exclusions provided in the Commission's regulations.[33] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[34] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that th regulations proposed herein will not have a significant impact on a substantial number of small entities.

VII. Information Collection Requirement

Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[35] The proposed rule revises and reduces the reporting requirements/ burden under existing FERC–592, Marketing Affiliates of Interstate Pipelines (OMB Control No. 1902–0157).

The information required under FERC–592 enables the Commission to carry out its legislative mandate under the NGA and NGPA and will help ensure a viable capacity release market under the Commission's Order No. 636. Specifically, the required information allows the Commission to review/ monitor pipeline transportation, sales, and storage transactions with its marketing affiliates to deter undue discrimination and to take appropriate action, where and when necessary. The information is also used by others to indicate whether or not there has been discrimination in pipeline/affiliate/ nonaffiliate transactions.

The Commission is submitting notification of these FERC–592 information requirements to OMB for its review and approval. Interested persons may obtain further information by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject proposed rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

VIII. Comment Procedures

The Commission invites interested persons to submit written comments on the matters proposed in this notice, including any related matters or alternative proposals that commenters may wish to discuss. An original and 14 copies of comments to this notice must be filed with the Commission no later than February 4, 1994. Comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, and should refer to Docket No. RM94–6–000.

All written comments will be placed in the Commission's public files and will be available for inspection in the Commission's Public Reference Room at 941 North Capitol Street, NE, Washington, DC 20426, during regular business hours.

List of Subjects

18 CFR Part 161

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 250

Natural gas, Reporting and recordkeeping requirements.

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 161 and 250, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 161—STANDARDS OF CONDUCT FOR INTERSTATE PIPELINES WITH MARKETING AFFILIATES

1. The authority citation for part 161 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. In § 161.3, paragraph (h) is removed, paragraphs (i) through (l) are redesignated (h) through (k), and redesignated paragraph (i) is revised to read as follows:

§ 161.3 Standards of conduct.

* * * * *

(i) It must file with the Commission procedures that will enable shippers and the Commission to determine how the pipeline is complying with the standards in this section.

PART 250—FORMS

1. The authority citation for part 250 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7352.

2. § 250.16 is revised to read as follows:

§ 250.16 Format of compliance plan for transportation services and affiliate transactions.

(a) *Who must comply.* The requirements of this section apply to interstate natural gas pipelines that transport natural gas for others pursuant to subparts B or G of part 284 of this chapter and are affiliated, as that term is defined in § 161.2 of this chapter, in any way with a natural gas marketing or brokering entity and conducts transportation transactions with its affiliate.

(b) *Tariff requirements.* An interstate pipeline must maintain tariff provisions containing the following:

(1) A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and the affiliated marketing or brokering company, which the pipeline must update and refile with the Commission on a quarterly basis to reflect changes occurring during the quarter;

(2) The procedures used to address and resolve complaints by shippers and potential shippers including a provision that the pipeline will respond within 48 hours and in writing within 30 days to such complaints.

(c) *Transportation information.* An interstate pipeline must maintain the following information for all requests for interruptible transportation service conducted pursuant to subparts B or G of part 284 of this chapter.

(1) The identity of the shipper making the request for service, including a designation of whether the shipper is a local distribution company, an interstate pipeline, an intrastate pipeline, an end user, a producer, or a marketer.

(2) The date of receipt of the request.

(3) The specific affiliation of the requester with the interstate pipeline.

(4) Whether an affiliated marketer or pipeline sales operating unit is involved in the transaction and its role.

(5) The maximum daily contract volume of gas requested to be transported.

(6) The position of the request in the transportation request queue.

(7) The disposition of the request.

(8) Any complaints by the shipper or end user concerning the requested or furnished service and the disposition of such complaints.

(9) Whenever service is requested, offered, or provided at discounted rates: The name of the shipper requesting or being offered or provided the discount; the amount and duration of the discount requested, offered or provided; the maximum rate or fee; the rate or fee actually charged during the billing period; and the quantity of gas scheduled at the discounted rate during the billing period for each delivery point.

(10) Whether the pipeline has granted a waiver of a tariff provision in providing the requested service.

(d) *Filing requirements for transportation involving affiliated marketers or brokers.* An interstate pipeline must file the information specified in paragraph (c) of this section for transportation requests by affiliated marketers or brokers or in which an affiliated marketer or broker is involved in the following manner and must provide this information when service begins and update the information on a daily basis.

(1) It must post each transaction on its Electronic Bulletin Board for no less than 90 days in conformity with the requirements of subpart A, part 284, § 284.8(b)(4) of this chapter and its tariff, and using the same protocols and procedures for access as used for its Electronic Bulletin Board.

(2) It must provide for downloading of the information according to specifications and format contained in Form No. 592, which can be obtained at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol St., NE., Washington, DC 20426

(e) *Provision of data for affiliate and nonaffiliate transactions.* (1) The information pipelines are required to maintain by paragraph (c) of this section

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[23] Under Order No. 497–E, the requirement for filing transportation logs at the Commission terminates the earlier of 90 days after a pipeline is in compliance with Order No. 636 or June 30, 1994.

[24] Pipelines with waivers of the EBB requirements under Order No. 636 would have to file for a waiver of the posting and downloading requirements for the affiliate information and propose an alternate method for making the information available.

[25] See Order No. 636, III FERC Stats. & Regs. Preambles at 30,415. For example, the requirements to provide information through downloadable files, to provide on-line help, search functions, and menus, and to provide for backing-up, archiving, and retrieval of this material would be the same as those for the capacity availability information posted pursuant to § 284.8(b)(4).

[26] For example, the Commission envisions that, in most cases, the Order No. 497 information would be a separate menu item that users could choose when they log-on to the pipeline's EBB.

[27] 18 CFR 250.16(e).

[28] 18 CFR 250.16(c); 18 CFR 385.401–11.

[29] The proposed specifications and format are attached as Appendix A.

[30] 44 U.S.C. 3507(d).

[31] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs Preambles 1986–1990 ¶ 30,783 (1987).

[32] 18 CFR 380.4.

[33] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

[34] 5 U.S.C. 601–612.

[35] 5 CFR 1320.13.

for both affiliate and nonaffiliate transaction must be made available to the Commission upon request and to the public under subpart D of part 385 of this chapter.

(2) When requested by the Commission, the information must be provided, within a reasonable time, according to the specifications and format contained in Form No. 592, which can be obtained at the Federal Energy Regulatory Commission, Public Reference and Files Maintenance Branch, 941 North Capitol St., NE., Washington, DC 20426.

(f) *Penalty for failure to comply.* (1) Any person who transports gas for others pursuant to subparts B or G of part 284 of this chapter and who knowingly violates the requirements of § 161.3, § 250.16, or § 284.13 of this chapter will be subject, pursuant to §§ 311(c), 501, and 504(b)(6) of the Natural Gas Policy Act of 1978, to a civil penalty, which the Commission may assess, of not more than $5,000 for any one violation.

(2) For purposes of this paragraph, in the case of a continuing violation, each day of the violation will constitute a separate violation.

Note: The following Appendix will not appear in the Code of Federal Regulations.

Appendix A

Form Approved OMB No. 1902–0157; FERC Form No. 592

Marketing Affiliates of Interstate Pipelines

Record Formats

Revised December 7, 1993.

Public reporting burden for this collection of information is estimated to average 66.2 hours per year per respondent, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to each of the following:

Michael Miller, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426;

Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for the Federal Energy Regulatory Commission.

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General Information

I. Purpose

The information required is to support the monitoring of activities of pipeline marketing affiliates (which includes holders of subpart J of part 284 blanket sales certificates) so as to deter undue discrimination by pipeline companies in favor of marketing affiliates, and to prevent any harassment of non-affiliates.

II. Who Must Comply

All interstate natural gas pipeline companies that

- Transport natural gas for others pursuant to subparts B or G of part 284
- Are affiliated in any way with a natural gas marketing or brokering entity, as that term is defined in 18 CFR § 161.2, and
- Conduct transportation transactions with an affiliate

must maintain the requisite information for interruptible transportation service as specified in the FERC Form No. 592 and in the manner prescribed herein.

III. How to Comply

A. Affiliate Data

The required Form No. 592 information for interruptible transportation/storage service must be publicly available on an electronic bulletin board (EBB) which satisfies the pipeline's obligations under Order No. 636. This Form No. 592 data/information is also required to be downloadable in ASCII flat files conforming with the specifications of these instructions and record formats.

The requirement for back-up, archive, and retrieval of the Form No. 592 interruptible transportation/storage information on the EBB is the same as for information posted pursuant to § 284.8(b)(4). Each affiliate interruptible transportation/storage transaction must be posted for a 90 day period. EBB functionality shall be provided to permit users to extract currently posted Form No. 592 data, for one or more months, and to download a flat file containing this material formatted in accordance with these instructions.

B. Affiliate and Nonaffiliate Data

Pipelines must have the capability to create flat files containing the Form No. 592 interruptible transportation/storage information for a specified time period, for both pipeline affiliates and nonaffiliates. For discovery, the Commission may require pipelines to submit these Form No. 592 flat files for both affiliates and nonaffiliates on 9-track tape reel(s), 18-track tape cartridges(s), or on computer diskette(s).

The pipeline may also be requested to provide one paper copy of the information submitted on the magnetic tape(s) or diskette(s) formatted so as to assist Commission staff in reading the company's flat files. The paper copy, if requested, must cover the same time period as the flat files submitted on the magnetic tape(s) or diskette(s).

IV. Where to Submit

(1) Any required submission should be addressed to: Office of the Secretary, Federal Energy Regulatory Commission, 825 N. Capitol Street, NE., Washington, DC 20426

(2) Hand deliveries can be made to: Office of the Secretary, Federal Energy Regulatory Commission, room 3110, 825 N. Capitol Street, NE., Washington, DC 20426.

General Instructions

1. The notation f(m,n) will be used to denote a numeric string of length "m" including a decimal (".") with "n" digits following the decimal.

2. In preparing the required flat file, the following conventions must be followed.

(A) All numeric fields must not be left blank and must be right justified unless indicated otherwise.

(B) All money items should be rounded to the nearest dollar except where noted.

(C) All volumetric data should be stated in MMbtu's (rounded to the nearest MMbtu), except where noted.

(D) All rates should be stated in cents per MMbtu fixed decimal numbers, format f(10,2). For example, $1.5264/MMbtu should be stated as 152.64.

(E) Negative values should be reported with a "−" sign preceding the first nonzero digit reported.

(F) Commas must not be included in any numeric field.

(G) Percents should be reported as whole numbers between 0 and 100 inclusive.

(H) All dates should be reported as six digit numerics (year, month, day), unless otherwise indicated.

3. The sequence number is the sequential number assigned to a record as it is recorded on a schedule/record. The sequence number is incremented as additional records are added to a schedule/record and will be between 1 and 999,999, inclusive. (Note: The sequence number should be right justified, zero filled.)

4. The reference number is the alphanumeric string formed by concatenation of the Schedule ID, Record ID, sequence number, and item location number. E.g., a respondent's Company ID reported in the first record on the "General Information" record would have reference number "X101000001011" formed by joining (concatenating) the schedule ID "X1", the record ID "01", the sequence number "000001", and the item location number "011".

5. Report any footnote relative to any item reported on Schedule X1 in the "Footnotes Record", (Record 06 of Schedule X1). Each footnote should be cross referenced to the schedule and record (line) it pertains to by the appropriate reference number. E.g., a footnote for Company ID reported in the first record of the "General Information" record, (Schedule X1, Record 01), would be recorded in the "Footnote Record," (Schedule X1, Record 06), using the reference number "X101000001011". At a minimum, the respondent should report the following information, in footnotes, for each contract/request reported in the "Transportation Service Data Record," (Schedule X1, Record 02).

a. The field "Respondent Affiliation," item number 15, should be footnoted to provide a complete list of personnel and facilities shared by the interstate pipeline and affiliated marketer or broker, or by the interstate pipeline and its blanket sales operating unit. Negative reports are required.

b. The field "Disposition of Request," item number 11, should be footnoted to provide any complaints and the disposition of such complaints by the shipper or end user concerning the requested or furnished service.

6. Source of codes.

(A) Pipeline Company ID: Use the code for the pipeline as contained in the Buyer Seller Code List, U.S. Department of Energy's publication DOE/EIA–0176. A code may be obtained by calling EIA at (202) 254–5435.

(B) Contract ID: The respondent's own designation for the contract or agreement covering the transaction being reported. This identifier will either be assigned by the respondent or the party providing a service to the respondent.

7. A pipeline blanket sales operating unit is any entity operating under a subpart J of part 284 blanket sales certificate, and is considered the functional equivalent of a marketing affiliate.

Specific Instructions

1. Request ID: The Request ID is the unique sequential number assigned by the respondent to a request for transportation service when that request is received by the respondent.

2. Date Request Received: The month, day, and year the pipeline company received the request for transportation service.

3. Maximum Daily Contract Volumes To Be Transported (or Maximum Storage Withdrawal Quantity): The total maximum daily contract volumes of natural gas to be transported by the pipeline company (or withdrawn from storage).

4. Delivery Point ID: The point at which the pipeline company delivers the natural gas to a designated end user, local distribution company, etc. as specified by the transportation service requested. The respondent will provide a unique 20-byte alphanumeric identifier for each delivery point on his pipeline system. This delivery point ID will be the alphanumeric label/name which the respondent uses in conducting his daily business, (or a unique abbreviation thereof if the company identifier is more than 20 characters in length.)

5. Maximum Rate for Transportation Service: The maximum rate contained in the respondent's currently effective tariff for the rate schedule under which the interruptible transportation service is being conducted.

6. Discounted Rate for Transportation Service: A rate that is less than the maximum rate on file with the Commission.

7. Contracted Storage Capacity: Contracted working gas (Top Gas) volume.

Schedules

Marketing Affiliates of Interstate Pipelines—Schedule X1

Definitions of Items and File Layout for the Marketing Affiliates of Interstate Pipelines—Schedule X1

This schedule will consist of six record formats:

(01) The Header Record
(02) The Transportation/Storage Request Record
(03) The Transportation Discounted Rate Record
(04) The Storage Discounted Rate Record
(05) The Narrative Record
(06) The Footnotes Record

(1) The Header Record

Item No.	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character	Sch=X1.
	Record ID	3–4	Numeric	Code=01
1	Company ID	5–10	Numeric	Company code from buyer/seller code list, see general instruction 6.
3	Month Posted	11–14	Numeric	(MMYY); month and year which data represents.

(2) The Transportation/Storage Request Record

Item No	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character	Sch=X1.
	Record ID	3–4	Numeric	Code=02.
	Sequence No.	5–10	Numeric	Right justified, zero filled, see general instruction 3.
4	Contract ID	11–18	Character	See general instruction 6(b).
5	Request ID	19–25	Numeric	See specific instruction 1.
7	Position in Queue	26–30	Numeric	Place in waiting line for contract for transportation service.
8	Total Number of Requests in Queue	31–35	Numeric	Total number of requests pending with pipeline for initial transportation service.
9	Date Request Received	36–41	Numeric	(MMDDYY); see specific instruction 2.
11	Disposition of Request	42	Numeric	See general instruction 5b; code=1, granted at maximum rate; code=2, granted a discounted rate, code=3, denied due to a capacity limitation; code=4, denied due to financial condition of requestor; code=5, other (provide specific details in a footnote).
14	Shipper	43–82	Character	Name of the shipper requesting service.
15	Pipeline Affiliation with Shipper	83	Numeric	See general instruction 5a and note 1, code=1, respondent affiliated with shipper; code=2, respondent not affiliated with shipper.
18	Shipper Type	84	Numeric	Code=1, LDC/distributor; code=2, interstate pipeline, code=3, intrastate pipeline; code=4, end user; code=5, producer; code=6, marketer; code=7, other, (specify in footnote).
	Affiliate Name	85–124	Character	Name of the pipeline affiliate involved in the transportation/storage service being provided; if more than one affiliate is involved in the service, provide name(s) in a footnote.

Item No.	Item	Character position	Data type	Comments
	Role of Affiliate	125	Character ...	Affiliates role in the transportation/storage service is: code=1, shipper; code=2, marketer; code=3, supplier; code=4, seller; code=5, buyer; code=6, agent; code=7, enduser; code=8, other, (identify role in a footnote).
	Is Affiliate a Pipeline Sales Operating Unit of the Respondent.	126	Character ...	Code=Y, yes; code=N, no.
20	Discounted Rate Requested	127	Numeric	Discounted rate requested by party requesting the transportation service; code=0, discount not requested; code=1, discount requested.
21	Maximum Daily Contract Volume to be Transported (or Maximum Storage Withdrawal Quantity).	128–137	Numeric	(MMbtu); see specific instruction 3. Post contracted storage capacity in Item 33b.
31	Type of Service	138	Numeric	See note 1; code=1, interruptible service without waiver; code=2, interruptible service with waiver.
33a	Type of Transaction	139	Numeric	Code=1, code=2, a previously posted transaction in which changes occurred.
33b	Contracted Storage Capacity	140–149	Numeric	(MMbtu); see specific instruction 7.
33c	Character of Service	150	Numeric	Code=1, storage service; code=2, transportation related to sale made by pipeline blanket sales operating unit; code=3, other transportation.
	Posting Date	151–156	Numeric	(YYMMDD), year, month, and day entry is posted on pipeline's electronic bulletin board.
	Footnote	157	Numeric	Code=1, footnote is provided for this record; code=0, no footnote provided.

Note 1: Report in this data item whether a waiver of a tariff provision has been granted in providing the requested service. Code 1 will be used to indicate interruptible transportation service without waiver of a tariff provision; code 3 and 4 will be used to indicate interruptible transportation se vice with a waiver of a tariff provision of the respondent. Provide details on any waiver granted in a footnote.

(3) The Transportation Discounted Rate Record

Item No.	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character ...	Sch=X1.
	Record ID	3–4	Numeric	Code=03.
	Sequence Number	5–10	Numeric	Right justified, zero filled, see general instruction 3.
4	Contract ID	11–18	Character ...	See general instruction 6(b).
5	Request ID	19–25	Numeric	See specific instruction 1.
35	Delivery Point ID	26–45	Character ...	See specific instruction 4 and note 2.
38	Billing Period	46–65	Character ...	The billing period during which the discounted rate was collected.
39	Duration of Discount	66–67	Numeric	Number of days in the billing period the discount was offered or provided.
14	Shipper	68–107	Character ...	Name of the shipper receiving transportation service.
18	Shipper Type	108	Numeric	Code=1, LDC/distributor; code=2, interstate pipeline, code=3, intrastate pipeline; code=4, end user code=5, producer; code=6, marketer; code=7, other, (specify in footnote).
36	Maximum Rate for Transportation Service	109–118	Numeric	(Cents/MMbtu); maximum effective rate/fee currently on file with the Commission for the service provided; format f(10,2); e.g., 35.62 cents is reported as "35.62"; see specific instruction 5.
37	Discounted Rate for Transportation Service.	119–128	Numeric	(Cents/MMbtu); actual rate/fee collected for the transportation service rendered; format f(10,2); e.g., 32.15 cents is reported as "32.15"; do not report a negative value; see specific instruction 6.
40	Volume Transported	129–139	Numeric	(MMbtu); volume of gas transported at the discounted rate.
	Posting Date	140–145	Numeric	(YYMMDD), year, month, and day entry is posted on pipeline's electronic bulletin board.
	Footnote	146	Numeric	Code=1, footnote is provided for this record; code=0, no footnote provided.

Note 2: This record is filed for each delivery point actually used during the billing period reported. Only transactions actually discounted should be reported.

(4) The Storage Discounted Rate Record

Item No.	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character ...	Sch=X1
	Record ID	3–4	Numeric	Code=04.
	Sequence No	5–10	Numeric	Right justified, zero filled, see general instruction 3.
4	Contract ID	11–18	Character ...	See general instruction 6(b).
5	Request ID	19–25	Numeric	See specific instruction 1.
35	Delivery Point ID	26–45	Character ...	See specific instruction 4 and note 3.
38	Billing Period	46–65	Character ...	The billing period during which the discounted rate was collected.
39	Duration of Discount	66–67	Numeric	Number of days in the billing period the discount was offered or provided.
14	Shipper	68–107	Character ...	Name of the shipper receiving storage service.
18	Shipper Type	108	Numeric	Code=1, LDC/distributor; code=2, interstate pipeline; code=3, intrastate pipeline; code=4, end user; code=5, producer; code=6, marketer; code=7, other, (specify in footnote).
42	Maximum Rate for Storage Capacity	109–118	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 5 for definition.
43	Maximum Rate for Maximum Storage Withdrawal Quantity.	119–128	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 5 for definition
44	Maximum Storage Injection Rate	129–138	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 5 for definition.
45	Maximum Storage Withdrawal Rate	139–148	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 5 for definition.
46	Discounted Rate For Storage Capacity	149–158	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 6 for definition
47	Discounted Rate For Maximum Storage Withdrawal Quantity.	159–168	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 6 for definition.
48	Discounted Storage Injection Rate	169–178	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 6 for definition
49	Discounted Storage Withdrawal Rate	179–188	Numeric	(Cents/MMbtu); format f(10,2); see specific instruction 6 for definition.
50	Discounted Storage Capacity Volume	189–198	Numeric	(MMbtu).
51	Discounted Maximum Storage Withdrawal Quantity.	199–208	Numeric	(MMbtu).
52	Discounted Storage Injection Volume	209–218	Numeric	(MMbtu).
53	Discounted Storage Withdrawal Volume	219–228	Numeric	(MMbtu).
	Posting Date	229–234	Numeric	(YYMMDD), year, month, and day entry is posted on pipeline's electronic bulletin board.
	Footnote	235	Numeric	Code=1, footnote is provided for this record; Code=0, no footnote provided.

Note 3: This record is filed for each delivery point actually used during the billing period reported. Only transactions actually discounted should be reported.

(5) The Narrative Record

Item No.	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character ...	Sch=X1.
	Record ID	3–4	Numeric	Code=05
	Sequence No.	5–10	Numeric	Right justified, zero filled, see general instruction 3.
	Text ID	11	Numeric	See note 4.
	Text	12–143	Character ...	See note 5.

Note 4: Character positions 12–143 are to be used to enter free form text. The "Text ID" is the corresponding code as set forth below which identifies the required information.

Text ID: 1. Required Information: A complete list of operating personnel and facilities shared by the interstate natural gas pipeline and any affiliated marketing or brokering company (or blanket sales operating unit).

Text ID: 2. Required Information: The procedures used to address and resolve complaints by shippers and potential shippers.

Note 5: A total of 132 character positions are provided for entering footnote text. If the respondent chooses to enter information in less than the 132 allowed character positions, the information should be left justified and the remainder of the record (line) should be blank filled through character position 255.

(6) The Footnotes Record

Item No.	Item	Character position	Data type	Comments
	Schedule ID	1–2	Character ...	Sch=X1.
	Record ID	3–4	Numeric	Code=06.
	Sequence No.	5–10	Numeric	Right justified, zero filled, see general instruction 3.

Item No.	Item	Character position	Data type	Comments
	Reference No.	11–23	Numeric	Reference number for record being footnoted see general instruction 4.
	Footnote Text	24–155	Character	See note 6.

Note 6: A total of 132 character positions are provided for entering footnote text.

[FR Doc. 94–31 Filed 1–3–94; 8:45 am]
BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 870, 886, 887, and 888

RIN 1029–AB72

Abandoned Mine Reclamation Grant Procedures

AGENCY: Office and Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment period.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the United States Department of the Interior extends until March 8, 1994, the public comment period on the proposed rule published in the November 8, 1993 **Federal Register** (58 FR 59334). The extension will provide interested persons more time in which to comment.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on March 8, 1994.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Norman J. Hess, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–208–2949.

SUPPLEMENTARY INFORMATION: OSM published a proposed rule on November 8, 1993 (58 FR 59334), that would revise the Abandoned Mine Lands (AML) regulations in 30 CFR chapter VII, subchapter R to ensure that they will be consistent with agency practice and all past amendments to Title IV of the Surface Mining Control and Reclamation Act. The specific changes proposed to the AML rules are set forth in the November 8, 1993, **Federal Register** notice.

The comment period for the proposed rule was scheduled to close on January 7, 1994. However, an extension of the comment period was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on March 8, 1994.

Dated: December 29, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 94–68 Filed 1–3–94; 8:45 am]
BILLING CODE 4310–05–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 3

RIN 2900–AG47

Exclusions From Income; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correction to proposed rule.

SUMMARY: This document contains corrections to the comment and inspection periods allowed in the Department of Veterans Affair's proposed rule on Exclusions from Income, published Friday, December 17, 1993 (58 FR 65958).

DATES: Comments must be received on or before February 15, 1994. Comments will be available for public inspection until February 25, 1994.

FOR FURTHER INFORMATION CONTACT: Steven Thornberry, Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, 810 Vermont Avenue, NW., Washington, DC 20420, Telephone (202) 233–3005.

SUPPLEMENTARY INFORMATION:

Background

Executive Order 12866 orders that the public be afforded a meaningful opportunity to comment on a proposed rule, which includes being granted a comment period of not less than 60 days.

Need for Correction

As published, the proposed rule allows only a 30 day comment period.

Correction of Publication

Accordingly, the publication on December 17, 1993 of the proposed rule, which is the subject of FR Doc. 93–30811, is corrected as follows:

In the **DATES** caption of the preamble, remove the date "January 18, 1994" and in its place add "February 15, 1994"; remove the date "January 26, 1994" and in its place add "February 25, 1994".

Dated: December 23, 1993.

B. Michael Berger,

Director, Recards Management Service.

[FR Doc. 94–34 Filed 1–3–94; 8:45 am]
BILLING CODE 8320–01–U–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[W12–2–5550; FRL–4821–2]

Approval and Promulgation of Implementation Plans; Wisconsin

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice of proposed rule.

SUMMARY: USEPA is proposing to disapprove the State of Wisconsin's Prevention of Significant Deterioration (PSD) Rules, Natural Resources (NR) 405.01 through 405.17, as a revision to the Wisconsin State Implementation Plan (SIP). The State developed the rules as Wisconsin's plan to prevent significant deterioration of air quality in areas designated as unclassifiable or attainment of the National Ambient Air Quality Standards (NAAQS) and to satisfy the requirements of part C of the Clean Air Act (Act). USEPA proposes to disapprove these rules because they do not meet USEPA's regulation governing State PSD programs (40 CFR 51.166). Until USEPA approves a SIP submission from Wisconsin satisfying these requirements, the Federal PSD requirements at 40 CFR 52.21 remain applicable within the State of Wisconsin.

DATES: Comments on this revision and on the proposed USEPA action must be received by March 7, 1994.

ADDRESSES: Written comments should be sent to: Carlton Nash, Chief, Regulation Development Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604. Please submit an original and five (5) copies, if possible.

Copies of the SIP revision request and USEPA's analysis are available at the following address for review: U.S. Environmental Protection Agency, Region 5, Air Toxics and Radiation Branch (AT–18J), 77 West Jackson Boulevard, Chicago, Illinois 60604. It is recommended that you telephone Constantine Blathras at (312) 886–0671, before visiting the Region 5 Office.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Grants Management and Program Evaluation Section, Air Toxics and Radiation Branch (AT–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–0671.

SUPPLEMENTARY INFORMATION:

I. Background

The 1977 Amendments to the Clean Air Act added part C to title I, which required implementation of a PSD program. On June 19, 1978 USEPA promulgated a PSD program to meet the requirements of part C. It promulgated 40 CFR 51.24 (now 40 CFR 51 166), which listed the requirements a State must meet in order to have a State PSD program approved as a part of its SIP It promulgated 40 CFR 52.21, which contains the procedures and requirements which USEPA follows when it carries out the mandates of part C itself. These § 52.21 requirements were then promulgated into those State SIPs where a State did not have an approvable plan in place. Section 52.21 provides that its requirements and authorities, or parts thereof, can be delegated to the State and local air programs if USEPA determines they have the ability and authority to carry out its mandates.

On June 19, 1978 (43 FR 26410), USEPA promulgated the Federal PSD program, 40 CFR 52.21(b) through (v), into the Wisconsin SIP at 40 CFR 52.2581 because Wisconsin had not submitted an approvable PSD program. On August 19, 1980 USEPA gave Wisconsin partial delegation to run the Federal PSD Program and on November 13, 1987 gave Wisconsin full delegation of the program.

Seeking a SIP approval of the State's PSD Program, the Wisconsin Department of Natural Resources (WDNR) submitted its PSD rules, NR 405.01 through NR 405.17, to USEPA as a revision to its SIP on March 16, 1987. A further revision to these rules, which addresses oxides of nitrogen (NO_x), was submitted on November 24, 1992.

Wisconsin NR 405 deals exclusively with PSD permitting requirements.[1] USEPA evaluated NR 405 by comparing each section of the rule to the appropriate paragraph of 40 CFR 51.166 (formerly 40 CFR 51.24). Although Wisconsin's PSD rules essentially incorporated the Federal PSD provisions in 40 CFR 51.166, USEPA's evaluation revealed deficiencies relative to references to New Source Performance Standards (NSPS), National Emissions Standards for Hazardous Air Pollutants (NESHAP), federally issued PSD permits, source-specific allowable emissions, and modeling guidelines.

II. USEPA's Evaluation of the Proposed Revision

A. NSPS and NESHAP

The Federal PSD definitions at 40 CFR 51.166 pertaining to: (1) "Best Available Control Technology" (BACT), (2) "Allowable emissions", (3) "Federally enforceable", and (4) the control technology review requirements make reference to applicable standards and standards of performance under 40 CFR part 60 (NSPS) and 40 CFR part 61 (NESHAP), respectively. In the comparable provisions of the State rule, the State refers to other NR 400 series chapters, i.e., NR 440, 445 to 499, and 400 to 499 of the State code. Although the State may have intended that these chapters approximate the requirements of 40 CFR parts 60 and 61, Wisconsin's NSPS and NESHAP regulations are not federally enforceable and may, in certain circumstances, differ significantly from the parts 60 and 61 requirements in the Federal PSD requirements. The references to parts 60 and 61 in the Federal PSD requirements for BACT and control technology review (§§ 51.166(b)(12) and 51.166(j)(1), respectively) set minimum emissions requirements. Because the State can set less stringent NSPS and NESHAP emission limits than the Federal standards, or not set any limits at all, the State PSD provisions which are dependent upon the requirements of Chapter 440 and Chapters 445 to 449 are not approvable.

B. Stack Height

The provisions in 40 CFR part 51, subpart I—"Revision of New Sources and Modifications" set forth both general and specific requirements for permitting PSD sources, including definitions. In order for the State to implement the stack height provision in accordance with 40 CFR 51.164 and 51.166(h), it must have definitions of such terms as "stack", "dispersion technique", and "good engineering practice". On November 6, 1985, the State submitted a letter stating that permits issued for new or modified sources will conform with the requirements with the Stack Height Regulation, as set forth in the **Federal Register** on July 8, 1985, until such time that the State promulgates its own rule. As submitted, this provision meets the stack height requirements of the PSD program, and USEPA approved Wisconsin's commitment on August 4, 1989 (54 FR 32074), as a portion of Wisconsin's stack height plan.

C. Federally Issued PSD Permits

In the State's definition of "major modifications", NR 405.02(21)(b)(6), the rule exempts an increase in hours of operation or in production rates from review unless such increases are prohibited by permits issued after January 6, 1975, under NR 405. This rule is deficient for not requiring review of sources with such increases if the increases were prohibited by previously issued Federal permits or during the period when EPA issued the permits prior to the delegation of the program's authority. The State rule only exempts from the exclusion those permits with conditions "pursuant to this chapter", which is in the Wisconsin rule. There is no requirement for review of modifications to federally issued permits with exemptions pursuant to 40 CFR 52.21. As submitted, this provision is not approvable as a PSD rule.

D. Source-Specific Allowable Emissions

NR 405.02(1) contains the term "source-specific allowable emissions" The meaning of the term is unclear The Federal rule depends upon the preamble language published in the **Federal Register** on August 7, 1980 (Vol. 45, No. 154), to qualify the term to exclude cases where data on actual emissions are available. The language in NR 405.02(1) would have to be clarified so that the State term has the same meaning as the Federal term. This

[1] Chapter NR 405 applies the PSD regulation within the total area of the State of Wisconsin. Court decisions have determined that State governments do not have jurisdiction over most Indian lands. This in itself does not affect USEPA's proposal to disapprove the rule, but would have to be addressed by Wisconsin if it submitted a revised rule

provision is not approvable in its present form.

E. PSD Increments

The State PSD increments for sulfur dioxide and particulate matter are found in Chapter NR 404.05. The increments were not included in Wisconsin's March 16, 1987 PSD SIP submittal, but were included in its November 24, 1992 submittal.

F. Modeling Guidelines

The modeling guidelines referenced in NR 405.10 are now outmoded, although they were current at the time of submittal. To make NR 405.10 approvable, it would either have to reference the most recent guidelines (See 40 CFR 165(l)) or state that the applicant must use USEPA's most current applicable guideline models. Although the modeling guidelines were current at the time of submittal, this deficiency would need to be addressed if Wisconsin were to resubmit the rule as a SIP revision.

G. Nitrogen Dioxide (NO_2) Increments

On October 17, 1988 (53 FR 40656), USEPA promulgated PSD air quality increments for NO_2. The States were required to submit to USEPA by July 17, 1990, plan revisions to protect the NO_2 increments. Wisconsin submitted such increments to USEPA on November 24, 1992. This submittal meets the NO_x increment requirements and is approvable

H Particulate Matter (PM) Significant Level

On July 1, 1987 (52 FR 24713), USEPA promulgated the significant level for PM at 15 tons per year Wisconsin submitted two PM SIP revisions on March 13, 1989 and May 10, 1990 to meet the Federal PM requirements. These submittals were proposed for approval on March 13, 1989 (NR 400.02, 404.02, 405.02, 406.04, 484.03) which contain the PM significant level, and May 10, 1990 (NR 404.04, 484.03). USEPA then proposed to disapprove the package on December 23, 1992. After receiving comments from the State, USEPA moved to approve the package. The final rulemaking approving these rules was published on June 28, 1993 (58 FR 34528).

Proposed Action

Because of the deficiencies noted above, USEPA is proposing to disapprove Wisconsin's Prevention of Significant Deterioration Permit Program as not meeting the requirements of part C of the Clean Air Act.

The Agency reviewed this PSD SIP revision request for conformance with the provisions of the 1990 Amendments enacted on November 15, 1990. The Agency has determined that this action did not conform with the statute before it was amended, that the Amendments did not in any way affect this determination, and that the revision does not conform to the Act, as amended. If resubmitted, Wisconsin's PSD SIP submission should include all requirements and changes added by the 1990 Amendments. Thus, USEPA is proposing that the revision be disapproved.

Pursuant to the provisions of 5 U.S.C., section 605(b), I certify that this action will not have a significant economic impact on a substantial number of small entities (see 46 FR 8709). If USEPA were to disapprove this rule, its disapproval would not have a significant economic impact on a substantial number of small entities because USEPA's PSD program remains in effect under delegated authority. Sources would remain subject to the same requirements.

Under Executive Order 12291, this action is not "Major". It has been submitted to the Office of Management and Budget (OMB) for review.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Hydrocarbons, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Sulfur oxides.

Authority: 42 U S.C. 7401–7671q.

Dated: November 15, 1993.

Valdas V. Adamkus,

Regional Administrotor

[FR Doc. 94–75 Filed 1–3–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 90

[ET Docket No. 93–7; DA–1550]

Compatibility Between Cable Systems and Consumer Electronics Equipment

In the Matter of Implementation of Section 17 of the Cable Television Consumer Protection and Competition Act of 1992. Compatibility between cable systems and consumer electronics equipment

AGENCY: Federal Communications Commission.

ACTION: Order extending time for comments and reply comments.

SUMMARY: This order grants a request by the Cable-Consumer Electronics Compatibility Advisory Group (the "Advisory Group") for an extension of time to filing comments in the proposed rulemaking proceeding on compatibility between cable systems and consumer electronics equipment (58 FR 65153, December 13, 1993). The Commission is taking this action to provide the Advisory Group additional opportunity to prepare a single joint filing on the proposals set forth by the Commission.

DATES: Comments must be submitted on or before January 25, 1994, and reply comments on or before February 9, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan Stillwell, Office of Engineering and Technology, (202) 653–8162.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Comments and Reply Comments

Adopted. December 27, 1993; Released: December 28, 1993.

Comment Date: January 25, 1994.

Reply Comment Date: February 9, 1994.

By the Chief Engineer.

1. On December 23, 1993, the Cable-Consumer Electronics Compatibility Advisory Group (Advisory Group) requested that the time for filing comments to the Notice of Proposed Rule Making (NPRM) in the above-captioned proceeding be extended from January 10, 1994 to January 25, 1994 and that the reply comment date be extended from January 25, 1994 to February 9, 1994.

2. In its request, the Advisory Group indicates that a 15 day extension of the comment periods would increase the chances that the cable and consumer electronics industries, though the Advisory Group, will be able to prepare a joint filing that help to narrow the issues in dispute between those industries and should increase the quality of such joint submission.

3. The Commission does not routinely grant extensions of time.[1] In this instance, however, we believe that extending the comment deadline by 15 days will serve the public interest by providing the cable and consumer electronics industries additional opportunity to reach a consensus on the proposals set forth in the NPRM and should result in a improved record being submitted to the Commission. We also believe it is in the public interest

[1] 47 CFR 1.46 (1991).

to extend the reply comment deadline correspondingly. Accordingly, *it is ordered* That the deadline for filing comments is extended to January 25, 1994, and the deadline for filing reply comments is extended to February 9, 1994.

4. This action is taken pursuant to authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to 47 CFR 0.31, 0.241, and 1.46. For further information, contact Alan Stillwell, Office of Engineering and Technology, (202) 653–8162.

Federal Communications Commission.

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 94–9 Filed 1–3–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 93–94; Notice 1]

RIN 2127–AE47

Federal Motor Vehicle Safety Standards; Antilock Brake Systems for Light Vehicles

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The National Highway Traffic Safety Administration Authorization Act of 1991 directs this agency to initiate rulemaking to consider the need for any additional brake performance standards for passenger cars, including antilock brake standards. Pursuant to this mandate, the agency is issuing this notice to obtain responses to questions regarding the braking performance of passenger cars and other light vehicles and the need to require antilock brake systems on these vehicles. This notice poses questions about the desirability of a requirement that light vehicles be equipped with antilock brake systems (ABS), including questions about such a requirement's anticipated safety benefits, potential regulatory approaches and anticipated performance requirements and test procedures, the requirement's applicability, its schedule for implementation, and the anticipated costs.

DATES: Comments on this notice must be received on or before March 7, 1994.

ADDRESSES: All comments on this notice should refer to the docket and notice number and be submitted to the following: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (Docket hours 9:30 a.m. to 4 p.m.)

FOR FURTHER INFORMATION CONTACT: Mr. George Soodoo, Office of Crash Avoidance, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590 (202) 366–5892.

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I. Background

A. Existing and Proposed Standards

Federal Motor Vehicle Safety Standard No. 105, *Hydraulic Brake Systems*, specifies requirements for vehicles equipped with hydraulic brake systems. (49 CFR 571.105). Standard No. 105 applies to all vehicles except motorcycles that are equipped with hydraulic brakes. It has specific requirements which apply to passenger cars and to vehicles other than passenger cars with a gross vehicle weight rating (GVWR) (1) equal to or less than 10,000 pounds and (2) greater than 10,000 pounds.[1] The Standard's purpose is to ensure safe braking performance under normal and emergency conditions. The Standard includes a variety of performance requirements that evaluate a vehicle's service brake system in terms of stopping distance, partial failure, fade and recovery, water recovery, and spike stops. It also sets forth requirements related to a vehicle's parking brake performance.

None of NHTSA's safety standards currently mandates the installation of antilock braking systems (ABS) on light vehicles or specifies performance requirements intended to ensure the proper functioning of an ABS voluntarily installed on a light vehicle. A light vehicle equipped with an ABS is required to meet the same stopping distance requirements as a non-ABS-equipped light vehicle. In addition, a light vehicle with a failed ABS must be capable of meeting the stopping distance requirements for partial failure of the service brake system, as follows: passenger cars are required to stop within 456 feet and other light vehicles must stop within 517 feet when traveling at 60 mph on a high coefficient of friction surface. (See section S5.5 of Standard No. 105).

NHTSA has proposed requirements for functioning and failed ABSs. NHTSA is currently reviewing comments to a supplemental notice of proposed rulemaking (SNPRM) that proposes to establish a new standard, Standard No. 135, *Passenger Car Brake Systems*, which would replace Standard No. 105 as it applies to passenger cars. (56 FR 30528, July 3, 1991). The rulemaking to establish the new standard resulted from NHTSA's efforts to harmonize its safety standards with international standards. The agency anticipates the next regulatory action related to Standard No. 135 will be issued in early 1994.

In the SNPRM, NHTSA proposed requirements for functioning antilock systems, which include straight line stops on high and low coefficient of friction surfaces, a high coefficient of friction to low coefficient of friction surface transition test, and a low coefficient of friction to high coefficient of friction surface transition test. A high coefficient of friction surface, such as dry asphalt, is one that is relatively sticky and thus provides higher levels of braking force and better lateral stability and control during braking. Conversely, a low coefficient of friction surface, such as wet or icy pavement, is one that is relatively slippery and thus provides lower levels of braking force and poorer lateral stability and control during braking. These surfaces are referred to as high mu and low mu surfaces, respectively.

The agency also proposed requirements for failed antilock systems, which are more stringent than Standard

[1] This document will refer to passenger cars and other vehicles with a GVWR of 10,000 pounds or less (e.g., light trucks and vans and multipurpose passenger vehicles) as "light vehicles." Where necessary to refer to passenger cars, "passenger cars" will be used, and where necessary to refer to vehicles with a GVWR of 10,000 pounds or less other than passenger cars, "other light vehicles" will be used.

No. 105's antilock failure requirements. For an antilock functional failure, the agency proposed a stopping distance of 85 meters (279 feet) from 100 kilometers per hour (62 mph).

B. Statutory Mandate

Sections 2500 through 2509 of the "Intermodal Surface Transportation Efficiency Act of 1991" are called the "National Highway Traffice Safety Administration Authorization Act of 1991" ("Authorization Act"). Among other things, the Authorization Act directs NHTSA to initiate rulemaking on a number of safety matters, including brake performance standards for passenger cars.

Today's ANPRM initiates the rulemaking required by section 2507 of the Authorization Act. That section provides that, not later than December 31, 1993, an advance notice of proposed rulemaking be published, in accordance with the National Traffic and Motor Vehicle Safety Act of 1966, to consider the need for any additional brake performance standards for passenger cars, including ABS standards. The Act also directs the agency to "consider any such [antilock brake system] adopted by a manufacturer" to facilitate and encourage innovation and early application of economical and effective antilock brake systems for all such vehicles.

Section 2507 requires the rulemaking action to be completed not later than 36 months from issuance of the ANPRM. Under sections 2507 and 2052(b)(2)(B)(ii), the action will be considered completed when the agency either promulgates a final rule or decides not to promulgate a rule.

C. Antilock Brake Systems

The primary benefit of an ABS is its ability to prevent loss-of-control accidents caused by wheel lockup during braking. This allows the driver to maintain steering control and lateral stability even in panic braking situations. In addition, vehicles equipped with an ABS typically have enhanced braking efficiency and as a consequence usually have shorter stopping distances, particularly on low mu surfaces, compared to the same vehicle without an ABS.

ABSs help prevent braking induced loss-of-control situations by automatically controlling the amount of braking pressure applied to a wheel. Current antilock braking systems include wheel speed sensors that measure wheel speeds and transmit signals to an Electronic Control Unit (ECU). The ECU monitors wheel speeds, and changes in wheel speeds, based on electrical signals transmitted from sensors located at the wheels or within the axle housings. If the wheels start to lock, the ECU signals a modulator control valve to actuate, thereby holding constant or reducing the amount of braking pressure applied to the wheel or axle that is nearing lockup. This continuous feedback cycle of sensing, controlling, modulating, and sensing prevents wheel lockup, and results in improved vehicle stability and steering control during braking on all types of road surface conditions.

There are two primary types of ABS configurations that are currently available for most light vehicles: all-wheel systems and rear-wheel-only systems. An all-wheel ABS directly controls all the wheels on the vehicle, typically by using individual wheel control for the front axle wheels and either individual wheel control or select low control for the rear axle wheels. (Select low control provides the same brake pressure modulation to both wheels of an axle whenever either wheel on that axle approaches lockup.) A vehicle equipped with an all-wheel ABS is able to maintain steering control, even during hard braking on wet surfaces. Because maintaining steering control can be a key factor in accident avoidance, a vehicle equipped with an all-wheel ABS would be expected to experience better lateral stability and control during hard braking, particularly on wet or slippery road surface conditions.

Rear-wheel-only ABSs directly control only the rear wheels of the vehicle, using the select low method of control. A vehicle equipped with a rear-wheel-only ABS may still experience front wheel lockup during braking, since the front wheels are not controlled by the ABS. Rear-wheel-only systems have relatively less accident reduction potential than all-wheel systems, because front wheel lockup could result in a vehicle losing steering control. In a crash-threatening situation, maintaining steering control can be a critical factor in accident avoidance.

D. Current Size of ABS Market

ABSs are currently available on over 130 models of passenger cars and other light vehicles (light trucks and vans (LTVs), and sport utility vehicles). ABSs are offered as standard equipment on almost all top-of-the line models and as standard equipment or an option on an increasing number of mid-priced and low-priced models. For instance, the Chevrolet Cavalier with a manufacturer's suggested retail price of under $10,000 offers an ABS as standard equipment. Manufacturers of ABSs currently available on vehicles sold in the United States include Bendix, Bosch, Dewandre-WABCO, GM-Delco, Honda, Kelsey-Hayes, Nippondenso, Sumitomo, and Teves.

In 1992, 2,682,218 of the passenger cars sold in the United States were equipped with an ABS. This represented approximately 32 percent of all passenger cars sold in this country during that year. Passenger cars that are equipped with an ABS typically have an all-wheel ABS that permits steering control since the system modulates the brake force at each wheel. That same year, approximately 3,600,000 of the other light vehicles sold in the United States were equipped with an ABS, and approximately 3,100,000 of those vehicles were equipped with a rear-wheel-only ABS. While rear-wheel-only systems provide benefits (e.g., improved stability during braking) for light trucks that frequently experience a wide range of loading levels, a rear-wheel-only ABS provides no ABS control to the front wheels.

These nearly 6,300,000 ABS-equipped passenger cars and light trucks represented 49 percent of the 12.8 million light vehicles sold in the United States in 1992. Based on reports from industry, NHTSA estimates that over 75 percent of all new passenger cars and other light vehicles will be equipped with an ABS by 1996.

II. NHTSA Activities Related to Braking Performance

Over the years, NHTSA has studied the effectiveness of ABSs in avoiding crashes and reducing their severity. The agency conducted the *Tri-Level Study of the Causes of Traffic Accidents*, (DOT HS 801–631, Final Report, June 1975) to determine the effectiveness of ABSs. While this is not a recent study, its conclusions might still be relevant. Among these conclusions are that (1) rear-wheel-only ABSs had an accident reduction potential of one to four percent, (2) four wheel ABSs provide the greatest safety benefits and could reduce accidents by eight to 15 percent, (3) an ABS's ability to maintain control was found to be a more important safety attribute than its ability to improve stopping distance performance.

NHTSA has also conducted test track evaluations of ABS equipped light vehicles. (Hiltner, Arehart, and Radlinski, "Light Vehicle ABS Performance Evaluation," DOT HS 807 813, December 1991; and "Light Vehicle ABS Performance Evaluation—Phase II," DOT HS 807 924, May 1992.) The December 1991 report describes tests conducted on ten light vehicles to evaluate the improvement in braking performance and vehicle stability and control resulting from each vehicle's ABS. The test program's purpose was to show the degree to which an ABS improves a given vehicle's brake performance, not to compare vehicles or similar ABSs to one another. Therefore, each vehicle was tested with the ABS "on" and with the ABS "off" or disabled. Eight of the ten vehicles were equipped with an all-wheel ABS. Each vehicle was run through a set of eighteen separate test conditions, using both panic stops and driver-best-effort stops in both the empty and loaded condition at speeds of 35 mph and 60 mph. Braking maneuvers consisted of straight line stops on a uniform surface, straight line stops on a split mu surface, stops in a 500 foot curve, and stops involving lane changes. The tests were conducted at 35, 45, 50, and 60 mph, at both the empty and loaded weight conditions. The tests were conducted on a variety of surfaces, including wet Jennite, gravel, and dry concrete.

Among the findings in the December 1991 report were that (1) each ABS, and especially the all-wheel systems, improved the vehicle's lateral stability during panic braking; (2) the all-wheel systems shortened stopping distances on most hard paved surfaces, with improvements of up to 25 percent on wet concrete and up to 50 percent on wet Jennite; (3) each ABS lengthened the vehicle's stopping distances in panic stops on gravel, with increases exceeding 25 percent in some cases; and (4) the rear-wheel system enhanced the vehicle's lateral stability but did not reduce stopping distances in most panic brake applications.

The May 1992 report describes tests conducted on eight light vehicles to evaluate how the ABS influenced vehicle stopping distance and lateral stability and control on various surfaces. This evaluation supplements the December 1991 program by testing different vehicles on more slippery test surfaces, although it only used straight line maneuvers. Among the report's findings were that (1) with one exception, the seven vehicles with all-wheel systems were under complete directional control during the tests with the ABS "on," (2) the vehicle with a rear-wheel-only ABS generally provided improved, but not complete, lateral stability and control, (3) ABSs improved stopping performance on all surfaces, except that stopping distance worsened on dry gravel surfaces, and (4) no vehicle experienced problems in the high to low mu transition testing with the ABS operational.

NHTSA has recently published two proposals related to the braking performance of medium and heavy vehicles (hereinafter referred to as "heavy vehicles"). On February 23, 1993, the agency proposed reinstating stopping distance requirements for these vehicles. (58 FR 11003). In addition, on September 28, 1993, the agency published a proposal that would require heavy vehicles to be equipped with an ABS to improve the lateral stability and control of these vehicles during braking. (58 FR 50738). The ABS requirement would be supplemented by a 30 mph braking-in-a-curve "check" test conducted on a low coefficient of friction surface using a full, panic brake application. Some of the issues raised in these rulemakings, such as the test surface and the proposed definition of "ABS," are relevant to this rulemaking.

III. Issues for Possible Agency Action

A. Overview of the issues

This ANPRM discusses whether the agency should propose to require ABS for light vehicles, pursuant to the mandate in ISTEA. While manufacturers are equipping an increasingly large number of light vehicles with ABS, it appears that it would be quite a few years, if ever, before all light vehicles would voluntarily be equipped with such devices. Based on the agency's review of comments to this notice and its review of additional accident data and other information, NHTSA will determine whether it should propose to require that all light vehicles be equipped with ABSs.

This ANPRM also makes a number of requests for data and information. The agency wishes to emphasize that since this is an ANPRM, no rule will be issued on this specific subject without first issuing an ANPRM to provide further opportunity to comment. In commenting on a particular matter on responding to a particular question, interested persons are requested to provide any relevant factual information to support their conclusions or opinions, including but not limited to, testing, statistical, and cost data, and the source of such information.

The agency seeks comments about the following topics:

(a) The anticipated safety benefits from requiring light vehicles to be equipped with ABSs;

(b) Potential regulatory approaches to improve the lateral stability and control of light vehicles during braking, including a requirement for an ABS and any anticipated performance requirements and test procedures;

(c) The types of light vehicles to which these requirements would apply and whether all vehicles should be required to be equipped with an all-wheel ABS;

(d) A schedule for implementing the ABS requirements to maximize their benefits at reasonable costs; and

(e) The costs of requiring light vehicles to be equipped with antilock braking systems that would comply with the anticipated requirements.

For ease of reference, the questions below are numbered consecutively. The agency requests that commenters identify each answer they give by the number of each question being answered.

B. Safety Need

The threshold issue in deciding whether to amend an existing safety standard concerns the requirement's safety need. NHTSA is reviewing accident data, including information from the Fatal Accident Reporting System (FARS), NHTSA's General Estimates System (GES), the National Accident Sampling System (NASS), and State accident data files. This review focuses on the benefits achieved by equipping light vehicles with an ABS in a variety of different crash modes. Among the crash modes being studied are (1) single vehicle run-off-the-road crashes in which skidding or spinning was the vehicle's pre-crash stability condition, (2) multi-vehicle crashes resulting from a vehicle's loss-of-control or inability-to-stop-in-time, and (3) crashes in which a vehicle strikes pedestrians, animals, or road objects.

Initial data from these sources indicate that braking induced loss-of-control crashes and inability-to-stop-in-time crashes are frequent types of crashes that warrant further study. Such crashes are especially prevalent on wet or slippery roads, a condition in which ABSs would be effective. Eleven percent of all fatal crashes in 1991 occurred on wet or slippery roads, and 18 percent of property-damage-only crashes occurred under such conditions.

NHTSA's research test findings indicate that equipping light vehicles with an ABS would be beneficial to safety. The primary benefit with equipping light vehicles with an ABS is that a driver is better able to maintain vehicle stability and steering control during crash-threatening braking situations. A secondary, but still important benefit with an ABS, is that a vehicle's stopping ability is improved on some surfaces.

NHTSA's preliminary evaluation of rear-wheel antilock brake systems indicates that such ABSs on light trucks are particularly effective in reducing the number of run-off-road crashes. Analyses of State accident files found

that rear-wheel ABS was effective in reducing the risk of such nonfatal rollovers (and side and frontal impacts with fixed objects) for almost every type of truck, under any type of road condition. Reductions of rollovers were typically in the 30–40 percent range, reductions of side impacts with fixed objects in the 15–30 percent range, and reductions in frontal impacts with fixed objects in the 5–20 percent range. The risk of collisions with pedestrians, animals, bicycles, trains, or on-road objects was also significantly reduced, by about 5–15 percent. A copy of this preliminary evaluation is available in the public docket.

NHTSA is continuing to analyze the data and a comprehensive report of the findings will be published at a later date. In the meantime, the agency requests additional information on braking induced loss-of-control crashes and inability-to-stop-in-time crashes from rental fleets, corporate fleets, insurance companies, police officers, and others. This information would assist the agency in its efforts to quantify the benefits from ABSs. Accordingly, the agency requests comments from these organizations and others about their experiences in which drivers of light vehicles have lost control during braking or been unable to stop before a crash.

With these considerations in mind, the agency poses the following questions.

1. Based on the available data, what safety benefits would result from the issuance of requirements to prevent or minimize the effect of braking induced loss-of-control crashes or inability-to-stop-in-time crashes? In what types of crashes would these benefits occur? Please provide estimates in terms of accidents, injuries, and fatalities prevented. The agency also requests quantitative estimates of reductions in property damage.

2. What additional injury and non-injury data and other information exist about real-world crashes and near crashes involving drivers of light vehicles who skidded or otherwise lost control?

3. At the time of loss-of-control or inability-to-stop-in-time crashes, what were the driving conditions and weather environment? At what speed was the vehicle traveling? Was the roadway dry, wet, or icy? To what degree did these adverse driving conditions contribute to the crash and its severity? Did the crash occur on an interstate, secondary highway, or residential road? What, if any, crash avoidance maneuver precipitated the crash?

4. With respect to loss-of-control or inability-to-stop-in-time crashes known to the commenter, would equipping the vehicle with an ABS or a more effective ABS (e.g., an all-wheel system instead of a rear-wheel-only system) have helped in avoiding any of the crashes or reducing their severity?

5. With respect to fleets that have switched or begun switching to ABS-equipped light vehicles, have the ABS-equipped light vehicles had a lower crash rate than the non-ABS-equipped light vehicles? If there has been a reduction in crashes, please quantify the reduction in terms of lives saved, injuries prevented, and property damage reduced.

C. Regulatory Approaches to Improve the Lateral Stability and Control of Light Vehicles

If NHTSA were to propose amending its braking safety standards to improve the lateral stability and control of light vehicles during braking, the amendment would have to meet the Vehicle Safety Act's criteria that the requirement be practicable and be stated in objective terms (section 103(a)). Any rulemaking addressing antilock would also be guided by the findings in *PACCAR* v. *NHTSA*, 573 F.2d 632 (9th Cir. 1978) *cert. denied* 439 U.S. 862 (1978). Even though *PACCAR* concerned air braked vehicles subject to a different safety standard, some of that decision's concerns about testing brake systems are relevant to proposing to require ABSs on light vehicles. *PACCAR* held that at the time of their implementation, parts of Standard No. 121 were not reasonable nor practicable. The court held that objective test methods and more probative and convincing data evidencing the reliability and safety of vehicles that are equipped with antilock and in use must be available before the agency can enforce a standard requiring its installation.

6. In the NPRM addressing lateral stability and control for heavy vehicles, NHTSA proposed that each heavy vehicle be equipped with an antilock braking system that satisfies the agency's proposed definition of "ABS." In addition, as a "check" on the performance of the ABS, the agency proposed that a heavy vehicle would have to comply with a braking-in-a-curve test. The agency tentatively concluded that this approach would ensure that heavy vehicles would be able to significantly improve their lateral stability and control during braking.

NHTSA is considering applying this approach to light vehicles by proposing both a requirement mandating the installation of ABSs on light vehicles and road tests that serve as a check on the performance of the ABS. The agency requests comments about the possible benefits and shortcomings of using this approach for light vehicles.

7. In developing the proposed definition for "ABS" in the heavy vehicle rulemaking, NHTSA referred to the definitions of "ABS" adopted by the Society of Automotive Engineers (SAE) and the Economic Commission for Europe's (ECE) Regulation 13, Annex 13 (1988). Based on these definitions and other considerations, the agency proposed the following definition of "antilock brake system" in the heavy vehicle rulemaking:

> a portion of a service brake system that automatically controls the degree of rotational wheel slip during braking by:
> (1) sensing the rate of angular rotation of the wheels;
> (2) transmitting signals regarding the rate of wheel angular rotation to one or more devices which interpret those signals and generate responsive controlling output signals; and
> (3) transmitting those controlling signals to one or more devices which adjust brake actuating forces in response to those signals.

Under this definition describing fundamental and necessary performance aspects that any braking system must have to be considered an ABS, the agency believes that any ABS would be permitted, provided that it is a "closed loop" system that ensures feedback between what is actually happening at the tire-road surface interface and what the device is doing to respond to impending wheel lockup.

The agency requests comments about whether to apply to light vehicles the approach proposed to improve the lateral stability and control of heavy vehicles. Is it necessary and appropriate to supplement the combination of a definition of "ABS" and an equipment requirement with one or more "check" tests to ensure the lateral stability and control of light vehicles? Is the definition of "ABS," as proposed in the heavy vehicle NPRM, appropriate for light vehicles? What are the advantages or disadvantages of a requirement expressly mandating an ABS instead of taking the more indirect approach of adopting dynamic tests? Notwithstanding the agency's tentative conclusion that the proposed definition for heavy vehicle "ABS" is sufficiently broad to allow a variety of ABSs, the agency welcomes comment about the use of this definition for light vehicles. Would it ensure suitable stopping distances and cover all appropriate brake designs, while not unnecessarily prohibiting brake systems that effectively prevent wheel lockup in a sufficiently wide variety of circumstances?

D. Test Procedures

8. In the heavy vehicle ABS rulemaking, NHTSA proposed that such vehicles would have to comply with a braking-in-a-curve test, but decided not to propose additional tests such as a split mu test or a lane change test. The agency believed that such additional tests would be impracticable for heavy vehicles given the criteria set forth in *PACCAR*. Notwithstanding the agency's tentative decision in the heavy vehicle ABS rulemaking to propose only a braking-in-a-curve test, the agency is seeking comment on whether to require that light vehicles be capable of stopping without loss-of-control in the following test maneuvers:

(a) While turning on a low mu surface;

(b) While stopping on a straight line split mu surface;

(c) While in transition from a high mu surface to a low mu surface; and

(d) While in transition from a low mu surface to a high mu surface.

NHTSA is considering additional tests for light vehicle antilock systems for three reasons. First, ABS requirements on passenger cars were originally developed in proposals for Standard No. 135, *Passenger Car Brake Systems*, which are based on the effort to harmonize braking standards with EEC and ECE requirements. These proposals included split mu tests and surface transition tests. Second, the agency believes that light vehicle ABS may need to have a higher level of capability for some aspects of performance than heavy vehicle ABS. For instance, the antilock systems on heavy vehicles do not have to be as quick as the systems on light vehicles in responding to impending wheel lock. The wheel lockup allowed by light vehicle antilock systems available today is about 0.2 seconds, compared with a lockup duration closer to one second for heavy vehicle systems. This is so because heavy vehicles typically have a longer wheel base than light vehicles, and a high vehicle moment of inertia about the vertical axis. On these vehicles, yaw movement during braking with ABS on a split mu surface or during a braking-in-a-curve maneuver takes place at a relatively slower rate than on light vehicles, primarily because of the higher vehicle moment of inertia. Third, in contrast to testing light vehicles, the availability of test facilities and the safety of the tests would make more extensive testing impracticable for heavy vehicles because such vehicles are larger and more prone to rollover than light vehicles. For the above reasons, the split mu and surface transition tests might be appropriate additions to the braking-in-a-curve test for light vehicles.

The agency anticipates that each of these tests would be conducted at 30 mph using a full pedal application (200 pounds pedal force applied within 0.2 seconds) and that the vehicle would be required to stay within a 12-foot lane. There would be no stopping distance requirement as part of these tests. (The issue of separate tests for stopping distance is discussed below in connection with question 13.)

9. As mentioned above, NHTSA is considering whether to propose a "braking-in-a-curve test" in which a light vehicle's braking would be evaluated at a relatively slow speed on a slippery surface. This test is designed to evaluate the capability of a vehicle to be controlled while braking in a curve. The test could be conducted on a 500-foot radius curve on a surface with a peak friction coefficient (PFC) of 0.5 or less. What benefits would be obtained from such a braking-in-a-curve test? What problems, if any, would be associated with this maneuver? Would this testing approach be a sufficient indicator of the lateral control and stability expected from an ABS equipped light vehicle? How would rear-wheel-only antilock systems perform under this test procedure?

10. NHTSA is considering whether to propose another type of test, possibly as an alternative to the braking-in-a-curve test. This test is known as a "split coefficient of friction test" (or split mu test) and is designed to evaluate a vehicle's ability to be controlled when one side of a road is slick and the other side is much stickier. If NHTSA were to propose such a test, it probably would be conducted on a straight lane surface with the high mu part of the surface having a PFC equal to or greater than 0.5 and the low mu part of the surface having a PFC of less than or equal to one-half the PFC of the high mu surface. An alternative way to describe the test surface would be to specify the PFCs for both parts of the surface (e.g., the high mu part would be 0.9 or greater and the low mu part would be 0.45 or less). The test lane would be split down the centerline along its length, so that the wheels on one side of the vehicle are on the high friction surface and the wheels on the other side of the vehicle are on the slick surface. What benefits would be obtained from testing on such a split mu surface? What problems, if any, would result from such a surface? Would this test be a sufficient indicator of the lateral stability and control expected from an ABS-equipped vehicle? How would rear-wheel-only antilock systems perform under this test procedure? What is the best way to specify the test surface?

11. NHTSA is also considering whether to propose a "low to high mu surface transition test." This test is designed to evaluate the capability of an antilock system to modulate brake pressure to achieve a high level of deceleration after the vehicle makes a transition to the high mu surface. NHTSA anticipates that if it proposes such a test, the high mu surface would have a PFC equal to or greater than 0.5, and the low mu surface would have a PFC of less than or equal to one half the PFC of the high mu surface. The agency is considering whether to propose requiring that the vehicle achieve at least 95 percent of the deceleration of the uniform coefficient deceleration on the high mu surface within one second. What benefits would be obtained from such a transition test? What problems, if any, would be associated with this test maneuver? Would this test be a sufficient indicator of the modulation capability expected from an ABS-equipped light vehicle? Would the suggested way of specifying test surfaces be appropriate? The agency requests comments about whether to specify the time needed to achieve a specific deceleration and to specify a maximum lockup duration during the transition. How would rear-wheel only antilock systems perform under this test procedure?

12. NHTSA is considering whether to propose a "high to low mu surface transaction test." This test is designed to evaluate the response for the ABS when the vehicle begins braking on a high mu surface then experiences a change to a low mu surface. This type of surface is discussed in the previous question. The agency is considering whether to require that the vehicle's wheels not lock for more than 0.2 seconds, with wheel lock defined as 100 percent slip. What benefits would be obtained from such a surface transition test? What problems, if any, would be associated with this test maneuver? Would this test be a sufficient indicator of the modulation control and the response to impending wheel lock expected from an ABS-equipped light vehicle? How would rear-wheel only antilock systems perform under this test procedure?

13. The efficiency of an ABS affects a vehicle's stopping distance performance with the ABS cycling. Consistent with the agency's decision in the heavy vehicle ABS rulemaking not to propose stopping distance requirements with

tests involving low mu surfaces, NHTSA does not anticipate proposing, at this stage of this rulemaking, stopping distance requirements with the curve, split mu, or transaction tests because of the variability of vehicle stopping distance performance on low mu surfaces. Do commenters agree with the agency's tentative decision not to propose stopping distance requirements with tests involving low mu surfaces?

Notwithstanding this tentative decision, NHTSA believes that a measurement of efficiency might provide consumers with information to compare the relative overall performance of various ABSs. In its evaluations, the agency has calculated ABS efficiency by dividing vehicle decelerations (g's) by the peak friction coefficient measured with the vehicle's tire. The agency notes that an ABS efficiency value could provide consumers with a means of comparing the ABS performance capability since no stopping distance requirements are being considered for the tests mentioned in this notice to evaluate ABS performance. Each antilock system achieves a certain level of efficiency based on design factors such as the wheel deceleration rate threshold at which ABS cycling begins, the control algorithm, and the modulator valves. In general, the higher the ABS efficiency, the shorter the stopping distance should be with the ABS operational. NHTSA's light vehicle ABS testing has shown that the improvements in braking performance provided by an ABS varies, in some cases considerably, from system to system and from vehicle to vehicle. Hence, simply setting a standard that requires all-wheel ABS would not necessarily mean that the performance of these systems would be similar. The agency therefore request comments on what would be an appropriate method for measuring ABS efficiency, and whether ABS efficiency would be a meaningful indicator of a system's overall performance.

14. The current requirements in Standard No. 105 for vehicles with failed antilock systems including stopping distance requirements from 60 mph of 456 feet for passenger cars and 517 feet for other light vehicles with a GVWR of not more than 10,000 pounds. This test is designed to ensure that the vehicle has adequate braking if the ABS fails. These distances may be overly generous for an ABS failure on some vehicles, given that the service brake system is generally still intact. NHTSA anticipates proposing ABS failure requirements for Standard No. 105 similar to those proposed for Standard No. 135. In that rulemaking, the agency proposed a stopping distance of 279 feet from a test speed of 62 mph on a surface with a PFC of 0.9. What problems, if any, would be associated with such a requirement? Should the standard allow an ABS that experiences a large degradation of stopping performance if the ABS fails? What is the best method for disabling an ABS for a failed system test? Should performance requirements for integrated ABSs be any different from the requirements for add-on ABSs, in the failed condition? If so, why? Should the failed ABS stopping distance be one absolute value for all vehicles, or should it be based on the performance relative to the stopping distance performance when each vehicle's ABS is in the "on" position?

E. Test Conditions

15. As explained in the previous section, NHTSA anticipates specifying the test surfaces used in the test procedures in terms of peak friction coefficient. While the braking-in-a-curve test would have a PFC of 0.5, the split mu and transition tests would have the surface specified based on the relative PFC of each of the two portions of the surface. The braking-in-a-curve test surface represents a wet secondary road in poor condition, and the split mu and transition test surface represent roads with different coefficients of friction such as those with ice patches. What practicability concerns, if any, are raised by conducting tests on surfaces with both low and high coefficients of friction?

16. Two different methods of applying brakes can be used when testing ABSs (and braking systems in general). One method is a "full pedal" application typical of how a driver might apply the brake pedal in reaction to a crash-threatening situation. This type of brake application can precipitate wheel lock-up and loss-of-control if the vehicle is operating on a slippery surface. A second method is a modulated "driver-best-effort" application in which the driver modulates the brake in an attempt to maintain stability and lateral control. This method enables stops that are as quick and short as possible while still maintaining stability and steering control. As with the heavy vehicle ABS rulemaking, the agency anticipates proposing a full pedal application because it is more representative of a typical driver's response to a real world crash-threatening situation. In addition, such an application is more objective and repeatable. In specifying the amount of brake application force in this test procedure, the agency anticipates that a pedal force of 200 pounds in 0.2 seconds would adequately represent a full pedal application for light vehicles. The agency requests comments about the best way to specify the brake application provisions.

F. Varieties of ABS Permissible under Potential Proposals

17. Agency testing indicates that all-wheel antilock systems provide full steering control and lateral stability during braking. Real-wheel-only antilock systems do not ensure steering control during braking, but provide some measure of vehicle stability during braking. Should the proposed requirements be drafted so that light vehicles must be equipped with systems that provide ABS control on all wheels, or should the requirements be drafted to allow rear-wheel-only systems as well? What are the differences in benefits between rear-wheel-only and all-wheel systems?

18. If NHTSA were to propose its braking standards to improve the lateral stability and control of light vehicles during braking, all light vehicles would have to be equipped with lateral stability and control devices to achieve the new performance requirements. As mentioned above, all-wheel ABSs were installed on 2,700,000 passenger cars and on 470,000 other light vehicles in 1992. While another 3.1 million light vehicles were equipped with rear-wheel-only ABSs, vehicles are increasingly being equipped with all-wheel systems rather than rear-wheel-only systems. How many vehicles would need to be equipped with ABSs to comply with the requirements discussed in this notice? Would it be necessary to equip a vehicle with an all-wheel ABS to comply with the requirements discussed in this notice or would rear-wheel-only systems be adequate?

19. The ECE currently uses three categories to classify antilock systems by their performance capabilities. While the ECE mandates the most sophisticated Category I systems for heavy vehicles, ABS installation remains voluntary for light vehicles. Nevertheless, if a manufacturer decides to equip a light vehicle with ABS, then it must inform the government approving body about the Category of ABS being installed on a given light vehicle. After being reviewed by the government, the manufacturer may market its system to consumers as that category of ABS.

NHTSA is considering whether to propose a classification system like the ECE's in which there would be categories of increasingly stringent performance criteria instead of a minimum requirement for all antilock systems. The performance criteria, if proposed, might include the following factors:

Category I—

- Braking efficiency of the vehicle equal to or greater than 75 percent on all road surfaces, including split mu.
- Meets braking-in-a-curve or split mu test requirements for stability.
- Meets low mu to high mu surface transition requirement of achieving 95 percent of the uniform coefficient deceleration within a specified time period.
- Meets high mu to low mu surface transition requirements for lockup duration.
- Wheels on all axles must be directly controlled by ABS.

Category II—

- Braking efficiency of the vehicle equal to or greater than 75 percent on all road surfaces except split mu.
- Meets braking-in-a-curve or split mu test requirements for stability.
- Meets low mu to high mu surface transition requirements of achieving 95 percent of the uniform coefficient deceleration within a specified time period.
- Meets high mu to low mu surface transition requirements for lockup duration.
- Wheels on each axle must be directly controlled by ABS.

Category III—

- Braking efficiency of each axle having at least one directly controlled wheel equal to or greater than 75 percent, on all road surfaces except split mu.
- Meets low mu to high mu surface transition requirements of achieving 95 percent of the uniform coefficient deceleration within a specified time period.
- Meets high mu to low mu surface transition requirements for lockup duration.

The agency anticipates that most, but not all, of the all-wheel ABSs would satisfy the criteria for Category I systems and that poorer performing all-wheel ABSs and rear-wheel only ABSs would satisfy the less stringent criteria of either Category II and Category III.

Specifying categories would permit simpler antilock braking systems to comply with the standard, without lowering the requirements for the higher capability systems. It would also serve to inform consumers that not all ABSs have the same performance capabilities. However, the agency notes that there might be significant drawbacks to specifying categories, since such an approach might result in unnecessary complexity and permit the manufacture and installation of poorer performing systems that do not provide steering control and other significant safety benefits. The agency invites comments about whether the standard should specify categories of ABSs.

G. Implementation

NHTSA's goal in initiating rulemaking to require light vehicles to be equipped with an ABS is to determine whether significant improvements in braking performance can be achieved at a reasonable cost to manufacturers and consumers. There are a number of different approaches that the agency could take in scheduling the implementation of the potential proposals. One approach would be to apply the requirements to passenger cars first and then to all other light vehicles. A second approach would be for the agency to apply the ABS standards to all light vehicles at the same time.

20. While the Authorization Act requires NHTSA to initiate rulemaking on brake performance for passenger cars, NHTSA is contemplating using its general authority under the Vehicle Safety Act to broaden this mandate to include trucks, vans, sport utility vehicles, and buses under 10,000 pounds GVWR. The agency is considering this approach because it believes that ABS has more potential benefits for vehicles which have a greater disparity between their unloaded and fully loaded weights. These latter type vehicles fall into this category. The agency notes that the market appears to agree with this position as ABS is more prevalent in light trucks than passenger cars. NHTSA seeks comment on its tentative decision to include these vehicles.

21. At this stage in the rulemaking, NHTSA is inclined to propose an effective date of two years after the final rule, for passenger cars, and three years after the final rule for light vehicles other than passenger cars (i.e., trucks). The agency believes that this would give the industry sufficient leadtime to develop the production capacity needed to supply the market with antilock systems. The agency expects that an increasing number of light trucks will be offered with all-wheel antilock systems, particularly if the proposed requirements cannot be met with rear-wheel-only systems. If this is the case, then manufacturers of light trucks with these systems might need more leadtime than manufacturers of passenger cars to comply with the proposed requirements. Would this implementation schedule be appropriate? Would it be reasonable to accelerate or delay any portion of it? Should the agency apply requirements for ABSs to some light vehicles but not others?

H. Costs Associated with Potential Proposals

22. NHTSA estimates that this rulemaking's potential cost would be approximately $1.04 billion per year. This cost consists of ABS costs of $920 million, installation costs of about $80 million, and increased fuel costs of about $40 million due to a small increase in vehicle weight. The average retail price of an ABS system to the consumer would be about $450. This price is based on a cost study of seven ABS systems entitled "Evaluation of Costs of Antilock Brake Systems" and a markup factor of 1.51. The agency's cost estimate assumes that all-wheel ABS would be required on all light vehicles. It projects that all-wheel ABS would be voluntarily installed as standard equipment in 85 percent of model year 1999 passenger cars, the first model year that would be affected if a final rule were issued in 1996 and a 2-year leadtime for compliance were provided. The remaining 15 percent or about 1.4 million vehicles would be equipped only as a result of a requirement. The cost estimate also projects that all light trucks would be voluntarily equipped with ABS by model year 1999/2000, 75 percent of them having all-wheel systems. Thus, 25 percent of new light trucks, or about 1.5 million vehicles, would be involuntarily equipped with all-wheel ABS if the agency issued a final rule requiring this. In this case, all wheel ABS hardware and installation costs would be incrementally higher (about $200 more), as compared to those for rear-wheel systems.

How much would it cost per vehicle to equip all light vehicles with all-wheel ABSs? How much would it cost per vehicle to equip these vehicles with rear-wheel-only ABSs? What would be the likely costs to a final purchaser for either of the two types of antilock systems?

23. Each light vehicle manufacturer is requested to provide, with respect to model year 1994, and for each of the following types of vehicles, passenger cars, light trucks, and light MPVs: the total number of the vehicles it will produce; the vehicles it will equip with rear-wheel-only ABSs; and the vehicles it will equip with all-wheel ABSs.

With respect to each of model years 1995–1999, and for each of the following types of vehicles, passenger

cars, light trucks, and light MPVs, what percentages of vehicles do you expect to voluntarily equip with a rear-wheel-only ABS? With an all-wheel ABS?

Do you expect to install all-wheel ABSs on all of your passenger cars? If so, when? On all of your light trucks? On all of your light MPVs?

24. NHTSA notes that some insurance companies currently offer discounts for antilock equipped passenger cars, light trucks and light MPVs. Which insurers provide such a discount? How large is the discount offered by each of those insurers? What is the basis for such discounts?

IV. Rulemaking Analyses and Notices

A. DOT Regulatory Policies and Procedures and Executive Order 12866

NHTSA has considered the potential burdens and benefits associated with this advance notice. NHTSA has determined that this advance notice is a significant rulemaking action under the Department of Transportation's Regulatory Policies and Procedures and an economically significant notice under Executive Order 12866. The advance notice would have an annual effect on the economy of $100 million or more. It concerns a matter in which there is substantial public interest. Further, there is a potential for significant safety benefits if effective requirements can be developed to address braking stability and control of light vehicles. The preliminary Assessment of Economic Significance for this advance notice addresses preliminary estimates of the costs and benefits of potential countermeasures that the agency is considering in this action. Those estimates are summarized below.

NHTSA believes that ABS is effective in preventing, and reducing the severity of many inability-to-stop-in-time and loss-of-control crashes. The previously mentioned 1975 Tri-Level study found ABS to be effective. Also, a preliminary agency evaluation of more current data found rear-wheel ABS on light trucks to be effective in preventing certain types of crashes. The agency is continuing to analyze the on-road experience of ABS-equipped vehicles as compared to those with standard braking systems. At this time, the agency does not have sufficient data to estimate the safety benefits of requiring mandatory installation of ABS on all light vehicles types. In this advance notice, the agency is requesting information on ABS effectiveness and the safety benefits that could be expected from a requirement for mandatory installation of the technology. In assessing the cost-effectiveness of any requirement for mandatory installation of the technology, benefits accruing to vehicles on which ABS would not have been voluntarily installed would be estimated and compared to the costs associated with equipping those vehicles with ABS. In the case of light trucks, depending on the extent and type of ABS voluntarily installed and the type of ABS required, the benefits at issue might be those that would be realized from all-wheel ABS as compared to rear-wheel systems.

NHTSA estimates that the annual consumer cost of requiring antilock brake systems on light vehicles to be $1,040 million: $710 million for passenger cars and $330 million for light trucks. This assumes that all-wheel systems would be required. Estimated ABS hardware cost would be $920 million, installation costs would be $80 million, and increased fuel costs (due to a small increase in vehicle weight) about $40 million.

B. Executive Order 12612 (Federalism)

NHTSA has analyzed this action under the principles and criteria in Executive Order 12612. The agency had determined that this advance notice does not have sufficient Federalism implication to warrant the preparation of a Federalism Assessment. No State laws would be affected. The agency welcomes comment on this issue.

Comments

NHTSA invites comments from interested persons on the questions presented in this advance notice and on other relevant issues. It is requested but not required that 10 copies be submitted.

Comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR Part 512.

NHTSA will consider all comments received before the close of business on the comment closing date indicated in the "Dates" caption of this advance notice. To the extent possible, the agency will consider comments filed after the closing date. Comments on the advance notice will be available for inspection in the docket. After the closing date, NHTSA will continue to file relevant information in the Docket as this information becomes available, and recommends that interested persons continue to examine the Docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

A regulatory information number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes their Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles, Rubber and rubber products, Tires.

(15 U.S.C. 1392, 1401, 1407; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on: December 29, 1993.

Barry Felrice.

Associate Administrator for Rulemaking.

[FR Doc. 93-32106 Filed 12-29-93; 3:35 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB73

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Notice of Public Hearing on Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule; extension of comment period and notice of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that a second public hearing will be held on the proposed rule to determine endangered status and designate critical habitat for the Alabama sturgeon, *Scaphirhynchus suttkusi*. The comment period is extended to accommodate the public hearing.

DATES: The public hearing will be held from 6 p.m. to 10 p.m. on January 13, 1994. The public comment period is extended through January 31, 1994.

ADDRESSES: The public hearing will be held at South Hall # 1, Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, suite A, Jackson, Mississippi 39213, or may be submitted at the public hearing. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Stewart, at the above address (601/965-4900).

SUPPLEMENTARY INFORMATION: The Service proposed to determine the Alabama sturgeon, *Scaphirhynchus suttkusi*, to be an endangered species and to designate its critical habitat on June 15, 1993 (58 FR 33148). The Alabama sturgeon, a small sturgeon with a maximum length of about 30 inches, is endemic to the Mobile River system, Alabama and Mississippi. Its current range is restricted to the lower Alabama River and the Cahaba River in Alabama. Both of these areas and the free flowing portion of the lower Tombigbee River are proposed as critical habitat. Factors in the sturgeon's decline include dams, and possible adverse effects from altered water flows, channel maintenance and gravel dredging.

A public hearing on the proposed rule was announced in the **Federal Register** of September 13, 1993 (58 FR 47851) and was held on October 4, 1993 near Mobile, Alabama. The capacity of the facility selected for the public hearing was not sufficient for all the individuals that wished to attend. A second hearing was then announced in the **Federal Register** on October 25, 1993 (58 FR 55036). The second public hearing was scheduled for November 15, 1993, in Montgomery, Alabama, to allow additional oral statements to be presented and to receive comment on a scientific report prepared by experts on the taxonomy and on the likelihood of existence of the Alabama sturgeon.

The November 15 hearing was canceled in response to a preliminary injunction issued on November 9, 1993, that restrained the Service and others from: (1) Disseminating the scientific report to the public; and, (2) utilizing or relying upon the scientific report or any product of the experts' deliberations in connection with the decision-making process on the proposal to list the Alabama sturgeon and to designate its critical habitat. Because the notice announcing the November 15 hearing specifically addressed the availability of the scientific report and the Service's intent to receive comments on it, the Service decided to postpone the hearing until a revised notice could be published to announce the limitations imposed by, and to thereby avoid inadvertent violations of, the court order.

On December 22, 1993, the court that issued the November 9 order issued another order providing, in most relevant part, as follows:

> Federal defendants and defendant-intervenor, and those acting in active concert with them, are hereby permanently enjoined from publishing, employing and relying upon the Advisory Committee report * * * for any purpose whatsoever, directly or indirectly, in the process of determining whether to list the Alabama sturgeon as an endangered species.

Therefore, a second public hearing has now been scheduled for January 13, 1994, and will allow additional oral statements to be presented (of course, written comments will also be accepted and will be given equal consideration). The time allocated for individual oral statements may be limited if the number of parties present at the hearing, or if the conduct of the individual commenter, necessitate such a limitation. There is no limit, however, on the length or volume of written comments or materials presented at the hearing or mailed to the Service office in the **ADDRESSES** section.

In keeping with the court restrictions issued in *Alabama-Tombigbee Rivers Coalition* v. *Fish and Wildlife Service*, Civ. No. 93-AR-2322-S, the Service considers itself compelled to enforce the following constraints on the submission of oral and written comments while the court restrictions remain in effect:

(1) Individuals or organizations cannot refer to the scientific report, issued on November 5, 1993, or to any drafts or other product derived from the preparation of that report, in presenting any oral statement or written comment; and,

(2) Individuals or organizations cannot attempt to bolster their oral or written comments or opinions by reference to the scientific report as authority.

The Departmental hearing officer at the hearing on January 13, 1994, will be authorized to terminate the opportunity to speak of any person making a statement if, in the judgment of the hearing officer, that person disregards the instructions not to address the scientific report or its contents. Written comments or materials that contain information that violates the above restrictions will be marked and thereafter excluded from the administrative record while the court restrictions remain in effect.

The Service intends that any final action resulting from the proposed rule will be as accurate and as effective as possible. Except for the court-imposed restrictions set out above, the Service encourages the submission of all individual scientific opinions, biological data, and other relevant scientific data that will assist in arriving at the "best scientific and commercial data available," as mandated by Section 4 of the Endangered Species Act.

Authority: The authority for this action is the Endangered Species Act, 16 U.S.C. 1531-1544.

List of Subjects in 50 CFR Part 17

Endangered and threatened wildlife, Fish, Marine mammals, Plants (agriculture).

Dated: December 20, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94-89 Filed 1-3-94; 8:45 am]

BILLING CODE 4310-55-P

Notices

Federal Register
Vol 59, No. 2
Tuesday, January 4, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Food Stamp Program; Notice of Public Hearing To Discuss Implementation of New Food Stamp Act Provisions

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice of public hearing.

DATE AND TIME: January 20, 1994, 9 a.m.–5 p.m.

LOCATION: Fourth Floor Conference Room, 3101 Park Center Drive, Alexandria, VA 22302.

FOR FURTHER INFORMATION CONTACT: Judith M. Seymour, Supervisor, Eligibility and Certification Rulemaking Section, Certification Policy Branch, Program Development Division, Food and Nutrition Service, USDA, 3101 Park Center Drive, Alexandria, Virginia.. 22302, (703) 305–2496.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act of 1980 (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This Program is listed in the Catalog of Federal Domestic Assistance under No. 10.551. For the reasons set forth in the final rule and related Notice(s) to 7 CFR part 3105, subpart V (48 FR 29115, June 24, 1983; or 48 FR 54317, December 1, 1983, as appropriate), this Program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

PURPOSE OF HEARING: The Omnibus Budget Reconciliation Act of 1993, Public Law No. 103–66 (Mickey Leland Childhood Hunger Relief Act) (August 10, 1993) (the Leland Act), contained numerous provisions requiring the possible amendment of Food Stamp Program regulations. The Department is holding a public hearing to offer State agencies, advocacy groups, and other interested parties an opportunity for public dialogue on issues concerning the regulatory provisions that are to be published in connection with the Food Stamp Act amendments made by the Leland Act.

Dated: December 28, 1993.

George A. Braley,

Acting Administrator.

[FR Doc. 93–32103 Filed 12–29–93; 2:07 pm]

BILLING CODE 3410–30–U

Forest Service

White Sand Ecosystem Management Project; Clearwater National Forest, Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of vegetation retention, vegetation treatments, access management, and fish habitat enhancement in the vicinity of White Sand Creek, Beaver Creek, Savage Creek, Rabbit Creek, and Colt Creek drainages. The area is located south and east of the Powell Ranger Station, Powell Ranger District, Clearwater National Forest, Idaho County, Idaho. Most of the proposed project's activities are within the North Fork Spruce - White Sand (#1309) and Sneakfoot Meadows (#1314) Roadless Areas. The proposal's actions are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25).

The purposes of the project are to implement the Clearwater Forest Plan within the context of Ecosystem Management principles; conserve biological diversity; retain the undeveloped character of White Sand scenery; restore ecosystem function in fire-dependant forest communities; reduce the risk of large fires and improve opportunities for use of prescribed natural fire; create vistas and visually rehabilitate several existing harvest unit boundaries; produce wood products and increase timber growth and yield in a way that provides long-term sustainability of both wood products and other ecosystem elements, protect water quality, fish populations, wildlife, and roadless characteristics influenced by access; improve safety of roads for current public use and expected increases and changes in use; enhance trail-based recreation; and manage limiting factors that affect fish populations in White Sand streams.

This project-level EIS will tier to the Clearwater National Forest Land and Resource Management Plan (Forest Plan) and Final EIS (September, 1987), which provides overall guidance of all land management activities on the Clearwater National Forest.

DATES: Written comments and suggestions should be received on or before February 18, 1994, to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in September, 1994. The Final EIS and Record of Decision are expected to be issued in February, 1995.

ADDRESSES: Submit written comments and suggestions on the proposed action or requests for a map of the proposed action or to be placed on the project mailing list to Margaret Gorski, District Ranger, Powell Ranger District, Clearwater National Forest, Lolo, MT 59847.

FOR FURTHER INFORMATION CONTACT: Jeff Pope, EIS Team Leader, Powell Ranger District, CLearwater National Forest, Phone (208) 942–3113.

SUPPLEMENTARY INFORMATION: The proposed action is based on the findings of the White Sand Integrated Resource and Ecosystem Analysis (IRA). The White Sand IRA is the first analysis on the Powell Ranger District using policy direction and emerging concepts of Ecosystem Management (EM). The overriding purpose of EM policy is to better blend the needs of people and environmental values so that National Forests represent diverse, healthy, productive, and sustainable ecosystems

The planning area consists of approximately 40,000 acres of National Forest land located in sections 33–36 of T.37N., R.14E.; sections 13–15, 20–24 and 26–35 of T.37N., R.15E.; sections 1–3, 10–16 and 22–27 of T.36N., R.14E.; sections 1–11, 13–14 and 25–36 of T.36N., R.15E.; sections 1, 2, 11 and 12 of T.35N., R.14E.; sections 2–9, 17 and 18 of T.35N. and R.15E.; Boise Meridian.

The proposed action was designed to meet various ecological and social needs expressed in the White Sand IRA. Proposed action activities fall into four broad categories: vegetation retention, vegetation treatments, access management, and fish habitat enhancement. The purpose of the proposed action is to:

Vegetation Retention

—Conserve biological diversity
—Retain the undeveloped character of White Sand scenery

Vegetation Treatments

—Restore ecosystem function in fire-dependant forest types
—Reduce the risk of large fires in White Sand landscape and improve opportunities for use of prescribed natural fire
—Create vistas and visually rehabilitate several existing harvest unit boundaries
—Implement the Clearwater Forest Plan within the context of Ecosystem Management
—Produce wood products and increase timber growth and yield in a way that provides long-term sustainability of both wood products and other ecosystem elements

Access Management

—Protect water quality, fish populations, and roadless characteristics influenced by access
—Improve safety of roads for current public use and expected increases or changes in use
—Enhance trail-based recreation

Fish habitat Enhancement

—manage limiting factors that affect fish populations in White Sand streams

The proposed action would accomplish the following activities over the next ten years:

Vegetation Retention and Treatments

—1,314 acres of underburning in fire-dependant vegetation communities, 59 acres of planting understocked seedling stands, 14 acres of precommercial thinning overstocked sapling stands, create one vista area for picnicking and viewing scenery, implement the following prescriptions for managing the forest: 704 acres of uneven-aged regeneration harvest, 1313 acres of even-aged regeneration harvest, 55 acres of commercial thinning, and 50 acres of uneven-aged regeneration harvest with underburning. These prescriptions would result in harvest of about 14,418 thousand board feet (MBF) of timber

Access Management

—2.7 miles of temporary road construction to provide access for harvesting, 6.0 miles of permanent road construction to provide access for harvesting, 10.7 miles of road reconstruction to improve safety, re-align the junction of roads 360 and 359 to improve safety, create 3 temporary helicopter landings for harvesting, manage road access by closing all new roads with gates or earthen barriers after completion of management activities, 5.7 miles of new trail construction, and 13.6 miles of existing trail reconstruction

Fish Habitat Enhancement

—5.4 miles of fish habitat improvement by increasing active debris, developing pools, and modifying debris dams and passage barriers

Possible Forest Plan amendments or site-specific adjustments may be needed to implement the proposed action. For example, the Powell District will need to seek approval to exceed the 40 acre opening limitation, to create openings within the historic range of variation and minimize fragmentation of large blocks of old growth. Openings larger than 40 acres would retain remnants of the original tree cover to provide structural diversity within those stands. Possible Forest Plan amendments include:

—Management area allocation changes for the Wild and Scenic River Corridor, to be determined through the concurrent Wild and Scenic River Suitability Study for White Sand Creek
—Change the Forest Plan standard for Beaver Creek from A channel to B channel standards
—Change the Forest Plan standard for Crab Creek from Steelhead to Cutthroat
—Propose a Visual Travel Corridor for Elk Summit Road
—Propose several Visual Travel Corridors including parts of Beaver Ridge Trail 47 and roads 369, 368, 111, 362, 360, and 359

The decision to be made is what, if anything, should be done in the White Sand Planning Area to achieve the purpose and need.

The Clearwater Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The area of proposed timber harvest and reforestation would occur within Management Areas C8S, E1, E3, A4, and M2. Timber harvest would occur only on suitable timber land, except where needed to facilitate ecosystem burning. These areas would be harvested only to manage fuel conditions to prevent crown fires during reintroduction of fire to fire-dependant ecosystems. Ecosystem burning would occur within management area C6, Key Fishery Habitat. Below is a brief description of the applicable management direction.

Management Area E1—Timber Management—Provide optimum, sustained production of timber products in a cost effective manner while protecting soil and water quality.

Management Area E3—Aerial Harvesting Systems/Timber Management—Similar to management area E1, except long-span cable, multi-span cable, or helicopter harvest systems will be utilized to limit road development.

Management Area C8S—Big Game Summer Range/Timber Management—Maintain high quality wildlife and fishery objectives while producing timber.

Management Area A4—Visual Travel Corridor—Maintain or enhance an aesthetically pleasing, natural appearing forest setting surrounding designated roads, trails, and other areas considered important for recreational travel and use.

Management Area M2—Riparian Lands—Meet watershed and riparian dependant resource objectives and compatible timber production.

Management Area C6—Key Fishery Habitat—Soil and water will be protected in these lands encompassing or adjacent to high value fishery streams. Considered key summer range for elk and moose. This area is designated unsuitable for timber production.

The Forest Service will consider a range of alternatives to the proposed action. One of these will be the "no action" alternative, in which none of the proposed activities would be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on both private and National Forest lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the project, commencing with the initial scoping process (40 CFR 1501.7), which starts with publication of this notice and continues for the next 45 days. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State, and local agencies, the Nez Perce Tribe, and other individuals or organizations who may be interested in or affected by the proposed action. Public meetings will be scheduled between now and publishing of the Draft EIS. Interested individuals and organizations are encouraged to contact the Powell District Ranger to be added to the project mailing list to receive future newsletters related to this project and notification of public meetings.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Clearwater Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Some public comments have already been received in conjunction with the White Sand IRA. Preliminary issues identified so far have been grouped into seven major categories: Biological Diversity and Ecosystem Management; Recreation, Wilderness, and Roadless Areas; Water Resources and Fisheries; Wildlife; Social and Economic; Heritage Resources; and Scenery. Issues commonly associated with effects of timber harvesting and road construction are grouped into these seven categories. The complete list is available upon request from the Powell District Ranger. This list may be verified, expanded, or modified based on public scoping for this proposal.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September of 1994. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register.** The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in management of the White Sand area participate at that time. To be most helpful, comments on the Draft EIS should be as site-specific as possible. The Final EIS is scheduled to be completed by February, 1995.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day scoping comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in developing issues and alternatives.

To assist the Forest Service in identifying and considering issues on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement. My address is Clearwater National Forest, 12730 Highway 12, Orofino, ID 83544.

Dated: December 15, 1993.

James L. Caswell,

Forest Supervisor.

[FR Doc. 94–79 Filed 1–3–94; 8:45 am]

BILLING CODE 3410–11–M

Murphy Timber Sales and Associated Activities; Kootenai National Forest, Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an Environmental Impact Statement (EIS) to disclose the environmental effects of timber harvest, reforestation, wildlife habitat enhancement (prescribed burning), construction of low standard haul roads, and restriction of existing roads within the lower portion of the Fortine Creek drainage. The Fortine Creek drainage is located approximately 40 air miles northeast of Libby, Montana near the town of Fortine, Montana.

The proposal's actions to harvest and reforest timber stands, construct and reconstruct roads, prescribed burning, and restricting roads are being considered together because they represent either connected or cumulative actions as defined by the Council on Environmental Quality (40 CFR 1508.25). The purposes of the project are to maintain and enhance winter thermal habitat requirements for whitetailed and mule deer, improve grizzly bear habitat by providing security, cover, and forage, and maintain a healthy forest while providing timber to the local economy.

The EIS will tier to the Kootenai National Forest Land and Resource Management Plan and Final EIS of September 1987, which provides overall guidance for achieving the desired forest condition of the area. All activities associated with the proposal will be designed to maintain high quality wildlife, fisheries, and watershed objectives.

DATES: Written comments and suggestions should be received within 45 days following publication of this notice.

ADDRESSES: The Responsible Official is Jane P. Kollmeyer, District Ranger, Fortine Ranger District, P.O. Box 116, Fortine, Montana 59918. Written comments and suggestions concerning the scope of the analysis may be sent to her at that address.

FOR FURTHER INFORMATION CONTACT: Joleen Dunham, ID Team Leader, Fortine Ranger District. Phone: (406) 882–4451.

SUPPLEMENTARY INFORMATION: The decision area contains approximately 15,000 acres within the Kootenai National Forest in Lincoln County, Montana. All of the proposed projects are located in the Fortine Creek drainage with sub-drainages of Deep, Brimstone, and Murphy Creeks included. The legal location of the decision area is as follows: Sections 8, 9, 14, 15, 16, 17, 19, 20, 21, 22, 23, 28, 29, 30, 31, 32, 33, and 34 of Township 35 North, Range 25 West; Sections 3, 4, 5, 6, 7, 8, 9, 10, 11, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29 of Township 34 North, Range 25 West; Sections 25 and 36 of Township 35 North, Range 26 West; and Sections 1 and 12 of Township 34 North, Range 26 West; Principal Montana Meridian.

Some timber management and prescribed wildlife burning activities under consideration would occur within the Marston Face Roadless Area X172 and the Thompson-Seton Roadless Area 483. No proposed activities are located in areas considered for inclusion to the National Wilderness System as recommended by the Kootenai National Forest Plan or by any past or present legislative wilderness proposals. Both even-aged and uneven-aged management would be used in implementing the proposed actions. Logging systems consist of tractor harvest only.

The Forest Service proposes to harvest approximately 3.3 million board feet of timber through application of a variety of harvest methods on approximately 1063 acres of forest land. The proposal also includes prescribed burning of 117 acres to enhance wildlife habitat. The Forest Service proposal also includes approximately 2.1 miles of new road construction (0.9 miles of temporary road and 1.2 miles of low standard specified road) and approximately 1.0 mile of road re-construction to access the specific harvest units. Approximately 15–18 miles of existing road is also proposed for additional road use restrictions to improve wildlife habitat security.

The Kootenai National Forest Land and Resource Management Plan provides overall management objectives in individual delineated management areas (MA's). The proposed projects encompass three predominant MA's; 11, 13, and 14. Briefly described, MA 11 is managed to maintain or enhance the winter-range habitat effectiveness for big-game species and produce a programmed yield of timber. MA 14 focuses on maintaining or enhancing grizzly bear habitat, reducing grizzly/human conflicts, assisting in the recovery of the grizzly bear, realizing a programmed yield of timber production, and providing for the maintenance or enhancement of other wildlife species, especially big-game. MA 13 is designated to provide the special habitat necessary for old growth dependent wildlife. Timber harvest is proposed only in MA 11. Prescribed burning for wildlife is the only activity proposed in MA 14. No activity is proposed in MA 13.

Issues

Tentatively, several issues of concern have been identified through the scoping process. These issues are briefly described below:

- Whitetailed and Mule Deer Winter Thermal Cover—How would the proposed action maintain and enhance winter thermal cover?
- Visuals—What effects would the proposed action have on naturally appearing views seen from trails, private land, Dickey Lake and Highway 93?
- Timber Supply—How would the proposed action help satisfy local and national needs?
- Activity in Roadless Area—What effect would the proposal have on the roadless character of Marston Face and Thompson-Seton Roadless Areas.
- Grizzly Bear—How would the proposal maintain and enhance grizzly bear habitat?
- Old Growth—What effect would the proposed action have on old growth habitat?
- Forest Health—Some stands are not growing at their full potential and some have sustained heavy mortality due to the mountain pine beetle. What effect would the proposed action have to reduce susceptibility to bark beetles and improve stand conditions?
- Water Quality—What effects would the proposed action have on riparian areas, lakes, and private water developments?

Public Involvement and Scoping

Public participation to this point has been extensive. On August 15, 1991 an initial scoping meeting was held with the local community and interested individuals for the development of a timber sale proposal. On May 28, 1992 we held another open house to present a revised proposal. In addition, a field trip to the Murphy Decision Area was conducted on June 26, 1992 with seven individuals attending. Comments were requested in writing during all of these public involvement efforts. Consultation with appropriate State and Federal agencies has been initiated. Preliminary effects analysis indicated that the proposed action may significantly affect quality of the human environment and may substantially alter the undeveloped character of the Marston Face Roadless Area. These potential effects prompted the decision to prepare an EIS for the Murphy Timber Sales.

This environmental analysis and decision making process will unable additional interested and affected people to participate and contribute to the final decision. Public participation will be requested at several points during the analysis. The Forest Service will be seeking information, comments, and assistance from Federal, State, local agencies and other individuals or organizations who may be interested in or affected by the proposed projects. This input will be used in preparation of the draft and final EIS. The scoping process will include:

- Identifying potential issues.
- Identifying major issues to be analyzed in depth.
- Exploring additional alternatives which will be derived from issues recognized during scoping activities.
- Identifying potential environmental effects of this project and alternatives (i.e. direct, indirect, and cumulative effects and connected actions).

The analysis will consider a range of alternatives, including the proposed action, no action, and other reasonable action alternatives.

Estimated Dates for Filing

The draft Murphy EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by September, 1994. At that time EPA will publish a Notice of Availability of the draft EIS in the **Federal Register.** The comment period on the draft EIS will be 45 days from the date the EPA publishes the Notice of Availability in the **Federal Register.**

The final EIS is scheduled to be completed by December, 1994. In the final EIS, the Forest Service is required to respond to comments and responses received during the comment period that pertain to the environmental consequences discussed in the draft EIS and applicable laws, regulations, and policies considered in making a decision regarding the proposal.

Reviewer's Obligations

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* versus *NRDC,* 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage may be waived or dismissed by the courts. *City of Angoon* versus *Hodel,* 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* versus *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis.

1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider and respond to them in the final EIS.

To be most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merit of the alternatives discussed. Reviewers may wish to refer to the Council on Environmental Quality regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Responsible Official

Jane P. Kollmeyer, District Ranger, Fortine Ranger District, Kootenai National Forest, P.O. Box 116, Fortine, Montana, 59918, is the Responsible Official. As the Responsible Official I will decide which, if any, of the proposed projects will be implemented. I will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to Forest Service Appeal Regulations.

Dated: December 16, 1993.

Jane P. Kollmeyer,

District Ranger, Fortine Ranger District.

[FR Doc. 94–4 Filed 1–3–94 8:45 am]

BILLING CODE 3410–11–M

Packers and Stockyards Administration

Proposed Posting of Stockyards

The Packers and Stockyards Administration, United States Department of Agriculture, has information that the livestock markets named below are stockyards as defined in section 302 of the Packers and Stockyards Act (7 U.S.C. 202), and should be made subject to the provisions of the Packers and Stockyards Act, 1921, as amended (7 U.S.C. 181 *et seq.*).

IL–173 Wyoming Livestock Auction, Wyoming, Illinois
MO–276 Barry County Livestock Auction, Exeter, Missouri
MO–277 Callaway Livestock Center, Inc., Fulton, Missouri
NM–122 Pecos Valley Dairy Sales, Inc., Dexter, New Mexico

Pursuant to the authority under section 302 of the Packers and Stockyards Act, notice is hereby given that it is proposed to designate the stockyards named above as posted stockyards subject to the provisions of said Act.

Any person who wishes to submit written data, views or arguments concerning the proposed designation may do so by filing them with the Director, Livestock Marketing Division, Packers and Stockyards Administration, room 3408—South Building, U.S. Department of Agriculture, Washington, DC 20250 by January 11, 1994. All written submissions made pursuant to this notice will be made available for public inspection in the office of the Director of the Livestock Marketing Division during normal business hours.

Done at Washington, DC this 27th day of December 1993.

Harold W. Davis,

Director, Livestock Marketing Division.

[FR Doc. 94–15 Filed 1–3–94; 8:45 am]

BILLING CODE 3410–KD–P

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931218–3318]

Opportunity To Join a Cooperative Research and Development Consortium To Develop Virtual Library and Document Interchange Technology

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice of opportunity to join a cooperative research and development consortium.

SUMMARY: The National Institute of Standards and Technology (NIST), seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of open systems technology for virtual libraries and electronic document interchange. This program will be undertaken within the scope and confines of The Federal Technology Transfer Act of 1986 (15 U.S.C. 3710a), which provides federal laboratories including NIST, with the authority to enter into cooperative research agreements with qualified parties. Under this law, NIST may contribute personnel, equipment, and facilities—but no funds—to the cooperative research program. Members will be expected to make contribution to the consortium's efforts in the form of materials, equipment, personnel, and/or funds. The research program is expected to last two to three years. This is not a grant program.

DATES: Interested parties should contact NIST at the address or telephone number shown below no later than (please insert date which is sixty (60) days from the date of publication of this notice in the **Federal Register**).

ADDRESSES: Dr. Lawrence A. Welsch, Manager Office Systems Engineering Group, Building 225, room B–254, National Institute of Standards and Technology, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Dr. Lawrence A. Welsch, (301) 975–3345, National Institute of Standards and Technology, Gaithersburg, MD 20899.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology seeks industrial and academic parties interested in entering into a cooperative research consortium on the development of open systems technology for virtual libraries and electronic document interchange. NIST wishes to pursue interoperable and portable open systems that will improve the use of information technology in conducting government programs and in providing services to the public, and, in particular, improve the use and exchange of electronic documents in many forms as an aid to the performance of daily business activities and research activities.

The open information systems movement is gaining momentum because many researchers and users realize that no single vendor can supply all the needs for an information-based society. Open systems are needed to provide for interoperability of software, hardware, and communications systems products, and for portability of data and applications across heterogeneous computing environments. While there is a strong movement to standards for interconnecting hardware, software and network systems, there are many proprietary products and systems in use. NIST has developed the application Portability Profile (APP), the U.S. Government's Open system Environment Profile, which integrates standards and other specifications to address a broad range of information technology requirements.

The purpose of this consortium is to develop technology that will promote the exchange of electronic documents and improve user access to information in various forms and locations. This technology will fit into the APP framework.

This program is being undertaken within the scope and confines of the Federal Technology Transfer Act of 1986 (Pub. L. 99–502, 15 U.S.C. 3710a) which authorizes government owned and operated federal laboratories, including NIST, to enter into cooperative research and development agreements (CRADAs) with qualified parties. Under the law, a CRADA may provide for contributions from the federal laboratory of personnel, facilities, and equipment, but not direct funding.

Dated: December 28, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 94–70 Filed 1–3–94; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

[I.D. 122793A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of availability of an amendment to a fishery management plan; request for comments.

SUMMARY: NMFS issues this notice that the North Pacific Fishery Management Council (Council) has submitted Amendment 32 to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) for Secretarial review and is requesting comments from the public. There is no proposed rule accompanying this amendment. Therefore, this is the final opportunity to comment on this amendment.

Copies of the amendment may be obtained from the Council (see **ADDRESSES**).

DATES: Comments on the FMP amendment should be submitted on or before March 7, 1994.

ADDRESSES: Comments on the FMP amendment should be submitted to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802 (Attn: Lori Gravel), or delivered to the Federal Building, 709 West 9th Street, Juneau, Alaska.

Copies of Amendment 32 and the environmental assessment (EA) and economic analysis prepared for the amendment are available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, Alaska 99510 (telephone 907–271–2809).

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, NMFS, Alaska Region, 907–586–7228.

SUPPLEMENTARY INFORMATION: The Magnuson Fishery Conservation and Management Act (Magnuson Act) requires that each Regional Fishery Management Council submit any fishery management plan or plan amendment it prepares to the Secretary of Commerce (Secretary) for review and approval, disapproval, or partial disapproval. The Magnuson Act also requires that the Secretary, upon receiving a fishery management plan or amendment, immediately publish a notice that the fishery management plan or amendment is available for public review and comment. The Secretary will consider the public comments received during the comment period in determining public comments received during the comment period in determining whether to approve the FMP or amendment.

Amendment 32 would establish a plan to rebuild stocks of the rockfish Pacific ocean perch (POP) (*Sebastes alutus*) in the Gulf of Alaska (GOA). POP is a highly valued groundfish. It was heavily exploited by a foreign trawl fleet from the early 1960's until the mid-1980's. Thereafter, a domestic at-sea processing fleet harvested POP at a substantially lower rate. Catches of POP peaked in 1965 when an estimated 350,000 metric tons (mt) were harvested by the foreign fleet; catches declined sharply in the late 1960's. From 1961–1977, annual POP landings averaged over 40,000 mt; after 1977, landings averaged 6,000 mt. In the domestic fishery, POP was managed as part of a larger slope rockfish assemblage of about 20 species until 1991, when POP was established as a separate target species category to prevent possible overfishing.

As a result of increased concern about the status of POP stocks, biomass assessment methodology has been improved and domestic harvest levels have been reduced. The 1993 total allowable catch (TAC) of 2,560 mt was available only as incidental catch in other groundfish fisheries. In recent years POP has been managed as a single species, harvest levels have been reduced, and directed fisheries have been restricted or eliminated. In spite of this conservative management in recent years, POP biomass has increased only slightly and remains depressed from historic levels. The current spawner biomass of about 71,000 mt is estimated to be 15–20 percent of the level observed during the 1960's.

The Council believes that increasing the biomass of POP to a level closer to historical amounts is necessary to achieve optimum yield in the POP fishery. Factors other than fishing mortality contribute to the continued depressed state of the POP resource. Ecosystem changes or other biological factors may preclude rebuilding success Nevertheless, the Council considers minimizing POP mortality necessary to maximize the probability of rebuilding success in a realistic time period Additionally, decreasing POP mortality should minimize resource waste associated with low TACs that do not fully accommodate incidental catch needs of existing fisheries.

After a review of alternatives analyzed in the EA, the Council selected Alternative 3 as the preferred alternative. This alternative is projected in modeling simulations to rebuild POP biomass to a target level (B_{MSY}) in about 14 years by harvesting POP at a fishing mortality rate lower than the optimum rate. The target biomass B_{MSY} is the total biomass of mature females that would produce the maximum sustainable yield, on average; this number is currently estimated at 150,000 mt. The optimal fishing mortality rate is the rate that maximizes expected biological and economic yields over a range of plausible stock-recruitment relationships.

The Council considered Alternative 3 superior to Alternative 1, which no longer represents the best scientific information about POP biomass and population dynamics. The Council also considered Alternative 3 superior to Alternative 2, which would harvest POP at the higher optimal fishing mortality rate. The Council believed that lower POP harvests and additional economic costs of Alternative 3 were justified because Alternative 2 would achieve the target biomass in a longer time (about 18 years) and with a lower probability of rebuilding success. Alternative 4 would harvest POP at a lower rate equivalent needed for unavoidable POP bycatch in remaining groundfish fisheries, at 1992 bycatch rates. The TACs resulting from Alternative 4 were considered too restrictive in relation to existing POP bycatch needs, causing unnecessary discards of POP that are killed in fishing operations after POP TACs are reached.

Under Alternative 3, the FMP would establish the procedure for deriving the annual GOA TACs for POP: POP stocks are considered to be rebuilt when the total biomass of mature females is equal to, or greater than, B_{MSY}. Annual TACs would be established as follows:

(a) Determine the current biomass, B_{MSY}, and the optimal fishing mortality rate;

(b) Determine the fishing mortality rate halfway between the optimal fishing mortality rate and the fishing mortality rate estimated to be sufficient to supply unavoidable bycatch of POP based on 1992 bycatch rates;

(c) When the current biomass of mature females is less than B_{MSY}, adjust the resultant fishing mortality rate in (b) by the ratio of current biomass to B_{MSY} so that when B_{MSY} is attained, the fishing mortality rate will be the optimal fishing mortality rate;

(d) The GOA TAC of POP is the amount of fish resulting from the adjusted fishing mortality rate in (c); and

(e) The TAC is apportioned among regulatory areas in proportion to POP biomass distribution.

In addition to restricting the annual fishing mortality rate of POP, the Council seeks to reduce the total mortality of POP in other target fisheries. In the past, overfishing has been defined GOA-wide. Under Amendment 32, the overfishing level would be distributed among the eastern, central, and western areas in the same proportions as POP biomass occurs in those areas. This measure would avoid localized depletion of POP and would rebuild POP at equal rates in all regulatory areas of the GOA. The Council considers this management option necessary because, although POP biomass is greatest in the Eastern Regulatory Area, most trawl fishing activity and incidental catch of POP is greatest in the Central Regulatory Area. With an acceptable biological catch as low as the current, 3,378 mt in 1993, fishing mortality of POP can be expected to exceed the TAC available in the central GOA.

Amendment 32 is necessary to improve conservation and management of POP and is intended to further the goals and objectives of the FMP. No regulatory changes are necessary to implement this FMP amendment because the FMP would provide the procedure for deriving TACs for POP, which are specified annually under existing regulations at § 672.20(a)(2).

List of Subjects in 50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq*

Dated: December 28, 1993.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–32090 Filed 12–9–93; 11:01 am]

BILLING CODE 3510–22–M

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a scientific research permit (P559).

SUMMARY: Notice is hereby given that Mr. Hiroyuki Suganuma, Ogasawara Marine Center, Byobudani, Chichijima Ogasawaramura, Tokyo, 100–21, Japan, has applied in due form for a permit to take humpback whales (*Megaptera novaeangliae*) for purposes of scientific research.

DATES: Written comments must be received on or before February 3, 1994.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, Suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

The applicant is requesting authority to conduct scientific research on Pacific humpback whales in the Northern Mariana Islands. The proposed research entails the approach of up to 400 humpback whales up to 4 times each, annually, for purposes of photo-identification, behavioral observations, acoustic recordings, and the collection of sloughed skin samples and fecal materials. These samples would be exported to Japan for analysis.

Dated: December 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–25 Filed 1–3–94; 8:45 am]

BILLING CODE 3510–22–M

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Notice of Meetings

AGENCY: Corporation for National and Community Service.

SUMMARY: On September 21, 1993, President Clinton signed the National and Community Service Trust Act of 1993, that merged the Commission on National and Community Service, ACTION, and the newly established Civilian Community Corps, to create the Corporation for National and Community Service. The Corporation is presenting a series of regional workshops in Washington, DC, Atlanta, Kansas City, and Los Angeles, to provide application assistance to organizations applying for national and community service program grants.

Functioning as a service "venture capitalist", the Corporation will provide funding on a population-based formula and competitive basis for national and community service programs, and as a clearinghouse of information and technical expertise for service initiatives nationwide.

To encourage broad participation in national service, the Corporation is conducting this series of workshops to support the application of high quality, national service programs and service-learning K–12 and higher education programs. Approximately $189 million will be available to these programs, to assist in the planning, operating and replicating of national and community service programs.

The primary audience for these workshops will be those applying directly to the Corporation, including State Commissions or alternative entities, State educational agencies, higher education institutions, Indian Tribes, territories, Federal agencies, professional corps, national nonprofits, and multi-State organizations. State Commissions will be responsible for providing technical assistance to local applicants applying to their States.

In addition, those local nonprofits organizations, government agencies, Indian Tribes, and higher education institutions interested in applying for Summer of Safety should attend.

For those who are unable to attend the workshops, the corporation will be sponsoring other assistance programs, including tele/video-conferences and printed material. Please contact the Corporation at (202) 606–5000, or FAX (202) 606–4845, for additional information on national service programs.

DATES: The meetings in Washington, DC will be held on January 10–11, 1994; the meetings in Atlanta will be held on January 12–13, 1994; the meetings in Kansas City will be held on January 18–19, 1994; and the meetings in Los Angeles will be held on January 20–21, 1994. All meetings will begin at 8:30 a.m. and conclude at approximately 5 p.m. The first day of each session will include additional evening sessions.

ADDRESSES: The Washington meetings will be held at the Ramada Hotel at 901 Fairfax Street, Alexandria, Virginia, 223114. Phone: (703) 683–6000. The Atlanta meetings will be held at the Westin, Peach Tree Plaza, at 210 Peach Tree Street, Atlanta, Georgia, 30303. Phone: (404) 659–1400. The Kansas City meetings will be held at the Kansas City Airport Marriot, at 775 Brasilia Avenue, Kansas City, MO 64153. Phone: (816) 464–2200. The meetings in Los Angeles will be held at the Biltmore Hotel, at 506 South Grand Avenue, Los Angeles, CA, 90071. Phone: (213) 624–1011.

FOR FURTHER INFORMATION CONTACT: The Corporation for National and Community Service, Office of Public Liaison, 1100 Vermont Avenue, NW., Washington, DC 20525. Phone: (202) 606–5000; FAX (202)606–4854.

Dated: December 29, 1993.

Terry Russell,

Acting General Counsel, Corporation for National and Community Service.

[FR Doc. 94–71 Filed 1–3–94; 8:45 am]

BILLING CODE 6820–BA–M

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS)

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of the TRICARE Demonstration Project in California and Hawaii.

SUMMARY: Notice was previously given in the **Federal Register** (53 FR 23783–23784) of June 24, 1988, that a demonstration project, called the CHAMPUS Reform Initiative (CRI), would be conducted by contract under the provisions of chapter 55, title 10, section 1092, to test a different method for financing and delivering health services under the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS). Delivery of services under that contract began August 1, 1988, for all beneficiaries who reside in the states of California and Hawaii, and is scheduled to end January 31, 1994. The TRICARE demonstration project in California and Hawaii is a continuation of the CRI demonstration project and includes five option periods, the execution of which would result in five years of service delivery under the new contract. An evaluation of the significant new features of the demonstration will be conducted. The objectives of the demonstration are to enhance beneficiary access and continuity of care, contain health care costs, and improve coordination between the military and civilian components of the Military Health Services System (MHSS).

DATES: February 1, 1994, for CHAMPUS beneficiaries in California and Hawaii.

FOR FURTHER INFORMATION CONTACT: Richard E. Bellamy, Chief, Coordinated Care Branch, OCHAMPUS, Aurora, CO, 80045–6900, telephone (303) 361–1336.

SUPPLEMENTARY INFORMATION: The **Federal Register** Notice referenced above described in detail the CRI demonstration project, which includes a choice for beneficiaries of three benefit options: CHAMPUS Prime, a health maintenance organization (HMO) benefit; CHAMPUS Extra, a preferred provider organization (PPO) benefit; and standard CHAMPUS, an indemnity benefit. The benefit options under this TRICARE demonstration (called TRICARE Prime, TRICARE Extra, and TRICARE Standard) are the same as those described in the **Federal Register** Notice for the CRI demonstration. There are only five significant differences for beneficiaries and providers between the CRI demonstration project and the TRICARE demonstration project in California and Hawaii:

—The new contractor is Aetna Government Health Plans. Aetna subcontracts with Hawaii Medical Service Association (HMSA) for the provision of health care in Hawaii, and with Blue Cross and Blue Shield of South Carolina (operating under the name of Palmetto Government Benefits Administrators) for claims processing services.

—Beneficiaries with a civilian Primary Care Manager (PCM) will need a referral in order to obtain covered services at a Military Treatment Facility (MTF) or a PRIMUS/NAVCARE clinic (except for emergency services, or for pharmacy services obtained at an MTF).

—MTF Commanders may consider the availability of health care from civilian network providers, in addition to availability from MTF providers, in determining whether to issue a Nonavailability Statement (NAS) to beneficiaries. Standard NAS procedures for beneficiaries apply

—The CHAMPUS home health care demonstration (as outlined in the CHAMPUS Operations Manual, Part Two, Chapter 20, Addendum B) is included in this demonstration

—Beneficiaries who receive care from network providers in the states of California and Hawaii, but who are not residents of those states, obtain the TRICARE Extra benefits (payments based on discounted provider rates and reduced coinsurance).

Duration

It is expected that the demonstration status of this program will end upon promulgation of final regulations, expected in 1994, which will provide permanent authority for implementation of managed care enrollment programs by the Department. In any event, the effect of this Notice shall expire September 30, 1994.

Dated: December 27, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–57 Filed 1–3–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

Active Duty Service Determinations for Civilian or Contractual Groups

On December 13, 1993, the Secretary of the Air Force determined that the service of the group known as "U.S. Civilian Flight Crew and Aviation Ground Support Employees of Northwest Airlines, Who Served Overseas as a Result of Northwest Airline's Contract with the Air Transport Command during the Period December 14, 1941 through August 14, 1945," shall be considered active duty for purposes of all laws administered by the Department of Veterans Affairs.

To receive recognition, each applicant must establish they:

1. Were employed by Northwest Air Lines as flight crew personnel (pilot co-pilot, navigator, flight engineer, radio operator) or
2. Were employed by Northwest Air Lines as aviation ground support personnel (aircraft mechanic, station

manager, dispatcher), or other support personnel necessary to sustain flight operations, and

3. Served outside the continental United States in direct support of Air Transport Command-directed flight operations during the period December 14, 1941 through August 14, 1945.

Qualifying periods of time are computed from the date of departure from the continental United States to the date of return to the continental United States.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: HQ AFMPC/DPMARS2, Randolph AFB, TX 78150–6001, ATTN: Sgt White.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any employment records from Northwest Airlines headquarters. Other supporting documentation might include copies of passports with appropriate entries, flight log books, Army Air Force Identification Forms 133, any personal employment records such as commendations regarding ATC performance, employee expense reports of charges to USAAF contracts, medical certifications prior to departure from U.S., USAAF passes to leave the limits of an overseas base, military orders, miscellaneous USAAF papers, etc. Additionally, the captain of a flight crew may provide written confirmation for other crew members on the flight.

Upon confirmation of an applicant's eligibility the DD–214 will be passed from HQ AFMPC/DPMARS2 to the Awards and Decorations office (in the same building) to determine which ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, etc.). Specific awards (i.e., Silver Star, Purple Heart, Air Medal, etc.) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

DD Forms 2168 are available from VA offices or from the U.S. Air Force offices in this notice.

For further information contact Lt. Col. Robert Dunlap at the Secretary of the Air Force Personnel Council (AFPC), 1535 Command Drive-3d Floor-EE Wing, Andrews AFB, MD 20331–7002, telephone (301) 981–3504/5750.

Benefit Information

A determination of "active duty" under Public Law 95–202 is "for the purposes of all laws administered by the Department of Veterans Affairs" (Sec. 106, 38 U.S.C.). Benefits are not retroactive and do not include such things as increased military or Federal Civil Service retirement pay, or a military burial detail, for example. Entitlement to state veterans benefits vary and are governed by each state. Therefore, for specific benefits information, contact your nearest Veterans Affairs Office and your state veterans service office after you have received your Armed Forces discharge documents.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94–80 Filed 1–03–94; 8:45 am]

BILLING CODE 3910–01–M

Active Duty Service Determinations for Civilian or Contractual Groups

On December 13, 1993, the Secretary of the Air Force determined that the service of the group known as "U.S. Civilian Female Employees of the U.S. Army Nurse Corps While Serving in the Defense of Bataan and Corregidor During the Period January 2, 1942 to February 3, 1945" shall be considered "active duty" under the provisions of Public Law 95–202 for the purposes of all laws administered by the Department of Veterans Affairs (VA).

To be eligible for VA benefits, each member of the group must establish:

1. They were employed as U.S. civilian female employees of the U.S. Army Nurse Corps (ANC), during the period January 2, 1942 to February 3, 1945, and

2. When their employment began with the ANC, and

3. Continuous employment prior to surrender of Corregidor to the Japanese on May 6, 1942, to gain recognition for the time spent in the civilian internment camps, and

4. The date of release/escape from a civilian internment camp or termination date prior to Japanese internment.

Application Procedures

Before an individual can receive any VA benefits, the person must first apply for an Armed Forces Discharge Certificate by filling out a DD Form 2168 and sending it to the following address: US Army Reserve Personnel Center (DARP–VSE–N), 9700 Page Blvd, St. Louis, MO 6132–520.

Important: Applicants must attach supporting documents to their DD Form 2168 application. Considered of primary importance will be any civilian employment records.

Upon confirmation of an applicant's eligibility the DD–214 will be passed to the Awards and Decorations office to determine which ribbons the applicant is eligible to receive (campaign ribbons, theater ribbons, victory medal, etc.). Specific awards (i.e., Silver Star, Purple Heart, etc.) need separate justification detailing the act, achievement, or service believed to warrant the appropriate medal/ribbon.

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Benefit Information

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Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94–81 Filed 1–3–94; 8:45 am]

BILLING CODE 3910–01–M

Partial Record of Decision (ROD) for the Disposal and Reuse of Norton Air Force Base (AFB), CA

On December 15, 1993, the Air Force signed the Partial ROD for the Disposal and Reuse of Norton AFB. The decisions included in this partial ROD have been made in consideration of, but not limited to, the information contained in the Final Environmental Impact Statement (FEIS) for the Disposal and Reuse of Norton AFB, filed with the Environmental Protection Agency on June 4, 1993.

Norton AFB will formally close on March 31, 1994, pursuant to the Defense Authorization Amendments and Base Closure and Realignment Act (BRAC) (Public Law 100–526) and recommendations of the Defense Secretary's Commission on Base Realignment and Closure. Pending closure of Norton AFB, this ROD documents the decisions made by the Air Force on the division of parcels, the method parcels are to be conveyed or transferred, and the mitigation measures to be adopted.

The primary decision in this ROD is to dispose of the aviation-related portion of Norton AFB in a manner that will enable the development of a regional airport with the capacity for expanding commercial and industrial development. The portion of the base covered by this ROD has been divided into ten (10) parcels. The airport parcel, including four (4) non aviation revenue producing parcels, will be conveyed at no-cost via public benefit conveyance for airport purposes. Three (3) parcels are to be offered for negotiated sale, and two (2) parcels will be reserved for transfer to another Federal Agency. The Air Force decided to defer decisions on roads, utilities, and portions of Norton AFB not covered by this ROD pending further analysis and review. The Federal Aviation Administration (FAA) has jurisdiction by law regarding reuse of the runways and associated facilities as a civilian airport. A decision, if any, by the FAA to approve an airport layout plan (ALP) will be announced by a separate ROD issued by the FAA based on the analysis in the FEIS and any additional FAA analysis that may be required.

The implementation of the closure and reuse action and associated mitigation measures will proceed with minimal adverse impact to the environment. This action conforms with applicable Federal, State and local statutes and regulations. All reasonable and practical efforts have been incorporated to minimize harm to the local public and environment.

Any questions regarding this matter should be directed to Mr. John E. B. Smith or Ms. De Carlo Ciccel at (703) 696–5534. Correspondence should be sent to: AFBCA/SP, 1700 North Moore Street, suite 2300, Arlington, VA 22209–2802.

Patsy J. Conner,

Air Force Federal Register Liaison Officer

[FR Doc. 94–82 Filed 1–3–94; 8:45 am]

BILLING CODE 3910–01–M

Department of the Army

Fort Ord, California Disposal and Reuse Environmental Impact Statement (EIS)

AGENCY: Department of the Army, Department of Defense.

ACTION: Notice of availability of record of decision (ROD).

SUMMARY: The Record of Decision (ROD) states the Army's intention to dispose of Fort Ord property, establish a Presidio of Monterey Annex, and retain the existing reserve center at Fort Ord. Because the local communities' reuse plan has not been finalized, the Army does not adopt a specific plan in this ROD. Rather, in this document the Army certifies that it has adequately analyzed the environmental impacts of its decision to dispose of property at Fort Ord.

Consistent with the President's Five-Point Initiative to Revitalize Base Closure Communities, the Army will dispose of property in accordance with the local communities' reuse plan to the maximum extent possible. The Army will develop, if necessary, additional environmental analysis following this ROD to address the impacts of those uses in the local communities' reuse plan not already addressed in the Environmental Impact Statement.

Based on this ROD, the Army will initiate the property disposal process at Fort Ord consistent with the analysis in the EIS.

FOR FURTHER INFORMATION CONTACT: For more information or to obtain a copy of the ROD, contact Mr. Bob Verkade, Sacramento District, U.S. Army Corps of Engineers, 1325 J Street, Sacramento, CA or call (916) 557–7423.

Dated: December 9, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety & Occupational Health OASA (I, L&E)).

[FR Doc. 94–67 Filed 1–3–93; 8:45 am]

BILLING CODE 3710–08–M

Army Science Board; Notice of Open Meeting

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB)

Date of Meeting: 21 January 1994

Time of Meeting: 0900–1200

Place: Washington, DC, Pentagon, room 3E467

Agenda: The Army Science Board will have its first Summer Study meeting at the Pentagon in room 3E467. This initial meeting will cover the Terms of Reference for the 1994 Summer Study titled "Technical Information Architecture." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee The ASB Administrative Officer, Sally Warner, may be contracted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board

[FR Doc. 94–72 Filed 1–3–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Navy

Government-Owned Inventions; Availability for Licensing

AGENCY: Department of the Navy, Defense.

ACTION: Notice of availability of inventions for licensing.

SUMMARY: The inventions listed below are assigned to the United States Government as represented by the Secretary of the Navy and are made available for licensing by the Department of the Navy.

Copies of patents cited are available from the Commissioner of Patents and Trademarks, Washington, DC 20231, for $3.00 each. Requests for copies of patents must include the patent number

Copies of patent applications cited are available from the National Technical Information Service (NTIS), Springfield, Virginia 22161 for $6.95 each ($10.95 outside North American Continent). Requests for copies of patent applications must include the patent application serial number Claims are deleted from the copies of patent applications sold to avoid premature disclosure.

FOR FURTHER INFORMATION CONTACT: Mr. R. J. Erickson, Staff Patent Attorney Office of Naval Research (Code OOCC3), Arlington, Virginia 22217–5660, telephone (703) 696–4001.

Patent 5,153,597: Acousto-Optical Classifier; filed 13 December 1976, patented 6 October 1992.

Patent 5,158,173: Weapons Storage Container To Prevent Sympathetic Detonation of Adjacent Weapons, filed 27 July 1990; patented 27 October 1992.

Patent 5,166,009: Mixed Polymer Electrolyte and Mixed Electrolyte Battery; filed 28 March 1991; patented 24 November 1992.

Patent 5,182,496: Method and Apparatus for Forming an Agile Plasma Mirror Effective as a

Microwave Reflector; filed 7 April 1992; patented 26 January 1993.
Patent 5,183,779: Method for Doping Gaas with High Vapor Pressure Elements; filed 3 May 1991, patented 2 February 1993.
Patent 5,183,938: N,N'-BIS (4,4,4-Trinitrobutyryl) Hydrazine: filed 15 June 1992; patented 2 February 1993.
Patent 5,184,331: Transducer Circuit for Removing Reactive Component of Transducer Signal; filed 1 June 1992; patented 2 February 1993.
Patent 5,186,604: Electro-Rheological Disk Pump; filed 6 June 1991; patented 16 February 1993.
Patent 5,186,770: BIS (2-Nitro-2-Azapropyl) Ether and Method of Preparation; filed 29 June 1984; patented 16 February 1993.
Patent 5,193,475: Thrust Expansion Engine; filed 1 June 1992; patented 16 March 1993.
Patent 5,197,993: Lightweight Battery Electrode and Method of Making It; filed 11 July 1991; patented 30 March 1993.
Patent 5,206,597: Capacitive Moisture Detection Apparatus; filed 27 August 1990; patented 27 April 1993.
Patent 5,207,100: Method and Device for Measuring Underwater Vehicle Hull Vibration; filed 25 July 1991; patented 4 May 1993.
Patent 5,208,422: Submarine Weapon Launch Control System; filed 26 June 1992; patented 4 May 1993.
Patent 5,208,423: Mechanical Shielding for Electric Primer; filed 27 April 1992; patented 4 May 1993.
Patent 5,208,891: Fiber-Optic Viewgraph Projector; filed 7 October 1991; patented 4 May 1993.
Patent 5,210,219: Bis-Sulfonium Salts of 2.5-Dimethylstilbene; filed 14 July 1992; patented 11 May 1993.
Patent 5,210,369: Self-Actuating Slide Valve System; filed 8 July 1992; patented 11 May 1993.
Patent 5,210,488: Projectile Velocity Measurement System and Method; filed 21 October 1991; patented 11 May 1993.
Patent 5,210,807: Variable Wide-Band Fiber Optic Delay Line; filed 29 June 1992; patented 11 May 1993.
Patent 5,211,530: Variable Breadth Impeller That Provides a Specific Shutoff Head; filed 20 April 1992; patented 18 May 1993.
Patent 5,212,269: Main Chain Chromophoric Polymers With Second Order Non-Linear Optical Properties; filed 25 March 1991; patented 18 May 1993.
Patent 5,212,670: Flextensional Hydrophone; filed 20 July 1992; patented 18 May 1993.
Patent 5,212,755: Armored Fiber Optic Cables; filed 10 June 1992; patented 18 May 1993.
Patent 5,213,503: Team Trainer; filed 5 November 1991; patented 25 May 1993.
Patent 5,213,713: Electrorheological Solids and Processes; filed 21 March 1991; patented 25 May 1993.
Patent 5,214,189: N-(2-Hydroxyethyl Nitrate)-2,4,6-Trinitrobenzamide; filed 15 June 1992; patented 25 May 1993.
Patent 5,214,525: Extending Bandwidth of Optical Emitters Using Active Matching Technique; filed 13 September 1991; patented 25 May 1993.
Patent 5,215,024: Vessel-Capturing Berthing Facility Incorporating Relative Motion-Mitigating Apparatus; filed 15 April 1992; patented 1 June 1993.
Patent 5,216,640: Inverse Beamforming Sonar System and Method; filed 28 September 1992; patented 1 June 1993.
Patent 5,216,815: Method of Passive Range Determination Using Only Two Bearing Measurements; filed 2 October 1991; patented 8 June 1993.
Patent 5,218,576: Underwater Transducer; filed 33 May 1992; patented 8 June 1993.
Patent 5,218,750: Method of Mounting a Spool Mount in An Opening in the Hull of a Vessel; filed 5 September 1991; patented 15 June 1993.
Patent 5,220,328: Target Motion Detecting Impulse Doppler Radar System; filed 25 March 1992; patented 15 June 1993.
Patent 5,220,537: Statistically Calibrated Transducer; filed 13 August 1992; patented 15 June 1993.
Patent 5,220,731: Friction Drive Position Transducer; filed 28 October 1991; patented 22 June 1993.
Patent 5,221,810: Embedded Can Booster; filed 14 May 1992; patented 22 June 1993.
Patent 5,222,455: Ship Wake Vorticity Suppressor; filed 17 April 1992; patented 29 June 1993.
Patent 5,222,489: Self Regulating Cooled Air Breathing Apparatus; filed 19 September 1991; patented 29 June 1993.
Patent 5,222,548: Electrically Controlled Liquid-Crystal Heat Valve; filed 26 May 1992; patented 29 June 1993.
Patent 5,222,996: Buoy Launch Container Extender; filed 19 August 1992; patented 29 June 1993.
Patent 5,223,666: Apparatus for Clearing Mines; filed 4 June 1992; patented 29 June 1993.
Patent 5,223,798: Method for Measuring the Resistive Transition and Critical Current in Superconductors Using Pulsed Current; filed 31 October 1990; patented 29 June 1993.
Patent 5,223,866: Small Simple and Cost-Effective Scheiner-Principle Optometer With Computer Interface for Automated Assessment; filed 30 December 1991; patented 29 June 1993.
Patent 5,224,074: Sonobuoy for Forming Virtual Vertical Sensing Arrays; filed 8 July 1992; patented 29 June 1993.
Patent 5,224,110: Tunable Laser Frequency Stabilizing System; filed 27 May 1992; patented 29 June 1993.
Patent 5,225,124: Method for In-Situ Casting of Fire Barrier Silicone Sheets Onto Acoustic Tiles; filed 13 August 1992; patented 6 July 1993.
Patent 5,225,285: Polarized Thin Films From Dye-Substituted Polymers Containing Hydrophobically Terminated Stilbazolium Radicals; filed 5 October 1990; patented 6 July 1993.
Patent 5,225,498: Interpenetrating Polymer Network Acoustic Damping Material; filed 26 August 1991; patented 6 July 1993.
Patent 5,226,016: Adaptively Former Signal-Free Reference System; filed 16 April 1992; patented 6 July 1993.
Patent 5,226,381: Torpedo Tube Hull Liner Cluster and Method for Making Same; filed 3 September 1992; patented 13 July 1993.
Patent 5,226,618: Lift Enhancement Device; filed 30 July 1992; patented 13 July 1993.
Patent 5,227,263: Reconfigurable Heavy Duty Battery Holder; filed 22 May 1992; patented 13 July 1993.
Patent 5,227,801: High Resolution Radar Profiling Using Higher-Order Statistics; filed 26 June 1992; patented 13 July 1993.
Patent 5,227,982: Digital Reverberation Time Measurement System; filed 28 February 1991; patented 13 July 1993.
Patent 5,228,837: High Pressure Pump for Electro-Rheological Fluids; filed 30 September 1992; patented 20 July 1993.
Patent 5,229,665: Optically Controlled Active Impedance Element and Filters Employing the Same; filed 11 December 1992; patented 20 July 1993.
Patent 5,231,241: Elastomeric Launcher; filed 29 June 1992; patented 27 July 1993.
Patent 5,231,403: Moving Target Indicator Using Higher Order Statistics; filed 30 September 1993; patented 27 July 1993.
Patent 5,231,609: Multiplatform Sonar System and Method for Underwater Surveillance; filed 28 September 1992; patented 27 July 1993.
Patent 5,231,883: Transient Flowmeter Calibration Facility; filed 24 December 1990; patented 3 August 1993.
Patent 5,233,143: High-Power Gas Switch With Hydride Electrodes; filed 6 November 1991; patented 3 August 1993.
Patent 5,233,902: Sliding Breech Block System for Repetitive Electronic Ignition; filed 11 May 1992; patented 3 August 1993.
Patent 5,233,929: Booster Explosive Rings; filed 14 May 1992; patented 10 August 1993.
Patent 5,235,506: Process Which Aids to the Laying Out of Locations of a Limited Number of 100, Personnel and Equipments in Functional Organization; filed 30 August 1991; patented 10 August 1993.
Patent 5,236,646: Process for Preparing Thermoplastic Composites; filed 2 March 1992; patented 17 August 1993.
Patent 5,236,983: Polyurethane Self-Priming Topcoats; filed 20 December 1991; patented 17 August 1993.
Patent 5,247,630: M-Dimensional Computer Memory With M–1 Dimensional Hyperplane Access; filed 9 July 1990; patented 21 September 1993.
Patent Application 006,544: Technique to Prepare High-Reflectiance Optical Fiber Bragg Grating With Single Exposure In-Line on Fiber Draw Tower; filed 21 January 1993.
Patent Application 010,252: Fiber Optic Ladder and Matrix Array Configurations With Low Crosstalk Using Code-Division Multiplexing; filed 28 January 1993.
Patent Application 010,948: Microwave Multiplexer With Channels of Varying Fractional Bandwidths; filed 29 January 1993.
Patent Application 012,837: Self Locking Set Screw; filed 3 February 1993.
Patent Application 016,325: Magnetohydrodynamic Boundary Layer Control System; filed 11 February 1993.
Patent Application 016,326: Active Turbulence Control Using Microelectrodes, Permanent Magnets in Microgrooves; filed 11 February 1993.
Patent Application 016,328: Seawater Magnetohydrodynamic Test Apparatus; filed 11 February 1993.
Patent Application 017,918: Aluminum Based Alkaline Battery; filed 16 February 1993.
Patent Application 020,158: Laser Synchrotron Source (LSS); filed 19 February 1993.
Patent Application 020,940: Corner Vortex Suppressor; filed 22 February 1993
Patent Application 022,218: Training of Homoscedastic Hidden Markov Models for Automatic Speech Recognition; filed 24 February 1993.
Patent Application 023,426: Dual Valve Plate Two-Way Pressure Relief Valve; filed 24 February 1993.
Patent Application 031,251: Method and Apparatus for Polarization-Maintaining Fiber Optical Amplification With Orthogonal Polarization Output; filed 15 March 1993.
Patent Application 035,862: External Combustion Engine Having a Combustion Expansion Chamber; filed 23 March 1993.
Patent Application 035,867: Heat Regenerative External Combustion Engine; filed 23 March 1993.
Patent Application 037,878: Vibration Isolation Mount With Locking Means; filed 29 March 1993.
Patent Application 040,944: Thin-Film Edge Field Emitter Device and Method of Manufacture Therefore; filed 31 March 1993.
Patent Application 043,914: Medical Device With Infection Preventing Feature; filed 7 April 1993.
Patent Application 045,156: Apparatus for Interconnecting an Underwater Vehicle and a Free Floating Pod; filed 12 April 1993.
Patent Application 888,083: Interference Photocathode; filed 26 May 1992.
Patent Application 905,705: Variable Wideband Fiber Optic Delay Line; filed 29 June 1992.
Patent Application 934,221: Fiber Optic Gyroscopes With Depolarized Light; filed 25 August 1992.
Patent Application 940,151: A Torpedo Tube Hull Liner Cluster and Method for Making Same; filed 3 September 1992.
Patent Application 948,562: Strum-Suppressant Cable for Towed Arrays; filed 23 September 1992.
Patent Application 984,111: Continuous-Time Adaptive Learning Circuit; filed 31 December 1992.
Patent Application 999,629: Electrochemical Process and Product Therefrom; filed 31 December 1992.

Dated: December 23, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94–77 Filed 1–3–94; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Proposed Sanitary Sewer System Upgrade Project at the Oak Ridge National Laboratory

AGENCY: Department of Energy (DOE)

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed sanitary sewer project at Oak Ridge National Laboratory (ORNL) prepared in accordance with 10 CFR 1022. DOE proposes to upgrade the sanitary sewer system to provide adequate service in the main complex area and outlying regions of the Oak Ridge Reservation. Only certain sections of two subprojects would be located in a 100-year floodplain. The East Area Sewer Main subproject would include installing approximately 2,900 linear feet of new sewer line that would lie within the 100-year floodplain of White Oak Creek located near Oak Ridge, Tennessee. This line would be installed in a trench about 2 feet deep. After installation, the trench would be backfilled and compacted. Finally, the area would be graded to original contour and seeded. The Sewer Main to Outlying Areas subproject would install approximately 8,300 linear feet of new pipeline. The new pipeline would be located in the 100-year floodplain of White Oak Creek only where the pipeline crosses White Oak Creek and an unnamed tributary feeding the creek from the west. At these crossings, the pipeline would be placed on the existing causeways and adjacent to the roadway. After installation, the area would be returned to the original condition.

DOE prepared a floodplain and wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION, CONTACT: Information on the proposed action (including maps of potentially disturbed floodplain areas) is available from: Mr. Doyle Brown, Waste Management Division (EW–92), Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, or fax comments to (615) 576–5333. For further information on general DOE floodplain/wetland environmental review requirements, contact: Carol M.

Borgstrom, Director, Office of NEPA Oversight (EH-25), U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586-4600 or (800) 472-2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed sanitary sewer upgrade project at ORNL. A Notice of Floodplain/Wetlands Involvement was published in the **Federal Register** on October 4, 1993 (58 FR 51624). DOE proposes to upgrade the sanitary sewer system to provide adequate service in the main complex area and outlying regions of the reservation. These upgrades are needed because of the deterioration in portions of the system, which are approaching 50-years of age; restrictive bends in sections of the piping; excessive surface and subsurface infiltration during heavy rains; infiltration of ground water; high cost and potential environmental damage of collecting, pumping, and hauling sanitary waste from holding tanks in the outlying areas; and lack of reserve capacity during peak periods of use. Of the proposed upgrades, only certain sections of two subprojects would be located in a 100-year floodplain. These subprojects would be the East Area Sewer Main and the Sewer Main to Outlying Areas.

The East Area Sewer Main subproject would include the installation of approximately 2,900 linear feet of new sewer line that would lie within the 100-year floodplain of White Oak Creek. This line would be installed in a trench about 2 feet deep. After installation, the trench would be backfilled and compacted. Finally, the area would be graded to original contour and seeded.

Currently, facilities in the outlying areas of the plant use either collection tanks or septic systems. The waste in the tanks is routinely pumped into trucks and taken to the main treatment plant. The cost of collection and maintenance of the sanitary facilities in the outlying areas continues to increase. Additionally, this existing system can negatively affect the environment. The objective of the Sewer Main to Outlying Areas subproject is to directly connect, via a pipeline, these facilities to the main sewage treatment plant. Approximately 8,300 linear feet of new pipeline would be installed. The new pipeline would be located in the 100-year floodplain of White Oak Creek only where the pipeline crosses White Oak Creek and an unnamed tributary feeding the creek from the west. At these crossings, the pipeline would be placed on the existing causeways and adjacent to the roadway. After installation, the area would be returned to the original condition.

Since the main facilities of ORNL were built along White Oak Creek, some upgrade projects naturally fall within the floodplain. This is the case with the new sewer line in the East Area. The only practical route lies between White Oak Creek and Southside Avenue, an area within the floodplain. The creek also separates the main complex from the outlying areas. Thus, the sewer line to the outlying areas must cross over the existing causeways to avoid the installation of new, separate crossings.

Several alternatives were evaluated. A no action alternative was evaluated for both subprojects. Two alternative routes for the new sewer main in the East Area were examined. An alternative route for the sewer main to the outlying areas was not evaluated since the only practical route follows the existing creek crossings.

The proposed upgrades occurring in the floodplain would not have any long-term effects upon the floodplain or surrounding environment. Only during construction could the project potentially affect the floodplain or the aquatic life in White Oak Creek and the impacts, if any, would be negligible. During construction, sediment could be introduced into the creek and unnamed tributary. DOE will prepare a sediment control plan identifying the best management practices to be employed during construction to minimize potential harm to or within the affected floodplain. Control measures would include the use of sediment and erosion control fences to minimize siltation. Procedural measures would include excavating trenches of the minimum size and performing construction activities during dry periods. Immediately upon installation of sections of the sewer line, the trench would be backfilled and compacted. The area would then be graded to the original contour and seeded. The upgrade project would conform to all applicable State and local floodplain protection standards.

DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Issued at Washington, DC, on December 21, 1993.

Mark W. Frei,

Director, Office of Waste Management Projects, Office of Waste Management, Environmental Restoration and Waste Management.

[FR Doc. 94-97 Filed 1-3-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Project Nos. 2315, 2331, 2332]

South Carolina Electric & Gas Co. and Duke Power Co.; Notice of Intent to Prepare an Environmental Assessment and Conduct Public Scoping Meetings and Site Visit

December 28, 1993.

The Federal Energy Regulatory Commission (FERC) has received applications for relicensing of the existing Gaston Shoals Project, Project No. 2332, Ninety-nine Islands Project, Project No. 2331, and Neal Shoals Project, Project No. 2315. All the projects are located on the Broad River. Gaston Shoals and Ninety-nine Islands are located near Gaffney, South Carolina. Neal Shoals is located near Carlisle, South Carolina.

The FERC staff intends to prepare a Multiple Environmental Assessment (MEA) on the hydroelectric projects in accordance with the National Environmental Policy Act.

The MEA will consider both site-specific and cumulative environmental impacts of the projects and reasonable alternatives, and will include an economic and engineering analysis.

A draft MEA will be issued and circulated for review by all interested parties. All comments filed on the draft MEA will be analyzed by the staff and considered in the final MEA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two scoping meetings will be conducted:

February 2, 1994, 10 a.m., U.S. Forest Service, 3557 Whitmire Highway Union, South Carolina

February 2, 1994, 7 p.m., the theater at Chester Park Elementary, School Complex Highway Number 9, Chester, South Carolina.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the MEA. The morning meeting is oriented toward the resource agencies and the evening meeting toward the public.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the MEA will be mailed to agencies, organizations, and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meeting, the FERC staff will: (1) identify preliminary environmental issues related to the proposed projects; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the MEA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the MEA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying the issues to be addressed in the MEA.

Persons choosing not to speak at the meetings but who have views on issues or information relevant to the issues may submit written statements for inclusion in the public record at the meeting. In addition, written comments may be filed with the *Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426*, until March 4, 1994.

All written correspondence should clearly show the following caption on the first page: *Gaston Shoals Project, FERC No. 2332, Ninety-nine Islands Project, FERC No. 2331, and Neal Shoals Project, FERC No. 2315.*

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the Gaston Shoals, Ninety-nine Islands and Neal Shoals Projects is planned for February 1, 1994. Those who wish to attend should plan to meet at the Gaston Shoals Powerhouse at 9:30 A.M. Any questions regarding the site visit or this notice should be directed to Tim Looney at the Federal Energy Regulatory Commission, Office of Hydropower Licensing, 825 North Capitol Street, NE., Washington, DC 20426, (202) 219-2852.

Lois D. Cashell,

Secretary.

[FR Doc. 94-33 Filed 1-3-94; 8:45 am]

BILLING CODE 6717-01-P

Office Of Fossil Energy

[FE Docket No. 93-141-NG]

St. Clair Pipelines Ltd.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting St. Clair Pipelines Ltd. authorization to import and export up to a combined total of 200 Bcf of natural gas from and to Canada over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 22, 1993.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-94 Filed 1-3-94; 8:45 am]

BILLING CODE 6450-01-P

[FE Docket No. 93-140-NG]

Suncor Inc.; Order Granting Blanket Authorization To Import Natural Gas From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Suncor Inc. authorization to import up to 127.66 billion cubic feet of natural gas from Canada over a two-year term beginning on the date of first delivery after December 31, 1993.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, December 23, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-95 Filed 1-3-94; 8:45 am]

BILLING CODE 6450-01-P

Office of Fossil Energy

[FE Docket No. 93-126-NG]

Tennessee Gas Pipeline Co.; Order Granting Blanket Authorization To Import "Special Purchase Natural Gas" From Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Tennessee Gas Pipeline Company authorization to import up to 75,000 Mcf per day of "special purchase natural gas" from its Canadian supplier, Progas Limited, over a two-year period beginning on the date of the first import after March 11, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F-056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, on December 23, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94-96 Filed 1-3-94; 8:45 am]

BILLING CODE 6450-01-P

Western Area Power Administration

Floodplain Statement of Findings for the Fort Morgan North Tapline Project, Morgan County, CO

AGENCY: Western Area Power Administration, DOE.

ACTION: Floodplain statement of findings.

SUMMARY: This is a floodplain statement of findings for the Fort Morgan North Tapline Project prepared in accordance with 10 CFR part 1022. Western Area

Power Administration (Western) proposes to construct 3 miles of new 115-kilovolt (kV) tapline in Morgan County, Colorado. The tapline would connect Western's existing Beaver Creek-Weld 115-kV transmission line with Morgan County Rural Electric Association's (MCREA) new Fort Morgan North Substation. The Fort Morgan North Tapline would cross the floodplain of the South Platte River in Morgan County, Colorado. Western prepared a floodplain and wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. This action is categorically excluded under the DOE's National Environmental Policy Act (NEPA) Implementing Procedures (10 CFR part 1021). Western will endeavor to allow 15 days of public review after publication of the statement of findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen A. Fausett, Area Manager, Western Area Power Administration, Loveland Area Office, P.O. Box 3900, Loveland, CO 80539–3003, (303) 490–7200 FAX (303) 490–7213.

For further information on general DOE floodplain/wetlands environmental review requirements contact: Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a floodplain statement of findings for the Fort Morgan North 115-kV Tapline Project prepared in accordance with 10 CFR part 1022. A notice of floodplain and wetlands involvement was published in the **Federal Register (FR)** on October 4, 1993 (58 FR 51623). Western is proposing to construct 3 miles of 115–kV tapline between Western's existing Beaver Creek-Weld 115-kV transmission line and MCREA's proposed new Fort Morgan North Substation. The tapline would be single circuit and would be constructed on single wood-pole structures. Approximately 13 wood-pole structures and two span structures (steel H-frame design) would be located within the floodplain of the South Platte River. Existing access is available along most of the proposed tapline right-of-way. New access trails may be required to access span structures located on either side of the river crossing. No construction would occur within the river. The tapline would span the active channel of the South Platte River. Approximately 600 square feet of riparian woodland would be removed on either side of the river for the construction of the two span structures. This would be a direct long-term impact. About 0.8 acre would be maintained as riparian shrubland as a result of project maintenance and would also be a direct long-term impact. Approximately 2 acres would be temporarily affected during construction for equipment and construction material staging and would be a minor short-term impact. No watercourses or drainage patterns would be altered by the project. Flood storage volume would not be affected. The action would conform with applicable State or local floodplain protection standards. This action is categorically excluded under the DOE's NEPA Implementing Procedures (10 CFR part 1021).

Western will endeavor to allow 15 days of public review after publication of the statement of findings prior to implementing the proposed action.

Issued at Golden, Colorado, December 20, 1993.

William H. Clagett,

Administrator.

[FR Doc. 94–93 Filed 1–3–94; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4821–8]

Science Advisory Board; Executive Committee Open Meeting, January 27–28, 1994

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) Executive Committee will conduct a meeting on Thursday and Friday, January 27–28, 1994. The meeting will be held in the Administrator's Conference Room 1103 West Tower at the U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460. It will begin at 8:30 a.m. and adjourn not later than 5 p.m. on each day.

At this meeting the Executive Committee plans to review reports from its Committees, including the following: Ecological Processes and Effects Committee [Review of Global Climate Effects Research; Review of Testing Manual for Sediment in Inland Waters; Review of MASTER program]; Indoor Air Quality Committee [Review of Indoor Air Quality Research Program; Review of Indirect Exposure Methodology]; and Radiation Advisory Committee [Radon Measurement Protocol].

The Executive Committee (EC) will be briefed on the status of the Board's Environmental Futures Project and the Agency's study of EPA laboratories. The EC will also consider the feasibility and advisability of conducting a "self-study" of the Board during calendar year 1994.

Representatives from the Committee for the National Institute of the Environment will discuss their proposal with the EC.

Additional topics on the agenda include public discussions with leaders in the Administration and Congress on environmental issues and the Board's appropriate role in advising the Agency and the Congress about these matters.

The meeting is open to the public. Any member of the public wishing further information concerning the meeting or who wishes to submit comments should contact Dr. Donald G. Barnes, Designated Federal Official for the Executive Committee (A–101), U.S. Environmental Protection Agency, Washington DC 20460 at 202–260–4126; FAX 202–260–9232; and INTERNET BARNES.Don@EPAMAIL.EPA.GOV@IN. Limited unreserved seating will be available at the meeting.

Dated: December 15, 1993.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 94–59 Filed 1–3–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

DEPARTMENT OF AGRICULTURE

Establishment of and Invitation for Nominations for the Dietary Guidelines Advisory Committee

AGENCIES: Office of the Assistant Secretary for Health, Department of Health and Human Services, and Food and Consumer Services, Department of Agriculture.

ACTION: Dietary Guidelines Advisory Committee: Invitation for Nominations.

SUMMARY: Pursuant to the National Nutrition Monitoring and Related Research Act of 1990 (Pub. L. 101–445), the Department of Health and Human Services (HHS) and the Department of Agriculture (USDA), announce the establishment by the Secretaries of HHS and USDA of the Dietary Guidelines Advisory Committee and invite nominations for the Committee.

The Committee shall review the 1990 edition of Nutrition and Your Health: Dietary Guidelines for Americans and determine if, on the basis of current scientific and medical knowledge, revision is warranted at this time. If so, the Committee will proceed to develop recommendations for revisions in a report to the Secretaries of HHS and USDA. The Committee shall be terminated upon delivery of its final report or at the end of two years, whichever is first.

The Departments invite nominations for committee membership of individuals qualified to carry out the above-mentioned tasks. Nominations should describe and document the nominee's qualifications in the relevant subject areas.

FOR FURTHER INFORMATION CONTACT: Elena T. Carbone, M.S., R.D., Co-executive Secretary from HHS to the Dietary Guidelines Advisory Committee, Office of Disease Prevention and Health Promotion, Public Health Service, U.S. Department of Health and Human Services, room 2132 Switzer Building, 330 C Street, SW., Washington, DC 20201, (202) 205–9007; or Debra Reed, M.S., L.N., Co-executive Secretary from USDA to the Dietary Guidelines Advisory Committee, Human Nutrition Information Service, U.S. Department of Agriculture, room 366, 6505 Belcrest Road, Hyattsville, Maryland 20782, (301) 436–8457.

ADDRESSES: Nominations may be submitted either to Elena T. Carbone or Debra Reed at the addresses above for up to 15 days after publication of this notice.

Philip R. Lee,

Assistant Secretary for Health, U.S. Department of Health and Human Services.

Ellen Haas,

Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture.

[FR Doc. 94–42 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–17–M

Food and Drug Administration

[Docket No. 93E–0353]

Determination of Regulatory Review Period for Purposes of Patent Extension; Betaseron®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Betaseron® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human biologic product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human biologic product Betaseron® (Interferon *beta*-1b). Betaseron® is indicated for use in ambulatory patients with relapsing-remitting multiple sclerosis to reduce the frequency of clinical exacerbations. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Betaseron® (U.S. Patent No. 4,588,585) from the Cetus Oncology Corp., and the Patent and Trademark Office requested FDA's assistance in determining the patent's eligibility for patent term restoration. In a letter dated October 26, 1993, FDA advised the Patent and Trademark Office that this human biologic product had undergone a regulatory review period and that the approval of Betaseron® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Betaseron® is 3,720 days. Of this time, 3,319 days occurred during the testing phase of the regulatory review period, while 401 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 19, 1983. The applicant claims April 4, 1986, as the date the investigational new drug application (IND) became effective. However, FDA records indicate that the IND effective date was May 19, 1983, which was 30 days after FDA receipt of the IND.

2. *The date the application was initially submitted with respect to the human drug product under section 351 of the Public Health Service Act:* June 18, 1992. The applicant claims June 16, 1992, as the date the product license application (PLA) for Betaseron® (PLA 92–0495) was initially submitted. However, FDA records indicate that PLA 92–0495 was initially submitted on June 18, 1992.

3. *The date the application was approved:* July 23, 1993. FDA has verified the applicant's claim that PLA 92–0495 was approved on July 23, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 1,500 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before March 7, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA on or before July 5, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an

FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 17, 1993.

Allen B. Duncan,

Acting Associate Commissioner for Health Affairs.

[FR Doc. 94–36 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0416]

AVRE Inc.; Revocation of U.S. License No. 1074–003

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the establishment license (U.S. License No. 1074–003) and the product license issued to AVRE Inc., (AVRE) for the manufacture of Source Plasma. AVRE has several locations. Only the Tacoma location is affected by this revocation. In a letter to FDA dated June 30, 1993, AVRE requested that its establishment and product licenses at the Tacoma location be revoked and thereby waived its opportunity for a hearing.

DATES: The revocation of the establishment license (U.S. License No. 1074–003) and the product license became effective November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Jean M. Olson, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 301–594–3074.

SUPPLEMENTARY INFORMATION: FDA announces the revocation of the establishment license (U.S. License No. 1074–003) and the product license issued to AVRE Inc., 10506 Bridgeport Way SW., Tacoma, WA 98499, for the manufacture of Source Plasma. Other locations under the AVRE license are not affected by this revocation. The licenses were revoked for the Tacoma location of AVRE only.

FDA inspected the Tacoma location of AVRE on April 7 through 21, 1993. During that inspection, FDA observed numerous deviations from the standards established in the license as well as the applicable Federal regulations. The inspection documented serious deviations from the applicable Federal regulations and standards established in the license. These deviations included, but were not limited to, the following:

1. Failure to follow adequate written standard operating procedures (SOP's) for determining donor suitability (21 CFR 606.100(b)), in that four donors were allowed to donate Source Plasma more than twice during a 7-day period; five donors were allowed to donate Source Plasma who had experienced a weight loss of greater than 10 pounds within a 2-month period without first being referred to a physician or physician substitute; and educational information provided to donors did not reference a temperature greater than 100.5 °F for more than 10 days as a symptom of acquired immune deficiency syndrome (AIDS).

2. Failure to follow adequate written SOP's for the collection, processing, storage, and distribution of blood and blood components for further manufacturing (21 CFR 606.100(b)), in that AVRE collected an amount of plasma from at least three donors that exceeded the maximum volume allowed by AVRE's plasma volume nomogram, AVRE's donor record files for at least 20 donors, 6 with multiple donations, did not contain photographs; and AVRE did not have its physician or physician substitute evaluate one donor who exhibited a temperature below 97.0 °F.

3. Failure to maintain complete, accurate, and concurrent records that clearly traced the steps of each significant procedure in the collection, processing, and storage of the blood products so as to provide a complete history of work performed (21 CFR 606.160), in that AVRE was unable to trace two unit numbers to the donors, AVRE misspelled the last name of at least one donor in the deferral file, and AVRE had no unit number in its donor record file for at least one donation.

4. Failure to observe, standardize, and calibrate equipment (21 CFR 606.60(a)), in that during October 1992, AVRE failed to clean the air filters on four Autopheresis-C machines.

FDA determined that the nature of the deficiencies found at AVRE showed a pattern of careless disregard for the standards established in the license and the Federal regulations that are designed to ensure the continued safety, purity, and potency of the manufactured product and that willfulness existed. The recent inspection showed that corrective actions promised in response to a March through April 1992 inspection, which resulted in suspension of AVRE's license, were not implemented or were not effective in achieving long-term compliance. In a letter to AVRE dated May 27, 1993, FDA delineated the observations listed above, provided notice that FDA intended to institute proceedings to revoke U.S. License 1074–003 issued to AVRE pursuant to 21 CFR 601.5(b). In accordance with 21 CFR 601.5(b), the letter advised AVRE that no additional time would be provided to achieve compliance with the regulations before FDA would institute proceedings to revoke the licenses of AVRE. The letter further announced its intent to offer an opportunity for a hearing. In a letter to FDA dated June 30, 1993, AVRE voluntarily requested that its licenses for the Tacoma location be revoked and thereby waived its opportunity for a hearing. In a letter dated November 8, 1993, FDA acknowledged voluntary revocation of the establishment license (U.S. License No. 1074–003) and the aforementioned product license of AVRE at the Tacoma location only.

FDA has placed copies of letters relevant to the license revocations on file under the docket number found in brackets in the heading of this document in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. These documents are available for public examination in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Accordingly, under 21 CFR 601.5 and section 351 of the Public Health Service Act (42 U.S.C. 262), and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Director, Center for Biologics Evaluation and Research (21 CFR 5.68), the establishment license (U.S. License No. 1074–003) and the product license issued to the Tacoma location of AVRE Inc., for the manufacture of Source Plasma were revoked, effective November 8, 1993.

This notice is issued and published under 21 CFR 601.8 and under authority delegated to the Director of the Center for Biologics Evaluation and Research (21 CFR 5.67).

Dated: December 16, 1993.

Kathryn C. Zoon,

Director, Center for Biologics Evaluation and Research.

[FR Doc. 94–37 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0112]

Milliken Chemical; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Milliken Chemical to indicate that the petitioned additive, dimethyldibenzylidene sorbitol, is also intended for use in high-propylene olefin copolymers for use in contact with food. The previous filing notice stated that the additive was intended for use only in polypropylene articles intended for use in contact with food.

DATES: Written comments by February 3, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir D. Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of April 22, 1993 (58 FR 21583), FDA announced that a petition (FAP 2B4341) had been filed on behalf of Milliken Chemical, c/o 1001 G St. NW., suite 500 West, Washington, DC 20001, proposing that the food additive regulations in § 178.3295 *Clarifying agents for polymers* (21 CFR 178.3295) be amended to provide for the safe use of dimethyldibenzylidene sorbitol as a clarifying agent for polypropylene articles intended for use in contact with food.

Upon further review of the petition, the agency notes that the petitioner had requested use of the additive as a clarifying agent in high-propylene olefin copolymers in addition to its use in polypropylene films. Therefore, FDA is amending the filing notice of April 22, 1993, to state that the petitioner requested that the food additive regulations be amended to provide for the safe use of dimethyldibenzylidene sorbitol as a clarifying agent in polypropylene and high-propylene olefin copolymers for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of the notice on public display at the Dockets Management Branch (address above) for public review and comment. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. Interested persons may, on or before February 3, 1994, submit to the Dockets Management Branch (address above) written comments regarding this notice. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and evidence supporting that finding will be published with the final regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–40 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0405]

New Monographs and Revisions of Certain Food Chemicals Codex Monographs; Opportunity for Public Comment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing an opportunity for public comment on pending changes to certain Food Chemicals Codex monographs from the third edition and its supplements and is also soliciting public review of specifications for proposed new monographs. For certain substances used as food ingredients, specifications consisting of new monographs and additions, revisions, and corrections to current monographs are being prepared by the National Academy of Sciences/Institute of Medicine (NAS/IOM) Committee on Food Chemicals Codex. This material will be presented in the next publication of the Food Chemicals Codex (fourth edition). Upon completion of the review of the comments by the Committee on Food Chemicals Codex, an announcement will be made in the **Federal Register** that copies of the new and revised monographs, as they will appear in the fourth edition of the Food Chemicals Codex, are available on request to NAS/IOM. FDA also is giving notice that the fourth supplement to the third edition has been published and is available from the National Academy Press.

DATES: Submit written comments by March 7, 1994 The NAS/IOM Committee on Food Chemicals Codex advises that comments not received by this date cannot be considered for the next publication but will be considered for later supplements.

ADDRESSES: Submit written comments to the NAS/IOM Committee on Food Chemicals Codex, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418.

FOR FURTHER INFORMATION CONTACT:

Fatima N. Johnson, Committee on Food Chemicals Codex, Food and Nutrition Board, National Academy of Sciences, 2101 Constitution Ave. NW., Washington, DC 20418, 202–334–2580;

or

Paul M. Kuznesof, Center for Food Safety and Applied Nutrition (HFS–247), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9537.

SUPPLEMENTARY INFORMATION: FDA provides research contracts to the NAS/IOM to support the preparation of the Food Chemicals Codex, a compendium of specifications for substances used as food ingredients. Before the inclusion of any specifications in a Food Chemicals Codex publication, public announcement will be made in the **Federal Register**. All interested parties are invited to comment and to make suggestions for consideration. Suggestions should be accompanied by supporting data or documentation to facilitate and expedite review by the Committee on Food Chemicals Codex.

In the **Federal Registers** of January 11, 1991 (56 FR 1198), and April 9, 1991 (56 FR 14382), FDA announced that the NAS/IOM Committee on Food Chemicals Codex was considering new monographs and monograph revisions for inclusion in the third supplement to the Food Chemicals Codex, third edition, which has since been published. In the **Federal Register** of November 22, 1991 (56 FR 58910), FDA announced that the NAS/IOM Committee on Food Chemicals Codex

was considering new monographs and monograph revisions for inclusion in the fourth supplement to the Food Chemicals Codex, third edition, which also has been published. Both supplements are available from the National Academy Press at the address given above for NAS.

FDA now gives notice that the NAS/IOM Committee on Food Chemicals Codex is soliciting comments and information on proposed new monographs and proposed changes to certain current monographs. These new monographs and changes will be published in the fourth edition of the Food Chemicals Codex. Copies of the proposed new monographs and revisions to current monographs may be obtained from NAS at the address listed above.

FDA emphasizes, however, that it will not consider adopting new monographs and monograph revisions until the public has had ample opportunity to comment on the changes and the new monographs. Such opportunity for public comment will be announced in a subsequent notice published in the **Federal Register**.

The NAS/IOM Committee on Food Chemicals Codex invites comments and suggestions of specifications by all interested parties on the proposed new monographs and revisions of current monographs, which follow:

I. Proposed New Monographs

Acesulfame potassium
Glyceryl monooleate

II. Current Monographs to which the Committee Proposes to Make Revisions

Calcium carbonate (lead and heavy metals)
Caramel (numerous revisions)
Calcium disodium EDTA (arsenic, nitrilotriacetic acid)
Disodium EDTA (arsenic, assay, identification, calcium and nitrilotriacetic acid)
Ethyl cellulose, hydroxypropyl cellulose, hydroxypropyl methyl cellulose,
methylcellulose, methyl ethyl cellulose, and sodium carboxymethyl cellulose (add synonym)
Fumaric acid (assay, identification, maleic acid)
Glutamine (identification)
Hexanes (heavy metals, nonvolatile residue)
Malic Acid (identification, maleic acid)
Methylene chloride (foreign odor)
Sodium stearyl fumarate (sodium stearyl maleate and stearyl alcohol)

Two copies of written comments regarding the monographs listed in this notice are to be submitted to NAS (address above). Each submission should include the statement that it is in response to this **Federal Register** notice. NAS will forward a copy of each comment to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, to be placed under Docket No. 93N–0405 for public review.

Dated: December 21,1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–38 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–01–F

MEDWATCH Conference on Drug and Device-Induced Disease: Developing a Blueprint for the Future; Notice of Public Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the Commissioner's MED*WATCH* Conference on Drug and Device-Induced Disease: Developing a Blueprint for the Future. The conference is co-sponsored by FDA and the American Medical Association (AMA) in cooperation with the following organizations: American Association of Colleges of Nursing, American Association of Colleges of Pharmacy, American Association of Dental Schools, American Dental Association, American Hospital Association, American Nursing Association, American Society of Clinical Pharmacology and Therapeutics, American Society of Hospital Pharmacists, Association of American Medical Colleges, and the Council on Education in Clinical Pharmacology and Therapeutics.

DATES: The conference will be held on January 21, 1994, from 8:30 a.m. to 5 p.m., and January 22, 1994, from 8:30 a.m. to 12:30 p.m.

ADDRESSES: The conference will be held at the Stouffer Mayflower Hotel, 1127 Connecticut Ave. NW., Washington, DC 20036. Registration is required.

FOR FURTHER INFORMATION CONTACT: Mary Pat Couig, Office of Health Affairs (HFY–40), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–5470. For registration call the American Medical Association at 1–800–621–8335.

SUPPLEMENTARY INFORMATION: Drug and device-induced diseases are serious health problems. It is estimated that 2 to 10 percent of all hospitalizations are a result of serious adverse events. The purpose of this conference is to develop recommendations on ways to heighten health professionals' awareness of the extent and spectrum of drug and device-induced disease and to break down barriers to the discovery and reporting of important adverse events to FDA and manufacturers by: (1) Strengthening undergraduate curricula, (2) enhancing postgraduate training, and (3) building user-friendly reporting mechanisms for health professionals.

David A. Kessler, Commissioner of Food and Drugs, and James S. Todd, Executive Vice President of the AMA, will be the keynote speakers.

The conference should be of interest to the following groups: Practicing health professionals, health professional organizations, health professions educators (undergraduate and graduate), health professionals of State health departments, regulatory and safety surveillance professionals, and hospital personnel (e.g, risk managers/quality assurance personnel and members of Pharmacy and Therapeutics Committees).

This is a participatory conference. Recommendations from the breakout sessions will be presented on the second day of the conference and their implementation discussed at the final panel discussion.

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

[FR Doc. 94–39 Filed 1–3–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–780–PN]

RIN 0938–AG43

Medicare Program; Withdrawal of Coverage of Diagnostic Nocturnal Penile Tumescence Testing (Impotence Testing)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice announces the Medicare program's proposal to revise its national policy by withdrawing coverage for diagnostic nocturnal penile tumescence (NPT) testing in the sleep disorder clinic. For all other settings, we are proposing to exclude rather than withdraw coverage because the Medicare program does not have a national policy that provides for coverage of NPT testing by plethysmography and other monitoring devices in settings other than sleep disorder clinics. Public Health Service studies show that NPT testing is not a reliable index for evaluating impotence. Therefore, it does not meet HCFA's criteria for effectiveness.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 7, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration,
Department of Health and Human Services, Attention: BPD–780–PN,
P.O. Box 26688, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or
Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–780–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Anne Marie Hummel, (410) 966–4637.

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

Administration of the Medicare program is governed by the Medicare statute, title XVIII of the Social Security Act (the Act). The Congress intended, at the time Medicare was enacted in 1965, that Medicare provide health insurance to protect the elderly (and later, the disabled) from the substantial costs of health care services. The Medicare law provides coverage for broad categories of benefits, including inpatient and outpatient hospital care, skilled nursing facility (SNF) care, home health care, and physicians' services.

The Medicare program consists of two separate but complementary health insurance programs, a Hospital Insurance (HI) program (known as Part A) and a Supplementary Medical Insurance (SMI) program (known as Part B). Although Part A is called Hospital Insurance, covered benefits also include medical services furnished in SNFs or by home health agencies (HHAs) and hospices. For purposes of the Medicare program, we refer to these entities as "providers." These providers must be certified as qualified providers of services and must sign an agreement to participate in the program. Part B covers a wide range of medical services and supplies such as those furnished by physicians, providers, or others in connection with physicians' services, outpatient hospital services, outpatient physical therapy and occupational therapy services, and home health services. Physicians' services covered under Part B include visits to patients in the home, office, hospital, and other institutions. Part B also covers certain drugs and biologicals, diagnostic x-ray and laboratory tests, purchase or rental of durable medical equipment (DME), ambulance services, prosthetic devices, and certain medical supplies.

While the Medicare law provides coverage for the broad categories of benefits described above, it also places categorical limitations on the coverage of the services furnished by certain health care practitioners, such as dentists, chiropractors, and podiatrists, and it specifically excludes some categories of services from coverage, such as cosmetic surgery, personal comfort items, custodial care, and routine physical checkups. The statute also provides direction as to the manner in which payment is made for Medicare services, the rules governing eligibility for services, and the health, safety, and quality standards to be met by providers and some types of suppliers that furnish services to Medicare beneficiaries.

The Medicare law does not, however, provide an all-inclusive list of specific items, services, treatments, procedures, or technologies covered by Medicare. Thus, except for the examples of DME in section 1861(n) of the Act, some of the medical and other health services listed in section 1861(s) of the Act, and exclusions from coverage listed in section 1862(a) of the Act, the statute does not specify medical devices, surgical procedures, or diagnostic and therapeutic services that should be covered or excluded from coverage.

The Congress understood that questions about coverage for specific services would arise and would require us to make specific decisions about coverage. Thus, it gave the Secretary the authority to make those decisions. Section 1862(a)(1)(A) of the Act prohibits payment for items or services that "are not reasonable and necessary for the diagnosis or treatment of illness or injury or to improve the functioning of a malformed body member."

We have interpreted this statutory provision to exclude from Medicare coverage those medical and other health care services that are not demonstrated to be safe or effective. Effectiveness in this context is the probability of benefit to individuals from a medical item, service, or procedure for a given medical problem under average conditions of use; that is, day-to-day medical practice. In day-to-day medical practice, physicians diagnose and treat clinical conditions following inquiry into an individual's medical history, performance of a physical examination, and interpretations of a variety of diagnostic tests and procedures. To be of value to the physician, the information obtained from any diagnostic test or procedure must be sufficiently accurate to provide a reasonably reliable measure for establishing or ruling out the presence of a given disease. Payment may not be made under Medicare for any diagnostic test or procedure that does not produce accurate results when properly performed, since that test cannot be considered "reasonable and necessary for the diagnosis or treatment of illness or injury."

B. Medicare Coverage of Diagnostic Nocturnal Penile Tumescence Testing (Testing for Impotence)

Impotence is the inability to attain and maintain an erection sufficient to permit satisfactory intercourse and is considered by Medicare to be the failure of a body part when the diagnosis, and frequently the treatment, require medical expertise. Impotence can be organic or psychogenic in origin. The focus of diagnostic tests is to determine the origin of impotence to establish the appropriate treatment.

Currently, Medicare covers diagnostic NPT testing by plethysmography (for example, mercury strain gauges) and other monitoring devices in a sleep disorder clinic to determine whether erectile impotence is organic or psychogenic. Although impotence is not a sleep disorder, the nature of the testing requires that it be performed while the patient sleeps. In the past, it was believed that patients with predominantly psychogenic impotence would regularly attain normal erections during rapid-eye-movement (REM) sleep, while patients with organic impotence would not demonstrate significant sleep-associated normal erections.

During NPT testing, mercury strain gauges placed on the shaft of the penis

can detect and measure changes in penile circumference during sleep. A normal result of NPT, measured with strain gauges, is two or more periods of sustained erections lasting more than 20 minutes and associated with at least a 25-mm increase in penile circumference. Normal NPT in a person with sexual dysfunction implies intact neurovascular structures and suggests psychogenic impotence. An abnormal recording, however, is not definitive and only suggests organic impotence and will require further testing for a more definite diagnosis. In addition, NPT testing has a high incidence (15 to 20 percent) of false-positive and, although not as common, false-negative findings.

Currently, diagnostic NPT testing in a sleep disorder clinic is listed as covered under "Sleep Disorder Clinics" in section 3112.5 of the Medicare Intermediary Manual (HCFA Pub. 13–3) and section 2055 of the Medicare Carriers Manual (HCFA Pub. 14–3), under limited circumstances, for example, to confirm appropriate treatment and for a maximum of 2 nights of testing. Section 35–24, "Diagnosis and Treatment of Impotence," of the Medicare Coverage Issues Manual (HCFA Pub. 6), does not address the use of plethysmography, a non-specific test for vascular competence, which may include monitoring devices, rigidometers, strain gauges, and stamp tests. However, we are revising this manual section to state that plethysmography is noncovered for use in the diagnosis of impotence because it does not indicate the rigidity and the duration of tumescence, both of which are necessary components in the evaluation of impotence. (Before publication, RS will confirm the status of this manual instruction.)

C. Recommendations to Withdraw Coverage for Diagnostic Nocturnal Penile Tumescence Testing in a Sleep Disorder Clinic

In 1986, a Medicare contractor requested advice about paying for items and services related to impotence testing. Medicare coverage instructions on the diagnosis and treatment of impotence did not specifically address the issues of plethysmography and in-home impotence testing devices. At that time, two monitoring devices had been developed for in-home testing under a physician's direction: the Snap-gauge, which measures the tumescence of the penis during sleep, and Rigiscan, which measures the duration and frequency of erections as well as the degree of rigidity and tumescence during sleep.

As a result, we consulted the HCFA Physicians Panel, a group of staff physicians and other health professionals in HCFA's central office and their counterparts in the Public Health Service (PHS). They advised us to ask PHS, through the Office of Health Technology Assessment (OHTA), to assess the safety and effectiveness of the principal diagnostic tests for impotence currently in use. (Our current process for making coverage decisions is discussed in the January 30, 1989, proposed rule entitled "Medicare Program Criteria and Procedures for Making Medical Services Coverage Decisions that Relate to Health Care Technology" (54 FR 4305)).

In September 1986, we asked OHTA to conduct a full assessment of the safety and effectiveness of diagnostic tests for impotence and the methods for treating impotence. To conduct this assessment, OHTA solicited information from manufacturers, researchers, other government agencies, other components of PHS, and the National Institutes of Health (NIH). OHTA also evaluated the latest scientific studies, medical literature, information from medical specialty groups, and respondents to the March 19, 1987, notice entitled "National Center for Health Services Research and Health Care Technology Assessment; Assessment of Medical Technology" (54 FR 8648). In that notice, OHTA announced that it was assessing the safety and effectiveness of diagnostic tests and treatment methods for impotence. OHTA researched and analyzed published medical and scientific literature and relevant studies and reports.

At the time we received the OHTA assessment on the diagnosis and treatment for impotence dated October 31, 1989, we asked for an assessment on sleep disorders. (Since December 1989, OHTA has been a part of PHS' Agency for Health Care Policy and Research.) The OHTA assessment, "Sleep Disorders," dated February 3, 1992, did not raise issues that would result in further coverage changes. Although OHTA's assessment on the diagnosis and treatment of impotence was issued 3 years ago, we have determined that the medical evidence and conclusions of the assessment are still accurate based on our own medical expertise and a thorough review of all the medical literature on the subject since 1989.

The OHTA assessment, "Public Health Service Assessment—The Diagnosis and Treatment of Impotence" includes a bibliography of studies evaluating the effectiveness of various types of impotence testing and treatment. (Copies of this assessment may be obtained from the Agency for Health Care Policy and Research Publications Clearinghouse, P.O. Box 8547, Silver Spring, MD 20907; Toll Free: 1–800–358–9295.) In the assessment, OHTA concluded that reliable tests for evaluating impotence include Doppler ultrasound, arteriography, cavernosography, cavernosometry, hormonal assays, and electrophysiological testing. NPT testing by plethysmography and other monitoring devices in the clinical setting or in the home is determined to be unreliable.

According to OHTA, there are no accepted standards for NPT test results. Results cannot be compared among laboratories because each laboratory has its own set of standards by which to evaluate NPT. False-positive and false-negative results occur frequently indicating that NPT testing is not a reliable index for differentiating organic from psychogenic impotence, thereby making it impossible to choose the appropriate treatment. Also, OHTA does not consider other in-home monitoring devices to be reliable for diagnosing impotence.

II. Provisions of This Proposed Notice

Based on the conclusion of the OHTA technology assessment that scientific evidence indicates that NPT testing is not a reliable index for evaluating impotence, we have concluded that NPT testing does not meet our criteria for effectiveness. Therefore, we propose to revise our national policy by withdrawing coverage for NPT testing in the sleep disorder clinic. We do not have a national policy regarding NPT testing in other settings. Therefore, we propose to exclude coverage for NPT testing, rather than withdraw coverage, in all other settings. Because NPT test results are not standardized and are frequently inaccurate and have a high rate of false-positive and false-negative results, the appropriate treatment cannot be determined.

The provisions of this notice would not affect existing Medicare regulations. However, they would affect the following manual instructions:

- Section 2055 of the Medicare Carriers Manual (HCFA Pub. 14–3).
- Section 3112.5 of the Medicare Intermediary Manual (HCFA Pub. 13–3).
- Section 35–24 of the Medicare Coverage Issues Manual (HCFA Pub. 6).

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

We propose to revise our national policy and to withdraw Medicare program coverage for NPT testing in the sleep disorder clinic. Because we do not have a national policy regarding NPT testing in other settings, we propose to exclude coverage, rather than withdraw coverage, for NPT testing by plethysmography and other monitoring devices in all other settings. In calendar year 1992, Medicare payment for NPT testing totaled approximately $840,000 for 13,000 allowed services. This is an increase of approximately 26 percent in expenditures and a 3 percent increase in the number of services over the previous year. We anticipate that future costs or savings as a result of this notice would be negligible. This notice would not meet the $100 million criterion nor would it meet the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all physicians, sleep disorder clinics, and manufacturers of devices for performing the NPT test are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

Currently, Medicare covers diagnostic NPT testing. Although impotence is not a sleep disorder, the nature of the testing requires that it be performed while a patient sleeps. As discussed in detail in section I.C. of this notice, the OHTA technology assessment has concluded that NPT testing in the sleep disorder clinic is not a reliable index for evaluating impotence. False-positive and false-negative results occur frequently indicating that NPT testing is not a reliable indicator for choosing the appropriate treatment. Based on scientific evidence that indicates that NPT testing is not a reliable index for evaluating impotence, we have concluded that NPT testing does not meet our criteria for effectiveness, a primary requirement for Medicare program coverage. We believe the test has not been performed often by medical practitioners because of the test's limited value. Therefore, we propose to withdraw Medicare coverage of NPT testing in the sleep disorder clinic and exclude coverage of NPT testing by plethysmography and other monitoring devices in all other settings. Our decision to withdraw coverage should have only a minimal effect on small entities.

Therefore, we are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this notice would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

V. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

Authority: Secs. 1861 and 1862 of the Social Security Act (42 U.S.C 1395x and 1395y.

(Catalog of Federal Domestic Assistance Program No. 13.774, Medicare Supplementary Medical Insurance)

Dated: July 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 28, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–41 Filed 1–3–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N–93–3697]

Submission of Proposed Information Collection to OMB

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph L. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street SW., Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mrs. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35). It is also requested that OMB complete its review within five days.

The Notice lists the following information:

(1) The title of the information collection proposal;

(2) The office of the agency to collect the information;
(3) The description of the need for the information and its purpose;
(4) The agency form number, if applicable;
(5) What members of the public will be affected by the proposal;
(6) How frequently information submissions will be required;
(7) An estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response;
(8) Whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and
(9) The names and telephone numbers of an agency official familiar with the proposal and of the OMB desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction ACT, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 27, 1993.

Mark C. Gordon,

Deputy Assistant Secretary for Community Planning and Development.

Proposal: Application approval.
Office: Office of the Assistant Secretary for Community Planning and Development.
Description of the Need for the Information and its Proposed Use: The Empowerment Zone/Enterprise Community Program is authorized by Title XIII of the Omnibus Budget Reconciliation Act of 1993. The statute requires the Secretaries of HUD and Agriculture to make designations of empowerment zones and enterprise communities from among eligible areas based on a Strategic Plan which addresses the human, physical, economic and community development problems in the area. HUD has prepared an application form HUD–40003 to allow applicants to apply for designation. We are asking the OMB for expedited clearance of the application form to allow the maximum time possible for eligible applications to prepare their applications.
Respondents: Units of general local government together with their appropriate State and State Certified Economic Development Corporations may apply.
Frequency of response: This is a one time application process. The Secretaries of HUD and Agriculture are authorized to make a maximum number of designations each, as specified by the statute in urban and rural areas.
Reporting burden:

	Number of respondents	×	Frequency	×	Estimated hours	=	Total hours
FY 94/ one time nomination	300		1		50		15,000
Annually for designees reports	104		1		16		1,664

Status: This is a new collection for a one-time appropriation.

Contact: Michael Savage, HUD, (202) 708–2290; or Joseph F. Lackey, Jr., OMB (202) 395–6880.

Dated: December 27, 1993.

Empowerment Zone/Enterprise Community Program Attachment to SF 83—Supporting Statement

A. Justification

1. The statute requires that data demonstrating eligibility must be submitted as part of the nomination for Empowerment Zone/Enterprise Community designation, as well as the Strategic Plan addressing problems in the nominated area which will serve as the basis for designation by the appropriate Secretary. In addition the statute requires that the nomination for designation include benchmarks established by the nominee for measuring the success of the nominees plan implementation. Modification of the boundaries of the zone or lack of progress in achieving the benchmarks set forth in the strategic plan is indicated in the statute as grounds for a revokation by the appropriate Secretary of the designation. Therefore, we will ask for periodic (annual) reports from the designated Empowerment Zones and Enterprise Communities in which they indicate how they are progressing against the benchmarks they established. We do not have a specific form which must be used to make this report.
a. Nomination.
(A) Eligibility factors include documentation of specific levels of poverty by census tract, pervesive poverty and general distress. In addition, parameters of geographic size and population are included.
(B) The statute provides that in making designations, the Secretary will consider the effectiveness of the strategic plan, the effectiveness of the assurances provided and the other criteria which may be specified by the appropriate Secretary.
b. Periodic (annual) performance reports. As indicated above this report will be submitted by the designated Empowerment Zones and Enterprise Communities to show their progress in achieving the benchmarks set forth in their strategic plans. The appropriate Secretary will use the information submitted to evaluate the success of the Empowerment Zones and Enterprise Communities as indicated in the statute.
2. Purpose and use of the information.
The nominations will be used by HUD and USDA to evaluate the eligibility of the nominated areas and make designations of Empowerment Zones and Enterprise Communities in accordance with the designation criteria set forth in the statute.
The period reports will be used as required by the statute to determine the success of each designee in meeting its established benchmarks and in evaluating the program as a whole.
3. Use of information technology to reduce burden—not applicable.
4. Effort to identify duplication.
These requirements are the minimum necessary to meet the requirements of the statute and put the Program into effect.
5. Availability of similar information.
While available information can be used to prepare the nomination and develop the strategic plan, the statute requires that the nominee develop this information for an area it selects.
6. Small business involvement—not applicable.
7. Consequence of less frequent information collection.
We judge periodic reports to be the minimum needed to administer the program in conformance with the statute.
8. Inconsistency with 5 CFR 1320.6—not applicable.
9. Persons consulted.
HUD and USDA have worked together to prepare joint applications for the Program. The following agencies were consulted during the preparation and development of the program:
Commerce Department—Larry Parks
Education Department—Mike Smith
Housing and Human Services—David Ellwood
Justice—Eleanor Acheson
Labor—Larry Katz
OMB—Chris Edley
ONDCP—Ed Jurith
SBA—Erskine Bolles
Transportation—Ann Bormolini
Treasury—Maurice Foley
CEA—Joe Stiglitz
DPC—Bruce Reed
NEC—Paul Dimond
V.P.—Kumiki Gibson

10. Assurance of confidentiality—not applicable.
11. Questions of a sensitive nature—not applicable.
12. Cost estimates.

	Number of respondents	×	Estimated hours	×	Average hourly rates	=	Cost
Grantees (state & local governments):							
Nomination	300		50		$10.00		$150,000
Reports	104		16		10.00		16,640
Total cost to nominees & designees							166,640
Federal Government:							
Nomination	300		80		$18.00		$432,000
Reports	104		40		18.00		74,880
Total cost to federal government							506,880

These figures are besed on an estimate of the number of applications expected and the assumption that HUD and USDA will designate the full EZs and ECs authorized in the statute. These figures were then multiplied by the number of hours estimated for preparation or review for each requirement.
13. Estimate of Burden of Information Collection.

	Number of respondents	×	Frequency	×	Estimated hours	=	Total hours
FY 94/one time nomination	300		1		50		15,000
Annually for Designees reports	104		1		16		1,664

14. Changes in burden—not applicable.
15. Publication for statistical use—not applicable.
16. The publication of this information does not employ statistical methods.

BILLING CODE 4210–29–M

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

U.S. Department of Agriculture
Office of Rural Community and Economic Development

Nomination for a Federal Empowerment Zone or an Enterprise Community

Public reporting burden for this collection of information is estimated to average XXX hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, Office of Information Policies and Systems, U.S. Department of Housing and Urban Development, Washington, D.C. 20410-3600, the U.S. Department of Agriculture, Washington, D.C., and to the Office of Management and Budget, Paperwork Reduction Project (2506-XXXX), Washington, D.C. 20503. Do not send this completed form to any of these addressees.

Submission Requirements

OMB Approval No. 2506-XXXX (exp XXXXXX)

In order to be considered for designation, nominations which are complete and acceptable for processing must be received by the deadline date and time published in the *Federal Register*. Nominations must be submitted in the general format which follows, including the elements of the Strategic Plan. The document can be reproduced, if necessary, in order to give flexibility in preparation as long as the basic outline is followed.

Strategic Plan

The Strategic Plan is a narrative submission and the core of the nomination. It is recommended that an index or table of contents identify major components and that the pages be numbered sequentially. Tabs or other separations may be used as appropriate. Refer to the Empowerment Zone / Enterprise Community Application Guide for more information on how to prepare a Strategic Plan.

Submissions

- Notice of Intent to Participate
- Strategic Plan
- Map: Attach a copy of the 1990 census map that shows;
  (1) the boundaries of the local government(s) listed in Part I and;
  (2) the boundaries of the nominated area.
- Nomination Form Parts I through IV
- Other Forms
  Participating Entities
  Federal Program Applications

Send an original and two copies of the nomination to:

U.S. Department of Housing and Urban Development
Office of Community Planning and Development, CEE
Empowerment Zone Office, Room 7253
451 7th Street, S.W.
Washington, D.C. 20410

or

U.S. Department of Agriculture
Office of Rural Community and Economic Development
EZ/EC Information Team
Box 1045
14th & Independence Avenue, S.W.
Washington, D.C. 20250-3200

Notice of Intent to Participate

Empowerment Zone or Enterprise Community

This is notification to the:

☐ Department of Housing and Urban Development (for urban)
Office of Community Planning and Development, CEE
Empowerment Zone Office, Room 7253
451 7th Street, S.W.
Washington, D.C. 20410-7253

or

☐ Department of Agriculture (for rural)
Office of Rural Community and Economic Development
EZ/EC Information Team
Box 1045
14th & Independence Avenue, S.W.
Washington, D.C. 20250-3200

that the entity named here, intends to participate in the nomination of an Empowerment Zone or Enterprise Community.

Name & Address of Participating Entity

Contact & Phone No

Check here if you are a: ☐ Nominating Entity

Nomination

for Federal Empowerment Zone & Enterprise Community Designation

U.S. Department of Housing and Urban Development
Office of Community Planning and Development

U.S. Department of Agriculture
Office of Rural Community and Economic Development

Number of years of designation requested: ☐ (maximum of 10 years)

Nomination Category:
☐ Rural ☐ Urban
☐ Enterprise Community
☐ Empowerment Zone (will automatically also be considered for Enterprise Community.)

Part I: State and Local Government Identification

A. Nominating State Government(s)

Name of State or Corporation | Governor's or Corporate Director's Name

Contact Person (name and title) | Telephone Number

Address (street / PO box, city, State & zip code)

Name of State or Corporation | Governor's or Corporate Director's Name

Contact Person (name and title) | Telephone Number

Address (street / PO box, city, State & zip code)

B. Nominating Local Government(s) ☐ Enter the total number of nominating local governments.

Name of Jurisdiction | Metropolitan Area Name (if in an MA)

Chief Elected Official

Contact Person (name and title) | Telephone Number

Address (street / PO box, city, State & zip code) | County

Name of Jurisdiction | Metropolitan Area Name (if in an MA)

Chief Elected Official

Contact Person (name and title) | Telephone Number

Address (street / PO box, city, State & zip code) | County

C. Lead Coordinating Entity (for questions concerning the nomination)

Name | Telephone Number

Address (street / PO box, city, State & zip code)

Attach separate sheet(s), as necessary, to provide identical information for all local governments nominating the area. Number the additional sheets 3a, 3b, etc.

Part II: Eligibility Information

This form incorporates the information necessary to demonstrate that the nominated area meets the eligibility requirements for consideration and designation. Procedures for identifying the population and poverty rate data are given on page 7. Use the results to answer the appropriate items in Sections A and B below.

A. Size & Location of the Nominated Empowerment Zone Area	Yes	No
1. What is the square mileage of the nominated area?		
2. Is the nominated area located wholly within the jurisdiction of the legal government(s) listed in Part I?	☐	☐
3. How many States are in the nominated area?		
4. Is the boundary of the nominated area continuous?	☐	☐
5. Is there more than one noncontiguous parcel in the nominated area?	☐	☐
If "yes," how many?		
6. **Urban nominations only:**		
Is the nominated area in a Metropolitan Area?	☐	☐
Is 51% or more of the population of the nominated area in a Metropolitan Area?	☐	☐
Does the nominating local government have a population of 20,000 or more, and is the urban character of the area documented?	☐	☐
Is the nominating local government jurisdiction an urbanized area?	☐	☐
Rural nominations only:		
Is the nominated area outside a Metropolitan Area?	☐	☐
Is 51% or more of the population of the nominated area outside a Metropolitan Area?	☐	☐
7. Is any portion of a central business district included?	☐	☐
If "yes," are the census tract / block numbering areas identified on the Population Data form.	☐	☐
a. Does any tract that includes the central business district have a poverty rate of less than 35%?	☐	☐
If "yes," eligibility is limited to Enterprise Community status.	☐	☐

B. Population & Poverty Rate of the Nominated Area	Yes	No
1. Does this nomination contain a request for a Secretarial exemption of the poverty threshold?	☐	☐
Poverty rate threshold exemption limits eligibility to Enterprise Community status. Only one form of the exemption can be used.		

Check which exemption is being requested:	Yes	No
The exemption to reduce the poverty rate threshold by 5 percentage points for up to 10% of the population census tracts (or 5 population census tracts)		
a. for the 20% threshold poverty rate	☐	
b. for the 25% threshold poverty rate	☐	
c. for the 35% threshold poverty rate or	☐	
d. for the 35 % threshold poverty rate by up to 10 percentage points for three population census tracts	☐	
2. Do any of the census tracts included in the nominated area have:		
a. no population?	☐	☐
If "yes," do 50% of the other census tracts have at least 35% poverty?	☐	☐
b. populations of less than 2,000?	☐	☐
If "yes," is 75% of the tract zoned commercial/ industrial and certified in Part III?	☐	☐
3. From the attached Population Data form, provide the following information for the entire area nominated:		
a. Total 1990 census population		
b. Do all census tracts or block numbering areas of the nominated zone have a 20% or more poverty rate?	☐	☐
c. If no, is the exemption request identified in B.1. above?	☐	☐
4. **Urban applications only:**		
What is the population of the most populous city in the nominated area?		
a. What is the name of that city?		

C. Distress of the Nominated Empowerment Zone Area. The major indices of distress are pervasive poverty, unemployment, and general distress.	Yes	No
1. Is the pervasive poverty of the area detailed in the Strategic Plan and certified in Part III?	☐	☐
2. Is the pervasive unemployment of the area detailed in the Strategic Plan and certified in Part III?	☐	☐
3. Is the general distress including the physical and social conditions that demonstrate the general distress of the area detailed in the Strategic Plan and certified in Part III?	☐	☐

Part III. Certifications

I hereby certify that the portion of the nominated area that I represent meets all State, local, and Federal eligibility requirements and that to the best of my knowledge and belief:

a. the information in this nomination is true and correct;

b. each nominating government has the authority, with respect to the nominated area, to:
   (1) nominate such area for designation as an Empowerment Zone area;
   (2) make the State and local commitments that the Strategic Plan will be implemented; and
   (3) provide assurances that such commitments will be fulfilled;

c. the nominating governments shall comply with State, local and Federal program requirements, and have agreed in writing to carry out the Strategic Plan if the application is approved;

d. the geographic area contains no portion of an area which is either designated as a Federal Empowerment Zone or Enterprise Community under this Part or is otherwise included in any other area nominated for designation as an Empowerment Zone or Enterprise Community under this Part;

e. the geographic area contains no portion or area within an Indian reservation;

f. no action will be taken to relocate any establishment to the nominated area;

g. the nominated areas of each unit of local government meet each of the eligibility criteria set forth in the program regulations, i.e.:
   (1) the geographic area does not exceed the population maximum and boundary test;
   (2) the geographic area is one of poverty, unemployment, and general distress and that the conditions are pervasive throughout the area;
   (3) the geographic area meets the size and boundary test;
   (4) the geographic area meets the tests of poverty; and

h. each noncontiguous area (up to three) being nominated separately meets the poverty rate test;

i. the amounts provided to the State for the area under Section 2007 of Title XX of the Social Security Act will not be used to supplant Federal or non-Federal funds for services and activities which promote the purposes of Section 2007;

j. the nominating governments or corporations agree to make all information available as requested by the designating Secretaries to aid in evaluation of progress in implementation of the strategic plan and reporting on the use of EZ\EC SSBG funds;

k. the nominating State agrees to distribute the EZ\EC SSBG funds in accordance with the strategic plan submitted by the designated zone or community.

Authorized Nominating State or Corporation Official(s) type or print	
State or Corporation:	Signature & Date:
Name & Title:	X
State or Corporation:	Signature & Date:
Name & Title:	X

Authorized Nominating Local Government(s) and Official(s) type or print	
Governmental unit & State name:	Signature & Date:
Official Name & Title:	X
Governmental unit & State name:	Signature & Date:
Official Name & Title:	X
Governmental unit & State name:	Signature & Date:
Official Name & Title:	X

Attach separate sheet(s), as necessary, to provide identical information and official signatures for all local governments nominating the area. Number the sheets 5a, 5b, etc.

Part IV: Population Data

Duplicate this page if needed. Number the added pages 6a, 6b, etc.

Enter the total number of census tracts / block numbering areas listed on all pages in the block to the right.

Name of County: | Name of State:

1. Census Geographic Area Census Tract Code/Block Numbering Area	2. 1990 Population	3. Land Area (sq. miles)	Poverty 4a. No. of Persons in each Tract	Poverty 4b. Percent Below Poverty Level	5. Code	1. Census Geographic Area Census Tract Code/Block Numbering Area	2. 1990 Population	3. Land Area (sq. miles)	Poverty 4a. No. of Persons in each Tract	Poverty 4b. Percent Below Poverty Level	5. Code
1.						21.					
2.						22.					
3.						23.					
4.						24.					
5.						25.					
6.						26.					
7.						27.					
8.						28.					
9.						29.					
10.						30.					
11.						31.					
12.						32.					
13.						33.					
14.						34.					
15.						35.					
16.						36.					
17.						37.					
18.						38.					
19.						39.					
20.						40.					
						Totals					

Number of census tracts / block numbering areas that have a poverty rate of 25% or greater.	
Number of census tracts / block numbering areas that have a poverty rate of 35% or greater.	
Number of census tracts / block numbering areas with a population of less than 2000.	
Number of census tracts / block numbering areas with no population.	

Part IVa. Instructions for Population Data

The Population Data form is used to demonstrate eligibility of the nominated area.

Fractional percentages of one-half or more may be rounded up to the next whole number.

You must demonstrate that 50 percent of the population census tracts / block numbering areas have a 35 percent poverty rate, excluding any census track / block numbering area with no population.

The 25 percent poverty rate applies to 90 percent of all census tracts. If a nominated area has 44 census tracts / block numbering areas, 22 census tracts must have a poverty rate of 35 percent or higher and 39.6 census tracts / block numbering areas must have a poverty rate of 25 percent or higher. IF the sample nominated area has three census tracts / block numbering areas with no population (41 populous census tracts / block numbering areas), then 20.5 census tracts / block numbering areas must have a poverty rate of 35 percent or higher and the number at the 25 percent poverty rate stays the same.

The number of census tracts / block numbering areas for which an exemption can be requested is up to five populous census tracts / block numbering areas or ten percent of the populous census tracts / block numbering areas. A nominated area of 66 populous census tracts / block numbering areas may request an exemption for seven census tracts / block numbering areas. A nominated area with 66 census tracts of which four have no population, may request an exemption for six census tracts / block numbering areas.

The total population of an urban nominated area is ten percent of the population of the most populous city that is in, or partially is in, the nominated area unless it exceeds 200,000. No nominated area can exceed 200,000 and any nominated area can be up to 50,000 in population even if that exceeds the ten percent formula.

The maximum population for a rural nominated area is 30,000.

The 1990 Census data specified are the only data sources acceptable to HUD and USDA. All data are for census tract or block numbering area. Calculations cannot be made using the data required for this form and none is needed.

Source - ***1990 Census Tracts / Block Numbering Areas Outline Maps.***

1990 census maps may be ordered by calling the Bureau of the Census at 301-763-4100 to obtain the 1990 CPH-3 Printed Reports and Maps Order Form. Use that form to order census tract / block numbering area outline maps for states or for metropolitan areas. State Data Centers or a local library may already have the CPH-3 series and maps.

The boundaries of the nominated area must include the full census tract or block numbering area. Census tracts and block numbering areas cannot be split. Nominated area boundaries follow census tract and block numbering area boundaries.

Separate Population Data forms are required in two instances. Where a nominated area consists of two or three noncontiguous areas, a separate Population Data form must be completed for each of the areas. Where a nominated area is located in more than one county, a separate Population Data form must be completed for each county.

Source - The Bureau of the Census CPH-3 series of publications from the ***1990 Census of Population and Housing: Population and Housing Characteristics for Census Tracts and Block Numbering Areas.***

Note: This document has several Tables that contain the square mile area, population and poverty rate. Only the CPH-3 tables and the lines specified are acceptable to HUD and USDA for completing the Population Data form on page 6 of the nomination package.)

Column 1. List each census tract or block numbering area code identified as the nominated area on the census outline map accompanying the nomination.

Table 1. Gives the land area in square miles and the population of all persons, for each tract or block numbering area.

Column 2. 1990 Population. Use the number from line 3 (subhead "All persons" under the "Age" heading) to fill in column 2.

Column 3. Land Area (sq. miles). Use the number from line two (subhead "Square mile" under the "Land Area" heading) to fill in column 3.

Column 4. Poverty

Table 19. Gives the poverty rate for persons and the number of people in poverty for each census tract and block numbering area.

Column 4a. Persons in each tract. Use the number from

the tenth line from the bottom labeled "Persons" under the heading "Poverty Status in 1989", subhead "Income in 1989 Below Poverty Level" to fill in column 4a.

Column 4b. Percent Below Poverty. Use the number from the ninth line from the bottom labeled "Percent Below Poverty Level", immediately below the "Persons" line to fill in column 4b. Round this number to the nearest whole number, e.g. 34.5 and above is 35 percent.

Note: Do not attempt to calculate the percent below poverty. It is established by Census based on responses from a statistical sample.

Column 5. Code (EX/CBD). Poverty rate exemptions (EX) and Central Business Districts (CBD). Enter, as appropriate, one of the two codes listed to identify a census tract or block numbering area that is subject to either of the special conditions.

For each census tract or block numbering area where a Secretarial exemption of the poverty rate is requested, enter EX in column 5. Refer to Part II. Eligibility Information, B.1., of this nomination for the limitations on poverty rate exemptions.

For each census tract or block numbering area that contains any portion of a Central Business District, enter CBD in column 5.

Central Business Districts were defined by some central cities of Metropolitan Statistical Areas, or other MSA cities with a population of 50,000 or more, based on this general definition from the Bureau of the Census: "areas of high land valuation; areas characterized by a high concentration of retail businesses, offices, theaters, hotels, and service businesses; areas of high traffic flow; and defined in terms of existing tract lines, i.e., consisting of one or more whole census tracts."

Consult the 1982 Census of Retail Trade, RC82-C-5, Major Retail Centers in Standard Metropolitan Statistical Areas, publication for your state/metropolitan area for

Participating Entities

List participating entities that are partners in the development and implementation of the Strategic Plan that support the nomination for Empowerment Zone / Enterprise Community designation. Duplicate this form to accommodate the number of entries needed. Note, in the first block, the lead/coordinating entity as identified in Part I.

Name of Lead/Coordinating Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X
Name of Entity:	Entity Representative: (name, signature, & date)
Address: (street, city, state & zip)	X

Federal Program Applications

List here any Federal programs for which any of the nominating or participating entities have applications pending prior to submission of this nomination. Include only those programs from which funding would be used to support the implementation of the strategic plan.

Federal Agency Name:	Name of Program:	
Applicant's Name:		
Amount applied for:	Date of Application:	To Whom Submitted:
Activity/Progam/Project Description:		
Federal Agency Name:	Name of Program:	
Applicant's Name:		
Amount applied for:	Date of Application:	To Whom Submitted:
Activity/Progam/Project Description:		
Federal Agency Name:	Name of Program:	
Applicant's Name:		
Amount applied for:	Date of Application:	To Whom Submitted:
Activity/Progam/Project Description:		
Federal Agency Name:	Name of Program:	
Applicant's Name:		
Amount applied for:	Date of Application:	To Whom Submitted:
Activity/Progam/Project Description:		
Federal Agency Name:	Name of Program:	
Applicant's Name:		
Amount applied for:	Date of Application:	To Whom Submitted:
Activity/Progam/Project Description:		

[FR Doc. 94-43 Filed 1-3-94; 8:45 am]
BILLING CODE 4210-29-C

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY-040-04-4370-01]

Use of Helicopters in Wild Horse Roundup Activities; Public Hearing

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of public hearing.

SUMMARY: A public hearing on the use of helicopters in wild horse roundup activities will be held at the White Mountain Library, Grace Gasson Room.

DATES: February 23, 1994, 7 p.m. until 9 p.m.

ADDRESSES: White Mountain Library, 2935 Sweetwater Drive, Rock Springs, Wyoming, 82901.

FOR FURTHER INFORMATION CONTACT: Marlowe E. Kinch, District Manager, Rock Springs District Office, Highway 191 North, Rock Springs, Wyoming, 82901.

SUPPLEMENTARY INFORMATION: The agenda will be limited to:

1. Introduction and opening remarks.
2. Review of the Wild Horse Management Plan.
3. Use of helicopters in the Plan.
4. Film presentation of roundup activity.
5. Public comment period.

The meeting is open to the public and interested persons may make statements on the subject. All statements will be recorded.

Marlowe E. Kinch,

District Manager.

[FR Doc. 94-85 Filed 1-3-94; 8:45 am]

BILLING CODE 4310-22-M

[AK-080-4230-05; F-85687]

Realty Action: Conveyance of Public Lands in Alaska for Airport Purposes

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The State of Alaska Department of Transportation and Public Facilities has requested conveyance of certain lands near the Fairbanks International Airport. The additional lands are necessary for the use, operation, and maintenance of the existing airport facility.

ADDRESSES: Written comments on this Notice should be submitted to the District Manager, Bureau of Land Management, Steese/White Mountains District Office, 1150 University Avenue, Fairbanks, Alaska, 99709.

FOR FURTHER INFORMATION CONTACT: Rodney G. Everett, Realty Specialist, at the address given above or at telephone (907) 474-2365.

SUPPLEMENTARY INFORMATION: The following public lands in Fairbanks, Alaska are being considered for conveyance to the State of Alaska for airport purposes pursuant to Section 516 of the Airport and Airway Improvement Act of September 3, 1982 (96 Stat. 692; 49 U.S.C. 2215):

Fairbanks Meridian, Alaska

T.1 S., R.2 W.,
Sec. 13, Tract XIV, Parcel B;
Sec. 23, Tract XIV, Parcel A.
T.1 S., R.1 W.,
Sec. 18, Tract XVIII, Parcels A, B, and C.
Containing 72.79 acres

The above described lands have been, and remain, segregated from all appropriation under the public land laws, including the mining laws but not the mineral leasing laws.

For a period of 45 days from the date of publication of this Notice in the **Federal Register**, interested parties may submit written comments to the District Manager at the above address. Any adverse comments will be reviewed by the State Director, who may vacate, sustain, or modify the realty action and issue a final determination. In the absence of any objection, the final determination of the Department of the Interior will be made in accordance with this Notice.

Dated: December 16, 1993.

Roger Bolstad,

District Manager.

[FR Doc. 94-78 Filed 1-3-94; 8:45 am]

BILLING CODE 4310-JA-M

[OR-050-4410-10:GP3-286]

Intent To Amend Resource Management Plan; Realty Action, Grant County, Oregon

AGENCY: Bureau of Land Management, Interior, Prineville District.

ACTION: Notice of intent to amend the John Day Resource Management Plan; notice of realty action—exchange of public land in Grant County, Oregon.

In accordance with 43 CFR 1601.3, notice is hereby given that the Bureau of Land Management in the State of Oregon, Prineville District, intends to amend that portion of the John Day Resource Management Plan (RMP) within the Prineville District. The existing RMP was approved in August 1985 and provides management direction and resource allocations for all BLM-managed lands in Grant County located in central and northeastern Oregon.

The amendment is to specifically identify public lands in the Central Oregon Resource Area located in Grant County for retention or disposal and to identify, generally, private land that may be suitable for acquisition through exchange, purchase or donation. All acquisitions will be on a "willing buyer—willing seller" basis. Presently, there are over 180,000 acres of public land managed by the Bureau of Land Management in Grant County, which contains a total of approximately 3,000,000 acres of land. While the John Day RMP does identify public land suitable for sale, it does not specifically identify public lands suitable for exchange or other realty actions. It also does not identify which of the BLM-managed public lands should be retained for multiple use or what privately-owned lands may be suitable for acquisition.

Additionally, this notice serves as the Notice of Realty Action as required by 43 CFR part 2200. The Prineville District is considering five exchange proposals affecting 8,340 acres of public land described as follows:

Exchange 1

	Acres
T. 10 S., R. 27 E.,	
Sec. 21: W½NW¼	80
22: S½SW¼	80
26: NW¼SW¼	40
27: SW¼NW¼, W½SW¼, NE¼SE¼	160
28: NW¼NE¼, SE¼NE¼	80
29: SW¼SW¼	40
30: NW¼NE¼, SE¼SE¼	80
32: NW¼NW¼, E½SW¼, SW¼SW¼, NW¼SE¼	200
33: E½SE¼, SW¼SE¼	120
34: W½NE¼, NE¼NW¼, SE¼SW¼	160
T. 11 S., R. 27 E.,	
Sec. 4: NE¼, W½NW¼, NW¼SW¼, SE¼SW¼, W½SE¼, SE¼SE¼	440
5: SW¼NE¼, S½SW¼, NE¼SE¼	160
6: SE¼NE¼, SE¼NW¼, SW¼,SW¼	120
7: S½NE¼	80
8: E½SE¼	80
11: N½NE¼	80
21: NE¼, SW¼NW¼, N½SE¼	280
22: N½NE¼, S½NW¼	160
23: NE¼	160
25: NW¼NW¼, NE¼SW¼, N½SE¼	160
27: NW¼NW¼	40
34: E½NW¼, SW¼SW¼	120
36: N½NE¼, NE¼NW¼	120
T. 11 S., R. 28 E.,	
Sec. 5: SE¼SW¼	40
6: E½NE¼, SW¼SE¼	120
17: SW¼SW¼	40
18: N½NE¼, SW¼NE¼, NE¼NW¼, N½SE¼, SW¼SE¼	280
20: W½NW¼	80
21: NE¼NE¼	40
30: S½SW¼, SE¼SE¼	120
31: N½NW¼, SW¼NW¼	120
32: N½NE¼	80
T. 12 S., R. 27 E.,	
Sec. 1: NW¼NW¼	40
2: N½	320
Approximately	4,220

Exchange 2

	Acres
T. 7 S., R. 27 E.,	
Sec. 13: SE¼NW¼	40
21: SE¼	160
22: S½SW¼, SW¼SE¼	120
23: N½NW¼	80
24: NW¼SE¼	40
26: SW¼NW¼	40
28: E½NE¼	80
T. 7 S., R. 28 E.,	
Sec. 1: NE¼SW¼	40
7: N½NE¼, SW¼NE¼, NW¼SE¼	160
8: NW¼SW¼	40
10: SW¼SE¼	40
12: NE¼NE¼	40
15: SE¼SE¼	40
17: SE¼NE¼, E½NW¼, E½SE¼	200
26: SE¼NW¼	40
29: SW¼SW¼	40
30: NE¼SW¼, SE¼SE¼	80
Approximately	1,280

Exchange 3

	Acres
T. 7 S., R. 29 E.,	
Sec. 3: W½NW¼	40
9: SW¼NW¼	40
10: W½SE¼	80
14: S½NW¼	80
15: SE¼NE¼	40
T. 7 S., R. 30 E.,	
Sec. 1: NW¼NW¼, SE¼SW¼, S½SE¼	160
2: NE¼NE¼, W½NE¼	120
5: SE¼SE¼	40
8: NE¼, NE¼NW¼	200
9: NE¼NW¼	40
12: NE¼, NE¼NW¼	200
15: NW¼NE¼	40
23: SE¼SW¼, NE¼SE¼	80
24: NE¼NE¼	40
Approximately	1,200

Exchange 4

	Acres
T. 14 S., R. 31 E.,	
Sec. 28: SE¼NW¼, SE¼	200
Approximately	200

Exchange 5

The adjoining landowner would like to acquire the tracts noted below and various proposals have been discussed. Although specific tracts have not been offered in exchange for the public land, the BLM would consider trading these tracts for private land along the North or South Forks of the John Day River.

	Acres
T. 13 S., R. 28 E.,	
Sec. 17: SE¼	160
18: Lots 3 and 4	80
19: Lot 1, E½NE¼	120
20: N½N½, SW¼NE¼, SW¼NW¼	240
22: S½SE¼	80
24: NE¼SE¼, SW¼SE¼	80
29: SW¼SW¼, SW¼SE½	80
30: Lots 3 and 4, SE¼NW¼, NE¼SE¼	160
31: Lot 4	40
32: SE¼NW¼, E½SE¼	120
33: W½NE¼, SE¼NE¼, E½NW¼, NE¼SE¼	240
34: NW¼NE¼	40
Approximately	1,440

In exchange for these lands, the Federal Government may acquire the following:

Exchange 1

	Acres
T. 9 S., R. 26 E.,	
Sec. 34: S½SW¼	80
T. 10 S., R. 26 E.,	
Sec. 3: W½	320
4: NW¼SE¼, S½S½	200
5: SW¼, S½SE¼	240
8: S½NE¼	80
9: N½NE¼, E½NW¼, SW¼NW¼	200
10: W½E½, E½W½	320
14: S½NE¼, N½SE¼, SE¼SE¼	200
15: E½	320
16: All	640
21: NE¼, E½NW¼	240
22: W½, N½NE¼, SW¼NE¼, SE¼	600
23: E½NE¼, W½NW¼, SE¼NW¼, S½	520
24: W½SW¼, SW¼SE¼	120
25: W½E½, W½NW¼, NW¼SW¼, SE¼SW¼	320
26: E½, E½W½, W½NW¼, NW¼SW¼	600
27: NE¼NE¼	40
33: NW¼SW¼	40
35: N½NE¼, E½NW¼, SW¼NW¼, SW¼SW¼, E½SW¼, W½SE¼, SE¼SE¼	440
36: NW¼NE¼, N½NW¼	120
T. 11 S., R. 26 E.,	
Sec. 1: N½NE¼, NW¼, NE¼SW¼, NW¼SE¼	320
2: N½NE¼, E½NW¼, SW¼NW¼	200
10: NE¼NE¼	40
11: NE¼NE¼	40
12: W½NW¼	80
T. 11 S., R. 27 E.,	
Sec. 7: SE¼SE¼	40
8: SW¼SW¼, S½SE¼	120
17: N½NE¼, SE¼NE¼, W½NW¼, S½	520
18:NE¼NE¼	40
20: N½NE¼, NE¼NW¼	120
Approximately	7,160

Exchange 2

	Acres
T. 8 S., R. 31 E.,	
Sec. 31: NE¼ south of the county road	
32: N½ west and south of the county road	
32: E½SW¼, W½SE¼ west and south of the county road	
T. 9 S., R. 31 E.,	
Sec. 4: Lot 4, SW¼NW¼, NW¼SW¼, SE¼NW¼, SE¼SW¼, SE¼ west and south of the county road	
5: Lots 1 and 2, SE¼NE¼ west and south of the county road	
9: N½NE¼, SE¼NE¼ west and south of the county road	
9: NE¼NW¼	
10: NW¼ south of the road	
10: E½SW¼ west and south of the county rd	
Approximately	850

Exchange 3

	Acres
T. 7 S., R. 29 E.,	
Sec. 1: SW¼NW¼, NW¼SW¼, SE¼SW¼, SE¼	280
2: SE¼NE¼, SW¼SE¼, E½SE¼	160
3: S½SE¼	80
4: S½E¼	80
9: N½N½	160
10: N½N½	160
11: N½N½, S½NW¼	200
T. 7 S., R. 30 E.,	
Sec. 2: N½NW¼	80
3: SW¼NE¼, NE¼SW¼	80
4: S½NE¼, NW¼	240
5: S½N½, N½SW¼, NW¼SE¼	280
8: S½N½, N½S½	320
Approximately	2,120

Exchange 4

	Acres
T. 14 S., R. 26 E.,	
Sec. 36: W½ (or other property of equal value, along the South Fork fo the John Day River)	320
Approximately	320

Exchange 5

Tracts to be acquired have not yet been identified, but the proponent has offered to purchase land along the North or South Forks of the John Day River.

Appraisals for these exchanges have not yet been completed. Therefore, the amount of land traded may be different than that shown after values are equalized.

The purpose of the exchanges are to acquire and block up lands in Grant County, particularly along the forks of the John Day River. These lands have high public value for riparian, fisheries, wildlife, recreation and scenic quality. Acquisition of this land would be consistent with the Bureau's planning system after the plan is amended. The value of the lands has not been determined; however, upon completion of the final appraisal, the acreage will be adjusted or money will be used to equalize values. The public lands will be transferred subject to: (1) A reservation to the United States of a rights-of-way for ditches or canals constructed by the authority of the United States, Act of Aug. 30, 1890 (43 U.S.C. 945); (2) All valid existing rights-of-way, leases, permits or licenses in effect at the time of exchange. The mineral estate is expected to be included in the exchange.

Interest has also been expressed in a tract of public land described as:

	Acres
T. 13 S., R. 31 E.,	
Sec. 26: SW¼SW¼	40
35: NW¼NW¼	40
Approximately	80

This land would be retained for use associated specifically with the airport and allow for expansion of airport activities. If not used in conjunction with the airport, the tract will become available for exchange.

The publication of this notice in the **Federal Register** segregates the public lands described above from appropriation under the public land laws, including the mining laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976.

This segregative effect shall terminate upon issuance of a patent to such lands, upon publication in the **Federal Register** of a Notice of Termination of the segregation or 18 months from date of this publication, whichever occurs first.

SUPPLEMENTARY INFORMATION: Copies of the scoping document, as well as detailed information concerning the proposed exchanges and land use plan amendment, are available for review at the Prineville District Office, 185 East Fourth St., Prineville, OR 97754, (503) 447–4115 and the Central Oregon Resource Area, 2321 E. Third St., (503) 447–7003. Contact Dick Cosgriffe, Area Manager or Ron Lane, Realty Specialist.

PUBLIC PARTICIPATION IN THE PLAN AMENDMENT: Major issues involved in the plan amendment are the identification of public lands in the Central Oregon Resource Area located in Grant County for retention for multiple use management, the identification of public lands suitable for disposal by sale, exchange or public purpose lease, the general identification of areas of private land suitable for acquisition and access to the public lands by people of the United States.

Disciplines to be represented on the interdisciplinary team preparing the plan amendment and associated Environmental Assessment (EA) are: Wildlife, fisheries, recreation, watershed, lands and realty, cultural, forestry, economics and land use planning. Copies of the scoping document, as well as more detailed information are available at the Prineville District Office or the Central Oregon Resource Area Office, both located in Prineville, Oregon.

A 45-day period for public review and comment is provided to meet the requirements for both the Notice of Intent and Notice of Realty Action. Scoping of issues and management alternatives which have been identified will also be refined through this process. The 45-day comment period will begin with the publication of this Notice in the Federal Register. There will be an open house in Prineville on February 2, 1994, in the BLM office at 2321 E. Third Street from 10 a.m. to 3 p.m. to provide information and answer questions regarding the proposals in this plan. A public meeting will also be held in John Day on February 3, 1994 at 7 p.m. in the Grant County Senior Center, located at 142 NE Dayton Street. Additional meetings and a 60-day public comment opportunity will be provided upon completion of the draft management plan amendment and environmental assessment in the spring of 1994. Dates, times and locations of those meetings and public comment opportunities will be published in the **Federal Register**, as well as in local newspapers. Notices will also be mailed to all known interested parties.

Dated: December 23, 1993.

James L. Hancock,

District Manager.

[FR Doc. 94–2 Filed 1–3–94; 8:45 am]

BILLING CODE 4410–33–M

[ES–960–4950–10–4600: ES–046621, Group 11, Virginia]

Notice of Filing of Plat of Dependent Resurvey

The plat, in one sheet, of a portion of George Washington Memorial Parkway, Fairfax County, Virginia, has been officially filed in Eastern States, Springfield, Virginia, at 7:30 a.m., on December 17, 1993.

The survey was made upon request submitted by the National Park Service.

Copies of the plat will be made available upon request and prepayment of the reproduction fee of $4.00 per copy.

Dated: December 22, 1993.

Charles E. Bush,

Acting State Director.

[FR Doc. 94–86 Filed 1–3–94; 8:45 am]

BILLING CODE 4310–GJ–M

Fish and Wildlife Service

Notice of Availability of a Draft Recovery Plan for Lesser Long-Nosed Bat for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of a draft recovery plan for the lesser long-nosed bat (*Leptonycteris curasoae yerbabuenae*) which the Service listed as an endangered species in 1988 (FR 38460; September 30, 1988). The lesser long-nosed bat occurs in southern Arizona, southwest New Mexico and the western and southern portions of Mexico. This species is migratory and is found in the United States during the summer. The Service solicits review and comment from the public on this draft plan.

DATES: Comments on the draft recovery plan must be received on or before March 7, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plan may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3616 West Thomas Road, suite 6, Phoenix, Arizona 85019. Written comments and material regarding the plan should be addressed to the State Supervisor at the above address. Comments and materials received are available on request for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Please phone Lesley Fitzpatrick, U.S. Fish and Wildlife Service, Fish and Wildlife Service Biologist; at telephone 602/379–4720 (see **ADDRESSES**).

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe the site specific management actions considered necessary for conservation and survival of the species, establish objectives, and measurable criteria for the recovery levels for downlisting or delisting species, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservetion of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service, and other affected Federal agencies, will take these comments into account in the course of implementing approved recovery plans.

The lesser long-nosed bat occurs in caves and mines in southern Arizona from approximately May through September. Both maternity colonies and night roosts are found in the state. Wintering areas for bats that summer in the United States are not defined. Maternity colonies and other types of roosts are found in western and southern Mexico. Management issues and concerns include mining activities, disturbance of foraging areas, animal control actions, and human disturbance of roost sites.

The lesser long-nosed bat recovery plan has been reviewed by the appropriate Service staff in Region 2 and was developed with input from selected experts on the biology of the species. The plan will be finalized and approved following incorporation of comments and material received during this comment period.

Public Comments Solicited

The Service solicits written comments on the recovery plan described. All biological comments received by the date specified above will be considered prior to the approval of the plan.

Authority

The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 16, 1993.

John G. Rogers,

Regional Director.

[FR Doc. 94–13 Filed 1–3–94; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Technology Transfer Act of 1986

AGENCY: United States Geological Survey, Interior.

ACTION: Notice of proposed cooperative research and development agreement (CRADA) negotiations.

SUMMARY: The United States Geological Survey (USGS) has entered into a Cooperative Research and Development Agreement (CRADA) with CQ Inc. The purpose of the CRADA is to develop models for predicting the fate of potentially toxic trace elements in commercial coal cleaning procedures. Any other organization interested in pursuing the possibility of a CRADA for similar kinds of activities should contact the USGS.

ADDRESSES: Inquiries may be addressed to the Chief, Branch of Coal Geology, U.S. Geological Survey, Mail Stop 972, Denver Federal Center, Denver, CO 80225; telephone 303–236–7726, FAX 303–236–7738.

FOR FURTHER INFORMATION CONTACT: Dr. Robert B. Finkelman of the U.S. Geological Survey, Branch of Coal Geology, Mail Stop 956, Reston, VA 22092, telephone (703) 648–6412, FAX (703) 648–6419.

SUPPLEMENTARY INFORMATION: This notice is to meet the USGS requirement stipulated in the Survey Manual.

Dated: December 21, 1993.

Benjamin A. Morgan,

Chief, Geologic Division.

[FR Doc. 94–10 Filed 1–3–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission Notice of Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Golden Gate National Recreation Area and Point Reyes National Seashore Advisory Commission will be held at 1 p.m. (PST) on Saturday, January 22, 1994, at West Marin School in Point Reyes Station, California to hear presentations on issues related to management of the Point Reyes National Seashore and adjoining Golden Gate National Recreation lands.

The Advisory Commission was established by Public Law 92–589 to provide for the free exchange of ideas between the National Park Service and the public and to facilitate the solicitation of advice or other counsel from members of the public on problems pertinent to the National Park Service systems in Marin, San Francisco and San Mateo Counties. Members of the Commission are as follows:

Mr. Richard Bartke, Chairman
Ms. Amy Meyer, Vice Chair
Mr. Ernest Ayala
Dr. Howard Cogswell
Brig. Gen. John Crowley, USA (ret)
Mr. Margot Patterson Doss
Mr. Neil D. Eisenberg
Mr. Jerry Friedman
Mr. Steve Jeong
Ms. Daphne Greene
Ms. Gimmy Park Li
Mr. Gary Pinkston
Mr. Merritt Robinson
Mr. R. H. Sciaroni
Mr. John J. Spring
Dr. Edgar Wayburn
Mr. Joseph Williams
Mr. Mel Lane

Included on the agenda for this public meeting will be:

1. Presentation of Giocomini Ranch Wetlands Feasibility Study.
2. Status report on tule elk assessment.
3. Report on range conditions at Point Reyes National Seashore.
4. Report on the proposed Education Center Annex at Point Reyes National Seashore.

Interested individuals, representatives of organizations, and public officials are invited to express their views in person at the January 22 public meeting. No action is anticipated on these issues by the Advisory Commission.

This meeting will be recorded for documentation and transcribed for dissemination. Minutes of the meeting will be available to the public after approval of the full Advisory Commission. A transcript for this meeting will be available after February 11, 1994. For copies of the minutes contact the Office of the Staff Assistant, Golden Gate National Recreation Area, Building 201, Fort Mason, San Francisco, California 94123.

Dated: December 22, 1993.

Patricia L. Neubacher,

Acting Regional Director, Western Region.

[FR Doc. 94–26 Filed 1–3–94; 8:45 am]

BILLING CODE 4310–70–P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 25, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 19, 1994.

Patrick Andrus,

Acting Chief of Registration, National Register.

COLORADO

Morgan County

Fort Morgan Power Plant Building, N. Main St. E side, N of jct. with US 6, Fort Morgan, 93001553

FLORIDA

Palm Beach County

Palm Beach Mercantile Company, 206 Clematis St., West Palm Beach, 93001552

GEORGIA

Clay County

Sutton, Warren, House, US 27 1000 ft. S of jct. with GA 37 at Sutton's Corners, Edison vicinity, 93001571

HAWAII

Hawaii County

Hind, James M., House, Skilled Camp, House J, Hawi, 93001557

Honolulu County

Smyth, Mabel, Memorial Building, 501 Punchbowl St., Honolulu, 93001558

MARYLAND

Washington County

Hagerstown Historic District, Roughly bounded by Prospect and Canon Aves., Memorial Blvd. and the CSX RR tracks, Hagerstown, 93001551

NEW YORK

Suffolk County

St. Johns Episcopal Church and Cemetery, Montauk Hwy. NE side, about 300' NW of the jct. with Locust Ave., Town of Islip.

OREGON

Lane County

Cottage Grove Downtown Commercial Historic District, Area surrounding Main St. between Coast Fork Willamette R. and Ninth St., Cottage Grove, 93001568

Stewart, LaSells D., House, 1807 E. Main St., Cottage Grove, 93001569

Multnomah County

Buyers Building, 317 SW. Alder St., Portland, 93001567

Frances Building and Echo Theater, 3628–3646 SE. Hawthorne Blvd., Portland, 93001566

Haycock, Ernest, Estate, 4700 SW. Humphrey Blvd., Portland, 93001565

O'Donnell, E.J., House, 5535 SW. Hewett Blvd., Portland, 93001564

Packard Service Building, 121 NW. Twenty-Third Ave., Portland, 93001570

Salerno Apartments, 2325 NE. Flanders St., Portland, 93001563

Telegram Building, 1101 SW. Washington St., Portland, 93001560

Tudor Arms Apartments, 1811 NW. Couch St., Portland, 93001562

United States Steel Corporation Office and Warehouse, 2345 NW. Nicolai St., Portland, 93001561

PUERTO RICO

Vieques Municipality

Casa Augusto Delerme, 7 Benitez Guzman St., Isabel Segunda, 93001555

Delerme-Anduze House, 361 Antonio Mellado St., Isabel Segunda, 93001556

Smaine-Oritz House, 341 Antonio Mellado St., Isabel Segunda, 93001554

[FR Doc. 94–51 Filed 1–3–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32412]

EASX Railroad Corporation—Purchase and Operation Exemption—CSX Transportation, Inc., Line in Pennsylvania

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 11343, *et seq.*, the purchase and operation by EASX Railroad Corporation (EASX) of a line of CSX Transportation, Inc., and two of its affiliates, Allegheny and Western Railway Company and Buffalo, Rochester and Pittsburgh Railway Company, subject to standard labor protective conditions. The line, known as the "Sample Spur", is 0.7 mile long and located in New Castle, PA.

DATES: This exemption is effective on February 3, 1994. Petitions to stay must be filed January 19, 1994. Petitions to reopen must be filed by January 24, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32412 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Betty Jo Christian, 1330 Connecticut Ave. NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721].

Decided: December 23, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–87 Filed 1–3–94; 8:45 am]

BILLING CODE 7035–01–P

[Decision No. 13; Finance Docket No. 32133 (Sub-Nos. 1–3)]

The Kansas City Southern Railway Co., et al.; Haulage and Trackage Rights Over Lines of Union Pacific Railroad Co., et al.

In the matter of [Finance Docket No. 32133 (Sub-No. 1)], the Kansas City Southern Railway Company—Haulage Rights Over The Lines of Union Pacific Railroad Company and Chicago and North Western Transportation Company; [Finance Docket No. 32133 (Sub-No. 2)], St. Louis Southwestern Railway Company and SPCL Corp.—Trackage Rights Over Lines of Union Pacific Railroad Company and Missouri Pacific Railroad Company in Wyandotte County, KS, and Jackson County, MO; and [Finance Docket No. 32133 (Sub-No. 3)], CCP Holdings, Inc. and Chicago, Central & Pacific Railroad Company—Trackage Rights Over Certain Lines of Union Pacific Railroad Company, Missouri Pacific Railroad Company, and Chicago and North Western Transportation Company.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of Decision No. 13.

SUMMARY: The Commission is accepting for consideration the applications of (1) The Kansas City Southern Railway Company (KCS), (2) Southern Pacific Transportation Company (SPT), The Denver and Rio Grande Western Railroad Company (DRGW) and St. Louis Southwestern Railway Company (SSW), and SPCL Corp., and (3) Chicago, Central & Pacific Railroad Company (CC&P) and CCP Holdings, Inc. (CCP Holdings) for the establishment of haulage rights, trackage rights, certain local service rights, and certain other conditions on lines of Union Pacific Railroad Company (UP), Missouri Pacific Railroad Company (MP), and Chicago and North Western Transportation Company (CNW). These applications are responsive to the proposed acquisition of control of CNW by Union Pacific Corporation and its subsidiary railroads, UP and MP.

EFFECTIVE DATE: This decision is effective on January 4, 1994. Written comments and all evidence must be filed with the Interstate Commerce Commission by February 28, 1994. Rebuttal is due March 29, 1994.

FOR FURTHER INFORMATION CONTACT: Thomas B. Shick (202) 927–5257 or Donald J. Shaw (202) 927–5610; TDD for hearing impaired: (202) 927–5721.

ADDRESSES: An original and 20 copies of all comments referring to Finance Docket No. 32133 (Sub-No. 1), Finance Docket No. 32133 (Sub-No. 2), or Finance Docket No. 32133 (Sub-No. 3), as appropriate, must be filed with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423. Five copies of all comments must also be sent to: Room 2118, Office of Proceedings, Interstate Commerce Commission, Washington, DC 20423. One copy must be sent to the Attorney General of the United States, the Secretary of Transportation, and the other active parties of record, including the primary applicants' representatives.

SUPPLEMENTARY INFORMATION: In No. 32133, Union Pacific Corporation, and its subsidiary railroads Union Pacific Railroad and Missouri Pacific Railroad (collectively, UP), seek to acquire control of CNW and its corporate parent, Chicago and North Western Holdings Corp. Notice of acceptance of the UP application was published in the **Federal Register** on February 26, 1993, at 58 FR 11626. On November 29, 1993, pursuant to the Commission's revised procedural schedule set forth in *Union Pacific Corp., Et Al.—Control—CNW,* 9 I.C.C.2d 939 (1993), the following responsive applications were filed:

Finance Docket No. 32133 (Sub-No. 1). KCS seeks the imposition of the following protective conditions designed to "renovate" its current "north end" haulage rights over UP between Kansas City and Omaha, NE/Council Bluffs, IA, Lincoln, NE, Atchison, KS, and Topeka, KS:[1]

(1) A new, cost-based, haulage charge, based upon UP's current, actual costs, with periodic adjustments;

(2) Elimination of all restrictions as to local service and interlining at Kansas City of traffic moving pursuant to those haulage rights;

(3) A guarantee by UP of "most favored nation" treatment being extended to KCS on all UP switching charges and practices at Omaha/Council Bluffs; and

(4) A guarantee by UP of minimum transit time, between the receipt or delivery of cars for shipment under the haulage rights, on the one hand, and, on the other hand, the interchange of those cars to KCS, with penalty provisions for any default.

KCS also seeks new haulage rights over CNW:

(5) Haulage rights, convertible to trackage rights at KCS's option, over CNW lines between Council Bluffs and Sheldon, IA; between Council Bluffs-Fort Dodge, IA, and the surrounding area; and between Kansas City, MO, and Des Moines, IA; and certain related conditions.

Finance Docket No. 32133 (Sub-No. 2). SP seeks denial of the application, but alternatively, requests the imposition of the following conditions:

(1) Access by such trackage and haulage rights as would be most efficient in the circumstances to provide full service to all shippers served by CNW and its existing affiliates (except those in Michigan and northeast Wisconsin). SP may hold out service in its own name, and quote rates and contracts without the concurrence of CNW; CNW shall furnish the underlying rail transportation as an independent contractor for mutually agreed upon compensation (or Commission prescribed compensation in the event of a failure to agree); and CNW shall give such traffic equal handling and priority as its own traffic;

(2) Access by such trackage and haulage rights as would be most efficient in the circumstances (a) to serve origins and destinations exclusively served by UP via Missouri Pacific Railroad (MP) and former Missouri-Kansas-Texas Railroad lines (MKT); and (b) to bridge between the CNW in the North and the SP in the South. SP may hold out service in its own name, and quote rates and contracts without the concurrence of CNW; MP shall furnish the underlying rail transportation as an independent contractor for mutually agreed upon compensation (or Commission prescribed compensation in the event of a failure to agree); and MP shall give such traffic equal handling and priority as its own traffic;

(3) Such changes in compensation, ownership and responsibility for maintenance, dispatch and other operations, and terminal rights and access to certain intermediate points, as will permit efficient and effective competition by SP utilizing the trackage rights granted in Finance Docket No. 30,000: (a) to SSW between Kansas City, MO, and East St. Louis, IL; and (b) to DRGW between Pueblo, CO, and Kansas City. Such changes include various measures to insure that SP trains are to be given equal treatment with UP trains;

(4) Provisions designed to provide access to CNW facilities at the Chicago Switching District that will allow SP to provide service and competition on terms and conditions no less favorable than those available to UP today, including reciprocal switching; and

(5) Access to and participation in each of the marketing and operational coordinations of the type described at pages 372–376 of Volume 1 of the Application, which are entered into by UP and CNW with each other subsequent to the effective date of any control authority granted in this proceeding, on terms and conditions that are substantially equivalent to the terms and conditions of UP's access or participation.

Finance Docket No. 32133 (Sub-No. 3). CC&P and CCP Holdings request:

(1) Overhead trackage rights for CC&P over UP's Council Bluffs Subdivision between the connection of CC&P's rail line at CC&P milepost 512.2 (Council Bluffs, IA) and the KCS/Soo Line Joint Agency Yard and UPRR Neff Yard in Kansas City, MO, and Kansas City, KS, with the right to interchange with all connecting carriers at Kansas City, and to handle directly inbound movements of grain to all existing grain receivers located on UP and CNW at Kansas City;

(2) Overhead trackage rights over CNW's Sioux City Subdivision between the connection of CC&P's line with CNW's line at CNW milepost 76.3 (Sioux City, IA) and the connection with CC&P's line at Council Bluffs, with the right to directly handle inbound movements of soybeans and outbound movements of soybean meal, oil, and other soybean products to and from the Ag Processing, Inc., plant located on CNW at Sergeant Bluff, IA;

(3) Overhead trackage rights for CC&P over CNW's Fort Dodge Subdivision between the connection of CC&P's line to CNW's line at CNW milepost 372.5 (Fort Dodge, IA) and milepost 354.2, at the private tracks of Ag Processing, Inc., at Eagle Grove, IA, for the limited purpose of handling inbound shipments of soybeans and coal and outbound movements of grain products to/from the Ag Processing, Inc., plant located on CNW at Eagle Grove, IA.

The applications substantially comply with the applicable regulations.[2] The

[1] These rights were negotiated with UP as a result of the Commission's decisions in *Union Pacific—Control—Missouri Pacific, Western Pacific,* 366 I.C.C. 459, 566–572 (1982); and *Union Pacific Corp. et al.—Control—MO-KS-TX Co., et al.,* 4 I.C.C.2d 409, 452–458 (1988).

[2] Although SP's application includes pro forma financial information for the first year of consummation of the transaction, it has failed to submit pro forma statements covering subsequent reporting period requirements under the Commission's consolidation procedures, 49 CFR 1180.9. Given the nature of the conditions that SP is requesting, the financial information omitted would appear to be of very limited relevance, at best, and unnecessary to a decision. Moreover, our

Continued

application and exhibits are available for inspection in the Public Docket Room at the offices of the Interstate Commerce Commission in Washington, DC. In addition, they may be obtained upon request from applicant's representatives.

These applications are consolidated for disposition with the primary application in Finance Docket No. 32133. Service of an initial decision will be waived, and determination of the merits of the applications will be made in the first instance by the entire Commission. 49 U.S.C. 11345(f).

Interested persons may participate formally by submitting written comments regarding all or any of the responsive applications. Comments should indicate the exact proceeding designation, and should be filed with the correct number of copies and with the Commission offices specified above no later than February 28, 1994. Comments shall include the following: The person's position in support of or in opposition to the proposed transaction; any and all evidence, including verified statements, in suppert of or in opposition to the proposed transaction; and specific reasons why approval would or would not be in the public interest. See 49 CFR 1180.4(d)(1). Interested persons who do not intend to participate formally in the proceeding but who desire to comment may file statements, subject to the filing and service requirements specified below. Persons must state specifically whether they intend actively to participate in the proceeding or whether they wish only to be advised of all decisions issued by the Commission. Failure to state an intention to participate as an active party will result in the person being placed in the latter category.

Written comments must be concurrently served by first class mail on the Secretary of the Department of Transportation, on the Attorney General of the United States, and on all other persons designated as active parties of record on the Commission's service list, including primary applicants' representatives.

Rebuttal in support of these responsive applications must be filed by March 19, 1994.

Because these applications contain proposed conditions to approval of the application in Finance Docket No. 32133, the Commission will entertain no requests for affirmative relief related to these proposals. Parties may only participate in direct support of or direct opposition to these applications as filed.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. To the extent that applicants failed to submit certain financial evidence in the application filed in Finance Docket No. 32133 (Sub-No. 2) as required by 49 CFR 1180.9, the requirements of that section are waived.

2. The applications in Finance Docket No. 32133 (Sub-Nos. 1, 2, and 3) are accepted for consideration.

3. The parties shall comply with all provisions as stated above.

Decided: December 21, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-88 Filed 1-3-94; 8:45 am]

BILLING CODE 7035-01-P

regulations will change as of December 30, 1993, and the application would qualify as complete if it had been filed after that date. See *R.R. Consolidation Proced. of Significant Transactions*, 9 I.C.C.2d 1198 (1993). Consequently, we will waive the requirement on our own motion.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Resource Conservation Act and the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Environmental Pacific Corp.*, Civil Action No. 91-771-AS was lodged on December 17, 1993, with the United States District Court for the District of Oregon. The Consent Decree settles all claims with the two defendants, Environmental Pacific Corporation (EPC) and Richard Hill.

The original complaint in this action was brought against EPC pursuant to Section 3008(h) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6928(h), seeking an order that EPC perform corrective action at its facility in Amity, Oregon to clean up hazardous constituents that had been released into the environment. EPC operated a hazardous waste treatment, storage or disposal facility in Amity, where EPC handled primarily spent batteries, electroplating wastewater treatment sludge, and other allegedly recyclable materials containing plastics and metals.

In an amended complaint, the United States added claims against EPC and Richard Hill, the President of EPC while the company was in operation, pursuant to 40 CFR 268.50 for improper storage of F006 electroplating wastes and mercury, which are wastes restricted from land disposal under RCRA. The amended complaint also included a claim against Richard Hill under section 104(e) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended (CERCLA), 42 U.S.C. 9604(e), for failure to timely respond to information requests that EPA had sent to Mr. Hill.

As set forth in the consent decree, Settling Defendants shall pay $113,055.30 towards past response costs incurred during a removal action performed by EPA pursuant to its authority under section 104 of CERCLA. 42 U.S.C. 9604, at the EPC facility. Settling Defendants shall also pay $60,163.00 which will be used for performing sampling and analysis and groundwater monitoring outside of the boundaries of the EPC facility.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Environmental Pacific Corp.*, DOJ Ref. #90-7-1-608.

The proposed consent decree may be examined at the Office of the United States Attorney, 312 U.S. Courthouse, 620 SW Main Street, Portland, Oregon 97205; the Region 10 Office of EPA, 7th Floor Records Center, 1200 Sixth Avenue, Seattle, WA 98101; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624-0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $6.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94-83 Filed 1-3-94; 8:45 am]

BILLING CODE 4410-01-M

Notice of Lodging of Partial Consent Decree Pursuant to the Clean Water Act

In accordance with Departmental Policy, 28 CFR 50.7, notice is hereby given that a partial consent decree resolving the remaining two of five counts in *United States* v. *Windward Properties, Inc, and Mobil Land Development (Georgia) Corp.*, No. 1:91-CV-348-JEC (N.D. Ga.), was lodged with the United States District Court for the Northern District of Georgia on December 13, 1993. The other three counts of the complaint were previously settled pursuant to a partial consent decree entered by the Court in May 1993.

The proposed partial consent decree concerns alleged violations of sections 301 and 404 of the Clean Water Act, 33 U.S.C. 1311, 1344, as a result of the unpermitted construction of a dam in Caney Creek and a recreation area in wetlands by the defendants at the Windward development in Alpharetta, Georgia. Under the partial consent decree, the defendants will pay a $100,000 civil penalty to the U.S. Treasury, and will provide up to $225,000 in funding for projects to improve and protect wetlands and water quality in the same watershed where the alleged violations occurred. If entered by the Court, the proposed partial consent decree, in conjunction with the previously entered partial consent decree, will fully resolve this litigation.

The Department of Justice will receive written comments relating to this consent decree for a period of thirty days from the date of publication of this notice. Comments should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, Attention: Jon M. Lipshultz, Attorney, Environmental Defense Section, Environment and Natural Resources Division, U.S. Department of Justice, room 7216, 10th & Pennsylvania Avenues, NW., Washington, DC 20530, and should refer to *United States* v. *Windward Properties, Inc.*, DJ Reference Number 90-5-1-1-3561.

The partial consent decree and accompanying exhibits may be examined at the Clerk's office, United States District Court for the Northern District of Georgia, 2211 U.S. Courthouse, 75 Spring Street, SW., Atlanta, Georgia, 30335, or a copy may be requested from Jon M. Lipshultz at the Department of Justice, (202) 514-0461.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment & Natural Resources Division.

[FR Doc. 94-9484 Filed 1-3-94; 8:45 am]

BILLING CODE 4410-01-M

Drug Enforcement Administration

Controlled Substances; Established 1993 Aggregate Production Quotas

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule establishing 1993 aggregate production quotas.

SUMMARY: The interim rule (58 FR 51382, October 1, 1993) which established 1993 revised aggregate production quotas for some controlled substances in Schedules I and II, as required under the Controlled Substances Act (CSA) (21 U.S.C. 826) is adopted without change.

EFFECTIVE DATE: January 4, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug & Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, telephone: (202) 307-7183.

SUPPLEMENTARY INFORMATION: Section 306 of the Controlled Substances Act, (21 U.S.C. 826), requires the Attorney General to establish aggregate production quotas for controlled substances in Schedules I and II each year. This responsibility has been delegated to the Administrator of the Drug Enforcement Administration pursuant to § 0.100 of title 28 of the Code of Federal Regulations.

On October 1, 1993, an interim rule establishing revised 1993 aggregate production quotas for controlled substances in Schedules I and II was published in the **Federal Register** (58 FR 51382). One comment was received from a company supporting the use of the interim rule in establishing aggregate production quotas under certain circumstances. The interim rule is adopted without change.

This rule is not a significant regulatory action and therefore has not been reviewed by the Office of Management and Budget pursuant to Executive Order 12866.

These actions have been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this matter does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The Administrator hereby certifies that this action will have no significant impact upon small entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601, et seq. The establishment of annual aggregate production quotas for Schedules I and II controlled substances is mandated by law and by international commitments of the United States. Such quotas impact predominantly upon major manufacturers of the affected controlled substance.

Therefore, under the authority vested in the Attorney General by section 306 of the CSA of 1970 (21 U.S.C. 826) and delegated to the Administrator by § 0.100 of title 28 of the Code of Federal Regulations, the Administrator of the DEA hereby establishes the following revised 1993 aggregate production quotas for the listed controlled substances, expressed in grams of anhydrous base:

Basic class	Established 1993 quotas (in grams)
Schedule I:	
Methaqualone	12
3,4-Methylenedioxyamphetamine	12
3,4-Methylenedioxymethamphetamine	12
Schedule II:	
Dextropropoxyphene	115,162,000
Methadone (for sale)	3,675,000
Methadone Intermediate (for conv)	4,598,000
Oxycodone (for sale)	3,520,000
Phencyclidine	54
Thebaine	7,795,000

Dated: December 22, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94-108 Filed 1-3-94; 8:45 am]

BILLING CODE 4410-09-M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50-338 and 50-339]

Virginia Electric and Power Company (North Anna Power Station, Units No. 1 and No. 2)

Exemption

I

Virginia Electric and Power Company (the licensee) is the holder of Facility Operating License Nos. NPF-4 and NPF-7 which authorize operation of North Anna Power Station, Units No. 1 and No. 2 (NA-1&2, the facility) at steady-state power levels not in excess of 2893 megawatts thermal. The licenses provide, among other things, that the facility is subject to all the rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission) now or hereafter in effect.

The facility employs pressurized water reactors (PWRs) located at the licensee's site in Louisa County, Virginia.

The licensee is implementing a refurbishment and restoration program for the NA–1&2 service water system (SWS). The program is being conducted in several stages. The subject Phase 1, Stage 4 is to be conducted for a period of time beginning January 3, 1994 and ending October 13, 1994, and will be performed during dual unit operating conditions. The scope of Stage 4 involves restoration of the two 24-inch auxiliary supply lines from Lake Anna to the main SW headers. This consists of approximately 900 linear feet of piping (450 feet per line). Each 450-foot line consists of approximately 185 feet of direct buried piping, 230 feet of concrete-encased piping and 35 feet of exposed piping. To support the Phase 1, Stage 4 SWS restoration program, the licensee has identified one temporary exemption required at this time. The exemption is specified below.

II

The Code of Federal Regulations at 10 CFR part 50, Appendix A, General Design Criterion-2 (GDC–2) requires that: Structures, systems, and components important to safety shall be designed to withstand the effects of natural phenomena such as * * * tornadoes, * * * without loss of capability to perform their safety functions.

The licensee has requested the temporary exemption from GDC–2 because of planned maintenance which will expose portions of the SWS piping to the potential effects of postulated missiles generated by natural phenomena. Earth and concrete protect the piping systems from the effects of severe weather events at the NA–1&2 site, such as tornadoes, for conformance with the requirements of GDC–2. The excavation of the auxiliary service water lines will effect only the missile shield protection aspects of GDC–2, with seismic qualification being retained. While producing a minimal increase in missile interaction risk, excavation of the piping does not result in total vulnerability to missiles. In the area of the planned excavation, the lines are substantially below grade and are adjacent to the turbine building structure. This will prevent some lateral aspects of missile vulnerability.

The licensee is providing contingency measures with compensatory actions to provide added assurance of safe operation of the facility during the exemption period. Although the exemption is requested only for missile protection, the risk to the plant due to construction mishaps is more significant than the risk due to natural phenomena. Therefore, the compensatory measures are geared toward preventing such mishaps in addition to minimizing the potential for missiles generated by severe weather. As stated in the staff's Safety Evaluation dated December 27, 1993, these compensatory actions include but are not limited to the following:

- Electronic scanning and nondestructive locating methods will be used to accurately determine underground locations of piping, duct banks, and other buried utilities prior to excavation.
- Machine excavation will be limited to an elevation that does not pose a threat to the auxiliary service water (ASW) lines. The remaining excavation will be performed by hand operated power and manual tools.
- Physical barriers will be used to keep vehicles a safe distance from the excavation site.
- Loose materials in and around the excavation will be limited to only those absolutely necessary for activities in progress.
- Lifting and rigging components will be inspected and load tested. Lifting of equipment or construction materials over the excavation will be performed with adequate precautions in accordance with approved procedures.
- Direct verbal communication (using dedicated radios if necessary) will be maintained between equipment operators and supervisors/observers.
- Operable ASW lines will retain their seismic qualification.
- Engineering reviews will be performed for shoring and temporary supports (if required) in the excavation area.
- Gasoline powered equipment will be refilled using small containers and the number of containers within the excavation area will be restricted. This is in accordance with the existing station procedures.
- Worker training and shift briefings will be conducted for all aspects of the project.
- Severe weather procedures will be used to provide notification to clear the area of vehicles and loose materials in the event of a tornado watch or other high wind conditions.
- Adequate wind protection and heating will be provided during freezing weather conditions.

Considering the existing design features and compensatory measures proposed by the licensee, the likelihood of damage to the exposed auxiliary SWS lines from postulated missiles generated by natural phenomena is minimal. Also, based on the compensatory measures provided, assurance exists that the ability to bring the plant to a safe shutdown will be maintained following any natural phenomena, including tornadoes or other severe weather which could result in airborne missiles. Therefore, there is reasonable assurance that the proposed GDC–2 exemption will present no undue risk to public health and safety.

III

The Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances as set forth in 10 CFR 50.12(a)(2)(v). The exemption would provide only temporary relief from the applicable regulation (GDC–2). The exemption is requested for a specific time period after which the facility would again be in conformance with all the requirements of GDC–2. The licensee has made good faith efforts in considering alternatives to the exemption requests and has concluded that the Phase 1, Stage 4 SWS refurbishment and restoration program can only be conducted without the subject exemption during a period when both NA–1&2 are shut down and defueled. The impact of scheduling such a dual-unit outage would have significant consequences in terms of power supply, fuel storage, capacity, and replacement power costs. Finally, the exemption will indirectly result in benefits to the public from increased reliability of the upgraded safety-related SWS.

Based on the above and on review of the licensee's submittal, as summarized in the Safety Evaluation dated December 27, 1993, the NRC staff concludes that the likelihood of unacceptable damage to the exposed auxiliary SW lines due to tornadoe-borne missiles during the exemption period is low.

Based on the low probability of unacceptable events, coupled with the comprehensive compensatory measures which the licensee has committed to, the NRC staff finds the proposed exemption from GEDC–2 acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12, the subject exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security. The Commission further determines that special circumstances, as provided in 10 CFR 50.12(a)(2)(v), are present justifying the exemption; namely, that the exemption would provide only temporary relief from the applicable regulations and that the licensee has made good faith efforts to comply with the regulations.

Therefore, the Commission hereby approves the following exemption: NA–1&2 may operate without conforming to the requirements of GDC–2 as they apply to the buried portions of the auxiliary SWS lines from Lake Anna to the main SWS header providing that compensatory measures as described herein are continued for the period of the exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that granting the above exemption will have no significant impact on the quality of the human environment (October 7, 1993, 58 FR 52332).

The subject Phase 1, Stage 4 SWS GDC–2 exemption is effective from its date of issuance through October 14, 1994.

Dated at Rockville, Maryland this 27th day of December 1993.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–54 Filed 1–3–94; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33382; File Nos. SR–MCC–93–8 and SR–MSTC–93–12]

Self-Regulatory Organizations; Midwest Clearing Corp. and Midwest Securities Trust Co.; Filing and Immediate Effectiveness of Proposed Rule Changes to Add Certain File Transmission Fees

Dece.nber 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on December 8, 1993, the Midwest Clearing Corporation ("MCC") and the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes as described in Items I, II, and III below, which Items have been prepared substantially by MCC and MSTC. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

MCC and MSTC propose to amend a portion of their Services and Schedule of Charges by adding certain fees for their File Transmission and Tape Input/Output Service.

The text of the proposed rule changes are underlined:

FILE TRANSMISSION AND TAPE INPUT/OUTPUT SERVICES

[Reports Received]

File	Daily	Weekly •	Monthly	Upon Request
R—Activity	$165.00	N/A	N/A	$75.00
R—Net Position	165.00	125.00	75.00	75.00
R—Net Position/Activity	275.00	N/AN/A	75.00	
B—Net Position/Activity	275.00	200.00	75.00	75.00
R/B Merged Net Position (special format: depository data only)	165.00	125.00	75.00	75.00
Purchase & Sales	165.00	N/A	N/A	75.00
ACATS Activity	165.00	N/A	N/A	75.00
Security Masterfile Updates	165.00	N/A	N/A	75.00
Complete Security Masterfile	N/A	200.00	75.00	75.00
NIDS Activity	165.00	N/A	N/A	75.00
Dividend Announcements	165.00	N/A	N/A	75.00
Accommodation Transfer	165.00	125.00	75.00	75.00
Bond Comparison Activity	165.00	N/A	N/A	75.00
Valid Trades	300.00	N/A	N/A	75.00
MCC/MSTC Account Masterfile	N/A	125.00	75.00	75.00
OTC T Contracts	165.00	N/A	N/A	75.00
Activity/Transfers	225.00	125.00	75.00	75.00
Activity/Deposits	225.00	125.00	75.00	75.00
Activity/Transfers/Deposits	285.00	125.00	75.00	75.00
Activity/Position/Transfers/Deposits	350.00	125.00	75.00	75.00
Deposit Records Only	75.00	75.00	75.00	75.00
Transfer records Only	75.00	75.00	75.00	75.00
Pledgee Bank Net Position	165.00	125.00	75.00	75.00
Pledgee Bank Activity	165.00	125.00	175.00	75.00

• Includes settlement month end or calendar month end.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, MCC and MSTC included statements concerning the purpose of, and basis for, the proposed rule changes and discussed any comments received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. MCC and MSTC prepared summaries, set forth in section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The purpose of the proposed changes is to establish fees for reports produced from individual files and new combinations of files in the MCC/MSTC File Transmission Service. MCC/MSTC's File Transmission Service

[1] 15 U.S.C. 78s(b)(1) (1988).

("FTS") (File Nos. SR–MCC–87–6 and SR–MSTC–87–7)[2] provides a computer-to-computer interface for the transmission of data between MCC/MSTC and their participants.

The proposed rule changes are consistent with section 17A of the Act in that they provide for the equitable allocation of reasonable fees and other charges among participants using MCC and MSTC facilities.

(B) Self-Regulatory Organizations' Statement on burden on Competition

MCC and MSTC do not believe that the proposed rule changes will impose a burden on competition that is not necessary or appropriate in furtherance of the proposes of the Act.

(C) Self-Regulatory Organizations' Statement of Comments on the Proposed Rule Changes Received from Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The foregoing rule changes became effective pursuant to section 19(b)(3)(A)(ii) of the Act and Rule 19b–4(e)(2) thereunder because they establish or change a due, fee, or other charge of the self-regulatory organizations. At any time within sixty days of the filing of such proposed rule changes, the Commission may summarily abrogate such rule changes if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purpose of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communication relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal offices of MCC and MSTC. All submissions should refer to File Nos. SR–MCC–93–8 and SR–MSTC–93–12 and should be submitted by January 25, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–7 Filed 1–3–94; 8.45 am]

BILLING CODE 8010–01–M

[Release No. 34–33391; File No. SR–PSE–91–11]

Self-Regulatory Organizations; Pacific Stock Exchange, Inc.; Order Approving Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and No. 2 to Proposed Rule Change Relating to Method for Execution of Cross Transactions

December 28, 1993.

I. Introduction

On August 26, 1991, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change relating to the method for the execution of cross transactions on the PSE. On June 7, 1993, the PSE submitted Amendment No. 1 to the proposed rule change in order to clarify certain terms used in the original filing.[3] On August 18, 1993, the PSE submitted Amendment No. 2 to the proposed rule change in order to clarify its interpretation of certain provisions regarding specialist participation in cross transactions.[4]

The proposed rule change was published for comment in Securities Exchange Act Release No. 29712 (September 20, 1991), 56 FR 49217 (September 27, 1991). No comments were received on the proposal. This order approves the proposed rule change, including both amendments on an accelerated basis.

II. Description of the Proposal

Exchange Rule 5.14(b) outlines the traditional method for the execution of cross transactions on the PSE.[5] Under that rule, a member effecting a cross transaction must first assure that all existing bids or offers by the specialists, in the books or at the posts, at or better than the cross price, are filled at their limits.[6] Thereafter the member must publicly announce both sides of the cross; the member's offer must be higher than his or her bid by the minimum trading differential permitted for that security.[7] Rule 5.14(b) then allows the member to execute the cross transaction at his or her bid or offer. Under this method, however, another member can "break up" the cross by trading with either the bid or the offer side of the transaction when it is presented to the crowd.

The Exchange proposes to formalize several policies that its Equity Floor Trading Committee previously developed to encourage the execution of cross transactions on the PSE. Specifically, the proposed commentary to Rule 5.14(b) will codify the PSE's policy that all efforts should be made to facilitate the execution of crosses; and will clarify which orders a member must satisfy before he or she can execute such a transaction.[8] The proposed commentary also will interpret Rule 5.14(b), together with the PSE's priority rule,[9] to prohibit the specialist from participating in a cross to establish or increase his or her position,[10] unless the member effecting the transactions gives the specialist permission to do so.

In addition, the Exchange proposes to place additional restrictions on when a specialist can break up a cross transaction.[11] Thus under the proposed commentary to Rule 5.14(b), the specialist will be prohibited from participating, for the benefit of his or her own account, on (1) either side of a customer-to-customer cross,[12] or (2) the customer side of a cross with the principal account of a member, where the cross is at a price inside the disseminated PSE market. The PSE, however, will interpret this provision to allow a specialist who is willing to better the price to participate in a cross transaction.[13] Finally, for purposes of Rule 5.14(b), the Exchange will define a "customer order" as an order that a broker represents in an agency capacity, including a professional order that is not for an account associated with the executing broker.

The PSE believes that the proposed rule change maintains the auction at market principles of price improvement and priority to existing orders, while at the same facilitating the execution of crosses on the PSE. In addition, the PSE believes that the proposed rule change is consistent with policies recently adopted by other exchanges.[14] The PSE states that the proposed rule change is consistent with Section 6(b)(5) of the Act in that these changes will promote just and equitable principles of trade and will protect investors and the public interest by continuing the effort to remove impediments to a free and open market.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) and 11(a).[15] In particular, the Commission believes that the proposed rule change is consistent with the Section 6(b)(5) requirement that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest; and with the section 6(b)(8) requirement that the rules of an exchange not impose any unnecessary burden on competition. The Commission also believes that the proposed rule change does not operate in a manner inconsistent with the traditional auction market principle of customer priority, as embodied in section 11(a) of the Act.

After careful review, the Commission has concluded that the proposed rule change should further competition among the exchanges, as well as between exchanges and other markets, and should increase the opportunities for the efficient execution of cross transactions. In the past, the Commission has recognized the competition that exists between various markets for order flow, and especially for block business. Several exchanges recently have sought Commission approval to amend their rules, on the grounds that exchange rules may hinder members' ability to execute a cross transaction without interference and thus may place an exchange at a competitive disadvantage. Despite serious reservations, the Commission has approved those proposals which are consistent with traditional auction market principles.[16]

In response to today's competitive market environment, the PSE has proposed to codify its policy that members should make their best efforts not to interfere in another member's cross transaction and, in particular, that the specialist should not participate unless he or she is liquidating a position. The PSE also has proposed to add a new requirement, based on a comparable rule on the Phlx, that the specialist's proprietary bid or offer yield to the customer side of a cross transaction at the cross price.[17] Looking at the proposal as whole, the Commission believes that it will clarify the roles of various market participants and assure that, under routine circumstances, crosses are executed in a fair and orderly manner. In sum, the Commission finds that this proposed rule change should improve the PSE's ability to compete for block business and should enhance the depth and liquidity of the Exchange market.[18]

In terms of auction market principles, the Commission believes that the proposed rule change strikes an appropriate balance between the competing needs of various customer orders represented for execution on the PSE and the proprietary trading operations of Exchange members and member organizations, including specialists. The Commission notes that Rule 5.14(b) will continue to require that a member effecting a cross transaction first assure that all existing bids or offers on the specialist's book or represented in the trading crowd, at or better than the cross price, are filled at their limits.[19] On that basis, the Commission has concluded that the PSE proposal adheres to the auction market principles of time and price priority and that this method for the execution of crosses (and, in particular, the priority granted to the customer side of the transaction) will not disadvantage existing orders.[20] In fact, limit orders on the PSE which coincide with the cross price could benefit from being assured of receiving an execution at that price.

Furthermore, the Commission finds that the PSE proposal does not restrict

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[2] Securities Exchange Act Release No. 25718 (May 19, 1988), 53 FR 19074 [order approving proposal to develop and implement the File Transmission Service to link MCC's and MSTC's computer systems with those of their participants].

[3] 17 CFR 200.30–3(a)(12) (1993).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Kenneth, J. Marcus, Director, Equity Surveillance/Compliance, PSE, to Diana Luka-Hopson, Branch Chief, Division of Market Regulation, SEC, dated June 3, 1993 ("Amendment No. 1").

[4] See letter from Kenneth J. Marcus, Director, Equity Surveillance/Compliance, PSE, to Beth Stekler, Attorney, Division of Market Regulation, SEC, dated August 9, 1993 ("Amendment No. 2").

[5] In a cross transaction, a member who holds an order to buy and an order to sell an equivalent amount of the same security wishes to execute the orders against each other. See PSE Rule 5.14(a). Because he or she already holds both sides of the trade, the member does not want the orders to interact with other market interest.

[6] As a general matter, the bid/offer entered at the best price (*i.e.*, the highest bid or the lowest offer) is entitled to priority over bids/offers at inferior prices; similarly, the first bid/offer clearly established at a given price is entitled to priority over other bids/offers at that same price. See PSE Rule 5.8(c).

[7] PSE Rule 5.3(b) sets forth the minimum trading differential for securities listed on the PSE.

[8] Among other things, see *supra* note 6 and accompanying text, a member effecting a cross first must satisfy the interest the specialist "publicly displayed and verbally stated" at the time of the cross.

[9] See PSE Rule 5.8(e). Under this rule, an order originated on the floor to establish or increase a proprietary position must yield to any order originated off the floor

[10] According to the PSE, this policy initially was established on May 2, 1984. In conjunction with this filing, the Exchange has clarified that the specialist will be able to participate in a cross transaction in order to decrease his or her position. See Amendment No. 1, *supra*, note 3. Under those circumstances, the specialist's participation will be subject to the additional restrictions discussed below. See *infra*, notes 11–13 and accompanying text.

[11] As discussed below, see *infra*, notes 16–17, the proposed restrictions are based on recent amendments to Philadelphia Stock Exchange ("Phlx") Rule 126.

[12] This restriction will apply whether the customer orders are represented by the same broker or "by separate agents," as defined in Amendment No. 1, *supra*, note 3.

[13] See Amendment No. 2, *supra*, note 4.

[14] See *infra*, note 16.

[15] 15 U.S.C. 78f(b) (1988).

[16] See, *e.g.*, Securities Exchange Act Release Nos. 27205 (August 31, 1989), 54 FR 37180 (September 7, 1989) (File No. SR–Phlx–89–17) (approving Phlx proposal to prohibit members from interfering, with either side of an agency cross or the customer side of a facilitation cross, by buying or selling for their own account at the cross price; except that a specialist can participate to the extent of a publicly disseminated bid or offer at that price); and 31343 (October 21, 1992), 57 FR 48645 (October 27, 1992) (File No. SR–NYSE–90–39) (approving New York Stock Exchange ("NYSE") "clean cross" proposal to allow members to execute agency crosses of 25,000 shares or more, at a price at or within the prevailing quotation, without interference, irrespective of any pre-existing bids or offers at the cross price; however, the cross could be broken up at a better price).

Several other proposals to facilitate the execution of crosses on a given exchange are pending with the Commission, including File Nos. SR–Amex–92–41 (American Stock Exchange "clean cross" proposal) and SR–MSE–93–05 (Chicago Stock Exchange proposal to encourage specialists to refrain from interfering in cross transactions).

[17] As noted above, this part of the PSE proposal is based on recent amendments to Phlx Rule 126. See *supra*, note 16. Briefly, the Phlx requires that a member's proprietary bid or offer yield to the customer side of a cross transaction at the cross price. In approving the Phlx proposal, the Commission took note of the fact that most principal trading activity on the floor of that regional stock exchange, other than facilitation crosses, is undertaken by the specialist.

[18] The Commission appreciates all the exchanges' competitive concerns with respect to the facilitation of cross transactions and, at the same time, continues to emphasize the importance of adherence with traditional auction market principles.

[19] See *supra*, note 6.

[20] In this regard, the PSE proposal contrasts favorably with other rule changes approved by the Commission, such as the NYSE's clean cross proposal, see *supra* note 16.

the opportunity for customer orders to receive price improvement. To this end, the Commission interprets the proposed commentary to Rule 5.14(b), and the Exchange agrees with that interpretation,[21] to allow the specialist to participate in a cross transaction to provide one side with a better price, notwithstanding the other provisions of this rule.[22] In addition, under the PSE's method, it is possible for interest in the trading crowd, including an order for the principal account of a member, to break up the cross and to improve the price.

Finally, the Commission believes that the PSE proposal would not grant priority, parity or precedence to the order of a member in a manner inconsistent with section 11(a)(1)(G) of the Act or SEC Rule 11a1–1(T)(a)(3) thereunder.[23] For purposes of its proposed rule change, the PSE has defined the term "customer order" as an order that a broker represents in an agency capacity, including a professional order that is not for an account associated with the executing broker. Because this definition of "customer order" excludes (and, thus, does not grant priority to) an order for an account over which the broker or an associated person of the broker exercises investment discretion, the Commission is satisfied that the proposed rule change complies with section 11(a).

The Commission finds good cause for approving Amendments No. 1 and No. 2 prior to the thirtieth day after the date of publication of notice of filing thereof. Amendments No. 1 and No. 2 merely clarify certain language used in the original filing and make no substantive changes to the proposed rule. Finally, the Commission did not receive any comments on the original proposal, which was noticed for the full statutory period.

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1 and No. 2 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rules change that are filed with the Commission, and all written communications relating to Amendments No. 1 and No. 2 between the Commission and any persons, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available at the principal office of the PSE. All submissions should refer to File No. SR–PSE–91–11 and should be submitted by January 25, 1994.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[24] that the proposed rule change (SR–PSE–91–11), including Amendments No. 1 and No. 2 on an accelerated basis, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[25]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–46 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–M

[21] See Amendment No. 2, *supra*, note 4.

[22] *Id.*

[23] 17 CFR 240.11a1–1(T)(a)(3).

[24] 15 U.S.C. 78s(b)(2) (1988).

[25] 17 CFR 200.30–3(a)(12) (1991).

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Continental Homes Holding Corp., Common Stock, $.01 Par Value) File No. 1–10700

December 28, 1993.

Continental Homes Holding Corp. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, in addition to being listed on the Amex, its common stock is listed on the New York Stock Exchange, Inc. ("NYSE"). The Company's common stock commenced trading on the NYSE at the opening of business on December 15, 1993 and concurrently therewith such stock was suspended from trading on the Amex.

In making the decision to withdraw its common stock from listing on the Amex, the Company considered the direct and indirect costs and expenses attendant on maintaining the dual listing of its common stock on the NYSE and on the Amex. The Company does not see any particular advantage in the dual trading of its common stock and believes that dual listing would fragment the market for its common stock.

Any interested person may, on or before January 20, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–47 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19983; 812–8726]

NBD Bank, N.A. et al.; Application

December 27, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for permanent order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: NBD Bank, N.A. ("NBD"), NBD Bank, and NBD Bancorp, Inc.

RELEVANT ACT SECTIONS: Permanent order requested under 9(c) for an exemption from the provisions of section 9(a).

SUMMARY OF APPLICATION: On December 17, 1993, the Commission issued a conditional temporary order and notice of application for permanent order under section 9(c) of the Act exempting applicants from the disqualification provisions of section 9(a) solely with respect to a securities-related injunction entered against NBD.[1] Applicants have discovered that the application, and consequently the notice, contains a factual misstatement with respect to the composition of the board of trustees of the Woodward Funds and Renaissance Assets Trust. Applicants have filed an amended application to correct the misstatement.

[1] Investment Company Act Release No. 19961 (Dec. 17, 1993).

FILING DATE: The application was filed on December 17, 1993, and amended on December 23, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 18, 1994, and should be accompanied by proof of service on applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549; Applicants, NBD and NBD Bancorp, Inc., 611 Woodward Avenue, Detroit, Michigan 48266. NBD Bank, 211 South Wheaton Avenue, Wheaton, Illinois 60189.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. NBD is a national banking association and a wholly-owned subsidiary of NBD Bancorp, Inc. NBD serves as investment adviser to The Woodward Funds and Renaissance Assets Trust (the "Funds"). The Funds are open-end management investment companies registered under the Act. The Woodward Funds consist of thirteen separate portfolios: Woodward Growth/Value Fund; Woodward Opportunity Fund; Woodward Intrinsic Value Fund; Woodward Equity Index Fund; Woodward Intermediate Bond Fund; Woodward Bond Fund; Woodward Money Market Fund; Woodward Government Fund; Woodward Treasury Money Market Fund; Woodward Tax-Exempt Money Market Fund; Woodward Michigan Tax-Exempt Money Market Fund; Woodward Municipal Bond Fund; and Woodward Michigan Municipal Bond Fund. It is anticipated that additional portfolios will commence operation at calendar year-end 1993 or shortly thereafter. Renaissance Assets Trust consists of two separate portfolios: the Renaissance Government Fund and the Renaissance Money Market Fund.

2. NBD Bank is a wholly-owned subsidiary of NBD Illinois, Inc., which is a wholly-owned subsidiary of NBD Bancorp. NBD Bank is not currently an investment adviser to any registered investment company. NBD Bank has entered into an agreement to act as sub-investment adviser to the Separate Account I (the "Separate Account") of the Washington National Life Insurance Company ("Washington National").

3. NBD Bancorp, Inc. is a bank holding company incorporated under Delaware law.

4. On December 17, 1993, the Commission filed a complaint in the United States District Court for the Southern District of New York in a civil action entitled *Securities and Exchange Commission* v. *Comerica Bank* (the "SEC" Action"). The complaint alleged that NBD violated Regulation U, as promulgated by the Board of Governors of the Federal Reserve System under section 7(d) of the Securities Exchange Act of 1934, in connection with extensions of credit in a custodial trust account maintained for an individual named Mark Sendo.[2]

5. On the same day, NBD consented to the entry of a Final Judgment of Permanent Injunction and Other Relief (the "Final Judgment"), without admitting or denying any of the allegations in the Commission's complaint except as to jurisdiction. The Final Judgment enjoins NBD from further violations of Regulation U. The Final Judgment requires that NBD disgorge $2,500, which represents its gross custodian services fees earned on Sendo's accounts. In addition, the Final Judgment requires NBD to pay a civil money penalty of $100,000. The Final Judgment also requires NBD to adopt internal procedures designed to prevent a recurrence of the violative conduct.

6. Applicants have been advised by the trustees of the Funds and by Washington National that (a) the trustees of the Funds and the directors of Washington National have reviewed the circumstances pertinent to the Final Judgment, and, in the case of the Funds, have considered the prior services rendered to the Funds by NBD; and (b) after review and consideration of such factors as they deemed appropriate, a majority of the trustees of the Woodward Funds who are not interested persons with respect to applicants, a majority of the trustees of Renaissance Assets Trust who are not interested persons with respect to applicants, and the directors of Washington National have determined that the retention of NBD in the case of the Funds and of NBD Bank in the case of Washington National as investment adviser is in the best interests of the Funds' shareholders and the account holders of the Separate Account.

7. In making the application, applicants acknowledge, understand, and agree that the application and any temporary exemption issued by the Commission shall be without prejudice to the Commission's consideration of any application for exemptions from statutory requirements, including the consideration of the instant application for a permanent exemption pursuant to section 9(c) or the revocation or removal of any temporary exemption granted in connection with the application.

Applicants' Legal Analysis

1. Applicants seek a permanent order exempting applicants and their affiliates from the provisions of section 9(a) of the Act solely with respect to the Final Judgment.

2. Section 9(a) of the Act, in pertinent part, disqualifies any person or company from serving or acting in the capacity of employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company, or principal underwriter for any registered open-end company, registered unit investment trust, or registered face amount certificate company if such person, or an affiliated person of such person, has, by reason of misconduct, been permanently or temporarily enjoined by an order, judgment, or decree from any court of competent jurisdiction from acting as an underwriter, broker, dealer, or investment adviser, or from engaging in or continuing any conduct or practice in connection with any such activity or in connection with the purchase or sale of any security.

3. Section 9(c) provides that the Commission shall grant an application for an exemption from the disqualification provisions of section 9(a), either unconditionally or on an appropriate temporary or other conditional basis, if it is established that these provisions, as applied to the applicant, are unduly or disproportionately severe or that the

[2] The Commission brought an action against Sendo and two of his associates for "free-riding"—paying for purchases of securities with anticipated proceeds from offsetting sales of the same securities—in violation of the antifraud and margin provisions of the federal securities laws in June 1991. *SEC* v. *Sendo, Burman and Tringale*, 91 Civ. 4408 (S.D.N.Y.). Litigation Release No. 12894 (Jun. 27, 1991). Summary judgment was rendered in favor of the Commission in October 1992. Litigation Release No. 13475 (Dec. 17 1992).

conduct of the applicant has been such as not to make it against the public interest or protection of investors to grant such application.

4. As a result of the Final Judgment, NBD and its affiliated persons are subject to the disqualification provisions of section 9(a). Applicants assert that the application of such provisions to applicants is unduly and disproportionately severe. Applicants further assert that NBD's conduct has been such as not to make it against the public interest or protection of investors to grant the requested relief.

5. Applicants state that the conduct that gave rise to the Final Judgment was not in any way related to activities of applicants as investment advisers. Applicants further state that neither applicants' senior management nor anyone involved in the management of investment advisory services on applicants' behalf were involved in the activities giving rise to the SEC Action.

6. Applicants assert that denial of the requested order would cause irreparable injury to applicants and to the Funds' investors because the investors would no longer have the services of their investment adviser. In addition, investors could be harmed by the uncertainty caused by applicants being prohibited from serving as investment advisers to the Funds.

7. NBD has implemented policies and procedures designed to prevent a recurrence by other account holders of the type of conduct that gave rise to the SEC Action. In addition, pursuant to the Final Judgment, NBD has taken or will take the following steps to remedy its conduct and prevent the recurrence of violations:

a. NBD will maintain policies and procedures to ensure that it complies with Regulation U, including policies to ensure that purchases of securities in custodial accounts are not paid for with proceeds from sales of the same securities in the accounts.

b. Within thirty days after the entry of the Final Judgment, NBD will retain an independent consultant who will review NBD's custodial securities clearing operations and who will make such recommendations as are necessary with respect to NBD's policies and procedures to ensure that NBD complies with Regulation U.

c. The consultant will issue a report within sixty days of its retention setting forth its findings and recommendations and will forward the report to the New York Regional Office.[3] Unless the Commission objects to the consultant's recommendations within thirty days, applicants will implement the consultant's recommendations by no later than forty days after the end of the period for the Commission to object.

8. Applicants state that they have not been the subject of prior Commission enforcement proceedings, and have not previously filed an application for relief pursuant to section 9(c) of the Act.

Applicants' Condition

Applicants agree that any order granted by the Commission pursuant to the application will be subject to the condition that NBD will comply with the Final Judgment.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–48 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–M

[3] Applicants state that in a report dated July 12, 1993, an independent consultant concluded that, based on its review, the policies and procedures of the custodian securities clearing operations for non-investment adviser accounts of NBD are reasonably designed to ensure compliance with the requirements of Regulation U. Applicants state that the recommendations of the independent consultant have been implemented.

Issuer Delisting; Notice of Application To Withdraw From Listing and Registration; (Odetics, Inc., Class A Common Stock, $0.10 Par Value; Class B Common Stock, $0.10 Par Value) File No. 1–8762

December 28, 1993.

Odetics, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified securities from listing and registration on the American Stock Exchange, Inc. ("Amex").

The reasons alleged in the application for withdrawing these securities from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on November 18, 1993, to withdraw the Company's Class A and Class B Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market Systems ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Class A and Class B Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the liquidity may be improved through the multiple market maker system; and

(2) The Company believes that the visibility and possibly research coverage may increase with improved liquidity.

Any interested person may, on or before January 20, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–49 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–M

Issuer Delisting; Application To Withdraw From Listing and Registration; (VISX, Inc., Common Stock, $.01 Par Value) File No. 1–10694

December 28, 1993.

VISX, Inc. ("Company") has filed an application with the Securities and Exchange Commission ("Commission"), pursuant to section 12(d) of the Securities Exchange Act of 1934 ("Act") and Rule 12d2–2(d) promulgated thereunder, to withdraw the above specified security from listing and registration on the American Stock Exchange, Inc. ("Amex")

The reasons alleged in the application for withdrawing this security from listing and registration include the following:

According to the Company, its Board of Directors (the "Board") unanimously approved resolutions on October 13, 1993, to withdraw the Company's Common Stock from listing on the Amex and, instead, list such Common Stock on the National Association of Securities Dealers Automated Quotations/National Market System ("NASDAQ/NMS"). According to the Company, the decision of the Board followed a lengthy study of the matter, and was based upon the belief that listing of the Common Stock on NASDAQ/NMS will be more beneficial to its stockholders than the present listing on the Amex because:

(1) The Company believes that the NASDAQ/NMS system of competing market-makers will result in increased visibility and sponsorship for the Common Stock than is presently the case with the single specialist assigned to the stock on the Amex;

(2) The Company believes that the NASDAQ/NMS system will offer the Company's stockholders more liquidity than is presently available on the Amex and less volatility in quoted prices per share when trading volume is slight;

(3) The Company believes that the NASDAQ/NMS system will offer the opportunity for the Company to secure its own group of market-makers and, in doing so, expand the capital base available for trading in its Common Stock; and

(4) The Company believes that firms making a market in the Company's Common Stock on the NASDAQ/NMS system will be inclined to issue research reports concerning the Company, thereby increasing the number of firms providing institutional research and advisory reports.

Any interested person may, on or before January 20, 1994, submit by letter to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the exchanges and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–50 Filed 1–3–94; 8:45 am]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

Paperwork Reduction Act of 1980, As Amended by Public Law 99–591; Information Collection Under Review by the Office of Management and Budget (OMB)

AGENCY: Tennessee Valley Authority.

ACTION: Information collections under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591.

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: TVA Aquatic Plant Management.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households.

Small Businesses or Organization Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses: 2,000.

Estimated Total Annual Burden Hours: 400.

Estimated Average Burden Hours Per Response: .2.

Need For and Use of Information: TVA committed to involving the public in developing plans for managing aquatic plants in individual TVA lakes under a Supplemental Environmental Impact Statement completed in August 1993. This proposed survey will provide a mechanism for obtaining input into this planning process from a representative sample of people living near each lake. The information obtained from the survey will be factored into the development of aquatic plant management plans for Chickamauga, Kentucky, Wheeler, Nickajack and Guntersville Lakes.

John J. O'Donnell,

Vice President, Facilities Services.

[FR Doc. 94–12 Filed 1–3–94; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF VETERANS AFFAIRS

Disease Not Associated With Exposure to Certain Herbicide Agents

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) hereby gives notice that the Secretary of Veterans Affairs, under the authority granted by the Agent Orange Act of 1991, has determined that a presumption of service connection based on exposure to herbicides used in the Republic of Vietnam during the Vietnam era is not warranted for the following conditions: Prostate cancer, peripheral neuropathy, hepatobiliary cancers, bone cancers, female reproductive cancers, renal cancers, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than lung cancer), nasal/nasopharyngeal cancer, skin cancer, gastrointestinal tumors, bladder cancer, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Section 3 of the Agent Orange Act of 1991, Public Law 102–4, 105 Stat. 11 (1991), directed the Secretary to enter into an agreement with the National Academy of Sciences (NAS) to review the scientific evidence concerning the association between exposure to herbicides used in support of military operations in the Republic of Vietnam during the Vietnam era and each disease suspected to be associated with such exposure. Congress mandated that NAS determine, to the extent possible, (1) whether there is a statistical association between the suspect diseases and herbicide exposure, taking into account the strength of the scientific evidence and the appropriateness of the methods used to detect the association; (2) the increased risk of disease among individuals exposed to herbicides during service in the Republic of Vietnam during the Vietnam era; and (3)

whether there is a plausible biological mechanism or other evidence of a causal relationship between herbicide exposure and the suspect disease.

Section 2 of Public Law 102–4 provides that whenever the Secretary determines, based on sound medical and scientific evidence, that a positive association (i.e., the credible evidence for the association is equal to or outweighs the credible evidence against the association) exists between exposure of humans to an herbicide agent (i.e., a chemical in an herbicide used in support of the United States and allied military operations in the Republic of Vietnam during the Vietnam era) and a disease, the Secretary will publish regulations establishing presumptive service connection for that disease. If the Secretary determines that a presumption of service connection is not warranted, he will publish a notice of that determination, which includes an explanation of the scientific basis for that determination.

Although Public Law 102–4 does not define "credible", it does instruct the Secretary to "take into consideration whether the results are statistically significant, are capable of replication, and withstand peer review." Simply comparing the number of studies which report a positive relative risk to the number of studies which report a negative relative risk for a particular condition is not a valid method for determining whether the weight of evidence overall supports a finding that there is or is not a positive association between herbicide exposure and the subsequent development of the particular condition. Because of differences in statistical significance, confidence levels, control for confounding factors, etc., some studies are clearly more credible than others, and the Secretary has given them more weight in evaluating the overall credibility of the evidence concerning specific diseases.

After reviewing approximately 6,420 abstracts of scientific or medical articles and selecting approximately 230 epidemiologic studies for detailed analysis, consulting with outside experts, and conducting public hearings, NAS issued a report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam", on July 27, 1993. The Secretary announced that same day that he had concluded that a positive association exists between exposure to herbicides used in the Republic of Vietnam and the subsequent development of Hodgkin's disease and porphyria cutanea tarda. Proposed regulations were published in the Federal Register on September 28, 1993 (See 58 FR 50528–30). The Secretary also announced that VA would review the remaining findings in the NAS report to determine whether a positive association exists between herbicide exposure and any other conditions. That review has been completed and this notice, pursuant to Public Law 102–4, conveys the Secretary's determination that there is no positive association between herbicide exposure and prostate cancer, peripheral neuropathy, hepatobiliary cancers, bone cancers, female reproductive cancers, renal cancers, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than lung cancer), nasal/nasopharyngeal cancer, skin cancer, gastrointestinal tumors, bladder cancer, brain tumors, and any other condition for which the Secretary has not specifically determined a presumption of service connection is warranted.

The NAS report assigns prostate cancer to a category labeled limited/suggestive evidence of an association, which it defined as meaning there is evidence suggestive of an association between herbicide exposure and a particular health outcome, but that evidence is limited because chance, bias, and confounding could not be ruled out with confidence. Prostate cancer is a very common male genitourinary cancer which shows marked increased prevalence with age. There are statistically significant occupational studies which show no association between prostate cancer and herbicide exposure (e.g., Fingerhut M.A., Halperin W.E., Marlow D.A., Piacitelli L.A., Honchar P.A., Sweeney M.H., Greife A.L., Dill P.A., Steenland K., Suruda A.J. 1991. Cancer mortality in workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. New England Journal of Medicine 324:212–218; Manz A., Berger J., Dwyer J.H., Flesch-Janys D., Nagel S., Waltsgott H. 1991. Cancer mortality among workers in chemical plant contaminated with dioxin. Lancet 338:959–964; Saracci R., Kogevinas M., Bertazzi P.A., Bueno De Mesquite B.H., Coggon D., Green L.M., Kauppinen T., L'Abbe K.A., Littorin M., Lynge E., Mathews J.D., Neuberger M., Osman J., Pearce N., Winkelman R. 1991. Cancer mortality in workers exposed to chlorophenoxy herbicides and chlorophenols. Lancet 338:1027–1032). Some occupational studies have shown a slight elevated risk for prostate cancer among farm and forestry workers (e.g., Burmeister L.F., 1981. Cancer mortality in Iowa farmers: 1971–1978. Journal of the National Cancer Institute 66:461–464; Alavanja M.C., Merkle S., Teske J. Eaton B., Reed B. 1989: Mortality among forest and soil conservationists. Archives of Environmental Health 44:94–101); however, only one study concerning a small sub-set of farmers (Morrison H., Savitz, D., Semenciw R., Hulka B., Mao Y., Morison D., Wigle D. 1993. Farming and prostate cancer mortality. American Journal of Epidemiology 137:270–280) associated the increased risk of prostate cancer among farmers specifically with herbicide exposure. The Morrison study is so recent that it it too early to determine whether its results will be replicated by other research. Accordingly, the Secretary has found that the credible evidence against an association between prostate cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

The NAS report assigns peripheral neuropathy, hepatobiliary cancers, bone cancers, female reproductive cancers, renal cancers, testicular cancer, leukemia, abnormal sperm parameters and infertility, cognitive and neuropsychiatric disorders, motor/coordination dysfunction, metabolic and digestive disorders, immune system disorders, circulatory disorders, respiratory disorders (other than lung cancer), and nasal/nasopharyngeal cancer to a category labeled inadequate/insufficient evidence to determine whether an association exists, which is defined as meaning that the available studies are of insufficient quality, consistency, or statistical strength to permit a conclusion regarding the presence or absence of an association with herbicide exposure.

Peripheral neuropathy can be induced by many common medical and environmental disorders unrelated to herbicide exposure, such as aging, alcoholism, diabetes, and exposure to other toxic chemicals. The last time VA considered this issue, it determined, after receiving the advice of the Veterans' Advisory Committee on Environmental Hazards, that there was sufficient evidence to meet the requirements for a "significant statistical association," the standard in effect at that time, between exposure to herbicides containing dioxin and the subsequent development of peripheral neuropathy under certain circumstances (See 57 FR 2236–38). That conclusion, however, relied heavily on case reports, which are anecdotal and have no statistical significant, and occupational studies such as Singer and colleagues (1982) (Singer R., Moses M., Valciukas J., Lilis R., Selikoff I.J., 1982. Nerve conduction velocity studies of workers employed in the manufacture of phenoxy herbicides. Environmental Research 29:297–311) whose credibility is compromised because they did not apply consistent methods to define a comparison group, determine exposure, evaluate clinical deficits, use standard definitions of peripheral neuropathy, or eliminate confounding variables. The Singer study, for example, excluded individuals with excessive alcohol consumption from the controls but not from the subjects of the study. Other occupational studies, such as Suskind and Herzberg (1984) (Suskind R.R., Hertzberg V.S., 1984. Human health effects of 2,4,5–T and its toxic contaminants. Journal of the American Medical Association 251:2372–2380), which did not have those methodological problems, showed no difference in the incidence of peripheral neuropathy for workers exposed to herbicides and workers not so exposed. Accordingly, the Secretary has found that the credible evidence against an association between peripheral neuropathy and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Hepatobiliary cancers are cancers of the liver and bile duct. There are a variety of risk factors that should be considered by a credible study, including hepatitis B and C, alcohol abuse, cirrhosis, exposure to polychlorinated biphenyl (PCB), and smoking. The relevant studies are few, and have not adequately controlled for these risk factors. A Swedish case control study (Hardell L., Bengtsson N.O., Jonsson U., Eriksson S., Larsson L.G., 1984. Aetiological aspects on primary liver cancer with special regard to alcohol, organic solvents and acute intermittent porphyria: an epidemiological investigation. British Journal of Cancer 50:389–397) showed a relationship between herbicide exposure and the subsequent development of hepatobiliary cancer; however, other studies of similar size (Ronco G, Costa G., Lynge E., 1992. Cancer risk among Danish and Italian farmers. British Journal of Industrial Medicine 49:220–225; Wiklund K., 1983. Swedish agricultural workers: a group with a decreased risk of cancer. Cancer 51:566–568) indicated no relationship. A large occupational study (Fingerhut et al., 1991) and a study of farmers in Denmark and Italy (Ronco et al., 1992) found no relationship. Accordingly, the Secretary has found that the credible evidence against an association between hepatobiliary cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Bone cancers were considered together with joint cancers by NAS. Because of the rarity of bone cancers, most studies have been too small to detect a significant risk. There has not been a consistent finding of bone cancer in exposed groups; the preponderance of studies show no association, and the few studies that demonstrate a positive relationship (Fingerhut et al., 1991; Breslin P., Kang H., Lee y., Burt V., Shepard B.M., 1988. Proportionate mortality study of U.S. Army and U.S. Marine Corps veterans of the Vietnam War. Journal of Occupational Medicine 30:412–419) are small and have large confidence intervals which include one. The small size of the studies and the confidence limitations compromise their significance. Accordingly, the Secretary has found that the credible evidence against an association between bone cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Female reproductive cancers reviewed by NAS include those of the breast, uterus, cervix, ovary, and other genital malignancies. The data related to women and herbicide exposure is extremely limited because few of the studies included women. A large number of the breast cancer studies showed no association. Two studies (Thomas T.L., Kang H., Dalager N., 1991. Mortality among women Vietnam veterans, 1973–1987. American Journal of Epidemiology 134:973–980; Manz et al., 1991) showed an increased risk for breast cancer which was not significant since both studies failed to control for reproductive histories and had methodological problems. Only one small case control study (Donna A., Betta P–G., Robutti F., Crosignani P., Berrino F., Bellingeri D., 1984. Ovarian mesothelial tumors and herbicides: a case control study. Carcinogenesis 5:941–942) showed an association with ovarian cancer, but the confidence intervals were very wide. The larger occupational and farm worker studies all showed significantly lower mortality ratios than expected. Likewise, studies of exposures generally found less uterine and cervical cancer than expected. Accordingly, the Secretary has found that the credible evidence against an association between female reproductive cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

The leather industry, asbestos, cadmium, petroleum products, analgesics, smoking, and obesity have been associated with renal cancers. Studies of renal cancer have generally produced inconclusive results, in some cases because of failure to adequately control for these confounding factors. Only one study of agricultural and forest workers (Alavanja et al., 1989) showed a significantly increased risk of death from renal cancers; however, the preponderance of studies, including the two largest (Wiklund, 1983; Burmeister, 1981), showed either no relationship with renal cancers or increased risk which was not significant. Accordingly, the Secretary has found that the credible evidence against an association between renal cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Major risk factors for testicular cancer are undescended testis and other factors, such as genetic abnormalities, infections, etc., which produce atrophy and dysfunction. In general, occupational studies (Ronco et al., 1992; Wiklund, 1983) have shown no association between herbicide exposure and testicular cancer. Occupational and environmental studies have found either no association or increased risk which was not significant. Studies concerning Vietnam veterans were inconsistent, and in those that found increased risk, that risk was generally not significant. Accordingly, the Secretary has found that the credible evidence against an association between testicular cancer and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Potential evidence for an association between herbicide exposure and leukemia comes primarily from studies of farmers (Ronco et al., 1992; Wigle D.T., Semenciw R.B., Wilkins K., Riedel D., Ritter L., Morrison H.I., Mao Y., 1990. Mortality study of Canadian male farm operators: non-Hodgkin's lymphoma mortality and agricultural practices in Saskatchewan. Journal of the National Cancer Institute 82:575–582) and residents of Seveso, Italy (Bertazzi P.A., Zocchetti C., Pesatori A.C., Guercilena S., Sanarico M., Radice L., 1989b. Ten-year mortality study of

the population involved in the Seveso incident in 1976. American Journal of Epidemiology 129:1187–1200; Bertazzi P.A., Zocchetti C., Pesatori A.C., Guercilena S., Consonni D., Tironi A., Landi M.T., 1992. Mortality of a young population after accidental exposure to 2,3,7,8-tetrachlorodibenzodioxin. International Journal of Epidemiology 21:118–123). The studies of farmers did not control for other confounding exposures (Brownson R.C., Reif J.S., Chang J.C., Davis J.R., 1989. Cancer risk among Missouri farmers. Cancer 64:2381–2385.; Brown L.M., Blair A., Gibson R., Everett G.D., Cantor K.P., Schuman L.M., Burmeister L.F., Van Lier S.F., Dick F. 1990. Pesticide exposures and other agricultural risk factors for leukemia among men in Iowa and Minnesota. Cancer Research 50:6585–6591). When farmers were stratified by suspected herbicide exposure, the incidence of leukemia was generally not elevated. Any elevation appeared to be due to factors other than herbicide exposure, e.g., risk was higher among chicken farmers than wheat farmers (Alavanja M.C., Blair A, Merkle S., Teske J. Eaton B., 1988. Mortality among agricultural extension agents. American Journal of Industrial Medicine 14:167–176). The suggestive evidence of increased risk concerning Seveso, Italy was not significant because of the small number of actual cases in which leukemia was found. Since none of the studies demonstrated a dose-response for any subtype of leukemia, it is not possible to attribute leukemia to herbicide exposure. Accordingly, the Secretary has found that the credible evidence against an association between leukemia and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

The common parameters used to evaluate toxic effects to sperm are number, motility, structure, and morphology. Many chemicals have been implicated in interfering with motility and sperm structure (Wyrobek A.J., Gordon L.A., Burkhart J.G., Francis M.W., Kapp R.W., Letz G., Malling H.V., Topham J.C., Whorton M.D., 1983. An evaluation of human sperm as indicators of chemically induced alterations of spermatogenic function. A report of the U.S. Environmental Protection Agency Gene-Tox Program. Mutation Research 115:73–148). One occupational study (Lerda D., Rizzi R., 1991. Study of reproductive function in persons occupationally exposed to 2,4-dichlorophenoxyacetic acid (2,4–D). Mutation Research 262:47–50) and one study of Vietnam veterans (Air Force Health Study (AFHS), 1992. An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. Reproductive Outcomes. Brooks AFB: USAF School of Aerospace Medicine. AL–TR–992–0900 602 pp.) found no association with decreased sperm count. Another study of Vietnam veterans (Centers for Disease Control (CDC), 1989. Comparison of Serum Levels of 2,3,7,8-Tetrachlorodibenzo-p-dioxin with Indirect Estimates of Agent Orange Exposure Among Vietnam Veterans: Final Report. Atlanta: U.S. Department of Health and Human Services) found lower sperm concentration and reduced sperm motility, but suggested these outcomes may be associated with the Vietnam experience rather than exposure to herbicides. Infertility usually incorporates two concepts: the inability to conceive and the inability to produce live children. Most studies do not take into account the desire for children, contraceptive practices, and other factors influencing fertility. NAS found no occupational or environmental studies examining herbicide exposure and infertility, and veteran studies (Field B., Kerr C., 1988. Reproductive behavior and consistent patterns of abnormality in offspring of Vietnam veterans. Journal of Medical Genetics 25:819–826; AFHS, 1992; Centers for Disease Control (CDC), 1988. Health status of Vietnam veterans. III. Reproductive outcomes and child health. Journal of the American Medical Association 259:2715–2717) do not support an association between herbicide exposure and infertility. Accordingly, the Secretary has found that the credible evidence against an association between abnormal sperm parameters and infertility and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Studies of cognitive and neuropsychiatric disorders are beset by a number of methodologic problems, including exposure measures, the wide variety of "standardized" test instruments used, and the inability to detect or correct for other influences on test results such as emotional state, non-neurologic disease, metabolic conditions, fatigue, medications, or style of the examiner. Because of their failure to adequately control for these confounding factors, these studies lack credibility in assessing the relationship of herbicide exposure to these conditions. Accordingly, the Secretary has found that there is no credible evidence for an association between cognitive and neuropsychiatric disorders and herbicide exposure, and he has determined that a positive association does not exist.

There were no significant studies available to analyze whether an association exists between herbicide exposure and motor/coordination dysfunction. Accordingly, the Secretary has found that there is no credible evidence for an association between motor/coordination dysfunction and herbicide exposure, and he has determined that a positive association does not exist.

Metabolic and digestive disorders (diabetes mellitus, hepatic enzyme abnormality, lipid abnormalities, and ulcers) were also categorized by NAS as health outcomes with inadequate/insufficient evidence to determine whether an association exists. Although NAS found no biologic basis to suspect an association between herbicide exposure and diabetes, abnormal glucose tolerance tests have been reported in three studies (Sweeney M.H., Fingerhut M.A., Arezzo J.C., Hornung R.W., Connally L.B. In press. Peripheral neuropathy after occupational exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin (TCDD).; Air Force Health Study. 1991. An Epidemiologic Investigation of Health Effects in Air Force Personnel Following Exposure to Herbicides. Serum Dioxin Analysis of 1987 Examination Results. Brooks AFB, TX: USAF School of Aerospace Medicine. 9 vols.; Pazderova-Vejlupkova J., Lukas E., Nemcova M., Pickova J., Jirasek L., 1991. The development and prognosis of chronic intoxication by tetrachlorodibenzo-p-dioxin in men. Archives of Environmental Health 36:5–11). While this suggests such an association, the evidence is inconclusive and its credibility is questionable because an abnormal glucose tolerance test is not an absolute indicator of diabetes and none of these studies allowed for the confounding role of obesity. Two other studies found no association (Moses M., Lilis R., Crow K.D., Thornton J., Fischbein A., Anderson H.A., Selikoff I.J., 1984. Health status of workers with past exposure to 2,3,7,8-tetrachlorodibenzo-p-dioxin in the manufacture of 2,4,5-trichlorophenoxyacetic acid: Comparison of findings with and without chloracne. American Journal of Industrial Medicine 5:161–182; Suskind and Hertzberg, 1984), and a number of studies have shown no increased death rates from diabetes (Bertazzi et al., 1989; Cook R.R., Bond G.G., Olson R.A., Ott M.G., 1987. Update of the mortality

experience of workers exposed to chlorinated dioxins. Chemosphere 16:2111–2116; Hennebeger P.K., Ferris B.G. Jr., Monson R.R., 1989. Mortality among pulp and paper workers in Berlin, New Hampshire. British Journal of Industrial Medicine 46:658–664). Accordingly, the Secretary has found that the credible evidence against an association between diabetes and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive associations does not exist.

The studies related to hepatic enzyme abnormality did not demonstrate an association with liver disease, and confounding factors (alcohol abuse, cirrhosis, hepatitis, and other toxic chemicals) were not ruled out. Studies showing lipid abnormalities do not control for the confounding variables of obesity and genetic factors, and no medical significance of the modest and variable increases has been demonstrated. The risk of gastric ulcers in exposed populations has not been sufficiently studied to establish an association with herbicide exposure. Only one study (Suskind and Hertzberg, 1984) indicates any increase, and in that study it is difficult to rule out the many factors (e.g., alcoholism, non-steroidal anti-inflammatory drugs, and H. pylori infection) known to be associated with ulcers. Accordingly, the Secretary has found that there is no credible evidence for an association between metabolic and digestive disorders (other than diabetes) and herbicide exposure, and he has determined that a positive association does not exist.

The available data deal with two categories of immune system disorders: immune modulation and autoimmunity. Many immune parameters have been studied; however, few show a relationship to herbicide exposure. Most studies address such a wide range of immune parameters that it is likely that at least some of the positive results are due to chance alone, which undermines the credibility of those studies. Furthermore, the clinical meaning, i.e., the relationship of immune disorders to disease, is unclear. Other studies (e.g., Pocchiari F., Silano V., Zampieri A., 1979. Human health effects from accidental release of tetrachlorodibenzo-p-dioxin (TCDD) at Seveso, Italy. Annals of the New York Academy of Sciences 320:311–320; Ghezzi I., Cannatelli P., Assennato G., Merlo F., Mocarelli P., Brambilla P., Sicurello F., 1982. Potential 2,3,7,8-tetrachlorodibenzo-p-dioxin exposure of Seveso decontamination workers. A controlled prospective study. Scandinavian Journal of Work, Environment, and Health 8:176–179) found no relationship between immune system disorders and herbicide exposure. Accordingly, the Secretary has found that the credible evidence against an association between immune system disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

Most occupational studies concerning circulatory disorders (e.g., Moses et al., 1984; Suskind and Hertzberg, 1984) showed no increased mortality or morbidity from circulatory disorders after herbicide exposure. The studies of the residents of Seveso, Italy (Bertazzi, P.A., Zocchetti C., Pesatori A.C., Guercilena S., Sanarico M., Radice L., 1989a. Mortality in an area contaminated by TCDD following an industrial incident. Medicine Del Lavoro 80:316–329; Bertazzi et al., 1989b) showed some increased risk of mortality in the first five year follow-up; however, these studies had a number of technical problems: they were not specific to circulatory disease and did not control for the confounding variables of smoking, diabetes, and hypertension. Veteran studies (e.g., CDC, 1988) have suggested that any increase in heart disease may be associated with the Vietnam experience rather than herbicide exposure, and most of these studies did not adjust for confounding variables. Accordingly, the Secretary has found that the credible evidence against an association between circulatory diseases and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS examined studies that covered a wide variety of respiratory disorders (e.g., chronic bronchitis, asthma, pleurisy, pneumonia, and tuberculosis), other than respiratory cancer. Studies of individuals exposed in occupational settings revealed no increase in mortality from respiratory disease (Coggon D., Pannett B., Winter P., 1991. Mortality and incidence of cancer at four factories making phenoxy herbicides. British Journal of Industrial Medicine 48:173–178; Blair A., 1983. Lung cancer and other causes of death among licensed pesticide applicators. Journal of the National Cancer Institute 71:31–37; Alavanja et al., 1989; Coggon D., Pannett B., Winter P.D., Acheson E.D., Bonsall J., 1986. Mortality of workers exposed to 2-methyl—chlorophenoxyacetic acid. Scandinavian Journal of Work, Environment, and Health 12:448–454). Environmental exposure studies similarly showed no significant differences in mortality due to respiratory disease (Bertazzi et al., 1989a,b). Also, mortality studies of Vietnam veterans generally found no increased risk.

Morbidity data are generally difficult to evaluate because of methodological problems and because studies focused on symptoms, lung function tests and x-ray interpretation rather than disease (e.g., Calvert et al.; 1991; Pollei S., Mettler F.A. Jr., Kelsey C.A., Walters M.R., White R.E., 1986. Follow-up chest radiographs in Vietnam veterans: Are they useful? Radiology 161:101–102). One occupational study (Calvert G.M., Sweeney M.H., Morris J.A., Fingerhut M.A., Horaung R.W., Halperin W.E., 1991. Evaluation of chronic bronchitis, chronic obstructive pulmonary disease, and ventilatory function among workers exposed to 2,3,7,8-tetrachlorodibenzo-p-dioxin. American Review of Respiratory Disease 144:1302–1306) showed no excess morbidity; another occupational study (Suskind and Hertzberg, 1984) found increased symptomatology of respiratory disease, but did not adequately control for the confounding factor of age. Accordingly, the Secretary has found that the credible evidence against an association between respiratory disorders and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS noted an association between nasal cancers and occupational exposure to nickel and to chromates. Exposure to wood dust is also a risk factor for nasal cancers; smoking and exposure to formaldehyde may increase the risk associated with wood dust. There is also evidence that leather workers have an increased risk for nasal cancers, and that there is an association between chronic nasal diseases and consumption of salt-preserved foods. Most studies (e.g., Wiklund, 1983; Ronco et al., 1992) showed inconclusive results, and often did not control for confounding variables. Two other epidemiological studies based on the same three cases (Saracci et al., 1991; Coggon D., Pannett B., Winter P.D., Acheson E.D., Bonsall J., 1986. Mortality of workers exposed to 2 methyl-4-chlorophenoxyacetic acid. Scandinavian Journal of Work, Environment, and Health 12:448–454) and one case-control study (Hardell L., Johansson B., Axelson O., 1982. Epidemiological study of nasal and nasopharyngeal cancer and their relation to phenoxy acid or chlorophenol exposure. American Journal of Industrial Medicine 3:247–257) showed increased risk associated with herbicide exposure; however, that risk was not statistically

significant, which diminishes the importance of these studies. Accordingly, the Secretary has found that the credible evidence against an association between nasal/nasopharyngeal cancers and herbicide exposure outweighs the credible evidence for such an association, and he has determined that a positive association does not exist.

NAS also reviewed the literature with respect to possible associations between herbicide exposure and various reproductive effects, i.e., spontaneous abortion, birth defects, neonatal infant deaths and stillbirths, low birth weight, and childhood cancers in offspring. These reproductive effects were categorized by NAS as health outcomes with inadequate/insufficient evidence to determine whether an association exists because the studies were of inadequate statistical power for specific birth defects, contained a limited sample size, and/or failed to exclude bias and chance. It should be noted that to compensate a veteran for these conditions is beyond VA's authority (See title 38, U.S.C.) and would require enabling legislation.

NAS assigns four diseases or categories of diseases to a category labeled limited/suggestive evidence of no association with herbicide exposure which it defined as meaning that several adequate studies, covering the full range of levels of exposure that humans are known to encounter, are mutually consistent in not showing a positive association between herbicide exposure and the particular health outcome at any level of exposure. The conditions include skin cancer, gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer), bladder cancer, and brain tumors. There were many credible studies (See NAS Report, Chapter 8) concerning all of these conditions that showed no association or a negative association with herbicide exposure. Accordingly, the Secretary has found that there is no credible evidence for an association between skin cancer, gastrointestinal tumors (stomach cancer, pancreatic cancer, colon cancer, and rectal cancer), bladder cancer, and brain tumors and herbicide exposure, and he has determined that a positive association does not exist.

NAS reviewed approximately 6,420 abstracts of scientific or medical articles as an integral part of the process that resulted in its report, entitled "Veterans and Agent Orange: Health Effects of Herbicides Used in Vietnam." From these articles, approximately 230 epidemiologic studies, including studies of people exposed to herbicides in occupational and environmental settings as well as studies of Vietnam veterans, were chosen for detailed review and analysis. In our judgment, the comprehensive review and evaluation of the available literature which NAS conducted in conjunction with its report has permitted us to identify all conditions for which the current body of knowledge supports a finding of an association with herbicide exposure. Accordingly, the Secretary has determined that there is no positive association between exposure to herbicides and any other condition for which he has not specifically determined that a presumption of service connection is warranted.

Dated: December 22, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94-73 Filed 1-3-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 2
Tuesday, January 4, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 6, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Closed to the Public.

MATTERS TO BE CONSIDERED: Compliance Status Report.

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504-0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207 (301) 504-0800.

Dated: December 29, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93-32111 Filed 12-30-93; 2:20 pm]

BILLING CODE 6355-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, January 10, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-32109 Filed 12-30-93; 11:53 am]

BILLING CODE 6210-01-P-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 3, 10, 17, and 24, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 3—Tentative

There are no meetings scheduled for the Week of January 3.

Week of January 10—Tentative

Monday, January 10

10:30 a.m.
Briefing on Status of NRC's Agreement States Program (Public Meeting)
(Contact: Richard Bangart, 301-504-3340)
2:00 p.m.
Briefing on NRC Research Program on Low level Waste (Public Meeting)
(Contact: Nick Costanzi, 302-492-3760)
3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 17—Tentative

Wednesday, January 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 24—Tentative

Monday, January 24

9:30 a.m.
Briefing on Final Report of Regulatory Review Task Force (Public Meeting)
(Contact: Frank Gillespie, 301-504-1275)
2:00 p.m.
Briefing on Options for Agreement States Compatibility Policy (Public Meeting)
(Contact: Cardelia Maupin, 301-504-2312)

Tuesday, January 25

10:00 a.m.
Briefing on Status of TVA Nuclear Programs (Public Meeting)
1:00 p.m.
Briefing on Activities of the Center For Nuclear Waste Regulatory Analyses (CNWRA) and Systematic Regulatory Analyses of the HLW Program (Public Meeting)
(Contact: Malcolm Knapp, 301-504-3324)

Wednesday, January 26

10:00 a.m.
Briefing by GE on Status of ABWR Application for Design Certification (Public Meeting)
11:30
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by NARUC Nuclear Waste Program Office (Public Meeting)

Thursday, January 27

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Bill Bateman, 301-504-1711)

Friday, January 28

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)
(Contact: Dennis Crutchfield, 301-504-1199 or Richard Borchardt, 301-504-1118)

Note: Affirmation are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504-1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504-1661.

Dated: December 29, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-32108 Filed 12-30-93; 8:15 am]

BILLING CODE 7590-01-M

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federal register

Tuesday
January 4, 1994

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Parts 20 and 101
Food Labeling; General Requirements; Final Rules and Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 93N-0478]

RIN 0905-AD08 and 0905-AB68

Dietary Supplements; Establishment of Date of Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is publishing this final rule to establish July 1, 1995, as the date on which it will apply the mandatory nutrition labeling and nutrient content claims provisions of the Federal Food, Drug, and Cosmetic Act (the act) to dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (hereinafter referred to as dietary supplements). This action is in accordance with the Dietary Supplement Act of 1992 (the DS act) and the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), which allows the Secretary of Health and Human Services (the Secretary) (and, by delegation, FDA) to delay, for up to 1 year, the date on which FDA applies those provisions to foods (including dietary supplements) if the agency finds that compliance with them would cause "undue economic hardship."

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Laina M. Bush, Center for Food Safety and Applied Nutrition (HFS-726), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5271.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, President Bush signed into law the 1990 amendments (Pub. L. 101-535). This statute adds to the Federal Food, Drug, and Cosmetic Act (the act) among other sections, section 403(q) (21 U.S.C. 343(q)), which makes nutrition labeling mandatory for most foods, and section 403(r)(2) (21 U.S.C. 343(r)(2)), which gives FDA authority to define nutrient content claims.

In accordance with the 1990 amendments, FDA published proposed rules on November 27, 1991 (56 FR 60366 *et seq.*), and final rules on January 6, 1993 (58 FR 2066 *et seq.*) implementing, among other things, the sections of the act on mandatory nutrition labeling and nutrient content claims, among other things, for foods in conventional food form. Because of the DS act, the final regulations did not include provisions on the nutrition labeling of, or nutrient content claims for, dietary supplements.

The DS act (Pub. L. 102-571) was signed into law on October 6, 1992. In section 202(a)(1), the DS act established a moratorium until December 15, 1993, on the implementation of the 1990 amendments with respect to dietary supplements that are not in the form of conventional food. Section 202(a)(2) of the DS act required the Secretary (and, by delegation, FDA) to issue new proposed regulations that are applicable to dietary supplements no later than June 15, 1993, and final regulations by December 31, 1993. On June 18, 1993, FDA issued proposed regulations in response to this provision of the DS act (58 FR 33700 *et seq.*). Elsewhere in this issue of the **Federal Register**, FDA is issuing the final rules.

Under section 10(a)(1)(A) and (B) of the 1990 amendments (21 U.S.C. 343 note), section 403(q) and (r)(2) of the act are effective 6 months after the promulgation of final regulations or after the date that proposed regulations are considered to be final regulations. Thus, because the final regulations on the nutrition labeling of, and nutrient content claims for, dietary supplements are being issued on January 4, 1994, section 403(q) and 403(r)(2) will be effective with respect to dietary supplements July 5, 1994. However, section 10(a)(3)(B) of the 1990 amendments provides that if the Secretary and, by delegation, FDA " * * * finds that compliance with sections 403(q) and 403(r)(2) of such Act would cause an undue economic hardship, the Secretary may delay the application of such sections for no more than one year."

FDA found such "undue economic hardship" existed for the conventional food industry in a final rule published on January 6, 1993 (58 FR 2070), entitled "Food Labeling: Establishment of Date of Application" (hereinafter called the date of application final rule). In that document, FDA delayed the application of section 403(q) and (r)(2) for 1 year, until May 8, 1994.

In the proposed rules on nutrition labeling (58 FR 33715 at 33725) and nutrient content claims (58 FR 33731 at 33748) for dietary supplements, FDA asked for comment on whether a similar delay in application of section 403(q) and (r)(2) would be appropriate for dietary supplements. The agency gave interested persons until August 17, 1993, to comment on whether the 6-month proposed compliance date would cause "undue economic hardship." FDA received approximately 2,000 letters of which approximately one-third contain one or more comments concerning either the date of application or other economic issues from consumers, consumer advocacy organizations, health care professionals, professional societies, universities, manufacturers, distributors, retailers, trade associations, and State governments. A discussion of the agency's decision, and a summary of the comments, concerning the delay of the date of application and other economic issues and the agency responses follow.

II. Undue Economic Hardship

A. Comments

Several comments requested that FDA extend the date that the nutrition labeling and nutrient content claim provisions of the act will be applied to dietary supplements. Most comments requested an additional year, for a total compliance period of 18 months. One comment proposed a delay of at least 9 months. The comments reported many examples of the difficulties in meeting a 6-month compliance period. Several comments stated that the amount of time needed to redesign labels would far exceed the resources available. One comment reported that the insufficient time allowed to revise labels would result in some products being removed from the market temporarily while new labels are being prepared. An additional comment requested the extension because of the difficulties in the logistics of revising existing labels, printing, packaging, and exhausting existing label supplies with a short compliance period.

Other comments that requested a delay cited the savings that could be gained with insignificant loss of benefits. One comment reported that inventory disposal could be reduced by 85 percent with an 18-month compliance period. Another comment stated that FDA's cost estimate of $20 million represents 1 percent of industry sales but a much larger percentage of industry profits. The comment explained that extending the compliance period would reduce the costs of compliance and, therefore, minimize any reduction in profits.

One comment requested a delay because there will be additional costs for compliance with the upcoming United States Pharmacopoeia (USP) standards. The comment stated that resources could be better spent if these compliance efforts were completed concurrently rather than consecutively

One comment requested a delay because of the overlap with the final months of the extended period that was allowed for foods in conventional food form. The comment reported that many conventional food manufacturers and their label suppliers are rushing to produce final labels for such foods. The comment said that supplement manufacturers will not be able to secure revised labels for their products from label manufacturers in time to meet a 6-month deadline because of the competition for label manufacturers' resources.

The agency agrees that it will be difficult for dietary supplement manufacturers to comply within 6 months, especially in light of the fact that label suppliers are currently stressed with label orders from manufacturers of food in conventional food form who are attempting to meet the May 1994 deadline for complying with the 1990 amendments. The agency also agrees that an extension of the date of application would result in significant savings for the industry. Administrative costs, printing costs, and label inventory disposal costs are all dependent on the length of the compliance period. The agency has determined that the costs of the regulations could be reduced with an extension.

The agency made a determination in the date of application final rule that the 1990 amendments will result in an undue economic hardship on manufacturers of food products in conventional food form (58 FR 2070 at 2075). The agency notes that the costs of compliance for manufacturers of foods in conventional food form represent less than 1 percent of sales. The costs of compliance with a 6-month compliance period for dietary supplements is approximately 2 percent of sales. Therefore, if the agency does not extend the date of application for dietary supplement manufacturers, that segment of the food industry will be asked to bear higher relative costs than the agency determined were reasonable for foods in conventional food form.

For all these reasons, the agency determines that the congressionally mandated date of application will result in an undue economic hardship for dietary supplement manufacturers.

B. The Agency's Determination of a Date of Application of Section 403(q) and (r)(2) of the Act as Applied to Dietary Supplements

The agency has determined that undue economic hardship will result if the dietary supplement industry is required to comply with section 403(q) and (r) of the act within 6 months. As will be shown in the following discussion on the economic impact, a 6-month delay (total of 12 months to comply) in the application of section 403(q) and (r)(2) to dietary supplements would result in over 40 percent savings of compliance cost, and a 12-month delay (total of 18 months to comply) would result in over 50 percent savings. Given the large disparity in costs of compliance for manufacturers of dietary supplements if they are required to comply in 6 months, as compared to those that are being borne by manufacturers of food in conventional form, FDA finds that it should tailor the delay to reduce the costs for dietary supplement manufacturers and thus to minimize the disparity. Therefore, the agency concludes that it is appropriate to delay the application date for dietary supplements for 12 months, as it did for foods in conventional food form. Thus, the agency intends to apply section 403(q) and (r)(2) to foods labeled after July 1, 1995. The agency fully expects that some dietary supplement firms will be able to comply before this date once the pressure on printing labels for foods in conventional food form is eased after May 8, 1994. Therefore, consumers can expect to begin enjoying the health benefits of the label changes prior to July 1, 1995.

III. Economic Impact

Some comments agreed with the agency's estimates of the costs of relabeling. Many comments were directed at issues covered by the advance notice of proposed rulemaking (ANPRM), which addressed the safe use of dietary supplements (58 FR 33690, June 18, 1993). Several comments stated that the three proposals that the agency issued (there was a proposed rule on health claims (58 FR 33700 in addition to the proposals on nutrition labeling and nutrient content claims)) and the ANPRM should be considered one proposal. These comments stated that the economic impact of the four documents would exceed $100 million and would be considered a major rule under Executive Order 12291.

The agency disagrees. Executive Order 12291 did not apply to advance notices. Therefore, no analysis of that document was required by that Executive Order. (FDA has not taken any action with respect to the ANPRM that would make it subject to Executive Order 12866). The three proposals are concerned with the labeling of dietary supplements, while the ANPRM is concerned with other issues. Thus, the costs and benefits associated with regulatory alternatives described in the ANPRM can be separated from those resulting from the three proposals on labeling actions. The agency has evaluated the labeling actions together, however, because it is not possible to separate the impacts of the various labeling actions. Finally, FDA is taking no further action with respect to the ANPRM at this time.

A. Scope

1. Several comments objected to the agency's estimate of the number of products that will be affected by the nutrition labeling and nutrient content claims rulemakings. Two comments stated that there are 25,000 products that are potentially affected by the rules, rather than the agency's estimate of 5,000 products. Another comment stated that there are approximately 25,000 herbal products alone that would be required to be tested and relabeled. Another comment objected to the agency's estimate because the agency failed to include amino acids, herbal products, and other dietary supplements that have no recognizable food function.

In its analysis of the proposals, FDA stated that there could be as many as 25,000 products that could be considered to be dietary supplements. The agency reduced that number to 5,000, an estimate of the number of vitamin and mineral supplement products, because: (1) Many products that contain herbs or other similar nutritional substances would not be subject to the nutrition label requirements because they do not contain the nutrients that must be declared, and (2) some products marketed as dietary supplements would be unaffected by the 1990 amendments because they bear drug claims that make them subject to the drug provisions of the act. For these reasons, it is clear that not all 25,000 products would be required to be tested or relabeled in response to the regulations implementing the 1990 amendments.

However, FDA is convinced by the comments that some herbal products and other dietary supplements might need to be tested and relabeled as a result of these regulations. FDA is unable to determine exactly how many of those products would be covered by the food provisions of the act rather than by the drug provisions. Therefore, the agency's final analysis of the rules is based on a range of products between 5,000 and 25,000.

2. Several comments objected to the agency's estimate that approximately 150 firms will be affected by the regulations. Some comments stated that approximately 500 firms would be affected by the proposed rules if made

final. Another comment stated that 250 herb manufacturers and 150 manufacturers of dietary supplements of vitamins and minerals would be affected. Another comment objected to the agency's source for the number of firms. The comment explained that Dunn and Bradstreet's Electronic Yellow Pages is primarily a listing for public companies, and the majority of supplement manufacturers are privately-held corporations. The comment suggested that conservative estimates suggest that there are a minimum of 150 herb companies alone.

The agency has confirmed that the Electronic Yellow Pages covers both public and private organizations of all types and sizes. The agency admits that the Electronic Yellow Pages is not a perfect source for the number of firms, but FDA believes that it is not entirely inadequate. The major difference between the agency's estimate and those of the comments is the inclusion or exclusion of manufacturers herbal products and products containing other similar nutritional substances. As stated in the response to the previous comment, the agency has determined that at least some of these types of dietary supplement products may be subject to the nutrition labeling provisions. However, because many of these products do not contain significant amounts of nutrients, many manufacturers will not be faced with the necessity of relabeling their products. For these reasons, the agency believes that its estimate of the number of firms may be low, but that to include all herbal products manufacturers and manufacturers of other similar nutritional substances would inflate the estimate. However, the agency has no basis on which to arrive at the actual number of firms. Therefore, in its final analysis, the agency is estimating the total number of firms affected to be between 150 and 300.

B. Costs

3. Several comments disagreed with the agency's estimate of administrative costs. The comments stated that actual administrative expenses would be at least $1,000 per label. Administrative expenses, according to the comments, are associated with the creation or redesign, proofreading, legal review, pricing, bid review, and retraining of customer service and sales staff. One comment estimates that administrative costs to one firm would be 80 to 120 hours of executive time, or approximately $2,500 to $3,750.

FDA recognizes that the factors that determine administrative costs are very complicated. The agency's estimates of administrative costs are based on a compliance cost model for food labeling created for FDA by Research Triangle Institute (RTI) (Ref. 1). According to RTI, many firms estimate that administrative effort would be twice as high for a 6-month compliance period as for a 12-month compliance period. In the dietary supplement proposals, FDA estimated that for a 6-month compliance period, manufacturers of dietary supplements will incur administrative costs of $850 per firm. The range of administrative cost estimates submitted in the comments was broad and there were no identifiable patterns to the estimates given. Although FDA acknowledges that its assumptions may have resulted in underestimates, the comments did not provide enough detailed information to permit FDA to evaluate the administrative cost estimates that they submitted. Therefore, the agency is not altering its original estimates based on these comments.

The agency has determined that total administrative costs for a 6-month compliance period are between $130,000 and $250,000, depending on the exact number of firms affected by the regulations. As determined by the contractor's study (Ref. 1), administrative costs are lower with longer compliance periods. A 1-year compliance period results in administrative costs of between $65,000 and $125,000. An 18-month compliance period results in administrative costs of between $50,000 and $94,000.

4. One comment stated that the requirement that herbal dietary supplements be required to bear nutrition labeling would mandate that all herbal products be assayed for their nutrient content. The comment further explained that testing for 12 nutrients would cost $588 per product for a total of $15 million for 25,000 products.

The agency agrees that to the extent that herbal product manufacturers will provide nutrition labeling, herbal products will need to be assayed for their nutrient content. The agency notes, however, that many herbs do not contain significant amounts of the nutrients that must be listed in the nutrition label, and that this fact is determinable from reference works without testing. Thus, these herbs will not need to be tested. Many comments admitted that, in general, herbal products do not contain significant amounts of nutrients and are not consumed for their nutrient content. However, some herbal products and combination products will require nutrient testing.

In the proposals, the agency assumed that dietary supplements of vitamins and minerals will not undergo any additional testing as a result of the nutrition labeling requirements. Comments did not object to this assumption.Therefore, in its final analysis, the agency is estimating that as many as 20,000 products may undergo testing once every 5 years for a total discounted analytical cost over the next 20 years of $33 million (7 percent discount rate).

5. One comment agreed, and several comments disagreed, with the agency's estimate of label printing and redesign costs. The comments that disagreed stated that printing and redesign costs would be at least $800 to $1,200 per label. One comment stated that the cost of redesigning and printing each label would be 2 hours of desktop redesign, $20 for linotronic service, and $600 for new plates, for a total of $750 per label

One comment objected to FDA's assumption that label revisions for supplements are less comprehensive than revisions for foods in conventional food form. The comment states that incorporating the "Nutrition Facts" section plus the ingredient list will necessitate complete redistribution of information on many labels.

In the analysis of the proposed rules, the agency estimated that, for a 6-month compliance period, printing and redesign costs would be approximately $1,000 per label. The comments do not suggest that the agency's estimate is incorrect. Therefore, the agency's final analysis of printing costs is based on a per label cost of $1,000 for each of between 15,000 and 75,000 labels, or between $15 million and $75 million. According to the RTI study, the length of the compliance period determines a firm's ability to combine planned label changes with mandated changes. Therefore, incremental labeling and redesign activities are less costly with lengthier compliance periods. If the agency extended the compliance period by only 6 months, printing and redesign costs would be between $7.5 million and $37.5 million. The 1-year extension that the agency is providing will reduce printing and redesign costs to between $6 million and $28 million.

6. Several comments provided data on label inventories that would be subject to disposal. These comments stated that a 4- to 6-month supply of product labels is common, resulting in $3.4 million to $5.1 million of label inventory that will be discarded. Another comment suggested that its dietary supplement label and box inventory disposal costs would be $325,000 with a 6-month compliance period, $200,000 with a 1-year compliance period, and $50,000 with an 18-month compliance period. One comment estimated the cost of discarding noncompliant labels would be approximately $30,000 for one firm.

The estimates provided by the comments are in line with the agency's preliminary estimate of label inventory disposal costs. Therefore, the agency is not changing its estimate based on the comments. The cost of label inventory disposal for a 6-month compliance period is between $5 million and $25 million, depending on the number of products affected. According to the RTI study and comments, lengthier compliance periods allow firms to use up more existing label supplies, thus reducing inventory disposal costs. According to data submitted in response to the Regulatory Impact Analysis document that was published in the **Federal Register** of November 27, 1991 (56 FR 60366), and adjusted to reflect the range of products affected, if the agency had extended the compliance period for an additional 6 months, inventory disposal costs would be between $3 million and $13 million. The 18-month compliance period that the agency is providing will result in costs of between $2 million and $9 million.

7. Several comments disagreed with the agency's estimate of the cost of inventory disposal. The comments argued that firms would dispose of finished product in addition to labels. The comments stated that typical product costs for dietary supplements would result in an inventory value for the disposal of 5,000 products of between $48 million and $73 million. One firm estimated its own cost of discarding noncompliant inventory would be approximately 30 percent of finished goods inventory, or about $45,000.

Because these proposals cover only the labeling of dietary supplements, the agency does not agree that there would be any reason for firms to dispose of any product inventory. Nor did the comments provide an explanation as to why it would be necessary to do so. Moreover, any product packaged and labeled in accordance with law before the date that FDA begins to apply the section 403(q) and (r) of the act will not need to be relabeled. Therefore, the agency is not changing its estimate based on this comment.

8. Several comments argued that the agency failed to consider the cost of discarding and redesigning catalogs, product literature, and advertising. The comments suggested that these costs would be at least $40,000 per firm, or $20 million for all firms.

The comments did not provide an explanation as to why it would be necessary to discard and redesign catalogs and product literature. The agency does agree that, to the extent that these materials are labeling, they must comply with the nutrient content and health claims provisions of the act.

However, the agency believes that many of the claims made in these types of materials are drug claims or structure-function claims, not health claims, and therefore are not subject to these rules. The comments did not present evidence to support a different finding. Consequently, the agency has no basis on which to conclude that extensive catalog and product literature redesign will be required by these final rules. Therefore, the agency is not changing its estimate based on these comments.

9. Several comments argued that the agency failed to consider the cost of relabeling of product returned from the retailer. The comments stated that it is common practice in the supplement industry to accept returns from retailers in the event of a label change. Industry firms would be faced with a number of products returned from retailers unwilling to carry products with older labels. The comments estimated the cost of processing returns, disposing of product, and applying for full credit at $48 million.

Any product labeled before the applicability date will not need to comply with the new nutrition labeling and nutrient content claim provisions. Therefore, no product that is labeled in accordance with law before July 1, 1995, need be returned, relabeled, or destroyed as a result of these new provisions. However, FDA agrees that to the extent that product is returned, the cost of disposing of product returned from retailers because of "old" labeling should be considered a cost of these regulations. However, the agency is unpersuaded of the magnitude of the cost and is unsure of the extent to which "old" product will be returned. The comments provided insufficient information with which the agency could estimate these costs. Therefore, the agency is not changing its estimates based on this comment.

10. Several comments expressed concern that the rules may cause the loss of many thousands of jobs, the closing of many firms, and the loss of products from the marketplace. According to one comment, the proposed rules would cause the loss of more than $10 million in sales and as many as 100 jobs in one company. Another comment stated a belief that 2 million Americans will lose their jobs as a result of the regulations. The comments did not provide any specific information as to how the regulations would cause the loss of jobs and products.

The agency agrees that the inability to make certain nutrient content or health claims may reduce the marketability of certain products and perhaps lead to a company's decision to remove a product from the marketplace. However, these rules affect only labeling; they do not require any supplement to be removed from the market. Moreover, the agency does not believe that many products are currently making health claims, as distinguished from drug claims or structure-function claims. Therefore, the agency has no basis to find that these regulations will cause the problems described in these comments. The agency believes that there is every reason to expect that the continued marketing of the vast majority of dietary supplement products will be unaffected by these regulations.

11. In the analysis of the proposed rules, the agency recognized that the rules could have an adverse impact on small businesses. Most of the costs associated with labeling regulations are fixed costs, which are typically more burdensome for small firms than for large firms because of the smaller sales base on which to spread costs.

One comment stated that the small business exemption was inadequate because small firms would not be able to avoid complying with the regulations because of competitive pressure. Another comment stated that the proposals would be catastrophic to small business owners and workers.

FDA notes that the Nutrition Labeling and Education Act Amendments of 1993, which were enacted on August 13, 1993, provide relief for small businesses from the requirements of section 403(q) of the act. The agency believes that the new exemption for small businesses will significantly mitigate any negative impact on small firms.

12. One comment stated that the proposed rule regarding health claims will cause pain, suffering, and death that would not occur were labeling and advertising allowed to include health claims. The comment was unspecific as to why these results would occur.

If the absence of health claims causes pain, suffering, or death, these regulations provide any party with a vehicle for submitting data to support a particular health claim for agency review. Therefore, the agency does not agree with this comment.

C. Benefits

13. One comment stated that the regulations will provide benefits by

preventing consumers from wasting money on unnecessary and ineffective dietary supplements. Another comment stated that if someone wanted to waste a little money taking too many vitamins or supplements in the hope of avoiding serious illness and the need for harsh drugs, they should be allowed to do so.

Because there are sources other than labeling that provide information about the potential uses of dietary supplements, the agency believes that limiting the use of claims on labels or labeling will be of limited effect in preventing consumers from purchasing supplements that they erroneously believe will prevent serious illness. However, these regulations will ensure that the labels of dietary supplements will provide full nutrition labeling to help consumers to maintain healthy dietary practices, and they will help to ensure that any nutrient content or health claims made in the labeling of these products are scientifically valid, truthful, and not misleading. For these reasons, these regulations will provide a significant benefit.

14. Some comments stated that the cost of providing nutrition information on the labels of dietary supplements of herbs would greatly outweigh any clear public benefit. The comments explained that herbs do not contain significant amounts of the core nutrients and are not normally consumed for their nutritional value. Therefore, the value to consumers of including nutrition labeling on herb products is insignificant.

The agency agrees with this comment. However, the agency notes that those products that do not contain significant amounts of the 14 mandatory nutrients will generally not be required to bear nutrition labeling. Therefore, although there will be no clear public benefit, there will also be no cost.

D. Summary of the Economic Impact

FDA has examined the economic implications of the final rules amending on nutrition labeling, nutrient content claims, and health claims for dietary supplements as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires analyzing options for regulatory relief for small businesses. FDA finds that these final rules on dietary supplements, taken together, are not significant as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the final rules will not have a significant impact on a substantial number of small businesses.

The agency has reviewed the comments and has determined that the costs of compliance associated with the 18–month compliance period provided by the agency include administrative costs of between $50,000 and $100,000, analytical costs of between $0 and $33 million, printing and redesign costs of between $6 and $28 million, and label inventory disposal costs of between $2 and $9 million. Total discounted costs of the final regulations, taken together are between $8 and $60 million (7 percent discount rate). If the agency did not extend the application of the rules, total discounted costs would be between $20 and $133 million for a 6-month compliance period, or between $11 and $84 million for a 1-year compliance period.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(11) that this action is of a type that does not individually or cumulatively have a significant impact on the human environment. Therefore, neither an environmental impact statement is required.

V. Reference

The following reference has been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. RTI, "Compliance Costs of Food Labeling Regulations," FDA Contract No. 223–87–2097, Project Officer—Richard A. Williams, Jr., Research Triangle Park, NC, December 1990.

VI. Conclusion

For the reasons stated above, FDA hereby establishes July 1, 1995, as the date on which it will apply the mandatory nutrition labeling and nutrient content claims provisions of the act to dietary supplements.

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs

Donna E. Shalala,

Secretary of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N–135D]

RIN 0905–AD96

Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to establish requirements for the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (hereinafter referred to as dietary supplements). This action is in response to certain provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act).

EFFECTIVE DATE: July 5, 1995.

FOR FURTHER INFORMATION CONTACT: Susan Thompson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5587.

SUPPLEMENTARY INFORMATION:

I. Background

In the Federal Register of June 18, 1993 (58 FR 33715), FDA published a proposed rule entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances" (hereinafter identified as "the nutrition labeling proposal for dietary supplements") to establish regulations on the nutrition labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances. A document correcting various editorial errors in that proposed rule was published in the Federal Register of July 27, 1993 (58 FR 40104).

The proposed rule was issued to implement the 1990 amendments (Pub. L. 101-535), which were signed into law on November 8, 1990. This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is that it added section 403(q) to the act (21 U.S.C. 343(q)). This section requires that most foods bear nutrition labeling.

In response to section 403(q) of the act, FDA published a proposed rule on nutrition labeling in the Federal Register of November 27, 1991 (56 FR 60366 at 60393). That document proposed, among other things, a regulation specifically for the nutrition labeling of dietary supplements of vitamins or minerals (proposed § 101.36). It also proposed to make the nutrition labeling of dietary supplements of herbs or other similar nutritional substances subject to § 101.9 (21 CFR 101.9), the general regulation on nutrition labeling. This distinction reflects section 403(q)(5)(F) (formerly section 403(q)(5)(E)) of the act. This section provides that if a food to which section 411 of the act (21 U.S.C. 350) applies (i.e., a dietary supplement of vitamins or minerals) contains one or more of the nutrients required to be listed in nutrition labeling, "the label or labeling of such food shall comply with requirements of subparagraph (1) and (2) [of section 403(q) of the act] in a manner which is appropriate for such food and which is specified in regulations of the Secretary." Other dietary supplements are not subject to section 403(q)(5)(F) of the act and thus are subject to regulation under section 403(q) of the act as any other food.

In response to the proposed rule on nutrition labeling of November 27, 1991, FDA received over 45 responses, each containing one or more comments, that pertained to the nutrition labeling of dietary supplements. The agency summarized and discussed the issues in these comments in the preamble of the mandatory nutrition labeling final rule that it issued on January 6, 1993 (58 FR 2079 at 2167). However, the regulations that FDA adopted in that final rule applied only to the nutrition labeling of foods in conventional food form (§ 101.9). They did not apply to dietary supplements because of a moratorium established by the DS act.

The DS act (Pub. L. 102–571) was signed into law on October 6, 1992. In section 202(a)(1), the DS act established a moratorium until December 15, 1993, on the implementation of the 1990 amendments, with respect to dietary supplements. Thus, FDA did not finalize the proposed rules pertaining to the nutrition labeling of dietary supplements of vitamins and minerals (§ 101.36) or of herbs or other nutritional substances.

Section 202(a)(2) of the DS act required that the Secretary of Health and Human Services, and by delegation FDA, issue new proposed regulations that are applicable to dietary supplements no later than June 15, 1993, and final regulations by December 31, 1993. In response to this provision, FDA issued the June 18, 1993 (58 FR 33715) proposal and is now issuing this final rule. In addition, elsewhere in this issue of the Federal Register, FDA is issuing final regulations that address the use of nutrient content claims and health claims on dietary supplements.

In addition, section 203 of the DS act instructed FDA not to promulgate regulations before November 8, 1993, that establish recommended daily allowances for vitamins or minerals other than those recommended allowances specified in § 101.9(c)(7)(iv) as in effect on October 6, 1992. Therefore, in the January 6, 1993, mandatory nutrition labeling final rule, FDA retained the U.S. Recommended Daily Allowances (U.S. RDA) values specified in § 101.9(c)(7)(iv), as in effect on October 6, 1992. These U.S. RDA values were in large measure based on the RDA's in the National Academy of Sciences' (NAS) publication "Recommended Dietary Allowances," 7th edition, 1968 (Ref. 1). The agency did, however, change the terminology for these values from "U.S. RDA's" to "Reference Daily Intakes (RDI's)."

FDA received over 400 responses to its June 18, 1993, proposed rule on the nutrition labeling of dietary supplements, each of these responses contained one or more comments. Responses were received from consumers, consumer advocacy organizations, health care professionals, professional societies, universities, industry, trade associations, and State and local governments. Many comments addressed issues covered by other proposals that are a part of this overall food labeling initiative, and they will be addressed in those documents. Other comments were outside the scope of these proposals and will not be discussed here.

About half of the comments supported the proposal; about half of these comments supported it without modification. These comments were primarily from health professionals, although a few were from that segment of the food industry that produces foods in conventional food form. The remainder of the comments that supported the proposal suggested modifications in various provisions of the proposal. About half of the comments opposed the proposal. These comments were primarily from consumers who opposed FDA's regulation of dietary supplements. A summary of the comments that suggested changes and the agency's responses follow:

II. Scope of New § 101.36

1. One comment from a manufacturer of dietary supplements supported the proposed rule to allow only vitamins and minerals that have RDI's or Daily Reference Values (DRV's) to be listed in the nutrition label of dietary supplements of vitamins and minerals. However, several comments wanted non-RDI vitamins and minerals to be listed, particularly those in the NAS's "Recommended Dietary Allowances" (i.e., chloride, chromium, fluoride, manganese, molybdenum, selenium, and vitamin K). The comments pointed out that advances in scientific knowledge have shown that these nutrients are considered essential to human health. Some comments also suggested listing nutrients such as arsenic, boron, silicon, tin, and vanadium that they stated are of major significance in human nutrition.

Some of these comments suggested that an asterisk in the "Percent Daily Value" column could refer to a footnote, such as "No Daily Value has been established for this nutrient." Another comment suggested that these additional nutrients could be listed in a subsection of the nutrition panel below the bar after the last nutrient for which there is an RDI or DRV. One comment stated that to put information on nutrients of this type outside of the "Nutrition Facts" box would be inconvenient and may cause some consumers to overlook the presence of these additional nutrients, some of which should not be consumed in excess.

The agency is persuaded that it is appropriate to allow the nutrients that are listed as being essential to humans in the NAS's "Recommended Dietary Allowances" (Refs. 2 and 10), but for which FDA has not established RDI's, to be declared in the nutrition label of dietary supplements of vitamins and minerals when they are present in supplements at more than insignificant amounts. The agency agrees that there have been significant advances in scientific knowledge with respect to essential nutrient requirements since 1968. In 1989, the NAS updated its RDA's to include values for vitamin K and selenium and to make significant revisions in the allowances for several nutrients including vitamin B6, folate (folic acid), vitamin B12, magnesium, iron and zinc (Ref. 2). In addition, scientific advances permitted the NAS to revise the values, known as "Estimated Safe and Adequate Daily Dietary Intakes" (ESADDI's) in 1980 for chloride (Ref. 10) and in 1989, for three nutrients (biotin, pantothenic acid, and

copper), for which FDA established U.S. RDA's in 1973, and to establish new ESADDI's for manganese, fluoride, chromium, and molybdenum (Ref. 2).

It was in response to these scientific advances that FDA proposed RDI's in the **Federal Register** of November 27, 1991 (56 FR 60366 at 60390 and 60393) for the nutrients mentioned previously that are included in the 1980 and the 1989 NAS RDA's but for which RDI's have not been established (i.e., chloride, chromium, fluoride, manganese, molybdenum, selenium, and vitamin K). The establishment of RDI's would have allowed these nutrients to be listed on the nutrition label of dietary supplements of vitamins and minerals as well of foods in conventional food form. However, as stated above, section 203 of the DS act instructed FDA not to promulgate regulations that require the use of, or that are based upon, recommended daily allowances of vitamins or minerals before November 8, 1993, other than those specified in § 101.9(c)(7)(iv), as in effect on October 6, 1992. In accordance with this provision of the DS act, the agency issued a final rule on January 6, 1993 (58 FR 2206) that retained the former U.S. RDA values. As a result, the final rule did not include RDI's for chloride, chromium, fluoride, manganese, molybdenum, selenium, and vitamin K.

Because the prohibition in section 203 of the DS act has now expired, the agency is proposing, elsewhere in this issue of the **Federal Register**, to establish RDI values for those nutrients listed by the NAS as being essential to humans and that do not already have RDI values. The agency is proposing this action because these nutrients are essential for the maintenance of good health in humans.

In recognition of the essentiality of these nutrients and in response to the comments summarized above, the agency is requiring in new § 101.36(b)(3) that chloride, chromium, fluoride, manganese, molybdenum, selenium and vitamin K be included in the nutrition label when present in the dietary supplement. The agency also is providing in § 101.36(b)(4)(vi) that if any of these nutrients are declared, they are to be followed by an asterisk in the "Percent Daily Value" column. The asterisk is to refer to another asterisk that is placed at the bottom of the table and that is followed by the statement "Daily Value not established." This action is a logical outgrowth of the nutrition labeling proposal for dietary supplements because that proposal put into issue the question of whether the list of nutrients that FDA proposed be included in the nutrition label under § 101.36 was the appropriate list. The comments have persuaded FDA that the list needs to be expanded in the manner described in this final rule.

FDA is not persuaded, however, that other trace elements for which the NAS has not established RDA's or ESADDI's should be declared within the nutrition label. The comments that suggested that such elements be included on the label provided some published reports that certain of these elements have been found to be essential in the diets of various animals but did not provide sufficient evidence for the agency to conclude that there is scientific consensus about their essentiality for the maintenance of good health in humans. The agency strongly believes that evidence of the usefulness of a nutrient for humans is necessary before that nutrient can be allowed to be listed within the nutrition label. This policy is consistent with current § 101.9(i)(5) (redesignated and revised in the January 6, 1993, final rules, as § 101.9(k)(5)) which prohibits a food's label from stating or implying that the food has special dietary properties because of the presence of a substance when, in fact, the usefulness of the substance has not been established in human nutrition.

In addition, in its proposed rule on mandatory nutrition labeling (55 FR 29487 at 29493, July 19, 1990), FDA stated that it was concerned about the possibility of a large number of nutrients being listed in nutrition labeling and about the way in which their presence on the label may be interpreted by consumers. FDA expressed concern that the presence of a large number of nutrients could be misinterpreted as implying that a food has a greater public health significance than may be the case. The potential for this happening and misleading the consumer about the contribution of the food to human nutrition is especially likely if the nutrition label were to include nutrients not known to be important to humans. Therefore, FDA believes that foods that list such nutrients in the nutrition label would be misbranded under section 403(a) of the act which prohibits misleading information on the labels and labeling of foods. However, statements about amounts and percentages can be made outside of the nutrition label as discussed in the final rule on nutrient content claims published elsewhere in this issue of the **Federal Register**.

The agency is specifying that the new nutrients to be listed appear in an order that reflects the order that FDA proposed in the nutrition labeling proposal of November 27, 1991 (56 FR 60390). Vitamin K is to be listed after vitamin E with the fat soluble vitamins, selenium is to be listed before copper, and the remaining nutrients (manganese, fluoride, chromium, molybdenum, and chloride) are to be listed after copper at the bottom of the list.

The agency points out that it is not allowing the listing of these nutrients on the nutrition labels of foods in conventional food form. Under § 101.9(c)(8), quantitative amounts by weight of vitamins and minerals are not listed within the nutrition label of foods in conventional food form. As a result, the listing of only an asterisk in conjunction with the statement "Daily Value not established" would provide consumers with no indication of the amount of chloride, chromium, fluoride, manganese, molybdenum, selenium and vitamin K present in the food. Therefore, FDA has not provided in § 101.9 for a provision comparable to that in § 101.36(b)(3) and (b)(4) that allows for the placement of these nutrients on the nutrition label.

FDA wishes to point out that § 101.36(a) only requires the label of a dietary supplement of a vitamin or mineral to bear nutrition labeling in accordance with the provisions of § 101.36 if the vitamins or minerals in the supplement have an RDI or DRV. Accordingly, dietary supplements containing only chloride, chromium, fluoride, manganese, molybdenum, selenium, or vitamin K need not adhere to § 101.36 until such time as RDI's are established for them.

2. A couple of comments said that nutrients such as fat and sodium should not be required to be declared in the nutrition labeling of dietary supplements of vitamins and minerals. One of these comments said that dietary supplements are not taken because of their fat or sodium levels, and that these substances should not be declared. Other comments specifically supported the proposed rule in requiring that nutrients of this type be declared when they are present.

The agency is not persuaded that nutrients such as fat and sodium should not be declared in the nutrition labeling of dietary supplements of vitamins and minerals when present in significant amounts. The majority of the comments supported FDA's view that this information is needed to fully inform consumers of the nutrient content of these products. Although dietary supplements of vitamins and minerals are not consumed because of their fat or sodium levels, this type of information on products that contain significant levels of such nutrients will assist consumers in maintaining healthy dietary practices. Therefore, the agency is not making the requested change in the regulation.

3. A few comments stated that dietary supplements of herbs and of other nutritional substances should be labeled under § 101.36. One of these comments said it would be less confusing if all supplements were labeled in the same manner. Other comments agreed that dietary supplements of herbs should be labeled in accordance with § 101.9 for foods in conventional food form. However, at least one comment requested that dietary supplements of herbs be exempt from declaring the "core" nutrients if they have to be labeled in accordance with § 101.9, and another comment said that these dietary supplements should not have to list "Percent Daily Values." At least one comment stated that dietary supplements of herbs should have their own format for nutrition labeling, and a few other comments requested that dietary supplements of herbs be exempt from all nutrition labeling. One of these comments agreed that FDA did not have the authority to exempt dietary supplements of herbs from § 101.9 and wanted an amendment to the 1990 amendments that would exempt these dietary supplements from nutrition labeling. This comment said that dietary supplements of herbs are not normally consumed for their nutritive value, and that nutrition labeling on these products is irrelevant and unimportant to consumers.

As explained in the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33716, June 18, 1993), the difference in the labeling of dietary supplements of vitamins or minerals and of dietary supplements of herbs and of other similar nutritional substances is a result of section 403(q)(5)(F) of the act. As stated above, this section provides that if a food to which section 411 of the act applies (i.e., a dietary supplement of vitamins or minerals) contains one or more of the nutrients required to be listed in nutrition labeling, the label or labeling of such food is to comply with the requirements of section 403(q)(1) and (q)(2) of the act in a manner that FDA determines, by regulation, is appropriate for such food. Other dietary supplements are not subject to section 403(q)(5)(F) of the act and thus are subject to regulation under section 403(q) of the act in the same manner as any other food. There is nothing in the 1990 amendments, or elsewhere in the act, that would allow the agency to exempt the broad category of dietary supplements of herbs and of other similar nutritional substances from section 403(q)(1) and (q)(2) of the act. Thus, supplements that are not dietary supplements of vitamins and minerals are appropriately subject to nutrition labeling under § 101.9.

Under § 101.9, the nutrition label of dietary supplements of herbs and of other similar nutritional substances may be presented in either a full or simplified format as specified in § 101.9(d) or (f). The simplified format in § 101.9(f) may be used when a supplement of herbs or of other similar nutritional substances contains insignificant amounts of seven or more of the following nutrients: Calories, total fat, saturated fat, cholesterol, sodium, total carbohydrate, dietary fiber, sugars, protein, vitamin A, vitamin C, calcium, and iron.

FDA is not persuaded that nutrition labels on dietary supplements of herbs using the simplified format should be exempt from the requirement to declare the "core" nutrients (i.e., calories, total fat, sodium, total carbohydrate, and protein). The agency has stated its belief in the mandatory nutrition labeling final rule (58 FR 2079 at 2142) that this core information is essential to aid consumers in learning about the relative nutritional qualities of all foods, and the information allows consumers to judge the consequences of the food selections they make. No new information was presented in the comments to change FDA's position on this issue.

The agency also advises that § 101.9(j)(4) provides that foods subject to § 101.9, including dietary supplements of herbs and of other similar nutritional substances, are exempt from nutrition labeling requirements when all of the nutrients required to be declared under § 101.9(c) are absent or are present in insignificant amounts.

FDA is also not persuaded that nutrition labels on supplements of herbs should be excused from listing "Percent Daily Values." As called for in section 2(b)(1)(A) of the 1990 amendments, a primary purpose of the nutrition label is to help consumers make informed food choices by enabling them to both comprehend the nutritional value of the food and to understand its relative significance in the context of the total daily diet. The consumer research that the agency reviewed in the mandatory nutrition labeling final rule supports FDA's assertion that the listing of percent Daily Value improves consumers' abilities to make correct dietary judgments about a food in the context of a total daily diet (58 FR 2079 at 2125). In part, this improved ability to make judgments is achieved by the use of a consistent system of percentages, so that virtually all the nutrients on the label can be declared in equivalent units. Also, the percentages communicate information about the nutrient level in a food without the consumer having to be concerned about the absolute level or units of the underlying scale being used.

Therefore, for the reasons stated, the agency has not acceded to the requests that dietary supplements of herbs and of other similar nutritional substances be labeled under § 101.36, have their own format for nutrition labeling, be exempt from all nutrition labeling, or be exempt from declaring the "core" nutrients and the "Percent Daily Values" in § 101.9.

4. One comment requested that the language of §§ 101.36(a) and 101.9(j)(6) be revised to refer to "dietary supplements that are represented as a source of vitamins and minerals," instead of "dietary supplements of vitamins and minerals." This comment was concerned that alfalfa tablets that have calcium as a binder would be required to be labeled under § 101.36.

The agency would like to make clear that it does not consider a product that contains a substance that is a vitamin or a mineral, but that is used in the food solely for technological purposes, to be a dietary supplement of a vitamin or mineral because of the presence of that substance. In these circumstances, the product would not be represented as supplying a vitamin or mineral (see section 411(c) of the act). Thus, alfalfa tablets that have calcium as a binder would be required to be labeled under § 101.9.

5. A few comments requested clarification of the type of nutrition labeling that would be required for "combination" products that contain herbs with added vitamins.

The agency advises that the type of nutrition labeling that would be required for products that contain herbs and added vitamins would depend upon the contents of the product as well as how the product is represented. If a "combination" product is primarily a dietary supplement of vitamins and minerals and is marketed as such, the product would have to be labeled in accordance with § 101.36. If the product is not primarily a dietary supplement of vitamins or minerals and is not represented as such, it would have to be labeled in accordance with § 101.9. The agency believes that the manufacturer makes the determination as to whether a product is primarily a dietary supplement of an herb, of vitamins or minerals, or of a "similar nutritional substance" based on how it labels and formulates the product.

The types of claims that are made on a dietary supplement will both

determine, and be limited by, whether it is a dietary supplement of vitamins or minerals or of herbs or of other nutritional substances. Section 411(b)(2)(B) of the act states that the labeling and advertising for dietary supplements of vitamins and minerals may not give prominence to or emphasize ingredients that are not vitamins, minerals, or represented as a source of vitamins or minerals. Thus, if, for example, a dietary supplement of an herbal extract adds vitamins and minerals yet remains primarily a dietary supplement of the herbal extract and is advertised as such, section 411(b)(2)(B) of the act would not apply to the product. This would be the case when the label of such a product made no reference to any added vitamins or minerals other than in the ingredient list and nutrition label. Section 411(b)(2)(B) is discussed in more detail in the companion document on nutrient content claims for dietary supplements, which is published elsewhere in this issue of the **Federal Register**.

6. One comment requested that the language of § 101.36(a) be revised to delete "and labeling." The comment says that nutrition labeling is not required on labeling under § 101.9.

The agency agrees with this comment and is revising the first sentence of § 101.36(a) to delete the words "and labeling," thereby requiring that the required nutrition information appear on the label of dietary supplements of vitamins and minerals. FDA notes that § 101.9(a)(2) allows the required nutrition information to be placed on labeling of foods in conventional food form when such foods are not in packaged form. The types of labeling that are identified in § 101.9(a)(2) and that allow the required information to be clearly displayed at the point of purchase are counter cards, signs, tags affixed to the product, booklets, looseleaf binders, and other appropriate devices. The only manner in which the agency envisions that dietary supplements of vitamins and minerals would not be sold in packaged form is when they would be sold directly from bulk containers. If and when dietary supplements of vitamins and minerals are sold in this manner, § 101.36(g) specifically provides that they are subject to the special labeling provisions in § 101.9(j)(16) for foods sold from bulk containers. Section 101.9(j)(16) allows for the required nutrition information to be displayed to consumers either on the labeling of the bulk container plainly in view or in accordance with § 101.9(a)(2).

III. Nutrition Labeling of Dietary Supplements

A. Serving Size Information

7. At least one comment stated that information on serving size is not needed because it is given in the directions for use. Other comments supported the proposed rule stating that serving size information should be declared in the nutrition label.

The agency believes that information on serving size is as essential on the nutrition label of dietary supplements of vitamins and minerals as it is on that of foods in conventional food form. First, this information may not be given in the directions. For instance, the directions may state "take 3 tablets a day" without indicating if they are to be taken at one setting as one serving or spread out throughout the day in three separate servings. Thus, it is fair to conclude that in many instances the serving size will not be duplicative.

Additionally, this information quickly informs the consumer about the amount of the product that contains the levels of nutrients declared. It also provides a degree of consistency between the nutrition labels of dietary supplements of vitamins and minerals and those of foods in conventional food form. FDA concluded in the mandatory nutrition labeling final rule that if the nutrition label was to be readily observable and comprehensible, it must be presented in as consistent a manner as possible from label to label (58 FR 2079 at 2136 and 2139). This consistent look to the required nutrition information on packages of both dietary supplements of vitamins and minerals and foods in conventional food form will help consumers to find and recognize the information. Consistent treatment is important for the effective use of the nutrition label by consumers. As a result, the agency is not changing § 101.36 to delete the requirement for serving size information.

8. One comment stated that the reference amounts for dietary supplements should be specified in absolute terms but did not provide any data. The comment argued that absolute amounts are needed so that if comparative claims are made, one product recommending consumption of, for example, one tablespoon per day is not compared to a product recommending five tablespoons per day. A few other comments supported the proposed definition for reference amounts.

The agency has defined the reference amount customarily consumed for a dietary supplement in § 101.12(b) as "the maximum amount recommended on the label for consumption per eating occasion or, in the absence of recommendations, one tablet, capsule, packet, or teaspoonful, as appropriate." As discussed in the nutrition labeling proposal on dietary supplements (54 FR 33715 at 33716), the agency relied upon labeling recommendations in this definition because it believed that consumption is determined in large part by the amount recommended on the label of these products, and it lacked the data to specify absolute amounts. The agency requested comments on this approach in the proposal. No comments provided data for the agency to use in determining absolute amounts that could be used as reference amounts Therefore, the reference amount for dietary supplements will continue to be based on labeling recommendations.

The agency does not agree with the comment that absolute amounts are needed to prevent a product with a 1 tablespoon serving from being compared to a product with a 5 tablespoon serving. Lacking data to the contrary, the agency must assume that the recommended amount on the label is the amount customarily consumed. Based on that assumption, it is consistent with § 101.13, General Principles for Nutrient Content Claims, which provides for comparative claims to be based on reference amounts customarily consumed. This topic as it relates to comparative claims is further discussed in the companion document on nutrient content claims for dietary supplements, published elsewhere in this issue of the **Federal Register**.

9. A few comments stated that the term "Serving Size" is confusing on dietary supplements. A few comments had questions about the determination of serving size, and one of these comments requested that the term "Recommended Intake" be used instead of the term "Serving Size." Another comment suggested that the term "Minimum Recommended Serving Size" be used when the label directions specify a range of possible intakes for a product (e.g., two to three tablets per day). This comment was concerned that "someone reading only the nutritional information portion of the label will think that the serving amount listed there is the recommended amount when it is really the maximum recommended amount." Other comments disagreed with this position and supported the proposed rule which stated that the serving size should refer to the maximum amount when a range is specified for a product.

One comment asked what the serving size is when the label recommends one to four tablets per day. This comment also asked about serving size when the label recommends two tablets a day. Another comment supported the statement in the proposal that if there is no amount recommended on the label, the serving size is one unit of the supplement. This comment observed that the issue arises as to how a determination can be made of "servings per container" if there is no recommendation as to serving size. The comment stated that this issue needs to be considered to avoid a regulatory gap.

The agency is not persuaded that a term other than "serving size" should be used to describe the basis for nutrient declaration for dietary supplements. It would be confusing for consumers if dietary supplements of vitamins and minerals used a term such as "Recommended Intake" and other foods used the term "Serving Size." As discussed in the nutrition labeling proposal on dietary supplements (58 FR 33715 at 33716), the agency proposed that the nutrition labeling of vitamin or mineral supplements be presented in a manner that is as similar as possible to the nutrition labeling of other foods. The agency believes that use of the same term on all labels will help to avoid confusion. As use of the new nutrition label becomes more widespread, and consumers become familiar with it, they will come to understand that the serving size represents the amount of product that they are likely to consume in one eating occasion. Thus, they will come to understand that for a dietary supplement, the serving size represents the amount of that product that they are likely to consume at those times that they decide to take the supplement.

As explained in the proposal of June 18, 1993 (58 FR 33715 at 33716), the agency believes that it is more useful for consumers to have the serving size be based on the maximum amount recommended, and to have the nutrition information be reported on this basis, than to have serving size be based on the minimum or the average amount. However, in some cases, the serving size is the same regardless of whether the maximum or minimum amount is used. For example, if label directions recommend a range of one to three tablets per day, the serving size is one tablet based on the fact that there are three separate eating occasions per day. If label directions recommend a range of one to four tablets per day, the serving size is also one tablet given the rounding rules (i.e., four divided by three, rounded off to one). As for the question what is the serving size if the label recommends two tablets per day, the serving size would also be one tablet because of rounding. In the absence of recommendations on the label, a serving size of one unit is appropriate for determining the "Serving Size" and the "Servings Per Container."

When the serving is one unit, the number of servings per container would duplicate the number of units declared on the principal display panel. To avoid redundancy the agency is providing in § 101.36(b)(2), as proposed, that information on servings per container need not be provided when the identical information is stated in the net quantity of contents declaration. However, dietary supplements in liquid or powdered form will have to declare "Servings Per Container" because the net quantity of contents information will be reported in net volume or net weight measures, such as fluid ounces or grams (g), while the serving size will be expressed in common household measures, such as teaspoonfuls.

In conclusion, the agency has reexamined the proposed rule with respect to these comments on serving size and believes that no changes are needed.

B. "Amount Per Serving"

10. A few comments stated that nutrition information should not be reported on the basis of "per serving." These comments requested that the heading "Amount Per Serving" be replaced by the term "Amount Per Day" or by the terms "Amount Per Tablet" or "Each Tablet Contains."

The agency does not agree with the comment that nutrition information should be reported as "amount per day." As explained in the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33717), the agency proposed in the November 27, 1991, document (56 FR 60366 at 60383) that nutrition information be presented under the heading of "Per Unit," but that when label directions specified that more than one unit be consumed during a day, it also be presented under the heading of "Per Day" (i.e., dual declaration). The agency proposed dual declaration when more than one unit was to be consumed per day to more fully inform consumers.

The agency received a number of comments opposing the dual declaration of nutrition information on supplements. Some of these comments supported declaration on the basis of "per day" because they believed that it is the total daily amount of nutrients that is important. Other comments favored a "per unit" basis because some consumers may deviate from the recommended intake, or the intake may be presented as a range. In the preamble of the mandatory nutrition labeling final rule of January 6, 1993 (58 FR 2079 at 2168), the agency stated that dual declaration may create a readability problem for consumers, and that in general a "per unit" approach was more useful than a "per day" approach.

In the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33717), however, the agency took a different approach. It stated that it had tentatively concluded that declaration on the basis of "per serving" is preferable because reporting information solely on a "per unit" basis could confuse consumers when more that one unit is to be consumed at one time (e.g., two capsules with each meal). The agency expressed concern that if consumers do not notice or do not understand the heading that states "per unit," they might assume that the information is for the amount specified for consumption at one time (i.e., "per serving"), particularly because information for foods in conventional food form is expressed on a "per serving" basis. Furthermore, the agency tentatively concluded that consistency with the labeling of foods in conventional food form in this regard is the best approach because it will reduce consumer confusion (58 FR 33715 at 33717).

Inasmuch as most of the comments supported the proposed rule on this issue, and comments opposing did not provide any information demonstrating that there is enhanced consumer understanding or ease of use when information is expressed on a daily basis, the agency is not changing § 101.36(b)(3) in response to these comments. FDA has reconsidered its position in response to comments requesting use of the terms "Amount Per Tablet" and "Each Tablet Contains," however, in light of the comments. The agency concludes that where the serving size is one tablet, there is little, if any, chance for misunderstanding if either of these terms is used in place of the term "Amount Per Serving." Therefore, the agency is revising § 101.36(b)(3) to state that when the serving size of the product is one unit, a heading consistent with the declaration of serving size, such as "Amount per Tablet" or "Each Tablet Contains," may be used in lieu of "Amount Per Serving." Other appropriate terms, such as "capsule," "packet," or "teaspoonful," may be used in place of the term "Serving." While a consistent change in § 101.9(d)(4) appears reasonable, FDA believes that it is necessary to address such a change through notice-and-comment rulemaking. The agency intends to

propose such a change in the near future.

C. Nutrient Information

1. Listing of Nutrient Names and Amounts

11. Several comments recommended that information on the quantitative amount by weight for the nutrients listed should be presented in a separate column, rather than immediately following nutrient names. These comments stated that some consumers buy on the basis of amounts, using them to make product comparisons, and that separate columns would help consumers to more readily locate this information. An additional comment requested that information on amounts be presented either in a separate column or after the "Percent Daily Value" in parenthesis. On the other hand, several comments supported the proposed rule, arguing that the format for dietary supplements of vitamins or minerals should follow the format for foods in conventional food form.

The agency disagrees with the recommendation that information on the quantitative amount by weight for the nutrients listed should be presented in a separate column. The agency observes that space on the label is conserved by not requiring a separate column. Furthermore, FDA believes that the comprehensibility of this information will be enhanced when it is presented immediately next to the name of the nutrient. As discussed in the mandatory nutrition labeling final rule (58 FR 2079 at 2117), multiple column nutrient information displays are much more difficult than single column displays for consumers to use for product comparisons. Both FDA's first experimental format study and the major industry format study found that declaring nutrient amounts per serving in adjacent columns of grams per milligram (g/mg) amounts and percent Daily Value led consumers to make more mistakes and to take longer on the product comparison type of task (Refs. 3 and 4). FDA's second experimental study, however, showed that when g/mg nutrient amount information was placed immediately next to the nutrient name in an unordered array, and percents were placed in a column array, the adverse effects on product comparison performance disappeared (Ref. 5). Thus, the agency is requiring in § 101.36(b)(3) that the name of each nutrient listed shall be immediately followed by the quantitative amount by weight of the nutrient, to be consistent with § 101.9(d)(7)(i).

12. A few comments requested that only the calcium portion of calcium gluconate be listed in the nutrition panel and on the principal display panel. Similarly, another comment requested that the agency clarify that vitamin B6 refers to pyridoxine, not pyridoxine hydrochloride.

The agency wishes to emphasize that the declaration of the quantitative amount by weight in the nutrition label is to indicate the weight of a particular nutrient and not the weight of the salt of that nutrient used to make the supplement. For example, only the calcium portion of calcium gluconate is to be declared in the nutrition label, although in some circumstances the weight of the whole substance may appear on the principal display panel if it clearly refers to the whole substance, such as when the statement of identity states "calcium gluconate, 600 mg." Similarly, only the pyridoxine portion of pyridoxine hydrochloride is to be declared in the nutrition label. The agency believes that no changes in § 101.36 are necessary based on these comments.

13. One comment recommended that biotin and folate be declared in terms of micrograms (µg), not mg, and that calcium and phosphorus be declared in terms of mg, not g. The comment stated that consumers are more familiar with these nutrients being expressed in this manner.

FDA proposed on July 19, 1990 (56 FR 29476) to change to the units suggested in this comment. However, section 203 of the DS act prohibited FDA from adopting any reference values for vitamins and minerals different from the U.S. RDA's contained in § 101.9(c)(7)(iv), as in effect on October 6, 1992, until after November 8, 1993. Accordingly, FDA adopted those U.S. RDA values as the RDI's, with biotin and folate expressed in terms of mg and calcium and phosphorus expressed in terms of g.

Since the prohibition in section 203 of the DS Act has now expired, the agency is proposing elsewhere in this issue of the **Federal Register** to amend § 101.9 to change the units of declaration for biotin and folate to µg and for calcium and phosphorus to mg. This proposal responds fully to the comment.

14. One comment was opposed to the agency's proposal, in § 101.36(b)(3), to allow amounts of protein below 1 g to be left off the nutrition label. This comment requested that such amounts of protein be declared because individuals who are highly sensitive to monosodium glutamate (MSG) may have adverse reactions.

FDA has recognized that certain individuals are sensitive to MSG and believes that the appropriate means to convey the presence of this ingredient to consumers is by use of the ingredient statement because MSG is a food ingredient. The agency reiterates that dietary supplements of vitamins and minerals are required to comply with § 101.4 (21 CFR 101.4), which requires full ingredient labeling of food. Furthermore, in the **Federal Register** of January 6, 1993, the agency proposed changes in the regulations pertaining to ingredient labeling to accommodate those individuals who are sensitive to MSG. Proposed § 101.22 (58 FR 2950) would require that when the amount of free glutamate in hydrolyzed protein reaches a specified level, the declaration in the ingredient statement must include the parenthetical "(contains glutamate)."

The agency has reexamined proposed § 101.36 in response to this comment and notes that there is an inconsistency in the labeling of protein, total carbohydrate, and dietary fiber between § 101.9 and proposed § 101.36. For example, 0.5 g to 0.99 g of these substances in a dietary supplement of a vitamin or mineral would not be declared under proposed § 101.36(b)(3), yet these amounts in a food in conventional food form would be declared either as "1 g" or "less than 1 g" under § 101.9(c). To correct this inconsistency, the agency is modifying § 101.36(b)(3) to provide that amounts of nutrients that can be declared as zero in the nutrition label of foods in conventional food form shall not be declared in the nutrition labeling of dietary supplements of vitamins and minerals. Thus, the agency is requiring the declaration of protein, as well as total carbohydrate and dietary fiber, when they are present in amounts of 0.5 g to 1 g. Amounts under 0.5 g would continue to not be listed in the nutrition label of dietary supplements of vitamins and minerals, because these amounts would allow a declaration of zero in the nutrition labeling of foods in conventional form.

15. One comment recommended that "active" ingredients present at less than 2 percent of the Daily Value be allowed to be listed in the nutrition label.

The agency is not allowing vitamins and minerals (except sodium and potassium, which are not included in § 101.9(c)(8)(iv)) present at less than 2 percent of the Daily Value to be listed because the declaration of such amounts would be misleading. Such values are insignificant under § 101.9(f) and may be declared as 0 percent of the RDI in the nutrition labeling of foods in conventional food form. They are amounts that are dietetically trivial and physiologically inconsequential. In addition, FDA is concerned that some consumers will be misled by the mere presence of names of nutrients within the nutrition label, because they would assume that products with more nutrients listed have a greater public health significance than those with less, regardless of the amount of each nutrient present.

The agency is unaware of any reason, nor does the comment present any reason, for allowing the declaration of nutrients that are present in such small amounts. Thus, the agency is making no change in response to this comment.

16. One comment requested that FDA revise § 101.36(b)(3)(i) to more clearly state the increments to be used for expressing the quantitative amounts by weight of vitamins and minerals. Another comment stated that amounts should not be rounded. This comment stated, "We really see no reason why products should not be formulated to contain the amounts stated on the label, subject to reasonable overages based on shelf-life considerations and the like and reasonable analytical variation."

The agency inadvertently did not address the increments to be used for expressing the quantitative amounts by weight of vitamins and minerals. Proposed § 101.36(b)(3)(i) stated that amounts of vitamins and minerals are to be expressed in the increments specified in § 101.9(c) using the units of measure and the level of significance given in § 101.9(c)(8)(iv), except that zeros following decimal points may be dropped. While the agency is adopting this rule, FDA recognizes that, as the comment points out, § 101.9(c) does not address the question of the increments in which the quantitative amounts of vitamins and minerals are to be declared because in the nutrition labeling of foods in conventional food form, vitamins, and minerals are declared only as a percentage of the Daily Value. The quantitative amounts by weight of these nutrients, except for potassium and sodium, which are considered electrolytes, are not required in the nutrition label of conventional foods.

The agency has considered this issue and notes that dietary supplements, unlike most foods in conventional food form, are fabricated to contain specific amounts of vitamins and minerals. It is for this reason that the vitamins and minerals in dietary supplements are categorized as Class I nutrients, and that under § 101.9(g)(4), a food is misbranded if it contains less of an added vitamin or mineral than the amount declared on the label. In view of how dietary supplements of vitamins and minerals are made, the agency agrees that it makes no sense to permit the amounts of vitamins and minerals in such products to be rounded and declared only in specified increments. Therefore, the agency has modified § 101.36(b)(3)(i) to provide that the actual amounts of vitamins and minerals in the supplement are to be declared using the units of measure specified in § 101.9(c)(8)(iv), except that zeros following decimal points may be dropped.

With respect to levels of significance, that is, the number of decimal places used in declaring amounts, the agency proposed that only the levels of significance shown in § 101.9(c)(8)(iv) could be presented. In some cases, however, the number of decimal places allowed is not sufficient to express actual amounts of certain vitamins and minerals because the amounts are very small. For example, a product that contains 10 percent of the Daily Value for copper would contain 0.2 mg of copper. If the amount of copper had to be expressed using the same level of significance as that used in § 101.9(c)(8)(iv) for expressing its RDI (i.e., 2 mg), the lowest amount that could be declared would be 1 mg, which would be inaccurately high.

To ensure that amounts of vitamins and minerals that have nutritional significance can be declared, the agency is modifying § 101.36(b)(3)(i) to provide that amounts shall be expressed in the increments specified in § 101.9(c), except that additional levels of significance may be used when the number of decimal places indicated is not sufficient to express lower amounts (e.g., the RDI for copper is given in whole mg, but the quantitative amount may be declared in tenths of a mg). Additionally, the agency is modifying § 101.36(b)(3)(i) to describe how amounts of the nutrients from NAS' 9th and 10th editions (Refs. 2 and 10) for which RDI's have not been established are to be declared. Amounts for chloride, fluoride, and manganese shall be expressed in mg, and amounts for chromium, molybdenum, selenium, and vitamin K shall be expressed in µg. These values shall be expressed in whole numbers, except that tenths may be used for fluoride. These values reflect the amounts in which the RDI's or EASDDL's for these nutrients are given (Refs. 2 and 10).

17. One comment stated there was an apparent inconsistency between the requirement in § 101.36(b)(3)(ii) that nutrients "be listed in the order specified in § 101.9(c) except that calcium and iron, when present, should be grouped with other minerals," and the sequence of vitamin D and vitamin E in the examples provided in § 101.36(c)(8). The comment recommended that the appropriate order of nutrients be clarified in the regulations.

While FDA finds no inconsistency with the sequence of vitamin D and vitamin E in the sample labels provided in § 101.36(c)(8), the agency points out that there was an error in the order of nutrients in § 101.9(c)(8)(iv) in the **Federal Register** of January 6, 1993 (58 FR 2227). FDA published a correction in the **Federal Register** of April 1, 1993 (58 FR 17104), which listed the order as follows: Vitamin A, vitamin C, calcium, iron, vitamin D, vitamin E, thiamin, riboflavin, niacin, vitamin B6, folate, vitamin B12, biotin, pantothenic acid, phosphorus, iodine, magnesium, zinc, and copper. This order is the one used by FDA in the June 18, 1993, proposal on nutrition labeling of dietary supplements of vitamins and minerals, except that calcium and iron were listed with the minerals, following pantothenic acid.

The agency wishes to make these regulations as clear as possible. Therefore, in response to the comment's request for clarification of the appropriate order of nutrients, and to make clear where in the list to include the nutrients that have no RDI but that are required to be included in the nutrition label on dietary supplements of vitamins and minerals when they are present, FDA is revising § 101.36(b)(3)(ii) to specify the exact order in which vitamins and minerals are to be declared (see section II. comment 1. of this document). Any nutrients not present in the supplement, or present at insignificant levels, must be omitted from the list.

18. At least one comment requested that vitamins be listed in alphabetical order. Another comment requested that calcium and magnesium be the first minerals to be listed.

The agency has not accepted these suggestions. As discussed in the nutrition labeling proposal for dietary supplements (58 FR 33719), with the exception of calcium and iron, FDA proposed in § 101.36(b)(3)(ii) that nutrients declared in the nutrition labeling of vitamin or mineral supplements be listed in the order that nutrients are listed in the nutrition labeling of foods in conventional food form. The agency proposed that calcium and iron be listed after the listing of any vitamins that are present so that all of the vitamins will be grouped together. While vitamin A and vitamin C are to be listed first, consistent with § 101.9(c).

they are then followed by the fat-soluble vitamins, then the water-soluble vitamins and the minerals. The NAS in its RDA publications has traditionally grouped the fat-soluble vitamins ahead of the water-soluble vitamins. The agency notes that this order is followed on the labels of many vitamin supplements in the marketplace. The comment requesting alphabetical order gave no convincing justification for following a different order, and, thus, FDA is not changing the order.

Additionally, the comment requesting that calcium and magnesium be the first minerals to be listed presented no reason for the agency to make this change. Calcium and iron are required to be the first minerals listed on the labels of foods in conventional food form. In the absence of any reason for why calcium and magnesium should be the first minerals to be declared on the labels of supplements of vitamins and minerals, the agency is making no change in the order for minerals.

19. One comment requested that § 101.36(b)(3)(ii) be revised to require that potassium be listed with the other minerals, preferably last on the list. This comment and others expressed confusion about whether potassium could be listed and requested clarification. One comment requested that § 101.36(b)(3) be clarified to allow for the voluntary listing of potassium in dietary supplements because, according to the comment, potassium is usually present at less than 100 mg per tablet, primarily because of existing FDA restrictions on potassium salt preparations.

The agency agrees that the listing of potassium needs clarification. Potassium is not required to be listed on the nutrition label of foods in conventional food form. However, it can be listed voluntarily, and when it is, it is to be listed under sodium, as an electrolyte rather than with the minerals. In contrast, the agency proposed that potassium be required to be listed on the nutrition label of dietary supplements of vitamins and minerals when present in supplements at more than insignificant amounts (i.e., 5 mg and above), consistent with the listing of other vitamins and minerals. The agency knows of no reason why potassium in supplements of vitamins and minerals should be treated differently from other vitamins and minerals in these products, and the comment did not provide a reason for why the listing of potassium should be voluntary rather than mandatory. Therefore, the agency is not making this change. However, the agency is modifying the language of § 101.36(b)(3) to make it clear that the declaration of potassium is required when it is present at more than insignificant amounts. To this end, FDA has revised the second sentence of § 101.36(b)(3) to state: "In addition, potassium * * * shall be declared, except when present at an amount that allows a declaration of zero * * *."

With respect to the placement of potassium within the nutrition label, FDA agrees with the comment that the regulation should be modified. The proposal stated that nutrients that are present shall be listed in the order specified in § 101.9(c), which would mean that potassium, as well as sodium, would precede the listing of any other vitamins or minerals present in a supplement. FDA has concluded that it is not appropriate and might confuse consumers to have the declaration of potassium, as well as that of sodium, precede the declaration of other vitamins and minerals on these labels because traditionally vitamins have appeared first. The agency agrees with the comment that it is appropriate for potassium to be listed at the bottom of the list because it is an electrolyte, and the electrolyte, chloride, is listed at the bottom. For the same reason, the agency concludes that sodium should be listed with the other electrolytes. Accordingly, the agency is revising § 101.36(b)(3)(ii) to state that sodium and potassium should be listed, in that order, following the electrolyte chloride at the bottom of the list of minerals.

20. One comment requested clarification regarding the labeling to be used on a package that has two compartments, each containing a different supplement to be taken at the same time, three times daily with meals. The company asked if the regulations permit the information for both supplements to be reported aggregately in one nutrition label that has one column of names and amounts and one column of percent Daily Values. The firm requested that if an aggregate label is not permitted, the additional nutrition label be permitted in a package insert. The company also asked how the information should be presented if children one to four years of age are to take the same amount as adults, and how it is to be presented if such children are to take half the amount of adults.

The agency advises that if two supplements are to be taken at the same time, one unit of each three times daily, the nutrition information for both supplements must be reported aggregately. In this situation, the serving size must clearly state that a serving includes one of each supplement, with one column listing names and the total quantitative amount by weight for both supplements and another column containing the total percent Daily Values. If this product is also represented for use by children one to four years of age, the percent Daily Values for this age group would have to be presented in a third column. In the case where the serving size is different for children, a nutrition label for adults and a separate nutrition label for children must be used to avoid confusion.

21. A few comments requested that the declaration of the percent of vitamin A present as *beta*-carotene be mandatory. These comments argued that this information is needed to help consumers compare the amounts of *beta*-carotene in various products. They stated that this information would help consumers understand claims such as "Now with *beta*-carotene." One of these comments requested the voluntary declaration of the quantitative amount of *beta*-carotene in addition to the percentage of vitamin A present as *beta*-carotene. This comment stated that calculations of vitamin A and *beta*-carotene values are difficult even for scientists, and that merely providing a percentage will not allow consumers to readily determine just how much *beta*-carotene is present in the product. The comment requested that the amount of *beta*-carotene be expressed in mg. Two comments requested that the percent of vitamin A present as retinol also be mandatory. One of these comments explained that most people are better off getting their vitamin A from *beta*-carotene rather than from retinol because *beta*-carotene is safer in high doses and may help reduce the risk of certain cancers, heart disease, cataracts, and other health problems.

FDA is not persuaded that the declaration of the percent of vitamin A present as *beta*-carotene should be mandatory because quantitative recommendations about the intake of *beta*-carotene have not yet been established by the scientific community. In the July 19, 1990, mandatory nutrition labeling proposal (55 FR 29476 at 29493), the agency set out the factors that it considered in deciding whether a nutrient or food component should be mandatory or voluntary in nutrition labeling:

> The agency has proposed to make the declaration of a nutrient or food component mandatory in nutrition labeling when quantitative intake recommendations with respect to the nutrient or component are highlighted in the reports * * * (e.g., "Reduce total fat intake to 30% or less of calories." * * *), and the nutrient or component is of particular public health significance as defined in several recent consensus documents * * *. On the other hand, for those nutrients or food components for which quantitative intake recommendations are not highlighted but that do have some public health significance * * *, or for which quantitative recommendations are available but that are not of pressing public health importance (e.g., the Recommended Dietary Allowances for several vitamins and minerals * * *), the agency is proposing to make declaration of the nutrient or component voluntary.
> (55 FR 29487 at 29493.)

The agency concludes that its decision to have the percent of vitamin A present as *beta*-carotene be voluntary is consistent with these guidelines because quantitative intake recommendations have not been established. On the other hand, if a claim about *beta*-carotene is made, information on the percent of vitamin A present as *beta*-carotene is needed to help consumers to understand the claim. Therefore, the agency is modifying § 101.36(b)(3)(iv) to require declaration of the percent of vitamin A present as *beta*-carotene when a claim is made about *beta*-carotene. The agency tentatively concludes that a parallel change in § 101.9(c)(8)(vi) for the labels of foods in conventional food form is appropriate. The agency intends to propose this change in the near future.

The agency is accepting the comment's suggestion to provide that when the percent of vitamin A present as *beta*-carotene is declared, the quantitative amount of *beta*-carotene may also be declared voluntarily. The agency is persuaded by the comment that this information on the labels of dietary supplements of vitamins and minerals would be useful to those individuals who are interested in maintaining a certain quantitative intake of *beta*-carotene in their diets.

The agency notes that the comment requested that the amount of *beta*-carotene be declared in terms of mg. However, the agency is requiring that international units (IU) be used in place of mg to be consistent with the declaration of vitamin A. FDA finds the usefulness of this added information would be reduced if the units used to quantify vitamin A and *beta*-carotene levels differ.

Accordingly, the agency is amending § 101.36(b)(3)(iv) to provide that when the percent of vitamin A present as *beta*-carotene is declared, the quantitative amount in terms of IU may also be declared, e.g., "Vitamin A 5000 IU (90 percent (4500 IU) as *beta*-carotene"). The agency intends to propose a parallel change in § 101.9(c)(8)(vi) as soon as possible. Until the agency does so, the agency advises that it is unlikely that it will take enforcement action against foods regulated under § 101.9 that declare *beta*-carotene in a manner consistent with § 101.36(b)(3)(iv) as long as they comply with § 101.9 in all other respects.

Additionally, the provision on type size requirements for the added statement on *beta*-carotene in § 101.36(c)(6) is corrected to refer to paragraph (b)(3)(iv) instead of to (b)(3)(ii). There was an inadvertent error in this reference in the proposal.

With respect to retinol, the agency concludes that, in accordance with the guidelines set out above, the declaration of retinol should be neither mandatory nor voluntary because of the absence of quantitative intake recommendations and ot public health significance. Thus, the agency is not changing the proposed rule to provide for the inclusion of retinol in the nutrition label.

22. One comment requested that § 101.36(b)(3)(v) be revised to "permit common synonyms," instead of only the synonyms specified. This comment stated that allowing all synonyms would provide people with more information and would ensure that the contents of products were, in fact, comprehensible to more people. The comment mentioned, for example, that niacin is known by many as vitamin B3 and vitamin E by the name alpha-tocopherol. Another comment expressed support for restricting the use of synonyms to the ones allowed in the proposed rule.

The agency is not persuaded that the provision on synonyms should be revised to "permit common synonyms," instead of only the synonyms specified. The terminology that the agency has recognized is that which is used in NAS' RDA table (Ref. 2). These include: Vitamin C (ascorbic acid), thiamin (vitamin B1), riboflavin (vitamin B2), folate (folacin), and calories (energy). The agency has restricted the use of synonyms to simplify nutrition labeling and to avoid potential confusion among consumers. The agency believes that allowing the unrestricted use of other synonyms will contribute to confusion about the nutrients that are present in the product. It will also make product comparisons more difficult because of the absence of consistent terminology. Therefore, FDA is not making the change requested by the comment.

23. At least one comment requested that the nutrition label of vitamins with iron, for example, be allowed to highlight the listing of iron. The comment stated that such highlighting is a useful and necessary tool to differentiate various product lines.

The agency is not persuaded that the highlighting of iron in the example described in the comment is necessary for consumers to differentiate between various product lines because the name, or statement of identity, of the product must identify the product as a multivitamin with iron. This identification is sufficient to differentiate the product from other multivitamin products. As discussed in the mandatory nutrition labeling final rule (58 FR 2079 at 2138), FDA is not permitting highlighting of this type because it can be used inconsistently in a way that would be potentially misleading to consumers. Among products with similar nutrition profiles, some would highlight certain nutrients and others would not. Consumers could not depend on the fact that all labels of similar products would look the same, and the differences in highlighting could undermine the credibility of the information on the nutrition label and lead to consumer confusion. Accordingly, the agency is not providing for the highlighting requested by the comment.

24. A number of comments suggested that the source of a vitamin or mineral be included in the nutrition label immediately following the listing of that vitamin or mineral, in a manner similar to the allowed listing of *beta*-carotene as a source of vitamin A. One comment stated that this information should be listed in a separate column entitled "Source." One comment requested that the source information should at least be optional. The comments stated that if this suggestion is adopted, it will be unnecessary to repeat source information in the ingredient statement, and one comment requested that the regulations on ingredient labeling be revised accordingly. The comments said that this approach would conserve space and more effectively communicate source information to consumers.

The agency notes that the parenthetical listing of the source of a vitamin or mineral in the nutrition label is a common practice by some, but not all, manufacturers in the dietary supplement industry. The agency finds, however, that the comments submitted failed to provide adequate justification and supporting information demonstrating that adoption, on an industry-wide basis, of this manner of expressing nutrition and ingredient information would result in a nutrition label that is readily observable and comprehensible, as required by the act. Comments have not demonstrated that consumers will be able to distinguish and understand the meaning of both the

nutrition and ingredient information provided. FDA has no means on which to determine, for example, whether the name of the source of the nutrient is indeed that and not the chemical name of the nutrient. The comments also failed to provide date to demonstrate that this manner of presentation truly conserves label space, especially if additional columns are added to the nutrition label. Further, if as suggested by one comment, source information within the nutrition label were made optional, the consistency of presentation of information that has been a guiding principle of the agency throughout the food label reform efforts would be violated. Accordingly, the agency is not providing for the parenthetical listing of nutrient source within the nutrition label.

The agency advises, however, that it would be receptive to a adequately supported petition on this issue, and that it will act expeditiously on such petition. Given that, elsewhere in this issue of the **Federal Register**, the agency is establishing a date of applicability of July 1, 1995, for the regulation governing nutrition labeling of dietary supplements, if a petition is promptly submitted, that petition could be acted upon before the date of applicability.

Any petition submitted to permit source declaration within the nutrition label would have to address, in detail, at least the issues of how the source information is to be consistently and clearly expressed, and why this manner of expression is advantageous to the consumer.

Because a primary purpose of the nutrition label is to allow consumers to compare the nutrition profile of products at the point of purchase, it is imperative that there be a high degree of consistency in the presentation of nutrition information for all dietary supplements. FDA would also need information on precisely how source information should be expressed within the nutrition label. For example, how would the source information be expressed if a single ingredient (e.g., fish liver oil) is a source of a number of nutrients (e.g., vitamins A and D) within a dietary supplement? If the source is required to be listed multiple times, how does this conserve label space? Also, would multiple listing of a source mislead consumers about the amount of the ingredient in the food? Conversely, if a nutrient in a supplement is provided from several sources (e.g., iodine from kelp and potassium iodide), how would this information be clearly and consistently conveyed? Would the source listed be all sources, or only the primary source, of the nutrient? If source listing in the nutrition label were to be limited to the primary source, how would the primary source be determined? Are safeguards necessary to ensure that consumers are not misled by inappropriate emphasis on certain sources of nutrients? For example, how would consumers be fully informed and be protected from being misled if a nutrient is derived from more than one source, and only the primary source is listed, particularly if a valued ingredient provides some, but not all, of the nutrient in question?

Should source information be permitted in the nutrition label only when there is some significance to the source? For example, because there are potential safety concerns about high intakes of vitamin A from some other sources, FDA found that there is was a public health reason for permitting *beta*-carotene to be shown as a source of vitamin A. Should such a finding be a prerequisite for permitting source labeling? If source labeling is limited to cases in which the source is significant (e.g., particularly valued sources, concern about other potential sources), how should such significance be consistently determined?

Also, any petition on source labeling in the nutrition label should address the issue of clarity of presentation. Section 2(b)(1)(A) of the 1990 amendments states that the nutrition information should be readily observable and comprehensible. Would adding information about the source of nutrients detract from the comprehensibility of the nutrition label? Given that source information will be available in the ingredient statement, would source declarations unnecessarily burden the nutrition label and detract from its primary purpose of providing a nutrient profile of the product? Would it be more difficult for consumers to find the listing of the quantitative amounts by weight of nutrients in the nutrition label when source information is given? Petitions on this issue would be strengthened by the inclusion of consumer survey or other similar data showing that consumers readily observe and comprehend information presented in the manner suggested by the comments.

As discussed in the mandatory labeling final rule (58 FR 2079 at 2170), dietary supplements of vitamins and minerals, like other foods, are required to bear a complete list of ingredients. Under section 403(i)(2) of the act, the statement of ingredients must list all ingredients of these foods, including, for example, lactose and other fillers, artificial colors, flavors, binders, and excipients, as well as the source of the vitamins and minerals in the dietary supplement. This section of the act provides FDA with authority to grant exemptions from the ingredient listing requirements, but such exemptions have not been sought by the dietary supplement industry. The agency advises that the fact that the name of an ingredient appears elsewhere on the label is not, in and of itself, sufficient justification to grant such exemptions. Therefore, any petition on this subject must address the issue of how this manner of presentation of the source of nutrients continues to fulfill the primary purpose of the ingredient label to adequately inform consumers about all ingredients used to make a food, including those that might be of concern because of personal health reasons (e.g., lactose).

The agency advises that its current policy, as stated in the **Federal Register** of August 2, 1973 (38 FR 20730) and March 16, 1979 (44 FR 16005), and in subsequent correspondence with industry (Refs. 6 and 7), is that the label for dietary supplements of vitamins and minerals must contain a list of nutrients and a separate full statement of ingredients, except those exempted by section 403(i)(2) of the act, declared by their common or usual name. This policy is consistent with the ingredient declaration requirements for other types of products.

Therefore, for all the reasons cited above, FDA has decided not to take the action requested by these comments, pending receipt and review of petitions on this issue.

2. Listing of Percent Daily Value

25. The agency received a number of comments that opposed the use of the term "Percent Daily Value" and that stated that they preferred to continue to use the term "percent U.S. RDA."

The agency disagrees with these comments. As explained in the final rule on RDI's that published in the **Federal Register** of January 6, 1993 (58 FR 2206 at 2207 and 2208), the agency has established two sets of label references values (i.e., RDI's, which were previously the U.S. RDA's, and DRV's). Because the agency believed the use of the two terms on food labels could be confusing to consumers, it established a single term, "Daily Value" to refer to both the RDI's and DRV's (58 FR 2079 at 2124). The comments did not provide any new arguments or data that were not considered in that rulemaking. Furthermore, the agency advises that it knows of no reason why dietary supplements of vitamins and minerals should not use the terminology prescribed for foods in general.

Consistency in terminology will assist consumers in maintaining healthy dietary practices by facilitating their use of the nutrition label to construct a healthy diet that includes both dietary supplements and foods in conventional food form. Therefore, the agency is not making any change in the regulations in response to these comments.

26. One comment requested that the agency eliminate the use of the term "RDI" and use the term "DRV" for both macronutrients and micronutrients. The comment stated that it is confusing to have more the one term.

The comment appears to be requesting new terms not only for the nutrition label of dietary supplements of vitamins and minerals but also for the nutrition label of foods in conventional food form. The terms "RDI" and "DRV" were established in the final rule on RDI's (58 FR 2206).As discussed in the proposed rule of July 19, 1990 (55 FR 29476 at 29479), the distinction between the RDI's and DRV's is necessary for several reasons. First, the RDI's are based on the RDA's, which are considered intake levels to be achieved. However, while some DRV's are based on recommendations to increase or maintain intake of the particular food component, other DRV's reflect levels that are limitations on intake. Furthermore, many of the DRV's must be based on a specific caloric intake, and, unlike the RDI's, the DRV's are not relevant for infants and young children. Finally, the RDI's serve as criteria for use in several regulatory functions, such as the application of the agency's food fortification policy and the assessment of the nutritional equivalency of imitation foods. The DRV's do not have such uses. Therefore, FDA believes that it is appropriate to treat RDI's and DRV's as two different sets of reference values. However, the agency notes that both terms are referred to as "Daily Values" on the nutrition label. The agency believes that the use of a single term on the label will limit consumer confusion. Thus, the concern articulated by the comment is fully addressed by FDA's current regulatory scheme. Accordingly, the agency is not making the requested change.

27. One comment requested that products containing 5 to 17 mg of potassium should be allowed to state, "Contains less than 1 percent of the Daily Value of this nutrient." The comment explained that 17 mg of potassium expressed to the nearest whole percent comes to "0 percent Daily Value" (3,500 mg divided by 17, which rounds to zero), yet § 101.9(c)(5) only allows amounts less than 5 mg to be considered as zero. As a result, the nutrition label of such a product would state 15 mg potassium and 0 percent Daily Value. The comment expressed concern that such apparently contradictory statements would be confusing to consumers.

The comment identifies a concern applicable to dietary supplements and foods in conventional food form, namely that consumers may find it confusing when there is a quantitative amount by weight for a nutrient, and yet the percent Daily Value states 0 percent. This seeming conflict can occur with sodium, potassium, and total carbohydrate on labels of both supplements and foods in conventional food form, and with some vitamins and minerals in dietary supplements, when both quantitative amounts by weight and percent Daily Values are given. To avoid any possible confusion that these apparently inconsistent declarations may cause, the agency is modifying § 101.36(b)(4)(ii) to provide for the declaration of "less than 1%" in the percent of Daily Value column when the declaration of the quantitative amount by weight is greater than zero, and the calculation of percent Daily Value yields a value that is less than 1 percent. The agency believes that a parallel change in § 101.9(d)(7)(ii) for foods in conventional food form is appropriate. The agency intends to propose this change in the near future.

Additionally, the agency notes that, consistent with § 101.9(d)(7)(ii), as modified in the technical amendments (58 FR 44063 at 44077, August 18, 1993), it is modifying § 101.36(b)(4)(i) to specify that the percent of Daily Value shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the RDI or DRV for the specified nutrient and multiplying by 100. The agency is making this change to provide for consistency on the food label between the percent Daily Value and the quantitative amount by weight. The agency had previously provided only that the amount declared be used in the calculation.

28. One comment requested clarification of § 101.36(b)(4)(iii), which provides that when a product is represented or purports to be for use by a group other than adults and children older than 4 years of age, the percent Daily Value for each group must be presented in separate columns. The comment asked if the label of a product represented for use "for the family" would have to include information for all of the groups for which FDA has established RDI's.

The agency believes that it is appropriate for the label of a product represented for use "for the family" to include information for adults and children older than 4 years of age and for children younger than 4 years of age because families often include children in this age group. Inasmuch as there generally would be safety concerns in feeding infants supplements intended for use by adults, FDA also advises that the statement "for the family" should be modified to specifically exclude infants if a firm wants to include only a single list of RDI values. The agency does not believe that this comment requires any change in the language of the proposed rule. However, the agency advises that for clarity, it has changed the word "additional" in § 101.36(b)(4)(iii) to "separate."

D. Format

29. One comment requested that the first sentence in § 101.36(c)(1), "The title of 'Nutrition Facts' shall be set in type size larger than all other print size in the nutrition label and, unless impractical, shall be set full width of the nutrition label," be revised to use the term "nutrition panel" instead of "nutrition label." The comment stated that the "nutrition label" could be interpreted to mean the whole label, in which case the phrase "Nutrition Facts" would have to be the biggest print on the label.

The agency is not persuaded that this revision is needed. In proposed § 101.36 and in § 101.9, the agency has consistently used the term "nutrition label" to refer to the nutrition information set off in a box presented under the heading of "Nutrition Facts." Extensive changes would be required in both regulations to make consistent changes wherever the term "nutrition label" is used. Because no other comments indicated a similar concern, the agency is not making the requested change.

30. One comment requested that § 101.36 be revised to clarify that selective reverse printing may not be used as a form of highlighting, consistent with § 101.9(d)(1)(iv).

The agency agrees with this comment. It unintentionally failed to address reverse printing in § 101.36. In the nutrition labeling final rule, FDA decided not to permit reverse printing as a form of highlighting because it would interfere with the "consistent" look of the label (56 FR 2079 at 2138). For the same reason, the agency is not permitting reverse printing on the nutrition labels of dietary supplements of vitamins or minerals. Accordingly, the agency has revised the second

sentence of § 101.36(c)(1) to read "The title and all headings shall be highlighted (reverse printing is not permitted as a form of highlighting) to distinguish them from other information."

31. One comment stated that labels of multivitamin supplements and multivitamin/multimineral supplements that have a total surface area available to bear labeling of 10 or less square inches should be exempt from the requirement in § 101.36(c)(4) that all information within the nutrition label shall have at least one point leading (i.e., space between two lines of text). Other comments stated that this provision of the proposed rule is appropriate.

The agency is not persuaded that the nutrition label on small labels should be exempt from the requirement of at least one point leading. This requirement is much less than that required for foods in conventional food form (e.g., four point is required between nutrients in § 101.9(d)(1)(ii)(C) and does little more than insure that lines of text do not touch). As discussed in the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33721), the agency proposed at least one point leading because of concerns about legibility. To maintain a consistent and distinctive format that is legible, some leading is necessary. Accordingly, FDA is providing for the minimal leading of one point in the nutrition labeling of dietary supplement of vitamins end minerals and encourages manufacturers to use more leading whenever possible. FDA is not making a similar change for dietary supplements of herbs and of other similar nutritional substances because comments did not demonstrate space concerns with those products that would justify such a change.

Many of the changes in this document will help reduce space requirements (e.g., type size changes). If a manufacturer finds that it is still technologically infeasible or impracticable to fit the nutrition label on a particular package, it may write to the Office of Food Labeling as provided in § 101.36(d)(2).

32. One comment requested that the kerning requirements be deleted, and that instead, the regulation state that "letters should never touch," consistent with the technical amendments to § 101.9 published on August 18, 1993 (58 FR 44063 at 44065). Another comment requested that labels that are less than 10 square inches should be exempt from the requirement in proposed § 101.36(c)(5) that all information within the nutrition label shall have type that is kerned (i.e., has proximity of placement) no tighter than -4 setting. At least one comment supported this provision of the proposed rule.

The agency agrees that the kerning requirements should be made consistent with that for the nutrition labels on packages of foods in conventional food form. As pointed out in a similar comment with respect to the labeling of foods in conventional food form (58 FR 44063 at 44065), a numeric kerning value (which in effect limits the proximity of one letter to another) has meaning only for a particular type setting system. Each such system has a unique numeric scale, and, as a result, a setting of -4 is meaningless for systems other than the one that FDA used in designing its sample labels. The agency acknowledges its error in including a single kerning limit that would be required for all type setting systems. Accordingly, FDA is revising § 101.36(c)(5), consistent with § 101.9(d)(1)(ii)(D), to delete the requirement for a -4 setting and to state that letters should never touch.

33. A couple of comments supported the provision in proposed § 101.36(c)(6) regarding type size, but more than ten comments strongly opposed the provision. The agency proposed to require type size no smaller than 8 point for nutrient information within the nutrition label and to allow no smaller than 6 point type for column headings and footnotes. In eddition, the agency proposed to allow no smaller than 6 point type for all of the information within the nutrition label of packages having a total surface area available to bear labeling of 40 or less square inches. The comments said that the total surface area available for labeling for most dietary supplements is well under 40 square inches. They stated that the proposed 6 point minimum type size is far too large for many labels to include all of the required nutrition information and to still allow space for the ingredient statement, necessary product codes, lot number, expiretion dates, Universal Product Code (UPC) symbols, front panel copy, and other information commonly provided on dietary supplement labels. To alleviate this space problem, a number of comments requested that FDA allow smaller type size. One comment requested a minimum type size of 3.0 point and another 4.0 point. However, most of the comments suggested a minimum type size of 4.5 point, which they said is consistent with the Nonprescription Drug Manufacturers Association (NDMA) Label Readability Guidelines used for over-the-counter (OTC) drugs.

The comments were divided about when FDA should allow smaller print size. A few comments believed that smaller type is needed on labels having up to 40 square inches of total surface area. Other comments suggested that such type is necessary on various-sized labels, such as those with surface areas of less than 25, 15, 12, and 10 square inches. Finally, a few comments suggested that the regulation should state that type size should be "as large as possible," or that it should permit manufacturers to decide for themselves.

After reviewing many dietary supplement labels, the agency is persuaded that the 6 point minimum type size proposed for nutrition labeling information is too large for many multivitamin and multimineral supplement labels. The agency acknowledges that these products often have many nutrients to declare in the nutrition label, are often sold in relatively small packages/jars, and include on the label other information not required for foods in conventional food form. Therefore, FDA is accepting the recommendation, supported by the NDMA Label Readability Guidelines, that 4.5 point minimum type size be allowed on smaller labels. Throughout rulemaking to implement the 1990 amendments, FDA has responded to consumer concerns that the required nutrition information be presented in a manner that will improve legibility, particularly to help older and vision-impaired consumers who otherwise would be effectively denied access to the nutrition information. Because type size is a major determinant of legibility, FDA does not believe type sizes less than 4.5 points should be allowed on package labels and encourages manufacturers to use larger type size when label space allows.

The agency finds that this minimum type size of 4.5 points is appropriate on packages having less than 12 square inches of surface area available to bear labeling. The agency selected less than of 12 square inches of area available to bear labeling as a result of its review of the comments and because it promotes consistency within food labeling regulations inasmuch as § 101.2(c)(3)(i) uses this package size as the standard for exempting small packages of foods from type size requirements, and § 101.9(j)(13)(i) uses it to differentiate which food packages may use a telephone number or address for consumers to use in obtaining nutrition information as the functional equivalent of a nutrition label if no nutrient content or health claims are made on the label. The agency also finds that this decision is reasonable considering the practical need for smaller packages containing supplements composed of many vitamins and minerals to have smaller print, and the need for all labels to be as legible as possible. Therefore, the agency is modifying § 101.36(c)(6) to allow for packages that have a total surface area available to bear labeling of less than 12 square inches to use 4.5 point type size. FDA is not making a similar change for dietary supplements of herbs and of other similar nutritional substances because comments did not demonstrate the same space concerns for those products. Additionally, the agency is correcting § 101.36(c)(6) to refer to paragraph (b)(3) instead of to (b)(4) and to refer to paragraph (b)(4) instead of to (b)(4)(ii). There were inadvertent errors in these references in the proposal.

FDA advises that under § 101.36(g), dietary supplements of vitamins and minerals may also use all provisions allowed in § 101.9(j)(13) to help accommodate the nutrition label on small and intermediate-sized packages.

If, despite these provisions, there are still packages for which there is insufficient area available to print all required information, the agency advises manufacturers to write to the Office of Food Labeling, FDA (HFS–150), on a case-by-case basis requesting alternative means of compliance (e.g., reduced type size or leading) in accordance with § 101.36(d)(2).

34. One comment requested that all upper case lettering be allowed for multivitamin and multimineral labels that are less than 25 square inches in total available surface area to facilitate readability. Other commenta agreed with proposed § 101.36(c)(3), which requires that all information within the nutrition label utilize upper and lower case letters.

In the technical amendments published in the **Federal Register** of August 18, 1993, the agency modified § 101.9(j)(13)(i)(B) to allow all upper case lettering to be used on packages of food in conventional food form that have less than 12 square inches of surface area available to bear labeling (58 FR 44063 at 44072). To be consistent, the agency has modified § 101.36(c)(3) to allow packages of dietary supplements of vitamins and minerals that have less than 12 square inches of surface area available to bear labeling to use all upper case lettering. To maximize legibility and to preserve the readily identifiable image of the nutrition label, FDA is limiting this special provision to small packages (i.e., those with less than 12 square inches of surface area) rather than the 25 square inches requested in the comment.

35. A few comments suggested ways to alleviate space problems other than by using a smaller type size. One comment wanted to be able to present the nutrition label on any package panel, to use the tabular or linear method of listing nutrients, and to use the abbreviations specified in § 101.9(j)(13)(ii). Another comment requested that the entire labeling, not just the label on the primary container, be allowed to be used to relate nutrition information. One comment requested that all supplements with less than 40 square inches of label space be exempt from having a large heading entitled "Nutrition Facts," a box that surrounds the nutrition panel, and the lines that separate each individual nutrient and the headings. Other comments requested that the nonfunctional slack-fill regulations be revised to allow containers to be bigger.

The agency notes that § 101.36(g) provides, in part, that dietary supplements of vitamins and minerals are subject to, among other provisions, the special labeling conditions set out in § 101.9(j)(13) for foods in small and intermediate-sized packages. Section 101.9(j)(13)(i) defines a small package as one that has a total surface area available to bear labeling of less than 12 square inches and allowa for the use of an address or telephone number that a consumer can use to obtain the required information (e.g., "For nutrition information, call 1-800-123-4567") as the functional equivalent of a nutrition label if no nutrient content or health claims are made on the label. When foods in small packages either voluntarily or because of nutrition claims bear nutrition labeling, § 101.9(j)(13)(i)(B) also allows the use of smaller type size than that required on larger packages.

Section 101.9(j)(13)(ii) defines an intermediate-sized package as one that has a total surface area available to bear labeling of 40 or less square inches. This section of the regulations provides several additional special labeling provisions to assist manufacturers in fitting the required information on both small and intermediate-sized packages. These provisions, which can apply to dietary supplements of vitamins and minerals in small or intermediate-sized packages, include using specified abbreviations and presenting the required nutrition information on any label panel. Additionally, this section provides for presenting the required information in a tabular (i.e., horizontal) display or linear (i.e., string) fashion: (1) If the product has a total surface available to bear labeling of less than 12 square inches, or (2) if the product has a total surface area available to bear labeling of 40 or less square inches, and the package shape or size cannot accommodate a column display on any panel. Nutrition information may be given in a linear fashion only if the label will not accommodate a vertical or tabular display.

In response to the comment requesting use of labeling, not just the label on the primary container, to convey nutrition information, the agency advises that it has traditionally required that all required information (e.g., the statement of identity, net weight statement, ingredient list, name and place of manufacture, and nutrition information) appear on the label of packaged foods. Labeling, which includes materials not affixed to the package (such as posters, notebooks, leaflets, and brochures available at the point of purchase), may become separated from the packaged food and are inappropriate for the delivery of required information. Therefore, FDA concludes that it would not be appropriate to grant the request in this comment.

However, FDA considers outer packaging that securely encloses a primary container and that is not intended to be separated from the primary container under conditions of retail sale to be the equivalent of the product label. Therefore, when a bottle containing a dietary supplement in tablet, granular, or liquid form is placed within a sealed box, the required information must be present on the outer container where it is available to the consumer at the point of purchase. While FDA regulations do not require that the information be repeated on the primary container inside the box, the agency encourages manufacturers to do so, so that consumers will have easy access to the information once the container is removed from the outer box. Likewise, if supplements are sold in sealed packaging that provides a cardboard display around the primary container, the full display seen by the consumer becomes the product label. In these situations, the required information shall be placed on appropriate panels as directed in §§ 101.1 and 101.2, pertaining to the principal display panel and the information panel, respectively.

It would not be consistent with section 2(b)(1)(A) of the 1990 amendments to allow packaging with less than 40 square inches of label space to be exempt from graphic requirements such as having the title "Nutrition Facts" in the largest print within the nutrition label, having the required information enclosed within a box, and

using hairlines to separate nutrients and headings. As stated above, the agency concluded in the mandatory nutrition labeling final rule (58 FR 2079 at 2136) that if the nutrition label was to be readily observable and comprehensible, it must be presented in as consistent a manner as possible from label to label. Thus, in establishing the requirements for the nutrition label, the agency went to great lengths to give the format a distinctive look (e.g., through the use of a prominent heading, highlighting of key nutrient information, and enclosure of the information in a box) to facilitate consumer recognition of the label and to encourage use of the information. Consistency of appearance begins to be lost if these graphic elements are omitted on certain packages. Such action would make it likely that some consumers would fail to recognize the nutrition information and to understand the significance of the information that is presented. For this reason, FDA is not providing the flexibility requested.

However, the agency has reviewed the format requirements in response to these comments concerned about space problems. To help alleviate space problems, the agency has concluded that it can provide for flexibility in the placement of the heading,"% Daily Value." When a dietary supplement contains less than 5 calories per serving, "Calories" need not be declared. In this situation, shown in the sample labels in § 101.36(c)(8) of the proposal (58 FR 33715 at 33728 through 33730), the heading "% Daily Value" is placed to the right and under the bar beneath the heading "Amount Per Serving." Because there is sufficient space on one line for both headings, the agency is modifying § 101.36(b)(4) to provide that the heading "% Daily Value" may be placed on the same line as the heading "Amount Per Serving," when calorie information is not required to be declared.

Also, consistent with provisions in § 101.9(d)(11)(i) and (ii) that allow lower portions of the vertical format to be split and moved to the contiguous right, FDA is providing in § 101.36(c)(10) that, if space is not adequate to list the required information in one vertical list (as shown in the sample labels in § 101.36(c)(9)), the list may be split and the lower information moved to the right as long as the headings are repeated. The list to the right should be set off by a line that distinguishes it and sets it apart from the nutrients and the percent Daily Value information given to the left. A sample of this split format is included in § 101.36(c)(10).

The agency is not convinced by the comment that the nonfunctional slack-fill regulations should be revised to allow containers of dietary supplements to be larger than otherwise necessary to accommodate the labeling requirements. As discussed in the final rule on nonfunctional slack-fill (58 FR 64123 at 64134, December 6, 1993), the agency knows of no reason for treating dietary supplements differently from foods in conventional food form. In response to this and the other comments suggesting ways to alleviate space constraints, the agency advises that many of the changes that FDA has made from the proposal will help to reduce space requirements (e.g., reduced type size requirements on packages of dietary supplements of vitamins and minerals). If manufacturers find that it is still technologically infeasible or impracticable to fit the nutrition label on a particular package, they may write to the Office of Food Labeling as directed in §§ 101.9(g)(9) and 101.36(d)(2). The agency points out that any information, other than the net quantity of contents and statement of identity, may be printed parallel to the base of a package. Thus, the nutrition label may be printed parallel to the base of a package, which may provide more space for this information. However, FDA urges manufacturers to strive for consistency of presentation of nutrition information in the market.

36. One comment requested that hairlines be required to separate lines of nutrient declarations, and that these hairlines be centered between the lines of text. This comment also requested clarification that Appendix B to part 101, which is referenced in § 101.36(c)(8), contains several nonrequired elements, such as Helvetica typeface, at least 13 point type for "Nutrition Facts," and a specific thickness for the separating bars on the nutrition label.

As discussed in the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33716), the agency intends that the nutrition labeling on vitamin or mineral supplements be presented in a manner that is as similar as possible to the nutrition labeling of foods in conventional food form. Hairlines are required in the nutrition labeling of foods in conventional food form as specified in § 101.9(d)(1)(v). The agency intended that § 101.36 contain a similar provision. However, it inadvertently failed to specifically provide for hairlines in the proposed rule, although it included hairlines in the samples labels presented in proposed § 101.36(c)(9) and urged that the graphic specifications set forth in Appendix B to part 101 be followed. These graphic specifications describe the use of hairlines under C-2. Accordingly, the agency concludes that it is appropriate to modify § 101.36(c) to require hairlines in § 101.36(c)(7) and to redesignate paragraphs (c)(7) and (c)(8) as paragraphs (c)(8) and (c)(9), respectively, to reflect this modification. New § 101.36(c)(7) states: "A hairline rule that is centered between the lines of text shall separate each nutrient and its corresponding percent Daily Value required in paragraph (b)(4) of this section from the nutrient and percent Daily Value above and below it, as shown in paragraph (c)(9) of this section, and shall separate 'Amount Per Serving' from the calorie statement, when the listing of calories is required."

With respect to Appendix B, the comment is correct in stating that Appendix B contains several nonrequired elements, such as Helvetica typeface, a specified type size for the title "Nutrition Facts," and a specific thickness for the separating bars on the nutrition label. The required graphic elements are specified in § 101.36(b) and (c).

37. A couple of comments objected to the bar at the bottom of the nutrition label and requested that this requirement be deleted. They stated that it is unnecessary and may interfere with the scanning of the UPC symbol. Another comment requested that § 101.36(c) be revised to require a bar following the final vitamin or mineral listed. Other comments supported the proposal.

In § 101.36(b)(3)(ii), FDA proposed to require a bar at the bottom of the nutrition label of dietary supplements of vitamins and minerals to help ensure that the nutrition label on these types of foods has the same readily identifiable image, or "look," as the nutrition label on foods in conventional food form (58 FR 33715 at 33719). Comments to the agency's proposed rule on the format for nutrition labeling (57 FR 32058, July 20, 1992) had argued that a consistent look to the required nutrition information on food packages will help consumers find the information on the package and to recognize it for what it is--a profile of the nutrient content of the food. These comments convinced FDA that the specific format elements mandated provide a visually integrated image that will give the nutrition label a uniform appearance across the various types of packages in the market and will enhance consumer use of the information. Nothing in the comments on proposed § 101.36 provide the basis for a different conclusion. FDA finds that contrary to the comments' assertion, this bar contributes directly to the consistent look of the nutrition label. To avoid any possible interference of the bar at the bottom of the nutrition label with the scanning of the UPC symbol, manufacturers may design the package layout so that the UPC symbol is not adjacent to the nutrition label. Accordingly, the agency is not modifying § 101.36(b)(3)(ii) in response to these comments.

38. One comment requested that bars be required after "Serving Size" and "Amount Per Serving."

The agency points out that § 101.36(b)(3) requires that the heading "Amount Per Serving" be separated from other information on the label by a bar above and beneath it. Thus, the upper bar will be beneath the declaration of "Servings Per Container" or, when "Servings Per Container" is not required, of "Serving Size." The lower bar would separate the declaration "Amount Per Serving" from the heading "Percent Daily Value." The agency notes that this bar should follow information on calories, when that information is declared (i.e., when the dietary supplement of vitamins and minerals contains 5 or more calories), to be consistent with the labeling of foods in conventional food form (§ 101.9(d)(6)). However, the agency inadvertently failed to specify in the proposed rule where this bar should be placed. As discussed in the nutrition labeling proposal for dietary supplements (58 FR 33715 at 33716), the agency intended that the nutrition labeling on vitamin and mineral supplements be presented in a manner as similar as possible to the nutrition labeling of foods in conventional food form. Therefore, FDA finds that it is the logical outgrowth of the proposal to specify in this final rule where the bar following "Amount Per Serving" should be placed when information on calories is declared in a nutrition label for a dietary supplement of vitamins or minerals. Accordingly, the agency is modifying § 101.36(b)(3) to state: "The heading 'Amount Per Serving' shall be separated from other information on the label by a bar above and beneath it, except when calories are listed, the bar shall be placed beneath the calorie declaration."

E. Compliance and Exemption Issues

39. At least three comments requested that dietary supplements be able to indicate compliance with United States Pharmacopeia (USP) requirements. One of these comments requested that a new paragraph, § 101.36(d)(3), be added that would provide that the label could bear a box entitled "Nutrition Facts" that would contain nutrition information for USP recognized substances that are the source of vitamins and minerals. Immediately below that box, the label would bear another section entitled, "Other Ingredients" that would list all additional ingredients present in more than insignificant amounts, followed by a listing of all other added substances incorporated in the product as excipients. The comment stated that by listing all other ingredients present, consistency with section 411(b)(2)(A)(i) of the act would be achieved. Alternatively, this comment requested that the following sentence be added after the first sentence of § 101.36(d)(2): "Such allowances will also be considered where a firm produces an article that purports to comply with the requirements of the official USP and seeks to label it in accordance with the requirements of the Pharmacopeia." The comment stated that this new sentence would allow firms to comply with USP labeling requirements with FDA's permission. Additionally, this comment requested that the name of products that meet USP quality standards be followed by the letters "USP."

Both of the comment's suggested changes in § 101.36(d) would allow for two very different forms of nutrition labeling on dietary supplements of vitamins and minerals, depending upon whether a manufacturer chose to follow FDA's requirements, which are generally consistent with § 101.9, or USP's, which would list only USP recognized nutrients in the top box. A manufacturer's decision to follow the USP approach would result in a nutrition label that was inconsistent with labels of other dietary supplements of vitamins and minerals, with dietary supplements of herbs and other similar nutritional substances, and with foods in conventional food form. The comment also appears to request that the determination of whether or not a nutrient should be listed in the nutrition label should be based upon its USP status.

FDA finds that it would not be consistent with section 2(b)(1)(A) of the 1990 amendments to provide the flexibility sought by these comments. As discussed in response to earlier comments, the agency decided in the mandatory nutrition labeling final rule that if the nutrition label was to be readily observable and comprehensible, it must be presented in as consistent a manner as possible from label to label. Thus, it was the agency's determination that, whenever possible, nutrition labeling requirements should ensure a distinctive look and order of nutrients to facilitate consumer recognition and understanding of the label and to encourage use of the information. Allowing two different nutrition labeling schemes would make it likely that some consumers would fail to recognize the nutrition information or would be too confused to be able to use it fully. FDA has made the same decision with respect to dietary supplements and thus is not providing the flexibility requested.

However, in regard to the request that the name of ingredients of USP quality be allowed to indicate USP status, the agency advises that although statements appearing outside of the nutrition label are beyond the scope of this final rule, it would not object to the use of truthful and nonmisleading statements regarding USP status elsewhere on product labels. Further, FDA would not object to the use of the USP symbol in the ingredient list to identify those ingredients that are USP grade. The agency advises that it will not consider the USP symbol, when used in this way, to constitute intervening material in the ingredient list.

40. One comment requested that FDA recognize USP methodology. This comment stated that § 101.36(d)(1) requires that dietary supplements comply with § 101.9(g)(2), which specifies Association of Official Analytical Chemists (AOAC) test methodology for nutrient analysis.

The agency wishes to clarify that § 101.9(g)(2) states that when FDA determines compliance, it will analyze composite samples by appropriate methods as given in the "Official Methods of Analysis of the AOAC International," 15th edition, or, if no AOAC method is available or appropriate, by other reliable and appropriate analytical procedures. Manufacturers, however, are free to use whatever methodology they believe will give results consistent with methods used by FDA. Therefore, the requested change is unnecessary.

41. One comment requested that the compliance criteria be revised to allow the actual content of any vitamin or mineral in a dietary supplement to be 90 percent, instead of at least 100 percent, of the declared value. This comment stated that the proposed rule (i.e., § 101.36(d)(1), which refers to § 101.9(g)(1) through (g)(2)) requires that products that contain added vitamins and minerals provide at least the amount declared for each nutrient. The comment stated that consideration should be given to the fact that many dietary supplements, while formulated to contain at least 100 percent of the declared amount, are designed to retain only at least 90 percent of their declared amount over the shelf life declared on these products. The comment attributed

this practice to the fact that USP monographs for several nutritional products require a minimum nutrient content of 90 percent of the label declaration.

The agency is not persuaded by this comment. As previously discussed in response to a similar comment in the mandatory nutrition labeling final rule (58 FR 2079 at 2171), dietary supplements of vitamins and minerals are fabricated products. The comments provided no convincing reason for why they should not be held to the same standards as foods in conventional food form that are fortified or enriched. The agency has informed USP that anything less than 100 percent of the value declared on the label for vitamin and mineral products is not acceptable to FDA, and that the only permissible deviation from this requirement would be a deviation that is attributable to the variability of the analytical method (Ref. 8).

The agency notes that, contrary to the statement in the comments, the General Notices of the USP state that a dosage should be formulated to provide 100 percent of the labeled amount (Ref. 9). The limits in the USP monographs allow for overages of ingredients known to decrease with time, for analytical error, for manufacturing and compounding variations, and for deterioration to an extent considered insignificant under practical conditions (Ref. 9).

42. One comment pertained to small businesses. The comment stated that "burdening the manufacturer with the cost of the nutrition labeling requirements (listing that a vitamin supplement contains no fat, no protein, no carbohydrate, etc.) would be a useless exercise, especially in the case of the marketing of a single ingredient substance." The comment requested that § 101.36(f)(1) of the proposed rule be revised to either delete the nutrition labeling requirement for small businesses or to allow the nutrition label to declare only those nutrients actually present in the supplement.

The agency believes that this comment misunderstood the proposed rule. As the comment requested, the agency requires nutrition labeling "only with respect to those substances actually contained in the supplement." Manufacturers are not burdened with the cost of declaring that a vitamin supplement contains no fat, no protein, or no carbohydrate if they do not. Only nutrients present in significant amounts are required to be declared under § 101.36(b)(3). Therefore, the agency is not changing the regulation in response to this comment.

FDA notes that Congress recently passed, and the President signed on August 13, 1993, the Nutrition Labeling and Education Act Amendments of 1993 (Pub. L. 103-80) that modified the treatment of small businesses. As a result of this change, the exemption from nutrition labeling requirements for small businesses that are food manufacturers will be based on the number of employees in a firm and the number of units of each product sold. FDA expects to publish a proposal to amend §§ 101.9 and 101.36 to reflect the new law.

F. Misbranding

43. One comment stated that § 101.9(k)(1) through (k)(6) should not apply to dietary supplements. The comment stated that § 101.9(k)(1) is overbroad such that it suppresses truthful, nonmisleading speech about the beneficial properties of a nutrient supplement product that may, by virtue of the supplement's inherent properties, not only be a food but also aid in the prevention, cure, mitigation, or treatment of any disease. This comment did not focus on why § 101.9(k)(2) through (k)(6) should not apply to dietary supplements. Other comments specifically mentioned that the first sentence of § 101.9(k)(5) is vague, confusing, and contradictory. This sentence provides that a food shall be deemed to be misbranded if its label or labeling represents, suggests, or implies that the food has dietary properties when such properties are of no significant value or need in human nutrition. These comments suggested that this sentence be revised to read: "A food shall be deemed to be misbranded if its label claims or represents that the food has a significant value or need in human nutrition when the scientific evidence for the claim does not exist." These comments argued that this change is necessary because "significant value or need in human nutrition" is a matter of consumer perception. They said that to a small child, the need for eating spinach is very low, but to the mother the need for spinach is very high. Other comments specifically agreed that § 101.9(k) should apply to dietary supplements of vitamins and minerals.

The agency does not agree with the comment that § 101.9(k)(1) through (k)(6) should not apply to dietary supplements, or that § 101.9(k)(1) suppresses truthful, nonmisleading speech. The comment did not provide any basis for the agency to conclude that this provision is not applicable to dietary supplements, or that it suppresses truthful, nonmisleading speech.

In the final rule on nutrition labeling of January 6, 1993 (58 FR 2079 at 2167), the agency pointed out that the provisions of § 101.9(i) (redesignated as (k)) had long been in effect at the time Congress drafted the 1990 amendments. While Congress did enact provisions under the 1990 amendments that allow for health claims on foods, nothing in the act or in the legislative history of the act suggest that Congress intended that § 101.9(i) should be changed.

Nor did the comments present any persuasive arguments that § 101.9(k)(5) of the proposed rule should be amended. The agency does not agree that whether or not a significant value or need in human nutrition has been established is a matter of consumer perception. The agency notes that the phrase "significant value or need in human nutrition" was promulgated and published in the **Federal Register** of January 19, 1973 (38 FR 2125). In that final rule (38 FR 2125 at 2128), the agency explained that over the years there have been a number of ingredients of products marketed as nutrients and nutritional supplements that have not been shown to be essential in human nutrition, such as rutin, other bioflavonoids, para-aminobenzoic acid, and inositol. The agency stated that calling attention to these ingredients in a manner that implies some nutritional benefit is misleading. The agency concludes that the language of § 101.9(k)(5) remains clear and does not need clarification.

Therefore, the agency is making no change in § 101.9(b) in response to these comments.

IV. Other Provisions

FDA did not receive any comments that dealt specifically with the other provisions of the proposal. In the absence of any basis for doing otherwise, FDA is adopting those provisions as proposed.

V. Economic Impact

In its dietary supplement labeling proposals of June 18, 1993, FDA stated that the proposed rules on the labeling of dietary supplements, taken as a whole, would have associated costs of approximately $20 million. Thus, the agency concluded that the proposed rules do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96-354), FDA explored whether the proposed rules may have a significant impact on small businesses and tentatively concluded that they do not.

FDA has evaluated the many comments that it received in response to its economic impact analysis. Because the issues raised in the comments relate to all three proposals, FDA has combined its discussion of these comments and presented them in the final rule regarding a delay in the date of application, which is published elsewhere in this issue of the **Federal Register**.

FDA has examined the economic implications of the final rules amending 21 CFR as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires that the agency analyze options for regulatory relief for small businesses. FDA has concluded, based on its review of the available data and comments, that these final rules are not significant as defined by Executive Order 12866. Further, in accordance with the Regulatory Flexibility Act, the agency certifies that these final rules will not have a significant impact on a substantial number of small businesses.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. References

The following references have been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Nutrition Board, Division of Biology and Agriculture, National Research Council, "Recommended Dietary Allowances, 7th ed., 1968," publication 1694, Printing and Publishing Office, NAS, Washington, DC, 1968.

2. Subcommittee on the 10th edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th edition," NAS, Washington, DC, National Academy Press, 1989.

3. Levy, A., S. B. Fein, and R. E. Schucker, "More Effective Nutrition Label Formats Are Not Necessarily More Preferred," Journal of the American Dietetic Association, 92:1230-1234, 1992.

4. Gardner, T. S., and E. T. Guarino, Grocery Manufacturers of America, Inc., Letters to Dockets Management Branch, June 3, 1992.

5. Levy, A. S., S. B. Fein, and R. E. Schucker, "Evaluation of Nutrition Label Formats: FDA Study 2," Center for Food Safety and Applied Nutrition, FDA, Washington, DC, March, 1992.

6. FDA opinion letter, Taylor M. Quinn, Office of Compliance, Bureau of Foods, to Stanley Skelskie, March 30, 1979.

7. FDA opinion letter, Taylor M. Quinn, Office of Compliance, Bureau of Foods, to Stanley Skelskie, January 25, 1980.

8. Tanner, J. T., Letter to V. Srinivasan, U.S. Pharmacopeial Convention, Inc., May 7, 1991.

9. U.S. Pharmacopeial Convention, Inc., "USP XXII, NF XVII, The United States Pharmacopeia," The National Formulary, General Notices and Requirements Applying to Standards, Tests, Assays, and Other Specifications of the United States Pharmacopeia, pp. 1-3, January 1, 1990.

10. Committee on Dietary Allowances, Food and Nutrition Board, Assembly of Life Sciences, National Research Council, "Recommended Dietary Allowances, 9th revised ed., 1980," Washington, DC, National Academy Press, 1980.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements,

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.9, effective May 8, 1994, is amended by revising paragraphs (d)(3)(ii), (h)(2), and (j)(6) to read as follows:

§ 101.9 Nutrition labeling of food.

* * * * *

(d) * * *

(3) * * *

(ii) "Servings Per Container": The number of servings per container, except that this statement is not required on single serving containers as defined in paragraph (b)(6) of this section or on other food containers when this information is stated in the net quantity of contents declaration.

* * * * *

(h) * * *

(2) If a product consists of two or more separately packaged foods that are intended to be eaten individually and that are enclosed in an outer container (e.g., variety packs of cereals or snack foods), the nutrition information shall:

(i) Be specified per serving for each food in a location that is clearly visible to the consumer at the point of purchase; and

(ii) Be presented in separate nutrition labels or in one aggregate nutrition label with separate columns for the quantitative amount by weight and the percent Daily Value for each food.

* * * * *

(j) * * *

(6) Dietary supplements of vitamins or minerals that have an RDI as established in paragraph (c)(8)(iv) of this section or a DRV as established in paragraph (c)(9) of this section shall be labeled in compliance with § 101.36, except that dietary supplements of vitamins or minerals in food in conventional form (e.g., breakfast cereals), of herbs, and of other similar nutritional substances shall conform to the labeling of this section.

* * * * * *

3. Section 101.12, effective May 8, 1994, is amended in paragraph (b), Table 2, by alphabetically adding a new entry under the subheading "Miscellaneous category" to read as follows:

§ 101.12 Reference amounts customarily consumed per eating occasion.

* * * * *

(b) * * *

TABLE 2.—REFERENCE AMOUNTS CUSTOMARILY CONSUMED PER EATING OCCASION: GENERAL FOOD SUPPLY[1, 2, 3, 4]

Product category	Reference amount	Label statements[5]
• • •	• • •	• • •
MISCELLANEOUS CATEGORY:		
• • •	• • •	• • •
Dietary supplements not in conventional food form..	The maximum amount recommended, as appropriate, on the label for consumption per eating occasion or, in the absence of recommendations, 1 unit, e.g., tablet, capsule, packet, teaspoonful, etc.	——— tablet(s), ——— capsule(s), ——— packet(s), ——— tsp(s) (——— g), etc.
• • •	• • •	• • •

[1] These values represent the amount (edible portion) of food customarily consumed per eating occasion and were primarily derived from the 1977–1978 and the 1987–1988 Nationwide Food Consumption Surveys conducted by the U.S. Department of Agriculture.

[2] Unless otherwise noted in the Reference Amount column, the reference amounts are for the ready-to-serve or almost ready-to-serve form of the product (i.e., heat and serve, brown and serve). If not listed separately, the reference amount for the unprepared form (e.g., dry mixes; concentrates; dough; batter; dry, fresh, and frozen pasta) is the amount required to make the reference amount of the prepared form. Prepared means prepared for consumption (e.g., cooked).

[3] Manufacturers are required to convert the reference amount to the label serving size in a household measure most appropriate to their specific product using the procedures in 21 CFR 101.9(b).

[4] Copies of the list of products for each product category are available from the Office of Food Labeling (HFS–150), Center for Food Safety and Applied Nutrition, Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

[5] The label statements are meant to provide guidance to manufacturers on the presentation of serving size information on the label, but they are not required. The term "piece" is used as a generic description of a discrete unit. Manufacturers should use the description of a unit that is most appropriate for the specific product (e.g., sandwich for sandwiches, cookie for cookies, and bar for ice cream bars). The guidance provided is for the label statement of products in ready-to-serve or almost ready-to-serve form. The guidance does not apply to the products which require further preparation for consumption (e.g., dry mixes, concentrates) unless specifically stated in the product category, reference amount, or label statement column that it is for these forms of the product. For products that require further preparation, manufacturers must determine the label statement following the rules in § 101.9(b) using the reference amount determined according to § 101.12(c).

4. Section 101.36 is added to subpart C to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins and minerals.

(a) The label of a dietary supplement of a vitamin or mineral that has a Reference Daily Intake (RDI) as established in § 101.9(c)(8)(iv) or a Daily Reference Value (DRV) as established in § 101.9(c)(9), shall bear nutrition labeling in accordance with this regulation, as illustrated in paragraph (c)(9) of this section, unless an exemption is provided for the product in paragraph (f) of this section. Dietary supplements of herbs or other similar nutritional substances shall bear nutrition labeling in accordance with § 101.9.

(b) The declaration of nutrition information on the label and in labeling shall contain the following information, using the headings and format specified, under the heading of "Nutrition Facts". The nutrition information shall be enclosed in a box by use of lines, shall be all black or one color type, and shall be printed on a white or other neutral contrasting background whenever practical.

(1) The subheading "Serving Size" shall be placed under the heading and aligned on the left side of the nutrition label. The serving size shall be determined in accordance with § 101.9(b) and § 101.12(b), Table 2. Serving size shall be expressed using a term that is appropriate for the form of the supplement, such as "tablets," "capsules," "packets," or "teaspoonfuls."

(2) The subheading "Servings Per Container" shall be placed under the subheading "Serving Size" and aligned on the left side of the nutrition label, except that this information need not be provided when it is stated in the net quantity of contents declaration.

(3) A listing of all nutrients required in § 101.9(c) that are present in the dietary supplement in quantitative amounts by weight that exceed the amount that can be declared as zero in § 101.9(c). Those nutrients that are not present, or that are present in amounts that would be declared as zero, shall not be declared. In addition, potassium, vitamin K, chloride, chromium, fluoride, manganese, molybdenum, and selenium shall be declared, except when present in quantitative amounts by weight that allow a declaration of zero. The name of each nutrient listed shall be immediately followed by the quantitative amount by weight of the nutrient. Nutrient names and quantitative amounts shall be presented in a column under the heading of "Amount Per Serving" and aligned on the left side of the nutrition label. The heading "Amount Per Serving" shall be separated from other information on the label by a bar above and beneath it, except that when calories are listed, the bar shall be placed beneath the calorie declaration. When the serving size of the product is one unit (e.g., one tablet), a heading consistent with the declaration of the serving size, such as "Amount Per Tablet" or "Each Tablet Contains," may be used in place of the heading "Amount Per Serving." Other appropriate terms, such as capsule, packet, or teaspoonful, may be used in place of the term "Serving."

(i) These amounts shall be expressed in the increments specified in § 101.9(c), except that the amounts of vitamins and minerals, excluding sodium and potassium, declared on the nutrition label shall be the actual amount of the vitamin or mineral included in the dietary supplement, using the units of measure and the levels of significance given in § 101.9(c). In declaring the amounts of vitamins and minerals, zeros following decimal points may be dropped, and additional levels of significance may be used when the number of decimal places indicated is not sufficient to express lower amounts (e.g., the RDI for copper is given in whole milligrams (mg), but the quantitative amount may be declared in tenths of a mg). Amounts for chloride, fluoride, and manganese shall be expressed in mg, and, amounts for chromium, molybdenum, selenium, and vitamin K shall be expressed in micrograms. These values shall be expressed in whole numbers, except that tenths may be used for fluoride.

(ii) Nutrients that are present shall be listed in the order specified in § 101.9(c); except that, when present, vitamin K shall follow vitamin E; calcium and iron shall follow pantothenic acid; selenium shall follow zinc; and manganese, fluoride, chromium, molybdenum, chloride, sodium, and potassium shall follow copper. This results in the following order for vitamins and minerals: Vitamin A, vitamin C, vitamin D, vitamin E, vitamin K, thiamin, riboflavin, niacin, vitamin B6, folate, vitamin B12, biotin, pantothenic acid, calcium, iron, phosphorus, iodine, magnesium, zinc, selenium, copper, manganese, fluoride, chromium, molybdenum, chloride, sodium, and potassium. A bar shall separate the last nutrient to be listed from the bottom of the nutrition label, as shown in the sample labels in paragraph (c)(9) of this section.

(iii) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the quantitative amounts may be presented as specified in this paragraph in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the quantitative amounts for each package as illustrated in paragraph (c)(9)(iii) of this section.

(iv) The percent of vitamin A that is present as *beta*-carotene may be declared, to the nearest whole percent, immediately adjacent to or beneath the nutrient name (e.g., "Vitamin A 5000 IU (90 percent as *beta*-carotene)"), except that the declaration is required when a claim is made about *beta*-carotene. The amount of *beta*-carotene in terms of international units (IU) may be included in parentheses following the percent statement (e.g., "Vitamin A 5000 IU (90 percent (4500 IU) as *beta*-carotene)").

(v) The following synonyms may be added in parenthesis immediately following the name of these nutrients: Vitamin C (ascorbic acid), thiamin (vitamin B1), riboflavin (vitamin B2), folate (folacin), and calories (energy). Energy content per serving may be expressed in kilojoules units, added in parentheses immediately following the statement of caloric content.

(vi) All nutrients shall be displayed with uniform type size, style, color, and prominence.

(4) A listing of the percent of the Daily Value (i.e., the percent of the RDI as established in § 101.9(c)(8)(iv) or DRV as established in § 101.9(c)(9)), where appropriate, of all nutrients listed in the nutrition label, except that the percent for protein may be omitted as provided in § 101.9(c)(7) and no percent shall be given for sugars, vitamin K, chloride, chromium, fluoride, manganese, molybdenum, selenium. This information shall be presented in one column aligned under the heading of "% Daily Value" and to the right of the column of nutrient names and amounts. The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," or "Percent DV" may be substituted for "% Daily Value." The heading "% Daily Value" shall be placed on the same line as the heading "Amount Per Serving" or placed beneath this heading and the bar underneath it, except that "% Daily Value" shall be placed beneath this bar when calorie information is required to be declared. Calorie information shall be placed beneath "Amount Per Serving" and above the bar.

(i) The percent of Daily Value shall be calculated by dividing either the amount declared on the label for each nutrient or the actual amount of each nutrient (i.e., before rounding) by the RDI or DRV for the specified nutrient and multiplying by 100, except that the percent for protein shall be calculated as specified in § 101.9(c)(7)(ii). The numerical value shall be followed by the symbol for percent (i.e., %).

(ii) The percentages based on RDI's and on DRV's shall be expressed to the nearest whole percent, except that "Less than 1%" may be used in place of "0%" when the declaration of the quantitative amount by weight is a value greater than zero.

(iii) The percent of Daily Value for vitamins and minerals shall be based on RDI values for adults and children 4 or more years of age unless the product is represented or purported to be for use by infants, children less than 4 years of age, pregnant women, or lactating women, in which case the column heading shall clearly state the intended group. If the product is for persons within more than one group, the percent of daily value for each group shall be presented in separate columns as shown in paragraph (c)(9)(ii) of this section.

(iv) If the product contains two or more separately packaged dietary supplements of vitamins and minerals (e.g., the product has a packet of supplements to be taken in the morning and a different packet to be taken in the afternoon), the percent of Daily Value may be presented as specified in paragraph (b)(4) of this section in individual nutrition labels or in one aggregate nutrition label with separate columns declaring the percent of Daily Value for each package as illustrated in paragraph (c)(9)(iii) of this section.

(v) If the percent of Daily Value is declared for total fat, saturated fat, total carbohydrate, dietary fiber, or protein, the value shall be followed by an asterisk that refers to another asterisk at the bottom of the nutrition label that states "Percent Daily Values are based on a 2,000 calorie diet."

(vi) When no percent is given for sugars, vitamin K, chloride, chromium, fluoride, manganese, molybdenum, or selenium, an asterisk shall be placed in the "% Daily Value" column that shall refer to another asterisk that is placed at the bottom of the nutrition label that is followed by the statement "Daily Value not established."

(c) Nutrition information specified in this section shall be presented as follows:

(1) The title of "Nutrition Facts" shall be set in a type size larger than all other print size in the nutrition label and, unless impractical, shall be set full width of the nutrition label. The title and all headings shall be highlighted (reverse printing is not permitted as a form of highlighting) to distinguish them from other information.

(2) All information within the nutrition label shall utilize a single easy-to-read type style.

(3) All information within the nutrition label shall utilize upper and lower case letters, except that all uppercase lettering may be utilized for packages that have a total surface area available to bear labeling of less than 12 square inches.

(4) All information within the nutrition label shall have at least one point leading (i.e., space between two lines of text).

(5) Letters should never touch.

(6) All information within the nutrition label on packages that have a total surface area available to bear labeling of less than 12 square inches shall have type size no smaller than 4.5 point; packages that have from 12 to 40 square inches of surface area available to bear labeling shall have type size no smaller than 6 point; and packages with more than 40 square inches of surface area available to bear labeling shall have type size no smaller than 8 point, except that on packages with more than 40 square inches of available surface area, type size no smaller than 6 point may be used for the listing of information on *beta*-carotene, as specified in paragraph (b)(3)(iv) of this section, for the headings required by paragraphs (b)(3) and (b)(4) of this section (i.e., "Amount Per Serving" and "% Daily Value"), and for the footnote required by paragraph (b)(4)(v) of this section.

(7) A hairline rule that is centered between the lines of text shall separate each nutrient and its corresponding percent Daily Value required in paragraph (b)(4) of this section from the nutrient and percent Daily Value above and beneath it, as shown in paragraph (c)(9) of this section, and shall separate "Amount Per Serving" from the calorie statement, when the listing of calories is required.

(8) In the interest of uniformity of presentation, FDA urges that the information be presented using the graphic specifications set forth in Appendix B to Part 101, as applicable.

(9) The following sample labels are presented for the purpose of illustration

(i) Multiple vitamin.

Nutrition Facts

Serving Size 1 tablet

Amount Per Serving	% Daily Value
Vitamin A 5000 I.U. 50 % as Beta Carotene	100%
Vitamin C 60 mg	100%
Vitamin D 400 I.U.	100%
Vitamin E 30 I.U.	100%
Thiamin 1.5 mg	100%
Riboflavin 1.7 mg	100%
Niacin 20 mg	100%
Vitamin B_6 2.0 mg	100%
Folate 0.4 mg	100%
Vitamin B_{12} 6 mcg	100%
Biotin 0.03 mg	10%
Pantothenic Acid 10 mg	100%

(ii, Multiple vitamin for children and adults.

Nutrition Facts

Serving Size 1 Tablet
Servings Per Container 100

Amount Per Serving	% Daily Value for Children Under 4 Years of Age	% Daily Value for Adults and Children 4 or More Years of Age
Calories 5		
Sugars 1g		
Vitamin A 2500 I.U. 50% as Beta Carotene	100%	50%
Vitamin C 40 mg	100%	67%
Vitamin D 400 I.U.	100%	100%
Vitamin E 15 I.U.	150%	50%
Thiamin 1.1 mg	157%	73%
Riboflavin 1.2 mg	150%	71%
Niacin 14 mg	156%	70%
Vitamin B6 1.1 mg	157%	55%
Folate 0.3 mg	150%	75%
Vitamin B12 5 mcg	167%	83%

(iii) Multiple vitamins in packets.

Nutrition Facts

	AM Packet	PM Packet
Serving Size	1 Packet	1 Packet
Servings Per Container	10	10
Amount Per Serving	**% Daily Value**	**% Daily Value**
Vitamin A	2500 I.U. 50%	2500 I.U. 50%
Vitamin C	60 mg 100%	60 mg 100%
Vitamin D	400 I.U. 100%	
Vitamin E	30 I.U. 100%	
Thiamin	1.5 mg 100%	1.5 mg 100%
Riboflavin	1.7 mg 100%	1.7 mg 100%
Niacin	20 mg 100%	20 mg 100%
Vitamin B6	2.0 mg 100%	2.0 mg 100%
Folate	0.2 mg 50%	0.2 mg 50%
Vitamin B12	3 mcg 50%	3 mcg 50%
Biotin		0.03 mg 10%
Pantothenic Acid	5 mg 50%	5 mg 50%

(10) If space is not adequate to list the required information as shown in the sample labels in paragraph (c)(9) of this section, the list may be split and continued to the right, as long as the headings are repeated. The list to the right shall be set off by a line that distinguishes it and sets it apart from the nutrients and percent of Daily Value information given to the left. The following sample label illustrates this display:

Nutrition Facts

Serving Size 1 tablet

Servings Per Container 100

Amount Per Tablet	% Daily Value	Amount Per Tablet	% Daily Value
Vitamin A 5000 I.U.	100%	Pantothenic Acid 10 mg	100%
Vitamin C 60 mg	100%	Calcium 162 mg	16%
Vitamin D 400 I.U.	100%	Iron 18 mg	100%
Vitamin E 30 I.U.	100%	Phosphorus 125 mg	13%
Vitamin K 20 mcg	*	Iodine 150 mcg	100%
Thiamin 1.5 mg	100%	Magnesium 100 mg	25%
Riboflavin 1.7 mg	100%	Zinc 15 mg	100%
Niacin 20 mg	100%	Selenium 25 mcg	*
Vitamin B_6 2 mg	100%	Copper 1 mg	50%
Folate 0.4 mg	100%	Manganese 2 mg	*
Vitamin B_{12} 6 mcg	100%	Sodium 50 mg	2%
Biotin 0.03 mg	10%	Potassium 80 mg	2%

* Daily Value not established

(d)(1) Compliance with this section shall be determined in accordance with § 101.9(g)(1) through (g)(8).

(2) When it is not technologically feasible, or some other circumstance makes it impracticable, for firms to comply with the requirements of this section, FDA may permit alternative means of compliance or additional exemptions to deal with the situation in accordance with § 101.9(g)(9). Firms in need of such special allowances shall make their request in writing to the Office of Food Labeling (HFS-150), Food and Drug Administration, 200 C St. SW., Washington, DC 20204.

(e) Except as provided in paragraph (g) of this section, the location of nutrition information on a label shall be in compliance with § 101.2.

(f)(1) Dietary supplements of vitamins or minerals are exempt from this section when they are offered for sale by a manufacturer, packer, or distributor who has annual gross sales made or business done in sales to consumers that is not more than $500,000 or has annual gross sales made or business done in sales of food to consumers of not more than $50,000, Provided, That the food bears no nutrition claims or other nutrition information on a label or labeling or in advertising.

(2) For purposes of the paragraph, calculation of the amount of sales shall be based on the most recent 2-year average of business activity. Where firms have been in business less than 2 years, reasonable estimates must indicate that annual sales will not exceed the amounts specified. For foreign firms that ship foods into the United States, the business activities to be included shall be the total amount of food sales, as well as other sales to consumers, by the firm in the United States.

(g) Dietary supplements of vitamins and mineral shall be subject to the special labeling conditions specified in § 101.9(j)(5)(i) and (j)(5)(ii) for food, other than infant formula, represented or purported to be specifically for infants and children less than 2 years of age and 4 years of age, respectively; in § 101.9(j)(9) for food products shipped in bulk form that are not for distribution to consumers; in § 101.9(j)(13) for foods in small or intermediate-sized packages; in § 101.9(j)(15) for foods in multiunit food containers; and, in § 101.9(j)(16) for foods sold in bulk containers.

(h) Dietary supplements of vitamins and minerals shall be subject to the misbranding provisions of § 101.9(k).

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 91N-384D]

RIN 0905-AD96

Food Labeling; Requirements for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritionnal Substances

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to: (1) Include dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (hereinafter referred to as "dietary supplements") under the coverage of the general principles for nutrient content claims; (2) provide for the use of expressed and implied nutrient content claims on labels or in labeling of dietary supplements; and (3) provide for petitions for nutrient content claims for dietary supplements. This final rule is in response to the Nutrition Labeling and Education Act of 1990 and to the Dietary Supplement Act of 1992.

EFFECTIVE DATE: July 1, 1995.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5483.

SUPPLEMENTARY INFORMATION:

I. Regulatory History

On November 8, 1990, President Bush signed into law the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101-535). The 1990 amendments revised the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the most notable aspects of the 1990 amendments is that they establish FDA's authority to regulate nutrient content claims on food labels and in food labeling. Section 403(r)(1)(A) of the act, which was added by the 1990 amendments, provides that a product is misbranded if it bears a claim in its label or labeling that either expressly or implicitly characterizes the level of any nutrient of the type required to be declared as part of nutrition labeling, unless such claim has been specifically defined (or otherwise exempted) by regulation. The 1990 amendments also direct the Secretary and, by delegation, FDA to promulgate regulations to define specific nutrient content claims including "free," "low," "light" or "lite," "reduced," "less," and "high" (section 3(b)(1)(A)(iii) of the 1990 amendments).

In the **Federal Register** of November 27, 1991 (56 FR 60421 and 56 FR 60478), FDA published two documents in which it proposed, among other things, to define nutrient content claims, to provide for their use on foods labels, and to establish procedures for the submission and review of petitions regarding the use of specific nutrient content claims. These proposals applied to dietary supplements as well as foods in conventional food form.

On October 6, 1992, the President signed the Dietary Supplement Act of 1992, Title II of Pub. L. 102-571 (the DS act). Section 202(a)(1) of the DS act established a moratorium on the implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993. Section 202(a)(2)(A) required the Secretary, and by delegation FDA, to issue proposed regulations on nutrient content claims for dietary supplements no later than June 15, 1993.

FDA issued final regulations that implemented the 1990 amendments with respect to nutrient content claims on foods in conventional food form on January 6, 1993 (hereinafter referred to as the "final rule on nutrient content claims") (58 FR 2302). FDA modified these final regulations slightly in a document that made technical corrections to them (58 FR 44020, August 18, 1993) (hereinafter referred to as "the technical corrections document"). In response to the requirements of the DS act, FDA published in the **Federal Register** of June 18, 1993 (58 FR 33731) a proposal to: (1) Include dietary supplements under the coverage of the general principles for nutrient content claims; (2) provide for the use of expressed and implied nutrient content claims on labels or in labeling of dietary supplements; and (3) provide for petitions for nutrient content claims for dietary supplements (hereinafter referred to as the "proposal on nutrient content claims for dietary supplements").

FDA received approximately 500 letters in response to its June 18, 1993, proposal on nutrient content claims for dietary supplements. Each letter contained one or more comments. The letters were from a wide range of sources, including consumers; consumer organizations; professional associations; Federal, State, and local government agencies; industry; and industry trade associations. Many comments generally supported the proposal or various provisions of the proposal. Other comments addressed issues outside the scope of the proposal (e.g., freedom of choice, access to health care, access to dietary supplements) and will not be discussed here. Many comments suggested modifications, revisions, or revocations of various aspects of the proposal. A summary of the comments, the agency's responses to the comments, and a complete discussion of the agency's conclusions with respect to nutrient content claims for dietary supplements follows.

II. Nutrient Content Claims for Dietary Supplements—FDA Authority

1. A couple of comments contended that FDA lacks the statutory authority to prohibit claims for substances for which no reference value (i.e., Reference Daily Intake (RDI) or Daily Reference Value (DRV)) has been established. The comments also stated that the agency lacks legal authority to promulgate regulations governing products bearing a nutrient content claim for a nutrient or other substance not explicitly named in section 403(q)(1) or (q)(2) of the 1990 amendments. The comments said that the references to section 403(q)(1) or (q)(2) of the act are references to those nutrients that the 1990 amendments require to be listed ("mandatory nutrients") on the nutrition label. The comments argued that under these provisions, a food may be subject to a misbranding charge under section 403(r)(1) of the act only if it characterizes, either explicitly or implicitly, the level of a mandatory nutrient in the food.

The comments also stated that the 1990 amendments did not provide FDA with misbranding authority over products that bear a claim characterizing the level of a nutrient or other substance that is not listed in section 403(q)(1) or (q)(2) of the act. The comments maintained that, regardless of whether a RDI or DRV has been established, no special requirements should apply if a manufacturer of a substance not covered by section 403(q)(1) or (q)(2), such as garlic, wished to claim that his product was "high in garlic" or a "good source of garlic." The comments argued that while FDA maintains its general misbranding authority over products bearing claims that characterize the level of a nonmandatory substance, FDA still must meet its burden of proving that any such claims are actually "false or misleading in any particular" under the general misbranding provision, section 403(a)(1) of the act.

Section 403(r)(1)(A) of the act states that a food intended for human consumption is misbranded if it bears a claim that expressly or by implication "characterizes the level of any nutrient which is of the type required by paragraph (q)(1) or (q)(2) to be in the label or labeling of the food * * *." The statute uses the same language in section 403(r)(1)(B) to describe the substances that could be the subject of a health claim. A health claim is a claim that "characterizes the relationship of any nutrient which is of the type required by paragraph (q)(1) or (q)(2) to be in the label or labeling of the food to a disease or a health-related condition * * *." Under section 403(r)(1)(B), a health claim may be made in accordance with section 403(r)(5)(D) as well as section 403(r)(3). Thus, because a statute must be read as a whole, the language in section 403(r)(1)(A) and (r)(1)(B) of the act that describes the substances that may be the subject of a nutrient content or of a health claim must be read in conjunction with section 403(r)(5)(D), which addresses health claims for vitamins, minerals, herbs, or other similar nutritional substances that are components of dietary supplements. Thus, the "nutrients of the type required by paragraph (q)(1) or (q)(2)" that are the subject of sections 403(r)(1)(A) and

(r)(1)(B) of the act include vitamins, minerals, herbs, and other similar nutritional substances.

The legislative history of "other nutritional substances" reveals that its coverage is broad and could, in appropriate circumstances, include garlic. See 136 Cong. Record S16609 (daily ed. October 24, 1990) (discussion between Senators Metzenbaum and Symms). Therefore, while a label claim that a food contains garlic that is intended to describe the taste of the food would not be subject to section 403(r)(1)(A) of the act, a claim that describes the garlic content in a way that reveals that garlic is being referred to as a nutritional substance would be subject to that section. Under section 403(r)(1)(A) of the act, the latter claim would misbrand the food unless its use has been authorized by FDA under section 403(r)(2). Thus, FDA rejects the comments that disagreed with the proposed coverage of the nutrient content claim provisions.

FDA has relied on the RDI's and DRV's in defining nutrient content claims under section 403(r)(2) of the act because it has concluded that if the characterization of the level of a nutrient is to have any meaning, there must be a level that can be used as a reference in determining whether the characterization is valid and appropriate. The RDI's and DRV's provide such levels. Thus, in § 101.54(a) (21 CFR 101.54(a)), FDA has limited the use of "good source," "high," and "more" claims to use with nutrients for which an RDI or DRV has been established. FDA is not aware of any other alternative standards.

If interested persons are aware of other standards that can be used as reference values to establish the validity of content claims for substances for which RDI's and DRV's have not been established, those persons should make FDA aware of those standards through § 101.69 (21 CFR 101.69) or other appropriate means. FDA will carefully consider using such standards as the basis for content claims for the substances involved.

III. Basis for Nutrient Content Claims For Dietary Supplements

A. Relationship to January 6, 1993 Final Rules, Consistency with Established Nutrient Content Claims, Scope

2. Many comments supported consistency in definitions for nutrient content claims between foods in conventional food form and dietary supplements. However, one comment stated that consistency in definitions for nutrient content claims for dietary supplements and foods in conventional food form is inappropriate. The comment argued that FDA has chosen to define nutrient content claims that are not meaningful to the supplement industry and to consumers.

Many comments pointed out that dietary supplements are intended to contribute, with foods in conventional food form, to consumers' daily nutrient intake. Thus, the comments argued that it is important that the terms used to describe the levels of nutrients in both dietary supplements and foods in conventional food form be consistent. These comments maintained that consumers would be confused if claims were to be allowed on dietary supplements that were not defined in the same manner as those for foods in conventional food form.

FDA disagrees with the comments that said that consistency with established nutrient content claims is inappropriate as a basic principle for defining nutrient content claims for dietary supplements. There is much about dietary supplements that suggests that the principles that guide FDA in defining nutrient content claims for dietary supplements should be the same as the principles that guide the agency in defining nutrient content claims on foods in conventional food form. Dietary supplements that are not intended for use as drugs have traditionally been regulated as foods and, as such, must be evaluated within the context of the total daily diet. In addition, nutrients from dietary supplements serve the same physiological function as nutrients from foods in conventional food form. While some consumers seek to ensure that the nutrient content of their diet is adequate through foods in conventional food form, other consumers seek to ensure nutritional adequacy by making dietary supplements part of their diets (Ref. 1). Consistent use of terms on dietary supplements and on foods in conventional food form will thus help consumers to construct a nutritionally adequate total daily diet by allowing consumers to make meaningful comparisons among these products. It will also facilitate use of these terms by consumers.

Over the years, FDA has stressed the importance of consistent definitions and descriptive terms as a necessary requirement for effective education and for preventing misleading labeling (Ref. 2). If terms were given different definitions depending on whether they were to be used to describe foods in conventional food form or dietary supplements, it would make it much more difficult for the public to understand what these terms are intended to convey about a particular food. Moreover, a single definition for a particular term eliminates any possibility that ambiguities could be created by the use of that term. Therefore, the agency concludes that for nutrient content claims, the definition of a particular term should be the same regardless of the type of food that it is being used to describe.

Additionally, FDA has been criticized for treating dietary supplements differently than other foods. FDA has no desire to discriminate in any way against supplements. Thus, by having a single definition for a particular nutrient content claim, FDA is providing the basis for dietary supplements to make the same claims as other foods and to be factored into the diet like other foods.

Nonetheless, as discussed in the proposal on nutrient content claims for dietary supplements (58 FR 33731), FDA recognizes that dietary supplements differ in at least two respects from foods in conventional food form. First, dietary supplements are likely to contain much higher levels of nutrients than foods in conventional food form. Thus, additional nutrient content claims that are specific for dietary supplements may be appropriate. As discussed later in this document, the agency intends in the near future to initiate a separate rulemaking to establish such claims for dietary supplements. Second, dietary supplements generally do not contain several nutrients (e.g., fat, cholesterol) found in foods in conventional food form. Therefore, in this document, FDA is limiting the use of certain claims that are useful for describing foods in conventional food form but that do not meaningfully describe dietary supplements.

B. General Principles

1. Substitute Foods

3. One comment objected to the requirement to use the word "imitation" on dietary supplements that are nutritionally inferior to other products of the same type. The comment argued that FDA was never given the authority to decide on formulations of dietary supplements, and that setting such formulations is the exclusive role of the manufacturer. Further, the comment stated that there is nothing "imitation" about "less" in the supplement industry, and that a requirement that a supplement be labeled "imitation" if it is nutritionally inferior to another product forces manufacturers to increase potencies in order that their products will not have to be labeled "imitation."

Under section 403(r)(2)(A)(ii) of the act, for a food to be labeled as "[nutrient) free," the nutrient must usually be present in the food or in a food for which it substitutes, as that term is defined by the Secretary (and by delegation, FDA) for the food. Accordingly, the agency defined "substitute foods" in § 101.13(d) (21 CFR 101.3(d)) in the final rule on nutrient content claims (58 FR 2302 at 2411) for the purpose of identifying the characteristics that substitute foods must have if they are to bear nutrient content claims that highlight differences between them and the foods for which they substitute. The definition states that a substitute food is one that may be used interchangeably with another food that it resembles, i.e., to which it is organoleptically, physically, and functionally (including shelf life) similar and to which it is not nutritionally inferior, unless it is labeled as an "imitation." Additionally, § 101.3(e)(1) (21 CFR 101.3(e)(1)) states that a food shall be deemed to be an imitation, and thus subject to the requirements of section 403(c) of the act, if it is a substitute for or resembles another food but is nutritionally inferior to that food. Thus, the issue that the agency must consider is whether dietary supplements that are foods should be subject to these provisions on substitute foods as any other foods are.

The agency has no evidence that manufacturers will increase the potencies for their products to avoid the use of this term and disagrees that this provision will interfere with a manufacturer's right to decide on product formulations. It is extremely unlikely that the term "imitation" will ever be used on dietary supplements, particularly dietary supplements of vitamins and minerals. The issue of whether a supplement would be an "imitation" would arise only when a manufacturer chooses to make a "free" or "low" claim for sugar or sodium on a dietary supplement (see comment 4). In such circumstances, under section 403(r)(2)(A)(ii) of the act, the manufacturer must identify a product on the market with which its product can be used interchangeably, to which the manufacturers product is not nutritionally inferior, and that contains sodium or sugar. Such a product may include the version of the manufacturer's product that contains sodium or sugar. As long as such a product exists, the manufacturer's product need not be labeled as an imitation. Moreover, if because of the way the manufacturer has formulated its product, there is no product with which it is used interchangeably, the product can be called "————————, a sodium-free food." Only in the rare situations in which neither of the conditions apply would the product have to be called "imitation" for it to bear a "free" or "low" sodium or sugar claim.

Sections 101.13(d)(1) and (d)(2) are designed to ensure that material differences between the substitute food and the reference food are conspicuously stated on the label or labeling of the food, so that consumers can make fully informed judgments about the value of the substitute food and its usefulness in maintaining healthy dietary practices. If a product has substantially less of a nutrient than the reference food, and to that extent is materially different and inferior in nutrient content, then "imitation" is an entirely appropriate term. For this reason, the agency concludes that there is no reason to apply the substitute food provisions any differently to dietary supplements than to other foods.

2. Requirements for "Low" and "Free" Claims

4. Several comments from dietary supplement manufacturers and trade associations questioned the need to allow "low" and "free" claims for nutrients such as fat and cholesterol that are not typically found in dietary supplements. One comment suggested that "free," "low," and "reduced" claims for calories, fat, and cholesterol on dietary supplements should be permitted only on dietary supplements that are a significant source of calories, such as protein supplements. The comment argued that consumers do not expect most dietary supplements to contain significant amounts of calories, and that it is nonsensical and confusing to permit dietary supplements that are not a significant source of calories to make a claim about reduced amounts of calories, fat, and cholesterol contained therein. Another comment stated that Americans who consume dietary supplements do not do so because the products are "low in fat," "cholesterol free," or "low calorie," and that consumers are not interested in the fat content of dietary supplements. The comment argued that consumers care about the substances in the products and the benefits that those products can have for their health.

In the proposal on nutrient content claims for dietary supplements, the agency requested comment on the need for extending "free," "low," and "reduced" claims to dietary supplements (58 FR 33731 at 33745). The agency has reviewed the comments that it received and is persuaded by them that it not meaningful to allow claims about the calorie, fat (including saturated fat), or cholesterol content of most dietary supplements. Most of these products do not contain those nutrients, and most consumers do not expect that they do. Thus, consumers would not generally look to these products in making dietary choices that are designed to control the amount of calories, fat, saturated fat, and cholesterol in the foods they eat. In fact, claims about these nutrients in most dietary supplements would only serve to confuse consumers. While it is true that FDA is requiring information about these nutrients in the nutrition label of supplements of herbs and of other similar nutritional substances, this requirement derives mainly from the limitation on the exemption in section 403(q)(5)(F) of the act (formerly section 403(q)(5)(E)). See the final rule on general requirements for nutrition labeling for dietary supplements published elsewhere in this issue of the **Federal Register**.

However, the agency recognizes that there are some dietary supplements, such as protein supplements, in which the amount of calories in the product is significant to consumers. On these products, the source of the calories, particularly whether they are from fat, is relevant and useful information.

Therefore, FDA has decided, based on the comments that it received to only allow calorie, fat, saturated fat, and cholesterol claims on those dietary supplements in which the amount of calories is important to consumers. In attempting to define what this level of calories should be, the agency looked first to § 101.9(f)(1) and (j)(4), which said that a food has "insignificant" calories for the purposes of nutrition labeling if it has an amount of calories that can be rounded to zero. Section 101.9(c)(1) states that "less than 5 calories" per serving may be expressed as zero, the same amount that is defined as "calorie free."

While FDA does not have information on the caloric content of dietary supplements, it would not be unreasonable to expect that many dietary supplements contain more than 5 calories (cal) per serving, particularly children's chewable vitamin and mineral supplements, supplements that contain herbal extracts, and supplements that contain caloric binders and fillers. Thus, to tie the use of "free," "low," and "reduced" calorie, fat, and cholesterol claims on labels of dietary supplements to the presence of more than an "insignificant amount" of calories in the food would be over-inclusive and would allow many

products in which the amount of calories is not significant to consumers to bear such claims.

FDA next looked at the definition of "low calorie" in § 101.60(b)(2) (21 CFR 101.60(b)(2)) for use in determining which dietary supplements should be allowed to bear "free," "low," and "reduced" claims. Section 101.60(b)(2) defines a "low calorie" food as a food that contains 40 cal or less per reference amount customarily consumed (hereinafter referred to as reference amount) and per 50 grams (g) if the reference amount is small. FDA believes that 40 cal per reference amount represents a reasonable level for demarcating a dietetically relevant source of calories for dietary supplements. In a product that contains this amount of calories, the source of the calories (e.g., fat) is of significance to consumers.

Accordingly, the agency is revising § 101.62(a) (21 CFR 101.62(a)) by adding paragraph (a)(4) to state that "free," "low," and "reduced" claims for fat, saturated fat, and cholesterol may not be made for dietary supplements that meet the criteria in § 101.60(b)(1) and (b)(2) for "calorie free" and "low calorie" claims. FDA is also revising § 101.13(b) by adding new paragraph (b)(5) to reflect these provisions. As a consequence, claims that identify all products of that class of being "low" or "free" of a nutrient (e.g., "vitamin C supplement, a fat-free supplement") will also be prohibited.

However, to use the same criteria (i.e., that a product may not be "calorie free" or "low calorie") as a basis for when a calorie claim may be made, has the effect of prohibiting the very claims that the criterion seeks to permit, namely "calorie free" and "low calorie" claims. Such a criterion would permit only relative calorie claims (e.g. "reduced") on dietary supplements. Therefore, a slightly different scheme for permitting calorie claims on certain dietary supplements, such as protein supplements, must be derived.

While, as stated above, the agency believes that calorie claims should not be permitted on most dietary supplements, it does believe that "calorie free" and "low calorie" claims may be appropriate if an equivalent amount of a similar food (i.e., another protein supplement) that the labeled food resembles and for which it substitutes would normally contain an appreciable amount of calories. Such a claim would highlight that the labeled food had a different calorie profile than would be expected in the similar product. It would also serve to direct a consumer to a product that had a lower amount of calories. Because the food would meet the criteria for "low calorie" and would be so labeled, it would not be necessary to highlight any comparative differences between the labeled and the similar food as would be required for a relative claim.

Therefore, the agency is revising § 101.62(a) by adding new paragraph (a)(4) to state that claims for calories may not be made on labels of dietary supplements that meet the criteria in § 101.60(b)(1) or (b)(2) for "calorie free" and "low calorie" except when an equivalent amount of a similar dietary supplement (e.g., another protein supplement) that the labeled food resembles and for which it substitutes normally exceeds the definition for "low calorie" in § 101.60(b)(2). It is including similar language in § 101.13(b)(5).

The comments specifically objected to claims for calories, fat, and cholesterol. Claims for sodium and sugar content were not mentioned. Since the sugar and sodium levels in dietary supplements can vary substantially, the agency finds that claims about the sugar and sodium content of dietary supplements may be useful in helping consumers to make purchasing decisions that will assist them in maintaining healthy dietary practices. Thus, extending the definitions of "low," "free," and "reduced" for sugar and sodium to dietary supplements is appropriate irrespective of the calorie level of the dietary supplement. Therefore, FDA concludes that there is no need to place limitations on claims for sugar and sodium content other than those in §§ 101.60(c) and 101.61, respectively. As explained below, FDA is amending these provisions to reflect their application to dietary supplements.

3. Labeling Mechanics

a. Type size

5. In discussing type size for nutrient content claims, one comment stated that every new statement that is required on dietary supplement labels will create a problem for manufacturers, particularly if they are constrained by minimum-type size requirements.

The agency acknowledges that dietary supplements are frequently packaged in small containers, and for this reason, FDA specifically asked for information on the impact of the type size proposal on dietary supplements that are packaged in small containers (58 FR 33731 at 33734). No suggestions or examples were presented to assist the agency in deciding how to address this problem. Therefore, the agency has made no special provision for dietary supplements in the type size requirements for nutrient content claims. FDA discusses the type size requirements for the nutrition labeling of dietary supplements in the final rule on nutrition labeling of dietary supplements published elsewhere in this issue of the **Federal Register**.

FDA stated in the technical corrections document (58 FR 44020 at 44020 and 44021) that there was a need to specify the minimum type size for labeling information (e.g., accompanying information) required under the nutrient content claims regulation. As a result, the agency modified § 101.2(b) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62, and 101.65 in the list of sections set out in § 101.2(b) for which a minimum type size for required label information is specified. For consistency, the agency also modified § 101.2(f) to include §§ 101.13, 101.54, 101.56, 101.60, 101.61, 101.62, and 101.65.The effect of these revisions for dietary supplements is that label information required by the nutrient content claims regulations, but whose type size is not otherwise specified, will be required to be in letters or numbers no less than one-sixteenth of an inch in height unless otherwise specified by § 101.2(c). FDA believes that making nutrient content claims on dietary supplements subject to this requirement is appropriate because this requirement is the logical outgrowth of the proposal. In the proposal on nutrient content claims for dietary supplements, FDA raised the issue of how to make nutrient content claims on dietary supplements. The question of how to ensure the legibility of the referral statement, which is required by section 403(r)(2)(B) of the act, is one that is at least implicitly raised by this issue. Thus, the agency's decision to explicitly address the question of the type size of the referral statement in this final rule represents the logical outgrowth of issues that were raised in the proposal.

The agency pointed out in the technical corrections document that if there are circumstances in which the product is not able to comply with type size requirements, manufacturers may request an alternative means of compliance (e.g., permission to use a reduced type size) in accordance with § 101.9(g)(9). Section 101.9(g)(9) states that when it is not technologically feasible, or some other circumstance makes it impracticable, for firms to comply with nutrition labeling requirements, they may write to the Office of Food Labeling, Food and Drug Administration, and request an alternative means of compliance. For the reasons explained above, dietary supplements of herbs and other similar nutritional substances are appropriately subject to this provision even though it was not specifically set out in the proposal on nutrient content claims for dietary supplements. A similar provision is included in § 101.36(d)(2) of the final regulation for nutrition labeling for dietary supplements of vitamins and minerals, in a companion document in this issue of the **Federal Register**. These provisions allow flexibility to ensure that there will be either sufficient space to make nutrient content claims on the labels of dietary supplements, or that manufacturers will have recourse to request relief.

b. Disclosure levels

6. One comment stated that there are a certain number of products, such as chewable tablets containing sodium ascorbate, for which information on sodium might be useful to consumers in maintaining healthy diets. The comment suggested that the agency urge supplement manufacturers to include information on sodium content, even though the sodium level might not reach the threshold levels established in § 101.13(h)(1) that would trigger a required statement.

The agency disagrees that there is a sufficient basis for requiring either the declaration of total sodium content on the principal display panel of a dietary supplement or for requiring a referral statement directing the consumer to the nutrition label for information about sodium content on all dietary supplements. Section 101.13(h)(1) specifies that the referral statement (i.e., "See [appropriate panel] for information about [nutrient requiring disclosure] and other nutrients") is required only when the sodium (or fat, saturated fat, or cholesterol) content of a product exceeds the disclosure level. FDA finds that there is no reason to provide a different rule for dietary supplements.

To the extent, as the comment suggests, that information on sodium content would be useful, it will be provided on the nutrition label as long as it is present at more than an insignificant level. Section 101.36(b)(3), which lists the nutrients that must be included in the nutrition label of a dietary supplement of a vitamin or mineral, provides that all nutrients listed in § 101.9(c), including sodium, must be declared on the nutrition label of a dietary supplement of vitamins and minerals, except that nutrients present at levels that would be declared as zero shall not be declared. (For sodium, the amount that is declared as zero is less than 5 milligrams (mg) per serving.) Section 101.9(c) itself requires that sodium be listed on the nutrition label of other dietary supplements. Consumers thus will be able to readily find the amount of sodium in a product by examining the nutrition label. Because the comment provided no basis for its suggestion other than usefulness, FDA is not making any special provision for the declaration of sodium on dietary supplements.

4. Relative Claims, Reference Foods, "Modified"

7. One comment requested that the agency clarify in § 101.13(j) that for dietary supplements, the reference food may be a source of the nutrient in either a dissimilar food within a product category or a similar food. The comment stated that the most helpful information to a consumer purchasing a dietary supplement often may be a comparison of the vitamin or mineral content to a recognized source of the nutrient, e.g., "contains more vitamin C than two 8 oz glasses of orange juice." In addition, the comment maintained that the examples used in the proposed rule on nutrient content claims for dietary supplements (58 FR 33731 at 33737) for comparing dissimilar foods within the same product category (e.g., potato chips as a reference for pretzels) generally does not apply to dietary supplements.

The agency agrees that a clarification is warranted to reinforce that § 101.13(j) applies to dietary supplements as well as to foods in conventional food form. Section 101.13(j)(1)(i)(A) states that for "less" (or "fewer") and "more" claims, the reference food may be a dissimilar food within a product category that can generally be substituted for one another in the diet (e.g., potato chips as reference for pretzels) or a similar food (e.g., potato chips as reference for potato chips).

The agency agrees that adding examples that are specific for dietary supplements will clarify that for "less" (or "fewer") and "more" claims, the reference food may be a dissimilar food within a product category for which the labeled food can generally be substituted (e.g., orange juice as a reference for vitamin C tablet) or a similar food (e.g., one brand of multivitamin as a reference for another brand of multivitamin). Accordingly, the agency is revising § 101.13(j)(1)(i)(A) to include these examples.

Additionally, to clarify § 101.13(j)(1)(i)(B) for "light," "reduced," "added," "fortified," and "enriched" claims, the agency is revising this regulation to include an example of a reference food that is a similar food (e.g., one brand of multivitamin for another brand of multivitamin).

8. One comment agreed that the term "modified" would rarely be a useful term for vitamin/mineral supplements but stated that this term might be useful for certain dietary supplements that contain "other similar nutritional substances." The comment stated that there are techniques for concentrating certain fish oils that are high in omega-3 fatty acids. The comment suggested that the use of the term "modified" might serve to distinguish products containing the concentrated fish oils from other fish oil products that would have to be taken several times a day to provide the same amount of fish oil and thus result in the consumption of significantly more calories. The comment argued that use of the term "modified" on dietary supplements should be authorized to maintain the principle of consistency between foods in conventional food form and dietary supplements.

The agency agrees. FDA has defined "modified" for use as part of the statement of identity on foods to reflect the fact that a change has been made in a food (56 FR 60421 at 60454). The term is not to be used alone, nor is the term to be used to describe products that have not been altered (58 FR 2302 at 2367 and 2412). Based on the comment, the agency concludes that this term may have some limited usefulness for dietary supplements, and thus this term may be used on such products when they meet the conditions of § 101.13(k). FDA finds, however, that no change in § 101.13(k) is necessary to authorize this use of the term.

5. Reference Amounts

9. One comment stated that if comparative claims (e.g., "reduced sodium") were to be made for dietary supplements, there need to be reference amounts (i.e., reference amounts customarily consumed) established so that one product recommending consumption of, for example, one tablespoon (tbsp) per day is not compared to a product recommending five tbsp per day. The comment argued that the proposal allows very flexible reference amounts for supplements (i.e., whatever the manufacturer is recommending for consumption) and suggests that reference amounts of reference foods (as established in § 101.13(j)) be specified in more concrete terms.

The agency is not persuaded by the comment that more concrete terms are needed for reference amounts at this time. The agency has established in the

final rule on general requirements for nutrition labeling for dietary supplements published elsewhere in this issue of the **Federal Register** a definition for the reference amount customarily consumed for dietary supplements in § 101.12(b) as "the maximum amount recommended on the label for consumption per eating occasion or, in the absence of recommendations, 1 tablet, capsule, packet, or teaspoonful, as appropriate." This definition is based on comments received on the proposal for mandatory nutrition labeling for dietary supplements.

Section 101.13(p)(1), which FDA proposed to apply to dietary supplements, states that unless otherwise specified, the reference amount customarily consumed set forth in § 101.12(b) through (f) shall be used in determining whether a product meets the criteria for a nutrient content claim. The comment did not suggest an alternative to the reference amount that could be used as the basis for comparative claims for dietary supplements. Therefore, given the fact, as the agency said in the proposal on nutrient content claims for dietary supplements (58 FR 33731 at 33732), that a consistent approach to nutrient content claims on dietary supplements and on foods in conventional food form will increase consumers' ability to use and understand such claims, FDA is not adopting a different approach to comparative claims for dietary supplements than the one that it adopted for foods in conventional food form.

The agency acknowledges that there is a potential for unfair marketing and misleading claims if the serving size is manipulated upwards or downwards to enable a product to make a nutrient content claim. The agency retains the authority to regulate any such misleading claims under section 403(a) of the act. Issues concerning serving size are further discussed in the companion document on nutrition labeling for dietary supplements, published elsewhere in this issue of the **Federal Register**.

IV. Definitions for Specific Nutrient Content Claim Terms

A. Use of RDI's and DRV's in Formulating Definitions

10. Many comments stated that limiting nutrient content claims to those nutrients with RDI's or DRV's was unnecessarily restrictive. Several comments suggested that content claims should be authorized with respect to a nutrient as long as it has either an RDI or DRV as established by FDA in § 101.9(c) or a Recommended Dietary Allowance (RDA) as established by the National Academy of Sciences (NAS) (Ref. 4). Other comments also stated that nutrient content claims should be authorized for nutrients for which NAS has established Estimated Safe and Adequate Daily Dietary Intakes (ESADDI's). Other comments suggested that FDA should expand the number of vitamins and minerals with RDI's when it publishes the final RDI/DRV rule following the expiration of the DS act moratorium.

FDA agrees that the current list of RDI's does not represent the entire list of nutrients for which dietary recommendations have been established. The agency had proposed to establish RDI's for all nutrients for which RDA's or ESADDI's were provided in the 1989 edition of the NAS RDA's (56 FR 60366). However, under the DS act, the agency was constrained to retain the label reference values established in § 101.9(c)(8)(iv) until at least November 8, 1993. These values were based on the 1968 RDA's. The 1968 RDA's did not contain recommended dietary values for a number of nutrients for which NAS has subsequently provided RDA's or ESADDI's. RDA's for vitamin K and selenium were established subsequent to 1968 and are listed in the 1989 edition of the NAS RDA's (Ref. 4). Furthermore, the 1980 and 1989 editions of the NAS RDA's provided ESADDI's for chloride, manganese, fluoride, chromium, and molybdenum. Now that the moratorium established by the DS act has expired, the agency is proposing elsewhere in this issue of the **Federal Register** to establish RDI's for all nutrients for which RDA's or ESADDI's are provided in the 1980 and 1989 editions of the NAS's Recommended Dietary Allowances but for which RDI's or DRV's have not been established by FDA. Once RDI's are established for these additional seven nutrients, nutrient content claims may be made for them.

FDA intends to consider revising all of the RDI's to conform to the most recent levels established by NAS. However, FDA is aware that NAS is in the process of reevaluating the basis on which RDA's are determined. It is considering the issue of whether values should be selected to prevent deficiencies or to promote optimal wellness. The agency believes that its action should await completion of the NAS process. FDA is committed to working with NAS to help resolve this issue.

Accordingly, as stated in response to comment number 1 above, FDA has concluded that it is not possible to define nutrient content claims for nutrients for which no reliable reference standards such as the RDI's and DRV's have been established. The agency believes that authorization for nutrient content claims for nutrients for which no RDI or DRV exists (e.g., vitamin K) needs to be deferred until RDI's or DRV's are adopted. In the interim, quantitative nutrient information may be listed in the nutrition label as discussed in the final rule on general requirements for nutrition labeling for dietary supplements published elsewhere in this issue of the Federal Register.

Also, manufacturers may provide amount or percentage statements as described in § 101.13(i)(3) for those nutrients that do not have RDI's or DRV's. For example, while there is no RDI for fluoride, under this provision, manufacturers may declare the amount of the nutrient present (e.g., 2 mg fluoride) on any panel outside of the Nutrition Facts box.

11. One comment stated that claims should be permitted for *beta*-carotene. The agency believes that claims regarding *beta*-carotene (e.g., "contains *beta*-carotene") are claims about an ingredient that make implied representations about the level of vitamin A that is present in the food as *beta*-carotene. This conclusion is consistent with section 403(r)(1)(A) of the act, which states that a food can be misbranded by a statement that expressly or by implication characterizes the level of a nutrient in a food. The agency considers that the claim "contains *beta*-carotene" implies that there is enough *beta*-carotene in the food to constitute a "good source" of vitamin A (i.e., it contains 10 percent or more of the DV for vitamin A from *beta*-carotene). Such a claim is provided for in § 101.65(c).

12. One comment advocated defining nutrient content claims for ultratrace nutrients including boron, silicon, vanadium, arsenic, and tin. The comment stated that claims about these ultratrace elements should be permitted on the basis of the RDA, ESADDI, or the amounts found in the average well-balanced diet. Additionally, this comment argued that reference values should be available for ultratrace nutrients once reputable scientific evidence is established that such nutrients serve important metabolic or physiological functions in the body. The comment also suggested that label information be permitted for choline and inositol.

The agency disagrees. The trace elements arsenic, nickel, silicon, boron, cadmium, lead, lithium, tin, vanadium, and cobalt, as well as choline and inositol, have not been shown to be essential in humans. No RDA's or ESADDI's for these substances have been established by NAS. NAS states that several of these substances "naturally present in foods are known to be required in the diets of various animal or microbial species, but there is little or no evidence of their dietary essentiality for humans" (Ref. 4). While NAS acknowledges that some of these classes of substances may "one day be candidates for RDA's," it states that there is currently no evidence that these substances are essential in humans (Ref. 4).

As stated in the "Summary" section of the 10th edition of the NAS RDA publication (Ref. 4), the NAS RDA's are based not only on data from nutrient intake measurements but also on information from nutrient balance studies, experimental intake studies, biochemical measurements, epidemiological observations of nutrient status, and extrapolation of data from animal experiments. FDA does not agree with the comments that it is desirable to base label reference values for nutrient content claims solely on individual scientific research publications, no matter how current, or solely on data on amounts of the trace element found in well-balanced diets. The existence of such data does not mean that there is scientific agreement on the essentiality of the nutrient or on the recommended level in the diet. Should agreement on the essentiality of additional nutrients be reached, timely and appropriate changes to the label reference values can be made through FDA's rulemaking procedures.

However, as stated above, manufacturers are free to declare the amount of the trace elements, or choline or inositol, on the product label outside of the "Nutrition Facts" panel in accordance with § 101.13(i)(3). Such a statement of amount is not considered to characterize the level of the nutrient in the food, as would claims such as "high" or "more."

13. One comment stated that although no RDI's have been established for certain vitamins and minerals, nutrient content claims could be based on reference foods that are recognized sources of those nutrients. For example, the label could state that "Brand X provides more vitamin K than two servings of cabbage," based on the vitamin K content of the reference amount for vegetables without sauce listed in § 101.12, Table 2.

The agency disagrees. Until a reference standard is established there is no basis for confidence that cabbage is a good source of vitamin K. There is also no basis for confidence that the amount of vitamin K in the food that is to be the subject of the claim is nutritionally significant. Elsewhere in this issue of the **Federal Register**, the agency has proposed to expand the list of nutrients with RDI's, including vitamin K. At this time, however, FDA concludes that it would be premature to authorize such claims.

B. Specific Requirements for Nutrient Content Claims (21 CFR 101, Subpart D)—Applicability to Dietary Supplements

1. § 101.54 Nutrient Content Claims for "Good Source," "high," and "More"

a. "Good source" and "high"

14. One comment encouraged the agency to maintain the proposed definitions for "good source" and "high" for dietary supplements. The comment argued that a higher level (e.g., 40 percent of the RDI) would suggest to consumers that daily nutrient intakes could be achieved by consuming only a few foods, which is inconsistent with dietary guidelines. The comment maintained that if a new higher claim level was adopted for supplements, it would likely also apply to foods in conventional food form based on the logic of the proposal for nutrient content claims for dietary supplements (i.e., consistency in definitions). The comment stated that users of dietary supplements are well aware of the elevated nutrient levels in these products, and that a new paradigm is not needed to inform consumers of these levels.

On the other hand, several comments did not support the proposal to use the same definitions for "good source" and "high" claims as those used for foods in conventional food form. The comments argued that the terms "good source" and "high" should not carry the same meaning for supplements as for foods in conventional food form, that most supplements contain at least 100 percent of the Daily Value for most of the nutrients they provide, and that consumers expect most of these products to contain at least 100 percent of the Daily Value. The comments maintained that allowing any product with as little as 10 or 20 percent of the RDI to carry "good source" and "high" claims would confuse and mislead consumers.

One comment questioned whether it is appropriate to permit the use of these nutrient content claims on vitamins and mineral supplements since it implies that supplements are comparable to, and acceptable substitutes for, foods in conventional food form. The comment also noted that nutrition educators feel strongly that supplements can enhance the nutrient intake from foods in conventional food form but can never replace them since foods in conventional food form provides other important components. On the other hand, many comments supported the proposal to extend the same definitions for "good source" and "high" for foods in conventional food form to dietary supplements. These comments emphasized the importance of consistency in definitions to assist consumer education.

One comment requested clarification on whether the terms "good source" and "contains" will be permitted for dietary supplements. The comment maintained that such claims provide consumers with important information regarding the precise content of various nutrients and should not be subject to discriminatory treatment solely on the basis of whether such claims are made for a nutrient in a dietary supplement as opposed to one in a conventional food.

The agency has reviewed these comments and is not persuaded that the definition of the terms "good source" and "high" should be different for dietary supplements than for foods in conventional food form. The agency finds that the definitions for foods in conventional food form and dietary supplements should be consistent. As directed by the 1990 amendments (section 3(b)(1)(A)(iii)(VI)), FDA defined the term "high," and the synonyms "rich in" and "excellent source of," for use on labels and in labeling in § 101.54 (58 FR 2302 at 2344). In § 101.54(c)(1) of final rule on nutrient content claims, the agency stated that the term "good source" may be used to describe a food when a serving of the food contains 10 to 19 percent of the RDI or the DRV for a nutrient. Likewise, the agency stated that the term "high" may be used to describe a food when a serving contains 20 percent or more of the RDI or the DRV. FDA concluded that the use of these terms would permit a sufficient number of food items to bear "good source" and "high" claims to allow consumers to use the claims in selecting foods that are better sources of nutrients (58 FR 2344).

While FDA recognizes that under the present definitions, most, if not all, dietary supplements of vitamins, minerals, potassium, and fiber would qualify for "good source" or "high" claims, the agency does not agree with those comments that argued that the

definitions, as proposed, would be confusing or misleading to consumers. As suggested by the IOM report on nutrition labeling (Ref. 6), the use of consistent and targeted content claims increases consumers' confidence in the validity of the claim. FDA is aware of no evidence to support an alternate conclusion. The basic principle of consistency in definitions of nutrient content claims is discussed in detail in comment 2 of this document.

Furthermore, the agency recognizes that consumers expect dietary supplements to be concentrated sources of nutrients. Consumer studies support this conclusion (Refs. 1 and 5). FDA acknowledges that the terms "good source" and "high" might be of limited utility in comparing nutrient content among dietary supplements of vitamins and minerals because virtually the entire class of products would qualify for such claims. However, these terms may be useful for some single source dietary supplements of calcium, biotin, or fiber or for multinutrient preparations containing these nutrients. These nutrients are generally found in dietary supplements at levels below the Daily Value.

Additionally, FDA believes that these terms would be useful in highlighting the nutrient content of some herbs and other similar nutritional substances that have nutrients at levels high enough to qualify for the definition of one of the above terms. For these reasons, the agency is not persuaded to preclude the use of these terms for dietary supplements.

The agency agrees with the comment that stated that dietary supplements cannot replace foods in conventional food form in all respects because the latter foods supply other important components. However, FDA recognizes that dietary supplements can be a useful part of the diet for those who wish to make sure that they consume at least the RDI amount for all vitamins and minerals or for those who wish to increase their daily intake of a particular substance above those levels that are ordinarily available from conventional foods. Thus, FDA finds that use of these terms on dietary supplements is appropriate.

FDA is convinced that consistency in definitions of nutrient content claims across the food supply is necessary. Consistency facilitates consumer education by limiting the number of terms that the public must learn and interpret. Moreover, different definitions for the same terms for dietary supplements and foods in conventional food form would be confusing to consumers because of the difficulties inherent in learning alternate definitions for the same term. There is a greater chance of error and misinterpretation when several definitions must be learned for the same term. Thus, different definitions would likely do more harm than good. Accordingly, the agency concludes that the proposed definitions for "good source" and "high" are appropriate, and that there is no reason to define the terms differently for dietary supplements.

The agency would like to clarify that "good source" and "contains" as defined § 101.54(c)(1) are nutrient content claims that can be used for foods in conventional food form as well as for dietary supplements. There is nothing in this final rule that states that the use of these terms would not be allowed for dietary supplements.

15. One comment stated that under FDA's proposal, consumers who want truly high levels—that is, levels that exceed the RDI—would have no means of identifying those products, other than reading the fine print on the back of each supplement label.

The comment acknowledged that consumers might also be confused if "high" had one meaning when the claim appears on labels of dietary supplements and a different meaning when the claim appears on labels of foods in conventional food form. To avoid that inconsistency, the comment urged FDA to prohibit the claims "good source" and "high" on supplements. Further, the comment suggested that the agency should define the term "high potency" and allow it to be used only on supplements.

FDA disagrees that the terms "good source" and "high" should be prohibited on the labels of dietary supplements. The agency recognizes that a claim of "high" will not specifically identify those products that have levels of nutrients that exceed the RDI. However, the quantitative amount of a nutrient in a dietary supplement is often a part of the statement of identity for the product, and additional quantitative information regarding the level of a nutrient may also be found in amount or percentage statements on the principal display panel. In addition, as a result of the agency's new format requirements, the nutrition label for dietary supplements of vitamins and minerals provides quantitative information on the levels of specific nutrients as well as the percent DV for each nutrient in a more legible format. Consequently, consumers will have easy access to information regarding the levels of specific nutrients and may adjust their levels of intake accordingly.

Further, as discussed in the previous comment, while the terms "good source" and "high" may be of limited utility for dietary supplements of vitamins and minerals, these terms may be useful in highlighting the nutritional content of single nutrients, such as biotin and calcium, that are generally found in products at levels well below the RDI, as well as of dietary supplements of herbs and other similar nutritional products. Therefore, FDA concludes that precluding the use of these terms on dietary supplements is unjustified.

However, FDA believes that there is a sufficient basis to consider defining the term "high potency" or some similar term as a nutrient content claim. FDA's tentative view is that this term, or a similar term when defined, could provide a way for manufacturers to describe the higher levels of nutrients in dietary supplements. (See comment 25 for further discussion of this matter.)

b. "More"

16. One comment stated that consumers could be misled if comparative claims are made among high potency vitamin/mineral supplements. The comment stated that if, for example, one brand of 300-mg vitamin B6 tablets claimed that it contained "more" than a competitive 250-mg product, then the consumer may get the misleading impression that the former product is better. The comment maintained that as customers shop for supplements, they will be able to readily observe whether one product is more potent than another without label claims suggesting superiority of one over another. If such a claim resulted in better sales, then a "horsepower race" would ensue. The comment recommended that "more" claims for vitamins and minerals not be allowed if the nutrient potency of the reference product already meets or exceeds 100 percent of the Daily Value.

The agency acknowledges that there is the possibility that some manufacturers may choose to increase potencies in order to make a "more" claim in comparison to another brand, but the agency disagrees that the limitation suggested by the comment is warranted at this time. The agency points out that "more" claims for nutrients with an RDI or DRV, including those products with nutrients in megadoses, such as those in the example cited by the comment, must include the following information: The percentage (or fraction) that the nutrient was increased relative to the RDI or DRV, the identity of the reference food, and the quantitative amount of the nutrient present (e.g., contains "20 percent more of the DV for vitamin B6 per tablet than product 'x'. The vitamin B6 content of product 'x' is 250 mg. This product contains 300 mg vitamin B6.") The nutrition label of a product containing 300 mg of vitamin B6 must state that the product contains 1,500 percent of the Daily Value. The agency acknowledges that the amount of information required to make a "more" claim is considerable, but such information is necessary to allow consumers to readily see how the amount of a nutrient for which a "more" claim is made fits into the total daily diet.

Furthermore, FDA believes that the concern regarding "horsepower races" in dietary supplements stems from concerns of possible unfair marketing among manufacturers as well as from safety concerns inherent in the addition of very high levels of nutrients to supplements. Similar concerns with foods in conventional food form led to the establishment of FDA's fortification policy in 1980. This policy, while published in § 104.20, does not have the force of a regulation. However, the agency has not found evidence of widespread "horsepower races" with such foods. The agency urges industry, particularly industry associations, to develop standards regarding nutrient levels and to monitor compliance with those standards to minimize any safety problems.

c. Restrictions on label or labeling claims based on section 411(b)(2)(B) of the act

17. One comment from a trade association stated that the literal reading of section 411(b)(2)(B) of the act prohibits giving prominence on the label of dietary supplements of vitamins or minerals to ingredients that are not vitamins or minerals. The comment argued that these prohibitions result in the withholding of information that is of interest to consumers, and that it is increasingly common for manufacturers to market products that offer a combination of vitamins, minerals, herbs, and other dietary substances. The comment stated that the principal reason for the purchase of these products is not their vitamin and mineral content but the other ingredients. The comment invited FDA to join the supplement industry in seeking an amendment to section 411 of the act that will remedy this problem.

Another comment disagreed with FDA's interpretation of section 411(b)(2)(B) of the act and suggested that this section merely prohibits giving prominence or emphasis to such ingredients. The comment argued that nutrients other than vitamins and minerals or sources of vitamins and minerals should be permitted to appear outside or immediately following the nutrition label, providing that such information is not emphasized by, for example, being presented in type size greater than that used in the nutrition label. The comment stated that such limited declarations would not conflict with current provisions of the act and would be fair and reasonable means of communicating about the presence of ingredients that provide added value to many dietary supplement products.

The agency is persuaded by these comments that a clarification of those sections of the proposal relating to section 411(b)(2)(B) of the act is needed. Section 411(b)(2)(B) of the act states that the labeling and advertising for dietary supplements of vitamins and minerals may not give prominence to or emphasize ingredients that are not vitamins, minerals, or represented as a source of vitamins or minerals. Because of this provision, nutrient content claims about ingredients that are not vitamins or minerals (e.g., "more fiber," "high protein") may not be made on dietary supplements of vitamins or minerals.

It must be emphasized that this provision pertains only to dietary supplements of vitamins and minerals. If, for example, an herbal extract includes vitamins and minerals but is labeled as an herbal extract, in compliance with § 101.9 and other applicable provisions, and is advertised as such, section 411(b)(2)(B) of the act would not apply. The same is true for a product that is primarily a protein supplement. A protein supplement with added vitamins and minerals that is labeled and advertised as a protein supplement could declare that it is high in fiber. Such claims are permissible as long as they are made in accordance with section 403(r) of the act, and they are not false or misleading in any particular.

However, section 411(b)(2)(B) of the act makes clear that in the labeling and advertising of dietary supplements of vitamins and minerals, ingredients other than vitamins or minerals cannot be emphasized or given prominence. FDA interprets prominence not solely as a function of type size. Declaring an ingredient outside or immediately following the nutrition label is another means of giving prominence. For example, a statement such as "5 g psyllium," except in extremely limited circumstances, cannot be made on the principal display panel, outside the nutrition label, or immediately following the nutrition label of a dietary supplement of vitamins and minerals because such placements give prominence to that ingredient. However, the declaration of psyllium in the ingredient list would not be construed as giving prominence to that ingredient. On the other hand, "5 g psyllium" could be declared in an amount statement on the principal display panel, outside, or immediately following the nutrition label on protein supplements, on dietary supplements of herbal extracts, and on dietary supplements of other similar nutritional substances so long as these dietary supplements are not subject to section 411 of the act.

FDA advises that if a sugar is an ingredient in a dietary supplement of vitamins or minerals, claims about the amount of sugar actually in the product would have to be restricted. However, "sugar-free" and "no added sugar" are absence claims that assert that sugar is not an ingredient. The agency concludes that the use of these terms is acceptable on dietary supplements of vitamins or minerals, as well as on other types of dietary supplements.

In view of this clarification, the agency believes that section 411(b)(2)(B) of the act, as written, is sufficiently flexible to accommodate claims on products that are not dietary supplements of vitamins or minerals. FDA believes that it is therefore unnecessary to amend section 411 of the act.

2. Nutrient Content Claims for Sugar Content

18. One comment questioned the appropriateness of allowing "sugar-free" claims for a dietary supplement containing less than 0.5 g of sugars. The comment stated that many supplements come in capsules or tablets that weigh slightly less or not much more than 0.5 g, and therefore, supplements that are mostly sugars could use the term "sugar-free." The comment suggested that the term "sugar free" on a dietary supplement should mean a much lower amount of sugars, or that the product should be totally devoid of sugars.

The comment also argued that terms such as "negligible source of sugar," "dietarily insignificant source of sugar," and "trivial source of sugar" are not synonymous with "sugar-free" because such terms connote the presence of some sugar content.

FDA is not persuaded by the comment that 0.5 g or less of sugars per serving is an inappropriate definition of insignificance for sugars for dietary supplements. Section 101.60(c)(1) provides that for a food in conventional food form to make a "sugar free" claim, the food must contain less than 0.5 g of

sugars per reference amount. Less than 0.5 g of sugars per reference amount is an amount that is consistent with the agency's policy of defining "free" claims at or near the reliable limit of detection and in an amount that is dietetically inconsequential (56 FR 60421 at 60432). As a result, even frequent consumption of a food bearing a "sugar free" claim would not result in an intake of sugars that would affect the overall diet in any meaningful way.

FDA acknowledges that there may be situations in which a dietary supplement may contain a significant proportion of sugars on a weight basis and be able to make the claim "sugar free." The agency believes, however, that even in such instances, if the total amount of sugars in a serving of the product is less than 0.5 g, its net contribution to the total daily diet would be inconsequential.

Additionally, FDA considers it important that nutrient content claims correspond with the nutrition label, which serves as a source of specific information for consumers concerning the nutritional value of the food. The nutrition labeling regulations allow foods containing less than 0.5 g sugars per labeled serving to declare 0 g of sugars (§§ 101.9(c)(6)(ii) and 101.36(b)(3)).

FDA rejects the suggestion that it permit use of the term "sugar free" only where there is an absolute absence of sugars. FDA believes that it is appropriate to apply the term "free" to a nutrient when a food contains that nutrient in a dietetically trivial or physiologically inconsequential amount, even though the nutrient is present at a level at or near its reliable limit of quantitation, because with modern analytical methods, the level at which the presence of a nutrient may be quantified is becoming increasingly smaller (58 FR 2302 at 2320). The agency believes that it is appropriate to focus on dietary insignificance, and very trivial amounts have no impact on the diet for the purpose of defining "sugar free."

The agency also disagrees that the terms "negligible source of sugar," "dietarily insignificant source of sugar", and "trivial source of sugar" are inappropriate synonyms for "sugar free." Section 403(r)(2)(A)(i) of the act states that a nutrient content claim must be defined by regulation. In addition, section (3)(b)(1)(A)(ix) of the 1990 amendments provides that those regulations may include similar terms commonly understood to have the same meaning. The agency is not aware of any reason why the above terms are inappropriate synonyms for "sugar free." Although these synonyms do not convey the absolute absence of sugar, they reflect that the amounts are dietetically trivial and of no dietary significance. Therefore, the agency rejects this comment.

19. One comment stated that the term "no added sugar" can be used only when a product is expected to contain sugar, but that consumers do not know when supplements are expected to contain sugars. The comments suggested that FDA should not preclude the use of the term "no added sugars" as this term would be useful to consumers in identifying those products without sugar.

The agency is persuaded that a review of the conditions for the use of the term "no added sugar" is warranted. FDA did not propose to preclude the use of the term "no added sugar" on all dietary supplements. The agency finds that this term is appropriate for some dietary supplements, such as children's chewable vitamins, that are frequently sweetened. Section 101.60(c)(2) states that the terms "no added sugar," "without added sugar," or "no sugar added" may be used only if: (1) No amount of sugars, as defined in § 101.9(c)(6)(ii), or any ingredient that contains sugars, or that functionally substitutes for added sugars is added during processing or packaging, (2) the product does not contain an ingredient containing added sugars, (3) the sugars content has not been increased above the amount present in the ingredients by some means such as the use of enzymes, (4) the food that it resembles and for which it substitutes normally is formulated with sugars, and (5) the product bears a statement that the food is not "low calorie" or "calorie reduced" (unless the food meets the requirements for a "low" or "reduced calorie" food) and that directs consumers' attention to the nutrition label for further information on sugar and calorie content.

As is the case for foods in conventional food form, the agency believes that to avoid misleading consumers, the term "no added sugar" should be limited to dietary supplements that would be expected to contain added sugars. The agency advises that the purpose of a "no added sugar" claim is to identify a food that differs from a similar food because it does not contain the added sugars that would normally be present in the similar food. For this provision to be of practical benefit to consumers, it must preclude the use of the claim on a food where the sugars that are normally added are replaced with an ingredient that contains sugars that functionally substitute for the added sugars. Thus, the agency concludes that the use of any ingredient that contains sugars that would normally be added to a food precludes the use of the "no added sugar" nutrient content claim. The agency believes that claims concerning the absence of added sugars on products that would not normally contain added sugar (e.g., dietary supplements of vitamins and minerals for adults) are likely to mislead consumers into thinking that a particular brand may be more desirable when compared to other brands of the same product.

FDA acknowledges that consumers may not know every type of product that could be expected to contain sugar. However, the final rule on nutrition labeling for dietary supplements published elsewhere in this issue of the **Federal Register** specifies that sugars will be listed in the ingredient label and must be declared in the nutrition label if present in more than insignificant amounts. Through these provisions the consumer can readily ascertain which products contain sugars.

C. Implied Nutrient Content Claims

1. Claims That are not Nutrient Content Claims

Section 101.65(b)(1) of the final rule on nutrient content claims provides that statements that declare the absence of food components or ingredients that are not nutrients of the type required to be declared on the nutrition label, and that are intended to facilitate avoidance for such reasons as food intolerance (e.g., lactose free), religious beliefs, dietary practices such as vegetarianism or other nonnutrition related reason, (e.g., "100 percent milk free"), are not nutrient content claims. In the proposal on nutrient content claims for dietary supplements, the agency tentatively concluded that this paragraph is applicable to dietary supplements and requested comment on other examples that are appropriate for dietary supplements.

20. Comments suggested that other examples of terms in this category include the following: gluten free, wheat free, corn free, yeast free, starch free, milk free, egg free, soy free, no artificial ingredients, nonirradiated, and no synthetic ingredients. The comments requested that FDA confirm that these statements are allowed on the label.

None of the terms that were submitted in the comments other than "egg free" would constitute nutrient content claims. The term "egg free" can be interpreted as an implied claim about cholesterol.

The agency points out that it does not currently have a definition for "artificial" except as that term applies to flavors and colors. Similarly, it has no definition for "synthetic" except as that term applies to flavors and colors. Although these terms have not been defined by FDA, the agency believes that they are not nutrient content claims unless they are used in a context in which they explicitly or implicitly describe the level of a nutrient. However, even if these terms are not nutrient content claims, manufacturers who use them must make sure that their use is not false or misleading.

21. FDA proposed to include dietary supplements in the coverage of § 101.65(b)(4). This section states that when an ingredient constitutes essentially 100 percent of a food, so that the name of the ingredient is the statement of identity, the name of the ingredient generally does not constitute an implied nutrient content claim unless it is used in a context to suggest that a nutrient is absent or present in a certain amount. FDA used a statement of identity for a dietary supplement in which an ingredient constitutes essentially 100 percent of a supplement (e.g. "60 mg—vitamin C") as an example. One comment pointed out that 60 mg vitamin C tablets contain excipients (fillers, binders, lubricants, disintegrants) other than vitamin C. The comment requested clarification as to whether, in the example of vitamin C tablets, § 101.65(b)(4) requires that the amount claimed in the statement of identity constitute 100 percent of the claimed amount of a food in § 101.65(b)(4).

In the example added to § 101.65(b)(4), the amount refers to the claimed nutrient. A tablet stating "60 mg—vitamin C tablets" should contain 60 mg of that nutrient. The agency recognizes that a nutrient will not constitute precisely 100 percent of some dietary supplements, such as vitamin tablets or capsules, and advises that small amounts of excipients, binders, lubricants, or disintegrants added for technological purposes are allowable in addition to the stated nutrient content.

Additionally, FDA points out that under § 101.3(c), if a food is marketed in various optional forms, the particular form is a necessary part of the statement of identity. Because vitamin C is marketed in tablet, capsule, and liquid form, the form is part of the name. Therefore, this food should be called "60 mg-vitamin C tablets." The agency acknowledges an error in this regard in the proposal and is revising § 101.65(b)(4) to make the correction.

22. One comment stated that it is not unusual for a dietary supplement to contain several nutrients of one type and a single nutrient of another type, such as "multiple-vitamins with iron." The comment requested confirmation that "with iron" would not represent an implied nutrient content claim.

The agency advises that a term such as "with iron," when used on the statement of identity of a supplement, is intended to describe the nature of the food. When a statement of identity simply states "with iron" or specifies the amount of iron in a product (e.g., "multivitamin with 15 mg iron"), the statement is not a nutrient content claim. Such statements fall under § 101.65(b)(5).

However, as the agency stated in § 101.65(b)(5), there may be cases in which other statements on the label or labeling would have the effect of making the statement into a nutrient content claim. For example, if the labeling of a multivitamin with iron includes a discussion of the importance of iron in the diet, FDA believes the statement "with iron" would be an implied claim that the multivitamin is a good source of iron. If the labeling is devoid of such information, FDA would be unlikely to consider the name to be an implied nutrient content claim. The agency will evaluate such claims on a case-by-case basis in the context of the entire label and labeling to determine whether they are nutrient content claims.

23. One comment maintained that FDA failed to address whether the currently used claim of "high in antioxidants" was within the scope of the proposed regulation.

While the term "high in antioxidants" was not explicitly discussed in the proposed regulations for nutrient content claims for dietary supplements, the agency considers it to be an implied nutrient content claim that would come under § 101.65. FDA's view is that this claim implies that the food on which it appears contains a "high" amount (i.e., at least 20 percent of the RDI, see § 101.54(b)(1)) of each antioxidant. One problem with this claim, however, is that there is no established definition of "antioxidants."

FDA believes that a logical place to start in defining this term is section 3(b)(1)(A)(x) of the 1990 amendments. That provision directed FDA to determine whether a health claim on antioxidant vitamins and cancer, could be authorized under the standard that it established for dietary supplements under section 403(r)(5)(D) of the act. In its proposed regulations to implement the 1990 amendments, in response to this provision, FDA considered the effects of vitamin C, vitamin E, and *beta*-carotene on cancer because these nutrients are the vitamins or provitamins that function as antioxidants (56 FR 60624, November 27, 1991). In the final rule on antioxidant vitamins and cancer, FDA concluded that its selection of these nutrients was appropriate (58 FR 2622, January 6, 1993). Thus, the agency has determined that the direct-acting antioxidant vitamins or provitamins include vitamin C, vitamin E, and *beta*-carotene. Based on its review of the information presented at a recent conference entitled "Antioxidant Vitamins and Cancer and Cardiovascular Disease," which was initiated by FDA, the agency is not aware of any basis to expand this list because the biological role of other vitamins as direct antioxidants has not been confirmed (Ref. 3).

While it is arguable that FDA could authorize "high in antioxidants" as an implied claim pertaining to antioxidant vitamins as a logical outgrowth of the proposal, because the claim applies to foods in conventional food form as well as to dietary supplements, the agency believes that the better course is to propose to authorize such a claim. In addition, the definition of "antioxidants" is not free from controversy. The agency is aware, based on its review of dietary supplements whose labeling currently includes a "high in antioxidant" claim, that some manufacturers view this term as including certain minerals. Antioxidant minerals have not been addressed by the agency, and, therefore, final rules implementing the 1990 amendments do not provide for claims about them. Thus, FDA finds that a rulemaking on the definition of "antioxidants" will provide an opportunity to establish the precise meaning of this term.

Consequently, FDA intends to address this issue as quickly as possible in a forthcoming proposal. Given that, elsewhere in this issue of the **Federal Register**, the agency is establishing a date of applicability of July 5, 1995, for this regulation, FDA anticipates that there is sufficient time to take final action on such a proposal before that date.

2. "Healthier"

24. One comment from a manufacturer observed that FDA proposed a regulation concerning use of the term "healthy" (proposed § 101.65(d)(2) (58 FR 2949)) in the January 6, 1993 **Federal Register** (58 FR 2944 at 2949). The comment notes that "healthy" and similar terms are used in a variety of contexts. For example, one of the manufacturer's dietary supplements is labeled as "the way to

a healthier life." The comment suggested that this claim should not be deemed to be subject to the "healthy" definition.

FDA advises that it is in the process of finalizing regulations on the January 6, 1993, proposal for the claim "healthy." The use of terms such as "healthy," "healthier," "healthiest" will be addressed in that final rule.

In its final rule on nutrient content claims, FDA concluded that a claim that a food, because of its nutrient content, may be useful in maintaining healthy dietary practices is a claim that characterizes the level of a nutrient in that food (58 FR 2302 at 2375). Accordingly, the agency provided in § 101.65(d)(1) that such statements are implied nutrient content claims and are subject to the requirements of section 403(r) of the act.

However, the agency also stated that when a term such as "healthy," "wholesome," or "nutritious" appears on a food label in a context that does not render it an implied nutrient content claim, it is not subject to the requirements of section 403(r) of the act (58 FR 2302 at 2375). Under such conditions, the use of the term is subject to section 403(a) of the act, and FDA will consider whether it is misleading on a case-by-case basis. The agency intends to give more specific guidance in the final rule on "healthy."

1. General Nutrition Claims Such as "High Potency," "High Absorption," and "Balanced"

a. General issues

In the proposal on nutrient content claims for dietary supplements, FDA requested comment on terms, "high potency," "high absorption," and "balanced," which are often encountered on labels or in labeling of dietary supplements and which seem to imply that the dietary supplement will contribute to good health (58 FR 33731 at 33748). The agency requested comment on whether there are established meanings for these terms, and, if so, whether they characterize the level of the nutrients in the food. FDA stated that if comments demonstrate that there are accepted definitions used in the dietary supplement industry for these terms that characterize the level of nutrients, and that if it determines that these definitions will assist consumers in maintaining healthy dietary practices, FDA will proceed with further rulemaking to adopt the definitions or to propose new ones.

FDA also stated that if the agency agrees that such terms are nutrient content claims, under the provisions of the statute, such claims would be prohibited after the effective date for final rules, until such time as they are defined by FDA by regulation. Further, FDA stated that if comments demonstrate that there are accepted definitions for these terms, and they do not characterize the level of nutrients, in accordance with § 101.65(d)(1) such terms would not be subject to section 403(r) of the act unless used in a nutritional context in association with an explicit or implicit claim or statement characterizing the nutrient content of the food.

25. Several comments maintained that the terms "high potency," "high absorption," and "balanced" are implied nutrient content claims and urged the agency to define or prohibit these terms. The comments stated that it is inappropriate and fraught with possibilities for deception to allow each manufacturer to define such claims. One comment stated that although these terms imply features of nutrient content to consumers, they do not have any established or useful meaning with regard to dietary supplements. The comment argued that these terms seem to be more specific to dietary supplements than to other food, so that their applicability in helping consumers make appropriate nutritional choices from the variety of foods available seems limited.

On the other hand, several comments stated that these terms do not inherently refer to the level of nutrients, are not nutrient content claims, and therefore should not be defined. These comments maintained that such terms are formulation descriptions, which properly and truthfully describe the nature and type of the product. These comments contended that these terms have been used for many years, and that consumers have come to understand that products so described provide an amount of the primary nutrients in the formulation that is at least equal to the RDA's for those nutrients.

One comment argued that FDA precedent exists for excluding such terms from regulation as nutrient content claims. The comment stated that as formulation descriptions, these terms are useful to consumers in helping them to make product choices, and manufacturers should be allowed to continue to use these terms in a manner that is consistent with FDA's policy on claims such as "maximum strength" for internal analgesics in the over-the-counter drug review (i.e., kept outside the scope of this rulemaking).

The agency agrees that these terms seem to have more direct application to dietary supplements than to foods in conventional food form. Furthermore, these terms may have some utility in helping consumers select among dietary supplements. However, while these terms have apparently been used for years to imply superiority, the agency is uncertain what they mean to consumers.

The agency disagrees that these terms should be regulated in the same manner as terms such as "maximum strength," which are used on the labels of over-the-counter drug products. The over-the-counter drug regulations include maximum amount limitations. Section 411(a)(1)(A) of the act prohibits limits on the potency of dietary supplements of vitamins or minerals except on the basis of safety. Therefore, the situations are not analogous.

The agency believes that each of these terms should be evaluated individually because they do not seem to be synonymous. "High potency" seems to focus on nutrient level or content, but "balanced," as one comment suggested, seems to be a formulation claim. "High absorption" seems to focus on how the body responds to the nutrient. The agency will address each of these terms in more detail in the comments that follow.

b. Definition for "high potency"

26. The majority of comments stated that the term "high potency" or "full potency" is an implied nutrient content claim and should be defined. Several definitions were offered for this term. A few comments stated that multivitamins and minerals are termed "high potency" when the majority of nutrients with established RDA's are present at the levels equal to or in excess of the RDA.

Similarly, another comment stated that the term should be restricted to formulations that contain micronutrients at levels of at least twice the applicable RDI or DRV because a multivitamin at 100 percent of the DV might be "high potency" compared to a food in conventional food form but not "high potency" when compared to other dietary supplements.

Another comment suggested that FDA should require a "high potency" single-ingredient supplement to contain at least twice the RDI, and that the front of the label should disclose what multiple of the RDI the supplement contains. The comment acknowledged that under this scheme, some nutrients, such as calcium and selenium, would not qualify to carry a "high potency" claim, because they are rarely sold at double the RDI. The comment suggested that if the supplement industry begins to market those supplements at higher doses in order to make "high potency" claims, then FDA could establish a lower minimum level, such as 50 percent more than the RDI for selenium or 50 percent of the RDI for calcium. Those minimum levels would apply to those nutrients only. The comment also suggested that FDA should allow "high potency" claims on multinutrient supplements when more than one-third of the nutrients that they contain meet the minimum level required for a high potency claim, and the label discloses which nutrients are present at high levels. For example, the label of a "high potency" multivitamin could carry an asterisk next to the claim, with the following disclosure: "contains high levels of [number] vitamins."

Further, the comment stated that it is not reasonable to require that all of the nutrients in a multinutrient supplement be present at levels that are necessary for high potency claims because many nutrients are not—and should not—be sold in such high doses. For example, the comment suggested that "high potency" claims should be allowed on a multivitamin-and-mineral supplement that contains at least double the RDI of vitamins A, C, E, B6, B12, thiamin, riboflavin, and niacin but smaller amounts of vitamin D, iron, calcium, magnesium, zinc, and copper. The comment stated that the latter nutrients are typically sold at doses lower than double the RDI and may pose a risk at high levels.

FDA has reviewed the comments and is persuaded that "high potency" is a claim that characterizes the level of a nutrient and therefore meets the definition in § 101.13(b) of a nutrient content claim. FDA also is persuaded by the comments that this is a term that FDA should define in order to ensure that it will be useful to consumers in maintaining healthy dietary practices. However, given the range and diversity of the suggested definitions, the agency is not prepared to offer a definition of "high potency" at this time. FDA intends to review the suggestions it received on this issue and based on information received in comments, issue a proposed rule on an appropriate definition of "high potency."

FDA recognizes that there is a need to provide this definition as quickly as possible. Therefore, FDA intends to act on this matter as expeditiously as its resources allow.

c. Definitions for "high absorption"

27. A couple of comments stated that the term "high absorption" does not refer to the level of nutrients but rather to bioavailability or how efficiently the nutrients are released from the product and absorbed into the bloodstream. One comment stated that "high absorption" means that the product meets the definition for "high," and that a "high amount" is digested and assimilated.

Another comment stated that from a biological viewpoint, the extent to which nutrients are absorbed from food or supplements depends not only on the chemical form of the nutrient itself but on the chemical environment presented by the carrier food in which it is contained and on the physiological state of nutrient need of the individual consumer. Given these factors, the comment stated that it is difficult to provide a meaningful definition of absorbability.

One comment requested that the label should disclose information about the bioavailability of the product. Another comment suggested that FDA should allow labels to make "high absorption" or similar claims only when the manufacturer supplies bioavailability data showing that the product is better absorbed than a standard supplement. The comment stated that the agency should not allow this claim on supplements that simply meet or exceed the United States Pharmacopeial Convention's (USP's) (or other) standards for disintegration or dissolution, because meeting those standards does not ensure that the product is well absorbed.

The agency agrees that the term "high absorption" generally refers to how well a nutrient is absorbed into the system. A product can be well absorbed irrespective of the quantitative amount found in the product. Accordingly, FDA finds that "high absorption" is not a nutrient content claim and thus will not define this term. The use of this term is subject to section 201(n) and 403(a) of the act, however. The agency expects that any product bearing a "high absorption" claim will contain the nutrients that are the subject of the claim in a form than can be readily assimilated by the body. In addition, manufacturers who make a "high absorption" claim should have data available to support the claim and should be prepared to make such data available to regulatory officials on request. Failure to do so could lead the agency to conclude that there is no basis for the claim, and thus that it is false or misleading.

d. Definitions for "balanced"

28. A few comments stated that "balanced" is not a nutrient content claim. One comment suggested that "balanced" refers to the ratio of nutrients, not the level, and that the term can apply equally to products containing low or high quantities of nutrients. Another comment stated that there is little need for FDA to define "balanced" because most multinutrient supplements that are currently on the market do not contain nutrients in proportions that would impair the absorption or utilization of other nutrients. The comment suggested that until researchers gain further information on the most favorable proportions of nutrients in supplements, the agency should leave this term undefined and therefore prohibited Another comment suggested that "balanced" be defined as any supplement containing from 50 to 150 percent of the RDI for each vitamin and mineral component of the product for which an RDI has been established.

The agency is persuaded by the comments that the term "balanced" does not typically characterize the level of nutrients, but rather that it is a formulation claim that addresses the ratio of nutrients. The term "balanced" may be used in different ways, each of which relates to the formulation of a product. For example, the term "balanced" may refer to the assortment of nutrients that are present in a product, or it may reflect interactions between the nutrients present, such as sparing effects or impairment or enhancement of absorption. Accordingly, this term does not meet the definition for a nutrient content claim in § 101.13(b). Therefore, the use of the term "balanced" is subject to sections 403(a) and 201(n) of the act and not section 403(r) of the act. The agency will determine whether the use of this term is misleading on a case-by-case basis.

e. Temporary suspension of the use of terms

29. One comment stated that use of the terms "high potency," "high absorption," and "balanced" should not be suspended temporarily during the rulemaking process because such a suspension would result in unnecessary labeling costs. Another comment requested additional time to comment on the definition of "high potency" and suggested that until FDA defines this term, the agency should permit dietary supplement manufacturers to continue to use this term as it is currently being used. The comment suggested that as an executive agency, FDA has inherent authority to refrain from enforcing a statutory provision in circumstances in which the enforcement would do more harm than good. The comment argued that to the extent that "high potency" is being used as part of a brand name (and was being used before October 25, 1989), the 1990 amendments permit its continued use in the brand name until

FDA has defined the term (section 403(r)(2)(C) of the act).

The comment argued that there is no reason for FDA to prohibit the use of a nutrient content claim while a definition is being developed. Further, the comment noted that an enforcement moratorium would avoid the relabeling problem that would arise if FDA disapproves and then reapproves use of the term within a short period of time. The comment stated that FDA will continue to have authority to prohibit use of the term when such use is false or misleading.

FDA advises that it intends to define "high potency" as a nutrient content claim in a separate rulemaking as quickly as possible. The agency is postponing the date that it will apply this final rule on nutrient content claims on dietary supplements until July 1, 1995. This postponement is discussed in detail in the document on the date of application for the nutrition labeling and nutrient content claim requirements for dietary supplements found elsewhere in this issue of the **Federal Register**. FDA intends to complete its rulemaking on "high potency" in sufficient time to assure implementation by the time that dietary supplement manufacturers will be required to comply with the nutrient content claim provisions.

The agency also advises that the term "high potency," when used as part of a brand name, would fall under section 403(r)(2)(C) of the act, if as the comment stated, it was used as part of the brand name before October 25, 1989. However, once this term is defined by the Secretary, it will have to be used in a manner that complies with that definition. In addition, use of the term in the brand name is subject to section 403(a) of the act, which prohibits the use of false and misleading labeling irrespective of whether the use of the term in the brand name is exempt under section 403(r)(2)(C) of the act.

As discussed previously, the comments did not demonstrate that there are accepted definitions for any of these terms. However, the comments have convinced the agency that the terms "high absorption" and "balanced" do not generally characterize the level of nutrients. Accordingly, the agency concludes that these terms are not subject to section 403(r) of the act.

4. Age Specific Claims

30. One comment stated that there are products with brand names that imply that the product is especially useful for a particular segment of the population. The comment argued that it would therefore be appropriate for FDA to require that these special formulas comply with clearly defined requirements (e.g., that they contain high amounts of particular vitamins and minerals that are needed by the relevant group). Another comment maintained that such names mislead consumers because they provide no explanation for those special population claims, and that in many cases, the supplements do not contain levels of nutrients that are appropriate for the special population named in the claim. The comment suggested that FDA should, at the very least, require labels to provide an explanation for these claims. For example, an explanation for a product with a brand name implying that it is useful for women might state that "this product is especially suited for young women because it contains 100 percent of the RDI for folic acid and iron and 30 percent of the RDI for calcium."

FDA agrees that products marketed for special population groups may include claims or brand names that can be misleading. These claims and brand names seem to imply a particular benefit for certain subgroups of the population and often do not disclose how or why they meet the needs of that particular subgroup. Disclosure of such facts would help to protect a product from being misbranded under section 403(a) of the act because its labeling would reveal material facts about the product's claimed special usefulness.

However, such claims about the usefulness of a product for particular population groups generally fall under section 403(j) of the act to the extent that they represent the product to be for special dietary use. As special dietary use claims, they are outside the scope of this rulemaking. Among other things, § 105.3 defines "special dietary uses" as "uses for supplying particular dietary needs which exist by reason of a physical, physiological, pathological or other condition, including but not limited to the conditions of disease, convalescence, pregnancy, lactation, allergic hypersensitivity to food, underweight, and overweight; [and] [u]ses for supplying particular dietary needs which exist by reason of age, including but not limited to the ages of infancy and childhood" (§ 105.3(a)(1)(i) and (a)(1)(ii)). The agency intends to consider proposing regulations for such products. However, because of resource constraints and other agency priorities, any such proposal will not be available in the immediate future. In the interim, such claims will continue to be subject to the general misbranding provisions of sections 201(n) and 403(a) of the act.

5. "Natural"

31. Several comments suggested that FDA define the term "natural" for dietary supplements because that term is widely used in the labeling of dietary supplements even though there is no established definition of that term, and it is misleading as it is now used. For example, one comment stated that studies indicate that natural vitamin E (d-*alpha* tocopherol) is better utilized than synthetic vitamin E (dl-*alpha* and other tocopherols), but that "natural" claims now appear on products containing synthetic vitamin E, misleading consumers who think they are getting a better utilized product. The comment stated that in other instances, companies use the term "natural" to mean that the product contains no artificial ingredients.

One comment acknowledged that FDA has struggled with how to define this term for foods in conventional food form. This comment suggested that the agency need not resolve the dilemma at this time, but that it should simply establish a supplement-specific definition, just as FDA has established a special definition for "natural flavor" in § 101.22. Another comment suggested that FDA should allow "natural" claims on products containing only the naturally occurring form of a vitamin. The comment suggested that FDA could request comments about whether to limit "natural" claims to nutrients, such as vitamin E, that appear to offer some advantage when consumed in a natural form. The comment also stated that many consumers will want the option of purchasing other nutrients in the natural form as well.

FDA is not persuaded by the comments that the term "natural" should be defined at this time. As one comment acknowledged, the agency has recently expended its resources exploring the use of this term, and it was unable to arrive at an acceptable definition (58 FR 2302 at 2407). FDA currently lacks sufficient resources to thoroughly explore and develop proposed regulations for the use of this term on dietary supplements.

In the final rule on nutrient content claims, the agency determined that it would maintain its current policy (as discussed in the general principles proposal (56 FR 60421 at 60466) of interpreting this term to mean that nothing artificial or synthetic (including all color additives regardless of source) has been included in, or has been added to, a food (Ref. 7). FDA also decided that it would continue to distinguish between natural and artificial flavors as outlined in § 101.22. The agency concludes that, for the reasons cited above, it is appropriate to apply this policy to dietary supplements.

In this regard, FDA also points out that § 101.9(k)(6) states that a food labeled under the provisions of this section shall be deemed to be misbranded under sections 201(n) and 403(a) of the act if its label or labeling represents, suggests, or implies, "that a natural vitamin in a food is superior to an added or synthetic vitamin or to differentiate in any way between vitamins naturally present from those added."

V. Other Provisions

FDA did not receive any comments that dealt specifically with the other provisions of the proposal. In the absence of any basis for doing otherwise, FDA is adopting those provisions as proposed.

VI. Economic Impact

In its dietary supplement labeling proposals of June 18, 1993, FDA stated that the proposed rules on the labeling of dietary supplements, taken as a whole, would have associated costs of approximately $20 million. Thus, the agency concluded that the proposed rules would not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA explored whether the proposed rules may have a significant impact on small businesses and tentatively concluded that they do not.

FDA has evaluated the many comments that it received in response to its economic impact analysis. Because the issues raised in the comments relate to all three proposals, FDA has combined its discussion of these comments and presented them in the final rule regarding the date of application published elsewhere in this issue of the **Federal Register**.

FDA has examined the economic implications of the final rules amending 21 CFR as required by Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires the agency to analyze options for regulatory relief for small businesses. FDA has concluded, based on its review of the available data and comments, that these final rules are not significant as defined by Executive Order 12866. Further, in accordance with the Regulatory Flexibility Act, the agency certifies that these final rules will not have a significant impact on a substantial number of small businesses.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Paperwork Reduction Act

In the June 18, 1993, proposal on nutrient content claims for dietary supplements (58 FR 33731 at 33749), FDA announced that the agency had submitted to the Office of Management and Budget (OMB) for its review the collection of information requirements contained in proposed § 101.69, for petitions regarding the use of nutrient content claims in conjunction with food labeling on dietary supplements. Also in that document, FDA published its estimated annual collection of information burden for this provision.

None of the more than 500 comments received in response to the dietary supplement proposal addressed the content of petitions under the proposed nutrient content claim petition requirements. Thus, the agency's estimated annual reporting and recordkeeping burden from the health claim petition requirements contained in this final rule remains unchanged from that announced in June.

FDA has submitted copies of the final rule to OMB for its review of these reporting requirements.

IX. References

The following references have been placed on file in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Moss, A. J., A. S. Levy, I. Kim, Y. Park, "Use of Vitamin and Mineral Supplements in the United States, Current Users, Types of Products and Nutrients," Advance Data from Vital and Health Statistics of the National Center for Health Statistics, No. 174, July 18, 1989.

2. Pennington, J. A. T., V. L. Wilkening, J. E. Vanderveen, "Descriptive Terms for Food Labeling," *Journal of Nutrition Education*, p. 51, June 1990.

3. Transcript to Docket N–289 for FDA-Initiated Public Conference: Antioxidant Vitamins and Cancer and Cardiovascular Disease, November 1993.

4. Subcommittee on the 10th Edition of the Recommended Dietary Allowances, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Ed.," Washington, DC, National Academy Press, 1989.

5. Committee on Diet and Health, Food and Nutrition Board, Commission on Life Sciences, National Research Council, National Academy of Sciences, "Diet and Health, Implications for Reducing Chronic Disease Risk," National Academy Press, Washington, DC, 1989.

6. Committee on the Nutrition Components of Food Labeling, Food and Nutrition Board, Institute of Medicine, National Academy of Sciences, "Nutrition Labeling, Issues and Directions for the 1990's," Washington, DC, National Academy Press, 1990.

7. Newberry, R., letter to Clinton K. Davies, September 29, 1988.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6, of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.13, effective May 8, 1994, is amended by revising paragraph (a), by adding paragraph (b)(5), by revising the first sentence in paragraph (c), introductory text of paragraph (i), (j)(1)(i)(A) and (j)(l)(i)(B), and (n) to read as follows:

§ 101.13 Nutrient content claims—general principles.

(a) This section and the regulations in subpart D of this part apply to foods that are intended for human consumption and that are offered for sale, including foods in conventional food form and dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (dietary supplements).

(b) * * *

(5) For dietary supplements, claims for calories, fat, saturated fat, and cholesterol may not be made on products that meet the criteria in § 101.60(b)(1) or (b)(2) for "calorie free" or "low calorie" claims, except, in the case of calorie claims, when an equivalent amount of a similar dietary supplement (e.g., another protein supplement) that the labeled food resembles and for which it substitutes, normally exceeds the definition for "low calorie" in § 101.60(b)(2).

(c) Information that is required or permitted by § 101.9 or § 101.36, as applicable, to be declared in nutrition labeling, and that appears as part of the nutrition label, is not a nutrient content claim and is not subject to the requirements of this section. * * *

* * * * *

(i) Except as provided in § 101.9 or § 101.36, as applicable, or in paragraph (q)(3) of this section, the label or labeling of a product may contain a statement about the amount or percentage of a nutrient if:

* * * * *

(j) * * *

(1) * * *

(i)(A) For "less" (or "fewer") and "more" claims, the reference food may be a dissimilar food within a product category that can generally be substituted for one another in the diet (e.g., potato chips as reference for pretzels, orange juice as a reference for vitamin C tablets) or a similar food (e.g., potato chips as reference for potato chips, one brand of multivitamin as reference for another brand of multivitamin).

(B) For "light," "reduced," "added," "fortified," and "enriched" claims, the reference food shall be a similar food (e.g., potato chips as a reference for potato chips, one brand of multivitamin for another brand of multivitamin).

* * * * *

(n) Nutrition labeling in accordance with § 101.9, § 101.10, or § 101.36, as applicable, shall be provided for any food for which a nutrient content claim is made.

* * * * *

3. Section 101.54, effective May 8, 1994, is amended by revising paragraph (a)(3), (b)(1), (c)(1) and the introductory text of paragraph (e)(1) to read as follows:

§ 101.54 Nutrient content claims for "good source," "high," and "more."

(a) * * *

(3) The food for which the claim is made is labeled in accordance with § 101.9, § 101.10, or § 101.36, as applicable.

(b) "High" claims. (1) The terms "high," "rich in," or "excellent source of" may be used on the label and in the labeling of foods except meal products as defined in § 101.13(l), main dish products as defined in § 101.13(m), and dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 20 percent or more of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(c) "Good Source" claims. (1) The terms "good source," "contains," or "provides" may be used on the label or in labeling of foods except meal products as described in § 101.13(l) main dish products as described in § 101.13(m), and dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that the food contains 10 to 19 percent of the RDI or the DRV per reference amount customarily consumed.

* * * * *

(e) "More" claims. (1) A relative claim using the terms "more," "fortified," "enriched," and "added" may be used on the label or in labeling of foods to describe the level of protein, vitamins, minerals, dietary fiber, or potassium except as limited by § 101.13(j)(1)(i) and except meal products as defined in § 101.13(l), main dish products as defined in § 101.13(m), and dietary supplements of vitamins or minerals to characterize the level of any substance that is not a vitamin or mineral, provided that:

* * * * *

4. Section 101.60 is amended by revising paragraphs (a)(2) and (a)(3), by adding new paragraph (a)(4), by redesignating paragraphs (c)(4) and (c)(5) as paragraphs (c)(5) and (c)(6), and adding a new paragraph (c)(4), and by revising the introductory text of newly redesignated paragraph (c)(5) to read as follows:

§ 101.60 Nutrient content claims for the calorie content of foods.

(a) * * *

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 101.13;

(3) The food for which the claim is made is labeled in accordance with § 101.9, § 101.10, or § 101.36, as applicable; and

(4) For dietary supplements, claims regarding calories may not be made on products that meet the criteria in § 101.60(b)(1) or (b)(2) for "calorie free" or "low calorie" claims except when an equivalent amount of a similar dietary supplement (e.g., another protein supplement) that the labeled food resembles and for which it substitutes, normally exceeds the definition for "low calorie" in § 101.60(b)(2).

* * * * *

(c) * * *

(4) The claims provided for in paragraph (c)(1) and (c)(2) of this section may be used on labels or in labeling of dietary supplements of vitamins or minerals that are intended specifically for use by infants and children less than 2 years of age.

(5) The terms "reduced sugar," "reduced in sugar," "sugar reduced," "less sugar," "lower sugar" or "lower in sugar" may be used on the label or in labeling of foods, except meal products as defined in § 101.13(l), main dish products as defined in § 101.13(m), and dietary supplements of vitamins or minerals, provided that:

* * * * *

6. Section 101.61 is amended by revising paragraph (a)(3) to read as follows:

§ 101.61 Nutrient content claims for the sodium content of foods.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with § 101.9, § 101.10, or § 101.36, as applicable.

* * * * *

7. Section 101.62 is amended by revising paragraphs (a)(2) and (a)(3) and by adding paragraph (a)(4) to read as follows:

§ 101.62 Nutrient content claims for fat, fatty acid, and cholesterol content of foods.

(a) * * *

(2) The claim is made in accordance with the general requirements for nutrient content claims in § 101.13;

(3) The food for which the claim is made is labeled in accordance with § 101.9, § 101.10, or § 101.36, as applicable; and

(4) For dietary supplements, claims for fat, saturated fat, and cholesterol may not be made on products that meet the criteria in § 101.60(b)(1) or (b)(2) for "calorie free" or "low calorie" claims.

* * * * *

8. Section 101.65 is amended by revising paragraphs (a)(3), (b)(3) and (b)(4) to read as follows:

§ 101.65 Implied nutrient content claims and related label statements.

(a) * * *

(3) The food for which the claim is made is labeled in accordance with § 101.9, § 101.10, or § 101.36, as applicable.

(b) * * *

(3) A claim about the presence of an ingredient that is perceived to add value to the product, e.g., "made with real butter," "made with whole fruit," or "contains honey," except that claims about the presence of ingredients other than vitamins or minerals or that are represented as a source of vitamins and minerals are not allowed on labels or in labeling of dietary supplements of vitamins and minerals that are not in conventional food form.

(4) A statement of identity for a food in which an ingredient constitutes essentially 100 percent of a food (e.g., "corn oil," "oat bran," "vitamin C 60 mg tablet").

* * * * *

Dated: December 23, 1993

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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21 CFR Parts 20 and 101

[Docket No. 85N-061D]

RIN 0905-AB67

Food Labeling; General Requirements for Health Claims for Dietary Supplements

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its food labeling regulations to make dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (dietary supplements) subject to the same general requirements that apply to all other types of food with respect to the use of health claims that characterize the relationship of a substance to a disease or health-related condition on the label or in labeling and the content of petitions for obtaining authorization for such health claims. This action is being taken in response to provisions of the Nutrition Labeling and Education Act of 1990 (the 1990 amendments) and the Dietary Supplement Act of 1992 (the DS act) that bear on health claims.

EFFECTIVE DATE: July 5, 1994.

FOR FURTHER INFORMATION CONTACT: James R. Taylor, Jr., Center for Food Safety and Applied Nutrition (HFS-158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5229.

SUPPLEMENTARY INFORMATION:

I. Background

On November 8, 1990, President Bush signed into law the 1990 amendments (Pub. L. 101-535). This new law amended the Federal Food, Drug, and Cosmetic Act (the act) in a number of important ways. One of the notable aspects of the 1990 amendments is their confirmation of FDA's authority to regulate health claims on food labels and in food labeling. The new provisions amended the act by adding a provision, section 403(r)(1)(B) (21 U.S.C. 343(r)(1)(B)), that provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with sections 403(r)(3) of the act (which pertains to foods in conventional food form) or 403(r)(5)(D) (which pertains to dietary supplements).

Congress enacted the health claims provisions of the 1990 amendments to help U.S. consumers maintain healthy dietary practices and to protect these consumers from unfounded health claims. The House Report of June 13, 1990, states, "Health claims supported by significant scientific agreement can reinforce the Surgeon General's recommendations and help Americans to maintain a balanced and healthful diet" (Ref. 1). In addition, the statement of the House Floor Managers noted that "There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims" (Ref. 2). The House Report characterized the need for regulation of health claims as "compelling" (Ref. 1).

FDA's first step to effect the health claims provisions of the 1990 amendments appeared in the form of a November 27, 1991, proposed health claims regulation (56 FR 60537) (hereinafter referred to as "the health claims proposal"). That document proposed to establish general requirements pertaining to the use of health claims that characterize the relationship of a food component to a disease or health-related condition on the labels and in labeling of both foods in conventional food form and dietary supplements. The health claims proposal contained definitions to clarify the meaning of specific terms used in the regulations, preliminary requirements that a component of food must meet to be eligible to be the subject of a health claim, a scientific standard for assessing the validity of claims, general labeling requirements for health claims that are permitted by regulation, and prohibitions on certain types of health claims. Also, the health claims proposal contained provisions pertaining to the required content of petitions for health claims.

In response to the health claims proposal, FDA received over 6,000 letters, each containing one or more comments, from consumers, health care professionals, universities, State and local governments, foreign governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. Many of the comments pertained to dietary supplements. The agency summarized and addressed the issues raised in the comments in the final rule on health claims that published in the **Federal Register** of January 6, 1993 (58 FR 2478) (hereinafter referred to as "the health claims final rule"). The health claims final rule became effective on May 8, 1993.

Although the health claims proposal pertained to dietary supplements as well as foods in conventional food form, the final rule applied only to the latter type of foods. In October of 1992, Congress passed the DS act (Pub. L. 102-571), which imposed a moratorium on FDA implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993 The DS act provides that by June 15, 1993, FDA was to have issued proposed rules to implement the 1990 amendments with respect to dietary supplements, and that by December 31, 1993, the agency is to issue final rules based on these proposals. The DS act also amends the 1990 amendments to reflect the fact that if the agency does not issue final rules with respect to health claims for dietary supplements by December 31, 1993, the proposed regulations are to be considered final regulations at that time.

In the **Federal Register** of June 18, 1993 (58 FR 33700), FDA responded to the DS act by issuing a proposal that sets forth a standard and procedure for making health claims for dietary supplements (hereinafter referred to as "the dietary supplement health claims proposal"). In that proposal, FDA proposed to make health claims on dietary supplements subject to the same general requirements that apply to health claims on all other types of food.

In response to the dietary supplement health claims proposal, FDA received over 1,200 letters, each containing one or more comments, from consumers, health care professionals, universities, State and local governments, trade organizations, consumer advocacy organizations, research institutes, industry, and professional organizations. Some comments agreed with one or more provisions of the proposed rule without providing further grounds for support other than those provided by FDA in the preamble to the proposal. Other comments disagreed with one or more provisions of the proposal without providing specific grounds for their disagreement. Many comments addressed issues that are beyond the scope of these regulations

and will not be addressed in this document. For example, some responded to various aspects of FDA's June 18, 1993, advance notice of proposed rulemaking concerning the general regulation of dietary supplements (58 FR 33690). Most of the comments, however, addressed the proposed regulations and provided specific grounds in support of their positions. The agency has summarized and addressed the issues raised in the comments in the discussion that follows.

II. Regulatory Approach

A. General Approach Based on FDA's Review of the 1990 Amendments

The 1990 amendments did not provide a specific standard for when a health claim should be authorized on dietary supplements or a specific procedure for authorizing such claims. Under section 403(r)(5)(D) of the act, the establishment of such a standard and such a procedure is left to the Secretary of the U.S. Department of Health and Human Services (DHHS) (and, by delegation, FDA). Thus, in the dietary supplement health claims proposal (58 FR 33700 at 33702), FDA reviewed the legislative history of the 1990 amendments to identify the features that Congress intended would guide the agency's choice of a scientific standard and procedure for regulating health claims on dietary supplements. FDA identified the following features that it believes should guide its choice:

- o The regulations are to deal only with the procedure and standard for health claims for the substances in dietary supplements. They are to have no bearing on the availability of any dietary supplements.
- o The regulations must prohibit the use of health claims that are not authorized under their provisions.
- o The regulations must ensure that any health claims that appear in labeling are scientifically valid.
- o The regulations must ensure that any health claims that appear in labeling are understandable.
- o The regulations should be such that all segments of the food industry are treated fairly and in a consistent manner, unless there is an appropriate basis on which to draw a distinction. This factor embodies a principle of equity implicitly in the act.

(58 FR 33700 at 33703)

With these features in mind, FDA considered all of the approaches of which it was aware that might be used to regulate dietary supplements. The agency tentatively concluded that it should adopt an approach that would subject dietary supplements to the same standard that applies to foods in conventional food form. FDA stated that it was its tentative view that that approach strikes the appropriate balance between the congressional concern for consumer fraud, public health, and sound science, on the one hand, and the desire to provide the consumer with information on the other. Furthermore, the agency advised that if it adopts this standard for dietary supplements, all foods will be regulated under the same standard.

FDA pointed out that under the same procedure that applies with respect to claims for substances in food in conventional food form, there is a premarket review that ensures that the safety of the substance that is to be the subject of the claim has been established as well as the scientific validity of the claim. A claim linking a substance to a disease, whether on a food in conventional food form or on a dietary supplement, is intended to increase intake of that substance. Thus, the agency said, it is important to ensure that a claim encouraging such increased intake can be safely implemented. Therefore, FDA proposed to adopt the same procedure for health claims for dietary supplements as for foods in conventional food form.

1. Availability of Dietary Supplements

1. A great many comments, primarily from consumers, raised objections that indicated that the commenters were misinformed about the proposed regulations, or that they simply did not believe what FDA stated in the dietary supplement proposal. Many of the comments expressed considerable anger, resentment, and even fear over the proposal. A large number of these comments characterized the proposal as an attack against the dietary supplement industry. Many of these comments stated that FDA is plotting to ban all dietary supplements. A number of comments explained that the proposed regulations would limit the number of dietary supplements available to consumers by limiting the amount of health information that could appear on supplement labels and thus diminish supplements' marketability. The comments maintained that FDA's proposed policy of requiring premarket review of a supplement's safety is contrary to the agency's stated intent to preserve supplement availability and consumer choice. Some of the comments maintained that many manufacturers would be put out of business. Many of the comments argued that the nation's health would be adversely affected, and that health care costs would increase without dietary supplements to maintain good health. Some comments contained testimonials that certain dietary supplements were responsible for curing and preventing a variety of diseases, including cancer.

However, a few comments pointed out that assertions that FDA plans to ban dietary supplements are unfounded. A number of these comments predicted that the vast majority of dietary supplements will remain in the marketplace because about 80 percent of supplement labels are already in compliance with the proposed provisions.

There is no basis for virtually all of the concerns raised in the comments about the availability of dietary supplements. Nothing in these regulations will make them unavailable to consumers. These regulations focus only on ensuring that health claims, if made on the labels or in the labeling of dietary supplements, are scientifically valid and understandable. Thus, the availability of dietary supplements will not be affected by these regulations. While it is likely that some claims may have to be removed from product labeling as a result of this final rule, the products themselves can continue to be marketed.

It is true that prohibiting the use of claims that have not been authorized by FDA may have an adverse impact on the marketability of some products. However, any such impact is outweighed by the need to assure consumers that the claims that are made in labeling are scientifically valid, and that they can rely on such claims. In fact, the only products whose marketability will ultimately suffer under these regulations will be those whose labeling has borne claims that cannot be supported by the available scientific evidence.

The requirement that the agency be confident that the presence of a health claim will not result in unsafe intakes of the substance that is the subject of the claim is not inconsistent with supplement availability and consumer choice. If a manufacturer does not choose to make a claim about a substance, nothing in these regulations will affect the manufacturer's ability to continue to market supplements that contain that substance. FDA believes, however, that it has an obligation to ensure that before it authorizes a claim that encourages consumers to increase their consumption of a substance, it have some assurance that increased consumption of that substance will not be harmful.

2. Fair and Consistent Treatment of All Segments of the Food Industry

2. Many comments asserted that FDA has not been evenhanded in its approval of health claims for use on dietary supplements and on foods in conventional food form. Some of these comments maintained that FDA's unfair treatment of dietary supplements is evidenced by the agency's approval of health claims involving cancer and coronary heart disease for use on fruits, vegetables, and grain products but not for use on fortified foods or supplements that provide fiber or antioxidant vitamins. The comments stated that FDA should authorize health claims involving particular nutrients for use on any food that contains those nutrients, including dietary supplements, unless there is significant scientific agreement that the claim is valid only when the nutrient is consumed in a particular form. To ensure that such an approach is taken in evaluating health claims for use on dietary supplements in the future, a few comments requested that FDA add the following provision to the end of § 101.14(g) (21 CFR 101.14(g)):

> A health claim that has been approved for any substance that is to be consumed at other than decreased dietary levels shall be permitted on all foods (including dietary supplements) containing the requisite amounts of that substance, unless FDA determines that (i) there is significant scientific agreement (as defined in subparagraph (c)) that the consumption of the substance in the particular food will not provide the benefits claimed, or (ii) the food contains disqualifying amounts of another substance.

A few comments contended that FDA also has treated dietary supplements unfairly by withholding approval of a health claim concerning the role of folic acid in reducing the risk of neural tube defects (NTD's) simply because of its concerns that allowing the claim on foods in conventional food form would raise safety issues because of overfortification of the food supply and the subsequent effect on certain subpopulations. These comments asserted that the proper course of action for the agency would have been to allow health claims on dietary supplements but to prohibit their use on foods in conventional food form until the public health concerns associated with such use had been resolved.

However, a few comments supported FDA's decision to approve particular health claims for use on fruits, vegetables, and fiber-containing grains while not authorizing their use on dietary supplements or fortified foods with added antioxidant vitamins or fiber. These comments noted that there are many compounds in fruits and vegetables that may be involved in reducing the risk of disease that may not have been identified. The comments asserted that before allowing a dietary supplement to bear a health claim authorized for use on food in conventional food form, it is important to establish that the supplement provides the same health protection benefits as the conventional food.

FDA disagrees with the assertions in the comments that it has been unfair with the dietary supplement industry with respect to its approval of specific health claims. FDA believes that the health claims should be consistent with the scientific evidence available to the agency. In the **Federal Register** of January 6, 1993 (58 FR 2537, 2552, and 2622), FDA explained why it was authorizing health claims pertaining to: (1) Heart disease and diets low in saturated fat and cholesterol and high in fruits, vegetables, and grain products that contain fiber; (2) cancer and diets low in fat and high in fruits, vegetables, and grain products that contain fiber; and (3) cancer and diets low in fat and high in fruits and vegetables that may contain fiber, vitamin A (*beta*-carotene) and vitamin C. The agency also explained in detail why it was not authorizing health claims pertaining to any specific nutrients (i.e., heart disease and dietary fiber, cancer and dietary fiber, and cancer and antioxidant vitamins).

In the case of the antioxidant vitamins, FDA found that although there was sufficient evidence to justify a health claim concerning the relationship between diets low in fat and high in fruits and vegetables that may contain fiber, vitamin A, and vitamin C and a reduced risk of cancer, the available evidence did not provide a basis on which to attribute the reduction in risk of disease to any individual vitamin or combination of vitamins, regardless of whether the vitamin is classified as an antioxidant or not (see discussion under section IV., 58 FR 2622 at 2633). Yet, because of the usefulness of vitamins A (as *beta*-carotene) and C and dietary fiber in identifying those fruits and vegetables that correlate with reduced cancer risk, FDA identified these nutrients as being characteristic of the foods associated with a protective effect. Any one or a combination of these three nutrients can serve as the identifying marker. Moreover, because fruits and vegetables are also characterized by an absence of fat, and because of the identified relationship of low fat diets to reduced risk of cancer, FDA highlighted low fat intakes as part of the dietary pattern associated with decreased cancer risk. Because the mechanism of the protective effect of fruits and vegetables is not known, and because it is not possible to determine which of the nutrients or other components in fruits and vegetables is causing the observed effect, the health claim authorized by FDA focuses on fruits and vegetables as a class of foods and their relationship to cancer risk, and not on particular nutrients. By requiring that all characterizing nutrients be identified as characteristic of dietary patterns rich in fruits and vegetables without specifically attributing reduced cancer risk to a single nutrient or single type of nutrient (antioxidant vitamins), FDA made the claim consistent with the scientific knowledge available to it at the time it authorized the claim.

Because of the rapidly evolving science base relative to this topic, however, FDA has continued to update its evaluation of the scientific evidence and the degree of scientific agreement on the relationship between antioxidant vitamins and cancer. As part of these efforts, FDA initiated, along with other major research and health organizations as cosponsors, a public conference on antioxidant vitamins and cancer and cardiovascular disease that was held on November 1 through 3, 1993. The transcript of that meeting has been submitted to the Docket as a comment on the antioxidant vitamins and cancer rulemaking, along with other comments received in response to the announcement of the conference (58 FR 54595, October 22, 1993). FDA is reviewing the results of this conference and other scientific evidence that has become publicly available since the publication of the January 6, 1993, final rule on antioxidant vitamins and cancer.

Similarly, in the case of heart disease and dietary fiber and of cancer and dietary fiber, the agency found that there was insufficient evidence to attribute the reduction in risk specifically to dietary fiber or to specific fiber components. The agency did conclude, however, that dietary fiber and soluble fiber, along with other nutrients, serve as useful markers in identifying those foods for which the scientific evidence showed that inclusion in a daily diet was associated with reduced risk of cancer and of heart disease (58 FR 2552 and 58 FR 2537).

For both topic areas, the agency also noted the inability of commonly used analytical methodologies to detect many of the characteristics that vary among dietary fibers and that may be related to biological function (e.g., particle size, chemical composition, water-holding capacity). With regard to heart disease, other components variable associated with soluble fiber in foods (e.g., lipid components) may also contribute to a cholesterol-lowering effect. FDA found that the inability to detect many of the differences among fibers, fiber

components, and other substances in foods that contain dietary fibers, including soluble fiber, and the general lack of conclusions as to the mechanism of action of dietary fibers and fiber components were limiting factors on FDA's ability to draw conclusions from the available evidence. Furthermore, FDA noted that foods high in dietary fiber are also generally low in calories and total fat, factors that are associated with reduced risk of cancer. Fiber-rich foods are also generally low in saturated fats and cholesterol, substances that also affect the risk of developing heart disease. Thus, some or all of the benefits associated with diets high in fiber-rich foods could be the result of displacement of fat and saturated fat from the total diet rather than an effect of fiber per se.

The agency stated that although the specific roles of the numerous potentially protective substances or displacement of negative substances (e.g., fat, saturated fat, and cholesterol) in such plant foods are not yet understood, populations with diets rich in these foods experience many health advantages, including lower rates of heart disease and cancer. Thus, FDA did not authorize the use of a health claim on the association between ingestion of dietary fiber, or specific fiber components, and a reduced risk of heart disease or cancer. Instead, for cancer, FDA, to be consistent with the available scientific evidence and prevailing scientific agreement, focused on fiber-containing grain products, fruits, and vegetables as product classes. Similarly, for heart disease, FDA focused on fruits, vegetables, and grain products that contain fiber, particularly soluble fiber. Because of the usefulness of dietary fiber or soluble fiber in identifying the types of foods whose consumption is most likely to correlate with decreased cancer or heart disease risk, these substances can serve as identifying markers for selecting useful foods, even in the absence of adequate evidence of a direct effect of fiber.

FDA is aware, however, of the rapidly evolving nature of the science base relative to these topic areas. FDA intends to update its review of the science by initiating, in the near future, along with other major research and health organizations as cosponsors, a public symposium on dietary fiber and heart disease and cancer.

With respect to assertions concerning folic acid, FDA disagrees that it should have allowed health claims on dietary supplements while prohibiting their use on foods in conventional food form. While FDA did not authorize a health claim for folic acid and NTD's, in the final rule on heath claims and label statements for folic acid and NTD's published in the **Federal Register** of January 6, 1993 (58 FR 2606) (hereinafter referred to as "the folic acid final rule"), the agency did announce its plans to work expeditiously to authorize a claim, if appropriate.

The agency noted that the Public Health Service (PHS), including FDA, had recommended (Ref. 7) that all women of childbearing age in the United States should consume 0.4 milligram (mg) (400 micrograms (μg)) of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other neural tube defects. FDA acknowledges that this recommendation evidenced that significant scientific agreement existed regarding a relationship between folate and NTD's but said that there were factors that prevented FDA from authorizing a claim. The agency said that the act must be read as a whole, and that sections 403(r)(3)(A)(ii) and 409 of the act (21 U.S.C. 348) reflect the proposition that the use of a substance that is the subject of a health claim must be safe. The agency pointed out that the PHS recommendation stated that there were significant questions that persist about the safe use of folic acid in food. As stated in the folic acid final rule, FDA expected that the authorization of a claim would likely result in significant increases in consumption of folic acid by women in their childbearing years and by the general population, because manufacturers would add folic acid to their products in order to claim that these products were useful in reducing the risk of birth defects. Intakes of multiple doses of folic acid from supplements and from its increased presence in the food supply could rapidly result in intakes of 3 to 7 mg (3,000 to 7,000 μg) per day (58 FR 2606 at 2614). Such intakes represent increases of 10–fold or more above current intakes.

In the folic acid final rule, the agency reviewed the safety considerations raised by such increases in folic acid intakes, including: (1) Potential effects in persons with poor vitamin B12 status; (2) potential risks for persons taking medications that interfere with folate metabolism; (3) potential risks for pregnant women because of uncertainties about effects of high blood levels of folic acid on the embryo during gestation; and (4) uncertainties regarding possible interactions between folic acid and other nutrients with increased folic acid intakes. The agency concluded that it could not authorize a health claim on folic acid until the questions regarding the safe use of this nutrient were satisfactorily resolved. In the folic acid final rule the agency described the efforts it was undertaking to address and resolve these concerns.

Following publication of this document, based on its review of the evidence, its discussions with an advisory committee, and its review of the comments that it received, the agency tentatively concluded that the safety problems raised by folic acid can be resolved by setting a safe upper limit of intake of 1 mg folate per day for all population groups. The agency announced its tentative conclusion in a proposal to authorize a health claim on folate and neural tube defects (58 FR 53254, October 14, 1993). In companion documents, FDA also proposed to amend the food additive regulation for folic acid to specify the foods that could be fortified with folic acid and the level at which they could be fortified (58 FR 53312) and to amend the standards of identity for specific cereal-grain products to permit the addition of folic acid (58 FR 53305).

Thus, based on this review of the agency's actions, it is clear that the nondiscriminatory provision suggested in the comments is not necessary. When FDA has concluded that a substance has a relationship to a disease, FDA has acted to authorize a claim (see final rule on calcium and osteoporosis (58 FR 2665) and the proposed rule on folic acid and neural tube defects (58 FR 53254)). In the case of antioxidant vitamins and cancer, dietary fiber and heart disease, and dietary fiber and cancer, the evidence did not establish that the named substances had an effect on the named diseases. The evidence showed that these nutrients were merely markers of foods that had been shown in studies to affect the risk of the disease. FDA has reflected the scientific evidence in the claims that it has authorized and proposed to authorize. Any other course of action would be inconsistent with the act because it would result in claims that were both not scientifically valid and misleading.

B. Alternative Approaches

In the dietary supplement health claims proposal (58 FR 33700 at 33703), FDA advised that a variety of approaches had come to FDA's attention about how health claims for dietary supplements would best be regulated under the 1990 amendments. These approaches came to the agency's attention by various means, including the comments on the health claims proposal that addressed the most appropriate method for regulating dietary supplements, testimony before Congress about implementation of the

1990 amendments, as well as the legislative history of the 1990 amendments. FDA carefully evaluated each of these approaches to determine how they compare with the characteristics that FDA has listed above. A number of comments addressed the agency's tentative conclusions about these approaches.

1. Use of Advisory Committees

In the dietary supplement health claims proposal (see section II.B.1., 58 FR 33700 at 33704), FDA advised that it had tentatively decided not to adopt a committee-based approach suggested in comments for evaluating the validity of health claims on herbs. This approach, known as the Botanical Ingredient Review (BIR), would involve the establishment of expert panels under the direction of an oversight committee. FDA would participate as a nonvoting member of the expert panels. The oversight committee, which would be charged with the responsibility of reviewing all health claim petitions pertaining to herb or botanical components, would relieve FDA of all responsibility for initial review of these petitions. Each expert panel would conduct an evaluation of scientific data pertaining to the requested claim, subject the evaluation to peer review, and prepare a final recommendation about the claim. The recommendation and all supporting documents would then be forwarded to FDA, and the agency would be permitted 120 days to approve, disapprove, or modify the report. Under draft regulations prepared and submitted for FDA adoption by one comment on the health claims proposal, there would be a codified presumption in favor of the committee recommendation.

The agency based its tentative decision about the BIR on its belief that the suggested approach would involve a significant transfer of agency authority on health claims because of this presumption in the draft regulations submitted by the comment. Under this presumption, FDA would be obligated to prove that the committee was wrong if the agency decided not to follow the committee's recommendation. In such circumstances, FDA could be forced to propose to authorize health claims that it was not satisfied were scientifically valid. FDA noted that there is no basis under the act for such a transfer. Also, the agency noted that the creation of such a committee would be financially burdensome and stated that it would be inappropriate to commit its limited resources to a committee with as narrow a scope as that suggested by the comment.

3. A few comments addressed this advisory committee issue. Some comments voiced opposition to FDA's tentative decision not to establish a BIR. These comments disputed the agency's assertion that the establishment of a BIR would involve any transfer of authority, noting that FDA would retain full and final discretion in approving health claims. The comments also disputed FDA's finding that the creation of a BIR would be burdensome and costly in light of the agency's limited resources. The comments stated that such a finding is inconsistent with FDA's current use of advisory committees for very narrow subject matters such as over-the-counter (OTC) antiplaque products, circulatory system medical devices, and drug abuse. The comments stated that the use of a BIR to help screen petitions from the much larger herbal products industry would be an efficient, economical, and scientifically credible way to ration FDA's scarce resources and would also help FDA meet statutorily-imposed deadlines for actions on petitions that it might not otherwise be able to meet.

The comments also asserted that the agency's statement that it has the "ultimate responsibility to determine whether the petitioned-for health claim is valid" implies a mistrust of the integrity of the BIR process and the involved scientists and reveals an agency belief that it is the only authority competent to judge the scientific validity of health claims for herbal dietary supplements. The comments disagreed with such a conclusion and argued that health claim petitions will only receive adequate and full consideration from the scientific community best qualified to determine whether they meet the significant scientific agreement standard set by Congress through the creation of a BIR, which would represent the most competent and knowledgeable body in a field that remains largely esoteric to FDA. One of these comments suggested that appropriate selections for herbal experts panels might include experienced herbal practitioners who are familiar with potential adverse reactions to herbs as well as medical practitioners in foreign countries where herb safety has been studied by government and industry panels. The comment stated that the inclusion of foreign medical practitioners would be especially appropriate during the evaluation of a claim whose merits are agreed upon throughout the world but are not generally recognized in the United States, such as in the case of using peppermint tea for its soothing or carminative effects on the digestive tract.

However, one comment supported the agency's tentative decision not to adopt the BIR process. The comment stated that FDA could well be legally liable for decisions made by the BIR that were later shown to have placed the public health at risk.

Several comments called for FDA to establish an advisory committee for health claims for dietary supplements where the committee would select expert panels responsible for the evaluation of proposed health claims for all dietary supplements. The comments suggested that the expert panels should be composed of scientists and health care professionals with expertise on a given nutrient-disease relationship as well as nonvoting industry and consumer representatives. These comments contended that one reason for the agency's slowness in approving a health claim for folic acid has been its reliance on advisory panels that were not sufficiently familiar with the research in the area and who had to be educated about the strength of the evidence before they could act. Some of these comments suggested that FDA could retain the authority to reject the recommendations of the committee, as long as it published its reasons for doing so.

Another comment stated that both the dietary supplement industry and FDA have been slow to recognize and utilize a great deal of research that has been done in the area of nutrition and health. The comment attributed this slowness to a gap between the scientific community, FDA, and the dietary supplement industry. The comment suggested that in order to close this gap, FDA should form a committee of its leading scientists to meet with a similar industry committee every 3 to 6 months, or as required, to discuss the latest research in the area of nutrition and health published in highly accredited scientific journals so that the research could be used to create and support health claim petitions. The comment suggested that when the agency committee and the industry reach an agreement on the data, FDA could authorize the use of a health claim on the nutrient-disease relationship on which there is agreement.

FDA recognizes that advisory committees may make valuable contributions in assisting the agency to evaluate scientific evidence about health claims in certain circumstances. For example, the Folic Acid Subcommittee of the Food Advisory Committee provided valuable recommendations in support of FDA

proposing to authorize a health claim for folic acid and proposing to fortify cereal-grain products. The agency intends to continue its use of advisory committees wherever the need arises.

FDA believes, however, that it should retain the right to decide when the use of an advisory committee is necessary. There may frequently be circumstances in which evidence establishes that use of advisory committees is not necessary because the evidence shows that the claim is clearly supported or clearly not supported. In addition, if the agency were to establish a standing advisory committee for health claims, FDA would want it to have a broader focus than just dietary supplements. FDA's view is that claims should focus on the substance, and not the food in which it is found, because the primary issue is whether the substance-disease relationship has been established. Thus, if FDA were to establish a standing advisory committee, it would be on health claims in general. Although a number of comments asserted that FDA lacks knowledge of herbal products, the agency believes that its personnel are fully competent to evaluate properly substantiated petitions concerning health claims in this area. Also, if the agency were to decide to establish an advisory committee, it would take steps to ensure that the membership of the committee had the necessary expertise, including pertinent expertise on herbal products.

There is an implication in some of the comments that the evaluation of the scientific evidence supporting a claim is somehow different depending on the substance involved. In fact, whether a claim is for a vitamin, mineral, herb, or other similar nutritional substance, including fat, saturated fat, and cholesterol, the skills needed for evaluation of a claim are basically the same. These skills are found in epidemiologists, nutritionists, biostatisticians, clinicians, and experts in the disease being addressed, as well as in people aware of how the substance is, or should be, consumed. Thus, FDA does not agree with the implication in these comments.

FDA is interested in having communication with the dietary supplement industry. However, the agency does not believe that it would be appropriate for the communication to take the form of the suggested standing committee to meet with a similar industry committee every 3 to 6 months. While FDA believes that regular communication with the dietary supplement industry is likely to be useful, the process by which health claims are authorized must be a more open and public process than that suggested by the comment. Certainly the 1990 amendments envisioned a public process for claims for substances in foods in conventional food form, as reflected in section 403(r)(4) of the act. FDA has been presented with no convincing reason why a similar process should not apply to claims for substances in dietary supplements.

Furthermore, FDA continues to believe that the BIR advisory committee approach would involve a significant transfer of agency authority for health claims, even though comments on the health claims proposal and the dietary supplement health claims proposal have made arguments to the contrary. The suggested regulation for health claims that was submitted to FDA on May 10, 1991, and referred to by the agency in the proposals that it has issued, states in part:

B. If the Committee determines that a proposed health claim is appropriate for a particular herb or botanical, either as proposed or as modified by the Committee, it shall forward its recommendation(s) to FDA together with all the data and other information before the Committee when it made its decision.

C. If the Committee determines that, on the basis of the data, and other information before it, the proposed health claim is not scientifically justified for the herb or botanical, it shall so notify the proposer. The proposer may then direct the Committee to forward to FDA all the information before the Committee with respect to the proposal together with its conclusions and the reasons therefore.

D. Within 120 days of receipt of the information described in (B) and (C) above, FDA shall either accept the recommendation, reject it, or modify it based upon the Agency's independent evaluation with analysis and reasons for rejection or modification of recommended health claims. In arriving at its decision FDA may consider data or information other than that before the Committee. *There shall be a presumption, to be sustained when the record is viewed as a whole, in favor of a Committee recommendation under either (B) or (C).* (Emphasis added.)

Despite assertions to the contrary, the last sentence of paragraph "D" obligates FDA to establish that the committee was wrong in order not to follow the committee's recommendation. Ultimately, therefore, there would, in fact, be a significant transfer of authority if the suggested provision were to be adopted by FDA. As FDA noted in the dietary supplement health claims proposal (58 FR 33700 at 33704), there is no basis under the act for such a transfer of authority.

FDA does not question that experts on an industry committee or panel on herbs and botanicals could be helpful. The agency encourages firms to work through such groups. For this reason, FDA revised the provision pertaining to petitions in the health claims final rule to clarify that the agency will consider all recommendations by such committees and panels (see § 101.70(b)). FDA recognizes that those petitions that have undergone an independent scientific review and received endorsement by qualified expert groups will likely be well-supported petitions and could be very persuasive to FDA. Further, FDA is likely to place considerable weight on the recommendations of outside experts, and its decision as to whether a petition should be granted could be influenced significantly by these experts.

Although FDA encourages firms to work through groups of outside experts, the agency would be concerned if such groups were heavily weighted with medical practitioners as one of the comments suggested. Over reliance on such practitioners, to the exclusion of scientists representing other relevant scientific descriptives, implies that the herbs are to be used for medicinal purposes. FDA stresses again that health claims are about the relationship of foods, rather than drugs, to a disease or health-related condition.

2. Establishment of an Approach Based on a More Lenient or the Same Standard

FDA proposed to subject dietary supplements to the same scientific standard and procedure that the statute provides for foods in conventional food form (section 403(r)(3)(B)(i) of the act). The standard, codified in § 101.14(c), states:

(c) Validity requirement. FDA will promulgate regulations authorizing a health claim only when it determines, based on the totality of publicly available scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant scientific agreement, among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence.

FDA explained in the dietary supplement health claims proposal (58 FR 33700 at 33705) that it knows of no standard and procedure for dietary supplements that would both be more lenient than the standard and procedure for foods in conventional food form and yet still have the characteristics that FDA considers necessary under the

1990 amendments and their legislative history. The agency stated that it had tentatively concluded that a standard for health claims for dietary supplements that is based only on section 403(a)(1) of the act (21 U.S.C 343(a)(1)), or that allows health claims based on the existence of substantial scientific evidence, even though significant scientific agreement about the validity of the claim does not exist, would be inconsistent with Congress's desire to ensure that health claims that are made on food, including dietary supplements, are scientifically valid. FDA said that it was concerned that if it were to allow claims in the marketplace whose validity had not been established, these claims would undercut the credibility of those health claims that are in fact valid. The agency said that if it were to allow such claims, consumers would be left little better off, and no less confused, than they were in 1989, before the passage of the 1990 amendments. FDA also expressed its tentative view that the proposed approach strikes the appropriate balance between the congressional concern for consumer fraud, public health, and sound science, on the one hand, and the desire to provide the consumer with information on the other (58 FR 33700 at 33706).

4. A large number of comments asserted that FDA should establish an approach based on a more lenient standard for dietary supplements. Some of these comments argued that such an approach is directed by Congress and cited a statement of Senator Hatch, one of the primary authors of the 1990 amendments, that "a more lenient standard for dietary supplement[s] is envisioned." One comment argued that by providing for the establishment of a separate standard for dietary supplements, Congress had implicitly rejected the rigid standard of "significant scientific agreement" adopted for foods in conventional food form. The comment asserted that FDA was therefore bound by basic tenets of statutory construction to adopt a more lenient standard for dietary supplements, as such an action would give meaning to Congress's instructions, whereas the adoption of the proposed standard would in effect render those instructions meaningless. The comment noted that courts have traditionally not interpreted provisions of a statute in ways that would render other provisions superfluous.

A number of comments stated that using the same standard and procedure for dietary supplements as for foods in conventional food form is counter to the intent of the 1990 amendments because Congress intended to make more, rather than less, information about the health benefits of dietary supplements available to consumers. The comments asserted that health information about the effects of diet on disease is particularly important to consumers of dietary supplements in deciding which products to buy.

Several comments argued that restricting this information on dietary supplements will deny millions of Americans the information that they need to improve their health and to help reduce their risk of deadly afflictions such as heart disease and cancer. The comments asserted that such restriction will cost the nation millions of dollars in health care expenditures that could have been saved through disease prevention.

Some comments expressed concern that restricting the use of properly qualified health claims based on preliminary evidence would encourage information-hungry consumers to seek information about the health benefits of various dietary supplements from sources such as books and the media, which may be unreliable and which are not regulated by FDA. These comments argued that adopting a policy that results in consumers turning to information that may well be misleading or outright false is contrary to the educational goals of the 1990 amendments. One comment stressed that FDA should assist consumers by encouraging them to reduce their risk of disease by changing their diets, lifestyle, and other factors.

Comments suggested that FDA should place more weight on the potential benefits of the health information than on eliminating all possibility for consumer misunderstanding or all elements of risk associated with increased consumption of dietary supplements. A few of these comments advised that a more lenient standard would be appropriate for dietary supplements because they are being sold to educated consumers rather than to the general population. Some of these comments disputed the argument that consumers could be misled by a more lenient standard. These comments noted that consumers continue to rely on health messages on products such as cigarettes and condoms, despite the fact that the messages have changed over the years in response to new scientific findings. Other comments stated that studies have indicated that consumers are able to use various advertising claims about diet and disease in a rational and beneficial manner.

Several comments asserted that FDA should allow the use of preliminary health claims on dietary supplements and foods in conventional food form because it allows their use on drugs The comments stated that FDA's proposed revision of the "Pediatric Use" subsection of prescription drug labeling in the **Federal Register** of October 16, 1992 (57 **FR** 47423) would allow prescription drugs that had not been tested for safety and efficacy in children to nevertheless be given to children provided that the drugs' efficacy claims were qualified by the statement, "Safety and effectiveness in children have not been established." The comments stated that because these drugs had not been tested for safety and efficacy in children, their claims would be "preliminary" at best and misbranding at worst.

However, many comments argued against a more lenient standard and procedure for dietary supplements Several comments stressed that the adoption of the proposed standard and procedure is supported by the legislative histories of the 1990 amendments and the DS act. One of these comments maintained that while the 1990 amendments give FDA the option of adopting a more lenient standard for dietary supplements, the Congressional Record denotes a majority opinion in favor of FDA applying the same standard to supplements that the act provides for conventional foods.

A number of comments also warned FDA that holding dietary supplements and foods in conventional food form to different standards for health claims would lead to consumer confusion, as the health benefits of nutrients derived from dietary supplements would be allowed to be characterized as superior to the benefits of those same nutrients derived from foods in conventional food form. Some comments asserted that the creation of public confusion would directly undermine the intent of the 1990 amendments to clear up consumer confusion about health claim information and would jeopardize consumer confidence in existing health claims, food labels, and the government, particularly public health officials. Another comment asserted that adopting a more lenient standard for dietary supplements could also allow some supplement manufacturers to make unsubstantiated claims and undercut consumer belief in the credibility of the entire supplement industry. These comments asserted that a single universal standard would best prevent consumer confusion by ensuring that health claim information is uniform on all foods.

Several comments supported the same standard and procedure on the grounds that it would ensure that health claims

appearing on the labels of dietary supplements are based on reliable, peer-reviewed, reproducible evidence. A number of these comments stated that because supplements, unlike conventional foods, are taken specifically for the health benefits associated with them, it is especially important that health claims on these products be reliable because more and more consumers are using these products in the belief that the products will protect their health. The comments said that these consumers were responding to the large amounts of recent evidence indicating that vitamins, minerals, and other nutrients may play a role in reducing the risk of chronic diseases.

Some comments cautioned FDA that the failure to ensure that health claims on dietary supplements are reliable would leave consumers open to fraud. A few of these comments pointed out that many consumers do not have the scientific knowledge to judge the veracity of label claims for themselves and presume that FDA regulations ensure that label claims are properly substantiated. One of these comments warned that older Americans are especially vulnerable to fraud. This comment pointed out that the elderly suffer disproportionally from diet-related diseases, read supplement labels more often than other people, are more trusting of salespersons, and do less research than younger consumers. Other comments warned that unsubstantiated health claims can harm consumers by inducing them to consume products that are inherently unsafe, to consume excessive doses of some substances, or to forego more beneficial forms of treatment for a given malady.

A number of comments insisted that the proposed regulations will not restrict the flow of information on nutrition and health to consumers. One of these comments stated that roughly 80 percent of supplement labels are already in compliance with the proposed regulations. Other comments noted that educational materials are not covered by the proposed regulations, and that there are many available channels through which information can be freely disseminated other than food labeling. Moreover, one comment contended that supplement labels are neither intended, nor currently used, to educate the public but instead serve to sell the product to which they are attached.

Some comments stated that applying the same standard to both conventional foods and dietary supplements would create a desirable "level playing field" for all food processors and manufacturers. One comment stated the adoption of the proposed standard will provide an atmosphere in which all food manufacturers can move toward the production of healthier foods, which will benefit the public health.

In FDA's reconsideration of how best to regulate dietary supplements, one of the most significant issues has been the issue of whether supplements should be regulated under a more lenient standard or the same scientific standard as that established by Congress for food in conventional food form. Despite assertions by some that Congress directed that a more lenient standard be established, the legislative history of the 1990 amendments does not support such a position. To the contrary, as other comments point out, and as the agency explained in the preambles of the health claims proposal (56 FR 60537 at 60539 through 60540), the health claims final rule (58 FR 2478 at 2507 through 2509), and the dietary supplement health claims proposal (58 FR 33700 at 33703), Congress did not intend that the agency be forced to adopt a different standard for dietary supplements. Instead, Congress gave the agency the discretion to adopt any appropriate scientific standard and procedure for dietary supplements. There was nothing in the comments that indicated that FDA does not have this discretion. Indeed, as some of the comments pointed out, there was considerable support in both the House of Representatives and the Senate for adoption of the same scientific standard and procedure for dietary supplements. FDA addressed the position of members of Congress on this issue in the preamble of the dietary supplement health claims proposal (58 FR 33703):

> Senator Hatch left no question about his position that FDA should use this flexibility [to adopt the standard and procedure for dietary supplements that appears appropriate to the agency] to adopt a more lenient standard * * *
>
> However, other members of Congress were equally clear about their position that FDA should not adopt a more lenient standard. In the October 24, 1990 Congressional Record at S 16608 [Ref. 4], Senator Metzenbaum, the other primary author of the Senate amendments, stated:
>
> * * * It is my view that there is no reason to do anything other than utilize the same procedure and standard for dietary supplements.
>
> Whatever approach the Secretary takes, he must establish a system that evaluates the validity of health claims for dietary supplements. The system must be based on the same considerations that guide other agency decisions: public health, sound scientific principles and consumer fraud.

Further, the House of Representatives clearly did not support a more lenient standard for dietary supplements. The statement of House Floor Managers that appears in the October, 26, 1990 Congressional Record at H 12953 [Ref. 2] states:

> * * * Whatever approach the agency takes, it must adopt a system that evaluates the validity of any disease claims made with respect to these substances. Its system must be based on considerations of public health and consumer fraud. As in every similar decision made by the agency today, we fully expect that the agency's evaluation of disease claims made with respect to vitamins will be based on sound scientific principles.
>
> There is a great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims. The potential is just as great for vitamins as it is for other products. In our view, vitamins and other substances covered by this provision should be subject to at least as strong a standard as is applicable to other foods that contain claims that the food will treat a disease or health condition.

Nothing in the DS act or its legislative history indicates in any way that Congress changed its position about its goals of the 1990 amendments with respect to prohibiting misleading health claims and improvement of the public health through use of valid and understandable claims in food labeling [Ref. 3].

Although Congress left no question that the exact standard and procedure for the regulation of health claims for dietary supplements is left to the discretion of FDA, and although Congress did not provide direct guidance concerning how FDA should use this discretion, Congress did provide considerable general guidance about the intent of the health claims provisions of the 1990 amendments. In view of the fact that this guidance does not distinguish between dietary supplements and foods in conventional food form, FDA considers this guidance to be applicable to both types of foods. As pointed out above in this response, Senator Metzenbaum, the other primary author of the Senate amendments, stated that whatever approach the Secretary takes, he must establish a system that evaluates the validity of health claims for dietary supplements. He stressed that the system must be based on the same considerations that guide other agency decisions: Public health, sound scientific principles, and consumer fraud (Ref. 4). The quoted statements of the House Floor Managers also stress that the agency's approach to regulating dietary supplements must be based on considerations of public health, sound scientific principles, and consumer fraud (Ref. 2). In addition, these quoted statements make it clear that Congress considered the use of "inaccurate or unsupportable health claims" on food labeling to be harmful to the public (Ref. 2). Moreover, Mr. Waxman, one of the House Floor Managers stated the following in the July 30, 1990 Congressional Record (H5844):

> What we have sought to do is to permit health claims but only health claims based on scientifically valid information, and we hope by having that scientifically valid information upon which a claim can be made, that health claims in the future will be healthful and not misleading.

Furthermore, as the agency pointed out in the January 6, 1993 **Federal Register** (58 FR 2478 at 2526):

> By enacting the 1990 amendments, Congress sought to ensure that health claims would be scientifically valid and not misleading. (See, for example, statement of Rep. Madigan, and statement of Rep. Waxman, [Ref. 2]). Experience had shown that many "unfounded" health claims were being used on foods (statement of Rep. Waxman [Ref. 2]). Congress recognized the "great potential for defrauding consumers if food is sold that contains inaccurate or unsupportable health claims." Id. (statement of House floor managers).
>
> In response to the high potential for health claims to be misleading, Congress legislated that any claim that is not consistent with FDA regulations will misbrand a food. Section 403(r)(1)(B) of the act states that a food is misbranded if its label or labeling contains a claim that "expressly or by implication * * * characterizes the relationship of any nutrient * * * of the food to a disease or a health-related condition unless the claim complies with regulations promulgated by FDA. § 403(r)(1)(B)" (emphasis added). By taking this approach, Congress chose to permit only those health claims on food that FDA determines to be scientifically valid, effectively recognizing that health claims are so potentially misleading as to be inherently misleading.
>
> Applying the same standard and procedure to health claims on dietary supplements as that that applies to foods in conventional food form will not affect the availability of any dietary supplements, will ensure that health claims that appear in labeling are scientifically valid and understandable, and will subject all segments of the food industry to regulation in a fair and consistent manner. Those comments favoring the same standard and procedure, for reasons of fairness, control of consumer fraud, and conveyance of valid information about diet and its impact on a disease or health-related condition, serve to reinforce FDA's conclusion that the agency's proposed rule should be finalized as proposed.
>
> The agency disagrees with arguments that use of the same approach for dietary supplements as for conventional foods would deny millions of Americans the dietary information that they need to improve their health and thereby cost the nation millions of dollars in health care expenditures that could have been avoided. As FDA explained in the preamble of the dietary supplement health claims proposal (58 FR 33700 at 33705):
>
> * * * In the absence of adequate data to establish that health claims are valid, assertions about costs associated with the lack of information in food labeling and about the benefits of consumption of substances in dietary supplements are highly speculative and highly questionable. FDA does not agree that it should place more weight on the potential benefits of the health information than on eliminating the possibility of consumer misunderstanding. FDA must weigh the public health impact of permitting a multitude of preliminary claims against the possibility that a significant portion of those claims will be determined to be not scientifically valid. The latter result would likely produce a perception among many consumers that food labels and health claims, even those that are valid, are not reliable. To the extent that, as a result, consumers do not change their dietary patterns to reduce their risk of disease, they will be less healthy, and there will be more needless deaths from disease and more costs to the national economy, rather than less.
>
> When FDA made this statement, the phrase "adequate data to establish that health claims are valid" was intended to express the position that until the validity requirements of § 101.14(c) are met, cost assertions about the benefits of substance consumption are highly speculative and highly questionable. In general, prior to fulfillment of this requirement, there may often be studies with a wide variety of strengths and weaknesses indicating that there may, or may not, be a valid association between a substance and a disease or health-related condition. In deciding whether or not to authorize a claim, FDA must consider that, while benefits may accrue from the availability of the claim, there is a very real possibility that significant costs may accrue if the claim is authorized prematurely. A few studies may often be found about a multitude of associations, and many, if not most, of those associations will ultimately be found not to be valid. If FDA were to permit preliminary claims about such a multitude of associations, the agency believes that ultimately what would be lost is the confidence of most consumers in the validity of all claims that appear in food labeling. FDA believes that the costs to consumers of such a situation would prove to be greater than the costs of not permitting preliminary claims. Of greater significance, however, is that needless deaths would ultimately occur where consumers would not change their dietary patterns to adopt a more healthful diet.
>
> The agency believes that Congress, in its enactment of the scientific standard in section 403(r)(3)(B)(i) of the act, struck what it believed to be an appropriate balance between the costs and benefits of claims on foods in general. FDA is not aware of any reason to strike a different balance for dietary supplements. FDA would like to assure all affected parties that the agency will move as expeditiously as possible to permit health claims once the scientific evidence is sufficiently supportive to conclude that associations between substances and disease or health-related conditions are valid.
>
> Although some comments asserted that claims based on a more lenient standard would not be confusing because consumers of dietary supplements are more knowledgeable than the general population, FDA pointed out in the preamble of the dietary supplement health claims proposal (58 FR 33700 at 33705) that there is nothing that limits the purchasers of dietary supplements to "knowledgeable consumers." The comments did not submit justification for FDA to change its position in this regard.
>
> Assertions that use of the same scientific standard for dietary supplements as that established for food in conventional food form is counter to the 1990 amendments because less information about diet and disease will be available to consumers are not correct. Under the 1990 amendments, authorized health claims provide considerably more information about the effects of diet on disease where the effects are recognized as scientifically valid than was the case before the passage of the 1990 amendments. In the **Federal Register** of January 6, 1993, FDA authorized claims with respect to 7 relationships (see 58 FR 2537, 2552, 2622, 2665, 2739, 2787, and 2820). Also, in the **Federal Register** of October 14, 1993 (58 FR 53254), FDA proposed to permit health claims concerning the relationship between folate and the risk of neural tube birth defects. Admittedly, other health claims are not permitted to appear on food labels and labeling, but Congress clearly intended through enactment of section 403(r) of the act that only valid health claims be permitted.
>
> With respect to concerns that consumers will be forced to seek information about diet and health from

unregulated sources such as books and the media, if FDA does not authorize preliminary claims, FDA advises that it must implement the provisions of the amendments as Congress chose to enact them. The 1990 amendments focus only on food labels and labeling. FDA cannot ignore its clear responsibilities under the 1990 amendments because of concerns about the unregulated sources of information that were mentioned in the comments. Moreover, while such sources of information may lead consumers to seek out products containing particular substances, FDA's action will ensure that the labels and labeling of those products contain only scientifically valid information that can dispel any misconceptions created by the unregulated sources. With respect to other concerns expressed by these comments, the agency believes that the specific required elements in the health claims that it has authorized to date demonstrate that the agency is encouraging consumers to reduce their risk of disease by changing their diets and lifestyle. For example, the specific requirements in § 101.72(c)(2)(A) requires, in part, that a claim about calcium and osteoporosis make clear that an adequate level of exercise and a healthful diet are needed in addition to adequate calcium consumption.

Arguments that the agency should allow preliminary claims because of FDA's implementation of the drug provisions of the act have no merit. Assertions about FDA's proposed action pertaining to "Pediatric Use" for drug labeling in (57 FR 47423) are clearly wrong. The agency's proposed action with respect to requiring the statement "Safety and effectiveness in children have not been established" pertains only to drugs for which there is no agency approval for any pediatric population to use the drug. In point of fact, the agency proposed to require this statement as a further warning that the product should not be used for pediatric populations. Thus, this action provides no support for authorizing preliminary health claims.

As FDA pointed out in the preamble of the dietary supplement health claims proposal (58 FR 33700 at 33706), making dietary supplements subject to the same scientific standard and procedure as for conventional foods does not render section 403(r)(5)(D) of the act superfluous. This section requires that the agency consider what procedure and standard respecting the validity of claims are most appropriate. This is what the agency has done. The fact that the agency has found that, on balance, the standard and procedure established for foods in conventional food form are also the most appropriate for dietary supplements does not render the agency's efforts invalid or the underlying provision superfluous: The agency was charged with exercising its expertise and discretion, and that is what it has done.

5. A number of comments provided specific suggestions about the way in which a more lenient approach could be implemented. Some comments argued that the approach should be sufficiently lenient to permit marketing of dietary supplements without any restrictions. Some of these comments argued that dietary supplements needed no stringent requirements because dietary supplements could be adequately regulated under the requirement in section 403(a)(1) of the act that the labeling of a food must be truthful and not misleading. Other comments suggested that FDA could require a warning informing the consumer that FDA had not substantiated particular claims appearing on a product. One comment suggested that substantiated claims could be allowed to appear within a specific advisory panel of the label, while preliminary claims would be allowed to appear only outside the panel. Another comment suggested that FDA adopt a split label approach, in which preliminary health claims would be allowed, but the agency would have the right to comment upon them on the label.

One comment suggested that health claims for which there is substantial scientific evidence but not yet significant scientific agreement be subject to a certification and notification procedure rather than rulemaking proceedings. Under the procedure suggested by the comment, claims could be made for dietary supplements so long as: (1) The claim expressly discloses the absence of scientific agreement as to the relationship, (2) the manufacturer provides FDA with a fully documented certification by a panel of at least three qualified experts that there is substantial scientific evidence supporting the claim, and (3) FDA does not disapprove the claim within 90 days of receipt of the certification. (When additional information is needed, the 90 day period could be extended an additional 45 days.) Under this suggested alternative, FDA would have an opportunity to participate in the selection of the expert panel.

One comment requested that FDA only disallow the use of those health claims on dietary supplements that are not supported by any evidence, and that it classify all other health claims into one of five categories and allow for their use on products in conjunction with a code system indicating to consumers the level of substantiation that the claim has achieved. The comment suggested that the highest category be full substantiation; the second, those claims that have a high degree of substantiation as judged by non-FDA experts, but that FDA finds to be not fully substantiated; the third, claims that have support in the form of double-blind placebo controlled studies published in peer-reviewed professional journals; the fourth, claims that are supported by some evidence from in vitro studies, animal studies, or other studies that do not involve humans; and the fifth, those claims supported by anecdotal evidence. In support of its call for various approval levels, the comment stated that simply categorizing a claim as "substantiated" or "unsubstantiated" does not accommodate the reality that full substantiation of a health claim consists of cumulative evidence from many studies. The comment maintained that if FDA were to place all claims that have not achieved full substantiation into the same category, FDA would not be providing a means for the public to distinguish claims that are nearly substantiated from those that are entirely false. Moreover, the comment stated that an agency determination that a claim is or is not supported by "significant scientific agreement" often reflects a political decision rather than a scientific one. The comments said that FDA panels comprise a very small percentage of the scientific community, that other scientists often disagree with the panels' findings, and that there even may be differing opinions within the panels themselves. The comment stated that, given these conditions, it is blatantly dishonest and misleading to the public for FDA to make a general declaration that a claim is or is not substantiated.

A few similar comments called for FDA to devise a multilevel approval scheme for health claims on dietary supplements that would allow statements concerning the traditional use of a product to appear on the label and would permit the label of a supplement that contained a substance that was the subject of a pending health claim petition to indicate that the product was under FDA review for a health claim but not to indicate the nature of the claim. The comments stated that the adoption of this approach would encourage manufacturers of products that qualify only for the "traditional uses" or "claim pending" approval categories to gather, perform and submit research information to FDA in order to reach higher approval levels

One comment suggested that FDA allow manufacturers to use facsimiles of the FDA seal in conjunction with the various ratings. The comment asserted that this approach would encourage manufacturers to come into compliance with FDA regulations quickly, as the seals would become valuable marketing tools for which consumers look when purchasing supplements, and the lack of a seal would become a marketing disadvantage for a company.

FDA has considered these alternative standards and procedures suggested by the comments and finds that none of them have the characteristics that are necessary to achieve the goal envisioned by Congress in passing the 1990 amendments. Previously in this preamble the agency concluded that Congress intended that FDA adopt a scientific standard and a procedure that ensure that health claims that appear in labeling are scientifically valid and understandable. None of the alternative standards and procedures offered by the comments meets this objective. One of Congress' primary concerns in passing the 1990 amendments was the widespread use of health claims whose scientific validity had not been established (Ref. 1). The purpose of the 1990 amendments was to bring that situation under control. The problem with the alternative procedures offered by the comments is that, rather than bringing the use of claims on dietary supplements under control, they would ratify the state of affairs that caused Congress to act.

As FDA explained in the preamble of the dietary supplement health claims proposal, a standard for health claims for dietary supplements that is based only on section 403(a)(1) of the act, or that allows health claims based on the traditional use of the supplement or the existence of substantial scientific evidence but not significant scientific agreement about the validity of the claim, would be inconsistent with Congress's desire to ensure that health claims that are made on dietary supplements, or on any other food, are scientifically valid. FDA pointed out that if such claims were to be permitted, consumers would be faced with a multitude of claims, some valid and some not valid. FDA stated that it would be unlikely that consumers could distinguish between valid and invalid claims. Although comments on the dietary supplement health claims proposal asserted that consumers would not be confused by a multitude of claims, the comments did not actually go further in addressing how consumers would react to such a situation in food labeling. More specifically, the comments did not provide data to resolve the question of whether consumers would be able to understand gradations of scientific reliability of claims on food labeling, or whether consumers would, in fact, be left as confused as they were before passage of the 1990 amendments. While a number of comments did assert that some studies show that consumers are able to use various advertising claims about diet and disease in a rational and beneficial manner, the studies were not actually submitted. In the absence of the studies, FDA has no basis upon which it can evaluate the assertions of the relevance of the studies to food labeling. In the absence of evidence to the contrary, the agency considers it more likely that consumers would be considerably confused by a multitude of claims with differing degrees of reliability. One of the purposes of the 1990 amendments was to end such confusion (see statement of Mr. Waxman, 136 Congressional Record H12953 (Ref. 2)). Therefore, FDA rejects this assertion.

Approaches such as those involving a "split label" or the use of an FDA seal would also not be consistent with the congressional desire for scientific validity because manufacturers would still be able to market dietary supplements with claims that were not scientifically valid. Even if FDA seals were being used to distinguish those claims that FDA considered to be valid, there would be a question as to whether consumers would be able to ascertain which claims were preliminary and which were not. These approaches would not restrict the number of health claims that were of questionable validity, about which Congress was specifically concerned (Ref. 1).

Thus, FDA has concluded that it would not be appropriate to adopt any of the alternative approaches suggested by the comments.

6. Several comments suggested that FDA adopt the reasonable substantiation standard used by the Federal Trade Commission (FTC) (see FTC Policy Statement Regarding Advertising Substantiation Program (49 FR 30999, August 2, 1984)). The comments asserted that under this policy, FDA could allow manufacturers to make claims provided that the nature of the scientific finding is accurately represented, the degree of evidence is not misrepresented, and the claim passes a rough cost/benefit test. The comments argued that this policy would facilitate harmonization with the FTC regulations governing the use of health claims in food advertising, would allow consumers to have access to truthful, nonmisleading, and reliable labeling information, and would still allow FDA to take action against those dietary supplements bearing health claims that are not properly substantiated.

Arguments that FDA should adopt for dietary supplements FTC's approach for regulating advertising are not consistent with Congress' expectations for health claims. While the FTC and FDA are working together to achieve as much consistency in their approaches to health claims as their respective statutes allow, adoption by FDA of the FTC advertising substantiation approach would not provide FDA the confidence Congress intended concerning the scientific validity of the claims. Specifically, as explained above, one of Congress' main purposes in passing the 1990 amendments was to ensure that health claims made in food labeling are scientifically valid. No such assurance of scientific validity is provided under the standard that FTC must employ. Under that standard, there must be some evidence to support a claim, but it need not rise to the level of establishing the claim's validity. Thus, the FTC standard is not adequate for health claims. In this context, it is appropriate to reiterate FDA's response to comments asserting that it was bound to follow cases involving FTC's regulation of advertising in the preamble of the health claims final rule (58 FR 2478 at 2528):

> Although cases involving FTC may sometimes be relevant, it is important to note that fundamental differences exist between the regulatory schemes administered by the two agencies. Congress has long recognized the division of roles between the two agencies—FTC concentrates on the interests of commerce and economic needs, whereas the objective of FDA is "the health of the people." FTC regulates unfair competition and trade practices, including food advertising. (See, for example, 15 U.S.C. sections 45 and 52.) In contrast, FDA is a scientific agency empowered to regulate the food label, among other things. Under section 403(r)(3)(B)(i) of the act, FDA may permit health claims on foods only if it has determined that those claims meet the statutory test for scientific validity. The laws under which FTC operates do not include a comparable statutory standard. Thus, it would not be appropriate for FDA to follow the case law involving FTC.

III. The Final Regulation

In light of the foregoing, FDA is subjecting dietary supplements to the same standard and procedure that applies to food in conventional food form. The agency believes that this approach strikes the appropriate balance between the congressional concern for consumer fraud, public health, and sound science, on the one hand, and the desire to provide the consumer with

information on the other. Thus, the agency is revising §§ 101.14 and 101.70 to include dietary supplements.

A. Definitions

In the health claims proposal, FDA proposed definitions for "health claim," "substance," "nutritive value," and "dietary supplement" to serve as tools for clearly establishing the scope of the types of claims that would be subject to the regulations promulgated under section 403(r)(1)(B) of the act. In addition, the agency proposed a definition for "disqualifying nutrient levels" to establish limits on the levels at which certain nutrients that are known to increase the risk of a disease or health-related condition could be present in a food, and the food would still be eligible to bear a health claim (see section 403(r)(3)(A)(ii) of the act).

In the health claims final rule, the agency adopted definitions for the terms "health claim," "substance," "nutritive value," and "disqualifying nutrient levels," that it revised in response either to comments or to the DS act (see § 101.14(a)(1), (2), (3), and (5)). Also, FDA adopted a definition for the term "disease or health-related condition." Although the term is used in the definition of "health claim," and the term serves to identify one of the basic elements of a health claim, the agency had not proposed a definition for it. The agency added this definition to clarify the coverage of the health claim provisions (see § 101.14(a)(6)). Because of the DS act, the agency reserved the question as to whether these definitions would apply to dietary supplements. The agency also did not include a definition of "dietary supplement" in the final rule because of the moratorium imposed by the DS act.

In the dietary supplement health claims proposal, FDA proposed to adopt the same regulatory scheme for health claims for dietary supplements that it had established for foods in conventional food form. To effect this tentative decision, the agency proposed to revise the definition of "substance" to make clear that it covers both food in conventional food form and dietary supplements and to establish a definition for "dietary supplement."

FDA received no comments on the former aspect of the proposal. Therefore, the agency is adopting it as proposed. However, FDA did receive some comments on its proposed definition of "dietary supplement."

1. Dietary Supplement

FDA proposed the following definition for the term "dietary supplement" (proposed § 101.14(a)(4)):

Dietary supplement means a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

In the past, FDA has taken a position that the term "dietary supplement" applied only to supplements composed of essential nutrients. However, FDA did not propose to limit the definition in § 101.14(a) in this way because section 403(r)(5)(D) of the act includes dietary supplements of herbs, substances that generally contain few essential nutrients. In addition, the legislative history indicates that the term "other nutritional substances" could include a number of substances that have not been shown to be essential or nutrients (Ref. 4).

7. One comment commended the agency for proposing a definition of "dietary supplement" that recognized that these foods could have components other than substances known to be essential nutrients. The comment asserted that the proposed definition would appropriately move supplements out of the food additive category.

FDA advises that the comment's assertion that the definition moves dietary supplements out of the food additive category is not correct. A dietary supplement, as the definition recognizes, is a compounded food that may include compounds that are food additives. Whether a component of food is a food additive or not is determined under section 201(s) of the act (21 U.S.C. 321(s)), not section 403(r) of the act. Congress specifically provided in section 9 of the 1990 amendments that these amendments "shall not be construed to alter the authority of the Secretary of Health and Human Services * * * under the Federal Food, Drug, and Cosmetic Act." Thus, the components of dietary supplements that are food additives are still fully subject to the food additive requirements under section 409 of the act.

8. A few comments requested that the proposed definition of "dietary supplement" be modified to explicitly include all herbal extracts. One of these comments asserted that the definition should include "processed or unprocessed plant parts (bark, leaves, flowers, fruits, and stems) as well as extracts of essential oils, marketed as teas, powders, tablets, capsules, and elixirs."

FDA is adopting the definition of "dietary supplement" as proposed. This definition is intentionally broad to cover the range of substances that, under the legislative history, could be included in a dietary supplement and could be the subject of a health claim. The purpose of the definition of "dietary supplement" is not to define the substances that may be eligible to be the subject of a health claim but to define the form in which they are to be sold to be subject to regulation as a "dietary supplement." Under the scheme that FDA is adopting, and that Congress envisioned (see Ref. 4, statement of Senator Metzenbaum), the determination as to what substances are appropriately the subject of a health claim is made on a case-by-case basis, based on the factors set out in § 101.14(b) and the evidence presented to the agency. The agency disagrees with the comment in one respect, however. Teas are food in conventional food form and thus not included within the definition of "dietary supplement."

9. One comment asserted the definition of "dietary supplement" should include foods in conventional food form that are fortified with a vitamin or mineral to a level of 50 percent or more of the Reference Daily Intake (RDI) per serving (e.g., many breakfast cereals).

FDA does not agree that such foods should be included in the definition of "dietary supplements." As discussed in the preamble to the dietary supplement proposal (58 FR 33700 at 33707), FDA has limited this definition to foods not in conventional food form to reflect the approach taken by Congress in the DS act. The manager's statements for the DS act from the Senate and the House (Ref. 3) clearly state that the moratorium on the implementation of the 1990 amendments applies only to dietary supplements "not in the form of conventional food." Because foods in conventional food form were not covered by the DS act moratorium, the health claims regulations already apply to them. Consequently, FDA believes that it will reduce confusion about the impact of these regulations if the agency limits coverage of the term "dietary supplements" to foods not in conventional food form. Of course, foods in conventional food form that are formulated to supplement the dietary intake of nutrients will be free to reflect their characteristics in their common or usual name (e.g., vitamin and mineral supplement cereal).

2. Nutritive Value

In the health claims final rule, FDA defined "nutritive value" as follows:

Nutritive value means a value in sustaining human existence by such processes as promoting growth, replacing loss of essential nutrients, or providing energy.

Although FDA did not propose any changes in the definition of "nutritive value" in the dietary supplement health claims proposal, many comments expressed concern about the impact of this definition in conjunction with the preliminary requirement in § 101.14(b)(3)(i) that the substance that is the subject of a health claim contribute taste, aroma, or nutritive value, or any technical effect listed in § 170(o), and that the substance must retain that attribute when consumed at levels that are necessary to justify a claim. (Preliminary requirements are criteria in § 101.14(b) that have to be met before a substance will qualify to be the subject of a health claim. An indepth discussion of all preliminary requirements follows in section III.B. of this document.)

10. Some comments urged the agency to broaden its definition of "nutritive value." These comments urged the agency to recognize that the processes by which a nutrient promotes health, maintains proper bodily functioning, and protects the body from the development of chronic disease or other health-related conditions are, in and of themselves, characteristic of "nutritive value." The comments noted that the basic function of Vitamin E, for example, relates to its antioxidant properties in preventing cell damage by trapping peroxyl free radicals and inhibiting the oxidation of unsaturated fatty acids. Also, the comments pointed out that fiber does not promote growth, replace essential nutrients, or provide energy, but that Congress specifically required FDA to study the relationship between various diseases and fiber. Some of the comments asked that the phrase "preventing or repairing the negative metabolic consequences of life processes" be added to the list of processes that characterize the nutritive value of a food to ensure that such components can be the subject of health claims. A few comments asserted that FDA should revise the definition of "nutritive value" to provide for claims about "prevention" of a disease or health-related condition.

However, one comment maintained that the definition of "nutritive value" in § 101.14(a)(3) is broad enough to include the functions of most dietary supplements. The comment supported its position by agreeing with FDA's statement in the health claims final rule (58 FR 2478 at 2488) that the inclusion of the phrase "such as" in the definition ensures that the three referenced processes are examples of how a substance may confer nutritive value rather than as an all-inclusive list.

The comment that highlighted FDA's use of the phrase "such processes as" in this definition is correct. FDA intended the three referenced processes to be examples of how a substance may confer nutritive value rather than as an all-inclusive list of the functions that provide such value. As FDA explained in the health claims final rule (58 FR 2478 at 2488), the definition of "nutritive value" is intended to be very flexible. The agency incorporated this flexibility in the definition because FDA recognizes that certain substances can play a major role in reducing the risk of certain chronic diseases and may confer their benefits through a number of processes. FDA believes that the agency should evaluate the nutritive value claimed for a substance that is proposed as the subject of a health claim, as described in a health claim petition, on a case-by-case basis. This approach will best ensure that the definition retains its intended flexibility and does not become an unintentional barrier to authorization for legitimate health claims.

FDA does believe, however, that this preamble should provide guidance concerning how the agency will determine if a claimed nutrient-disease relationship derives from the nutritive value of a substance. In general, the agency will look for evidence that the claimed effect on disease is associated with the normal maintenance of human existence. If the substance is used to correct an abnormal physiological function caused by a disease or health-related condition, the action of the substance is clearly beyond a normal maintenance function, and the health benefit would therefore not derive from the substance's nutritive value. Such a substance would be a drug. (Note also that claims about classical nutrient deficiency diseases are not health claims (see 58 FR 2478 at 2481).)

FDA recognizes that many of the benefits mentioned in the comments may derive from the nutritional value of a substance. The agency's broad definition of "nutritive value" includes assisting in the efficient functioning of classical nutritional processes and of other metabolic processes necessary for the normal maintenance of human existence. Dietary fiber, for example, helps to assure normal intestinal transit time, thereby providing nutritional value by promoting efficient bowel function. Vitamin E provides nutritive value through its antioxidant function of reduction of cell damage.

With respect to assertions that FDA should revise the definition of "nutritive value" to provide for claims about "prevention" of a disease or health-related condition, the agency points out that the preamble of the health claims final rule (58 FR 2478 at 2501 through 2502) fully addressed this matter and concluded that a claim that a substance can be used in the prevention, diagnosis, cure, mitigation, or treatment of a disease or symptom is inappropriate for a food (see section 201(g)(1)(B) of the act and § 101.9(k)(1) (21 U.S.C. 101.9(k)(1))). FDA reached this conclusion because the relationship of a food or a food component to a disease is quite different from that of a drug. The comments making these assertions did not provide any basis upon which FDA could conclude that the agency's position in this matter should be different for dietary supplements than for foods in conventional food form. As FDA explained in the preamble of the health claims final rule, the Surgeon General's Report on Nutrition and Health (Ref. 5) points out that, apart from classic disorders resulting from dietary deficiencies of essential nutrients (e.g., pellagra and niacin), it has proved difficult to demonstrate causal associations between specific dietary factors and chronic or other diseases (e.g., dietary fiber and cancer). The report states:

> Development of the major chronic disease conditions—coronary heart disease, stroke, diabetes, or cancer—is affected by multiple genetic, environmental, and behavioral factors among which diet is only one—albeit an important—component. These other factors interact with diet in ways that are not completely understood. In addition, foods themselves are complex; they may contain some factors that promote disease as well as others that are protective. The relationship of dietary fat intake to causation of atherosclerotic heart disease is a prominent example. An excess intake of total fat, if characterized by high saturated fat, is associated with high blood cholesterol levels and therefore an increased risk for coronary heart disease in many populations. A higher proportion of mono- and polyunsaturated fats in relation to saturated fats is associated with lower blood cholesterol levels and, therefore, with a reduced risk for coronary heart disease.
>
> Because of these complexities, definitive scientific proof that specific dietary factors are responsible for specific chronic disease conditions is difficult—and may not be possible—to obtain, given available technology.

(Ref. 5).

11. Several comments argued that the definition of "nutritive value" should include levels of nutrients that are achievable only through the use of fortified foods or dietary supplements. Several of these comments referenced studies recently reported in the New England Journal of Medicine that indicate that vitamin E reduces the risk of heart disease when consumed at levels that are almost impossible to achieve through a conventional diet but that can be easily and safely attained

through the use of dietary supplements. These comments asserted that it would be inappropriate for FDA to categorize the involved nutrient levels of vitamin E as therapeutic and to refuse to consider approving a health claim simply because the claim concerns levels of a nutrient above that achievable in a normal daily diet. A few of the comments supported this assertion by noting that the mechanism by which Vitamin E protects against cell damage when consumed at normal dietary levels is identical to the mechanism by which it protects against heart disease when consumed at higher levels. The comments maintained that, in cases such as this one, the agency should approve health claims for use strictly on dietary supplements, provided that the nutrient is safe when consumed at the level at which the claimed effect is achieved, and the supplement is intended to be consumed to optimize health rather than as a drug. The comments supported this regulatory approach by noting that the health benefits of calcium occur when the nutrient is consumed at increased levels that can be achieved through the diet or by supplementation and stating that vitamin E should not be treated differently simply because the beneficial levels cannot be reached without the use of dietary supplements.

Similar comments argued that FDA should at least avoid establishing a maximum level of a nutrient that is considered to be characteristic of "nutritive value." One of these comments noted such an approach results in an extremely fuzzy line, because the maximum level of a nutrient that is achievable in a diet varies widely from one individual to another. As an example, the comment pointed out that a person who eats ten oranges or drinks a quart of orange juice per day gets more vitamin C than is provided by most currently marketed vitamin C supplements. A few comments asserted that there is much scientific disagreement over what levels of a nutrient are "nutritive," with many scientists contending that levels much higher than the U.S. Recommended Daily Allowances (U.S. RDA) fall within the definition. A few comments requested that FDA explicitly express in its regulations a policy that nutritive value may involve relatively high levels of a nutrient.

A few comments maintained that FDA should presume that all nutrients function in a nutritive manner regardless of their level, unless it has proof to the contrary. In support of this position, a number of comments objected to the use of niacin's effect on blood cholesterol levels in the dietary supplement proposal as an example of an effect that is not nutritive. One of these comments questioned FDA's assertion that niacin does not exhibit cholesterol-reducing properties when ingested at the levels conventionally associated with its function as a vitamin. The comment stated that niacin's vitamin effect occurs below the level of tissue saturation and maintained that the excretion of niacin when consumed at higher levels known to be associated with cholesterol-lowering effects does not necessarily indicate that tissue saturation has occurred. This comment also disagreed with the agency's statement that the occurrence of liver damage when high levels of niacin are consumed indicates that the effect of niacin at these levels is not nutritive in nature. The comment argued that it is quite possible that niacin continues to have nutritive effects at these levels but simply is overloading the body's normal metabolic pathways for ridding itself of excessive levels of the nutrient. The comment asserted that while legitimate safety concerns exist in particular cases of excessive nutrient intake, FDA should not use this fact to conclude that high levels of those nutrients are inherently nonnutritive in nature and are instead pharmacological.

Other comments expressed the belief that nothing in the proposed regulations would automatically exclude high levels of nutrients from the definition of "nutritive value" and urged the agency to include such levels in instances where they would benefit the public health. These comments also agreed with FDA's decision to review on a case-by-case basis whether the amount of a substance is appropriate as the subject of a health claim. One of these comments stated that such an approach would help to ensure that health information about fortified foods and dietary supplements can be conveyed without triggering the drug regulations.

FDA does not believe that it is necessary for the rules to explicitly state that nutritive value includes relatively high levels of a nutrient. As some comments pointed out, the case-by-case approach, which, as stated above, is intrinsically linked with the preliminary requirement in the provisions of § 101.14(b)(3)(i), provides the agency with considerable flexibility with respect to high levels of substances in dietary supplements. Under this approach, FDA has not, as a general rule, established any maximum level at which a nutrient would cease to have "nutritive value." Furthermore, the agency advises that there is no basis for concerns that FDA would use safety concerns alone to conclude that high levels of nutrients are pharmacological. FDA will not do so.

As some of the comments pointed out, petitions for claims that require that high levels of substances be ingested should have no problem demonstrating that the substance has nutritive value where the mechanism by which the substance affects the risk of disease at these high levels is the same as the mechanism by which it functions as a nutrient at normal dietary levels. However, it will still be necessary, as the agency explained in response to the previous comment, for the petition to show that the substance's effect on disease is associated with the normal functioning of the human body (e.g., the substance could not be used to correct an abnormal physiological function caused by a disease or health-related condition.)

In its response to the previous comment, the agency acknowledged that vitamin E provides nutritive value through its antioxidant function of reduction of cell damage. If there are situations where it can be established that this same antioxidant mechanism affects the risk of disease when the vitamin is consumed at levels significantly higher than normal dietary levels, such levels would satisfy the requirement in § 101.14(b)(3)(i) that a substance retain its food attribute (i.e., its nutritive value) when consumed at levels that are necessary to justify a claim.

FDA does not agree, however, that it should presume that all nutrients function in a nutritive manner, regardless of their level, unless it has proof to the contrary. It would not be practicable for the agency to bear the burden of determining the mechanism by which the claimed effect is occurring for each petitioned claim. Thus, the agency finds that it is appropriate to require that petitioners provide the basis for why it is reasonable to conclude that the claimed effect is nutritional and not pharmacological. However, the agency does not necessarily expect absolute proof on this issue. FDA will evaluate petitions on this issue on a case-by-case basis.

The agency has considered assertions that the dietary supplement proposal should not have cited the cholesterol-reducing properties of niacin as an example of a high dose effect that is not nutritive. FDA has again concluded that niacin is an appropriate example because there are significant indications that a nutritive mechanism is not responsible for the cholesterol-lowering effect that occurs with high levels of niacin intake. When FDA stated in the dietary supplement proposal that levels of niacin necessary to produce the cholesterol-lowering effect are far in excess of the levels at which there is tissue saturation for niacin's vitamin function, the agency was attempting to explain that for niacin's function as a vitamin there is a level beyond which additional niacin will not provide additional functional results for that vitamin. The term "tissue saturation" may imply either this type of situation (sometimes referred to as "function saturation") or the type of situation referred to in one of the comments wherein the tissue is saturated with a concentration of a substance, and more substance could immediately spill out into the urine. FDA was not attempting to assert that the tissue itself was actually saturated. There is no question that additional niacin will be absorbed by cells when the vitamin function saturation level is reached.

In addition to the situation with vitamin function saturation, there are other indications that the cholesterol-reducing properties of niacin do not result from the same mechanism as that presented by its vitamin function. Vitamin function saturation may be achieved through dietary supplementation with either of the two forms of the vitamin, nicotinic acid or nicotinamide. However, only nicotinic acid provides, at high levels, the cholesterol-reducing effects. Such effects do not appear with high level consumption of nicotinamide (Ref. 6). If the same mechanism were involved with the vitamin function of niacin as with the cholesterol-reducing properties of niacin, both forms of this vitamin should have cholesterol-reducing properties.

3. Health Claim

In the dietary supplement health claim proposal, FDA did not propose to make any modifications in the definition of "health claim" in § 101.14(a)(1):

> Health claim means any claim made on the label or in labeling of a food, including a dietary supplement, that expressly or by implication, including "third party" references, written statements (e.g., a brand name including a term such as "heart"), symbols (e.g., a heart symbol), or vignettes, characterizes the relationship of any substance to a disease or health-related condition. Implied health claims include those statements, symbols, vignettes, or other forms of communication that suggest, within the context in which they are presented, that a relationship exists between the presence or level of any substance in the food and a disease or health-related condition.Nonetheless, FDA received several comments on this definition.

12. Some comments asserted that FDA should clarify the types of statements that will be regulated as health claims. A few of these comments asked whether statements that indicate that a product may be useful in maintaining good health (e.g., "Substance X may be beneficial to good health") or that describe the biochemical functions of vitamins, minerals, and other nutrients (e.g., "Vitamin A is necessary for good eyesight," "Protein helps build a strong body") will be considered to be health claims. The comments objected to FDA's failure to provide clear instruction in this regard. These comments asserted that the agency's allowance of case-by-case interpretation of the regulations will hinder industry compliance, create enforcement problems for the agency, and cause continued antagonism between FDA and the food industry.

FDA believes that it provided ample guidance on what types of statements constitute health claims in the health claims final rule. As the agency explained in the preamble of that rule (58 FR 2478 at 2479 through 2488), the definition establishes that a claim must have at least two basic elements for it to be regulated as a "health claim." First, the claim must be about a "substance" as defined in § 101.14(a)(2). Secondly, the claim must characterize the relationship of that substance to a "disease or health-related condition," as defined in § 101.14(a)(6):

> *Disease or health-related condition* means damage to an organ, part, structure, or system of the body such that it does not function properly (e.g., cardiovascular disease), or a state of health leading to such dysfunctioning (e.g., hypertension); except that diseases resulting from essential nutrient deficiencies (e.g., scurvy, pellagra) are not included in this definition (claims pertaining to such diseases are thereby not subject to 101.14 or 101.70).

If a statement has one of these elements without the other, it would not be a "health claim," although it may still be subject to regulation under other provisions of the act (e.g., the requirement of section 403(a)(1) of the act that a label statement be truthful and not misleading). Thus, all of the statements mentioned by the comments would not be health claims because they do not address a disease or health-related condition as defined under § 101.14(a)(6). The agency has provided a lengthy and detailed discussion on what types of statements constitute health claims in the health claims final rule at the pages cited above.

12. A few comments asked whether FDA would remove or prohibit the publishing of books containing information on health claims and argued that such regulations would clearly be unconstitutional. Other comments addressed the issue of whether FDA's health claims regulations for dietary supplements would apply to advertising. One of these comments interpreted an excerpt from the report of FDA's Task Force on Dietary Supplements as an attempt to disallow the use of unapproved health claims in magazines, newsletters, or other media channels unless the information has been preapproved by FDA. That excerpt reads:

> The task force considered various issues in its deliberations, including how to assure the safety of dietary supplements; how to limit the potential for fraud, i.e., disease claims made on labels or through other means, e.g., magazine articles, newsletters, and advertisements * * *.

The comment further asserted that this same intent is reflected in the health claim regulations proposed in November 1991. The comment stated that this broad-based application of the health claims regulations would severely jeopardize the reporting of health and disease-related information in almost every form of media, would inhibit the evolution of scientific knowledge, would have a significant negative impact on the public health of America, and was likely unconstitutional.

FDA advises that the provisions of this regulation pertain only to a product's label and labeling. This regulation does nothing to censor the content of books, magazines, or advertising. This regulation also does not in any way regulate the availability of books, magazines, or advertising. However, firms sometimes choose to use such material as labeling for their products, and if used as such, the material would be subject to this regulation. For example, sometimes firms copy an article from a magazine and display that article with a product that is offered for sale. Under such circumstances, the article would be a part of the labeling of that product. What is significant to note is that these regulations in no way limit what articles may be published, or what books may be printed. They limit only the claims that may be made in the labeling of food products. Under the act, advertising may provide objective evidence of what the intended use of a particular product is. If the advertising reveals that the product is intended to be used as a drug, the product may be regulated as a drug. In addition, claims made in advertising may affect the type of nutrition labeling that is provided (see § 101.9(j)). Claims made in advertising, however, are not subject to section 403(r)(1)(B) of the act.

Thus, the agency finds no merit in the concerns expressed by these comments.

B. Preliminary Requirements for a Claim

In the health claims final rule, FDA established several criteria in § 101.14(b) that have to be met before a substance will qualify to be the subject of a health claim. The criteria provide that the substance must: (1) Be associated with a disease or health-related condition for which the general U.S. population is at risk (alternatively, the relevance of the claim may be explained within the context of the daily diet) (see § 101.14(b)(1)); (2) be a food (see § 101.14(b)(2) and (b)(3)(i)); and (3) be safe and lawful under applicable food safety provisions of the act (see § 101.14(b)(3)(ii)). These criteria reflect not only the requirements of section 403(r) of the act but also the fact that FDA is charged with ensuring that the food supply is safe, and that the food label is not misleading. Given that agency evaluations of the validity of a health claim will be resource intensive, FDA decided not to undertake such evaluations unless a petition for a health claim demonstrates that the preliminary requirements are met. While FDA had proposed in November of 1991 that these preliminary requirements cover substances in dietary supplements as well as foods in conventional food form, the provisions of the DS act precluded the agency from applying these preliminary requirements to substances in dietary supplements at the time that the rule was finalized. Thus, the preliminary requirements established in the health claims final rule apply only to substances in foods in conventional food form.

The dietary supplement health claim proposal contained provisions to subject the components of dietary supplements to the same preliminary requirements in § 101.14(b) that apply to any other substance that is proposed as the subject of a health claim. This final rule for dietary supplements retains these provisions as proposed. Specific reference to dietary supplements in § 101.14(b)(1) and (b)(2) is not necessary because the requirements in these paragraphs apply generally to any "substance," and FDA's revision of the definition of "substance" in § 101.14(a)(2) includes the components of dietary supplements within the coverage of this term. However, FDA proposed to add a specific reference to dietary supplements to paragraph (b)(3)(i) of § 101.14 to clarify that the substance may be a component of a food that is in the form of a dietary supplement. The only comments on the issue agreed with the agency's proposed revision. Accordingly, as proposed, FDA is including in the final regulations a reference to dietary supplements in the codified language of § 101.14(b)(3)(i). Specifically, FDA is inserting the phrase "regardless of whether the food is in conventional food form or dietary supplement form" into § 101.14(b)(3)(i).

1. Effect on General Population

13. One comment argued that the proposed requirement that a substance be associated with a disease or health-related condition for which the general U.S. population or a subpopulation thereof is at risk, or that the claim be explained within the context of the daily diet, would prohibit the appearance of health claims on herbal dietary supplements. However, the comment did not explain how the requirement would have this effect, and the comment's own analysis of how garlic would or would not meet various proposed requirements indicated that garlic would meet this particular requirement.

FDA does not agree that this preliminary requirement will present any significant barriers to the appearance of health claims on dietary supplements. To the contrary, as the agency explained in the preamble of the health claims final rule (58 FR 2478 at 2499), FDA intends to employ a flexible approach in interpreting this provision. The alternative aspect of the provision, which creates the possibility of claims about the relationship of a substance to a disease or health related-condition that affects very few in the U.S. population as long as the petition in support of the claim addresses that fact and the relevance of the claim in the context of the total daily diet, evidences a determination by FDA to provide the widest latitude possible for proposed claims to qualify under this provision.

14. One comment requested that FDA not limit the diseases or health-related conditions that may be the subject of a health claim to those for which the entire United States is at potential risk. The comment asserted that health claims should also be allowed in cases where dietary factors have been conclusively shown to affect diseases or health-related conditions for which only a particular subportion of the U.S. population is at risk (e.g., ovarian cancer in women).

FDA advises that the general eligibility provisions of its health claims regulations in § 101.14(b)(1) do not contain the restriction cited by the comment. While these provisions contain a requirement that health claims pertain to diseases or health-related conditions affecting the general U.S. population, they also provide that health claims may pertain to diseases or health-related conditions for which an identified subgroup of the U.S. population is at risk. Thus, ovarian cancer in women would clearly be an appropriate subject of a health claim

2. Components of Food Within the Context of a Daily Diet

The preliminary requirement that a substance that is to be the subject of a health claim must be a food appears in § 101.14(b)(2) and (b)(3)(i). If the substance is present at decreased dietary levels, under § 101.14(b)(2), it must be a nutrient that is required to be included in nutrition labeling (e.g., cholesterol, total fat). If the substance is present at other than decreased dietary levels, under § 101.14(b)(3)(i), it: (1) Must contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o), to the food and (2) must retain that attribute when consumed at levels that are necessary to justify a claim.

15. Numerous comments expressed concern about the aspect of the preliminary requirement of § 101.14(b)(3)(i) that requires that a substance contribute taste, aroma, or nutritive value, or any technical effect listed in § 170.3(o), in view of the agency's definition of "nutritive value" in § 101.14(a)(3). A number of these comments characterized these provisions as an attack by the agency against dietary supplements. Some comments asserted that the proposed preliminary requirement would prohibit dietary supplements, especially those containing herbs, from bearing health claims. Comments pointed out that many herbs, such as garlic, are specially processed to remove the flavor or odor from the final supplement product. A number of comments explained that such supplements would fail to meet this requirement because their beneficial effects on the body often are derived from substances unique to the plant that do not promote growth, replace loss of essential nutrients, or provide energy. A few comments also noted that many herbs contain insignificant amounts of vitamins, minerals, and other nutrients.

Some comments asserted that the adoption of any preliminary requirement that would automatically disqualify herbal dietary supplements from bearing health claims would undermine the intent of Congress to establish a nondrug review process for health claims involving herbs. These comments asserted that the 1990 amendments clearly provide that herbal dietary supplements can be the topic of a health claim. Furthermore, a comment asserted that the Court of Appeals held

in *Nutrilab, Inc.* v. *Schweiker*, 713 F.2d 335, 338 (7th Cir. 1983) that some products, such as prune juice or coffee, may be consumed for reasons other than taste, aroma, or nutritive value.

One comment asserted that all dietary supplements already meet the this preliminary requirement. The comment noted that a substance to be consumed at other than decreased dietery levels may also be shown to be a food by contributing any technical effect listed in § 170.3(o). The comment stated that § 170.3(o)(20) lists one of those technical effects as nutrient supplementation and broadly defines a "nutrient supplement" as "substances which are necessary for the body's nutritional and metabolic processes."

FDA does not believe that it is overly restrictive to require, as it does in § 101.14(b)(3)(i), that a substance be a food or a component of food for it to be the subject of a health claim. Section 403 of the act, which includes the health claims provisions, states, "A food shall be deemed to be misbranded * * *" (emphasis added). Thus, section 403(r) of the act describes the circumstances in which a food will, and will not be, misbranded if it bears a health claim. It is therefore appropriate for the agency to make it incumbent on the proponent of a health claim to demonstrate that the substance that is to be the subject of the claim is a food or component of food.

FDA disagrees with the comments' interpretation of the *Nutrilab* decision. As FDA explained in the preamble of the health claims final rule (58 FR 2478 at 2499–2500), the *Nutrilab* court adopted a "common sense" definition of "food" under section 201(f)(1) of the act: "When the statute defines 'food' as 'articles used for food,' it means that the statutory definition of 'food' includes articles used by people in the ordinary way most people use food—primarily for taste, aroma, or nutritive value." *Nutrilab*, 713 F.2d at 338. Other courts have followed suit. *See United States* v. *Undetermined Quantities of Cal-Ban 3000*, 776 F. Supp. 249, 254–55 (E.D.N.C. 1991); *American Health Products Co.* v. *Hayes*, 574 F. Supp. 1498, 1508–09 (S.D.N.Y. 1983), *aff'd*, 744 F.2d 912 (2d Cir. 1984). By describing taste, aroma, and nutritive value as the "primary" reasons for consuming food, the *Nutrilab* court acknowledged that a food consumed for one of these reasons might sometimes also be consumed for an additional purpose (713 F.2d at 338 (giving prune juice and coffee as examples of foods that "may be consumed on occasion for reasons other than taste, aroma, or nutritive value")). Under *Nutrilab*, however, a substance whose uses do not include taste, aroma, or nutritive value is not a food.

In § 101.14(b)(3)(i), FDA incorporated this common sense definition of food and the phrase "or any technical effect listed in § 170.3(o)," which reflects the fact that the definition of "food" in section 201(f)(3) of the act includes "articles used for components of food," as a preliminary requirement to ensure that a substance that is to be the subject of a health claim is in fact a food. This preliminary requirement is fundamental because both the component of a food that is the subject of a health claim and a component of a drug have a characterizable relationship to a disease. Congress recognized this fact by creating an exception from section 201(g)(1)(B) of the act, in the definition of "drug" for foods that bear a claim authorized under section 403(r) of the act. Thus, it is crucial to the continuing viability of the act itself that the choice of the test that determines whether a claim that characterizes the relationship of a substance to a disease can be made be based on the appropriate factors. Under the act, that choice turns in part on whether the substance is a food. Therefore, FDA has reflected in § 101.14(b)(3)(i) the judicially recognized characteristics of a food.

In this regard, interested persons should not presume that inclusion of the phrase "or any technical effect listed in § 170.3(o)" in § 101.14(b)(3)(i) means that substances that may be classified within one or more of the categories of food additives in § 170.3(o) automatically meet this preliminary requirement. The classifications within § 170.3(o) are of a general nature to reflect the uses to which food ingredients are put. All of the classifications pertain to the effect of the ingredients on food (e.g., by affecting the texture of the food) rather than on the human body. Only a substance that is used for the technical effect in § 170.3(o)(20), that of a nutrient supplement, has the potential to have a useful effect in the body because of the characteristics that cause it to be used in the food. The "nutrient supplement" category includes "Substances which are necessary for the body's nutritional and metabolic processes." As the comments themselves recognized, not every component of a dietary supplement has such an effect.

In view of the agency's broad, flexible definition of "nutritive value," FDA does not find any merit in arguments that the provisions requiring that a substance be a food should be removed. To the contrary, FDA believes that these provisions will benefit the public health by allowing the agency to devote its limited resources for review of petitions to those that are appropriate for consideration under the health claim provisions of the act. Accordingly, FDA considers these provisions essential elements under the framework that it has created in its regulations for the regulation of health claims and fully consistent with the act.

FDA disagrees with the comments' characterization of its actions as an attack against dietary supplements. FDA believes that the combined effect of § 101.14(b)(3)(i), the preliminary requirement that a substance be a food, and § 101.14(a)(3), the definition of "nutritive value," will not present dietary supplements with any unreasonable barriers for agency evaluation of potential health claims for components of these products. Without question, these provisions do restrict health claims to effects on a disease or a health-related condition resulting from the nutritive value of substances. However, as one comment pointed out, the current definition of "nutritive value" in § 101.14(a)(3) is broad enough to include the functions of most dietary supplements.

One observation that might bear making in this context is that Congress has given the agency a statutory structure with which to deal. In relevant part, that structure divides the world of substances that have a relationship to disease into foods and drugs. Congress placed the health claims provisions on the food side of the ledger. FDA is charged with implementing those provisions in accordance with the act and applicable legal precedents. FDA has announced its intention to implement the health claim provisions as flexibly as possible, but at some point the agency simply cannot be as flexible as some of the comments have suggested. At that point, the agency would start to erode the scheme that the statute has established for drugs. The agency cannot do that. If Congress intended something that goes beyond the scheme that FDA has established in these final regulations, then what is required is a change in the law itself.

16. Many comments objected to the aspect of § 101.14(b)(3)(i) that requires that a substance retain its food status (i.e., its nutritive value) when consumed at levels that are necessary to justify a claim. Almost all concern was directed toward consumption of substances at levels significantly higher than those present in the daily diet. Some comments urged FDA to evaluate proposed health claims involving relatively high levels of nutrients on the grounds that categorically prohibiting

them would deny Americans beneficial information rather than educating them on how to alter their diets to achieve optimal health. Other comments stated that FDA's categorical refusal to evaluate such health claims because of the nutrient levels involved would directly violate both the Proxmire Amendment and the congressional intent behind the 1990 amendments. These comments noted that the 1990 amendments provide for the appearance of health claims on foods and stated that, subject to certain conditions, the Proxmire Amendment's prohibition against regulating a vitamin supplement as a drug "solely because it exceeds the level of potency which the Secretary determines is nutritionally rational or useful" guarantees the regulation of vitamins as foods regardless of the levels of nutrients that they supply. The comments also stated that Congress envisioned the approval of such health claims, as it was aware that dietary supplements substantially in excess of the U.S. RDA's were routinely being consumed by Americans, and it chose to direct that FDA conduct a review of antioxidant vitamins/cancer claims with dietary supplements in mind. Other comments further asserted that FDA was attempting to circumvent the Proxmire Amendment and create maximum potency levels for all supplements by establishing an upper limit for "nutritive value."

FDA does not agree that any conflict with section 411 of the act is presented by a requirement that, to be the subject of a health claim, the substance must be a food, that is, consumed primarily for its taste, aroma, or nutritive value. There is nothing in the health claims final rule or in the regulations established by this document that will affect in any way the availability of dietary supplements or consumers' freedom to choose to purchase them. Rather, the regulations that FDA is establishing are intended to ensure that any health claims that may be made for dietary supplements are scientifically valid. This is what section 403(r)(5)(D) of the act directs FDA to do.

Nothing in these regulations would necessarily prevent a supplement from bearing a health claim when it contains a level of a substance that exceeds the level achievable in the context of the daily diet. To the contrary, the final rule concerning calcium and osteoporosis, for example, which was published in the **Federal Register** of January 6, 1993 (58 FR 2665), permits a calcium health claim for dietary supplements and requires only that the supplement labeling advise consumers, in appropriate circumstances, that there is no known benefit from consuming more than 200 percent of the recommended daily intake for calcium.

Section 411 of the act does not authorize health claims for dietary supplements or in any way affect FDA's authority under section 403(r)(5)(D) of the act to regulate such claims. Under section 411(a)(1)(B) of the act, FDA may not classify a dietary supplement as a drug solely because it contains a vitamin or mineral at a level that exceeds the level of potency that the agency determines is nutritionally rational or useful. Nothing in these proposed regulations would do so. Absent a claim, FDA will not consider a dietary supplement to be a drug because it contains vitamins or minerals at levels above those normally found in food. However, a claim on a product is an indication of the product's intended use. If a claim reveals that the product is intended for a use other than for its taste, aroma, or nutritive value, then nothing in section 411 of the act would require that it be treated as a food.

17. Many comments addressed the circumstances under which dietary supplements should be considered drugs. A number of these comments referred to the following agency statement in the health claims final rule (comment 49, 58 FR 2478 at 2501):

> A product that is intended for medicinal effects, that is, intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease, is a drug and not a food. Thus, there is no basis under the act for FDA to permit health claims for herbs whose only known use is for medicinal effects. Health benefits of such herbs may appear in the labeling only in accordance with the drug provisions of the act.

Although a few comments agreed with this statement, many comments expressed categorical opposition to the classification of any herbs or other dietary supplements as drugs. While most of these comments did not offer reasons in support of their position, one comment expressed concern that such a policy would be grounds for FDA to categorically ban all such supplements as unapproved new drugs. Several comments noted that many herbs have traditionally been used both as foods and drugs and asked for assurance that FDA would not automatically regulate such herbs as drugs. Other comments argued that herbs should always be regulated as foods where they are consumed for their nutritive value.

Some comments stressed that intended use, as stated on its labeling, should be the determinative factor in deciding whether a supplement should be regulated as a food or as a drug. As an example, one of these comments stated that a supplement marketed for a specific therapeutic use (e.g., a vitamin C tablet sold to cure cancer) is appropriately regarded as a drug, while a supplement sold to be taken over a period of time to reduce the risk of developing a disease (e.g., a vitamin C tablet sold to be taken daily to reduce the risk of cancer) should be regulated as a food. The comment asserted that this approach is consistent with FDA's determination that a supplement containing large amounts of niacin should be regulated as a drug when consumed to lower serum cholesterol. Another of these comments emphasized that a consumer's use of a legally labeled product should not have any weight in determining whether that product is a drug. As an example, the comment noted that FDA does not regulate either fiber or water as a drug as long as their labeling does not bear drug claims, even though consumers may use them to facilitate bowel movement or to prevent, mitigate, or treat dehydration, respectively.

A few comments suggested that FDA determine whether a substance is a food or a drug by its chemical composition. The comments asserted that while the boundary between drugs and supplements is fuzzy at times, drugs are typically synthetic molecules that are of a unique and patentable nature, while dietary supplements consist of natural, nonpatentable materials.

Another comment stated that FDA should exempt substances taken to treat a symptom of a disease from regulation as drugs, as the act defines as drugs only those substances used in the diagnosis, cure, mitigation, treatment, or prevention of the disease itself.

Earlier in this preamble, FDA explained that these regulations do not affect the availability of dietary supplements. Again, these regulations affect only the food label and food labeling. FDA has no intention of banning all dietary supplements of herbs or similar substances as unapproved new drugs. FDA will carry out its responsibility to regulate inappropriate claims, but the agency will not attempt to restrict the sale of dietary supplements to consumers unless the supplements present safety concerns.

With respect to the specific words for use in labeling statements, FDA advises that statements that a product may be effective in the cure, mitigation, treatment, or prevention of disease will make the product a drug. However, statements that a product may reduce the risk of developing a disease or health-related condition may, or may not, make the product a drug. Exactly how a substance-disease relationship is to be characterized is one of the issues

that the agency will address in deciding whether to authorize a health claim and how to ensure that the claim describes the significance of the substance in affecting the disease or health-related condition. FDA points out that as a general matter, merely using terms such as "reduce the risk" instead of "prevent" will not automatically make a claim a health claim and not a drug claim. FDA will make a case-by-case assessment based on all relevant factors in determining whether a claim is appropriately subject to the health claims regime. The agency also agrees that the main focus in deciding whether a product is subject to regulation as a food or a drug is the intent of the vendor and not how consumers use the product (although how consumers understand claims that are made can be used to determine vendor intent).

FDA advises that there is no provision in the act for the agency to exempt statements about symptoms of disease from causing products to be regulated as drugs. Although such statements may not be claims that the product will treat the disease that causes the symptoms, the statements clearly pertain to the mitigation of disease by addressing the symptoms caused by the disease. Section 201(g)(1)(B) of the act provides, in part, that articles intended for use in the mitigation of disease are drugs. Similarly, there is no provision in the act for FDA to exempt natural, nonpatentable materials from the definition of a drug in section 201(g) of the act.

FDA advises that it not true that all natural materials are not drugs. It has been estimated that about 25 percent of the drugs currently prescribed by physicians are plant compounds, and that an additional 25 percent are related to plants. Therefore, fully half of the drugs commonly used can be considered plant derived. Such commonly used drugs as digitalis, aspirin, quinidine, atropine, and hundreds of others were once considered herbals. Thus, the agency finds that it cannot rely on the distinction of whether a product is natural or synthetic in deciding whether it is a food or a drug.

3. Safety

Section 101.14(b)(3)(ii) provides that, to justify a claim for a substance that is to be consumed at other than decreased levels, the substance must be a food or a food ingredient or a component of a food ingredient whose use at the levels necessary to justify a claim has been demonstrated by the proponent of the claim, to FDA's satisfaction, to be safe and lawful under the applicable food safety provisions of the act.

The preamble of the dietary supplement health claims proposal (58 FR 33700 at 33709) explained:

> * * * This showing can be based on: (1) A demonstration that the substance is generally recognized as safe (GRAS) within the meaning of § 170.30; (2) a listing of the substance as GRAS in 21 CFR Part 182 or as affirmed as GRAS in 21 CFR Part 184; (3) a food additive regulation; or (4) a sanction or approval granted by FDA or the United States Department of Agriculture prior to September 6, 1958. If the safety and lawfulness of the substance is not expressly recognized in an FDA regulation, the burden will rest on the claim's proponent, as a prerequisite to FDA's evaluation of the health claim, to submit all the scientific data and other relevant information required to demonstrate safety and lawfulness in accordance with applicable petition requirements. FDA will withhold review of the health claim until it is satisfied on these points.

18. Many comments objected that the proposed safety provisions are unreasonable. A few of these comments specifically asserted that herbal supplements would almost universally fail the proposed safety requirements because most herbs are not GRAS for use as a dietary supplement, are not approved food additives, and are not the subject of prior sanctions or are the subject of prior sanctions that have been waived. Furthermore, the comments complained that FDA's process for acting on GRAS affirmation petitions is notoriously slow and extremely costly. The comments maintained that the proposed safety requirements would discourage manufacturers from submitting health claim petitions for dietary supplements, would delay the approval of such petitions, and could well amount to a total ban on health claims for certain dietary supplements. The comments suggested that FDA require safety determinations only for those substances with no history of safe use and provide that the absence of known safety problems will be sufficient proof of safety for substances with a long history of use.

Other comments urged FDA to be flexible in its determination of safety for substances in dietary supplements. A number of these comments stressed the importance of FDA recognizing that safety can be determined solely through the historical use of such substances. Some of the comments noted that many components of supplements, particularly herbs, have been used for hundreds or thousands of years without safety problems. The comments also noted that herbs are used safely throughout three-fourths of the world as a principal means of medicine. The comments declared that regulatory authorities in Great Britain, Germany, Japan, and many other nations have researched various herbal supplements and found them to be safe when consumed at the levels of use likely to be contemplated under a health claim petition. One comment also noted that information concerning accurate dosage, indications, contraindications, and quality control measures are also available in past editions of the U.S. Pharmacopeias and National Formularies. These comments urged FDA to accept all relevant data on the safe use of herbal dietary supplements, including foreign studies and monographs that evidence the safety of these products. One comment declared that FDA is legally bound to consider evidence involving herb usage outside the United States when reviewing the safety of herbs.

One comment asserted that FDA should evaluate the safety of vitamins and minerals in terms of their effect on the normal population and not on those consumers with unusual conditions or sensitivities. The comment acknowledged that such consumers need clear label ingredient statements as well as education on foods to deal with their problems. The comment asserted, however, that these consumers should be held responsible for some degree of self-protection. The comment maintained that this approach is consistent with the agency's policy on persons with allergies to food components. A few comments asserted that the safety of a dietary supplement should be defined in terms of whether or not harm may occur under the conditions of use defined by the supplement's labeling, rather than in terms of an arbitrary cutoff such as the RDI. The comment maintained that a systematic review of all components of dietary supplements is not necessary and suggested that the agency undertake safety reviews on a case-by-case basis where it believes a potential safety concern might exist.

Several comments asserted that FDA is not equitable in its concern for the safety of dietary supplements as compared to the safety of other products regulated by the agency. Some comments asserted that the safety record of dietary supplements is far better than many FDA-approved food additives such as aspartame, against which, according to the comments, the agency receives and ignores thousands of consumer complaints annually. Other comments asserted that FDA's intense interest in the safety of products would be better focused on prescription drugs, which are responsible for over 1/2 million deaths annually as compared to

the no or few deaths attributable to the consumption of dietary supplements.

However, several comments supported FDA's proposal to require that petitioners for a health claim for a substance in a dietary supplement demonstrate that the substance is safe and lawful. The comments agreed with the agency that such a requirement is implicit in the act, and that the labeling law in no way diminishes FDA's responsibility to ensure the safety of foods.

FDA concludes that the preliminary requirement that the safety of a substance be demonstrated should apply to substances in dietary supplements in the same manner that it applies to substances in foods in conventional food form. The amendment to the act enacted by the 1990 amendments cannot be implemented independently of the remaining portions of the act (see section 9 of the 1990 amendments). The act must be considered as a whole, and FDA's responsibility for ensuring the safety of foods is explicitly provided for in other sections of the act (see sections 201(s), 402(a)(1) and (2), and 409 of the act).

As the agency explained in the dietary supplement health claims proposal, the fact that the act contains such explicit safety authority is particularly significant because the agency will be specifically authorizing the health claims that will be made. In view of this affirmative action, FDA authorization of a health claim places the agency's imprimatur on the claim. Moreover, the claim will encourage consumption of the substance. It would be a violation of the agency's responsibility under the act to authorize a health claim about a substance, whether it be in a dietary supplement or in food in conventional food form, without being satisfied that the use of the substance is safe. Certainly, FDA would have almost no assurance that it would be protecting the public health if it permitted, as some comments suggest, all substances except those that are actually known to cause safety problems to be the subject of health claims. It would be a great and tragic irony if substances that were the subject of health claims because of one effect caused injury because of another. This is the situation that Congress sought to avert by including section 403(r)(3)(A)(ii) in the act. FDA's preliminary requirement is fully consistent with the principles that underlie that section.

The fact that some herbs and other ingredients of dietary supplements have been used for thousands of years does not necessarily justify a conclusion by FDA that their use under all conditions is safe, but it may. First, FDA needs a basis for concluding that such use was in fact without harmful effect. Second, FDA needs a basis for concluding that consumption of ingredients in a supplement carrying a health claim would be in amounts comparable to those consumed safely in the past. The proponents of claims for such substances are certainly free to demonstrate that the use of those substances is generally recognized as safe based on their common use in food prior to 1958. The agency notes, however, that the use of many of these substances has been primarily as a drug, tonic, or folk remedy, rather than as food (see 53 FR 16544 at 16545; May 10, 1988). This fact is confirmed by some of the comments summarized above. As drugs, the levels and frequency of use of these substances may have been significantly different than the levels and frequency of use that will result from their use as foods. Although the agency will consider evidence involving herb usage outside the United States, FDA still needs to review data on the identity of the substance, the safety of the substance, the use of the substance in food, the context of its use, and the frequency of use in the country where use of the substance occurred (see 50 FR 27294 at 27295, July 2, 1985). Evidence that another country has studied the safety of an herbal supplement and found it to be safe would certainly be relevant and should be submitted to FDA. It is important, however, that as much of the evidence that provided the basis for the country's determination as is possible be submitted to FDA.

Although formal recognition of safety by FDA admittedly can be lengthy and expensive, such formal recognition is not required under this preliminary requirement. In responding to concerns raised by comments suggesting that FDA recognize manufacturers' private GRAS determinations, the agency stated in the health claims final rule the following concerning § 101.14(b)(3)(ii) (58 FR 2478 at 2502 through 2503):

> FDA acknowledges that the GRAS affirmation and food additive listing process can be lengthy. Thus, FDA designed § 101.14(b)(3)(ii) to provide flexibility with respect to the type of showing of safety that is necessary to make a substance eligible to be the subject of a health claim. GRAS affirmation and food additive listing are but two of the procedures by which a substance may meet this preliminary requirement.
>
> FDA intends to consider the basis of manufacturers' independent GRAS determinations where such determinations are submitted with petitions for health claims and may use its discretion to accept, without formal affirmation, the independent determination of GRAS where FDA believes that such action would be appropriate. As FDA pointed out in the previous comment, however, the agency would not be fulfilling its responsibilities under the act if it were to permit a substance to be the subject of a health claim without satisfying itself that the use of that substance is safe.
>
> Although FDA will consider all manufacturers' independent GRAS determinations where the basis for such determinations are submitted with petitions for health claims, the agency advises that it will generally not be possible for FDA to judge whether GRAS determinations based on complex scientific evidence are valid within the short timeframes mandated under the 1990 amendments for health claims petitions. Instead, agency agreement with an independent determination that a substance is GRAS will be most likely where the substance is an ingredient, or a component of a food ingredient, that was in common use in food prior to January 1, 1958, in a similar context. However, where such agreement occurs, the agreement does not constitute GRAS affirmation. Instead, the history of common use in food, coupled with the fact that FDA knows of no reason to question the safety of the food ingredient, means that the substance will be treated as if it is an unlisted GRAS substance (as provided for in § 170.30(d) and 182.1(a) (21 CFR 170.30(d) and 182.1(a))) in the manner provided for in the food ingredient list in 21 CFR Part 182.
>
> (58 FR 2478 at 2503.)

Under this final rule, this statement is fully applicable to substances in dietary supplements. The agency believes that this policy on independent determinations that a substance is GRAS demonstrates that FDA will be flexible in assessing conformance with the safety preliminary requirement.

FDA disagrees with assertions that the agency should evaluate the safety of dietary supplements in terms of only the normal population. It would be unconscionable for the agency to adopt a policy of ignoring adverse effects, some of which could be life-threatening, of any foods, including dietary supplements, on vulnerable segments of the population. Furthermore, there is no basis under the act for such a policy. FDA does attempt, however, to find the most practicable solutions to assuring consumers of a safe food supply. For example, the agency generally does not base safety decisions on atypical population subgroups that will use the product. Where there are subgroups of consumers (e.g., consumers with certain sensitivities) that could suffer adverse effects from consuming the product, FDA may place certain restrictions on the use of the product or rely on labeling solutions (such as those the agency has used for sulfiting agents and yellow 5) as a condition for its safe use, rather than denying the availability of the product to the entire population.

Thus, for all the foregoing reasons, FDA is making health claims for substances in dietary supplements, like claims for any other food, subject to § 101.14(b)(3)(ii).

C. Scientific Standard

19. Many comments expressed concern that FDA would apply the term "significant scientific agreement" in an unreasonable manner by demanding too much supporting evidence on substance/disease relationships before approving health claims.

Several comments insisted that FDA is misinterpreting the requirements for the scientific standard for food in conventional food form as well as for dietary supplements. The comments asserted that the law does not require that there be significant scientific agreement that a nutrient/disease relationship has been conclusively established, but only that the statements made in a claim be supported by the available evidence. As an example, one of the comments asserted that the requirements of the law would be fully met by a properly qualified label claim such as, "Although no scientific consensus has been established, several clinical studies suggest that daily consumption of Vitamin C as part of a well-balanced diet may reduce the frequency of colds." A number of comments asserted that the standards for authorizing health claims on foods are more stringent than those authorizing the use of drug claims. Several comments argued that FDA is being unduly restrictive by requiring that manufacturers perform expensive randomized, double-blind, placebo-controlled tests to prove the validity of a claim under the proposed regulations. These comments stated that such requirements would deter manufacturers from seeking new uses for herbs and other substances used in dietary supplements. The comments maintained that a more lenient standard would encourage manufacturers to engage in research to develop more healthful products. The comments further asserted that the disparate treatment of foods and drugs is especially unfair when the enormous difference in safety factors between dietary supplements and untested prescription drugs is considered.

Some of the comments asserted that FDA had not been fair to date in its evaluations of health claims under this standard. One of these comments asserted that FDA had approved only four of the ten congressionally-proposed health claims, not seven, as FDA claimed in the preamble to the proposed regulations.

Some comments maintained that FDA should not require a unanimous or near-unanimous consensus among experts in order to find that there is "significant scientific agreement" concerning a claim. A few of the comments pointed out that the legislative history of the 1990 amendments clearly indicates that such a level of agreement is not to be required. Other comments urged that FDA consider the requirement for "significant scientific agreement" to be satisfied as long as there is agreement among a majority of scientists familiar with the research in a given area. These comments noted that Commissioner Kessler offered testimony supporting this interpretation before the U.S. House of Representatives Subcommittee on Health and the Environment. Other comments maintained that the requirement for "significant scientific agreement" only requires agreement among a significant number of qualified experts. One of these comments requested that FDA include a provision in the regulations that the standard of "significant scientific agreement" is not one of unanimity to prevent confusion among manufacturers and consumers. A few comments asked that FDA's regulations include a provision that guarantees that "significant scientific agreement" will be considered to have been achieved when a credible health authority, particularly an agency of the U.S. Government, recommends the consumption of a nutrient because of its relationship to a disease or health-related condition.

One comment suggested that FDA not use the phrase "significant scientific agreement" to evaluate proposed health claims, despite its inclusion in the language of the 1990 amendments, because the meaning of the phrase is ambiguous. The comment suggested that FDA should simply consider the totality of publicly available scientific evidence to determine whether or not a particular health claim can be justified.

FDA disagrees with assertions that it is conducting validity assessments for health claims in an unduly restrictive manner. FDA does not require that manufacturers perform controlled clinical trials to prove the validity of a claim. To the contrary, as discussed in the health claims final rule (58 FR 2478 at 2506), the scientific standard for health claims is less stringent than the requirements for approval of a new drug. In the case of a new drug, section 505(d)(5) of the act (21 U.S.C. 355(d)(5)) states that the Secretary shall refuse to approve an application for approval of such a drug where there is a lack of substantial evidence that the drug will have the effect that it purports or is represented to have under the conditions of use prescribed, recommended, or suggested in the proposed labeling thereof. Section 505(d) provides further that the term "substantial evidence" means evidence consisting of adequate and well-controlled investigations, including clinical investigations (human studies conducted in a controlled clinical setting), by experts qualified by scientific training and experience to evaluate the effectiveness of the drug involved. (The statutory term "substantial evidence" should not be confused with the same term used by some comments to refer to "more than a scintilla and less than a preponderance" of evidence.) Based on this statutory direction, the agency has identified a number of characteristics that are present in "adequate and well-controlled" studies in § 314.126 (21 CFR 314.126).

Section 101.14(c) of FDA regulations does not mandate requirements as stringent as those for drugs in section 505(d)(5) of the act. Section 101.14(c) contains no mention of "substantial evidence," "adequate and well-controlled investigations," or of "clinical investigations." To the contrary, § 101.14(c) contains more flexibility than the drug provisions of the act because it provides FDA with authority to authorize claims based on "scientific evidence (including evidence from well-designed studies conducted in a manner which is consistent with generally recognized scientific procedures and principles), that there is significant agreement among experts qualified by scientific training and experience to evaluate such claims, that the claim is supported by such evidence" (section 403(r)(3)(B)(i) of the act).

Consistent with this flexibility, FDA did not prescribe a specific set, type, or number of studies as being sufficient to support a health claim in the health claims final rule that applied to food in conventional food form. In that rule, the agency advised (58 FR 2478 at 2506) that it would consider all relevant data on a topic, including clinical studies, epidemiological data, and animal studies.

In addition, the 1990 amendments directed FDA to consider 10 nutrient-disease relationships. In the January 6, 1993, final rules, FDA authorized claims with respect to seven of those 10 relationships (see 58 FR 2537, 2552, 2622, 2665, 2739, 2787, and 2820). In

addition, FDA has recently proposed to authorize claims concerning an eighth, folic acid and neural tube defects (see 58 FR 53254, October 14, 1993). FDA believes that these approvals demonstrate that it is not conducting validity assessments for health claims in an unduly restrictive manner.

FDA agrees that the legislative history of the 1990 amendments makes clear that Congress did not intend, in calling for significant scientific agreement about the support for a claim, to require that such agreement represents a full consensus among scientists. The House Report (Ref. 1) states:

> * * * the standard does not require that there be a unanimous agreement among experts. Instead there must be a significant agreement among experts, but it does not require that every expert in the field approve or agree with the claim.

The agency shares the comments' concern that a requirement of consensus would mean that some valid health claims would not be authorized and, by restricting such claims, would counter Congress' intent that health claims supported by a significant scientific agreement be made available to consumers. The agency never intended to require that claims be supported by a consensus among scientists and has not done so.

The agency is sensitive to the comments' perception that the scientific standard, particularly the phrase "significant scientific agreement," is subjective. The agency believes, however, that any standard involving the evaluation of scientific evidence and opinions derived from that evidence must be somewhat subjective. FDA, in proposing not to define "significant agreement" among experts in the November 27, 1991 (56 FR 60537 at 60548) proposal, noted that each situation may differ with the nature of the claimed substance/disease relationship. The agency believes that in deciding whether significant scientific agreement about the validity of a claim exists, it is necessary to consider both the extent of agreement and the nature of the disagreement on a case-by-case basis.

The House Report (Ref. 1) makes clear that Congress intended the "significant scientific agreement" standard to be a flexible one by pointing out that, in reviewing scientific studies, FDA may give greater weight to the studies that it finds more persuasive. The House Report also clarifies that the overriding consideration in assessing whether to authorize a claim should be the Secretary's level of comfort about the validity of the claim. The agency believes that this clarification provides clear guidance for the application of the standard, and thus it is not incorporating the changes requested by the comments in the codified language of the regulations.

FDA does not believe it has in any way been unfair in its approval of health claims to date. Earlier in this preamble in response to comment 2, FDA explained why certain specific health claims were not approved. Nevertheless, the agency's statement in the dietary supplement health claims proposal that it had authorized claims on 7 of the 10 nutrient-disease relationships is correct. In the case of 3 of the relationships, however, the claims were authorized for foods rather than specific nutrients. In these cases, as explained previously, although there was sufficient evidence to attribute certain disease risk reductions to the consumption of certain foods, and those foods are marked by significant levels of the nutrients in question, there was insufficient evidence to attribute any disease risk reduction directly to consumption of the nutrients themselves.

FDA does not agree that it should define "significant scientific agreement" as agreement among a majority of scientists familiar with the issues. Commissioner Kessler's statements about significant scientific agreement being 50 or 60 percent agreement were intended to show the contrast between this term and the term "consensus," not to provide a specific definition of "significant scientific agreement." There is simply no bright line that FDA can draw in this area. Ultimately, the agency must exercise its scientific judgment, arrived at after input from the scientific community.

The agency does not agree that significant scientific agreement should be considered to have been achieved when a credible health authority, particularly an agency of the U.S. Government, recommends the consumption of a nutrient because of its relationship to a disease or health-related condition. While FDA recognizes the significance of such recommendations, Congress charged FDA with the responsibility of authorizing health claims on the food label and labeling. Nonetheless, the agency is mindful of the admonition in section 403(r)(4)(C) of the act that reads: "If a petition for a regulation under subparagraph (3)(B) relies on a report from an authoritative scientific body of the United States, the Secretary shall consider such report and shall justify any decision rejecting the conclusions of such report."

Accordingly, FDA is retaining the requirement for "significant scientific agreement" in this regulation.

20. Many comments applauded the agency's determination not to underrate any scientific evidence on the basis of its cultural or geographic origin. One of these comments noted that the United States is one of the most ethnically diverse nations in the world and stated that a study done anywhere in the world is likely to be relevant to at least one U.S. subpopulation. A few of these comments noted that some of the studies done on herbal dietary supplements have been conducted under foreign drug protocols and requested assurance that FDA would consider such data to be part of the publicly available scientific evidence supporting prospective health claims. Another of these comments asserted that the "totality of publicly available scientific evidence" should include not only "well designed studies" but also ethnobotanical and other traditional usage information which is often available for herbs and other dietary supplements.

The agency reaffirms its commitment to consider any evidence submitted in support of the scientific merits of a claim and in the context of the totality of available evidence. FDA will not underrate any study on the basis of its cultural or geographic origin. Evidence in support of a proposed health claim, however, will attain value in direct proportion to the significance in the U.S. population of the effects of the substance in question on the disease or health-related condition addressed by the claim (see § 101.14(b)(1)). Also, the agency advises that it will consider ethnobotanical and other traditional usage information. However, the agency points out that under § 101.14(c), the evidence must provide the basis for significant scientific agreement that the claim is valid.

D. General Labeling Requirements

In the health claims final rule, FDA established a number of general requirements for health claims for food in conventional food form in § 101.14(d) to ensure that consumers are provided with valid and reliable information about the value that ingestion (or reduced ingestion) of a particular substance, as part of a total dietary pattern, may have in affecting certain diseases or health-related conditions.

In the dietary supplement health claims proposal, the agency proposed that dietary supplements be subject to the same general requirements that it has established for food in conventional food form in § 101.14(d). The agency advised that specific references to dietary supplements in § 101.14(d) are not necessary because FDA's revision of § 101.14(a)(2), the definition of the term "substance," to include components of dietary supplements will link dietary supplements to the health claim for which § 101.14(d) prescribes general requirements.

1. FDA Authorization of Valid Claims

Section 101.14(d)(1) provides that when FDA determines that a health claim is valid, the agency will propose a regulation in Subpart E of Part 101 to authorize the use of the claim. Further, the provision states that if the claim pertains to a substance not provided for in § 101.9, FDA will propose to amend that regulation to include declaration of the substance. To ensure that the provisions established in § 101.14(d)(1) apply equally to all forms of dietary supplements, the agency proposed in the dietary supplement proposal to revise § 101.14(d)(1) to reference, in addition to § 101.9, the provisions of § 101.36 (21 CFR 101.36), which establish requirements for the nutrition labeling of dietary supplements of vitamins and minerals.

FDA received no comments requesting changes in this aspect of the proposal. Therefore, the agency is adopting this section as proposed.

2. General Requirements

Section 101.14(d)(2) requires that health claims on foods in conventional food form: (1) Be consistent with the specific authorizing regulation for the claim; (2) be limited to describing the value that ingestion (or reduced ingestion) of the substance, as part of a total dietary pattern, may have on a particular disease or health-related condition; (3) be complete, truthful, and not misleading; (4) contain all required information for that claim in one place without other intervening material (except that the principal display panel (PDP) of the label or labeling may bear a reference statement such as "See attached pamphlet for information about calcium and osteoporosis," with the entire claim appearing elsewhere on the other labeling); and (5) enable the public to comprehend the information provided and to understand the relative significance of such information in the context of a total daily diet. If the claim is about the effects of consuming the substance at decreased dietary levels, the level of the substance in the food must be sufficiently low to justify the claim. For example, if a definition for use of the term "low" has been established for that substance, the substance must be present at a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation. If the claim is about the effects of consuming the substance at other than decreased dietary levels, the level of the substance in the food must be sufficiently high and in an appropriate form to justify the claim. For example, if a definition for use of the term "high" for that substance has been established, the substance must be present et a level that meets the requirements for use of that term, unless a specific alternative level has been established for the substance in the authorizing regulation. (See § 101.14(d)(2)(vii)(A) for additional requirements where the food meets the "high" or "low" requirements based on its reference amount customarily consumed and the labeled serving size differs from that amount. See § 101.14(d)(2)(vii)(B) for guidance about how a food can meet the "high" and "low" requirements where the food is sold in a restaurant.)

In the dietary supplement health claims proposal, FDA proposed that dietary supplements be subject to these requirements to ensure that consumers are provided with scientifically valid, nonmisleading, and reliable information about the value that ingestion of the particular substance in the dietary supplement may have in affecting a disease or health-related condition.

21. One comment stated that FDA should mandate that dietary supplements bear health claims for which they are eligible in order to promote public awareness of the benefits associated with those supplements.

FDA does not believe that it is appropriate to adopt a general policy requiring the inclusion of health claims on the labels of all foods eligible to bear them. The agency notes that while the 1990 amendments provide for the appearance of health claims on the labels of foods qualified to bear them, they do not make the appearance of those claims mandatory.

FDA believes that many manufacturers will choose to include health claims on the labels of qualified foods because of the marketing benefit offered by their appearance. Because health claims provide information regarding the benefits associated with the increased or decreased dietary intake of various substances in the product rather than information regarding the particular product itself, consumers will be made aware of the benefits of consuming other foods that do or do not contain the particular substance, even if a particular food product does not itself bear the health claim.

22. One comment asserted that FDA should require manufacturers who elect to craft their own health claims, rather than to use the model claim verbatim, to secure agency approval for their claims with respect to understandability.

FDA disagrees with this comment. Section 3(b)(1)(A)(vii) of the 1990 amendments prohibits FDA from requiring persons to secure agency approval before placing a health claim on a product, provided that the claim is in compliance with the applicable regulation authorizing the health claim. The House Report (Ref. 1) states that this section "makes it clear that the regulations will not require premarket review of each claim; they will only require that the claim be consistent with the terms and requirements of the regulations." The agency believes that it is possible to paraphrase a model health claim while remaining consistent with the terms and requirements of the regulations permitting that claim. This position is similar to agency policy that permits the use of terminology other than that established in a final OTC drug monograph in labeling of an OTC drug product to describe indications for use (51 FR 16258, May 1, 1986). Consistent with that policy for OTC drug labeling, the agency believes that the goal of ensuring scientifically valid, truthful, and nonmisleading labeling without inhibiting effective consumer communication does not require exclusive use of language in a model health claim. The model language along with other requirements for a claim will, nevertheless, provide the standard for measuring the accuracy of alternative language developed by food manufacturers for their products because FDA has included all mandatory labeling elements of a health claim in the model claim. Of course, manufacturers should recognize that a health claim that fails to convey all the mandatory elements of the claim will subject a product to regulatory action.

3. Nutrition Labeling

Section 101.14(d)(3) requires that health claims on foods in conventional food form must bear nutrition labeling in accordance with § 101.9 and 101.10 (21 CFR 101.9 and 101.10). In the dietary supplement health claims proposal, the agency proposed to revise § 101.14(d) to reference § 101.36 (21 CFR 101.36), in addition to § 101.9 and 101.10. In response to section 403(q)(5)(F) of the act (formerly section 403(q)(5)(E)), § 101.36 establishes requirements for the nutrition labeling

of dietary supplements of vitamins and minerals.

FDA received no comments requesting changes in this aspect of the proposal. Therefore, the agency is adopting this section as proposed.

E. Prohibited Health Claims

In § 101.14(e) of the health claims final rule, FDA established, for foods in conventional food form, a number of situations where health claims are prohibited. In that paragraph, FDA provides that a health claim may not be made on the label or in the labeling of a food unless: (1) The claim is specifically provided for in authorizing regulations in Subpart E of 21 CFR part 101; (2) the claim conforms to all general provisions of § 101.14, as well as to all specific provisions in the authorizing regulation; (3) none of the disqualifying levels identified in § 101.14(a)(5) is exceeded in the food, unless specific alternative levels have been established for the substance in the authorizing regulation, and the labeling bears a statement that complies with § 101.13(h) highlighting the nutrient that exceeds the disqualifying level; (4) no substance is present at an inappropriate level as determined in the specific provision authorizing the claim in Subpart E of 21 CFR part 101; (5) the label does not represent or purport that the food is for infants and toddlers less than 2 years of age except if the claim is specifically provided for in Subpart E of 21 CFR part 101; and (6) except for dietary supplements, the food contains 10 percent or more of the RDI or Daily Reference Value (DRV) for vitamin A, vitamin C, iron, calcium, protein, or fiber before any nutrient addition.

In the dietary supplement health claims proposal, the agency proposed that dietary supplements be subject to the general prohibitions that have been established for foods in conventional food form in § 101.14(e). The agency tentatively concluded that this action was appropriate because these prohibitions: (1) Reflect the statutory restriction in section 403(r)(1)(B) of the act that requires that health claims be made in accordance with the provisions of section 403(r)(5)(D) for dietary supplements; (2) ensure that inappropriate, unsubstantiated, and fraudulent health claims are not made; and (3) reduce the potential for consumer confusion when confronted with a situation in which there would be health claims for substances when they are present in dietary supplements but not when they are present in foods in conventional food form. The agency advised that specific references to dietary supplements in § 101.14(e) generally are not necessary because FDA's proposed revision in § 101.14(a)(2) of the definition of the term "substance" to include components of dietary supplements will bring dietary supplements within the coverage of § 101.14(e).

FDA did propose, however, to include a reference to dietary supplements in the introductory sentence of paragraph (e) to clarify that dietary supplements may be food. Specifically, FDA proposed to insert the phrase "regardless of whether the food is in conventional food form or dietary supplement form" into that sentence to make clear that no expressed or implied health claims may be made on the label or in labeling of any food unless the conditions in that paragraph are met.

1. Claims Not Authorized By FDA

Section 101.14(e)(1) and (e)(2) prohibit the use on a food label or in food labeling of any claim that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition unless: (1) The claim is specifically provided for in Part 101, Subpart E—Specific Requirements for Health Claims; and (2) the claim conforms to all general provisions of § 101.14, as well as to all specific provisions in the appropriate section in subpart E of 21 CFR part 101.

23. A number of comments asserted that the marketplace is currently saturated with hundreds of false and misleading claims, ranging from rather innocuous statements to blatant claims concerning the treatment of cancer, AIDS, heart disease, asthma, high blood pressure, Alzheimer's disease, diabetes, and other diseases and health-related conditions. One of these comments urged FDA to regulate as implied health claims those brand names that imply that a product is useful in preventing particular diseases. The comment asserted that an implied health claim can be made by the inclusion of the name of a disease in a brand name, as well as by label statements that slant the meaning of a brand name toward disease prevention.

FDA realizes there are a number of misleading claims in use on products. The agency reviews these claims as part of its regular enforcement activities and takes action against such claims based on such factors as the public health significance of the claim, how clearly it violates the act, and the availability of agency resources.

24. A number of comments stated that manufacturers should be allowed to include information on the traditional use of various supplements on their labels. These comments noted that many other countries allow supplement labels to indicate traditional uses of the product, provided that the level of evidence supporting such use is accurately represented. Many comments asserted that statements concerning the safe usage of dietary supplements should not be considered a health claim. The comments maintained that the exclusion of such information from food labeling would endanger the public health.

Dietary supplements that bear labeling that expressly or by implication characterizes the relationship of any substance to a disease or health-related condition will be subject to the provisions of section 403(r) of the act. However, if the claim reveals that the product is intended to be used in the diagnosis, cure, mitigation, treatment, or prevention of a disease, as would likely be the situation where the product is presented as an alternative to conventional drug therapy, the product, like any other product that does so, is a drug under section 201(g)(1)(B) of the act and subject to the requirements for drugs in Chapter V of the act.

However, supplement manufacturers, like all other food manufacturers, are welcome to submit health claim petitions that establish the validity of claims that characterize the relationship of a substance to a disease or a health-related condition in a manner that is appropriate for a food. (See section III G. of this document.) Any such petition that shows that the preliminary requirements in § 101.14(b) and the scientific standard for a health claim in § 101.14(c) are met will provide the basis for a proposal to authorize a claim in accordance with section 403(r)(4)(A)(i) of the act.

In addition, FDA advises manufacturers of dietary supplements that where a claim does not include one or both of the basic elements of a health claim, it generally constitutes dietary guidance that may be provided on the label or in labeling, so long as it is presented in a truthful and nonmisleading manner.

25. One comment urged that FDA permit the appearance of preliminary health claims on the labeling of a product other than its label. The comment maintained that the 1990 amendments draw a clear distinction between a product label and its labeling and noted that labeling has much more room in which a manufacturer may sufficiently explain the current state of scientific evidence regarding a preliminary claim.

FDA disagrees with this comment. Section 403(r)(1) of the act clearly prohibits the appearance of health claims that are not made in accordance with FDA regulations and that appear "*in the label or labeling* of the food (emphasis added)." The agency's objections to preliminary claims are fully discussed in this preamble in its response to comment 4.

2. Additional Limits on Health Claims

In the health claims final rule (58 FR 2478 at 2534), FDA adopted new § 101.14(e)(6) to require consistency with dietary guidelines by prohibiting health claims unless the food contains 10 percent or more of the RDI or DRV for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition. (A complete discussion of why these specific criteria were selected appears in the preamble of that document (see 58 FR 2478 at 2521 through 2522).) This provision stresses the importance of selecting foods so that dietary sources of calories are coupled with sources of nutrients. This approach incorporates established levels of significance for nutrients in food and is based on the amounts in foods of certain nutrients required to be listed on the label as part of mandatory nutrition labeling. As such, this approach applies to food in conventional food form.

FDA specifically exempted dietary supplements from this requirement. Such supplements are intended only to provide nutritive value to the daily diet, and they make no pretense of serving as substitutes for conventional food. (Nutrient supplements in conventional food form are, however, intended to serve as substitutes for conventional food.) As a result, it would not be logical to hold such products to criteria designed to ensure consistency with dietary guidelines for conventional food. A dietary supplement that meets the qualifying criterion in § 101.14(d)(2)(vii) and that does not contain a nutrient at a disqualifying level specified in § 101.14(a)(5) possesses nutritive value for a health claim irrespective of whether or not it may also provide calories. Accordingly, in the dietary supplement health claims proposal, FDA did not propose to make any change in the exemption for dietary supplements from the provisions of § 101.14(e)(6). For consistency with the proposed definition of the term "dietary supplement," however, FDA proposed to revise the wording for this exemption to delete the phrase "not in conventional food form" because the definition of "dietary supplement" states that such foods are not in conventional food form.

FDA received no comments requesting changes in this aspect of the proposal. Therefore, the agency is adopting this section as proposed.

F. Applicability

In the health claims final rule, FDA established a provision in § 101.14(g) stating that the requirements for health claims in § 101.14 apply to foods intended for human consumption that are offered for sale. In the dietary supplement proposal, FDA proposed that dietary supplements also be covered by § 101.14(g). FDA stated that it had tentatively concluded that a reference to dietary supplements was appropriate in paragraph (g) to clarify that dietary supplements can be food. Specifically, FDA proposed to revise paragraph (g) as follows:

Applicability. The requirements of this section apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

26. One comment asserted that FDA should allow health claims authorized for use on dietary supplements to also appear on OTC drug products that provide "high" levels of a particular nutrient, e.g., calcium-osteoporosis claims on calcium carbonate antacid tablets.

FDA received a comment similar to this one on the health claims proposal. This comment provides no basis for the agency to provide a different response to this comment than it did in the health claims final rule.

As explained in the preamble of the health claims final rule (58 FR 2478 at 2500), multiple use products that are both foods and drugs present a difficult set of competing concerns for the agency. Such products are likely to be both an OTC drug and a dietary supplement.

Most OTC drug products are developed to address some type of acute medical problem that is expected to be of short duration. If the problem persists, it is important that the person with the problem know that it may be more severe than he or she otherwise thought, and that he or she should seek medical attention. Labeling on such products, therefore, includes instructions to use the product for a limited period of time and, if the problem persists, to seek medical intervention. Thus, the time limits on use of the product are important to the health of the users.

Dietary supplements, on the other hand, are developed for inclusion in a daily diet at levels that are consistent with dietary use and may often be consumed throughout most of a person's lifetime. Labeling on dietary supplements contains no instructions for seeking medical intervention or for limiting the duration of consumption of the supplement. Rather, under the new regulations, dietary supplements will be able to bear nutrient content and health claims, which focus the consumer's attention on the advantages that consuming the product will have in helping the consumer to maintain a healthy diet. Moreover, where the supplement bears a health claim, the claim will contain information about how long-term ingestion of the supplement may promote health.

Where dietary levels and therapeutic levels differ (as is generally the case and is in fact the case with antacids and calcium supplements), an apparent conflict is created when both food and drug labeling appear on the same product. In the case of the drug labeling, consumers are given directions for use that involve high consumption during a limited time period. In the case of the food labeling, consumers are given directions for lower consumption with no time constraints. Even though label instructions may identify those directions for food and drug use in separate locations, FDA is concerned that consumers will incorrectly assume that the therapeutic dosage is appropriate for dietary use, and that the directions for food use will undercut the warning in the drug labeling to seek medical care if the condition persists. Where the labeling is not properly followed, significant adverse consequences may result.

The agency knows of no broad approach that it can use to harmonize a nutrient content claim or a health claim with drug labeling. A drug that is labeled with instructions for use that both limit and do not limit consumption would be misbranded under section 502(a) of the act (21 U.S.C. 352(a)) if it failed to contain a material fact—that is, how to reconcile these conflicting instructions.

However, FDA does not believe that it would be appropriate to preclude such claims under all circumstances. Such claims may be permissible if a firm can demonstrate that dual claims can be made in a manner that will neither misbrand the product nor create a safety problem. The agency suggests that anyone desiring to make a health claim or a nutrient content claim that complies with section 403(r) of the act on a product that is both a food and a drug contact the Center for Drug Evaluation and Research, OTC Compliance Branch (HFD–312), FDA, 7500 Standish Pl., Rockville, MD 20855,

to discuss whether it would be possible to put such a claim on the product and still comply with the drug provisions of the act.

G. Petitions

27. A number of comments urged FDA to streamline its procedures for approving health claims in order that dietary supplement manufacturers may include the most current, reliable information on their products. The comments stated that the inclusion of such information is critically important to dietary supplements because, unlike foods in conventional food form, they are consumed only for the health benefits associated with them. The comments specifically proposed that FDA add the following paragraphs to § 101.70(j):

(4) *Final Rule.* FDA will, within 120 days of the date of publication of the proposed rule, issue a final rule authorizing or prohibiting the requested use of the health claim.

(5) *Expedited Action on certain petitions.* If FDA determines during its initial review of the petition that it accurately represents the recommendations of any agency or department of the U.S. Government with public health responsibilities, or of any other public health organization that is recognized as a credible source of information on diet and health, FDA will publish a proposed rule authorizing the requested use of the claim no later than 60 days from the date of receipt of the petition and will issue a final rule no later than 60 days from the date of publication of the proposed rule.

The comments maintained that new provision in paragraph (j)(4) would correct an obvious oversight in the existing regulations, i.e., the establishment of a firm deadline for a proposed rule but no firm deadline for a final rule. The comments also contended that paragraph (j)(5) is necessary to address FDA's failure to act promptly to approve claims that are based on the recommendations of public health authorities, such as its failure to approve a health claim for folic acid in accord with the recommendations of PHS agencies.

FDA advises that its failure to specify in § 101.70(j) a deadline for the publication of a final rule regarding the use of a proposed health claim was not an oversight. Section 403(r)(4)(A)(i) does not require that the agency adhere to any deadline for the publication of a final rule. While FDA could establish such a timeframe by regulation, it does not believe that the adoption of such a requirement would be prudent. The comment period following the publication of proposed rules is a critical step in determining whether a proposed regulation is appropriate for adoption. In the instance of health claim regulations, significant information concerning the validity of the substance-disease relationship underlying the proposed health claim may be submitted by interested parties during the comment period. Also, the comment period may bring to light a previously unforeseen potential for the use of a health claim, if adopted without modification, to be misleading to consumers or to create serious potential threats to the public health. The agency has no way to guarantee that it will be able to adequately resolve such problems within the suggested timeframe. In such instances, if faced with a specific timeframe, FDA would be forced to either deny an otherwise valid health claim petition, or to approve it without erecting the regulatory framework that it believes necessary to ensure that the public health is safeguarded. Therefore, FDA is not adopting the suggested time limit on the issuance of a final rule. However, the agency advises that it committed to issuing final rules on health claim petitions as quickly as possible consistent with the issues presented and the agency's available resources.

With respect to suggestions for shorter timeframes for certain petitions, FDA advises that the agency's ability to meet timeframes is influenced by many factors, such as work priorities and availability of personnel. FDA considers the statutory timeframes for assessing the validity of health claims and for issuing a proposed regulation to be extremely short, given the need to evaluate the totality of available scientific evidence on a substance and a disease or a health-related condition. Given the agency's limited resources, it would not be practicable to shorten these timeframes further. However, FDA points out that although action on petitions for most claims will require virtually all of the time provided by the statutory timeframes, nothing would prohibit the agency from acting in less time than the timeframes provide if it is possible to do so. Thus, it is likely that a petition for a claim on a well-accepted substance/disease relationship would be reviewed more expeditiously than one for which scientific agreement is not as clear.

28. A few comments urged FDA to consider the limited label space available on many dietary supplements in developing model health claims. The comments stated that concise model claims will provide guidance to manufacturers on how to convey health claims in succinct statements that comply with all of FDA's requirements and will thus help ensure that the health claims presented to consumers are clear and comprehensible.

FDA realizes that there is a limit to the amount of information that can be presented on a food label. However, the agency believes that it must ensure that consumers understand that factors other than dietary intake of the nutrient may bear on the substance-diseese relationship. Given the imperative of ensuring consumer understanding of a message that must be presented in a very limited space, the agency is faced with the difficult task of determining what information is necessary in a claim, and what information is not. FDA believes that its regulations in subpart E of 21 CFR part 101 represent an acceptable balance between the consumer's right to understand the full context of the claim and the manufacturer's concern over claim length. By delineating the information that is mandatory and optional in a claim, FDA is relieving manufacturers from having to include information that is of tangential importance but ensuring that those who wish to make a claim do so in a manner that provides a useful and understandable message to consumers. FDA advises that it will take a similar approach when providing model health claims in the future. FDA also notes that manufacturers who are not satisfied with the model claim are free to develop their own versions of the claim, provided that those versions include all of the information required by the authorizing regulation.

29. Several comments raised the issue of product-specific health claims by asserting that many manufacturers will be dissuaded from undertaking the scientific studies and other investments necessary to obtain approval of new health claims petitions by the fact that approved health claims will be allowed for use on all qualifying products. However, a number of comments stressed that in a health claim, the role of the total diet should be emphasized rather than the role of a specific food in risk reduction.

FDA advises that section 403(r)(1)(B) of the act pertains to a claim about the relationship between a nutrient and a disease or health-related condition, rather than about particular food product and such a condition. While the agency has used the term "substance" in lieu of the word "nutrient" and has said that a "substance" can be a food, in doing so the agency was only trying to cover circumstances such as those presented by fruits, vegetables, and grain products in which it was not possible to identify the specific nutrient in a broad class of foods that was having the observed effect on the risk of disease. FDA was not thereby including formulated products as possible subjects of health claims. Such products are formulated to include particular substances because of the nutritional effects of those substances. Thus, a health claim for such a product would appropriately be about the substance in the formulated product and not about the product itself.

In addition, section 403(r)(3)(B)(iii) of the act directs the agency to require that health claims enable the public to understand the information in the context of the total daily diet. As explained above, FDA finds that to effect Congress' intent in passing the 1990 amendments, the same requirement should apply to health claims made on dietary supplements. FDA believes that a claim that refers specifically to the effects on a disease or health-related condition resulting from the consumption of a certain brand name of product would unduly emphasize the importance of that product and not the importance of the total daily diet. Also, such claims could imply that other brands of the same food, as well as other foods containing the substance that is the subject of the claim, might not have the same effect on the disease or health-related condition and thus would be misleading under section 403(a) of the act. Accordingly, the agency finds that it is not appropriate to approve product-specific health claims.

30. One comment suggested that FDA provide regular monthly or quarterly reports concerning newly approved health claim petitions for display in the supplement section of stores. The comment maintained that such a list distributed by FDA would increase consumer confidence in the claims when they appear on supplement labels.

Although FDA recognizes that there could be benefits to consumers from such reports, the agency simply does not have the resources to provide the reports on an ongoing basis. However, FDA expects that trade associations and other interested parties will provide information to firms that will ultimately be passed on to consumers.

IV. Constitutional Issues

A. First Amendment

1. General

31. Several comments raised concerns that the regulations violate the First Amendment. Comments cautioned that the regulations would be unconstitutional if they limited the dissemination of scientific opinion or prevented scientifically valid, well-balanced information from reaching the public.

In the final rule on health claims for foods in conventional food form, 58 FR 2478 at 2524 through 2528 (January 6, 1993), the agency addressed in detail the First Amendment implications of its regulation of health claims on the food label and in food labeling. The agency concluded that its regulations, and the act as amended by the 1990 amendments, do not violate the First Amendment. FDA considers its earlier analysis to be relevant to the present rulemaking and incorporates it into this document. The agency notes that none of the comments submitted on the proposed rule on health claims for dietary supplements disputed the agency's earlier discussion, and no comments argued that subsequent court decisions have called the agency's conclusions into question.

FDA disagrees with the comments that asserted that these regulations unconstitutionally suppress scientific opinion. The regulations address what may appear in labeling; they do not affect any other means of disseminating information. Indeed, far from limiting the dispersal of scientific information, as stated above, these regulations, which implement the 1990 amendments to the act, permit more information to appear on the label than the act allowed before its amendment.

The agency does not agree with the comments' implication that the Constitution requires a more lenient standard of scientific validity than that codified in § 101.14(c). FDA has a strong interest in ensuring that the information that appears on the food label is scientifically valid and believes that the standard it has adopted best furthers that interest. When FDA seeks to ensure that food is not misbranded, it may place restrictions on label contents. See *SEC* v. *Wall Street Publishing Institute*, 851 F.2d 365, 373 (D.C. Cir. 1988), cert. denied, 489 U.S. 1066 (1989); *American Frozen Food Institute* v. *Mathews*, 413 F. Supp. 548, 555 (D.D.C. 1976), *off'd*, 555 F.2d 1059 (D.C. Cir. 1977). Contrary to the view of the comments, "the First Amendment does not guarantee the right to employ every conceivable method of communication at all times and in all places" (*Members of City Council* v. *Taxpayers for Vincent*, 466 U.S. 789, 812 (1984)). Indeed, "Freedom of Speech does not include the freedom to violate the labeling provisions of the Federal Food, Drug, and Cosmetic Act." (*United States* v. *Articles of Food * * * Clover Club Pototo Chips*, 67 F.R.D. 419, 424 (D. Idaho 1975)).

2. Pure Speech

31a. One comment asserted that health claims are not commercial in nature and are entitled to full First Amendment protection. This comment described health claims as typically being mere recitations of scientific findings made by independent medical authorities and backed by substantial agreement in the medical community. The comment asserted that the proposed regulations reach "pure scientific speech" placed on labels and in product advertisements and violate the First Amendment by: (1) denying speakers channels of communication to present truthful, nonmisleading health claims; (2) denying speakers the right to communicate a particular kind of content; (3) discriminating against certain speakers and forms of communication; and (4) denying the constitutional rights of willing listeners, viewers, and readers.

FDA disagrees with the comment. The agency notes initially that the comment misinterprets the scope of the agency's action. These regulations apply only to health claims made on the label or in labeling of dietary supplements and not to advertising.

The agency disagrees that health claims are entitled to full First Amendment protection. The agency has stated that, although it does not consider it necessary for its First Amendment analysis to determine whether or not food labeling fits the definition of commercial speech, labeling should certainly be considered closer to commercial speech than to "pure" speech (58 FR 2478 at 2525 through 2526). It has also stated that "[l]abeling statements on food products intended for sale would clearly appear in the context of a commercial transaction and would 'propose' such a transaction." (58 FR 2478 at 2527 (citing *Bolger* v. *Youngs Drug Products Corp.*, 463 U.S. 60, 66 (1983)); *Central Hudson Gas & Electric Corp.* v. *Public Service Commission*, 447 U.S. 557, 562 n.5 (1980)); see also *Adolph Coors* v. *Brady*, 944 F.2d 1543, 1546 (10th Cir. 1991); *United States* v. *General Nutrition, Inc.*, 638 F. Supp. 556, 562 (W.D.N.Y. 1986). Commercial speech receives a lesser degree of protection than noncommercial speech. (See, e.g., *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S. Ct. 1505, 1513 (1993)). The comment does not make a persuasive argument for considering health claims on dietary supplement labels to be pure speech, and FDA is not aware of any circumstance in which a court has considered such information on the food label to be "pure" speech. Contrary

to the comment's assertion, information that is placed on the label by a commercial enterprise in order to encourage the consumer to make a purchase should not be considered protected speech simply because it was generated by an independent source. (See, e.g., *United States* v. *Article of Drug * * * B-Complex Cholinos Capsules*, 362 F.2d 923, 927 (3d Cir. 1966) (free speech was not implicated when third party's statements were taken as evidence of manufacturer's intent); *United States* v. *Articles of Drug*, 32 F.R.D. 32, 34–35 (S.D. Ill. 1963) (First Amendment did not prohibit seizure of third party's book used as labeling)).

Although the agency disagrees that health claims should be considered noncommercial speech, and although many of the cases cited in the comment deal with fully protected speech rather than commercial speech and thus do not provide a useful analytical framework for these regulations, the agency will address the comment's arguments individually.

The agency disagrees that its action denies speakers channels of communication. As discussed above, the agency has placed no limits on the dissemination of scientific information but has acted to permit certain information to appear on the label or in labeling of dietary supplements. Adequate alternative channels remain for the dissemination of scientific information. For example, regulation of the information that may appear on the food label in no way affects the ability of a scientist to publish experimental results in a journal. Moreover, any interested person may petition for a health claim regulation.

The agency disagrees that these regulations should be subjected to the close scrutiny afforded restraints on the content of pure speech. Of the cases cited by the comment to advance this argument, one is particularly instructive. In *Turner Broadcasting System, Inc.* v. *FCC*, the court declined to apply strict scrutiny to the "must-carry" provisions of the 1992 Cable Act, applying instead the "interest-balancing traditionally applied to content-neutral speech regulation or legislation ostensibly unrelated to expression that is discovered to impose incidental burdens on speech." 819 F. Supp. 32, 39 (D.D.C. 1993), *prob. juris. noted*, 114 S. Ct. 38 (1993). In passing the Cable Act, "Congress employed its regulatory powers over the economy to impose order upon a market in dysfunction, but a market in a commercial commodity nevertheless; not a market in speech" (*Id.* at 40). Similarly, with the 1990 amendments Congress sought to bring order to the food market. (See, e.g., 136 Congressional Record S16611 (October 24, 1990) (statement of Sen. Hatch) ("It is up to us to make order out of chaos in the regulation of food * * *."); 136 Congressional Record H12953 (October 26, 1990) (statement of Rep. Waxman) ("[T]he bill will once and for all settle the confusion surrounding health claims.")). As discussed in the final rule on health claims for foods in conventional food form, the case law establishes that FDA's power to regulate the food label derives from its broad regulatory powers over food (58 FR 2525). As in *Turner*, these regulations are valid under the limited scrutiny that has been afforded restrictions on speech under extensive regulatory schemes involving areas of economic activity (*Id*).

The comment argued that the regulations are impermissibly discriminatory because they require government regulators to exercise judgment based on subjective line-drawing, guided not by rational principles of law and science but by the will of the censorship authority. FDA disagrees. The agency has carefully articulated the appropriate scientific standard that it will apply to proposed health claims. Unlike the ordinance at issue in *Forsyth County* v. *Nationalist Movement*, cited by the comment, the decision whether to authorize a health claim is not left to the agency's whim but is based on objective factors. 112 S. Ct. 2395, 2403 (1992). In *Forsyth*, the county administrator's exercise of discretion to vary the fee for assembling or parading was not reviewable and did not require an explanation (Id). FDA's procedure for evaluating a proposed health claim, including use of notice and comment rulemaking, presents a far different situation, and one that does not offend the Constitution.

Contrary to the comment's assertion, the fact that FDA does not presume to prohibit the publication of health claims in the popular media does not show an "arbitrary predilection to enforce [the] law against particular speakers and forum owners rather than others." FDA has no interest in regulating the dissemination of scientific information in the popular media and has no authority to do so. Rather, its strong interest is in ensuring that health claims made in labeling, on which consumers are likely to rely when making purchasing decisions, are truthful, not misleading, and scientifically valid. The agency's action contrasts with the categorical ban on commercial newsracks struck down in *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S. Ct. 1505. In that case, the Supreme Court held that the restriction, which was intended to advance Cincinnati's interest in safety and esthetics, overemphasized the distinction between commercial and noncommercial speech by prohibiting only newsracks holding commercial handbills and not those holding ordinary newspapers (*Id.* at 1514). The city thus discriminated against a use of newsracks that was no more harmful to safety and esthetics than the use it permitted (Id. at 1511). On the other hand, FDA's regulation of health claims in labeling bears a specific relationship to the interests the agency has asserted, because it is directed specifically at ensuring the reliability and validity of these claims (see *id.* at 1514.) Contrary to the comment's assertion, the limited scope of FDA's regulations—i.e., food labeling—does not amount to discrimination.

Finally, the agency disagrees that its regulations deny the constitutional rights of willing listeners, viewers, and readers. First, this argument overstates the impact of these regulations, which will affect only the labeling of dietary supplements and not other sources of information about these products. Second, these regulations will actually advance consumers' First Amendment interest in obtaining information on which to base a purchasing decision, "by insuring that the information is not false or deceptive" (*National Commission on Egg Nutrition* v. *FTC*, 570 F.2d 157, 162 (7th Cir. 1977), *cert. denied*, 439 U.S. 821 (1978)). "The fact that health is involved enhances the interests of both consumers and the public in being assured 'that the stream of commercial information flow clearly as well as freely'" (Id. (citing *Virginia State Board of Pharmacy* v. *Virginia Citizens Consumer Council*, 425 U.S. 748, 772 (1976)); see also *American Home Products* v. *FTC*, 695 F.2d 681, 714 (3d Cir. 1982)).

3. Commercial Speech

31b. Two comments asserted that, if health claims on labels are considered commercial speech, FDA's regulations violate the First Amendment because they are more restrictive than necessary to achieve the government's goals. One comment recognized that FDA has "a great interest in preventing false and misleading claims and in preventing fraud in the marketplace," but argued that closing the door on truthful, qualified claims that are based on significant scientific evidence is not reasonably responsive to those interests. The other comment asserted that the wholesale suppression of truthful, nonmisleading speech carries with it the silencing of speech indispensable to the health of the American people, and that the agency's action not only lacks a rational relationship to the end chosen, public health, but actually undercuts that goal by shrouding the public in ignorance.

FDA disagrees that these regulations, if considered under the commercial speech doctrine, are unconstitutional. The final rule on health claims for foods in conventional food form, 58 FR 2478 at 2526–2527 (January 6, 1993), contains an analysis of that regulation in light of the four-part test set out in *Central Hudson Gas & Electric Corp.* v. *Public Service Commission*, 447 U.S. 557, 563–564 (1980). That discussion is equally applicable to the present rulemaking. *Central Hudson* states that commercial speech that is inherently misleading is not protected and may be prohibited (*Id.*). Speech that is only potentially misleading may be restricted, so long as the restrictions directly advance a substantial governmental interest and are no more extensive than necessary to serve that interest (*Id.* at 566).

The comments do not dispute the government's substantial interest in promoting public health by ensuring that consumers have access to information about dietary supplements that is scientifically valid, truthful, reliable, informative, and not misleading. (Indeed, one comment stated that the government's interest is "great.") Rather, the comments focus on the last two parts of the *Central Hudson* test: whether the regulations directly advance the governmental interest, and whether there is a reasonable fit between regulatory ends and means.

FDA disagrees that its regulations will undercut its stated goals. Rather, the regulations directly advance the governmental interest. The regulations provide for FDA review of the relevant scientific evidence on a proposed health claim before the agency decides whether to authorize use of the claim. In this way, the regulations ensure that health claims are scientifically valid and reliable, and that they will not mislead consumers. At the same time, the regulatory scheme encourages the provision of information to consumers that will enable them to maintain healthful dietary practices. Thus, these regulations advance the government's interest in a "direct and material way" (Edenfield v. Fane, 113 S. Ct. 1792, 1798 (1993)).

FDA also disagrees that these regulations are more extensive than necessary to serve the government interest. Recently, the Supreme Court stated that the "commercial speech cases require a fit between the restriction and the government interest that is not necessarily perfect, but reasonable" (*United States* v. *Edge Broadcasting Co.*, 113 S. Ct. 2696, 2705 (1993) (citing *Board of Trustees* v. *Fox*, 492 U.S. 469, 480 (1989); *Posadas de Puerto Rico Associates* v. *Tourism Co. of Puerto Rico*, 478 U.S. 328, 344 (1986)). In *Edge*, the Court upheld a federal statute prohibiting the broadcast of lottery advertising by a broadcaster licensed to a State that does not allow lotteries. Although the law prevented a broadcaster in North Carolina, with a majority of its listeners in Virginia, from airing nonmisleading advertisements for Virginia's lottery, the Court had "no doubt that the fit * * * was a reasonable one." *Edge*, 113 S. Ct. at 2705. The Court stated that the validity of a restriction should be judged "by the relation it bears to the general problem of accommodating the policies of both lottery and nonlottery States, not by the extent to which it furthers the Government's interest in an individual case." *Id.* (citing *Ward* v. *Rock Against Racism*, 491 U.S. 781 (1989)). Moreover, once the government has established a strong interest in adopting and enforcing rules of conduct designed to protect the public, it is entitled to protect its interest by applying a prophylactic rule to those circumstances generally, Id. at 2706 (citing *Ohralik* v. *Ohio State Bar Association*, 436 U.S. 447, 464 (1978)).

After considering alternate approaches, the agency has concluded that the procedures and scientific standard set out in these regulations best advance its stated interests under the act. (See discussion *supra*.) As in *Edge*, the government has weighed competing interests: the interest in making information available on the dietary supplement label and in its labeling about the relationship between nutritional substances and disease or health-related conditions, and the interest in ensuring that the information provided is scientifically valid, informative, and not misleading. As in *Ohralik* and *Edge*, the agency is entitled to protect its interest by applying a prophylactic rule to general circumstances, in this case by permitting only health claims about substance-disease relationships that the agency has determined are scientifically valid to appear in labeling. See *Edge*, 113 S. Ct. at 2706.

The means that FDA has chosen to further its substantial interest are reasonable, "in proportion to the interest served," and "narrowly tailored to achieve the desired objective." *City of Cincinnati* v. *Discovery Network, Inc.*, 113 S. Ct. at 1510 n.12 (quoting *Fox*, 492 U.S. at 480). The regulations specifically target labeling claims about relationships between substances and disease or health-related conditions. They are not intended to restrict the flow of information to the public, but rather to ensure that the scientific validity of information provided to consumers in the labeling of a product has been established. Indeed, the regulations leave open a broad range of other possible methods of communication.

4. Chilling Effect

31c. One comment asserted that an overbroad suppression of scientific speech on communications media used by manufacturers creates a pervasive chilling effect on their willingness (and that of the scientists they employ) to communicate their findings for public and professional consideration.

The overbreadth doctrine is an exception to traditional rules of standing and is applicable in First Amendment cases in order to ensure that an overbroad statute does not chill the exercise of protected rights. *Leonardson* v. *City of E. Lansing*, 896 F.2d 190, 195 (6th Cir. 1990)). The doctrine may apply to a regulation that, in all its applications, directly restricts protected First Amendment activity and is not narrowly tailored *Secretary of State of Maryland* v. *Joseph H. Munson Co.*, 467 U.S. 947, 965 n.13 (1984). FDA disagrees that these regulations are overbroad or that they will chill free speech. The activity prohibited under the act and these regulations—marketing dietary supplements bearing unapproved health claims in their labeling—constitutes a "core of easily identifiable and constitutionally proscribable conduct," (467 U.S. at 965–966). Labeling is defined in the act and easily identifiable. See 21 U.S.C. 321(m) ("The term labeling means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article."). Moreover, courts have held that misbranding food is not protected under the First Amendment. See, e.g., *Kellogg Co.* v. *Mattox*, 763 F. Supp. 1369, 1381 (N.D. Tex. 1991), *aff'd* sub nom. *Kellogg Co.* v. *Morales*, 940 F.2d 1530 (5th Cir. 1991); *United States* v. *General Nutrition, Inc.*, 638 F. Supp. 556, 562 (W.D.N.Y. 1986); *United States* v. *Articles of Food * * * Clover Club Potato Chips*, 67 F.R.D. 419, 424 (D. Idaho 1975). Finally, as discussed above, the regulations are narrowly tailored to accomplish the government's goals.

In any event, it is doubtful that the overbreadth doctrine would apply to these regulations, particularly if they are considered to regulate commercial speech, because the overbreadth doctrine does not apply to commercial speech. "[C]ommercial speech is generally considered less susceptible to the chilling effect of regulation than other, more traditionally recognized forms of speech, such as political discourse." *Kraft, Inc.* v. *FTC*, 970 F.2d 311, 321 (7th Cir. 1992), *cert. denied*, 113 S. Ct. 1254 (1993).

B. Fifth Amendment

32. One comment asserted that the takings clause of the United States Constitution provides protection to dietary supplement trade names. It argued that § 101.14 might proscribe certain trade names that FDA has allowed to remain on the market for years. The comment urged FDA to give more attention, under Executive Order 12630, to the regulation's possible takings implications.

When it issued its final regulations governing conventional foods under the 1990 amendments, FDA fully discussed the takings implications of those regulations. (See 58 FR at 2397 through 2400 and 2528 through 2529). This discussion, including the underlying takings analysis, is incorporated herein. The agency concluded that there would be no regulatory taking under the Fifth Amendment if a manufacturer is required to alter its brand name when the brand name asserts by implication a relationship between the presence or level of a substance in the food and a disease or health-related condition, and that relationship is not the subject of an approved health claim (58 FR at 2529). Because the agency conducted its analysis before passage of the DS act, it fully took into account the regulations' impact on dietary supplements. Although the comment stated that FDA must address the issues raised by its regulations in light of Executive Order 12630, it did not provide any additional information that the agency has not already considered. Therefore, the agency concludes that it is not necessary to address potential takings issues in any greater detail.

V. Other Issues

33. A few comments objected to the period of time provided for public comment on the proposal, stating that it was too short. One of these comments asserted that FDA had no reason to establish such a short deadline other than to curtail public input on the proposed regulations. Another of these comments requested that FDA extend the period for public comment on the proposed regulations to give consumer advocacy groups, health care professionals, and the scientific community adequate time to prepare the information and opinions needed to fairly resolve the issues associated with the proposal.

As explained in the preamble of the proposals, the DS act requires that final rules implementing the 1990 amendments with respect to dietary supplements be issued by December 31, 1993. To meet this statutory timeframe, FDA was forced to limit the comment period for the proposed regulations to 60 days. Thus, the agency reaffirms that it is unable to grant any extensions to the comment period.

34. One comment requested that FDA clarify that the compliance date is the date on which manufacturers of dietary supplements must begin to label products in accordance with § 101.14.

FDA advises that the comment is correct. Section 10(a)(2) of the 1990 amendments specifically states that "* * * section 403(r) of the Federal Food, Drug, and Cosmetic Act * * * shall not apply to food *which was labeled* before the effective date of the amendments * * * [emphasis added)." Accordingly, the effective date of the health claims regulations for dietary supplements adopted by the agency under section 403(r) refers to the date on which a dietary supplement is labeled.

35. A number of comments concerned the requirement in § 101.14(d)(2)(iv) that states that all claims must appear in one place, in the same type size, without intervening material. The comments addressed the exception in this provision that a short reference statement may appear on the label, "See ———— for information about the relationship between ———— and ————," with the blanks filled in with references to the location of the labeling on which the full claim appears, the name of the substance, and the disease or health-related condition. The comment requested that FDA allow graphic material constituting an implied health claim to appear on the PDP without the accompanying referral statement or full health claim, as long as the graphic material appeared in conjunction with the full health claim elsewhere on the labeling. The comment justified this request based on the lack of sufficient label space on the PDP for the referral statement.

FDA does not believe that it should make the requested revision in § 101.14(d)(2)(iv). In situations where graphic material constitutes an implied health claim, and the reference statement is not present, the graphic material on the labeling is in fact a shortened form of the health claim. FDA explained in response to comment 69 in the health claims final rule that shortened health claims are misleading because they do not include facts that are material in light of the representation that is made and that are necessary to understand the claim in the context of the daily diet.

IV. Impact Statements

A. Economic Impact

In its dietary supplement labeling proposals pertaining to health claims, nutrition labeling, and nutrient content claims in the June 18, 1993 **Federal Register** (58 FR 33700, 33715, and 33731), FDA stated that the proposed rules on the labeling of dietary supplements, taken as a whole, would have associated costs of approximately $20 million. Thus, the agency concluded that the proposed rules do not constitute a major rule as defined by Executive Order 12291. In accordance with the Regulatory Flexibility Act (Pub. L. 96–354), FDA explored whether the proposed rules may have a significant impact on small businesses and tentatively concluded that they do not.

FDA has evaluated many comments that it received in response to its economic impact analysis. Because the issues raised in the comments relate to all three proposals, FDA has combined its discussion of these comments and presented them in the final rule regarding the establishment of the date of application published elsewhere in this issue of the **Federal Register**.

FDA has examined the economic implications of the final rules as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, and public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires that the agency analyze the options for regulatory relief for small businesses. FDA has concluded, based on its review of the available data and comments, that these final rules are not significant as that term is defined by Executive Order 12866. Further, in accordance with the Regulatory Flexibility Act, the agency certifies that these final rules will not have a significant impact on a substantial number of small businesses.

B. Environmental Impact

The agency has previously considered the environmental effects of this rule when it was part of the proposed rule pertaining to both foods in conventional food form and dietary supplements (November 27, 1991 **Federal Register** (56 FR 60537 at 60562)). At that time, FDA determined under § 25.24(a)(8) and (11) that the proposed action was of a type that does not individually or cumulatively have a significant impact on the human environment. No new information or comments have been received with respect to health claims for dietary supplements that would affect the agency's previous determination that there is no significant impact on the human environment, and that an environmental impact statement is not required.

C. Paperwork Reduction Act

In the dietary supplement proposal of June 18, 1993 (58 FR 33700 at 33714), FDA announced that the agency had submitted to the Office of Management and Budget (OMB) for its review the collection of information requirements contained in proposed § 101.70, for petitions regarding the use of health claims in conjunction with food labeling on dietary supplements. Also in that document, FDA published its estimated annual collection of information burden for this provision.

None of the more than 1,200 comments received in response to the dietary supplement proposal addressed the content of petitions under the proposed health claim petition requirements. Thus, the agency's estimate of the annual reporting and recordkeeping burden from the health claim petition requirements contained in this final rule remains unchanged from the estimate that it announced in June 1993.

FDA has submitted copies of the final rule to OMB for its review of these reporting requirements.

V. References

The following references have been placed on display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. House of Representatives, House Report 101–538, "Nutrition Labeling and Education Act of 1990," June 13, 1990.

1a. 136 Congressional Record—House H5843–5845, July 30, 1990.

2. 136 Congressional Record—House, H12951–12955, October 26, 1990.

3. 138 Congressional Record—House H12597 (October 8, 1992); 138 Congressional Record—Senate S17236 (October 7, 1992).

4. 136 Congressional Record—Senate, S16607–16612, October 24, 1990.

5. DHHS, PHS, "The Surgeon General's Report on Nutrition and Health," DHHS (PHS) Publication No. 88–50210 (GPO Stock No. 017–001–00465–1, U.S. Government Printing Office, Washington, DC), 1988.

6. United States Pharmacopeia DI, "NIACIN (Systemic)," 9th ed., 1989, Vol. IB, pp. 1737–1740.

7. Centers for Disease Control, "Recommendations for the Use of Folic Acid to Reduce the Number of Cases of Spina Bifida and Other Neural Tube Defects," *Morbidity and Mortality Weekly Reports*, September 11, 1992, volume 41/No. RR–14, pages 1–7.

List of Subjects in 21 CFR in Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 101 is amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.14 is amended by revising paragraph (a)(2), by adding a new paragraph (a)(4), and by revising paragraphs (b)(3)(i), (d)(1), (d)(3), the introductory text of paragraph (e) and (e)(6), and (g) to read as follows:

§ 101.14 Health claims: general requirements.

(a) * * *

(2) *Substance* means a specific food or component of food, regardless of whether the food is in conventional food form or a dietary supplement that includes vitamins, minerals, herbs, or other similar nutritional substances.

* * * * *

(4) Dietary supplement means a food, not in conventional food form, that supplies a component to supplement the diet by increasing the total dietary intake of that component.

* * * * *

(b) * * *

(3) * * *

(i) The substance must, regardless of whether the food is in conventional food form or dietary supplement form, contribute taste, aroma, or nutritive value, or any other technical effect listed in § 170.3(o) of this chapter, to the food and must retain that attribute when consumed at levels that are necessary to justify a claim; and

* * * * *

(d) General health claim labeling requirements. (1) When FDA determines that a health claim meets the validity requirements of paragraph (c) of this section, FDA will propose a regulation in subpart E of this part to authorize the use of that claim. If the claim pertains to a substance not provided for in § 101.9 or § 101.36, FDA will propose amending that regulation to include declaration of the substance.

* * * * *

(3) Nutrition labeling shall be provided in the label or labeling of any food for which a health claim is made in accordance with § 101.9; for restaurant foods, in accordance with § 101.10; or for dietary supplements of vitamins or minerals, in accordance with § 101.36. The requirements of the introductory text of paragraph (d)(3) of this section are effective as of May 8, 1993, except:

(i) [Reserved]

(ii) [Reserved]

(iii) For dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances for which the requirements of paragraph (d)(3) of this section will be effective July 5, 1994.

(e) *Prohibited health claims.* No expressed or implied health claim may be made on the label or in labeling for a food, regardless of whether the food is in conventional food form or dietary supplement form, unless:

* * * * *

(6) Except for dietary supplements, the food contains 10 percent or more of the Reference Daily Intake or the Daily Reference Value for vitamin A, vitamin C, iron, calcium, protein, or fiber per reference amount customarily consumed prior to any nutrient addition.

* * * * *

(g) *Applicability.* The requirements of this section apply to foods intended for human consumption that are offered for sale, regardless of whether the foods are in conventional food form or dietary supplement form.

§ 101.70(f) [Amended]

3. Section 101.70 is amended in paragraph (f) in the sample petition for a health claim, in the paragraph beginning with "The undersigned," by adding the words "or 403(r)(5)(D)" after "403(r)(4)".

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-31815 Filed 12-29-93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket No. 90N-0134]

RIN 0905-AD08

Food Labeling: Reference Daily Intakes

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to amend its regulations to establish Reference Daily Intakes (RDI's) for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum for use in declaring the nutrient content of a food on its label or labeling; change the units of measure for biotin, folate, calcium, and phosphorus; and make consideration of selenium, molybdenum, fluoride, and chromium optional when determining nutritional inferiority. The agency is taking this action to assist consumers in understanding the nutritional significance of the levels of these nutrients in the context of the total daily diet and in recognition of the fact that the National Academy of Sciences (NAS) has established Recommended Dietary Allowances (RDA's) or Estimated Safe and Adequate Daily Dietary Intakes (ESADDI's) for these nutrients.

DATES: Submit written comments by March 7, 1994. The agency is proposing that any final rule that may issue based on this proposal become effective 30 days after date of publication of that final rule.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Camille E. Brewer, Center for Food Safety and Applied Nutrition (HFS-165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5483.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of July 19, 1990 (55 FR 29476), in a document entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" (hereinafter referred to as the July 1990 proposal), FDA proposed to amend its food labeling regulations by revising and expanding the list of label reference values for nutrients in foods that it had established. This list was known as the "U.S. Recommended Daily Allowances" (U.S. RDA's) (§ 101.9(c)(7)(iv) (21 CFR 101.9(c)(7)(iv)). The agency proposed to replace the U.S. RDA's with RDI's for protein and 26 vitamins and minerals for which RDA's or ESADDI's were provided in the 9th and 10th Editions of NAS' "Recommended Dietary Allowances" (proposed § 101.9(c)(11)(iv) (56 FR 60366 at 60390)). FDA proposed to establish RDI's for vitamins and minerals for five groups: Adults and children 4 or more years of age, children less than 4 years of age, infants, pregnant women, and lactating women. It also proposed to establish Daily Reference Values (DRV's) for eight nutrients and food components (i.e., total fat, saturated fat, unsaturated fat, cholesterol, total carbohydrate, dietary fiber, sodium, and potassium) for adults and children 4 or more years of age.

During the comment period on this proposal, Congress passed, and the President signed into law, the Nutrition Labeling and Education Act of 1990 (Pub. L. 101-535) (hereinafter known as "the 1990 amendments"). In response to this new law, in the **Federal Register** of November 27, 1991 (56 FR 60366, and corrected at 57 FR 8178, March 6, 1992), FDA issued a document entitled "Food Labeling: Reference Daily Intakes and Daily Reference Values; Mandatory Status of Nutrition Labeling and Nutrient Content Revision" (hereinafter referred to as "the supplementary proposal"). In that document, FDA republished and supplemented the July 1990 proposal and a proposal on nutrition labeling that FDA had also published in July of 1990 to make clear that in the agency's view, with some modifications, these proposals addressed the requirements of the 1990 amendments.

FDA received approximately 800 responses to the July 1990 proposal, and approximately 700 responses to that part of the supplementary proposal that addressed the RDI's and DRV's, from trade and retail associations, government organizations, retailers, consumer groups, State groups, private organizations, professional societies, and universities. Each of the responses contained one or more comments. FDA summarized and reviewed these comments in the final rule entitled "Food Labeling; Reference Daily Intakes and Daily Reference Values" that it published in the **Federal Register** of January 6, 1993 (58 FR 2206, and corrected at 58 FR 17104, April 1, 1993) (hereinafter referred to as "the RDI/DRV final rule").

However, on October 6, 1992, before FDA issued a final rule in response to the July 1990 and the supplemental proposals, Congress passed the Dietary Supplement Act of 1992 (Pub. L. 102-571) (hereinafter referred to as the "DS act"). Section 202(a)(1) of the DS act established a moratorium on the implementation of the 1990 amendments with respect to dietary supplements of vitamins, minerals, herbs, or other similar nutritional substances (hereinafter referred to as "dietary supplements") until December 15, 1993. Section 203 of the DS act prohibited FDA from promulgating before November 8, 1993, regulations that require the use of, or that are based upon, recommended daily allowances of vitamins or minerals, other than regulations establishing the United States recommended daily allowances specified in § 101.9(c)(7)(iv) as in effect on October 6, 1992. The label values in § 101.9(c)(7)(iv) were based, to a large extent, on the 1968 RDA's and thus were almost 25 years old. Nonetheless, with its discretion constrained by section 203 of the DS act but faced with a need to establish a labeling scheme that manufacturers could implement as quickly as possible, FDA simply adopted the values in § 101.9(c)(7)(iv) as in effect in 1992 in its new regulations (see the RDI/DRV final rule).

However, this solution created a new set of problems. Section 101.9(c)(7)(iv) as in effect in 1992, and the 1968 RDA's that it was based on (Ref. 1), did not contain reference values for a number of nutrients that were included in the 1989 RDA's (Ref. 2). Thus, there is no provision in the RDI's for a number of nutrients whose importance for good nutrition has been generally accepted. To remedy this situation, FDA is proposing to establish RDI's for these nutrients.

FDA is not proposing to change the RDI levels for those nutrients for which it has already established RDI's. FDA recognizes that there is active debate within the scientific community as to the basis on which such levels should be established, and therefore, the agency considers it premature to modify its current levels. However, FDA believes that at least the list of nutrients for which it has RDI's, if not the RDI levels themselves, should reflect scientific consensus. Therefore, FDA is proposing to establish RDI's for seven additional nutrients.

II. Authority for Additional Label Reference Values

Section (2)(b)(1)(A) of the 1990 amendments states that nutrition label information shall be conveyed in a manner that, among other things, enables the public to understand its relative significance in the context of a total daily diet. In the legislative history of this provision, Congress stated that this provision requires the Secretary to specify requirements that would permit the consumer to understand the nutrition information pertaining to a particular food in relation to recommended dietary information (H. Rept. 101–538, 101st Cong., 2d sess. 18 (1990)). Thus, FDA has required that a presentation of the percent of the daily value of the nutrients listed in the nutrition label be a fundamental part of the nutrition label format (see 58 FR 2079 at 2123 through 2135). Given the approach that FDA has taken, it is clear that the more nutrients for which RDI's or DRV's are clearly established, the easier it will be for consumers to understand information about that nutrient in the context of the total daily diet.

In the RDI/DRV final rule, FDA stated that over the last 20 years, there have been significant advances in scientific knowledge with respect to essential nutrient requirements (58 FR 2206). In 1980, NAS established ESADDI values for vitamin K, biotin, pantothenic acid, copper, manganese, fluoride, chromium, selenium, molybdenum, sodium, potassium, and chloride for the first time (Ref. 3). These suggested intake values were based on less complete scientific data than the RDA values and were regarded as more tentative and evolutionary (Ref. 3). In 1989, NAS updated the values for vitamin K and selenium, making them RDA's rather than EASDDI's (Ref. 2). At that time, NAS continued to provide ESADDI values for manganese, fluoride, chromium, and molybdenum but dropped the suggested values for sodium, potassium, and chloride, giving instead estimated minimum requirements for healthy persons at various ages.

Thus, given the usefulness of RDI values in conveying the information that Congress has said should be conveyed by nutrition labeling, and given the fact that NAS has developed the basis for RDI's that are not included on the current list, FDA tentatively concludes that it is appropriate to establish reference values for these seven nutrients.

III. The Need for Change

Under § 101.9(c)(8) that becomes effective May 8, 1994, only those vitamins and minerals for which FDA has established label reference values may be listed in the nutrition labels of food in conventional food form. FDA proposed to take a similar position with respect to nutrition labeling of dietary supplements of vitamins and minerals (58 FR 33715, June 18, 1993). Several comments on the dietary supplement proposal argued, however, that because RDA's or ESADDI's have been established by NAS for vitamin K, selenium, manganese, fluoride, chromium, molybdenum, and chloride, manufacturers of dietary supplements of vitamins or minerals should be allowed to declare these nutrients in products' nutrition labels with an asterisk in the "Percent Daily Value" column. The comments suggested that the asterisk refer to a footnote stating "No Daily Value has been established."

Based on its consideration of these comments and because the format that FDA proposed for dietary supplements of vitamins and minerals provides for the listing of quantitative amounts for vitamins and minerals (in contrast to the format for the nutrition labeling of foods in conventional food form, which provides for only a listing of the percent of the daily value for each vitamin and mineral provided by the food), FDA provided for the listing of these nutrients in the manner that was suggested by these comments in the final rule entitled "Food Labeling; Requirement for Nutrient Content Claims for Dietary Supplements of Vitamins, Minerals, Herbs, and Other Similar Nutritional Substances," published elsewhere in this issue of the **Federal Register**. However, as an ultimate matter, FDA considers this solution to be deficient in two respects. First, even on dietary supplements of vitamins and minerals, this solution provides no basis for a declaration of the percent of the daily value for these nutrients, information that is, as stated above, important for consumers in putting the information presented in the nutrition label in the context of the total daily diet. Second, the agency's action with respect to dietary supplements of vitamins and minerals does nothing to provide information on the levels of these nutrients in foods whose labeling is subject to § 101.9.

Moreover, the comments on the proposed rule on nutrient content claims for dietary supplements (58 FR 33715 at 33731) pointed to a third type of problem created by the lack of reference values for the nutrients in question. Several of those comments requested that nutrient content claims be allowed for all vitamins or minerals for which NAS has established RDA's or ESADDI's. These comments could not be readily accommodated, however, because, as explained in the final rule on nutrient content claims for dietary supplements published elsewhere in this issue of the **Federal Register**, FDA's regulations define terms such as "high" and "good source" based on the RDI or DRV for the nutrient that is the subject of the claim. This approach has the advantage of linking nutrient content claims to established reference values that provide a consistent, quantitative basis for the claims. However, because the agency's current list of RDI's and DRV's does not reflect the entire list of nutrients for which dietary recommendations have been established, no claims can be made about nutrients whose essentiality is generally recognized unless the list of nutrients with RDI's is updated as quickly as possible.

Thus, FDA is proposing to establish RDI's for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum for three reasons. First, it will permit the declaration of these nutrients in the nutrition labeling of all foods. Second, it will permit consumers of dietary supplements of vitamins and minerals, as well as other foods that contain these nutrients in significant amounts, to understand the amount of these nutrients present in these products in the context of the total daily diet. Third, it will permit nutrient content claims to be made for these nutrients on all foods.

IV. The Proposed Rule

A. Basis for RDI's for Vitamin K, Selenium, Chloride, Manganese, Fluoride, Chromium, and Molybdenum

FDA has determined that NAS RDA's are an appropriate basis for label reference values. Strong and uniform support was provided for the use of NAS RDA's during the initial development of label reference values in 1972 as well as in response to the July 1990 proposal and the supplementary proposal. The agency continues to believe that these established nutrient allowances are the most widely accepted and respected source of information on human nutrient requirements and recommended intakes.

In proposing RDI's for these seven nutrients, the agency recognizes that if it adopts this proposal, some label reference values will be based on the 1968 NAS RDA's, while others will be based on the 1980 and 1989 NAS RDA's. The agency believes, however, that providing label information regarding the seven additional nutrients covered by the proposal would be useful to consumers in making healthy dietary choices. As discussed in the previous section, without RDI's, there can be no percent Daily Values expressed for these nutrients on the nutrition label, and nutrient content claims cannot be made for them. Therefore, FDA tentatively concludes that the advantages of having a reference value for all nutrients that NAS has found to be essential outweighs any disadvantages that derive from the fact that some of these values are more reflective of current scientific thinking than others.

As stated above, NAS is in the process of reevaluating the basis on which RDA's are determined. NAS is considering whether values should be selected to prevent deficiencies or to promote optimal wellness. The agency believes that any action to establish a set of RDI's with consistent derivation should await completion of the NAS process. FDA is committed to working with NAS to help resolve this issue.

B. Determination of Reference Amounts for Vitamin K, Selenium, Chloride, Manganese, Fluoride, Chromium, and Molybdenum

Based on its consideration of comments on the 1990 proposal and on the supplementary proposal, FDA determined in the RDI/DRV final rule that there is considerable support for the general approach of establishing label reference values for vitamins and minerals by selecting the highest NAS RDA value from among those for persons 4 or more years of age (excluding pregnant and lactating females) (58 FR 2206 at 2211). The comments stated that vulnerable or at-risk groups would be sufficiently covered by selecting the highest value. Therefore, in the RDI/DRV final rule, FDA tentatively determined that in establishing label reference values from NAS' RDA values, it would be appropriate to select the highest value from among those for adults and children 4 or more years of age, excluding values for pregnant females and lactating females (58 FR 2206 at 2211). FDA referred to this approach as the "population coverage approach."

FDA is proposing to use this approach in adopting RDI's for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum. In doing so, the agency is setting forth a quantitative amount as well as a unit of measure for each nutrient.

In regard to vitamin K, a review of the 1989 RDA values shows a range of recommended levels from 20 micrograms (μg) for children 4 to 6 years of age to 80 μg for adult males from 25 to 51+ years of age (Ref. 2). Accordingly, using the population coverage approach, FDA is proposing to adopt 80 μg as the RDI for vitamin K.

A review of the 1989 RDA values for selenium shows a range of recommended levels from 20 μg for children 4 to 6 years of age to 70 μg for adult males from 19 to 51+ years of age (Ref. 2). Using the population coverage approach, FDA is proposing to adopt 70 μg as the RDI for selenium.

A review of the 1980 ESADDI values for chloride shows a range from 700 to 2,100 milligrams (mg) for children 4 to 6 years of age to 1,700 to 5,100 mg for adults (Ref. 3). To be consistent with the population coverage approach being used for vitamins and minerals with RDA's, FDA said in the RDI/DRV final rule that when nutrients had ESADDI values, it would select the highest ESADDI within the specified age groups to serve as the label reference value. When the ESADDI value is presented as a range, FDA said it would use the midpoint of that range as the RDI. No comments were received that objected to this approach (58 FR 2206 at 2212). Therefore, in accordance with this procedure, FDA is proposing to adopt 3,400 mg (the midpoint between 1,700 to 5,100 mg) as the RDI for chloride.

A review of the 1989 ESADDI values for manganese shows a range from 1.5 to 2.0 mg for children 4 to 6 years of age to 2.0 to 5.0 mg for adults (Ref. 2). Consistent with the procedure discussed above, FDA is proposing to adopt 3.5 mg (the midpoint between 2.0 to 5.0 mg) as the RDI for manganese.

For fluoride, a review of the 1989 ESADDI values shows a range from 1.0 to 2.5 mg for children 4 to 6 years of age to 1.5 to 4.0 mg for adults. Consistent with the procedure discussed above, FDA is proposing to adopt 3.0 mg (rounding the midpoint between 1.5 to 4.0 mg, 2.75 mg, to 3.0 mg) as the RDI for fluoride.

For chromium, a review of the 1989 ESADDI values shows a range from 30 to 120 μg for children 4 to 6 years of age to 50 to 200 μg for adults and children 7 or more years of age. In accordance with the population coverage approach, FDA is proposing to adopt 130 μg (rounding the midpoint between 50 to 200 μg, 125 μg, to 130 μg) as the RDI for chromium.

Lastly, a review of the 1989 ESADDI values for molybdenum shows a range from 30 to 75 μg for children 4 to 6 years of age to 75 to 250 μg for adults and children 11 or more years of age. In accordance with the population coverage approach, FDA is proposing to adopt 160 μg (rounding the midpoint between 75 to 250 μg, 162.5 μg, to 160 μg) as the RDI for molybdenum.

In summary, FDA is proposing to amend § 101.9(c)(8)(iv) to include the following values:
Vitamin K, 80 micrograms
Selenium, 70 micrograms
Chloride, 3,400 milligrams
Manganese, 3.5 milligrams
Fluoride, 3.0 milligrams
Chromium, 130 micrograms
Molybdenum, 160 micrograms

One comment to the proposal on nutrition labeling for dietary supplements recommended that biotin and folate be declared in terms of micrograms, not milligrams, and that calcium and phosphorus be declared in terms of milligrams instead of grams. The comment stated that consumers are more familiar with these nutrients being expressed in this manner.

FDA proposed in 1990 (56 FR 29476) to use the units suggested by this comment. However, section 203 of the DS act limited the values that FDA could use in establishing RDI's to those contained in § 101.9(c)(7)(iv) until after November 8, 1993. Accordingly, as stated above, FDA adopted the current U.S. RDA values as the RDI's, with biotin and folate expressed in terms of milligrams, and calcium and phosphorus expressed in terms of grams. Public health guidelines and nutrition education efforts typically use the same units of measure as those found in the 10th Edition of NAS' RDA and repeated in the 1990 proposal. Therefore, the agency agrees with the comment that changing the current units of measure of biotin, folate, calcium, and phosphorus to those units specified in the 1990 proposal will facilitate consumer comprehension of quantitative nutrient information.

Therefore, FDA is proposing to amend § 101.9(c)(8)(iv) by changing the units of measure for biotin, folate, calcium, and phosphorus to the following:
biotin-micrograms
folate-micrograms
calcium-milligrams
phosphorus-milligrams

FDA points out that in following the provisions of the DS act and retaining the label reference values in current § 101.9(c)(7)(iv), it did not adopt label reference values in the RDI/DRV final rule for use on foods purported to be or represented for use by infants, children under 4 years of age, or pregnant or lactating women. Given the continuing questions about how to arrive at such values, FDA is deferring action on this

issue with respect to the issue of updating the RDI's. FDA intends to propose RDI's for all nutrients, including vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum, for infants, children under 4 years of age, and pregnant and lactating women in a future rulemaking.

As a result of the lack of reference values for infants, children under 4 years of age, and pregnant and lactating women, labels of dietary supplements of vitamins or minerals that are intended for these specific groups and that are regulated under § 101.36 (21 CFR 101.36) may continue to specify the milligram or microgram amounts of these nutrients with an asterisk in the percent Daily Value column. The asterisk would refer to a footnote stating "Daily Value not established." However, since milligram and microgram amounts are not listed for vitamins and minerals on labels of foods in conventional food form, until such time as RDA's are established for infants, children less than 4 years of age, and pregnant and lactating women, and barring a significant change in agency position in the final rule in this proceeding, the seven subject nutrients may not be declared on labels of foods in conventional food form that are represented or purported to be for use by these groups. FDA requests comment on whether or not this position is appropriate.

One possible alternative would be to allow foods in conventional food form that are represented or purported to be for use by infants, children less than 4 years of age, or pregnant and lactating women to list vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum when they are present in the food in more than insignificant amounts but without milligram or microgram amounts, only an asterisk that refers to a footnote stating that a Daily Value has not been established. This alternative would alert consumers to the presence of these nutrients in the food, although it would not give any indication of the amount present. FDA solicits comment on this and other alternative approaches.

C. Issues Concerning Specific Nutrients

1. GRAS Status of Selenium, Fluoride, and Chromium

In the RDI/DRV final rule, FDA reviewed several comments expressing concern about the GRAS status of selenium, fluoride, and chromium (58 FR 2206 at 2215). These comments centered primarily around issues of their use in supplements.

As the agency stated in the final rule on mandatory nutrition labeling (58 FR 2079 at 2170), decisions with regard to whether the use of sources of these nutrients is GRAS are outside the scope of this rulemaking. Any direct addition of these trace minerals to a food is based on the manufacturer's judgment that use of the nutrient sources is GRAS.

2. Alternative Products

The RDI/DRV final rule also addressed the effect of the label reference values on alternative products (e.g., reduced fat foods). One comment suggested that with a larger number of vitamins and minerals listed in § 101.9(c)(8), selected vitamins and minerals should be removed from the list of nutrients that, under § 101.3(e)(4)(ii) (21 CFR 101.3(e)(4)(ii)), must be present at the same level in a substitute food if that food is to be considered not nutritionally inferior to the food for which it substitutes and resembles (58 FR 2206 at 2225). The agency acknowledged that an increase in the number of nutrients for which label reference values (RDI's) are established would mean that efforts to obtain nutritional equivalency may require the addition of nutrients to substitute foods (58 FR 2206 at 2225).

In considering this comment, FDA acknowledged that there were no FDA-approved sources of selenium, fluoride, chromium or molybdenum for direct addition to foods (58 FR 2206 at 2225). Since there are no listed sources for these four nutrients, the agency stated in the RDI/DRV final rule that if RDI's had been established for these nutrients, FDA would have amended § 101.3(e)(4)(ii) to state that these nutrients are not required for nutritional equivalency (58 FR 2206 at 2225).

Having received no objections to this statement, FDA is proposing to amend § 101.3(e)(4)(ii) to state that selenium, molybdenum, fluoride, and chromium need not be considered in determining nutritional inferiority. If adopted, this amendment will mean that a product that substitutes for another food that contains at least 2 percent more of the RDI for selenium, molybdenum, fluoride, or chromium will not have to be fortified with these nutrients to avoid being an "imitation."

The agency feels compelled, however, to point out that there are circumstances in which adequate amounts of selenium, chromium, and molybdenum need to be supplied by particular foods because those foods may well be the sole item of the diet. These foods include infant formulas, medical foods, or total diet replacement formulas. The agency notes that selenium, molybdenum, and chromium have been used for several years in some infant formulas, medical foods, and total diet replacement product without apparent problems. Although the agency has not determined whether the use of certain compounds used by manufacturers of such products as sources of these nutrients is GRAS, FDA has not objected to these additions at levels that result in daily intakes that do not exceed the upper limits of the NAS' ESADDI's.

V. Conforming Amendments

The proposed revision of the nutrition labeling regulations in § 101.9 to provide RDI's for vitamin K, selenium, chloride, manganese, fluoride, chromium, and molybdenum necessitates that FDA revise § 101.36(b)(3), (b)(4), and (b)(4)(vi) as finalized in the document entitled "Food Labeling; General Requirements for Nutrition Labeling for Dietary Supplements of Vitamins, Minerals, Herbs, or Other Similar Nutritional Substances" published elsewhere in this issue of the **Federal Register**. Section 101.36(b)(3) specifically provides for vitamin K, chloride, chromium, fluoride, manganese, molybdenum, and selenium to be listed in the nutrition label of dietary supplements of vitamins and minerals when present and for quantitative amounts of the nutrients to be declared. Section 101.36(b)(4) states that no percent of Daily Value shall be given for these seven nutrients in the nutrition label, and § 101.36(b)(4)(vi) states that when no percent is given, an asterisk shall be placed in the "Percent Daily Value" column in the nutrition label that refers to another asterisk that is placed at the bottom of the nutrition label that is followed by the statement "Daily Value not established." FDA is proposing to amend § 101.36(b)(3) to remove all references to vitamin K, chloride, chromium, fluoride, manganese, molybdenum, and selenium. Because these nutrients are proposed to be included in § 101.9(c)(8)(iv), they will be permitted to be listed in nutrition labeling without specific provision.

With regard to § 101.36(b)(4) and (b)(4)(vi), once RDI's are established for vitamin K, chloride, chromium, fluoride, manganese, molybdenum, and selenium for adults and children 4 or more years of age, the percent Daily Value of these nutrients will be able to be calculated for this group. However, because RDI's are not being proposed for infants, children less than 4 years of age, and for pregnant or lactating women (as discussed in section IV.C.1. of this document), labels of products represented or purported to be for use by those groups will not be able to declare the percent Daily Value for these nutrients. Therefore, FDA is proposing to amend § 101.36(b)(4) and (b)(4)(vi) to provide for the use of an asterisk that will refer to the statement "Daily Value not established" for the seven subject nutrients on products represented or purported to be for use by infants, children less than 4 years of age, and pregnant or lactating women.

VI. Comments

Interested persons may, on or before July 7, 1994, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VII. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(11) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VIII. Economic Impact

FDA has examined the economic implications of the proposed rule amending 21 CFR as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96-354). Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches which maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act requires that agencies analyze options for regulatory relief for small businesses. FDA finds that this proposed rule is not a significant rule as defined by Executive Order 12866. In accordance with the Regulatory Flexibility Act, the agency certifies that the proposed rule will not have a significant impact on a substantial number of small businesses.

This proposed regulation allows manufacturers of foods in conventional food form and dietary supplements to declare certain nutrients within the nutrition panel and to make content claims about those nutrients. The proposal provides flexibility for those manufacturers who wish to disclose information about these seven nutrients without imposing requirements on those firms producing products without these nutrients. Manufacturers of food in conventional food form must change food labels if any of the nutrients are added to the product or if any claims are made. FDA is unsure of the extent to which this will occur. FDA believes that the costs of this regulation are minimal. This regulation will create benefits to the extent that the additional information allowed in nutrition labeling will help consumers make healthy dietary choices.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Food and Nutrition Board, Division of Biology and Agriculture, National Research Council, "Recommended Dietary Allowances, 7th ed., 1968," Publication 1694, Printing and Publishing Office, NAS, Washington, DC, 1968.

2. Subcommittee on the 10th Edition of the RDA's, Food and Nutrition Board, Commission on Life Sciences, National Research Council, "Recommended Dietary Allowances, 10th Edition," Washington, DC, National Academy Press, 1989.

3. Committee on Dietary Allowances, Food and Nutrition Board, Assembly of Life Sciences, National Research Council, "Recommended Dietary Allowances, 9th Revised ed., 1980," Washington, DC, National Academy Press, 1980.

List of Subjects in 21 CFR Part 101

Food labeling, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

1. The authority citation for 21 CFR part 101 continues to read as follows:

Authority: Secs. 4, 5, 6 of the Fair Packaging and Labeling Act (15 U.S.C. 1453, 1454, 1455); secs. 201, 301, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 342, 343, 348, 371).

2. Section 101.3, effective May 8, 1994, is amended by revising paragraph (e)(4)(ii) to read as follows:

§ 101.3 Identity labeling of food in packaged form.

* * * * *

(e) * * *

(4) * * *

(ii) For the purpose of this section, a measurable amount of an essential nutrient in a food shall be considered to be 2 percent or more of the Daily Reference Value (DRV) of protein listed under § 101.9(c)(7)(iii), of potassium listed under § 101.9(c)(9), and of the Reference Daily Intake (RDI) of any vitamin or mineral listed under § 101.9(c)(8)(iv), except that selenium, molybdenum, fluoride, and chromium need not be considered.

* * * * *

3. Section 101.9, effective May 8, 1994, is amended by revising paragraph (c)(8)(iv) to read as follows:

§ 101.9 Nutrition Labeling of foods.

* * * * *

(c) * * *

(8) * * *

(iv) The following RDI's and nomenclature are established for the following vitamins and minerals which are essential in human nutrition:
Vitamin A, 5,000 International Units.
Vitamin C, 60 milligrams.
Calcium, 1000 milligrams.
Iron, 18 milligrams.
Vitamin D, 400 International Units.
Vitamin E, 30 International Units.
Vitamin K, 80 micrograms.
Thiamin, 1.5 milligrams.
Riboflavin, 1.7 milligrams.
Niacin, 20 milligrams.
Vitamin B6, 2.0 milligrams.
Folate, 400 micrograms.
Vitamin B12, 6 micrograms.
Biotin, 300 micrograms.
Pantothenic Acid, 10 milligrams.
Phosphorus, 1000 milligrams.
Iodine, 150 micrograms.
Magnesium, 400 milligrams.
Zinc, 15 milligrams.
Selenium, 70 micrograms.
Copper, 2.0 milligrams.
Manganese, 3.5 milligrams.
Fluoride, 3.0 milligrams.
Chromium, 130 micrograms.
Molybdenum, 160 micrograms.
Chloride, 3,400 milligrams.

* * * * *

4. Section 101.36 is amended by revising paragraph (b)(3), (b)(4) introductory text, and (b)(4)(vi) to read as follows:

§ 101.36 Nutrition labeling of dietary supplements of vitamins or minerals.

* * * * *

(b) * * *

(3) A listing of all nutrients required in § 101.9(c) that are present in the dietary supplement in quantitative amounts by weight that exceed the amount that can be declared as zero in § 101.9(c). Those nutrients that are not present, or that are present in amounts

that would be declared as zero, shall not be declared. In addition, potassium shall be declared except when present in quantitative amounts by weight that allow a declaration of zero. The name of each nutrient listed shall be immediately followed by the quantitative amount by weight of the nutrient. Nutrient names and quantitative amounts shall be presented in a column under the heading "Amount Per Serving" and aligned on the left side of the nutrition label. The heading "Amount Per Serving" shall be separated from other information on the label by a bar above and beneath it, except that when calories are listed, the bar shall be placed beneath the calorie declaration. When the serving size of the product is one unit (e.g., 1 tablet), a heading consistent with the declaration of serving size, such as "Amount per Tablet" or "Each Tablet Contains," may be used in place of the heading "Amount per Serving." Other appropriate terms, such as capsule, packet, or teaspoonful, may be used in place of the term "Serving."

(4) A listing of the percent of the Daily Value (i.e., the percent of the RDI as established in § 101.9(c)(8)(iv) or DRV as established in § 101.9(c)(9)), where appropriate, of all nutrients listed in the nutrition label, except that the percent for protein may be omitted as provided in § 101.9(c)(7), no percent shall be given for sugars, and, for labels of dietary supplements of vitamins and minerals that are represented or purported to be for use by infants, children less than 4 years of age, or pregnant or lactating women, no percent shall be given for vitamin K, chloride, chromium, fluoride, manganese, molybdenum, or selenium. This information shall be presented in one column aligned under the heading of "% Daily Value" and to the right of the column of nutrient names and amounts. The headings "% Daily Value (DV)," "% DV," "Percent Daily Value," or "Percent DV" may be substituted for "% Daily Value." The heading "% Daily Value" shall be placed on the same line as the heading "Amount Per Serving" or placed beneath this heading and the bar underneath it, except that "% Daily Value" shall be placed beneath this bar when calorie information is required to be declared. Calorie information shall be placed beneath "Amount Per Serving" and above the bar.

* * * * *

(vi) When no percent is given for sugars, or, on labels of dietary supplements of vitamins and minerals that are represented or purported to be for use by infants, children less than 4 years of age, or pregnant or lactating women, when no percent is given for vitamin K, chloride, chromium, fluoride, manganese, molybdenum, or selenium, an asterisk shall be placed in the "% Daily Value" column that shall refer to another asterisk that is placed at the bottom of the nutrition label and followed by the statement "Daily Value not established."

* * * * *

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93N-0481]

RIN 0905-AB67

Food Labeling: Health Claims and Label Statements; Folate and Neural Tube Defects

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, in accordance with the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), as amended by the Dietary Supplement Act of 1992 (the DS act), the regulation proposed on October 14, 1993 (58 FR 53254), to authorize the use of a health claim about the relationship between folate and the risk of neural tube defects (NTD's) is now considered a final regulation for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (dietary supplements). The proposed regulation set out the information that must be included in such a health claim to ensure that it is an accurate representation of the effect of intake of folic acid on the risk of NTD's, and that any claims that are made are understandable, informative, and not misleading.

DATES: The final regulation will become effective on July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Judith W. Riggins, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831.

or

Jeanne I. Rader, Center for Food Safety and Applied Nutrition (HFS-175), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-205-5375.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing that, in accordance with section 3(b)(1)(A)(ii), (b)(1)(A)(x), and (b)(2) of the 1990 amendments as amended by the DS act (Pub. L. 102-571), the regulation proposed on October 14, 1993 (58 FR 53254), to authorize the use of a health claim about the relationship between folate and the risk of NTD's is now considered a final regulation for dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (dietary supplements).

II. Passage of 1990 Amendments

The 1990 amendments to the Federal Food, Drug, and Cosmetic Act (the act) (Pub. L. 101-535) gave the Secretary of Health and Human Services (the Secretary), and by delegation FDA, the authority to issue regulations authorizing health claims on the labels and in the labeling of foods. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act (21 U.S.C. 343(r)(3) and (r)(5)(D)).

The 1990 amendments also directed the Secretary to determine through rulemaking whether claims regarding 10 nutrient-disease relationships met the requirements of the act. The relationship of folic acid and NTD's was among those 10 topics (section 3(b)(1)(A)(x) of the 1990 amendments).

III. Chronology of Regulatory and Other Activities Related To Folate and Ntd's

A. The 1991 Proposed Rule

In the **Federal Register** of November 27, 1991 (56 FR 60537), FDA proposed to not authorize a health claim on folic acid and NTD's. The agency tentatively concluded that the available evidence did not establish that the standard that FDA had proposed for health claims for dietary supplements under section 403(r)(5)(D) of the act was met, that is, that there was not significant scientific agreement, based on the totality of publicly available scientific evidence, that the claim is valid.

B. The Public Health Service Recommendations

In September 1992, the Public Health Service (PHS) issued a recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 milligram (mg) of folic acid/day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other NTD's. The recommendation was based on data suggesting that folic acid, when given at a high dose (4 mg), can reduce the risk of recurrence of NTD's and on a synthesis of information from studies that used multivitamins containing folic acid at dose levels from 0 to 1,000 micrograms/day. The PHS recommendation identified approaches and identified outstanding issues, including the appropriate intake of folate, the potential role of other nutrients in reduction of risk of NTD's, safety concerns, and the "folate-preventable" fraction of NTD's.

C. The Dietary Supplement Act of 1992

In October 1992, the DS act was enacted. This statute imposed a moratorium on FDA's implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993. The DS act directed FDA to issue proposed rules to implement the 1990 amendments with respect to dietary supplements by June 15, 1993, and to issue final rules based on these proposals by December 31, 1993. The DS act also amended the so-called "hammer" provision of the 1990 amendments, section 3(b)(2) of the 1990 amendments, to provide that if the agency did not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations would be considered final regulations.

D. The 1993 Final Rules for Health Claims for Foods in Conventional Food Form

On January 6, 1993 (58 FR 2606), FDA published a final rule to not authorize a health claim for folic acid and NTD's. However, the agency reaffirmed its support of the PHS recommendation that all women of childbearing age in the United States who are capable of becoming pregnant should consume 0.4 mg of folic acid daily to reduce their risk of having a pregnancy affected with spina bifida or other NTD's. The agency noted, however, that unresolved questions about the safe use of folate remained. The agency concluded that it could not authorize a health claim until these questions were resolved. Because of the DS act, FDA took no final action with respect to the use of a health claim on folic acid and NTD's on dietary supplements.

E. The 1993 Proposal to Authorize a Health Claim on Folic Acid and NTD's

On October 14, 1993, FDA published a proposed rule to authorize the use of a health claim about the relationship of folate and NTD's on the labels of foods in conventional food form and dietary supplements (58 FR 53254). FDA provided 60 days for comment on this proposed action. The comment period closed on December 13, 1993.

Section 3(b)(2) of the 1990 amendments, as amended by section 202(a)(2)(B)(ii) of the DS act, provides that if the Secretary does not promulgate final regulations on any of the health claims applicable to dietary supplements in a timely manner, the proposed regulations shall be considered final regulations but not

until December 31, 1993. FDA did not issue a final regulation on the use of a health claim on folic acid and NTD's on dietary supplements by December 31, 1993. Therefore, FDA is issuing this document announcing that by operation of the law, the proposal to authorize a health claim about the relationship of folate and NTD's published in the **Federal Register** of October 14, 1993, is now considered a final regulation applicable to the labels and labeling of dietary supplements only. The agency proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

2. Section 101.71 *Health claims: claims not authorized* is amended by removing paragraph (c) and by redesignating paragraphs (d) through (f) as (c) through (e), respectively.

3. New § 101.79 is added to subpart E to read as follows:

§ 101.79 Health claims: folate and neural tube defects.

(a) *Relationship between folate and neural tube defects*—(1) *Definition.* Neural tube defects are serious birth defects of the brain or spinal cord that can result in infant mortality or serious disability. The birth defects anencephaly and spina bifida are the most common forms of neural tube defects and account for about 90 percent of these defects. These defects result from failure of closure of the covering of the brain or spinal cord during early embryonic development. Because the neural tube forms and closes during early pregnancy, the defect may occur before a woman realizes that she is pregnant.

(2) *Relationship.* The available data show that diets adequate in folate may reduce the risk of neural tube defects. The strongest evidence for this relationship comes from an intervention study by the Medical Research Council of the United Kingdom that showed that women at risk of recurrence of a neural tube defect pregnancy who consumed a supplement containing 4 milligrams (mg) (4,000 micrograms (μg)) folic acid daily had a reduced risk of having a child with a neural tube defect. (Products that contain this level of folic acid are drugs.) In addition, based on its review of a Hungarian intervention trial that used a multivitamin and multimineral preparation containing 800 μg (0.8 mg) of folic acid, and its review of the observational studies that reported use of multivitamins containing 0 to 1,000 μg of folic acid, the Food and Drug Administration concluded that most of these studies had results consistent with the conclusion that folate, at levels attainable in usual diets, may reduce the risk of neural tube defects.

(b) *Significance of folate*—(1) *Public health concern.* Neural tube defects occur in approximately 0.6 of 1,000 live births in the United States (i.e., about 2,500 cases among 4 million live births annually). Neural tube defects are believed to be caused by many factors. The single greatest risk factor for a neural tube defect-affected pregnancy is a personal or family history of a pregnancy affected with a such a defect. However, about 90 percent of infants with a neural tube defect are born to women who do not have a family history of these defects. The available evidence shows that diets adequate in folate may reduce the risk of neural tube defects but not of other birth defects.

(2) *Populations at risk.* Prevalence rates for neural tube defects have been reported to vary with a wide range of factors, including genetics, geography, socioeconomic status, maternal birth cohort, month of conception, race, nutrition, and maternal health, including maternal age and reproductive history. Women with a close relative (i.e., sibling, niece, nephew) with a neural tube defect, those with insulin-dependent diabetes mellitus, and women with seizure disorders who are being treated with valproic acid or carbamazepine are at significantly increased risk compared with women without these characteristics. Rates for neural tube defects vary within the United States, with lower rates observed on the west coast than on the east coast.

(3) *Those who may benefit.* Based on a synthesis of the results of several observational studies, the Public Health Service has estimated that about 50 percent of neural tube defect-affected pregnancies in the United States (e.g., about 1,250) may be averted annually if all women consume adequate amounts of folate daily (i.e., 0.4 mg) throughout their childbearing years.

(c) *Requirements.* The label or labeling of food in conventional food form or dietary supplements may contain a folate/neural tube defect health claim provided that:

(1) *General requirements.* The health claim for a food or supplement meets all of the general requirements of § 101.14 for health claims, except that a food or dietary supplement may qualify to bear the health claim if it meets the definition of the term "good source."

(2) *Specific requirements*—(i) *Nature of the claim*—(A) *Relationship.* A health claim that women who are capable of becoming pregnant and who consume adequate amounts of folate daily during their childbearing years may reduce their risk of having a pregnancy affected by spina bifida or other neural tube defects may be made on the label or labeling of foods in conventional food form or of dietary supplements provided that:

(B) *Specifying the nutrient.* In specifying the nutrient, the claim shall use the terms "folate," "folic acid," "folacin," "folate, a B vitamin," "folic acid, a B vitamin," or "folacin, a B vitamin."

(C) *Specifying the condition.* In specifying the health-related condition, the claim shall identify the birth defects as "neural tube defects," "birth defects, spina bifida, or anencephaly," "birth defects of the brain or spinal cord anencephaly or spina bifida," or "spina bifida or anencephaly, birth defects of the brain or spinal cord;"

(D) *Multifactorial nature.* The claim shall state that neural tube defects have many causes and shall not imply that folate intake is the only recognized risk factor for neural tube defects.

(E) *Prevalence.* In specifying the prevalence of neural tube defects among women in the general population, the claim shall state that such birth defects "which, while not widespread, are extremely significant" or "* * * birth defects * * * that, while not widespread, are extremely significant."

(F) *Reduction in risk.* The claim shall not attribute any specific degree of reduction in risk of neural tube defects, including mention of the Public Health Service estimate that 50 percent of neural tube defects may be averted annually, to maintaining an adequate folate intake throughout the childbearing years. The claim shall state that some women may reduce their risk of a neural tube defect pregnancy by maintaining adequate intakes of folic acid during their childbearing years.

(G) *Safe upper limit of daily intake.* Claims on fortified foods in conventional form and on dietary supplements that contain more than 25 percent of the RDI for folate (100 μg per serving or per unit) shall state that 1 mg folate per day is the safe upper limit of intake (e.g., "Folate consumption should be limited to 1,000 μg per day from all sources.")

(H) *The claim.* The claim shall not state that a specified amount of folate (e.g., 400 μg in a dietary supplement) is more effective in reducing the risk of neural tube defects than a lower amount (e.g., 100 μg in a breakfast cereal or from diets rich in fruits and vegetables).

(ii) *Nature of the food*—(A) *Requirements.* The food or supplement shall meet or exceed the requirements for a good source of folate as defined in § 101.54;

(B) *Diets adequate in folate.* The claim shall identify diets adequate in folate by using phrases such as "* * * diets that include 2 to 4 servings per day of fruits) including citrus fruits and juices), 3 to 5 servings of vegetables (including dark green leafy vegetables and legumes), 6 to 11 servings of enriched grain products (such as breads, rice, and pasta) and fortified cereals. Such diets provide many essential minerals and vitamins, including folate. Women who do not eat well-balanced diets or who may be concerned about their diets may choose to obtain folate from dietary supplements."; or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables and legumes, enriched grain products, including breads, rice, and pasta, fortified cereals, or a dietary supplement."; or "Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or from dietary supplements."

(C) *Dietary supplements.* Dietary supplements shall meet the United States Pharmacopeia (U.S.P.) standards for disintegration and dissolution, except that if there are no applicable U.S.P. standards, the folate in the dietary supplement shall be shown to be bioavailable under the conditions of use stated on the product label.

(iii) *Limitation.* The claim shall not be made on foods in conventional food form or dietary supplements that contain more than 100 percent of the RDI for vitamin A as retinol or preformed vitamin A or vitamin D.

(iv) *Nutrition labeling.* The nutrition label shall include information about the amount of folate in the food. This information shall be declared after the declaration for iron if only the levels of vitamin A, vitamin C, calcium, and iron are provided, or in accordance with § 101.9(c)(8) and (c)(9) if other optional vitamins or minerals are declared.

(3) *Optional information*—(i) *Risk factors.* The claim may specifically identify risk factors for neural tube defects;

(ii) *Relationship between folate and neural tube defects.* The claim may include statements from paragraphs (a) and (b) of this section that summarize the relationship between folate and neural tube defects and the significance of the relationship except for information specifically prohibited from the claim.

(iii) *Personal history of a neural tube defect-affected pregnancy.* The claim may state that women with a history of a neural tube defect pregnancy should consult their physicians or health care providers before becoming pregnant.

(iv) *Daily value.* The claim may identify the daily value level of 400 μg of folate per day as the target intake goal.

(d) *Model health claims.* The following are examples of model health claims that may be used in food labeling to describe the relationship between folate and neural tube defects:

(1) *Example 1.* Women who consume adequate amounts of folate, a B vitamin, daily throughout their childbearing years may reduce their risk of having a child with a neural tube birth defect. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or a supplement. Folate consumption should be limited to 1,000 μg per day from all sources.

(2) *Example 2.* Women who consume adequate amounts of folate daily throughout their childbearing years may reduce their risk of having a child with a birth defect of the brain and spinal cord. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, dark green leafy vegetables and legumes, enriched grain products, fortified cereals, or a supplement. Women who have had a child with a spinal cord birth defect should consult a physician before becoming pregnant. Folate consumption should be limited to 1,000 μg per day from all sources.

(3) *Example 3.* Women who take steps to ensure that their folate intake is adequate throughout their childbearing years may reduce their risk of having a child with a neural tube defect. Such birth defects, while not widespread, are very serious. They can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in citrus fruits and juices, dark green leafy vegetables and legumes, enriched grain products such as breads, rice, and pasta, fortified cereal, or a supplement. Folate consumption should be limited to 1,000 μg per day from all sources.

(4) *Example 4.* Women who take steps to ensure that their folate intake is at least 400 μg daily throughout their childbearing years may reduce their risk of having a child with spina bifida or anencephaly, birth defects of the brain or spinal cord that, while not widespread, are very serious. These birth defects can have many causes. Adequate amounts of folate, a B vitamin, can be obtained from diets rich in fruits, including citrus fruits and juices, vegetables, including dark green leafy vegetables and legumes, enriched grain products, including breads, rice, and pasta, fortified cereals, or from a supplement. Women who have had a pregnancy affected with a neural tube defect should consult a physician before becoming pregnant. Folate consumption should be limited to 1,000 μg per day from all sources.

(5) *Example 5.* Some women who consume the Daily Value of folate (400 μg) throughout their childbearing years may reduce their risk of having a child affected with spina bifida or anencephaly, birth defects of the brain or spinal cord that, while not widespread, are very serious. These birth defects can have many causes. Women of childbearing age should choose well-balanced diets that include 2 to 4 servings per day of fruits (including citrus fruits and juices), 3 to 5 servings of vegetables (including dark green leafy vegetables and legumes), 6 to 11 servings of enriched grain products (such as breads, rice, and pasta) or fortified cereals throughout their childbearing years. Such diets provide many essential minerals and vitamins, including folate. Women who may be concerned about their diets may choose to obtain folate from a supplement. Folate consumption should be limited to 1,000 μg per day from all sources.

(e) *Effective date.* For fortified foods, this regulation is effective on the date the food additive regulation on the use of folic acid that was proposed on October 14, 1993, becomes effective.

The 1990 amendments state that FDA is to promptly publish notice of the new status of the proposed regulations in the **Federal Register.** This notice is issued in response to that requirement. The agency emphasizes, however, that this regulation is deemed to be a final regulation only with respect to dietary supplements.

The agency notes that this document is part of a separate rulemaking contemplated by Congress if the final regulation was not issued by December 31, 1993. This rulemaking bears a separate docket number from the one assigned to the October 14, 1993 rulemaking to distinguish it from that rulemaking, which is ongoing. The agency intends to continue its rulemaking with respect to folic acid and neural tube defects and to issue a final rule as quickly as possible.

In this regard, FDA recognizes that clarification with respect to the legal status of claims about folic acid and

NTD's on foods in conventional food form is appropriate. FDA advises that, given the PHS recommendation and the results of FDA's preliminary review of the evidence on this claim, at this time it has no intention of taking action against foods in conventional food form that are naturally high in folate that bear a claim on this nutrient-disease relationship, so long as the claim fully complies with the provisions of the regulation that has become final for dietary supplements by operation of law.

However, for foods fortified with folic acid, the agency has more significant concerns. As explained in the health claim proposal on folic acid and NTD's (58 FR 53254 at 53288) and the proposal to amend the food additive regulation on folic acid that published in the Federal Register on October 14, 1993 (58 FR 53312), there appears to be a rather narrow range of safe use of folic acid in food. Based on this tentative view, FDA would be very concerned, at least until it reached a final determination in those proceedings, if manufacturers began adding folic acid to their products, or increasing the amount of folic acid in their products, to qualify for a claim. Therefore, FDA strongly discourages the use of a health claim about folic acid and NTD's on any such fortified products pending the issuance of a final rule on this nutrient-disease relationship.

As stated above, FDA intends to issue a final rule in the proceeding on a health claim on folic acid and NTD's that it began on October 14, 1993, in the near future. FDA is in the process of evaluating the comments that it has received in that proceeding, including the results of an advisory committee meeting held on October 14 and 15. FDA will attempt to resolve the issues in that ongoing proceeding as soon as possible.

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-31817 Filed 12-29-93; 8:45 am]

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Food Labeling; Health Claims for Dietary Supplements

[Docket Nos. 93N-480F, 93N-480C, 93N-480O, 93N-480A, and 93N-480Z]

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that, in accordance with the Nutrition Labeling and Education Act of 1990 (the 1990 amendments), as amended by the Dietary Supplement Act of 1992 (the DS act), the change in its regulations that it proposed on October 14, 1993 (58 FR 53296 through 53305), to reflect its tentative decision not to authorize health claims relating an association between dietary fiber and cancer; dietary fiber and cardiovascular disease (CVD); antioxidant vitamins and cancer; omega-3 fatty acids and coronary heart disease (CHD); and zinc and immune deficiency in the elderly on the labels and in the labeling of dietary supplements of vitamins, minerals, herbs, and other similar nutritional substances (dietary supplements) is now considered a final regulation.

DATES: The final regulation will become effective on July 1, 1994.

FOR FURTHER INFORMATION CONTACT: Judith W. Riggins, Office of Policy (HF-23), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-2831,

or

John N. Hathcock, Center for Food Safety and Applied Nutrition (HFS-465), Food and Drug Administration, 8301 Muirkirk Rd., Laurel, MD 20708, 301-594-6006.

SUPPLEMENTARY INFORMATION:

I. Background

FDA is announcing that, in accordance with section 3(b)(1)(A)(ii), (b)(1)(A)(vi), (b)(1)(A)(x), and (b)(2) of the 1990 amendments (Pub. L. 101-535), as amended by the DS act (Pub. L. 102-571), the change in its regulations that it proposed on October 14, 1993 (58 FR 53296 through 53305), to reflect its tentative decision not to authorize health claims relating an association between dietary fiber and cancer (Docket No. 93N-480F); dietary fiber and CVD (Docket No. 93N-480C); antioxidant vitamins and cancer (Docket No. 93N-480A); omega-3 fatty acids and CHD (Docket No. 93N-480O); and zinc and immune deficiency in the elderly (Docket No. 93N-480Z) on the labels and in the labeling of dietary supplements is now considered a final regulation.

II. Passage of 1990 Amendments

The 1990 amendments to the Federal Food, Drug, and Cosmetic Act (the act) gave the Secretary of Health and Human Services (the Secretary), and by delegation FDA, the authority to issue regulations authorizing health claims on the labels and in the labeling of foods. Section 403(r)(1)(B) of the act (21 U.S.C. 343(r)(1)(B)) provides that a product is misbranded if it bears a claim that characterizes the relationship of a nutrient to a disease or health-related condition, unless the claim is made in accordance with procedures and standards established under section 403(r)(3) and (r)(5)(D) of the act (21 U.S.C. 343(r)(3) and (r)(5)(D)).

The 1990 amendments also directed the Secretary to determine through rulemaking whether claims regarding 10 nutrient-disease relationships meet the requirements of the act. Dietary fiber and cancer, dietary fiber and CVD, antioxidant vitamins and cancer, zinc and immune function in the elderly, and omega-3 fatty acids and CHD were among the topics that FDA was directed to evaluate under section 3(b)(1)(A)(vi) and (b)(1)(A)(x) of the 1990 amendments.

III. The 1991 Health Claims Proposals

In the Federal Register of November 27, 1991, FDA proposed not to authorize health claims on dietary fiber and CVD (56 FR 60582); dietary fiber and cancer (56 FR 60566); antioxidant vitamins and cancer (56 FR 60624); zinc and immune function in the elderly (56 FR 60652); and omega-3 fatty acids and CHD (56 FR 60663). The agency tentatively concluded that the available evidence did not establish that the standard that FDA had proposed for health claims for dietary supplements under section 403(r)(5)(D) of the act was met, that is, the agency tentatively concluded that there was not significant scientific agreement, based on the totality of publicly available scientific evidence that these claims are valid.

IV. The Dietary Supplement Act of 1992

In October 1992, the DS act was enacted. This statute imposed a moratorium on FDA's implementation of the 1990 amendments with respect to dietary supplements until December 15, 1993 (although the DS act did provide that FDA could authorize claims for dietary supplements before that date). The DS act directed FDA to issue proposed rules to implement the 1990 amendments with respect to dietary supplements by June 15, 1993, and to issue final rules based on these proposals by December 31, 1993. The DS act also amended the so-called "hammer" provision of the 1990 amendments, section 3(b)(2) of the 1990 amendments, to provide that if the agency did not meet the established December 31, 1993, timeframe for issuance of final rules, the proposed regulations would be considered final regulations.

V. The 1993 Final Rules For Health Claims For Foods in Conventional Food Form

On January 6, 1993, FDA published final rules on the general requirements for health claims on the labels and in the labeling of foods in conventional food form (58 FR 2478), and final rules authorizing health claims on seven nutrient-disease relationships (calcium and osteoporosis; fat and cancer; saturated fat and cholesterol and CHD; fiber-containing grain products, fruits, and vegetables and cancer; fruits, vegetables, and grain products that contain fiber and risk of CHD; and fruits and vegetables and cancer). Three of the health claims that FDA authorized were for fresh fruits and vegetables and grains, and thus these claims were not authorized for dietary supplements. Because of the DS act, FDA took no final action with respect to the use on dietary supplements of health claims on dietary fiber and cancer; dietary fiber and CVD; omega-3 fatty acids and CHD; zinc and immune function in the elderly; and antioxidant vitamins and cancer. (The agency's actions with respect to health claims involving folic acid and neural tube defects are described in a notice published elsewhere in this issue of the Federal Register.)

VI. The 1993 Proposal to Not Authorize Health Claims For Dietary Supplements

On October 14, 1993, FDA published a proposal to not authorize health claims on the labels of dietary supplements on five nutrient-disease relationships: Dietary fiber and cancer; dietary fiber and CVD; antioxidant vitamins and cancer; omega-3 fatty acids and CHD; and zinc and immune function in the elderly (58 FR 53296). FDA provided 60 days for comment on this proposed action. Thus, the comment period closed on December 13, 1993.

Section 3(b)(2) of the 1990 amendments, as amended by section 202(a)(2)(B)(ii) of the DS act, provides that if the Secretary does not promulgate final regulations on any of the health claims applicable to dietary supplements in a timely manner, the proposed regulations shall be considered final regulations but not until after December 31, 1993. FDA did not issue final regulations on the use of health claims on dietary supplements on dietary fiber and cancer; dietary fiber and CVD; antioxidant vitamins and cancer; omega-3 fatty acids and CHD; and zinc and immune function in the elderly by December 31, 1993. Therefore, FDA is issuing this document announcing that by operation of law, the change in its regulations that FDA proposed to reflect a decision not to authorize health claims about the relationships of dietary fiber and cancer; dietary fiber and CVD; antioxidant vitamins and cancer; omega-3 fatty acids and CHD; and zinc and immune function in the elderly, published in the October 14, 1993, Federal Register, is now considered a final regulation by operation of law. The agency proposed that 21 CFR part 101 be amended as follows:

PART 101—FOOD LABELING

2. Section 101.71 is amended by revising the introductory text to read as follows:

§ 101.71 Health claims: claims not authorized.

Health claims not authorized for foods in conventional food form or for dietary supplements of vitamins, minerals, herbs, or other similar substances:

* * * * *

The 1990 amendments state that FDA is to promptly publish notice of the new status of the proposed change in its regulations in the Federal Register. This notice is issued in response to that requirement.

The agency notes that this rulemaking constitutes a separate rulemaking from that instituted with respect to the five nutrient-disease relationships on October 14, 1993. This separate rulemaking was contemplated by Congress if a final rule was not issued by December 31, 1993. The agency notes, however, that the October 14, 1993, rulemaking remains ongoing.

In particular, with regard to antioxidant vitamins and cancer, on November 1 through 3, 1993, FDA held a public conference on this nutrient-disease relationship. (The conference also covered antioxidant vitamins and CVD.) The transcript of that meeting has been submitted to the Docket as a comment, and other comments were solicited in the announcement of the conference (58 FR 54595, October 22, 1993). FDA intends to consider all comments and data received at this conference. FDA intends to take any actions that it concludes are warranted by this information either in the ongoing rulemaking on an antioxidant vitamins and cancer claim for dietary supplements or, if the agency concludes that it is appropriate, in a separate rulemaking.

Dated: December 23, 1993.

David A. Kessler,

Commissioner of Food and Drugs.

Donna E. Shalala,

Secretary of Health and Human Services.

[FR Doc. 93-31818 Filed 12-29-93; 8:45 am]

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Part III

Department of Commerce

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

Endangered and Threatened Species; Status of Sacramento River Winter-run Chinook Salmon; Final Rule

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 222 and 227

[Docket No. 930779–3330; I.D. 051192B]

Endangered and Threatened Species; Status of Sacramento River Winter-run Chinook Salmon

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS has determined that the Sacramento River winter-run chinook salmon should be reclassified from threatened to endangered under the Endangered Species Act of 1973 (ESA). NMFS has determined that the current biological status of the species is endangered based on the continued decline and increased variability of run sizes since its first listing as a threatened species in 1989, the expectation of weak returns in certain years as the result of two small year classes (1991 and 1993), and continuing threats to the population. Although measures implemented through consultations conducted under section 7 of the ESA and State and Federal regulatory actions are designed to reduce adverse impacts on the species, quantifiable improvements in population levels are not likely to be evident for several years. NMFS will continue to closely monitor the status of this population, and evaluate the protective measures to determine whether there is evidence that these measures have reduced or eliminated threats to the species and whether a change in status may be warranted.

EFFECTIVE DATES: February 3, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Lecky, NMFS, Southwest Region, Protected Species Management Division, 501 W. Ocean Blvd., suite 4200, Long Beach, CA, 90802–4213, (310) 980–4015, or Margaret Lorenz, NMFS, Office of Protected Resources, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2322.

SUPPLEMENTARY INFORMATION:

Background

Under the ESA and its implementing regulations (50 CFR part 424), an "endangered species" is any species that is in danger of extinction throughout all or a significant portion of its range. A "threatened species" is any species that is likely to become an endangered species within the foreseeable future throughout all or a significant portion of its range. Based on a review of the status of the Sacramento River winter-run chinook salmon and the factors affecting the species, NMFS has determined that it is endangered.

The Sacramento River winter-run chinook salmon is a unique population that is distinguishable from other chinook salmon runs in the Sacramento River based on the timing of its upstream migration and spawning period. For the most part, the winter-run chinook salmon population is comprised of three year classes, each of which primarily returns to spawn as 3-year old fish.

The best available data on winter-run chinook salmon abundance are the annual estimates of the spawning run size made by the California Department of Fish and Game (CDFG) based on counts of fish passing the Red Bluff Diversion Dam. The CDFG began estimating the annual run size for winter-run chinook salmon in 1967 after the Dam was placed in operation. This time series of annual run size estimates has documented a precipitous decline in the winter-run chinook salmon to its present low level (Table 1).

TABLE 1.—ANNUAL ESTIMATED RUN SIZE AT RED BLUFF DIVERSION DAM

Year	Number of Fish
1967	57,306
1968	84,414
1969	117,808
1970	40,409
1971	53,089
1972	37,133
1973	24,079
1974	21,897
1975	23,430
1976	35,096
1977	17,214
1978	24,862
1979	2,364
1980	1,156
1981	20,041
1982	1,242
1983	1,831
1984	2,663
1985	3,962
1986	2,422
1987	2,236
1988	2,085
1989	547
1990	441
1991	191
1992	1,180
1993	341

In 1989, the CDFG estimated that the winter-run chinook salmon run size was only 547 fish. This unexpectedly small return represented nearly a 75 percent decline from the consistent, but low, run size of 2,000 to 3,000 fish that had occurred since 1982. As a result of this unexpected decline, NMFS issued an emergency interim rule listing the winter-run chinook salmon as threatened under the ESA on August 4, 1989 (54 FR 32085). During the period the emergency interim rule was in effect, NMFS published a proposed rule to list winter-run chinook salmon as threatened under the formal listing procedures of the ESA on March 20, 1990 (55 FR 10260). To avoid a hiatus in protection of the species until the formal listing process was completed, NMFS published a second emergency interim rule listing winter-run chinook salmon as threatened on April 2, 1990 (55 FR 12191). On November 5, 1990, NMFS completed the formal listing process and published a final rule (55 FR 46515) listing the species as threatened under the ESA.

On June 5, 1991, the American Fisheries Society petitioned NMFS to reclassify winter-run chinook salmon as an endangered species. At the time the petition was submitted, the best preliminary data available indicated that the 1991 run would consist of a return of only 88 to 200 adults from the progeny of the 1988 run of 2,085 fish. The final run size estimate made by the CDFG for 1991 was 191 fish (Table 1). NMFS reviewed the petition and determined that it contained substantial information indicating that the petitioned action might be warranted. On November 7, 1991, NMFS announced (56 FR 58986) its intention to review the status of the species to determine whether reclassification was appropriate. After conducting a status review, NMFS published a proposed rule (57 FR 27416) on June 19, 1992, to reclassify winter-run chinook salmon as endangered.

NMFS published a subsequent **Federal Register** notice (58 FR 31688) on June 4, 1993, delaying the issuance of a final determination on the reclassification for up to six months pursuant to section 4(b)(6)(B) of the ESA. On September 10, 1993, NMFS published another **Federal Register** notice that provided information on the 1993 run size estimate (341 fish) and reopened the public comment period on the proposed rule.

This determination does not change any of the prohibitions against taking Sacramento River winter-run chinook salmon. Section 9 of the ESA prohibits taking endangered species. The regulations issued when this species was listed as threatened in November 1990 also prohibit taking.

In a separate rulemaking, the U.S. Fish and Wildlife Service (FWS), which

is responsible for the List of Endangered and Threatened Wildlife, will revise the list to reflect the reclassification of this species from threatened to endangered.

Current Status

Conservation measures were implemented by the Bureau of Reclamation (Bureau) beginning in 1986–1987 in an effort to improve adult passage conditions for winter-run chinook salmon at Red Bluff Diversion Dam and to provide suitable spawning and egg incubation conditions for the species in the upper Sacramento River below Keswick Dam. Despite the implementation of measures in 1986–1987 and 1987–1988, the winter-run chinook salmon run size declined to 441 fish in 1990 and to 191 fish in 1991. The estimated 1991 run size of 191 fish was primarily the result of surviving progeny from the 1988 spawning population of 2,085 fish. Thus, the 1991 spawning escapement represented nearly a 90 percent decline in a single generation, and suggested that the 1988 year class was nearly a total failure (57 FR 27416).

In 1992, the CDFG estimated that the winter-run chinook salmon run size increased to 1,180 fish. This run size was substantially higher than the runs estimated in 1989 (547 fish), 1990 (441 fish), and 1991 (191 fish), and it represented more than a 100 percent increase in the spawning population in a single successive generation since the 1992 run was comprised primarily of the surviving progeny from the 1989 run. In 1989, the Bureau implemented conservation measures to manage upper Sacramento River water temperatures and provide improved fish passage at the Red Bluff. As a result of these actions, temperature conditions were much improved with favorable water temperatures occurring from Keswick Dam to Bend Bridge (44 miles downstream) during almost the entire spawning and egg incubation period. Spawning ground surveys in 1989 also indicated that nearly 100 percent of the estimated run spawned in this 44-mile river reach where water temperature was favorable. As a result of these factors, temperature-related mortality was minimal in 1989. The substantial increase in the 1992 run size suggests that the measures implemented to protect winter-run chinook salmon in 1989 were effective, and that similar or more protective measures may be successful in the future.

In 1993, the CDFG estimated the winter-run chinook salmon run size to be 341 fish. This represented nearly a 30 percent decline of the run size in one generation. NMFS had anticipated that the run size would likely decline in 1993 because the 1990 spawning population (441 fish) experienced less favorable water temperature conditions during spawning and egg incubation, and more of the run spawned downstream from the river reach where temperatures could be suitably managed by the Bureau. In 1990, as a result of continued drought conditions and high ambient temperatures, favorable water temperatures for spawning and egg incubation were present only from Keswick Dam to the Balls Ferry Bridge (26 miles downstream) during a portion of the egg incubation period. In addition, spawning distribution surveys indicated that nearly 10 percent of the run spawned downstream from Balls Ferry where temperatures were not favorable. Therefore, temperature-related mortality was substantially higher in 1990 than in 1989. In addition to less favorable temperature conditions, it is possible that conditions for outmigrants were less than favorable, and that ocean survival of the 1990 year class was reduced by the El Nino event that began in 1991–92.

Since the winter-run chinook salmon was formally listed as threatened in November 1990 (55 FR 46515), the species run size has continued to decline, with the exception of 1992, and exhibit considerable variability (Table 1). Although some protective measures were implemented beginning in 1987, this decline was exacerbated by the 6-year drought in California (1987–1992). Based on the run size estimates for the last 3 years (1991–1993), the population now has two weak year classes (1991 and 1993). NMFS expects that the 1994 run will also be weak because of the weak 1991 year class (191 fish) and the less than favorable conditions for spawning, egg incubation, and juvenile outmigration that occurred in 1991–92. Because of the small run in 1991 and the weak return expected in 1994, this year class is likely to remain weakened for some time.

As part of the status review, extinction probabilities were estimated for the winter-run chinook salmon population using modifications of the model described by Dennis, Munholland, and Scott (1991), and the 3-year geometric moving average of the annual estimated run size for the periods of 1967–1993 and 1979 1993, respectively. Results of the analysis indicate that if past trends continue, the population faces a high probability of dropping below 100 spawners per year at least once over the next 10 years, and to even lower levels over the 50 and 100 year time horizons.

The extinction modeling results suggest that the risk of the winter-run chinook salmon population dropping to unacceptably low levels is high. However, this type of analysis is based only on historical trends in the population (1967–1993) and assumes that past conditions will continue in the future. Although the 1994 run is expected to be weak, NMFS believes that conditions for winter-run chinook salmon were substantially improved in 1992 and 1993 because of long-term protective measures implemented to reduce impacts of Central Valley and State Water Project operations and improve conditions for successful egg incubation, rearing, and outmigration, and the end of the drought. In addition to these protective measures, the FWS has been supplementing the natural production of juveniles with substantial numbers of hatchery produced fish. If these protective measures and supplementation efforts prove to be effective, run sizes in 1995 and 1996 will likely increase. For these reasons, the probability of the population declining to low levels is probably less than suggested by the extinction modeling analysis. However, because the effectiveness of these recently implemented protective measures and supplementation efforts is unknown and cannot be assessed until future runs return, there remains substantial risk that the population is in danger of extinction.

Summary of Comments

The World Wildlife Fund supported the reclassification and also encouraged NMFS to develop and implement a recovery plan for the conservation of Sacramento River winter-run chinook salmon. The Department of the Interior (Interior) also supported the reclassification of winter-run chinook salmon, and said the population remained at depressed levels and may be in danger of extinction after the next two runs. However, Interior noted that the 1989 year class survived particularly well and that the resulting 1992 run size of 1,180 adults represented more than a 100 percent increase in size in a single successive generation. Interior also acknowledged that the 1992 increase in run size may indicate that measures taken to protect the population in recent years may be effective. Interior also provided technical comments to clarify and update facts contained in the proposed rule.

The Westlands Water District, the Family Water Alliance, and the Glenn County Board of Supervisors all opposed reclassifying winter-run chinook salmon because of protective

measures that have been recently implemented. They said that the threatened status should be retained until the effectiveness of these measures has been assessed.

Response to Comments

NMFS agrees with the World Wildlife Fund that development and implementation of a recovery plan is essential for the conservation and recovery of winter-run chinook salmon. For this reason, NMFS has appointed a National Sacramento River winter-run chinook salmon recovery team, comprised of fishery resource mangers, experts on winter-run chinook salmon biology, and conservation biology specialists, to develop a recovery plan. The recovery team has been meeting since September 1992 and will submit a draft recovery plan to NMFS in 1994. Interior's technical comments were incorporated where appropriate.

NMFS disagrees with the comments of the Westlands Water District, the Family Water Alliance, and the Glenn County Board of Supervisors that current protective measures should be allowed to be in place for a certain amount of time and their effectiveness evaluated before NMFS determines whether reclassification is necessary. Although measures have been implemented to reduce adverse impacts on winter-run chinook salmon, and NMFS believes they are likely to be effective, their effectiveness is currently unknown and cannot be evaluated until data on future returns are available.

One of the factors to be considered in listing, delisting and reclassifying a species is "the inadequacy of existing regulatory mechanisms." Judicial interpretation of this language allows NMFS to also consider the "adequacy" of regulatory mechanisms in its listing decisions. It is premature to determine the adequacy of these measures for purposes of this reclassification. Most measures will not demonstrate positive results until the 1996 return of adult winter-run chinook salmon. NMFS must determine whether reclassification is justified on the basis of the current status of the population and the factors affecting its continued existence.

Summary of Factors Affecting the Species

Section 4(a)(1) of the ESA specifies five criteria to be evaluated in reviewing the status of a species or population proposed for listing or reclassification. The following discussion is in addition to the evaluation of these factors in the proposed rulemaking to reclassify winter-run chinook salmon as an endangered species (57 FR 27416, June 19, 1992), the first Notice of Determination (52 FR 6041, February 27, 1987), a subsequent Notice of Determination (53 FR 49722, December 19, 1987), two emergency rules (54 FR 32088, August 4, 1989 and 55 FR 12193, April 2, 1990), the proposed rule to list winter-run chinook salmon as threatened (55 FR 10260, March 20, 1990), and the final rule listing the species as threatened (55 FR 46515, November 5, 1990).

1. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

Modification and loss of spawning and rearing habitat have been major factors contributing to the decline of the winter-run chinook salmon.

Shasta and Keswick Dams

On February 12, 1993, NMFS issued a biological opinion and incidental take statement to the Bureau of Reclamation which concluded that long-term operations of the Federal Central Valley Project and the State Water Project would jeopardize the continued existence of winter-run chinook salmon. The opinion identifies a reasonable and prudent alternative with measures designed to protect winter-run chinook salmon from the long-term operations of Shasta and Keswick Dams, as well as other facilities of the Central Valley Project. Implementation of these measures is expected to substantially improve water temperature and flow conditions in the upper Sacramento River for winter-run chinook salmon spawning, incubation, and rearing. The specific measures contained in the reasonable and prudent alternative that relate to Shasta and Keswick Dams require the Bureau to (1) use a more conservative forecasting approach to determine the annual allocation of deliverable water stored in Shasta Reservoir, (2) maintain a minimum end-of-water-year carryover storage in Shasta Reservoir (1.9 million acre-feet) for most water year types, (3) maintain daily average water temperatures in the winter-run chinook salmon spawning grounds below Keswick Dam at no more than 56 degrees Fahrenheit from April 15 through August 31 and at no more than 60 degrees Fahrenheit from October 1 through October 31, (4) maintain a minimum flow of 3,250 cubic feet per second (cfs) from Keswick Dam from October 1 through March 31, and (5) reduce releases from Keswick Dam according to specific criteria from July 1 through March 31. The reasonable and prudent alternative identified specific temperature control points in the upper Sacramento River for various operating scenarios based on the water year type and reservoir storage conditions at the start of the water year.

Based on forecasted water supplies and reservoir storage conditions in February and March 1993, the Bureau met the reasonable and prudent alternative requirement to maintain water temperatures at or below 56 degrees Fahrenheit throughout the entire winter-run chinook salmon spawning and incubation season from Keswick Dam to Bend Bridge. The CDFG conducted numerous aerial surveys of redd (nests) counts during the winter-run chinook spawning period and observed an unusually large number of redds (in proportion to the estimated run size) due to excellent viewing conditions in the river. Based on these surveys, virtually all redds were observed in the vicinity of Redding well upstream from Ball's Ferry. Two redds were observed between Ball's Ferry and the Bend Bridge temperature control point, and only a single redd was observed below Bend Bridge (immediately downstream from the Red Bluff Diversion Dam). As a result of the temperature control maintained by the Bureau and the distribution of spawners in the river, the incremental impact of temperature on winter-run chinook salmon egg and juvenile survival was minimal in 1993. In addition to providing temperature control during the 1993 spawning, incubation; and rearing season, the Bureau's operations in 1993 resulted in an end-of-water-year Shasta Reservoir storage (in excess of 3.0 million acre-feet) that far exceeded the requirements of the reasonable and prudent alternative.

The incidental take statement issued with the February 1993, long-term CVP biological opinion also contains specific measures that must be implemented to minimize the effects of Shasta and Keswick Dam operations on winter-run chinook salmon incidental take. These measures include (1) the continuation and expansion of temperature monitoring in the upper Sacramento River to ensure compliance with the temperature criteria, (2) NMFS review of the Bureau's proposed water allocation plans before delivery commitments are made each year to determine their potential effects on upper river water temperatures, and (3) monitoring in the upper river when Keswick Dam releases are reduced to prevent the stranding of juvenile winter-run chinook salmon. These measures were implemented by the Bureau as required by the incidental take statement.

Spawning habitat utilized by winter-run chinook salmon in the Sacramento River has also been degraded by decreases in the rate of replenishment for gravel suitable for spawning (NMFS 1992c). In 1990, the California Department of Water Resources placed 100,000 cubic yards of spawning gravel in the upper Sacramento River between Salt Creek and Clear Creek to restore degraded spawning riffles in areas of the river used by winter-run chinook salmon. The FWS has been evaluating these gravel restoration efforts and issued progress reports in 1992 and 1993. Thus far, the majority of the gravel remains where it was originally placed because flows have not reached rates great enough to disperse it in the upper river. Studies by the FWS are expected to continue through at least 1993 with a final report on the program expected in 1994.

Adult winter-run chinook salmon can also be adversely impacted by operation of the Keswick Dam stilling basin. Overflow of water from the stilling basin during operation of the spillway attracts upstream migrating adult salmon into the basin at the base of the Dam where they become trapped. The CDFG and FWS have conducted fish rescue operations at the stilling basin and removed hundreds of trapped salmon. Until the facility is structurally modified to allow fish free passage back to the river, it is likely that some adult winter-run chinook salmon will be lost. To remedy this long-standing problem, the incidental take statement issued with NMFS' February 12, 1993, biological opinion requires the Bureau to structurally modify the stilling basin by no later than December 31, 1993, so that adult winter-run chinook salmon will be able to freely pass from the basin back into the Sacramento River. NMFS and the Bureau have been meeting to discuss and evaluate alternative methods of correcting the problems with the stilling basin.

Red Bluff Diversion Dam

Another serious habitat concern for winter-run chinook salmon is the impediment to adult upstream migration caused by the Bureau's operation of this dam on the Sacramento River. Operation of the dam and the associated Tehama-Colusa Canal also adversely impacts juvenile winter-run chinook salmon migrating downstream past the facility. Impacts of the dam and its operations are discussed in the February 12, 1993, biological opinion addressing long-term operations of the Central Valley and State Water Projects.

The 1993 biological opinion also includes specific measures to minimize the impact of gate operations at Red Bluff Diversion Dam on both the upstream passage of adult winter-run chinook salmon and the downstream passage of juveniles. These measures require the Bureau to maintain the dam gates in the raised position at least through April 30, 1993, and from November 1, 1993, through at least April 30, 1994. After the Bureau's proposed pilot pumping project is operational in 1994, the Bureau must raise the dam gates from September 15 through at least May 14 in all subsequent years. Operation of dam gates in accordance with this schedule is expected to provide unimpeded access to upper river spawning habitat for most migrating adults and substantially reduce losses of downstream migrating juveniles due to predation. The Bureau maintained the dam gates in the raised position through April 30, 1993. In a effort to provide additional protection for outmigrating juveniles in 1993, the Bureau raised the dam gates in mid-October rather than on November 1 as required by the reasonable and prudent alternative.

Operation of the Tehama-Colusa Canal water diversion facilities associated with Red Bluff Diversion Dam before 1990 also adversely affected juvenile winter-run chinook salmon during their outmigration. To improve operation of the dam and canal and to reduce impacts to juvenile salmonids, including winter-run chinook salmon, the Bureau installed "state-of-the-art" drum screens and a bypass system at the canal headworks in 1990. Studies conducted to date indicate that the entrainment problem has been greatly diminished by the new screens. FWS is expected to publish a report in 1993 summarizing the results of monitoring and evaluation studies conducted in 1992. Additional studies, including monitoring of entrainment and an evaluation of mortality associated with the bypass system is anticipated in 1993. The February 1993 biological opinion for long-term CVP operations requires the Bureau to develop and implement a program to evaluate the fish bypass facilities, and correct any identified problems. This evaluation has not been completed.

The Bureau, in conjunction with Federal and state fishery agencies, has been evaluating various alternatives to the existing facilities at Red Bluff Diversion Dam. The Bureau published an appraisal report in 1992 that identified and analyzed several alternatives for improving fish passage at the dam. Among the four most reasonable alternatives identified in the appraisal report, two involve installation of a new pumping plant based on the Archimedes screw design. The Bureau has postponed final selection of a preferred alternative until experimental data are collected and analyzed from a pilot pumping plant that will be constructed downstream from the dam in 1994.

The pilot pumping plant that the Bureau has proposed to install at the dam will consist of three large pumps to be located on the west bank of the Sacramento River immediately downstream from the dam. Two of the pumps will be closed Archimedes pumps and the third will be a helical style pump, with each having approximately a 100 cfs capacity. This pilot program is intended to evaluate the pump design and operation, and to allow the Bureau to meet irrigation demands in the Tehama-Colusa Canal service area while maintaining the dam gates in the raised position. NMFS conducted an ESA section 7 consultation with the Bureau on the pilot pumping project and issued a biological opinion and incidental take statement in February 1993 which requires the Bureau to conduct an extensive monitoring program to evaluate the effects of fish passage by the pumps and assess the level of taking. Consultation was reinitiated in June 1993 to address modifications in the design, construction, and operations of the pumping facility that would delay eventual operation from October 1993 to December 1994.

Pollution

Pollution in the Sacramento River has also degraded winter-run chinook salmon spawning and rearing habitat. In particular, NMFS is concerned about the effects on adult and juvenile winter-run chinook salmon from runoff entering the upper Sacramento River that is contaminated by heavy metals leached from inactive mining sites at Iron Mountain Mine (IMM). Heavy metal concentrations from this runoff can reach levels that are lethal to winter-run chinook salmon eggs and juveniles. Metal-laden runoff that flows from IMM into the Spring Creek drainage is impounded behind the Spring Creek Debris Dam operated by the Bureau. The Bureau generally operates this dam to control the release of contaminated Spring Creek flow in conjunction with dilution releases from Shasta and Whiskeytown Reservoirs. The Bureau is expected to continue controlling releases from Spring Creek Debris Dam in this manner until source control and/or cleanup can be achieved.

The Environmental Protection Agency (EPA) has placed IMM on the Superfund Priority List, and the State of California and EPA are continuing to evaluate options for the long-term control of

contaminants originating from the IMM complex. Based on an memorandum of Agreement between the Bureau and EPA, the Bureau will develop a plan to enlarge Spring Creek Debris Dam to provide additional storage for IMM effluent. EPA also issued a Record of Decision on September 30, 1992, identifying an interim remedial action plan to clean up hazardous substances in the Boulder Creek Operable Unit at the IMM site. The remedial action involves the collection and treatment of acid mine drainage discharges from the Richmond and Lawson portals at IMM, and the excavation and capping of existing waste piles that are eroding and discharging into Boulder Creek and subsequently Spring Creek and the upper Sacramento River. The Richmond and Lawson portals are the two largest sources of hazardous materials at the IMM site and represent the sources for nearly 40 percent of the copper and 80 percent of the cadmium and zinc leached from IMM and discharged into tributaries leading to the Sacramento River. In addition to these activities, the EPA is moving forward with plans to study several remaining sources of contamination at IMM and identify appropriate remedial actions.

The 1993 biological opinion to the Bureau also addressed contamination from IMM. The opinion's incidental take statement requires the Bureau to operate Spring Creek Debris Dam and Shasta Dam so as to minimize the chronic exposure of adult and juvenile winter-run chinook salmon to heavy metal concentrations and eliminate the potential scouring of metal laden sediments from Keswick Reservoir.

NMFS has previously expressed concern that outmigrating juvenile winter-run chinook salmon may be adversely impacted by the disposal of contaminated dredge sediments at disposal sites located in the San Francisco Bay area. The residence time for outmigrating winter-run chinook salmon through the Bay is thought to range from 1 week to more than 2 months depending on the water year type. Prey organisms utilized by juvenile winter-run chinook salmon may bioaccumulate contaminants originating from in-bay disposal of contaminated dredge sediments, thereby exposing juveniles to these contaminants as they forage and migrate through the Bay.

Although NMFS continues to be concerned about the potential effects of in-bay disposal, the Corps has taken recent action to ensure that in-bay disposal of contaminated materials does not occur. In June 1992, the Corps, EPA, the Regional Water Quality Control Board, and the San Francisco Bay Conservation and Development Commission published proposed interim testing guidelines for dredged sediments that would be disposed of at in-bay sites. On February 1, 1993, the Corps formally adopted these guidelines in Public Notice 93–2. These interim testing guidelines are designed to ensure that sufficient information is available to characterize sediments to be dredged for all projects so that disposal does not result in chemical or biological degradation of the disposal site. These guidelines are intended to apply to all open water disposal projects until a long-term plan for managing dredged sediments in the San Francisco Bay area is developed and implemented.

Although the interim testing guidelines adopted by the Corps represent an important short-term action aimed at preventing the in-bay disposal of contaminated sediments, NMFS believes it is essential that a long-term strategy be developed and implemented for San Francisco Bay area dredging and disposal activities. To meet this need, the Corps and several other Federal, state and local agencies, including NMFS, are developing a Long-Term Management Strategy (LTMS) for managing dredging and disposal activities. The LTMS is designed to provide appropriate dredged material disposal alternatives for a 50-year planning horizon through the designation of ocean, in-bay, and upland disposal sites and the identification of beneficial reuse options. Implementation of the LTMS management programs is anticipated to begin in August 1994.

Bank Stabilization

Bank stabilization projects in the Sacramento River are believed to adversely affect winter-run chinook salmon rearing habitat. The Corp of Engineers has developed the Sacramento River Bank Protection Project as a long-range program for construction of bank erosion control works. On October 28, 1991, NMFS issued a biological opinion to the Corps that concluded Phase II of the project was not likely to jeopardize the continued existence of winter-run chinook salmon. However, the incidental take statement issued with the opinion requires the Corps to select the least damaging bank stabilization methods available and to provide NMFS with detailed mitigation plans for each bank protection project in Phase II that would adversely affect winter-run chinook salmon habitat. Based on recent information developed by the FWS concerning bank protection methods that minimize impacts and the importance of protecting shaded riverine aquatic habitat, NMFS requested the Corps to reinitiate consultation on Phase II of the project in late 1992. The Corps is currently developing additional environmental documentation for the remaining Phase II bank protection projects, and NMFS anticipates that further consultation will be initiated when that documentation is completed.

2. Overutilization for Commercial, Recreational, Scientific or Educational Purposes

Commercial and Recreational Fishing

In 1991, NMFS consulted with the Pacific Fishery Management Council (PFMC) pursuant to section 7 of the ESA to evaluate the potential effects of the proposed Pacific Ocean Salmon Fishery Management Plan (FMP) on winter-run chinook salmon. A biological opinion was issued to the PFMC on March 1, 1991, that concluded management of the salmon fishery under the Pacific Ocean Salmon FMP was not likely to jeopardize the continued existence of winter-run chinook salmon. An incidental take statement was also issued with the opinion that authorized a limited incidental take of winter-run chinook salmon by the ocean fishery (NMFS 1991b). NMFS has also consulted with the Council concerning implementation of Amendment 4 to the Pacific Coast Groundfish FMP. The opinion issued by NMFS concluded that implementation of the FMP would not jeopardize the continued existence of winter-run chinook salmon as a result of incidental bycatch of salmon in the fishery. NMFS will continue to consult internally and with the PFMC, as appropriate, to ensure that ocean salmon and other fishery management actions do not jeopardize the continued existence of winter-run chinook salmon.

Since 1987, the CDFG has implemented seasonal fishing closures in the upper Sacramento River and monitored the recreational salmon catch. In 1990, the California Fish and Game Commission adopted regulations that prohibited the retention of salmon in the Sacramento River when adult winter-run chinook salmon are present. This closure has virtually eliminated the taking of winter-run chinook salmon by recreational fishermen. NMFS will continue to coordinate with CDFG concerning in-river fishing restrictions.

Scientific Studies

In 1991, NMFS issued an ESA section 10 scientific research permit to the FWS to conduct several scientific research studies on Sacramento River winter-run chinook salmon. The FWS's Northern Central Valley Fishery Resource Office published a report in early 1993 summarizing their 1992 activities under the permit. The results from the juvenile monitoring program, the hatchery propagation program, and the temperature tolerance experiments are expected to significantly contribute to NMFS efforts to protect and recover winter-run chinook salmon.

CDFG and FWS also conduct annual spawning distribution surveys of winter-run chinook salmon in the upper Sacramento River and develop estimates of the annual spawning run size based on counts of fish passing the dam. CDFG conducts aerial surveys each year to count winter-run chinook spawning redds and determine their distribution in the upper River. The FWS also counts winter-run chinook salmon redds in an index area in the vicinity of Redding.

In March 1993, NMFS modified the FWS's scientific research to authorize the directed take and sacrifice of coded-wire tagged winter-run chinook juveniles produced at Coleman National Fish Hatchery and collected during monitoring studies in the Sacramento River, the Delta, and at the State and Federal water export facilities in the southern Delta. The purpose of the study was to determine growth rates of juvenile winter-run chinook salmon produced at the hatchery and released into the wild, and to help verify the size criteria developed by CDFG to separate and identify juvenile chinook salmon by race.

Under the terms of the May 1988 Ten Point Restoration Plan for winter-run chinook salmon, the FWS agreed to fund and implement a winter-run chinook salmon propagation program at the hatchery. Prior to 1991, this program was unsuccessful. However, in 1991 the FWS was able to successfully hold and spawn six female winter-run chinook salmon despite the low numbers of fish available (only 22), and produce and release about 11,000 juveniles into the Sacramento River near Redding, California. In 1992, the winter-run chinook salmon spawning run size was substantially higher (1,180 fish), more adults were collected for broodstock use, and a total of approximately 28,000 juvenile winter-run chinook salmon with tags were released into the upper Sacramento River in late January 1993. The FWS continued this program in 1993 using approximately 17 wild adults and is currently rearing in excess of 20,000 juveniles at the hatchery. The surviving juveniles will eventually be tagged and released into the upper Sacramento. This marking program is expected to provide information on the timing of winter-run chinook salmon outmigration and growth. In addition, marked fish that return to the upper Sacramento River to spawn in the future will be easily distinguishable from wild fish, thereby allowing the FWS to assess the effectiveness of this supplementation program and ensure that hatchery produced adults are not mated with each other. The marking program may also provide additional information concerning the ocean harvest of winter-run chinook salmon. NMFS is currently conducting a section 7 consultation with the FWS to address the long-term effects of this propagation program, as well as a proposed captive broodstock program, and other existing propagation programs at the hatchery, on the wild winter-run chinook salmon population. NMFS expects to conclude consultation and issue a biological opinion to the FWS before the end of 1993.

In April 1992, FWS applied for a modification to its scientific research permit in order to initiate a captive breeding program using about 1,000 juveniles that remained from the hatchery propagation effort in 1991. A primary objective of this program was to provide insurance against extinction or loss of unique genetic variability until the wild winter-run chinook salmon population began to recover. The goal of the program is to produce about 200 mature broodstock for each of three consecutive years beginning in 1994.

The FWS transferred approximately 750 of the juveniles produced from adults captured during the 1991 spawning run to the University of California's Bodega Marine Laboratory in September 1992 for extended captive rearing. A small number of these juveniles (approximately 50) were subsequently transferred to Steinhart Aquarium in San Francisco during March 1993 for further rearing and display. Additional juveniles produced from adults collected and spawned in 1992 were transferred from the hatchery to Bodega Marine Laboratory for extended rearing in February 1993. As of September 1993, the Bodega Marine Lab was rearing approximately 425 fish from the 1991 broodyear and approximately 640 fish from the 1992 broodyear. A portion of the surviving adults produced from the 1991 and 1992 broodyears may eventually be returned to the hatchery for use as broodstock. However, these captively reared adults will not be used in any matings nor can their progeny be released into the wild until after NMFS and FWS have concluded the ongoing section 7 consultation that is addressing the potential adverse effects of the captive broodstock program on wild fish, and NMFS has amended the FWS's existing ESA section 10 research and propagation permit.

3. Disease or Predation

The magnitude and extent of predation on winter-run chinook salmon in the Sacramento River and Sacramento-San Joaquin Delta are poorly known. However, studies by the FWS have found that predation at Red Bluff Diversion Dam, primarily by squawfish, significantly contributes to the mortality of downstream winter-run chinook salmon migrants. The FWS has undertaken periodic electrofishing below the dam which may be useful in developing a relative squawfish abundance index. All of the fisheries agencies believe that before squawfish control is possible, more must be learned about their life history. In 1992, the FWS conducted limited studies of predation at the fish bypass outfall as part of its continuing evaluation of the dam and the new screens that were installed in 1990.

NMFS has addressed this problem, in part, by requiring the Bureau, through the 1993 biological opinion on long-term operations of the Central Valley Project, to maintain the Red Bluff Diversion Dam gates in the raised position during most of the outmigration period. This action is expected to reduce substantially the adverse effects of predation at the dam on juvenile winter-run chinook salmon.

The potential for high levels of predation on juvenile winter-run chinook salmon also exist at the Glen-Colusa Irrigation District (GCID) diversion facility and other manmade structures such as the California Department of Water Resource's Suisun Marsh Salinity Control Structure and Clifton Court Forebay in the southern Delta. Predation studies conducted by the CDFG in forebay indicate that the pre-screening mortality of marked salmonids, primarily due to predation by striped bass, is approximately 75 percent. Squawfish and striped bass predation has also been observed on juvenile salmonids released back into the Sacramento River from salvage operations conducted by the CDFG at State and Federal fish protection facilities in the lower Sacramento-San Joaquin Delta.

The CDFG is conducting an extensive ongoing program to assess the abundance of predators in the forebay, remove predators by means of gill nets and other fishing gear, and investigate and evaluate all factors that are thought to contribute to pre-screening losses of

juvenile salmonids. The February 1993 opinion on long-term operation of the CVP indirectly address predation in the forebay by limiting the combined incidental take of juvenile winter-run chinook salmon at the State and Federal facilities to 1 percent of the annual estimated juvenile production. In addition, implementation of specific measures contained in the opinion's reasonable and prudent alternative, such as closure of the Delta Cross Channel and reverse flow criteria in the western Delta, is expected to limit the diversion of juvenile winter-run chinook salmon from the Sacramento River and their subsequent exposure to predation in the Delta and possibly Clifton Court Forebay.

The CDFG began a large-scale program of stocking hatchery-reared striped bass in 1981 through the Striped Bass Stamp Program authorized that year. Approximately 60,000 yearling bass were stocked that year, and the program increased substantially in subsequent years. Beginning in 1984, the program expanded to include several private hatcheries and two state facilities. Between 1982 and 1990, the program raised and planted nearly 3.0 million juvenile striped bass. Additionally, privately reared yearling bass have purchased and stocked by the State's Department of Water Resources and the Pacific Gas and Electric Company as mitigation for fish losses at their facilities in the Delta. Since 1984, the company has purchased and stocked over 2.5 million juvenile bass, and the State has stocked almost 5.0 million juvenile bass since 1988.

Several groups raised concerns in 1992 about the possible effects of CDFG's striped bass enhancement and management program on winter-run chinook salmon. NMFS reviewed CDFG's proposed enhancement program for 1992 and recommended several changes, as well as the implementation of studies designed to assess the magnitude of striped bass predation on winter-run chinook salmon. As a result of these and other concerns, CDFG eventually decided to suspend the planting of hatchery-reared striped bass in Delta waters in 1992. In June 1993, NMFS requested that CDFG delay further release of hatchery fish as part of its striped bass management program, and apply for an ESA section 10 incidental take permit.

4. The Inadequacy of Existing Regulatory Mechanisms

In the final rule listing winter-run chinook salmon as threatened (55 FR 46515, November 5, 1990), NMFS concluded that the existing regulatory mechanisms at that time were not adequate to recover the Sacramento River winter-run chinook salmon. In the proposed rule reclassifying the species as endangered (57 FR 27416, June 19, 1992), NMFS concluded that regulatory mechanisms might not have been sufficient or applied effectively. NMFS believes that measures currently being taken by Federal agencies pursuant to their ESA section 7 obligations will reduce adverse impacts on the species. However, these measures do not necessarily provide for the recovery of the species, but that the continued existence of the species is not likely to be jeopardized. Further, the adequacy or inadequacy of these measures cannot be determined until at least the 1996 return of adult salmon.

In addition, NMFS believes that Title XXXIV of Public Law 102–575—Central Valley Project Improvement Act—which was enacted by Congress in late 1992 will also contribute to the restoration and recovery of the winter-run chinook salmon. Although that Act is intended to protect, restore, and enhance all fishery resources and habitats in the Central Valley and Trinity River basins of California, the implementation of several provisions will directly benefit winter-run chinook salmon and aid in its recovery. Several of the provisions are also expected to help implement actions that NMFS has identified as necessary to avoid jeopardizing the continued existence of winter-run chinook salmon and ensure its eventual recovery.

Provisions of the Act that have the most direct beneficial effect on winter-run chinook salmon are those requiring:

(1) Dedication of 800,000 acre-feet of CVP water for fish, wildlife, and habitat restoration purposes annually,

(2) Installation and operation of a temperature control device at Shasta Dam and modifications of CVP operations to control water temperatures in the upper Sacramento River,

(3) Development and implementation of measures at the Red Bluff Diversion Dam to minimize fish passage problems,

(4) Expansion of the FWS's existing hatchery facility,

(5) Modification of the Keswick Dam fish trap and spillway to prevent trapping of fish,

(6) Development and implementation of a continuing program to restore and replenish lost spawning gravel in the upper Sacramento River,

(7) Development and implementation of a program that provides for modified operations or new and improved control structures at the Delta Cross Channel and Georgiana Slough,

(8) Development and implementation of a program to resolve fish passage and stranding problems associated with operation of the ACID dam,

(9) Maintenance of minimum carryover storage in Sacramento and Trinity River reservoirs,

(10) Design and construction, in conjunction with the State of California and other Federal agencies, of a new fish protection structure at the GCID pumping facility near Hamilton City, and

(11) Development and implementation, with the State of California, of measures to avoid losses of juvenile fish resulting from unscreened or poorly screened diversions.

EPA is expected to propose, in December 1993, regulations that would set water quality standards for the San Francisco Bay/Sacramento-San Joaquin Bay/Delta estuary. This is in response to EPA disapproving many elements of a water quality control plan for salinity adopted in May 1991 by the California State Water Resources Control Board. The plan was disapproved because it failed to adequately protect the estuarine habitat and its resources. NMFS is presently consulting with EPA concerning the effects of the standards to be proposed on winter-run chinook salmon and its critical habitat.

5. Other Natural or Manmade Factors Affecting the Continued Existence of the Species

Unscreened Diversions and Entrainment

Juvenile winter-run chinook salmon are subject to entrainment by large numbers of unscreened or inadequately screened diversions during their outmigration to the Pacific Ocean. These diversions range from small siphons diverting 20 cfs to the large export facilities operated by the Bureau and Department of Water Resources in the southern Delta that have the combined capacity of pumping approximately 12,000 cfs of water daily. The magnitude of this impact is currently unknown.

Because of the potential impact from unscreened diversions, NMFS published an Advanced Notice of Proposed Rulemaking (ANPR) on October 18, 1993, that stated NMFS is considering development of regulations that would establish screening requirements for water diversions from the Sacramento River and the Delta to protect juvenile winter-run chinook salmon. The ANPR also requested specific information and comments concerning the numbers, types, and sizes of diversions, the magnitude of

juvenile salmon losses at unscreened diversions, the feasibility of installing positive-barrier fish screens to reduce losses, the estimated costs of screening and available funding mechanisms, and the availability of alternative management options for reducing fish losses due to entrainment. NMFS will evaluate all information and comments on the ANPR to determine whether to proceed with the development of screening regulations.

In addition, the CDFG has begun an inventory of all existing water diversions on the Sacramento River and in the Sacramento-San Joaquin Delta to determine the number and size of unscreened diversions and identify high priority facilities requiring screening. The Bureau, in conjunction with the State, has also established a demonstration screening program that is expected to be implemented in 1994. This program was included as a measure to reduce taking of winter-run chinook salmon in the incidental take statement that NMFS issued to the Bureau with the February 12, 1993, biological opinion covering long-term CVP operations. The program is intended to promote the advancement of state-of-the-art positive barrier screening technology at small (less than 40 cfs) unscreened diversions along the Sacramento River and within Delta waterways.

Anderson Cottonwood Irrigation District

The Anderson Cottonwood Irrigation District (ACID) operates a diversion dam and two diversion facilities on the upper Sacramento River near Redding, California. The larger of the two diversions is protected by a screen operated and maintained by the CDFG. Until July 1992, the smaller Bonneyview water diversion facility (65 cfs capacity) was unscreened.

In May 1992 the ACID applied for a Corps of Engineers (Corps) permit to install a screening structure at the Bonneyview facility, and NMFS initiated section 7 consultation with the Corps to evaluate the effects of installing and operating the structure on winter-run chinook salmon. The ACID obtained a Corps permit and installed an impervious barrier with screens that was operational by early July 1992. Monitoring by CDFG in the irrigation canal behind the screening structure in July and August 1992 demonstrated that the structure effectively eliminated the entrainment of juvenile winter-run chinook salmon and other species. Subsequent dive inspections of the screening facility by the NMFS found that the cleaning mechanism was working improperly. As a result, ACID personnel are now cleaning the screens manually and are expected to work with NMFS and the screen manufacturer to develop an alternative cleaning mechanism.

Glenn-Colusa Irrigation District

The GCID diversion facility located near Hamilton City, California, is the single largest diverter of water on the Sacramento River with the capacity to take up to 3,000 cfs daily. Inadequate fish screens at the facility result in the entrainment and impingement of juvenile salmon, including winter-run chinook salmon, that are dispersing in the river system during the peak of the irrigation season. Since 1990, NMFS has used the section 7 and section 10 provisions of ESA, together with direct legal action, in an effort to remedy the adverse effects of GCID water diversion operations on winter-run chinook salmon.

On August 16, 1991, the U.S. District Court in Sacramento, California issued a temporary restraining order that required GCID not to exceed a pumping rate of 1,100 cfs from August 19 to August 29, 1991. On January 9, 1992, the Court issued a permanent injunction that completely enjoined GCID from diverting any water at the facility from July 15 through November 30. The Court modified the permanent injunction in April 1992 to allow GCID to operate under the terms and conditions of a joint stipulation that was agreed to by GCID, the Department of Justice, and the State of California. Under the terms and conditions of the modified injunction, GCID was allowed to pump water on a restricted basis in 1992 in exchange for its commitment to implement a long-term solution to correct existing fish passage problems at the facility.

Following completion of an ESA section 7 consultation and the issuance of a biological opinion from NMFS on June 5, 1992, the Corps issued a 1-year permit to GCID that authorized dredging and other construction activities that were identified as terms and conditions in the modified the permanent injunction. GCID completed construction of a training wall, reconfiguration of the lower oxbow leading back into the Sacramento River, and additional maintenance dredging near the screens by mid-July 1992.

In September 1992, the Corps initiated consultation with NMFS concerning a new GCID permit application to conduct maintenance dredging and other activities at its facility over a 3-year period (1993–95). On April 22, 1993, NMFS concluded consultation and issued a jeopardy biological opinion and incidental take statement that limited dredging in the upper oxbow, required maintenance of the training wall and pilot cut through the lower oxbow, limited the permit duration to a period of 1 year, and required GCID to pursue a long-term solution for protecting winter-run chinook salmon and correcting passage problems at the facility. Following issuance of the Corps permit, GCID conducted maintenance dredging and other maintenance activities in accordance with the requirements of the biological opinion, and subsequently began pumping water on a restricted basis beginning on August 1, 1993.

The Department of Justice and GCID signed a new stipulated agreement in June 1993 that allowed operations to continue in 1993. This new agreement, in conjunction with the biological opinion that was issued to the Corps, restricted pumping activities at the Hamilton City facility, required various types of monitoring, and committed GCID to ensure the implementation of long-term protective and conservation measures for winter-run chinook salmon at its Hamilton City facility.

In 1992, GCID, the State of California, and the Corps began a joint Federal and state environmental review process to evaluate several long-term alternatives for correcting fish entrainment, impingement, and passage problems at the GCID facility. The Bureau is now the lead Federal agency responsible for preparing the environmental documentation and constructing the selected long-term protective and conservation measures due to the passage of the Central Valley Improvement Act. The environmental review process has been delayed, but is expected to be completed by mid-1994. NMFS will consult with the Bureau to evaluate the effects of constructing and operating the selected long-term protection alternative on winter-run chinook salmon.

Delta Export Facilities of the Central Valley Project and the State Water Project

The Bureau and the California Department of Water Resources operate facilities in the Sacramento-San Joaquin Delta to convey Sacramento River water into and through the Delta and to export water out of the Delta. These facilities include the Delta Cross Channel operated by the Bureau, and water export and fish protection facilities operated by the Bureau (Tracy Pumping Plant) and California Department of Water Resources (Byron Pumping Plant). The operations of these and other Central Valley and State water facilities, which are coordinated through the

Coordinated Operations Agreement between the Bureau and the State, can adversely impact winter-run chinook salmon.

To address the potential adverse effects of gate operations on juvenile winter-run chinook salmon survival in 1992, NMFS included a reasonable and prudent alternative measure in the February 14, 1992, biological opinion for 1992 CVP operations requiring the Bureau to close the Delta Cross Channel from February 1 through May 1, 1992. This action was expected to substantially reduce the diversion of juvenile winter-run chinook salmon into the Delta from the Sacramento River, especially with the extremely critical water supply and low export pumping rates that were anticipated to occur in 1992. Operation of the Federal and State export facilities in 1992 was not expected to incidentally take more than a small percentage of the 1991 winter-run chinook salmon outmigrant population.

However, based on monitoring at these facilities during February and March 1992, NMFS determined that the taking of juveniles exceeded the amount identified in the incidental take statement, and requested consultation be reinitiated. After further consultation with the Bureau and the State was completed, NMFS amended the incidental take statement to restrict the combined daily water export rate from both facilities to 1,200 cfs during the remainder of April 1992. The amended take statement also required that consultation be reinitiated if the incidental take of juveniles exceeded 400 fish during this period or there was evidence to indicate that winter-run outmigration would substantially continue beyond April 30, 1992, and required both the Bureau and the State to support efforts to develop a more refined and accurate method for determining the level of taking incidental to pumping operations at the water export facilities.

Because the losses of juvenile fish at these facilities were higher than expected in the spring of 1992, NMFS and the CDFG established a Delta Salvage and Loss Working Group consisting of representatives from NMFS; FWS, the California Departments of Fish and Game and Water Resources, and the Bureau. The objectives of this group were to (1) review and refine the juvenile winter-run chinook salmon loss estimates at the water export facilities during the 1992 outmigration period, and (2) evaluate the loss estimation and reporting procedures used in 1992 and make recommendations for improving the procedures for 1993 and future years. The group met frequently to discuss these issues and issued a summary report in September 1992 that included a revised estimate of juvenile winter-run chinook salmon losses in 1992 and a series of recommendations for loss estimation and reporting. The loss estimation and reporting procedures developed by this group were eventually incorporated into the February 12, 1993, biological opinion and incidental take statement that NMFS issued to the Bureau on the long-term operations of the Federal and State water projects.

The biological opinion also includes protective measures designed to reduce the impact of Delta operations on winter-run chinook salmon. The reasonable and prudent alternative in the opinion contains the following measures to avoid jeopardizing the continued existence of winter-run chinook salmon: (1) Closure of the Delta Cross Channel each year from February 1 through April 30; (2) operation of the cross channel gate each year from October 1 through January 31 to minimize the diversion of juveniles into the Delta based on the use of a real-time monitoring program; (3) operation of the delta water export facilities each year to ensure that no reverse flow conditions occur in the western Delta from February 1 through April 30; (4) operation of the delta export facilities each year to ensure that reverse flow conditions are minimized from November 1 through January 31; and (5) monitoring of winter-run chinook incidental take at the Federal and State export facilities. The incidental take statement included with the opinion also contains measures designed to minimize the taking of juvenile winter-run chinook salmon incidental to the operation of the water export facilities. This take statement identifies the level of incidental taking by the Bureau and State export facilities to be no more than 1 percent of the estimated number of outmigrant juvenile winter-run chinook salmon entering the Delta in any year, and requires the Bureau and the State to submit daily, weekly, and annual reports based on an extensive monitoring program to ensure the incidental take authorization is not exceeded.

Based on the 1992 run size estimate (1,180 fish), NMFS determined that the allowable take of outmigrating juvenile winter-run chinook salmon incidental to operation of the export facilities in 1992–93 was 2,700 fish. Monitoring of winter-run chinook salmon incidental take during the 1993 outmigration season indicated that the level of taking was substantially higher at the State export facility than at the Federal export facility. The monitoring program also indicated that the rate of taking by mid-February 1993 was higher than anticipated, and that continued high pumping rates could result in exceeding the annual take level authorized by NMFS. As a result, the State voluntarily curtailed pumping at its Delta pumping facility in late February to reduce the loss rate and cumulative loss of juvenile winter-run chinook salmon at its facility. Although pumping rates were gradually increased during March and April 1993 at the State facility, the cumulative loss of juveniles was less than 1 percent of the estimated outmigrant population in 1993. As a result of these and other actions taken by the State and Bureau in accordance with the February 12, 1993, biological opinion and incidental take statement, NMFS believes that the survival of outmigrating juveniles in 1993 was significantly improved over previous years. Continued implementation of these protective measures in future years is expected to improve outmigration success of juvenile winter-run chinook salmon and aid in recovery.

Suisun Marsh

Operation of the Suisun Marsh salinity control gate structure by the State can potentially affect winter-run chinook adversely by diverting outmigrating juveniles from the Sacramento River into Montezuma Slough where conditions for survival are poorer because diverted fish have a longer migration route, and are exposed to increased water temperatures, increased predation, and numerous unscreened water diversions. Upstream migrant adult winter-run chinook that enter the downstream end of Montezuma Slough may also be blocked or delayed by operation of the gates as they attempt to migrate into the Sacramento River.

In order to minimize impacts on winter-run chinook salmon juveniles, NMFS required (in the 1992 CVP opinion) that salinity control gates to either close from March 1 through April 15, or that unscreened diversions in the Slough not operate during this period. The California Departments of Water Resources and Fish and Game conducted monitoring during this period and provided documentation to NMFS that these diversions were not operated. However, sampling by FWS during April 1992 also indicated that only a small percentage of marked juvenile salmonids (0.2–1.5 percent) were diverted into Montezuma Slough.

Since the potential impacts of operating the salinity control gates on winter-run chinook salmon are unclear based on the available information, NMFS addressed the need for additional studies at the facility in the incidental take statement included with the 1993 CVP biological opinion. Specifically, the incidental take statement requires the Bureau and the State to develop and implement a program to evaluate the effects of operating the salinity control structure on winter-run chinook salmon by spring 1994. The program is expected to assess the diversion rate of chinook salmon juveniles into Montezuma Slough, predation at the structure, survival of juveniles passing through the slough, and passage of adults upstream.

Droughts/El Niño

The natural factors of greatest concern to NMFS are drought conditions and the oceanographic phenomenon known as El Niño. The effects of the extended 1987–1992 drought on California's water supply have likely exacerbated the effects of management of State and Federal water operations and other activities on winter-run chinook salmon over the past several years. However, the end of the drought in 1993 due to above normal levels of precipitation throughout the State, and the implementation of protective measures contained in NMFS February 12, 1993, biological opinion are expected to reduce the adverse effects of drought in future years by ensuring that minimum carryover storage is maintained in Shasta Reservoir each year, and that conservative water supply forecasts are used by the Bureau to make annual water allocation decisions. In addition to these measures, the Bureau is expected to construct a temperature control device at Shasta Reservoir that should improve its ability to provide suitable water temperatures in the upper Sacramento River.

The El Niño event that began in 1991–1992 may result in reduced ocean survival of winter-run chinook salmon produced in 1990 and 1991 when the estimated run sizes were very low (441 and 191 fish respectively) and drought conditions prevailed. For these and other reasons, NMFS anticipated that the 1993 run size would be low, and also expects that the run size in 1994 will be weak. The only measure that may help to mitigate the impact of El Niño events may be the hatchery supplementation program developed by the FWS to augment natural juvenile production. If the hatchery supplementation program proves to be successful, it may provide the necessary juvenile production to offset any adverse effects of El Niño conditions.

Conclusion

Since the winter-run chinook salmon was formally listed as a threatened species in November 1990 (55 FR 46515), the annual estimated run sizes have become more variable and have continued to decline with the exception of an increase in 1992. Although some protective measures were implemented beginning in 1987, the decline was exacerbated by a 6-year drought in California (1987–1992) and threats adversely affecting the species that were not addressed until recently. Based on the run size estimates for the last 3 years (1991–1993), the population now has at least one and possibly two extremely weak year classes (1991 and 1993). NMFS expects that the 1994 run will also be weak because of the small numbers of adults returning in 1991 (191 fish) and less than favorable conditions for spawning, egg incubation, and juvenile outmigration that occurred in 1991–92. This years class is likely to remain weakened for the foreseeable future.

Although conditions for winter-run chinook salmon began improving in 1992 and 1993 because of protective measures implemented to reduce the long-term impacts of operations of the Federal and State water projects and improve conditions for successful egg incubation, rearing, and outmigration, the 6-year drought ended, and the natural production of juveniles is being supplemented with hatchery produced fish, NMFS believes that quantifiable improvements in population levels are not likely to be evident for several years. Since the effectiveness of these recently implemented protective measures and supplementation efforts is unknown and cannot be assessed until future runs return, there remains substantial risk that the population is in danger of extinction.

Based on the continued decline of the population and increased variability of run sizes since 1991, the expected weak return in 1994, continuing threats to the population, and uncertainty about whether recently implemented protective and conservation measures will be effective, NMFS believes that the Sacramento River winter-run chinook salmon is in danger of becoming extinct and should be classified as an endangered species. NMFS will continue to monitor closely the status of this population as well as evaluate the effectiveness of existing and future protective and conservation measures to determine whether any further changes in its status are warranted.

Available Conservation Measures

Conservation measures provided to species that are listed under the ESA include listing, recovery actions, implementation of certain protective measures, and designation and protection of critical habitat. Some of the most useful protective measures are contained in section 7 of the ESA. Pursuant to section 7, Federal agencies are required to conduct conservation programs for endangered species and to consult with NMFS regarding the potential effects of their actions on winter-run chinook salmon.

Since winter-run chinook salmon was originally listed as a threatened species on an emergency basis in August 1989, NMFS has conducted numerous section 7 consultations with Federal agencies whose actions may affect the species. The most significant consultations have been with the Bureau and the California Department of Water Resources concerning the long-term operations of the Central Valley Project and the State Water Project and the Corps concerning fish passage at the GCID diversion facility at Hamilton City. NMFS is currently engaged in consultations with other Federal agencies and will continue this process to determine whether Federal actions affect winter-run chinook salmon.

Section 10 of the ESA provides for addressing the effects of private and state (non-Federal) actions on endangered species. NMFS has worked with GCID to address the impacts of their major diversion facility on winter-run chinook salmon through this process. NMFS also expects to work with the CDFG to address potentially adverse effects of striped bass and salmon hatchery management on winter-run chinook salmon. In the future, NMFS will continue to pursue opportunities to remedy private and non-Federal activities that may affect winter-run chinook salmon through this process.

In 1992, NMFS established a National Sacramento River Winter-run Chinook Salmon recovery team to develop a recovery plan for the species. The team is comprised of fishery resource managers, experts on winter-run chinook salmon biology and, other conservation specialists. The recovery team meets frequently and expects to complete development of a comprehensive draft recovery plan in 1994.

Critical Habitat

Section 4(a)(3)(A) of the ESA requires that, to the extent that it is prudent and determinable, critical habitat be

designated concurrently with the listing of a species. NMFS published a final rule designating critical habitat for Sacramento River winter-run chinook salmon on June 16, 1993. The designated critical habitat includes: the Sacramento River from Keswick Dam (RM 302) to Chipps Island (RM 0) at the westward margin of the Sacramento-San Joaquin Delta, all waters from Chipps Island westward to Carquinez Bridge, all waters of San Pablo Bay, and all waters in San Francisco Bay north of the San Francisco/Oakland Bay Bridge. The final rule also identifies those physical and biological features of the habitat that are essential to the conservation of winter-run chinook salmon.

List of Subjects

50 CFR Part 222

Administrative practice and procedure, Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

50 CFR Part 227

Endangered and threatened species, Exports, Imports, Marine mammals, Transportation.

Dated: December 14, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR parts 222 and 227 are amended as follows:

PART 222—ENDANGERED FISH OR WILDLIFE

1. The authority citation for part 222 continues to read as follows:

Authority: 16 U.S.C. 1531–1543.

§ 222.23 [Amended]

2. In § 222.23, paragraph (a) is amended by adding the phrase "Sacramento River winter-run chinook salmon (*Oncorhynchus tshawytscha*);" immediately after the phrase "Snake River sockeye salmon (*Oncorhynchus nerka*)" in the second sentence.

PART 227—THREATENED FISH AND WILDLIFE

3. The authority citation for part 227 continues to read as follows:

Authority: 16 U.S.C. 1531 *et seq.*

§ 227.4 [Amended]

4. In § 227.4, paragraph (e) is removed and paragraphs (f) through (h) are redesignated paragraphs (e) through (g) respectively.

§ 227.21 [Amended]

5. In § 227.21, paragraphs (a) and (b)(1), the phrase "(e), (g) and (h)" is removed, and the phrase "(f) and (g)" is added in its place; in paragraph (b)(2), the phrase "(g) and (h)" is removed and the phrase "(f) and (g)" is added in its place.

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Part IV

Department of Commerce

National Telecommunications and Information Administration

Public Telecommunications Facilities Program: Availability of Funds; Notice

DEPARTMENT OF COMMERCE

National Telecommunications and Information Administration

[Docket No. 931228-3328]

Public Telecommunications Facilities Program: Availability of Funds

AGENCY: National Telecommunications and Information Administration (NTIA), Commerce.

ACTION: Notice of availability of funds.

SUMMARY: The National Telecommunications and Information Administration (NTIA), U.S. Department of Commerce, announces that applications are available for planning and construction grants for public telecommunications facilities under the Public Telecommunications Facilities Program (PTFP), which is administered by NTIA.

Applicants for grants under the PTFP must file their applications on or before March 17, 1994. NTIA anticipates making grant awards by September 30, 1994.

Approximately $21.3 million is available in fiscal year 1994 for grants. The amount of a grant award will vary depending on the project of the applicant. NTIA awarded $20.8 million in funds to 105 projects for fiscal year 1993. The awards ranged from $1,898 to $968,989.

Final Rules and Policy Statement for the Public Telecommunications Facilities Program were published on November 22, 1991 (56 FR 59168–59192, No. 226). These rules, codified at 15 CFR part 2301, will be in effect for 1994 applications.

Prospective PTFP applicants should be aware that NTIA is in the process of establishing a new National Information Infrastructure grant program to be called the Information Infrastructure Grants Program (IIGP). The IIGP's funds may be used for the planning and construction of telecommunications networks or the purchase of telecommunications services and facilities for the provision of educational, cultural, health care, public information, public safety or other social services. The Congress appropriated $26 million dollars for the IIGP in FY 1994. Formal announcement of the IIGP will be made at a later date. The new IIGP is separate from the already-existing grant program, the PTFP, which is the subject of this Notice. The PTFP or its predecessor-agencies have been in operation since 1962; the present PTFP program has been in place since 1978.

DATES: Pursuant to § 2301.5(c) of the PTFP Final Rules (56 FR 59176 (1991), codified at 15 CFR part 2301), the Administrator of NTIA hereby establishes the closing date for the filing of applications for grants under the PTFP. The closing date selected for the submission of applications for 1994 is March 17, 1994. Applications delivered by mail or by hand must be delivered to the address referenced below by 5 p.m. on or before March 17, 1994. Applicants whose applications are not received by the deadline will be notified that their applications will not be considered in the current grant cycle and will be returned.

ADDRESSES: To obtain an application package, submit completed applications, or send any other correspondence, write to: Office of Telecommunications and Information Applications, NTIA/DOC, 14th Street and Constitution Avenue, NW., room H–4625, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: Dr. Charles Rush, Acting Associate Administrator, telephone: (202) 482–5802.

SUPPLEMENTARY INFORMATION:

I. Eligibility

A. To be eligible to apply for and receive a construction grant, an applicant must be:

(1) A public or noncommercial educational broadcast station;

(2) A noncommercial telecommunications entity;

(3) A system of public telecommunications entities;

(4) A nonprofit foundation, corporation, institution, or association organized primarily for educational or cultural purposes; or,

(5) A state or local government or agency, or a political or special purpose subdivision of a state.

B. To be eligible to apply for and receive a planning grant, an applicant must be:

(1) Any of the organizations described in paragraph A of this section; or,

(2) A nonprofit foundation, corporation, institution, or association organized for any purpose except primarily religious.

C. An applicant that is eligible under paragraphs A or B of this section may file an application with the Agency for a planning or construction grant to achieve the following:

(1) The provision of new public telecommunications facilities to extend service to areas currently not receiving public telecommunications services;

(2) The expansion of the service areas of existing public telecommunications entities;

(3) The establishment of new public telecommunications entities serving areas currently receiving public telecommunications services; or,

(4) The improvement of the capabilities of existing licensed public broadcast stations to provide public telecommunications services.

D. Applicants must certify whether they are delinquent on any Federal debt. No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

(1) The delinquent account is paid in full,

(2) A negotiated repayment schedule is established and at least one payment is received, or

(3) Other arrangements satisfactory to the Department of Commerce are made. Delinquent accounts include debts incurred by sub-units of the applicant other than the sub-unit that is applying to NTIA, and includes debts owed to any agency of the Federal government, not just to the Department or NTIA.

E. An applicant whose proposal requires an authorization from the FCC must be eligible to receive such authorization.

II. Program Goals and Priorities

The Goals of this program as stated in section 390 of the Communications Act (47 U.S.C. 390) are:

"To assist through matching grants, in the planning and construction of public telecommunications facilities in order to achieve the following objectives:

(1) Extend delivery of public telecommunications services to as many citizens of the United States as possible by the most efficient and economical means, including the use of broadcast and nonbroadcast technologies;

(2) Increase public telecommunications services and facilities available to, operated by, and owned by minorities and women; and

(3) Strengthen the capability of existing public television and radio stations to provide public telecommunications services to the public."

The Agency has established the following priorities for the PTFP:

Special Applications

NTIA possesses the discretionary authority to recommend awarding grants to eligible broadcast and nonbroadcast applicants whose proposals are so unique or innovative that they do not clearly fall within the priorities listed below. Innovative projects submitted under this category must address demonstrated and substantial community needs (e.g., service to identifiable ethnic or linguistic minority audiences, service to the blind or deaf, electronic text, and nonbroadcast projects offering educational or instructional services).

Priority 1—Provision of Public Telecommunications Facilities for First Radio and Television Signals to a Geographic Area

There are three subcategories:

A. *Projects that include local origination capacity.* This subcategory includes the planning or construction of new facilities that can provide a full range of radio and/or television programs including material that is locally produced.

B. *Projects that do not include local origination capacity.* This subcategory includes projects such as increases in tower height and/or power of existing stations and construction of translators, cable networks, and repeater transmitters that will result in providing public telecommunications services to previously unserved areas.

C. *Projects that provide first nationally distributed programming.* This subcategory includes projects that provide satellite downlink facilities to noncommercial radio and television stations that would bring nationally distributed programming to a geographic area for the first time.

Priority 1 and its subcategories apply only to grant applicants proposing to plan or construct new facilities to bring public telecommunications services to geographic areas that are presently unserved.

Priority 2—Replacement of Basic Equipment of Existing Essential Broadcast Stations

Projects eligible for consideration under this category include the urgent replacement of obsolete or worn out equipment in existing broadcast stations that provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographical area.

Priority 3—Establishment of a First Local Origination Capacity in a Geographical Area

Projects in this category include the planning or construction of facilities to bring the first local origination capacity to an area already receiving public telecommunications services.

Priority 4—Replacement and Improvement of Basic Equipment for Existing Broadcast Stations

Projects eligible for consideration under this category include the replacement of obsolete or worn-out equipment and the upgrading of existing origination or delivery capacity to current industry performance standards. There are two subcategories:

A. Under Priority 4A, NTIA will consider applications to replace urgently needed equipment from public broadcasting stations that do not meet the Priority 2 criteria because they do not provide either the only public telecommunications signal or the only locally originated public telecommunications signal to a geographic area. NTIA will also consider applications that improve as well as replace urgently needed production-related equipment at public radio and television stations that do not qualify for Priority 2 consideration but that produce, on a continuing basis, significant amounts of programming distributed nationally to public radio or television stations.

This subcategory will also enable the acquisition of satellite downlinks for public radio stations in areas already served by one or more full-service public radio stations. The applicant must demonstrate that it will broadcast a program schedule that does not merely duplicate what is already available in its service area.

The final projects included in this subcategory would enable the acquisition of the necessary items of equipment to bring the inventory of an already-operating station to the basic level of equipment requirements established by PTFP.

B. This subcategory includes the improvement and non-urgent replacement of equipment at any public broadcasting station.

Priority 5—Augmentation of Existing Broadcast Stations

Projects in this category would equip an existing station beyond a basic capacity to broadcast programming from distant sources and to originate local programming.

A. *Projects to equip auxiliary studios at remote locations, or to provide mobile origination facilities.* An applicant must demonstrate that significant expansion in public participation in programming will result.

B. *Projects to augment production capacity beyond basic level in order to provide programming or related materials for other than local distribution.* This subcategory would provide equipment for the production of programming for regional or national use.

III. Application Forms and Regulations

To apply for a PTFP grant, an applicant must file a timely and complete application on a current form approved by the Agency. *No previous versions of the PTFP Application Form may be used.* (In accordance with the Paperwork Reduction Act, the current application form has been cleared under OMB control no. 0660–0003.)

All persons and organizations on the PTFP's mailing list will be sent a copy of the current application form and the Final Rules. Those not on the mailing list may obtain copies by contacting the PTFP at the address above. Prospective applicants should read the Final Rules carefully before submitting applications. Applicants whose applications were deferred will be mailed pertinent PTFP materials and instructions for requesting reactivation.

Applicants should note that they must comply with the provisions of Executive Order 12372, "Intergovernmental Review of Federal Programs." The Executive Order requires applicants for financial assistance under this program to file a copy of their application with the Single Points of Contact (SPOC) of all states relevant to the project. Applicants are required to serve a copy of their completed application on the appropriate SPOC on or before March 17, 1994. Applicants are encouraged to contact the appropriate SPOC well before the NTIA closing date.

NTIA requires that all applicants whose proposed projects need authorization from the Federal Communications Commission (FCC) must tender an application to the FCC for such authority on or before March 17, 1994. (An application is tendered to the FCC when it has been received by the Secretary of the FCC.) However, applicants are urged to submit it with as much lead time before the PTFP closing date as possible. The greater the lead time, the better the chance the FCC application will be processed to coincide with NTIA's grant cycle. NTIA may return the application of any applicant which fails to tender an application to the FCC for any necessary authority on or before March 17, 1994.

Effective October 1, 1988, OMB Circular A–102, as it applies to grant recipients, has been superseded by Department of Commerce regulations, Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments (53 FR 8034, codified at 15 CFR 24 (1988)). Applicants should note that PTFP grant recipients, depending on their type of organization, are subject to the provisions of diverse Office of Management and Budget (OMB) Circulars; i.e., A–87 "Cost Principles for State and Local Governments," A–21 "Cost Principles for Educational Institutions," A–110, A–122, A–128, as

implemented by 15 CFR part 29a, and A–133, as implemented by 15 CFR part 29b.

Indirect costs for construction applications are not supported by this program. The total dollar amount of the indirect costs proposed in a planning application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less.

All non-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity. Potential grant recipient organizations may also be subject to reviews of Dun and Bradstreet data or other similar credit checks.

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension, and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Applicants are further advised that:

(1) Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form;

(2) Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form;

(3) Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

(4) Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

For awards granted by NTIA, the recipient shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the grant award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to the Department. SF–LLL completed by any tier recipient or subrecipient should be submitted to the Department in accordance with the instructions contained in the award document.

If an application is selected for funding, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal or amendment of an award to increase funding or to extend the period of performance is at the total discretion of the Department.

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards. In addition, unsatisfactory performance by the applicant under prior Federal awards may result in the application not being considered for funding.

Applicants are reminded that a false statement on the application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

If applicants incure any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal or written assurance that may have been received, there is no obligation on the part of DOC to cover preaward costs.

IV. Funding Criteria

All PTFP funding criteria are equal in weight. In determining whether to approve or defer a construction grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the project meets the program purposes set forth in the Final Rules, 15 CFR 2301.2, as well as the specific program priorities set forth in the Appendix of those Rules;

(b) The adequacy and continuity of financial resources for long-term operational support;

(c) The extent to which non-Federal funds will be used to meet the total cost of the project;

(d) The extent to which the applicant has:

(1) Assessed specific educational, informational, and cultural needs of the community(-ies) to be served, and the extent to which the proposed service will not duplicate service already available;

(2) Evaluated alternative technologies and the bases upon which the technology was selected;

(3) Provided significant documentation of its equipment requirements, and the urgency of acquisition or replacement;

(4) Provided documentation of an increasing pattern of substantial non-Federal financial support;

(5) Provided other evidence of community support, such as letters from elected or appointed policy-making officials, and from agencies for which the applicant produces or will produce programs or other materials;

(e) The extent to which the evidence supplied in the application reasonably assures an increase in public telecommunications services and facilities available to, operated by, and owned or controlled by minorities and women;

(f) The extent to which various items of eligible apparatus proposed are necessary to, and capable of, achieving the objectives of the project and will permit the most efficient use of the grant funds;

(g) The extent to which the eligible equipment requested meets current broadcast industry performance standards;

(h) The extent to which the applicant will have available sufficient qualified staff to operate and maintain the facility and provide services of professional quality;

(i) The extent to which the applicant has planned and coordinated the proposed services with other telecommunications entities in the service area;

(j) The extent to which the project implements local, statewide or regional public telecommunications systems plans, if any; and,

(k) The readiness of the FCC to grant any necessary authorization.

In determining whether to approve or defer a planning grant application, in whole or in part, and the amount of such grant, the Agency will evaluate all the information in the application file and consider, in no order of priority, the following factors:

(a) The extent to which the applicant's interests and purposes are consistent with the purposes of the Act and the priorities of the Agency;

(b) The qualifications of the proposed project planner;

(c) The extent to which the project's proposed procedural design assures that the applicant would adequately:

(1) Obtain financial, human and support resources necessary to conduct the plan;

(2) Coordinate with other telecommunications entities at the local, state, regional and national levels;

(3) Evaluate alternative technologies and existing services; and

(4) Receive participation by the public to be served (and by minorities and women in particular) in the project planning;

(d) Any pre-planning studies conducted by the applicant showing the technical feasibility of the proposed planning project (such as the availability of a frequency assignment, if necessary, for the project); and,

(e) The feasibility of the proposed procedure and timetable for achieving the expected results.

V. Matching Requirements

(a) Planning grants. A Federal grant for the planning of a public telecommunications facility shall be in an amount determined by the Agency and set forth in the award document and the attachments thereto. The Agency may provide up to 100 percent of the funds necessary for the planning of a public telecommunications construction project.

(b) Construction grants.

(1) A Federal grant award for the construction of a public telecommunications facility shall be an amount determined by the Agency and set forth in the award document. Such amount may not exceed 75 percent of the amount determined by the Agency to be the reasonable and necessary cost of such project.

Special Note: As originally stated in the August 20, 1987, PTFP Final Rules, and as reaffirmed and clarified in a November 22, 1991, PTFP Policy Statement, NTIA has established a policy which is intended to encourage stations to increase from 25% to 50% the matching percentage in their proposals for equipment replacement, improvement, and augmentation. The Agency has emphasized that applicants proposing to provide first service to a geographic area encounter considerable ineligible costs, including construction or renovation of buildings or other similar expenses. NTIA, therefore, expects to continue funding projects to extend service at up to 75% of the total project cost. Applicants from small community-licensed stations, or those who can show that a station licensed to a large institution cannot obtain direct or in-kind support from the larger institution, also will not be subject to this preference. Otherwise, a showing of extraordinary need or an emergency situation will be taken into consideration as justification for grants of up to 75% of the project cost, but the presumption of 50% funding will be the general rule for applications calling for the replacement, improvement, or augmentation of equipment.

(2) No part of the grantee's matching share of the eligible project costs may be met with funds paid by the Federal government, except where the use of such funds to meet a Federal matching requirement is specifically and expressly authorized by Federal statute.

(3) Funds supplied to an applicant by the Corporation for Public Broadcasting may not be used for the required non-Federal matching purposes, except upon a clear and compelling showing of need.

(4) The expenditure of any local matching funds prior to the Closing Date will be disallowed.

(5) *The Applicants should note that expenditure of local matching funds prior to the award of a grant is at the applicant's own risk.* The exact amount of the match will not be known with certainty until the final award agreement is negotiated. Therefore, should the applicant's expenditure of non-Federal funds exceed the non-Federal share which will be established in the final award agreement, then either the Federal share of the total project cost may be reduced by a corresponding amount, or no Federal award may be offered.

VI. Selection Process and Project Period

PTFP grants are awarded on the basis of a competitive review process. This includes several grant review panels, which apply the Funding Criteria listed in section V above. The Agency determines the selection of grantees according to the Priorities listed in section III above and the evaluation of the applications by the various review panels.

Planning grant award periods customarily do not exceed one year, whereas construction grant award periods commonly range up to two years. Although these time frames are generally applied to the award of all PTFP grants, variances in project periods may be based on specific circumstances of an individual proposal.

Authority: The Public Telecommunications Financing Act of 1978, Pub. L. 95–567, 92 Stat. 2405 (as amended), 47 U.S.C. 390–394, 397–399b (1988).

Dr. Charles Rush,

Acting Associate Administrator, Office of Telecommunications and Information Applications.

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Part V

Environmental Protection Agency

40 CFR Parts 260 and 261
Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes From Wood Surface Protection; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 260 and 261

[FRL–4804–9]

Hazardous Waste Management System; Identification and Listing of Hazardous Waste; Wastes From Wood Surface Protection

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing a final hazardous waste listing determination for wastes generated from the use of chlorophenolic formulations in wood surface protection processes. Upon reviewing the public comments received on its proposal of April 27, 1993, the Agency has decided not to list wastes from the use of chlorophenolic formulations in wood surface protection processes. As a result of this determination, EPA is not mandating in this rule any specific operating or information collection requirements for owners/operators of wood surface protection plants. If, however, use of chlorophenolic formulations resumes in the future, the Agency would very likely re-evaluate this decision not to list. This rule also finalizes the proposed amendment of SW–846 ("Test Methods for Evaluating Solid Waste, Physical/Chemical Methods") to include Method 4010 (Immunoassay Test for the Presence of Pentachlorophenol). In addition, the Agency is adding the following four chemicals to 40 CFR part 261, Appendix VIII: Sodium and potassium salts of pentachlorophenol and tetrachlorophenol.

EFFECTIVE DATE: January 4, 1994.

ADDRESSES: The official record for this rulemaking is identified as Docket Number F–93–F33F–FFFFF and is located in the EPA RCRA Docket, room M2616, 401 M Street, SW., Washington, DC 20460. The public must make an appointment to review docket materials by calling (202) 260–9327. The docket is open from 9 a.m. to 4 p.m., Monday through Friday, excluding holidays. The public may copy up to 100 pages from the docket at no cost. Additional copies cost $0.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 (toll-free) or (703) 920–9810 in the Washington, DC metropolitan area. The TDD hotline number is (800) 553–7672 or (703) 486–3323. For technical information on specific aspects of this rulemaking, contact Mr. David J. Carver at (202) 260–6775, Office of Solid Waste (Mailcode 5304), U.S. EPA, 401 M Street, SW., Washington, DC 20460. For technical information relating to the amendment of SW–846, contact Ms. Gail Hansen at (202) 260–4761, Office of Solid Waste (Mailcode 5304), at the same address provided above.

SUPPLEMENTARY INFORMATION: The contents of today's preamble are listed in the following outline:

I. Legal Authority
II. Background & Summary
III. Overview of the Proposed Rule
IV. Summary of Public Comments and Responses
  A. General Comments
  B. Comments Regarding Risk Assessment
V. Overview of the Final Rule
  A. Basis for the Determination Not to List As Hazardous Wastes From Wood Surface Protection Operations
  B. Operating Requirements for Surface Protection Plants
  C. Addition of Chemicals to Appendix VIII of 40 CFR part 261
VI. Amendment of SW–846 (*Test Methods for Evaluating Solid Waste, Physicol/Chemical Methods*)
VII. Pollution Prevention and Waste Minimization
VIII. Analysis of Potential Costs and Benefits
  A. Executive Order Requirements
  B. Description of Costs and Benefits of this Rule
IX. State Authority
X. Regulatory Flexibility Analysis
XI. Paperwork Reduction Act

I. Legal Authority

These regulations are being promulgated under the authority of sections 2002(a) and 3001(b) and (e)(1) of the Solid Waste Disposal Act, as amended, 42 U.S.C. 6912(a), 6921(b) and (e)(1), and 6922 (commonly referred to as RCRA).

II. Background & Summary

A. Background

Under section 3001(e) of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), EPA is required to make a hazardous waste listing determination for wastes containing chlorinated dioxins and dibenzofurans. As part of this mandate, the Agency began an investigation in 1988 of dioxin-containing wastes from wood preserving and wood surface protection processes. Three categories of wastes from wood preserving processes were listed as hazardous wastes in 1990, (F032, F034, and F035, see 55 FR 50450). A final listing determination for wood surface protection process wastes were deferred due to lack of data (53 FR 53282). In 1991, the Agency began a separate study of the surface protection industry in an effort to obtain sufficient information upon which to base a hazardous waste listing determination. The Agency, upon obtaining and evaluating information, published a proposed rule on April 27, 1993 which proposed a concentration-based hazardous waste listing option and requested comment on an alternative option not to list these wastes as hazardous (58 FR 25707). Details of the options can be found in the following section to this preamble. A detailed summary of all Agency actions related to wood surface protection wastes was provided in the April 27, 1993 proposal (58 FR 25707). The reader is encouraged to consult that document for more information on the wood surface protection rulemaking history.

In accordance with a proposed consent decree signed by EPA and the Environmental Defense Fund (EDF) in *EDF* v. *Browner* (U.S. District Court for the District of Columbia, case no. 89–0591), the Agency has agreed to make a final listing determination for chlorophenolic wastes from wood surface protection processes by December 31, 1993.

B. Summary of the Wood Surface Protection Regulation

After considerable review and study of the rulemaking docket for this action, including comments received on the proposal, the Agency has determined that listing as hazardous wastes from surface protection operations is unnecessary and will not yield the benefits intended by a hazardous waste listing under the RCRA program. This section summarizes elements of the proposed rule of April 27, 1993 (58 FR 25707), and details the conclusions reached in developing this final rule. The reader is cautioned that although some of the highlights brought up in the proposed rule are described below, the majority of information on the industry itself as well as the detailed risk assessment on which the initial proposed rule was based is found in the preamble and background documents to the proposed rule. The information contained in this final rule is primarily concerned with developments subsequent to the proposed rule. This rule describes, in detail, the Agency's justification for not listing wastes from surface protection processes that use chlorophenolic formulations. In addition, it summarizes the Agency's response to comments received on the proposal.

III. Overview of the Proposed Rule

The April 27, 1993 proposal discussed and requested comment on each of the following:

(1) Proposing a concentration-based hazardous waste listing for certain wood surface protection wastes,

(2) Proposing various testing, analysis, recordkeeping requirements and management standards for wood surface protection plants,

(3) Adding six hazardous constituents to appendix VIII of 40 CFR part 261,

(4) Amending of appendix VII of 40 CFR part 261 by adding F033 and the hazardous constituents found in the wastes,

(5) Modifying the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) list of hazardous substances to reflect the newly proposed listing,

(6) Amending SW–846 ("Test Methods for Evaluating Solid Waste, Physical/Chemical Methods") to include Method 4010 (Immunoassay Test for the Presence of Pentachlorophenol), and

(7) An alternative option not listing chlorophenolic wastes as hazardous.

The Agency proposed to list as hazardous at 40 CFR 261.31 only those wastes from wood surface protection processes using a formulation with a pentachlorophenate concentration greater than 0.1 ppm. Under this proposed option, surface protection operations using formulations with pentachlorophenate concentrations equal to or less than 0.1 ppm would not generate F033 listed wastes. The Agency proposed this concentration-based listing because it had information which suggested that many surface protectors who previously used chlorophenolics did not sufficiently clean out equipment prior to abandoning the use of chlorophenolics. Because of this, many formulations from past users of chlorophenolics exhibit "cross-contamination," the contamination of current formulations by dioxins and chlorophenolic compounds from old formulations. The rule proposed the following hazardous waste listing description for the F033 waste code and included the following specific waste streams from process operations:

F033:Process residuals, wastewaters that come into contact with protectant, discarded spent formulation, and protectant drippage from wood surface protection processes at plants that use surface protection chemicals having an in-process formulation concentration of pentachlorophenate (expressed as pentachlorophenol during analysis) exceeding 0.1 ppm. (T)

Along with this option, various testing and recordkeeping requirements were proposed. For an owner/operator to demonstrate that he/she is not generating F033 wastes, EPA proposed formulation testing requirements for all surface protection plants. All owner/operators of wood surface protection plants would be required to test their formulation to determine the concentration of pentachlorophenate if the owner/operators wanted to avoid generating F033 wastes. If the analysis showed a concentration at or below 0.1 ppm, the owner/operator would be required to sign a certification to that effect and maintain records on site related to the testing procedure. This testing proposed an analysis using a method listed within the EPA's Test Methods for Evaluating Solid Waste, Physical/Chemical Methods (SW–846). The Agency proposed to add Method 4010 to SW–846. Method 4010 is an immunoassay test for the presence of pentachlorophenol, which determines whether a sample is above or below a set limit (such as the 0.1 ppm concentration level proposed).

Under the proposal, if analysis showed that a facility's formulation contains pentachlorophenate at levels exceeding 0.1 ppm, then the wastes generated from surface protection at that facility would be F033 wastes and the owner/operator would be subject to additional operating requirements proposed as subpart T of parts 264 and 265. For details on the specific operating requirements, the reader should refer to the proposed notice (58 FR 25706).

A number of the constituents of concern that are present in wastes generated from wood surface protection processes which use chlorophenolic formulations do not appear on the list of hazardous constituents at 40 CFR part 261, appendix VIII. The Agency proposed to add six hazardous constituents to appendix VIII: sodium pentachlorophenate, potassium pentachlorophenate, the sodium salt of 2,3,4,6-tetrachlorophenol, the potassium salt of 2,3,4,6-tetrachlorophenol, octachlorodibenzo-p-dioxin (OCDD) and octachlorodibenzofuran (OCDF).

Sodium and potassium pentachlorophenate are the sodium and potassium salts of pentachlorophenol. These salts were proposed for addition to appendix VIII of 40 CFR part 261 since, as a result of gastric secretions following ingestion, the sodium and potassium salts of pentachlorophenol and 2,3,4,6-tetrachlorophenol are readily converted to the corresponding phenols by acidification. Therefore, the sodium and potassium salts are reasonably expected to elicit the same health effects as the corresponding phenols. For this reason, the Agency proposed to add these four compounds to the list of hazardous constituents in appendix VIII of 40 CFR part 261.

The Agency also requested comment on an option not to list as hazardous wastes generated from surface protection processes. The Agency included the so-called "no-list" option in the proposal because the future generation of chlorophenolic wastes is expected to diminish rapidly to zero and because the results of risk analyses show that the risks from the dominant exposure pathways are relatively modest, assuming the widespread use of chlorophenolic formulations does not resume. The Agency believed at the time of the proposal that reintroduction of chlorophenolic formulations into the market place in the future was not likely to occur. EPA also noted that the Agency would always have the option of reconsidering the listing determination should chlorophenolic surface protection formulations be reintroduced in the future.

IV. Summary of Public Comments and Responses

Comments received on the proposed rule are placed under two separate headings for purposes of this summary. The first addresses the more general comments associated with the proposal, including those relating to: (1) General implementation issues of a listing for wastes generated by the wood surface protection industry; (2) technical approaches discussed in the proposal relating to data sampling methodologies; and (3) various engineering assumptions on which the proposed listing was based. The second part of this section describes the Agency's response to comments dealing with the risk assessment methodology used to support the listing determination for these wastes.

A. General Comments

Several comments were submitted on the proposed listing of F033 wastes. Four commenters supported the listing in general and two commenters supported the concentration-based approach in particular. Three commenters opposed the proposed listing and urged EPA to rely on its authority under FIFRA to control the risks posed by chlorophenolic formulations. One commenter supported an outright ban on the use of chlorophenolics for wood surface treatment.

Two commenters warned that listing F033 wastes would hinder remediation efforts at contaminated wood surface protection sites. The Agency agrees with

the commenters' point that a hazardous waste listing may provide a disincentive for owner/operators of surface protection plants to initiate voluntary remediation efforts. The regulation of potentially large amounts of contaminated soil as listed hazardous waste could delay the start of cleanup due to the administrative and economic realities of regulatory compliance.

Three commenters expressed concern over the possibly perceived interchangeability of the proposed 0.1 ppm concentration level and the Toxicity Characteristic (TC) regulatory level for pentachlorophenol. Although the Agency is not finalizing the F033 hazardous waste listing, EPA nevertheless wants to make clear that the concentration level proposed in the F033 listing description was not intended as a regulatory level for any purpose other than defining a waste as F033. The current regulatory level for pentachlorophenol that defines a waste as hazardous under the TC (100 mg/L) would not have been affected by this rulemaking in any way had the F033 listing been promulgated today. Levels set for the TC are obtained by running models which simulate acidic landfill conditions. For the proposed listing, the proposed 0.1 ppm level was calculated using a Maximum Contaminant Level (MCL) of 0.001 ppm and a risk analysis using the Agency's Multi-med model. Multi-med simulates groundwater contamination from specific sources, and for this proposal, it incorporated variables which are specific to sawmill conditions. The Agency's analysis approximated the dilution of pentachlorophenate from the time the waste contacts the ground to when it reaches a ground water well. The Agency did not arrive at the 0.1 ppm level by applying a dilution attenuation factor (DAF) of 100 (as the Agency has done in other circumstances) to the MCL. Indeed, the Agency did not take a position in the proposal about the use of DAFs in calculating acceptable risk levels for any constituents. A detailed discussion of the Agency's modeling assumptions and actual parameters used to generate risk approximations can be found in the docket for the proposed rule.

One commenter expressed reservations regarding the decontamination procedures promulgated previously for wood preserving equipment (55 FR 50482–50483, December 6, 1990). The Agency is aware that equipment cleaning will not always prevent cross-contamination. However, it will certainly reduce the amount of contamination that would occur if no equipment cleaning took place. Although the Agency is not finalizing the proposed F033 hazardous waste listing, EPA encourages owner/operators of surface protection plants to clean or replace any surface-treating equipment that was used previously with chlorophenolic formulations upon a switch to non-chlorophenolic chemicals and properly dispose of the wastes in an environmentally sound manner. Furthermore, the Agency has obtained information which shows that some new substitute products are more effective if residual chlorophenolic contamination is removed. Hence, removing sludge and cleaning equipment from previous chlorophenolic use will not only be more environmentally sound, but may also enhance the new products effectiveness. Methodology on recommended cleaning and operating practices for surface protectors will be published in the near future by the Agency in a pollution prevention and waste minimization guidance document.

One commenter suggested that the proposed operating standards for surface protection plants be codified in part 262 as opposed to parts 264/265. The commenter reasoned that most surface protection plants are only generators and do not function as treatment, storage, and disposal facilities (TSDFs). However, since the F033 hazardous waste listing is not being promulgated, this issue is moot and there is no need for special generator requirements.

Several commenters had specific concerns about the applicability of the proposed F033 listing. Since the Agency is not finalizing the proposed F033 listing, these concerns are also moot: However, where appropriate, answers specific to each of these comments have been addressed in the background document of this final rule.

One commenter questioned the representativeness of the Agency's data on cross-contamination. The commenter stated that because sites were not randomly selected, there is no true sample representation of the surface protector population. EPA did not choose sampling sites based on their statistical representativeness. Rather, the sites were selected as appropriate from what the Agency considered to be typical operating plants. The Agency visited more than 15 surface protection sites in the Nation (both large and small plants). From the information obtained from these plant tours and interviews, the Agency developed a view of what it considered typical from an engineering standpoint (e.g. size of equipment, production scale, presence of containment systems, size of storage yards, amount of drippage, etc). The sites sampled need not represent the entire surface protection industry in terms of the process used and the degree of cross-contamination present to allow the Agency to demonstrate that wastes from current and previous use of chlorophenolics at surface protection sites were contaminated with the constituents of concern. These sites were chosen from information obtained by a questionnaire sent out under the Agency's 3007 RCRA authority.

B. Comments Regarding Risk Assessment

Five commenters responded to the risk assessment presented in the proposed rule. One commenter stated that the EPA incorrectly converted units of measurement in the record sampling data used for the risk assessment causing the overestimation of incremental risk for the fish/shellfish consumption and soil ingestion pathways by a 1,000-fold. The EPA agrees with the commenter. The dioxin concentrations in the formulation at one of the affected facilities (Aquasco, MD) were reported in the wrong units, causing a 1,000-fold error to be incorporated into the risk estimates for the fish and shellfish ingestion and soil ingestion scenarios. When this error is corrected, the TCDD-TEQ dioxin levels used as the source concentration (the concentration of formulation dripping onto the ground) for affected facilities (cross-contamination from past use of chlorophenolic formulations) and used in the lifetime individual risk estimates for the soil ingestion scenario and fish and shellfish ingestion scenario were reduced by a 1,000-fold. The lifetime individual risk values using the corrected data are presented in Table 1.

TABLE 1.—INDIVIDUAL RISK FROM CROSS-CONTAMINATION FROM PAST USAGE OF CHLOROPHENOLIC FORMULATIONS FROM FISH AND SHELLFISH INGESTION

Population	Recreational fishers		General population	
	Central tendency	High end	Central tendency	High end
Constituent: 2,3,4,7,8-TCDD TEQ[1]	2E–12	3E–11	8E–13	1E–11

[1] Excess lifetime cancer risk.

The estimated risk to any one individual using the corrected values are 1,000-fold lower than the risk estimated in the proposed rule from cross-contamination due to past use. In this case for the typically exposed individual in the general population, the incremental risk of developing cancer is a chance of 0.8 in a trillion (8E–13); in the recreational fisher person, the risk of developing cancer is increased by only 2E–12. The estimated incremental population risk is also reduced, after correction, approximately by a 1,000-fold, to 0.0002 cases/70 years for the anticipated increase in the development of cancer as a result of exposure to ingestion of fish/shellfish contaminated with wastes from the use of chlorophenolic formulations for wood surface protection. Chart 1 in Section V Part A of this final rule shows the original values reported in the April 27, 1993 proposed notice.

The soil ingestion scenarios also were based on the storage yard soil concentrations. The soil ingestion scenario assumed that children ages 1 to 6 could come into contact with the contaminated soil at the sawmill sites because sawmill sites could be converted to rural residential land use and the child's play area could be located on the area previously used as a storage yard area. The lifetime individual risks, using the corrected formulation concentration values for dioxin, associated with the soil ingestion scenario for cross-contamination from past users of chlorophenolic formulations are presented in Table 2.

TABLE 2.—INDIVIDUAL RISK FROM CROSS-CONTAMINATION FROM PAST USAGE OF CHLOROPHENOLIC FORMULATIONS FROM DIRECT SOIL INGESTION

Source	Storage yard	
	Central tendency	High end
Constituent: 2,3,7,8-TCDD TEQ[1].	7E–10	2E–9

[1] Upper bound excess lifetime cancer risk.

The estimates presented in Table 2 show that the incremental risks from direct soil ingestion by children are below what the Agency considers a level of concern. A child exposed to storage yard soils cross-contaminated by past users of chlorophenolics under typical conditions (consumption of 0.1 gram of soil/day for 160 days/year for six years) would be subject to an increased cancer risk of 7E–10 over a lifetime, or a chance of 0.7 in a billion. The estimated incremental population risk is also reduced approximately 1,000-fold (to 4E–7 cases per year over a 70-year period) for the anticipated increase in the development of cancer as a result of exposure to direct ingestion of soil contaminated with wastes from the use of cross-contaminated formulations for wood surface protection.

One commenter remarked that the EPA failed to specifically address the incremental risks to subsistence fisher persons from consumption of fish/shellfish contaminated from the use of chlorophenolic formulations for wood surface protection. EPA agrees that the risks to highly exposed sub-populations should be considered. The fish ingestion scenarios developed for the proposed rule considered exposure to a general population and recreational fisher at the outflow of a drainage area containing surface protection facilities.

EPA used the analysis for the high end recreational fisher to approximate the risk to the subsistence fisher. Recent data show that the high end ingestion rate for a subsistence fisher is greater than for a recreational fisher by a factor of approximately 2. Therefore, the incremental risk for a subsistence fisher would not exceed a level of concern, since the projected risk to recreational fishers is much less than 10^{-6}.

The analysis of risks from fish consumption assumes that all fish in the drainage basin are contaminated. The estimates of PCDDs and PCDFs in fish tissue are based on sediment concentrations of these constituents. The sediment concentrations are estimated based on the erosion of contaminated soils from sawmill sites in a river or stream basin and subsequent dilution of contaminant levels by the erosion of uncontaminated soils from the corresponding drainage basin.

The projected risk levels increase as the size of the drainage area decreases, due to the relatively lower amounts of uncontaminated soil in smaller drainage basins. EPA performed an analysis which shows that, even with all exposure parameters set at values which would maximize the overall estimate of exposure, in order to reach a risk level of 10^{-6}, the drainage area would need to be 8,000 hectares or less, which is smaller than the smallest drainage area in the country. The average drainage area is 440,000 hectares, and the lower fifth percentile of the size distribution is 109,000 hectares.

With regard to the fish/shellfish ingestion scenario, one commenter maintained that the fish/shellfish ingestion scenario should have been performed on a site-specific basis (*i.e.* EPA should have used parameters seen at individual sites), because not all sawmills are located on streams with commercial fisheries. The EPA chose the fish/shellfish ingestion scenario to be protective of the recreational fisher persons and the general population. The risk analysis was structured so that the hydrologic cataloguing unit (or watershed) was the basic unit of analysis to ensure that the contaminated sediment would be associated with a body of water large enough to support

fish hatcheries and recreational fisher persons. When these assumptions were used in the fish/shellfish ingestion scenario using corrected values for dioxin found in formulation for PCDDs and PCDFs, the incremental risk to individuals with high-end exposures remains well below 1×10^{-6}.

With regard to the Universal Soil Loss Equation (USLE), one commenter asserted that the equation is overly conservative for estimating soil erosion from surface protection sites. This equation models the amount of soil which is dumped into a drainage area containing fish. For a more detailed description of the model, the reader is referred to background document of the proposed rule. The EPA believes that, although this may be a conservative approach, it is the best method currently available. It has been used to support other EPA rulemakings and guidance documents. The most notable example being the Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife, and Aquatic Life to Dioxins and Furans, from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills.[1] Even using these conservative assumptions, the incremental risks from cross-contamination at these sites are not at a level of concern.

One commenter suggested that the population risks attributable to the contaminated fish/shellfish ingestion scenario were too high because the entire U.S. population was considered to be exposed. EPA disagrees and believes it is appropriate to consider the consumption rate of the entire population in estimating risk to the general population from this exposure pathway. However, an adjustment of 0.4 was made to the diet fraction to account for the fact that not all fish are contaminated. Thus, only some percentage of the population would be affected by the contaminated fish. As discussed in the Risk Assessment Background Document for the proposed rule, the 0.4 diet fraction was derived by estimating the percentage of rivers and streams (i.e., cataloguing units) that have at least one sawmill. A second adjustment was made in the calculation of population risk to account for the percentage of sawmills that operate surface protection processes (about 30% of the entire number of sawmills nationally). Population risk for the fish/shellfish ingestion scenario has been recalculated for the final rule using the corrected incremental storage yard soil TCDD-TEQ concentrations. The corrected estimate of incremental population risk from cross-contamination is three orders of magnitude lower than the risk originally stated in the proposed rule. The corrected number of cancer cases expected in 70 years is now 0.0002.

One commenter asserted that the soil ingestion scenario was overly conservative because all of the soil consumption was attributed to contaminated storage yard soil and no consumption of "indoor dust" was considered. EPA considered only the consumption of storage yard soil in order to be protective of human health. The range of soil ingestion rates for average children aged 1 through 6 is presented in the EPA's Exposure Factors Handbook (1990) as 0.2 to 0.8 grams per day. These estimated values were determined from the clay content of fecal samples taken from children in this age group and thus represent consumption of soil. However, the percent of this consumption that is attributed to house dust is unknown, as is the contaminant concentration in the house dust. The EPA has recalculated the soil ingestion scenario using the corrected incremental TCDD-TEQ concentrations obtained from the formulation sample. The incremental risk estimated is below 1E–6, using the conservative assumptions. The Agency's risk levels are particularly protective with the use of these conservative assumptions, thereby further lending support to the Agency's decision not to list these wastes.

One commenter stated that children are unlikely to consume sediment at the same rate that they consume soil. The Agency agrees, but notes that sediment consumption by children was not considered as an exposure pathway in the proposed rule. The Agency does not feel that this exposure pathway is a significant one in making a determination whether or not to list chlorophenolic wastes since the exposure areas of concern are relatively small and any land conversion which could take place would most likely require soil testing prior to land development.

One commenter stated that the assumptions used to estimate the exposed population in the soil ingestion population risk scenario greatly overestimate the number of exposed children. EPA believes that the scenario may be conservative, but not implausible. The scenario assumes that all sawmill sites are converted to rural residential land use, that the children's play areas are located on the site of the former storage yards, and that the homes are resold to new families with young children every 25 years. These assumptions include a low population density in these areas. It would take only a limited number of sites to be converted to suburban housing or to daycare or school facilities to cause a substantial increase in the exposed population. The incremental population risk estimated using the corrected incremental value for the storage yard soil TCDD-TEQ concentration is 4E–7 cases in 70 years, three orders of magnitude lower than that in the proposed rule.

One commenter maintained that the soil ingestion scenario was questionable because Superfund liabilities, state laws, and lender requirements make land use changes unlikely without site cleanup activities. The EPA agrees that, in some states, land transfers and subsequent land use changes would be unlikely to occur without cleanup. However, not all states are equally diligent in requiring site investigations at the time of property transfer, making the types of land use changes described in the soil ingestion scenario plausible. Because of this, EPA believes it is entirely appropriate to assess risk via the soil ingestion pathway, notwithstanding any risk management decisions that may be made at some future time to address the risk.

Two commenters believed that some of the values used as input parameters to the ground-water model (i.e. recharge rate, regional conductivity, and average depth to water) were too conservative and that more appropriate input parameters should be used in this MULTIMED model. One commenter believed that the Agency had used DRASTIC (a name given to a modelling program used to evaluate the potential which may exist resulting from groundwater pollution) to perform its groundwater modeling. First, the EPA did not use the DRASTIC model in this rulemaking effort; it used the MULTIMED model developed by the Agency to perform groundwater models. The Agency did, however, use some soil and hydrogeologic information (on hydrogeologic regions and subregions collected by Aller *et al.* (1988)) which is used when applying the DRASTIC model. With regard to the parameters felt by the commenter to be too conservative, the EPA supports the values used in the proposed rule (58 FR at 25706 of April 27, 1993). This hydrogeologic information includes many of the input parameters required to run the MULTIMED model, and includes such parameters as depth to water, soil type and hydraulic conductivity, net recharge, aquifer hydraulic conductivity. The EPA selected hydrogeologic subregions in the northwest and southeast United States, excluding subregions where sawmills were not likely to be sited (e.g., mountain slopes or flanks). Since the parameter value ranges presented in Aller *et al.* (1988) are based on compilations of literature values and expert opinion, the values should be viewed as bounding ranges, and are not sufficiently statistically rigorous to estimate true means or parameter distributions. For the average case, "typical" parameter values were obtained by examining the ranges of values in Aller *et al.* (1988) for the selected subregions only and selecting values representing the central tendency of the reported ranges. Similarly, high-end values were selected to represent the high end of the exposure distribution, using the higher end of the range of parameter values deemed likely to occur by Aller *et al.* (1988). EPA recognizes that there are limitations to this approach, largely associated with the non-statistical nature of the data. The Agency believes, however, that this data source is the best available at this time for regional and subregional estimates of the hydrogeologic properties necessary to estimate exposures through the ground-water pathway.

Two commenters felt that the Agency's use of input parameter values used for well location and well intake point were too conservative. EPA derived the horizontal distance to wells from the responses reported in the RCRA's 3007 Industry Questionnaires. Because information was not obtained on the well type or construction, all wells described in the questionnaire were assumed to be possible sources of drinking water and were assumed to be screened to the top of the aquifer, that is, well water was assumed to be drawn off the top of the aquifer where organics are assumed to exist in greater concentrations than when water is drawn from the middle of the aquifer. These assumptions are consistent with similar conservative assumptions used to develop other RCRA regulations, such as the Toxicity Characteristic (55 FR 11798, March 29, 1990).

Two commenters contended that neither biodegradation or chemical degradation rates were considered in the ground-water modeling of pentachlorophenol contamination. These commenters submitted studies showing that biological and chemical degradation of PCP can occur and that adequate biological and chemical degradation rates are available or can be estimated from these studies. EPA has reviewed these studies and agrees that they do indicate that biological and chemical degradation of PCP can occur. The information submitted by the commenters are results from laboratory studies, reporting the results from controlled experiments. However, EPA does not agree that there is sufficient information on unassisted field degradation rates, the geochemical factors that affect degradation, or their spatial variability from site-to-site or region-to-region to model degradation in the field at generic or prototypical sites for regulatory purposes. Moreover, the existence of metabolites that would confirm the occurrence of biodegradation in the field has not been firmly established. Therefore, EPA does not believe the data warrant an assumption that biodegradation does occur at significant rates at most sites. In addition, the toxicities of potential degradation products have not been characterized. Therefore, the EPA does not believe it is appropriate to consider these mechanisms in this rulemaking.

One commenter suggested that it would be more appropriate to calculate the average peak concentration of pentachlorophenate in groundwater used to reflect a 9-year exposure duration by producing a breakthrough curve of annual concentrations at a well using the MULTIMED model and calculate a series of 9-year or 10-year moving averages. The moving averages would be sorted in descending order and a paper plot prepared. A preferred percentile value could then be selected as the concentration of concern. EPA believes the current method of calculating 10-year time-weighted averages by averaging two 5-year concentrations (including the maximum concentration and the highest adjacent 5-year value calculated from each model run) is an appropriate approach for estimating lifetime individual risk and the Agency selected this approach to be conservative and protective of human health. The 30-year exposure duration scenario uses a time-weighted 30-year average concentration that includes the maximum concentration. Population risk estimates aggregated over 70 years were based on a time-weighted 70-year average concentration that includes the maximum concentration.

One commenter believed that the source concentration used by EPA for PCP in the ground-water ingestion scenario was too high because PCP is no longer in use and, thus, the infiltration to ground water would be reduced. The commenter suggested that source reduction also would occur from erosion of surface soil containing PCP, before it is leached and enters the ground water. EPA addressed the fact that PCP is no longer in use at most facilities in its baseline risk estimates in the proposed rule, which have been revised in the final rule based on comments received to reflect source concentrations and pulse durations (estimated time in which pentachlorophenate is expected to be present in substitute wood surface protection product from time of changeover) more representative of the cross-contamination scenario. While surface runoff and erosion may reduce the amount of PCP available for leaching to ground water, EPA has assumed, for the purpose of its analysis, that any reductions are negligible. The EPA adopted this conservative assumption mainly because of lack of data necessary to quantify such a loss and its effects on ground-water concentrations. Furthermore, EPA does not believe that surface water and erosion will significantly reduce source leachate concentrations. As formulation drips onto the soil it will rapidly penetrate the soil until the soil is saturated. Subsequent rain events may wash off contaminated surface soil, but will not erode deeper soil horizons where most of the contaminant mass resides. Thus, EPA does not consider this assumption to be overly conservative.

One commenter noted that the results of the ground-water analysis were not supported by actual resource damage data. The Agency does not expect, nor does it feel that it is needed, that ground water PCP concentrations predicted by MULTIMED would agree precisely with the resource damage data. The resource damage incidents presented in the background document are intended to illustrate that ground-water contamination from PCP does occur at sawmill facilities, and are not intended as validation points for exposure modeling. Resource damage data were obtained from monitoring and other wells that happened to be in place at a facility when the sampling was conducted. There are a number of possible reasons why sampling data from the resource damage incidents may not reflect well-water concentrations predicted by the model, in particular the location of the wells with regard to plume centerline and ground-water flow direction, and the timing of peak plume concentrations at the wells.

The latter point is especially important because, depending on patterns of past PCP use and the well

[1] Environmental Protection Agency, 1990. Assessment of Risks from Exposure of Humans, Terrestrial and Avian Wildlife to Dioxins and Furans, from Disposal and Use of Sludge from Bleached Kraft and Sulfite Pulp and Paper Mills. Prepared for the Office of Toxic Substances, Washington, DC by Abt Association, Inc. under contract nos. 68–02–4283, Task 3–02, and 68–D9–0169, Task 1–15. EPA 560/5–90–13. July, 1990.

location, the peak concentration in the plume may not have reached or may have passed the well(s) sampled. In these resource damage cases, sufficient information was not available to determine the placement and design of these wells with respect to the site's hydrogeology or possible plume locations and travel time. Thus, it is not possible to use these data points for validation of model results. However, it should be noted that the model-estimated ground-water PCP concentrations in the final rule are similar to those reported from resource damage incidents. When the revised average source concentration was used in the ground-water model, the estimated concentrations for PCP in ground water (average = 0 .005 mg/L; high-end = 288 mg/L) are in a reasonable agreement with the values reported in the resource damage accounts (<0.001 to 45 mg/L).

One commenter disagreed with the use of MULTIMED in that it was not as "robust" or well-tested as the Monte Carlo-based EPACML model used for the TC rule. Another commenter recommends the use of the Monte Carlo approach for all input parameters in the modeling effort. First, it is important to note that the MULTIMED ground-water model is the same model as used in EPACML except for the manner in which input parameters are specified. EPACML can only be run in a probabilistic, Monte Carlo mode, while MULTIMED allows Monte Carlo runs as well as for individual input parameters to be specified and fixed. The ground-water flow and transport model components are the same for MULTIMED and EPACML. Second, the Agency did not pursue a probabilistic, Monte Carlo-based approach when developing input parameters for this modeling effort due to the fact that using this sophisticated technique requires knowledge and proper specification of input parameter distributions, and variable independence or proper specification of joint probability parameter distributions. When these requirements cannot be met, the Monte Carlo approach will not provide better estimates than a scenario-based approach.

EPA has adopted a scenario-based regional modeling approach that uses input parameters developed for regions of the U.S. where sawmills are more prevalent. In this approach, EPA uses average and high-end values for estimating model input parameters on a regional basis because information does not exist on the actual means and distributions of these parameters for the regions modeled. The Agency believes that this approach is an appropriate one and, furthermore, that the resulting model estimates bracket or bound the uncertainty associated with the model input parameters.

Two commenters questioned the use of cancer as the endpoint of concern for 2,3,7,8-TCDD. EPA disagrees. The cancer endpoint for TCDD was selected because it is the most sensitive endpoint for which qualitative dose response data are available. 2,3,7,8-TCDD has been demonstrated to be a potent carcinogen in animals and has been classified as a B2 (potential human) carcinogen. Recently published epidemiological studies of occupationally exposed individuals report significant increases in cancer mortality. 2,3,7,8-TCDD also has potent reproductive and teratogenic endpoints and enough data exist to estimate a reference dose (RfD) based on these alternative short-term effects. (For a detailed discussion of this information, and for references to studies supporting these conclusions, the reader is referred to the background document of the proposed rule.) However, if health-based levels (HBLs) are calculated using the reproductive effect RfD, the exposure level is an order of magnitude higher than the level calculated using the carcinogen slope factor (CSF). Thus, if the cancer endpoint is used as the basis for calculating a permissible exposure level, it also will be protective against short-term exposures such as those associated with reproductive effects.

The issue of 2,3,7,8-TCDD toxicity is being reassessed by EPA (outside the framework of this rulemaking) and all endpoints are being considered. TCDD has been observed to express a wide variety of effects including teratogenesis, reproductive effects, and suppression of the immune system function in many species. Mechanistic approaches to understanding and identifying toxic effects levels are also being considered. Until the reassessment process has been completed, the EPA will continue to use the current carcinogenicity endpoint CSF value that has been accepted as the basis for the MCL.

Two commenters noted limitations associated with the use of the Toxicity Equivalence Factors (TEF's) methodology. They argued that the TEF methodology should not be used to justify the addition of appendix VIII in the absence of valid toxicological studies that demonstrate actual health effects associated with exposure to these compounds. One commenter questioned the proposal to add Octachlorodibenzo-p-dioxin (OCDD) and Octachlorodibenzofuran (OCDF) to 40 CFR part 261, appendix VIII. The commenters stated that neither compound has been shown to produce toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms. The Agency has decided not to add, at this time, OCDD and OCDF to appendix VIII of 40 CFR part 261. Although the original basis for including these congeners on appendix VIII remains valid (details of which can be found in the background document supporting this final rulemaking), the Agency is investigating further the information submitted by the commenters regarding the effects of OCDD and OCDF reported in the Couture, Elwell, and Birnbaum study used to support the decisions made in the "Interim Procedures for Estimating Risks Associated with Exposures of Mixtures of Chlorinated Dibenzo-p-dioxins and Dibenzofurans and the 1989 Update". OCDD and OCDF are the most prevalent of the PCDD and PCDF congeners accounting for approximately 85 percent of the total CDD and CDF present in five of the six storage yard soil samples. OCDD has been shown to exhibit "dioxin-like" toxicity in male rats when administered in small doses in a sub-chronic toxicity study.[2] These findings have been confirmed by a second sub-chronic study conducted in female rats.[3] OCDD and OCDF have not exhibited toxicity in short term studies; however, acute exposure is not the only concern of EPA. The Agency is currently re-evaluating its original assessment of risks from dioxin. At this point, the Agency wishes to conclude its on-going reassessment before adding OCDD and OCDF to appendix VIII of 40 CFR part 261.

One commenter questioned the conclusion that soil contamination presents no risk to wildlife. The EPA recognizes that concentrations that are protective of human health may not necessarily always be protective of wildlife. However, in view of the relatively small areas occupied by sawmills and the low concentration of TCDD–TEQ in storage yard soil from cross contamination, the EPA believes the incremental risks to wildlife will be below a level of concern.

[2] Couture, L.A., M. R. Elwell, and L. S. Birnbaum Dioxin-like effects observed in male rats following exposure to octachlorodibenzo-p-dioxin (OCDD) during a 13-week study. Toxicology and Applied Pharmacology, Vol. 93, pp 31–46, 1988.

[3] Hermelinger, N., N. Poiger, and C. Schlatter. Results of a 9-month feeding study with OCDD and OCDF in rats, Organohalogen Compounds, Vol. 1, 1990, pp. 221–224.

V. Overview of the Final Rule

This final rule makes final the Agency's hazardous waste listing determination for chlorophenolic wastes generated at wood surface protection plants. EPA believes that listing as hazardous chlorophenolic wastes from surface protection operations is unnecessary for reasons described in Part A of this preamble.

This document also amends SW–846 (Test Methods For Evaluating Solid Waste, Physical/Chemical Methods) by adding Method 4010 (Immunoassay Test for the Presence of Pentachlorophenol). This action is discussed in Section VI of this preamble.

This final rule also adds four chemicals to the list of hazardous constituents at 40 CFR part 261, appendix VIII. These four chemicals are: (1) Sodium pentachlorophenate, (2) potassium pentachlorophenate, (3) sodium tetrachlorophenate, and (4) potassium tetrachlorophenate. A discussion of this action is found in part C of this section.

A. Basis for the Determination Not To List as Hazardous Wastes From Wood Surface Protection Operations

As discussed in the proposed rule, in making a hazardous waste listing determination, the Agency applies a "weight-of-evidence" approach. In doing this, the Agency examines the risks associated with all potential human health and environmental exposure pathways, analyzes trends in the current industry, researches past damage incidents, as well as other factors found in 40 CFR 261.11.

Upon reviewing and responding to comments received on the proposed rule, the Agency has decided not to list as hazardous wastes from the use of chlorophenolic formulations in the wood surface protection industry for several reasons.

First, chlorophenolic formulations are no longer being produced in the United States and the Agency believes it is very unlikely they will be produced in the future. The only remaining producer of chlorophenolics in the U.S., Chapman Chemicals, stopped production in January of 1992 and sometime later applied for voluntary cancellation of its FIFRA product registration. A notice describing this action was published in the **Federal Register** on June 3, 1992 (57 FR 23401), and a final cancellation order was sent to Chapman Chemicals with an effective date of September 14, 1992. This cancellation notice applies to the following products produced by Chapman Chemicals: Permatox 181, 10S, and 101, and Mitrol G-ST. Any manufacturer wishing to resume production of chlorophenolics would have to obtain a new FIFRA registration before these chemicals could be re-introduced and made available for use in wood surface protection. Currently, there remains only one known user of chlorophenolics in the U.S. out of an estimated 1000 previous users and the remaining plant's existing stock is believed to be very limited. A major element in the decision not to list as hazardous chlorophenolic wastes generated from the surface protection industry is the fact that use of chlorophenolic formulations has ceased. EPA believes it is highly unlikely that a manufacturer will seek reregistration for this product for many reasons, including the availability of effective substitute products and the potentially high financial and administrative burdens imposed by the FIFRA registration process. Additional justification to support non-future production is the fact that European countries do not want to accept dioxin-containing wood products which have affected large export mills who will not use chlorophenolic formulations in the future in part for this reason. Use of chlorophenolics for surface protection has declined steadily (even without the influence of RCRA) from over 1,000 users to one user over the past decade. Should a new registration of this product be sought, EPA will consider this surface protection risk analysis for full strength application when determining whether a new listing determination under RCRA should be initiated. Currently, the Agency is aware of nine available substitute products currently being used by surface protectors in place of chlorophenolics. The substitute products are for a large part satisfactory to their users (as mentioned on various site trips), and the Agency does not feel as though a switch back to chlorophenolics is likely.

A second reason why the Agency has decided not to list these wastes is because the risk to human health and the environment from on-going operations which previously used chlorophenolics is shown to tail off quickly because chlorophenolic concentrations diminish to a near zero concentration within a short period of time following switchover to an alternate product. The Agency has determined that the use of full-strength chlorophenolic formulations generates wastes that result in unacceptable risk to human health and the environment. As before mentioned, should the use of chlorophenolics for surface protection applications resume, for any reason, the Agency will most likely re-evaluate its current position. However, dealing with the current situation, there remains only one known user of chlorophenolics with a limited supply remaining.

Although the Agency believes the use of full-strength chlorophenolics will be phased out in the very near future, there was concern at the time of proposal that there may be unacceptable risks posed by the use of substitute products that become cross-contaminated from previous chlorophenolic use. Particularly, the proposal cited possible ground water risks of 2×10^{-4} for individuals and a broad but very low potential exposure risk due to surface run-off contributing to dioxin levels in fish. The Agency received several comments addressing these potential impacts. In response to these comments, the Agency conducted additional ground-water modeling using new pulse assumptions developed from commenter-submitted information. The Agency developed what it believed to be better pulse assumptions in an effort to determine how long pentachlorophenate will be present in on-going operations which have switched over from its past use. This new data was obtained from performing mass balance iterations using typical tank volumes found at both large and small facilities. These mathematical calculations showed that cross-contamination from previous use of chlorophenolics will be present in a substitute products for only two to six years from the time a plant stops using chlorophenolics. The Agency found that the highest estimated risk to an individual from drinking ground water for nine years at peak concentrations in the two- or six-year pulse resulting from cross contamination, is significantly diminished and the broad effect on dioxin levels in fish is reduced by several orders of magnitude. This new analysis shows that the risks associated with cross-contamination do not justify a hazardous waste listing to capture cross-contaminated wastes. In the proposed rule, EPA addressed the fact that PCP is no longer in use at most facilities in its baseline risk estimates, which have been revised in the final rule to reflect source concentrations and pulse durations more representative of the cross-contamination, incremental-risk scenario. Chart 1 below compares the incremental risks from cross-contaminated wastes as calculated for the proposed rule to the values obtained using the new approach.

CHART 1.—INCREMENTAL RISKS [1] DUE TO CROSS CONTAMINATED WASTES

	Constituent	Significant threat pathway	Central tendency	High end	Population risk
Proposed in NPRM ..	Pentachlorophenate (assumed 30 year pulse).	Ground water	5×10^{-7}	2×10^{-4}	.005
	Dioxin fish and shellfish consumption (general population and recreational fisher).	Soil	18×10^{-10} (general population).	4×10^{-7}, rec fisher.	0.2
	Dioxin soil ingestion	Soil	7×10^{-7}	2×10^{-5}	.0004
Revised	Pentachlorophenate (2 year pulse, for large facilities).	Ground water	6×10^{-7}	2×10^{-5}	.007
	Pentachlorophenate (6 year pulse, for small facilities).	Ground water	2×10^{-6}	6×10^{-5}	0.02
	Dioxin fish & shellfish consumption (recreational fisher).	Soil	2×10^{-12}	3×10^{-11}	NR
	Dioxin fish & shellfish consumption (general pop.).	Soil	8×10^{-13}	1×10^{-11}	.0002
	Dioxin soil ingestion	Soil	7×10^{-10}	2×10^{-9}	4×10^{-7}

[1] Excess lifetime cancer risk.

As shown in Chart 1, population risk is lower than that presented in the proposal for both fish/shellfish consumption and the soil ingestion pathway, due to a unit conversion error in expressing dioxin concentration. The dioxin concentrations in the formulation at one of the affected facilities (Aquasco, MD) were reported using incorrect units, causing a 1,000-fold error to be incorporated into the risk estimates for the fish and shellfish ingestion and soil ingestion scenarios. When this error was corrected, the TCDD-TEQ levels used as the source concentration for affected facilities (cross-contamination from past use of chlorophenolic formulations) and used in the lifetime individual risk estimates for the soil/fish and shellfish ingestion scenarios also were reduced 1,000-fold.

The incremental population risk was revised for the ground-water scenario from an original 0.005 value to between 0.007 and 0.02 cancer cases. This range of 0.007 to 0.02 cancer cases was obtained because two different modelling scenarios were run to generate the extremes of this range. One model run used input parameters which would simulate decay for a small production plant. The input information was obtained from a mass balance iteration which showed that it would take a small plant approximately 6 years to decrease cross-contamination levels to near zero; likewise, the second model used input parameters for large facilities which predicted a two year decline to near zero levels of cross-contamination. The details of the mass balance approach and the resulting change in population risk can be found in the background document for this final rule. The Agency believes that these revised risk levels do not warrant a hazardous waste listing.

Based on the above two main factors (*i.e.* (1) chlorophenolic production stoppage and subsequent chlorophenolic use decline and (2) revised risk due to cross contamination), the Agency looked closely at any potential environmental benefits that may accrue from a hazardous waste listing. Given the market trend, the Agency cannot identify any tangible benefits to be gained from listing wastes generated from the use of chlorophenolic formulations for wood surface protection. Environmental damages caused by previous use of chlorophenolics have already occurred. A listing of these wastes cannot mitigate past damages nor can it force the clean-up of these damages. Such potential jurisdiction exists under current programs. Authority under CERCLA and RCRA 3007 exists even if a decision is made not to list as is the case for this final rule.

Damage to the environment of this magnitude from previous use of chlorophenolic formulations within this industry are not expected to occur in the future unless use of full-strength chlorophenolics resumes. Furthermore, sampling data collected at surface protection sites indicate that dioxin concentrations in storage yards (the largest area of a plant) are below 1 ppb. The heavier contamination that occurs in the process area is confined to a small area and likely will not migrate off-site to environmental receptors. Therefore, the Agency finds that the risks posed by this residual contamination are limited and that a hazardous waste listing would likely simply result in these limited areas of contamination being left in place and not produce an environmental benefit. Thus the effect on past contamination does not justify a hazardous waste listing.

B. Operating Requirements for Surface Protection Plants

Because the Agency is not listing F033 wastes, the operating standards for surface protection plants proposed in the April 27, 1993 notice are not applicable and, thus, are not being finalized. Furthermore, surface protection plants are not required to follow any specific waste management requirements regarding previous use of chlorophenolics as a result of this rule.

C. Addition of Chemicals to Appendix VIII of 40 CFR Part 261

Although this final rule does not list any wastes from wood surface protection processes as hazardous, the Agency believes that certain constituents contained in these wastes warrant inclusion in appendix VIII of part 261. 40 CFR 261.11 provides that "[s]ubstances will be listed on appendix VIII only if they have been shown in scientific studies to have toxic, carcinogenic, mutagenic or teratogenic effects on humans or other life forms." In the April 27 notice, EPA proposed to add six hazardous constituents of concern found in surface protection wastes to appendix VIII of 40 CFR part 261. Based on the information gathered during this listing investigation, the following four are being added to the list: sodium pentachlorophenate, potassium pentachlorophenate, the sodium salt of 2,3,4,6-tetrachlorophenol, and the potassium salt of 2,3,4,6-tetrachlorophenol. The Agency presented information in the proposed rule and supporting background documents on the adverse effects of these compounds. For those reasons, EPA is finalizing the addition of four of these constituents to appendix VIII of part 261. The Agency is not at this time finalizing the addition of OCDD and OCDF to Appendix VIII. As mentioned before, the Agency is investigating further the information submitted by the commenters regarding the effects of OCDD and OCDF reported in the Couture, Elwell, and Birnbaum study used to support the decisions made in the "Interim Procedures for Estimating Risks Associated with Exposures of Mixtures of Chlorinated Dibenzo-p-dioxins and Dibenzofurans and the 1989 Update".

VI. Amendment of SW–846 (Test Methods for Evaluating Solid Waste, Physical/Chemical Methods)

In the notice of proposed rulemaking, the Agency proposed to add Method 4010 (Immunoassay Test for the Presence of Pentachlorophenate) to the Second and Third Editions of SW–846. The purpose behind this proposal was to aid owners/operators of wood surface protection plants with the proposed formulation testing requirement.

With respect to requiring the use of SW–846 methods for testing for the presence of pentachlorophenate in wood surface protection "in-process" formulation, the issue is moot since EPA is not listing any wood surface protection wastes as hazardous. Nonetheless, EPA believes that although no comments were received on Method 4010, Method 4010 is an appropriate method, in general, for testing for the presence of pentachlorophenate or pentachlorophenol and can, therefore, be used in other applications other than for wood surface protection formulation testing. The Agency is, therefore, adding Method 4010 to the Third Edition of SW–846 as Update IIA. We are not adding Method 4010 to the Second Edition of SW–846 since the Third Edition has replaced the Second Edition on August 31, 1993 for use in mandatory applications (58 FR 46040). Method 4010, including its protocol and documentation supporting this action can be found in the docket for this rulemaking. See the "For Further Information" Section in front of this preamble for the EPA contact person for further information or with questions on Method 4010.

VII. Pollution Prevention and Waste Minimization

The Agency is preparing a separate guidance manual recommending voluntary pollution prevention and waste minimization techniques for the lumber industry. Since it has studied the surface protection industry in making a listing determination for wastes generated from the use of chlorophenolic formulations, EPA has gained a broad perspective on the best ways to reduce wastes generated by this wood surface protection industry. The ideas gained from the study are presented in this manual. Some recommended strategies for pollution prevention in the surface protection industry are described in this section. Further information can be found in the manual.

The ultimate goal of pollution prevention is to reduce present and future threats to human health and the environment. Pollution prevention (also referred to as source reduction) is the use of materials, processes, or practices that reduce or eliminate the quantity and/or toxicity of wastes at the source of generation. Pollution prevention is the first step in a hierarchy of options for reducing the generation of waste. The first recommended pollution prevention option is to replace chemical treatment with another type of treatment to achieve surface protection. One alternate is to dry the wood to reduce water content (high water content leads to sapstain). The Agency is aware that this option may not be economically viable for a smaller mill. If such a system cannot be feasibly employed, it would be preferable for a user of chlorophenolic-containing formulations to switch to an alternate formulation.

Other pollution prevention strategies for use within the surface protection industry include: (1) Providing local and general ventilation within the cutting process area to reduce dust that can accumulate on wood; (2) blowing wood with air to reduce the amount of sawdust on wood prior to surface protection; and (3) using drainage collection devices like gutters on rooftops to keep precipitation away from process wastes. The pollution prevention practices described here can be critical to reduce the amount of waste generated. Although the Agency is not listing these chlorophenolic wood surface protection wastes, the pollution prevention practices described in the guidance manual are applicable to any waste generating process. For wastes that cannot be reduced at the source, generators may consider recycling as the next best option.

VIII. Analysis of Potential Costs and Benefits

A. Executive Order Requirements

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review. Nevertheless, the Agency prepared an abbreviated RIA or "Economic Assessment" (EA) in order to examine costs and benefits likely to occur as a result of that action.

B. Description of Costs and Benefits of This Rule

Because the Agency has decided not to list wastes generated from the use of chlorophenolic formulations in surface protection operations, no specific action is required under this Rule. Facilities, however, may choose to take some remedial action as a result of publicity surrounding this action. A detailed analysis of work performed is described in the background document for this final rule.

IX. State Authority

Under section 3006 of RCRA, EPA may authorize qualified States to administer and enforce the RCRA program within the State. (See 40 CFR part 271 for the standards and requirements for authorization.) Following authorization, EPA retains enforcement authority under sections 3007, 3008, 3013, and 7003 of RCRA, although authorized States have primary enforcement responsibility.

Before the Hazardous and Solid Waste Amendments of 1984 (HSWA) amended RCRA, a State with final authorization administered its hazardous waste program entirely in lieu of the Federal program in that State. The Federal requirements no longer applied in the authorized State, and EPA could not issue permits for any plants located in the State with permitting authorization. When new, more stringent Federal requirements were promulgated or

enacted, the State was obligated to enact equivalent authority within specified time frames. New Federal requirements did not take effect in an authorized State until the State adopted the requirements as State law.

By contrast, under section 3006(g) of RCRA, 42 U.S.C. 6926(g), new requirements and prohibitions imposed by the HSWA take effect in authorized States at the same time that they take effect in non-authorized States. EPA is directed to implement those requirements and prohibitions in authorized States, including the issuance of permits, until the State is granted authorization to do so. While States must still adopt HSWA-related provisions as State law to retain final authorization, the Federal HSWA requirements apply in authorized States in the interim.

Although this final rule does not list, as hazardous, chlorophenolic wastes from the wood surface protection industry, it does add four constituents to appendix VIII of 40 CFR part 261. These additions will not be effective in authorized States since the requirements are not being imposed pursuant to HSWA. These requirements will be effective only in those States that do not have final authorization. In authorized States, these requirements will not be applicable until the States revise their programs to adopt equivalent requirements under State law.

Section 271.21(e)(2) of EPA's state authorization regulations (40 CFR part 271) requires that States with final authorization must modify their programs to reflect Federal program changes and submit the modifications to EPA for approval. The deadline by which the States must modify their programs to adopt this proposed regulation, if it is adopted as a final rule, will be determined by the date of promulgation of a final rule in accordance with § 271.21(e)(2). If the proposal is adopted as a final rule, Table 1 at 40 CFR 271.1 will be amended accordingly. Once EPA approves the modification, the State requirements become RCRA Subtitle C requirements.

States with authorized RCRA programs already may have regulations similar to what is being finalized in this rule. These State regulations have not been assessed against the Federal regulations being proposed today to determine whether they meet the tests for authorization. Thus, a State would not be authorized to implement these regulations as RCRA requirements until State program modifications are submitted to EPA and approved, pursuant to 40 CFR 271.21. Of course, States with existing regulations that are not less stringent than current Federal regulations may continue to administer and enforce their regulations as a matter of State law.

It should be noted that authorized States are required to modify their programs only when EPA promulgates Federal standards that are more stringent or broader in scope than existing Federal standards. Section 3009 of RCRA allows States to impose standards more stringent than those in the Federal program. For those Federal program changes that are less stringent or reduce the scope of the Federal program, States are not required to modify their programs. (See 40 CFR 271.1(i).) This proposed rule, if finalized, is neither less stringent than nor a reduction in the scope of the current Federal program and, therefore, states would be required to modify their programs to retain authorization to implement and enforce these regulations.

X. Regulatory Flexibility Analysis

This final rule amends the hazardous waste regulations by adding four chemicals to appendix VIII of 40 CFR part 261 and amending SW–846 by adding Method 4010. These are impacts with negligible effects to small entities. Therefore, there is no need to consider its impacts on small entities by preparing a Regulatory Flexibility Analysis.

XI. Paperwork Reduction Act

This rule does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

List of Subjects

40 CFR Part 260

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous waste.

40 CFR Part 261

Hazardous materials, Waste treatment and disposal, Recycling.

Dated: December 23, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 260—HAZARDOUS WASTE MANAGEMENT SYSTEM: GENERAL

1. The authority citation for part 260 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921–6927, 6930, 6934, 6935, 6937, 6938, 6939, and 6974.

2. Section 260.11 is amended by revising the "Test Methods for Evaluating Solid Waste, Physical/Chemical Methods" reference in paragraph (a) to read as follows:

§ 260.11 References.

(a) • • •

"Test Methods for Evaluating Solid Waste, Physical/Chemical Methods." EPA Publication SW–846 (Third Edition (November, 1986), as amended by Updates I, II and IIA). The Third Edition of SW–846 and Updates I, II, and IIA (document number 955–001–00000–1) are available from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

• • • • • •

PART 261—IDENTIFICATION AND LISTING OF HAZARDOUS WASTE

3. The authority citation for part 261 continues to read as follows:

Authority: 42 U.S.C. 6905, 6912(a), 6921, 6922, and 6938.

4. Appendix VIII of part 261 is amended by adding the following hazardous constituents in alphabetical order by common name to read as follows:

Appendix VIII to Part 261—Hazardous Constituents

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
• • •	• • •	•	•
Potassium pentachlorophenate	Pentachlorophenol, potassium salt	7778736	None

Common name	Chemical abstracts name	Chemical abstracts No.	Hazardous waste No.
• • •	• • •	•	•
Sodium pentachlorophenate	Pentachlorophenol, sodium salt	131522	None
• • •	• • •	•	•
2,3,4,6-tetrachlorophenol, potassium salt	same	53535276	None
2,3,4,6-tetrachlorophenol, sodium salt	same	25567559	None
• • •	• • •	•	•

• • • • • •

[FR Doc. 93–32032 Filed 12–30–93; 8:45 am]

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Part VI

Department of Education

34 CFR Part 685
Federal Direct Student Loan Program; Final Rule

DEPARTMENT OF EDUCATION

34 CFR Part 685

RIN 1840–AC05

Federal Direct Student Loan Program

AGENCY: Department of Education.

ACTION: Final standards, criteria, and procedures.

SUMMARY: The Secretary of Education issues standards, criteria, and procedures governing the Federal Direct Student Loan (Direct Loan) Program in the academic year beginning July 1, 1994.

These standards, criteria, and procedures govern the Federal Direct Stafford Loans Program, the Federal Direct Unsubsidized Stafford Loans Program, and the Federal Direct PLUS Program, collectively referred to as the Direct Loan Program.

EFFECTIVE DATE: The standards, criteria, and procedures in this notice are effective on January 4, 1994, with the exception of §§ 685.204, 685.206, 685.301, 685.302, 685.303, 685.304, and 685.308. These sections will become effective after the information collection requirements contained in those sections have been submitted by the Department of Education to, and approved by, the Office of Management and Budget under the Paperwork Reduction Act of 1980. If you want to know the effective date of these sections, call or write the Department of Education contact person. A document announcing the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT: Lloyd Robertson, U.S. Department of Education, 400 Maryland Avenue, SW., (room 4310, ROB–3), Washington, DC 20202–5162. Telephone: (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The Student Loan Reform Act of 1993, enacted on August 10, 1993, established the Direct Loan Program under the Higher Education Act of 1965, as amended (HEA). See subtitle A of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66). Under the Direct Loan Program, loan capital is provided directly to student and parent borrowers by the Federal Government rather than through private lenders. This program replaces the direct loan demonstration program that was authorized to begin in July 1994 by the Higher Education Amendments of 1992 (Pub. L. 102–325).

The HEA directs the Secretary to consult with members of the higher education community and to publish a notice of standards, criteria, and procedures for the program's first year in lieu of issuing regulations using the Department's usual procedures. The Secretary's representatives participated in regional meetings at various locations around the country in which members of the higher education community including representatives of colleges, universities, proprietary schools, and educational associations were consulted. The Secretary's representatives have also met with numerous national, regional, and state organizations representing the financial aid community to discuss various aspects of the Direct Loan Program. The Secretary's representatives have met with personnel from schools and financial advisors to assist in the development of the software that will be used by Direct Loan Program schools. In addition, the notice is based in part on final regulations for the direct loan demonstration program in 34 CFR part 685 that were published in the **Federal Register** on July 2, 1993 (58 FR 36088), following the publication of a notice of proposed rulemaking and consideration of public comment. The Secretary believes that participating schools' familiarity with those regulations will ease the burden of their participation in the Direct Loan Program.

This notice establishes the policies and procedures necessary for schools to implement the Direct Loan Program and most of the policies and procedures relating to borrowers in the Direct Loan Program. The Secretary anticipates publishing another notice in the spring of 1994 to govern repayment of loans for the 1994–1995 academic year and establish standards and procedures relating to Federal Direct Consolidation Loans.

I. Background

On September 10, 1993, the Secretary published a notice in the **Federal Register** (58 FR 47816) soliciting applications from schools for participation in the Direct Loan Program. Over 1,100 schools responded to that invitation. The Secretary selected 104 schools, representing approximately five percent (5%) of the total Federal Family Education Loan Program (FFEL) loan volume, to participate in the Direct Loan Program for the academic year beginning July 1, 1994. The rules in this notice are applicable for the period beginning July 1, 1994, and ending June 30, 1995. As required by statute, program regulations for the Direct Loan Program in future years will be developed through the use of a negotiated rulemaking process to the extent practicable.

II. Participation

Schools may participate in the Direct Loan Program by originating loans directly, by participating in a consortium of schools that originates loans directly, or by using an alternative originator to originate loans. All schools are responsible for determining student eligibility for Direct Loan and disbursing loan proceeds to borrowers. Some schools participate in the Direct Loan Program and the FFEL concurrently, while the rest of the selected schools participate exclusively in the Direct Loan Program. Some of the schools that participate in both programs concurrently make Direct Loans available to first time borrowers only; other schools make Direct Loans available to students studying in certain divisions of the school and make FFEL loans available to their other students.

The standards and procedures in this notice are, unless otherwise noted, applicable to each participating school regardless of its method or volume of participation. As stated in the notice announcing the selection of participating schools for the 1994–95 academic year, a school may withdraw from participation within 30 days of the publication of these standards, criteria, and procedures.

III. Administrative Fee for Loan Origination

Schools and consortia that originate loans will be paid a fee to assist in meeting the costs of loan origination, including the costs associated with drawing down the funds, maintaining the Direct Loan Program account, and reconciling cash and individual loan records with the Secretary each month. The Secretary prefers that originating schools print promissory note/disclosure statements on site. To assist in compensating for the costs associated with this function, schools that print promissory notes/disclosure statements will be paid a larger fee than schools that do not print promissory note/disclosure statements.

The administrative fee is paid for borrowers for whom a first disbursement has been made and for whom the first disbursement has been reconciled with the Secretary. For the 1994–1995 academic year, the program-wide average administrative fee may not exceed $10 per borrower. The Secretary will notify schools that originate loans of the actual fee schedule and payment procedures when they are determined.

This fee structure is applicable to the first year of the program only and is likely to be restructured through the negotiated rulemaking process and when additional data are available.

IV. Making Direct Loans

Beginning with the 1994–95 academic year, all student applications for Federal student aid, including Direct Loans, will be processed by the Central Processor System (CPS). The school will receive an official output from the CPS in the form of a Student Aid Report (SAR) or an Electronic Student Aid Report (ESAR). The ESAR output may be on tapes, cartridges, or rosters. With this official output, the school will be able to assemble a financial aid award package. A school participating in the Direct Loan Program may package Direct Loans as part of the financial aid package in the same manner that a school participating in the FFEL Program packages FFEL Program loans.

A school in the Direct Loan Program will either originate loans or use the services for an alternative originator. A school will use an alternative originator if it chooses not to originate loans or is not eligible to originate loans. For the first year of the Direct Loan Program, the criteria for eligibility to originate were prescribed by statute. These criteria were included in the September 10, 1993 **Federal Register** notice.

A. Originating Schools

Under the Direct Loan Program, schools and consortia that originate loans must use software provided by the Secretary, or other software based on specifications provided by the Secretary, to create a loan-origination record containing the basic information necessary to make a loan. The software provided by the Secretary reformats the data received from the CPS and prompts the school to add data collected by the school, such as the type of loan, loan amount, and disbursement dates. Because schools have different needs, various options are available to schools after they generate the loan origination record. The software allows schools to computer-generate combined promissory notes/disclosure statements. Alternatively, a school could transmit the information collected by the school to the Direct Loan Program Servicer, which upon request, will print promissory notes/disclosure statements on behalf of the school and ship them to the school.

A student who accepts a Direct Loan completes a promissory note and returns it to the school; the school may not disburse Direct Loan funds without a completed promissory note.

An originating school in the Direct Loan Program requests and obtains loan funds from the Secretary using a process similar to the process for drawing down funds for other Department of Education (ED) programs. The Secretary adopted this process to ease the burden on schools participating in the Direct Loan Program. The Direct Loan Program system, however, differs from the systems used for other ED programs in two ways. First, a school transmits to ED a specific Direct Loan funding request that is separate from its funding requests for other programs. Direct Loan capital must be tracked separately and cannot be used for purposes other than making Direct Loans. The actual transmission request and subsequent electronic transfer of funds uses the same delivery process as is used for the Federal Pell Grant Program. After a request for funds is received, the Secretary uses the Automated Clearinghouse (ACH) process through the Federal Reserve Banking system to deposit funds in a school's designated bank account. Currently, this process takes between 48 to 72 hours from the school's request for funds until the school's receipt of funds.

The second difference between the Direct Loan Program system and the system used for other ED programs is that the amount of loan capital needed by the school is dependent on the eligibility of student and parent borrowers at the school. Funds for the Direct Loan Program are not limited by Congressional appropriations. As a result, there is no need for a maximum funding level to be authorized for a school in the Direct Loan Program. The Direct Loan system, however, incorporates internal fund controls to monitor school drawdown requests; these controls will flag any requests that appear excessive. The system also identifies schools that have failed to comply with program requirements. These flags result in immediate inquiry and intervention by the Secretary.

The software provided by the Secretary computes gross disbursements, loan fees, and net disbursements on the basis of the loan amounts entered by the school. A school requests the amount needed to fund net disbursements to borrowers. The Secretary expects that schools will follow the guidelines for cash management set out in The Blue Book, which is the manual of accounting, recordkeeping, and reporting requirements for postsecondary educational institutions under the federally-funded student financial aid programs. This notice requires any interest earned on funds drawn down to be returned to the Secretary. For future years, the Secretary anticipates that issues related to fiscal control and final accountability will be addressed in more detail in negotiated rulemaking.

After receiving funds from the Secretary, a school disburses funds to students by crediting their accounts at the school or by sending checks to the students. Before a school may disburse funds to a borrower, the school must ensure that it has a completed and signed promissory note. After the first disbursement is made, the school must record the actual disbursed amount and the date of each disbursement in the loan-origination record and transmit all completed loan records and promissory notes to the Secretary. The school transmits subsequent disbursement data to the Secretary as the disbursements occur.

A school is required to reconcile cash and individual loan records monthly. To reconcile cash, a school must provide documentation that the total disbursement minus cancellations, plus return of excess cash, is equal to the amount of money the school has drawn down during a one-month period by the end of the next month. For example, loan records and promissory notes for all disbursements and cancellations made in July 1994 must be transmitted to the Secretary by the end of August 1994. To reconcile loan records, a school's records must match the records of the Direct Loan Program Servicer. The software that is provided to participating schools is designed to assist schools in this reconciliation process.

B. Schools That Use an Alternative Originator

Schools that use an alternative originator transmit to the Direct Loan Program Servicer the data necessary for the Direct Loan Program Servicer to generate the combined promissory note/disclosure statement unless the school chooses to print the promissory note/disclosure statement on its premises. After the Direct Loan Program Servicer generates the promissory note/disclosure statement, it is sent to the school or to the borrower depending upon the school's established procedures. The borrower must complete the promissory note/disclosure statement and forward it as instructed to the Direct Loan Program Servicer or to the school. The Direct Loan Program Servicer must review the promissory note/disclosure statement before funds can be disbursed. If the Direct Loan Program Servicer or the school determines that the promissory

note/disclosure statement is not accurate or complete, the promissory note/disclosure statement must be correct and complete before funds can be disbursed. The Direct Loan Program Servicer initiates drawdown of funds to the school based on the completed promissory note/disclosure statement. The school also receives a roster from the Direct Loan Program Servicer identifying each borrower, the disbursement date and amount to be disbursed for each borrower, and the total amount of funds received by the school. Schools that use alternative origination are still responsible for reporting actual disbursement data, reconciling cash, and returning funds that are not used or for which the borrower is not eligible.

In short, the procedures used by a school that uses alternative origination differ in two ways from the procedures of originating schools. The first is that a school under alternative origination may choose to designate the alternative originator as the manager of promissory note/disclosure statements. The second is that a school under alternative origination does not manage the funds draw down process; instead, the school receives funds drawn down by the alternative originator only for those completed promissory notes in the possession of the alternative originator.

The Secretary anticipates that issues related to participation of alternative originators in future years will be subject to the negotiated rulemaking process.

C. Federal Direct PLUS Loans

Federal Direct PLUS loans are made through a process similar to the one used in the Federal PLUS loan program. The parent obtains a combined application/promissory note from the school and, after completing the combined application/promissory note, sends it to the school. The school completes the school section of the application/promissory note and forwards it to the Direct Loan Program Servicer where data from the note is key entered and a credit check is performed. Alternatively, a school enters data from the note using the software provided by the Direct Loan Program Servicer and electronically forwards this information to the Direct Loan Program Servicer. In either case, the Direct Loan Program Servicer performs a credit check to determine, as required by section 428B(a) of the HEA, whether the parent has an adverse credit history and notifies the school and the parent of the results. If the loan is approved, the Direct Loan Program Servicer sends a disclosure statement to the parent. If the credit check indicates an adverse credit history, the Secretary advises the parent of available options; for example, the parent could obtain an endorser without an adverse credit history. If the loan is approved and the school originates loans, the school may draw down money and disburse loan funds in the same manner as it would for other loans made under the Direct Loan Program. If the school does not originate loans, the alternative originator electronically transmits the funding request for the school based on the application/promissory notes that the Direct Loan Program Servicer holds for that school.

V. Loan Servicing

The Secretary is responsible for servicing and collecting Direct Loans. As noted above, a notice specifically concerned with repayment and collection will be published shortly.

A school's interaction with the Direct Loan Program Servicer during the servicing and collection of the loan is similar to the interaction schools currently have with lenders and guaranty agencies in the FFEL Program. Schools must respond to periodic student status confirmation requests as well as to *ad hoc* requests for information regarding borrowers from the Direct Loan Program Servicer.

Borrowers who default on Direct Loans are added to ED's debt collection system and are subject to all legally authorized default-collection activities.

VI. Impact of Other Rules

Many of the provisions of the FFEL Program that are applicable to the Direct Loan Program have been incorporated into this notice of standards, criteria, and procedures. The Secretary adopted those provisions because schools are familiar with them from their participation in the FFEL Program. Certain policies and procedures currently being developed through negotiated rulemaking for FFEL Program regulations will be adopted in the Direct Loan Program, including policies relating to borrower forgiveness for students who attended schools that have closed or whose eligibility was falsely certified and policies controlling the deferment for economic hardship.

VII. Summary of Contents

A. Subpart A—Purpose and Scope

Subpart A contains descriptions of the types of loans that will be made, the entities involved, and the definitions used in the Direct Loan Program.

B. Subpart B—Borrower Provisions

Subpart B contains conditions of borrower eligibility, which are identical to the borrower eligibility provisions in the FFEL Program. The charges for which borrowers are responsible, loan limits, deferment and forbearance options, and borrower defenses to repayment are also included. The Student Loan Reform Act of 1993 eliminated the Federal Supplemental Loans for Students (SLS) program but increased the loan limits for the Unsubsidized Stafford Program beginning July 1, 1994. The Higher Education Technical Amendments of 1993 further revised the loan limits. The revised loan limits are included in this notice along with a chart (Appendix A) which illustrates the loan limits that will be applicable as of July 1, 1994.

C. Subpart C—Requirements, Standards, and Payments for Schools in the Direct Loan Program

Subpart C contains those provisions governing a school's participation in the Direct Loan Program, including disbursement procedures, entrance and exit counseling, withdrawal procedures, recordkeeping and funds control requirements. The Secretary anticipates that schools will continue with the conscientious efforts demonstrated in the FFEL Program in tailoring the counseling to the borrower's particular needs and making counseling accessible. These efforts have included, for example, sign language interpreters for hearing impaired borrowers or translations for limited English proficient borrowers.

Executive Order 12866

The contents of this notice have been reviewed in accordance with Executive Order 12866. Under the terms of the order, the Secretary has assessed the potential costs and benefits of the standards, criteria, and procedures in this notice.

The potential costs associated with the contents of this notice are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. In assessing the potential costs and benefits—both quantitative and qualitative—of these standards, criteria, and procedures, the Secretary has determined that the benefits of these standards, criteria, and procedures justify the costs.

The Secretary has also determined that the contents of this notice do not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

The contents of this notice are consistent with the requirements of the

HEA and promote the President's priorities.

Waiver of Rulemaking

It is the practice of the Secretary to offer interested parties an opportunity to comment on proposed regulations. However, Public Law 103–66 requires that the Secretary publish a notice in lieu of regulations for the first year of the Direct Loan Program and exempts the contents of the notice from the rulemaking requirements of section 431 of the General Education Provisions Act. While the Secretary has consulted with members of the higher education community in the development of this notice, the statutory timeframe for the program does not permit the solicitation of further public comment. A public comment period, while helpful, would seriously delay the provision of necessary guidance for the operation of the Direct Loan Program. Therefore, the Secretary finds that solicitation of public comments would be impracticable and contrary to the public interest under 5 U.S.C. 553(b)(B).

List of Subjects in 34 CFR Part 685

Administrative practice or procedure, Colleges and universities, Education, Loan programs-education, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Number 84.268, Federal Direct Student Loan Program)

Dated: December 27, 1993.

Richard W. Riley,

Secretary of Education.

The Secretary revises part 685 of title 34 of the Code of Federal Regulations to read as follows:

PART 685—STANDARDS, CRITERIA, AND PROCEDURES FOR THE DIRECT LOANS PROGRAM

Subpart A—Purpose and Scope

Sec.

685.100 The Federal Direct Student Loan Program.
685.101 Participation in the Direct Loan Program.
685.102 Definitions.
685.103 Applicability of subparts.

Subpart B—Borrower Provisions

685.200 Borrower eligibility.
685.201 Obtaining a loan.
685.202 Charges for which Direct Loan Program borrowers are responsible.
685.203 Loan limits.
685.204 Deferment.
685.205 Forbearance.
685.206 Borrower responsibilities.

Subpart C—Requirements, Standards and Payments for Direct Loan Program Schools

685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.
685.301 Certification by a Direct Loan Program school for a loan.
685.302 Correspondence school schedule requirements.
685.303 Disbursing borrowers' loan proceeds and counseling borrowers.
685.304 Determining the date of a student's withdrawal.
685.305 Payment of a refund to the Secretary.
685.306 Withdrawal procedure for schools participating in the Direct Loan Program.
685.307 Remedial actions.
685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

Appendix A New Loan Maximums as of July 1, 1994

Authority: 20 U.S.C. 1087a *et seq.*

Subpart A—Purpose and Scope

§ 685.100 The Federal Direct Student Loan Program.

(a) Under the Federal Direct Student Loan Program (Direct Loan Program), the Secretary makes loans to enable a student or parent to pay the costs of the student's attendance at postsecondary schools. This part governs the Federal Direct Stafford Loan Program, the Federal Direct Unsubsidized Stafford Loan Program, and the Federal Direct PLUS Program for the academic year beginning July 1, 1994. The Secretary makes loans under the following program components:

(1) Federal Direct Stafford Loan Program, which provides loans to undergraduate, graduate, and professional students. The Secretary subsidizes the interest while the borrower is in an in-school, grace, or deferment period.

(2) Federal Direct Unsubsidized Stafford Loan Program, which provides loans to undergraduate, graduate and professional students. The borrower is responsible for the interest that accrues during any period.

(3) Federal Direct PLUS Program, which provides loans to parents of dependent students. The borrower is responsible for the interest that accrues during any period.

(b) The Secretary makes a Federal Direct Stafford Loan, a Federal Direct Unsubsidized Stafford Loan, or a Federal Direct PLUS loan only to a student or a parent of a student enrolled in a school that has been selected by the Secretary to participate in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.101 Participation in the Direct Loan Program.

(a)(1) Colleges, universities, graduate and professional schools, vocational, and technical schools selected by the Secretary may participate in the Direct Loan Program. Participation in the Direct Loan Program enables an eligible student or parent to obtain a loan to pay for the student's cost of education at the school.

(2) The Secretary has the authority to permit a school to participate in both the Federal Family Education Loan (FFEL) Program, as defined in 34 CFR part 600 and the Direct Loan Program. A school permitted to participate in both the FFEL Program and the Direct Loan Program may certify loans under the FFEL Program according to the terms of its agreement with the Secretary.

(b) An eligible student who is enrolled at a school participating in the Direct Loan Program may borrow under the Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan programs. A parent of an eligible dependent student may borrow under the Federal Direct PLUS Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.102 Definitions.

(a)(1) The following definitions are set forth in the Student Assistance General Provisions, 34 CFR part 668:

Academic year
Campus-based programs
Dependent student
Eligible program
Eligible student
Enrolled
Federal Consolidation Loan Program
Federal Direct Student Loan Program (Direct Loan Program)
Federal Pell Grant Program
Federal Perkins Loan Program
Federal PLUS Program
Federal-State Student Incentive Grant Program
Federal Supplemental Educational Opportunity Grant Program
Federal Work-Study Program
Independent student
Parent
State
U.S. citizen or national

(2) The following definitions are set forth in the regulations for Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600:

Accredited
Clock hour
Educational program
Eligible institution
Federal Family Education Loan (FFEL) Program
Institution of higher education
Nationally recognized accrediting agency or association

Preaccredited
Program of study by correspondence
Secretary

(3) The following definitions are set forth in the regulations for the Federal Family Education Loan (FFEL) Program, 34 CFR part 682:

Act
Endorser
Expected family contribution
Federal Insured Student Loan (FISL) Program
Federal Stafford Loan Program
Foreign school
Full-time student
Graduate or professional student
Guaranty agency
Holder
Legal guardian
Lender
Totally and permanently disabled
Undergraduate student

(b) The following definitions also apply to this part:

Alternative originator: An entity that originates Direct Loans to students and parents of students who attend a Direct Loan Program school that does not have an agreement with the Secretary to originate loans.

Direct Loan Program borrower: An individual to whom a Direct Loan is made.

Default: The failure of a borrower and endorser, if any, to make an installment payment when due, or to meet other terms of the promissory note, if the Secretary finds it reasonable to conclude that the borrower and endorser, if any, no longer intend to honor the obligation to repay, provided that this failure persists for—

(1) 180 days for a loan repayable in monthly installments; or

(2) 240 days for a loan repayable in less frequent installments.

Direct Loan Program school: A school that has an agreement with the Secretary under § 685.300 to participate in the Direct Loan Program.

Disbursement: The delivery of loan proceeds by a school to a borrower, either directly or by applying the proceeds to the student's account with the school.

Estimated cost of attendance: The tuition and fees normally assessed a student carrying the same academic workload as the student to whom or on whose behalf a Direct Loan is sought, as determined by the school, plus the school's estimate of other expenses reasonably related to attendance at that school, for the period of enrollment for which the loan is sought. They may include, but are not limited to—

(1) The costs for rental or purchase of any equipment, materials, or supplies required of all students in the student's course of study, except for the cost of rental or purchase of telecommunications equipment for a student receiving all or part of his or her instruction by means of that telecommunications technology;

(2) For a student attending the school on at least a half-time basis, an allowance for books, supplies, transportation, and miscellaneous personal expenses;

(3) If applicable, the loan fee for the loan;

(4) An allowance, as determined by the school, for room and board costs incurred by the student that includes—

(i) For a student, without dependents, residing at home with parents, an allowance of at least $1,500;

(ii) For a student, without dependents, residing in institutionally owned or operated housing, a standard allowance based on the amount normally assessed most of the school's residents for room and board; and

(iii) For all other students, an allowance of not less than $2,500 for expenses reasonably incurred by those students for room and board;

(5) For a student enrolled in a program of study by correspondence, only the tuition and fees and, if required, books and supplies, travel, and room and board costs incurred specifically in fulfilling a required period of residential training;

(6) For a student enrolled in an educational program that normally includes a formal program of study abroad, reasonable costs associated with that study;

(7) For a student with one or more dependents, an allowance based on the expenses reasonably incurred for dependent care based on the number and age of the dependents; and

(8) For a student with a disability, an allowance for those expenses related to his or her disability, including special services, transportation, equipment, and supplies that reasonably are incurred and not provided by other assisting agencies.

Estimated financial assistance: (1) The estimated amount of assistance that a student has been or will be awarded, for a period of enrollment, from Federal, State, institutional, or other scholarship, grant, financial need-based employment, or loan programs, including but not limited to—

(i) Veterans' educational benefits paid under chapters 30, 31, 32, and 35 of title 38 of the United States Code;

(ii) Educational benefits paid under chapters 106 and 107 of title 10 of the United States Code (Selected Reserve Educational Assistance Program);

(iii) Reserve Officer Training Corps (ROTC) scholarships and subsistence allowances awarded under chapter 2 of title 10 and chapter 2 of title 37 of the United States Code;

(iv) Benefits paid under Public Law 97–376, section 156: Restored Entitlement Program for Survivors (or Quayle benefits);

(v) Benefits paid under Public Law 96–342, section 903: Educational Assistance Pilot Program;

(vi) Any educational benefits paid because of enrollment in a postsecondary education institution;

(vii) The estimated amount of other Federal student financial aid, including, but not limited to, a Federal Direct Stafford loan eligible for interest subsidies, Federal Pell Grants, and to the extent funding is available, campus-based aid the student would be expected to receive if the student has applied or will apply for that aid; and

(viii) In the case of a Federal Direct PLUS loan, the estimated amount of other Federal student financial aid, including but not limited to, a Federal Direct Stafford loan, Federal Pell grant, and campus-based aid that the student has been or will be awarded.

(ix) If the student is applying for a loan to cover expenses incurred within the same enrollment period as that for which a prior Federal or conventional student loan was received, the amount of loan proceeds withheld by the Secretary, lender, or guaranty agency making or insuring the loan if those costs were included in computing the borrower's estimated cost of attendance for the prior loan.

(2) The estimated amount of assistance does not include—

(i) Those amounts used to replace the expected family contribution, including—

(A) Federal Direct PLUS loan amounts; and

(B) Private and State-sponsored loan program loan amounts; and

(ii) Federal Perkins loan and Federal Work-Study funds that the school determines the student has declined for an acceptable reason.

Federal Direct PLUS Program: A loan program authorized by title IV, part D of the Act that provides loans to parents of undergraduate students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program.

Federal Direct Unsubsidized Stafford Loan Program: A loan program authorized by title IV, part D of the Act that provides loans to undergraduate, graduate, and professional students attending Direct Loan Program schools and one of the components of the Direct Loan Program. The interest that accrues during all periods is paid by the borrower.

Grace period: The period that begins on the day after a Direct Loan Program borrower ceases to be enrolled as at least a half-time student at an eligible institution and ends on the day before the repayment period begins.

Half-time student: A student enrolled in a school that is participating in the FFEL Program or the Direct Loan Program and is carrying an academic workload that amounts to at least one-half the workload of a full-time student, as determined by the school, and is not a full-time student. A student enrolled solely in an eligible program of study by correspondence as defined in 34 CFR 668.8 is considered a half-time student.

Interest rate: The annual interest rate that is charged on a loan, under title IV, part D of the Act.

Loan fee: A fee, payable by the borrower, that is used to help defray the costs of the Direct Loan Program.

Originating school: A school that has an agreement with the Secretary under § 685.300(b) to originate loans in the Direct Loan Program. An originating school requests and obtains funds to originate Direct Loans using a draw down process similar to the process for drawing down funds for other federal student aid programs.

Period of enrollment: The period for which a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan is intended. The period of enrollment must coincide with a bona fide academic term (*i.e.*, semester trimester, quarter, academic year, and length of the program of study), established by the school, for which institutional charges are generally assessed. The period of enrollment is also referred to as the loan period.

Repayment period: (1) For a Federal Direct Stafford Loan or Federal Direct Unsubsidized Stafford Loan, the period beginning on the date following the expiration of the grace period and ending when the loan is paid-in-full, exclusive of any period of deferment or forbearance.

(2) For a Federal Direct PLUS loan, the period that begins on the date the loan is fully disbursed and ends when the loan is paid-in-full, exclusive of any period of deferment or forbearance.

Satisfactory repayment arrangement. The making of six consecutive voluntary on-time full monthly payments on a defaulted loan to regain further eligibility for Direct Loan Program loans. The required monthly payment amount may not be more than is reasonable and affordable based on the borrower's total financial circumstances. On-time means a payment made within fifteen days of the scheduled due date and voluntary payments are those payments made directly by the borrower, regardless of whether there is a judgment against the borrower, and do not include payments obtained by income tax offset, garnishment, or income or asset execution.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.103 Applicability of subparts.

(a) Subpart A contains general information regarding the purpose and scope of the Direct Loan Program.

(b) Subpart B contains provisions that apply to borrowers in the Direct Loan Program.

(c) Subpart C contains certain requirements that apply to schools in the Direct Loan Program.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart B—Borrower Provisions

§ 685.200 Borrower eligibility.

(a)(1) *Student borrower.* A student is eligible to receive a Federal Direct Stafford Loan, or a Federal Direct Unsubsidized Stafford Loan, or a combination of such loans, if the student is enrolled in a Direct Loan Program school, meets the requirements for an eligible student under 34 CFR part 668, and—

(i) In the case of an undergraduate student who seeks a Federal Direct Stafford or Federal Direct Unsubsidized Stafford Loan for the cost of attendance at a school that participates in the Federal Pell Grant Program, has received a final determination, or, in the case of a student who has filed an application with the school for a Federal Pell Grant, a preliminary determination from the school of the student's eligibility or ineligibility for a Federal Pell Grant and, if eligible, has applied for the period of enrollment for which the loan is sought;

(ii)(A) Reaffirms any FFEL Program or Direct Loan Program amount that previously was cancelled due to the borrower's total and permanent disability, or that was discharged in bankruptcy, or written off.

(B) For purposes of this paragraph, reaffirmation means the acknowledgement of the loan by the borrower in a legally binding manner. The acknowledgement may include, but is not limited to, the borrower—

(*1*) Signing a new promissory note or repayment schedule; or

(*2*) Making a payment on the loan;

(iii)(A) In the case of a borrower whose previous loan was cancelled due to total and permanent disability, obtains a certification from a physician that the borrower's condition has improved and that the borrower is able to engage in substantial gainful activity; and

(B) Signs a statement acknowledging that any Direct Loan the borrower receives cannot be cancelled in the future on the basis of any present impairment, unless that condition substantially deteriorates;

(iv) In the case of any student who seeks a loan but does not have a certificate of graduation from a school providing secondary education or the recognized equivalent of such a certificate, has passed an independently administered examination approved by the Secretary; and

(v) Is not serving in a medical internship or residency program, except for an internship in dentistry.

(2) *Special conditions for Federal Direct Stafford Loan borrowers.*

(i) A Federal Direct Stafford loan borrower must demonstrate financial need in accordance with title IV, part F of the act.

(ii) The Secretary considers a member of a religious order, group, community, society, agency, or other organization who is pursuing a course of study at an institution of higher education to have no financial need if that organization—

(A) Has as its primary objective the promotion of ideals and beliefs regarding a Supreme Being;

(B) Requires its members to forego monetary or other support substantially beyond the support it provides; and

(C)(*1*) Directs the member to pursue the course of study; or

(*2*) Provides subsistence support to its members.

(b) *Parent borrower.* A parent is eligible to receive a Federal Direct PLUS loan, if the parent—

(1) Is borrowing to pay for the educational costs of a dependent undergraduate student who meets the requirements for an eligible student set forth in 34 CFR part 668;

(2) Provides his or her and the student's social security number;

(3) Meets the requirements pertaining to citizenship and residency that apply to the student in 34 CFR 668.7;

(4) Meets the requirements concerning defaults and overpayments that apply to the student in 34 CFR 668.7;

(5) Except for the completion of a Statement of Selective Service Registration Status, complies with the requirements for submission of a Statement of Educational Purpose that apply to the student in 34 CFR part 668; and

(6) Meets the requirements of paragraphs (a)(1)(ii) and (a)(1)(iii) of this section; and

(7)(i)(A) Does not have an adverse credit history; or

(B) Has an adverse credit history, but has obtained an endorser who does not have an adverse credit history.

(ii) For purposes of paragraph (b)(7)(i) of this section, an adverse credit history means that as of the date of the credit report, the applicant—

(A) Is 90 or more days delinquent on any debt;

(B) Has been the subject of a default determination on any debt; or

(C) Has been the subject of a bankruptcy discharge, foreclosure, repossession, tax lien, wage garnishment or write-off of a Title IV debt during the five years preceding the date of the credit report.

(c) *Use of loan proceeds to replace expected family contribution.* A borrower may use the amount of a Federal Direct Unsubsidized Loan, Federal Direct PLUS loan, State-sponsored loan or other non-Federal loan obtained for a loan period to replace the expected family contribution for that loan period.

(d) *Defaulted FFEL Program borrower.* In the case of a student, or parent, borrower who is currently in default on an FFEL Program loan, the borrower must make satisfactory repayment arrangements on the defaulted loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.201 Obtaining a loan.

(a) *Application for a Federal Direct Stafford loan.* To obtain a Federal Direct Stafford loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit the student's loan origination record to the alternative originator, which will complete the origination of the loan.

(b) *Application for a Federal Direct Unsubsidized loan.* To obtain a Federal Direct Unsubsidized loan, a student shall complete and submit a Free Application for Federal Student Aid. If the student is eligible for a Federal Direct Unsubsidized Stafford loan, the school shall obtain a completed promissory note from the student and complete the origination of the loan. If the student is attending a school that uses an alternative originator, the school must transmit a student's loan origination record to the alternative originator, which will complete the origination of the loan.

(c) *Application for a Federal Direct PLUS loan.* To obtain a Federal Direct PLUS loan, the parent shall complete an application/promissory note and submit it to the school. After the school completes its portion of the application/promissory note, the school submits it to the Secretary. If the parent does not have an adverse credit history an originating school shall complete the origination of the loan. If the student for whom the loan is intended is attending a school that uses an alternative originator, the alternative originator will complete the origination of the loan.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.202 Charges for which Direct Loan Program borrowers are responsible.

(a) *Interest*—(1) *Interest rate under the Federal Direct Stafford Loan Program and the Federal Direct Unsubsidized Stafford Loan Program.* For Federal Direct Stafford Loans and Federal Direct Unsubsidized Stafford Loans, the interest rate, during any twelve month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 91-day Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed 8.25 percent.

(2) *Interest rate under the Federal Direct PLUS Program.* The interest rate on a Federal Direct PLUS loan, during any 12-month period beginning on July 1 and ending on June 30, is determined on the preceding June 1 and is equal to the bond equivalent rate of 52-week Treasury bills auctioned at the final auction held prior to that June 1; plus 3.1 percent, but does not exceed nine percent.

(b) *Capitalization.* (1) The Secretary may add accrued interest to the borrower's unpaid principal balance. This increase in the principal balance of a loan is called "capitalization."

(2) The Secretary may capitalize interest payable by the borrower that has accrued—

(i) During the period from the date the first disbursement was made to the date the repayment period begins;

(ii) During a period of authorized deferment;

(iii) During a period of authorized forbearance; or

(iv) During the period from the date the first installment payment was due until it was made.

(3) Under the Federal Direct Unsubsidized Stafford Loan Program and the Federal Direct PLUS Program, the Secretary requires the borrower to pay on a monthly or quarterly basis, or may capitalize on a quarterly or less frequent basis, interest that has accrued during periods of deferment.

(4) For a borrower who is in a period of deferment, a mandatory forbearance, or the in-school or grace period on a Federal Direct Unsubsidized Stafford Loan and has agreed to monthly or quarterly payments of interest, the Secretary capitalizes past due interest after notification to the borrower that the borrower's failure to resolve any delinquency constitutes the borrower's consent to capitalization of delinquent interest and all interest that would accrue through the remainder of that period.

(c) *Loan Fee for Federal Direct Stafford, Federal Direct Unsubsidized Stafford, and Federal Direct PLUS loans.* The Secretary—

(1) Charges a borrower a loan fee on a Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan of four percent of the principal amount of the loan;

(2) Deducts the loan fee from the proceeds of the loan;

(3) In the case of a loan disbursed in multiple installments, deducts a *pro rata* portion of the fee from each disbursement; and

(4) Refunds by a credit against the borrower's loan balance the portion of the loan fee previously deducted from the loan that is attributable to a disbursement of that loan that is repaid within 120 days of disbursement.

(d) *Late charge.* (1) The Secretary may require the borrower to pay a late charge of up to six cents for each dollar of each installment or portion thereof that is late under the circumstances described in paragraph (d)(2) of this section.

(2) The late charge may be assessed if the borrower fails to pay all or a portion of a required installment payment within ten days after it is due.

(e)(1) *Collection charges before default.* Notwithstanding any provisions of State law, the Secretary may require that the borrower or any endorser pay costs incurred by the Secretary or his agents in collecting installments not paid when due, including, but not limited to—

(i) Attorney's fees;

(ii) Court costs;

(iii) Telegrams; and

(iv) Fees on checks returned due to non-sufficient funds.

(2) *Collection charges after default.* If a borrower defaults on a Direct Loan Program loan, he or she is assessed collection costs under the formula in 34 CFR 30.60.

(Authority: 20 U.S.C. 1087a *et seq.*, 1091a)

§ 685.203 Loan limits.

(a) *Federal Direct Stafford Loan Program.* (1) In the case of a dependent undergraduate student who has not successfully completed the first year of a program of undergraduate education, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $2,625 for a program of study of at least a full academic year in length;

(ii) $1,750 for a program of study of at least two-thirds but less than a full academic year in length; and

(iii) $875 for a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a dependent undergraduate student who has successfully completed the first year of an undergraduate program but has not successfully completed the second year of an undergraduate program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $3,500 for a program of study of at least a full academic year in length; or

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $3,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a dependent undergraduate student who has successfully completed the first and second year of a program of study of undergraduate education but has not successfully completed the remainder of the program, or in the case of a student in a program who has an associate or baccalaureate degree which is required for admission into the program, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, and the Federal Stafford Loan Program, may not exceed—

(i) $5,500 for a program of study of at least an academic year in length;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,500 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(4) In the case of a graduate or professional student, the total amount the student may borrow for any academic year of study under the Federal Direct Stafford Loan Program, in combination with any amount borrowed under the Federal Stafford Loan Program, may not exceed $8,500.

(b) *Federal Direct Unsubsidized Stafford Loan Program.* In the case of a dependent graduate student, the total amount the student may borrow for any period of study for the Federal Direct Unsubsidized Stafford Loan Program and Federal Unsubsidized Stafford Loan Program is the same as the amount determined under paragraph (a) of this section, less any amount received under the Federal Direct Stafford Loan Program or Federal Stafford Loan Program.

(c) *Additional eligibility under the Federal Direct Unsubsidized Stafford Loan Program.* In addition to any amount borrowed under paragraph (b), an independent undergraduate student, graduate or professional student, or certain dependent undergraduate students may borrow additional amounts under the Federal Direct Unsubsidized Loan Program. In order for a dependent undergraduate student to receive this additional loan amount, the financial aid administrator must determine and document in the school's file, after review of the family financial information provided by the student and consideration of the student's debt burden, that the student's parents likely will be precluded by exceptional circumstances (e.g., the student's parent receives only public assistance or disability benefits, is incarcerated, has an adverse credit history, or his or her whereabouts are unknown) from borrowing under the Federal Direct PLUS Program or the Federal PLUS Program and the student's family is otherwise unable to provide the student's expected family contribution. A parent's refusal to borrow a Federal PLUS loan or Federal Direct PLUS loan does not constitute an exceptional circumstance. The additional amount that such a student may borrow under the Federal Direct Unsubsidized Stafford Loan Program, in combination with Federal Unsubsidized Stafford loans, for any academic year of study is—

(1) In the case of a student who has not successfully completed the first and second year of a program of undergraduate education, may not exceed—

(i) $4,000 for enrollment in a program of study of at least a full academic year in length;

(ii) $2,500 for enrollment in a program of study of at least two-thirds but less than a full academic year in length;

(iii) $1,500 for enrollment in a program of study of at least one-third but less than two-thirds of an academic year in length.

(2) In the case of a student who has successfully completed the first and second year of an undergraduate program, but has not completed the remainder of the program of study, may not exceed—

(i) $5,000 for enrollment in a program of study of at least a full academic year;

(ii) If the student is enrolled in a program of study with less than a full academic year remaining, a prorated amount that bears the same ratio to $5,000 as the remainder of the program measured in semester, trimester, quarter, or clock hours bears to one academic year.

(3) In the case of a graduate or professional student, may not exceed $10,000.2

(d) *Federal Direct Stafford Loan Program and Federal Stafford Loan Program aggregate limits.* The aggregate unpaid principal amount of all Federal Direct Stafford Loans and loans received under the Federal Stafford Loan Program made to a student may not exceed—

(1) $23,000 in the case of any student who has not successfully completed a program of study at the undergraduate level; and

(2) $65,500, in the case of a graduate or professional student, including loans for undergraduate study.

(e) *Federal Direct PLUS Program annual limit.* The total amount of all Federal Direct PLUS loans that a parent or parents may borrow on behalf of each dependent student for any academic year of study may not exceed the cost of education minus other estimated financial assistance for that student.

(f) *Federal Direct PLUS Program aggregate limit.* The total amount of all Federal Direct PLUS Program loans that a parent or parents may borrow on behalf of each dependent student for enrollment in an eligible program of study may not exceed the student's cost of education minus other estimated financial assistance for that student.

(g) *Federal Direct Stafford Loan and Federal Direct Unsubsidized Stafford Loan Program aggregate limits.* The total unpaid principal amount of Federal Direct Stafford Loans, Federal Direct Unsubsidized Stafford Loans, Federal Stafford Loans and Federal Unsubsidized Stafford Loans may not exceed—

(1) $46,000 for an undergraduate student.

(2) $138,500 for a graduate or professional student.

(h) *Minimum loan interval.* The annual loan limits applicable to a student shall apply to the length of the

school's academic year as the term is used under the FFEL Program.

(i) *Treatment of Federal Direct Consolidation loans and Federal Consolidation loans for purposes of determining loan limits.* The percentage of the outstanding balance on a Federal Direct Consolidation loan or Federal Consolidation Loans counted against a borrower's aggregate loan limits—

(1) For the Federal Direct Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Stafford and Federal Stafford loans; and

(2) For the Federal Direct Unsubsidized Stafford Loan Program, equals the percentage of the original amount of the Federal Direct Consolidation loan or Federal Consolidation loan attributable to the Federal Direct Unsubsidized Stafford Loan and Federal Unsubsidized Stafford loans.

(j) *Maximum loan amounts.* In no case may a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan amount exceed the student's estimated cost of attendance for the period of enrollment for which the loan is intended, less—

(1) The student's estimated financial assistance for that period; and

(2) The borrower's expected family contribution for that period, in the case of a Federal Direct Stafford loan.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.204 Deferment.

(a) (1) A Federal Direct Stafford Loan borrower who meets the requirements described in subparagraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, and interest does not accrue.

(2) A Federal Direct Unsubsidized Stafford Loan borrower or a Federal Direct PLUS borrower who meets the requirements described in paragraph (b) is eligible for a deferment during which periodic installments of principal need not be paid, but interest does accrue and is capitalized or paid by the borrower.

(b) A Direct Loan Program borrower is eligible for a deferment during any period during which the borrower—

(1) Is carrying at least one-half the normal full-time work load for the course of study that the borrower is pursuing, as determined by the eligible school the borrower is attending.

(2) Is pursuing—

(i) A course of study pursuant to a graduate fellowship program approved by the Secretary; or

(ii) A rehabilitation training program, approved by the Secretary, for individuals with disabilities.

(3) Not in excess of three years is seeking and unable to find full-time employment; or

(4) Not in excess of three years has experienced or will experience an economic hardship.

(c) No borrower is eligible for a deferment, or a loan made under this part while serving in a medical internship or residency program.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.205 Forbearance.

(a)(1) A Direct Loan Program borrower or endorser may receive forbearance from the Secretary if the borrower or endorser is willing but unable to make scheduled loan payments. "Forbearance" means permitting the temporary cessation of payments, allowing an extension of time for making payments, or temporarily accepting smaller payments than previously scheduled. A forbearance is granted by the Secretary only if the borrower or endorser requests forbearance, and—

(i) The Secretary believes that the borrower or endorser intends to repay the loan but, due to poor health or other acceptable reasons, is currently unable to make scheduled payments; or

(ii) The borrower's payments of principal are deferred under § 685.204 and the Secretary does not subsidize the interest benefits on behalf of the borrower under § 685.200(a)(2).

(2) If payments of interest are forborne, they are capitalized.

(b) *Mandatory forbearance.* (1) *Medical or dental interns or residents.* Upon receipt of a written request and sufficient supporting documentation from a borrower serving in a medical or dental internship or residency program, the Secretary grants forbearance renewable at 12-month intervals to a borrower—

(i) For the length of time remaining in the borrower's medical or dental internship or residency that must be successfully completed before the borrower may begin professional practice or service; or

(ii) For the length of time that the borrower is serving in a medical or dental internship or residency program leading to a degree or certificate awarded by an institution of higher education, a hospital, or a health care facility that offers postgraduate training.

(2) *Borrowers and endorsers with high debt burdens.* Upon receipt of a written request and sufficient supporting documentation from an endorser, or from a borrower (other than a borrower who is serving in a medical or dental internship or residency described in paragraph (i)(1) of this section), the Secretary grants forbearance in increments of up to one year, for periods that, collectively, do not exceed three years, if the borrower or endorser—

(i) Is currently obligated to make payments on Title IV loans; and

(ii) The amount of such payments each month (or a proportional share if the payments are due less frequently than monthly) is collectively equal to or greater than 20 percent of the borrower or endorser's monthly disposable income.

(3) *Borrowers and endorsers in National and Community Service.* Upon receipt of a written request and sufficient supporting documentation from a borrower or endorser serving in a national service position for which the borrower or endorser receives a national service educational award under the National and Community Service Trust Act of 1993, the Secretary grants forbearance for the duration of the borrower's or endorser's term of service under that statute.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.206 Borrower responsibilities and defenses.

(a) The borrower shall give the school, as part of the origination process for a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(1) A statement, as described in 34 CFR part 668, that the loan will be used for the cost of the student's attendance;

(2) Information demonstrating that the borrower is eligible for the loan;

(3) Information concerning the outstanding FFEL Program and Direct Loan Program loans of the borrower and, for a parent borrower, of the student, including any Federal Consolidation loan or Federal Direct Consolidation loan used to discharge a Federal Stafford, Federal PLUS loan, Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan;

(4) A statement authorizing the school to release information to the Secretary relevant to the student's eligibility to borrow or to have a parent borrow on the student's behalf (*e.g.*, the student's enrollment status, financial assistance, and employment records).

(b) The borrower shall promptly notify—

(1) The Secretary of any change of name, address, student status to less than half-time, employer, or employer's address; and

(2) The school of any change in address during enrollment.

(c) *Borrower defenses.* A Direct Loan Program borrower may assert as a defense against the repayment of the loan a claim based on the act or omission of the school only if—

(1) The act or omission gives rise to a cause of action against the school recognized under the law of the State in which the school attended by the student was located;

(2) Prior to asserting the claim as a defense to repayment, the borrower presented that claim to the school and received no satisfaction; and

(3) The borrower presented the claim in writing to the Department within 18 months of the date the loan was disbursed to the borrower.

(Authority: 20 U.S.C. 1087a *et seq.*)

Subpart C—Requirements, Standards, and Payments for Direct Loan Program Schools

§ 685.300 Agreements between an eligible school and the Secretary for participation in the Direct Loan Program.

(a) (1) *General.* Participation of a school in the Direct Loan Program means that the school's students are eligible to receive Direct Loans. To participate in the Direct Loan Program, a school must—

(i) Demonstrate to the satisfaction of the Secretary that it meets the elements of basic eligibility as defined in 34 CFR part 600 through certification by the Secretary; and

(ii) Enter into a written program participation agreement with the Secretary that is signed by the Chief Executive Officer of the school on a form approved by the Secretary.

(2) *Program participation agreement.* The school, in the program participation agreement, shall promise to comply with the applicable provisions of—

(i) The Act and applicable regulations including notices;

(ii) The Student Assistance General Provisions, 34 CFR part 668; and

(iii) The Institutional Eligibility regulations, 34 CFR part 600.

(b) (1) In the participation agreement, the school shall agree to—

(i) Identify eligible students who seek student financial assistance at the institution in accordance with section 484 of the Act;

(ii) Estimate the need of each of these students as required by part F of the Act for an academic year, except that any loan obtained by a student under this part with the same terms as Federal Direct Unsubsidized Stafford Loans, or Federal Direct PLUS Loans, or obtained under any State-sponsored or private loan program, may be used to offset the expected family contribution of the student for that year;

(iii) Provide a statement that certifies the eligibility of any student to receive a loan under part D of the Act is not in excess of the annual or aggregate limit applicable to the loan;

(iv) Set forth a schedule for disbursement of the proceeds of the loan in installments, consistent with the requirements of section 428G of the Act; and;

(v) Provide timely and accurate information to the Secretary for the servicing and collecting of loans—

(A) Concerning the status of student borrowers (and students on whose behalf parents borrow) while these students are in attendance at the school and concerning any new information of which the school becomes aware for these students (or their parents) after the student leaves the school; and

(B) Concerning student eligibility and need, for the alternative origination of loans to eligible students and parents in accordance with part D of the Act;

(2) Provide assurances that the school will comply with requirements established by the Secretary relating to student loan information with respect to loans made under the Direct Loan Program;

(3) Provide that the school will accept responsibility and financial liability stemming from its failure to perform its functions pursuant to the agreement;

(4) Provide that students at the school and their parents will be eligible to participate in the programs under part B of the Act at the discretion of the Secretary for the period during which the school participates in the Direct Loan Program under part D of the Act, except that a student or parent may not receive loans under both part D of the Act and part B of the Act for the same period of enrollment;

(5) Provide for the implementation of a quality assurance system, as established by the Secretary and developed in consultation with the school, to ensure that the school is complying with program requirements and meeting program objectives;

(6) Provide that the institution will not charge any fees of any kind, however described, to student or parent borrowers for origination activities or the provision of any information necessary for a student or parent to receive a loan under part D of the Act, or any benefits associated with such loan; and

(7) Comply with other provisions that the Secretary determines are necessary to protect the interests of the United States and to promote the purposes of part D of the Act.

(c) *Origination.* A school or consortium that originates loans in the Federal Direct Student Loan Program must have a supplemental agreement that—

(1) Provides that the institution or consortium will originate loans to eligible students and parents in accordance with part D of the Act; and

(2) Provide that the note or evidence of obligation on the loan is the property of the Secretary.

(Authority: 20 U.S.C. 1087a *et seq.*, 1094)

§ 685.301 Certification by a Direct Loan Program school for a loan.

(a)(1) A school participating in the Direct Loan Program shall ensure that any information it provides to the Secretary in connection with loan origination is complete and accurate. Except as provided in 34 CFR part 668, subpart E, a school may rely in good faith upon statements made on the application by the student.

(2) The information to be provided to the Secretary by the school about the borrower receiving the loan includes but is not limited to—

(i) The borrower's eligibility for a loan, as determined in accordance with § 685.200 and § 685.203;

(ii) The student's loan amount; and

(iii) The anticipated and actual disbursement date or dates and disbursement amounts of the loan proceeds.

(3) A school may not certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan, or a combination of loans, for an amount that—

(i) The school has reason to know would result in the borrower exceeding the annual or maximum loan amounts in § 685.203; or

(ii) Exceeds the student's estimated cost of attendance, less—

(A) The student's estimated financial assistance for that period; and

(B) In the case of a Federal Direct Stafford Loan, the borrower's expected family contribution for that period.

(4) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with § 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be at least 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

(i) *Number of clock-hours in program* ÷ 900 hours; or

(ii) *Credit hours in program* ÷ 24 semester or 36 quarter hours.

(5) In determining a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan amount in accordance with § 685.203, for a borrower enrolled in a program of study of less than 900 clock hours or 24 semester or trimester hours, or 36 quarter hours (where the school defines its academic year to be less than 30 weeks in length), the school must determine the annual loan limit for the borrower by determining what portion of the academic year the program of study represents by calculating—

Number of weeks in program ÷ 30 weeks.

(6) A school may refuse to certify a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan or may reduce the borrower's determination of need for the loan if the reason for that action is documented and provided to the student in writing, provided—

(i) The determination is made on a case-by-case basis;

(ii) The documentation supporting the determination is retained in the student's file; and

(iii) The school does not engage in any pattern or practice that results in a denial of a borrower's access to Direct Loans because of the borrower's race, sex, color, religion, national origin, age, disability status, or income.

(7) A school may not assess a fee for the completion or certification of any Direct Loan Program loan forms or information.

(b) *Disbursing a loan.* (1) Before disbursing a loan, a school must determine that all information required by the loan application and promissory note has been provided by the borrower and, if applicable, the student.

(2) A school shall establish disbursement dates for any Direct Loan Program loan as follows:

(i) Disbursements must be in two or more installments;

(ii) No installment may exceed one-half the loan; and

(iii) At least one-half of the loan period must elapse before the second installment is disbursed, except as necessary to permit the second installment to be disbursed at the beginning of the next semester, quarter, or similar division of the loan period.

(c) *Promissory note.* (1) The Secretary provides promissory notes for use in the Direct Loan Program and a school may not modify, or make any additions to, the promissory note without the Secretary's prior written approval.

(2) A school shall provide to the Secretary an executed legally enforceable promissory note as proof of the borrower's indebtedness.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.302 Correspondence school schedule requirements.

(a) A school offering a course of study by correspondence shall establish a schedule for submission of lessons by its students and provide it to a prospective student prior to the student's enrollment.

(b) The school shall include in its schedule—

(1) A due date for each lesson in the course;

(2) A description of the options, if any, available to the student for altering the sequence of lesson submissions from the sequence in which they are otherwise required to be submitted;

(3) The date by which the course is to be completed; and

(4) The date by which any resident training must begin, the location of any residential training, and the period of time within which that resident training must be completed.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.303 Disbursing borrowers' loan proceeds and counseling borrowers.

(a) *Purpose.* This section establishes rules governing a school's disbursement of a borrower's Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan proceeds, and for counseling borrowers. The school shall also comply with any rules for processing a loan contained in 34 CFR part 668.

(b) *General.* (1) A school may not disburse any loan proceeds unless the school or the alternative originator has obtained an executed legally enforceable promissory note from the borrower.

(2)(i) Except in the case of a late disbursement under paragraph (d) of this section, or as provided in paragraph (b)(2)(iii) of this section, a school may disburse loan proceeds only to a student whom the school determines continuously has maintained eligibility in accordance with the provisions of § 685.200 from the beginning of the loan period certified by the school.

(ii) If, after the first disbursement is made to the student, the student becomes ineligible due solely to the school's loss of eligibility to participate in the Title IV programs or the Direct Loan Program, the school may make the second or subsequent disbursement to the borrower as permitted by 34 CFR part 668.

(iii) If, prior to when the loan is made to the student, the student temporarily ceases to be enrolled on at least a half-time basis, the school may make the first disbursement of the loan and any subsequent disbursement to the student if the school subsequently determines and documents in the student's file—

(A) That the student has resumed enrollment on at least a half-time basis;

(B) The student's revised cost of attendance; and

(C) That the student continues to qualify for the entire amount of the loan notwithstanding any reduction in the student's cost of attendance caused by the student's temporary cessation of enrollment on at least a half-time basis.

(3) The school may credit a registered student's account with only those loan proceeds covering costs of attendance owed to the school by the student for which substantially all of the school's students incurring those costs have been billed.

(4) A school may not deliver loan proceeds to a student borrower earlier than ten days before the first day of the period of enrollment.

(5) If a registered student withdraws or is expelled prior to the first day of classes of the period of enrollment for which the loan is made or fails to attend school during that period, or if the school is unable for any other reason to document that the student attended school during that period, the school, within 30 days of the period described in § 685.304(b), shall notify the Secretary of the student's withdrawal, expulsion, or failure to attend school, if applicable, and return to the Secretary—

(i) Any loan proceeds credited directly by the school to the student's account; and

(ii) The amount of payments made directly by the student to the school, to the extent that they do not exceed the amount of any loan proceeds delivered by the school to the student.

(6) A school may not apply the first disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to the account of a student who is enrolled in the first year of an undergraduate program of study and who has not previously received a Federal Stafford, Federal Supplemental Loans for Students, Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan until 30 days after the first day of the student's program of study.

(c) *Processing of the proceeds of a Direct Loan Program loan.* (1) After the student has registered, the school shall—

(i) Not more than three weeks prior to the first day of the period of enrollment—

(A) Credit the amount of the loan proceeds to the student's account;

(B) Notify the student or parent borrower in writing that it has so credited that account; and

(C) Deliver to the student or parent borrower the remaining loan proceeds, subject to paragraph (b)(5) of this section, not later than 45 days after the disbursement of the funds.

(ii) Subject to paragraph (b)(5) of this section, disburse the loan proceeds to the borrower.

(2) A school may not credit a student's account or release the proceeds of a loan to a student who is on a leave of absence, as described in § 685.304(c).

(d) *Late disbursement.* (1) For purposes of this paragraph, a disbursement is late if the school delivers loan proceeds—

(i) After the loan period; or

(ii) Before the end of the loan period, but after the student ceased to be enrolled at the school on at least a half-time basis.

(2) A school may make a late disbursement only if the school or the alternative originator has received a completed promissory note prior to the 30th day after the applicable condition in paragraph (d)(1) of this section.

(3) Notwithstanding paragraph (d)(2) of this section, a school may not make—

(i) A late second or subsequent disbursement of a Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan to a borrower who has ceased to be enrolled on at least a half-time basis unless the borrower has graduated or successfully completed the period of enrollment for which the loan was intended; or

(ii) Any late disbursement that under 34 CFR part 668 is considered to be awarded for a payment period in which the student was not enrolled on at least a half-time basis at the school.

(e) *Initial counseling.* (1) Except in the case of a correspondence school or for a student enrolled in a study-abroad program approved for credit at the home institution, a school shall conduct counseling with each Federal Direct Stafford and Federal Direct Unsubsidized Stafford borrower either in person or by videotape presentation. In each case, the school shall conduct this counseling prior to making the first disbursement of the proceeds of the first Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan made to a borrower who has not received a Federal Stafford loan for attendance at the school and shall ensure that an individual with expertise in the title IV programs is reasonably available shortly after the counseling to answer the borrower's questions regarding those programs. In the case of a correspondence school or a student enrolled in a study-abroad program that the school approves for credit, the school shall provide the borrower with written counseling materials by mail prior to releasing those proceeds.

(2) In conducting the initial counseling, the school must—

(i) Emphasize to the borrower the seriousness and importance of the repayment obligation the borrower is assuming; and

(ii) Describe in forceful terms the likely consequences of default, including adverse credit reports, garnishment of wages, and litigation.

(3) Additional matters that the Secretary recommends that a school include in the initial counseling session or materials are set forth in appendix D to 34 CFR part 668.

(f) *Exit counseling.* (1) A school shall conduct in-person exit counseling with each Federal Direct Stafford, or Federal Direct Unsubsidized Stafford borrower shortly before the borrower ceases at least half-time study at the school, except that—

(i) In the case of a correspondence school, the school shall provide the borrower with written counseling materials by mail within 30 days after the borrower completes the program; and

(ii) If the borrower withdraws from school without the school's prior knowledge or fails to attend an exit counseling session as scheduled, the school shall mail written counseling material to the borrower at the borrower's last known address within 30 days after the school learns that the borrower has withdrawn from school or failed to attend the scheduled session.

(2) In conducting the exit counseling, the school shall—

(i) Provide the borrower with general information with respect to the average indebtedness of students who have obtained Federal Direct Stafford or Federal Direct Unsubsidized Stafford loans for attendance at that school;

(ii) Inform the student as to the average anticipated monthly repayment for those students based on that average indebtedness;

(iii) Review for the borrower available repayment options (e.g., standard repayment plan, extended repayment plan, graduated repayment plan, income contingent repayment plan, loan consolidation, refinancing);

(iv) Suggest to the borrower debt-management strategies that the school determines would best assist repayment by the borrower;

(v) Include the matters described in paragraph (e)(2) of this section; and

(vi) Review with the borrower the conditions under which the borrower may defer repayment or obtain cancellation of a loan;

(vii) Require the borrower to provide corrections to the institutions's records concerning name, address, social security number, references, and driver's license number, as well as the name and address of the borrower's expected employer that must be provided within 60 days to the Secretary.

(3) Additional matters that the Secretary recommends that a school include in the exit counseling session or materials are set forth in appendix D to 34 CFR part 668.

(4) The school shall maintain in the student borrower's file documents substantiating the school's compliance with paragraphs (e) and (f) of this section as to that borrower.

(g) *Treatment of excess loan proceeds.* Before the delivery of any Federal Direct Stafford or Federal Direct Unsubsidized Stafford loan disbursement, if a school learns that the borrower would receive or has received financial aid for the period of enrollment for which the loan was intended that exceeds the amount of assistance for which the student is eligible, the school shall reduce or eliminate the overaward by either—

(1) Using the student's Federal Direct Unsubsidized Stafford, Federal Direct PLUS, or State-sponsored or private loan to cover the expected family contribution, if not already done; or

(2) Reducing one or more disbursements to eliminate the overaward.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.304 Determining the date of a student's withdrawal.

(a) *Purpose.* This section establishes rules for how a school shall determine the withdrawal date for a student to whom or on whose behalf a loan has been made under this part for the purpose of reporting to the Secretary the date that the student has withdrawn from the school and for determining when a refund must be paid under § 685.305.

(b) *The withdrawal date.* (1) Except as provided in paragraphs (b)(2) and (b)(3) of this section, the student's withdrawal date is the earlier of—

(i) The date the student notifies the school of the student's withdrawal or the date of withdrawal specified by the student, whichever is later; or

(ii) The date of withdrawal as determined by the school. The school must determine the student's date of withdrawal no later than—

(A) Forty-five days after the expiration date of the academic term in which the student was enrolled for a school that uses academic terms (e.g., semester, trimester, or quarter), except that 30

days after the first day of the next scheduled term may be used in the case of a summer break; or

(B) Twenty-five days after a student's last date of attendance for a school that measures academic progress either in clock hours or credit hours but does not use a semester, trimester, or quarter system.

(2) If the student has not returned to school at the expiration of a leave of absence approved under paragraph (c) of this section, the student's withdrawal date is the first day of the leave of absence.

(3) If the student is enrolled in a program of study by correspondence, the student's withdrawal date is the date of the last lesson submitted if the student fails to submit the next scheduled lesson in accordance with the schedule of lessons established under § 685.302. However, if the student establishes in writing, within 60 days of the date of the last lesson submitted, a desire to continue in the program and an understanding that the required lessons must be submitted on time, the school may restore that student to in-school status for purposes of the loan made under this part. The school may not grant the student more than one restoration to in-school status on this basis.

(4) For the purpose of a school's reporting to the Secretary, a student's withdrawal date is the month, day, and year of the withdrawal date determined under paragraphs (b)(1)–(b)(3) of this section.

(c) *Leaves of absence.* A student who has been absent from school and has been granted a leave of absence by a school in accordance with this paragraph is not considered to have withdrawn from school for purposes of paragraph (a) of this section. In any 12-month period, a school may grant no more than a single leave of absence to a student, provided that—

(1) The student has made a written request to be granted a leave of absence;

(2) The leave of absence involves no additional charges by the school to the student; and

(3) The leave of absence does not exceed—

(i) Sixty days; or

(ii) Six months under either of the following circumstances:

(A) The school is not a correspondence school and the school's next period of enrollment after the start of the leave of absence would begin more than 60 days after the first day of the leave of absence.

(B) The leave of absence is requested because of the student's medically determinable condition, in which case the student must provide the school with a written recommendation from a physician for a leave of absence longer than 60 days.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.305 Payment of a refund to the Secretary.

(a) *General.* By applying for a Direct Loan, a borrower authorizes the school to pay directly to the Secretary that portion of a refund from the school that is allocable to the loan. A school—

(1) Shall pay that portion of the student's refund that is allocable to a Direct Loan to the Secretary; and

(2) Shall provide simultaneous written notice to the borrower if the school pays a refund to the Secretary on behalf of that student.

(b) *Allocation of refund.* In determining the portion of a student's refund for an academic period that is allocable to a Direct Loan received by the borrower for that academic period, the school shall follow the procedures established in 34 CFR Part 668 for allocating a refund that is payable.

(c) *Timely payment.* A school shall pay a refund that is due—

(1) Within 60 days after the student's withdrawal as determined under § 685.304(b)(1)–(3); or

(2) In the case of a student who does not return to school at the expiration of an approved leave of absence under § 685.304(c), within 30 days after the last day of that leave of absence.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.306 Withdrawal procedure for schools participating in the Direct Loan Program.

(a) A school participating in the Direct Loan Program may submit a written request to the Secretary to withdraw from participation in the Direct Loan Program explaining why it seeks to withdraw.

(b) The Secretary reviews the school's request to determine if the school has the ability to administer the Direct Loan Program properly and notifies the school of his decision to approve or disapprove the request within 30 days of receiving the school's request.

(c) In reviewing a school's request, the Secretary considers whether the reasons for the request apply only to participation in the Direct Loan Program or to participation in either the Direct Loan Program or the FFEL Program.

(d) If a school's request is approved by the Secretary, the withdrawal becomes effective on the first of July following the school's request.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.307 Remedial actions.

(a) *General.* The Secretary requires a school to purchase that portion of a Direct Loan that is unenforceable, or that the borrower was ineligible to receive. The Secretary requires the repayment of funds and the purchase of loans if the Secretary determines that the unenforceability of a loan or loans, or the disbursement of loan amounts for which the borrower was ineligible resulted in whole or in part from—

(1) The school's violation of a Federal statute or regulation; or

(2) The school's negligent or willful false certification.

(b) In requiring a school to repay funds to the Secretary or to purchase loans from the Secretary in connection with an audit or program review, the Secretary follows the procedures described in 34 CFR part 668, subpart H.

(c) Notwithstanding paragraph (a) of this section, the Secretary may waive the right to require repayment of funds or purchasing of loans by a school if, in the Secretary's judgment, the best interest of the United States so requires.

(d) The Secretary may impose a fine or take an emergency action against a school or limit, suspend, or terminate a school's participation in the Direct Loan Program in accordance with 34 CFR part 668, subpart G.

(e) The Secretary may take any other action necessary to enforce the Secretary's rights under the agreement specified in § 685.300.

(Authority: 20 U.S.C. 1087a *et seq.*)

§ 685.308 Administrative and fiscal control and fund accounting requirements for schools participating in the Direct Loan Program.

(a) *General.* Each school shall—

(1) Establish and maintain proper administrative and fiscal procedures and all necessary records as set forth in the regulations in this part and in 34 CFR part 668 in order to—

(i) Protect the rights of student and parent borrowers;

(ii) Protect the United States from unreasonable risk of loss; and

(iii) Comply with specific requirements in those regulations; and

(2) Submit all reports required by this part and 34 CFR part 668 to the Secretary.

(b) *Student status confirmation reports.* A school shall—

(1) Upon receipt of a student status confirmation report from the Secretary, complete and return that report to the Secretary within 30 days of receipt; and

(2) Unless it expects to submit its next student status confirmation report to the Secretary within the next 60 days, notify the Secretary within 30 days—

(i) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a student who enrolled at that school, but who has ceased to be enrolled on at least a half-time basis;

(ii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford or Federal Direct PLUS loan has been made to or on behalf of a student who has been accepted for enrollment at that school, but who failed to enroll on at least a half-time basis for the period for which the loan was intended; or

(iii) If it discovers that a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan has been made to or on behalf of a full-time student who has ceased to be enrolled on a full-time basis.

(c) *Record retention requirements.* Unless otherwise directed by the Secretary, the school or its successors—

(1) Shall keep all records required under the regulations in this part for five years following the last day of the borrower's attendance at the school;

(2) Shall keep for five years after completion, copies of reports and other forms used by the school relating to the Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS programs;

(3) Shall keep all records involved in any loan, claim, or expenditure questioned by a Federal audit until resolution of any audit questions;

(4) Shall provide, in the event of the school's closure, termination, suspension, or change in ownership resulting in a change of control as described in 34 CFR part 600, for the retention of the records and reports required by the regulations in this part and for access by the Secretary or the Secretary's authorized representatives to those records and reports for inspection and copying; and

(5) May keep records and copies of reports on microfilm, optical disk, or in other machine readable format.

(d) *Loan record requirements.* In addition to records required by 34 CFR part 668, for each Federal Direct Stafford, Federal Direct Unsubsidized Stafford, and Federal Direct PLUS loan received under this part by or on behalf of its students, a school shall maintain a copy of the loan application or data electronically submitted to the Secretary and shall, upon request, produce a record of—

(1) The amount of the loan and the loan period;

(2) The data used to construct an individual student budget or the school's itemized standard budget used in calculating the student's estimated cost of attendance;

(3) The sources and amounts of financial assistance available to the student that the school used in determining the student's estimated financial assistance for the loan period in accordance with § 685.102;

(4) The amount of the student's tuition and fees paid for the loan period and the date the student paid the tuition and fees;

(5) The amount and basis of its calculation of any refund paid to or on behalf of a student;

(6) In the case of a Federal Direct Stafford loan under § 685.200, the data used to determine the student's expected family contribution;

(7) In the case of a Federal Direct Stafford, Federal Direct Unsubsidized Stafford, or Federal Direct PLUS loan—

(i) The date the school received a completed promissory note from the borrower; and

(ii) The date of each disbursement of the loan.

(8) The student's job placement, if known; and

(9) Any other matter for which a record would be required for the school to be able to document its compliance with applicable requirements with respect to the loan.

(e) *Inspection requirements.* Upon request, a school or its agent shall cooperate with an independent auditor, the Secretary, the Department of Education Office of Inspector General, and the Comptroller General of the United States, or their authorized representatives, in the conduct of audits, investigations, and program reviews authorized by law. This cooperation must include—

(1) Providing timely access for examination and copying to the records (including computerized records) required by the applicable regulations and to any other pertinent books, documents, papers, computer programs, and records; and

(2) Providing reasonable access to institutional personnel associated with the institution's administration of the Title IV, HEA programs for the purpose of obtaining relevant information. In providing reasonable access, the institution may not—

(i) Refuse to supply any information deemed relevant by the Secretary;

(ii) Refuse to permit interviews with those personnel without the presence of representatives of the institution's management; and

(iii) Refuse to permit interviews with those personnel unless they are recorded by the institution.

(f) *Information sharing.* (1) Upon request of the Secretary, a school promptly shall provide the Secretary with any information the school has respecting the last known address, surname, employer, and employer address of a borrower who attends or has attended the school.

(2) If the school discovers that a student who is enrolled and who has received a Federal Direct Stafford, or Federal Direct Unsubsidized Stafford loan has changed his or her permanent address, the school shall notify the Secretary within 30 days thereafter.

(g)(1) *Accounting requirements.* A school shall establish and maintain on a current basis financial records that reflect all transactions for the bank account specified in paragraph (h)(1). The school shall establish and maintain general ledger control accounts and related subsidiary accounts that identify each program transaction and separate those transactions from all of the school's other financial activities.

(2) The school shall account for receiving and expending Direct Loan Program funds in accordance with generally accepted accounting principles.

(h)(1) *Direct Loan Program bank account.* The school shall establish and maintain a bank account as trustee for the Secretary and the borrower for Direct Loan Program funds. The school shall notify the bank where the Direct Loan Program account is located in writing that the Direct Loan Program account contains Federal funds. In addition, the school must provide that the word "Federal" is in the name of the school's Direct Loan Program account. If the school's accounting system and practices meet the requirements of paragraph (g) of this section, the school's Direct Loan Program account need not be a separate bank account. The Secretary reserves the right to require a school to maintain a separate account for the Direct Loan Program.

(2) Any interest earned on Direct Loan Program funds deposited in the school's account is considered Federal funds and must be returned to the Secretary.

(i) A school shall divide the functions of authorizing payments and disbursing funds to borrowers so that no single office has responsibility for both functions under the Direct Loan Program.

(j) Funds received by a school under this part may be used only to make Direct Loan Program loans to eligible borrowers and may not be used or hypothecated for any other purpose.

(k) The Secretary may take any action that he deems appropriate to protect the Federal fiscal interest, including such actions as requiring that a school that

originates Direct Loans use an alternative originator instead.

(Authority: 20 U.S.C. 1087a *et seq.*)

APPENDIX A TO PART 685.—NEW LOAN MAXIMUMS AS OF JULY 1, 1994

Direct Loan Program and FFEL Program		
Academic level	Sub./ Unsubsidized Federal Stafford loans	Additional unsubsidized eligibility
1Annual Limits		
First Year Student:		
Full academic year	$2,625	$4,000
⅔ academic year	1,750	2,500
⅓ academic year	875	1,500
Second Year Student		
Full academic year	3,500	4,000
⅔ academic year	(1)	2,500
⅓ academic year	(1)	1,500
Third Year Student and Beyond:		
Full academic year	5,500	5,000
Less than academic year	Prorated	Prorated
Graduate or Professional Student	8,500	10,000
Aggregate Limits:		
Undergraduate	$46,000	
Graduate	138,500	

[1] Prorated for less than academic year.

Notes: For independent students or dependent students whose parents cannot borrow under the PLUS program, the amount a student can borrow under the unsubsidized loan program during any academic year is: (A) the Stafford loan limits *plus*; (B) first 2 years $4,000 per year; (C) remainder of undergraduate program $5,000 per year; (D) Graduate $10,000 per year.

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APPENDIX A TO PART 685.—NEW LOAN MAXIMUMS AS OF JULY 1, 1994—Continued

Direct Loan Program and FFEL Program

federal register

Tuesday
January 4, 1994

Part VII

Department of Housing and Urban Development

Community Outreach Partnership Centers (COPC): Notice of Funding Availability

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Community Planning and Development

[Docket No. N–93–3693; FR–3532–N–01]

NOFA for Community Outreach Partnership Centers (COPC)

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year 1994.

SUMMARY: This NOFA announces the availability of $7.0 million to implement the first year of a demonstration program to make grants to public and private nonprofit institutions of higher education to assist in establishing or carrying out research and outreach activities addressing the problems of urban areas. These funds shall be used to establish and operate Community Outreach Partnership Centers (COPC).

In the body of this NOFA is information concerning:

(1) The principal objectives of the competition, the funding available, eligible applicants and activities and factors for award;

(2) The application process, including how to apply and how selections will be made; and

(3) A checklist of application submission requirements.

DATES: Applications may be requested on or after January 18, 1994. The application due date will be 4:30 p.m. Eastern Standard Time no later than April 8, 1994. The above-stated application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

ADDRESSES: To obtain a copy of the application kit, contact: Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests for application kits must be in writing, but requests may be faxed to: (202) 708–3363 (this is not a toll-free number). Requests for application kits must include the applicant's name, mailing address (including zip code), telephone number (including area code), and must refer to "document FR–3532".

FOR FURTHER INFORMATION CONTACT: Jerome B. Friedman, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7218, Washington, DC 20410. Telephone Number (202) 708–3176; TDD Number: (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act Statement

The information collection requirements contained in this notice have been approved by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520), and assigned OMB control number 2535–0084.

I. Purpose and Substantive Description

A. Authority

This competition is authorized under the Community Outreach Partnership Act of 1992 (42 U.S.C. 5307 note; hereafter referred to as the "COPC Act"). The COPC Act is contained in section 851 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, approved October 28, 1992). Section 801(c) of the Housing and Community Development Act of 1992 provides for a $7.5 million set-aside for each year of the 5-year demonstration authorized in the COPC Act. (The funds appropriated by Congress for FY 1993 were rescinded by the 1993 Supplemental Appropriations Act, Pub. L. 103–50, approved July 2, 1993.)

B. Allocation and Form of Award

The competition in this NOFA is for $7.0 million to fund the first year of the Community Outreach Partnership Centers (COPC) Program authorized as indicated above. An additional $500,000 will be used to fund the first year of the National Clearinghouse mandated by section 851(j) of the COPC Act. A separate announcement will be issued at a later date for the National Clearinghouse.

Each grant made under the COPC program will be for a maximum two year period of performance. The maximum size of any grant will be $750,000, while the minimum will be $250,000. Each applicant must submit an application within this range. In future years, successful applicants will have to compete for funds with all other applicants.

C. Description of Competition

The Congress has mandated that the Department carry out "a 5-year demonstration to determine the feasibility of facilitating partnerships between institutions of higher education and communities to solve urban problems through research, outreach and the exchange of information."

The COPC Act stipulates that grants are to go to public and private institutions of higher education to establish and operate Community Outreach Partnership Centers (COPC). These centers shall: "(a) Conduct competent and qualified research and investigation on theoretical or practical problems in large and small cities; and (B) Facilitate partnerships and outreach activities between institutions of higher education, local communities, and local governments to address urban problems."

The specific problems that grants under the COPC program must focus on are "problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning, community organizing, and other areas deemed appropriate by the Secretary."

Furthermore, the COPC Act states: "The Secretary shall give preference to institutions of higher education that undertake research and outreach activities by bringing together knowledge and expertise in the various social science and technical disciplines that relate to urban problems."

It is clear from the statutory language quoted above, and the program requirements and selection criteria detailed below, that Congress intended that COPC be multi-disciplined, combine research with outreach, work with communities and local governments and address the multi-dimensional problems that beset urban areas. To be most effective during the term of the demonstration, the assisted research must have a clear near-term potential for solving specific significant urban problems. The selected institutions must have the capacity to apply their research results and to work with communities and local institutions, including neighborhood groups, in applying research results to specific real-life urban problems, including design of comprehensive strategies and consolidated housing and community development plans to resolve these problems.

D. Eligible Applicants

Applicants for this competition must be public or private nonprofit institutions of higher education granting four year degrees and accredited by a national or regional accrediting agency recognized by the Department of Education.

A consortium of institutions may be part of any application, but one institution must be designated as the legal applicant. Finally, each institution may be part of only one consortium or submit only one application, although the application can include various schools within the institution.

E. Program Requirements

Grantees must meet the following program requirements:

1. *Responsibilities.* Each Center shall:

(a) Employ the research and outreach resources of its sponsoring institution of higher education to solve specific urban problems identified by communities served by the Center;

(b) Establish outreach activities in areas identified in the grant application as the communities to be served;

(c) Establish a community advisory committee comprised of representatives of local institutions and residents of the communities to be served to assist in identifying local needs and advise on the development and implementation of strategies to address those issues;

(d) Coordinate outreach activities in communities to be served by the Center;

(e) Facilitate public service projects in the communities served by the Center;

(f) Act as a clearinghouse for dissemination of information;

(g) Develop instructional programs, convene conferences, and provide training for local community leaders, when appropriate; and

(h) Exchange information with other Centers.

The clearinghouse function in (f) above refers to a local or regional clearinghouse for dissemination of information, including empowerment zone and enterprise communities information and consolidated housing and community development plans information, to local governments and neighborhood groups. This clearinghouse must deal with the problems being addressed at the local level. It is separate and distinct from the functions in (h) above, which relate to the provision of information to the National Clearinghouse which will serve all funded centers.

Grantees serving areas which include or are near Federally-designated empowerment zones or enterprise communities will have to assist such zones and communities in developing the required strategic plans and helping implement them.

In addition, grantees serving areas which include or are near colonias, as defined in section 916(d) of the Cranston-Gonzalez National Affordable Housing Act, must provide clearinghouse services to help improve living conditions and standards within colonias.

2. *Match.* Grantees must meet the following match requirements:

(a) *Research Activities.* 50 percent of the project costs of establishing and operating research activities.

(b) *Outreach Activities.* 25 percent of the project costs of establishing and operating outreach activities.

This non-Federal share may include cash or the value of non-cash contributions, equipment and other allowable in-kind contributions as detailed in Attachment E of OMB Circular No. A–110, Grants and Agreements with Institutions of High Education, Hospitals, and other Nonprofit organizations.

3. *Statement of Work.* Each applicant must develop and submit a Statement of Work which incorporates all eligible activities proposed in its application and details how the proposed work will be accomplished. Following a task-by-task format, the Statement of Work must:

(a) Delineate the tasks and sub-tasks involved in each of the areas for which the Center is responsible, including research activities, outreach/technical assistance activities, community advisory committee activities, local/regional clearinghouse activities, and other activities necessary to carry out the responsibilities delineated under Program Requirement #1 outlined above.

(b) Indicate the sequence in which the tasks are to be performed, noting areas of work which must be performed simultaneously.

(c) State the intermediate and end products to be developed by task and sub-task.

(d) Provide a framework for, and be consistent with, the Project Management Work Plan requirements (to be provided in the Application Kit).

Note: Where an application is prepared prior to the designation of empowerment zones or enterprise communities, then the affected applicants selected for awards will be required, when necessary, to revise their statement of work to incorporate the activities needed to assist such zones and communities.

4. *Administrative.* The grant will be governed by the provision of OMB Circulars A–110 (Grants and Agreements with Institutions of Higher Education, Hospitals and other Nonprofit Organizations), A–122 (Cost Principles for Nonprofit Organizations), and A–133 (Audits of Institutions of Higher Education and other Nonprofit Institutions), as implemented at 24 CFR part 45.

F. Eligible Activities

Eligible activities include:

1. Research activities which have practical application for solving specific problems in designated communities and neighborhoods. Such activities may not total more than one-quarter of the total project costs contained in any grant made under this NOFA (including the required 50 percent match).

2. Outreach, technical assistance and information exchange activities which are designed to address specific problems in designated communities and neighborhoods. Such activities must total no less than three-quarters of the total project costs contained in any grant made under this NOFA (including the required 25 percent match).

Examples of outreach activities include, but are not limited to:

(a) Assistance to communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans.

(b) Job training and other training projects, such as workshops, seminars and one-on-one and on-the-job training;

(c) Design of community strategies to resolve urban problems of communities and neighborhoods;

(d) Innovative use of funds to provide direct technical expertise and assistance to local community groups and residents to help them resolve local problems such as homelessness and housing discrimination; and

(e) Assistance in business start-up activities for low- and moderate-income individuals and organizations, including business start-up training and technical expertise and assistance, mentor programs, assistance in developing small loan funds, business incubators, etc.

3. Activities to carry out the "Responsibilities" listed under Section I.E.1.

G. Ineligible Activities

Ineligible activities are:

1. Research activities which have no clear and immediate practical application for solving urban problems or do not address specific problems in designated communities and neighborhoods.

2. Any type of construction, rehabilitation, or other physical development costs.

3. Costs used for day-to-day administration of regular programs of

institutions of higher education, local governments or neighborhood groups.

II. Selection Criteria/Rating Factors

A. Rating Factors

HUD will use the following criteria to rate and rank applications received in response to this NOFA. The factors and maximum points for each factor are provided below. The maximum number of points is 100.

Rating of the "applicant" or the "applicant's organization and staff", unless otherwise specified, will include any sub-contractors, consultants and sub-recipients which are firmly committed to the project.

(1) (10 points) The demonstrated research resources available to the applicant for carrying out the purposes of the COPC Act. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant and successful experience in undertaking research activities in specific communities which have clear near-term potential for practical application to significant urban problems associated with housing, economic development, neighborhood revitalization, infrastructure, health care, job training, education, crime prevention, planning and community organizing.

(2) (10 points) The demonstrated outreach resources available to the applicant for carrying out the purposes of the COPC Act. In rating this factor, HUD will consider the extent to which the applicant's organization and staff have recent, relevant and successful experience in applying research results through outreach activities, including the provision of technical expertise and assistance, to solve or ameliorate the impact of significant urban problems associated with the areas listed in factor #1 above.

(3) (5 points) The demonstrated commitment of the applicant to supporting research and outreach programs by providing matching contributions for the Federal assistance received. In rating this factor, HUD will provide an increasing number of points for increasing amounts of contributions beyond the statutory 50 percent for research and 25 percent for outreach.

(4) (10 points) The capability of the applicant to provide leadership in solving community problems and in making national contributions to solving long-term and immediate urban problems. HUD will evaluate the two parts of this factor separately, giving them equal weight. In rating the first sub-factor, HUD will consider the extent to which the institution of higher education can demonstrate that it has taken a leadership position in solving specific community problems in the past. In rating the second sub-factor, HUD will consider the extent to which the applicant can demonstrate that its published research and other activities place it in a leadership position toward making a national contribution to solving longer-term and immediate urban problems.

(5) (15 points) The extent of need in the communities to be served by the applicant. HUD will consider the extent to which the proposal clearly delineates a need or needs in the affected communities that can be resolved through the activities of a COPC. The applicant must demonstrate how these needs were determined and how the COPC will help resolve these needs.

(6) (7 points) The demonstrated ability of the applicant to disseminate results of research and successful strategies developed through outreach activities to other COPC and communities served through this demonstration program. In rating this factor, HUD will evaluate the past experience of the applicant's staff and the scope and potential of the applicant's proposal to serve as a local/regional clearinghouse or use other means to disseminate information on its own and other COPC research results and strategies to: (a) Local communities in its area and (b) other communities and COPC through the National Clearinghouse.

(7) (15 points) The projects and activities that the applicant proposes to carry out under the grant. In rating this factor, HUD will consider the extent to which the applicant's proposal effectively addresses the following: (a) Identifies specific communities (including colonias, where appropriate), neighborhoods within communities, local institutions and neighborhood groups to be assisted by the Center; (b) demonstrates that one or more effective community advisory committees comprised of representatives of local institutions and a balance of racial/ethnic, gender and income mix of residents of the communities (and, where appropriate, colonias) to be served has been or will be formed to participate in identifying local needs to be addressed by the Center and to form a partnership with the Center to develop and implement strategies to address those needs; (c) outlines a clear research agenda related to local needs that can be successfully carried out within the period of this grant and plan for involving the community advisory committee(s) in the execution of that agenda; (d) demonstrates how it will design a comprehensive strategy to resolve community and neighborhood problems; and (e) demonstrates how it will assist communities to improve consolidated housing and community development plans and remove impediments to design and implementation of such plans. (Other projects and activities required of a COPC, being evaluated under other factors, include: Providing outreach activities to communities; acting as a clearinghouse for disseminating information; facilitating public service projects and coordinating outreach activities in communities to be served by the Center, and exchanging information with other centers.)

(8) (18 points) The effectiveness of the applicant's strategy to provide outreach activities to communities. In rating this factor, HUD will consider the extent to which: (a) The application identifies a clear outreach agenda related to locally-identified needs that can be successfully carried out within the period of this grant and a plan for involving the community advisory committee(s) in the execution of that agenda; (b) the outreach agenda includes design of a community strategy to resolve community and neighborhood problems; (c) the outreach agenda includes training projects for local community leaders, when appropriate; (d) the outreach program provides for on-site or a frequent presence in the communities and neighborhoods to be assisted through outreach activities; and (e) the outreach agenda includes assistance to communities for the design of consolidated housing and community development plans and removal of impediments to design and implementation of such plans.

(9) (10 points) The effectiveness of the applicant's strategy to provide assistance to Federally-designated empowerment zones and enterprise communities. In rating this factor, HUD will consider the extent to which the applicant's proposal addresses the following: (a) Identifies the empowerment zone or zones and enterprise communities it will serve; (b) delineates how it will help such zones and communities develop the required strategic plans; (c) outlines a clear program to help implement such plans; and (d) outlines an agenda to review effectiveness of such plans and their implementation and provides methods to overcome impediments.

B. Selection Process

Applications for funding under this NOFA will be evaluated competitively and points will be awarded as specified in the Rating Factors section described above.

After assigning points based upon the factors all applications will be listed in rank order. Applications will then be funded in rank order until all available funds have been expended. However, in order to be funded, an applicant must receive a minimum score of 70. HUD reserves the right to fund all or portions of the proposed activities identified in each application, based upon the eligibility of the proposed activities.

If two or more applications have the same number of points, the application with the most points for rating factor (8) shall be selected. If there is still a tie, the application with the most points for rating factor (7) shall be selected.

If the amount of funds remaining after funding as many of the highest ranking applications as possible is insufficient for the next highest ranking application, HUD shall determine (based upon the proposed activities) if it is feasible to fund part of the application and offer a smaller grant to the applicant. If HUD determines that given the proposed activities a smaller grant amount would make the activities infeasible, or if the applicant turns down the reduced grant amount, HUD shall make the same determination for the next highest ranking application until all applications within the competitive range have been exhausted or available funds have been expended.

If HUD receives an insufficient number of applications to expend all funds, or if funds remain after HUD approves all approvable applications, HUD may negotiate increased amounts of grant awards up to an additional $250,000. Increased grants will be offered in rank order to applicants in the competitive range.

C. Geographic Distribution

HUD reserves the right to make selections out of rank order to provide for a geographic distribution of funded centers. The geographic balance that HUD will use, if it decides to implement this option, will be based on a combination of two adjacent standard Federal regions (e.g., Southwest and Southeast Regions, Great Plains and Midwest Regions, etc.) If the rank order does not yield at least one fundable center within each two region combination, then HUD may select the highest ranking application from such a combination, as long as the minimum score of 70 is achieved.

It is HUD's intent to fund at least one COPC that serves the colonias, as defined by section 916(d) of the Cranston-Gonzales National Affordable Housing Act, as long as the applicant receives a minimum score of 70.

It is HUD's intent to give preference to COPCs that serve Federally-designated empowerment zones or enterprise communities, as long as the applicant receives a minimum score of 70.

III. Application Process

A. Obtaining Applications

Requests for an application kit (Request for Grant Application; RFGA), must be in writing to the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., room 7255, Washington, DC 20410. Requests may also be faxed to (202) 708–3363. (This is not a toll free number.) We strongly recommend the use of the fax transmission option to promote accuracy and expedite HUD response time. Requests for application kits must include the applicant's name, mailing address, zip code, area code and telephone number and must refer to document FR–3532.

B. Application Deadline

To be considered for funding, the application package must be physically received by the Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, room 7255, 451 Seventh Street, SW., Washington, DC 20410 by 4:30 p.m. Eastern Standard Time on April 8, 1994. The application deadline is firm as to date, hour and place. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

IV. Checklist of Application Submission Requirements

A. Application Content

Applicants must complete and submit applications in accordance with instructions contained in the application kit. The following is a checklist of the application contents that will be specified in RFGA:

(1) Transmittal letter,

(2) OMB Standard Forms 424 (Application for Federal Assistance), Form 424A (Budget), Form 424B (Non-Construction Assurances) and Budget Summary;

(3) Statement of Work and Project Management System Baseline Plan (HUD 441.1 and accompanying narrative);

(4) A description of how the "Responsibilities" in Section I.E.1. will be met.

(5) Evidence of how the matching requirement in section I.E.2. will be met.

(6) Narrative statement addressing each of the rating factors in section II.

B. Certifications and Exhibits

Applications must also include the following:

(1) Drug-Free Workplace Certification.

(2) Form SF-LLL, Disclosure of Lobbying Activities, if applicable.

(3) Form HUD–2280, Applicant/Recipient Disclosure/Update Report.

V. Corrections to Deficient Applications

After the submission deadline date, HUD will screen each application to determine whether it is complete. If an application lacks certain technical items or contains a technical error, such as an incorrect signatory, HUD will notify the applicant in writing that it has 14 calendar days from the date of HUD's written notification to cure the technical deficiency. If the applicant fails to submit the missing material within the 14-day cure period, HUD will disqualify the application.

This 14-day cure period applies only to non-substantive deficiencies or errors. Any deficiency capable of cure will involve only items not necessary for HUD to assess the merits of an application against the factors specified in this NOFA.

VI. Other Matters

A. Environmental Review

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(b) of the HUD regulations, the policies and procedures in this document relate only to the provision of research, training and technical assistance which do not result in physical change and therefore are categorically excluded from the requirements of the National Environmental Policy Act.

B. Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies and procedures contained in this notice will not have substantial direct effects on States or their political subdivisions, or the relationship between the federal government and the states, or on the

distribution of power and responsibilities among the various levels of government. As a result, the notice is not subject to review under the Order. Specifically, the notice solicits participation in an effort to provide assistance to institutions of higher education for establishing and carrying out research and outreach activities addressing the problems of urban areas. The Centers established under this notice will work with local communities to help resolve urban problems. The notice does not impinge upon the relationships between the Federal government and State or local governments.

C. Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this notice will likely have a beneficial impact on family formation, maintenance, and general well-being. The assistance to be provided by the funding under this NOFA is expected to help local residents to become self-sufficient by improving living conditions and standards. Accordingly, since the impact on the family is beneficial, no further review is considered necessary.

D. Documentotion and Public Access Requirements: HUD Reform Act

HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

E. Prohibition Against Advance Information on Funding Decisions

HUD's regulation implementing section 103 of the HUD Reform Act was published on May 13, 1991 (56 FR 22088) and became effective on June 12, 1991. That regulation, codified as 24 CFR part 4, applies to the funding competition announced today. The requirements of the rule continue to apply until the announcement of the selection of successful applicants.

HUD employees involved in the review of applications and in the making of funding decisions are restrained by part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted under 24 CFR part 4.

Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815. (This is not a toll-free number.) The Office of Ethics can provide information of a general nature to HUD employees, as well. However, a HUD employee who has specific program questions, such as whether particular subject matter can be discussed with persons outside the Department, should contact his or her Regional or Field Office Counsel, or Headquarters counsel for the program to which the question pertains.

F. Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

Section 13 was implemented by final rule published in the **Federal Register** on May 17, 1991 (56 FR 22912). The final rule is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read part 86, particularly the examples contained in Appendix A of the regulation.

Any questions about the rule should be directed to the Office of Ethics, Room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–3000. Telephone: (202) 708–3815 TDD: (202) 708–1112 These are not toll-free numbers. Forms necessary for compliance with the rule may be obtained from the local HUD office.

G. Prohibition Against Lobbying Activities

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of Section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000 must certify that no federal funds have been or will be spent on lobbying activities in connection with the assistance.

Authority: 42 U.S.C. 5307 note

Dated: December 23, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–44 Filed 1–3–94; 8:45 am]

BILLING CODE 4210–29–P

federal register

Tuesday
January 4, 1994

Part VIII

Department of Agriculture

7 CFR Part 1710

Loans for Demand Side Management, Energy Conservation Programs, and On-Grid and Off-Grid Renewable Energy Systems; Interim Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1710

Loans for Demand Side Management, Energy Conservation Programs, and On-Grid and Off-Grid Renewable Energy Systems

AGENCY: Rural Electrification Administration, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: The Rural Electrification Administration (REA) hereby amends its pre-loan regulations for electric loans to incorporate changes to electric loan policies required by the Rural Electrification Loan Restructuring Act of 1993 (RELRA). This action will permit REA to make loans for demand side management (DSM), energy conservation programs, and on- and off-grid renewable energy systems.

DATES: This rule is effective January 4, 1994.

Written comments must be received by REA or carry a postmark or equivalent by May 4, 1994.

ADDRESSES: Written comments should be addressed to F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–S, 14th Street and Independence Avenue, SW., Washington, DC 20250–1500. REA requires a signed original and three copies of all comments (7 CFR 1700.30(e)). Comments will be available for public inspection during regular business hours (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Deputy Director, Program Support Staff, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–S, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: This regulatory action is issued in conformance with Executive Order 12866, Regulatory Planning and Review. The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this rule. The Administrator of REA has determined that this rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment. Section 1710.117 requires borrowers to comply with applicable environmental regulations and will cover the activities for which assistance is sought under this subpart. This rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation, which may require consultation with State and local officials. A Notice of Final Rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA electric loans and loan guarantees from coverage under this Order. This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; (3) will not require administrative proceedings before any parties may file suit challenging the provisions of this rule. The program described by this rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850 Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325. The existing recordkeeping and reporting burdens contained in this rule were approved by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), under control numbers 0572–0017, 0572–0032 and 0572–0103. Because of the deadline imposed by the law, the additional recordkeeping and reporting burdens have been submitted to OMB for approval on an emergency basis. Send questions or comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burden, to the Office of Information and Regulatory Affairs, Office of Management and Budget, room 3201, NEOB, Washington, DC 20503. Attention: Desk Officer for USDA.

Background

The Rural Electrification Loan Restructuring Act of 1993, Public Law 103–129, 107 Stat. 1356, (RELRA), signed into law by President Clinton on November 1, 1993, amends the Rural Electrification Act of 1936, 7 U.S.C. 901 *et seq.* (RE Act). The amendments mandate a restructuring of the electric loan programs of REA. Loan purposes, the definition of "rural area", applicable interest rates and loan terms and conditions were among the areas affected by RELRA. An interim rule implementing these provisions of RELRA were published on December 20, 1993 at 58 FR 66260.

The amendments to 7 CFR part 1710, published today implement the provision for making loans for demand side management, energy conservation programs, on- and off-grid renewable energy systems. This provision has a statutory deadline of January 1, 1994.

Demand side management has become increasingly important to electric utilities as they seek ways to make their existing systems more efficient and reduce the need for new capacity. REA has supported demand side management (DSM) activities in the form of direct load control and energy conservation through loans for control equipment and principal deferment programs for energy conservation. With the passage of RELRA, REA is authorized to expand its role and make loans for all types of demand side management activities.

This authority will be used primarily to finance distribution borrower needs. REA believes that most DSM activities must be conducted at the distribution level because DSM impacts the consumer's use of electricity. Power supply borrowers are eligible for this financing assistance, but the level of investment required to support their distribution members in this area is not normally expected to require loan funds. REA will not make DSM loans or any type of loans directly to individuals.

To be eligible for a loan for DSM programs, which include energy conservation programs (except those financed by loan principal deferments), and for on-grid renewable energy systems, the loan request must be supported by an REA-approved integrated resource plan (IRP). REA may also require an IRP, on a case by case basis, for certain large or unusual loans for off-grid renewable energy systems. DSM programs must also be supported by DSM plan, which must be consistent with the borrower's IRP.

As defined by the Energy Policy Act of 1992 (Pub. L. 102–486) (EP Act), an integrated resource plan is "a planning and selection process for new energy resources that evaluates the full range of alternatives, including new generation capacity, power purchases, energy conservation and efficiency, cogeneration and district heating and cooling applications, and renewable energy sources, in order to provide adequate and reliable service at the lowest system cost. The process shall take into account necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk and shall take into account the ability to verify energy savings achieved through energy conservation and efficiency and the projected durability of such savings measured over time; and shall treat demand and supply side resources on a consistent and integrated basis."

In the regulatory text, the term "IRP" is used to refer to the result of the process rather than the process.

The EP Act also defines the term "system cost" to mean "all direct and quantifiable net costs for an energy resource over its available life, including the cost of production, distribution, transportation, utilization, waste management, and environmental compliance."

This subpart establishes policies and requirements for IRPs and DSM plans. Many of these requirements are new, although existing §§ 1710.253 and 1710.254, and existing subparts E and G, set forth analytical and related requirements for the financing of most generation facilities that are the same in many respects to the requirements of an IRP. Given the expansion of REA lending authority in the relatively new and sometimes uncertain areas of DSM and renewable energy systems, it is essential that borrowers make their investment decisions based on an IRP in order to ensure informed and prudent investment planning.

If a distribution borrower is a member of a power supply borrower, its requests for DSM loans must be based on and be consistent with the IRP of the power supply borrower. The IRP of the power supply borrower will establish which DSM programs, on-grid renewable energy systems, and traditional utility investments, among several feasible alternatives, are most cost-beneficial from the standpoint of the power supply borrower and its members taken as an integrated system. The DSM programs of the individual distribution members must be coordinated among all parties to ensure that the DSM programs of one member do not jeopardize the financial integrity and loan security of any other member or that of the power supply borrower.

Although DSM must be implemented at the distribution level, a significant portion of the benefits and costs of DSM are accrued at the power supply level. These benefits and costs are then transferred to the distribution borrower through wholesale rates. Consequently, DSM planning by distribution borrowers must consider the impacts of their activities on their power supplier and the implications of the power supplier's wholesale rates.

Because of the relationship between a power supply borrower and its members and the relationship among the members of a power supply borrower, it is imperative that the power supply borrower and its members coordinate IRP activities per § 1710.356(b)(1) of this interim rule.

If a distribution borrower is not a member of a power supply borrower, loan requests for DSM programs and on-grid renewable energy systems must be supported by the borrower's own IRP. The IRP must address, in particular, any effects its DSM programs will have on the wholesale power rates charged by its non-REA financed power supplier.

The requirements set forth for DSM plans and IRPs are intended to provide guidance as these new requirements are implemented. Since these areas are new in many respects, REA intends to exercise its discretion to administer the specific requirements and procedures with a prudent degree of flexibility, especially during the first several months of implementation. Comments from the public are invited regarding the policies and requirements set forth herein for DSM plans and IRPs.

This rule includes citations to studies of the Electric Power Research Institute (EPRI) and the U.S. Department of Energy which are included as reader aids and do not imply REA adoption or endorsement of said studies.

This interim regulation will define DSM and renewable energy systems. It will also emphasize REA commitment to finance nontraditional (renewables, DSM and energy conservation systems) and traditional resources on an equal footing. Borrowers requesting loans under this subpart will be required to submit an IRP and a DSM plan in most cases.

Loans under this subsection for facilities to be owned and operated by the borrower will generally be treated like loans for usual electric facilities. Loans for other purposes will be considered as operational loans with terms based on the borrower's program cycle.

Until REA has developed experience in making loans for these new purposes, cumulative loans for DSM and for energy conservation programs will be limited to an amount not to exceed 20 percent of the borrower's equity.

List of Subjects in 7 CFR Part 1710

Electric power, Electric utilities, Loan programs—energy, Rural areas.

For the reasons set out in the preamble, REA amends chapter XVII, title 7 of the Code of Federal Regulations as follows:

PART 1710—GENERAL AND PRE-LOAN POLICIES AND PROCEDURES COMMON TO INSURED AND GUARANTEED ELECTRIC LOANS

1. The authority citation for part 1710 is revised to read as follows:

Authority: 7 U.S.C. 901–950(b); Pub. L. 99–591, 100 Stat. 3341; Delegation of Authority by the Secretary of Agriculture, 7 CFR 2.23; Delegation of Authority by the Under Secretary for Small Community and Rural Development, 7 CFR 2.72.

2. Section 1710.2(a) is amended by adding new definitions in alphabetical order to read as follows:

§ 1710.2 Definitions and rules of construction.

(a) * * *

Demand side management (DSM) means the deliberate planning and/or implementation of activities to influence consumer use of electricity provided by a distribution borrower to produce beneficial modifications to the system load profile. Beneficial modifications to the system load profile ordinarily improve load factor or otherwise help in utilizing electric system resources to best advantage consistent with acceptable standards of service and lowest system cost. Load profile modifications are characterized as peak clipping, valley filling, load shifting, strategic conservation, strategic load growth, and flexible load profile. (See, for example, publications of the Electric Power Research Institute (EPRI), 3412 Hillview Avenue, Palo Alto, CA 94304, especially "Demand-Side Management Glossary" EPRI TR–101158, Project 1940–25, Final Report, October 1992.) DSM includes energy conservation programs: It does not include sources of electrical energy such as renewable energy systems, fuel cells, or traditionally fueled generation, such as fossil or nuclear fueled generators.

* * * * *

DSM activities means activities of the type referred to in § 1710.354(f).

DSM plan means a plan that describes the implementation at the distribution level of the DSM activities identified in the integrated resource plan as having positive net benefits. See § 1710.357.

* * * * *

Integrated Resources Plan (IRP) means a plan resulting from the planning and selection process for new energy resources that evaluates the benefits and costs of the full range of alternatives, including new generating capacity, power purchases, DSM programs, system operating efficiency, and renewable energy systems.

* * * * *

Off-grid renewable energy system means an energy source which is not electrically attached to the grid. Off-grid systems are operated as an island and will have no direct impact on a utility system's physical operations. An off-grid system need not meet electric utility power quality standards.

On-grid renewable energy system means an energy source electrically attached to an existing grid. It can be attached on either side of a consumer's meter. On-grid systems are operated as part of the overall utility system and have a direct impact on a utility system's operations. An on-grid system must meet electric utility power quality and safety standards.

* * * * *

Renewable energy system means a source of energy (kWh) used to meet borrower electric load that is fueled by any of the following technologies: Hydropower, geothermal, biomass, municipal waste, solar thermal, photovoltaic, wind, fuel cells not fueled by fossil fuels. See, for example, "Renewable Resources in U.S. Electricity Supply," February 1993, Publication number DOE/EIA 0561, published by the Department of Energy, Energy Information Administration, Forrestal Building, EI–231, Washington, DC 20585.

* * * * *

§ 1710.118 [Removed and Reserved]

3. Section 1710.118 is removed and reserved.

4. Subpart H heading is revised and the text of subpart H is added to part 1710 to read as follows:

Subpart H—Demand Side Management and Renewable Energy Systems

Sec.

1710.350 Purpose.
1710.351 General policy; renewable energy systems.
1710.352 General policy; energy resource conservation programs.
1710.353 General policy; demand side management.
1710.354 Eligible DSM activities.
1710.355 DSM loan applications.
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1710.360 Submittal of alternate documentation.
1710.361 Type and term of loans.
1710.362 Loan approval.
1710.363 Advance and documentation of use of loan funds.
1710.364 Loan limits.

Subpart H—Demand Side Management and Renewable Energy Systems

§ 1710.350 Purpose.

This subpart sets forth REA policies and procedures with regard to loans and loan guarantees to REA borrowers for the purpose of implementing their demand side management (DSM) plans, energy conservation programs, and on-grid and off-grid renewable energy systems. The Administrator reserves the right to determine if loans for purposes under this subpart will be made to a borrower in default under its mortgage and loan contract. As is the case with all other REA loans, loans for purposes under this subpart will not be made to individuals.

§ 1710.351 General policy; renewable energy systems.

(a) Off-grid renewable energy systems will be considered the same as DSM activities and will qualify for either insured loans or loan guarantees pursuant to § 1710.102.

(b) On-grid renewable energy systems will be treated as a generation resource and will be eligible only for loan guarantees pursuant to § 1710.102. Existing REA policy with respect to generation resources shall generally apply.

(c) REA loans for renewable energy systems will be made only for systems utilizing technologies that are proven and commercially available.

§ 1710.352 General policy; energy resource conservation programs.

This subpart does not replace the energy resource conservation program financed by deferments of loan principal.

§ 1710.353 General policy; demand side management.

(a) REA will make loans for the purpose of assisting electric borrowers to implement REA approved demand side management plans. For the purposes of this regulation energy conservation programs are included as a DSM activity.

(b) REA will treat demand-side and supply-side resources on an equal basis. All requirements applicable to loans for traditional electric facilities will apply to loans for DSM. In addition the requirements set forth in this subpart will apply.

(c) DSM will be considered a distribution loan purpose, eligible for either insured loans or loan guarantees pursuant to § 1710.102.

(d) REA will conduct its own evaluation, as specified in this subpart, of a borrower's DSM activities before making a determination on the disposition of a borrower's loan application.

(e) REA loans for DSM activities will be made only for systems utilizing technologies that are proven and commercially available.

(f) In general, REA will require pilot project testing of DSM activities new to the borrower.

(g) If the borrower's IRP, DSM plan, project construction and/or financing, and/or rate recovery is subject to the approval of state authorities, the borrower must obtain such approvals before REA will approve a loan for any purpose for which an REA approved DSM plan or IRP is required under this subpart.

§ 1710.354 Eligible DSM activities.

DSM activities that are projected to result in more efficient use of electric system resources and which are consistent with an REA approved Integrated Resource Plan (IRP) and DSM plan may be eligible for financing. Examples of such DSM activities, which are not mutually exclusive, are as follows:

(a) General information and education;

(b) Purchase and installation of borrower owned or consumer owned equipment or materials, including:

(1) Heating, ventilation, air conditioning;

(2) Building envelope;

(3) Appliances;

(4) Load control;

(5) Lighting and lighting control;

(6) Thermal storage; and

(7) Efficient motors and drives;

(c) Rebates for DSM equipment and facilities;

(d) Fuel switching for dual fuel applications where one of the energy sources is electricity; and

(e) Pilot DSM projects.

§ 1710.355 DSM loan applications.

(a) Any loan application which includes funds for DSM must include all loan support documents required for a loan for electric facilities, and must demonstrate that requirements for need, loan feasibility and loan security are satisfied. In addition, the application must be supported by an REA approved IRP, except as provided in § 1710.356(a)(1), and an REA approved DSM plan.

(b) DSM loans will be made to provide financing for DSM activities planned to be implemented within a two year period.

§ 1710.356 Integrated resource plans.

(a)(1) An REA approved IRP is required for all loans that include funds for DSM activities, unless the cumulative total of all previous DSM loans and the loan under consideration for that applicant is less than 1 percent of the applicant's total utility plant.

(2) An REA approved IRP is required for all loans that include funds for on-grid renewable energy systems.

(3) An REA approved IRP is required for all loans that include funds for off-grid renewable energy systems unless the Administrator determines that an IRP is not needed to determine that the loan is both feasible and secure pursuant to §§ 1710.112 and 1710.113, respectively.

(b)(1) When an IRP is required, a distribution borrower that is a member of a power supply borrower must use the IRP prepared by the power supply borrower for its overall system. This IRP must have been coordinated with all of the member systems and it must have been approved by the board of directors of the power supply borrower. Because of the relationship between the power supply borrower and its members under which the loans incurred by the power supply borrower are primarily to construct, improve or acquire facilities that benefit all members directly or indirectly, the security of loans to all parties is interlinked. Consequently, DSM activities and renewable energy activities must be coordinated among all parties to insure that the activities of one member do not jeopardize the financial integrity or loan security of any other member or that of the power supply borrower.

(2) A distribution system that is not a member of an REA financed power supply borrower shall prepare its own IRP. An IRP developed by a distribution borrower that is not a member of a power supply borrower need only address its own system, but shall include an analysis of the effects of its DSM activities on its wholesale power costs.

(c) The IRP shall identify supply side and demand side options and analyze their benefits and costs in order to provide adequate and reliable electric service to consumers at the lowest cost for the system as a whole.

(d) The IRP shall include necessary features for system operation, such as diversity, reliability, dispatchability, and other factors of risk; and it shall take into account the ability to verify energy and cost savings achieved through DSM, energy conservation, and renewable energy systems, and the projected durability of such savings measured over time.

(e) The following elements also included in a DSM plan, pursuant to §§ 1710.357 and 1710.358, shall be included except where REA determines that they are not necessary:

(1) Load shape objectives;

(2) Wholesale power pricing policy and costs, and their relationship to the proposed DSM activities;

(3) Ownership and costs of DSM related hardware;

(4) Incentive and marketing costs;

(5) Communication and control costs; and

(6) Monitoring methods and costs.

(f) The IRP shall analyze the DSM effects set forth in § 1710.359.

§ 1710.357 DSM plans.

(a) A DSM plan approved by the borrower's board of directors is required in support of a loan that includes funds for DSM activities or for off-grid renewable energy systems. The DSM plan shall address the borrower's existing and proposed activities for the same period covered by the Long-Range Financial Forecast submitted in support of the loan application.

(b)(1) A DSM plan prepared by a member of a power supply borrower must be consistent with the IRP prepared by the power supply borrower.

(2) A DSM plan prepared by a distribution borrower that is not a member of an REA financed power supply borrower must be consistent with the borrower's own IRP.

(c) The level of detail required in the DSM plan is dependent on several factors, for example:

(1) Size and term of loan;

(2) Financial impact of loan on the borrower;

(3) Probability of realization of the estimated impacts;

(4) Magnitude of the estimated effects; and

(5) Potential effects, if any, on other distribution members of a power supply borrower.

(d) REA will consider effects of proposed and existing DSM plans on government loan security, rates, revenue requirements, competitiveness, other distribution borrowers, power supply borrowers or other industry recognized tests as applicable.

§ 1710.358 Requirements for a DSM plan.

A DSM plan shall include:

(a) A list of the DSM activities to be financed by the loan including details on implementation such as beginning and completion dates and estimated draw downs of loan funds;

(b) An analysis of the borrower's existing and proposed DSM activities, including sources of financing and projections of the effects of those activities as set forth in § 1710.359;

(c) System specific load research and DSM pilot projects as required by § 1710.353(f);

(d) A benefit/cost and net present value cash flow analysis of each DSM activity included in the plan. Benefits and costs must be expressed in the same units where possible. Short term and long term impacts must be addressed. Who benefits and who pays must be clearly identified. Objectives of a DSM plan shall be stated in terms of load profile adjustments by customer rate class and/or market segment. The benefit/cost analysis shall include the following steps:

(1) Identification of objectives, alternatives, and effects;

(2) Simulation of impacts on the system and its consumers, and the probable costs and benefits, including sensitivity/probability and scenario analysis; and

(3) Selection of DSM activities;

(e) An outline of monitoring and reporting procedures to evaluate the performance of the implemented DSM plan;

(f) A narrative discussing the following:

(1) Scope of the DSM plan;

(2) Resources used to develop the DSM plan;

(3) Internal and external data collection and analysis;

(4) Analysis method used to screen and evaluate the projected programs;

(5) Analysis of existing and projected plans; and

(6) Coordination activities with power supplier.

§ 1710.359 DSM effects.

The IRP and the DSM plan shall consider and discuss the expected effects of the borrower's DSM activities. The expected effects to be considered and discussed includes, but are not limited to, the following:

(a) Effects on the utility (supply side effects):

(1) Operations;

(2) Maintenance;

(3) Environmental compliance;

(4) Capacity planning, including deferment of capacity and reliability of capacity;

(5) DSM equipment including purchase, operation and maintenance considerations;

(6) Transmission and distribution effects;

(7) Administrative costs, including administrative and general costs, program costs, DSM planning costs, integration of supply and DSM planning, marketing costs, incentive costs, infrastructure support, monitoring and evaluation costs, bidding costs; and

(8) Revenues and rates;
(b) Effects on consumers (demand side effects):
(1) Equipment purchases;
(2) Operation costs;
(3) Maintenance costs;
(4) Supply voltage quality;
(5) Availability of service and reliability (outages);
(6) Change in benefits received from appliances and housing;
(7) Convenience (availability of equipment, appliances and services);
(8) Change in comfort and air quality levels of buildings; and
(9) Rates, billing level and elasticity;
(c) Effects on competitiveness;
(d) Effects on other member distribution systems of the power supply borrower; and
(e) Effects on power supply borrower.

§ 1710.360 Submittal of alternate documentation.

(a) The borrower may have performed analysis and prepared comparable documentation for other purposes, such as for a state regulatory commission. This information may be acceptable to REA as an IRP or a DSM plan if the borrower demonstrates that the alternative information meets the goals and objectives of this subpart.
(b) The borrower shall advise REA of all material information provided to other lenders or other governmental authorities relating to their DSM plans. This information shall be provided to REA as requested.

§ 1710.361 Type and term of loans.

(a) The final maturity of loans for purposes under this subpart shall be determined by REA based on the expected life of needed capital improvements, expected cost recovery periods, the expected life of program benefits, the certainty of these benefits, and matching costs and benefits.
(b) REA will normally consider final maturities for DSM loans of up to 5 years. Longer loan terms, not to exceed 10 years, for loans for these purposes will be considered if the borrower can satisfactorily demonstrate to the Administrator an acceptable basis for doing so and can demonstrate that the loan will be feasible and secure pursuant to §§ 1710.112 and 1710.113, respectively, for the longer period. As used in this paragraph, renewable energy resource equipment and facilities are not considered a DSM purpose. Maturities for such loans will be limited to the expected useful life of the equipment and facilities.

§ 1710.362 Loan approval.

The amount and scope of loans approved by REA under this subpart are subject to the discretion of REA. Applications will be evaluated on the merits of the proposals as outlined in the plans specified in this subpart. REA approval of a loan for purposes under this subpart and/or REA approval of IRPs and DSM plans does not relieve a borrower of its responsibilities under this subpart or constitute a representation or warranty by REA to the borrower or any person that its IRP or DSM plan will work as described therein.

§ 1710.363 Advance and documentation of use of loan funds.

(a) Loan funds for on-grid renewable energy systems will be advanced using the same procedure as loans for other electric system facilities.
(b) Loan funds for DSM activities.
(1) Funds for these purposes shall be advanced and used only for the specific projects and purposes detailed in the loan application and supporting documents. Generally funds shall be drawn down on a reimbursement basis. The borrower shall certify completion of work according to the DSM plan.
(2) The borrower shall maintain accounting and plant records sufficient to document the cost and location of DSM activities and to support loan fund advances and disbursements.
(3) All cost associated with DSM projects related to construction, operations or maintenance, shall be accumulated using the borrower's work order procedure. An individual work order or work orders shall be used to record and control the costs of each DSM project. Daily time and material reports referenced to the DSM activity shall be kept to record labor and materials used as the activity(ies) is completed.
(4) All other disbursements for DSM activities must be properly supported by invoices, contracts, or other forms of evidence required by REA regulations. All such supporting material shall be available at the borrower's premises for review by the REA Field Accountant, borrower's certified public accountant and other authorized parties as applicable. Costs of DSM activities related to operations and maintenance should be charged to expense in the month incurred. Departures from this prescribed accounting must be approved by REA subject to the provisions of 7 CFR 1767.13.
(c) Requirements on advance of funds for all insured electric loans are in 7 CFR part 1721, subpart B.

§ 1710.364 Loan limits.

Cumulative loans DSM activities at the time of loan approval for, including energy conservation programs and off-grid renewable energy systems, shall not exceed the lesser of:
(a) Twenty percent of the borrower's equity at the time of the loan or any time during amortization of the loan; or
(b) An amount approved for such purposes in a final non-appealable order by the applicable regulatory body for inclusion in the borrower's rate base.

Dated: December 29, 1993.

Michael V. Dunn,

Acting Under Secretary, Small Community and Rural Development.

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A cumulative list of Public Laws for the first session of the 103d Congress is in Part IV of this issue of the **Federal Register.**

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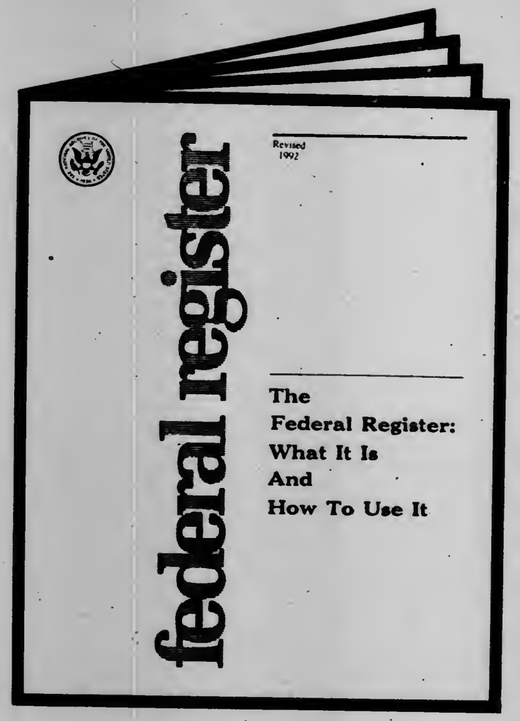
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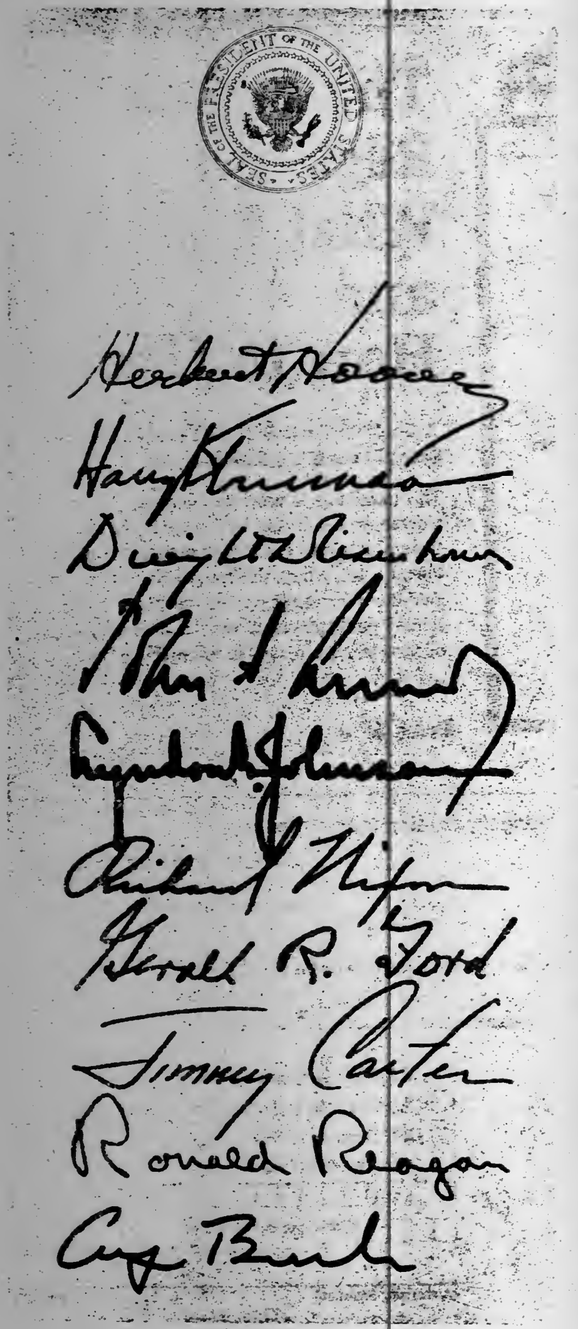
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Presidential Documents

Title 3—

The President

Executive Order 12890 of December 30, 1993

Amendment to Executive Order No. 12864

By the authority vested in me as President by the Constitution and the laws of the United States of America, and in order to provide for the appointment of up to 30 members to the United States Advisory Council on the National Information Infrastructure, it is hereby ordered that section 1(a) of Executive Order No. 12864 is amended by deleting the number "25" and inserting the number "30" in lieu thereof.

William J. Clinton

THE WHITE HOUSE,
December 30, 1993.

[FR Doc. 94-290
Filed 1-3-94; 2:48 pm]
Billing code 3195-01-P

Rules and Regulations

Federal Register
Vol. 59, No. 3
Wednesday, January 5, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 204

[INS No. 1647-93]

RIN 1115-AD61

Priority Dates for Employment-Based Petitions

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Interim rule with request for comments.

SUMMARY: This interim rule amends the Immigration and Naturalization Service (Service) regulations by providing that an application for labor certification filed with a state employment office before October 1, 1991, must be filed with the Service in connection with a petition filed under section 203(b) of the Immigration and Nationality Act (Act) before October 1, 1993, in order to maintain a pre-October 1, 1991 priority date. This rule implements section 302(e)(2) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), which amended section 161(c)(1) of the Immigration Act of 1990 (IMMACT). This rule is necessary to ensure full public awareness of the October 1, 1993 deadline

DATES: This interim rule is effective January 5, 1994. Written comments must be submitted on or before February 4, 1994

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW , room 5307, Washington, DC 20536. To ensure proper handling please reference INS No 1647-93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street NW., room 7122, Washington, DC 20536, telephone (202) 514-5014.

SUPPLEMENTARY INFORMATION: On November 29, 1991, the Service published a final rule in the **Federal Register** at 56 FR 60897-60913, revising 8 CFR 204.5(d), which provides that the priority date for an employment-based petition that is accompanied by a labor certification shall be the date the request for labor certification was accepted for processing by any office within the employment service system of the Department of Labor. A priority date cannot be established unless the Service approves a petition under section 203(b) of the Act based on a labor certification approved by the Department of Labor. Subsequent to the promulgation of this regulation, the President signed into law the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, (MTINA) Public Law 102-232, dated December 12, 1991. Section 302(e)(2) of the MTINA, which amended section 161(c)(1) of the Immigration Act of 1990 (IMMACT), Public Law 102-649, dated November 29, 1990, was enacted in order to address the transition of labor certifications filed before October 1, 1991 into the new employment-based immigrant visa categories created by IMMACT. Section 302(e)(2) of MTINA provides that, in order to maintain the priority date of a labor certification filed in connection with an employment-based petition which was submitted to a state employment office before October 1, 1991, the employer must file a petition under section 203(b) of the Act before October 1, 1993. Section 302(e)(2) of MTINA further provides that if the Department of Labor approves a pre-October 1, 1991 labor certification application subsequent to October 1, 1993, the employer must file a petition under section 203(b) of the Act within 60 days of the date of certification. Although not specifically provided for in section 302(e)(2) of MTINA, the Service has interpreted that section to require that, in the case of labor certifications which have been certified by the Department of Labor between August 2, 1993 and October 1, 1993, a petition under section 203(b) must be filed within 60 days after the date of certification to preserve the earlier priority date. This reading of section 302(e)(2) of MTINA furthers congressional intent by allowing at least 60 days from the date of certification to file the petition under section 203(b) of the Act.

In light of the above, 8 CFR 204.5(d) will be amended to reflect these MTINA amendments. The regulation will be further amended to provide that if the petitioner fails to maintain the priority date by filing a timely petition, the new priority date shall be the date a new petition is properly filed with the Service.

The Service's implementation of this rule as an interim rule, with provision for post-promulgation public comment, is based on the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons and necessity for immediate implementation of this interim rule are as follows: Immediate promulgation of this interim rule is necessary to insure full public awareness of the October 1, 1993 deadline mandated by MTINA. Specifically, petitioning employers who submitted labor certification applications with a state employment office before October 1, 1991 and who have not submitted a petition with the Service under section 203(b) of the Act, must be made clearly aware that the provisions of 8 CFR 204.5(d), regarding assignment of priority dates, have been superseded by the MTINA amendments. Moreover, immediate promulgation of these regulations will inform the petitioning employer that, in cases where the request for labor certification was filed with a state employment office before October 1, 1991, it should file a petition under section 203(b) of the Act with the Service as soon as possible after the Department of Labor has issued the labor certification in order to obtain an earlier priority date

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. It is anticipated that this rule affects only a very limited number of petitioners and aliens who filed requests for labor certifications prior to October 1, 1991, but have not yet filed petitions under section 203(b) of the Act This rule is

not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 204

Administrative practice and procedure, Aliens, Employment, Immigration, Petitions.

Accordingly, part 204 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 204—IMMIGRANT PETITIONS

1. The authority citation for part 204 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1151, 1153, 1154, 1182, 1186a, 1255; 8 CFR part 2.

2. In § 204.5, paragraph (d) is amended by adding a new sentence immediately following the first sentence of the paragraph to read as follows:

§ 204.5 Petitions for employment-based immigrants.

* * * * *

(d) *Priority date.* * * * In the case of labor certifications accepted for processing by any office within the employment service system of the Department of Labor before October 1, 1991, if a petition filed under section 203(b) of the Act is not filed before October 1, 1993, or within 60 days after the date of certification by the Department of Labor, whichever is later, the priority date shall be the date the petition is properly filed with the Service. * * *

* * * * *

Dated: December 30, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–175 Filed 1–4–94; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 26

RIN 3150–AE38

Modifications to Fitness-For-Duty Program Requirements

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations governing fitness-for-duty (FFD) programs that are applicable to licensees who are authorized to construct or operate nuclear power reactors and to licensees authorized to possess, use, or transport formula quantities of strategic special nuclear material (SSNM). The amendment permits licensees to reduce the random testing rate for all persons covered by the fitness-for-duty regulations to an annual rate equal to 50 percent.

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Copies of the regulatory analysis, the comments received, and the Government Accounting Office (GAO) report (GAO/GGD–93–13) of November 1992 may be examined at the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC.

Copies of NUREG–1354, NUREG/CR–5758 (Volumes 1, 2, and 3), and NUREG/CR–5784 may be purchased from the Superintendent of Documents, U.S. Government Printing Office, P.O. Box 37082, Washington, DC 20013–7082. Copies are also available from the National Technical Information Service, 5282 Port Royal Road, Springfield, VA 22161. A copy is available for inspection and/or copying for a fee in the NRC Public Document Room, 2120 L Street NW, (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Loren L. Bush, Jr., Safeguards Branch, Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone: (301) 504–2944.

SUPPLEMENTARY INFORMATION:

Background

The NRC has reviewed experiences gained since publication of the current FFD rule on June 7, 1989 (54 FR 24468), and implementation by power reactor licensees on January 3, 1990, and determined that it may be appropriate to modify the random testing rate. Accordingly, on March 24, 1993 (58 FR 15810), the Commission published a proposed modification to the FFD rule that would permit a reduction in the random testing rate for licensee employees, but maintain the 100-percent random testing rate for contractors and vendors.

Summary of Public Comments

The comment period expired on June 22, 1993. Forty comment letters were received. Twenty-eight were from power reactor licensees, six from unions, one from an industry association, one from a vendor, three from licensed reactor operators, and one from a private citizen. There was overwhelming support for the proposed reduction in the annual rate of random testing for licensee employees. Most of the commenters believed that the reduced rate also should apply to contractors and vendors, and several commenters proposed a flexible, performance-based rate. There was no support for excluding from any reduction in the random testing rate certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators. A summary of the comments received and the NRC's responses are presented below.

1. Comment. The random testing rate for licensee employees should be reduced to 50 percent.

All of the 23 commenters submitting comments on the Commission's proposed reduction of the random testing rate to 50 percent for licensee employees supported the proposal. The reason most often expressed was the low rate of positive random test results experienced by licensee employees, particularly in comparison with other industries having significant safety concerns. These commenters believe that this low industry-wide positive rate justifies the lowering of the random testing rate to 50 percent. Some commenters stated that a 50-percent rate for licensee employees would make that rate consistent with the random testing rate currently required in the substance abuse programs mandated for entities regulated by the agencies within the Department of Transportation (DOT), including the Federal Aviation Administration and the Federal Highway Administration. They also noted that DOT is currently considering lowering its proposed random testing rate below 50 percent even though Federal Highway Administration data, for example, indicate a significantly higher positive rate than that experienced among NRC licensee employees. Another commenter pointed out that the lowered random testing rate for licensee employees subject to the NRC's FFD rule also would be consistent with the random rate applied in the Commission's own internal drug testing program.

Other commenters supported the reduction with the expectation of significant cost savings for licensees as a result of only testing approximately one-half the number of employees now being tested. In this regard, the Nuclear Management and Resources Council (NUMARC) made reference to the November 1992 GAO report, "Employee Drug Testing: Opportunities Exist To Lower Drug-Testing Program Costs" (GAO/GGD–93–13), which suggests reduced random testing rates as a means of producing cost efficiencies in

Federally mandated drug testing programs without adversely affecting program integrity.

Concerning the relative effectiveness of alternative random testing rates, some commenters believe that a 50-percent random testing rate would produce satisfactory deterrence of drug and alcohol abuse. This is particularly true in light of the fact that other FFD program elements, such as program awareness training and behavioral observation, and the access authorization program will continue to inhibit such behavior. Two commenters also supported the proposed change because it would lessen the disruption of workers lives and reduce the invasion of privacy that random drug testing creates.

NRC Response

The NRC concurs with those commenters who stated that a 50-percent random testing rate as applied to licensee employees can be expected to provide sufficient deterrence to justify lowering the rate at this time. It also agrees with the observation that the access authorization program and other FFD program elements, such as policy communications and awareness training, behavioral observation, for-cause testing, employee assistance programs, and the imposition of strict sanctions for violations of an FFD policy will continue to deter drug and alcohol abuse by most of the workforce. As some commenters noted, requiring fewer tests of licensee employees should decrease the privacy invasion experienced by some employees. It also should result in cost savings across the industry by reducing lost work hours and the number of tests to be administered.

The Commission recognizes that positive results in the nuclear power industry's random testing are generally among the lowest of any U.S. industry. Nonetheless, it realizes that there are many variables that can affect the rate of positive testing results and that relatively low positive test results, by themselves, are not the only indicator of the effectiveness of a testing program either on an industry-wide or a licensee program level. Some of the variables that could affect the testing results are the propensity of the population being tested to use drugs and alcohol, the effectiveness of other program elements, and the extent to which tested employees have been successful in subverting the testing process and avoiding detection.

The NRC does not have sufficient information about these or other factors that may influence testing results to be able to determine that the decreasing positive rates reported by licensees are an unqualified indication of FFD program effectiveness. Nonetheless, the Commission is gratified to observe the decreasing positive rates in licensee employees' random test results during the past three years. The recently published NUREG/CR–5758, Volume 3, "Fitness for Duty in the Nuclear Power Industry: Annual Summary of Program Performance Reports," indicates that licensee employees' positive random testing rate in 1992 was 0.20 percent as compared to 0.28 percent in 1990 and 0.22 percent in 1991. There also have been decreasing positive rates for random testing of contractor and vendor personnel, viz., 0.56 percent in 1990, 0.55 percent in 1991, and 0.45 percent in 1992.

In making its decision, the Commission has considered these testing results along with the apparent continuing strength of the other elements of most licensees' FFD programs, the reduced invasion of employees' privacy interests, and the potential for cost savings. In light of this industry experience and of these beneficial effects, the Commission has concluded that it is reasonable at this time to lower the random testing rate for licensee employees and contractor and vendor personnel to 50 percent. The response to Comment 4 discusses the Commission's reasons for allowing reduction in the random testing rate for contractor and vendor personnel.

2. Comment. The random testing rate should be reduced to less than 50 percent.

Four commenters recommended that the random testing rate be reduced to less than 50 percent. The rates they recommended varied from 5 percent to 25 percent. Their central argument was that the random testing rate can be lowered substantially without threatening the effectiveness of the program. The very low rates of drug and alcohol positive tests that have been recorded by the nuclear industry during the first two years of FFD program operations are the basis for their recommendation. One licensee stated that most chronic drug users probably have been eliminated and currently there is not a serious drug or alcohol abuse problem in the industry. This commenter and NUMARC also cited the GAO study that found that the percentage of positives does not vary significantly among Federal agency drug testing programs, regardless of what random rate is used. Another licensee emphasized that behavioral observation, not random testing, is the most potent tool in detecting drug abuse. Another commenter recommended that the NRC consider further reductions because the effectiveness of other program elements makes a random rate of even 50 percent unnecessarily high.

Significant cost savings was given as the most compelling reason to reduce the random rate below 50 percent. One licensee estimated the industry would save up to $30 million annually without degradation of the overall program.

NRC Response

As stated in the response to Comment 1 above, positive random testing results are not, by themselves, the only indicator of the FFD program's effectiveness in detecting substance abuse. The NRC does not have sufficient information about the many variables that could affect testing results to be able to determine that a lower random testing rate would maintain an acceptable level of program effectiveness. Therefore, the Commission believes that the industry's relatively low numbers of drug and alcohol positive random test results should not be used as the sole justification for lowering the random testing rate below 50 percent. While behavorial observation and for-cause testing are valuable program elements, there still must be a strong random testing program that provides an adequate level of detection and deterrence. The Commission continues to believe that it must choose a conservative and prudent random testing rate that maximizes both detection and deterrence of substance abuse while minimizing the monetary and social costs of such testing. The Commission believes that a 50-percent random testing rate will strike the proper balance between the dictates of public health and safety, the financial needs of licensees, and the privacy and other interests of workers subject to the testing requirement. Given the substantial unknowns currently associated with the true detection and deterrence effectiveness of alternative random testing rates as applied to the particular conditions of the nuclear power industry workforce, the Commission believes that it cannot establish a random testing rate lower than 50 percent for any segment of the industry at this time.

It should also be noted that relatively low positive test rates do not necessarily indicate that there is not a drug and alcohol abuse problem, as some commenters asserted. First, some users have become adept at avoiding detection, and the use of increasingly effective subversion techniques may be one reason why random testing results

are decreasing. Second, while it may be that most of the chronic drug users who were in the industry when the program started have been detected or have left, there can be expected to be a continuing level of intermittent illegal drug use and alcohol abuse among industry employees; such use is difficult to detect. The Commission concludes that the low positive random test results do not indicate that there has ceased to be a drug and alcohol abuse problem and that further reduction in the random testing rate would not be appropriate at this time.

In response to the commenters' reference to the GAO's observation that the percentage of positives does not vary significantly among Federal agency drug testing programs, the NRC notes that the GAO's objective in that report was to identify potential cost savings in Federal employee drug testing programs. Its objective did not include determination of the relative deterrent values of alternative random testing rates. In accomplishing its objective, the GAO properly concentrated on only the costs associated with Federal employee drug testing. It did not perform an indepth analysis of the several variables that influence testing results nor of the very complex relationship between those variables and the deterrence value of testing. Such variables would include the inclination for drug or alcohol abuse among the employees in the various industries in which the Federal testing programs operate, the extent to which the strength and effectiveness of other, non-testing program elements, such as drug awareness training, may affect testing results, and the relative stringency of sanctions imposed by the various Federal agencies following positive test results. Because the GAO's objective was to address the cost rather than the deterrence effectiveness of testing, the NRC does not consider the commenter's reference to the GAO's observation to be a persuasive argument for reduced random testing rates.

The NRC will continue to monitor implementation of the rule and will modify the rule in response to industry experience, advances in technology, or other considerations to ensure that the rule is achieving the general performance objectives set forth in 10 CFR Part 26.

3. Comment. The random testing rate should be flexible and based on performance, such as the positive rate of random testing.

Twelve commenters recommended that the Commission allow some form of performance-based approach to determine the random testing rate. Under such a system, the random testing rate would vary over time. This would depend on each licensee's or, alternatively, the industry's positive random test results from a previous period. One licensee, for example, suggested that each licensee's random testing rate should be based upon that particular licensee's previous 12-month testing results. Under this approach, a licensee would be subject to a minimum 50-percent random testing rate if it experienced a positive rate of greater than 0.50 percent during the previous 12 months. That licensee could reduce its random rate to 25 percent if it subsequently had a 12-month positive rate between 0.25 percent and 0.50 percent or to as low as 10 percent ff its positive rate for the previous year was less than 0.25 percent. Three other licensees recommended similar schemes whereby a licensee's random rate would be determined by its own record of positive test results. One of these recommendations based the rate on the results of the previous 2 years rather than those of the previous 12 months.

NUMARC proposed that the industry-wide random testing rate be determined by the industry-wide random testing results from the previous period. This recommendation was endorsed by five licensees. Under NUMARC's proposed approach, the industry would be allowed by regulation to adjust its random testing rate based on testing results from the previous reporting period. All licensees would be required to test at a 100-percent random rate if the industry-wide positive rate were greater than 1.0 percent in the previous period, at a 50-percent random rate if the positive rate was between 0.50 percent and 1.0 percent, at a 25-percent random rate if the positive rate was between 0.25 percent and 0.50 percent, and at a 10-percent random rate if the positive rate was less than 0.25 percent. Two of the eleven licensees favoring a performance-based testing system provided a general recommendation that did not specify whether the random testing rate should be based on the positive testing results of each individual licensee, or on the results of the industry as a whole.

The commenters noted various potential advantages of adopting a performance-based approach to setting the random testing rate. One stated that adopting such an approach would be consistent with the NRC's initiative to identify performance-based programs that would be beneficial to the industry. Another listed cost savings, equity in that each licensee's random rate would be commensurate with its program performance, and an incentive for licensees to maximize program conformance with the FFD rule as advantages of such an approach.

NRC Response

During development of 10 CFR part 26 in 1989, the Commission considered a variation of the flexible, performance-based random rate similar to the approaches recommended by these commenters. (See, for example, the NRC's response to Comment 7.4.2 in NUREG–1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments.") At that time, the Commission decided against adopting a performance-based rate for various reasons. As stated above, positive random testing results are not the only indicator of detection and deterrence effectiveness or of overall random testing program performance to allow the testing rate to vary with testing results. Adopting a performance-based approach would tend to discourage the initiatives that the Commission is encouraging in 10 CFR 26.24(b) and in Section 2.1 of Appendix A to Part 26. In § 26.24(b), the NRC allows licensees to implement programs with more stringent standards, for example, lower screening and confirmation cutoff levels and a broader panel of drugs than those specified in the rule. In Section 2.1 of Appendix A, licensees are permitted to test for any illegal drugs during a for-cause test or analysis of specimens suspected of being adulterated or diluted. Program performance data for the first three years of FFD program implementation have shown that those licensees using screening cutoff levels for marijuana that are lower than the maximum allowed 100 nanograms per milliliter (ng/ml) have had a higher percentage of confirmed positive results than those screening at 100 ng/ml. (See NUREG/CR–5758, Vols. 1–3.) Licensees that employ special measures to detect attempts to dilute specimens or flush metabolites from the body report that their positive rate is about doubled. This result is similar to data presented to the Department of Health and Human Services' Drug Testing Advisory Board on June 10, 1993, and reported in "The National Report on Substance Abuse" on June 18, 1993. (The study is currently undergoing peer review before publication.) Adopting a performance-based approach that allowed licensees to reduce their random testing rates as positive testing results declined would likely discourage licensees from adopting lower screening cutoff levels and taking measures to detect attempts by users to avoid detection.

Lastly, a performance-based approach would require the collection and analysis of performance data to provide the bases for adjustments to the random testing rate. Such data is not currently collected by the licensees or the NRC. Previous efforts known to the NRC staff to identify and analyze the many candidate performance indicators for measuring the effectiveness of random testing have been inconclusive, primarily because of the numerous variables. Furthermore, assuming that the proper performance indicators can be developed, it would appear that the collection and analysis of data to support a performance-based approach would add a considerable administrative burden to both licensees and the NRC.

For all these reasons and until further experience is gained that would support a performance-based approach, the Commission declines to adopt such an approach to setting the random testing rate.

4. Comment. The reduction in the random testing rate should be applied to all workers.

Four of the 30 commenters on this issue—three unions and one licensee—supported the Commission's proposal that licensees maintain the 100-percent random testing rate for contractor and vendor employees. Their reasons included a concern for lack of commitment by contractor employees to maintaining the industry's high drug-free standard and the need for the higher testing rate to provide continued deterrence for contractor employees. One of the three unions recommended that long-term contractors should have the same lower random testing rate as that of licensee employees because test results of long-term contractors and licensee employees have been almost identical.

There were several issues consistently mentioned by those 26 commenters who opposed maintaining the 100-percent random testing rate for contractor and vendor employees. There was a general concern for unnecessary inconsistencies in random testing rates between Federal agencies. Commenters recommended that the NRC program be kept as consistent as possible with programs in other Federally regulated safety-related industries. These include the DOT programs that currently require contractors and vendors to be randomly tested at a 50-percent rate.

Various licensees cited the testing results from 1990 and 1991 which, in their opinion, create no statistically sound rationale for testing contractor and vendor employees at a rate different from that of licensee employees. They argued that, while the contractor/vendor positive testing rate has been twice that of licensee employees, it is still low enough to make unnecessary the expenditure of the resources necessary to maintain two separate random testing pools.

Various commenters noted that contractors and vendors are subject to the identical access authorization and other FFD program requirements as are licensee employees, including behavioral observation. These stringent requirements, in their view, obviate the need to keep the contractor/vendor random rate at 100 percent. Some also noted that the deterrent value of random testing is in the act of testing itself and not in what many consider to be a high rate of testing. Some commenters warned that keeping contractors and vendors at 100 percent could be construed as discriminatory against those employees and may be perceived as punitive rather than as a corrective measure. Two licensees also cited a study of the detection effectiveness of nine random testing rates published in NUREG/CR–5784, "Fitness for Duty in the Nuclear Power Industry: A Review of the First Year of Program Performance and an Update of the Technical Issues," which indicates that a 100-percent testing rate is only a little more effective than a 50-percent rate for detecting occasional drug users.

NRC Response

Although there is a difference between the positive results of random testing of licensee employees and those of contractor and vendor employees, the positive random testing rate of both groups has been less in each year since 1990, as stated in the response to Comment 1 above. While the contractor/vendor random testing positive rates continue to be about twice the rate for licensee employees and statistical analysis of the data shows that the difference in proportion between the contractors' and licensees' employees is not explained within statistical fluctuations (therefore, differences in the rates are statistically significant), the Commission agrees that the absolute numbers of positive test results of all categories of nuclear power workers are low Therefore, the Commission will permit its licensees to lower the random testing rate to 50 percent for all persons covered by 10 CFR part 26. However, the Commission will continue to monitor licensee program performance and effectiveness and will make program adjustments as necessary.

In response to the comments regarding the study of the detection effectiveness of nine random testing rates published in NUREG/CR–5784, the Commission notes that the study explicitly dealt with only the hypothetical detection effectiveness of those alternatives. It did not address their relative deterrence effectiveness. While it may be that the effectiveness of a 100-percent random testing rate for deterring occasional drug users could be slightly higher than that of a 50-percent rate, the Commission nonetheless believes that a 50-percent random testing rate will provide sufficient deterrence to drug and alcohol abuse by contractor and vendor employees.

With respect to commenters' concerns about unnecessary inconsistencies in random testing rates between Federal agencies, the Commission continues to believe that the random test rate for employees in the nuclear power industry need not be similar to the rates applied to employees in all, or even most, other Federal agencies or Federally mandated programs. Not all Federal agencies have identical safety concerns or responsibilities.

5. Comment. There should be no difference in the random testing rate for certain positions critical to the safe operation of a nuclear power plant.

Seventeen commenters responded to the Commission's question as to whether certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators, should be excluded from any reduction of the random testing rate. All these commenters recommended against such differentiation. Two licensees stated that treating people in positions critical to safety differently from other employees could have a negative effect on the morale, self-image, and motivation of this group of highly trained and dedicated specialists Another stated that all plant employees are critical to safe operation Therefore, a reduction in the random testing rate should apply to all employees The potential for added record-keeping requirements creating unnecessary burdens for the industry was another reason for not making this distinction. In the opinion of one commenter, the 1990–1992 industry-wide program performance data do not support testing people in positions critical to safety at a different rate than that applied to other licensee employees Finally, one licensee cited potential problems getting union agreement to testing this classification of employees at a higher rate than other licensee personnel subject to the FFD rule.

NRC Response

The essence and unanimity of these comments—that licensed operators and other employees in positions critical to the safe operation of a nuclear power plant should not be excluded from a

reduction of the random testing rate—is not surprising. These particular members of the nuclear power industry's workforce have collectively demonstrated their dedication to safe and efficient plant operations. As at least one commenter noted, the industry's program performance data for the first three years of operation do not support differentiating between people in safety-critical positions and other licensee employees insofar as the random testing rate is concerned. The 1992 program performance data, for example, show that eighteen of the industry's approximately 5,000 licensed operators tested positive for drugs or alcohol or otherwise violated the licensee's FFD policy; twelve of these were a result of random testing. When comparing these results to the 461 positive results out of 156,730 random tests administered to the industry workforce, the difference in proportion between the licensed operators and the industry workforce is within statistical fluctuations and the difference in the positive rates is not statistically significant. While the NRC expects licensees to continue to take action to drive this number of positives down even further, this record does not merit testing people in these positions at a rate different from that applied to other licensee employees. The Commission; therefore, concurs with the commenters' recommendation that certain positions critical to the safe operation of a nuclear power plant, such as licensed reactor operators, should not be excluded from a reduction of the random testing rate.

6. Comment. Random testing is expensive and produces false positives Furthermore, chronic users are able to avoid detection.

Two commenters, a power plant worker and a union, argued against the usefulness of continued random testing. One of these commenters stated that random testing produces false positives. These cost the industry large amounts of money in settlements and damage the public's perception of licensees' fairness. As additional support for this position, this commenter warned that chronic drug abusers are particularly adept at escaping detection from random testing by subverting the testing process. The other commenter recommended that random testing be eliminated because it is not effective in identifying workers who are impaired at the time urine samples are collected For-cause testing, in this commenter's opinion, is more effective because it more accurately reflects a worker's present ability to perform his/her job at the time he/she is tested This commenter also stated that random testing appears to be a means of having the NRC enforce the Controlled Substances Act which is not the NRC's responsibility.

NRC Response

The Commission has long been well aware of the types of FFD program-related concerns as addressed by these commenters. During the promulgation of 10 CFR part 26 in 1989, the Commission fully addressed these and many other such concerns. (See NUREG–1354, "Fitness for Duty in the Nuclear Power Industry: Responses to Public Comments.") At that time the NRC concluded, for example, that licensee FFD programs should be concerned not only with impairment, but also with worker reliability and trustworthiness. The NRC believes that any illegal drug use or alcohol abuse by a worker reflects upon his or her trustworthiness and reliability. Likewise, random testing is not intended, nor has it ever functioned, as a means to enforce the Controlled Substances Act. Section 26.29(b) provides that licensees, contractors, and vendors shall not disclose test results to law enforcement officials unless those officials request such information under court order It also is noted that there is no requirement to routinely provide such officials with testing results.

The Commission is well aware that there is a potential for false positive results and, therefore, has required numerous quality control measures and safeguards to prevent such occurrences. In Appendix D to NUREG/CR–5758, Volume 3, the testing process errors that were reported by licensees during the first three years under the FFD rule were analyzed. Of over 800,000 specimens tested, there were two false positives of personnel specimens reported by the laboratories, both due to administrative errors In both cases, the quality assurance programs detected and corrected the problem.

Because of the NRC's particular concern with the degree to which the testing process can be subverted, the Commission staff has continued to track the ways in which workers have subverted testing processes in industries across the country. These efforts have resulted in staff recommendations for amending 10 CFR part 26 to introduce various means for combatting subversion. Lastly, the Commission believes that the added protection of public health and safety that the FFD program provides is well worth the industry's costs of administering this program

7 Comment Maintaining two separate populations of workers for random testing is an unnecessary and expensive burden.

Some of the commenters stated that requiring two random testing rates would force licensees to develop two separate testing programs. The resulting additional administrative and financial burdens would cancel out any savings resulting from reducing the licensee employee rate to 50 percent. NUMARC stated that the industry would save approximately $4.1 million if the number of tests of contractor and vendor employees was cut in half.

NRC Response

Some of the comments noted above asserted that separate random testing rates for licensee employees and contractors/vendors would create additional administrative and financial burdens for licensees. Although this issue is somewhat moot since the Commission will permit licensees to reduce the random testing rate to 50 percent per year for all persons covered by Part 26, the Commission does not concur that conducting random testing using two random rates would have caused appreciably higher administrative or operating costs. Presumably, most licensees' data bases already distinguish between licensee employees and contractor/vendor employees subject to testing Numerous commenters on the initial rule in 1989 indicated that the workforce population should be separated so that permanent employees would not be tested at a much higher rate to make up for contractors who might not be on site when selected for testing (see comment/response 7-4.3 of NUREG–1354). The NRC staff understands that several licensees have divided their testing population as permitted by the rule. The number and identity of licensee employees in the testing pool remains rather constant over time. The number and identity of contractor/vendor employees in the testing pool, on the other hand, varies quite considerably over time depending on outages and other operational considerations A licensee may choose to create more than one test population so that it may test portions of its workforce at a greater rate or reduce the burden on its employees from being tested at a higher rate to compensate for the testing of contractors and vendors not normally on site.

8 Comment. The Commission should modify certain portions of 10 CFR part 26 based on industry experience and lessons learned and incorporate numerous program enhancements as discussed at various industry forums

Eight commenters recommended that the Commission make future modifications to certain portions of 10 CFR part 26 based on industry experience and lessons learned and incorporate numerous program enhancements as discussed at various industry forums.

NRC Response

The specific recommendations for ways in which part 26 can be improved and numerous other program enhancements are currently being considered by the NRC in conjunction with a general package of rule revisions currently under development.

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described in categorical exclusion 10 CFR 51.22(c)(2). Therefore, the NRC has not prepared an environmental impact statement, nor an environmental assessment for this final rule.

Paperwork Reduction Act Statement

This final rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) These requirements and amendments were approved by the Office of Management and Budget, approval number 3150–0146.

Since the rule will permit licensees to reduce the random testing rate for their employees, the resulting reduction in the reporting and recordkeeping burden is expected to be an average of 223 hours per site, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019 (3150–0146), Office of Management and Budget, Washington, DC 20503.

Regulatory Analysis

The NRC has prepared a regulatory analysis for this regulation. The analysis examines the costs and benefits of the alternatives considered by the Commission. The analysis is available for inspection in the NRC Public Document Room, 2120 L Street NW (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Loren L. Bush, Jr., Division of Radiation Safety and Safeguards, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 504–2944.

Regulatory Flexibility Act Certification

In accordance with the Regulatory Flexibility Act of 1980 (5 U.S.C. 605(b)), the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule affects only the licensing and operation of nuclear power plants and activities associated with the possession or transportation of Category I material. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards issued by the Small Business Administration in 13 CFR part 121.

Backfit Analysis

The rule represents a relaxation from current part 26 requirements for drug testing since the rule permits (but does not require) licensees to reduce the random testing rate for all persons covered by the rule. Accordingly, the rule does not represent a backfit as defined in 10 CFR 50.109(a)(1), and a backfit analysis is not required for this rule.

List of Subjects in 10 CFR Part 26

Alcohol abuse, Alcohol testing, Appeals, Chemical testing, Drug abuse, Drug testing, Employee assistance programs, Fitness for duty, Hazardous materials transportation, Management actions, Nuclear materials, Nuclear power plants and reactors, Penalties, Protection of information, Radiation protection, Reporting and recordkeeping requirements, Sanctions, Special nuclear materials.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 26.

PART 26—FITNESS FOR DUTY PROGRAMS

1. The authority citation for part 26 continues to read as follows:

Authority: Secs. 53, 81, 103, 104, 107, 161, 68 Stat. 930, 935, 936, 937, 939, 948, as amended (42 U.S.C. 2073, 2111, 2112, 2133, 2134, 2137, 2201); secs. 201, 202, 206, 88 Stat. 1242, 1244, 1246, as amended (42 U.S.C. 5841, 5842, 5846).

2. In § 26.24 paragraph (a)(2) is revised to read as follows:

§ 26.24 Chemical and alcohol testing

(a) * * *

(2) Unannounced drug and alcohol tests imposed in a statistically random and unpredictable manner so that all persons in the population subject to testing have an equal probability of being selected and tested. The tests must be administered so that a person completing a test is immediately eligible for another unannounced test. As a minimum, tests must be administered on a nominal weekly frequency and at various times during the day. Random testing must be conducted at an annual rate equal to at least 50 percent of the workforce.

* * * * *

Dated at Rockville, Maryland, this 29th day of December, 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Acting Secretary of the Commission.

[FR Doc. 94–131 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–208–AD; Amendment 39–8783; AD 93–24–51]

Airworthiness Directives; Airbus Industrie Model A310 and A300–600 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) T93–24–51 that was sent previously to all known U.S. owners and operators of all Airbus Model A310 and A300–600 series airplanes by individual telegrams. This AD requires repetitive operational tests of feel and limitation computers (FLC) 1 and 2. This amendment is prompted by a report that the pitch control on a Model A300–600 series airplane operated with stiffness. The actions specified by this AD are intended to prevent stiff operation of the pitch control and undetected loss of rudder travel limitation function.

DATES: Effective January 20, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–24–51, issued

December 1, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 20, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 7, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–208–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The applicable service information may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–130.

SUPPLEMENTARY INFORMATION: On December 1, 1993, the FAA issued telegraphic airworthiness directive (AD) T93–24–51, which is applicable to all Airbus Model A310 and A300–600 series airplanes. That action was prompted by a report from an operator that the pitch control on a Model A300–600 series airplane operated with stiffness. Investigation into the cause of this stiffness revealed that the feel and limitation computer (FLC) failed and caused stiff operation of the pitch control. This condition, if not corrected, could result in stiff operation of the pitch control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane.

Airbus Industrie has installed these computers on all Model A310 and A300–600 series airplanes. Each airplane has two FLC's, designated FLC 1 and FLC 2. The FLC and the pitch feel fault lights are integral components of the pitch feel system. (The pitch feel fault lights indicate a failure of the FLC.)

Currently, these airplanes are allowed to operate with one inoperative pitch feel system. If the airplane is operated with one inoperative pitch feel system, failure of the other FLC could result in stiff operation of the pitch control and undetected loss of rudder travel limitation function. This failure could also allow excessive elevator movement, which could expose the airplane structure to excessive air loads.

Airbus Industrie has issued All Operator Telex (AOT) 27–14, dated November 2, 1993, applicable to all Airbus Model A310 and A300–600 series airplanes, that describes procedures for performing repetitive operational tests to verify proper operation of FLC's 1 and 2. The Direction Generale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, classified this AOT as mandatory and issued French telegraphic airworthiness directive 93–202–153(b), dated November 2, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since the unsafe condition described is likely to exist or develop on other airplanes of the same type design registered in the United States, the FAA issued Telegraphic AD T93–24–51 to require repetitive operational tests to verify proper operation of FLC's 1 and 2. The actions are required to be accomplished in accordance with the AOT previously described. Any FLC that fails the operational test is required to be repaired or replaced in accordance with a method approved by the FAA.

The AD also prohibits operation of any airplane with an inoperative pitch feel system or inoperative pitch feel fault lights.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual telegrams issued on December 1, 1993, to all known U.S. owners and operators of all Airbus Model A310 and A300–600 series airplanes. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective as to all persons.

This is considered to be interim action. The manufacturer has advised that it currently is developing a modification that will positively address the unsafe condition addressed by this AD. Once this modification is developed, approved, and available, the FAA may consider additional rulemaking.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–208–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–24–51 Airbus Industrie: Amendment 39–8783. Docket 93–NM–208–AD.

Applicability: All Airbus Model A310 and A300–600 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent stiff operation of the pitch control and undetected loss of rudder travel limitation function, which may adversely affect controllability of the airplane, accomplish the following:

(a) Within 7 days after the effective date of this AD, perform an operational test to verify proper operation of feel and limitation computers (FLC) 1 and 2 in accordance with Airbus Industrie All Operator Telex 27–14, dated November 2, 1993. Thereafter repeat this test at intervals not to exceed 7 days.

(b) If any FLC fails the test, prior to further flight, replace with a new or serviceable FLC, or repair the FLC in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(c) As of the effective date of this AD, no airplane shall be operated with an inoperative pitch feel system or inoperative pitch feel fault lights.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The test shall be done in accordance with Airbus Industrie All Operator Telex 27–14, dated November 2, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 20, 1994, to all persons except those persons to whom it was made immediately effective by telegraphic AD T93–24–51, issued December 1, 1993, which contained the requirements of this amendment.

Issued in Renton, Washington, on December 28, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–21 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–CE–46–AD; Amendment 39–8787; AD 94–01–05]

Airworthiness Directives: Allied Signal Aerospace Company, Air Transport Avionics (Formerly Bendix/King Air Transport Avionics Division) Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Allied Signal Aerospace Company, Air Transport Avionics (Allied Signal) Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. This action requires replacing the existing TCAS II processor with a new processor that incorporates updated computer logic. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

EFFECTIVE DATE: February 4, 1994.

ADDRESSES: Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. A. E. Clark, Manager, Systems and Equipment Branch, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–3020; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Allied Signal TCAS II processors that are installed on aircraft was published in the **Federal Register** on September 9, 1993 (58 FR 47405). The action proposed to require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. These Allied Signal TCAS II processors are installed on, but not limited to the following airplanes:

- Aerospatiale ATR–42;
- Airbus Industries A–340;
- Beech Model 65–A90 airplanes;
- Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 Series airplanes;
- de Havilland DHC–7 series and Model DHC–8–100 airplanes;
- Fokker Models F.28 Mark 1000 and Mark 4000 airplanes;
- General Dynamics Models Convair 340 and 440 airplanes;
- Gulfstream Models G–159 and G–IV airplanes;
- Lockheed L1011 series airplanes;
- McDonnell Douglas—DC–8–60, DC–9–31, DC–9–51, DC–10–10 DC–10–

30, DC–13–30F, MD–11, and MD–80 series airplanes; and

• Rockwell International NA–265–65 airplanes.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from 33 different owners, operators, manufacturers, and organizations.

All commenters express their concern of the FAA's compliance date of December 30, 1993, especially since Allied Signal's service bulletin will not be available until early 1994. The following summarizes the compliance times that the commenters recommended:

• 18 recommended one year or less;

• 5 recommended longer than one year; and

• 10 recommended an extension without a proposed time.

The National Air Traffic Controllers Association and the Airline Pilots Association both recommend an "aggressive implementation" of "Change 6.04A". The FAA has re-evaluated the December 30, 1993, compliance time and has determined that the compliance time should be changed to December 31, 1994. In addition, "Change 6.04A" has been upgraded to "Change 6.04A Enhanced", which eliminates unnecessary non-crossing resolution advisories (RA's) included in "Change 6.04A". Allied Signal has assured the FAA that (1) the upgrade to "Change 6.04A Enhanced" is minor and will be incorporated in the logic change for the TCAS II processor upgrades; and (2) this compliance time correlates with their schedule for disseminating service information and kits necessary to accomplish the incorporation of "Change 6.04A Enhanced". The proposed AD has been changed to reflect the compliance time change and logic change described above.

In addition, Allied Signal states that "Change 6.04", which is FAA-certified and is currently in service, accomplishes the major intent of "Change 6.04A Enhanced" and should be considered as an acceptable interim version to allow the eventual upgrade to "Change 6.04A Enhanced". The FAA recognizes that "Change 6.04" incorporates several of the features of "Change 6.04A Enhanced". However, the FAA has determined that (1) "Change 6.04" does not provide an equivalent level of safety to that of "Change 6.04A Enhanced"; and (2) "Change 6.04A Enhanced" should be incorporated as a way to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system. Compliance time extension consideration will be given on a case-by-case basis to airlines or operators experiencing compliance difficulties that arise because of fleet size. The proposed AD remains unchanged as a result of this comment.

Allied Signal also lists several additional aircraft that these TCAS II processor units are certified for installation. The FAA has incorporated these into the proposed AD.

One commenter, who supports the implementation of "Change 6.04A Enhanced", requests that the FAA issue a supplementary notice of proposed rulemaking (NPRM) to propose installing this revised software by June 30, 1995. This commenter states that significant differences exist between "Change 6.04A" and "Change 6.04A Enhanced". The FAA does not concur. Comments received in response to the proposed AD reflect unanimous support for implementing "Change 6.04A Enhanced". The FAA considers the logic change (which reduces non-crossing RA's) to be minor. The intent is to correct the unsafe condition by installing modified TCAS II computer units that incorporate updated logic. The FAA has determined that the requirement to implement Version 6.04A software, including the latest enhancement, will (1) correct the unsafe condition; (2) maintain the same intent originally proposed without altering the substance of the proposed rule; and (3) impose no additional burden on the public than was previously proposed.

In addition, issuing a supplemental NPRM would necessitate (under the provisions of the Administrative Procedures Act) reissuing the notice, reopening the public comment period, considering any additional comments received, and eventually issuing a final rule. The time required for these procedures could take as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that soliciting further public comment is not necessary and that further delay of the final rule action is not appropriate.

Several commenters request that the FAA revise the economic impact specified in the proposed AD to reflect costs associated with the development, testing prior to certification, and certification of the modified processor. These costs would be absorbed by suppliers, installers, and airline operators. The FAA does not concur that the economic impact statement include this information. The 1 workhour necessary to accomplish the proposed action was provided to the FAA by the TCAS II processor manufacturer based on the best data available to date. This number represents the time required to install the revised software. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing prior to certification, and certification of a modified processor. The proposed action remains unchanged as a result of these comments.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in compliance time, the logic reference change, the incorporation of known aircraft that these TCAS II processor units are installed on, and minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 3,000 TCAS II processors in the U.S. registry will be affected by this AD, that it will take approximately 1 workhour per processor to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $165,000. These figures are based on the assumption that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

93–01–05 Allied Signal Aerospace Company, Air Transport Avionics (formerly Bendix/King Air Transport Avionics Division): Amendment 39–8787; Docket No. 93–CE–46–AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

Aerospatiale ATR–42;
Airbus Industries A–340;
Beech Model 65–A90 airplanes;
Boeing 727–100, 727–200, 737–200, 737–300, 737–400, 737–500, 747–100, 747–200, 747–300, 747–400, 747SP, 757–200, 767–200, and 767–300 Series airplanes;
de Havilland DHC–7 series and Model DHC–8–100 airplanes;
Fokker Models F 28 Mark 1000 and Mark 4000 airplanes;
General Dynamics Models Convair 340 and 440 airplanes;
Gulfstream Models G–159 and G–IV airplanes;
Lockheed L1011 series airplanes;
McDonnell Douglas—DC–8–60, DC–9–31, DC–9–51, DC–10–10 DC–10–30, DC–13–30F, MD–11, and MD–80 series airplanes; and
Rockwell International NA–265–65 airplanes.

Compliance: Prior to December 31, 1994, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
–0102 or –0107	–0108
–0203 or –0207	–0208
–0301, –0302, or –0307	–0308
–0402, –0405, or –0407	–0408
–0504 or –0507	–0508
–0606 or –0607	–0608
–8101	–0108

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office (ACO).

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(d) Information that relates to the proposed AD may be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39–8787) becomes effective on February 4, 1994.

Issued in Kansas City, Missouri, on December 29, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–32113 Filed 12–30–93; 8:45 am]

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14 CFR Part 39

[Docket No. 93–NM–68–AD; Amendment 39–8786; AD 94–01–04]

Airworthiness Directives; Honeywell Traffic Alert and Collision Avoidance System II Computer Units, as Installed on Various Transport Category Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes, that requires replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic, and modifying the computer surveillance logic. This amendment is prompted by the development of candidate enhancements to TCAS II logic that will improve its utility and increase its overall operational acceptance. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

DATES: Effective February 4, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 4, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, Arizona 85036. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Abby Malmir, Aerospace Engineer, Systems and Equipment Branch, ANM–132L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5351; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Honeywell Traffic Alert and Collision Avoidance System II (TCAS II) computer units installed on various transport category airplanes was published in the **Federal Register** on September 9, 1993 (58 FR 47407). That action proposed to require replacing certain TCAS II computer units with new units that incorporate updated collision avoidance system (CAS) logic, and modifying the computer surveillance logic.

Since the issuance of the notice, an additional change to Version 6.04A collision avoidance system (CAS) logic was recommended at a meeting held to discuss the progress made in implementing logic modification 6.04A.

Meeting attendees included representatives from the FAA and European civil aviation authorities, U.S. and European aviation industry, and U.S. operators. The logic change that was recommended involves reducing unnecessary crossing resolution advisories (RA). That change is included in a new enhanced software package (identified as Version 6.04A), specified in Mitre letter F046–L–0069, dated September 21, 1993.

Subsequently, Honeywell Inc. has issued Service Bulletin 4066010–34–SW16, dated December 20, 1993. The service bulletin describes procedures for converting certain TCAS II computer units to new units (Version 6.04A). The new units incorporate all of the logic changes specified in the preamble to the notice, including updating CAS logic, modifying the computer surveillance logic to ensure that these units accommodate Mode C altitude input of 100-foot increments, and ensuring that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7. The conversion is onboard-loadable, or it may be accomplished at a field repair shop. The first method involves data loading the TCAS II computer unit in the aircraft equipment bay using an ARINC 615 or 603 data loader. The second method entails performing a final test, and then programming the TCAS II computer unit to convert it to the latest enhanced version at a field repair shop.

The notice proposed that operators accomplish the modification requirements of this AD in accordance with a method approved by the FAA. However, the FAA has reviewed and approved the Honeywell service bulletin discussed previously, and has determined that accomplishment of this service bulletin is an appropriate method of compliance. Consequently, the FAA has revised paragraph (a) of the final rule to cite the Honeywell service bulletin as the appropriate source of service information, and has removed the language referring to accomplishing the actions "in accordance with a method approved by the FAA." Even though this language has been deleted from paragraph (a), operators may still be permitted to accomplish the actions in accordance with an FAA-approved method under the provisions of paragraph (c) of the final rule.

In light of this new data and software developement, the FAA has revised the final rule by changing the reference to Mitre letter F046–L–0056, dated July 20, 1993, which appeared in paragraph (a)(1) of the NPRM, to Mitre letter F046–L–0069, dated September 21, 1993, since the latter identifies the enhanced software package. Since the original Version 6.04A software was never issued, no operator could have installed that version. Therefore, no redundant actions would be required on the part of any operator as a result of this change.

Since the enhanced Version 6.04A software introduces a change in the operation of the aircraft, the FAA also finds that a revision to the Airplane Flight Manual (AFM) is necessary as a conforming change to correspond with that new software configuration. The AFM revision is advisory only, and will ensure that the flight crew is aware of the changes associated with the new software installation. Consequently, paragraph (b) has been added to the final rule to reflect this informational AFM revision.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received in response to the notice:

One commenter, Honeywell, objects to the proposed compliance date of December 30, 1993, and states that December 31, 1994, represents a more realistic compliance timeframe. Honeywell indicates that operators vary in their ability to load the updated software due to maintenance and aircraft schedules and data-load/test resources. Honeywell states that, although it has been working aggressively to implement the latest change, that change has resulted in a delay in the date operators will be able to implement the latest change.

Several other commenters also request that the FAA extend the proposed compliance date from 3 to 18 months after the date specified in the proposal in order to accommodate implementation, verification, certification, and incorporation of the proposed software change into existing installations. One commenter, the Air Transport Association (ATA) of America, supports implementation of the latest enhanced Version 6.04A, and requests that the FAA issue a supplemental notice of proposed rulemaking (NPRM) to propose that this revised software be retrofitted by June 30, 1995. ATA contends that significant differences exist between Version 6.04A and the latest enhanced version. Another commenter requests that the FAA solicit comments from foreign agencies participating in TCAS evaluation and simulations to help ensure that the proposed Version 6.04A revision will be compatible and acceptable.

The FAA concurs partially with these requests to extend the compliance time. The FAA has considered the safety implications, the time necessary for approval of the enhanced Version 6.04A software, the size of the fleet, and normal maintenance schedules for timely accomplishment of implementation of the modification. In light of these considerations, the FAA has determined that a compliance date of December 31, 1994, is appropriate. Paragraph (a) of the final rule has been revised to specify the revised compliance date.

However, in response to the requests that a supplemental NPRM be issued and that further public comments be solicited, the FAA submits the following. Comments received in response to the proposal reflect unanimous support for implementation of the latest enhanced Version 6.04A software. The FAA considers the logic change (reduction of unnecessary crossing RA's) incorporated in the enhanced software to be a minor change. The intent of this AD is to require that the addressed unsafe condition be corrected by installing modified TCAS II computer units that incorporate updated CAS logic. The FAA has determined that a requirement to implement Version 6.04A software, including the latest enhancement, will meet that intent, will not alter the substance of the rule, and will impose no additional burden on any member of the public. Additionally, issuance of a supplemental NPRM would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that solicitation of further public comment is not necessary and that further delay of this final rule action is not appropriate.

One commenter requests that the FAA require Honeywell TCAS II processors that are already installed be operated in the "traffic advisory (TA) only" mode until the updated software package is installed. The commenter indicates that "possible hidden problems" could exist between the different versions of logic that are installed currently in the TCAS II processors.

The FAA does not concur with the commenter's request. Operation of currently installed TCAS II processors in the "TA only" mode would impair the capability of those processors to alert the flight crew of appropriate aircraft maneuvers that must be taken to prevent mid-air collisions. Further, the FAA is unaware of any "possible hidden problems" between the different versions of logic installed currently in the TCAS II processors, as suggested by the commenter. Therefore, the FAA concludes that currently installed TCAS II processors should not be operated in the "TA only" mode until the updated software packaged is installed.

One commenter requests clarification of the unsafe condition specified in the proposed rule. This commenter points out differences in the wording of the unsafe condition between this proposed rule and two existing proposals that address the same CAS logic change for Rockwell International/Collins Air Transport Division (Collins), and Allied Signal Aerospace Company/Air Transport Avionics (Allied Signal), TCAS II processors. From this comment, the FAA infers that the commenter requests that the proposed statement of unsafe condition more closely parallels the statement of unsafe condition in the other two proposals addressing the same subject.

The FAA concurs. The FAA has revised the unsafe condition specified in this final rule to coincide with the proposals that address Collins and Allied Signal TCAS II processors to more explicitly reference safety considerations, as follows: "* * * to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system."

One commenter, Falcon Jet Corporation, indicates that Honeywell TCAS II processors are installed on Mystere-Falcon Model 50 and 900 series airplanes, and requests that these airplanes be included in the portion of the applicability of the AD that lists airplanes on which this TCAS II processor may be installed. The FAA concurs with the commenter's request and has revised the final rule accordingly. In addition, the FAA has become aware of other airplane models affected by this AD and has included those models in that portion of the applicability statement of the final rule. The FAA clarifies that, as stated in the preamble and the applicability of the proposal, the affected Honeywell TCAS II processors are installed on various transport category airplanes and are not limited only to those airplanes listed in the applicability of this AD.

Several commenters request that the FAA revise the economic impact information specified in the proposal to reflect costs borne by suppliers, installers, and airline operators associated with development, testing, and certification of the modified processor.

The FAA does not concur with the commenters' request to revise the economic impact information contained in this AD. The appropriate number of hours required to accomplish the required actions, specified as 3 in the economic impact information, below, was provided to the FAA by the processor manufacturer based on the best data available to date. This number represents the time required to gain access, remove the existing processor, install a diskette containing the revised software, and close up. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing, and certification of a modified processor, as suggested by the commenter.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 2,700 transport category airplanes in the worldwide fleet on which the Honeywell TCAS II computer units may be installed. The FAA estimates that 1,150 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $189,750, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–01–04 Honeywell: Amendment 39–8786. Docket 93–NM–68–AD.

Applicability: Traffic Alert and Collision Avoidance System (TCAS) II computer units; part numbers 4066010–901, –902, and –903; as installed on, but not limited to, the following airplanes, certificated in any category:

Airbus Industrie Model A300–600, A310–200, A310–300, A320–200, and A340 series airplanes;

Boeing Model 727–100 and –200; 737–100, –200, –300, and –400; 747–100, –200, –300, –400 and 747SP; 757–200 and –500; and 767–200 and –300 series airplanes;

Cessna Citation Model C550 and C560 series airplanes, and Cessna Citation III and VII series airplanes;

Canadair Challenger Model CL–600–2B16 and –2A12 series airplanes;

British Aerospace Model 125–800A;

Gulfstream Model GII, GIIB, GIII, and GIV series airplanes;

Lockheed Model L–1011 series airplanes;

McDonnell Douglas Model DC–9–10, –20, –30–, –40, and –50; DC–10–10, –15, –30, and –40; MD–11; and DC–9–80 series airplanes; and Model MD–88 airplanes;

Dassault Aviation Model Mystere-Falcon 50 and 900 series airplanes;

Short Brothers Model SD3–60 series airplanes;

de Havilland Model DHC–8–100 and DHC–7 series airplanes;
Fokker Model F27 series airplanes; and
Corporate Jets Limited Model BAe 125–800A and BAe 125–1000A series airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system, accomplish the following:

(a) Before December 31, 1994, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Honeywell Service Bulletin 4066010–34–SW16, dated December 20, 1993.

(1) Remove existing Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, and replace those units with new units that incorporate updated collision avoidance system (CAS) logic, identified as Version 6.04A in Mitre letter F046–L–0069, dated September 21, 1993.

(2) Modify the computer surveillance logic on Honeywell TCAS II computer units, part numbers 4066010–901, –902, and –903, to ensure that these units accommodate Mode C altitude input of 100-foot increments and that the system will be tracked and coordinated by intruding aircraft when the Mode S transponder CA field is set at CA=7.

(b) Prior to further flight after accomplishing the requirements of paragraph (a) of this AD, revise the Airplane Flight Manual (AFM) or AFM Supplement by accomplishing either paragraph (b)(1) or (b)(2) of this AD.

(1) Revise the Normal Procedures Section of the AFM to include the appropriate TCAS operating characteristic relative to the modifications required by paragraph (a) of this AD, in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate; or

(2) Revise the Normal Procedures Section of the AFM to include the following TCAS operating characteristic relative to the modification required by paragraph (a) of this AD. This may be accomplished by inserting a copy of this AD in the AFM or AFM Supplement.

"All Resolution Advisory (RA) and Traffic Advisory (TA) aural messages are inhibited at a radio altitude of less than 1,100 feet above ground level (AGL) climbing, and less than 900 feet AGL descending."

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Avionics Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement and modification shall be done in accordance with Honeywell Service Bulletin 4066010–34–SW16, dated December 20, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Honeywell Inc., Commercial Flight Systems Group, Air Transport Systems Division, P.O. Box 21111, Phoenix, Arizona 85036. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 4, 1994.

Issued in Renton, Washington, on December 29, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–32115 Filed 12–30–93; 8:45 am]
BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–CE–47–AD; Amendment 39–8788; AD 94–01–06]

Airworthiness Directives: Rockwell International, Collins Air Transport Division, Traffic Alert and Collision Avoidance System II Processors

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Rockwell International, Collins Air Transport Division (Collins), Traffic Alert and Collision Avoidance System (TCAS) II processors that are installed on aircraft. This action requires replacing the existing TCAS II processor with a new processor that incorporates updated computer logic or reprogramming certain processors while they are still on board the aircraft. The development of candidate enhancements to TCAS II logic that improves its utility and increases its overall operational acceptance prompted the proposed action. The actions specified by this AD are intended to prevent collisions or near misses caused by incompatibility between the TCAS II processors and the current air traffic control system.

EFFECTIVE DATE: February 4, 1994.

ADDRESSES: Service information that is referenced in this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. Information that relates to this AD may be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

FOR FURTHER INFORMATION CONTACT: Mr. Roger A. Souter, Aerospace Engineer, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4134; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that applies to certain Collins TCAS II processors that are installed on aircraft was published in the **Federal Register** on September 9, 1993 (58 FR 47409). The action proposed to require (1) removing from service all processors that do not have computer logic "Change 6.04A" incorporated; and (2) mandatory incorporation of "Change 6.04A" into the TCAS II computer system.

The affected TCAS II processors are not designed for a specific aircraft type. The Collins TCAS II processors are installed on, but not limited to the following:

General Aviation Airplanes

Astra Model 1125 airplanes
BAC Model 1–11 airplanes
British Aerospace Model 125–800 airplanes
Beech Models C90A, B200, 300, 350, and 400A airplanes
Canadair Models CL–600, CL–600–2B16, CL–601, CL–601–1A, and CL–601–3A airplanes
Learjet Models 31, 55, and 60 airplanes
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes
British Aerospace Models HS–125–700 airplanes and
Sabreliner Model 60 airplanes

Air Transport Airplanes

Aerospatiale Models ATR–42 and ATR–72 airplanes
Airbus Industries Models A300B2, A–300B, and A–320 airplanes
British Aerospace Models ATP and 146 airplanes
Boeing Models 707, 727, 737, 747, 757, and 767 airplanes
British Aerospace/Aerospatiale Model Concorde SST airplanes
de Havilland DHC–7 and DHC–8 series airplanes
McDonnell Douglas Models DC–8, DC–9, DC–10, MD–80, and MD–11 airplanes
Ilyushin Model IL–86 airplanes
Lockheed Model L–1011 airplanes
SAAB Models SF340A and SF340B airplanes and
Shorts Models SD3–60–300 airplanes

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received from 31 different owners, operators, manufacturers, and organizations.

All commenters express their concern of the FAA's compliance date of December 30, 1993. The following summarizes the compliance times that the commenters recommended:

- 21 recommended one year or less;
- 3 recommended longer than one year; and
- 7 recommended an extension without a proposed time.

The National Air Traffic Controllers Association and the Airline Pilots Association both recommend an "aggressive implementation" of "Change 6.04A". The FAA has re-evaluated the December 30, 1993, compliance time and has determined that the compliance time should be changed to December 31, 1994. In addition, "Change 6.04A" has been upgraded to "Change 6.04A Enhanced", which eliminates unnecessary non-crossing resolution advisories (RA's) included in "Change 6.04A". Collins has assured the FAA that (1) the upgrade to "Change 6.04A Enhanced" is minor and will be incorporated in the logic change for the TCAS II processor upgrades; and (2) this compliance time correlates with their schedule for disseminating service information and kits necessary to accomplish the incorporation of "Change 6.04A Enhanced". The proposed AD has been changed to reflect the compliance time change and logic change described above.

One commenter states that the affected aircraft operators should operate their TCAS II units in the "TA Mode Only" until the new logic is incorporated because of possible hidden problems that could exist between different logic versions currently installed. The FAA does not concur that these TCAS II units should be operated in the "TA Mode Only". The information provided by an RA may prove to be useful to the pilot. The pilot has the option of whether to utilize the RA information. The proposed AD is unchanged as a result of this comment.

A commenter recommends referencing Collins Service Bulletin (SB) No. 16, TTR–920–34–16, dated December 9, 1993, as a way of complying with the proposed AD. The FAA concurs that this service information is a way of complying with the proposed action, and has included a note in the final rule that so indicates this.

Another commenter proposes a change to the proposed AD that would allow reprogramming the existing unit on board the aircraft as a method of compliance with the proposed action. The FAA concurs that certain existing TCAS II part numbers may be reprogrammed with the unit on board the aircraft. The proposed AD has been modified to include this method on the applicable TCAS II processor part numbers.

One commenter states that reference to the SAAB 340B airplanes in the General Aviation Airplanes list should be deleted. This commenter also recommends that reference to the Aerospatiale ATR–42 and ATR–72 airplanes be moved from the General Aviation Airplanes list to the Air Transport Airplanes list. The FAA concurs and has revised the proposed AD accordingly.

One commenter, who supports the implementation of "Change 6.04A Enhanced", requests that the FAA issue a supplementary notice of proposed rulemaking (NPRM) to propose installing this revised software by June 30, 1995. This commenter states that significant differences exist between "Change 6.04A" and "Change 6.04A Enhanced". The FAA does not concur. Comments received in response to the proposed AD reflect unanimous support for implementing "Change 6.04A Enhanced". The FAA considers the logic change (which reduces non-crossing RA's) to be minor. The intent is to correct the unsafe condition by installing modified TCAS II computer units that incorporate updated logic. The FAA has determined that the requirement to implement Version 6.04A software, including the latest enhancement, will (1) correct the unsafe condition; (2) maintain the same intent originally proposed without altering the substance of the proposed rule; and (3) impose no additional burden on the public than was previously proposed.

In addition, issuing a supplemental NPRM would necessitate (under the provisions of the Administrative Procedures Act) reissuing the notice, reopening the public comment period, considering any additional comments received, and eventually issuing a final rule. The time required for these procedures could take as long as four additional months. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original NPRM, the FAA concludes that soliciting further public comment is not necessary and that further delay of the final rule action is not appropriate.

Several commenters request that the FAA revise the economic impact specified in the proposed AD to reflect costs associated with the development, testing prior to certification, and certification of the modified processor. These costs would be absorbed by suppliers, installers, and airline operators. The FAA does not concur that the economic impact statement include this information. The 5 workhours necessary to accomplish the proposed action was provided to the FAA by the TCAS II processor manufacturer based on the best data available to date. This number represents the time required to install the revised software and test for proper operation after installation. The cost analysis in AD rulemaking actions typically does not include costs associated with development, testing prior to certification, and certification of a modified processor. The proposed action remains unchanged as a result of these comments.

After careful review of all available information including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for the change in compliance time, the logic reference change, the option of reprogramming certain units on board the aircraft, reference to Collins SB No. 16, TTR–920–34–16, dated December 9, 1993, and minor editorial corrections. The FAA has determined that these changes and corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 1,995 TCAS II processors in the U.S. registry will be affected by this AD, that it will take approximately 5 workhours per processor (1 workhour for installation and 4 workhours for operational testing) to accomplish the required action, and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $548,625. These figures are based on the assumption that none of the operators of the airplanes equipped with the affected TCAS II processors have accomplished the actions specified in this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

94-01-06 Rockwell International, Collins Air Transport Division: Amendment 39-8788; Docket No. 93-CE-47-AD.

Applicability: Traffic Alert and Collision Avoidance System II processors that are installed on, but not limited to the following airplanes (all serial numbers), certificated in any category:

General Aviation Airplanes

Astra Model 1125 airplanes
BAC Model 1-11 airplanes
British Aerospace Model 125-800 airplanes
Beech Models C90A, B200, 300, 350, and 400A airplanes
Canadair Models CL-600, CL-600-2B16, CL-601, CL-601-1A, and CL-601-3A airplanes
Learjet Models 31, 55, and 60 airplanes
Falcon Models 20, 50, 200, and 900 airplanes
Gulfstream Models G2 and G3 airplanes
British Aerospace Models HS-125-700 airplanes and
Sabreliner Model 60 airplanes

Air Transport Airplanes

Aerospetiale Models ATR-42 and ATR-72 airplanes
Airbus Industries Models A300B2, A-300B, and A-320 airplanes
British Aerospace Models ATP and 146 airplanes
Boeing Models 707, 727, 737, 747, 757, and 767 airplanes
British Aerospace/Aerospatiale Model Concorde SST airplanes
de Havilland DHC-7 and DHC-8 series airplanes
McDonnell Douglas Models DC-8, DC-9, and DC-10, MD-80, and MD-11 airplanes
Ilyushin Model IL-86 airplanes
Lockheed Model L-1011 airplanes
SAAB Models SF340A and SF340B airplanes and
Shorts Models SD3-60-300 airplanes.

Compliance: Prior to December 31, 1994, unless already accomplished.

To prevent collisions or near misses caused by incompatibility between the traffic alert and collision avoidance system (TCAS) II processors and the current air traffic control system, accomplish the following:

(a) Incorporate "Change 6.04A Enhanced" by accomplishing either (1) or (2) below, as applicable:

(1) Remove any TCAS II processor with a part number (P/N) suffix listed in the "Existing P/N Suffix" column of the table below, and install a corresponding TCAS II processor with a P/N listed in the "New P/N Suffix" column of the table below:

Existing P/N suffix	New P/N suffix
-001, -002, -011, -012, or -612	-020
-102, -111, or -112	-120
-014	-320

Note 1: Collins SB No. 16, TTR-920-34-16, dated December 9, 1993, specifies procedures for incorporating the referenced New P/N suffixes.

(2) Change the part number of the TCAS II unit on board the aircraft by reprogramming the software with a data loader in order to obtain the New P/N Suffix as specified in the following table:

Existing P/N suffix	New P/N suffix
-012	-020
-112	-120
-014	-320

Note 2: Units with P/N suffix of -001, -002, -011, -102, -11, and -612 cannot be reprogrammed on board the aircraft.

Note 3: Operators are encouraged to update the Airplane Flight Manual (AFM) or AFM Supplement. Collins TTR-920 TCAS II Transmitter Receiver Service Information Letter 2-93, titled "CAS Logic Change 6.04A" specifies the information needed for this update.

(b) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(c) An alternative method of compliance or adjustment of the compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office (ACO).

Note 4: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Service information that is referenced in this AD may be obtained from Rockwell International/Collins Air Transport Division, 400 Collins Road, NE; Cedar Rapids, Iowa 52498. This information may also be examined at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

(e) This amendment (39-8788) becomes effective on February 4, 1994.

Issued in Kansas City, Missouri, on December 29, 1993.

Gerald W. Pierce,

Acting Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-32114 Filed 12-30-93; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93-4-000; Order No. 563]

Standards For Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

Issued December 23, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is issuing a final rule adopting regulations to standardize the content of, and procedures for accessing, information relevant to the availability of service on interstate pipelines. The Commission's standards will require pipelines to make this information available on Electronic Bulletin Boards (EBBs) and through downloadable files and will detail procedures and protocols for EBB operation and file transfers.

DATES: February 4, 1994. Pipelines must implement the requirements of this rule by June 1, 1994, except where the procedures and protocols specify otherwise.

ADDRESSES: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:
Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-2294.
Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-1283.
Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208-0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208-1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208-1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington DC 20426.

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I. Introduction

In Order No. 636,[1] the Commission created a new operating environment for interstate pipelines and shippers on those pipelines by requiring pipelines to unbundle the sale of gas from the transportation of that gas and by introducing a mechanism permitting shippers to trade unneeded capacity through Electronic Bulletin Boards (EBBs) maintained by the pipelines. Because shippers will now be transporting gas over multiple pipelines, the Commission concluded that the development of uniform standards covering the content of, and methods for accessing, information relating to transportation would improve the efficiency of gas movement across the interstate pipeline grid. To begin the process of developing the needed standards, the Commission directed its staff to convene a series of informal conferences with all facets of the gas industry to consider standards relating to capacity allocation. As a result of these conferences, the industry reached consensus agreements on the information about available capacity that should be included on EBBs and the procedures and protocols for making that information available.

The Commission is adopting a final rule reflecting the consensus agreements reached by the industry. The rule amends the Commission's open access regulations by requiring pipelines to provide standardized information about the availability of service on their systems. This information will be provided both on the pipelines' EBBs and through files which users can download from the pipelines' computers to their own computers. The rule further requires pipelines to provide this information according to standardized procedures and protocols, which will be maintained in a document entitled "Standardized Data Sets and Communication Protocols" that can be obtained at the Commission. Pipelines must implement the requirements of this rule by June 1, 1994.

The Commission also recognizes the standards and protocols it is adopting will need to be updated as more experience with capacity release and the transportation environment under Order No. 636 is obtained. The Commission, therefore, is proposing to continue the industry conferences to consider and propose modifications when needed.

II. Reporting Requirements

The Commission estimates the public burden for the information requirement under this final rule—including the one-time start-up burden related to pipeline EBBs—will average 6,770 hours per company. The burden estimate includes the time required to review and implement the standards, develop the necessary software, search existing data sources, gather and maintain the data needed, create/validate common and proprietary codes/information and complete and review the information. The information/data elements required to be maintained on pipeline EBBs will be under a new information requirement, FERC-549(B), Gas Pipeline Rates: Capacity Release Information. The annual burden associated with the new FERC-549(B) information requirement will be 528,060 hours based on the estimated initial EBB development burden and daily EBB informational updates by an anticipated 78 pipeline respondents.

Included in the annual burden estimate are 40,560 hours (520 hours per company) attributable to the creation of

[1] Pipeline Service Obligations and Revisions to Regulations Governing Self-Implementing Transportation; and Regulation of Natural Gas Pipelines After Partial Wellhead Decontrol, 57 FR 13267 (Apr. 16, 1992), III FERC Stats. & Regs. Preambles ¶ 30,939 (Apr. 8, 1992), order on reh'g, Order No. 636-A, 57 FR 36128 (August 12, 1992), III FERC Stats. & Regs. Preambles ¶ 30,950 (August 3, 1992), order on reh'g, Order No. 636-B, 57 FR 57911 (Dec. 8, 1992), 61 FERC ¶ 61,272 (1992), appeal pending sub nom., *Atlanta Gas Light Co. and Chattanooga Gas Co.* v. *FERC*, No. 92-8782 (11th Cir. Aug. 13, 1992).

common/proprietary codes to identify pipelines and common transaction points. The codification requirements were not part of the burden estimates contained in the Commission's Notice of Proposed Rulemaking (NOPR) issued July 29, 1993.

Because the final rule contains new information and EBB requirements, many of which are one-time start-up activities, it is anticipated that FERC–549(B) burden will be reduced by 2,250 hours per respondent (for a total reduction of 175,500 hours for all respondents) the year following the implementation of the EBB systems.

Arkla Energy Resources Company and Mississippi River Transmission Corporation state that providing comments on the burden estimate in the NOPR is difficult until final resolution of EBB issues. Interstate Natural Gas Association of American states the burden estimate in the NOPR is reasonable for the items included in the proposed rule, but would be too low if additional items, such as common codes are included. No party has submitted contrary data on a revised burden estimate for the requirements proposed in the NOPR. The only significant change from the NOPR is the requirement to create a common code data base and the Commission has revised its estimate to include the additional burden of this effort. Accordingly, the Commission finds its burden estimates reasonable.

Interested persons may send comments regarding these burden estimates or any other aspect of this information requirement, including suggestions for reductions of the burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415, FAX (202) 208–2425]; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Background

In Order No. 636, the Commission required pipelines to establish EBBs to provide shippers with equal and timely access to relevant information about the availability of service on their systems, including service available through capacity release transactions and firm and interruptible capacity available directly from the pipeline.[2] The Commission recognized the efficiency of capacity allocation would be enhanced by standardizing both the content of capacity release information and the methods by which shippers could access that information.[3] On February 26, 1993, the Commission held a technical conference to examine the industry's efforts in standardizing information content and communication procedures. The participants at the conference expressed a willingness to establish a broad industry-wide working group to reach consensus on standards governing capacity release transactions. The Commission subsequently established informal conferences with Commission staff and all interested members of the gas industry to facilitate the development of consensus standards.[4]

A broad spectrum of firms and organizations participated in these Working Groups, including representatives from the major segments of the gas industry and other interested parties, such as computer and software firms. The participants at the conferences divided their efforts into five working groups covering different areas of standardization and, on July 1 and July 6, 1993, the Working Groups submitted reports on their deliberations. Working Groups 1 and 2 reached consensus on proposed standardized data sets setting forth the information concerning available capacity. Working Group 4 agreed on a set of communication protocols governing the dissemination of the information. Working Group 5 proposed methods for developing codes to identify companies and common transaction points, but had not finalized standards in these areas. Working Group 3 reported on its progress in considering standards relating to business practices other than capacity release, but did not propose any standards. The Working Group reports included minority positions on several items. The Commission also provided an additional period for the public to comment on the Working Group proposals.

On July 29, 1993, the Commission issued a Notice Of Proposed Rulemaking (NOPR) proposing to adopt standards reflecting the consensus agreements reached by the industry working groups.[5] The NOPR also provided for the continuation of the Working Groups and set a number of items for further consideration, with reports generally due by February 1, 1994.[6]

Forty comments were received on the NOPR.[7] In addition, on October 12, 1993, Working Group 5 filed its report containing a finalized proposal for providing common transaction point codes, and on November 3, 1993, Working Groups 1 and 2 filed revisions to the proposed capacity availability data sets. The Commission noticed both filings and provided the industry with an opportunity to submit comments on the filings and to discuss them at an informal conference.[8]

IV. Summary of the Final Rule

The final rule adopts the regulation and standards as proposed in the NOPR, with only slight modifications. The final rule adopts § 284.8(b)(5) requiring pipelines to provide standardized information relevant to the availability of service on their systems. Under the rule, pipelines must provide the standardized information on their EBBs and provide users with the ability to download the standardized information in compliance with standardized procedures and protocols. The rule provides that the details of the required information, procedures, and protocols will be made available in a document entitled "Standardized Data Sets and Communication Protocols," which would be available from the Commission's Public Reference and Files Maintenance Branch.[9] Because the standardized information includes information relevant to the availability of interruptible transportation, the rule also revises § 284.9(b)(4), which governs interruptible transportation, to cross-reference the standardization requirements in § 284.8(b)(5).

In summary, the standardized data sets set forth the information concerning capacity availability that pipelines must provide both on their on-line EBBs and through downloadable files.[10] This information includes offers to sell firm capacity (either by the pipeline or releasing shippers), bids for capacity, awards of capacity, withdrawals of capacity offers and bids, operationally available (i.e., interruptible) capacity, and system-wide notices. The protocols establish principles and procedures relating to the operation of pipeline EBBs and the provision of downloadable files to users. Under these protocols, pipelines will provide for file downloads in two formats: one that complies with standards for Electronic Data Interchange (EDI) promulgated by the American National Standards Institute (ANSI) Accredited Standards Committee (ASC) X12 and a second format that does not comply with ASC X12, but which provides files in standard flat ASCII format.[11] The Commission is changing the implementation of the regulation from the April 1, 1994 date proposed in the NOPR to June 1, 1994, unless the standards and protocols specify a different compliance date.[12]

The comments addressed issues relating to the proposed regulation, the standards and protocols that were proposed for inclusion in the Standardized Data Sets and Communication Protocols, and the items which the Commission proposed not to include in the data sets and protocols. The Commission will address the issues raised in each area in turn.

V. Discussion of the Proposed Regulation

A. Need for a Flexible Mechanism To Make Revisions to the Standards and Protocols

In the NOPR, the Commission proposed to proceed through rulemaking, rather than a policy statement, finding that the benefits of standardization can be achieved only when all pipelines provide the same information through the same procedures. The Commission concluded a rulemaking was the proper approach to issuing mandatory requirements.

Several commenters support the Commission's issuance of a rule to ensure full compliance, but urge the Commission to commit itself to a process for revising the requirements.[13] They maintain that once the industry obtains experience with capacity release, revisions may be needed. Natural supports the use of notice and comment rulemaking, but it requests clarification that, even though the referenced document of standards and protocols is not contained in the Code of Federal Regulations, any modifications to these standards or protocols will be made through rulemaking procedures. It maintains changes to this document could result in significant administrative burdens and costs and, therefore, contends the Administrative Procedure Act (APA) requires that such changes be made only through a notice and comment rulemaking. O&R and Williston urge the Commission to proceed using a policy statement to ensure the utmost flexibility for modifications.

The Commission adheres to its determination to proceed through rulemaking to ensure the uniformity standardization requires. Nevertheless, the Commission agrees with the commenters that revisions and modifications to the standards and protocols will need to be made on a regular basis as the industry obtains more experience with capacity release transactions and with the changed operating environment created by Order No. 636. For example, in the two months after issuance of the NOPR, Working Groups 1 and 2 already have proposed revisions to the standardized data sets to ensure that they function effectively and to clarify a number of items. The Commission proposes to continue the informal conferences and the Working Groups as the best means for monitoring the performance of the standards and proposing needed changes.

To facilitate the Commission's ability to respond to the need for changes, it adopted only a general regulation requiring the pipelines to standardize their provision of capacity information, while the standards and protocols themselves were to be provided in a separate document not contained in the Code of Federal Regulations. The Commission is committed to making needed modifications and revisions to the standards and protocols as quickly as possible. Determining the appropriate mechanism for making such changes is premature, because the method should vary depending on the type of change contemplated; maintenance of the standards to correct problems or improve their functioning should be handled differently than significant substantive changes in the means of providing the information.

In making changes to the data sets and protocols, the Commission intends to follow the APA and provide notice and an opportunity for comment, just as it has in the past with respect to proposed changes by the Working Groups. For example, when Working Groups 1 and 2 submitted their recent set of revisions, the Commission noticed the filing and provided an opportunity for written comments as well as for consideration of the revisions at one of the Commission's EBB conferences.

Although the Commission is issuing the current data sets along with this rule, the Commission realizes that as pipelines begin the process of correlating the downloadable data sets with the information provided by offerors and bidders through their on-line EBBs, difficulties with the data sets may be identified. All pipelines immediately must begin the correlation process, so they can report any significant difficulties to Working Groups 1 and 2. The Commission is committed to implementing the data sets by June 1, 1994, and Working Groups 1 and 2, therefore, should ensure that they provide the Commission with any additional changes they believe are essential in sufficient time to permit implementation of the data sets, including ASC X12 downloadability, by that date. The Commission recognizes that the data sets may not be perfect when implemented, but, as discussed above, the Commission is committed to a process for revising the data sets on a regular basis after implementation.

B. Exemptions for Small Pipelines

Sabine maintains small pipelines may not be able to comply with the requirements outlined in the NOPR. It does not suggest a blanket exemption for small pipelines, but instead recommends they be afforded an opportunity to demonstrate that the costs of implementing the standards would outweigh the benefits of compliance.[14]

The Commission recognizes small pipeline compliance with some of the requirements of the standards and protocols may not be cost justified or essential to obtain the benefits the Commission sought to achieve through

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[2] 18 CFR 284.8(b)(3)(4), 284.9(3)(4).

[3] Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,549.

[4] Notice Of Informal Conferences (March 10, 1993), 54 FR 14530 (Mar. 18, 1993).

[5] Notice Of Proposed Rulemaking, 58 FR 41647 (Aug. 5, 1993), IV FERC Stats. & Regs. Proposed Regulations ¶ 32,500 (July 29, 1993).

[6] Working Group 5 was given an October 1, 1993 report date for its proposal dealing with common transaction point codes.

[7] The commenters, and the abbreviations used for each, are listed in Appendix A. Con Edison and PSCW filed comments late. The Commission will consider these comments.

[8] AER/MRT, IPAA, Geslantic, National Registry, NYMEX/EnerSoft, Process Gas Consumers Group, and Transcó submitted comments on the common code proposal. ANR submitted comments on the revised data sets.

[9] This document will not be published in the **Federal Register**.

[10] On-line EBB refers to a continuous computer connection between a pipeline EBB and a user's computer in which the information from the pipeline's computer is displayed visually on the user's computer and the user can enter data directly to the pipeline's computer. File downloading refers to the transfer in computerized format of a file from the pipeline's computer to the user's computer. The user can use its own internal computer programs to manipulate the data.

[11] ASCII refers to the American Standard Code for Information Interchange, a code for character representation. The Commission recognizes the ASC X12 files also use ASCII characters. The Commission is using the term ASCII download to refer to standard flat file downloads that do not necessarily meet the requirements of the ASC X12 standards.

[12] The June 1, 1994 date will not apply to the requirement that pipelines provide a common code system. The date for implementation of this requirement is November 1, 1994.

[13] Power Generators, AGA, Columbia Distribution, Destec Energy, FMA, and UDC.

[14] It points out the Commission exempted it from compliance with the interactive EBB requirement in its restructuring order. Sabine Pipe Line Company, 63 FERC ¶ 61,010 (1993).

standardization. The Commission cannot make a generic determination of the particular standards and protocols with which small pipelines should not have to comply; compliance with some of the standards may not involve as much added cost as compliance with others and partial compliance may still be of benefit to users.[15] Small pipelines desiring an exemption should file a petition under Rule 207 of the Commission's Rules of Practice and Procedure listing the specific requirements for which they seek exemption and explaining why the exemption is justified.[16] Users will then be given an opportunity to comment on the proposed application.

C. Implementation Date

In the NOPR, the Commission proposed an April 1, 1994 implementation date, finding this date would provide pipelines with sufficient time to program their computers to incorporate the changes required and would permit final testing of the system during the off-peak summer season. Many commenters support the April 1, 1994 implementation date, some suggesting no extension be given.[17] Peoples Gas, et al., and UDC state this date should not result in delay in implementing the on-line EBBs already required by Order No. 636. Some commenters contend the April 1, 1994 date is sufficient for the items included in the NOPR, but would not give sufficient time for implementation of additional requirements resulting from the Working Groups' February 1, 1994 reports on those items which the Commission set for further consideration.[18] Other commenters contend the April 1, 1994 data is too ambitious for all items and assert the Commission should not set an interim date, but should require full implementation by the fall of 1994.[19] AER/MRT contends an April 1, 1994 implementation date for the ASC X12 requirement, in particular, is unreasonably ambitious.

The Commission will agree to delay the implementation date to June 1, 1994, to allow the Working Groups and the pipelines to make final revisions that will improve the functioning of the EBBs and the downloadable data sets. But, given this extension, the Commission expects the pipelines to have an operational set of standards fully implemented by June 1, 1994. At the same time, the June 1, 1994 date will permit capacity release transactions, which may be significant in the off-peak season, to benefit from the standards. The June 1, 1994 date applies to the implementation of EDI, but not to the implementation of common codes, as discussed later.[20] The Commission clarifies that this date applies only to the items included in this rule, not to further items resulting from the February 1, 1994 reports. The June 1, 1994 date also does not delay pipelines' compliance with the EBB requirements of Order No. 636; pipelines must comply with these requirements by the date specified in their restructuring orders.

The June 1 date is not an interim date, but the final date for compliance with these requirements. The reference in the NOPR to final testing during the off-peak season meant only that full scale operation would operate as the final check to uncover lacunae in operation not detected during routine small scale (or beta) testing of the system.[21] As stated earlier, the Commission expects full implementation of the data sets and communication protocols by no later than the June 1, 1994 date.

Williston Basin asserts the February 1, 1994 date for the Working Group reports is premature since the industry will not have sufficient experience with capacity release by then to make additional modifications. The Commission is not persuaded to change the February 1 date for the Working Group reports. These reports are intended to cover the items on which the parties did not have the time to reach consensus in time for their July reports, but which the Commission found were susceptible to resolution given more time. As discussed earlier, the Commission is committed to updating these standards when necessary in light of experience. The timing of additional meetings or reports to consider further revisions are better made at a later point.

D. Modifications to the Regulatory Provisions

NGSA and Process Gas Consumers Group suggest the rule should be revised to require each pipeline to submit a compliance filing specifying in its tariff the details of how it will supply the services required by the rule. UDC suggests the imposition of reporting requirements to permit the Commission and the public to monitor the initial operation of EBBs.

The Commission perceives no need at this point for requiring compliance filings by pipelines or the submission of periodic reports. The requirements of the rule are straight-forward. The communication protocols require pipelines to provide users with scripts detailing the procedures for accessing (logging-on to) the pipelines' computer systems, and providing further detail through tariff filings seems unnecessary. Monitoring of the system can be better accomplished through Commission oversight of pipelines' compliance by accessing their EBBs and through the use of industry conferences than through tariff filings or inflexible periodic reporting requirements.

Process Gas Consumers Group suggests the deletion of the phrase "on its Electronic Bulletin Board" from the opening clause of the rule. It contends this phrase suggests the rule may not cover EDI access to data, may not apply to pipelines using third-party vendors to provide EBB services, and appears to require pipelines to provide information about accessing their EBB solely through their EBB, thereby creating a Catch-22 in which shippers can obtain information on how to access a pipeline's EBB only by knowing how to access the EBB.

The Commission will not delete the reference to Electronic Bulletin Boards because pipelines must provide the required information on their EBBs as well as through downloadable files. The Commission, however, will modify the regulation slightly to make even more explicit that both modes of communication must be provided. The Commission expects pipelines to provide users with instructions for accessing their EBBs or using EDI transfers without having the user first access the pipelines' EBB.

VI. Discussion of Items Included in the Standardized Data Sets and Communication Protocols

The Commission proposed to set forth the information on capacity availability and the protocols governing the dissemination of that information in a separate document entitled Standardized Data Sets and Communication Protocols that would be available at the Commission. The Commission included this document in the NOPR and commenters raised issues with respect to the proposed provisions.

A. Standardized Data Sets

1: Operation of the Data Sets

El Paso requests clarification that a pipeline can leave fields in the data sets blank if the pipeline's tariff does not require the information to be provided. It cites, as an example, differences in pipelines' tariffs as to whether volumetric releases are subject to minimum quantity requirements.

ANR contends the definitions of the terms mandatory and optional, as used for some fields in the data sets, are confusing. It submits mandatory refers to data fields that every pipeline must support, while optional refers to data fields pipelines may offer at their discretion, unless their individual tariffs require that those fields be supported. If optional means that all pipelines must support the field, thereby permitting releasing shippers or bidders with the option of including information in the field, ANR asserts it would have to incur added expense to redesign its EBB to include these fields.[22]

In general, the Commission understands that El Paso's and ANR's interpretation of the manner in which the data sets are designed to operate accords with the intent of the Working Groups, and the Commission agrees with that approach. The Commission, however, sees a need to provide further clarification of the operation of the data sets and the mandatory and optional characterization of certain fields. At the outset, it is important to recognize that these data sets must apply to all pipelines, and, therefore, the Working Groups had to design them to be flexible enough to accommodate the different operational characteristics and information requirements of different pipelines. Implementation of the data sets perforce will differ across pipelines.

The data sets are organized along the following lines. First, they are divided into generic groups for offers, bids, awards, withdrawals, operationally available capacity, and system wide notices. Some of these groups are then divided into specialized data sets, for example for receipt and delivery point information or for storage releases. Each of these subsets contain mandatory, optional, or contingent fields.

All pipelines must support the six broad categories of data sets. Pipeline support of the subsets within each category, however, may depend on the operational characteristics of individual pipelines.[23] For example, data sets are included for receipt and delivery point information and for segment information although not all pipelines are segment systems. Pipelines will choose from among the combination of these data sets the ones that best present the relevant information for their systems.

All pipelines choosing a particular data set will be required to support the mandatory fields in that data set. Pipelines are not required by this rule to support the optional fields. Some pipelines, however, may be required by their tariffs or other requirements, to support some of the optional fields.[24] Moreover, pipelines must display all information, whether mandatory or optional, on their on-line EBBs. For example, if a pipeline is not now displaying mandatory information on its on-line EBB, it must revise its display format to accommodate that information.

As mentioned earlier, the Working Groups are continuing to make refinements in the data sets. In making these refinements, they should make a further effort to clarify how pipelines must implement these requirements, such as which fields pipelines must support and which are optional.

Enron suggests the standardized data sets should be minimum requirements that pipelines can supplement to accommodate tariff provisions. As an example, it claims the data sets do not accommodate Florida Gas' proposal to permit several shippers temporarily to combine their capacity rights to facilitate release transactions.

The Commission is not sure what flexibility Enron is requesting. Pipelines cannot add or delete fields from the capacity data sets because standardization requires that all pipelines use the same structure for downloading, so shippers can process that information using the same computer software. For example, if pipelines could add new data fields, shippers' ASC X12 software might be unable to interpret the information because the software is keyed to the specific fields on the implementation guide. Moreover, the Working Groups anticipated the need to accommodate special release offers or unique circumstances and included special terms and miscellaneous note fields for providing such details.[25] As discussed previously, the Commission recognizes that pipelines may uncover difficulties in correlating their information requirements with the downloadable data sets and the Commission anticipated possibly having to make corrections to the data sets. The best way for pipelines to avoid problems is to begin the implementation process immediately so they can report difficulties to the Working Groups for resolution prior to implementation.

2. Date and Time Stamps

The proposal put forward by Working Groups 1 and 2 included fields identifying the date and time when release offers, bids, withdrawals of bids or offers, and capacity awards are posted on pipelines' EBBs. No consensus was reached over whether fields should be included to identify when pipelines actually received offers, bids, or withdrawals or made the determination to award capacity.

The NOPR proposed to require the inclusion of fields for bid receipt date and time, but not for the date and time offers and withdrawals were received or capacity awarded. Since releasing shippers and pipelines may choose the first come, first served method to break ties, the Commission found that routine posting of the bid receipt date and time would permit shippers to verify the award of capacity without having to contact the pipeline. The Commission did not propose to include the date and time fields for receipt of offers and withdrawals or capacity awards, concluding this information was not as important to capacity release transactions as the bid information. The Commission stated, however, that information about the date and time offers and withdrawals were received and capacity awards determined must be provided by the pipelines upon request.

Several commenters support the Commission's decision to include only the information about bid receipt in the standardized data sets.[26] Some request

[15] For example, provision of the data contained in the standardized data sets may not be unduly costly and would permit users to obtain the same information from all pipelines.

[16] 18 CFR 385.207.

[17] Power Generators, Con Edison, WEV, Destec Energy, NGSA, NYMEX/EnerSoft, O&R, Peoples Gas, et al., UDC, Process Gas Consumers Group (noting that capacity release transactions may be heaviest in the off-season), Transco (if development of ASC X12 not unduly delayed).

[18] INGAA, Natural.

[19] AER/MRT, Columbia Gas, Enron, KGPL.

[20] See text accompanying notes 36 and 51, infra.

[21] By beginning full-scale operation during the summer, the standards will be in effect during the period when capacity release transactions may be significant, but, at the same time, any final problems with the system can be resolved when obtaining gas supplies is not as crucial as during the peak winter heating season.

[22] As an example of the difference in definition, an optional field is releaser contract number. Data Set I.1, line 6. Under ANR's definition, pipelines would have the discretion to include this field. Under the second interpretation, pipelines must provide the field so releasing shippers have the ability to include the information.

[23] The easiest example is the storage data sets which obviously will not have to be supported by pipelines without storage fields.

[24] The contingent fields are filled only when a condition in another field is met.

[25] Enron did not describe the specific problem created by combination offers, and the Commission cannot discern why it could not be accommodated within the prescribed data sets. For example, the combination offer could be assigned a single offer number (Data Set I.1, line 3) with any special circumstances described in the miscellaneous field (Data Set I.1, line 52).

[26] Power Generators, AER/MRT, Columbia Gas, Enron.

clarification as to whether pipelines must include both the date and time bids are received and posted as mandatory fields.[27] Process Gas Consumers Group contends the Commission should require inclusion of all the contested items. It contends the date and time for receipt of capacity withdrawals is particularly important because releasing shippers have only a limited right to withdraw offers; it maintains the date and time information is needed so bidders can determine whether that right has been exercised validly. It contends pipelines easily can make all the contested information available in electronic form. The National Registry requests that even if pipelines are not required to post information concerning the receipt of offers and withdrawals and determination of capacity awards, they should be required to provide this information in electronic form when requested.

The Commission adheres to its decision not to require pipelines routinely to post the receipt date and time for capacity offers and withdrawals and the date and time capacity awards are made. The Working Groups could not reach agreement on providing the additional information, and, as stated in the NOPR, the Commission does not find that this information is as crucial to capacity release, or will be needed as frequently, as the bid information. The Commission will not require pipelines to provide the additional information in electronic form, because such a requirement would not be significantly different than requiring the routine, electronic posting of this information, which the Commission has determined is not necessary. The ability of users to obtain the information for offers, withdrawals, and awards upon request appears sufficient. The Commission clarifies that both the bid receipt and bid posting data fields are mandatory.

PEC Pipeline Group contends the date and time for bids should be the posting time, arguing if receipt date and time is used, the information would be unreliable because the bids would not have been verified for accuracy. It maintains only the date and time of verified bids should be used to break ties.

The Commission agrees, in principle, that the appropriate information to include is the date and time used to break ties. However, in most instances, that will be the date and time bids are received, not when they are verified. For example, when bids are submitted near the end of bidding periods, the pipeline may not verify the bids until after the bid window closes. Under a first come, first served tie breaking system, capacity would be awarded to the highest bid received first in time even if the bid was not verified until later.

[27] KGPL (posting date and time should not be mandatory). NGSA (both should be required).

3. Operationally Available Capacity

The Commission proposed to adopt the Working Group's consensus agreement that pipelines provide information on the amount of unscheduled capacity available at specific locations, such as receipt and delivery points, mainline, or mainline segments. This field serves to identify the capacity that would be available as interruptible service from the pipeline. Edison contends this definition would not allow shippers to determine whether firm or interruptible capacity is available. It suggests operationally available capacity be defined as the capacity a firm shipper can nominate at a point, asserting this definition would include interruptible capacity that can be displaced by a firm shipper. Transco contends the amount of unscheduled capacity is proprietary information that would not be provided in the free market. Williston Basin does not oppose this requirement, but states shippers may be able to use this information only for trend analysis, not for making decisions on a daily basis.

The Commission finds the requirement to provide information on operationally available or unscheduled capacity is necessary to comply with the requirement that pipelines identify the interruptible capacity available on their systems.[28] The unscheduled capacity at a point reveals the capacity available as interruptible service. In response to Edison's comment, the Commission finds that the consensus approach is adequate at this point to disclose both the firm and interruptible capacity available to potential shippers. The operationally available capacity reveals interruptible service and pipelines also are required to post the firm service they have available.[29] The Working Groups still are considering issues relating to operationally available capacity, and the Commission will be open to modification of this definition if needed.[30]

[28] See 18 CFR 284.9(b)(3).

[29] See 18 CFR 284.8(b)(3). Pipelines would post this information under the capacity offer data set I.1.

[30] For example, the Commission is not certain whether Edison and Transco principally are concerned with the definition of operationally available (or unscheduled) capacity or with the different, albeit somewhat related, issue of whether additional fields are required to divide scheduled (or nominated) capacity into firm and interruptible components. The issue of identifying the firm and interruptible components of nominated capacity is still under deliberation by the Working Groups, and Edison and Transco will have a further opportunity to address these issues in the Working Group meetings.

ANR asserts that the data field for operationally available capacity should indicate that the data may be estimates. It also suggests an additional data field to enable the pipeline to qualify the accuracy of any information. The Commission agrees with ANR that the information in this field may be estimates and leaves to the Working Groups the decision on whether another field is necessary to convey information about how the estimates are provided.

As discussed earlier, NGSA suggested pipelines be required to make compliance filings and it submits that these filings include information on the locations at which operationally available information will be provided, the manner of display, and the timeliness of the data. WEV suggests generally that the information provided under the data sets be as current as the pipeline can provide. While pipelines will not be required to make compliance filings to implement this rule, they should provide users with adequate information about the locations at which they are reporting the information and the timeliness of the information, which should be as current as is possible. Since the Commission will have access to the pipelines' EBBs, it can monitor the adequacy of the information pipelines provide.

4. Disclosure of Minimum Conditions

Hadson contends the Commission should eliminate the field providing for disclosure of minimum price terms (Data Set I.1, lines 23 and 24). It contends disclosure of this information while the market is open facilitates collusion among releasing shippers to maintain higher prices in a falling market. The Commission will not eliminate this field because it comports with the Commission's policy of providing releasing shippers with the option of having their minimum conditions posted on the EBB.[31] This technical proceeding is not the proper forum to reexamine the Commission's policy in this regard. The Commission notes, however, that, in a free market, sellers can choose to disclose minimum price conditions if they find such disclosure beneficial. For example,

[31] See El Paso Natural Gas Company, 62 FERC ¶ 61,311 at 62,999–4 (1993). Releasing shippers choosing not to post their minimum conditions disclose those conditions only to the pipeline which then uses those conditions in evaluating bids.

stating a minimum price protects against the possibility a deal will fail simply because a buyer submits a bid lower than the minimum price even though it is willing to pay the minimum price if it had known this condition. Moreover, since minimum price terms are public, the Commission can monitor the situation, and eliminate this field, if experience shows it does facilitate collusion.

B. Communication Protocols

1. Electronic Data Interchange

The Commission proposed to adopt the recommendation of Working Group 4 by requiring EBB operators [32] to provide for electronic file downloading of the standardized data sets in compliance with ASC X12 EDI standards and an implementation guide to be developed by the Gas*Flow group.[33] ASC X12 standards provides an electronic data submission capability that allows computers to exchange information over communication lines using standardized formats. To facilitate these transfers, the ASC X12 standards provide standardized transaction sets for different types of transactions, such as requests for quotations and responses to such requests.[34] Since the ASC X12 transaction sets provide generic data groups applicable to a range of potential applications, the transaction sets must be customized to individual applications by correlating or "mapping" the specific information to an ASC X12 transaction set through an implementation guide.

The Commission anticipated Gas*Flow would be able to receive industry input and submit a final implementation guide to the Commission within a month after promulgation of the final data sets. The Commission also proposed to require file downloads in a flat ASCII format in accordance with documentation developed by Gas*Flow, but requested comments on whether requiring downloads in ASCII format was needed to supplement the downloads in ASC X12 format.[35]

a. ASC X12. A few comments address the proposed implementation date for ASC X12. Tenneco asserts the April 1, 1994 implementation date should not include EDI compliance, because EDI should be implemented only when trading partners agree. AER/MRT suggest the date is too ambitious for ASC X12 implementation. PEC Pipeline Group maintains ANSI must approve the implementation guide developed by Gas*Flow and asserts obtaining this approval could affect the timing of ASC X12 implementation as well as the commitment of ASC X12 software vendors to guarantee the use of their software with these data sets. Despite these concerns, PEC Pipeline Group is willing to go forward and implement ASC X12 based on Gas*Flow's recommendations.

Working Group 4 found that ANSI approval of the data sets was not necessary to go forward with ASC X12 implementation, because the information could be mapped to an existing ASC X12 data set.[36] This is the task Gas*Flow will perform. Only one comment suggested that the April 1, 1994, date was too ambitious for ASC X12 implementation. Since the Commission has now extended the implementation date to June 1, 1994, EBB operators should have sufficient time to program their computer systems to make ASC X12 downloads available by that date.[37]

Tenneco argues no implementation date for ASC X12 be set, contending implementation should occur when trading partners agree. As the comments suggest, EBB operators need lead time to modify their system to incorporate ASC X12 downloads. The Commission, therefore, concludes it needs to set a date by which ASC X12 downloads will be available to ensure that users wanting this service can obtain it expeditiously. As specified by Working Group 4, the details of any special arrangements for access to ASC X12 data between the pipeline and a trading partner would be worked out between those parties.

Other commenters address the Commission's proposal to use Gas*Flow to prepare the implementation guide. UDC and Tenneco support the use of Gas*Flow, but Tenneco suggests the Gas*Flow documentation should be submitted to the Working Groups prior to submission to the Commission. Columbia Gas believes the Commission's estimate of one month for Gas*Flow to prepare the implementation guide is overly optimistic and provides too little opportunity for the industry to participate in development.

The Commission expects Gas*Flow to continue its current procedure of receiving industry comment on its proposed implementation guide and to submit the guide to the Working Groups for their final approval. The extension of the implementation date until June 1, 1994, provides Gas*Flow with sufficient time to obtain industry input and still finalize the implementation guide in time for the industry to meet the June 1, 1994 date. Working Groups 1 and 2 and Gas*Flow should coordinate their efforts to ensure that any additional revisions made by the Working Groups in the data sets are made in sufficient time to ensure that EBB operators can implement the ASC X12 downloads by June 1, 1994. Once the implementation guide is completed, the Commission will include the guide with its data sets.

b. ASCII downloads. A number of commenters contend ASCII downloads are not needed to supplement ASC X12.[38] They generally argue mandating a second download in ASCII format is not worth the increased expense and maintain the resources could be better devoted to development of ASC X12. They recommend ASCII downloads should remain a pipeline option, as proposed by Working Group 4. AER/MRT and Northwest, on the other hand, recommend ASCII downloads replace ASC X12, contending that ASCII is less costly, and faster and more efficient to implement than ASC X12 and that their customers prefer ASCII to ASC X12. Others support the Commission's proposal of maintaining ASCII as an adjunct to ASC X12 since some users may not have ASC X12 capability and ASCII would ensure those users could download the data.[39]

The Commission will not substitute ASCII downloads for ASC X12 as suggested by Northwest and AER/MRT. Even if ASCII downloads would be less

[32] The Commission is adopting Working Group 4's use of the phrase "EBB operator" in the protocols. An EBB operator is either a pipeline or a third-party vendor providing EBB services for a pipeline, and pipelines relying on third-party vendors must ensure they comply with these standards.

[33] Gas*Flow was organized to promote the acceptance of ASC X12 EDI in the gas industry. It is composed of representatives from the gas industry, including local distribution companies, marketers, producers, shippers, and pipelines, and operates under guidance from the Natural Gas Review Committee.

[34] Because the ASC X12 transaction sets have been standardized, commercial software and consulting services are available to assist users in translating data from standard program files to the standardized ASC X12 formats and vice versa.

[35] The flat ASCII files also could be transmitted electronically over communication lines.

[36] Working Group 4 Report at 9.

[37] ASC X12 downloads must be made available to any party, including a value added network (VAN). A VAN is a communications or information system providing an aggregation, routing, and delivery service. In effect, a VAN provides a user with an electronic mailbox for receiving information.

[38] Columbia Gas, El Paso (noting software can translate between ASCII and ASC X12); Enron, INGAA (ASC X12 is more comprehensive and ASCII might not be demanded after ASC X12); National (contending EDI software costs only $500), Natural, WEV, and NGSA (customers wanting ASCII should have to pay the costs).

[39] Brooklyn Union and Process Gas Consumers Group (but noting ASCII may be of limited value unless software developers or the users themselves develop programs to extract the needed information).

expensive to prepare initially, as Northwest and AER/MRT contend, the consensus of the industry was to provide for download capability using ASC X12 because it provided significant benefits when compared with downloads using ASCII format. Some of these benefits include the availability of already standardized and well-accepted procedures and the concomitant software and businesses available to implement the technology. The Commission anticipates that, as ASC X12 is more widely used in the gas industry, users will recognize the advantages to using ASC X12, as they have in other industries, and it will become the industry standard for communication. Nevertheless, to ease the transition to ASC X12 for those customers not yet familiar with the ASC X12 technology, the Commission will require EBB operators to provide for downloading capability in a flat ASCII format as well.

2. Protocols for Communications Software and Hardware, Access Requirements, and Log-On Procedures

Commenters raise questions about the Commission's proposed protocols relating to the software and modem speeds used to access EBBs, the requirements for obtaining access to EBBs, and the procedures and principles for logging-on to computers. Columbia Distribution argues the Commission's proposed protocols fail to reflect two principles to which the pipelines agreed: the pipelines' recognition of the need to develop a mechanism under which users can log-on to multiple EBBs with one phone call; and their commitment to work in good faith to address other customer concerns, such as log-on procedures, additional file transfer options, and other logistical concerns. IPAA suggests a standardized basic user interface must be developed, as opposed to each pipeline specifying a different communications package.

Because the statements mentioned by Columbia Distribution reflected a goal for future discussions, rather than a consensus on specific procedures or principles, the Commission did not include them in its current protocols. The Commission recognizes that further standardization of access requirements could reduce the burden on users which have to access many pipeline EBBs. But Working Group 4 concluded, from its review of pipeline EBBs, that adoption of one standard communication package for accessing EBBs was made impracticable at this time by the proliferation of different hardware and other operating considerations used by the various pipeline EBBs.[40] Instead, it reached consensus on the principle that each EBB operator must provide a script detailing its log-on procedures which is compatible with the software package used to access the EBB and must provide for file downloads through VANs.[41] The Commission, therefore, will not require further standardization in this area at this time, but will leave any such modifications to the continuing Working Group deliberations.

Columbia Distribution also asserts some pipelines are proposing to make electronic contracting mandatory for certain transactions; it contends electronic contracting raises legal and business practice issues that should be addressed by the Working Groups. Issues regarding electronic contracting are legal and policy concerns that have been addressed in restructuring or other proceedings[42] and are beyond the scope of this rulemaking, which focuses on technical issues of how to exchange information. The Working Groups have more than enough technical issues to consider, and the expertise of these groups lies in the technical, not policy, arena.

Northwest contends the Commission should not require pipelines to support the 2400 baud modem speed because any speed slower than 9600 baud will place too great a burden on the EBB communication network. It recommends each pipeline be able to choose the appropriate modem speed so long as it identifies the hardware necessary to access the EBB. Working Group 4 reached consensus on the principle that pipelines must support a minimum modem speed so all potential users will have reasonable access to the EBBs.[43] The Commission will not disturb the consensus, since Working Group 4's rationale is reasonable and the Commission has no data on the impact on user access of permitting pipelines to require higher modem speeds.

The Commission recognizes that modem speeds higher than 9600 are in use. The Commission is amending the protocols to provide that EBB operators supporting such higher modem speeds must comply with the recognized national or international standards governing modem communication.

Transco recommends changes to three of the communication protocols. First, it argues the Commission should clarify that the requirement for 24-hour EDI access (protocol ID) is subject to two separate contingencies, required periodic maintenance and unpredicted downtime. The Commission sees no need to change this language from what was proposed by Working Group 4; the possibility of unforseen events causing computer problems is well understood and need not be addressed separately. Second, Transco contends the Commission's proposed language on advance authorization for third-party access to commercially sensitive data (protocol IIIA) is unclear because it does not specify that the pipeline's customer must provide the authorization.[44] The Commission agrees that the customer must authorize access to commercially sensitive data and will modify this principle accordingly. Third, Transco asserts the Commission's proposed language for log-on scripts (protocol IVB) does not reflect the principle put forward by Working Group 4, because it fails to make clear that the script for customized software packages is part of the customized package, not a separate software code. The Commission will modify this protocol to reflect this principle.

C. Common Codes

1. Introduction

In the NOPR, the Commission found the post-Order No. 636 business environment and the computerization of capacity release transactions required the development of common, standardized codes in two areas: Codes to identify companies; and common transaction point codes to enable shippers to use a single coding structure to identify pipeline points, particularly interconnect points between pipelines. Working Group 5 had identified, but had not finalized, a process for developing both sets of codes. In the NOPR, the Commission stated that it expected Working Group 5 to finalize its proposal for common company codes by February 1, 1994.

For common transaction points, Working Group 5 proposed an approach in which a third-party (code assignor) would prepare a computerized cross-reference table correlating pipelines' proprietary codes (as verified and updated by the pipelines) to a common code. Those wanting to use the common code would maintain the cross-reference

[40] Working Group 4 Report at 6.

[41] By using a VAN, a user could have files from multiple pipelines delivered to its electronic mailbox, obviating the need to log-on to each of the pipelines' EBBs individually.

[42] See Questar Pipeline Company, 62 FERC ¶ 61,192 at 62,307–08, eff'd, 64 FERC ¶ 61,157 at 62,283–84 (1993); Transcontinental Gas Pipe Line Corporation, 65 FERC ¶ 61,023 slip op. at 90–93 (1993).

[43] Working Group 4 Report at 15.

[44] A pipeline customer might want to authorize an agent to obtain commercially sensitive information about the customer, such as the customer's nominations, from the EBB.

table on their computers and could convert proprietary pipeline codes to the common code, and *vice versa*. The Commission was concerned about the feasibility of this process, at least in the short term, because Working Group 5 had not worked out the details of the approach (such as how to select a code assignor, pay for the costs of the initial assignment and continued maintenance, or distribute the code) and had suggested this process be undertaken by a yet undeveloped gas industry standards board. Due to the importance of this issue, the Commission gave the Working Group until October 1, 1993, to finalize this approach or reach another consensus approach. If no consensus was reached, the Commission proposed to select a common code and require the pipelines to make the translation to the common code. The Commission requested comments on whether it should adopt the PI–GRID code developed by the Petroleum Information Corporation or another common code.

Many commenters support the development of a common code and the selection of the PI–GRID code if consensus on an alternative is not reached.[45] Columbia Distribution and Exxon contend the pipelines, not the users, should make the translation. Pipelines contend that requiring them to make the translation to the common code would increase costs significantly, because it would affect all their computer operations, such as those for accounting, scheduling, and management, which are based on the use of proprietary codes.[46] They assert Commission selection of the common code could impede the cooperative efforts of the industry to date and recommend the Commission permit Working Group 5 to continue its efforts.

On October 12, 1993, Working Group 5 filed its report which detailed its consensus agreement on a code assignor process along the lines of its previous proposal. As discussed below, the Commission is adopting the Working Group's proposal.

2. The Proposal

The common code structure proposed by the Working Group would consist of two components. The first would be the code number itself, a 16 digit number, which according to the Working Group, would provide the user with some information about each point.[47] The second is a common code data base consisting of data elements that will be associated with each common code. These data elements include such information as the name of the point, the owner operator of the point, a flow indicator showing the direction of gas flow at the point, and a point locator (e.g., geographic coordinates, survey coordinates, or line number or mile marker) to be provided when the information is available.

Under the proposal, PI–GRID will be the code assignor and will provide a copy of the data base to any requestor at a price reflecting only its distribution and handling costs. The Working Group also proposes that various Code Distributors will enter into agreements with PI–GRID to distribute the code. These agreements would provide that the Code Distributors would not be able to charge for the data base itself, but would be able to charge for other "value added" services, such as selective extraction of information from the data base.[48]

Based on discussions with PI-GRID, the Working Group anticipates six months will be required to establish and validate the common codes for a large majority of interstate pipelines. If the industry begins the coding process this winter, the Working Group expects the creation of a complete common code data base by the 1994–95 winter heating season.

Under the proposal, all business will be transacted with pipelines using proprietary codes. Those wanting to use the common code will have to program their computers to translate between common and proprietary codes to communicate with pipelines. Pipelines will be required to verify and validate their proprietary code information to PI-GRID. The proposal also provides for ongoing assignment of new transaction points and modifications to existing points. The information for these revisions must be provided at least ten days before a new or modified code goes into effect.

The Working Group states that, at this point, the demand for common codes is unknown; some parties using only one or a small number of pipelines may prefer to continue using proprietary codes. Given this level of uncertainty, the Working Group contends the code assignor process provides a number of benefits compared to a requirement that all pipelines adopt a common code. It provides a verified and validated common code system to those who need it, while ensuring that the costs of using common codes are borne by the users, not those still preferring to use proprietary codes. It will provide consistent communication between pipelines and customers using proprietary codes, avoiding the difficulties that would be created if business transactions and other customer contacts employed different coding systems. And, it will provide an initial first test of the level of demand for, and efficiency of using, a common code. Should a common code prove efficient, the Working Group expects the market to evolve to the point where common codes will be used for all communications.

3. Comments on the Working Group Filing

Process Gas Consumers Group and NYMEX/Enersoft raise objections to the code assignor process. Process Gas Consumers Group objects to the shipper having the responsibility for maintaining a rather large data set on its computer and having to develop, or acquire from others, the "intelligence" needed to compare capacity release offers among pipelines to identify possible alternative transportation paths.[49] It maintains that the most burdensome task facing pipelines is verifying their proprietary codes and that including the common code in the capacity release data sets would not be particularly burdensome. It emphasizes that including such codes in the data sets would be for informational purposes only, and would not require the pipelines to conduct business using the common codes.

NYMEX/EnerSoft contend pipelines should not be able to require customers to communicate using proprietary codes, because users will then have to obtain translation software to convert the common codes to the proprietary codes. It maintains that having the pipelines perform the translation is preferable since there are fewer pipelines than market participants.

[45] Power Generators, NYMEX/EnerSoft, WEV, IPAA, Destec Energy, FMA, NGSA, Edison, WEV.

[46] Columbia Gas, Enron, INGAA, KGPL, Natural, Transco, Tenneco.

[47] For example, for each non-wall facility point, the first two numbers indicate the state; the second three, the county; the next five a surface location within the state; the next two, the facility code; the next two, a sub number identifying components of certain types of facilities (e.g., gas plant inlets from tailgates); and the final two, a detail number identifying multiple facilities at the same location.

[48] The Working Group envisions a series of contracts, beginning with a master agreement between PI–GRID and a consortium of the gas industry. If a gas industry standards board eventually is developed, it would then take over this contract. PI–GRID would enter into contracts based on the master agreement with Code Distributors, and the Code Distributors would enter into agreements with users specifying the services Distributor will provide.

[49] It also suggests that a common code system could include mile markers or other geographic location information so software could identify delivery points either upstream or downstream of a location.

The other commenters support the code assignor process. AER/MRT supports the use of proprietary codes for communication between pipelines and users, because use of one code will minimize the likelihood of miscommunication. It also argues requiring shippers to perform the translation appropriately requires those using common codes to bear the costs of that use. Gaslantic contends the Commission should ensure that initial and updated common codes are distributed on an open-access basis, and IPAA similarly supports the provision of the data base without cost.

The National Registry suggests two clarifications. It is concerned about the possibility that PI-GRID, as code assignor, might delay distribution of the code in order to degrade the value of services provided by competitors. It suggests PI-GRID should be required to file a letter with the Commission when it has completed more than 90% of the cross-referencing for each pipeline and provide the code to distributors at that point. It further contends that information on the location of points (such as geographic coordinates or pipeline line number of mile marker) is critical, but that the proposed data sets requires this information to be included only when available. It maintains the Commission should clarify when this information must be provided, suggesting it should be supplied for path pipelines, but not for point-to-point or network pipelines.[50] In line with this request, it suggests the Commission require pipelines to include in their next Form 567 filing an identification of the proprietary point code associated with the points in the flow diagrams.[51]

4. Commission Adoption of the Working Group Proposal

Given the level of support for the code assignor process, the Commission accepts the Working Group proposal and will implement it by requiring pipelines to provide a mechanism through which any person can obtain a validated computerized data base that will provide the ability to convert from pipeline proprietary codes to a common code. The Working Group stated the code assignment process could be completed by the start of the 1994–95 winter heating season, and the Commission, therefore, will require the implementation of this approach by November 1, 1994. The Commission also will require pipelines to ensure that the common codes and data base, and any updates, will be provided without charge, except for reasonable distribution and handling fees.

The Commission will adopt the data sets as proposed by the Working Group with one modification. The Commission will require that the point locator information be mandatory. The Commission agrees with the commenters that the ability to locate pipeline points in relation to other points on the system is important if users are to use the common code data base to determine if a package of released capacity fits their needs. When pipelines verify their proprietary codes to PI-GRID, they must include information sufficient to enable users to locate a point on one pipeline in relation to other points. At this point, the pipelines can choose the method of locating the points, such as geographic coordinates, line number or line marker, but the Commission envisions that eventually all pipelines should move to using geographic coordinates so that points on different pipelines can be related to each other.

Gaslantic and IPAA support the provision of the data base and updates at no cost to the user. The Working Group report states distributors cannot charge more than postage and handling costs for providing the code itself, but can charge for value added services. The Commission is requiring the pipelines to ensure that users can obtain the data base and any updates at a price that reflects only reasonable costs of distribution and handling. Additional charges, however, may be assessed for other value added services relating to updates.

The requirement that point locator information be mandatory for all pipelines obviates the requests by the National Registry for a further definition of the term "available" to describe when point locator information will be provided and for requiring point location disclosure in Form 567 filings. The provision of point locator information also should satisfy Process Gas Consumers Group's request for geographic location points.

The National Registry suggests that the Commission require PI-GRID to file a statement with the Commission when it has completed more than 90% of the cross-referencing for each pipeline and provide the code to distributors at that point. The Commission has set a deadline for final dissemination of the common code data base and finds no reason to require filings as the data are compiled or piecemeal implementation.

NYMEX/Enersoft contend pipelines should be required to conduct business using common codes. The Commission will not impose this requirement at this time, since it goes beyond the consensus agreement reached by Working Group 5. Shippers will be able to use the cross-reference table to convert electronically from the common codes to the proprietary codes for communication with the pipeline.

Process Gas Consumers Group maintains that including the common codes in the capacity release data sets would be more efficient, although they do not suggest pipelines be required to conduct business using the common code. This suggestion too goes beyond the consensus agreement reached by the Working Groups, and the Commission will not impose it.

Moreover, even if the common code (consisting of 16 digits) was included in the capacity release data sets, the efficiency of the process might not be enhanced to a significant degree. The extensive data base that goes along with the common code would not be on the EBBs, and users may very well need the underlying data base to provide the information they require to perform an analysis of capacity paths. As described earlier, the sequence of numbers in the code itself provides users only with limited information, such as identifying the state and county of the point. But the entire common code data base provides additional information about points, such as the point locator information, that users may well need to use the common code effectively in comparing capacity releases over multiple pipelines. The Commission further notes that Working Groups 1 and 2 have included an optional field for common codes which pipelines may make available to their users. Use of this field may provide a test of whether bidders would derive value from access to the common code numbers, without also having the underlying data base available.

In conclusion, the Commission finds that the industry has taken a positive step forward by designing a process that will ensure that those wanting to use common codes can do so effectively within a reasonable period of time. The Commission expects use of this system will prove to enhance efficiency by better enabling shippers to manage the transportation of gas supplies across the nationwide pipeline grid. As pipelines review and update their computer and financial systems in light of the changed business environment created by Order No. 636, the Commission expects them to incorporate the use of common codes. Ultimately, the Commission anticipates that the common codes ultimately will become the standard used for all transactions and communications between pipelines and their customers.

[50] It similarly seeks clarification that available information will be validated and become part of the cross-reference table.

[51] Form No. 567 is diagram of the operating conditions on the pipeline's main transmission system for the prior year. 18 CFR 260.8.

VII. Issues not Addressed in the Standardized Data Sets and Communication Protocols

The Working Group reports included minority positions on some issues, and these issues also were addressed in the comments on the Working Group reports. On several issues, the Commission recommended that the Working Groups continue their efforts to seek resolution, with reports to be made by February 1, 1994. Others involved policy questions which the Commission found were beyond the scope of this proceeding and would be better examined in other fora.

A. Proposed Additions to the Standardized Data Sets

1. Index of Purchasers

The National Registry proposed that an Index of Purchasers (index), which would disclose a variety of information about the capacity rights of firm capacity holders, be available on EBBs and through downloadable files.[52] It asserted this index could be used to establish the baseline contractual rights of current holders of pipeline capacity, information which it believed was needed so potential purchasers could determine the releasable rights of firm capacity holders. In the NOPR, the Commission did not propose to include the proposed Index because the proposal appeared too burdensome and costly. But the Commission stated it considered a more limited Index to have value in identifying firm shippers with releasable capacity. It suggested the Working Groups work on a cost-effective method of presenting such information.

Many commenters contend the benefits of an Index do not warrant the cost, since shippers willing to release capacity are free to post offers to sell and potential purchasers can post so-called want ads, advertising the capacity they want to acquire.[53] INGAA suggests the Commission not prejudge the outcome of this issue, but instead permit the Working Group process to determine whether an Index in any form is appropriate.

Others contend an Index would be valuable in providing convenient access to baseline information on those holding firm service so buyers could determine whom to approach to negotiate prearranged deals for capacity.[54] They contend the Index would replace the index of sales customers pipelines previously maintained and should not be difficult for pipelines to provide.

The Commission will not decide this issue now because it is still being considered by the Working Groups. But the Commission continues to find merit in the concept of providing a cost-effective electronic Index of purchasers and expects the participants in the Working Groups to consider this issue in the same open-minded and conciliatory manner they used to build consensus on other issues in this proceeding.

The Commission also did not propose to make data items for contract number and replacement contract number mandatory fields, finding that these items were tied to the proposed Index.[55] The National Registry contends its request to make contract and replacement contract numbers mandatory fields is independent of the Index. It asserts these data are needed by the Commission, state commissions, and others to create an audit trail to verify the ownership of capacity being released and acquired.

Although the Commission will not require the inclusion of contract and replacement contract number in the data sets at this time, it does recognize that pipelines will need to maintain a correlation between release transactions and the contracts resulting from those transactions for Commission audit requirements if not also for the pipelines' own purposes. Since pipelines must maintain this information in any event, the Working Groups should consider making this information mandatory in the downloadable data sets to make access easier.

2. Nominations for Firm and Interruptible Capacity

No consensus was reached in the Working Groups whether to include fields showing confirmed firm and interruptible nominations and a field showing whether no-notice service is available at a location. Proponents of providing this information contended it was needed for releasing shippers and bidders to assess the value of released capacity, while opponents maintained it is not needed to bid on capacity, but would unfairly tilt the market in favor of bidders. The parties also disagreed on the availability, and costs, of providing the information.

In the NOPR, the Commission found that the available information did not permit it to resolve the issue. Moreover, the Commission recognized the Working Groups had little time to consider this matter fully and, therefore, strongly encouraged them to continue their discussions and to explore alternatives for providing information relevant to the purchasing of capacity that is operationally feasible to provide at reasonable cost.

The comments on the NOPR essentially parallel the previous positions: proponents state the information is needed to make business judgments and is information that would be available in a free market;[56] opponents contend it would undermine capacity release, is too costly to provide, would not be provided in a free market, and unfairly requires shippers to divulge competitive information that would be used against them.[57] NGSA and Destec Energy comment that the Commission must be prepared to judge the merits of disputes, like this one, which are based on competing economic interests. FMA asserts that for unresolved disputes, special consideration should be given to the views of end-users, because they are the ones paying for natural gas and transportation.

The Commission finds that the Working Groups should continue to examine and explore means of reaching a compromise on this issue. The Commission does not agree that the views of any one group should predominate over others. The parties should seek to accommodate each other's interests, as they have on other issues, a process more likely to produce a resolution preferable to both sides than if the Commission decides. Should agreement on whether to provide the information prove elusive, the parties should, at a minimum, seek to agree upon a cost effective method of providing the information if the Commission determines it is necessary.

[52] The Commission requires pipeline tariffs to include an index of firm capacity holders, with less detail than what was proposed by the National Registry. Tennessee Gas Pipeline Company, 65 FERC ¶ 61,224 slip op. at 182 (1993); 18 CFR 154.41.

[53] AER/MRT, Columbia Distribution, Con Edison (if Index is adopted, it should be operated independently and funded by subscribers), Enron (too costly and burdensome); KGPL, Natural, UDC, Williston Basin.

[54] FMA, IPAA, NGSA.

[55] The releaser's contract number is an optional field and so may be included by pipelines when they deem such information to be necessary for operation of their systems.

[56] Power Generators, Destec Energy, FMA, Edison.

[57] Columbia Distribution, Con Edison, Enron, KGPL, National, Natural, Transco, and UDC.

B. Communication Protocols for Uploading Files and Downloading Subsets of Files

In the NOPR, the Commission stated that development of standards permitting users to transmit (upload) files to the pipelines' computers as well as to download subsets of files could increase the efficiency of the capacity allocation mechanism. File upload capability, for example, would permit bidders to submit their bids electronically without having to sign-on to the pipelines' on-line EBBs. The ability to download a subset of a capacity release file, such as release information received after a certain date, would permit users to eliminate unneeded information from the files they download and also increase the efficiency of the communication process. The Commission endorsed Working Group 4's plan to continue its efforts to develop these capabilities.

Many commenters support file uploading to provide efficient communication.[58] Others, principally pipelines, raise questions about file uploading. They contend file uploading is not as well suited as on-line EBBs to handling bids submitted near the close of bidding periods, because, unlike EBBs, uploading is not an interactive system permitting immediate notification to bidders of errors in their bids.[59]

Edison states downloading of file subsets should be a priority. Columbia Gas maintains downloads of subsets based on dates is reasonable, but adding other criteria could be burdensome, while Williston Basin contends any subset downloads would be too expensive. UDC suggests the Commission should not mandate file uploading or downloading of file subsets, but should trust the market to develop these capabilities if they are needed.

The Commission is convinced that the development of effective file uploading and subset downloading capability would markedly enhance communication efficiency related to capacity release. Working Group 4 should continue to assign a high priority to developing standards in this area. The Commission recognizes the concerns with uploads submitted close to the end of the bidding period, but is confident the Working Groups can develop the necessary standards to deal with this issue.[60]

C. Standardization of Non-Capacity Release Business Transactions

The industry established Working Group 3 to consider the development of standards relating to business practices, other than capacity release, resulting from the business changes fostered by pipeline restructuring under Order No. 636. In its report, the Working Group did not propose any standards; it outlined the areas of highest priority and its process for continuing to examine these issues. Several commenters support the continuation of these efforts, maintaining standardization of these business data is critically important to the industry.[61] Vesta contends the Commission should require the pipelines now to provide the 16 data items tentatively established by Working Group 3 as being the most critical. Others oppose the continuation of Working Group 3's deliberations, arguing standards in these areas are not required by Order No. 636 and the Commission should limit its promulgation of standards to those essential for capacity release.[62]

The Commission has recognized the restructuring occasioned by Order No. 636 likely will result in changes to business practices, apart from capacity release, which could require further standardization.[63] Standardizing capacity release information was the first step in this process, but now the Working Groups should turn their attention to standards for these other business transactions.

From over 66 items proposed for review, Working Group 3 found 33 to be of high priority, and of those 33, focused its initial review on ten elements.[64] In the Commission's view, standardization of these ten, or most of them, would provide a good departure point for this effort. The Commission realizes all facets of the industry may not have equal need for all these elements, but these elements would appear to have wide enough coverage that the benefits from standardization will be widespread. Moreover, once standards are in place, those who may not now perceive a need for standards, may come to realize the standards will make their business more efficient, and even those who do not need the standards themselves, stand to benefit if other segments of the industry become more efficient.[65] The Working Group should propose an appropriate implementation schedule for the ten identified data elements. The Working Group also should continue its efforts to identify which of the remaining 23 high priority data elements, as well as any others, require standardization and propose a schedule for implementation of standards for these elements as well.

D. Policy Issues

The minority reports and initial comments raised questions about three policy issues: the method of recovering the costs of standardization, pipeline disclaimers of liability for EBB operation, and the disclosure of non-price considerations underlying capacity release transactions. The Commission stated in the NOPR that such substantive policy issues are beyond the scope of this proceeding and are more appropriately considered in individual proceedings.

1. Costs of Standardization

In the NOPR, the Commission recognized the concern of firm shippers that the costs of compliance with the EBB standards should be spread equitably across all those benefitting from the standards. The Commission encouraged the industry to consider methods for ensuring equitable sharing of such costs, such as user or access fees.

Many commenters support development of a fair and equitable method of allocating costs.[66] Transco and Williston Basin maintain EDI, in particular, is not suitable for all customers and suggest the costs of implementing this technology should be borne by those benefitting from it. PSCW contends LDCs should not have to subsidize the costs of providing information benefitting other parties

[58] Power Generators, Columbia Distribution, Con Edison, NYMEX/EnerSoft, Edison, Tenneco (noting effort should not be oversimplified), WEV, and Williston Basin (noting uploads must be coordinated with interactive EBBs, especially at the end of bidding periods when quick action is needed).

[59] El Paso, Natural, Transco, Northwest, KGPL, National (also may expose pipelines' computers to security risks, such as viruses).

[60] For example, one possible approach the Working Groups could consider is whether all bids received within some time period prior to the close of the bidding period should be treated as having been received at the same time.

[61] Excion, NGSA, O&R.

[62] PEC Pipeline Group, UDC, Tenneco.

[63] See Order No. 636–A, III FERC Stats. & Regs. Preambles at 30,459 (standards may be needed to ensure efficient movement of gas across pipelines); March 10, 1993, Notice (capacity release standards first step in standardization).

[64] The ten elements were: timely flowing volume; timely volume allocation reports; predetermined allocations and shipper ranking; imbalance status; customer scheduled receipts and deliveries; customer specific curtailment/interruption information; customer specific operational flow orders; daily nominated volume acknowledgement; customer penalty status; and input and modify gas nominations. Working Group 3 Report at 5–6.

[65] For example, if standards reduce producers' costs or result in making gas a more viable option for fuel switchable users, all will benefit from lower prices and greater use of the gas transportation system.

[66] AGA, UDC, WEV.

and suggests an incremental pricing system for all information beyond a basic level. A number of commenters are concerned about leaving the issue solely to rate cases.[67] They maintain the policy needs to be consistent across pipelines and urge the Commission to decide on the method for allocating costs in this proceeding or in another generic proceeding, leaving implementation to individual rate cases. Power Generators opposes inclusion of this issue in the Working Groups, because the success of the Groups was due to their focus on technical issues.

El Paso, Tenneco, and INGAA contend user or access fees are not appropriate for recovery of upfront costs, and Natural expresses concern that access fees may not be sufficient to compensate pipelines.[68] FMA suggests, in the absence of consensus on a new approach, the proper approach is to continue with the Order No. 636 policy of recovering fixed costs through reservation charges and only variable costs through usage charges.

In general, the Commission finds that its previous policy of permitting the pipelines to recover fixed costs through a reservation charge and only variable costs through a usage charge is appropriate for the basic EBB service. This basic service includes, at a minimum, the downloadable data sets and communication protocols established in this rule, which the Commission finds are necessary to promote a viable capacity release market and should provide generalized system-wide benefits to all users of the pipeline grid. Until additional standards are presented, the Commission cannot determine whether they provide sufficient benefits to the industry as a whole to warrant inclusion in the basic EBB package.

For enhancements to the basic EBB service, which are not of general benefit, the Commission is open to considering cost recovery approaches that will recover fixed costs from the limited number of users deriving benefit from the service. The Commission encourages the industry to pursue such approaches.

As an example, pipelines could consider using a process for recovering the costs of enhancements to the standard EBB package from only those customers that subscribe to the enhancements. The pipeline could explore with the users of its EBB the costs of providing a particular service or group of services and methods of recovering these costs from the subscribing users, such as through access fees, reservation charges, or direct charges. The pipeline and the users also could establish mechanisms for reimbursing the initial subscribers if additional users later evince an interest in obtaining the services. Once having obtained agreement from those customers desiring the service, the pipeline could make a tariff filing to establish the method of recovery or submit an application or petition for a declaratory order requesting advance Commission review of the proposed costs and charges.[69]

2. Liability

Several commenters suggest the liability standard for EBB operations should be the same across all pipelines and, therefore, should be resolved either in this proceeding or in another generic proceeding.[70] Peoples Gas, *et al.*, supports consideration of the issue in individual proceedings, but suggests the Commission restate here its standard that pipeline liability for EBB operations should be no different than for other operations. UDC asks the Commission to state that it will enforce its standard. Some parties contend the Commission should adopt a new standard, arguing EBBs are not like other pipeline operations since parties other than the pipeline are responsible for providing information.[71] Because verification of such information is time consuming, they recommend each party ensure the accuracy of the information it provides. Con Edison, in contrast, argues that pipeline tariff provisions regarding EBB user indemnification of the pipeline are too onerous and hold the EBB user to a higher standard of responsibility than applies to the pipeline. Enron contends the issue is beyond the scope of this proceeding.

The Commission agrees that this issue goes beyond the technical concerns with standards development which were the focus of this proceeding. The Commission can determine policy related issues in individual cases without having to establish a new generic proceeding and already has addressed this issue in restructuring orders. The Commission has adopted the principle that a pipeline's liability for EBB operations should be the same as for its other operations.[72] The Commission also has addressed user liability standards in individual restructuring orders based upon the specific pipeline EBB agreement.[73] In general, the Commission has determined that a user's liability for unauthorized use of a customer identification number is limited to negligence or a wrongful act.

3. Non-Price Considerations

O&R contends standards are needed to guard against capacity releases involving deals for indirect consideration, such as capacity release transactions tied to gas supply arrangements. It asserts this issue is not better addressed in individual proceedings, but requires a definitive policy statement. The Commission adheres to its conclusion that this issue is outside the scope of this technical rulemaking and should not be an issue considered by the continuing Working Group sessions. The Commission has addressed this concern in individual restructuring proceedings based on the facts and circumstances in each case.[74] As pointed out previously, should the Commission decide a general policy in this area is required in the future, the Commission need not articulate its policy through a generic proceeding, but can do so in individual proceedings.

E. Gas Industry Standards Board

Several of the Working Group reports, and initial comments, endorsed the development of a Gas Industry Standards Board (GISB) which ultimately would replace the Working Groups and continue the development and maintenance of industry-wide standards. In the NOPR, the Commission stated it was interested in this concept and invited submission of a proposal as to how it would operate.

Many commenters support an industry standards board in concept as long as all industry segments are represented, but noted the concept is still in the planning phase so any detailed comments would be premature.[75] A number of commenters

[67] AER/MRT, Brooklyn Union, Columbia Distribution, UDC.

[68] INGAA suggests direct charges may be appropriate for additional services and features that go beyond the standards to be adopted by the Commission.

[69] 18 CFR 385.204, 385.207. This process would be similar to the advance approval for research, development, and demonstration projects. 18 CFR 154.38(d)(5).

[70] Columbia Distribution, Con Edison, NGSA, NYMEX/EnerSoft.

[71] Tenneco, Con Edison, NYSEG, WEV (knowingly providing false information should subject provider to damages).

[72] Algonquin Gas Transmission Company, 65 FERC ¶ 61,019 slip op. at 23–24 (1993); Great Lakes Gas Transmission Limited Partnership, 65 FERC ¶ 61,004 slip op. at 29–30 (1993).

[73] South Georgia Natural Gas Company, 64 FERC ¶ 61,251 slip op. 11–12 (1993); East Tennessee Natural Gas Company, 65 FERC ¶ 61,223 (1993).

[74] See Northwest Pipeline Corporation, 63 FERC ¶ 61,124 at 61,803 (1993); Pacific Gas Transmission Company, 64 FERC ¶ 61,052 at 61,455–56 (1993).

[75] See Power Generators, Northwest, Tenneco, Williston Basin, AGA, AER/MRT, AGD, Brooklyn Union, Columbia Distribution, Columbia Gas,

Continued

emphasized that the GISB concept should not interfere with the on-going efforts of the Working Groups. El Paso did not support an industry standards board unless it was limited to communication format standards, and O&R contended such a board should be an advisory panel only. Con Edison, in contrast, contends the scope of the board should be extended beyond electronic communication to include standardization relating to pipeline operations, imbalances, and nominations.

On November 2, 1993, the Commission met with representatives from the Natural Gas Council to hear a report on the progress of GISB. The Commission remains interested in this concept and looks forward to a detailed proposal. When the Commission receives a proposal, it will give close consideration to the effects of such an independent industry standardization effort on all facets of the gas industry, Commission regulation, and state regulation.

In the meantime, the Working Group efforts should continue apace. The Working Groups should not defer or delay the development of standards in anticipation of the formation of a standards board. Moreover, they should ensure their proposals can stand alone and should not rely upon the eventual existence of a standards board as the means to administer the standards.

VIII. Environmental Analysis

The Commission is required to prepare an Environmental Assessment or an Environmental Impact Statement for any action that may have a significant adverse effect on the human environment.[76] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[77] The action taken here falls within the categorical exclusions in the Commission's regulations for rules that are clarifying or procedural and that relate to information gathering, analysis, and dissemination.[78] Therefore, an environmental assessment is unnecessary and has not been prepared in this rulemaking.

Destec Energy, Exxon, NGSA, Process Gas Consumers Group , IPAA, KGPL, Transco, UDC, Natural, Peoples Gas, et al., Edison, Texaco, PEC Pipeline Group.

[76] Order No. 486, Regulations Implementing the National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs. Preambles 1986–1990 ¶ 30 (1987).

[77] 18 CFR 380.4.

[78] See 18 CFR 380.4(a)(2)(ii), 380.4(a)(5).

IX. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act of 1980 (RFA)[79] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities. Pursuant to section 605(b) of the RFA, the Commission hereby certifies that the regulations proposed herein will not have a significant impact on a substantial number of small entities.

X. Information Collection Requirement

Office of Management and Budget (OMB) regulations require approval of certain information collection requirements imposed by agency rules.[80] The information/EBB requirements of this final rule are under FERC–549(B), Gas Pipeline Rates: Capacity Release Information, (OMB Control No. 1902–0169).

The required information under FERC–549(A) enables the Commission to carry out its legislative mandate under the NGA and NGPA and will ensure a viable capacity release market under Commission Order No. 636. Specifically, the required information allows the Commission to review/monitor capacity release transactions and firm and interruptible capacity made available directly from pipelines and to take appropriate action, where and when necessary.

The Commission is submitting notification of these information/EBB requirements to OMB for its review and approval. Interested persons may send comments regarding the burden estimates or any other aspect of these EBB standards/information requirements, including suggestions for reducing the estimated burden, by contacting the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division, (202) 208–1415]. Comments on the requirements of the subject final rule may also be sent to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 [Attention: Desk Officer for Federal Energy Regulatory Commission].

XI. Effective Date

This final rule shall take effect February 4, 1994.

[79] 5 U.S.C. 601–612.

[80] 5 CFR 1320.14.

List of Subjects in 18 CFR Part 284

Continental shelf, Natural gas, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, part 284, chapter I, title 18, Code of Federal Regulations, is amended as set forth below.

PART 284—CERTAIN SALES AND TRANSPORTATION OF NATURAL GAS UNDER THE NATURAL GAS POLICY ACT OF 1978 AND RELATED AUTHORITIES

1. The authority citation for part 284 continues to read as follows:

Authority: 15 U.S.C. 717–717w, 3301–3432; 42 U.S.C. 7101–7532; 43 U.S.C. 1331–1356.

2. In § 284.8, paragraph (b)(5) is redesignated paragraph (b)(6) and new paragraph 284.8(b)(5) is added to read as follows:

§ 284.8 Firm transportation service.

* * * * *

(b) * * *

(5) *Standardization of information provided on Electronic Bulletin Boards.*

(i) An interstate pipeline must provide access to standardized information relevant to the availability of service on its system on its Electronic Bulletin Board and through downloadable files in compliance with standardized communication protocols. The standardized information and the communication protocols are found in "Standardized Data Sets And Communication Protocols," which can be obtained from the Public Reference and Files Maintenance Branch, Federal Energy Regulatory Commission, 941 North Capitol Street NE., Washington DC 20426.

(ii) An interstate pipeline must implement these standards, procedures, and protocols by June 1, 1994, unless the Standardized Data Sets And Communication Protocols specify an implementation date.

* * * * *

3. In § 284.9, paragraph (b)(4) is revised to read as follows:

§ 284.9 Interruptible transportation service.

* * * * *

(b) * * *

(4) The requirement of paragraph (b)(3) of this section must be implemented through the use of an Electronic Bulletin Board with the features required under § 284.8(b)(4) and complying with § 284.8(b)(5).

* * * * *

Note: This Appendix will not appear in the Code of Federal Regulations.

Appendix A—Parties Filing Comments on the Notice of Proposed Rulemaking

Docket No. RM93–4–000

Commenter	Abbreviation
Ad Hoc Group of Power Generators[81] and Edison Electric Institute.	Power Generators.
American Gas Association	AGA.
ANR Pipeline Company and Colorado Interstate Gas Company.	ANR/CIG.
Arkla Energy Resources Company and Mississippi River Transmission Corporation.	AER/MRT.
Associated Gas Distributors	AGD.
Brooklyn Union Gas Company.	Brooklyn Union.
Columbia Gas Distribution Companies[82].	Columbia Distribution.
Columbia Gas Transmission Corporation and Columbia Gulf Transmission Company.	Columbia Gas.
Consolidated Edison Company of New York, Inc..	Con Edison.
Destec Energy, Inc.	Destec Energy.
El Paso Natural Gas Company.	El Paso.
Enron Interstate Pipelines (Northern Natural Gas Company, Transwestern Pipeline Company, and Florida Gas Transmission Company).	Enron.
Exxon Corporation	Exxon.
Fuel Managers Association	FMA.
Hadson Gas Systems, Inc.	Hadson.
Independent Petroleum Association of America.	IPAA.
Interstate Natural Gas Association of America.	INGAA.
Koch Gateway Pipeline Company.	KGPL.
National Fuel Gas Supply Corporation.	National.
National Registry of Capacity Rights.	National Registry.
Natural Gas Pipeline Company of America.	Natural.
Natural Gas Supply Association.	NGSA.
New York Mercantile Exchange and Enersoft Corporation.	NYMEX/EnerSoft.
New York State Electric & Gas Corporation.	NYSEG.
Northwest Pipeline Corporation.	Northwest.
O&R Energy, Inc.	O&R.
Peoples Gas Light and Coke Company, North Shore Gas Company, and Northern Illinois Gas Company.	Peoples Gas, *et al.*
Process Gas Consumers Group, American Iron and Steel Institute, and Georgia Industrial Group.	Process Gas Consumers Group.
Public Service Commission of Wisconsin.	PSCW.
Sabine Pipe Line Company	Sabine.
Southern California Edison Company.	Edison.
Tenneco Gas	Tenneco.
Texaco, Inc.	Texaco.
Texas Eastern Transmission Corporation, Panhandle Eastern Pipe Line Company, Trunkline Gas Company, and Algonquin Gas Transmission Company.	PEC Pipeline Group.
Transcontinental Gas Pipe Line Corporation.	Transco.
UGI Utilities, Inc.	UGI.
United Distribution Companies.	UDC.
Vesta Energy Company	Vesta.
Williams Energy Ventures, Inc.	WEV.
Williston Basin Interstate Pipeline Company.	Williston Basin.

[81] This group includes American Electric Power Service Corporation, Atlantic City Electric Company, Boston Edison Company, Energy Service, Inc., Fuel Managers Association, New England Power Service Company, Northern States Power Company, Northeast Utilities, Potomac Electric Power Company, Southern Company Services, Virginia Electric and Power Company, West Texas Utilities Company, and Wisconsin Electric Power Company.

[82] Columbia Gas of Kentucky, Inc., Columbia Gas of Maryland, Inc., Columbia Gas of Ohio, Inc., Columbia Gas of Pennsylvania, Inc., and Commonwealth Gas Services, Inc.

[FR Doc. 94–45 Filed 1–4–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N–0244]

Freedom of Information Regulations

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its public information regulations to reflect changes already adopted by the agency as a result of the 1986 amendments to the Freedom of Information Act (the FOIA), executive branch directives, and judicial standards governing disclosure of agency records under the FOIA. In practice, FDA modified its policies and procedures to comply with these changes as they became effective. The regulations are being updated to reflect these changes. The agency is also adding clarifying language to certain of its public information regulations and making technical changes necessary to update citations and cross-references.

DATES: Effective January 5, 1994. Written comments by March 7, 1994. As provided in § 10.40(e) (21 CFR 10.40(e)), FDA is providing an opportunity for public comment on whether the regulations should subsequently be modified or revoked.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Gerald H. Deighton, Freedom of Information Staff (HFI–30), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–6310.

SUPPLEMENTARY INFORMATION:

I. Background

FDA's practice and policy under the FOIA have undergone a number of changes as a result of legislation, executive directives, and judicial precedents over the past years. FDA modified and updated its practices and policies to comply with these changes as they became effective. FDA is now formally amending its public information regulations to reflect changes that were required by law and which have already been put into effect. Specifically, FDA is updating its public information regulations to reflect provisions of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508), the Freedom of Information Reform Act of 1986 (Pub. L. 99–570), Executive Order 12600 (June 23, 1987) establishing predisclosure notification procedures, guidelines promulgated by the Office of Management and Budget (OMB) (52 FR 10012 at 10018, March 27, 1987), the revised Department of Health and Human Services (DHHS) regulations at 45 CFR part 5, and the widely adopted District of Columbia (D.C.) Circuit Court of Appeals opinion in *Public Citizen Health Research Group v. FDA*, 704 F.2d 1280 (D.C. Cir. 1983). The agency is also adding language to §§ 20.53 and 20.85 (21 CFR 20.53 and 20.83) in order to clarify particular aspects of those regulations that have been the subject of some confusion. In addition, FDA is making technical revisions to certain public information regulations to update citations to cross-

references that have changed since the last revision of part 20 (21 CFR part 20).

II. Procedural Amendments

A. Investigatory Records Compiled for Law Enforcement Purposes

The language of § 20.64, regarding records compiled for law enforcement purposes, is being changed to conform to the 1986 amendments to the FOIA, which broadened the FOIA exemption 5 U.S.C. 552(b)(7) that protects certain law enforcement records from mandatory public disclosure.

B. Disclosure to Congress

Section 20.87 is being revised to reflect the provision of the Omnibus Budget Reconciliation Act of 1990 that removed the statutory barrier that previously prohibited FDA from disclosing certain trade secret information to Congress, (Pub. L. 101–508). Section 4755(c)(2) of the Omnibus Budget Reconciliation Act of 1990 amended section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 331(j)) in order to permit FDA to disclose to Congress certain trade secret information that is otherwise prohibited from disclosure except to employees of DHHS or to the courts in relevant judicial proceedings. Such disclosures to Congress may only be pursuant to a request from the Senate, the House of Representatives, any committee or subcommittee with jurisdiction over the matter being investigated, or any joint committee of Congress or any subcommittee of such joint committee.

C. Trade Secret and Confidential Commercial Information

Executive Order 12600, issued June 23, 1987, requires Federal agencies to establish predisclosure notification procedures in certain circumstances before releasing commercial information submitted by businesses. FDA has complied with the terms of the Executive Order since it became effective, and has followed the procedures adopted by DHHS in the regulations published in the **Federal Register** of November 25, 1988 (53 FR 47697). To clarify these practices and for the convenience of the public, FDA is incorporating DHHS' regulations concerning predisclosure notification into FDA's regulations governing the disclosure of trade secret and confidential commercial information at § 20.61. Accordingly, the standards and procedures promulgated by DHHS at 45 CFR 5.65(c), (d), and (e) are being added to FDA's public information regulations in § 20.61(d), (e), and (f).

Section 20.61 also is being amended to reflect the narrow definition of "trade secret" that was adopted by the D.C. Circuit Court of Appeals in *Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983). That definition requires a direct relationship between the information being protected and the productive process. The definition adopted by the D.C. Circuit in that case has become the most widely adopted judicial test for defining trade secret information under the FOIA and is already codified in the DHHS FOIA regulations at 45 CFR 5.65(a). This amendment to § 20.61 will not affect agency practice because FDA has distinguished between trade secret and confidential commercial information in accordance with the definition in the *Public Citizen Health Research Group* v. *FDA* case since that case was decided.

D. Fees and Fee Waivers

Sections 20.42 and 20.43 are being amended to reflect changes required by the 1986 amendments to the FOIA concerning fees and fee waivers and the OMB guidelines promulgated to implement those changes. FDA is adopting the standards and procedures promulgated by DHHS at 45 CFR 5.41 through 5.45, except that 45 CFR 5.42(g) is excluded from § 20.42 because 45 CFR 5.42(g) pertains only to the Social Security Administration. In general, the regulations being adopted codify the descriptions of categories of requesters, the new fee structure and fee limitations, and the revised standards for fee waivers or reductions established by the 1986 amendments to the FOIA.

Section 20.41 is being amended to remove the paragraphs that refer to $25 as the amount that triggers a requirement for prepayment of FOIA fees. The guidelines promulgated by OMB and the DHHS regulations include an advance payment provision for fees that exceed $250. That requirement is being included in revised § 20.42.

III. Clarifications

A. Indexing Trade Secrets and Confidential Commercial or Financial Information

A recent report by the General Accounting Office (GAO) criticized FDA's regulation concerning § 20.53 Indexing trade secrets and confidential or financial information. GAO believed that it would be an abrogation of the agency's responsibilities to disclose information in those circumstances when a submitter failed to intervene to defend against the release of its records. The report hypothesized circumstances in which a firm could suffer severe financial loss because it could not afford legal representation to defend the competitive value of its commercial information.

Although the regulation has been in effect for almost two decades, such a situation has never materialized. The agency continues to believe that the burden of defending business related records should be borne by the owner and submitter of such information, who is in the best position to explain the competitive harm that may result from disclosure. A company's unwillingness to take steps to protect the information it has submitted to the agency and to index the records at issue is ordinarily evidence to FDA that disclosure of the information is not likely to cause the submitter substantial competitive harm.

However, the agency has never and would not at any time abandon its responsibilities to protect information that is truly prohibited from release. Although the situation has never previously arisen, there may be exceptional circumstances that would make it unreasonable for FDA to expect a submitter to participate as an intervenor in defending the proprietary value of its records. Accordingly, the language of the regulation is being amended to clarify that a company's failure to intervene to defend the exempt status of its information and to itemize and index the disputed records is not treated as an automatic waiver of the submitter's interest in protection of the information.

B. Disclosure to Other Federal Agencies

A 1991 contract report "FDA Safeguards Against Improper Disclosure of Financially Sensitive Information," which was undertaken as part of the FDA Commissioner's integrity initiative, recommended that FDA obtain written pledges of confidentiality when it provides nonpublic information to other Federal agencies, such as the Securities Exchange Commission (SEC), as part of cooperative law enforcement efforts. FDA's regulations governing the disclosure of information to other Federal agencies, § 20.85, is intended to require written commitments of confidentiality, and staff manual guides and internal agency guidance have consistently instructed personnel to obtain such written commitments. However, because the 1991 report named above suggested some confusion among FDA and other Department and Federal employees, FDA is adding the word "written" to § 20.85 so that the regulation clearly states that such disclosures can only be made pursuant to a "written" agreement.

IV. Technical Changes

Section 20.100 is being revised to update cross-references that have changed because agency regulations have been amended or new regulations have been promulgated since the last revision of part 20.

Because the agency's current practice with respect to disclosure of records will not change as a result of any of these amendments, and because the amendments set forth in section I. of this document are required either by statute, executive branch directives, or judicial decisions, FDA finds for good cause under § 10.40(e) that notice and public procedure are unnecessary (5 U.S.C. 553(b)(3)(B) and (d)). However, under § 10.40(e), FDA is providing an opportunity for comment to determine whether the regulations should subsequently be modified or revoked.

V. Request for Comments

Interested persons may, on or before March 7, 1994 submit to the Dockets Management Branch (address above) written comments regarding this final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

FDA has examined the impacts of the final rule under Executive Order 12866 and the Regulatory Flexibility Act. Executive Order 12866 directs agencies to assess all costs and benefits of available regulatory alternatives and, when regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). The Regulatory Flexibility Act (Pub. L. 96–354) requires analyzing options for regulatory relief for small businesses.

This rule amends the regulations for FDA's practice and policy under the FOIA. Because the amendments merely update the regulations to reflect procedural changes already adopted by the agency as a result of legislation, executive branch directives, or legal precedents, no additional impact is anticipated. Accordingly, FDA finds that this final rule is not a significant regulatory action as defined by Executive Order 12866. In compliance with the Regulatory Flexibility Act, the agency certifies that the final rule will not have a significant impact on a substantial number of small businesses.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act, the Public Health Service Act, and the Freedom of Information Act, and under the authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation for 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

§ 20.41 [Amended]

2. Section 20.41 Time limitations is amended by removing paragraphs (b)(5), (c), and (d).

3. Section 20.42 is revised to read as follows:

§ 20.42 Fees to be charged.

(a) *Categories of requests.* Paragraphs (a)(1) through (3) of this section state, for each category of request, the type of fees that the Food and Drug Administration will generally charge. However, for each of these categories, the fees may be limited, waived, or reduced for the reasons given in paragraphs (b) and (c) of this section and in § 20.43 or for other reasons.

(1) *Commercial use request.* If the request is for a commercial use, the Food and Drug Administration will charge for the costs of search, review, and duplication.

(2) *Educational and scientific institutions and news media.* If the request is from an educational institution or a noncommercial scientific institution, operated primarily for scholarly or scientific research, or a representative of the news media, and the request is not for a commercial use, the Food and Drug Administration will charge only for the duplication of documents. Also, the Food and Drug Administration will not charge the copying costs for the first 100 pages of duplication.

(3) *Other requests.* If the request is not the kind described in paragraph (a)(1) or (a)(2) of this section, then the Food and Drug Administration will charge only for the search and the duplication. Also, the Food and Drug Administration will not charge for the first 2 hours of search time or for the copying costs of the first 100 pages of duplication.

(b) *General provisions.* (1) The Food and Drug Administration may charge search fees even if the records found are exempt from disclosure or if no records are found.

(2) If, under paragraph (a)(3) of this section, there is no charge for the first 2 hours of search time, and those 2 hours are spent on a computer search, then the 2 free hours are the first 2 hours of the operator's own operation. If the operator spends less than 2 hours on the search, the total search fees will be reduced by the average hourly rate for the operator's time, multiplied by 2.

(3) If, under paragraph (a)(2) or (a)(3) of this section, there is no charge for the first 100 pages of duplication, then those 100 pages are the first 100 pages of photocopies of standard size pages, or the first 100 pages of computer printout. If this method to calculate the fee reduction cannot be used, then the total duplication fee will be reduced by the normal charge for photocopying a standard size page, multiplied by 100.

(4) No charge will be made if the costs of routine collection and processing of the fee are likely to equal or exceed the amount of the fee.

(5) If it is determined that a requester (acting either alone or together with others) is breaking down a single request into a series of requests in order to avoid (or reduce) the fees charged, all these requests may be aggregated for purposes of calculating the fees charged.

(6) Interest will be charged on unpaid bills beginning on the 31st day following the day the bill was sent. Provisions in 45 CFR part 30, the Department of Health and Human Services regulations governing claims collection, will be used in assessing interest, administrative costs, and penalties, and in taking actions to encourage payment.

(c) *Fee schedule.* The Food and Drug Administration charges the following fees:

(1) *Manual searching for or reviewing of records.* When the search or review is performed by employees at grade GS–1 through GS–8, an hourly rate based on the salary of a GS–5, step 7, employee; when done by a GS–9 through GS–14, an hourly rate based on the salary of a

GS–12, step 4, employee; and when done by a GS–15 or above, an hourly rate based on the salary of a GS–15, step 7, employee. In each case, the hourly rate will be computed by taking the current hourly rate for the specified grade and step, adding 16 percent of that rate to cover benefits, and rounding to the nearest whole dollar. As of January 1, 1993, these rates were $12, $24, and $43 respectively. When a search involves employees at more than one of these levels, the Food and Drug Administration will charge the rate appropriate for each.

(2) *Computer searching and printing.* The actual cost of operating the computer plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(3) *Photocopying standard size pages.* $0.10 per page. Freedom of Information Officers may charge lower fees for particular documents where:

(i) The document has already been printed in large numbers;

(ii) The program office determines that using existing stock to answer this request, and any other anticipated Freedom of Information requests, will not interfere with program requirements; and

(iii) The Freedom of Information Officer determines that the lower fee is adequate to recover the prorated share of the original printing costs.

(4) *Photocopying odd-size documents (such as punchcards or blueprints), or reproducing other records (such as tapes).* The actual costs of operating the machine, plus the actual cost of the materials used, plus charges for the time spent by the operator, at the rates given in paragraph (c)(1) of this section.

(5) *Certifying that records are true copies.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide certification, there is a $10 charge per certification.

(6) *Sending records by express mail, certified mail, or other special methods.* This service is not required by the Freedom of Information Act. If the Food and Drug Administration agrees to provide this service, actual costs will be charged.

(7) *Performing any other special service in connection with a request to which the Food and Drug Administration has agreed.* Actual costs of operating any machinery, plus actual cost of any materials used, plus charges for the time of the Food and Drug Administration's employees, at the rates given in paragraph (c)(1) of this section.

(d) *Procedures for assessing and collecting fees.* (1) *Agreement to pay.* The Food and Drug Administration generally assumes that a requester is willing to pay the fees charged for services associated with the request. The requester may specify a limit on the amount to be spent. If it appears that the fees will exceed the limit, the Food and Drug Administration will consult the requester to determine whether to proceed with the search.

(2) *Advance payment.* If a requester has failed to pay previous bills in a timely fashion, or if the Food and Drug Administration's initial review of the request indicates that the charges will exceed $250, the requester will be required to pay past due fees and/or the estimated fees, or a deposit, before the search for the requested records begins. In such cases, the requester will be notified promptly upon receipt of the request, and the administrative time limits prescribed in § 20.41 will begin only after there is an agreement with the requester over payment of fees, or a decision that fee waiver or reduction is appropriate.

(3) *Billing and payment.* Ordinarily, the requester will be required to pay all fees before the Food and Drug Administration will furnish the records. At its discretion, the Food and Drug Administration may send the requester a bill along with or following the records. For example, the Food and Drug Administration may do this if the requester has a history of prompt payment. The Food and Drug Administration may also, at its discretion, aggregate the charges for certain time periods in order to avoid sending numerous small bills to frequent requesters, or to businesses or agents representing requesters. For example, the Food and Drug Administration might send a bill to such a requester once a month. Fees should be paid in accordance with the instructions furnished by the person who responds to the request.

4. Section 20.43 is revised to read as follows:

§ 20.43 Waiver or reduction of fees.

(a) *Standard.* The Associate Commissioner for Public Affairs will waive or reduce the fees that would otherwise be charged if disclosure of the information meets both of the following tests:

(1) Is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the Government; and

(2) It is not primarily in the commercial interest of the requester. These two tests are explained in paragraphs (b) and (c) of this section.

(b) *Public interest.* Disclosure of information satisfies the first test only if it furthers the specific public interest of being likely to contribute significantly to public understanding of Government operations or activities, regardless of any other public interest it may further. In analyzing this question, the Food and Drug Administration will consider the following factors:

(1) Whether the records to be disclosed pertain to the operations or activities of the Federal Government;

(2) Whether disclosure of the records would reveal any meaningful information about Government operations or activities that is not already public knowledge;

(3) Whether disclosure will advance the understanding of the general public as distinguished from a narrow segment of interested persons. Under this factor, the Food and Drug Administration may consider whether the requester is in a position to contribute to public understanding. For example, the Food and Drug Administration may consider whether the requester has such knowledge or expertise as may be necessary to understand the information, and whether the requester's intended use of the information would be likely to disseminate the information to the public. An unsupported claim to be doing research for a book or article does not demonstrate that likelihood, while such a claim by a representative of the news media is better evidence; and

(4) Whether the contribution to public understanding will be a significant one, i.e., will the public's understanding of the Government's operations be substantially greater as a result of the disclosure.

(c) *Not primarily in the requester's commercial interest.* If disclosure passes the test of furthering the specific public interest described in paragraph (b) of this section, the Food and Drug Administration will determine whether disclosure also furthers the requester's commercial interest and, if so, whether this effect outweighs the advancement of that public interest. In applying this second test, the Food and Drug Administration will consider the following factors:

(1) Whether disclosure would further a commercial interest of the requester, or of someone on whose behalf the requester is acting. Commercial interests include interests relating to business, trade, and profit. Both profit and nonprofit-making corporations have commercial interests, as well as individuals, unions, and other associations. The interest of a representative of the news media in using the information for news dissemination purposes will not be considered a commercial interest.

(2) If disclosure would further a commercial interest of the requester, whether that effect outweighs the advancement of the public interest as defined in paragraph (b) of this section.

(d) *Deciding between waiver and reduction.* If the disclosure of the information requested passes both tests described in paragraphs (b) and (c) of this section, the Food and Drug Administration will normally waive fees. However, in some cases the Food and Drug Administration may decide only to reduce the fees. For example, the Food and Drug Administration may do this when disclosure of some but not all of the requested records passes the tests.

(e) *Procedure for requesting a waiver or reduction.* A requester must request a waiver or reduction of fees at the same time as the request for records. The requester should explain why a waiver or reduction is proper under the factors set forth in paragraphs (a) through (d) of this section. Only the Associate Commissioner for Public Affairs may make the decision whether to waive or reduce the fees. If the Food and Drug Administration does not completely grant the request for a waiver or reduction, the denial letter will designate a review official. The requester may appeal the denial to that official. The appeal letter should address reasons for the Associate Commissioner's decision that are set forth in the denial letter.

5. Section 20.53 is amended by revising the last sentence to read as follows:

§ 20.53 Indexing trade secrets and confidential commercial or financial information.

* * * If the affected person fails to intervene to defend the exempt status of the records and to itemize and index the disputed records, the Food and Drug Administration will take this failure into consideration in deciding whether that person has waived such exemption so as to require the Food and Drug Administration to promptly make the records available for public disclosure.

6. Section 20.61 is amended by revising paragraph (a) and by adding new paragraphs (d), (e), and (f) to read as follows:

§ 20.61 Trade secrets and commercial or financial information which is privileged or confidential.

(a) A trade secret may consist of any commercially valuable plan, formula, process, or device that is used for the making, preparing, compounding, or processing of trade commodities and that can be said to be the end product of either innovation or substantial effort. There must be a direct relationship between the trade secret and the productive process.

* * * * *

(d) A person who submits records to the Government may designate part or all of the information in such records as exempt from disclosure under exemption 4 of the Freedom of Information Act. The person may make this designation either at the time the records are submitted to the Government or within a reasonable time thereafter. The designation must be in writing. Where a legend is required by a request for proposals or request for quotations, pursuant to 48 CFR 352.215–12, then that legend is necessary for this purpose. Any such designation will expire 10 years after the records were submitted to the Government.

(e) The procedures in this paragraph apply to records on which the submitter has designated information as provided in paragraph (d) of this section. These procedures also apply to records that were submitted to the Food and Drug Administration when the agency has substantial reason to believe that information in the records could reasonably be considered exempt under exemption 4 of the Freedom of Information Act. Certain exceptions to these procedures are set forth in paragraph (f) of this section.

(1) When the Food and Drug Administration receives a request for such records and determines that disclosure may be required, the Food and Drug Administration will make reasonable efforts to notify the submitter about these facts. The notice will include a copy of the request, and it will inform the submitter about the procedures and time limits for submission and consideration of objections to disclosure. If the Food and Drug Administration must notify a large number of submitters, notification may be done by posting or publishing a notice in a place where the submitters are reasonably likely to become aware of it.

(2) The submitter has 5 working days from receipt of the notice to object to disclosure of any part of the records and to state all bases for its objections.

(3) The Food and Drug Administration will give consideration to all bases that have been stated in a timely manner by the submitter. If the Food and Drug Administration decides to disclose the records, the Food and Drug Administration will notify the submitter in writing. This notice will briefly explain why the agency did not sustain the submitter's objections. The Food and Drug Administration will include with the notice a copy of the records about which the submitter objected, as the agency proposes to disclose them. The notice will state that the Food and Drug Administration intends to disclose the records 5 working days after the submitter receives the notice unless a U.S. District Court orders the agency not to release them.

(4) If a requester files suit under the Freedom of Information Act to obtain records covered by this paragraph, the Food and Drug Administration will promptly notify the submitter.

(5) Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(1) of this section, the Food and Drug Administration will notify the requester that the Food and Drug Administration is giving the submitter a notice and an opportunity to object. Whenever the Food and Drug Administration sends a notice to a submitter under paragraph (e)(3) of this section, the Food and Drug Administration will notify the requester of this fact.

(f) The notice requirements in paragraph (e) of this section do not apply in the following situations:

(1) The Food and Drug Administration decided not to disclose the records;

(2) The information has previously been published or made generally available;

(3) Disclosure is required by a regulation issued after notice and opportunity for public comment, that specifies narrow categories of records that are to be disclosed under the Freedom of Information Act, but in this case a submitter may still designate records as described in paragraph (d) of this section, and in exceptional cases, the Food and Drug Administration may, at its discretion, follow the notice procedures in paragraph (e) of this section;

(4) The information requested has not been designated by the submitter as exempt from disclosure when the submitter had an opportunity to do so at the time of submission of the information or within a reasonable time thereafter, unless the Food and Drug Administration has substantial reason to believe that disclosure of the information would result in competitive harm; or

(5) The designation appears to be obviously frivolous, but in this case the Food and Drug Administration will still give the submitter the written notice required by paragraph (e)(3) of this

section (although this notice need not explain our decision or include a copy of the records), and the Food and Drug Administration will notify the requester as described in paragraph (e)(5) of this section.

7. Section 20.64 is amended by revising the section heading and paragraph (a), and by removing the word "investigatory" in paragraphs (b), (c) introductory text, (d) introductory text, and (e) to read as follows:

§ 20.64 Records or information compiled for law enforcement purposes.

(a) Records or information compiled for law enforcement purposes may be withheld from public disclosure pursuant to the provisions of this section to the extent that disclosure of such records or information:

(1) Could reasonably be expected to interfere with enforcement proceedings;

(2) Would deprive a person to a right to a fair trial or an impartial adjudication;

(3) Could reasonably be expected to constitute an unwarranted invasion of personal privacy;

(4) Could reasonably be expected to disclose the identity of a confidential source, including a State, local, or foreign agency or authority or any private institution which furnished information on a confidential basis; and information furnished by a confidential source in the case of a record compiled by the Food and Drug Administration or any other criminal law enforcement authority in the course of a criminal investigation or by an agency conducting a lawful national security intelligence investigation;

(5) Would disclose techniques and procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions, if such disclosure could reasonably be expected to risk circumvention of the law; or

(6) Could reasonably be expected to endanger the life or physical safety of any individual.

* * * * *

§ 20.81 [Amended]

8. Section 20.81 *Data and information previously disclosed to the public* is amended in paragraph (a)(3) by removing the phrase "part 312 of this chapter or other".

§ 20.85 [Amended]

9. Section 20.85 *Disclosure to other Federal government departments and agencies* is amended in the last sentence by removing the words "an agreement" and adding in their place the words "a written agreement".

10. Section 20.87 is amended by revising paragraph (a) to read as follows:

§ 20.87 Disclosure to Congress.

(a) All records of the Food and Drug Administration shall be disclosed to Congress upon an authorized request.

* * * * *

11. Section 20.100 is amended by revising paragraphs (c)(7), (c)(14), (c)(16), and (c)(17) and by adding new paragraphs (c)(35) through (c)(40) to read as follows:

§ 20.100 Applicability; cross-reference to other regulations.

* * * * *

(c) * * *

* * * * *

(7) Food additive petitions, in §§ 171.1(h) and 571.1(h) of this chapter.

* * * * *

(14) Investigational new drug notice, in § 312.130 of this chapter.

* * * * *

(16) Master file for a new drug application, in § 312.420 of this chapter.

(17) New drug application file, in § 314.430 of this chapter.

* * * * *

(35) Premarket approval application, in § 814.9 of this chapter.

(36) Report of certain adverse experiences with a medical device, in § 803.9 of this chapter.

(37) Disqualification determination of an institutional review board, in § 56.122 of this chapter.

(38) Disqualification determination of a nonclinical laboratory, in § 58.213 of this chapter.

(39) Minutes or records regarding a public advisory committee, in § 14.65(c) of this chapter.

(40) Data submitted regarding persons receiving an implanted pacemaker device or lead, in § 805.25 of this chapter.

Dated: December 23, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–98 Filed 1–4–94; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 93N–0439]

21 CFR Part 100

Misleading Containers; Nonfunctional Slack-Fill

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is revoking a regulation that implements section 403(d) of the Federal Food, Drug, and Cosmetic Act (the act) by defining the circumstances in which a food is misbranded, and that became final by operation of law on May 10, 1993. In addition, the agency is replacing this revoked regulation with one that was included in a final rule that published in the **Federal Register** of December 6, 1993 (58 FR 64123).

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Michelle A. Smith, Center for Food Safety and Applied Nutrition (HFS–158), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5099.

SUPPLEMENTARY INFORMATION: The Nutrition Labeling and Education Act of 1990 (the 1990 amendments) (Pub. L. 101–535) became law on November 8, 1990. Section 6 of the 1990 amendments established a procedure under which FDA was given 30 months from the date of their enactment to promulgate final rules implementing that section. Pursuant to that procedure, FDA published a proposal on January 6, 1993 (58 FR 2957) (the misleading container proposal), to amend its regulations by implementing new § 100.100 (21 CFR 100.100) to define the circumstances in which a food is misbranded under section 403(d) of the act (21 U.S.C. 343(d)).

Section 6(b)(3)(D)(ii) of the 1990 amendments provides that, if the final rule to implement section 403(d) of the act is not promulgated within 30 months of the date of passage of the 1990 amendments (November 8, 1990), then the regulation proposed to implement that section is to be considered a final regulation. Further, section 6 provides that States and their political subdivisions shall be preempted with respect to section 403(d) of the act at that time.

The 30-month period established by the 1990 amendments expired on May 9, 1993. Because FDA was unable to publish a final rule, in the proceeding instituted in January 1993, by May 9, 1993, FDA published a document in the **Federal Register** of May 12, 1993 (58 FR 27932) (the May 12, 1993, regulation), announcing that the regulation that FDA had proposed in the misleading container proposal was considered to be a final regulation by operation of law, effective May 10, 1993. This document did not conclude the rulemaking begun in January, 1993, however. Rather, the May 12, 1993, regulation was part of a separate proceeding that is compelled under section 6(b)(3)(D)(ii) of the 1990 amendments (see H. Rept. 101–538, 101st Cong., 2d sess. 18 and 136 Congressional Record 5842 on the effect of this "hammer" provision).

In the **Federal Register** of December 6, 1993 (58 FR 64123), FDA published a final rule on the circumstances in which containers are misleading and thus would misbrand the food under section 403(d) of the act. This final rule concluded the proceeding that the agency instituted with the misleading container proposal. In the May 12, 1993, document, FDA stated that when it issued such a final rule, it would act to supersede the regulation that had become final by operation of law. Thus, the agency proposed to withdraw the May 10, 1993, regulation in the **Federal Register** of December 6, 1993 (58 FR 64208).

FDA explained that it was proposing to do so for two reasons. First, the May 10, 1993, regulation did not have the benefit of public comment. Thus, the regulation included in the December 6, 1993, final rule (the December 6, 1993 regulation), which was the product of notice and comment rulemaking, is better able than the May 10, 1993, regulation to ensure adequate implementation of section 403(d) of the act and to facilitate compliance. Second, FDA tentatively found that because of the minor differences between the May 10, 1993, regulation and the December 6, 1993, regulation, replacing the former with the latter will not result in any hardship to manufacturers who have relied on the May 10, 1993, regulation.

FDA gave interested persons 10 days to comment on its proposal to withdraw the May 10, 1993, regulation. It also proposed to make any final rule that issues in this proceeding effective on the date of its publication in order to ensure that the supersession of the May 10, 1993, regulation proceeded as expeditiously as possible and with a minimum of confusion or ambiguity.

The comment period on the proposal to withdraw the May 10, 1993, regulation closed on December 17, 1993. FDA received no comments on this proposed action. Therefore, FDA advises that the May 10, 1993, regulation, which became final by operation of law, is withdrawn. FDA advises that it is replacing that regulation with the December 6, 1993, regulation.

Environmental Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA stated that it had determined under 21 CFR 25.24(a)(ii) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment, and that as a result, neither an environmental assessment nor an environmental impact statement is required. FDA received no comments on the conclusion; therefore FDA restates it here.

Economic Impact

In the December 6, 1993, proposal (58 FR 64208 at 64209), FDA incorporated the conclusion from the December 6, 1993, final rule on slack-fill that the agency's action in replacing the May 10, 1993, regulation would not have any significant economic effects. The agency received no comments on this conclusion and consequently is restating it here.

List of Subject in 21 CFR Part 100

Administrative practice and procedure, Food labeling, Foods.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 100 is amended as follows:

PART 100—GENERAL

1. The authority citation for 21 CFR part 100 continues to read as follows:

Authority: Secs. 201, 301, 307, 402, 403, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 337, 342, 343, 348, 371).

§ 100.100 [Removed]

2. Subpart F consisting of § 100.100 *Misleading containers* (as published in the **Federal Register** of May 12, 1993 (58 FR 27932), is removed.

3. For the convenience of the reader, FDA is republishing without change new subpart F, consisting of § 100.100 (as published in the **Federal Register** of December 6, 1993 (58 FR 64136) to read as follows:

Subpart F—Misbranding for Reasons Other Than Labeling

§ 100.100 Misleading containers.

In accordance with section 403(d) of the act, a food shall be deemed to be misbranded if its container is so made, formed, or filled as to be misleading.

(a) A container that does not allow the consumer to fully view its contents shall be considered to be filled as to be misleading if it contains nonfunctional slack-fill. Slack-fill is the difference between the actual capacity of a container and the volume of product contained therein. Nonfunctional slack-fill is the empty space in a package that is filled to less than its capacity for reasons other than:

(1) Protection of the contents of the package;

(2) The requirements of the machines used for enclosing the contents in such package;

(3) Unavoidable product settling during shipping and handling;

(4) The need for the package to perform a specific function (e.g., where packaging plays a role in the preparation or consumption of a food), where such function is inherent to the nature of the food and is clearly communicated to consumers;

(5) The fact that the product consists of a food packaged in a reusable container where the container is part of the presentation of the food and has value which is both significant in proportion to the value of the product and independent of its function to hold the food, e.g., a gift product consisting of a food or foods combined with a container that is intended for further use after the food is consumed; or durable commemorative or promotional packages; or

(6) Inability to increase level of fill or to further reduce the size of the package (e.g., where some minimum package size is necessary to accommodate required food labeling (excluding any vignettes or other nonmandatory designs or label information), discourage pilfering, facilitate handling, or accommodate tamper-resistant devices).

(b) [Reserved]

Dated: December 30, 1993.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 93–32112 Filed 12–30–93; 2:40 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[T.D. ATF–352; RE: Notice No. 781]

RIN 1512–AA07

Lake Wisconsin Viticultural Area (92F–017P)

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Final rule, Treasury decision.

SUMMARY: This final rule establishes a viticultural area in Columbia and Dane Counties, Wisconsin, to be known as Lake Wisconsin. The petition was submitted by Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Wollersheim Winery located near Prairie-du-Sac, Wisconsin. The establishment of viticultural areas and

the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising will help consumers better identify the wines they may purchase, and will help winemakers distinguish their products from wines made in other areas.

EFFECTIVE DATE: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226, (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of American viticultural areas. Section 4.25a(e)(l), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical characteristics (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the proposed boundaries prominently marked.

Petition

ATF received a petition from Mr. Charles W. Dean, Viticultural Area Consultant, on behalf of Robert P. Wollersheim and JoAnn I. Wollersheim, proprietors and landowners of Wollersheim Winery near Prairie-du-Sac, Wisconsin, to establish a viticultural area in south-central Wisconsin to be known as "Lake Wisconsin." The viticultural area is bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. Wollersheim Winery is the sole winery located in the 28,000 acre viticultural area and there are currently twenty-three acres planted to wine grapes.

Notice of Proposed Rulemaking

In response to Mr. Wollersheim's petition, ATF published a notice of proposed rulemaking, Notice No. 781, in the **Federal Register** on September 24, 1993 (58 FR 49949), proposing the establishment of the Lake Wisconsin viticultural area. The notice requested comments from all interested persons by October 25, 1993.

Comments to Notice of Proposed Rulemaking

Seven comments were received concerning the proposal to establish the Lake Wisconsin viticultural area. All seven commenters stated that they fully support the proposed area as delineated in Notice No. 781. One of the commenters was under the mistaken impression that this area had been proposed to be called the Roxbury Viticultural District. However, despite the misunderstanding about the name, this commenter stated in his letter that he heartily supports the establishment of a new viticultural area in this part of Wisconsin which includes the Wollersheim Winery.

Viticultural Area Name

The place-name "Lake Wisconsin" was first used ca. 1917 to describe a widened section of the Wisconsin River that was submerged when the Baraboo hydroelectric dam was constructed one mile upriver from the town of Prairie-du-Sac. A travel brochure and map produced by the Lake Wisconsin Chamber of Commerce in 1989, entitled Lake Wisconsin Chamber Recreation Area Vacationland, shows various recreational and tourist facilities in the Lake Wisconsin viticultural area. The viticultural area has a long history of wine grape growing and wine making activity. Agoston Haraszthy, an immigrant from Hungary well known as an early pioneer in the American wine industry, first planted wine grapes on Wollersheim Winery property in 1847. Cold winter temperatures frustrated this early attempt to establish grapevines and two years later Haraszthy moved to California. However, wine grape growing and wine making continued in this area until 1900. Because of its role in the early history of Wisconsin, Wollersheim Winery and the adjacent homestead were listed on the National Register of Historic Places in 1976.

Evidence of Boundaries

The boundaries of the Lake Wisconsin viticultural area are clearly shown on two U.S.G.S. quadrangle maps, Sauk City, Wisc. and Lodi, Wisc. The Sauk City, Wisc. quadrangle map shows the viticultural area to be bounded by the shoreline of Lake Wisconsin and the Wisconsin River on the north and west. The southern boundary is defined by Mack Road and State Highway Y, and the eastern boundary, shown on the Lodi, Wisc. quadrangle map, follows State Highway Y, State Highway 60, State Highway 113, and Spring Creek. The petitioner states that some of the natural boundary features, which closely approximate some of the roads and highways used as boundaries for this viticultural area, can be found on county maps, plat maps and county atlases dating back to 1861.

Geographical Features

The Wisconsin River (of which Lake Wisconsin is a part) is a major natural feature of the State and of the region. It is the largest river in the State after the Mississippi River, of which it is a major tributary. Roads and highways define the southern boundary of the Lake Wisconsin viticultural area. The landscape of the viticultural area is comprised of discontinuous end moraines interspersed with ground moraines and occasional outwash plains. The landscape outside the southern boundary is of higher elevation and is comprised of rolling, hummocky upland with some outwash material. The eastern boundary, which closely approximates Spring Creek, identifies an area of low relief, continuous and intermittent stream drainage, and marsh. To the east of Spring Creek and outside the viticultural area is a glaciated upland plain where the landscape is generally of higher elevations and comprised of end moraines with little or no outwash material.

Topography and Elevation

The vineyards in the viticultural area are located at an elevation of 800–900 feet along south and southwest facing slopes of 10–40 percent gradient. This combination of elevation, aspect, and relief contributes to the well-drained quality of the vineyard soils, the free circulation of air in summer and winter, and the locally longer growing season. Outside the viticultural area to the north and west, higher elevations of 900–1,200 feet increase the risk of wind damage to grapevines, or the soils become too shallow for successful grape cultivation where bedrock is nearer the surface or exposed. Outside the viticultural area to the east, elevations between 720 feet (Wisconsin River level) and 800 feet are generally less well drained or are saturated during periods of rainfall or snowmelt.

Climate

The Lake Wisconsin viticultural area benefits from the microclimate effects of the lower Wisconsin River valley. The river moderates winter temperatures in the viticultural area several degrees higher than areas north and west of the river or further south. Air circulation within the river valley helps prevent cold air accumulation and frost pockets from forming in the vineyards. In summer, the river valley and limestone bluffs along the river's edge serve to channel air currents and increase localized air circulation, protecting the vineyards from mildew and rot in hot, humid weather.

The viticultural area has a mean precipitation of twenty-nine inches, one inch less than the average rainfall in the area north and east, three inches less than the average rainfall in the area to the west, and two inches less than the State average. The petitioner describes the viticultural area as an "island" of locally below-average rainfall and drier soils conducive to the grapevines concentrating their vigor in ripening fruit. The viticultural area has a growing season of 140–160 days, ten to twenty days longer than across the river to the west and to the north. The additional frost-free period allows the grapes to reach maturity before the onset of winter cold.

Soil

The Wisconsin River forms an approximate dividing line between the glaciated and unglaciated regions of south-central Wisconsin. Soils primarily of glacial till and outwash material are found east of the river valley and characterize the soils in the viticultural area. The unglaciated "driftless" soils west of the valley result from significant differences in soil parent materials, microrelief, and drainage. The soils that support viticulture within the viticultural area are Typic Hapludalfs of mixed mineral material and silty or loamy texture. All are underlain by gravelly or sandy loam glacial till or by dolomitic bedrock. The soils are typically well drained and about 36–60 inches deep on slopes and rolling areas of 2–45 percent gradient. The soils outside the viticultural area to the north and west are predominately unglaciated, and so are not underlain by glacial till and contain less outwash material. The soils outside the area to the south and east, although glacially derived, are found on topography of rolling upland with fewer limestone outcrops and no outwash plains. The soils there have formed on slightly higher elevations over discontinuous end and ground moraines.

Viticultural Area Boundary

The boundary of the Lake Wisconsin viticultural area may be found on two United States Geological Survey (U.S.G.S.) maps with a scale of 1:24,000. The boundary is described in § 9.146.

Executive Order 12866

It has been determined that this rule is not a significant regulatory action, because

(1) It will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. The establishment of a viticultural area is neither an endorsement nor approval by ATF of the quality of wine produced in the area, but rather an identification of an area that is distinct from surrounding areas. This process merely allows wineries to more accurately describe the origin of their wines to the consumers, and helps consumers identify the wines they purchase. Designation of a viticultural area itself has no significant economic impact because any commercial advantage can come only from consumer acceptance of wines made from grapes grown within the area. In addition, no new recordkeeping or reporting requirements are imposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. Chapter 35, and its implementing regulations, 5 CFR Part 1320, do not apply to this final rule because no requirement to collect information is imposed.

Drafting Information

The principal author of this document is Robert White, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practice and procedure, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Accordingly, Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.146 to read as follows:

Subpart C—Approved American Viticultural Areas

§ 9.146 Lake Wisconsin.

(a) *Name.* The name of the viticultural area described in this section is "Lake Wisconsin."

(b) *Approved maps.* The appropriate maps for determining the boundary of the "Lake Wisconsin" viticultural area are two U.S.G.S. 7.5 minute series topographical maps of the 1:24,000 scale. They are titled:

(1) "Sauk City, Wis.," 1975; and

(2) "Lodi, Wis.," 1975.

(c) *Boundary.* The Lake Wisconsin viticultural area is located in Columbia and Dane Counties, Wisconsin. The boundary is as follows:

(1) The point of beginning is on the "Lodi, Wisc." U.S.G.S. map in the northeast quarter-section of section 17, Lodi Township, Columbia County, where Spring Creek enters Lake Wisconsin;

(2) From the point of beginning, follow the southern shoreline of Lake Wisconsin northwest to where Lake

Wisconsin narrows and becomes the Wisconsin River on the map, in the vicinity of the town of Merrimac, Sauk County;

(3) Then continue along the southern shoreline of the Wisconsin River, west and south past Goose Egg Hill, Columbia County, on the "Sauk City, Wisc." quadrangle map, and then west to a southwest bend in the shoreline opposite Wiegands Bay, Sauk County, where the Wisconsin River becomes Lake Wisconsin again on the map;

(4) Then southwest and south along the eastern shoreline of Lake Wisconsin, to the powerplant that defines where Lake Wisconsin ends and the Wisconsin River begins again;

(5) Then continuing south along the Wisconsin River shoreline to where it intersects with U.S. Highway 12 opposite Sauk City, Sauk County;

(6) Then in a southeasterly direction on U.S. Highway 12 to the intersection at State Highway 188, just over one-half a mile;

(7) Then in a northeasterly direction about 1,000 feet on State Highway 188, to the intersection of Mack Road;

(8) Then east on Mack Road to the intersection of State Highway Y, about 3 miles;

(9) Then follow State Highway Y in a generally northeasterly direction onto the "Lodi, Wisc." quadrangle map and continue in a northeasterly direction to the intersection with State Highway 60;

(10) Then in a northeasterly direction on State Highway 60 to the intersection with State Highway 113 in the town of Lodi;

(11) Then in a northwesterly direction on State Highway 113 to where it crosses Spring Creek the second time just before Chrislaw Road;

(12) Then follow Spring Creek in a northwesterly direction to where it enters Lake Wisconsin, the point of beginning.

Dated: November 24, 1993.

Daniel R. Black,

Acting Director.

Approved: December 17, 1993.

John P. Simpson,

Deputy Assistant Secretary, (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 94–147 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–31–U

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 904

Arkansas' Abandoned Mine Land Reclamation Plan

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is approving an amendment to the Arkansas abandoned mine land reclamation plan (hereinafter referred to as the "Arkansas plan") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of revisions to the Arkansas statute pertaining to the eligibility of project sites for abandoned mined land (AML) funds. The amendment is intended to revise the Arkansas plan to be in compliance with SMCRA.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: James H. Moncrief, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION:

I. Background on the Arkansas Plan
II. Submission of Amendment
III. Director's Findings
IV. Summary and Disposition of Comments
V. Director's Decision
VI. Procedural Determinations

I. Background on the Arkansas Plan

On May 2, 1983, the Secretary of the Interior approved the Arkansas plan. General background information on the Arkansas plan, including the Secretary's findings, the disposition of comments, and the approval of the Arkansas plan can be found in the May 2, 1983, Federal Register (48 FR 19710).

II. Submission of Amendment

By letter dated October 6, 1993 (Administrative Record No. AAML–18), Arkansas submitted a proposed amendment to its plan pursuant to SMCRA. Arkansas submitted the proposed amendment in response to a required program amendment at 30 CFR 904.26(a) that was placed on the Arkansas plan when OSM approved Arkansas' March 31, 1993, plan amendment (58 FR 38532, July 19, 1993; Administrative Record No. AAML–17). Arkansas intended that this amendment be in compliance with section 402 of SMCRA.

Arkansas proposed to amend Arkansas Code Annotated (ACA) 15–58–401(b)(2) that provides criteria for the determination of the eligibility of certain project sites for AML funding. Specifically, Arkansas proposed to require at ACA 15–58–401(b)(2) a finding that the surface coal mining operation occurred during the period beginning on August 4, 1977, and ending on November 5, 1990.

OSM announced receipt of the proposed amendment in the November 1, 1993, Federal Register (58 FR 58313; Administrative Record No. AAML–25) and in the same notice opened the public comment period and provided an opportunity for a public hearing on the substantive adequacy of the proposed amendment. The public comment period closed on December 1, 1993. No substantive comments were received. The public hearing, scheduled for November 26, 1993, was not held because no one requested an opportunity to testify.

III. Director's Findings

After a thorough review pursuant to SMCRA and the Federal regulations at 30 CFR 884.14 and 884.15, the Director finds, as discussed below, that Arkansas' October 6, 1993, proposed plan amendment is in compliance with SMCRA.

OSM required at 30 CFR 904.26(a) that Arkansas submit a revision to ACA 15–58–401(b)(2) to limit operations eligible for AML funds because of insolvency of a surety company to those operations whose surety became insolvent during the time frame provided by section 402(g)(4)(B)(ii) of SMCRA. Section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990 (Pub. L. 101–508), provided that the period of time during which such an operation would be eligible for AML funds because of the insolvency of the surety company would begin on August 4, 1977, and end on the date of enactment of the revision to SMCRA, which was November 5, 1990. Because Arkansas revised ACA 15–58–401(b)(2) to specify a period of time beginning on August 4, 1977, and ending on November 5, 1990, ACA 15–58–401(b)(2) is no less stringent than section 402(g)(4)(B)(ii) of SMCRA, as revised by the Abandoned Mine Land Reclamation Act of 1990.

Therefore, the Director approves ACA 15–58–401(b)(2) and removes the required amendment at 30 CFR 904.26(a).

IV. Summary and Disposition of Comments

1. Public Comments

The Director solicited public comments and provided an opportunity for a public hearing on the proposed amendment. No public comments were received, and because no one requested an opportunity to testify at a public hearing, no hearing was held.

2. Agency Comments

Pursuant to 30 CFR 884.14(a)(2) and 884.15(a), the Director solicited comments from the heads of various other Federal agencies with an actual or potential interest in the Arkansas plan.

By letter dated October 29, 1993, (Administrative Record No. AAML–22), the U.S. Bureau of Mines responded that it had no comments.

By letter dated October 29, 1993 (Administrative Record No. AAML–23), the U.S. National Park Service (NPS) responded that the proposed amendment would not impact NPS program responsibilities.

By letter dated November 8, 1993 (Administrative Record No. AAML–24), the U.S. Bureau of Land Management responded with a recommendation that Arkansas be required to revise ACA 15–58–401(c) so that it would read as follows:

> In determining which sites to reclaim pursuant to paragraph (b) of this section, the Director shall follow the priorities stated in paragraphs (1) and (2) of 15–58–402. The Director shall ensure that priority is given to those sites which are in the immediate vicinity of a residential area or which have an adverse economic impact upon a community [once coal mining sites and toxic mining material sites on federal or state surface tracts have been reclaimed].

BLM proposed the addition of the bracketed language and stated that its intent was to protect the public interest as a whole, particularly in the Ouachita National Forest, prior to focusing in on individual communities.

Referenced "paragraph (b) of this section" in ACA 15–58–401, as revised by the amendment that is the subject of this notice, allows the reclamation under Arkansas' plan of certain surface coal mining operations that operated on or after August 7, 1977, and were abandoned or left in an inadequate reclamation status.

Referenced "paragraphs (1) and (2) of 15–58–402" require that the expenditure of AML funds reflect the priorities of (1) the protection of public health, safety, general welfare, and property from extreme danger of adverse effects of coal mining practices and (2) the protection of public health, safety, and general welfare from adverse effects of coal mining practices. These State provisions are substantively identical to sections 403(a) (1) and (2) of SMCRA.

ACA 15–58–401(c) is substantively identical to section 402(g)(4)(C) of SMCRA. In addition, section 411 of SMCRA provides for the use of AML funds for lands affected by noncoal mining only after a State has certified that all abandoned coal mines have been reclaimed. Arkansas has not yet made this certification.

OSM cannot, as requested by BLM, require that Arkansas give higher priority to the reclamation of coal mining sites and toxic mining material sites on federal or state surface tracts because sections 403(a), 402(g)(4)(C), and 411 of SMCRA do not do so.

V. Director's Decision

Based on the above finding, the Director approves Arkansas' proposed plan amendment, as submitted on October 6, 1993.

The Federal regulations at 30 CFR part 904, codifying decisions concerning the Arkansas plan, are being amended to implement this decision. This final rule is being made effective immediately to expedite the State plan amendment process and to encourage States to bring their plans into conformity with the Federal standards without undue delay. Consistency of State and Federal standards is required by SMCRA.

VI. Procedural Determinations

1. Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866 (Regulatory Planning and Review).

2. Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State abandoned mine land reclamation plans and revisions thereof since each such plan is drafted and promulgated by a specific State, not by OSM. Decisions on proposed State AML reclamation plans and revisions thereof submitted by a State are based on a determination of whether the submittal meets the requirements of Title IV of SMCRA (30 U.S.C. 1231–1243) and the applicable Federal regulations at 30 CFR parts 884 and 888.

3. National Environmental Policy Act

No environmental impact statement is required for this rule since agency decisions on proposed State abandoned mine land reclamation plans and revisions thereof are categorically excluded from compliance with the National Environmental Policy Act of 1969 (42 U.S.C. 4332) by the Manual of the Department of the Interior (516 DM 6, appendix 8, paragraph 8.4B(29)).

4. Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by OMB under the Paperwork Reduction Act (44 U.S.C. 3507 *et seq.*).

5. Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Accordingly, this rule will ensure that existing requirements established by SMCRA or previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions in the analyses for the corresponding Federal regulations.

List of Subjects in 30 CFR Part 904

Intergovernmental relations, Surface mining, Underground mining.

Dated: December 28, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the Code of Federal Regulations is amended as set forth below:

PART 904—ARKANSAS

1. The authority citation for part 904 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 904.25 is amended by adding paragraph (b) to read as follows:

§ 904.25 Approval of abandoned mine land reclamation plan amendments.

* * * * *

(b) The following section of the Arkansas Code Annotated, title 15,

pertaining to the Arkansas abandoned mine land reclamation plan, as submitted to OSM on October 6, 1993, is approved effective January 5, 1994.

Section 15–58–401(b)(2) of Arkansas Code Annotated—Lands Eligible.

3. Section 904.26 is revised to read as follows:

§ 904.26 Required plan amendments.

Pursuant to 30 CFR 884.15, Arkansas is required to submit for OSM's approval the following proposed plan amendment by the date specified.

(a) [Reserved]

(b) [Reserved]

[FR Doc. 94–119 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 61

[FRL–4821–7]

Asbestos NESHAP Clarification Regarding Analysis of Multi-layered Systems

AGENCY: Environmental Protection Agency.

ACTION: Notice of clarification to the final rule.

SUMMARY: This document provides clarification regarding the requirements of the National Emission Standards for Hazardous Air Pollutants (NESHAP) for asbestos. It is intended to address common questions regarding situations where one or more layers which may contain asbestos are present.

FOR FURTHER INFORMATION CONTACT: Mr. Chris Oh at (703) 308–8732 or Mr. Jeffery KenKnight at (703) 308–8728.

SUPPLEMENTARY INFORMATION: On November 20, 1990, the **Federal Register** published the Environmental Protection Agency's (the Agency's) revision of the National Emission Standards for Hazardous Air Pollutants for Asbestos (asbestos NESHAP), 40 CFR part 61, subpart M, 55 FR 48406. The asbestos NESHAP applies to any facility as defined in 40 CFR 61.141. The Agency has learned that some of the regulated community have questions concerning the analysis of samples which may contain multiple layers, any or all of which may be asbestos containing materials (ACM) under the asbestos NESHAP. Because these questions are frequently asked, EPA is making this clarification.

This clarification does not supersede, alter, or in any way replace the existing asbestos NESHAP. This notice is intended solely as guidance and does not represent an action subject to judicial review under the section 307(b) of the Clean Air Act or section 704 of the Administrative Procedure Act.

I. Clarification of Multi-layered ACM System

The Environmental Protection Agency has received many questions about analyzing multi-layered systems for asbestos content to determine the applicability of the asbestos NESHAP. This clarification reiterates EPA's position for analysis of multi-layered samples for applicability of the asbestos NESHAP.

In general, when a sample consists of two or more distinct layers or materials, each layer should be treated separately and the results reported by layer (discrete stratum). Specific examples are given below.

Plaster/Stucco Systems

If plaster and stucco wall or ceiling systems are layered, and the layers can be distinguished, then the layers must be analyzed separately. Where a plaster or stucco wall system is constructed in layers, and the asbestos-containing layer becomes a distinguishable but "non-separable" component of the wall system, the results of the analysis of the individual layer(s) may include a small amount of the other layers when analyzed (e.g. a skim coat layer may contain a small amount of the base coat layer in the analysis of the skim coat layer).

Add-on Materials

All materials "added" to wallboard or other base materials (e.g., sprayed-on materials, paint, ceiling or wall texture, etc.) must be analyzed separately, if possible. The results of the analysis of those individual layers of "add-on" material may not be averaged with the result of the analysis of wallboard for a composite result, but must be analyzed and reported separately. Where a thin coating of one material is applied over another material and the materials cannot be separated without compromising the layers, the analysis may include a small amount of the base layer. If for example, a paint layer containing asbestos is spread over a wallboard layer, and the paint layer cannot be separated from the wallboard, then a small amount of the wallboard layer may be included in the sample of the paint.

If any of the "add-on" materials meet the definition of regulated asbestos-containing material (as defined in 40 CFR 61.141), and if at least 160 square feet of the material(s) are involved in demolition or renovation (whether planned or unplanned during a calendar year), then the project would be subject to the asbestos NESHAP.

Joint Compound/Wallboard

When joint compound and/or tape is applied to wallboard it becomes an integral part of the wallboard and in effect becomes one material forming a wall system. Therefore, where a demolition or renovation impacts such a wall system, a composite analysis of the wall system (percent of asbestos in the joint compound, tape and wallboard) should be conducted. If the analysis shows an asbestos content of greater than one percent and at least 160 square feet of the wall system is involved in the demolition or renovation activities (whether planned or unplanned, during a calendar year), then the activities would be subject to the asbestos NESHAP.

Dated: December 3, 1993.

John Rasnic,

Director, Stationary Source Compliance Division, Office of Air Quality Planning and Standards.

[FR Doc. 94–74 Filed 1–4–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0, 1, and 97

[FCC 93–546]

Station Call Sign Administrators for Club and Military Recreation Stations

AGENCY: Federal Communications Commission.

ACTION: Final rules.

SUMMARY: This action vacates the rule provisions that established private entity club call sign administrators and reinstates prior rules. A new proposal regarding call signs will meet the need for persons interested in obtaining a club station license. Hence, it is not necessary to retain the club call sign administrator rules adopted in an earlier action.

EFFECTIVE DATE: February 4, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, adopted December 13, 1993, and released December 29, 1993. The complete text of this Commission action, including the rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Memorandum Opinion and Order, including the rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. On May 11, 1993, final rules were adopted that established call sign administrators for club and military recreation stations in the amateur service. Subsequently, a petition for reconsideration was filed in which it was argued that the establishment of such administrators was not minor and non-controversial and that a notice and comment proceeding should have been held before final rules were adopted.

2. Further, the Commission is activating a new automated licensing system that will enable it to perform, with minimal burden, the function that administrators in the private sector were going to perform without reimbursement. Also, a new proposal by the Commission regarding call signs will meet the need of persons interested in obtaining a club station license.

3. Because there appears to be merit in the argument that the establishment of administrators is controversial, and because the new proposal will meet the need of persons interested in the club station licenses, the rule provisions that established private entity club call sign administrators can be vacated.

4. Accordingly, by this action, the rules establishing administrators are vacated, the prior rules are reinstated, and the petition for reconsideration is granted.

5. The amended rules are set forth at the end of this document.

6. The amended rules have been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

7. This Memorandum Opinion and Order and the rule amendments are issued under the authority of 47 U.S.C. 154(i), 303(r), and 405(a).

List of Subjects

47 CFR Part 0

Organization and functions.

47 CFR Part 1

Radio.

47 CFR Part 97

Applications, Club stations, Radio.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amended Rules

Parts 0, 1, and 97 of chapter 1 of title 47 of the Code of Federal Regulations are amended as follows:

PART 0—COMMISSION ORGANIZATION

1. The authority citation for part 0 continues to read as follows:

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.131 [Amended]

2. Section 0.131 is amended by removing paragraph (k).

§ 0.331 [Amended]

3. Section 0.331 is amended by removing paragraph (d).

§ 0.486 [Removed]

4. Section 0.486 is removed.

PART 1—PRACTICE AND PROCEDURE

The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303; Implement, 5 U.S.C. 552, unless otherwise noted.

1. Section 1.912(a) is revised to read as follows:

§ 1.912 Where applications are to be filed.

(a) Each application for a new amateur service operator/primary station license and each application involving a change in operator class must be submitted to the volunteer examiners (VEs) administering the qualifying examination. See § 97.17(c) of this chapter. The VEs are required to submit the applications of persons passing their respective examinations for amateur operator licenses to the Volunteer-Examiner Coordinator (VEC). All other applications for amateur service licenses must be submitted to FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

PART 97—AMATEUR RADIO SERVICE

The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1086, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

1. Section 97.17 is amended by revising paragraph (b) to read as follows. In addition, paragraph (g) is removed.

§ 97.17 Application for new license.

* * * * *

(b) Each application for a new operator/primary station license must be made on FCC Form 610. Each application for a reciprocal permit for alien amateur licensee must be made on FCC Form 610–A. No new license for a club, military recreation, or RACES station will be issued.

* * * * *

2. Paragraphs (a) and (b) of § 97.19 are revised to read as follows:

§ 97.19 Application for a renewed or modified license.

(a) Each application for a renewed or modified operator/primary station license must be made on FCC Form 610. Each application for a renewed or modified club, military recreation, or RACES station license must be made on FCC Form 610–B. A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for a renewed or modified amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed. Each application for a modified operator license involving a change in operator class must be submitted to the VEs administering the qualifying examination. All other applications must be submitted to: FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245.

* * * * *

§ 97.29 [Removed]

3. Section 97.29 is removed in its entirety.

[FR Doc. 94–29 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 5, 14, 15, 17, 25, and 52

[FAC 90–19; FAR Case 93–310]

Federal Acquisition Regulation; Implementation of the North American Free Trade Agreement Implementation Act

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comment.

SUMMARY: The Department of Defense, General Services Administration, and National Aeronautics and Space Administration have agreed to an interim rule implementing the North American Free Trade Agreement (NAFTA) Implementation Act.

DATES: *Effective Date:* January 1, 1994. This rule applies to solicitations issued on or after January 1, 1994.

Comment Date: Comments should be submitted to the FAR Secretariat on or before March 7, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4037, Washington, DC 20405. Please cite FAC 90–19, FAR case 93–310 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Peter O'Such at (202) 501–1759 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GSA Building, Washington, DC 20405 (202) 501–4755. Please cite FAC 90–19, FAR case 93–310.

SUPPLEMENTARY INFORMATION:

A. Background

Chapter Ten of NAFTA requires the three NAFTA countries (the United States, Canada, and Mexico) to eliminate "buy national" restrictions on non-defense related purchases, by their responsible Federal Governments, of goods and services provided by firms in North America. NAFTA applies to most United States Government agencies. The Canadian Free Trade Agreement is suspended while NAFTA remains in effect.

As required by NAFTA, specified agencies must evaluate certain NAFTA country end products offers without regard to the restrictions of the Buy American Act or the Balance of Payments Program. This evaluation method will apply to offers of Canadian end products under supply contracts with an estimated value above $25,000 and Mexican end products under supply contracts with an estimated value of $50,000 or more, except for the Department of Energy's Power Marketing Administrations, where the estimated acquisition value is $250,000 or more. This evaluation method also will apply to construction contracts with an estimated acquisition value of $6,500,000 or more, except for the Department of Energy's Power Marketing Administration, where the estimated acquisition value is $8,000,000 or more.

The applicable rule of origin for NAFTA country end products under the agreement is that of "substantial transformation", which means an article that is wholly the growth, product, or manufacture of a NAFTA country or has been substantially transformed in a NAFTA country into a new and different article may be offered.

This rule also—

(1) Designates NAFTA country end products as eligible products under the Trade Agreements Act, as implemented in Trade Agreements under the FAR;

(2) Adds language to require that, when an overseas procurement for performance overseas is subject to NAFTA, it will be synopsized in accordance with agency procedures;

(3) Revises the prescriptions for the provisions, Submission of Offers in the English Language, and Submission of Offers in U.S. Currency, to clarify and include NAFTA;

(4) Updates the list of designated countries in FAR 25.401 to add "Portugal" and revise "Upper Volta" to "Burkina Faso";

(5) Includes the new threshold of $182,000 for application of the Trade Agreements Act and the European Community (EC) Agreement, which is effective January 1, 1994;

(6) Updates FAR 25.407 list of agencies covered by the Agreements on EC and NAFTA; and

(7) Makes clarifications to the interim rule published in FAC 90–18 (58 FR 31140), at FAR 25.407, to implement the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement and NAFTA.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. A copy of the IRFA may be obtained from the FAR Secretariat. Comments are invited. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite 5 U.S.C. 601, *et seq.* (FAR Case 93–310), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) is deemed to apply because the new provision at 52.225–20 requires offerors to list the line item number and country of origin for any end product other than a domestic end product: Accordingly, a request for clearance of a new information collection requirement concerning the NAFTA Act is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.* Public comments concerning this requirement are invited through an OMB clearance request appearing in the **Federal Register** at 58 FR 68636, December 28, 1993.

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense (DOD), the Administrator of General Services (GSA), and the Administrator of the National Aeronautics and Space Administration (NASA) that compelling reasons exist to promulgate this interim rule without prior opportunity for public comment. This action is necessary because the NAFTA Implementation Act, signed into law on December 8, 1993, becomes effective on January 1, 1994. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 5, 14, 15, 17, 25, and 52

Government procurement.

Dated: December 30, 1993.

Shirley Scott,

Acting Director, Office of Federal Acquisition Policy.

Unless otherwise specified, all Federal Acquisition Regulation (FAR) and other directive material contained in FAC 90–19 is effective January 1, 1994.

Dated: December 21, 1993.

Eleanor R. Spector,

Director, Defense Procurement, Department of Defense (DOD).

Dated: December 20, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy, General Services Administration.

Dated: December 21, 1993.

Deidre A. Lee,

Associate Administrator for Procurement, NASA.

Therefore, 48 CFR parts 5, 14, 15, 17, 25, and 52 are amended as set forth below:

1. The authority citation for 48 CFR parts 5, 14, 15, 17, 25, and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 5—PUBLICIZING CONTRACT ACTIONS

2. Section 5.202 is amended in paragraph (a)(12) by adding a third sentence to read as follows:

5.202 Exceptions.

(a) * * *

(12) * * * This exception also does not apply to North American Free Trade Agreement contract actions, which will be synopsized in accordance with agency regulations.

* * * * *

PART 14—SEALED BIDDING

3. Section 14.201–6 is amended by revising paragraphs (x) and (y) to read as follows:

14.201–6 Solicitation provisions.

* * * * *

(x) The provision at 52.214–34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(y) The provision at 52.214–35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

4. Section 14.408–1 is amended by revising the introductory text of paragraph (a)(2) to read as follows:

14.408–1 Award of unclassified contracts.

(a) * * *

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), agencies shall promptly, but in no event later than 7 working days after award, give unsuccessful offerors from designated or NAFTA countries written notice stating—

* * * * *

PART 15—CONTRACTING BY NEGOTIATION

5. Section 15.407 is amended by revising paragraphs (l) and (m) to read as follows:

15.407 Solicitation provisions.

* * * * *

(l) The provision at 52.214–34, Submission of Offers in the English Language, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

(m) The provision at 52.214–35, Submission of Offers in U.S. Currency, is required in solicitations subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see 25.408(d)). It may be included in other solicitations when the contracting officer decides that it is necessary.

6. Section 15.1001 is amended by revising paragraph (c)(2) to read as follows:

15.1001 Notifications to unsuccessful offerors.

* * * * *

(c) * * *

(2) For acquisitions subject to the Trade Agreements Act or the North American Free Trade Agreement (NAFTA) Implementation Act (see 25.405(e)), the information in paragraph (c)(1) of this section shall be provided to unsuccessful offerors from designated or NAFTA countries promptly, but in no event later than seven working days after contract award.

* * * * *

PART 17—SPECIAL CONTRACTING METHODS

7. Section 17.203 is amended by revising paragraph (h) to read as follows:

17.203 Solicitations.

* * * * *

(h) See 25.402(a)(5) regarding use of options in calculating the estimated contract amount for application of the Trade Agreements Act and North American Free Trade Agreement thresholds.

PART 25—FOREIGN ACQUISITION

25.101 [Amended]

8. Section 25.101 is amended in the definition *Domestic end product* by removing the last sentence.

9. Section 25.109 is amended by revising paragraphs (d) and (f), redesignating paragraph (g)(2) as (g)(3), and adding a new paragraph (g)(2) to read as follows:

25.109 Solicitation provisions and contract clauses.

* * * * *

(d) Except as provided in paragraph (g) of this section, or when the clause prescribed by paragraph (f) is used, or when the clause prescribed in 25.408(a)(4) is used, the contracting officer shall insert the clause at 52.225–3, Buy American Act-Supplies, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies, for use within the United States.

* * * * *

(f) Except as provided in paragraph (g) of this section, the contracting officer shall insert the clause at 52.225–17, Buy American Act-Supplies under European Community Agreement, in solicitations and contracts for the acquisition of supplies, or for services involving the furnishing of supplies when the estimated acquisition value meets or exceeds $182,000 for the agencies listed at FAR 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is $450,000 of more.

(g) * * *

(2) The acquisition is made under the Trade Agreements Act (see subpart 25.4); or

* * * * *

25.202 [Amended]

10. Section 25.202 is amended in paragraph (c) by removing "25.402(a)(4)" and inserting "25.402(a)(3) and (4)".

11. Section 25.205 is amended by revising paragraph (b) to read as follows:

25.205 Solicitation provision and contract clause.

* * * * *

(b) For construction contracts with an estimated acquisition value of $6,500,000 ($8,000,000 for the Power Marketing Administrations) or more, to be awarded by agencies listed in 25.407, insert the clause at 52.225–15, Buy American Act-Construction Materials under European Community and North American Free Trade Agreements, in solicitations and contracts for construction.

12. Section 25.300 is amended by revising the second sentence to read as follows:

25.300 Scope of subpart.

* * * The Balance of Payments Program restrictions have been waived with respect to the acquisition, in accordance with subpart 25.4, of certain products under the Trade Agreements Act of 1979 and the North American Free Trade Agreement (NAFTA) Implementation Act.

25.305 [Amended]

13. Section 25.305 is amended in paragraphs (a) and (c) by adding "or NAFTA" after "1979".

14. Section 25.400 is amended by revising paragraph (c) to read as follows:

25.400 Scope of subpart.

* * * * *

(c) Acquisitions involving offers of Canadian or Mexican end products under the North American Free Trade Agreement (NAFTA), as approved by Congress in the NAFTA Implementation Act (Pub. L. 103–182, 107 Stat. 2057);

* * * * *

15. Section 25.401 is amended by revising the definitions for "Canadian end product" and "Eligible product"; amending the "designated country" list by removing "Upper Volta" and adding in alphabetical order "Burkina Faso" and "Portugal"; and adding in alphabetical order the definitions "Mexican end product", "North American Free Trade Agreement (NAFTA) country", "NAFTA country construction material", and "NAFTA country end product" to read as follows:

25.401 Definitions.

Canadian end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Canada, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Canada into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

* * * * *

Eligible product, as used in this subpart, means a designated, North American Free Trade Agreement (NAFTA), or Caribbean Basin country end product.

* * * * *

Mexican end product, as used in this subpart, means an article that (a) is wholly the growth, product, or manufacture of Mexico, or (b) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in Mexico into a new and different article of commerce with a name, character, or use distinct from, that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

North American Free Trade Agreement (NAFTA) country, as used in this subpart, means Canada or Mexico.

NAFTA country construction material, means a construction material that (a) is wholly the growth, product, or manufacture of a NAFTA country or (b) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct form the materials from which it was transformed.

NAFTA country end product, as used in this subpart, means a Canadian end product or a Mexican end product.

16. Section 25.402 is amended—

(a) In paragraph (a)(1) by inserting a new sentence after the first sentence;

(b) By revising paragraph (a)(3);

(c) In the introductory text of paragraph (a)(4) by inserting "(European Community Agreement)" after "Procurement"; in (a)(4)(i) by revising "25.406 or" to read "25.407"; and in (a)(4)(ii) by revising "$176,000" to read "$182,000";

(d) In paragraphs (a)(5) introductory text and (a)(6) by inserting "or NAFTA" after "Act"; and

(e) By removing "country" the first time it appears in the introductory text of paragraph (f) and the second time it appears in paragraph (f)(2) and inserting", North American Free Trade Agreement," in their places.

The revised text reads as follows:

25.402 Policy.

(a)(1) * * * The current threshold is $182,000. * * *

* * * * *

(3) As required by the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057), agencies shall evaluate offers of the following NAFTA country end products without regard to the restrictions of the Buy American Act (see subpart 25.1) or the Balance of Payments Program (see subpart 25.3):

(i) NAFTA country construction materials under construction contracts with an estimated acquisition value of $6,500,000 or more for the agencies in 25.407, except for the Power Marketing Administration segments of the Department of Energy where the estimated acquisition value is $8,000,000 or more.

(ii) Canadian end products under supply contracts with an estimated value above $25,000 and Mexican end products under supply contracts with an estimated value of $50,000 or more for the agencies in 25.407, except for the Power Marketing Administrations' segment of the Department of Energy, where the estimated acquisition value is $250,000 or more.

* * * * *

17. Section 25.403 is amended in paragraph (a) by removing "Trade Agreements Act"; by revising paragraph (b); in paragraph (e) by inserting "(3) and" after "25.402(a)"; in paragraph (h) by revising "25.402(a)(4)(ii)" to read "25.402(a)(3) and (4)"; and revising paragraph (l) to read as follows:

25.403 Exceptions.

* * * * *

(b) Products of countries (1) not identified in 25.401 as designated, Caribbean Basin, or North American Free Trade Agreement countries, or (2) barred by 25.402(c);

* * * * *

(l)(1) For purchases subject to North American Free Trade Agreement or the European Community Agreement, agencies not listed at 25.407;

(2) For other purchases under this subpart, agencies not listed at 25.406; or

* * * * *

25.405 [Amended]

18. Section 25.405 is amended in the introductory text by inserting "or North American Free Trade Agreement (NAFTA)" after "Act"; in paragraph (d) by removing "countries" the first time it appears and inserting ", NAFTA," in its place; and in paragraph (e) by inserting "or NAFTA" after "designated".

19. Section 25.406 is amended by revising the "General Services Administration" entry and adding in alphabetical order "National Archives and Records Administration" to read as follows:

25.406 Agencies covered by the Agreement on Government Procurement.

* * * * *

General Services Administration (except Federal Supply Groups 51 and 52 and Federal Supply Class 7340).

* * * * *

National Archives and Records Administration.

* * * * *

20. Section 25.407 is amended by revising the section heading; removing the introductory paragraph; redesignating paragraphs (a) thru (d) as (b) thru (e), and adding a new paragraph (a); changing "is" to "are" in newly redesignated (d); and adding paragraphs (f) and (g) to read as follows:

25.407 Agencies covered by the European Community and North American Free Trade Agreements.

(a) The agencies listed in 25.406.

* * * * *

(f) Federal Housing Finance Board.

(g) Office of Thrift Supervision.

21. Section 25.408 is amended by removing "Act" following "Agreements" from paragraph (a)(1) and (a)(2) the first time it appears; by removing "and" at the end of paragraph (a)(1); by removing the period at the end of paragraph (a)(2) and inserting a semicolon in its place; by adding new paragraphs (a)(3) and (a)(4); by revising paragraph (c); and in paragraph (d) by inserting "or NAFTA" following "Act" to read as follows:

25.408 Solicitation provision and contract clause.

(a) * * *

(3) The provision at 52.225–20, Buy American Act-North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program Certificate, in solicitations containing the clause at 52.225–21; and

(4) The clause at 52.225–21, Buy American Act-North American Free Trade Agreement (NAFTA) Implementation Act-Balance of Payments Program, where the contracting officer has determined that the acquisition is not subject to the Trade Agreements Act but is subject to NAFTA.

* * * * *

(c) The clause prescriptions at paragraph (a) of this section shall apply where any item under a multiple item solicitation is determined to be subject to the Trade Agreements Act or North American Free Trade Agreement Implementation Act. If the Acts do not apply to all of the items being solicited, the contracting officer shall indicate, in the schedule, those items that are exempt.

* * * * *

25.1003 [Amended]

22. Section 25.1003 is amended in paragraphs (a)(2) and (b)(2) by revising "$176,000" to read "$182,000".

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.225–3 [Amended]

23. Section 52.225–3 is amended by revising the date of the clause to read "(JAN 1994)"; by removing the last sentence from the definition "Domestic end product"; and removing the parenthetical following paragraph (b)(4).

24. Section 52.225–8 is amended in the section and clause headings by removing "Act" following "Agreements", and revising the date of the clause heading to read "(JAN 1994)"; in paragraph (a) by removing "Act" following "Agreements", and inserting "a North American Free Trade Agreement (NAFTA) country," following "designated country,"; by revising the introductory text of paragraph (c) and paragraph (c)(1); and in paragraph (c)(2) by removing "Act" following "Agreements". The revised text reads as follows:

§ 52.225–8 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Jan 1994)

* * * * *

(c) Offers will be evaluated by giving certain preferences to domestic end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are designated or NAFTA country end products, or Caribbean Basin country end products. Products that are not identified and certified below will not be deemed designated country end products, NAFTA country end products, or Caribbean Basin country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "designated or NAFTA country end products" as those terms are defined in the clause entitled "Buy American Act—Trade Agreements—Balance of Payments Program:"

(Insert line item numbers)

* * * * *

25. Section 52.225–9 is amended in the section and clause headings by removing "Act" following "Agreements", and revising the date of the clause heading to read "(JAN 1994)"; by revising the introductory text of paragraph (a) and adding in alphabetical order the definitions "NAFTA country", and "NAFTA country end product"; and revising paragraph (b) to read as follows:

§ 52.225–9 Buy American Act—Trade Agreements—Balance of Payments Program.

* * * * *

Buy American Act—Trade Agreements—Balance of Payments Program (Jan 1994)

(a) This clause implements the Buy American Act (41 U.S.C. 10), the Trade Agreements Act of 1979 (19 U.S.C. 2501–2582), the North American Free Trade Agreement (NAFTA) Implementation Act (Pub. L. 103–182, 107 Stat. 2057) and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as designated, NAFTA, or Caribbean Basin country end products.

* * * * *

NAFTA country, as used in this clause, means Canada or Mexico.

NAFTA country end product, as used in this clause, means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) The Contracting Officer has determined that the Trade Agreements Act and NAFTA apply to this acquisition. Unless otherwise specified, the Acts apply to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the

provision entitled "Buy American Act—Trade Agreements—Balance of Payments Program Certificate." An offer certifying that a designated, NAFTA, or Caribbean Basin country end product will be supplied requires the Contractor to supply a designated, NAFTA, or Caribbean Basin country end product or, at the Contractor's option, a domestic end product. Contractors may not supply a foreign end product for line items subject to the Trade Agreements Act unless the foreign end product is a designated, NAFTA, or Caribbean end product (see FAR 25.401), or unless a waiver is granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

* * * * *

26. Section 52.225–15 is amended in the section and clause headings by removing "Agreement" and inserting "and North American Free Trade Agreements"; by revising the date of the clause heading to read "(JAN 1994)"; in paragraph (a) by adding in alphabetical order the definitions "North American Free Trade Agreement (NAFTA) country", and "NAFTA country construction material"; and by revising paragraphs (b) and (c) to read as follows:

52.225–15 Buy American Act—Construction Materials under European Community and North American Free Trade Agreements.

* * * * *

Buy American Act—Construction Materials Under European Community and North American Free Trade Agreements (Jan 1994)

* * * * *

North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

NAFTA country construction material means a construction material that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of a construction material which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different construction material distinct from the materials from which it was transformed.

(b) The Buy American Act (41 U.S.C. 10) provides that the Government give preference to domestic material. In addition, the Memorandum of Understanding between the United States of America and the European Economic Community on Government Procurement, and the North American Free Trade Agreement (NAFTA), provide that EC and NAFTA construction materials are exempted from application of the Buy American Act.

(c) The Contractor agrees that only domestic construction materials, NAFTA country construction materials or EC construction materials will be used by the Contractor, subcontractors, materialmen and suppliers in the performance of this contract, except for other foreign construction materials, if any, listed in this contract.

(End of clause)

27. Section 52.225–17 is amended in the clause heading by revising the date to read "(JAN 1994)"; in the definition "Domestic end product" by removing the last sentence; by removing the parenthetical following paragraph (c)(4); and by adding paragraph (d) to read as follows:

52.225–17 Buy American Act—Supplies under European Community Agreement.

* * * * *

Buy American Act—Supplies Under European Community Agreement (Jan 1994)

* * * * *

(d) If this contract contains the clause at 52.225–21, Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program, the Contractor may deliver NAFTA country end products, notwithstanding the prohibition in paragraph (c).

(End of clause)

28. Section 52.225–19 is amended in the clause heading by revising the date to read "(JAN 1994)"; and by revising paragraph (b) to read as follows:

52.225–19 European Community Sanction for Services.

* * * * * *

European Community Sanction for Services (Jan 1994)

* * * * *

(b) *Agreement.* The Contractor agrees not to perform services under this contract in a sanctioned member state of the EC. This does not apply to subcontracts.

(End of clause)

29. Sections 52.225–20 and 52.225–21 are added to read as follows:

52.225–20 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 25.408(a)(3), insert the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Jan 1994)

(a) The offeror hereby certifies that each end product, except those listed in paragraph (b) of this provision, is a domestic end product (as defined in the clause entitled "Buy American Act—North American Free Trade Agreement (NAFTA) Implementation Act—Balance of Payments Program") and that components of unknown origin have been considered to have been mined, produced, or manufactured outside the United States.

(b) Excluded End Products:

Line item No.	Country of origin
	(List as necessary)

(c) Offers will be evaluated by giving certain preferences to domestic end products or NAFTA country end products over other end products. In order to obtain these preferences in the evaluation of each excluded end product listed in paragraph (b) of this provision, offerors must identify and certify below those excluded end products that are NAFTA country end products. Products that are not identified and certified below will not be deemed NAFTA country end products. Offerors must certify by inserting the applicable line item numbers in the following:

(1) The offeror certifies that the following supplies qualify as "NAFTA country end products" as that term is defined in the clause entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program:"

(Insert line item numbers)

(d) Offers will be evaluated in accordance with FAR part 25.

(End of provision)

52.225–21 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program.

As prescribed in 25.408(a)(4), insert the following clause:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program (Jan 1994)

(a) *Definitions.* As used in this clause—

Components means those articles, materials, and supplies incorporated directly into the end products.

Domestic end product means (1) an unmanufactured end product mined or produced in the United States, or (2) an end product manufactured in the United States, if the cost of its components mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all its components. A component shall also be considered to have been mined, produced, or manufactured in the United States (regardless of its source in fact) if the end product in which it is incorporated is manufactured in the United States and the component is of a class or kind (i) determined by the Government, to be not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities of a satisfactory quality, or (ii) to which the agency head concerned has determined that it would be inconsistent with the public interest to apply the restrictions of the Buy American Act.

End products means those articles, materials, and supplies to be acquired under this contract for public use.

Foreign end product means an end product other than a domestic end product.

North American Free Trade Agreement (NAFTA) country means Canada or Mexico.

NAFTA country end product means an article that (1) is wholly the growth, product, or manufacture of a NAFTA country, or (2) in the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. The term includes services (except transportation services) incidental to its supply; *provided*, that the value of those incidental services does not exceed that of the product itself. It does not include service contracts as such.

(b) This clause implements the Buy American Act (41 U.S.C. 10), the North American Free Trade Agreement Implementation Act (Pub. L. 103–182, 107 Stat. 2057), and the Balance of Payments Program by providing a preference for domestic end products over foreign end products, except for certain foreign end products which meet the requirements for classification as NAFTA country end products.

(c) The Contracting Officer has determined that the NAFTA applies to this acquisition. Unless otherwise specified, the Act applies to all items in the schedule. The Contractor agrees to deliver under this contract only domestic end products unless, in its offer, it specifies delivery of foreign end products in the provision entitled "Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate." An offer certifying that a NAFTA country end product will be supplied requires the Contractor to supply a NAFTA country end product or, at the Contractor's option, a domestic end product.

(d) If the contract contains the clause at 52.225–17, Buy American Act—Supplies under European Community Agreement, the Contractor may deliver EC country end products notwithstanding the provisions of paragraph (c).

(e) Offers will be evaluated in accordance with the policies and procedures of subpart 25.4 of the Federal Acquisition Regulation.

(End of clause)

[FR Doc. 94–177 Filed 1–4–94; 8:45 am]

BILLING CODE 6820–34–M

Proposed Rules

Federal Register
Vol. 59, No. 3
Wednesday, January 5, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 92-029P]

RIN 0583-AB66

Sodium Citrate as a Tripe Denuding Agent

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat inspection regulations to permit the use of sodium citrate in solution to denude beef stomachs of mucous membranes. In 1990, a manufacturer of processing aids and other direct food ingredients petitioned the Food and Drug Administration and FSIS to approve the use of several compounds, including sodium citrate, for use in denuding tripe. FSIS has reviewed the data and other information submitted by the petitioner and has determined that the proposed use of sodium citrate would not result in product adulteration or misbranding. The proposed regulation would make available to meat processors an additional, alternative tripe-denuding formulation that would contain sodium citrate as an ingredient. The sodium citrate solution would be as effective as existing tripe-denuding agents, but would be less objectionable to workers than the agents now in use. The sodium citrate-containing formulation would contribute to improved tripe production.

DATES: Comments must be submitted on or before March 7, 1994.

ADDRESSES: Written comments to: Policy Office, Attn. Diane Moore, FSIS Hearing Clerk, room 3171 South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Dr. Bill James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 720-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is in conformance with Executive Order 12866, and the Assistant Secretary has determined that it is not a "significant regulatory action." This proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health and safety, or State, local or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights or obligations or recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing requirements with respect to premises, facilities, and operations of federally inspected meat or poultry products, and any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA and PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or in the case of imported articles, which are not at such an establishment, after their entry into the United States. The States may, however, impose more stringent requirements on such State inspected products and establishments.

This proposed rule is not intended to have retroactive effect, and no applicable administrative procedures must be exhausted before any judicial challenge to the provisions of this rule. However, the applicable administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge to the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA. The applicable administrative procedures specified in 9 CFR part 335 must be exhausted prior to any judicial challenge to the application of the provisions of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator has determined that this proposed rule will not have a significant impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601). The proposed regulation would make available to meat processors an additional, alternative tripe-denuding formulation that would contain sodium citrate as an ingredient. The sodium citrate formulation could be manufactured and sold in liquid form and used in existing or newly developed tripe denuding equipment. The sodium citrate-containing formulation could be used most efficiently in the new equipment and contribute to improved tripe production. Small establishments could benefit from the use of the sodium citrate product.

Background

Under the Federal Meat Inspection Act (21 U.S.C. 601 *et seq.*), FSIS provides for mandatory inspection of meat and meat food products shipped in interstate and foreign commerce. The Act prohibits the addition of any substance to any meat or meat food product that may render the product adulterated (21 U.S.C. 601). Section 318.7(a)(1) of the Federal meat inspection regulations (9 CFR 318.7) prohibits the use of any substance in the preparation of any product unless its use is approved in § 318.7(c)(4) of the Federal meat inspection regulations (9 CFR 318.7), which is the chart of substances acceptable for use in the preparation of products, or unless it is approved elsewhere in the regulations or it is approved by the Administrator.

In 1990, a manufacturer of processing aids and other direct food ingredients petitioned the Food and Drug Administration (FDA) and FSIS to approve the use of several compounds, including sodium citrate, for use in denuding tripe. Tripe denudation—the removal of mucous membranes from beef stomachs—is a necessary step in the cleaning and preparation of tripe for use as human food. FSIS has reviewed the data and other information submitted by the petitioner and has determined that the proposed use of sodium citrate would not result in product adulteration or misbranding.

FDA lists sodium citrate as generally recognized as safe when used in accordance with good manufacturing practice in an amount not in excess of that required to achieve its intended effect (21 CFR 182.1751). In an August 24, 1992, letter to the petitioner, FDA reported this fact and stated that it would have "no objection to [sodium citrate's] addition to the tripe-denuding mixture [contemplated by the petitioner] providing that it is used in accordance with good manufacturing practice."[1] FDA further stipulated that the sodium citrate used be of food-grade quality and that the quantity used not be in excess of the amount reasonably required to accomplish its intended effect.

FSIS is proposing to amend § 318.7(c)(4) of the Federal meat inspection regulations to permit the use of sodium citrate as a tripe denuding agent in combination with other approved agents, in an amount sufficient to accomplish the intended effect. Use of sodium citrate for this purpose would be subject to the condition that the substance be removed from the denuded tripe by rinsing with potable water.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

For the reasons set out in the preamble, 9 CFR part 318 is proposed to be amended as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS; REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 would continue to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 318.7(c)(4) would be amended by adding to the chart of substances, under the Class of substance "Denuding agents; may be used in combination. Must be removed from tripe by rinsing with potable water." the substance sodium citrate in alphabetical order as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substances	Substances	Purpose	Products	Amount
• • • • • • •				
Denuding Agents; may be used in combination. Must be removed from tripe by rinsing with potable water.	Sodium Citrate	.....do	.....do	Do.
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Done at Washington, DC, on December 27, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-105 Filed 1-4-94; 8:45 am]

BILLING CODE 3410-DM-M

9 CFR Part 381

[Docket No. 92-026P]

RIN 0583-AB65

Use of Trisodium Phosphate on Raw, Chilled Poultry Carcasses

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: FSIS is proposing to amend the poultry products inspection regulations to permit the application of trisodium phosphate (TSP) on raw, chilled poultry carcasses passed for wholesomeness. TSP would be permitted as an antimicrobial agent on such poultry carcasses at a level of 8 to 12 percent. The TSP treatment solution would be maintained at a temperature of 45° F. to 55° F. and applied by spraying or dipping carcasses for up to 15 seconds. Tests conducted by industry have shown that the use of TSP at a level of 8 to 12 percent reduces microbial populations on raw, chilled poultry surfaces. This proposed rule is in response to a petition filed by Rhone-Poulenc, Inc., Cranbury, New Jersey.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments, as provided under the Poultry Products Inspection Act (PPIA), should be directed to Dr. William O. James at (202) 720-3219. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Dr. William O. James, Director, Slaughter Inspection Standards and Procedures Division, Science and Technology, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250; (202) 720-3219.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

FSIS has determined that this regulatory action is not a significant rule under Executive Order 12866. It would not likely result in a rule that may (1) have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

[1] A copy of this letter is available from the FSIS Hearing Clerk, USDA, 14th & Independence Avenue, SW., room 3175, South Agriculture Building, Washington, DC 20250.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This proposed rule would provide for the use of TSP as an antimicrobial treatment on raw, chilled poultry carcasses passed for wholesomeness.

States and local jurisdictions are preempted under the Poultry Products Inspection Act (PPIA) from imposing any requirements with respect to federally inspected premises and facilities, and operations of such establishments, that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions are also preempted under the PPIA from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. States and local jurisdictions may also make requirements or take other actions that are consistent with the PPIA, with respect to any other matters regulated under the PPIA.

Under the PPIA, States that maintain poultry inspection programs must impose requirements on State-inspected products and establishments that are at least equal to those required under the PPIA. These States may, however, impose more stringent requirements on such State-inspected products and establishments.

In the event of its adoption, no retroactive effect would be given to this proposed rule, and applicable administrative procedures must be exhausted before any judicial challenge to the application of these provisions. Those administrative procedures are set forth in 9 CFR 381.35.

Effect on Small Entities

The Administrator, FSIS, has determined that the proposed rule would not have a significant impact on a substantial number of small entities. The proposed rule would permit the use of TSP at the establishment's option.

Establishments that decide to use TSP as an antimicrobial agent on their products would incur a one-time expense for the necessary equipment and an ongoing cost for purchasing TSP. The cost for the treatment equipment would be approximately $45,000 per processing line. The cost for the TSP would average about ½ cent per bird.

The production of ready-to-cook poultry containing lower amounts of bacteria than such poultry now available would contribute to the national effort to reduce the incidence of pathogenic bacteria in foods. Most consumers are willing to pay more for poultry products that are raised or processed in a way that reduces the levels of *Salmonella* on such products.[1] Therefore, the market for TSP-treated poultry carcasses would likely attract most consumers who desire additional protection from harmful microorganisms. In turn, poultry establishments that market TSP-treated poultry carcasses could benefit from increased sales.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office at the address shown above and should refer to Docket Number 92–026P. Any person desiring opportunity for oral presentation of views, as provided under the PPIA, should make such request to Dr. James at (202) 720–3219 so that arrangements may be made for such views to be presented. A record will be made of all such oral comments. Copies of all comments submitted in response to this proposal will be available for public inspection in the Policy Office between 9 a.m. and 12:30 p.m. and between 1:30 and 4 p.m., Monday through Friday.

Background

FSIS is responsible for assuring that poultry products distributed in commerce are wholesome, not adulterated, and properly marked, labeled, and packaged. Under the PPIA (21 U.S.C. 451–470), FSIS provides mandatory inspection of poultry and poultry products shipped in interstate and foreign commerce, as well as in designated States. Continuous inspection of poultry slaughtering establishments is intended to assure that fresh, ready-to-cook poultry carcasses and parts are free of visible signs of disease and contamination. FSIS inspectors examine the outside, inside, and viscera of all birds presented for inspection.

Because raw poultry furnish a rich medium for the potential growth of both beneficial and harmful microorganisms, it has been assumed traditionally that a certain level of microbial activity on the surface tissues of raw poultry was unavoidable. Consequently, poultry slaughter inspection activities have focused on the organoleptic detection of poultry diseases or other abnormalities in carcasses and parts that would render the products adulterated or unwholesome.

Over the years, scientific and public concern about microbiological contamination of poultry products has expanded from the processing of such products to conditions under which poultry are slaughtered, and even to preslaughter poultry production. FSIS has encouraged the scientific community and the regulated industry to develop slaughtering and processing methods and treatments that would yield raw poultry products that are as free as practicable of pathogenic bacteria. The control of miscrooganisms on raw poultry has been given a high priority on FSIS's research agenda.

Researchers estimate that from 6.5 million to 33 million Americans, or 3 to 14 percent of the population, become ill each year from consumption of foods containing microorganisms. An estimated 9,000 of these illnesses result in death, or 4 in 100,000 people. Chapter 4 of a 1985 report by the National Research Council/National Academy of Sciences, Meat and Poultry Inspection: The Scientific Basis of the Nation's Program, recommended, in part, that the poultry inspection program be refocused to place greater emphasis on microbiological and chemical testing.[2] Since the issuance of that report, FSIS has given greater priority to microbiological and chemical testing.

Among the diseases caused by foodborne microorganisms, the one receiving the most publicity in recent years has been salmonellosis. This common human intestinal disorder was estimated to cost Americans approximately $1 billion in 1987.

Much of the concern about *Salmonella* in the food supply has focused on chicken. FSIS has encouraged and permitted the industry to use technologies such as counterflow scalders, chlorinated inplant water, and ionizing radiation to reduce *Salmonella* and other pathogenic bacteria.

Rhone-Poulenc, Inc., Petition

FSIS has been petitioned by Rhone-Poulenc, Inc., Cranbury, New Jersey, to

[1] Rhone-Poulenc Food Buyer Telephone Survey, January 1993. A copy of this survey is available for public inspection in the office of the FSIS Hearing Clerk.

[2] A copy of Chapter 4 of this report is available for public inspection in the office of the FSIS Hearing Clerk. Page 53 contains the referenced recommendation.

permit the use of food-grade TSP as a processing aid in post-chill poultry slaughter operations.[3] The petitioner requested the use of a treatment solution consisting of TSP dissolved in water to a concentration of 10 percent, plus or minus 2 percent (8 to 12 percent). The petitioner requested exposure of the poultry to the TSP treatment solution for no more than 15 seconds, with the TSP treatment solution being maintained at 50° F., plus or minus 5° F. (45° F. to 55° F.).

The petitioner supplied data demonstrating that the use of TSP, under the parameters addressed above, is effective in reducing the levels of bacteria, including pathogenic bacteria, found on raw, chilled poultry carcasses. Immediately after chilling, poultry carcasses that have been passed for wholesomeness enter the TSP treatment system. Chilled poultry carcasses are either sprayed with or dipped in the TSP treatment solution for no more than 15 seconds. The concentration of TSP used in various studies conducted by or for the petitioner ranged from 8 to 12 percent in water, at temperatures ranging from 45° F. to 55° F.

Data from the petitioner included results of studies conducted by the Pennsylvania State Sensory Laboratory for Rhone-Poulenc, Inc., on consumer acceptability of cooked poultry derived from TSP-treated poultry carcasses. These studies show no significant difference in taste or appearance between cooked poultry from TSP-treated poultry carcasses and cooked poultry from untreated poultry.

The petitioner also provided study results concerning moisture pickup and residue findings in poultry carcasses treated with TSP. According to these study results, the moisture pickup in TSP-treated poultry carcasses does not exceed regulatory limits for moisture absorption as prescribed in 9 CFR 381.66(d)(5). Residue findings ranged from −0.25 percent to 0.11 percent, showing that virtually no residue of the TSP solution remains on or in the treated poultry carcasses.

FSIS Studies on TSP

FSIS also conducted studies to determine the efficacy of TSP on raw, chilled poultry carcasses.[4] These studies show that the use of TSP on raw, chilled poultry carcasses results in statistically significant reductions in the levels of bacteria. Summary statistics of bacterial plate counts were used in all statistical analyses based on the arithmetic average and statistical significance was determined through nonparametric procedures using the relative rank of values. Analyses of 256 carcass-rinse samples collected at a federally inspected establishment over 4 days indicated that carcasses had average aerobe plate counts of 328 before TSP application, and 78 after application; Enterobacteriaceae counts of 25.5 before TSP application, and 2.7 after application; and *Escherichia coli* counts of 10.1 before TSP application, and 0.2 after treatment. Although these particular studies found no salmonellae in untreated or treated carcasses, preliminary results from industry group testing show that TSP is also effective in reducing salmonellae on raw poultry. Studies on moisture absorption resulting from the use of TSP found no inconsistencies with data furnished by the petitioner.

Food Additive Status

TSP is listed in the Food and Drug Administrated (FDA) regulations as generally recognized as safe (GRAS) for multiple purpose use in accordance with good manufacturing practice (21 CFR 182.1778).

FDA evaluated the petitioner's request for the use of TSP as a processing aid in poultry and concluded that the treatment leaves no residues on the product that could be harmful to consumers. Therefore, in an August 25, 1992, letter, FDA approved the use of TSP as a processing aid on raw poultry, under conditions to be established by FSIS.[5]

The Proposal

The Administrator has determined that (1) the use of TSP on raw, chilled poultry carcasses is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the intended purpose, (3) the substance is used at the lowest acceptable level to consistently achieve the desired reduction of pathogenic bacteria as determined in specific cases, and (4) the use of this substance on raw, chilled poultry carcasses at the stated level will not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the PPIA.

Therefore, FSIS is proposing to amend the poultry products inspection regulations at 9 CFR 381.147(f)(4) to add antimicrobial agents as a new class of substance for use on poultry products, and to add TSP as an approved antimicrobial agent. As requested by the petitioner, TSP would be permitted for use on raw, chilled poultry carcasses passed for wholesomeness at a level of 8 to 12 percent. The TSP treatment solution would be maintained at 45 °F. to 55 °F., and would be applied either by spraying or dipping the raw, chilled poultry carcasses for no more than 15 seconds. FSIS has determined, through review of the petitioner's data and its own study results, that 15 seconds is the maximum time necessary to coat all surfaces of the poultry carcasses with the TSP solution. FSIS is proposing the application of TSP by spraying, as well as by dipping, to permit the use of any existing spraying equipment in establishments, and thus reduce the costs incurred by establishments to set up the TSP treatment system.

Although the use of TSP would not eliminate the need for continuing careful handling of raw poultry products, TSP treatment on raw, chilled poultry carcasses would reduce the levels of bacteria that may be present on raw poultry carcasses.

TSP leaves virtually no residue on or in the carcass of treated poultry that would require the labels of such treated product to show the presence of TSP. Therefore, poultry producers opting to use TSP would not be required to revise their product labels.

List of Subjects in 9 CFR Part 381

Poultry and poultry products.

For the reasons set forth in the preamble, FSIS is proposing to amend the poultry products inspection regulations as follows:

PART 381—MANDATORY POULTRY PRODUCTS INSPECTION

1. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. In Table I of § 371,147(f)(4), a new class of substance titled "Antimicrobial agents" would be added and the substance "Trisodium phosphate" would be added to the new class of substance to read as follows:

§ 381.147 Restrictions on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

[3] A copy of this petition is available for public inspection in the office of the FSIS Hearing Clerk.

[4] A copy of the study results is available for public inspection the office of the FSIS Hearing Clerk. After carcasses had been chilled and hung on a moving shackle line, they were dipped for 15 seconds in an 8 percent) plus or minus 2 percent) TSP solution at a temperature of 7.7 °C. (plus or minus 2 °C.) (42 °F. to 49.5 °F.).

[5] A copy of FDA's approval letter is available for public inspection in the office of the FSIS Hearing Clerk.

Class of substance	Substance	Purpose	Products	Amount
Anti-microbial agents	Trisodium phosphate	To reduce microbial levels	Raw, chilled poultry carcasses.	8 to 12 percent; solution to be maintained at 45° F. to 55° F. and applied by spraying or dipping carcasses for up to 15 seconds in accordance with 21 CFR 182.1778.

Done at Washington, DC, on December 27, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–104 Filed 1–4–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–21]

Petition for Rulemaking; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specified provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received by March 7, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 28, 1993.

Joseph Conte,

Acting Assistant Chief Counsel.

Petitions for Rulemaking

Docket No.: 27542.

Petitioner: Ms. Debra Russi.

Regulations Affected: 14 CFR 105.

Description of Rulechange Sought: To require all parachute training be performed in accordance with the United States Parachute Association (USPA) training program or in accordance with a plan approved by the Federal Aviation Administration (FAA); incorporated by reference the USPA training program in part 105; and require that the operator of an aircraft immediately, and by the most expeditions means available, notify the nearest FAA Air Traffic Facility when a sport parachute accident/incident occurs involving a person who made an intentional jump from that aircraft.

Petitioner's Reason for the Request: The petitioner feels that this amendment is needed to protect the citizens of the United States of America, who wish to participate in sport parachuting, by providing participants the assurance of a training course which adheres to approved specifications; and, in the event of a parachute accident, the proposed changes would facilitate prompt notification of the nearest FAA field office, enabling timely investigative procedures.

[FR Doc. 94–134 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 27 and 29

Future Harmonized Rotorcraft Rulemaking; Normal Category Maximum Weight; Meeting

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of public meeting.

SUMMARY: The FAA is announcing a public meeting to discuss the use of Aviation Rulemaking Advisory Commission procedures in future harmonized rulemaking. Once specific rulemaking topic that will be discussed is a proposed increase in the current maximum gross weight limitation of 6,000 pounds for certification as a normal category rotorcraft.

DATES: The meeting will begin at 9 a.m. PDT on February 2, 1994.

ADDRESSES: The meeting will be held at the Anaheim Marriott, Ballrooms E and G, 700 West Convention Way, Anaheim, California 92802, telephone 714–750–8000 (headquarters hotel for the Helicopter Association International Heli Expo '94).

FOR FURTHER INFORMATION CONTACT: Mr. Eric Bries, Manager, Rotorcraft Standards Staff, ASW–110, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0110, telephone (817) 222–5110 or fax (817) 222–5961.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA), Rotorcraft Directorate, has recently completed a series of harmonization meetings with the Helicopter Airworthiness Study Group (HASG) of the European Joint Airworthiness Authorities (JAA). The meetings were supplemented with joint authorities and industry meetings. These meetings resulted in the issuance of European Joint Airworthiness Requirements 27 (September 1993) and 29 (November 1993), which are in basic harmonization with Federal Aviation Regulations parts 27 and 29 (FAR 27 and 29). Current rulemaking using the Aviation Rulemaking Advisory Committee (ARAC) is intended to amend FAR 27 and 29 to complete the harmonization process for existing rules.

To assure future rotorcraft rulemaking is harmonized to the greatest extent practical and to provide information on rulemaking using the ARAC, the FAA believes that a public meeting is warranted.

The public meeting will also be used to discuss draft revisions for Advisory Circular (AC) 27–1, Change 3, and AC 29–2A, Change 2 (58 FR 67893, December 22, 1993).

Future Harmonized Rotorcraft Rulemaking—General

Status reports on the current harmonization efforts will be made by American and European authorities and industry representatives. A presentation on the ARAC will be made. Discussion will follow the presentation and will focus on the following items:

—ARAC

—International Harmonization of rulemaking

—Future rotorcraft rulemaking—general

Normal Category Maximum Gross Weight of 6,000 Pounds

Since 1956 the FAA has based the primary and obvious distinction between normal and transport category rotorcraft certification requirements on the maximum certificated gross weight of the aircraft. The upper gross weight limit for normal category rotorcraft was set at 6,000 pounds, based on existing and anticipated designs. All rotorcraft above the 6,000 pounds maximum certificated gross weight are required to be certificated in the transport category.

Recently the FAA received two requests for exemptions from this criteria and numerous recommendations for varying degrees of changes to the airworthiness standards. The FAA recognizes that helicopters, and their operational roles, have evolved since the 6,000-pound rule was established in 1956, and therefore some changes may be warranted. Based on this recognition, the FAA developed an issue paper entitled "Certification Categories for Civil Rotorcraft." This paper will be used to facilitate discussion at the public meeting. Copies of the paper have been mailed to interested parties. Additional interested parties who have not received a copy of the paper by January 1, 1994, may obtain a copy by contacting the person listed under "FOR FURTHER INFORMATION CONTACT."

Meeting Procedures

The meeting is being chaired by the Rotorcraft Directorate. Participants will include FAA representatives from Flight Standards, Legal Counsel, and the Office of International Aviation; JAA representatives from engineering and operations; and industry groups from the U.S. and Europe.

The following procedures will be used to conduct the meeting:

1. Registration will be from 8–9 a.m. PDT on February 2, 1994. There will be no registration fee. Preregistration is recommended and may be accomplished by contacting the person listed under the caption "FOR FURTHER INFORMATION CONTACT."

2. The meeting will be recorded by a court reporter, and transcripts will be available for purchase directly from the court reporter.

3. Statements by the FAA will be made to facilitate discussion and should not be taken as expressing a final FAA position.

4. The FAA will consider all material presented at the meeting by participants. Handouts will be accepted at the discretion of the chairperson; however, enough copies should be provided for distribution to all participants.

Issued in Fort Worth, Texas, on December 20, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–224 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 39

[Docket No. 93–SW–17–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 205A, 205A–1, 205B, 212, and 412 Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Bell Helicopter Textron, Inc. Model 205A, 205A–1, 205B, 212, and 412 series helicopters. This proposal would require removal and replacement of a certain design main transmission lower planetary spider (spider) and would establish a 2,500 hours' time-in-service retirement life for the spider. This proposal is prompted by five failures of the spider that occurred during the manufacturer's fatigue tests. The actions specified by the proposed AD are intended to prevent fatigue failure of the spider, failure of the main transmission, and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–17–AD, 2601 Meacham Boulevard, Fort Worth, Texas 76137. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Bell Helicopter Textron, Inc., P.O. Box 482, Fort Worth, Texas 76101. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 222–5159, fax (817) 222–5959.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped

postcard on which the following statement is made: "Comments to Docket Number 93–SW–17–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–17–AD, 2601 Meacham Boulevard, Fort Worth, Texas 76137.

Discussion

This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 205A, 205A–1, 205B, 212, and 412 series helicopters, equipped with a main transmission lower planetary spider (spider), part number (P/N) 412–040–785–101. During recent BHTI fatigue tests, five spiders failed due to structural fatigue. Previously, there was no retirement life established for the spider. However, based on these test results, the FAA proposes to establish a 2,500 hours' time-in-service (TIS) retirement life for this design spider. This condition, if not corrected, could result in fatigue failure of the spider, failure of the main transmission, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved (1) BHTI Alert Service Bulletin (ASB) 205–93–54, dated June 18, 1993, applicable to Model 205A–1 helicopters; (2) ASB 205B–93–16, dated June 18, 1993, applicable to Model 205B helicopters; (3) ASB 212–93–83, dated June 18, 1993, applicable to Model 212 helicopters; and (4) ASB 412–93–72, Revision A, dated June 18, 1993, applicable to Model 412 helicopters. These ASBs describe procedures for the removal, retirement, and replacement of certain spiders when they reach 2,500 hours' TIS.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require removal and replacement of spiders with less than 2,400 hours' TIS, prior to or upon attaining 2,500 hours' TIS or, for spiders with 2,400 hours' or more TIS, within the next 100 hours' TIS. This AD also establishes a retirement life of 2,500 hours' TIS. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that 40 helicopters of U.S. registry would be effected by this proposed AD, that it would take approximately 26 workhours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per workhour. Required parts would cost approximately $8,929 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $414,360.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–17–AD.

Applicability: Model 205A, 205A–1, 205B, 212, and 412 series helicopters, with main transmission lower planetary spider (spider), part number (P/N) 412–040–785–101, installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the spider, that could result in failure of the main transmission and subsequent loss of control of the helicopter, accomplish the following:

(a) For spiders with 2,400 hours' or more time-in-service (TIS) on the effective date of this airworthiness directive (AD), within the next 100 hours' TIS remove and replace the spider with an airworthy spider in accordance with the Accomplishment Instructions of Bell Helicopter Textron, Inc. Alert Service Bulletin (ASB) 205–93–54, dated June 18, 1993, for the Models 205A and 205A–1; ASB 205B–93–16, dated June 18, 1993, for the Model 205B; ASB 212–93–83, dated June 18, 1993, for the Model 212; and ASB 412–93–72, Revision A, dated June 18, 1993, for the Model 412 helicopters.

(b) For spiders with less than 2,400 hours' TIS on the effective date of this AD, prior to or upon attaining 2,500 hours' TIS, remove and replace the spider with an airworthy spider in accordance with the accomplishment instructions of the appropriate ASB referred to in paragraph (a).

(c) This AD revises the Airworthiness Limitations Section of the applicable helicopter maintenance manuals by establishing a retirement life of 2,500 hours' TIS for the spider.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate. Operators should submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on December 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–140 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–SW–20–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST helicopters. This proposal would establish a mandatory retirement life of 60,000 high-power events for the main rotor trunnion (trunnion), which is currently not a life-limited part. This proposal is prompted by the manufacturer's analysis and retesting that has shown that the trunnion is sensitive to high-power events. The actions specified by the proposed AD are intended to prevent fatigue failure of the trunnion, that could result in loss of the main rotor and subsequent loss of control of the helicopter.

DATES: Comments must be received by February 22, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–20–AD, 4400 Blue Mound Road, bldg 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9:00 a.m. and 3:00 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, ASW–170, Fort Worth, Texas 76193–0170, telephone (817) 624–5177, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–20–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–20–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

This document proposes to adopt a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. Model 214B, 214B–1, and 214ST helicopters. Recent retesting and analysis has shown that the main rotor trunnion (trunnion), part number 214–010–230–101, is sensitive to high-power events. High power events are takeoffs and external load lifts. This condition, if not corrected, could result in fatigue failure of the trunnion, loss of the main rotor, and subsequent loss of the control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require for the trunnion, within the next 25 hours' time-in-service after the effective date of this AD, (1) creation of a component history card; (2) accumulation of the historical high-power events; and (3) thereafter, recording of the high-power events as they occur. Additionally, the proposed AD would establish a trunnion retirement life of 60,000 high-power events.

The FAA estimates that 15 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $10,929 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $29,523, assuming inspection and modification of one-sixth of the fleet is required each year.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–20–AD.

Applicability: Model 214B, 214B–1, and 214ST helicopters, equipped with main rotor trunnion (trunnion), part number 214–010–230–101, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the trunnion as a result of takeoffs and external loads lifts (high-power events), that could result in loss of the main rotor and subsequent loss of control of the helicopter, accomplish the following:

(a) Within the next 25 hours' time-in-service after the effective date of this airworthiness directive (AD), accomplish the following:

(1) Create a historical service record or component history card for the trunnion.

(2) Determine the actual time-in-service of the trunnion from maintenance records, if possible. If the actual time-in-service cannot be determined, use a time-in-service of 900 hours per year. Prorate the hours for a partial year.

(3) For Model 214B and 214B–1 helicopters, determine and record the accumulated high-power events on the trunnion as follows:

(i) If the number of high-power events is unknown, assign 12 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, divide that number by 2 and record the resulting number as the total accumulated high-power events.

(4) For Model 214ST helicopters, determine and record the accumulated high-power events on the trunnion as follows:

(i) If the number of events is unknown, assign 11 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as the total accumulated high-power events.

(b) After the effective date of this AD, continue to record high-power events in the aircraft maintenance record. For Model 214B and 214B–1 helicopters, divide the number of high-power events by 2 and add the resulting number to the previously recorded sum. For Model 214ST helicopters, add the high-power events to the previously recorded sum.

(c) Remove the trunnion and replace it with an airworthy trunnion in accordance with the following:

(1) For each trunnion with 59,400 or more high-power events on the effective date of this AD, remove and replace the trunnion on or before the accumulation of an additional 600 high-power events.

(2) For each trunnion with less than 59,400 high-power events on the effective date of this AD, remove and replace the trunnion on or before attaining 60,000 high-power events.

(d) This AD revises the helicopter Airworthiness Limitations Section of the maintenance manual by establishing a new retirement life for the trunnion.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on November 5, 1993.

Larry N. Kelly,

Acting Manager, Rotorcraft Directorate, Aircraft Certificotion Service.

[FR Doc. 94–143 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

28 CFR Part 65

[INS No. 1449–92]

RIN 1115–AD40

Emergency Federal Law Enforcement Assistance; Comment Period Extended

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This notice extends the comment period for the Immigration Emergency Fund regulation published on November 5, 1993, at 58 FR 58994. The original comment period expired on December 6, 1993, but the Immigration and Naturalization Service received several requests from the public to extend this period.

DATES: Written comments must bear a postmark dated on or before January 26, 1994.

ADDRESSES: Please submit written comments, in triplicate, to Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, the letters should refer to INS No. 1449–92.

FOR FURTHER INFORMATION CONTACT: Michael J. Coster, Associate General Counsel, Immigration and Naturalization Service, 425 I Street, NW., room 6100, Washington, DC 20536, telephone (202) 514–2895.

Dated: December 22, 1993.

Doris Meissner,

Commissioner.

[FR Doc. 94–176 Filed 1–4–94; 8:45 am]

BILLING CODE 4410–10–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93–305; FCC 93–545]

Vanity Call Sign System

AGENCY: Federal Communications Commission.

ACTION: Proposed rules.

SUMMARY: This action proposes to authorize the use of vanity call signs in the amateur service. The proposed rules are necessary so that amateur operators can request specific call signs with letters that signify something of importance to them such as their initials or their nicknames. This proposal would give better service to members of the amateur community because it would allow them to choose their own calls signs provided the call sign chosen is unassigned and within the framework of the license class held.

DATES: Comments are due on or before March 7, 1994. Reply comments are due on or before April 7, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632–4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted December 13, 1993, and released December 29, 1993. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference center (room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The Licensing Division of the Private Radio Bureau is installing a new automated licensing process that will give it the capability to administer a vanity call sign system. The Commission, therefore, on its own motion, is proposing to amend the amateur service rules to implement a system wherein amateur station licensees can select call signs of their own choice, provided they are not already assigned and are within the framework of the operator license class held by the applicant.

2. The vanity call sign system would be in addition to the current sequential call sign system that would be continued to be used for those applicants who do not want a vanity call sign.

3. The proposed rules would allow the licensee of an existing primary station to request a modification of the licensee to show a call sign selected by the licensee. This privilege would also be extended to the license trustee of an existing club station.

4. It is also proposed to administer a club and military recreation station sequential call sign system under our new automated licensing process.

5. An applicant could list ten call signs on the application form in order of preference. The first available call sign from the applicant's list would be assigned. If none of the call signs listed are available, the automated process would reassign the call sign that the applicant had vacated.

6. The proposed vanity call sign system is designed to be practicable to administer and simple for the amateur community to use. Comments are invited on the entire proposal and specifically on the following matters. Could other means, such as magnetic computer disks, be used to apply directly to the Commission for a vanity call sign in lieu of the traditional paper application form? Could some type of access be made available to the public to check with the Commission for call sign availability? What options are available so that the public could apply for a license electronically and receive authorization to begin operation by the same means?

7. In addition, commenters may wish to submit alternatives suggesting ways that military recreation and RACES stations might be able to be brought into a system that would afford them call signs of choice.

8. The proposed rules are set forth at the end of this document.

9. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's Rules. See generally 47 CFR 1.1202, 12.1203, and 1.1206(a).

10. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications where the station licensee or control operator has a pecuniary interest. See § 97.113(a)(3).

11. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303(r).

12. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

Club stations, Radio, Vanity call signs.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. §§ 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. In § 97.17, paragraphs (b), (c), (f), are revised and a new paragraph (g) is added to read as follows:

§ 97.17 Application for new license.

* * * * *

(b) Each application for a new amateur service license must be made on the proper FCC form:

(1) FCC Form 610 for a new operator/primary station license;

(2) FCC Form 610–A for a reciprocal permit for alien amateur licensee; and

(3) FCC Form 610–B for a new amateur service club or military recreation station license.

(c) Each application for a new operator/primary station license must be submitted to the VEs administering the qualifying examination.

* * * * *

(f) One unique call sign will be assigned to each new primary, club, and military recreation station using the sequential call sign system (call sign is selected sequentially by the FCC from an alphabetized list corresponding to the geographic region of the licensee's mailing address and class of operator license.) The FCC will issue public announcements detailing the procedures of the sequential call sign system.

(g) Each application for a new club or military recreation station license must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. No new license for a RACES station will be issued.

3. Section 97.19 is revised to read as follows:

§ 97.19 Application for a vanity call sign.

(a) A person holding an operator/primary or club station license may request a modification of the license to show a call sign assigned under the vanity call sign system (licensee selects the call sign.)

(b) Each request for a modification of an operator/primary or club station license to show a new call sign assigned under the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the proper fee to the address specified in the Private Radio Services Fee Filing Guide.

(c) Each request for a renewal of an operator/primary or club station license retaining a call sign assigned under the vanity call sign system must be made on FCC Form 610–V. The form must be submitted with the proper fee to the address specified in the Private Radio Services Fee Filing Guide. To renew the license without retaining a vanity call sign, the applicant must use FCC Form 610 as specified in § 97.21.

(d) The following persons are eligible to apply for a new vanity call sign:

(1) The holder of a valid operator/primary station license; and

(2) The license trustee holding a club station license.

(e) RACES and military recreation stations are not eligible for a vanity call sign.

(f) Only unassigned call signs are available to the vanity call sign system.

(1) A call sign that was previously assigned to a station whose license has lapsed is not available to the vanity call sign system for 2 years following expiration of the license.

(2) A call sign assigned to a station of a deceased licensee is not available to the vanity call sign system for 2 years following the licensee's death, or for 2 years following the expiration of the license, whichever is sooner.

(3) A call sign that is vacated by the licensee is available immediately to the vanity call sign system.

(g) Each vanity call sign requested must be selected from the groups of call signs designated under the sequential call sign system for the class of operator license held by the applicant or for a lower class.

(1) The applicant must request that the call sign held be cancelled and provide a list of up to 10 call signs in order of preference. The list will automatically end with the call sign vacated as the eleventh choice.

(2) The first available call sign from the applicant's list will be assigned. When none of those call signs are available, the call sign vacated by the applicant will be reassigned.

(3) Vanity call signs will be assigned from those call signs available at the time the application is processed by the FCC.

(4) The FCC will issue public announcements detailing the procedures of the vanity call sign system.

4. Current §§ 97.21, 97.23, 97.25 and 97.27 are redesignated as §§ 97.23, 97.25, 97.27 and 97.29, respectively.

5. Section 97.21 is added to read as follows:

§ 97.21 Application for renewal, reinstatement, or modification of a license.

(a) Each application for renewal, reinstatement, or modification of an amateur service license must be made on the proper FCC form(s):

(1) FCC Form 610 to request renewal or reinstatement of an operator/primary station license. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, FCC Form 610–V must be used as specified in § 97.19.

(2) FCC Form 610 to request modification of an operator license showing a change in operator class. The form must be submitted to the VEs administering the qualifying examination. A request for a vanity call sign may *not* be filed with the administering VEs. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(3) FCC Form 610 to request modification of an operator/primary station license showing a change of mailing address, change of name, or change of call sign to be assigned under the sequential call sign system. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(4) FCC Form 610–B to request renewal of a club, military recreation, or RACES station license. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. If the station has a call sign that was assigned under vanity call sign system, FCC Form 610–V must be used as specified in § 97.19.

(5) FCC Form 610–B to request modification of a club, military recreation, or RACES station license showing a change of mailing address, change of license trustee or custodian, or change of call sign to be assigned under the sequential call sign system. The form must be submitted to the FCC, 1270 Fairfield Road, Gettysburg, PA 17325–7245. When the applicant desires to retain a call sign that was assigned under the vanity call sign system, the license will bear the original expiration date.

(6) A reciprocal permit for alien amateur licensee is not renewable. A new reciprocal permit may be issued upon proper application.

(b) Each application for renewal, reinstatement, or modification of an amateur service license must be accompanied by a photocopy of the license document or the original document, unless it has been lost, mutilated, or destroyed.

(c) When the licensee has submitted a timely application for renewal of an unexpired license (between 60 and 90 days prior to the end of the license term is recommended), the licensee may continue to operate until the disposition of the application has been determined. If a license expires, application for reinstatement may be made during a grace period of 2 years after the expiration date. During this grace period, the expired license is not valid. A license reinstated during the grace period will be dated as of the date of the reinstatement.

(d) Under the sequential call sign system, unless the licensee requests a change, the same call sign will be assigned to the station upon renewal, reinstatement, or modification of a station license.

[FR Doc. 94–30 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 59, No. 3

Wednesday, January 5, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Newspapers To Be Used for Publication of Notice on Proposed Actions for Southern Region; Alabama, Kentucky, Georgia, Tennessee, Florida, Louisiana, Mississippi, Virginia, West Virginia, Arkansas, Oklahoma, North Carolina, South Carolina, Texas, Puerto Rico

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: Responsible Officials in the Southern Region will publish notice of proposed actions under 36 CFR part 215 in the newspapers that are listed in the Supplementary Information section of this notice. As provided in 36 CFR 215.5(a), the public shall be advised, through **Federal Register** notice, of the principal newspapers to be utilized for publishing notices on proposed actions.

DATES: Use of these newspapers for purposes of publishing notices of proposed actions under 36 CFR part 215 shall begin on or after January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Jena Paul Kruglewicz, Regional Appeals Coordinator, Southern Region, Planning and Budget, 1720 Peachtree Road, NW, Atlanta, Georgia 30367–9102, Phone: 404–347–4867.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Southern Region will give notice of proposed actions under 36 CFR part 215 in the following principal newspapers which are listed by Forest Service administrative unit. The timeframe for comment shall be based on the date of publication of the notice of the proposed action in the principal newspaper.

Southern Regional Forester decisions affecting National Forest System lands in more than one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico.

Atlanta Journal, published daily in Atlanta, GA

Southern Regional Forester decisions affecting National Forest System lands in only one state of the 13 states of the Southern Region and the Commonwealth of Puerto Rico will appear in the principal newspaper elected by the National Forest(s) of that state.

National Forests in Alabama, Alabama Forest Supervisor Decisions

Montgomery Advertiser, published daily in Montgomery, AL

District Rangers Decisions

Bankhead Ranger District: Northwest Alabamian, published weekly (Monday & Thursday) in Haleyville, AL

Conecuh Ranger District: The Andalusia Star, published daily (Tuesday through Saturday) in Andalusia, AL

Oakmulgee Ranger District, The Tuscaloosa News, published daily in Tuscaloosa, AL

Shoal Creek Ranger District: The Anniston Star, published daily in Anniston, AL

Talladega Ranger District: The Daily Home, published daily in Talladega, AL

Tuskegee Ranger District: Tuskegee News, published weekly (Thursday) in Tuskegee, AL

Caribbean National Forest, Puerto Rico Forest Supervisor Decisions

El Nuevo Dia, published daily in Spanish in San Juan, PR

District Ranger Decisions

El Horizonte, published weekly (Wednesday) in Fajardo, PR

Chattahoochee-Oconee National Forest, Georgia Forest Supervisor Decisions

The Times, published daily in Gainesville, GA

District Ranger Decisions

Armuchee Ranger District: Walker County Messenger, published bi-weekly (Wednesday & Friday) in LaFayette, GA

Toccoa Ranger District: The News Observer published weekly (Wednesday) in Blue Ridge, GA

Chestatee Ranger District: Dahlonega Nugget, published weekly (Thursday) in Dahlonega, GA

Brasstown Ranger District: North Georgia News, published weekly (Wednesday) in Blairsville, GA

Tallulah Ranger District: Clayton Tribune, published weekly (Wednesday) in Clayton, GA

Chattooga Ranger District: Northeast Georgian, published weekly (Wednesday) in Clarksville, GA

Cohutta Ranger District: Chatsworth Times, published weekly (Tuesday) in Chatsworth, GA

Oconee Ranger District: Monticello News, published weekly (Thursday) in Monticello, GA

Cherokee National Forest, Tennessee Forest Supervisor Decisions

Knoxville News Sentinel, published daily in Knoxville, TN (covering McMinn, Monroe, and Polk Counties)

Johnson City Press, published daily in Johnson City, TN (covering Carter, Cocke, Greene, Johnson, Sullivan, Unicoi and Washington Counties)

District Rangers Decisions

Ocoee Ranger District: Polk County News, published weekly (Wednesday) in Benton, TN

Hiwassee Ranger District: Daily Post-Athenian, published daily (Monday-Friday) in Athens, TN

Tellico Ranger District: Monroe County Advocate, published weekly (Thursday) in Sweetwater, TN

Nolichucky Ranger District: Greeneville Sun, published daily (Monday-Saturday) in Greeneville, TN

Unaka Ranger District: Johnson City Press, published daily in Johnson City, TN

Watauga Ranger District: Elizabethton Star, published daily (Sunday-Friday) in Elizabethton, TN

Daniel Boone National Forest, Kentucky Forest Supervisor Decisions

Lexington Herald-Leader, published daily in Lexington, KY

District Rangers Decisions

Morehead Ranger District: Morehead News, published bi-weekly (Tuesday and Friday) in Morehead, KY

Stanton Ranger District: The Clay City Times, published weekly (Thursday) in Clay City, KY

Berea Ranger District: Jackson County Sun, published weekly (Thursday) in McKee, KY

London Ranger District: The Sentinel-Echo, published tri-weekly (Monday,

Wednesday, and Friday) in London, KY
Somerset Ranger District: Commonwealth-Journal, published daily (Sunday through Friday) in Somerset, KY
Stearns Ranger District: McCreary County Record, published weekly (Tuesday) in Whitley City, KY
Redbird Ranger District: Manchester Enterprise, published weekly (Thursday) in Manchester, KY

National Forests in Florida, Florida Forest Supervisor Decisions

The Tallahassee Democrat, published daily in Tallahassee, FL

District Rangers Decisions

Apalachicola Ranger District: The Weekly Journal, published weekly (Wednesday) in Bristol, FL
Lake George Ranger District: The Ocala Star Banner, published daily in Ocala, FL
Osceola Ranger District: The Lake City Reporter, published daily (Monday-Saturday) in Lake City, FL
Seminole Ranger District: The Daily Commercial, published daily in Leesburg, FL
Wakulla Ranger District: The Tallahassee Democrat, published daily in Tallahassee, FL

Francis Marion & Sumter National Forest, South Carolina Forest Supervisor Decisions

The State, published daily in Columbia, SC

District Rangers Decisions

Enoree Ranger District: Newberry Observer, published tri-weekly (Monday, Wednesday, and Friday) Newberry, SC
Andrew Pickens Ranger District: Seneca Journal and Tribune, published bi-weekly (Wednesday and Friday) in Seneca, SC
Long Cane Ranger District: Index-Journal, published daily (Sunday through Friday) in Greenwood, SC
Wambaw Ranger District: News and Courier, published daily in Charleston, SC
Witherbee Ranger District: News and Courier, published daily in Charleston, SC
Tyger Ranger District: The State, published daily in Columbia, SC
Edgefield Ranger District: Augusta Chronicle, published daily in Augusta, GA

George Washington National Forest, Virginia Forest Supervisor Decisions

Daily News Record, published daily in Harrisonburg, VA

District Rangers Decisions

Lee Ranger District: Shenandoah Valley Herald, published weekly (Wednesday) in Woodstock, VA
Warm Springs Ranger District: The Recorder, published weekly (Thursday) in Monterey, VA
Pedlar Ranger District: News-Gazette, published weekly (Wednesday) in Lexington, VA
James River Ranger District: Virginian Review, published daily in Covington, VA
Deerfield Ranger District: Daily News Leader, published daily in Staunton, VA
Dry River Ranger District: Daily News Record, published daily in Harrisonburg, VA

Jefferson National Forest, Virginia Forest Supervisor Decisions

Roanoke Times & World-News, published daily in Roanoke, VA

District Rangers Decisions

Blacksburg Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA
Glenwood Ranger District: Roanoke Times & World-News, published daily in Roanoke, VA
New Castle Ranger District: Roanoke Time & World-News, published daily in Roanoke, VA
Mount Rogers National Recreation Area: Bristol Herald Courier, published daily in Bristol, VA
Clinch Ranger District: Kingsport-Times News, published daily in Kingsport, TN
Wythe Ranger District: Southwest Virginia Enterprise, published bi-weekly (Wednesday and Saturday) in Wytheville, VA

Kisatchie National Forest, Louisiana Forest Supervisor Decisions

Alexandria Daily Town Talk, published daily in Alexandria, LA

District Ranger Decisions

Caney Ranger District: Minden Press Herald, published daily in Minden, LA
Catahoula Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA
Evangeline Ranger District: Alexandria Daily Town Talk, published daily in Alexandria, LA
Kisatchie Ranger District: Natchitoches Times, published bi-weekly (Sunday and Wednesday) in Natchitoches, LA
Vernon Ranger District: Leesville Leader, published daily in Leesville, LA
Winn Ranger District: Winn Parish Enterprise, published weekly (Wednesday) in Winnfield, LA

National Forests in Mississippi, Mississippi Forest Supervisor Decisions

Clarion-Ledger, published daily in Jackson, MS

District Ranger Decisions

Bienville Ranger District: Clarion-Ledger, published daily in Jackson, MS
Biloxi Ranger District: Clarion-Ledger, published daily in Jackson, MS
Black Creek Ranger District: Clarion-Ledger, published daily in Jackson, MS
Bude Ranger District: Clarion-Ledger, published daily in Jackson, MS
Chickasawhay Ranger District: Clarion-Ledger, published daily in Jackson, MS
Delta Ranger District: Clarion-Ledger, published daily in Jackson, MS
Holly Springs Ranger District: Clarion-Ledger, published daily in Jackson, MS
Homochitto Ranger District: Clarion-Ledger, published daily in Jackson, MS
Strong River Ranger District: Clarion-Ledger, published daily in Jackson, MS
Tombigbee Ranger District; Clarion-Ledger, published daily in Jackson, MS
Ashe-Erambert Project: Clarion-Ledger, published daily in Jackson, MS

National Forests in North Carolina, North Carolina Forest Supervisor Decisions

The Asheville Citizen-Times, published daily in Asheville, NC

District Ranger Decisions

Cheoah Ranger District: Graham Star, published weekly (Thursday) in Robbinsville, NC
Croatan Ranger District: The Sun Journal, published weekly (Sunday through Friday) in New Bern, NC
French Broad District: The Asheville Citizen-Times, published daily in Asheville NC
Grandfather District; McDowell News, published daily in Marion, NC
Highlands Ranger District: The Highlander, published weekly (May-Oct Tues & Fri; Oct-April Tues only) in Highlands, NC
Pisgah Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Toecane Ranger District: The Asheville Citizen-Times, published daily in Asheville, NC
Tusquitee Ranger District: Cherokee Scout, published weekly (Wednesday) in Murphy, NC
Uwharrie Ranger District: Montgomery Herald, published weekly (Wednesday) in Troy, NC

Wayah Ranger District: The Franklin Press, published tri-weekly (Monday, Wednesday, and Friday) in Franklin, NC

Ouachita National Forest, Arkansas, Oklahoma Forest Supervisor Decisions

Arkansas Democrat-Gazette, published daily in Little Rock, AR

District Ranger Decisions

Caddo Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Cold Springs Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Fourche Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Jessieville Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Mena Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Oden Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Poteau Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Winona Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Womble Ranger District: Arkansas Democrat-Gazette, published daily in Little Rock, AR
Choctaw Ranger District: Tulsa World, published daily in Tulsa, OK
Kiamichi Ranger District: Tulsa World, published daily in Tulsa, OK
Tiak Ranger District: Tulsa World, published daily in Tulsa, OK

Ozark-St. Francis National Forest: Arkansas Forest Supervisor Decisions

Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR

District Ranger Decisions

Sylamore Ranger District: Stone County Leader, published weekly (Tuesday) in Mountain View, AR
Buffalo Ranger District: Newton County Times, published weekly (Wednesday) in Jasper, AR
Bayou Ranger District: Courier-Democrat, published daily (Sunday through Friday) in Russellville, AR
Pleasant Hill Ranger District: Johnson County Graphic, published weekly (Wednesday) in Clarksville, AR
Boston Mountain Ranger District: Southwest Times Record, published daily in Fort Smith, AR
Magazine Ranger District: Southwest Times Record, published daily in Fort Smith, AR

St. Francis Ranger District: The Daily World, published daily (Sunday through Friday) in Helena, AR

National Forests in Texas, Texas Forest Supervisor Decisions

The Lufkin Daily News, published daily in Lufkin, TX

District Rangers Decisions

Angelina Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
San Jacinto Ranger District: The Houston Post, published daily in Houston, TX
Neches Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Raven Ranger District: The Courier, published daily in Conroe, TX
Tenaha Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Trinity Ranger District: The Lufkin Daily News, published daily in Lufkin, TX
Yellowpine Ranger District: The Beaumont Enterprise, published daily in Beaumont, TX
Caddo-LBJ Ranger District—Caddo-LBJ National Grassland: Denton Record-Chronicle, published daily in Denton, TX

Dated: December 28, 1993.

R.B. Erickson,

Deputy Regional Forester.

[FR Doc. 94–113 Filed 1–4–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Electronics Technical Advisory Committee; Meeting

A meeting of the Electronics Technical Advisory Committee will be held January 20, 1994, 9 a.m., Herbert C. Hoover Building, room 1617–M–2, 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions which affect the level of export controls applicable to electronics equipment or technology.

Agenda

1. Opening Remarks and Introductions
2. Election of New Chair
3. Review of Calendar of Events
4. Discussion of New Issues
5. Presentations by the Public
6. Review of Export Control Policy Issues

The meeting will be open to the public and a limited number of seats will be available. To the extent time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that you forward your public presentation materials or comments at least one week before the meeting to the address listed below: Ms. Lee Ann Carpenter, TAC Unit/OAS–EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

For further information or copies of the minutes call Lee Ann Carpenter, 202–482–2583.

Dated: December 30, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 94–159 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Order No. 673]

Dril-Quip, Inc., Houston, Texas; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of authority for subzone status, Dril-Quip, Inc. (Oil Field Equipment), Houston, Texas

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Port of Houston Authority, grantee of Foreign-Trade Zone 84, for authority to establish a special-purpose subzone for export activity at the oil field equipment manufacturing facilities of Dril-Quip, Inc., in Houston, Texas, was filed by the Board on May 10, 1993, and notice inviting public comment was given in

the **Federal Register** (FTZ Docket 17–93, 58 FR 28952, 03–18–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export manufacturing activity is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 84K) at the Dril-Quip, Inc., facilities in Houston, Texas, at the locations described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–163 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 672]

Wisconsin Dairies Cooperatives, Preston, Minnesota; Grant of Authority for Subzone Status

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of authority for subzone status: Wisconsin Dairies Cooperative (Infant Formula/Dairy Products), Preston, Minnesota.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Greater Metropolitan Area Foreign Trade Zone Commission, grantee of Foreign-Trade Zone No. 119, Minneapolis/St. Paul, Minnesota, area, for authority to establish a special-purpose subzone for export activity at the infant formula/dairy products manufacturing plant of Wisconsin Dairies Cooperative in Preston, Minnesota, was filed by the Board on February 17, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 6–93, 58 FR 11834, 3–1–93); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations are satisfied, and that approval of the application for export processing is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 119D) at the Wisconsin Dairies Cooperative plant in Preston, Minnesota, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to the further requirement that all foreign-origin dairy products admitted to the subzone shall be reexported.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–162 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than January 31, 1994, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in January for the following periods:

	Period
Antidumping duty proceedings:	
Brazil: Brass Sheet & Strip (A–351–603)	01/01/93–12/31/93
Canada: Brass Sheet & Strip (A–122–601)	01/01/93–12/31/93
Canada: Color Picture Tubes (A–122–605)	01/01/93–12/31/93
France: Anhydrous Sodium Metasilicate (A–427–098)	01/01/93–12/31/93
Japan: Color Picture Tubes (A–588–609)	01/01/93–12/31/93
Singapore: Color Picture Tubes (A–559–601)	01/01/93–12/31/93
Spain: Potassium Permanganate (A–469–007)	01/01/93–12/31/93
South Africa: Low-Fuming Brazing Copper Wire and Rod (A–791–502)	01/01/93–12/31/93
Taiwan: Certain Stainless Steel Cooking Ware (A–583–603)	01/01/93–12/31/93
The People's Republic of China: Potassium Permanganate (A–570–001)	01/01/93–12/31/93
The Republic of Korea: Brass Sheet & Strip (A–580–603)	01/01/93–12/31/93
The Republic of Korea: Color Picture Tubes (A–580–605)	01/01/93–12/31/93
The Republic of Korea: Stainless Steel Cooking Ware (A–580–601)	01/01/93–12/31/93
Suspension agreements:	
Canada: Potassium Chloride (A–122–701)	01/01/93–12/31/93
Colombia: Miniature Carnations (C–301–601)	01/01/93–12/31/93
Colombia: Roses and Other Fresh Cut Flowers (C–301–003)	01/01/93–12/31/93
Costa Rica: Fresh Cut Flowers (C–223–601)	01/01/93–12/31/93

	Period
Hungary: Truck Trailer Axle and Brake Assemblies (A–437–001)	01/01/93–12/31/93
Countervailing duty proceedings:	
Argentina: Non-Rubber Footwear (C–357–052)	01/01/93–12/31/93
Brazil: Brass Sheet & Strip (C–351–604)	01/01/93–12/31/93
Ecuador: Fresh Cut Flowers (C–331–601)	01/01/93–12/31/93
The Republic of Korea: Stainless Steel Cookware (C–580–602)	01/01/93–12/31/93
Spain: Stainless Steel Wire Rod (C–469–004)	01/01/93–12/31/93
Taiwan: Stainless Steel Cookware (C–583–604)	01/01/93–12/31/93
Thailand: Butt-Weld Pipe Fittings (C–549–804)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country of origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce Building. Further, in accordance with § 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Department's service list. The Department will publish in the Federal Register a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by January 31, 1994.

If the Department does not receive, by January 31, 1994, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: December 22, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–164 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–570–825]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Sebacic Acid From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Brian C. Smith, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1766.

Preliminary Determination

We preliminarily determine that sebacic acid from the People's Republic of China (PRC) is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation (58 FR 43339, August 16, 1993), the following events have occurred.

On August 16, 1993, the Department of Commerce (the Department) sent the PRC's Ministry of Foreign Trade and Economic Cooperation (MOFTEC) a mini-Section A questionnaire (i.e., the section regarding sales volume and value).

On September 2, 1993, the U.S. International Trade Commission (ITC) notified the Department of its preliminary determination that there is a reasonable indication that an industry in the United States is materially injured by reason of imports of sebacic acid from the PRC that are allegedly sold at less than fair value.

On September 27, 1993, MOFTEC submitted its mini-Section A response and on September 30, 1993, the Department sent MOFTEC the antidumping questionnaire. (This antidumping questionnaire is divided into three sections and two attachments: (1) Section A requests general information on each company; (2) Section C requests information on, and a listing of, U.S. sales made during the period of the investigation (POI); (3) Section D requests information on the production process; (4) Attachment I requests information for a market-oriented industry (MOI) claim; and (5) Attachment II requests information for a separate rates claim.) As a courtesy, we sent a copy of the questionnaire to those companies identified as possible exporters of sebacic acid to the United States.

On September 30, 1993, we requested that the petitioner, four exporters ("respondents") who had entered a notice of appearance before the Department (Sinochem International Chemicals Company (Sinochem International), Sinochem Jiangsu Import & Export Corporation, Tianjin Chemicals Import & Export Corporation (Tianjin), and Guangdong Chemicals Import & Export Corporation (Guangdong)), and MOFTEC submit any publicly available published information that they wished the Department to consider when valuing the factors of production in this investigation.

On October 22, 1993, the same four exporters who had entered a notice of appearance submitted responses to Section A of the questionnaire. On October 29, 1993, we sent each

company a Section A deficiency questionnaire.

On November 1, 1993, the four exporters submitted responses to Sections C and D and Attachments I and II of the questionnaire. On November 9, 1993, we sent MOFTEC an Attachment I supplemental questionnaire. Also on November 9, 1993, we sent the four exporters deficiency questionnaires on Sections C and D and Attachment I.

On November 12, 1993, we received Section A deficiency responses from the four exporters.

On November 16, 1993, the petitioner and the four exporters submitted publicly available published information.

On November 16, 1993, we sent a letter to each of the 13 non-responding PRC exporters to whom we had sent a copy of the questionnaire. We again requested that they respond to the Department's questionnaire or provide a certification that they did not export or sell subject merchandise during the POI.

Also on November 16, 1993, we sent supplemental Attachment II questionnaires to MOFTEC and the four responding exporters.

On November 19, 1993, the Department sent to the petitioner and the four exporters a publicly available published information deficiency questionnaire. On November 23, 1993, the petitioner provided comments on the information submitted by the four exporters.

On November 26, 1993, we sent a letter to the Guangdong and Jiangsu provincial governments and the Beijing municipal government requesting information in order to more completely evaluate the issue of whether the four exporters should receive separate antidumping duty rates.

On November 29, 1993, we received Sections C and D deficiency responses from the four exporters.

From November 29, 1993, through December 3, 1993, we received certifications from three Chinese exporters (Sinochem China National Chemicals Import & Export Corporation, Yunnan Minmetals & Chemicals Import & Export (Group) Corporation, and Shanghai Chemicals Import and Export Corporation) which state that each entity did not ship sebacic acid to the United States during the POI.

On December 3, 1993, the four exporters provided a response to the Department's publicly available published information deficiency questionnaire.

On December 13, 1993, we received a letter from MOFTEC objecting to the November 26, 1993, questionnaires we sent to the provincial and municipal governments. On December 17, 1993, we received a response to our November 26, 1993, separate rates clarification questionnaire from the Guangdong Commission of Foreign Economic Relations and Trade. On December 20, 1993, we received a response from the Jiangsu provincial government.

Also, on December 20, respondents requested that, in the event of an affirmative determination in this investigation, the Department postpone the final determination an additional 60 days from the date of publication of the affirmative preliminary determination. See the "Postponement of Final Determination" section of this notice. On December 23, 1993, we received a response from the Beijing municipal government but we did not receive a response to our supplemental Attachment II questionnaire from MOFTEC or from the four responding exporters.

Scope of Investigation

The products covered by this investigation are all grades of sebacic acid, a dicarboxylic acid with the formula $(CH_2)_8(COOH)_2$, which include but are not limited to CP Grade (500ppm maximum ash, 25 maximum APHA color), Purified Grade (1000ppm maximum ash, 50 maximum APHA color), and Nylon Grade (500ppm maximum ash, 70 maximum APHA color). The principal difference between the grades is the quantity of undesirable ash and color. Sebacic acid contains a minimum of 85 percent dibasic acids of which the predominant species is the C_{10} dibasic acid. Sebacic acid is sold generally as a free-flowing powder/flake.

Sebacic acid has numerous industrial uses, including the production of nylon 6/10 (a polymer used for paintbrush and toothbrush bristles and paper machine felts), plasticizers, esters, automotive coolants, polyamides, polyester castings and films, inks and adhesives, lubricants, and polyurethane castings and coatings.

Sebacic acid is currently classifiable under subheading 2917.13.00.00, of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

Period of Investigation

The POI is January 1, 1993, through June 30, 1993.

Market-Oriented Industry

All of the respondents in this investigation have claimed that the sebacic acid industry is an MOI. In their November 1, 1993, responses, the respondents claim that all of the manufacturers' material and non-material inputs used to produce sebacic acid were purchased at market-driven prices during the POI and that none of the factories or the factories' suppliers produced any of the inputs for sebacic acid for in-plan production. Accordingly, these respondents state that it is appropriate for the Department to use the PRC prices for material and non-material inputs for valuing the inputs used to produce sebacic acid.

In the Preliminary Determination of Sales at Less Than Fair Value: Sulfanilic Acid from the People's Republic of China (57 FR 9409, 9411; March 18, 1992) (Sulfanilic Acid), the Department set forth the following criteria to be used in determining whether an MOI exists in an economy which would otherwise be considered non-market:

- For merchandise under investigation, there must be virtually no government involvement in setting prices or amounts to be produced. For example, state-required production of the merchandise, whether for export or domestic consumption in the non-market economy country would be an almost insuperable barrier to finding a market-oriented industry.
- The industry producing the merchandise under investigation should be characterized by private or collective ownership. There may be state-owned enterprises in the industry but substantial state ownership would weigh heavily against finding a market-oriented industry.
- Market-determined prices must be paid for all significant inputs, whether material or non-material, and for an all but insignificant proportion of all the inputs accounting for the total value of the merchandise under investigation. For example, an input price will not be considered market-determined if the producers of the merchandise under investigation pay a state-set price for the input or if the input is supplied to the producers at government direction. Moreover, if there is any state-required production in the industry producing the input, the share of state-required production must be insignificant.

If these conditions are not met, then, pursuant to 19 CFR 353.52, the producers of the merchandise under investigation will be treated as non-market economy (NME) producers, and the foreign market value will be calculated by using prices and costs from a surrogate country, in accordance with sections 773(c)(3) and (4) of the Act.

On November 9, we issued an MOI deficiency questionnaire to the respondents and sent a supplemental MOI questionnaire to MOFTEC. This questionnaire contained questions concerning the identity of the entire sebacic acid industry, the ownership of all entities which produce sebacic acid or supply inputs used to produce sebacic acid, and whether any inputs were subject to in-plan production. Since we did not receive the responses to our questionnaire on December 23, 1993, we did not have sufficient information on the record for our preliminary determination to determine whether the sebacic acid industry during the POI was an MOI. Therefore, we will address the respondents' MOI claim in our final determination.

Separate Rates

To determine whether an NME exporter is eligible for a separate antidumping duty rate, the Department first analyzes ownership. If an exporter is owned by the central government, the Department will not issue a separate rate for that exporter. Instead, the Department assigns to all exporters owned by the central government a single, weighted-average margin.

In the Final Determination of Sales at Less Than Fair Value: Certain Compact Ductile Iron Waterworks Fittings and Accessories Thereof from the People's Republic of China (58 FR 37908; July 14, 1993), the Department determined that NME exporters owned by the central government are not eligible for antidumping duty rates separate from each other because ownership by the central government enables the government to manipulate prices, whether or not it takes advantage of its opportunity to do so during the POI. Accordingly, entities owned by the central government cannot be eligible for rates different or separate from each other. To calculate a rate for exporters owned by the central government, the Department requires that all potential respondents that are owned by the central government reply to the antidumping questionnaire. Only complete responses from all the entities owned by the central government could enable the Department to calculate a weighted-average antidumping margin for the central government-controlled entities.

In the Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China (58 FR 48833; September 20, 1993) (Lock Washers), the Department determined that if an exporter is not owned by the central government the Department will consider issuing a separate rate. This is because the opportunity for the central government to manipulate the exporter's prices is less than its opportunity to control the prices of enterprises owned by the central government. However, as in the case of exporters owned by the central government, it would still be possible for enterprises under common ownership (e.g., provincial governments, local governments, collectives, etc.) to have their prices manipulated by the common owner. All firms under common ownership which produce or sell subject merchandise during the POI must cooperate in the investigation to enable the Department to calculate a weighted-average dumping margin for them.

In this investigation, MOFTEC has informed the Department that the central government does not own any of the responding exporters of sebacic acid. Furthermore, the responding exporters stated for the record that they do not share ownership with each other or with any other exporter of sebacic acid. Because non-responding exporters of sebacic acid are located in the same municipality as Sinochem International and in the same province as Guangdong, we requested separate rates information from the Beijing municipal government and Guangdong provincial government. We also requested similar information from the Jiangsu provincial government. Though we have received a response from the Guangdong and Jiangsu provincial governments, we received a response from the Beijing municipal government too late to consider for the preliminary determination. After examining the responses submitted by the Guangdong and Jiangsu provincial governments, we are concerned that the PRC government agencies have not provided information requested by the Department in an NME investigation. Because the responding companies have stated on the record that they are not owned by the central government or any other jurisdiction or entity that owns other exporters of sebacic acid, the lack of information in the two local government responses to our questionnaire should not control our separate rates decision for the preliminary determination. However, we encourage provincial and municipal government entities to respond, with the assistance of MOFTEC if appropriate, because this issue will be reconsidered before making the final separate rates determination in this investigation.

Given that each of the four responding exporters states that it is neither owned by the central government nor owned by another jurisdiction or entity that also owns other exporters of the subject merchandise, we have determined that these respondents are eligible to be considered for separate rates. The criteria the Department relies upon to establish whether or not separate rates are appropriate are those put forward in the Final Determination of Sales at Less Than Fair Value: Sparklers from the People's Republic of China (56 FR 20588; May 6, 1991) (Sparklers). Under the Sparklers criteria, the Department issues separate rates where respondents can demonstrate both *a de jure* and *de facto* absence of central government control over export activities.

In this investigation, each of the four cooperative exporters has documented that its business license provides that its ownership is distinguished from central-government ownership. In addition, MOFTEC has stated that it does not own or control the exporters or producers of sebacic acid. This information indicates that there is a de jure absence of central government control.

Each of the four cooperating respondents has asserted and provided evidence such as sales contracts that it establishes its own export prices and keeps the proceeds of its export sales and that its management operates with complete autonomy. This information indicates the de facto absence of central government control with respect to exports. Consequently, we have determined that these four cooperating exporters have met the criteria set forth in Sparklers and we have used their information to calculate a separate rate for each of them.

Surrogate Country

Section 773(c) of the Act requires the Department to value the factors of production, to the extent possible, in one or more market economy countries that are at a level of economic development comparable to that of the non-market economy country, and that are significant producers of comparable merchandise. The Department has determined that India and Pakistan are the most comparable to the PRC in terms of overall economic development, based on per capita gross national product (GNP), the national distribution of labor, and growth rate in per capita GNP. (See memorandum from the Office of Policy to David L. Binder, dated September 29, 1993.) The Department has also determined that India is a producer of the subject merchandise. Because India fulfills both requirements outlined in the statute, India is the preferred surrogate country for purposes of valuing the factors of production used in producing the subject merchandise. In cases where we were unable to obtain

surrogate values from India, we have used values obtained in Pakistan. Specifically, we have resorted to Pakistan for two surrogate values, where publicly available published values in India were either significantly outdated or not obtainable. We have obtained and relied upon publicly available published information wherever possible.

Fair Value Comparisons

To determine whether sales of sebacic from the PRC to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and because exporter's sales price methodology was not otherwise indicated.

For those exporters that responded to the Department's questionnaire, we calculated purchase price based on packed, CIF prices to unrelated purchasers in the United States. We made deductions, where appropriate, for foreign inland freight, ocean freight, marine insurance, and foreign brokerage.

We based the deduction for foreign inland freight on freight rates in India, as the respondents reported the use of PRC transportation services in incurring this charge. The respondents also reported the use of PRC-based providers for ocean freight and marine insurance. We based ocean freight on the current tariff rate in the Asia North America Eastbound Rate Agreement.

For foreign brokerage and handling and marine insurance, we used publicly summarized versions of these two expenses reported in the antidumping duty investigation of sulfur dyes, including sulfur vat dyes, from India (see memorandum to the file dated December 27, 1993).

Foreign Market Value

We calculated FMV based on factors of production reported by the factories which produced the subject merchandise for these respondents. The factors used to produce sebacic acid include materials, labor, and energy. To calculate FMV, the reported factors of production were multiplied by the appropriate surrogate values for the different inputs. (For a complete analysis of the surrogate values used, see our preliminary concurrence memorandum, dated December 27, 1993.)

In determining which surrogate value to use for valuing each factor of production, we selected, where possible, the publicly available published value which was: (1) An average non-export value; (2) within the POI; (3) product-specific; and (4) tax-exclusive.

We used surrogate transportation rates to value inland freight from the factories to ports. In the case of material inputs, we also used surrogate transportation rates to value the transportation of inputs to the factories. In those cases where a respondent failed to provide transportation distances, we applied the longest truck rate from our surrogate data as best information available (BIA).

To value castor oil, we used publicly available published information from The Times of India. This source provided a non-export price during the POI.

To value caustic soda, sodium chloride, zinc oxide, phenal, and glycerine, we used publicly available published information from Chemical Business. This source provided a non-export price during the POI which did not appear to include Indian excise or provincial sales taxes.

To value sulfuric acid, cresol, and caproyl alcohol, we used publicly available published information from Chemical Weekly. This source provided a non-export price during the POI which was inclusive of taxes. However, because we did not have the necessary information to deduct taxes, we did not remove the taxes from these prices.

To value activated carbon and fatty acid, we used publicly available published information from the Monthly Statistics of the Foreign Trade of India. In addition, to value macropore resin we used a comparable product's price from Monthly Statistics of the Foreign Trade of India. This source was the only one we found which provided publicly available published price information for these material inputs. Because these prices were prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using wholesale price indices (WPIs) published in International Financial Statistics (IFS) by the International Monetary Fund (IMF).

To value steam coal, we used publicly available published information from the 1993 OECD IEA Statistics. This was the most current publicly available published information we found that provided a price for steam coal. Because the price quoted was prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using WPIs published in IFS by the IMF.

To value electricity, we used publicly available published information from the Monthly Statistical Bulletin published by the Pakistani Federal Bureau of Statistics. This source provided an electricity rate for industrial use in the POI. We found that the published information for Indian electricity rates was either outdated or appeared to be non-specific.

To value water, we used a cable from the U.S. consulate in Pakistan. We used this cable because we could not locate a value for water in any Indian or Pakistani publication. Because the price contained in the cable was for a period prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using WPIs published in IFS by the IMF.

To value labor costs, we used the International Labor Office's 1992 Yearbook of Labor Statistics. To determine the number of hours in an Indian workday, we used the Country Reports: Human Rights Practices for 1990. Because the published labor rate was prior to the POI, we adjusted the factor values to account for inflation between the time period in question and the POI using the consumer price index published in IFS by the IMF.

To value factory overhead, selling, general and administrative expenses, and profit, we calculated percentages based on elements of industry group income statements from The Reserve Bank of India Bulletin. We did not include an amount for energy in our factory overhead calculation.

To calculate FMV for one ton of sebacic acid, we added each of the costs derived above. We also added to FMV, where appropriate, an amount for packing labor based on the appropriate Indian wage rate, and an amount for packing materials based on Indian prices from the Monthly Statistics of the Foreign Trade of India. We made no adjustments for selling expenses. Finally, we added surrogate freight costs for the delivery of inputs and packing materials to the factories producing sebacic acid.

In this investigation, respondents stated that the factories produce three valuable by-products (glycerine, fatty acid, and caproyl alcohol) in the course of producing sebacic acid. Respondents maintain that the Department should deduct the value of these three by-products from the cost of manufacture. We disagree with the respondents that the products are all by-products, and that the value of each should be deducted from the cost of manufacture of sebacic acid. Rather, as discussed below, we agree that fatty acid is a by-product but determine that glycerine and caproyl alcohol should not be considered by-products in this case.

The three products in question are all yielded during the production of sebacic acid and the products are an unavoidable consequence of the production of sebacic acid. These products are produced from the same raw materials, by the same equipment, during the same manufacturing operations, as those used for sebacic acid.

In accordance with generally accepted accounting principles, by-products are treated differently from other types of products (i.e. joint or co-products) for purposes of determining a product's costs. The distinction between by-products and these other products is based on relative sales value. By-products are identified by their relatively insignificant sales value, whereas these other products, regardless how they are referred to, generally have significant sales value relative to the product under investigation. In this case, we determined whether the value of a product was significant or insignificant based on the quantity yielded and the value assigned to each product.

To determine the relative values of all subsidiary products and the subject merchandise, we took into account the fact that: (1) The factories generally sell the subsidiary products in the domestic market; (2) the factories sell sebacic acid in the domestic market; (3) the PRC renminbi is a non-convertible currency; and (4) the factories' costs and profits have not been considered because we have not yet addressed respondents' MOI claim. In accordance with the hierarchy for preferred input values as set forth in the Final Determination of Sales at Less Than Fair Value: Certain Carbon Steel Butt-Weld Pipe Fittings From the People's Republic of China, 57 FR 21058 (May 18, 1992) (Comment 4) and the publicly available published information selection methodology noted above, we used surrogate values from India for sebacic acid, glycerine, caproyl alcohol, and fatty acid to determine the relative value of each product based on the production of one metric ton of sebacic acid, as well as to determine the total value of one metric ton of sebacic acid.

In this case, we determine that fatty acid is a by-product because the overall value of fatty acid is insignificant compared to the relative value among all of the "subsidiary" products and the subject merchandise. As a by-product, we subtracted the sales revenue of fatty acid from the production costs of the other products.

For purposes of the preliminary determination, we determine that glycerine and caproyl alcohol are not by-products. The value of glycerine for two of the four factories and the value of caproyl alcohol for all four factories is significant compared to the relative value of all of the products manufactured as a result of or during, the process of manufacturing sebacic acid. The reason why we find that glycerine should not be considered as a by-product is because we conclude that the quantity of production of this product appears subject to manipulation by management based on the variation in the quantity yield among the four factories.

Therefore, we allocated the factor inputs, e.g., materials, used to produce glycerine and caproyl alcohol, by the relative quantity of output of these two products and sebacic acid. We did not allocate the amount of labor, energy usage or factory overhead among the products because we did not have the information to allow us to make accurate adjustments (*See* concurrence memorandum, dated December 27, 1993, for further discussion).

Best Information Available

The Department's policy, as set forth in Lock Washers, is that all potential exporters owned by a given entity must cooperate in our investigation in order for the response to be considered complete.

MOFTEC did not submit a consolidated questionnaire response on behalf of all PRC exporters of sebacic acid. As noted above, the list of PRC exporters of sebacic acid submitted by MOFTEC contained the names of firms which have not responded to the Department's antidumping questionnaire. Since the Department must receive an adequate questionnaire response from each entity to which a separate dumping rate can be applied, all non-responding entities must receive a PRC country-wide rate. In the absence of adequate questionnaire responses from the other exporters of sebacic acid, we have based PRC country-wide rate on BIA. Section 776(c) of the Act provides that whenever a party refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an investigation, the Department shall use BIA. We have done so in this investigation.

In determining what to use as BIA, the Department follows a two-tiered methodology based on the degree of respondents' cooperation. According to the Department's two-tiered BIA methodology, when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (a) the highest margin alleged in the petition, or (b) the highest calculated rate of any respondent in the investigation. This methodology for assigning BIA has been upheld by the U.S. Court of Appeals for the Federal Circuit. (*See Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993); see also *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993).) Because some PRC exporters refused to answer the Department's questionnaire, we find that they have been uncooperative in this investigation. As BIA for these exporters, we are assigning the highest margin provided in the petition (243.40) as the PRC country-wide rate, in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. No adjustments were made to petitioner's calculations.

No "All Others" rate will be established for the PRC. Instead, a country-wide rate is applied to all imports of sebacic acid from the PRC for those PRC exporters which were unable to demonstrate that they were entitled to a separate rate. Because we are assigning a country-wide rate in this situation, there is no need to assign an "All Others" case deposit rate for PRC entities.

Verification

As provided in section 776(b) of the Act, we will verify the information used in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of sebacic acid from the PRC that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated amount by which the FMV exceeds the USP as shown below. These suspension of liquidation instructions will remain in effect until further notice.

The weighted-average dumping margins are as follows. The PRC

country-wide rate applies only to PRC companies not specifically listed below.

Manufacturer/Producer/Exporter	Weighted-average margin percentage
Sinochem International Chemicals Company	28.04
Sinochem Jiangsu Import & Export Corporation	39.24
Tianjin Chemicals Import & Export Corporation	20.01
Guangdong Chemicals Import & Export Corporation	40.25
PRC country-wide rate	243.40

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine before the later of 120 days after the date of this preliminary determination or 45 days after our final determination whether these imports are materially injuring, or threaten material injury to, the U.S. industry.

Postponement of Final Determination

As stated above, in accordance with 19 CFR 353.20(b), respondents, which account for a significant portion of the merchandise covered in this proceeding, have requested in writing that, in the event of an affirmative determination, the Department postpone the final determination an additional 60 days from the publication of the preliminary determination. Accordingly, because we find no compelling reason to deny the request, we are postponing the date of the final determination until not later than 135 days after the date of publication of this notice.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than April 8, 1994, and rebuttal briefs, no later than April 13, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on April 15, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In addition, an executive summary of no more than two pages on the major issues to be addressed should be submitted with case briefs. Briefs should contain a table of authorities. Citations to the Department's determinations and court decisions should include the page number where the cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination on or about May 23, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: December 27, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–160 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–570–824]

Postponement of Final Antidumping Duty Determination and Correction of Ministerial Errors: Silicon Carbide From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: January 5, 1994.

FOR FURTHER INFORMATION CONTACT: Edward Easton or Steve Alley, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–1777 or (202) 482–5288, respectively.

Postponement of Final Determination

Hainan Feitian Electrontech Co., Ltd. (Hainan), Shaanxi Minmetals (Shaanxi), Xiamen Abrasive Co. (Xiamen), 7th Grinding Wheel Factory Import and Export Corp., Qinghai Metals and Minerals Import & Export Corp., and The Import and Export Corporation of Inner Mongolia Autonomous Region, responding exporters in this proceeding, account for a significant proportion of exports of merchandise covered by this investigation. On December 1 and 3, 1993, these exporters requested that the Department of Commerce (the "Department") postpone its final determination until not later than 135 days after the date of publication of the preliminary determination.

Our November 29, 1993, preliminary determination (58 FR 64549, December 8, 1993) in this proceeding was affirmative. In accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.20(b), when, subsequent to an affirmative preliminary determination, we receive a request for postponement of the final determination from exporters who account for a significant proportion of the merchandise under investigation, we are required, absent compelling reasons for denial, to grant the request. Accordingly, we are postponing our final determination as to whether sales of silicon carbide from the PRC have been made at less than fair value until not later than April 22, 1994.

Amended Preliminary Determination

On December 2, 1993, we disclosed our calculations for the preliminary determination to counsel for Hainan, Shaanxi, and Xiamen. On December 7, 1993, we received timely submissions from each of these three exporters alleging ministerial errors in the Department's preliminary determination calculations. (For specific details of these allegations and our analysis of them, see Memorandum from Richard W. Moreland to Barbara R. Stafford of December 20, 1993).

One of these exporters, Hainan, alleged that the Department made certain errors with respect to the valuation of freight rates and packing materials. We agree, and in accordance with procedures set forth in the proposed regulations, we are amending Hainan's preliminary dumping margin because the corrections represent a change of more than five absolute percentage points and more than 25 percent of the dumping margin calculated in the original (erroneous) preliminary determination. See § 353.15(g)(4)(ii) of the Department's proposed regulations, 57 FR 1131 (January 10, 1992). The corrected dumping margin for Hainan is 50.42 percent.

The rest of the alleged ministerial errors were either not ministerial in nature or could not be considered a "significant ministerial error." See § 353.15(g)(4) of the Department's proposed regulations.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than March 30, 1994, and rebuttal briefs, no later than April 4, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will now be held on April 6, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

This notice is published pursuant to section 735(d) of the Act, 19 CFR 353.20(b)(2) and in accordance with procedures set forth in the Department's proposed regulations, § 353.15(g)(3), 57 FR 1131 (January 10, 1992).

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–161 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–DS–P

United States Travel and Tourism Administration

[Docket No. 931219–3319]

Financial Assistance To Support Tourism Trade Development in Midwest States Affected by the Widespread Flooding of 1993

AGENCY: United States Travel and Tourism Administration (USTTA), Commerce.

ACTION: Notice.

SUMMARY: Financial assistance funding in the amount of $3 million is available from the USTTA to the nine States of the midwest affected by the major, widespread flooding of 1993, to assist in promoting tourism within the United States and from the contiguous Canadian market. These funds are intended to defray the costs of increased tourism promotion needs resulting from the flooding. This notice invites applications for an award of such funds and sets forth application and award procedures, award criteria, and certain limitations.

DATES: Applications for an award of these funds will be accepted from January 5, 1994 until February 4, 1994. Applications postmarked after February 4, 1994, will not be considered. Awards are anticipated by April 15, 1994.

ADDRESSES: Application kits including application forms (Standard Forms 424, 424A, and 424B) are available from, and completed applications should be submitted to, the Office of Tourism Trade Development, United States Travel and Tourism Administration, room 1860, Herbert C. Hoover Building, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Applicants must submit an original of their application and two copies.

FOR FURTHER INFORMATION CONTACT: Ms. Karen M. Cardran, Director, Marketing Programs (202) 482–1904.

SUPPLEMENTARY INFORMATION: Notice is hereby given to the States of Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, South Dakota, and Wisconsin, their political subdivisions and combinations thereof, and to private or public nonprofit organizations and associations that, pursuant to Title III of Pub. L. No. 103–75, sections 202 (a)(5) and (c) of the International Travel Act of 1961, as amended, and 42 U.S.C. 3151, a total of $3 million is available from the USTTA to the States affected by the major, widespread flooding of 1993, to assist projects to promote tourism within the United States and from the contiguous Canadian market. As used in this notice, "private or public non-profit organization or association" means an institution, organization, or association, either private or public, which has tax exempt status as defined in section 501(a) of the Internal Revenue Code.

These funds are intended to defray the costs of increased tourism promotion needs resulting from the flooding. An applicant may receive no more than one award for this disaster.

Only eligible applicants from the nine eligible States whose applications receive a final evaluation score of 80 or greater will be considered for an award. No applicant will be awarded funds unless the application includes a project or projects from at least two of the six project areas set forth in section IV.C., below. No applicant will be awarded funds unless the application includes: (1) Documentation demonstrating that all programs set forth in the application are or will be effectively coordinated with other affected entities in the State; and (2) a marketing plan that contains clearly stated objectives for a time period of one year and procedures for credible evaluation and tracking, and that is integrated (in terms of multiple activities) with a generally cohesive approach. Further, no applicant will be awarded funds unless the projects for which funding is sought are aimed at market(s) which have potential for mitigating the tourism-related negative effects of the disaster. The application must include credible market research to support this potential.

The maximum amount an applicant from the States of Missouri, Iowa and Illinois, whose tourism industries have been most severely affected by the floods, shall be awarded is $400,000 and cannot exceed an aggregate of $400,000 annually for such projects for each State. Applicants from the States of Nebreska, Minnesota, North Dakota, South Dakota, Kansas and Wisconsin shall be eligible to receive up to $300,000 and cannot exceed an aggregate of $300,000 annually for such projects for each State. The minimum amount for which an applicant may apply is $200,000.

Based on individual State funding limitations, applicants will be awarded assistance in descending order starting with the applicant whose proposal has the highest final evaluation score. Subject to the availability of funds, grants will be awarded on a state-by-state basis according to final evaluation scores, State funding limitations, and broad geographic distribution.

The funding instrument will be a grant unless it is anticipated that the USTTA will be substantially involved in the implementation of the project for which an award is to be made, in which case the funding instrument will be a cooperative agreement.

In the event that all funds have not been obligated after the first competition, a second competition will be announced. Applicants from the eligible States that have not reached their maximum limitation, as noted above, will be invited to apply.

To support the tourism promotional effort financed by this program, a comprehensive national public relations campaign will be developed to encourage recovery of visitation to the affected region. Components of the campaign may include, but are not limited to, public service announcements (broadcast or print), development of a "1–800" number for tourist information, and endorsements by celebrity spokespersons. Applicants are encouraged to utilize the umbrella campaign in their overall effort.

I. Selection Procedures

All applications will be reviewed and judged individually, independent from all other applications, by each of four qualified evaluators acting without consultation among themselves. Each evaluator will score each application by awarding points for each of the three (3)

evaluation criteria set forth in IV, below. Scores awarded for each evaluation criterion will be multiplied by the weight assigned to that criterion. A maximum score of 100 points may be awarded to an application. Once scores have been determined individually by each evaluator, a final score for each application will be determined by averaging the scores provided by each of the four evaluators.

II. Matching Requirements

The recipient is required to provide 25 per cent matching funds for the total project cost.

In determining the amount of the non-Federal share, due consideration will be given to all contributions both in cash and in-kind. In-kind contributions shall be made in accordance with OMB Circular A–110 (non- or for-profits) or 15 CFR part 24 (state and local governments).

A waiver of the match may be requested if the non-Federal share is not reasonably available and the applicant provides documentation clearly demonstrating the lack of resources due to the disaster.

III. Award Period

Financial assistance shall be awarded on a one-year basis.

IV. Evaluation Criteria

The three evaluation criteria and the weight assigned each criterion are:

A. Needs and Effect Criterion (assigned weight—0.4)

Application demonstrates the need of affected area and the ability of the project to counteract directly the negative impact of the 1993 floods on tourism.

(1) Application clearly reflects the ability of project to offset negative impacts of the disaster which have not been substantially mitigated by other aid. (40 points)

(2) Application includes documentation from Federal, State, or local sources demonstrating the current degree of need. This must include documentation showing the: (a) Current loss of and tourism-related employment; (b) level of tourism prior to the disaster; (c) current level of tourism; (d) impact in terms of employment and income of tourism on the area economy versus other industries; and (e) extent to which the negative impact of the disaster on tourism has been mitigated. (60 points)

B. General Criterion (assigned weight—0.2)

Application clearly states objectives that respond directly to the specialized tourism promotion needs of the affected area.

(1) Application states clear and achievable objectives to be carried out over an appropriate length of time. (25 points)

(2) Application demonstrates that project is aimed at markets that have been identified using credible market research. (25 points)

(3) Application demonstrates that project is fully integrated (in terms of multiple activities) with a generally cohesive approach. (25 points)

(4) Application demonstrates that applicant has the organizational quality and competence to effectively carry out the project. The application must include an organizational chart and a biographical sketch of the program director with the following information: name, address, phone number, background and other qualifying experience for the project; and a list of other key personnel, consultants, etc. engaged in the project, which includes names, training and background. Applications by non-profit organizations must include a copy of the articles of incorporation, charter, trust statement, or other similar documentation which sets forth the authorizing powers and purposes of the organization, together with bylaws or other code of regulations; a brief description of organizational arrangements for fiscal and managerial control, including the extent to which these overlap or are integrated with other organizations; a copy of a current financial statement of the organization; and a copy of the current Internal Revenue Service tax exemption letter which certifies the organization's not-for-profit status. (25 points)

C. Project Criterion (assigned weight—0.4)

Each application must include a project or projects from at least two of the six project areas set forth below. The project evaluation component score will be determined by adding the points awarded for the applicable project areas divided by the number of project areas prepared by the applicant.

1. Media Product Information

Media product information projects are those that include the development of media familiarization tours and dissemination of product information on the destination.

The applicable criteria are:

a. Correlation of media programs with applicant's overall tourism marketing strategy. (20 points)

b. Correlation with USTTA national public relations program. (20 points)

c. Program timing and content, and potential acceptance by the target media. (15 points)

d. Project cost versus media space/time return (a minimum 10 to 1 return on investment is suggested). (20 points)

e. Measurement plan to assess program effectiveness, *i.e.*, methodology to track readership or viewer response. (25 points)

2. Market Development

Market development projects are those designed to generate increased travel to the impacted area from primary markets of opportunity. Criteria are set forth for the following three types of such projects:

a. Operator/Agent Familiarization Tours.

1. Preliminary planning (*i.e.*, proposed itinerary) of the familiarization tour(s) to cities, State(s) or regions for operators/agents to introduce the tourism product to support tour development or marketing. (30 points)

2. Plans for subsequent follow-up with participants to ensure continued awareness and potential sale of product. (45 points)

3. Measurement plan to assess project return versus outlay. (25 points)

b. Tour Package Development.

1. Preliminary planning for and packaging of tour programs, *i.e.*, selection of receptive/wholesale operators and program components. (30 points)

2. Plans for subsequent implementation and promotion of the program in conjunction with tour wholesalers, retailers, etc. (45 points)

3. Measurement to assess program effectiveness. (25 points)

c. Consumer Travel Shows/Workshops.

1. Preliminary planning and packaging of product for information delivery to consumer. (30 points)

2. Plans for subsequent follow-up with trade contacts or potential consumers. (45 points)

3. Measurement of project effectiveness. (25 points)

An applicant may choose to implement only one of the three designated types of market development programs to be considered as having satisfied the Market Development project criterion.

3. Advertising

Applications for advertising projects should include a planned campaign outline, including the message to be conveyed (visually and written), and an outline of proposed media plans. If layouts, copy and media schedules are available at the time application is made, they should be submitted with application. If they are not, specific campaign details must be submitted to the Office of Tourism Trade Development prior to the actual placement of the advertising in the media.

The applicable criteria are:

a. Basic approach and objectives. (20 points)

b. Correlation with USTTA national public relations program. (20 points)

c. Evidence that customer demographic, psychographic and statistical data necessary to develop marketing and advertising strategy is available. (10 points)

d. Creative interpretation of the proposed strategy. (20 points)

e. Expected reach of the advertising campaign in relation to its cost and short-term impact on the market. (15 points)

f. Measurement plan to assess program cost/return effectiveness. (15 points)

4. Trade Development

Trade development projects are those which complement ongoing programs directed toward the members of the travel trade. For application purposes, trade development projects are not concerned with either the development or promotion of tour packages (which are covered in the "Tour Package Development" criterion).

Such projects may include: Trade-oriented product workshops or seminars, trade advertising, familiarization tours for retail travel agents, and participation in travel trade shows.

The applicable criteria are:

a. Techniques used to create awareness and encourage selling of the destination by the travel trade. (25 points)

b. Implementation time and anticipated project benefits derived after grant expiration. (25 points)

c. Goals of project and methods used to measure program results. (50 points)

5. Consumer and Trade Literature

Consumer and trade literature must be designed specifically for use in the United States. Speciel attention should be devoted to designing literature to meet the needs of the target market. An applicant may choose to implement only one of the two designated types of consumer and trade literature project criterion set forth below:

a. Consumer and trade literature development and production.

1. Preliminary planning for design and content of brochures. (15 points)

2. Evidence that market planning research has been utilized to identify visitor preferences and information needs. (15 points)

3. Correlation between literature program and overall marketing plan. (15 points)

4. Correlation with USTTA national public relations program. (15 points)

5. Information adequately covers flood affected area. (20 points)

6. Measurement plan to assess program effectiveness. (20 points)

b. Consumer and Trade Literature Distribution.

1. Soundness of strategy for distribution of literature. (25 points)

2. Timeliness of proposed response mechanism. (25 points)

3. Adequacy of response mechanism to meet anticipated demand. (20 points)

4. Evidence of strategy to allow follow-up after initial response. (15 points)

5. Measurement plan to assess program effectiveness. (15 points)

6. Special Events/Festivals

This category includes the development, promotion and implementation of participatory events that draw visitation and attention to the area.

a. Preliminary plan for development of event. (20 points)

b. Appropriate program timing and content, and potential acceptance by the target media. (20 points)

c. Proposed promotion plan adequately reaches potential trade and consumer audiences. (15 points)

d. Event plan includes adequate service facilities, *i.e.*, parking, security, traffic flows, restrooms, food service, to accommodate projected audience. (20 points)

e. Correlation to USTTA national public relations program, *i.e.*, use of logo or theme, etc. (15 points)

f. Measurement plan to determine effectiveness. (10 points)

V. Other Requirements

1. Recipients and subrecipients are subject to all Federal laws and Federal and Department of Commerce policies, regulations, and procedures applicable to Federal financial assistance awards.

2. Indirect costs are allowable; however, "the total dollar amount of the indirect costs proposed in an application under this program must not exceed the indirect cost rate negotiated and approved by a cognizant Federal agency prior to the proposed effective date of the award or 100 percent of the total proposed direct costs dollar amount in the application, whichever is less."

3. No Federal funds will be awarded to an applicant who has an outstanding delinquent Federal debt until either: (a) The delinquent account is paid in full; (b) a negotiated repayment schedule is established and at least one payment is received; or (c) other arrangements satisfactory to the Department of Commerce are made.

4. Awards of financial assistance are subject to the requirements of Executive Order No. 12372, "Intergovernmental Review of Federal Programs."

5. A false statement on an application is grounds for denial or termination of funds and for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

6. All primary applicants must submit a completed CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying." Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of CD–511 applies. Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Government-wide Requirements for Drug-Free Workplace (Grants)" and the related section of CD–511 applies. Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain federal contracting and financial transactions," and the lobbying section of CD–511 applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater. Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

7. Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and a completed SF–LLL, "Disclosure of Lobbying Activities." CD–512's are intended for the use of recipients and should not be transmitted to the Department of Commerce. SF–LLL's submitted by any tier recipients or subrecipient should be submitted to the Department of Commerce in accordance

with the instructions contained in the award document.

8. Unsatisfactory performance of an applicant under prior Federal awards may result in an application not being considered for funding.

9. Costs incurred by an applicant prior to an award being made are incurred solely at the applicant's own risk. Applicants are advised that notwithstanding any verbal assurance that they may receive, there is no obligation on the part of the Department of Commerce to reimburse pre-award costs.

10. If an applicant is selected for an award, the Department of Commerce has no obligation to provide any additional future funding in connection with that award. Renewal of an award to increase funding or extend the period of performance is at the total discretion of the Department of Commerce.

11. All applicants who are private or public non-profit organizations or associations are subject to a name check review process. Name checks are intended to reveal whether any key individuals associated with the applicant have been convicted of, or are presently facing, criminal charges such as fraud, theft, or perjury, or are involved in other matters which significantly reflect on the applicant's management honesty or financial integrity.

Classification

This notice of availability of financial assistance is issued under the authority of title I of Public Law No. 103–75, section 202(a)(5) and (c) of the International Travel Act of 1961, as amended, and 42 U.S.C. 3151.

Because this notice relates to grants, benefits, or contracts, section 553 of the Administrative Procedure Act (APA)(5 U.S.C. 553) does not require that notice and an opportunity for comment be given for this rule or that its effective date be delayed for 30 days. Since notice and an opportunity to comment is not required by the APA or by any other law, a Regulatory Flexibility Analysis is not required under the Regulatory Flexibility Act and none was prepared.

The Department of Commerce has determined that the Federal assistance covered by this notice will not significantly affect the quality of the human environment. Therefore, no draft or final Environmental Impact Statement has been or will be prepared.

This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

All information collection requirements under this notice are consistent with those covered in Office of Management and Budget Circular A–110.

Leslie K. Doggett,

Acting Under Secretary of Commerce for Travel and Tourism.

[FR Doc. 94–208 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–11–1

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of modifications to permit Nos. 657 (P77#31), 707 (P77#40) and 711 (P77#43).

SUMMARY: Notice is hereby given that on December 28, 1993, Permit Nos. 657, 707, and 711, issued to the Southwest Fisheries Science Center, NMFS, P.O. Box 271, La Jolla, California, were modified.

ADDRESSES: The modifications and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, suite 13130, Silver Spring, MD 20910 (301/712–3389);

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802, (310/980–4016); and

Marine Mammal Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, room 106, Honolulu, HI 96822 (808/955–8831).

SUPPLEMENTARY INFORMATION: The subject modifications have been issued under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1351 *et seq.*), the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit Nos. 657, 707, and 711 were modified to extend the effective dates through December 31, 1994.

Dated: December 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–112 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Extension of the Visa and Exempt Certification Arrangement Between the United States and India

December 30, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Announcing the extension of the visa and exempt certification arrangement with India.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The existing export visa and exempt certification arrangement between the Governments of the United States and India has been extended through January 31, 1994, as agreed in an exchange of letters between the two Governments dated December 23 and 27, 1993. This notice is to remind the public that the U.S. Customs Service must continue to require visas and exempt certifications as previously published, for textiles and textile products produced or manufctured in India, and exported to the United States. Any cancellation of those requirements will be announced in the Federal Register.

See 44 FR 68504 published on November 29, 1979.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–32116 Filed 12–30–93; 4:35 pm]

BILLING CODE 3510–DR–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. CP94–149–000]

Transcontinental Gas Pipe Line Corp.; Application

December 29, 1993.

Take notice that on December 20, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–149–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a 652 horsepower compressor unit and appurtenant facilities in Nueces County, Texas, all as more fully set forth in the application on file with the Commission and open to public inspection.

TGPL proposes to abandon by sale the compressor, which is located at the interconnection between TGPL's Petronilla Lateral and the pipeline system of Texas Eastern Transmission Corporation (Texas Eastern) in Nueces County. It is stated that the compressor was installed under Commission authorization in Docket No. CP80–533–000 by order issued March 23, 1981. It is asserted that the compressor was installed to alleviate capacity constraints on TGPL's Petronilla Lateral so that TGPL could take delivery of up to 30,000 Mcf of gas per day which was imported from Mexico at an existing delivery point with Texas Eastern. It is explained that TGPL was purchasing gas from Border Gas, Inc. for system supply purposes, but that TGPL has not purchased gas under the gas purchase contract since December 1984 and does not plan to resume such purchases. It is stated that the proposed abandonment would have no impact on the daily design capacity or operating conditions on TGPL's system. It is further stated that no customers would lose service as a result of the proposed abandonment.

Any person desiring to be heard or to make any protest with reference to said application should on or before January 7, 1994, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for TGPL to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–106 Filed 1–4–94; 8:45 am]

BILLING CODE 6717–01–P

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order to Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Keyboard Broadcasting Communication, Licensee of WCSA (AM).	Ripley, MS ...	93–317

(Regarding the silent status of Station WCSA (AM))

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Keyboard Broadcasting Communication has been directed to show cause why the license for Station WCSA (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Keyboard Broadcasting Communication has the capability and intent to expeditiously resume broadcast operations of WCSA(AM) consistent with the Commission's Rules.

2. To determine whether Keyboard Broadcasting Communication has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the foregoing issues, whether Keyboard Broadcasting Communication is qualified to be and remain the licensee of Station WCSA (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 94–100 Filed 1–4–94; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM docket No.
Wesley College, Licensee of WCSP (AM).	Crystal Springs, MS.	93–306

(Regarding the silent status of Station WCSP(Am))

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Wesley College has been directed to show cause why the license for Station WCSP(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Wesley College has the capability and intent to expeditiously resume broadcast operations of WCSP(AM) consistent with the Commission's Rules.

2. To determine whether Wesley College has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Wesley College is qualified to be and remain the licensee of Station WCSP(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street, NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.
Stuart B. Bedell,
Assistant Chief, Audio Services Division, Mass Media Bureau.
[FR Doc. 94–101 Filed 1–4–94; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Bridgeville Financial Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 28, 1994.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Bridgeville Financial Corp., Bridgeville, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of Bridgeville Savings Bank, Bridgeville, Pennsylvania.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. D/W Bankshares, Inc., Dalton, Georgia; to become a bank holding company by acquiring 100 percent of the voting shares of Dalton/Whitfield Bank & Trust, Dalton, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Home Bancorp, Fort Wayne, Indiana; to become a bank holding company by acquiring 100 percent of the voting shares of Home Loan Bank, S.B., Fort Wayne, Indiana.

2. Orangeville Bancorp, Inc., Orangeville, Illinois; to acquire 100 percent of the voting shares of State Bank of Winslow, Winslow, Illinois.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 100 percent of the voting shares of Grand National Bank of Colorado, Fraser, Colorado.

2. Sentry Bancorp, Inc., Edina, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Cannon Valley Bank, Dundas, Minnesota.

3. Michigan Financial Corporation, Marquette, Michigan; to merge with Houghton Financial Inc., Houghton, Michigan, and thereby indirectly acquire Houghton National Bank, Houghton, Michigan.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. First Missouri Bancshares, Inc., Brookfield, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of First Missouri National Bank, Brookfield, Missouri.

2. Huckabay Enterprises A Limited Partnership, Mustang, Oklahoma; to become a bank holding company by acquiring 48.54 percent of Wichita Bancshares, Inc., Snyder, Oklahoma, and thereby indirectly acquire Bank of the Wichitas, Snyder, Oklahoma; to acquire 50 percent of the voting shares of Southwest State Corporation, Sentinel, Oklahoma, and thereby indirectly acquire Southwest State Bank, Sentinel, Oklahoma; and to acquire 60.70 percent of the voting shares of First Mustang Corporation, Mustang, Oklahoma, and thereby indirectly acquire The First Mustang State Bank, Mustang, Oklahoma.

3. Meadows Enterprises A Limited Partnership, Burns Flat, Oklahoma; to become a bank holding company by acquiring 43.92 percent of the voting shares of Wichita Bancshares, Inc., Snyder, Oklahoma, and thereby indirectly acquire Bank of the Wichitas, Snyder, Oklahoma; to acquire 50 percent of the voting shares of Southwest State Corporation, Sentinel, Oklahoma, and thereby indirectly acquire Southwest State Bank, Sentinel, Oklahoma; and to acquire 62.23 percent of the voting shares of Washita Bancshares, Inc., Burns Flat, Oklahoma, and thereby indirectly acquire Washita State Bank, Burns Flat, Oklahoma.

4. FIAB Holdings, Inc., San Francisco, California; to become a bank holding company by acquiring 100 percent of the voting shares of First Indo-American Bank, San Francisco, California.

Board of Governors of the Federal Reserve System, December 30, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–122 Filed 1–4–94; 8:45 am]
BILLING CODE 6210–01–F

First Chicago Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 19, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Chicago Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, First Chicago Capital Markets, Inc., Chicago, Illinois, in underwriting and dealing in, to a limited extent, all types of debt securities; acting as agent in the private placement of all types of securities, including providing related advisory services; buying and selling all types of securities on the order of investors as a riskless principal; providing financial and transactional advice in connection with the structuring and arranging of swaps, caps, and similar transactions; and providing, to institutional customers, full service securities brokerage services in combination with permissible investment advisory services, pursuant to § 4 of the Bank Holding Company Act.

2. Quad City Holdings, Inc., Bettendorf, Iowa; to engage *de novo* in making and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted within a 120 mile radius of the Quad City, Iowa, area.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Manistique Corporation, Manistique, Michigan; to engage *de novo* through its subsidiary, First Rural Relending Company, Manistique, Michigan, in making, acquiring, and servicing loans pursuant to § 225.25(b)(1) of the Board's Regulation Y. These activities will be conducted in the Upper Peninsula of the State of Michigan.

2. U.S. Bancorp, Portland, Oregon; to engage *de novo* in data processing activities pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–123 Filed 1–4–94; 8:45 am]
BILLING CODE 6210–01–F

FNB Financial Services, Inc., ESOP; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 28, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. FNB Financial Services, Inc., ESOP, Durant, Oklahoma; to acquire FNB Capital Corporation, Inc., Durant, Oklahoma, and thereby engage in direct lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 94–121 Filed 1–4–94; 8:45 am]
BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[File No. 922 3262]

The Hairbow Company, et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.
ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based corporations and officers, who purported to hairbows, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.9 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA. 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of RUSSELL J. OSBORN, a/k/a Russell J. Osborne and Russell J. Osbourne, individually, trading and doing business as THE HAIRBOW COMPANY, and as an officer of Rainbow Productions, Inc.,

and RAINBOW PRODUCTIONS, INC., a corporation.

The Federal Trade Commission having initiated an investigation of Russell J. Osborn, a/k/a Russell J. Osborne and Russell J. Osbourne (hereafter "Russell J. Osborn"), individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Russell Osborn, individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Respondent The Hairbow Company is an unincorporated association, with its principal office and place of business located at 19 Front Street, Danville, California 94526.

Respondent Rainbow Productions, Inc., is a corporation, organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office and place of business located at 19 Front Street, Danville, California 94526.

Respondent Russell Osborn is an individual, is the owner of The Hairbow Company, and is the owner and president of Rainbow Productions, Inc. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of The Hairbow Company and Rainbow Productions, Inc. His address is 19 Front Street, Danville, California 94526.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is Ordered That respondents Russell J. Osborn, individually, trading and doing business as The Hairbow Company, and as an officer of Rainbow Productions, Inc., and Rainbow Productions, Inc., a corporation, its successors and assigns, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered That for three (3) years after the last date of dissemination of any representation covered by this Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: All written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondent Russell J. Osborn shall pay to the FTC as consumer redress the sum of one million nine hundred thousand dollars ($1,900,000); *provided however,* that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Debtor" executed by Russell J. Osborn on September 22, 1992, and appended "Statement of Assets and Liabilities" executed by Russell J. Osborn on September 14, 1992; a "Financial Statement of Corporate Defendant" relating to Rainbow Productions, Inc. executed by Russell J. Osborn on September 22, 1992; and on the federal and California tax returns of Russell J. Osborn for 1990. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million nine hundred thousand dollars ($1,900,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. § 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered That the corporate respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is further ordered That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, and shall promptly notify the Commission of each affiliation with a new business or employment.

VI

It is further ordered That respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from The Hairbow Company, Inc., Rainbow Productions, Inc., and Russell J. Osborne ("proposed respondents"). All of the proposed respondents are located in Danville, California.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

The Hairbow Company and Rainbow Productions disseminate advertising seeking individuals to assemble craft items at home. The Hairbow Company sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by The Hairbow Company's home assemblers, through performing such assembly work and submitting it to The Hairbow Company for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. § 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondent to notify the Commission of changes in corporate structure, the individual respondent to notify the Commission of his discontinuance his present business or employment and each new business or employment affiliation, and all proposed respondent to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,900,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-157 Filed 1-4-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 922 3264]

Homespun Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the California-based corporations and an officer, who purported to market pillows and Christmas ornaments, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.04 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., Suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to Section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and Section 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with Section 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of HOMESPUN PRODUCTS, INC., a corporation, G & S MARKETING, INC. a corporation, and GREGORY A. STRAW, individually and as an officer of said corporations.

The Federal Trade Commission having initiated an investigation of Homespun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, and Gregory A. Straw, individually and as an officer of said corporations ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Homespun Products. Inc. by its duly authorized officer, G & S Marketing, Inc., by its duly authorized officer, and Gregory A. Straw, individually and as an officer of said corporations, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Homespun Products, Inc., is a corporation organized, existing, and doing business under and by virtue of the lawa of the State of California, with its principal office and place of business located at 201 Benton Court, Suisun, California 94585.

Proposed respondent G & S Marketing, Inc. is a corporation organized, existing, and doing business under and by virtue of the laws of the State of California, with its principal office or place of business located at 201 Benton Court, Suisun, California 94585.

Proposed respondent Gregory A. Straw is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered That respondents Homespun Products, Inc., a corporation, G & S Marketing, Inc., a corporation, their successors and assigns, and their officers, and Gregory A. Straw, individually and as an officer of Homespun Products, Inc. and G & S Marketing, Inc., and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered That for three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondents Homespun Products, Inc., G & S Marketing, Inc. and Gregory A. Straw shall pay to the FTC as consumer redress the sum of one million and forty thousand dollars ($1,040,000); provided, however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in a "Financial Statement of Corporate Defendant" relating to Homespun Products, Inc., dated February 12, 1993; a "Financial Statement of Corporate Defendant" relating to G & S Marketing, Inc., dated February 12, 1993; a "Financial Statement of Debtor" executed by Gregory A. Straw, dated February 8, 1993; the federal income tax returns of Homespun Products, Inc. for 1990, 1991 and 1992; the federal income tax returns for G & S Marketing, Inc. for 1991 and 1992; and the federal income tax returns for Gregory A. Straw and Susan M. Straw for 1991 and 1992. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million and forty thousand dollars ($1,040,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal

remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered That the corporate respondents shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporations that may affect compliance obligations arising out of the Order.

V

It is further ordered That the individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this Order, shall promptly notify the Commission of each affiliation with a new business or employment.

It is further ordered That respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this Order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from Homespun Products, Inc., G & S Marketing, Inc., and Gregory A. Straw ("proposed respondents"). All of the Proposed respondents are located in Suisun, California.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

Homespun Products and G & S Marketing disseminate advertising seeking individuals to assemble craft items at home. Homespun Products sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by Homespun Products' home assemblers, through performing such assembly work and submitting it to Homespun Products for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate Section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondents to notify the Commission of changes in corporate structure, the individual respondent to notify the Commission of his discontinuance of his present business or employment and each new business or employment affiliation, and all proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,040,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-158 Filed 1-4-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 922 3266]

New Mexico Custom Designs, Inc., et al; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the New Mexico-based corporation and its officer, who claimed to sell beaded earrings, from making any material misrepresentations regarding earnings or profits of participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $1.2 million to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, Room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744-7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with an accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited.

Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of New Mexico Custom Designs, Inc., a corporation, and Anthony L. Ingram, individually and as an officer of said corporation.

The Federal Trade Commission having initiated an investigation of New Mexico Custom Designs, Inc., a corporation, and Anthony L. Ingram, individually and as an officer of said corporation ("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between New Mexico Custom Designs, Inc. by its duly authorized officer, and Anthony L. Ingram, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent New Mexico Custom Designs, Inc., is a corporation organized, existing, and doing business under and by virtue of the laws of the State of New Mexico, with its principal office and place of business located at 8415 Washington Place, NE., suite D, Albuquerque, New Mexico 87113.

Proposed respondent Anthony L. Ingram is an officer of said corporation. He formulates, directs and controls the policies, acts and practices of said corporation and his address is the same as that of the corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they well be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered that, Respondents New Mexico Custom Designs, Inc., a corporation, its successors and assigns, and its officers, and Anthony L. Ingram, individually and as an officer of New Mexico Custom Designs, Inc., a corporation, and respondents' agents, representatives end employees, directly or through any corporation, subsidiary, division or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any

instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

It is further ordered that, For three (3) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: All written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondent Anthony L. Ingram shall pay to the FTC as consumer redress the sum of one million two hundred thousand dollars ($1,200,000); provided however, that this liability will be suspended, subject to the provisions of subpart B below.

B. That the Commission's acceptance of this Order is expressly premised upon the representations regarding the financial condition of the respective respondents made to the FTC in: A "Financial Statement of Debtor" executed by Anthony L. Ingram on October 20, 1992; a "Financial Statement of Corporate Defendant" relating to New Mexico Custom Designs, Inc. executed by Anthony L. Ingram, as president, on October 20, 1992; the Federal income tax returns of New Mexico Custom Designs, Inc., for 1989, 1990 and 1991; the federal income tax returns of Anthony L. Ingram for 1990 and 1991; accounting statements for 1990, 1991 and 1992, referred to in, and enclosed with, a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 22 march 1993; and a letter from Gary Harrell, Esq., to the Federal Trade Commission, dated 3 May 1993. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations for omissions in said representations regarding the financial condition of the respective respondents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of one million two hundred thousand dollars ($1,200,000) to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered, That the corporate respondent shall notify the Commission at least thirty (30) days prior to any dissolution, assignment, or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation that may affect compliance obligations arising out of the Order.

V

It is further ordered that, The individual respondent shall promptly notify the Commission of the discontinuance of his present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment.

VI

It is further ordered that, Respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from New Mexico Custom Designs, Inc. and Anthony L. Ingram ("proposed respondents"). Both of the proposed respondents are located in Albuquerque, New Mexico.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

New Mexico Custom Designs, Inc. and Anthony L. Ingram disseminate advertising seeking individuals to assemble craft items at home. They sell instructional kits and craft materials, and/or charge registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by New Mexico Custom Designs' home assemblers, through performing such assembly work and submitting it to New Mexico Custom Designs for compensation. The complaint further alleges that proposed respondents have misrepresented that there is a significant marketplace demand for the products they offer for assembly. The complaint alleges that these misrepresentations violate section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to," or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires

disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the corporate respondent to notify the Commission of changes cn Corporate structure, the individual respondent to notify the Commission of his discontinuance of his present business or employment and each new business or employment affiliation, and all proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above other provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $1,200,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-155 Filed 1-4-94; 8:45 am]

BILLING CODE 6750-01-M

[File No. 921-0070]

Personal Protective Armor Association, Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Baltimore-based association for manufacturers of body armor in North America from restricting its members from engaging in comparative advertising or offering product-liability insurance, guarantees or warranties on soft body armor, and from placing any restraints on member advertising, including price disclosure, product liability, and body armor performance characteristics.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Paul Nolan, FTC/S-2624, Washington, DC 20580. (202) 326-2770.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of the Personal Protective Armor Association, Inc., and it now appearing that Personal Protective Armor Association, Inc., hereinafter sometimes referred to as proposed respondent, is willing to enter into an agreement containing an Order to cease and desist from engaging in the acts and practices being investigated,

It is hereby agreed by and between the proposed respondent and its attorney and counsel for the Federal Trade Commission that:

1. Proposed respondent Personal Protective Armor Association, Inc. ("PPAA") is a corporation organized, existing and transacting business under and by virtue of the laws of the State of Tennessee, with its office and principal place of business located at 3623 Falls Road, Baltimore, Maryland 21222.

2. PPAA admits all of the jurisdictional facts set forth in the draft of Complaint here attached.

3. PPAA waives:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered into pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondent, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondent that the law has been violated as alleged in the draft of Complaint here attached.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules of Practice, the Commission may, without further notice to proposed respondent, (1) Issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order to cease and desist shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time as provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to-order to proposed respondent's address as stated in this agreement shall constitute service. Proposed respondent waives any right it may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to

vary or contradict the terms of the Order.

7. Proposed respondent has read the proposed draft of Complaint and Order contemplated hereby. It understands that once the Order has been issued, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Proposed respondent further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

For the purposes of this order, the following definitions shall apply:

A. "Respondent" means the Personal Protective Armor Association, its directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns.

B. "Soft body armor" means concealable bullet-resistant vests generally worn by civilians and law enforcement personnel.

II

It is ordered, That Respondent, directly, indirectly, or through any device, in connection with activities in or affecting commerce, as "commerce" is defined by the Federal Trade Commission Act, as amended, cease and desist from:

A. Entering into, attempting to enter into, organizing, continuing, or acting in furtherance of any agreement or combination, or carrying out any agreement between or among Respondent's members, either express or implied, that prohibits, restricts, impedes, interferes with, restrains, places limitations on, or advises against:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or

2. Offering or providing products liability insurance, guarantees, or warranties on softly body armor.

B. Restricting, regulating, impeding, declaring unethical, interfering with, restraining, or advising against the advertising, publishing, or dissemination by any person of the prices, terms, availability, characteristics, or conditions of sale of soft body armor through any means, including, but not limited to, adopting or maintaining any rule or policy that restricts or prohibits a member from:

1. Engaging in comparative advertising, including, but not limited to prohibiting any member from advertising that any type of soft body armor meets or fails to meet any ballistic resistance standard; or

2. Offering or providing products liability insurance, guarantees, or warranties on soft body armor.

Provided, That nothing contained in this Paragraph II shall prohibit Respondent from formulating, adopting, disseminating to its members, and enforcing reasonable ethical guidelines governing the conduct of its members with respect to representations, including unsubstantiated representations, that Respondent reasonably believes would be false or deceptive within the meaning of section 5 of the Federal Trade Commission Act.

III

It is further ordered, That Respondent:

A. Distribute by first-class mail a copy of this Order and the Complaint to each of its members within thirty (30) days after the date this Order become final.

B. For a period of five (5) years after the date this Order becomes final, provide each new member who joins PPAA with a copy of the Order and Complaint within thirty (30) days of membership into PPAA.

C. File a verified, written report with the Commission within sixty (60) days after the date this Order becomes final, and annually thereafter for five (5) years on the anniversary of the date this Order becomes final, and at such other times as the Commission may, by written notice to PPAA, require, setting forth in detail the manner and form in which it has complied and is complying with the Order.

D. For a period of five (5) years after the date this Order becomes final, maintain and make available to Commission staff for inspection and copying upon reasonable notice, records adequate to describe in detail any action taken in connection with any activity covered by Part II of this Order.

IV

It is further ordered, That PPAA shall notify the Commission at least thirty (30) days prior to any change in the corporation such as dissolution, assignment, or sale, resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance with this order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement to a proposed consent order from Personal Protective Armor Association ("PPAA"), which is located in Baltimore, Maryland. The agreement would settle charges by the Commission that the proposed respondent violated section 5 of the Federal Trade Commission Act by engaging in practices that restricted competition among PPAA members.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement or make final the agreement's proposed order.

The Complaint

The complaint prepared for issuance by the Commission along with the proposed order alleges that PPAA and its members have engaged in acts and practices that have unreasonably restrained competition among manufacturers of soft body armor. The complaint alleges that PPAA members have maintained a policy against comparative advertising and have adopted a policy not to compete in offering products liability insurance to law enforcement agencies.

According to the complaint, advertising, including comparative advertising and advertising of warranties and products liability insurance, enables firms to inform consumers as to the quality, price, and terms of sale of the product. Consumers consider terms of sale such as products liability insurance and certification that the soft body armor passes applicable performance standards. Comparative advertising and advertising of warranties and products liability insurance enables firms to inform consumers about these factors and increases the information available to consumers.

The complaint states that, during some periods, from 1986 to the present, PPAA has maintained a policy against comparative advertising, including a policy which declares it unethical for any member to make any representation that another member's vests have failed certification testing. The complaint also states that, during some periods, from 1986 to the present, PPAA adopted a policy to respond uniformly to bids by not offering products liability insurance in competing for contracts from law enforcement agencies.

The complaint alleges that the purposes or effects of the challenged act or practice have been to restrain competition unreasonably:

a. By frustrating and restraining competition in the marketing and sale of soft body armor on the basis of price, service, and quality;

b. By depriving consumers of the benefits of truthful information about the performance of soft body armor;

c. By depriving consumers of the potential value of warranties, including products liability insurance, in the purchase of soft body armor.

The Proposed Consent Order

Part I of the order covers definitions. These definitions make clear that the consent order applies to directors, trustees, councils, committees, officers, representatives, delegates, agents, employees, successors, or assigns of PPAA. The order also defines "soft body armor" as concealable bullet-resistant vests generally worn by civilians and law enforcement personnel.

Part II of the order describes the conduct prohibited by the order. Part II prevents PPAA from entering into or carrying out any agreement between or among its members that restricts engaging in comparative advertising or restricts offering or providing products liability insurance. Part II also prevents PPAA from restricting or interfering with the advertising or dissemination of prices, terms, availability, characteristics, or conditions of sale of soft body armor by adopting a policy which restricts or prohibits a member from engaging in comparative advertising or offering or providing products liability insurance.

Part III of the order requires PPAA to furnish a copy of the Commission's order to each of its members; to provide each new member who joins PPAA with a copy of the Order and complaint; and to file compliance reports for five years.

Benjamin I. Berman,

Acting Secretary.

Concurring Statement of Commissioner Roscoe B. Starek, III

I concur in the Commission's decision to accept for public comment the Consent Order in this matter. The evidence demonstrates that ten companies, representing more than 90% of U.S. sales of protective body armor, engaged in unreasonable restraints of trade in violation of section 5 of the Federal Trade Commission Act, 15 U.S.C. 45. The agreements here restrain significant dimensions of competitive rivalry among body armor manufacturers. Therefore, they appear likely, absent an efficiency justification, to restrict output. The respondent has not proffered any efficiency justification for the restraints. Under the standards set forth in the Commission's decision in Massachusetts Board of Registration in Optometry,[1] and its progeny, this "inherently suspect" conduct is appropriately condemned without a full rule of reason analysis.

In my view, however, it may have been appropriate to name as respondents the members of the Personal Protective Armor Association ("PPAA"). This case is not typical of the Commission's cases challenging anticompetitive conduct of state licensing boards and trade associations. In most such cases, the board or association represents hundreds or thousands of competing entities.[2] Naming individual members as respondents in such cases is generally impracticable: It may unnecessarily complicate litigation or create intractable problems for settlement negotiations.[3] More importantly, naming members is often unnecessary: The respondent board or association is typically the only (or only effective) means by which the multitude of competitors can reach and enforce an agreement restraining competition.

By contrast, competitors in the relatively concentrated protective body armor industry may be able to collude effectively outside the auspices of the PPAA or any other formal trade association.[4] If so, the proposed Consent Order, which names only the PPAA as a respondent, may provide an insufficient remedy. So long as the PPAA is not involved,[5] the same body armor manufacturers could engage in collusive conduct falling squarely within the core cease and desist provisions of the Order without exposure to civil penalties under section 5(l) of the FTC Act, 15 U.S.C. 45(l).[6]

In determining the optimal scope of any future enforcement actions against anticompetitive restraints facilitated by a trade association, the necessity of the particular association to effective collusion among its members should be considered carefully.

[FR Doc. 94–154 Filed 1–4–94; 8:45 am]

BILLING CODE 6750–01–M

[1] 110 F.T.C. 549, 604 (1988).

[2] See, e.g., American Medical Association, 94 F.T.C. 701, 702 (1979) (membership consisting of approximately 170,000 medical doctors); Mass. Board, 110 F.T.C. at 560 (more than 1350 optometrists subject to the Board's restraints); Detroit Auto Dealers Association, Inc., 111 F.T.C. 475, 419 (1989) (membership consisting of 231 automobile dealerships).

[3] But see Detroit Auto Dealers, 111 F.T.C. at 518–521 (addenda to final order) (naming as respondents the association, 17 constituent associations, 96 member dealerships, and 81 individuals).

[4] Thus, unlike many cases involving association restraints in which the respondent association itself is a critical first mover, the conduct at issue here constitutes archetypal cartel behavior in which this particular association's involvement may be merely detail.

[5] Under the Order, respondent PPAA is defined to include any association that can be held to be a legal successor. The evidence does not clearly indicate whether or not PPAA has any structural, legal, or historical advantage that would impede the creation of a new, non-successor body armor trade association.

[6] Of course, this conduct would expose these firms to private and state actions for damages under section 4 of the Clayton Act, 15 U.S.C. 15. Such exposure, however, apparently did not deter the conduct that led to the Commission's action in this matter.

[File No. 922 3265]

Sandcastle Creations; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, the Oregon-based respondents, who marketed potholders and mohair for use as doll's hair, from making any material misrepresentations regarding earnings or profits or participants in any work opportunity and from making misrepresentations about the marketplace demand for any product or service. In addition, the proposed settlement would require the respondents to pay $536,000 to the Commission for consumer redress or disgorgement.

DATES: Comments must be received on or before March 7, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Jeffrey Klurfeld or Gerald Wright, San Francisco Regional Office, Federal Trade Commission, 901 Market St., suite 570, San Francisco, CA 94103. (415) 744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

In the Matter of William E. Taylor, and Susan L. Taylor, Individually, and trading and doing business as Sandcastle Creations.

The Federal Trade Commission having initiated an investigation of William E. Taylor and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations

("proposed respondents" or "respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated.

It is hereby agreed by and between William E. Taylor and Susan L. Taylor, individually, and trading and doing business as Sandcastle Creations, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondents William E. Taylor and Susan L. Taylor are individuals, trading and doing business as Sandcastle Creations, an unincorporated association, with its principal office and place of business located at 126 SE. 1st Street, Newport, Oregon 97365.

Proposed respondent William E. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, he formulates, directs and controls the policies, acts and practices of Sandcastle Creations and his address is the same as that of Sandcastle Creations.

Proposed respondent Susan L. Taylor is a co-owner of Sandcastle Creations. Individually or in concert with others, she formulates, directs and controls the policies, acts and practices of Sandcastle Creations and her address is the same as that of Sandcastle Creations.

2. Proposed respondents admit all the jurisdictional facts set forth in the draft complaint here attached.

3. Proposed respondents waive:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. All claims under the Equal Access to Justice Act.

4. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify the proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of this proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the draft of complaint, or that the facts alleged in the draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the complaint an decision containing the agreed-to order to proposed respondents' address as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the proposed complaint and order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

For purposes of this order, the following definitions shall apply:

"Work Opportunity" means any offer to a person to earn income by producing goods or providing services, where (1) the offeree must pay to the offeror, or a person identified by the offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating; and (2) the offeror represents that the offeree will or could be compensated in any manner by the offeror or by a person identified by the offeror.

"Participant" means any person who pays the offeror of a work opportunity, or a person identified by such offeror, any amount of money, whether in the form of a registration, application or other fee, a payment for initial inventory or supplies, or in any other form, as a condition of participating in a work opportunity.

"Net Earnings or Profits" means the compensation paid to a participant in a work opportunity, less the costs to a participant of materials, supplies and shipping.

I

It is ordered that, Respondents William E. Taylor and Susan L. Taylor, individually and trading and doing business as Sandcastle Creations, an unincorporated association, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the marketing, advertising, promotion, offering, or sale of any work opportunity, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from:

A. Making any material misrepresentation, including but not limited to:

1. Misrepresenting the past, present or potential future earnings or profits of participants in any work opportunity; or

2. Misrepresenting the marketplace demand for any product or service for which respondents are offering a work opportunity.

B. Making any earnings-related or profit-related claim which uses the phrase "up to" or words of similar import or which states any dollar amount, unless the stated level of earnings or profits constitutes the net earnings or profits which can be achieved by an appreciable number of participants; and further, in any instances where consumers could not reasonably foresee the major factors or conditions affecting the ability to achieve the stated level of earnings or profits, cease and desist from failing to disclose clearly and prominently the class of consumers who can achieve the stated level.

II

It is further ordered that, For three (3) years after the last date of dissemination of any representation covered by this Order, respondents shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

A. Specimen copies of all materials disseminated which contain such representation;

B. All materials that were relied upon as substantiation in disseminating such representation;

C. The names, addresses and telephone numbers of all work opportunity participants who paid any money to respondents within the previous three years; and

D. The names, addresses and telephone numbers of all work opportunity participants who earned any income or profits from respondents during the previous three years, and for each such participant: all written agreements between respondents and each participant during the previous three years; and the dates and amounts of all payments paid to each participant for work completed pursuant to the work opportunity during the previous three years.

III

It is further ordered:

A. That respondents shall jointly and severally pay to the FTC as consumer redress the sum of five hundred and thirty-six thousand dollars ($536,000); provided however, that this liability will be suspended, subject to the provisions of subparts B and D below, upon the payment of twenty-five thousand dollars ($25,000) no later than fifteen (15) days after the date of service of this Order. Such payment shall be made by cashier's check or certified check payable to the Federal Trade Commission and shall be delivered to the Federal Trade Commission, San Francisco Regional Office, 901 Market Street, suite 570, San Francisco, CA 94103.

B. That, in the event of respondents' default on the $25,000 payment set forth in subpart A above, the amount of five hundred and thirty-six thousand dollars ($536,000), less the sum of any payments made pursuant to subpart A above, shall become immediately due and payable without any notice required to be given to the respondents, and interest computed at the rate prescribed under 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance.

C. That any funds paid by respondents pursuant to subparts A and B above shall be paid into a redress fund administered by the Federal Trade Commission and shall be used to provide direct redress to those purchasers of respondents' introductory kits (as described in the complaint) who have not previously been reimbursed by respondents for the cost of the kit through a refund or through the purchase of finished product. If the Federal Trade Commission determines, in its sole discretion, that the redress to purchasers (as defined above) is wholly or partially impracticable, any funds not so used shall be paid to the United States Treasury. Respondents shall be notified as to how the funds are disbursed, but shall have no right to contest the manner of distribution chosen by the Commission. No portion of the payment as herein described shall be deemed a payment of any fine, penalty, or punitive assessment.

D. That the Commission's acceptance of this Order is expressly premised upon the financial statements and related documents previously provided by respondents to the FTC, signed and dated July 27, 1992. After service upon respondents of an order to show cause, the FTC may reopen this proceeding to make a determination whether there are any material misrepresentations or omissions in said financial statements and related documents. Respondents shall be given an opportunity to present evidence on this issue. If, upon consideration of respondents' evidence and other information before it, the FTC determines that there are any material misrepresentations or omissions in the financial statements and related documents, that determination shall cause the entire amount of monetary liability of five hundred and thirty-six thousand dollars ($536,000), less the sum of any payments made under subpart A above, to become immediately due and payable to the Federal Trade Commission, and interest computed at the rate prescribed in 28 U.S.C. 1961, as amended, shall immediately begin to accrue on the unpaid balance. Proceedings initiated under Part III are in addition to, and not in lieu of, any other civil or criminal remedies as may be provided by law, including any proceedings the Federal Trade Commission may initiate to enforce this Order.

IV

It is further ordered that, The individual respondents shall promptly notify the Commission of the discontinuance of their present business or employment and, for a period of five (5) years after the date of service of this order, shall promptly notify the Commission of each affiliation with a new business or employment.

V

It is further ordered that, Respondents shall, within sixty (60) days after service of this Order on them, and on the first through the fifth anniversaries of the effective date of this order, file with the Commission a report in writing, setting forth in detail the manner and form in which it has complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted, subject to final approval, an agreement to a proposed consent order from William E. Taylor and Susan L. Taylor, who do business under the name Sandcastle Creations ("proposed respondents"). The proposed respondents are located in Newport, Oregon.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the proposed order contained in the agreement.

Sandcastle Creations disseminates advertising seeking individuals to assemble craft items at home. It sells instructional kits and craft materials, and/or charges registration fees, to individuals wanting to perform such assembly work.

The complaint alleges that proposed respondents have misrepresented the weekly earnings that are regularly realized by Sandcastle Creations' home assemblers, through performing such assembly work and submitting it to Sandcastle Creations for Compensation. The complaint alleges that this misrepresentation violates section 5(a)(1) of the Federal Trade Commission Act (15 U.S.C. 45(a)(1)).

The proposed order requires proposed respondents to cease making any material misrepresentations, including specifically misrepresentations regarding past, present or future earnings or profits of participants in any work opportunity. The order further prohibits misrepresentations regarding the marketplace demand for any product or service for which proposed respondents are offering a work opportunity.

The proposed order also prohibits proposed respondents from making any earnings-related or profit-related claims through using phrases such as "up to,"

or through stating any dollar amount, unless the stated earnings or profit figures can be achieved by an appreciable number of participants. The latter prohibition also requires disclosure of the class of consumers who can achieve stated earnings or profit levels, where factors or conditions affecting earnings or profits are not reasonably foreseeable by prospective workers.

The proposed order additionally requires proposed respondents to retain specified records relating to their advertising of work opportunities, the persons who paid money to participate in any work opportunity, and the earnings or profits of participants.

Additionally, the proposed order requires the individual proposed respondents to notify the Commission of their discontinuance of their present business or employment and each new business or employment affiliation, and requires the proposed respondents to file compliance reports with the Commission. Proposed respondents would be subject to civil penalties if they did not comply with any of the above order provisions.

The proposed order also requires proposed respondents to pay to the Federal Trade Commission $536,000 for consumer redress or disgorgement. This liability is suspended, however, on the basis of financial disclosures made by proposed respondents to the FTC, and the payment to the Federal Trade Commission of $25,000, with the proviso that the Commission can reopen the proceeding if it subsequently determines that there are material misrepresentations or omissions in the financial disclosures.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Benjamin I. Berman,

Acting Secretary.

[FR Doc. 94-156 Filed 1-4-94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93F0904Z8]

PPG Industries, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that PPG Industries, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of alpha-(dinonylphenyl)-omega-hydroxy-poly(oxy-1,2-ethanediyl) containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a defoaming agent used in the production of paper and paperboard coatings and paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by February 4, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA09305), Food and Drug Administration, rm. 10923, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS09216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202092540995OO.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4363) has been filed by PPG Industries, Inc., 440 College Park Dr., Monroeville, PA 15146. The petition proposes to amend the food additive regulations in §1A176.200 *Defoaming agents used in coatings* (21 CFR 176.200) and §1A176.210 *Defoaming agents used in the manufacture of paper and paperboard* (21 CFR 176.210) to provide for the safe use of alpha-(dinonylphenyl)-omega-hydroxy-poly(oxy-1,2-ethanediyl) containing 7 to 24 moles of ethylene oxide per mole of dinonylphenol, as a defoaming agent used in the production of paper and paperboard coatings and paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act, (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before February 4, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the final regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: December 21, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94-60 Filed 1-4-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Notice of Meeting of the Subcommittee To Evaluate the National Cancer Program, National Cancer Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health on January 20-22, 1994 at the San Diego Hilton, 1175 East Mission Bay Drive, San Diego, California 92109.

The meeting will be open to the public from 3 p.m. to recess on January 20; from 9 a.m. to recess January 21, and from 9 a.m. until adjournment on January 22. Attendance by the public will be limited to space available. Discussions will address the evaluation and achievements of the National Cancer Program.

Ms. Carole Frank, Committee Management Specialist, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630M, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708), will provide a summary of the meeting and a roster of the Subcommittee members upon request.

Ms. Cherie Nichols, Executive Secretary, Subcommittee to Evaluate the National Cancer Program, National Cancer Advisory Board, National Cancer Institute, National Institutes of Health, Building 31, room 11A23, Bethesda, Maryland 20892 (301/496-5515), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Cherie Nichols on (301/496-5515) in advance of the meeting.

Dated: December 28, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94-153 Filed 1-5-94; 8:45 am]

BILLING CODE 4140-01-M

Substance Abuse and Mental Health Services Administration

Current List of Laboratories Which Meet Minimum Standards To Engage in Urine Drug Testing for Federal Agencies and Laboratories That Have Withdrawn From the Program

AGENCY: Substance Abuse and Mental Health Services Administration, HHS (Formerly: National Institute on Drug Abuse, ADAMHA, HHS).

ACTION: Notice.

SUMMARY: The Department of Health and Human Services notifies Federal agencies of the laboratories currently certified to meet standards of Subpart C of Mandatory Guidelines for Federal Workplace Drug Testing Programs (53 FR 11979, 11986). A similar notice listing all currently certified laboratories will be published during the first week of each month, and updated to include laboratories which subsequently apply for and complete the certification process. If any listed laboratory's certification is totally suspended or revoked, the laboratory will be omitted from updated lists until such time as it is restored to full certification under the Guidelines.

If any laboratory has withdrawn from the National Laboratory Certification Program during the past month, it will be identified as such at the end of the current list of certified laboratories, and will be omitted from the monthly listing thereafter.

FOR FURTHER INFORMATION CONTACT: Denise L. Goss, Program Assistant, Division of Workplace Programs, room 9-A-54, 5600 Fishers Lane, Rockville, Maryland 20857; Tel.: (301) 443-6014.

SUPPLEMENTARY INFORMATION: Mandatory Guidelines for Federal Workplace Drug Testing were developed in accordance with Executive Order 12564 and section 503 of Public Law 100-71. Subpart C of the Guidelines, "Certification of Laboratories Engaged in Urine Drug Testing for Federal Agencies," sets strict standards which laboratories must meet in order to conduct urine drug testing for Federal agencies. To become certified an applicant laboratory must undergo three rounds of performance testing plus an on-site inspection. To maintain that certification a laboratory must participate in an every-other-month performance testing program plus periodic, on-site inspections.

Laboratories which claim to be in the applicant stage of certification are *not* to be considered as meeting the minimum requirements expressed in the HHS Guidelines. A laboratory must have its letter of certification from SAMHSA, HHS (formerly: HHS/NIDA) which attests that it has met minimum standards.

In accordance with Subpart C of the Guidelines, the following laboratories meet the minimum standards set forth in the Guidelines:

Aegis Analytical Laboratories, Inc., 624 Grassmere Park Road, Suite 21, Nashville, TN 37211, 615-331-5300

Alabama Reference Laboratories, Inc., 543 South Hull Street, Montgomery, AL 36103, 800-541-4931/205-263-5745

Allied Clinical Laboratories, 201 Plaza Boulevard, Hurst, TX 76053, 817-282-2257

American Medical Laboratories, Inc., 14225 Newbrook Drive, Chantilly, VA 22021, 703-802-6900

Associated Pathologists Laboratories, Inc., 4230 South Burnham Avenue, Suite 250, Las Vegas, NV 89119-5412, 702-733-7866

Associated Regional and University Pathologists, Inc. (ARUP), 500 Chipeta Way, Salt Lake City, UT 84108, 801-583-2787

Baptist Medical Center—Toxicology Laboratory, 9601 I-630, Exit 7, Little Rock, AR 72205-7299, 501-227-2783, (formerly: Forensic Toxicology Laboratory Baptist Medical Center)

Bayshore Clinical Laboratory, 4555 W. Schroeder Drive, Brown Deer, WI 53223, 414-355-4444/800-877-7016

Bioran Medical Laboratory, 415 Massachusetts Avenue, Cambridge, MA 02139, 617-547-8900

Cedars Medical Center, Department of Pathology, 1400 Northwest 12th Avenue, Miami, FL 33136, 305-325-5810

Centinela Hospital Airport Toxicology Laboratory, 9601 S. Sepulveda Blvd., Los Angeles, CA 90045, 310-215-6020

Clinical Pathology Facility, Inc., 711 Bingham Street, Pittsburgh, PA 15203, 412-488-7500

Clinical Reference Lab, 11850 West 85th Street, Lenexa, KS 66214, 800-445-6917

CompuChem Laboratories, Inc., A Subsidiary of Roche Biomedical Laboratory, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263/800-833-3984

CompuChem Laboratories, Special Division, 3308 Chapel Hill/Nelson Hwy., Research Triangle Park, NC 27709, 919-549-8263

Cox Medical Centers, Department of Toxicology, 1423 North Jefferson Avenue, Springfield, MO 65802, 800-876-3652/417-836-3093

CPF MetPath Laboratories, 21007 Southgate Park Boulevard, Cleveland, OH 44137-3054, (Outside OH) 800-338-0166/(Inside OH) 800-362-8913, (formerly Southgate Medical Laboratory; Southgate Medical Services, Inc.)

Damon/MetPath, 140 East Ryan Road, Oak Creek, WI 53154, 800-638-1100, (formerly: Damon Clinical Laboratories; Chem-Bio Corporation; CBC Clinilab)

Damon/MetPath, 8300 Esters Blvd., Suite 900, Irving, TX 75063, 214-929-0535, (formerly: Damon Clinical Laboratories)

Dept. of the Navy, Navy Drug Screening Laboratory, Great Lakes, IL, Building 38-H, Great Lakes, IL 60088-5223, 708-688-2045/708-688-4171

Dept. of the Navy, Navy Drug Screening Laboratory, Norfolk, VA, 1321 Gilbert Street, Norfolk, VA 23511-2597, 804-444-8089 ext. 317

Doctors Laboratory, Inc., P.O. Box 2658, 2906 Julia Drive, Valdosta, GA 31604, 912-244-4468

Doctors & Physicians Laboratory, 801 East Dixie Avenue, Leesburg, FL 32748, 904-787-9006

Drug Labs of Texas, 15201 I-10 East, Suite 125, Channelview, TX 77530, 713-457-3784

DrugScan, Inc., P.O. Box 2969, 1119 Mearns Road, Warminster, PA 18974, 215-674-9310

ElSohly Laboratories, Inc., 5 Industrial Park Drive, Oxford, MS 38655, 601-236-2609, (moved 6/16/93)

Employee Health Assurance Group, 405 Alderson Street, Schofield, WI 54476, 800-627-8200, (formerly: Alpha Medical Laboratory, Inc.)

General Medical Laboratories, 36 South Brooks Street, Madison, WI 53715, 608-267-6267

Harrison Laboratories, Inc., 606 N. Weatherford, P.O. Box 2788, Midland, TX 79702, 800-725-3784/915-687-6877, (formerly: Harrison & Associates Forensic Laboratories)

HealthCare/MetPath, 24451 Telegraph Road, Southfield, MI 48034, Inside MI: 800-328-4142/Outside MI: 800-225-9414, (formerly: HealthCare/Preferred Laboratories)

Hermann Hospital Toxicology Laboratory, Hermann Professional Building, 6410 Fannin, Suite 354, Houston, TX 77030, 713-793-6080

Jewish Hospital of Cincinnati, Inc., 3200 Burnet Avenue, Cincinnati, OH 45229, 513-569-2051

Laboratory of Pathology of Seattle, Inc., 1229 Madison St., Suite 500, Nordstrom Medical Tower, Seattle, WA 98104, 206-386-2672

Laboratory Specialists, Inc., 113 Jarrell Drive, Belle Chasse, LA 70037, 504-392-7961

Marshfield Laboratories, 1000 North Oak Avenue, Marshfield, WI 54449, 715-389-3734/800-222-5835

Mayo Medical Laboratories, 200 S.W. First Street, Rochester, MN 55905, 507-284-3631

Med-Chek/Damon, 4900 Perry Highway, Pittsburgh, PA 15229, 412–931–7200, (formerly: Med-Chek Laboratories, Inc.)
MedExpress/National Laboratory Center, 4022 Willow Lake Boulevard, Memphis, TN 38175, 901–795–1515
Medical Science Laboratories, 11020 W. Plank Court, Wauwatosa, WI 53226, 414–476–3400
MEDTOX Bio-Analytical, 8600 West Catalpa Avenue, Chicago, IL 60656, 800–872–5221/312–714–9191, (formerly: MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; Bio-Analytical Technologies)
MedTox Laboratories, Inc., 402 W. County Road D, St. Paul, MN 55112, 800–832–3244/612–636–7466
Methodist Hospital of Indiana, Inc., Department of Pathology and Laboratory Medicine, 1701 N. Senate Boulevard, Indianapolis, IN 46202, 317–929–3587
Methodist Medical Center Toxicology Laboratory, 221 N.E. Glen Oak Avenue, Peoria, IL 61636, 800–752–1835/309–671–5199
MetPath, Inc., 1355 Mittel Boulevard, Wood Dale, IL 60191, 708–595–3888
MetPath, Inc., One Malcolm Avenue, Teterboro, NJ 07608, 201–393–5000
Metropolitan Reference Laboratories, Inc., 2320 Schuetz Road, St. Louis, MO 63146, 800–288–7293
National Center for Forensic Science, 1901 Sulphur Spring Road, Baltimore, MD 21227, 410–536–1485, (formerly: Maryland Medical Laboratory, Inc.)
National Drug Assessment Corporation, 5419 South Western, Oklahoma City, OK 73109, 800–749–3784, (formerly: Med Arts Lab)
National Health Laboratories Incorporated, 5601 Oberlin Drive, Suite 100, San Diego, CA 92121, 619–455–1221
National Health Laboratories Incorporated, 2540 Empire Drive, Winston-Salem, NC 27103–6710, Outside NC: 919–760–4620/800–334–8627/Inside NC: 800–642–0894
National Health Laboratories Incorporated, 75 Rod Smith Place, Cranford, NJ 07016–2843, 908–272–2511
National Health Laboratories Incorporated, d.b.a. National Reference Laboratory, Substance Abuse Division, 1400 Donelson Pike, Suite A–15, Nashville, TN 37217, 615–360–3992/800–800–4522
National Health Laboratories Incorporated, 13900 Park Center Road, Herndon, VA 22071, 703–742–3100
National Psychopharmacology Laboratory, Inc., 9320 Park W. Boulevard, Knoxville, TN 37923, 800–251–9492
National Toxicology Laboratories, Inc., 1100 California Avenue, Bakersfield, CA 93304, 805–322–4250
Nichols Institute Substance Abuse Testing (NISAT), 7470–A Mission Valley Road, San Diego, CA 92108–4406, 800–446–4728/619–686–3200, (formerly: Nichols Institute)
Northwest Toxicology, Inc., 1141 E. 3900 South, Salt Lake City, UT 84124, 800–322–3361
Occupational Toxicology Laboratories, Inc., 2002 20th Street, Suite 204A, Kenner, LA 70062, 504–465–0751
Oregon Medical Laboratories, P.O. Box 972, 722 East 11th Avenue, Eugene, OR 97440–0972, 503–687–2134
Pathology Associates Medical Laboratories, East 11604 Indiana, Spokane, WA 99206, 509–926–2400
PDLA, Inc. (Princeton), 100 Corporate Court, So. Plainfield, NJ 07080, 908–769–8500/800–237–7352
PharmChem Laboratories, Inc., 1505–A O'Brien Drive, Menlo Park, CA 94025, 415–328–6200/800–446–5177
PharmChem Laboratories, Inc., Texas Division, 7606 Pebble Drive, Fort Worth, TX 76118, 817–595–0294, (formerly: Harris Medical Laboratory)
Physicians Reference Laboratory, 7800 West 110th Street, Overland Park, KS 66210, 913–338–4070/800–821–3627, (formerly: Physicians Reference Laboratory Toxicology Laboratory)
Poisonlab, Inc., 7272 Clairemont Mesa Road, San Diego, CA 92111, 619–279–2600/800–882–7272
Precision Analytical Laboratories, Inc., 13300 Blanco Road, Suite #150, San Antonio, TX 78216, 210–493–3211
Puckett Laboratory, 4200 Mamie Street, Hattiesburgh, MS 39402, 601–264–3856/800–844–8378
Regional Toxicology Services, 15305 NE. 40th Street, Redmond, WA 98052, 206–882–3400
Resource One, Inc., Seven Pointe Circle, Greenville, SC 29615, 803–233–5639
Roche Biomedical Laboratories, 1957 Lakeside Parkway, Suite 542, Tucker, GA 30084, 404–939–4811
Roche Biomedical Laboratories, Inc., 1120 Stateline Road, Southaven, MS 38671, 601–342–1286
Roche Biomedical Laboratories, Inc., 69 First Avenue, Raritan, NJ 08869, 800–437–4986
Saint Joseph Hospital Toxicology Laboratory, 601 N. 30th Street, Omaha, NE 68131–2197, 402–449–4940
Scott & White Drug Testing Laboratory, 600 S. 25th Street, Temple, TX 76504, 800–749–3788
S.E.D. Medical Laboratories, 500 Walter NE, Suite 500, Albuquerque, NM 87102, 505–848–8800
Sierra Nevada Laboratories, Inc., 888 Willow Street, Reno, NV 89502, 800–648–5472
SmithKline Beecham Clinical Laboratories, 7600 Tyrone Avenue, Van Nuys, CA 91045, 818–376–2520
SmithKline Beecham Clinical Laboratories, 3175 Presidential Drive, Atlanta, GA 30340, 404–934–9205 (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 506 E. State Parkway, Schaumburg, IL 60173, 708–885–2010, (formerly: International Toxicology Laboratories)
SmithKline Beecham Clinical Laboratories, 11636 Administration Drive, St. Louis, MO 63146, 314–567–3905
SmithKline Beecham Clinical Laboratories, 400 Egypt Road, Norristown, PA 19403, 800–523–5447, (formerly: SmithKline Bio-Science Laboratories)
SmithKline Beecham Clinical Laboratories, 8000 Sovereign Row, Dallas, TX 75247, 214–638–1301, (formerly: SmithKline Bio-Science Laboratories)
South Bend Medical Foundation, Inc., 530 N. Lafayette Boulevard, South Bend, IN 46601, 219–234–4176
Southwest Laboratories, 2727 W. Baseline Road, Suite 6, Tempe, AZ 85283, 602–438–8507
St. Anthony Hospital (Toxicology Laboratory), P.O. Box 205, 1000 N. Lee Street, Oklahoma City, OK 73102, 405–272–7052
St. Louis University Forensic Toxicology Laboratory, 1205 Carr Lane, St. Louis, MO 63104, 314–577–8628
Toxicology & Drug Monitoring Laboratory, University of Missouri Hospital & Clinics, 301 Business Loop 70 West, Suite 208, Columbia, MO 65203, 314–882–1273
Toxicology Testing Service, Inc., 5426 NW. 79th Avenue, Miami, FL 33166, 305–593–2260
TOXWORX Laboratories, Inc., 6160 Variel Avenue, Woodland Hills, CA 91367, 818–226–4373, (formerly: Laboratory Specialists, Inc.; Abused Drug Laboratories; MedTox Bio-Analytical, a Division of MedTox Laboratories, Inc.; moved 12/21/92)
UNILAB, 18408 Oxnard Street, Tarzana, CA 91356, 800–492–0800/818–343–8191, (formerly: MetWest-BPL Toxicology Laboratory).

The following laboratory withdrew from the National Laboratory Certification Program on November 19, 1993:

Roche Biomedical Laboratories, 1801 First Avenue South, Birmingham, AL 35233, 205–581–4170.

The following laboratory withdrew from the National Laboratory Certification Program, on December 31, 1993:

IHC Laboratory Services Forensic Toxicology, 930 North 500 West, Suite E, Provo, UT 84604, 800–967–9766.

Richard Kopanda,

Acting Executive Officer, Substance Abuse and Mental Health Services Administration.

[FR Doc. 94–190 Filed 1–4–94; 8:45 am]

BILLING CODE 4160–20–U

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

Change in Discount Rate for Water Resources Planning

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of change.

SUMMARY: This notice sets forth that the discount rate to be used in Federal water resources planning for fiscal year 1994 is 8 percent. Water Resources Planning Act and Water Resources Development Act of 1974 requires an annual determination of a discount rate. Federal water resources planning for fiscal year 1994 is 8 percent. Discounting is to be used to convert future monetary values to present values.

DATES: This discount rate is to be used for the period October 1, 1993, through and including September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Norbert S. Ries, Special Programs Manager, Investigations and Oversight Branch, U.S. Bureau of Reclamation, Attention: D–5110, Building 67, Denver Federal Center, Denver CO 80225–0007; telephone: (303) 236–9336, extension 233.

SUPPLEMENTARY INFORMATION: Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 8 percent for fiscal year 1994.

This rate has been computed in accordance with section 80(a), Public Law 93–251 (88 Stat. 34) and 18 CFR 704.39, which: (1) Specify that the rate shall be based upon the average yield during the preceding fiscal year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity (average yield is rounded to nearest one-eighth percent); and (2) provide that the rate shall not be raised or lowered more than one-quarter of 1 percent for any year. The Treasury Department calculated the specified average yield to be 7.08 percent. However, application of the above mentioned limitation to the fiscal year 1993 rate of 8.25 percent limits the change in the fiscal year 1994 rate to 8 percent.

The rate of 8 percent shall be used by all Federal agencies in the formulation and evaluation of water and related land resources plans for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

Dated: December 28, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–109 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

General Management Plan/Environmental Impact Statement for Fort Clatsop National Memorial, OR

ACTION: Notice of extension of public review period.

SUMMARY: The November 3, 1993 issue of the **Federal Register** contained a notice by the National Park Service that announced the availability of the draft General Management Plan/Environmental Impact Statement (GMP/EIS) for Fort Clatsop National Memorial, Oregon, and called for written comments to be submitted by January 7, 1994. This present notice announces a 31-day extension of the period available for public review of the draft GMP/EIS.

DATES: Comments on the draft GMP/EIS should be received no later than February 7, 1994.

ADDRESSES: Written comments on the draft GMP/EIS should be submitted to the Superintendent, Fort Clatsop National Memorial, Route 3, Box 604–FC, Astoria, Oregon 97103.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Clatsop National Memorial, at the above address or at telephone number (503) 861–2471.

Dated: December 23, 1993.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 94–173 Filed 1–4–94; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–669–670 (Preliminary)]

Certain Cased Pencils From the People's Republic of China and Thailand

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from the People's Republic of China and Thailand[2] of certain cased pencils, provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 10, 1993, a petition was filed with the Commission and the Department of Commerce by the Pencil Makers Association, Inc., Marlton, NJ, alleging that an industry in the United States is materially injured or threatened with material injury by reason of LTFV imports of certain cased pencils from the People's Republic of China and Thailand. Accordingly, effective November 10, 1993, the Commission instituted antidumping investigations Nos. 731–TA–669–670 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 17, 1993 (58 FR 60670). The conference was held in Washington, DC, on December 1, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on December 27, 1993. The views of the Commission are contained in USITC Publication 2713 (December 1993), entitled "Certain Cased Pencils from the People's Republic of China and Thailand: Investigations Nos. 731–TA–669–670 (Preliminary)."

Issued: December 29, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–150 Filed 1–4–93; 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale and Commissioner Crawford determine that there is no reasonable indication that an industry in the United States is materially injured or threatened with material injury by reason of imports of certain cased pencils from Thailand.

[Investigation No. 337–TA–359]

Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on January 12, 1994, in Courtroom A (Room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register.**

Issued: December 29, 1993.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 94–151 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–349]

Commission Decision Not To Review an Initial Determination Suspending the Investigation

In the Matter of Certain Diltiazem Hydrochloride and Diltiazem Preparations

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) issued by the presiding administrative law judge (ALJ) suspending the above-captioned investigation.

FOR FURTHER INFORMATION CONTACT: Cynthia P. Johnson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3098.

SUPPLEMENTARY INFORMATION: On March 31, 1993, the Commission instituted an investigation into allegations by complainants Tanabe Seiyaku Co., Ltd. and Marion Merrell Dow ("complainants") that respondents Gyma Laboratories of America, Inc.; Mylan Pharmaceuticals, Inc., Mylan Laboratories, Inc. and Profarmaco Norbel SRL ("Mylan respondents"); Orion Corporation Fermion, Interchem Corporation, Rhone-Poulenc Rorer, Inc., and Copley Pharmaceuticals, Inc. ("the Fermion Respondents"); and Abic Ltd. ("Abic") were violating section 337 in the importation and sale of certain diltiazem hydrochloride and diltiazem preparations allegedly manufactured abroad by a process covered by claim 1 of U.S. Letters Patent 4,438,035 ("the '035 patent"). Plantex USA ("Plantex") was later added as a respondent. On May 3, 1993, respondent Abic requested that the U.S. Patent and Trademark Office ("PTO") reexamine all claims of the '035 patent. On June 25, 1993, the PTO granted Abic's request and began reexamination proceedings. On November 22, 1993, the PTO issued an office action rejecting claims of the '035 patent as obvious under 35 U.S.C. 103.

On November 23, 1993, as a result of the PTO's rejection, complainants moved to suspend the Commission investigation pending the outcome of the PTO reexamination proceedings. Respondents opposed the motion, and the Commission investigative attorney (IA) supported the motion. On November 24, 1993, the presiding ALJ issued an ID suspending the investigation until 30 days after the completion of reexamination proceedings at the PTO or until such time as may be prescribed by the Commission.

On December 2, 1993, Abic and Plantex filed a petition for review of the ID. On December 6, 1993, the Fermion respondents filed a response in support of Abic and Plantex's petition for review. On December 9, 1993, complainants and the IA filed oppositions to respondents' petition for review.

This action is taken under the authority of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337) and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 to 5:15 p.m. in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: December 28, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–152 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

[332–237]

Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Provisions 9802.00.60 and 9802.00.80, 1989–92

AGENCY: United States International Trade Commission.

ACTION: Opportunity to supply written comment on continuing investigation.

SUMMARY: The Commission annually conducts a study on production sharing. The Commission's 1993 report on "Production Sharing: U.S. Imports Under Harmonized Tariff Schedule Provisions 9802.00.60 and 9802.00.80," covering imports for the period 1989–92, will be published in January 1994. Last year's report, covering the period 1988–91, was published in February 1993 (USITC Publication 2592). The 1994 annual report (published in January 1995) will cover imports during the period 1990–93.

FOR FURTHER INFORMATION CONTACT: Richard L. Witherspoon (202–205–3489), Minerals, Metals and Miscellaneous Manufactures Division, Office of Industries, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436.

SUPPLEMENTARY INFORMATION: Harmonized Tariff Schedule (HTS) provision 9802.00.60 involves tariff treatment for metal of U.S. origin processed in a foreign location and returned to the United States for further processing; provision 9802.00.80 involves tariff treatment for imported goods that contain U.S.-made components. The initial notice of institution of this investigation in 1986 was published in the **Federal Register** of September 4, 1986 (51 FR 31729).

Written Submission

No public hearing is planned. Written statements concerning the investigation are welcome at any time, however, since monitoring imports under production sharing HTS provisions 9802.00.60 and 9802.00.80 is a continuing endeavor of the Commission. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436.

Hearing-impaired individuals are advised that information on this matter can be obtained by contacting our TDD terminal on (202) 205–3810.

Dated: December 30, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–188 Filed 1–4–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–52 (Sub-No. 76X)]

Atchison, Topeka and Santa Fe Railway Co.—Abandonment Exemption—in Harper County, KS

The Atchison, Topeka and Santa Fe Railway Company (SF) has filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments* to abandon a 1.84-mile line of railroad on its H&S Subdivision from milepost 258+2,120 feet to milepost 256+2,993 feet at or near Harper, in Harper County, KS.

SF has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic can be rerouted over other lines; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirement at 49 CFR 1152.50(d)(1) (notice to government agencies), 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), and 49 CFR 1105.12 (newspaper publication) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Peter M. Olson, 1700 E. Golf Road, Schaumburg, IL 60173.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

SF has filed an environmental report which addresses the abandonment's effect, if any, on the environment or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–169 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket No. AB–410 (Sub-No. 1X)]

Austin Railroad Co., Inc., Discontinuance of Service Exemption—in Burnet and Llano Counties, TX

Austin Railroad Co., Inc., d/b/a Austin & Northwestern Railroad (AUNW) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to discontinue service over 26.4 miles of railroad from milepost 127.7 at Scobee to milepost 154.1 at the end of the track at Llano, in Burnet and Llano Counties, TX.

AUNW has certified that: (1) No local traffic has moved over the line for more than 2 years; (2) any overhead traffic can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice of governmental agencies) have been met.

As a condition to this exemption, any employee affected by the discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues[1] and formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2)[2] must be filed by January 18, 1994. Petitions to reopen must be filed by January 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Michael W. Blaszak, 211 South Leitch Avenue, LaGrange, IL 60525–2162.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

AUNW has filed an environmental report which addresses the discontinuance's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental and historic preservation conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 94–170 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[Docket Nos. AB–32 and AB–355 (Sub-Nos. 61X and 13X)]

Boston and Maine Corporation—Abandonment Exemption—New Haven County, CT; Springfield Terminal Railway Company—Discontinuance of Service Exemption—New Haven County, CT

Boston and Maine Corporation (B&M) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over a segment of B&M's Dublin Street Track line of railroad between milepost 17.29 and milepost 19.86, a distance of approximately 2.57 miles, in Waterbury, New Haven County, CT. B&M seeks authority to abandon the line, and ST, which leases the line from B&M, seeks authority to discontinue service over the line.

B&M and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic, if any, has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

B&M and ST have filed an environmental report which addresses the effect, if any, of the abandonment and the discontinuance on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 27, 1993.

By the Commission, Julia M. Farr, Acting Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–172 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket Nos. AB–32 and AB–355 (Sub-Nos. 58X and 10X)]

Boston and Maine Corporation—Abandonment Exemption—New Haven County, CT; Springfield Terminal Railway Company—Discontinuance of Service Exemption—New Haven County, CT

Boston and Maine Corporation (BM), and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR part 1152 Subpart F—*Exempt Abandonments and Discontinuances* for BM to abandon and ST to discontinue service over a 0.88 mile segment of BM's rail known as the Waterbury Industrial Track, between milepost 0.98 and milepost 1.86, in Waterbury, New Haven County, CT.

BM and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to the use of this exemption, any employee affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 4, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 18, 1994. Petitions to reopen or request for public use conditions under 49 CFR 1152.28 must be filed by January 25, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BM and SP have filed an environmental report which addresses the effects, if any, of the abandonment and discontinuance on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 10, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 23, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–171 Filed 1–4–94; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Foreign Claims Settlement Commission

Claims Against Iran

AGENCY: Foreign Claims Settlement Commission of the United States, Department of Justice.

ACTION: Notice.

SUMMARY: The persons listed in the information section of this notice have claims pending against the Islamic Republic of Iran which are before the Foreign Claims Settlement Commission (FCSC) for adjudication. The claims are among a total of approximately 3,100 claims of under $250,000 which were settled under an agreement between the United States and Iran which took effect on June 22, 1990. However, these claimants have failed to inform the FCSC of their current addresses, and despite its efforts, the FCSC has been unable to locate or contact these claimants. The purpose of this notice is to publicize the names, claim numbers, and last known addresses of these claimants, and to inform them that unless they furnish their current addresses to the FCSC by March 1, 1994, their claims will be dismissed from further consideration.

DATES: The deadline for providing an updated address is March 1, 1994.

FOR FURTHER INFORMATION CONTACT: David E. Bradley, Chief Counsel, Foreign Claims Settlement Commission of the United States, 601 D Street, NW., room 10430, Washington, DC 20579, (202) 208–7730 or FAX (202) 208–2816.

SUPPLEMENTARY INFORMATION: The Foreign Claims Settlement Commission of the United States (FCSC) hereby gives notice that it has been unable to locate the following named claimants, whose last known addresses and claim numbers also appear below, who have claims pending before the FCSC for property and financial losses alleged to have been caused by the Government of Iran. These claims are among the approximately 3,100 claims of under $250,000 each which were settled en bloc under an agreement between the United States and Iran which took effect on June 22, 1990. *Settlement Agreement in Claims of Less than $250,000, Case No. 86 and Case No. B38*, Award No. 483 (1990). The FCSC has been given authority to adjudicate the claims under title V of the Foreign Relations Authorization Act, Fiscal Years 1986 and 1987 (Pub. L. 99–93, approved August 16, 1985, 99 Stat. 437 (50 U.S.C. 1701 note)). Further, the FCSC hereby gives notice to each of these claimants that it will dismiss their claims from further consideration, regardless of their potential validity, unless it receives notification of the claimant's current address on or before the deadline of March 1, 1994.

Dated at Washington, DC on December 30, 1993.

Judith H. Lock,

Administrative Officer.

Name & last known address	Claim No. IR–
Adretta, Richard A., 1074 Lorimer Street, #1R, Brooklyn, NY 11222	3150
Arthur Tickle Engineering Works, Inc., 26 Delevan Street, Brooklyn, NY 11231	0368
Autodynamics, Inc., 1115 Green Grove Road, Neptune, NJ 07753	1373
Avilla, Henry, 17th ASG CM, Unit 45013, Box 2954, APO AP, 96338	1633
Batton, Cleophas, c/o Savaneeya Batton, 3871 N. Shelby Ln., Douglasville, GA 30135	2077
Berckemeyer, Jack R., 1860 Okeechobee Drive, Colorado Springs, CO 80915	0129
Bill, Luis L., 7401 New Hampshire Ave., #506, Hyattsville, MD 20783	2686
Blackledge, Albert H., Otis Engineering Corp, P.O. Box 34380, Dallas, TX 75234	1395
Blake, Harvey E., 1155 South Riverside Ave, Space 148, Rialto, CA 92376	2556
Boen, Clinton, Route 2, Box 10, Oark, AR 72852	2638
Brennan, John J., 16410 Miami Drive, North Miami Beach, FL 33162	1145
Burge, John J., 3211 Oakridge Drive, Chino Hills, CA 91709	2628
Burkeman, Walter B., 252 South Maple Drive, Beverly Hills, CA 90212	3032
Bushey, Alfred J., RAO, 3d GSC/CDR, APO San Francisco, 96274	0367
Carey, Don N., 111 Woodlawn, Dollard, Des Ormeaux, Canada H9A124	1294
Carriger, Lillian, 421 North Air Depot Blvd., #1, Midwest City, OK 73110	2295
Carriger, Charles, 1954 Highway 58, #114, Mojove, CA 93501–1933	1125
Carroll, Sue G., 757 Ledyard Place, Montgomery, AL 36109	0411
Carter, M.A., 1015 Bois d'Arc Street, Duncan, OK 73536	1619
Chandler, George M., c/o T. Norton, 20102 Chaparral Circle, Penn Valley, CA 95946	1674
Cobb, Frank W., Route 1, Box 123, Jackson, Alabama 36545	0739
Curtiss, Russell E., 2101 S. 324th Street, Space #6, Federal Way, WA 98003	2075
Davis, Laurene D., 4024 Kenwood Drive, Spring Valley, CA 92077	2509
Douglas, Arthur S., Box 59, Taif, Saudi Arabia	2792
Duck, John W., 1015 Bois d'Arc Street, Duncan, OK 73536	1690
Edwards, William N., 1101 Melanie Lane, Ozark, MO 65721	1391
Eubanks, Joe, 1215 E. 48th Street, Los Angeles, CA 90011	2292
Fleming, Victor D., 6801 Trowita Way, Citrus Heights, CA 95610	3085
Fox, Joseph A., 2441 W. 205H Street, #105, Torrance, CA 90501–1463	0432
Gavenas, Steven P., c/o U.S. Embassy Refugee Section, Bangkok, Thailand	2894
Gaynes Dept. Store, 861 Williston Road, South Burlington, VT 05401	1291
Gensplit Finance Corp., P.O. Box 1086, Sheboygan, WI 53081	0149
Girard, William Glen, 220 Holmes Blvd., #G–1, Gretna, LA 70053	1963
Glenn, Robert L., 124 W. Manta Cove, Savannah, GA 31410	3183
Greenlaw, Osborne M., 4379 Dunmovin Drive, Kennesaw, GA 30144	2058

Name & last known address	Claim No. IR–
Guinn, Elias, HC36 Box 184, Chavies, KY 41727	2931
Hancock, Herschel, NAC c/o Material Control Dept., APO New York, NY 09674	2622
Harvey, Norman Grant, 3834 Jupiter, Lompoc, CA 93438	1621
Hayes, Robert C., 711 Tenna Loma, Dallas, TX 75208	2360
Henderson, Howard W., 211 Artesian Forest, 6 Wellwood St., Conroe, TX 77304	2679
Hewitt, Thomas, Est. of, c/o Ms. Nita Hewitt, 4020 Pinehurst, Amarillo, TX 79109	2951
Holleman, David J., P.O. Box 3694, Jeddeah, Saudi Arabia	1677
Howard, Kelly, 5218 Prairie Creek Drive, Flower Mound, TX 75028	1931
Howarth, Neville, 30709 Rue Langlois, Rancho Palos Verdes, CA 90274	1060
Howell, Donald T., 13823 NE 74th Street, Redmond, WA 98052	1596
Huffman, Jack, 1600 N. Lake Street, #6, Madera, CA 93638	2497
Imperial Van Lines, Inc., 2805 Columbia Street, P.O. Box 2917, Torrance, CA 90503	2939
ITT Blackburn Co., P. Moelling, 1525 Woodson Road, St. Louis, MO 63114	2920
Jarratt, Thomas Earl, 552 W. I–30, P.O. Box 428, Garland, TX 75043	0483
Jones, James B., P.O. Box 1949, Al-Khobar, Saudi Arabia	2469
Kamely, Daphne, 7119 Matthew Mills Road, McLean, VA 82358	3140
Killion, Milton, 196 E. Pleasantview Drive, Hurst, TX 76053	2428
Killion, Armedia, 196 E. Pleasantview Drive, Hurst, TX 76053	2428
King, Frederick L. 1021 E. Wheeler Street, Kokomo, IN 46901	0473
Kolendo, Chester, NAC, APO New York, NY 09674	2621
Kos, Jr., Frank, NAC c/o Material Control, APO New York, NY 09674	2623
Kuzbicki, Ramon S., 13079 Artesia Blvd., Suite 232, Cerritos, CA 90701	3198
Le Fevre, Jr., Bernard, 1115 West Fern, Redland, CA 92373	2234
Leake, Jr., James J., Saudi Arabian Airlines, Jeddah, Saudi Arabia	2068
Lee, Pamela C., 23 Lockatong Road, Stockton, NJ 08559	0523
Lopez, Filimon R., 1020 Alta Vista, Arcadia, CA 91006	2053
Loving, Joseph Sidney, 7059 Fernhill Drive, Malibu, CA 90265	0301
Mackown, Patricia A.B., 3640 Buttonwood Drive, Titusville, FL 32796	0289
Maxwell, Raymond S., Saudi Arabian Parsons Ltd., P.O. 3694, Jeddah, Saudi Arabia	1667
McClay, John F., 1601 Lexington Place, Bedford, TX 76022	2355
McDowell, James K., 1111 Schilling Road, MS 7041, Hunt Valley, MD 21030	2610
McNicholas, Martin J., 5249 North Fairhill Street, Philadelphia, PA 19120	2600
Mechtron Industries, Inc., P.O. Box 2322, Wilmington, DE 19899	2534
Mehrpouyan, Cyrus, c/o atty, 502 Capital Avenue, North Bay Village, FL 33141	1155
Miller, Kenneth George, 6913 Old Briarstown Drive, Waco, TX 76710	1866
Morse Shoe, Inc., c/o atty, Martin Cole, 111 E. 80th St., New York, NY 10021	3017
Mullis, Jr., Lance C., 3649 Groover Lake Road, Lithia Springs, GA 30057	2084
Nelson, Roger, 501 DeeAnn Road, Decatur, AL 35603	0362
Nelson, Charles, NAC Box 402, APO New York, NY 09674	2618
Nelson, II, John, 9415 Lyngrove, Dallas, TX 75205	2429
Nilsen, Karina, 821 S. Stanley Avenue, Los Angeles, CA 90036	0753
Noe, Victor E., 3316 Ellen Avenue, Hebron, Kentucky 41048	3080
Oritz-Moreno, Orlando, 1409 Prestwick Court, Orlando, FL 32817	2773
Outsen, Kenneth W., 29018 39th Avenue South, Auburn, WA 98002	0728
Parrish, Thadius A., 1045 West 55th Street, Los Angeles, CA 90037	1620
PLT Engineering, Inc., L. Hansen, One Sugar Creek Pl., 14141 SW Freeway, Sugar Land, TX 77478	2512
Rea International Corp., Alan Marrus, 937 East Hazelwood Avenue, Rahway, NJ 07065	2921
Riedel, Herbert, 20531 Shadow Mount Road, Walnut, CA 91789	1576
Riedel, Collen M., 20531 Shadow Mount Road, Walnut, CA 91789	1576
Rowlett, Larry, 629 North Mesa Drive, Mesa, AZ 85203	1095
Russ, Donald O., P.O. Box 27281, San Antonio, TX	2617
Russ, Jack O., NAC Box 401, APO New York, NY 35124	2619
Scalfati, Joseph, 12926 N.E. 147th Place, Kirkland, WA 98034	0754
Scarritt, John, c/o Aramco, P.O. 10803, Dhahran, Saudi Arabia	1476
Schoonmaker, David T., 16 Warfield Avenue, Cranston, RI 02920	1569
Shahrestani, Mostaffa, 10600 Western Avenue, #23, Stanton, CA 90680	2886
Shamilzadeh, Michael, 430 East 57th Street, New York, NY	0868
Shamilzadeh, Charles, 645 Bryant Avenue, Roslyn Harbor, L.I., New York	0869
Shaney, Richard E., P.O. Box 3694, Jeddah, Saudi Arabia	1662
Skeen, Alfred J., 7128 Tristan Circle, Stockton, CA 95210	2454
Smith, Oscar M., 5327 Montgomery, N.E., Albuquerque, NM 87109	1905
Smith, George L., NAC, APO New York, NY 09674	2620
Sotelo, William H., 1380 Christi Drive, Vista, CA 92083	0250
Spring, Mark D., c/o Petroleum Air Services, PO Box 2711, Cairo, Egypt	2470
Sturgis, Guy C., 1207 North Garfield, Midland, TX 79701	1586
Tamaddoni-Jahromi, Paula, Route 1, Box 571, Bainbridge, GA 31717	1209
Tehrani, Shahin, 43 Strathmore Road, Great Neck, NY 11023	3200
Ulicki, Thomas E., 515 Sunset Lane, Mt. Pleasant, MI 48858	0439
Veyro, Jose V., 1320 Todd Court, Wichita, KS 97207	2687
West, Bert A., 1786 Grove Valley Avenue, Palm Harbor, FL 33563	2474
Williams, Gerald W., 1015 Bois d'Arc Street, Duncan, OK 73536	1388
Youngs, Neil G., 111 Anthony Drive, Lakeville, MN 55044	2654
Zeiser, Robert E., 18 Grand Street, Smithtown, NY 11787	1562

[FR Doc. 94–148 Filed 1–4–94; 8:45 am]
BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–29,008]

PPG Industries, Inc., Ford City, Pennsylvania; Negative Determination Regarding Application for Reconsideration

By an application dated December 13, 1993, the Aluminum Brick and Glass Workers Union requested administrative reconsideration of the Department's denial of trade adjustment assistance (TAA) benefits for workers of the subject firm. The Department's notice of negative determination was issued on November 29, 1993 and will be published in the **Federal Register** soon.

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

The union claims that a French Canadian firm is selling glass at prices lower than domestic producers' costs. The union also states that the Department's survey of customers did not take into account the lowered demand for glass in the industry and PPG plans for expansion in Mexico.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The Department's survey of PPG's major customers shows that most respondents did not import and those that did had very minor import purchases in the period relevant to the petition.

The investigation file shows that the workers at Ford City purchase glass and fabricate it into commercial windows unlike the French Canadian firm cited by the union which is a primary glass producer.

With respect to the union's example of sheet glass and fabricated commercial glass windows, the Department does not see any relevance. One is a raw material used in making a different product while the other is a finished article. Sheet glass and fabricated commercial glass windows are not interchangeable, nor are they like or directly competitive within the meaning of section 222(3) of the Trade Act.

Further, company officials indicated that there is a downswing in the production of commercial glass windows because the commercial market currently is overbuilt. The construction boom during the 1980s resulted in record vacancy rates for office buildings, stores and hotels—all users of fabricated glass windows.

Other findings show that the PPG does not import commercial glass windows.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 22nd day of December, 1993.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 94–166 Filed 1–4–94 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,968]

Plains Petroleum Operating Co. Midland, TX; Affirmative Determination Regarding Application for Reconsideration

On November 19, 1993, after being granted a filing extension, one of the former workers requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on September 27, 1993 and was published in the **Federal Register** on October 21, 1993 (58 FR 54736).

The former worker submitted additional information showing that the Midland facility had decreased sales and production in 1993.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 22nd day of December, 1993.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 94–165 Filed 1–4–94; 8:45 am]
BILLING CODE 4510–30–M

Pension and Welfare Benefits Administration

Withdrawal of Notice of Proposed Exemption

In the matter of Day Runner, Inc. 401(k) Plan (the Plan), Located in Fullerton, California [Exemption Application No. D–9357]

In the **Federal Register** dated April 27, 1993 (58 FR 25661), the Department of Labor (the Department) published a notice of proposed exemption from the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 and from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the proposed cash sale by the Plan to Day Runner, Inc. (the Employer), the sponsor of the Plan, of a guaranteed investment certificate issued by Mutual Benefit Life Insurance Company of New Jersey.

On December 16, 1993, the applicant informed the Department that it did not wish to proceed with the exemption application procedure.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director, Office of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–107 Filed 1–4–94; 8:45 am]
BILLING CODE 4510–29–P

[Application No. D–9470 through D–9473]

Proposed Exemptions; Avram A. Jacobson, M.D. Employee Profit Sharing Plan; The Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan, Collectively

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public

inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Avram A. Jacobson, M.D. Employee Profit Sharing Plan (the Profit Sharing Plan) and the Avram A. Jacobson, M.D. Employee Money Purchase Pension Plan (the Money Purchase Plan; Collectively, the Plans) Located in Beverly Hills, California

[Application Nos. D–9470 through D–9473]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale (the Sale) of certain works of art (the Art Work) by the Plans to Avram A. Jacobson, M.D., a sole proprietor and disqualified person with respect to the Plans.[1]

This proposed exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plans are not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Art Work is appraised by qualified, independent appraisers; (4) the sale price for the Art Work reflects the greater of either: (a) The original amount paid by the Plans at the time of acquisition; or (b) its fair market value on the date of the Sale; and (5) within ninety days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, Dr. Jacobson will file Forms 5330 with the Internal Revenue Service (the Service) and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

Summary of Facts and Representations

1. The Plans are a profit sharing plan and a money purchase pension plan, which as of December 31, 1992, had total assets of $1,642,180 and $960,643 respectively. Dr. Jacobson is the 100 percent owner of Avram A. Jacobson, M.D. (the Employer), a sole proprietorship and the sponsoring employer of the Plans. Dr. Jacobson maintains a pathology practice in Beverly Hills, California. The only participants in the Plans are Dr. Jacobson and his wife. The Trustee of the Plans is Dr. Jacobson, who has sole investment discretion with respect to the assets of the Plans.

2.The Profit Sharing Plan owns three works of contemporary art and the Money Purchase Pension Plan owns one work of mixed media art, collectively known as the Art Work. The Art Work was purchased for a cash amount of $685,000 by the Plans from unrelated parties with respect to Dr. Jacobson, the Employer, or the Plans. To date, the Plans have not incurred any costs associated with acquisition and holding of the Art Work. A description of the Art Work is as follows:

Plan	Title	Artist	Date of purchase	Price
PSP	"Untitled"	M. Merz	10/6/89	$135,000
PSP	"Grau"	G. Richter	11/9/89	150,000
MPPP	"Pau"	F. Stella	5/1/86	180,000
PSP	"Fouffi Noutti in Hell"	J. Schnabel	5/18/93	220,000
Total				685,000

3. Following its acquisition, the Art Work has been in the possession of Dr. Jacobson at his residence located at 630 N. Sierra Drive, Beverly Hills, California. During a 1993 audit, the Service determined that Dr. Jacobson had engaged in prohibited transactions with the Plans by reason of his use of the Art Work for the years 1989 and 1990.[2]

Dr. Jacobson represents that he will file Forms 5330 with the Service and pay the applicable excise taxes associated the past prohibited transactions within ninety days of the publication in the **Federal Register** of the notice granting this proposed exemption. In addition, Dr. Jacobson will pay the Plans the fair market rental value in the amount of approximately $90,000 for his use of the Art Work for years 1989 through 1993. Excise taxes will accrue for the period between 1989 and 1993.

4. At present, the Art Work has produced no income for the Plans. In order to enable the Plans to divest themselves of the Art Work and to invest in income-producing, marketable securities, Dr. Jacobson proposes to purchase the Art Work from the Plans for a cash amount equal to the aggregate of the greater of either: (a) The original amount paid by the Plan at the time of acquisition; or (b) its fair market value on the date of the Sale. Accordingly, Dr. Jacobson requests an administrative exemption from the Department to permit his purchase of the Art Work from the Plans under the terms and conditions described herein.

5. The Art Work has been valued by two separate, independent, qualified appraisers, Arline Edelbaum and Jacqueline Silverman, both the Los Angeles, California. Ms. Edelbaum is a senior member of the American Society of Appraisers and has nineteen years experience in appraising fine arts and personal property. Ms. Silverman is a certified member of Appraisers Association of America and has fifteen years experience in appraising modern and contemporary art. Both appraisers represent that they are unrelated to and independent of Dr. Jacobson. Ms. Edelbaum and Ms. Silverman's valuations of the Art Work as of June 28, 1993 and June 22, 1993, respectively, are as follows:

Plan	Work	Purchase price	Edelbaum	Silverman
PSP	"Untitled"	$135,000	$135,000	$120,000
PSP	"Grau"	150,000	165,000	150,000
MPPP	"Pau"	180,000	275,000	275,000
PSP	"Fouffi Noutti in Hell"	220,000	165,000	175,000

Because their fair market values are less than or equal to their original purchase price, "Untitled" and "Fouffi Noutti in Hell" will be purchased by Dr. Jacobson for their original purchase prices of $135,000 and $220,000, respectively. In addition, Dr. Jacobson will purchase "Grau for $165,000, which reflects its higher fair market valuation as determined by Ms. Edelbaum. Finally, Dr. Jacobson will purchase "Pau" for $275,000, which reflects its fair market value as determined by both appraisers. Dr. Jacobson proposes to purchase the Art Work for an aggregate cash purchase price of $795,000.

6. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 4975(c)(2) of the Code because: (a) The Sale will be a one-time cash transaction; (b) the Plan will not be required to pay any commissions, costs or other expenses in connection with this transaction; (c) the Art Work will be appraised by a qualified, independent appraiser; (d) the sale price for the Art Work will reflect the greater of either: (1) The original amount paid by the Plan at the time of acquisition; or (2) its fair market value on the date of the Sale; and (e) within ninety days of the publication in the **Federal Register** of the grant of this notice of proposed exemption, Dr. Jacobson will file Forms 5330 with the Service) and pay all applicable excise taxes that are due by reason of the past prohibited transactions.

Notice to Interested Persons

Since Dr. Jacobson and his wife are the only participants in the Plan, it has been determined that there is no need to distribute the notice of the proposed exemption to interested persons. Comments are due thirty days after publication of this notice in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–116 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

Withdrawal of Notice of Proposed Exemption

In the matter of Kalon L. Kelley IRA and Karen R. Kelley IRA (the IRAs), located in Santa Barbara, California [Exemption Application Nos. D–9167 and D–9168]

In the **Federal Register** dated December 17, 1993 (58 FR 66031/66032), the Department of Labor (the Department) published a notice of proposed exemption from certain taxes imposed by the Internal Revenue Code of 1986. The notice of proposed exemption concerned the prospective cash sale of certain commercial real property (the Property) by the IRAs to Kalon L. Kelley and Karen R. Kelley (the

[1] Since Dr. Jacobson and his wife are the only participants in the Plans, there is no jurisdiction under Title I of the Act pursuant to 29 CFR 2510.3–3(b). However, there is jurisdiction under the Act pursuant to section 4975 of the Code.

[2] The Department notes that in 1987 the Profit Sharing Plan purchased a third party note for cash form the Norman L. Jacobson, M.D., P.A. Profit Sharing plan, the sole participant and trustee of which is Dr. Jacobson's brother, Norman L. Jacobson. In 1993, the Profit Sharing Plan sold the note back to the Norman L. Jacobson, M.D., P.A. Profit Sharing Plan for cash. The Department is not granting an exemption for such purchase and sale and is expressing no opinion as to whether the purchase and sale of such note constitutes a violation of any provision of the Code.

Applicants), disqualified persons with respect to the IRAs.

On December 17, 1993, the applicant informed the Department that it wished to withdraw the notice of proposed exemption.

Accordingly, the notice of proposed exemption is hereby withdrawn.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director, Office of Exemption Determinotions, Pension ond Welfare Benefits Administration, Department of Labor.

[FR Doc. 94–115 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 94–1, et al.; Exemption Application No. D–9438, et al.]

Grant of Individual Exemptions; Tenneco, Inc., The General Employee Benefit Trust, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corporation Pension Plan for Hourly-Paid Employees (the Plan) Located in Houston, TX

[Prohibited Transaction Exemption 94–1; Application No. D–9438]

Exemption

The restrictions of sections 406(a) and 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the transfer of shares of common stock (the Stock) of Cummins Engine Company, Inc. (Cummins) to the GEBT by Tenneco, Inc. (Tenneco), the Plan sponsor, to reflect the contribution of the Stock to the Plan, provided that: (a) The Stock is valued at its fair market value as of the date of contribution by a qualified, independent appraiser; (b) the contribution of the Stock is approved on behalf of the Plan by a qualified, independent fiduciary; (c) the GEBT's continued holding of the Stock is monitored by a qualified, independent fiduciary; (d) the GEBT's independent fiduciary will monitor and enforce the conditions of the exemption and take whatever action is necessary to protect the GEBT's rights, including, but not limited to, the enforcement of a legally enforceable contribution obligation (the Contribution Obligation) as described in the Notice of Proposed Exemption, which will remain in force for as long as the GEBT continues to hold any shares of the Stock; and (e) the Contribution Obligation is secured by a letter of credit issued by a bank approved by the GEBT's independent, qualified fiduciary.

Comments

In the Notice of Proposed Exemption, the Department invited interested persons to submit written comments and requests for a hearing on the exemption. All comments and requests for hearing were due by December 20, 1993. The Department received over 100 telephone inquiries from interested persons who expressed concern over the effect, if any, of the transaction on their pension benefits. These inquiries were responded to by a Department representative who informed the callers that the transaction does not affect the calculation of pension benefits or the Plan's obligation to make benefit payments.

The Department received a total of 29 written comments with only one of those comments containing a request for a hearing.[1] Nine commentators stated that they did not understand the proposed exemption or how it would affect their pensions.

The remaining commentators were opposed to the granting of the exemption. The comments addressed 17 general areas of concern about the proposed transaction. The concerns are summarized as follows:

1. Questions about the correct value of Cummins Stock, including a question about the discrepancy between the New York Stock Exchange (NYSE) price quoted in the Notice and the price quoted in a national newspaper on December 2, 1993.

2. Concerns that the restrictions on the Stock make the Stock less valuable and increase the risk that the Plan will not be able to dispose of the Stock in the future.

3. Concerns about the wisdom of investing this much of the GEBT's assets in one company.

4. Assertions that Tenneco would not be able to stand behind its obligation under the Contribution Obligation based on its history of financial troubles.

5. Concern that the letter of credit proposes to protect only 20% of the value of the Stock, leaving 80% at risk.

6. A request that Tenneco fully fund all of its pension liabilities.

7. A request that Tenneco guarantee the value of the Stock to be contributed to the GEBT.

8. Questions about the possibility that the transaction will decrease the amount of pension payments to participants and beneficiaries of the Plan.

9. Concerns over changes in retiree medical benefits.

[1] Because the exemption provides relief from section 406(b) of the Act, 29 CFR 2570.46 of the Department's regulations provides that the Department in its discretion may convene a hearing if requested by interested persons.

10. Questions regarding the wisdom of allowing Tenneco to contribute Cummins stock to the GEBT since, according to the commentator, Tenneco owns Cummins.

11. Comments indicating that the Plan participants would prefer to receive cash contributions rather than stock.

12. Allegations that individuals who would be affected by the proposed transaction have not received proper notice.

13. Questions concerning the independent fiduciary's alleged determination that the Stock will experience no precipitous declines in value in the future.

14. Confusion over the consequences for the GEBT of any decline in value of the Stock.

15. Concern over the proper exercise of the voting and other privileges applicable to shareholders of the Stock.

16. Questions about the guidelines for determining if and when to adjust the amount of the letter of credit (or alternative collateral) which secures the Contribution Obligation.

17. A request that Tenneco guarantee that the value of the contribution will not be diminished by transaction costs when the Stock is sold at some future date.

Responses to these comments were submitted by the applicant, on behalf of both Tenneco and Woodbridge, the GEBT'S independent fiduciary. These responses are summarized as follows, corresponding in order to the comments listed above:

1. According to the applicant, subsequent to the publication of the Notice of Proposed Exemption, Cummins had a 2 for 1 stock split which accounts for the change in the price of the Stock as listed on the NYSE.

2. The applicant notes that after a review of the Stock's past performance, Woodbridge has determined that the Stock is a prudent investment for the Plan despite the restrictions on transferability. Furthermore, the applicant states that the Stock's value has been determined by an independent appraisal company, taking the restrictions into account. Finally, the applicant notes that the restrictions on transfer of the Stock will expire in July, 1996.

3. The applicant explains that once the Stock is contributed to the GEBT, it will represent only 5.65% of the assets of the GEBT. In addition, because each of the Affected Plans has an undivided interest in the assets of the GEBT, no single plan will hold all of the Stock.

4. The applicant asserts that Standard & Poors and Moody's rating of Tenneco debt as investment grade, as well as Tenneco's recent sale of $1 billion of equity, are indications that Tenneco is a viable company. The applicant again notes that the proposed transaction is backed by the judgment of Woodbridge as independent fiduciary, by the independent appraisal of the Stock and by the letter of credit in the amount of 20% of the value of the Stock.

5. The applicant represents that due to Tenneco's financial condition, as described in 4. above, a letter of credit in the amount of 20% of the value of the Stock is sufficient to protect the interests of the GEBT. The applicant represents that the face value of the letter of credit is approximately $32,000,000. The applicant also represents that Tenneco's financial condition is good and that its credit-worthiness is adequate security for the unsecured portion of the Contribution Obligation.

6. According to the applicant, the contribution of the Stock to the GEBT is part of an overall strategy to ensure that the Tenneco Plans will be fully funded.

7. The applicant represents that the Contribution Obligation assumed by Tenneco guarantees the value of the contribution since Tenneco is required to make a cash contribution to the GEBT to compensate for any loss in the value of the Stock in any calendar quarter. Furthermore, the Contribution Obligation is secured by a letter of credit issued by a major bank in the amount of 20% of the value of the Stock.

8. The applicant responds by explaining that all plans invested in the GEBT are defined benefit plans, the benefits of which are not affected by the investment performance of plan assets.

9. Retiree medical benefits are not relevant to the proposed exemption.

10. Tenneco does not own Cummins. The applicant represents that Tenneco owns less than 10% of Cummins' stock.

11. The applicant represents that the contribution of the Stock to the GEBT is essentially the same as a cash contribution to the GEBT followed by a purchase of Cummins' stock by the GEBT. In addition, the applicant states that maintaining the Plan assets primarily in uninvested cash would be a breach of fiduciary duties under ERISA. The applicant further states that the GEBT will at all times maintain sufficient liquid assets to pay benefits when due.

The applicant also represents that the Stock is not replacing cash or other assets in the GEBT; rather, the Stock is being contributed in addition to the assets already held in the GEBT. According to the applicant, the contribution of Stock enables Tenneco to accelerate the time at which the GEBT will receive contributions.

12. The applicant represents that it has complied with all applicable notice requirements. An authorized representative of Tenneco has provided the Department with a declaration under penalty of perjury attesting to the truth of the information regarding Tenneco's notice to interested persons as required by the Department's regulations (see 29 CFR 2570.43). In addition, in response to information indicating that several interested persons in and around Hutchinson, Kansas had not received proper notice of the proposed exemption, the applicant represents that notice was again provided to people in the Hutchinson area.

13. The applicant explains that, contrary to the commentator's assertion, Woodbridge has not made any such determination but has concluded that the Stock is a prudent investment for the GEBT, based in part on the Stock's market history over the past 3 years. In addition, Woodbridge has determined that any decline in value of the Stock would be adequately compensated for by the Contribution Obligation.

14. The applicant asserts that the Contribution Obligation ensures that the value of the stock contribution will remain the same even if the value of the Stock decreases. The applicant explains that, if, for example, the Stock is valued at $160,000,000 on the date of contribution to the Plan and, over the course of a year the price drops, Tenneco would be obligated, over the course of that year, on a quarterly basis, to contribute cash so that the value of the Stock plus the aggregate amounts of cash contributed pursuant to the Contribution Obligation equals $160,000,000. It is represented, therefore, that the value of the intial contribution will never be diminished.

15. The applicant responds by explaining that Woodbridge, acting in its capacity as independent fiduciary, will exercise the stock voting rights and the right to designate a person to the Cummins Board of Directors, pursuant to the direction of the GEBT's Investment Committee; provided, that Woodbridge may decline to designate the Investment Committee's choice if it determines that to do so is in the GEBT's best interests.

16. The applicant states that the determination regarding the increase in the amount of the letter of credit or the need to provide alternative collateral is a simple calculation based on the difference between (a) the balance of the letter of credit and (b) the product of the number of shares of the Stock held by

the GEBT, the contribution price of the Stock and 20%.

17. The applicant explains that the Contribution Obligation will be in effect when the Stock is sold in the future. According to the applicant, if the Stock is sold at a loss, any transaction costs would be accounted for by the Contribution Obligation which would require Tenneco to contribute an amount equal to the number of shares sold, multiplied by the difference between the realized net price and the Lowest Price (see paragraph 5 in the Notice of Proposed Exemption). If the Stock is sold at a gain, the GEBT would bear the transaction costs. The applicant represents that it is customary for pension plans to bear such transaction costs in similar circumstances.

Only one of the interested persons who commented on the proposed exemption requested a public hearing, although several others indicated that they wished to be notified if a hearing was scheduled. The Department has considered the concerns expressed by the commentators and the applicant's written responses addressing such concerns, and, on the basis of the materials provided, has determined not to hold a public hearing. Furthermore, after giving full consideration to the entire record, including the written comments and the responses thereto, the Department has decided to grant the exemption.

Finally, the applicant has informed the Department that it intends to enter into the transaction on December 29, 1993, and requests that the exemption be made effective as of that date. The Department concurs with this suggested modification.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the Notice of Proposed Exemption published on November 15, 1993, at 58 FR 60217.

EFFECTIVE DATE: This exemption is effective December 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Lakeshore Foods Corp. Retirement Savings Plan (the Plan) Located in Michigan City, Indiana

[Prohibited Transaction Exemption 94–2; Exemption Application No. D–9441]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) of through (E) of the Code, shall not apply to (1) past and proposed interest-free loans to the Plan (the Loans) by Lakeshore Foods Corporation, the sponsor of the Plan, with respect to guaranteed investment contracts number C90816 and number C91096 (the GICs) issued by Inter-American Insurance Company of Illinois (Inter-American); and (2) the Plan's potential repayment of the Loans (the Repayments); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loans are made to reimburse the Plan for amounts invested with Inter-American under the terms of the GICs;

(C) The Repayments are restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Inter-American and/or any other responsible third party with respect to the GICs, and no other Plan assets are used to make the Repayments;

(D) Any GIC Proceeds received by the Plan are applied first to make the Plan whole with respect to the Guaranteed Amount (as defined in the Notice of Proposed Exemption), and thereafter to repay the Loans; and

(E) The Repayments will be waived to the extent the Loans exceed the GIC Proceeds.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on October 29, 1993 at 58 FR 58197.

EFFECTIVE DATE: This exemption is effective as of December 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Goodman-Gable-Gould Company Profit Sharing Plan (the Plan) Located in Baltimore, Maryland

[Prohibited Transaction Exemption 94–3; Exemption Application No. D–9498]

Exemption

The restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) a loan of up to $250,000 (the Loan) by the Plan to the Office Property Joint Venture (OPJV), a party in interest with respect to the Plan; and (2) the personal guarantees of OPJV's obligations under the Loan by William A Goodman, Harvey M. Goodman, Lawrence H. Goodman, and Myron Schwartz, each of whom is a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms of the Loan are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) For the duration of the Loan, the principal balance of the Loan does not exceed twenty-five percent of the net assets of the Plan at any time;

(C) For the duration of the Loan, the Plan's interests with respect to the Loan are represented by Barry C. Greenberg, an independent fiduciary who will monitor and enforce the OPJV's compliance with the Loan terms and the conditions of this exemption; and

(D) Upon the making of the Loan and for its duration, the Loan is secured by a perfected lien on real property having a fair market value of no less than 150% of the outstanding principal balance of the Loan.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on November 10, 1993 at 58 FR 59738.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it effect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 30th day of December, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 94–117 Filed 1–4–94; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposals for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

DATES: Comments on this information collection must be submitted on or before February 4, 1994.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202–606–8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202–395–6880).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606–8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Revisions

Title: Process of Application, Evaluation, Award, and Report of NEH Fellowships
Form Number: OMB No. 3136–0083
Frequency of Collection: Annual
Respondents: Scholars, writers, and teachers in the humanities
Use: Application for funding, evaluation, award-making, and reporting for NEH Fellowships
Estimated Number of Respondents: 7,586
Frequency of Response: Once
Estimated Hours for Respondents to Provide Information: 2.7 per respondent
Estimated Total Annual Reporting and Recordkeeping Burden: 20,067 hours

Donald Gibson,

Acting Deputy Choirman.

[FR Doc. 94–168 Filed 1–4–94; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

McMurdo Station, Antarctica; Environmental Assessment

AGENCY: National Science Foundation.

ACTION: Notice of environmental assessment and request for comments.

SUMMARY: The National Science Foundation (NSF) has prepared an Environmental Assessment of the United States Antarctic Program's Management of Food Wastes at McMurdo Station, Antarctica, from 1993–1996. NSF is inviting public comments on the Environmental Assessment. In order to be assured consideration, comments must be received no later than February 4, 1994.

ADDRESSES: Copies of the Environmental Assessment may be obtained from and comments addressed to Thomas F. Forhan, Head, Antarctic Staff, Polar Coordination and Information Section, Office of Polar Programs, National Science Foundation, 4201 Wilson Boulevard, room 755, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, 703–306–1031.

Dated: December 29, 1993.

Lawrence Rudolph,

Acting General Counsel.

[FR Doc. 94–64 Filed 1–4–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443]

North Atlantic Energy Service Corp. et al., Seabrook Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an order authorizing a transfer of ownership and an amendment to the Facility Operating License No. NPF–86 issued to North Atlantic Energy Service Corporation (North Atlantic/the licensee) for operation of the Seabrook Station, Unit No. 1, located in Rockingham County, New Hampshire.

Environmental Assessment

Identificotion of the Proposed Action

The proposed action would approve the transfer of ownership of Vermont Electric Generation and Transmission Cooperative, Inc's. (Vermont) 0.41259 percent share of Seabrook 1 to North Atlantic Energy Company (NAEC). A license amendment would be issued to change the footnote on page 1 of Facility Operating License No. NPF–86 by deleting Vermont, as one of the entities for which North Atlantic is authorized to act.

The Need for the Proposed Action

In 1990, Vermont filed a claim against Public Service Company of New Hampshire (PSNH) with the United States Bankruptcy Court which was then hearing a petition from PSNH for reorganization under Chapter 11 of the United States Bankruptcy Code. Vermont's claim sought redress for damages which were alleged to have been incurred while PSNH had been the managing agent for Seabrook 1. In November 1990, the two parties arrived at a settlement which included an agreement by PSNH or its designee to purchase Vermont's share of Seabrook 1 subject to obtaining the necessary approvals from all regulatory agencies. Subsequently, the Bankruptcy Court issued an order approving the stipulation that PSNH and Vermont had filed describing the settlement.

In June 1992, in accordance with the Plan of Reorganization for PSNH that was confirmed by the Bankruptcy Court, Northeast Utilities (NU) acquired PSNH in merger transactions and, after receipt of NRC approval, NAEC (a newly-formed and wholly-owned subsidiary of NU) acquired PSNH's interest in the Seabrook 1. As the successor to PSNH's interest in Seabrook 1, NAEC is obligated to purchase Vermont's interest in Seabrook Station. The transfer of Vermont's ownership share in Seabrook 1 to NAEC will consummate the settlement entered into by Vermont and PSNH.

Environmental Impacts of the Proposed Action

The proposed action would approve the transfer of ownership of 0.41259 percent of Seabrook 1 from Vermont to NAEC. The transfer will not involve any changes to the Seabrook 1 staff, to the facility itself, or in the manner by which Seabrook 1 is operated.

The Commission has evaluated the environmental impact of the proposed action and has determined that the probability or consequences of accidents would not be increased by the transfer of ownership, and that post-accident radiological releases would not be greater than previously determined. Further, the Commission has determined that the transfer of ownership would not affect routine radiological plant effluents and would not increase occupational radiological exposure. Accordingly, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed action.

With regard to potential nonradiological impacts, the transfer of ownership would not affect nonradiological plant effluents and would have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission has concluded that the environmental effects of the proposed action are not significant, any alternative with equal or greater environmental impact need not be evaluated.

The principal alternative would be to deny the requested approval. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are identical.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement Related to Operation of Seabrook Station, Units 1 and 2, dated December 1982.

Agencies and Persons Consulted

The NRC staff consulted with the State of New Hampshire and the Commonwealth of Massachusetts regarding the environmental impact of the proposed action. The State of New Hampshire and the Commonwealth of Massachusetts had no comments on the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the request for approval dated August 27, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW; Washington, DC 20555, and at the local public document room located at the Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Dated at Rockville, Maryland, this 29th day of December 1993.

For the Nuclear Regulatory Commission.

Albert W. De Agazio,

Acting Director, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–127 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–275 and 50–323]

Pacific Gas and Electric Co., Diablo Canyon Power Plant, Unit Nos. 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating Licensing Nos. DPR–80 and DPR–82, issued to the Pacific Gas and Electric Company (the licensee), for operation of Diablo Canyon Power Plant, Unit Nos. 1 and 2, located in San Luis Obispo, California.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to the Technical Specifications in response to the revised 10 CFR part 20. The change would revise the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendments dated July 7, 1993.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regard to the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendments.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendments.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant envirommental impacts associated with the proposed amendments to the TS, any alternative to the amendments will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternatives Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement and Addendum related to the operation of Diablo Canyon Power Plant Units 1 and 2, dated May 1973 and May 1976, respectively.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendments.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 7, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the California Polytechnic State University, Robert E. Kennedy Library, Government Documents and Maps Department, San Luis Obispo, California 93407.

For the Nuclear Regulatory Commission.

Theodore R. Quay,

Director, Project Directorate V, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–128 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on January 6–8, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the Federal Register on November 24, 1993.

Thursday, January 6, 1994

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–9:45 a.m.: Proposed Final Rule to Revise Emergency Planning Regulations on Exercise Requirements (Open)—The Committee will review and comment on the proposed final rule on emergency planning regulations that is intended to clarify the requirements for the emergency planning exercises.

Representatives of the NRC staff will participate.

9:45 a.m.–10:45 a.m.: Proposed Resolution of Generic Issue 67.5.1, "Reassessment of SGTR Radiological Consequences" (Open)—The Committee will review and comment on the proposed resolution of Generic Issue 67.5.1 regarding reassessment of the validity of the present techniques used to calculate radiological consequences resulting from a steam generator tube rupture (SGTR) event. Representatives of the NRC staff will participate.

11 a.m.–12:30 a.m.: Results of the Public Workshop on License Renewal (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the results of the September 30, 1993 public workshop on license renewal, and a draft Commission paper that includes staff recommendations on the future directions of the license renewal. Representatives of the industry will participate, as appropriate.

1:30 p.m.–3 p.m.: BWR Core Power Stability/ATWS (Open)—The Committee will hear briefings by and hold discussions with representatives of the NRC staff regarding the status of the issues associated with the resolution of BWR core power stability combined with an ATWS event, including the issue of liquid poison remixing phenomena, and the development of emergency procedure guidelines. Representatives of the industry will participate.

3:15 p.m.–4:15 p.m.: Reliability Assurance Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding the staff position on the Reliability Assurance Program for the Advanced Light Water Reactors.

4:15 p.m.–5:15 p.m.: Evaluation of License Feedback on the Impact of NRC Activities on Licensee Operations (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff regarding SECY–93–236, "The Staff's Evaluation of Ongoing Licensee Feedback on the Impact of NRC Activities on Licensee Operations." Representatives of the industry will participate, as appropriate.

5:15 p.m.–6 p.m.: Proposed ACRS Report on Certified Design Material for ABWR (Open)—The Committee will discuss a proposed ACRS report on Certified Design Material in the areas of Human Factors Engineering, Radiation Protection, Piping Design, and Instrumentation and Control.

6 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, January 7, 1994

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:15 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

10:30 a.m.–11:30 a.m.: Meeting with the Deputy Executive Director (Open)—The Committee will meet with Mr. Sniezek, Deputy Executive Director for Nuclear Reactor Regulation, Regional Operations and Research, and Mr. Milhoan who will succeed Mr. Sniezek in early February 1994 and discuss items of mutual interest.

12:30 p.m.–1:15 p.m.: Future Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

1:15 p.m.–2 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to the ACRS staff members. It may also discuss qualifications of candidates nominated for appointment to the ACRS.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy.

2 p.m.–2:15 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

2:15 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, January 8, 1994

8:30 a.m.–10:30 a.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

10:30 a.m.–11 a.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

11 a.m.–12 noon: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities.

Procedures for the conduct of and participation in ACRS meetings were published in the Federal Register on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as far in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) Public Law 92–463 that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2) and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: December 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–124 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–245]

Northeast Nuclear Energy Co.; Withdrawal of Application for Amendment to Facility Operating License

The United States Nuclear Regulatory Commission (the Commission) has granted the request of Northeast Nuclear Energy Company, et al. (the licensee) to withdraw its December 2, 1988 application for proposed amendment to Facility Operating License DPR–21 for the Millstone Nuclear Power Station, Unit 1, located at the licensee's site in New London County, Connecticut.

The proposed amendment would have revised the Technical Specifications to reflect the implementation of modifications during the 1989 refueling outage related to degraded grid undervoltage detection. Since the licensee plans to make additional modifications to the undervoltage detection circuitry during the Cycle 15 refueling outage, additional Technical Specification changes will be necessary and will be submitted prior to the outage.

The Commission has previously issued a Notice of Consideration of Issuance of Amendment published in the Federal Register on February 1, 1989 (54 FR 5170). However, by letter dated September 10, 1993, the licensee withdrew the proposed change.

For further details with respect to this action, see the application for amendment dated December 2, 1988, and the licensee's later dated September 10, 1993, which withdrew the application for license amendment. The above documents are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Learning Resources Center, Three Rivers Community-Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 28th day of December 1993.

For the Nuclear Regulatory Commission.

James W. Andersen,

Acting Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–130 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–20111, License No. 25–21258–01, EA 93–202]

Physicians' Laboratory Service, Inc. (Former Licensee) Bozeman, MT; Order Imposing Civil Monetary Penalty

I

Physicians' Laboratory Service, Inc. (Licensee or PLS) was the holder of NRC License No. 25–21258–01 (License) issued by the Nuclear Regulatory Commission (NRC or Commission). The License, which was transferred to Bozeman Deaconess Hospital on July 2, 1993, authorized the Licensee to possess and use byproduct material to conduct nuclear medicine activities in accordance with the conditions of the License.

II

An inspection of the Licensee's activities was conducted July 14–16, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated October 18, 1993. The Notice described the circumstances surrounding the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice in a letter dated November 17, 1993. In its letter, the Licensee admitted the violations which resulted in the proposed civil penalty, but requested that the NRC reconsider the circumstances surrounding the violations and mitigate the proposed civil penalty for reasons that are summarized in the Appendix to this order.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated and that the penalty proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered That:*

The Licensee pay the civil penalty in the amount of $2,500 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing," and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region IV, 611 Ryan Plaza Drive, Suite 400, Arlington, Texas 76011.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issue to be considered at such hearing shall be:

Whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland this 22nd day of December 1993.

For the Nuclear Regulatory Commission.

Hugh L. Thompson, Jr.,

Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support.

Appendix—Evaluation and Conclusions

On October 18, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was issued for violations identified during an NRC inspection on July 14–16, 1993. Physicians' Laboratory Service, Inc. responded to the Notice on November 17, 1993. The Licensee admitted the violations that resulted in the proposed civil penalty, but requested that the NRC reconsider the circumstances surrounding the violations and mitigate the proposed civil penalty. A restatement of the violation, and the NRC's evaluation and conclusions regarding the Licensee's request follow:

Restatement of Violations Assessed a Civil Penalty

10 CFR 35.32 (a) and (e), require, in part, that by January 27, 1992, each licensee establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet specific objectives, including that prior to administration, a written directive is prepared for any administration of quantities greater than 30 microcuries of sodium iodide I–125 or I–131.

10 CFR 35.2, "Definitions," defines a written directive, in part, as an order in writing for a specific patient, dated and signed by an authorized user prior to administration of a radiopharmaceutical and specifies, in part, that for the administration of quantities greater than 30 microcuries of either sodium iodide I–125 or I–131 or any therapeutic administration of a radiopharmaceutical other than sodium iodide I–125 or I–131, the written directive must include the dosage.

1. Contrary to the above, between January 27, 1992, and July 27, 1992, the licensee did not establish a written quality management program (01013).

2. Contrary to the above, on numerous occasions after January 27, 1992, including March 8 and 22, May 13, June 3, and July 1, 1993, the licensee administered sodium iodide I–131 for diagnostic purposes in quantities greater than 30 microcuries without a written directive signed by an authorized user (01023).

These violations represent a Severity Level III problem (Supplement VI).

Civil Penalty—$2,500

Summary of Licensee's Request for Mitigation

In response to the violation involving the failure to establish a written Quality Management Program, the Licensee admitted that it did not establish a Quality Management Program by the January 27, 1992 effective date of the rule. The Licensee states that it first learned of the requirement to establish a Quality Management Program following receipt of the June 1992 NMSS Newsletter and that it immediately devised a plan and submitted it to the NRC by July 27, 1992. Because corrective action was taken without NRC intervention, the Licensee requested that the violation be dismissed or mitigated to a reprimand without penalty.

In response to the violation concerning the administration of sodium iodide without a written directive signed by an authorized user, the Licensee admitted that a "minimal number" of patients received dosages of greater than 30 microcuries without written directives having been prepared. The Licensee stated that it took immediate corrective action and requested that the violation and the civil penalty be mitigated. In addition, the Licensee requested that the NRC take into account the fact that during the past 23 years, approximately 20,000 to 23,000 diagnostic administrations had occurred with no known misadministrations.

NRC Evaluation of Licensee's Request for Mitigation

The violations were not considered separately in this case. The proposed penalty was based on the aggregate of the two violations (i.e., a Severity Level III problem). Thus, the severity level of the violations was based on their collective significance—that is the combination of not establishing a Quality Management Program until six months after the effective date of the rule and not implementing the requirements of the Quality Management Program even after a written program was established by the Licensee.

The NRC places a great deal of importance on its Quality Management regulation. Thus, its Enforcement Policy was revised at the same time the rule was adopted to place an emphasis on noncompliance with the rule. Example C.6 was added to Supplement VI, such that violations involving "A substantial failure to implement the quality management program as required by § 35.32 * * *" was to be classified at Severity Level III (Note: This was later amended to state "Substantial failure to implement the quality management program as required by § 35.32 that does not result in a misadministration * * *").

The term "substantial" has consistently been applied to failures of a programmatic, as opposed to an isolated, nature. In this case, the Licensee's failure was deemed programmatic because the Licensee repeatedly failed to use written directives for diagnostic administrations of sodium iodide I–131 on quantities that exceeded 30 microcuries because of weaknesses in the program. Thus, the violations were appropriately classified in the aggregate as a Severity Level III problem.

With regard to the magnitude of the proposed civil penalty, the Licensee's argument are related to the civil penalty adjustment factors of Identification, Corrective Action and Licensee Performance. The use of these factors is described in Section VI.B.2 of the Enforcement Policy. No adjustment was made to the proposed base penalty with respect to any of these factors.

Although the Licensee identified its failure to establish a Quality Management Program and corrected it by submitting a plan to the NRC, the plan it submitted lacked specificity, contributing in part to the second violation, the failure to use written directives for diagnostic administrations of I–131 in excess of 30 microcuries. The second violation was identified by the NRC, continued for nearly a year after the Licensee became aware of the regulation, and was occurring at the time of the license transfer. The Licensee's arguments do not provide a basis for mitigation under the identification factor.

No adjustment was made under the corrective action factor because these violations were discovered after the license had been transferred to another entity. Thus, this factor did not, and still does not, appear to be applicable to the circumstances of this case. In addition, although the Licensee corrected its failure to establish a Quality Management Program, its corrective action was weak, i.e., the Licensee did not implement the use of written directives for diagnostic procedures, as discussed above. Thus, the Licensee has not provided a basis for mitigation under the corrective action factor.

No adjustment was made under the licensee performance factor. The Licensee's

performance was considered relatively poor in the two inspections that preceded the July 14–16, 1993 inspection. Several Severity Level IV and V violations were issued following each of the two prior inspections, one occurring in September 1991 and the other occurring in March 1990. This was balanced, however, against the fact that the July 1993 inspection found only the violations related to the Quality Management rule. Thus, notwithstanding the Licensee's statements about an absence of misadministration, the Licensee has not provided a basis for mitigation under the prior performance factor.

NRC Conclusion

The Licensee has not provided any information that provides a basis for reclassifying the violations or mitigating the proposed civil penalty. The proposed civil penalty in the amount of $2,500 should be imposed by order.

[FR Doc. 94–126 Filed 1–4–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–142]

University of California at Los Angeles Research Reactor; Order Releasing Facility for Unrestricted Use

By application dated February 28, 1980, the University of California, Los Angeles (UCLA) submitted a request for renewal of Facility License No. R–71 for the UCLA Research Reactor Facility (UCLA facility). By letters dated June 14 and July 26, 1984, UCLA requested termination of Facility License No. R–71. A "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License" was published in the **Federal Register** on September 24, 1984 (49 FR 37484). Following hearings and stipulations on the license renewal and termination applications by the parties involved, an order was issued on November 8, 1985, by the Atomic Safety and Licensing Board that approved a Settlement Agreement dated September 30, 1985, between the Regents of the University of California, the Campus Committee to Bridge the Gap, and the staff of the United States Nuclear Regulatory Commission (the Commission/NRC). The Order also terminated UCLA License No. R–71. The Settlement Agreement stipulated a timetable for the decommissioning of the UCLA facility.

By application dated October 29, 1985, as supplemented, UCLA submitted a Phase I decomissioning plan. An order authorizing Phase I dismantling of the UCLA facility and disposition of component parts was issued by the Commission on July 14, 1986. Phase I concerned the removal of all UCLA facility components except for the concrete building structure, concrete biological shield, components affixed to or embedded in the biological shield, the holdup tank, primary water pump, sump pump, compressor system, floor drains, decontamination sinks, and fuel storage pits. Phase I of decommissioning was completed on August 18, 1989.

By application dated June 10, 1988, as supplemented, UCLA submitted its Phase II decommissioning plan. An order authorizing Phase II dismantling of the UCLA facility and disposition of component parts was issued by the Commission on July 28, 1989. Phase II decommissioning concerned the removal of components that remained after completion of Phase I decommissioning. When Phase II decommissioning was completed, UCLA submitted final survey information on January 4 and 28 and February 22, 1993.

The reactor fuel has been removed from the core and shipped to a Department of Energy (DOE) facility. The UCLA reactor facility has been completely dismantled and all NRC and settlement agreement requirements pertaining to residual radioactivity, personnel and external radiation exposure, and fuel disposition have been met. Confirmatory radiological surveys verified that the UCLA facility met the recommended regulatory guidance for release of the facility for unrestricted use. Accordingly, the Commission has found that the UCLA facility has been dismantled and decontaminated pursuant to the Commission Orders dated July 14, 1986, and July 28, 1989, and the Settlement Agreement. Satisfactory disposition has been made of the component parts and fuel in accordance with the Commission regulations in title 10 of the Code of Federal Regulations (10 CFR) chapter I, and in a manner not inimical to the common defense and security, or to the health and safety of the public. Therefore, on the basis of the Settlement Agreement, applications filed by UCLA and pursuant to sections 104 and 161 b, i, of the Atomic Energy Act of 1954, as amended, the UCLA facility is released for unrestricted use as of the date of this Order. In accordance with 10 CFR part 51, the Commission has determined that the issuance of this Order will have no significant environmental impact. The Environmental Assessment was published in the **Federal Register** on December 27, 1993 (58 FR 68445).

For further details with respect to this action see (1) UCLA final survey information dated January 4 and 28 and February 22, 1993, (2) the Settlement Agreement of September 30, 1985, (3) the Commission Safety Evaluation related to release of the UCLA facility for unrestricted use, (4) the Environmental Assessment, and (5) the "Notice of Proposed Issuance of Orders Authorizing Disposition of Component Parts of Terminating Facility License," which was published in the **Federal Register** on September 24, 1984 (49 FR 37484). Each of these items is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555.

Copies of items (3), (4), and (5) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Operating Reactor Support.

Dated at Rockville, Maryland this 28th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–129 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–01244, License No. 06–00819–03, EAs 92–241 and 93–016]

Yale-New Haven Hospital, New Haven, Connecticut; Order Imposing Civil Monetary Penalties

I

Yale-New Haven Hospital (Licensee), New Haven, Connecticut, is the holder of Byproduct Material License No. 06–00819–03 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission). The License was most recently amended on September 15, 1993. The License authorizes the Licensee to perform diagnostic and therapeutic procedures with radioactive material as well as research in accordance with the conditions specified therein. This is a broad scope license. The License was most recently renewed on August 13, 1985, and was due to expire on August 31, 1990 but was extended by the NRC pending staff action on the Licensee's renewal request. Based on the Licensee's application to renew the License dated June 17, 1990, and pursuant to 10 CFR 30.37(b), the existing License has not expired and continues in effect.

II

Between December 3, 1992, and January 27, 1993, the NRC performed two inspections of licensed activities at the Licensee's facility. The inspections were conducted to review two incidents involving therapeutic misadministrations and a failure to control licensed material that occurred between November 30 and December 1, 1992, and on January 21, 1993. During the inspections, five violations of NRC requirements were identified. A written Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was served upon the Licensee by letter dated April 26, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalties proposed for the violations.

The Licensee responded to the Notice on June 10, 1993. In its response, the Licensee denies Violations II.A and II.B set forth in the Notice; questions the Severity Level classification for Violations I.A, I.B, and I.C; and requests reduction of the civil penalties.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations did occur, the Severity Level classifications were appropriate, and the penalties proposed for the violations designated in the Notice should be imposed.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay civil penalties in the amount of $10,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be:

(a) Whether the Licensee was in violation of the Commission's requirements as set forth in Violations II.A and II.B in the Notice referenced in section II above, and

(b) Whether, on the basis of such violations and the other violations set forth in the Notice of Violation that the Licensee admitted, this Order should be sustained.

Dated at Rockville, Maryland, this 27th day of December 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluations and Conclusion

On April 26, 1993, a Notice of Violation and Proposed Imposition of Civil Penalties (Notice) was issued for violations identified during two NRC inspections. The Licensee responded to the Notice on June 10, 1993. The Licensee denied Violations II.A and II.B; questioned the Severity Level classification of Violations I.A, I.B, and I.C; and requested reduction of the civil penalties. The NRC's evaluations and conclusions regarding the Licensee's requests are as follows:

Restatement of Violations—Section I

I.A. Condition 23 of License No. 06–00819–03 requires that licensed material be possessed and used in accordance with statements, representations, and procedures contained in an application dated December 13, 1984.

Item 7 of that application, dated December 13, 1984, states that the Hospital Radioisotope Committee has the responsibility of establishing and enforcing the Hospital's Radiation Safety Program to ensure the safety and welfare of hospital personnel and property as well as protecting the surrounding community from the potential hazards of sources of ionizing radiation used at the hospital.

A procedure of the Hospital's Radiation Safety Program entitled, "Procedure for Nursing Care of Patients Containing Radioactive Sources for Therapy", requires, in part, that "during nursing care procedures, the nurse must check all materials used by the patient . . . for radioactive sources that may have become dislodged," and that "everything used by the patient (except dishes) must be saved and monitored before disposal."

Contrary to the above, the Hospital Radioisotope Committee did not enforce the Hospital's Radiation Safety Program to ensure safety and welfare of hospital personnel and property as well as protecting the surrounding community from the potential hazards of all sources of ionizing radiation used at the hospital. Specifically, on November 30 and December 1, 1992, nurses on the ninth floor of Yale-New Haven Hospital removed linen pads from a brachytherapy patient's room without first checking the pads for radioactive sources which may have become dislodged and failed to survey the linen pads before disposal.

B. 10 CFR 20.207(a) requires that licensed materials stored in an unrestricted area be secured against unauthorized removal from the place of storage. 10 CFR 20.207(b) requires that licensed materials in an unrestricted area and not in storage be tended under constant surveillance and immediate control of the licensee. As defined in 10 CFR 20.3(a)(17), an unrestricted area is any area access to which is not controlled by the licensee for purposes of protection of individuals from exposure to radiation and radioactive materials.

Contrary to the above, on December 1 and 2, 1992, licensed material consisting of a 35 millicurie cesium-137 brachytherapy source was located, at various times, in unrestricted areas, namely, a hallway on the ninth floor of the hospital, the laundry collection area of the hospital, and a contractor's laundry facility; and at those times, the brachytherapy source was not under the constant surveillance and immediate control of the licensee.

C. 10 CFR 20.105(b) requires, in part, that except as authorized by the Commission in 10 CFR 20.105(a), no licensee allow the creation of radiation levels in unrestricted areas which, if an individual were continuously present in the area, could result in his receiving a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days.

Contrary to the above, on December 1 and 2, 1992, the licensee allowed the creation of radiation levels, at various times, in unrestricted areas, namely, in a hallway on the ninth floor of the hospital, in the laundry collection area of the hospital, and a contractor's laundry facility, such that if an individual were continuously present in the area, he could have received a dose in excess of 2 millirems in any one hour or 100 millirems in any seven consecutive days.

These violations are classified in the aggregate as a Severity Level III problem. (Supplements IV and VI)

Civil Penalty—$2,500

Summary of Licensee Response to the Violations in Section I

The Licensee, in its response, states that the safety significance of the loss of the source was minimal, noting that the potential absorbed dose to any member of the general public as a result of this incident was well below regulatory limits. Further, the Licensee argues that the possibility of public exposure was minimized by the hospital's prompt search for and discovery of the source. The Licensee believes that personnel and members of the public who may have been exposed to the source received only a minimal dose as a result of this incident, noting that its calculations indicate that the

maximum dose to any exposed individual was unlikely to have exceeded a total of 30 millirems.

While the Licensee recognizes that, under postulated worst case conditions, the exposure rate at distances less than 2.4 meters could have exceeded the NRC's applicable limits for the general public, the Licensee argues that this exposure condition would only have existed for very short periods of time, on the order of several minutes, and with the bulk of the postulated exposure at a dose rate well below NRC's standards for the general public. The Licensee also notes that the source was located in linen that was removed from a patient's room, and that since the linen is treated as a biologically hazardous waste, it is highly unlikely that a person would have any extended contact with the source once it had left the patient's room.

The Licensee states that immediately upon discovery that a source was missing, the Radiation Safety Officer, and the resident physician who misplaced the source, conducted a search that promptly located and safely recovered the missing source. The Licensee further contends that despite this corrective action, the NRC chose to treat the sequential consequences which flowed from the initial failure as separate violations which could be treated in the aggregate and escalated to a Severity Level III problem.

In addition, while the Licensee recognizes the NRC's authority to cite for each separate violation, the Licensee believes that the circumstances of the violations do not represent a programmatic breakdown in its radiation safety program, and even when aggregated, do not have the safety or regulatory significance to be considered a Severity Level III problem.

The Licensee argues that the 100 percent escalation of the civil penalty was not warranted since the Notice makes reference to an incident that occurred in 1989. The NRC's enforcement policy states that a licensee's prior performance normally refers to a period within the last two years of the inspection at issue, or the period within the last two inspections; whichever is longer.

The Licensee concludes by requesting that the NRC exercise its discretion to reduce the civil penalty associated with the violations in Section I of the Notice.

NRC Evaluation of the Licensee Response to Violations in Section I

While the NRC agrees that the doses to members of the general public resulting from the loss of the source were small, the source was, nonetheless, missing for a period of time in excess of twenty-three hours. During that time, the source was in the hallway outside the patient's room for at least seventeen hours, in a basement laundry closet and in a laundry service truck for at least an hour each, and on the floor of the laundry facility or in the laundry washing machine for at least four and one half hours. None of these locations was controlled by the Licensee for the purposes of radiation protection. Therefore, since the radiation levels were in excess of applicable levels for unrestricted areas for periods of hours, this created a significant potential for an exposure in excess of regulatory limits to personnel or members of the public, and the NRC maintains that this is a significant lack of control of licensed material.

As noted in Section C.1 of Supplement VI of the Enforcement Policy, violations involving a failure to control access to licensed materials for radiation purposes (as specified in the NRC requirements) constitute Severity Level III violations. Therefore, Violation I.B could have been individually classified at Severity Level III. However, the NRC chose to aggregate the Licensee's violation in failing to control licensed material with its root cause (failure to survey—Violation I.A) as well as the effect of the violation (the creation of radiation levels in excess of that allowed in NRC regulations—Violation I.C) since the three violations were all related to the one incident.

In view of the above, the assertion that Violations I.A, I.B, and I.C were classified in the aggregate at Severity Level III because they represent a programmatic breakdown is incorrect. In addition, the Licensee's contention regarding corrective action, involving the prompt location and recovery of the source are not controlling in determining the severity level of the violation. The severity level is determined by the safety or regulatory significance of the violation. The Licensee's request for mitigation of the civil penalty is discussed below.

In conclusion, the violations were properly classified in the aggregate as a Severity Level III problem.

Restatement of Violations—Section II

II.A. 10 CFR 35.32(a) requires, in part, that each licensee shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. Pursuant to 10 CFR 35.32(a)(4), the quality management program must include written policies and procedures to meet the objective that each administration is in accordance with the written directive.

Contrary to the above, as of November 30, 1992, the licensee's quality management program did not include written policies and procedures to meet the objective that each administration was in accordance with the written directive. In particular, the licensee did not establish written procedures to identify if a brachytherapy source was not properly implanted or inadequately secured against accidental removal. As a result, on November 30, 1992, during a therapy procedure that involved a gynecological implant of four cesium-137 sources, one source was either not implanted as required or it was implanted properly but inadequately secured because the source came out of the applicator and lay undetected in the patient's bed. As a result, the dose administered to the patient was less than that prescribed by the physician and the patient received a radiation dose to the leg, an area not intended to receive radiation.

B. 10 CFR 35.32(a)(4) requires, in part, that each licensee shall establish and maintain a written quality management program to provide high confidence that byproduct material or radiation from byproduct material will be administered as directed by the authorized user. The quality management program must include written policies and procedures to meet the specific objective that each administration is in accordance with the written directive.

On January 27, 1992, the licensee implemented a quality management program for the use of byproduct material. Section 3 of the quality management program entitled "Policies and Procedures for Brachytherapy", paragraph 3.1.3 of the "High Dose Rate Remote Afterloading Devices", requires, in part, that the treatment site be confirmed with the written directive and treatment plan by the administering person before administration of the treatment dose.

Contrary to the above, on January 21, 1993, the authorized user physician failed to follow the quality management program in that during a brachytherapy patient treatment with a high dose rate remote afterloader, the treatment site was not confirmed by the authorized user physician, causing the patient to receive 700 rads to the rectum, instead of the vagina, as prescribed in the written directive.

These violations are classified in the aggregate as a Severity Level III problem (Supplement VI).

Civil Penalty—$7,500

Summary of Licensee Response to Violations in Section II

In its response, the Licensee denies that it violated the requirement to establish and maintain a written QMP, noting that it established a written QMP based upon the NRC's own guidance published in Regulatory Guide 8.33 on January 27, 1992, and as required by 10 CFR 35.32(a)(4). The Licensee further states that the written quality management policy and procedures were distributed to all authorized users for comment on January 21, 1992, and no comments were received from the authorized users on this final version, and the same version was presented to NRC Region I in a letter dated January 27, 1992.

The Licensee also notes that in addition to giving each authorized user a copy of the written quality management policy and procedures, the radiation safety officer conducted formal training for the members of the radiation therapy staff on March 5, 1992, detailing the requirements of the QMP, and both physicians involved in the alleged violations attended this presentation. The Licensee further states that both physicians understood that the written directive needed to be verified during the application process. Nonetheless, despite the existence of a comprehensive QMP and related training, these events occurred.

With respect to the first incident, the Licensee also states that the resident physician followed the established procedures and, therefore, reasonably concluded that he had successfully placed the sources in the applicator during the loading process, and he and the dosimetrist identified the correct sources as they were moved from the transportation shield. The Licensee stated that in the process of moving one of the four sources and its applicator to the patient, the source inadvertently slipped unnoticed from the applicator, and that since the resident missed the source in its fall under the patient, he had no opportunity to identify the error once the applicator was placed into the Fletcher Suit Device (FSD). Since the resident wholly believed he had fulfilled the written directive, the Licensee submits that he had satisfied the requirements of the QMP regardless of his error.

With respect to the second incident involving the High Dose Rate Afterloading (HDR) device, the Licensee states that the physician who prepared the written directive was the same physician who placed the applicator in error. Since he was the prescribing physician, the Licensee contends that there is no doubt that he understood the intent of the written directive. The Licensee states that while the physician did not visually confirm or verify the placement, he fully believed that he had correctly placed the applicator, based on his sense of touch during the physical examination, knowledge of anatomy, the feel and depth of the applicator insertion, and by asking the patient if she felt comfortable after the placement. Since the physician fully believed that he had carried out the written directive, the Licensee submits that it had fulfilled the requirements of the QMP notwithstanding his error.

NRC Evaluation of Licensee Response to Violations in Section II

The NRC does not dispute, in general, that the Licensee established and maintained a QMP, or that it provided training to authorized users. However, with respect to the first incident, the NRC maintains that the Licensee's QMP did not include written policies and procedures to provide high confidence that the QMP would meet the objective that each brachytherapy administration is in accordance with the written directive. 10 CFR 35.32(a) requires, in part, that each licensee shall establish and maintain these written policies and procedures to provide high confidence that the radiation from byproduct material will be administered as directed by the authorized user. Therefore, it is incumbent upon the Licensee to establish written procedures that provide high confidence in the delivery process of therapeutic radiation and the accurate administration of the prescribed dose. In this case, the Licensee did not establish adequate written procedures, as required, to effectively implement their QMP and procedures to verify whether brachytherapy sources were properly inserted in accordance with the written directive. In particular, the QMP was inadequate in that it did not require visual or other verification of proper insertion of the sources while they were being inserted. The Licensee stated that it established a QMP based on requirements in 10 CFR 35.32. 10 CFR 35.32(a)(4) requires that each administration be in accordance with the written directive. The licensee's QMP did require that a means be employed of verifying sources are positioned properly. However, the licensee had not established such a procedure to meet this objective by directing the physician to verify proper insertion of the source or sources (e.g., by visual inspection). In this instance, visual verification of the sources in the applicator would have been an acceptable means. The QMP did not have any procedure to ensure, nor did the physician confirm, that the administration of the dose was in accordance with the written directive. Therefore, the QMP did not provide high confidence that radiation from byproduct material would be administered as directed pursuant to 10 CFR 35.32(a).

With respect to the second incident, although the authorized user fully understood the intent of the written directive, the individual did not confirm or verify the proper placement of the applicator, which had not been placed into the correct organ, with the treatment site specified in the written directive *and* treatment plan. The Licensee stated that it established a QMP based on requirements in 10 CFR 35.32. 10 CFR 35.32(a)(4) requires that each administration be in accordance with the written directive but did not describe how this should be done. The licensee's QMP did require the treatment site be confirmed with the written directive. Visual verification of the source insertion into the proper organ would have been an acceptable means. As in violation IIA, the QMP appears inadequate in that it did not require visual or another specific procedure for verification of proper insertion of the sources while they were being inserted. The QMP did not have any specific procedure to ensure, nor did the physician confirm, that the administration of the dose was in accordance with the written directive. Therefore, the QMP did not provide high confidence that radiation from byproduct material would be administered as directed pursuant to 10 CFR 35.32(a).

The NRC realizes that confirmation of a treatment site by the Licensee may be accomplished in a number of ways. However, it is the responsibility of the Licensee to establish effective procedures to meet the performance-based objective of the QMP required by 10 CFR 35.32(a)(4), and provide high confidence that the intended therapeutic radiation is administered to the designated treatment site as prescribed by the physician authorized user. In this case, simple visual confirmation could have prevented the error and would have provided higher confidence than the physician's method of feeling to locate the treatment site.

As demonstrated by the authorized user's failure to treat the prescribed treatment site, the Licensee did not meet the objective in 10 CFR 35.32(a)(4).

The NRC agrees that the Licensee had a QMP and that the physician understood the intent of the written directive. The NRC has determined, however, that the procedures may have been inadequate in that the physician did not adequately confirm (or verify) the placement of the applicator and that the QMP procedure for confirmation (or verification) is vague and does not provide high confidence that the objective will be met.

Accordingly, the NRC maintains that with regard to both incidents, violations of the QMP occurred.

Summary of Licensee Response Requesting Mitigation of the Civil Penalties

As a general comment to violations identified in Sections I and II of the Notice, the Licensee contends that the civil penalties should be reduced, noting that it has voluntarily conducted an independent, formal, and comprehensive review of the hospital's radiation safety program, and a panel of four experts conducted the review on May 10 and 11, 1993. The Licensee also notes, as evidenced by this formal review program, and other comprehensive measures detailed in its incident reports dated December 22, 1992, January 4, 1993, and February 5, 1993, that it is committing significant management and fiscal resources to address the concerns expressed in the enforcement action. The Licensee believes that the remedial actions that the NRC seeks to encourage will be realized without the need for stringent enforcement in the form of proposed civil penalties, and that this is consistent with the Enforcement Policy.

With respect to the violations in Section I, as stated above, the Licensee notes that the NRC letter stated that 100 percent escalation of the civil penalty was warranted based upon the hospital's past enforcement history. Since the letter makes reference to an incident which occurred in 1989, the Licensee questions consideration of that action since the NRC's Enforcement Policy indicates that a licensee's prior performance normally refers to a period within the last two years of the inspection at issue, or the period within the last two inspections, whichever is longer. Since this license is a broad scope license that is inspected on a yearly interval, the Licensee believes it is contrary to established NRC practice to cite an incident occurring more than three and a half years ago as a basis for escalation of the civil penalty. Further, since the NRC's current Enforcement Policy has been modified to provide for maximum flexibility and consideration of all mitigating circumstances, the Licensee requests that the NRC exercise its discretion to reduce the civil penalty associated with the violations in Section I of the NOV.

With respect to the violations in Section II, the Licensee states that the NRC's cover letter to the NOV indicates that all of the adjustment factors set forth in 10 CFR Part 2, Appendix C, were considered. Although the NRC increased the base civil penalty by 200 percent for "past enforcement history and multiple examples," and concluded that the remaining factors warranted no further adjustment, the Licensee believes that, upon closer examination of the circumstances, mitigation is warranted.

Regarding the "multiple examples" adjustment factor, the Licensee notes that the NRC's Enforcement Policy makes it explicitly clear that for this factor to be applicable, the multiple occurrences should have the "same root causes." The Licensee contends that while the NRC indicated that the root cause of the two incidents was inattention to detail by the treating physicians, this is not the root cause of the cited violations. The Licensee notes that the NOV states that the root cause of Violation II.A was failure to have an adequate procedure in place consistent with

the program requirements in 10 CFR 35.32, whereas the second violation, II.B, is stated by the NRC to arise from a different root cause, namely, failure to follow an existing procedure established in conformance with the program requirements of 10 CFR 35.32. The Licensee further states that the fact that these violations derive from different root causes is reinforced by the fact that the specific corrective action for one violation would not necessarily have prevented the other. Based on this information, the Licensee believes that escalation of the base civil penalty under the "multiple examples" factor is inappropriate.

Regarding the "prior enforcement history" adjustment factor, the Licensee believes that the application of this factor was inappropriate in this case, noting that the Quality Management rule has become effective only recently, and there has been no opportunity to develop an enforcement history for compliance with this rule. Just as the Enforcement Policy recognizes that this factor should not be applied where the Licensee has not been in existence long enough to establish a performance history, the Licensee contends that so too should this logic be applied in establishing performance history for quality management violations. On this basis, the Licensee contends that escalation of the base civil penalty is unwarranted.

Regarding the other factors, the Licensee believes that, on balance, the remaining adjustment factors warrant mitigation even though none was applied. Regarding the "identification" factor, the Licensee notes that the current Enforcement Policy streamlines the applicability of this factor to situations where the Licensee identified the violations and promptly reported them to the NRC. The Licensee argues that, in both cases, following identification of the violation, the hospital thoroughly evaluated the events and promptly provided the NRC with the results in letters to the NRC Region I office, dated December 22, 1992, January 4, 1993, and February 5, 1993. Based on this information, the Licensee believes that full mitigation on this factor is warranted.

Regarding the "corrective action" factor, once the violations were identified, the Licensee maintains it took prompt action to bring the situations into compliance. Immediate corrective actions were implemented to assure that fully safe conditions were restored and that further noncompliance with the NRC's requirements was halted. In addition, as evidenced by the NRC's inspection report dated December 30, 1992, the Licensee maintains that it had already developed proposed long-term corrective actions, "at the time of the inspection," which was the day after the incident was reported. Given this information, the Licensee believes that further mitigation due to this factor is warranted.

Finally, the Licensee maintains it had no prior opportunity to identify the two specific violations, neither misadministration resulted in doses to the patients that exceeded the prescribed doses by more than 20 percent of the total prescribed doses, nor are they believed to result in any significant detriment, and therefore, no escalation is warranted for these factors. In summary, when the circumstances surrounding the violations are fully considered, the Licensee submits that significant mitigation of the proposed civil penalty for Violation II is warranted.

NRC Evaluation of Licensee Response Requesting Mitigation of the Civil Penalties

The NRC has evaluated the Licensee response and has determined, as set forth below, that the Licensee has not provided an adequate basis for any mitigation of the civil penalty. In determining the amount of the civil penalty, the NRC considered the escalation and mitigation factors set forth in the NRC Enforcement Policy.

With respect to the issues provided in the Licensee's response as a basis for mitigation of the penalty, the NRC acknowledges that the Licensee performed an independent assessment on May 10 and 11, 1993, to improve implementation of the radiation safety program. However, this commitment was made only after these violations were identified by the NRC as a result of inspections conducted on December 3 and 4, 1992, and January 26 and 27, 1993, at the Licensee's facility. Nevertheless, the NRC mitigated the base civil penalty for corrective action for Violations I.A, I.B, and I.C by 50 percent, the maximum recommended under the enforcement policy. No further mitigation is warranted under this factor.

With respect to the violations in Section I, the Licensee states that the NRC, contrary to established practice in Section VI.B.2.(c) of the Enforcement Policy, used an enforcement action which occurred in 1989 as part of its inspection history to establish a basis for the 100 percent escalation of the civil penalty for licensee performance. The NRC agrees that prior performance normally refers to the licensee's performance within the last two years of the inspection at issue, or the period within the last two inspections, whichever is longer. However, Section VI.B.2.(c) also states that the base civil penalty may be escalated by as much as 100 percent if the current violation is reflective of the licensee's poor or declining prior performance. While the NRC did mention the escalated action issued in 1989 in its April 26, 1993, cover letter to the Notice of Violation, it also referred to an escalated action that was issued in 1992, which is within the two year/two inspection period. Viewed collectively, the past enforcement actions demonstrate a declining trend in performance at the Licensee's facility. Additionally, the escalated enforcement action issued in 1989 involved the Licensee's loss of control of a cesium-137 sealed source and subsequent improper disposal. The Licensee's corrective action for this incident was not broad and lasting, and did not prevent recurrence of a similar violation described in Section I of the Notice issued April 26, 1993, involving the loss of a cesium-137 brachytherapy sealed source. Based on the above, the NRC believes that the 100 percent escalation for Licensee performances, was a proper application of the Enforcement Policy in determining the civil penalty amount of $2500 for the violations in Section I. As for the Licensee's contention regarding identification of Violations I.A, I.B, and I.C, the NRC in the Notice proposed 50 percent mitigation, which is the maximum recommended under the enforcement policy.

The escalation/mitigation factors for the violations in Section II were applied consistent with the Policy. Regarding the "multiple examples" factor, the violations both involved the failure to meet the specific objective that each administration is in accordance with the written directive. The QMP was inadequate in that it did not contain procedures that provide high confidence in the delivery process of therapeutic radiation and the accurate administration of the prescribed dose. The administering physician's inattention to detail was the root cause and primary contributing reason for the occurrence of both misadministrations at the facility within a short period. In violation II.A, the physician failed to observe that one of four sources fell into the patient's bed, while in violation II.B, the physician failed to use any visual means to verify correct insertion of the sources. Had either physician paid adequate attention while inserting the sources, or if the Licensee's QMP had provided specific procedures to verify correct source insertion, these violations would likely have been averted. Therefore, based on the fact that both events were due to the same root cause, escalation on this factor was warranted.

With respect to the "prior performance" factor, while there is no history in the quality management area given its recent implementation, the Licensee's poor and declining overall performance in the radiation safety area of the medical program warrants escalation of the penalty on this factor, as set forth above.

Regarding the "identification" factor, the NRC maintains that, while the two misadministrations were self disclosing, the associated quality management violations were identified by the NRC. In both events, the Licensee did not identify the failure of the QMP to include written policies and procedures to meet the objective that each brachytherapy administration is verified to be to the proper treatment site in accordance with the respective written directive. In each case, the NRC identified the failure to establish adequate written procedures to ensure the Licensee's proper placement of brachytherapy source(s) at the prescribed treatment site. Therefore, on balance, no adjustment by the NRC on this factor was warranted.

With respect to the "corrective action" factor, the actions taken in response to these violations were not considered sufficiently prompt and comprehensive to warrant mitigation because they were initially narrowly focused on the specific events, rather than on root causes, the QMP and improvements necessary to increase management oversight. The Licensee did implement additional training and instruction in the loading and placement of brachytherapy sources and applicators. However, the Licensee did not perform an extensive and comprehensive root cause analysis of the two misadministrations. The corrective actions were narrowly focused and primarily directed at the performance of visual checks and examinations of the sources and applicators before implantation. The corrective actions did not include a comprehensive review of the QMP procedures to determine what written modifications might be necessary to ensure compliance with the failed objective and program areas of concern. Additionally, the corrective actions failed to address what changes in management oversight and involvement would be incorporated into the Licensee's QMP to prevent recurrence of similar events and improve supervision of brachytherapy activities. Following the second event and discussions with NRC, a more comprehensive approach was adopted. However, on balance, no adjustment on this factor is warranted.

NRC Conclusion

The NRC concludes that the Licensee has not provided an adequate basis for mitigating any portion of the civil penalties. Accordingly, the NRC has determined that monetary civil penalties in the amount of $10,000 should be imposed.

[FR Doc. 94-125 Filed 1-4-94; 8:45 am]

BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from December 13, 1993, through December 22, 1993. The last biweekly notice was published on December 22, 1993 (58 FR 67840).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By February 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or

controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Arizona Public Service Company, et al., Docket Nos. STN 50-528, STN 50-529, and STN 50-530, Palo Verde Nuclear Generating Station, Unit Nos. 1, 2, and 3, Maricopa County, Arizona

Date of amendment requests: December 2, 1993

Description of amendment requests: The proposed changes would modify TS 3/4.6.1.2 by removing the schedular requirements for a Type A (overall integrated containment leakage rate) test to be performed specifically at 40 lB 10 month intervals and replacing these requirements with a requirement to perform Type A testing in accordance with Appendix J to 10 CFR 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensees have provided their analysis about the issue of no significant hazards consideration, which is presented below:

(1) The proposed changes would not involve an increase in the probability or the consequences of an accident previously evaluated. The proposed change only allows flexibility in the scheduling of the three required Type A tests in the 10-year service period. The additional flexibility is needed for plants using 18-month fuel cycles to allow refueling outages and testing intervals to coincide. There is no change to the number of tests required, test methodology, or acceptance criteria.

(2) The proposed changes would not create the possibility of a new or different type of accident from any accident previously evaluated. The proposed change to the test schedule only provides flexibility in meeting the same requirement for three tests in a 10-year period. The testing type and bases have not changed. Therefore, operation of the units with this more flexible test schedule will not result in an accident previously not analyzed in the Updated Final Safety Analysis Report (UFSAR). The proposed changes do not impact the design bases of the containment and do not modify the response of the containment during a design basis accident.

(3) The proposed changes would not involve a reduction in the margin of safety. The proposed changes to the schedule only provides flexibility in meeting the same requirement for three tests in a 10-year period. These proposed changes do not affect or change any limiting conditions for operation (LCO), or any other surveillance requirements in the TS, and the basis for the surveillance requirement remains unchanged. The testing method, acceptance criteria, and bases are not changed. The TS continue to require testing that is consistent with the requirements of Appendix J to 10 CFR 50.

The NRC staff has reviewed the licensees' analysis and, based on that review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004

Attorney for licensees: Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072-3999

NRC Project Director: Theodore R. Quay

Gulf States Utilities Company, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: November 18, 1993

Description of amendment request: The proposed amendment would permit extending the time to perform leak rate testing of certain containment isolation valves so that the testing can be performed during the refueling outage scheduled to start April 16, 1994, rather than requiring an earlier shutdown solely to perform the testing. The proposed amendment would revise Surveillance Requirements 4.6.1.3d and 4.6.1.3f to allow a one-time extension of the surveillance intervals for leak rate testing of containment isolation valves. In addition, the proposed amendment would revise Surveillance Requirements 4.4.3.2.2a and 4.4.3.2.2b, replacing the requirement to leak test the reactor coolant pressure isolation valves every 18 months or prior to returning a valve to service, with a requirement to leak test the valves in accordance with the Inservice Testing Program. This would allow the testing to be performed during the fifth refueling outage.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the licensee's analysis against the standards of 10 CFR 50.92(c). The NRC staff's review is presented below:

1. The proposed changes would not significantly increase the probability or consequences of a previously evaluated accident.

One of the proposed technical specification (TS) changes requests a one-time only extension of the surveillance intervals for the TS Surveillance Requirements of TS 4.6.1.3f, leak rate testing of valves sealed by the main steam positive leakage control system (MS-PLCS) and the penetration valve leakage control system (PVLCS). The revision would permit eleven containment isolation valves to be tested a maximum of 46 days later than required by current technical specifications.

To permit the one-time extension of the surveillance interval for leak rate tests of containment isolation valves, TS 4.6.1.3d must also be revised to permit the interval for Type C leak rate tests to exceed 24 months. This change is consistent with an associated exemption request. The exemption request and this revision would permit 20 valves to be tested a maximum of 35 days later than required by the current technical specifications.

The proposed amendment would also revise Surveillance Requirements 4.4.3.2.2a and 4.4.3.2.2b, replacing the requirement to leak test the reactor coolant pressure isolation valves every 18 months or prior to returning a valve to service, with a requirement to leak test the valves in accordance with the Inservice Testing Program. This change would require that the pressure isolation valves be tested in accordance with Section XI of the ASME Boiler and Pressure Vessel Code, resulting in the valves being tested at least every refueling outage, rather than specifying an 18 month cycle. The revision would permit five valves to be tested a maximum of 65 days later than allowed under the current technical specification.

Based on the short duration of the requested extensions, the extensions will not significantly increase the probability or consequences of a previously evaluated accident.

2. The proposed changes would not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed TS changes permit extension of the surveillance intervals for leak rate testing of containment isolation valves and reactor coolant system pressure isolation valves. In that the requested extension durations are small as compared to the overall interval allowed by TS, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously analyzed.

3. The proposed changes would not involve a significant reduction in the margin of safety.

The proposed TS changes permit extension of the surveillance intervals for leak rate testing of containment isolation valves and reactor coolant system pressure isolation valves. In that the requested extension durations are small as compared to the overall interval allowed by TS, the proposed changes do not involve a significant reduction in the margin of safety.

Based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Documents Department, Louisiana State University, Beton Rouge, Louisiana 70803

Attorney for licensee: Mark Wetterhahn, Esq., Winston & Strawn, 1400 L Street, N.W., Washington, D.C. 20005

NRC Project Director: Suzanne C. Black

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: December 8, 1993

Description of amendments request: The frequency for Channel Calibration would be revised from Q (quarterly) to R (refuel) for Technical Specification Table 4.3.2.1, Item 4.a.4, High Pressure Core Injection Steam Line Tunnel Temperature-High.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change corrects Technical Specification pages issued for Amendment 166 for Brunswick Unit 1 and Amendment 197 for Brunswick Unit 2, regarding NUMAC Steam Leak Detection Equipment. Specifically, on page 3/4 3-29 for each unit, the Channel Calibration frequency of Item 4.a.4, HPCI [High Pressure Core Injection] Steam Line Tunnel Temperature - High, was inadvertently left as quarterly (Q) rather than being revised to refuel (R). The text of CP&L's September 14, 1992 license amendment request and the NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the frequency change from quarterly to refuel for this item. Therefore, the proposed change is purely administrative in nature and can not involve a significant increase in the probability of consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. As stated above, the NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the frequency change from quarterly to refuel for Item 4.a.4 of Table 4.3.2-1, HPCI Steam Line Tunnel Temperature - High. Therefore, the proposed change is purely administrative in nature and can not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed license amendment does not involve a significant reduction in the margin of safety. The proposed change corrects Technical Specification pages issued for Amendment 166 for Brunswick Unit 1 and Amendment 197 for Brunswick Unit 2, regarding NUMAC Steam Leak Detection Equipment. The NRC's safety evaluation for Amendments 166 and 197, dated October 14, 1993, addressed the change of Channel Calibration frequency of Item 4.a.4, HPCI Steam Line Tunnel Temperature - High from quarterly (Q) to refuel (R). Therefore, the proposed change is purely administrative and can not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Dairyland Power Cooperative, Docket No. 50-409, La Crosse Boiling Water Reactor (LACBWR), Vernon County, Wisconsin

Date of application for amendment: November 5, 1993 (Reference LAC-13320)

Brief description of amendment: This proposed change would modify the Technical Specifications incorporated in Facility Operating License No. DPR-45 in accordance with the requirements of the revised 10 CFR Part 20 which becomes mandatory January 1, 1994 (56 FR 23360). In addition, this proposed change would correct several editorial oversights from previous amendments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee provided the results of its analysis of the issue of no significant hazards consideration. The NRC staff has reviewed the information provided by the licensee and found that the licensee did not provide specific information as to how it determined that the three standards of 50.92(c) were satisfied. The NRC staff performed its own evaluation of the proposed change to determine if the three standards of 50.92(c) were satisfied. The NRC staff's no significant hazards consideration evaluation is presented below:

1. Will operation of the facility according to this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed change is to bring the LACBWR Technical Specifications into conformance with the revised 10 CFR Part 20 and to correct several editorial oversights previously evaluated. The proposed change has no affect on any plant operating parameters. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Will operation of the facility according to this proposed change create the possibility of a new or different kind of accident from any previously evaluated?

The proposed change is to bring the LACBWR Technical Specifications into conformance with the revised 10 CFR Part 20 and to correct several editorial oversights previously evaluated. The proposed change is administrative in nature. Further, the proposed change does not result in any physical alteration to any plant system, and does not result in any change in the method by which any safety-related system performs its function. Consequently, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

The margin of safety is the difference between the value of a critical design, operating, or post accident parameter, and the value of the parameter which would produce unacceptable results. The proposed change does not affect any hardware, has no effect on the current operating methodologies or actions which govern plant performance, and does not affect any accident analysis parameter. Consequently, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has determined based on its own no significant hazards consideration evaluation that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: La Crosse Public Library, 800 Main Street, La Crosse, Wisconsin 54601

Attorney for licensee: Fritz Schubert, Esquire, Dairyland Power Cooperative, 2615 East Avenue South, La Crosse, Wisconsin 54601

NRC Branch Chief: John H. Austin

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1. The amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1. The amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The proposed revisions will not involve a reduction in a margin of safety because they are administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: Loren R. Plisco, Acting

Duke Power Company, Docket Nos. 50-269, 50-270 and 50-287, Oconee Nuclear Station, Units 1, 2 and 3, Oconee County, South Carolina

Date of amendment request: November 11, 1993

Description of amendment request: The proposed amendments would consolidate the Quality Verification Department with the Nuclear Generation Department and realign the Nuclear Safety Review Board such that it reports to the Senior Vice-President of the Nuclear Generation Department. In addition, the requirement to conduct an annual independent Fire Protection Audit is deleted.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

[1. The amendments do not involve a significant increase in the probability or consequences of an accident previously evaluated.]

The proposed revisions to consolidate the Quality Verification Department with the Nuclear Generation Department and realign the NSRB [Nuclear Safety Review Board] such that it reports to the Senior Nuclear Officer, change the reference from Semiannual to Annual, change the reference from group to division, delete titles of persons designated to approve modifications, clarify the responsibilities of the Safety Assurance Manager, and delete the requirement to perform an annual independent Fire Protection Audit will not involve a significant increase in the probability or consequences of an accident previously evaluated because the changes do not have any impact upon the design or operation of any plant systems or components.

[2. The amendments do not create the possibility of a new or different kind of accident from any accident previously evaluated.]

The proposed revisions will not create the possibility of a new or different kind of accident from any previously evaluated because the changes are administrative in nature and operation of Catawba, McGuire, and Oconee Nuclear Stations in accordance with these TS [technical specifications] will not create any failure modes not bounded by previously evaluated accidents.

[3. The amendments do not involve a significant reduction in a margin of safety.]

The proposed revisions will not involve a reduction in a margin of safety because they are administrative in nature.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691

Attorney for licensee: J. Michael McGarry, III, Winston and Strawn, 1200 17th Street, NW., Washington, DC 20036

NRC Project Director: Loren R. Plisco, Acting

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 16, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications to change the periodic test schedule for containment Type A integrated leak rate tests (ILRTs) from a set of three tests performed at approximately equal intervals during each 10-year period, as specified in 10 CFR Part 50, Appendix J, Section III.D, to one Type A test performed at 10-year intervals. The change is being reviewed in conjunction with a proposed exemption to Appendix J, as requested by the licensee in a letter dated November 16, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The Waterford 3 Type A test history provides substantial justification for the proposed test schedule. Three type A tests have been performed over an eight (8) year period with successful results. The tests indicate that Waterford 3 has a low leakage containment and that the leakage has never exceeded 24.6% of L_a. [L_a is the maximum allowed leakage rate of air from containment where containment is pressurized to P_a; for Waterford 3 P_a is 44 psig. L_a for Waterford is 0.50 percent by weight of the containment air per 24 hours at P_a.]

There are no structural mechanisms which would adversely affect the structural capability of the containment and that would be a factor in extending the Type A test schedule to ten years. A risk impact assessment was performed, and a determination was made that there is no risk impact as a result of changing the Type A test schedule. Therefore, the proposed change will not involve a significant increase in the probability or consequences of any accident previously evaluated.

There are no design changes being made that would create a new type of accident or malfunction. The proposed change will not alter the plant or the manner in which it is operated. The change proposes a change to the schedule for performing the periodic Type A test. The purpose of the test is to provide periodic verification by test of the leaktight integrity of the primary reactor containment, and systems and components which penetrate containment. The tests assure that leakage through containment and systems and components penetrating containment will not exceed the allowable leakage rate values associated with conditions resulting from an accident. The change in schedule for performing the Type A test will not adversely affect the containment integrity in the event of an accident. Therefore, the proposed change will not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change is a change to the schedule for performing the periodic Type A tests and does not reduce the margin of safety assumed in accident analysis for release of radioactive materials from the containment atmosphere into the environment or any

margin of safety preserved by the Technical Specifications. The methodology, acceptance criteria, and the technical specification leakage limits for the performance of the Type A tests will not change, and the Type A tests will be performed in accordance with 10CFR 50, Appendix J, and the Waterford 3 licensing basis. Therefore, the proposed change will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

Entergy Operations Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: November 16, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to provide acceptable conditions for operation when (1) the core operating limits supervisory system (COLSS) is in service and neither control element assembly calculator (CEAC) is operable and (2) the COLSS is out of service and either or both CEACs are operable.

This proposed TS change modifies the departure from nucleate boiling ratio (DNBR) margin, Limiting Condition for Operation (LCO) 3.2.4b and c, which limits the core power distribution to the initial value assumed in the accident analyses. Operation within this LCO either limits or prevents potential fuel cladding failures in the event of a postulated accident and limits damage to the fuel cladding during an accident by ensuring that the plant is operating within acceptable conditions at the onset of a transient. The limiting safety system settings and this LCO are based on the accident analysis, so that specified acceptable fuel design limits (SAFDLs) are not exceeded as a result of anticipated operational occurrences (AOOs) and the limits of acceptable consequences are not exceeded for other postulated accidents.

The COLSS and core protection calculators (CPCs) monitor the core power distribution on line and are capable of verifying that the linear heat rate (LHR) and DNBR do not exceed their limits. The COLSS performs this function by continuously monitoring the core power distribution and calculating core power operating limits corresponding to the allowable peak LHR and DNBR. The CPCs perform this function by continuously calculating an actual value of DNBR and LHR for comparison with the respective trip setpoints. CEACs monitor CEA position. Should a CEA deviate from its subgroup position, the CEACs will transmit an appropriate "penalty" factor to the CPCs.

The COLSS is normally used to monitor DNBR margin. When at least one CEAC is operable, TS 3.2.4a provides enough margin to DNB to accommodate the limiting AOO without failing the fuel. When neither CEAC is operable, the CPCs lack the CEA position information necessary to ensure a reactor trip when necessary. In this case TS 3.2.4b requires the COLSS calculated core power to be reduced to ensure that the limiting AOO will not result in fuel failure. Currently, TS 3.2.4b requires that the COLSS calculated power be maintained at 13% below the COLSS calculated power operating limit to compensate for the potential error in the CPC DNBR calculation. The proposed revision would increase this required adjustment to 16%, which is more restrictive than the present value.

In instances when the COLSS is out of service, but either or both CEACs are operable, TS 3.2.4c states that the DNBR operating margin shall be maintained by comparing the DNBR indicated on any operable CPC channel with the allowable value from TS Figure 3.2-2. Whenever the COLSS is out of service, the CPCs are used to perform the same monitoring function. However, the extra conservatisms built into the CPCs for transient protection are not all required when the CPCs are being used for monitoring. In order not to affect the CPC transient protection, these conservatisms are not taken from the CPC, but are credited in the COLSS out-of-service limits in Figure 3.2-2. A reevaluation of the limiting AOOs has verified that, by maintaining the margin in the proposed Figure 3.2-2, sufficient margin exists to ensure that the limiting Cycle 7 AOO will not result in fuel failure.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

For the case when neither CEAC is operable but COLSS is in service, the CPCs assume a preset CEA configuration and can not obtain the required CEA position information to ensure the SAFDL on DNBR will not be violated during an AOO. Thus, as a result of limiting AOOs for Cycle 7, Specification 3.2.4b requires that core power be reduced to a value 16% less than the current COLSS calculated power operating limit. This ensures the limiting AOO will not result in a violation of SAFDLs. The proposed revision to Figure 3.2-2 accounts for the situation when COLSS is out of service but at least one CEAC is operable. In this case, the Cycle 7 safety analysis has shown that by maintaining the CPC calculated DNBR above the value shown in the figure, the limiting AOO will not result in a violation of the SAFDLs. Therefore, the proposed change will not significantly increase the probability or consequences of any accident previously evaluated.

The proposed changes are primarily a result of changes in Cycle 7 core parameters. These changes do not involve any change to any equipment or manner in which the plant will be operated. These changes further restrict the plant operation when either COLSS or both CEACs are out of service. Therefore, the proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

The intent of this Specification is to ensure that there is always sufficient margin to DNB such that the CPCs can mitigate the consequences of the most limiting AOO prior to a violation of the SAFDLs. Generally, this margin is continuously monitored by COLSS; however, if COLSS is out of service, but at least one CEAC is operable, the limitation on CPC calculated DNBR (as a function of ASI [axial shape index]) shown in Figure 3.2-2 represents a conservative envelope of operating conditions consistent with the Cycle 7 safety analysis assumptions. This band of operating conditions has been analytically demonstrated to maintain an acceptable minimum DNBR through all AOOs. On the other hand, for the case when COLSS is in service, but neither CEAC is operable, the proposed change will ensure that the limiting AOO will not result in a violation of SAFDLs. Therefore, the proposed changes will not result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122

Attorney for licensee: N.S. Reynolds, Esq., Winston & Strawn 1400 L Street N.W., Washington, D.C. 20005-3502

NRC Project Director: William D. Beckner

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: December 2, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications (TS) to remove the limiting conditions for operation and surveillance requirements for the chlorine detection system. TMI-1 removed the gases Chlorination System for the Circulating Water and River Water Systems. This modification eliminated the need for a Chlorine Dectection System (CDS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The TS requirements assured the operability of the CDS in the event of an on-site chlorine release from a one ton cylinder. These TS requirements reduced the probability and the consequences of a radiological accident which may result from an incapacitation of control room operatorsafter entry of chlorine into the control room. With the removal and the restriction on delivery of one ton chlorine cylinders, this postulated event is no longer credible, and there is a decrease in the probability of a radiological accident.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The TS requirements associated with the CDS were for the on-site release of chlorine from a one ton cylinder. These cylinders are removed and prohibited from the TMI-1 site. These actions preclude a significant on-site release of chlorine which could affect the control room operators.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. The purpose of the TS requirements was to maintain operability of the CDS in the event of on-site release from a one ton chlorine cylinder. Since chlorine cylinders greater than 150 pounds are prohibited on-site, the TS requirements for chlorine detection are no longer required, and their removal will not reduce the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: November 23, 1993

Description of amendment request: The licensee proposes to modify the South Texas Project, Units 1 and 2, Technical Specification 3/4.8.1.1, "A.C. Sources," to modify the action statements and surveillance requirements for testing of the standby diesel generator. This amendment would incorporate the recommendations of NRC Generic Letter (GL) 93-05, "Line-Item Technical Specifications Improvements To Reduce Surveillance Requirements For Testing During Power Operation," dated September 27, 1993.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change seeks to eliminate the unnecessary testing of an operable Standby Diesel Generator (SDG). Technical Specification (TS) 3.8.1.1 Actions a. and e. require all operable SDGs be started as a demonstration of operability whenever one or more of the offsite AC [alternating current] power sources is declared inoperable. The inoperability of an offsite AC power source has no effect on the reliability of a SDG. Deleting this requirement does not affect the design or performance characteristics of the SDGs. Therefore, the SDGs maintain their ability to perform their design function.

TS 3.8.1.1 Actions b. and c. require all remaining operable SDGs be started as a demonstration of operability whenever one of the SDG is declared inoperable except for preplanned preventive maintenance or testing. The proposed amendment would expand the testing exclusion to include an inoperable support system and an independently testable component in addition to preplanned preventive maintenance and testing. The proposed amendment would also eliminate the testing requirement of the remaining operable SDGs, when a SDG is declared inoperable, unless there is cause to believe a potential common mode failure exists for the remaining SDGs. The normal TS surveillance testing schedule assures that operable SDG(s) are capable of performing their intended safety functions. A failure of one SDG does not reduce the reliability of another, otherwise operable SDG. Deleting this requirement does not affect the design or performance characteristics of the SDGs, once a common mode failure has been dismissed. Therefore, the SDGs maintain their ability to perform their design function.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The elimination of these unnecessary tests does not affect the design bases of the SDGs, or any of the accident evaluations involving the SDGs. The SDGs are designed to provide electrical power to the equipment important for safety during all modes and plant conditions following a loss of offsite power. The test schedule established in accordance with GL 84-15 ["Proposed Staff Actions To Improve and Maintain Diesel Generator Reliability"] assures that operable SDGs are capable of performing their intended safety function. Therefore, this change does not create the possibility of a new or different kind of accident from any previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

Since the proposed change does not affect the design bases, accident analysis, reliability or capability of the SDGs to perform their intended safety function, this change does not involve any reduction in a margin to safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Indiana Michigan Power Company, Docket No. 50-315, Donald C. Cook Nuclear Plant, Unit No. 1, Berrien County, Michigan

Date of amendment request: December 15, 1993. This submittal supersedes a previous submittal dated March 10, 1993.

Description of amendment request: The proposed amendment would

implement interim tube plugging criteria for the tube support plate elevation outer diameter stress corrosion cracking for cycle 14.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of Donald C. Cook Nuclear Plant Unit 1 in accordance with the proposed license amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Testing of model boiler specimens for free span tubing (no TSP restraint) at room temperature conditions shows burst pressures in excess of 5000 psi for indications of ODSCC with voltage measurements as high as 19 volts. Burst testing performed on pulled tubes from Cook Nuclear Plant Unit 1 with up to a 2.02 volt indication shows measured burst in excess of 10,000 psi at room temperature. Correcting for the effects of temperature on material properties and minimum strength levels (as the burst testing was done at room temperature), tube burst capability significantly exceeds the RG 1.121 criterion requiring the maintenance of a margin of 3 times normal operating pressure differential on tube burst. The 3 times normal operating pressure differential for the Cook Nuclear Plant Unit 1 steam generators corresponds to 4275 psi. Based on the existing data base, this criterion is satisfied with 7/8" diameter tubing with bobbin coil indications with signal amplitudes less than 4.9 volts, regardless of the indicated depth measurement. A 1.0 volt plugging criteria compares favorably with the structural limit considering the previously calculated growth rates for ODSCC within the Cook Nuclear Plant Unit 1 steam generators. Considering a voltage increase of 0.4 volts, and adding a 20% NDE uncertainty of 0.20 volts (90% Cumulative Probability) to the IPC of 1.0 volts results in an EOC voltage of approximately 1.6 volts for Cycle 14 operation. A 3.3 volt safety margins implied (4.9 structural limit - 1.6 volt EOC - 3.3 volt margin). This EOC voltage compares favorably with the Structural Limit of 4.9 volts.

For the voltage/burst correlation, the EOC structural limit is supported by a voltage of 4.9 volts. A 3.1 volt BOC repair limit confirms the structural limit when 40% growth and 20% uncertainty are applied to the repair limit. This repair limit will be applied for Cycle 14 IPC implementation to repair bobbin indication greater than 3.1 volts independent of RPC confirmation of the indication.

The conservatism of this repair limit is shown by the EOC 12 (Summer 1992) eddy current data. The overall average voltage growth was determined to be only 2.2%, with a 12% average voltage growth for indications less than 0.75 volt BOC and a 1% average voltage growth for indication >0.75 volt at the BOC. In addition, the Cycle 12 maximum observed voltage increase was found to be 0.49 volts, and occurred in a tube initially <1.0 BOC. In accordance with the technical specification requirements, the applicability of Cycle 13 growth rates for Cycle 14 operation will be confirmed prior to return to power of Cook Nuclear Plant Unit 1. Similar large structural margins are anticipated.

As stated previously, TSP proximity to the tubes will prevent tube burst during all plant conditions. Test data indicates that tube burst cannot occur within the TSP, even for tubes which have 100% through-wall EDM notches, 0.75 inch long, provided that the TSP is adjacent to the notched area. Therefore, a more realistic assessment of tube operability should be performed against the RG 1.121 loading requirements during accidents SLB conditions, since the TSP has the potential to deflect during blowdown following a main SLB, thereby uncovering the intersection. At the ASME Code recommended faulted condition loading of 3657 psi (2560 psi/0.7) structural integrity is provided for bobbin voltage indications of a minimum of 9.6 volts. The repair limit based on the structural limited conservative SLB conditions would be 6.0 volts (compared to a 3.1 volt repair limit for a structural limit based on the 3[delta]P burst capability voltage).

Only three indications of ODSCC have been reported to have operating leakage, and all three have been in European plants. No field leakage has been reported at other plants from tubes with indications of a voltage level of under 7.7 volts (from 3/4" tubing). Relative to the expected leakage during accident condition loadings, it has been previously established that a postulated main SLB outside of containment but upstream of the MSIV represents the most limiting radiological condition relative to the IPC. In support of implementation of the IPC, it will be determined whether the distribution of cracking indications at the TSP intersections at the EOC 14 are projected to be such that primary to secondary leakage would result in site boundary doses within a small fraction of the 10 CFR 100 guidelines. The SLB leakage rate calculation methodology prescribed in Section 3.3 of draft NUREG-1477 will be used to calculate EOC 14 leakage. Due to the relatively low voltage growth rates at Cook Nuclear Plant Unit 1 and the relatively small number of indications affected by the IPC, SLB leakage prediction per draft NUREG-1477 is expected to be less than the acceptance limit of 1.0 gpm in the faulted loop and far below the conservatively calculated SRP based allowable value of 120 gpm in the faulted loop. The NRC leakage rate calculation methodology applies a 98% confidence limit on leakage that is independent of voltage. This method for calculating SLB leakage is conservative as it assumes no correlations exists between SLB leakage and bobbin probe voltage. Tube pull results from Cook Nuclear Plant Unit 1 indicate that tube wall degradation of greater than 40% through-wall was detectable either by the bobbin or RPC probe. The tube with maximum through-wall penetration of 56% (42% average) had a voltage of 2.02 volts. This indication also was the largest recorded bobbin voltage from the EOC 12 eddy current data. All burst tested tube intersections had degradation depths of 40% to 56 % (actual) deep and all were detected by both probes, with all bobbin voltage grater than or equal to 1.0. Since the criteria requires the plugging of >1.0 volt bobbin indications with confirmed RPC calls, using the Cook Nuclear Plant Unit 1 pulled tube destructive examination results, it is reasonable that no indications of degradation greater than 40% to 56% deep with an ability to influence tube burst capability were left in service. Since the majority of the EOC 14 indications at Cook Nuclear Unit 1 are expected to be below this level, the inclusion of all IPC intersections into the leakage calculation is exceptionally conservative.

Therefore, as re-implementation of the 1.0 volt IPC during Cycle 14 does not adversely affect steam generator tube integrity and results in acceptable dose consequences, the proposed amendment does not result in any increase in the probability or consequences of an accident previously evaluated within the Cook Nuclear Plant Unit 1 FSAR.

2. The proposed license amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

Implementation of the proposed steam generator tube IPC does not introduce any significant changes to the plant design basis. Use of the criteria does not provide a mechanism which could result in a tube rupture outside of the region of the TSP elevations; no ODSCC is occurring outside the thickness of the TSPs. Neither a single or multiple tube rupture event would be expected in a steam generator in which the plugging criteria has been applied (during all plant conditions).

Specifically, Cook Nuclear Plant will continue to implement a maximum leakage rate limit of 150 gpd (0.1 gpm) per steam generator to help preclude the potential for excessive leakage during all plant conditions. The Cycle 14 Technical Specification limits on primary to secondary leakage at operating conditions is a maximum of 0.4 gpm (600 gpd) for all steam generators, or, a maximum of 150 gpd for any one steam generator. The RG 1.121 criterion for establishing operational leakage rate limits that require plant shutdown are based upon leaks-before-break consideration to detect a free span crack before potential tube rupture. The 150 gpd limit should provide for leakage detection and plant shutdown in the event of the occurrence of an unexpected single crack resulting in leakage that is associated with the longest permissible crack length. RG 1.121 acceptance criteria for establishing operating leakage limits are based on leak-before-break considerations such that plant shutdown is initiated if the leakage associated with the longest permissible crack is exceeded. The longest permissible crack is the length that provides a safety factor of 3 against bursting at normal operating pressure differential. A voltage amplitude of 4.9 volts for typical ODSCC corresponds to meeting this tube burst requirement at a lower 95% prediction limit on the burst correlation coupled with 95/95 LTL material properties. Alternate crack morphologies can correspond to 4.9 volts so that a unique crack length is not defied by the burst pressure versus voltage correlation. Consequently, typical burst pressure versus through-wall crack length correlations are used below to define the "longest permissible crack" for evaluating operating leakage limits.

At current plant conditions, the single through-wall crack lengths that result in tube burst at 3 times normal operating pressure differential and SLB conditions are 0.44 inch and 0.84 inch, respectively. A leak rate of 150 gpd will provide for detection of 0.42 inch long cracks at nominal leak rates and 0.61 inch long cracks at the lower 95% confidence level leak rates. Since tube burst is precluded during normal operation due to the proximity of the TSP to the tube and the potential for the crevice to become uncovered during SLB conditions, the leakage from the maximum permissible crack must preclude tube burst at SLB conditions. Thus, the 150 gpd limit provides for plant shutdown prior to reaching critical crack lengths for SLB conditions.

3. The proposed license amendment does not involve a significant reduction in margin of safety.

The use of the voltage based bobbin probe interim TSP elevation plugging criteria at Cook Nuclear Plant Unit 1 is demonstrated to maintain steam generator tube integrity commensurate with the criteria of Regulatory Guide 1.121. RG 1.121 describes a method acceptable to the NRC staff for meeting GDCs 14, 15, 31, and 32 by reducing the probability or the consequences of steam generator tube rupture. This is accomplished by determining the limiting conditions of degradation of steam generator tubing, as established by inservice inspection, for which tubes with unacceptable cracking should be removed from service. Upon implementation of the criteria, even under the worst case conditions, the occurrence of ODSCC at the TSP elevations is not expected to lead to a steam generator tube rupture event during normal or faulted plant conditions. The EOC 14 distribution of crack indications at the TSP elevations will be confirmed to result in acceptable primary to secondary leakage during all plant conditions and that radiological consequences are not adversely impacted.

In addressing the combined effects of LOCA + SSE on the steam generator component (as required by GDC 2), it has been determined that tube collapse may occur in the steam generators at some plants. This is the case as the TSPs may become deformed as a result of lateral loads at the wedge supports at the periphery of the plant due to the combined effects of the LOCA rarefaction wave and SSE loadings. Then, the resulting pressure differential on the deformed tubes may cause some of the tubes to collapse.

There are two issues associated with steam generator tube collapse. First, the collapse of steam generator tubing reduces the RCS flow area through the tubes. The reduction in flow are increases the resistance to flow of steam from the core during a LOCA which, in turn, may potentially increase peak clad temperature (PCT). Second, there is a potential that partial through-wall cracks in tubes could progress to through-wall cracks during tube deformation or collapse.

Consequently, since the leak-before-break methodology is applicable to the Cook Nuclear Plant Unit 1 reactor coolant loop piping, the probability of breaks in the primary loop piping is sufficiently low that they need not be considered in the structural design of the plant. The limiting LOCA event becomes either the accumulator line brake or the pressurizer surge line break. LOCA loads for the primary pipe breaks were used to bound the Cook Nuclear Plant Unit 1 smaller breaks. The results of the analysis using the larger break inputs show that the LOCA loads were found to be of insufficient magnitude to result in steam generator tube collapse or significant deformation.

Addressing RG 1.83 consideration, implementation of the bobbin probe voltage based interim tube plugging criteria of 1.0 volt is supplemented by the following: enhanced eddy current inspection guidelines to proved consistency in voltage normalization, a 100% eddy current inspection sample size at the TSP elevations, and RPC inspection requirements as outlined in the technical specifications and Appendix A "NDE Data Acquisition and Analysis Guidelines" (Attachment 6).

As noted previously, implementation of the TSP elevation plugging criteria will decrease the number of tubes which must be repaired. The installation of steam generator tube plugs reduce the RCS flow margin. Thus, implementation of the alternate plugging criteria will maintain the margin of flow that would otherwise be reduced in the event of increased tube plugging.

Based on the above, it is concluded that the proposed license amendment request does not result in a significant reduction in margin with respect to plant safety as defined in the Final Safety Analysis Report or any of the plant Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: Leaks Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A Randolph Blough, Acting

Indiana Michigan Power Company, Docket Nos. 50-315 and 50-316, Donald C. Cook Nuclear Plant, Unit Nos. 1 and 2, Berrien County, Michigan

Date of amendment requests: November 15, 1993

Description of amendment requests: The proposed amendments delete certain Limiting Conditions for Operation, Actions, and Surveillance Requirements for Reactor Coolant System Pressure Isolation Valves in the Technical Specifications. The Technical Specifications for these Reactor Coolant System Pressure Isolation Valves were added by Order dated April 20, 1981. This Order was prompted by concerns for an interfacing system loss-of-coolant accident as identified in the Reactor Safety Study (WASH-1400). The proposed Technical Specification change, by inference, also requests rescission of the April 20, 1981 Order.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Per 10 CFR 50.92, a proposed amendment to an operating license will not involve a significant hazards consideration if the proposed amendment satisfies the following three criteria:

1. Does not involve a significant increase in the probability or consequences of an accident previously analyzed,

2. Does not create the possibility of a new or different kind of accident from an accident previously analyzed or evaluated, or

3. Does not involve a significant reduction in a margin of safety.

Criterion 1

The ISLOCA is not one of the accidents previously analyzed in Chapter 14, Safety Analysis, of the Cook Nuclear Plant Updated Final Safety Analysis Report. Chapter 14 analyzes the large break LOCA in Section 14.3.1, and "loss of reactor coolant from small ruptured pipes or from cracks in large pipes which actuates the ECCS", or small break LOCA in Section 14.3.2. Therefore, deleting from the Technical Specifications the Reactor Coolant System pressure isolation valves in Table 3.4-0, will not increase the probability or the consequences of the large break or the small break LOCAs previously analyzed for the Cook Nuclear Plant.

Criterion 2

The Reactor Coolant System pressure isolation valves in Table 3.4-0 of the Technical Specifications were added because WASH-1400 identified the ISLOCA as a significant contributor to core damage frequency. Deletion of the subject valves from the Technical Specifications and reliance on the testing requirements mandated by the In-Service Testing Program of ASME XI does not create the possibility of a new or different kind of accident from the large break or the small break LOCAs previously analyzed for the Cook Nuclear Plant.

Criterion 3

Deleting the Reactor Coolant System pressure isolation valves from the testing requirements in Table 3.4-0 of the Technical Specifications will result in these valves only being tested on a refueling outage frequency as part of the ASME B&PV Code Section XI IST Program. This somewhat reduced testing frequency will result in a slight increase in the ISLOCA contribution to core damage frequency of 5.4%, from lower 5.00E-08/

reactor year to mid 5.00E-08/reactor year. This insignificant increase will not affect the overall core damage frequency of 6.26E-05/reactor year. Therefore, it is concluded that the proposed deletion of the Reactor Coolant System pressure isolation valves in Table 3.4-0 of the Technical Specifications, as well as the proposed deletion of the portions of the Technical Specifications that are affected by Table 3.4-0, will not result in a significant reduction in the margin of safety that exists at Cook Nuclear Plant to prevent an ISLOCA or to mitigate the consequences of an ISLOCA.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW, Washington, DC 20037

NRC Project Director: A. Randolph Blough, Acting

Pacific Gas and Electric Company, Docket No. 50-133, Humboldt Bay Power Plant, Unit 3, Humboldt County, California

Date of application for amendment: October 8, 1993 (Reference LAR 93-02)

Brief description of amendment: This Licensee Amendment Request (LAR) proposes to revise the Humboldt Bay Power Plant (HBPP), Unit 3, Technical Specifications (TS) by deleting Figure II-2 in Section II, "Site," by deleting the Restricted Area boundary line in Figure V-3, Section V, "Monitoring Systems," by incorporating a title change into Section VII, "Administrative Controls," and by revising Figure VII-2, "Plant Staff Organization." The proposed changes are in response to the revised 10 CFR Part 20 which becomes mandatory on January 1, 1994 (56 FR 23360). The specific TS changes proposed are as follows:

(1) Page v, Figures - delete reference to Figure II-2.

(2) Page II-1, Section II.B, Plant Areas - change "is shown in Figure II-2" to "shall be defined in plant procedures."

(3) Page II-3, Section II - delete Figure II-2.

(4) Page V-14, Section V - delete the Restricted Area boundary line from Figure V-3, "HBPP Groundwater Monitoring Systems Wells," to be consistent with item 3 above.

(5) Page VII-5, Section VII.C.2.e, Supervisor of Maintenance - change the title from "Supervisor of Maintenance" to "Maintenance Planner."

(6) Page VII-10, Section VII.D.1.b., Membership, List of minimum membership - replace "Supervisor of Maintenance" with "Maintenance Planner."

(7) Page VII-31, Section VII, Figure VII-2, Plant Staff Organization - replace "Maintenance Supervisor" with "Maintenance Planner."

(8) Page VII-31, Section VII, Figure VII-2, Plant Staff Organization - both the Mechanical Foreman and the Instrument/Electrical Foreman report directly to the Plant Manager, not to the "Maintenance Planner," as previously shown.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

a. Does the change involve a significant increase in the probability or consequences of an accident previously evaluated?

A change to the defined restricted area has no affect on any plant operating parameters. Consequently, a change to the defined restricted area will not affect the probability or consequences of an accident occurring.

Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

b. Does the change create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed revisions to the HBPP TS are administrative in nature. Further, the proposed changes would not result in any physical alteration to any plant system, and there would not be a change in the method by which any safety-related system performs its function.

Therefore, the proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated.

c. Does the change involve a significant reduction in a margin of safety?

The proposed revisions to the HBPP TS do not affect the margin of safety of any accident analysis since they do not affect the parameters for any accident analysis, and have no effect on the current operating methodologies or actions which govern plant performance.

Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requests involve no significant hazards consideration.

Local Public Document Room location: Humboldt County Library, 636 F Street, Eureka, California 95501

Attorney for licensee: Christopher J Warner, Esq., Pacific Gas & Electric Company, P.O. Box 7442, San Francisco, California 94120

NRC Branch Chief: John H. Austin

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: October 29, 1993

Description of amendment request: The amendment would revise the Limerick Generating Station, Units 1 and 2, Technical Specifications to eliminate the Main Steam Line Radiation Monitoring System high radiation trip function for initiating 1) an automatic reactor scram and automatic closure of the Main Steam Line Isolation Valves, and 2) automatic closure of the Main Steam Line drain valves, and Main Steam and Reactor Water Sample line valves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specification (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed TS changes involve eliminating the Main Steam Line Radiation Monitoring (MSLRM) system high radiation trip function for initiating an automatic reactor scram and automatic closure of the Main Steam Line Isolation Valves (MSIVs), Main Steam line drain valves, and Main Steam and Reactor Water sample line valves. The proposed TS changes support installation of a plant modification to defeat portions of MSLRM system high radiation trip function logic circuitry in the Reactor Protection System (RPS) and Primary Containment and Reactor Vessel Isolation Control System (PCRVICS). Installation of this modification will not adversely impact the operation of the RPS or PCRVICS with respect to performing its other intended safety functions. The proposed TS changes will not affect the operation of other plant systems or equipment important to safety. The MSLRM system high radiation trip function for the Mechanical Vacuum Pump (MVP) will be retained. The safety assessment and justification for eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs [are] based on General Electric's (GE's) Topical Report NEDO-31400A, "Safety Evaluation for Eliminating the Boiling Water Reactor Main Steam Line Isolation Valve Closure Function and Scram Function of the Main Steam Line Radiation Monitor," and the applicability of this report to Limerick Generating Station (LGS), Units 1 and 2. By letter dated May 15, 1991, the NRC approved this topical report and indicated that it was acceptable for licensees to reference this report as the basis for requesting a TS change to eliminate the MSLRM system high radiation trip functions as documented in the report and associated NRC Safety Evaluation Report (SER).

The safety assessment provided in NEDO-31400A can also be applied to eliminate the MSLRM system high radiation trip function for initiating the automatic closure of the Main Steam line drain valves although this aspect was not explicitly evaluated in NEDO-31400A. The flow from these valves ultimately discharges to the main condenser as do the MSIVs and therefore, any radioactive material passing through these valves would be processed in the same fashion as that passing through the MSIVs. The effects of eliminating the MSLRM system high radiation trip function for initiating the closure of the Main Steam and Reactor Water sample line valves is [are] negligible. The sample lines are routed to a sample sink where inlet valves installed on the sample lines are normally closed. Additionally, downstream of the inlet valves are needle valves designed to control and limit sample line flow. The sample sink is enclosed, and air vented from its exhaust hood is passed through filters prior to release to the environment. There is the potential that a minimal amount of radioactive material could be released to the environment if the sample sink inlet and needle valves failed to properly function. This potential release has been evaluated and determined to a small fraction of the dose limit requirements specified in 10 CFR 100.

The MSLRM system high radiation trip was intended to function in response to a Control Rod Drop Accident (CRDA), a Design Basis Accident previously evaluated. Although the CRDA assumes MSIV closure, no credit was taken for this in the CRDA analysis since it postulates that the radioactive material calculated to be released from the fuel is transported to the main condenser prior to the MSIVs completely closing. Furthermore, the probability of a fuel failure is independent of the operation of the MSLRM system.

The Steam Jet Air Ejectors (SJAEs) will continue to operate to remove non-condensable gases from the main condenser for processing by the Offgas Treatment system. The Offgas Treatment system will continue to function as designed to reduce offgas radioactivity levels prior to release to the environment. Eliminating the MSLRM system high radiation isolation functions will improve operational flexibility in that the main condenser will be available to aid in decay heat removal. Elimination of the MSLRM system high radiation trip functions in conjunction with proper operation of the Offgas Treatment system will ensure that any radioactive material released to the environment is a small fraction of 10 CFR 100 limits.

Therefore, the proposed TS changes associated with eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam line drain valves, and Main Steam and Reactor Water sample line valves do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam Line drain valves, and Main Steam and Reactor Water sample line valves. The proposed TS changes will not affect the operation of other plant systems or equipment important to safety. The associated plant modification simply defeats the MSLRM system high radiation trip function logic circuitry in the RPS and PCRVICS. The RPS and PCRVICS will continue to respond in performing its other design intended safety functions. The MSLRM system high radiation trip function for the MVP will be retained. The proposed TS changes do not involve any plant hardware changes that could introduce any new failure modes or effects. The MSLRM system radiation monitors will remain active to initiate Main Control Room (MCR) annunciation alarms. Plant procedures will be in place to implement the appropriate mitigative measures in response to a MSLRM system high radiation alarm signal.

The SJAEs will continue to operate to remove non-condensable gases from the main condenser for processing by the Offgas Treatment system. The Offgas Treatment system will continue to function as designed to reduce offgas radioactivity levels prior to release to the environment.

Since the Design Basis Accident analysis (i.e., CRDA) does not credit the MSLRM system high radiation trip function for reducing the radiological consequences of the postulated accident, the proposed TS changes have effectively been evaluated and are included in the existing analysis. That is, the CRDA analysis already assumes that the radioactive material released from the failed fuel is immediately transported to the main condenser prior to the MSIVs completely closing.

The safety assessment and assumptions documents in GE Topical Report NEDO-31400A provide the basis for eliminating the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs. The safety assessment provided in NEDO-31400A can also be applied to eliminate the MSLRM system high radiation trip function for initiating the closure of the Main Steam Line drain valves, since any radioactive material passing through these valves would be processed in the same fashion as that passing through the MSIVs. Eliminating the MSLRM system high radiation trip function for initiating the closure of the Main Steam and Reactor Water sample line valves will have a negligible impact. The sample lines are routed to a sample sink where inlet valves installed on the sample lines are normally closed. Downstream of the inlet valves are needle valves designed to control and limit sample line flow. The sample sink is located in the Reactor Enclosure and is enclosed, and air vented from its exhaust hood is passed through filters prior to release to the environment. The Reactor Enclosure ventilation duct radiation monitor samples air from the sample sink hood exhaust, and will isolate the Reactor Enclosure ventilation system if the radiation levels exceed the monitor's setpoint. There is the potential that a minimal amount of radioactive material could be released to the environment through this flowpath if the sample sink inlet and needle valves failed to properly function. This potential release has been evaluated and determined to a small fraction of the dose limit requirements specified in 10CFR100.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The proposed TS changes to eliminate the MSLRM system high radiation trip function for initiating an automatic reactor scram and automatic closure of the MSIVs, Main Steam line drains valves, and Main Steam and Reactor Water sample line valves do not change the conclusion reached in the LGS Updated Final Safety Analysis Report (UFSAR) that the calculated radiological consequences of the bounding Design Basis Accident (i.e., CRDA) will not exceed the dose limit requirements established by 10 CFR 100. The proposed TS changes will improve the overall reliability of the plant when compared to the existing system lineup configuration, since it will reduce the potential of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure.

A reliability assessment analysis was performed to evaluate the effects of eliminating the MSLRM system high radiation reactor scram function on reactivity control failure frequency and core damage frequency in GE Topical Report NEDO-31400A. This analysis indicated that there is a negligible increase in reactivity control frequency with the elimination of the MSLRM trip function. However, this increase is compensated for by the reduction in transient initiating events (i.e., inadvertent reactor scrams). This reduction in transient initiating events represents a reduction in core damage frequency and thus, results in a net improvement in safety.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Docket Nos. 50-352 and 50-353, Limerick Generating Station, Units 1 and 2, Montgomery County, Pennsylvania

Date of amendment request: November 30, 1993

Description of amendment request: The amendment would extend the surveillance interval of the primary containment drywell-to-suppression chamber bypass leak test from the current 18-month interval as required by Technical Specification (TS) Surveillance Requirement 4.6.2.1.d to a 40 +/- 10-month interval. This change would allow the drywell-to-suppression chamber bypass test to coincide with the 10 CFR 50, Appendix J, Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)) interval.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed Technical Specifications (TS) changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The failure effects that are potentially created by the proposed Technical Specifications (TS) changes have been considered. The accident which is potentially negatively impacted by the proposed TS changes are any Loss of Coolant Accident (LOCA) inside primary containment with or without offsite power available.

The proposed TS changes increase the surveillance interval of the drywell-to-suppression chamber bypass leak test required by TS Section 4.6.2.1.d, and will require that an additional test be performed on the downcomer vacuum breakers assemblies. The primary containment structure and associated equipment are not considered to be accident initiators, they act to mitigate the consequences of an accident. There are no physical or operational changes being made as a result of these proposed changes. Therefore, the probability of occurrence of an accident previously evaluated is not increased.

There is a potential increased risk that an increase in the bypass leakage may go undetected for the duration of the proposed extension of the interval between the performance of the drywell-to-suppression chamber bypass leak test. However, as discussed below, the increased risk is considered to be negligible due to the design of the diaphragm structure and past test data. Therefore, we have concluded that the probability of bypass leakage exceeding the allowed value is not increased as a result of the proposed TS changes.

The proposed TS changes will extend the surveillance interval for the drywell-to-suppression chamber bypass leak test from 18 months to 40 +/− 10 months. These proposed changes would allow this test to be performed at the same interval as the 10CFR50, Appendix J, Type A test (i.e., Containment Integrated Leakage Rate Test (CILRT)). In addition, the proposed changes will add an additional surveillance requirement to be performed on the vacuum breaker assemblies during refueling outages when the drywell-to-suppression chamber bypass leak test is not required to be performed. The proposed TS changes do not increase the consequences of an accident previously evaluated. This is based on the evaluation summarized below that demonstrates that the overall impact, if any, on the plant containment integrity is negligible. Furthermore, the performance history for the previous LGS bypass leak tests does not indicate any time based failures. The proposed TS changes also include a change to the frequency of testing, if two consecutive tests fail, from once every nine (9) months to once every 24 months in order to coincide with the 24 month refueling cycle. This change has no impact on the consequences of an accident based on maintaining the original requirement to increase the frequency of testing if two consecutive bypass leak tests fail, and maintaining a TS requirement for the NRC to review the schedule for subsequent tests.

During a LOCA inside containment, potential leak paths between the drywell and suppression chamber airspace could result in excessive containment pressures, since the steam flow into the airspace would bypass the heat sink capabilities of the suppression pool. The containment pressure response to the postulated bypass leakage can be mitigated by manually actuating the suppression chamber sprays. Accordingly, since the sprays are manually actuated, an analysis was performed to show that the operator has sufficient time to initiate the sprays prior to exceeding the containment design pressure. This analysis is described in section 6.2.1.1.5 of the LGS Updated Final Safety Analysis Report (UFSAR). The analysis is based on a small break LOCA inside containment with a differential pressure between the drywell-to-suppression chamber equal to the static pressure due to downcomer submergence. The analysis concludes that the containment design pressure of 55 psig will be reached in over 30 minutes from the onset of a small break LOCA assuming a drywell-to-suppression chamber bypass flow area (i.e., A/square root of k) equal to 7.20 in² without operator intervention.

TS Limiting Condition for Operation 3.6.2.1.b conservatively specifies a maximum allowable bypass area of 10 % of the design value of 7.20 in². This TS limit provides an additional safety factor of 10 above the conservatism taken in the steam bypass analysis (i.e., 0.720 in²). The drywell-to-suppression chamber bypass leak test required by TS Surveillance Requirement 4.6.2.1.d verifies that the actual bypass flow area is less than or equal to the TS limit of 0.720 in². The bypass leakage test ensures that degradation in the measured bypass area is identified and corrected to ensure containment integrity during LOCA events.

The potential bypass leakage paths can be divided into two categories as described below.

1) Leakage pathways other than those associated with the drywell-to-suppression chamber vacuum breaker assemblies such as diaphragm floor penetrations (i.e., downcomer and Safety/Relief Valve (SRV) discharge line penetrations), cracks in the diaphragm floor and/or liner plate, and cracks in the downcomers and SRV discharge lines that pass through the suppression chamber airspace.

2) The four sets of drywell-to-suppression chamber vacuum breaker assemblies.

All other potential bypass leakage pathways have at least two isolation valves in the potential leakage path. These valves are high quality leak-tight containment isolation valves that are normally closed and receive an isolation signal to close. All Air Operated Valves (AOVs) in these paths fail closed.

Several plant design features and the bypass leak test data measured to date confirm that the leakage from other than the vacuum breaker assemblies is negligible and indicates that this leakage will continue to be negligible for the proposed increased duration between tests. All pressure boundary penetrations between the drywell and the suppression chamber are welded except the vacuum breaker valves and the blind flanges closing 10 spare nozzles in the downcomers. All pressure boundary penetrations between the drywell-to-suppression chamber have been fabricated, erected, and inspected in accordance with the American Society of Mechanical Engineers (ASME) Code, Section III, Subsection NC, 1971 Edition, with the exception of the tees supporting the vacuum breakers.

The downcomer and SRV discharge lines penetrate through the diaphragm slab and terminate in the suppression pool. A steel ring plate is welded to the outside of the downcomers. The downcomer/ring plate assemblies are embedded in the diaphragm slab with the top surface of the ring plate flush with the drywell side of the diaphragm slab. All connections are welded to form a continuous steel membrane between the liner plate and downcomer penetrations. The SRV discharge lines are routed through welded flued heads at the diaphragm floor. The flued head design and construction are similar to the downcomer penetrations and also provide a continuous steel barrier. The downcomer and SRV discharge lines are designed and constructed to safety-related requirements. In addition, they are designed for all postulated loading conditions, including seismic, hydrodynamic, pressure, and temperature loads. The conservative design requirements ensure that the SRV discharge and the downcomer lines will not contribute to bypass leakage.

The diaphragm floor is a reinforced concrete slab approximately 3.5 feet thick. The drywell side surface of the diaphragm slab is capped with a 1/4 inch thick carbon steel liner plate. The liner plate and diaphragm slab provide a barrier against the potential for bypass leakage through the diaphragm floor. The structural integrity of the diaphragm floor and penetrations was demonstrated during the pre-operational test program. The drywell was pressurized to a drywell-to-suppression chamber differential pressure of above 30 psid, which envelopes the maximum drywell-to-suppression chamber differential pressure postulated to occur during LOCA conditions.

There have been six Unit 1 and three Unit 2 bypass leak tests performed in accordance with TS Surveillance Requirement 4.6.2.1.d. These tests were conducted at a drywell-to-suppression chamber differential pressure of at least 4.0 psid. The measured leakage area includes leakage from both the vacuum breakers and sources other than vacuum breakers.

In all cases, the measured leakage is significantly less than the TS and design values. The maximum measured leakage areas are 0.0400 in² and 0.0111 in² for Unit 1 and Unit 2, respectively; or 5.56% and 1.55 %, respectively, of the TS limit. The average values are 0.0180 in² for Unit 1 and 0.0107 in² for Unit 2; or 2.5% and 1.49%, respectively, of the TS limit of 0.720 in². The minimum measured leakage areas are 0.0 in² and 0.0100 in² for Unit 1 and Unit 2, respectively, or 0% and 1.3 %, respectively, of the TS limit. Clearly, the test data confirm that the bypass leakage measured to date at LGS has been negligible.

In addition, we have obtained bypass leakage data from the Pennsylvania Power and Light Company, Susquehanna Steam Electric Station (SSES), Units 1 and 2, which also has Mark II containments with the Anderson Greenwood vacuum breakers (i.e., the same manufacturer as the vacuum breakers installed in the LGS, Unit 1 and Unit 2 containments) and therefore the data is applicable to LGS. The maximum bypass leakage area for the SSES Unit 1 containment was 0.037 in², and 0.009 in² for the SSES Unit 2 containment, or 4.81% and 1.17%, respectively, of the SSES TS limit. Approval for a similar TS change for SSES, Units 1 and 2 was issued by the NRC by letter dated August 11, 1993.

The remaining and most likely source of potential bypass leakage is the four sets of drywell-to-suppression chamber vacuum breakers. Each set consists of two vacuum breakers in series, flange mounted to a tee off the downcomers in the suppression chamber airspace. The drywell-to-suppression chamber bypass leak test is currently required by TS Surveillance requirement 4.6.2.1.d to be completed during each refueling outage and the results are used to verify that the total bypass area, including that due to the vacuum breakers, meets the TS limit. If maintenance has been performed on the vacuum breakers, this test also serves as a post-maintenance vacuum breakers leakage area test.

The proposed TS changes decrease the frequency of the drywell-to-suppression chamber bypass leak test. The drywell-to-suppression chamber bypass leak test data obtained following vacuum breakers maintenance cannot be utilized to determine vacuum breakers leakage reliability over the duration of the proposed test interval extension. To address this concern and collect additional vacuum breakers leakage data, the proposed TS changes include an additional requirement to perform a vacuum breaker leakage test as described below.

The leakage test will be conducted on each set of vacuum breakers (i.e., four vacuum breakers sets per unit) during each refueling outage when the drywell-to-suppression chamber bypass leak test would not be required to be performed. If maintenance is performed on the vacuum breaker assemblies, this additional test will be performed post-maintenance to verify that the leakage is acceptable. This test will be conducted at a drywell-to-suppression chamber differential pressure of 4.0 psid (i.e., the same as differential pressure required for the drywell-to-suppression chamber bypass leak test) by either pressurizing the drywell side of the vacuum breakers or inducing a vacuum on the suppression chamber side of the vacuum breakers. The acceptence criteria for the vacuum breaker leakage tests will be as follows. The total vacuum breaker leakage areas for all four sets of vacuum breakers will be less than or equal to 24% of the TS limit (i.e., 0.24 x 0.720 in² = 0.173 in²). This proposed acceptable vacuum breaker leakage area provides a 76% margin to the TS limit to account for the leakage paths other than the vacuum breakers. As described above, previous bypass leakage testing measured a maximum bypass leakage area of 5.56% of the TS limit. The 76% margin is sufficiently large to accommodate the other expected leakage sources. In addition, each set of vacuum breakers will be limited to a leakage area twice the assumed leakage from a single vacuum breaker set, assuming the leakage area is evenly distributed among the four sets of vacuum breakers (i.e., four sets equate to 24% of the TS Limit where each set is 6% and twice this total is 12% of the TS Limit). This allows a leakage of less than or equal to 0.0865 in² (i.e., (0.173 in² divided by 4 sets of vacuum breakers) x (a factor of 2 times the acceptable total) = 0.0865 in²) for an individual set of vacuum breakers. This criterion is stipulated to identify individual sets of vacuum breakers with higher leakage area.

The drywell-to-suppression chamber bypass leak test data obtained during previous testing at LGS demonstrates conformance by a large margin compared to the TS and design leakage requirements. The test data indicates that there is negligible risk that the bypass leakage will change adversely in future years. Furthermore, the proposed test frequency is judged to be acceptable based on the risk of the leakage sources other than the vacuum breakers being essentially equivalent to that of the rest of the primary containment structure, which is leak tested (i.e., CILRT) every 40 +/− 10 months as required by TS Surveillance Requirement 4.6.1.2.a. A bypass leak test will be developed and conducted to verify acceptable vacuum breaker bypass leakage areas for those outages when the bypass leak test will not be required to be performed. The proposed vacuum breaker leakage test with stringent acceptance criteria, combined with other negligible leakage areas, provide an acceptable level of assurance that the bypass leakage can be measured and an adverse condition can be detected and corrected such that the existing level of confidence that the primary containment will function as required during a LOCA is maintained.

Therefore, the proposed TS changes will not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed TS changes involve the drywell-to-suppression chamber bypass leak test frequency. There are no physical or operational changes as a result of these proposed changes. These proposed changes include the requirement to perform an additional surveillance test on the vacuum breaker assemblies, applying a differential pressure of 4.0 psid which is the same differential pressure as currently required by TS for the drywell-to-suppression chamber bypass leak test. This required test will ensure that acceptable vacuum breaker leakage is maintained during those intervals when the drywell-to-suppression chamber bypass leak test is not required to be performed. Furthermore, the affected structure (i.e., primary containment) acts as an accident mitigator and not as an accident initiator. Accordingly, the possibility of a different type of malfunction of equipment or the possibility of an accident of a different type is not introduced.

Therefore, the proposed TS changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed TS changes do not involve a significant reduction in a margin of safety.

The drywell-to-suppression chamber bypass leak test data obtained during previous testing at LGS demonstrates conformance by a large margin to the TS and design leakage requirements. The test data indicate that there is negligible risk that the bypass leakage will change adversely in future years. Furthermore, the proposed test frequency is judged to be acceptable based on the risk of sources of leakage other than the vacuum breakers being essentially equivalent to that of the rest of the primary containment structure, which is tested every 40 +/− 10 months. A bypass leak test will be developed and conducted to verify acceptable vacuum breaker bypass leakage areas for those outages when the bypass leak test will not be required to be performed. The proposed vacuum breaker leakage test with stringent acceptance criteria, combined with other negligible potential leakage areas, provide an acceptable level of assurance that the bypass leakage can be measured and an adverse condition can be detected and corrected such that the existing levels of confidence that the primary containment will function as required during a LOCA is maintained.

Therefore, the consequences of an accident are not impacted by this change and containment integrity during a LOCA will be maintained.

Therefore, the proposed TS changes do not involve a reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Larry E. Nicholson, Acting

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 17, 1993

Description of amendment request: The proposed Technical Specification (TS) changes to Surveillance Requirements would eliminate unnecessary emergency diesel generator (EDG) testing when a diesel generator or an offsite power source becomes inoperable. The proposed change would reduce the stresses on the diesel generators caused by unnecessary testing.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because implementation of the proposed TS change, which would delete the requirement to demonstrate the operability of an otherwise operable EDG once the potential for a common cause failure has been dismissed, does not affect the design or performance characteristics of an EDG. Similarly, deleting the requirement to demonstrate the operability of EDGs when an offsite power source is inoperable does not affect the design or performance characteristics of an EDG. Therefore, the EDGs will maintain their ability to perform their design function. The EDGs are not assumed to be an initiator of any analyzed event. The role of the EDGs is the mitigation of accident consequences. Therefore, this proposed TS change does not increase the probability of an accident previously evaluated.

The consequences of an accident previously evaluated could be affected by the proposed TS change. As described above, implementation of the proposed change will result in the EDGs maintaining their ability to perform their design function. Excessive testing of EDGs can cause reduced reliability. Precluding unnecessary testing of operable EDGs will improve EDG reliability and thereby have an overall positive affect on plant safety. Therefore, this proposed TS change does not increase the consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed TS change will not involve physical changes to plant systems, structures, or components (SSC). The design or performance characteristics of the EDG will not be affected by the proposed change. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints which would initiate a new or different kind of accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety because the proposed TS change does not affect the design or performance of any EDG. The change will increase EDG reliability by reducing the stresses on the EDG from unnecessary testing. This will result in an overall increase in plant safety. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: November 19, 1993

Description of amendment request: The proposed change would eliminate the listing of specific position titles for the Plant Operations Review Committee (PORC) composition in favor of allowing the Plant Manager to appoint PORC members. This would eliminate the need to change the Technical Specifications (TSs) in the future whenever a position title is changed.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the proposed TS change is administrative in nature. The PORC member titles will be removed from the TS to facilitate not requiring that a TS change be submitted for NRC approval when position titles change. PORC member qualifications will continue to be consistent with those required for the Facility Staff and meet or exceed Sections 4.2, 4.4, or 4.6 of ANSI N18.1-1971. The proposed change ensures that PORC will continue to be comprised of personnel involved in daily plant activities who are experienced individuals with varied expertise. By maintaining the qualification requirements for members of PORC who represent various areas of expertise, PORC will continue to fulfill its requirements specified in TS Section 6.5.1.6. The proposed change does not involve any physical changes to plant systems, structures, or components (SSC), or the manner in which these SSC are operated, maintained, modified, tested, or inspected. Therefore, the proposed TS change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because implementation of the proposed TS change will not involve physical changes to plant SSC or the manner in which these SSC are operated, maintained, modified, tested or inspected. The proposed change does not introduce any new modes of plant operation or make any changes to system setpoints which would initiate a new or different kind of accident. Therefore, the possibility of a new or different kind of accident from any accident previously evaluated is not created.

3. The proposed change does not involve a significant reduction in a margin of safety because the proposed TS change is administrative in nature by providing internal flexibility in changing organizational titles and does not reduce the PORC function or responsibilities. PORC will continue to be filled by appropriately qualified personnel who have a variety of expertise. The change does not affect the plant material condition, operation, or accident analyses. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: J. W. Durham, Sr., Esquire, Sr. V. P. and General Counsel, Philadelphia Electric Company, 2301 Market Street, Philadelphia, Pennsylvania 19101

NRC Project Director: Charles L. Miller

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: November 24, 1993

Description of amendments request. The proposed changes to the Technical Specification will relocate the reactor trip system and engineered safety feature actuation system response time limits from the TS to the Final Safety Analysis Report.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Also, the proposed changes do not alter the conditions or assumptions in any of the FSAR accident analyses. Since the FSAR accident analyses remain bounding, the radiological consequences previously evaluated are not adversely affected by the proposed changes. Therefore, the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes are administrative in nature and do not involve any change to the configuration or method of operation of any plant equipment used to mitigate the consequences of an accident. Accordingly, no new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes are administrative in nature and will continue to ensure that the response times for the RTS and ESFAS instrumentation do not exceed the limits assumed in the accident analyses. As a result of the proposed changes, response time limits for the RTS and ESFAS will be administratively controlled in accordance with the provisions of 10 CFR 50.59, thus eliminating an unnecessary burden of governmental regulation without reducing protection for public health and safety. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: September 30, 1993 (TS 337)

Description of amendment request: The proposed amendments provide an administrative vehicle for modifying a condition of the facility operating license for each of the BFN units. The condition requires the licensee to implement and maintain in effect all provisions of the "Fire Protection Program (FPP)" and lists the U.S. Nuclear Regulatory Commission (NRC) staff safety evaluations (SE) approving the FPP. If the staff approves of a revision currently under review to an element of the FPP, the "Appendix R Safe Shutdown Program (SSP)", the proposed amendments would add the staff SE documenting approval of the revised SSP to the above listing of SEs in each facility operating license. The current SSP is directed toward the safe shutdown of only one operating plant (Unit 2). The revised SSP would be directed toward the safe shutdown of two operating plants (Units 2 and 3).

Additionally, the proposed amendments add the definition of the SSP to Section 1.0 of the Unit 3 Technical Specifications (TS).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

This proposed change is administrative in nature. The proposed change is being made to revise the license condition to reflect a combined Unit 2 and 3 Appendix R Safe Shutdown Program following NRC approval. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and the Appendix R Safe Shutdown Program. The change does not affect any design bases accident or the ability of any safe shutdown equipment to perform its function. Also, there are no physical modifications required to implement this TS change. Therefore, these proposed administrative changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change is administrative in nature. The proposed change is being made to revise the license condition to reflect a combined Unit 2 and 3 Safe Shutdown Program following NRC approval. Compliance with the applicable Appendix R requirements is ensured through implementation of the Fire Protection Program and Appendix R Safe Shutdown Program. This change does not affect any design basis accident or the ability of any safe shutdown equipment to perform its function. Also, there are no physical modifications required to implement this TS change. Therefore, these proposed administrative changes do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. This change does not involve a significant reduction in the margin of safety.

The proposed changes are administrative in nature. Compliance with the applicable Appendix R requirements is ensured through the implementation of the Fire Protection Program and Appendix R Safe Shutdown Program. The proposed change does not affect any design basis accident and does not reduce or adversely affect the capability to achieve and maintain safe shutdown in the event of a fire. Furthermore, no reductions to the requirements for equipment operability, surveillance requirements or setpoints are being made which could result in reduction in the margin of safety. Therefore, these proposed administrative changes will not result in a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Tennessee Valley Authority (TVA), Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant (BFN), Units 1, 2, and 3, Limestone County, Alabama

Date of amendment request: October 12, 1993 (TS 320)

Description of amendment request: The proposed amendment would delete reference in the BFN Unit 3 Technical Specifications (TS) to the Reactor Water Cleanup (RWCU) system floor drain high temperature switches and the RWCU system space high temperature switches. The piping configuration for the Unit 3 RWCU system has been modified, and the licensee contends that its revised High Energy Line Break (HELB) analysis has demonstrated that these switches are no longer required. Instead, to initiate RWCU system isolation, the HELB analysis has indicated the need for temperature switches in the main steam vault, the heat exchanger room, and the RWCU pipe trench. The proposed amendment therefore would add temperature switches to the Unit 3 TS for these areas and modify the TS Bases section accordingly. The proposed amendment also adds clarifying remarks to Tables 3.2.A and 3.2.B of the TS for each of the BFN units. The proposed remarks list the actuation signals for the various primary containment valve group isolations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

An analysis of HELBs in the Unit 3 reactor building identified certain RWCU pipe breaks which could not be automatically detected and isolated in a reasonable time frame. To resolve this issue, a design change is being performed to remove from service the existing non-environmentally qualified temperature switches used to detect RWCU line breaks and replace them with environmentally qualified RTDs [resistance temperature detectors] and IEEE [Institute of Electrical and Electronics Engineers] Class 1E qualified ATUs [analog trip units] located to detect and isolate the critical RWCU pipe breaks. This TS amendment adds the new ATUs [sic] function to Tables 3.2.A and 4.2.A. Note 14 is deleted from Table 3.2.A since it only applies to the temperature switches being removed from the table.

The safety function of the RTD/ATU temperature loops is to provide an isolation signal to close the RWCU suction line isolation valves (FCV-69-001 and FCV-69-002) and RWCU return line valve (FCV-69-012) on a high area temperature. This ensures RWCU pipe breaks are isolated. No other RWCU safety functions are affected by the change.

The new RTD/ATU temperature loops were chosen to decrease the time required to initiate closure of the RWCU valves. This improves the detection/isolation of RWCU breaks and helps to limit the reactor coolant lost, helps ensure core cooling, and helps ensure that environmental conditions inside the reactor building are maintained within the required limits.

Components added by this change are qualified for the environment in which they will operate. This ensures that the system will perform its function in a post accident environment. No additional paths for the release of radiation or contamination are created. The failure modes of the RTDs and ATUs are such that any single failure will result in a gross failure alarm and/or a channel trip. Because of the redundancy, separations, and logic designed into the system, a single failure of any part of the system will not prevent isolation of the primary containment isolation valves and spurious operation is minimized. The RTDs will be located and the instrument setpoints will be set to preclude spurious trips due to ambient temperatures including localized hot areas while assuring a timely trip due to a pipe break. Therefore, the proposed amendment does not involve a significant increase in the probability or consequences of any accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

This change is being made to improve the RWCU leak detection/isolation function of the RWCU Primary Containment Isolation System (PCIS). The PCIS will perform its intended safety function in the same manner as the previous installation. There is no affect [sic] on the function or operation of any other plant system.

Failure of the RTD/ATU temperature loops would be no different than failure of existing temperature switches. Since environmental qualification requirements, divisional separation, single failure requirements and one-out-of-two taken twice logic requirements are maintained, the possibility of a RWCU isolation failure on a RWCU line break or of a spurious isolation is no more likely after the change than before.

In the existing design, logic relays are powered from RPS Bus A or B. The new design also uses RPS Bus A or B to feed the ATUs. Therefore, the consequence of a power failure is unchanged from the present design. The seismic qualification and proper circuit coordination of the installation is maintained. The system functions and operates in the same manner as previously evaluated in the Safety Analysis Report. No new system interactions other than additional RTDs located in the main steam valve vault to input into the PCIS logic for isolation of the RWCU have been introduced by this activity. Therefore, the proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The margin of safety will be enhanced by installing instruments that provide quicker response to a temperature rise indicative of a pipe break. Calculations have been performed to determine the analytical limits for the RTD/ATU temperature loops in each of the monitored areas and to determine the setpoints for the ATUs in each area. The setpoints are set above the maximum expected room temperatures to avoid spurious actuations due to ambient conditions and below the analytical limits to ensure timely detection of a pipe break. This type of design utilizing ATUs has been analyzed by the NRC (U.S. Nuclear Regulatory Commission staff) (NEDO-21617, Analog Transmitter/Trip Unit System for Engineered Safeguard Sensor Trip Input) and has been found to be generically acceptable at BWR facilities. Therefore, the proposed amendment does not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Mr. Frederick J. Hebdon

Virginia Electric and Power Company, Docket Nos. 50-338 and 50-339, North Anna Power Station, Units No. 1 and No. 2, Louisa County, Virginia

Date of amendment request: December 10, 1993

Description of amendment request: The proposed change would change the Technical Specifications (TS) for the North Anna Power Station, Units No. 1 and No. 2 (NA-1&2).

Specifically, the proposed changes would modify the surveillance frequency of the Auxiliary Feedwater System pumps from monthly to quarterly in accordance with the guidance provided in Generic Letter 93-05, "Line-Item Technical Specifications Improvements to Reduce Surveillance Requirements for Testing During Power Operation," dated September 27, 1993.

The NRC has completed a comprehensive examination of surveillance requirements in TS that require testing at power. The evaluation is documented in NUREG-1366, "Improvements to Technical Specification Surveillance Requirements," dated December 1992. The NRC staff found, that while the majority of testing at power is important, safety can be improved, equipment degradation decreased, and an unnecessary burden on personnel resources eliminated by reducing the amount of testing at power that is required by TS. Based on the results of the evaluations documented in NUREG 1366, the NRC issued Generic Letter 93-05.

The Auxiliary Feedwater System supplies water to the steam generators to remove decay heat from the Reactor Coolant System. To ensure operability of the Auxiliary Feedwater System, the pumps are currently tested on a monthly basis as required by the TS. Consistent with Generic Letter 93-05, Item 9.1 and NUREG-1366, the licensee is requesting a change to the surveillance testing frequency for the Auxiliary Feedwater Pumps from monthly to quarterly on a staggered test basis.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Specifically, operation of North Anna Power Station in accordance with the proposed Technical Specifications changes will not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated.

Changing the surveillance test frequencies of the Auxiliary Feedwater System pumps does not significantly affect the probability of occurrence or consequences of any previously evaluated accidents. Quarterly testing of the pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended functions. Therefore, the change in frequency of testing the Auxiliary Feedwater System pumps does not affect the probability or consequences of any previously analyzed accident.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

Changing the surveillance test frequency of the Auxiliary Feedwater System pumps does not involve any physical modification of the plant or result in a change in a method of operation. Quarterly testing of the Auxiliary Feedwater System pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended function. Therefore, a new or different type of accident is not made possible.

3. Involve a significant reduction in a margin of safety.

Changing the surveillance test frequency of the Auxiliary Feedwater System pumps does not affect any safety limits or limiting safety system settings. System operating parameters are unaffected. The availability of equipment required to mitigate or assess the consequence of an accident is not reduced. Quarterly testing of the Auxiliary Feedwater System pumps on a staggered basis will continue to assure that the Auxiliary Feedwater System will be capable of performing its intended functions. Safety margins are, therefore, not decreased.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: The Alderman Library, Special Collections Department, University of Virginia, Charlottesville, Virginia 22903-2498.

Attorney for licensee: Michael W. Maupin, Esq., Hunton and Williams, Riverfront Plaza, East Tower, 951 E. Byrd Street, Richmond, Virginia 23219.

NRC Project Director: Herbert N. Berkow

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of application for amendment: October 5, 1993

Brief description of amendment: The proposed change to the Technical Specifications would revise the wording of liquid release rate limit and its associated bases, and relocate the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 to be consistent with the revised terminology of 10 CFR Part 20. The new wording will retain the same overall level of effluent control required to meet the design objectives of Appendix I to 10 CFR Part 50.

Date of issuance: December 14, 1993

Effective date: December 14, 1993

Amendment No.: 40

Facility Operating License No. NPF-63. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59746) The Commission's related evaluation of the amendment is

contained in a Safety Evaluation dated December 14, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: August 5, 1992

Brief description of amendments: The amendment revises the Braidwood Station, Units 1 and 2, Technical Specifications (TS) regarding Engineered Safety Features Actuation System (ESFAS) instrumentation. The ESFAS, Functional Units, Analog Channel Operational Test interval is changed from monthly to quarterly. Eighteen changes to the Reactor Trip System (RTS) are also included in this TS change.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 44 and 44

Facility Operating License Nos. NPF-72 and NPF-77. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48816) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of application for amendments: October 29, 1993

Brief description of amendments: The amendments revise Table 3.6.3-1, "Primary Containment Isolation Valves," of the LaSalle Technical Specifications for Units 1 and 2 by adding a new category of valves to these tables. There are a total of eight new valves added in each table, consisting of two check valves in each of four backfill lines. The backfill lines were added in response to NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993.

Date of issuance: December 10, 1993

Effective date: December 10, 1993

Amendment Nos.: 92 and 76

Facility Operating License Nos. NPF-11 and NPF-18. The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 9, 1993 (58 FR 59493). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of application for amendment: November 25, 1992, as supplemented by letter dated February 5, 1993.

Brief description of amendment: The amendment revises surveillance intervals for Process Radiation Monitors, Area Radiation Monitors, the Main Steam Line Radiation Monitors, the Auxiliary Feedwater System Initiating Logic, the Main Steam Safety Valves Setpoints, and the Toxic Gas Detection System Monitors to accommodate a 24-month refueling cycle. These revisions are being made in accordance with the guidance provided by Generic Letter 91-04, "Changes in Technical Specification Surveillance Intervals to Accommodate a 24-Month Fuel Cycle."

Date of issuance: December 16, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-26: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16219) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 5, 1993, as supplemented November 15 and 22, 1993

Brief description of amendments: The amendments revise the Technical Specifications to reflect the appropriate operability requirements for cold leg accumulator water volume and surveillance requirements values for the centrifugal changing pumps, safety injection pumps, and residual heat removal pumps to prevent possible runout conditions during a loss of coolant accident event.

Date of issuance: December 15, 1993

Effective date: December 15, 1993

Amendment Nos.: 110 and 104

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57848) The November 15 and 22, 1993, letters provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 5 and 14, 1993, as supplemented November 15 and December 14, 1993

Brief description of amendments: The amendments revise the Technical Specifications to allow the implementation of interim steam generator tube plugging criteria for the tube support plate elevations.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 111 and 105

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57849) The November 15 and December 14, 1993, letters provided clarifying information and revisions to the coolant specific activity that did not change the scope of the original application and did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: September 7, 1993

Brief description of amendments: The amendments revise the Technical Specification to (a) reduce the slope of the axial power imbalance penalty in the overtemperature-delta temperature reactor protection system trip setpoint equation, and (b) increase the boron concentration limits in the cold leg accumulators, the refueling water storage tank, the reactor coolant system, and refueling canal during MODE 6 conditions. These changes reflect the reloading of Unit 1 with Mark BW fuel for Cycle 8 including an increase in cycle length from 350 effective full power days (EFPD) to 390 EFPD.

Date of issuance: December 17, 1993

Effective date: December 17, 1993

Amendment Nos.: 112 and 106

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 27, 1993 (58 FR 57847) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: October 25, 1993, as supplemented December 3 and 6, 1993

Brief description of amendments: The amendments revise the Technical Specifications (TS) Figure 2.1-1, certain TS Table 2.2-1 factors in the equation for the OVERTEMPERATURE delta T and OVERPOWER delta T setpoints, and Figure 3.2-1 to reflect a reduction in the required minimum measured reactor coolant system (RCS) flow rate from 385,000 gallons per minute (gpm) to 382,000 gpm for Unit 1. Catawba Unit 2 values are unchanged and, accordingly, certain TS pages were modified to retain the current TS values in effect for Unit 2.

The need for these changes is attributed to the effects of steam generator tube plugging and to a hot leg temperature streaming phenomenon. The application also proposed to revise the text of TS 2.1.1 and the definition for TS Figure 2.1-1. These changes are not related to the changes in RCS flow rate. The staff is continuing to review these proposed changes and, accordingly, they are not dealt with in this amendment.

Date of issuance: December 17, 1993

Effective date: Effective within 30 days of its date of issuance.

Amendment Nos.: 113 and 107

Facility Operating License Nos. NPF-35 and NPF-52: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59747) The December 3 and 6, 1993, letters provided clarifying information that did not change the scope of the October 25, 1993, application and the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Entergy Operations, Inc., System Energy Resources, Inc., South Mississippi Electric Power Association, and Mississippi Power & Light Company, Docket No. 50-416, Grand Gulf Nuclear Station, Unit 1, Claiborne County, Mississippi

Date of application for amendment: May 20, 1993

Brief description of amendment: The amendment removed unnecessary operability requirements for the Intermediate Range Monitors (IRMs) and the Average Power Range Monitors (APRMs) during plant shutdown operations.

Date of issuance: December 13, 1993

Effective date: December 13, 1993

Amendment No: 109

Facility Operating License No. NPF-29. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34077) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: July 23, 1993

Brief description of amendments: The amendments are necessary to implement new Standards for Protection Against Radiation (10 CFR Part 20).

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos.: 125, 63

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46234) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 8, 1993

Brief description of amendment: The amendment deletes portions of the Oyster Creek Nuclear Generating Station Radiological Effluent Technical Specifications and relocates them to controlled programs in accordance with the guidance contained in NRC Generic Letter 89-01, dated January 31, 1989.

Date of issuance: December 13, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 166

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59749) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753.

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of application for amendment: October 18, 1993

Brief description of amendment: The amendment revises the Technical Specifications to delete requirements to demonstrate by testing, that a redundant system/component is operable when a system/component is declared inoperable. In lieu of testing the redundant system/component to demonstrate its operability the Technical Specifications are being revised to require an administrative check of plant records to verify operability of the redundant system/component. Confirming changes are made to Definition 1.1 "Operable-Operability."

Date of issuance: December 21, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 167

Facility Operating License No. DPR-16. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59749) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1993. No significant hazards consideration comments received: Yes. Comments were provided by letter dated December 10, 1993, from the State of New Jersey, Department of Environmental Protection and Energy, Division of Environmental Safety, Health and Analytical Programs. The comments and the NRC staff's response are addressed in the Commission's Safety Evaluation dated December 21, 1993.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: September 20, 1993, as supplemented on October 1, 1993.

Brief description of amendment: The amendment revises the plant Technical Specifications to reflect a partial GPU Nuclear reorganization to become effective when Three Mile Island, Unit 2 (TMI-2), enters the Post-Defueling Monitored Storage (PDMS) mode. This reorganization includes deleting TMI-2 as a Division and incorporating those functions and responsibilities required to maintain the PDMS condition and requirements into the current TMI-1 Division. The TMI-1 Division will be renamed the TMI Division.

Date of issuance: December 13, 1993

Effective date: No specific date has been specified by the staff for the effectiveness of this amendment. The amendment will become fully effective at such time as the Vice President - TMI has been delegated the full responsibility of the overall safe operation of both TMI-1 and TMI-2.

Amendment No.: 179

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 13, 1993 (58 FR 52987). The October 1, 1993, submittal provided clarifying and corrected TS pages which did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: August 9, 1993

Brief description of amendment: The amendment revises the plant Technical Specifications to be consistent with a major revision to 10 CFR Part 20 that is to be implemented by January 1, 1994.

Date of issuance: December 21, 1993

Effective date: As of the date of issuance to be implemented on January 1, 1994.

Amendment No.: 180

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of application for amendment: August 24, 1993.

Brief description of amendment: The amendment revises the plant Technical Specifications to adopt the Standard Technical Specification (STS) provision that allows a period up to 24 hours to complete a surveillance requirement upon the discovery that the surveillance has been missed.

Date of issuance: December 22, 1993

Effective date: As of its date of issuance, to be implemented within 30 days of issuance.

Amendment No.: 181

Facility Operating License No. DPR-50. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 10, 1993 (58 FR 59751). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Gulf States Utilities Company and Cajun Electric Power Cooperative, Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated October 18, 1993.

Brief description of amendment: The amendment revises the River Bend, Unit 1 operating license to reflect a change in ownership of Gulf States Utilities (GSU). GSU, which owns a 70 percent undivided interest in the River Bend Station, will become a wholly-owned subsidiary company of Entergy Corporation.

Date of issuance: December 16, 1993

Effective date: December 6, 1993, to be implemented within 180 days of issuance.

Amendment No.: Amendment No. 69

Facility Operating License No. NPF-47: The amendment revised the license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36435) The October 18, 1993, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: Yes. Comments and a request for hearing were received from Cajun Electric Power Cooperative of Baton Rouge, Louisiana.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Gulf States Utilities Company, Cajun Electric Power Cooperative, and Entergy Operations, Inc., Docket No. 50-458, River Bend Station, Unit 1, West Feliciana Parish, Louisiana

Date of amendment request: January 13, 1993, as supplemented by letter dated June 29, 1993.

Brief description of amendment: The amendment revises the River Bend Station, Unit 1 operating license to include as a licensee, Entergy Operations, Inc. (EOI), and to authorize EOI to use and operate River Bend and to possess and use related licensed nuclear materials.

Date of issuance: December 16, 1993

Effective date: December 16, 1993 to be implemented within 180 days of issuance.

Amendment No.: 70

Facility Operating License No. NPF-47: The amendment revised the license.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36436) The June 29, 1993, supplemental letter provided additional clarifying information and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: Yes. Comments and a request for hearing were received from Cajun Electric Power Cooperative of Baton Rouge, Louisiana.

Local Public Document Room location: Government Documents Department, Louisiana State University, Baton Rouge, Louisiana 70803

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: June 18, 1993

Brief description of amendment: The proposed changes to Technical Specifications 6.2.3.1, "Independent Safety Engineering Group (ISEG) Function;" 6.2.3.4, "ISEG Records;" 6.4.1, "Training;" and 6.5.2.2, "Nuclear Review and Audit Group (NRAG) Composition" are editorial changes reflecting recent administrative/organizational changes which occurred at Clinton Power Station.

Date of issuance: November 29, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 86

Facility Operating License No. NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43927) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 29, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library District, 310 N. Quincy Street, Clinton, Illinois 61727

Indiana Michigan Power Company, Docket No. 50-316, Donald C. Cook Nuclear Plant, Unit No. 2, Berrien County, Michigan

Date of application for amendment: April 16, 1993, as supplemented September 28 and December 3, 1993

Brief description of amendment: The amendment revises Technical Specifications to allow certain tests normally designated as 18-month surveillances to be delayed until the next refueling outage scheduled to begin August 6, 1994.

Date of issuance: December 22, 1993

Effective date: December 22, 1993

Amendment No.: 158

Facility Operating License No. DPR-74. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41505) The supplemental letters provided clarifying information which did not change the staff's initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Maud Preston Palenske Memorial Library, 500 Market Street, St. Joseph, Michigan 49085.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: June 7, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 3/4.8.1, "AC Sources-Operating," and associated Bases to eliminate unnecessary diesel generator testing when a diesel generator or an offsite power source becomes inoperable. The amendment is intended to increase diesel generator reliability and the overall level of plant safety by reducing the stresses on the diesel generators caused by unnecessary testing. The amendment also makes additional changes to TS 3/4.8.1 to further enhance diesel generator reliability and incorporate certain administrative changes.

Date of issuance: December 15, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 54

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36440) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 15, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of amendment request: November 11, 1992, as supplemented by letters dated July 2, 1993, and November 24, 1993.

Description of amendment request: The amendment modifies the Seabrook Station Technical Specifications to allow the use of either the fixed incore detector system or the movable incore detector system to perform technical specification surveillances. Specifically, the amendment modifies Technical Specification sections 3.1.3, 4.2.2, 4.2.3, 4.2.4, and 3.3.3.

Date of issuance: December 22, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 27

Facility Operating License No. NPF-86. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 7002). The licensee's letters dated July 2, 1993, and November 24, 1993, provide additional information and clarification to the application but do not change the initial proposed no significant hazards

consideration determination and do not provide information outside the scope of the original Federal Register notice. The licensee's November 24, 1993, letter provides a commitment to acquire, through the end of Cycle 4, a limited number of flux maps using the movable incore detector system for comparison to flux maps obtained using the fixed incore detector system. Additionally, the licensee committed to provide a report to the NRC at the end of Cycle 4 regarding comparison of the data obtained from both systems. The NRC's approval of the requested TS changes is conditioned upon the licensee's implementing the commitment. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 22, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: March 19, 1993

Brief description of amendment: The amendment revises the Technical Specifications (TS) to reflect staff positions and improvements to the TS in response to Generic Letter 90-06, "Resolution of Generic Issue 70, 'Power-Operated Relief Valve and Block Valve Reliability, and Generic Issue 94, 'Additional Low-Temperature Overpressure Protection for Light Water Reactors.'" Generic Issue 94 was closed out by Amendment 80 dated July 12, 1993. With the issuance of this TS amendment, we consider the licensee's response to Generic Letter 90-06 and Generic Issue 70 (TAC No. M77362) complete for the Millstone Nuclear Power Station, Unit No. 3.

Date of issuance: December 16, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 88

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32388) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resource Center, Three Rivers Community Technical College, Thames Valley Campus, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: July 21, 1993

Brief description of amendment: The amendment revised the Technical Specifications to modify the requirement for acquisition of baseline data on single-loop operation from during startup testing following each refueling outage to at least once per 18 months.

Date of issuance: December 10, 1993

Effective date: December 10, 1993

Amendment No.: 131

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41509) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 10, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Portland General Electric Company, et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of application for amendment: April 1, 1993 as supplemented June 9 and August 5, 1993.

Brief description of amendment: This amendment relocates the Radiological Effluent Technical Specifications (RETS) to the Offsite Dose Calculation Manual (ODCM) and Process Control Program (PCP) in accordance with NRC staff Generic Letter 89-01, and changes the required frequency for submittal of the radioactive Effluent Release Report from semiannual to annual in accordance with 10 CFR 50.36(a).

Date of issuance: December 6, 1993

Effective date: 30 days from date of issuance

Amendment No.: 193

Facility Operating License No. NPF-1: The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36442) The supplements proposed additional changes and clarification to the TS regarding the frequency of effluent reporting. The changes were within the scope of the action described in the notice and did not change the initial no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 6, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Branford Price Millar Library, Portland State University, 934 S.W. Harrison Street, P.O. Box 1151, Portland, Oregon 97207

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of application for amendment: September 25, 1992

Brief description of amendment: The amendment to the Technical Specifications (TSs) deletes the surveillance requirements for the iodine analyzer portion of the drywell atmosphere Continuous Atmosphere Monitoring system from TS Table 4.6-2 and makes accompanying changes to TS Bases Section 3.6/4.6.D. These changes are consistent with the guidance in Regulatory Guide 1.45, "Reactor Coolant Boundary Leakage Detection Systems."

Date of issuance: December 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 200

Facility Operating License No. DPR-59: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16229) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 9, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: May 26, 1992

Brief description of amendments: These amendments increase the shutdown margin requirements for the current operating cycle at both units; reduce the containment pressure high-high setpoint and allowable value; and change the containment spray system, containment fan cooler and service water system response times. These changes were necessitated by the discovery of containment fan cooler unit and containment spray system response

times greater than originally assumed for Loss of Coolant Accident (LOCA) or Main Steam Line Break (MSLB) analysis, and auxiliary feedwater system flow greater than assumed for the MSLB analysis.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment Nos. 149 and 127

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 19, 1992 (57 FR 37571) The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: June 28, 1991

Brief description of amendment: The amendment revised Technical Specification 3.5.1 to add a required action to periodically monitor alternative indication if one or both automatic depressurization system (ADS) safety related instrument air header(s) low pressure alarm system instrumentation channels become inoperable.

Date of issuance: December 13, 1993

Effective date: December 13, 1993

Amendment No.: 52

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 7, 1991 (56 FR 37590) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 13, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081

The Cleveland Electric Illuminating Company, Centerior Service Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, Toledo Edison Company, Docket No. 50-440, Perry Nuclear Power Plant, Unit No. 1, Lake County, Ohio

Date of application for amendment: March 19, 1991

Brief description of amendment: The amendment revised Technical Specification Table 3.3.3-1 to make the required actions for the automatic depressurization system (ADS) consistent with the as-built configuration of the system. An editorial change to Action statement 32 was added to this amendment to make Action statement 32 consistent with Action statements 30 and 33.

Date of issuance: December 17, 1993

Effective date: December 17, 1993

Amendment No.: 53

Facility Operating License No. NPF-58. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 15, 1991 (56 FR 22480) Additional clarifying information was provided verbally by the utility on November 5, 1993, that did not change the initial proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 17, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Toledo Edison Company, Centerior Service Company, and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: November 9, 1992 as supplemented on November 22, 1993

Brief description of amendment: The amendment revises the Technical Specifications to allow the de-energization of the borated water storage tank outlet isolation valves in the open position during operational Modes 1, 2, 3, and 4.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment No. 182

Facility Operating License No. NPF-3. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28061) The supplemental letter provided additional information that did not change the proposed no significant hazards consideration determination. The Commission's related evaluation of the amendment is contained in a safety evaluation dated December 16, 1993. No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: August 1, 1991

Brief description of amendment: The amendment revises the Technical Specification Sections 3.3.3.6, 3.6.4.1, 4.11.2.5, 6.2.2, and Tables 3.3-4 and 3.3-10 to correct typographical errors and make editorial changes.

Date of issuance: December 21, 1993

Effective date: December 21, 1993

Amendment No.: 86

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 18, 1991 (56 FR 47244) The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated December 21, 1993. No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Notice of Issuance of Amendments to Facility Operating Licenses and Final Determination of No Significant Hazards Consideration and Opportunity For a Hearing (Exigent Public Announcement or Emergency Circumstances)

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Because of exigent or emergency circumstances associated with the date the amendment was needed, there was

not time for the Commission to publish, for public comment before issuance, its usual 30-day Notice of Consideration of Issuance of Amendment, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing.

For exigent circumstances, the Commission has either issued a Federal Register notice providing opportunity for public comment or has used local media to provide notice to the public in the area surrounding a licensee's facility of the licensee's application and of the Commission's proposed determination of no significant hazards consideration. The Commission has provided a reasonable opportunity for the public to comment, using its best efforts to make available to the public means of communication for the public to respond quickly, and in the case of telephone comments, the comments have been recorded or transcribed as appropriate and the licensee has been informed of the public comments.

In circumstances where failure to act in a timely way would have resulted, for example, in derating or shutdown of a nuclear power plant or in prevention of either resumption of operation or of increase in power output up to the plant's licensed power level, the Commission may not have had an opportunity to provide for public comment on its no significant hazards consideration determination. In such case, the license amendment has been issued without opportunity for comment. If there has been some time for public comment but less than 30 days, the Commission may provide an opportunity for public comment. If comments have been requested, it is so stated. In either event, the State has been consulted by telephone whenever possible.

Under its regulations, the Commission may issue and make an amendment immediately effective, notwithstanding the pendency before it of a request for a hearing from any person, in advance of the holding and completion of any required hearing, where it has determined that no significant hazards consideration is involved.

The Commission has applied the standards of 10 CFR 50.92 and has made a final determination that the amendment involves no significant hazards consideration. The basis for this determination is contained in the documents related to this action. Accordingly, the amendments have been issued and made effective as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the application for amendment, (2) the amendment to Facility Operating License, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment, as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

The Commission is also offering an opportunity for a hearing with respect to the issuance of the amendment. By February 4, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses. Since the Commission has made a final determination that the amendment involves no significant hazards consideration, if a hearing is requested, it will not stay the effectiveness of the amendment. Any hearing held would take place while the amendment is in effect.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to (Project Director): petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

Commonwealth Edison Company, Docket No. STN 50-456, Braidwood Station, Unit 1, Will County, Illinois

Date of application for amendment: November 12, 1993, as supplemented by letters dated November 18 and December 6, 1993

Brief description of amendment: The amendment changes the existing technical specifications (TS) by adding a footnote to TS 4.4.5.0 to address steam generator (SG) operability requirements. The change references an unscheduled inspection of the 1C SG which occurred due to a tube leak in that SG. The amendment was required because the circumstances of the inspection were not covered by the existing TS 3/4.4.5. It will allow SG operability requirements to be satisfied until the next SG inservice inspection, scheduled to begin no later than March 5, 1993.

Date of issuance: December 16, 1993

Effective date: December 16, 1993

Amendment No.: 43

Facility Operating License No. NPF-72. The amendment revised the Technical Specifications. Public comments requested as to proposed no significant hazards consideration: No. The Commission's related evaluation of the amendment, finding of emergency circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated December 16, 1993.

Attorney for licensee: Michael L Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

Local Public Document Room location: Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

NRC Project Director: James E. Dyer

Dated at Rockville, Maryland, this 28th of December 1993.

For the Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects - III/IV/V, Office of Nuclear Reactor Regulation

[Doc. 94-53 Filed 1-4-94; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33401; File No. SR-CHX-93-29]

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Order Granting Accelerated Approval to Proposed Rule Change Relating to Extended Trading Hours for the Chicago Stock Basket

December 29, 1993.

On October 27, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to extend the trading hours for the Chicago Stock Basket ("CXM").

The proposed rule change was published for comment in Securities Exchange Act Release No. 33241 (November 23, 1993), 58 FR 63407 (December 1, 1993). No comments were received on the proposal.

The CHX's primary trading session, including trading of the CXM, currently ends at 3 Central time (4 Eastern time).[3] The CXM is a standardized basket product consisting of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's ("Merc") "MMI" futures contract. That contract is based on the American Stock Exchange's ("Amex") Major Market Index ("MMI"), a broad-based price-weighted index of twenty stocks listed on the New York Stock Exchange ("NYSE").[4]

The Exchange proposes to extend the hours for trading the CXM until 3:15 Central time (4:15 Eastern time). This proposal will make the trading hours of the CXM consistent with the trading hours of derivative products that are based on the same index as the CXM and other derivative products that could be used as a hedge against the CXM. According to the Exchange, similar trading hours should provide risk management benefits when trading the CXM.

The Exchange states that the proposed rule change is consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).[5] In particular, the Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

In recent years, concerns have been raised about the role that index-related trading strategies (e.g., use of the equity cash market to hedge positions in stock index futures and options contracts) played in increasing market volatility.[6] As a result, the Commission has, among other things, encouraged the national securities exchanges to list and trade standardized baskets of stocks.[7] The

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See Article IX, Rule 10 of the CHX Rules.

[4] For further discussion of the terms of the CXM contract and the market structure for trading the CXM, see Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR-CHX-93-18) ("CXM Approval Order").

[5] 15 U.S.C. 78f(b) (1988).

[6] See, e.g., SEC, Division of Market Regulation, The October 1987 Market Break (February 1988).

[7] In addition to the CXM, the Commission has approved the trading of market baskets on the NYSE and the Chicago Board Options Exchange ("CBOE"). See Securities Exchange Act Release

Continued

Commission believes that, in comparison to other methods of portfolio trading, basket products, such as the CXM, are an efficient means to make investment decisions based on the direction of standardized measures of stock market performance, and may enhance the market's ability to absorb program trading.[8]

The Commission has concluded that extending the trading hours for the CXM will enhance market participants' ability to use that basket for hedging purposes. The CXM offers a highly correlative hedge to the Merc's "MMI" futures contract. In addition, the CXM could be used to offset a position in the options on the MMI futures contract that are traded on the Merc; in the options on the MMI that are traded on the Amex; or in derivative products on other broad-based stock market indexes.[9] At the moment, however, CXM trading ends at 3 Central time (4 Eastern time), while trading of such derivative products continues until 3:15 Central time (4:15 Eastern time). The Commission recognizes that the current lack of coordination may hinder market participants' ability to adjust their risk in response to late price movements in the derivatives market.

Accordingly, the Commission believes that synchronizing the close of trading for the CXM with the close of trading for such derivative products will allow market participants to hedge their positions more effectively. Specifically, traders and investors will be able to employ closing strategies that reflect price movements that take place during the last fifteen minutes of derivatives trading, as well as complete last sale information for the various indexes' component stocks. To the extent that the CHX proposal will promote fair hedging opportunities, the Commission finds that extended trading hours should increase volume in the CXM, thereby adding to the depth and liquidity of the market for that basket product.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of the notice of filing thereof. The CHX proposal is designed to eliminate a barrier to fair hedging opportunities; accelerated approval thereof will allow the resulting risk management benefits for traders and investors to be realized immediately. In addition, the proposed rule change was published in the **Federal Register** for the full statutory period and no comments were received on any aspect of the proposal.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CHX–93–29) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–145 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33379; File No. SR–MSTC–93–10]

Self-Regulatory Organizations; Midwest Securities Trust Company; Notice of Filing of a Proposed Rule Change Relating to the Limitation or Elimination of Directors' Liability

December 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 27, 1993, the Midwest Securities Trust Company ("MSTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared substantially by MSTC. MSTC amended the filing on October 6, 1993.[2] The Commission is publishing this notice to solicit comments from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

MSTC proposes to amend Article Ten of its Articles of Incorporation and Article VI, Section 1 of its By-Laws to limit or eliminate the potential monetary liability of its directors to the extent permitted by the Illinois Business Corporation Act except where such liability is the result of a violation of the federal securities laws.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MSTC included statements concerning the purpose of and statutory basis for the proposed rule change and discussed any comments it received on the proposal. The text of these statements may be examined at the places specified in Item IV below. MSTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The proposal will limit or eliminate the potential monetary liability of MSTC directors under certain circumstances. The proposed change is based on Section 2.10(b)(3) of the Illinois Business Corporation Act, under which MSTC is organized, which allows corporations to adopt provisions in their articles of incorporation that limit or eliminate the potential monetary liability of directors under certain circumstances.

General corporate law imposes a fiduciary duty of care upon each corporate director. This duty of care requires a director to exercise informed business judgment in good faith and to act with an honest believe that the action taken is in the best interest of the corporation. The proposal will not eliminate an MSTC's director's duty of care but will limit the personal liability of an MSTC director to MSTC or its shareholders should the director fail through negligence or gross negligence to satisfy his or her duty of care.[3] Under Illinois law, such limitations of personal liability do not apply in certain situations.

The proposal will prohibit limitation of a director's liability in instances where liability arises directly or indirectly as a result of a violation of federal securities laws. The proposal will not eliminate equitable remedies such as rescission or injunctive actions. Moreover, it will not eliminate the liability of an officer of MSTC for actions taken in that capacity even if the officer is also a director. Finally, the proposal will not affect the liability of a director for acts or omissions that occurred prior to approval of the proposal.

Limiting or eliminating directors' liability will help to ensure that MSTC will be able to recruit and retain competent directors. Due to the increased number and magnitude of lawsuits against directors, many other corporations from various states already have adopted provisions similar to those in MSTC's proposal.

The proposed rule change is consistent with the requirements of Section 17A of the Act because it will remove an impediment to attracting competent directors and thus will help assure the fair representation of shareholders and participants in the selection of directors and in the administration of MSTC's affairs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

MSTC believes that no burden will be placed on competition as a result of the proposed rule change.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants, or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the principal office of MSTC. All submissions should refer to File No. SR–MSTC–93–10 and should be submitted by January 26, 1994.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–103 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33403; File No. SR–NYSE–93–35]

Self-Regulatory Organizations; New York Stock Exchange, Inc.; Order Granting Approval of Proposed Rule Change Relating to Additions of Market-at-the-Close Orders to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A" and Amending Minor Rule Violation Enforcement and Reporting Plan

December 28, 1993.

On October 7, 1993 the New York Stock Exchange, Inc. ("NYSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list Exchange procedures with respect to entry and cancellation of market-at-the-close ("MOC") orders on expiration days (i.e., expiration Fridays or the day on which Quarterly Index options expire). The NYSE also requested approval, under Rule 19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan to include the MOC procedures.[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 33161 (November 5, 1993), 58 FR 60078 (November 12, 1993). No comments were received on the proposal.

Description and Background

In 1984, the Commission adopted amendments to paragraph (c) of Securities Exchange Act Rule 19d–1 to allow SROs to submit, for Commission approval, plans for the abbreviated reporting of minor rule violations.[4] Subsequently, in 1985, the Commission approved an NYSE Plan for the abbreviated reporting of minor rule violations pursuant to Rule 19d–1(c) under the Act. The Plan relieves the NYSE of the current reporting requirements imposed under section 19(d)(1) of the Act for violations listed in NYSE Rule 476A. The NYSE Plan, as embodied in NYSE Rule 476A, provides that the Exchange may designate violations of certain rules as minor rule violations. The Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a violation of the delineated rules by issuing a citation with a specific penalty.[5] Such person can either accept the penalty, or opt for a full disciplinary hearing on the matter. Fines assessed pursuant to NYSE Rule 476A in excess of $2,500 are not considered pursuant to the Plan and must be reported in a manner consistent with the current reporting requirement of section 19(d)(1) of the Act. The Exchange also retains the option of bringing violations of rules included under NYSE Rule 476A to full disciplinary proceedings, and the

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Nos. 27382 (October 26, 1989), 54 FR 45834 (October 31, 1989) (File No. SR–NYSE–89–05) (approving trading of basket of stocks comprising the Standard & Poor's ("S&P") 500 Portfolio Index); and 27383 (October 26, 1989), 54 FR 45846 (October 31, 1989) (File No. SR–CBOE–88–20) (approving trading of basket of stocks comprising the S&P 100 and S&P 500 Indexes).

[8] See CXM Approval Order, supra, note 4.

[9] For example, the promotional literature for the CXM illustrates how that basket could be used as a hedge against the S&P 100 options contract.

[10] The Commission used a similar rationale in approving extended trading hours for stock index options. See Securities Exchange Act Release No. 22957 (February 27, 1986), 51 FR 7869 (March 6, 1986) (File Nos. SR–CBOE–85–49, SR–Amex–86–02 and SR–NYSE–86–06). See also Securities Exchange Act Release No. 31591 (December 11, 1992), 57 FR 60253 (December 18, 1992) (File No. SR–Amex–92–18) (approving trading of portfolio depository receipts until 4:15 Eastern time).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from David T. Rusoff, Foley & Lardner, to Richard Strasser (Attorney), Division of Market Regulation, Commission (October 5, 1993).

[3] MSTC's proposal will limit a director's liability even if that director had been grossly negligent provided that the director exercised informed business judgment in good faith and acted with an honest belief that the action taken was in the best interest of the corporation. Because there has been no judicial interpretation on the scope of the applicable Illinois legislation, it is possible that an Illinois court may find as a matter of law that a director cannot act in a manner that is both grossly negligent and in good faith.

[4] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated October 5, 1993.

[4] See Securities Exchange Act Release No. 21013 (June 1, 1984), 49 FR 23828 (June 8, 1984). Pursuant to paragraph (c)(1) of Rule 19d–1, an SRO is required to file promptly with the Commission notice of any "final" disciplinary action taken by the SRO. Pursuant to paragraph (c)(2) of Rule 19d–1, any disciplinary action taken by an SRO for a violation of an SRO rule that has been designated a minor rule violation pursuant to the Plan shall not be considered "final" for purposes of section 19(d)(1) of the Act if the sanction imposed consists of a fine not exceeding $2,500 and the sanctioned person has not sought an adjudication, including a hearing, or otherwise exhausted his or her administrative remedies. By deeming unadjudicated minor violations as not final, the Commission permits the SRO to report violations on a periodic, as opposed to immediate, basis.

[5] The List if contained under Supplementary Material to Exchange Rule 476A. As discussed in note 4 *supra*, only those fines imposed that are not in excess of $2,500 are subject to periodic reporting. Fines imposed pursuant to Rule 476A in excess of $2,500 are deemed final and therefore are subject to immediate reporting to the Commission.

Commission expects the Exchange to do so for egregious or repeat violations.

In adopting Rule 19d–1, the Commission noted that the Rule was an attempt to balance the informational needs of the Commission against the reporting burdens of the SROs.[6] In promulgating paragraph (c) of the Rule, the Commission was attempting further to reduce those reporting burdens by permitting, where immediate reporting was unnecessary, quarterly reporting of minor rule violations. The Rule is intended to be limited to rules which can be adjudicated quickly and objectively.

The NYSE currently is adding its procedures with respect to entry and cancellation of MOC orders on expiration days to the list of minor rule violations subject to the Rule 476A minor rule violation plan. The MOC order entry and cancellation procedures require, for example, that MOC orders be entered on the Exchange by 3:40 p.m. on expiration days if they are related to a strategy including any stock index future, stock index option or option on stock index future in expiring contracts, and that no cancellations of such orders be effected after 3:40 p.m. Violations of these policies could include late entry of MOC orders, entry of MOC orders which do not offset a published imbalance of 50,000 shares or more in a pilot stock or an improper cancellation of an MOC order. These procedures are announced to members and member organizations through an Information Memo issued approximately one week before each expiration day.

Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b)(1), (6) and (7), 6(d)(1) and 19(d) of the Act.[7] The proposal is consistent with the section 6(b)(6) requirement that the rules of an exchange provide that its members and persons associated with its members shall be appropriately disciplined for violations of rules of the exchange. In this regard, the proposal provides an efficient procedure for appropriate disciplining of members for a rule violation that is technical and objective in nature. Moreover, because the Plan provides procedural rights to the person fined and permits a disciplined person to request a full hearing on the matter, the proposal provides a fair procedure for the disciplining of members and persons associated with members, consistent with sections 6(b)(7) and 6(d)(1) of the Act.

The Commission also believes that the proposal provides an alternate means by which to deter violations of the NYSE rules included in the Plan, thus furthering the purposes of section 6(b)(1) of the Act. An exchange's ability to effectively enforce compliance by its members and member organizations with Commission and Exchange rules is central to its self-regulatory functions. Inclusion of a rule in an exchange's minor rule violation plan should not be interpreted to mean it is an unimportant rule. On the contrary, the Commission recognizes that inclusion of rules under a minor rule violation plan may not only reduce reporting burdens on an SRO but also may make its disciplinary system more efficient in prosecuting violations of these rules.

In addition, because the NYSE retains the discretion to bring a full disciplinary proceeding for any violation included on the List, the Commission believes that adding the procedures for entry and cancellation of MOC orders on expiration days to the List will enhance, rather than reduce, the NYSE's enforcement capabilities of these Exchange procedures.

As described above, MOC procedures are subject to change on a monthly basis and are outlined in an Information Memo disseminated to the members and member organizations prior to each expiration day. The Commission believes that whether a member or member organization has followed such specifically outlined procedures is amenable to quick, objective determinations of compliance with respect to activity on each expiration day. The quick and efficient resolution of questions of compliance with such procedures would facilitate the Exchange's ability to induce continued compliance without being hindered by the additional time and cost associated with more sophisticated Exchange disciplinary actions.

Finally, the Commission believes that the inclusion of the MOC procedural rules will prove to be an effective alternate response to a violation when the initiation of a full disciplinary proceeding is unsuitable because such a proceeding may be more costly and time-consuming in view of the minor nature of the particular violation. This is further reinforced by the nature of the monthly dissemination of these procedures to the members and their potential for change each month in response to the instruments affected on the expiration day and the surrounding circumstances at that time. By including the MOC procedures in the Rule 476A Minor Rule Violation List, the NYSE can quickly respond to violations, thereby deterring similar infractions the following month.

It is therefore ordered, Pursuant to section 19(b)(2) and Rule 19d–1(c)(2) under the Act,[8] that the proposed rule change (SR–NYSE–93–35) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–146 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

[6] See Securities Exchange Act Release No. 13762 (July 8, 1977), 42 FR 35411 (July 14, 1977).

[7] 15 U.S.C. 78f(b)(1), (6) and (7), 78f(d)(1) and 78s(d) (1988).

[8] 15 U.S.C. 78s(b)(2) (1988) and 17 CFR 240.19d–1(c)(2) (1991).

[9] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33400; File No. SR–NYSE–93–47]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Listing Standards for Non-U.S. Companies

December 29, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 16, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed modification to NYSE policy would amend Paragraph 103 of the NYSE Listed Company Manual ("Non-U.S. Companies") to permit non-U.S. issuers to distribute summary annual reports to U.S. holders, under certain circumstances.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The proposed modification to policy recognizes an amendment, adopted in 1990, to the U.K. Companies Act which permits issuers listed on the London Stock Exchange to provide an option to holders of their ordinary shares to receive a full annual report or a summary annual report. The Companies Act sets forth the specific financial and management information that must be contained in the summary reports.

The Companies Act, as amended, also requires that shareholders who receive only the summary report be given the opportunity, at any time, to obtain the full annual report from the company and that companies must notify shareholders annually of this right and how the report might be obtained. When the program was instituted in the U.K. in 1990, shareholders received both reports and notice of the available option with respect to future reports.

Certain U.K. issuers are now seeking permission from the NYSE to provide holders of listed ADRs with summary reports in place of full annual reports if the holders do not object. The proposed modification to policy is necessary to grant permission since current policy requires all listed companies to submit to shareholders an annual report with financial information as detailed in Paragraph 203.01 of the NYSE Listed Company Manual.

The creation of the summary annual reports in the U.K. was prompted by two objectives: Potential cost savings to the company and the ability to provide a more easily read document to retail holders. The effort has been deemed successful in the U.K. since a majority of shareholders now receive the summary reports.

The Exchange is proposing that the NYSE annual report requirements be modified to allow holders of NYSE-listed non-U.S. securities to receive summary annual reports if (i) this is the practice in the home country and (ii) certain conditions are met.

Specifically, issuers proposing to provide summary annual reports to ADR holders would be required to:

(a) provide ADR holders with an ongoing option to

(1) Receive the full annual report on demand, and

(2) Annually change their election (as in the U.K., U.S. ADR holders would initially receive both reports and notice of the available option with respect to future reports);

(b) Follow the specific dictates of home country law or business practice with respect to the data presented;

(c) Include a U.S. GAAP reconciliation to the extent that such reconciliation would be required in the full annual report.

This proposal would be consistent with the Exchange's policies for non-U.S. companies which effectively allow these companies to follow home country practice in such areas as interim reporting and corporate governance. In addition, we believe the modification to policy would be consistent with the SEC's posture toward non-U.S. companies of being accommodating without compromising disclosure.

2. Statutory Basis

The basis under the Act for this proposed rule change is the requirement under section 6(b)(5) that an exchange have rules that are designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change does not impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties. However, the Exchange adopted this proposed rule change, in part, in response to a petition from eight listed U.K. companies requesting that the exchange allow them to use summary annual reports.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–47 and should be submitted by January 26, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–144 Filed 1–4–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Noise Exposure Map Notice, Receipt of Noise Compatibility Program and Request for Review; Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, Minneapolis, MN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the Minneapolis-St. Paul Metropolitan Airports Commission for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before June 8, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is December 10, 1993. The public comment period ends February 8, 1994.

FOR FURTHER INFORMATION CONTACT: John M. Dougherty, Federal Aviation Administration, Airports District Office, room 102, 6020 28th Avenue South, Minneapolis, Minnesota 55450, (612) 725–4222. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport are in compliance with applicable requirements of part 150, effective December 10, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before June 8, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional non-compatible uses.

The Minneapolis-St. Paul Metropolitan Airports Commission submitted to the FAA on March 30, 1992, noise exposure maps, descriptions and other documentation which were produced during the FAR Part 150 Noise Compatibility Study from March 1991 to March 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the Minneapolis-St. Paul Metropolitan Airports Commission. The specific maps under consideration are the 1991 existing Noise Exposure Map and the 1996 future Noise Exposure Map. The FAA has determined that these maps for the Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport are in compliance with the applicable requirements. This determination is effective on December 10, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detail overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator who submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for the Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, also effective on December 10, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before June 8, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Minneapolis Airports District Office, room 102, 6020–28th Avenue South, Minneapolis, Minnesota 55450

The Minneapolis-St. Paul Metropolitan Airports Commission, Minneapolis-St. Paul International (Wold-Chamberlain Field) Airport, 6040–28th Street South, Minneapolis, Minnesota 55450

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Minneapolis, Minnesota on December 10, 1993.

Franklin D. Benson,

Manager, Minneapolis Airports District Office, FAA Great Lakes Region.

[FR Doc. 94–139 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Determination of Significance and Notice of Intent To Prepare an Environmental Impact Statement and To Conduct Scoping for Seattle-Tacoma International Airport, Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent.

SUMMARY: The Northwest Mountain Region of the Federal Aviation Administration ("FAA") and the Port of Seattle ("Port") announce that the FAA and the Port, acting as joint lead agencies, intend to prepare an Environmental Impact Statement (EIS) for a proposal by the Port to develop a new parallel runway and other airport facility improvements to be examined in an update to the Seattle-Tacoma International Airport (Sea-Tac Airport) Master Plan. To ensure that all significant issues related to the proposed action are identified, scoping comments are requested.

DATES AND ADDRESSES FOR COMMENTS: To facilitate the receipt of written comments, two scoping meetings will be conducted. The first meeting, in a workshop format, will be conducted for the public on February 9, 1994. A meeting for Federal, state and local agencies will be conducted on February 10, 1994. Send comments to, or seek additional information from the responsible Federal official: Mr. Dennis Ossenkop, Airports Division, Federal Aviation Administration, 1601 Lind Avenue SW., suite 540, Renton, Washington 98055–4056. To be considered, written comments must be received on or before February 25, 1994.

SUPPLEMENTARY INFORMATION: Recent planning studies have indicated both an existing and long-term need for additional airfield capacity at Sea-Tac Airport. Under current demand levels, the Airport experiences reduced operating capability and delay during bad weather conditions due to the close-spacing of the existing parallel runways. During busy hours, arrival demand exceeds the bad weather arrival capacity and aircraft and passenger delays result. In addition to increasing the severity of delays caused by bad weather, continued growth in aircraft operational demand is projected to exceed Sea-Tac's annual airfield capacity within the next ten years. The objective of the Master Plan Update, and accompanying EIS, is to address the bad weather capacity problem and to meet long-term regional air travel needs spurred by a growing regional economy.

An Environmental Impact Statement (EIS) will be prepared for the Master Plan Update, which is expected to include numerous projects including, but not be limited to: A new parallel runway and improvements to the passenger terminal, ground access system, and other support facilities. The range of new parallel runway options that may be considered in the EIS are anticipated to be in the immediate vicinity of the existing airfield at Sea-Tac Airport. Based on the Master Plan Update, other airport developments that may be considered in the EIS would be located on or in the immediate vicinity of the existing Sea-Tac Airport property. Mitigation measures will be proposed, as necessary, for the significant adverse impacts created by development. Major actions or concepts to be discussed in the draft EIS include the no action alternative and other reasonable alternatives meeting the purpose and need. Such alternatives are expected to include several options related to runway lengths, separations and threshold stagger.

The FAA and Port of Seattle have determined that the new parallel runway is likely to have a significant adverse impact on the environment. An Environmental Impact Statement (EIS) is required under the National Environmental Policy Act and the Washington State Environmental Policy Act (SEPA), RCW 43.21C.030(2)(c) and will be prepared. The FAA and Port of Seattle have identified the following key areas for discussion in the EIS including, but not limited to: Alternatives, noise and land use, social and socio-economic impacts, human health, water resources, biotic communities, construction, earth, transportation and air quality.

Scoping is the initial step in the preparation of the EIS. The scoping process is "an early and open process for determining the scope of issues to be addressed and for identifying the significant issues related to the proposed action." Agencies, affected tribes, and members of the public are invited to comment on the scope of the EIS. You may comment on alternatives, mitigation measures, probable significant adverse impacts, and licenses or other approvals that may be required. Comments and suggestions are invited from Federal, State and local agencies, and other interested parties and individuals to ensure that the full range of issues related to a Master Plan Update EIS are addressed and all significant issues identified.

To facilitate the receipt of comments, two scoping meetings will be conducted. A public workshop will be conducted to receive written comments on February 9, 1994 from 4 p.m. until 8 p.m. at Tyee Senior High School, 4424 South 188th Street, City of SeaTac. The second meeting will be held on February 10, 1994 between 9:30 a.m. and 11 a.m. for Federal, state and local agencies in the Sea-Tac Auditorium, Mezzanine Level Main Terminal Building, Seattle-Tacoma International Airport.

Issued in Renton, Washington on December 20, 1993.

Edward G. Tatum,

Manager, Airports Division, Federal Aviation Administration, Northwest Mountain Region, Renton, Washington.

William E. Brougher,

SEPA Responsible Official, Port of Seattle.

[FR Doc. 94–137 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Availability of Draft Environmental Impact Statement and 4(f) Statement for an Airport Surveillance Radar Model 9 Facility for Washington National Airport, Washington, DC and Conduct a Public Hearing

AGENCY: Department of Transportation, Federal Aviation Administration.

ACTION: Notice of availability of Draft Environmental Impact Statement (DEIS) and 4(f) Statement, and conduct a public hearing.

SUMMARY: The Federal Aviation Administration (FAA) is issuing this notice to advise the public of the availability of a Draft Environmental Impact Statement (DEIS), which assesses the potential effects of constructing and operating an Airport Surveillance Radar Model 9 (ASR–9) facility at either a site within Ward 8 of the District of Columbia or at Washington National Airport, Arlington County, Virginia. The DEIS has been prepared in accordance with the National Environmental Policy Act of 1969. The purpose of the proposed action is to improve existing radar coverage provided to air traffic control servicing Washington National Airport and the airspace over Washington, DC.

ADDRESSES: Comments on the DEIS may be submitted in writing and may be mailed or delivered to the FAA at the following address: Federal Aviation Administration, Mr. Charles Hoch (AEA–400), Manager, Airway Facilities Division, Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York 11430.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Mr. Mike Lanz, AEA–451.1, (718) 553–1198 or Mr. Larry D. Walker, Louis Berger & Associates, Inc. (202) 331–7775.

SUPPLEMENTARY INFORMATION: An FAA evaluation concluded that potentially significant impacts may result to two of the sites on National Park Service land with respect to historical and visual resources. Mitigation of these impacts are expected to be developed as a result of the consultation process with the District of Columbia State Historic Preservation Office.

A Notice of Intent to prepare an Environmental Impact Statement (EIS) was published in the **Federal Register** by the FAA on October 13, 1992, inviting comments. A public scoping meeting was held on October 20, 1992 to receive comments on the proposed action from the public.

Six alternative sites and the no action alternative were evaluated in the DEIS. Three sites are located at Washington National Airport and three sites are located on National Park Service land in Anacostia, DC. The environmental review of the project was conducted in accordance with the requirements of the National Environmental Policy Act (NEPA) of 1969, as amended (42 U.S.C. 4371, *et seq.*), Council on Environmental Quality (CEQ) regulations (40 CFR parts 1500–1508), the Department of Transportation (DOT) Act of 1966, DOT/FAA Orders, and all applicable Federal regulations and District of Columbia ordinances.

Comments on the DEIS are invited from Federal, State, and local agencies, and all other interested parties, and should be directed to the FAA at the addresses provided above. All comments received or postmarked within 60 days from the date of publication of the Environmental Protection Agency's (EPA) Notice of Availability of the DEIS in the **Federal Register** will be considered in the preparation of the Final Environmental Impact Statement.

The DEIS is available for public review at the following locations: Washington Highlands Library, 115 Atlantic Street, SW., Washington, DC 20032 and Aurora Hills Library, 735 18th Street South, Arlington, VA 22202.

To obtain a copy of the DEIS, submit a written request to: Mr. Charles Hoch (AEA–400), Manager, Airway Facilities Division, Fitzgerald Federal Building, Federal Aviation Administration, John F. Kennedy International Airport, Jamaica, New York 11430.

Public Hearing

The FAA solicits public comments on the DEIS and 4(f) Statement through a public hearing. To ensure the full range of issues related to this proposed action are addressed, comments and suggestions are invited from all interested parties. Interested parties are invited to attend a public hearing that will be conducted at 10 a.m. on February 5, 1994 in the Basement Meeting Room, Washington Highlands Library, 115 Atlantic Street, SW., Washington, DC. Written comments will be accepted until February 15, 1994.

Dated: December 22, 1993.

Herbert Ross,

Assistant Manager, Airway Facilities Division.

[FR Doc. 94–132 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee; Meeting

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Public Law 92–362; 5 U.S.C. App. I), notice is hereby given of a meeting of the Flight Service Technology Subcommittee of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Friday, January 28, 1994, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC, in the Round Room on the tenth floor.

The agenda for this meeting will include: Review and discussion of the proposed task statement; organization of the effort to develop a report and recommendations; overview of the current and future technology associated with pre-flight weather and flight plan filing services. This subcommittee will attempt to ensure that the FAA's program addresses all the right technology issues.

Attendance is open to the interested public but limited to space available. With the approval of the Subcommittee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Mr. Carl McCullough, ASE–10, at (202) 287–8595 or Ms. Jan Peters, ASD–3, at (202) 287–8543 in the Office of the Associate Administrator for System Engineering and Development, 800 Independence Avenue, SW., Washington, DC 20591.

Members of the public may present a written statement to the subcommittee at any time.

Issued in Washington, DC, on December 27, 1993.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–138 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Cincinnati/Northern Kentucky International Airport, Hebron, KY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Cincinnati/Northern Kentucky International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before February 4, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Memphis Airports District Office, 2851 Directors Cove, suite #3, Memphis, TN 38131–0301

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert F. Holscher, Director of Aviation, of the Cincinnati/Northern Kentucky International Airport at the following address: Second Floor, Terminal 1, C/NKIA, 2939 Terminal Drive, Hebron, Kentucky 41048.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Cincinnati/Northern Kentucky International Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Planner, Memphis Airports District Office, 2851 Directors Cove, suite #3, Memphis, TN 38131–0301, (901) 544–3495.

The application may be reviewed in person at this office.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Cincinnati/Northern Kentucky International Airport under provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 22, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Cincinnati/Northern Kentucky International Airport was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 30, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: March 1, 1994

Proposed charge expiration date: June 1, 1995

Total estimated PFC revenue: $20,737,000

Brief description of proposed project(s):

Impose and Use

1. Noise Compatibility and Land Use Management Measures:

a. Purchase Assurance Program off Runway Ends

b. Voluntary Acquisition in the 75 Ldn Contour

c. Voluntary Acquisition in Rolling Green Acres

d. Voluntary Acquisition in Ethan's Glen Subdivision and scattered homes in the 65–75 Ldn, West

e. Sound Insulation of Nursing Home

f. Sound Insulation of Schools

2. Part 150 Supplemental Study and Related Planning Costs

3. Noise Monitoring Equipment.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs:

1. FAR part 121 Supplemental Carriers which operate at the Airport without an Operating Agreement with the Kenton County Airport Board and enplane less than 1,500 passengers per year.

2. FAR part 135 on-demand air taxis, both fixed wing and rotary.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**".

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Cincinnati/Northern Kentucky International Airport.

Issued in College Park, Georgia on December 23, 1993.

Troy R. Butler,

PFC Program Manager, Airports Division, Southern Region.

[FR Doc. 94–135 Filed 1–4–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Women Veterans; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a subcommittee meeting of the Advisory Committee on Women Veterans will be held on January 11, 1994, in the 2nd floor conference room, 1785 Massachusetts Ave. NW., Washington, DC. The purpose of the subcommittee meeting is to review the research efforts to date for the Study of Reproductive Health Outcomes Among Women Vietnam Veterans.

The subcommittee will convene on January 11 from 10 a.m. to 4 p.m. and all sessions will be open to the public up to the seating capacity of the room. Because this capacity is limited, it will be necessary for those wishing to attend to contact Antoinette Workeman, Committee Coordinator, Department of Veterans Affairs (phone 202/606–5420) prior to January 11, 1994.

Dated: December 21, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 94–99 Filed 1–4–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 3
Wednesday, January 5, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of January 3, 1994.

A closed meeting will be held on Friday, January 7, 1994, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9) (A) and (10) and 17 CFR 200.402(a)(4), (8), (9) (i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Friday, January 7, 1994, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter regarding financial institution.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Brian Lane at (202) 272–2400.

Dated: December 30, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-236 Filed 3-3-94; 11:59 am]

BILLING CODE 8010-01-M

federal register

Wednesday
January 5, 1994

Part II

Environmental Protection Agency

40 CFR Part 13
Referral of Debts to Internal Revenue Service for Tax Refund Offset; Interim Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 13

[FRL–4818–2]

Referral of Debts to the Internal Revenue Service for Tax Refund Offset

AGENCY: Environmental Protection Agency.

ACTION: Interim rule with request for comments.

SUMMARY: The Environmental Protection Agency (EPA), as a participant in the Federal Tax Refund Offset Program, is issuing interim regulations to govern the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to EPA. These regulations allow EPA to collect debts by means of offset from the income tax refunds of persons owing money to EPA provided certain conditions are met. This rule establishes procedures to be followed by EPA in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the EPA.

DATES: Interim rule is effective on January 5, 1994. Written comments must be received on or before March 7, 1994.

ADDRESSES: Send comments to: Stephen B. Hess, Claims and Property Law Branch (2376), Office of General Counsel, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Stephen B. Hess, Office of General Counsel. Telephone 202–260–7512.

SUPPLEMENTARY INFORMATION: This interim rule provides procedures for EPA to refer past-due legally enforceable debts to the IRS for offset against the income tax refunds of persons owing debts to EPA. This rule is authorized by 31 U.S.C. 3720A, the purpose of which is to improve the ability of the government to collect money owed it while adding certain notice requirements and other protections applicable to the government's relationship to the debtor.

This rule implements 31 U.S.C. 3720A, which directs any Federal agency that is owed a past-due legally enforceable debt by a named person to notify the Secretary of the Treasury in accordance with regulations issued by the Department of the Treasury at 26 CFR 301.6402–6. Before a Federal agency may give such notice, however, it must first:

(1) Notify the debtor that the agency proposes to refer the debt for a tax refund deduction;

(2) Give the debtor 60 days from the date of the notification to present evidence that all or part of the debt is not past-due or legally enforceable;

(3) Consider any evidence presented by the debtor and determine whether any amount of such debt is past-due and legally enforceable; and

(4) Satisfy such other conditions as the Secretary of the Treasury may prescribe to ensure that the agency's determination is valid and that the agency has made reasonable efforts to obtain payment of the debt.

This rule, in accordance with IRS regulations, provides that before EPA refers a debt to Treasury (through IRS), a notice of intention (Notice of Intent) will be sent to the debtor. This Notice of Intent will inform the debtor of the amount of the debt and that unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to offset any tax refund payable to the debtor. In addition, the Notice of Intent will state that the debtor has a right, during such period, to present evidence that all or part of the debt is not past-due or legally enforceable. This rule also establishes procedures for the debtor to present such evidence.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to Office of Management and Budget (OMB) review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may: (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

Regulatory Flexibility Act Certification

This rule does not have a significant impact on a substantial number of small entities (5 U.S.C. 601 *et seq.*).

Paperwork Reduction Act

No additional information and record keeping requirements are imposed by this rule.

National Environmental Policy Act

Promulgation of this rule does not represent a major Federal action with significant environmental impact. Therefore, preparation of an environmental assessment or environmental impact statement under the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*) is not required.

Public Comments

Pursuant to an agreement between the IRS, the Financial Management Service, and EPA regarding EPA's participation in the Tax Refund Offset Program for 1994, EPA is required to have promulgated regulations regarding referral of debts to IRS for tax refund offset prior to EPA's participation in the program. EPA is issuing interim final regulations to take effect today in order to fulfill that requirement. Although EPA will respond to written comments on today's notice, EPA is not holding a hearing, providing an opportunity for prior comments, or delaying the effective date because this regulation is mostly procedural and because there are no significant issues of law or fact or relevant substantial impacts on the Nation or large numbers of persons of which EPA could take account consistent with law. Moreover, issuance of immediately effective interim final regulations does not prejudice the due process rights of debtors and is essential in order for EPA to participate in the 1994 program. Written comments are solicited for 60 days after publication of this document in the **Federal Register**. A final document discussing any comments received and revisions required will be published in the **Federal Register** as soon as possible after the close of the comment period.

Other Matters

These procedures are being codified in the Agency's regulations pursuant to statutory requirements regarding publication of rules of procedure in the **Federal Register**, 5 U.S.C. 552(a)(1)(C). However; the procedures described in the rule will be utilized before it becomes effective with respect to persons who are provided actual notice of the procedures through the notices required under the procedures. See 5 U.S.C. 552(a)(1).

List of Subjects in 40 CFR Part 13

Environmental protection, Administrative practice and procedure, Claims, Government employees, Income taxes, Wages.

Dated: December 28, 1993.

Carol M. Browner,

Administrator.

In consideration of the foregoing, the Environmental Protection Agency hereby amends part 13 of title 40 of the Code of Federal Regulations as set forth below.

PART 13—[AMENDED]

1. The authority citation for part 13 is revised to read as follows:

Authority: 5 U.S.C. 552a, 5512, and 5514; 31 U.S.C. 3711 *et seq.* and 3720A; 4 CFR parts 101–10.

2. Subpart H is added to part 13 to read as follows:

Subpart H—Referral of Debts to IRS for Tax Refund Offset

Sec.

13.34 Purpose.
13.35 Applicability and scope.
13.36 Administrative charges.
13.37 Notice requirement before offset.
13.38 Review within the Agency.
13.39 Agency determination.
13.40 Stay of offset.

Supbart H—Referral of Debts to IRS for Tax Refund Offset

§ 13.34 Purpose.

This subpart establishes procedures for the Environmental Protection Agency (EPA) to refer past-due debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing debts to EPA. It specifies the Agency procedures and the rights of the debtor applicable to claims for the payment of debts owed to EPA.

§ 13.35 Applicability and scope.

(a) This subpart implements 31 U.S.C. 3720A, which authorizes the IRS to reduce a tax refund by the amount of a past-due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past-due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Except in the case of a judgment debt, has been delinquent for at least three months but has not been delinquent for more than ten years at the time the offset is made;

(2) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(3) Is ineligible for administrative offset under 31 U.S.C. 3716(a) by reason of 31 U.S.C. 3716(c)(2) or cannot be collected by administrative offset under 31 U.S.C. 3716(a) by the Agency against amounts payable to or on behalf of the debtor by or on behalf of the Agency;

(4) With respect to which EPA has given the taxpayer at least 60 days from the date of notification to present evidence that all or part of the debt is not past-due or not legally enforceable, has considered evidence presented by such taxpayer, if any, and has determined that an amount of such debt is past-due and legally enforceable;

(5) Has been disclosed by EPA to a consumer reporting agency as authorized by 31 U.S.C. 3711(f), unless a consumer reporting agency would be prohibited from using such information by 15 U.S.C. 1681c, or unless the amount of the debt does not exceed $100.00;

(6) With respect to which EPA has notified or has made a reasonable attempt to notify the taxpayer that the debt is past-due and, unless repaid within 60 days thereafter, the debt will be referred to the IRS for offset against any overpayment of tax;

(7) Is at least $25.00; and

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations at 26 CFR 301.6402–6 relating to the eligibility of a debt for tax return offset have been satisfied.

§ 13.36 Administrative charges.

In accordance with § 13.11, all administrative charges incurred in connection with the referral of a debt to the IRS shall be assessed on the debt and thus increase the amount of the offset.

§ 13.37 Notice requirement before offset.

A request for reduction of an IRS tax refund will be made only after EPA makes a determination that an amount is owed and past-due and provides the debtor with 60 days written notice. EPA's notice of intention to collect by IRS tax refund offset (Notice of Intent) will state:

(a) The amount of the debt;

(b) That unless the debt is repaid within 60 days from the date of EPA's Notice of Intent, EPA intends to collect the debt by requesting the IRS to reduce any amounts payable to the debtor as refunds of Federal taxes paid by an amount equal to the amount of the debt and all accumulated interest and other charges;

(c) That the debtor has a right to present evidence that all or part of the debt is not past-due or not legally enforceable; and

(d) A mailing address for forwarding any written correspondence and a contact name and phone number for any questions.

§ 13.38 Review within the Agency.

(a) *Notification by debtor.* A debtor who receives a Notice of Intent has the right to present evidence that all or part of the debt is not past-due or not legally enforceable. To exercise this right, the debtor must:

(1) Send a written request for a review of the evidence to the address provided in the notice;

(2) State in the request the amount disputed and the reasons why the debtor believes that the debt is not past-due or is not legally enforceable; and

(3) Include in the request any documents which the debtor wishes to be considered or state that additional information will be submitted within the remainder of the 60-day period.

(b) *Submission of evidence.* The debtor may submit evidence showing that all or part of the debt is not past-due or not legally enforceable along with the notification required by paragraph (a) of this section. Failure to submit the notification and evidence within 60 days will result in an automatic referral of the debt to the IRS without further action by EPA.

(c) *Review of the evidence.* EPA will consider all available evidence related to the debt. Within 30 days, if feasible, EPA will notify the debtor whether EPA has sustained, amended, or cancelled its determination that the debt is past-due and legally enforceable.

§ 13.39 Agency determination.

(a) Following review of the evidence, EPA will issue a written decision.

(b) If EPA either sustains or amends its determination, it shall notify the debtor of its intent to refer the debt to the IRS for offset against the debtor's Federal income tax refund. If EPA cancels its original determination, the debt will not be referred to IRS.

§ 13.40 Stay of offset.

If the debtor timely notifies the EPA that he or she is exercising the right described in § 13.38(a) and timely submits evidence in accordance with § 13.38(b), any notice to the IRS will be stayed until the issuance of a written decision which sustains or amends its original determination.

[FR Doc. 94–76 Filed 1–4–94; 8:45 am]

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Federal Register

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Wednesday, January 5, 1994

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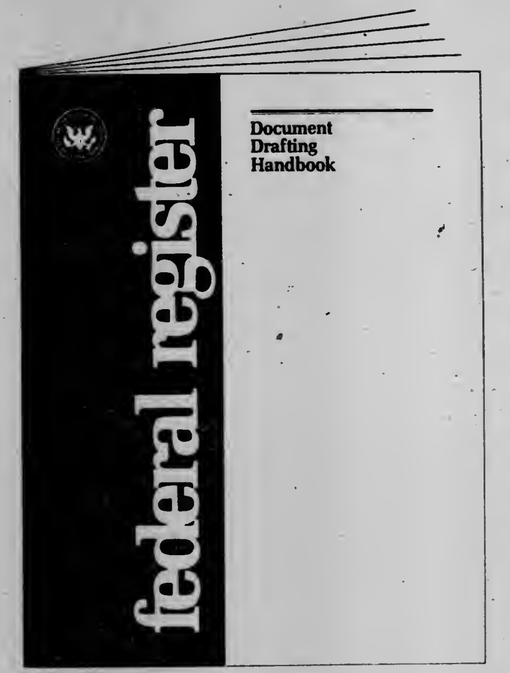
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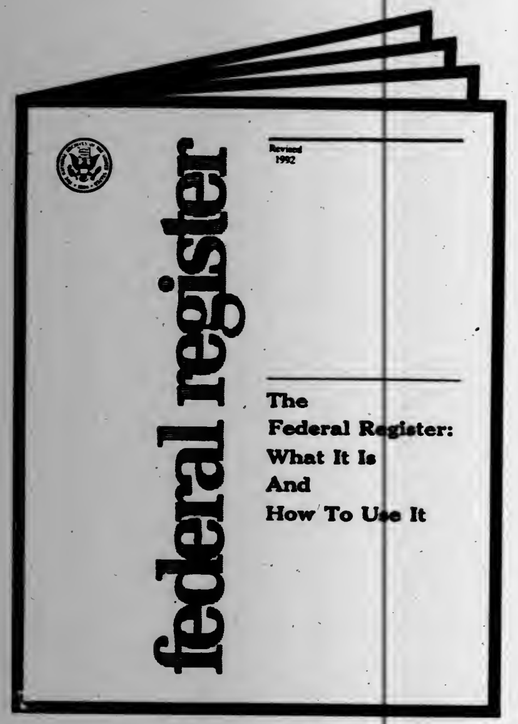
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Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Presidential Documents

Title 3—

The President

Memorandum of January 1, 1994

Determination Under the Bus Regulatory Reform Act of 1982

Memorandum for the Secretary of Transportation

Section 6 of the Bus Regulatory Reform Act of 1982 imposed a moratorium on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of a contiguous foreign country. The Act authorized the President to remove the moratorium in whole or in part for any country or political subdivision thereof upon determining that such action is in the national interest. Sixty days' advance notice to the Congress is required whenever the removal or modification applies to a foreign contiguous country or political subdivision thereof that substantially prohibits the granting of motor carrier authority to persons from the United States.

As set forth in the Statement of Administrative Action regarding the North American Free Trade Agreement (NAFTA) that I submitted to the Congress on November 3, 1993, the moratorium with respect to Mexico will be lifted in phases to coincide with the schedule of liberalization in the relevant provisions of the NAFTA. The NAFTA specifically states that the moratorium will not apply to the provision of cross-border charter or tour bus services as of the date of entry into force of the Agreement.

This is to give public notice that, pursuant to section 6 of the Bus Regulatory Reform Act of 1982, 49 U.S.C. section 10922(*l*)(2)(A), on November 3, 1993, I gave the Congress notice of my intention to make a limited modification to the moratorium imposed by that section and all actions taken by my predecessors under that section on the issuance of certificates or permits to motor carriers domiciled in, or owned or controlled by, persons of Mexico. This modification will take effect on January 1, 1994, the 60th day after my notice to the Congress.

The moratorium is modified only to authorize the Interstate Commerce Commission to grant Mexican motor carriers authority to transport passengers in charter or tour bus operations, in foreign commerce, in round-trip or one-way service between Mexico and the United States.

This action applies only to international charter or tour bus operations, does not allow for point-to-point bus service within the United States, and does not authorize companies to conduct cross-border regular route bus service.

Effective January 1, 1994, the Interstate Commerce Commission will begin to accept and process expeditiously all applications for operating authority from Mexican owned, controlled, or domiciled charter and tour bus firms.

This determination shall be published in the **Federal Register**.

William J. Clinton

THE WHITE HOUSE,
Washington, January 1, 1994.

[FR Doc. 94–423
Filed 1–4–94; 4:46 pm]
Billing code 4910–62–M

Rules and Regulations

Federal Register
Vol. 59, No. 4
Thursday, January 6, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 201

[Docket No. 93–164–1]

Federal Seed Act Regulations

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the Federal Seed Act regulations to remove the origin staining requirements for seed of alfalfa and red clover grown in Mexico and imported into the United States. The removal of the requirements is necessary to make the regulations conform to the amendment of the Federal Seed Act by the North American Free Trade Agreement Implementation Act. The effect of this action is to relieve a restriction on importation of alfalfa and red clover seed from Mexico.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Polly Lehtonen, Botanist, Biological Assessment and Taxonomic Support, Operational Support, Plant Protection and Quarantine, APHIS, USDA, room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8896.

SUPPLEMENTARY INFORMATION:

Background

We are amending the Federal Seed Act Regulations in 7 CFR part 201 (referred to below as the regulations) by removing the requirement that 10 percent of each container of alfalfa or red clover grown in Mexico be stained red.

On December 8, 1993, President Clinton signed the North American Free Trade Agreement (NAFTA), to become effective January 1, 1994. To implement this agreement, Congress passed the North American Free Trade Agreement Implementation Act (the Act) (Pub. L. 103–182). The statutory amendments included in the Act become effective coincident with NAFTA.

The amendment in this final rule is mandated by section 361(a) of the Act, which amended section 302(e)(1) of the Federal Seed Act (7 U.S.C. 1582(e)(1)) by providing that the provisions requiring certain seeds to be stained red shall not apply to alfalfa or red clover seed originating in Mexico. (See Pub. L. 103–182).

This final rule is being taken to conform the regulations with the amendments to the Act, by amending § 201.104 of the regulations to remove the origin staining requirements for seed of alfalfa and red clover grown in Mexico and imported into the United States.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that good cause exists to publish this final rule without prior notice and opportunity for public comment.

Certain regulatory actions must be taken as a result of the statutory amendments discussed in the **"Background,"** and must become effective with NAFTA to avoid inconsistency between the regulations and their statutory authority. Removal of the origin staining requirement for alfalfa and red clover seed imported from Mexico is one of the regulatory changes that must become effective at the same time as NAFTA and the Act to avoid this conflict.

This action relieves a restriction on the importation of alfalfa and red clover seed from Mexico. Since prior notice and other public procedures with respect to this final rule are impracticable, unnecessary, and contrary to the public interest, and since this regulatory change is mandated by Congress, there is good cause under 5 U.S.C. 553 for making this final rule effective as of January 1, 1994.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

The Act, as amended, removes the requirement that alfalfa and red clover seed that is imported from Mexico be stained red. This final rule conforms the regulations to the Act. We have no record of any alfalfa or red clover having been imported from Mexico in the past 5 years, and we anticipate no importations in the foreseeable future.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12278

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 201

Advertising, Agricultural commodities, Imports, Labeling, Reporting and recordkeeping requirements, Seeds, Vegetables.

Accordingly, 7 CFR part 201 is amended as follows:

PART 201—FEDERAL SEED ACT REGULATIONS

1. The authority citation for part 201 continues to read as follows:

Authority: 7 U.S.C. 1582.

2. In § 201.104, paragraph (a) is revised to read as follows:

§ 201.104 Staining of imported seed.

(a) 10 percent of the seed in each container of the seed of alfalfa or red clover grown in any foreign country other than the countries of South America, Canada, and Mexico shall be stained red.

* * * * *

Done in Washington, DC, this 30th day of December 1993.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–201 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–34–P

7 CFR Part 322

[Docket No. 93-163-1]

Honeybees and Honeybee Semen

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending a footnote in the honeybee and honeybee semen regulations that quotes the Honeybee Act, in order to conform the footnote to the Honeybee Act, as amended by the North American Free Trade Agreement Implementation Act.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Matthew H. Royer, Chief Operations Officer, Biological Assessment and Taxonomic Support, Operational Support, Plant Protection and Quarantine, APHIS, USDA, room 626, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8896.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR part 322 (referred to below as the regulations) govern the importation into the United States of honeybees and honeybee semen. These regulations were established pursuant to the Honeybee Act (7 U.S.C. 281 et seq.) The Honeybee Act was designed to prevent the movement into the § United States of diseases and parasites harmful to honeybees. In addition, the Honeybee Act was designed to prevent the movement into the United States of undesirable species or subspecies of honeybees.

Section 322.1 of the regulations contains a footnote that includes the criteria set forth in the Honeybee Act for determining which countries may be listed in the regulations as countries from which honeybees or honeybee semen may be imported into the United States. In this rule, we are amending that footnote to reflect amendments to the Honeybee Act made by section 361(d)(2) of the North American Free Trade Agreement Implementation Act.

On December 8, 1993, President Clinton signed the North American Free Trade Agreement (NAFTA), to become effective January 1, 1994. To implement this agreement, Congress passed the North American Free Trade Agreement Implementation Act (the Act) (Pub. L. 103-182). The statutory amendments included in the Act become effective coincident with NAFTA.

Section 361(d)(2) of the Act amended subsections (a) and (b) of the Honeybee Act by providing the following: (1) That honeybees may be imported from Canada or Mexico, subject to such terms as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and (2) that honeybee semen may be imported from Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees. (See Pub. L. 103-182, 107 Stat. 2057).

This rule is being published to conform a footnote in the regulations with the Act, as amended.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that good cause exists to publish this final rule without prior notice and opportunity for public comment.

Since prior notice and other public procedures with respect to this final rule are impracticable, unnecessary, and contrary to the public interest, and since this regulatory change is mandated by Congress, there is good cause under 5 U.S.C. 553 for making this final rule effective as of January 1, 1994.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

This rule amends a footnote in the regulations that quotes the Act, in order to conform the footnote to the Act, as amended by the North American Free Trade Agreement Implementation Act.

The amendments to the regulations will have no practical impact on importations of honeybees and honeybee semen from Canada or Mexico since it merely quotes the Act. Furthermore, such importations are already allowed from any part of Canada. Currently, the only regular movement of honeybees from Canada to the United States is a relatively insignificant movement from the Maritime Provinces of Canada to northern New England. We anticipate that the amendments will have little practical impact with regard to importations from Mexico. Sufficient numbers of honeybees are already available in the United States to make it unnecessary to import honeybees or honeybee semen from Mexico.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 322

Bees, Honey, Imports, Quarantine, Transportation.

Accordingly 7 CFR part 322 is amended as follows:

PART 322—HONEYBEES AND HONEYBEE SEMEN

1. The authority citation for part 322 is revised to read as follows:

Authority: 7 U.S.C. 281; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 322.1, footnote 1 is revised to read as follows:

§ 322.1 Importation of honeybees and honeybee semen.[1]

* * * * *

[1] The criteria for determining which countries may be listed in this part as countries from which honeybees or honeybee semen may be imported into the United States are set forth in 7 U.S.C. 282. In this regard, 7 U.S.C. provides in relevant part, that:

(a) *In order* to prevent the introduction and spread of diseases and parasites harmful to honeybees, and the introduction of genetically undesirable germ plasm of honeybees, the importation into the United States of all honeybees is prohibited, except that honeybees may be imported into the United States—

(1) By the United States Department of Agriculture for experimental or scientific purposes;

(2) From countries determined by the Secretary of Agriculture—

(A) To be free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees; and

(B) To have in operation precautions adequate to prevent the importation of honeybees from other countries where harmful diseases or parasites, or undesirable species or subspecies, of honeybees exist; or

(3) From Canada or Mexico, subject to such terms and conditions as the Secretary of Agriculture determines appropriate, if the Secretary determines that the region of Canada or Mexico from which the honeybees originated is, and is likely to remain, free of diseases or parasites harmful to honeybees, and undesirable species or subspecies of honeybees.

(b) Honeybee semen may be imported into the United States only from:

(1) Countries determined by the Secretary of Agriculture to be free of undesirable species or subspecies of honeybees, and which have in operation precautions adequate to prevent the importation of such undesirable honeybees and their semen; or

(2) Canada or Mexico, if the Secretary of Agriculture determines that the region of Canada or Mexico from which the imports originate is, and is likely to remain, free of undesirable species or subspecies of honeybees.

Done in Washington, DC, this 30th day of December, 1993.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94-200 Filed 1-5-94; 8:45 am]

BILLING CODE 3410-34-P

Rural Electrification Administration

7 CFR Part 1773

RIN 0572-AA93

Policy on Audits of REA Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: This final rule revises and clarifies a provision of the current regulation which requires a certified public accountant (CPA) to state whether an electric borrower has complied with certain provisions of its loan and security instruments. This final rule also incorporates the illustrative management letter issued by the American Institute of Certified Public Accountants in a Technical Practice Aid dated November 11, 1992.

DATES: This rule is effective February 7, 1994. This rule applies to audits prepared as of December 31, 1993, and thereafter.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta E. Detwiler, Chief, Technical Accounting and Auditing Staff, Borrower Accounting Division, Rural Electrification Administration, room 2222, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720-5227.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866.

Regulatory Flexibility Act Certification

The Administrator, REA, has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this final rule.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96-511) and section 3504 of that Act, the information collection and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under control number 0572-0095. Comments regarding these requirements may be sent to the United States Department of Agriculture, Clearance Office, OIRM, room 404-W, Washington, DC 20250 or to the Office of Management and Budget, Office of Information and Regulatory Affairs, room 3201, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator, REA, has determined that this final rule will not significantly effect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under number 10.850—Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final Rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and Rural Telephone Bank (RTB) loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule:

(1) Will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule;

(2) Will not have any retroactive effect; and

(3) Will not require administrative proceeding before parties may file suit challenging the provisions of this rule.

Background

On December 3, 1991, REA published a final rule on part 1773, at 56 FR 63354, concerning audits of REA borrowers. Part 1773 implements the standard REA security instrument provision requiring REA borrowers to prepare and furnish to REA, at least once during each 12-month period, a full and complete report of its financial condition, operations, and cash flows, in form and substance satisfactory to REA, audited and certified by an independent CPA, satisfactory to REA, and accompanied by a report of such audit, in form and substance satisfactory to REA. A report of the audit was defined in § 1773.1 to include the auditor's report, report on compliance, report on internal controls and management letter.

The management letter is prepared by the CPA and addresses specific internal control, compliance, and other program issues not typically addressed in the standard auditor's report, report on internal controls, or report on compliance. The requirements for preparing a management letter are set forth in § 1773.34, Management Lotter. This final rule revises and clarifies § 1773.34(e). Section 1773.34 (e)(1)(i) for electric borrowers and § 1773.34 (e)(2)(i) for telephone borrowers requires CPAs to test compliance with the loan and security instrument provision requiring borrowers to maintain insurance. REA is currently reviewing its insurance requirements to determine if these requirements are representative of current industry standards. Therefore, until such time as REA's review is completed and revisions, if any, to current policies are finalized, CPAs will not be required to test for compliance with the mortgage provision relating to insurance.

Section 1773.34(e)(1)(ii) for electric borrowers and § 1773.34(e)(2)(iii) for telephone borrowers requires CPAs to test for compliance with the loan and security instrument provision requiring funds to be deposited in banks or other depositories designated in the loan documents or approved by REA. Because of the many and varied investing activities available in today's economy, CPAs have questioned the definition of funds and what, if any, investments are affected. This final rule provides a definition of funds for purposes of applying this part 1773.

Section 1773.34(e)(1)(iv) for electric borrowers and § 1773.34(e)(2)(iv) for telephone borrowers requires CPAs to

review the financial and statistical report and state whether the information presented is in agreement with the borrower's records. CPAs have questioned whether they are required to review a certified copy of the report obtained directly from REA or whether they may review a copy represented by the borrower as having been submitted to REA. This final rule clarifies REA's requirement for CPAs to review a copy of the financial and statistical report represented by the borrower as having been submitted to REA.

Section 1773.34(e)(1)(iii) for electric borrowers and § 1773.34(e)(2)(ii) for telephone borrowers requires the CPA to state whether an REA borrower has complied with the provision of its loan and security instrument that requires a borrower to obtain written approval of mortgagees to enter into any contract for the operation or maintenance of all or any part of its property, or for the use of its property by others. This requirement clearly goes beyond the scope of government auditing standards because it requires all contracts, even those that have little or no impact on financial statement amounts, to be reviewed by the CPA for REA approval. This testing has, during the effective period of part 1773, translated into increased audit fees. To minimize the cost impact to REA borrowers yet provide REA the assurance it requires, this final rule details the contracts that must be reviewed by CPAs.

This final rule also incorporates the illustrative management letter, as amended by these part 1773 revisions, issued by the American Institute of Certified Public Accountants in a Technical Practice Aid dated November 11, 1992. The illustrative letter properly addresses the management letter requirements set forth in 7 CFR 1773.34 and includes specific language to ensure compliance with the promulgated auditing literature. As such, REA believes it is more informative than the sample management letter previously provided in appendix C to part 1773.

Due to a procedural change within REA that will more efficiently process and review audit reports submitted by REA borrowers, this final rule also amends § 1773.3, § 1773.20, and § 1773.21 to require borrowers to submit to REA an additional copy of the audit, report on compliance, report on internal controls, and management letter and revises § 1773.21 to require the submission of an additional copy of borrowers' plans for corrective action.

Comments

A proposed rule entitled Policy on Audits of REA Borrowers, published September 23, 1993, at 58 FR 49442, invited interested parties to submit comments on or before November 22, 1993. Comments were received from the National Rural Electric Cooperative Association (NRECA) and two certified public accounting firms. The comments submitted by NRECA were based upon an analysis performed by the Accounting & Depreciation Committee, a subcommittee of the Generation and Transmission Managers Association Technical Advisory Committee, and were considered and concurred in by the NRECA Accounting and Tax Committee.

One accounting firm agreed with the proposed revisions in all respects. The other commenters agreed with the proposed revisions; however, proffered additional revisions. The following paragraphs address the additional revisions proposed by the commenters.

Comment. Sections 1773.40 and 1773.45 state that the certified public accountant's (CPA) workpapers must document whether all regulatory assets and liabilities comply with the requirements of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, and have received REA approval. REA telephone borrowers that comply with generally accepted accounting principles as required by part 32 of the Federal Communications Commission's Rules and Regulations, Uniform System of Accounts for Telecommunications Companies, are not required to obtain specific REA approval of regulatory assets and liabilities. Only REA electric borrowers must seek such approval. Sections 1773.40 and 1773.45 should be amended to specify that REA approval of regulatory assets and liabilities must only be documented for REA electric borrowers.

Response. REA agrees with the comment and has revised § 1773.40 and § 1773.45 accordingly.

Comment. Section 1773.9(c) states that pursuant to the terms of its audit agreement with the borrower, the CPA must immediately report, in writing, all irregularities and all indications or instances of illegal acts, whether material or not to: (1) The president of the borrower's board of directors; (2) the Director, Borrowers Accounting Division; and (3) the Office of Inspector General. This requirement goes beyond that of generally accepted government auditing standards (GAGAS) which limits reporting requirements for irregularities to material instances and instances that cumulatively could have a material effect on the financial statements. GAGAS further limits the reporting of illegal acts to only the top official of the entity arranging for the audit. REA should modify the requirements set forth in § 1773.9(c) to correspond with the GAGAS requirements.

Response. REA recognizes that certain procedures set forth in part 1773 exceed the requirements of a GAGAS audit and REA has acknowledged that fact in the rule. The Office of Inspector General, in Departmental Regulation No. 1700–1, Basic OIG Investigation/Audit Organization and Procedures, sets forth certain requirements that all Federal agencies within USDA must impose upon nonFederal auditors. One of these requirements is that all irregularities or illegal acts, regardless of materiality, discovered by nonFederal auditors be reported to the Federal agency requiring the audit and to OIG for appropriate action. For this reason, no revisions were made in the final rule.

Comment. Section 1773.6(a)(2) states that "The borrower and CPA acknowledge that REA regulations provide that if the borrower fails to have an audit performed and documented in compliance with GAGAS and this part, the borrower is in violation of its security instrument with REA". This language exceeds the applicable mortgage covenant and the following language should be substituted: "The borrower and CPA acknowledge that REA will consider the borrower to be in violation of its security instrument with REA if the borrower fails to have an audit performed and documented in compliance with GAGAS and 7 CFR part 1773. This acknowledgement shall not be considered a contractual admission against interest by either the borrower or the CPA."

Response. REA's proposed rule published on September 23, 1993, did not include revisions to § 1773.6(a)(2). Therefore, comments on this section went beyond the scope of the proposal. REA is planning a separate rulemaking procedures that will include changes in § 1773.6(a)(2) and REA will be soliciting comments at that time.

Comment. Certain disclosure and reporting requirements contained in § 1773.34 should include some consideration of materiality. The concept of materiality is inherent in all audits. Strict compliance with the existing policy has, however, resulted in reporting of immaterial items of non-compliance.

Response. As previously discussed, REA recognizes that certain procedures set forth in part 1773 exceed the requirements of a GAGAS audit and REA has acknowledged that fact in the rule. Section 1773.34 sets forth REA's requirement that the CPA must prepare a management letter and establishes the testing and reporting requirements for the management letter.

Section 1773.34(e) sets forth certain provisions of REA's security instrument that REA has determined are essential to the security of its loans. CPAs auditing REA borrowers are, therefore, required to test for compliance with the security instrument provisions set forth in § 1773.34. Because of the degree of reliance that REA places on the CPAs' testing in these areas, REA has determined that materiality should not be a factor upon which testing is based. REA has, however, through the publication of this final rule, revised and eliminated many of the unclear or burdensome requirements set forth in part 1773. For this reason, no additional revisions were made to § 1773.34.

List of Subjects in 7 CFR Part 1773

Accounting, Electric power, Loan programs—communications, Loan programs—energy, Reporting and recordkeeping requirements, Rural areas, Telephone.

For the reasons set forth in the preamble, REA hereby amends 7 CFR chapter XVII as follows:

PART 1773—POLICY ON AUDITS OF REA BORROWERS

1. The authority citation for part 1773 is revised to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*)

2. In § 1773.3, paragraph (c) is revised to read as follows:

§ 1773.3 Annual audit.

* * * * *

(c) Until all loans made or guaranteed by REA have been repaid, the borrower must furnish three copies of the auditor's report, report on compliance, report on internal controls, and management letter to REA within 120 days of the as of audit date.

* * * * *

3. In § 1773.20, paragraph (a) is revised to read as follows:

§ 1773.20 CPA's submission of the auditor's report, report on compliance, report on internal controls, and management letter.

(a) *Time limit.* As soon as possible after completion of the audit, but within 90 days of the as of audit date, the CPA should deliver the auditor's report, report on compliance, report on internal controls, and management letter to the president of the borrower's board of directors. As a minimum, copies should be provided for each member of the board of directors and the manager. Further, three copies must be provided to the borrower for transmittal to REA.

* * * * *

4. In § 1773.21, paragraphs (b) and (c) are revised to read as follows:

§ 1773.21 Borrower's review and submission of the auditor's report, report on compliance, report on internal controls, and management letter.

* * * * *

(b) The borrower must furnish REA with three copies of the auditor's report, report on compliance, report on internal controls, and management letter within 120 days of the as of audit date. Any provision in REA's security instrument that requires such documents to be furnished to REA in a shorter period of time may be disregarded.

(c) The borrower must furnish REA with three copies of its plan for corrective action, if any, within 180 days of the as of audit date.

* * * * *

5. Section 1773.34 is amended by removing paragraph (e)(1)(i), redesignating paragraphs (e)(1)(ii) through (e)(1)(iv) as paragraphs (e)(1)(i) through (e)(1)(iii) respectively and revising the newly designated paragraphs, removing paragraph (e)(2)(i), redesignating paragraphs (e)(2)(ii) through (e)(2)(iv) as paragraphs (e)(2)(i) through (e)(2)(iii) respectively and revising the newly redesignated paragraphs to read as follows:

§ 1773.34 Management letter.

* * * * *

(e) * * *

(1) * * *

(i) The requirement for funds to be deposited in banks or other depositories designated in the loan documents or approved by REA. For purposes of this part 1773, funds shall be defined as cash on deposit in demand and time accounts, and certificates of deposit;

(ii) The requirement for a borrower to obtain written approval of mortgagees to enter into any contract for the operation or maintenance of all or any substantial part of its property, or for the use by others of its property. For purposes of this part 1773, the following contracts shall be deemed as requiring REA approval:

(A) Management contracts in which the borrower has contracted to have another borrower or other entity manage its affairs;

(B) Management contracts in which the borrower has contracted to manage another borrower or other utility system;

(C) Operations and maintenance contracts in which the borrower has contracted to have another borrower or other entity operate and/or maintain all or a substantial part (45% or more) of the physical plant facilities of the borrower;

(D) Operations and maintenance contracts in which the borrower has contracted to operate and maintain the physical plant facilities of another borrower or other utility system; and

(E) Contracts between the borrower and its manager; and

(iii) The requirement for a borrower to prepare and furnish mortgagees annual financial and statistical reports on the borrower's financial condition and operations. The CPA must state whether the information represented by the borrower as having been submitted to REA in its most recent December 31 REA Form 7 or Form 12 is in agreement with the borrower's records, and must comment on any exceptions noted. If the borrower represents that an amended report has been filed as of December 31, the comments must relate to the amended report.

(2) * * *

(i) The requirement for a borrower to obtain written approval of the mortgagees to enter into any contract for the operation or maintenance of property and for the use of mortgaged property by others, or for services pertaining to toll traffic, operator assistance, or switching. For purposes of this part 1773, the following contracts shall be deemed as requiring REA approval:

(A) Any contract, agreement or lease between the borrower and an affiliate other than as allowed under 7 CFR part 1744, subpart E;

(B) Any lease of a building or land; and

(C) Any other contract as defined in § 1773.34 (e)(2)(i) except:

(*1*) Industry standard traffic settlement agreements involving interexchange and long distance carriers which, in form and substance, conform with contracts in general use in the telecommunications industry;

(*2*) Billing and collecting agreements;

(*3*) Toll pooling arrangements involving National Exchange Carrier Association and state associations;

(*4*) Directory services agreements; and

(*5*) Joint use agreements;

(ii) The requirement for funds to be deposited in banks or other depositories designated in the loan documents or approved by REA. For purposes of this part 1773, funds shall be defined as cash on deposit in demand and time accounts, and certificates of deposit; and

(iii) The requirement for a borrower to prepare and furnish mortgagees annual financial and statistical reports on the

borrower's financial condition and operations. The CPA must state whether the information represented by the borrower as having been submitted to REA in its most recent December 31 REA Form 479 is in agreement with the borrower's records, and must comment on any exceptions noted. If the borrower represents that an amended report has been filed as of December 31, the comments must relate to the amended report.

* * * * *

6. Section 1773.40 is revised to read as follows:

§ 1773.40 Regulatory assets.

The CPA's workpapers must document whether all regulatory assets comply with the requirements of SFAS No. 71. For electric borrowers only, the CPA's workpapers must document whether all regulatory assets have received REA approval.

7. Section 1773.45 is revised to read as follows:

§ 1773.45 Regulatory liabilities.

The CPA's workpapers must document whether all regulatory liabilities comply with the requirements of SFAS No. 71. For electric borrowers only, the CPA's workpapers must document whether all regulatory liabilities have received REA approval.

8. Appendix C to Part 1773 is revised to read as follows:

Appendix C to Part 1773—Illustrative Independent Auditors' Management Letter

REA requires that CPAs auditing REA borrowers provide a management letter in accordance with § 1773.34. REA requires that this letter bear the same date as the auditor's report and be addressed to the borrower's board of directors. The CPA is required to sign the auditor's report, report on compliance, report on internal controls, and management letter.

Illustrative Independent Auditors'
Management Letter
March 15, 19x6

Board of Directors
[*Name of Borrower*]
[*City, State*]

We have audited the financial statements of [*Name of Borrower*] for the year ended December 31, 19x5, and have issued our report thereon dated March 15, 19x6. We conducted our audit in accordance with generally accepted auditing standards, Government Auditing Standards issued by the Comptroller General of the United States, and 7 CFR part 1773, Policy on Audits of Rural Electrification Administration (REA) Borrowers. Those standards require that we plan and perform the audit to obtain reasonable assurance about whether the financial statements are free of material misstatement.

In planning and performing our audit of the financial statements of [*Name of Borrower*] for the year ended December 31, 19x5, we considered its internal control structure in order to determine our auditing procedures for the purpose of expressing an opinion on the financial statements and not to provide assurance on the internal control structure.

A description of the responsibility of management for establishing and maintaining the internal control structure and the objectives of and inherent limitations in such a structure is set forth in our independent auditors' report on the internal control structure dated March 15, 19x6, and should be read in conjunction with this report.

Our consideration of the internal control structure would not necessarily disclose all matters in the internal control structure that might be material weaknesses under standards established by the American Institute of Certified Public Accountants.

A material weakness is a condition in which the design or operation of the specific internal control structure elements does not reduce to a relatively low level the risk that errors or irregularities in amounts that would be material in relation to the financial statements being audited may occur and not be detected within a timely period by employees in the normal course of performing their assigned functions. However, we noted no matters involving the internal control structure and its operation that we consider to be a material weakness as defined above. [*If a material weakness was noted, refer the reader to the independent auditors' report on internal control structure.*]

7 CFR 1773.34 requires comments on specific aspects of the internal control structure, compliance with specific REA loan and security instrument provisions, and other additional matters. We have grouped our comments accordingly. In addition to obtaining reasonable assurance about whether the financial statements are free from material misstatements, at your request, we performed tests of specific aspects of the internal control structure, of compliance with specific REA loan and security instrument provisions, and of additional matters. The specific aspects of the internal control structure, compliance with specific REA loan and security instrument provisions, and additional matters tested include, among other things, the accounting procedures and records, materials control, compliance with specific REA loan and security instrument provisions set forth in 7 CFR 1773.34 (e)(1), [*for telephone borrowers, 7 CFR 1773.34 (e)(2)],* related party transactions, and depreciation rates. [*For electric borrowers:*] The additional matters tested also include a schedule of deferred debits and credits, upon which we express an opinion. In addition, our audit of the financial statements also included the procedures specified in 7 CFR 1773.38–.45. Our objective was not to provide an opinion on these specific aspects of the internal control structure, compliance with specific REA loan and security instrument provisions, or additional matters, and accordingly, we express no opinion thereon.

No reports (other than our independent auditors' report, our independent auditors' compliance report, and our independent auditors' report on the internal control structure, all dated March 15, 19x6) or summary of recommendations related to our audit have been furnished to management.

Our comments on specific aspects of the internal control structure, compliance with specific REA loan and security instrument provisions, and other additional matters as required by 7 CFR 1773.34 are presented below.

Comments on Certain Specific Aspects of the Internal Control Structure

We noted no matters regarding [*Name of Borrower*]'s internal control structure and its operation that we consider to be a material weakness as previously defined with respect to:

—The accounting procedures and records [*list other comments*];
—The process for accumulating and recording labor, material, and overhead costs, and the distribution of these costs to construction, retirement, and maintenance or other expense accounts [*list other comments*]; and,
—The materials control [*list other comments*].

Comments on Compliance With Specific REA Loan and Security Instrument Provisions

Management's responsibility for compliance with laws, regulations, contracts, and grants is set forth in our independent auditors' report on compliance dated March 15, 19x6, and should be read in conjunction with this report. At your request, we have performed the procedures enumerated below with respect to compliance with certain provisions of laws, regulations, and contracts. The procedures we performed are summarized as follows:

—Procedure performed with respect to the requirement to maintain all funds in institutions whose accounts are insured by an Agency of the Federal Government:

1. Obtained information from financial institutions with which [*Name of Borrower*] maintains funds that indicated that the institutions are insured by an Agency of the Federal Government.

—Procedures performed with respect to the requirement for a borrower to obtain written approval of the mortgagee to enter into any contract for the operation or maintenance of property, or for the use of mortgaged property by others [*see § 1773.34(e)(2)(i) for additional telephone borrower requirements in accordance with 7 CFR 1773.34(e)*] for the year ended December 31, 19x5 of [*Name of Borrower*]:

1. Obtained and read a borrower prepared schedule of new written contracts entered into during the year for the operation or maintenance of its property, or for the use of its property by others as defined in § 1773.34(e)(1)(ii) [*§ 1773.34(e)(2)(i) for telephone borrowers*].

2. Reviewed Board of Director minutes to escertain whether board-approved written contracts are included in the borrower-prepared schedule.

3. Noted the existence of written REA [*and other mortgagee*] approval of each contract listed by the borrower.

—Procedure performed with respect to the requirement to submit REA Form 7 or Form 12 [*Form 479 for telephone borrowers*] to the REA:

1. Agreed amounts reported in Form 7 or Form 12 [*Form 479 for telephone borrowers*] to [*Name of Borrower*]'s records.

The results of our tests indicate that, with respect to the items tested, [*Name of Borrower*] complied, except as noted below, in all material respects, with the specific REA loan and security instrument provisions referred to below. With respect to items not tested, nothing came to our attention that caused us to believe that [*Name of Borrower*] had not complied, in all material respects, with those provisions. The specific provisions tested, as well as any exceptions noted, include the requirements that:

—The borrower maintains all funds in institutions whose accounts are insured by an Agency of the Federal Government [*list all exceptions*];
—The borrower has obtained written approval of the REA [*and other mortgagees*] to enter into any contract for the operation or maintenance of property, or for the use of mortgaged property by others as defined in § 1773.34(e)(1)(ii) [*§ 1773.34(e)(2)(i) for telephone borrowers*] [*list all exceptions*]; and
—The borrower has submitted its Form 7 or Form 12 [*Form 479 for telephone borrowers*] to the REA and the Form 7 or Form 12 [*Form 479 for telephone borrowers*], Financial and Statistical Report, as of December 31 19x5, represented by the borrower as having been submitted to REA is in agreement with the [*Name of Borrower*]'s records in all material respects [*list all exceptions*].

Comments on Other Additional Matters

In connection with our audit of the financial statements of [*Name of Borrower*], nothing came to our attention that caused us to believe that [*Name of Borrower*] failed to comply with respect to:

—The reconciliation of subsidiary plant records to the controlling general ledger plant accounts addressed at 7 CFR 1773.34(c)(1) [*list all exceptions*];
—The clearing of the construction accounts and the accrual of depreciation on completed construction addressed at 7 CFR 1773.34(c)(2) [*list all exceptions*];
—The retirement of plant addressed at 7 CFR 1773.34(c) (3) and (4) [*list all exceptions*];
—Sales of plant material, or scrap addressed at 7 CFR 1773.34(c)(5) [*list all exceptions*];
—The disclosure of material related party transactions, in accordance with Statement of Financial Accounting Standards No. 57, Related Party Transactions, for the year ended December 31, 19x5, in the financial statements referenced in the first paragraph of this report addressed at 7 CFR 1773.34(f) [*list all exceptions*]; and
—*For electric borrowers only:* depreciation rates addressed at 7 CFR 1773.34(g) [*list all exceptions*].

Detailed Schedule of Inventory Differences

A detailed schedule of differences between physical inventory, perpetual inventory records, and the general ledger (identifying gross overages and gross shortages) is provided below. This schedule is not a required part of the basic financial statements but is supplementary information required by 7 CFR 1773.34(d). We have applied certain limited procedures, which consisted principally of inquiries of management regarding the method of measurement and presentation of the supplementary information. However, we did not audit the information and express no opinion on it. [Disclose the disposition of inventory differences.]

[The detailed schedule of inventory differences would be included here. The word "unaudited" should appear in the title of the schedule.]

For Electric Borrowers Only: Detailed Schedule of Deferred Debits and Deferred Credits

Our audit was made for the purpose of forming an opinion on the basic financial statements taken as a whole. The detailed schedule of deferred debits and deferred credits required by 7 CFR 1773.34(h) and provided below is presented for purposes of additional analysis and is not a required part of the basic financial statements. This information has been subjected to the auditing procedures applied in our audit of the basic financial statements and, in our opinion, is fairly stated in all material respects in relation to the basic financial statements taken as a whole.

[The detailed schedule of deferred debits and deferred credits would be included here. The total amount of deferred debits and deferred credits as reported in the schedule must agree with the totals reported on the Balance Sheet under the specific captions of "Deferred Debits" and "Deferred Credits". Those items that have been approved, in writing, by REA should be clearly indicated.]

This report is intended solely for the information and use of the board of directors, management, and the REA and supplemental lenders. However, this report is a matter of public record and its distribution is not limited.

Name of Firm

Michael V. Dunn,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc. 94–196 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–15–M

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AE93

Fingerprint Cards: Change in User Fee

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) is amending its regulations to reflect an administrative change in the procedure for notifying licensees of changes in the user fee charged by the Federal Bureau of Investigation (FBI) for processing fingerprint cards as part of the criminal history checks that nuclear power reactor licensees are required to perform for those individuals granted unescorted access to an operating nuclear power facility or access to Safeguards Information. This notice also informs licensees of the new user fee adopted by the FBI effective January 3, 1994.

EFFECTIVE DATE: February 7, 1994.

FOR FURTHER INFORMATION CONTACT: C.H. Hendren, Office of Nuclear Reactor Regulation, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, Telephone (301) 504–3209.

SUPPLEMENTARY INFORMATION:

Background

The provisions of 10 CFR 73.57 requires licensees to process fingerprint cards through the NRC to the FBI Criminal Justice Information Services Division which then does a criminal history check. A user fee for processing fingerprint cards was required by Congress (Pub. L. 99–399), is established by the FBI, and is periodically increased as the FBI's processing costs change.

Discussion

On December 3, 1993, the FBI's Division of Criminal Justice Information Services (CJIS) notified the Nuclear Regulatory Commission that the "user fee" charged by the FBI for processing fingerprint cards had been increased from $23.00 to $24.00 effective January 3, 1994. The FBI user fee includes a $2.00 handling cost for the agency doing the initial screening of the fingerprint cards, and provides that the agency doing the initial screening retains that handling cost. In the case of nuclear reactor licensees, the NRC performs this initial screening. The user fee is periodically changed by the FBI, as their processing costs change.

Because this amendment pertains only to a user-fee change imposed by the FBI, the Commission for good cause finds that the notice and public procedure provisions of the Administrative Procedure Act are impractical and unnecessary. Comment will not serve to alter the FBI fee, which is outside the control of the NRC. Further, rather than engaging in an unnecessary rulemaking procedure to amend the rule every time the FBI changes the fee, this amendment removes the fee amount from the rule.

The Commission will advise licensees directly when the FBI fee changes. A notice of the FBI fee change pertaining to NRC licensees will also be published in the **Federal Register.**

Environmental Impact: Categorical Exclusion

The NRC has determined that this final rule is the type of action described as a categorical exclusion in 10 CFR 51.22(c)(2). Therefore, neither an environmental impact statement nor an environmental assessment has been prepared for this final rule.

Paperwork Reduction Act Statement

This final rule does not contain a new or amended information collection requirement subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). Existing requirements were approved by the Office of Management and Budget under approval number 3150–0002.

Backfit Analysis

The NRC has determined that the backfit rule, 10 CFR 50.109, does not apply to the action taken in this final rulemaking and, therefore, that a backfit analysis is not required for this final rule because this amendment does not involve any provisions which would impose backfits as defined in 10 CFR 50.109(a)(1).

List of Subjects in 10 CFR Part 73

Criminal penalties, Export, Hazardous materials transportation, Nuclear materials, Nuclear power plants and reactors, Reporting and recordkeeping requirements, Security measures.

For the reasons stated in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 552 and 553, the NRC is adopting the following amendment to 10 CFR part 73.

PART 73—PHYSICAL PROTECTION OF PLANTS AND MATERIALS

1. The authority citation for part 73 continues to read as follows:

Authority: Secs. 53, 161, 68 Stat. 930, 948, as amended, sec. 147, 94 Stat. 780 (42 U.S.C. 2073, 2167, 2201); sec. 201, as amended, 204, 88 Stat. 1242, as amended, 1245 (42 U.S.C. 5841, 5844).

Section 73.1 also issued under secs. 135, 141, Pub. L. 97–425, 96 Stat. 2232, 2241, (42 U.S.C. 10155, 10161). Section 73.37(f) also issued under sec. 301, Pub. L. 96–295, 94 Stat. 789 (42 U.S.C. 5841 note). Section 73.57 is issued under sec. 606, Pub. L. 99–399, 100 Stat. 876 (42 U.S.C. 2169).

2. In § 73.57, paragraph (d)(3) is revised to read as follows:

§ 73.57 Requirements for criminal history checks of individuals granted unescorted access to a nuclear power facility or access to Safeguards Information by power reactor licensees.

* * * * *

(d) * * *

(3) Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, or money order made payable to "U.S. NRC." The amount of the fee is the user fee for processing fingerprint cards submitted by the Nuclear Regulatory Commission on behalf of nuclear power plants charged by the FBI for each card. Combined payment for multiple applications is acceptable. The Commission will publish the user fee charged by the FBI in the **Federal Register** whenever the fee changes. The Commission will directly notify licensees who are subject to this regulation of any fee changes.

* * * * *

Dated at Rockville, Maryland this 22nd day of December, 1993.

For the Nuclear Regulatory Commission.

James M. Taylor,

Executive Director for Operations.

[FR Doc. 94–250 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWP–17]

Establishment of Class D Airspace, Barking Sands, Kauai, HI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on December 10, 1993. This final rule established Class D airspace at Barking Sands Pacific Missile Range Facility (PMRF), Kekaha, Kauai, Hawaii, effective January 10, 1994. This correction to the final rule will establish the Class D airspace at Barking Sands PMRF effective on March 3, 1994.

EFFECTIVE DATE: Effective January 6, 1994, the effective date of the final rule at 58 FR 64880 is corrected to be 0901 U.T.C., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261; telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Federal Aviation Administration (FAA) published a final rule that established Class D airspace at Barking Sands Pacific Missile Range Facility, Kekaha, Kauai, Hawaii (58 FR 64880). The effective date was established as 0901 U.T.C., January 10, 1994. That date was incorrect. The new effective date is now 0901 U.T.C., March 3, 1994.

Correction of Final Rule Effective Date

Accordingly, pursuant to the authority delegated to me, the publication on December 10, 1993 (58 FR 64880) is corrected as follows:

On page 64880, in the second column, in **EFFECTIVE DATE**, by removing "0901 U.T.C., January 10, 1994" and inserting in its place "0901 U.T.C., March 3, 1994".

Issued in Lawndale on December 21, 1993.

Harvey R. Riebel,

Manager, System Management Branch, AWP–530.

[FR Doc. 94–133 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASO–17 and 93–ASO–18]

Amendment to Class D Airspace Areas, Multiple Locations in Kentucky, Mississippi, North Carolina, South Carolina and Puerto Rico; Amendment to Class E Airspace Areas, Multiple Locations in Alabama, Georgia, Kentucky, Mississippi, North Carolina and Tennessee; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; corrections.

SUMMARY: This action corrects errors in the airspace designation of the Columbus Golden Triangle, MS Class E airspace area published in final rules on October 25, 1993 (58 FR 54953), Airspace Docket No. 93–ASO–17 and (58 FR 54954), Airspace Docket No. 93–ASO–18.

EFFECTIVE DATE: 0900 UTC, January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, GA 30320; telephone (404) 305–5590.

SUPPLEMENTARY INFORMATION:

History

Airspace Docket 93–ASO–17, published on October 25, 1993 (58 FR 54953), changed the effective hours of certain Class D Airspace areas from full time to part time. The Columbus Golden Triangle Airport was inadvertently included in the list of Class D Airspace areas in error. The Columbus Golden Triangle Airport is Class E2 airspace, an airspace area designated as a surface area for an airport. Airspace Docket No. 93–ASO–18, published on October 25, 1993 (58 FR 54954), changed the effective hours of certain Class E airspace areas from full time to part time. The Columbus Golden Triangle Airport was inadvertently omitted from the list of Class E airspace areas. This action corrects the errors by changing the designation of the Columbus Golden Triangle, MS Airspace area from Class D to Class E.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the corrections to the airspace designation for the Columbus Golden Triangle, Mississippi, Airspace area, as published in the **Federal Register** on October 25, 1993 (58 FR 54953) (**Federal Register** Document No. 93–26168, page 54954, column 2) and omitted from the **Federal Register** on October 25, 1993 (58 FR 54954) (**Federal Register** Document No. 93–26169, page 54955, column 1) is corrected in the amendment to the incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, as follows:

The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

Para. 5000 General is amended by removing "ASO MS D Columbus Golden Triangle, MS".

Para. 6002 Class E airspace areas designated as a surface area for an airport is amended by adding "ASO MS E2 Columbus Golden Triangle, MS".

Issued in College Park, Georgia, on December 17, 1993.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–246 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

Technology Administration

15 CFR Part 295

[Docket No. 930242–3313]

RIN 0693–AA83

Advanced Technology Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is today issuing a final rule which amends the implementing regulations for the Advanced Technology Program (ATP). A number of the revisions are required by the American Technology Preeminence Act of 1992, including provisions on: participation by foreign companies in ATP; the establishment of a patent policy different from the government-wide policy set out by the Bayh-Dole Act; and a new requirement that "joint research and development ventures" be industry-led. Further, requirements for royalty-sharing by ATP recipients with the Federal government for inventions funded under ATP have been repealed by the Act, and are thus removed from the regulations. Similarly, ATP authority to provide direct funding to independent research organizations has been repealed. Also, changes not required by the Act are made, including changes to simplify and clarify the selection criteria, and to streamline the internal operations of ATP, including the selection process.

EFFECTIVE DATE: This rule is effective on January 6, 1994.

FOR FURTHER INFORMATION CONTACT: George A. Uriano or Brian C. Belanger, Advanced Technology Program, National Institute of Standards and Technology (NIST), telephone number (301) 975–5187.

SUPPLEMENTARY INFORMATION: The National Institute of Standards and Technology is today issuing a final rule which amends regulations found at part 295 of title 15 of the Code of Federal Regulations, which implement the Advanced Technology Program (ATP). The Advanced Technology Program assists United States businesses to carry out high-risk research and development that will, if successful, improve the competitive position of the United States and its businesses by accelerating the development of technologies that have significant potential to stimulate economic growth, and raise productivity. ATP enters into cooperative agreements with United States joint research and development ventures and United States businesses, especially small businesses. Where appropriate, Federal laboratories may be involved in ATP projects consistent with other authority, such as cooperative research and development agreements under section 12 of the Stevenson-Wydler Technology Innovation Act of 1980.

Description of the Changes

Changes to part 295 include revisions on the following topics (please see the analysis of comments below for additional details):

- The eligibility of foreign firms to participate in ATP is addressed in a new section 295.3 of the regulations, and a related definition of "United States owned company" is added in section 295.2(r). These revisions follow the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(d)(9)).
- The establishment of a patent policy different from the government-wide policy set out by the Bayh-Dole Act (Pub. L. 96–517, as amended) is set out at section 295.8(a). These revisions follow the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(d)(11)). That statute requires that title to inventions made in whole or part with Program funds reside with for-profit companies that have been incorporated in the United States. Entities that are not for-profit organizations incorporated in this country are not eligible to obtain title to inventions made under the Program.
- A new requirement that "joint research and development ventures" be industry-led, set out at §§ 295.2(i) and 295.21, and the repeal of ATP authority to provide direct funding to independent research organizations, set out at § 295.30. These revisions follow the requirements of section 201(c)(2) and section 201(c)(4), respectively, of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(b)(1) and (b)(2)).
- Requirements for royalty-sharing by ATP recipients with the Federal government for inventions funded under ATP have been repealed, and are thus removed from existing § 295.7(c) of the regulations. This revision follows

the requirements of section 201(c)(6) of the American Technology Preeminence Act of 1991.

• Finally, changes not required by the Act are made to the selection criteria, and to the internal operations of ATP, including the selection process. These changes particularly include revisions to the remaining definitions in § 295.2, changes to the selection process described in §§ 295.4 and 295.5, changes to the selection criteria as set out in § 295.6, and changes to program administration found in §§ 295.7 and 295.14.

Summary of Comments

On August 2, 1993, the Technology Administration published a notice of proposed rulemaking in the **Federal Register** (55 FR 41069). In response to this notice forty-four letters were received; twenty-nine from universities, ten from other not-for-profit research organizations and industry associations, one from a state agency, one from a U.S.-owned for-profit company, one from a U.S. subsidiary of a foreign-owned corporation, one from a member of the U.S. House of Representatives, and one from a member of the NIST staff.

All but four of the forty-four respondents, including all twenty-nine from universities and all ten from other not-for-profit organizations, commented on the proposed revision to the treatment of patent rights found in § 295.8. An additional two dozen comments were received concerning proposed changes to the proposed definitions set out in § 295.2. The remaining comments were scattered among several sections, including: five concerning new § 295.14, which deals with special financial reporting requirements; three on the revisions to the selection criteria found in § 295.5; two on the use of abbreviated proposals proposed in § 295.5; and one each on the provisions on the eligibility and qualification of applicants found in §§ 295.3 and 295.31. No comments were received in response to proposed changes to the following: § 295.1, pertaining to the purpose of the regulation; § 295.4, the selection process; § 295.7, pertaining to notices of availability of funds; § 295.21, on qualification of applicants; § 295.22, dealing with limitations on assistance; § 295.24, concerning registration under the antitrust laws; and § 295.30, which describes the types of assistance available.

The following is a section-by-section description of the comments received by NIST, and NIST's response to those comments.

Section 295.2 Definitions—Comment Summary (24 Comments)

Twenty-three respondents, all universities or other nonprofit organizations, questioned whether the definition of "United States-owned company" found in § 295.2(r) of the proposed rule reflected the actual intent of Congress as stated in the American Technology Preeminence Act of 1991. The definition of United States-owned company set out in § 295.2(r) is used in section 295.8 to determine eligibility to obtain title to inventions arising from assistance under ATP. A consolidated analysis of the issues raised by § 295.2(r) and 295.8 is presented in the discussion of § 295.8 later in this notice, and the reader is asked to refer to that discussion.

In addition to the issue described above, one respondent questioned the exclusion (by omission) of independent research and development (IR&D) costs in the definition of matching funds found in § 295.2(1). IR&D funds are generally generated through contracts funded by the federal government. The financial assistance regulations which are applicable to ATP awards, and particularly Attachment E to OMB Circular A–110, prohibit the use of federal funds as cost share or match unless specifically authorized by federal law. The rule follows closely the wording of the 1988 legislation and hence cannot be changed without congressional action. The purpose of the limitations on qualified matching funds is to obtain a meaningful and significant commitment of company resources towards ATP objectives, including support to additional R&D beyond that which would have occurred without the ATP award.

Section 295.3 Eligibility of United States and foreign-owned businesses—(1 Comment)

One U.S. subsidiary of a foreign-owned company requested that both eligibility requirements and cancellation requirements for foreign-owned applicants be made clearer and that they be consistent with present law and with H.R. 820. In response, NIST notes that H.R. 820 is not law, but rather is pending legislation in the Congress. NIST cannot base changes in rules upon proposed legislation that has not been enacted.

Section 295.5 Use of Abbreviated Proposals in the Selection Process—(2 Comments)

Two respondents endorsed the use of abbreviated proposals. One respondent further proposed that abbreviated proposals address, and thus be evaluated on, scientific and technical criteria only. NIST has determined that business and economic factors are important factors in assessing the potential for success of a proposed project, and therefore must be considered in addition to the scientific and technical merit of the proposal.

Section 295.6 Criteria for Selection—(3 Comments)

Two respondents endorsed the increased emphasis on "scientific and technical merit", one of whom suggested increasing its weight further to 40 percent. Another respondent took issue with the reduced weight for two proposers "level of commitment" and suggested increasing the weight for the "commitment" criteria to 30 percent by eliminating "experience and qualifications" as a separate criteria.

In response to these comments, § 295.5 has been modified to increase the weight of the "level of commitment" to 20 percent, the level that exists in the regulation as it was promulgated in 1990. The weight given "experience and qualifications" has been reduced from 20 percent to 10 percent.

Section 295.8(a) Patent Rights—(40 Comments)

Forty comments were received concerning the proposed revision to § 295.8(a)(1), thirty-nine from universities and other nonprofit organizations opposed to the proposal, and one from a business supporting the proposal. Also, twenty-three of the thirty-nine commentors described above objected to the definition of "United States-owned company" found in § 295.2(r) of the proposed rule.

The term "United States-owned company" defined in § 295.2(r) is used in § 295.8(a)(1) to determine who is eligible to obtain title inventions arising from assistance under ATP. The definition states that an entity must be organized for profit-making purposes to be deemed a United States-owned company, and § 295.8(a)(1) states that only United States-owned companies may take title to inventions arising under the ATP. Taken together, the two sections prevent universities and other nonprofit organizations from obtaining title to inventions arising under the ATP.

The thirty-nine universities and nonprofit commentors are strongly opposed to this outcome. The following objection is typical: "The ATP legislation enables universities to participate in research funded through the program, and (we have) taken advantage of the opportunity to do so. However, the problem is that NIST has interpreted the ATP legislation to exclude universities from ownership of intellectual property resulting from ATP funded research."

In the view of NIST, the decision to prevent universities and other nonprofit organizations from taking title to inventions is embedded in statute, and NIST has no alternative but to follow the law as it presently is written. As a result of comments received from both for-profit and nonprofit organizations, NIST recognizes that one ingredient for the successful implementation of joint ventures under ATP is a flexible patent policy. The participants in ATP joint ventures need the flexibility to determine for themselves the best means of commercializing the technology they develop. This, in turn, requires the flexibility to allocate intellectual property rights as the joint ventures best see fit. Accordingly, NIST is working with the Congress in an attempt to enact a patent policy for ATP that leaves the decisions on patent ownership to joint venture members. Should a change in the law be enacted, NIST would immediately implement it. In that case, NIST would rely on the ATP proposal evaluation criteria to assess the probability of subsequent commercialization based on the proposed intellectual property rights arrangement.

Section 201(c)(6) of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(d)(11)) states that intellectual property rights developed under ATP "shall vest in a company or companies incorporated in the United States." In reaching the conclusion that the term "company or companies" refers to profit-making entities, NIST has been guided by the broader context of changes made to the ATP by the American Technology Preeminence Act. NIST believes that it was the intent of Congress to provide title to inventions directly to U.S. companies as the most effective means of assuring that research results enter the marketplace rapidly, and in the way most beneficial to United States businesses. In this context, NIST notes that the Act contains a new requirement that "joint research and development ventures" funded by ATP must be industry-led. NIST also notes the repeal of ATP authority to provide direct funding to nonprofit independent research organizations. (See sections 201(c)(2) and section 201(c)(4), respectively, of the American Technology Preeminence Act of 1991 (15 U.S.C. 278n(b)(1) and (b)(2)).

Thus, NIST believes that the only reasonable reading of section 201(c)(6) is to interpret the term "United States-owned company" as referring to businesses, and specifically, to for-profit entities.

Section 295.8 (b) and (c) · Copyright and Publication—(24 Comments)

A number of universities have expressed fear that the new ATP rules will prevent universities or their employees from copyrighting their works. The fear is also raised that the ATP rule will require universities to get the permission of their for-profit collaborators before publishing their research findings. In response, NIST notes that the parts of the ATP rule dealing with the questions raised by these comments on copyright and publication were not proposed to be substantively changed in the **Federal Register** notice of August 2, 1993. In the old rule, the provision on copyright was found in § 295.5(b), and the treatment of publication of research results was found at § 295.8(d). In the new rule, the provision on copyright is found in § 295.8(b), and the treatment of publication of research results is at § 295.8(c).

Except for renumbering, the only change that NIST proposed for the old § 295.5(b) concerned the governmental use license that each ATP funding recipient is required to provide to NIST for any copyrighted data first produced in the performance of the ATP award. The scope of the governmental use license has been truncated by deleting the authority of the government to distribute computer programs first produced in the performance of the ATP award to users in the United States. The ability of funding recipients to copyright the works of their employees remains unchanged. Both the old and new versions of the ATP regulation state that "funding recipients" can copyright works made under ATP. Universities that receive funds under ATP are "funding recipients". They are funding recipients if they are members of joint ventures. They are funding recipients if they are subcontractors. Universities get copyright. Accordingly, no change is made to § 295.8(c) of the regulation based upon the comments described ebove.

Except for renumbering, the only change that NIST proposed for the old § 295.5(d) was to delete the first part of the first sentence. That sentence originally read: "Although the program will encourage the timely publication of research results by funding recipients, the decision on whether to publish or not will be made by the funding recipient(s)." In the proposed revision, the sentence was revised to read simply "The decision on whether to publish or not will be made by the funding recipient(s)." NIST believes that the regulation is very clear that the decision to publish shall be made by negotiated agreement of the funding recipients and that the for-profit members of a joint venture will not be able to dictate to universities on this matter. This provision has been part of every ATP award made since 1990, and no difficulties have arisen under it. Accordingly, no change is made to section 295.8(c) of the proposed regulation based upon the comments described above.

Section 295.14 Special Financial Reporting—(5 Comments)

Two universities and three other not-for-profit organizations commented on proposed section 295.14, which would increase the flexibility of financial reporting requirements and encourage award recipients to retain independent CPA firms to perform audit services, while reserving the right of the Department of Commerce's Office of the Inspector General to determine the timing and nature of these services, and to conduct its own audit. The comments suggested a need for greater specificity as to the applicable OMB regulations which might apply and the conditions under which the Departmental Inspector General would exercise his authority in setting the time frame and scope of audit services.

In response, the regulations have been amended to state that the audit principles to be applied to ATP awards are the Generally Accepted Accounting Principles (GAAP) according to the General Accounting Office's "Government Auditing Standards" subtitled "Standards for Auditing Government Organization, Program, Activities and Functions". Clarifying changes have also been made to the definitions of "direct costs" found at § 295.2(c) and "indirect costs" found at § 295.2(h).

Section 295.31 Qualification of Applicants—(1 Comment)

One respondent urged that state and local governments and U.S. universities and non-profit research institutes working independently should be eligible to receive individual ATP awards outside of joint ventures. No change has been made to the regulation based upon this comment because eligibility for individual awards is expressly limited to United States companies by section 278n(b)(2) of title 15 of the United States Code.

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Classification

This document was not reviewed by the Office of Management and Budget under Executive Order 12866. The General Counsel certified to the Chief Counsel for Advocacy, Small Business Administration, at the time this rule was proposed that, if it were adopted as proposed it would not have a significant economic effect on a substantial number of small entities requiring a flexibility analysis under the Regulatory Flexibility Act. This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. The program is entirely voluntary for the participants that seek funding. It is not a major federal action requiring an environmental assessment under the National Environment Policy Act. This rule contains collection of information requirements subject to the Paperwork Reduction Act approved by OMB under control number 0693–0009. The Advanced Technology Program does not involve the mandatory payment of any matching funds from a state or local government, and does not affect directly any state or local government. Accordingly, the Technology Administration has determined that Executive Order 12372 is not applicable to this program. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research, Science and technology, Scientists.

Dated: December 27, 1993.

Arati Prabhakar,

Director.

For reasons set forth in the preamble, title 15, part 295 of the Code of Federal Regulations is amended as follows:

PART 295—ADVANCED TECHNOLOGY PROGRAM

1. The authority citation for part 295 is revised to read as follows:

Authority: 15 U.S.C. 278n.

2. Section 295.1 is revised to read as follows:

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on pre-competitive generic technologies. These technologies are: (1) Enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications; and (2) high value, because when applied, they offer significant benefits to the U.S. economy. Precompetitive technology is defined in § 295.2(n) and generic technology is defined in § 295.2(e).

(b) In the case of joint research and development ventures involving potential competitors, the willingness of firms to commit significant amounts of corporate resources to the venture is evidence that the proposed research and development is precompetitive. For joint ventures that involve firms and their customers or suppliers or for single firms not proposing cooperative research and development, a quantified description of the expected broad applicability of the technology and adequate assurances that the technology being developed will be utilized widely can provide evidence that the proposed research and development is pre-competitive.

(c) These rules prescribe policies and procedures for the award of cooperative agreements under the advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, competitive agreements, and contracts to carry out its mission, these rules address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

3. Section 295.2 is amended by revising paragraph (a), redesignating paragraphs (d) through (i) as paragraphs (k) through (p), redesignating paragraph (b) as paragraph (e) , redesignating paragraph (c) as paragraph (h), and adding new paragraphs (b), (c), (d), (f), (g), (i), and (j) to read as follows:

§ 295.2 Definitions.

(a) For the purposes of the ATP, the term *award* means Federal financial assistance made under a grant or cooperative agreement.

* * * * *

(b) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, or services, or anything of value to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(c) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel assigned to the ATP project and associated normal fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall interpret direct costs in accordance with 48 CFR part 31 or OMB Circular A–122, attachment B.

(d) The term *foreign-owned company* means a company other than a United States-owned company as defined in § 295.2(r).

* * * * *

(f) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal Government and the recipient is the transfer of money, property, services, or anything of value to the recipient in order to accomplish a public purpose of support or stimulation authorized by Federal statute, rather than acquisition by purchase, lease, or barter, of property or services for the direct benefit or use of the Federal Government; and no substantial involvement is anticipated between the executive agency, acting for the Federal Government, and the recipient during performance of the contemplated activity.

(g) The term *independent research organization* (IRO) means a nonprofit research and development corporation or association organized under the laws of any state for the purpose of carrying out research and development on behalf of other organizations.

* * * * *

(i) The term *industry-led joint research and development venture* means a joint research and development venture that consists of at least two separately-owned businesses that contribute matching funds to the project, perform research and development in the project, and control the venture's membership, research directions and funding priorities. The venture may include additional companies, independent research organizations, universities, and/or government laboratories which may or may not contribute funds to the project and perform research and development. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

(j) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention.

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4. The newly designated § 295.2(h) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(h) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration and general expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall interpret indirect costs in accordance with 48 CFR part 31 or OMB Circular A–122, Attachment C.

5. The newly designated § 295.2(k)(1)(v) is revised and (k)(1)(vi) is added, to read as follows:

§ 295.2 Definitions.

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(k)(1) * * *

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(v) The production of any product, process, or service; or

(vi) any combination of the purposes specified in paragraphs (k)(1), (i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (k)(2) of this definition.

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6. The newly designated § 295.2(l) is revised to read as follows:

§ 295.2 Definitions.

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(l) The term *matching funds* includes the following: (1) Dollar contributions from state, county, city, company, or other non-federal sources; (2) in-kind contributions of full-time personnel (i.e., persons employed full time by the joint venture or one of the joint venture members); (3) in-kind contributions of a pro-rata share of part-time personnel that the Program deems essential to carrying out the proposed experimental work program and who devote at least 50% of their time to the program; and (4) in-kind value of equipment that the Program deems essential to carrying out the proposed experimental work program, which may include either the purchase cost of new equipment or the depreciated value of previously purchased equipment. The depreciation method to be used for the matching fund determination shall be the internal depreciation accounting method used by the applicant for that equipment prior to the award. The value of equipment will be further pro-rated according to the share of total use dedicated to carrying out the proposed ATP work program. The total value of equipment expenditures allowable under the match may be applied in the award year expended or pro-rated over the duration of award years. The total in-kind value of equipment expenditures can not exceed 30% of the applicant's total annual share of matching funds. The total in-kind value of part-time personnel can not exceed 20% of the applicant's total annual share of matching funds.

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7. The newly designated § 295.2(p) is revised to read as follows:

§ 295.2 Definitions.

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(p) The term *Secretary* means the Secretary of Commerce or the Secretary's designee.

8. Section 295.2 is amended by adding paragraphs (q) through (r) to read as follows:

§ 295.2 Definitions.

* * * * *

(q) The term *small business* means a business that is independently owned and operated, is organized for profit, and is not dominant in the field of operation in which it is proposing, and meets the other requirements found in 13 CFR part 121.

(r) The term *United States-owned company* means a for-profit organization, including sole proprietors, partnerships, or corporations, that has a majority ownership or control by individuals who are citizens of the United States.

§§ 295.3–295.10 [Redesignated as §§ 295.6–295.13]

9. Sections 295.3 through 295.10 are redesignated as §§ 295.6 through 295.13, and newly designated §§ 295.3 through 295.5 are added to read as follows:

§ 295.3 Eligibility of United States- and foreign-owned businesses.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The Program finds that the company's participation in the Program would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology (taking into account the goals of promoting the competitiveness of United States industry), and to procure parts and materials from competitive suppliers, and

(2) Either the company is a United States-owned company, or the Program finds that the company is incorporated in the United States and has a parent company which is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized under the Program; affords the United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective

protection for the intellectual property rights of United States-owned companies.

(b) The Program may, within 30 days after notice to Congress, suspend a company or joint venture from continued assistance under the Program if the Program determines that the company, the country of incorporation of the company or a parent company, or the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

§ 295.4 The selection process.

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. In the first step, called "preliminary screening," proposals are eliminated that do not meet the requirements of this rule or the program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal: is deemed to have serious deficiencies in either the technical or business plan; or does not meet the definition of precompetitive, generic technology; or, is not industry-led; or is significantly overpriced or underpriced given the scope of the work; or does not meet the requirements set out in the Notice of Availability of Funds issued pursuant to § 295.7; or in the case of joint ventures, requests more than a minority share of funding. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and if not, may reject the proposal or forward it to a later stage in the review process based upon the earlier review.

(b) In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in § 295.6. Proposals are rated as "not recommended" or "recommended." Proposals must have high scientific and technical merit to be recommended. Only those proposals rated as "recommended" are considered further. These applicants are referred to as "semifinalists."

(c) In the third step, referred to as "selection of finalists," the Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the selecting official.

(d) In the final step, referred to as "selection of awardees," the Selecting Official selects funding recipients from among the finalists, based upon (1) the rank order of the applications on the basis of all selection criteria (§ 295.6); (2) assuring an appropriate distribution of funds among technologies and activities, and (3) the availability of funds. The Program reserves the right to withhold awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the applicant. The decision of the Selecting Official is final.

(e) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the applicant of the deficiencies and enter into negotiations with the applicant in an effort to remedy the deficiencies. If appropriate, funding up to 10 percent of the amount originally requested by the applicant may be awarded by the Program to the applicant to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the applicant to that applicant.

(f) NIST reserves the right to negotiate with applicants selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task to improve the probability of success.

§ 295.5 Use of abbreviated proposals in the selection process.

To reduce proposal preparation costs incurred by applicants and to make the selection process more efficient, NIST may use a preliminary qualification process based on abbreviated proposals. Announcements requesting abbreviated proposals will be published as indicated in § 295.7, seeking proposals that address all of the selection criteria, but in considerably less detail than full proposals. The Program will review the abbreviated proposals and select those that best meet the selection criteria. Submitters of abbreviated proposals will be notified in writing whether their proposals are recommended for full proposal, or, not recommended for full proposal. Those whose proposals are recommended for full proposal submission will be invited to prepare and submit full proposals. Those not invited to submit proposals may nonetheless elect to do so, and will have an equal opportunity for selection. When the full proposals are received, the review and selection process will continue as described in § 295.4.

10. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines via the technical review that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria.

(a) Scientific and Technical Merit of the Proposal (30 Percent)

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, i.e. uniqueness with respect to current industry practice. Applicants shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project; that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still demonstrating feasibility.

(3) Coherency of technical plan and clarity of vision of technical objectives, and the degree the technical plan meets Program goals.

(4) Adequacy of systems-integration and multi-disciplinary planning including integration of appropriate downstream or upstream production, manufacturing, quality assurance, and customer service requirements.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) Potential Broad-based Economic Benefits of the Proposal (20 Percent)

(1) Potential to improve U.S. economic growth.

(2) Timeliness of proposal; that is, the potential project results will not occur too late or too early to be competitively useful.

(3) Degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This factor takes into consideration the likelihood of the results being achieved in the same general time frame by the applicant or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work.

(4) Cost-effectiveness of proposal.

(c) Adequacy of Plans for Eventual Commercialization (20 Percent)

(1) Evidence that if the project is successful, the applicants will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the applicant has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) Proposer's Level of Commitment and Organizational Structure (20 Percent)

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work vis-a-vis other projects.

(2) For joint ventures, the extent to which the joint venture has been structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, appropriate participation by small businesses. "Small business" is defined in § 295.2(q).

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable).

(5) Clarity and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

(e) Experience and Qualifications of the Proposing Organization (10 Percent)

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the applicant or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

11. Newly designated § 295.7 is revised to read as follows:

§ 295.7 Notice of availability of funds.

(a) The Program shall publish at least annually a **Federal Register** notice inviting interested parties to submit proposals, and may more frequently publish invitations for proposals in the Commerce Business Daily, based upon the annual notice. Potential applicants must request a proposal preparation kit from the Program. Applications will only be considered for funding when submitted in response to an invitation published in the **Federal Register**, or a related announcement in the Commerce Business Daily.

(b) All notices published in accord with § 295.7(a) shall include the amount of funds available, the approximate number of awards, types of awards, closing dates, the name, address and telephone number of the contact person, a requirement that proposals be submitted with a NIST Form 1262 (for single applicants), or NIST Form 1263 (for joint ventures), and any other appropriate guidance.

(c) Notices issued under § 295.7(a) shall also state that awards under the Program shall be subject to all Federal laws and Federal and Departmental regulations, policies and procedures applicable to financial assistance awards, and shall require that funds awarded by the Program under subpart C (single applicants) shall be used only for direct costs and not for indirect costs, profits, or management fees of the funding recipients. Notices shall also include the notification that section 319 of Public Law 101–121 prohibits recipients of Federal contracts, grants, and loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan.

12. Newly designated § 295.8 is revised to read as follows:

§ 295.8 Intellectual property rights; Publication of research results.

(a)(1) *Patent rights:* Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. The United States may reserve a non-exclusive, nontransferable, irrevocable paid-up license to practice or have practiced for or on behalf of the United Sates any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(2) *Patent procedures:* Each award by the Program will contain procedures regarding reporting of inventions by the funding recipient to the Program; determinations by the Program as to whether it will retain a governmental use license; march-in rights, and other matters.

(b) *Copyrights:* Except as otherwise specifically provided for in an Award, funding recipients under the Program may establish claim to copyright subsisting in any data first produced in the performance of the award. When claim is made to copyright, the funding recipient shall affix the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Government sponsorship to the data when and if the data are delivered to the Government, are published, or are deposited for registration as a published work in the U.S. Copyright Office. The funding recipient shall grant to the Government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such data to reproduce, prepare derivative works, perform publicly and display publicly, and for data other than computer software to distribute to the public by or on behalf of the Government.

(c) *Publication of research results:* The decision on whether or not to publish research results will be made by the funding recipient(s). Unpublished intellectual property owned and developed by any business or joint research and development venture receiving funding or by any member of such a joint venture may not be disclosed by any officer or employee of the Federal Government except in accordance with a written agreement between the owner or developer and the Program. The licenses granted to the Government under § 295.8(b) shall not be considered a waiver of this requirement.

13. Section 295.14 is added to read as follows:

§ 295.14 Special financial reporting requirements.

Each award by the Program shall contain procedures regarding financial reporting to ensure that awards are being used in accordance with Office of Management and Budget Circular A–122—"Cost Principles for Non-Profit Organizations", Federal Acquisition Regulation (FAR) part 31—"Contract Cost Principles and Procedures", or other sound accounting practices to be specified in the Cooperative Agreement. The audit principles to be applied to ATP awards are the Generally Accepted Accounting Principles (GAAP) according to the General Accounting Office's "Government Auditing Standards" subtitled "Standards for Auditing Government Organization, Program, Activities and Functions". Each award will be subject to an Attestation Engagement (i.e., providing assurance on representations of compliance with statutory, regulatory, and contractual requirements) or an audit in conjunction with the recipient's annual audit at least every two years. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these services. The Department of Commerce's Office of Inspector General (OIG) reserves the right to determine the time frame and/or level of service of financial audit reports that are to be delivered and to determine how the close-out audit is to be conducted. The use of an independent CPA firm does not preclude the OIG's right to conduct its own audit.

14. The heading for subpart B is revised to read as follows:

Subpart B—Assistance to United States Industry-Led Joint Research and Development Ventures

15. Section 295.21 is revised to read as follows:

§ 295.21 Qualification of applicants.

(a) Assistance under this subpart is available to industry-led joint research and development ventures only, subject to the limitations set out in § 295.3 of these regulations. These ventures may include universities, independent research organizations, and governmental entities; however, the Program will not provide funding directly to any university or governmental organization.

(b) Applications for funding under this subpart may be submitted on behalf of an industry-led joint research and development venture by one or more businesses or independent research organizations that are members of the venture. Applications must, however, include letters of commitment from all proposed members of the venture, verifying the availability of matching funds, and authorizing the party or parties submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal.

16. Section 295.22 is revised to read as follows:

§ 295.22 Limitations on assistance.

An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

17. Section 295.24 is revised to read as follows:

§ 295.24 Registration.

Joint research and development ventures selected for funding must notify the Department of Justice or the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

18. The heading for subpart C is revised to read as follows:

Subpart C—Assistance to Single-Applicant U.S. Businesses

19. Section 295.30 is revised to read as follows:

§ 295.30 Types of assistance available.

This subpart describes the types of assistance that may be provided under the authority of 15 U.S.C. 278n(b)(2). Such assistance includes but is not limited to entering into cooperative agreements with United States businesses, especially small businesses.

20. Section 295.31 is revised to read as follows:

§ 295.31 Qualification of applicants.

Awards under this subpart will be available to all businesses, subject to the limitations set out in § 295.3 of these regulations. The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

[FR Doc. 94–69 Filed 1–5–94; 8:45 am]
BILLING CODE 3510–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4]

RIN 0960—None Assigned

Federal Old-Age, Survivors and Disability Insurance; Determining Disability and Blindness; Extension of Expiration Date for Cardiovascular System Listing

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are extending the date on which parts A and B of the cardiovascular system listings, found in appendix 1 of part 404, subpart P, will no longer be effective from January 6, 1994, to February 15, 1994. We have made no revisions in the medical criteria in the cardiovascular system listings; they remain the same as they now appear in the Code of Federal Regulations. We are presently considering comments we received on a Notice of Proposed Rulemaking (NPRM) to update the medical criteria contained in part A and part B of the cardiovascular system listings. When we have completed our review, any revised criteria will be published as final regulations.

EFFECTIVE DATE: This final rule will be effective January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Irving Darrow, Esq., Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 966–0512.

SUPPLEMENTARY INFORMATION: On December 6, 1985, a revised Listing of Impairments in appendix 1 to subpart P of part 404 was published in the **Federal Register** (50 FR 50068). The Listing of Impairments describes, for each of 13 major body systems, impairments that are considered severe enough to preclude a person from engaging in any gainful activity (part A), or in the case of a child under the age of 18, impairments that are considered severe enough to prevent the child from functioning independently, appropriately, and effectively in an age-appropriate manner (part B). The Listing of Impairments is used for evaluating disability and blindness at the third step of the sequential evaluation process for adults and children under the Social Security disability program and the supplemental security income program.

When the revised Listing of Impairments was published in 1985, we indicated that medical advances in disability evaluation and treatment and program experience would require that the listings be periodically reviewed and updated. Accordingly, we established termination dates ranging from 4 to 8 years for each of the listings for specific body systems. A date of December 6, 1989, was established for the cardiovascular system listings in part A to no longer be effective. A date of December 6, 1993, was established for part B of the cardiovascular system listings to no longer be effective.

The potential program impact of the changes to update the cardiovascular system listings required careful analysis and consideration within the Agency. As our analysis continued, it became evident that we would be unable to publish a proposed and then a final regulation containing revised criteria for part A of the cardiovascular system listings by December 6, 1989. We published in the **Federal Register** of December 5, 1989 (54 FR 50233), a final regulation extending the current part A cardiovascular system listings for a period of 18 months through June 5, 1991. The part A cardiovascular system listings were again extended an additional 12 months through June 5, 1992, by final regulation published in the **Federal Register** on June 6, 1991 (56 FR 26030), and were extended to January 5, 1993, by final regulation published in the **Federal Register** on June 5, 1992 (57 FR 23945), and to July 6, 1993, by final regulation published in the **Federal Register** on December 29, 1992 (57 FR 61795). The part A end part B cardiovascular system listings were extended to January 6, 1994, by final regulation published in the **Federal Register** on July 6, 1993 (58 FR 36133).

On July 9, 1991, we published an NPRM proposing revisions to the medical criteria contained in parts A and B of the cardiovascular system listings (56 FR 31266), with provisions for a 60-day comment period. The complex issues raised by the numerous comments we received have required extensive analysis and careful consideration. In order to ensure sufficient time for this review, we are extending the date on which the current cardiovascular system listings in parts A and B will no longer be effective from January 6, 1994, to February 15, 1994.

Regulatory Procedures

The Department, even when not required by statute, as a matter of policy, generally follows the Administrative Procedure Act notice of proposed rulemaking and public comment procedures specified in 5 U.S.C. 553 in the development of its regulations. The Administrative Procedure Act provides exceptions to its notice and public comment procedures when an agency finds there is good cause for dispensing with such procedures on the basis that they are impracticable, unnecessary, or contrary to the public interest. We have determined that, under 5 U.S.C. 553(b)(B), good cause exists for waiver of notice of proposed rulemaking and public comment procedures on this rule because it only extends the dates on which parts A and B of the cardiovascular system listings will no longer be effective and makes no substantive changes to these listings. The current regulations expressly provide that the listings may be extended by the Secretary, as well as revised and promulgated again. Because we are not making any revisions to the current listings, we have determined that use of public comment procedures is unnecessary under the Administrative Procedure Act.

Regulatory Flexibility Act

We certify that this regulation will not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This regulation imposes no reporting or recordkeeping requirements necessitating clearance by the Office of Management and Budget.

(Catalog of Federal Domestic Assistance Program No. 93.802, Social Security-Disability Insurance; No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-age, Survivors and disability insurance, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: December 29, 1993.

Donna E. Shalala,

Secretary of Health and Humon Services.

For the reasons set forth in the preamble, part 404, title 20 of the Code of Federal Regulations is amended as set forth below.

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart P of part 404 is revised to read as follows:

Authority: Secs. 202, 205 (a), (b), and (d) through (h), 216(i), 221 (a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405 (a), (b), and (d) through (h), 416(i), 421 (a) and (i), 422(c), 423, 425, and 1302.

2. Appendix 1 to subpart P is amended by revising item 5 of the introductory text before part A to read as follows:

Appendix 1 to Subpart P—Listing of Impairments

* * * * *

5. Cardiovascular System (4.00 and 104.00): February 15, 1994.

* * * * *

[FR Doc. 94–222 Filed 1–5–94; 8:45 am]
BILLING CODE 4190–29–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

21 CFR Part 1308

Schedules of Controlled Substances Temporary Placement of 4-Bromo-2,5-dimethoxyphenethylamine into Schedule I

AGENCY: Drug Enforcement Administration, Justice.

ACTION: Final rule.

SUMMARY: The Acting Administrator of the Drug Enforcement Administration (DEA) is issuing this final rule to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the Controlled Substances Act (CSA) pursuant to the emergency scheduling provisions of the CSA. This action is based on the finding by the Acting Administretor of the DEA that the placement of 4-bromo-2,5-dimethoxyphenethylamine in Schedule I of the CSA is necessary to avoid an imminent hazard to the public safety. As a result of this rule, the criminal sanctions and regulatory controls of Schedule I substances under the CSA will be applicable to the manufacture, distribution, and possession of 4-bromo-2,5-dimethoxyphenethylamine.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Howard McClain, Jr., Chief, Drug and Chemical Evaluation Section, Drug Enforcement Administration, Washington, DC 20537, Telephone: (202) 307–7183.

SUPPLEMENTARY INFORMATION: The Comprehensive Crime Control Act of 1984 (Pub. L. 98–473) amended section 201 of the Controlled Substances Act (CSA) (21 U.S.C. 811) to give the Attorney General the authority to temporarily place a substance into Schedule I of the CSA if it is found that such action is necessary to avoid an imminent hazard to the public safety. A substance may be temporarily scheduled under the emergency provision of the CSA if that substance is not listed in any other schedule under Section 202 of the CSA (21 U.S.C. 812) of if there is no approval or exemption in effect under 21 U.S.C. 355 of the Food, Drug, and Cosmetic Act for the substance. The Attorney General has delegated his authority under 21 U.S.C. 811 to the Administrator of the DEA (28 CFR 0.100).

A notice of intent to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA was published in the **Federal Register** on November 4, 1993, (58 FR 58819). The Administrator transmitted notice of his intention to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA to the Assistant Secretary for Health of the Department of Health and Human Services (HHS). In response to this notification, the Food and Drug Administration has advised DEA that there are no exemptions or approvals in effect under 21 U.S.C. 355 of the Food, Drug, and Cosmetic Act for 4-bromo-2,5-dimethoxyphenethylamine and HHS has no objection to DEA's intention to temporarily place 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA. No other comments were received regarding this matter.

In accordance with 21 U.S.C. 811(h)(3), the Acting Administrator has considered the following factors regarding 4-bromo-2,5-dimethoxyphenethylamine: (1) Its history and current pattern of abuse; (2) scope, duration and significance of abuse; and (3) what, if any, risk there is to the public health.

4-Bromo-2,5-dimethoxyphenethylamine is structurally similar to the Schedule I phenylisopropylamine hallucinogens, 4-methyl-2,5-dimethoxyamphetamine (STP or DOM) and 4-bromo-2,5-dimethoxyphenethylamine (DOB). Like DOM and DOB, 4-bromo-2,5-dimethoxyphenethylamine displays high affinity for central serotonin receptors and is capable of substituting for either DOM or DOB in drug discrimination studies conducted in rats. These data suggest that 4-bromo-2,5-dimethoxyphenethylamine is a psychoactive substance capable of producing effects similar, though not identical, to DOM and DOB. Data from human studies indicate that 4-bromo-2,5-dimethoxyphenethylamine is orally active at 0.1–0.2 mg/kg producing an intoxication with considerable euphoria and sensory enhancement which lasts for 6 to 8 hours. Higher doses have been reported to produce intense and frightening hallucinations.

DEA first encountered 4-bromo-2,5-dimethoxyphenethylamine in Texas in 1979. Since that time, several other exhibits of 4-bromo-2,5-dimethoxyphenethylamine have been analyzed by DEA and state forensic laboratories in California, Arizona, Louisiana, Pennsylvania, Iowa, Oregon, Georgia, Tennessee and Florida. Clandestine laboratories producing 4-bromo-2,5-dimethoxyphenethylamine were seized in California in 1986 and in Arizona in 1992. It has been represented as 3,4-methylenedioxy-methamphetamine (MDMA) and has been sold in sugar cubes as LSD. More recently, it has been promoted as an aphrodisiac and distributed under the product name of NEXUS whose purported active ingredient is brominated cathinine. DEA has recently seized several thousand dosage units of this product.

The continued clandestine production, illicit importation, distribution and abuse of 4-bromo-2,5-dimethoxyphenethylamine poses an imminent hazard to public safety. DEA is not aware of any commercial use for this substance in the United States.

In accordance with the provisions of section 201(h) of the CSA (21 U.S.C. 811(h)) and 28 CFR 0.100 and based on a consideration of the requisite factors and other relevant information, the Acting Administrator finds that placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA on a temporary basis is necessary to avoid an imminent hazard to the public safety.

The following regulations are effective with respect to 4-bromo-2,5-dimethoxyphenethylamine on January 6, 1994, except for those individuals registered with DEA in accordance with part 1301 or part 1311 of title 21 of the Code of Federal Regulations, who currently possess 4-bromo-2,5-dimethoxyphenethylamine may continue to do so pending DEA's receipt of an application for amended registration no later than February 7, 1994:

1. Registration. Any person who manufactures, distributes, delivers, imports or exports 4-bromo-2,5-dimethoxyphenethylamine or who engages in research or conducts instructional activities with respect to 4-bromo-2,5-dimethoxyphenethylamine or who proposes to engage in such activities must be registered to conduct such activities in accordance with parts 1301 and 1311 of title 21 of the Code of Federal Regulations.

2. Security. 4-Bromo-2,5-dimethoxyphenethylamine must be manufactured, distributed and stored in accordance with §§ 1301.71 through 1301.76 of title 21 of the Code of Federal Regulations.

3. Labeling and Packaging. All labels and labeling for commercial containers of 4-bromo-2,5-dimethoxyphenethylamine must comply with requirements of §§ 1302.03 through 1302.05, 1302.7 and 1302.08 of title 21 of the Code of Federal Regulations.

4. Quotas. All persons required to obtain quotas for 4-bromo-2,5-dimethoxyphenethylamine must submit applications pursuant to §§ 1303.12 and 1303.22 of title 21 of the Code of Federal Regulations.

5. Inventory. Every registrant required to keep records and who possesses any quantity of 4-bromo-2,5-dimethoxyphenethylamine is required to take an inventory of all stocks of this substance on hand pursuant to §§ 1304.11 through 1304.19 of title 21 of the Code of Federal Regulations.

6. Records. All registrants required to keep records pursuant to §§ 1304.21 through 1304.27 of title 21 of the Code of Federal Regulations must do so regarding 4-bromo-2,5-dimethoxyphenethylamine.

7. Reports. All registrants required to submit reports in accordance with §§ 1304.34 through 1304.37 of title 21 of the Code of Federal Regulations shall do so regarding 4-bromo-2,5-dimethoxyphenethylamine.

8. Order Forms. All registrants involved in the distribution of 4-bromo-2,5-dimethoxyphenethylamine must comply with the order form requirements of §§ 1305.01 through 1305.16 of title 21 of the Code of Federal Regulations.

9. Importation and Exportation. All importation and exportation of 4-bromo-2,5-dimethoxyphenethylamine must be in compliance with part 1312 of title 21 of the Code of Federal Regulations.

10. Criminal Liability. Any activity with 4-bromo-2,5-dimethoxyphenethylamine not authorized by, or in violation of, the CSA or the Controlled Substances Import and Export Act occurring on or after January 6, 1994, is unlawful.

The Acting Administrator of the DEA hereby certifies that the temporary placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA will have no significant impact upon entities whose interests must be considered under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* This action involves the temporary control of a substance with no currently approved medical use in the United States.

The temporary scheduling of 4-bromo-2,5-dimethoxyphenethylamine is not a significant regulatory action for the purposes of Executive Order (E.O.) 12866 of September 30, 1993. Drug scheduling matters are not subject to review by the Office of Management and Budget (OMB) pursuant to the provisions of E.O. 12866, section 3(d)(1). Accordingly, this proposed emergency scheduling action is not subject to provisions of E.O. 12778 which are contingent upon review by OMB. This regulation both responds to an emergency situation posing an imminent hazard to the public safety, and is essential to a criminal law enforcement function of the United States.

This action has been analyzed in accordance with the principles and criteria in E.O. 12612, and it has been determined that the temporary placement of 4-bromo-2,5-dimethoxyphenethylamine into Schedule I of the CSA does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 21 CFR Part 1308

Administrative practice and procedure, Drug traffic control, Narcotics, Prescription drugs.

Under the authority vested in the Attorney General by section 201(h) of the CSA (21 U.S.C. 811(h)), and delegated to the Administrator of the DEA by the Department of Justice regulations (28 CFR 0.100), the Acting Administrator hereby amends 21 CFR part 1308 as follows:

PART 1308—SCHEDULES OF CONTROLLED SUBSTANCES

1. The authority citation for 21 CFR part 1308 continues to read as follows:

Authority: 21 U.S.C. 811, 812, 871b, unless otherwise noted.

2. Section 1308.11 is amended by adding paragraph (g)(5) to read as follows:

§ 1308.11 Schedule I.

* * * * *

(g) * * *

(5) 4-bromo-2,5-dimethoxyphenethylamine, its optical isomers, salts and salts of isomers—7392. Some other names: 2-(4-bromo-2,5-dimethoxyphenyl)-1-aminoethane; alpha-desmethyl DOB; 2C–B.

Dated: December 27, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–234 Filed 1–5–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CGD02 93–035]

RIN 2115–AE46

Special Local Regulations; Operation Anzio Reenactment (Ohio River Between Mile 630.0–636.5)

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: A special local regulation is being adopted for the Operation Anzio Reenactment training exercise which the U.S. Army will hold on the Ohio River near Fort Knox, Kentucky on January 20–22, 1994. This regulation is needed to control vessel traffic in the immediate vicinity of the event. The regulation will restrict general navigation in the regulated area for the safety of spectators, participants and through traffic.

EFFECTIVE DATES: This regulation becomes effective daily at 12 p.m. to 3 p.m. local time on January 20–22, 1994.

FOR FURTHER INFORMATION CONTACT: LTJG D.R. Dean, Chief, Boating Affairs Branch, Second Coast Guard District, 1222 Spruce Street, St. Louis, Missouri 63103–2832. The telephone number is (314) 539–3971, fax (314) 539–2685.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of these regulations are LTJG D.R. Dean, Project Officer, Second Coast Guard District, Boating Safety Division and LCDR A.O. Denny, Project Attorney, Second Coast Guard District - Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the sponsor's late submission of the regatta application left insufficient time to publish a notice of proposed rulemaking in advance of the scheduled event. However, the Coast Guard deems it to be in the public's best interest to issue a regulation now as the benefits of holding the training during the winter, as scheduled, rather then later in the spring will mean less impact on the boating public.

Background and Purposes

Operation Anzio Reenactment consists of river crossing training for the 19th Engineer Battalion, Fort Knox, Kentucky. The Training will take place over three days, January 20–22, 1994. Each day's training will begin at 12 p.m., and will end at 3 p.m. local time. In order to provide for the safety of spectators and participants, and for the safe passage of through traffic, the Coast Guard will restrict vessel movement in the regatta area. The river will be closed during part or all of the effective period to all vessel traffic except participants, official regatta vessels, and patrol craft. These regulations are issued pursuant to 33 U.S.C. 1233 and 33 CFR 100.35.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to its short duration.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

Under section 2.B.2.c of Commandant Instruction M16475.1B, this regulation is categorically excluded from further environmental documentation.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water), Records and recordkeeping requirements, Waterways.

Temporary Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations, is amended as follows:

PART 100—[AMENDED]

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T02–035 is added, to read as follows:

§ 100.35–T02–035 Ohio River, Fort Knox, Kentucky.

(a) *Regulated area.* Ohio River from mile 630.0 to 636.5.

(b) *Special local regulations.* (1) Except for participants in the Operation Anzio Reenactment no person or vessel may enter or remain in the regulated area without permission of the Patrol Commander.

(2) The Coast Guard Patrol Commander will be a commissioned or petty officer designated by the Commanding Officer, Marine Safety Office Louisville, Kentucky and may be contacted, during the event, on channel 16 (156.8 MHZ) by the call sign "Coast Guard Patrol Commander." The Patrol Commander may:

(i) Direct the anchoring, mooring, or movement of any vessel within the regulated area,

(ii) Restrict vessel operation within the regulated area to vessels having particular operating characteristics,

(iii) Terminate the marine event or the operation of any vessel when necessary for the protection of life and property, and

(iv) Allow vessels to transit the regulated area whenever an event is not being conducted and the transit can be completed before another event begins.

(3) Coast Guard commissioned or petty officers will patrol the event on board patrol vessels which display the Coast Guard Ensign. If radio or other voice communications are not available to communicate with a vessel, they will use a series of sharp, short blasts by whistle or horn to signal the operator of any vessel in the vicinity of the regulated area to stop. When signaled, the operator of any vessel in the immediate vicinity of the regulated area shall stop the vessel immediately and shall proceed as directed.

(4) Vessels desiring to transit the regulated area may do so only with the prior approval and direction of the Patrol Commander.

(5) The Patrol Commander will terminate enforcement of the regulations at the conclusion of the marine event if earlier than the announced termination time.

(c) *Effective dates.* This regulation becomes effective daily from 12 p.m. to 3 p.m. local time on January 20–22, 1994.

Dated: January 3, 1994.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 94–268 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 147

[CGD08–93–026]

RIN 2115–AA97

Safety Zone; Chevron #1 Well on Destin Dome #97

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: This rulemaking establishes a 500 meter safety zone around the structure at the Chevron #1 Well on Destin Dome #97. The overall impact of these regulations will be to promote the safety of lives and property on the structure, its appurtenances and attending vessels, and on vessels in adjacent waters.

DATES: This regulation becomes effective on November 3, 1993, and terminates on September 1, 1994, unless sooner terminated by Commander, Eighth Coast Guard District. Comments on this regulation must be received on or before February 22, 1994.

ADDRESSES: Comments should be mailed to Commander (mps), Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396. The comments will be available for inspection and copying at the Marine Safety Division, Eighth Coast Guard District, room 1319, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant Verne Gifford, Marine Safety Division, Eighth Coast Guard District, Hale Boggs Federal Building, 501 Magazine Street, New Orleans, LA 70130–3396. Phone number: (504) 589–6271.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a Notice of Proposed Rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been contrary to the public interest. Immediate action is needed to prevent possible loss of life and damage to vessels in the area and to the structure itself. Although this regulation is published as a final rule without prior notice, an opportunity for public comment is nevertheless desirable to ensure that the regulation is both reasonable and workable. Accordingly, persons wishing to comment may do so by submitting written comments to the office listed under **ADDRESSES** in this preamble. Commenters should include their names and addresses, identify the docket number for the regulations, and give reasons for their comments. Based upon comments received, the regulations may be changed.

Drafting Information

The drafters of this notice are Lieutenant Verne Gifford, project officer, and Commander D.G. Dickman, project attorney, Eighth Coast Guard District Legal Office.

Discussion of Regulation

The circumstances creating the need for this regulation is information received by Chevron and by the Coast Guard that vessels intend to protest and possibly interfere with drilling operations at this site. This is the first site at which drilling will begin in this particular area, which has been a subject of controversy. Precautionary measures for safety at a drilling site require that the structure and waters around it be maintained free of interference and traffic in order to allow for immediate evacuation of personnel aboard the structure and by attending vessels in case of emergency. The establishment of a safety zone will prevent non-attending vessels from remaining in close proximity to the offshore structure and hindering any necessary evacuation of the area.

The final rule amends part 147 to add a temporary safety zone around the Chevron Well #1, Destin Dome #97, which is about 27 miles south of Pensacola, Florida. The regulation contains a description of the area of the safety zone, including the location of the center of the structure and information pertinent to the safety zone. The regulations restrict the entry of vessels into the safety zone, except for attending vessels and those vessels authorized by the Commander, Eighth Coast Guard District.

Economic Assessment and Certification

This regulation is not considered a significant regulatory action under Executive Order 12866 and is nonsignificant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact has been found to be so minimal that a full regulatory evaluation is unnecessary. The Coast Guard certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this rulemaking does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard has considered the environmental impact of this regulation and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for examination or a copy may be obtained by contracting the person identified under **"FOR FURTHER INFORMATION CONTACT."**

Paperwork Reduction Act

The rule contains no information collection or recordkeeping requirements.

List of Subjects in 33 CFR Part 147

Continental shelf, Marine safety, Navigation (water).

Final Regulation

In consideration of the foregoing, part 147 of title 33, Code of Federal Regulations, is amended as follows:

PART 147—[AMENDED]

1. The authority citation for this part is revised to read as follows:

Authority: 43 U.S.C. 1333 as amended; 49 CFR 1.46.

2. A new § 147.T801 is added to read as follows:

§ 147.T801 Safety Zone: Chevron #1 Well at Destin Dome #97.

(a) *Description.* The area within a line 500 meters from each point on the structure's outer edge. The position of the center of the structure is 29°51'57.91" N, 87°20'07.74" W.

(b) *Effective date.* This regulation becomes effective November 3, 1993. It terminates on September 1, 1994, unless sooner terminated by Commander, Eighth Coast Guard District.

(c) *Regulation.* No vessel may enter or remain in this safety zone except the following:

(1) An attending vessel or

(2) A vessel authorized by the Commander, Eighth Coast Guard District.

Dated: November 3, 1993.

J.C. Card,

Rear Admiral, U.S. Coast Guard Commander, Eighth Coast Guard District.

[FR Doc. 94–264 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP St. Louis Regulation 93–037]

RIN 2115–AA97

Safey Zone; Upper Mississippi River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Upper Mississippi River. This regulation is needed to control vessel traffic in the regulated area to provide safe working conditions and navigation within the affected area. The regulation will prohibit navigation in the regulated area for the safety of vessel traffic and the protection of life and property associated with bridge and span removal.

EFFECTIVE DATES: This regulation is effective December 21, 1993 and will terminate on January 21, 1994 unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT Timothy Deal, Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are MK1 Christopher C. Schulz, Project Officer, Marine Safety Office, St. Louis, Missouri and LCDR A. O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, the nature of repairs to the Burlington Highway Bridge at mile 404.2 Upper Mississippi River leaves insufficient time to publish a notice of proposed rule making. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period since the conditions present an immediate hazard.

Background and Purpose

Extensive renovation of the bridge is required and removal of the center is to be accomplished from a vessel located in the navigation channel and this action will impede normal traffic flow. As a result of these conditions this regulation is necessary to provide safe working conditions and navigation within the affected area.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements.

The Coast Guard expects the impact of this regulation to be so minimal that a Regulatory Evaluation is unnecessary. The imposed restrictions are anticipated to be of short duration. To avoid any unnecessary adverse economic impact on businesses which use the river for commercial purposes, Captain of the Port, St. Louis, Missouri will monitor the situation and will authorized entry into the closed area as conditions warrant. Changes will be announced by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ). Mariners may also call the Port Operations Officer, Captain of the Port, St. Louis, Missouri at (314) 539–3823 for current information.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.[5] of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action to protect public safety.

List of Subject in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; CFR 1.46 and 33 CFR 1.05–1(g), 6.01–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–077 is added, to read as follows:

§ 165.T02–077 Safety zone: Upper Mississippi River.

(a) *Location.* The Upper Mississippi River between mile 403.2 and 405.2 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective on December 21, 1993 and will terminate on January 21, 1994.

(c) *Regulations.* The general regulations under § 165.23 of this part which prohibit entry into the described zones without authority of the Captain of the Port apply. The Captain of the Port, St Louis, Missouri will notify the maritime community of river conditions affecting the areas covered by this safety zone by Marine Safety Information Radio Broadcast on VHF Marine Band Radio, Channel 22 (157.1 MHZ).

Dated: December 17, 1993.

S.P. Cooper,

Commander, U.S. Coast Guard, Captain of the Port, St. Louis, Missouri.

[FR Doc. 94–269 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Pittsburgh Regulation 93–010]

RIN 2115–AA97

Safety Zone Regulations; Youghiogheny River

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone on the Youghiogheny River from mile 0.8 to mile 1.8. This regulation is needed to control vessel traffic in the regulated area during demolition of the main span of a bridge at mile 1.3. This regulation will restrict general navigation in the regulated area during demolition and subsequent debris clearing operations for the safety of vessels transitting the area.

EFFECTIVE DATE: This regulation is effective from 9 a.m. on January 8, 1994 and will terminate at 10 a.m. on January 10, 1994.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Port Operations Officer, Captain of the Port, Pittsburgh, Pennsylvania at (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, a bridge is being removed from a navigable waterway. Bridge removal operations pose inherent risks to the waterway because the structure is progressively weakened as the operation proceeds. Once commenced, such operations should be completed as quickly as possible. Removal operations involving structural supports for this bridge have proceeded ahead of schedule, leaving insufficient time to publish a notice of proposed rulemaking. The Coast Guard deems it to be in the public's best interest to issue a regulation without waiting for a comment period, as immediate implementation of navigation restrictions is needed to ensure the safety of vessels transitting the area and to minimize the time a bridge in a weakened condition remains over the waterway.

Background and Purpose

The Port Vue Bridge located at mile 1.3 on the Youghiogheny River is not longer an active highway bridge and must be removed. The bridge consists of several small spans that are located over land and one 310-foot main span that crosses over the navigable waterway. As part of the overall bridge removal operation, this main span will be demolished with five simultaneously detonated explosive charges. This explosion, which will create an obvious hazard to vessels transitting the area, will occur at approximately 10 a.m. on January 8, 1994. After the explosives on this span are detonated, the steel and other debris from the bridge will fall into the navigable waters of the Youghiogheny River, creating an unsafe condition of vessels. The contractor will immediately commence clearing operations, but it will require 48 hours to restore the navigability of this section of the Youghiogheny River. Accordingly, during that period, no traffic will be permitted in the safety zone, as it would be unsafe for vessels attempting to transit and such transit attempts would interfere with the debris clearing operations.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979), it will not have a significant economic impact on a substantial number of small entities, and it contains no collection of information requirements. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation to be minimal due to the relatively short duration of vessel traffic restrictions, the relatively small size of the area regulated, and the absence of any commercial vessel transits along this section of the Youghiogheny River, due to insufficient bridge clearances and water depth downriver.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.c. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation as an action required to protect public safety.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Records and recordkeeping, Security measures, Waterways.

Temporary Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. They authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A temporary § 165.T02–079 is added, to read as follows:

§ 165.T02–079 Safety zone: Youghiogheny River.

(a) *Location.* The Youghiogheny River between mile 0.8 and mile 1.8 is established as a safety zone.

(b) *Effective dates.* This regulation becomes effective from 9 a.m. on January 8, 1994 and will terminate at 10 a.m. on January 10, 1994.

(c) *Regulations.* In accordance with the general regulations in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

Dated: December 30, 1993.

M.W. Brown,

Commander, U.S. Coast Guard, Captain of the Port, Pittsburgh, Pennsylvania.

[FR Doc. 94–270 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 4

Diseases of the Ear and Systemic Conditions; Correction

AGENCY: Department of Veterans Affairs.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the regulations of the Department of Veterans Affairs (VA) that govern the evaluation of diseases of the ear and systemic conditions. These corrections are required in order to amend editorial errors in those regulations. No substantive change to the content of 38 CFR part 4 is being made by this correcting amendment.

EFFECTIVE DATE: This correcting amendment is effective January 6, 1994.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: The regulations that appear at 38 CFR 4.87a, diagnostic code 6210, establish the criteria for evaluating disease of the auditory canal. Due to VA error, that criteria contains the word "serious" instead of the word "serous." This document corrects that error.

The regulations that appear at 38 CFR 4.88a, diagnostic code 6311, establish the criteria for evaluating military tuberculosis. Due to VA error, that type of tuberculosis is identified as "military" instead of "miliary" tuberculosis. This document corrects that error.

List of Subjects in 38 CFR Part 4

Handicapped, Pensions, Veterans.

For the reasons set out in the preamble, 38 CFR part 4, subpart B, is amended as set forth below:

PART 4—SCHEDULE FOR RATING DISABILITIES

Subpart B—Disability Ratings

1. The authority citation for part 4, subpart B, continues to read as follows:

Authority: 72 Stat. 1125; 38 U.S,C, 1155, unless otherwise noted.

§ 4.87a [Corrected]

2. In § 4.87a, diagnostic code 6210, remove the word "serious", and insert, in its place, the word "serous".

§ 4.88a [Corrected]

3. In §4.88a, diagnostic code 6311, remove the word "military", and insert, in its place, the word "miliary".

Approved: December 28, 1993.

Marjorie M. Leandri,

Chief, Records, Reports, and Regulations.

[FR Doc. 94–232 Filed 1–5–94; 8:45 am]

BILLING CODE 8320–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 600

[AMS-FRL 4823–1]

Revisions to Corporate Average Fuel Economy (CAFE) Calculations Pursuant to the North American Free Trade Agreement Implementation Act of 1993

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action changes the Corporate Average Fuel Economy (CAFE) calculation regulations to conform to changes required by section 371 of the North American Free Trade Agreement Implementation Act of 1993, which specifies that costs to motor vehicle manufacturers attributable to value added in Mexico be included with the costs attributable to value added in the United States and Canada for the purpose of separating foreign and domestic fleets.

EFFECTIVE DATE: This action is effective January 1, 1994.

ADDRESSES: Interested parties may submit written comments (in duplicate, if possible) to Public Docket No. A–93–52 at: Air Docket Section, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Materials relevant to this final rule have been placed in Docket No. A–93–52. The docket is located at the above address in room M–1500, Waterside Mall, and may be inspected weekdays between 8:30 a.m. and noon, and between 1:30 p.m. and 3:30 p.m.

FOR FURTHER INFORMATION CONTACT: Cliff Tyree, Certification Division, U.S. Environmental Protection Agency, National Vehicle and Fuel Emissions Laboratory, 2565 Plymouth Road, Ann Arbor, MI 48105. Telephone (313) 668–4310.

SUPPLEMENTARY INFORMATION:

I. Background

EPA is today promulgating changes to its fuel economy calculation regulations to conform to changes in the Motor Vehicle Information & Cost Savings Act (MVICSA), 15 U.S.C. 2003(b)(2), made by section 371 of the North American Free Trade Agreement Implementation Act of 1993 (NAFTA Implementation Act), Public Law 103–182 (December 8, 1993). Section 104(a)(2) of the NAFTA Implementation Act specifically provides that "appropriate officers of the United States Government may issue such regulations * * * as may be necessary to ensure that any * * * amendment made by this Act, that takes effect on the date the Agreement enters into force is appropriately implemented on such date."

The MVICSA, 15 U.S.C. 2003(b)(1), specifies that the EPA Administrator is to separate passenger automobiles manufactured by a manufacturer into foreign and domestic fleets, and to calculate the average fuel economy of each category separately. Prior to the NAFTA Implementation Act, 15 U.S.C. 2003(b)(2) specified that an automobile is to be considered domestically manufactured in any model year if at least 75% of the cost to the manufacturer is attributable to value added in the United States or Canada, unless the assembly is completed in Canada and the automobile is not imported into the United States prior to the expiration of 30 days following the end of the model year.

Section 371 of the NAFTA Implementation Act simply adds a new subparagraph (G) to 15 U.S.C. 2003(b)(2) extending domestic treatment to costs to the manufacturer attributable to value added in Mexico, according to an explicit phase-in schedule. The statutory change does not alter the current treatment of costs to the

manufacturer attributable to value added in the United States or Canada. Pursuant to clause (iii) in new subparagraph (G), the Secretary of Transportation is to prescribe reasonable procedures for manufacturers to make elections for the phase-in schedules described in today's regulations, and the EPA Administrator may prescribe rules for carrying out subparagraph (G). Today, EPA is amending its regulations governing the determination of domestic production to include the provisions of new subparagraph (G) in 15 U.S.C. 2003(b)(2).

II. Environmental Effects and Economic Impacts

Because the NAFTA Implementation Act does not give EPA discretion as to the content of these regulations and because Congress required the regulations to become effective less than a month after enactment of this Act, the Agency has not conducted detailed analyses of the environmental and economic impacts separate from the analyses that were done on the North American Free Trade Agreement.

III. Public Participation and Effective Date

Pursuant to section 553(b)(3)(B) of the Administrative Procedure Act, the Agency is not using notice and comment rulemaking procedures to promulgate this rule because the Agency has found that notice is unnecessary and impracticable. Comment is unnecessary because the rule issued today merely conforms pre-existing regulations as required by the NAFTA Implementation Act and does not involve an exercise of discretion by the Administrator. Furthermore, comment is impracticable because the NAFTA Implementation Act allowed the Administrator less than one month between the date of enactment and the date by which the regulations must be effective. It is impracticable to have notice-and-comment rulemaking completed in such a short time. This short time period is consistent with EPA's view that it is performing a ministerial act that is not subject to notice and comment rulemaking.

The rule is being made effective sooner than 30 days after publication or service. This is permitted by section 553(d) of the Administrative Procedure Act when the Agency finds good cause and publishes it with the rule. The Agency finds that there is good cause. The regulation needs to be effective on January 1, 1994, to avoid having the statute (which goes into effect on January 1, 1994) differ from the implementing regulations. In addition, the statutory provision itself will go into effect less than 30 days after it was enacted, which precludes EPA from providing 30 days between publication or service and the effective date.

The Agency does not believe that notice-and-comment rulemaking is required and does not expect this change to be controversial, as it directly incorporates the explicit provisions of the statutory amendment into the current regulations. Nonetheless, EPA will accept comments on these regulatory changes and will consider making changes if justified by the comments.

IV. Statutory Authority

Authority for the actions promulgated in this final rule is granted to EPA by section 371 of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103–182.

V. Administrative Designation

Under Executive Order 12866, the Agency must determine whether the regulatory action is "significant" and, therefore, subject to OMB review and the requirements of the Executive Order. The order defines a "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866 and is therefore not subject to OMB review.

VI. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1990, which requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities, does not apply to this rulemaking. Section 604 of the Regulatory Flexibility Act requires analyses only for final rules for which a general notice of proposed rulemaking is required. As discussed in section III, a general notice of rulemaking would be unnecessary and impracticable and, thus, is not required for this rule.

VII. Reporting and Recordkeeping Requirements

Under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, EPA must obtain Office of Management and Budget clearance for any activity that will involve collecting substantially the same information from ten or more non-Federal respondents. This regulation does not impose any new information requirements or contain any new information collection requirements and will result in no change in the reporting burden.

List of Subjects in 40 CFR Part 600

Environmental protection, Administrative practice and procedure, Energy conservation, Fuel economy, Gasoline, Imports, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

Dated: December 30, 1993.

Carol M. Browner,

Administrator.

For the reasons set forth in the preamble, part 600 of chapter I, title 40 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 600 is revised to read as follows:

Authority: Title III of the Energy Policy and Conservation Act of 1975, Public Law 94–163, 89 Stat. 871, Title IV of the National Energy Conservation Policy Act of 1978, Public Law 95–619, 92 Stat. 3206, Section 371 of the North American Free Trade Agreement Implementation Act of 1993, Public Law 103–182, 107 Stat. 2057.

2. Section 600.502–81 is amended by revising paragraph (a)(1) to read as follows:

§ 600.502–81 Definitions.

(a) * * *

(1) "Declared value" of imported components shall be:

(i) The value at which components are declared by the importer to the U.S. Customs Service at the date of entry into the customs territory of the United States; or

(ii) With respect to imports into Canada, the declared value of such components as if they were declared as imports into the United States at the date of entry into Canada, or

(iii) With respect to imports into Mexico (when paragraph (b)(3) of this section applies), the declared value of such components as if they were declared as imports into the United States at the date of entry into Mexico.

* * * * *

3. Section 600.511–80 is amended by revising paragraphs (a) introductory text, (a)(1), and (b)(2) introductory text, and adding new paragraphs (b)(3), (b)(4) and (b)(5) to read as follows:

§ 600.511–80 Determination of domestic production.

(a) An automobile shall be considered domestically produced in any model year if it is included within a domestically produced car line (car line includes station wagons for purposes of this paragraph), unless the assembly of such automobile is completed in Canada or Mexico and such automobile is not imported into the United States prior to the expiration of 30 days following the end of the model year. For purposes of this paragraph a car line will be considered domestically produced if the following ratio is less than 0.25:

(1) The sum of the declared value, as defined in § 600.502, of all of the imported components installed or included on automobiles produced within such a car line within a given model year plus the cost of transportation and insuring such components to the United States port of entry, the Mexican port of entry (when § 600.511–80(b)(3) applies), or the Canadian port of entry but exclusive of any customs duty, divided by

* * * * *

(b) * * *

(2) For automobiles for which paragraph (b)(3) of this section does not apply pursuant to the schedule in paragraph (b)(4), components shall be considered imported unless they are either:

* * * * *

(3) For automobiles for which this paragraph applies pursuant to the schedule in paragraph (b)(4) of this section, components shall be considered imported unless they are either:

(i) Wholly the growth, product, or manufacture of the United States and/or Canada and/or Mexico, or

(ii) Substantially transformed in the United States and/or Canada and/or Mexico into a new and different article of commerce.

(4) Paragraphs (b)(4) (i) through (v) of this section set forth the schedule according to which paragraph (b)(3) of this section applies for all automobiles manufactured by a manufacturer and sold in the United States, wherever assembled.

(i) With respect to a manufacturer that initiated the assembly of automobiles in Mexico before model year 1992, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have paragraph (b)(3) of this section apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election.

(ii) With respect to a manufacturer initiating the assembly of automobiles in Mexico after model year 1991, paragraph (b)(3) of this section shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994, or the model year commencing after the date that the manufacturer initiates the assembly of automobiles in Mexico, whichever is later.

(iii) With respect to a manufacturer not described by paragraph (b)(4) (i) or (ii) of this section assembling automobiles in the United States or Canada but not in Mexico, the manufacturer may elect, at any time between January 1, 1997, and January 1, 2004, to have paragraph (b)(3) of this section apply to all automobiles it manufactures, beginning with the model year commencing after the date of such election, except that if such manufacturer initiates the assembly of automobiles in Mexico before making such election, this paragraph shall not apply, and the manufacturer shall be subject to paragraph (b)(4)(ii) of this section.

(iv) With respect to a manufacturer not assembling automobiles in the United States, Canada, or Mexico, paragraph (b)(3) of this section shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 1994.

(v) With respect to a manufacturer authorized to make an election under paragraph (b)(4) (i) or (iii) of this section which has not made that election within the specified period, paragraph (b)(3) of this section shall apply to all automobiles it manufactures, beginning with the model year commencing after January 1, 2004.

(5) All elections under paragraph (b)(4) of this section shall be made in accordance with the procedures established by the Secretary of Transportation pursuant to 15 U.S.C. 2003(b)(2)(G)(iii).

* * * * *

[FR Doc. 94–181 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–083–F]

RIN 0938–AF84

Medicare Program; Revisions to Criteria and Standards for Evaluating Intermediaries and Carriers

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule issues technical amendments to Medicare regulations intended to simplify and improve our system for evaluating the performance of fiscal intermediaries and carriers in the administration of the Medicare program. Currently, we evaluate intermediaries using performance criteria and standards announced in an annual notice in the **Federal Register**. We are clarifying the methodology for establishing these criteria and standards. For consistency, we establish comparable regulation requirements for the evaluation of carrier performance.

These revisions are published in accordance with sections 1816(f) and 1842(b)(2) of the Social Security Act which require us to develop standards, criteria, and procedures to evaluate an intermediary's or carrier's overall performance.

EFFECTIVE DATE: This final rule is effective February 7, 1994.

FOR FURTHER INFORMATION CONTACT: Larry Pratt, (410) 966–7403.

SUPPLEMENTARY INFORMATION:

I. Background

Under section 1816(a) of the Social Security Act (the Act), public or private organizations and agencies participate in the administration of Part A (Hospital Insurance) of the Medicare program under agreements with the Secretary of Health and Human Services (HHS). These agencies or organizations are known as fiscal intermediaries, and they perform bill processing and benefit payment functions for the Medicare program. Under section 1842(a) of the Act, the Secretary is authorized to enter into contracts with carriers to fulfill various functions in the administration of Part B (Supplementary Medical Insurance) of the Medicare program. Beneficiaries, physicians and suppliers of the services submit claims to these carriers that, in turn, make appropriate payments.

Beginning in 1980 for intermediaries and in 1981 for carriers, we have been evaluating the effectiveness and efficiency of contractor operations through a system of criteria and standards called the Contractor Performance Evaluation Program (CPEP).

We refer to the performance requirements we use to evaluate the performance of intermediaries and carriers in meeting their contractual obligations to HCFA in our regulations and program instructions as criteria and standards. When we developed our regulations, criteria were expected to be distinguished from standards; we intended to measure broad categorizations of performance using criteria (42 CFR 421.120) and to measure statistical and performance data using standards (§ 421.122). As planned, a contractor had to be evaluated by and pass the requirements of the criteria before we evaluated contractor performance using statistical standards. However, in practice, the standards have been used to measure a contractor's compliance with the requirements of the criteria. The separate reliance on statistical standards diminished and we have developed a CPEP under which standards are used to measure the performance of specific activities in a defined criteria instead of "statistical" standards.

II. Summary of the Proposed Rule

On December 3, 1992, we published in the Federal Register (57 FR 57125) a proposed rule describing technical revisions we proposed to make to Medicare regulations in order to simplify and improve our system for evaluating the performances of fiscal intermediaries and carriers in the administration of the Medicare program. These technical revisions are necessary to bring our regulations up to date with our actual use of criteria and standards in performance evaluations.

In the preamble to the proposed rule we described how the reliance on statistical standards diminished and that current "standards" are used to measure the performance of specific activities in a defined criterion. That is, measurement and evaluation using criteria and standards have evolved into a one-step process. In addition, we noted that certain functions that were included in the original planned evaluation structure have been transferred to more appropriate review activities. We, therefore, proposed to amend §§ 421.3, 421.112(b), 421.118(b) and 421.122 to delete reference to statistical standards and to replace the general standards for the areas evaluated formerly by statistical standards with a general explanation of the areas evaluated by performance standards.

We also mentioned in the proposed rule that our regulations do not contain requirements relating to measurement of carrier performance that are parallel to those for intermediaries. For consistency, we proposed to establish a new § 421.201, "Performance Criteria and Standards," that would measure and evaluate carrier performance of functional responsibilities, such as, accurate and timely processing of claims, responsiveness to beneficiaries', physicians' and suppliers' concerns, and proper management of administrative funds.

We proposed to base performance criteria and standards on the experience of carriers nationwide, changes in carrier operations due to fiscal constraints, and our objectives in achieving better performance. Before the beginning of each CPEP evaluation period, we would publish the performance criteria and standards as a notice in the Federal Register.

We also announced that we would add a new § 421.203, "Carrier's failure to perform efficiently and effectively," to explain the adverse action that may be taken by the Secretary if the carrier fails to meet criteria and standards specified at § 421.201. The content is parallel to § 421.124, which applies to intermediaries. This new § 421.203 does not add or change carrier obligations. It merely codifies in regulations a provision specific to carriers that has been in effect since Public Law 98–369.

III. Analysis of and Response to Public Comments

We received 10 timely items of correspondence in response to the December 3, 1992 proposed rule. The comments were from intermediaries, carriers, contractor advocacy groups, and provider advocacy groups. A summary of the comments and the Department's responses follow:

Comment: Several commenters suggested that a process be developed by HCFA for receiving comments, complaints, or problems with carrier performance by physicians or professional organizations and that the information generated by this process be included in the overall performance evaluation of a carrier.

Response: Beginning in Fiscal Year 1994, HCFA will review both intermediaries' and carriers' efforts to enhance customer satisfaction through the use of customer satisfaction surveys, including the National Physician Survey. Results of the surveys will be used to establish performance data on customer satisfaction and to identify areas in need of improvement. The results will be summarized for publication in the report of contractor performance.

Comment: A number of the commenters believe that certain of our proposed changes at §§ 421.124 and 421.203 are unnecessary. Those changes would allow the Secretary to take adverse action if an intermediary or carrier exceeds the amount the Secretary finds to be reasonable and adequate to meet the costs which must be incurred by an efficiently and economically operated intermediary or carrier, notwithstanding whether the intermediary or carrier meets the published criteria and standards. Both the intermediary and carrier contracts currently have a provision to allow the Secretary to request a committee of the contractors to assist in efforts to effect improvements in the high cost contractor's performance. In addition, the current Contractor Performance Evaluation Program (CPEP) contains measures on contractor costs. If a contractor fails to meet the applicable criteria, its CPEP score is reduced accordingly.

Response: We do not agree that the proposed changes are unnecessary. This section of the regulation would authorize us to take adverse action for deficient performance of a function not specifically evaluated by CPEP. Currently, CPEP only measures contractor performance in meeting the approved budget and the contractor's relative standing among similar contractors. Moreover, beginning in FY 1993, CPEP eliminated the concept of passing/failing the overall evaluation. Passing/failing now is determined on a standard by standard basis. For example, if a contractor fails to meet the approved budget, it will fail one standard in CPEP, not the entire CPEP. Thus, despite CPEP, the authority to take adverse contract action against high cost intermediaries and carriers is necessary. As the commenters note, current contracts allow the Secretary to request a committee of the contractors to assist in efforts to effect improvements in the high cost contractor's performance. The proposed regulatory change allows us to take the next logical step in the event efforts to effect improvement have failed. We will have authority to take adverse action based on continued high cost performance.

Comment: Several commenters stressed that the proposed § 421.124 and § 421.203 were vague. They asked that HCFA further define "reasonable" amount, and how and when high cost would be calculated.

Response: We believe that the provisions at § 421.124 and § 421.203 are clear and straightforward. It is our responsibility to consider the funding levels that are reasonable and adequate to meet the costs incurred by an efficiently and economically operated contractor. To address this responsibility, we develop unit cost targets for each contractor prior to the start of every fiscal year. These unit cost targets are forwarded to the HCFA regional offices as part of the Budget and Performance Requirements (BPRs) package and represent the benchmark for the negotiations between the regional offices and the contractors.

We believe that the composition of a contractor's workload (for example, number of hospital inpatient bills versus number of outpatient bills or laboratory bills, etc.) is an important factor in the amount of costs it incurs since some claims are inherently more problematic and difficult to resolve. In order to give full consideration of each contractor's unique situation, we currently apply a "complexity index" to develop the BPRs' unit cost targets. This methodology allows us to correlate the contractor's costs with its individual workload composition. The use of the complexity index allows us to identify the contractors whose unit costs appear to be out of proportion to the type and medium (electronic versus hardcopy) of workload they must process.

Use of the complexity index methodology allows us to evaluate each contractor's costs with full consideration of its unique workload mix and within the national forum of its peers. In this way, we identify our high cost contractors. However, since the use of the complexity index methodology is an administrative tool to identify contractors with aberrant costs and can be changed or modified as required, we do not believe it necessary to outline this methodology in the regulation.

Comment: Several commenters stated that the proposed §§ 421.124(a) and 421.203(a) on high cost contractors do not specify the types of adverse action we may take on the grounds of excessive cost. Contractors are uncertain about how we would go about the process of applying sanctions and what these sanctions might be.

Response: Adverse contract actions are listed in §§ 421.124(a) and 421.203(a) of the proposed regulation, but we are not limited to those. Adverse contract actions are further defined in the intermediary and carrier manual issuances released within the HCFA Program Manual Issuances System, which contain the details of the CPEP. Adverse actions range in severity commensurate with relative performance and include, but are not limited to, such actions as, Regional Office Letter of Admonition; Central Office Letter of Admonition; deletion of the automatic renewal clause from the contract without performance goals established; deletion of the automatic renewal clause from the contract with performance goals established; limited contract automatic-renewal clause and provision for termination upon 90 days notice; reduction in territory or "carve-out"; non-renewal; and termination.

Comment: A commenter was unsure whether, if HCFA does not publish the CPEP standards during a fiscal year, there would be no performance evaluation for that year or whether the previous year's CPEP would apply.

Response: In general, the evaluation period which the criteria and standards measure is the Federal fiscal year. We make every effort to publish the criteria and standards prior to the beginning of the Federal fiscal year, that is, October 1st. If we do not publish a Federal Register notice before the new fiscal year begins, readers may presume that, until and unless notified otherwise, the criteria and standards which were previously in effect remain in effect. When a new CPEP is published, it usually applies to a prospective period, as stated in the Federal Register notice.

Comment: One commenter states that contractors participate in pilot projects which may involve additional funding from HCFA. They assume this "additional funding" would not be considered as "excessively high costs".

Response: We encourage contractors to participate in pilot projects which may result in improved quality, service or efficiency in the administration of the Medicare program. Where a contractor's participation in a pilot study or program adversely affects its performance evaluation, appropriate adjustments are made to mitigate the impact of the pilot study or program.

Comment: One commenter recommends that HCFA not base criteria and standards on the sliding scale of available funding but on true expectations of performance and therefore delete "changes in fiscal operations due to fiscal constraints" as a basis for developing criteria and standards.

Response: Each year the specific standards are revised and developed in concert with the specific budget and performance requirements, because that is the fiscally responsible approach to develop uniform and fair performance standards for the Medicare contractor community. We will continue to develop standards in conjunction with budget and performance requirements.

Comment: One commenter notes that §§ 421.124 and 421.203 do not include the contract's provision for an extension of the contract, subject to cost limitations. This would deprive high cost contractors of the formal opportunity to choose between accepting limits on their reimbursable costs and losing their Medicare contracts.

Response: The contract allows us to offer a high cost contractor the option of submitting a lower budget or losing its Medicare contract. Sections 421.124 and 421.203 would give us the authority to determine the amount which is reasonable and adequate to efficiently and economically operate as an intermediary and carrier. If we determine that we cannot afford to contract with high cost intermediaries or carriers, we may consider appropriate adverse contract action.

IV. Provisions of the Final Rule

Based on our review of the comments submitted, we are making no substantive changes to the proposed revisions to the rules affecting criteria and standards for evaluating intermediaries and carriers as published on December 3, 1992, (57 FR 233). Only minor editorial and technical revisions have been made to the proposed rules.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 is amended as set forth below:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834(a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m(a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b-1.

2. Section 421.3 is revised to read as follows:

§ 421.3 Definitions.

Intermediary means an entity that has a contract with HCFA to determine and make Medicare payments for Part A or Part B benefits payable on a cost basis (or under the Prospective Payment System for hospitals) and to perform other related functions. For purposes of designating regional or alternative regional intermediaries for home health

agencies and of designating intermediaries for hospices under § 421.117 as well as for applying the performance criteria in § 421.120 and the performance standards in § 421.122 and any adverse action resulting from such application, the term intermediary also means a Blue Cross Plan which has entered into a subcontract approved by HCFA with the Blue Cross and Blue Shield Association to perform intermediary functions.

§ 421.112 [Amended]

3. In § 421.112(b), "statistical standards" is revised to read "performance standards".

§ 421.118 [Amended]

4. In § 421.118(b) "statistical standards" is revised to read "performance standards".

5. Section 421.122 is revised to read as follows:

§ 421.122 Performance standards.

(a) *Development of standards.* In addition to the performance criteria (§ 421.120), HCFA develops detailed performance standards for use in evaluating intermediary performance which may be based on historical performance, application of acceptable statistical measures of variation to nationwide intermediary experience during a base period, or changing program emphases or requirements. These standards are also developed considering intermediary experience and evaluate the specific requirements of each functional responsibility or criterion.

(b) *Factors beyond intermediary's control.* To identify measurable factors that significantly affect an intermediary's performance, but that are not within the intermediary's control, HCFA will—

(1) Study the performance of intermediaries during the base period, and

(2) Consider the noncontrollable factors in developing performance standards.

(c) *Publication of standards.* The development and revision of standards for evaluating intermediary performance is a continuing process. Therefore, before the beginning of each evaluation period, which usually coincides with the Federal fiscal year period of October 1–September 30, HCFA publishes the performance standards as part of the **Federal Register** notice describing the performance criteria issued under § 421.120(c). HCFA may not necessarily publish the criteria and standards every year. HCFA interprets the statutory phrase "before the beginning of each evaluation period" as allowing publication of the criteria and standards after the Federal fiscal year begins, as long as the evaluation period of the intermediaries for the new criteria and standards begins after the publication of the notice.

6. Section 421.124 is revised to read as follows:

§ 421.124 Intermediary's failure to perform efficiently and effectively.

(a) Failure by an intermediary to meet, or to demonstrate the capacity to meet, the criteria or standards specified in §§ 421.120 and 421.122 may be grounds for adverse action by the Secretary or by HCFA, such as reassignment of providers, offer of a short-term agreement, termination of a contract, or non-renewal of a contract. If an intermediary meets all criteria and standards in its overall performance, but does not meet them with respect to a specific provider or class of providers, HCFA may reassign that provider or class of providers to another intermediary in accordance with § 421.114.

(b) In addition, notwithstanding whether an intermediary meets the criteria and standards, if the cost incurred by the intermediary to meet its contractual requirements exceeds the amount which HCFA finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated intermediary, those high costs may also be grounds for adverse action.

7. In subpart C a new § 421.201 is added to read as follows:

§ 421.201 Performance criteria and standards.

(a) *Application of performance criteria and standards.* As part of the carrier evaluations mandated by section 1842(b)(2) of the Act, HCFA periodically assesses the performance of carriers in their Medicare operations using performance criteria and standards.

(1) The criteria measure and evaluate carrier performance of functional responsibilities such as—

(i) Accurate and timely payment determinations;

(ii) Responsiveness to beneficiary, physician, and supplier concerns; and

(iii) Proper management of administrative funds.

(2) The standards evaluate the specific requirements of each functional responsibility or criterion.

(b) *Basis for criteria and standards.* HCFA bases the performance criteria and standards on—

(1) Nationwide carrier experience;

(2) Changes in carrier operations due to fiscal constraints; and

(3) HCFA's objectives in achieving better performance.

(c) *Publication of criteria and standards.* Before the beginning of each evaluation period, which usually coincides with the Federal fiscal year period of October 1–September 30, HCFA publishes the performance criteria and standards as a notice in the **Federal Register**. HCFA may not necessarily publish the criteria and standards every year. HCFA interprets the statutory phrase "before the beginning of each evaluation period" as allowing publication of the criteria and standards after the Federal fiscal year begins, as long as the evaluation period of the carriers for the new criteria and standards begins after the publication of the notice.

8. A new § 421.203 is added to read as follows:

§ 421.203 Carrier's failure to perform efficiently and effectively.

(a) Failure by a carrier to meet, or demonstrate the capacity to meet, the criteria and standards specified in § 421.201 may be grounds for adverse action by the Secretary, such as contract termination or non-renewal.

(b) Notwithstanding whether or not a carrier meets the criteria and standards specified in § 421.201, if the cost incurred by the carrier to meet its contractual requirements exceeds the amount that HCFA finds to be reasonable and adequate to meet the cost which must be incurred by an efficiently and economically operated carrier, those high costs may also be grounds for adverse action.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 2, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–63 Filed 1–5–94; 8:45 am]

BILLING CODE 4120–01–P

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42 CFR Part 493

[HSQ–210–FC]

Medicare, Medicaid and CLIA Programs; Personnel Requirements for Cytotechnologists

AGENCY: Health Care Financing Administration (HCFA), and Public Health Service (PHS), HHS.

ACTION: Final Rule with Comment Period.

SUMMARY: This rule amends certain personnel requirements for cytotechnologists that perform testing in laboratories subject to the requirements of the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We are providing an adequate period of time for individuals to gain the necessary 2 years experience performing cytology testing which is currently included in two of the provisions for qualifying as a cytotechnologist. Also, we are extending the time for individuals to either meet the educational qualifications by virtue of completing training in an approved cytotechnology training program or be certified by an approved organization. We are making these changes to prevent the loss of qualified personnel in the field of cytotechnology.

DATES: These regulations are effective on January 6, 1994. Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 7, 1994.

ADDRESSES: Mail an original and 3 copies of comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: HSQ–210–FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) transmissions. In commenting, please refer to file code HSQ–210–FC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in Room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Cheryl Wiseman, (410) 597–5906.

SUPPLEMENTARY INFORMATION:

I. Background

On February 28, 1992, we published in the **Federal Register** at 57 FR 7002, rules that set forth the test performance requirements for laboratories that are subject to the Clinical Laboratory Improvement Amendments of 1988 (CLIA). We subsequently published in the **Federal Register** a related rule (January 19, 1993 (58 FR 5215)) that made technical corrections and addressed immediate concerns raised by some of the approximately 16,000 comments on the publication of the February 28 regulations. This rule responds to concerns raised by some of the commenters and pertains to limited aspects of the CLIA requirements: The period of time during which an individual who needs 2 years experience as a cytotechnologist is allowed to earn that experience, and the period of time that a person may either obtain appropriate training in a school approved by the Commission on Allied Health Education and Accreditation (CAHEA) or be certified by an organization approved by HHS.

The February 28, 1992 CLIA regulations represented establishment of uniform personnel standards for cytotechnologists for all laboratories offering cytology, regardless of location. Prior to these regulations, individuals working in hospital cytology laboratories that were not licensed under the Clinical Laboratory Improvement Act of 1967 to test specimens in interstate commerce were not subject to Federal personnel qualification requirements for cytotechnologists. In addition, individuals employed in cytology laboratories that were not approved to participate in the Medicare or Medicaid program were not subject to Federal requirements, including personnel requirements.

In the preamble to the February 28, 1992 regulations, we stated that in developing the personnel standards for cytotechnologists, it was not our intention to put out of work individuals currently employed as cytotechnologists. Our aim was to provide qualification standards that would ensure quality of service and be in the best interest of the public health. Recognizing the existing shortage of laboratory personnel, particularly cytotechnologists, we stated that we were expanding the qualification requirements to allow individuals additional methods of qualifying. We stated, "In our opinion, many individuals currently working in laboratories, as a function of their employment, have gained valuable experience in testing operations. In most instances in this rule, we are acknowledging the value of this experience, by allowing those individuals, who do not meet the qualification requirements in these regulations, to continue their laboratory employment while acquiring the education or training necessary to meet the requirements. The net effect of the personnel standards will be to permit a preponderance of personnel presently working in laboratories to continue their employment while they are updating their credentials to meet the national standards for laboratory personnel specified in this rule." (57 FR 7083)

To § 493.1483, Standard: Cytotechnologist Qualifications, we added several alternative qualification standards for cytotechnologists with education or experience requirements that had to be met by the effective date of the regulations (September 1, 1992) or by a specified later date. To the previous Federal requirements, we added at § 493.1483(b)(4) a current work experience requirement that had to be met by September 1, 1992, which was applicable to those individuals who received their cytotechnology training and acquired their work experience prior to January 1, 1969. At § 493.1483(b)(5), we added a new provision requiring current work experience by September 1, 1993, in addition to requiring on or before September 1, 1994, that individuals either complete their cytotechnology training in an approved school or be certified in cytotechnology by an organization approved by HHS.

II. Revisions to the Rules

We have now determined that we did not provide sufficient time for cytotechnologists to meet current standards. Without prior notification, the February 28, 1992 rule required individuals, who obtained their education and training prior to January 1, 1969, 6 months to acquire 2 years of current work experience. Also, individuals, who trained outside of the United States, were given 1 year and 6 months to fulfill the requirement of 2 years for current work experience in the United States. Therefore, we are revising the dates originally published in the February 28, 1992 rule at § 493.1483(b)(4) and (5) concerning personnel requirements for cytotechnologists who qualified under Federal regulations and for individuals who trained outside of the United States. Based on public concern and our analysis of anticipated availability of qualified individuals, we are revising our regulations to allow all individuals 2 full years from September 1, 1992, the effective date of our personnel requirements, to gain the necessary experience to qualify under the regulations.

Accordingly, in § 493.1483(b)(4), we are revising the date from September 1.

1992 to September 1, 1994, to enable a previously qualified cytotechnologist to continue working without interruption and obtain the necessary work experience. In § 493.1483(b)(5)(i), we are similarly revising the date from September 1, 1993 to September 1, 1994 to allow an individual trained outside the United States and an individual who does not meet the other qualification standards an opportunity to obtain the 2 years of slide examination experience within the United States.

As a technical revision to our rules, we note that § 493.1483(b)(5)(ii) provides that an individual qualifying as a cytotechnologist must, on or before September 1, 1994, have either graduated from a school of cytotechnology approved by the CAHEA or be certified by an organization approved by the Department. It is possible that the CAHEA may cease to function as an accrediting organization before the Department has recognized any alternative certifying organization. In order to prevent the possibility that individuals will not have 2 full years to be certified by an approved certifying organization, we are extending the date from September 1, 1994 to September 1, 1995. This will allow time for the Department to recognize organizations that certify cytology personnel and minimize the loss of currently employed individuals at a time when there is an existing shortage of qualified cytology personnel.

We are also making a conforming change to § 493.1483(b)(1) to provide that a school of cytotechnology must be accredited by CAHEA "or other organization approved by HHS."

III. Waiver of Proposed Rulemaking and Delay of Effective Date

We ordinarily publish a notice of proposed rulemaking in the **Federal Register** and invite public comment on proposed requirements. The notice of proposed rulemaking includes a reference to the legal authority under which the rule is proposed, and the terms and substances of the proposed rule or a description of the subjects and issues involved. This procedure can be waived, however, if an agency finds good cause that a notice-and-comment procedure is impracticable, unnecessary, or contrary to the public interest and incorporates a statement of the finding and its reasons in the rule issued.

We believe that these revisions are essential to the effective implementation of the CLIA program, and to delay the effective date would potentially disrupt public access to laboratory services, unnecessarily expose laboratories to greater costs than are needed to help assure quality testing, and create unnecessary confusion among laboratories in understanding the standards they must meet. Without immediate revision of the regulations, we believe there may be shortages of cytotechnologists in some areas resulting in limited access to cytology services. Therefore, we believe it is contrary to the public interest to go through a notice-and-comment procedure, and we find good cause to waive the notice of proposed rulemaking and to issue this final rule on an interim basis. For these same reasons, we find there is good cause to dispense with a delayed effective date of these regulations. Although the regulations are final and effective on the date of publication, we are providing a 60-day period for public comment.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all laboratories are considered to be small entities. Individuals and States are not included in the definition of a small entity.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

This final rule with comment period revises personnel requirements for cytotechnologists by extending the dates by which they must meet the qualification requirements. We are unable to quantify the number of individuals, laboratories, or rural hospitals affected by this rule. In the laboratory industry generally, recent surveys indicate that 80 percent of U.S. laboratories have experienced a shortage of technical personnel. A shortage of cytotechnologists throughout the United States has been demonstrated through anecdotal studies of wages and vacancy rates. According to the American Hospital Association's 1991 Survey of Human Resources, there was a full-time equivalent vacancy rate of 12.2 percent for cytotechnologists in hospital laboratories. The survey also reported that more than 60 days were required to fill almost two-thirds of the full-time vacancies. The average length of time required to fill approximately half of the full-time vacancies was over 90 days. This scarcity level existed prior to the imposition of Federal personnel standards that might lead to lesser numbers of qualified cytotechnologists.

In the absence of a registry that indicates the actual number of cytotechnologists, their employment and age distribution, the amount and type of work they do, and the specific number of individuals that meet all the qualifications except the two years' experience, we cannot determine the cause of this shortage or predict when the shortage will end. Based on data projections from the Census Bureau and the National Health Interview Survey, the demand for Pap smears in women 18 and older was nearly 79 million in 1992 and is expected to increase. If there is an existing shortage of personnel and we anticipate the increased demand for cytology services, the impact of this regulation would be beneficial to laboratories because it will allow larger numbers of cytotechnologists to meet Federal personnel requirements. Although we cannot determine whether this final rule's provisions to allow a longer period of time for certain individuals to accumulate required experience will have a significant impact on a substantial number of small entities or small rural hospitals, because of the lack of data, we have determined that its impact is beneficial.

As stated previously, one of the new methods of qualifying as a cytotechnologist includes graduation, by September 1, 1994, from a CAHEA-approved school. In the event that CAHEA should cease to function as an accrediting agency prior to September 1, 1994, individuals may not be able to avail themselves of this method of qualifying as a cytotechnologist. To accommodate individuals seeking to qualify under this provision, we are extending the date of graduation to September 1, 1995. This should provide sufficient time for us to formally recognize another accrediting organization, if that becomes necessary.

Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 42 CFR Part 493

Grant programs—health, Health facilities, Laboratories, Medicaid, Medicare, Reporting and recordkeeping requirements.

PART 493—LABORATORY REQUIREMENTS

Part 493 is amended as follows:

1. The authority citation for part 493 continues to read as follows:

Authority: Sec. 353 of the Public Health Service Act, secs. 1102, 1861(e), the sentence following sections 1861(s)(14), 1861(s)(15), and 1861(s)(16) of the Social Security Act (42 U.S.C. 1302, 1395x(e), the sentence following 1395x(s)(14), 1395x(s)(15), and 1395x(s)(16)).

§ 493.1483 [Amended]

2. Section § 493.1483 is amended as set forth below:

a. In § 493.1483(b)(1), "Accreditation; or" is revised to read "Accreditation or other organization approved by HHS; or";

b. In § 493.1483(b)(4) introductory text, "September 1, 1992," is revised to read "September 1, 1994,";

c. In § 493.1483(b)(5)(i), "September 1, 1993," is revised to read "September 1, 1994,"; and

d. In § 493.1483(b)(5)(ii), "September 1, 1994," is revised to read "September 1, 1995,".

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program; Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: October 14, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 12, 1993.

Philip R. Lee.

Assistant Secretary for Health.

Dated: December 20, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–58 Filed 1–5–94; 8:45 am]

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DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 663

[Docket No. 931249–3349; ID. # 121693B]

Foreign Fishing; Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: 1994 groundfish fishery specifications and management measures; request for comments.

SUMMARY: NMFS announces the 1994 fishery specifications and management measures for groundfish taken in the U.S. exclusive economic zone and state waters off the coasts of Washington, Oregon, and California as authorized by the Pacific Coast Groundfish Fishery Management Plan (FMP). The specifications include the level of the acceptable biological catch (ABC) and harvest guidelines including the distribution between domestic and foreign fishing operations. The management measures for 1994 are designed to keep landings within the harvest guidelines, for those species for which there are harvest guidelines and to achieve the goals and objectives of the FMP and its implementing regulations. The intended effect of these actions is to establish allowable harvest levels of Pacific coast groundfish and to implement management measures designed to achieve but not exceed those harvest levels while extending fishing and processing opportunities as long as possible during the year.

DATES: Effective January 1, 1994, until modified, superseded, or rescinded. Comments will be accepted until February 7, 1994.

ADDRESSES: Comments on these specifications should be sent to Mr. J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Bldg. 1, Seattle, WA 98115–0070; or Dr. Gary Matlock, Acting Director, Southwest Region, National Marine Fisheries Service, 501 West Ocean Blvd., suite 4200, Long Beach, California 90802–4213. Information relevant to these specifications and management measures has been compiled in aggregate form and is available for public review during business hours at the office of the Director, Northwest Region NMFS (Regional Director), or may be obtained from the Pacific Fishery Management Council (Council), by writing Pacific Fishery Management Council, Metro Center, suite 420, 2000 SW. First Avenue, Portland, OR 97201.

FOR FURTHER INFORMATION CONTACT: William L. Robinson (Northwest Region, NMFS) 206–526–6140; or Rodney R. McInnis (Southwest Region, NMFS) 310–980–4040.

SUPPLEMENTARY INFORMATION: The FMP requires that fishery specifications for groundfish be evaluated each calendar year, that harvest guidelines or quotas be specified for species or species groups in need of additional protection, and that management measures designed to achieve the harvest guidelines or quotas be published in the **Federal Register** and implemented by January 1, the beginning of the next fishing year.

These final fishery specifications and management measures have been recommended by the Council and approved by the Secretary of Commerce (Secretary) for implementation on January 1, 1994. The ABCs and harvest guidelines announced herein are the basis for the management measures recommended for 1994, and may be modified during the year as provided in the FMP. Unless otherwise specified, all of the management measures announced in this notice are considered "routine," and have been so designated at 50 CFR 663.23. The exception is trip limits in the open-access fisheries for groundfish caught incidentally in nongroundfish gear (such as trawl gear used to fish for pink shrimp, spot or ridgeback prawns, California halibut, or sea cucumbers). These trip limits will be designated "routine" in a separate **Federal Register** notice so that they may be adjusted as necessary.

The FMP provides for announcement of the final fishery specifications in the **Federal Register** after consideration at two Council meetings. The process for adopting ABCs and harvest guidelines for 1994 was initiated early in 1993 so that preliminary specifications could be adopted by the Council at its September 1993 meeting. New stock assessments, the basis for changes to the 1993 ABCs, were distributed to the public prior to the September Council meeting. The Council's scientific and industry advisory committees and the public reviewed and commented on the documents. After receiving comments, the Council adopted preliminary ABCs and harvest guidelines at its September meeting, which were subsequently made available to the public. Comments were requested before and at the November Council meeting. The final recommendations of harvest specifications and management measures designed to achieve those specifications, adopted at the November Council meeting, were forwarded to the Secretary for implementation by January 1, 1994.

I. Final Specifications: ABCs and Harvest Guidelines, or; Apportionments to Foreign and Joint Venture Fisheries; Open-Access and Limited-Entry Allocations

The fishery specifications include ABCs, the designation of harvest guidelines or quotas for species that need individual management, the apportionment of the harvest guidelines or quotas between domestic and foreign fisheries, and subsequent allocation between the open-access and limited-entry segments of the fishery.

The final 1994 specifications (except for DAP, DAH, JVP, and TALFF) are listed in Table 1, followed by a discussion of each specification that differs from 1993 levels. As in the past, these specifications include fish caught in state ocean waters (0–3 nautical miles offshore) as well as fish caught in the exclusive economic zone (EEZ) (3–200 nautical miles offshore).

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Table 1. 1994 Specifications of Acceptable Biological Catch (ABC), Harvest Guidelines (HG), and Limited Entry and Open Access Allocations, by International North Pacific Fisheries Commission (INPFC) subareas

Species	ACCEPTABLE BIOLOGICAL CATCH (ABC)e/ (x 1,000 mt)					Harvest Guideline (x 1,000 mt)	Allocations (x 1,000 mt)			
	Vancouver b/	Columbia	Eureka	Monterey	Conception	Total ABC		Open Access		Limited Entry	
								%	mt	%	mt
Roundfish:											
Lingcod	1.0	4.0	0.5	1.1	0.4	7.0	4.0	13.6	0.54	86.4	3.46
Pacific cod	--	--	c/	c/	c/	3.2	--	--	--	--	--
Pacific whiting	--	--	--	--	--	325.0 d/	260.0 d/	--	--	--	--
		1.0			.425	7.425	7.0 f/	9.4 g/	0.63	90.6 g/	6.07
Sablefish e/	--	--	--	--	--	52.6 h/	52.6 h/	--	--	--	--
Jack mackerel h/							1/	--	--	--	--
Rockfish:											
POP	0.0	0.0	c/	c/	c/	0.0	1.3 j/	--	--	--	--
Shortbelly	--	--	--	--	--	23.5	23.5	--	--	--	--
Widow	--	--	--	--	--	6.5	6.5	3.7	0.24	96.3	6.26
Thornyheads: e/							6.44 k/	--	--	--	--
Shortspine	--	1.9			--	1.9	--	--	--	--	--
Longspine	--	10.1			--	10.1	--	--	--	--	--

| Sebastes complex: | | |

1994 continue at 80 percent of the U.S.-Canada ABC; as was the case in 1993, providing a U.S. harvest guideline of 260,000 mt. If Canada continues to calculate its share in the same manner as in 1992 and 1993, the U.S. and Canadian total harvest would be 14 percent above the coastwide ABC in 1994. However, the total harvest would be lower than the overfishing level, and lower than the amount that would have been taken if the Council had chosen to use the moderate harvest rate level, as in 1993, in determining the ABC. If recruitment remains near the median level, a decline in annual yield is expected over the next few years, and will be slightly more severe if the catch exceeds the harvest guideline. Bilateral negotiations with Canada are expected to continue to resolve this issue.

Jack mackerel. The ABC is maintained at 52,600 mt, the same level as in 1993, and the harvest guideline is adjusted upward to equal the ABC. In 1992, the harvest guideline has been set at 46,500 mt, lower than the ABC, to deduct the amount of jack mackerel that was expected to be taken beyond 200 nautical miles (nm). However, the fishery did not materialize and the Council recommended setting the harvest guideline equal to ABC in 1993. This change inadvertently was not announced with the 1993 specifications in the **Federal Register**, so the correction is made for 1994.

Chilipepper rockfish. In 1993, the coastwide ABC was set at 3,600 mt with nearly all the catch coming from the Eureka, Monterey, and Conception subareas. The catch in 1992 was about 2,895 mt; 1993 landings data are not yet available for this species. A new assessment indicates that the ABC could be higher, up to 5,000 mt, due to a very strong 1984 year class, and that the stock is at a level above that expected under the recommended level of exploitation. However, the Council recommended a lower ABC of 4,000 mt for 1994, higher than the expected 1993 catch, but less than the maximum amount suggested by the assessment and close to the long-term average yield. Although a higher ABC appears supportable from the assessment, it is not recommended because bocaccio, which is at a low stock level and has an ABC of 1,540 mt and 1993 landings near that level, are unavoidably caught with chilipepper. There is no harvest guideline at this time for chilipepper rockfish.

Pacific ocean perch (POP). Based on the 1992 stock assessment, the ABC for POP remains at zero. A rebuilding program was established for POP in 1981, following depletion of this stock during the 1960's and early 1970's. Significant rebuilding has not been detected. The stock abundance is estimated to be about 50 percent of its target level and recent harvests of about 1,000 mt are near the level of overfishing. If the stock recovers to its target level, then annual yields of about 1,400 mt may be possible. Strong year classes which are necessary to rebuild the stock occur infrequently, so the lack of rebuilding is not unexpected. The harvest guideline continues to be set at the level that accommodates the incidental catch of POP caught while fishing for other species. The reduction of the harvest guideline from 1,550 mt in 1993 to 1,300 mt in 1994 results from converting the harvest guideline from an estimate of total catch (retention plus discards) to an estimate of landed catch (retention only). The harvest guideline of 1,550 mt in 1993 applied to the total catch, 1,300 mt for landed catch and a 250-mt (16 percent) estimate of trip-limit induced discards. In 1994, the harvest guideline represents only the landed catch, and therefore is lowered to 1,300 mt.

For the last several years, the harvest guideline, in conjunction with a very small trip limit, was necessary to accommodate only incidental catches of POP which otherwise would have been discarded. The trip limit will not be relaxed to achieve the harvest guideline, but may be changed to reflect revised estimates of bycatch levels. The catch in 1993 is projected to be about 1,447 mt, 93 percent of the harvest guideline. The 1994 harvest guideline is consistent with the Council's policy to allow for incidental catches during the 20-year rebuilding schedule for POP.

Shortbelly rockfish. Shortbelly rockfish remains an unexploited stock and thus is difficult to assess quantitatively. In recent years, the ABC has been maintained at 13,000 mt until further data can be collected. However, the midpoint of the range of recently revised yield estimates is 23,500 mt. The Council agreed that this represents the best available scientific information and recommended that the harvest guideline be set equal to the ABC. To date, a fishery for this species has not developed. Less than 10 mt were taken in 1992 and similar landings have occurred in 1993.

Widow rockfish. A new assessment was conducted for widow rockfish which explored the consequences of near-term landings between 5,000–7,000 mt. If recent recruitment remains near the average, then stock abundance is expected to remain nearly constant with annual landings of 7,000 mt (which would, including discards, indicate a total harvest of 8,150 mt) in 1994–1996. With annual harvest at 6,500 mt, stock abundance would be expected to increase slightly towards its target level. However, the assessment also provides a plausible alternative, based on lower stock abundance and recent recruitment at a lower, median level, which would support landings of only 5,000 mt during 1994–1996. Given this uncertainty, the ABC and HG are both set at 6,500 mt for 1994.

Thornyheads. The ABCs for shortspine and longspine thornyheads are the same as in 1993. The two species of thornyhead cannot be practically separated in the landings, so, as in 1993, the 1994 harvest guideline is set for the combined species. However, like POP, the harvest guideline is adjusted so that it applies only to landed catch in 1994. Under the assumption that equal amounts of each species will be in the catch, the harvest guideline is set at 6,440 mt for both species combined (the 1993 harvest guideline of 7,000 mt, which represented the total catch, minus 8 percent for trip limit induced discards). This would result in a shortspine thornyhead catch equal to its overfishing level of 3,500 mt and a longspine catch that is less than its ABC of 10,100 mt. However, the percentage of shortspine thornyheads in 1991 and 1992 has been lower than 50 percent, and therefore the catches in these years have been below the overfishing level. During the first half of 1993, shortspine contributed only 35 percent of the thornyhead landings. If the percentage shortspine in 1994 remains at this reduced level as expected, the 1994 catch would be 2,450 mt, well below the overfishing level.

Yellowtail rockfish. A new stock assessment was conducted which indicates that 1983 and 1984 were stronger year classes than previously thought. The ABCs which were applied to the Vancouver, Columbia, and Eureka subareas separately in the past, are applied to different subareas in 1994, coinciding with the subareas used in the new stock assessment. These areas are: The Eureka subarea combined with the Columbia subarea south of Cape Falcon (40°30′ to 45°46′ N. latitude); the Columbia subarea north of Cape Falcon (45°46′ to 47°30′ N. latitude); and the Vancouver subarea between 47°30′ and 49°00′ N. latitude which includes Canadian waters.

In the north Columbia subarea, the assessment indicates a stock that is slowly declining, and further declines are expected as the 1983–1984 year class moves through the stock. The 1994 4,160 mt ABC in this area is higher than the 1992 catch and similar to average catches between 1986–1989. In the Vancouver subarea, which extends into Canadian waters, there are contrary indicators of stock condition. Trawl survey data indicate a stable healthy stock from 1980–1992, whereas age composition data do not indicate a particularly strong 1983–1984 year class and implies a steeply declining stock. Therefore the ABC for the Vancouver subarea is more conservative, based on the lower end of the optimistic scenario in the stock assessment, and the U.S. portion is estimated at 60 percent, or 1,190 mt. In the southern subareas (Eureka/south Columbia), the stock is believed to have recently increased because of the strong 1983–1984 year classes, but will experience a declining trend as the strong year classes are exploited. In 1993, 300 mt of the ABC was set aside for the Eureka subarea, and a harvest guideline, equal to the sum of the ABCs, was set only for the U.S. Vancouver/Columbia subareas combined. In 1994, however, two harvest guidelines are set for yellowtail rockfish, dividing the U.S. Vancouver, Columbia, and Eureka subareas at Cape Falcon, Oregon. The 4,160 mt harvest guideline in the northern subareas (U.S. Vancouver/north Columbia) is the sum of the ABCs. In the southern area (south Columbia/Eureka), the harvest guideline is set equal to the ABC of 2,580 mt.

Remaining rockfish. Remaining rockfish in the Eureka, Monterey, and Conception subareas includes all rockfish except POP, widow rockfish, shortbelly rockfish, bocaccio and chilipepper rockfish. The ABCs for remaining rockfish have been unchanged since 1983. The ABCs in the Eureka, Monterey, and Conception subareas were set at 1.2 times the 1977 catch, for a total of 9,500 mt. During 1983–1992, the catch of remaining rockfish in this area has ranged from 5,100 mt to 7,200 mt with an average of 6,600 mt. Although annual catches never have achieved the 9,500 mt ABC, an examination of declines in average length for several rockfish species suggests that the fishery is having a noticeable impact. Although there is insufficient information to conduct a quantitative stock assessment for the remaining rockfish in this southern area, an increase in effort in this area should not be encouraged, and therefore the ABC is reduced to 7,000 mt, the upper range of harvest in recent years.

Remaining rockfish in the Vancouver and Columbia subareas are defined as all rockfish except POP, yellowtail rockfish, canary rockfish, widow rockfish, and shortbelly rockfish. The ABC is not changed in 1994.

Remaining rockfish are included in both the northern and southern harvest guidelines for the *Sebastes* complex.

Sebastes complex. The *Sebastes* complex includes all rockfish except widow, shortbelly, Pacific ocean perch, and thornyheads.

North: The harvest guideline for the *Sebastes* complex in the Vancouver-Columbia area has been, and continues to be, the sum of the ABCs of the species in that area, and therefore is 13,240 mt in 1994. It is calculated by adding the ABCs for canary and remaining rockfish in the Vancouver and Columbia subareas, and for yellowtail rockfish in the Vancouver, Columbia and Eureka subareas and then subtracting 300 mt, an estimate of the yellowtail ABC in the Eureka subarea.

South: A harvest guideline of 13,440 mt is established for the first time for the *Sebastes* complex in the Eureka, Monterey, and Conception subareas, based on the sum of the ABCs of the species in those subareas (bocaccio, chilipepper, yellowtail rockfish, and remaining rockfish). The decline in average size of some the *Sebastes* species in this southern area, particularly dark-blotched rockfish, indicated a need to keep effort from expanding. Uncertainty generated by the new limited-entry management regime in 1994 prompted the Council to recommend a harvest guideline to better respond to effort shifts during the season.

Dover sole. There is no change to any of the subarea or coastwide ABCs for Dover sole. At its November 1992 meeting, to mitigate the economic impact of abrupt reductions in ABC, the Council adopted a policy to reduce the harvest (and therefore the harvest guideline) in the Columbia subarea by 1,000 mt annually until the 4,000 mt ABC for that subarea is reached in 1995. This is the second year of the step-down, and therefore the harvest guideline in the Columbia subarea is reduced from 6,000 mt in 1993 to 5,000 mt in 1994, 1,000 mt above the 1994 ABC. Consequently, the coastwide harvest guideline, which is the sum of the subarea harvest guidelines, is 16,900 mt, 1,000 mt higher than the sum of the ABCs. As stated at 58 FR 2994 (January 7, 1993), the risk of overfishing Dover sole in the Columbia subarea is not appreciably increased by setting the harvest guideline greater than the ABC in 1993 and 1994. The Columbia subarea catch has declined from an average of 7,970 mt in 1988–1991 to 5,665 mt in 1992, and landings are expected to be about 5,800 mt in 1993.

English sole. The coastwide ABC of 1,900 mt in 1993 is changed to two area ABCs in 1994: 2,000 mt for the Vancouver-Columbia area and 1,100 mt for the Eureka-Monterey-Conception area. A new stock assessment was conducted only for the Vancouver-Columbia area. It indicated high recruitment during 1977–1992. The large biomass, combined with the early age at maturity which allows a high exploitation rate, suggest that a ten-fold increase in short-term yield may be possible in the Vancouver-Columbia area. However, catches have averaged only about 2,100 mt between 1983–1991. The 1994 ABC is set conservatively, at 2,000 mt in this area, approximately double the coastwide average catch during 1983–1991. The southern area ABC is set near the recent average catch because trawl surveys indicate little trend in abundance. There is no harvest guideline for English sole.

Petrale sole. A new stock assessment for the Vancouver and Columbia subareas was conducted which resulted in the ABC for the two subareas being combined and lowered from 1,700 mt in 1993 to 1,200 mt in 1994. The assessment indicates that the stock in this area is essentially at the expected long-term average level of abundance, and recent yields are slightly below the potential. In addition, the ABC is lowered to exclude the portion that applied to Canadian waters that mistakenly was included in the previous ABC. There is no harvest guideline for petrale sole.

Setting Harvest Guidelines Greater Than ABC

In most cases, harvest guidelines equal the ABCs, or prorated ABCs, for specific areas. However, for 1994 as in 1993, the Council recommended harvest guidelines that exceed the ABCs for three species, POP, Dover sole in the Columbia subarea, and shortspine thornyheads. The FMP requires that the Council consider certain factors when setting a harvest guideline above an ABC. These factors were analyzed by the Council's Groundfish Management Team (GMT) and considered at the Council's November 1993 meeting before recommending the 1994 harvest guidelines. These factors also were considered in establishing the 20-year rebuilding schedule for POP in the 1981 FMP, and in the most recent stock assessments for POP and Dover sole in the Council's August 1992 SAFE document, which provided the basis for the 1993 and 1994 ABCs. A synopsis of these issues appears in the above discussion of these species.

Overfishing. The FMP defines "overfishing" as a fishing mortality rate that would, in the long-term, reduce the

spawning biomass per recruit below 20 percent of what it would have been if the stock had never been exploited (unless the species is above the level that would produce the maximum sustainable yield (MSY)). The rate is defined in terms of the percentage of the stock removed per year. Therefore, a large amount of catch can cause overfishing at any stock abundance level. Conversely, overfishing does not necessarily occur for stocks at low abundance levels if the catch can be kept to a sufficiently small fraction of that stock level. The target rate of exploitation for west coast groundfish typically is the rate that would reduce spawning biomass per recruit to 35 percent of its unfished level. This desired rate of fishing will always be less than the overfishing rate, so there is a buffer between the management target and the level that could harm the stock's long-term potential productivity. If the overfishing level is reached, the Guidelines for Fishery Management Plans at 50 CFR part 602 require the Council to identify actions to be undertaken to alleviate overfishing. POP is the only species believed to be near its overfishing level in 1993, and no others are expected to be overfished in 1994.

POP was depleted off Washington and Oregon mainly by foreign fishing during the 1960's and early 1970's. In 1981, a rebuilding program was established for POP in the Vancouver and Columbia subareas. (POP are neither common nor important in the more southern areas). A review in 1992 of fishery and survey data does not indicate any significant rebuilding. The stock is estimated to be about 50 percent of its MSY level and recent harvests are near the level of overfishing (1,100 mt). The review also indicates that strong year classes, which are necessary to rebuild the stock, occur infrequently so the lack of rebuilding is not expected. The Council's GMT recognized that, as long as trawling occurs in these areas, incidental catches of POP will result. The GMT recommended that trip limits continue to be set to discourage targeting on POP while allowing landings of incidental catches.

It is not anticipated that lowering the level of the trip limit (or the harvest guideline) will reduce the fishing mortality of POP. The level of catch will vary with effort in the Vancouver-Columbia area, and it is possible that the overfishing level will be reached, but not substantially exceeded, in 1994. Under the same harvest guideline and trip limit (3,000 pounds (1,361 kg) or 20 percent of all groundfish per trip, whichever is less), the total landings were 1,378 mt in 1991, 1,023 mt in 1992, and are projected at 1,214 mt in 1993.

Discards. Stock assessments and inseason catch monitoring are designed to account for all fishing mortality, including that resulting from fish discarded at sea. Discards of rockfish and sablefish in the fishery for whiting processed at sea are well-monitored and are accounted for inseason as they occur. In the other fisheries, discards caused by trip limits are not monitored, so discard factors have been developed to reasonably account for this extra catch. These discard factors are applied in several ways.

In some cases (trawl sablefish, widow rockfish, bocaccio, Dover sole), the discard factor was used in the stock assessment and in the setting of the ABC. Therefore the ABC and harvest guideline are defined in terms of landed catch. No additional discard factor is applied to inseason catch projections.

In other cases (yellowtail rockfish, POP, thornyheads), a discard factor was not anticipated in the stock assessment leading to the setting of the ABC because the assessment was conducted before the trip limits became low enough to induce discards. For POP and thornyheads, an estimate of discards caused by trip limits has been subtracted from the ABC so that the harvest guideline represents only the landed catch. For yellowtail rockfish, a variety of gears with different discard levels contribute to the catch, so the harvest guideline is set equal to ABC and landings are adjusted by a discard factor during the season to estimate total removals.

The level of trip limit discard is not monitored. A level previously measured for widow rockfish (16 percent) in a scientific study is assumed to be appropriate for the commercial fisheries for widow rockfish, yellowtail rockfish and POP. A lower level of 8 percent is used for the deepwater thornyhead fishery.

Discarded bycatch in the Pacific whiting fishery always is counted towards the harvest guideline inseason because this source of discard is measured accurately by observers and is variable from year to year.

Foreign and domestic fisheries. For those species needing individual management that will not be fully utilized by domestic processors or harvesters, and that can be caught without severely impacting species that are fully utilized by domestic processors or harvesters, the harvest guidelines or quotas may be apportioned to domestic annual harvest (DAH, which includes domestic annual processing (DAP) and joint venture processing (JVP)) and the total allowable level of foreign fishing (TALFF). In 1994, there are no surplus groundfish available for joint venture or foreign fishing operations. Consequently, all the harvest guidelines in 1994 are designated entirely for DAP (which also equals DAH), and JVP and TALFF are set at zero.

In the unlikely event that a foreign or joint venture fishery should occur, the incidental catch levels would be the same as announced at Table 2, footnote 1 of 58 FR 2990 (January 7, 1993).

The Limited-Entry Program—Effective January 1, 1994

Amendment 6 to the FMP establishes a limited-entry program which divides the groundfish fishery into two components, the limited-entry fishery and the open-access fishery, each of which has its own allocations and management measures. The limited-entry and open-access allocations are calculated according to a formula specified in the FMP and implementing regulations, and are announced annually with the ABC and harvest guideline specifications. At its November 1993 meeting, the Council recommended the species and areas subject to open-access and limited-entry allocations in 1994, and the Regional Director calculated the amounts of the allocations which are presented in Table 1. Unless otherwise specified, the limited-entry and open-access allocations are treated as harvest guidelines in 1994.

Open-access allocations. The open-access fishery means the fishery composed of vessels using (i) exempt gear, or (ii) longline or pot (trap) gear used pursuant to the harvest guidelines, quotas, and other management measures governing the open-access fishery. Exempt gear means all types of fishing gear except groundfish trawl, longline, and pots. (Exempt gear includes trawls used to harvest pink shrimp or spot or ridgeback prawns (shrimp trawls), and, south of Point Arena, California, California halibut, or sea cucumbers.) Simply put, open-access gear is all types of fishing gear except longline, pot, or groundfish trawl gear fished by a vessel that has a limited-entry permit affixed with a gear endorsement for that gear.

The open-access allocation is derived by applying the open-access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational fishing or treaty Indians under sections II.E. (b) and (c) of the Appendix to part 663. For those species in which the open-access share would have been less than one percent, no open-access allocation is

specified for 1994 because significant open-access effort is not anticipated. At the time the calculations were made, the status of some vessels (whether or not they would receive a limited-entry permit) was not certain. The catch by these vessels was divided equally between the limited-entry and open-access allocations. The highest "undecided" amount is 4.7 percent for the catch of species used to represent bocaccio during the window period. Therefore the greatest potential error in any of the open-access or limited-entry allocations is less than 2.5 percent of the harvest guideline. This level of error would not result in a change in any of the trip limits for the limited-entry or open-access fisheries.

Limited-entry allocations. The limited-entry fishery means the fishery composed of vessels using limited-entry gear fished pursuant to the harvest guidelines, quotas, and other management measures governing the limited-entry fishery. Limited-entry gear means longline, pot, or groundfish trawl gear used under the authority of a valid limited-entry permit, issued under 50 CFR part 663, affixed with an endorsement for that gear. (Groundfish trawl gear excludes shrimp trawls used to harvest pink shrimp, spot prawns, or ridgeback prawns, and other trawls used to fish for California halibut or sea cucumbers south of Pt. Arena, California.)

The limited-entry allocation is the allowable catch (harvest guideline or quota) reduced by: (1) Set asides, if any, for treaty Indian fisheries or recreational fisheries, and (2) the open-access allocation.

II. 1994 Management Measures—Commercial Fishery

Most of the 1994 management measures announced in this notice have been designated as "routine" under the procedures contained in Amendment 4 to the FMP (56 FR 736, January 8, 1991). The "routine" designation means that a measure is likely to need adjustment on an annual or more frequent basis, and that it may be implemented and adjusted for a specified species or species group and gear type after consideration at a single Council meeting. However, the effects of the particularly measure must have been analyzed previously, the purpose of the measure must be the same as when it was designated as routine, and the measure must be announced in the **Federal Register.**

Those management measures not yet designated as routine apply to the harvest of groundfish taken incidentally in non-groundfish fisheries (in the open-access fishery) for pink shrimp, spot and ridgeback prawns, California halibut, and sea cucumbers. These fisheries must be managed under "routine" trip limits to assure that open-access allocations are not exceeded. The trip limits for pink shrimp, and spot and ridgeback prawns previously were codified at 50 CFR 663.24; those for California halibut and sea cucumbers are announced herein for the first time. In the future, the Council also may recommend designating trip limits for lingcod as routine, so that they may be adjusted in season to achieve its harvest guideline which was specified for the first time in 1994.

Limited-entry fishery. The following management measures apply to vessels operating in the limited-entry fishery after January 1, 1994, and are designed to keep landings within the harvest guidelines or limited-entry allocations.

The Sebastes complex (including yellowtail rockfish and Bocaccio). Beginning January 1, 1993, the cumulative trip limit for the *Sebastes* complex coastwide was 50,000 pounds (22,680 kg) in a 2-week period, of which no more than 10,000 pounds (4,536 kg) could be bocaccio taken south of Cape Mendocino, or 8,000 pounds (3,629 kg) could be yellowtail rockfish caught north of Coos Bay, Oregon. The *Sebastes* complex trip limit remained the same all year, but the trip limit for yellowtail rockfish was lowered to 6,000 pounds (2,722 kg) in late April, and the bocaccio trip limit was increased to 15,000 pounds (6,804 kg) in early October. By the end of 1993, landings of bocaccio are yellowtail rockfish and the *Sebastes* complex catches are expected to exceed their harvest guideline in the Vancouver/Columbia subareas by as much as 27 percent and 18 percent, respectively. The Council did not recommend further reductions in the trip limit for yellowtail rockfish in 1993 because the ABC and harvest guideline for this species were expected to increase substantially in 1994, and the overage in 1993 is not expected to reduce future productivity. The *Sebastes* complex harvest guideline was exceeded entirely due to the overage in the yellowtail rockfish landings, so the trip limit for the complex was not reduced for the same reasons as for yellowtail rockfish.

In 1994, the cumulative trip limit period for the *Sebastes* complex (including yellowtail rockfish and bocaccio) is extended from 2 weeks to a calendar month, consistent with the period for widow rockfish and the Dover sole/thornyhead/sablefish complex. However, the trip limit is not simply doubled because experience has shown that the opportunity for landings, and thus catch rates, increase as the trip limit period is lengthened. Consequently, the coastwide trip limit for the *Sebastes* complex is increased to only 80,000 pounds (36,290 kg) per calendar month in 1994. Analysis of 1993 Washington and Oregon landings accumulated by 4-week periods indicated that this trip limit will not be severely constraining because few cumulative *Sebastes* trips exceeded 80,000 pounds (36,290 kg) in 1993.

In addition, the management line for yellowtail rockfish is moved north to Cape Lookout, Oregon (45°20'15" N. latitude), to better define the areas where this species is concentrated. The cumulative trip limit for yellowtail rockfish north of Cape Lookout is set at 14,000 pounds (6,350 kg) per month, intermediate to the 1993 levels (6,000 pounds (2,722 kg) and 8,000 pounds (3,629 kg) per 2-week periods), because landings in 1993 are believed to have been similar to the 1994 harvest guideline for the same area. To keep landings from accelerating south of the line, as occurred in 1992, a trip limit of 30,000 pounds (13,608 kg) per month is established for yellowtail rockfish caught south of Cape Lookout.

Because landings of bocaccio did not reach the 1993 harvest guideline, the trip limit is almost doubled to 30,000 pounds (13,608 kg) per month.

The 1993 restrictions limited a vessel to the northern, more restrictive trip limit for yellowtail rockfish if operating on both sides of the line at Coos Bay. This was a problem for vessels that took the yellowtail rockfish limit south of Coos Bay at the beginning of the month, and then fished north of the line for the DTS complex because yellowtail rockfish is commonly taken as bycatch. The yellowtail rockfish would either need to be discarded or the vessel would be in violation of the more restrictive northern limit. The same problem would exist north and south of Cape Lookout in 1994. Consequently, the Council endorsed a declaration procedure by the States of Oregon and Washington that would allow a fisherman to operate both north and south of Cape Lookout during a month and retain up to the southern limit of yellowtail rockfish, if the State is notified in advance where the vessel will be operating on each trip that crosses the line during that month. These declarations, which are binding for the trip, are similar, but not identical, to those used in the past. The State where the fish will be landed (Oregon or Washington) should be contacted for more complete information on these procedures, which

may differ between the two States. The phone numbers of the State agencies appear in Section III.C.

Widow rockfish. The 1993 cumulative trip limit for widow rockfish initially was set at 30,000 pounds (13,608 kg) per 4-week period, but was reduced to 3,000 pounds (1,361 kg) per trip on December 1, 1993. Landings of widow rockfish are projected to exceed the harvest guideline by as much as 12 percent in 1993. For 1994, the trip limit is again initially set at 30,000 pounds (13,608 kg), but the period is slightly extended from 4-weeks to a calendar month. Reducing the number of trip limit periods from 13 4-week periods (of 28 days) to 12 calendar months (of 30–31 days) is intended to reduce landings from 1993 levels and avoid the need for further trip limit reductions before the fall of 1994.

POP. The 1994 trip limit for POP is the same as in 1991–1993: 3,000 pounds (1,361 kg) or 20 percent of all fish on board, whichever is less, in landings of POP above 1,000 pounds (454 kg). This is not a cumulative limit because it is intended to accommodate only incidental catches. It therefore applies to each fishing trip. Because the trip limit for POP is intended to accommodate only unavoidable incidental catches, it will not be increased if landings are lower than the harvest guideline.

DTS complex (Dover sole, thornyheads, and trawl-caught sablefish). In January 1993, the cumulative trip limit for the DTS complex was 45,000 pounds (20,412 kg) per 2-week period, of which no more than 20,000 pounds (9,072 kg) could be thornyheads and no more than 1,000 pounds (454 kg), or 25 percent of the DTS complex, whichever was greater, could be sablefish. In April, the trip limits were reduced and applied on a 4-week cumulative basis: 60,000 pounds (27,216 kg) of the DTS complex, of which no more than 35,000 pounds (15,876 kg) could be thornyheads. The sablefish trip limit remained the same (but was expected to result in lower landings due to the reduction in the trip limit for the complex) until September when a ceiling of 3,000 pounds (1,361 kg) per trip was added. Nonetheless, landings continued at high levels and, at the Council's November 1993 meeting, were projected to exceed the harvest guidelines for trawl-caught sablefish by 18 percent and for thornyheads by 17 percent. Dover sole landings were projected to be 17 percent below its coastwide harvest guideline, but only 3 percent below the harvest guideline in the Columbia subarea (which is 1,000 mt lower in 1994). Further reductions were implemented in December 1993 (58 FR 64169, December 6, 1993) but were not expected to substantially reduce these overages. Throughout the year, no more than 5,000 pound (2,268 kg) of sablefish per trip could be smaller than 22 inches (56 cm) (total length).

In 1994, the cumulative trip limit for the DTS complex is 50,000 pounds (22,680 kg) per month, including no more than 30,000 pounds (13,608 kg) of thornyheads and 12,000 pounds (5,443 kg) of trawl-caught sablefish. The cumulative period is lengthened from 4-weeks to calendar month. The sablefish trip limit of 1,000 pounds (454 kg) or 25 percent of the DTS complex, whichever is greater, that applies to each trip, remains in effect. The 5,000-pound (2,268 kg) trip limit on sablefish smaller than 22 inches (56 cm) also continues. Even though the sablefish harvest guideline applies only to the Vancouver, Columbia, Eureka, and Monterey areas, these trip limits are applied coastwide to avoid effort shifts into the Conception area.

Nontrawl trip limits for sablefish. In 1993, a coastwide 250-pound (113 kg) daily trip limit was applied until May 9, the beginning of the 72-hour closure before the start of the regular season on May 12. The 250-pound (113 kg) daily trip limit was reimposed on June 5 following a 72-hour closure beginning June 2. Landings are projected to be within one percent of the harvest guideline in 1993. The harvest guideline applies coastwide except for the Conception subarea.

Daily trip limits are established again in 1994, until 72 hours before, and 72 hours after, the regular season which is scheduled to start on May 15, 1994. However, the 250-pound (113 kg) daily trip limit will apply only to the Vancouver, Columbia, Eureka, and Monterey subareas, the same areas covered by the harvest guideline. In the Conception area, where there is no harvest guideline and landings have been below the 425 mt ABC, the daily trip limit is increased to 350 pounds (159 kg). This limit will accommodate most current landings without encouraging excessive effort shifts into that area.

The trip limit for sablefish smaller than 22 inches (56 cm) (1,500 pounds (680 kg) or 3 percent of all legal sablefish on board, whichever is greater) remains in effect.

Pacific whiting. The Council recommended continuation of the 10,000-pound (4,536 kg) trip limit for Pacific whiting taken before and after the regular season. In 1994, the regular season begins on March 1 between 42°00′—40°30′ N. latitude, and on April 15 north of 42°00′ N. latitude and south of 40°30′ N. latitude.

Open-access fishery. At its November meeting, the Council recommended open-access fishery trip limits for certain gear types, areas, and species or species groups. For all open-access gear except trawls, the Council recommended: (1) A 10,000 pound (4,536 kg) trip limit for all rockfish, not to exceed 40,000 pounds (18,144 kg) cumulative in a month; and (2) a sablefish trip limit of the same amounts and areas as for the limited-entry nontrawl fishery at the beginning of the year (250 pounds (113 kg) per day north of 36°00′ N. latitude; 350 pounds (159 kg) per day south of 36°00′ N. latitude). For shrimp trawls, the trip limit for spot and ridgeback prawns remains the same at 1,000 pounds (454 kg) of groundfish per trip, and the trip limit in the pink shrimp fishery (1,500 pounds (680 kg) of groundfish per day times the number of days in the fishing trip) is the same except the exclusion of whiting, shortbelly rockfish, and arrowtooth flounder is removed. The trip limits all are designed to keep landings within the open-access allocation for as long as possible during the year. In addition, any more restrictive limits imposed on the limited-entry vessels also apply to the open-access vessels. In particular, the cumulative monthly limits for bocaccio and for yellowtail rockfish are more restrictive than the 40,000 pounds (18,144 kg) cumulative limit on all rockfish in the open-access fishery.

Public comment resulting from the discussion of trip limits at the September 1993 Council meeting revealed two minor trawl fisheries for non-groundfish species (California halibut and sea cucumbers south of Point Arena, California) that incidentally take small amounts of groundfish. If these vessels had landed the 500-pound (227 kg) minimum landing requirement during the window period, they would have qualified for a limited-entry permit, but they did not. These vessels are considered to be using exempt gears, and therefore may participate in the open-access fishery. The Council agreed that the total take of groundfish in these fisheries was insignificant, if measurable, and that there was no need to force these fishers to discard incidentally-caught groundfish. Therefore, a 500-pound (227 kg) trip limit for all groundfish species was recommended for these fisheries.

Vessels using open-access gear are subject to the management measures for the open-access fishery, whether or not the vessel has a valid limited-entry permit endorsed for any other gear. In addition, a vessel operating in the open-access fishery must not exceed any trip limit, frequency limit, and/or size limit for the same gear and/or subarea in the limited-entry fishery (as announced in this **Federal Register** notice in paragraphs titled "limited-entry"). A vessel that operates in both the open-access and limited-entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open-access gear will also be counted toward the limited-entry trip limit. For example; In one month, a trawl vessel catches 12,000 pounds (5,443 kg) of yellowtail rockfish in the limited-entry fishery, and in the same month catches 4,000 pounds (1,814 kg) of yellowtail rockfish using hook-and-line (open-access) gear. Because the open-access landings are counted toward the limited-entry limit, the vessel would have exceeded its monthly 14,000 pound (6,350 kg) limited-entry limit for yellowtail rockfish by 2,000 pounds (907 kg).

III. 1994 Management Measures—Recreational Fishery

The recreational size and bag limits in 1994 are the same as in 1993 except for the bag limit for black rockfish off Oregon. The State of Oregon is concerned that numbers of black rockfish on the north Oregon coast are declining and has reduced the State bag limit from 15 rockfish of any species, to 15 rockfish of which no more than 10 may be black rockfish. The Council recommended that the same change be made to the bag limit in Federal waters to conserve the species and maintain consistency with Oregon regulations. The commercial fishery is not restricted at this time because the commercial catch of black rockfish is low, and commercial vessels have voluntarily agreed to avoid the nearshore areas where black rockfish are found.

IV. Secretarial Actions

For the reasons stated above, the Secretary concurs with the Council's recommendations and announces the following management actions for 1994, including those that have not been changed since 1993.

A. General Definitions and Provisions

The following definitions and provisions apply to the 1994 management measures, unless otherwise specified in a subsequent notice:

(1) *A trip limit* is the total allowable amount of a groundfish species or species complex, by weight, or by percentage of fish on board, that may be taken and retained, possessed, or landed per vessel from a single fishing trip.

(2) *A daily trip limit* is the maximum amount that may be taken and retained, possessed or landed per vessel in 24 consecutive hours, starting at 0001 hours local time. Only one landing of groundfish may be made in that 24-hour period.

(3) *A cumulative trip limit* is the maximum amount that may be taken and retained, possessed or landed per vessel in a specified period of time, without a limit on the number of landings or trips. Cumulative trip limits for 1994 initially apply to calendar months.

(4) Unless the fishery is closed, a vessel which has landed its cumulative or daily limit may continue to fish on the limit for the next legal period so long as the fish are not landed (offloaded) until the next legal period.

(5) All weights are round weights or round weight equivalents.

(6) Percentages are based on round weights, and, unless otherwise specified, apply only to legal fish on board.

(7) Legal fish means fish taken and retained, possessed, or landed in accordance with the provisions of 50 CFR part 663, the Magnuson Act, any notice issued under subpart B of part 663, and any other regulation promulgated or permit issued under the Magnuson Act.

(8) Closure, when referring to closure of a fishery, means that taking and retaining, possessing or landing the particular species or species group is prohibited. (See the regulations at 50 CFR 663.2.)

(9) The fishery management area for these species is the EEZ off the coasts of Washington, Oregon, and California between 3 and 200 nautical miles offshore, and bounded on the north by the Provisional International Boundary between the United States and Canada, and bounded on the south by the International Boundary between the United States and Mexico. All groundfish possessed 0–200 nautical miles offshore, or landed in, Washington, Oregon, or California are presumed to have been taken and retained from the fishery management area, unless otherwise demonstrated by the person in possession of those fish.

(10) Inseason changes to trip limits are announced by notices published in the **Federal Register.** Information concerning changes to trip limits also is available from the NMFS Northwest and Southwest regional offices (see **ADDRESSES** above). Changes to trip limits are effective at the times stated in the **Federal Register** notices. Once a change is effective, it is illegal to take and retain, possess, or land more fish than allowed under the new trip limit.

(11) It is unlawful for any person to take and retain, possess, or land groundfish in excess of the landing limit for the open-access fishery without having a valid limited-entry permit for the vessel affixed with a gear endorsement for the gear used to catch the fish. (50 CFR 663.7(t))

(12) The following provisions that are not covered under the headings "limited-entry" or "open-access" apply to all vessels that take and retain groundfish unless otherwise stated.

B. Widow Rockfish

(1) *Limited-entry Fishery.* No more than 30,000 pounds (13,608 kg) cumulative of widow rockfish may be taken and retained, possessed, or landed per vessel per month. (Widow rockfish are also called brownies.)

(2) *Open-access Fishery.* See section G. Of the 40,000 pound (18,144 kg) monthly cumulative trip limit for rockfish taken in the open-access fishery, no more than 30,000 pounds (13,608 kg) may be widow rockfish.

C. Sebastes Complex (Including Yellowtail and Bocaccio Rockfish)

(1) *General.* (a) *Sebastes* complex means all rockfish managed by the FMP except Pacific ocean perch (*Sebastes olutus*), widow rockfish (*S. entomelas*), shortbelly rockfish (*S. jordani*), and *Sebastolobus* spp. (also called thornyheads, idiot, or channel rockfish). Yellowtail rockfish (*S. flavidus*) are commonly called greenies. Bocaccio (*S. paucispinis*) are commonly called rock salmon.

(b) Cape Lookout means 45°20′15″ N. latitude.

(c) Cape Mendocino means 40°30′00″ N. latitude.

(2) *Limited-entry fishery.* (a) *Cumulative trip limits.* Coastwide, no more than 80,000 pounds (36,287 kg) cumulative of the *Sebastes* complex may be taken and retained, possessed or landed per vessel per month. Within this 80,000 pounds (36,287 kg), no more then 14,000 pounds (6,350 kg) cumulative may be yellowtail rockfish taken and retained north of Cape Lookout; no more than 30,000 pounds (13,608 kg) cumulative may be yellowtail rockfish taken and retained south of Cape Lookout; and no more than 30,000 pounds (13,608 kg) cumulative may be bocaccio taken and retained south of Cape Mendocino.

(b) The provisions of this paragraph (b) apply unless declarations are made according to paragraph (c) below. If any vessel transits through or fishes in the area north of Cape Lookout during a

month, then that vessel is subject to the trip limit for yellowtail rockfish taken and retained north of Cape Lookout, no matter where the fish are possessed or landed. Similarly, if a vessel takes and retains yellowtail rockfish south of Cape Lookout and possesses or lands yellowtail rockfish north of Cape Lookout during a month, that vessel is subject to the northern trip limit.

(c) *State declarations.* The States of Oregon and Washington are implementing declaration procedures that enable a vessel that fishes or transits both north and south of Cape Lookout during a month to retain the 30,000 pound (13,608 kg) cumulative limit for yellowtail rockfish south of Cape Lookout. For any vessel that takes and retains or lands yellowtail rockfish during the month, a declaration must be filed for each fishing trip that crosses the line at Cape Lookout during that month, must be made before leaving port on the fishing trip, and may not be changed once the vessel has left port. Declarations must be made, according to State law, to the state where the fish will be landed. To make a declaration or for further information, contact: Washington Department of Fisheries, Montesano, WA, at 206–249–4628; or Oregon Department of Fish and Wildlife, Newport, OR, at 503–867–4741.

(i) A vessel under a northern trip declaration may not exceed the northern limit during a single trip, nor may the cumulative catch of all northern declared trips exceed the northern cumulative limit. The total cumulative catch for the month may not exceed the southern limit, no matter where the fish are caught.

(ii) A vessel under a southern trip declaration may not fish for any groundfish north of Cape Lookout during the fishing trip for which the declaration is made; otherwise, the northern trip limit would apply. A vessel under a southern trip declaration may not exceed the southern trip limit during a single trip, nor may the cumulative catch of all southern declared trips exceed the southern cumulative limit. The total cumulative catch for the month may not exceed the southern limit, no matter where the fish are caught.

(d) If any vessel is used to fish south of Cape Mendocino during the month, then the vessel is subject to the trip limit for bocaccio taken and retained south of Cape Mendocino, no matter where the fish are possessed or landed. Similarly, if a vessel is used to take and retain bocaccio north of Cape Mendocino and possesses or lands bocaccio south of Cape Mendocino, that vessel is subject to the southern trip limit.

(3) *Open-access Fishery.* See section G. Of the 40,000 pound (18,144 kg) monthly cumulative trip limit for rockfish taken in the open-access fishery, no more than 14,000 pounds (6,350 kg) cumulative may be yellowtail rockfish caught north of Cape Lookout, no more than 30,000 pounds (13,608 kg) cumulative may be yellowtail rockfish caught south of Cape Lookout, and no more than 30,000 pounds (13,608 kg) cumulative may be bocaccio caught south of Cape Mendocino. The State declaration procedures apply to all vessels, whether in the limited-entry or open-access fishery.

D. Pacific Ocean Perch (POP)

(1) *Limited-entry Fishery.* The trip limit for Pacific ocean perch coastwide is 3,000 pounds (1,361 kg) or 20 percent of all legal fish on board, whichever is less. If less than 1,000 pounds (454 kg) of Pacific ocean perch are landed, the 20 percent limit does not apply.

Note: Twenty percent of all legal fish on board including Pacific ocean perch is equivalent to 25 percent of all legal groundfish on board other than Pacific ocean perch.

(2) *Open-access Fishery.* See section G. Within the 10,000 pound (4,536 kg) trip limit for rockfish taken in the open-access fishery, no more than 3,000 pounds (1,361 kg) or 20 percent of all legal fish on board, whichever is less, may be POP. If less than 1,000 pounds (454 kg) of Pacific ocean perch are landed, the 20 percent limit does not apply.

E. Sablefish and the DTS Complex (Dover Sole, Thornyheads, and Trawl-Caught Sablefish

(1) *1994 Management Goal.* The sablefish fishery will be managed to achieve the 7,000 mt harvest guideline in 1994.

(2) *Washington Coastal Tribal Fisheries.* An estimate will be made of the catch to the end of 1994 for the Washington coastal treaty tribes. It is anticipated that these tribes will regulate their fisheries so as not to exceed their estimated catch. There will be no Federally imposed tribal allocation or quota. In 1994, the estimated tribal catch is 300 mt, the same as in 1991, 1992, and 1993.

(3) *Limited-entry Fishery.* (a) *Gear Allocations.* After subtracting the tribal-imposed catch limit and the open-access allocation from the harvest guideline, the remainder will be allocated 58 percent to the trawl fishery and 42 percent to the nontrawl fishery.

[Note: The 1994 harvest guideline for sablefish is 7,000 mt. The 300-mt tribal-imposed catch limit is subtracted, and the limited-entry and open-access allocations are based on the remaining 6,700 mt. The limited-entry allocation for 1994 of 6,070 mt is allocated 3,520 mt (58 percent) to the trawl fishery and 2,550 mt (42 percent) to the nontrawl fishery. The trawl and nontrawl gear allocations are harvest guidelines in 1994, which means the fishery will be managed so that the harvest guidelines are not exceeded, but will not necessarily be closed if they are reached.]

(b) *Trip and Size Limits for the DTS Complex (Thornyheads, Dover Sole, and Trawl-caught Sablefish).* These provisions apply to thornyheads and Dover sole caught with any limited-entry gear and sablefish caught with limited-entry trawl gear.

(i) "DTS complex" (formerly called the "deepwater complex") means Dover sole (*Microstomus pacificus*), thornyheads (*Sebastolobus* spp.), and trawl-caught sablefish (*Anoplopoma fimbria*). Sablefish also are called blackcod. Thornyheads also are called idiots, channel rockfish, or hardheads.

(ii) *Trip limits.* Coastwide, no more than 50,000 pounds (22,680 kg) cumulative of the DTS complex may be taken and retained, possessed, or landed per vessel per month. Within this 50,000 pounds (22,680 kg), no more than 30,000 pounds (13,608 kg) cumulative may be thornyheads, and no more than 12,000 pounds (5,443 kg) cumulative may be trawl-caught sablefish. In any landing of the DTS complex, the trip limit for trawl-caught sablefish is the greater of 1,000 pounds (454 kg), or 25 percent of the DTS complex. In any landing, no more than 5,000 pounds (2,268 kg) of sablefish may be smaller than 22 inches (56 cm) (total length).

[Note: Twenty-five percent of the DTS complex (including sablefish) is equivalent to 33.333 percent of the legal thornyheads and Dover sole.]

(c) *Nontrawl trip and size limits.* (i) The daily trip limit for sablefish in the Vancouver, Columbia, Eureka and Monterey subareas (the U.S.-Canada border to 36°00′00″ N. latitude) is 250 pounds (113 kg), and in the Conception subarea (36°00′00″ N. latitude to the U.S.-Mexico border) is 350 pounds (159 kg). These daily trip limits, which apply to sablefish of any size, remain in effect until the regular season begins, as specified at 50 CFR 663.23(b)(2).

[Note: In 1994, the daily trip limits will be in effect from 0001 hours January 1 through 2400 hours May 11; the first 72-hour closure will occur from 0001 hours May 12 through 2400 hours May 14; and the regular season will start at 0001 hours May 15.]

(ii) During the "regular" season, the only trip limit in effect applies to sablefish smaller than 22 inches (56 cm) (total length) which may comprise no more than 1,500 pounds (680 kg) or 3 percent of all legal sablefish on board, whichever is greater.

(See paragraph (d) regarding length measurement.)

(iii) Following the regular season, on a date to be announced in the **Federal Register**, the daily trip limits will be reimposed for sablefish (of any size) caught with nontrawl gear.

(d) *Length measurement.* (i) Total length is measured from the tip of the snout (mouth closed) to the tip of the tail (pinched together) without mutilation of the fish or the use of additional force to extend the length of the fish.

(ii) For processed ("headed") sablefish,

(*a*) The minimum size limit is 15.5 inches (39 cm) measured from the origin of the first dorsal fin (where the front dorsal fin meets the dorsal surface of the body closest to the head) to the tip of the upper lobe of the tail; the dorsal fin and tail must be left intact; and,

(*b*) The product recovery ratio (PRR) established by the state where the fish is or will be landed will be used to convert the processed weight to round weight for purposes of applying the trip limit. (The PRR currently is 1.6 in Washington, Oregon, and California. However, the state PRRs may differ and fishermen should contact fishery enforcement officials in the state where the fish will be landed to determine that state's official PRR.)

(e) No sablefish may be retained which is in such condition that its length has been extended or cannot be determined by the methods stated above in paragraph (d).

(4) *Open-access Fishery.* The daily trip limit for sablefish in the Vancouver, Columbia, Eureka and Monterey subareas (the U.S.-Canada border to 36°00′00″ N. latitude) is 250 pounds (113 kg), and in the Conception subarea (36°00′00″ N. latitude to the U.S.-Mexico border) is 350 pounds (159 kg).

F. Pacific Whiting. (1) *Limited-entry Fishery.* (a) No more than 10,000 pounds (4,536 kg) of pacific whiting may be taken and retained, possessed, or landed, per vessel per fishing trip until the regular season for whiting begins, as specified at 50 CFR 663.23(b)(3).

(b) No more than 10,000 pounds (4,536 kg) of Pacific whiting may be taken and retained, possessed, or landed by a vessel that, at any time during a fishing trip, fished in the fishery management area shoreward of the 100-fathom contour (as shown on NOAA Charts 18580, 18600, and 18620) in the Eureka subarea (from 43°00′00″ N. latitude to 40°30′00″ N. latitude).

Additional regulations that apply to the whiting fishery are found in the Pacific Coast Groundfish regulations at 50 CFR 663.7 and 663.23 (58 FR 21261 and 58 FR 21265, both April 20, 1992).

G. Vessel Limits In The Open-Access Fishery

(1) *Set net, hook-and-line, pot, and other exempt gear except exempted trawl gear:*

(a) *Rockfish.* No more than 10,000 pounds (4,536 kg) of rockfish may be taken and retained, possessed, or landed per vessel per fishing trip. No more than 40,000 pounds (18,144 kg) cumulative of rockfish may be taken and retained, possessed or landed per vessel per month. Rockfish means the *Sebastes* complex, shortbelly rockfish, widow rockfish, Pacific ocean perch, and thornyheads, as listed at 50 CFR 663.2. Within these limits, a vessel may not take and retain, possess or land more widow rockfish, Pacific ocean perch, thornyheads, DTS complex, *Sebastes* complex, yellowtail rockfish, or bocaccio than authorized for the limited-entry fishery. (See paragraphs B.(1), C.(2), D.(1), and E.(3).)

(b) *Sablefish.* The daily trip limit for sablefish in the Vancouver, Columbia, Eureka and Monterey subareas (the U.S.-Canada border to 36°00′00″ N. latitude) is 250 pounds (113 kg), and in the Conception subarea (36°00′00″ N. latitude to the U.S.-Mexico border) is 350 pounds (159 kg).

Note: The "regular" season and 72-hour closures specified at 50 CFR 663.23(b)(2) do not apply to the open-access fishery.

(2) *Shrimp trawl* (used to catch pink shrimp or spot or ridgeback prawns):

(a) *Pink shrimp.* The trip limit for a vessel engaged in fishing for pink shrimp is 1,500 pounds (680 kg) (multiplied by the number of days of the fishing trip) of groundfish species listed at 50 CFR 663.2.

(b) *Spot and ridgeback prawns.* The trip limit for a vessel engaged in fishing for spot or ridgeback prawns is 1,000 pounds (454 kg) of groundfish species per fishing trip.

(c) Within these limits, a vessel may not take and retain, possess or land more widow rockfish, Pacific ocean perch, thornyheads, DTS complex, *Sebastes* complex, yellowtail rockfish, bocaccio, Dover sole, or Pacific whiting than authorized in the limited-entry fishery. (See paragraphs B.(1), C.(2), D.(1), E.(3), and F.(1).)

(3) *California halibut or sea cucumber trawl.* No more than 500 pounds (227 kg) of groundfish may be taken and retained, possessed, or landed per trip by a vessel participating in the California halibut fishery or in the sea cucumber fishery south or Point Arena, California (38°57′30″ N. latitude).

(i) A trawl vessel will be considered participating in the California halibut fishery if (i) it is not fishing under a valid limited-entry permit issued under 50 CFR part 663 for trawl gear, and (ii) all fishing on the trip takes place south of Point Arena and the landing includes California halibut of a size required at California Fish and Game Code Section 8392(a) which states:

> No California halibut may be taken, possessed or sold which measures less than 22 inches in total length, unless it weighs four pounds or more in the round, three and one-half pounds or more dressed with the head on, or three pounds or more dressed with the head off. Total length means the shortest distance between the tip of the jaw or snout, whichever extends farthest while the mouth is closed, and the tip of the longest lobe of the tail, measured while the halibut is lying flat in natural repose, without resort to any force other than the swinging or fanning of the tail.

(ii) A trawl vessel will be considered participating in the sea cucumber fishery if (i) it is not fishing under a valid limited-entry permit issued under 50 CFR part 663 for trawl gear, and (ii) all fishing on the trip takes place South of Point Arena and the landing includes sea cucumbers taken in accordance with California Fish and Game Code Section 8396, which requires a permit issued by the State of California.

(iii) Currently, no trawl trip limit in the limited-entry fishery is less than 500 pounds (227 kg). However, if a limited-entry trip limit were lower than 500 pounds (227 kg), no groundfish landing by California halibut or sea cucumber trawl may be in excess of the limited-entry trip limit for trawl gear.

(4) *Operating in both limited-entry and open-access fisheries.* The open-access trip limit applies to any fishing conducted with open-access gear, even if the vessel has a valid limited-entry permit with an endorsement for another type of gear. A vessel operating in the open-access fishery must not exceed any trip limit, frequency limit, and/or size limit for the same gear and/or subarea in the limited-entry fishery (as announced in this **Federal Register** notice in paragraphs titled "limited-entry"). A vessel that operates in both the open-access and limited-entry fisheries is not entitled to two separate trip limits for the same species. Fish caught with open-access gear will also be counted toward the limited-entry trip limit.

(5) *Sorting.* 50 CFR 663.7(l) makes it unlawful for any person to "fail to sort, prior to the first weighing after offloading, those groundfish, species or species groups for which there is a trip limit, if the weight of the total delivery exceeds 3,000 pounds (1,361 kg) (round weight or round weight equivalent)." This provision applies to both the limited-entry and open-access fisheries.

IV. Recreational Fishing

(1) *California.* The bag limit for each person engaged in recreational fishing seaward of the State of California is 5 lingcod which may be no smaller than 22 inches (56 cm) (total length) and 15 rockfish per day. Multi-day limits are authorized by a valid permit issued by the State of California and must not exceed the daily limit multiplied by the number of days in the fishing trip.

(2) *Oregon.* The bag limit for each person engaged in recreational fishing seaward of the State of Oregon is 3 lingcod per day and 15 rockfish per day, of which no more than 10 may be black rockfish (*Sebastes melanops*).

(3) *Washington (South of Leadbetter Point).* The bag limit for each person engaged in recreational fishing seaward of the States of Washington south of Leadbetter Point (46°38'10" N. latitude) and Oregon is 3 lingcod per day and 15 rockfish per day.

(4) *Washington (North of Leadbetter Point).* The bag limit for each person engaged in recreational fishing seaward of the State of Washington north of Leadbetter Point (46°38'10" N. latitude) is 3 lingcod per day and 12 rockfish per day.

V. Inseason Adjustments

At subsequent meetings, the Council will review the best data available and recommend modifications to these management measures if appropriate. The Council intends to examine the progress of these fisheries during the year in order to avoid overfishing and to achieve the goals and objectives of the FMP and its implementing regulations.

VI. Experimental Fisheries

U.S. vessels operating under an experimental fishing permit issued under 50 CFR 663.10 also are subject to these restrictions unless otherwise provided in the permit.

Classification

The final specifications and management measures for 1994 are issued under the authority of and in accordance with the regulations implementing the FMP at 50 CFR parts 611 and 663.

Much of the data necessary for these specifications and management measures comes from the current fishing season. Because of the timing of the receipt, development, review, and analysis of the fishery information necessary for setting the initial specifications and management measures, and the need to have these specifications and management measures in effect at the beginning of the fishing year, there is good cause to waive the publication of proposed specifications in the **Federal Register** and 30-day comment period on the proposed specifications. Amendment 4 to the FMP, implemented on January 1, 1991, recognized these timeliness considerations, and set up a system by which the interested public was notified, through **Federal Register** notice and Council mailings of meetings, and of the development of these measures, and was provided the opportunity to comment during the Council process. The public participated in GMT, Groundfish Advisory Subpanel, Scientific and Statistical Committee, and Council meetings in August, September, October, and November 1993 that resulted in these recommendations from the Council. Additional public comments will be accepted for 30 days after publication of this notice in the **Federal Register**. The Assistant Administrator for Fisheries, NOAA will consider all comments made during the public comment period and may propose modifications as appropriate.

Because the rule is being issued without prior notice and opportunity for public comment, preparation of a Regulatory Flexibility Analysis is not required and none has been prepared.

The Administrative Procedure Act requires that publication of an action be made not less than 30 days before its effective date unless the Secretary finds and publishes with the rule good cause for an earlier effective date. Good cause for waiving the delay in effectiveness is found if the delay is impracticable, unnecessary, or contrary to the public interest. These specifications announce the harvest goals and the management measures designed to achieve those harvest goals in 1994. A delay in implementation could compromise the management strategies that are based on the projected landings from these trip limits. Therefore, a delay in effectiveness is contrary to the public interest and these actions are effective on January 1, 1994.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 663

Administrative practice and procedure, Fisheries, Fishing, Reporting and Recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–32118 Filed 12–30–93; 5 pm]

BILLING CODE 3510–22–M

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50 CFR Part 663

[Docket No. 931248–3348; ID. 100693A]

Pacific Coast Groundfish Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Interim final rule; request for comments.

SUMMARY: This interim final rule amends the regulations governing the Pacific coast groundfish limited-entry fishery to: (1) Clarify distinctions between holders, owners, and lessees of limited-entry permits in the Pacific coast groundfish fishery by adding definitions of these terms and making minor corrections consistent with the new definitions; (2) clarify that shrimp (including spot and ridgeback prawn) trawls, California halibut trawls, and California sea cucumber trawls are "exempted gear"; (3) delete trip limits for groundfish taken in the pink shrimp and spot and ridgeback prawn trawl fisheries; (4) designate trip limits in the pink shrimp and spot and ridgeback prawn fisheries as "routine" management measures; (5) modify the method of calculating allocations for the "open-access" fishery; and (6) clarify that the sablefish "regular" season for nontrawl gear only applies to the limited-entry groundfish fishery. These actions are necessary to make the regulations implementing the Fishery Management Plan for the Pacific Coast Groundfish Fishery (FMP) consistent with Amendment 6 (limited entry) to the FMP, and to improve recordkeeping and enforcement of regulations in the Pacific coast groundfish fishery.

DATES: Effective on December 30, 1993. Comments will be accepted through January 31, 1994.

ADDRESSES: Effective January 1, 1994. Comments should be sent to Mr. J. Gary Smith, Acting Director, Northwest Region, National Marine Fisheries Service, 7600 Sand Point Way NE., BIN C15700, Seattle, WA 98115–0070.

FOR FURTHER INFORMATION CONTACT: William L. Robinson at 206–526–6140.

SUPPLEMENTARY INFORMATION: On November 16, 1992, NOAA promulgated regulations (57 FR 54001) that establish a license limitation limited-entry program for the Pacific coast commercial groundfish fishery based on the issuance of gear-specific Federal permits (the "limited-entry program"). Under the program, permits are initially issued to owners of qualifying vessels. Permits with type "A" gear endorsements are transferrable, and may be leased by one vessel owner to another. The implementing regulations, codified at 50 CFR part 663, subpart C, use the terms "permit holder" and "permit owner" interchangeably, and do not clearly define the relationship between permit owners and permit lessees. This lack of definition creates potential recordkeeping and enforcement problems. These problems stem from a person being able to "own" a permit, but lease it to someone else. Maintenance of records identifying the permit owner, even if the permit is currently registered to a lessee, is essential for recording and enforcement purposes. The NMFS records system is the only place available to officially record permit ownership, and give notice to creditors, purchasers, encumbrancers, and other interested parties. NMFS itself needs to know who owns the permit in the event it becomes necessary to take an enforcement action such as sanctioning the permit or collecting a delinquent penalty.

Accordingly, the first clarification made by this interim final rule is to add the following definitions for "permit owner," "permit lessee," and "permit holder." A "permit owner" is defined as the person owning the permit; a "permit lessee" is defined as a person who does not own the permit, but has the right to possess and use it for a designated period, with reversion to the permit owner; and "permit holder" is an umbrella term which includes both "permit owners" and "permit lessees." This rule amends the regulations in multiple paragraphs to use the term "permit owner" rather than "permit holder" when appropriate, and to amend the definition of "owner" to "owner of a vessel" or "vessel owner" to distinguish a vessel owner from a "permit owner." These revisions clarify that only permit owners may transfer a limited-entry permit to a different person, thus not allowing a lessee to transfer the permit to someone other than the permit owner.

With respect to administration of the limited-entry program, the terms "permit holder," "permit owner," and "permit lessee" are used for ease of understanding only, and do not signify traditional property rights. As stated in Amendment 6,

> Groundfish limited entry permits and endorsements confer a right to participate in the Pacific coast groundfish fishery with a limited entry gear in accordance with the limited entry system established under the Pacific Coast Groundfish FMP as modified by this chapter of the FMP (created under Amendment 6) or any future amendment which may modify or even abolish the limited entry system. The permits and endorsement are also subject to sanctions, including revocation, as provided by the Magnuson Fishery Conservation and Management Act, 16 U.S.C. at 1858(g) and 15 CFR part 904, subpart D.

The second clarification revises the definition of "exempted gear" in the implementing regulations. Section 4.2.1 of the FMP states that exempted gear includes all gears other than groundfish trawl, longline, and fishpot (which are limited-entry gears). The FMP points out that shrimp trawl gear, a non-groundfish trawl gear, is an exempt gear. Shrimp trawl gear is not defined in terms of physical attributes, but includes trawl gear used to take pink shrimp, or spot or ridgeback prawns. Two other trawl fisheries, California halibut and California sea cucumber, also have been identified as non-groundfish trawl fisheries, which have traditionally landed small quantities of groundfish as a bycatch. However, the implementing regulations at 50 CFR 663.31 define "exempted" gear as all types of fishing gear except trawl, longline, and trap (or pot) gear, thus inadvertently excluding shrimp, California halibut, and California sea cucumber trawl gear from participation in the open-access fishery. This action clarifies that "exempted" gear includes all gear other than longline, trap, and groundfish trawl gear. Trawl gear used to take pink shrimp, spot prawns, ridgeback prawns, California halibut, or California sea cucumbers is specifically defined as "exempted gear." "Limited-entry gear" is redefined to include "groundfish trawl gear" rather than "all trawl gear." A new definition of "groundfish trawl gear" is added to include only trawl gear used under the authority of a valid Pacific Coast Groundfish limited-entry permit affixed with an endorsement for trawl gear.

The third and fourth clarifications address how trip limits are established for groundfish taken in trawl fisheries for pink shrimp and spot and ridgeback prawn fisheries. Trip limits for groundfish in these fisheries have been fixed in the regulations at 50 CFR 663.24(a) and (b). The trip limits were codified because the Council did not foresee any future need to revise them under the management regime that existed prior to limited entry. Under Amendment 6, however, groundfish bycatch in the shrimp and prawn trawl fisheries is managed as a component of the "open-access" fishery because it is taken with "exempted gear." Amendment 6 provides for the establishment of trip limits for bycatch of groundfish with exempted gear in the open-access fishery to make sure that the total catch of each species and species group does not exceed the historical catch proportions during the limited-entry qualifying period, and that the open-access allocations are not exceeded during the fishing year. Because the amount of effort in the open-access fishery may change over time, Amendment 6 contemplated that trip limits may need frequent revision.

The Pacific coast groundfish regulations at 50 CFR 663.23(c) establish a category of management measures called "routine." Routine measures include the types of management measures, primarily trip limits but also including trip frequency limits and bag limits in the recreational fishery, that need to be adjusted frequently in order to manage the fishery consistent with the FMP's goals and objectives. Once a particular management measure has been established by regulation as "routine," the Pacific Fishery Management Council (Council) may recommend that the Secretary adjust that measure at any time, following consideration at a single Council meeting and publication of the adjustment in the **Federal Register**, provided that the purpose for the adjustment is consistent with the rationale for needing frequent adjustments that was articulated at the time the management measure was determined to be "routine."

Implementing regulations for Amendment 6 inadvertently omitted a "routine" designation for trip limits for groundfish in the shrimp and prawn trawl fisheries. The routine designation is necessary in order to limit the open-access catch of groundfish to its historical catch proportions and to ensure that the annual open-access allocation is not exceeded. Thus, this rule deletes the trip limits in the pink shrimp and spot and ridgeback prawn

fisheries at 50 CFR 663.24(a) and (b) while simultaneously designating them as "routine" under 50 CFR 663.23(c)(2) so that the Council may recommend adjustments as necessary without undertaking the time-consuming regulatory amendment process.

In accordance with the procedures for routine designation, the Council considered the routine designation for trip limits for pink shrimp and prawns at the September 1993 meeting and recommended the designation at its November 1993 meeting. Rockfish and sablefish trip landing and trip frequency limits for all gear are already designated as routine. This action clarifies the regulations to include trip landing and frequency limits for rockfish and sablefish in the open-access as well as the limited-entry portion of the Pacific coast groundfish fishery.

The fifth clarification addresses an inconsistency between how catches in the "limited-entry" and "open-access" fisheries are accounted for, and how the allocations are calculated for each fishery. 50 CFR 663.32(c) provides that any groundfish caught by a vessel with a limited-entry permit will be counted against the limited-entry allocation while the limited-entry fishery for that vessel's limited-entry gear type is open. Thus, for example, while the limited-entry fishery for groundfish is open, any groundfish taken by a vessel with a limited-entry permit, even if it is fishing with exempted gear such as shrimp trawl gear, will be counted against the limited-entry allocation. In sections II.E.(d)(3) and (d)(4)(A)(1) and (2) of the appendix to part 663, the "open-access" allocation is derived by applying the open-access allocation percentage to the annual harvest guideline or quota after subtracting any set asides for recreational fishing or treaty Indians. The "open-access allocation percentage" is calculated by computing the total catch during the limited-entry qualifying (window) period by longlines and traps (or pots) not initially receiving a limited-entry endorsement for that gear, and by exempted gear, and dividing that amount by the total catch during the window period by all gear. Thus, the groundfish catch taken during the window period with exempted gear by a vessel that initially receives a limited-entry permit will be included in the open-access allocation even though the catch with that same exempted gear in 1994 and beyond will count against the limited-entry allocation as long as the limited-entry fishery is open. To rectify this inconsistency, this rule amends the regulations to provide that the window period catch by vessels not initially receiving limited-entry permits will count toward the "open-access" allocation; conversely, the window period catch with exempted gear by vessels initially receiving a limited-entry permit will count toward the "limited-entry" allocation.

Finally, this rule clarifies that the "regular" season with longline and fish trap (or pot) gear (nontrawl gear) for sablefish refers only to the "limited-entry" fishery. Vessels participating in the "open-access" fishery are not affected by the regular season because they are regulated under open-access trip landing limits which extend throughout the year.

Classification

This interim final rule is issued under the Magnuson Fishery Conservation and Management Act, 16 U.S.C. 1801 *et seq.* This rule makes minor changes designed to clarify and facilitate implementation of Amendment 6. NMFS became aware of the need for these changes while implementing the Pacific coast groundfish limited-entry program, a new and complex regulatory system. These changes need to be in place when the fishery itself begins to operate under the limited-entry system on January 1, 1994. Most of the changes effected by this rule are necessary to conform the implementing regulations to the letter and intent of Amendment 6 to the FMP. As such, these provisions were discussed and were subject to public comment and scrutiny during the years the Council developed Amendment 6. Furthermore, the revisions and clarifications are necessary to uniformly administer the program and to ensure accurate recordkeeping. These provisions will not result in any significant changes in the day-to-day operating practices of the fishery. Accordingly, the Assistant Administrator for Fisheries, NOAA, has determined under 5 U.S.C. 553(b) and (d), that it would be unnecessary and contrary to the public interest to delay the effectiveness of these provisions pending advance notice and comment and a 30-day delay in effectiveness.

The revision of 50 CFR 663.22(d)(1) is the only change that was not necessarily contemplated by Amendment 6; however, it would be impracticable and contrary to the public interest to provide advance notice and comment before the fishery converts to limited-entry because, without it, permit owners and potential purchasers would be susceptible to substantial losses if permits could be freely transferred by permit lessees.

List of Subjects in 50 CFR Part 663

Fisheries, Fishing, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 663 is amended as follows:

PART 663—PACIFIC COAST GROUNDFISH FISHERY

1. The authority citation for part 663 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 663.7 [Amended]

2. In § 663.7, in paragraph (q), the word "groundfish" is added before the words "trawl gear" the first two times they appear.

3. In § 663.23, paragraph (b)(2) is amended by revising the paragraph heading and adding introductory text, the title of paragraph (c)(1) is revised, paragraph (c)(2) is redesignated as (c)(3), and a new paragraph (c)(2) is added to read as follows:

§ 663.23 Catch restrictions.

* * * * * *

(b) * * *

(2) *Nontrawl sablefish—Limited entry Fishery.* This paragraph (b)(2) applies to vessels using nontrawl gear in the limited entry fishery, but not to vessels in the open access fishery as described in Subpart C—Limited entry and Open Access Fisheries. * * *

* * * * * *

(c) * * *

(1) *Commercial—Limited entry and Open Access Fisheries.* * * *

* * * * * *

(2) *Commercial—Open Access Fishery.*

(i) All groundfish—Shrimp trawls used to harvest pink shrimp, spot prawn, or ridgeback prawn—trip landing and frequency limits.

(ii) *Reasons for "routine" management measures.* All routine management measures on the open access fisheries are intended to keep landings within the harvest levels announced by the Secretary, maintain landings at historical (1984–1988) proportions, and extend the fishing season to minimize disruption of traditional fishing and marketing patterns.

(3) *Recreational.* * * *

* * * * * *

§ 663.24 [Removed and Reserved]

4. Section 663.24 is removed and reserved.

5. Section 663.31 is amended by revising the definitions of "exempted gear," "limited entry gear", removing the definition of "owner" and adding definitions for "groundfish trawl gear", "owner of a vessel", "permit holder", "permit lessee", and "permit owner" in alphabetical order as follows:

§ 663.31 Definitions.

* * * * *

Exempted gear means all types of fishing gear except longline, trap (or pot), and groundfish trawl gear. Exempted gear includes trawl gear used to take pink shrimp, spot and ridgeback prawns, California halibut south of Pt. Arena, California, and sea cucumber, south of Pt. Arena, California, under the authority of a State of California limited entry permit for the sea cucumber fishery.

* * * * *

Groundfish trawl gear means trawl gear that is used under the authority of a valid limited entry permit issued under this part endorsed for trawl gear. It does not include any type of trawl gear listed as "exempted gear."

* * * * *

Limited entry gear means longline, trap (or pot) or groundfish trawl gear used under the authority of a valid limited entry permit affixed with an endorsement for that gear.

* * * * *

Owner of a vessel or *vessel owner,* as used in this subpart, means a person who is identified as the current owner in the Certificate of Documentation (CG–1270) issued by the U.S. Coast Guard for a documented vessel, or in a registration certificate issued by a state or the U.S. Coast Guard for an undocumented vessel.

* * * * *

Permit holder means a permit owner or a permit lessee.

Permit lessee means a person who has the right to possess and use a limited entry permit for a designated period of time, with reversion to the permit owner.

Permit owner means a person who owns a limited entry permit.

* * * * *

§ 663.33 [Amended]

6. In § 663.33, in paragraph (d)(1), the words "Permit holder" are revised to read "Permit owner", and the words "person, or" are revised to read "person. The permit holder may".

§ 663.35 [Amended]

7. In § 663.35, in paragraph (b)(1), the word "holder" is revised to read "permit owner".

8. In § 663.35, in paragraph (b)(2)(i), the words "permit holder" are revised to read "permit owner".

9. In § 663.35, in paragraph (b)(2)(ii), the word "transferee" is revised to read "new permit owner".

§ 663.36 [Amended]

10. In § 663.36, in paragraph (b)(1), the word "holder" is revised to read "permit owner".

§ 663.37 [Amended]

11. In § 663.37, in paragraph (b)(1), the word "holder" is revised to read "permit recipient".

§ 663.41 [Amended]

12. In § 663.41, in paragraph (c)(2), the twice occurrence of the words "permit holder" are revised to read "permit owner".

13. In § 663.41, in paragraph (c)(3), the words "permit holder" are revised to read "permit owner".

14. In Section II.E.(d)(4)(i) of the appendix to part 663, paragraph (A) is revised to read as follows:

Appendix to Part 663—Groundfish Management Procedures

* * * * *

II. * * *
E. * * *
(d) * * *
(4) * * *
(i) * * *

(A) Computing the total catch for that species during the window period by any vessel that does not initially receive a limited entry permit; and

* * * * *

[FR Doc. 93–32117 Filed 12–30–93; 5:12 pm]

BILLING CODE 3510–22–M

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50 CFR Part 676

[Docket No. 921114–3183; I.D. 123093A]

Limited Access Management of Fisheries off Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of application period.

SUMMARY: NMFS announces an application period for individuals and other persons to apply for Quota Share (QS) under the Individual Fishing Quota (IFQ) program for Pacific halibut and sablefish fisheries off Alaska. The IFQ program was developed under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act) and the Northern Pacific Halibut Act (Halibut Act). This action is necessary to provide potential applicants with notice of an opportunity to apply for QS under the IFQ program. Individuals and other persons thought to be eligible to apply have been so informed by NMFS; all others are hereby notified that they must submit a Request for Application prior to being sent an individualized application form by NMFS. The intended effect of this action is to formally announce the application period for QS under the IFQ program for Pacific Halibut and sablefish fisheries off Alaska.

DATES: Applications must be received during the application period beginning January 17, 1994, and ending at close of business on July 15, 1994.

ADDRESSES: Applications must be sent to NMFS, Restricted Access Management, P.O. Box 21668, Juneau, AK 99802–1668 or 709 W. 9th, room 413, Juneau, AK 99801. Applications and copies of the regulations that implement the IFQ program for Pacific halibut and sablefish fisheries off Alaska may be obtained from NMFS at the above address.

FOR FURTHER INFORMATION CONTACT: Phillip J. Smith, Chief, Restricted Access Management Division, Alaska Region, NMFS, at 907–586–7344.

SUPPLEMENTARY INFORMATION: The IFQ program is a regulatory regime intended by the North Pacific Fishery Management Council to promote the conservation and management of halibut and sablefish resources and to further the objectives of the Magnuson Act and the Halibut Act. The regulations implementing the IFQ program were approved by the Secretary of Commerce (Secretary) and became effective on December 9, 1993 (58 FR 59375, November 9, 1993).

Under 50 CFR 676.20(d), the Director, Alaska Region, NMFS (Regional Director), must provide to any person, on request, an application form for an initial allocation of QS. The application form sent to the person requesting a QS allocation will include all data on that person's vessel ownership and catch history of halibut and sablefish that can be released to the applicant under current state and Federal confidentiality rules, and that are available to the Regional Director at the time of the request. The Regional Director must also provide for an application period, of no less than 180 days, for the submission of applications for initial allocation of QS. The Regional Director is directed to provide notice of the application period

in the **Federal Register** and other information sources that the Regional Director deems appropriate.

This notification is intended to comply with the requirements of 50 CFR 676.20(d). Persons thought to be eligible to apply for QS have been so informed by NMFS by mail. All others are hereby notified that they must submit a Request for Application prior to being sent an individualized application form by NMFS. The application period to submit applications for initial allocation of QS begins on January 17, 1994, and extends for 180 days, ending at the close of business on July 15, 1994. Incomplete applications will be returned to the applicant with specific kinds of information identified that are necessary to make it complete. Applications for initial allocation of QS received after the close of business on July 15, 1994, will not be considered.

Classification

This action is taken under 50 CFR 676.20.

List of Subjects in 50 CFR Part 676

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 773 *et seq.* and 16 U.S.C. 1801 *et seq.*

Dated: December 30, 1993.

David S. Crestin,

Acting Director, Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–204 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register

Vol. 59, No. 4

Thursday, January 6, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93–ANE–66; Notice No. 33–ANE–05]

Special Conditions; Pratt & Whitney Model(s) PW4073 and PW4084 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Pratt & Whitney (PW) Model(s) PW4073 and PW4048 turbofan engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from medium and large bird ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards for aircraft engines of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before February 22, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–66, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 93–ANE–66. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Golinski, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certificate Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7119; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under "**ADDRESSES.**" All communications received on or before the closing date for comments, specified under "**DATES,**" will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic environmental, and energy aspects of the proposed special conditions. All comment submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–66." The postcard will be date stamped and returned to the commenter.

Background

On December 10, 1990, Pratt & Whitney applied for type certification of PW Model(s) PW4073 and PW4084 turbofan engines. The FAA has determined that the current foreign object ingestion requirements of § 33.77(a) for four pound birds; and § 33.77(b) for one and one-half pound flocking birds, do not adequately represent the bird threat encountered in service. A study of in-service bird ingestion events has indicated a need to modify the bird ingestion requirements of this section to ensure design integrity and demonstrate an adequate level of safety.

The FAA has concluded that additional safety standards must be applied to Pratt & Whitney Model(s) PW4073 and PW4048 turbofan engines to demonstrate that they are capable of acceptable operation after medium and large bird ingestion. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for type certification with respect to the new design criteria. This new design criteria assumes the actual bird threat encountered in service.

Type of Certification Basis

Under the provisions of § 21.101 of the FAR, Pratt & Whitney must show that the PW Model(s) PW4073 and PW4084 turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33–14.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the PW Model(s) PW4073 and PW4084 turbofan engines because of its unique design criteria. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Conclusion

This action affects only PW Model(s) PW4073 and PW4048 turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); 14 CFR 21.16, and 14 CFR 11.28.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Pratt & Whitney Model(s) PW4073 and PW4084 turbofan engines.

In lieu of the requirements of FAR § 33.77(a) and (b), the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator:

(a) It must be shown that the ingestion of a single large bird, under the conditions prescribed in Appendix A, will not cause the engine to:

(1) catch fire;

(2) release hazardous fragments through the engine casing;

(3) generate loads greater than those ultimate loads specified under § 33.23(a);

(4) lose the ability to be shut down; or

(5) generate other conditions hazardous to the aircraft.

(b) Alternatively, if compliance with the bird ingestion requirements of paragraph (a) of this special condition is not established, the applicant must demonstrate that compliance with the containment requirements of § 33.94(a) constitutes a more severe demonstration than the requirements of paragraph (a) of this special condition. The engine type certification documentation will then be endorsed to reflect this alternative compliance method.

(c) It must be shown that the ingestion of medium birds, under the conditions prescribed in Appendix B, will not cause the engine to:

(1) Sustain more than a 25 percent thrust loss;

(2) Be shut down during the required run-on demonstration prescribed in Appendix B;

(3) Exceed any engine operating limitations to the extent that the engine cannot comply with this section; or

(4) Generate other conditions hazardous to the aircraft.

(d) It must be shown that engine spinner impact by one large bird and by the single largest medium bird, under the respective conditions prescribed in Appendices A and B, will not affect the engine to the extent that it cannot comply with the requirements of paragraphs (a) and (b of this special condition.

Appendix A—Large Bird Ingestion Test Procedures

(a) The test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted using one eight-pound bird targeted at the the most critical location and ingested at a bird speed of 200 knots.

(c) Power lever movement is not permitted within 15 seconds following the ingestion event.

Appendix B—Medium Bird Ingestion Test Procedures

(a) The ingestion test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted to simulate a flock encounter, with all birds ingested within approximately one second, and using the more severe of the following bird weight/quantity combinations:

(1) Six 1.5-pound and one 2.5-pound birds.

(2) Four 2.5-pound birds.

(c) Bird targeting shall be one 2.5-pound bird at the core primary flow path, and the remaining birds targeted at critical fan rotor locations.

(d) Bird ingestion velocity shall be the most critical velocity between V1 minimum through 250 knots.

(e) Power lever movements between stages must occur in 10 seconds or less. The following test schedule will be used as the post-ingestion run-on demonstration:

(1) Two minutes with no power lever movement.

(2) Three minutes at 75 percent of takeoff thrust.

(3) Six minutes at 75 percent of maximum continuous thrust.

(4) Six minutes at 50 percent of maximum continuous thrust.

(5) One minute at approach idle.

(6) Two minutes at 75 percent of takeoff thrust.

(7) Retard throttle to idle.

(8) Shut down the engine.

(f) An analysis or component/engine test(s) acceptable to the Administrator shall be conducted to determine the critical ingestion parameters for medium bird ingestion that relates to airspeeds from V1 minimum through 250 knots. The analysis or test(s) must also show satisfactory engine operation for medium bird ingestion at the most severe ambient operating condition approved for the engine that may be experienced in service.

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-136 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 33

[Docket No. 93-ANE-67; Notice No. 33-ANE-06]

Special Conditions; Rolls-Royce Model(s) RB211-Trent-875-17/-877-17/-884-17 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Rolls-Royce Aircraft Engines Model(s) RB211-Trent-875-17/-877-17/-884-17 Turbofan Engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from water and hail ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before February 22, 1994.

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93-ANE-67, 12 New England Executive Park, Burlington, Massachusetts 01803-5299. Comments must be marked: Docket No. 93-ANE-67. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Thomas Boudreau, Engine and Propeller Standards Staff, ANE-110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803-5229; telephone (617) 238-7117; fax (617) 238-7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES.** All communications received on or before the closing date for comments, specified under **DATES,** will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93-ANE-67." The postcard will be date stamped and returned to the commenter.

Background

On August 4, 1992, Rolls-Royce applied for type certification of Model(s) RB211-Trent-870-17/-877-17/-884-17 turbofan engines. The application for type certification of the Model RB211-Trent-870-17 turbofan engine was withdrawn and a new application for type certification of the Model RB211-Trent-875-17 was made on April 6, 1993. The FAA has determined that the current water and hail ingestion requirements of § 33.77(c) of the FAR do not represent the inclement weather threat encountered in service.

A study of in-service inclement weather events has indicated a need to modify the water and hail ingestion requirements of this section to ensure design integrity and demonstrate an adequate level of safety. This study indicated that a potential flight safety threat existed for engines when operating in severe weather environments. Although current requirements provide adequate validation of the engine's resistance to mechanical damage due to hail impact and case contractions from water ingestion, the study showed that the current standards did not adequately address engine power loss anomalies, such as rollback and flameout at lower than take off rated power settings.

The FAA has concluded that additional safety standards must be applied to Rolls-Royce Model(s) RB211-Trent-875-17/-877-17/-884-17 turbofan engines to demonstrate that they are capable of acceptable operation in severe weather environments.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Rolls-Royce must show that Model(s) RB211-Trent-875-17/-877-17/-884-17 turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and Part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33-14.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for Rolls-Royce Model(s) RB211-Trent-875-17/-877-17/-884-17 turbofan engines because of unique design criteria. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Conclusion

This action affects only Rolls-Royce Model(s) RB211-Trent-875-17/-877-17/-884-17 turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Rolls-Royce Model(s) RB211-Trent-875-17/-877-17/-884-17 turbofan engines.

In addition to the requirements of FAR § 33.77, the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator.

(a) The most critical operating point(s) for water and hail ingestion must be determined by test, analysis, or other acceptable methods, and must be based on the threat levels defined in Table 1 and Table 2 of this proposal. The critical point(s) determination must address the entire operating envelope of the engine. The critical operating point(s) is defined as those operating conditions within the engine flight envelope at which an engine operability margin is reduced to a minimum level.

TABLE 1.—RAIN THREAT

Altitude (feet)	Liquid water content (LWC) (grams water per cubic water air)
0	20.0
20,000	20.0
26,300	15.2
32,700	10.8
39,300	7.7
46,000	5.2

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

TABLE 2.—HAIL THREAT

Altitude (feet)	Hail Water Content (HWC) (grams water per cubic meter air)
0	8.9
7,300	8.9
8,500	9.4
10,000	9.8
11,000	9.9
12,000	10.0
15,000	10.0
16,000	8.9
17,700	7.8
19,300	6.6
21,500	5.6
24,300	4.4
29,000	3.3
46,000	3.3

Note: LWC and HWC values at other altitudes may be determined by linear interpolation.

(b) The engine will be shown to operate at an acceptable level for a minimum of three minutes when subjected to the critical point conditions for water ingestion. The percentage of water to airflow by weight, at the critical point, is to be reproduced during the engine test. The test method should adequately model the inflight water concentration effect at the primary flow (core) inlet. Water droplet size and velocity distributions must be representative of the critical water ingestion point. All variable systems, whose position could effect engine operation during water ingestion, must be scheduled for the most critical positions.

(c) The engine will be shown to operate at an acceptable level for a minimum of 30 seconds when subjected to the critical point conditions for hail ingestion. The percentage of hail to airflow by weight, at the critical point.

is to be reproduced during the engine test. The test should adequately model the inflight hail concentration effect at the primary flow (core) inlet. Hailstone size and velocity distributions must be representative of the critical hail ingestion point. All variable systems whose position could effect engine operation during hail ingestion, must be scheduled for the most critical positions.

(d) Acceptable engine operation, as noted in paragraphs (b) and (c) of this special condition, must preclude rundown, flameout, surge, loss of acceleration capability, limit exceedance, or any other engine anomaly which would negatively affect the operability of the engine.

(e) The engine, as operated under the conditions defined in paragraphs (b) and (c) of this special condition, must show that it will operate acceptably if exposed to other probable factors associated with normal operations. These other probable factors include, but are not limited to, performance losses, installation effects, inlet distortion, and throttle transients.

Issued in Burlington, Massachusetts, on December 29, 1993.

Jay J. Pardee,

Acting Manager, Engine and propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-249 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-AGL-26]

Proposed Establishment of Class E Airspace; Oconto, WI

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace (Class E airspace areas extending upward from 700 feet or more above the surface of the earth) at Oconto Municipal Airport, Oconto, WI, to accommodate Nondirectional Beacon (NDB) Runway 29 Standard Instrument Approach Procedure (SIAP). Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this proposal is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

DATES: Comments must be received on or before February 8, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 93-AGL-26, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed below. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AGL-26." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great Lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Counsel No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace to Oconto Municipal Airport, Oconto, WI, to accommodate NDB Runway 29 SIAP. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rules requirements.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL WI E5 Oconto, WI [New]

Oconto Municipal Airport, WI
(lat. 44°52'24.897"N, long. 87°54'32.589"W)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Oconto Municipal Airport and within 2.475 miles each side of the 118-degree bearing from the NDB extending from the 6.3-mile radius to 7 miles southeast of the airport.

* * * * *

Issued in Des Plaines, Illinois, on December 20, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 94-245 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 52 and 81

[TX-22-1-5738; FRL-4821-9]

Approval and Promulgation of Implementation Plan Texas State II Program

AGENCY: United States Environmental Protection Agency (EPA).

ACTION: Proposed rulemaking.

SUMMARY: The EPA is taking action to approve the Texas Natural Resource Conservation Commission State II State Implementation Plan (SIP), which includes a SIP Supplement dated September 30, 1992, and Regulation V (31 TAC Section 115 Subchapter C: Volatile Organic Compound Marketing Operations), as a revision to the Texas SIP for ozone. On November 13, 1992, Texas submitted a SIP revision request to the EPA to satisfy the Clean Air Act, as amended (1990). This SIP revision requires owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment in the four Texas ozone nonattainment areas classified as moderate or worse. This revision applies to the Texas counties of Brazoria, Chambers, Collin, Dallas, Denton, El Paso, Fort Bend, Galveston, Hardin, Harris, Jefferson, Liberty, Montgomery, Orange, Tarrant, and Waller.

DATES: Comments must be received by February 7, 1994.

ADDRESSES: Comments should be sent to James F. Davis at U.S. EPA Region 6, (6T-AP), 1445 Ross Avenue, Suite 700, Dallas, Texas 75202-2733. The State submittal and the technical support document (TSD) are available for public review at the above address and at the Texas Natural Resource Conservation Commission, Stage II Program, 12124 Park 35 Circle, Austin, Texas 78753. Interested persons wanting to examine these documents should make an appointment with the appropriate office at least 24 hours before the visiting day.

FOR FURTHER INFORMATION CONTACT: James F. Davis at (214) 655-7584.

SUPPLEMENTARY INFORMATION:

Under section 182(b)(3) of the Clean Air Act (CAA), the EPA was required to issue guidance as to the effectiveness of Stage II systems. The EPA issued technical guidance in November 1991, and enforcement guidance in December 1991, to meet this requirement.[1] In addition, on April 16, 1992, the EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what the EPA believes a State submittal needs to include to meet that requirement.

The EPA has designated four areas as ozone nonattainment in the State of Texas. The Houston/Galveston/Brazoria ozone nonattainment area is classified as severe and contains the following eight counties: Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller. The Beaumont/Port Arthur ozone nonattainment area is classified as serious and contains the following three counties: Hardin, Jefferson, and Orange. The El Paso ozone nonattainment area is classified as serious and contains the county of El Paso. The Dallas/Fort Worth ozone nonattainment area is classified as moderate and contains the following four counties: Collin, Dallas, Denton, and Tarrant. The designations for ozone were published in the **Federal Register** (FR) on November 6, 1991, and November 30, 1992, and have been codified in the Code of Federal Regulations (CFR). See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR sections 81.300-81.437. Under section 182(b)(3) of the amended CAA, Texas was required to submit Stage II vapor recovery rules for these areas by November 15, 1992. On November 13, 1992, Governor Ann W. Richards submitted to the EPA Stage II vapor recovery rules and a SIP Supplement dated September 30, 1992, which were adopted by the State on October 16, 1992. By today's action, the EPA is proposing to approve this submittal. The EPA has reviewed the State submittal against the statutory requirements and for consistency with the EPA guidance. A summary of the EPA's analysis is provided below. In addition, a more detailed analysis of the State submittal is contained in a TSD, dated June 25, 1993, which is available from the Region 6 Office, listed above.

I. Applicability

Under section 182(b)(3) of the CAA, States were required by November 15, 1992, to adopt regulations requiring owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. The amended CAA specifies that these State rules must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer, any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the CAA defines an independent small business marketer. The State has adopted a general applicability requirement of 10,000 gallons per

[1] These two documents are entitled "Technical Guidance—Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

month and has not included a lower applicability for independent small business marketers. However, independent small business marketer which dispense less than 50,000 gallons have a provision for an extended compliance deadline.

As more fully discussed in the EPA's Enforcement Guidance and the General Preamble (57 FR at 13514), the State has provided that the gallons of gasoline dispensed per month will be based on the gasoline throughput for each calendar month beginning January 1, 1991. The State is interpreting this requirement to mean that if a facility exceeds the throughput limits for any one month, the facility will be required to install Stage II. While the State is not calculating the average volume of gasoline dispensed per month for the two year period preceding the adoption date, the EPA believes that the State's method will require more gasoline dispensing facilities to comply with Stage II requirements. In addition, the State has specified that the State II requirements apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities, with throughput rates as defined above. However, the State has exempted gasoline dispensing equipment used exclusively for the fueling of aircraft, marine vessels, or implements of agriculture. The EPA has determined that these limited exemptions are acceptable in the Texas Stage II program for the following reasons. Historically, the Stage II program was intended to reduce refueling emissions for "on-road" motor vehicles. These limited exemptions would not be considered to be on-road motor vehicles. Also, refueling systems of gasoline powered vehicles such as aircraft, marine vessels, and implements of agriculture are normally designed with nonstandardized equipment for which Stage II systems designed for on-road vehicle refueling facilities may not be compatible. The acceptability of these limited exemptions does not preclude the State from requiring refueling vapor recovery systems at such facilities at a later date.

Section 324 establishes a statutory definition of an independent small business marketer, which is fully set forth in the TSD. The State has adopted the statutory definition of independent small business marketer in its regulations.

The EPA finds the applicability requirements in the Texas Stage II rule to be acceptable.

II. Implementation of Stage II

The CAA specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an independent small business marketer, these times, calculated from the time of State adoption of the regulation, are: (1) Six months for facilities for which construction began after November 15, 1990, (2) one year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) two years for all other facilities. The Texas Stage II rule time schedule sets compliance dates of May 15, 1993, November 15, 1993, and November 15, 1994, respectively for the above three deadlines. Although Texas adopted its Stage II regulations on October 16, 1992, the EPA believes it is appropriate to accept the adoption date to be November 15, 1992.

The EPA is proposing to approve the submitted time table for the following reasons. First, the CAA states that the adoption date must be used to calculate the compliance schedule for Stage II implementation at facilities. In this case, the EPA defines the adoption date to be the date when the regulation and the rest of the SIP was required to be submitted to the EPA on November 15, 1992. The compliance deadlines triggered by this date begin within the time schedule specified by the CAA. Secondly, remedying this deficiency by amending the compliance schedule would cause further delay in the implementation of Stage II in Texas. Lastly, the Texas rule otherwise fulfills the Stage II requirements and the EPA believes it will provide substantial air quality benefits to the regulated areas. Therefore, the EPA believes it is in the public interest to approve and make enforceable this requirement at the earliest time feasible.

In the Texas program, independent small business marketers of gasoline, for which the monthly gasoline throughput is less than 50,000 gallons per month, may petition, no later than November 15, 1993, the State's Executive Director for an extension of the compliance deadline to December 22, 1998, or until on or more of the facility's gasoline storage tanks are replaced and/or equipped with corrosive protection, which is required by the Texas Natural Resource Conservation Commission. This extension provision for independent small business marketers of gasoline, for which the monthly gasoline throughput is less than 50,000 gallons per month, is acceptable because the CAA does not require Stage II systems to be installed on such facilities.

III. Additional Program Requirements

Consistent with the EPA's guidance, the State requires that Stage II systems be tested and certified to meet a 95 percent emission reduction efficiency. The EPA has indicated three acceptable methods of demonstrating a 95 percent emission reduction efficiency: (1) A method tested and approved by the California Air Resources Board (CARB); (2) a testing program that is equivalent to the CARB program, that will be conducted by the Program Oversight Agency or by a third party recognized by the Program Oversight Agency, and submitted and approved by the EPA for incorporation into the SIP; or (3) a system approved by CARB. The State has chosen to use option three, a system approved by CARB. The State requires sources to verify proper installation and function of Stage II equipment through use of a liquid blockage test and a leak test prior to system operation and at least every five years or upon major modification of a facility (i.e., 75 percent or more equipment change).

With respect to recordkeeping, the State has adopted those items recommended in the EPA's guidance and specifies that sources subject to Stage II must make these documents available upon request: (1) A copy of the California Air Resources Board (CARB) Executive Order for the specific Stage II vapor recovery system installed at the facility, (2) results of verification tests, (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements, (4) training certification files, and (5) inspection and compliance records. In addition, the State has committed in their SIP supplement to maintain a general compliance file, including information such as facility name, address, phone number, owner/operator names, a State assigned reference number, date of initial compliance with the regulations, number of pumps and monthly gasoline throughput. The State has also established an inspection function consistent with that described in the EPA's guidance. The State commits to conducting inspections of facilities including a visual inspection of the Stage II equipment and of the required records and a functional test of the Stage II equipment. According to the Supplement, the State shall inspect each facility at least one time per year with follow-up inspections at noncomplying facilities. Finally, the State has established procedures for enforcing violations of the Stage II requirements.

and has committed to establish a penalty schedule in the SIP. A detailed draft penalty schedule has already been developed by the State. Administrative penalties may be assessed of up to $10,000 per day per violation and civil penalties of up to $25,000 per day per violation. The EPA finds the State's program for implementation and enforcement of the Stage II program to be consistent with the EPA guidelines.

Rulemaking Action

Since the EPA finds that the State has adopted a Stage II SIP in accordance with section 182(b)(3) of the CAA, as interpreted in EPA's guidance, the EPA is proposing to approve the submittal as meeting the requirements of section 182(b)(3).

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economical, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. section 600 et. seq., the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. sections 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds (*Union Electric Co.* v. *U.S.E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. section 7410(a)(2).

This action has been classified as a Table Two action by the Regional Administrator under the procedures published in the FR on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table Two and Table Three SIP revisions from the requirements of section three of Executive Order 12291 for a period of two years (54 FR 2222). The EPA has submitted a request for a permanent waiver for Table Two and Table Three SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on the EPA's request. This request is still applicable under Executive Order 12866.

List of Subjects

40 CFR Part 52

Air pollution control; Hydrocarbons; Environmental protection; Incorporation by reference; Intergovernmental relations; Ozone; Reporting and recordkeeping requirements; Volatile organic compounds.

40 CFR Part 81

Air, pollution, control.

Authority: 42 U.S.C. 7401–7671q.

Dated: November 24, 1993.

W.B. Hathaway,

Acting Regional Administrator.

[FR Doc. 94–186 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 261

[FRL–4822–9]

Availability of Report to Congress on Cement Kiln Dust; Request for Comments and Announcement of Public Hearing

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of the Agency's *Report to Congress on Cement Kiln Dust*, that is required by section 8002(o) of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6982(o). The Report to Congress contains a detailed study of cement kiln dust (CKD), which is within the scope of the exemption from hazardous waste regulations provided by section 3001(b)(3)(A)(iii) of RCRA as codified at 40 CFR 261.4(b)(8); this exemption is often referred to as the Bevill Exemption. The report also presents the Agency's decision making rationale and a series of options being considered regarding regulatory options for cement kiln dust waste. Information submitted in public comments and at a public hearing will be used in conjunction with the Report to Congress to make a final determination on the regulatory status of these wastes.

DATES: EPA will accept public comments on the Report to Congress on Cement Kiln Dust until February 22, 1994. The Agency will hold a public hearing on the Report to Congress on February 15, 1994.

ADDRESSES: Requests to speak at the public hearing should be submitted in writing to the Public Hearing Officer—Cement Kiln Dust, Office of Solid Waste, Special Waste Branch, U.S. Environmental Protection Agency, 401 M Street (5302W), SW., Washington, DC 20460. The February 15, 1994 public hearing will be held at the Renaissance Hotel in Washington, DC, located at 999 9th Street, NW. The hearing will begin at 9 a.m. with registration beginning at 8:30 a.m. The hearing will end at 5 p.m. unless concluded earlier. Oral and written statements may be submitted at the public hearing. Persons who wish to make oral presentations must restrict them to 15 minutes, and are requested to provide written comments for inclusion in the record.

Copies of the full report are available for inspection and copying at the EPA Headquarters library, at the RCRA Docket in Washington, DC, and at all EPA Regional Office libraries. Copies of the full report can be purchased from the National Technical Information Service (call (703) 487–4660 or (800) 553–NTIS). Copies of the Executive Summary (Volume I) can be obtained by calling the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810.

Those wishing to submit public comments for the record must send an original and two copies of their comments to the following address: RCRA Docket Information Center (5305), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC, 20460. Please place the docket number F–93–RCKA–FFFFF on your comments.

The RCRA docket is located in room M2616 at EPA Headquarters in Washington, DC. The docket is open from 9 to 4 p.m., Monday through Friday, except Federal holidays. In order to view the docket, please call (202) 260–9327 to make an appointment. Copies are free up to 100 pages and thereafter cost $0.15/page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline at (800) 424–9346 or (703) 412–9810; for technical information contact Bill Schoenborn, U.S. Environmental Protection Agency (5302W), 401 M Street, SW., Washington, DC 20460, at (703) 308–8483.

SUPPLEMENTAL INFORMATION:

A. Background Information

RCRA section 3001(b)(3) (hereafter referred to as the Bevill Exemption) exempts, among other things, cement kiln dust waste from regulation under RCRA subtitle C, pending completion of a Report to Congress and a subsequent determination of whether such regulation is warranted. In RCRA section 8002(o), Congress directed EPA to conduct a detailed and comprehensive study based on eight study factors (discussed below) and submit a Report to Congress on "the adverse effects on human health and the environment, if any, of the disposal and utilization of cement kiln dust waste". RCRA section 3001(b)(3)(C) then requires that EPA determine, within six months of the date of submission of the Report to Congress, either to promulgate regulations for CKD under subtitle C or determine that subtitle C regulation is unwarranted.

The Bevill Exemption was added to RCRA on October 12, 1980, as part of the 1980 Solid Waste Disposal Act Amendment. In response to the 1980 RCRA amendments, EPA published an interim final amendment to its hazardous waste regulations to reflect the provisions of the Bevill Exemption (40 CFR 261.4(b)(8)). Since that time, cement kiln dust has remained exempt from subtitle C of RCRA, meaning that this material has never been subject to hazardous waste regulations under Federal law.

On March 8, 1989, the Environmental Defense Fund (EDF) filed suit against EPA for failing to complete the RTC as required by RCRA. On June 19, 1991, EPA entered into a proposed consent decree with EDF. In the proposed consent decree, EPA agreed to complete the Report to Congress on Cement Kiln Dust by April 30, 1993. The proposed consent decree was later modified to extend the deadline for issuance of the Report to Congress to December 31, 1993.

B. Report to Congress

EPA has completed its study of CKD waste and prepared the Report to Congress on Cement Kiln Dust. In keeping with the statutory requirements, the report addresses the following factors (hereafter "study factors") required under section 8002(o) of RCRA:

(1) The source and volumes of such materials generated per year;

(2) Present disposal practices;

(3) Potential danger, if any, to human health and the environment from the disposal of such materials;

(4) Documented cases in which danger to human health or the environment has been proved;

(5) Alternatives to current disposal methods;

(6) The costs of such alternatives;

(7) The impact of those alternatives on the use of natural resources; and

(8) The current and potential utilization of such materials.

In addition, section 8002(o) directs the Agency review other Federal and state studies and actions (e.g., regulations) to avoid duplication of effort.

The Agency's approach in preparing the Report to Congress was to combine certain study factors for purposes of analysis and to evaluate these study factors in a step-wise fashion. This evaluation process, hereafter referred to as EPA's decision rationale, is a three-step methodology that was used in making the regulatory determinations for Mineral Processing Special Wastes (56 FR 27305, June 13, 1991) and the four large-volume Wastes from the Combustion of Coal by Electric Utilities (58 FR 42466, August 9, 1993). The decision rationale contributed to the development of the proposed options for managing CKD waste. EPA is soliciting comment on how the decision rationale can be used in the Agency's decision-making process.

The resulting review and discussion of EPA's analysis is organized into ten chapters in Volume II of the Report to Congress: Methods and Findings. (Volume I is an Executive Summary.) The first chapter of Volume II briefly summarizes the purpose and scope of the report, general methods and information sources used, and EPA's decision making methodology. The second chapter provides a brief overview of the cement industry, including a description of CKD waste, the industry structure and characteristics, the cement manufacturing process, the types of production processes used, and significant process inputs (RCRA Study Factor 1). The third chapter discusses the generation and chemical and physical characteristics of CKD (Study Factors 1 and 3). The fourth chapter outlines the range of CKD management methods employed at domestic cement plants (Study Factor 2). The fifth chapter identifies and summarizes cases of potential and documented damages to human health and the environment (Study Factor 4). The sixth chapter includes a discussion of EPA's risk assessment in which the Agency examined inherent hazards posed by CKD, evaluated site-specific risk factors, and performed quantitative transport, fate and exposure modeling (Study Factor 3). The seventh chapter summarizes applicable federal and state regulatory controls. The eighth chapter investigates alternative waste management practices and potential utilization of the wastes (Study Factors 5, 6, and 7). The ninth chapter discusses costs and impacts under each of several regulatory and operational scenarios (Study Factor 8). The tenth and final chapter of Volume II of the Report to Congress summarizes and analyzes the findings of EPA's evaluation of the above study factors and presents a series of options the Agency is considering, based on these findings, concerning the management of cement kiln dust.

C. Decision Rationale

After studying cement kiln dust, the Agency used the decision rationale to evaluate the findings of the study factors, and to formulate a series of options being considered regarding the level of control needed for CKD. In Step 1 of the decision rationale, the Agency first determined whether the management of CKD poses human health/environmental problems and the potential for current practices to cause problems in the future. In Step 2, the Agency looked at waste management practices and existing regulations to examine the potential for releases and exposure under current practices. In Step 3, the Agency evaluated the costs and impacts associated with regulating this waste under Subtitle C and, possibly, other regulatory scenarios.

The rationale for the order of questions is that cement kiln dust should first be considered to present risk to human health or the environment or a potential risk under plausible mismanagement scenarios before the Agency considers it for regulation under RCRA subtitle C. Second, before it considers regulating the waste under subtitle C, the Agency should determine that current management practices and existing state and Federal regulatory controls are inadequate to limit the risks posed by a waste. Then it should consider whether subtitle C regulation would be effective and appropriate. Finally, the special statutory status of the waste requires that the Agency consider the impacts to the industry that regulation under subtitle C would create in making a decision to regulate the waste as hazardous. Therefore, the decision rationale allows EPA to systematically narrow its focus as to whether the waste may present significant risk of harm and whether additional regulatory controls are necessary and desirable.

The tentative answers to the questions posed in its three-step decision rationale are discussed below:

Step 1: Does management of CKD pose human health and environmental problems? Might current practices cause problems in the future?

After reviewing evidence of damage to human health and the environment, performing a risk assessment, and reviewing the results of laboratory analyses of waste samples, EPA has concluded that risks associated with CKD management are generally low, however, there is a potential under certain circumstances for CKD to pose a danger to human health and environment, and may do so in the future.

Data collected from state files and EPA site visits identify common CKD waste management practices, including management in exposed, unlined piles, abandoned quarries, and landfills, that have caused, and may continue to cause, contamination of air and nearby surface water and ground water. Management practices such as disposal in a water-filled quarry and management in piles adjacent to grazing and agricultural fields or surface water bodies also pose a potential danger to human health and the environment. In addition, risk modeling results supports the conclusion that CKD can potentially pose risks to human health and the environment under certain hypothetical, yet plausible scenarios.

Step 2: Is more stringent regulation necessary or desirable?

EPA has reached no conclusions with respect to the need for more stringent regulation. EPA's preliminary analysis of the effectiveness of State and Federal regulations and controls suggests that additional controls should be evaluated; for example, controls for CKD management scenarios which potentially present high risks, if those scenarios exist. While CKD is regulated under State and local laws, the specific requirements for CKD vary from state to state. In many instances, minimal controls are applied to these wastes. Also, recycling technologies could be used as a means to improve waste management practices.

Step 3: What would be the operational and economic consequences of a decision to regulate CKD under subtitle C?

Operational costs of CKD regulation are largely dependent on the management alternative selected. If CKD is managed as a hazardous waste under RCRA subtitle C, facilities that manage their CKD through on-site land disposal are estimated to incur significant compliance costs. However, the financial burden of compliance, even for waste dust generated in kilns that burn RCRA hazardous waste, may be reduced, if facilities are able to adopt pollution prevention technologies which recycle CKD.

The possible economic outcomes of a decision to regulate CKD under RCRA subtitle C cover a broad spectrum. An economic analysis of innovative pollution prevention technologies (including alkali leaching, flue gas desulfurization, and fluid-bed dust recovery), suggests that the potentially high compliance costs of CKD land disposal may drive the industry toward more recycling of their CKD. However, at this early stage of their development, it is uncertain that these recycling technologies can be widely adopted by the industry. Moreover, even if CKD is recycled, some facilities may incur substantial disposal costs.

D. Regulatory Options

This section presents a series of options the Agency is considering concerning the management of cement kiln dust waste based on the findings of this Report. In accordance with RCRA section 3001(b)(3)(C), EPA will make a regulatory determination for cement kiln dust waste after submitting this Report to Congress, and after holding a public hearing, and accepting and reviewing public comments.

As stated previously, cement kiln dust waste generally presents a low inherent toxicity, is only rarely characteristically hazardous, and, in most cases based on risk modeling, does not present a risk to human health and the environment. However, cement kiln dust waste may pose a potential threat to human health and the environment considering plausible worst case conditions under certain hypothetical management scenarios (see Chapters 5 and 6). Major factors increasing the potential for human health and environmental damages include proximity to potential exposure points such as agricultural fields and surface water bodies, as well as the concentrations of key constituents of concern.

Based on the findings, and an initial evaluation of regulatory options, the Agency has not decided whether to retain or remove the CKD exemption. The Agency considered a number of options which represent a wide range of scenarios that would subject CKD to different management requirements and enforcement oversight. From these, the Agency has chosen to highlight five, including three in which CKD would be managed under subtitle C, with the intent to focus public comment from environmental groups, industry, and other interested parties regarding the most appropriate approach to manage CKD.

EPA notes that regulations for the management of CKD waste under subtitle C may not be warranted or appropriate if other Agency-administered programs are better suited to address the concerns identified in this Report. Among the statutes that may have authority to address the indirect foodchain risks associated with CKD are the Clean Water Act (stormwater management regulations), the Clean Air Act (the program defining the National Emissions Standards for Hazardous Air Pollutants), and the Toxic Substances Control Act (which gives the Agency authority to issue appropriate regulations to address the risks from hazardous chemical substances or mixtures). These alternative authorities are being explored and a decision to pursue regulation of CKD under one or more of these statutes may form the basis for a decision that subtitle C regulation of CKD may be limited or even unwarranted.

Whether or not the Agency lifts the exemption, dust suppression and storm water management at facilities that burn hazardous waste, as well as on-site CKD management practices at all other facilities would be subject to current and potential future regulation under the Federal Clean Air and Clean Water Acts, and where such provisions exist, all applicable state laws and regulations. Damages at existing CKD disposal sites also could be addressed by RCRA section 7003 and CERCLA section 104 and 106, if the site posed an imminent and substantial danger to human health and the environment.

Option 1: Retain the CKD Exemption

Since CKD exhibits low inherent toxicity and poses minimal risk when evaluating the various exposure pathways using average or best case conditions, it may be appropriate to retain the exemption for cement kiln dust waste, that is, maintain the status quo. Under this option, CKD management would continue to be regulated by the States, if at all.

Option 2: Retain the CKD Exemption, but enter into discussions with the industry, in which they voluntarily implement dust recycling technologies, reduce waste, and monitor and control certain off-site uses.

Since certain management scenarios may present risks when assuming plausible worst case conditions and pollution prevention alternatives may be promising in certain instances, the Agency could enter into discussions with the cement manufacturing industry

to urge it to implement selected waste minimization/pollution prevention technologies or implement, more environmentally protective management practices, including controlling certain off-site uses.

For example, some of the potential higher risk situations that have been identified in the hypothetical scenarios relate to on-site CKD management and derive from CKD releases from waste piles or other points via wind-blown dust or storm water runoff or a combination of the two. These contaminant release situations may be controllable (and at some facilities are currently being controlled) at relatively low cost by careful location of the waste pile and active use of conventional dust suppression and storm water management practices. The Agency would hold discussions with the industry to encourage them to voluntarily agree to implement these practices.

An exception to the above conclusion would appear to be the 15 percent or so of cement plants where CKD waste is managed in areas of karst topography or other areas characterized by flow in fractured or cavernous bedrock, where leachate may directly percolate to groundwater with little or no attenuation. For some of these facilities, the groundwater pathway may become of increased concern, depending on other site specific considerations. Again, EPA would discuss with the industry opportunities to either use appropriate liners or relocate the CKD management unit.

About 20 percent of current net CKD generation is used off-site for a wide variety of purposes, most of which according to the Agency's risk assessment do not pose human health or other risks. However, the use of raw CKD containing higher measured levels of certain metals and/or dioxins as a direct substitute for lime on agricultural fields and gardens can concentrate toxic constituents in crops and animal products at levels of concern for human health. This use of CKD, though not widely practiced at present, is otherwise not currently controlled, and may warrant further consideration by the Agency.

The Agency, under this option, could also develop guidance for States regarding site management, off-site uses, and pollution prevention and waste minimization technologies. This guidance would assist States in reducing the potential risks posed by mismanagement of CKD and recommend implementation of technologies that would promote recycling of CKD.

Under this option, CKD management would not be controlled by the provisions of RCRA subtitle C. However, since the exemption for CKD remains in place, CKD generated in kilns that burn hazardous waste would still be subject to the two-part test for residuals under 40 CFR 266.112. If CKD does not pass the two-part test, it would be treated to standards for land disposal (40 CFR 268.43) and disposed in a subtitle C facility. Damages at existing CKD disposal sites would still be addressed by RCRA section 7003 and CERCLA sections 104 and 106, if the site posed an imminent and substantial danger to human health and the environment.

Option 3: Remove the CKD Exemption but delay implementation for some period of time (e.g., two years), that would allow industry time to employ pollution prevention options.

While CKD may not present risks when evaluating the various exposure pathways using average or best case conditions, CKD may pose a potential danger to human health and the environment if managed in certain ways under a limited set of exposure pathways assuming plausible worst case conditions. Also, damages to the environment resulting from poor CKD management practices have been recorded and are continuing to occur at some facilities. For these reasons, removing the Bevill exemption (codified at 40 CFR 261.4(b)(8)) may be appropriate. Accordingly, provisions of the Boiler and Industrial Furnace rule (40 CFR 266.112) would no longer apply to hazardous waste-derived CKD.

Under this option, on-site CKD management practices at those facilities with dust that exhibited any of the RCRA hazardous waste characteristics, or CKD derived from the burning of listed hazardous wastes (see 40 CFR 261.3(c)(2)(i)) would be affected by the provisions of RCRA subtitle C. CKD disposal piles which are inactive on or before the effective date of the Final Rule would be unaffected by the provisions of subtitle C, unless subsequently managed.

By delaying lifting the exemption for some period of time (e.g., two years after the Regulatory Determination), industry would be provided an opportunity to implement pollution prevention alternatives and thus, manage the hazardous waste management costs they would incur. During this interim period between submittal of the Report to Congress and the effective date of the Final Rule, the CKD exemption would still be in effect. The Agency believes that many of the affected facilities would utilize the time to adopt pollution prevention technologies which would reduce, if not eliminate the amount of hazardous CKD they generate or stop burning hazardous waste.

Once the exemption is removed, CKD generated from cement manufacturing facilities that burn RCRA hazardous wastes would be RCRA hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)). The goal of avoiding subtitle C compliance costs would provide an incentive for each facility to look for pollution prevention alternatives to recycle their CKD and reduce the amount of hazardous waste generated. The Agency is requesting additional information on the viability of the CKD recycling options discussed in the RTC and any other available pollution prevention or recycling option not considered in the Report.

Those facilities that do not burn hazardous waste would not generally be affected by removing the exemption unless they generated characteristic RCRA hazardous waste. The Agency expects the number of non-hazardous waste burning facilities affected by this option would be small, since CKD rarely exhibits a characteristic of hazardous waste. These facilities would have an incentive to control their cement manufacturing process to avoid generating characteristic CKD.

Option 4: Remove the CKD Exemption, and rely on existing hazardous waste rules to control cement kiln dust.

This option is similar to Option 3, except the exemption would be removed in accordance with RCRA section 3010(b). (Under subtitle C of RCRA, wastes brought under regulatory control have up to six months from the Regulatory Determination before they become subject to hazardous waste control.) Thus, CKD that is hazardous waste-derived or exhibits a RCRA hazardous characteristic would be made subject to the provisions of RCRA subtitle C. Otherwise, this option is the same as Option 3.

Option 5: Promulgate Regulatory Standards for the Management of CKD Waste.

As previously stated, the Agency's analysis of the risks associated with cement kiln dust suggest that by merely lifting the exemption at 40 CFR 264.1(b)(8), certain pathways of potential concern under the hypothetical scenarios may not be adequately addressed under Options 3 and 4, should EPA decide that subtitle C regulation is warranted for CKD in the first instance. Specifically, EPA's risk assessment indicates indirect foodchain risks are of potential concern from releases of CKD from disposal piles to nearby surface waters and crop lands and from the direct application of CKD to croplands as a soil amendment assuming reasonable worst-case conditions. The Agency acknowledges, as discussed in detail in Chapter 6, that these modelled risks, while plausible, are of probably minimal incidence.

As described above, the likely regulatory result under Options 3 and 4 would be to make CKD generated by a kiln that burns listed hazardous wastes itself a hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)). The indirect foodchain risks potentially identified in this Report, however, are not associated only with CKD generated by hazardous waste burning kilns. As a result, EPA is also considering regulatory mechanisms that would specifically address these risks, including promulgating regulatory standards under subtitle C for the management of CKD waste that would provide adequate protection against these risks.

RCRA section 3001(b)(3)(C) provides that EPA shall within six months of the RTC "determine to promulgate regulations under this subchapter * * * or determine that such regulations are unwarranted." The statute does not describe the type of regulation that EPA should consider promulgating (if any), other than that such regulation be under subtitle C of RCRA. For example, RCRA does not expressly direct EPA to determine whether to list CKD as hazardous, as required for other wastes under the mandates in RCRA section 3001(c). Furthermore, RCRA section 2002(a) gives the Administrator the broad authority to "prescribe * * * such regulations as are necessary to carry out his functions under this chapter." The Agency believes it has the authority where appropriate to promulgate Federally-enforceable regulatory standards under subtitle C for the management of CKD. EPA could explore mechanisms for imposing regulatory standards for CKD, e.g., under grant of rulemaking authority under section 3001(b)(3)(C). Alternatively, EPA could consider conditioning the CKD exemption from the definition of hazardous waste (40 CFR 261.4(b)(8)) on compliance with appropriate management standards.

EPA could promulgate minimally burdensome management standards for cement kiln dust that would adequately control the indirect foodchain risks, such as: (1) Requiring that dust piles be kept covered to control fugitive emissions and institute surface water runoff and erosion controls; (2) maintaining groundwater protection, perhaps by requiring that CKD piles be maintained on a non-earthen base or by requiring a liner; and (3) establishing risk-based concentration thresholds for all constituents of concern (including 2,3,7,8–TCDD, arsenic, cadmium, and lead) for CKD used as a direct soil amendment. Additional or alternative standards may be appropriate, and EPA welcomes comments and suggestions on this aspect of its options.

Of the five options being considered by the Agency, Options 3, 4 and 5 would provide more control through implementation of the provisions of subtitle C. The principal difference between Options 3 and 4 is the timing of the implementation of the regulatory controls. Option 3 provides industry additional time to implement waste minimization/pollution prevention options and more protective CKD management standards. Option 4 would bring CKD under subtitle C regulatory control more quickly. Removing the exemption also would impose regulatory equity between CKD generated from kilns that burn RCRA hazardous waste and residues from other incinerators that burn RCRA hazardous waste that do not have such an exemption. Option 5 would provide management standards to control all CKD, and would be targeted to specifically address only those risks of potential concern.

The Agency did not evaluate the risk from the land application of agricultural lime, so it cannot determine whether there is an increase in incremental risk when CKD is substituted. In any event, CKD-sewage sludge derived fertilizers and soil amendments are considered safe for such uses as fertilizer and pose minimal risk because these final products are required to be tested to assure they comply with all provisions of 40 CFR part 503, which are fully protective of human health and the environment. It should be noted that if the exemption is removed, fertilizer that is derived from CKD generated from a kiln that burns listed hazardous waste is itself a hazardous waste under the derived-from rule (40 CFR 261.3(c)(2)(i)); the extent of regulation, however, is limited (see 40 CFR 266.20(b)).

In addition, it should also be noted that under current rules, if CKD is recycled, the resulting clinker is not automatically subject to the provisions of subtitle C. By removing the exemption, however, clinker may be affected by the derived-from rule (40 CFR 261.3(c)(2)(i)) if the kiln burns listed hazardous waste, thereby becoming a hazardous waste. The Agency has not yet fully analyzed available data on trace constituents in clinker. Based on our understanding of current data, however, the Agency does not believe that clinker produced from kilns that burn listed hazardous waste generally poses a hazard to human health and the environment. The Agency is, therefore, considering crafting appropriate regulatory language for clinker. The Agency, however, is interested in receiving comment on this issue.

E. Public Comment

The Agency encourages all interested parties to obtain a copy of the Report to Congress and provide comments or further information that might be necessary to the Agency on the data, analysis, and findings contained in the Report to Congress, and on the types of specific requirements that might be necessary under RCRA subtitle C or D for this waste. In addition to receiving input from the various stakeholders regarding the appropriateness of each of the five regulatory options presented for the management of CKD, the Agency is interested in receiving additional information and/or comment on the following:

- CKD sampling data (analytical results, including conditions of sampling, fuels burned at time of sampling, types of samples collected and analytical methods used).
- Documented cases of damage to human health and the environment traceable to CKD disposal, including notices of violation, administrative orders, and scientific studies.
- How the burning of RCRA hazardous wastes, non-hazardous wastes (such as tires and non-hazardous used oils), and fossil fuels affect the quantity and chemistry of generated CKD, as well as the partitioning of toxic metals, chlorides, and alkalis between stack gases, CKD, and clinker.
- The Agency's consideration of drafting appropriate regulatory language for clinker acknowledging that, based on the Agency's preliminary assessment, clinker produced from kilns that burn hazardous waste generally poses no hazard to human health or the environment.
- The extent to which activities such as farming (including the recreational gardening of vegetables) and fishing occur around these facilities.
- Any concerns related to the location of cement manufacturing facilities with respect to environmental justice matters (i.e., the fair treatment of people of all cultures, incomes, and educational levels with respect to protection from environmental hazards).
- The viability of implementing the CKD recycling options discussed in the

RTC and any other available pollution prevention or recycling option not considered in the Report.

- How pollution prevention technologies, including flue gas desulfurization, fluid-bed dust recovery, and alkali leaching affect the quantity and chemistry of air emissions, as well as the partitioning of toxic metals, chlorides, and alkalis between CKD and clinker.
- Additional or alternative management standards from those presented in the Report (e.g., covers for dust piles, runoff controls, groundwater protection, and the establishment of risk-based thresholds for all constituents of concern), that might be appropriate for control of indirect foodchain risks.

Public comments and other documents related to the Report to Congress will be available for inspection at the docket, together with information obtained at the public hearing.

Following publication of this report, the Agency will consider public comments received during a 45-day public comment period in accordance with RCRA section 3001(b)(3)(c). After evaluating and responding to public comments, the Agency will make a regulatory determination on the status of this waste.

Dated: December 30, 1993.

Carol Browner,

Administrator.

[FR Doc. 94–182 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4822–5]

National Oil and Hazardous Substances Pollution Contingency Plan (NCP)

AGENCY: Environmental Protection Agency (EPA).

ACTION: Reopening of comment period on proposed rule; notice of public meeting.

SUMMARY: On October 22, 1993 (58 FR 54702), EPA published in the **Federal Register** a Notice of Proposed Rulemaking (NPRM) that would revise the National Contingency Plan (NCP) consistent with the Oil Pollution Act of 1990 (OPA). The public comment period for the NPRM ended December 20, 1993. EPA received several letters requesting a comment period extension. To accommodate these requests and obtain additional input concerning the NPRM, EPA will hold a public meeting at which interested parties may present their concerns for EPA's consideration in finalizing the NCP. EPA is today reopening the comment period until the day of that meeting.

DATES: EPA must receive all comments on or before January 14, 1994. The public meeting will be held on January 14, 1994, from 9 a.m. until 4 p.m.

ADDRESSES: Comments should be submitted in triplicate to Emergency Response Division, Attn: Superfund Docket Clerk, Docket Number NCP–R2/A, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

The meeting will be held in EPA's Region 10 office, located at 1200 Sixth Avenue, Seattle, WA 98101.

FOR FURTHER INFORMATION CONTACT: Richard Morris, Emergency Response Division (5202G), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, (703) 603–9053.

SUPPLEMENTARY INFORMATION:

Public Meeting

Meeting attendees should send a letter by telephone facsimile by Monday, January 10, 1994, stating attendees' names, addresses, affiliation, and telephone numbers, to Richard Norris, EPA Emergency Response Division, at (703) 603–9116. Those who do not have a facsimile machine may telephone (703) 603–9074 and leave a message containing the information requested above.

Attendees should submit in writing any additional comments they wish to add to the public record in the event that time does not allow for all comments to be presented orally. Additional written comments may also be submitted to the EPA docket, if commenters do not wish to attend the public meeting. Written comments should be submitted in triplicate either at the public meeting or to: Emergency Response Division, Attn: Superfund Docket Clerk, Docket Number NCP–R2/A, Superfund Docket, room M2427, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Summary of Proposed Rule

The proposed revisions (58 FR 54702) include the creation of Area Committees and Area Contingency Plans; a National Response Unit to assist in coordinating spill removal resources, personnel, and equipment; and U.S. Coast Guard District Response Groups to assist On-Scene Coordinators and maintain Coast Guard response equipment. In addition, the NPRM includes criteria and procedures for responding to discharges that result in substantial threats to public health or welfare; procedures and standards for preventing, mitigating, and removing worst case discharges; and a new provision addressing spills of national significance. EPA also proposed to revise subpart J of the NCP, which provides for a Product Schedule that lists dispersants, bioremediation agents, and other miscellaneous oil spill control substances. The subpart J revisions would reflect new dispersant effectiveness testing and acceptability criteria.

Dated: December 29, 1993.

Elliott P. Laws,

Assistant Administrator.

[FR Doc. 94–184 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 406

[BPD–738–P]

RIN: 0938–AG19

Medicare Program; Revisions to the Definition of End-Stage Renal Disease and Resumption of Entitlement

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: We propose to revise the definition of end-stage renal disease to reflect that more than one dialysis treatment is required for there to be a "regular course of dialysis" and to require that generally accepted diagnostic criteria and laboratory findings must form the basis of the physician's certification of end-stage renal disease. The purpose of this proposed revision is to eliminate any misinterpretation of the definition of end-stage renal disease. We propose to do so by clarifying that only those individuals whose kidneys have failed and for whom the disease is expected to be a lifelong affliction are eligible for Medicare end-stage renal disease benefits.

We also propose to amend the regulations to specify that Medicare entitlement is resumed for individuals who again begin a regular course of renal dialysis treatments after a previous course is terminated (with or without a transplant), and to add the same considerations for those who have a second transplant. Therefore, the purpose of these proposed revisions is to conform the regulations more closely to the intent of sections 226A (c)(2) and (c)(3) of the Social Security Act regarding resumption of entitlement to Medicare.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 7, 1994.

ADDRESSES: Mail comments to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–738–P, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC. 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Due to staffing and resource limitations, we cannot accept facsimile (FAX) copies of comments. In commenting, please refer to file code BPD–738–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 690–7890).

FOR FURTHER INFORMATION CONTACT: Denis Garrison, (410) 966–5643.

SUPPLEMENTARY INFORMATION:

I. Background

End-stage renal disease (ESRD) is a disease which occurs from the destruction of normal kidney tissues over a long period of time. The individual often does not experience any symptoms until the kidney has lost more than half of its function. The loss of kidney function in ESRD is usually irreversible and permanent.

A. Related Law and Regulations for Medicare Coverage of ESRD and the Definition of ESRD

Section 226A(a)(2) of the Social Security Act (the Act) provides for Medicare coverage for certain individuals who are medically determined to have end-stage renal disease. Once an individual is medically determined to have ESRD, section 226A(b) of the Act specifies that one of two conditions must be met before entitlement begins. That is, a regular course of dialysis must begin or a kidney transplant must be performed. Section 226A(b)(1)(A) of the Act provides that entitlement begins with the third month after the month in which a regular course of renal dialysis is initiated.

The statute does not give a definition of ESRD; however, the Medicare regulations in title 42 of the Code of Federal Regulations do define the term. The definition of ESRD is given in two sections of the regulations. For purposes of Medicare eligibility and entitlement, ESRD is currently defined in § 406.13(b) as that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life. A parallel definition of ESRD also appears in § 405.2102 which defines ESRD as it relates to the conditions for coverage that must be met by suppliers furnishing ESRD care to Medicare beneficiaries.

B. Potential Misinterpretation of the Current ESRD Definition

In calendar year 1989, 21,200 individuals were certified by their physicians as having an irreversible, permanent kidney impairment and obtained Medicare entitlement solely because of this certification. That is, they could not qualify for Medicare on any other basis, such as age or disability status. In calendar year 1990, the number of similar new beneficiaries was 22,800. Soon after obtaining Medicare eligibility, nearly 1 percent of these individuals terminated their course of dialysis with a return of kidney function. We are concerned that the diagnosis and certification of ESRD for these individuals was incorrect. The regulations in §§ 405.2102 and 406.13(b) define ESRD as a condition that appears irreversible and permanent; Medicare entitlement on the basis of the patient's need for dialysis is usually terminated only if the individual dies or receives a kidney transplant.

Any severe kidney condition (particularly acute kidney failure) may appear to be irreversible and permanent if the diagnosis is based on only limited tests and criteria. We believe that certifications for the patients who terminated dialysis may have arisen from a misunderstanding of the extent of the kidney failure which constitutes ESRD for which the law grants Medicare entitlement. We believe that specifying that the diagnosis must be based on generally accepted diagnostic criteria and laboratory findings may result in not enrolling in Medicare those patients whose renal disease is not "end-stage". However, we do not wish to eliminate the word, "appears," from the regulation since the law recognizes that dialysis treatments may end in some ESRD cases.

C. Related Laws and Regulations for Termination of Medicare Entitlement and Resumption of Entitlement to ESRD Benefits

Section 226A(b)(2) of the Act specifies that Medicare entitlement for individuals on the basis of ESRD terminates with the end of the 36th month after the month of transplant or with the end of the 12th month after the last month of renal dialysis treatments. Section 226A(c)(2) and (c)(3) of the Act specifically provides for beginning a new period of entitlement when a kidney transplant fails or a course of renal dialysis begins again, whether during or after the 36 or 12 months, as applicable. Current regulations in § 406.13(f) address these situations by specifying that entitlement does not end as scheduled if the treatment begins again during the applicable periods. The regulations in § 406.13(g) deal with resumption of entitlement after termination of entitlement has occurred and require the submission of a new application.

In addition, the provisions in section 226A(c)(2) and (c)(3) of the Act ensure that resumption of entitlement to Medicare will begin without the 3-month waiting period that usually applies in cases when Medicare entitlement is sought on the basis of dialysis (except for certain cases involving self-care training).

II. Provisions of the Proposed Regulations

A. Proposed Revision to ESRD Definition

We analyzed the payment records of patients who terminated dialysis shortly after becoming eligible for Medicare based on a diagnosis of ESRD. Our records indicate an annual mean cost per patient of approximately $8,000, which is significantly below the average annual cost of $40,000 for a patient who remains on dialysis. Because these individuals were able to discontinue dialysis shortly after beginning a course of treatment and incurred only limited medical costs, we believe that many of these patients may have been incorrectly certified as having ESRD as a result of physicians misinterpreting the ESRD definition as it appears in § 406.13(b). We also find the current ESRD definition (§ 406.13(b)) inadequate for Medicare Part A (hospital insurance) eligibility and entitlement purposes because entitlement to Medicare based on ESRD depends on the existence of ESRD, not on the sole fact that dialysis treatments are being given. Therefore, in order to eliminate any possible misinterpretation, we

propose to revise the definition of ESRD in § 406.13(b). After the phrase "* * * a regular course of dialysis", we propose to add the word "treatments". This revision would clarify that more than one dialysis treatment is required for there to be a regular course of dialysis.

We also propose to add to the end of the definition of ESRD, the phrase "as evidenced by generally accepted diagnostic criteria and laboratory findings". We believe that requiring generally accepted diagnostic criteria and laboratory findings as the basis for diagnosis of ESRD serves as a reminder to physicians that they must have medical evidence to substantiate their certification of ESRD. We do not believe this addition to the definition would have a substantial effect on most physicians since they already depend on such medical information.

We do not believe it is necessary to add the word "treatments" or the phrase "as evidenced by generally accepted diagnostic criteria and laboratory findings" to the definition of ESRD in § 405.2102, which defines ESRD as it relates to the conditions for coverage of suppliers of ESRD services. This is because that section does not establish who is eligible or entitled to Medicare ESRD benefits, which is the purpose of this proposed rule.

B. Proposed Revisions to the Termination of Entitlement and to the Resumption of Entitlement

Section 226A(c)(2) and (c)(3) of the Act specifies the conditions for beginning a new period of entitlement when a kidney transplant fails or a regular course of dialysis begins again. However, this section refers to those instances when entitlement has not yet ended and specifies that Part A entitlement "begins" (although it may not yet have ended) with the month when regular dialysis treatments begin again. The importance of "beginning" Part A entitlement is that it offers the opportunity for those who do not have Part B (Supplementary Medical Insurance) entitlement to enroll in Part B without waiting for the annual general enrollment period (January through March). Supplementary Medical Insurance is a voluntary program available to most individuals age 65 or over and to disabled individuals who are under age 65 and entitled to Medicare Part A. In addition, since Part A entitlement has not ended, we believe that the intention is to re-enroll the individual in Part A with that month, without a new application.

Therefore, we propose to treat the situation where dialysis or transplant recurs during the 12-month or 36-month periods as a resumption of entitlement. Accordingly, we delete from § 406.13(f) the reference to continuation of entitlement, and instead revise § 406.13(g), which specifies the conditions for resumption of entitlement, to include this situation where coverage resumes despite a previous course of treatment.

We propose to revise § 406.13(g) to state that entitlement would be resumed under any one of three conditions. Using the language we propose to remove from paragraph (f), a new period of entitlement would begin if an individual initiates a regular course of renal dialysis during the 12-month period after the previous course of dialysis ended, and he or she would be entitled to resume Part A benefits and eligible to enroll in Part B benefits effective with the month the regular course of dialysis is resumed.

The statute does not mention the beginning of a new period of entitlement when a second kidney transplant occurs during the 36-month period following the initial transplant, since there is never a waiting period for entitlement based on a transplant. However, we believe that, by analogy, the provisions for beginning a new period of entitlement in cases where a regular course of dialysis begins or recurs during the 36 months indicate that we should construe the law as requiring resumption of entitlement and a new period of Part B enrollment in cases of re-transplantation that occur without the beneficiary's resuming (or initiating) dialysis treatments. We, therefore, propose to revise § 406.13(g) to state that entitlement would begin when an individual initiates a new, regular course of renal dialysis, or has a kidney transplant, during the 36-month period after an earlier kidney transplant, and that he or she would be entitled to resume Part A benefits and eligible to enroll in Part B benefits effective with the month the regular course of dialysis begins or with the month the subsequent kidney transplant occurs.

We also propose to make technical revisions to § 406.13(g) to clarify the other condition for resumption of entitlement. That is, entitlement is resumed if an individual initiates a regular course of renal dialysis more than 12 months after the previous regular course of dialysis ended or more than 36 months after the month of a kidney transplant, and the individual is eligible to enroll in Part A and Part B benefits effective with the month in which the regular course of dialysis treatment is resumed. If he or she is otherwise entitled to Part A benefits under the conditions specified in § 406.13(c), and files an application, entitlement would begin with the month in which dialysis treatments are initiated or resumed, without a waiting period, subject to the basic limitations of entitlement in § 406.13(e)(1).

C. Proposed Revisions' Effect on Medicare Part B

The revised definition of ESRD in § 406.13(b) and revisions to resumption of entitlement in § 406.13(g) would also be used as the basis for eligibility for Medicare Part B. This is because, in accordance with § 407.10(a)(1), an individual who qualifies for Medicare Part A on the basis of ESRD is also eligible for Medicare Part B.

D. Manuals Affected

When we publish these proposed requirements as a final rule, the Social Security Program Operations Manual System, Part 6, "HI"; the Medicare Part A Intermediary Manual, Part 3, "Claims Processing"; the Medicare Part B Carriers Manual, Part 3, "Claims Processing"; and the Medicare Renal Dialysis Facilities Manual, would be revised to reflect the changes made to the definition of ESRD and the resumption of entitlement.

III. Collection of Information Requirements

This rule contains no information collection requirements. Consequently, this rule need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

IV. Response to Comments

Because of the large number of items of correspondence we normally receive on a proposed rule, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this preamble, and if we proceed with the final rule, we will respond to the comments in the preamble to the final rule.

V. Regulatory Impact Statement

In calendar year 1989, over 21,200 individuals were certified by their physicians as having an irreversible, permanent kidney impairment, and obtained Medicare entitlement solely on the basis of this certification. In 1990, that number was 22,800. As reported in the National Institute of Diabetes and Digestive and Kidney Disease's U.S. Renal Data System Annual Data Report, approximately 1 percent of individuals

receiving dialysis treatments during these years were able to terminate their course of dialysis treatment because kidney function returned. This figure is consistent with data that we maintain on the number of individuals whose Medicare eligibility terminated.

We analyzed the Medicare payment records of beneficiaries whose sole reason for Medicare entitlement was ESRD, and who discontinued dialysis (and thus, Medicare eligibility) within 2 years after enrollment. Our records indicate that 70 percent of the individuals incurred annual costs of less than $10,000, with an annual mean cost per beneficiary to the Medicare program of approximately $8,000. This is significantly below the average annual cost to the Medicare program of $40,000 for a patient receiving regular dialysis treatments. Because these beneficiaries were able to discontinue dialysis after incurring only limited medical costs, we believe that most of these patients may have been incorrectly certified as having ESRD, which requires long-term maintenance dialysis or a kidney transplant. Although the number of individuals who may have been incorrectly certified was less than 250 per year, they accounted for nearly $2 million in annual Medicare program expenditures. These expenditures were unintended because the disease did not reach "end-stage" in these individuals. As a result of this proposed revision, we estimate the projected savings to the Medicare program for the next 5 calendar years to be as follows:

[Millions of Dollars]

1994	1995	1996	1997	1998
2.8	3.1	3.4	3.8	4.2

With regard to the portion of this proposed rule concerning resumption or continuation of entitlement after a terminating event, we have no reason to believe, based on 13 years' experience, that more than one or two people would have had their entitlement resumed earlier under the proposed revised regulation relating to that issue.

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all physicians and dialysis facilities to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

No additional time burden or monetary requirements would be placed on physicians or dialysis facilities in order to comply with the provisions of this proposed rule since physicians should already have appropriate laboratory findings and generally accepted diagnostic criteria to confirm a diagnosis of ESRD.

In addition, changes in the resumption of entitlement regulations would have no effect on physicians or on dialysis facilities.

For the reasons stated above, we have determined, and the Secretary certifies, that this proposed rule would not result in a significant economic impact on a substantial number of small entities or on the operations of a substantial number of small rural hospitals. We are, therefore, not preparing analyses for either the RFA or section 1102(b) of the Act.

List of Subjects in 42 CFR Part 406

Health facilities, Kidney diseases, Medicare.

42 CFR chapter IV, part 406 is amended as follows:

PART 406—HOSPITAL INSURANCE ELIGIBILITY AND ENTITLEMENT

1. The authority citation for part 406 continues to read as follows:

Authority: Secs. 202(t), 202(u), 226, 226A, 1102, 1818, and 1871 of the Social Security Act (42 U.S.C. 402(t), 402(u), 426, 426–1, 1302, 1395i–2, and 1395hh), and 3103 of Public Law 89–97 (42 U.S.C. 426a) unless otherwise noted.

2. In § 406.13, the heading and introductory language in paragraph (b) is republished, the definition of "End-stage renal disease" in paragraph (b) is revised, and paragraphs (f) and (g) are revised to read as follows:

§ 406.13 Individual who has end-stage renal disease.

* * * * *

(b) *Definitions.* As used in this section:

End-stage renal disease (ESRD) means that stage of kidney impairment that appears irreversible and permanent and requires a regular course of dialysis treatments or kidney transplantation to maintain life, as evidenced by generally accepted diagnostic criteria and laboratory findings.

* * * * *

(f) *End of entitlement.* Entitlement ends with—

(1) The end of the 12th month after the month in which a regular course of dialysis ends; or

(2) The end of the 36th month after the month in which the individual has received a kidney transplant.

(g) *Resumption of entitlement* Entitlement is resumed under the following conditions:

(1) An individual who initiates a regular course of renal dialysis during the 12-month period after the previous course of dialysis ended is entitled to Part A benefits and eligible to enroll in Part B with the month the regular course of dialysis is resumed.

(2) An individual who initiates a regular course of renal dialysis, or has a kidney transplant, during the 36-month period after an earlier kidney transplant is entitled to Part A benefits and eligible to enroll in Part B with the month the regular course of dialysis begins or with the month the subsequent kidney transplant occurs..

(3) An individual who initiates a regular course of renal dialysis more than 12 months after the previous course of regular dialysis ended or more than 36 months after the month of a kidney transplant is eligible to enroll in Part A and Part B with the month in which the regular course of dialysis is resumed. If he or she is otherwise entitled under the conditions specified in paragraph (c) of this section, including the filing of an application, entitlement begins with the month in which dialysis is initiated or resumed, without a waiting period, subject to the limitations of paragraph (e)(1) of this section.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: October 4, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–65 Filed 1–5–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Part 3160

[WO–610–4111–02–24 1A]

RIN 1004–AB22

Onshore Oil and Gas Operations, Federal and Indian Oil and Gas Leases; Onshore Oil and Gas Order No. 5, Measurement of Gas

AGENCY: Bureau of Land Management, Interior.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise Onshore Oil and Gas Order No. 5 under 43 CFR 3164.1, originally issued February 24, 1989 (54 FR 8100), and made effective March 27, 1989, for new facilities, August 23, 1989, for existing facilities measuring 200 thousand cubic feet (Mcf) or more per day of gas, and February 26, 1990, for existing facilities producing less than 200 Mcf per day of gas. This proposed revision would reorganize the Order to make it more logical in sequence, remove unnecessary provisions, resolve internal inconsistencies discovered in the Order, and clarify certain provisions. These changes are based on several years of experience implementing the Order, and on suggestions from the public.

DATES: Comments should be submitted by March 7, 1994. Comments received or postmarked after the above date may not be considered in the decisionmaking process on the final rule.

ADDRESSES: Comments should be sent to: Director (140), Bureau of Land Management, Room 5555, Main Interior Building, 1849 C Street, N.W., Washington, D.C. 20240. Comments will be available for public review at the above address during regular business hours (7:45 a.m. to 4:15 p.m.), Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lonny R. Bagley, (406) 255–2847.

SUPPLEMENTARY INFORMATION: Order No. 5, Measurement of Gas, implements and supplements requirements found in 43 CFR Part 3160 relating to the measurement of gas produced under the terms of Federal and Indian (except Osage) oil and gas leases, as well as gas produced from State or privately owned lands when Federal and/or Indian leases receive a share of such production under the terms of an approved agreement. The Order addresses gas measurement by orifice meter and gas measurement by other methods acceptable to the authorized officer of the Bureau of Land Management (BLM). Gas measurement by electronic flow computers, utilizing an orifice, which calculate volume using the equations specified by the American Gas Association (AGA) Committee Report No. 3, may be implemented without prior approval if the minimum standards outlined in the Order are adhered to.

Several years of experience implementing the Order have revealed some areas where the organization of the Order can be improved, and certain provisions that require amendment or clarification or both.

The statement of the purpose of the Order in section I.B. is proposed to be amended to remove the reference to the assessments and penalties imposed as a result of noncompliance or the failure to correct noncompliance, because the Order does not set forth such assessments and penalties. The purpose statement also is proposed to be amended to include the purpose that measurements be accurate.

There are no amendments proposed in the definitions included in the existing Order. However, one new definition (meter uncertainty) would be added in this proposed rule.

Section III.A. on Required Recordkeeping is proposed to be amended by adding requirements for the retention of data generated by electronic flow computers. The revised Order would set forth specifically the kinds of data required to be retained, without prescribing an exhaustive list.

Article III. would be reorganized in the proposed Order. Two new sections would be added to cover minimum standards specific to the secondary element of the orifice meter and to allow the use of other types of secondary elements, and to cover other requirements not specific to orifice meters or the secondary element. Requirements included in section C. on orifice meters are proposed to be moved, and in some cases amended, as part of the new section D. on secondary elements or section E. on other requirements, and several new requirements have been added as part of section C. and new section D. These changes are stated in table form below.

Existing order citations	Proposed order citations
III.C. Gas Measurement by Orifice Meter.	III.C Primary Element—Orifice Meters.
C.1	C.1.
C.2	C.2.
C.3	C.3.
C.4	D.10.a.
C.5	D.10.b.
C.6	C.4.
C.7	D.1.
C.8	C.5.
	C.6. (new).
C.9	C.7.
C.10	C.8.
C.11	C.9.
C.12	C.10.
C.13	(removed).
	D. Secondary Element (new).
	D.2. (new).
C.14	D.10.c.
C.15	D.3.
	D.4. (new).
	D5. (new).
C.16	D.10.d.
C.17	D.6.
C.18	D.7.
C.19	D.8.
	D.11.a., b., and c. (new).
	E. Other Requirements (new).
C.20	E.1.
C.21	C.11.
C.22	Removed.
C.23	E.2.
C.24	D.9.
C.25	E.3.
C.26	E.4.
D. Gas Measurmeent by Other Methods.	F. Gas Measurement by Other Methods.
D.1	F.1.
D.2	F.2.

The automatic exemption from some requirements for meters measuring 100 Mcf per day or less on a monthly basis would be expanded to include 3 additional standards. These added exemptions would include the existing requirement that the static element be sized to make the pen that records the static pressure operate in the outer ⅔ of the chart range for the majority of the flowing period, the new requirement that electronic flow computers be installed, operated, and maintained to achieve an overall meter uncertainty of plus or minus 3 percent, and the new requirement for inspecting meter tubes every 5 years. Language has been added to the Order identifying the applicable standards for the exemption.

The following requirements proposed to be amended in revised Order No. 5 are discussed below in the order they appear in this proposed rule.

III.C.5. (formerly C.8.) is proposed to be amended purely for clarification. It is the difference between the internal diameters of the meter tube pipe and the orifice fittings that is to be within AGA tolerance limits, not the diameters themselves, as the existing Order seems to provide.

III.C.6. (new) is added to ensure that the meter tubes conform with AGA Committee Report No. 3. Proper meter tube condition is essential for accurate measurement. It is intended that all meter tube inspections would be conducted within the first 5 years after the effective date of the final rule, and every 5 years thereafter. Meters measuring 100 Mcf per day or less on a monthly basis would be exempt from this new requirement.

III.C.8. (formerly C.10.) is proposed to be amended for precision in stating the requirement. As stated in this rule, orifice plates would be required to be inspected during calibration of the secondary element.

III.C.10. (formerly C.12.) is proposed to be amended by removing the requirement that, when leaks are detected, the meter setting shall be determined and recorded "as found," and "as left" after the meter is calibrated. This part of the existing requirement is duplicated by the linearity test in requirement III.D.3. of the proposed Order.

III.C.13. in the existing Order would be removed in the proposed Order because it is duplicated by the linearity test in requirement III.D.3. of the proposed Order.

III.C.11. (formerly C.21.) would be amended by revising the corrective action to provide for the submittal of a report to BLM. The form called for in existing requirement C.21. is now submitted to the Minerals Management Service, not to the BLM. Under the proposed rule, the operator would be required to submit a report to the BLM showing what corrections were made.

III.D.1. (formerly C.7.) would be amended by removing the provision allowing consideration of a variance for sales or allocation meters measuring between 200 and 500 Mcf per day. This provision duplicates the general provision for a variance under Article IV. of the Order. The requirement for the use of an indicating thermometer would be removed because when using an indicating thermometer the temperature is not a true average flowing temperature. All meters measuring more than 100 Mcf per day are required to have a temperature recorder. Meters measuring 100 Mcf per day or less are required to use either a temperature recorder or an average flowing temperature.

III.D.2. (new) would ensure that the accuracy of the temperature recording device is maintained.

III.D.3. (formerly C.15.) would be amended for clarification and to require the recording of readings before and after adjustments are made. The words "of the element range" would be added to make it clear what the 0 and 100 percent refer to.

III.D.4. (new) would be added to require calibration equipment to be more accurate than the equipment being calibrated. If the testing equipment is not more accurate than the equipment being calibrated, the inherent uncertainty in the metering equipment increases.

III.D.5. (new) would be added to require documentation of the certification or recertification of calibration equipment to be available to the authorized officer at the time of calibration.

III.D.6. (formerly C.17.) would be amended to allow meters that measure 100 Mcf or less per day to be inspected and calibrated semiannually rather than quarterly. Experience has shown that quarterly inspections and calibrations of meters measuring such low volumes are neither cost effective nor necessary to assure an acceptable degree of accuracy.

III.D.7. (formerly C.18.) would be amended to require operators to notify the authorized officer of the BLM well in advance of calibrations to enable the planning of inspections.

III.D.8. (formerly C.19.) would be amended by changing the reference to "measuring equipment" to "recording device" to conform with changes in other requirements. The current Order requires that an adjustment be made whenever a volume error of 2 percent or greater occurs. It is proposed to change this standard to "more than 1 percent" because volume errors of less than 2 percent on higher volume wells are very significant. However, in most instances, it will be the policy of the BLM not to pursue volume errors of less than 200 Mcf per month, because the cost of doing so would exceed the value of any additional royalty that might result. The requirement that the meter be adjusted to zero error would be removed because this is part of the linearity test requirement in Section III.D.3. For the sake of simplicity, the abatement period would be stated as 60 days only rather than also stating the alternative "prior to completion of calibration."

III.D.10. would be added combining several requirements from the existing Order, as explained below.

III.D.10.a. (formerly C.4.) would be revised to clarify what is meant by the outer ⅔ of the chart range. Also, the reference to sizing the orifice would be removed because doing so is not the only alternative available to the operator to maintain the differential pen in the outer ⅔ of the chart.

III.D.10.b. (formerly C.5.) would be revised to clarify what is meant by the outer ⅔ of the chart range.

III.D.10.c. (formerly C.14.) would be amended by revising the corrective action. It would no longer require recordation of the "as found" and "as left" readings, which are meaningless.

III.D.11.a., b., and c. (new) would be added as requirements for Electronic Flow Computers (EFCs). The requirements for EFCs would be no more stringent than those for chart recorders. The current static pressure, differential pressure, and temperature would have to be displayed on a continuous basis, and the EFC would be required to have a back-up power source capable of retaining data collected for a minimum of 35 days.

III.E.3. and 4. (formerly C.25. and 26.) would be amended to make them read as requirements rather than as descriptions or definitions, as they appear to do in the existing Order.

Other editorial changes have been proposed to correct errors in the existing Order and cross-references that must be changed as a result of the proposed reorganization of the Order.

The principal authors of this proposed rule are Lonny R. Bagley, Inspection and Enforcement Specialist, Montana State Office, Richard Estabrook, Petroleum Engineer, Ukiah District Office, California, Michael Kolling, Petroleum Engineering Technician, Dickinson District Office, North Dakota, Will Lambert, Petroleum Engineer, Grand Junction District Office, Colorado, and Larry Bray, Petroleum Engineering Technician, Roswell Resource Area Office, New Mexico, assisted by the staff of the Division of Legislation and Regulatory Management, all of the BLM.

It is hereby determined that this proposed rule does not constitute a major Federal action significantly affecting the quality of the human environment, and that no detailed statement pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) is required. The Bureau of Land Management has determined that this proposed rule is categorically excluded from further environmental review pursuant to 516 Departmental Manual (DM), Chapter 2, Appendix 1, Item 1.10, and that the proposal would not significantly affect the 10 criteria for exceptions listed in 516 DM 2, Appendix 2. Pursuant to the Council on Environmental Quality regulations (40 CFR 1508.4) and environmental policies and procedures of the Department of the Interior, "categorical exclusions" means a category of actions that do not individually or cumulatively have a significant effect on the human environment and that have been found

to have no such effect in procedures adopted by a Federal agency and for which neither an environmental assessment nor an environmental impact statement is required.

This rule has been reviewed under Executive Order 12866.

The Department has determined under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that it will not have a significant economic impact on a substantial number of small entities for the same reasons. The rule codifies industry standards that apply to all entities in the industry, regardless of size. The Order would not require a substantial amount of additional information or monitoring. Some additional equipment may be required in certain cases, but the total cost of these changes would not approach the threshold specified in the Executive Order. Costs to the public should not increase at all as a result of the Order.

The Department certifies that this proposed rule does not represent a governmental action capable of interference with constitutionally protected property rights. There would be no taking of private property without due process. Failure to abate violations could result in assessments under the Mineral Leasing Act and/or penalties under the Federal Oil and Gas Royalty Management Act, and possibly lease cancellation if the failure continues, but not without due process. Therefore, as required by Executive Order 12630, the Department of the Interior has determined that the proposed rule would not cause a taking of private property.

The Department has certified to the Office of Management and Budget that this proposed rule meets the applicable standards provided in section 1(a) and 2(b)(2) of Executive Order 12788.

The information collection requirement(s) contained in Part 3160 that relate to this Order have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0134.

List of Subjects in 43 CFR Part 3160

Government contracts; Mineral royalties; Oil and gas exploration; Oil and gas production; Public lands—Mineral resources; Indian lands—Mineral resources; Reporting requirements.

For the reasons stated above, under the authority of the Mineral Leasing Act of 1920, as amended and supplemented (30 U.S.C. 181 *et seq.*), the Department proposes to amend part 3160, Group 3100, subchapter C, chapter II of title 43 of the Code of Federal Regulations as set forth below:

PART 3160—ONSHORE OIL AND GAS OPERATIONS

1. The authority citation for part 3160 continues to read as follows:

Authority: 43 U.S.C. 1733; 30 U.S.C. 181 *et seq.*; 30 U.S.C. 351–359; 30 U.S.C. 301–306; 25 U.S.C. 396; 25 U.S.C. 396a–396q, 397, 398, 398a–398e, 399; 43 U.S.C. 1457; see also 40 Op.Atty.Gen. 41; 40 U.S.C. 471 *et seq.*; 42 U.S.C. 4321 *et seq.*; 43 U.S.C. 6508; 30 U.S.C. 1701 *et seq.*; and 25 U.S.C. 2101 *et seq.*

Subpart 3164—Special Provisions

2. Section 3164.1(b) is amended by revising the fifth entry of the table to read as follows:

§ 3164.1 Onshore Oil and Gas Orders.

* * * * *

(b) * * *

Order No. & Subject	Effective date	Federal Register reference	Supersedes
• • • • • • •			
5. Measurement of Gas	[30 days after date of publication of final rule].	[FR reference for final rule]	None.
• • • • • • •			

Dated: September 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

Appendix—Text of Oil and Gas Order No. 5

Note.—This appendix will not appear in the Code of Federal Regulations.

Onshore Oil and Gas Order No. 5

Measurement of Gas

I. Introduction
A. Authority
B. Purpose
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Attachment

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Onshore Oil and Gas Order No. 5

Measurement of Gas on Federal and Indian Oil and Gas Leases

I. Introduction

A. Authority

This Order is established pursuant to the authority granted to the Secretary of the Interior under various Federal and Indian mineral leasing statutes and the Federal Oil and Gas Royalty Management Act of 1982. This authority has been delegated to the Bureau of Land Management and is implemented by the onshore oil and gas operating regulations contained in 43 CFR part 3160. Section 3164.1 thereof specifically authorizes the Director to issue Onshore Oil and Gas Orders when necessary to implement or supplement the operating regulations and provides that all such Orders shall be binding on the lessees and operators of Federal and restricted Indian oil and gas leases which have been, or may hereafter, be issued.

Specific authority for the provisions contained in this Order is found at: section 3162.4–1, Well records and reports; section 3162.4–2, Samples, tests, and surveys; section 3162.7–1, Disposition of production; section 3162.7–3, Measurement of gas; and subpart 3163, Noncompliance, Assessments, and Penalties.

B. Purpose

One purpose of this Order is to establish requirements and minimum standards for the accurate measurement of gas by the methods authorized in 43 CFR 3162.7–3, i.e., measurement by orifice meter or other methods acceptable to the authorized officer. Accurate gas measurement ensures that the Federal Government, the general public, State Governments that share in the proceeds, and Indian mineral owners receive the royalties due, as specified in the governing oil and gas leases.

Another purpose of this Order is to establish abatement periods for corrective action when noncompliance with the minimum standards is detected.

This Order also serves as notice to any party cited for noncompliance that it may request from the authorized officer an extension of the abatement period for any violation, provided that the request for extension is applied for and granted prior to the expiration of the abatement period previously allowed.

C. Scope

This Order is applicable to all Federal and Indian (except Osage) oil and gas leases. In addition, this Order is also applicable to all wells and facilities on State or privately owned mineral lands committed to a unit or communitization agreement that affects Federal or Indian interests, notwithstanding any provision of a unit or communitization agreement to the contrary.

II. Definitions

A. "Authorized officer" means any employee of the Bureau of Land Management authorized to perform the duties described in 43 CFR Groups 3000 and 3100 (see 43 CFR 3000.0–5).

B. "Business day" means any day Monday through Friday excluding Federal holidays.

C. "Gas" means any fluid, either combustible or noncombustible, that is produced in a natural state from the earth and that maintains a gaseous or rarefied state at standard temperature and pressure conditions (see 43 CFR 3000.0–5(a)).

D. "INC" means incident of noncompliance, which serves as a Notice of Violation under CFR subpart 3163.

E. "Lessee" means a person or entity holding record title in a lease issued by the United States (see 43 CFR 3160.0–5).

F. "Major violation" means noncompliance that causes or threatens immediate, substantial, and adverse impacts on public health and safety, the environment, production accountability, or royalty income (see 43 CFR 3160.0–5).

G. "Meter uncertainty" means the overall inaccuracy of a flow meter caused by the inherent errors of the flow measurement equipment.

H. "Minor violation" means noncompliance that does not rise to the level of a major violation (see 43 CFR 3160.0–5).

I. "Operating rights owner" means a person or entity holding operating rights in a lease issued by the United States. A lessee also may be an operating rights owner if the operating rights in a lease or portion thereof have not been severed from record title.

J. "Operator" means any person or entity, including but not limited to the lessee or operating rights owner, who has stated in writing to the authorized officer that it is responsible under the terms and conditions of the lease for the operations conducted on the leased lands or portion thereof.

K. "Production unit" means, for purposes of reporting gas production, a measurement unit of 1000 standard cubic feet (Mcf).

L. "Standard cubic foot" means the volume of gas contained in one cubic foot at a base pressure of 14.73 pounds per square inch absolute, and at a base temperature of 60° F or 519.67° Rankine (see 43 CFR 3162.7–3).

III. Requirements

A. Required Recordkeeping

The operator shall keep all test data, meter reports, charts/recordings, or other similar records for 6 years from the date they were generated, unless the operator is notified that an audit or investigation involving such records has been initiated. If the operator is notified that an audit or investigation involving the records has been initiated, the operator shall maintain the records until released in writing from the obligation to maintain them. The authorized officer may request, and the operator shall produce, such records any time within this period. For electronic flow computers (EFCs), this includes but is not limited to:

1. Field edits or volume adjustments.

2. Hourly average static and differential pressures, hourly flow temperatures, hourly sums of extensions calculated at each data point, hourly volumes, and the method used to obtain the summation of extensions, averages, and volumes. For the purposes of this Order, extensions are the square root of the product of the differential pressure and static pressure.

3. Subsequent edits or adjustments. If several changes are made, only the original and the final readings shall be retained.

Along with any records submitted at the request of the authorized officer, the operator shall provide all additional information used to compute volumes so that computations may be verified.

B. General

All gas production shall be measured in accordance with an authorized method of measurement. As set out in 43 CFR 3162.7–3, gas measurement authorized for gas produced from leases, unit areas, and communitization agreements subject to the jurisdiction of the Bureau of Land Management, as such jurisdiction is defined in 43 CFR 3161.1, may be by orifice meter or other methods acceptable to the authorized officer. The requirements and minimum standards for gas measurement are set out below. If these requirements for the primary element and chart recorder are met, a meter accuracy of plus or minus 3 percent will be attained. However, given the complex components and sophistication of electronic flow computers (EFCs), no "cook book" method can be established. Therefore, an uncertainty standard of plus or minus 3 percent would be included for EFCs.

The requirements of this Order are based on the standards and specifications published by the American Gas Association (AGA) and officially designated as ANSI/API 2530 and AGA Committee Report No. 3, second edition, 1985, hereafter referred to as AGA Committee Report No. 3. The AGA-published standards and specifications are considered to be appropriate for proper gas measurement by both the Department of the Interior and the oil and gas industry. The requirements set minimum standards necessary to promote conservation of natural resources and to ensure proper measurement of gas production for sales and allocation purposes, so that the Federal Government and Indian mineral owners will receive the royalties due under governing oil and gas leases.

All future sales and allocation facilities and sales or allocation facilities in existence on the effective date of this Order, unless covered by a valid variance, shall meet the minimum standards prescribed in this Order; provided, however, that all gas produced from or allocated to Federal and Indian (except Osage) oil and gas leases wherein the gas is measured through sales or allocation meters handling 100 thousand cubic feet (Mcf) per day or less on a monthly basis are exempt from the standards in section III. C.1., C.2., D.10.a., D.10.b., and D.11.c. of this Order. The authorized officer may, where appropriate and necessary for proper measurement, work with the operators in designating consolidated gas sales and/or allocation meter stations.

Meter installations constructed in accordance with the AGA Committee Report No. 3 standards in effect at that time shall not automatically be required to retrofit if the standards are revised. The Bureau will review any revised

Meter installations constructed in accordance with the AGA Committee Report No. 3 standards in effect at that time shall not automatically be required to retrofit if the standards are revised. The Bureau will review any revised standards and, when necessary, will amend the Order through the rulemaking process.

The intent of these minimum standards is to ensure that when equipment malfunctions occur that could result in inaccurate measurement, proper corrective actions are taken, the authorized officer is notified, and a report is submitted.

Failure to comply with these minimum standards will be considered noncompliance and an incident of noncompliance (INC) will be issued. Operators who discover noncompliance with these minimum standards and take immediate corrective action will not be issued an INC. If the authorized officer or his representative is present when an operator discovers a malfunction or uses incorrect procedures as specified in this Order, an INC will be issued unless immediate corrective action is taken. Failure of equipment will not be considered a violation. However, the incidents of noncompliance which may result from equipment failure are considered violations. A partial list of such incidents follows:

Failure to install equipment properly.

Failure to repair or correct equipment malfunction properly or in a timely manner.

Failure to submit report of alternate method of sales.

Failure to submit required reports in a timely manner.

Failure to adhere to the minimum standard procedures specified in this Order.

The use of improper equipment, when discovered, will be considered a violation and a formal INC will be issued.

The use of improper procedures will be considered a violation and when witnessed by the authorized officer or his representative, immediate corrective action will be required. In the event that proper procedures are then used as required by this Order, and prior to completing the operation, calibration, or proving, the violation will be considered as properly corrected. In this case, although the violation will be documented in the agency files, no INC will be issued.

The failure to take timely corrective action as required to meet any standard in this article will be considered either a major or minor violation in accordance with the classification set out below for each standard, unless an applicable variance has been granted or the standards have been otherwise modified in accordance with Article IV.

A major violation, as defined in this Order, will generally require an immediate shut-in of the metering device. However, where the non-recoupable loss is not significant or where damage to the resource is likely to occur if a shut-in is required, an abatement period of 24 hours may be granted by the authorized officer or his representative.

Where abatement is required "prior to sales or removal," action is required to be taken so that no gas can be removed beyond the measurement point until properly measured.

C. Primary Element—Orifice Meters

The following are minimum standards for the measurement of natural gas using orifice meters.

1. For meters measuring more than 100 Mcf per day on a monthly basis, the orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "flange taps," shall be between 0.15 and 0.70.

Violation: Major.

Corrective Action: Install an orifice of such size that subsequent measurements will be within the appropriate beta ratio range. If changing the orifice causes the differential pressure to be recorded in the lower one-third of the chart, then either the meter tube or the differential element shall be changed, sizing the straight pipe sections in a manner that will provide subsequent measurement within the appropriate beta ratio range.

Abatement Period: Prior to sales or removal.

2. For meters measuring more than 100 Mcf per day on a monthly basis, the orifice to pipe diameter ratio (d/D), or the beta ratio, with meters using "pipe taps," shall be between 0.20 and 0.67.

Violation: Major.

Corrective Action: Same as C.1. above.

Abatement Period: Prior to sales or removal.

3. To obtain flow conditions as near optimum as possible and minimize the effects of turbulence in gas flow, the minimum length of straight pipe preceding and following an orifice, and the use of straightening vanes, shall conform to the specifications shown in Figures 4 through 9 of AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install proper length of pipe where appropriate or install straightening vanes in accordance with appropriate AGA Committee Report No. 3 specifications.

Abatement Period: Prior to sales or removal.

4. There shall be no pipe connections between the orifice and the nearest pipe fitting other than the pressure taps and/or thermometer wells as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Replace entire length of pipe ahead of the orifice meter with pipe of appropriate length and inside smoothness in accordance with AGA Committee Report No. 3.

Abatement Period: Prior to sales or removal.

5. The difference between the internal diameters of the meter tube pipe and the orifice fittings shall be within the tolerance limits set by AGA.

Violation: Major.

Corrective Action: Install properly sized meter tube.

Abatement Period: Prior to sales or removal.

6. For meters measuring more than 100 Mcf per day on a monthly basis, meter tubes shall be inspected at least every 5 years to ensure continuing conformance with the meter tube specifications in AGA Committee Report No. 3. Record results of inspections and take any necessary corrective actions to bring the meter tube into conformance with AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Inspect meter tube for conformance with AGA Committee Report No. 3, record results of inspection, and take necessary corrective actions.

Abatement Period: 60 days.

7. Meter tubes using flange taps or pipe taps shall have the pressure tap holes located as specified in AGA Committee Report No. 3.

Violation: Major.

Corrective Action: Install pressure tap as specified.

Abatement Period: Prior to sales or removal.

8. Orifice plates shall be removed from the flange or plate holder, and visually inspected for conformance with AGA standards and specifications, at least semi-annually, during calibration of the secondary element.

Violation: Minor.

Corrective Action: Remove and visually inspect orifice plate for conformance with AGA standards and specifications.

Abatement Period: No later than the next meter calibration.

9. Any plate or orifice that is determined not to be in conformance with AGA standards shall be replaced with one that is in conformance.

Violation: Major.

Corrective Action: Replace orifice plate.

Abatement Period: Prior to sales or removal.

10. All connections and fittings of the secondary element (including meter pots and meter manifolds) shall be leak tested prior to conducting tests of the meter's accuracy.

Violation: Minor.

Corrective Action: Stop meter calibration and conduct leak test.

Abatement Period: Prior to completion of calibration.

11. Volumes of gas delivered shall be determined according to the flow equations specified in AGA Committee Report No. 3.

Violation: Minor.

Corrective Action: Recalculate all gas volumes not determined in accordance with flow equations specified in AGA Committee Report No. 3. Submit a report adjusting the volume of gas measured, and showing or discussing all calculations made in correcting the volumes.

Abatement Period: 60 days.

D. Secondary Element

The following are minimum standards for the secondary element of the orifice meter.

1. Continuous temperature recorders to measure the flowing gas temperature are required on all sales and allocation meters measuring more than 100 Mcf per day on a monthly basis. Meters measuring 100 Mcf or less per day on a monthly basis shall determine the flowing temperature of the gas by one of the following:

a. Continuous temperature recorder, or

b. Average flowing temperature, as determined by a method approved by the authorized officer.

Violation: Major.

Corrective Action: Install temperature measuring device as required.

Abatement Period: Prior to sales or removal.

2. The temperature recording device shall be tested for accuracy utilizing one of the following:

a. "Test well" in the meter run; or

b. Water bath.

Record "as found" readings, make any necessary adjustments, and record "as left" readings.

Violation: Minor.

Corrective Action: Test temperature recording device as specified, record "as found" readings, make necessary adjustments, and record "as left" readings.

Abatement Period: Prior to completion of calibration.

3. Differential and static pen accuracy shall be tested for linearity at zero, at 100 percent of the element range, and at 1 point within the normal operating range of the differential and static recordings. Record "as found" readings, make any necessary adjustments, and record "as left" readings.

Violation: Minor.

Corrective Action: Test linearity at the required points, record "as found" readings, make necessary adjustments, and record "as left" readings.

Abatement Period: Prior to completion of calibration.

4. All calibrating equipment shall be more accurate than the required accuracy of the equipment being calibrated, as shown in the documentation required in paragraph 5. Calibration equipment shall be recertified at least annually.

Violation: Minor.

Corrective Action: Stop calibration, substitute proper calibrating equipment, and restart calibration.

Abatement Period: Prior to completion of calibration.

5. Documentation of the certification/recertification of the calibrating equipment shall be available to the authorized officer at the time of calibration.

Violation: Minor.

Corrective Action: Provide documentation.

Abatement Period: 20 days.

6. The accuracy of the recording device(s) shall be tested following initial meter installation and following repairs. Meters measuring more than 100 Mcf per day on a monthly basis shall be tested at least quarterly. Meters measuring 100 Mcf per day or less on a monthly basis shall be tested at least semi-annually.

Violation: Minor.

Corrective Action: Test meter for accuracy.

Abatement Period: a. 24 hours for initial meter installation or following repairs.

b. 30 days to conduct the quarterly or semi-annual meter test, as applicable.

7. The authorized officer shall be notified in writing of all meter calibrations. Calibration schedules covering monthly, quarterly, semiannual, or annual periods shall be submitted at least 10 days prior to the date of the first calibration on the schedule.

Violation: Minor.

Corrective Action: Submit the calibration schedule, as required.

Abatement Period: Prior to next calibration.

8. If the inaccuracy in the recording device(s) results in a volume calculation more than 1 percent in error, the volume measured since the last calibration shall be corrected. However, if the magnitude of the volume error is less than 200 Mcf per month, it will not be pursued unless it occurs on a continuing basis. In that case, the meter shall be adjusted in accordance with Sections III.D.2. and III.D.3. Also, the operator shall submit a report adjusting the volumes of gas measured, and showing or discussing all calculations made in correcting the volumes. The volumes shall be corrected back to the time the inaccuracy occurred, if known. If this time is unknown, volumes shall be corrected for the last half of the period elapsed since the date of last calibration.

Violation: Minor.

Corrective Action: Submit report with adjusted volumes.

Abatement Period: 60 days.

9. All meter calibration report forms shall include the following information, if applicable, and shall be submitted to the authorized officer upon request.

a. Name of producer or seller;

b. Name of purchaser;

c. Federal or Indian lease number, communitization agreement number, or unit name or number and participating area identification;

d. Station or meter number;

e. Meter data (make, differential, and static and temperature range, recording period);

f. Type of connections (flange or pipe, upstream or downstream static connections);

g. Orifice data (plate size and ID of meter tube);

h. Time and date of test;

i. Instrument error(s) found and certification of corrections, and "as found" and "as left" data for all instruments;

j. Signature and affiliation of tester and witness;

k. Remarks.

Violation: Minor.

Corrective Action: Submit amended meter calibration report(s) to authorized officer, including all required information.

Abatement Period: 15 days.

10. Chart Recorder: The following are minimum standards that only apply to chart recorders.

a. For meters measuring more than 100 Mcf per day on a monthly basis, the pen that records differential pressure shall operate in the outer ⅔ of the chart range (the physical distance on the chart measured from zero) for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size the metering equipment so that the differential pen will record in the outer ⅔ of the chart range.

Abatement Period: 20 days.

b. For meters measuring more than 100 Mcf per day on a monthly basis, the static element shall be sized to make the

pen that records the static pressure operate in the outer ⅔ of the chart range (the physical distance on the chart measured from zero) for the majority of the flowing period.

Violation: Minor.

Corrective Action: Size static element so as to cause static pen to record in the outer ⅔ of the chart range.

Abatement Period: 20 days.

c. The meter's differential pen arc, the ability of the differential pen to duplicate the test chart's time arc over the full range of the test chart, shall be checked during each testing of the meter's accuracy and adjustments made if necessary.

Violation: Minor.

Corrective Action: Stop meter calibration, check differential pen arc, make necessary adjustments, and restart calibration.

Abatement Period: Prior to completion of calibration.

d. During testing of the meter accuracy, the static pen time lag shall be adjusted to ensure independent movement of the static pen in relation to the differential pen.

Violation: Minor.

Corrective Action: Make appropriate adjustments.

Abatement Period: Prior to completion of calibration.

11. Electronic Flow Computers: The following are minimum standards that only apply to electronic flow computers (EFCs).

a. The current static pressure, differential pressure, and temperature shall be displayed on a continuous basis.

Violation: Minor.

Corrective Action: Display required data.

Abatement Period: 30 days.

b. The EFC shall be equipped with a back-up power source capable of retaining data collected for a minimum of 35 days.

Violation: Minor.

Corrective Action: Install back-up power source capable of retaining data collected for a minimum of 35 days.

Abatement Period: 30 days.

c. For meters measuring more than 100 Mcf per day on a monthly basis, the EFC shall be installed, operated, and maintained to achieve an overall meter uncertainty of within ±3 percent.

Violation: Minor.

Corrective Action: Make any necessary changes to bring the overall meter uncertainty within ±3 percent.

Abatement Period: 20 days.

E. Other Requirements

The following are minimum standards that apply to all sales and sales allocation meter installations.

1. If, for any reason, the measuring equipment is out of service or malfunctioning so that the quantity of gas delivered is not known, the volume delivered during this period shall be estimated using one of the following methods, in this order of priority:

a. Record data on check metering equipment if used in lieu of main meter recordings. If check meters are not installed or are found to be recording inaccurately, then

b. Base corrections on the percentage error found during the instrument test. If that is not feasible, then

c. Estimate the quantity of gas run, based on deliveries made under similar conditions when the metering equipment was registering accurately.

Violation: Minor.

Corrective Action: Estimate volumes delivered during those periods cited using one or more of the approved methods identified in the order of priority and, where necessary, submit a report showing corrected volumes.

Abatement Period: 60 days.

2. The Btu content shall be determined at least annually, unless otherwise required by the authorized officer, by means of (1) a recording calorimeter, (2) calculations based on a complete compositional analysis of the gas and the heating value of each constituent, in accordance with AGA Committee Report No. 3, or (3) any other method acceptable to the authorized officer. The authorized officer shall be apprised of the method used for each determination and be furnished with all needed analytical data or other documentation upon request. The Btu content most recently determined and used for royalty purposes shall be reported.

Violation: Minor.

Corrective Action: Determine Btu content and submit a report.

Abatement Period: 30 days.

3. For purposes of measurement and meter calibration, atmospheric pressure shall be established through an actual measurement or assumed to be a constant value based on the elevation at the metering station.

Violation: Minor.

Corrective Action: Recalibrate gas meter and submit a report indicating corrected volumes using the adjusted absolute zero or properly calculated pressure extensions.

Abatement Period: 30 days.

4. The method and frequency of determining specific gravity shall be determined by use of one of the following methods:

a. Continuous recording gravitometer;

b. Complete compositional analysis of a spot or cumulative gas sample determined at least annually.

Violation: Minor.

Corrective Action: Determine specific gravity of gas by approved method and submit a report with corrected volume.

Abatement Period: 30 days.

F. Gas Measurement by Other Methods or at Other Locations Acceptable to the Authorized Officer

Using any method of gas measurement other than by orifice meter at a location on the lease, unit, unit participating area, or communitized area, requires prior approval from the authorized officer pursuant to 43 CFR 3162.7–3. Other measurement methods include, but are not limited to:

Turbine metering systems
Positive displacement meter
Pitot tube
Orifice well tester
Critical flow prover
Gas-oil ratio

The requirements and minimum standards for gas measurement on the lease, unit, unit participating area, or communitized area by an alternate method of measurement, or at a location off the lease, unit, unit participating area, or communitized area by either an authorized or an alternate method of measurement, are as follows:

1. Measurement on the Lease, Unit, Unit Participating Area, or Communitized Area

A written application for approval of an alternate gas measurement method shall be submitted to the authorized officer and written approval obtained before any such alternate gas measurement method is installed or operated. Any operator requesting approval of any alternate gas sales measurement system shall submit performance data, actual field test results, or any other supporting data or evidence acceptable to the authorized officer, that will demonstrate that the proposed alternate gas sales measurement system will meet or exceed the objectives of the applicable minimum standards or will not adversely affect royalty income or production accountability.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales or removal.

2. Measurement at a Location Off the Lease, Unit, Unit Participating Area, or Communitized Area

a. A written application for off-lease measurement shall be submitted to the authorized officer and written approval obtained before any such off-lease gas measurement facilities are installed or operated. The application for approval of off-lease measurement shall justify the location of the measurement facilities at the desired off-lease location before approval will be granted, but no additional approval as to the gas sales measurement method is required, provided measurement is to be accomplished by orifice meter pursuant to the requirements and minimum standards of this Order.

Violation: Minor.

Corrective Action: Submit application and obtain approval.

Abatement Period: 20 days.

b. If gas measurement is to be accomplished at a location off the lease, unit, unit participating area, or communitized area by any alternate measurement method (any method other than measurement by orifice meter), then the application, in addition to justifying the location of the measurement facilities, shall also demonstrate the acceptability of the alternate measurement method pursuant to Section III.F.1. of this Order.

Violation: Major.

Corrective Action: Submit application and obtain approval.

Abatement Period: Prior to sales.

IV. Variances From Minimum Standards

An operator may request that the authorized officer approve a variance from any of the minimum standards prescribed in Article III. All such requests shall be submitted in writing to the appropriate authorized officer and shall provide information as to the circumstances warranting approval of the variance(s) requested and the proposed alternative means by which the related minimum standard(s) will be satisfied. The authorized officer, after considering all relevant factors, shall approve the requested variance(s) if it is determined that the proposed alternative(s) meets or exceeds the objectives of the applicable minimum standard(s), or does not adversely affect royalty income or production accountability.

In addition, approval may be given orally by the authorized officer before the operator initiates actions which require a variance from minimum standards. The oral request, if granted, shall be followed by a written request not later than the fifth business day following oral approval, and written approval will then be appropriate.

The authorized officer may also issue NTLs that establish modified standards and requirements for specific geographic areas of operations.

After notice to the operator, the authorized officer may also require compliance with standards that exceed those contained in this Order whenever such additional requirements are necessary to achieve protection of royalty income or production accountability. The rationale for any such additional requirements shall be documented in writing to the operator.

[FR Doc. 94–149 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–84–P

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 67

[CGD 93–063]

Vessel Rebuild Standards

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Coast Guard is considering whether to undertake rulemaking to develop standards for vessel rebuild determinations. In order to help it determine whether rulemaking is needed and the scope of the issues involved, the Coast Guard conducted a public meeting on November 16, 1993. At the meeting, attendees discussed problems encountered under existing procedures and possible solutions, and whether use of a negotiated rulemaking would be appropriate. The meeting attendees requested that the Coast Guard conduct a second meeting to further discuss the issues. This notice announces the date, time, and place of the second meeting.

DATES: 1. The meeting will be held on February 15, 1994, beginning at 9 a.m. and concluding at 3 p.m. or earlier if discussion is concluded.

2. All comments should be received by the Coast Guard on or before January 31, 1994.

ADDRESSES: 1. The meeting will be held in room 4400, DOT Headquarters (Nassif Building), 400 Seventh Street, SW., Washington, DC 20590.

2. All written material should be submitted to the Coast Guard at: Vessel Documentation and Tonnage Survey Branch, room 1312, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Ms. Laura Burley, Vessel Documentation and Tonnage Survey Branch at (202) 267–1492.

SUPPLEMENTARY INFORMATION: Under section 27 of the Merchant Marine Act, 1920 (46 U.S.C. app. 883), a vessel entitled to engage in the coastwise trade by virtue of having been built in the United States which is later rebuilt outside the United States, loses its eligibility to engage in the coastwise trade. Under 46 U.S.C. 12106, a vessel not eligible for the coastwise trade cannot receive a Great Lakes endorsement on its Certificate of Documentation. In addition, under 46 U.S.C. 12108, a fishing vessel which has been rebuilt outside the United States and which does not qualify for the rebuild savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987, is not eligible for a fishery endorsement on its Certificate of Documentation.

Effective January 1, 1994, the Coast Guard's regulatory standard for rebuild determinations will be found in 46 CFR § 67.177. (See final rule published in the **Federal Register** issue of Monday, November 15, 1993, page 60256.) In accordance with that standard, a vessel is rebuilt when "any considerable part of its hull or superstructure is built upon or is substantially altered." A determination that a vessel has been rebuilt, if the rebuilding was done outside the U.S., results in a permanent loss of the eligibility of the vessel to engage in the restricted trades, with a commensurate loss in value. At the present time none of the problematic terms contained in the regulatory standard are defined. As a result, the Coast Guard frequently receives requests for advisory opinions that certain work to be performed on a vessel does not constitute a rebuilding. In support of a request for a rebuild determination, the submitter will generally enclose extensive documentation addressing the character and scope of the work to be performed including plans, drawings, contracts, work orders, and materials lists. Then the submitter will attempt to show that the work will not build upon or "substantially" alter "any considerable part" of the vessel's hull or superstructure. Often, the submitter will make comparisons between the before and after area of the hull and superstructure; the weight and area of steel plate to be replaced or added; or the comparative cost of the planned work to the value of the vessel. Unfortunately, the vessel representative sometimes does not submit any documentation until after the work is performed only to have the Coast Guard determine that the vessel has been rebuilt, with the disastrous consequence of loss of trading entitlements. In other cases, the work actually done on the vessel differs from or exceeds the planned work, with possible adverse effects on the final determination.

The Coast Guard is considering initiating rulemaking to develop standards for determining when work

on a vessel constitutes a rebuilding and to define the terms involved in rebuild determinations. However, to assist it to determine the scope of the issues involved in the project and to receive suggested definitions and standards for consideration, the Coast Guard conducted a public meeting before proceeding with the rulemaking process. At the meeting held on November 16, 1993, the attendees requested time to consider the information and ideas shared at the meeting and the opportunity to submit written materials to the Coast Guard. In addition, the attendees requested that the Coast Guard schedule a second meeting to further discuss the issues involved, including whether the use of negotiated rulemaking would be appropriate. The Coast Guard agreed.

In order to have sufficient time to review written submissions prior to the meeting, all materials should be received by the Coast Guard on or before January 31, 1994. Attendees are encouraged to share written submissions with other attendees. An attendance list with addresses for this purpose may be obtained by contacting the person identified in **FOR FURTHER INFORMATION CONTACT** in this notice.

The meeting is open to the public and will begin at 9 a.m. on February 15, 1994, at: DOT Headquarters (Nassif Building), room 4400, 400 Seventh Street, SW., Washington, DC 20590.

Dated: December 29, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–265 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–254, DA 93–1576]

Radio Broadcast Services; Limitations on Commercial Time on Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of reply comment period.

SUMMARY: This action, in response to a request indicating good cause to extend the reply comment period filed by the Center for the Study of Commercialism, the Center for Media Education, the Consumer Federation of America, and the Office of Communication of the United Church for Christ, extends the deadline for filing reply comments in the Notice of Inquiry in the above-cited docket. The Notice solicited comments on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the *Notice* on its own motion. Comments were due by December 20, 1993. The deadline for reply comments was originally January 5, 1994, and is extended until February 4, 1994.

DATES: Reply comments are now due by February 4, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION:

Order

Adopted: December 29, 1993
Released: December 29, 1993
Reply Comment Date: February 4, 1994
By the Chief, Mass Media Bureau

1. This action extends the deadline for filing reply comments in response to the Notice of Inquiry in MM Docket No. 93–254, 8 FCC Rcd 7277 (1993), in which the Commission seeks comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the Notice on its own motion. Comments were due by December 20, 1993, and the deadline for reply comments was January 5, 1994.[1]

2. The Center for the Study of Commercialism, the Center for Media Education, the Consumer Federation of America, and the Office of Communication of the United Church for Christ (the parties) request a 30-day extension of the reply comment period in order to address adequately the matters asserted in the comments. The parties state that the reply comment period extends over the seasonal holidays, providing insufficient time in which to prepare an adequate reply. In addition, they state that their co-counsel, a clinical legal education program at a local law school, lacks the staff to prepare reply comments during the school holiday.[2]

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Grant of the request will provide the Commission a more substantial record upon which to base its findings. Therefore, pursuant to 47 CFR 0.283, the deadline for filing reply comments is extended until February 4, 1994.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 94–211 Filed 1–5–94; 8:45 am]

BILLING CODE 6712–01–M

[1] The Bureau altered these comments dates from the original dates set forth in the Notice of Inquiry. Order in MM Docket No. 93–254, DA No. 93–1425 (released November 22, 1993).

[2] The parties also state that an extension will allow the Commission to supplement the Notice. Specifically, they request that two pending petitions for rulemaking, both of which concern the Commission's rules on commercial sponsorship identification, be incorporated into this proceeding. However, we believe that the issues raised in the petitions for rulemaking are best addressed separately by the Commission. Accordingly, we decline to extend the range of issues addressed in this proceeding.

Notices

Federal Register
Vol. 59, No. 4
Thursday, January 6, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

December 30, 1993.

The Department of Agriculture has submitted to OBM for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection;
(2) Title of the information collection;
(3) Form number(s), if applicable;
(4) How often the information is requested
(5) Who will be required or asked to report;
(6) An estimate of the number of responses;
(7) An estimate of the total number of hours needed to provide the information;
(8) Name and telephone number of the agency contact person.

Questions about the time in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

New Collection

- Food Safety and Inspection Service, Processing Procedures and Quality Control Systems, FSIS Forms 8820–2 & 6000–17, Recordkeeping; on occasion, Businesses or other for-profit; 15,213 responses; 5,849 hours, Lee Puricelli, (202) 720–7163.

Larry K. Roberson,

Deputy Department Clearance Officer.

[FR Doc. 94–202 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–01–M

Office of the Secretary

Meat Import Limitations; First Quarterly Estimate

Public Law 88–482, enacted August 22, 1964, as amended (19 U.S.C. 2253 note (the "Act"), provided for limiting the quantity of fresh, chilled, or frozen meat of bovine, sheep except lamb, and goats; and processed meat of beef or veal (Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.20, 0201.10.40, 0201.20.60, 0201.30.20, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.20, 0202.20.40, 0202.20.60, 0202.30.20, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00), other than Canada and Mexico, which may be imported into the United States in any Calendar year. Such limitations are to be imposed when the Secretary of Agriculture estimates that imports of articles, other than products of Canada and Mexico, provided for in Harmonized Tariff Schedule of the United States subheadings 0201.10.00, 0201.20.40, 0201.20.60, 0201.30.40, 0201.30.60, 0202.10.00, 0202.20.40, 0202.20.60, 0202.30.40, 0202.30.60, 0204.21.00, 0204.22.40, 0204.23.40, 0204.41.00, 0204.42.40, 0204.43.40, and 0204.50.00 (hereinafter referred to as "meat articles"), in the absence of limitations under the Act during such calendar year, would equal or exceed 110 percent of the estimated aggregate quantity of meat articles prescribed for calendar year 1994 by subsection 2(c) as adjusted under subsection 2(d) of the Act.

In accordance with the requirements of the Act, I have made the following estimates:

1. The estimated aggregate quantity of meat articles prescribed by subsection 2(c) as adjusted by subsection 2(d) of the Act for calendar year 1994 is 1,108.1 million pounds.

2. The first quarterly estimate of the aggregate quantity of meat articles which would, in the absence of limitations under the Act, be imported during calendar year 1994 is 1,218.8 million pounds.

Done at Washington, DC this 30th day of December, 1993.

Mike Espy,

Secretary.

[FR Doc. 94–192 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–10–M

Forest Service

Environmental Impact Statement for the Mad River Water Withdrawal and Sugarbush South Snowmaking and Trail Improvement Project; Green Mountain National Forest; Towns of Warren and Fayston; Washington County, VT

AGENCY: Forest Service, USDA.

The Forest Service is the lead agency for preparing the Environmental Impact Statement. The U.S. Army Corps of Engineers, U.S. Environmental Protection Agency, and U.S. Department of Interior—Fish and Wildlife Service are cooperating agencies.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare a Draft and Final Environmental Impact Statement to determine whether to authorize additional snowmaking capability and trail improvements at the Sugarbush South Ski Area as proposed by Snowridge, Inc. Authorization of the trail improvements and snowmaking would implement a portion of the Master Development Plan for the Sugarbush Valley Winter Sports Area, approved on July 14, 1983. The proposed use and activities are consistent with the Land and Resource Management Plan for the Green Mountain National Forest and the current Special Use Permit for operation of the Sugarbush Ski Resort. Authorization would require an amendment to the Master Development Plan for the Sugarbush Valley Winter Sports Area so that the Master Development Plan identifies the water source for snowmaking and the schedule for water withdrawal. The Master Development Plan would also be amended to accurately show the approved trail configuration and anticipated development schedule.

Sugarbush is a winter sports complex operated by Snowridge, Inc. and located on both private lands and National Forest System lands. There are about

2,100 acres at Sugarbush South, the area where this project is proposed. Of that 2,100 acres, about 1825 acres are National Forest System lands.

The purpose of the actions proposed by Snowridge, Inc. is to improve the quality of winter sports recreation opportunities at Sugarbush South by installing snowmaking equipment and facilities that would provide coverage over at least 70% of the ski trails, and by constructing widening, and grading the trail system so that there is improved skier traffic flow and safety. Improved trail design would also offer a better mix of opportunities for novice, intermediate, advanced, and expert skiers.

Additional snowmaking is needed because Sugarbush South currently has snowmaking coverage on only 38% of the ski trails. Natural snowfall is inconsistent and often inadequate during a typical Vermont winter. Predictable snow coverage is needed if Sugarbush is to consistently provide quality winter sports recreation opportunities, be attractive to skiers, and remain competitive with other major ski areas in New England. Increased snowmaking will also relieve skier traffic congestion problems and improve skier safety by providing more opportunities for skiers to disperse over many trails.

Trail widening is needed so that snow grooming equipment can be used and to relieve "bottle-necks" where skiers merge. Trail construction is needed to improve inter-connections among trails, improve skier traffic flow, and increase the number of intermediate and advanced trails so that the variety of skier experiences available is better geared to families and groups made up of skiers with different ability levels.

The proposed action is to: (1) Construct and operate a water withdrawal facility on the Mad River including a removable weir, a permanent Parshall flume and two intake structures; (2) Withdraw for snowmaking use an estimated 300–420 million gallons of water per year (the estimated average is 380 Million gallons per year) from the Mad River under a schedule which will prohibit withdrawals that would reduce flows to less than the February median flow rate (0.79 csm); (3) Construct and operate a 13-acre water storage pond located adjacent to the Mad River and having a capacity of approximately 55 to 60 million gallons; (4) Construct and operate pumping facilities adjacent to the water storage pond; (5) Construct a 15 foot wide, 1,800 foot long gravel access road from Highway 100 to the pond site; (6) Construct and operate about 3.3 miles of buried 16-inch pipeline to transport water from the storage pond to the snowmaking facilities at Sugarbush South; (7) Construct and operate a new snowmaking facility located in the vicinity of the existing vehicle maintenance shop. This is a building housing the pumps, compressors, and control system used for snowmaking; (8) Install approximately 90,000 feet of buried pipelines and hydrants along 24 trails at Sugarbush South and operate for snowmaking; (9) Use water from the Mad River source and the existing source on Clay Brook for snowmaking on an additional 157 acres of ski trails; and (10) Widen 24 trails, widen 2 lift lines, construct 6 new trails, and grade several existing trails. Total widening and trail construction will add 100 acres of skiable terrain.

Both the Forest Service and the U.S. Army Corps of Engineers have decisions to make with respect to the proposal. The Forest Service must decide whether to authorize the project under the Special Use Permit and whether to approve amendments to the Master Development Plan for the Sugarbush Valley Winter Sports Area. The U.S. Army Corps of Engineers must make a decision as to whether to issue a permit under Section 404 of the Clean Water Act to authorize the Mad River water withdrawal structures, holding pond, access road and fill.

The purpose of the Environmental Impact Statement is to determine the environmental effects of the proposed action and of any reasonable alternatives actions that would also achieve the purpose and need while addressing significant issues raised through public comment and agency review.

The alternatives may include any combination of feasible water withdrawal sources; water storage sites; and water withdrawal schedules on source rivers or brooks as long as those alternatives would achieve the purpose and need for this proposal while addressing significant issues that are identified during the analysis. Alternatives may include different trail configurations if significant concerns are raised about the trail improvements being proposed. The analysis will include a discussion of cumulative effects of all water withdrawals in the area affected by this proposal, including the current withdrawal at Clay Brook, the proposed withdrawal on Mad River, and any alternative water withdrawals that are identified.

This Environmental Impact Statement and analysis will not reconsider the overall development plans for the Sugarbush Valley Winter Sports Areas as described in the Master Development Plan approved on July 14, 1983. Forest Supervisor Terry Hoffman completed a review of that Master Development Plan on September 30, 1993. The Forest Supervisor determined that there is no need to change the overall development plan or supplement the 1983 Environmental Impact Statement that was prepared in support of that Plan, except for specific amendments to the Master Development Plan associated with the proposal from Snowridge Inc. to use the Mad River as a water source for snowmaking, increase the volume of water used for snowmaking, and revise the trail map (or the alternative to this proposal as selected by the Forest Service). Those specific amendments are the focus and scope of the Environmental Impact Statement that will be prepared.

The purpose of this Notice is to inform you that the Forest Service, with assistance from the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, and U.S. Army Corp of Engineers is soliciting your comments and concerns about this proposed action.

The environmental analysis and decision-making process will include opportunities for public participation and comment so that people interested in this proposal may contribute to the final decision.

The Forest Service will host an open house to be held at the Waitsfield Elementary School, Waitsfield, Vermont, from 6:00 PM to 8:00 PM on Monday January 24, 1994. The purpose of this open house is to discuss and answer questions about the project proposal, the analysis process that will be conducted by the Forest Service and cooperating agencies, and the ways that people can best participate in the analysis and decision-making process.

Public participation will be welcome throughout the analysis, but is especially important at two points. The first point is during the scoping process (40 CFR 1501.7). The agency is now seeking written comments and suggestions on the scope of the analysis. Comments relevant to scoping include: (1) identifying potential issues, (2) identifying those issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a previous environmental analysis, (4) identifying additional alternatives to the proposed action that should be considered, (5) identifying potential environmental effects of the proposed action and alternatives, and (6) determining task assignments among the lead and cooperating agencies. General notice to the public concerning the scope of the analysis will be provided by mailings, news releases and/or public meetings. The second point when public participation is most important is during the public comment period on the Draft Environmental Impact Statement.

DATES: Comments related to the scope of the analysis should be received by February 18, 1994 to ensure timely consideration.

ADDRESSES: Submit written comments and suggestions related to the scope of analysis to Terry Hoffman, Forest Supervisor, Green Mountain National Forest, 231 N. Main Street, Rutland, VT 05701.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed action and EIS to Sam Emmons, Green Mountain National Forest, 231 N. Main Street, Rutland, VT 05701, (phone 802–747–6757).

SUPPLEMENTARY INFORMATION: Sugarbush is a winter sports area which has operated by Special Use Permit since 1958 on National Forest System lands administered by the Green Mountain National Forest. Most of the base lodge facilities are on provide lands, but some of the base facilities and many of the lifts and trails are located on National Forest System lands. Sugarbush encompasses about 6,000 acres, of which a little over 1,825 acres are on National Forest System lands at Sugarbush South (about 30%).

Sugarbush operates in accordance with the Master Development Plan for the Sugarbush Valley Winter Sports Area, which was approved by the Forest Service on July 14, 1983. Specific operations on National Forest System lands are authorized under a Special Use Permit issued by the Forest Service on December 9, 1988.

The proposed action is consistent with the long-range goals for this area as defined in the Land and Resource Management Plan for the Green Mountain National Forest. That Forest Plan was approved on January 15, 1987. Under that Forest Plan, the area encompassed by the Suguarbush Ski Area is assigned to management under prescription 7.1A. This management prescription emphasizes highly developed areas, including downhill ski areas. The purpose of prescription 7.1A is to provide opportunities for recreation requiring highly developed structures and facilities, maintain a visually appealing landscape, and manage for other resources and uses in a compatible way. The Forest Service does not anticipate the need for any amendments to the Land and Resource Management Plan as a result of this snowmaking proposal.

On September 30, 1993, the Forest Service completed a review of an Environmental Impact Statement completed in 1983 and the Master Development Plan which was approved based on that Environmental Impact Statement. Based on that review, the Forest Supervisor determined that there was no need to supplement the 1983 Environmental Impact Statement or revise the Master Development Plan except for amendments to the Master Development Plan that may result from the analysis of the Mad River water withdrawal proposal.

Four amendments to the Master Development Plan would likely be required if the project proposal is approved: (1) Identify the Mad River as a source of water for snowmaking; (2) Identify the anticipated schedules and volumes for water withdrawal and any restrictions or requirements related to snowmaking water withdrawal; (3) Revise the Master Development Plan trails map so that it accurately displays the approved trail configuration for Sugarbush South; and (4) Update the Development Schedule (Appendix C in the Master Development Plan) so that it shows current estimates of completion dates for each phase of the previously approved development at Sugarbush.

The proposed snowmaking facilities, trail widening, construction, and improvement, and the actual snowmaking itself, would be located on National Forest System land operated under special use permit. Approval of these actions which would occur on National Forest System lands requires Forest Service authorization under the Special Use Permit.

The Department of the Army permit program is authorized by section 10 of the Rivers and Harbors Act of 1899, section 404 of the Clean Water Act, and section 103 of the Marine Protection Research and Sanctuaries Act. These laws require permits authorizing activities in or affecting navigable waters of the United States, the discharge of dredged or fill materials into waters of the United States, and the transportation of dredged material for the purpose of dumping it into ocean waters. The Corps must make a decision as to whether to issue a section 404 permit for activities associated with the Mad River water withdrawal. These activities include water withdrawal structures, holding pond, access road, and fill. The proposed water withdrawal site, storage pond, access road and most of the pipeline to the snowmaking facility would be located on private lands.

Several permits, certificates, or authorizations through the review processes established for the State of Vermont are also required to implement the proposed action. The District Environmental Commission must issue permits under the State of Vermont's Act 250 for various phases of the project. A 401 Certificate must be issued by the State Division of Water Quality. A Dam Permit must be issued by the State Agency of Natural Resources. At this time, all permits or authorizations required by the State of Vermont have been granted, except for one Act 250 permit to approve the trial improvements.

Until a Record of Decision based on this EIS is issued, the Sugarbush Ski Area will continue to be managed according to the terms and conditions of the Land and Resource Management Plan for the Green Mountain National Forest, the Master Development Plan for the Sugarbush Valley Winter Sports Area, and the Special Use Permit.

A range of reasonable alternatives to the proposed action will be considered in the analysis. Reasonable alternatives are those which fulfill the purpose and need for the proposals and address significant issues that are identified during the scoping process. The analysis may include an evaluation of feasible alternative water sources or storage sites which could be used either separately or in combination to meet snowmaking objectives while reducing or avoiding impacts to the aquatic environment. Only one specific alternative to the proposed action has been identified at this time. That is the "no action" alternative. If the "no action" alternative were selected, the proposed project would not take place at this time. Other alternatives will be developed based on the results of scoping.

The analysis will address major issues and concerns about the proposed action and alternatives and will disclose the direct and indirect impacts related to those issues. The following tentative issues have been identified: (1) Impacts to wetlands and floodplains; (2) Impacts to waterways; (3) Impacts to cultural resource; (4) Impacts to streams from increased snowpack and runoff; (5) Impacts to fisheries; (6) Effect on the suitability of the Mad River for inclusion in the national system of Wild and Scenic Rivers; (7) Effect on recreation opportunities, specifically skiing and winter sports at Sugarbush South; (8) Effects on visual quality, and (9) Impacts to the local economy.

The Draft Environmental Impact Statement is expected to be filed with the Environmental Protection Agency and to be available for public review in

the summer of 1994. At that time, the Environmental Protection Agency will publish a Notice of Availability in the **Federal Register**.

The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the Notice of Availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the Draft Environmental Impact Statement, the comments will be analyzed and considered by the agency in preparing the Final Environmental Impact Statement.

The Final Environmental Impact Statement is scheduled to be completed and available to the public approximately 5 months following the close of the review period for the Draft Environmental Impact Statement. The responsible Forest Service official will document the decision and the reasons supporting it in a Record of Decision. That decision will be subject to appeal pursuant to 36 CFR part 215.

A separate decision will be made by the U.S. Army Corps of Engineers concerning the issuance of permits under section 404 of the Clean Water Act.

The Forest Service official responsible for approving the proposed action is Terry Hoffman, Forest Supervisor, Green Mountain National Forest, 231 North Main Street, Rutland, VT 05701.

Dated: December 21, 1993.

Terry W. Hoffman,

Forest Supervisor.

[FR Doc. 94–407 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Rural Telephone Bank

Amendment to the Rural Electrification Act's "Buy American" Provision

AGENCY: Rural Electrification Administration and Rural Telephone Bank, USDA.

ACTION: Notice of Amendment to the Rural Electrification Act's "Buy American" Provision.

SUMMARY: The recently passed North America Free Trade Agreement Implementation Act has amended the Rural Electrification Act's "Buy American" provision. Previously, the provision required borrowers, when using loan funds, to purchase only equipment that was manufactured in the United States and that was made mostly from materials and supplies originating in the United States. The amended provision permits borrowers to also purchase equipment, under similar conditions, from Canadian or Mexican manufacturers.

FOR FURTHER INFORMATION CONTACT: For telephone program matters: George Bagnall, Chief, Engineering Standards Branch, Telecommunications Standards Division, Rural Electrification Administration, Room 2846, South Building, U.S. Department of Agriculture, Washington DC 20250–1500, telephone number (202) 720–0698.

For electric program matters: Harvey L. Bowles, Chairman, Technical Standards Committee "A" (Electric), Electric Staff Division, Rural Electrification Administration, Room 1246, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0980.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement Implementation Act, Public Law 103–182, (NAFTA Implementation Act) was signed into law on December 8, 1993. Section 381 (d) of Subtitle G of Title III of the NAFTA Implementation Act amends the REA "Buy American" provision established by Section 401 of the Rural Electrification Act of 1938, 52 Stat. 313, 318, 7 U.S.C. 901 et. seq., (1938 RE Act). The REA "Buy American" provision was revised by adding ", Mexico, or Canada" after every reference therein to the "United States."

Prior to its amendment by the NAFTA Implementation Act, the 1938 RE Act generally required borrowers, when using loan funds, to purchase equipment that was manufactured in the United States that was made mostly from materials and supplies originating in the United States. The NAFTA Implementation Act amendment of the 1938 RE Act takes effect on January 1, 1994. Generally speaking, after December 31, 1993, borrowers using funds from loans which have been made or guaranteed by REA or the Rural Telephone Bank will be able to satisfy REA's "Buy American" provision by purchasing equipment that has been manufactured in North America and made mostly of materials and supplies originating in North America, i.e., in the United States, Mexico, or Canada.

The REA "Buy American" provision as revised by the NAFTA Implementation Act reads as follows:

> In making loans pursuant to this title and pursuant to the Rural Electrification Act of 1936, the Administrator of Rural Electrification Administration shall require that, to the extent practicable and the cost of which is not unreasonable, the borrower agree to use in connection with the expenditure of such funds only such unmanufactured articles, materials, and supplies, as have been mined or produced in the United States, Mexico, or Canada, and only such manufactured articles, materials, and supplies as have been manufactured in the United States, Mexico, or Canada substantially all from articles, materials or supplies, mined, produced, or manufactured, as the case may be, in the United States, Mexico, or Canada.

The amended provision applies to all procurements within REA's jurisdiction that commence after December 31, 1993, which involve any REA, Rural Telephone Bank or guaranteed loan funds. REA is notifying borrowers, as well as Canadian and Mexican manufacturers with current REA technically-accepted products, of this change in the REA "Buy American" provision.

REA is also making technical revisions to its existing forms of loan contracts and loan contract amendments to conform them to the 1938 RE Act as amended by NAFTA. REA will begin using these revised forms for all transactions entered into after December 31, 1993. In addition, REA is making similar technical revisions to its recommended forms of contracts providing for the purchase of materials and supplies. These changes will have no effect on any contract which is fully in effect prior to January 1, 1994.

Michael V. Dunn,

Acting Under Secretary, Small Community and Rural Development.

[FR Doc 94–233 Filed 1–5–94; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Quarterly Survey of the Finances of Public–Employee Retirement Systems.

Form Number(s): F–10.

Agency Approval Number: 0607–0143.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 416 hours.

Number of Respondents: 104.

Avg Hours Per Response: 1 hour.

Needs and Uses: This survey provides, on a quarterly basis, nationwide data on the receipts, expenditures, and cash and security holdings of the 104 largest public–employee retirement systems. These 104 systems control billions of asset dollars and represent 90 percent of the total assets of all public employee retirement systems. Census conducts this survey at the request of the Council of Economic Advisors and the Federal Reserve Board. Economists from these agencies, the Department of Treasury, the Bureau of Economic Analysis, and others use these data to monitor and analyze investment trends and to formulate governmental economic policies and investment decisions.

Affected Public: State or local governments.

Frequency: Quarterly.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94–283 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–07–F

Foreign-Trade Zones Board

[Docket 64-93]

Foreign-Trade Zone 24—Pittston (Wilkes-Barre/Scranton), PA; Application for Subzone, Merck & Co. Pharmaceutical Plant, Riverside, PA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Eastern Distribution Center, Inc., grantee of FTZ 24, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc., (Merck) in Riverside, Pennsylvania. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on December 28, 1993.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: Patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals, and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort (subzone status is being requested for seven other Merck facilities).

Merck's Riverside plant (364 acres, 650,000 sq. ft., 68 bldgs.) is located at First Street and Avenue C in Riverside (Northumberland County), Pennsylvania, some 60 miles southwest of Scranton. The facility (560 employees) is used to produce bulk pharmaceutical chemicals and intermediates used at other Merck plants in the manufacture of human and animal health products, agricultural chemicals (including "Avermectin" and "Ethopabate"), and industrial chemicals. At the outset, zone procedures would be used primarily in the production of "Primaxin", a broad spectrum antibiotic produced for the company's Human Health Division. Currently, foreign-sourced materials account for 33 to 43 percent of finished product value and include the following specific ingredients: Acetoxy azetidinone, HP–20 resin dianon, SP–207 (brominated polystyrine resin), bromochloropentane, and D-carboxamide. The company also may purchase from abroad items in the following general product categories: Gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products. The company may also source from abroad insecticides, rodenticides, fungicides, and herbicides for use in its agricultural/veterinary products. Currently, exports account for some 40 percent of production.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products ("Primaxin"—3.7%; others—duty-free to 23.5%). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling in the 3.7%–7.9% range. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is March 7, 1994. Rebuttal comments in response to material submitted during the foregoing period

may be submitted during the subsequent 15-day period (to March 22, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director, U.S. Customs Service, Northeast Region, Bldg. 135, 2nd Floor, Middletown, PA 17057.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: December 28, 1993.

Dennis Puccinelli,

Acting Executive Secretary.

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International Trade Administration

[A–351–820]

Final Determination of Sales at Less Than Fair Value: Ferrosilicon From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberly Hardin, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–0371.

FINAL DETERMINATION: We determine that ferrosilicon (FeSi) from Brazil is being, or is likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act), and that critical circumstances exist for Italmagnesio S.A. Industria e Comercio (Italmagnesio), but not for Companhia Ferroligas Minas Gerais (Minasligas) or Companhia Brasileira Carbureto de Calcio (CBCC). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Scope of Investigation

The merchandise subject to this investigation is ferrosilicon, a ferroalloy generally containing, by weight, not less than four percent iron, more than eight percent but not more than 96 percent silicon, not more than 10 percent chromium, not more than 30 percent manganese, not more than three percent phosphorous, less than 2.75 percent magnesium, and not more than 10 percent calcium or any other element.

FeSi is a ferroalloy produced by combining silicon and iron through smelting in a submerged-arc furnace. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant.

FeSi is differentiated by size and by grade. The sizes express the maximum and minimum dimensions of the lumps of FeSi found in a given shipment. FeSi grades are defined by the percentages by weight of contained silicon and other minor elements. FeSi is most commonly sold to the iron and steel industries in standard grades of 75 percent and 50 percent FeSi.

Calcium silicon, ferrocalcium silicon, and magnesium ferrosilicon are specifically excluded from the scope of this investigation. Calcium silicon is an alloy containing, by weight, not more than five percent iron, 60 to 65 percent silicon, and 28 to 32 percent calcium. Ferrocalcium silicon is a ferroalloy containing, by weight, not less than four percent iron, 60 to 65 percent silicon, and more than 10 percent calcium. Magnesium ferrosilicon is a ferroalloy containing, by weight, not less than four percent iron, not more than 55 percent silicon, and not less than 2.75 percent magnesium.

FeSi is currently classifiable under the following subheadings of the Harmonized Tariff Schedule of the United States (HTSUS): 7202.21.1000, 7202.21.5000, 7202.21.7500, 7202.21.9000, 7202.29.0010, and 7202.29.0050. Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

FeSi in the form of slag is included within the scope of this investigation if it meets, generally, the chemical content definition stated above and is capable of being used as FeSi. FeSi is used primarily as an alloying agent in the production of steel and cast iron. It is also used in the steel industry as a deoxidizer and a reducing agent, and by cast iron producers as an inoculant. Parties that believe their importations of slag do not meet these definitions should contact the Department and request a scope determination.

Period of Investigation

The period of investigation (POI) is July 1, 1992, through December 31, 1992.

Case History

Since the publication of the notice of preliminary determination on August 16, 1993 (58 FR 43323), the following events have occurred.

On August 20, 1993, respondent Italmagnesio notified the Department that it had decided to withdraw from participation in this investigation and requested the return of all documents that it submitted during the course of the investigation.

On August 25, 1993, we returned the proprietary versions of all documents submitted by Italmagnesio during the investigation.

On August 23, 24, and 25, 1993, CBCC, petitioners, and Minasligas, respectively, requested a public hearing.

The Department conducted verification of the cost and sales responses of Minasligas and CBCC in Brazil from August 25 through September 14, 1993.

Petitioners, CBCC, and Minasligas submitted case briefs on October 27, 1993, and rebuttal briefs on November 1, 1993.

On November 3, 1993, a public hearing was held.

Best Information Available

As stated in the "Case History" section of this notice, Italmagnesio withdrew its responses prior to verification and stated that it would not participate further in the investigation. Therefore, Italmagnesio must be considered a non-cooperating party. As a non-cooperating party, based on our past practice (*see e.g.*, 58 FR 37215, *Final Determination of Sales At Less Than Value, Certain Cut-to-Length Carbon Steel Plate from the United Kingdom*, July 9, 1993), Italmagnesio will be assigned the higher of the margins alleged in the petition or a calculated margin for another company as best information available (BIA). (See Comment 15)

Such or Similar Comparisons

We have determined that all the products covered by this investigation constitute a single category of such or similar merchandise. Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we compared similar merchandise based on the following criteria: (1) The percentage range, by weight, of silicon content; (2) grade; and (3) sieve size. (See Comment 2 with regard to sieve size.)

Fair Value Comparisons

To determine whether sales of FeSi from Brazil to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified below.

United States Price

A. CBCC

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and exporter's sales price was not indicated by other circumstances.

We calculated purchase price based on packed FOB port of embarkation prices to unrelated customers. Because CBCC did not report packing for bulk sales, we used information from the public version of Minasligas' response for bulk packing. We made deductions where appropriate for foreign inland freight (which also included foreign inland insurance), foreign brokerage and handling, and warehousing.

We made an adjustment to USP for the taxes paid on the comparison sales in Brazil. On October 7, 1993, the Court of International Trade (CIT), in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decision, and has applied this new methodology in making the final determination in this investigation. From now on, the Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent the new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

In this investigation, there are four different taxes levied on sales of the subject merchandise in the home market. The ICMS tax is a regional tax, which varies depending upon the state in which the purchase originates. The IPI tax is a fixed percentage rate tax of four percent. Finally, the PIS and FINSOCIAL taxes are a fixed percentage rate tax equalling 2.65 percent combined. CBCC used both a unit and a gross basis to calculate the combined PIS and FINSOCIAL taxes within various months of the POI. We recalculated these taxes on a unit basis, where appropriate, which is the way CBCC calculated them. Because these taxes are calculated on the same base price, we find them not to be cascading. Thus, for each sale, we made only one tax adjustment which equals the sum of the actual tax rates.

B. Minasligas

We based USP on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation and exporter's sales price was not indicated by other circumstances.

We calculated purchase price based on packed FOB port of embarkation prices to unrelated customers. We made deductions where appropriate for foreign inland freight (which also included foreign inland insurance) and foreign brokerage and handling.

We made an adjustment to USP for the taxes paid on the comparison sale in Brazil. (See above description under "A. *CBCC*" for an explanation of our new tax methodology as well as a description of the specific taxes in this investigation.)

Foreign Market Value

In order to determine whether there were sufficient sales of FeSi in the home market to serve as a viable basis for calculating FMV, we compared the volume of home market sales of FeSi to the aggregate volume of third country sales in accordance with section 773(a)(1)(B) of the Act. For both CBCC and Minasligas, the volume of home market sales was greater than five percent of the aggregate volume of third country sales. Therefore, for both CBCC and Minasligas, we determined that home market sales of FeSi constituted a viable basis for calculating FMV, in accordance with 19 CFR 353.48(a).

In the petition and in subsequent filings, petitioners alleged that home market sales were made at less than the cost of production (COP) and that constructed value (CV) should be used to compute FMV. Based on petitioners' allegations, which provided a reasonable basis to "believe or suspect" below cost sales (see section 773(b) of the ACT), we initiated COP investigations. We examined respondents' cost data at verification and analyzed this information for purposes of this final determination.

We determine Brazil's economy to be hyperinflationary. Therefore, in order to eliminate the distortive effects of inflation, consistent with past practice (see, *e.g.*, *Final Determination of Sales at Less Than Fair Value and Amended Antidumping Duty Order, Tubeless Steel Disc Wheels from Brazil*, 53 FR 34566, September 7, 1988), we calculated separate weighted-average FMVs, COPs, and CVs for each month.

A. CBCC

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of CBCC's cost of materials, fabrication, general expenses, and packing. We relied on the COP data submitted by CBCC except in the following instances where the costs were not appropriately quantified or valued. Specifically, we:

1. Revised general and administrative (G&A) expenses by calculating them as a percentage of cost of goods sold as reported on CBCC's 1992 financial statements (see Comment 4);
2. Added an amount for the G&A expenses of CBCC's parent company (see Comment 4);
3. Revised the interest expense computation using the financial statements of CBCC's parent, Solvay do Brasil (see Comment 3);
4. Included IPI and ICMS taxes as part of reported material costs in COP (see Comment 5);
5. Recalculated the cost of CBCC's own production of charcoal based upon BIA (see Comment 6);
6. Recalculated depreciation costs for Furnace 8 based upon a 10 year useful life (see Comment 7);
7. Corrected an error in the October 1992 calculation of electricity cost (see Comment 9);
8. Added packing expenses in COP for the home market and United States, respectively.

We compared individual home market prices with the monthly COPs. We tested the home market prices on a sieve-size-specific basis and found, for all sieve sizes, that between 10 and 90 percent of sales in the home market were made at prices above the COP. Therefore, we disregarded the below-cost sales, if those sales were made over an extended period of time. CBCC did not provide any information in its responses to indicate that its below cost sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time. All of CBCC's sales were made over an extended period of time.

For CBCC, we based FMV on home market prices. However, for one U.S. sale, although there were comparable home market sales in the same month, we were unable to make a difference-in-merchandise (DIFMER) adjustment. This is because the U.S. product was produced in a month different than the home market products and in hyperinflationary economies, we limit such adjustments to products produced and sold in the same month. In that instance, we used CV as FMV.

We calculated CV in accordance with section 773(e)(1) of the Act. The monthly CV includes materials, fabrication, general expenses, profit and packing. We made all adjustments described in the COP section (except for the inclusion of ICMS and IPI taxes in material costs) in calculating the CV. We used the following as the basis for calculating CV:

(1) CBCC's actual general expenses because they exceed the statutory ten percent minimum of materials and fabrication, in accordance with section 773(e)(1)(B)(i) of the Act;

(2) the statutory minimum profit of eight percent, in accordance with section 773(e)(1)(B)(ii) of the Act, as CBCC's profit was less than eight percent of the sum of general expenses and the cost of manufacture; and

(3) we calculated an offset to interest expense to avoid double counting the portion of such expense attributable to the imputed credit and inventory carrying costs which were already included in the selling, general and administrative expenses.

We made circumstance-of-sale adjustments for differences in credit expenses, in accordance with 19 CFR 353.56(a). Finally, we added U.S. packing expenses to CV.

For price-to-price comparisons, we based FMV on ex-factory prices, inclusive of packing, to unrelated customers. We deducted foreign inland freight from FMV. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). Because the home market credit figure reported by CBCC is actually interest revenue, we imputed credit expense and then applied the interest revenue as an offset against the imputed expense. We also used the actual paydates found at verification in our credit expense calculation. For those sales which we did not examine at verification, we added the average difference between the paydate reported and the actual paydate from the verified sales.

For FeSi sales packed in bags, we deducted home market packing costs and added U.S. packing costs. Because CBCC did not report packing for bulk sales, we used information on bulk packing costs from the public version of Minasligas' response for these sales.

We included in the FMV the amount of taxes collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., the sum of any amounts that were deducted from the tax base). This amount was deducted from the FMV after all other additions and deductions had been made. By making the additional tax adjustments, we avoid a distortion that would create a dumping margin even when pre-tax dumping is zero.

B. Minasligas

In order to determine whether home market sales were above the COP, we calculated the monthly COPs on the basis of Minasligas' cost of materials, fabrication, general expenses, and packing. We relied on the COP data submitted by Minasligas except in the following instances where the costs were not appropriately quantified or valued. Specifically, we:

1. Revised G&A expenses by calculating them on an annual basis as a percentage of cost of goods sold as reported in Minasligas' 1992 financial statements (see Comment 4);
2. Revised interest expenses to include finance expenses of Delp (Minasligas' parent company), and disallowed a portion of the claimed interest income offset (see Comment 3);
3. Included IPI and ICMS taxes as part of reported material costs in COP (see Comment 5);
4. Revised the labor and overhead allocation methodology to reflect production quantity (see Comment 14);
5. Adjusted the inventory holding gains and losses to account for revisions in the reported costs (see Comment 10);
6. Disallowed the claimed differences in cost between high purity and standard grade FeSi and used the "all kinds" reported costs;
7. Added packing expenses in COP for the home market and United States, respectively.

We compared individual home market prices with the monthly COPs. We tested the home market prices on a sieve-size-specific basis and found, for certain sieve sizes, that between 10 and 90 percent of sales of each in the home market were made at prices above the COP. Therefore, we disregarded the below-cost sales for those sieve sizes, ir those sales were made over an extended period of time. Minasligas did not provide any information in its responses

to indicate that its below cost sales were made at prices which would permit recovery of all costs within a reasonable period of time in the normal course of trade. In order to determine whether below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time. All of Minasligas' below cost sales were made over an extended period of time.

For Minasligas, we based FMV on home market prices. We calculated FMV based on ex-factory prices, inclusive of packing, to unrelated customers. We deducted foreign inland freight from FMV. We made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses, in accordance with 19 CFR 353.56(a). Because the home market credit figure reported by Minasligas is actually interest revenue, we imputed credit expense and then used the interest revenue as an offset against the imputed expense. We imputed U.S. credit because Minasligas did not report this expense. We used the "First Payment" date reported by Minasligas and the monthly interest rates based on the "Taxa Referential" which is the Brazilian Government's referential index for short-term borrowings. We also made circumstance-of-sale adjustments, where appropriate, for direct selling expenses (finance charges), warehousing, and quality control expenses. We reallocated a portion of direct selling expenses to foreign brokerage and handling based on findings at verification. Finally, we deducted home market packing costs and added U.S. packing costs.

We included in FMV the amount of taxes collected in the home market. We also calculated the amount of the tax that was due solely to the inclusion of price deductions in the original tax base (i.e., the sum of any adjustments that were deducted from the tax base). This amount was deducted from the FMV after all other additions and deductions had been made. By making the additional tax adjustments, we avoid a distortion that would create a dumping margin even when pre-tax dumping is zero.

Critical Circumstances

Petitioners alleged that critical circumstances exist with respect to imports of FeSi from Brazil. Section 735(a)(3) of the Act provides that critical circumstances exist if we determine that:

(A) (i) There is a history of dumping in the United States or elsewhere of the class or kind of merchandise which is the subject of the investigation, or

(ii) The person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the merchandise which is the subject of the investigation at less than its fair value, and,

(B) There have been massive imports of the class or kind of merchandise which is the subject of the investigation over a relatively short period.

Regarding (A)(i) above, we normally consider whether there has been an antidumping order in the United States or elsewhere on the subject merchandise in determining whether there is a history of dumping. Regarding (A)(ii) above, we normally consider margins of 25 percent or more for purchase price comparisons and 15 percent or more for exporter's sales price comparisons as sufficient to impute knowledge of dumping.

Pursuant to section 735(a)(3)(B), we generally consider the following factors in determining whether imports have been massive over a short period of time: (1) The volume and value of the imports; (2) seasonal trends (if applicable); and (3) the share of domestic consumption accounted for by imports. If imports during the period immediately following the filing of a petition increase by at least 15 percent over imports during a comparable period immediately preceding the filing of a petition, we normally consider them massive.

Since the calculated dumping margins for CBCC and Minasligas are not in excess of 25 percent, we cannot impute knowledge under section 735(a)(3)(A)(ii) of the Act. (See, e.g., *Final Determination of Sales At Less Than Fair Value; Tapered Roller Bearings and Parts Thereof, Finished or Unfinished, from Italy*, 52 FR 24198, June 29, 1987.) Petitioners provided information regarding respondent's history of dumping in a third country. Therefore, we examined whether imports have been massive. Based on our analysis of verified company specific import data, we determined that imports have not been massive over a relatively short period of time for CBCC and Minasligas. Accordingly, we determine that critical circumstances do not exist for CBCC and Minasligas. However, for Italmagnesio, a non-cooperative respondent, based on BIA we determine that critical circumstances exist. In the case of Italmagnesio, the margin in excess of 25 percent is high enough to impute knowledge of dumping and, as BIA, we concluded that imports have been massive over a relatively short period of time.

Because we found that critical circumstances do not exist with respect to all cooperative respondents, we also find that critical circumstances do not exist with respect to all other exporters and producers of the subject merchandise from Brazil, except for Italmagnesio.

Verification

As provided in section 776(b) of the Act, we conducted verification of the information provided by CBCC and Minasligas by using standard verification procedures, including the examination of relevant sales and financial records, and selection of original source documentation containing relevant information.

Currency Conversion

No certified rates of exchange, as furnished by the Federal Reserve Bank of New York, were available for the POI. In place of the official certified rates, we used the daily official exchange rates for the Brazilian currency published by the Central Bank of Brazil. In the instances when a post-POI exchange rate was required, we used a monthly average exchange rate from International Monetary Fund's International Financial Statistics.

In hyperinflationary economies, the Department normally converts movement charges for the U.S. sales on the date these charges become payable. Where we did not have the exact payment date for a charge, we converted charges for U.S. sales on the date of shipment, the closest approximation to the date the charges became payable. For two of CBCC's U.S. sales, it was necessary to convert the bulk packing charges on the date of sale as we did not have a bulk packing rate in the month of shipment for those U.S. sales. Thus, for these two sales we converted the packing charges in the same month in which the U.S. sales occurred.

Interested Party Comments

Comment 1: Petitioners argue that, based on the facts now available to the Department, the dumping margins established in the preliminary determination are inadequate to offset the actual dumping margin of Brazilian FeSi producers. In addition, petitioners

believe that at verification the Department confirmed the existence of major, continuing deficiencies in respondents' information. Accordingly, petitioners contend that the Department should assign the highest, most adverse margin based on noncooperative BIA to both CBCC and Minasligas.

DOC Position: We disagree with petitioners. CBCC and Minasligas' mistakes, found during the course of this investigation, when taken as a whole, do not represent a verification failure and do not support a claim of respondents' noncooperation. The minor errors in calculation or discrepancies with regard to adoption of certain methodological premises do not merit the use of BIA. Therefore, we have followed our practice of correcting errors found at verification as long as those errors are minor and do not exhibit a pattern of systemic misstatement of fact. Thus, we are able to use the data submitted by CBCC and Minasligas, corrected for errors noted at verification, in our calculations.

Comment 2: Petitioners argue that the Department should use the highest, most adverse noncooperative BIA rate for CBCC and Minasligas since they both repeatedly failed to provide the Department with the accurate sieve size and silicon content of the FeSi they sold. Petitioners maintain that CBCC's August 17, 1993, letter contained information about silicon content and sieve size known to be inaccurate. Petitioners contend that accurate information was clearly available to CBCC and the fact that it was not provided prevented the Department from making such or similar comparisons in the final determination, as required by the Act. Similarly, petitioners note that Minasligas, in its August 25, 1993, revised product concordance, failed to provide the exact silicon content and sieve size of its home market sales.

CBCC believes that the Department incorrectly based its preliminary determination on BIA because of the alleged failure by CBCC to provide a proper product concordance. CBCC states that it cannot fabricate a product concordance to the level of sieve size, which was requested by the Department, because there is no difference in product between sieve sizes. CBCC argues that the Department verified that sieve size is irrelevant in terms of the cost and the price and, thus, any DIFMER would be zero. CBCC maintains that based on the information submitted and the production processes observed at verification, the Department should use CBCC's information as the basis for the final determination.

Similarly, Minasligas maintains that sieve size does not impact cost or price of FeSi and should not be considered a factor for product comparison purposes. With respect to providing information on exact silicon content, Minasligas contends that the ASTM standard specifications for FeSi 75 percent under grade C provide for a product containing between 74 percent and 79 percent of silicon. Minasligas argues that since all of its FeSi sales are of FeSi 75 percent the exact silicon content of the product within this range is irrelevant.

DOC Position: We agree with respondents. We determine that Minasligas provided a unique code for each sieve size for each sale during the POI, in accordance with directions in Appendix V. We used Minasligas' product matching method for purposes of margin calculation; however, we rematched in a few instances where we disagreed with their selection. We based matching on home market sales with sieve size ranges which were closest to the sieve size range of the U.S. product.

We also determine that CBCC reported sieve sizes in accordance with Appendix V. The sieve size ranges reported by CBCC were broader than those reported by Minasligas and were broader than the ranges observed on CBCC's individual home market sales. Nevertheless, these ranges do allow us to match within the closest sieve size range, as specified in Appendix V. Moreover, these broad ranges are consistent with CBCC's selling practices. CBCC stated on the record that it fills customer orders with the broadest range of possible sieve sizes. Therefore, we accepted CBCC's revised coding system, and matched home market sales with all possible sieve sizes, including those that may extend beyond the sieve size range of the U.S. product because this corresponds to CBCC's selling practices. We excluded from FMV only those home market sales where the sieve size ranges are entirely outside the sieve size range of the U.S. sale in question. (See Concurrence Memorandum dated December 29, 1993.)

In addition, we also agree with respondents that reported silicon content ranges, within acceptable ASTM specifications, are adequate.

Comment 3: Petitioners claim that both CBCC and Minasligas failed to report their respective interest expenses on a consolidated basis for the purposes of calculating COP in accordance with Department practice. Petitioners argue that CBCC's refusal to provide this information prevented the Department from verifying these expenses. Accordingly, petitioners state that the Department should use adverse, "noncooperative BIA" in calculating interest expense for CBCC. However, in the event that the Department does not use "noncooperative BIA," petitioners suggest that the Department use Solvay do Brasil's audited financial statements to calculate interest expense for the purposes of calculating CBCC's COP and CV. Similarly, petitioners contend that the Department should allocate interest expense to Minasligas' COP based on Delp's (Minasligas' parent company) 1992 audited financial statements as a percentage of cost of goods sold, without allowance for a short-term interest income offset.

CBCC argues that the Department should use its non-consolidated income statement, rather than the corporate consolidated figure, to compute net interest expense. CBCC claims that the advances of funds from subsidiary to parent were the reverse of those normally seen by the Department and were not "interest free". CBCC further argues that without CBCC, Solvay do Brasil would have had to borrow funds in the commercial market. Thus, CBCC suggests that the Department should increase CBCC's financial receipts by an imputed interest on the interest free loans that CBCC made to its parent. With regard to petitioners' allegation that CBCC refused to provide the Department with Solvay do Brasil's financial statement, CBCC explains that the Department requested an additional copy of the translated financial statement, previously submitted to the Department on June 10, 1993, which the company was unable to provide at verification.

Minasligas contends that its financial statements are not consolidated with Delp's statements. Minasligas maintains that there is no borrowing relationship between Delp and Minasligas, and further, there is no evidence of control by Delp over borrowings by Minasligas. Minasligas, therefore, believes it is inappropriate to substitute Delp's interest expenses for that of Minasligas. Minasligas asserts that it correctly reduced its submitted unconsolidated interest expenses by various forms of short-term financial income, including capital gains, exchange rate gains, discounts, and monetary correction.

DOC Position: We agree with petitioners that CBCC and Minasligas should report interest expense on a consolidated basis. The Department's position is that the cost of capital is fungible, therefore, calculating interest expense based on consolidated statements is the most appropriate methodology.

As discussed in the cost verification report of CBCC, we noted that CBCC and Solvay do Brasil rely on intercompany interest-free borrowing to meet their working capital requirements. In addition, in order to extinguish its outstanding debt, CBCC issued new shares of capital stock to its parent company. After establishing at verification that CBCC and Solvay do Brasil have significant financial transactions with each other, we requested information documenting financial expense at the Solvay do Brasil level. Company officials refused to provide any data. Therefore, we have based financial expense for CBCC using BIA. As BIA, we used information from Solvay do Brasil's financial statements (exhibit B; June 10, 1993, questionnaire response). This percentage was then applied to each month's COM.

In the case of Minasligas, Delp does not consolidate its accounts with Minasligas. In addition, because there are no significant intercompany transactions between the two companies, we combined the financial expenses of the two companies, effectively creating consolidated accounts. Regarding the offset claimed by Minasligas, the Department only allows income generated from investments of working capital which the company documents as short-term in nature. Minasligas was able to substantiate only a portion of the investments to be short-term; consequently, we have allowed only the documented portion of interest income as an offset. We did not allow an offset to Minasligas' parent, Delp, for interest expense because the information required to substantiate such an adjustment is not contained in the record of this investigation.

For both companies, in order to avoid overstating financing charges, we applied the interest expense ratio to each month's COM calculated on a historical basis rather than amounts computed under the replacement cost basis.

Comment 4: Petitioners maintain that CBCC and Minasligas failed to follow the Department's established practice for allocating G&A expenses. Petitioners make the same allegation with regard to CBCC's selling expenses. Petitioners claim that G&A expenses are period costs that should be allocated based on the ratio of total annual G&A expenses over total annual costs of goods sold. Selling expenses should be allocated similarly. However, petitioners state that CBCC allocated G&A and selling expenses to individual products, using the ratio of each separate product's cost of goods sold. Minasligas allocated POI G&A expenses on a monthly basis. For purposes of the final determination, petitioners believe that the Department should reallocate these expenses following its established practice.

CBCC argues that the Department should not use the ratio of expenses to cost of goods sold as an estimate of G&A expenses. CBCC believes that the monthly expenses accurately reflect, on a replacement cost basis, the expenses for the company in that month and are the most appropriate figures to use. CBCC claims that the petitioners are urging the Department to use a methodology that the Court of International Trade specifically invalidated as susceptible to overstating the effects of inflation.

Minasligas agrees that G&A expenses are period costs, but maintains that an annual calculation based on cost of sales is problematic because the annual G&A expense and the annual cost of sales are conglomerations of monthly expenses which have not been adjusted for inflation. Minasligas believes the Department should calculate G&A rates based on monthly averages or a simple average G&A rate.

DOC Position: We agree with petitioners in part. G&A expenses are period expenses which are normally measured over a fiscal year. As such, the Department calculates G&A on an annual basis. To calculate G&A for a lesser period may exclude certain expenses, which is distortive. Therefore, we recalculated G&A expenses on an annual historical basis for both companies and, in order to avoid overstating G&A expenses and neutralize hyperinflationary effects, we applied the G&A ratio to each month's COM calculated on a historical basis. We also revised CBCC's reported G&A to include a portion of Solvay do Brasil's G&A, which CBCC had failed to include in its reported costs. Moreover, we calculated CBCC's selling expense portion of SG&A based on sales of the same class or kind of merchandise according to our normal practice.

Comment 5: Petitioners contend that the Department should include ICMS and IPI taxes in CBCC's and Minasligas' reported materials costs in applying the Department's sales-below-cost test. Petitioners state that Department practice is to perform the sales-below-cost test on a tax-inclusive basis, with the COP and home market prices containing the same absolute amount of taxes. With regard to CV, petitioners contend that the Department has previously determined that ICMS and other domestic taxes are not remitted or refunded upon exportation and consequently have to be included in CV.

CBCC submits that the Department should not include the ICMS and IPI taxes in its COP and CV calculations. CBCC states that the Department reviewed CBCC's records at verification showing that CBCC's payments of ICMS offset any amount owed by virtue of its receipts of ICMS. Thus, CBCC claims that the "cost of materials" does not include any ICMS or IPI value, because CBCC always receives a tax credit for these payments.

Minasligas argues that in determining whether home market sales are above the cost of production, the Department must either include ICMS and IPI in the cost of production and in the sales price to the domestic market or exclude them from both sides to avoid double counting. Minasligas further argues that these taxes should not be included in calculations of CV because they are offset against the amounts collected from the domestic market sales.

DOC Position: We agree with petitioners in part. For our test of home market sales below cost we have included the same amount of domestic taxes in the COP and the domestic sales prices. However, when using CV as a surrogate for home market prices we must determine if in fact the entity under investigation is able to recover all of the taxes paid on inputs (raw materials) from its domestic sales of subject merchandise. If domestic sales of subject merchandise fully recover all of the domestic taxes paid on inputs, then these taxes would appropriately be excluded from the margin analysis. However, if the producer is not able to recover all input taxes from its sales of subject merchandise, then these actual costs must be reflected in the CV. (See *Camargo Correa Metais, S.A.*, v. *United States*, Slip Op. 93–163, p. 19 (August 13, 1993).

We have determined that CBCC's domestic sales of subject merchandise fully recover all input taxes incurred to produce the subject merchandise sold in both the domestic and export markets. We have excluded the domestic tax amounts from CV because the taxes paid are offset against the amounts which are collected on domestic sales which are rebated to the government.

Comment 6: Petitioners claim that CBCC did not accurately report its charcoal replacement costs. They further argue that CBCC did not provide the Department with the additional documentation requested regarding the estimated harvest of wood and other assumptions used in the calculation of the amortization costs for charcoal production. Petitioners argue that by not providing this information, CBCC prevented the Department from

verifying the accuracy of the cost data and CBCC did not comply with Department practice in reporting replacement costs for company-produced charcoal. Therefore, petitioners state that the Department should assign a noncooperative BIA rate to CBCC. Alternatively, petitioners suggest that the Department adjust CBCC's reported cost for company-produced charcoal upward to the level of CBCC's cost for purchasing charcoal from unrelated suppliers.

CBCC argues that since charcoal accounts for less than three percent of the cost of production of FeSi, use of BIA because of the difficulty encountered with verifying the accuracy of this factor of production would be totally inappropriate. CBCC maintains that should the Department make any adjustments to the charcoal costs it should only adjust the figures with the information gathered at verification rather than disregard the entire response.

DOC Position: We agree with petitioners that we should adjust CBCC's charcoal replacement costs; however, we disagree that CBCC was noncooperative and should receive a margin based solely upon BIA. We discovered errors made by CBCC in calculating its cost of producing charcoal, a primary raw material, used in the production of FeSi. CBCC substantially understated its cost of producing charcoal by inaccurately recording the costs associated with their wood forests which provide the raw material needed to produce charcoal. Therefore, we have recalculated the cost of CBCC's production of charcoal. As suggested by petitioners, we relied upon the actual weighted-average monthly cost CBCC was charged by unrelated vendors.

Comment 7: Petitioners claim that CBCC incorrectly accelerated the depreciation on a particular furnace by five years. The result was a disproportionate allocation of costs to products manufactured during the first five years the furnace was put into service, as opposed to the second five years, when no depreciation was reported. Petitioners contend that the accelerated depreciation for this furnace was an abnormal event since CBCC returned to its normal ten-year useful life for furnace depreciation following the period of accelerated depreciation. Petitioners further argue that the Department has explicitly rejected the accelerated depreciation of assets where such accelerated depreciation was not based on the useful life of the assets. Accordingly, petitioners believe that the depreciation charges for this furnace should be recalculated to reflect the company's normal ten-year useful life for furnace depreciation.

DOC Position: We agree with petitioners. We have recalculated depreciation expense for this furnace to reflect the amounts which would have been recorded based upon CBCC's normal ten year amortization period since it is CBCC's normal practice to employ a ten year useful life in calculating furnace depreciation charges.

Comment 8: Petitioners state that CBCC failed to accurately allocate furnace depreciation to FeSi based on the percentage of total furnace capacity devoted to FeSi production. Accordingly, for purposes of the final determination, petitioners contend that the Department should increase depreciation allocated to FeSi production for each month of the POI.

CBCC contends that it would be improper for the Department to allocate all of CBCC's depreciation expenses on all furnaces to FeSi production. Although theoretically, any one furnace could be used to produce any of the products that CBCC sells, this does not make the furnaces fungible. The Department's determination should not be based on what could theoretically be produced in a furnace, but rather what was actually produced in each furnace. Regardless, if the Department considers the furnaces fungible, this would result in a lowering of CBCC's depreciation expense as furnaces one through six are fully depreciated.

DOC Position: We agree with CBCC. Its methodology of matching furnace depreciation with the product actually produced in each furnace is an acceptable methodology. Accordingly, no adjustment has been made for the final determination.

Comment 9: Petitioners claim that at verification CBCC's reported consumption and cost of electricity attributed to FeSi were understated for October 1992. Therefore, petitioners believe that the Department should increase these costs for each month of the POI.

CBCC maintains that the Department verified that only the month of October contained an error of 5.7 percent with respect to the electricity consumption and cost; such error was incurred in transferring expenses from one cost report to another. Thus, CBCC concedes only that the Department should adjust its October, 1992, electricity consumption and cost by 5.7 percent, rather than making monthly adjustments.

DOC Position: We agree with CBCC. At verification we established that this was an isolated error and not a methodological problem. Accordingly, we have corrected the reported electrical consumption and cost for October 1992, only.

Comment 10: Petitioners state that CBCC failed to properly calculate inventory holding gains/losses. Petitioners argue that CBCC reported its input and finished product inventories on a first in first out (FIFO) basis, which is contrary to Department practice. Furthermore, petitioners claim that CBCC provided no inventory holding gain/loss calculations for iron ore. Accordingly, petitioners believe that the reported values cannot be relied on for purposes of the final determination and the Department should apply BIA.

CBCC maintains that it provided inventory gain/loss information according to the Department's methodology used in the *Final Determination Of Sales At Less Than Fair Value, Silicon Metal from Brazil*, 56 FR 26977, June 12, 1991, where the Department rejected CBCC's cost accounting method used in the normal course of business, stating that it did not properly reflect the effects of inflation and used a FIFO basis to make the calculation.

With respect to the inventory holding gain/loss calculation for iron ore, the Department verified that CBCC maintains no more than its immediate requirements in inventory. Thus, CBCC submitted no inventory holding gain/loss information on this raw material because there is none. CBCC's monthly purchase of iron ore is consumed during that month.

DOC Position: We agree with respondent. In reporting on a FIFO basis, CBCC followed prescribed Department practice. The Department verified that CBCC had no gain or loss on the iron ore because it completely consumed its purchases in the same month as production.

Comment 11: Petitioners argue that Minasligas' U.S. sales of slag during the POI are within the scope of this investigation. Petitioners base their argument on the petition's scope language, which they claim does not specifically exclude slag of the chemical composition that Minasligas sold to the United States during the POI. Petitioners further argue that even if the slag were not covered by the product description in the petition, it is within the scope under the criteria outlined in *Diversified Products Corporation* v. *U.S.*, 572 F. Supp. 883 (CIT 1983) ("*Diversified Products*") criteria.

Conversely, Minasligas states that its U.S. sales of slag are not covered by the scope of this investigation. Minasligas bases its argument on chemical analysis certificates provided at verification, which list chemical compositions which Minasligas claims are sufficient to exclude the slag sales from the scope of the investigation. Specifically, Minasligas argues that, according to the petition, the high levels of oxygen and calcium oxide present in these slag sales places them outside the scope of the investigation.

DOC Position: We agree that ferrosilicon in the form of slag can be included within the scope of investigation if it generally meets the chemical content definition contained in the scope of this investigation and if it is capable of being used as FeSi. (See *Scope of Investigation.*)

With regard to the two U.S. sales of FeSi slag made by Minasligas, we determine that these sales are within the scope of the investigation based on information on the record indicating that the slag in question can be used as FeSi. Since we do not have actual price or cost data for these two sales, we will assign an average of all margins calculated for Minasligas' sales for which we have price and cost data.

Comment 12: Petitioners argue that Minasligas failed to provide complete cost information requested by the Department in conjunction with a previously unreported sale. Thus, petitioners argue that the Department should assign a "noncooperative" BIA margin for that U.S. sale.

Minasligas maintains that it provided all necessary information relating to this sale.

DOC Position: Since we used a price-to-price comparison for this sale, petitioners' points are moot.

Comment 13: Minasligas contends that the sale dates for certain U.S. sales falls outside the POI. Thus, Minasligas claims these sales should be excluded from this investigation.

DOC Position: We agree with respondent. Based on the sale dates reported and verified, these sales are outside the POI and are not included in our margin calculation.

Comment 14: Petitioners claim that Minasligas inappropriately allocated its labor and overhead costs between subject and non-subject merchandise based on number of furnaces, rather than actual production during the POI. Therefore, petitioners request that the Department adjust Minasligas' submitted costs accordingly.

DOC Position: We agree with petitioners that number of furnaces is not an adequate basis for allocating labor or other fabrication costs. Number of furnaces is an arbitrary measure, which does not necessarily reflect the actual level of labor and overhead expended in the production of the subject merchandise. In the instant case, output tons is a more accurate allocation basis. Therefore, we have revised the submitted costs to reflect an allocation based on actual production units.

Comment 15: Petitioners argue that Italmagnesio failed to cooperate with the Department by withdrawing from the investigation and should receive the highest, most adverse BIA rate on the record. Petitioners further argue that BIA includes the rates alleged in the petition, as corrected for clerical errors, and the rates alleged in petitioners' amended allegation of sales below cost for Italmagnesio. Petitioners disagree with the Department's decision in the preliminary determination which rejected the revised margin calculations in petitioners' amended sales-below-cost allegation as a source of BIA; the Department rejected the revisions on the grounds that petitioners based the revisions on information submitted by Italmagnesio. Petitioners state that their amended allegation relied not on financial statements submitted by Italmagnesio but on identical financial statements that petitioners had obtained independently prior to the date of Italmagnesio's submission of the information. In addition, petitioners assert that Italmagnesio withdrew from the investigation after the Department indicated in the preliminary determination that it would not use the higher rates in petitioners' amended allegation as BIA. Therefore, petitioners maintain that not using the amended allegation as BIA would allow Italmagnesio to control the outcome of the investigation.

DOC Position: For this final determination, we assigned Italmagnesio a margin in accordance with the two-tiered BIA methodology under which the Department imposes the most adverse rate upon those respondents who refuse to cooperate or otherwise significantly impede the proceeding. In our BIA margin analysis, we utilized information contained in petitioners' amended COP allegation for Italmagnesio. Although Department policy does not allow petitioners to use questionnaire responses in a piece-meal manner in order to increase margins in the petition that may later be used as BIA, our analysis revealed that petitioners had access to Italmagnesio's financial statements prior to the submission of this information on the record by Italmagnesio.

Continuation of Suspension of Liquidation

In accordance with section 735(c)(4)(A) of the Act, we are directing the U.S. Customs Service to continue to retroactively suspend liquidation of all entries of FeSI from Italmagnesio. Retroactive suspension applies to entries of FeSi, that are entered, or withdrawn from warehouse, for consumption on or after May 18, 1993, which is the date 90 days prior to the date of the publication of our preliminary determination in the **Federal Register**. We are also directing the Customs Service to terminate the retroactive suspension of liquidation with regard to CBCC, and "All Other Exporters" entered, or withdrawn from warehouse, for consumption between May 18, 1993, and August 16, 1993, which is the date of our preliminary determination, and to release any bond or other security, and refund any cash deposit with respect to these entries during that period in accordance with section 735(c)(3). For CBCC and "All Other Exporters", we are directing the Customs Service to suspend liquidation of all entries of FeSi from Brazil, that are entered, or withdrawn from warehouse, for consumption on or after August 16, 1993. Finally, since the Department finds that no final dumping margin exists with respect to Minasligas, we are directing the Customs Service to terminate the suspension of liquidation for entries of FeSi from Minasligas, and to release any bond or other security, and refund any cash deposit with respect to these entries from Minasligas in accordance with section 735(c)(2) of the statute. However, if the Department has reasonable cause to believe or suspect at any time during the existence of the antidumping duty order that Minasligas has sold or is likely to sell the subject merchandise to the United States at less than its foreign market value, then the Department may institute an administrative review of Minasligas under section 751 of the Tariff Act of 1930, as amended.

The Customs Service shall require a cash deposit or posting of a bond equal to the estimated margin amount by which the FMV of the subject merchandise exceeds the USP as shown below.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Italmagnesio S.A. Industria e Comercio.	88.86	Yes.

Manufacturer/producer/exporter	Margin percent	Critical circumstances
Companhia Brasileira Carbureto de Calcio.	2.23	No.
Companhia Ferroligas Minas Gerais.	0.00	No.
All others	45.55	No.

ITC Notification

In accordance with section 735(d) of the Act, we have notified the ITC of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) in this investigation of their responsibility covering the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: December 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94-281 Filed 1-5-94; 8:45 am]

BILLING CODE 3510-DS-P

[A-588-702]

Certain Stainless Steel Butt-Weld Pipe and Tube Fittings From Japan, Preliminary Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration/ Department of Commerce.

ACTION: Notice of Preliminary Results of Antidumping Duty Administrative Review.

SUMMARY: In response to a request from the petitioner, Flowline Division of Markovitz Enterprises, Inc. (Flowline), the Department of Commerce (the Department) has conducted an administrative review of the antidumping duty order on certain stainless steel butt-weld pipe and tube fittings (SSPFs) from Japan. The review covers one manufacturer/exporter, Benkan Corporation (Benkan), and exports of the subject merchandise to the United States during the period from March 1, 1992, through February 28, 1993. The review indicates the existence of dumping margins for the period.

As a result of the review, the Department has preliminarily determined to assess antidumping duties equal to the difference between the United States price (USP) and foreign market value (FMV). Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: David Genovese or Michael Heaney, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 482-5254.

SUPPLEMENTARY INFORMATION:

Background

On March 12, 1993, the Department published a notice of "Opportunity to Request an Administrative Review" (58 FR 13563) of the antidumping duty order on SSPFs from Japan (53 FR 9787). On March 29, 1993, Flowline requested an administrative review. The Department initiated the review on May 6, 1993 (58 FR 26960), covering the period March 1, 1992, through February 28, 1993. The Department has now conducted this review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of the Review

The products covered by this review include certain stainless steel butt-weld pipe and tube fittings. These fittings are used in piping systems for chemical plants, pharmaceutical plants, food processing facilities, waste treatment facilities, semiconductor equipment applications, nuclear power plants, and other areas.

This merchandise is currently classifiable under the Harmonized Tariff Schedules (HTS) item number 7307.23.0000. The HTS item number is provided for convenience and Customs purposes. The written product description remains dispositive.

This review covers sales and entries by Benkan of the subject merchandise during the period March 1, 1992, through February 28, 1993.

Such or Similar Comparisons

For Benkan, pursuant to section 771(16) of the Act, the Department established the following criteria for matching sales in the home and U.S. markets: Type of fitting, seam condition, steel material grade, unit product weight within 10 percent, nominal pipe size, and wall thickness. An identical pipe is one that matches all of these criteria. A similar pipe is one that has one or more differences in these discrete criteria from the U.S. fitting other than the type of fitting, seam condition, and unit product weight within 10 percent. The 10 percent variance in unit product weight reflects our prior practice in this case which was based upon allowable deviations between Japanese and U.S. industry standards. The Department established this hierarchy of criteria after soliciting comments from Flowline and Benkan at the beginning of the 1992-1993 review period. Both Flowline and Benkan agreed on the criteria and their hierarchy.

United States Price

In calculating USP, the Department used purchase price, as defined in section 772(b) of the Act, because the merchandise was sold to an unrelated purchaser in the United States prior to its importation and exporter's sales price was not indicated by other circumstances. The Department based USP on the packed, delivered price to those unrelated purchasers.

The Department has determined that the date of sale for this merchandise is the invoice date because the invoice always sets forth agreed prices and quantities and represents the first transactional document which systematically records agreed prices. The Department made deductions, where appropriate, for foreign inland freight, U.S. inland freight, U.S. duties, U.S. brokerage fees, ocean freight, marine insurance, foreign brokerage fees, and discounts.

On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corporation and The Torrington Company* v. *United States*, Slip Op. 93-194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to the foreign market sales. *Federal-Mogul*, Slip Op. 93-194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decision. The Department will add to USP the result of multiplying the foreign market tax rate by the price of the merchandise sold in the United States at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustments and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

Foreign Market Value

In calculating FMV, we used home market price, as defined in section 773(a) of the Act. Home market price was based on a packed, delivered price to unrelated purchasers in the home market. In accordance with section 353.45 of the Department's regulations, the Department has excluded sales to related parties because the respondent has failed to provide sufficient evidence to support its claim that sales to related parties were at arm's-length. The Department made adjustments, where applicable, for inland freight, discounts, rebates, and for differences in packing material, packing labor, and credit.

The Department also made an adjustment to FMV for imputed consumption taxes in accordance with the aforementioned *Federal-Mogul* decision.

Additionally, where similar home market sales were used due to the absence of an identical sale, we made a difference-in-merchandise adjustment. The Department based the difference-in-merchandise adjustment on differences in steel pipe materials cost between U.S. and home market merchandise (see the Department's preliminary analysis memo dated December 29, 1993). When there were no contemporaneous such or similar sales, we based FMV on constructed value. Constructed value data for specific models was provided by Benkan at the request of the Department. Benkan did not provide constructed value information for two models as requested by the Department. For these preliminary results the Department has applied to applicable sales of these two models an antidumping duty margin of 8.05967 percent which is the weighted average margin for sales of SSPFs by Benkan for this review. The Department will request for the final results of this review that Benkan provide constructed value data for these two models.

Preliminary Results of Review

As a result of our comparison of USP to FMV, the Department preliminarily determines that a margin of 8.06 percent exists for Benkan for the period March 1, 1992, through February 28, 1993.

Interested parties may request disclosure within 5 days of the date of publication of this notice and may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication of this notice, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to the issues raised in the case briefs and comments, may be filed not later than 37 days after the date of publication. The Department will publish the final results of this administrative review, including the results of its analysis of any such written comments or hearing.

The Department shall determine, and U.S. Customs shall assess, antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentage stated above. The Department will issue appraisement instructions directly to Customs.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise, entered or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act: (1) The cash deposit rate for the reviewed company will be that rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this review but covered in a previous review or the original less-than-fair-value (LTFV) investigation, the cash deposit rate will continue to be the rate published in the most recent final results or determination for which the manufacturer or exporter received a company-specific rate; (3) if the exporter is not a firm covered in this review, earlier reviews, or the original investigation, but the manufacturer is, the cash deposit rate will be that established for the manufacturer of the merchandise in these final results of review, earlier reviews, or the original investigation, whichever is the most recent; and (4) the "all others" rate will be 49.31 percent, as explained below.

On May 25, 1993, the CIT, in *Floral Trade Council* v. *United States*, Slip Op. 93-79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93-83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders. Accordingly, the cash deposit rate for any future entries from all other manufacturers or exporters, who are not covered in this or prior administrative reviews and who are unrelated to the reviewed firms or any previously reviewed firm, will be the "all others" rate established in the original LTFV investigation which is 49.31 percent.

These deposit requirements, when imposed, shall remain in effect until

publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 29, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–280 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–DS–P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Stay of Panel Reviews

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of stay of panel reviews of the final determination made by the International Trade Administration respecting certain cold-rolled carbon steel flat products from Canada (USA–93–1904–01) and certain hot-rolled carbon steel flat products from Canada (USA–93–1904–02).

SUMMARY: This notice is effective December 23, 1993.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482–5438.

Background

The panel issued an order and memorandum on December 23, 1993, as follows: "These are appeals from two affirmative final dumping determinations issued by the International Trade Administration of the Department of Commerce (ITA) involving, respectively, cold-and-hot rolled carbon steel flat products imported into the United States from Canada. The International Trade Commission (ITC) rendered final negative determinations in both cases on the issue of material injury; these negative injury determinations have been appealed to the Court of International Trade (CIT).

The ITA has moved in each case to stay the proceedings before this panel pending final resolution of the injury question now before the CIT. The ITA argues that until such final judicial action an unconstitutional exercise of power for this panel to proceed. Four complaining parties in each case (respondents below) support the issuance of the requested stay. The complaining U.S. domestic interests (who also appeal here, claiming that the dumping margins found by ITA are too low) have taken no position on the ITA motion. The Government of Canada takes no position on the ITA motion in No. 01 and consent to issuance of a stay in No. 02 but does not endorse the ITA's constitutional argument in either case.

In the cold-rolled case (No. 01), a fifth complaining respondent, Sidbec-Dosco, Inc. (SDI), opposes the ITA motion and itself moves for a stay, which it would seek to have lifted in the event the CIT remands the injury issue to the ITC for further proceedings. SDI regards the Panel as having power to go forward with this proceeding, whether or not there has been a final resolution of the injury question elsewhere.

At the present juncture, no party contends either that we cannot or should not grant a stay. It is evident that if the ITC's negative determination is affirmed by the courts any effort expended here will have been wasted. We agree with all the parties who have addressed the point that, in these circumstances, considerations of economy and efficiency should predominate. We do not regard the procedural timetable laid down in the Free Trade Agreement and the implementing measures as a jurisdictional limitation. Accordingly, we grant a stay in each case, subject to further consideration on motion by any party or by the Panel if and when circumstances warrant, and terminating in each case at the latest upon the conclusion of the proceedings for review of the corresponding injury determination. In staying these proceedings, we express no opinion as to the merits of the constitutional argument advanced by ITA. Leave is granted to any party to move later to lift the stay if and when they regard the circumstances as propitious.

Dated: December 30, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 94–284 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–GT–M

National Oceanic and Atmospheric Administration

Site Selection Process for Proposed East Coast Florida National Estuarine Research Reserve; Meeting

AGENCY: Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, DOC.

ACTION: Notice of public meeting.

SUMMARY: The Office of Ocean and Coastal Resource Management announces a public meeting on the proposed East Coast Florida National Estuarine Research Reserve.

This meeting will be conducted pursuant to section 315 of the Coastal Zone Management Act of 1972, (CZMA) as amended. The CZMA requires the conduct of at least one public meeting by the State during the site selection process. This meeting must be held in the vicinity of the proposed site. The State of Florida, Department of Environmental Protection has selected the Guana, Tolomato and Matanzas River area in St. Johns and Flagler Counties for consideration for nomination as a National Estuarine Research Reserve. The Public Meeting will be held on Thursday, January 20, 1994, at the St. Johns County Auditorium, 4020 Lewis Speedway, St. Augustine, Florida beginning at 7 p.m. A copy of the agenda may be obtained by contacting Mr. Danny Riley or Mr. Larry Nall at (404) 488–3456.

FOR FURTHER INFORMATION CONTACT: June Cradick, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, NOS/NOAA, 1305 East-West Highway, 12th floor, Silver Spring, Maryland 20910, (301) 713–3133.

(Federal Domestic Assistance Catalog 11.429 Coastal Zone Management Program Administration)

Dated: December 23, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

[FR Doc. 94–260 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–08–M

[I.D. 123093I]

New England Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The New England Fishery Management Council (Council) will hold a public meeting on January 12–13, 1994, at the King's Grant Inn, Route 128 at Trask Lane, Danvers, MA; telephone: (508) 774–6800.

The meeting will begin at 1:30 p.m. on January 12 with introductions and announcements. The Lobster Oversight Committee Chair will provide an update on events that have taken place subsequent to the submission of Amendment No. 5 to the American Lobster Fishery Management Plan (FMP) to the Secretary of Commerce. NMFS will present details of their new fisheries data collection program, and participate in a question-and-answer session with both the Council and public. If time allows, the Council Chairman, Council Executive Director, NMFS Regional Director, Northeast Fisheries Center liaison, Mid-Atlantic Fishery Management Council liaison, and representatives from the Coast Guard, Fish and Wildlife Service, and the Atlantic States Marine Fisheries Commission will provide reports.

On January 13, the meeting will begin at 8:30 a.m. with a discussion of haddock management. A representative of the Canadian Department of Fisheries and Oceans will report to the Council on Canada's actions to manage groundfish, and haddock in particular. The Groundfish Plan Development Team will report on its meeting held in early January. During the afternoon session, the Marine Mammal Committee will report on the use of time/area closures to reduce the bycatch of harbor porpoise in the Gulf of Maine. This will be followed by a status report on Atlantic Sea Scallops and the implementation of Amendment No. 4 to the FMP for Atlantic Sea Scallops. Any other outstanding business, including reports from the previous day, will be addressed before the meeting adjourns on Thursday.

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906; telephone: (617) 231–0422.

Dated: January 3, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–261 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–22–P

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for an incidental take permit (P503L).

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a permit to take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR parts 217–227).

The applicant requests authorization to continue its anadromous fish mitigation program funded by Idaho Power Company. The program includes four hatcheries, the operation of which was authorized in 1993 through Permit 832. The activities included in this application are: (1) Release of hatchery steelhead smolts in the Snake and Salmon Rivers; (2) adult hatchery steelhead broodstock collection in the Snake and upper Salmon Rivers; (3) release of hatchery spring chinook smolts in the Snake and lower Salmon Rivers; (4) adult hatchery spring chinook broodstock collection in the Snake and lower Salmon Rivers, and (5) adult natural summer chinook trap and transport in the lower Salmon River. IDFG is requesting authorization for a period of five years, through 1998.

The proposed activities may incidentally affect endangered Snake River sockeye salmon (*Oncorhynchus nerka*), threatened Snake River spring/summer chinook salmon (*O. tshawytscha*), and threatened Snake River fall chinook salmon (*O. tshawytscha*) through broodstock collection, predation, competition, behavior modification, transmission of disease, straying, and the operation of the hatchery facilities.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Dated: December 22, 1993.

Herbert W. Kaufman,

Deputy Director, Office of Protected Resources.

[FR Doc. 94–293 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Brazil

December 29, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 218 and 350 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 14381, published on March 17, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist

only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 29, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on March 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Brazil and exported during the twelve-month period which began on April 1, 1993 and extends through March 31, 1994.

Effective on January 10, 1994, you are directed to amend the directive dated March 12, 1993 to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Federative Republic of Brazil:

Category	Adjusted twelve-month limit [1]
Sublevels in the aggregate	
218	4,261,627 square meters.
350	127,310 dozen.

[1] The limits have not been adjusted to account for any imports exported after March 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–198 Filed 1–5–94; 8:45 am]

BILLING CODE 3510–DR–F

COMPETITIVENESS POLICY COUNCIL

Meeting

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: January 13, 1994; 9:30 a.m. to 4:00 p.m.

ADDRESSES: Third Floor, 1726 M Street, NW., suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 300, 1726 M Street, NW., Washington, DC 20036, (202) 632–1307.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210, as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

Type of Meeting: Open.

Agenda: The Council will discuss the Administration's Workforce Investment Strategy, the impact of regulation on US competitiveness, and a mechanism to finance public infrastructure expenditures. The Council will also consider additional business as suggested by its members.

Dated: December 30, 1993.

Dr. C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 94–193 Filed 1–5–94; 8:45 am]

BILLING CODE 4730–84–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 7, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Deck Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green, (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: January 3, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.
Title: Federal Pell Grant Program—State Report on Postsecondary Educational Assistance Provided To Incarcerated Students.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57.
Burden Hours: 1,140.
Recordkeeping Burden:
Recordkeepers: 57.
Burden Hours: 57.
Abstract: Federal Grants, Federal Student Financial Aid Programs section 401(b)(8) of the Higher Education Act of 1965, as amended, requires that incarcerated students shall only be awarded a Federal Pell Grant in a state if the grants are used to supplement and not supplant the level of postsecondary educational assistance provided by that state to incarcerated individuals. The Annual State Report on Postsecondary Educational Assistance Provided To Incarcerated Students will be used to collect this information.

Dated: January 3, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94–256 Filed 1–5–94; 8:45 am]

BILLING CODE 4000–01–M

Office of Educational Research and Improvement

Type of Review: New.
Title: Third International Mathematics and Science Study.
Frequency: One time.
Affected Public: Individuals or households; State or local governments; non-profit institutions.
Reporting Burden:
Responses: 7,600.
Burden Hours: 17,591.
Recordkeeping Burden:
Recordkeepers: 0.
Burden Hours: 0.
Abstract: The Third International Mathematics and Science Study will assess student achievement in math and science, at the fourth, eighth, and twelfth grade levels, in 50 countries. In the U.S., the data will be used to measure U.S. progress toward the fourth National Education Goal—that the U.S. will be first in the world in math and science education by the year 2000. The study will also help educators understand differences in performance by providing data on opportunity-to-learn factors.

[FR Doc. 94–272 Filed 1–5–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 2275–001]

Public Service Company of Colorado; Intent To Prepare a Joint Environmental Assessment and Conduct Public Scoping Meetings and Site Visit

December 30, 1993.

The Federal Energy Regulatory Commission (FERC) has received an application for relicense of the existing Salida Hydroelectric Project, FERC No. 2275–001. The project is located on the South Arkansas River and on Fooses Creek in Chaffee County, Colorado, and occupies lands within the San Isabel National Forest.

The FERC staff, in cooperation with the U.S. Forest Service, intends to prepare an Environmental Assessment (EA) on this hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in a final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

Scoping Meetings

Two scoping meetings will be conducted on January 27, 1994. A scoping meeting oriented towards the agencies will be conducted at 10 a.m. at the Salida Ranger District office, 325 West Rainbow Boulevard, Salida, Colorado. A scoping meeting oriented towards the public will be conducted at 7 p.m. at the Chaffee County Courthouse, Commissioners Meeting Room, 142 Crestone Street, Salida, Colorado.

Interested individuals, organizations, and agencies are invited to attend either or both meetings and assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

To help focus discussions at the meetings, a scoping document outlining subject areas to be addressed in the EA will be mailed to agencies and interested individuals on the FERC mailing list. Copies of the scoping document will also be available at the scoping meetings.

Objectives

At the scoping meetings the FERC staff will: (1) Identify preliminary environmental issues related to the proposed project; (2) identify preliminary resource issues that are not important and do not require detailed analysis; (3) identify reasonable alternatives to be addressed in the EA; (4) solicit from the meeting participants all available information, especially quantified data, on the resource issues; and (5) encourage statements from experts and the public on issues that should be analyzed in the EA, including points of view in opposition to, or in support of, the staff's preliminary views.

Procedures

The meetings will be recorded by a court reporter and all statements (oral and written) thereby become a part of the formal record of the Commission proceedings on the Salida Hydroelectric Project. Individuals presenting statements at the meetings will be asked to clearly identify themselves for the record.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and assist the staff in defining and clarifying and issues to be addressed in the EA.

Persons choosing not to speak at the meetings, but who have views on the issues or information relevant to the issues, may submit written statements for inclusion in the public record at the meetings. In addition, written scoping comments may be filed with Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until February 28, 1994.

All written correspondence should clearly show the following caption on the first page: Salida Hydroelectric Project, FERC Project No. 2275–001.

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Amendment to notice of a closed meeting of the Nominations Committee.

SUMMARY: This amends the notice of a closed meeting of the Nominations Committee of the National Assessment Governing Board published on December 12, 1993 in Vol. 58, No. 247, page 68639. The place of the meeting is changed from Washington, DC to Denver, Colorado. The Committee will meet at the offices of the Education Commission of the States, 707–17th Street, Denver, Colorado. The meeting time and agenda are unchanged.

interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Site Visit

A site visit to the Salida Project is planned for January 26, 1994. Those who wish to attend should plan to meet at the Salida No. 2 powerhouse at 9 a.m. or contact Charlie Medina, District Ranger, at (719) 539–3591 for details.

Any questions regarding this notice may be directed to Vince Yearick, at (202) 219–3073.

Lois D. Cashell,

Secretary.

[FR Doc. 94–194 Filed 1–5–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EG94–11–000]

Adirondack Hydro Development Corporation; Application for Commission Determination of Exempt Wholesale Generator Status

December 30, 1993.

Adirondack Hydro Development Corporation ("Adirondack") filed with the Federal Energy Regulatory Commission an application on December 30, 1993 for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Adirondack is a Delaware Subchapter S corporation which will provide operation and maintenance services to a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be filed on or before January 10, 1994 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–231 Filed 1–5–94 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–12–000]

Northern Electric Power Co., L.P.; Application for Commission Determination of Exempt Wholesale Generator Status

December 30, 1993.

Northern Electric Power Co., L.P. ("Northern Electric") filed with the Federal Energy Regulatory Commission an application on December 30, 1993 for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations.

Northern Electric is a New York limited partnership formed to own a hydroelectric generating facility located on the Hudson River in Saratoga and Washington Counties, New York.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments must be filed on or before January 10, 1994 and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–230 Filed 1–5–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4822–6]

Acid Rain Program: Notice of Public Comment Period and Proposed Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing for comment draft, five-year retired unit exemptions to 11 utility units under the Acid Rain Program regulations (40 CFR part 72).

DATES: Comments on retired unit exemptions must be received no later than February 7, 1994.

ADDRESSES: *Administrative Records.* The administrative record for each exemption, except information protected as confidential, may be viewed at the addresses listed in **"SUPPLEMENTARY INFORMATION."**

Comments. Send comments, requests for public hearings, and requests to receive notice of future actions concerning a retired unit exemption to David Kee, Director, Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Submit all comments in duplicate and identify the unit to which the comments apply, the commenter's name, address, and telephone number, and the commenter's interest in the matter and affiliation, if any, to the owners and operators of the unit covered by the exemption. All timely comments will be considered, except those pertaining to standard provisions under 40 CFR 72.9 and issues not relevant to the exemption.

Hearings. To request a public hearing, state the issues proposed to be raised in the hearing. EPA may schedule a hearing if EPA finds that it will contribute to the decision-making process by clarifying significant issues affecting the exemption.

FOR FURTHER INFORMATION CONTACT: Regarding the Acme and Avon Lake plants: Franklin Echevarria at (312) 886–9653. Regarding the Poston plant: Allan Batka at (312) 353–7316. Air and Radiation Division, EPA Region 5 (A–18J), Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

SUPPLEMENTARY INFORMATION:

Retired Unit Exemptions

EPA proposes to issue exemptions from the Acid Rain permit and continuous emission monitoring requirements for the following units in Ohio: Acme units 9, 11, 13, 14, 15, 91, and 92; Avon Lake unit 11; and Poston units 1, 2, and 3. The designated representative for Acme and Avon Lake is Fred J. Lange Jr. and the designated representative for Poston is John McManus.

Addresses

The administrative records for each plant may be viewed during normal

business hours at EPA Region 5, 17th floor, Ralph H. Metcalfe Federal Bldg., 77 West Jackson Blvd., Chicago, IL 60604.

Dated: December 23, 1993.

Doris Price,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 94–185 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4822–2]

Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended, by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the Martin Marietta site in Waterton, Colorado was signed by the EPA Regional Administrator, Region VIII, and issued by the Agency on July 2, 1993. The settlement resolves an EPA claim under section 107 of CERCLA against the Martin Marietta Corporation ("MMC"). By the terms of the proposed Agreement, MMC will pay $875,592.92 to EPA to settle its liability for remaining Past Response Costs. In return, the United States will provide MMC with a covenant not to sue limited to claims for civil liability to the United States arising out of section 107(a) of CERCLA, 42 U.S.C. 9607(a), for reimbursement of the United States' Past Response Costs. "Past Response Costs" are defined in the Agreement as any and all response costs, including oversight costs, incurred by the United States in responding to the release or threat of release of hazardous substances from the Site pursuant to CERCLA prior to and including the effective date of the Agreement, and any and all response costs, including oversight, incurred pursuant to Administrative Order on Consent, In the Matter of: Martin Marietta Corporation, Docket Nos. CERCLA 106 VIII–86–2 and RCRA (3008) VIII–86–01. The $875,592.92 figure represents approximately 91 percent of the total amount of Past Response Costs incurred by the United States.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the Superfund Records Center, 5th floor, Denver Place, 999 18th Street, Denver, Colorado, 80202.

DATES: Comments must be submitted on or before February 7, 1994.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available at the Superfund Records Center, 5th floor, Denver Place, 999 18th Street, Denver, Colorado, 80202. A copy of the proposed settlement may be obtained from Kelcey Land (8HWM–SR), 999 18th Street, suite 500, Denver, Colorado, 80202, telephone (303) 294–7639. Comments should reference the Martin Marietta site, Waterton, Colorado, and EPA Docket No. CERCLA VIII 93–03 and should be addressed to Kelcey Land (8HWM–SR), Cost Recovery Program Manager, 999 18th Street, suite 500, Denver, Colorado, 80202.

FOR FURTHER INFORMATION CONTACT: Jessie Goldfarb, Office of Regional Counsel, 999 18th Street, suite 500, Denver, Colorado, 80202, telephone (303) 294–7592.

Dated: August 2, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–183 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–44604; FRL–4748–3]

TSCA Consent Order; Receipt of Test Data

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the receipt of test data on refractory ceramic fibers (RCFs) (CAS No. 142844–00–6), submitted pursuant to a Testing Consent Order entered into under the authority of the Toxic Substances Control Act (TSCA). Publication of this notice is required under section 4(d) of TSCA.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: Section 4(d) of TSCA requires EPA to publish a notice in the **Federal Register** reporting the receipt of test data submitted pursuant to test rules promulgated under section 4(a) of TSCA within 15 days after the test data are received. Under 40 CFR 790.60, all results of testing conducted pursuant to a consent order must be announced to the public in accordance with the procedures specified in section 4(d) of TSCA.

I. Test Data Submissions

Test data for refractory ceramic fibers (RCFs) were submitted by three member companies of the Refractory Ceramic Fiber Coalition (Carborundum Company, Premier Refractories and Chemicals, Inc., and Thermal Ceramics, Inc.) pursuant to a Testing Consent Order at 40 CFR 799.5000. The test data were received by EPA on December 21, 1993. The submission describes workplace exposure monitoring data to RCFs from RCFC company facilities, and their customers' facilities.

RCFs are used as insulation for industrial applications such as high temperature furnaces, heaters, and kilns. RCFs are also used in automotive applications, aerospace uses, and in certain commercial appliances such as self-cleaning ovens.

EPA has initiated its review and evaluation process for these data submissions. At this time, the Agency has not determined whether the submissions are complete.

II. Public Record

EPA has established a public record for this TSCA section 4(d) receipt of data notice (docket number OPPTS–42166A). This record includes copies of all data reported in this notice. The record is available for inspection from 12 noon to 4 p.m., Monday through Friday, except legal holidays, in the TSCA NCIC, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

Authority: 15 U.S.C. 2603.

Lists of Subjects

Environmental protection, Test data.

Dated: December 27, 1993.

James B. Willis,

Acting Director, Office of Pollution Prevention and Toxics.

[FR Doc. 94–374 Filed 1–5–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

December 30, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0176.

Title: Section 73.1510, Experimental Authorizations.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 25 responses; 2.96 hours average burden per response; 74 hours total annual burden.

Needs and Uses: Section 73.1510 requires that a licensee of an AM, FM and TV broadcast stetion file an informal application with the FCC to request an experimental authorization to conduct technical experimentation directed toward improvement of the technical phases of operation and service. This request shall describe the nature and purpose of experimentation to be conducted, the nature of the experimental signal to be transmitted, and the proposed schedule of hours and duration of the experimentation. The data is used by FCC staff to maintain complete technical information about a broadcast station and to ensure that such experimentation will not cause interference to other stations.

OMB Number: 3060–0181.

Title: Section 73.1615, Operation During Modification of Facilities.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 160 responses; 0.69 hour average burden per response; 110 hours total annual burden.

Needs and Uses: Section 73.1615 requires notification to the FCC by a licensee of an AM, FM or TV station when it is in the process of modifying existing facilities as authorized by a construction permit and it becomes necessary to either discontinue operation or to operate with temporary facilities. If such licensee needs to discontinue operations or operate with temporary facilities for more than 30 days, then an informal letter request must be sent to the FCC prior to the 30th day. The data is used by FCC staff to maintain complete technical records and to ensure that interference will not be caused to other licensed broadcast facilities.

Federal Communicstions Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–212 Filed 1–5–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P108–93]

Petition for Permanent Filing Exemption; Petition of Totem Ocean Trailer Express, Inc.; Filing of Petition

Notice is hereby given of the filing of a petition by Totem Ocean Trailer Express, Inc. pursuant to 46 CFR 514.8(a), for permanent exemption of its Local Freight Tariff No. 3–C, FMC–F No. 4, ICC TOTE 201, from the electronic tariff filing requirements of the Commission's ATFI System, on the grounds that the tariff is jointly filed with the Interstate Commerce Commission and the Federal Maritime Commission, and is therefore not compatible with the ATFI filing requirements. Alternatively, petitioner seeks complete exemption from filing the tariff in paper or electronic form.

To facilitate through consideration of the petition, interested persons are requested to reply to the petition no later than January 18, 1994. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Counsel for petitioner, Mr. Michael D. Duppenthaler, Registered Practitioner, Interstate Commerce Commission, 1100 Olive Way, suite 1150, Seattle, Washington 98101–1839.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street. NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 94–111 Filed 1–5–94; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Carnegie Bancorp, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 31, 1994.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Carnegie Bancorp, Princeton, New Jersey; to become a bank holding company by acquiring 100 percent of the voting shares of Carnegie Bank, N.A., Princeton, New Jersey.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. American Bancshares Corp., Livingston, Tennessee; to become a bank holding company by acquiring American Savings Bank, Livingston, Tennessee, a *de novo* bank.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Independent Bank Corporation, Ionia, Michigan; to acquire 100 percent of the voting shares of KSB Financial, Inc., Kingston, Michigan, and thereby indirectly acquire Kingston State Bank, Kingston, Michigan.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of Tennessee Bancorp, Inc., Columbia, Tennessee, and thereby indirectly acquire Tennessee National Bank, Columbia, Tennessee.

In connection with this application, Union Planters National Bank, Memphis, Tennessee, has applied to become a bank holding company by acquiring 100 percent of the voting shares of Tennessee Bancorp, Inc., Columbia, Tennessee, and thereby indirectly acquire Tennessee National Bank, Columbia, Tennessee. Immediately at consummation of the proposed acquisition, Tennessee Bancorp, Inc. will be dissolved and its subsidiary bank, Tennesee National Bank, will be merged with and into Union Planters National Ban. Union Planters National Bank will be the surviving entity. Both Tennessee Bancorp, Inc. and Tennessee National Bank will cease to exist on a pro forma basis.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Leader First Bancorp, Inc., Marlow, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Marlow, Marlow, Oklahoma.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Mission-Heights Management Company, Ltd., Houston, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Ibid, Inc., Wilmington, Delaware; Independent Bancorp, Inc., Channelview, Texas, and thereby indirectly acquire Channelview Bank, Channelview, Texas.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–213 Filed 1–5–94; 8:45 am]

BILLING CODE 6210–01–F

FF Bancorp, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 20, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. FF Bancorp, Inc., New Smyrna Beach, Florida; to become a bank holding company by acquiring Key Bancshares, Inc., Tampa, Florida, and thereby indirectly acquire The Key Bank of Florida, Tampa, Florida.

Applicants proposes to retain its thrift subsidiaries, First Federal Savings Bank of New Smyrna, New Smyrna Beach, Florida, and First Federal Savings Bank of Citrus County, Inverness, Florida, and thereby engage in operating a thrift subsidiary pursuant to § 225.25(b)(9) of the Board's Regulation Y. Applicant also proposes to retain Smyrna Thrift's subsidiary, Florida Agency, and Inverness Thrift's subsidiary, Home Assets, and thereby engage in discount brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–214 Filed 1–5–94; 8:45 am]

BILLING CODE 6210–01–F

First Security Corporation; Application to Engage de novo in Permissible Nonbanking Activities

This notice corrects a notice (FR Doc. 93-31063) published on page 67412 of the issue for Tuesday, December 21, 1993.

In the third column, under the Federal Reserve Bank of San Francisco heading, the entry for First Security Corporation is revised to read as follows:

1. First Security Corporation, Salt Lake City, Utah; to engage *de novo* through its subsidiary, First Security Investor Services, Inc., Salt Lake City, Utah, in the purchase and sale, on the order of investors as a "riskless principal", of obligations of the United States, general obligations of states and their political subdivisions and other obligations that state member banks of the Federal Reserve System may be authorized to underwrite and deal in under 12 U.S.C. 24 and 335, including bankers' acceptances and certificates of deposit, under the same limitations as would be applicable if the activity were performed by Applicant's subsidiary state member banks or its subsidiary nonmember banks as if they were member banks, pursuant to § 225.25(b)(16) of the Board's Regulation Y.

Comments on this applicatio must be received by January 10, 1994.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–215 Filed 1–5–94; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corporation; Acquisition of Company Engaged in Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a) or (f) of

the Board's Regulation Y (12 CFR 225.23(a) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1994.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota, and Norwest Investment Services, Inc., Minneapolis, Minnesota; to acquire FN Investment Center, Phoenix, Arizona, and thereby engage in securities brokerage activities pursuant to § 225.25(b)(15) of the Board's Regulation Y, including private placement, limited underwriting, precious metal brokerage, riskless principal and leasing activities pursuant to *Norwest Corp.*, 76 Federal Reserve Bulletin 79 (1990).

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–216 Filed 1–5–94; 8:45 am]

BILLING CODE 6210–01–F

The Sumitomo Bank, Limited; Application To Engage in Certain Nonbanking Activities

The Sumitomo Bank, Limited, Osaka, Japan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and section 225.23 of the Board's Regulation Y (12 CFR 225.23), for approval to engage through its wholly owned subsidiary, Sumitomo Bank Securities, Inc., New York, New York (Company), in underwriting and dealing in, to a limited extent, certain municipal revenue bonds, 1-4 family mortgage-related securities, consumer receivable-related securities, and commercial paper. Applicant proposes to conduct the activities on a world-wide basis.

Closely Related to Banking Standard

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "that the Board after due notice and opportunity for hearing has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto". In determining whether a proposed activity is closely related to banking for purposes of the BHC Act, the Board considers, *inter alia*, the matters set forth in National Courier Association v. Board of Governors of the Federal Reserve System, 516 F.2d 1229 (D.C. Cir. 1975). These considerations are:

(1) Whether banks generally have in fact provided the proposed services,

(2) Whether banks generally provide services that are operationally or functionally so similar to the proposed services as to equip them particularly well to provide the proposed services; and

(3) Whether banks generally provide services that are so integrally related to the proposed services as to require their provision in a specialized form. *See* 516 F.2d at 1237. In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. *Board Statement Regarding Regulation Y*, 49 FR 806 (1984).

Applicant maintains that the Board previously has determined by order that the proposed activities, when conducted within the limitations established by the Board, are closely related to banking and consistent with section 20 of the Glass-Steagall Act (12 U.S.C. 377). *See, e.g., Citicorp*, 73 Federal Reserve Bulletin 473 (1987), *aff'd sub nom. Securities Industry Ass'n v. Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 488 U.S. 1059 (1988); *Order Approving Modifications to the Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989); *The Sanwa Bank, Limited*, 76 Federal Reserve Bulletin 568 (1990); *Order Approving Modifications to the Section 20 Orders*, 79 Federal Reserve Bulletin 226 (1993); and *Supplement to Order Approving Modifications to Section 20 Orders*, 79 Federal Reserve Bulletin 360 (1993).

Proper Incident to Banking Standard

In order to approve the proposal, the Board must determine that the proposed activities to be conducted by Company "can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." 12 U.S.C. 1843(c)(8).

Applicant believes that the proposal will produce public benefits that outweigh any potential adverse effects. In particular, Applicant maintains that the proposal will enhance competition and result in greater convenience to Applicant's customers. In addition, Applicant states that the proposed activities will not result in adverse effects such as an undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices, and that Company will conduct the proposed activities in accordance with prudential limitations designed to safeguard against such potential adverse effects that have been relied upon by the Board in similar previous cases. *See, e.g., Citicorp, supra; The Sanwa Bank, Limited, supra.* In this regard, Applicant has requested that one of the prudential limitations be modified to permit one officer or one director of one of its United States banking affiliates to serve as a director of Company, a modification which Applicant maintains is consistent with prior Board actions. *See, e.g., Synovus Financial Corp., et al.*, 77 Federal Reserve Bulletin 954 (1991).

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application, and does not represent a determination by the Board that the proposal meets or is likely to meet the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than January 26, 1994. Any request for a hearing on this application must, as required by section 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal. This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, December 30, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–217 Filed 1–5–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Revised Jurisdictional Thresholds for Section 8 of the Clayton Act

AGENCY: Federal Trade Commission.

ACTION: Notice.

SUMMARY: The Federal Trade Commission announces the revised thresholds for interlocking directorates required by the 1990 amendment of section 8 of the Clayton Act. Section 8 prohibits, with certain exceptions, one person from serving as a director or officer of two competing corporations if two thresholds are met. Competitor corporations are covered by section 8 if each one has capital, surplus, and undivided profits aggregating more than $10,000,000, with the exception that no corporation is covered if the competitive sales of either corporation are less than $1,000,000. Section 8(a)(5) requires the Federal Trade Commission to revise those thresholds annually, based on the change in gross national product. The new thresholds, which take effect immediately, are $12,092,000 for section 8(a)(1), and $1,209,200 for section 8(a)(2)(A).

EFFECTIVE DATE: January 6, 1994.

FOR FURTHER INFORMATION CONTACT: James Mongoven, Bureau of Competition, Office of Policy and Evaluation, (202) 326–2879.

(Authority: 15 U.S.C. 19(a)(5)).

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–273 Filed 1–5–94; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 92N–0416]

David J. Brancato; Denial of Hearing and Final Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Deputy Commissioner for Operations of the Food and Drug Administration (FDA) is denying a request for a hearing and issuing a final order under section 306(a) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)) permanently debarring Mr. David J. Brancato, 13010 Atlantic Ave., Rockville, MD 20851, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Mr. Brancato was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval of a drug product; and relating to the regulation of a drug product under the act.

EFFECTIVE DATE: January 6, 1994.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

David J. Brancato, a former review chemist with FDA's Division of Generic Drugs, pled guilty and was sentenced on January 5, 1990, for receiving unlawful gratuities, a felony offense under 18 U.S.C. 201(c)(1)(B). This conviction was based on Mr. Brancato's acceptance of payment of approximately $4,300 from senior officials of generic drug manufacturers, Par Pharmaceutical, Inc. (Par), and its subsidiary, Quad Pharmaceuticals, Inc. (Quad), while Mr. Brancato was involved in the regulation of Par's and Quad's drug products and while he was specifically responsible for reviewing Par's and Quad's applications to determine whether those applications met certain statutory standards for approval.

On December 12, 1992, Mr. Brancato received a certified letter from the Deputy Commissioner for Operations offering Mr. Brancato an opportunity for a hearing on the agency's proposal to issue an order under section 306(a) of the act debarring him from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar Mr. Brancato on its finding that he was convicted of a felony under Federal law for conduct relating to the development, approval, and regulation of Par's and Quad's drug products.

The certified letter further informed Mr. Brancato that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there was a genuine and substantial issue of fact requiring a hearing. The letter also notified Mr. Brancato that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact which precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated December 21, 1992, Mr. Brancato requested a hearing and submitted arguments and information in support of his hearing request. In his request for a hearing, Mr. Brancato acknowledges that he was convicted of a felony under Federal law as alleged by FDA; however, he argues that FDA's findings are incorrect and that the agency's proposal to debar him is unconstitutional.

The Deputy Commissioner for Operations has considered Mr. Brancato's arguments and concludes that they are unpersuasive and fail to raise a genuine and substantial issue of fact requiring a hearing. The legal arguments that Mr. Brancato offers do not create a basis for a hearing because hearings are not granted on matters of policy or law, but only on genuine and substantial issues of fact (see 21 CFR 12.24(b)(1)). Additionally, the material submitted in support of Mr. Brancato's hearing request does not justify a hearing because hearings will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions (see 21 CFR 12.24(b)(2)). Moreover, all of Mr.

Brancato's arguments are unconvincing for the reasons discussed below.

II. Conclusions of the Deputy Commissioner Concerning Mr. Brancato's Arguments in Support of a Hearing

A. Mandatory Debarment of Individuals Applies Retroactively to Convictions Occurring Within the Past 5 Years

Mr. Brancato first alleges that the debarment provisions do not apply to conduct which occurred prior to the effective date of the act. Mr. Brancato does not support this claim with further argument.

The provision of the act applicable to Mr. Brancato is section 306(a)(2) of the act. Initiation of debarment proceedings under that section is not limited by when the conduct underlying the conviction occurred, but rather, by when the conviction occurred. Under section 306(a)(2) of the act, debarment proceedings must be initiated within 5 years of the conviction (see section 306(l)(2) of the act). Debarment of Mr. Brancato is appropriately based upon his January 5, 1990, conviction, occurring less than 4 years ago. Because the 5-year statute of limitations has not expired, Mr. Brancato's argument fails to raise a genuine and substantial issue of fact.

It is unclear from Mr. Brancato's first argument whether he intended to further allege that the debarment provisions do not apply retroactively to convictions occurring prior to the effective date of the act. Nevertheless, this issue is addressed below.

Congress intended section 306(a)(2) of the act to be retroactive as evidenced by comparing section 306(a)(2) of the act, applicable to mandatory debarment of individuals, to section 306(a)(1) of the act, applicable to mandatory debarment of corporations. The act treats corporations differently from individuals with respect to retroactivity. Mandatory debarment of corporations under section 306(a)(1) of the act is not retroactive because debarment of corporations is explicitly limited to convictions occurring "after the date of enactment." Conversely, section 306(a)(2) of the act, pertaining to mandatory debarment of individuals, does not contain any such limiting language. The exclusion of language barring retroactivity for section 306(a)(2) implies that section 306(a)(2) of the act was intended by Congress to be implemented retroactively.

In addition, section 306(l)(2) of the act shows that section 306(a)(2), pertaining to mandatory debarment of individuals, was intended to be retroactive. Section 306(l)(2) of the act sets out the effective dates for each provision of the act. As noted above, the effective dates pertaining to section 306(a)(2) of the act state that any relevant conviction may be used as the basis for mandatory debarment of individuals, so long as the conviction occurred no more than 5 years prior to the initiation of debarment proceedings. Section 306(l) of the act states that certain other debarment provisions shall not be retroactive by limiting application of those provisions to actions occurring on or after June 1, 1992. Thus, where Congress intended a section not to be retroactive, it provided an effective date in section 306(l) of the act. The omission of an effective date for section 306(a) of the act and the inclusion of an effective date for other sections reveals Congress' intent that this section be retroactive.

Thus, as intended by Congress, and as supported by the explicit language of the act, mandatory debarment applies retrospectively and, thus, mandatory debarment applies to Mr. Brancato's conviction, which occurred within 5 years prior to the effective date of the act. Accordingly, Mr. Brancato's claim fails to raise a genuine and substantial issue of fact.

B. The Decision To Debar Mr. Brancato Was Based Upon the Relevant Considerations and Was Made by an Authorized Designee of the Secretary

Mr. Brancato next argues that notice to him of his proposed debarment does not reflect consideration by the Secretary of Health and Human Services or his designee. Mr. Brancato does not support this claim with facts or further argument.

Sections 201 through 903 of the act (21 U.S.C. 321 through 394) contain numerous grants of authority to the Secretary of the Department of Health and Human Services (the Secretary). The Secretary has, in general, delegated this authority to the Commissioner of Food and Drugs with authority to redelegate to the Deputy Commissioner for Operations and other officers of FDA (see 21 CFR 5.10 and 5.20). The authority conferred in section 306 of the act is delegated to the Commissioner, even though the legislation formally names the Secretary. The Commissioner has redelegated that authority to the Deputy Commissioner for Operations (21 CFR 5.20(b) and 5.20(g)(1)).

The notice of proposed debarment and opportunity for a hearing letter received by Mr. Brancato on December 12, 1992, was issued legally under authority delegated to FDA's Deputy Commissioner for Operations.

The decision to propose debarment of Mr. Brancato was appropriately based upon the following relevant considerations: (1) The nature of the conviction (a felony under Federal law) and (2) the conduct underlying the conviction (conduct relating to the development, approval, and regulation of Par's and Quad's drug products) (see section I. of this document). Because the Deputy Commissioner for Operations, an authorized designee of the Secretary, considered the relevant factors in making the determination to propose debarment, Mr. Brancato's claim that the notice of his proposed debarment does not reflect consideration by the Secretary or his designee fails to raise any issue as to the validity of this proceeding and fails to raise a genuine and substantial issue of fact.

C. Mr. Brancato's Conviction Subjects Him to the Mandatory Debarment Provisions Not to the Permissive Debarment Provisions

Mr. Brancato further contends that the conduct for which he was convicted is more appropriately conduct subject to permissive debarment under 21 U.S.C. 306(b)(2)(B) of the act rather than to mandatory debarment. Mr. Brancato fails to support this statement with an explanation or further argument.

Section 306(a)(2)(A) and (a)(2)(B) of the act mandates that FDA debar an individual if the Secretary finds that the individual has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of any drug product; and (2) otherwise relating to the regulation of any drug product under the act.

As discussed above, Mr. Brancato's conviction for receiving unlawful gratuities triggers the section 306 (a)(2)(A) and (a)(2)(B) of the act mandatory debarment provisions. An individual convicted of this crime will not be considered a candidate for permissive debarment unless FDA finds that the conduct underlying the conviction did not relate to the development or approval, or the regulation of any drug product (see section 306(b)(2)(B)(ii) of the act). Absent such a finding, mandatory debarment based upon such a conviction must follow. Because FDA finds that the conduct which served the basis for Mr. Brancato's conviction did relate to the development and approval and the regulation of Par's and Quad's drug products, the mandatory provisions, rather than the permissive provisions, are applicable in this case. Mr. Brancato acknowledges that he was convicted of a felony under Federal law.

Furthermore, he does not dispute FDA's finding that the conduct underlying his conviction relates to the development and approval and the regulation of Par's and Quad's drug products. Therefore, Mr. Brancato's claim fails to raise a genuine and substantial issue of fact.

D. The Statutory Criteria Pertaining to Permissive Debarment Are Not Relevant to Mr. Brancato's Mandatory Debarment Action

Mr. Brancato states the following: (1) There is no evidence that the Secretary considered the statutory criteria for determining appropriateness and period of debarment for nonmandatory (permissive) debarment, (2) Mr. Brancato took voluntary steps to mitigate the impact of his offense on the public, and (3) Mr. Brancato has no prior convictions. Mr. Brancato fails to support these three statements with further argument.

As discussed, the mandatory debarment provisions, not the permissive debarment provisions, apply in this case. The criteria pertaining to permissive debarment, which include evidence of mitigation and prior convictions, may not be considered in making the decision to initiate mandatory debarment proceedings. Because Mr. Brancato argues for the consideration of irrelevant permissive debarment criteria, not applicable to Mr. Brancato's mandatory debarment action, his claim fails to raise a genuine and substantial issue of fact.

E. Mr. Brancato's Plea Agreement With the Government Does Not Preclude His Debarment

In his next argument, Mr. Brancato states that his guilty plea and cooperation with the government were predicated on the assumption that no civil penalties would flow from his cooperation and that debarment would render his guilty plea subject to collateral attack and jeopardizes the integrity of the judicial process. He does not support this claim with evidence or citations.

Mr. Brancato's claim is completely unsubstantiated. The April 13, 1989, plea agreement represents the complete and final embodiment of Mr. Brancato's and the government's intention; the agreement explicitly states that "[t]here are no other agreements, promises, undertakings or understandings between Mr. Brancato and this Office." Contrary to Mr. Brancato's "assumption," the terms of the plea agreement do not preclude subsequent civil or administrative actions, including debarment. The terms bar only subsequent criminal action. Because the plea agreement is the complete and final expression of the compromise between Mr. Brancato and the government, and because the agreement does not preclude debarment, Mr. Brancato's claim fails to raise a genuine and substantial issue of fact.

F. Debarment of Mr. Brancato Is Not Prohibited by the Ex Post Facto Clause

In his final argument, Mr. Brancato states, "individuals who cooperate with the government should not be subject to sanctions of this kind *ex post facto*." Mr. Brancato fails to support this statement with an explanation or case citation.

Although it is unclear from this statement what point Mr. Brancato is attempting to make, two separate arguments may be implied: That his cooperation exempts him from the debarment provisions, and that his debarment violates the ex post facto clause of the United States Constitution. Both arguments are discussed individually below.

As discussed above, the mandatory debarment provisions, not the permissive debarment provisions, apply in this case. Cooperation with the government may not be considered in the decision to initiate mandatory debarment proceedings. (Cooperation may, however, be considered in determining whether to grant special early termination of debarment, under section 306(d)(4)(C) of the act, to individuals and as evidence of mitigation, in determining appropriateness and period of permissive debarment.) Because Mr. Brancato's cooperation is immaterial here, his claim fails to raise a genuine and substantial issue of fact.

Mr. Brancato further suggests that the ex post facto clause of the U.S. Constitution prohibits application of section 306(a)(2) of the act to him because this section was not in effect at the time of Mr. Brancato's criminal conduct. Section 306(a)(2) of the act was enacted on May 13, 1992. The conduct underlying Mr. Brancato's conviction occurred in 1987, and his conviction occurred in 1990.

An ex post facto law is one which punishes acts occurring prior to enactment of the law, or which adds a new punishment to one that was in effect when the crime was committed. (*Ex Parte Garland*, 4 Wall. 333, 377, 18 L. Ed. 366 (1866). *Collins* v. *Youngblood*, 110 S.Ct. 2715 (1990).) Retroactive application of a law to serve a remedial purpose does not violate the ex post facto clause.

Because debarment is intended as a remedy, rather than a punishment, retroactive application of the mandatory debarment provisions of the act is not prohibited by the ex post facto clause.

Debarment was clearly intended to be remedial. Congress created the Generic Drug Enforcement Act of 1992 (GDEA) in response to findings of fraud and corruption in the generic drug industry Both the language of the GDEA itself and its legislative history reveal that the purpose of the debarment provisions is remedial: "to restore and ensure the integrity of the ANDA approval process and to protect the public health" (see section 1, Pub. L. 102–282, (GDEA)). A statement by Senator Hatch supports the remedial character of debarment as follows: "* * * [t]he legislation * * * provides a much-needed *remedy* for the blatant fraud and corruption uncovered in the generic drug industry * * * during the last 3 years." (Emphasis added.) (See Congressional Record, April 10, 1992, at S 5616.)

It is well established by the Supreme Court that statutes which deny future privileges to convicted offenders because of their previous criminal activities in order to ensure against corruption in specified areas do not impose penalties for past conduct and, therefore, do not violate the ex post facto prohibitions (see, e.g., *Hawker* v. *New York*, 170 U.S. 189, 190 (1898) (physician barred from practicing medicine for a prior felony conviction); *DeVeau* v. *Braisted*, 373 U.S. 154 (1960)).

In *DeVeau*, the Court upheld a law that prohibited a convicted felon from employment as an officer in a waterfront union. The purpose of the law was to remedy the past corruption and to ensure against future corruption in the waterfront unions. The Court in *DeVeau*, 363 U.S. at 160, stated:

> The question in each case where unpleasant consequences are brought to bear upon an individual for prior conduct, is whether the legislative aim was to punish that individual for past activity, or whether the restriction of the individual comes about as a relevant incident to a regulation of a present situation, such as the proper qualifications for a profession * * *.

As in *DeVeau*, the legislative purpose of the relevant statute is to ensure that fraud and corruption are eliminated from the generic drug industry. The restrictions placed on individuals convicted of a felony under Federal law are not intended as punishment but are "incident to a regulation of a present situation" (*DeVeau*, 363 U.S. at 160) and are necessary in order to remedy the past fraud and corruption in the industry.

The legislative history is replete with statements that the GDEA provides the

reasonable means needed to eliminate the widespread corruption in the generic drug industry and to restore consumer confidence in generic drugs. Because debarment is a remedial action, rather than one intended to punish, debarment does not violate the ex post facto clause and Mr. Brancato's claim fails to raise a genuine and substantial issue of fact.

In conclusion, Mr. Brancato has raised no genuine and substantial issue of fact regarding his conviction. He acknowledges his conviction as alleged by FDA in the agency proposal to debar him. In addition, Mr. Brancato's legal arguments do not create a basis for a hearing and, in any event, are unpersuasive. Accordingly, the Deputy Commissioner for Operations denies Mr. Brancato's request for a hearing.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Mr. Brancato has been convicted of a felony under Federal law for conduct: (1) Relating to the development or approval, including the process for development or approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Mr. Brancato is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under sections 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective on January 6, 1994 (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Mr. Brancato in any capacity, during his period of debarment, will be subject to civil money penalties (21 U.S.C. 335b(a)(6)). If Mr. Brancato, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties (21 U.S.C. 335b(a)(7)). In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with Mr. Brancato's assistance during his period of debarment.

Mr. Brancato may file an application to attempt to terminate his debarment, pursuant to section 306(d)(4)(A) of the act. Any such application would be reviewed under the criteria and processes set forth in section 306(d)(4)(C) and (d)(4)(D) of the act. Such an application should be identified with Docket No. 92N–0416 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 5, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 94–210 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–01–P

[Docket No. 93D–0398]

Proposed Guideline Regarding Microbiological Testing for Antimicrobial Food-Animal Drugs; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a proposed guideline entitled "Microbiological Testing of Antimicrobial Drug Residues in Food" prepared by the Center for Veterinary Medicine (CVM) regarding the tests required for food-animal antimicrobial drug products to establish their human-food safety. This proposed guideline provides criteria for determining which antimicrobials will require supplemental testing, and recommends test procedures that are necessary to ensure that antimicrobial residues will not cause intestinal microflora perturbations in the consumer.

DATES: Submit written comments by April 6, 1994.

ADDRESSES: Submit written requests for single copies of the proposed guideline to the Communications and Education Branch (HFV–12), Center for Veterinary Medicine, Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1755, or the contact person (address below). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the proposed guideline to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. A copy of the proposed guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Haydee Fernandez, Center for Veterinary Medicine (HFV–154), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1684.

SUPPLEMENTARY INFORMATION: FDA is announcing the availability of a proposed guideline entitled "Microbiological Testing of Antimicrobial Drug Residues in Food" regarding required testing for food-animal antimicrobiel drug products. In evaluating new animal drug applications (NADA's) the agency must determine, among other factors, the safety of the intended use of the drug, including the cumulative effect on man or animal required by section 512(d)(2)(B) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(d)(2)(B)). The proposed guideline provides criteria that will be used to determine which antimicrobial drugs will require supplemental testing to ensure that antimicrobial residues will not cause intestinal microflora perturbations in the consumer exposed to antimicrobial residues.

It is well known that therapeutic doses of antibiotics can cause adverse effects on the intestinal microflora ecology. In most cases the lowest dose at which these perturbations occur have not been determined; however, CVM believes that the ecology of the human intestinal microflora should not be disturbed by the residues of antimicrobials used in food-animals.

In June 1992, CVM sponsored a symposium on the Microbiological Significance of Drug Residues in Food to evaluate scientific expertise in this area. Information discussed at the symposium reaffirmed CVM's conclusion that the residue antimicrobial activity is a valid endpoint for establishing residue tolerances for antimicrobial animal drugs.

CVM proposes establishing two categories for antimicrobial drugs: (1) "New Animal Antimicrobial Drugs Requiring Additional Human Food Safety Microbiological Testing" and (2) "New Animal Antimicrobial Drugs Exempt from Additional Human Food Safety Microbiological Testing." To qualify for exemption from additional microbiological testing, the antimicrobial drug must have either: (1) "Very low" residue levels, (2) residues

with limited antimicrobial activity, or (3) no adverse effects on intestinal microflora at approved dosages. Antimicrobial drugs will require additional testing in cases where a safe residue concentration retains antimicrobial activity in humans at residue exposure levels greater than 1 part per million in the total diet.

CVM requests comments regarding how the proposed guideline should relate the effects of low doses of antibiotics observed in model systems to potential adverse biological effects in humans. In addition, information is requested on the appropriate endpoints for monitoring the effects of the different classes of antibiotics.

Interested persons may, on or before April 6, 1994, submit to the Dockets Management Branch (address above) written comments on the proposed guideline. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. The proposed guideline and received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: December 28, 1993.

William K. Hubbard,

Acting Deputy Commissioner for Policy.

[FR Doc. 94–114 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[BPD–778–PN]

RIN 0938–AG28

Medicare Program; Special Payment Limits for Home Blood Glucose Monitors

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This notice would establish special payment limits for standard home blood glucose monitors, identified as code E0607 of the HCFA Common Procedure Coding System (HCPCS). This proposed notice is intended to prevent excessive payment for these items. Currently, payment under the Medicare program for home blood glucose monitors and other items of durable medical equipment (DME) is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. This notice proposes that payment for standard home blood glucose monitors be equal to 80 percent of the lesser of the actual charge or a special payment limit.

DATES: Comments will be considered if we receive them at the appropriate address, as provided below, by 5 p.m. on March 7, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–778–PN, P.O. Box 26688, Baltimore, MD 21207

If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–778–PN. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: (202) 245–7890).

FOR FURTHER INFORMATION CONTACT: Joel Kaiser, (410) 966–4499.

SUPPLEMENTARY INFORMATION:

I. Background

A. Special Reasonable Charge Limits

Payment for DME furnished under Part B of the Medicare program (Supplementary Medical Insurance) is made through contractors known as carriers. Before January 1, 1989, payment for DME was made on a reasonable charge basis. The methodology used by the carriers to establish reasonable charges is set forth in sections 1833 and 1842(b) of the Social Security Act (the Act) and in 42 CFR part 405, subpart E. Reasonable charge determinations are generally based on customary and prevailing charges derived from historic charge data. The reasonable charge for an item of DME was generally set at the lowest of the following factors:

- The supplier's actual charge for the item.
- The supplier's customary charge.
- The prevailing charge in the locality for the item. (The prevailing charge may not exceed the 75th percentile of the customary charges of suppliers in the locality.)
- The inflation indexed charge (IIC). The IIC is defined in § 405.509(a) as the lowest of the fee screens used to determine reasonable charges for services, supplies, and equipment paid on a reasonable charge basis (excluding physicians' services) that is in effect on December 31 of the previous fee screen year, updated by the inflation adjustment factor.

Section 1842(b)(3) of the Act requires that all payments under Part B of the Medicare program must be reasonable. Paragraphs (8) and (9) of section 1842(b) of the Act provide that we may establish a special reasonable charge limit for a category of service if, after consultation with representatives of affected parties, we determine that the standard rules for calculating reasonable charges result in grossly deficient or excessive charges.

Applicable regulations are located at § 405.502(g). Section 405.502(g) requires that we consider the available information that is relevant to the category of service and establish reasonable charge limits that are realistic and equitable. The limit on the reasonable charge is an upper limit to correct a grossly excessive charge or a lower limit to correct a grossly deficient charge. The limit is either a specific dollar amount or is based on a special method to be used in determining the reasonable charge.

Section 405.502(g)(1) provides the following examples of circumstances that may result in grossly deficient or excessive charges:

- The marketplace is not competitive.
- Medicare and Medicaid are the sole or primary source of payment for a service.
- The charges involve the use of new technology for which an extensive charge history does not exist.
- The charges do not reflect changing technology, increased facility with that technology, or changes in acquisition, production, or supplier costs.
- The prevailing charges for a service in a particular locality are substantially higher or lower than prevailing charges in other comparable localities, taking into account the relative costs of furnishing the services in the different localities.
- Charges are grossly lower than or exceed acquisition or production costs.
- There have been increases in charges for a service that cannot be explained by inflation or technology.
- The prevailing charges for a service are substantially higher or lower than the payments made for the service by other purchasers in the same locality.

Section 405.502(g)(3) specifies that we announce payment limits in the **Federal Register**. Specifically, we publish in the **Federal Register** our intention to propose limits and allow 60 days for receipt of public comments on the proposal. After we have considered all timely comments, we publish in the **Federal Register** a final notice announcing the special payment limits and our analyses and responses to the comments. Section 405.502(g)(3) also provides that the proposed and final notices must set forth the criteria and circumstances, if any, under which a carrier may grant an exception to the limit(s).

B. DME Fee Schedules

Section 4062 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (Public Law 100–203), which added section 1834(a) to the Act, provides for a fee schedule payment methodology for DME furnished on or after January 1, 1989. (This fee schedule payment methodology is set forth in 42 CFR part 414, subpart D.) Sections 1834(a)(1) (A) and (B) of the Act provide that Medicare payment for DME is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. Section 1834(a) of the Act classifies DME into the following payment categories:

- Inexpensive or other routinely purchased DME.
- Items requiring frequent and substantial servicing.
- Customized items.
- Oxygen and oxygen equipment.
- Other items of DME (capped rental items).

There is a separate methodology for determining the fee schedule payment amount for each category of DME. The fee schedules are adjusted annually by a covered item update factor. The covered item update factor is generally equal to the change in the Consumer Price Index for all Urban Consumers (CPI–U) for the 12-month period ending June 30 of the preceding year.

Section 1834(a)(10)(B) provides that we may apply the special payment limits authority of paragraphs (8) and (9) of section 1842(b) to covered items of DME and suppliers of these items and payments under section 1834(a) in the same manner as these provisions apply to physician's services and physicians and reasonable charges under section 1842(b).

C. Payment for Home Blood Glucose Monitors (Code E0607)

Standard home blood glucose monitors allow individuals to measure their blood glucose end, then, alter their diets or insulin dosages to ensure that they are maintaining an adequate blood glucose level. Home blood glucose monitors are covered by the Medicare program as DME and are classified under the inexpensive and other routinely purchased DME payment category defined in section 1834(a)(2) of the Act. Section 1834(a)(2) specifies that inexpensive and other routinely purchased DME are those items of DME that have a purchase price that does not exceed $150 or are acquired at least 75 percent of the time by purchase. We determined that home blood glucose monitors belong in this category based on a review of data that show that these monitors are acquired at least 75 percent of the time by purchase.

Section 1834(a)(2) requires that payment for items falling within this category be made on a purchase or rental basis and that local purchase and rental fee schedule amounts be calculated for each item. Section 414.220(c)(1) provides for the calculation of purchase fee schedules for both new and used DME within this category. The fee schedule amounts for purchased new, purchased used, and rental DME within this category are based on the average reasonable charges for purchased new, purchased used, and rental DME, respectively, from the base year period of July 1, 1986 through June 30, 1987.

The current 1993 fee schedule amounts for code E0607 accurately reflect the average reasonable charges for home blood glucose monitors in 1986, adjusted by 1.7 percent (the percentage increase in the CPI–U for the 6-month period ending with December 1987) and by the cumulative covered item update factor. The average 1993 fee schedule amount for purchased new home blood glucose monitors, excluding the fee schedule amounts for the Virgin Islands, Alaska, Hawaii, and Puerto Rico, is $178.73. However, as we explain below, due to manufacturers' widespread practice of issuing consumer rebates, the fee schedule amounts substantially exceed the effective purchase amount (the list purchase amount less any rebate) paid by the general public in all localities.

We have reviewed pricing and rebate information available for the years 1986 through 1993 to become familiar with the home blood glucose monitor market. Our pricing and rebate sources include: mail order catalogs (such as Bruce Medical Supply catalog, St. Louis Medical Supply, and Institutional Products), advertisements listed in newspapers and periodicals (such as Drug Topics and Shopper's Guide), and pharmacy and other retail store fliers. For the purposes of this analysis, we focused on home blood glucose monitor pricing and national rebate programs listed in the Winter 1993 edition of the Bruce Medical Supply catalog (Vol. 15, No. 1), but the pricing and rebate information found in the Bruce catalog is consistent with the pricing and rebate information available in all the other sources we examined.

In addition, in our experience, the Bruce catalog listed the largest number of home blood glucose monitors made by the largest number of home blood glucose monitor manufacturers, and reflected the national rebate programs offered by these manufacturers. Six different brands of home blood glucose monitors, manufactured by five different organizations, can be purchased from the Bruce catalog from any location in the United States, Puerto Rico, and the United States Virgin Islands and are covered under Medicare. The monitors listed are: Accu-Chek III, manufactured by Boehringer Mannheim; Checkmate, manufactured by Cascade Medical; ExacTech Companion and ExacTech Pen, manufactured by MediSence; Glucometer 3, manufactured by Miles, Inc.; One Touch II, manufactured by Lifescan; and Tracer II, manufactured by Boehringer Mannheim. We estimate that the six monitors listed in the Bruce catalog account for approximately 90 percent of the market. This estimate is based on marketing information presented in an article that appeared in the Wall Street Journal on November 12, 1992 (Marketing and Media section, B1).

We are using the Bruce catalog pricing and rebate information because it is a convenient single reference. We believe the catalog is indicative of market pricing for home blood glucose monitors. In addition, the catalog lists the national rebate programs offered by the manufacturers of the monitors. By choosing the Bruce catalog as the source of data for proposing payment limits, we are not recommending that future purchases of home blood glucose monitors by Medicare beneficiaries be made through the Bruce catalog. We are confident that comparable net prices are available in all localities from the various other mail order or retail outlets.

During the fee schedule base year period (July 1, 1986 through June 30, 1987), retail prices for home blood glucose monitors generally exceeded $150. Since then, several lower priced models have appeared on the market while the older, higher priced models have been phased out. The growth in the home blood glucose monitor market and advances in the technology of producing these monitors have caused the market value of the home blood glucose monitor to decline steadily, so that now this item is readily available at prices below $70. In addition, manufacturers have begun the widespread practice of issuing consumer rebates to promote their products. Mail-in manufacturers' rebates ranging from $20 to $75 have been available over the past several years. The Medicare program does not receive the benefit of many of these rebates because, although suppliers bill for the price of the equipment, the rebates are sent to the beneficiary.

The average list price of the six monitors in the Bruce catalog is $65.44. Manufacturer rebates, ranging from $30 to $50, are available for four of these monitors. A fifth monitor, the Checkmate, is listed at a price of $61.90, but can be obtained through the catalog free of charge with the purchase of two boxes of Checkmate test strips, supplies that are essential for the effective use of the Checkmate monitoring system. New home blood glucose monitors are now available to the general public at a net cost that is well below the fee schedule amounts established for code E0607.

Our findings are supported by the Office of the Inspector General's (OIG) report "Durable Medical Equipment—Review of Medicare Payments for Home Blood Glucose Monitors" (A–09–92–00034)—issued in December of 1992. In this report, the OIG states that excessive Medicare payments have been made for home blood glucose monitors because claims were not adjusted to reflect manufacturers' rebates. The OIG reviewed a sample of 80 Medicare claims for monitors processed by 2 carriers. From this sample, the OIG identified 50 claims for which rebates were available at the time the monitors were purchased. The OIG found that Medicare payment for only 5 of these 50 claims were reduced by the amount of the rebate. The OIG concluded that the fee schedule amounts established for code E0607 based on pre-1987 historic charges are excessive.

D. Supplier Consultation

Sections 1834(a)(10)(B) and 1842(b)(9)(A)(i) of the Act require that we consult with representatives of the suppliers likely to be affected by any change in payment before making a determination that a fee schedule amount(s) is not inherently reasonable by reason of its grossly excessive or deficient amount. On June 15, 1993, we met with representatives of suppliers of home blood glucose monitors (hereinafter referred to as supplier representatives) to discuss issues relating to Medicare payment for these devices. The following is a synopsis of the comments and concerns of the supplier representatives as expressed at this meeting.

The supplier representatives were primarily concerned about the use of manufacturer rebate information in determining appropriate Medicare payment amounts for home blood glucose monitors. They maintained that the rebate programs are purely a marketing tool used by the manufacturers to promote the sale of their monitors, that the rebates do not relate in any way to the "market price" of the monitors, and that the rebate programs are not permanent and, therefore, should not be used as a basis for establishing payment amounts.

Currently, if a manufacturer's rebate is included in the charge listed on a claim submitted for reimbursement to Medicare, that rebate is to be clearly and specifically identified and is to be annotated as not reimbursable under Medicare. Payment is based on the lower of the actual charge for the equipment (the submitted charge less the rebate amount) or the fee schedule amount. However, as noted in the OIG report discussed above, in a majority of cases, the rebates are not reported on the claims submitted to Medicare, resulting in Medicare overpayments.

The Medicare payment amounts for home blood glucose monitors should not exceed the amounts paid by the general public for these devices. The price of a home blood glucose monitor less any available rebate amount represents the actual cost to the consumer for the device and is an appropriate basis for establishing Medicare payment amounts for these devices.

In the case of home blood glucose monitors, manufacturer rebates are widespread and have been available for several years. The OIG reported that manufacturer rebates for home blood glucose monitors generally range from about $30 to $75 and that the duration of the rebate offer is continually extended, often lasting for more than 1 year or until a new model is introduced. Given the facts underlying the pricing of these monitors, the retail prices of home blood glucose monitors less the available rebate amounts are reasonable measures of the market value of these devices.

The supplier representatives maintained that some rebate programs are not available in some areas of the United States. However, the rebates listed in the Bruce Medical Supply catalog are available to all Medicare beneficiaries living in the continental United States, Alaska, Hawaii, Puerto Rico, and the United States Virgin Islands.

The supplier representatives stated that we should consider establishing inherent reasonableness limits for blood glucose test strips, identified as code A4253 of the HCPCS. Medicare payment for these supplies is made on a reasonable charge basis. The Medicare carriers, therefore, have the authority to establish inherent reasonableness limits for code A4253. We are aware of several carriers that have established inherent reasonableness limits for this code.

II. Provisions of This Proposed Notice

Based on our own experience and the work of OIG, and after consulting with representatives of suppliers of home blood glucose monitors, we have determined that the fee schedule amounts for code E0607 are grossly excessive and are not inherently reasonable. In accordance with section 1842(b)(8) of the Act, we are proposing to replace the use of a fee schedule payment with special payment limits for code E0607. These special payment limits would not apply to home blood glucose monitors with special features (HCPCS code E0609).

A. Special Payment Limits for Code E0607

1. New Home Blood Glucose Monitors

For purchased new home blood glucose monitors furnished to Medicare beneficiaries, we propose the following special payment limits:

Initial Year Special Payment Limits

Continental U.S.	$57
Alaska, Hawaii, Puerto Rico and Virgin Islands	$65

These proposed limits are based on pricing and manufacturers' rebates contained in the Winter 1993 edition of the Bruce Medical Supply catalog. We based the proposed limits for the continental U.S. on the median net cost, rounded to the nearest dollar, of five of the six monitors listed in the catalog. We omitted the Checkmate monitor because this monitor is relatively new to the market and has little market history. We determined the cost for each monitor to be equal to the Bruce Medical Supply list price decreased by the manufacturer's mail-in rebate (if applicable) and increased by appropriate shipping and handling charges effective December 1992. After making the adjustments for rebates and shipping and handling charges, we are proposing a limit of $57 which exceeds the final cost for four of the six monitors listed in the catalog. We permitted an additional shipping charge of $8 for monitors that are purchased in Alaska,

Hawaii, Puerto Rico, and the U.S. Virgin Islands. In addition, our review of current pricing and rebate information shows that several brands of new home blood glucose monitors can be widely purchased at prices below the proposed limits.

The information we used to calculate the proposed limits is presented below.

BRUCE MEDICAL SUPPLY (WINTER 1993)

[Pricing for Home Blood Glucose Monitors]

Monitor	List price	Rebate	Basic cost (1)	Shipping & handling (2)	Final cost (1+2)
Checkmate	$61.90	[1] $61.90	$0.00	$6.95	$6.95
Tracer II	42.95	30.00	12.95	5.95	18.90
Glucometer 3	42.95	30.00	12.95	5.95	18.90
Accu-Chek III	79.95	30.00	49.95	6.95	56.90
ExacTech	54.95	00.00	54.95	5.95	60.90
One Touch II	109.95	50.00	59.95	8.95	68.90
Median of the final cost—$57					

[1] The Checkmate monitor can be obtained free of charge with the purchase of two boxes of Checkmate test strips.

The final median cost of the monitors listed in the Bruce catalog, excluding the Checkmate monitor, including shipping and handling, and rounded to the nearest dollar is $57. We propose that this amount be established as the special payment limit for new home blood glucose monitors furnished within the continental United States. The final median cost for these monitors, if furnished in Alaska, Hawaii, Puerto Rico, or the United States Virgin Islands, including shipping and handling, and rounded to the nearest dollar is $65. We propose that this amount be established as the special payment limit for new home blood glucose monitors furnished outside the continental United States.

We recognize that shipping and handling costs are unique to mail-order outlets and are not generally experienced by retail outlets; however, we have chosen to include these shipping and handling costs, without regard to the type of supplier, as a proxy for similar costs such as transportation and overhead that might be incurred by retail stores. The average shipping and handling cost per monitor in the continental U.S. is approximately $7, an amount that we believe sufficiently reflects expenses incurred by retail stores that supply home blood glucose monitors. The additional shipping allowance of $8 is intended to reflect additional costs of shipping outside the continental U.S.

2. Purchased Used Home Blood Glucose Monitors

Historically, Medicare allowed payment amounts for the purchase of used DME have been set at approximately 75 percent of the corresponding allowed payment amounts for the purchase of new DME. Based on this ongoing policy, for purchased used home blood glucose monitors, the special payment limits would be equal to 75 percent of the special payment limits for purchased new monitors. If the special payment limit for a purchased new home blood glucose monitor is $57, the special payment limit for the purchased used monitor would be $42.75.

3. Rented Home Blood Glucose Monitors

Historically, Medicare-allowed payment amounts for the rental of DME have been set at approximately 10 percent of the corresponding allowed payment amounts for the purchase of new DME. Based on this ongoing policy, for rented home blood glucose monitors, the special payment limits would be equal to 10 percent of the special payment limits for purchased new monitors. If the special payment limit for a purchased new home blood glucose monitor is $57, the special payment limit for a rented monitor would be $5.70 each month. The total payment for a rented monitor would not be allowed to exceed the lower of the actual charge or the fee for the purchase of the monitor.

B. Applicability

The initial special payment limits we propose would apply to standard home blood glucose monitors furnished on or after the effective date of the published final notice and before January 1, 1994. For standard home blood glucose monitors furnished in calendar year 1994, the special payment limits would be equal to the initial special payment limits increased by the 1994 covered item update factor (the factor used to update other items of DME). The covered item update for 1994, and each subsequent year, is defined in section 1834(a)(14)(B) of the Act as the percentage increase in the CPI–U for the 12-month period ending with June of the previous year. For each calendar year after 1994, the special payment limits would be equal to the special payment limits for the preceding calendar year increased by the covered item update for the calendar year to which the limits would apply.

C. Payment for Home Blood Glucose Monitors

We propose that payment for home blood glucose monitors be equal to 80 percent of the lesser of the actual charge for the monitor or the appropriate special payment limit, as described in section A above.

III. Regulatory Impact Statement

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any notice that meets one of the E.O. 12291 criteria for a "major rule"; that is, that would be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This proposed notice would reduce unnecessary Medicare program expenditures for standard home blood glucose monitors. Currently, payment under the Medicare program for home glucose monitors is equal to 80 percent of the lesser of the actual charge for the item or the fee schedule amount for the item. Under this proposed notice, payment would be equal to 80 percent of the lesser of the actual charge or the appropriate special payment limit proposed by this notice.

We are proposing special payment limits for purchased new home blood glucose monitors for Medicare beneficiaries of $57 if the monitor is furnished within the continental United States and $65 if furnished in Alaska, Hawaii, Puerto Rico, or the Virgin Islands.

We estimate that imposing special payment limits for purchased new home blood glucose monitors would produce savings of $5 million annually, or $25 million from FY 1994 through FY 1998.

This notice would not meet the $100 million criterion nor would it meet the other E.O. 12291 criteria. Therefore, this notice is not a major rule under E.O. 12291, and an initial regulatory impact analysis is not required.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all suppliers and manufacturers of home blood glucose monitors are considered to be small entities.

In addition, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a notice may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

In determining whether to adjust payment rates for standard home blood glucose monitors, we considered the potential impacts on quality, access, and beneficiary liability of the adjustment, including the likely effects on assignment rates and participation rates of suppliers (as required by section 1842(b)(8)(C) of the Act). These considerations are addressed below in this impact analysis.

This notice would affect suppliers of standard home blood glucose monitors. Their Medicare payments could be reduced by the amount of the estimated savings. Suppliers can choose to accept assignment, which means they agree to accept Medicare's approved amount as payment in full. It is possible that, as a consequence of our reducing payments for code E0607, the number of suppliers accepting assignment of a beneficiary's claim for Medicare payment for this code may decrease if suppliers choose instead to charge beneficiaries the full difference between the amount charged and the lower Medicare payment. Also, the number of suppliers who elect to become "participating suppliers" may decrease as a result of reduced payments for code E0607. Under the Medicare participation program, a supplier that decides to become a "participating supplier" must agree to accept assignment for all covered services furnished to Medicare beneficiaries. Participating suppliers benefit by being listed in the Medicare Participating Physician/Supplier Directories, known as Medpards, which are compiled by the Medicare carriers and furnished to various senior citizen groups. A Medicare beneficiary can obtain the Medpard for his or her State from the Medicare carrier.

Suppliers who do not accept assignment and charge more than the Medicare approved amount can collect the balance, that is, the actual charge minus Medicare payment, from the beneficiary. Therefore, beneficiaries who receive services from suppliers who do not accept assignment are exposed to greater financial liability than those who receive services from a supplier taking assignment. As a result, Medicare beneficiaries may choose to deal with participating suppliers or purchase less expensive home blood glucose monitors in order to reduce their financial liability.

Manufacturers of more expensive home blood glucose monitors may be affected if, as a result of this notice, suppliers choose to provide less expensive monitors or Medicare beneficiaries decide to use less expensive monitors. We expect that this notice would have minimal affects on the quality of monitors furnished to beneficiaries or on beneficiary access to quality monitors. As we demonstrated above, four out of six home blood glucose monitors listed in the Bruce Medical Supply catalog can be purchased from anywhere in the continental United States for less than $57.

Though the estimated decrease in the allowed limit from $178.73 to $57 for monitors purchased in the continental U.S. appears large, the net decrease is not large, given the size and prevalence of the rebates manufacturers have been refunding to beneficiaries. Four of five manufacturers are giving rebates ranging from 37 percent to 70 percent of the purchase price. In addition, the glucose test strips used with the monitors are specifically manufactured to be used with a specific brand of monitor. The test strips frequently cost more than $.50 each and a beneficiary may use 4 or more each day. Therefore, once the beneficiary obtains a home blood glucose monitor, Medicare could pay an additional $60 each month the beneficiary uses the medically necessary monitor. Apparently, the income generated from the ongoing sale of the test strips far exceeds the income generated from the sale of the monitors. A manufacturer has an enormous incentive to promote the sale of its brand of monitors in order to ensure the future sale of its brand of test strips. For these reasons, we believe that manufacturers and suppliers will continue to provide their services to Medicare beneficiaries.

If a manufacturer's rebate is not reported on a Medicare claim for code E0607, and the beneficiary subsequently mails in the rebate form, and receives the rebate, then the beneficiary receives a windfall in the amount of the rebate and the Medicare program is not benefiting from the rebate. The beneficiary is essentially paid for purchasing a certain brand of monitor

This notice would effectively eliminate any windfall that beneficiaries receive from manufacturer rebates that are not reported on Medicare claims for code E0607.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this notice would not result in a significant economic impact on a substantial number of small entities and would not have a significant impact on the operations of a substantial number of small rural hospitals.

IV. Paperwork Reduction Act

This notice does not impose any information collection requirements. Consequently, it need not be reviewed by the Executive Office of Management and Budget under the authority of the Paper Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

V. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them

individually. We will consider all comments we receive by the date and time specified in the "DATES" section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

(Section 1834(a)(10)(B) of the Social Security Act (42 U.S.C. 1395m(a)(10)(B)); 42 CFR 405.502(g))

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 3, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 4, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–66 Filed 1–5–94; 8:45 am]

BILLING CODE 4120–01–P

[BPD–796–NC]

Medicare Program; Elimination of Additional Payments for Administrative and General Costs of Hospital-Based Home Health Agencies

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: In accordance with section 13564(b)(1) of the Omnibus Budget Reconciliation Act of 1993, this final notice with comment period provides that the payment add-on for the administrative and general costs of hospital-based home health agencies (HHAs) is eliminated. This notice also explains the effects of this provision on the methodology used in calculating the HHA cost limits.

DATES: *Effective date:* The notice is effective for cost reporting periods beginning on or after October 1, 1993.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, and must be received by 5 p.m. on March 7, 1994.

ADDRESSES: Mail comments (an original and three copies) to the following address:

Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–796–NC, P.O. Box 7517, Baltimore, MD 21207–0517.

If you prefer, you may deliver your comments (an original and three copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–796–NC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (Phone: 202–690–7890).

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FOR FURTHER INFORMATION CONTACT: Michael Bussacca (410) 966–4602.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1861(v)(1)(A) of the Social Security Act (the Act) authorizes the Secretary to establish limits on allowable costs incurred by a provider of services that may be paid under the Medicare program. These limits are based on estimates of the costs necessary in the efficient delivery of needed health services. Under this authority, we have maintained limits on HHA per-visit costs since 1979. The limits may be applied to direct or indirect overall costs or to the costs incurred for specific items or services furnished by the provider. This statutory provision is implemented in the regulations at 42 CFR 413.30. Additional statutory provisions governing the limits are contained at section 1861(v)(1)(L) of the Act. Section 1861(v)(1)(L)(i) specifies that for cost reporting periods beginning after July 1, 1987, the cost limits are not to exceed 112 percent of the mean of the labor-related and nonlabor per-visit costs for freestanding HHAs. In addition, section 1861(v)(1)(L)(ii) of the Act has required that an adjustment be made to the cost limits for the administrative and general (A&G) costs of hospital-based agencies. The A&G per-visit add-on for hospital-based HHAs has been applied since 1980.

We published a notice with comment period that appeared in the July 8, 1993 issue of the **Federal Register** (58 FR 36748) that set forth a revised schedule of limits on HHA costs for cost reporting periods beginning on or after July 1, 1993. The limits were computed using actual cost per-visit data from cost reporting periods ending on or after June 30, 1989 and before May 31, 1991, and were adjusted by the latest estimates in the "market basket" index to reflect changes in the price of goods and services furnished by HHAs.

II. Provisions of This Final Notice With Comment Period

A. Elimination of the A&G Add-on

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, was enacted. Section 13564(b) of OBRA '93 amended section 1861(v)(1)(L)(ii) of the Act to require that, effective for cost reporting periods beginning on or after October 1, 1993, we no longer include a payment adjustment for the administrative and general costs of hospital-based HHAs in computing the HHA limits. Under this provision, hospital-based HHAs and freestanding HHAs will be treated identically for payment purposes. Thus, in computing a hospital-based HHA's cost limits for cost reporting periods beginning on or after October 1, 1993, the A&G add-on amounts that were to apply, as set forth in Table II of the July 8, 1993 notice (58 FR 36753), will not be used. Other components of the July 8, 1993 notice, specifically the per-visit limits in Table I, the wage indexes in Tables IIIa and IIIb, and the cost reporting year adjustment factors in Table IV, will continue to be used to compute the limits.

We note that section 13564(a) of OBRA '93 amended section 1861(v)(1)(L)(iii) of the Act to provide that there be no changes in the per-visit cost limits for home health services for cost reporting periods beginning on or after July 1, 1994, and before July 1, 1996. Since the effective date of that provision is different from that of the elimination of the A&G add-on, we intend to publish a separate notice in a future **Federal Register** to explain the effects of the delay in the update. Again, the only change in the methodology for computing the HHA cost limits that is effective for cost reporting periods beginning on or after October 1, 1993 is the elimination of the A&G add-on for hospital-based HHAs.

B. Computing the Cost Limit for a Hospital-Based HHA

The example below illustrates how an adjusted occupational therapy per-visit cost limit is calculated for a hospital-based HHA in Dallas, Texas, with a 12-month cost reporting period beginning October 1, 1993. Because the A&G add-on has been eliminated, this example is identical to the example contained in our July 8, 1993 notice (58 FR 36752) of the calculation of a limit for a free-standing HHA, with the exception of the application of a different cost reporting period adjustment factor, as set forth in Table IV of that notice. These factors are based on the month and year in which an HHA's cost reporting period begins, and are used to account for inflation in costs that occurs after the effective date of the latest schedule of HHA limits. Thus, in the example below, the adjustment factor from Table IV of the July 8, 1993 notice for an HHA with a cost reporting period beginning October 1, 1993 is applied.

To arrive at the adjusted limit, the HHA's intermediary first determines the adjusted labor-related component by multiplying the labor-related component of the limit by the appropriate wage index value, and then adjusts for budget neutrality. The adjusted limit is the sum of the adjusted labor-related component, plus the nonlabor component, plus other adjustments (if applicable), multiplied by the applicable cost reporting period adjustment factor.

Example: Calculation of an Adjusted Occupational Therapy Limit for a Hospital-Based HHA in Dallas, Texas for a Cost Reporting Period Beginning October 1, 1993 (using the appropriate tables from the July 8, 1993 schedule of limits)

Labor Component (Table I)	$76.27
Wage Index Value (Table III)	×0.9599
Labor Portion	$73.21
Special Labor Adjustment for Budget Neutrality	×1.027
Adjusted Labor Portion	$75.19
Nonlabor Component (Table I)	+16.68
OSHA Adjustment	+0.18
	$92.05
Cost Reporting Period. Adjustment Factor (Table IV)	× 1.0126
Adjusted Occupational Therapy Limit	$93.21

If an HHA uses a cost reporting period that is not 12 months in duration, a special adjustment factor is calculated. This is necessary because inflation projections are computed to the midpoint of the cost reporting period, and the adjustment factors in Table IV are based on 12-month cost reporting periods. For cost reporting periods other than 12 months, the calculation must be made for the midpoint of the specific cost reporting period. In these cases, the intermediary for the HHA obtains this adjustment factor from HCFA.

In the July 8, 1993 notice, we also set forth an example of a cost-limit calculation with A&G add-on for a hospital-based HHA in State College, Pennsylvania (58 FR 36754). That example, as well as any other references in that document to the A&G add-on, are no longer applicable for cost reporting periods beginning on or after October 1, 1993.

III. Impact Statement

Executive Order 12866 (E.O. 12866) requires us to prepare an analysis for any rule that meets one of the E.O. 12866 criteria for a "significant regulatory action"; that is, that may—

- Have an annual effect on the economy of $100 million or more; or adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition, for final notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that this notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all HHAs are treated as small entities.

This final notice with comment period announces the provisions of section 13564(b) of OBRA '93, which provides for the elimination of the A&G add-on for hospital-based HHAs, effective for cost reporting periods beginning on or after October 1, 1993. None of the provisions of this notice interprets or extends requirements beyond those set forth in OBRA '93.

Section 13564(b) of OBRA '93 will result in significant Federal cost savings. The impact of this provision is discussed further below. This notice explains how the provision affects the methodology for calculating the HHA limits. We do not believe that merely explaining the results of this provision in this notice produces any effect that will meet any of the criteria of E.O. 12866 for a significant regulatory action or will have a significant effect on a substantial number of small entities. Therefore, we have determined and the Secretary certifies that neither an impact statement under E.O. 12866 nor a regulatory flexibility analysis under the RFA are required.

To the extent that a legislative provision being announced by a notice such as this may have a significant effect on beneficiaries or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of this statutory change. We estimate that the elimination of the add-on for hospital-based HHAs will result in the following savings to the Medicare program:

TABLE 1.—IMPACT OF THE ELIMINATION OF HOSPITAL-BASED ADD-ON*

Fiscal year	Savings
1994	$70
1995	120

*All figures are rounded to the nearest $10 million.

We have attempted to examine the overall effects of this provision on hospital-based HHAs. As illustrated in Table 2 below, we estimate that the elimination of the A&G add-on for hospital-based HHAs will result in substantial increases in the number of hospital-based HHAs that meet or exceed the cost limits.

TABLE 2.—HOSPITAL-BASED HHAS AT OR OVER THE COST LIMITS

	HHAs in Model	July 1993	October 1993
Hospital-Based	1599	774	1144
Urban	780	397	596
Rural	819	377	548

The model used for our analysis is based on data from 1,599 hospital-based HHAs. In our July 8, 1993 notice, which used the same model, we estimated that 774 hospital-based HHA in the model would meet or exceed the HHA cost limits. Thus, we believe that the proportion of hospital-based HHAs that will meet or exceed the cost limits is likely to increase from approximately 48 percent (774/1599) to 72 percent (1144/1599) as a result of the elimination of the A&G add-on.

We are unable to identify the effects of this provision on individual hospital-based home health agencies. However, we anticipate that overall FY 1994 Medicare payments for hospital-based HHAs will be approximately 6 percent less than they would have been if the A&G add-on had not been eliminated. The effects of this reduction on the total revenues of individual hospital-based HHAs will depend on the HHA's ability to operate within the cost limits and on the proportion of the HHA's revenues that come from the Medicare program.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Waiver of Proposed Notice and 30-Day Delay in the Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to the public interest.

Section 13564(b)(1) of OBRA '93 amended section 1861(v)(1)](L)(ii) of the Act to eliminate, effective for cost reporting periods beginning on or after October 1, 1993, the adjustment to the HHA cost limits to recognize the administrative and general costs of hospital-based HHAs. In conformance with the clear direction of section 13564(b)(1) of OBRA '93, this notice announces the elimination of the adjustment to the HHA cost limits to recognize the administrative and general costs of hospital-based HHAs and explains the effect that this action will have on methodology for calculating the cost limits of hospital-based HHAs. We have made no changes in this methodology beyond those directly required by section 13564(b)(1) of OBRA '93, nor are there any other discretionary aspects to this notice. Moreover, section 13564(b)(2) of OBRA '93 mandates that these provisions are effective beginning with cost reporting periods beginning on or after October 1, 1993. Thus, we have concluded that in this instance, it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this notice.

B. Paperwork Reduction Act

This final notice does not impose information collection requirements. Consequently, it does not need to be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

C. Public Comments

Because of the large number of items of correspondence we normally receive on a notice with comment period, we are not able to acknowledge or respond to them individually. However, we will consider all comments concerning the provisions of this notice that we receive by the date and time specified in the "**DATES**" section of this notice, and, if changes are made in another notice, we will respond to these comments in that notice.

Authority: (Section 1861(v)(1)(L) of the Social Security Act (42 U.S.C. 1395x(v)(1)(L)); section 4207(d) of Pub. L. 101–508 (42 U.S.C. 1395x (note)); section 13564(b) of Pub. L. 103–66 (42 U.S.C. 1395x (note)).

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: December 5, 1993:

Donna E. Shalala,

Secretary.

[FR Doc. 94–61 Filed 1–5–94; 8:45 am]

BILLING CODE 4120–01–P

[BPD–795–NC]

RIN: 0938–AG56

Medicare Program; Schedule of Limits for Skilled Nursing Facility Inpatient Routine Service Costs

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final notice with comment period.

SUMMARY: This final notice with comment period provides that there will be no changes in the skilled nursing facility (SNF) cost limits for cost reporting periods beginning during Federal fiscal years 1994 and 1995 and that the add-on for administrative and general costs of hospital-based SNFs is eliminated. This notice announces provisions of the Omnibus Budget Reconciliation Act of 1993 that affect the schedule of limits on SNF routine service costs for which payment may be made under the Medicare program and explains the effects of these provisions on the methodology used in calculating the SNF cost limits.

DATES: *Effective date:* The provisions set forth in this notice are effective for cost reporting periods beginning on or after October 1, 1993.

Comment date: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on [March 7, 1994].

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address:

Health Care Financing Administration
Department of Health and Human Services Attention: BPD–795–NC,
P.O. Box 7571, Baltimore Maryland 21207–0517.

If you prefer, you may deliver your comments to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Ave. SW., Washington DC 20201, or
Room 132, East High Rise Building 6325 Security Boulevard Baltimore Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–795–NC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington DC, on Monday through Friday of each week from 8:30 a.m. to 5:00 p.m. (Phone: 202–690–7890).

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FOR FURTHER INFORMATION CONTACT: Laurence Wilson, (410) 966–4603

SUPPLEMENTARY INFORMATION:

I. Background

Sections 1861(v)(1)(A) and 1888 of the Social Security Act (the Act) authorize the Secretary to set limits on allowable costs incurred by a provider of services for which payment may be made under Medicare. These limits are based on estimates of the costs necessary for the efficient delivery of needed health services. Implementing regulations appear at 42 CFR 413.30. Section 1888 of the Act directs the Secretary to set limits on per diem inpatient routine service costs for hospital-based and freestanding skilled nursing facilities (SNFs) by urban or rural area location. Section 4008(e)(2) of the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101–508) amended section 1888(a) of the Act to require the Secretary to update the per diem SNF cost limits for cost reporting periods beginning on or after October 1, 1992, and every 2 years thereafter.

Under the authority of section 1888 of the Act, we published a final notice on October 7, 1992 (57 FR 46177) announcing a schedule of limits for freestanding and hospital-based SNFs effective for cost reporting periods beginning on or after October 1, 1992. The limits were computed using data from cost reporting periods ending on or after June 30, 1989, through May 31, 1990, for freestanding SNFs and from cost reporting periods ending on or after October 31, 1988, through September 30, 1989, for hospital-based SNFs.

The October 7, 1992 final notice contained provisions relating to:

(1) Separate group limits for labor-related and nonlabor-related components of SNF per diem routine service costs;

(2) Adjustments to the cost limits by an area wage index developed from hospital industry wages;

(3) A "market basket" index developed to reflect changes in the price of goods and services purchased by SNFs;

(4) Application of the adjusted hospital wage index to wages, employee benefits, health service costs, costs of business services, and other miscellaneous expenses;

(5) Freestanding SNF cost limits set at 112 percent of the average per diem labor-related and nonlabor-related costs;

(6) Hospital-based SNF cost limits set at the limit for freestanding SNFs, plus 50 percent of the difference between the freestanding limit and 112 percent of the average per diem routine service costs of hospital-based SNFs, and an add-on for administrative and general (A&G) costs;

(7) Cost-of-living adjustments for Alaska, Hawaii, Puerto Rico, and the Virgin Islands;

(8) Exceptions to the cost limits;

(9) A classification system based on whether the SNF is hospital-based or freestanding and whether it is located in an urban or rural area.

In addition to the above provisions, the October 7, 1992 final notice also provided for a per diem add-on to recognize the costs incurred by SNFs in complying with the additional nursing home reform requirements of section 1819 of the Act (including the costs of conducting nurse aide training and competency evaluations). (Section 1861(v)(1)(E) of the Act provides for Medicare payment for costs incurred by SNFs in complying with the requirements of section 1819 of the Act.) The October 7, 1992 notice also included an add-on to the cost limits to recognize the costs that SNFs may incur in meeting the universal precaution requirements of the Occupational Safety and Health Administration (OSHA). These requirements were described in a final rule published by OSHA in the **Federal Register** on December 6, 1991 (54 FR 64004) that set forth a standard under section 6(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 655) to eliminate or minimize occupational exposure to bloodborne pathogens.

II. Provisions of This Final Notice With Comment Period

A. No Changes in the Cost Limits

On August 10, 1993, the Omnibus Budget Reconciliation Act of 1993 (OBRA '93), Public Law 103–66, was enacted. Section 13503(a)(1) of OBRA '93 requires that there be no changes in the SNF routine cost limits (except as may be necessary to take into account the elimination of the administrative and general add-on for hospital-based SNFs) for cost reporting periods beginning during Federal fiscal years (FY) 1994 and 1995, that is, for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1995. The effect of this provision is that a SNF's latest routine cost limit for a period beginning on or after October 1, 1992 and before October 1, 1993, as calculated under the October 7, 1992 notice, without regard to any subsequent adjustments under section 1888(c) of the Act such as exceptions, will remain in effect until its cost reporting period beginning on or after October 1, 1995. Accordingly, there will be no changes to a SNF's cost limit for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1995, to account for inflation, updates of the data, changes to the wage index or to MSA designations. Thus, in computing a provider's cost limit for cost reporting periods beginning on or after October 1, 1993 and before October

1, 1995, the cost reporting period adjustment factors that were to apply for cost reporting periods beginning on or after October 1, 1993, as set forth in Table IV of the October 7, 1992 notice (57 FR 46188), will not be used. Other components of the October 7, 1992 notice, specifically the SNF Group Limits in Table I, and the wage indexes in Tables II and III will continue to be used to compute the limits, with the exception in Table I of the add-on for administrative and general costs of hospital-based SNFs.

In the example below, a freestanding SNF in Dallas, Texas has a cost reporting period beginning date of January 1, 1993. As calculated under the October 7, 1992 notice, its cost limit for the 12-month period beginning January 1, 1993 is $96.97. Under the provisions of this notice, the cost limit of $96.97 will remain in effect for its 12-month cost reporting periods beginning January 1, 1994 and January 1, 1995. As explained above, the cost reporting period adjustment factors that would have been used under the October 7, 1992 notice for calculating the limits for the SNF's new cost reporting periods beginning January 1, 1994 and January 1, 1995, are not used. Accordingly, the provider in this example will not have any change in its cost limit until its cost reporting period beginning January 1, 1996.

Example—Calculation of Adjusted Limit for a Freestanding SNF Located in Dallas, Texas (using the appropriate tables from the October 7, 1992 schedule of limits):

Labor-Related Component	$79.56	(Table I).
Wage Index	×0.9638	(Table II).
Adjusted Labor Component	$76.68	
Nonlabor-Related Component	+17.08	(Table I).
Nursing Home Reform and OSHA Per Diem Add-On	+1.98.	
Limit Prior To Inflation Adjustment $95.74		
Adjustment Factor	×1.01286	(Table IV).
Inflation Adjusted Limit	$96.97	

As noted above, for cost reporting periods beginning on or after October 1, 1993 but before October 1, 1995, a SNF's cost limit will be its latest routine cost limit for the period beginning on or after October 1, 1992 and before October 1, 1993, as calculated under the October 7, 1992 notice and without regard to any subsequent adjustments, such as an exception to the limit. Thus, if the SNF in the above example received an exception to its cost limit for its cost reporting period beginning January 1, 1993, its cost limit for the cost reporting period beginning January 1, 1994 would not include the exception amount for the previous period. To receive an exception or other adjustment to its cost limit, the SNF would need to submit a request to its fiscal intermediary in accordance with the procedures set forth in § 413.30 of the regulations.

B. Periods Other Than 12 Months

The above methodology applies to providers with cost reporting periods of 12 months in duration. If a facility's cost reporting period is not 12 months in duration, a special adjustment factor is calculated. This is necessary because inflation projections are computed to the midpoint of a cost reporting period, and the adjustment factors in Table IV are based on 12-month reporting periods. For cost reporting periods of other than 12 months, the calculation must be made based on the midpoint of the specific cost reporting period. The SNF's intermediary obtains this adjustment factor from HCFA central office. This methodology results in a different cost limit than if a 12-month adjustment factor were used. However, since the provisions of OBRA '93 require no changes in the cost limit on or after October 1, 1993, the limit calculated with the special adjustment factor will remain in place for subsequent cost reporting periods beginning before October 1, 1995.

C. Providers Entering the Medicare Program

For providers entering the Medicare program on or after October 1, 1993 and before October 1, 1995, the applicable cost limit will be the cost limit for the identical period beginning on or after October 1, 1992 through September 30, 1993. For example, if a provider enters the Medicare program on September 1, 1994, with a 12-month cost reporting period, its cost limit will be determined in the same manner as a cost limit for a period beginning September 1, 1993 and ending August 30, 1994. If the provider's cost reporting period is a short period beginning September 1, 1994 and ending December 31, 1994, the provider's cost limit will be determined in the same manner as a cost limit for a period beginning September 1, 1993 and ending December 31, 1993. In addition, whether the first period is a full 12-month period or a period other than 12 months, the cost limit determined for the first period will remain in effect until the provider's first cost reporting period beginning on or after October 1, 1995.

D. Next Update of Limits

As discussed above, before the enactment of OBRA '93, section 1888(a) of the Act required that the SNF routine cost limits be updated on October 1, 1992 and every 2 years thereafter. Section 13503(a)(1) of OBRA '93 amended this section to delay the next update until October 1, 1995, and every 2 years thereafter. Accordingly, there will be no changes to the routine cost limits published in the October 7, 1992 notice for inflation, changes in the wage index, geographic designation, or for a more recent data base until October 1, 1995.

E. Add-On for Hospital-Based SNFs

Before the enactment of OBRA '93, section 1888(b) of the Act provided for an add-on to recognize the cost differences between hospital-based and freestanding SNFs attributable to excess overhead allocations, that is, an add-on for the administrative and general costs (A&G) of hospital-based SNFs. Section 13503(a)(3) of OBRA '93 amended this section of the Act to repeal the requirement that we recognize cost differences attributable to excess overhead allocations. Therefore, this notice implements that provision by eliminating the A&G add-on for hospital-based SNFs. In addition, while section 13503(a)(1) of OBRA '93 requires that there be no changes in the cost limits, as explained above, it also states that the provision does not apply to the elimination of the A&G add-on for hospital-based SNFs. Therefore, effective for cost reporting periods beginning on or after October 1, 1993, we will no longer apply the administrative and general add-on for hospital-based SNFs as shown in Table I of the October 7, 1992 schedule of limits. The intermediary will continue to determine the cost limits for hospital-based SNFs using the relevant instructions and Table I SNF Group Limits, as described in the October 7, 1992 notice. However, for cost reporting periods beginning on or after October 1, 1993, these limits will be calculated without using the A&G add-on.

The example below uses information from Table I of the October 7, 1992 schedule of limits to calculate a cost limit for a hospital-based SNF located in Scranton, Pennsylvania. The cost limit is for a cost reporting period beginning October 1, 1993. However, as discussed above, the A&G add-on for hospital-based SNFs is no longer applied, and the cost limit effective October 1, 1992 remains in effect for the cost reporting period beginning on or after October 1, 1993.

Example—Calculation of Adjusted Limit Effective October 1, 1993, for a Hospital-Based SNF Located in Scranton, Pennsylvania:

Labor-Related Component Limit	$112.22	(Table I).
Wage Index	×0.8952	(Table II).
Adjusted Labor Component	$100.46	
Nonlabor-Related Component:		
Limit	23.79	(Table I).
Nursing Home Reform and OSHA Per Diem Add-on	+1.98	
Adjusted Limit	$126.23	

F. Adjustments to the Routine Limits

Section 1888(c) of the Act provides for appropriate adjustments to the SNF routine cost limits. These adjustments are set forth at § 413.30 and include: exemptions from the cost limits for new providers; exceptions to the limits for atypical services and extraordinary circumstances; and other provisions. Section 13503(a)(1) of OBRA '93 mandates that the effect of allowing no changes in the SNF routine cost limits for cost reporting periods beginning during FYs 1994 and 1995 not be considered in making adjustments to the routine cost limits under the exceptions process. Therefore, effective for cost reporting periods beginning on or after October 1, 1993, and before October 1, 1995, a provider may request an exception only for costs incurred above the amount that the limit would have been had the provisions set forth in this notice regarding no changes in the cost limits not been enacted. Accordingly, for the purpose of determining the amount of an exception to the SNF routine cost limits under the regulations at § 413.30(f), the difference between the amount of a provider's cost limit as determined by the provisions set forth in this notice, and the amount that a provider's cost limit would have been under the October 7, 1992 notice had the provisions described herein not been enacted, is not subject to an exception to the routine cost limits. We note that this provision does not apply to the A&G add-on for hospital-based SNFs. That is, for cost reporting periods beginning on or after October 1, 1993, the A&G add-on for hospital-based SNFs will not be used in computing the amount that the hospital-based cost limit would have been had the provisions requiring no changes in the limits not been enacted. In addition, we note that this provision has no effect on new provider exemptions to the SNF cost limits, as set forth under § 413.30(e)(2), since this exemption removes the limitation on a SNF's routine costs.

The example below demonstrates the computation to determine the amount not subject to an exception under the provisions set forth in this notice. The provider's cost limit is computed for the cost reporting period beginning January 1, 1993, in accordance with the provisions set forth in this notice, and this limit remains in effect until the cost reporting period beginning January 1, 1995. The provider has requested an exception to its limit for the period beginning January 1, 1994. Again, we use the information from the October 7, 1992 notice to calculate what the limit would have been had the OBRA '93 provisions requiring no changes in the limits not been enacted. The difference of $5.04 between the actual limit and the amount the limit would have been is the amount not subject to an exception.

Example—Calculation of Amount Not Subject to an Exception to the Limits Freestanding SNF Located in Dallas, Texas:

Labor-Related Component	$79.56	(Table I).
Wage Index	×0.9638	(Table II).
Adjusted Labor Component	$76.68	
Nonlabor-Related Component	+17.08	(Table I).
Nursing Home Reform and OSHA Per Diem Add-On	+1.98	
Limit Prior To Inflation Adjustment	$95.74	
Adjustment Factor (January 1, 1993)	×1.01286	(Table IV).
Inflation Adjusted Limit (Limit in Effect for January 1, 1993, January 1, 1994, January 1, 1995)	$96.97	
Adjustment Factor (January 1, 1994 for Exception Purposes Only)	×1.06553	(Table IV).
Inflation Adjusted Limit (January 1, 1994 for Exception Purposes Only)	$102.01	
Amount Not Subject to Exception ($102.01–$96.97)	$5.04	

III. Impact Statement

Executive Order 12866 (E.O. 12866) requires us to prepare an analysis for any rule that meets one of the E.O. 12866 criteria for a "significant regulatory action"; that is, that may—

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

• Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
• Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
• Raise a novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In addition for final notices such as this, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that this notice will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all SNFs are treated as small entities.

This final notice with comment period announces the provisions of section 13503(a) of OBRA '93, which provides for a delay in the updates of the limits on payments for routine SNF services through cost reporting periods beginning before October 1, 1995, and provides for the elimination of the A&G add-on for hospital-based SNFs effective for cost reporting periods beginning on or after October 1, 1993. None of the provisions of this notice interprets or extends requirements beyond those set forth in OBRA '93.

Sections 13503(a)(1) and (3) of OBRA '93 will result in significant Federal cost savings. The impact of these provisions is discussed further below. This notice explains the revised methodology for calculating the SNF limits that results from the provisions of OBRA '93. We do not believe that merely reflecting these provisions in this notice produces any effect that will meet any of the criteria of E.O. 12866 for a significant regulatory action or will have a significant effect on a substantial number of small entities. Therefore, we have determined and the Secretary certifies that neither an impact analysis under E.O. 12866 nor a regulatory flexibility analysis under the RFA are required.

To the extent that a legislative provision being announced by a notice such as this may have a significant effect on beneficiaries or providers or may be viewed as controversial, we believe that we should address any potential concerns. In this instance, we believe it is desirable to inform the public of our estimate of the substantial budgetary effect of these statutory changes. We estimate that these statutory provisions will result in the following savings to the Medicare program:

TABLE 1.—IMPACT OF DELAY IN THE UPDATE OF SNF LIMITS AND ELIMINATION OF ADD-ON *

Fiscal year	Update delay	Elimination of add-on
1994	$30	$10
1995	120	10
1996	90	10
1997	.....	10
1998	.....	10

* All figures are rounded to the nearest $10 million.

As illustrated in Table 2 below, the delay in updating the cost limits until October 1, 1995, combined with the elimination of the A&G add-on for hospital-based SNFs, will result in a small increase in the number of SNFs exceeding the SNF limits in all categories, although we cannot isolate the separate impact of these factors. Table 2 below shows the combined impact of these changes.

TABLE 2.

	Total SNFs	Exceeding old limits	Exceeding new limits
Freestanding SNFs	5340	911	1209
Urban	4074	706	930
Rural	1266	205	279
Hospital-based SNFs	908	518	563
Urban	455	298	321
Rural	453	220	242

We are unable to identify the effects of these provisions on individual SNFs. However, we anticipate that overall SNF payments for FY 1994 and FY 1995 will be approximately 1.2 percent and 2.3 percent less, respectively, than they would have been in those years if the OBRA '93 provisions were not in effect. Moreover, since Medicare does not account for a high proportion of SNF utilization or revenue, we estimate that the delay in updating the limits and the elimination of the hospital-based add-on will not result in a significant number of facilities' total revenues being increased or reduced by 3 percent or more from the October 7, 1992 limits, adjusted for inflation. Thus, we have determined that the economic impact on SNFs will not be significant.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final notice such as this may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 100 beds located outside of a Metropolitan Statistical Area.

We have not prepared a rural impact statement since we have determined and the Secretary certifies that this final notice will not have a significant economic impact on the operations of a substantial number of small rural hospitals.

IV. Other Required Information

A. Paperwork Reduction Act

This final notice with comment period does not impose information collection requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 through 3511).

B. Waiver of Proposed Notice and 30-Day Delay in the Effective Date

In adopting notices such as this, we ordinarily publish a proposed notice in the **Federal Register** with a 60-day period for public comment as required under section 1871(b)(1) of the Act. We also normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive these procedures if we find good cause that prior notice and comment or a delay in the effective date are impracticable, unnecessary, or contrary to the public interest.

As discussed above, before the enactment of OBRA '93, section 1888(a) of the Act required that the SNF routine cost limits be updated for cost reporting periods beginning on or after October 1, 1992 and every 2 years thereafter. However, section 13503(a)(1) of OBRA '93 specifies that there be no changes in the SNF cost limits for cost reporting periods beginning during FYs 1994 and 1995, and section 13503(a)(2) of OBRA '93 amended section 1888 of the Act to delay the next required update of the SNF limits until October 1, 1995. In addition, section 13503(a)(3) of OBRA '93 amended section 1888(b) of the Act to eliminate, effective for cost reporting periods beginning on or after October 1, 1993, the add-on to the SNF cost limits to recognize the higher administrative and general costs of hospital-based SNFs.

In conformance with the clear direction of section 13503(a) of OBRA '93, this notice announces the new SNF provisions and explains the effects of these provisions on the methodology used in calculating the SNF cost limits. We have made no changes in this methodology beyond those directly required by OBRA '93, nor are there any other discretionary aspects to this notice. Moreover, section 13503(a) of OBRA '93 mandates that these provisions are effective beginning with cost reporting periods beginning on or after October 1, 1993. Thus, we have concluded that in this instance, it would be impracticable, unnecessary, and contrary to the public interest to publish a proposed notice or to provide for a 30-day delay in the effective date of this notice. Therefore, we find good cause to waive publication of a proposed notice and the 30-day delay in effective date. However, we are providing a 60-day period for public comment, as indicated at the beginning of this preamble.

C. Public Comments

Because of the large number of items of correspondence we normally receive, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Date" section of the preamble to this notice. If we make any changes to this notice, we will respond to the comments in the preamble to the notice that incorporates the changes.

Authority: (Sections 1102, 1814(b), 1861(v)(1), 1866(a), 1871, and 1888 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395x(v)(1), 1395cc(a), 1395hh, and 1395yy); section 6024 of Pub. L. 101–239 (42 U.S.C. 1395yy(note)); section 13503 of Pub. L. 103–66 (42 U.S.C. 1395yy(note)) and 42 CFR 413.30.)

(Catalog of Federal Domestic Assistance Program No. 93.773 Medicare-Hospital Insurance Program)

Dated: November 23, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: November 28, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–62 Filed 1–5–94; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Program Announcement, Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference and Proposed Funding Priority for Grants for Establishment of Departments of Family Medicine for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994 Grants for Establishment of Departments of Family Medicine are being accepted under the authority of section 747(b), (previously section 780) of the Public Health Service (PHS) Act, title VII, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentage for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference, and proposed funding priority stated below.

Approximately $9.4 million will be available for the Grants for Establishment of Departments of Family Medicine program in FY 1994. Total continuation support recommended is $5.7 million. It is anticipated that $3.7 million will be available to support approximately 22 competing awards averaging $170,000.

Purpose

Section 747(b) of the PHS Act authorizes support to schools of medicine and osteopathic medicine to meet the costs of projects to establish, maintain, or improve family medicine academic administrative units (which may be departments, divisions, or other units) to provide clinical instruction in family medicine. Funds awarded will be used to: (1) Plan and develop model educational predoctoral, faculty development and graduate medical education programs in family medicine which will meet the requirements of section 747(a), by the end of the project period of section 747(b) support; and (2) support academic and clinical activities relevant to the field of family medicine.

The program may also assist schools to strengthen the administrative base and structure that is responsible for the planning, direction, organization, coordination, and evaluation of all undergraduate and graduate family medicine activities. Funds are to complement rather than duplicate programmatic activities for actual operation of family medicine training programs under section 747(a).

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program.

In FY 1993, HRSA reviewed 50 competing applications for the Grants for Departments of Family Medicine program. Of those applications 82 percent were approved and 18 percent were disapproved. Twelve projects, or 24 percent of applications received, were funded.

In FY 1992, HRSA reviewed 71 competing applications. Of those applications, 66 percent were approved and 34 percent were disapproved. Thirty-six projects, or about 50 percent of the applications received, were funded.

Eligibility

To be eligible to receive support for this grant program, the applicant must be a public, or nonprofit private, accredited school of medicine or osteopathic medicine.

To receive support, programs must meet the requirements of final regulations as set forth in 42 CFR part 57, subpart R, and section 791(b) of the PHS Act.

The period of Federal support will not exceed 5 years.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

Education and Service Linkage

As part of its long-range planning HRSA will be targeting its efforts to

strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The degree to which the proposed project adequately provides for the project requirements in section 57.1704;
2. The administrative and management capability of the applicant to carry out the proposed project in a cost effective manner;
3. The qualifications of the proposed staff and faculty of the unit; and
4. The potential of the project to continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications:

1. Funding preference is defined as the funding of a specific category or group of applications ahead of other categories or groups of approved applications such as competing continuation projects ahead of new projects.
2. Funding priority is defined as the favorable adjustment of aggregate review scores when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

General Statutory Funding Preference

As provided in section 791(a) of the PHS Act, preference will be given to any qualified applicant that—

(A) Has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or

(B) During the 2-year period preceding the fiscal year for which an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. This preference will only be applied to applications that rank above the 20th percentile that have been recommended for approval by the peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" means that 20 percent of all graduates of the medical school in 1989 or 1990, whichever is greater, are spending at least 50 percent of their work time in clinical practice in the specified settings.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing 1989 or 1990 graduates in the specified settings has increased by at least 50 percent and that not less than 15 percent of graduates from the most recent year (1990) are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

Establishment and Expansion

Public Law 102–408 has amended section 747(b), (previously section 780) to include the following statutory funding preference for this program.

Section 747(b)(2) provides that preference shall be given to any qualified applicant that agrees to expend the award for one of the following purposes:

(a) Establishing an academic administrative unit (defined as a department, division, or other unit), for programs in family medicine; or

(b) Substantially expanding the programs of such a unit.

A program will meet the definition of "substantial expansion" if it has developed an acceptable plan for a 50 percent increase in a sufficient number of the following areas to qualify for 70 points. The expansion must be completed within 3 years.

	Points
(1) Required 3rd Year Clerkship	30
(2) Required Preceptorship	20
(3) Family Medicine Research	10
(4) Expansion of Faculty	10
(5) Faculty Development Program for Community Based Faculty	10
(6) Family Medicine Faculty Represented on Medical School Standing Committees of Admissions or Curriculum	10
(7) Family Medicine Faculty Represented on Dean's Executive Committee that determines Tenure	10

More detail on each of these areas will be provided in the program application materials.

Established Funding Priority for FY 1994

The following funding priority was established in FY 1993, after public comment at 58 FR 35019, June 30, 1993, and is being continued in FY 1994.

A funding priority will be given to applicants that demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in influencing graduates from those minority or low-income populations identified as at-risk of poor health outcomes to enter family medicine residency training.

Proposed Funding Priority for FY 1994

It is proposed that a funding priority be given to applicants based on their level of accomplishment in relation to the outcome or process measures cited below:

Outcome measures	Points	Process measures
—25% of students who graduated in 1991, 1992 and 1993 entered family practice residencies.	100	
—20% of students who graduated in 1991, 1992 and 1993 entered family practice residencies.	75	
—15% of students who graduated in 1991, 1992 and 1993 entered family practice residencies.	50	—Required 3rd Year Clerkship* (of at least 4 weeks duration).
—12% of students who graduated in 1991, 1992 and 1993 entered family practice residencies.	35	—Required primary care preceptorship/mentorship program* in preclinical years.

*Curricular elements must be in place at the time of application or the applicant must provide satisfactory evidence (including commitments from institutional officials) that the clerkship or preceptorship will be operational by the beginning of the third year of the grant.

Applicants May Only Receive Priority Points in One of the Above Six Categories

Information Requirements Provision in Statute

Under section 791(b) of the Act, the Secretary may make an award under the Grants for the Establishment of Departments of Family Medicine program only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations or preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds, or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, August 17, 1993, and will be provided in the application materials.

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, and funding priority. All comments received on or before February 7, 1994 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference, and funding priority are established.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H. Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Parklawn Building, room 4C–25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Mrs. Judy Bowen, Grants Management Specialist (D–32), Residency and Advanced Grants Section, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6960, FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

Questions regarding programmatic information should be directed to: Ms. Shelby Biedenkapp, Program Specialist, Resources Development Section, PCMEB, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–04, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–3614, FAX: (301) 443–8890.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

The deadline date for receipt of applications is February 4, 1994. Applications shall be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program is listed at 93.984 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: November 29, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–178 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the General Statutory Funding Preference for Grants for Nurse Anesthetist Education Programs for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Grants for Nurse Anesthetist Education Programs under the authority of section 831(a), title VIII of the Public Health Service Act, as amended by the Nurse Education and Practice Improvement Amendments of 1992, title II of the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference.

Approximately $1,791,000 will be available in FY 1994 for this program. Total continuation support recommended is $1,316,000. It is anticipated that approximately $475,000 will be available to support 5 competing awards averaging $95,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 16 eligible applications for Grants for Nurse Anesthetist Education Programs. Of those applications, 88 percent were approved and 12 percent were disapproved. Eight projects or 57 percent of the competing applications

approved, were funded. In FY 1992, HRSA reviewed 3 applications for Grants for Nurse Anesthetist Education Programs. Of those applications, 67 percent were approved and 33 percent were disapproved. Two projects, or 67 percent of the applications received, were funded.

Purpose

Section 831(a) of the Public Health Service Act authorizes the Secretary to make grants to cover the costs of projects to develop and operate programs for the education of nurse anesthetists. The period of Federal support may not exceed 3 years.

Eligibility

Eligible applicants for Grants for Nurse Anesthetist Education Programs are public or private nonprofit institutions, accredited by an entity or entities designated by the Secretary of Education. Grants may be awarded to develop and operate a new nurse anesthetist program. Grants may also be awarded to maintain or expand an existing program.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review of applications will take into consideration the following criteria:

1. The national or special local need which the particular project proposes to serve with special emphasis on meeting shortages in underserved areas;
2. The potential effectiveness and impact of the proposed project including its potential contribution to nursing;
3. The administrative and managerial capability of the applicant to carry out the proposed project;
4. The appropriateness of the plan, including the timetable for carrying out the activities of the proposed project and achieving and measuring the project's stated objectives;
5. The capability of the applicant to carry out the proposed project;
6. The reasonableness of the budget for the proposed project, including the justification of the grant funds requested; and
7. The potential of the nurse anesthetist program to continue on a self-sustaining basis after the period of grant support.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Statutory Funding Preference

In making awards of grants under this section, preference will be given to any qualified applicant that—(A) has a high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities; or (B) during the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings. Preference will be given only for applications ranked above the 20th percentile of applications that have been recommended for approval by the appropriate peer review group.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" is defined as a minimum of 20 percent of graduates in academic years 1990–91, 1991–92 or 1992–93 who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, July 29, 1993.

Established Funding Priority

The following funding priority was established in FY 1993 following public comment (58 FR 40657, July 29, 1993) and the Administration is extending this funding priority in FY 1994. A funding priority will be given to programs which demonstrate either substantial progress over the last 3 years or a significant experience of 10 or more years in enrolling and graduating students from those minority populations identified as at-risk of poor health outcomes.

Information Requirements Provision

Under section 860(e)(2) of the Act, the Secretary may make an award under the Grants for Nurse Anesthetist Education Programs only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, August 17, 1993 and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date July 31, 1995)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference. The comment period is 30 days. All comments received on or before February 7, 1994 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the general statutory funding preference are established. Written comments should be addressed to: Marla Salmon, ScD, RN, FAAN, Director, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Nursing, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Jacquelyn Whitaker (A–22), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857, FAX: (301) 443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Mary S. Hill, R.N., Ph.D., Chief, Nursing Education Practice Resources Branch, Division of Nursing, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 9–35, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6193, FAX: (301) 443–8586.

The deadline date for receipt of applications is March 15, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Nurse Anesthetist Education Programs, is listed at 93.916 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: December 6, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–179 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement for Grants for Interdisciplinary Training for Health Care for Rural Areas for FY 1994

The Health Resources and Services Administration (HRSA) announces that applications are being accepted for fiscal year (FY) 1994, Grants for Interdisciplinary Training for Health Care for Rural Areas under the authority of section 778, title VII of the Public Health Service (PHS) Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

Approximately $4,017,000 will be available in FY 1994 for this program. Total continuation support recommended is approximately $1,600,000. It is anticipated that $2,417,000 will be available to support 12 competing awards averaging approximately $180,000.

Funding for this program is designed to test innovative training approaches that may be replicated in similar settings.

Previous Funding Experience

Previous funding experience is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 29 applications for Grants for Interdisciplinary Training for Health Care for Rural Areas. Of those applications, 45 percent were approved and 55 percent were disapproved. Eight projects, or 28 percent of the applications received, were funded. There was no competitive cycle for FY 1992.

Purposes

Section 778 of the Public Health Service Act, as amended, authorizes the Secretary to award grants for interdisciplinary training projects designed to provide or improve access to health care in rural areas. Specifically, projects funded under this authority shall be designed to:

(a) Use new and innovative methods to train health care practitioners to provide services in rural areas;

(b) Demonstrate and evaluate innovative interdisciplinary methods and models designed to provide access to cost-effective comprehensive health care;

(c) Deliver health care services to individuals residing in rural areas;

(d) Enhance the amount of relevant research conducted concerning health care issues in rural areas; and

(e) Increase the recruitment and retention of health care practitioners in rural areas and make rural practice a more attractive career choice for health care practitioners.

A recipient of funds may use various methods in carrying out the projects described above. The legislation cites the following methods as examples:

(a) The distribution of stipends to students of eligible applicants;

(b) The establishment of a postdoctoral fellowship program;

(c) The training of faculty in the economic and logistical problems confronting rural health care delivery systems; or

(d) The purchase or rental of transportation and telecommunication equipment where the need for such equipment due to unique characteristics of the rural area is demonstrated by the recipient.

Eligibility

To be eligible for a Grant for Interdisciplinary Training for Health Care for Rural Areas, each applicant must be located in a State and be:

1. A local health department, or
2. A nonprofit organization, or
3. A public or nonprofit college, university or school of, or program that specializes in nursing, mental health practice, optometry, public health, dentistry, osteopathic medicine, physician assistants, pharmacy,

podiatric medicine, allopathic medicine, chiropractic, or allied health professions.

Applicants eligible to obtain funds under this grant program shall not include for-profit entities, either directly or through a subcontract or subgrant.

Each application must be jointly submitted by at least two eligible applicants. One of the applicants must be an academic institution. Each application must demonstrate the need and demand for health care services, knowledge of available resources and the most significant service and educational gaps within its targeted geographic area. One applicant must be designated the principal organization responsible and accountable for the conduct of the proposed project.

Support may be requested for this grant program for a project period of not more than three years.

Definitions

"Clinical Treatment or Training" means direct, supervised participation in patient care by observation, examination and performance of procedures as are appropriate for the assigned role of the trainee on the rural health care team.

"Community Health Center" means an entity as defined in section 330 (a) and (b) of the Act and in regulations at 42 CFR 51c.102(c).

"Community Mental Health Center" means for purposes of this grant program a multiservice mental health facility which provides essential elements of comprehensive mental health services:

(1) Inpatient services;
(2) Outpatient services;
(3) Partial hospitalization services—must include at least day care service;
(4) Emergency services provided 24 hours per day—must be available within at least one of the first three services listed above; and/or
(5) Consultation and education services available to community agencies and professions personnel.

"Indian Tribe" or "Tribal Organization" means an organization or entity as defined in section 4(e) and 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

"Interdisciplinary Training" means a planned and coordinated program of education or training aimed at preparation of functioning teams of two or more health care practitioners from different health disciplines who will coordinate their activities to provide services to a client or group of clients.

"Long-Term Care Facility" is a facility which offers services designed to provide diagnostic, preventive, therapeutic, rehabilitative, supportive and maintenance services for individuals who have chronic physical or mental impairments. This facility may have a variety of institutional and non-institutional health settings, including the home, and the goal of the service provided is to promote the optimum level of physical, social and psychological functioning.

"Migrant Health Center" means an entity as defined in section 329(a) of the Act and in regulations at 42 CFR 56.102(g)(1).

"Native Hawaiian Health Center" means an entity as defined in the Native Hawaiian Health Care Act of 1988 (Pub. L. 100–579) (42 U.S.C. 11707(4)).

"Nonprofit" as applied to any entity means one, no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

"Postdoctoral Fellowship Program" means a program of advanced academic or professional work, after the attainment of a doctoral degree, that is sponsored by a school of/or program that specializes in medicine, osteopathic medicine, nursing, dentistry, mental health practice, optometry, public health, pharmacy, podiatric medicine, physician assistant, chiropractic, or allied health.

"Rural" means geographic areas that are located outside of standard metropolitan statistical areas.

"Rural Health Care Agency" means a hospital, community health center, migrant health center, rural health clinic, community mental health center, long-term care facility, Native Hawaiian health center, or facility operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

"Rural Health Clinic" means an entity as defined under section 1861(aa)(2) of the Social Security Act and in regulations at 42 CFR 491.2.

"State" means, in addition to the 50 States, only the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (the Republic of Palau), the Republic of the Marshall Islands, and the Federated States of Micronesia.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS led national activity for setting priority areas. This program, Grants for Interdisciplinary Training for Health Care for Rural Areas, is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S. Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Statutory Project Requirements

Interdisciplinary training projects funded under section 778 must:

1. Assist individuals in academic institutions in establishing long-term collaborative relationships with health care facilities and providers in rural areas, and;

2. Designate a rural health care agency or agencies for clinical treatment or training, including hospitals, community health centers, migrant health centers, rural health clinics, community mental health centers, long-term care facilities, Native Hawaiian health centers, or facilities operated by the Indian Health Service or an Indian tribe or tribal organization or Indian organization under a contract with the Indian Health Service under the Indian Self-Determination Act.

Not more than 10 percent of the individuals receiving training with section 778 funds shall be trained as doctors of medicine or osteopathic medicine. A grantee may not use more than 10 percent of the grant funds for administrative costs.

Established Nonstatutory Project Requirements

The following project requirements were established in fiscal year 1990 (55 FR 24321, June 15, 1990) and 1991 (56 FR 37713, August 8, 1991), after public comment, and are being extended in FY 1994.

A project supported under this grant program must meet the following requirements:

(1) Carry out the following two project purposes, at a minimum, among those authorized by section 778:

(a) Interdisciplinary training to prepare health care practitioners to provide services in rural areas; and

(b) increase the recruitment and retention of health care practitioners in rural areas.

(2) Collaborate with the resources of an Area Health Education Center (AHEC) or Geriatric Education Center(GEC) if these centers are present in a State or part of a State where the rural interdisciplinary training project is conducted.

(3) Evaluate in a systematic manner, as prescribed by the Secretary, its project activity, including determination of a baseline at the outset of the project and measurement of progress by trainees and faculty.

(4) Provide and clearly define for each level of training (undergraduate, graduate, postgraduate, continuing education and faculty training) the disciplines and numbers of students to receive training as well as the duration of the training. This is to include an outline of basic criteria for the selection of students to participate in the training. These project elements are to be tracked and linked to project outcomes.

(5) Provide specific indicators of the extent and means by which it plans to become self-sufficient.

(6) Implement integrated recruitment and retention strategies.

(7) Establish curriculum elements that address the uniqueness of health conditions and ethnic or cultural characteristics of the populations in the rural areas to be served.

(8) Enroll a significant proportion of individuals from rural areas, particularly rural health professions shortage areas or medically underserved areas.

Review Criteria

The review of applications will take into consideration the following criteria:

(1) The potential effectiveness of the proposed project in carrying out the training purposes of section 778 of the Act;

(2) The extent to which the project explains the need for the project in the rural area to be served;

(3) The degree to which the proposed project adequately provides for the interdisciplinary training of health professionals to practice in the rural area to be addressed by the project;

(4) The degree to which the applicant offers appropriate clinical training experiences in rural health care settings;

(5) The degree to which the applicant demonstrates a commitment to establishing and maintaining long-term collaborative relationships between academic institutions and health care facilities and providers in rural areas;

(6) The effectiveness of the organizational arrangements necessary to carry out the project;

(7) The administrative and management capability of the applicant to carry out the proposed project in a cost-effective manner;

(8) The capability of the proposed staff and faculty to provide the proposed instruction;

(9) The extent to which the trainee recruitment and selection process assures that qualified trainees with significant interest or background in rural health care are involved in the project;

(10) The extent to which the budget justification is reasonable and indicates that institutional and community support to the project are provided to the maximum extent possible; and

(11) The extent to which the financial information provided indicates an effective utilization of grant funds and indicates that the project will continue on a self-sustaining basis.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications.

A funding priority is defined as the favorable adjustment of aggregate review scores of individual approved applications when applications meet specified criteria.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Established Funding Preference

The following funding preference was established in FY 1990, after public comment (55 FR 24321, June 15, 1990), and the Administration is extending it in FY 1994.

A funding preference will be given to interdisciplinary training involving three or more disciplines. This funding preference will be given to applicants that propose and implement training for health care practitioners, faculty or students representing three or more disciplines.

Established Funding Priority

The following funding priority was established in FY 1993 after public comment (58 FR 5741, January 22, 1993) and the Administration is extending this funding priority in FY 1994. In determining the order of funding of approved applications a priority will be given to applicant institutions (academic) which demonstrate either substantial progress over the last three years or a significant experience of ten or more years in enrolling and graduating trainees from those minority or low-income populations identified as at risk of poor health outcomes.

Application Requests

Application forms will be sent only upon request. Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Theda Duvall, Grants Management Specialist (D–36), Bureau of Health Professions, HRSA, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6002, FAX: 301–443–6343.

Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Marcia Brand, Program Officer, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, HRSA, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, MD 20857, Telephone: 301–443–6763, FAX: 301–443–1164.

The standard application for State and local governments is form PHS 5161. For other applicants, the standard application form PHS 6025–1, HRSA Competing Training Grant Application, General Instructions and supplement for this program have been approved by the Office Of Management and Budget under the Paperwork Reduction Act. The OMB clearance number is 0915–0060.

The deadline date for receipt of applications is January 31, 1994. Applications will be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

This program, Grants for Interdisciplinary Training for Health care for Rural Areas, is listed at 93.192

in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: November 19, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 94–180 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

Statement of Organization, Functions and Delegations of Authority; Office of the Assistant Secretary for Health

Part H, Public Health Service (PHS), Chapter HA (Office of the Assistant Secretary for Health), of the Statement of Organization, Functions and Delegations of Authority for the Department of Health and Human Services (DHHS) (42 FR 61318, December 2, 1977, as amended most recently at 58 FR 58871, November 4, 1993) is amended to reflect changes within the Office of Management, Office of the Assistant Secretary for Health.

Office of the Assistant Secretary for Health Under *Chapter HA, Office of the Assistant Secretary for Health, Section HA–20, Functions, Office of Management,* delete in their entirety the titles and statements for the *Office of Personnel Management (HAU3),* and add the following:

Office of Personnel Management (HAU3). The Director, Office of Personnel Management, serves as the principal advisor to the Assistant Secretary for Health, the Deputy Assistant Secretary for Health Management Operations and the Director, Office of Management, in meeting PHS nationwide human resources management responsibilities; represents the Office of the Assistant Secretary for Health and the PHS agencies in contacts with DHHS, U.S. Office of Personnel Management, other Federal Agencies, and provides leadership and direction in the planning and implementation of comprehensive human resource management systems for PHS.

Division of Employee and Labor Management Relations (HAU32). Plans, monitors, directs, implements, and evaluates a comprehensive employee relations program throughout the PHS including providing guidance, policy direction, and assistance in carrying out USOPM and HHS guidelines in misconduct and performance deficiencies and in the resolution of grievances and appeals, and administering the PHS recognition and awards program. Plans, monitors, directs, implements and evaluates an effective Federal labor management relations program throughout the PHS which establishes a system of cooperative and quality relationships between labor organizations and management; defines the respective rights of each in dealing with the other; and seeks to insure the PHS management is adequately defended and/or represented.

Division of Policy, Evaluation and Compensation (HAU33). Develops, implements, and administers systems for and advises on PHS human resources management planning for all areas of human resource services; formulates PHS personnel policies and delegations of authority; evaluates personnel management practices and programs throughout PHS; creates and implements new/pilot projects, alternative personnel and pay systems, and other continuous-improvement efforts; provides PHS-wide leadership for the functional areas of pay, salary setting, bonuses and allowances, job evaluation and position management.

Division of Staffing and Development (HAU36). Develops and implements PHS policies and programs in the areas of recruitment and staffing, career development and training and performance management. Coordinates special staffing and career development programs to meet work force needs with particular emphasis on the health professions, students, under-represented groups and executive resources management. Provides PHS-wide advice, assistance and leadership in these areas and common needs training for employees in the Parklawn complex.

Division of Personnel Operations (HAU37). Administers the Parklawn Servicing Personnel Office (SPO) providing technical review and oversight to the consolidated personnel activities of the constituent agencies of Parklawn complex; assures close working relationships exist between personnel and programs with a uniformity of operations within the scope of the SPO. Plans and conducts an operating personnel program for the Office of the Assistant Secretary for Health (OASH), including position classification, pay administration, employment, merit promotion, personnel security, employee relations, labor-management relations, awards and special recruitment activities. Provides personnel management advice and assistance on all aspects of personnel administration to managers, supervisors, and employees of OASH.

Division of Human Resources Information Management (HAU38). Provides ADP systems support to the PHS personnel offices and the OPM Divisions. Provides human resources management information to PHS agency management. Manages DHHS automated personnel and pay systems for the PHS agencies in the Parklawn complex. Designs and maintains application systems which provide PHS agencies with access to personnel/payroll information. Supports ADP hardware software, applications and network administration used by OPM.

Dated: December 27, 1993.

Anthony L. Itteilag,

Deputy Assistant Secretary for Health Management Operations.

[FR Doc. 94–223 Filed 1–5–94; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[G–910–64–0002]

Notice of Use Restriction—Seasonal Closure of Access Road to Simon Canyon ACEC

AGENCY: Bureau of Land Management, Farmington District, Interior.

ACTION: Notice of use restriction.

SUMMARY: To protect significant natural resources, a seasonal road closure is in effect each year from March 1–July 31.

SUPPLEMENTARY INFORMATION: The road will be closed seasonally with locked gate in T. 31 N., R. 8 W., Sec. 27; NE¼. Access beyond this point will be limited to permitted users. Authority for the closure is found in 43 CFR part 8364. Any person who fails to comply with a closure issued under 43 CFR part 8364 may be subject to the penalties provided in 43 CFR 8360.0–7: violations are punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months.

FOR MORE INFORMATION CONTACT: Bill Falvey, BLM Farmington District, 1235 La Plata Highway, Farmington, NM 87401. Phone (505) 599–6329.

Dated: December 23, 1993.

Mike Pool,

District Manager.

[FR Doc. 94–291 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4120–04; OKNM 92221]

Invitation to Participate; Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Farrell-Cooper Mining Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in LeFlore County, Oklahoma, and are described as follows:

Indian Meridian

T. 5 N., R. 20 E.,
Sec. 1, lots 3 and 4;
Sec. 2, lots 1 to 4, inclusive;
T. 6 N., R. 20 E.,
Sec. 35, S½SW¼SW¼ and S½SE¼;
Sec. 36, S½.
T. 6 N., R. 21 E.,
Sec. 31, S½S½N½;
Sec. 32, S½S½N½ and S½;
Sec. 33, S½S½N½ and S½.
T. 6 N., R. 22 E.,
Sec. 31, N½S½ and N½S½S½;
Sec. 32, S½;
Sec. 33, S½;
Sec. 34, S½;
Sec. 35, S½;
Sec. 36, N½.
T. 6 N., R. 23 E.,
Sec. 31, N½S½.
Aggregating 3,723.52 acres, more or less.

Interested parties may obtain a complete description of the lands covered in the license application by contacting Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050, or the Bureau of Land Management, New Mexico State Office, Mining Unit, P.O. Box 27115, Santa Fe, New Mexico 87502–0115. Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe; New Mexico 87502–0115, and Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register.**

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Farrell-Cooper Mining Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502–0115, the Bureau of Land Management, Tulsa District Office, 9522–H E. 47th Place, Tulsa, Oklahoma 74145–7223, or the Bureau of Land Management, Oklahoma Resource Area Office, 221 N. Service Road, Moore, Oklahoma 73160–4946.

Dated: December 23, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 94–299 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4120–04; OKNM 92222]

Invitation to Participate; Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Farrell-Cooper Mining Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in Le Flore County, Oklahoma, and are described as follows:

Indian Meridian

T. 8 N., R. 24 E.,
Sec. 1, S½,SW¼ and SE¼;
Sec. 2, SE¼SE¼;
Sec. 11, NE¼NE¼ and S½NE¼;
Sec. 12, N½NW¼.
T. 8 N., R. 25 E.,
Sec. 4, S½SW¼;
Sec. 5, N½S½ and SE¼SE¼;
Sec. 6, N½S½ and SE¼SE¼;
Sec. 6, lots 6 and 7, N½NE¼, E½SW¼, and N½SW¼SE¼.
Aggregating 1,017.46 acres, more or less.

Interested parties may obtain a complete description of the lands covered in the license application by contacting Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050, or the Bureau of Land Management, New Mexico State Office, Mining Unit, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Any parties electing to participate in this exploration program shall notify in writing both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30 calendar days after the publication of this notice in the **Federal Register.**

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Farrell-Cooper Mining Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502–0115, the Bureau of Land Management, Tulsa District Office, 9522–H E. 47th Place, Tulsa, Oklahoma 74145–7223, or the Bureau of Land Management, Oklahoma Resource Area Office, 221 N. Service Road, Moore, Oklahoma 73160–4946.

Dated: December 23, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 94–300 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–FB–M

[NM–940–4120–04; OKNM 92223]

Invitation to Participate; Exploration for Coal in Oklahoma

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Members of the public are hereby invited to participate with Farrell-Cooper Mining Company on a pro rata cost sharing basis, in a program for the exploration of coal deposits owned by the United States of America. The lands are located in LeFlore County, Oklahoma, and are described as follows:

Indian Meridian

T. 5 N., R. 26 E.,
Sec. 23, SE¼SE¼;
Sec. 24, S½S½ and N½SE¼;
Sec. 25, N½NW¼;
Sec. 26, N½;
Sec. 27, S½N½, N½S½, and SW¼SW¼.
Sec. 28, S½;
Sec. 29, S½SW¼, N½SE¼, N½SW¼SE¼, and SE¼SE¼.
Sec. 32, NW¼NE¼ and N½NW¼.
T. 5 N., R. 27 E.,
Sec. 15, lots 2 and 3;
Sec. 16, SE¼NE¼ and S½;
Sec. 17, SE¼SW¼ and S½SE¼;
Sec. 19, NE¼NE¼, S½N½, N½S½, and SW¼SW¼;
Sec. 20, N½NE¼ and NW¼;
Sec. 21, NW¼NW¼.
Aggregating 2,844.78 acres, more or less.

Interested parties may obtain a complete description of the lands covered in the license application by contacting Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050, or the Bureau of Land Management, New Mexico State Office, Mining Unit, P.O. Box 27115, Santa Fe, New Mexico 87502–0115.

Any parties electing to participate in this exploration program shall notify in writing, both the State Director, Bureau of Land Management, New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502–0115, and Farrell-Cooper Mining Company, P.O. Box 11050, Fort Smith, Arkansas 72917–1050. Such written notice must include a justification for wanting to participate and any recommended changes in the exploration plan with specific reasons for such changes. The notice must be received no later than 30-calendar days after the publication of this notice in the **Federal Register**.

This proposed exploration program is for the purpose of determining the quality and quantity of the coal in the area and will be conducted pursuant to an exploration plan to be approved by the Bureau of Land Management. A copy of the exploration plan as submitted by Farrell-Cooper Mining Company may be examined at the Bureau of Land Management, New Mexico State Office, 1474 Rodeo Road, Santa Fe, New Mexico 87502–0115, the Bureau of Land Management, Tulsa District Office, 9522–H E. 47th Place, Tulsa, Oklahoma 74145–7223, or the Bureau of Land Management, 221 N. Service Road, Moore, Oklahoma 73160–4946.

Dated: December 23, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 94–301 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–FB–M

[CA–940–4350–01, 4333-01; CACA 30080]

Issuance of Land Exchange Conveyance Document; California

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice.

SUMMARY: The purpose of this exchange is to acquire non-Federal lands in the Three Rivers area with important scenic, riparian, and access values. This exchange will consolidate the Bureau lands and reduce the number of scattered, isolated Bureau tracts that are difficult for the Bureau to manage. The public interest will be well served upon completion of this exchange.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM, California State Office, 2800 Cottage Way, Sacramento, California 95825, 916–978–4820.

The United States issued four exchange conveyance documents to The Trust for Public Land on December 20, 1993, pursuant to section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), for the following described lands:

Mount Diablo Meridian

T. 27 S. R. 10 E.,
Portions of secs. 13, 24, and 28.
T. 27 S., R. 11 E.,
Portion of sec. 19.
T. 28 S., R. 13 E.
Portions of secs. 28, 32, 33, 34, and 35.
T. 29 S., R. 13 E.,
Portions of secs. 1, 2, 3, 4, and 11.

San Bernardino Meridian

T. 11 N., R. 33 W.
Portions of secs. 8 and 9.

The lands described in the conveyance documents aggregate 2,960.64 acres in San Luis Obispo County. A specific description of these lands is contained in the official case file which is located in the California State Office.

The value of the Federal lands was appraised at $869,187. When appropriate, the non-Federal land involved in this exchange will be acquired in accordance with the procedures set forth in the Cooperative Land Exchange Agreement between the Bureau of Land Management and The Trust for Public Land for the State of California, dated February 15, 1990.

Dated: December 29, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–296 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–40–P

[CA–060–4350–06; CACA 28950]

Opening of Land in a Proposed Withdrawal; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The temporary 2-year segregation of a proposed withdrawal of 1,262.45 acres of public land to protect the Santa Margarita Ecological Preserve expires on January 17, 1994, and the land will be opened to mining. It has been and remains open to mineral leasing.

EFFECTIVE DATE: January 18, 1994.

FOR FURTHER INFORMATION CONTACT: John Beck, BLM California State Office, 2800 Cottage Way, rm E–2845, Sacramento, CA 95825, (916) 978–4820.

SUPPLEMENTARY INFORMATION: A Notice of Proposed Withdrawal was published in the **Federal Register**, 57 FR 2110, January 17, 1992, which segregated the land described therein for up to 2 years from location and entry under the mining laws, subject to valid existing rights, but not from mineral leasing. The 2-year segregation expires January 17, 1994. The withdrawal application will continue to be processed unless it is canceled or denied. The land is described as follows:

San Bernardino Meridian

T. 8 S., R. 3 W.,
Sec. 23, SE¼SE¼;
Sec. 24, Lots 1,2,3, S½SW¼;
Sec. 25, W½NE¼, W½, SE¼;
Sec. 26, E½NE¼, NE¼NW¼, NE¼SE¼;
Sec. 33, NW¼NE¼, S½NE¼, S½NW¼, N½SW¼, NE¼SE¼.
T. 9 S., R. 3 W.,
Sec. 3, Lot 4.

The areas described aggregate approximately 1,262.45 acres in Riverside and San Diego counties.

At 10 a.m. on January 18, 1994, the land will be opened to location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, and other segregations of record. Appropriation of any of the land described in this order under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38 (1988), shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Dated: December 29, 1993.

Duane A. Marti,

Acting Chief, Lands Section.

[FR Doc. 94–195 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–40–P

[CO–930–4214–10; COC–56149]

Proposed Withdrawal; Opportunity for Public Meeting; Colorado

December 30, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to withdraw approximately 3,333 acres of National Forest System land for 50 years to protect recreational resources and existing and planned facilities of the Aspen Highlands Ski Area. This notice closes this land to location and entry under the mining laws for up to two years. The land remains open to mineral leasing.

DATES: Comments on this proposed withdrawal or requests for public meeting must be received on or before April 6, 1994.

ADDRESSES: Comments and requests for a meeting should be sent to the Colorado State Director, BLM, 2850 Youngfield Street, Lakewood, Colorado 80215–7076.

FOR FURTHER INFORMATION CONTACT: Doris E. Chelius, 303–239–3706.

SUPPLEMENTARY INFORMATION: On December 21, 1993, the Department of Agriculture, Forest Service, filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws (30 U.S.C. Ch 2): White River National Forest.

Sixth Principal Meridian

T. 10 S., R 85 W.,
Sec. 15, SE¼SE¼;
Sec. 22, lots 1, 2, 3, 4, and 5, E½SW¼, and SE¼;
Sec. 23, lots 1, 2, 3, 6, 7, 8, and 9;
Sec. 26, lots 3, 4, 5, 10, and 11, SW¼NW¼ and W½SW¼;
Sec. 27;
Sec. 28, E½E½;
Sec. 33, E½ and E½W½;
Sec. 34;
Sec. 35, lot 10, W½NW¼, SE¼NW¼, and SW¼.
Sec. T. 11 S., R. 85 W.,
Sec. 2, N½N½NW¼;
Sec. 3, N½N½N½;
Sec. 4, N½N½NE¼ and N½NE¼NW¼.

The area described aggregates approximately 3,333.34 acres of National Forest System land in Pitkin County. (This proposed withdrawal excludes any lands lying within the boundaries of the Maroon Bells—Snowmass Wilderness Area.)

The purpose of this withdrawal is to protect the high recreational resource values and planned recreational development and use associated with the Aspen Highlands Ski Area.

For a period of 90 days from the date of publication of this notice, all parties who wish to submit comments, suggestions, or objections in connection with this proposed withdrawal, or to request a public meeting, may present their views in writing to the Colorado State Director. If the authorized officer determines that a meeting should be held, the meeting will be scheduled and conducted in accordance with 43 CFR 2310.3–1(c)(2).

This application will be processed in accordance with the regulations set forth in 43 CFR part 2310.

For a period of two years from the date of publication in the **Federal Register**, this land will be segregated from the mining laws as specified above unless the application is denied or cancelled or the withdrawal is approved prior to the date. During this period the Forest Service will continue to manage these lands.

Alexa L. Watson,

Acting Chief, Branch of Realty Programs.

[FR Doc. 94–295 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–JB–M

Fish and Wildlife Service

Availability of Draft Recovery Plans for the Key Largo Woodrat, Key Largo Cotton Mouse, Gulf Sturgeon, Two Hernando County Plants, and Four Apalachicola Plants for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of four draft recovery plans for the following species: The Key Largo woodrat (*Neotoma floridana smalli*) and cotton mouse (*Peromyscus gossypinus allapaticola*), Gulf sturgeon (*Acipenser oxyrinchus desotoi*) two Hernando County plants (*Campanula robinsiae, Justicia cooleyi*), and four Apalachicola plants (*Euphorbia telephioides, Macbridea alba, Pinguicula ionantha, Scutellaria floridana*). The Key Largo woodrat and Key Largo cotton mouse are restricted to the north half of Key Largo, Monroe County, Florida. The Gulf sturgeon occurs in most major rivers from the Mississippi River to the Suwannee River, and marine waters of the central and eastern Gulf of Mexico and Florida Bay. The two Hernando County plants occur in the hilly countryside north of Tampa. The four Apalachicola plants occur in the pinelands and wetlands in Liberty, Franklin, Gulf, and Bay Counties in the Florida panhandle. The Service solicits review and comment from the public on these draft plans.

DATES: Comments on the draft recovery plans must be received on or before March 7, 1994, to receive consideration by the Service.

ADDRESSES: Persons wishing to review the draft recovery plans for the Key Largo woodrat and cotton mouse, two Hernando County plants, or the four Apalachicola plants may obtain a copy by contacting David J. Wesley, Field Supervisor, Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, suite 310, Jacksonville, Florida 32216 (Telephone: 904–232–2580, FAX 904–232–2404). Persons wishing to review the draft recovery plan for the Gulf sturgeon may obtain a copy by contacting Ms. Gail A. Carmody, Field Supervisor, U.S. Fish and Wildlife Service, 1612 June Avenue, Panama City, Florida 32244 (Telephone: 904–768–0552, FAX 904–763–2177). Written comments and materials regarding these plans should be addressed to the appropriate above individual. Comments and material received are available upon request for public inspection, by appointment, and during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: For information on the Key Largo woodrat and cotton mouse recovery plan, contact Linda Finger at the Jacksonville, Florida, address. For information on the two Hernando County Plants and the four Apalachicola plants recovery plan, contact David L. Martin at the Jacksonville, Florida address. For information on the Gulf sturgeon recovery plan, contact Lorna Patrick at the Panama City, Florida address.

SUPPLEMENTARY INFORMATION:

Background

Restoring endangered or threatened animals and plants to the point where they are again secure self-sustaining members of their ecosystems is a primary goal of the Service's endangered species program. To help guide the recovery effort the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe actions necessary for the conservation of the species, establish criteria for the recovery levels for downlisting or delisting them, and estimate time and cost for implementing the recovery measures needed.

The Endangered Species Act of 1973 (Act), as amended (16 U.S.C. 1531 *et seq.*) requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice, and an opportunity for public review and comment be provided during recovery

plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal agencies will take these comments into account in the course of implementing approved recovery plans.

The Key Largo woodrat and cotton mouse were listed as endangered species on August 31, 1984. Both species require tropical hardwood hammock forests for food and cover. An estimated 6,500 woodrats and 18,000 cotton mice occur on 2,100 acres of forested uplands. Both species originally occurred throughout all of the hardwood hammocks of Key Largo, but are now restricted to only north Key Largo, representing about one-half their original distribution. Primary threats to these species include habitat destruction and fragmentation, road mortality, and vulnerability to catastrophic events such as storms or fires. Current habitat acquisition by both the State and Federal governments will provide nearly complete public ownership for the remaining hardwood hammocks on north Key Largo. Specific recovery actions include additional habitat purchase and protection and the future reestablishment of both species to the southern portion of Key Largo.

The Gulf sturgeon, a subspecies of the Atlantic sturgeon *Acipenser oxyrinchus*, was listed as a threatened species on September 30, 1991. The Gulf sturgeon is an anadromous fish which migrates from salt water into large coastal rivers to spawn and spend the warmer months. The majority of its life is spent in fresh water. The current population levels of Gulf sturgeon in rivers other than the Suwannee and Apalachicola rivers are unknown, but are thought to be reduced from historic levels. Historically, the subspecies occurred in most major rivers from the Mississippi River to the Suwannee River, and marine waters of the central and eastern Gulf of Mexico to Florida Bay. Major factors in the decline of the Gulf sturgeon include barriers (dams) to historical spawning habitats, habitat loss, water quality degradation, and overfishing.

The recovery plan for the Gulf sturgeon was prepared by a Recovery Team containing members from the States of Louisiana, Mississippi, Alabama, and Florida, the Gulf States Marine Fisheries Commission, the National Marine Fisheries Service, the National Biological Survey, university researchers, commercial fishing interests, conservation organizations, and the Service. The draft plan currently available for public comment resulted from a technical review during the summer of 1992. Major recovery actions include identifying and restoring essential habitats of the Gulf sturgeon. Initial restoration efforts will focus on riverine habitats. Another recovery action includes reducing incidental catch of the fish by commercial fishermen. The ultimate recovery goal for the Gulf sturgeon is to establish population levels that would allow delisting of the fish in selected river systems. After delisting, the goal is to establish populations that could support commercial fishing in those selected river systems.

The two Hernando County plants *Campanula robinsiae* (Brooksville bellflower) and *Justicia cooleyi* (Cooley's water-willow) were listed as endangered species on August 28, 1989. Brooksville bellflower inhabits wet "prairies" and lake margins in the hill country of Hernando County. Cooley's water-willow primarily inhabits hardwood forests, but appears to persist or thrive in clearings, pastures, and roadsides. Its distribution appears to be primarily in the hills of Hernando County, but it is also known from Sumter County, near Mascotte. The draft recovery plan emphasizes better information on the life history of the bellflower, an annual that grows in late winter and is often under water. For Cooley's water-willow, immediate efforts are needed to control the spread of alien pest vines, especially air-potato (a tropical yam that produces tubers on its vines) and skunkvine (an Asian vine that can cover the ground in a forest, and whose leaves have a fecal odor when bruised). Recovery efforts for these plants will begin on land owned by Federal and State agencies.

Three Apalachicola plants were listed as threatened species on May 8, 1992: *Euphorbia telephioides* (Telephus spurge), *Macbridea alba* (white birds-in-a-nest), and *Scutellaria floridana* (Florida skullcap). The fourth species, *Pinguicula ionantha* (Godfrey's butterwort) was listed as a threatened species on July 12, 1993. These four plants overlap in their distributions and habitats in the low-lying outer Coastal Plain near the Apalachicola River, roughly from the southwestern portion of Apalachicola National Forest west to Panama City. Telephus spurge occupies low sand ridges. White birds-in-a-nest and Florida skullcap occur in grassy pinelands and savannahs; Godfrey's butterwort occurs in savannahs, bogs, and seasonal ponds. Three of the four species occur in Apalachicola National Forest, where ongoing management, especially prescribed burning, is needed to ensure that they are secure. Telephus spurge, which does not occur on public land, and the other species outside of Apalachicola National Forest are threatened by habitat degradation due to lack of prescribed fire and by forestry practices, including planting practices. The recovery plan calls for ensuring that habitat for the three plants is appropriately managed in the National Forest and, to the extent feasible, privately-owned habitat be protected through conservation easements or purchase by public conservation agencies.

Public Comments Solicited

The Service solicits written comments on the four recovery plans described. All comments received by the date specified will be considered prior to the approval of the plans.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: December 22, 1993.

David J. Wesley,

Field Supervisor.

[FR Doc. 94–187 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

Federal Geographic Data Committee (FGDC); Open Meeting on Creating a Geospatial Data Framework for the National Spatial Data Infrastructure (NSDI)

AGENCY: Geological Survey, Interior.

ACTION: Notice of meeting.

SUMMARY: The Federal Geographic Data Committee has organized a Framework Working Group to gather information for and create the structure for a national geospatial data framework for the National Spatial Data Infrastructure. The purpose of the meeting is to receive public comments on different perspectives on the framework, and the need for and approaches to providing elevation and cadastral data to the framework.

DATES: January 18, 1994, 9 a.m. to 5:30 p.m. Mountain Standard Time.

ADDRESSES: The meeting will be held in the Fifth Floor Conference Room, State Office Building, 400 North State Street, Salt Lake City, Utah. This is the only meeting that will be held in Salt Lake City.

FOR FURTHER INFORMATION CONTACT: Persons planning to attend or to make a presentation at the meeting should notify Dennis Goreham, Manager, Utah Automated Geographic Reference Center, 5130 State Office Building, Salt Lake City, Utah 84114, telephone (801) 538–3163; facsimile (801) 538–3622.

SUPPLEMENTARY INFORMATION: Admittance will be limited to the seating available. Persons planning to attend the meeting should contact Mr. Goreham as described above.

As part of this effort the working group will hold open meetings to receive input from any interested parties. The public is invited to prepare a presentation on any of the topics listed in the Summary section of this notice. Presentations should be limited to 15 minutes. (Presentations may be limited to a shorter time if necessary so that all may be heard.) An overhead projector and slide projector will be supplied. The working group will also accept written comments, which should be received by Mr. Goreham before January 18, 1994.

This meeting is part of a series on developing a geospatial data framework for the National Spatial Data Infrastructure. The framework will provide a minimum set of geographic data that is useful to a maximum number of users within any geographic area or nationwide. Framework data will be produced to known standards in the fastest time frame possible and for the most reasonable cost. Creation of such a geospatial data framework will eliminate much of the redundancy in data capture by making available a basic set of geospatial data to which other data can be related. The framework data would be of recognized quality and would be available in "standard" formats. The geospatial data framework also will provide a means to integrate data from numerous collection activities in various agencies and will encourage data sharing among different disciplines. The components of the framework will likely include digital ortho imagery, geographic and cadastral reference systems, elevation, and spatial representations of transportation, hydrography, and administrative and political units. This meeting will address elevation and cadastral data; subsequent meeting will address the other themes.

The Framework Working Group consists of representatives of Federal, State, regional, and local government agencies engaged in the collection, maintenance, and development of geospatial data. The working group will define the components, identify the standards for the initial collection and maintenance, recommend a time frame for production and maintenance, and develop a plan for funding a framework of geospatial data as the foundation for the NSDI.

Dated: December 29, 1993.

Allen H. Watkins,

Chief, National Mapping Division.

[FR Doc. 94–206 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Willow Beach Development Concept Plan Amendment; Lake Mead National Recreation Area, Arizona and Nevada; Public Meetings and Extension of Comment Deadline

SUMMARY: The National Park Service is extending the public comment period for the Willow Beach Development Concept Plan Amendment, Lake Mead National Recreation Area, to February 4, 1994. The availability of this document was announced in the November 5, 1993, **Federal Register** (58 FR 59065). Also, public meetings and informational sessions, previously scheduled for November 1993 will now be held in January 1994 at the following locations and on the specified times and dates:

Boulder City, Nevada

January 11—Open house 1–4 p.m. at Park Headquarters, 601 Nevada Highway, Boulder City.

Kingman, Arizona

January 12—Open house 1–4 p.m. and a public meeting 7–10 p.m. at the Holiday Inn, 3100 East Andy Devine (Highway 66), Exit 53 off Interstate 40.

Las Vegas, Nevada

January 13—Open house 1–4 p.m. and a public meeting 7–10 p.m. at Cashman Field, 850 North Las Vegas Blvd., just north of U.S. Highway 93/95.

Ontario, California

January 14—Open house 1–4 p.m. and a public meeting 7–10 p.m. at the Holiday Inn, 1801 East G Street, Vineyard Exit (Ontario Airport) off Interstate 10.

For additional information, please contact the Superintendent, Lake Mead National Recreation Area, 601 Nevada Highway, Boulder City, NV 89005, telephone number (702) 293–8947.

Dated: December 8, 1993.

Lou Albert,

Acting Regional Director, Western Region.

[FR Doc. 94–274 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Public Administration Assistance Program in Central and Eastern Europe (RFP: OP/A/EE–94–P–003 Due 02/28/94) POC Contact Point: Dana Doo-Sogholan, Contract Specialist, 703/875–1995, Contracting Officer, Diane M. Howard

The following notice appeared in the Commerce Business Daily on Monday, December 20, 1993:

This notice is a reissuance of a notice published on 12/7/93 and is for the same RFP. Any requests for this RFP that have already been submitted in response to the earlier notice will be honored, and a new request is not necessary.

The U.S. Agency for International Development (USAID) is soliciting proposals for up to two contracts to provide public administration services throughout Central and Eastern Europe. Activities under the contract(s) will be focused primarily in Romania, Slovakia, the Czech Republic, Albania, Estonia, Latvia, Lithuania, and possibly the republics of the former Yugoslavia, and secondarily, in Bulgaria, Hungary, and Poland.

Each contract term is expected to be for two years, with the option to extend the contract(s) for 50% of the level of effort in the 2-year base period. The contract(s) will be based on a level-of-effort, and contract resources will be accessed through individual Technical Service Orders (TSOs). In addition, the contract(s) will provide a set amount of funds for equipment and U.S.-based training for which the Contractor will be logistically responsible. Contractor(s) shall furnish qualified personnel to provide technical assistance and training in the field of public administration in, but not limited to, the following categories of activity: public management training, personnel systems, organizational management, budgeting systems, regulatory systems, transparency of process, accountability, decentralization, intergovernmental finance, local self-governments, procurement, and future public administrators.

Given the scope of activities, USAID encourages proposals from consortia or organizations joining together under one proposal. All responsible sources may submit a proposal to be considered by USAID. Proposals will be evaluated in accordance with the selection criteria stated in the RFP, with award(s) based on the proposal(s) that are most

advantageous to the Government, cost and other factors considered. To help identify potential subcontractors, the RFP will contain an attachment listing all organizations who requested the RFP up to the time the RFP goes to print. By providing a list, USAID does not endorse any of the listed organizations as being capable of carrying out the activity, nor does USAID verify the claimed status of the organizations known to USAID prior to the issuance of the RFP. All requestors are encouraged to state in their requests for the RFP whether their organization is a small business or a disadvantaged enterprise. USAID promotes participation of small business concerns and disadvantaged enterprises (firms owned by minorities or women, historically black colleges and universities, college and universities with more than 40 percent Hispanic American students, and private voluntary organizations controlled by minorities or women) as contractors or subcontractors. Accordingly, the prime contractor(s) will make reasonable efforts to identify the use of such groups. All other selection criteria being equal, the participation of such groups may be a determining factor for selection.

Only one request for the RFP per organization will be honored. The RFP will be available approximately 15 days after issuance of this notice. Interested parties may obtain a copy of the RFP by submitting a written request, citing RFP number OP/A/EE–94–P–003, with one self-addressed mailing label to Dana Doo-Soghoian, U.S. Agency for International Development, Office of Procurement, M/OP/A/EE, room 1566, SA–14, Washington, DC 20523–1426. Only written requests will be honored. Parties interested in obtaining a copy of the RFP after its issuance may request a copy in person by presenting a written request with the organization mailing address to the 15th Floor Receptionist, 1100 Wilson Blvd., Arlington, VA 22209. To expedite receipt of the RFP, organization requesting the RFP may provide a self-addressed envelope already prepared for mailing with either their Federal Express or Express Mail account number. If an envelope already prepared for mailing is not provided by the requestor, the RFP will be mailed through the regular U.S. Postal Service. Telephonic requests will not be honored. Requests for the RFP that are received one week or less before the RFP closing date will be filled subject to the availability of copies. (0350)

Dated: December 22, 1993.

Susan Kosinski,

Project Officer, ENI/EUR/DR/DPI.

[FR Doc. 94–292 Filed 1–5–94; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–167 (Sub-No. 1131X), Consolidated Rail Corp.—Abandonment Exemption—In Mahoning County, OH. EA available 12/10/93.

AB–167 (Sub-No. 1122X), Consolidated Rail Corp.—Abandonment Exemption—In Henry and Madison Counties, IN. EA available 12/23/93.

AB–83 (Sub-No. 12X), Maine Central Railroad Co.—Abandonment Exemption—In Coos and Carroll Counties, NH. EA available 12/21/93.

Comments on the following assessment are due 30 days after the date of availability:

None.

Sidney L. Strickland,

Secretary.

[FR Doc. 94–289 Filed 1–5–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32423]

Twin Cities & Western Railroad Company—Acquisition of Trackage Rights—Burlington Northern Railroad Co.; Exemption

The Burlington Northern Railroad Company (BN) has agreed to grant overhead trackage rights to Twin Cities & Western Railroad Company (TCW) extending from MP–13.27 at Lyndale Junction to MP–9.5 (East leg of Wye) and MP–10.08 (West leg of Wye) at Minneapolis Junction in Minneapolis, MN, from MP–11.6, the former Shoreham Yard switch in Minneapolis, to MP–429.7 in St. Paul, MN. The trackage rights were to become effective on or after January 1, 1994.

The principal purpose of the trackage rights is to provide TCW with an alternative route to Soo Line Railroad Company's (Soo) St. Paul Yard. This notice is related to a notice filed in Finance Docket No. 32424, *Twin Cities & Western Railroad Company—Acquisition of Trackage Rights—Chicago and North Western Transportation Company*, in which CNW is granting TCW overhead trackage rights from its connection with Soo's Merriam Park line in St. Louis Park to Lyndale Junction.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles H. Clay, Head, Hempel, Seifert & Vander Weide, One Financial Plaza, suite 2110, 120 South Sixth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: December 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–286 Filed 1–5–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32424]

Twin Cities & Western Railroad Co.; Acquisition of Trackage Rights—Chicago and North Western Transportation Co.; Notice of Exemption

The Chicago and North Western Transportation Company (CNW) has agreed to grant overhead trackage rights to Twin Cities & Western Railroad Company (TCW) between the connection with the Soo Line Railroad Company (Soo) at MP–16.2, St. Louis Park and the CNW connection with Burlington Northern Railroad Company (BN) at MP–13.7 in Minneapolis, MN. The trackage rights were to become effective on or after January 1, 1994.

The purpose of the trackage rights is to provide TCW with an alternative route to Soo's St. Paul Yard. This notice is related to a notice filed in Finance Docket No. 32423, *Twin Cities & Western Railroad Company—Acquisition of Trackage Rights—Burlington Northern Railroad Company*, in which BN is granting TCW, overhead trackage rights over its line extending from Lyndale Junction in Minneapolis/St. Paul.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.G. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Charles H. Clay, Head, Hempel, Seifert & Vander Weide, One Financial Plaza, suite 2110, 120 South Sixth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980)*.

Decided: December 28, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland,

Secretary.

[FR Doc. 94–288 Filed 1–5–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 92–56]

Abel J. Sands, M.D.; Denial of Application

On May 14, 1992, the Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration (DEA), issued an Order to Show Cause to Abel J. Sands, M.D. (Respondent) of 316 South Midwest Boulevard, Midwest City, Oklahoma 73110. The Order to Show Cause, which proposed to deny Respondent's application for registration pursuant to 21 U.S.C. 823(f), alleged that Respondent's registration would be inconsistent with the public interest. The Order to Show Cause alleged that Respondent issued prescriptions for controlled substances to undercover agents of the Oklahoma State Bureau of Narcotics and Dangerous Drugs (OBN) for other than legitimate medical purposes; that OBN took action against Respondent's state license to handle controlled substances; and that Respondent failed to keep complete and accurate records of this purchasing and dispensing of controlled substances.

Respondent, through counsel, requested a hearing and the matter was placed on the docket of Administrative Law Judge Mary Ellen Bittner. Following prehearing procedures, a hearing was held in Oklahoma City, Oklahoma, on December 15, 1992. On September 8, 1993, the administrative law judge issued her findings of fact, conclusions of law and recommended ruling. On September 30, 1993, Respondent filed exceptions to the recommended ruling of the administrative law judge. On October 12, 1993, the administrative law judge transmitted the record in this proceeding to the Administrator. Having considered the record in its entirety, and pursuant to 21 CFR 1316.67, the Acting Administrator hereby issues his final order in this matter based upon the findings of fact and conclusions of law set forth below.

It was proven at the hearing that on numerous occasions, Respondent wrote prescriptions to undercover agents in the absence of a legitimate medical purpose. OBN first became aware of Respondent's prescribing practices after Respondent's name arose in the course of an investigation into the street purchase of cocaine, a Schedule II controlled substance, Valium and Xanax, both Schedule IV controlled substances. OBN agents posed as patients and visited Respondent's office in an attempt to obtain prescriptions for controlled substances without legitimate medical reason. The OBN agents conducted a total of seven successful undercover operations at Respondent's office between December 1988 and April 1989. On each occasion, the OBN agents were able to obtain prescriptions for Xanax without legitimate medical purpose. All of these undercover operations were taped and transcribed.

On the first undercover visit on December 14, 1988, the undercover agent told Respondent that a friend from whom he had been purchasing Xanax advised him that he could obtain a prescription for Respondent. The agent told Respondent that the Xanax made him "feel good." After initially refusing to provide the prescription, Respondent informed the agent that he would make a patient chart for him, the charge for which would be $25.00. Respondent proceeded to perform a cursory examination of the agent, which included taking his weight and blood pressure. The agent told Respondent that he needed Xanax to "function" at work after he used cocaine. Respondent ultimately provided the agent with a prescription for 60 Xanax, stating that writing for 100 would get him (Respondent) in "trouble."

OBN agents conducted similar undercover operations on six other occasions and obtained prescriptions for Xanax each time. The lead agent testified, and the transcripts provided corroboration, that he never complained of any medical problem which warranted the use of Xanax. The administrative law judge determined that Respondent did not establish a physician-patient relationship with the OBN agents and concluded that none of the prescriptions at issue was for a legitimate medical purpose.

The administrative law judge further noted that Respondent's taped comments to the OBN agents demonstrated that he was aware of the illegitimacy of the prescriptions and was concerned that his conduct would become known to law enforcement. As a result, the administrative law judge concluded that Respondent's contention that he issued the prescriptions pursuant to a valid physician-patient relationship was disingenuous and did not "bode well for the proposition that [Respondent] is likely in the future to accept and discharge the responsibilities of a DEA registrant."

Also proven at the administrative hearing was the fact that Respondent, after surrendering his DEA Certificate of Registration and after his state controlled substance license had been suspended, was found to be in possession of controlled substances. On January 29, 1990, OBN agents and DEA Diversion Investigators delivered to Respondent an "imminent danger letter" from OBN, which suspended Respondent's state controlled substance registration. The same day, Respondent signed a DEA Form 104, voluntarily surrendering his DEA Certificate of Registration. An investigation by Medical Board investigators revealed that on June 4, 1990, Respondent was in possession of Equagesic and Halcion, both controlled substances.

The Medical Board investigation also revealed that Respondent had failed to keep accurate records of his purchase and dispensing of controlled substances. After a Medical Board hearing was scheduled, but before the hearing date, the Medical Board proposed and Respondent accepted a five year probation period during which Respondent was prohibited from prescribing, administering or dispensing any Schedule II or III controlled

substances. On April 16, 1991, OBN granted Respondent a state controlled substance registration limited to Schedules IV and V for the period of his Medical Board probation.

The Acting Administrator also finds that on November 15, 1989, Respondent was indicted in the United States District Court for the Western District of Oklahoma on seven counts of violating 21 U.S.C. 842(a)(1). This indictment was based on Respondent's writing of prescriptions to the undercover OBN agents. Respondent was acquitted of all charges on February 22, 1990, following a jury trial.

Pursuant to 21 U.S.C. 823(f) and 824(a)(4), the Administrator may revoke a DEA Certificate of Registration or deny an application for registration if he determines that the registration would be inconsistent with the public interest. Section 823(f) requires that the following factors be considered: (1) The recommendation of the appropriate State licensing board or professional disciplinary authority; (2) the applicant's experience in dispensing, or conducting research with respect to controlled substances; (3) the applicant's conviction record under Federal or State laws relating to the manufacture, distribution, or dispensing of controlled substances; (4) compliance with applicable State, Federal or local laws relating to controlled substances; and, (5) such other conduct which may threaten the public health and safety.

The Administrator may rely on any one or any combination of these factors when determining whether an application should be denied or a registration revoked. See Neveille H. Williams, D.D.S., 51 FR 17556 (1986); Anne L. Hendricks, M.D., 51 FR 41030 (1986). The administrative law judge correctly found that all these factors, with the exception of 21 U.S.C. 823(f)(3), were relevant to a determination of whether Respondent's registration would be in the public interest.

Two Oklahoma authorities which exercise control over the licensing of physicians, OBN, which issues controlled substances registrations, and the Oklahoma Medical Board (Medical Board), which issues medical licenses, have taken action against Respondent. With respect to Respondent's experience with dispensing controlled substances, the OBN investigation clearly demonstrates that Respondent cannot be trusted to fulfill his responsibilities as a DEA registrant. This conduct, combined with his recordkeeping violations as discovered by the Medical Board, indicates that Respondent has not complied with Federal and State regulations relating to controlled substances.

Finally, Respondent's cavalier conduct when issuing prescriptions, as evidenced by comments made during the undercover operations, is disturbing. As the Administrative law judge correctly noted, the transcripts clearly indicate that Respondent was aware of the illegality of his actions. Respondent's knowledge of the illicit nature of his conduct demonstrates that Respondent cannot fulfill the significant responsibilities which come with a DEA registration. Additionally, it is further evidence that the public health and safety would be comprised were Respondent given the opportunity to return to his prior conduct. After considering these elements, the administrative law judge concluded that Respondent's registration would not be in the public interest and recommended that Respondent's application be denied.

On September 30, 1993, Respondent filed exceptions to the administrative law judge's recommended decision. In these exceptions, Respondent took issue with the administrative law judge's reliance on the testimony of the OBN agent and the transcripts of the undercover operations. Respondent maintained that the agent's credibility was damaged given the discrepancies between his testimony before the grand jury and his testimony during the criminal trial. The Acting Administrator finds, however, that the administrative law judge carefully considered these issues and concluded that the alleged inconsistencies in testimonies did not affect the administrative hearing. The inconsistencies were adequately explained by the agent at the administrative hearing. Furthermore, as the administrative law judge correctly noted, some of the agent's statements which Respondent insisted were contradictory were not necessarily inconsistent. Finally, and perhaps most importantly, the transcripts of the undercover operations, the accuracy of which was not challenged by Respondent, speak for themselves.

Respondent asserts that the administrative law judge did not base her opinion on all the evidence presented, and instead relied exclusively on the transcripts of the undercover operations. This contention, however, is not supported by the detailed opinion and recommended ruling prepared by the administrative law judge. The Acting Administrator finds that the administrative law judge properly weighed the evidence presented by both the Government and Respondent.

The Acting Administrator agrees with the administrative law judge that, after considering the applicable factors pursuant to 21 U.S.C. 823(f), Respondent's registration would not be in the public interest and adopts her recommended decision in its entirety. Accordingly, the Acting Administrator of the Drug Enforcement Administration, pursuant to the authority vested in him by 21 U.S.C. 823 and 824 and 28 CFR 0.100(b), hereby orders that Abel J. Sands' application for registration be, and it hereby is, denied. This order is effective January 6, 1994.

Dated: December 28, 1993.

Stephen H. Greene,

Acting Administrator of Drug Enforcement.

[FR Doc. 94–235 Filed 1–5–94; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to section 10(a) of FACA, this is to announce that the Commission will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Wednesday, January 19, 1994 from 10 a.m. to 4:30 p.m. in room N–3437 A–D, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

The meeting will be devoted to the statutory and legal framework respecting employee participation plans of various forms treating a variety of workplace issues. It will consider what, if any, changes in this framework are required to encourage workplace productivity through labor-management cooperation and employee participation.

The meeting will be organized around two panels, one in the morning and one in the afternoon. The morning panel will be comprised of two representatives of management, one a lawyer and one a human resources executive, and two representatives of labor, one a lawyer and one a union representative.

The afternoon panel will be drawn from legal academics and research organizations with recent research reports treating workplace worker-management plans.

The members of the panels will each be allotted ten minutes of prepared presentations and then engage in discussion of the issues with each other and with members of the Commission.

PUBLIC PARTICIPATION: The meeting will be open to the public. It will be in session from 10 a.m. until 12:30 p.m. when it will adjourn for lunch and will return at 1:45 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 15 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, telephone (202) 219–9148.

Due to the Christmas and New Year's Holiday vacation, we are unable to give the full 15 days of advance notice of this meeting.

Signed at Washington, DC this 29th day of December, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 94–238 Filed 1–5–94; 8:45 am]

BILLING CODE 4510–23–M

Occupational Safety and Health Administration

[Docket No. NRTL–1–93]

Wyle Laboratories; Application

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of Wyle Laboratories for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is March 7, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that Wyle Laboratories (WL) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: Wyle Laboratories, 7800 Governors Drive, P.O. Box 077777, Huntsville, Alabama 35807.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

Wyle Laboratories states that its application demonstrates that for each specified item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, quality control and calibration programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate product test standards. In summary, it claims that it has the experience, expertise, personnel, organization, equipment, and facilities suitable for accreditation as an OSHA Nationally Recognized Testing Laboratory.

The Calibration Laboratory maintains, repairs, and calibrates more than 7400 pieces of test equipment. Test equipment is available in the laboratory to perform the testing specified in the standard. If equipment is not available, it may be purchased, rented, or leased only under specified, stringent conditions.

The applicant states that it has pertinent testing and certification experience. The Huntsville facility has been conducting testing related to product safety for over 30 years. Since the commercial product safety market has only recently become available, WL's experience has been in other markets including telecommunications. The applicant states the WL has tested equipment to standards which compare with UL standards for which they are requesting accreditation to test and certify as an NRTL. In addition, Wyle has had experience in the certification of products (although not necessarily related to those required by OSHA), having been a certified Department of Transportation (DOT) Third Party Testing Laboratory since July, 1985. (See Exhibit 2.A.(1), Section 6).

WL's Huntsville facility employs some 350 people and has about 320,000 square feet of engineering and test facilities situated on 126 acres. The floor space of the Product Safety Testing and Certification Laboratory including the storage and office area, is 2,700 square feet. Some twenty key personnel are presently assigned to this Division including Calibration Laboratory and Quality staff. Product safety testing has been allocated 1,500 square feet of floor space. If additional floor space is necessary for product testing, WL can expand into the 320,000 square feet that is available at this facility. (See Exhibits 3.A.(1) and 2.A.(2), Appendices II and III, and IV).

WL has written testing procedures and has supplied examples of typical procedures for five of the test standards for which it has applied for NRTL recognition. (See Exhibit 2.A.(2), Appendix VI).

Wyle Laboratories states that all instrumentation, measuring, and test equipment used in the performance of the testing programs are calibrated in accordance with Wyle Laboratories' Quality Assurance Program. Standards used in performing all calibrations are traceable to the National Institute of Standards and Technology (NIST) by report number and date. Where no national standards exist, the standards are traceable to international standards or the basis for calibration is otherwise documented. (See Exhibit 2.A.(1), Section 10, and Exhibit 2.A.(2), Appendix VIII, Section 12, and Appendix XII).

WL has submitted an unrestricted copy of its Quality Assurance Program Manual (Exhibit 2.A.(2), Appendix VIII) which describes the overall Quality Assurance Program used at WL's Huntsville facility. The Manual includes various control procedures.

Wyle Laboratories states that it will implement control procedures for identifying products which have been certified. It will maintain a controlled and secure file for each product tested. This file will contain the technical and business records of the test program, including the services agreement, test results, correspondence, transmittals, the Factory Inspection Reports, and the

product documentation. (See Exhibit 2.A.(1), Section 7).

The applicant further states that products bearing the Wyle label will be considered evaluated, certified, and listed by Wyle. It will certify that these products are in compliance with the applicable safety standards to which they were tested. Wyle will thereafter have unannounced and unrestricted access to conduct inspections at approximately three-month intervals at manufacturing and other facilities where products certified by them may be fabricated, processed, or stored. Wyle will conduct field inspections to monitor and assure proper use of its certification label after the products are delivered to the end user. (See Exhibit 2.A(1), Sections 5 and 9, and Exhibit 2.A.(2), Appendix XI).

WL states that its Product Safety Certification activities are performed completely independent of its clients. No Wyle clients have ownership positions in Wyle or have any sort of influence on WL's activities. No WL employees are under the influence or control of manufacturers or suppliers. (See Exhibits 2.A; 2.A.(1), Section 3; and Exhibits 2.A.(2), Appendix I).

The applicant appears to maintain effective procedures for producing creditable findings or reports that are objective and without bias. (See Exhibit 2.A.(2), Appendices IV and VIII).

Wyle asserts that its Appeals Procedure (see Exhibit 2.A.(2), Appendix X) includes a system which provides an unbiased review of any controversial matter. The Appeals Procedure is available for any interested party, including users.

All other pertinent aspects of Wyle Laboratories' program are detailed in Exhibited 2.A and 3.A.

Background

The applicant states that Wyle Laboratories was founded in 1949 in El Segundo, California, as an independent test laboratory to support the nation's fledgling aerospace industry. As manned spaceflight became a national priority and support of spaceflight development was required, Wyle expanded to a new location in Norco, California, which was dedicated in 1959. To complement the propellent and vibration testing capabilities of the California locations, Wyle states that it created the Huntsville facility in 1982 to support the National Aeronautics and Space Administration (NASA) and the establishment of the George C. Marshall Space Flight Center (MSFC) in Huntsville, Alabama, with testing, engineering, and research capabilities. Of the three major operations at the Huntsville facility, the one of interest to the NRTL Accreditation program is the Test Operations Division, which includes the Product Safety Department. The Product Safety Testing and Certification Division of the Test Operations Division is responsible for the testing, certification, and factory follow-up inspections of the products.

The applicant states that over its 42 year history, Wyle Laboratories—Scientific & Systems (3S) Group has expended and diversified into various business disciplines. At the same time, the applicant states that the Company has continuously maintained its independent laboratory status as a major provider of conformity assessment services to North America's most quality-conscious industries. Wyle's focus continues to be on the science of evaluation, test and measurement engineering, as well as the business of regulatory compliance.

Wyle Laboratories desires recognition for testing and certification of products when tested for compliance with the following test standards:

ANSI/UL 153—Portable Electric Lamps
ANSI/UL 187—X-Ray Equipment
ANSI/UL 465—Central Cooling Air Conditioners
ANSI/UL 484—Room Air Conditioners
ANSI/UL 489—Molded-Case Circuit Breakers and Circuit-Breaker Enclosures
ANSI/UL 499—Electric Heating Appliances
ANSI/UL 506—Specialty Transformers
ANSI/UL 508—Electric Industrial Control Equipment
UL 544—Electric Medical and Dental Equipment
ANSI/UL 1012—Power Supplies
ANSI/UL 1025—Electric Air Heaters
ANSI/UL 1069—Hospital Signaling and Nursing Call Equipment
ANSI/UL 1087—Molded-Case Switches
ANSI/UL 1236—Electric Battery Chargers
UL 1244—Electrical and Electronic Measuring and Testing Equipment
ANSI/UL 1262—Laboratory Equipment
ANSI/UL 1310—Direct Plug-In Transformer Units
ANSI/UL 1411—Transformers and Motor Transformer for Use in Audio-, Radio-, and Television-Type Appliances
ANSI/UL 1459—Telephone Equipment
ANSI/UL 1570—Fluorescent Lighting Fixtures
ANSI/UL 1571—Incandescent Lighting Fixtures
ANSI/UL 1585—Class 2 and Class 3 Transformers
ANSI/UL 1778—Uninterruptible Power Supply
UL 1863—Communication Circuit Accessories
ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

Preliminary Finding

Wyle Laboratories addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its further correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report; a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; appeals procedure; typical calibration forms; and a copy of its Quality Assurance Manual. This QA Manual includes a description of its document control; identification and control of materials, parts, and components; inspection; test control; control of measuring and test equipment; inspection, test, and operating status; quality assurance records; and audits.

Nine major areas were examined in depth during the on-site laboratory evaluation: Facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the on-site evaluation were adequately responded to [Ex. 3.A.(2)] prior to the preparation of the final on-site evaluation [Ex. 3. A.(1)]. With the preparation of the final report, the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by the standard, and so noted in the On-Site Review Report (Survey). (See Ex. 3.A.)

Following a review of the application file and the on-site survey report of the WL facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that Wyle Laboratories can meet the requirements for recognition as required by 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than March 7, 1994 and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the WL application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–1–93), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of § 1910.7.

Signed at Washington, DC this 30th day of December, 1993.

Joseph A. Dear,

Assistant Secretary.

[FR Doc. 94–237 Filed 1–5–94; 8:45 am]

BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550; 703–306–1031.

SUPPLEMENTARY INFORMATION: On December 1, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking, import into USA–Port of Entry Port Hueneme and enter site of special scientific interest was issued to E. Imre Friedmann on December 30, 1993.

Thomas F. Forhan,

Permit Officer, Office of Polar Programs.

[FR Doc. 94–205 Filed 1–5–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Elementary, Secondary and Informal Education; Notice of Meeting

In accordance with Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and Time: January 21, from 8:30 a.m. to 5 p.m.; January 22, from 8:30 a.m. to 3:30 p.m.

Place: Holiday Inn Arlington, 4610 North Fairfax Drive, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Margaret B Cozzens, Division Director Division of Materials Development, Research and Informal Science Education, room 885, 4201 Wilson Boulevard, Arlington, VA 22230, telephone: (703) 307–1620.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process of awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 3, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–218 Filed 1–5–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Name: Special Emphasis Panel in Mechanics and Structural Systems.

Date & Time: January 24 & 25 1994; 8:30 a.m. to 5 p.m.

Place: NSF, Rm. 530, 4201 Wilson Blv., Arlington, VA 22230.

Contact: Dr. Oscar W. Dillon/ Dr. William A. Spitzig, Program Directors, (703) 306–1361.

Type of Meeting: Closed.

Purpose of Meeting: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Agenda: To review and evaluate proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 3, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–219 Filed 1–5–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announced the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and Time: February 3–4, 1994, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, Room 370, Arlington, VA 22230.

Notice of Meeting: Closed.

Contact Person: Dr. Mehmet T. Tumay, Program Director, 4201 Wilson Blvd., Arlington, VA 22230, Telephone: (703) 306–1361.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: Review and evaluate Mechanical and Structural Systems NSF IIA proposals.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information, financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 3, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–220 Filed 1–5–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–441]

Cleveland Electric Illuminating Co., et al., Perry Nuclear Power Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an extension to the latest construction completion date specified in Construction Permit No. CPPR–149 issued to The Cleveland Electric Illuminating Company, et al., for the Perry Nuclear Power Plant, Unit 2. The facility is located on the applicant's site in Lake County, Ohio, approximately 35 miles northeast of Cleveland, Ohio and approximately 7 miles northeast of Painesville, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed action would extend the latest construction completion date of Construction Permit No. CPPR–149 to November 30, 2001. The proposed action is in response to the applicant's request of October 28, 1991, as supplemented on February 20, 1992.

The Need for the Proposed Action

The proposed action is needed because the construction of the facility is not yet completed and the licensee wants to maintain the facility as a potential electrical power source.

Environmental Impact of the Proposed Action

Since the proposed action involves extending the construction permit, there are no radiological impacts associated with this action. The impacts that are involved are all non-radiological and are associated with continued construction. The impact of construction was evaluated in the Final Environmental Statement for the Perry Nuclear Power Plant, Units 1 and 2 (NUREG–0844, dated August 1982).

Based on the foregoing, the NRC staff concludes that the proposed extension of the construction permit would have no significant environmental impact.

Alternatives Considered

A possible alternative to the proposed action would be to deny the request. Under this alternative, the applicant would not be able to complete construction of the facility. This would result in denial of the potential benefit of the facility. This option would not eliminate the environmental impacts of construction already incurred. If construction were halted and not completed, site redress activities would restore some small areas to their natural state. This would be a slight environmental benefit, but much outweighed by the economic losses from denial of the use of the facility, if completed. Therefore, this alternative is rejected.

Another alternative is to take no action on the request for extension. The construction permit would not be deemed to have expired until the application has been finally processed (10 CFR 2.109). In effect, the construction permit could be in effect as long as no action was taken on a timely application for an extension. To take no action on the applicant's request would not be responsive; therefore, this alternative is rejected.

Alternative Use of Resources

This action does not involve the use of resources other that those evaluated in the Final Environmental Statement, NUREG–0884, dated August 1982, prepared as part of the NRC staff's review of the construction permit application.

Agencies and Persons Consulted

The NRC staff reviewed the applicant's request and applicable documents referenced therein that support this extension. The NRC did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for this action. Based upon the environmental assessment, we conclude that this action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the request for extension of October 28, 1991, as supplemented on February 20, 1992, which is available for public inspection in the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. 20555, and at the Local Public Document Room, located at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 29th day of December 1993.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–251 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–331]

Iowa Electric Light and Power Co.; Issuance of Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–49, issued to Iowa Electric Light and Power Company (the licensee), for operation of the Duane Arnold Energy Center (DAEC), located in Linn County, Iowa.

Identification of Proposed Action

The amendment would consist of a change to the Operating License that would increase the storage capacity of the spent fuel pool to 3152 fuel assemblies, including a rack which can be used for temporary storage of 323 fuel assemblies.

The amendment to the TS is responsive to the licensee's application dated March 26, 1993, and supplemented by additional correspondence dated September 15 and November 23, 1993. The NRC staff has prepared an Environmental Assessment of the proposed action.

Summary of Environmental Assessment

The "Final Generic Environmental Impact Statement (FGEIS) on Handling and Storage of Spent Light Water Power Reactor Fuel" (NUREG–0575), Volumes 1–3 (1979), concluded that the environmental impact of interim storage of spent fuel was negligible and the cost of the various alternatives reflects the advantage of continued generation of nuclear power with the accompanying spent fuel storage. Because of the differences in design, the FGEIS recommended evaluating spent fuel pool expansions on a case-by-case basis. For DAEC, the expansion of the storage capacity of the spent fuel pool will not create any significant additional radiological effects or nonradiological environmental impacts beyond those assessed in the Commission's Final Environmental Statement (FES) issued in March 1973 related to the operation of DAEC, and in the Safety Evaluation Report issued July 7, 1978, in support of a previous license amendment concerning storage capacity.

The occupational radiation dose for the proposed operation of the expanded spent fuel pool is estimated to be less than 2 percent of the total annual occupational radiation exposure for this facility.

Finding of No Significant Impact

The staff has reviewed the proposed spent fuel pool expansion to the facility relative to the requirements set forth in 10 CFR part 51. Based on this assessment, the staff concludes that there are no significant radiological or nonradiological impacts associated with the proposed action and that the issuance of the proposed amendment to the license will have no significant impact on the quality of the human environment. Therefore, pursuant to 10 CFR 51.31, no environmental impact statement needs to be prepared for this action.

For further details with respect to this action see

(1) The application for amendment dated March 26, 1993, and supplemental correspondence dated September 15 and November 23, 1993,

(2) The FGEIS on Handling and Storage of Spent Light Water Power Reactor Fuel (NUREG–0575),

(3) The FES for DAEC dated March 1973 and

(4) The Environmental Assessment dated December 29, 1993.

These documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Cedar Rapids Public Library, 500 First Street, SE., Cedar Rapids, Iowa 52401.

Dated at Rockville, Maryland, this 29th day of December 1993.

Robert M. Pulsifer,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–253 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–293]

Boston Edison Co., (Pilgrim Nuclear Power Station); Exemption

I

The Boston Edison Company (BECo, the licensee) is the holder of Facility Operating License No. DRP–35, which authorizes the operation of Pilgrim Nuclear Power Station (the facility), at steady state power levels not in excess of 1998 megawatts thermal. This facility is a boiling water reactor located in Plymouth, Massachusetts. The license provides, among other things, that Pilgrim Nuclear Power Station is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

II

BECo is preparing to implement the Final Rule on Standards for Protection Against Radiation, 10 CFR part 20, on January 1, 1994. Section 20.1902(d) of the Final Rule specifies posting requirements for airborne radioactivity areas (ARA) and § 20.1003 defines an ARA based on the derived air concentrations (DAC) values of radionuclides provided in Table 1 of Appendix B to 10 CFR part 20.

III

By letter dated September 13, 1993, the licensee requested an exemption, pursuant to 10 CFR 20.2301, from the DAC values for Kr–89 and Xe–137 in Table 1 of appendix B to 10 CFR part 20 and provided alternative values in order to use more appropriate specific DAC values for these radionuclides. The requested exemption would constitute a permanent change to the Final Rule values for Kr–89 and Xe–137 for the facility.

Based on the NRC staff evaluation, it was calculated that the dose equivalent, in units of rem, that corresponds to an exposure of 2,000 hours at the requested DACs of 10^{-6} uCi/cm for Kr–89 and 10^{-5} uCi/cm for Xe–137 is below the limiting dose values used for determining the radionuclide-specific DAC values in Appendix B to 10 CFR 20.001–20.2402 (and in Federal Guidance Report No. 11). Therefore, the staff finds the specific DAC values acceptable alternatives for use in place of the generic DAC value of 10^{-7} uCi/ml for these radionuclides when determining whether an area is, and requires posting as, an airborne radioactivity area.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.2301, the requested exemption from the DAC values for Kr–89 and Xe–137 in Table 1 of Appendix A to 10 CFR part 20 and use of the values specified in the licensee's request is authorized by law, and will not result in undue hazard to life or property. The exemption request has been evaluated in a Safety Evaluation dated December 29, 1993.

Therefore, the Commission hereby grants BECo and exemption from the values in the Final Rule for Kr–89 and Xe–137 and approves the use of the proposed values in their request when determining whether an area is, and requires posting as, an airborne radioactivity area. This exemption constitutes a permanent change to the applicability of the Regulations in this regard for the facility.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this Exemption will have no significant impact on the quality of the human environment (58 FR 68672 dated December 28, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 29th day of December 1993.

For the Nuclear Regulatory Commission.

Jose A. Calvo,

Acting Director, Division of Reactor Projects I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–254 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–003]

Consolidated Edison Co. of New York, Inc., (Indian Point Station, Unit 1); Exemption

I

The Consolidated Edison Company of New York, Inc., (the licensee), is the holder of Provisional Operating License No. DPR–5 which authorizes possession and maintenance of the Indian Point Station, Unit 1 (IP–1). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shutdown light water reactor located at the licensee site in Westchester County, New York.

II

IP–1 has been shut down since October 31, 1974. There is presently no fuel in the reactor and, under the terms of an April 14, 1977 amendment to License No. DPR–5 (Appendix A, Technical Specification 3.2.1), no fuel may be loaded into the reactor core or moved into the reactor containment building without prior review and authorization by the Commission. In addition, the Commission revoked authority to operate IP–1 by order dated June 19, 1980. In order to reflect the permanently shutdown and defueled status of the plant, the NRC is granting an exemption from the requirements of 10 CFR 50.120. This rule states the following:

> * * * each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4.

This exemption will relieve the licensee from all training program requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

III

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the facility.

The licensee in its letter dated July 31, 1993, addressed the special circumstances related to the NRC requiring the Indian Point training programs to comply with 10 CFR 50.120. The reactor is permanently shut down, defueled, and the fuel moved to the spent fuel pool.

The licensee has stated that the training requirements necessary to assure adequate protection of the public health and safety in a permanently shutdown and defueled facility are significantly less than the training requirements necessary to assure the public health and safety at an operating facility. The current Indian Point training programs for the personnel categories required by 10 CFR 50.120 are as follows:

Non-licensed Operators

At Indian Point, non-licensed operators are known as "Nuclear Plant Operators" and are trained as part of the IP–2 staff. Their training specifically address the IP–1 systems that are required to remain in service and also those that support IP–2 operations.

Shift Supervisor

The Indian Point shift supervisors are known as "Senior Watch Supervisors." Individuals in this category are part of the IP–2 staff and receive ongoing training under the IP–2 program, which includes training on IP–1 activities.

Shift Technical Advisor (STA)

The Indian Point shift technical advisor is known as "Watch Engineer." Individuals in this category are part of the IP–2 staff and receive ongoing training under the Indian Point IP–2 program, which includes training on IP–1 activities.

Instrumentation and Control, Electrical, and Mechanical Maintenance

These individuals are part of the Unit 2 staff and receive training under the IP–2 training program. The IP–2 program contains training in IP–1 activities.

Radiation Protection and Chemistry Technician

These individuals are part of the IP–2 staff and receive training under the IP–2 training program. The IP–2 program contains training in IP–1 activities.

Engineering Support

These individuals are part of the IP–2 staff and receive training under the IP–2 training program. The IP–2 program contains training in IP–1 activities.

The tasks and activities associated with maintaining the fuel are relatively simple compared to the tasks and activities required to maintain an operating nuclear power plant. Therefore, requiring IP–1 to comply with the literal training requirements specified in 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

The licensee contends that the regulation was established for power operation conditions because such conditions could result in the potential for an accident with significant offsite consequences. In an NRC Show Cause Order to Consolidated Edison dated February 11, 1980, the NRC stated that the NRC and the licensee had performed calculations that showed that the spent fuel fission products had decayed such that, in the event of a loss of water from the spent fuel pool, the fuel would adequately cool in air. Since February 11, 1980, the spent fuel radionuclides have decayed an additional 13 years which further reduces the heat load in the event of a loss of water.

The staff has also determined that the tasks that remain to be performed by the IP–1 staff are fewer in number and significantly less complicated than the tasks performed by the staff of an operating nuclear plant. Thus, the NRC staff concludes the licensee justification for exemption is reasonable based on (1) the significantly reduced risk to the public health and safety due to IP–1 being permanently shut down, and (2) the reduced number and complexity of tasks to be performed by the IP–1 site staff.

IV

Based on the analyses presented in Section III above, the staff concludes that sufficient bases exits for approval of this exemption. In addition, the staff finds that the special circumstance present satisfies the requirement of 10 CFR 50.12(a)(2)(ii) in that requiring compliance with 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

V

Based on the above evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission hereby grants Indian Point Station Unit 1 and exemption to 10 CFR 50.120. This exemption does not relieve the licensee of any other training requirements or commitments which they have made to the NRC.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 67871, dated December 22, 1993).

This exemption is effective as of its date of issuance.

Dated at Rockville, Maryland this 28th day of December 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 94–255 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–498 and 50–499]

Houston Lighting & Power Co. (South Texas Project, Units 1 and 2); Exemption

I

On March 22, 1988, and March 28, 1989, the Commission issued Facility Operating License Nos. NPF–76 and NPF–80 to Houston Lighting & Power Company, et al. (the licensee) for South Texas Project, Unit Nos. 1 and 2, respectively. These licenses provided, among other things, that the facilities are subject to all rules, regulations, and orders of the Commission.

II

Appendix A of part 20 of title 10 of the Code of Federal Regulations, "Protection Factors for Respirators," establishes protection factors of air-purifying respirators for protection against particulates only. Furthermore, footnoted d–2(c) states, "No allowance is to be made for the use of sorbents against radioactive material in the form of gases or vapors." This restriction was needed since an inadequate data base has existed for evaluating the complex interaction of many factors affecting the service life and removal efficiency of radioactive gases and vapors by sorbent canisters. Also, due to the lack of a data base, a National Institute for Occupational Safety and Health/Mine Safety and Health Administration (NIOSH/MSHA) certification schedule has not been established to ensure that the canisters meet acceptable performance criteria.

Section 20.103(e) of 10 CFR part 20 allows the Commission to authorize the use of respiratory equipment in lieu of an NIOSH/MSHA certification when such an action is justified based on adequate testing of material and performance characteristics.

By letter dated December 19, 1991, as supplemented by letters dated July 1, 1993, and November 3, 1993, HL&P requested an exemption based on 10 CFR 20.501 to allow the use of radioiodine Mine Safety Appliance Company (MSA) GMR–1 canisters with a protection factor of 50 for personnel respiratory protection. In support of the exemption request, HL&P cited test results and a quality assurance plan that satisfies the recommended qualification process of NUREG/CR–3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine."

III

The NRC staff evaluated the information provided by HL&P. The licensee provided reliable test information verifying that the MSA GMR–1 canister is capable of providing a protection factor of 50 over a period of 8 hours of continuous use, provided that the total challenge of radioactive and non-radioactive iodine and other halogenated compounds does not exceed 1 ppm, and temperature does not exceed 110°F provided the dewpoint does not exceed 107° F. The data showed the breakthrough point to be well beyond 8 hours.

Testing has been conducted under acceptable conditions of cyclic flow and under worst-case conditions for those environmental factors affecting service life (i.e., temperature, relative humidity, and challenge concentration of CH_3I (methyliodide/methyl radioiodide), the most penetrating of the challenge forms). The data showed that the MSA GMR–I canisters performed adequately under acceptable test conditions. These conditions, including criteria and test methods, are consistent with those derived by the NRC staff from NUREG/CR–3403, "Criteria and Test Methods for Certifying Air-Purifying Respirator Cartridges and Canisters Against Radioiodine."

HL&P, through acceptance of MSA QA controls, has provided commitments that the MSA GMR–1 canisters will meet standards for quality assurance and quality control that are recognized by NIOSH and are compatible with NRC staff positions. This includes a commitment to establish a 1 percent AQL (acceptable quality limit) in a 5 to 10 ppm challenge concentration of CH_3I, 90 percent relative humidity, 110°F, 64 liters per minute cyclic flow, for a service life of 8 hours or more at a penetration equal to 1 percent of the challenge concentration. Test data referenced by HL&P demonstrate that performance (i.e., service life) of canisters at 100 percent relative humidity is acceptable.

IV

Accordingly, the Commission has determined that, pursuant to 10 CFR 20.501, this exemption is authorized by law and will not result in undue hazard to life or property.

Accordingly, the Commission hereby grants an exemption as described in Section III above from 10 CFR part 20, appendix A, footnote d-2(c) to authorize the use of the MSA GMR–1 canister at South Texas Project, Units 1 and 2. For additional details regarding the basis of this exemption, including usage limitations and restrictions, see the staff's safety evaluation dated December 30, 1993 available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC and at the Wharton County Junior College, J.M. Hodges Learning Center, 911 Boling Highway, Wharton, Texas 77488.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of the Exemption will have no significant impact on the environment (58 FR 42112).

This Exemption is effective upon issuance.

Dated at Rockville, Maryland this 30th day of December 1993.

For The Nuclear Regulatory Commission.

Elinor G. Adensam,

Acting Director, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–252 Filed 1–5–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Rescission of OMB Circular A–120, Guidelines for the Use of Advisory and Assistance Services; Correction

AGENCY: Office of Management and Budget (OMB), Executive Office of the President.

ACTION: Correction.

SUMMARY: This document contains a correction to the notice of rescission of OMB Circular No. A–120, Guidelines for the Use of Advisory and Assistance Services, which was published Thursday, December 2, 1993 (58 FR 63593). The Transmittal Memorandum No. 1 was inadvertently left out of the document submitted for publication. The test of Transmittal Memorandum No. 1 follows.

FOR FURTHER INFORMATION CONTACT: Linda G. Williams, Deputy Associate Administrator, (202) 395–3502. To obtain a copy of Transmittal Memorandum No. 1, please call the Executive Office of the President's Publications Office at (202) 395–7332.

Dated: December 28, 1993.

John B. Arthur,

Assistant Director for Administration.

November 19, 1993.

Circular No. A–120

Transmittal Memorandum No. 1

To the Heads of Executive Departments and Establishments

Subject: Guidelines for the Use of Advisory and Assistance Services

Office of Management and Budget (OMB) Circular No. A–120, "Guidelines for the Use of Advisory and Assistance Services," dated January 4, 1988, is hereby rescinded. Executive departments and agencies are no longer required to comply with the management controls and reporting requirements of the Circular.

Guidance contained in the Circular has been revised and incorporated into other policy documents, as appropriate. Those documents include: (1) Office of Federal Procurement Policy (OFPP) Policy Letter 93–1 on "Management Oversight of Service Contracting," (2) OFPP Policy Letter 92–1 on "Inherently Governmental Functions," (3) OFPP Policy Letter 91–2 on "Service Contracting," (4) OFPP Policy Letter 89–1 on "Conflicts of Interest Applicable to Consultants," (5) OMB Circular A–76 on "Performance of Commercial Activities," and (6) OFPP's Guidance on Contract Administration. To obtain a copy of these documents, please call the Executive Office of the President's Publication Office at (202) 395–7332.

Leon E. Panetta,

Director.

[FR Doc. 94–110 Filed 1–5–94; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of a Review To Consider Designation of Belarus as a Beneficiary Developing Country Under the Generalized System of Preferences; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Solicitation of public comment with respect to the eligibility of Belarus for the Generalized System of Preferences (GSP) program.

SUMMARY: The purposes of this notice is to announce the initiation of a review to consider whether Belarus satisfies criteria for designation as a beneficiary developing country under the GSP program, and to solicit public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following the filing deadline. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated a review to determine if Belarus meets the designation criteria of the GSP law and should be designated as a beneficiary. The GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in 19 U.S.C. 2462(a), 2462(b) and 2462(c). Interested parties are invited to submit comments regarding the eligibility of Belarus for designation as a GSP beneficiary. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided by beneficiaries to other developed countries, expropriation without compensation, enforcement of arbitral awards, international terrorism, and internationally recognized worker rights. Other practices taken into account include market access for goods and services, investment practices and intellectual property rights.

An original and fourteen (14) copies of comments regarding Belarus' eligibility may be submitted, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on January 12, 1994.

Information and comments submitted regarding this notice will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, an original and fourteen (14) copies of a nonconfidential version of the submission along with an original and (14) copies of the confidential version must be submitted. In addition, the document containing confidential information should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Frederick L. Montgomery,
Chairman, Trade Policy Staff Committee.

[FR Doc. 94–323 Filed 1–5–94; 8:45 am]
BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33405; File No. SR–Phlx–93–57]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating To Extending the AUTOM Pilot Program

December 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 1, 1993, the Philadelphia Stock Exchange ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx is requesting Commission approval to extend the Exchange's Automated Options Market ("AUTOM") system, a pilot program, until December 31, 1994. AUTOM is an electronic delivery system of small options orders to the Phlx trading floor, with an automatic execution feature.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included states concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On March 31, 1988, the Commission approved the establishment of AUTOM as a pilot program.[2] The Exchange currently is proposing to extend the AUTOM pilot program until December 31, 1994. The Exchange represents that, from the date of the last Commission order extending the AUTOM pilot program, AUTOM has operated efficiently and without any material problems being reported by Phlx members or AUTOM users.

The AUTOM system is an online system that allows electronic delivery of options orders from member firms directly to the appropriate specialist on the Phlx options trading floor, with electronic confirmation of order executions. Specifically, once AUTOM orders are entered into the system and routed to the specialists' post, they are executed manually by the specialist who, upon execution of the order, enters the relevant trade information into the system. An execution report is then automatically transmitted to the firm that placed the order.

The AUTOM system also has an automatic execution feature called "Auto-X." Currently, Auto-X is available to public customer market and marketable limit orders of up to 20 contracts. Orders eligible for automatic execution through AUTOM are: (1) Printed in hard copy form at the floor representative booth of the delivering member organization; (2) displayed on the trading crowd screen with buy/sell information omitted; and (3) printed in hard copy form at the specialist post. The order is priced and executed automatically at the best displayed bid or offer, and the execution is reported automatically to the Options Price Reporting Authority ("OPRA"). A report of the execution also is electronically sent to the delivering member organization. Under Auto-X, the specialist is the contra-side of all trades. However, the specialist is required to ensure participation of bids and offers on the limit order book and in the trading crowd that are entitled to execution pursuant to the Phlx's rules of priority, parity, and precedence.

The Phlx represents that, as a general matter, the AUTOM system has functioned well, servicing member firms options orders. The Phlx states that two major groups of figures best reflect the performance of AUTOM: (1) The capacity figures; and (2) the order flow figures.[3] First, the Phlx believes that information regarding AUTOM's system capacity shows that AUTOM continues to have the ability to service the volume of incoming orders. Specifically, the Phlx represented, in February 1993, that it would make enhancements to systems capacity (*i.e.*, the ability of the system's hardware to properly route orders and service potential order volume) if order volume during peak time exceeded 80% of CPU capacity. The Exchange represents that since making these representations with respect to AUTOM's capacity, this 80% level has not been attained.

Second, the Phlx also believes that an analysis of current customer order flow demonstrates that the system capacity is adequate to handle the current and potential number of orders transmitted through the system. Specifically, the Phlx represents that only about two-thirds of all orders placed on AUTOM are executed because the other one-third of the orders are too far away from the market to receive execution. The orders routed through AUTOM that receive execution are either automatically executed through Auto-X or are manually executed by the receiving Phlx specialist.

Accordingly, the Phlx believes that AUTOM continues to facilitate smooth and liquid markets on the equity options floor, and otherwise represents a favorable development for all concerned parties. The Phlx further believes that AUTOM has performed well, servicing member firms' options orders.

The Phlx, therefore, believes that it is consistent with the Act and the rules and regulations promulgated thereunder for the Commission to permanently approve the AUTOM system. Specifically, the Phlx believes that the current proposal is consistent with section 6(b)(5) of the Act because it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Phlx believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule change, including Amendment No. 1 to the proposed rule change, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Sections 6 and 11A.[4] Specifically, the Commission continues to believe that the development and implementation of the AUTOM system provides for more efficient handling and reporting of orders in Phlx equity options through the use of new data processing and communications techniques, thereby improving order processing and turnaround time. The Commission also believes that the extension of the pilot program until December 31, 1994, will provide the Exchange with a better opportunity to study its operation and effectiveness prior to permanent approval of the program.[5]

The Commission further notes that the Exchange has represented that from January 1, 1993 until present, AUTOM has not suffered any operational failures and the Phlx has not received any formal complaints with respect to the system's operation.[6] Finally, since the pilot program is being extended without expansion of the scope of the pilot, the Commission does not believe that the capacity of the Exchange's automated systems will be adversely effected by this extension.[7]

The Commission finds good cause for approving the proposed rule change, including Amendment No. 1 to the proposed rule change, prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Phlx to continue the AUTOM pilot program on an uninterrupted basis. Specifically, the Commission believes that the Phlx's proposal to extend the AUTOM pilot program does not raise

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[1] The original proposal included a request for permanent approval of AUTOM. Because the Phlx is in the process of modifying and upgrading the computer system on which the AUTOM system operates, the Phlx submitted a letter, dated December 17, 1993, withdrawing that request from the proposal ("Amendment No. 1"). The Phlx states that it will resubmit its request for permanent approval after the Phlx and the Commission have had the opportunity to evaluate the operation of the system in light of the current modifications and upgrades. See letter from J. Keith Kessel, Staff Counsel, Phlx, to Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, dated December 17, 1993.

[2] The Commission approved AUTOM on a pilot basis for market orders of up to five contracts for all exercise prices in the near month covering twelve Phlx equity options. *See* Securities Exchange Act Release No. 25540 (March 31, 1988), 53 FR 11390 (April 6, 1988). Since then, the order routing feature of AUTOM has been expanded to include all orders in all exercise prices and months in all Phlx equity options. In addition, day orders, good until cancelled orders, and cabinet orders (accommodation transactions) have become eligible for delivery through the system, and the eligible order size for the order routing feature of AUTOM has been increased from five to one hundred contracts. See Securities Exchange Act Release No. 28643 (November 26, 1990), 55 FR 49960 (December 3, 1990) at notes 2–6 for citations to Commission orders approving these expansions of the AUTOM pilot. See *also* Securities Exchange Act Release No. 28978 (March 15, 1991), 56 FR 12050 (March 21, 1991).

[3] See letter from J. Keith Kessel, Staff Counsel, Phlx, to Monica C. Michelizzi, Staff Attorney, Division of Market Regulation, Commission, dated November 19, 1993.

[4] 15 U.S.C. 78f and 78k–1 (1988).

[5] The Commission notes that the Phlx is in the process of modifying and upgrading the computer system on which AUTOM operates. Before granting permanent approval or any further extension of the pilot, the Commission expects the Phlx to submit a full report, by November 1, 1994, describing the effect these modifications have had on the operation of AUTOM and updating the information, submitted to the Commission on November 24, 1993, which set forth the benefits provided by AUTOM, the degree of AUTOM usage, including the number and size of the orders routed through AUTOM and the number and size of the orders automatically executed through the Auto-X system, and the system capacity of AUTOM and Auto-X and any problems that have been encountered with the routing and execution features. The Commission also requests that the Phlx submit its request for an extension of the pilot or permanent approval by November 1, 1994.

[6] See letter dated December 17, 1993, supra note 3.

[7] The Commission recognizes that additional options classes added onto the system can have an effect on the systems operations. In this context, the Commission expects that the Phlx will notify the Commission if the expansion of options multiple trading, pursuant to Rule 19c–5 under the Act, has any meterial effect on the capacity of the Phlx's automated systems.

any new issues since it merely extends the pilot program as it is currently operating. Further, the Commission believes that the pilot is beneficial in maintaining the quality and efficiency of the Phlx's market.

The Commission also notes that there have been no adverse comments concerning the pilot program since its implementation. Accordingly, the Commission believes that granting accelerated approval of the proposed rule change is appropriate and consistent with Sections 6 and 11A of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change, including Amendment No. 1 to the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by January 27, 1994.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–Phlx–93–57) is approved through December 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–239 Filed 1–5–94; 8:45 am]

BILLING CODE 8010–01–M

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] 17 CFR 200.30–3(a)(12) (1993).

TENNESSEE VALLEY AUTHORITY

Information Collection Under Review by the Office of Management and Budget

AGENCY: Tennessee Valley Authority.

ACTION: Information collections under review by the Office of Management and Budget (OMB).

SUMMARY: The Tennessee Valley Authority (TVA) has sent to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), as amended by Public Law 99–591,

Requests for information, including copies of the information collection proposed and supporting documentation, should be directed to the Agency Clearance Officer whose name, address, and telephone number appear below. Questions or comments should be made within 30 days directly to the Agency Clearance Officer and also to the Desk Officer for the Tennessee Valley Authority, Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503; Telephone: (202) 395–3084.

Agency Clearance Officer: Mark R. Winter, Tennessee Valley Authority, 1101 Market Street (BR 6B), Chattanooga, TN 37402–2801; (615) 751–2523.

Type of Request: Regular submission.

Title of Information Collection: Comparison of Factors Influencing Minority and Nonminority Representation in State and Federal Natural Resource Professions.

Frequency of Use: On occasion.

Type of Affected Public: Individuals or households, state or local governments, Federal agencies or employees.

Small Businesses or Organizations Affected: No.

Federal Budget Functional Category Code: 452.

Estimated Number of Annual Responses. 2,000.

Estimated Total Annual Burden Hours: 500.

Estimated Average Burden Hours Per Response: .25.

Need For and Use of Information: TVA is cooperating with 22 other Federal and state agencies to investigate selected factors which may influence minority and nonminority representation in state and Federal agency natural resource professions. A survey of natural resource professions in the Southeastern United States will be conducted to determine (1) the diversity in the workforce and job responsibilities, (2) factors that promote or preclude job satisfaction, (3) educational backgrounds attained and needed by inservice professionals, and (4) conceptual framework for career selection by and retention of minorities in natural resource professions. Results of the study may provide strategies for state and Federal agencies to refine minority recruitment and retention programs, personnel planning, and career counseling.

William S, Moore,

Manager, Information Support Services.

[FR Doc. 94–297 Filed 1–5–94; 8:45 am]

BILLING CODE 8120–08–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–092]

Passenger Vessel Safety Act of 1993

AGENCY: Coast Guard, DOT.

ACTION: Notice of eligibility.

SUMMARY: The Passenger Vessel Safety Act of 1993 (the Act) clarifies the criteria which determine when vessels are required to be certificated by the Coast Guard for passenger carriage. To accomplish this, the Act, among other things, redefines the terms "passenger," "passenger vessel," "small passenger vessel," and "uninspected passenger vessel." The Act also provides definitions for the terms "passenger for hire" and "consideration." The Act establishes an extension period for its applicability to charter vessels that will operate as charters with no crew provided. The extension period is only available to those vessels whose owners make application to the Coast Guard by June 21, 1994. The Act further calls for the possible modification of existing requirements for certain charter vessels of over 100 gross tons, and the establishment of new requirements for uninspected passenger vessels of at least 100 gross tons carrying not more than 12 passengers.

FOR FURTHER INFORMATION CONTACT: LT. Brian Poskaitis, Project Manager, Merchant Vessel Inspection and Documentation Division (G–MVI–1), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1464.

SUPPLEMENTARY INFORMATION:

Applicability

Although most of the Act is effective immediately, it does not apply to passenger and small passenger vessels chartered without a crew until six months after enactment. An additional 30 months extension of inapplicability is also available for these vessels only. To receive this extension the vessel owner must:

(a) Make application for inspection with the local Coast Guard Officer in Charge, Marine Inspection (OCMI) by June 21, 1994;

(b) Make the vessel availeble for examination by the Coast Guard prior to the carriage of passengers;

(c) Correct especially any hazardous conditions involving the vessel's structure, electrical system, and machinery installation such as: (i) Grossly inadequate, missing, unsound, or severely deteriorated frames or major structural members; (ii) wiring systems or electrical appliances without proper grounding or overcurrent protection; and (iii) significant fuel or exhaust system leaks;

(d) Equip the vessel with lifesaving and firefighting equipment, or the portable equivalent, required for the route and number of persons carried;

(e) Verify through stability tests, calculations, or other practical means (which may include a history of safe operations) that the vessel's stability is satisfactory for the size, route and number of passengers; and

(f) Develop a work plan approved by the Coast Guard to complete in a good faith effort all requirements necessary for issuance of a Certificate of Inspection as soon as practicable. If a vessel qualifies for an extension, the Coast Guard will issue a letter to the owner which establishes the conditions of operation for the vessel during the extension period. The letter will specifically indicate the conditions of route, service, number of passengers, manning, and equipment.

Depending on the condition and outfitting of these vessels, the process to receive a Coast Guard extension letter may take several weeks or months. Therefore, vessel owners desiring extensions are encouraged to apply early. Under the Act, vessels chartered without a crew thet carry more than 12 passengers, as defined by the Act, must heve an extension letter from the Coast Guard or have obtained a Certificate of Inspection to continue operations after June 21, 1994.

Possible Modified Regulations for Certain Existing Passenger Vessels

The Act also permits the establishment of different structural fire protection, manning, operating and equipment requirements for certain existing charter vessels if they are not necessary for safe operation. Such requirements would apply to existing charter vessels carrying not more than 150 passengers on domestic voyages that are:

(a) At least 100 gross tons but less than 300 gross tons, and;

(b) Former public vessels of at least 100 gross tons but less than 500 gross tons.

These modified requirements will seek to ensure an equivalent degree of safety is achieved for those existing vessels that cannot come into full compliance with the current passenger vessel regulations because of their construction. To be eligible for these modified requirements, the owner of the vessel must:

(1) Make application for inspection with the local Coast Guard OCMI before June 21, 1994; and

(2) Provide satisfactory documentation that the vessel was chartered at least once within the period December 20, 1992 to December 20, 1993.

New Regulations for Uninspected Passenger Vessels

The new definition of the term "uninspected passenger vessel" will now include vessels of at least 100 gross tons, that are: carrying not more than 12 passengers, including at least one passenger for hire; or, that is chartered with the crew provided or specified by the owner or the owner's representative and is carrying not more than 12 passengers. New regulations will be developed for these vessels within 24 months.

Dated: December 30, 1993.

R.C. North,

Captain, U.S. Coast Guard, Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–262 Filed 1–5–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Approval of Noise Compatibility Program; Stockton Metropolitan Airport, Stockton, CA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the Noise Compatibility Program submitted by the county of San Joequin, Stockton, California, under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On May 10, 1991, the FAA determined that the Noise Exposure Maps submitted by under part 150 were in compliance with applicable requirements. On November 22, 1993, the Acting Assistant Administrator for Airports approved the Noise Compatibility Program for Metropolitan Oakland International Airport. Twenty-eight (28) of the proposed measures were approved, and two (2) measures were disapproved.

EFFECTIVE DATE: The effective date of FAA's approval of the Stockton Metropolitan Airport Noise Compatibility Program is November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Pfeifer, Manager, Airports District Office, SFO–600, Federal Aviation Administration, San Francisco Airports District Office, 831 Mitten Road, Burlingame, California 94010–1303, Telephone: (415) 876–2805. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the Noise Compatibility Program for Stockton Metropolitan Airport, effective November 22, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a Noise Exposure Map, may submit to the FAA a Noise Compatibility Program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the Noise Exposure Maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport Noise Compatibility Program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in Part 150 and the Act and is limited to the following determinations:

a. The Noise Compatibility Program was developed in accordance with the

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to the FAA's approval of an airport Noise Compatibility Program are delineated in FAR part 150, § 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District Office in Burlingame, California.

The county of San Joaquin submitted to the FAA on February 28, 1992, the Noise Exposure Maps, descriptions, and other documentation produced during the Noise Compatibility Planning study conducted from May 1988, through October 1990. The Stockton Metropolitan Airport Noise Exposure Maps were determined by the FAA to be in compliance with applicable requirements on May 10, 1991. Notice of this determination was published in the **Federal Register** on May 28, 1991.

The Stockton Metropolitan Airport study contains a proposed Noise Compatibility Program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion to, or beyond, the year 2000. It was requested that the FAA evaluate and approve this material as a Noise Compatibility Program as described in section 104(b) of the Act. The FAA began its review of the program on May 26, 1993 and was required by a provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed to be an approval of such program.

The submitted program contained thirty (30) proposed actions for noise mitigation on and off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Acting Assistant Administrator for Airports effective November 22, 1993.

Outright approval was granted for twenty-eight (28) of the specific program elements. Two (2) elements were disapproved. The approved elements included existing preferential runway usage, existing flight procedures, existing aircraft category procedures, existing pattern procedures, practice circling maneuvers, education of airport users, amend county development title, residential/nonresidential noise sensitive land use exclusion area, sound attenuation in new construction, acoustical studies, real estate disclosure, residential soundproofing program, noise abatement departures, informational signs, noise abatement advisories, noise abatement hotlines, interagency coordination procedures, review committee, amend airport land use plan, and Weston Ranch easement area.

These determinations are set forth in detail in a Record of Approval endorsed by the Acting Assistant Administrator for Airports on November 22, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Santa Clara County.

Issued in Hawthorne, California, on December 15, 1993.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 94-247 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Two New Documents Available

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. Appendix I), notice is hereby given for the availability of the following two new documents:

- RTCA/DO-219, Minimum Operational Performance Standards for ATC Two-Way Data Link Communications. Prepared by Special Committee 169 and approved by the Technical Management Committee (TMC) on August 27, 1993.
- RTCA/DO-220, Minimum Operational Performance Standards for Airborne Weather Radar with forward-looking windshear capability. Prepared by Special Committee 173 and approved by the Technical Management Committee (TMC) on September 21, 1993.

Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94-241 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; Aeronautical Data Link Applications; RTCA Special Committee 169, Tenth Meeting

Pursuant to section 19(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for RTCA Special Committee 169 meeting to be held January 11-12, 1994, starting at 9:30 a.m. The meeting will be held at the RTCA Conference Room, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review of meeting agenda; (3) Approval of the Summary of the ninth meeting held July 22-23, 1993; (4) Report of Air Traffic Services Data Link Communications Working Group (WG-1) activities and approval of MOPS for Aircraft Contest Management (CM) Equipment; (5) Report on Working Group 3, Flight Information Services Communications, activities; (6) Discuss Working Group 4 status; (7) Task Force 2 update on issues applicable to SC-169; (8) Other Business: (a) Discussion of implementation issues (b) FANS-1 status; (9) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94-242 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc.; RTCA Technical Management Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C., Appendix I), notice is hereby given for RTCA Technical Management meeting to be held January 12, 1994, starting at 9 a.m. The meeting will be held at the Airports Council International-NA, 1220 10th Street, NW., Suite 200, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Approve summary of the September 21, 1993 meeting; (3) Consider/approve: (a) Action on a recent request from the Federal Aviation Administration to revise the guidance provided to Special Committees 159 and 135. The problems identified in the request will impact RTCA DO-208 and DO-160C (b) Action on a recent request from Airports Council International—North America to develop characteristics/specifications for form/fit/function and software and communications standards for security/access control systems (c) Action on a recent request from ARINC to develop a MOPS for a generic computer. This equipment, referred to as an avionics computer resource, could be used as a Flight Management Computer or a Communications Management Unit and would be used to implement the ICAO CNS/ATM concept; (4) Other business; (5) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., Suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94-243 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

RTCA, Inc., Special Committee 168, Eleventh Meeting; Lithium Batteries

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. appendix I), notice is hereby given for Special Committee 168 meeting to be held January 27-28, 1994, starting at 9:30 a.m. The meeting will be held at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's remarks; (2) Approval of the summary from the tenth meeting; (3) Review EUROCAE WG-39 Activity; (4) Review material from task assignments; (5) Review/approve the proposed final MOPS draft; (6) Assignment of tasks; (7) Other business; (8) Date and place of next meeting (if required).

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833-9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on December 28, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 94-244 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-13-M

National Highway Traffic Safety Administration

[Docket No. 93-34; Notice 2]

American Honda Motor Co., Inc. Denial of Petition for Determination of Inconsequential Noncompliance

American Honda Motor Co., Inc. (Honda) of Torrance, California determined that certain passenger cars failed to comply with 49 CFR 571.208, Federal Motor Vehicle Safety Standard No. 208, "Occupant Crash Protection," and filed an appropriate report pursuant to 49 CFR part 573. Honda also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

Notice of receipt of the petition was published on May 21, 1993 (58 FR 29689). This notice denies that petition.

Paragraph S4.1.4.2 of Standard No. 208 requires that motor vehicles be equipped with seat belt assemblies that comply with Standard No. 209, "Seat Belt Assemblies." Paragraph S4.3(j)(3) of Standard No. 209 requires that

> An emergency locking retractor of a Type 1 or Type 2 seat belt assembly * * * shall not lock, if the retractor is sensitive to vehicle acceleration, when the retractor is rotated in any direction to any angle of 15 degrees or less from its orientation in the vehicle * * *

Honda determined that the seat belt assemblies for the rear outside seating positions of approximately 1.2 million model year 1990, 1991, 1992, and early 1993 two-door and four-door Accords do not comply with S4.3(j)(3), the emergency locking retractor requirements of Standard No. 209. When the vehicle in which the noncomplying belt is installed is in certain parking positions such as on a steep uphill grade, the rear seat occupants are sometimes unable to pull the belt out of the retractor, and thus cannot fasten their belts. The vehicle must be moved to a more level position for the rear seat occupant to be able to put on the seat belt.

Honda supported its petition for inconsequential noncompliance with the following arguments:

In the petitioner's opinion, the noncompliance does not affect the occupant protection performance of the subject seat belt assemblies. To verify this, Honda tested the belts to determine whether they meet the locking requirements of Standard No. 209. All the belts complied with these requirements. Further, Honda performed dynamic sled test comparisons of the noncompliant belts to complaint belts at a test speed of 30 miles per hour. Honda found that the performance of the noncompliant belts was almost the same as that of the compliant belts.

Honda stated that the primary effect of the noncompliant seat belts is inconvenience due to the rear seat occupant's inability to pull the belt out from the retractor under certain parking conditions, as when the vehicle is in a significant uphill parking position in excess of 11 degrees, or when the

vehicle has been parked such that one side of the vehicle is substantially higher than the other (at least nine degrees). Honda argued that the opportunities for parking an affected vehicle in this type of situation are very uncommon and would present a high level of discomfort to rear seat occupants from sitting at this angle. Honda has found that when the vehicle is parked on ground at lesser angles than previously noted, the noncompliant belts work completely normally.

Honda reviewed its consumer records for complaints relating to the noncompliance. It found that consumers had registered a total of 173 complaints regarding the 4-door sedan and 34 complaints regarding the 2-door coupe. These complaints are known to be related to the subject noncompliance, as the problem is clearly described in the complaint. In addition, Honda received 168 complaints regarding the 4-door sedan and 46 complaints regarding the 2-door coupe which were not clearly defined and may not be related to the subject noncompliance. The consumer complaint ratios, taking into account only the known related complaints, are 0.026 percent for the 4-door sedan and 0.014 percent for the 2-door coupe.

Since Honda offers a lifetime warranty for seat belts, it will replace, free of charge, any unit that has a functional problem at any time during the life of the vehicle. In this instance, Honda will notify owners of the subject vehicles that it will replace the sensor in the noncompliant seat belt retractors if the customer experiences the locking problem.

Honda concluded by stating that, although the noncomplying retractors may, in certain situations, result in the belt not being able to be pulled out of the retractor, this is a temporary condition which is remedied if the vehicle is moved from an uphill position of greater than 11 degrees or a lateral angle of greater than nine degrees. There is no risk to safety once the belt has been successfully fastened, since the performance of the belts is equal to those which are in total compliance with Standard No. 209. Because the seat belts have a lifetime warranty, any complaint concerning the ability to activate the belts will result in Honda replacing the belt with no cost to the consumer.

No comments were received on the petition.

Occupant protection has been a primary safety goal of the agency since its inception. Therefore, noncompliances with occupant protection requirements are treated with particular concern. The noncompliance described in the petition is one that occurs only under specific circumstances of vehicle attitude. That these circumstances are not isolated and occur with a degree of frequency is borne out by the number of complaints that Honda has received. Generally, a petitioner for a determination of inconsequentiality supports its arguments with the statement that no complaints have been received. In this instance, there have been sufficiently numerous expressions of concern to cause Honda to formulate a "Product Improvement Campaign". Honda has submitted to NHTSA a draft of its proposed letter to owners. The letter does not address the safety issue to NHTSA's satisfaction. The agency is concerned that the average recipient will not understand the safety-relatedness of the problem described in the letter. As a result, the recipient would be less likely to respond to it than to a letter meeting the requirements of Part 577.

NHTSA has concluded that the noncompliance is one that will have the immediate effect of creating frustration when the rear seat passenger is unable to pull the belt out of its retractor. This can deter the passenger from further efforts to wear the belt until the vehicle is once more at an attitude at which the belt may be fastened, or even create the impression that the belt is broken and that further attempts to dislodge it will be useless. Another possibility is that a parent may be unable initially to secure a child safety seat, then neglect to get out of the car to secure it when the vehicle is moved.

Alternatively, the parent may respond by moving the child seat from the rear seat position to the front. This would be contrary to the agency's policy of encouraging parents to install child safety seats in the rear in view of the greater safety of that location. In NHTSA's view, any noncompliance that has the potential to decrease the chances of use of a seat belt is not one that is inconsequential. Therefore, both the notification letter and the remedy must be in accordance with Federal requirements.

In consideration of the foregoing, it is hereby found that the petitioner has not met its burden of persuasion that the noncompliance herein described is inconsequential as it relates to motor vehicle safety, and its petition is denied.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 3, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94-240 Filed 1-5-94; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. T84-01; Notice 31]

Theft Data; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation.

ACTION: Publication of final theft data.

SUMMARY: This document publishes the final data on passenger motor vehicle thefts that occurred in calendar years 1990–1991. As provided in the Anti Car Theft Act of 1992, these data were used to determine the theft rates for existing passenger motor vehicle lines manufactured in model years 1990 and 1991 and to determine the median theft rate for all those lines. Vehicle lines with theft rates exceeding the median theft rate of 3.5866 per thousand vehicles produced, are subject to selection for coverage under the Theft Prevention Standard.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366-1740.

SUPPLEMENTARY INFORMATION:

Original Base Median Theft Rate (1983–1984 Median Theft Rate)

The Motor Vehicle Theft Law Enforcement Act of 1984 (Theft Act), added title VI to the Motor Vehicle Information and Cost Savings Act (Cost Savings Act). Pursuant to title VI, NHTSA promulgated 49 CFR part 541, Federal Motor Vehicle Theft Prevention Standard. Part 541 establishes performance requirements for inscribing or affixing vehicle identification numbers (VINs) onto certain major original equipment and replacement parts of high theft lines of passenger motor vehicles.

Section 603 of the Cost Savings Act, as originally enacted, specified three categories of car lines that were high theft lines within the meaning of title VI. These three types were:

Existing lines that had a theft rate exceeding the median theft rate for calendar years (CYs) 1983–1984 (section 603(a)(1)(A));

New lines that were likely to have a theft rate exceeding that median theft rate (section 603(a)(1)(B)); and

Lines with theft rates below the median theft rate, but which had a majority of major parts interchangeable with lines whose theft rate exceeded or was likely to exceed the median theft rate (section 603(a)(1)(C)).

Section 603(b) of the Cost Savings Act provided that the median theft rate was the combined rate determined for CYs 1983–1984. Section 603(b) also set forth the equation NHTSA must use to determine the theft rates for each of the vehicle lines. After applying this equation to each existing line, NHTSA was directed by section 603(b) to rank the lines by theft rates to calculate the median theft rate.

In a **Federal Register** document of November 12, 1985 (50 FR 46666), NHTSA published the final theft data reflecting passenger motor vehicle thefts in CYs 1983–1984. In that document, NHTSA also explained how it decided on the data source to be used and how it calculated the final theft rates. Based on its calculations, NHTSA determined that the median theft rate for CYs 1983 and 1984 was 3.2712 thefts per thousand vehicles.

Request for Comments Concerning New Median Theft Rate (1990–1991 Median Theft Rate)

1. The Anti Car Theft Act of 1992

The Anti Car Theft Act of 1992 (ACTA), which became law on October 25, 1992, amended title VI, Theft Prevention, of the Cost Savings Act. Title VI was amended to require the agency to calculate theft rates for passenger motor vehicle lines for the CY 1990–1991 period and then to establish a new median theft rate, based on that same period.

Title VI was also amended to redefine "passenger motor vehicle" to include "any multipurpose passenger vehicle and light-duty truck that is rated at 6,000 pounds gross vehicle weight or less." See Section 601(1) of title VI. Before title VI was amended, "passenger motor vehicle" was defined for title VI purposes to include passenger cars only. Given the new definition of "passenger motor vehicle," NHTSA must calculate the CY 1990 and 1991 theft rates not only for passenger cars, but also for multipurpose passenger vehicle (MPV) and light-duty truck (LDT) lines that are rated at 6,000 pounds gross vehicle weight rating or less. Depending on their theft rates, certain MPV and LDT lines may be determined to be likely high theft lines, and thus may be subject to the parts marking requirements of the Theft Prevention Standard.

2. Preliminary Theft Rates of Vehicle Lines and Median Theft Rate

On August 5, 1993, NHTSA published in the **Federal Register** (58 FR 41834), for review and comment, a document setting forth data on passenger motor vehicle thefts that occurred in CYs 1990–91, including preliminary theft rates of vehicle lines and the preliminary median theft rate for all lines. In calculating the preliminary CY 1990–1991 theft rates, NHTSA followed the same procedures it used in calculating the 1983–1984 theft rates, with minor exceptions. The calculation procedure, based on National Crime Information Center data and the Vehicle Identification Number (VIN) of each stolen vehicle, was described in the August 1993 document.

Out of a total of 226 vehicle lines, NHTSA preliminarily determined that the median theft rate for CYs 1990–1991 was 3.6436 thefts per thousand vehicles produced. Of those vehicle lines with a theft rate higher than 3.6436, 90 were passenger car lines, 17 were MPV lines, and 6 were LDT lines.

In Table I of the August 1993 document, NHTSA tentatively ranked each of the 226 vehicle lines in descending order of theft rate. Public comment was sought on the accuracy of the data, especially production volumes of individual vehicle lines. Public comment was also sought on the methodology used by NHTSA in determining the ranking of the existing passenger motor vehicle lines.

Based on the preliminary data, NHTSA also published a Table III that listed the previously designated high theft lines with theft rates that fell below the preliminary median theft rate of 3.6436. The agency noted that lines that are presently listed in appendix A of 49 CFR part 541 as subject to the requirements of the Theft Prevention Standard will continue to be so listed regardless of whether they fall below the median theft rate. This is because section 603(d) of the Cost Savings Act provides that, except for exemptions from parts marking due to NHTSA-approved antitheft devices, the agency may not "render the standard inapplicable to any line which at any time has been subject to the standard."

NHTSA explained that in selecting high theft lines based on the 1990/91 median theft rate, it will follow the procedures it established in 49 CFR part 542, Procedures for Selecting Lines to be Covered by the Theft Prevention Standard. The agency indicated that it contemplated that newly designated high theft passenger cars would be required to begin to comply with parts marking requirements in MY 1995, but that compliance for high theft MPV's and LDTs might be delayed to a later model year since determination of "major parts" for these vehicles has not yet been made.

Public Comments and Agency Response

In response to the August 1993 **Federal Register** document, NHTSA received nine written comments, all from vehicle manufacturers. The commenters addressed four subjects: NHTSA's methodology in calculating the 1990/91 theft rates, the specific preliminary theft data regarding the respective commenter's vehicles, the agency's intention to require that newly designated high theft care lines be marked beginning in model year 1995, and the effect of the 1990/91 theft rates on lines previously determined high theft.

1. NHTSA's Methodology in Calculating Rates

NHTSA received on comment on its methodology in calculating the new theft rates. Volkswagen of America, Inc. (Volkswagen) stated its belief that ACTA sought to alleviate chop-shop related vehicle thefts. It therefore recommended that only thefts relating to chop-shop activities be counted in determining theft rates.

While chop-shop-related thefts may have been Congress' primary concern in enacting the Theft Act, the relevant language in that Act (which remained unaltered in the ACTA) directs NHTSA to calculate the theft rate of a passenger motor vehicle line using a fraction with " the number of new passenger motor vehicle thefts for that line * * *", as the numerator. (See section 603(b)(1).) The statute does not direct the agency to make theft motive distinctions such as those suggested by Volkswagen.

Therefore, NHTSA does not believe it appropriate to only use chop-shop related theft data in calculating theft rates for a particular line, or the median theft rates for a particular line, or the median theft rate of all lines. The final data published in this document calculates theft rates for each particular line, using all reported new passenger motor vehicle thefts for that line, in CY 1990 and 1991.

2. NHTSA's Calculated Theft Rates of Individual Lines

NHTSA received comments from the following seven manufacturers concerning the listing of certain vehicle lines and preliminary data presented in the August 1993 document: Chrysler Corporation (Chrysler), Fiat Auto R&D U.S.A. (Fiat), Ford Motor Company

(Ford), Mazda (North America), Inc., Nissan Research and Development, Inc (Nissan). American Suzuki Motor Corporation (Suzuki), and Volkswagen.

Chrylsler requested that the Chrysler LeBaron line be separated into three lines, to differentiate among the LeBaron Landau 4-door sedan, the LeBaron 2-door coupe and the LeBaron convertible. NHTSA agrees that the LeBaron line should be separated, but only into two lines. Since the 2-door coupe and the convertible are built on the same platform, the agency considers the vehicles to be in the same line, the LeBaron Coupe/Convertible. The LeBaron 4-door sedan is in a separate line, the LeBaron Sedan.

Chrysler also stated that the Chrysler New Yorker is more accurately listed as the "New Yorker 5th Avenue/Imperial." Listing the 1990/91 New Yorker line as the New Yorker 5th Avenue/Imperial makes that line distinct from the LH series New Yorker, that Chrysler introduced in model year 1994. NHTSA concurs with this comment.

Ford commented that only 16 percent of its model year 1990 and 1991 E150 light duty truck line had a gross vehicle weight rating (GVWR) of 6,000 lbs. or less, and that model year 1996, each vehicle in its E150 line will be over 6,000 lbs. GVWR. Thus, by model year 1996, that company's E150 light duty trucks will not meet the ACTA's definition of "passenger motor vehicle," since they will have a GVWR exceeding 6,000 pounds. Ford stated that it assumes that the effective date of the parts marking standard for MPV's and LDT's will be no earlier than the 1996 model year and that, therefore, it has concluded that no E150 vans will be subject to parts making. As discussed below, NHTSA has decided that manufacturers of liens designated as high theft pursuant to the 1990/91 median theft rate must begin marking their vehicles in model year 1996. The agency agrees that if the Ford E150 line does not fall within the statutory definition of "passenger motor vehicle," the vehicles are not subject to the theft prevention standard.

Mazda noted two errors concerning the listing of Mazda lines in Table III of the August 1993 **Federal Register** document. As discussed above, Table III listed the previously designated high theft lines with theft rates that fell below the preliminary median theft rate. The Mazda 323/Protege line was erroneously listed as a high theft line, and the Mazda 929 was not listed. NHTSA has corrected the table for this document by removing the 323/Protege and including the 929.

Volkswagen noted that Table III listed the "Quattro," which that company assumed refers to the Audi V8 Quattro Sedan. Since the line was determined by NHTSA to be likely low theft, Volkswagen asked that the line be removed from Table III. NHTSA concurs that listing the "Quattro" in Table III was an error, and has removed it from the final data.

Commenters also identified several typographical errors in the theft data presented in the August 1993 document. In light of those comments, the agency has corrected the theft rate for the Ford Tempo and Nissan NX Coupe, and the 1990 production number for the Suzuki Sidekick. NHTSA has also corrected production data for the Jetta line for model year 1991, based on Volkswagen's comment. Based on comments from Rolls-Royce, NHTSA added three Rolls-Royce lines. Two Maserati lines were also added. No thefts were reported for any of the Rolls-Royce or Maserati lines in 1990 or 1991.

Suzuki provided model year 1990 production numbers for the Chevrolet Sprint, Firefly and GEO Metro (including production numbers for both the hardtop and convertible models) lines. The Sprint is sold in Puerto Rico as the Firefly. General Motors (GM) has already provided NHTSA with production figures for the Chevrolet Sprint (including the Firefly). Since GM certifies compliance with the theft prevention standard for the Sprint line, NHTSA will base the final theft rates for these lines using GM's production numbers.

GM also certifies theft standard compliance for the GEO Metro. GM's data, however, did not include production numbers for the convertible GEO Metros. Therefore, the final theft rates for the GEO Metro reflect the additional information provided by Suzuki.

In addition to the above changes, NHTSA is making the following corrections to the list of high theft lines with theft rates below the median theft rate. Two lines that were inadvertently omitted, the Saturn SC and Lotus Elan, are added. One line that was inadvertently included, the Mercedes-Benz 129 line, is removed.

Fiat noted that the production figures shown in the agency's August 1993 document correspond to the figures in the 1990 and 1991 model year CAFE reports, and expressed the belief that NHTSA's theft regulation requires theft marking subjection to be based on actual calendar year production. As indicated above, the equation that NHTSA must use in determining the theft rates for each vehicle line is set forth in section 603(b) of the Coast Savings Act. That section provides that the agency is to use "the sum of the respective production volumes of all passenger motor vehicles of [a] line (as reported to the Environmental Protection Agency under title V of this Act) which are of [two specified] *model years*." (Emphasis added.) Therefore, it is correct to use model year production figures rather than the calendar year production figures suggested by Fiat.

3. Implementation Date

Four commenters discussed whether, for the new vehicle lines determined to be high theft based on the CY 1990–1991 theft data, parts marking should begin in MY 1995. Each of the four commenters, Honda, Nissan, Toyata, and Volkswagen, asked that the required marking begin with MY 1996. Essentially, each manufacturer stated it needed more leadtime to be able to comply, and it would be a hardship to begin marking in MY 1995. Some commenters cited start up difficulties since they would be parts marking for the first time. Volkswagen noted that for some manufacturers, requiring parts marking in model year 1995 may not provide enough leadtime for the manufacturers to be able to submit timely petitions for exemption from parts marking, pursuant to part 543, Exemption from Vehicle Theft Prevention Standard.

Based on these comments, NHTSA has decided that requiring parts marking in MY 1995 for the new vehicle lines determined to be high theft based on the CY 1990–1991 theft data would impose an undue burden on manufacturers. The agency also agrees with Volkswagen that requiring newly designated high theft lines to be marked beginning with model year 1995 may not permit some manufacturers to submit timely petitions for exemption from parts marking for its vehicle lines, pursuant to part 543. Section 543.5(b)(4) requires a manufacturer to submit a petition "at least 8 months before the commencement of production of the line(s)." For a manufacturer which plans to introduce its model year 1995 lines in the summer of 1994, Part 543 petitions may already be due at NHTSA. Delaying parts marking to model year 1996 would permit all manufacturers to submit timely petitions for exemption from parts marking.

For these reasons, NHTSA plans to apply the parts marking requirement for newly designated high theft lines, including cars and MPV's/LDT's, pursuant to the 1990/91 median theft rates, beginning with model year 1996. This expectation will be reflected in a future rulemaking to amend the Theft Prevention Standard.

4. Effect of 1990/91 Median Theft Rate on Lines Previously Determined To Be High Theft

Nissan made several observations regarding the effect of the 1990/91 median theft rate on Nissan vehicle lines previously determined to be high theft. NHTSA confirms Nissan's understanding that the Infiniti Q45, although ranked no. 177 in the final theft rates, continues to be a high theft line subject to the theft prevention standard. Section 603(a)(5) of the ACTA provides that any line subject to parts marking when the original Motor Vehicle Theft Act was enacted continues to be so subject, and that the only exemptions are for vehicles with NHTSA-approved antitheft devices. See also section 603(d). In model year 1990, the Infiniti Q45 was granted an exemption from parts marking, based on a standard antitheft device on all vehicles in the line. (See 53 FR 45181; November 8, 1988.) Thus, Nissan may continue to place the antitheft device on all vehicles in the Q45 line, in lieu of parts marking.

NHTSA also confirms that the publication of this final theft data has no effect on the Nissan Infiniti J30, which was not yet introduced in 1990 or 1991. The Infiniti J30, a high theft line introduced in model year 1993, was also granted an exemption from parts marking, beginning with model year 1993. (See 56 FR 47983; September 23, 1991.)

Final Theft Data and Final Median Rate

In Table I of this document, the agency lists each of the 231 vehicle lines manufactured in model years 1990 and 1991 in descending order according to theft rate. Based on the data set forth in Table I, NHTSA has determined the final median theft rate for 1990 and 1991 to be 3.5866 thefts per 1000 vehicles produced. The final median is the theft rate ranked 116th (3.5866 thefts per thousand) in the table, according to the instructions in section 603(b)(2) of the Cost Savings Act.

If NHTSA has not previously determined the line to be high theft, each line shown in positions 1 through 115, inclusive, in Table I, will be subject to selection as a high theft line. In selecting high theft lines based on the 1990/91 median theft rate, NHTSA will follow the procedures it established in 49 CFR part 542 Procedures for Selecting Lines to be Covered by the Theft Prevention Standard, and provide affected manufacturers an opportunity to comment on NHTSA's preliminary determination that a line is high theft. Final selection by NHTSA will mean that the vehicles in these lines and their major replacement parts will have to be marked as specified in 49 CFR part 541, the vehicle theft prevention standard, beginning with model year 1996.

In addition, Table II of this document lists previously designated high theft lines with theft rates below the median theft rate of 3.5866, and Table III lists lines that have theft rates above the median theft rate and have major parts interchangeable with those of lines that have theft rates below the median theft rate.

Authority: 19 U.S.C. 2021 and 2023; delegation of authority at 49 CFR 1.50.

Issued on: December 30, 1993.

Howard M. Smolkin,

Executive Director.

TABLE I.—MODEL YEARS 1990/1991 THEFT RATES FOR MOTOR VEHICLES PRODUCED IN CALENDAR YEARS 1990/1991

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
1. Ford Motor Co	Ford Mustang	1,545	2,085	115,821	91,479	17.5109
2. General Motors	GMC Jimmy S–15	276	1,048	18,257	61,794	16.5395
3. Honda	Prelude	379	555	29,708	29,785	15.6993
4. General Motors	Chevrolet Blazer S–10	946	2,825	56,080	192,680	15.1592
5. Nissan	Pathfinder	357	579	29,525	38,215	13.8175
6. Hyundai	Sonata	336	281	25,021	24,542	12.4488
7. Toyota	Supra	65	61	6,287	4,055	12.1833
8. General Motors	Oldsmobile Bravada	0	134	0	11,139	12.0298
9. Nissan	300ZX	449	229	38,882	18,502	11.8151
10. Volkswagen	Cabriolet	116	35	8,673	4,136	11.7867
11. Chrysler Corp	Jeep Cherokee	1,837	924	135,416	105,463	11.4622
12. Mazda	RX–7	107	77	10,560	7,800	10.0218
13. Alfa Romeo	164	0	19	0	1,947	9.7586
14. General Motors	Cadillac Brougham	295	257	32,052	25,731	9.5530
15. Mitsubishi	Mirage	448	364	60,150	30,019	9.0053
16. Chrysler Corp	Dodge Monaco	23	153	7,154	12,433	8.9856
17. Volkswagen	Golf/GTI	76	186	13,696	15,965	8.8331
18. General Motors	Cadillac Seville	305	206	32,346	25,916	8.7707
19. Chrysler Corp	Jeep Wrangler	397	392	46,874	44,891	8.5980
20. Porsche	911	31	48	4,609	4,818	8.3802
21. General Motors	Pontiac Grand AM	1,596	1,381	189,150	171,582	8.2527
22. Chrysler Corp	Lebaron Coupe/Convertible	469	341	58,837	39,749	8.2162
23. General Motors	Chevrolet Camaro	288	759	33,200	97,290	8.0236
24 Mitsubishi	Montero	144	108	16,403	15,959	7.7869
25. Ford Motor Co	Ford Probe	755	654	110,201	73,522	7.6692
26. Chrysler Corp	Town & Country MPV	32	10	3,238	2,244	7.6614
27. General Motors	Chevrolet Corvette	168	139	22,034	18,510	7.5720
28. Toyota	4-Runner	521	340	72,138	46,263	7.2179
29. General Motors	Pontiac Bonneville	494	345	75,655	42,919	7.0758
30. Volkswagen	Jetta	337	329	47,731	48,091	6.9504
31. Volvo	780	7	2	945	363	6.8807
32. Suzuki	Sidekick	59	80	7,162	13,052	6.8764
33. General Motors	Pontiac Firebird	154	288	19,157	45,234	6.8643
34. Chrysler Corp	Dodge Shadow	537	500	71,088	81,211	6.8090

TABLE I.—MODEL YEARS 1990/1991 THEFT RATES FOR MOTOR VEHICLES PRODUCED IN CALENDAR YEARS 1990/1991—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
35. Mitsubishi	Pickup Truck	194	132	24,976	23,928	6.6661
36. Ford Motor Co	Lincoln Continental	396	368	62,657	52,103	6.6574
37. Suzuki	Samurai	42	31	5,782	5,417	6.5184
38. General Motors	Pontiac 6000	293	223	52,352	27,940	6.4265
39. General Motors	GEO Tracker	232	195	34,948	31,498	6.4263
40. Porsche	928	4	1	414	369	6.3857
41. Ford Motor Co	Lincoln Mark VII	120	71	21,658	8,898	6.2508
42. General Motors	Buick Skylark	509	482	83,666	75,811	6.2141
43. Chrysler Corp	Dodge Dynasty	500	768	94,510	112,320	6.1306
44. General Motors	Chevrolet C–1500	1,639	1,015	267,411	168,497	6.0884
45. Mitsubishi	Galant/Sigma	301	212	45,397	39,562	6.0382
46. Toyota	MR2	0	129	0	22,080	5.8424
47. BMW	3	143	138	21,556	26,839	5.8064
48. Chrysler Corp	Plymouth Acclaim	538	671	95,142	114,510	5.7667
49. General Motors	Buick Reatta	55	2	8,431	1,491	5.7448
50. Chrysler Corp	Dodge Spirit	415	584	79,054	94,895	5.7431
51. General Motors	GMC Sierra C–1500	531	273	89,021	52,079	5.6981
52. Chrysler Corp	Plymouth Sundance	432	236	60,517	56,820	5.6930
53. General Motors	GEO Prizm	1,021	489	170,272	95,000	5.6923
54. General Motors	Oldsmobile Cutlass Calais	494	417	88,229	74,045	5.6140
55. General Motors	Pontiac Sunbird	519	731	106,960	115,721	5.6134
56. Ford Motor Co	Ford Thunderbird	593	427	104,847	78,133	5.5744
57. BMW	5	126	101	23,871	17,016	5.5519
58. Chrysler Corp	New Yorker 5th Ave/Imperial	461	405	93,538	63,375	5.5190
59. Chrysler Corp	Plymouth Laser	257	141	45,141	30,720	5.2464
60. Nissan	240SX	301	190	60,582	34,534	5.1621
61. Mitsubishi	3000GT	0	51	0	9,903	5.1500
62. General Motors	Oldsmobile Cutlass Ciera	584	604	126,321	107,028	5.0911
63. Isuzu	Amigo	61	28	11,622	6,030	5.0419
64. General Motors	Pontiac Lemans	148	172	34,351	29,500	5.0117
65. Mazda	626/MX–6	530	448	96,966	100,436	4.9544
66. Nissan	Maxima	528	482	110,685	94,646	4.9189
67. General Motors	Buick Estate Wagon	37	0	7,524	0	4.9176
68. General Motors	Buick Century	497	649	123,893	110,767	4.8837
69. Chrysler Corp	Eagle Premier	55	71	14,277	11,630	4.8636
70. Ford Motor Co	Lincoln Town Car	602	666	142,648	119,046	4.8454
71. Alfa Romeo	Spider	2	8	915	1,154	4.8333
72. Chrysler Corp	Dodge Stealth	0	96	0	19,907	4.8224
73. Hyundai	Scoupe	0	165	0	34,305	4.8098
74. Mitsubishi	Eclipse	383	211	67,658	56,058	4.8013
75. Honda	Accord	1,833	2,151	410,915	425,360	4.7640
76. Ford Motor Co	Ford Escort	1,030	1,545	188,146	355,642	4.7353
77. General Motors	Chevrolet Cavalier	1,482	1,127	263,204	293,995	4.6823
78. Volkswagen	Corrado	49	12	11,041	2,072	4.6519
79. Nissan	Sentra	885	547	163,355	144,748	4.6478
80. Chrysler Corp	Dodge Daytona	186	69	37,884	17,288	4.6221
81. Honda/Acura	Legend	336	282	66,611	68,274	4.5817
82. Mercedes-Benz	129	19	50	5,413	9,797	4.5365
83. BMW	7	43	33	10,717	6,056	4.5311
84. Ford Motor Co	Mercury Cougar	335	280	76,580	60,669	4.4809
85. Hyundai	Excel	403	346	92,106	78,529	4.3895
86. General Motors	GEO Storm	370	343	73,376	89,996	4.3643
87. Mazda	B Series Pickup	323	269	70,866	65,585	4.3386
88. Toyota	Corolla/Corolla Sport	1,073	781	219,738	208,743	4.3269
89. Chrysler Corp	Jeep Wagoneer	53	10	10,928	3,702	4.3062
90. General Motors	Oldsmobile Delta 88 Royale	451	214	105,508	50,451	4.2639
91. Isuzu	Rodeo	0	123	0	28,953	4.2483
92. Ford Motor Co	Ford Tempo	999	734	218,976	189,747	4.2400
93. Chrysler Corp	Dodge Omni	69	0	16,481	0	4.1866
94. General Motors	Chevrolet Beretta	384	261	90,981	64,022	4.1612
95. General Motors	Buick LeSabre	593	387	152,967	83,677	4.1412
96. Nissan	Stanza	305	296	79,356	67,583	4.0901
97. Audi	Coupe Quattro	6	1	1,348	377	4.0580
98. Subaru	XT	0	7	12	1,725	4.0299
99. Chrysler Corp	Eagle Talon	117	125	28,064	32,096	4.0226
100. General Motors	Chevrolet Corsica	605	754	168,855	169,460	4.0170
101. Isuzu	Trooper/Trooper II	167	120	37,448	34,502	3.9889

TABLE I.—MODEL YEARS 1990/1991 THEFT RATES FOR MOTOR VEHICLES PRODUCED IN CALENDAR YEARS 1990/1991—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
102. Chrysler Corp	LeBaron Sedan	145	33	27,304	17,741	3.9516
103. General Motors	Cadillac Fleetwood/Deville	656	573	170,517	140,992	3.9453
104. Honda/Acura	Integra	479	267	109,321	80,333	3.9335
105. Toyota	Tercel	406	382	88,482	112,032	3.9299
106. Chrysler Corp	Plymouth Horizon	60	0	15,884	0	3.7774
107. General Motors	Chevrolet S–10 Pickup	349	1,271	72,784	358,397	3.7571
108. General Motors	GEO Metro	250	337	74,557	82,206	3.7445
109. Ford Motor Co	Mercury Tracer	0	260	0	70,172	3.7052
110. Toyota	Camry	1,052	909	270,029	259,414	3.7039
111. Ford Motor Co	E150 Van	37	28	10,102	7,516	3.6894
112. General Motors	GMC Sonoma	101	306	21,165	90,222	3.6539
113. General Motors	Chevrolet Caprice	381	413	55,528	156,822	3.6449
114. General Motors	Chevrolet Lumina APV	223	180	72,089	38,551	3.6424
115. Chrysler Corp	Jeep Comanche	45	19	10,681	7,063	3.6069
116. Ford Motor Co	Mercury Topaz	277	187	73,207	56,165	3.5866
117. General Motors	Oldsmobile 98/Touring	318	72	58,444	50,417	3.5826
118. Toyota	Celica	315	201	82,740	61,482	3.5778
119. Isuzu	Impulse	22	10	4,772	4,287	3.5324
120. Mitsubishi	Wagon	6	0	1,791	0	3.3501
121. Nissan	Pickup Truck	460	408	129,951	131,144	3.3245
122. BMW	8	0	8	0	2,411	3.3181
123. Rover Group	Range Rover MPV	14	11	4,862	2,681	3.3143
124. Mercedes-Benz	201	42	45	9,247	17,033	3.3105
125. Mazda	323/Protege	297	212	74,316	79,948	3.2995
126. Isuzu	Stylus	0	49	0	14,919	3.2844
127. General Motors	Cadillac Allante	11	7	3,076	2,485	3.2368
128. Rover Group	Sterling 827	6	5	1,200	2,216	3.2201
129. Mitsubishi	Van	3	0	934	0	3.2120
130. General Motors	Pontiac Grand Prix	363	277	110,549	91,646	3.1653
131. Mazda	Navajo	0	38	0	12,080	3.1457
132. General Motors	Chevrolet Astro	290	429	123,394	105,795	3.1371
133. Mercedes-Benz	124	81	59	21,870	22,771	3.1361
134. General Motors	Oldsmobile Cutlass Supreme	361	267	109,288	91,770	3.1235
135. Daihatsu	Rocky MPV	24	5	7,514	1,883	3.0861
136. Ford Motor Co	Bronco II	166	0	54,988	0	3.0188
137. General Motors	Oldsmobile Toronado/Trofeo	38	29	14,480	7,831	3.0030
138. Chrysler Corp	Eagle Summit	40	41	9,595	17,626	2.9756
139. Ford Motor Co	Mercury Sable	278	264	93,126	89,349	2.9703
140. Suzuki	Swift	19	22	7,671	6,227	2.9501
141. Ferrari	Testarossa	1	1	426	255	2.9369
142. Toyota	Cressida	33	36	12,456	11,039	2.9368
143. Chrysler Corp	Dodge Caravan/Grand	709	506	234,609	182,675	2.9117
144. Jaguar	XJS	13	9	5,213	2,371	2.9008
145. General Motors	Pontiac Trans Sport APV	88	60	33,424	18,418	2.8548
146. Porsche	944	6	2	1,990	850	2.8169
147. General Motors	Oldsmobile Silhouette APV	57	68	28,103	16,322	2.8137
148. Mazda	MX–5 Miata	157	97	52,247	38,868	2.7877
149. General Motors	Oldsmobile Custom Cruiser	18	13	3,573	7,660	2.7597
150. Nissan	Infiniti M30	20	19	7,466	6,718	2.7496
151. Mercedes-Benz	126	64	60	21,030	24,128	2.7459
152. Honda	Civic	737	759	277,631	269,947	2.7320
153. Mazda	929	36	47	18,090	12,449	2.7178
154. Chrysler Corp	Chrysler's TC	11	3	3,536	1,636	2.7069
155. General Motors	Chevrolet Celebrity	79	0	29,271	0	2.6989
156. Toyota	Pickup Truck	437	457	159,842	178,940	2.6389
157. Ford Motor Co	Ford Crown Victoria	148	133	57,680	49,213	2.6288
158. General Motors	Cadillac Eldorado	53	45	21,764	15,895	2.6023
159. Chrysler Corp	Dodge Ramcharger	30	13	12,311	4,483	2.5604
160. Ford Motor Co	Ford Festiva	140	95	47,449	44,544	2.5545
161. Volvo	740	147	58	54,036	29,343	2.4587
162. Nissan	Axxess	44	0	17,994	182	2.4208
163. Ford Motor Co	Mercury Grand Marquis	160	193	70,633	75,861	2.4097
164. General Motors	Chevrolet Lumina	763	422	296,720	196,473	2.4027
165. General Motors	Chevrolet Sprint	1	0	233	187	2.3810
166. Chrysler Corp	Plymouth Voyager/Grand	513	301	197,977	144,534	2.3766
167. Chrysler Corp	Dodge Ram Wagon/Van B150	24	18	13,706	3,969	2.3762
168. Isuzu	Pickup	106	94	50,214	34,635	2.3571

TABLE I.—MODEL YEARS 1990/1991 THEFT RATES FOR MOTOR VEHICLES PRODUCED IN CALENDAR YEARS 1990/1991—Continued

Manufacturer	Make/model (line)	Thefts 1990	Thefts 1991	Production (mfgr's) 1990	Production (mfgr's) 1991	Theft rate (1990/91 thefts per 1,000 cars produced)
169. General Motors	Buick Regal	148	274	53,561	126,701	2.3410
170. Chrysler Corp	Plymouth Colt/Colt Vista	26	50	12,183	20,681	2.3126
171. Ford Motor Co	Ford Taurus	716	635	309,211	278,485	2.2988
172. Volkswagen	Passat	42	36	17,426	16,567	2.2946
173. General Motors	GMC Safari	88	99	43,263	38,453	2.2884
174. Ford Motor Co	Ranger Pickup	566	599	271,160	243,697	2.2628
175. Ford Motor Co	Explorer	0	711	0	323,551	2.1975
176. Chrysler Corp	Dodge Colt/Colt Vista	23	58	13,743	23,813	2.1568
177. Nissan	Infiniti Q45	20	40	11,615	16,264	2.1522
178. General Motors	Buick Electra Park Avenue	184	131	46,360	100,702	2.1420
179. Volkswagen	Fox	58	15	24,714	10,425	2.0775
180. Volvo	240	80	45	35,580	25,561	2.0445
181. Volvo	940	0	29	0	14,249	2.0352
182. Ford Motor Co	F150 Pickup Truck	298	215	138,657	114,669	2.0251
183. Audi	80/90	24	1	9,168	3,224	2.0174
184. Toyota	Lexus ES250	32	43	19,561	17,643	2.0159
185. Ford Motor Co	Mercury Capri	0	70	0	35,407	1.9770
186. Jaguar	XJ6	24	23	15,172	8,995	1.9448
187. Chrysler Corp	Dodge Dakota Pickup	154	112	66,459	71,490	1.9282
188. Subaru	Legacy	154	141	88,873	64,200	1.9272
189. Honda/Acura	NSX	0	6	0	3,139	1.9114
190. Toyota	Lexus LS400	77	82	42,227	41,559	1.8977
191. Saab	900	32	23	14,574	15,437	1.8327
192. Ford Motor Co	Aerostar	303	279	169,574	150,579	1.8179
193. General Motors	Oldsmobile Cutlass Cruiser	16	13	8,891	7,163	1.8064
194. Volvo	760	17	0	9,515	0	1.7867
195. Mitsubishi	Precis	17	3	3,210	8,000	1.7841
196. Subaru	Loyale	68	36	32,994	25,904	1.7658
197. Nissan	Pulsar NX	2	0	1,168	0	1.7123
198. Daihatsu	Charade	23	4	12,447	3,732	1.6688
199. Toyota	Land Cruiser	3	0	1,921	0	1.5617
200. Nissan	Infiniti G20	0	25	0	16,132	1.5497
201. Toyota	Previa	0	126	0	81,426	1.5474
202. General Motors	Buick Riviera	29	25	21,982	12,956	1.5456
203. Mazda	MPV Wagon	57	82	47,852	47,107	1.4638
204. Audi	100/200	15	12	10,869	9,036	1.3564
205. Volkswagen	Vanagon	9	6	7,363	4,729	1.2405
206. General Motors	Saturn SL	0	49	0	39,867	1.2291
207. Peugeot	405	0	4	700	2,557	1.2281
208. Audi	V8 Quattro Sedan	4	0	2,911	542	1.1584
209. Subaru	Justy	10	10	9,552	8,999	1.0781
210. General Motors	Chevrolet Sportvan G–10	0	15	8,715	5,804	1.0331
211. General Motors	Buick Roadmaster	0	6	0	6,729	0.8917
212. Nissan	NX Coupe	0	7	0	8,705	0.8041
213. Chrysler Corp	Dodge Ram Pickup	24	19	42,251	21,763	0.6717
214. General Motors	Saturn SC	0	6	0	10,298	0.5826
215. Saab	9000	10	13	20,675	24,195	0.5126
216. General Motors	GMC Rally Sportvan	0	2	3,092	1,620	0.4244
217. Yugo	GV/GVL/GVX/GVS	1	1	1,323	8,250	0.2089
218. Peugeot	505	0	0	2	654	0.0000
219. Lotus	Esprit	0	0	102	28	0.0000
220. Ferrari	348	0	0	377	240	0.0000
221. Lotus	Elan	0	0	0	159	0.0000
222. Nissan	Van	0	0	292	0	0.0000
223. Ferrari	Mondial	0	0	98	49	0.0000
224. Aston Martin	Saloon/Vantage/Volante	0	0	2	40	0.0000
225. Lamborghini	Diablo	0	0	0	110	0.0000
226. Ferrari	F40	0	0	90	60	0.0000
227. Rolls-Royce	SIL Spirit/Spur/Mulsa/Eight	0	0	399	505	0.0000
228. Rolls-Royce	Corniche/Continental	0	0	162	141	0.0000
229. Rolls-Royce	Turbo R	0	0	340	207	0.0000
230. Maserati	Spyder	0	0	31	4	0.0000
231. Maserati	430/228	0	0	31	0	0.0000

TABLE II.—DESIGNATED HIGH THEFT CAR LINES WITH THEFT RATES BELOW THE MEDIAN THEFT RATE OF 3.5866

Manufacturer	Make/model
BMW	8.
Chrysler	Chrysler's TC.
Ferrari	Mondial.
Ford Mercury	Capri.
General Motors:	
Buick	Riveria, Electra, Park Avenue, Regal.
Cadillac	Eldorado, Allante.
Chevrolet	Lumina.
Oldsmobile	Cutlass Supreme, 98/ Touring.
Pontiac	Grand Prix.
Saturn	Sports Coupe (SC).
Honda Acura	NSX.
Isuzu	Impulse, Stylus.
Jaguar	XJ6, XJS.
Lotus	Elan.
Mazda	MX–5 Miata, 929.
Mercedes-Benz	124, 126, 201.
Nissan Infiniti	M30, Q45.
Peugeot	405.
Rover Group	Sterling.
SAAB	900, 9000.
Toyota	Cressida, Celica.
Lexus	ES250, LS400.
Volkswagen, Audi	100/200/S4

TABLE III.—VEHICLES THAT FELL BELOW THE MEDIAN THEFT RATE AND ARE INTERCHANGEABLE WITH LINES THAT FELL ABOVE THE MEDIAN THEFT RATE

Manufacturer	Theft Rate
Chrysler:	
Chrysler Town and Country (MPV)	7.6614
Dodge Caravan/Grand	2.9117
Plymouth Voyager/Grand (Interchangeable with Chrysler Town and Country MPV)	2.3766
Ford:	
Ford Tempo	4.2400
Mercury Topaz (Interchangeable with Ford Tempo)	3.5866
General Motors:	
Chevrolet Caprice	3.6449
Buick Roadmaster (Interchangeable with Chevrolet Caprice)	0.8917
GEO Metro	3.7445
Suzuki Swift (Interchangeable with GEO Metro)	2.9501
Nissan:	
Pathfinder (MPV)	13.8175
Pickup Truck (LDT) (Interchangeable with Pathfinder MPV)	3.3245
Toyota:	
4-Runner (MPV)	7.2719
Pickup Truck (LDT) (Interchangeable with 4-Runner MPV)	2.6389

[FR Doc. 94–191 Filed 1–5–94; 8:45 am]
BILLING CODE 4810–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review; Correction

December 29, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Correction

This is a correction to FR Doc. 93–31573 Filed 12–27–93; 8:45 a.m., for a Department of the Treasury, Office of Thrift Supervision information collection. The corrected information is as follows:

Estimated Number of Respondents: 1,500.
Estimated Burden Hours Per Respondent: 40 hours.
Estimated Total Reporting Burden: 60,000 hours.

Lois K. Holland,
Departmental Reports Management Officer.

[FR Doc. 94–228 Filed 1–5–94; 8:45 am]
BILLING CODE: 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

December 30, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0052
Form Numbers: ATF F 5130.9
Type of Review: Extension
Title: Brewer's Monthly Report of Operations (formerly Brewer's Monthly Report of Operations)
Description: ATF F 5130.9 is a periodic report filed by brewers to account for taxable commodities. For this reason, ATF F 5130.9 is a method to protect tax revenue. The data collected on ATF F 5130.9 is also summarized by the Bureau of Alcohol, Tobacco and Firearms (ATF) in a statistical release which is used by industry and other government agencies.
Respondents: Businesses or other for-profit, Smell businesses or organizations
Estimated Number of Respondents: 427
Estimated Burden Hours Per Respondent: 1 hour
Frequency of Response: Monthly, Quarterly
Estimated Total Reporting Burden: 2,388 hours

OMB Number: 1512–0059
Form Numbers: ATF F 5120.29
Type of Review: Extension
Title: Bonded Wineries—Formula and Process for Wine, Letterhead Applications and Notices Relating to Formula Wine
Description: ATF F 5120.29 is completed by proprietors of bonded wineries who intend to produce wine, to ensure that the formulas and processes used in the production of wine are in accordance with the regulations of the Federal Alcohol Administration Act and the Internal Revenue Code.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 600
Estimated Burden Hours Per Respondent: 2 hours
Frequency of Response: On occasion
Estimated Total Reporting Burden: 1,200 hours

OMB Number: 1512–0115
Form Numbers: ATF F 5220.4
Type of Review: Extension
Title: Monthly Report—Export Warehouse Proprietor
Description: Proprietors who are qualified to operate export warehouses that handle untaxpaid tobacco products are required to file a monthly report. This report summarizes all transactions by the proprietor handling receipts, dispositions and on-hand quantities. ATF F 5220.4 is used for product accountability and is examined by regional office personnel.

Respondents: Businesses or other for-profit
Estimated Number of Respondents: 272
Estimated Burden Hours Per Respondent: 48 minutes
Frequency of Response: Monthly
Estimated Total Reporting Burden: 2,644 hours
OMB Number: 1512–0216
Form Numbers: ATF F 5120.17
Type of Review: Extension
Title: Monthly Report of Wine Cellar Operations (formerly Monthly Report of Wine Cellar Operations)
Description: This report is used to monitor wine operations, insure collection of wine tax revenue and insure wine is produced in accordance with law and regulations. ATF F 5120.17 provides raw data for the Bureau of Alcohol, Tobacco and Firearm's (ATF's) Monthly Statistical Release on Wine, which is used by ATF and other federal agencies, along with industry itself, as a tool in trend analysis and planning.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 1,648
Estimated Burden Hours Per Respondent: 1 hour, 6 minutes
Frequency of Response: Monthly, Annually
Estimated Total Reporting Burden: 9,654 hours
OMB Number: 1512–0504
Form Numbers: ATF F 5000.28
Type of Review: Extension
Title: Floor Stocks Tax Return, Recordkeeping and Reporting Requirements
Description: ATF F 5000.28 is completed by persons who held alcohol, tobacco or imported perfume for sale on 1/1/91. This tax collection was imposed by Public Law 101–508 for collection of tax. ATF uses the form to identify the taxpayer, the liability, and the adjustments to the amount paid.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 100
Estimated Burden Hours Per Respondent: 30 minutes
Frequency of Response: Other (one-time floor stocks tax)
Estimated Total Reporting Burden: 530 hours
Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–229 Filed 1–5–94; 8:45 am]

BILLING CODE: 4810–31–P

UNITED STATES INFORMATION AGENCY

U.S. Advisory Panel on Radio Marti and TV Marti; Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

The United States Advisory Panel on Radio Marti and TV Marti will meet in room 840, 301 4th Street, SW., Washington, DC, on January 13, 1993, from 10 a.m. to 6 p.m.

The Panel will meet in open session with current and former U.S. government broadcasters, U.S. officials, technical experts, representatives of the Cuban community, representatives of the private sector and other interested parties to discuss the purposes, policies and practices of U.S. broadcasting to Cuba.

Please call Diane Augustine, (202) 475–2204, for further information.

Dated: December 30, 1993.

Robert S. Leiken,

Executive Director, U.S. Advisory Panel on Radio Marti and TV Marti.

[FR Doc. 94–258 Filed 1–5–94; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 4
Thursday, January 6, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, January 10, 1994.

PLACE: 2033 K St., N.W., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Enforcement Matters.

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 202–254–6341.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–410 Filed 1–4–94; 3:08 pm]

BILLING CODE 6351–01–M

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 5, 1994.

LOCATION: Room 420, East West Towers, 4330 East West Highway, Bethesda, Maryland.

STATUS: Open to the Public.

MATTERS TO BE CONSIDERED: Fiscal Year 1995 Budget.*

The Commission will consider issues related to the CPSC Budget for Fiscal Year 1995.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 4330 East West Highway, Bethesda, MD 20207, (301) 504–0800.

Dated: January 3, 1994.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 94–409 Filed 1–4–94; 3:07 pm]

BILLING CODE 6355–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:01 a.m. on Tuesday, January 4, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendations regarding the liquidation of depository institutions' assets acquired by the Corporation in its capacity as receiver, liquidator, or liquidating agent of those assets:

Memorandum re: The Howard Savings Bank, Newark, New Jersey (Case No. 505–8369–93–BOD)

Memorandum re: The Howard Savings Bank, Newark, New Jersey (Case No. 505–8553–93–BOD)

Recommendation regarding an administrative enforcement proceeding.

Matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550 17th Street, NW., Washington, DC.

Dated: January 4, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 94–414 Filed 1–4–94; 3:31 am]

BILLING CODE 6714–01–M

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, January 11, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This Meeting Will Be Closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.

Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.

Matters concerning participation in civil actions or proceedings or arbitration.

Internal personnel rules and procedures or matters affecting a particular employee

DATE AND TIME: Wednesday, January 12, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor.)

STATUS: This Oral Hearing Will Be Open to the Public.

MATTER BEFORE THE COMMISSION: Public Hearing on Personal Use of Campaign Funds.

DATE AND TIME: Thursday, January 13, 1994 at 10:00 a.m.

PLACE: 999 E Street, NW, Washington, DC (Ninth Floor.)

STATUS: This Meeting Will Be Open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.

Advisory Opinion 1993–23: Pacific Telesis Pactel.

Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Press Officer, Telephone: (202) 219–4155.

Majorie W. Emmons,

Secretary of the Commission.

[FR Doc. 94–413 Filed 1–4–94; 3:15 pm]

BILLING CODE 6715–01–M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

TIME AND DATE: 4:00 p.m., January 18, 1994.

PLACE: 4th Floor, Conference Room, 1250 H Street, N.W., Washington, D.C.

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Approval of the minutes of the December 20, 1993, Board meeting
2. Thrift Savings Plan activity report by the Executive Director.
3. Review of legislative activity.

CONTACT PERSON FOR MORE INFORMATION: Tom Trabucco, Director, Office of External Affairs, (202) 942–1640.

Dated: January 3, 1994.

Francis X. Cavanaugh,

Executive Director, Federal Retirement Thrift Investment Board.

[FR Doc. 94–331 Filed 1–4–94; 9:57 am]

BILLING CODE 6760–01–M

* The Commission decided that agency business required scheduling this matter without the normal seven day advance notice.

LEGAL SERVICES CORPORATION BOARD OF DIRECTORS

Presidential Search Committee Meeting; Changes

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 68460.

PREVIOUSLY ANNOUNCED TIME AND DATE: A meeting of the Legal Services Corporation Board of Directors Presidential Search Committee will be held on January 7, 1994. The meeting will commence at 1:30 p.m.

PREVIOUSLY ANNOUNCED LOCATION OF MEETING: The Legal Services Corporation, 750 1st Street, N.E., 11th Floor, The Board Room, Washington, D.C. 20002, (202) 336–8800.

CHANGES IN THE MEETING:

STATUS OF MEETING: *Open*, except that a portion of the meeting will be closed pursuant to majority votes of the Board of Directors taken on January 4, 1994. In this regard, a majority of the Board of Directors voted to: (a) add what appears below as agenda item number 5, affirming by said vote that Corporation business required such a change and no earlier announcement of the change was possible; and, (b) close from public observation that portion of the meeting at which the above-referenced item will be discussed for the reasons enumerated below. Pursuant to the aforementioned votes, the Committee will, in closed session, consider and act on the hiring of a consultant to assist with administrative matters in connection with the presidential search being undertaken by the Committee, including discussion of the relative qualifications of candidates for the consulting position. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(2) and (6)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a) and (e)]. The closing has been certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification is posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and is otherwise available upon request.

MATTERS OF BE CONSIDERED: Agenda items five through seven have been added as reflected below.

CLOSED SESSION:

5. Consider and Act on the Hiring of a Consultant to Assist With Administrative Matters in Connection With the Presidential Search Being Undertaken By the Committee, Including Discussion of the Relative Qualifications of Candidates for the Consulting Position.

OPEN SESSION: (Resumed)

6. Consider and Act on Other Business.
7. Consider and Act on Motion to Adjourn Meeting.

CONTACT PERSON FOR INFORMATION: Patricia D. Batie, Executive Office, (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: January 4, 1994.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 94–411 Filed 1–4–94; 3:14 pm]

BILLING CODE 7050–01–M

Corrections

Federal Register

Vol. 59, No. 4

Thursday, January 6, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-293]

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Correction

In notice document 93-29308 appearing on page 63192 in the issue of Tuesday, November 30, 1993, make the following correction:

In the second column, after the fourth full paragraph, insert the following text:

A copy of the Decision will be filled with the Office of the Secretary for the Commission's review in accordance with 10 CFR 2.206(c). As provided in this regulation, the Decision will constitute the final action of the Commission 25 days after issuance, unless the Commission, on its own motion, institutes review of the Decision within that time period.

Dated at Rockville, Maryland, this 19th day of November, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[93-29308 Filed 11-29-93; 8:45 am]

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[FI-47-92]

RIN 1545-AR76

Reissuance of Mortgage Credit Certificates

Correction

In proposed rule document 93-31010 beginning on page 67744 in the issue of Wednesday, December 22, 1993, in the third column, under **DATES**, in the third line, "January 22, 1994" should read "February 22, 1994".

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Part II

Environmental Protection Agency

40 CFR Part 131

Sacramento River, San Joaquin River, and San Francisco Bay and Delta, CA; Water Quality Standards for Surface Water; Proposed Rule

Department of the Interior

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants: Delta Smelt, Sacramento Splittail, and Longfin Smelt; Proposed Rules

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 131

[OW–FRL–4783–6]

Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California

AGENCY: Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: On September 3, 1991, the Regional Administrator for Region IX of the U.S. Environmental Protection Agency disapproved certain water quality criteria contained in the Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, that was adopted by the California State Water Resources Control Board on May 1, 1991. These criteria were disapproved because they failed to protect the Estuarine Habitat and other designated fish and wildlife uses of the estuary. Under the authority of section 303 of the Clean Water Act, this document proposes a rule establishing three sets of federal criteria to protect the designated uses of the estuary: salinity criteria protecting the Estuarine Habitat and other designated fish and wildlife uses, a second set of salinity criteria (measured in electrical conductivity) to protect the Fish Spawning (Striped Bass) designated use in the lower San Joaquin River, and a set of salmon smolt survival index criteria to protect the Fish Migration and Cold Fresh-Water Habitat designated uses in the estuary.

DATES: All written comments received on or before March 11, 1994, will be considered in the preparation of the final rule. Public Hearings will be held during the week of February 21, 1994, in Fresno, Sacramento, and San Francisco, California.

ADDRESSES: Written comments should be addressed to Patrick Wright, Bay/Delta Program Manager, Water Quality Standards Branch, W–3, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105.

Both oral and written comments will be accepted at the hearings. EPA reserves the right to fix reasonable limits on the time allowed for oral presentations. Written comments are encouraged.

Contact Lois Grunwald, Public Affairs Office, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, 415/744–1588, for further information on hearings.

FOR FURTHER INFORMATION CONTACT: Patrick Wright, Bay/Delta Program Manager, Water Quality Standards Branch, W–3, Water Management Division, Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, 415/744–1993.

SUPPLEMENTARY INFORMATION: Section 303 of the Clean Water Act, as amended (hereinafter CWA or the Act), requires each state to adopt water quality standards consisting of designated uses and instream water quality criteria to protect such uses for all waters of the United States located within that state. Section 303(c) of the Act provides that states shall review and, if appropriate, revise the water quality standards at least once every three years. Any new or revised standards adopted by the state are to be reviewed and approved or disapproved by the U.S. Environmental Protection Agency (EPA or the Agency). In the event that EPA disapproves a state's standards, and the state does not make EPA's requested changes within ninety (90) days of the disapproval, or if EPA determines at any time that revised or new standards are necessary to meet the requirements of the Act, section 303(c)(4) of the Act states that the Administrator shall promptly prepare and publish proposed regulations establishing water quality standards for the applicable waterbodies. The Administrator shall promulgate any new or revised standards not later than ninety (90) days after publication of the proposed standards. EPA's regulations for implementing section 303(c) of the Act are codified at 40 CFR part 131. Guidance for implementing these regulations is contained in the Water Quality Standards Handbook (December 1983) and Technical Support Manual: Waterbody Surveys and Assessments for Conducting Use Attainability Analyses (Volumes I, II and III).

EPA's proposal is part of a coordinated federal interagency response to the water management issues in the San Francisco Bay and Delta. EPA has worked closely with the U.S. Fish and Wildlife Service (USFWS), the National Marine Fisheries Service (NMFS), and the U.S. Bureau of Reclamation (USBR) to develop a comprehensive, habitat-oriented approach to water and fish and wildlife resource management issues in California. Other components of this interagency initiative are being announced contemporaneously with EPA's proposal. These include USFWS actions on petitions to list the longfin smelt and Sacramento splittail as endangered fish species under the Federal Endangered Species Act, 16 U.S.C. §§ 1531 to 1540 (ESA), the USFWS proposal of critical habitat for the Delta smelt under the ESA, and the NMFS reclassification of the winter-run Chinook salmon as endangered under the ESA.

A. Background

The San Francisco Bay/Sacramento-San Joaquin River Delta estuary (hereinafter the Bay/Delta) is the West Coast's largest estuary. It encompasses roughly 1600 square miles, and drains over 40 percent of California. The Bay/Delta is the point of convergence of California's two major river systems—the Sacramento River system flowing southward and draining a large part of northern California, and the San Joaquin River system flowing northward and draining a large part of central California. These two rivers, together with a number of smaller rivers flowing directly westward from the mountains, come together in a network of channels and islands, roughly a triangle 90 miles on each side, known as the Sacramento-San Joaquin Delta. The rivers converge at the western tip of the Delta, forming an estuary as fresh water mixes with marine water through a series of bays, channels, shoals and marshes and ultimately flowing into San Francisco Bay and then to the Pacific Ocean.

The Bay/Delta constitutes one of the largest systems for fish production in the country, supplying habitat for over 120 fish species. It also comprises one of the largest areas of waterfowl habitat in the United States, providing a stopover for more than one-half of the waterfowl and shorebirds migrating on the Pacific Flyway. Within the boundaries of the Bay/Delta is the Suisun Marsh, the largest brackish marsh on the West Coast.

The Bay/Delta is also the hub of California's two major water distribution systems—the Central Valley Project (CVP) built and operated by the USBR and the State of California's State Water Project (SWP). Most of the State's developed water—75 to 85 percent—is used for irrigation purposes by agriculture, irrigating over 4.5 million acres throughout the State. The Bay/Delta watershed also provides part or all of the drinking water supply for over 18 million people.

Located solely within the State of California, the Bay/Delta is subject under state law to the water quality control jurisdiction of the California State Water Resources Control Board (State Board) and two regional boards, the Central Valley and San Francisco Regional Water Quality Control Boards. Under the California regulatory scheme, the State Board's actions preempt regional board actions to the extent of any conflicts. Cal. Water Code § 13170.

In 1978, the State Board adopted and submitted to EPA a Water Quality Control Plan (hereinafter the 1978 Delta Plan) containing a comprehensive set of water quality standards to protect the designated uses of the Bay/Delta. The 1978 Delta Plan included water quality standards for three categories of designated uses: municipal and industrial, agriculture, and fish and wildlife.[1] The 1978 Delta Plan relied on a key set of criteria to protect fish and wildlife uses: the striped bass spawning and survival criteria. These criteria were established to provide minimum salinity and flow conditions to protect the fishery at levels that would have existed in the absence of the State and federal water projects (the so-called "without projects" level). The striped bass survival criteria were based on a statistical correlation between a Striped Bass Index (SBI) (a measure of the relative abundance of young striped bass in the estuary) and two hydrological variables: (1) Delta outflow (freshwater flowing through the Delta out to the ocean), and (2) Delta diversions (freshwater diverted out of the Delta channels for consumptive uses in agricultural irrigation, municipal and industrial uses). Based on this relationship, flow (measured in cubic feet per second (cfs) of Delta outflow) and salinity requirements at critical points in the Bay/Delta were adopted as criteria. The SBI, although not a formal criteria, was used to measure and predict the substantive environmental results of implementing these flow and salinity criteria. The 1978 Delta Plan emphasized striped bass protection because of the economic importance and availability of scientific information on this species in the Bay/Delta, but the Plan also indicated that it considered the striped bass standards to be a surrogate for protection of other species.

Pursuant to its obligations under section 303(c)(3) of the Act, EPA reviewed the 1978 Delta Plan in 1980. While EPA approved the Plan, it was concerned that the 1978 Delta Plan standards would not provide adequate protection of striped bass and the estuary's fishery resources. EPA therefore conditioned its approval upon a set of "interpretations" of the standards, including commitments by the State Board to review and revise the 1978 Delta Plan standards immediately if there were measurable adverse impacts on striped bass spawning, or if necessary to attain "without project" levels of protection for the striped bass (as defined by an SBI value of 79). EPA also conditioned its approval on the State Board's commitment to develop additional criteria to protect aquatic life and tidal wetlands in and surrounding the Suisun Marsh. The State Board concurred with these interpretations in its letter to EPA dated November 21, 1980.

In the years since the 1978 Delta Plan was adopted, these standards have not accomplished the intended goal of maintaining the SBI at a long term average of 79, the 1978 Delta Plan's estimate of "without project" levels. Indeed, during the 1980's, the SBI averaged approximately 7.5, and in 1983 and 1985 reached all-time lows of 1.2 and 2.2. Some of the decline in the SBI may be attributable to drought conditions in the late 1970's and again in the late 1980's. However, the highest SBI values actually attained since the 1978 Delta Plan was adopted were only in the teens and 20's, a substantial shortfall from the stated goal of 79.

The precipitous decline in striped bass is indicative of the poor health of other aquatic resources in the estuary. Several species have experienced similar declines, including chinook salmon (the winter-run of chinook salmon is listed as a threatened species under the ESA, and is currently proposed for reclassification as endangered), Delta smelt (recently listed as a threatened species under the ESA) and Sacramento splittail and longfin smelt (both the subject of a recent petition for listing as endangered species). The California Department of Fish and Game (California DFG) recently testified that virtually all of the estuary's major fish species are in clear decline. (CDFG 1992b, WRINT–DFG–8)[2]

As fishery resources continued to decline, EPA on several occasions expressed its concern to the State Board about the need for standards to adequately protect these resources. Throughout the first and second triennial reviews ending in 1981 and 1985, EPA urged the State Board to review and revise the 1978 Delta Plan in accordance with EPA's 1980 approval letter. At the conclusion of each triennial review, the State Board made no changes.

After its second triennial review, in a letter to EPA dated June 23, 1986, the State Board acknowledged that the 1978 Delta Plan standards were not adequate to protect the estuary's fishery resources. It then outlined the hearing process it was planning for revising the standards. In response, and as part of its consideration of the State Board's second triennial review, EPA, on June 29, 1987, sent a letter to the State Board stating that EPA could no longer approve the striped bass survival standards (or the related provision allowing relaxation of the spawning standard in drier years) because these standards did not adequately protect the designated uses. EPA recognized, however, that the State Board had initiated new hearings to revise the 1978 Delta Plan standards. EPA therefore indicated that it would await the results of the new hearings and approve or disapprove the revised standards after the State Board's submission to EPA of a complete set of revised standards.

In addition to EPA's review under the CWA, the 1978 Delta Plan also received intense scrutiny under state law in California state court. This review culminated in a state appellate decision, *United States, et. al.* v. *State Water Resources Control Board*, 182 Cal. App. 2d 82 (1st Dist., 1986) (known as the "Racanelli Decision" after its author, Judge John T. Racanelli). Among that decision's many holdings was the conclusion that the 1978 Delta Plan's water quality standards had been impermissibly limited to those standards that could be enforced against only the SWP and CVP (instead of against all water users). The court took notice that the State Board had proposed hearings to develop revisions to the 1978 Delta Plan, and asked the State Board to remedy the Plan's shortcomings in those hearings.

Following the first phase of the new hearings, the State Board in November 1988 issued a draft Plan that included revised salinity and flow standards to protect the fisheries and other designated uses. The State Board subsequently withdrew that draft Plan, however, and issued a revised workplan that served as the basis for the State Board's present Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary (1991 Bay/Delta Plan).

[1] The CWA and implementing regulations describe the two components of water quality standards as "designated uses" and "water quality criteria" (40 CFR 131.3(i)), whereas California uses the terms "beneficial uses" and "objectives". It has been EPA's and California's longstanding practice to interpret these terms synonymously. To avoid confusion, this proposal will use the federal terms "designated uses" and "criteria".

[2] If a reference was presented to the State Board during one of its hearings, this preamble will present citations in both the standard scientific form and in the State Board hearing record form. Accordingly, the eighth exhibit submitted by California DFG at the Board's interim water rights hearings in the summer of 1992 is cited as indicated.

In accordance with the revised workplan, the State Board, on May 1, 1991, adopted State Board Resolution No. 91–34, formally approving the 1991 Bay/Delta Plan. The Plan restated the specific designated uses that had been included in the 1978 Delta Plan and related regional board basin plans. As restated, the designated uses included the following: Agricultural Supply, Cold and Warm Fresh-Water Habitat, Estuarine Habitat, Fish Migration, Fish Spawning, Groundwater Recharge, Industrial Process Supply, Industrial Service Supply, Municipal and Domestic Supply, Navigation, Contact and Non-Contact Water Recreation, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat.

The 1991 Bay/Delta Plan, which was submitted for EPA's review on May 29, 1991, amended certain salinity criteria and adopted new temperature and dissolved oxygen criteria for specified locations in the estuary. The changes to the criteria, however, were of minimal substance. The 1991 Bay/Delta Plan did not revise the earlier 1978 Delta Plan to address EPA's longstanding concerns about adequate protection for the designated fish and wildlife uses of the Bay/Delta.

On September 3, 1991, EPA approved in part and disapproved in part the provisions of the 1991 Bay/Delta Plan. EPA's letter found that "[t]he record * * * does not support the conclusion that the State has adopted criteria sufficient to protect the designated uses" of the estuary. The designated uses at risk, as defined by the State Board, include Estuarine Habitat, and also Cold and Warm Water Habitat, Fish Migration, Fish Spawning, Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, and Wildlife Habitat. In addition to its general finding that the 1991 Bay/Delta Plan did not contain sufficient criteria to protect the designated uses, EPA also disapproved the absence of salinity standards to protect fish and wildlife uses in the Suisun, San Pablo, and San Francisco Bays and Suisun Marsh, the absence of scientifically supportable salinity standards (measured by electrical conductivity) to protect the Fish Spawning uses of the lower San Joaquin River, and the absence of scientifically supportable temperature standards on the San Joaquin and Sacramento Rivers to protect the fall-run and winter-run chinook salmon.

Pursuant to section 303(c)(3) of the Act, the State Board had 90 days to make changes to the criteria disapproved by EPA in its September 3, 1991 letter. The State Board made no such revisions during the 90 day period or at any subsequent time. However, in the summer of 1992, the State Board, at the request of the Governor of the State of California, held hearings for the purpose of establishing interim measures to protect the natural resources in the Bay/Delta estuary. In keeping with the CWA's recognition that the states have primary responsibility for setting water quality standards, EPA participated in these hearings—rather than proposing federal standards at that time—in the hope that the hearings would result in state adoption of approvable standards and preclude the need for a federal rulemaking. EPA submitted opening and closing statements to the State Board, and joined with NMFS and USFWS in submitting an Interagency Statement of Principles. These statements recommended that the State Board adopt a habitat and ecosystem-based approach to standards that would satisfy CWA requirements and meet the State Board's goal of reversing the decline of the estuary's fish and wildlife resources.

At the conclusion of these hearings, the State Board, on December 10, 1992, issued its recommended interim measures in Draft Water Rights Decision (hereinafter D–1630). The Draft contained new water export limits and pumping restrictions and ordered "pulse flows" to help transport young migratory fish through the Delta. It also imposed water conservation measures on agricultural and urban users, and established a restoration fund financed by user fees to pay for conservation efforts in the Bay/Delta. Although D–1630 proposed several changes in the operation of the water facilities effecting the estuary that would be beneficial to its natural resources, EPA informed the State Board in its comments dated January 13, 1993, that D–1630, if adopted, would not satisfy the requirements of the Act. EPA noted that D–1630, a proposed water rights decision, did not purport to revise the State's water quality standards at all, and therefore did not affect EPA's prior decision disapproving the 1991 Bay/Delta Plan. Moreover, EPA noted that the measures in D–1630 were not tied to specific designated uses in the estuary (including the Estuarine Habitat, Fish Spawning, and Preservation of Rare and Endangered Species uses), and that no attempt had been made to assure that the designated uses would be protected. Accordingly, EPA found that D–1630 "meets neither the procedural nor the substantive requirements of the Clean Water Act." After the close of the comment period for D–1630, the State Board, in response to a subsequent request by the Governor, declined to adopt D–1630.

In response to the State Board's failure to revise the criteria disapproved in EPA's September 3, 1991 letter, EPA, pursuant to section 303 (c)(3) and (c)(4) of the Act, is proposing regulations establishing revised water quality criteria which would in effect supersede and supplement the disapproved State criteria for purposes of the CWA.

B. Statutory Basis and Purpose

Section 303(c) of the Act requires that state water quality standards "* * * be such as to protect the public health or welfare, enhance the quality of water and serve the purposes of this Act. Such standards shall be established taking into consideration their use and value for propagation of fish and wildlife. * * *" Key concerns of this statutory provision are the enhancement of water quality and the protection of the propagation of fish. The ultimate purpose of water quality standards, as with the other sections of the Act, is to restore and maintain the chemical, physical, and biological integrity of the Nation's waters. CWA section 101(a).

Under section 303(c) of the Act, a water quality standard for a specific waterbody consists of two components: a designated use for which a waterbody is to be protected (such as recreation, fish and wildlife, or agriculture) and a numerical or qualitative water quality criterion which supports the designated use.

The Act gives primary responsibility for the adoption of water quality standards to the states. After adopting its initial water quality standards, a state is required, no less than every three years, to review those standards and, if necessary, modify them. Under section 303(c)(1) of the Act, the results of these triennial reviews are to be submitted to EPA for review and approval or disapproval.

EPA's Water Quality Standards regulations at 40 CFR part 131 specify the requirements for water quality criteria. States must adopt those water quality criteria that protect the designated use. Such criteria must be based on sound scientific rationale and must contain sufficient parameters or constituents to protect the designated use. For waters with multiple use designations, the criteria shall support the most sensitive use. (see 40 CFR 131.11(a).

In addition, a state's criteria must be consistent with the state's antidegradation policy. The federal regulations provide that, at a minimum, the state must maintain "[e]xisting instream water uses [those existing in the waterbody at any time on or after November 28, 1975] and the level of water quality necessary to protect the existing uses. * * *" 40 CFR 131.12(a)(1). In order to approve a state's water quality criteria, EPA must determine whether the state has adopted "water quality criteria [that are] sufficient to protect the designated uses." 40 CFR 131.6(c).

Section 303(c)(4) of the Act provides that the Administrator shall promptly prepare and publish proposed regulations establishing a new or revised standard in either of two situations: First, when the Administrator has disapproved a state standard under section 303(c)(3) and the state has not taken corrective action within 90 days; and, second, in any case where the Administrator determines that a revised or new standard is necessary to meet the requirements of the Act. Once promulgated, the federal regulations are applicable to the state's waters, and, if they are more stringent, have the effect of supplanting and supplementing the state's standards. However, it is EPA's longstanding policy that the federal regulations will be withdrawn if a state adopts and submits standards that in the Agency's judgment meet the requirements of the Act.

In reviewing California's implementation of its water quality standards program, EPA has considered the provisions of section 101(g) of the Act, which restate the long-standing policy of Federal deference to state water allocation functions: "It is the policy of Congress that the authority of each State to allocate quantities of water within its jurisdiction shall not be superseded, abrogated or otherwise impaired by this [Act]." The General Counsel of EPA, in a Memorandum to Regional Administrators dated November 7, 1978, interpreted this statutory provision in the context of the water quality standards program and concluded that "EPA should therefore impose requirements which affect water usage only where they are clearly necessary to meet the Act's requirements." See also Memorandum from Robert M. Perry, General Counsel, to Frederic A. Eidsness, Jr., Assistant Administrator for Water, dated March 17, 1983 (considering interplay of section 101(g) and the guidelines under section 404(b)(1) of the Act). These positions of the General Counsel are consistent with the existing judicial precedent interpreting section 101(g). The leading case interpreting section 101(g) in light of the other mandates of the CWA, *Riverside Irrigation Dist. v. Andrews*, 758 F.2d 508, 513 (10th Cir. 1985), held that section 101(g) is only a general policy statement which "cannot nullify a clear and specific grant of jurisdiction." *Id.* at 513. The Court then examined the legislative history of the Act and concluded that "where both the state's interest in allocating water and the federal government's interest in protecting the environment are implicated, Congress intended an accommodation." *Id. See also United States v. Akers*, 785 F.2d 814 (9th Cir. 1986) (adopting *Riverside* in the 9th Circuit on similar facts).

As the discussion above indicates, EPA has attempted to accommodate the State Board processes procedurally, generally deferring to the State Board schedules for review and revision of its water quality standards, even though this State process has continued for almost a decade and has frequently exceeded the Act's required triennial review requirements. Similarly, EPA is in this proposal attempting to accommodate the State's interest substantively. Although the State Board, in the 1978 Delta Plan, adopted explicit flow criteria, EPA is refraining from proposing direct revisions to the flow criteria. Instead, EPA is proposing criteria that describe the habitat conditions necessary to protect the designated uses of the Bay/Delta. The State Board still has full discretion to develop implementation measures attaining those habitat conditions, and still retains full discretion over the allocation of water necessary to achieve the criteria. Finally, EPA has fully considered the record developed in the State Board's 1992 hearings on D–1630 and, to the extent possible, has incorporated the scientific information presented in those hearings in the proposed criteria.

The State Board's adoption of the 1978 Delta Plan, and of the revised Bay/Delta Plan in 1991, were intended to meet the State's obligations to establish water quality standards under the CWA. Pursuant to its mandate under section 303(c)(3) of the Act, on September 3, 1991, EPA disapproved several of the criteria contained in the State Board's plan. For the reasons outlined herein and in EPA's letter of September 3, 1991, the Administrator finds that the water quality criteria adopted by the State fail to protect the designated uses and the criteria proposed below would meet the requirements of the Act. Accordingly, pursuant to sections 303(c)(3) and 303(c)(4) of the Act, the Administrator is proposing the following water quality criteria applicable to California waters.

C. Proposed Criteria

EPA is proposing three different sets of water quality criteria: Salinity criteria protecting estuarine habitat in the Suisun Bay area, salmon smolt survival indices protecting salmon migration, and an electrical conductivity criterion protecting striped bass spawning on the lower San Joaquin River. Each set of criteria is intended to protect a particular designated use or set of uses in the Bay/Delta estuary. As discussed above, these designated uses were originally established by the regional boards in the individual basin plans and by the State Board in its 1978 Delta Plan, and were reaffirmed and restated in the 1991 Bay/Delta Plan. The discussion below describes each set of proposed criteria in detail and outlines the scientific basis for the proposals.

In developing these proposed criteria, EPA has considered the scientific evidence and testimony presented during the State Board's 1992 hearing process, as well as scientific information from other sources. In particular, EPA has relied upon the recommendations of the USFWS, of Dr. Peter Moyle, Professor in the Department of Wildlife and Fisheries Biology at the University of California at Davis and author of more than 100 articles and books on the ecology of the inland fishes of California, and of a distinguished panel of scientists who participated in a series of workshops sponsored by the San Francisco Estuary Project (SFEP).

EPA's proposed criteria are consistent with the Interagency Statement of Principles dated June 15, 1992 and submitted to the State Board by EPA, USFWS, and NMFS during the Board's 1992 hearings. This Interagency Statement recommended that the State Board develop a comprehensive habitat protection approach to restore and maintain the ecological health of the estuary, and provided a framework for both interim and long-term standards. The Interagency Statement also emphasized that there is a consensus among the three federal agencies that the existing scientific information is sufficient to set criteria to protect the designated uses of the estuary.

The criteria proposed below are similar to those EPA has outlined in letters and statements to State and federal agencies, including in the following: its September 3, 1991 disapproval letter to the State Board; its June 11, 1992 policy statement and its August 24, 1992 closing statement submitted to the State Board's 1992 hearings; and its October 29, 1992 letter

to USFWS and NMFS. Throughout this process, EPA has carefully coordinated its actions and proposals with other State and Federal environmental agencies to achieve a consensus on the water quality criteria necessary to protect the estuary.

1. Estuarine Habitat Criteria

a. Designated Uses and EPA's Disapproval

The State's 1991 Bay/Delta Plan included "Estuarine Habitat" as a designated use for the Bay/Delta estuary. As described more fully in the Water Quality Control Plan, San Francisco Bay Basin [2], December 1986, at II–4, this Estuarine Habitat designated use is intended to provide "an essential and unique habitat that serves to acclimate anadromous fishes (salmon, striped bass) migrating into fresh or marine conditions. This habitat also provides for the propagation and sustenance of a variety of fish and shellfish, numerous waterfowl and shore birds, and marine mammals." Related fish and wildlife uses of the Bay/Delta estuary designated by the State Board include Ocean Commercial and Sport Fishing, Preservation of Rare and Endangered Species, Shellfish Harvesting, Fish Migration, and Wildlife Habitat. To protect these designated uses, the 1991 Bay/Delta Plan included dissolved oxygen and temperature criteria to protect chinook salmon, outflow and salinity criteria to protect striped bass, and salinity criteria to protect the managed (non-tidal) areas of Suisun Marsh.

Unfortunately, the specific criteria adopted by the State Board clearly do not protect the integrity of the Estuarine Habitat designated use. Although EPA had already many times noted the inadequacies of the 1978 Delta Plan, the 1991 Bay/Delta Plan made only minor adjustments to criteria protecting striped bass, salmon, and the managed portions of the Suisun Marsh, and provided no criteria specifically addressing the Estuarine Habitat designated use.

The shortcomings of the State Board's criteria are reflected by the continued deterioration of the estuary's resources. The SBI, used as a measure of the health of the 1978 Delta Plan's indicator species, has never attained its targeted value of 79, and instead has plummeted to unprecedented low values. Recent testimony by the California DFG indicates that virtually all of the estuary's major fish species are in clear decline (CDFG 1992b, WRINT–DFG–8). As noted above in the recitation of the history of the Bay/Delta, many species relying on the estuarine habitat are listed or are being considered for listing under the ESA. One recent report suggests that at least five of the estuary's fish species (longfin smelt, spring-run Chinook salmon, Sacramento splittail, green sturgeon, and Red Hills roach) qualify for immediate listing under the ESA (Moyle and Yoshiyama 1992), in addition to the already listed winter-run Chinook salmon and Delta smelt.

California's Gov. Wilson highlighted the seriousness of the problems in the Bay/Delta when he announced his new water policy on April 6, 1992.

> California has many species with populations in serious decline, and some faced with extinction. Both existing and proposed water projects often have an impact upon protected animal and plant species. * * *
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>
> [A]ny program must begin by recognizing a disturbing truth: The Delta is broken.

Gov. Wilson also outlined the kinds of measures necessary to protect the Bay/Delta: "If we are to be good stewards of our fish and wildlife, we must begin to mitigate these impacts by providing larger streamflows, greater Delta outflow, restoration of spawning gravel and provision of fish screens and temperature control measures." In response to Gov. Wilson's proposal, the State Board initiated the D–1630 process, the "immediate goal" of which was "to halt the decline and increase the protection of public trust resources where reasonable." (SWRCB 1992b). However, as explained above, California abandoned the D–1630 process, and the State Board has yet to develop criteria that adequately protect the Estuarine Habitat designated use.

In its disapproval letter of September 3, 1991, EPA formally found that the set of water quality criteria adopted by the State Board in the 1991 Bay/Delta Plan failed to protect the Estuarine Habitat and other designated fish and wildlife uses of the estuary.

To be consistent with the Clean Water Act and the accompanying Regulations, the State's [criteria] must be sufficient to protect Estuarine Habitat and other designated fish and wildlife uses. The Estuarine Habitat use, which has been formally approved by the State and EPA as part of the State's water quality standards, was established to provide "an essential and unique habitat that serves to acclimate anadromous fishes (salmon, striped bass) migrating into fresh or marine conditions. This habitat also provides for the propagation and sustenance of a variety of fish and shellfish, numerous waterfowl and shore birds, and marine mammals. Water Quality Control Plan, San Francisco Bay Basin(2), December 1986, at II–4.

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> The record * * * does not support the conclusion that the State has adopted criteria sufficient to protect the designated uses. Accordingly * * * I hereby disapprove the current set of [criteria] contained in the State Board's Bay/Delta Plan because they fail to protect the Estuarine Habitat and the other designated fish and wildlife uses of the estuary.

Given the State Board's failure to address EPA's concerns either directly or in the D–1630 process, EPA is proposing to supplement the State's criteria with additional salinity criteria to protect the Estuarine Habitat designated use and related fish and wildlife uses of the estuary described above. EPA is emphasizing the Estuarine Habitat designated use because of its importance to the whole spectrum of fish and wildlife uses in the estuary. This emphasis is consistent with the Interagency Statement of Principles' recommendation that restoration efforts focus on habitat protection. The discussion below describes the scientific basis for salinity criteria and presents EPA's conclusions as to this proposal.

b. Developing Salinity Criteria

In developing proposed criteria protecting Estuarine Habitat, EPA has considered the complex hydrological and biological nature of the Bay/Delta estuarine system. Habitat conditions in the estuary change from month to month and year to year primarily in response to precipitation upstream, reservoir operations, agricultural patterns and export rates (Nichols et al. 1986). Many important environmental characteristics within the Delta and Bay respond to changes in water availability, storage and use. The environmental characteristics of particular biological importance include flow rates and volumes within river channels and the Bay, salinity and turbidity levels, water temperature, and the degree of stratification of the water column. Correlations among all these variables are high; thus, each is often a good indicator of the other. However, other factors such as wind, tidal stage, and antecedent conditions influence the day to day values of each variable.

When EPA disapproved the State's criteria on September 3, 1991, it suggested that the State could develop approvable replacement criteria using a number of alternative methodologies: it could adopt additional salinity and temperature criteria, adopt revised flow

criteria, adopt biological criteria, or develop a combination of these or other scientifically-defensible criteria protecting the designated Estuarine Habitat and fish and wildlife uses in the estuary. Upon the State's failure to revise its criteria during the statutory 90 day period (or during the D–1630 process), EPA began developing a federal proposal for criteria protecting the applicable designated uses.

(1) *Entrapment Zone.* The "entrapment zone" was the focus of EPA's initial consideration of water quality criteria due primarily to its perceived importance to the food chain. The entrapment zone, where ocean water flowing landward at depth mixes with freshwater flowing seaward at the surface (Kimmerer 1992), is widely acknowledged to be one of the most important habitats within the estuary. Salinities are usually between 2 and 10 ppt, turbidity and phytoplankton densities are high, and young fish of several species are most abundant in this zone. One of the most important aspects of the entrapment zone is the localized high density of prey. The closest association of predator and prey with the entrapment zone is shown by Delta smelt and its principal food item, the copepod *Eurytemora affinis* (Moyle et al. 1992). Similarly, young striped bass and their principal food item, the shrimp *Neomysis affinis*, are found in the greatest abundance in salinities between 2 and 10 ppt. (Heubach 1969, Siegfried et al. 1979, Orsi and Knutson 1979, Knutson and Orsi 1983, Orsi and Mecum 1986, Obrebski, et al. 1992). Many young fish require high food densities in order to obtain sufficient food for growth (Moyle and Cech 1988), and it has been suggested that the density of food in the entrapment zone may affect fish survival and abundance. However, no direct evidence of starvation has been demonstrated for the declining fish populations of the estuary (Bennett et al. 1990, Moyle et al. 1992). The location of the entrapment zone has also been shown to be important for organisms at lower trophic levels (that is, organisms that are lower on the food chain). Phytoplankton densities are higher when the entrapment zone is within the relatively-shallow Suisun Bay than when it is further upstream in deeper channels (Arthur and Ball 1980). Measurements of phytoplankton growth rates show that shallow areas are ten times as productive as channel areas (Cloern et al. 1983).

In large part because of the relationship between fishery productivity and the entrapment zone described above, EPA initially considered developing federal criteria designed to directly maintain and protect the entrapment zone. However, as described below, discussions among the participants in a workshop convened by the SFEP suggested that salinity criteria would be a more appropriate measure for protecting estuarine habitat.

(2) *San Francisco Estuary Project Workshop Findings.* The SFEP is a five-year cooperative effort by over 100 representatives of public and private entities concerned about the water quality and natural resources of the San Francisco Bay estuary. Funded primarily by EPA and the State of California, the SFEP has developed a Comprehensive Conservation and Management Plan to protect the natural and consumptive water uses of the Bay/Delta (SFEP 1993a). In 1991 and 1992, the SFEP convened a series of workshops to develop the scientific rationale for an estuarine index that would measure the responses of estuarine biota and habitats to various conditions of salinity and flow. The workshops involved approximately thirty scientists and policy makers with expertise in estuarine ecology and water resource management, and included several of the world's most distinguished estuarine scientists. The group focused its attention on the estuary between Carquinez Strait and the confluence of the Sacramento and San Joaquin Rivers. The specific operations of the water projects (water exports, gate closures, etc.) were not directly addressed by the group.

The findings of the workshops were assembled in a final report, Managing Freshwater Discharge to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: The Scientific Basis for an Estuarine Standard (SFEP 1993b) (SFEP Report). All of the conclusions and recommendations in this report were endorsed by a consensus of the estuarine scientists and managers who participated in the final workshop in August of 1992.[3]

Although the workshop group initially focused on the entrapment zone, they concluded that salinity would be a more appropriate index for the development of estuarine standards. Salinity was selected for several reasons: It is of direct ecological importance, it can be measured accurately and easily, and it integrates a number of important estuarine properties and processes. In particular, it is closely associated with the abundance and distribution of species at all trophic levels (SFEP 1993b). The workgroup further concluded that the placement of the 2 parts per thousand isohaline[4] should be used to develop estuarine standards.

Because of the broad spectrum of scientific expertise underlying the SFEP Report, its conclusions and recommendations are included in full as appendix I. For purposes of developing water quality criteria protecting Estuarine Habitat, the following conclusions and recommendations are especially relevant:

* * * * *

(2) Conclusion

> Estuarine standards to be used in conjunction with flow standards should be based upon an index that is simple and inexpensive to measure accurately, that has ecological significance, that integrates a number of important estuarine properties and processes, and that is meaningful to a large number of constituencies.

Recommendation

> Salinity should be used as an index for the development of some estuarine standards.

(3) Conclusion

> Salinity measured at about 1m above the bottom[5] is an index upon which estuarine standards should be developed. The index is a practical way of tracking changes in habitat.

Recommendation

> Standards should be developed using an index that establishes an upstream limit of the position of the 2‰ near-bottom isohaline, averaged over different periods of the year.

* * * * *

(7) Conclusion

> The position of the near-bottom 2‰ salinity isohaline is an index of habitat

[3] The SFEP Report defined "consensus" as follows: "The term consensus is used to represent group solidarity on an issue; a judgement arrived at by most of the scientists and managers present. In all cases, the consensus was unanimous or nearly unanimous." SFEP Report, at p. 3. EPA recognizes that representatives from a number of the participating organizations (the State Water Contractors, the California Department of Water Resources (California DWR), the State Board, and the USBR) subsequently withdrew their names from the final SFEP Report. According to the Final Report, the conclusions are based on the consensus that was achieved by the participants at the workshops.

[4] An "isohaline" is defined as a theoretical or imaginary line in the estuary connecting all points of equal salinity. For example, the phrase "2‰ near-bottom isohaline" means a line stretching across the Delta marking the positions where the salinity of the near-bottom water is 2 parts per thousand. The position of an isohaline in an estuary changes dramatically during the day because of rising and falling tides, which sometimes move the isohaline as much as 5 miles up or downstream during a 24 hour period. By convention, a daily isohaline is measured at its daily mean position for the 24 hour period.

[5] Because the difference between surface and near-bottom salinities is small and because the relationship between them is reasonably well known, surface salinity could also be used. Near-bottom salinity is recommended, however, because it is a more stable indicator. [Footnote in the original.]

conditions for estuarine resources at all trophic levels, including the supply of organic matter to the food web of Suisun Bay, an important nursery area. In other words, well-behaved statistical relationships exist between the near-bottom 2‰ isohaline and many estuarine resources for which sufficient data exist to make appropriate analyses. Moreover, at least a rudimentary understanding exists for the causal mechanisms underlying many of these relationships. The location of the near-bottom 2‰ isohaline is important either because it is a direct causal factor or because it is highly correlated with a direct causal factor (e.g., diversions).

Preliminary analyses show that errors in prediction using models which incorporate only the position of the 2‰ isohaline are comparable to the errors using more complex models which incorporate additional flow-related variables. In other words, given the present data sets, predictive models using only the position of the near-bottom 2‰ isohaline perform as well as more complex models that incorporate other variables. However, some of these other variables may be very important in affecting habitat and the condition of biological resources of the estuary.

Recommendations

At this time, the most appropriate basis for setting salinity standards for the portion of the estuary on which this report concentrates is the position of the near-bottom 2‰ isohaline *alone*, unless it can be shown either that another variable is the controlling variable or that incorporation of additional variables improves the predictive capability.

* * * * *

(10) Conclusion

The actual setting of salinity standards—specifying the upstream locations of the near-bottom 2‰ isohaline for different periods of the year—should be keyed to environmental goals: to achieving and sustaining some desired biological response level specified in terms of habitat protection or abundance and survival rates of important and diagnostic estuarine and wetland species.

Recommendations

Goals should be expressed in terms of desired conditions for some future time. Progress toward those goals should be monitored and reported widely. Environmental goals for the estuary will be most effective if they are expressed in terms of restoring conditions to those that existed at specific historical times. . . .

In developing these conclusions, the workshop participants relied in part on a series of papers developed by Dr. Alan Jassby of the University of California at Davis and Dr. Wim Kimmerer of BioSystems Analysis, Inc. These papers concluded that the position of the 2 ppt isohaline is closely associated with the abundance of estuarine organisms at all trophic levels, as well as with the supply of organic matter from phytoplankton production and riverine loading (phytoplankton POC). The estuarine organisms include primary and secondary zooplankton consumers (*Neomysis* and *Crangon*), a major group of benthic consumers in Suisun Bay (mollusks), bottom-foraging fish (starry flounder), and both survival (striped bass) and abundance (striped bass and longfin smelt) of fish that feed in the water column. For each of these organisms, with the exception of mollusks, abundance levels increase as the position of the 2 ppt isohaline is located farther downstream (Jassby 1993).

The SFEP's final report cautioned that these correlations are not proof of cause and effect relationships. That is, the report did not attempt to identify the causal mechanism linking the salinity regime and the abundance of estuarine organisms. Further, the report did not address other factors unrelated to water quality, such as overfishing, that may also have an impact on abundance of certain aquatic resources. Nevertheless, salinity integrates a number of important estuarine properties, is easy to measure, and is readily understood by all interested parties. The particular value of 2 ppt near-bottom salinity was selected because it occurs near the upstream limit of marine salt penetration, is higher than salinities derived from agricultural runoff, is close to the entrapment zone and is associated with little stratification of the water column. The group concluded that the location of the 2 ppt isohaline, measured as kilometers upstream from the Golden Gate Bridge, is the most appropriate index of habitat conditions underlying the variability in biological resources (SFEP 1993b).

These findings in the SFEP workshop reports are entirely consistent with other scientific work in the Bay/Delta. For example, Dr. Peter Moyle testified to the State Board that nursery habitat (represented by areas of low salinity) in Suisun Bay is now more important than it was historically due to the high risks of entrainment[6] faced by fishes in the Delta. After discussing a variety of mechanisms that may be behind the declines of most aquatic populations of the upper estuary, Dr. Moyle concluded that "[w]hile the exact mechanisms that account for the importance of having the [entrapment] zone in Suisun Bay (increased food supplies, physical concentration of organisms, association with higher flows, etc.) are being debated, there seems little doubt that many fish species depend on this location for their long-term survival" (Moyle 1992, WRINT–NHI–9). Dr. Moyle recommended that in wetter years the zone of low salinity habitat should be located near Roe Island but that in drier years this requirement could be shifted upstream to Chipps Island. In addition, the USFWS cited the importance of low-salinity habitat in Suisun Bay in the January to June period in its 1991 proposal to designate critical habitat for Delta smelt under the ESA. 56 FR 50075 (October 3, 1991).

c. Ecological Significance of Salinity Levels

EPA is selecting the 2 ppt isohaline as the basis for its proposed criteria in part because that isohaline incorporates a whole range of factors relevant to the estuary's health, even though the operation of some of these factors is not fully understood. Some species that show high correlations with the location of the 2 ppt isohaline are not abundant in low salinity habitat and are probably responding to river flow or other correlated factors. However, salinity in the 2 ppt range is clearly and directly important to a broad range of estuarine species and the location of this salinity is strongly associated with the abundance and distribution of many of these species. The SFEP Report emphasized that it is well established scientifically that salinity has direct ecological importance to many estuarine species in this estuary and others throughout the world (SFEP 1993b). In fact, much of the distribution of estuarine species can be explained by their association with specific salinity ranges and their ability to survive and reproduce within certain salinity limits. The following sections summarize the best available evidence on the direct effects of the location of low salinity habitat on the distribution and abundance of key species and habitats within the Bay/Delta estuary. This scientific evidence provides substantial support for the need for the proposed salinity criteria protecting the water quality necessary to sustain the ecological health of the estuary.

—Delta smelt. Delta smelt (*Hypomesus transpacificus*) are found today only in the upper reaches of the Sacramento-San Joaquin estuary. Early studies by the California DFG of the two most abundant smelts, longfin smelt and Delta smelt, noted that changes in the historical location of the entrapment zone would threaten populations of both species (Broadway 1979). In its initial notice of petition findings for the listing of the Delta smelt as threatened under the ESA, the USFWS found that "the annual export of 6 million acre-feet of water by Federal, State and private agencies has allowed the intrusion of higher salinity seawater to the marshes. Because of higher salinities, the Delta smelt has lost spawning and nursery areas in Suisun Bay and Suisun Marsh." 55 FR 52852, 52853 (December 24, 1990). The final rule listing Delta smelt

[6] Strictly defined, "entrainment" is the displacement of fish or other aquatic organisms from their location in one waterbody to another as a result of the operation of a water diversion. In the Bay/Delta, however, the term "entrainment" is generally used to refer to the destruction of fish or larvae at the intake mechanisms of the many water diversion facilities in the Delta. Most entrainment occurs when fish or larvae are pulled into screens or pumps by the diversion apparatus.

as a threatened species found that embryonic, larval and post-larval mortality rates increase as salinities in the western Delta increase and the entrapment zone moves upstream. Delta smelt larvae survive and grow best when the entrapment zone occupies a broad geographic area with extensive shallow areas. Delta smelt reproduction has probably suffered in recent years because the entrapment zone has been located east of Suisun Bay. 58 FR 12854 (March 5, 1993).

In the proposal to list the Delta smelt as a threatened species, the USFWS identified critical habitat for the species as requiring salinities less than 2 ppt in Suisun Bay from January through June. 56 FR 50075, 50079 (October 3, 1991). When listing the Delta smelt as threatened, the USFWS deferred designation of critical habitat until October 1993. In summarizing the factors affecting Delta smelt, the USFWS concluded that the biological characteristics of the species made it very sensitive to perturbations in its reproductive habitat and larval nursery grounds. The final listing notice further determined that Suisun Bay is the primary nursery habitat for this species and that the habitat has been degraded because of higher salinities in the spring due to upstream freshwater diversions. 58 FR 12854, 12860 (March 5, 1993).

The USFWS's conclusions were also supported by an interagency Delta smelt working group convened by the USFWS after its proposal to list the species under the ESA. The working group included representatives of USFWS, EPA, USBR, California DFG, and the California DWR. The working group developed several recommendations to increase abundance levels of Delta smelt, including maintaining the 2 ppt zone in Suisun Bay during the Delta smelt's early months of life. The working group's recommendation was that low salinity habitat be kept in Suisun Bay in all years; no attempt was made to adjust the position of the zone to account for dry year conditions (USFWS 1992f, WRINT–USFWS–15).

The USFWS's proposed critical habitat designation has been supported by a recently published paper by biologists of the California DFG and the University of California at Davis. The authors concluded that Delta smelt are most abundant in low salinity water associated with the entrapment zone. During the years preceding their decline, Delta smelt were found most abundantly at sites where low salinity conditions coincided with shallow habitats. Since their decline, low salinity conditions have been found in areas where little shallow habitat is available. The principal conclusion of these authors was that "[r]estoration of the Delta smelt to a sustainable population size is likely to require maintenance of the [entrapment] zone in Suisun Bay and maintenance of net seaward flows in the lower San Joaquin River during the period when larvae are present" (Moyle et al. 1992).

The State Board's 1991 Bay/Delta Plan also acknowledged that the location of the 2 ppt isohaline is important for Delta smelt, finding that "existing knowledge suggests that salinities of 2 ppt or less are desired in Suisun Bay from March through June." However, rather than adopting protective salinity criteria, the State Board suggested that protection of low-salinity habitat would be dealt with as a "flow" issue in the subsequent scoping and water rights phases of its proceedings (1991 Bay/Delta Plan, p. 5–44). As explained in more detail above, to date the State Board has failed to adopt any additional standards since its 1991 Bay/Delta Plan.

—Striped Bass. Striped bass (*Morone saxatilis*) support one of the most economically important sportfisheries in the Bay/Delta estuary. The striped bass population (and consequently the number of anglers) has plummeted since the early 1970's, with populations declining by as much as 70 percent from historical levels (Stevens et al. 1985; White 1986; CDFG 1992b, WRINT–DFG–8). Although striped bass populations exist elsewhere in entirely freshwater habitats, the species thrives only in estuarine conditions (Talbot 1966), and in the Sacramento-San Joaquin estuary low salinity habitat appears to provide important nursery grounds (Wang 1986). Adult striped bass migrate upstream to spawn in fresh water. The planktonic larvae are carried downstream and concentrate in areas of low salinity (Moyle 1976). When this low salinity zone is located in Suisun Bay, survival of young bass is improved (Turner and Chadwick 1972). As a result, several parties have recommended that the entrapment zone be maintained in Suisun Bay to improve striped bass year class survival (Moyle 1992, WRINT–NHI–9; USBR 1991, WRINT–USBR–2; USFWS 1992d, WRINT–USFWS–19; USFWS 1992e, WRINT–USFWS–20; Moyle and Herbold 1989; Moyle, et al. 1989).

Other factors, including year-to-year variations in outflow and exports, have also contributed to the decline of the striped bass population. California DFG has developed a model suggesting that export limitations also are necessary to preserve the striped bass fishery. Accordingly, California DFG's recent recommendations to protect striped bass have focused on reducing entrainment of fish, eggs and larvae in water pumps operated by the SWP and the CVP, rather than on maintaining protective salinity conditions (CDFG 1992e, WRINT–DFG–3; D–1630). However, according to a series of papers developed for the SFEP-sponsored workshops, models that are based on the downstream extent of low salinity habitat are at least as accurate in predicting striped bass abundance as the California DFG model based on flows and exports (Jassby, in SFEP 1993b; CDFG 1992e, WRINT–DFG–3). The studies cited above suggest that, regardless of the effects of entrainment at the diversion pumps, low salinity nursery habitat in Suisun Bay is important and that this habitat has sharply declined in recent years. Based on these studies, EPA believes that salinity criteria in Suisun Bay are necessary to protect nursery habitat of the striped bass.

—Sacramento splittail. Sacramento splittail (*Pogonichthys macrolepidotus*) are now restricted to the lower reaches of the rivers flowing into the Sacramento-San Joaquin Delta and the upper regions of the San Francisco Bay complex, particularly Suisun Bay and Suisun Marsh (Moyle 1976; Moyle 1980). Historically, this species occurred throughout the lowlands of the Sacramento Valley, but diking and dredging have eliminated 96% of the wetland habitats this species appears to require (Meiorin et al. 1991). Currently, the population lives largely in the shallow, low salinity habitat of Suisun Bay and Marsh but in early spring adults migrate upstream through the Delta to spawn near the mouths of the rivers along the Delta's eastern edge (Daniels and Moyle 1983). Although this migration pattern predominates for most of the splittail, lower concentrations of the species can be found in most locations in the Delta throughout the year.

In recent years, fewer numbers of newly-spawned splittail have moved across the Delta, back to Suisun Bay. Recent severe declines in regions in which splittail were formerly abundant resulted in the filing of petitions to list the species as endangered under the ESA. 50 FR 36184 (July 6, 1993). The only other member of the genus, found in Clear Lake, California, became extinct in the early 1970's.

No physiological studies have been done to determine the specific salinity tolerances of the splittail, but it is likely that high salinities restrict their downstream range. The scarcity of shallow habitats upstream and the increase of salinity in Suisun Bay and

Suisun Marsh have greatly restricted the habitat required by this species.

Sacramento splittail recruitment displays a strong relationship to annual outflow (Daniels and Moyle 1983). The exact mechanism that results in this relationship is unclear; years of higher outflow provide better cues to direct successful migration upstream by adults, larger areas of flooded vegetation on which the adults can spawn (Caywood 1974), higher flows to transport the newly spawned young downstream, and larger areas of suitable habitat in Suisun Bay and Suisun Marsh. Protection of historical habitat conditions in the Bay/Delta through the implementation of the proposed salinity criteria should therefore provide indirect protection for all the needs of this species that depend on outflow.

—Estuary dependent species. In addition to Delta smelt and striped bass, several other fish species are dependent on brackish-water nursery habitat. The juveniles of these species, collectively referred to as "estuary dependent species" by the California DFG, live predominantly downstream of the Delta within a salinity range of approximately 0 to 22 ppt, although the range varies somewhat by species. This habitat is larger than the nursery habitat for Delta smelt and striped bass, but nevertheless has substantially diminished in size as water has been diverted and stored for upstream uses.

Three of these species, bay shrimp (*Crangon franciscorum*), starry flounder (*Platichthys stellatus*), and longfin smelt (*Spirinchus thaleichthys*), depend on brackish-water nursery habitat for a significant portion of their life cycles. Bay shrimp and starry flounder are important components of commercial and sport fisheries, and their protection is important to maintain the State's Ocean Commercial and Sport Fishing designated uses, as well as the Estuarine Habitat designated use.

The bay shrimp is the largest shrimp species in the estuary, and has been the most numerous, except during recent prolonged drought conditions, when abundance has been very low. It supports a commercial bait fishery in the Bay, and is an important food source for the larger fish of the estuary. Reproductive adults and larvae are found in the more marine habitats of Central San Francisco Bay and nearshore Gulf of the Farallones. Transforming larvae and early juveniles move into the Bay from the nearshore ocean, and maturing juveniles are mainly found in warm, shallow, brackish water areas (2 to 22 ppt) of the estuary (CDFG 1992; WRINT–DFG–6).

Starry flounder also use the brackish areas of San Francisco Bay as nursery habitat. After moving into the Bay as transforming larvae from the nearshore ocean during the spring, young-of-the-year juvenile flounder (smaller than 70 mm) are found primarily in warm shallows where salinities are less than 22 ppt (CDFG 1992, WRINT–DFG–6). By the second year of life (1+), the fish have moved out of fresh water completely and are concentrated in the brackish water areas of the Bay. By the third year of life (2+) they have spread throughout the higher salinity areas, and many have migrated out of the Bay.

Starry flounder supports both a commercial and recreational fishery in the San Francisco Bay area. Commercial catch has varied between 486 thousand pounds in 1980 to a minimum of 40 thousand pounds in 1990. Although starry flounder are a small component of the flatfish catch (2 percent by weight), they are second only to California halibut in price per pound at the dock (CDFG 1992, WRINT–DFG–6). Commercial passenger fishery total catch and catch per unit effort in San Pablo Bay have declined dramatically since the mid-1970's. Abundance of starry flounder young-of-the-year and one-year-olds (1+) has been consistently low since 1986, and older starry flounder (two years old and older) have also declined in the Bay since the mid-1970's, based on Commercial Passenger Fishing Vessel logs (CDFG 1992, WRINT–DFG–6).

Until recently, longfin smelt has been one of the most abundant fish species in the estuary. This species spawns in freshwater, and larvae and juveniles smaller than 50 mm are predominantly found in brackish water with bottom salinities less than 18 ppt. According to California DFG, water with less than 18 ppt salinity in the spring months of March through June constitutes important nursery habitat for longfin smelt (CDFG 1992, WRINT–DFG–6). Recent populations of longfin smelt have been very low, and in 1991 the population reached the lowest number ever recorded since monitoring was initiated in 1967. As a result, this species has been the subject of a petition for listing under the ESA. See Petition for Listing Under the Endangered Species Act—Longfin smelt and Sacramento splittail, National Heritage Institute (November 5, 1992).

There are close correlations between the location of the near-bottom 2 ppt isohaline during winter/spring and annual abundance indices of bay shrimp, starry flounder, and longfin smelt (Jassby 1992). Annual abundances are low when the position of the near-bottom 2 ppt isohaline is upstream and does not move to and remain at a position near Roe Island for any extended period of time. Under these circumstances, the brackish-water nursery habitat favored by these species is primarily limited to Suisun Bay. Salinity data from California DFG studies indicate that when near-bottom salinities are at or below 2 ppt near Roe Island in Suisun Bay, salinities downstream over the large shallow flats of San Pablo Bay are characteristically less than 18 to 22 ppt (CDFG 1993). In years when the position of the near-bottom 2 ppt isohaline moves downstream at least as far as Roe Island in the spring, the area of low-salinity habitat expands into the large shallows of San Pablo Bay and these species are more abundant. These areas of San Pablo Bay provide greatly increased habitat within the salinity ranges preferred by juveniles of these species.

As with striped bass, other factors are also likely to contribute to year-to-year variations in abundance of these species, including the strength of net landward bottom currents (shrimp and flounder), coastal distribution of reproductive adults and larvae (shrimp and flounder), and successful downstream transport and dispersal of larvae and juveniles (smelt) (CDFG 1992, WRINT–DFG–6). However, brackish-water nursery habitat is essential to the juveniles of these three species, and is a major factor in the strong correlation between the position of the near-bottom 2 ppt isohaline and abundance. According to studies by California DFG, an index of brackish water habitat is strongly correlated with abundance indices for these three species (CDFG 1992, figs 1–3, WRINT–DFG–6). EPA's proposed salinity criteria, by providing estuarine habitat conditions similar to the healthier reference period of the late 1960's to early 1970's, should restore and maintain the brackish-water nursery habitat required by these three species.

—Suisun Bay Tidal Wetland Species. The tidal wetlands bordering Suisun Bay are characterized as brackish marsh because of their unique combination of species typical of both freshwater wetlands and more saline wetlands.[7]

[7] There are currently no salinity criteria protecting the Estuarine Habitat, Wildlife Habitat, and other fish and wildlife uses of the brackish tidal marshes of Suisun Bay. These large tidal marshes are distinct from the "managed" marshes in the Suisun Bay. EPA's approval of the 1978 Delta Plan criteria was explicitly conditioned on the State Board's commitment to develop additional criteria for the tidal marshes and to protect aquatic life in the Suisun Marsh channels and open waters. Because these conditions have not been met, EPA, in its September 3, 1993 letter on the 1991 Bay/Delta Plan, disapproved the standards for Suisun Marsh and stated that the State Board should immediately develop salinity objectives sufficient to protect aquatic life and the brackish tidal wetlands surrounding Suisun Marsh.

Suisun Marsh itself, bordering Suisun Bay on the north, is the largest contiguous brackish water marsh in the United States. A large portion of the wetland habitat (approximately 44,000 acres) in this marsh is currently diked and managed for waterfowl use and hunting. Approximately 10,000 acres bordering Suisun Bay are still fully tidal (Meiorin 1991).

These tidal marshes provide habitat for a large, highly diverse, and increasingly rare ecological community. The recent "Status and Trends" reports published by the SFEP listed 154 wildlife species associated with the brackish marshes surrounding Suisun Bay (Harvey, et al. 1992), including a number of candidates for listing under the ESA. These include the Suisun song sparrow (*Melospiza melodia maxillaris*) and the Suisun ornate shrew (*Sorex ornatus sinuosus*), as well as the plants Suisun slough thistle (*Cirsium hydrophilum* var. *hydrophilum*), Suisun aster (*Aster chilensis* var. *lentus*), delta tule pea (*Lathyrus jepsonii*), Mason's lilaeopsis (*Lilaeopsis masonii*), and soft-haired bird's beak (*Cordylanthus mollis*). These rare species are all found exclusively in tidally inundated marsh.

As part of the SFEP-sponsored workshops, a comprehensive literature review and intensive field surveys of marsh vegetation were undertaken to document the responses of estuarine marsh communities to changes in the salinity regime (Collins and Foin 1993). The study concluded that salinity levels in the tidal marshes play a major role in the distribution and abundance of plant species. In addition, average tidal marsh salinity levels are related to the position of the 2 ppt isohaline, although local controls on salinity are important in some areas.

The study also found that recent increases in salinity caused by a combination of upstream diversions and drought have adversely affected the tidal marsh communities. As salinity has intruded, brackish marsh plants which depend on soils low in salt content (especially the tules *Scirpus californicus* and *S. acutus*) have died back in both the shoreline marshes and in some interior marsh channel margins of the western half of Suisun Bay. These plants have been replaced by plants typically growing in saline soils, especially cordgrass (*Spartina foliosa*). This has been associated with erosion of the marsh margins, significantly reducing the tidal marsh acreage in some areas. In addition, tules in the upper intertidal zone have been replaced by the smaller and more salt tolerant alkali bulrush (*Scirpus robustus*). These changes have significantly affected available habitat for a variety of wildlife that nest and feed in these areas, including the Suisun song sparrow, marsh wren, common yellowthroat, black-crowned night heron, and snowy egret (Collins and Foin 1993; Granholm 1987a; 1987b). The loss of habitat for the Suisun song sparrow is of particular concern, since individuals of this species are found only in the already fragmented marshes bordering Suisun Bay, occupy an established territory for their lifetime, and depend on tall tules for successful reproduction and cover from predators (Marshall 1948).

Although there have been no studies of the direct effects of salinity on rarer plant species, these species are likely to have the same salinity requirements as non-rare species residing in the same plant communities. Delta tule pea and Suisun aster are associated with tules along the banks of tidal sloughs (CDFG 1991). Mason's lilaeopsis is also found along tidal banks, associated with the more freshwater marsh species, including tules, and in the shade of riparian shrubs such as willows (CDFG 1991). Suisun thistle and soft-haired bird's beak are found in the few remaining higher elevation tidal marshes. All of these species are limited to marsh areas seasonally inundated with fresh to brackish water, and depend on such conditions to varying degrees.

For those brackish marsh plants depending on freshwater conditions, the most critical growth period is February through June. If suitable lowlands were present upstream, increases in the estuary's salinity gradient would allow brackish tidal marsh communities to migrate upstream. However, the floodplains and other lowlands suitable for the evolution of tidal marshes are absent upstream of Suisun Bay (SFEP 1993b). As a result, increases in tidal water salinity may significantly reduce the already severely limited freshwater and brackish marsh habitats, and will threaten the natural diversity of the estuary's wetland communities. Maintaining historical levels of low-salinity habitat in Suisun Marsh is therefore essential to protect Estuarine Habitat, Wildlife Habitat, Rare and Endangered Species, and other uses designated for protection by the State's water quality standards.

d. Proposed Criteria

(1) *Preliminary considerations.* This section discusses three issues that affect EPA's proposal: the proper level of protection for designated uses, the basis for choosing the locations for measuring the proposed criteria, and the proper time period for maintaining the proposed criteria.

—Level of Protection. One of the key recommendations of the SFEP-sponsored workshops was that environmental goals for the estuary would be most effective if expressed in terms of restoring conditions to those that existed at specific historical periods. If a certain level of ecosystem restoration is selected as a goal, then the relationship between abundance and the location of the 2 ppt isohaline (and the amount of water necessary to achieve that isohaline) can be used as a basis for setting standards that will achieve those goals. (SFEP 1993b).

This historically-based approach is consistent with EPA's National Program Guidance for Biological Criteria for Surface Waters (USEPA 1990). EPA's National Program Guidance recommends that aquatic communities in waterbodies subject to anthropogenic disturbance be assessed in comparison to similar, but unimpaired waterbodies (a reference condition). Although the Guidance discusses designation of a reference site to compare directly with an impaired waterbody, analysis of historical records is also recommended. In the case of the Bay/Delta, a reference waterbody is not available. Instead, reference conditions have been based on historical information.

The proposed salinity criteria reflect estuarine habitat conditions that existed prior to 1976. In the recent State Board hearings, EPA, NMFS, and USWFS recommended standards that would restore habitat conditions to levels that existed in the late 1960's and early 1970's (USFWS 1992g, WRINT–FWS–10).[8] This period generally reflects

[8] This restoration goal is less protective than the "without project" goal targeted by the State Board as part of its water quality standards in 1978. In the 1978 Delta Plan, the State Board adopted standards intended to achieve levels that would have existed in the absence of the state and Federal water projects, and agreed to revise the standards if necessary to achieve this goal. This "without projects" goal was never formally incorporated into the State's water quality standards, and its continued validity as a stated goal is in question given the court's decision in *United States et al. v. State Water Resources Control Board, supra*) (reviewing the 1978 Delta Plan and rejecting the "without projects" approach). EPA continues to believe that fully offsetting the impacts of water development should be the goal of long-term planning efforts by the State Board and other agencies. However, because of the precipitous

Continued

conditions that occurred in the estuary before fish habitat and populations began to experience the most recent significant declines, and therefore serves as a useful definition of a healthy fishery resource. Land use patterns and upstream water developments had largely stabilized by the end of this period so that increases in project impacts are the dominant change associated with the subsequent decline in fishery resources. The reclamation of wetlands was largely complete by the 1920's, and the largest of the upstream developments, Shasta Reservoir, was completed in the early 1940's.

Ideally, EPA would use the late 1960's to early 1970's habitat conditions as both the targeted level of protection and the historical reference period. However, to better reflect the natural variability of wet and dry years, EPA is proposing criteria that vary according to the "water year type". The water year type concept is already fully integrated into the operations of California water management, and the State Board's classification of years into one of five categories (wet, above normal, below normal, dry, and critically dry) is accepted as the standard water year type classification scheme.

The period of the late 1960's to early 1970's, however, contained no dry or critically dry years and only one above normal year. Thus, in order to provide an adequate representation of the different water year types, EPA is proposing the use of the period 1940 to 1975 as the historic reference period. An examination of the historical record reveals that this 35 year period was one of fairly consistent hydrological conditions. The period is bracketed by major hydrological changes—the construction of Shasta Dam immediately before this period, and the extended drought and increased water exports beginning immediately after this period in 1976.

Including the longer 1940–1975 period as the historical reference period allows better estimation of the salinity regime for different water year types than would use of only the late 1960's to early 1970's. Given that the hydrological conditions were fairly consistent throughout the longer 1940–1975 period, EPA believes this longer historical reference period serves as a better long term indicator through all water year types of the habitat conditions existing in the recommended target years of the late 1960's to early 1970's.

The development of the historical salinity regime is presented in appendix II. Salinity records extend back only to 1967, whereas daily flow estimates are available from October 1929. Using models created by California DWR relating flow and salinity allows reconstruction of the salinity regimes in the historical reference period.

—Basis for locations selected. Three locations for the proposed 2 ppt isohaline were selected to correspond to protection of three different types of estuarine habitat in different water years. Together, the use of these three locations will maintain the natural variability in salinity levels that characterize the historical data set at medium to lower flow levels (those substantially within the control of upstream diverters).

Roe Island. The 2 ppt isohaline occurs at or below Roe Island at times of high outflow accompanying storms with uncontrolled runoff, as well as at times of high water releases from upstream dams. These flows carry many young fish from the Delta downstream into Suisun Bay. Because the entrapment zone will consistently be near the broad shallows and large marsh areas of Suisun Bay, the young fish and other organisms associated with the zone will be distributed into these diverse and productive habitats, greatly increasing the extent and value of their available habitat. This location will also maximize the inputs of production from Suisun Marsh and the shallows of Suisun Bay into the entrapment zone, and will provide greatly increased areas of medium to low salinity nursery habitat for estuary dependent species in San Pablo Bay.

Chipps Island. The downstream end of Chipps Island marks the upstream end of Suisun Bay. As noted above, low salinity habitat in Suisun Bay has been well documented as an important nursery area for Delta smelt, striped bass, and other estuarine species. Suisun Bay also represents the farthest upstream extent of large areas of shallow habitat. These shallow habitats are more productive than deeper channels (Cloern et al. 1983), and horizontal flows across these shallows bring food sources into the entrapment zone. For some species, particularly Delta smelt, shallow areas near the entrapment zone are a preferred habitat (Moyle et al. 1992), perhaps as a refuge from predation. When the average salinity at Chipps Island is less than 2 ppt, organisms associated with this habitat will be in or near the shallow habitats of Suisun Bay for half of each tidal cycle.

Confluence of Sacramento and San Joaquin Rivers. The confluence of the Sacramento and San Joaquin Rivers marks the point where organisms associated with low salinity habitat are exposed to the detrimental conditions in the lower San Joaquin River. The higher mortalities and poorer habitat conditions associated with the lower San Joaquin River have been documented at length in testimony to the State Board (USBR 1992, WRINT–USBR–2; Moyle 1992, WRINT–NHI–9). This location, then, provides a suitable upstream limit for the 2 ppt isohaline. When average salinities at the confluence reach the 2 ppt level, the organisms associated with low salinity habitat will have access to the shallow habitats downstream in Suisun Bay only during the lower low tide point of the tidal cycle.

—Period of protection. Changes in water quality that have affected aquatic resources have been greatest during the period from February to June. Under naturally-occurring hydrological conditions, flows in these months were often very large while in summer flow rates declined and salinity in the delta increased. Upstream diversions have altered this natural pattern by reducing peak spring flows and, in some years, increasing flows during the late summer and fall months. The changes in summertime water quality (towards lower salinity) occur during a season when most of the fish species have already completed their spawning or migration (Monroe and Kelly 1992).

The abundance and reproductive success of almost all species that live in or migrate through the upper estuary depend strongly on conditions during the months from February through June (Stevens 1977; Daniels and Moyle 1983; Stevens and Miller 1983; Moyle and Herbold 1989; Herbold et al. 1992; SWC 1992, WRINT–SWC–1). These species survive and reproduce more successfully when Suisun Bay has large areas of low salinity habitat (less than 2 ppt), San Pablo Bay has large areas of medium to low salinities (less than 18 to 22 ppt), river outflows are high, bottom currents are strong, temperature is low, and the areas of greatest turbidity are downstream of the Delta. Because of the combination of drought conditions and high levels of water exports, these conditions have occurred very rarely in recent years. Therefore, EPA's proposed criteria center on these five months.

(2) *Proposed criteria.* EPA's specific proposed criteria are shown in Table 1. They include 2 ppt salinity criteria at Roe Island, Chipps Island, and at the Sacramento/San Joaquin River confluence from February through June. The criteria replicate the average number of days on which the 2 ppt isohaline occurred at or downstream from each of these locations during the historical period 1940–1975, inclusive, classified by water year type. Because no critically dry years occurred in the period from 1940 to 1975, the required number of days for critically dry years is based on an extrapolation of the data.

The proposed criteria are measured using a 14-day moving average. The use of a 14-day moving average allows the mean location to be achieved despite the varying strength of tidal currents during the lunar cycle because any 14 day period will include the full range of spring and neap tidal conditions.

TABLE 1.—PROPOSED 2 PPT SALINITY CRITERIA

Year type	Roe Island [km 64] (days)	Chipps Island [km 74] (days)	Confluence [km 81] (days)
Wet	133	148	150
Above normal	105	144	150
Below normal	78	119	150
Dry	33	116	150
Critically dry	0	90	150

Numbers indicate required number of days (based on a 14-day moving average) at or downstream from each location for the 5-month period from February through June. The water year classifications are identical to those included in the 1991 Bay/Delta Plan for the Sacramento River Basin. Roe Island salinity shall be measured at the salinity measuring station maintained by the USBR at Port Chicago (km 64). Chipps Island salinity shall be measured at the Collinsville station, and salinity at the Confluence shall be measured at the Mallard Slough station, both of which are maintained by the California Department of Water Resources. The Roe Island number represents the maximum number of days, based on the adjustment described below.

Example: In a wet year, the 2 ppt isohaline must be maintained at or downstream of the Confluence at least 150 days during February through June, at or downstream of Chipps Island for at least 148 days during that same period, and, ignoring for a moment the adjustment described below, at or downstream of Roe Island for at least 133 days.

Adjusting the Roe Island standard to reflect intra-year storm variability. As noted above, the proposed criteria at Roe Island are intended, in part, to replicate low salinity habitat conditions resulting from spring storm events. Storm events in the spring provide many benefits to aquatic resources of the estuary. Large areas of flooded vegetation provide ideal spawning for some species, high flows transport many planktonic larvae downstream, and translocation of low salinity habitat allows wide dispersion of many species which reduces predation (and perhaps competition) and replenishes otherwise isolated areas. In addition, the variability in salinity over a wide range is thought to be an important tool in preventing the buildup of molluscan species and, thus, ensures that more food will accumulate in the entrapment zone (Nichols 1985; Nichols and Pamatmat 1988).

The proposed criteria at Roe Island, unadjusted, would fully protect low salinity habitat, but would not accurately reflect the historical natural variability in runoff and precipitation. The distribution of storm systems within the October to April wet season varies greatly year-to-year. In some years, all storm events are concentrated in early winter, whereas in others the storm events are evenly distributed or concentrated in the spring. This natural historical variability is reflected in the proposed salinity criteria.

Without some form of adjustments, salinity criteria at a fixed downstream location would also result in more flows through the estuary than might be necessary to maintain water quality (that is, the "water costs" would be unnecessarily high). The flows necessary to hold the 2 ppt isohaline at a particular location in the estuary are substantially less than the flows needed to move that isohaline downstream to a different position. In the Bay/Delta, these higher flows used to move the isohaline could come either from natural storm events or from controlled reservoir releases. The proposed standard provides for an adjustment of the Roe Island standard to more closely replicate natural spring storm cycles. This adjustment will avoid adverse impacts on species (such as the winter-run salmon) dependent on upstream reservoir conditions.

Under the proposal, the criteria of number of days for a given year type at Roe Island would not apply unless and until the average daily salinity at Roe Island attains the 2 ppt level through natural uncontrolled flows. Following the occurrence of such an event, the 14 day average salinity at Roe Island must not exceed 2 ppt for the number of days specified in Table 1. Therefore, the number of days listed under Roe Island represents the maximum of the number of days that may be required. In effect, this adjustment provides that the additional water needed to move the isohaline downstream to Roe Island will come from natural storms rather than from reservoir releases or export restrictions. This approach better reflects the natural variability in timing and quantity of runoff and significantly reduces the water supply impacts of the proposed criteria relative to criteria that do not account for this variability.

e. Implementation Measures

Under the CWA, the states have a primary role in developing measures implementing water quality criteria. EPA expects that the State Board would implement these salinity criteria by making appropriate revisions to operational requirements included in water rights permits issued by the State Board. Consistent with the mandates of section 101(g) of the CWA, the State Board has full discretion in determining the source of water flows necessary to meet these criteria. EPA has intentionally drafted its proposed criteria to be measured at or downstream of the confluence of the Sacramento and San Joaquin Rivers. This allows the State Board maximum latitude in choosing a mix of flow conditions and export restrictions in both river basins.

Although the State Board has full discretion to develop an implementation plan for these criteria in

decline in the biological communities of the estuary in the last decade, this goal is no longer reasonably attainable in the short term, given the existing physical facilities and water project operations in the Delta. As a result, EPA, USFWS and NMFS have recommended that the State Board immediately set standards sufficient to restore estuarine habitat conditions to those that existed in the late 1960's and early 1970's, and to establish a long-term goal of fully offsetting the impacts of water development (USFWS 1992g, WRINT–FWS–10). This long-term goal is consistent with the goals of the recently-enacted Central Valley Project Improvement Act (Title 34 of P.L. 102–575, 106 Stat. 4600) (Central Valley Project Improvement Act), which include programs to mitigate the adverse effects incurred as a result of the construction of the CVP.

the manner it chooses, EPA and the other federal agencies involved in water resource management issues in the Bay/Delta (USFWS, NMFS, and USBR) urge the State Board to spread the burden across as broad a spectrum of water users as possible. The economic analysis prepared in conjunction with this proposal suggests that spreading the burden results in substantially lower costs than does imposing the burden on a particular geographical area or a narrowly defined group of water users. This is not just a matter of fairness. The federal agencies' preliminary discussions with water project managers indicated that increasing the pool of contributors substantially increases the operational flexibility of the water system, and thereby reduces the total impact of meeting the proposed criteria. For that reason, the federal agencies hope the State Board will continue the concept it adopted in its proposal for D–1630, and will allocate the burden of meeting these criteria across the broad range of the state's water users.

2. Fish Migration and Cold-Water Habitat Criteria

a. Background

The State's designated uses for the Bay/Delta include Cold Freshwater Habitat to sustain aquatic resources associated with a coldwater environment, and Fish Migration to protect those fish which migrate through the estuary. The migratory fish species associated with the cold-water environment in the Bay/Delta are chinook salmon (*Oncorhynchus tshawytscha*) and steelhead trout (*Oncorhynchus mykiss*).

Currently there are four distinct populations of salmon in the Sacramento/San Joaquin river systems, each named for the season of their migration upstream as adults. The fall-run population is now the most numerous; in recent years, typically 90 percent of all Central Valley spawners are fall-run fish. Increased hatchery production of fall-run fish has resulted in stable spawning returns of fall-run fish passing the Red Bluff Diversion Dam on the Sacramento River; however, wild fall-run chinook abundance is low and is decreasing. The Sacramento River system still supports small winter-run, spring-run and late fall-run populations, but these populations have all declined dramatically in recent years (USFWS 1992a, WRINT–USFWS–7). The winter-run population is now listed as threatened under the ESA. The spring-run population has recently reached low enough levels to be recognized as a species of special concern by the State of California.

Steelhead trout are also cold-water migratory fish within the Sacramento River System. They have suffered a 90 percent decline since the late 1960's, and are supported largely by hatchery production (CDFG 1992a, WRINT–DFG–14).

The San Joaquin River system supported both fall and spring runs until the 1940's when Friant Dam was built. The dam prevented the spring-run fish from reaching cool upstream areas suitable for summer rearing, so the spring-run disappeared and presently there is only a fall-run population. Recently, the San Joaquin population has been highly variable, reaching very low levels in times of drought, and responding quickly to higher wet year flows. Inadequate stream flows, water developments, poor water quality, water diversions, and habitat deterioration have had varying degrees of impact. Continuing high levels of water diversions from the San Joaquin River and tributaries, and high exports out of the South Delta, in concert with the recent extended drought have caused major impacts to all San Joaquin tributary runs. Population levels are extremely low, and the 1991 brood year may only produce a total of 100 to 300 returning adults in 1994 when these adults return to spawn at the end of their three year life cycle (CDFG 1992c, WRINT–DFG–25).

Salmon and steelhead populations are subject to increased mortality when exposed to high temperatures and when diverted out of the main channels of the Sacramento and San Joaquin Rivers into less suitable habitat. Those fish diverted from the main channels are also subject to increased mortality as water exports at the State and Federal pumping plants in the south Delta increase. USFWS tagged smolt [9] studies between 1984 and 1989 found that smolts migrating out of the Sacramento River system in the spring survived on average approximately 3.4 times better in the Sacramento main channel than in the interior (central) Delta. Results from studies carried out in the spring of 1985 to 1990 showed on average approximately 2 times better survival in the main channel of the San Joaquin River than in Old River, a secondary channel. Higher temperatures affect smolt mortality both in the main channel and in the central Delta. For example, the recent (1992) USFWS results from spring tagged smolt releases into the central Delta showed that mortality was approximately 2½ times greater at 67 °F than at temperatures of 63° and 64 °F (USFWS 1992a, WRINT–USFWS–7).

State and federal legislators have recognized the serious threat to the continued existence of migratory fishes in the Bay/Delta. In 1988, the California State legislature mandated a restoration goal of doubling natural salmon and steelhead production by the year 2000, and required development of a plan to meet this goal. Salmon, Steelhead Trout, and Anadromous Fisheries Program Act; codified at Cal. Fish & Game Code § 6900 et seq. (West 1991). In response to this mandate, California DFG published the Central Valley Salmon and Steelhead Restoration and Enhancement Plan in 1990 (CDFG 1990a). California DFG recommended that the State Board adopt an objective of maintaining the survival rate of salmon smolts passing through the estuary at the "without projects" historical level, and listed specific actions for the consideration of the State Board to implement this objective. Also, Congress recently enacted the Central Valley Project Improvement Act, which requires that a program be developed and implemented to ensure that natural production of anadromous fish in Central Valley rivers and streams will be "sustainable at levels at least twice the average levels attained during the period 1967–1991."

b. Protection of Bay/Delta Coldwater Habitat and Migration Under the Clean Water Act

In order to protect fall-run salmon, the 1978 Delta Plan included minimum flow objectives (below those set for striped bass) and mandated gate closures to help keep fry out of the central Delta when flows were above 12,000 cubic feet per second (cfs) during the period January 1 to April 15. In addition, gate closures through May, designed to protect striped bass, have also provided protection for out-migrating salmon smolts. These measures were considered inadequate by the fisheries agencies (USFWS, NMFS, and California DFG). At the 1987 Water Quality Control Plan hearings, these agencies recommended flow objectives based on 1940 historical flows (without project levels) that would have significantly increased protection for fall-run salmon. Similarly, in the 1988 Draft Water Quality Control Plan (SWRCB 1988), the State Board staff recommended objectives for Sacramento fall-run salmon based on average spring flow

[9] A "smolt" is a salmon in the process of acclimating to a change from a fresh water environment to a salt water environment. This occurs when young salmon migrate downstream through the Delta to the ocean.

conditions from 1930 to 1987, and for San Joaquin fall-run salmon based on flow conditions from 1953 to 1987. However, this Plan was not adopted.

The 1991 Bay/Delta Plan established additional criteria designed to protect salmon. The State Board set new temperature criteria of 68 °F at Freeport and Vernalis from April 1 through June 30 and September 1 through November 30 to protect Cold Fresh-Water Habitat for fall-run salmon. The 1991 Bay/Delta Plan also set a temperature criterion of 66°F at Freeport from January through March to protect winter-run salmon. EPA disapproved these criteria because the evidence in the State Board's submittal did not demonstrate that they would be sufficient to protect cold-water habitat for these species. Based on the supporting evidence in the State Board's submittal and the Central Valley Salmon and Steelhead Restoration and Enhancement Plan (CDFG 1990a), EPA recommended that the State Board adopt a 65 °F criterion, or an alternative that is scientifically defensible. EPA also disapproved the State's temperature criteria because they were subject to "controllable factors" (that is, temperature criteria were to be met only if they could be attained using a limited set of implementation measures). With this limitation such criteria are unlikely to be protective, especially since the State Board specifically prohibited the use of reservoir releases to reduce temperatures in the Delta (SWRCB, 1991).

EPA believes that the State should continue to work on developing scientifically-defensible long-term temperature criteria sufficient to protect cold-water-habitat for salmon migrating through the estuary. Temperature has been consistently used nationwide as a basis for water quality criteria, and there is strong scientific evidence that temperature affects survival of salmon smolts as they move through the Delta (Kjelson, et al., 1989; USFWS 1992a, WRINT-USFWS–7, USFWS 1992b and USFWS 1992c, WRINT-USFWS–8). However, EPA acknowledges that specific temperature criteria are difficult to establish and implement presently in the Delta because historic temperature levels have been highly variable and respond quickly to ambient air temperatures, and because there is insufficient information on the effectiveness and feasibility of various methods of lowering temperature. It is likely that there are short time periods (on the order of days to a few weeks) during which efforts at temperature control could be successful and provide increased smolt survival. However, existing models predicting changes in temperature in response to water project operations use a monthly temporal structure and only provide results as monthly means. Thus, these models cannot be used to analyze measures that could provide improved conditions over shorter periods of time. In addition, management of reservoir releases to provide benefits to salmon both in the Delta and in the upstream reaches has not been thoroughly assessed (Kelley, et al. 1991; Mann and Abbott 1992).

Studies to develop improved reservoir and river temperature models with a shorter time-step and improved predictive capability for the entire Sacramento system are just beginning under the auspices of Trinity County, the University of California at Davis, and the California DFG. These studies will also include a direct analysis of the effect of temperature management alternatives on salmon populations. Additional work to develop effective temperature models has been mandated by section 3406(g) of the recently-enacted Central Valley Project Improvement Act. It should be possible to use information from these studies to set temperature criteria in the near future, and EPA will continue to work with the State to develop specific temperature criteria for the Delta. However, at this time, EPA is not proposing temperature criteria to replace those criteria disapproved in EPA's September 3, 1991 letter, and is instead proposing the salmon smolt survival criteria described below.

c. Proposed Smolt Survival Criteria

Because at this time EPA has not developed an adequate scientific basis for precise temperature criteria, EPA is proposing "smolt survival criteria" to protect the Fish Migration and Cold Fresh-Water Habitat designated uses in the Bay/Delta estuary. These criteria are based on a smolt survival index that quantifies and predicts the survival of salmon migrating through the Delta. The index can be used to determine whether the Fish Migration and Cold Fresh-Water Habitat uses are impaired in the Bay/Delta. When applied in criteria, the index measures and can control the condition of the resource at risk by directly assessing and limiting the loss of salmon smolts within the Delta due to a variety of impaired water quality conditions. The use of this index is consistent with the integrated approach envisioned by the National Program Guidance for Biological Criteria for Surface Waters (USEPA 1990).

(1) *Smolt Survival Models.* The smolt survival indices are based on USFWS models described in Kjelson et al. (1989), USFWS (1992a) (WRINT-USFWS–7) and USFWS (1992b). These models are summarized more fully in Appendix III. The models are empirical; that is, they are in large part based on the results of experiments measuring and comparing smolt survival under a number of different physical conditions of varying migration pathways, water temperatures, flow rates, and rates of exports from the Delta. The models underlying the salmon smolt survival criteria are complex; additional information about the methods used in constructing the Sacramento and San Joaquin indices is contained in Appendix III and the administrative record to the proposal. For the Sacramento River system, the proposed salmon smolt survival criteria are based on the most recent model (USFWS 1992b) for predicting migration success for the Sacramento River fall-run population, and rely on the relationship between smolt survival and three factors: temperature, diversion out of the mainstem Sacramento River, and export rates. The San Joaquin model is based on experimental data, and relies on the relationship between salmon smolt survival and river flows, diversion into Old River, and export rates. Consistent with the implementation recommendations of USFWS, NMFS, and California DFG, the San Joaquin model assumes that a barrier will be in place at the head of Old River during the peak migration season.

Verifying the models used to generate the salmon smolt criteria is a continuing process using code-wire tagged smolt studies conducted by the USFWS (USFWS 1992b, 1993). Although these models represent the present state-of-the-art in Bay/Delta salmon fisheries management, EPA anticipates that the models will continue to be verified, updated and refined each year by USFWS to reflect additional data collection results, and believes that continuing verification is necessary to assure that outmigrating smolts are protected. In the event that USFWS modifies its models, recommended index values, or recommended implementation measures, EPA intends that the criteria will be amended accordingly in the next triennial review

(2) *Proposed Criteria.* In developing the goals or target index values for its proposal, EPA is relying primarily on the goal of restoring habitat conditions to those existing in the late 1960's and early 1970's, as recommended in the Interagency Statement of Principles. Strict adherence to this recommendation would suggest using the index values associated with that historical period as the target index values. These values are included in

Table 2, which provides estimated index values for different historical periods. As part of their recent expert testimony to the State Board, USFWS estimated these historical survival indices under different conditions (USFWS 1992c, WRINT-USFWS-8). The Sacramento River historical values are based on an early version of the Sacramento River model (Kjelson et al. 1989). There would be minor changes in the estimates using the most up-to-date model (USFWS 1992b). For example, recalculating the Sacramento River value for the 1956–1970 historical period yields a mean of the five-year types of .37, compared to the .36 indicated in Table 2.

TABLE 2.—HISTORICAL SALMON SMOLT SURVIVAL INDICES FOR THE SACRAMENTO AND SAN JOAQUIN RIVER PORTIONS OF THE DELTA

	WATER YEAR TYPE					Mean of year types
	W	AN	BN	D	C	
Sacramento River goal:						
1940 Level of Development	.76	.81	.77	.63	.44	.68
1956–70 Historical	.56	*.45	.35	.26	*.20	.36
1960–88 Historical	.44	.43	.31	.25	.19	.32
1978–90 Historical	.39	*.32	*.28	.22	.16	.27
San Joaquin River Goal:						
1940 Level of Development	.58	.50	.52	.47	.39	.49
1956–70 Historical	.61	*.25	.18	.17	*.15	.27
1960–88 Historical	.43	.12	.17	.13	.12	.19
1978–90 Historical	.48	*.15	*.09	*.06	.07	.17*

*Interpolated: there were no water years in these categories during the relevant historical period. Source: USFWS 1992a.

For a number of reasons, however, strict adherence to the late 1960's and early 1970's target is inappropriate. Salmon fisheries, especially on the San Joaquin River, were already somewhat degraded during that historical period, and the degradation has been more severe in drier years. This is demonstrated in Table 2, above, which provides estimated historical survival index values for the relevant period. This Table shows that the decline in the survival index was more pronounced in critical, dry, and below normal water years than in wetter years. Accordingly, to protect salmon from falling to dangerously low population levels, and more nearly mimic the natural historical response of smolts migrating through the Delta to year-to-year changes in hydrology, EPA is proposing more protective target values in drier years and less in wetter years.

On the Sacramento River system, EPA believes salmon smolt migration will be protected if the long-term average survival over all water year types replicates the target historical period values. Protection at the late 1960's to early 1970's level in the wetter years is not necessary if better protection is afforded migrating smolts in the drier years. On the San Joaquin River system, however, the drop in survival has been more severe in drier years, the runs are smaller and more at risk, and the overall survival index was less than in the Sacramento system during the target historical period. For that reason, in order to protect the Fish Migration designated use on the San Joaquin, EPA is proposing index values that afford both better protection in drier years and overall index values that are higher than in the historical late 1960's to early 1970's period.

To achieve this level of protection and to address this bias in the historical reference period index values, EPA is proposing the use of target values derived from the recommendations and analyses carried out by the Delta Team of the Five Agency Chinook Salmon Committee. This interagency group consists of representatives from the USFWS, California DFG, California DWR, NMFS, and USBR. Its reports (Five Agency Delta Salmon Team, 1991a, 1991b) represent a consensus on the most effective and feasible implementation measures to protect downstream migrant salmon smolts in the Delta. In preparing its recommendations for the 1992 State Board hearings, USFWS reviewed recommendations from the Five Agency Delta Salmon Team in its salmon smolt model, and presented a set of index values and corresponding operational recommendations to the State Board (USFWS 1992a, WRINT–USFWS–7; USFWS 1992c). These index values, which are intended to be consistent with the fisheries agencies recommended target index values that would restore habitat conditions and salmon populations to those characteristic of the late 1960's to early 1970's (USFWS 1992a, WRINT–USFWS–7; USFWS 1992c, WRINT–USFWS–8; CDFG 1992b, WRINT–DFG–8), are shown in Table 3. The values for the Sacramento River index differ slightly from those presented in the 1992 State Board hearings because these Table 3 values are based on the most recent version of the Sacramento River model.

TABLE 3.—SALMON SMOLT SURVIVAL INDICES BASED ON FIVE AGENCY CHINOOK SALMON COMMITTEE ANALYSIS AND RECOMMENDATIONS

Sacramento River		San Joaquin River	
Water year type	Index value	Water year type	Index value
Wet	.49	Wet	.46
Above Normal	.41	Above normal	.30
Below Normal	.40	Below normal	.26
Dry	.35	Dry	.23
Critical	.32	Critical	.20
Mean	.41	Mean	.31

TABLE 3.—SALMON SMOLT SURVIVAL INDICES BASED ON FIVE AGENCY CHINOOK SALMON COMMITTEE ANALYSIS AND RECOMMENDATIONS—Continued

Finally, in arriving at index values for its proposal contained in Table 4, EPA has adjusted the index values of Table 3 to meet concerns over potential closure of the Georgiana Slough. As discussed below, EPA has been engaged in consultations with USFWS and NMFS under the ESA about possible effects of EPA's water quality standards actions on threatened and endangered species. During the course of these consultations, it was suggested that one of the measures the Five Agency Chinook Salmon Committee had recommended as an effective protective measure for salmon smolts—putting a temporary barrier at the head of Georgiana Slough—may have deleterious effects on the Delta smelt and other native aquatic life in the central Delta, and possibly on adult salmon returning upstream. For that reason, EPA has recomputed the index values (see Table 4) to reflect model results if the Georgiana Slough were left open. Lower exports, particularly during times of peak San Joaquin salmon outmigration, were incorporated as an additional feasible and effective implementation measure benefiting salmon, in part to compensate for the additional mortality associated with keeping Georgiana Slough open. EPA believes that these adjustments still provide protection consistent with the goal of restoring habitat conditions to those existing in the late 1960's to early 1970's (mean Sacramento River survival index of .37), while also taking into account achievable implementation measures. The recomputed index values in Table 4 are included as EPA's proposal.

TABLE 4.—PROPOSED SALMON SMOLT CRITERIA

Sacramento River		San Joaquin River	
Water year type	Index value	Water year type	Index value
Wet	.45	Wet	.46
Above Normal	.38	Above normal	.30
Below Normal	.36	Below normal	.26
Dry	.32	Dry	.23
Critical	.29	Critical	.20

To protect both Fish Migration and Cold Fresh-Water Habitat designated, EPA proposes that the specific smolt survival criteria in Table 4, above, be adopted for the Bay/Delta. As explained above, the proposed Sacramento River criteria are modified from the USFWS indices in Table 3. The San Joaquin River criteria are the same as Table 3. The Sacramento River criteria provide overall protection at approximately the 1956–1970 historical level (.37 mean survival index). The San Joaquin River criteria provides better protection than the 1956–1970 historical level (.27 mean survival index). Both sets of criteria provide better protection than the 1956–1970 historical period in drier years, and less protection in wetter years. These criteria should provide more consistent smolt survival and help avoid situations where extraordinary measures are necessary to preserve runs, particularly in the San Joaquin River tributaries. Water year type designations are identical to State Board classifications (SWRCB 1992a).

d. Implementation Measures

Under the CWA, the States have a primary role in developing measures implementing water quality criteria. EPA expects that the State Board would implement these criteria by making appropriate revisions to operational requirements included in water rights permits issued by the State Board. EPA believes that the State Board would have a number of possible implementation approaches for achieving the salmon smolt survival criteria. In the recent State Board hearings, USFWS recommended a series of implementation measures (based on the Five Agency Chinook Salmon Committee proposals) designed to achieve the smolt survival indices recommended in the joint statement by USFWS, NMFS and EPA. For the Sacramento River, these included closure of the Delta Cross Channel from April through June, closure of Georgiana Slough from April 15 to June 15, and minimum Sacramento Flow at Rio Vista of 4000 cfs from April through June. For the San Joaquin River, these measures included requiring a range of flows from 2,000 to 10,000 cfs at Vernalis from April 15 to May 15; requiring minimum flows of 1000 cfs at Jersey Point from April through June, except from April 15 to May 15, when higher flows from 1000 to 3000 cfs would be required; and placing a full barrier in upper Old River from April through May. Total water exports would be curtailed to a range from 6000 cfs in wet years to 2000 cfs in critically dry years from April 15 to May 15.

Based on the USFWS models, these particular measures will achieve the proposed smolt survival indices in Table 3. However, as discussed earlier, EPA has incorporated into its proposed target index values changes to the recommended implementation measures based on concerns about the effect of these measures on other aquatic resources. Given the nature of the index itself, however, there is substantial flexibility in how the target values can be achieved. For example, if flows are increased above the recommended levels in the San Joaquin River, the

associated export limits could also be increased while achieving the same level of protection. Reductions in Sacramento River temperatures would also provide significant benefits. Although temperature controls were not included in the USFWS recommendations, they are an important variable in the USFWS model, and may be the most significant factor affecting smolt survival in the Sacramento River system. Implementation measures affecting temperature may therefore be an effective means of attaining the smolt survival criteria.

There is also evidence that short-term operational changes implemented at peak migration times coincident with critical periods of high ambient air and water temperature may provide significant benefits (Kelley, et al, 1991). Other possibilities listed in California DFG's *Central Valley Salmon and Steelhead Restoration and Enhancement Plan* (CDFG 1990) include screening Georgiana Slough and screening the Delta Cross Channel. A sound barrier (a device generating subsurface sound that discourages fish from entering the Slough) at Georgiana Slough is currently under study and may also be a useful implementation measure. As new methods are developed to increase smolt survival, their benefits can be assessed, and their contribution toward meeting and/or revising the criteria taken into account.

Given this potential flexibility, EPA believes that establishing smolt survival indices as Fish Migration and Cold Fresh-Water Habitat criteria would give the State Board maximum latitude in choosing a set of implementation methods that will attain protection of the designated migration and coldwater fisheries uses. As such, these proposed criteria are consistent with the mandates of section 101(g) of the CWA, as discussed above, and accommodate the State's interest in allocating its water supplies in a way that maximizes the many values important to the State. Furthermore, the proposal of these criteria is consistent with the authority in CWA section 303(c)(4), which authorizes EPA to propose revised or new standards to meet the requirements of the Act.

e. Protection of Other Salmon Runs and Life Stages

Because the smolt survival indices were developed using tagged fall-run fish during the time of their outmigration, EPA is proposing the use of these indices only for fall-run outmigrants. For winter-, late fall-, and spring-run salmon, as well as steelhead, there is no direct information about the factors that affect survival, although it is likely that many of the same factors, with the exception of temperatures during the colder months, are also affecting the juveniles of these populations as they migrate through the Delta.

Measures implemented by the USBR and SWP as a result of the Biological Opinion for winter-run salmon issued by NMFS under the ESA afford some protection for other runs, in addition to protection for the winter-run salmon population itself. NMFS, Biological Opinion on Central Valley Project, 1992 Operations (February 14, 1992). In addition, EPA has been consulting with NMFS to assure that the implementation of EPA's proposed standards will not jeopardize the winter-run Chinook salmon population.

Juvenile spring-run salmon and steelhead move through the Delta during the same period as winter-run and fall-run salmon, and should be protected in the Delta by measures taken for these other runs. Late fall-run salmon, however, outmigrate in fall and early winter, and are currently not fully protected during their passage through the Delta. Protective criteria for this run should be developed by the State Board in the near future to ensure that this run is protected.

Younger salmon, or fry, also enter the Delta, particularly when rainstorms stimulate the movement of fry out of the tributaries and into the lower Rivers and Delta. Some protection for these fry is afforded by the current State Board standards requiring closure of the Delta Cross Channel gates when flows are higher than 12,000 cfs. However, closure of the Cross Channel gates alone may not be protective enough, since fry can be swept into the central Delta through Georgiana Slough and upstream to the export pumps when there is reverse flow in the lower San Joaquin River, especially during times of high export. For that reason, Delta habitat conditions for fry may need to be addressed by the State Board in the future.

f. Protection of Other Migrating Species

Species other than salmonids seasonally migrate into and out of the Delta for spawning and as juveniles. These species include striped bass, Delta smelt, longfin smelt, white and green sturgeon, American shad and Sacramento splittail. With the exception of temperature, the factors that lead to successful migration of salmonid smolts are also important for successful migration of the juveniles of these species into the lower embayments. Therefore, EPA's proposed salmon smolt survival criteria, although specifically addressing fall-run Chinook salmon, will also help protect migration of these other migrating species.

3. Fish Spawning Criteria

a. Background

In California, striped bass spawn primarily in the warmer freshwater segments of the Sacramento and San Joaquin Rivers. Protection of spawning in both river systems is important to ensure the genetic diversity of the population as well as to increase the size of the overall striped bass population. Adults spawn by migrating upstream from the San Francisco Bay or from the Pacific Ocean (Stevens 1979; Wang 1986). The precise location and time of spawning appear to be controlled by temperature and salinity (Turner 1972a; Turner and Chadwick 1972). According to the California DFG, striped bass spawn successfully only in freshwater with electrical conductivities less than 0.44 millimhos [10] per centimeter electroconductivity (mmhos/cm EC), and prefer to spawn in waters with conductivities below 0.33 mmhos/cm. Conductivities greater than 0.55 mmhos/cm appear to block the upstream migration of adult spawners (Radtke and Turner 1967; SWRCB 1987; CDFG 1990b, WQCP–DFG–4).

In the Sacramento River, adults migrate to spawning sites upstream of Sacramento until they encounter the appropriate warmer temperatures for spawning. Because of the higher volume of water in the Sacramento River and the particular constituents and volume of nonpoint source discharges into the river, salinity does not appear to be a serious limitation on spawning at any location along the river. In years of higher spring river flows, with correspondingly lower water temperatures, bass can spawn further upstream and later in the April-June period because the warmer temperatures that induce spawning occur later (Chadwick 1958). Migration and spawning in the Sacramento River are therefore not adversely affected by salinity. In the smaller and shallower San Joaquin River, however, the earlier occurrence of warm temperatures causes the peak spawning period to occur earlier than in the Sacramento River; the San Joaquin peak usually occurs in April or May rather than in May or June (Chadwick 1958). Migrating bass seeking the warmer waters encounter excessive upstream salinity caused primarily by runoff. This salinity can block migration up the San Joaquin River, thereby reducing spawning, and can also reduce survival of eggs (Farley 1966; Radtke 1966; Radtke and Turner 1967; Turner and Farley 1971; Turner 1972a, 1972b).

The State Board's 1991 Bay/Delta Plan established objectives of 1.5 mmhos/cm EC at Antioch and 0.44 mmhos/cm EC at Prisoners Point in April and May. EPA disapproved these objectives, in part, because they are not adequate to protect spawning habitat in the reach farther upstream between Prisoners Point and Vernalis.

In the 1987 State Board hearings, California DFG testified that striped bass formerly spawned farther up the San Joaquin River, but that this has occurred less frequently in recent years because of increased salinity levels (CDFG 1987). Salinity in the San Joaquin River increases upstream of Prisoners Point due to reduced freshwater inflow and agricultural return flows. Thus the absence of salinity criteria above Prisoners Point effectively establishes a barrier to adult migration and spawning farther upstream on the San Joaquin River (Turner 1972a,b). California DFG also suggested that there was a danger of losing the part of the population that spawned in this area if high salinities prevent spawning or decrease survival of newly spawned eggs (CDFG 1987; SWRCB. Phase I Hearing Transcript, LXXV, VII 111:3–14).

In the 1991 Bay/Delta Plan, the State Board described several alternative water quality standards that would have extended the protection of spawning conditions upstream of Prisoners Point, including one alternative very similar to the one EPA is proposing today. However, the State Board deferred adoption of revised standards, apparently because of concern that improved spawning conditions would lead to greater losses of young to entrainment at the State and Federal pumping plants. As indicated in its September 3, 1991 letter disapproving certain State criteria, EPA believes that the State Board can, in developing its implementation measures, address the impact of the pumps on this spawning habitat.

EPA also disapproved the 1991 Bay/Delta Plan spawning criteria because they were not based on sound science. The State Board explained that the 1.5 mmhos/cm EC criteria at Antioch was intended to protect spawning habitat upstream of Antioch (near Jersey Point), not at the Antioch location itself. The State Board acknowledged that "the use of 1.5 [mmhos/cm] EC at Antioch appears not to be generally appropriate, and proposed that a thorough review of this [criteria] be undertaken at the next triennial review" (1991 Bay/Delta Plan, p. 5–32). EPA found this indirect and unproven approach of setting criteria downstream in hopes of attaining different criteria upstream deficient, and disapproved it. EPA's proposed criteria would correct this deficiency by establishing the scientifically-defensible criteria at Jersey Point, the actual point of concern.

The State Board also acknowledged that the 1991 Bay/Delta Plan spawning criteria did not protect the spawning reach in the lower San Joaquin River, but instead only at two locations: Jersey Point and Prisoners Point (1991 Bay/Delta Plan, p. 5–30). As a result, the State Board directed California DFG to study how a specific habitat zone of 0.44 mmhos/cm EC could be established in the entire reach between Jersey Point and Prisoners Point "to make certain that the State Board develops water quality objectives that are based on sound scientific data" (1991 Bay/Delta Plan, p. 5–33). EPA agrees, and is proposing criteria to assure that the entire reach between Jersey Point and Prisoners Point should be protected.

b. Proposed Criteria

In its September 3, 1991 letter and subsequent correspondence with the Board, EPA recommended salinity criteria of 0.44 mmhos/cm EC in the lower San Joaquin River in the reach from Jersey Point and Vernalis. After further reviewing the scientific evidence, EPA is proposing the following criteria:

The 14-day running average of the mean daily EC shall not be more than 0.44 mmhos/cm for the period April 1 to May 31 in wet, above normal, and below normal years at the following stations: Jersey Point, San Andreas Landing, Prisoners Point, Buckley Cove, Rough and Ready Island, Brandt Bridge, Mossdale, and Vernalis. In dry and critical water years, the criteria are required only in the reach between Jersey Point and Prisoners Point, as measured at Jersey Point, San Andreas Landing, and Prisoners Point.

These criteria will fully protect the historic spawning range of striped bass on the lower San Joaquin River, while reflecting the natural variability in salinity levels in different water year types.

c. Implementation

Under the CWA, the states have a primary role in developing measures implementing water quality criteria. EPA expects that the State Board would implement these criteria by making appropriate revisions to operational requirements included in water rights permits issued by the State Board.

4. Compliance With Endangered Species Act

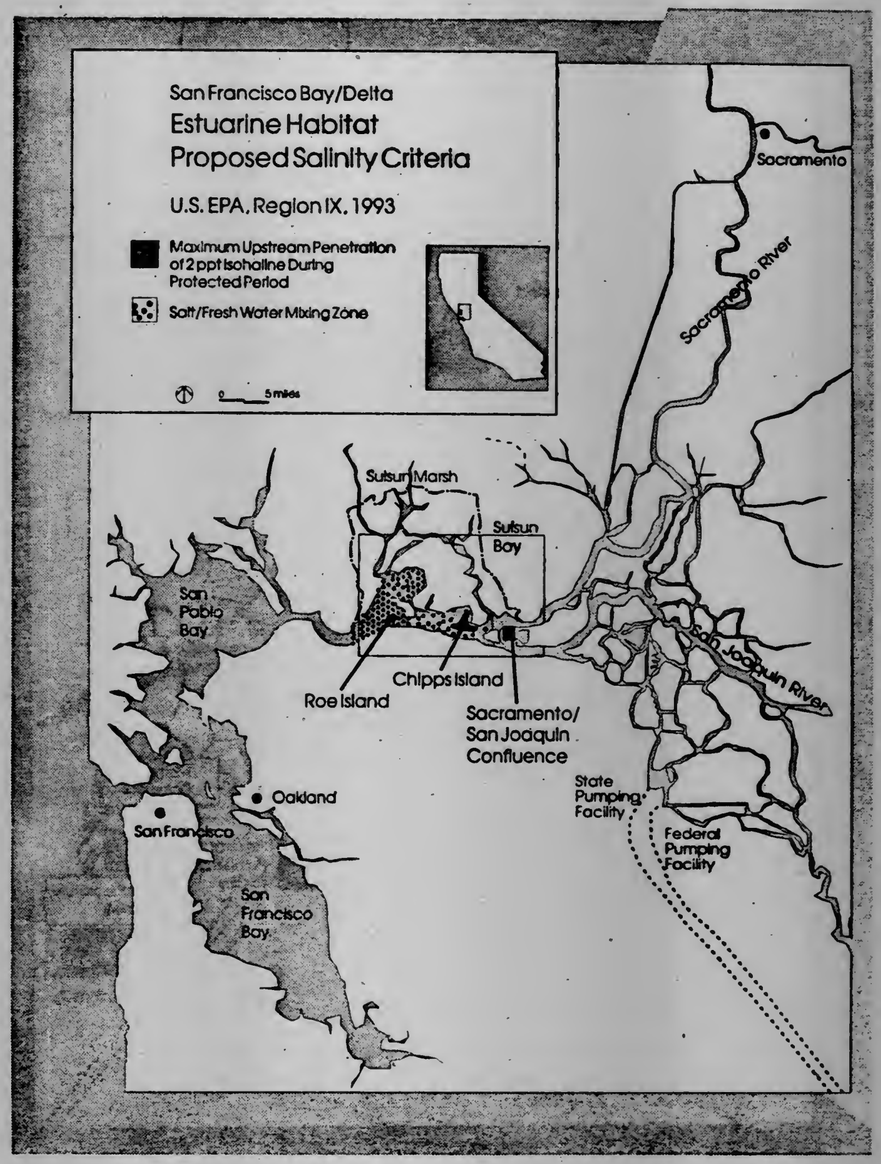
EPA has concluded that its promulgation of water quality criteria for the Bay/Delta may affect certain species protected by the federal ESA. These include the winter-run chinook salmon (listed as threatened and proposed for reclassification as endangered), the Delta smelt (listed as threatened), and the Sacramento splittail and longfin smelt (both the subject of petitions for listing). There are also a number of listed and proposed species resident in Suisun Marsh. Under section 7 of the ESA and accompanying regulations, EPA is required to consult with NMFS (on the winter-run chinook salmon) and USFWS (on the other listed and proposed species) to assure that the water quality criteria promulgated by EPA do not jeopardize the continued existence of these species or adversely affect their critical habitat. 50 CFR 402.14 and § 402.10.

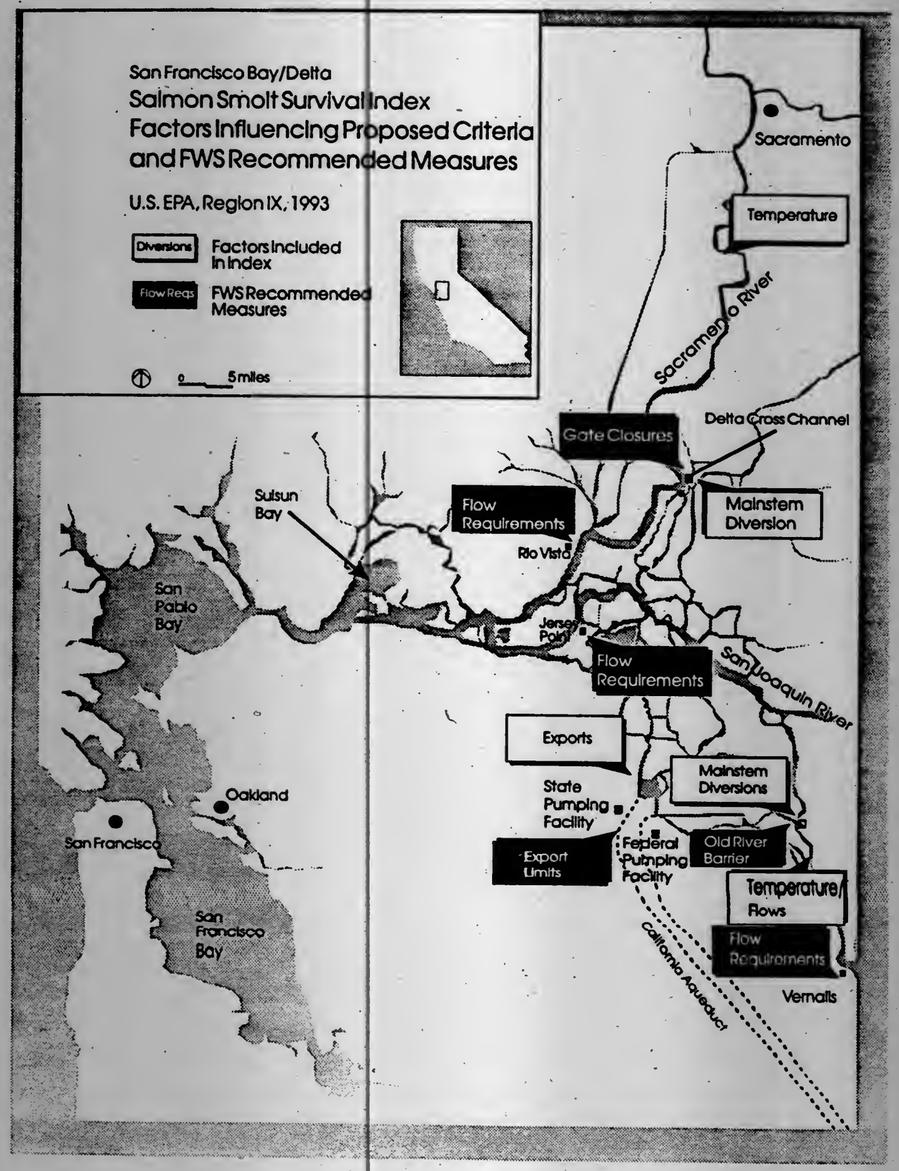
EPA has worked closely with NMFS and USFWS over the past two years to meet its obligations under the ESA. The federal agencies have recognized the need to take an integrated ecosystem approach to the Bay/Delta rather than a fragmented, species-by-species approach. To that end, the EPA, NMFS, and USFWS issued a joint proposal to the State Board's 1992 hearings on interim measures recommending that the State Board adopt an immediate goal of restoration of habitat conditions to those characteristic of the late 1960's and early 1970's. By targeting this level of protection, the agencies intended to establish habitat conditions that would protect and preserve the entire range of fish and wildlife uses in the Bay/Delta.

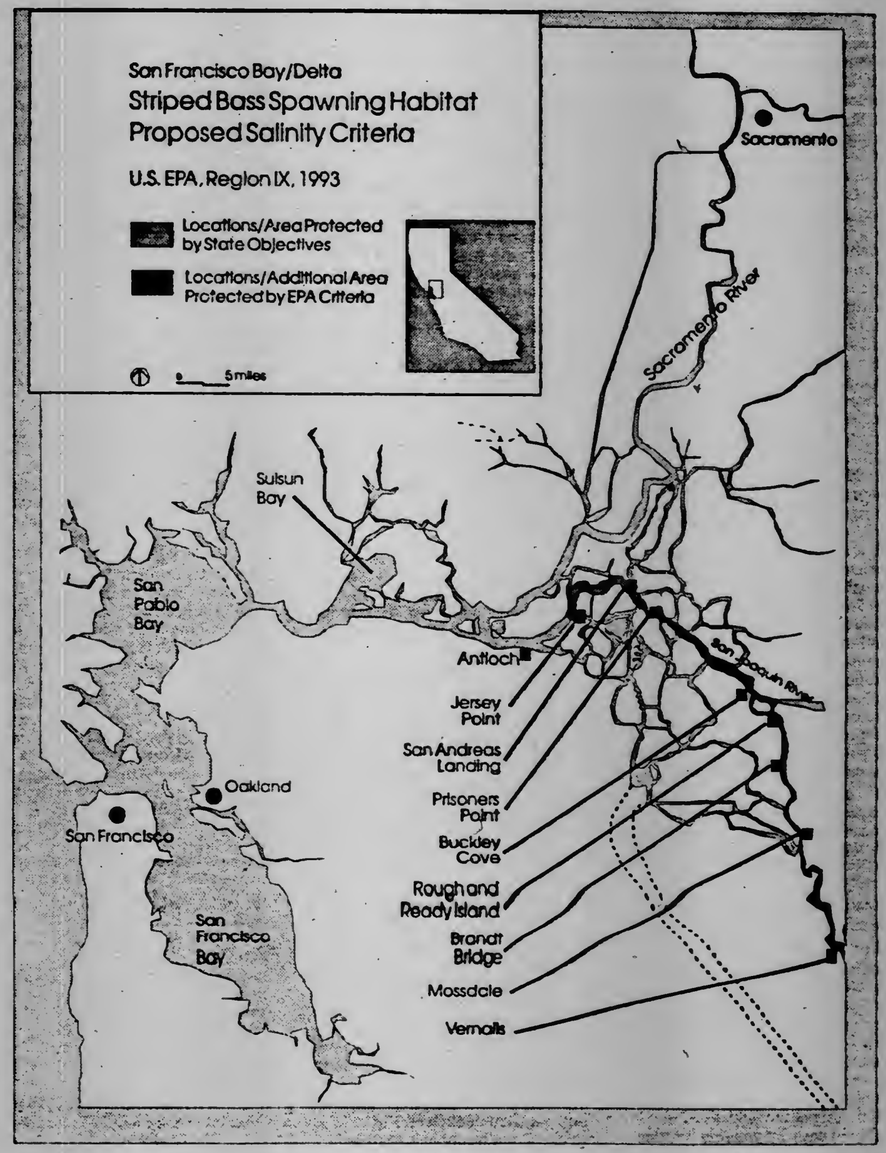
[10] The salinity problems addressed by the isohaline criteria outlined above are caused primarily by salt water intrusion and are traditionally measured by "parts per thousand". In contrast, salinity conditions upstream in freshwater are generally affected by dissolved salts from upstream water runoff. The salinity content of freshwater is traditionally measured by its electroconductivity or "EC" standardized to 25 C (specific conductance), and is expressed in terms of millimhos per centimeter electroconductivity or "mmhos/cm EC".

The criteria proposed in this notice follow this approach to habitat protection within the Bay/Delta watershed. Pursuant to 50 CFR §§ 402.14, EPA has initiated formal consultations with USFWS and NMFS on the potential effects of its action on endangered and threatened species. The agencies have agreed to finalize these consultations before EPA promulgates water quality standards in the Bay/Delta.

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D. Executive Order 12866

Executive Order 12866 requires EPA and other agencies to assess the potential costs and benefits of all significant regulatory actions. Significant regulatory actions are those that impose a cost on the economy of $100 million or more annually or have certain regulatory, policy, or economic impacts. Today's proposed rule meets the criteria of a significant regulatory action set forth in section 3(f) of the Executive Order. The regulatory analysis for this proposed rule is presented in "Draft Regulatory Impact Assessment of the Proposed Water Quality Standards for the San Francisco Bay/Sacramento-San Joaquin River Delta" (see Section F for the availability of this and other documents). This draft RIA was submitted to OMB for review as required by the Executive Order.

EPA's action is the proposal of water quality standards and this action explicitly does not include a proposed implementation plan. The implementation plan has not yet been developed by the State. Therefore, this draft RIA analyses a range of possible implementation scenarios. Importantly, the analysis illustrates that the level of costs for the same level of environmental benefits varies significantly depending on assumptions in implementation scenarios. Specifically, mechanisms for economically-efficient allocation of water or for the widespread distribution of responsibility, such as water transfers and/or a drought water bank, result in the most cost-effective scenarios.

EPA is committed to working with the State on an implementation plan and welcomes additional information and analysis on the economic costs and benefits of its proposals. EPA is interested in both improved information and policies and programs to minimize the economic impacts upon water users.

The draft RIA evaluated the costs and benefits of the combined federal proposals, including EPA's proposed water quality standards and USFWS's actions under the ESA. The primary method of implementation is assumed to be increased Delta outflow resulting in reduced water supplies to urban and agricultural water users. Further, critical habitat designation may result in additional costs by possibly limiting sand and gravel operations and affecting marina operations. Benefits are to the Delta ecosystem as a whole, species diversity, and commercial and recreational fisheries.

Assessment of Costs and Impacts

The draft RIA shows that the costs to both agricultural and urban water users would depend upon how water supplies are allocated to implement the proposals.

- The primary method for implementing the combined federal proposals will be increases in Delta outflow. Current estimates of the additional outflow developed by the California DWR are 540,000 acre-feet on average and 1.1 million acre-feet in critically dry years.
- The analysis uses an initial distribution of water supply reductions between agricultural users (80% of the reductions) and urban users (the remaining 20%).

The results of three scenarios analyzed are presented in the draft RIA and are briefly summarized here.

- Agricultural impacts are influenced by improved irrigation efficiency, crop shifting opportunities, the size of the affected region and opportunities for water trading between agricultural districts. A range of these options was modeled, except for irrigation efficiency.
- A middle range distribution of supply impacts (Scenario 2) that includes water trading between agricultural districts results in producer surplus losses (net revenue losses) of $20 million dollars on average. If trading is limited (Scenario 1), impacts are estimated to be $44 million on average. Scenario 3 illustrates the lowest cost option, distributing the water supply reductions throughout the Central Valley, resulting in producer surplus losses estimates of $8 million on average.
- Economic impacts were estimated for critically dry years and indicate larger economic impacts, because lower cost options are already used up in drought years. Scenario 1, where trading is limited, estimates $147 million in costs in critically dry years. Scenario 2, where trading is facilitated among agricultural districts, reduces those impacts by nearly half to $87 million in impacts.

Potential impacts on the urban users were more difficult to estimate, given the less-established analytic information base. Three scenarios were developed to project the economic impacts based upon different assumptions and implementation choices. Key implementation choices analyzed include the availability of transfers, drought water pricing, a drought water bank and increased water reclamation. Additional water management choices include increased conservation, conjunctive use and other demand management programs.

- Water transfers and an efficient drought water bank are key to minimizing impacts on urban users, given increased environmental needs. In the least-cost scenario, (Scenario 3) impacts on urban users were projected to be $25 million on average.
- Under Scenario 2, where reclamation meets urban supply needs along with a combination of drought water pricing and a more limited drought water bank, impacts are approximately $50–54 million on average. Under Scenario 1, where no drought water bank exists, impacts are projected at $80 million on average.
- The economic impacts of the proposals are highest in drought years, when fewer supplies are available to meet increased urban and environmental needs. Estimation of consumer surplus losses for Scenario 3 projects a continuation of the 1991 drought water bank resulting in economic costs of $70 million in a critically dry year. A combination of a more limited drought water bank and drought water pricing results in consumer surplus losses of $184–223 million for Scenario 2. Scenario 1, where no drought water bank exists, results in consumer surplus losses of $450 million in a critically dry year. However, EPA projects that these losses are not likely given the support for a drought water bank as a drought management option. Further, consumer surplus losses do not measure water bill increases in the drought case because consumers have demonstrated in drought periods that they change their water use practices rather than pay higher rates. Accordingly, an undetermined portion of these estimates is the value of inconvenience and changes in behavior during drought.

In addition, the draft RIA also estimated employment impacts for agriculture associated with the implementation of these proposals. The direct employment effects were estimated to be a reduction of 99 person-years on average, but 1926 person-years in a critically dry year for Scenario 2 (water trading allowed between agricultural districts). If water trading between agricultural districts is limited, employment impacts are estimated to be higher, with 828 person years on average and 3282 person years in a critically dry year. These estimates are not predicted employment changes (e.g impacts that would effect the actual unemployment rate) because they do not account for a full labor market equilibrium analysis.

Assessment of Benefits

Background: The Bay/Delta estuary constitutes one of the largest habitats for fish and wildlife in the United States. The estuary supports more than 120 fish species and provides a stopover or home for more than half of the waterfowl and shorebirds migrating on the Pacific Flyway. Suisun Marsh, which is within the Bay/Delta estuary, supports many rare plant and animal species. Maintenance of freshwater, estuarine, and wildlife habitat would preserve rare and endangered species; permit fish migration; and provide opportunities for commercial ocean fishing and sport fishing.

Qualitative assessment: The combined proposed requirements will increase the protection of the estuarine habitat in the Delta and will benefit the ecosystem overall. In addition, the combined proposal is expected to increase biological productivity of such important resources as salmon, striped bass, and waterfowl; protect diversity of species, such as Delta smelt, longfin smelt and Sacramento splittail, that are unique to the Bay/Delta ecosystem; increase commercial and recreational fishing opportunities; and increase opportunities for wildlife observation resulting from restoration of riparian and tidal marsh habitat and ecosystem.

Benefits associated with the federal proposals are described qualitatively for most ecosystem benefits. Some fish population increases were estimated and a portion of the commercial and recreational fishery benefits were monetized.

- The benefits of the federal proposals are an increase in biological productivity and ecosystem health for the Bay/Delta ecosystem. This increase includes protecting unique species from extinction. Bay/Delta species that currently might qualify for listing under the ESA include the longfin smelt, spring-run Chinook salmon, Sacramento splittail, green sturgeon, and Red Hills Roach, in addition to the already listed winter-run Chinook salmon and Delta smelt. A potential benefit of the federal proposals is that the ecosystem health might improve to the point where unlisted species need not be listed, or presently listed species could be delisted under the ESA.
- Well-established relationships between estuarine conditions and populations exist for many estuarine species. The extent of the low salinity habitat in the estuary is closely associated with the abundance and distribution of estuarine species at all trophic levels. Increased populations were estimated for salmon (increasing by approximately 90,000 salmon), striped bass (increasing by approximately 10 percent), and starry flounder. In addition, populations of other game species of green and white sturgeon, bay shrimp, American shad and white catfish are expected to increase.
- A portion of these population increases will accrue to the recreational or commercial fisheries. Not less than $9–11 million annually were estimated, again with many benefits not estimated in dollar value. The majority of these gains are in the commercial salmon fishery. Employment gains in the salmon fishery were estimated to increase by 300–360 jobs annually.
- Many other recreation activities, including hunting, boating, and nature appreciation are expected to be enhanced by the proposed regulations; however, the estimated change in participation in these activities could not be quantified.
- Enhancing the natural environment of the Bay/Delta would have nonuse social benefits. Although these benefits could not be quantified, it is believed that they constitute the largest portion of the total value to society of implementing the proposed regulations.
- Enhancing water quality in the Bay/Delta could result in other benefits associated with the avoidance of listing additional species and associated increased flexibility in water management and the avoided costs of further collapse of the ecosystem and its associated fisheries and dependent communities.

Summary of Costs and Benefits

Monetized social costs and benefits of the federal proposals are not directly comparable in this analysis because some use benefits to fisheries and non-use benefits of ecological improvement and species diversity cannot be estimated. However, two conclusions can be drawn:

- The implementation plan for the federal proposals has not yet been developed, thereby making it difficult to project actual levels of economic impacts. However, it is reasonable to assume that cost-effective solutions will be pursued that include a flexible approach to meeting Delta requirements. Thus, economic costs in the agricultural sector are estimated to be $20 million on average and $25 million for the urban sector. However, the overall costs may be lower than the total, given that at least some of the increases in urban costs will be payments to agriculture for water transferred. The benefits are estimated to be $10 million from improved commercial fisheries, and unquantified but important ecological, scientific, educational and existence values.
- Costs and benefits are difficult to compare directly in this case because of the non-marginal nature of ecosystem protection and species protection. These benefits, including preventing the extinction of several candidate or listed species and preventing the collapse of the Bay/Delta ecosystem, account for the majority of benefits.
- Given both the monetary estimates of benefits and the qualitative information on benefits not expressed in dollar value, EPA believes that the proposal can be implemented in a cost-effective manner where a healthy estuary and fisheries can co-exist with a strong agricultural and urban sector. Given all the available information, the benefits are commensurate with the costs.
- Comprehensive analyses of the incremental response of costs and benefits to marginal changes in EPA's proposed rule have not been prepared. However, EPA has developed in the draft RIA a method for roughly estimating incremental changes in economic costs based on changes in the number of days of compliance with the proposed salinity criteria at particular locations in the estuary. These estimates are based on the estimates of the flows necessary to maintain the criteria at the target locations. For example, the difference in water supply impacts between a day of protection at Chipps Island and a day of protection at the Confluence is 12,276 AF/year. These estimates of the difference in water supply impact can be compared to the dollar value of that water, which the draft RIA estimates as being $90 per AF.

E. Regulatory Flexibility Act

The Regulatory Flexibility Act, 5 U.S.C. § 601, et seq., requires EPA and other federal agencies to prepare an initial regulatory flexibility analysis (IFRA). EPA's internal guidelines require that an IFRA include a profile of the small entities and determine if the statutory authority allows consideration of alternative implementation actions.

EPA has determined that the action does not allow consideration of alternative implementation actions. First, under the Clean Water Act, water quality criteria must be based solely on science. Second, EPA is promulgating water quality criteria that in effect supplement state criteria that fail to meet the requirements of the CWA.

EPA has prepared an abbreviated regulatory flexibility analysis. It's findings include the following:

• Minimizing the impacts on small farms can be accomplished by developing the least costly implementation plan, which distributes water supply reductions widely and facilitates trading between water districts. Given that allocation of water at the farm level depends primarily on decisions at the irrigation district level, determining which size farm would experience water supply impacts will also be difficult at the State level.

F. Availability of the Record

The administrative record concerning the California Bay/Delta Water Quality Standards discussed in this preamble is available for public inspection and copying at the Environmental Protection Agency, Region IX Office, Water Quality Standards Branch, 75 Hawthorne Street, San Francisco, California 94105.

G. Specific Issues for Commenters to Address

Written public comments are invited on all issues raised in this notice. EPA is especially interested in soliciting public comments on the following issues:

1. EPA requests comments on the feasibility of setting water quality criteria based on a smooth function rather than on the mean value for each water year type categories.

Testimony at recent State Board hearings criticized the use of water year type categories. Because water year types can change as the year progresses, criteria based on the historical mean for each water year type can cause major changes in project operations and habitat conditions if a given year shifts from one water year type to another. For example, a later season storm could cause the water year type to be reclassified from the below normal category to the above normal category. This shift would increase the number of required days of compliance at Chipps Island from 119 to 144 days. Such large and sudden changes are inefficient for water resource management and can harm aquatic resources by dewatering or washing away newly spawned eggs. One formulation of the criteria that could provide for more gradual shifts is described below.

California DWR, USBR, and others have suggested that a smooth function should replace the use of means for each water year type category. Use of these smooth function equations would result in the same average number of days required for each year type but would involve higher numbers in wetter years within the category and lower numbers for the drier years within each category. Incorporation of a smooth function would likely ease the actual operational procedure to meet the criteria and would avoid the relatively large scale changes in operations that might come from a shift in the determination of year type as spring progresses.

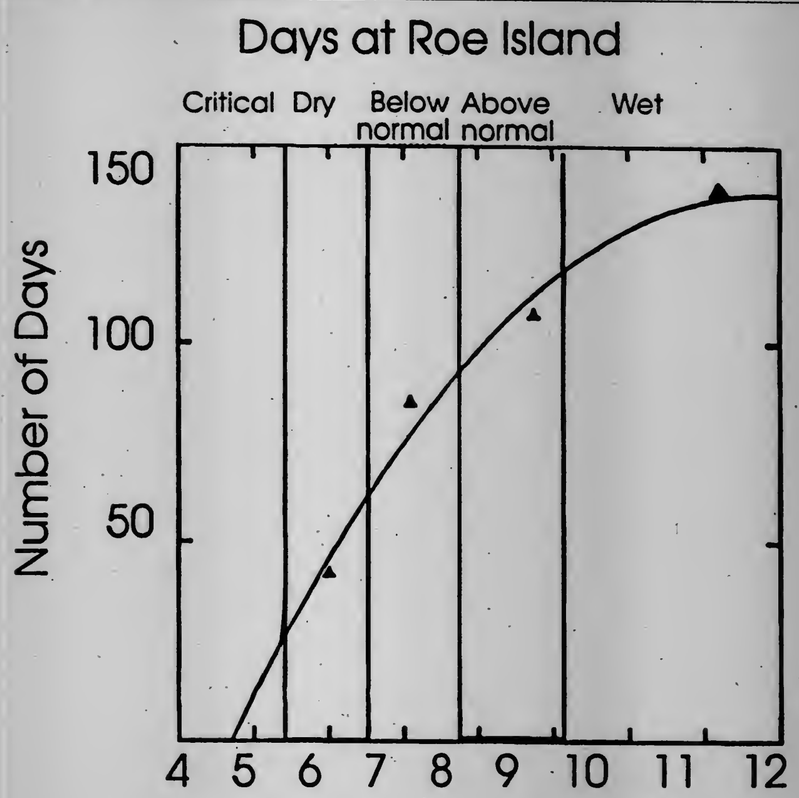
EPA has discussed the use of a smooth function criteria with water project operators and the State Board, and has thus far received a very positive response. Because it is a new approach that has not received substantial scrutiny in California, EPA's proposal above relies on the traditional water year type classification. However, if public comments do not raise any significant issues preventing its use, EPA would be inclined to use the smooth function criteria as an alternative to the water year type classification.

The discussion below describes one possible approach to the construction of a smooth function criteria, and compares the potential effects of those functions with the traditional water year type criteria. Because no critically dry years occurred in the reference period it is necessary to extrapolate from the four year types for which there are data to the critical year type. Fortunately, there is a very high correlation among the four points (Figs. 1 and 2). These extrapolations allow the required number of days at Roe and Chipps Islands in each year type to be described as a pair of smooth functions.

Port Chicago Equation (see Figure 1).
$Days = 76 * Index - 3.3 * (index)^2 - 299$

This equation produces a wide range of required number of days within most year types and in all but wet years would involve a range of about thirty days. Use of the equation would result in little variance within wet years.

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Port Chicago (64 km)	Mean	Min	Max
Wet	133	122	150
Above normal	105	94	121
Below normal	78	57	93
Dry	33	16	56
Critical	0	0	15

Figure 3.

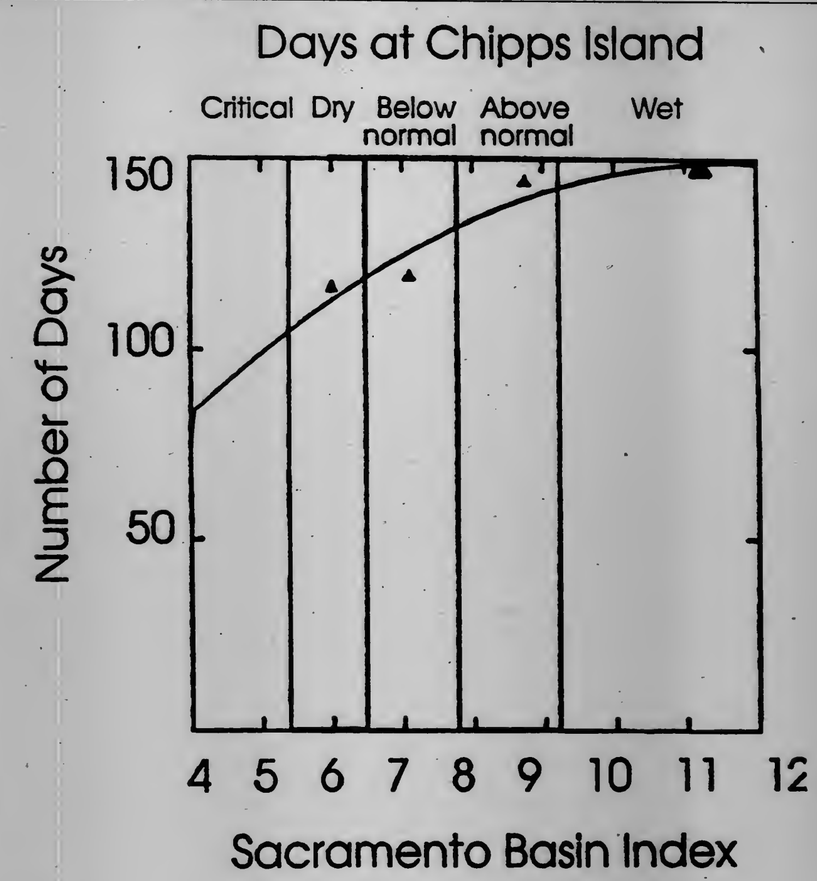
The relationship between number of days at Port Chicago and Sacramento Basin Index (Figure 3) yields differences of required number of days within year types of as much as 40 days in dry years. With the difference in flows required to sustain the isohaline at Port Chicago (29,000 cfs) and Chipps Island (12,000 cfs), the theoretical difference in water costs within a year type could be substantial. The actual costs are likely to be lower, however, because flows sufficient to trigger the standard are often followed by a considerable period of elevated flows sufficient to meet the required number of days. These differences are likely to be fully realized in dry and critical years when conditions in the Delta are fully controlled by the projects.

Chipps Island Equation (see figure 2)

Days = 26.3 * Index − 1.13 * (index) − 4.6

This equation results in small differences within each of the year types, with the exception of critical years.

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Chipps Island (74 km)	Mean	Min	Max
Wet	148	142	150
Above normal	144	133	141
Below normal	119	118	132
Dry	116	105	118
Critical	90	66	104

Figure 4.

The relationship between number of days at Chipps Island and Sacramento Basin Index (Figure 4) yields very small ranges about the mean for all but critical years. However, use of a smooth function is justified because of the open-ended nature of critical years. The driest year on record had a Sacramento Basin Index of 3.1, but the index theoretically could approach 0. This wide span of possible index values in the critical year type is best handled by the smooth function described. The smaller flows this standard entails (12,000 cfs at Chipps and 5,800 cfs at the confluence) and the small range of values within all but critical year types yields smaller differences in water costs.

In summary, a smooth function to determine the number of days of compliance would result in the same average number of days for each year type, but would more accurately reflect differences within these categories. Hence, small adjustments could be made in project operations as the water year progresses.

The use of a smooth function addresses, to some extent, the issue of adjusting habitat protection requirements in extended droughts. The present identification of year type is based on the Sacramento River Index. That index combines three variables: (1) Precipitation in the April through September period when flood control requirements are reduced and more precipitation can be held in reservoirs, (2) the index of the previous year which partly reflects the amount of carry-over storage, and (3) precipitation in the October through March period. The index weights these three factors in a 40:30:30 ratio. For the purpose of protecting estuarine habitat, the precipitation in February to June and the amount of carry-over storage may be more important than precipitation in the rest of the year. EPA is requesting comments on the possibility of modifying the Sacramento River Index for purposes of developing the salinity criteria as follows:

(a) The criteria could calculate an index weighted more toward the previous year's Sacramento River Index and the February through June precipitation. A 40:40:20 ratio or even 50:50:0 index might be a more appropriate basis for the criteria.

(b) The criteria could start each February with a baseline set of requirements and add or subtract days at each of the two downstream sites based on how conditions in each month differ from the average conditions for that month.

2. EPA is including a 14 day rolling averaging period in its proposed salinity criteria. As discussed above, the 14 day period was included to assure that the range of spring to neap tidal conditions was included in the averaging period. Accounting for the effects of tidal influences is important, especially for the downstream compliance location at Roe Island. During its discussions of this proposal with the operators of California's major water projects, it was suggested that a 28 day rolling average or other averaging period may be more appropriate, so that the entire tidal cycle is included. EPA's preliminary review of this suggestion indicates that it would be an appropriate device for accounting for tidal influences, and would not have any detrimental impact on protecting the designated Estuarine Habitat use. Therefore, if public comments do not raise any significant issues, EPA would be inclined to use a 28 day averaging period. EPA, therefore, is requesting comments on the following alternative approaches to the averaging period:

(a) The proposed criteria could be measured using a 28 day rolling average, thereby lengthening the averaging period to encompass the full range of tidal strengths and giving an overall effect of the tidal cycle.

(b) The criteria could measure compliance with a rolling average but allow discontinuities in the averaging period. Thus, days on which meteorological conditions interfere with achieving the 2 ppt criteria at Roe Island would be counted instead as days of meeting the criteria upstream at Chipps Island. This approach could be applied only until all days that are required at the upstream site are met.

3. As a part of EPA's coordination process in developing this proposal, the Agency has discussed its proposed criteria at length with the operators of California's major water projects. These operators, who will have substantial responsibilities under any implementation plan developed by the State Board, raised a question about how compliance with the 2 ppt salinity criteria should be measured. Under existing operational models, these operators would translate the proposed criteria into a set of flow parameters, and would operate the system pursuant to those flow parameters so as to achieve the 2 ppt salinity criteria at the targeted sites. However, because all models contain imperfections, it has been proposed that the operators should actually model compliance at a site somewhat downstream of the targeted site so as to provide a "margin of error" or a "confidence interval".

EPA's preliminary review of this issue suggests that use of a "confidence interval" of this kind is unwarranted, for two primary reasons. First, the model that predicts the location of the 2 ppt isohaline based on flows is extremely accurate. EPA's preliminary review of the model's accuracy during the five months covered by the proposed salinity criteria, using historical data, found that the model correctly predicts the number of days for the isohaline position more than 95 percent of the time. Second, the use of a 28 day averaging period, as described above, would adequately address most of the variability associated with factors not included in the salinity-flow model. For these reasons, EPA believes that the use of these proposed confidence intervals would require substantial additional flows through the estuary without any corresponding ecological benefit to the Estuarine Habitat designated use.

EPA expects that the State Board will develop an implementation plan for these Estuarine Habitat criteria by changing the volume and timing of water flows through the estuary. EPA believes that an implementation plan that relies on the salinity-flow model, without making additional allowances for confidence intervals as described above, would be acceptable for purposes of protecting the designated use. Further, EPA notes that the State's triennial review provides a mechanism for regularly reviewing the adequacy of any implementation decisions concerning confidence intervals for the proposed salinity criteria.

EPA solicits comment from the public on this issue, and welcomes any evaluation on the merits of the use of this or other forms of confidence intervals with the proposed criteria. Specifically, EPA requests comment on whether the proposed criteria without the above confidence interval adjustment would be protective. Alternatively, would a confidence interval based on an extended number of days of compliance at the targeted sites yield the desired level of confidence without requiring the higher flows required by the confidence interval proposal outlined above?

4. Will these criteria be adequate to protect low-salinity habitat conditions in wetter years? The SFEP workshop that developed the scientific rationale for an estuarine index based their conclusions on correlations between mean position of the 2 ppt isohaline during appropriate months and the abundance of estuarine organisms at all trophic levels. With the exception of mollusks, yearly measures of abundance increase either linearly or logarithmically as the mean location of the 2 ppt isohaline moves down the estuary.

EPA has developed its proposed Estuarine Habitat criteria based on the number of days at particular locations in the estuary, rather than a mean position over a series of months. These criteria have the advantage of being more easily implemented, and more directly tie certain salinity ranges to certain geographic locations (such as the extensive shallows of Grizzly Bay). However, basing the number of days on a certain historical period (such as 1940 to 1975) does not mean that the mean position of the 2 ppt isohaline for these reference years will be achieved. By using the historical period of 1940 to 1975 to define the number of days at each location, we are approximating the actual historical (late 1960's to early 1970's) mean position of the 2 ppt isohaline in drier years. However, EPA's criteria may not provide overall conditions equal to those during the late 1960's to early 1970's. This is because the mean position of the 2 ppt isohaline in wetter years has been substantially downstream of the wetter year positions in the proposed rule (see Table below).

MEAN POSITION, IN KM, OF THE FEBRUARY THROUGH JUNE 2 PPT ISOHALINE, BY YEAR TYPE, FOR 1940–1975 HISTORICAL PERIOD AND LATE 1960'S TO EARLY 1970'S HISTORICAL PERIOD (BASED ON DAYFLOW INFORMATION AND THE SALINITY/FLOW RELATIONSHIP DEVELOPED BY KIMMERER AND MONISMITH; SFEP 1993B), AND EPA CRITERIA

Year type	C	D	BN	AN	W
1940–1975	.....	70	67	59	56
1964–1975	.....	74	73	62	59
EPA criteria—with trigger[9]	77	73	70	67	65
EPA criteria—without trigger	77	76	75	74	74

[9] The EPA criteria include the Roe Island criteria with its "trigger", which in some years will not be triggered. These two sets of results indicate the mean position of the 2 ppt isohaline in the event that the Roe Island criteria is and is not triggered.

These wetter years are an important component of the natural hydrology; 40 percent of the last 50 years have been in the "wet" category. They are years of very high productivity for the estuary, and are likely to provide a buffer for times of low productivity, especially for those species living longer than one or two years. Such variability also encourages diversity, such as the plant diversity in brackish tidal marshes bordering Suisun Bay. While many of the winter/spring flows during these years are presently considered "uncontrollable," a number of new water projects have been proposed that would capture part of these flows.

One concern about the future development of these "uncontrolled" flows involves a possible decrease in the frequency with which triggering conditions will occur. The level of protection afforded by the Roe Island standard would be reduced if additional upstream water developments decrease uncontrolled wintertime flows, thus reducing the frequency with which the standard is triggered. EPA welcomes comments on how this standard should be modified to reflect future changes in upstream water development facilities.

An additional concern about the protection of conditions in wetter years is that some wet years are much more productive than others. By developing standards that can be met in all wet years some of the biological values associated with exceptional years is not included. Part of the difficulty of developing criteria to protect the biological value of these wetter years arises from the open-ended nature of the wet year category. Recent wet years include years as different as 1983 and 1986. In 1983, precipitation, both rain and snow, was heavy throughout the winter and spring. In 1986, on the other hand, a large tropical storm produced record-setting precipitation which lasted for a brief period and fell almost entirely as rain. Although both these were wet years, 1983 had about three times the amount of precipitation of 1986 and, because of the heavy snowfall, a much higher amount of water was available for use. Possible ways to protect the value of wet year habitats include the use of triggered standards downstream of Roe Island or by requiring more days at Roe Island in the wettest years.

EPA welcomes suggestions on the proper level of protection that should be provided during these wetter periods.

5. One of the critical elements of EPA's proposal is the determination of the proper historical reference period for developing target numbers of days when the 2 ppt isohaline is at a particular point in the estuary. As discussed above, EPA is recommending a level of protection for the Bay/Delta similar to that existing during the late 1960's to early 1970's. To estimate the hydrological conditions during the late 1960's to early 1970's across the five water year categories, EPA is proposing using the 1940 to 1975 period as the historical reference period.

The choice of years to include in the historical reference period can strongly affect the number of days when the 2 ppt isohaline is at a particular point. Incremental changes in the number of days have corresponding incremental effects on the water supply impacts of these proposals.

Prior to the building of Shasta Dam, uncontrolled spring runoffs resulted in as many as 150 days when the 2 ppt isohaline was located at or below Chipps Island, even in critical years, whereas in recent years there have been as few as 0 days. In developing the proposed rule, EPA has used the period between October 1939 and September 1975 to represent the period when the conditions in the estuary were sufficient to protect the designated fisheries uses. As explained above, this span of years provides the greatest number of examples of each year type during the period after the massive changes in hydrology due to the construction of the Shasta Dam on the Sacramento River and the Friant Dam on the San Joaquin but before the most dramatic recent declines in fishery abundance. Even so, the chosen historical reference period contains no examples of critical years and only three examples of above normal years.

One example of the variability of conditions within the chosen historical reference period involves the Chipps Island location. There is a great deal of variability in the number of days the 2 ppt isohaline was at Chipps Island within each of the drier year types in

the historical reference period. Although the years with fewest days occurs later in the period there are examples of later years with more days than earlier years. The following table gives the number of days that the 2 ppt isohaline was west of Chipps Island for each dry and below normal year in the historical period. The latest examples of dry years in the proposed reference period, 1964 and 1961, had the fewest days at Chipps Island. These two dry years, however, were immediately preceded by a dry year (1960) with a number of days at Chipps Island substantially greater than the historical mean, and the year with the third lowest number of days at Chipps actually occurred in 1947. The absence of a strong pattern of decreasing days at Chipps Island over time was the principal basis for EPA's use of as broad a historical period as possible, the full period from 1940 to 1975, as the historical reference period.

Year	Dry years	Below normal
Number of days between February and June when 2 ppt isohaline was west of Chipps Island;		
1930	146	
1932	151	
1935		150
1936		151
1937		150
1939	106	
1944	142	
1945		150
1946		150
1947	111	
1948		143
1949	141	
1950	150	
1955	129	
1957		147
1959		81
1960	123	
1961	89	
1962		136
1964	75	
1966		112
1968		83
1972		63
1979		117
1981	76	
1985	31	
1987	46	
1989	39	

During the development of EPA's proposal, it has been suggested that the years 1964 to 1976 could be used as an alternative historical reference period. This period almost literally replicates the intended late 1960's to early 1970's. EPA has not chosen that period for two reasons. First, it is an extremely limited sample of the variation of conditions within water year categories. Second, including the year 1976 is inappropriate, given that by 1976 the decline of certain aquatic resources was already apparent.

Another suggested possibility is that use of the 1955 to 1975 time period may be a better indicator of conditions in the late 1960's to early 1970's. The 1955–1975 period excludes water years before the CVP's pumping facilities were operational, but still provides a larger sample across certain water year types than would using the 1965 to 1974 period alone. As the table above indicates, using this 1955 to 1975 period would decrease the number of Chipps Island days from 116 to approximately 104 days during dry years, and from 119 to approximately 104 days during below normal years.

EPA did not use this 1955–1975 period as the historical reference period because, as explained above, it believes the 1940 to 1975 period provides a larger and more representative sample of hydrological conditions across all year types similar to those in the late 1960's to early 1970's.

Given the importance of this issue, EPA requests comments on the suitability of the above suggestions or of other historical reference periods for the salinity criteria. EPA is especially interested in how the use of alternative periods could provide a better estimate of the hydrological and ecological conditions in the estuary in the late 1960's to early 1970's. In addition, EPA is soliciting comment on alternative approaches to developing reference conditions for water year types for which there are limited historical examples.

6. During the spawning season, several species appear to be carried through the Delta to Suisun Bay during periods of elevated Delta flows caused by upstream storm events. The proposed Roe Island salinity criteria are partly intended to protect the normal dispersal of these young fish throughout Suisun Bay over a number of tidal cycles. As explained in more detail above, the proposed Roe Island criteria include a "trigger" that activates the criteria only after natural hydrological conditions push the 2 ppt isohaline to Roe Island. EPA is requesting comment on this trigger, including comment on the following specific questions:

(a) Would a trigger at some upstream site, such as Middle Ground, retain the desired link to storm events while ensuring a more frequent triggering of the standard?

(b) Should the criteria be triggered only by storm events actually occurring in the February through June period? This refinement would prevent the criteria from being triggered, for example, solely by a large storm occurring in January, the runoff from which may keep the 2 ppt isohaline below Roe Island into February.

(c) Should the trigger be stated as a single day when mean salinities are less than 2 ppt, or by a longer averaging period (14 days, 28 days, etc.)?

(d) It has been suggested that the need for a trigger might be eliminated by setting a criteria at a location further upstream. Both USFWS and USBR have suggested developing a criteria at Middle Ground (at roughly km 68). At this location the criteria would be triggered in all but critical years and would thereby provide an increased level of protection overall. Even though a Middle Ground criteria would require more days of protection than the Roe Island criteria, the upstream location means that the water supply impacts would be less than for the Roe Island criteria in years when the Roe Island criteria would have applied. It is likely that a shift of the downstream requirement from Roe Island to Middle Ground would have higher water supply impacts on average but lower impacts in particular years. At the same time, however, this shift in the downstream location would mean that the criteria would no longer be directly tied to salinities in San Pablo Bay that have been identified as biologically important for starry flounder, longfin smelt, and the shrimp, *Crangon franciscorum*.

7. Several participants in the State Board hearings stressed the importance of avoiding consecutive years of poor habitat conditions for short-lived species, such as Delta smelt and longfin smelt. For example, Dr. Moyle recommended that relaxations of the Roe Island standards to Chipps Island during dry and critical years be limited to two consecutive years. Similarly, during the course of the Agency's discussions with USFWS and NMFS about the potential effects of these proposed criteria on threatened and endangered species, a question was raised about whether the proposed criteria would adequately protect the listed Delta smelt in an extended drought. Recent extended droughts in the Bay/Delta watershed have lasted six or seven years, but there is scientific evidence that droughts as long as fifty years have occurred and could happen again. Although droughts of this magnitude are unlikely, such a drought would have serious adverse impacts on the estuary's fisheries resources, and especially on fishes with short life cycles such as the Delta smelt.

At the same time, water project operators have suggested that extended droughts impose special constraints on project operations and deliveries, and have recommended that EPA propose relaxations of the Estuarine Habitat criteria during extended droughts.

EPA is soliciting comments on whether it is necessary to promulgate special criteria to deal with the issue of consecutive dry or critical years or extended drought. EPA is particularly interested in comments on the biological requirements of threatened and endangered fishes during these periods, and on the operational impacts of special protection measures during these periods.

8. In this proposed rule, EPA is relying on the Estuarine Habitat criteria to protect the tidal wetlands bordering Suisun Bay. Tidal wetlands provide habitat for diverse marsh, aquatic and wildlife species, as well as special status species such as the Suisun song sparrow, Delta tule pea, black rail, clapper rail and soft-haired bird's beak. EPA's proposed criteria have been developed to protect aquatic species and to provide salinity conditions similar to those in the late 1960's to early 1970's. Therefore, many of the aquatic species that inhabit the marsh channels should be better protected under our proposed criteria. In addition, the proposed Estuarine Habitat criteria are designed to provide substantially better dry and critically dry year springtime conditions than the recent year conditions that have caused adverse effects on the tidal marsh communities bordering Suisun Bay. EPA therefore believes that these criteria will provide substantially better conditions in the marshes, but is soliciting comment as to whether additional criteria are necessary to fully protect the marsh resources.

Although EPA does not believe that there is a sufficient scientific record at this time to establish specific numerical salinity criteria for the tidal wetlands, it may be possible to set narrative criteria which could be developed into numerical criteria in the near future as additional information becomes available. To be consistent with EPA guidance, such narrative criteria should include specific language about conditions that must exist to protect a designated use, and must be quantifiable so that numeric standards can be developed (USEPA, 1990). Examples of possible narrative criteria for the Suisun Marsh are:

(1) "Water quality conditions sufficient to support high plant diversity and diverse wildlife habitat throughout all elevations of the tidal marshes bordering Suisun Bay"

(2) "Water quality conditions sufficient to assure survival and growth of brackish marsh plants dependent on soils low in salt content (especially *Scirpus californicus* and *Scirpus acutus*) in sufficient numbers to support Suisun song sparrow habitat in shoreline marshes and interior marsh channel margins bordering Suisun Bay."

EPA welcomes any information or recommendations on criteria to protect the Suisun Bay tidal marshes.

9. USFWS and NMFS have expressed concern that special measures may be necessary to protect Delta smelt in the event of a late spawn. In particular, these agencies have suggested that if real-time monitoring indicates that peak Delta smelt spawning occurs in late June or July, it might be appropriate to maintain the 2 ppt isohaline in Suisun Bay during those months to assure that juveniles remain in the suitable rearing habitat in eastern Suisun Bay.

EPA is soliciting comment as to whether and how these measures should be incorporated into water quality criteria, and on the operational impacts of such criteria. In addition, EPA requests comment on how implementation of these criteria would affect carryover storage requirements presently imposed on water projects for the benefit of the threatened winter-run Chinook salmon.

10. EPA is proposing salmon smolt survival criteria to protect the Cold Fresh-Water Habitat and Fish Migration designated uses. These criteria would address EPA's concerns with certain temperature criteria contained in the 1991 Bay/Delta Plan that were disapproved by EPA. As explained in more detail above, the Agency believes that it presently has an inadequate basis to propose temperature criteria. Further, the adoption of salmon smolt criteria provides the State with more flexibility in determining an implementation plan protecting the fisheries use.

EPA is soliciting comment as to whether an adequate scientific basis exists to propose a temperature criteria alone. The Agency is especially interested in receiving comment as to whether a temperature criteria would provide better protection for the designated uses than the proposed criteria, and whether a temperature criteria could be implemented given the present operational flexibility in the estuary.

11. EPA welcomes any additional information on the effectiveness and feasibility of installing a barrier to fish (including a sound barrier) at the head of Georgiana Slough. Results from USFWS coded-wire salmon smolt experiments clearly demonstrate that migrating smolts survive poorly in the central Delta, and salmon smolt survival would be higher if fish migrated down the main Sacramento River channel. Closure of Georgiana Slough is one of the implementation measures that the Delta Team of the Five Agency Chinook Salmon Committee evaluated and recommended as a measure to increase salmon smolt survival, and survival indices recommended by the fisheries agencies included this measure. The major concerns over Georgiana Slough closure are: exacerbation of the reverse flow situation in the lower San Joaquin River, degradation of water quality conditions in the Central Delta, and blocking of upstream migration of adult salmon. It is likely that reverse flows would become less of a problem with a barrier in place in Georgiana Slough if exports were balanced with San Joaquin River flows to continue to provide positive flows in the lower San Joaquin. EPA would like more information on whether a balance could be achieved to provide some periods of time when a Georgiana Slough barrier would be beneficial for salmon without causing detrimental effects on the other species and habitats in the Delta. Since EPA's proposed salmon smolt survival index is a criteria to protect the outmigration of smolts, and Georgiana Slough closure is a measure that would be beneficial for outmigrating salmon, EPA solicits comments on whether the target index values in its proposal should be changed.

12. As explained in more detail above, EPA has based its proposed index values for the salmon smolt survival criteria for the San Joaquin River on recommendations by the USFWS, NMFS and California DFC at the State Board's Interim Water Rights Hearings for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. These recommendations include placing a barrier at the head of Old River during migration of San Joaquin River system smolts through the Delta (April 1 until May 31). The Old River barrier was also recommended by the Delta Team of the Five Agency Chinook Salmon Committee, and is one of the projects called for in the CVP Improvement Act. However, discussions with USWFS and NMFS carried out during EPA's consultations under the ESA have raised questions about whether the barrier would adversely affect reverse flows in the central Delta under certain conditions. EPA is therefore requesting comment on the following issues:

(a) Would the proposed salmon smolt criteria index values on the San Joaquin need to be revised if the Old River barrier is not built? In what ways?

(b) Should EPA promulgate alternative or additional criteria that would be effective in the event that the Old River barrier is not constructed?

13. In addition to a barrier at the head of Old River, the USFWS implementation recommendations for the San Joaquin also included certain export limits and flow requirements during peak migration periods. Export limits are also an important measure for achieving protection for migrating smolts on the Sacramento River system, especially if there is no barrier in place at Georgiana Slough, and are an element of the models used to generate the salmon smolt survival indices on the Sacramento River. EPA is concerned that there may be implementation scenarios for the two rivers that could result in detrimental conditions for migrating smolts even if the proposed index values are achieved. One such possible scenario may occur if the State Board adopts USFWS implementation recommendations on the Sacramento River (adjusted, as described above, to account for Georgiana Slough remaining open), but then operates the San Joaquin River so as to just meet the proposed index values. In this case, our preliminary review indicates that the San Joaquin River index value theoretically might be attained with lower flows than are protective for the salmon resources. The USFWS has substantial evidence that San Joaquin River flows are a critical element for successful smolt migration. Protection of migration for these runs is particularly important considering the low abundances and poor conditions in the San Joaquin system.

The discussion above raises the possibility that the salmon smolt criteria for the San Joaquin River system may need to be refined. We are therefore requesting comment as to whether the proposed index values should be revised to reflect the interrelation between Sacramento River and San Joaquin River implementation measures recommended by USFWS. In particular, should the proposed index values be revised to account for the possible effects of low flow scenarios on the San Joaquin River?

14. The Central Valley Project Improvement Act requires that measures be taken to double the production of anadromous fish species throughout the Central Valley watershed. EPA intends that its proposed criteria should support this goal in the waters of the Bay/Delta estuary. EPA appreciates any information on whether the proposed criteria provide the necessary protection to reach this goal.

15. Dr. Wim Kimmerer has developed a salmon population model for the Sacramento River Basin, CPOP, which includes a regression model for the Delta based on the same USFWS data used to develop EPA's proposed criteria (BioSystems Analysis, 1989). This model is not divided into reaches, and uses all coded wire tag data from both ocean and trawl recoveries. Significant independent variables include: proportion of flow remaining in Sacramento River, flow in the Sacramento River, the interaction between these two, and temperature at Freeport. Dr. Kimmerer compares his analysis with the USFWS analysis, and reports that his analysis outperforms the USFWS analysis and, in addition, that it better models temperature effects on mortality. However, this model uses only pre-1989 data. EPA appreciates any comments on the usefulness of this model in predicting Sacramento River smolt survival and setting criteria to protect Fish Migration as a designated use.

16. A number of species in the Bay/Delta estuary appear to rely on estuarine conditions during the months of July to January. These species include herring (primarily a Bay species), late fall-run salmon, and juvenile striped bass. EPA welcomes any information on habitat conditions necessary for protection of these species, and on possible revisions to the proposed criteria that could address these species.

17. EPA is concerned that changes in water project operations in response to the proposed criteria may have unforeseen environmental impacts. EPA welcomes comments as to whether there are any operational scenarios for the CVP, SWP, and/or other water users that would increase or decrease the ecological benefits of the proposed criteria. In addition, EPA notes that, under the CWA, the state will conduct triennial reviews of these and other water quality criteria to determine whether they are adequate to protect the designated uses. At those times, the state has the opportunity to adjust criteria that are shown to be over or under protective of the uses. EPA welcomes comments as to the kinds of information, such as biological resource monitoring data, that are or will be available to measure the effectiveness of fish and wildlife criteria in the Bay/Delta.

List of Subjects in 40 CFR Part 131

Environmental protection, Water pollution control, Water quality standards, Water quality criteria.

Dated: December 13, 1993.

Carol M. Browner,

Administrator.

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Appendix I to the Preamble—Managing Freshwater Discharge to the San Francisco Bay/Sacramento-San Joaquin Delta Estuary: The Scientific Basis for an Estuarine Standard (San Francisco Estuary Project, 1993) (Excerpts)

Introduction

Aquatic resources of the Sacramento-San Joaquin Delta and upper portions of San Francisco Bay have undergone significant declines over the past several decades. Species characteristic of the Delta and rivers, such as striped bass and salmon, began to decline during the late 1970s. Prolonged drought, large diversions of fresh water, and dramatic increases in populations of introduced aquatic species during the 1980s and 1990s brought a number of indigenous aquatic species to extremely low levels. Species that spend more of their lives downstream of the Delta, including Delta smelt, longfin smelt, and many zooplankton, maintained large populations through the 1970s, but declined sharply after the mid-1980s. Declines in aquatic resources have led to curtailed fishing seasons, to petitions for endangered species status, and general concern about the health of the estuarine ecosystem.

Concern over the impacts of increased salinity produced from the combination of drought and high diversion rates is not limited to aquatic communities. The few remaining fragments of brackish and freshwater tidal marshlands are particularly vulnerable to increased salinity or to reduced variability in salinity. Under natural conditions, these tidal marsh communities would move upstream with the changing salinity. But the flood plains and other lowlands suitable for the evolution of tidal marshes are absent upstream. Tidal marshes provide important habitat for numerous plants and animals of special concern.

Large demands for water by the agricultural community and by California's burgeoning urban areas make it difficult to allocate additional freshwater for the protection of dwindling aquatic and wetland resources of the estuary. Management of the State's water resources necessitates a delicate balancing of needs, given the intense and growing competition for water. If the freshwater needs of the estuary are to be considered seriously they must be based on sensitive, straightforward, and diagnostic indicators of the responses of the estuarine ecosystem to patterns of freshwater inflow.

An extensive body of scientific evidence indicates that flows into, within, and through the estuary are extremely important to organisms that depend on the estuary for at least a portion of their life cycles. However, the mechanisms by which flows affect different elements of the ecosystem are not well understood. In the Bay/Delta Estuary, many chemical and physical properties and processes are tightly linked to flow, including proportion of water diverted, salinity at a given point, the longitudinal position of a particular salinity range, and alteration of the effects of toxicants through dilutions. Any of these phenomena could be controlling a particular species, but each will also vary with the other variables that are closely correlated with flow.

At present, the complex configuration of the Delta and the estuary, combined with the complex withdrawal and diversion network, preclude any simple, directly monitored measure of freshwater discharge to the estuary. Effective protection and management of the estuary requires an index of the estuary's response to freshwater inflow that (1) Can be measured accurately, easily and inexpensively; (2) has ecological significance; and (3) has meaning for nonspecialists. Net Delta outflow, which is calculated from various measures and estimates of water inflow and use, has been a useful tool but it does not satisfy all of these requirements. Because of the high correlations among the flow-related variables, the choice of a suitable index does not need to be based on any presumed mechanism.

The San Francisco Estuary Project convened a series of technical workshops to evaluate the responses of estuarine biota and habitats to various conditions of salinity and flow. The workshops involved approximately 30 scientists and policy makers with expertise in estuarine oceanography and ecology, and in water and living resource management. The group focused its attention on the Suisun Bay area, the portion of the estuary downstream of the confluence of the Sacramento and San Joaquin rivers and upstream of Carquinez Strait. Internal Delta issues (such as gate closures, water exports, and internal flows) or problems of downstream portions of the San Francisco Bay (such as urban and industrial discharges) were not directly addressed by the group. No attempt was made to incorporate all management actions that might benefit biological communities, nor to identify what level of environmental restoration and protection should be set based on salinity and flow.

Identification of freshwater needs of aquatic resources has caused conflict for a variety of reasons. Debate of scientific issues is fundamentally different from other kinds of debate in that it should yield to scientific investigation. Participants developed issue papers that delineated areas of scientific agreement. Several issue papers showed that conditions in Suisun Bay largely reflected the abundance, recruitment, or survival not only of local species, but also of habitat conditions for species upstream and downstream. A primary result of the issue papers produced for this group was that almost all species studied increased in abundance as a simple function of increased outflow and decreased salinity. The absence of a plateau or peak in the relationship of species abundances and outflow conditions means that science alone cannot identify an optimal outflow. Furthermore, the similar response of species at all ecological (trophic) levels argues strongly that the estuary should be managed using an ecosystem approach rather than on a species by species basis.

The technical workshops concentrated on developing the scientific rationale for an estuarine index to measure the estuary's response to different levels and patterns of freshwater input. Participants recognized that economic and socio-political considerations should be accounted for at other points in the deliberations. The needs of society, as well as the needs of the environment, should be considered in determining appropriate allocations of freshwater. However, the premise of the workshops was that one should start with the best scientific and technical judgements possible.

Many large-scale changes in the structure of the Delta have been proposed to facilitate water use and to reduce impacts of water withdrawal on aquatic resources. There was general recognition by the group that the present Delta withdrawal and distribution system is a major contributor to the declines of important species. The conclusion and recommendations of the workshops are based upon the present water withdrawal and distribution system and would need to be re-evaluated if any significant alterations to that system are considered.

The conclusions and recommendations in this report were developed by the estuarine scientists and managers who participated in one or more of the workshops. The complete list of participants and their affiliations are listed in Appendix D. All conclusions and recommendations in this report were reviewed, voted on, and endorsed by a consensus of the estuarine scientists and managers who participated in the fourth and final workshop in the series (26 August 1992). The term consensus is used to represent group solidarity on an issue; a judgement arrived at by most of the scientists and managers present. In all cases, the consensus was unanimous or nearly unanimous. The conclusions and recommendations are arranged in a sequence that "tracks" the evolution of thinking of the participants. The conclusions and recommendations reached by the group reflect the participants' best scientific and technical judgements, not necessarily the positions of their affiliated agencies or organizations.

The following conclusions and recommendations are intended to provide guidance and information on how estuarine standards could be developed and how different levels of protection of estuarine resources could be selected.

The full justifications to these conclusions and recommendations are contained in technical papers that accompany this report and in other documents prepared for the San Francisco Estuary Project. (Appendix E).

Important Conclusions and Recommendations

(1) Conclusion

Because of the complex nature of the freshwater delivery and distribution system in the San Francisco Bay/Sacramento-San Joaquin Delta estuary, there is at present no single, simple, accurate measure of freshwater input to the estuary that conveys information important to resource managers and to the public, and that is meaningful to those with special concerns about how fluctuations in freshwater inflow to the

estuary affect habitat and the condition of the estuarine ecosystem.

Recommendation

Estuarine standards should be developed to be used in conjunction with flow standards. One set of standards should be based upon an index of the physical response of the estuary to fluctuations in the input of fresh water. These standards should have diagnostic value in providing, throughout the year, a level of protection to the estuary and to important ecosystem values and functions consistent with environmental goals and objectives for the Bay-Delta estuary.

(2) Conclusion

Estuarine standards to be used in conjunction with flow standards should be based upon an index that is simple and inexpensive to measure accurately, that has ecological significance, that integrates a number of important estuarine properties and processes, and that is meaningful to a large number of constituencies.

Recommendation

Salinity should be used as an index for the development of some estuarine standards.

Justification

In the first workshop (August 1991), participants identified and assessed a number of indices of the estuary's responses to flow to use in managing freshwater discharge to the estuary. The preliminary, preworkshop, choice was the position of the entrapment zone. This index was abandoned quickly, however. The entrapment zone is important to estuarine ecosystem processes and functions, but at present there is no single, straightforward "entrapment zone index" suitable for monitoring the position or strength of the entrapment zone as a function of freshwater input.

Salinity was selected as the most appropriate index because: (1) The salinity distribution is of direct ecological importance to many species; (2) the salinity distribution is a result of the interplay of freshwater input, geometry of the estuarine basin, diversion of fresh water in the Delta, and the tidal regime; and (3) salinity measurements can be made accurately, directly, easily, and economically. Moreover, since most of the major concerns about reductions in the freshwater input to the estuary are associated either directly or indirectly with the loss or alteration of low salinity habitat, salinity is an ideal index for keeping track of the extent—both area and volume—of low salinity habitat. The salinity distribution represents the response of the estuary to different combinations of river discharge, diversions and withdrawals, tidal regime, and basin geometry.

(3) Conclusion

Salinity measured at about 1m above the bottom [1] is an index upon which estuarine standards should be developed. The index is a practical way of tracking changes in habitat.

Recommendation

Standards should be developed using an index that establishes an upstream limit of the position of the 2‰ near-bottom isohaline, averaged over different periods of the year.

(4) Conclusion

Analysis of the available historical data indicates that, throughout the year, the farther downstream the 2‰ near-bottom isohaline is displaced, the greater the abundance or survival of most species examined.

Recommendation

The downstream position of the 2‰ isohaline should be unconstrained.

Justification

From the environmental perspective—an important perspective, but not the only one—scientific uncertainty dictates taking an environmentally conservative approach, i.e. providing enough Delta outflow to the estuary to push the 2‰ isohaline farther downstream than might be required with greater scientific certainty. It is anticipated, and preliminary analysis supports it, that the salinity standard—the upstream limit of the 2‰ near-bottom isohaline—will vary from season to season to provide the desired level of protection.

(5) Conclusion

Estuarine systems are characterized not only by short-term responses to the mean salinity at any given location, but also by responses to longer-term seasonal, annual and interannual variability in salinity and other properties.

Recent advances in scientific understanding indicate that this dynamic character of healthy estuarine ecosystems is particularly true for the distribution and abundance of wetland vegetation, but also holds for other aquatic organisms.

Recommendation

The potential importance of variations in salinity on different time scales to the structure and dynamics of estuarine ecosystems should be considered in developing salinity standards. Deviations from the patterns of salinity variability in the historical data set could increase the risk of not achieving environmental goals and objectives even if mean positions of the 2‰ near-bottom isohaline were matched with the historical data sets.

Justification

There is strong biological evidence from a number of estuaries throughout the world that variability in flow, in circulation and mixing, in the salinity distribution, and in the distribution of other important properties and processes is important in maintaining a healthy estuarine ecosystem. Therefore, variability in flow above the threshold needed to meet the seasonal salinity standard is encouraged.

(6) Conclusions

Empirical statistical relationships were developed between a variety of estuarine properties and resources, and the position of the near-bottom 2‰ isohaline and other flow-related variables. *The relationships developed are statistical relationships. They are not proof of cause-effect.* The relationships indicate clearly, however, that the position of the near-bottom 2‰ isohaline can serve as a powerful diagnostic indicator of the condition of biological "units" (communities, populations) across a range of different trophic levels.

With the information these relationships can provide, water managers will be in a far better position to regulate freshwater discharge to the estuarine system to produce, on the average,[2] predictable and desirable ecological responses of the estuary consistent with goals selected for the estuarine ecosystem. If this strategy is followed, the probability of the desired ecological response will be enhanced and the chances of undesirable ecological surprises in the estuary will be reduced.

Because the statistical relationship between net Delta outflow and the position of the near-bottom 2‰ isohaline is strong, the position of the near-bottom 2‰ isohaline is an excellent surrogate for net Delta outflow

[1] Because the difference between surface and near-bottom salinities is small and because the relationship between them is reasonably well known, surface salinity could also be used. Near-bottom salinity is recommended, however, because it is a more stable indicator.

[2] Over a period of several years.

in managing freshwater input to the estuary. The relationship may be improved further through routine direct monitoring of the position of the 2‰ isohaline and a suite of biological responses.

Recommendation

The salinity distribution should be monitored continuously at a series of at least six stations spaced approximately five kilometers apart and located along the channel between about Emmaton and Carquinez Bridge. Measurements should be made at least near the surface and near the bottom at each station. The data should be telemetered to a convenient location for timely analysis and interpretation. These continuous monitoring data should be supplemented with detailed surveys to map the distribution of salinity in three dimensions. The data should be readily available in a timely way to all interested parties.

An appropriate biological monitoring program should determine responses of a variety of organisms to changes in position of the 2‰ isohaline.

Justification

During the second and third workshops, and during intersessions between workshops, a systematic search was made to select the most powerful tools of analysis to describe how diagnostic biological indicators respond to changes in position of the near-bottom 2‰ isohaline. When data were rich enough, other variables were included in the analyses

The first task was to specify the most diagnostic resource variables—the responses of indicators that would convey the maximum amount of environmental/ecological information. In every case, the objective was to demonstrate how these diagnostic environmental/ecological indicators responded to changes in the position of the near-bottom 2‰ isohaline and to a variety of other flow measures. In every case, experts on the particular biological response were consulted in selecting the appropriate averaging time for the position of the 2‰ isohaline.

(7) Conclusion

The position of the near-bottom 2‰ salinity isohaline is an index of habitat conditions for estuarine resources at all trophic levels, including the supply of organic matter to the food web of Suisun Bay, an important nursery area. In other words, well-behaved statistical relationships exist between the near-bottom 2‰ isohaline and many estuarine resources for which sufficient data exist to make appropriate analyses. Moreover, at least a rudimentary understanding exists for the causal mechanisms underlying many of these relationships. The location of the near-bottom 2‰ isohaline is important either because it is a direct causal factor or because it is highly correlated with a direct causal factor (e.g., diversions).

Preliminary analyses show that errors in prediction using models which incorporate only the position of the 2‰ isohaline are comparable to the errors using more complex models which incorporate additional flow-related variables. In other words, given the present data sets, predictive models using only the position of the near-bottom 2‰ isohaline perform as well as more complex models that incorporate other variables. However, some of these other variables may be very important in affecting habitat and the condition of biological resources of the estuary.

Recommendations

At this time, the most appropriate basis for setting salinity standards for the portion of the estuary on which this report concentrates is the position of the near-bottom 2‰ isohaline alone, unless it can be shown either that another variable is the controlling variable or that incorporation of additional variables improves the predictive capability. Further research should be conducted to improve prediction of the responses of important estuarine resources to variations in the position of the near-bottom 2‰ isohaline. That research should incorporate other variables where they can be shown to contribute significantly.

(8) Conclusion

A number of key species are subject not only to the biological effects of the location of the near-bottom 2‰ isohaline, and therefore the effects of freshwater inflow to the estuary, but also to the physical effects of entrainment and diversion by the various water projects.

Recommendations

Salinity standards should be keyed to the existing city, county, regional, state, and federal water diversion and distribution system. Proposed changes to that system should trigger a re-evaluation of the salinity standards to ensure that they will continue to provide the desired level of environmental protection while retaining as much flexibility as possible in meeting the state's other needs for water.

Since a broad class of models can be constructed, including mechanistic and statistical models that incorporate both biological and physical parameters and other factors such as diversions, exports, and antecedent conditions, efforts should be enhanced to ensure a consistent, long-term accurate measurement program to enhance these models and to decrease the uncertainties in their application. The ultimate goal is to have a predictive model that incorporates the position of the 2‰ isohaline and other appropriate physical and biological variables.

(9) Conclusion

Salinity standards should be based upon the best scientific and technical knowledge. A method is needed to summarize and to advance the state of scientific and technical knowledge of the complex relationships between variations in the position of the near-bottom 2‰ isohaline during different periods of the year (and associated Delta outflow) and a variety of diagnostic ecosystem responses.

Recommendation

Salinity and flow-response matrices should be developed for different biologically important periods of the year. The matrices should summarize the existing state of knowledge of the responses of a rich variety of estuarine organisms and communities as well as estuarine properties and processes, to the location of the near-bottom 2‰ isohaline and associated freshwater discharge to the estuary. The estuarine properties and biological responses initially identified for inclusion in these matrices are summarized in Exhibit A.

A Matrix Manager should be appointed to oversee the development of the summary matrices and to ensure quality control. The Matrix Manager should orchestrate the analyses of relevant data and ensure that the results of the analyses are cast into forms appropriate for the intended uses.

Because estuarine habitat suitability and, therefore, estuarine ecosystem health are not simply a function of the instantaneous salinity distribution, the entry in each response cell of the matrix, whenever possible, should be based upon the development of functional relationships of estuarine properties to isohaline positions (and freshwater input to the estuary) that incorporate lagged terms, seasonal variability, and other water management variables. Ideally, the input to each matrix cell would include a directory of the appropriate model, or models, that could be used for prediction.

The proposed matrices are shorthand methods for keeping track of advances in the state of scientific knowledge and for ensuring that the most up-to-date

scientific knowledge is used in decision-making. They are not intended to be used as isolated regulatory tools. They are a summary of the state of development of those tools, a guide to which tools to use during different times of the year, and an index of where to find them. The responsibility for development of the matrices and for periodically updating them should be institutionalized. One appropriate agency might be the Interagency Ecological Studies Program.

Justification

The proposed matrices are an effective shorthand way of summarizing in a convenient format the status of a large amount of data and information relating the responses of the estuary to fluctuations in freshwater inflow and to other water management variables. The matrices are a useful vehicle for summarizing the biological benefits—using a broad array of response indicators—of positioning the near-bottom 2‰ salinity isohaline at various distances upstream (inland) from the Golden Gate Bridge during different periods of the year. The proposed matrices would provide the first quantitative and comprehensive summary of how the San Francisco Bay/Sacramento-San Joaquin Delta estuary ecosystem responds to fluctuations in freshwater inflow to the estuary (Delta outflow) and to the estuary's changing salinity regime. The matrices have further advantages. They will provide managers, policy-makers and the public with: (1) a clear statement by the scientific community of the current status of understanding of the effects of different freshwater discharge-diversion scenarios on the estuarine ecosystem; (2) an identification of critical gaps in scientific knowledge that can be used to guide future research and monitoring activities; and (3) a summary that is easily updated on a cell-by-cell basis as new knowledge is developed.

The models upon which the matrices are based can serve as tools for regulatory agencies to use in incorporating the environmental needs of the estuary into a set of management prescriptions for storing, releasing, and diverting water for consumptive uses. Section of the level or degree of biological response to be achieved—the level of environmental protection—is the responsibility of regulatory bodies acting in response to society's priorities.

(10) Conclusion

The actual setting of salinity standards—specifying the upstream locations of the near-bottom 2‰ isohaline for different periods of the year—should be keyed to environmental goals: to achieving and sustaining some desired biological response level specified in terms of habitat protection or abundance and survival rates of important and diagnostic estuarine and wetland species.

Recommendations

Goals should be expressed in terms of desired conditions for some future time. Progress toward those goals should be monitored and reported widely. Environmental goals for the estuary will be most effective if they are expressed in terms of restoring conditions to those that existed at specific historical times such as those summarized in Exhibit B.

(11) Conclusion

At prevailing patterns of the position of the near-bottom 2‰ isohaline, the biological resources of the low salinity portion of the estuary, including the Delta, have been seriously depleted. Data from the Interagency Ecological Studies Program and the University of California at Davis indicate clearly that species at every trophic level are now at, or near, record low levels in the Delta and in Suisun Bay. This is not surprising considering the recent drought, the introduction of exotic species, and the increased diversion of water.

Analyses of the data indicate that the abundance or survival of a number of important species at a variety of life history states and from a variety of trophic levels is related to the position of the near-bottom 2‰ isohaline. Of the organisms whose response to salinity has been analyzed, the farther downstream the 2‰ isohaline is, the higher their abundance or survival.

Almost all of the components of the estuarine community analyzed during the workshops (e.g., organisms, habitats, and processes) show a strong, coherent, and negative monotonic response to increased penetration (upstream movement) of the near-bottom 2‰ isohaline. There is no well-defined break point that can be reliably identified statistically in the composite relationship between the abundance or survival of these components and the position of the 2‰ isohaline. In other words, the biological benefits of downstream displacement of the 2‰ continue to increase over the range of positions of the 2‰ near-bottom isohaline reflected in the historical data set.

If one selects a certain level of restoration and biological response as a goal, then one can develop statistical relationships to prescribe the appropriate range of the position of the near-bottom 2‰ isohaline and the amounts of water necessary to achieve these salinity distributions during different periods of the year. *While such action will not guarantee achieving a desired level of resource recovery or protection, it would increase the probability of attaining these goals.*

Recommendations

A range of environmental/ecosystem restoration goals should be selected, and analyses should be made, to determine the distribution of the 2‰ near-bottom isohaline throughout the year consistent with those goals. Historical flow and salinity data should be examined to determine how frequently these conditions would have been met before construction of the Central Valley Project; the State Water Project; a variety of city, county, and regional projects that divert water; and before the large-scale reclamation of historical tidal marshlands. The results of these analyses would provide a valuable context within which to evaluate the amounts of water needs to achieve a range of ecological goals.

Appendix II to the Preamble—Determination of Historical Conditions

Appendix II summarizes the methodology used in developing the historical conditions data presented in Table 1, above.

1. Calculating Delta Outflow Over Historical Period

Net Delta outflow at Chipps Island is estimated by performing a water balance at the boundary of the Delta. The water balance involves adding the total Delta inflow and Delta precipitation runoff, then subtracting Delta channel depletions and exports. *See* Equation 1, below. DWR has estimated net Delta outflow for water years 1956–present with their flow accounting model, DAYFLOW. A similar model, using a smaller number of measured flows, was used to estimate Delta outflow from 1929–1962. In the years of overlap the two models yield very similar results.

Equation 1: Delta outflow = river inflows + precipitation − channel depletions—exports

The four components used to calculate net Delta outflow are based on a variety of measurements. Most of the river inflows are gaged or directly measured at some point before they enter the Delta. Local precipitation is derived by multiplying the surface area of the Delta by the rainfall recorded at Stockton. Local precipitation is usually a trivial amount of flow but within-Delta uses (called channel depletions) can be substantial. Prior to construction of Shasta Dam and its regulation of Sacramento River flow, net Delta outflow was often negative during summer months because channel depletions exceeded Delta outflow. The level of channel depletions in DAYFLOW are based on average monthly crop demands for the acreage of each crop grown on Delta islands. Exports are directly measured at the point of diversion.

Because of the arithmetic nature of these estimates of Delta outflow, the estimated flows cannot reflect the impacts of such factors as the spring/neap tidal cycles, wind, etc. that would affect the actual mean daily flow velocities in the western Delta.

2. Calculation of Historical Occurrence of 2 ppt Isohaline Position

The daily estimates of net Delta outflow from October 1, 1939 to September 30, 1975 were used to calculate the frequency with which the 2 ppt isohaline was downstream of each of the specified positions in each year. Isohaline position is a function of net Delta outflow on a particular day and the isohaline position on the previous day, as specified in Eq. 2. (Kimmerer and Monismith 1993).

Equation 2: Mean daily position of 2 ppt near-bottom isohaline (X2) on day t:

$X2_{(t)} = 10.16 + (0.945 \text{ times } X2_{(t-1)}) - (1.487 \text{ times } \log_{10}(\text{Delta outflow}))$

3. Adjustment for Water Year Type

The proposed criteria were developed to reflect the average position of the 2 ppt isohaline in different water year types, according to the classification adopted by the State Board (SWRCB 1991). First, for each year from 1940 to 1975, the number of days on which the 2 ppt level was attained at each target location was tabulated. These totals were then averaged across each water year type. Because no critical years were available for comparison during this historical period, the average position of the 2 ppt isohaline in critical years was extrapolated from the other year types. The extrapolation was performed by fitting a curvilinear model to the averages for the other year types. These extrapolations are shown in Figures 1 and 2, above. The results of average number of days for each year type, along with the extrapolated values for critical years, are presented in Table 1, above.

4. Sensitivity to Starting Assumptions

No estimate of the location of the 2 ppt isohaline on October 1, 1939 was available, so the starting position in October 1939 was assumed to be 75 km. However, sensitivity analysis showed that the calculated isohaline position on February 1 was largely independent of the assumed isohaline position on the preceding October 1. This sensitivity analysis was performed as follows: for each of the ten years from 1940 to 1949, the February 1 isohaline position was calculated under two assumptions: (1) that the October 1 starting position was at the Golden Gate (km 0), and (2) that the October 1 starting position was 100 km upstream of the Golden Gate. The historical delta outflow patterns and volumes differed greatly among these years and the calculated February 1 isohaline positions ranged from 49 km above the Golden Gate after wet winters to as much as 72 km above the Golden Gate during dry winters. However, by February 1 the difference in calculated positions based on the two different starting positions varied by no more than 0.1 km in any year.

Appendix III to the Preamble

Appendix III describes the models used to create and measure the salmon smolt survival indices for the Sacramento and San Joaquin Rivers. These indices and the underlying models represent the state-of-the-art analyses of the factors critical to maintaining habitat conditions necessary to protect cold water fish migration. Nevertheless, as further scientific work is completed and the new data is analyzed in the models, EPA anticipates that the models and indices will be further refined. EPA intends that these refinements be incorporated into the State's criteria during the triennial review process.

Derivation of the Sacramento River Index

The smolt survival index for fall-run outmigrating smolts in the Sacramento River Delta has been developed by the US Fish and Wildlife Service, using coded-wire tagged hatchery-raised smolts released at various locations and under different conditions within the Bay/Delta, and recovered by trawl downstream. The methods are described in USFWS. 1987. Since estimates of total tagged fish in the river cross-section (based on trawl mouth size and time fished) yielded a maximum survival index of nearly 1.8, and the frequency distribution plot of survival indices indicated an approximately normal distribution with a median near 1.0, the indices were divided by 1.8 to provide biologically meaningful survival rates.

In order to estimate the benefits of various measures to achieve these indices, a multiple regression smolt survival model was developed for the Sacramento River portion of the Delta. The model, based on tagged smolt releases between 1978 and 1989, is described in Kjelson et al, 1989; a more recent verification and analysis is described in USFWS, 1992a and 1992b. The Sacramento River portion of the Delta was divided into three reaches for survival analysis: (1) The Sacramento River from Sacramento to Walnut Grove, where the Cross-Delta Channel and Georgiana Slough divert water from the main-stem Sacramento River into the central Delta; (2) Walnut Grove to Chipps Island (at the confluence of the Delta river systems) via the central Delta; and (3) Walnut Grove to Chipps Island via the Sacramento River system. Survival indices were converted to mortalities by subtracting from 1.0, and were correlated with ecologically meaningful factors for each reach. Multiple regression analysis was then used to develop equations for each reach which included the significant ($p<.05$) factors affecting mortality. The equations used to calculate mortality for each reach (as identified above) are:

$M_1 = -2.45925 + (0.0420748 * \text{Avg Water Temp, °F, at Freeport, CA})$, $r^2 = .39$

$M_2 = -0.5916024 + (0.017968 * \text{Avg Water Temp, °F, at Freeport, CA}) + (0.0000434 * \text{SWP + CVP Exports})$, $r^2 = .69$

$M_3 = -1.613493 + (0.0319584 * \text{Avg Water Temp, °F, at Freeport, CA})$, $r^2 = .32$

Using these equations, USFWS calculated total mortality for the Sacramento River Delta using an adaptation of an approach developed by Ricker (1975) describing the combined effect of two independent sources of mortality occurring sequentially over two distinct time periods:

$M_T = M_1 + M_2 * P_1 + M_3 * P_2 - M_1 * M_2 * P_1 - M_1 * M_3 * P_2$

where P_1 = proportion of Sacramento River flow diverted into the central Delta at Walnut Grove through the Cross-Delta Channel and Georgiana Slough, and P_2 = proportion of Sacramento River flow remaining in the Sacramento River. If, as happens when temperatures are low, the term "M_1" is negative, it will be reset to zero before the computation above is made. Total survival is then calculated as:

$S_T = (1-M_T)$

The USFWS is also estimating survival from recovery of tagged fish in the ocean salmon fishery. The results correlate with the (unadjusted) trawl recovery survival indices ($p<0.01$; $r=0.89$; USFWS 1992b), and further increase confidence in the survival indices as a good measure of migration success and habitat conditions.

Sacramento River Delta survival index values reflecting historical habitat conditions in different types of water years (Table 2) were calculated by the USFWS using the 1989 version of the above models, together with historical data on temperatures, water exports, and the percentage of Sacramento River flows diverted at Walnut Grove, as described in USFWS 1992a: All total survival values are calculated as monthly averages, and assume, based on past sampling results, that 17% migrate through the Delta from the Sacramento River in April, 65% in May, and 18% in June. At low temperatures, the Sacramento River regression gives mortality values (m_i) of less than zero, indicating that the regression does not give biologically meaningful results at these lower temperatures. The USFWS transforms these negative values to zeros before calculating total survival.

Derivation of San Joaquin River Index

The smolt survival indices for the San Joaquin River Delta were developed from coded-wire tagged smolt study results (USFWS 1992b). The CWT experiments were specifically designed to evaluate the benefit of constructing a barrier at the head of the Old River Channel to keep smolts in the main channel of the San Joaquin River. Smolts diverted into the Old River Channel are on a direct path to the State and Federal pumping plants, and are also likely subject to high temperatures and increased predation. The smolt survival relationship for smolts kept in the San Joaquin River is:

$y = 0.191271 + .000067x$

Where y = smolt survival and x = San Joaquin flow at Stockton in cfs ($r=0.68$, $n=8$, $p<0.10$).

There was evidence from the individual CWT studies that water exports had a substantial effect on survival for those smolts migrating down the San Joaquin to Suisun Bay. For instance, separate releases in 1989 under high export conditions and low export conditions indicate approximately double the survival under low export conditions. Although adding exports to the regression equation did not improve it, probably because there are not enough experimental releases under enough variety of conditions to provide a significant relationship, the USFWS developed an additional equation to model this factor, and used both this equation and the above flow equation to estimate smolt survival indices for the San Joaquin River. A discussion of the methodology is provided in USFWS 1992a and 1992b. This additional relationship is:

$y = (.341271 - 0.00025x_1 + 0.00067x_2)/1.8$

Where x_1 = CVP+SWP exports in cfs and x_2 = flow at Stockton in cfs.

Past adult escapement data was used to estimate smolt survival for historical conditions because there is still not enough CWT information under a broad enough variety of flow and export conditions to rely solely on CWT study results. Escapement values on the Y axis were replaced with survival values from 0 to 1.0. This assumes that adult production is an indicator of smolt survival. This assumption is generally valid, because less of the overall natural mortality occurs after the smolts enter the ocean. The relationship is as follows:

$y = (4.90106 + .000286x_1 - .000774x_2)/12$

where y = smolt survival, x_1 = mean daily flow at Vernalis from March 15 to June 15, and x_2 = mean daily CVP+SWP exports from March 15 to June 15.

The USFWS used this relationship to estimate historical smolt survival indices for various periods of time (see Table 2). Further support for the importance of flows to salmon smolt survival comes from CWT study results showing a significant relationship between flow at Stockton and survival through the lower San Joaquin River (USFWS 1992a).

40 CFR part 131 is proposed to be amended as follows:

PART 131—[AMENDED]

1. The authority citation for part 131 continues to read as follows:

Authority: 33 U.S.C. 1251 *et seq.*

2. Section 131.37 is proposed to be added to read as follows:

§ 131.37 California.

(a) *Additionol Criteria.* The following criteria are applicable to waters specified in the Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary, adopted by the California State Water Resources Control Board in State Board Resolution No. 91–34 on May 1, 1991 which is available from the Water Resources Control Board, State of California, PO Box 100, Sacramento, CA 95812:

(1) *Suisun Boy Salinity Criteria.* (i) *General rule.* Salinity (measured 1 meter above bottom) shall not exceed 2 ppt (measured on a 14-day moving average) at the stations listed in Table 1 for at least the number of days listed in Table 1, during the months of February through June.

TABLE 1. TWO PARTS PER THOUSAND (2 PPT) SALINITY CRITERIA

Water year type	Roe Island [km 64]	Chipps Island [km 74]	Confluence [km 81]
Wet	133 days	148 days	150 days.
Above normal	105 days	144 days	150 days.
Below normal	78 days	119 days	150 days.
Dry	33 days	116 days	150 days.
Critically dry	0 days	90 days	150 days.

The Roe Island measurements shall be made at the salinity measuring station maintained by the U.S. Bureau of Reclamation at Port Chicago (km 64). The Chipps Island measurements shall be taken at the Mallard Slough Monitoring Site, Station D–10 (RKI RSAC–075) maintained by the California Department of Water Resources. The Confluence measurements shall be taken at the Collinsville Continuous Monitoring Station C–2 (RKI RSAC–081) maintained by the California Department of Water Resources. Water year types shall be determined by reference to the Sacramento Basin Water Year Type classifications, defined in paragraph (c)(1)(i) of this section.

(ii) *Exception.* The 2 ppt salinity criteria need not be met at the Roe Island station unless and until the 2 ppt salinity isohaline occurs at the Roe Island station due to uncontrolled hydrologic conditions. After such occurrence, the 2 ppt salinity criteria (measured on a 14-day moving average) must be attained at the Roe Island station for the lesser of the number of days indicated in Table 1 or the number of days remaining in the period February 1 through June 30 after such occurrence. (2) *Salmon Smolt Survival Criteria.*—(i) *General rule.* Salmon smolt survival index values shall attain at least the values indicated in Table 2.

TABLE 2. SALMON SMOLT SURVIVAL CRITERIA

Sacramento River		San Joaquin River	
Water year type	Index value	Water year type	Index value
Wet	.45	Wet	.46
Above normal	.38	Above normal	.30
Below normal	.36	Below normal	.26
Dry	.32	Dry	.23
Critical	.29	Critical	.20

(ii) *Computing salmon smolt survival index values for Sacramento River.* Index values on the Sacramento River shall be computed according to the following formula:

$SRSI = 1 - (-2.45925 + .0420748T) + (-0.5916024 + .017968T + .0000434E)(P_1) + (-1.613493 + .0420748T)(P_2) - (-2.45925 + .0420748T)^* (-.5916024 + .017968T + .0000434E)^* P_1 - (-2.45925 + .0420748T)^* (-1.613493 + .0420748T)^* P_2$

where

SRSI = Sacramento River Salmon Index value

T = Average Water Temperature in Fahrenheit at Freeport

E = Average State Water Project plus Central Valley Project Exports in cubic feet/second (cfs) (from DAYFLOW)

P_1 = proportion water diverted into Delta Cross-Channel at Walnut Grove

P_2 = proportion water remaining in Sacramento River at Walnut Grove

The index shall be computed at least monthly, weighted by the proportion migrating during each month (or shorter time period) and summed to estimate survival for the water year. Total survival for the entire fall-run migration period shall either use monitoring information collected during each water year's outmigration to determine the specific pattern of migration for the water year, or shall assume monthly migration to be 17% in April, 65% in May, and 18% in June. For purposes of this computation, mortality for the Sacramento River Reach between Sacramento and Walnut Grove (which is reflected in the computation above by the term "$(-2.45925 + .0420748T)$") shall be reset to zero before the index is calculated if this term is negative, as happens at low temperatures.

(iii) *Computing salmon smolt survival index values for San Joaquin River.* Index values on the San Joaquin River shall be computed according to the following formula:

$SJSI = (0.341271 - 0.000025E + 0.000067F)/1.8$

where

SJSI = San Joaquin River Salmon Index value

E = Average Central Valley Project plus State Water Project exports measured in cfs

F = Mean daily flow in cfs in San Joaquin River at Stockton, calculated as Old River flow subtracted from San Joaquin River flow at Mossdale. Old River flow is calculated from ratio of Brandt Bridge flow to exports.

The index shall be computed at least monthly, weighted by the proportion migrating during each month (or shorter time period) and summed to estimate survival for the water year. Total survival for the entire fall-run migration period shall either use monitoring information collected during each water year's outmigration to determine the specific pattern of migration for the water year, or shall assume monthly migration to be 45% in April and 55% in May.

(b) *Revised Criteria.* The following criteria are applicable to state waters specified in Table 1–1, at Section (C)(3) ("Striped Bass—Salinity : 3. Prisoners Point—Spawning") of the Water Quality Control Plan for Salinity for the San Francisco Bay—Sacramento/San Joaquin Delta Estuary, adopted by the California State Water Resources Control Board in State Board Resolution No. 91–34 on May 1, 1991:

Location	Sampling site Nos. (I–A/RKI)	Parameter	Description	Index type	Year type	Dates	Values
San Joaquin River at Jersey Point, San Andreas Landing, Prisoners Point, Buckley Cove, Rough and Ready Island, Brandt Bridge, Mossdale, and Vernalis.	D15/RSAN018, C4/RSAN032, D29/RSAN038, P8/RSAN056, -/RSAN062, C6/RSAN073, C7/RSAN087, C10/RSAN112	Electrical Conductivity (EC)	14-day running average of mean daily for the period not more than value shown, in mmhos.	Not Applicable	Wet, Above normal, and below normal years	April 1 to May 31	0.44
San Joaquin River at Jersey Point, San Andreas Landing and Prisoners Point.	D15/RSAN018, C4/RSAN032, D29/RSAN038	Electrical Conductivity (EC)	14-day running average of mean daily for the period not more than value shown, in mmhos.	Not Applicable	Dry and critical dry years	April 1 to May 31	0.44

(c) *Definitions.* Terms used in paragraphs (a) and (b) of this section, shall be defined as follows:

(1) *Water year type.*

(i) *Sacramento Basin Water Year Type.* Water year types in the Sacramento River basin are computed as follows:

(A) The Sacramento Basin Index is computed according to the following formula:

$I_{SAC}=0.4X+0.3Y+0.3Z$

where I_{SAC}=Sacramento Basin Index

X = April through July Four River Unimpaired Flow in Million Acre Feet (MAF)

Y = October through March Four River Unimpaired Flow in MAF

Z = Previous Year's Sacramento Basin Index in MAF, not to exceed 10 maf

(B) *Measuring Four River Unimpaired Flow.* The Four River Unimpaired Flow for a current water year (October 1 to September 30) is a forecast of the sum of the following locations: Sacramento River above Bend Bridge, near Red Bluff; total inflow to Oroville Reservoir; Yuba River at Smartville; American River, total inflow to Folsom Reservoir. The flow determinations are made and are published by the California Department of Water Resources in Bulletin 120 which is available from the California Department of Water Resources, 3251 S Street, Sacramento, CA 95816. Preliminary determinations of year classification shall be made in February, March, and April with final determination in May. These preliminary determinations shall be based on hydrological conditions to date plus forecasts of future runoff assuming normal precipitation for the remainder of the water year.

(C) Sacramento River Basin Water Year Type shall be categorized according to the following table:

Sacramento basin water year type	Sacramento basin index value
Wet (W)	≥ 9.2 MAF.
Above normal (AN)	< 9.2 MAF, > 7.8 MAF.
Below normal (BN)	≤ 7.8 MAF, > 6.5 MAF.
Dry (D)	≤ 6.5 MAF, > 5.4 MAF.
Critical (C)	≤ 5.4 MAF.

(ii) *San Joaquin Basin Water Year Type.*

Water year types in the San Joaquin River Basin are computed as follows:

(A) The San Joaquin Valley Index is computed according to the following formula:

$I_{SJ}=0.6X+0.2Y$ and $0.2Z$

where I_{SJ}=San Joaquin Valley Index

X = Current year's April-July San Joaquin Valley unimpaired runoff

Y = Current year's October-March San Joaquin Valley unimpaired runoff

Z = Previous year's index in MAF, not to exceed 0.9 MAF

(B) *Measuring San Joaquin Valley unimpaired runoff.* San Joaquin Valley unimpaired runoff for the current water year from the preceding year's October 1 to September 30 of the current calendar year) is a forecast of the sum of the following locations: Stanislaus River, total flow to New Melones Reservoir; Tuolumne River, total inflow to Don Pedro Reservoir; Merced River, total flow to Exchequer Reservoir; San Joaquin River, total inflow to Millerton Lake. Preliminary determinations of year classification shall be made in February, March and April with final determination in May. These preliminary determinations shall be based on hydrologic conditions to date plus forecasts of future runoff assuming normal precipitation for the remainder of the water year.

(C) San Joaquin Valley Water Year Type shall be categorized according to the following table:

San Joaquin valley water year type	San Joaquin valley index value
Wet (W)	≥ 3.8 MAF.
Above normal (AN)	< 3.8 MAF, > 3.1 MAF.
Below normal (BN)	≤ 3.1 MAF, > 2.5 MAF.
Dry (D)	≤ 2.5 MAF, > 2.1 MAF.
Critical (C)	≤ 2.1 MAF.

(2) *Water year.* A water year is the twelve calendar months beginning October 1.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB66

Endangered and Threatened Wildlife and Plants; Revised Proposed Critical Habitat Determination for the Delta Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) revises its proposed designation of critical habitat for the delta smelt (*Hypomesus transpacificus*) originally published on October 3, 1991, concurrently with the proposal to list the species, pursuant to the Endangered Species Act of 1973, as amended (Act). The final rule listing the delta smelt as a threatened species was published on March 5, 1993. In the final rule, the Service postponed the decision on critical habitat determination for up to 1 year beyond the date that the final rule was due (October 3, 1993) in accordance with section 4(b)(6)(C)(ii) of the Act. The Service has refined the primary constituent elements described in the original critical habitat proposal. This revised proposed rule supersedes all aspects of the Service's previous proposal. Critical habitat designation for the delta smelt would provide additional protection under section 7 of the Act with regard to activities that require Federal agency action. As required by section 4 of the Act, the Service will consider economic and other relevant impacts prior to making a final decision on the size and configuration of critical habitat. The Service solicits data and comments from the public on all aspects of this revised proposal.

DATES: Comments from all interested parties must be received by March 7, 1994. Public hearing requests must be received by February 22, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Acting Field Supervisor, Fish and Wildlife Service, Sacramento Field Office, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Sacramento Field Office (see **ADDRESSES** section) at (916) 978–4866.

SUPPLEMENTARY INFORMATION:

Background

Previous Service Action

In the January 6, 1989 (50 FR 554), Animal Notice of Review, the Service included the delta smelt as a category 1 candidate species. Category 1 includes species for which data in the Service's possession are sufficient to support proposals for listing. On June 29, 1990, the Service received a petition dated June 26, 1990, from Dr. Don C. Erman, President-Elect of the California-Nevada Chapter of the American Fisheries Society, to list the delta smelt as an endangered species with critical habitat. The Service made a 90-day finding that substantial information had been presented indicating that the petitioned action may be warranted and announced this decision in the **Federal Register** on December 24, 1990 (55 FR 52852). On October 3, 1991 (56 FR 50075), the Service published a proposal to list the delta smelt as a threatened species and to designate critical habitat. This proposed rule constituted the 12-month petition finding in accordance with section 4(b)(3)(B) of the Act.

Critical habitat was proposed for areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained within Suisun Bay (including the contiguous Grizzly and Honker Bays), the length of Montezuma Slough, portions of the Sacramento River, portions of the Sacramento-San Joaquin Delta, portions of the San Joaquin River, and the contiguous water bodies in between (a complex of bays, dead-end sloughs, channels typically less than four meters deep, marshlands, etc.), California. The public comment period opened on the date of publication of the proposed rule (October 3, 1991) and closed on January 31, 1992.

The Service published a notice of public hearing on the proposed rule on December 19, 1991 (56 FR 65877). Public hearings were conducted in California on January 9, 1992, in Sacramento; on January 14, 1992, in Santa Monica; and on January 16, 1992, in Visalia. At each meeting, testimony was taken from 1 p.m. to 4 p.m. and from 6 p.m. to 9 p.m.

The final rule listing the delta smelt as a threatened species was published on March 5, 1993 (58 FR 12854). In the final rule, the Service postponed the decision on critical habitat designation for up to 1 year beyond the date that the final rule was due (October 3, 1993) in accordance with section 4(b)(6)(C)(ii) of the Act. The economic analysis necessary to determine critical habitat was still in progress at that time. On March 16, 1993 (58 FR 14199), the Service published a notice that the public comment period on the proposed designation of critical habitat for the delta smelt was reopened until April 30, 1993, to allow the Service to consider any information that previously had not been submitted.

Revisions to the October 3, 1991, Critical Habitat Proposal

The Service is required to base critical habitat designations on the best scientific and commercial data available (50 CFR 424.12). Subsequent to publication of the October 3, 1991, proposed rule, the Service received new information on the current distribution of the delta smelt, primarily from other State and Federal agencies.

Based primarily on information gathered by the California Department of Fish and Game (Dale Sweetnam, California Department of Fish and Game, pers. comm., 1993) and University of California, Davis (Lesa Meng, University of California, pers. comm., 1993), the Service proposes to expand the geographic extent of critical habitat to include additional areas now known to constitute important spawning habitat. In 1993, delta smelt spawned in the Sacramento River, at least as far upstream as Sacramento and Barker, Lindsey, Cache, Georgiana, Prospect, Beaver, Hog, and Sycamore Sloughs (Dale Sweetnam, pers. comm., 1993). In 1991, when delta smelt had all but disappeared from Suisun Marsh, relatively large numbers of delta smelt were caught in Suisun Slough, as far upstream as Suisun City (Lesa Meng, pers. comm., 1993). For these reasons, the proposed critical habitat has been revised to encompass these upstream habitats. Protection of these upstream spawning habitats is essential to ensure recovery of the species. Hence, this rule proposes critical habitat for the following geographic area: Areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma Sloughs; and the existing contiguous waters contained within the Delta. As used in this rule, the term "Delta" refers to all tidal waters contained within the legal definition of the Sacramento-San Joaquin Delta, as delineated by section 12220 of the State of California's Water Code of 1969.

In an April 23, 1993, letter, received during the public comment period, the Environmental Protection Agency (EPA) requested that new scientific information presented in its draft proposed Bay/Delta water quality standards be considered in the Service's designation of critical habitat. The Service has used this information to refine the primary constituent elements described in the original critical habitat proposal. (The term "primary constituent element" is defined in the "Primary Constituent Elements" section of this rule.) The Service's original proposal listed the following constituent elements: Space for population growth, cover or shelter, maintenance of appropriate littoral zone reproduction habitat to sustain embryos and to rear larvae and juveniles, and 0–2 parts per thousand (ppt) salinities during the January to June delta smelt reproductive season. As part of the background for formulation of its proposed water quality standards, EPA analyzed the number of days that low salinity (2 ppt) water historically was located at three positions in Suisun Bay. The revised primary constituent elements incorporate this new information. As described in the "Primary Constituent Elements" section of this rule, the Service has revised the primary constituent elements to include those features that provide temporal and spatial variability of low salinity waters that will deter further invasion of exotic species, produce high zooplankton densities for food, and simulate natural processes and historical conditions. The primary constituent elements also describe in detail the months that each delta smelt life stage requires protective habitat conditions.

After considering the information presented by EPA, the Service has determined that, if implemented, EPA's proposed water quality standards would likely significantly affect critical habitat as proposed in the October 3, 1991, rule. Consequently, the Service is proposing this revised rule to reduce the potential for inconsistencies between EPA's standards and the Service's proposed critical habitat. Resolving the inconsistencies will afford the smelt the same or better protection as would have been achieved through the earlier proposal.

Relationship Between Fish and Wildlife Service and EPA Actions

The Clean Water Act and Endangered Species Act as written do not specify how government actions should be coordinated or agency conflicts should be resolved. However, because the Service and EPA recognize that their proposed regulatory actions overlap both biologically and economically, both agencies are working closely to provide a comprehensive, ecosystem-based approach to the protection of the fish and wildlife resources of the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. This coordination should also provide a set of regulatory actions that are integrated in both substance and timing.

Section 7 of the Endangered Species Act requires that all Federal agencies ensure that their actions do not jeopardize the continued existence of listed species or adversely modify listed species' critical habitat. EPA's proposed action to designate water quality standards must comply with the section 7 requirement. EPA has initiated a formal consultation process under section 7. Additionally, the Clean Water

Act requires protection of the most sensitive use within each category of designated uses. Protection of endangered and threatened species is considered a designated use within the meaning of the Clean Water Act; therefore, a species listing under the Endangered Species Act provides one method to identify the most sensitive use within the designated uses of a water body.

Biologically, the proposed critical habitat for the delta smelt and the salinity criteria that constitute EPA's proposed water quality standards are directly related. Specifically, the occurrence of salinities of 2 parts per thousand (ppt) in Suisun Bay was identified as a critical habitat primary constituent element in the October 3, 1991, critical habitat proposal. Subsequent scientific publications indicate that salinities associated with the distribution of delta smelt may provide the best basis for setting standards for many species that are affected by freshwater discharge from the Bay/Delta Estuary. Favorable conditions from February through June are extremely important to the abundance and reproductive success of almost all species that live in or migrate through the upper Bay/Delta Estuary. EPA's proposed water quality standards address the location of 2 ppt salinities from February to June and, therefore, address both critical habitat requirements for delta smelt and a range of interrelated parameters that affect other species that rely on estuarine habitat.

Habitat Requirements

Historically, the delta smelt is thought to have occurred from Suisun Bay upstream to the city of Sacramento on the Sacramento River and Mossdale on the San Joaquin River (Moyle *et al.* 1992). Recently, however, Wang (1991) recorded larval delta smelt from the Sacramento River as far north as its confluence with the Feather River. The delta smelt is an euryhaline species (tolerant of a wide salinity range) that spawns in fresh water and has been collected from estuarine waters up to 14 grams per liter (ppt) salinity (Moyle *et al.* 1992). For a large part of its annual life span, this species is associated with the freshwater edge of the entrapment zone (mixing zone at the saltwater-freshwater interface), where the salinity is approximately 2 ppt (Ganssle 1966, Moyle *et al.* 1992, Sweetnam and Stevens 1993).

The delta smelt is adapted to living in the highly productive Sacramento-San Joaquin River Estuary (Estuary) where salinity varies spatially and temporally according to tidal cycles and the amount of freshwater inflow. (The term estuary refers to a partially enclosed water body of variable salinity with freshwater and seawater inflow.) Despite this tremendously variable environment, the historical Estuary probably offered relatively constant suitable habitat conditions to delta smelt, which could move upstream or downstream with the entrapment zone (Peter Moyle, University of California, pers. comm., 1993). Since the 1850s, however, the amount and extent of suitable habitat for the delta smelt has declined dramatically. The advent in 1853 of hydraulic mining in the Sacramento and San Joaquin Rivers led to increased siltation and alteration of the circulation patterns of the Estuary (Nichols *et al.* 1986, Monroe and Kelly 1992). The reclamation of Merritt Island for agricultural purposes in the same year marked the beginning of the present-day cumulative loss of 94 percent of the Estuary's tidal marshes (Nichols *et al.* 1986, Monroe and Kelly 1992).

In addition to this degradation and loss of estuarine habitat, the delta smelt has been increasingly subject to entrainment, upstream or reverse flows of waters in the Delta and San Joaquin River, and constriction of habitat in the less productive, deep-water river channels of the Delta (Moyle *et al.* 1992). These adverse conditions are primarily a result of the steadily increasing proportion of water diverted from the Delta by the Federal and State water projects (Monroe and Kelly 1992). Water delivery through the Federal Central Valley Project began in water year 1940. The State Water Project began delivering water in 1968. However, the proportion of fresh water being diverted has increased since 1983 and has remained at high levels (Moyle et al. 1992). The high proportion of fresh water exported has exacerbated the already harsh environmental conditions experienced by the delta smelt during the recent 6-year drought. The March 5, 1993 (58 FR 12854), final rule listing the delta smelt as a threatened species describes in detail the factors that have led to this species' decline.

This revised proposed rule to designate critical habitat for the delta smelt focuses on habitat conditions required during specific life stages (spawning, larval and juvenile transport, rearing, and adult migration) of this annual species to ensure its eventual recovery. Shortly before spawning, adult delta smelt migrate upstream from the highly productive brackish-water habitat associated with the entrapment zone to disperse widely into river channels and tidally-influenced backwater sloughs (Radtke 1966, Moyle 1976, Wang 1991). Migrating adults with nearly mature eggs have been taken at the Central Valley Project's Tracy Pumping Plant from late December 1990 to April 1991 (Wang 1991).

Delta smelt spawn in shallow, fresh or slightly brackish water upstream of the entrapment zone (Wang 1991). Most spawning occurs in tidally-influenced backwater sloughs and channel edgewaters (Moyle 1976; Wang 1986, 1991; Moyle et al. 1992). Although delta smelt spawning behavior has not been observed (Moyle *et al.* 1992), the adhesive, demersal eggs are thought to attach to substrates such as cattails and tules, tree roots, and submerged branches (Moyle 1976, Wang 1991). In the Delta, spawning is known to occur in the Sacramento River and in Barker, Lindsey, Cache, Georgiana, Prospect, Beaver, Hog, and Sycamore Sloughs (Wang 1991; Dale Sweetnam, pers. comm., 1993). Delta smelt also spawn north of Suisun Bay in Montezuma and Suisun Sloughs and their tributaries (Dale Sweetnam, pers. comm., 1993; Lesa Meng, pers. comm., 1993).

The spawning season varies from year to year and may occur from late winter (December) to early summer (July). Moyle (1976) collected gravid adults from December to April, although ripe delta smelt were most common in February and March. In 1989 and 1990, Wang (1991) estimated that spawning had taken place from mid-February to late June or early July, with the peak spawning period occurring in late April and early May.

Based on data for a closely related species, delta smelt eggs probably hatch in 12 to 14 days (Moyle *et al.* 1992). After hatching, larvae are transported downstream toward the entrapment zone where they are retained by the vertical circulation of fresh and salt waters (Stevens *et al.* 1990). The pelagic larvae and juveniles feed on zooplankton. When the entrapment zone is located in a broad geographic area with extensive shallow-water habitat within the euphotic zone (depths less than 4 meters), high densities of phytoplankton and zooplankton are produced (Arthur and Ball 1978, 1979, 1980), and larval and juvenile fish, including delta smelt, grow rapidly (Moyle *et al.* 1992, Sweetnam and Stevens 1993). In general, estuaries are among the most productive ecosystems in the world (Goldman and Horne 1983). Estuarine environments produce an abundance of fish as a result of plentiful food and shallow, protective habitat for young.

When the entrapment zone is contained within Suisun Bay, young

delta smelt are dispersed widely throughout a large expanse of shallow-water and marsh habitat. Dispersion in areas downstream from the State and Federal water pumps and in-Delta agricultural diversions protects young smelt from entrainment and distributes them among the extensive, protective, and highly productive shoal regions of Suisun Bay. In contrast, when located upstream, the entrapment zone becomes confined in the deep river channels, which are smaller in total surface area, contain fewer shoal areas, have swifter, more turbulent water currents, and lack high zooplankton productivity.

Erkkila *et al.* (1950) collected young delta smelt near Sherman Island, at the confluence of the Sacramento and San Joaquin Rivers, in July and August of 1948. In studies by the California Department of Fish and Game, California Department of Water Resources, and Bureau of Reclamation, larval and juvenile delta smelt were collected from Roe Island in Suisun Bay north to the confluence of the Sacramento and Feather Rivers and east to Medford Island on the San Joaquin River (Wang 1991). These studies were conducted during the months of April through mid-July in 1989 and 1990. Through these distribution surveys, Wang (1991) was able to document the movement of juvenile delta smelt from the Delta to Suisun Bay in late June and early July. In 1990, young delta smelt were taken at the Tracy Pumping Plant at the end of February (Wang 1991).

Critical Habitat

Critical habitat is defined in section 3(5)(A) of the Act as "(i) the specific areas within the geographic area occupied by the species * * * on which are found those physical or biological features (I) essential to the conservation of the species and (II) which may require special management considerations or protection; and (ii) specific areas outside the geographical area occupied by the species at the time it is listed * * * upon a determination * * * that such areas are essential for the conservation of the species." The term "conservation," as defined in section 3(3) of the Act, means "* * * to use and the use of all methods and procedures which are necessary to bring an endangered species or threatened species to the point at which the measures provided pursuant to this Act are no longer necessary." Therefore, areas designated as critical habitat must contain those physical or biological features essential to recover a species to the point that it no longer requires protection under the Act. Hence, critical habitat designation affords species additional protection above and beyond those of listing in that it preserves options for the species' eventual recovery. Section 3 further states that in most cases the entire range of a species should not be encompassed within critical habitat.

Critical habitat designations alert Federal and State agencies, other organizations, and the public about the importance of an area in the conservation of a listed species. Critical habitat also identifies areas that may require special management or protection. Critical habitat receives protection under section 7 of the Act with regard to actions carried out, funded, or authorized by Federal agencies. Section 7 requires that Federal agencies consult on actions that may affect critical habitat to ensure that their actions are not likely to destroy or adversely modify critical habitat. Section 7 also requires Federal agencies to confer on Federal actions that are likely to result in adverse modification or destruction of proposed critical habitat. Aside from the added protection provided under section 7, the Act does not provide other direct forms of protection to lands designated as critical habitat.

In addition to considering biological information in designating critical habitat, the Service also considers economic and other relevant impacts of designating critical habitat. The Secretary may exclude areas from critical habitat when the benefits of such exclusion outweigh the benefits of including the areas within critical habitat, provided that the exclusion will not result in the extinction of a species.

Primary Constituent Elements

In determining which areas to designate as critical habitat, the Service considers those physical and biological features that are essential to a species' conservation (50 CFR 424.12). The Service is required to list the known primary constituent elements together with a description of any critical habitat that is proposed. Such physical and biological features (i.e., primary constituent elements) include, but are not limited to, the following:

(1) Space for individual and population growth, and for normal behavior;

(2) Food, water, air, light, minerals, or other nutritional or physiological requirements;

(3) Cover or shelter;

(4) Sites for breeding, reproduction, rearing of offspring, germination, or seed dispersal; and

(5) Generally, habitats that are protected from disturbance or are representative of the historic geographical and ecological distributions of a species.

Following are the primary constituent elements necessary to conserve the delta smelt. These elements were determined in coordination with EPA in preparation of its proposed water quality standards. EPA's proposed rule to promulgate Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California is published in this same Federal Register separate part. In its proposed rule, EPA has requested specific comments on several issues, including the possibility of modifying the Sacramento River Index for the purposes of developing the salinity criteria, alternative approaches to the averaging period used in its proposed salinity criteria, and evaluation of the merits of the use of difference forms of confidence intervals with the proposed criteria. The Fish and Wildlife Service will consider these comments also in developing its final rule.

The primary constituent elements are organized by habitat conditions required for each life stage. The specific geographic areas and seasons identified for each habitat condition specified below represent the maximum possible range of each of these variables.

Each of the habitat conditions specified below requires as its basis placement of the 2 ppt isohaline at or downstream of the Sacramento-San Joaquin River confluence from February through June. (An isohaline is a line that can be drawn to connect all points of equal salinity.) Furthermore, the location of the 2 ppt isohaline must vary according to water years because:

(1) Temporal and spatial variability of the 2 ppt isohaline will be the most effective deterrent to further invasion of new introduced species and continued competition by those that are already established,

(2) Placement of the 2 ppt isohaline in an area will also produce the high phytoplankton and zooplankton densities that characterize most healthy estuarine ecosystems, and

(3) Variability is needed to simulate natural processes and historical conditions.

Table 1 lists the number of days (based on a 14-day running average) that the 2 ppt isohaline must be located at Roe Island, Chipps Island, or the Sacramento-San Joaquin River confluence during wet, above normal, below normal, dry, and critically dry years to achieve the life-stage habitat conditions described below. These required salinity criteria are based on

historical records of the water years between October 1939 (subsequent to the operation of the Federal and State water projects) and September 1975 (prior to the decline of the delta smelt) (Harry Seraydarian, EPA, *in litt.*, 1993; Bruce Herbold, EPA, pers. comm., 1993). However, because no critically dry years occurred during this period, the salinity criteria (required number of days) for these years are based on an extrapolation of the data.

TABLE 1.—REQUIRED SALINITY CRITERIA FOR SUISUN BAY TO REFLECT HISTORICAL HABITAT CONDITIONS

[Values represent the number of days that the 2 ppt isohaline must be placed at three locations within the Sacramento-San Joaquin River Estuary]

Year type	Roe Island [km 64]	Chipps Island [km 74]	Confluence [km 81]
Wet	133	148	150
Above normal	105	144	150
Below normal	78	119	150
Dry	33	116	150
Critically dry	0	90	150

The Roe Island salinity criteria are meant to replicate natural spring storm cycles and are invoked only after uncontrolled runoff has placed the 2 ppt isohaline seaward of Roe Island. Therefore, the criteria for Roe Island represent the maximum number of days that the 2 ppt isohaline must be located there.

Spawning Habitat—Delta smelt adults seek shallow, tidally-influenced, freshwater (i.e., less than 2 ppt salinity) backwater sloughs and edgewaters for spawning. To ensure egg hatching and larval viability, spawning areas also must provide suitable water quality (i.e., low concentrations of pollutants) and substrates for egg attachment (e.g., submerged tree roots and branches and emergent vegetation). Specific areas that have been identified as important delta smelt spawning habitat include Barker, Lindsey, Cache, Prospect, Georgiana, Beaver, Hog, and Sycamore Sloughs and the Sacramento River in the Delta, and tributaries of northern Suisun Bay. The spawning season varies from year to year and may start as early as December and extend until July.

Larval and Juvenile Transport—To ensure that delta smelt larvae are transported from the area where they are hatched to shallow, productive rearing or nursery habitat, the Sacramento and San Joaquin Rivers and their tributary channels must be protected from physical disturbance (e.g., sand and gravel mining, diking, dredging, and levee or bank protection and maintenance) and flow disruption (e.g., water diversions that result in entrainment and in-channel barriers or tidal gates). Adequate river flow is necessary to transport larvae to rearing habitat in Suisun Bay. To ensure that suitable rearing habitat is available in Suisun Bay, the salinity criteria described above in Table 1 are required. Reverse flows that maintain larvae upstream in deep-channel regions of low productivity and expose them to entrainment interfere with these transport requirements. Suitable water quality must be provided so that maturation is not impaired by pollutant concentrations. The specific geographic area important for larval transport is confined to waters contained within the legal boundary of the Delta, Suisun Bay, and Montezuma Slough and its tributaries. The specific season when habitat conditions identified above are important for successful larval transport varies from year to year depending on when peak spawning occurs. Therefore, habitat conditions suitable for transport of larvae and juveniles may be required as early as February 1 and as late as August 31.

Rearing Habitat—Maintenance of the 2 ppt isohaline (according to the salinity criteria described in Table 1) and suitable water quality (low concentrations of pollutants) within the Estuary is necessary to provide delta smelt larvae and juveniles a shallow, protective, food-rich environment in which to mature to adulthood. This placement of the 2 ppt isohaline also serves to protect larval, juvenile, and adult delta smelt from entrainment in the State and Federal water projects. However, additional flows above those required to implement the February through June salinity criteria listed in Table 1 may be required occasionally to protect larval and juvenile delta smelt from being entrained in the State and Federal water projects during the months of July and August. These additional flows will be required when the previous year's abundance indices show that the adult population already is at low levels and late spawning conditions have led to distribution of larval and juvenile delta smelt upstream of the confluence of the Sacramento and San Joaquin Rivers in July and August. An area extending eastward from Carquinez Straits, including Suisun Bay, Grizzly Bay, Honker Bay, Montezuma Slough and its tributary sloughs, up the Sacramento River to its confluence with Three Mile Slough, and south along the San Joaquin River including Big Break, defines the specific geographic area critical to the maintenance of suitable rearing habitat. Three Mile Slough represents the approximate location of the most upstream extent of tidal excursion when the salinity criteria described in Table 1 are implemented. Protection of rearing habitat conditions may be required from the beginning of February to the end of August.

Adult Migration—Adult delta smelt must be provided unrestrained access to suitable spawning habitat in a period that may extend from December to July. Therefore, adequate flow and suitable water quality must be maintained to attract migrating adults in the Sacramento and San Joaquin River channels and their associated tributaries, including Cache and Montezuma Sloughs and their tributaries. These areas also must be protected from physical disturbance and flow disruption during migratory periods.

To conserve the delta smelt, critical habitat is proposed for an area encompassing the specific habitat conditions required by each life stage identified above. Accordingly, critical habitat is proposed for the following geographic area: Areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma Sloughs; and the existing contiguous waters contained within the Delta. The proposed critical habitat is contained within Contra Costa, Sacramento, San Joaquin, Solano, and Yolo Counties, California. The "Proposed Regulations Promulgation" section provides a precise metes and bounds description of the revised proposed critical habitat.

Effects of Critical Habitat Designation

Section 7(a)(2) of the Act requires Federal agencies to ensure that the activities they authorize, fund, or carry out are not likely to destroy or adversely modify critical habitat. This Federal responsibility is in addition to the requirement in the same section of the Act that Federal agencies ensure their actions do not jeopardize the continued existence of any listed species.

Jeopardy is defined at 50 CFR 402.02 as any action that would be expected to reduce appreciably the likelihood of both the survival and recovery of a listed species. Destruction or adverse modification of critical habitat is defined at 50 CFR 404.02 as a direct or indirect alteration that appreciably diminishes the value of critical habitat for both the survival and recovery of a listed species. The regulations also clearly state that such alterations include, but are not limited to, alterations adversely modifying any of those physical or biological features that were the basis for determining the habitat to be critical. The requirement to consider potential adverse modification of critical habitat is an incremental consideration above and beyond the review necessary to evaluate the likelihood of jeopardy and incidental take in section 7 consultations. In section 7 consultations, the Service considers the potential for adverse modification of the primary constituent elements identified in the critical habitat designation.

Section 4(b)(8) of the Act requires for any proposed or final regulation that designates critical habitat a brief description and evaluation of those activities (public or private) that may adversely modify such habitat or may be affected by such designation. The Service has identified the following list of activities that, depending on the season of construction and scale of the project, may result in the destruction or adverse modification of critical habitat without necessarily jeopardizing the continued existence of the delta smelt:

(1) Sand and gravel extraction in river channels or marshes;

(2) Diking wetlands for conversion to farmland and dredging to maintain these dikes;

(3) Levee maintenance and bank-protection activities, such as riprapping, removal of vegetation, and placement of dredged materials on levees of banks;

(4) Operation of the Montezuma Slough Control Structure; and

(5) Bridge and marina construction.

Construction and implementation of each of these actions requires authorization by the Army Corps of Engineers pursuant to section 10 of the Rivers and Harbors Act of 1899 and section 404 of the Clean Water Act. Based on the Service's review of all existing or proposed projects that may affect the delta smelt, the great majority that would likely result in destruction or adverse modification of critical habitat also would be likely to jeopardize the continued existence of the species. The Service has not identified any proposed actions that might jeopardize the delta smelt without adversely affecting its critical habitat.

Considerations of Economic and Other Factors

Section 4(b)(2) of the Act requires the Service to consider economic and other relevant impacts of specifying any particular area to be included within the critical habitat boundary. The Secretary may exclude any area from critical habitat should it be determined that the benefits of such exclusion outweigh the benefits of specifying such an area as part of the critical habitat unless it is determined, based on the best scientific and commercial data available, that the failure to designate such an area as critical habitat will result in the extinction of the species concerned.

The impacts of designating critical habitat are in addition to the economic and other impacts attributable to listing of the species. Impacts attributable to listing include those resulting from the taking prohibitions under section 9 of the Act and associated regulations. "Take," as defined in section 3(18) of the Act, includes harm to a listed species. "Harm" means an act that actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including feeding, breeding, or sheltering (50 CFR 17.3).

Impacts attributable to listing also include those resulting from the responsibility of Federal agencies under section 7 to ensure that their actions are not likely to jeopardize the continued existence of endangered or threatened species. An action could be likely to jeopardize the continued existence of a listed species through the destruction or modification of its habitat regardless of whether that habitat has been formally designated as critical. The Act provides significant protection to species, including protection to their habitats, as a result of listing. Therefore, the direct economic and other impacts resulting from additional habitat protection through critical habitat designation may be incrementally small. In general, the designation of critical habitat supplements the substantive protection resulting from listing.

EPA has prepared a draft Regulatory Impact Analysis on its proposed water quality standards. EPA's draft Regulatory Impact Analysis includes an economic analysis of the effects of the designation of critical habitat for the delta smelt. This economic analysis concludes that economic costs attributable to the designation of critical habitat for the delta smelt are relatively small and due primarily to the effects designation of critical habitat would have upon the five types of actions listed above under the section entitled "Effects of Critical Habitat Designation." An underlying assumption of the draft economic analysis is that the costs associated with implementing EPA's proposed water quality standards for the Bay/Delta are due primarily to listing the delta smelt as threatened. As the Service refines its economic analysis, it may determine that this assumption is to some degree inappropriate and that some of the costs associated with implementing the water quality standards may be attributable to the designation of critical habitat.

The costs associated with sand and gravel operations (approximately two aggregate operators are located in the Delta), diking or dredging for agricultural activities, and marina or bridge construction are expected to be similar. Project proponents or operators would incur costs associated with wetlands restoration, using a replacement ratio of 3 acres restored for 1 acre destroyed. The cost to restore 1 acre of wetlands ranges between $10,000 and $50,000. However, for some tracts of land, the costs associated with restoring wetlands may exceed the value derived from the agricultural activity, in which case the cost attributable to critical habitat would be the loss in agricultural income. The costs attributable to a designation of critical habitat are not expected to substantially affect levee maintenance operations because Federal regulatory agencies currently have restrictions that generally avoid adverse effects to the delta smelt. However, the designation of critical habitat may result in leaving the Montezuma Slough Control Structure's gates open from December to August rather than November to March.

The Service will prepare a final economic analysis prior to making its final determination on critical habitat. If that analysis substantially differs from the draft summarized here, the Service will make a revised economic analysis

available to the public for comment prior to a final determination on critical habitat.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed and its critical habitat is designated, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Survival and recovery, mentioned in both the definition of adverse modification and jeopardy (see "Effects of Critical Habitat Designation" section), are directly related. Survival may be viewed as a linear continuum between recovery and extinction of the species. The closer a species is to recovery, the greater the certainty of the species' continued survival. Thus, the terms survival and recovery are related by the degree of certainty that the species will persist over a given period of time. Survival relates to viability. Factors that influence a species' viability include population numbers, distribution throughout the range, stochasticity, expected duration, and reproductive success. A species may be considered recovered when there is a high degree of certainty for the species' continued viability.

The Act's definition of critical habitat indicates that the purpose of critical habitat is to contribute to a species' conservation, which, by definition, means recovery. Section 7 prohibitions against the destruction or adverse modification of critical habitat apply to actions that would impair survival and recovery of the listed species, thus providing a regulatory means of ensuring that Federal actions within critical habitat are considered in relation to the goals and recommendations of a recovery plan. As a result of the link between critical habitat and recovery, the prohibition against destruction or adverse modification of critical habitat should protect the critical habitat's ability to contribute fully to a species' recovery. Thus, the adverse modification standard may be reached closer to the recovery end of the survival continuum, whereas the jeopardy standard traditionally has been applied nearer to the extinction end of the continuum.

Federal actions that may affect the delta smelt or its critical habitat, should any be designated, include those authorized, carried out, or funded by the Army Corps of Engineers, Bureau of Reclamation, National Marine Fisheries Service, and EPA. The Army Corps of Engineers funds projects and issues permits for water pumping and diversion facilities, levee construction or repair, bank protection activities, deep-water navigation channel dredging and dredge spoil disposal projects, sand and gravel extraction, marina and bridge construction, diking of wetlands for conversion to farmland, and tidal gate or barrier installation. The Bureau of Reclamation and California Department of Water Resources construct, operate, and/or manage water export facilities. EPA reviews State water quality standards and promulgates replacement standards, pursuant to the Clean Water Act, if the State standards are found to be inadequate. In 1991, EPA disapproved portions of the California State Water Resources Control Board's Water Quality Control Plan for Salinity for the San Francisco Bay/Sacramento-San Joaquin Delta Estuary. Accordingly, EPA has prepared proposed replacement standards for those portions of the State's salinity standards that were disapproved. Measures to protect the federally listed winter-run chinook salmon, for which the National Marine Fisheries Service has jurisdiction under the Act, also may affect the delta smelt and may require consultation with the Service.

Under section 4 of the Act, listing of the delta smelt provided a requirement for the development of a recovery plan. The Service convened the Delta Native Fishes Recovery Team to prepare a recovery plan for declining native fishes in the Sacramento-San Joaquin Estuary. The recovery plan will develop a framework for Federal, State, and private entities to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the costs of various tasks necessary to accomplish recovery goals. Site-specific management actions necessary to achieve survival and recovery of the delta smelt and other fishes native to the Estuary ecosystem also will be described in this plan.

Summary of Comments and Recommendations

During the 4-month comment period following publication of the October 3, 1991 (56 FR 50075), proposed rule to list the delta smelt as threatened and designate its critical habitat, the Service received 360 comments (i.e., letters and oral testimony) from 348 individuals. The Service received several letters supporting designation of delta smelt critical habitat as proposed. Many local government agencies, water districts, business and trade associations, and other private interests submitted comments regarding the presumed economic effects of the proposed critical habitat designation on industries, planned activities, and development in specific municipalities or geographic regions of California.

On March 16, 1993 (58 FR 14199), the Service published a notice that the public comment period on the proposed designation of critical habitat for the delta smelt was reopened until April 30, 1993, to allow the Service to consider any information that previously had not been submitted. In response, the Service received seven letters: two in support of critical habitat designation as proposed, four in opposition, and a letter from EPA requesting that the Service consider the biological and hydrological information described in EPA's draft proposed rule to promulgate Bay/Delta water quality standards.

The proposed rule to designate critical habitat for the delta smelt has been revised to reflect the best scientific information currently available and to ensure that the Service coordinates its final actions with other interested Federal agencies. For this reason, the Service will address all comments

previously received on the economic impacts, legal requirements, and interpretation of various provisions of the Act during preparation of a final rule. Additionally, comments received during the 60-day comment period following publication of this revised proposed rule will be used in preparing a final rule. Only comments addressing the issue of available scientific information used to revise this proposed rule are responded to in this document. In its final determination on the designation of critical habitat, the Service will provide a thorough discussion of all comments received in response to the original proposed rule and to this revised proposed rule.

Comment: EPA requested that in its designation of critical habitat the Service consider the scientific information described in EPA's draft proposed rule to promulgate water quality standards for the Bay/Delta.

Service Response: The Service has substantially revised the primary constituent elements in this proposed rule to reflect more closely the historical placement of low salinity estuarine habitat in Suisun Bay. As part of the background for formulation of its proposed water quality standards, EPA analyzed the number of days that low salinity (2 ppt) water historically was located at the confluence of the Sacramento and San Joaquin Rivers, Chipps Island, and Roe Island in Suisun Bay. The Service has revised the primary constituent elements to include those features that provide temporal and spatial variability of low salinity waters that will deter further invasion of exotic species, produce high zooplankton densities for food, and simulate natural processes and historical conditions. The "Primary Constituent Elements" section of this revised proposed rule describes in detail the months that each delta smelt life stage requires protective habitat conditions. This revised proposal refines the primary constituent elements to more accurately replicate historical conditions that are needed to recover the delta smelt.

Comment: One commenter stated that the Service does not have enough scientific data to substantiate the conclusions that the location of low salinity habitat in Suisun Bay is important to the recovery of the delta smelt, that delta smelt are associated with the saltwater-freshwater mixing zone, or that water exports could adversely affect delta smelt critical habitat as currently proposed.

Service Response: Section 4(b)(B)(2) of the Act requires that critical habitat designations be based on the best scientific data available. As discussed in the "Habitat Requirements" and "Primary Constituent Elements" sections of this rule, the best available scientific evidence shows that when the entrapment zone is located in a broad geographic area with extensive shallow-water habitat within the euphotic zone, high densities of phytoplankton and zooplankton are produced (Arthur and Ball 1978, 1979, 1980) and larval and juvenile fish, including delta smelt, grow rapidly (Moyle *et al.* 1992, Sweetnam and Stevens 1993). When the entrapment zone is contained within Suisun Bay, young delta smelt are dispersed widely throughout a large expanse of shallow-water and marsh habitat (Harry Seraydarian, EPA, *in litt.*, 1993). Dispersion in areas downstream from the State and Federal water pumps and in-Delta agricultural diversions protects young smelt from entrainment (diverted into man-made structures or impinged on screens) and distributes them among the extensive, protective, and highly productive shoal regions of Suisun Bay. In contrast, high exports cause the entrapment zone to be pulled upstream into the deep river channels (Moyle *et al.* 1992). The large river channels are smaller in total surface area, contain fewer shoal areas, have swifter, more turbulent water currents, and lack high zooplankton densities.

Because the Service seeks to coordinate its final actions with other interested Federal agencies and because the Service also has received new distributional information since the October 3, 1991, proposal to designate critical habitat for the delta smelt, the Service hereby revises the proposal to designate critical habitat. This proposed rule revision is based on materials received during the public comment period and information received during numerous meetings and discussions with State and Federal agency biologists, ichthyologists, engineers, and hydrologists. This new proposal supersedes the October 3, 1991, proposal.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments are particularly sought concerning:

(1) The reasons why any habitat (either existing or additional areas) should or should not be determined to be critical habitat as provided by section 4 of the Act;

(2) Current or planned activities and their possible impacts on proposed critical habitat areas;

(3) Any foreseeable economic or other impacts resulting from the proposed designation of critical habitat;

(4) Economic values associated with benefits of designating critical habitat for the delta smelt; and

(5) The methodology the Service might use, under section 4(b)(2) of the Act, in determining whether the benefits of excluding an area from critical habitat outweigh the benefits of specifying the area as critical habitat. Because the primary constituent elements used in determining which areas to propose as critical habitat for the delta smelt were determined in coordination with EPA in preparation of its proposed water quality standards, the Service also encourages the public, other concerned governmental agencies, the scientific community, industry, or any other interested party to provide comments or suggestions to EPA on its proposed rule to promulgate Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta of the State of California. The Fish and Wildlife Service will consider these comments also in developing its final rule. EPA's proposed rule is published in this same **Federal Register** separate part.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of this revised proposal in the **Federal Register**. Such requests must be made in writing and should be sent to the Acting Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

As stated previously, all comments that have been received during the preceding public comment periods on the economic impacts, legal requirements, and biological or ecological requirements or effects of critical habitat designation will be considered during preparation of a final rule. Additionally, comments received during the 60-day comment period following publication of this revised proposed rule will be used in preparing a final rule. The final decision on the designation of critical habitat will take into consideration the comments and any additional information received by the Service and will include any exclusion determinations.

National Environmental Policy Act

The Service has determined that an Environmental Assessment and/or an Environmental Impact Statement, as

defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination was published in the Federal Register on October 25, 1983 (48 FR 49244).

Regulatory Flexibility Act and Executive Order 12866

This proposed rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that the proposed rule will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). Based on the information discussed in this rule concerning public projects and private activities within critical habitat areas, significant economic impacts will not result from the critical habitat designation. Also, no direct costs, enforcement costs, information collection, or recordkeeping requirements are imposed on small entities by this designation. Further, the rule contains no recordkeeping requirements as defined by the Paperwork Reduction Act of 1980.

Takings Implications Assessment

The Service has analyzed the potential takings implications of designating critical habitat for the delta smelt in a Takings Implications Assessment prepared pursuant to requirements of Executive Order 12630, "Governmental Actions and Interference with Constitutionally Protected Property Rights." The Takings Implications Assessment concludes that the designation does not pose significant takings implications.

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Author

The primary author of this proposed rule is Nadine R. Kanim, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.11 [Amended]

2. Amend § 17.11(h), in the entry in the table under FISHES for "Smelt, delta," in the column under "Critical habitat" by revising "NA" to read "17.95(e)."

3. Amend § 17.95(e) by adding critical habitat of the delta smelt in the same alphabetical order as the species occurs in § 17.11(h).

§ 17.95 Critical habitat—fish and wildlife.

(e) * * *

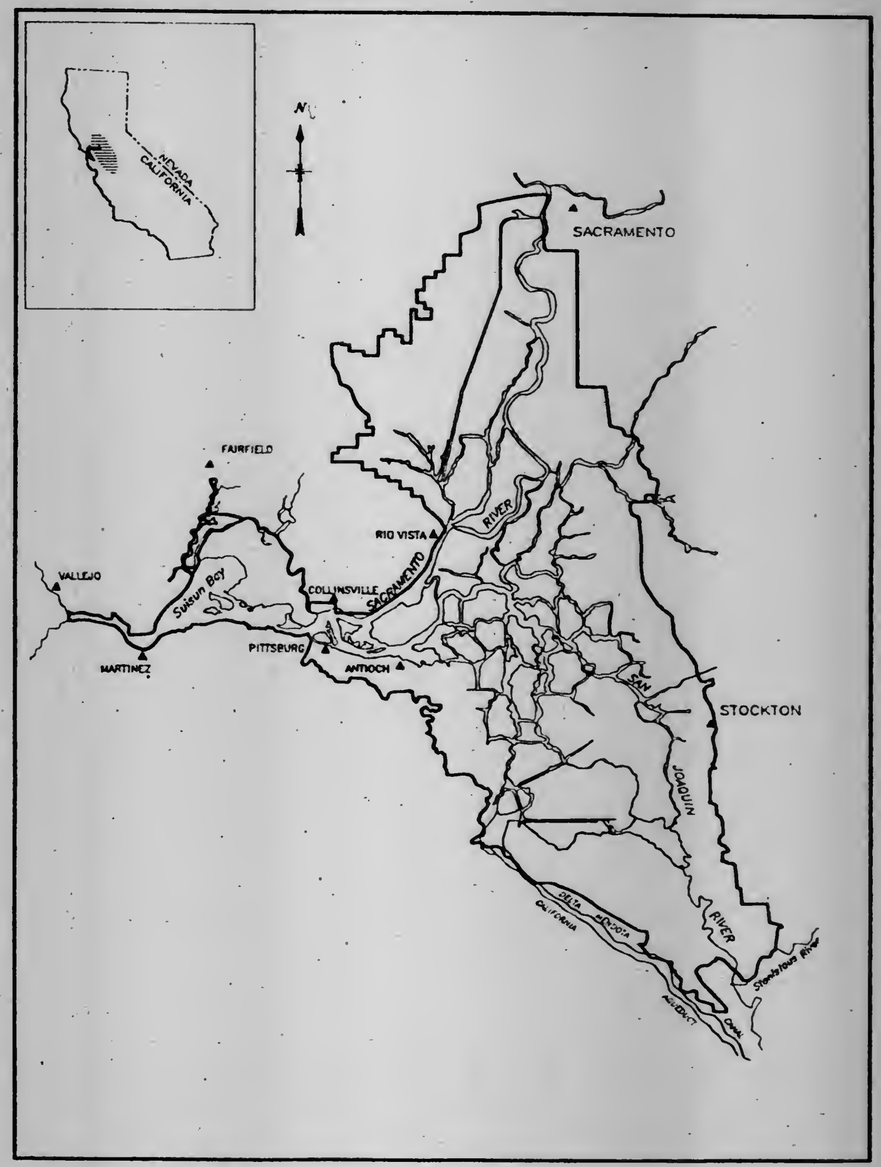
* * * * * *

Delta Smelt (*Hypomesus transpacificus*)

California: Areas of all water and all submerged lands below ordinary high water and the entire water column bounded by and contained in Suisun Bay (including the contiguous Grizzly and Honker Bays); the length of Montezuma Slough; and the existing contiguous waters contained within the Delta, as defined by section 12220, of the State of California's Water Code of 1969 (a complex of bays, dead-end sloughs, channels typically less than 4 meters deep, marshlands, etc.) as follows:

Bounded by a line beginning at the Carquinez Bridge which crosses the Carquinez Strait, thence northeasterly along the western and northern shoreline of Suisun Bay, including Goodyear, Suisun, Cutoff, First Mallard (Spring Branch), and Montezuma Sloughs; thence upstream to the intersection of Montezuma Slough with the western boundary of the Delta as delineated in section 12220 of the State of California's Water Code of 1969; thence following the boundary and including all contiguous water bodies contained within the statutory definition of the Delta, to its intersection with the San Joaquin River at its confluence with Suisun Bay; thence westerly along the south shore of Suisun Bay to the Carquinez Bridge.

BILLING CODE 4310-55-P



BILLING CODE 4310-55-C

Primary Constituent Elements: Physical habitat, water, river flow, and salinity concentrations required to maintain delta smelt habitat for spawning, larval and juvenile transport, rearing, and adult migration.

Dated: December 10, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–90 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC26

Endangered and Threatened Wildlife and Plants; Proposed Determination of Threatened Status for the Sacramento Splittail

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes threatened status for the Sacramento splittail (*Pogonichthys macrolepidotus*) pursuant to the Endangered Species Act of 1973, as amended (Act). Sacramento splittail occur in Suisun Bay and the San Francisco Bay-Sacramento-San Joaquin River Estuary in California. The Sacramento splittail has declined by 62 percent over the last 15 years. This species is primarily threatened by large freshwater exports from Sacramento and San Joaquin River diversions, prolonged drought, loss of shallow-water habitat, introduced aquatic species, and agricultural and industrial chemicals. This proposal, if made final, would implement the protection and recovery provisions afforded by the Act for Sacramento splittail. The Service seeks all available data and comments from the public regarding this proposal.

DATES: Comments from all interested parties must be received by March 7, 1994. Public hearing requests must be received by February 22, 1994.

ADDRESSES: Comments and materials concerning this proposal should be submitted to the Acting Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dale Pierce, Acting Field Supervisor, Sacramento Field Office (see **ADDRESSES** section) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

As used in this rule, the term "Delta" refers to all tidal waters contained within the legal definition of the San Francisco Bay-Sacramento-San Joaquin River Delta, as delineated by section 12220 of the State of California's Water Code of 1969. Generally, the Delta is contained within a triangular area that extends south from the city of Sacramento to the confluence of the Stanislaus and San Joaquin Rivers on the southeast corner and Chipps Island in Suisun Bay at the southwest corner. The term "Estuary," as used in this rule, refers to tidal waters contained in the Sacramento River and San Joaquin Rivers, the Delta, and the San Pablo and San Francisco Bays.

Sacramento splittail were first described in 1854 by W.O. Ayres as *Leuciscus macrolepidotus* and by S.F. Baird and C. Girard as *Pogonichthys inaequilobus*. Although Ayres' species description is accepted, the species was assigned to the genus *Pogonichthys* in recognition of the distinctive characteristics exhibited by the two splittail species *P. ciscoides* and *P. macrolepidotus* (Hopkirk 1973). *P. ciscoides*, endemic to Clear Lake, Lake County, California, has been extinct since the early 1970s. The Sacramento splittail (hereafter splittail) represents the only extant species in its genus.

The splittail is a large cyprinid that can exceed 40 centimeters (16 inches) in length (Moyle 1976). Adults are characterized by an elongated body, distinct nuchal hump, and small, blunt head, usually with barbels at the corners of the slightly subterminal mouth. The enlarged dorsal lobe of the caudal fin distinguishes the splittail from other minnows in the Central Valley of California. Splittail are dull, silvery-gold on the sides and olive-gray dorsally. During spawning season, the pectoral, pelvic, and caudal fins are tinged with an orange-red color. Males develop small white nuptial tubercles on the head.

Splittail are endemic to California's Central Valley, where they were once widely distributed (Moyle 1976). Historically, splittail were found as far north as Redding on the Sacramento River, as far south as the present-day site of Friant Dam on the San Joaquin River, and as far upstream as the current Oroville Dam site on the Feather River and Folsom Dam site on the American River (Rutter 1908). Recreational anglers in Sacramento reported catches of 50 or more splittail per day prior to damming of these rivers (Caywood 1974). The species was used as part of the Central Valley Native American diet (Caywood 1974).

In recent times, dams and diversions have increasingly prevented upstream access to large rivers, and the species is now restricted to a small portion of its former range (Moyle and Yoshiyama 1992). Splittail enter the lower reaches of the Feather (Jones and Stokes 1993) and American Rivers (Charles Hanson, State Water Contractors Association, *in litt.*, 1993) on occasion; however, the species now largely is confined to the Delta, Suisun Bay, Suisun Marsh, and Napa Marsh.

Splittail are relatively long-lived, frequently reaching 5 to 7 years of age. Females are highly fecund and produce over 100,000 eggs each year. Populations fluctuate annually depending on spawning success, which is highly correlated with freshwater outflow and the availability of shallow-water habitat with submerged vegetation (Daniels and Moyle 1983). Fish usually reach sexual maturity by the end of their second year. Some variability in the period of reproduction exists because older individuals reproduce first, followed by younger individuals (Caywood 1974). The onset of spawning is associated with rising temperature, and peak spawning occurs from the months of March through May, although records of spawning exist for late January to early July (Wang 1986). Spawning occurs over flooded vegetation in tidal freshwater and euryhaline habitats of estuarine marshes and sloughs and slow-moving reaches of large rivers. Larvae remain in shallow, weedy areas close to spawning sites and move into deeper water as they mature (Wang 1986).

Splittail are benthic foragers that feed on opossum shrimp (*Neomysis mercedis*), although detrital material makes up a large percentage of their stomach content (Daniels and Moyle 1983). Earthworms, clams, insect larvae, and other invertebrates also are found in the diet. Predators include striped bass and other piscivores.

Although primarily a freshwater species, the splittail can tolerate salinities as high as 10 to 18 parts per thousand (ppt) (Moyle 1976, Moyle and Yoshiyama 1992). In recent years, this fish has been found most often in slow-moving sections of rivers and sloughs and dead-end sloughs (Moyle *et al.* 1982, Daniels and Moyle 1983). Reports from the 1950s, however, mention Sacramento River spawning migrations and catches of splittail during fast tides in Suisun Bay (Caywood 1974). Because they require flooded vegetation for spawning and rearing, splittail are frequently found in areas subject to flooding, such as the major flood basins distributed throughout the Sacramento and San Joaquin Valleys. California Department of Fish and Game (CDFG) survey data from the last 15 years indicate that the highest catches occurred in shallow areas of Suisun and Grizzly Bays.

The decline in splittail abundance has taken place during increased human-induced changes to seasonal estuary hydrology and freshwater exports and the accompanying changes in the temporal, spatial, and relative ratios of water diversions. These deleterious hydrological effects, coupled with severe drought years, introduced aquatic species, and loss of shallow-water habitat to reclamation, seem to have reduced the species' capacity to recover from natural seasonal fluctuations in hydrology for which it was adapted.

Analyses of survey data collected since 1967 (Meng 1993) by Service, CDFG, and University of California, Davis, biologists from several different studies indicate the following:

(1) On average, splittail have declined in abundance by 62 percent since 1984. Percent decline varied among studies, dependent upon location of sampling effort. The greatest declines (over 80 percent) were found from studies that sampled the shallow Suisun Bay area, the center of the species' range. A study that began in 1980 at the lower Estuary, the outermost edge of splittail range, found the lowest percent decline (34 percent). The number of splittail young taken at State and Federal pumping facilities (per acre-foot of water pumped) has declined 64 percent since 1984;

(2) Successful reproduction in splittail is highly correlated with wet years, but within these wet years, young-of-the-year taken per unit effort has declined steadily from a high of 12.3 in 1978 to 0.3 in 1993;

(3) A strong relationship exists between young-of-the-year abundance and outflow (i.e., river outflow into San Francisco Bay after water exports are removed). As outflow increases, annual abundance of splittail young increases. Changes in outflow explain 73 percent of the changes seen in splittail young abundance;

(4) When young-of-the-year abundance is predicted using unimpaired outflow (i.e., river outflow without water exports removed), abundance is higher than expected in dry years, indicating that water exports effect young-of-the-year abundance in dry years. In dry years when river outflow is reduced, high proportions of outflow are diverted, resulting in lower than expected splittail young numbers;

(5) Lower than expected numbers of splittail young persisted throughout the recent 6-year drought in California. This prolonged period of poor reproductive success may affect the stock's ability to recover;

(6) Splittail are most abundant in shallow areas of Suisun and Grizzly Bays and are vulnerable to increased salinities. Salinities increase when, as a result of water exports and drought conditions, the entrapment zone (mixing zone at the freshwater-saltwater interface) is moved upstream. Concentration of splittail in shallow areas suggests that they are particularly vulnerable to reclamation activities, such as dredging and the diking and filling of wetlands; and

(7) Splittail distribution has shifted upstream into the lower Sacramento River and South Delta since 1983. Ninety-one percent of the splittail captured in San Pablo and lower Suisun Bays from 1967 to 1993 were taken before 1983, and 77 percent of the splittail captured in the lower Sacramento River and South Delta were taken after 1983. Because State and Federal water project pumps are located near the lower Sacramento River and South Delta, this upstream shift in splittail distribution increases splittail mortality at the pumps. In 1993, the number of splittail young taken at the Federal pumping facility was four times higher than in previous years.

A variety of factors affects the estuarine ecosystems and has led to the decline of Sacramento splittail. Principal among these factors specific to the Estuary are the altered hydraulics and reduced outflow of the Delta caused by export of freshwater from the Sacramento and San Joaquin Rivers through State and Federal water diversion projects. Additional threats to this species include:

(1) Loss at pumping plants and in-Delta diversion sites,

(2) Loss of spawning and nursery habitat as a consequence of draining and diking for agriculture,

(3) Reduction in the availability of highly productive brackish-water habitat,

(4) Urban and agricultural pollution,

(5) Introduction of exotic species, and

(6) Exacerbation of the effects of these factors as a result of 6 years of drought.

The causes of splittail decline in the Estuary are multiple and synergistically threaten this species. The individual threats include:

(1) Reduced river outflows, primarily in the Sacramento and San Joaquin Rivers and their tributaries;

(2) Loss of shallow-water habitat;

(3) Mortality caused by diversion into State and Federal water projects and privately-operated agricultural in-Delta water diversions;

(4) Human and natural perturbations of the food web;

(5) Presence of toxic substances in the aquatic habitat (e.g., agricultural and industrial chemicals and heavy metals); and

(6) Introduction of non-native species.

Previous Service Action

The Service included the Sacramento splittail as a category 2 candidate species for possible future listing as endangered or threatened in the January 6, 1989 (54 FR 554), Animal Notice of Review. Category 2 includes species for which information contained in Service files indicates that proposing to list is possibly appropriate but additional data is needed to support a listing proposal.

On November 5, 1992, the Service received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute to add the splittail to the List of Endangered and Threatened Wildlife and to designate critical habitat for this species in the Sacramento and San Joaquin Rivers and those estuaries. In his letter, Mr. Thomas identified the following eight organizations as co-petitioners: American Fisheries Society, Bay Institute of San Francisco, Natural Heritage Institute, Planning and Conservation League, Save San Francisco Bay Association, Friends of the River, San Francisco Baykeeper, and the Sierra Club. On June 24, 1993, the Service issued a 90-day finding, notice of which was published in the **Federal Register** on July 6, 1993 (58 FR 36184), that the petition presented substantial information indicating that the requested action may be warranted. The Service initiated a status review and analyzed available data on this species (Meng 1993). Additional sources of information describing the human factors and projects that may affect this species include expert testimonies presented to the California State Water Resources Control Board's 1987 Water Quality/Water Rights Proceeding on the San Francisco Bay and Sacramento-San Joaquin River Delta and 1992 Water Rights Phase of the Bay-Delta Estuary Proceedings. This proposal constitutes the final finding on the petition to list the Sacramento splittail.

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal Lists. A species may be determined to be endangered or threatened because of one or more of the five factors described in section 4(a)(1). These factors and their application to the Sacramento splittail (*Pogonichthys macrolepidotus*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range

The Sacramento splittail was once widely distributed in the Central Valley of California from Redding to the modern-day site of Friant Dam near the City of Fresno. It is now restricted to western, northern, and southern portions of the Delta due to dams, diversions, dredging, and the diking and filling of historic flood basins. Within the species' constricted range, splittail have declined by 62 percent since 1984. However, the overall percentage decline over its historical range is much greater. Populations have fluctuated somewhat in the past, with most recruitment taking place in wet years. In wet years since 1976, however, splittail recruitment has declined consistently with catches per unit effort of 12.3, 8.1, 2.0, 1.3, and 0.3 for 1978, 1982, 1983, 1986, and 1993, respectively. Splittail declines are highest (82 percent) in the shallow-water Suisun Bay area, which is the center of its distribution. This may reflect the loss of productive brackish-water habitat in Suisun and Grizzly Bays due to increased salinities caused by low outflows.

Currently, Delta water diversions and exports total to about 9 million acre-feet per year. Federal and State projects presently export about 6 million acre-feet per year when sufficient water is available, and in-Delta agricultural uses result in diversion of about 3 million additional acre-feet per year. Plans currently being prepared could potentially induce increased exports and diversions in the future. The Service knows of 22 major Central Valley Project, State Water Project, or private organization proposals that would result in increased water exports from the Delta, reduced water inflow to the Delta, changes in the timing and volume of Delta inflow, or increases in heavy metal contamination of the Delta. These proposed projects or actions include but are not limited to Central Valley Project Operations Criteria and Plan (including Friant Contract Renewals), Los Banos Grandes Reservoir, Los Vaqueros Reservoir, South Delta Water Management Program, South Delta Water Barriers Project, North Delta Water Management Project, West Delta Water Management Project, Coastal Aqueduct proposal, Delta Wetlands Corporation Water Storage Project, Folsom Dam Reoperation, Oroville Dam Reoperation, Auburn Dam, Central Valley Project contract renewals, the Central Valley Project and State Water Project wheeling purchase agreement, reactivation of the San Luis Drain, Stanislaus-Calaveras River Basin Water Use Program, Suisun Marsh Project Phase Three and Four, Kern Water Bank, Arvin Edison water storage and exchange proposal, Federal Water Project change in diversion point, and State Water Project Pump additions. These projects would modify or destroy the habitat of this species.

Because the Federal pumping plant has been operated at capacity for many years except for a few drought years, increased exports at this plant appear unlikely. However, the State Water Project pumping plant and the capacity of the State Aqueduct have considerable unused capacity. The California Department of Water Resources (1992) reported the past and projected State Water Project deliveries from Delta sources during the years of 1962 to 2035. In the 1980s, deliveries ranged from 1.5 million acre-feet to 2.8 million acre-feet. By 2010, deliveries of up to 4.2 million acre-feet are planned.

Since 1983, the proportion of water exported from the Delta during October through March has been higher than in earlier years (Moyle *et al.* 1992). The timing of these proportionally higher exports have coincided with the spawning season of the splittail. Federal and State water diversion projects in the southern Delta export, by absolute volume, mostly Sacramento River water with some San Joaquin River water. Moreover, during periods of high export pumping and low to moderate river outflows, reaches of the San Joaquin River reverse direction and flow upstream to the pumping plants located in the southern Delta. The State-operated pumping plant presently exports water at rates up to 6,400 cubic feet per second (cfs). The State is considering proposals to export an additional 3,900 cfs. The Federal pumping plant can export water at rates up to 4,600 cfs. In addition, local private diverters export up to 5,000 cfs from about 1,800 diversions scattered throughout the Delta.

When total diversion rates are high relative to Delta outflow, and the lower San Joaquin River and other channels have a net upstream (i.e., reverse or negative) flow, out-migrating larval and juvenile fish of many species become disoriented. Large mortalities occur as a result of loss to pumps and predation by striped bass at the various water facilities and other diversion sites. Because data from State and Federal pumping facilities indicate that splittail migrate upstream to spawn, positive outflows are also important to transport splittail young downstream (Meng 1993).

In recent years, the number of days of reversed San Joaquin River flow have increased (Moyle *et al.* 1992), particularly during the February-June spawning months for splittail. All size classes of splittail young suffer near total loss when they are entrained by the pumping plants and diversions in the south Delta. Few young are effectively salvaged at the Federal and State pumping plant screens. This species' embryonic, larval, and postlarval mortality rates also are higher when reduced outflows cause increases in salinity and relocation of the entrapment zone (Moyle and Yoshiyama 1992).

Splittail are adapted for life in the entrapment zone. Estuaries are ecosystems where the entrapment zone and salinity levels are determined by the interaction of river outflow and tidal action. Splittail are most abundant in the shallow waters of Suisun Bay, which is historically associated with the entrapment zone. The young of this species require high zooplankton densities produced by the entrapment zone environment. The best survival and growth of splittail occurs when the entrapment zone occupies a large geographic area with extensive shoal regions within the euphotic zone (depths less than 4 meters). Fall mid-water trawl survey data collected by CDFG indicate that 76 percent of the splittail captured from 1967 to 1992 in the Delta were taken in the shallow areas of Suisun and Grizzly Bays (Meng 1993).

During periods of drought and increased water diversions, the entrapment zone and associated fish populations are shifted farther upstream in the Estuary. During years prior to 1984, the entrapment zone was located in Suisun Bay from October through March (except in months with exceptionally high outflows or during years of extreme drought). From April through September, the entrapment zone usually was found upstream in the river channels. Since 1984, with the exception of the record 1986 flood outflows, the entrapment zone has been located primarily in the river channels during the entire year because of drought and increased water exports and diversions. When located upstream, the entrapment zone is confined to deep river channels where the total surface area is smaller, fewer shoal areas of suitable spawning substrate exist, water currents are swifter and more turbulent, and zooplankton productivity is low. In all respects, the upstream river channels are much less favorable for spawning and rearing of splittail. Splittail declines since 1984 have been concurrent with an increasing amount and proportion of freshwater diversions that confine the entrapment zone to the narrow, deep, and less productive channels in the lower rivers.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

This factor is not known to be applicable. Some scientific collecting is conducted for splittail, but these activities do not adversely affect this species. Little or no recreational harvest of splittail is likely occurring because the population has dramatically declined, and it is not a desirable game species. No recent records of splittail harvest exist, probably because little or no harvest occurs, and the identification of this species is often confused with other nongame species. No other recreational or educational uses of this species exist that may affect its abundance.

C. Disease or Predation

This factor is not known to be applicable. However, if the non-native striped bass populations increase, all size classes of splittail could be under greater threat of predation. An effort by CDFG is under way to compensate for striped bass population mortalities caused by water export projects. The 1991 striped bass stock was low relative to the population in the 1960s. Previously, the striped bass compensation program annually released 1 to 2 million juvenile, hatchery-reared striped bass in the Estuary in an effort to rebuild the population. However, for the last 2 years, the Director of CDFG has foregone release of striped bass because of the potential harm they would cause to the federally-threatened Sacramento River winter-run chinook salmon and delta smelt.

D. The Inadequacy of Existing Regulatory Mechanisms

Regulatory mechanisms currently in effect do not provide adequate protection for the splittail or its habitat. This species is not listed by the State of California.

Suisun Bay is the best known nursery habitat for reproduction and larval survival of splittail, but the habitat has been deleteriously altered by higher salinities in the spring. These higher salinities are caused by a large number of freshwater diversions that allow seawater to intrude farther upstream. At present, there are relatively few periods when freshwater outflow volumes through the Delta and Suisun Bay of any significance are mandated for wildlife or fisheries. State and Federal agencies had planned to increase 1991 and 1992 water supplies for out-of-stream uses at the expense of environmental protection of estuarine fish and wildlife resources in the fifth and potentially sixth years of drought (Morat 1991). Because of significantly higher than normal precipitation and subsequent higher instream flows after March 1991, a State agency request for relaxation of Delta water quality standards was withdrawn. Should a California drought return, water quality relaxation action likely will be requested again to favor out-of-stream water use over the need to protect aquatic habitats for fish and wildlife.

Present regulatory processes do not ensure that water inflows to Suisun Bay and the western Estuary will be adequate to maintain the entrapment zone near or in Suisun Bay to benefit splittail. The California State Water Resources Control Board (Board) has the authority to condition or require changes in the amount of water inflow and the amount of water exported or diverted from the Delta. In testimony given before the Board's Water Quality/Water Rights Hearings in 1987, a Service biologist expressed concern for several Delta species including splittail (Lorentzen 1987). The Board did not take regulatory or legal action to protect this fish or its habitat during the four following years. On May 1, 1991, the Board adopted the Water Quality Control Plan for Salinity for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary (1991 Bay/Delta Plan). On September 3, 1991, under provisions of the Clean Water Act, the Environmental Protection Agency (EPA) disapproved certain water quality standards for the Board's failure to adopt criteria to protect estuarine habitat. In 1993, EPA began the process of formulating replacement standards for those portions of the 1991 Bay/Delta Plan that were disapproved. In January 1992, the Governor of California announced a new water policy that included a directive to the Board to establish "interim measures" to reverse the decline of fishes in the Bay and Delta. Accordingly, the Board released an interim water quality plan (Draft Decision 1630) in December 1992 that immediately was suspended by the Governor.

EPA's proposed rule to promulgate Water Quality Standards for Surface Waters of the Sacramento River, San Joaquin River, and San Francisco Bay and Delta is published in this same **Federal Register** separate part; however, enforcement of these standards may be difficult. The Service is aware that the salinity standards currently in effect (Water Right Decision 1485) are inconsistently implemented and frequently violated. Institutional guarantees of compliance have been lacking in the past and are needed in the future before existing mechanisms can contribute to the protection of this species.

The Service currently is analyzing the potential effects on the splittail and other fish and wildlife resources in California as a result of recent enactment of the Central Valley Project Improvement Act (Pub. L. 102-575). Two of the stated purposes of this act are to: "Protect, restore, and enhance fish, wildlife, and associated habitats in the Central Valley and Trinity River basins of California" and "to contribute to the State of California's interim and long-term efforts to protect the San Francisco Bay-Sacramento-San Joaquin Delta Estuary." Section 3406(b)(2) dedicates 800,000 acre-feet of Central Valley Project water annually for various purposes, including the benefit of federally listed species. Although the Service is reasonably certain that the splittail will realize some benefit from implementation of the Central Valley Project Improvement Act, the magnitude and timeliness of these protections may be inadequate to prevent further decline of splittail.

Protective measures currently being implemented to benefit the delta smelt will beneficially affect the splittail by restricting pumping under certain conditions. However, the ecological requirements of each species differ, especially with respect to timing of important developmental stages and habitat use. Splittail need flooded lowland habitat for spawning and are particularly vulnerable to disturbance or destruction of marshy habitat. Therefore, the protections afforded the delta smelt, listed as threatened in 1993

under the Endangered Species Act, will not be sufficient to prevent further decline of the splittail. For the reasons stated above, the Service considers the existing regulatory mechanisms inadequate to ensure the long-term existence of the Sacramento splittail.

E. Other natural or manmade factors affecting its continued existence

Splittail are vulnerable to extinction from stochastic events because of the consistent decline in population indices and severely constricted ranges and distribution.

Poor water quality also may adversely affect splittail, either through direct exposure to toxins or depletion of zooplankton or invertebrate food sources. All major rivers that are tributary to the Estuary are exposed to large volumes of agricultural and industrial chemicals that are applied in the Central Valley watershed (Nichols *et al.* 1986). Agricultural chemicals and their residues, as well as chemicals originating in urban runoff, find their way into the rivers and Estuary. Approximately 10 percent of the total pesticide use in the United States occurs in the Sacramento and San Joaquin River watersheds, primarily on orchards, alfalfa, and rice during the months of January to June of each year (Jewel Bennett, U.S. Fish and Wildlife Service, *in litt.*, 1993). Recently, high concentrations of organophosphate and carbamate pesticides from agricultural uses have been documented entering the Estuary. These pesticides are acutely toxic to zooplankton and fishes as far west as Martinez in Suisun Bay and as far south as Vernalis on the San Joaquin River (Bennett, *in litt.*, 1993). The periods of pesticide use coincide with the timing of migration, spawning, and early development of splittail. During rainfall runoff events, acutely toxic pulses of pesticides move down the rivers and through the Estuary with remarkable persistence and relatively little dilution.

Toxicology studies of rice field irrigation drain water of the Colusa Basin Drainage Canal have documented significant toxicity of drain water to striped bass embryos and larvae, *Oryzias latipes* larvae (in the Cyprinodontidae family), and the opossum shrimp, which is the major food organism of striped bass larvae and juveniles (Bailey *et al.* 1991). This drainage canal flows into the Sacramento River just north of the City of Sacramento. The majority of drain water samples collected during April and May 1990 were acutely toxic to striped bass larvae (96 hour exposures); this was the third consecutive year that the Colusa Basin rice irrigation drain water was acutely toxic (Bailey *et al.* 1991). Splittail may be similarly affected by agricultural and industrial chemical run-off.

Some heavy metal contaminants have been released into the Estuary from industrial and mining enterprises. While the effects of these contaminating compounds on splittail larvae and their zooplankton food resources are not well known, the compounds could adversely affect survival. In addition, increases in urban development in the Sacramento Valley will continue to result in concurrent increases in urban runoff. Selenium has been found in aquatic organisms (Saiki and Lowe 1987) and fish species in the San Joaquin River watershed (Nakamoto and Hassler 1992). Selenium has been shown to cause developmental defects in and mortality of fish species (Hermanutz 1992).

In recent years, untreated discharges of ship ballast water has introduced exotic aquatic species to the Estuary ecosystem (Carlton *et al.* 1990). Several exotic species may adversely affect the splittail. An asian clam (*Potamocorbula omurensis),* introduced as veliger larvae in 1986, was first discovered in Suisun Bay during October 1986. By June 1987, the Asian clam was widespread in Suisun, San Pablo, and San Francisco Bays irrespective of salinity, water depth, and sediment type at densities greater than 10,000 individuals per square meter. Asian clam densities declined to 4,000 individuals per square meter as the population aged during the year (Carlton *et al.* 1990). Persistently low river outflow and concomitant elevated salinity levels may have contributed to this species' population explosion (Carlton *et al.* 1990). The Asian clam could potentially play an important role in affecting the phytoplankton dynamics in the Estuary. The clam may have an effect on higher trophic levels by decreasing phytoplankton biomass.

Historically, *Eurytemora affinis,* the native euryhaline copepod, has been the most important food for larval fishes in the Estuary. Three non-native species of euryhaline copepods (*Sinocalanus doerrii, Pseudodiaptomus forbesi,* and *Pseudodiaptomus marinus)* became established in the Delta between 1978 and 1987 (Carlton *et al.* 1990), while E. *affinis* populations have declined since 1980. It is not known if the exotic species have displaced *E. affinis* or whether changes in the estuarine ecosystem now favor *S. doerrii* and the two *Pseudodiaptomus* species (Moyle *et al.* 1989). *S. doerrii* is difficult for larval fishes to catch because of its fast swimming and effective escape response (Meng and Orsi 1991). Reduced feeding efficiency and ingestion rates weaken and slow the growth of splittail young and make them more vulnerable to starvation or predation.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to propose this rule. Sacramento splittail have declined by 62 percent over the last 15 years. This species has been extirpated from portions of its range. In the Estuary during the past 2 decades, the entrapment zone, associated with the important nurseries for splittail, has been more frequently shifted upstream to a confined area of greater depth as a result of drought conditions, water management schedules, and the continual and increasing demand for water exports and diversions. These factors will continue to adversely affect all life stages of splittail.

Threatened status is proposed for the Sacramento splittail because of several factors. The population has declined by 62 percent within 15 years. The historical and current range of the species is constricted. Changes in water salinity and the reverse flow of water has shifted the distribution of individuals upstream and has caused the fish to be vulnerable to State and Federal pumping plants. The death of these fish due to pumping continues at present and is likely to continue in the future. Water exports also threaten the quality and quantity of habitat at present and for the future. Because Sacramento splittail are long-lived, their decline has been gradual, and extinction is not imminent, listing the splittail as endangered would not be appropriate. Although this species is not in imminent danger of extinction at this time, it is likely to become endangered in the foreseeable future.

Therefore, based on the evaluation of all available information on abundance, present distribution, and threats to this species, the Service has determined that proposing to list the Sacramento splittail as threatened is appropriate at this time. Critical habitat is not determinable for reasons discussed in the "Critical Habitat" section of this rule.

Critical Habitat

Section 4(a)(3) of the Act requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat concurrently with proposing a species to be endangered or threatened. The Service finds that designation of critical habitat for the Sacramento splittail is not determinable at this time. Regulations at 50 CFR 424.12(a)(2) state that critical habitat is not determinable if information sufficient to perform required analyses of the impacts of the designation is lacking or if the biological needs of the species are not sufficiently known to permit identification of an area of critical habitat. The Service's efforts to gather information on the potential benefits of designating critical habitat for splittail may lead to the conclusion that designation of critical habitat is not prudent. Regulations at 50 CFR 424.12(a)(1) state that a designation of critical habitat is not prudent when the species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or when such designation would not be beneficial to the species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated by the Service following listing. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is subsequently listed and its critical habitat is designated, section 7(a)(2) requires Federal agencies to insure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into consultation with the Service.

Federal actions that may affect the splittail or its critical habitat, should any be designated, include those authorized, carried out, or funded by the Army Corps of Engineers, Bureau of Reclamation, National Marine Fisheries Service, and EPA. The Army Corps of Engineers funds projects and issues permits for water pumping and diversion facilities, levee construction or repair, bank protection activities, deep-water navigation channel dredging and dredge spoil disposal projects, sand and gravel extraction, marina and bridge construction, diking of wetlands for conversion to farmland, and tidal gate or barrier installation. The Bureau of Reclamation and California Department of Water Resources construct, operate, and/or manage water export facilities. EPA reviews State water quality standards and promulgates replacement standards, pursuant to the Clean Water Act, if State standards are found to be inadequate. In 1991, EPA disapproved portions of the California State Water Resources Control Board's Water Quality Control Plan for Salinity for the San Francisco Bay-Sacramento-San Joaquin Delta Estuary. Accordingly, EPA has published in this same **Federal Register** separate part proposed replacement standards for those portions of the State's salinity standards that were disapproved.

Under section 4 of the Act, listing the splittail will provide additional impetus for the development of a recovery plan to bring together Federal, State, and private efforts to develop conservation strategies for this species. The Service has convened the Delta Native Fishes Recovery Team to prepare a recovery plan for declining native fishes in the Estuary. The recovery plan will develop a framework for agencies to coordinate activities and cooperate with each other in conservation efforts. The plan will set recovery priorities and estimate the costs of various tasks necessary to accomplish recovery goals. Site-specific management actions necessary to achieve survival and recovery of the splittail and other fishes native to the Estuary ecosystem also will be described in this plan.

The Act and its implementing regulations found at 50 CFR 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife not covered by a special rule. These prohibitions, in part, would make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, collect, or attempt any such conduct), import or export, transport in interstate or foreign commerce in the course of commercial activity, or sell or offer for sale in interstate or foreign commerce any such species. It also is illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving endangered or threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22 and 17.23. Permits for threatened species are available for scientific purposes, to enhance the propagation or survival of the species, and for incidental take in connection with otherwise lawful activities. In some instances, permits may be issued during a specified period of time to relieve undue economic hardship that would be suffered if such relief were not available. For threatened species, permits are lawful for zoological exhibition, educational purposes, or special functions consistent with the purposes of the Act. Further information regarding regulations and requirements for permits may be obtained from the U.S. Fish and Wildlife Service, Ecological Services, Permits Branch, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6241; FAX 503/231–6243).

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to this species;

(2) The location and status of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat as provided by section 4 of the Act. Biological information that would be useful in determining whether to designate critical habitat includes descriptions and locations of spawning habitat and life history information on behavior and ecological needs;

(3) Additional information concerning the range, distribution, and population size of this species; and

(4) Current or planned activities in the subject area and their possible impacts on this species.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to final regulations that differ from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be received within 45 days of the date of publication of the proposal. Such requests must be made in writing and addressed to the Acting Field Supervisor, Sacramento Field Office (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Authors

The authors of this rule are Dr. Lesa Meng and Nadine R. Kanim, Sacramento Field Office (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulations Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following, in alphabetical order under FISHES, to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Fishes:							

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Splittail, Sacramento.	*Pogonichthys macrolepidotus.*	U.S.A. (CA)	Entire	T	.....	NA	NA

Dated: December 21, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–91 Filed 1–5–94; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 1-Year Finding on a Petition to List the Longfin Smelt

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 1-year finding on a petition to list the longfin smelt (*Spirinchus thaleichthys*) under the Endangered Species Act of 1973, as amended (Act). The Service determines that the petitioned action is not warranted at this time. The longfin smelt occurs from the San Francisco Bay-Sacramento-San Joaquin River Estuary in California to Prince William Sound in Alaska. Although the southernmost populations are declining, little or no population trend data are available for estuaries in Oregon and Washington. The species may be surviving and reproducing in Puget Sound, Skagit Bay, Grays Harbor, Willapa Bay, the Columbia River, Yaquina Bay, and Coos Bay. Large numbers are found in the Gulf of Alaska 5 to 6 miles off shore. The listing of a Sacramento-San Joaquin River estuary vertebrate population segment is also not warranted at this time because that population does not seem to be biologically significant to the species as a whole, and may not be sufficiently reproductively isolated.

DATES: Comments from all interested parties will be accepted until further notice.

ADDRESSES: Comments and materials concerning this document should be submitted to the Acting Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, E–1803, Sacramento, California 95825–1846.

FOR FURTHER INFORMATION CONTACT: H. Dale Hall, Assistant Regional Director, Ecological Services, U.S. Fish and Wildlife Service, 911 NE. 11th Avenue, Portland, Oregon 97232–4181 (503/231–6150).

SUPPLEMENTARY INFORMATION: On November 5, 1992, the Service received a petition from Mr. Gregory A. Thomas of the Natural Heritage Institute to add the longfin smelt to the List of Endangered and Threatened Wildlife and to designate critical habitat in the Sacramento and San Joaquin Rivers and estuary. In his letter, Mr. Thomas identified the following eight organizations as co-petitioners: American Fisheries Society, Bay Institute of San Francisco, Natural Heritage Institute, Planning and Conservation League, Save San Francisco Bay Association, Friends of the River, San Francisco Baykeeper, and the Sierra Club. On June 24, 1993, the Service issued a 90-day finding, a notice of which was published in the **Federal Register** on July 6, 1993 (58 FR 36184), that the petition presented substantial information indicating that the requested action may be warranted. The Service initiated a status review and analyzed available data on this species (Meng 1993). Additional sources of information describing the human factors and projects that may affect this species include expert testimonies presented to the California State Water Resources Control Board's 1987 Water Quality/Water Rights Proceeding on the San Francisco Bay and Sacramento-San Joaquin River Delta and 1992 Water Rights Phase of the Bay-Delta Estuary Proceedings.

Section 4(b)(3)(B) of the Act requires that the Service issue a finding within 1 year of the receipt of the petition on whether the petitioned action is (a) not warranted, (b) warranted, or (c) warranted but precluded from immediate proposal by other pending proposals of higher priority.

In casual conversations, the petitioner indicated that he intended the petition to be a request to list the Sacramento-San Joaquin River estuary population. However, the Service did not receive this request in writing and, in any case, was required to review the status of the species on a rangewide basis prior to considering the appropriateness of listing individual population segments. The Service determines that listing of the Sacramento-San Joaquin estuary population segment of the longfin smelt is not warranted.

Longfin smelt is an euryhaline species with a 2-year life cycle (Moyle 1976, Moyle and Yoshiyama 1992). Spawning occurs in fresh water over sandy-gravel substrates, rocks, or aquatic plants. Spawning may take place as early as November and extend into June, although the peak spawning period is from February to April (Wang 1986). After hatching, larvae move up into surface waters and are transported downstream into brackish-water nursery areas. Sacramento-San Joaquin River outflow into Suisun and San Pablo Bays has been positively correlated with longfin smelt recruitment (Stevens and Miller 1983) because higher outflow increases larval dispersal and the area available for rearing (Wang 1986). The main food of longfin smelt is opossum shrimp, although copepods and other crustaceans also are eaten (Moyle 1976). Longfin smelt are preyed upon by fishes, birds, and marine mammals (Monaco et al. 1991). Longfin smelt play a role in maintaining the structure and function of estuarine ecosystems because they are important as food for birds and piscivorous fishes.

As presently described, longfin smelt range from the San Joaquin-Sacramento River estuary and South San Francisco Bay, California, to Prince William Sound, Alaska (Miller and Lea 1972). The present-day distribution of longfin smelt is probably due to lower sea levels in the Pleistocene, which would have enlarged estuaries up and down the Pacific coast and shortened the distances between estuaries, as well as provide more habitat (Peter Moyle, University of California, Davis, pers. comm., 1993). Unverified reports of offshore collection of longfin smelt exist, approximately 5 to 6 miles off shore in Alaska (Bruce Wing, National Marine Fisheries Service, Auke Bay, Alaska, pers. comm., 1993) and 3 to 4 miles off shore in northern California (Larry

Quirollo, California Department of Fish and Game, pers. comm., 1993).

Based on inferred abundance, longfin smelt may be common in Willapa Bay, Skagit Bay, and Puget Sound in Washington and Coos Bay and Yaquina Bay in Oregon (Monaco *et al.* 1990). Largely using sampling data, Monaco *et al.* (1990) also reported that longfin smelt were common to highly abundant in the Columbia River and Grays Harbor, Washington. Few data exist on the recent status of the Oregon and Washington longfin smelt; however, indications are that this species may be reproducing and surviving in the Oregon and Washington estuaries (Bob Emmett, National Marine Fisheries Service, Hammond, Oregon, pers. comm., 1993). A land-locked population exists in Harrison Lake in British Columbia. British Columbia longfin smelt have also been recorded at the Fraser River estuary and near Prince Rupert and Vancouver (Hart 1973). Alaska longfin smelt are found at the Dixon Entrance, Yakutat Bay, Prince William Sound, and Cook Inlet (Wing, pers. comm., 1993). In California, the longfin smelt occurs (or did occur) in the Klamath River mouth, Humboldt Bay, Eel River mouth, Van Duzen River mouth, and the San Francisco Bay-Sacramento-San Joaquin Estuary (Moyle 1976; Moyle and Yoshiyama 1992; Ron Fritzsche, Humboldt State University, pers. comm., 1993). The Estuary supports the largest and most southerly longfin smelt population in California (Lee *et al.* 1980).

The strongest information on the decline of longfin smelt comes from the Sacramento-San Joaquin River Estuary of California. Longfin smelt were once one of the most abundant fish caught by trawl surveys in the Sacramento-San Joaquin (Herbold *et al.* 1992) and Humboldt Bay estuaries (Barnhart, pers. comm., 1993). Longfin smelt numbers in the Estuary fluctuated widely in the past, but since 1983 abundance has dropped dramatically and remained at record lows. In Humboldt Bay, longfin smelt were the fourth most abundant fish captured in trawls in the late 1960s and early 1970s (Roger Barnhart, National Biological Survey, pers. comm., 1993). However, since 1988, no longfin smelt have been captured in Humboldt Bay using similar sampling methods (Tim Mulligan, Humboldt State University, pers. comm., 1993). Historical records of longfin smelt from the mouth of the Van Duzen River exist; however, in recent years, no evidence of the fish exists for this location (Fritzsche, pers. comm., 1993). The Eel River, which is about 3.2 kilometers (2 miles) from Humboldt Bay, is relatively small and probably contains little habitat appropriate for longfin smelt. Longfin smelt likely occurred in the Eel River only when high river outflows introduced fish from Humboldt Bay. Longfin smelt numbers probably declined in the Eel River at the same time declines occurred in Humboldt Bay. Recent surveys have not found the longfin in the Eel estuary (Moyle, pers. comm., 1993). In Oregon and Washington, no population trend data exist for any of the estuaries, although the indications are that the species is surviving and reproducing in several estuaries (Emmett, pers. comm., 1993). In Alaska, large numbers of longfin smelt are found in the Gulf of Alaska (Bruce Wing, National Marine Fisheries Service, pers. comm., 1993).

In the Sacramento-San Joaquin River Estuary the decline in longfin smelt abundance is associated with fresh water diversions from the Delta to support California's agricultural industry in the Central Valley and the vast urban areas of southern California. Strong relationships between outflow and longfin smelt abundance indicate that outflows less than 3,400 cubic feet per second (cfs) result in reproductive failure for longfin smelt (Moyle and Yoshiyama 1992). Because of its 2-year life span, such flows for more than 2 or 3 consecutive years could push this species toward extinction. From 1986 to 1991, outflows hovered close to that number, partly due to high proportions of inflow diverted. Movement of the entrapment zone (mixing zone at the freshwater-saltwater interface) up-river due to low outflows has constricted the range of the longfin smelt and made it increasingly vulnerable to diversion into man-made structures. Low outflows have failed to disperse larvae downstream to the productive nursery areas in Suisun Bay away from the pumps. The water exports from the Delta by far exceed those from any other estuary on the west coast of North America.

Sediment production as a result of human activities and developments in the Humboldt, Eel, Van Duzen, and Klamath watersheds may be a cause of the decline of longfin smelt in those estuaries. Soil washed into the streams can deposit in estuaries downstream. Sedimentation in the spawning habitat could have reduced the spawning success of this species due to physical scouring or suffocation of eggs (Barnhart, pers. comm., 1993). Although human activities upstream of estuaries in Oregon, Washington, Canada, and Alaska would likely result in similar impacts, the Service does not have population trend data for these portions of the species' range.

Longfin smelt disappeared from the Humboldt Bay estuary in the 1980s (Barnhart, pers. comm., 1993), perhaps as a result of a dramatic loss of intertidal marsh habitat, which may have reduced productivity levels to a point at which they could no longer support the species. In addition, the loss of freshwater flows from the Mad River, as a result of water diversions and land reclamation, may have contributed to the loss of this species from the Humboldt Bay.

Longfin smelt may be particularly sensitive to adverse habitat alterations or to stochastic events because their 2-year life cycle increases the likelihood of extinction after consecutive periods of reproductive failure due to drought or other factors. Relatively brief periods of reproductive failure could lead to extirpations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in this determination. This species does not appear to be threatened throughout all or a significant portion of its range or likely to become so in the foreseeable future. However, given the declines in the southern portion of the species' range and the general lack of population trend data for the remainder of its range, the Service will include the longfin smelt in category 2 of the next notice of review for animals.

Though the petition was not limited to a portion of the species' range, the petitioner focused on the resident longfin smelt in the Sacramento-San Joaquin River estuary population. In telephone conversations, the petitioner indicated that he was most interested in a population listing. Longfin smelt numbers in this estuary have declined by 90 percent since 1984 and by 50 percent annually since 1987.

The Service has listed vertebrate population segments where the entity being listed represented the entire coterminous United States population (e.g., marbled murrelet, grizzly bear). Some reproductively isolated (or nearly so) vertebrate population segments that are clearly important to the conservation of an entire species have also been listed under the Act (e.g., Mojave population of the desert tortoise, coastal population of the western snowy plover).

Although the longfin smelt reportedly is unable to swim between estuaries (Moyle, pers. comm., 1993), unverified reports of offshore collections exist (Quirollo, pers. comm., 1993; Wing, pers. comm., 1993). Furthermore, the current distribution is thought to be the result of movements between estuaries that took place during the Pleistocene when lower sea levels reportedly would have enlarged estuaries along the Pacific coast and shortened the inter-estuarian distances (Moyle, pers. comm., 1993). Though geographically removed from the closest known extirpated or declining population (300 miles from the Eel River in California), this isolation does not necessarily indicate that the Sacramento-San Joaquin River estuary population is significant to a species that has a range of more than 1,900 miles. In addition, electrophoretic analysis revealed that the accumulated number of codon substitutions per locus (i.e., Nei's genetic distance) since the time of separation of the Sacramento-San Joaquin River estuary population and the longfin population in Lake Washington, Washington, connected to Puget Sound via a system of locks, has been small (0.005 according to Stanley *et al.*, submitted to *Copeia*). Thus, these populations, separated by approximately 1,000 miles, have genetically diverged only slightly since their separation.

The Sacramento-San Joaquin River estuary is clearly an important and significant wetland ecosystem. The longfin smelt formerly was the fourth most abundant fish in the Sacramento-San Joaquin River estuary; however, the role of this declining species in the estuary today is unknown.

Based on this evaluation the Service has determined that the listing of the longfin smelt under the Act is not warranted at this time. The listing of the Sacramento-San Joaquin River estuary population of the longfin smelt is also not warranted at this time.

References

A complete list of references used in the preparation of this finding is available from the Associate Manager—Endangered Species, U.S. Fish and Wildlife Service, Portland, Oregon (see **ADDRESSES** section).

Authority

The authority for this action is the Endangered Species Act (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: December 22, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–92 Filed 1–5–94; 8:45 am]

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January 6, 1994

Part III

Department of Labor

Employment and Training Administration
20 CFR Parts 621 and 655

Wage and Hour Division

29 CFR Part 504

Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Parts 621 and 655

RIN 1205–AA84

Wage and Hour Division

29 CFR Part 504

RIN 1215–AA55

Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCIES: Employment and Training Administration and Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Final rule.

SUMMARY: The Employment and Training Administration (ETA) and the Wage and Hour Division of the Employment Standards Administration (ESA) of the Department of Labor (DOL or Department) are publishing final regulations governing the filing and enforcement of attestations by facilities seeking to use nonimmigrant aliens as registered nurses under H–1A visas.

The attestations, required under the Immigration and Nationality Act, pertain to substantial disruption in the delivery of health care services, absence of adverse effect on wages and working conditions of similarly employed registered nurses, payment of wages to nonimmigrant alien nurses employed by the facility at wage rates paid to other registered nurses similarly employed by the facility, taking timely and significant steps designed to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant alien nurses, absence of a strike or lockout, and giving appropriate notice of filing.

Facilities are required to submit these attestations to DOL as a condition for being able to petition the Immigration and Naturalization Service (INS) for H–1A nurses. The attestation process is administered by ETA, while complaints and investigations regarding the attestations are handled by ESA.

EFFECTIVE DATE: February 7, 1993, except 20 CFR 655.310 and 655.350 and 29 CFR 504.310 and 504.350 which contain information collection requirements which are under review at OMB. When approval is received, the agencies will publish a document announcing the effective date.

FOR FURTHER INFORMATION CONTACT: On 20 CFR part 655, subpart D, and 29 CFR part 504, subpart D, contact Mr. Denis M. Gruskin, Senior Specialist, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, Room N–4456, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–219–4369 (this is not a toll-free number).

On 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E, contact Mr. Solomon Sugarman, Chief, Farm Labor Programs, Wage and Hour Division, Employment Standards Administration, Department of Labor, room S–3502, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION:

I. Background

A. Introduction

The Immigration Nursing Relief Act of 1989 (INRA), Public Law 101–238, 103 Stat. 2099 (December 18, 1989), amended the Immigration and Nationality Act (INA) to add new sections 101(a)(15)(H)(i)(a) and 212(m) governing the admission to the United States of nonimmigrant aliens for employment as registered nurses (RN's) during a 5-year "pilot" period. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m). The provisions which INRA added to the INA were further amended by section 162(f) of the Immigration Act of 1990 (IMMACT), Public Law 101–649, 104 Stat. 4978 (November 29, 1990), and by section 302(e) (9) and (10) of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA), Public Law 102–232, 105 Stat. 1733 (December 12, 1991).[1]

Congress enacted this legislation based on its finding of a shortage of RN's in the United States. See, e.g., H.R. Rep. No. 101–288, 101st Cong., 1st Sess. 1–4 (October 16, 1989). Some health care facilities had been relying on nonimmigrant RN's admitted under H–1 visas to meet this need. However, the numbers of visas available for such aliens to adjust their immigration status to permanent residency had been limited. *Id.* at 2 and 3.

At the time of INRA's enactment, many such RN's were approaching the end of their periods of admission to the United States and faced return to their home countries. Many H–1 RN's potentially affected by the INRA were thought to be employed in critical care and emergency service units. *Id.* at 2. The House Judiciary Committee found that departure of these H–1 RN's would have a detrimental impact on the care provided to critically ill patients. *Id.* The INRA addressed this situation by permitting certain RN's who had H–1 status to become permanent residents. Public Law 101–238, sec. 2, 8 U.S.C. 1255 note.

At the same time, Congress was concerned about the perceived increased dependence of health care providers on foreign RN's. As a result, the INA, as amended, links future access to nonimmigrant RN's to the taking of significant steps by the facility to develop, recruit and retain U.S. workers in the registered nursing profession while ensuring that the temporary foreign nurses admitted are protected in their employment and that their employment does not adversely effect the employment of U.S. nurses. 8 U.S.C. 1182(m).

Facilities are required to file attestations with DOL attesting to certain conditions and to steps taken to recruit and retain U.S. nurses in order to reduce dependence on nonimmigrant alien nurses. Facilities are required to submit these attestations to DOL as a condition to being able to petition INS for admission of H–1A nurses. The attestation process is administered by ETA, while complaints and investigations regarding the attestations are handled by ESA.

The INRA-amended portions of the INA were amended by IMMACT to make clear that where nursing contractors are involved, both the contractor and the worksite facility (other than private households) must file attestations, but granted the Secretary of Labor (Secretary) some discretion in determining the requirements of the worksite facility attestation. MTINA further amended the INA to clarify Congressional intent concerning the "no lay off" provision, to specify that a facility that has laid off a nurse other than a staff nurse still meets the "no lay off" requirement, if it attests that it will not replace the nurse with an H–1A nurse for 1 year after the lay off.

B. Attestation Process

The INA requires a health care facility seeking access to temporary foreign RN's (under the H–1A visa category) to file an "attestation" with the Department of Labor (DOL or Department) on an annual basis. 8 U.S.C. 1101(a)(15)(H)(i)(a) and 1182(m)(2)(A) and (C). This includes worksites (except private households) seeking to use the services of an H–1A nurse through a nursing contractor. See IMMACT section 162(f). The attestation must assure that the following six statutory criteria are met:

(1) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such alien(s). A facility is not considered to meet this clause if, within the previous year, it laid off RN's, unless such RN's were other than staff nurses and the facility has attested that it will not replace them with H–1A visa nurses.

(2) The employment of the alien(s) will not adversely affect the wages and working conditions of RN's similarly employed.

(3) The alien(s) employed by the facility will be paid the wage rate for RN's similarly employed by the facility.

(4) Either:

(a) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient RN's who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant RN's or

(b) The facility is subject to an approved State plan for the recruitment and retention of nurses (see 8 U.S.C. 1182(m)(3)).

(5) There is not a strike or lockout in the course of a labor dispute, and the employment of such alien(s) is not intended or designed to influence an election for a bargaining representative for RN's of the facility.

(6) At the time of the filing of the petition for RN's, notice of the filing has been provided by the facility to the bargaining representative of the RN's at the facility or, where there is none, notice of the filing has been provided to RN's employed at the facility through posting in conspicuous locations.

8 U.S.C. 1182(m)(2)(A)(i) through (vi).

Each of the following is a "significant step" reasonably designed to recruit and retain RN's (see Item (4)(a) above):

(i) Operating of training program for RN's at the facility or financing (or providing participation in) a training program for RN's elsewhere;

(ii) Providing career development programs and other methods of facilitating health care workers to become RN's;

(iii) Paying RN's wages at a rate higher than currently being paid to RN's similarly employed in the geographic area;

(iv) Providing adequate support services to free RN's from administrative and other non-nursing duties;

(v) Providing reasonable opportunities for meaningful salary advancement by RN's.

8 U.S.C. 1182(m)(2)(B) (i) through (v); see 8 U.S.C. 1182(m)(2)(A)(iv)(I).

Items (i) through (v) above are not an exclusive list of the significant steps that may be taken to meet the requirements of the fourth attestations element, and a facility is not required to take more than one step if the facility can demonstrate than taking a second step is not reasonable. 8 U.S.C. 1182(m)(2)(B).

Special rules apply to cases where an alien nurse, for whom an employer has filed an attestation, is performing services at a worksite other than the employer's worksite or other than a worksite controlled by the employer. In cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause, the Secretary may waive such requirements for the attestation for the worksite as the Secretary may determine are appropriate, in order to avoid duplicative attestations. 8 U.S.C. 1182(m)(2)(A) (as amended by section 162(f)(2)(B)(iii) of IMMACT).

These attestations (and visa petitions supported by them) are available for public examination in the Employment and Training Administration (ETA) National Office in Washington, D.C. 8 U.S.C. 1182(m)(2)(E)(i). The Department also informs the Immigration and Naturalization Service (INS) which attestations have been accepted. The employer must furnish evidence to INS that the Department has accepted its attestation for filing as a prerequisite for INS approving a petition to bring in foreign RN's under H–1A visas (which visas are issued by the U.S. Department of State (DOS)). 8 U.S.C. 1101(a)(15)(H)(i)(a).

In summary, DOL's administrative functions under the INRA include, with certain limited exceptions, receiving and accepting attestations for filing, *i.e.*, checking that the attestation form is properly completed and that the required explanatory statements are provided. DOL reviews elements of attestations in only four instances: (1) the facility attests to a "non-standards" indicator of substantial disruption (Element I); (2) the facility takes as one of its two steps a "non-standard" timely and significant step (Element IV); (3) the facility attests that taking a second timely and significant step under Element IV would not be reasonable; and (4) the facility is not an employer of H–1A nurses and is claiming a bona fide medical emergency as the basis for requesting a waiver of one or more of the attestation elements. The Department also makes the accepted attestations available for public inspection, and notifies INS of those attestations that DOL has on file. These administration functions are delegated, by regulation, to ETA.

C. Complaints, Investigations and Enforcement

The Department is also authorized to investigate allegations that a facility has failed to meet the conditions attested to or that a facility has misrepresented a material fact in an attestation. 8 U.S.C. 1182(m)(2)(E) (ii) through (v). If violations are found, DOL may impose administrative remedies, including civil money penalties (CMP's); shall notify the Attorney General, who shall not approve H–1A petitions for a period of at least 1 year for the facility; shall obtain back wages; and may impose other remedies. These activities constitute the Department's enforcement functions under the INRA. Under the regulations, the enforcement functions are delegated to the Department's Employment Standards Administration (ESA), Wage and Hour Division.

D. Advisory Group

Finally, pursuant to the INRA, the Secretary appointed an advisory group which includes representatives of DOL, the Department of Health and Human Services, the Attorney General, hospitals, and labor organizations

[1] The provisions of INRA do not apply to nurses admitted under the free trade agreement with Canada, whose admission is authorized under section 214(e) of the INA. Under the provisions of Appendix 1603.D.4 of Annex 1603 of the North Atlantic Free Trade Agreement (NAFTA), the number of Mexican professionals (including registered nurses) entering the United States pursuant to NAFTA is limited to 5,500 annually. This limit may be increased by agreement between Mexico and the United States and will expire 10 years after NAFTA enters into effect, unless the two countries decide to remove the limit earlier. Entry into the United States under these provisions of NAFTA neither forecloses nor establishes their eligibility for entry under other similar provisions of the INA.

As authorized by Paragraph 5(b) of Section D of Annex 1603 of NAFTA, during the period that the transition provisions of Appendix 1603.D.4 of Annex 1603 of the NAFTA are in effect, Mexican nurses are subject to the labor attestation requirements of section 212(m) of the INA. See 8 U.S.C. 1182(m); Section 341(b) of the NAFTA Implementation Act.

In order to implement its responsibilities with respect to the admission of Mexican nurses during the transition period provided under the NAFTA, the Department will require health care facilities seeking to use the services of Mexican registered nurses to file H–1A labor attestations under and pursuant to existing regulations implementing section 212(m) of the INA, at 20 CFR part 655, subpart D, and 29 CFR part 504, subpart D. Complaints regarding such attestations will be processed under and pursuant to existing regulations at 20 CFR part 655, subpart E, and 29 CFR part 504, subpart E. This document amends the applicability section of the regulations promulgated pursuant to section 212(m) of the INA pertaining to facilities using nonimmigrants as registered nurses under H–1A visas, to implement the provisions of NAFTA.

representing RN's. Pub. L. 101–238 section 3(c)(2), 103 Stat. at 2103.

Under the INRA, the advisory group advises the Secretary on:

(1) The impact of this legislation on the nursing shortage,

(2) Programs that health care facilities may implement to recruit and retain U.S. RN's,

(3) State recruitment and retention plans, and

(4) The advisability of extending the law beyond the current 5-year duration of this pilot program.

The advisory group operates under the auspices of the DOL Office of the Assistant Secretary for Policy.

E. Operating Experience

On December 6, 1990, an interim final rule was published in the **Federal Register** to implement the Department's responsibilities relating to attestations by facilities seeking to use nonimmigrant aliens as registered nurses. 55 FR 50500. This interim final rule incorporated many of the comments the Department received on the Notice of Proposed Rulemaking (NPRM) which was published in the July 6, 1990, **Federal Register**. 55 FR 27992; see also 55 FR 30720 (July 27, 1990). The interim final rule went into effect on the date it was published and established a comment period that ended February 4, 1991.

The rulemaking was the Department's first experience with defining and implementing an attestation process. The interim final rule required attestations to be filed in the ETA National Office to allow it to gain operating experience in this new process. The final rule published below decentralizes the processing of H–1A attestations to four ETA regional offices.

The attestation includes a completed Form ETA 9029 and accompanying statements that explain briefly how the facility complies with the various attestation elements and describe the documentation available at the facility that demonstrates compliance. In the case of facilities attesting to "other" indicators of substantial disruption, "other" timely and significant steps, the unreasonableness of taking more than one timely and significant step, and/or a bona fide medical emergency, the attestation must also include more detailed information describing how the prescribed standards are being met.

Attesting facilities are required to maintain sufficient documentation to demonstrate compliance with the statutory and regulatory standards for each of the attestation elements. The attestation, along with supporting documentation, must be maintained by the facility on site in a separate file. The file shall also contain visa petitions supported by the attestation. Any interested party may request to see this file. The facility is required to make all of the information in the file available within 72 hours of receiving a request.

ETA has provided for a 30-day time period to determine whether an attestation can be accepted for filing. All attestations are examined to ensure that the Form ETA 9029 is properly completed and that the explanatory statements contain the required information. In the case of facilities attesting to "other" indicators of substantial disruption, "other" timely and significant steps, the unreasonableness of taking more than one timely and significant step, or a bona fide medical emergency, the explanatory information is reviewed to ensure that the prescribed standards are being met. Attestations which meet the established criteria are accepted for filing.

At the time the interim final rule was promulgated, ETA estimated that approximately 1,000 facilities per year would be submitting attestations. Experience has proven this estimate to be too low. Approximately 1,500 facilities submitted attestations the first year the H–1A attestation process was in effect. Approximately 1,400 facilities submitted attestations during the 1992 fiscal year. It should be noted, however, that the number of attestations received was substantially larger than the number of facilities submitting attestations, because many facilities submitted attestations that were returned as unacceptable.

As employers' experience with the H–1A program has increased, the proportion of attestations that ETA returns because they are unacceptable for filing has decreased from 43 percent to the current level of 23 percent. The two most common reasons why ETA is not able to accept attestations for filing are that the Form ETA 9029 is not properly completed and the required explanatory statements are not included with the submission. ETA returns unacceptable attestations to the facility with a letter explaining why the attestation cannot be accepted for filing. The facility may file a new attestation which corrects the deficiencies. There are no restrictions on how frequently they may be refiled. Most facilities which have submitted attestations not accepted for filing continue to refile their attestations until they are accepted for filing.

Over 70 percent of the attestations have been submitted by health care facilities located in six States—California, New York, New Jersey, Texas, Illinois, and Florida. Approximately 90 percent of the attestations received have been submitted by three types of facilities: about 62 percent by acute care facilities; 22 percent by long-term care facilities; and 6 percent by nursing contractors.

It was estimated in the interim final rule that 10 notices of strikes or lockouts and 10 annual State plans would be submitted per year. However, ETA has received notice from an attesting facility of a strike that lasted 1 day. ETA has not received any annual State plans.

F. Comments on Interim Final Rule

The interim final rule, which was published in the **Federal Register** on December 6, 1990, invited comments through February 4, 1991. 55 FR 50500 comments were received from 21 organizations and individuals, including employers and employer associations, labor organizations, a nurse association, a commission, an attorney association, two individual attorneys, one Member of Congress, and one State employment security agency (SESA). The 41 comments received on the NPRM were discussed at 55 FR 50501–50504 and are further discussed in pertinent part below.

The labor organizations and other organizations representing the interests of registered nurses asserted that the interim final rule did not offer U.S. nurses the protection offered in the proposed rule, while the attorneys and commenters representing the interests of employers asserted that the interim final rule did not go far enough in "streamlining" the attestation process. See 55 FR 27992 (July 6, 1990); and 55 FR 30720 (July 27, 1990). Some commenters stated that the Department had been successful in addressing concerns that the proposed definition of "nurse" did not take into consideration the differences among State governments in defining nursing duties and practices and did not clearly state that foreign nurses who have not been licensed by State nursing boards must have passed the Commission on Graduates of Foreign Nursing Schools (CGFNS) Examination.

The major concerns expressed by commenters on the interim final rule included: the type of and location for retention of supporting documentation; the waiver provisions; DOL's role in reviewing attestations; the definition of "facility"; and the indicators of substantial disruption.

All of the comments received on the interim final rule, as well as those comments received on the proposed rule that may not have been fully addressed in the interim final rule, have been reviewed and considered in preparing this final rule.

1. Location for Retention of Supporting Documentation

Three labor organizations and one Member of Congress commented that supporting documentation should be available at DOL, as well as at the facility. The attorneys commented that only the Form ETA 9029 should be submitted to DOL and that the requirement concerning the accompanying explanatory statements should be removed in the final rule. Two employer associations commented in support of the interim final rule provisions which require the attestor to maintain the supporting documentation at the facility, but these commenters wanted the rule to be more specific about the explanatory statements to be submitted with the Form ETA 9029.

As indicated in the preamble to the interim final rule, ETA found the comments offered by Former Representative Bruce Morrison, then Chairman of the House Judiciary Committee's Subcommittee on Immigration, Refugees, and International Law when INRA was passed, and one of the principal authors of the legislation, to be very persuasive. In commenting on the proposed rule, Representative Morrison voiced his support for the kinds of supporting documentation required, and indicated that the intent of a streamlined attestation process would best be served by keeping the amount of documentation filed with the attestation to a minimum, and requiring the bulk of it to be retained at the facility. (The preamble to the interim final rule also pointed out that the Office of Management and Budget in its official comments to the Department on the paperwork burden stated that there should be a streamlined attestation process.) See 55 FR at 50502.

After reviewing the comments received during this rulemaking concerning the location for retention of supporting documentation, and considering the fact that the comments received from Representative Morrison and OMB are consistent with a "complaint driven process" for investigating and resolving complaints, the Department has decided to retain the interim final rule's provisions concerning the location of the supporting documentation. The facility must submit to DOL only a brief statement of what documentation is available at the facility to demonstrate compliance with the various attestation elements. The full documentation must be retained at the facility for the duration of the attestation period, and for as long thereafter as the facility continues to employ an H–1A nurse hired under the attestation. Further, the facility must attest that the documentation will be available for public examination within 72 hours of receiving a request. Failure to provide access may be the basis for a complaint as a "failure to perform."

2. DOL Authority To Review Attestations

An attorney commenting on the interim final rule questioned whether DOL has the authority to review any H–1A attestations, and an employer and an attorney association commented that the DOL role in reviewing attestations should be reduced. However, two of the labor organizations submitting comments voiced concern that the interim final rule weakened DOL's role in reviewing attestations.

The proposed rule prescribed a substantial review function by DOL. As indicated in the preamble to the interim final rule, ETA found the comments of Representative Morrison and Senator Edward M. Kennedy, Chairman of the Senate Judiciary Committee's Subcommittee on Immigration and Refugee Affairs, highly persuasive. Both Representative Morrison and Senator Kennedy expressed the view that the proposed DOL review function was greater than that intended by the legislation. This was also the view expressed by many health care facility commenters. See 55 FR at 50502. In response to these comments, the interim final rule substantially restricted the DOL review function. As indicated above, DOL reviews elements of attestations in only four instances. For all other attestations, the DOL function is limited to checking that the attestation Form ETA 9029 is properly completed, the required explanatory statements are included, and the facility is attesting to compliance with the regulatory standards.

The Department has concluded that the provisions governing DOL's review function, set forth in the interim final rule should be retained. After a careful review of the comments received both on the proposed rule and on the interim final rule, considering that only minimal documentation is submitted, and, in view of the fact that the H–1A program relies on a "complaint driven process" for investigating and resolving complaints, DOL has determined that no further change in this provision is warranted.

3. Indicators of Substantial Disruption

The Department received 10 comments concerning the indicators of substantial disruption under Attestation Element One. One attorney commented that the rule should not be more specific than the legislation in addressing "substantial disruption"; and an employer commented that a simple description of the steps taken to fill vacant nursing positions should suffice as evidence that there would be a substantial disruption without the services of nonimmigrant alien nurses. In contrast, one employer commented that the requirement that a facility document its recruiting efforts does not belong in the section of the regulations dealing with substantial disruption. The employer also commented that the documentation requirements under § ____.310(d)(3) should be limited to the total number of nursing vacancies and the total number of H–1A nurses employed at the time the attestation is submitted. Other commenters recommended adding more specific requirements to § ____.310(d)(2) and allowing facilities to count as vacant all positions encumbered by H–1A nurses.

INRA was enacted to allow facilities to use nonimmigrant alien nurses temporarily to help alleviate substantial disruptions in health care services, while requiring that facilities take steps designed to develop, recruit and retain a trained U.S. workforce as the long-term solution to the current nursing shortage. One of the legislatively-mandated elements that a facility must attest to in order to have its attestation accepted by DOL is a substantial disruption in health care services due to a shortage of nurses (absent the services of the nonimmigrant alien nurses on whose behalf they are petitioning).

The interim final rule listed four possible indicators of substantial disruption. These indicators were identified by organizations representing both employers and nurses as being those most commonly experienced throughout the health care industry. However, this provision was not intended to be an exhaustive list. When a facility finds that the indicators of substantial disruption listed in the regulations cannot be demonstrated or that such indicators are inappropriate to that facility, the facility may propose an alternative indicator of substantial disruption under the "other" category. A facility attesting to an "other" indicator of substantial disruption is required to provide an explanation which clearly shows a substantial disruption in the delivery of specific health care services due to a shortage of

nurses. For example, a facility that has a large number of H–1A nurses with visas that will be expiring within the next 12 months may be able to demonstrate that it will experience a substantial disruption if it cannot petition INS for extensions of stay and/or new H–1A nurses. Such a facility may choose to attest to an "other" indicator substantial disruption. The facility would then be required to demonstrate that it has made conscientious efforts to recruit and retain U.S. nurses but has a history of being able to fill only a small percentage of its vacancies with U.S. nurses, and that it projects a vacancy rate of at least 7 percent, if it cannot continue to petition INS for H–1A nurses.

DOL has determined that the four indicators of substantial disruption listed in the interim final rule, coupled with the "other" indicator of substantial disruption, strike the proper balance in addressing the concerns raised in the comments. These indicators satisfy the need for standardized criteria that can be used by facilities in determining whether they qualify to file an attestation and by DOL in carrying out its enforcement responsibilities. Therefore, they have been retained in this final rule.

However, based on its operating experience, the Department has determined that a brief explanatory statement is not necessary if the employer attests to a vacancy rate of 7 percent or more, or to an unutilized bed rate of 7 percent or more. The employer is still required to maintain supporting documentation and to make it available for review at the facility in accordance with § ____.350(b).

4. No Adverse Effect

A nurses' association, a labor organization, and one Member of Congress submitted comments endorsing the Department's approach to determining no adverse effect on wages. The labor organization and the Member of Congress advocated using the same approach to determining whether there would be no adverse effect on working conditions. A nationwide employer organization and a statewide employer association both commented that the rule should state that the wage need only be the lowest point on the prevailing wage range since most H–1A nurses start out in entry-level positions. One attorney commented that facilities should not be required to get prevailing wage determinations prior to filing their attestations, and another attorney and an attorney association commented that the prevailing wage requirement should be deleted entirely.

After careful consideration of the comments received, the Department has determined that there will be no substantive changes made to the interim final rule's requirements concerning no adverse effect on wages and working conditions.

The requirement concerning no adverse effect on wages is statutory and, as such, cannot be removed from the regulations. As pointed out in the preamble to the interim final rule:

> The phrase "not adversely affect the wages" is a well established legal term of art that has been used for decades in alien labor certification programs, with a very specific meaning of at least the area prevailing wage for the occupation * * *. Presumably Congress was aware of this meaning in incorporating this language in the INRA. [55 FR at 50506.]

The prevailing wage rate is derived by averaging the wages paid by a sample of facilities in the geographic area. If the prevailing wage determination was not obtained prior to submitting the attestation, the facility would not have the knowledge needed to determine whether it could truthfully attest to paying each nurse it employs at least the prevailing wage for the geographic area, nor would it be able to attest to having the supporting documentation available at the facility for examination by interested parties.

Operating experience has indicated that clarification is desirable as to how far in advance a health care facility can obtain the prevailing wage from the SESA. Some facilities have allowed an inordinate amount of time to elapse between obtaining a prevailing wage determination from the SESA and filing an appropriate attestation. Since prevailing wage surveys and determinations are frequently updated by SESA's, to minimize the possibility of adverse effect on the wages of U.S. registered nurses the prevailing wage determination should be reasonably contemporaneous with the filing of the attestation. To assure that the prevailing wage determination supporting the attestation is current the regulation at 20 CFR 655.310(e)(1)(i) has been amended to require filing of the attestation within 90 days of the date the prevailing wage request was submitted to the SESA by the facility.

Section § ____.310(e)(1)(i) of the interim final rule requires that a facility obtain a prevailing wage determination from the SESA. Although the SESA and ETA administrative system provide an avenue for a facility to challenge a SESA determination through the Employment Service (ES) complaint process (see 20 CFR part 658, subpart E), the interim final rule did not specifically identify that process. The final rule provides needed clarification by directing the facility to the ES complaint process and alerting the facility that a challenge of a SESA determination may be made only prior to filing an attestation in which that SESA determination is used. Implicit and essential in this process is the requirement that once a facility obtains a prevailing wage determination from the SESA and files the attestation without challenging the SESA's determination through the ES complaint system, the facility has in effect accepted the determination and waived its right to challenge the determination. Permitting a facility to operate under a determination and later contest it in the course of an investigation or enforcement action is contrary to sound public policy; such a delayed, disruptive challenge would have a harmful effect on U.S. and H–1B nurses, competing hospitals, and other parties who may have relied on the wage provided by the facility on the attestation. Section § ____.310(3)(1)(i) of the final rule explicitly states the Department's clarification of the use and consequence of the ES complaint process.

Regarding working conditions, the final rule, as did the interim final rule, applies an adverse effect standard on a facility basis, due to the administrative infeasibility of making prevailing practice determinations on an area-wide basis.

Concerning the documentation requirements for pay and compensation, a Member of Congress commented that the interim final rule did not require specific enough documentation. He suggested that the rule should require specific wage and job data for individual nurses and positions, not summaries. However, a statewide employer association expressed concern that the interim final rule made confidential information available to the public. This commenter suggested that such information should be available only to the Department of Labor and/or others as hospital policy allows. Former Representative Morrison, in commenting on the NPRM, which contained documentation requirements much like the interim final rule, voiced his support for the kinds of supporting documentation required.

After careful consideration of the comments received, the Department has determined that there will be no changes made to the interim final rule's requirements concerning documentation of no adverse effect on wages and working conditions. Employers should note that if a complaint is filed, an investigation conducted, and a hearing held, any employer information submitted as evidence for the hearing will become a matter of public record. Such information may well be more extensive than that which the employer must make available for public examination. See 8 U.S.C. 1182(m)(2)(E).

5. Notification of Strike or Lockout

One employer commented that the requirement that the facility notify ETA within 3 days of the occurrence of a strike or lockout at the facility involving registered nurses should be changed to allow the facility 10 days to notify ETA.

The Department has determined that the current requirement that ETA be notified within 3 days of the occurrence of a strike or lockout provides the facility with adequate time for making the required notification, since the facility will be aware of any such occurrence immediately. The current protections offered to U.S. nurses would be weakened if the 3-day notification period were lengthened. Therefore, no change is being made in the requirements governing notification of strike or lockout.

6. Notification of Filing

An attorney commented that the requirement that facilities notify their employees when they file an attestation is burdensome to employers and goes beyond what is in the statute. The attorney recommended that facilities be required to provide notice only of the filing of H–1A visa petitions with INS and only from the time of filing until the alien begins work. The attorney also commented that the current requirement concerning the availability for public examination of the supporting documentation goes beyond what should be required.

While INRA amendments to the INA call for notice of filing when the visa petition is filed, the accompanying House Judiciary Committee report on INRA (then called H.R. 3259) recommending that the bill pass without amendment, stated on page 5 that:

> [T]he facility is required to provide notice of filing of an attestation to various labor representatives or to post a notice in a conspicuous location. The Committee believes that notice of filing is an important element of the new procedure, particularly in view of the fact that this is one of two mechanisms available for U.S. nurses to monitor the admission of foreign nurses and its possible effect on their employment situation. [H.R. Rep. No. 101–288, 101st Cong., 1st Sess. 5 (1989).]

The Department believes that the notice requirements are consistent with the intent of Congress that all aspects of the process should be open to public review. Additionally, this approach is necessary to facilitate the complaint and investigative process that is called for in the INA.

7. Waiver Provisions

The Department received numerous comments critical of the interim final rule's provisions concerning waivers of certain attestation elements. Such waivers may be requested by facilities which are not themselves employers of H–1A nurses, but which use H–1A nurses employed by contractors. Three labor organizations opposed the interim final rule's waiver provisions. One of these organizations expressed opposition to allowing any waivers, while another commented that the provisions go beyond the statute and allow for circumvention of legislative intent. One Member of Congress commented that waivers for temporary emergency situations should be very narrow and for a short period of time.

One attorney commented that the waiver provisions should be expanded so that facilities only using H–1A nurses employed by contractors would not be required to file an attestation. Such a broad waiver would go beyond the scope of the statute. The Secretary only has the discretion to waive attestations for worksites using nonimmigrant nurses employed by contractors "to avoid duplicate attestations in cases of temporary circumstances, with respect to information not within the knowledge of the attestor, or for other good cause." Section 212(m)(2)(A) of the INA as amended by section 162(f)(2)(B)(iii) of IMMACT.

The Department has carefully considered the comments concerning the waiver provisions set forth in the interim final rule. With the above one exception, none of the commenters made any specific recommendations for revisions to these provisions which would address the concerns raised. No need or basis for revisions are indicated by the Department's operational experience, the Department has received very few requests for waivers during the 2 years the program has been in operation. Therefore, for the above reasons, no changes have been made to this section in the final rule.

8. Nursing Contractors

An attorney organization commented that contractors should not be required to comply with each attestation element. The commenter suggested that, at most, they should be required to attest that their employees will be paid at a rate equal to the rate for nurses similarly employed by the facility where they are placed. The Department does not have the authority to make such a change. Amendments to the INA by IMMACT require that *both* the contractor *and* the worksite facility (other than private households) file attestations. These amendments grant the Secretary discretion to determine the requirements of the attestation filed by the worksite facility, but they do not grant the Department the authority to waive any attestation elements for contractors. To the contrary, IMMACT amended the INA to make clear that, where nursing contractors are involved, both the contractor and the worksite facility (other than private households) must file attestations.

9. Definition of "Facility"

One labor organization commented in support of the definition of "facility" set forth in the interim final rule, which requires an employer with multiple sites to file an individual attestation for each site unless the sites are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. On the other hand, one employer and an attorney recommended that a multi-site employer should be allowed to file a single attestation so long as the same employer controls each worksite.

DOL carefully considered this multi-site issue during the development of both the NPRM and the interim final rule and determined that any advantages of a "single attestation" would be offset by the problems it would cause. Area prevailing wage rates would be different for sites in different geographic areas. Entities would be significantly increasing the vulnerability of their entire system to suspension from the program, should one of their sites incur a violation or should a lay off of nurses occur at only one of their sites. It should be noted, however, that multi-site entities may develop materials that could be used by all of their sites, with perhaps some minor modifications. See 55 FR at 50504.

10. State Plans

Three commenters stated that the section dealing with State plans for the recruitment and retention of nurses should be expanded. One labor organization commented that the regulations need to specify that a State may use a State plan to impose obligations on a facility that go beyond those that would be applicable in the absence of a State plan. One Member of Congress commented that the regulations should specify that the list of eight components of a State plan is not an exhaustive list and that States

should be encouraged to develop additional components. An employer association commented that the regulations should include the criteria that will be used for determining whether to approve State plans.

To date, the Department has received no State plans. All of the changes suggested by the commenters would make the section dealing with State plans more restrictive. The Department believes that any additional restrictions would further discourage States from developing and implementing State plans. Therefore, no revision has been made to this section.

11. Definitions of "U.S. Nurse" and "U.S. Worker"

The definitions of "United States (U.S.) nurse" and "United States (U.S.) worker" in the interim final rule include U.S. citizens, U.S. nationals, permanent resident aliens, and temporary resident aliens. A Member of Congress commented that refugees and asylees should be included in both of these definitions, since refugees and asylees are lawfully in the U.S., are allowed to work for an indefinite period of time, and there is nothing in the statute that excludes them.

In response to comments received from the Office of Special Counsel for Immigration-Related Unfair Employment Practices (OSC) of the Department of Justice during the rulemaking process implementing the IMMACT amendments to the permanent labor certification program, the definition of "U.S. worker" for the purposes of that program was amended to include within that definition "protected individuals" under the INA's unfair immigration-related employment practices provision. 8 U.S.C. 1324b(a)(3); see 56 FR 54920, 54926 (October 23, 1991); see also 8 U.S.C. 1182(a)(5)(A); and 20 CFR part 656. To meet the definition of a "protected individual", one must be a U.S. citizen, a U.S. national, or an alien in one of four citizenship status categories: (1) permanent resident; (2) temporary resident (including seasonal and replenishment agricultural workers); (3) refugee; or (4) asylee. To remain a "protected individual", these aliens must complete the naturalization process within a specified period of time. Protected individuals can work indefinitely in the United States.

The H–1A interim final rule's definitions of "U.S. nurse" and "U.S. worker" included all "protected individuals" except refugees and asylees. To have consistent definitions of the term "U.S. worker" in the certification and attestation programs administered by DOL, the definitions of "U.S. nurse" and "U.S. worker" have been clarified and amended in §____.302 to be consistent with the definition of "U.S. worker" for the permanent alien labor certification program.

12. Layoff Provision

INRA amended the INA to provide that a facility cannot meet the first attestation element, relating to a substantial disruption in the delivery of health care services, if, within the past 12 months it has laid off any registered nurses. In the interim final rule the Department interpreted this statutory provision to cover lay offs of all individuals who are licensed registered nurses, regardless of the positions they held within the health care facility.

MTINA amended the INA to clarify Congressional intent regarding lay offs, by specifying that a facility which has laid off a registered nurse other than a staff nurse still meets the "no layoff" requirement, if, in its attestation, the facility attests that it will not replace the nurse with an H–1A nurse (either through promotion or otherwise) for a period of 1 year after the date of the layoff. In the final rule, section §_____.310(d)(1) has been revised to incorporate this statutory amendment. The definition of "layoff" in §_____.302 has been revised to specify that if staff nurses are separated from one specialized activity, the retraining and retention they are offered must be in another activity involving direct patient care at the same facility in order for their separation not to be considered a "layoff", and a sentence has been expanded to indicate that a "staff nurse" means a nurse who provides nursing care directly to patients Item 8.a(i) on the Form ETA 9029 has also been modified to reflect the amendment to the "no layoff" provision.

G. Technical and Clarifying Amendments in Final Rule

1. Decentralization to the Regional Offices

The interim final rule required that attestations be submitted to the ETA National Office. This was done as a temporary measure, in order to allow the National Office, which is responsible for establishing the policies and procedures for administering the program, an opportunity to gain first-hand experience in administering an attestation program. It was believed that this experience would assist the National Office in developing regulations and in providing policy guidance for regional offices once they were assigned responsibility for administering the program.

The final rule decentralizes the processing of attestations for four ETA regional offices—Boston, Chicago, Dallas, and Seattle—by revising §_____.310(b) and by making the modifications required elsewhere, so that the entire body of the rule reflects this decentralization. Information on the addresses of the four regional offices and the States served by each has been added to the instructions for completing the Form ETA 9029.

2. Claims of Business Exigency

Under §_____.310(c)(1)(iii) of the interim final rule, a facility submitting an attestation prior to April 1, 1991, was allowed to claim business exigency as a basis for delaying the compilation of documentation supporting its attestation for up to 90 days after submission of its attestation. This provision, now obsolete, which was intended to ease the transition from the H–1 to the H–1A program, has been deleted from the final rule since the applicable date has passed.

3. Indicators of Substantial Disruption

The third indicator of substantial disruption was described in §_____.310(d)(2)(C) of the interim final rule as the elimination or curtailment of "essential health care services that are otherwise not available in the community. * * *" This indicator should have been described, in accordance with section 212(m)(2)(A)(i) of the INA, as the elimination or curtailment of essential health care services not otherwise available "at the facility." Section 212(m)(2)(A)(i) of the INA requires the facility to attest that "there would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of [the] alien". The final rule makes this change, so that the third indicator of substantial disruption, as described in _____.310(d)(2)(C) of the final rule reads so that it applies to the elimination or curtailment of health services at the facility.

4. Timely and Significant Steps

Section 212(m)(2)(E)(iv) of the INA provides that a violation will be found if a facility "fail[s] to meet a condition attested to". The regulation, §_____.310(g)(1), has been modified, in accordance with this statutory directive, to specify that employers will be held responsible for all timely and significant steps to which they attest. If, for example, the employer attests it is taking four timely and significant steps, but is found in an investigation to be complying with only two, a violation will be cited. It should be noted that the INA requires a minimum of two steps, unless taking a second step would be unreasonable.

The interim final rule required a facility taking the third timely and significant step specified in section 212(m)(2)(B)(iii) of the INA—the facility is paying nurses at a higher rate than nurses similarly employed in the—area to maintain documentation showing that its entire schedule of wages for nurses is at least 5 percent higher than the prevailing wages, as determined pursuant to 22 §_____.310(e)(1). The question arose whether, in the case of a facility where wages for nurses are the result of arms-length collective bargaining, this regulation required the facility to pay at least 5 percent higher than the collectively-bargained rate in order to attest to the third statutory step. The Department has concluded that it is not reasonable to require that facilities pay 5 percent higher than a collectively-bargained rate, if such a wage is at least five percent higher than the prevailing wage for the geographic area as determined by the SESA. Therefore, in the final rule §_____.310(g)(1)(i)(A)(*3*) has been amended to allow a facility the option of attesting to the third timely and significant step if its entire schedule of collectively-bargained wage rates is 5 percent above the prevailing wage as determined by the SESA.

One commenter, an employer organization, suggested a new waiver provision. This commenter proposed that any facility which can demonstrate that it is unable to meet the requirements for nursing services under title XVIII or title XIX of the Social Security Act, or that can demonstrate that it fails to meet minimum federal or state statutory requirements for nursing staff, should be exempt from the fourth attestation element—timely and significant steps. The Department has concluded that it does not have the authority to promulgate such a waiver, since timely and significant steps are required by the statute.

5. Review of Attestations Accepted and Not Accepted for Filing

The interim final rule's provision for administrative-judicial review of a determination by DOL whether or not to accept an attestation for filing has been clarified. Under §_____.301(e), an appeal may be taken to the Board of Alien Labor Certification Appeals only on an ETA determination where ETA has performed a review function. The four instances in which ETA performs a review function involve determinations on the following issues only: (1) The facility attests to a "non-standard" indicator of substantial disruption (Element I); (2) the facility takes as one of its two steps a "non-standard" timely and significant step (Element IV); (3) the facility attests that taking a second timely and significant step under Element IV would not be reasonable; and (4) the facility is not an employer of H–1A nurses and is claiming a bona fide medical emergency as the basis for requesting a waiver of one or more of the attestation elements.

6. Technical Amendments to Enforcement Subpart

Based on ESA's operational experience with the H–1A program, three technical changes have been made in subpart E on enforcement. First, to regularize the hearing process, while remaining consistent with Congressional intent regarding timely hearings for interested parties, the final rule specifies that, once the deadline for requesting a hearing has expired, an interested party may participate in an administrative law judge proceeding only with the approval of the judge. Further, to make the hearing and notification process more easily understood, the final rule has a separate section setting out the stages at which the enforcement determination becomes final agency action and notification (if any) is sent to ETA and INS. In the interim final rule, these provisions appeared in the same section with the provisions regarding the ESA determination notification, and this regulatory structure was somewhat confusing. In addition, the final rule contains an express statement of the opportunity to direct inquiries and requests for technical assistance to the Wage and Hour Division of ESA. The final rule also expressly authorizes the filing of hearing requests by facsimile transmission (FAX) and requires that the Solicitor of Labor will be appropriately served with hearing requests. Finally, the rule has been modified to make corrections regarding cross references and citations.

II. Paperwork Reduction Act

The information collection requirements contained in the final rule have been submitted to the Office of Management and Budget (OMB) for clearance under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control No. 1205–0305.

Based on operating experience, technical changes were made to the Form ETA 9029 to clarify the attestation requirements and reduce the need for separate explanatory statements. The Department believes that the changes to the form will result in a decrease in the proportion of attestations returned to employers because they are unacceptable for filing.

Included among the changes made to the form are the following:

a. The phrase "no explanatory statement required" has been added as a parenthetical after the first two indicators of substantial disruption under item 8.a.(ii), to make it clear that explanatory statements are no longer required for these two attestation elements.

b. The word "past" has been added before "elimination/curtailment" in the third indicator of substantial disruption under item 8.a.(ii), to make it clear that the elimination or curtailment must already have occurred.

c. Language has been added under item 8.b. clarifying that in order to be in compliance with the no adverse effect wage requirement the facility must be paying each nurse it employs at least the prevailing wage as determined by the SESA unless wages for nurses at the facility are the result of a collective bargaining agreement.

d. The words "developed under the provisions of the Immigration and Nationality Act" have been added to item 8.d.(i) to clarify that the State plan has to be one developed pursuant to the requirements of the INA.

e. The words "steps of comparable timeliness and significance" have been added to the sixth box under item 8.d.(ii) to clarify the "other" timely and significant step category.

ETA estimates that 1,400 facilities per year will be submitting attestations. The public reporting burden for this collection of information is estimated to average 8–10 hours for searching existing information/data sources and gathering and compiling the data at the facility the first year that a facility submits an attestation. In the second, and subsequent years, the reporting burden, based on operating experience, will average 2–3 hours.

Regulatory Impact and Administrative Procedure

E.O. 12866

In accordance with Executive Order 12866, the Department of Labor has determined that this is not a significant regulatory action as defined in section 3(f) of the Order.

Regulatory Flexibility Act

At the time the proposed rule was published, the Department of Labor notified the Chief Counsel for

Advocacy, Small Business Administration, and made the certification pursuant to the Regulatory Flexibility Act at 5 U.S.C. 605(b), that the rule does not have a significant economic impact on a substantial number of small entities.

Catalog of Federal Domestic Assistance Number

This program is not yet listed in the Catalog of Federal Domestic Assistance.

List of Subjects

20 CFR Part 621

Administrative practice and procedure, Aliens, Employment, Guam, Labor, Wages.

20 CFR Part 655

Administrative and practice procedure, Agriculture, Aliens, Crewmembers, Employment, Enforcement, Forest and forest products, Guam, Health professions, Immigration, Labor, Longshore work, Migrant labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Specialty occupation, Students, Wages.

29 CFR Part 504

Administrative practice and procedures, Aliens, Employment, Enforcement, Health professions, Immigration, Labor, Nurse, Penalties, Registered nurse, Reporting and recordkeeping requirements, Wages.

Text of the Joint Final Rule

The text of the joint final rule as adopted by ETA and the Wage and Hour Division, ESA, in this document appears below.

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

Sec.

_____.300 Purpose and scope of subparts D and E.
_____.301 Overview of process.
_____.302 Definitions.
_____.310 Attestations.
_____.315 State plans.
_____.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
_____.350 Public access.

Subpart E—Enforcement of H–1A Attestations

_____.400 Enforcement authority of Administrator, Wage and Hour Division.
_____.405 Complaints and investigative procedures.
_____.410 Civil money penalties and other remedies.
_____.415 Written notice and service of Administrator's determination.
_____.420 Request for hearing.
_____.425 Rules of practice for administrative law judge proceedings.
_____.430 Service and computation of time.
_____.435 Administrative law judge proceedings.
_____.440 Decision and order of administrative law judge.
_____.445 Secretary's review of administrative law judge's decision.
_____.450 Administrative record.
_____.455 Notice to the Attorney General and the Employment and Training Administration.
_____.460 Non-applicability of the Equal Access to Justice Act.

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

§ _____.300 Purpose and scope of subparts D and E.

(a) *Purpose.* The Immigration and Nationality Act (INA) establishes the H–1A program to provide relief for the nursing shortage crisis. Subpart D of this part sets forth the procedure by which health care facilities seeking to use nonimmigrant registered nurses may submit attestations to the Department of Labor relating to the effects of the nursing shortage on their operations, their efforts to recruit and retain United States workers as registered nurses and certain information on wages and working conditions for nurses at the facility. Subpart E of this part sets forth complaint, investigation, and penalty provisions with respect to such attestations.

(b) *Procedure.* The INA establishes a procedure for health care facilities to follow in seeking admission to the United States for, or use of, nonimmigrant nurses under H–1A visas. The procedure is designed to reduce reliance on nonimmigrant nurses in the future, and calls of the health care facility to attest, and be able to demonstrate, that, *e.g.*, there would be substantial disruption to health services without the nonimmigrant nurses and that it is taking timely and significant steps to develop, recruit, and retain U.S. nurses. Subparts D and E of this part set forth the specific requirements for those procedures.

(c) *Applicability.* (1) Subparts D and E of this part apply to all facilities that seek the temporary admission or use of nonimmigrants as registered nurses.

(2) During the period that the provisions of Appendix 1603.D.4 of Annex 1603 of the North American Free Trade Agreement (NAFTA) apply, subparts D and E of this part shall apply to the entry of a nonimmigrant who is a citizen of Mexico under and pursuant to the provisions of section D of Annex 1603 of NAFTA.

§ _____.301 Overview of process.

This section provides a context for the attestation process, to facilitate understanding by health care facilities that may seek nonimmigrant nurses under H–1A visas.

(a) *Federal agencies' responsibilities.* The United States Department of Labor (DOL), Department of Justice, and Department of State are involved in the H–1A visa process. Within DOL, the Employment and Training Administration (ETA) and the Employment Standards Administration (ESA) have responsibility for different aspects of the process.

(b) *Health care facility's attestation responsibilities.* Each health care facility seeking one or more H–1A nurses shall, as the first step, submit an attestation on *Form ETA 9029*, as described in § _____.310 of this part, to the designated regional office of the Employment and Training Administration (ETA) of DOL. If the attestation is found to meet the requirements set at § _____.310 (a) through (k) of this part, ETA shall accept the attestation for filing, shall return the cover form of the accepted attestation to the health care facility, and shall notify the Immigration and Naturalization Service (INS) of the Department of Justice of the filing. As discussed in § _____.310 of this part, if the facility proposes to utilize alternative methods to comply with Attestation Elements I and/or IV, or asserts that taking a second timely and significant step under Element IV would be unreasonable, or claims a bona fide medical emergency exemption from Element IV as a worksite using one or more H–1A nurses through a nursing contractor only, additional supporting information and ETA review shall be required.

(c) *Visa petitions.* Upon ETA's acceptance of the filing, the health care facility may then file with INS H–1A visa petitions for the admission of H–1A nurses, or to extend the stay of alien nurses currently working at the facility. the facility shall attach a copy of the accepted attestation form (Form ETA 9029) to the visa petition filed with INS. At the same time that the facility files a visa petition with INS, it shall also send a copy of the visa petition with INS, it shall also send a copy of the visa petition to the Chief, Division of Foreign Labor Certifications, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., room N–4456, Washington, DC 20210.

(d) *Visa issuance.* INS assures that the nonimmigrants possess the required qualifications and credentials to be

employed as nurses. See 8 U.S.C. 1182(m)(1)). The Department of State is responsible for issuing the visa.

(e) *Board of Alien Labor Certification Appeals (BALCA) review of attestations accepted and not accepted for filing.* The decision whether or not to accept for filing an attestation which ETA has reviewed, that is: an attestation where the facility is attesting to alternative methods of compliance with Element I and/or Element IV; an attestation where the facility is claiming that taking a second timely and significant step would not be reasonable; and/or an attestation where a facility that is not an employer of H–1A nurses is claiming a bond fide medical emergency as the basis for requesting a waiver of Element IV; may be appealed by any interested party to the BALCA.

(f) *Complaints.* Complaints concerning misrepresentation in the attestation or failure of the health care facility to carry out the terms of the attestation may be filed with the Wage and Hour Division (Division), Employment Standards Administration (ESA) of DOL, according to the procedures set forth in subpart E of this part. Complaints of "misrepresentation" may include assertions that a facility's attestations of compliance failed to meet the regulatory standards for attestation elements under which the attestation was accepted by ETA for filing without ETA review. The Division shall then investigate, and, where appropriate, after an opportunity for a hearing, assess sanctions and penalties. Subpart E of this part also provides that interested parties may obtain an administrative law judge hearing and may seek the Secretary's review of the administrative law judge's decision.

§ _____.302 Definitions.

For the purposes of subparts D and E of this part:

Accepted for filing means that the attestation and supporting documentation submitted by the health care facility have been received by the Employment and Training Administration of the Department of Labor (DOL) and have been found to be in compliance with the attestation requirements in § _____.310 of this part.

Act and *INA* mean the Immigration and Nationality Act, as amended, 8 U.S.C. 1101 *et seq.*

Administrative law judge means an official appointed pursuant to 5 U.S.C. 3105.

Administrator means the Administrator of the Wage and Hour Division, Employment Standards Administration, Department of Labor, and such authorized representatives as may be designated to perform any of the functions of the Administrator under subparts D and E of this part.

Attorney General means the chief official of the U.S. Department of Justice or the Attorney General's designee.

Board of Alien Labor Certification Appeals (BALCA) means a panel of one or more administrative law judges who serve on the permanent Board of Alien Labor Certification Appeals established by 20 CFR Part 656. BALCA consists of administrative law judges assigned to the Department of Labor and designated by the Chief Administrative Law Judge to be members of the Board of Alien Labor Certification Appeals.

Bona fide medical emergency means a situation in which the services of one or more H–1A contract nurses are necessary at a worksite facility (which itself does not employ an H–1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or health, nursing services for such situation are not elsewhere available in the geographic area.

Certifying Officer means a Department of Labor official, or such official's designee, who makes determinations about whether or not H–1A attestations are acceptable for filing.

Chief Administrative Law Judge means the chief official of the Office of the Administrative Law Judges of the Department of Labor or the Chief Administrative Law Judge's designee.

Chief, Division of Foreign Labor Certifications, USES means the chief official of the Division of Foreign Labor Certifications within the United States Employment Service, Employment and Training Administration, Department of Labor, or the designee of the Chief, Division of Foreign Labor Certifications, USES.

Date of filing means the date an attestation is "accepted for filing" by ETA.

Department and *DOL* mean the United States Department of Labor.

Director means the chief official of the United States Employment Service (USES), Employment and Training Administration, Department of Labor, or the Director's designee.

Division means the Wage and Hour Division of the Employment Standards Administration, DOL.

Employer means a person, firm, corporation, or other association or organization involved in the direct provision of health care services, which:

(1) Suffers or permits a person to work;

(2) Has a location within the United States to which U.S. workers may be referred for employment;

(3) Proposes to employ workers at a place within the United States; and

(4) Has an employer-employee relationship with respect to employees under subpart D and E of this part, as indicated by the fact that it may hire, pay, fire, supervise or otherwise control the work of such employee.

Employment means full-time work by an employee for an employer/health care facility other than oneself. "Full-time work" means work where the nurse is regularly scheduled to work 40 hours or more per week, unless the facility documents as part of its attestation that it is common practice for the occupation at the facility or for the occupation in the geographic area for nurses to work fewer hours per week.

Employment and Training Administration (ETA) means the agency within the Department of Labor (DOL) which includes the United States Employment Service (USES).

Employment Standards Administration (ESA) means the agency within the Department of Labor (DOL) which includes the Wage and Hour Division.

Facility means a user of nursing services with either a single site or a group of contiguous locations at which it provides health care services. "Facility" includes an employer of registered nurses which provides health care services in a home or other setting, such as a hospital, nursing home, or other site of employment, not owned or operated by the employer (*e.g.*, a visiting nurse association or a nursing contractor). "Facility" also includes a private household which employs or seeks to employ one or more H–1A nurses, but does not include a private household which uses H–1A nurses only through a nursing contractor. Groups of structures which form a campus or separate buildings across the street from one another are a single facility. However, separate buildings or areas which are not physically connected or in immediate proximity are a single health care facility if they are in reasonable geographic proximity, used for the same purpose, and share the same nursing staff and equipment. An example is an entity which manages a nursing home and a hospital in the same area and which regularly shifts or rotates the nurses between the two. Non-contiguous sites, even within the same geographic area, which do not share the same nursing staff and operational purposes are not a single facility. For example, hospitals which are located on opposite sides of a municipality, but which are managed or owned by a single entity, are separate

facilities if they do not regularly share nursing staff and operational purpose.

Geographic area means the area within normal commuting distance of the place (address) of the intended worksite. If the geographic area does not include a sufficient number of facilities to make a prevailing wage determination, the term "geographic area" shall be expanded (by the State employment service, unless directed not to do so by the Director) with respect to the attesting facility to include a sufficient number of facilities to permit a prevailing wage determination to be made. If the place of the intended worksite is within a Metropolitan Statistical Area (MSA), any place within the MSA may be deemed to be within normal commuting distance of the place of intended employment.

Governor means the chief elected official of a State or the Governor's designee.

H–1A nurse means any nonimmigrant alien admitted to the United States to perform services as a nurse under section 101(a)(15)(H)(i)(a) of the Act (8 U.S.C. 1101(a)(15)(H)(i)(a)).

Immigration and Naturalization Service (INS) means the component of the Department of Justice which makes the determination under the Act on whether to grant visa petitions to petitioners seeking the admission of nonimmigrant nurses under H–1A visas.

Layoff means any involuntary separation of one or more staff nurses without cause/prejudice. If a staff nurse is separated from one specialized activity and is offered retraining and retention at the same facility in another activity involving direct patient care at the same wage and status, but refuses such training and retention, such separation shall not constitute a layoff. The layoff provision applies to staff nurses only, not to other health occupations. If the position occupied by the staff nurse is covered by a collective bargaining agreement, the collective bargaining agreement definition of "layoff" (if any) shall apply to that position.

Lockout means a labor dispute involving a work stoppage, wherein an employer withholds work from its employees in order to gain a concession from them.

Nurse means a person who is or will be authorized by a State Board of Nursing to engage in registered nursing practice in a State or U.S. territory or possession at a facility which provides health care services. A staff nurse means a nurse who provides nursing care directly to patients. In order to qualify under this definition of "nurse" the alien shall:

(1) Have obtained a full and unrestricted license to practice nursing in the country where the alien obtained nursing education, or have received nursing education in the United States or Canada;

(2) Have passed the examination given by the Commission on Graduates for Foreign Nursing Schools (CGFNS), or have obtained a full and unrestricted (permanent) license to practice as a registered nurse in the state of intended employment, or have obtained a full and unrestricted (permanent) license in any state or territory of the United States and received temporary authorization to practice as a registered nurse in the state of intended employment; and,

(3) Be fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to practice as a registered nurse immediately upon admission to the United States, and be authorized under such laws to be employed by the employer. For purposes of this paragraph, the temporary or interim licensing may be obtained immediately after the alien enters the United States and registers to take the first available examination for permanent licensure.

Nursing contractor means an entity that employs registered nurses and supplies these nurses, on a temporary basis and for a fee, to health care facilities or private homes.

Prevailing wage means the average wage paid to similarly employed registered nurses within the geographic area.

Secretary means the Secretary of Labor or the Secretary's designee.

Similarly employed means employed by the same type of facility (acute care or long-term care) and working under like conditions, such as the same shift, on the same days of the week, and in the same specialty area.

State means one of the 50 States, the District of Columbia, Puerto Rico, the U.S. Virgin Islands, and Guam.

State employment security agency (SESA) means the State agency designated under section 4 of the Wagner-Peyser Act to cooperate with USES in the operation of the national system of public employment offices.

Strike means a labor dispute wherein employees engage in a concerted stoppage or work (including stoppage by reason of the expiration of a collective-bargaining agreement) or engage in any concerted slowdown or other concerted interruption of operations.

United States Employment Service (USES) means the agency of the Department of Labor, established under the Wagner-Peyser Act, which is charged with administering the national system of public employment offices.

United States (U.S.) nurse means any nurse who is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is granted the status of an alien admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255a(a)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

United States (U.S.) worker means any worker who is a U.S. citizen; is a U.S. national; is lawfully admitted for permanent residence; is granted the status of an alien lawfully admitted for temporary residence under 8 U.S.C. 1160(a), 1161(a), or 1255(e)(1); is admitted as a refugee under 8 U.S.C. 1157; or is granted asylum under 8 U.S.C. 1158.

United States is defined at 8 U.S.C. 1101(a)(38).

Worksite means the health care facility or home where the nurse is involved in the practice of nursing. It is possible, in the case of nursing contractors, that the employer's physical location and the worksite facility's physical location will differ.

§ _____.310 Attestations.

(a) *Who may submit attestations?* Any entity meeting the definition of "facility" in § _____.302, may submit an attestation. The attestation shall include: a completed Form ETA 9029, which shall be signed by the chief executive officer of the facility (or the chief executive officer's designee); and explanatory statements prescribed in paragraphs (c) through (k) of this section. A nursing contractor that seeks to employ nonimmigrant nurses shall file its own attestation (including *Form ETA 9029* and explanatory statements) as prescribed by this section, and, as part of its own attestation, shall attest that it shall refer H–1A nurses only to facilities that, with the exception of private households which themselves do not employ H–1A nurses, have current and valid attestations on file with ETA. Subparts D and E of this part shall apply both to the nursing contractor and to the worksite facility.

(b) *Where should attestations be submitted?* Attestations shall be submitted, by U.S. mail or private carrier, to the U.S. Department of Labor ETA Regional Office which has jurisdiction over the geographic area where the H–1A nurse will be employed, as designated by the Chief, Division of Foreign Labor Certifications, USES. The addresses of the Certifying Officers are set forth in the instructions to *Form ETA 9029*.

(c) *What should be submitted?*—(1) *Form ETA 9029 and* explanatory statements.

(i) A completed and dated original *Form ETA 9029*, containing the required attestation elements and the original signature of the chief executive officer of the facility, shall be submitted, along with two copies of the completed, (signed, and dated) *Form ETA 9029*. (Copies of *Form ETA 9029* are available at the address listed in paragraph (b) of this section.) In addition, explanations, where required, for the required attestation elements as to what documentation is available at the facility and how such documentation indicates compliance with the regulatory standards as prescribed in paragraphs (d) through (i) of this section. In addition,

(A) If the facility is a nursing contractor, the special attestation element in paragraph (j) of this section; or

(B) If the facility is a worksite (other than a private household which itself does not employ, seek to employ, or file a visa petition on behalf of an H–1A nurse), which will use H–1A nurses only through a nursing contractor, the special attestation element in paragraph (k) of this section, shall be submitted in triplicate with the *Form ETA 9029*.

(ii) If the facility is proposing to meet alternative standards for substantial disruption (Element I) and/or the taking of timely and significant steps (Element IV), an explanation of the standards being proposed and an explanation of how these proposed standards are of comparable significance to those set forth in the statute shall be submitted in triplicate. If the facility is attesting that it can only take one timely and significant step (Element IV), it shall submit an explanation, in triplicate, demonstrating that taking a second step is unreasonable. If the facility uses H–1A nurses only through a nursing contractor, but claims a bona fide medical emergency exemption from Element IV, it shall submit a written explanation, in triplicate, demonstrating the existence of such an emergency. DOL may request additional explanation and/or documentation from a facility in the process of determining acceptability in cases described in this paragraph (c)(1)(ii).

(2) *Attestation elements.* The attestation elements referenced in paragraph (c)(1) of this section are mandated by section 212(m)(2)(A) of the Act (8 U.S.C. 1182(m)(2)(A)). Section 212(m)(2)(A) of the Act requires covered facilities to attest as follows:

(i) The attestation referred to in section 101(a)(15)(H)(i)(a) of the Act, with respect to a facility for which an alien will perform services, is an attestation as to the following:

(A) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens.

(B) The employment of the aliens will not adversely affect the wages and working conditions of registered nurses similarly employed.

(C) The aliens employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility.

(D) Either—(*1*) The facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or

(*2*) The facility is subject to an approved State plan for the recruitment and retention of nurses (described in section 212(m)(3) of the Act; 8 U.S.C. 1182(m)(3)).

(E) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility.

(F) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations.

(ii) A facility is considered not to meet paragraph (c)(2)(i)(A) of this section (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, has laid off registered nurses. A facility which lays off a registered nurse *other than a staff nurse* still meets the "no layoff" requirement if, in its attestation, it attests that it will not replace the nurse with an H–1A nurse (either through promotion or otherwise) for a period of 1 year after the date of the layoff. Nothing in paragraph (c)(2)(i)(D) of this section shall be construed as requiring a facility to have taken significant steps described in such paragraph before December 18, 1989 (*i.e.*, the date of enactment of the Immigration Nursing Relief Act of 1989).

(d) *The first attestation element: substantial disruption.* The facility shall attest that "there would be substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien or aliens." This element shall be met if the facility provides the following information:

(1) *Layoffs.* The facility shall attest that it has not laid off nurses during the 12-month period prior to submitting the attestation. A facility which lays off a registered nurse *other than a staff nurse* still meets the "no layoff" requirement if, in its attestation it attests that it will not replace the nurse with an H–1A nurse (either through promotion or otherwise) for a period of 1 year after the date of the layoff.

(2) *Nursing shortage.* (i) The facility shall attest to one of the following:

(A) It has a current nurse vacancy rate of 7 percent or more. An explanatory statement does not have to be submitted for this attestation element, but documentation to support this attestation shall be maintained at the facility and shall be available for review in accordance with § _____.350(b).

(B) It is unable to utilize 7 percent or more of its total beds due to a shortage of nurses. An explanatory statement does not have to be submitted for this attestation element, but supporting documentation for this attestation shall be maintained at the facility and shall be available for review in accordance with § _____.350(b).

(C) It has had to eliminate or curtail the delivery of essential health care services due to a shortage of nurses, and provide brief explanatory information about the essential services eliminated or curtailed by the facility due to a nursing shortage, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation.

(D) It has been unable to effect established plans to provide needed new health care services in the community due to a shortage of nurses, and provide brief explanatory information about needed new services that have not been implemented by the facility due to a nursing shortage and which will be implemented with the availability of H–1A nurses, what documentation is available at the facility to substantiate this attestation, where this documentation is located and can be reviewed, and the applicable time period of the documentation.

(ii) *Other substantial disruption.* When an attesting facility finds that the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be demonstrated, or that such indicators are inappropriate to that facility, but that without the services of H–1A nurses, substantial disruption in the delivery of health care services of the facility still would occur due to a shortage or nurses, the facility shall provide an explanation of how a shortage of nurses has caused a "substantial disruption" in the delivery of its health care services. Such explanation shall be sufficient to provide a clear showing of "substantial disruption" in the delivery of specific health care services due to a shortage of nurses, and shall clearly explain why the indicators in paragraphs (d)(2)(i) (A) through (D) of this section cannot be met by or are inappropriate to that facility. In addition to the documentation required to be maintained by attesting facilities described in paragraph (d)(3) of this section, facilities attesting under this paragraph also shall maintain and make available for inspection (as described elsewhere in this section) such additional documentation as is necessary to substantiate such claim of substantial disruption.

(3) *Documentation of facility's nursing positions.* The attesting facility shall maintain and make available for inspection (as described in § _____.350(b)) documentation substantiating:

(i) The total number of nursing positions at the facility;

(ii) The number of nursing vacancies at the facility during a 12-month period ending no later than 3 months prior to submittal of the attestation;

(iii) The number of nurses who left the facility during the same 12-month period;

(iv) The number of nurses hired by the facility during the same 12-month period;

(v) The overall staffing pattern for nursing positions at the facility; and

(vi) A description of the facility's efforts to recruit U.S. nurses during the same 12-month period. The documentation on numbers of nurses, maintained for the purposes of this paragraph (d)(3), shall be broken out by numbers of U.S. nurses, nurses admitted under H–1 visas, nurses admitted under H–1A visas, nurses admitted under other nonimmigrant vises, and other nurses.

(e) *The second attestation element: no adverse effect.* The facility shall attest that "the employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed."

(1) *Wages.* To meet the requirement of no adverse effect on wages, the facility shall attest that it shall pay each nurse of the facility at least the prevailing wage for the occupation in the geographic area. The facility shall pay the higher of the wage required pursuant to this paragraph (e) or the wage required pursuant to paragraph (f) of this section (*i.e.*, the third attestation element: facility wage).

(i) *State employment security determination.* The facility does not independently determine the prevailing wage. The State employment security agency (SESA) shall determine the prevailing wage for similarly employed nurses in the geographic area in accordance with administrative guidelines or regulations issued by ETA. The facility shall request the appropriate prevailing wage from the SESA not more than 90 days prior to the date the attestation is submitted to ETA. Once a facility obtains a prevailing wage determination from the SESA and files an attestation supported by that prevailing wage determination, the facility shall be deemed to have accepted the prevailing wage determination as accurate and appropriate (both to the occupational classification and wage) and thereafter shall not contest the legitimacy of the prevailing wage determination in an investigation or enforcement action. A facility may challenge a SESA prevailing wage determination through the Employment Service complaint system. See 20 CFR part 658, Subpart E. A facility which challenges a SESA prevailing wage determination shall obtain in final ruling from the Employment Service prior to filing an attestation. Any such challenge shall not require the SESA to divulge any employer wage data which was collected under the promise of confidentiality.

(ii) *Collectively bargained wage rates.* Where wage rates for nurses at a facility are the result of arms-length collective bargaining, those rates shall be considered "prevailing" for that facility for the purposes of this subpart.

(iii) *Total compensation package.* The prevailing wage finding under this paragraph (e)(1) relates to wages only. However, each item in the total compensation package for U.S., H–1A, and other nurses employed by the facility shall be the same within a given facility, including such items as housing assistance and other perquisites.

(iv) *Documentation of pay and total compensation.* The facility shall maintain documentation summarizing its pay schedule and compensation package for nurses. See § _____.350(b). The summary shall cover each category of nursing position in which H–1A nurses are or will be hired or promoted into and each category of nursing position in which H–1A nurses (or nurses admitted on H–1 visas) have been hired or promoted into. Categories of nursing positions not covered by the documentation shall not be covered by the attestation, and, therefore, such positions shall not be filled or held by H–1A nurses.

(2) *Working conditions.* To meet the requirement of no adverse effect on working conditions, the facility shall attest that it shall afford equal treatment to U.S. and H–1A nurses with the same seniority, with respect to such working conditions as the number and scheduling of hours worked (including shifts, straight days, weekends); vacations; wards and clinical rotations; and overall staffing-patient patterns.

(f) *The third attestation element: facility/employer wage.* The facility employing or seeking to employ the alien shall attest that "the alien employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility." The facility shall maintain documentation substantiating compliance with this attestation which shall include a description of the factors taken into consideration by the facility in making compensation decisions for nurses and the facility pay schedule for nurses maintained pursuant to paragraph (e)(1) of this section. See § _____.350(b). The facility shall pay the higher of the wage required pursuant to this paragraph (f) or the wage required pursuant to paragraph (e) of this section (*i.e.*, the second attestation element: no adverse effect).

(g) *The fourth attestation element: timely and significant steps; or State plan.* The facility may satisfy the fourth attestation element by satisfying Alternative I in paragraph (g)(1) of this section or by satisfying Alternative II in paragraph (g)(2) of this section.

(1) *Alternative I: Timely and significant steps.* The facility shall attest that it "has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses." The facility shall take at least two such steps, unless it demonstrates that taking a second step is not reasonable. The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. The facility is not required to have taken any of these steps prior to December 18, 1989. A facility choosing to take timely and significant steps other than those specifically described in paragraph (g)(1)(i)(A) of this section shall submit with its attestation a description of the steps it is proposing to take and an explanation of how the proposed steps are of comparable timeliness and significance to those described in paragraph (g)(1)(i)(A) of this section. A facility claiming that a second step is unreasonable shall submit an explanation of why such second step would be unreasonable.

(i) *Descriptions of steps— (A) Statutory steps.* Each of the actions described in this paragraph (g)(1)(i)(A) shall be considered a significant step reasonably designed to recruit and retain U.S. nurses. A facility choosing any one of the following steps shall attest that its program(s) meets the regulatory requirements set forth for each and provide an explanation of how the requirements are satisfied by the program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § _____.350(b) of this part) documentation specified in the particular step selected and/or documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements for the particular step selected. Section 212(m)(2)(E) of the INA provides that a violation shall be found if a facility fails to meet a condition attested to. Thus, a facility shall be held responsible for all timely and significant steps to which it attests.

(*1*) *Step One: "Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere."* Training programs may include either courses leading to a higher degree (*i.e.*, beyond an associate or a baccalaureate degree), or continuing education courses. If the program includes courses leading to a higher degree, they shall be courses which are part of a program accepted for degree credit by a college or university and accredited by a State Board of Nursing or a State Board of Higher Education (or its equivalent), as appropriate. If the program includes continuing education courses, they shall be courses which meet criteria established to qualify the nurses taking the courses to earn continuing education units accepted by a State Board of Nursing (or its equivalent). In either type of program, financing by the facility, either directly or arranged through a third party, shall cover the total tuition costs of such training. The number of U.S. nurses for whom such training actually is provided shall be no less than half of the number of nurses who left the facility during the 12-month period prior to submission of the attestation. (U.S. nurses to whom such training was offered, but who rejected such training, may be counted towards those provided training, but the facility, in such case, shall maintain documentation of such offer and rejection). See § _____.350(b).

(*2*) *Step Two: "Providing career development programs and other methods of facilitating health care workers to become registered nurses."* This may include programs leading directly to a degree in nursing, or career ladder/career path programs which could ultimately lead to a degree in nursing. A facility choosing this step shall maintain as documentation a description of the content and eligibility requirements for both types of programs and an explanation of how the requirements of this paragraph (g)(1)(i)(A)(*2*) are satisfied by each program. Any such degree program shall be, at a minimum, either through an accredited community college (leading to an associate's degree), 4-year college (a bachelor's degree), or diploma school, and the course of study shall be one accredited by a State Board of Nursing (or its equivalent). For career ladder or career path programs, the facility shall maintain documentation that the programs are normally part of a course of study or training which prepares a U.S. worker for enrolling in formal direct training leading to a degree in nursing, either through an accredited community college, a 4-year college, or a diploma school. See § _____.350(b) of this part. Financing by the facility, either directly or arranged through a third party, shall cover the total costs of such programs. U.S. workers participating in such programs shall be working or have worked in health care occupations or health care facilities. The number of U.S. workers for whom such training is provided shall be equal to no less than half the average number of vacancies for nurses during the 12-month period prior to the submission of the attestation.

(*3*) *Step Three: "Paying registered nurses wages at a rate higher than currently being paid to registered nurses similarly employed in the geographic area."* A facility choosing this step shall maintain documentation showing that its entire schedule of wages for nurses is at least 5 percent higher than the prevailing wages as determined by the SESA pursuant to paragraph (e)(1)(i) of this section, and it shall attest that such differentials shall be maintained throughout the period of the attestation's effectiveness.

(*4*) *Step Four: "Providing adequate support services to free registered nurses from administrative and other non-nursing duties."* Non-nursing duties include such activities as housekeeping duties; food preparation and delivery; transporting patients; providing occupational and respiratory therapy; answering telephones; running errands for patients; and clerical tasks. A facility choosing this step shall not require nurses at the facility to perform non-nursing duties. However, it is understood that on an infrequent non-recurring basis, nurses at the facility may perform one or more of the tasks encompassed by the duties listed above in this paragraph (g)(1)(i)(A)(*4*) or other non-nursing duties. Facilities choosing this step shall maintain documentation showing what steps they have taken to ensure that nursing jobs do not include any of these duties and that such activity by nurses at the facility occurs without regularity and infrequently. Such a facility also shall maintain documentation with respect to any other steps being taken to relieve nurses from non-nursing duties, or to enhance the nursing function, such as computerizing certain writing and routine functions performed by nurses.

(*5*) *Step Five: "Providing reasonable opportunities for meaningful salary advancement by registered nurses."* Documentation for this step shall include documentation of systems for salary advancement based on factors such as merit, education, and specialty, and/or salary advancement based on length of service with other bases for wage differentials remaining constant.

(*i*) *Merit, education, and specialty.* For salary advancement based on factors such as merit, education, and specialty, the facility shall maintain and make available for inspection documentation that it provides opportunities for professional development of its nurses which lead to salary advancement, *e.g.*, opportunities for continuing education; in-house educational instruction; special committees, task forces, or projects considered of a professional development nature; participation in

professional organizations; and writing for professional publications. Such opportunities shall be available to all the facility's nurses.

(*ii*) *Length of service.* For salary advancement based on length of service, the facility shall maintain and make available for inspection documentation that it has clinical ladders in place which provide, annually, salary increases of 3 percent or more for a period of no less than 10 years, over and above the costs of living and merit, education, and specialty increases and differentials.

(B) *Other possible steps.* The Act indicates that the five steps described in paragraphs (g)(1)(i)(A) (*1*) through (*5*) of this section are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other timely and significant steps, but these shall be of timeliness and significance comparable to those in paragraphs (g)(1)(i)(A) (*1*) through (*5*) of this section to qualify. A facility may attest that it has taken and is taking other such steps and explain in its attestation what these steps are, their nature and scope, how they are effected and how they meet the statutory test of timeliness and significance comparable to those Steps One through Five described above. A facility choosing alternative steps shall attest that its program(s) meet(s) the statutory requirements of timeliness and significance in promoting the development, recruitment and retention of U.S. nurses, explaining how these requirements are satisfied by such program(s). In addition, the attesting facility shall maintain and make available for inspection (as described in § _____.350(b)) documentation which provides a complete description of the nature and operation of its program(s) sufficient to substantiate its attestation and full compliance with the requirements of this paragraph (g)(1)(i)(B). Examples of such steps which—depending on the circumstances, the size and nature of the attesting facility; the nature and scope of the step(s) described, the number of persons affected, and other such factors—may meet these requirements are:

(*1*) *Monetary incentives*—providing monetary incentives to nurses, through bonuses and merit pay plans not included in the base compensation package, for additional education, and for efforts leading to increased recruitment and retention of U.S. nurses. Such monetary incentives can be based on actions by nurses such as: Innovations to achieve better patient care, increased productivity, reduced waste, better safety; obtaining additional certification in a nursing specialty; unused sick leave; recruiting other U.S. nurses; staying with the facility for a given number of years; taking less desirable assignments (other than shift differential); participating in professional organizations, on task forces and on special committees; or contributing to professional publications. Facilities attesting to this step shall have a documented system for providing significant financial rewards in the form of bonuses or salary advancement to nurses participating in the activities described in this paragraph.

(*2*) *Special perquisites*—providing nurses with special perquisites for dependent care or housing assistance of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*3*) *Work schedule options*—providng nurses with non-mandatory work schedule options for part-time work, job-sharing, compressed work week or non-rotating shifts (provided, however, that H–1A nurses are employed only in full-time work) of a nature and/or extent that constitute a "significant" factor in inducing employment and retention of U.S. nurses.

(*4*) *Other training options*—providing training opportunities to become registered nurses to U.S. workers not currently in health care occupations by means of financial assistance (*e.g.*, scholarship, loan or pay-back programs) to such persons.

(ii) *Unreasonableness of second step.* The steps described in this paragraph (g)(1) shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of this paragraph (g)(1). Nothing in this subpart or subpart E of this part shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. A facility taking only one step shall provide an explanation with its attestation, and maintain documentation at the facility, relating to why taking a second step is not reasonable. The taking of a second step may be considered unreasonable if it would result in the facility's financial inability to continue providing the same quality and quantity of health care or if the provision of nursing services would otherwise be jeopardized by the taking of such a step. If the single step which is taken is one of the statutorily defined steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall explain with its attestation, and maintain documentation at the facility, with respect to each of the four statutory steps (described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section) not taken, relating to why it would be unreasonable for the facility to take such step and also shall explain with its attestation, and shall maintain and make available for inspection (as described in § _____.350(b)) documentation demonstrating why it would be unreasonable for the facility to take any other steps designed to recruit, develop and retain sufficient U.S. nurses to meet its staffing needs. If the single step which is taken is not one of the five statutory steps described in paragraphs (g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(*5*) of this section, the facility shall, with respect to each of the five statutory steps not taken, explain with its attestation, and maintain documentation and make available for inspection (as described in § _____.350(b)) documentation, demonstrating why it would be unreasonable for the facility to take such step; the facility also shall explain with its attestation, and make available for inspection (as described in § _____.350(b)) documentation demonstrating why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. On the basis of the explanation submitted by the facility, the Certifying Officer shall determine whether the requirements of this paragraph (g)(1)(ii) have been met. See paragraph (m) of this section regarding such determinations and administrative appeals therefrom.

(iii) *Alternative to criteria for each specific step.* Instead of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include in its prior year's attestation, in addition to the actions taken under Steps One through Five, that it shall reduce the number of alien (H–1 and H–1A visaholders) nurses it utilizes within 1 year from the date of attestation by at least 10 percent, without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and made available for inspection, and indicated in its subsequent year's attestation), the facility's subsequent year's attestation may simply include the *Form ETA 9029*, an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of alien nurses it utilizes within 1 year from the date of attestation by at least 10 percent. This alternative is designed to permit a facility to achieve the objectives of the Act, without subjecting the facility to detailed requirements and criteria as to the specific means of achieving that objective. The first, second, and succeeding years shall be consecutive.

(2) *Alternative II: subject to approved annual State plan.* As an alternative to attesting to the timely and significant steps set forth in paragraph (g)(1) of this section, the facility may attest that it "is subject to an approved State plan for the recruitment and retention of nurses." The contents of the annual State plan are described in more detail in § _____.315. For an individual facility to meet the requirements of this paragraph (g)(2), the annual State plan shall provide for the taking of timely and significant steps by that facility, and the facility shall maintain appropriate documentation with respect to those steps. See § _____.350(b). To qualify for this Alternative II, the annual State plan shall have been approved prior to the date the facility submits its attestation to ETA for filing.

(h) *The fifth attestation element: No strike or lockout; no intention or design to influence bargaining representative election.* The facility shall attest that "there is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or designated to influence an election for a bargaining representative for registered nurses of the facility." Labor disputes for purposes for this attestation element relate only to those involving nurses providing nursing services; other health service occupations are not included. This attestation element applies to strikes and lockouts and elections of bargaining representatives at both the facility employing the nurse and, in the case of nursing contractors, at the worksite facility.

(1) *Notice of strike or lockout.* In order to remain in compliance with the no strike or lockout portion of this attestation element, if a strike or lockout of nurses at the facility occurs during the 1 year's validity of the attestation, the facility, within 3 days of the occurrence of the strike or lockout, shall submit to the ETA National Office, by U.S. mail or private carrier, written notice of the strike or lockout.

(2) *ETA notice to INS.* Upon receiving from a facility a notice described in paragraph (h)(1) of this section, ETA shall examine the documentation, and may consult with the union at the facility or other appropriate entities. If ETA determines that the strike or lockout is covered under 8 CFR 214.2(h)(17), INS's *Effect of strike* regulation for "H" visaholders, ETA shall certify to INS, in the manner set forth in that regulation, that a strike or other labor dispute involving a work stoppage of nurses is in progress at the facility.

(i) *The sixth attestation element: notice of filing.* The facility shall attest that at the time of filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a) of the Act, notice of filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses at the facility through posting in conspicuous locations. The requirement applies to providing notice of filing both for attestations submitted to ETA and for visa petitions filed with INS.

(1) *Notification of bargaining representative.* No later than the date the attestation is mailed to DOL to be considered for filing, the facility shall notify the bargaining representative (if any) for nurses at the facility that the attestation is being submitted to DOL, and shall state in that notice that the attestation is available at the facility (explaining how it can be inspected or obtained) and at the national office of ETA for review by interested parties. No later than the date the facility transmits a visa petition for H–1A nurses to INS, the facility shall notify the bargaining representative (if any) for nurses at the facility that the visa petition is being submitted to INS, and shall state in that notice that the attestation and visa petition are available at the facility (explaining how they can be inspected or obtained) and at the national office of ETA for review by interested parties. Notices under this paragraph (i)(1) shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office of the Wage and Hour Division of the United States Department of Labor."

(2) *Posting notice.* If there is no bargaining representative for nurses at the facility, when the facility submits and attestation to ETA, and each time the facility files an H–1A visa petition with INS, the facility shall post a written notice at the facility (and, in addition, at the worksite facility, if at a different location, such as in the case of nursing contractors), stating that the attestation and/or visa petition(s) have been filed and are available at the facility (explaining how these documents can be inspected or obtained) and at the national office of ETA for review by interested parties. In order for the facility to remain in compliance with this paragraph (i)(2), all such notices shall remain posted during the validity period of the attestation and the attestations and petitions shall be available for examination at the facility throughout this period of time. The notice of posting shall provide information concerning the availability of these documents for examination at the facility and at the national office of ETA, and shall include the following statement: "Complaints alleging misrepresentation of material facts in the attestation or failure to comply with the terms of the attestation may be filed with any office the Wage and Hour Division of the United States Department of Labor." Such posted notices shall be clearly visible and unobstructed while posted, shall be posted in conspicuous places, where the facility's U.S. nurses readily can read the posted notice on the way to or from their duties. Appropriate locations for posting such notices include locations in the immediate proximity of mandatory Fair Labor Standards Act wage and hour notices and Occupational Safety and Health Act occupational safety and health notices.

(j) *Special provisions for nursing contractors.* A nursing contractor submitting an attestation for filing as a facility shall attest, in addition to the first through sixth attestation elements, that it will refer H–1A nurses only to facilities that (with the exception of private households which themselves do not employ H–1A nurses) have valid attestations on file with ETA. The nursing contractor shall obtain from each such worksite facility a copy of that facility's *Form ETA 9029*, accepted for filing by ETA and then currently on file with ETA. The nursing contractor shall maintain a copy of such worksite facility's accepted attestation on file at the nursing contractor's principal office during the validity period of the nursing contractor's attestation or the period of time that any H–1A nurse in its employ is providing nursing services at the worksite facility, whichever is longer.

(k) *Special provisions for worksite facilities which are not employers of H–1A nurses and are not controlled by employers of H–1A nurses.* A facility (other than a private household) which obtains the services of an H–1A nurse by contracting with a nursing contractor, but which is itself neither the employer of any H–1A nurse nor controlled by the employer of any H–1A nurse (see paragraph (k)(1) of this

section), shall file an attestation with ETA pursuant to this subpart. Such a worksite facility may request from ETA a waiver of specific elements of the attestation to avoid duplicative attestations, in cases of temporary, emergency circumstances, with respect to information not within the knowledge of the attestor, or for other good cause. The attesting worksite facility shall be to ably demonstrate the existence of the circumstances or good cause which are asserted as the basis(es) for the request for a waiver of a particular element of the attestation, but need not submit such evidence with its request for waiver, except evidence with respect to a bona fide medical emergency (see paragraph (k)(3)(iii) of this section).

(1) *Worksites employing, seeking to employ, or filing visa petitions on behalf of H–1A nurses.* An attestation with respect to which waiver is requested or granted pursuant to this paragraph (k) is not valid (*i.e.*, is not "on file and in effect") for a worksite facility employing, seeking to employ, or filing a visa petition on behalf of H–1A nurses. Only an attestation meeting the requirements of paragraphs (a) through (i) of this section (and paragraph (j) of this section, in the case of a nursing contractor) can serve as the basis for a petition for an H–1A visa. A worksite facility which uses H–1A nurses only through a nursing contractor and, as part of its attestation, requests waiver of one or more attestation elements nevertheless shall file a complete attestation in order to be able to use such attestation as a basis for itself filing a visa petition for an H–1A nurse. Thus, a worksite facility should consider its future needs for H–1A nurses in filing attestations and requests for waiver pursuant to this paragraph (k).

(2) *Inapplicability of third attestation element: facility/employer wage.* If a worksite facility uses H–1A nurses only through a nursing contractor, the third attestation element (facility/employer wage; see paragraph (f) of this section) is not applicable to that facility, since the worksite facility is not the employer of the H–1A nurse and does not guarantee the H–1A nurse's wage. The third attestation element is required only for the employer of the H–1A nurse(s), *i.e.*, the third attestation element shall be included in the attestation of and met by the H–1A nurse's employer (*i.e.*, the nursing contractor).

(3) *Waiver of attestation elements.* ETA may consider, pursuant to this paragraph (k)(3) requests for waiver of certain attestation elements by a worksite facility which uses or will use an H–1A nurse provided by a nursing contractor (*i.e.*, an "H–1A contract nurse"), but which worksite facility itself does not employ, seek to employ, or file a visa petition on behalf of an H–1A nurse. Paragraphs (k)(3) (i) through (iii) of this section set forth different conditions for waiver depending on the number of workdays of H–1A contract nurse services the worksite facility will use. For the purposes of this paragraph (k)(3), a "workday" shall consist of one H–1A contract nurse working for one normal shift in a day. Thus, for example, three normal shifts worked by each of a group of five H–1A contract nurses totals 15 workdays.

(i) *Minimal use of H–1A contract nurses by a worksite.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 15 workdays of H–1A contract nurse services in any 3-month period of the attestation's 1-year period of validity to meet emergency needs on a temporary basis, ETA may waive the first (substantial disruption), second (adverse effect), and fourth (timely and significant steps or State plan) elements of the attesting worksite facility's attestation. See paragraphs (d), (e), and (g) of this section; see also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(i) the fifth attestation element (strike, lockout, or intent or design to influence bargaining representative election) or the sixth attestation element (notice). See paragraphs (h) and (i) of this section.

(ii) *Short-term use of H–1A contract nurses.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use no more than a total of 60 workdays of H–1A contract nurse services in any 3-month period of the attestation's 1-year period of validity to meet temporary needs, ETA may waive the nursing shortage component of the first element (substantial disruption; see paragraphs (d)(2) and (d)(3) of this section) and may waive the fourth (timely and significant steps or State plan; see paragraph (g) of this section) element of the attesting worksite facility's attestation. See also paragraphs (f) and (k)(2) of this section, with respect to the inapplicability of third attestation element (facility/employer wage). ETA shall not waive pursuant to this paragraph (k)(3)(ii) the no-layoff component of the first attestation element (substantial disruption; see paragraph (d)(1) of this section); the second attestation element (adverse effect); the fifth attestation element (strike, lockout, or intent to influence a bargaining representative election); or the sixth attestation element (notice). See paragraphs (d), (e), (h), and (i) of this section.

(iii) *Long-term use of H–1A contract nurse services.* Where the attesting worksite facility attests in its request for waiver pursuant to this paragraph (k)(3) that it will use more than 60 workdays of H–1A contract nurse services in any 3-month period of the attestation's 1-year period of validity, ETA shall not waive any attestation element, except that, if the attestor documents a bona fide medical emergency warranting a waiver of the fourth attestation element (timely and significant steps or State plan) ETA may waive such element. See paragraph (g) of this section.

(l) *Agents of worksite facilities.* A worksite facility (including a worksite facility which itself employs or seeks to employ an H–1A nurse) may authorize a nursing contractor to act as its agent in preparing and filing the worksite facility's attestation; however, a worksite facility using an agent for preparation and filing of the attestation is responsible for the contents of such attestation and remains liable for any violations which may be disclosed in any investigation under Subpart E of this Part, and the chief executive officer of the worksite facility shall sign the original attestation, as required by paragraph (c)(1)(i) of this section.

(m) *Actions on attestations submitted for filing.* An attestation which meets the established criteria set forth in this § ____.310 shall be accepted for filing by ETA on the date it is signed by the Certifying Officer. ETA shall then follow the procedures set forth in paragraph (m)(1) of this section. An attestation submitted by a facility proposing alternative criteria or steps for the first and/or the fourth attestation elements, and/or proposing to take only one timely and significant step, and/or claiming a bona fide medical emergency exemption from the fourth attestation element shall be reviewed by ETA, and a determination shall be made by the Certifying Officer whether to accept or reject the attestation for filing. See paragraphs (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), and (k)(3)(iii) of this section. The Certifying Officer may request additional explanation and/or documentation from the facility in making this determination. If the Certifying Officer does not contact the facility for such information or make any determination within 30 days of receiving the attestation, the attestation shall become accepted for filing. Upon the facility's submitting the attestation to ETA and providing the notice required by the sixth attestation element (see § ____.310(i)), the attestation shall be available for public examination at the health care facility itself. When ETA accepts the attestation for filing, the Certifying Officer shall forward the attestation to the ETA National Office, where it shall be available for public examination. Information contesting an attestation received by ETA prior to the determination to accept or reject the attestation for filing shall not be made part of ETA's administrative record on the attestation, but shall be referred to ESA to be processed as a complaint pursuant to Subpart E of this part, and, if such attestation nevertheless is accepted by ETA for filing, the complaint will be handled by ESA under that subpart.

(1) *Acceptance.* (i) If the attestation (and any explanatory statements that may be required) meet the requirements of this subpart, ETA shall accept the attestation for filing, shall, in the case of a facility intending to file a visa petition as the employer of an H–1A nurse, notify INS in writing of the filing, shall return to the facility one copy of the attestation form submitted by the facility, with ETA's acceptance indicated thereon, and shall forward one copy of the attestation with ETA's acceptance indicated thereon to the ETA National Office. The facility may then file a visa petition with INS for alien nurses in accordance with INS regulations.

(ii) DOL is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

(2) *Appeals of acceptances.* If an attestation which is subject to a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section is accepted for filing, any interested party may appeal ETA's determination(s) on the element(s) that have been reviewed. Appeals of acceptances shall be filed with the BALCA, no later than 30 days after the date of acceptance, and will be considered under the procedures set forth at § ____.320.

(3) *Appeals of rejections.* If the attestation is not accepted for filing, which may occur as a result of a determination under paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), or (k)(3)(iii) of this section, ETA shall notify the facility in writing, specifying the reasons for rejection and quoting the language of § ____.320(a)(1). Any interested party may appeal such rejection to the BALCA, no later than 30 days after the date of rejection. Appeals of rejections shall be filed and considered under the procedures set forth at § ____.320.

(n) *Effective date and validity of filed attestations.* An attestation becomes filed and effective as of the date it is accepted and signed by the Certifying Officer and accepted thereby for filing. Such attestation is valid for the 12-month period beginning on the date of acceptance for filing, unless suspended or invalidated pursuant to § ____.320 or subpart E. The filed attestation expires at the end of the 12-month period of validity.

(o) *Suspension or invalidation of filed attestation.* Suspension or invalidation of an attestation may result from a BALCA decision reversing an ETA acceptance for filing; from investigations by the Administrator, Wage and Hour Division, of the facility's misrepresentation in or failure to carry out its attestation; or from a discovery by ETA that it made an error in its review of the attestation (in those cases where ETA performs such review pursuant to paragraph (d)(2)(ii), (g)(1)(i)(B), (g)(1)(ii), (k)(3)(iii) of this section) and that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at § ____.310 (a) through (k). If an attestation is suspended or invalidated, DOL shall notify INS.

(1) *Result of BALCA or Wage and Hour Division action.* If an attestation is suspended or invalidated as a result of a BALCA decision overruling an acceptance of the attestation for filing, or is suspended or invalidated as a result of a Wage and Hour Division action pursuant to subpart E, such suspension or invalidation may not be separately appealed, but shall be merged with appeals of BALCA's or the Wage and Hour Division's determination on the underlying violation.

(2) *Result of ETA action.* If, after accepting an attestation for filing, ETA discovers that it erroneously accepted that attestation for filing, and, as a result, ETA suspends or invalidates that acceptance, the facility may appeal such suspension or invalidation pursuant to § ____.320 as if that suspension or invalidation were a decision to reject the attestation for filing.

(p) *Facility's responsibilities during suspension and after invalidation or expiration of filed attestation.* A facility shall comply with the terms of its attestation, even if such attestation is suspended, invalidated, or expired, as long as any H–1A nurse is at the facility, unless the attestation is superseded by a subsequent attestation accepted for filing by ETA.

(q) *Facilities subject to penalties.* No attestation shall be accepted for filing from a nursing contractor or other facility which has failed to comply with any penalty, sanction, or other remedy assessed in a final agency action following an investigation by the Wage and Hour Division pursuant to subpart E.

§ _____.315 State plans.

A State may submit an annual plan for the recruitment and retention of U.S. citizens and permanent resident aliens who are authorized to perform nursing services in the State.

(a) *Who should prepare and file the annual plan?* The Governor of each State that chooses to submit an annual State plan shall be responsible for the preparation and filing of the annual plan. The Governor may designate any public and/or private organization(s) to assist the Governor in the development of the annual plan.

(b) *When and where should the annual plan be filed?* If a State determines to file an annual State plan, the Governor shall submit the original plan, signed by the Governor, by U.S. mail or private carrier, to ETA at the following address: Director, U.S. Employment Service, Employment and Training Administration; Department of Labor, 200 Constitution Avenue, NW., room N–4456, Washington, DC 20210. An annual State plan may be filed with ETA at any time. However, for an individual facility legitimately to attest to being subject to an annual State plan for the purposes of the fourth attestation element, Alternative II (see § _____.310(g)(2)), such annual State plan shall have been epproved prior to the date the attestation was submitted to ETA for filing and be in current effect. Therefore, if the Governor is aware that a facility within the State plans to submit an attestation for filing with ETA, the annual State plan should be mailed to ETA at least 35 days prior to the facility's submission of its attestation to ETA.

(c) *What overall issues shoill the annual State plan address?* The annual State plan shall address the overall issue of supply of and demand for nurses within the State, with particular emphasis on measures to develop a sufficient supply of U.S. nurses to meet projected demand. The State, as opposed to individual facilities, is in a position to—and may be expected to—address broad issues and perform such functions as conducting a Statewide needs assessment; overall management, facilitation and coordination among various interested entities within the State; and undertaking more regionally

based approaches. The State is also in a position to devote resources which individual facilities may be lacking.

(d) *How should the annual State plan address the timely and significant steps?* The annual State plan shall address all of the timely and significant steps in §_____.310(g)(1)(i)(A)(*1*) through (g)(1)(i)(A)(5) generically, without regard to the specific criteria therein, on a Statewide basis. However, for the annual State plan to satisfy Alternative II of the fourth attestation requirement for an individual facility (see §_____.310(g)(2)), the annual State plan shall indicate which of those timely and significant steps relate to individual facilities, and that each individual facility shall take such a step (either one step or more, as appropriate) to meet the appropriate specific criteria as set forth in §_____.310(g)(1).

(e) *What other components may the annual State plan include?* An annual State plan may include the following components:

(1) The cooperation of high schools and colleges may be enlisted in counseling health workers and other individuals to enter the nursing profession.

(2) Geographic and salary data may be made available to assist in linking nurses to facilities.

(3) Publications of vacancies and programs may be made in industry and State newsletters.

(4) Training films and videotapes, as well as information on housing and relocation services, may be developed and distributed.

(5) Measures may be taken to encourage other health professionals to become nurses, such as: setting up home study programs with State licensing boards to allow work credits for purposes of meeting educational or State clinical requirements; entering into cooperative agreements for providing health care insurance and other job-related elements which would allow greater flexibility for those attempting to combine careers and school; providing monetary grants or long-term loans to persons preparing to become nurses.

(6) Steps may be taken to encourage nurses who have left the nursing field to return to nursing, by providing such inducements as child care, holiday schedule adjustments, and substantial salary increases.

(7) The State may profile and publicize those facilities with special model programs.

(8) The annual State plan may place demands on facilities for comprehensive plans to reduce reliance on foreign nurses.

(f) *Approval and disapproval of annual State plans.* Determinations of approval and disapproval of annual State plans shall be made by the Director, USES. The annual State plan shall be reviewed by ETA, in consultation with the Department of Health and Human Services, and a determination to approve or disapprove the annual State plan made within 30 calendar days of ETA's receipt of the plan.

(1) If the annual State plan is approved, the Director shall notify the Governor in writing.

(2) If the annual State plan is disapproved, the Director shall notify the Governor in writing, specifying the reason(s) for disapproval. The notice shall state that within 30 calendar days of the date of the notice of disapproval, the Governor may correct the deficiencies noted in the disapproval and resubmit the annual State plan to ETA; and shall inform the state of its right to an appeal, by quoting the language of §_____.320(a).

(g) An approved annual State plan shall be valid for 12-month period beginning on the date of its approval by DOL.

(Approved by the Office of Management and Budget under control number 1205–0305)

§_____.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.

(a) *Appeal right—(1) Attestations; when to file appeals from acceptances and rejections.* On the basis that the explanation and documentation provided and maintained by the facility does not or did not meet the criteria set forth at §_____.310(d)(2)(ii), (g)(1)(i)(B)(*5*), (g)(1)(ii), or (k)(3)(iii), an interested party may appeal an acceptance or rejection by ETA of an attestation submitted by a facility for filing in those cases where DOL performed an attestation review function under those provisions. The appeal shall be limited to ETA's determinations on the element(s) reviewed and shall not be an appeal as to any other element(s) in the attestation. An interested party may also appeal ETA's invalidation or suspension of a filed attestation due to a discovery by ETA that it made an error in its reviewing of the attestation (see §_____.310(c). In the case of an appeal of an acceptance, the facility shall be a party to the appeal; in the case of the appeal of a rejection, invalidation, or suspension, the collective bargaining representative (if any) representing nurses at the facility shall be a party to the appeal. Appeals shall be in writing; shall set forth the grounds for the appeal; shall state if *de novo* consideration by BALCA is requested; and shall be mailed by certified mail within 30 calendar days of the date of the action from which the appeal is taken (*i.e.*, the acceptance, rejection, suspension or invalidation of the attestation).

(2) *Annual State plans; when to file appeals from disapprovals.* A Governor of a State may appeal ETA's disapproval of an annual State plan. Individual facilities in the State may file briefs as *amici curiae*. Appeals shall be in writing and shall be mailed by certified mail within 30 calendar days of the disapproval of the annual State plan.

(3) *Where to file appeals.* Appeals made pursuant to this section shall be in writing and shall be mailed by certified mail to: Director, U.S. Employment Service, Employment and Training Administration, Department of Labor, 200 Constitution Avenue, NW., Room N–4456, Washington, DC 20210.

(4) *Complaints.* Appeals under this paragraph (a) shall not encompass questions of misrepresentation by a health care facility or nonperformance by such a facility of its attestation. Such complaints shall be filed with an office of the Wage and Hour Division, United States Department of Labor.

(b) *Transmittal to BALCA; case file.* Upon receipt of an appeal pursuant to this section, the Certifying Officer (or, in the case of State plans, the Director, USES), shall send to BALCA a certified copy of the ETA case file, containing the attestation and supporting documentation and any other information or data considered by ETA in taking the action being appealed. The administrative law judge chairing BALCA shall assign a panel of one or more administrative law judges who serve on BALCA to review the record for legal sufficiency and to consider and rule on the appeal.

(c) *Consideration on the record; de novo hearings.—(1) General.* BALCA shall not remand, dismiss, or stay the case, except as provided in paragraph (c)(2) of this section, but may otherwise consider the appeal on the record or in a *de novo* hearing (on its own motion or on a party's request). Interested parties and *amici curiae* may submit briefs in accordance with a schedule set by BALCA. The ETA official making the determination from which the appeal was taken shall be represented by the Associate Solicitor for Employment and Training Legal Services, Office of the Solicitor, Department of Labor, or the Associate Solicitor's designee. If BALCA determines to hear the appeal on the record without a *de novo* hearing, BALCA shall render a decision within 30 calendar days after BALCA's receipt of the case file. If BALCA determines to hear the appeal through a *de novo* hearing, the procedures contained in 29 CFR part 18 shall apply to such hearings, except that:

(i) The appeal shall not be considered to be a complaint to which an answer is required;

(ii) BALCA shall ensure that, at the request of the appellant, the hearing is scheduled to take place within a reasonable period after BALCA's receipt of the case file (see also the time period described in paragraph (c)(1)(iv) of this section);

(iii) Technical rules of evidence, such as the Federal Rules of Evidence and subpart B of the Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges (29 CFR part 18, subpart B), shall not apply to any hearing conducted pursuant to this subpart, but rules or principles designed to assure production of the most credible evidence available and to subject testimony to test by cross-examination shall be applied where reasonably necessary by BALCA in conducting the hearing; BALCA may exclude irrelevant, immaterial, or unduly repetitious evidence; the certified copy of the case file transmitted to BALCA by the Certifying Officer (or, in the case of State plans, the Director, USES), shall be part of the evidentiary record of the case and need not be removed into evidence; and

(iv) BALCA's decision shall be rendered within 120 calendar days after BALCA's receipt of the case file.

(2) *Dismissals and stays.* If the BALCA determines that the appeal is solely a question of misrepresentation by the facility or is solely a complaint of the facility's nonperformance of the attestation, BALCA shall dismiss the case and refer the matter to the Administrator, Wage and Hour Division, for action under subpart E. If the BALCA determines that the appeal is partially a question of misrepresentation by the facility or is partially a complaint of the facility's nonperformance of the attestation, BALCA shall refer the matter to the Administrator, Wage and Hour Division, for action under Subpart E of this part and shall stay BALCA consideration of the case pending final agency action on such referral. During such stay, the 120-day period described in paragraph (c)(1)(iv) of this section shall be suspended.

(d) *BALCA's decision.* After consideration on the record or a *de novo* hearing, BALCA shall either affirm or reverse ETA's decision, and shall so notify the appellant; the Director, if the affirmation or denial involves a State plan; Certifying Officer; Chief, Division of Foreign Labor Certifications; and any other parties. See §_____.450 custody of the record of the appeal.

(e) *Decisions on attestations.* With respect to an appeal of the acceptance, rejection, suspension or invalidation of an attestation, the decision of BALCA shall be the final decision of the Secretary, and no further review shall be given to the matter by any DOL official.

(f) *Decisions on annual State plans.* With respect to an appeal of the disapproval of an annual State plan, the decision of BALCA shall be the final decision by the Secretary, unless a petition for review of the BALCA decision is filed with the Secretary and the Secretary determines to review the decision.

(1) *Filing of petition for review.* The Director or the State desiring review of the decision and order of BALCA may petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on BALCA.

(2) *Form of petition for review.* No particular form is prescribed for any petition for Secretary's review permitted by this paragraph (f). However, any such petition shall:

(i) Be dated;

(ii) Be typewritten or legibly written;

(iii) Specify the issue or issues stated in the BALCA decision and order giving rise to such petition;

(iv) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(v) Be signed by the party filing the petition or by an authorized representative of such party;

(vi) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(vii) Attach copies of BALCA's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(3) *Notice of determination to review.* Whenever the Secretary determines to review the decision and order of BALCA on an annual State plan, a notice of the Secretary's determination to do so shall be served upon BALCA and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(4) *Hearing record.* Upon receipt of the Secretary's notice, BALCA shall within 15 days forward the complete hearing record to the Secretary.

(5) *Contents of Secretary's notice.* The Secretary's notice shall specify:

(i) The issue or issues to be reviewed;

(ii) The form in which submissions shall be made by the parties; and

(iii) The time within which such submissions shall be made.

(6) *Filing of documents.* All documents submitted to the Secretary pursuant to this paragraph (f) shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, Room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(7) *Service of documents.* Copies of all documents filed with the Secretary pursuant to this paragraph (f) shall be served simultaneously upon all other parties involved in the proceeding. Service upon the Director shall be in accordance with paragraph (a)(3) of this section.

(8) *Secretary's decision.* The Secretary's final decision pursuant to this paragraph (f) shall be issued within 180 days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and BALCA.

(9) *Transmittal of record.* Upon issuance of the Secretary's decision under this paragraph (f), the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to §_____.450.

§_____.350 Public access.

(a) *Public examination at ETA.* ETA shall make available for public examination in Washington, DC, a list of facilities which have filed attestations, and such facilities' visa petitions (if any) for H–1A nurses, and for each such facility, a copy of the facility's attestation and any explanatory statements it has received; the annual State plan (if any) which relates to the facility's attestation; and a copy of each of the facility's H–1A visa petitions (if any) to INS. A copy of the latter shall be transmitted to ETA by the facility at the same time it is submitted to INS. The facility shall also forward to ETA a copy of the INS visa petition approval notice within 5 days after it is received from INS.

(b) *Public examination at facility.* For the duration of the attestation's validity and thereafter for so long as the facility

uses any H–1 or H–1A nurse under the attestation, the facility shall maintain a separate file containing the attestation and required documentation, and shall make this file available to any interested parties within 72 hours upon written or oral request. If a party requests a copy of the file, the facility shall provide it and any charge for such copy shall not exceed the cost of reproduction.

(c) *Notice to public.* ETA periodically shall publish a notice in the **Federal Register** announcing the names and addresses of facilities which have submitted attestations; facilities which have attestations on file; facilities which have submitted attestations which have been rejected for filing; facilities which have had attestations suspended; States which have submitted annual State plans; States which have approved annual State plans; and States which have submitted annual State plans which were disapproved.

Subpart E—Enforcement of H–1A Attestations

§ _____.400 Enforcement authority of Administrator, Wage and Hour Division.

(a) The Administrator shall perform all the Secretary's investigative and enforcement functions under 8 U.S.C. 1182(m) and subparts D and E of this part.

(b) The Administrator, either pursuant to a complaint or otherwise, shall conduct such investigations as may be appropriate and, in connection therewith, enter and inspect such places and such records (and make transcriptions thereof), question such persons and gather such information as deemed necessary by the Administrator to determine compliance regarding the matters to which a health care facility has attested under section 212(m) of the INA (8 U.S.C. 1182(m)) and subparts D and E of this part.

(c) A facility being investigated shall make available to the Administrator such records, information, persons, and places as the Administrator deems appropriate to copy, transcribe, question, or inspect. No facility shall interfere with any official of the Department of Labor performing an investigation, inspection or law enforcement function pursuant to 8 U.S.C. 1182(m) or subparts D or E of this part. In the event of such interference, the Administrator may deem the interference to be a violation and take such further actions as the Administrator considers appropriate. (*Note:* Federal criminal statutes prohibit certain interference with a Federal officer in the performance of official duties. 18 U.S.C. 111 and 1114.)

(d) A facility subject to subparts D and E of this part shall at all times cooperate in administrative and enforcement proceedings. No facility shall intimidate, threaten, restrain, coerce, blacklist, discharge, or in any manner discriminate against any person because such person has:

(1) Filed a complaint or appeal under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(2) Testified or is about to testify in any proceeding under or related to section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part;

(3) Exercised or asserted on behalf of himself/herself or others any right or protection afforded by section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part.

(4) Consulted with an employee of a legal assistance program or an attorney on matters related to the Act or to subparts D or E of this part or any other DOL regulation promulgated pursuant to 8 U.S.C. 1182(m).

In the event of such intimidation or restraint as are described in paragraph (d)(1), (2), (3), or (4) of this section, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(e) A facility subject to subpart D and E of this part shall maintain a separate file containing its attestation and required documentation, and shall make that file or copies thereof available to interested parties, as required by § _____.350(b). In the event of a facility's failure to maintain the file, to provide access, or to provide copies, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate.

(f) No health care facility shall seek to have an H–1A nurse, or any other nurse similarly employed by the employer, or any other employee waive rights conferred under the Act or under subpart D or E of this part. In the event of such waiver, the Administrator may deem the conduct to be a violation and take such further actions as the Administrator considers appropriate. Any agreement by an employee purporting to waive or modify any rights inuring to said person under the Act or subpart D or E of this part may be void as contrary to public policy, except that a waiver or modification of rights or obligations hereunder in favor of the Secretary shall be valid for purposes of enforcement of the provisions of the Act or subpart D and E of this part. This prohibition of waivers does not prevent agreements to settle litigation among private parties.

(g) The Administrator shall, to the extent possible under existing law, protect the confidentiality of any complainant or other person who provides information to the Department.

§ _____.405 Complaints and investigative procedures.

(a) The Administrator, through investigation, shall determine whether a facility has failed to perform any attested conditions, misrepresented any material facts in an attestation (including misrepresentation as to compliance with regulatory standards), or otherwise violated the Act or subpart D or E of this part.

(Note: Federal criminal statutes provide penalties of up to $10,000 and/or imprisonment of up to 5 years for knowing and willful submission of false statements to the Federal Government. 18 U.S.C. 1001; see also 18 U.S.C. 1546).

(b) Any aggrieved person or organization may file a complaint of a violation of the provisions of section 212(m) of the INA (8 U.S.C. 1182(m)) or subpart D or E of this part. No particular form of complaint is required, except that the complaint shall be written or, if oral, shall be reduced to writing by the Wage and Hour Division official who receives the complaint. The complaint shall set forth sufficient facts for the Administrator to determine what part or parts of the attestation or regulations have allegedly been violated. Upon the request of the complainant, the Administrator shall, to the extent possible under existing law, maintain confidentiality regarding the complainant's identity; if the complainant wishes to be a party to the administrative hearing proceedings under this subpart, the complainant shall then waive confidentiality. The complaint may be submitted to any local Wage and Hour Division office; the addresses of such offices are found in local telephone directories. Inquiries concerning the enforcement program and requests for technical assistance regarding compliance may also be submitted to the local Wage and Hour Division office.

(c) The Administrator shall determine whether there is reasonable cause to believe that the complaint warrants investigation and, if so, shall conduct an investigation, within 180 days of the receipt of a complaint. If the Administrator determines that the complaint fails to present reasonable cause for an investigation, the Administrator shall so notify the complainant, who may submit a new complaint, with such additional information as may be necessary.

(d) When an investigation has been conducted, the Administrator shall, within 180 days of the receipt of a complaint, issue a written determination, stating whether a basis exists to make a finding that the facility failed to meet a condition of its attestation, or made a misrepresentation of a material fact therein, or otherwise violated the Act or subpart D or E. The determination shall specify any sanctions imposed due to violations. The Administrator shall provide a notice of such determination to the interested parties and shall inform them of the opportunity for a hearing pursuant to § _____.420.

§ _____.410 Civil money penalties and other remedies.

(a) The Administrator may assess a civil money penalty not to exceed $1,000 for each affected person with respect to whom there has been a violation of the attestation or subpart D or E of this part of and with respect to each instance in which such violation occurred. The Administrator also shall impose appropriate remedies, including the payment of back wages and the performance of attested obligations such as providing training.

(b) In determining the amount of civil money penalty to be assessed for any violation, the Administrator shall consider the type of violation committed and other relevant factors. The matters which may be considered include, but are not limited to, the following:

(1) Previous history of violation, or violations, by the facility under the Act and subpart D or E of this part;

(2) The number of workers affected by the violation or violations;

(3) The gravity of the violation or violations;

(4) Efforts made by the violator in good faith to comply with the attestation or the State plan as provided in the Act and Subparts D and E of this part;

(5) The violator's explanation of the violation or violations;

(6) The violator's commitment to future compliance, taking into account the public health, interest or safety; and

(7) The extent to which the violator achieved a financial gain due to the violation, or the potential financial loss or potential injury or adverse effect upon the workers.

(c) The civil money penalty, back wages, and any other remedy determined by the Administrator to be appropriate, are immediately due for payment or performance upon the assessment by the Administrator, or the decision by an administrative law judge where a hearing is requested, or the decision by the Secretary where review is granted. The facility shall remit the amount of the civil money penalty, by certified check or money order made payable to the order of "Wage and Hour Division, Labor." The remittance shall be delivered or mailed to the Wage and Hour Division Regional Office for the area in which the violations occurred. The payment of back wages, monetary relief, and/or the performance or any other remedy prescribed by the Administrator shall follow procedures established by the Administrator. The facility's failure to pay the civil money penalty, back wages, or other monetary relief, or to perform any other assessed remedy, shall result in the rejection by ETA of any future attestation submitted by the facility, until such payment or performance is accomplished.

§ _____.415 Written notice and service of Administrator's determination.

(a) The Administrator's determination, issued pursuant to § _____.405(d), shall be served on the complainant, the facility, and other interested parties by personal service or by certified mail at the parties' last known addresses. Where service by certified mail is not accepted by the party, the Administrator may exercise discretion to serve the determination by regular mail. Where the complainant has requested confidentiality, the Administrator shall serve the determination in a manner which will not breach that confidentiality.

(b) The Administrator shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and the Administrator's determination.

(c) The Administrator's written determination required by § _____.405(c) shall:

(1) Set forth the determination of the Administrator and the reason or reasons therefor; prescribe any remedies or penalties including the amount of any unpaid wages due, the actions required for compliance with the facility attestation and/or State plan, and the amount of any civil money penalty assessment and the reason or reasons therefor.

(2) Inform the interested parties that they may request a hearing pursuant to § _____.420.

(3) Inform the interested parties that in the absence of a timely request for a hearing, received by the Chief Administrative Law Judge within 10 days of the date of the determination, the determination of the Administrator shall become final and not appealable.

(4) Set forth the procedure for requesting a hearing, and give the address of the Chief Administrative Law Judge.

(5) Inform the parties that, pursuant to § _____.455, the Administrator shall notify the Attorney General and ETA of the occurrence of a violation by the employer.

§ _____.420 Request for hearing.

(a) Any interested party desiring to request an administrative hearing on a determination issued pursuant to § _____.405(d) shall make such request in writing to the Chief Administrative Law Judge at the address stated in the notice of determination.

(b) An interested party may request a hearing in the following circumstances:

(1) Where the Administrator determines that there is no basis for a finding of violation, the complainant or other interested party may request a hearing. In such a proceeding, the party requesting the hearing shall be the prosecuting party and the facility shall be the respondent; the Administrator may intervene as a party or appear as *amicus curiae* at any time in the proceeding, at the Administrator's discretion.

(2) Where the Administrator determines that there is a basis for a finding of violation, the facility or other interested party may request a hearing. In such a proceeding, the Administrator shall be the prosecuting party and the facility shall be the respondent.

(c) No particular form is prescribed for any request for hearing permitted by this part. However, any such request shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the notice of determination given rise to such request;

(4) State the specific reason or reasons why the party requesting the hearing believes such determination is in error;

(5) Be signed by the party making the request or by an authorized representative of such party; and

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto.

(d) The request for such hearing shall be received by the Chief Administrative Law Judge, at the address stated in the Administrator's notice of determination, no later than 10 days after the date of the determination. An interested party which fails to meet this 10-day deadline for requesting a hearing may thereafter participate in the proceedings only by consent of the administrative law judge, either through intervention as a party

pursuant to 29 CFR 18.10 (b) through (d) or through participation as an *amicus curiae* pursuant to 29 CFR 18.12.

(e) The request may be filed in person, by facsimile transmission, by certified or regular mail, or by courier service. For the requesting party's protection, if the request is filed by mail, it should be certified mail. If the request is filed by facsimile transmission, the original of the request, signed by the requestor or authorized representative, shall be filed within 10 days of the date of the Administrator's notice of determination.

(f) Copies of the request for a hearing shall be sent by the requestor to the Wage and Hour Division official who issued the Administrator's notice of determination, to the representative(s) of the Solicitor of Labor identified in the notice of determination, and to all known interested parties.

§ _____.425 Rules of practice for administrative law judge proceedings.

(a) Except as specifically provided in this subpart, and to the extent they do not conflict with the provisions of this subpart, the "Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges" established by the Secretary at 29 CFR part 18 shall apply to administrative proceedings under this subpart.

(b) As provided in the Administrative Procedure Act, 5 U.S.C. 556, any oral or documentary evidence may be received in proceedings under this part. The Federal Rules of Evidence and subpart B of the *Rules of Practice and Procedure for Administrative Hearings Before the Office of Administrative Law Judges* (29 CFR part 18, subpart B) shall not apply, but principles designed to ensure production of relevant and probative evidence shall guide the admission of evidence. The administrative law judge may exclude evidence which is inmaterial, irrelevant, or unduly repetitive.

§ _____.430 Service and computation of time.

(a) Under this subpart, a party may serve any pleading or document by regular mail. Service is complete upon mailing to the last known address. No additional time for filing or response is authorized where service is by mail. In the interest of expeditious proceedings, the administrative law judge may direct the parties to serve pleadings or documents by a method other than regular mail.

(b) Two (2) copies of all pleadings and other documents in any administrative law judge proceeding shall be served on the attorneys for the Administrator. One copy shall be served on the Associate Solicitor, Division of Fair Labor Standards, Office of the Solicitor, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, and one copy on the attorney representing the Administrator in the proceeding.

(c) Time will be computed beginning with the day following the action and includes the last day of the period unless it is a Saturday, Sunday, or federally-observed holiday, in which case the time period includes the next business day.

§ _____.435 Administrative law judge proceedings.

(a) Upon receipt of a timely request for a hearing filed pursuant to and in accordance with § _____.420, the Chief Administrative Law Judge shall appoint an administrative law judge to hear the case.

(b) Within 7 days following the assignment of the case, the administrative law judge shall notify all interested parties of the date, time and place of the hearing. All parties shall be given at least 5 days notice of such hearing.

(c) The date of the hearing shall be not more than 60 days from the date of the Administrator's determination. Because of the time constraints imposed by the Act, no requests for postponement shall be granted except for compelling reasons and by consent of all the parties to the proceeding.

(d) The administrative law judge may prescribe a schedule by which the parties are permitted to file a prehearing brief or other written statement of fact or law. Any such brief or statement shall be served upon each other party in accordance with § _____.430. Posthearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge, shall be due within the time prescribed by the administrative law judge, and shall be served on each other party in accordance with § _____.430.

§ _____.440 Decision and order of administrative law judge.

(a) Within 90 days after receipt of the transcript of the hearing, the administrative law judge shall issue a decision.

(b) The decision of the administrative law judge shall include a statement of findings and conclusions, with reasons and basis therefore, upon each material issue presented on the record. The decision shall also include an appropriate order which may affirm, deny, reverse, or modify, in whole or in part, the determination of the Administrator; the reason or reasons for such order shall be stated in the decision. The administrative law judge shall not render determinations as to the legality of a regulatory provision or the constitutionality of a statutory provision.

(c) The decision shall be served on all parties in person or by certified or regular mail.

§ _____.445. Secretary's review of administrative law judge's decision.

(a) The Administrator or any interested party desiring review of the decision and order of an administrative law judge shall petition the Secretary to review the decision and order. To be effective, such petition shall be received by the Secretary within 30 days of the date of the decision and order. Copies of the petition shall be served on all parties and on the administrative law judge.

(b) No particular form is prescribed for any petition for Secretary's review permitted by this subpart. However, any such petition shall:

(1) Be dated;

(2) Be typewritten or legibly written;

(3) Specify the issue or issues stated in the administrative law judge decision and order giving rise to such petition;

(4) State the specific reason or reasons why the party petitioning for review believes such decision and order are in error;

(5) Be signed by the party filing the petition or by an authorized representative of such party;

(6) Include the address at which such party or authorized representative desires to receive further communications relating thereto; and

(7) Attach copies of the administrative law judge's decision and order, and any other record documents which would assist the Secretary in determining whether review is warranted.

(c) Whenever the Secretary determines to review the decision and order of an administrative law judge, a notice of the Secretary's determination shall be served upon the administrative law judge and upon all parties to the proceeding within 30 days after the Secretary's receipt of the petition for review.

(d) Upon receipt of the Secretary's notice, the Office of Administrative Law Judges shall within 15 days forward the complete hearing record to the Secretary.

(e) The Secretary's notice shall specify:

(1) The issue or issues to be reviewed;

(2) The form in which submissions shall be made by the parties (*e.g.*, briefs, oral argument);

(3) The time within which such submissions shall be made.

(f) All documents submitted to the Secretary shall be filed with the Secretary of Labor, U.S. Department of Labor, Washington, DC 20210, Attention: Executive Director, Office of Administrative Appeals, room S–4309. An original and two copies of all documents shall be filed. Documents are not deemed filed with the Secretary until actually received by the Secretary. All documents, including documents filed by mail, shall be received by the Secretary either on or before the due date.

(g) Copies of all documents filed with the Secretary shall be served upon all other parties involved in the proceeding. Service upon the Administrator shall be in accordance with § _____.430(b).

(h) The Secretary's final decision shall be issued within 180 days from the date of the notice of intent to review. The Secretary's decision shall be served upon all parties and the administrative law judge.

(i) Upon issuance of the Secretary's decision, the Secretary shall transmit the entire record to the Chief Administrative Law Judge for custody pursuant to § _____.450.

§ _____.450 Administrative record.

The official record of every completed administrative hearing procedure provided by subparts D and E of this part shall be maintained and filed under the custody and control of the Chief Administrative Law Judge. Upon receipt of a complaint seeking review of the final agency action in a United States District Court, the Chief Administrative Law Judge shall certify the official record and shall transmit such record to the clerk of the court.

§ _____.455 Notice to the Attorney General and the Employment and Training Administration.

(a) The Administrator shall promptly notify the Attorney General and ETA of the final determination of a violation by an employer upon the earliest of the following events:

(1) Where the Administrator determines that there is a basis for a finding of violation by an employer, and no timely request for hearing is made pursuant to § _____.420; or

(2) Where, after a hearing, the administrative law judge issues a decision and order finding a violation by an employer; or

(3) Where the administrative law judge finds that there was no violation, and the Secretary, upon review, issues a decision pursuant to § _____.445, holding that a violation was committed by an employer.

(b) The Attorney General, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall not approve petitions filed with respect to that employer under section 212(m) of the INA (8 U.S.C. 1182(m)) during a period of at least 12 months from the date of receipt of the Administrator's notification.

(c) ETA, upon receipt of the Administrator's notice pursuant to paragraph (a) of this section, shall suspend the employer's attestation under subparts D and E of this part, and shall not accept for filing any attestation submitted by the employer under subparts D and E of this part, for a period of 12 months from the date of receipt of the Administrator's notification or for a longer period if such is specified by the Attorney General for visa petitions filed by that employer under section 212(m) of the INA.

§ _____.460 Non-applicability of the Equal Access to Justice Act.

A proceeding under subpart D or E of this part is not subject to the Equal Access to Justice Act, as amended, 5 U.S.C. 504. In such a proceeding, the administrative law judge shall have no authority to award attorney fees and/or other litigation expenses pursuant to the provisions of the Equal Access to Justice Act.

Adoption of the Joint Final Rule

The agency specific adoption of the joint final rule which appears at the end of the common preamble, appears below:

TITLE 20—EMPLOYEES' BENEFITS

CHAPTER V—EMPLOYMENT AND TRAINING ADMINISTRATION, DEPARTMENT OF LABOR

Accordingly, the interim final rule published on December 6, 1990 (55 FR 50500) amending Chapter V of Title 20 of the Code of Federal Regulations by redesignating §§ 621.1, 621.2 and 621.3 to subpart A of part 655, removing the remainder of part 621 and amending part 655 is adopted as final, and part 655 is further amended as follows:

PART 655—[AMENDED]

1. The authority citation for part 655 continues to read as follows:

Authority: Section 655.0 issued under 8 U.S.C. 1101(a)(15)(H)(i) and (ii), 1182(m) and (n), 1184, 1188, and 1288(c); 29 U.S.C. 49 *et seq.*; sec. 3(c)(1), Pub. L. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); sec. 221(a), Pub. L. 101–649, 104 Stat. 4978 5027 (8 U.S.C. 1184 note); and 8 CFR 214.2(h)(4)(i).

Section 655.00 issued under 8 U.S.C. 1101(a)(15)(H)(ii), 1184, and 1188; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subparts A and C issued under 8 U.S.C. 1101(a)(15)(H)(ii)(b) and 1184; 29 U.S.C. 49 *et seq.*; and 8 CFR 214.2(h)(4)(i).

Subpart B issued under 8 U.S.C. 1101(a)(15)(H)(ii)(a), 1184, and 1188; and 29 U.S.C. 49 *et seq.*

Subparts D and E issued under 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 3(c)(1), Pub. 101–238, 103 Stat. 2099, 2103 (8 U.S.C. 1182 note); and sec. 341(a) and (b), Pub. L. 103–182, 107 Stat. 2057.

Subparts F and G issued under 8 U.S.C. 1184 and 1288(c); and 29 U.S.C. 49 *et seq.*

Subparts H and I issued under 8 U.S.C. 1101(a)(15)(H)(i)(b), 1182(n), and 1184; 29 U.S.C. 49 *et seq.*; and sec. 303(a)(8), Pub. L. 102–232, 105 Stat. 1733, 1748 (8 U.S.C. 1182 note).

Subparts J and K issued under 29 U.S.C. 49 *et seq.*; and sec. 221(a), Pub. L. 101–649, 104 Stat. 4978, 5027 (8 U.S.C. 1184 note).

2. Part 655 is amended by revising subparts D and E to read as set forth in the joint final rule above in this document.

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

Sec.

655.300 Purpose and scope of subparts D and E.
655.301 Overview of process.
655.302 Definitions.
655.310 Attestations.
655.315 State plans.
655.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
655.350 Public access.

Subpart E—Enforcement of H–1A Attestations

655.400 Enforcement authority of Administrator, Wage and Hour Division.
655.405 Complaints and investigative procedures.
655.410 Civil money penalties and other remedies.
655.415 Written notice and service of Administrator's determination.
655.420 Request for hearing.
655.425 Rules of practice for administrative law judge proceedings.
655.430 Service and computation of time.
655.435 Administrative law judge proceedings.
655.440 Decision and order of administrative law judge.
655.445 Secretary's review of administrative law judge's decision.
655.450 Administrative record.
655.455 Notice to the Attorney General and the Employment and Training Administration.
655.460 Non-applicability of the Equal Access to Justice Act.

Signed at Washington, DC, this 28th day of December, 1993.

Robert B. Reich,

Secretary of Labor.

TITLE 29—LABOR

CHAPTER V—WAGE AND HOUR DIVISION, DEPARTMENT OF LABOR

Accordingly, part 504 of Title 29, Code of Federal Regulations, is revised to read as follows:

PART 504—ATTESTATIONS BY FACILITIES USING NONIMMIGRANT ALIENS AS REGISTERED NURSES

Subparts A, B, and C—[Reserved]

Subpart D—Attestations by Facilities Using Nonimmigrant Aliens as Registered Nurses

Sec.

504.300 Purpose and scope of subparts D and E.
504 301 Overview of process.
504.302 Definitions.
504.310 Attestations.
504.315 State plans.
504.320 Appeals of acceptance and rejection of attestations submitted for filing and of State plans.
504.350 Public access.

Subpart E—Enforcement of H–1A Attestations

504.400 Enforcement authority of Administrator, Wage and Hour Division.
504.405 Complaints and investigative procedures.
504.410 Civil money penalties and other remedies.
504.415 Written notice and service of Administrator's determination.
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504.430 Service and computation of time.
504.435 Administrative law judge proceedings.
504.440 Decision and order of administrative law judge.
504.445 Secretary's review of administrative law judge's decision
504.450 Administrative record.
504.455 Notice to the Attorney General and the Employment and Training Administration.
504.460 Non-applicability of the Equal Access to Justice Act.

Authority: 8 U.S.C. 1101(a)(15)(H)(i)(a), 1182(m) and Pub. L. 101–238, sec. 3(c)(1), 103 Stat. 2099, 2103; and sec. 341(a) and (b), Pub. L. 103–182, 107 Stat. 2057

Signed at Washington, DC, this 28th day of December, 1993.

Robert B. Reich,

Secretary of Labor.

Note: The following appendix will not appear in the Code of Federal Regulations.

Appendix—Form ETA 9029

Billing Code 4510–10–M and 4510–27–M

Health Care Facility Attestation (H-1A)

U.S. Department of Labor
Employment and Training Administration
U.S. Employment Service

OMB Approval No.: 1205-0305

1. Name of Facility (Full Legal Name of Organization)
2. Address (Number, Street, City, State and ZIP Code)
3. Telephone (Area Code and Number)
4. Facility's Federal Employer I.D. Number
5. Nature of Facility's Business Activity (Hospital, Nursing Home, etc)
6. Name of Chief Executive Officer
6a. Contact Person & Telephone Number

7. KIND OF FACILITY: (check appropriate item)

- ☐ a. Facility (hospital, nursing home, clinic, household, etc.) intending to petition for H-1A nurses.
- ☐ b. Nurse contractor intending to petition for H-1A nurses.
- ☐ c. Facility intending to use H-1A nurses through a contractor only (check appropriate item; item 8.c. not applicable if item 7.c. is checked):
  - ☐ (i) For no more than 15 workdays in any 3-month period to meet temporary emergency needs or other good cause on a temporary basis. (Waivers may be requested in writing for items 8.a., 8.b., and 8.d.)
  - ☐ (ii) For more than 15 but no more than 60 workdays in any 3-month period to meet temporary emergency needs or for other good cause on a temporary basis. (Waivers may be requested in writing for items 8.a.(ii), and 8.d.)
  - ☐ (iii) For more than 60 workdays in any 3-month period due to a bona fide medical emergency. (Explanatory statement required; waiver may be requested in writing for item 8.d.)
  - ☐ (iv) None of the above.

8. FACILITY ATTESTATION: (Applicable in its entirety if item 7.a. or item 7.b. is checked. Item 8.g. required if item 7.b. is checked.)

- ☐ a. Lay offs and Substantial Disruption
  - ☐ (i) This facility has not laid off any registered staff nurses within the past year; and this facility will not replace laid off nonstaff nurses with H-1A nurses either through promotion or otherwise for a period of 1 year from the lay off. (No explanatory statement required.)
  - ☐ (ii) Through no fault of this facility, there would be a substantial disruption in the delivery of health care services of the facility without the services of H-1A nurses, as demonstrated by (check at least one item):
    - ☐ Current nurse vacancy rate of 7% or more. Vacancy rate is ____%. (No explanatory statement required.)
    - ☐ Current unutilized bed rate of 7% or more. Unutilized bed rate is ____%. (No explanatory statement required.)
    - ☐ Past elimination/curtailment of essential health care services. (Explanatory statement required.)
    - ☐ Inability to implement established plans for needed new health care services. (Explanatory statement required.)
    - ☐ Other. (Explanatory statement required.)

- ☐ b. The employment of H-1A nurses will not adversely affect the wages and working conditions of registered nurses similarly employed. This facility has obtained a prevailing wage determination from the State Employment Security Agency (SESA) and is paying both U.S. and H-1A nurses at least the prevailing wage for the geographic area unless wages for registered nurses at this facility are the result of a collective bargaining agreement. (No explanatory statement required.)

(NOTE: 8. FACILITY ATTESTATION CONTINUES ON THE BACK OF THIS FORM.)

FOR U.S. GOVERNMENT AGENCY USE ONLY: By virtue of my signature below, I acknowledge that this attestation is accepted for filing on _____ (date) and will be valid through _____ (date 12 months from the date it is accepted for filing).

Signature of Authorized DOL Official

ETA Case No.

The Department of Labor is not the guarantor of the accuracy, truthfulness or adequacy of an attestation accepted for filing.

Public reporting burden for this collection of information is estimated to average 7 hrs 5 min per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of IRM Policy, Department of Labor, Room N-1301, 200 Constitution Avenue, N.W., Washington, DC 20210; and to the Office of Management and Budget, Paperwork Reduction Project (1205-0305), Washington, DC 20503.

DO NOT SEND THE COMPLETED FORM TO EITHER OF THESE OFFICES

ETA 9029
Rev. Mar. 1993

(8. FACILITY ATTESTATION CONTINUATION)

☐ c. H-1A nurses employed by the facility will be paid the same wage rate as other registered nurses similarly employed by this facility. (No explanatory statement required; this item not applicable if item 7.c. is checked.)

☐ d. Recruitment and Retention of Registered Nurses (Check either 8.d.(I) or 8.d.(II).)

☐ (I) This facility is subject to an approved State plan for the recruitment and retention of nurses developed under the provisions of the Immigration Nursing Relief Act of 1989. (If checked, skip item 8.d.(ii), explanatory statement required.)

☐ (II) This facility has taken and is taking timely and significant steps designed to recruit and retain registered nurses who are United States citizens or immigrants who are authorized to perform nursing services in order to remove as quickly as reasonably possible our dependence on nonimmigrant nurses. Timely and significant steps being taken by this facility include (check at least two items and include explanatory statement for each):

- ☐ Operating a training program at no cost for registered nurses at the facility or providing for 100% tuition in a training program for registered nurses elsewhere.
- ☐ Paying 100% of the cost of career development programs and other methods of facilitating health care workers to become registered nurses.
- ☐ Paying registered nurses at a rate at least 5% higher than the prevailing wage as determined by the SESA.
- ☐ Providing adequate support services to free registered nurses from administrative and other nonnursing duties.
- ☐ Providing reasonable opportunities for meaningful salary advancement by registered nurses based on merit, education, and specialty or based on length of service.
- ☐ Other Step of comparable timeliness and significance.
- ☐ Only one timely and significant step has been and is being taken by this facility because taking a second step is unreasonable.

☐ (III) Alternative criteria for each step for second and succeeding years. (Check appropriate items and attach explanatory statement; see instructions.)

- ☐ This facility does not have a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10% without reducing the quality or quantity of services provided.
- ☐ This facility has a valid attestation on file with the Department of Labor. This facility will, within the next year, reduce the number of nonimmigrant nurses it utilizes by at least 10% without reducing the quality or quantity of services provided.
- ☐ Pursuant to its prior attestation, this facility has reduced the number of nonimmigrants it utilizes by 10% within one year of the date of such prior attestation, without reducing the quantity of services provided.

☐ e. No Strike or Lay Off

There is not a strike or lockout in the course of a labor dispute, and the employment of H-1A nurses is not intended or designed to influence an election for a bargaining representative for registered nurses of this facility. (No explanatory statement required.)

☐ f. Notice and Pubic Examination

A copy of this attestation and supporting documentation are available at this facility for examination by interested parties. Copies of all visa petitions filed by the facility with INS for H-1A nurses will also be available for examination at this facility and will also be sent to the ETA National Office. (Check only one item; no explanatory statement required.)

☐ (I) As of this date, notice of this filing has been provided to the bargaining representative of the registered nurses at this facility; or

☐ (II) Where there is no such bargaining representative, notice of this filing has been provided as of this date to registered nurses at this facility through posting in conspicuous locations.

☐ g. **FOR NURSE CONTRACTORS ONLY:** H-1A nurses shall be referred only to facilities which themselves have valid and current attestations; this employer maintains copies of the valid attestation (Form ETA 9029) from each facility where its H-1A nurses are working. (No explanatory statement required.).

9. DECLARATION OF FACILITY:

Pursuant to 28 U.S.C. 1746, I declare under penalty of perjury that the information provided on this form is true and accompanying documentation is true and correct. In addition, I declare that I will comply with the Department of Labor regulations governing this program and, in particular, that I will make this attestation, supporting documentation, and other records, files and documents available to officials of the Department of Labor, upon such officials request, during any investigation under this attestation or the Immigration and Nationality Act.

Signature of Chief Executive Officer
(or such officer's agent or designee and title)

Date

INSTRUCTIONS FOR COMPLETING FORM ETA 9029

HEALTH CARE FACILITY ATTESTATION (H-1A)

IMPORTANT: READ CAREFULLY BEFORE COMPLETING FORM

Submit an original and two copies of Form ETA 9029 and explanatory statements attached to all copies to the appropriate ETA regional office listed at the end of these instructions.

To knowingly furnish any false information in the preparation of this form and any explanatory statements thereto, or to aid, abet or counsel another to do so is a felony, punishable by $10,000 fine or five years in the penitentiary, or both (18 U.S.C. 1001). Other penalties apply as well to fraud and misuse of this immigration document (18 U.S.C. 1546 and 1621).

Print legibly in ink or use a typewriter. Sign and date one form in original signature. Citations below to "regulations" are citations to the identical provisions of 20 CFR Part 655, Subparts D and E, and 29 CFR Part 504, Subparts D and E.

Item 1. Name of Facility. Enter full legal name of business, firm or organization, or, if an individual, enter name used for legal purposes on documents.

Item 2. Address of Facility. Self explanatory.

Item 3. Telephone Number. For private households, enter a business and home telephone number when all adults are employed.

Item 4. Facility's Federal Employer I.D. Number. Enter the facility's federal employer identification number assigned by the Internal Revenue Service.

Item 5. Nature of Facility's Business Activity. Enter a brief, non-technical description, e.g., acute care, long-term care, nursing contractor, clinic and private physician.

Item 6. Name of Chief Executive Officer. Self explanatory.

Item 6.a. Contact Person and Telephone Number. Enter the name and telephone number of the person who has direct knowledge of, and can be contacted about, this attestation.

Item 7. Kind of Facility. A facility intending to use H-1A nurses through a contractor only must check the applicable box under item 7.c. and may request, in writing on an attached sheet, a waiver of certain attestation elements (see § ___ .310(k) of the regulations). See instructions to item 8. Waiver requests must include an estimate of the maximum number of workdays of H-1A contract nurses services the facility intends to use in any 3-month period. A workday consists of one H-1A contract nurse working for one normal shift in a day. Facilities may waive certain attestation elements when using H-1A nurses through a contractor.

A facility intending to use H-1A nurses through a contractor for no more than 15 workdays in any 3-month period to meet emergency needs on a temporary basis may request, in writing, a waiver of item 8.a. (substantial disruption; lay offs), item 8.b. (adverse effect), and item 8.d. (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for no more than 60 workdays in any 3-month period to meet temporary needs may request, in writing, a waiver of item 8.a.(ii) (substantial disruption, but not pay offs under item 8.a.(i)) and item 8.d. (timely and significant steps; or State plan).

A facility intending to use H-1A nurses through a contractor for more than 60 workdays in any 3-month period may request, in writing, a waiver of item 8.d. (timely and significant steps; or State plan) due to a bona fide medical emergency. As part of the request for waiver, the facility must attach an explanation documenting the bona fide medical emergency. "Bona fide medical emergency" means a situation in which the services of one or more H-1A contract nurses are necessary at a facility (which itself does not employ an H-1A nurse) to prevent death or serious impairment of health, and, because of the danger to life or death, nursing services for such situations are not elsewhere available in the geographic area.

Note: A facility requesting a waiver, in writing, of any attestation element (see § ___ .310(k) of the regulations) may obtain the services of an H-1A nurse by contracting with a nurse contractor but will not be eligible to itself employ any H-1A nurses under this attestation.

Item 8. Facility Attestation. In order to be eligible to hire nonimmigrant alien (H-1A) nurses, a facility must attest to the conditions listed in elements (a) through (f). The attestation cannot be accepted for filing if the required explanations or information supporting these elements are not attached to the Form ETA 9029. See § ___ .310(c) through (k) of the regulations for guidance on the supporting information that must be attached to the Form ETA 9029, and the specific requirements for each attested element and the documentation required to be maintained in one location at the facility.

Item 8.a.(i). No Lay Offs. Lay off means any involuntary separation of staff nurses without cause or prejudice. If nurses involved in direct patient care are separated from one specialized activity and offered retraining and retention at the same facility in another activity involving direct patient care at the same wage and status, but refuse, it is not a lay off. If the position is covered by a collective bargaining agreement, the agreement's definition of "Lay off" (if any) shall apply to that position. An explanatory statement is not required for this item.

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Item 8.a.(II). Substantial Disruption. A facility may attest that substantial disruption in the delivery of its health care services without nonimmigrant nurses is demonstrated by one or more of the specific circumstances listed. To make such an attestation, a facility must check the appropriate item(s) and attach brief explanatory statements (unless otherwise indicated on the Form ETA 9029) as to the circumstances and the nature and location of supporting documentation (see §§ ___.310(d)(2)(i) and ___ .310(d)(3) of the regulations). If a facility finds that the listed circumstances are inapplicable or cannot be demonstreted, the facility may make an attestation of substantial disruption in the delivery of the facility's health care services by checking the "Other" item and attaching a clear explanation of the substantial disruption in specific health care services due to a shortage of nurses and why none of the four indicators listed can be met (see §§ ___ .310(d)(2)(ii) and ___ .310(d)(3) of the regulations).

Item 8.b. No Adverse Effect. A facility must attest that the employment of H-1A nurses will not adversely affect the wages and working conditions of registered nurses similarly employed. To make such an attestation, a facility must check item 8.b. By checking this item the facility is also attesting that, unless wages for registered nurses are covered by a collective bargaining agreement, it has obtained a prevailing wage determination from the State Employment Security Agency (SESA) and is paying both U.S. and H-1A nurses at least the prevailing wage for the geographic area. An explanatory statement is not required for this item. The facility must update the prevailing wage every year in which it employs H-1A nurses.

Item 8.c. Facility/Employer Wage. A facility may attest that H-1A nurses employed by the facility will be paid the wage rate for registered nurses similarly employed by the facility. In other words, H-1A nurses cannot be paid less than similarly employed U.S. nurses, even if the wages paid U.S. nurses are higher than the prevailing wage level. To make such an attestation, a facility must check item 8.c. An explanatory statement is not required for this item.

Item 8.d. Recruitment and Retention of Registered Nurses. Check either item 8.d.(i) or 8.d.(ii).

Item 8.d.(I). State Plan. A facility may attest that it is subject to an approved State plan for the recruitment and retention of nurses developed under the provisions of the Immigration Nursing Relief Act of 1989. To make such an attestation, a facility must check item 8.d.(I). Facilities are cautioned to contact the ETA National Office before checking this box since such plans must be approved by the ETA National Office.

Item 8.d.(II). Timely and Significant Steps. A facility may attest that it has taken and is taking one or more of the listed timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses. To make such an attestation, a facility must check the appropriate items and for each attach an explanatory statement of how the facility's programs meet the requirements of the steps (see § ___ .310(g)(1)(i)(A) of the regulations). The five steps listed on the form are not an exclusive list of timely and significant steps which might qualify. Facilities are encouraged to be innovative in devising other steps, that are of comparable timeliness and significance. A facility choosing to take steps other than the steps must make its attestation by checking the "Other" item and attaching an explanation of the nature and scope of the steps taken, how the steps are implemented, and how the steps meet the statutory test of timeliness and significance comparable to the listed steps. Examples of such other steps which may be considered to be of comparable timeliness and significance, depending upon all of the circumstances, are monetary incentives, special perquisites, work schedule options, and other training options. See § ___ .310(g)(1)(i)(B) of the regulations.

Nothing shall require a facility to take more than one step, if the facility can demonstrate that taking a second step is not reasonable. However, a facility shall make every effort to take at least two steps. To make an attestation that taking a second step would be unreasonable, a facility must check the last item under 8.d.(ii) and attach an explanatory statement of why such a step would be unreasonable. The taking of a second step may be considered unreasonable, if it would result in the facility's financial inability to continue providing the same quality and quantity of health care, or the provision of nursing services would otherwise by jeopardized by the taking of such a step. For any of the five listed steps not taken, the facility's explanation shall demonstrate, with respect to each of the listed steps not taken, why it would be unreasonable for the facility to take such step. Such facility also shall explain why it would be unreasonable for the facility to take any other steps designed to recruit and retain sufficient U.S. nurses to meet its staffing needs. See § ___ .310(g)(1)(ii).

Item 8.d.(II). Alternative to criteria for each specific step after the first year of attestation. In order to avoid the necessity of complying with the specific criteria for each of the steps in the second and succeeding years, a facility may include with its Form ETA 9029, in addition to the actions taken under items 8.d.(ii), an attestation that it shall reduce the number of nonimmigrant alien (H-1 and H-1A) nurses it uses one year from the date of attestation by at least 10%. This shall be achieved without reducing the quality or quantity of services provided. If this goal is achieved (as demonstrated by documentation maintained by the facility and indicated in its subsequent year's Form ETA 9029), the facility's subsequent year's Form ETA 9029 may simply include an explanation demonstrating that this goal has been achieved and an attestation that it shall again reduce the number of nonimmigrant alien (H-1A) nurses it uses one year from the date of attestation by at least 10%.

Item 8.e. No Strike or Lockout. A facility must attest that there is not a strike or lockout in the course of a labor dispute, and that the employment of H-1A nurses is not intended or designed to influence an election for a bargaining representative for registered nurses of the facility. To make such an attestation, a facility must check item 8.e. An explanatory statement is not required for this item.

Item 8.f. Notice and Public Examination. A facility must attest that, as of the date it files the attestation with the Department, it has provided notice of filing to the bargaining representative of registered nurses at the facility, or, if there is none, it has posted notice of filing in conspicuous locations. To make such an attestation, a facility must check either item 8.f.(i) or 8.f.(ii). An explanatory statement is not required for this item.

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Item 8.g. Nurse Contractor Only. This item is only applicable if item 7.b. is checked. Nurse contractors must check item 8.g. to attest that they will refer H-1A nurses only to facilities which themselves have valid and current attestations on file. An explanatory statement is not required to this item.

Item 9. Declaration of Facility. One copy of this form must bear the original signature of the chief executive officer of the facility (or the chief executive officer's designee). By signing this form the chief executive officer is attesting to item 7. and item 8. on the Form ETA 9029 and to the accuracy of the information provided in the explanatory statements. False statements are subject to Federal criminal penalties, as stated above.

If the attestation bears the necessary entries of information and attached explanations for all items except Item 7.c.(ii) "Bona Fide Medical Emergency", Item 8.a.(ii) "Other," and Item 8.d.(ii) "Other," and if for those three items the Department of Labor determines after review that the attached explanations are sufficient to demonstrate compliance with the regulatory standards, the Department of Labor shall accept the attestation for filing and shall document such acceptance on the original and two copies of Form ETA 9029's submitted. The original of the attestation form indicating the Department's acceptance will be returned to the health care facility. The facility may then make a copy of the accepted attestation and file visa petitions with INS for H-1A nonimmigrant nurses in accordance with INS regulations. The facility shall include a copy of the accepted Form ETA 9029 with each visa petition filed with the Immigration and Naturalization Service.

Regional Office to which H-1A Attestations should be submitted:

The States of: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, New York, New Jersey, Puerto Rico, and Virgin Islands, should submit Attestations to:

Regional Certifying Officer
U.S. Department of Labor/ETA
One Congress Street
10th Floor
Boston, Massachusetts 02114-2021

The States of: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, West Virginia, Illinois, Indiana, Michigan, Minnesota Ohio, Wisconsin, Iowa, Kansas, Missouri, Nebraska, Colorado, Montana, North Dakota, South Dakota, Utah, Wyoming, should submit Attestations to:

Regional Certifying Officer
U.S. Department of Labor/ETA
230 South Dearborn Street
Room 628
Chicago, Illinois 60604

The States of: Arkansas, Louisiana, New Mexico, Oklahoma, Texas, Alabama, Florida, Georgia, Kentucky, Mississippi, North Carolina, South Carolina, Tennessee, should submit Attestations to:

Regional Certifying Officer
U.S. Department of Labor/ETA
Federal Building
Room 317
525 Griffin Street
Dallas, Texas 75202

The States of: Arizona, California, Guam, Hawaii, Nevada, Alaska, Idaho, Oregon, Washington, should submit Attestations to:

Regional Certifying Officer
U.S. Department of Labor/ETA
1111 Third Avenue
Suite 900
Seattle, Washington 98101-3212

A copy of this attestation, along with any explanatory statements and visa petitions, will be available for public inspection at the ETA National Office in Room N-4456, 200 Constitution Avenue, NW, Washington, D.C. 20210. The facility must submit a copy of an H-1A visa petition to the ETA national office at the same time that it is submitted to INS. The facility must also forward to the ETA national office a copy of the INS visa petition approval notice within 5 days after it is received. The address is:

Chief, Division of Foreign Labor Certifications
U.S. Employment Service
Employment and Training Administration
U.S. Department of Labor
200 Constitution Avenue, N.W., Room N-4456
Washington, D.C. 20210

[FR Doc. 94-17 Filed 1-5-94; 8:45 am]
BILLING CODE 4510-10-C and 4510-27-C

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January 6, 1994

Part IV

Department of Labor

Employment and Training Administration

20 CFR Part 617

Trade Adjustment Assistance for Workers; Amendment of Regulations; Final Rule

DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 617

RIN: 1205–AA72

Trade Adjustment Assistance for Workers; Amendment of Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Final rule; request for comments.

SUMMARY: This document contains a final rule amending the regulations on trade adjustment assistance for workers which implement the 1988 Amendments to the Trade Act of 1974 as contained in the Omnibus Trade and Competitiveness Act of 1988. This action will update the regulations and will provide uniform instructions to State agencies in carrying-out their responsibilities under the Trade Act. These State agencies act as agents of the United States for the purpose of providing adjustment assistance benefits and services to adversely affected workers. Comments are requested on the several material changes being made in this final rule, which differ from the September 1988 proposed rule, and on a number of other changes which were not included in the proposed rule.

DATES: Effective date: February 7, 1994.

Comment date: Comments on the material changes, from the proposed rule to this final regulation, are invited and must be received in the Department on or before February 22, 1994.

ADDRESSES: Written comments on the changes in the regulations, on which comments are invited, may be mailed or delivered to the Office of Trade Adjustment Assistance, Employment and Training Administration, 200 Constitution Avenue NW., room C–4318, Washington, DC 20210.

All comments received will be available for public inspection during normal business hours in Room C–4318 at the above address.

FOR FURTHER INFORMATION CONTACT: Marvin M. Fooks, Director, Office of Trade Adjustment Assistance, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: (202) 219–5555 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

In General

The Trade Act of 1974 made major changes to the trade adjustment assistance program (hereafter "TAA program") for workers displaced because of increased imports of articles like or directly competitive with articles produced by the workers' firm. On receiving a petition for trade adjustment assistance (hereafter "TAA") from a group of workers or its authorized representative, the Department conducts a factfinding investigation in response to the petition. If the findings substantiate that the workers of a firm or subdivision of a firm have been adversely affected by import competition, a certification is issued stating that the workers are eligible to apply at a local office of a State employment security agency for TAA benefits.

The 1981 Amendments to the Trade Act of 1974 (Title XXV of Pub. L. 97–35) made extensive changes in the TAA program. Further changes were made in the 1984 Amendments (Sections 2671 and 2672, of Pub. L. 98–369) and in the 1986 Amendments (Part 1 of Subtitle A of Title XIII of Pub. L. 99–272). Final regulations implementing the 1986 Amendments were published in the **Federal Register** on August 24, 1988, at 53 FR 32344, and on May 23, 1989, at 54 FR 22277.

The 1988 Amendments to the TAA program are contained in Part 3, Trade Adjustment Assistance, of subtitle D of title I of the "Omnibus Trade and Competitiveness Act of 1988" (Pub. L. 100–418) (hereafter the "OTCA"). The 1988 Amendments expand eligibility for TAA to workers in the oil and natural gas industry engaged in exploration and drilling; require detailed information about TAA program benefits to be given to every individual who files an initial claim for unemployment benefits, and further require an individualized notice to every worker believed to be covered by a certification issued by the Department; require publication of a notice of the certification in a newspaper of general circulation; require a worker to participate in training as a condition for receiving basic trade readjustment allowances (hereafter "TRA"); authorize the waiver of the training requirement for a worker when training is not feasible or appropriate; authorize the payment of basic and additional TRA to a worker during breaks in training that do not exceed 14 days; reinstate the movable eligibility period for basic TRA, based on the worker's most recent qualifying (total) separation rather than the first qualifying separation as was previously required; extend the expiration date of the TAA program to September 30, 1993; emphasize coordination with programs and services to dislocated workers provided under title III of the Job Training Partnership Act; and make other changes.

While most of the provisions of Part 3 affecting the TAA program are in the form of amendments to Chapter 2 of Title II of the Trade Act of 1974, some provisions of Part 3 affecting workers do not amend existing law. Examples are the provision which permits workers in the oil and natural gas industry engaged in exploration or drilling, separated after September 30, 1985, to file petitions under new eligibility rules, and the provision concerning the eligibility of workers totally separated from adversely affected employment during the period beginning August 13, 1981, and ending April 7, 1986. The provisions of the 1988 Amendments became effective, in general, on August 23, 1988, except that the amendments to sections 231(a)(5), (b) and (c) took effect on November 21, 1988, and the amendment to Section 225 took effect on September 22, 1988.

Because many of the 1988 Amendments were effective on the date of their enactment into law, August 23, 1988, most notably the new "movable" eligibility period for basic TRA, the Department issued interim Operating Instructions in General Administration Letter (hereafter "GAL") No. 7–88, dated September 12, 1988, which was published in the **Federal Register** on September 16, 1988, at 53 FR 36180–36213, together with Training and Employment Information Notice (hereafter "TEIN") 6–88. GAL 7–68 and the two changes thereto were subsequently rescinded and replaced by GAL 15–90, dated August 21, 1990. These GALs disseminated controlling guidance to the States on the administration of the TAA program as amended by the OTCA, pending the issuance of final amendments to the regulations. GAL 15–90 was published in the **Federal Register** on November 21, 1990, at 55 FR 48774–48800, together with TEIN 13–90.

Following the issuance of GAL 7–88, amendments to the regulations at 20 CFR part 617, implementing the 1988 Amendments, were proposed in a document published in the **Federal Register** on November 30, 1988, at 53 FR 48474, with a comment period ending on December 30, 1988. Preparation of a final rule document, addressing the comments received, began after the end of the comment period. The need for other changes in the regulations was identified in light of the comments received, further reflection on the 1988 Amendments, and experience with the interim Operating Instructions. The most significant changes, resulting in the issuance of GAL 15–90 and in delaying the publication of this final rule document, were the changes in the interpretations of subsections (a) and (g) of Section 1430 of the OTCA, relating to the new "movable" eligibility period for basic TRA. This significant change, and other related changes, were announced in GAL 15–90.

This final rule therefore includes substantive changes in the amendments to part 617 that were included in the proposed rule published on November 30, 1988. The most significant of these changes are the new interpretations of the effective dates of the 1988 Amendments relating to the "movable" eligibility period for basic trade readjustment allowances (§§ 617.3 and 617.11(a) (1) and (2)). This document also includes substantive changes to Part 617 that were not included in the published proposed rule, including substantive changes that were announced in Changes 2 and 3 to GAL 15–90, relating to a complete revision of § 617.26 and a change in § 617.22(a). Many of these substantive changes resulted from a consideration of comments received on the proposed rule. Nonetheless, in the interests of keeping its rulemaking processes as open as possible, the Department is inviting public comments on these changes. Further changes are made in §§ 617.3, 617.11(a), 617.15(b) and (d), 617.16, 617.19(b), 617.21, 617.22(f), 617.33, 617.44, 617.50(d), 617.55, 617.60 and 617.64, which are related to the revision of § 617.26 or for other reasons as explained below. Conforming changes are also made in § 617.67.

The effective date of all of the substantive changes in the statute and the regulations that are announced in any GAL (or change thereto) is the same as the effective date of the amendment(s) to which the GAL pertains, but any substantive change in GAL operating instructions applies, unless stated otherwise, in the case of all decisions made after the date of issuance of the GAL (or change thereto) by the Department. However, all of the substantive changes noted below in items A through R are subject to an opportunity for comment after publication of this final rule. After the end of the comment period, and consideration of any comments received, another final rule document will be published relating to these substantive changes.

Substantive changes in the interpretations of the 1988 Amendments which are addressed below relate primarily to the effective date and application of the new eligibility period for basic TRA, but also relate to other provisions of the OTCA, the Trade Act of 1974 and section 106(a) of Public Law 102–318 which amends section 231(a)(2) of the Trade Act, as discussed below.

The Department's new interpretations center on the effective date provisions of subsections (a) and (g) of Section 1430 of the OTCA. These new interpretations are discussed in detail in paragraph A, below.

Good Cause Exception

The Department has determined, pursuant to 5 U.S.C. 553 (b)(B), that good cause exists for publication in final of the substantive changes in this document, because all of such changes are essential to the proper administration of the TAA program by the States, and such changes either relieve a restriction, and have been previously announced in controlling operating instructions issued to the States, or relate primarily to procedural relationships between and among the States. In addition, because of the delays encountered in issuing this final rule, any further delay in putting these substantive changes into effect would be impractical and contrary to the public interest. As explained above, comments are invited and will be considered, after which a final rule will be published. In the meantime, public implementation of these substantive changes as final regulations will not be delayed further.

In the following text, therefore, substantive changes, on which comments are requested, are addressed first. These changes are followed by a discussion of the comments received on the proposed rule published on November 30, 1988.

Substantive Changes from November 30, 1988 Proposed Rule

The substantive changes noted under this heading are either changes in the amendments to part 617, as published on November 30, 1988, or changes in other sections of Part 617 that were not included in the proposed rule. These substantive changes also include conforming changes in the transition provisions of § 617.67.

Comments are requested on all of these substantive changes, after which a final rule document on such changes will be published.

A. New Eligibility Period for Basic TRA

Section 1425 (a) of the OTCA amended section 233(a)(2) of the Trade Act of 1974 to reinstate the "movable" eligibility period for basic TRA. Section 1430(a) of the OTCA made this amendment effective on the date of enactment, August 23, 1988, and section 1430(g) of the OTCA provided that amended section 233(a)(2) would not be applied in certain circumstances if it would result in an earlier expiration date of a worker's eligibility period established on the basis of the prior law.

In the proposed rule published on November 30, 1988 (53 FR 48474) (as well as in Section 4.F.1. of GAL 7–88), Section 1430(a) was interpreted as making this amendment applicable to any total qualifying separation which occurred on or after August 23, 1988. The limitation in section 1430 (g) was interpreted as applying with respect to any such total qualifying separation if it would result in an earlier expiration date of the eligibility period of a worker based on the prior law and a first qualifying separation which occurred before August 23, 1988.

In GAL 15–90, issued on August 21, 1990, the Department announced that, in conjunction with the development of final regulations implementing the 1988 Amendments, the Department determined that the previously published interpretations of the effective date provisions in the proposed rule published on November 30, 1988, were in error. The same erroneous interpretations were contained in GAL 7–88, and this fact necessitated the issuance of revised operating instructions in GAL 15–90, which was published in the **Federal Register** on November 21, 1990, at 55 FR 48774.

Subsection (a) of section 1430 of the OTCA provides that: "Except as otherwise provided by this section, the amendments made by this part shall take effect on the date of enactment of this Act." Subsection (a) thus applied to, among others, the amendment to section 233(a)(2) of the Trade Act of 1974, which prescribes the eligibility period for basic TRA. In the proposed rule and in GAL 7–88, the amendment to section 233(a)(2) was interpreted as being applicable to separations which occurred on or after the date of enactment of the OTCA, August 23, 1988.

In the new interpretations announced in GAL 15–90, section 1430(a) was interpreted as applying to all decisions (i.e., all determinations, redeterminations, and decisions on appeals) made on and after August 23, 1988.

The Department concluded, and announced in GAL 15–90, that amended section 233(a)(2) should be applied to all decisions rendered on or after August 23, 1988, regardless of whether they involved initial determinations of TRA eligibility, redeterminations, or decisions on appeal.

The Department also stated in GAL 15–90 that the new interpretation of section 1430(a) is supported by the analysis and construction placed on subsection (g) of section 1430, and by the general principle of law known as the law-in-effect rule. Under the law-in-effect rule, the law to be applied in making any decision is the law in effect at the time the decision is made. In GAL 15–90, this law-in-effect rule was determined to be applicable to the new interpretations and the 1988 Amendments.

Subsection (g) of section 1430 provides that the amendment to section 233(a)(2) "shall not apply with respect to any total separation of a worker * * * that occurs before the date of enactment of this Act if the application of such amendment with respect to such total separation would reduce the period for which such worker would (but for such amendment) be allowed to receive" basic TRA. In the proposed rule and in GAL 7–88, section 1430(g) was interpreted as limiting the application of amended section 233(a)(2) to total separations which occurred on or after August 23, 1988, where the result otherwise achieved would be an earlier expiration date of the eligibility period of a worker established on the basis of the prior law and a first qualifying separation which occurred before August 23, 1988.

In the new interpretations announced in GAL 15–90, section 1430(g) was interpreted literally as applying only to total separations that occurred before August 23, 1988, and the limitation in section 1430(g) thus applies only to such prior separations.

A consequence of this new interpretation of section 1430(g) is that, if the application of amended section 233(a)(2) to a total separation prior to August 23, 1988, would result in extending the worker's eligibility period, the amended section 233(a)(2) shall be applied. Conversely, amended section 233(a)(2) shall be applied to total separations which occur on and after August 23, 1988, regardless of whether it would result in an earlier expiration date of the worker's eligibility period based upon a first qualifying separation which occurred before August 23, 1988.

Section 1430(g) is not applicable, however, to a "first qualifying separation" which occurs before August 23, 1988. It is on the basis of such a first qualifying separation that a worker would have a longer eligibility period "but for" the amendment to section 233(a)(2). To preserve a longer eligibility period, and thereby give effect to the limitation in section 1430(g), therefore, such limitation could not logically be made applicable to such a first qualifying separation.

A more extensive explanation and justification for the new interpretations affecting amended section 233(a)(2) was set forth in GAL 15–90, and in Attachment A and Section F.1. of GAL 15–90. That explanation and justification was published in the Federal Register, at 55 FR 48774, 48778, 48782, and 48789 (November 21, 1990).

The new interpretations require substantive changes in the final rule, particularly in the definitions of "eligibility period" and the various types of "separation" defined in §§ 617.3(m) and 617.3(t), as well as in the transition provisions in § 617.67. Other conforming changes are made throughout the document, including the deletion of clause (D) in § 617.11(a)(2)(iii).

B. Other Applications of New Interpretations

The new interpretation of section 1430(a) and the law-in-effect rule also affect other amendments to which section 1430(a) applies. These include—

- OTCA Section 1421(a)(1)(B)—§ 617.11(a)(4) *Special rules for oil and gas workers—retroactive.* (Section A.2. of Attachment A to GAL 15–90);
- Trade Act Section 233(b)—§ 617.15 (Section E.4. of Attachment A to GAL 15–90);
- OTCA Section 1425(b)—§ 617.11(a)(3) *Special rules for workers separated in 1981 to 1986 period.* (Section F.2. of Attachment A to GAL 15–90).

A more extensive explanation and justification for the application of the new interpretations to these provisions was set forth in GAL 15–90 and Attachment A thereto.

The Department also has decided that the 1988 Amendments relating to sections 231(a)(5), 231(b), and 231(c) of the Trade Act, which, under section 1430(f) of the OTCA, took effect 90 days after the date of enactment (i.e., on November 21, 1988), are not affected by the new interpretation of section 1430(a). Although the effective date language of section 1430(f) is the same as the effective date language of section 1430(a), the Department has determined that the application of the new interpretation to these provisions would cause manifest injustice to affected workers and also would appear to be contrary to the intent of the Congress and the logic of the 90-day delay in the effective date of these amendments. This is more fully explained in GAL 15–90 and Attachment A.

C. Changes to § 617.11(a)(2)(iii)(B) (1) and (2)

Section 106(a) of Public Law 102–318 amended section 231(a)(2) of the Trade Act of 1974 by adding a new paragraph (D) to the categories which are considered a week of adversely affected employment at wages of $30 or more a week in order to qualify for TRA. The new subparagraph (D) provides that any week a worker is on call-up for active duty in a reserve status in the armed forces, provided such active duty is "Federal service" as defined in 5 U.S.C. 8521(a)(1), shall constitute a week in meeting the TRA qualifying requirements of section 231(a)(2) of the Trade Act of 1974. Section 106(a) also clarifies that not more than 26 weeks described in subparagraphs (B) or (D) of section 231(a)(2) of the Trade Act may be used for TRA qualifying purposes.

This means that all of the required employment and wages necessary to qualify for TRA may be attained during a reservist's call-up to active duty. This amendment only affects the TRA qualifying requirement in section 231(a)(2); all other TRA qualifying requirements in section 231 are unchanged. Therefore, State agencies must also determine if a reservist meets the remaining TRA qualifying requirements contained in section 231 of the Trade Act before awarding TRA entitlement to the reservist.

In determining the worker's qualifying weeks at wages of $30 or more a week for TRA qualifying purposes, the amendment to section 231(a)(2) of the Trade Act applies to weeks beginning after August 1, 1990. The effective date of this amendment results in a retroactive application to TRA claims filed (or which would have been filed) by reservists who took part in Operations Desert Storm and Desert Shield. This means that State agencies must redetermine the TRA initial claims of all reservists called-up for active duty whose claims were denied solely because they did not meet the requirements of section 231(a)(2) of the Trade Act as in effect prior to the enactment of this amendment. State agencies must also take TRA initial claims of reservists who did not previously file a TRA initial claim because they did not meet the requirements of section 231(a)(2) as in effect prior to the enactment of this amendment.

Operating instructions issued to State agencies in GAL No. 10–92, *Operating Instructions to section 231(a)(2) of the Trade Act of 1974 Contained in H.R. 5260,* dated July 6, 1992, explained the changes to section 231(a)(2) of the Trade Act and instructed State agencies and cooperating agencies to take the appropriate actions to identify and inform reservists of their rights to redetermination or the opportunity to file TRA initial claims. Actions by State agencies include a search of claimant files and publication of information on this new provision in newspapers of general circulation and other appropriate media.

Accordingly, a new clause (*iv*) is added to § 617.11(a)(2)(iii)(B)(*1*) and clause (*iii*) in § 617.11(a)(2)(iii)(B)(*2*) is changed to implement these amendments to section 231 (a)(2) of the Trade Act.

D. Change to § 617.11(a)(3)(i)(E)

Section 1425(b) of OTCA provides eligibility for TRA to certain workers who were continuously unemployed since separation from adversely affected employment during the period from August 13, 1981 to April 7, 1986, not taking into account seasonal employment, odd jobs, or part-time, temporary employment. This provision opened up eligibility to workers who could not qualify for additional weeks of TRA because they did not meet the 210-day time limit for filing for training and to workers who did not receive all of their TRA entitlement because their eligibility period was based on their first rather than their most recent separation. In the proposed rule, general guidance was provided to State agencies on "continuously unemployed" but State agencies were allowed to apply the provisions using their expertise in determining eligibility relating to employment. However, the Department decided that it was essential to provide State agencies with guiding instructions for implementing section 1425(b)(2)(A)(ii) of the OTCA so that the Department, rather than States, defines the limits of the Federal liability. Accordingly, definitions to be used in applying the terms "seasonal employment", "odd jobs" and "part-time, temporary employment" are added in a new clause (*2*) in § 617.11(a)(3)(*i*)(E). Because precise definitions were not available for each of these terms, definitions were developed for purposes of this final rule from various sources and other program applications. The seasonal provision of applicable State law is used in applying the "seasonal employment" provision. A definition for "odd jobs" was developed in which the established period of employment occurs within 5 days or less. The definition for "part-time" is taken from the ETA Glossary of Program Terms and Definitions (ETA Handbook No. 373), which provides for less than 30 hours per week of regularly scheduled work. However, that definition has to be applied along with "temporary employment." The definition for "temporary employment" is based on ETA reporting requirements for the public employment service in which an established employment period of 150 days or less is used.

E. Change to § 617.15(b)

Amendments to § 617.15 were included in the proposed rule published for comment on November 30, 1988. A further change in § 617.15 was considered as a result of the reinstatement of the movable eligibility period for basic TRA. This change was to base the 210-day period for filing an application for training, in order to qualify for up to 26 weeks of additional TRA, on the worker's most recent partial or total separation from employment under the certification, rather than within 210 days after the date of the first qualifying separation. This change reinstates the rule that was applicable prior to the 1981 Amendments, when the eligibility period was movable, and was adopted with the issuance of Change 2 to GAL 7–88, dated May 22, 1989. In view of the new interpretation of section 1430(a), and the law-in-effect rule, a further change was made in the interpretation and application of the 210-day rule, which was announced in GAL 15–90. The new interpretation applies to all decisions (i.e., determinations, redeterminations, and decisions on appeals) which are made after the date of issuance of GAL 15–90, on August 21, 1990. (See GAL 15–90 and section E.4 of Attachment A). These changes are incorporated in § 617.15(b) of this final rule.

F. Change to § 617.15(d)

The proposed rule was published for comment on November 30, 1988. At that time, the Department had concluded that days "in which training would not normally be scheduled" should not be counted as part of a scheduled break in training. Initially, the Department limited the exclusion to Saturdays and Sundays, if training in the applicable training program would not normally be conducted on those days. In GAL 7–88, and Change 1 to GAL 7–88, the Department interpreted section 233(f) of the Trade Act as excluding certain weekend days and holidays in counting the days of a break in training. GAL 7–88 and Change 1 were unclear, however, whether the exclusion of holidays included both National and State holidays. On further consideration, the Department agreed that all officially recognized National and State holidays should be excluded in counting the days of a break in training, to the extent that training in the applicable training program would not normally be scheduled on those days if they did not occur during the break. This change was adopted with the issuance of GAL 15–90 and is applicable to all decisions (i.e., all determinations, redeterminations, and decisions on appeals) which are made on or after August 23, 1988, regardless of when the training was approved under section 236 of the Trade Act, or whether the training was approved or is approvable under section 236 as amended by the 1988 Amendments, or when the break in training began or ended. In making decisions under § 617.15(d), the law to be applied is the law as in effect on the date the decision is made, and this rule has applied since the issuance of GAL 15–90 on August 21, 1990. Decisions previously made under prior operating instructions are subject to redetermination in accordance with State law, as set forth in section 4.b. of GAL 15–90.

In order to clarify what constitutes a "break in training" for purposes of section 233(f), a new clause (2) is added to § 617.15(d) defining a break in training as including all periods within or between courses, terms, quarters, semesters and academic years, whether or not such breaks are scheduled by the training provider.

Clauses (2) through (5) of § 617.15(d) are renumbered (3) through (6).

G. Revision of § 617.16

Section 234 of the Trade Act of 1974 specifies the State law provisions that shall be applicable to claimants for TRA purposes, and § 617.16 distills the provisions of section 234 in a definition of "applicable State law." Section 617.16 is now being revised for two essential reasons. The first reason is to include in the definition the situation of the worker who is not entitled to UI after separation from adversely affected employment, as is provided for in Section 234. This had not seemed relevant after the 1981 Amendments, because of the addition in section 231(a)(3) of the eligibility requirement that the worker must be entitled to and have exhausted all UI. The 1988 Amendments, however, have prompted rethinking of the roles and responsibilities of the States in the administration of the TAA program, and particularly of the role of the "applicable State" (i.e., the State whose law is the applicable State law) in the case of TAA program benefits other than TRA. Accordingly, the definition of "applicable State law" is broadened so that it is a useful reference point for all

TAA program benefits. While providing a useful reference point, there is no intent in revising § 617.16 to suggest that an individual who is not entitled to UI after a qualifying separation from adversely affected employment may be entitled to TRA.

The second reason for revising § 617.16 is to conform § 617.16 to the revision of § 617.26, relating to the roles and responsibilities of the States as liable States and agent States in the administration of the TAA program. As discussed below, § 617.26 is revised to incorporate the Department's thinking as set out in Change 2 to GAL 15–90. In this connection, consideration was given to including in § 617.16 the definition of "applicable State" which is set forth in Change 2. Upon further consideration, however, it was decided that the definition of "applicable State law" furnished the most useful reference point for all purposes of the TAA program, and that a special definition of "applicable State" is neither necessary nor useful.

Accordingly, § 617.16 is revised to track more closely Section 234, and to serve as a useful reference point for all of the purposes of the TAA program. The section also is modified to make it clear that the UI entitlement referred to is that which immediately follows a qualifying separation from adversely affected employment, and not UI entitlement in some past period, however recent or remote it may have been.

H. Revision of § 617.19(b)(1)(i)(B) and (b)(2)(ii)(A)

Clause (A) of § 617.19(b)(2)(ii) explains that training is not appropriate when the firm from which the individual was separated plans to recall the individual within the "reasonably foreseeable future". Also, § 617.19(b)(1)(i)(B) defines "appropriate" as including whether there is a reasonable prospect which is reasonably foreseeable that the individual will be reemployed by the separating firm. These provisions are consistent with § 617.22(a)(1)(ii) on conditions for approval of training when there is reasonable prospect of suitable work within the foreseeable future. (See item 43 below.)

While it is reasonable to deny training under § 617.22 (a) to a worker who is scheduled for recall, there is an identified need to provide additional guidance in the regulations on the application of the term "recall that will occur in the reasonably foreseeable future", for purposes of administering §§ 617.19(b)(1)(i)(B) and (b)(2)(ii)(A). These regulations are consistent with the Administration's position to tighten waivers. Publication of these regulations will improve efficiency in utilizing waivers. This moves the current TAA program in to closer alignment with the Transitional Adjustment Assistance provisions of NAFTA. Therefore, this section is being amended by adding a new clause (2) to §§ 617.19(b)(2)(ii)(A), for use in approving training and granting waivers. Clause (2) provides guidance on two types of planned recalls. The first type is a specific recall where an individual or group of individuals who was separated from employment is identified and notified by the employer to return to work within a specified time period. In this situation an individual would not be approved for training and a waiver of the training requirement would be granted for purposes of receiving basic TRA.

The second type is a general recall where the employer announces an intention to recall an individual or group of individuals, or by other action reasonably signals an intent to recall, but does not specify a certain time period in which the recall will occur. In this situation, if the recall in each individual case is reasonably expected to occur after the individual would exhaust his or her eligibility for regular UI associated with the most recent total separation that is within the TAA certification period, the individual would be treated as any other individual who was separated from adversely affected employment and the participation in training requirement would be applied.

I. Revision of § 617.21

Section 617.21 describes the activities that are included as reemployment services and allowances. Paragraph (e) of this section is revised to add child care as a support service. This revision is made to eliminate any uncertainty that child care is a support service and that the costs for such service may not be charged as a related cost of training and paid with TAA program funds. See also the Department's response to item 47 below.

Paragraph (g) of this section is also revised to reflect the 1988 Amendment to section 236 of the Act which added remedial education as being approvable as classroom training. Training designed to enhance the employability of individuals by upgrading basic skills, through remedial education or English-as-second-language courses, are considered as remedial education approvable under § 617.22(a) if all the approval criteria in that section are met. A training program of remedial education only may now be approved for an individual if he or she possesses occupational skills and needs only remedial education to obtain employment. Ordinarily, remedial education is made part of a broader skills training program as defined in § 617.22(f) (3).

J. Revision of § 617.22(a)(5)

Section 617.22(a) lists six criteria that must be met for approval of training. These are intended to assure that training will lead to a specific occupational goal. Clause (5) of § 617.22(a) deals with a worker's personal qualifications to undertake and complete such training. The Department's interpretation of this clause has been changed to add "financial resources" to those personal qualifications, and this change is included in amended § 617.22(a)(5).

Change 3 to GAL 15–90, dated July 17, 1991, (56 FR 46331, 46333), announced a change in the definition of the criterion for approval of training in Section 236(a)(1) (E) of the Act, by adding "financial resources" to the existing physical and mental qualifications which must be reviewed in making a determination that a worker is able to undertake and complete training, as set out for criterion (E) in Section G.1. of Attachment A to GAL 15–90 and incorporated in this final rule. This change was made to enhance the worker's ability to complete training by stressing that the duration of approved training should be commensurate with the worker's financial resources.

Training may be approved for a duration not to exceed 104 weeks under a single certification, as limited in amended § 617.22(f)(2). However, combined UI and TRA entitlement is available to workers for a maximum of 78 weeks. When the duration of training exceeds the remaining weeks of UI and TRA payments, a worker's income support may end or be substantially reduced before completing the approved training program. This situation often results in workers dropping out of training.

The amended § 617.22(a)(5) will require State agency staff to explain to workers seeking approval of training in which the duration of training exceeds their remaining weeks of UI and TRA payments, that in the absence of other financial resources such training may not be appropriate. When the worker's financial resources are not commensurate with a training program suitable to the worker, the training requirement may be waived under § 617.19(b)(2)(ii)(B).

K. Revision of § 617.22(f)

An individual who satisfies the six criteria for approval of training in § 617.22(a) may be enrolled in a training program that does not exceed 104 weeks in length. (See § 617.22(f)(2).) Inquiries were received on whether an individual may pursue more than one training program under a single certification or whether training under a certification is limited by the 104-weeks time provision. To eliminate any uncertainty on this matter, clause (2) on length of training has been revised to state more clearly that the maximum duration for any approvable training program is 104 weeks and no individual shall be entitled to more than one training program under a single certification.

For purposes of part 617, a new clause (3) is added to § 617.22(f), which provides a definition for a "training program". Subclause (i) of clause (3) provides that a training program may consist of a single course or a group of courses designed and approved by the State agency for an individual to meet a specific occupational goal. Subclause (ii) of clause (3) authorizes State agencies to amend an individual's approved training program, when the duration of training is less than 104 weeks, to add a course or courses designed to satisfy unforeseen needs, such as the need for remedial education or specific occupational skills. However, the amended training program may not exceed the 104-week time limitation in clause (2).

Clause (4), previously clause (3), is amended to clarify that the hours in a day and the days in a week an individual attends an approved training program must be full time commensurate with the standards of the training facility. The purpose of this amendment is to ensure that hours of training per week and length of the training program are scheduled in a manner that the individual will develop the skills needed to achieve a specific occupational goal in a reasonable time period and at a reasonable cost. Any week in which training is less than full time will still count as a full week for the purposes of the 104-week limitation.

L. Revision of § 617.26

Section 617.26, entitled "Approval of other training including interstate," was not among the sections of regulations proposed to be amended in the proposed rule published on November 30, 1988. However, rethinking occasioned by the 1988 Amendments led to the conclusion that there is a need to clarify, and in some respects alter, the roles and responsibilities of liable States and agent States in the administration of the TAA program. Among the OTCA amendments that caused such rethinking were those making training an entitlement and an eligibility requirement for basic TRA, and the provisions of amended section 231(c) on training waivers. In addition, comments received on related sections of the proposed regulations were considered in reaching this conclusion. The redescription of liable State and agent State roles and responsibilities was announced in Change 2 to GAL 15–90, which was published at 56 FR 46331, 46332.

The present § 617.26, written in 1975, provides that the agent State shall be responsible for the selection and approval of training, and will pay any training related costs, and that the liable State is responsible for determining eligibility for TRA, job search and relocation allowances, and may approve and purchase training provided that certain conditions are met. Although the respective roles of the liable and agent States were spelled out, the section was silent on the legal relationships and the appellate authority in the case of determinations made by the agent State. In addition, there were some overlapping responsibilities relative to training approval and payment of training costs. The regulations as revised in this document address these issues and, in general, deal more comprehensively with the roles and responsibilities of liable and agent States in administering the TAA program. Accordingly, § 617.26 is retitled "Liable and agent State responsibilities" and the roles of liable and agent States are delineated.

After examining State practices, as affected by the OTCA amendments, the Department has concluded that, as a general rule, the agent State should continue to be responsible for procuring and paying for TAA approved training and related costs, including subsistence and transportation, as appropriate. In addition, the agent State shall assist the liable State in fulfilling its responsibilities for making determinations of entitlement to all TAA program benefits. These changes are reflected in revised § 617.26.

Another significant change in § 617.26 is in making the liable State responsible for all determinations, redeterminations, and decisions on appeals pertaining to any worker's eligibility for or entitlement to any TAA program benefit under Part 617. This includes determinations relating to training approval, disapproval, waivers and revocation of waivers for training, and training related costs including subsistence and transportation. This requirement will preclude due process objections which could be raised if workers were required to appeal some issues under the agent State law and other issues under the liable State law. Responsibility for selection and approval of training no longer resides in the agent State, as is provided in the present rule.

However, a liable State and an agent State may jointly agree to modify this rule with respect to their TAA administrative functions, but any such change must comply with the legal requirement that all determinations will be under the authority of the liable State, and all appeals by individuals will be under the law of the liable State. Further, prior approval for any such modification must be obtained under § 617.54. (See also §§ 617.33 and 617.44, below.)

Additionally, in those situations where two or more States share a common labor market area and workers commute across State lines for work, those States may wish to develop cooperative arrangements, consistent with revised § 617.26, and approved under § 617.54, to provide TAA services to adversely affected workers in the area.

The definition of "liable State" at § 617.3(aa) is also revised to conform with changes in §§ 617.16, 617.26, 617.33 and 617.44, and a definition is added for "agent State". (The term "applicable State," which is defined and used in Change 2 to GAL 15–90, is not used in this final rule. It was decided that the terms "liable State" and "agent State," and the definition of "applicable State law" in § 617.16 were adequate to cover the rules associated with interstate responsibilities without adding a further definition of "applicable State.")

As revised in this final rule, § 617.26 comprehensively addresses the roles and responsibilities of liable States and agent States in interstate cases; clarifies the legal and appellate relationships among the States, and assures due process for workers and conformance with section 239(d) of the Act. With this revision, and other changes in the rules, there is consistency among the regulations in addressing State responsibilities: § 617.16 covers applicable State law; § 617.20 addresses State responsibilities for the delivery of reemployment services, in general; § 617.33 addresses findings required before final payment of a job search allowance is made by the liable State; § 617.44 addresses findings required before final payment of a relocation allowance is made by the liable State;

and §§ 617.50 and 617.51 speak to determinations of entitlement, and appeals and hearings under the applicable State law, respectively.

A conforming change is made in § 617.50(a) by striking the clause ", or the State agency as provided in § 617.26(d),".

M. Revision of § 617.33

Section 617.33 prescribes the findings required before final payment of a job search allowance is made to an eligible worker by the liable State. It describes the responsibilities of liable and agent States in regard to those findings. This section is revised to delineate more clearly the responsibilities of liable and agent States for determinations (and appeal rights) regarding job search allowances.

N. Revision of § 617.44

Section 617.44 prescribes the findings required before final payment of a relocation allowance is made to an eligible worker by the liable State. It describes the responsibilities of liable and agent States in regard to those findings. This section is revised to delineate more clearly the responsibilities of liable and agent States for determinations (and appeal rights) regarding relocation allowances.

O. Revision of § 617.50(d)

Section 617.50(d) contains the rules on the use of State law and regulations in making and reviewing determinations and redeterminations under part 617. Questions have arisen in at least two States whether the 210-day time limit in § 617.15(b) (and section 233(b) of the Act) may be waived for good cause, or whether State law provisions on good cause for late filing of UI claims may be applied. The Department has consistently taken the position that such good cause provisions may not be applied, in view of the lack of authority for doing so in any provision of the Act or the regulations. Nevertheless, State authorities in one State have ruled a number of times that there can be good cause for late filing. And more recently, in a matter arising in another State, the Sixth Circuit Court of Appeals issued a decision adverse to the position of the Department. Because the Department believes that conclusions inconsistent with its longstanding position do not comport with the Act, it has decided to address the issue in a broad manner and state as clearly as possible in the regulations the precise situations in which State laws may be applicable in addressing issues arising under the regulations.

The Sixth Circuit's decision started with the proposition that the Trade Act of 1974 was passed by the Congress "during a mood of congressional largesse," and that the 210-day rule in section 233(b) of the Act "was not intended to act as a jurisdictional prerequisite to additional TRA benefits." From this premise it reasoned that "the purpose of the rule is to discourage dilatory" conduct by applicants, and that absent a finding of dilatory conduct "the application of the 210-day rule does nothing to further the Act's remedial purpose and everything to frustrate it". Citing another holding in the District of Columbia Circuit, the Sixth Circuit held that the Department's "interpretation makes sense only if there was a congressional policy in favor of limiting TRA benefits." The Sixth Circuit concluded that: "That court found no evidence of such a policy. Nor do we." From this line of reasoning the Sixth Circuit held that the State's "waiver for good cause rule [is applicable] in this context".

The Department believes the Sixth Circuit erred in relying upon the "mood of congressional largesse" in passing the 1974 Act, without taking into account the critical redirection in the 1981 amendments away from TRA and towards greater emphasis upon training (including changing the 233(b) rule from 180 days to 210 days), and the direct linkage in the 1988 Amendments of training and eligibility for basic TRA (as well as additional TRA). In this context, there is a sound reason for upholding the "jurisdictional" nature of the 210-day rule, and less reason for reaching out to State law for a good cause exception, as distinguished from fashioning an exception from the language of Section 233(b). For these reasons, the Department believes the Sixth Circuit's decision was incorrect. The Department is therefore moving to clarify the regulations to make its interpretation of the Act clearer.

In considering where in the regulations the clarification of the Department's position should be made, the Department took into account the fact that there are other time limits expressed in the regulations, such as in §§ 617.10(b), 617.31(c), 617.41(c), and 617.43(b). Since all such time limits may be vulnerable to the same deviations that occurred with respect to the 210-day time limit, it was decided that a general rule was needed that is applicable to all of part 617. The placement of this general rule thus fell logically in paragraph (d) of § 617.50.

Accordingly, paragraph (d) of § 617.50 is amended to add the general rule that no provision of State law or regulations as to good cause for waiver of any time limit or for late filing of any claim shall apply in the case of any time limitation stated in part 617, unless such State law or regulation is made applicable by a specific provision of part 617. This change eliminates any uncertainty about the Department's position, and places a clear obligation on the States to adhere to the time limitations in all of part 617.

P. Revision of § 617.55

Section 243 of the Act, on Fraud and Recovery of Overpayments, is interpreted as being drawn in broad terms so as to impose liability for repayment of all improper payments under the Act, and to impose penalties for all false statements or representations resulting in improper payments. Subsection (a) imposes repayment liability upon any "person" receiving an improper payment, whereas subsections (b) and (c) use the term "individual" in the fraud and recovery provisions. In § 617.55, in contrast, the term "individual" is used throughout the liability, fraud, and waiver provisions of the regulations.

Recent experience in the administration of the TAA program has highlighted the difference between "person" and "individual" as such terms are commonly understood in other areas of law. The term "person" is more comprehensive, and may include an employer or other entity or organization as well as an individual, whereas the term "individual" as used throughout part 617 typically means the individual workers who are the beneficiaries of the program. The question that arose was whether § 617.55(a) was sufficiently broad in wording to impose repayment liability upon an employer who had received improper payments for the on-the-job training. In examining this issue it became apparent that the same issue existed with respect to payments for training of individuals that are made directly to training providers. Although the payments in both cases may be said to be made on behalf of the individual workers, it is evident that, in many cases (particularly in the case of on-the-job training), liability for repayment as well as responsibility for fraud is more properly assignable primarily to the employer and possibly the training provider.

To clarify the regulations, and to reflect the broad interpretation given to section 243 of the Act, § 617.55 is revised throughout to make it specifically applicable to any person or individual, and paragraph (i) is added to define person as any employer or other entity or organization as well as the officers and officials thereof who may bear individual responsibility.

Q. Revision of § 617.60

A new § 617.60, on Administrative requirements, was included in the proposed rule published on November 30, 1988, for comment. Although no comments were received, the substance of several of the provisions are affected by other administrative regulations. Since further work is required to bring the TAA administrative requirements into full conformity with those other regulations, the decision was made to reserve § 617.60 for use when the revised TAA administrative requirements are completed and published.

R. Revision of § 617.64

In the 1986 Amendments to the Trade Act, section 285 was amended by, among other things, adding a subsection (b), to provide that "no assistance, allowance, or other payments may be provided under chapter 2 * * * after September 30, 1991." This new subsection (b) superseded the current provisions in § 617.64, which were consistent with the amendments made by section 2512 of the Omnibus Budget Reconciliation Act of 1981. Section 1426(a) of the OTCA extended the termination of the program to September 30, 1993. While the 1986 and 1988 amendments to the TAA program changed the termination dates to September 30, 1991 and 1993, respectively, appropriate changes were not made to § 617.64 concerning the payment of TAA program benefits after the termination date in the Act. Therefore, § 617.64 is amended to bring it into accord with the amended language in section 285 of the Act.

A strict construction of the law, prohibiting the actual payment of TAA program benefits to individuals after the termination date in the Act, would have a profound effect on those persons who completed approved TAA program services, but, because of State processing requirements, payment for such services cannot be made by the State agency until after the termination date in the Act. This strict construction would unnecessarily make the orderly termination of the program impossible. It would deny payment of benefits to individuals for the period prior to the termination date of the program simply because it was administratively infeasible to make the payment before the termination date. Therefore, in order to avoid these untoward results stemming from a strict construction, a more liberal construction of section 285(b) is necessary to effectuate the Congressional intent. A "payment," within the meaning of section 285(b), will be deemed to have been made before the termination date of the program, if a final determination on the amount payable to, or on behalf of, the individual for TAA program services was made on or before the termination date of the program, for which payment was due.

This means that State agency approved job search and relocation, and training related transportation and subsistence, must be completed on or before the termination date in the Act and that the State make a final determination on the amount of TAA program funds payable to the individual on or before such termination date. This places the requirement on the State agency to inform all individuals presently approved for such benefits of the statutory time provision that the service must be completed and a final determination on the amount payable made on or before the termination date of the program. It also places a requirement on individuals to complete the approved services and to submit all claims for such activities to the State agency in time to receive a final determination on the amount payable on or before the termination date.

Individuals approved for training who began approved training on or before the termination date in the Act must have a final determination by the State agency on or before the termination date on the amount due and payable for the training costs to cover previously incurred tuition and related expenses. Determinations on tuition shall be limited to the current training term, quarter, semester, or other scheduled period, and be in accord with normal billing practices of the training provider and payment practices of the State agency. In order to conform with the intent of the law, the State agency may make a final determination on the amount payable only for the training term, quarter, semester or other time period for which payment is due and payable on or before the termination date of the program.

Individuals entering training, and those currently in training programs which extend beyond the termination date of the program, should be informed that no payments will be authorized or made for any costs or expenses which become due and payable after the termination date of the program, nor will any such costs or expenses be paid prior to the expiration date of the program.

Moreover, only the last full TRA benefit week, for which a final determination has been made according to normal State UI processing procedures on or before the termination date of the program, will be paid to any individual.

When a claim for TRA is submitted to the State agency subsequent to the termination date in the Act, or for which a final determination on the amount payable has not been made on or prior to the termination date of the program, the State agency is required to issue a "no-payment" determination on the claim because the State may not refuse to take and process the claim even though it is prohibited by statute from paying the claim. These provisions apply also to claims for job search allowances under § 617.33 and for relocation allowances under § 617.44.

Discussion of Comments and Changes

In response to the proposed rule, the Department received written comments from two State Governors, fourteen State employment security agencies, three labor unions, and one public interest group.

1. *Eligibility period.* The Pennsylvania Department of Labor and Industry (PDLI) recommended that clause (i) of § 617.3(m)(1) (defining "eligibility period" for basic TRA) be amended by removing the word "first" after the word "individual" in the seventh line, and by removing all language after the parenthetical clause "(as defined in paragraph (oo)(1) of this section)." The PDLI stated that these deletions are necessary for the regulation to conform to the eligibility requirement of Section 233(a)(2) prior to its amendment by the OTCA. The International Union, United Automobile, Aerospace and Agricultural Implement Workers of America (UAW) commented that the proposed rule incorrectly ties the eligibility period for basic TRA to the date on which the first qualifying separation occurs, and the reference to eligibility period, therefore, should be omitted.

Department's response. The Department believes that these comments reflect an incorrect view of the 1981 Amendments and the effect of the 1988 Amendments in the OTCA. The Department construes the 1981 Amendments as setting the beginning of the eligibility period as the week immediately following the week in which regular benefits are exhausted following the worker's first qualifying separation. This is explicitly provided for in section 233(a)(2), as amended in 1981, and is set forth in the Department's regulations implementing the 1981 Amendments. The only change in this provision of the law was the extension of the eligibility period from 52 weeks to 104 weeks in the 1986

Amendments. No change was made in the fixed eligibility period until the 1988 Amendments, which restored the movable eligibility period based on the most recent qualifying total separation. Therefore, in § 617.3(m)(1), the fixed eligibility period is retained for first qualifying separations that occurred before August 23, 1988. The new movable eligibility period is also implemented, in accordance with the 1988 Amendments, for decisions made on or after August 23, 1988, for other qualifying total separations which occurred before, on, or after August 23, 1988.

Section 1430(g) of the OTCA provides for the retention of the pre-OTCA eligibility period which was established by the first qualifying separation occurring before August 23, 1988, even if the decision is made on or after August 23, 1988. Amended section 233(a)(2) may not be applied in a decision made on or after August 23, 1988, in the case of a more recent total separation occurring before August 23, 1988, if the effect of applying such amended section would result in an earlier expiration date of the eligibility period established on the basis of an earlier first qualifying separation.

It is essential to retain the definition of eligibility period for the application of prior law with respect to first qualifying separations which occurred before August 23, 1988, while adding a definition of the new eligibility period for qualifying separations to which amended section 233(a)(2) is applicable. If, however, the adversely affected worker is totally separated on or after August 23, 1988, following a first qualifying separation which occurred prior to August 23, 1988, amended section 233(a)(2) must be applied even though it results in an earlier expiration date of the eligibility period established under pre-OTCA law.

Therefore, no substantive change is made in paragraph (m)(1)(i) of § 617.3, but as noted below substantive changes are made in paragraphs (m) and (t) as a result of the new interpretations of sections 1430 (a) and (g) of the OTCA, and to correct technical errors.

2. *Applicotion of new eligibility period.* The UAW commented that in § 617.3(m)(1) the Department set up two standards for the 104-week eligibility period during which TRA is payable. The UAW argues that the proposed two standards differ according to whether the date of separation occurred before or after August 23, 1988. The UAW commented that Congress explicitly provided in section 1430(g) of the OTCA that the revised definition of the 104-week eligibility period in section 1425(a) (amending section 233(a)(2)) was effective upon enactment unless the application of the amended eligibility period would reduce the period for which a worker would have been eligible for TRA. Therefore, the two standards should not turn on the date of the worker's separation, but on whether or not the worker's period of eligibility is reduced through the application of the amended eligibility period. The UAW commented further that Congress intended the amendment to be fully effective upon enactment, permitting the amendment to increase the eligibility period for basic TRA or establish a TRA eligibility period for some workers, and noted that the Conference agreement statements in House Conference Report 100–576 on sections 1425 and 1430 of the OTCA strongly support this application of the amendments. The UAW also commented that under OTCA sections 1425(a) and 1430(g) the most recent total separation which is qualifying must be used to determine the eligibility period, unless the eligibility period would be shortened through the application of the amendment to workers separated prior to enactment.

The PDLI, commenting on the transition guidelines in § 617.67(e)(3), noted that section 1430(g), in specifically referring to total separations prior to the enactment of the OTCA, raised the unavoidable implication that amended section 233(a)(2) shall be applied to total separations prior to August 23, 1988, if such application would provide the worker with a longer or later eligibility period than the worker would have had under the pre-OTCA law. The Unemployment Council of Southwestern Pennsylvania made the same point in its comments.

Department's response. The Department agrees with the commenters' understanding that the amendment to the basic TRA eligibility period is not to operate to the disadvantage of workers whose eligibility period would expire at a later date with respect to a qualifying separation which occurred before the date of enactment of the amendment to section 233(a)(2). These comments were also a factor in the Department's reconsideration of GAL 7–88 and the resulting new interpretations of sections 1430(a) and 1430(g) announced in GAL 15–90 (see discussion in item A. above).

If workers are to retain the advantage of a later expiration date for the eligibility period based on the prior law, then the prior law must continue to be applied to first qualifying separations which occur before the date of enactment of the OTCA (August 23, 1988).

Accordingly, in general the comments have merit, and substantial changes are made in the final regulations regarding the definition of "eligibility period" in § 617.3(m)(1) and the definitions of "separations" in § 617.3(t). Furthermore, the transition provisions at § 617.67(e) also have been revised to reflect the Department's new interpretations of sections 1430(a) and 1430(g). For further clarification, a proviso directly implementing section 1430(g) of the OTCA is added to § 617.3(m)(1).

3. *Retroactive approval.* The PDLI stated that § 617.3(m)(2)(iii) does not clearly point out why weeks of training prior to approval cannot be paid. The PDLI asked "What if the trainee, for example, was in JTPA funded training that would be, after approval, either paid for by TAA or continued under JTPA?"

Department's response. This comment suggests a misunderstanding of the TAA program and the effects of the 1988 Amendments and earlier changes. Since the addition of section 236(a)(3) (now 236(a)(4)) in the 1986 Amendments, the switching of training costs from other funds to TAA funds has to be subject to the controls set out in that section. In the 1988 Amendments those controls were retained, and authority was added to mix TAA funding with funding from other public and private sources and to use funding solely from other sources for TAA training. That is why, in GAL 15–90 (and earlier in GAL 7–88) and in amended § 617.25, greater emphasis is given to entering into prearrangements for sharing the costs of training with other funding sources. With training becoming an eligibility requirement for basic TRA in the 1988 Amendments, the same emphasis upon prospective treatment must now be given to basic TRA as has been given to additional TRA and, to a somewhat lesser extent, TAA funds for training. Additional TRA has not been paid for retroactive weeks, nor, under § 617.22(c), have previously incurred training costs been payable from TAA funds. This same rule must now be applied to basic TRA, as well as additional TRA and TAA training funds, and it is this rule that is reflected in amended § 617.3(m)(2)(iii) as well as in amended § 617.22(c). Under the 1988 Amendments, therefore, TAA funding will not follow automatically from approval of training under § 617.22(a), nor will approval of training that commenced before approval under § 617.22(a) imply or justify payment of previously incurred training costs from TAA funds, or payment of any TRA for any week that ended before such approval was documented.

For the foregoing reasons, no substantive change is made in the final regulations to accord with PDLI's comment. Changes are made in § 617.3(m)(2)(iii), as well as in § 617.22(c), however, for purposes of stating the prospective rule as clearly as possible and to furnish a regulatory response to the PDLI's multi-faceted question.

4. *Retroactive payments.* The Ohio Bureau of Employment Services (OBES) commented that § 617.3(m)(2)(iii) specifies that the eligibility period, during which additional weeks of TRA are payable to a worker in approved training, if such training is approved after the training commences, begins with the first week such training is approved. Approval of such training after the training has commenced shall not be deemed to authorize the payment of TRA for any week which ended before such approval was documented. The OBES explained that, at the present time, many individuals are enrolled in training programs which were not TAA approvable prior to the 1988 Amendments because the costs of training were paid with non-appropriated funds. While these individuals are being made aware of the change in the law that now authorizes the use of non-appropriated funds to pay the costs of training, there are unavoidable delays in documenting sources of training funds and approving the training under part 617. These delays result in lost worker eligibility for weeks of additional TRA. OBES recommends that the final rule provide for retroactive payment of the additional weeks of TRA in such cases, at least to the date of application for approval of such training. Sections 617.22(c) and 617.67(f) would also need to be modified for this purpose.

Department's response. The OBES presented the problem as one that existed at the time the letter was written; that is, when the OBES's comments were made in December 1988. Although the Department understands that such a problem may have existed in late August and in September 1988, the operating instructions in GAL 7–88 were issued to State agencies some three months before the OBES comments were made. Accordingly, the Department has decided not to relax its long-standing rule against retroactive payments expressed in § 617.22(c). See discussion under the preceding item. It was not expected that the new authorization for sharing costs of training would furnish a viable solution to all existing cases. One of the safeguards built into the new system was to require that sharing of costs be under conditions arranged before the training was approved under § 617.22 and undertaken by the worker. There is no intent to approve the payment of additional TRA for weeks a worker is not actually participating in training nor to approve retroactive payments that are not allowable under § 617.22 (c). The expectation is that cooperating agencies will enter into shared cost prearrangements for training not funded wholly from TAA funds.

Therefore, the Department has decided to make no change in the regulations in response to this comment, but notes under item 3 that clarifying technical changes are being made in §§ 617.3(m)(2)(iii) and 617.22(c).

5. *Qualifying separations.* The Missouri Department of Labor and Industrial Relations (MDLIR) commented on paragraphs (t)(1), (t)(2)(ii) and (t)(3)(ii) of § 617.3 in the proposed rule, which define "first separation", "qualifying separation", and "first qualifying separation". Since a worker must have a total separation on or after August 23, 1988 to qualify for TRA, the MDLIR asked why the definition of "partial separation" should not be eliminated if it takes a total separation to establish eligibility for TRA?

Department's response. The Department retained the definition of "partial separation" because the qualifying requirements in section 231(a)(1) and (2) continue to permit workers to have a total or partial separation from employment to qualify for TRA prior to August 23, 1988, and for TAA services other than TRA whether a separation occurs before or after August 23, 1988. The amended law does not require that a worker have a total qualifying separation on or after August 23, 1988, in order to qualify for basic or additional TRA for weeks beginning after August 23, 1988. Workers will continue to be eligible for basic and additional TRA after August 23, 1988, based on a partial or total qualifying separation that occurred before August 23 under the prior law. Although the amended law requires that a qualifying separation must be a total separation to qualify initially for basic TRA (or to move the eligibility period based on a prior qualifying separation under the same certification), a partial qualifying separation will be used for purposes other than the basic TRA eligibility period. For example, under § 617.15(b) an application for training must be filed within 210 days after the date of the worker's total or partial separation referred to in Section 231(a)(1). (See item E. above, and item 25, below, concerning changes to § 617.15(b) on the application of the 210-day rule.) Further, the weekly and maximum amounts of TRA payable to an individual are based on the first total or partial separation. However, with respect to qualifying separations to which amended section 233(a)(2) applies, a worker's eligibility period for basic TRA is based on total separations only.

In considering this comment, however, an error was discovered in paragraph (t)(3) of § 617.3, which did not give proper effect to a partial separation on or after August 23, 1988. Therefore, in addition to other changes as discussed above, paragraph (t)(3) is amended in this final rule to accord with the above response to this comment. For the same reason a parallel change is made in § 617.67(e)(4).

6. *TRA weekly and maximum.* In commenting on the application of amended section 233(a)(2) to the most recent total qualifying separation, in determining the eligibility period of a worker, the UAW argued that this contrasts with the determination of weekly and maximum amounts of TRA, which does require the use of "first qualifying separation." The proper use of "first qualifying separation" is restricted to the determination of the weekly and maximum amounts of TRA.

Department's response. The Department agrees that determinations of TRA weekly benefit amounts and maximum benefit amounts, under sections 232(a) and 233(a)(1), will continue to be based on the first total or partial separation, and that this was not changed by the 1988 Amendments. What this means is that monetary determinations of TRA entitlement may have to be based upon two separations which occurred in different years. For example, for a period of up to three years or more after August 23, 1988 (the impact date to termination date of a certification plus the time between petition and certification dates can be a period of up to or in excess of three years), it is possible that a worker will have had a first qualifying separation before August 23, 1988, and computations under sections 232(a) and 233(a)(1) will be based upon UI entitlement in the first benefit period following such first separation, whereas the worker's most recent total qualifying separation will be used to determine the basic TRA eligibility period. This is simply illustrative, however, because in all cases decided on or after August 23, 1988, the eligibility period under amended section 233(a)(2) will be based upon the most recent "total qualifying

separation," whereas computations of weekly and maximum TRA amounts under sections 232(a) and 233(a)(1) will continue to be based on the first separation with respect to which the worker is entitled to UI, whether such separation occurred before or after August 23, 1988. This is an additional reason why, for any worker who is determined to have had a "total qualifying separation," it will be necessary to establish whether the worker had an earlier first separation under the same certification.

The definition of "first qualifying separation" in paragraph (t)(3) of § 617.3 incorrectly relates determinations of weekly and maximum TRA amounts only to first qualifying separations with respect to which the worker also qualifies for TRA. This is corrected in the final regulations, and other technical corrections are made to distinguish between "first separation" and the meaning of "first qualifying separation" for its two purposes; that is, (a) eligibility period for TRA, and (b) computation of weekly and maximum TRA amounts.

7. *Partial separations.* The Indiana Department of Employment and Training Services (IDETS) commented that, based on its understanding of § 617.3(t)(3)(ii) of the proposed rule, and sections 233(a)(1) and 231(a)(3)(A) of the Act, there appears to be a conflict over whether a partial separation after August 23, 1988, may be used to determine benefit amounts.

Department's response. The IDETS is correct in noting this error in paragraph (t)(3) of § 617.3. See the discussion under the preceding two items. The first separation under a single certification, with respect to which the worker is entitled to UI, must be used to determine the worker's weekly and maximum amounts of basic TRA, whether such first separation occurs before or after August 23, 1988. As noted in the preceding two items, § 617.3(t) is modified to clarify this and other points.

8. *Advice to workers.* The Vermont Department of Employment and Training (VDET) commented on § 617.4 concerning what constitutes proper advice and assistance to workers. The VDET stated that the requirement to inform each worker applying for unemployment insurance "of the procedures and deadlines for applying for such benefits" taken literally includes a large number of applicants who are applying for short term UI benefits and who in no way are likely to be eligible for benefits under the TAA program. The VDET argues that while it is important that the State agency take the initiative to inform workers who may be eligible for the benefits, the current language is too rigid, and will only cause confusion among short term unemployed. The Vermont agency recommended that the requirement be rephrased to require States to develop the means to identify trade eligible workers who apply for UI and then provide the necessary information to those workers.

Department's response. The Department agrees that State agencies should identify potential trade eligible workers as early as possible in their benefit period. However, section 239(f) of the Act provides, among other things, that each worker who applies for unemployment insurance shall be advised of the benefits under the TAA provisions of the Trade Act and the procedures and deadlines to apply for such benefits. There is no language which would support the limitation suggested by the VDET. Often temporary layoffs by a firm adversely affected by import competition or other economic conditions become permanent. The intent of Congress is to ensure that such workers are made aware early in their unemployment experience of the TAA program, how to apply for benefits, and the services available to them. Many State UI agencies furnish an information bulletin or brochure to every worker who files a claim for UI. These bulletins or brochures should include full and correct information on the amended TAA program, and on the benefits and services available to unemployed workers. The Department is encouraging all State agencies to publish a brochure for handout to workers filing initial claims for UI. State agencies should revise their previously used brochures to accurately reflect all the changes made in this final rule, and furnish a copy to each worker who files an initial claim for UI as required by section 239(f) since August 23, 1988.

While no change is made in the final regulations regarding the requirement of advising all UI claimants of the TAA program, § 617.4(e) is modified by eliminating the unnumbered paragraph at the end of this section and by adding the provisions of that paragraph in clause (2).

9. *Notice to workers.* The Michigan Employment Security Commission (MESC) explained that § 617.4(d)(1)(ii)(A) states that notices to workers must include information as to the article(s) produced. The MESC commented that unless the article(s) produced is part of the certification statement, e.g. "all workers producing shock absorbers," referring to it will often confuse rather than clarify worker coverage. For example, if the certification covers "all workers of XYZ Company," to state in the worker notice that the company "produces shock absorbers," will confuse workers of the XYZ Company who may have produced brakes. Unless a specific article is identified in the published certification document, it should not be required information in the notice to workers.

Department's response. The Department concurs with the comment. The articles produced are to be specified in a notice to the workers only when there is a specific reference in the published certification document to an article or articles. When all workers in the firm are covered by the certification it is not necessary to identify the article(s) produced. The regulation is modified at § 617.4(d)(1)(ii)(A) to reflect this change, and the same change is made in § 617.4(d)(2)(ii)(A) regarding newspaper notices.

10. *Identifying workers.* The New York Department of Labor (NYDL) commented that § 617.4(d)(1) expands the intent of the Trade Act by specifying the sources that the State agency should utilize in identifying adversely affected workers. The NYDL stated that it is inappropriate to specify such sources in a regulation and suggested that the Department adhere to the language of the Act. It also suggested the following substitute language: "The state agency shall provide written notice, through the mail, of benefits available under this chapter to each worker whom the State agency has reason to believe is covered by a certification made under subchapter A of this chapter. The notice must include the following information: * * *."

Department's response. The proposed rule merely refers to any other reliable sources of information other than the workers' firm. When a firm closes, information from the firm's records may be difficult to obtain. In this case, as well as others, the State agency should obtain the best information available to it. This level of specificity seems appropriate for the regulations. Similarly, in implementing the provision on the scope of the notice to be given, the Department has concluded that amended Section 225 requires that all workers who can be identified shall receive such notice. Therefore, no change is made in the final regulations.

11. *Newspaper notices.* The OBES commented that § 617.4(d)(2) requires State agencies to publish a notice of each certification issued in its State in a newspaper of general circulation in the areas in which the affected workers reside. OBES further commented that it is not uncommon that prior to the State agency being informed of a certification by the Department of Labor all affected workers have already learned of the certification and have reported to the State agency to file for TAA benefits. Therefore, OBES recommended that the final rule provide for a waiver of the public notice requirement when it can be verified by the State agency that all the affected workers have filed for TAA benefits. The OBES also recommended that the funding source for such newspaper notices be identified formally. The California Employment Development Department (CEDD) provided similar comments on § 617.4(d)(2). CEDD pointed out that there is no useful purpose in placing an expensive newspaper ad when all affected workers are notified by letter, or when the ad will very likely not be seen by any of the former workers.

Department's response. The Department agrees that a newspaper notice is not needed in some situations because all the workers are identified by the State agency and notified by mail. This situation occurs frequently when the certified worker group is small. Therefore, the Department is amending the final rule at § 617.4(d)(2) to authorize State agencies to dispense with the newspaper notice when it can be *substantiated* and is *documented* in the agency's records that all adversely affected workers covered by a certification have been identified and have been sent written notice by mail as required by § 617.4(d)(1)(i).

12. *Notices of waivers.* The UAW, commenting on § 617.4(e), stated that workers should be provided with a notice of their right to seek a waiver of the training requirement and the procedure for doing so.

Department's response. The Department believes that the regulations as proposed establish the right of workers to waivers of the training requirement in appropriate cases, and provide for appeal and review of determinations on such waivers. State agencies will initiate waivers where training is not feasible or appropriate. Information that waivers will be issued to workers when training is not appropriate or feasible must be furnished to the workers or be included in the bulletin or brochure furnished to each worker under paragraph (e)(1) of § 617.4. The Department does not believe that more specificity is required in paragraph (e)(1). Therefore, no change is made in the final regulations.

13. *Information to workers.* The CEDD, commenting on § 617.4(e), stated that there is some confusion between this section and § 617.67(c)(2). The CEDD commented that it is not clear whether TAA information must be provided to every individual who applies for unemployment insurance, as stated in § 617.67(c)(2), or just to those certified as adversely affected as implied by use of the word "worker" in § 617.4(e). The CEDD recommended, if States are to provide TAA information to all individuals filing for UI, this requirement should be clearly identified in the final rule.

Department's response. The Department does not believe that the regulations are ambiguous on this issue. The 1988 Amendments to section 239(f) state that every worker filing for UI is to be informed of the TAA program and the benefits available, even though the worker may not qualify for TAA. The regulations at §§ 617.4(e)(1) and 617.67(c)(2) clearly state that each worker who applies for UI shall be advised of the benefits available under the TAA program and does not confine such advice to workers who have been identified as adversely affected by imports. Therefore, no change is made in the regulations.

14. *Advice to UI claimants.* The OBES commented that § 617.4(e)(1) requires State agencies to advise each worker who files for unemployment insurance of TAA benefits available and the deadlines for applying for such benefits. The OBES requested that the final rule replace the term "deadlines" with "time limits". The final rule should also establish the administrative funding mechanism for the substantial costs associated with implementing this requirement. CEDD also commented on a funding issue.

Department's response. The regulations at § 617.4(e)(1) track the language of section 239(f)(1) of the Trade Act, which provides that workers shall be informed of the "deadlines" for applying for TAA benefits. Matters of administrative funding are addressed in program letters and other issuances of the Department and will be addressed further in § 617.60 when it is published. (See explanation on the publication of § 617.60 in item Q. above.) No special funding category is contemplated for furnishing information and assistance to applicants and potential applicants. Therefore, no change is made in the final regulations.

15. *All UI claimants.* The CEDD, commenting on § 617.10(d), stated that this section contains a statement about providing "workers" with TAA information at the time the UI claim is filed. The CEDD argues that, if the rule means every individual who files a UI claim, States will have problems meeting this requirement because often a TAA certification has not been issued when the worker files an initial UI claim.

Department's response. The 1988 Amendments require the State agency to inform every worker filing an initial UI claim about the TAA program and the benefits available under it. There are no exceptions to this rule. One of the purposes of the amendment is to ensure that workers are informed of the program at that time so they can file a petition for TAA if they wish, whether or not a petition has been filed or a certification issued covering that worker or others. See § 617.4(e). The Department believes this requirement can be met easily by furnishing an information bulletin or brochure on the TAA program to every worker who files an initial UI claim. See discussion in item 8, above. Therefore, no change is made in the final regulations.

16. *Legal work requirement.* The UAW commented that the proposed rules at § 617.11(a)(1)(iii)(C) and (a)(2)(iii)(C) are not reflected in any provision of the Trade Act of 1974, as amended, nor in the 1988 Amendments. The UAW stated that the Department is trying to enforce the Immigration Reform and Control Act (IRCA) with this provision. The UAW argued that if Congress wished to enact such a provision it could have, but it did not do so. IRCA did not implicitly amend other federal laws. The Department should not amend the TAA program to enforce IRCA in the absence of statutory authority and therefore the referenced subparagraphs should be deleted entirely.

Department's response. The content of §§ 617.11(a)(1)(iii)(C) and (a)(2)(iii)(C) is not changed by reason of the 1988 Amendments. These sections of the regulations merely restate a requirement which has been in the TAA regulations since they were issued in 1975 in a different place within the regulations. No substantive change has been made in this regulatory requirement. These provisions do not implement the IRCA. Therefore, no change is made to the regulations.

17. *Certification period.* The NYDL recommended that paragraphs (B) and (C) of § 617.11(a)(1)(ii) and (a)(2)(ii) be combined to read as follows: "(B) Before the expiration of the two-year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification."

Department's response. The Department agrees that this change would clarify an ambiguity in the statutory language. Therefore, the regulations are changed along the lines suggested by the NYDL.

18. *Job search program.* The NYDL recommended that § 617.11(a)(1)(vii) on the job search program (JSP) be deleted from the regulations since retroactive TRA claims approved for weeks prior to November 21, 1988, will no longer require participation in a JSP. After November 21, 1988, individuals involved will not know about the requirement. The UAW made a similar comment on the JSP requirement. However, the UAW commented further that this proposed rule creates a likelihood that workers will not be informed by State agencies of the deletion of this requirement in the 1988 Amendments since the Department is "encouraging" States to continue the program.

Department's response. Various provisions of the 1988 Amendments became effective on different dates. The proposed rule was structured to address those statutory requirements that applied prior to, and apply on and after November 21, 1988. The JSP requirement was applicable through November 20, 1988. The training requirement became applicable on November 21, 1988. Therefore, it is essential to delineate the statutory requirements for each time period, and set them forth clearly in these regulations. Also, appeal actions may be pending on workers who were denied TRA eligibility because they failed to begin participation in or failed to complete a JSP. Some of these cases could eventually be resolved in the courts. The retention of the regulations on the JSP will continue to provide the basis for supporting determinations made by State agencies during the period the JSP requirement was applicable. In the proposed rule, a new paragraph was added to § 617.49, specifically providing that JSP is not a requirement for any week which begins after November 20, 1988, and this provision is included in the final regulations. In addition, the Department believes that a JSP is a very useful employability service for adversely affected workers and should be encouraged. Therefore, no change is made in the final regulations.

19. *Temporary work.* The OBES commented that § 617.11(a)(3)(iii) specifies that State agencies are to take into account local labor market characteristics in giving effect to the terms seasonal employment and part-time, temporary work. The OBES recommended that the final rule should provide a definition of temporary work to ensure uniformity among and between States.

Department's response. As noted in item D. above, the Department decided to add to the regulations definitions of the terms "seasonal employment", "odd jobs", and "part-time, temporary employment", to provide State agencies with guiding instructions for implementing section 1426(b)(2)(A)(ii) of the OTCA, so that the Department, rather than the States, defines the limits of Federal liability under § 617.11(a)(3) as under other aspects of the TAA program. The explanation for each of these definitions is noted in item D. In more specific response to the commenter, notice that the definitions go beyond simply defining temporary work separate and apart from "part-time, temporary employment" as used in the statute. To fit into this category, as is made clear in the amended regulation, such work must be both part-time and temporary.

20. *Enrolled in training.* The Governor of North Dakota and the Job Service of North Dakota, commenting on § 617.11(a)(2)(vii), point out that the definition for "enrolled into training" is when the worker has been accepted to an approved training program that will begin within 30 calendar days. Both recommended that the definition provide that a worker be considered as enrolled in training upon acceptance into an approved training program and scheduled to commence training on the next regularly scheduled program starting date. Rural States have a limited number of training facilities offering open entry and open exit options. Virtually all training programs offered by both public and private facilities have designated enrollment dates. The 30-day limitation would cause States to invoke the waiver provision unnecessarily.

Department's response. The Department included the 30-day provision in the definition for "Enrolled in training" to help reduce the number of waivers of the training requirement that would have to be issued by State administering agencies because approved training would not begin immediately. The Department recognizes that schedules for some training institutions may involve periods longer than 30 days for training to begin. In such situations, a waiver may and should be granted. States must search for training programs for individuals which will begin within 30 days, or as soon as possible thereafter. To allow fewer days in the definition for "Enrolled in training" would generate more waivers of the training requirement and increase administrative costs. The Department believes that extending this period in regulations would be difficult to justify. Under the statute, the objective of the training requirement is to get workers actively engaged in training as soon as possible, as a condition of entitlement to TRA. The 30-day requirement eliminates the need for a waiver where the training program is to begin within 30 days, but does not subject the worker to the EB work test while awaiting the start of training. Accordingly, no change is made in the final regulations.

21. *Apparent contradiction with EB work test.* The MDLIR commented that § 617.11(a)(2)(vi)(B) and (vii)(B) and (C), which refer to the EB work test and the training requirement, appear to be contradictory. The regulations state that the EB work test and the training requirement shall not apply to an individual with respect to a claim for TRA for weeks of unemployment prior to the filing of an initial claim for TRA, nor for any week which begins before the certification is issued and the individual is fully informed of the requirement. The MDLIR points out that the language of these paragraphs appears to permit retroactive payments of TRA.

Department's response. The Department does not agree with the commenter. The cited paragraphs of the regulations do not authorize retroactive payments of TRA. These paragraphs specifically provide that the requirements for eligibility in clauses (vi) and (vii) may not be applied retroactively, to workers otherwise eligible for basic TRA, because workers cannot comply retroactively with those requirements. This is a "due process" issue only. Therefore, no change is made in the regulations.

22. *Completed training.* The Unemployed Council of Southwestern Pennsylvania (UCSP), commenting on § 617.11(a)(2)(vii)(D)(*2*), stated that the requirement "the training occurred subsequent to the individual's total or partial separation" goes beyond Congressional intent. The UCSP argues that in amended Section 231(a)(5)(B) Congress allowed TRA payments to workers who have "* * * after the date on which the worker became totally separated, or partially separated, from adversely affected employment, completed a training program approved by the Secretary. * * *" The UAW also commented along the same lines.

Department's response. The Department agrees with the comments, and the regulations have been changed accordingly to delete the word "occurred" and insert in place thereof "was completed" in § 617.11(a)(2)(vii)(D)(*2*).

23. *Enrolled in training.* The Washington Employment Security Department (WESD), commenting on

§ 617.11(a)(2)(vii)(D)(*1*), recommended that the definition for "enrolled in training" be amended by adding after "within 30 calendar days" the words "or the next available time the training could begin at the training institution." The WESD explained that in the cases where training is not available within 30 days of approval that to subject the worker to the EB work test, which means a worker must accept any work the worker is physically capable of performing, would be to the detriment of the worker when training is approved and planned for in the foreseeable future.

Department's response. During the period the EB work test is applied under § 617.19(b)(3), when the training requirement is waived, the worker may find suitable employment which would eliminate the need for additional training. If the State agency determines the job is not suitable (as defined in § 617.22(a)(1)(ii)), and it is reasonable and necessary for the worker to quit work in order to enter training, as provided in § 617.18(b)(1)(iii), the individual may enter training when the training program begins. Also, see the Department's response in item 20, above. Therefore, no change is made in the final regulations.

24. *Certain waivers.* The PDLI commented that § 617.11(a)(3)(i)(C) appears to require that a worker must meet all the requirements applicable to eligibility for basic TRA in the preceding sections, including the wage and employment qualifying requirements, with respect to the total separation in § 617.11(a)(3)(i)(B), to qualify for the waiver of the basic TRA eligibility period and the 210-day filing requirement under Section 1425(b) of the OTCA. The PDLI commented further that the reference in Section 1425(b) is to total separations from adversely affected employment within the meaning of Section 247 of the Act. Section 247 defines both separation and adversely affected employment. The definitions do not include references to wage and employment qualifying requirements. Requiring workers to meet these additional conditions with respect to the total separation noted in section 1425(b) seems to be beyond the intent of the law. Further, to the extent previous Federal operating instructions (GAL 7–88) direct the wage requirements, including equivalent qualifying weeks, be met as provided under the law prior to the 1986 Amendments, the PDLI believes those instructions are incorrect and should be revised.

Department's response. The Department does not concur in these comments. Section 1425(b) does not remove the wage and employment qualifying requirements of the Trade Act. This section, by specific reference to sections 233(a)(2) and 233(b), only eliminates the time limit on the eligibility period for receiving basic TRA and the 210-day time limit for filing for training to qualify for additional weeks of TRA. No waiver of any of the other basic eligibility requirements is implied in removing these two time constraints. Therefore, no change is made in the regulations.

25. *210-day period.* The WESD, commenting on § 617.15(b)(2), argues that it would be a contradiction for the Department to retain the present 210-day requirement for requesting training in order to qualify for additional weeks of TRA rather than applying a movable eligibility period as used for TRA payments. The NJDL and the MESC also commented that the 210-day period should begin with the individual's most recent qualifying separation.

Department's response. The Department agrees with these comments, and § 617.15(b) is revised accordingly in the final rule. This change has already been implemented through Change 2 to GAL 7–88 and reiterated in GAL 15–90, both of which were also previously published as notices in the **Federal Register**. This change is effective for decisions made on or after August 23, 1988, when the movable eligibility period took effect. However, as this change was not included in the proposed rule, a 30-day comment period is provided in this final rule. (See the explanation above in item C.)

26. *Scheduled breaks in training.* The UAW, commenting on § 617.15(d)(1), pointed out that amended section 233(f) provides that a worker shall be treated as participating in training during a week which falls in a break of 14 days or less, if the worker was participating in training before the break and "the break is provided under such training program."

The UAW points out that the proposed rule adds the requirement that the break be "provided in the published schedule of the training program." While "publication" might ease administration, there are some individualized training programs which do not have published schedules. Therefore, the UAW recommended that "previously established" schedule as an alternative formulation which would permit workers in less academic settings to continue to receive TRA as Congress intended, but prevent nonparticipating workers from arguing they were merely "on break."

Department's response. The Department does not believe such a narrow reading need be given to the word "published," but has clarified the regulations by modifying § 617.15(d)(1) to add after the "published schedule" the words "or previously established schedule" and by adding that the break may be indicated in the training program approved for the individual. The intent is to ensure that "breaks" in training during which TRA payments may continue are not limited to regularly scheduled breaks established by the training provider before the program begins but also include all other periods of time elapsing between courses or phases of the approved training program. Therefore, the changes made in this final rule with respect to this matter go beyond the comments received, and, as explained in item F. above, a new clause (2) is added to § 617.15(d) to define a scheduled break in training as including scheduled breaks within or between courses, terms, quarters, semesters, and academic years, whether or not such breaks are scheduled by the training provider.

27. *Before and after break.* The PDLI commented that § 617.15(d)(1)(i) requires, in addition to other requirements, that the worker be participating in training immediately prior to the break and resume participation immediately after the break ends. The PDLI recommends that this provision might be stated better by changing the final regulation to participating in training for the week claimed prior to the beginning of the break and resuming participation for the week claimed at the end of the break.

Department's response. The Department believes the commenter's suggestion would introduce some ambiguity in the wording of the regulations. However, § 617.15(d)(1) is revised to reflect the change announced in GAL 15–90, and set forth in Section E.3., *Payments of TRA During Breaks in Training*, in Attachment A to GAL 15–90. Section 233(f) provides for the payment of basic and additional TRA "during any week which is part of a break in training" provided certain conditions are met. The conditions are spelled out in § 617.15(d)(1), clauses (i) through (iii). In addition, as a condition of TRA eligibility during the break, § 617.15(d)(*1*) is amended to restate the requirement that the worker shall be required to participate in training after the break ends. This will assure that the purpose of Section 233(f) is carried out. Section 617.15(d)(1) accordingly is modified by removing the "resume participation" condition from clause (i)

and restating it in clause (iii), with emphasis upon "immediate" resumption of participation.

28. *Break delay.* The ODHR, commenting on § 617.15(d)(1)(i), explains that by including the phrase "and resumes participation" as a condition for payment means that no payment for the break can be paid until the break is over and this is verified. The ODHR states that this contradicts the intent of the rule that "An individual will continue to receive basic and additional weeks of TRA during scheduled breaks in training" and would create problems if the break fell within the individual's scheduled reporting period. The NYDL provided similar comments on § 617.15(d)(1)(i).

Department's response. The Department agrees that it is not the intent of this regulation to delay TRA payments during scheduled breaks in training that do not exceed 14 days. However, if a worker fails to resume participation in the training immediately after the break ends, any payments made during the scheduled break shall be established as overpayments, subject to repayment under the provisions of § 617.55. Therefore, no change in the regulations is necessary to reflect this intent.

29. *Inconsistency.* The MESC, commenting on § 617.15(d)(2), stated that no basic TRA may be paid if the individual is on a scheduled training break of 15 days or more. The MESC stated that denial of TRA to a claimant during a break which exceeds 14 days, but less than 30 days, is inconsistent with the definition of "enrolled in training" in § 617.11(a)(2)(vii)(D)(*1*), which allows payment of TRA to a claimant who will enter training within 30 days. A claimant during a break in training of less than 30 days should be considered enrolled in training and eligible for basic TRA.

Department's response. The purpose of these two provisions is not similar, nor is there a basis in the statute for altering the specific 14-day provision of section 233(f). The 14-day break in training provision is a statutory requirement and not subject to change in regulations. On the 30-day provision, see the discussion in item 20 above. Therefore, no change is made in the final regulations.

30. *Holidays during breaks.* The West Virginia Department of Employment Security (WVDES) commented that, in counting days of breaks under § 617.15(d)(3), Saturdays and Sundays are not counted but holidays are counted. The WVDES recommends that for purposes of counting the days in a break, holidays not be counted along with Saturdays and Sundays. The MESC, NYDL and the Oregon Department of Human Resources (ODHR) provided similar comments.

Department's response. The Department agrees that recognized legal holidays should not be counted, and has already acknowledged this change in section E.3. of Attachment A to GAL 15–90 (also see page 3 of the GAL). Ordinarily, breaks in training are oriented to National and State holidays, and to periods within terms or semesters of the training institution. The one long holiday oriented break each year is the holiday beginning around the second or third week in December and ending after New Year's Day. Since these holidays are the reason for the break, the Department agrees that such holidays should not be included in counting the number of days of the break. The critical point is whether a particular day would ordinarily be a scheduled training day in the particular training program. Therefore, official State and National holidays are added to the days not counted in counting the days of a break, if training in the program concerned would not normally be scheduled on such days. (See the explanation in item F. above.)

31. *EB work test.* The MESC, commenting on § 617.17(b)(2), stated that this section indicates that on or after November 21, 1988, claimants in training which is State approved (but not TAA approved) must satisfy the EB work test. The MESC further states that before November 21, 1988, the EB work test was not applied to claimants in State approved training. The MESC argues that there should be no change in the exception to the EB work test on or after November 21, 1988. Section 231(a)(4) of the Trade Act, unchanged by the 1988 Amendments, requires that to be eligible for TRA, a worker would not be disqualified for EB due to the work test. An EB claimant in State approved training would not be disqualified.

Department's response. The commenter incorrectly reads section 231(a)(4) and the effect of the substantive amendment to section 231(a)(5), which was effective on November 21, 1988. Prior to November 21, 1988, for the purposes of basic TRA, participation in training approved under the State law or under § 617.22(a) was sufficient to make the able and available requirement, including the EB work test, inapplicable. The amendment to section 231(a)(5) makes training approved under section 236 an eligibility requirement for basic TRA, effective on November 21, 1988. After November 20, therefore, claimants for basic TRA may not satisfy the requirement of section 231(a)(5), or avoid the EB work test, by participating in training which is not approved under section 236. The Department's position was clearly set forth in section 4.C. of GAL 7–88, and was reiterated without change in section C. of Attachment A to GAL 15–90; it also is correctly stated in §§ 617.11(a)(2), (3), and (4) and 617.17(b) of the proposed rule and is retained in this final rule.

To give full effect to the 1988 Amendments, moreover, the EB work test must apply even after the TRA claimant has satisfied the requirement of Section 231(a)(5) by completing a training program approved under amended § 617.22(a), (see Section C. of Attachment A to GAL 15–90). Having completed such training, the individual should be job ready, and should be actively seeking work so as to return to employment as soon as possible. It is particularly appropriate in these circumstances, therefore, that the EB work test of section 231(a)(4) should apply in regard to any further claims for basic TRA. It would not accord with these purposes to permit the claimant to avoid the EB work test by engaging in any other training that is not approved under amended § 617.22(a). The Department has concluded, and the final regulations provide, therefore, that the EB work test must be met by every claimant for basic TRA, unless the claimant actually is enrolled in or participating in TAA approved training as specified in the Trade Act and in these final regulations. This requirement applies as well to claimants who have completed TAA approved training, with respect to any claim for basic TRA for any week beginning after completing the training program. For the foregoing reasons, no change is made in the final regulations.

(Note: section 202(b) of the Unemployment Compensation Amendments of 1992 added paragraph (7) to section 202(a) of the Federal-State Extended Unemployment Compensation Act of 1970, which suspends the eligibility and requalification requirements of paragraphs (3) and (4) of section 202(a) for the weeks beginning after March 6, 1993, until January 1, 1995. GAL No. 7–93, 58 F.R. 21477, makes this change applicable to the TAA Program and should be used for guidance with respect to this issue. This change is not incorporated into the final regulations because it is a temporary suspension.)

32. *Justifiable cause.* The American Federation of Labor and Congress of Industrial Organizations (AFL-CIO), commented on § 617.18(b)(2)(i), regarding an individual who "* * * fails to make satisfactory progress in training," and on § 617.18(b)(2)(ii)(C), *Justifiable cause*, including reasons related to the individual's capability to participate in or complete approved training. The AFL-CIO recommends that, since educational limitations are a common reason for failure to profit from job training, such individuals should be promptly evaluated as to the need for remedial education, as authorized under the 1988 Amendments.

Department's response. The Department agrees that training must be suitable for the worker. The fifth criterion in section 236(a)(1) requires a supported determination that a worker is qualified to undertake and complete the training being approved. See section G.1. of Attachment A to GAL 15–90 and section 4.G.1. of GAL 7–88, and § 617.22(a)(5). This provision emphasizes the worker's personal qualifications; that is, that the worker's own physical and mental capabilities and background and experience are appropriate to the training. It states further that the worker must be evaluated before approving training as being qualified to undertake the specific training program being considered and to complete that training program successfully. If the worker needs remedial education, this should be identified and included as a part of the approved training program. If, during the training program, the need for remedial education becomes apparent, appropriate arrangements should be made to accommodate those needs as part of the same training program. Therefore, while the Department agrees with the comment, no change is needed in the regulations to accomplish this intent. However, the worker's personal qualifications in § 617.22(a)(5) are amended by adding financial resources to the existing qualifications to undertake and complete the training being approved. Item J., above, explains the change and the Department's reasons for the change.

33. *Satisfactory progress in training.* The PDLI commented that several paragraphs in the proposed rule refer to "making satisfactory progress" in training. This language was amended in section 233(a) of the Trade Act effective on November 21, 1988, to "participating" in training, and section 236(c) was repealed. The PDLI recommends that unless these sections refer to the law prior to November 21, 1988, this language only serves to confuse and should be revised or deleted. The UCSP and UAW made similar comments on the requirement in the proposed rule that the worker must have "successfully" completed an approved training program to meet the training completion requirement of amended Section 231(a)(5).

Department's response. The Department has reconsidered these matters and agrees that the comments on "satisfactory progress" have merit. References to "satisfactory progress" have therefore been removed from §§ 617.11(a)(3)(i)(D), 617.15(b)(3), 617.18(b)(1)(ii) and (iii), and 617.18(b)(2)(i). The references to "successfully" completed and "satisfactory" completion of training are also removed from §§ 617.11(a)(2)(vii)(A)(*2*) and (D)(*2*). However, the conditions for "completed training" in § 617.11(a)(2)(vii)(D)(*2*) are retained. To meet the requirements of section 231(a)(5) of the Act, it is reasonable to expect an individual who completed a training program to have satisfied the standards or conditions for the training program and, therefore, to have "successfully" completed such training in order to be job ready. Further, in connection with making this correction in § 617.11(a)(3)(i)(D), the language is modified to make it clearer that an individual must actually be enrolled in or participating in approved training in each week that TRA is claimed, and that, while the break in training provisions of § 617.15(d) apply, the waiver of participation provisions of § 617.19 shall not be applicable under paragraph (a)(3).

34. *Waiver appeals.* The PDLI commented that § 617.19(a)(2) provides the minimum information that shall be contained on the waiver of training participation. (§ 617.19(c)(3) provides for equivalent information on the waiver revocation form.) These minimum information items do not include an appeal date, or instructions for appeal. However, § 617.19(c)(4) appears to state that waivers and waiver revocations shall be appealable. The PDLI suggests that the issuance of waivers and waiver revocations should not be appealable determinations; rather, these documents are prerequisites to determinations of entitlement to TRA payments, and these latter determinations should be appealable. The PDLI recommends further evaluation of this regulation.

Department's response. The 1975 regulations required that all determinations relating to TAA program benefits shall be subject to appeal and review, as specifically required by section 239(d) of the Trade Act of 1974. That requirement continues in effect and is correctly implemented in the regulations in providing that §§ 617.50 and 617.51 shall apply to all determinations regarding waivers, as well as any determination pertaining to any other TAA program benefit. Waivers have a direct relationship to basic TRA entitlement. The Department does not believe it would be appropriate to provide that an individual should be denied the right to appeal a determination issued by the State agency that training is not feasible or appropriate, or that written notice of such determinations (granting, denying, or revoking a waiver) should not include notice of appeal rights.

Consideration of the comments, however, reveals that there appears to be some lingering uncertainty about the scope of the waiver provision and the appeal rights of individual workers, and the reexamination of the language proposed for § 617.19 underscores the need for some clarification of the regulatory language so as to express the scope of the waiver provision more accurately and to declare unmistakably the appeal and review rights of individuals in regard to all determinations relating to waivers.

Paragraph (a)(1) of § 617.19 thus is revised to state more accurately the scope of the waiver provision, and to state explicitly that a waiver pertains solely to basic TRA and may never be made applicable to additional TRA. Paragraph (a)(2) is revised so as to be more explicit about the application of the waiver provision, and to provide that waiver determinations shall include all of the information required by § 617.50(e), which thereby requires inclusion of notice of appeal rights in any such determination. This is in addition to other information specified in paragraph (a)(2) that is required to be furnished in the determination.

Other important changes in paragraph (a) of § 617.19 are the addition of clauses (3) and (4). Clause (3) is added to make certain that denial of a waiver also is a determination to which all of the requirements for determinations apply. Clause (4) is a restatement of the provision proposed in paragraph (c)(4), and is moved in paragraph (a) and revised to make more explicit the application of §§ 617.50 and 617.51 to all determinations under paragraph (a) and to provide expressly that this means and includes notice of appeal rights.

Conforming changes are made in other paragraphs of § 617.19, most significantly including a combining of the provisions of clauses (3) and (4) of paragraph (c) into a revised clause (3), and deleting the proposed clause (4). This revision makes clear that waiver revocations are determinations to which §§ 617.50 and 617.51 apply, and that such determinations shall include all of the information required for determinations under paragraph (a), including notice of appeal rights.

35. *Waiver revocation.* The NYDL commented on § 617.19(a)(2)(iv), which mandates inclusion of the statement that the "waiver will be revoked at any time suitable training becomes available." This statement would be appropriate only for waivers issued because suitable training is not currently available; however, there are numerous situations in which training may become available and yet a revocation of waiver would not be appropriate. Accordingly, the NYDL recommended the following statement as more appropriate: "This waiver is subject to review at 30 day intervals." This would afford the states the needed latitude to assess the continuing validity of a waiver should training become available but remain inappropriate.

Department's response. The Department agrees that the qualifying wording is too narrowly focused, but does not agree on affording States the broad latitude suggested by the NYDL. Accordingly, § 617.19(a)(2)(iv) is revised by deleting the term "suitable training" and inserting in place thereof "appropriate and feasible training" as provided in amended section 231(c)(2) of the Act.

36. *Waiver reasons.* The UAW commented that § 617.19(b)(2)(i) as drafted should be of substantial assistance to State agencies in administering this provision. The UAW suggested that, for clarity, the Department repeat the criteria that "the worker is so situated as to be able to take full advantage of the training" at this point in the rule.

Department's response. The Department believes that § 617.19(b)(2) adequately covers the reasons for issuing a waiver when training is not feasible or appropriate. The UAW's point is covered under the criteria for approval of training. Therefore, no change is made in the regulations.

37. *Training limitation.* The Nebraska Department of Labor (NDL) commented that § 617.19(b)(2)(ii)(B) indicates that a course of training is not appropriate if the duration of training exceeds the individual's maximum entitlement to TRA payments. This would seem to limit appropriate training to a duration of 52 weeks when initial UI eligibility is 26 weeks. If this is the actual effect, it ignores the fact that an individual may enter training during the initial UI benefit period. When the individual enters training during the UI eligibility period, a training program of up to 78 weeks might be completed before exhausting TRA benefits. It seems further to preclude the possibility for an individual who enters training during the first 13 weeks of UI to be eligible for needs based payments under EDWAA during the portion of a training period which might extend beyond the end of TRA eligibility. If this section in fact has these effects, they may be unintended, and should perhaps be reconsidered.

Department's response. The TAA provisions of the Trade Act authorize the State to approve training for a worker for up to 104 weeks; however, the maximum combined duration of UI and TRA payments generally is 78 weeks. If a training program longer than the worker's remaining eligibility for UI and TRA payments is being considered, the State administering agency should ensure that the individual has the financial resources to complete the training program after TRA payments expire. If such an assurance cannot be made, a training program of shorter duration should be considered for approval. The Department therefore agrees that the regulation is too strictly worded, and § 617.19(b)(2)(ii)(B) is clarified in these final regulations. (See discussion in item J. above, on Revision of § 617.22(a)(5).)

38. *Reasons for waiver.* The VDET, commenting on § 617.19(b)(2)(ii)(C), concerning reasons for issuing a waiver, asked why, after 26 weeks of UI, a person with skills for suitable employment has not become reemployed already. Simply allowing a waiver to be granted at this point in a person's unemployment seems to be at odds with the intent of all of the recently enacted Federal retraining legislation, and may actually exacerbate a situation where the worker has not been receiving the proper services which would result in new employment. The VDET recognized that there may be some circumstances where it would be unfair to the worker not to receive a waiver based on this condition. However, the VDET recommended making this condition an extreme one, by not specifically identifying it as a reason to grant a waiver.

Department's response. The Department agrees that waivers should only be issued on a limited basis. As reflected in the VDET comment, however, there may be situations where such waivers are properly warranted. For example, when a firm agrees to employ a worker in the foreseeable future, no purpose would be served by having the worker enter training to learn other occupational skills. Therefore, the Department sees no need to make any change in the regulations.

39. *Every 30 days.* The PDLI recommended that the parenthetical phrase "(ie., every 30 days or less)" in § 617.19(c)(1) be deleted as an unnecessary guideline with which compliance could be impossible. The OBES presented similar comments that the final rule should reflect administrative and logistical realities by specifying such period for waiver review to be 60 days. Basic TRA payments should be made once a waiver has been issued until such time as the waiver is revoked, and not require documentation of such waiver reviews on an ongoing or routine basis. The CEDD also recommended that the frequency of waiver reviews be changed to 60 days. The MESC recommended that waivers be reviewed every 90 days, while the ODHR recommended that the State have more flexibility in the frequency for reviewing waivers. The NJDL recommended that States be given authority to establish procedures for reviewing appropriate waivers.

Department's response. A major objective of the 1988 Amendments is to enroll adversely affected workers in training programs to help facilitate their return to employment as quickly as possible. The Department believes that, when the training requirement is waived for an individual, proper program administration necessitates regular reviews of waivers issued by the State agencies. The frequency of such reviews at 30-day intervals is reasonable to carry out the provision requiring adversely affected workers to be enrolled in training for purposes of receiving TRA, particularly in light of the fact that TRA is a weekly benefit program and the 30-day rule only requires review approximately every four weeks. Section 231(c)(2)(B) provides that "If, after submitting to a worker a written statement * * * a State or State agency finds that it is feasible or appropriate to approve a training program for such worker pursuant to the requirements of section 236(a), the State or State agency shall submit to such worker * * * a written statement that revokes the certification * * *." To review waivers less frequently than every 30 days would not give the sense of urgency reflected in the law on placing adversely affected workers into training programs as soon as possible.

However, the comments highlight an omission in the regulations, in that, in individual cases, when circumstances change, the need to revoke a waiver may arise earlier than the next periodic review, and, accordingly, necessitate action to revoke the certification before the next review date. Therefore, § 617.19(c)(2) is amended to require revocation in individual cases at any time a change in circumstances occurs.

40. *Waiver determinations appealable.* The MESC, commenting on § 617.19(c)(4), stated that waiver actions should not be appealable determinations. If training is being denied, the denial and any appeal should come on the training determination, not on the waiver. Otherwise, duplicative appeals and confusion of issues will result. The waiver form should contain an explanatory statement, such as: "If you disagree with this waiver action, you have the right to appeal any denial of training or trade readjustment allowances (TRA) that results from this action."

Department's response. See discussion under item 34, above. A determination on the feasibility and appropriateness of training, and the reason(s) therefor, constitutes the critical determination on whether a worker is subject to the EB work test regarding claims for basic TRA. Equally important is the relevance of a waiver in some cases. For example, a waiver is not appropriate concerning entitlement to additional TRA, because additional TRA is payable only while the worker is actually participating in training, and, in that case, the EB work test is not applicable. Similarly, a waiver is not appropriate during breaks in training. It is not needed if the break is not more than 14 days. A waiver is not appropriate if the break is more than 14 days, since payment of basic or additional TRA in this case would be inconsistent with sections 231(a)(5), 233(a)(3), and 233(f). It is clear, therefore, that the determination resulting in the issuance, denial or revocation of a waiver presents justiciable issues, and, accordingly, determinations relating to waivers must be subject to the right of appeal and review. To deny the right of appeal and review on justiciable issues cannot be justified. Paragraph (c)(4) of § 617.19, therefore, has a sound basis in law, and is unchanged in the final rule.

41. *Recording waivers.* The NYDL, commenting on § 617.19(d)(1), stated that recordkeeping and reporting of waivers issued and revoked by reason constitutes a very real problem in that the agency relies on time consuming manual systems. Any requirement in this regard must be accompanied by appropriate levels of administrative funding, specifically for this purpose, in order to yield reliable data.

Department's response. The regulations at § 617.19(d) (1) track the language of section 231(c)(3) of the Trade Act, which provides that the Secretary shall submit an annual report to Congress on the number of waivers issued and the number revoked. As explained in item 14 above, matters concerning the administrative funding for all TAA activities are addressed in program letters and other issuances of the Department and will be addressed further in § 617.60 when it is published. No special funding category is contemplated for this item. Therefore, no change is made in the final regulations.

42. *Reemployment plans.* The NYDL commented that to require monthly reviews of individual reemployment plans, as implied in § 617.20(b)(13), would not serve the worker in a constructive way, and to interview every adversely affected worker needlessly would place an unreasonable burden on the agency when there is a minimum amount of funds available for staff costs. The PDLI and the NJDL provided similar comments.

Department's response. The Department concurs in the comments. It is not the Department's intent to have State agency staffs review individual reemployment plans every 30 days, as is required for waivers of the training requirement. Therefore, the rule is modified to provide for periodic review and updating of reemployment plans, as may be appropriate, in individual cases. The review of waivers, which is required no less frequently than every 30 days under § 617.19(c)(1), is addressed in a new clause (14) in § 617.20(b).

43. *Work in the "foreseeable future".* The UAW, commenting on § 617.22(a)(1)(ii), stated the proposed rule provides that training can be denied if there is a reasonable prospect of suitable work within the "foreseeable future." The statute does not include this element, providing instead that there must be "no suitable employment available" to the adversely affected worker. The UAW argues that under the proposed rule, a worker could be denied TRA because training was not approved due to foreseeable work, even though the worker had no job to enter. The UCSP provided similar comments and recommended that the last part of the rule be eliminated.

Department's response. This provision was incorporated in the regulations to preclude the approval of training when the worker is clearly scheduled to be employed or recalled. For that worker, suitable employment is "available" if the employment may occur in the foreseeable future. The purpose of including the provision in the rule is to give meaning to the first criterion of section 236(a)(1) and help preserve limited training funds for use by workers who need such assistance to return to employment. Labor-management agreements frequently provide for worker recall on a seniority basis. When recalls are scheduled in the foreseeable future, workers clearly do not need training in order to return to employment. In such situations, a waiver of the training requirement is appropriate and shall be issued by the State administering agency. Therefore, no change is made in § 617.22(a)(1)(ii) of the regulations. However, as explained in item H. above, guidance is added in §§ 617.19 (b)(1)(i)(B) and (b)(2)(ii)(A) for use by State agencies on the application of recall that will occur in the "reasonably foreseeable future."

44. *Suitable employment.* The AFL-CIO, commenting on § 617.22(a)(1)(ii), pointed out that the term "suitable employment" means work at no less than 80 percent of the worker's average weekly wage in such adversely affected employment. Since job benefits such as health insurance and pension entitlement must be coupled with wages to determine the total compensation of a position, this definition should be expanded to include "and benefits valued at not less than 80 percent of those provided in the worker's adversely affected employment."

Department's response. The regulation uses the definition in section 236(e), and any change such as that suggested would require a change in the law. Therefore, no change is made in the regulations.

45. *Adversely affected wage.* The MDLIR, commenting on § 617.22(a)(1)(ii), explained that suitable employment is defined in the proposed rule as work of a substantially equal or higher skill level than the worker's past adversely affected employment and wages for such work at not less than 80 percent of the worker's average weekly wage in such adversely affected employment. The MDLIR asks why, since there does not appear to be a change in the law, the regulation was changed from average weekly wage to average weekly wage in adversely affected employment? In addition, the definition of average weekly wage in adversely affected employment makes reference to partial separation which, for separations on August 23, 1988 or later, will no longer establish TRA eligibility.

Department's response. The Department agrees that the definition of "average weekly wage in adversely affected employment" is used appropriately only in the definition of "partial separation," and the definition of "suitable work" in section 236(e) does not include the reference to adversely affected employment.

Therefore, to fully accord with the statute, the phrase "in such adversely affected employment" is removed from § 617.22(a)(1)(ii).

46. *Training cost limit.* The UAW, commenting on § 617.22(b), pointed out that the Conference Committee rejected a proposed $4000 per worker limit on training costs, stating that "it is inappropriate to establish a ceiling on training and related costs for individual workers since such costs may vary significantly from one region of the country to another and from one worker dislocation to another." The Department cannot give the States the authority to do indirectly what the Congress decided it would not let the Department do directly. The UAW recommended that this proposal should be dropped. The UCSP provided similar comments. The MESC also commented that it is contradictory to require States to establish a single maximum amount and then indicate that States should take into consideration the type of occupational training, duration of training, etc. The different types of training and varying durations render a single maximum cost meaningless. By applying § 617.22(a)(6)(iv)(B), there will be sufficient cost control. Section 617.22(a)(6)(iv)(B) requires comparison of training similar in quality, content and results at different training facilities, and approval of the lowest cost training. Also, the ODHR recommended that more guidelines are needed in order to define the "maximum amount allowable for the total costs of training." Specifically, ODHR is concerned with overcoming inequities in setting an amount both for individuals in a rural area without training facilities and for individuals in an urban area with training facilities. The ODHR asked if it is the intent for the maximum amount allowable, because the cost of subsistence or mileage is part of the cost of training, to limit the kinds or duration of training for individuals in rural areas.

Department's response. The Department agrees with the comments and is amending this section by eliminating the requirement that States establish, annually, a maximum amount allowable for the total cost of training for each worker. While the Congress did not establish a national ceiling for the costs of training for individual workers, the Conferees did state in the Conference Report that they expected the Secretary of Labor to set forth guidelines for State administering agencies to provide approved training at the lowest reasonable cost for the particular type of training in that region consistent with the objective of assisting import impacted workers to obtain suitable skills to return to work as quickly as possible. The 1988 Amendments clearly provide that State administering agencies shall approve training for individual workers at the lowest reasonable cost which will lead to employment and will result in training opportunities for the largest number of adversely affected workers. This means that State administering agencies should avoid approving training for occupations that require an extraordinarily high skill level relative to the worker's current skills level and for which total costs of training, including transportation and subsistence, are excessively high. While the final regulations eliminate the requirement for States to establish a maximum amount allowable for the total costs of training, they continue to provide that States approve training at the lowest reasonable cost for the particular type of training in that region that will lead to employment and will enable the worker to obtain employment within a reasonable period of time.

47. *Child care.* The WESD, commenting on § 617.22, stated it believed that child care is equally important as transportation and subsistence to include as a cost of training. The WESD recommended that child care be included under the definition for supportive services, as is transportation and subsistence. The WESD states that the 1981 Amendments do not permit self-financed training and require TAA or other Federal, State, or private sources to "pay the full costs of the training." Washington contends that the lack of child care would, in fact, require self payment of training costs and it should be included as part of the reasonable costs of training.

Department's response. Section 236(b) authorizes transportation and subsistence expenses applicable to training. Child care is a supportive service to be obtained for individuals under section 235 of the Act (and § 617.21(e)), and is not a training cost in the TAA program. Funds for the administration of sections 225, 231 through 235, 243 and 244 of the Trade Act are appropriated in the State Unemployment Insurance and Employment Service Operations (SUIESO) account. The SUIESO account includes funds for the administration of section 235 activities but not for the direct payment of supportive services for certified individuals. Since child care is a supportive service authorized by section 235 to be provided if available under "any other Federal law", no TAA funds are appropriated for such services.

The Department's position is that the State administering agency, in carrying out its responsibilities under section 235 and § 617.21(e), should make every reasonable effort to secure for adversely affected workers covered by a certification any supportive services, including child care, which are obtainable under any other Federal law, to help individuals in training and to obtain employment. No change is made in the regulations, but § 617.21 is amended to make clear that supportive services are to be provided under other Federal law and may include child care.

48. *Other source funds.* The MESC, commenting on § 617.24(e), stated that this rule allows approval of training for which all, or any portion, of the cost of training is paid "from any other source". The MESC points out that the rule does not sufficiently define acceptable funding sources. Some limits are necessary. Acceptable funding sources should be limited to recognized employment and training programs, including employer training funds. Such funding sources as friends, relatives, and fraternal organizations should not be acceptable, but § 617.24(e) does not preclude them.

Department's response. The Department concurs in this comment and has modified §§ 617.24(e)(2) and 617.25(b)(1) to clarify that other funding sources may not include sources personal to the individual, such as self, relatives, or friends. This is consistent with the Department's prior position on this matter.

49. *Equal monthly installments.* The MESC questioned the application of the requirement in § 617.25(a) that employers be paid in equal monthly installments for on-the-job training (OJT) programs. The MESC stated that problems are associated with trainees entering OJT programs in the middle of the month, trainees receiving raises in wages during the month, and trainees working different hours. The MESC explained that it has attempted to satisfy the intent of the equal monthly payment requirement by having the employer bill for the trainee's hours in training during the month, which results in approximately equal monthly payments. The Governor of Idaho and the WESD presented similar comments on § 617.25. The Governor stated that the proposed rule will require Idaho and possibly many other States to incur additional administrative costs to pay for tracking OJT reimbursements. The WESD suggested that reimbursement to employers for actual hours worked by the trainee, on a monthly basis, would eliminate overpayments.

Department's response. The Department recognizes that the statutory provision requiring payments for OJT to be made to employers in equal monthly installments is presenting problems in negotiating and reimbursing employers for OJT contracts. In negotiating OJT contracts with employers, reasonable costs should be based on the achievement of a prescribed level of job skills, rather than being based solely on the hourly wages of the worker. The hourly wages should serve only as a guide for establishing OJT contract costs. A raise in the worker's wages implies increased proficiency of the worker and higher productivity, and may not form the basis for increasing training costs. Once the cost of OJT for a worker is established, payments can be made in equal monthly installments, with any required adjustment made in the final payment to the employer.

What appears to be troubling to States in administering this provision is thinking of equal monthly installments in terms of equal "dollar" amounts. Instead, it appears most reasonable to base the "equal monthly installments" on the number of hours of paid work during the month, multiplied by the agreed upon rate of payment. Although this would not assure the same dollar figure for each month, it is nonetheless "equal" in the sense that the payment for each month is computed at the same rate. This method would appear to address the concerns expressed in the comments received, and may be accomplished under the present reading of § 617.25(a). For these reasons, no change is made in the regulations.

50. *Pell and similar grants.* The ODHR, commenting on § 617.25(b)(4)(i)(A)(*2*), stated the rule is clear that when the direct payment of the costs of training has been made under any other Federal law, or the costs are reimbursable under any other Federal law and a portion of the direct costs has already been paid under such other Federal law, payment of such training costs may not be made from TAA funds. The ODHR points out, however, that grants, such as Pell Grants, are often paid directly to the institution to be applied toward tuition. The ODHR feels this contingency should be addressed here and that these funds should be allowed in these cases in determining costs payable from TAA funds for training.

Department's response. The Department agrees that complications are presented in considering appropriate TAA funding in the case of Pell Grants and similar Federal educational assistance. Section 617.25(b)(4)(ii)(C) provides, in implementing section 236(a)(4)(C), that such federal educational assistance paid to the individual may not be taken into account in determining payment of the costs of training from TAA or other funds, but such payments to the individual shall be deducted from TRA under § 617.13(c)(2). Conversely, when such Federal educational assistance is paid to the training institution, to the extent it is used for training costs otherwise payable from TAA funds, it must be taken into account in determining the training costs payable from TAA funds, either alone or in combination with other funds. To clarify this matter, the regulations at § 617.25(b)(4)(ii)(C) are modified; combination funding is otherwise addressed in more detail in the completely revised § 617.25.

51. *OJT approval.* The AFL–CIO recommended that additional standards be added in § 617.25(a) concerning the approval of on-the-job training agreements. Further, the AFL–CIO recommended that since employers available to provide OJT under TAA have offered such training under JTPA, those who failed to meet JTPA requirements should be barred from receiving TAA funds for such training. Such a requirement is clearly in keeping with the emphasis on coordination of TAA program activities with the JTPA Title III program.

Department's response. The requirements in § 617.25(a) are based on existing statutory language, and provide adequate protection to workers from adverse effects under OJT training contracts. The Department agrees that contracts under the TAA program for OJT should not be entered into with employers who failed to meet JTPA requirements. While § 617.25 (a)(9) and (a)(10) are intended to avoid such situations, the final rule is clarified to help ensure that employers who violated a JTPA training contract will be denied TAA training contracts. The words "or under any other Federal law" is added after "this Subpart C" in paragraph (a)(9) of § 617.25, with another addition at the end of paragraph (a)(9) to make this point clear.

52. *Information on waivers.* The UCSP, commenting on § 617.67(c), argues that workers should be furnished information on applying for a waiver of the training requirement in order to receive TRA payments.

Department's response. The Department does not believe a specific provision is needed for the reasons explained in the response to item 12, above.

53. *Homework.* The Amalgamated Clothing and Textile Workers Union (ACTWU) commented that a major problem has recently arisen which affects workers, when the Department lifted the restrictions prohibiting homework in five of the six industries, and announced it will shortly lift the restraints on homework in the women's and children's apparel industry. While this matter is not finally resolved due to court challenges, the TAA regulations have to anticipate the situation of potentially extensive homework in these industries.

Department's response. This issue is beyond the scope of the 1988 Amendments to the TAA program, and the final rule in this document.

Other changes. In addition to the changes discussed above in responses to comments received, other changes are made in the final rule in this document to correct printing errors, and to make technical and conforming changes that either do not affect the substance of the regulations, or, in the case of other provisions (including the transition provisions of § 617.67), are necessary to conform to other changes in the final regulations. Further, references to compliance with "the Act and this Part" are changed to eliminate references to the Act so that it is clear that the regulations are controlling and express the Department's interpretations of the Act.

Drafting Information

This document was prepared under the direction and control of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210: telephone: (202) 219–5555 (this is not a toll free number).

Classification Executive Order 12866

The final rule in this document is not classified as a "major rule" under Executive Order 12866 on Federal Regulations, because it is not likely to result in (1) an annual effect on the economy of $100 million or more; (2) a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

In accordance with the requirements of the Paperwork Reduction Act of 1980, 44 U.S.C. Ch. 35, approval of the recordkeeping requirement contained at

§§ 617.19(d) and 617.57 has been obtained from the Office of Management and Budget (control number 12050016, for reporting forms ETA 563 and ETA 9027). OMB control number 12050222 applies to forms used by States to convey reports to the Department as required in §§ 617.52(c) and 617.54.

Regulatory Flexibility Act

No regulatory flexibility analysis is required where the rule "will not . . . have a significant economic impact on a substantial number of small entities." 5 U.S.C. 605(b). The definition of the term "small entity" under 5 U.S.C. 601 (6) does not include States. Since these regulations involve an entitlement program administered by the States, and are directed to the States, no regulatory flexibility analysis is required. The Secretary has certified to the Chief Counsel for Advocacy of the Small Business Administration to this effect. Accordingly, no regulatory flexibility analysis is required.

Catalog of Federal Domestic Assistance Number

This program is listed in the Catalog of Federal Domestic Assistance at No. 17.245, "Trade Adjustment Assistance—Workers."

List of Subjects in 20 CFR Part 617

Job search assistance, labor, reemployment services, relocation assistance, trade readjustment allowances, unemployment compensation, vocational education.

Words of Issuance

For the reasons set out in the preamble, part 617 of title 20, Code of Federal Regulations, is amended as set forth below.

Signed at Washington, DC on December 21, 1993.

Doug Ross,

Assistant Secretary of Labor.

PART 617—TRADE ADJUSTMENT ASSISTANCE FOR WORKERS

1. The authority for part 617 continues to read as follows:

Authority: 19 U.S.C. 2320; Secretary's Order No. 3–81, 46 FR 31117.

2. Paragraphs (j), (m), (t), (aa), (ff), and (oo)(4) of § 617.3 are revised to read as follows:

§ 617.3 Definitions.

* * * * *

(j)(1) *Certification* means a certification of eligibility to apply for TAA issued under section 223 of the Act with respect to a specified group of workers of a firm or appropriate subdivision of a firm.

(2) *Certification period* means the period of time during which total and partial separations from adversely affected employment within a firm or appropriate subdivision of a firm are covered by the certification.

* * * * *

(m) *Eligibility period* means the period of consecutive calendar weeks during which basic or additional TRA is payable to an otherwise eligible individual, and for an individual such eligibility period is—

(1) *Basic TRA.* (i) With respect to a first qualifying separation (as defined in paragraph (t)(3)(i)(A) of this section) that occurs on a day that precedes August 23, 1988, the 104-week period beginning with the first week following the week with respect to which the individual first exhausts all rights to regular compensation (as defined in paragraph (oo)(1) of this section) in such individual's first benefit period (as described in § 617.11(a)(1)(iv)) or § 617.11(a)(2)(iv), whichever is applicable), and

(ii) With respect to a total qualifying separation (as defined in paragraph (t)(3)(i)(B) of this section) that occurs on or after August 23, 1988—or before August 23, 1988, if the individual also had a prior first qualifying separation under the same certification—the 104-week period beginning with the first week following the week in which such total qualifying separation occurred;

Provided, that, an individual who has a second or subsequent total qualifying separation within the certification period of the same certification shall be determined to have a new 104-week eligibility period based upon the most recent such total qualifying separation; but the rule of this proviso shall not be applicable in the case of an individual who had a total qualifying separation before August 23, 1988, and also had a prior first qualifying separation (as referred to in paragraph (m)(1)(i) of this section) within the certification period of the same certification, if the individual's 104-week eligibility period based upon the total qualifying separation (as referred to in paragraph (m)(1)(i) of this section) would end on a date earlier than the ending date of the individual's eligibility period which is based upon the prior first qualifying separation; and

(2) *Additional TRA.* With respect to additional weeks of TRA, and any individual determined under this part 617 to be entitled to additional TRA, the consecutive calendar weeks that occur in the 26-week period that—

(i) Immediately follows the last week of entitlement to basic TRA otherwise payable to the individual, or

(ii) Begins with the first week of training approved under this part 617, if such training begins after the last week described in paragraph (m)(2)(i) of this section, or

(iii) Begins with the first week in which such training is approved under this part 617, if such training is so approved after the training has commenced; but approval of training under this part 617 after the training has commenced shall not imply or justify approval of a payment of basic or additional TRA with respect to any week which ended before the week in which such training was approved, nor approval of payment of any costs of training or any costs or expenses associated with such training (such as travel or subsistence) which were incurred prior to the date of the approval of such training under this part 617.

* * * * *

(t)(1) *First separation* means, for an individual to qualify as an adversely affected worker for the purposes of TAA program benefits (without regard to whether the individual also qualifies for TRA), the individual's first total or partial separation within the certification period of a certification, irrespective of whether such first separation also is a qualifying separation as defined in paragraph (t)(2) of this section;

(2) *Qualifying separation* means, for an individual to qualify as an adversely affected worker and for basic TRA—

(i) Prior to August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification, with respect to which the individual meets all of the requirements of § 617.11(a)(1) (i) through (iv), and which qualifies as a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section, and

(ii) At any time before, on, or after August 23, 1988, any total separation of the individual within the certification period of a certification (other than a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section), with respect to which the individual meets all of the requirements in § 617.11(a)(2) (i) through (iv), and which qualifies as a total qualifying separation as defined in paragraph (B) of (t)(3)(i)(B) of this section;

(3) "First qualifying separation" means—

(i) For the purposes of determining an individual's eligibility period for basic TRA—

(A) with respect to a separation that occurs before August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification, with respect to which the individual meets all of the requirements of § 617.11(a)(1) (i) through (iv), and

(B) with respect to a separation that occurs before, on, or after August 23, 1988 (other than a first qualifying separation as defined in paragraph (t)(3)(i)(A) of this section), the first total separation of the individual within the certification period of a certification, with respect to which the individual meets all of the requirements in § 617.11(a)(2) (i) through (iv); and

(ii) For the purposes of determining the weekly and maximum amounts of basic TRA payable to an individual, with respect to a separation that occurs before, on, or after August 23, 1988, the individual's first (total or partial) separation within the certification period of a certification if, with respect to such separation, the individual meets the requirements of § 617.11(a)(1) (i), (ii) and (iv) or § 617.11(a)(2) (i), (ii) and (iv).

* * * * *

(aa) *Liable State* and *Agent State* are defined as follows:

(1) *Liable State* means, with respect to any individual, the State whose State law is the applicable State law as determined under § 617.16 for all purposes of this Part 617.

(2) *Agent State* means, with respect to any individual, any State other than the State which is the liable State for such individual.

* * * * *

(ff)(1) *Secretary* means the Secretary of Labor of the United States of America.

(2) *Department of Labor* or *Department* means the United States Department of Labor or the Employment and Training Administration within the Department.

* * * * *

(oo) * * *

(4) *Federal supplemental compensation* means the supplemental unemployment compensation payable to individuals who have exhausted their rights to regular and extended compensation, and which is payable under the Federal Supplemental Compensation Act of 1982 or any similar Federal law enacted before or after the 1982 Act.

* * * * *

4. Sections 617.3(b)(1) and 617.3(kk) (1) and (2) are revised to read as follows.

§ 617.3 Definitions.

* * * * *

(h) *Benefit period* * * *

(1) The benefit year and any ensuing period, as determined under the applicable State law, during which the individual is eligible for regular compensation, additional compensation, extended compensation, or federal supplemental compensation, as these terms are defined by paragraph (oo) of this section; or

* * * * *

(kk) *Suitable work* * * *

(1) Suitable work as defined in the applicable State law for claimants for regular compensation (as defined in paragraph (oo)(1) of this section); or

(2) Suitable work as defined in applicable State law provisions consistent with section 202(a)(3) of the Federal-State Extended Unemployment Compensation Act of 1970;

whichever is applicable, but does not in any case include self-employment or employment as an independent contractor.

* * * * *

5. Section 617.4 is amended by revising the heading of paragraph (c) and adding new paragraphs (d) and (e) to read as follows:

§ 617.4 Benefit information to workers.

* * * * *

(c) *Providing information to State vocational education agencies and others.* * * *

(d) *Written and newspaper notices.* (1) *Written notices to workers.* (i) Upon receipt of a certification issued by the Department of Labor, the State agency shall provide a written notice through the mail of the benefits available under subparts B through E of this part 617 to each worker covered by a certification issued under section 223 of the Act when the worker is partially or totally separated or as soon as possible after the certification is issued if such workers are already partially or totally separated from adversely affected employment.

(ii) The State agency will satisfy this requirement by obtaining from the firm, or other reliable source, the names and addresses of all workers who were partially or totally separated from adversely affected employment before the certification was received by the agency, and workers who are thereafter partially or totally separated within the certification period. The State agency shall mail a written notice to each such worker of the benefits available under the TAA Program. The notice must include the following information:

(A) Worker group(s) covered by the certification, and the article(s) produced as specified in the copy of the certification furnished to the State agency.

(B) Name and the address or location of workers' firm.

(C) Impact, certification, and expiration dates in the certification document.

(D) Benefits and reemployment services available to eligible workers.

(E) Explanation of how and where workers should apply for TAA benefits and services.

(F) Whom to call to get additional information on the certification.

(G) When and where the workers should come to apply for benefits and services.

(2) *Newspaper notices.* (i) Upon receipt of a copy of a certification issued by the Department affecting workers in a State, the State agency shall publish a notice of such certification in a newspaper of general circulation in areas in which such workers reside. Such a newspaper notice shall not be required to be published, however, in the case of a certification with respect to which the State agency can substantiate, and enters in its records evidence substantiating, that all workers covered by the certification have received written notice required by paragraph (d)(1) of this section.

(ii) A published notice must include the following kinds of information:

(A) Worker group(s) covered by the certification, and the article(s) produced as specified in the copy of the certification furnished to the State agency.

(B) Name and the address or location of workers' firm.

(C) Impact, certification, and expiration dates in the certification document.

(D) Benefits and reemployment services available to eligible workers.

(E) Explanation of how and where workers should apply for TAA benefits and services.

(e) *Advice ond assistance to workers.* In addition to the information and assistance to workers as required under paragraphs (a) and (b) of this section, State agencies shall—

(1) Advise each worker who applies for unemployment insurance under the State law of the benefits available under subparts B through E of this part and the procedures and deadlines for applying for such benefits.

(2) Facilitate the early filing of petitions under section 221 of the Act and § 617.4(b) for any workers that the agency considers are likely to be eligible for benefits. State agencies shall utilize information received by the State's dislocated worker unit to facilitate the early filing of petitions under section 221 of the Act by workers potentially adversely affected by imports.

(3) Advise each adversely affected worker to apply for training under

§ 617.22(a) before, or at the same time as, the worker applies for trade readjustment allowances under subpart B of this part.

(4) Interview each adversely affected worker, as soon as practicable, regarding suitable training opportunities available to the worker under § 617.22(a) and review such opportunities with the worker.

6. Section 617.10 is amended by adding a new paragraph (d) to read as follows:

§ 617.10 Applications for TRA.

* * * * *

(d) *Advising workers to apply for training.* State agencies shall advise each worker of the qualifying requirements for entitlement to TRA and other TAA benefits at the time the worker files an initial claim for State UI, and shall advise each adversely affected worker to apply for training under subpart C of this part before, or at the same time, the worker applies for TRA, as required by § 617.4(e)(1) and (3).

7. Section 617.11 is revised to read as follows:

§ 617.11 Qualifying requirements for TRA.

(a) *Basic qualifying requirements for entitlement*—(1) *Prior to November 21, 1988.* To qualify for TRA for any week of unemployment that begins prior to November 21, 1988, an individual must meet each of the following requirements of paragraphs (a)(1) (i) through (vii) of this section:

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t)(3)(i) of § 617.3) before application for TRA must occur:

(A) On or after the impact date of such certification; and

(B) Before the expiration of the two-year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52-week period (i.e., 52 consecutive calendar weeks) ending with the week of the individual's first qualifying separation, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(*1*) For the purposes of paragraph (a)(1)(iii) of this section, any week in which such individual—

(*i*) is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training, or

(*ii*) does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*iii*) had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision,

shall be treated as a week of employment at wages of $30 or more;

(*2*) *Provided*, that—

(*i*) not more than 7 weeks in the case of weeks described in paragraph (a)(1)(iii)(B)(*1*)(*i*) or paragraph (a)(1)(*iii*)(B)(*1*)(*iii*) of this section, or both, and (*ii*) not more than 26 weeks described in paragraph (a)(1)(iii)(B)(*1*)(*ii*) of this section,

may be treated as weeks of employment for purposes of paragraph (a)(1)(iii) of this section.

(C) Wages and employment creditable under paragraph (a)(1)(iii) of this section shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would have been entitled to if the individual had applied therefor) UI for a week within the benefit period—

(A) in which the individual's first qualifying separation occurred, or

(B) which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would have been entitled to if the individual had applied therefor); and

(B) Not have an unexpired waiting period applicable to the individual for any such UI.

(vi) *Extended Benefit work test.* (A) The individual must—

(*1*) Accept any offer of suitable work, as defined in § 617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency, and

(*2*) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week, and

(*3*) Register for work and be referred by the State agency to suitable work, in accordance with those provisions of the applicable State law which apply to claimants for Extended Benefits and which are consistent with Part 615 of this Chapter.

(B) The Extended Benefit work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the Extended Benefit work test requirements of paragraph (a)(1)(vi) of this section and § 617.17. Prior to such notification and advice, the individual shall not be subject to the Extended Benefit work test requirements, nor to any State timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided for workers in approved training in § 617.17(b)(1).

(vii) *Job search program participation* (A) The individual is enrolled in, participating in, or has successfully completed a job search program which meets the requirements of § 617.49(a); or the State agency has determined that no acceptable job search program is reasonably available under the criteria set forth in § 617.49(c).

(B) The job search program requirement shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the job search program requirement of paragraph (a)(1)(vii) of this section and § 617.49.

(C) The job search program requirement shall not apply to an individual, as a qualifying requirement for TRA, with respect to any week ending after November 20, 1988, but cooperating State agencies are encouraged to continue to utilize job search programs after November 20, 1988, as an effective tool to assist adversely affected workers in finding suitable employment, particularly unemployed workers who have completed training or for whom the training requirement has been waived under § 617.19.

(2) *On and after November 21, 1988* To qualify for TRA for any week of unemployment that begins on or after November 21, 1988, an individual must meet each of the following requirements of paragraphs (a)(2) (i) through (vii) of this section:

(i) *Certification.* The individual must be an adversely affected worker covered under a certification.

(ii) *Separation.* The individual's first qualifying separation (as defined in paragraph (t)(3)(i) of § 617.3) before application for TRA must occur:

(A) On or after the impact date of such certification; and

(B) Before the expiration of the two-year period beginning on the date of such certification, or, if earlier, before the termination date, if any, of such certification.

(iii) *Wages and employment.* (A) In the 52-week period (i.e., 52 consecutive calendar weeks) ending with the week of the individual's first qualifying separation, or any subsequent total qualifying separation under the same certification, the individual must have had at least 26 weeks of employment at wages of $30 or more a week in adversely affected employment with a single firm or subdivision of a firm. Evidence that an individual meets this requirement shall be obtained as provided in § 617.12. Employment and wages covered under more than one certification may not be combined to qualify for TRA.

(B)(*1*) For the purposes of paragraph (a)(2)(iii) of this section, any week in which such individual—

(*i*) Is on employer-authorized leave from such adversely affected employment for purposes of vacation, sickness, injury, maternity, or inactive duty or active duty military service for training, or

(*ii*) Does not work in such adversely affected employment because of a disability compensable under a workers' compensation law or plan of a State or the United States, or

(*iii*) Had adversely affected employment interrupted to serve as a full-time representative of a labor organization in such firm or subdivision, or

(*iv*) Is on call-up for the purpose of active duty in a reserve status in the Armed Forces of the United States (if such week began after August 1, 1990), provided such active duty is "Federal service" as defined in part 614 of this chapter,

shall be treated as a week of employment at wages of $30 or more;

(*2*) *Provided*, that—

(*i*) Not more than 7 weeks in the case of weeks described in paragraph (a)(2)(iii)(B)(*1*) (*i*) or (*iii*) of this section, or both, and

(*ii*) Not more than 26 weeks described in paragraph (a)(2)(iii)(B)(*1*) (*ii*) or (*iv*) of this section,

may be treated as weeks of employment for purposes of paragraph (a)(2)(iii) of this section.

(C) Wages and employment creditable under paragraph (a)(2)(iii) of this section shall not include employment or wages earned or paid for employment which is contrary to or prohibited by any Federal law.

(iv) *Entitlement to UI.* The individual must have been entitled to (or would have been entitled to if the individual had applied therefor) UI for a week within the benefit period—

(A) in which the individual's first qualifying separation occurred, or

(B) which began (or would have begun) by reason of the filing of a claim for UI by the individual after such first qualifying separation.

(v) *Exhaustion of UI.* The individual must:

(A) Have exhausted all rights to any UI to which the individual was entitled (or would have been entitled if the individual had applied therefor); and

(B) Not have an unexpired waiting period applicable to the individual for any such UI.

(vi) *Extended Benefit work test.* (A) The individual must—

(*1*) Accept any offer of suitable work, as defined in § 617.3(kk), and actually apply for any suitable work the individual is referred to by the State agency, and

(*2*) Actively engage in seeking work and furnish the State agency tangible evidence of such efforts each week, and

(*3*) Register for work and be referred by the State agency to suitable work, in accordance with those provisions of the applicable State law which apply to claimants for Extended Benefits and which are consistent with part 615 of this chapter.

(B) The Extended Benefit work test shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the Extended Benefit work test requirements of paragraph (a)(2)(vi) of this section and § 617.17. Prior to such notification and advice, the individual shall not be subject to the Extended Benefit work test requirements, nor to any State timely filing requirement, but shall be required to be unemployed and able to work and available for work with respect to any such week except as provided in § 617.17(b)(2) for workers enrolled in, or participating in, a training program approved under § 617.22(a).

(vii) *Participation in training.* (A) The individual must—

(*1*) Be enrolled in or participating in a training program approved pursuant to § 617.22(a), or

(*2*) Have completed a training program approved under § 617.22(a), after a total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, or

(*3*) Have received from the State agency a written statement under § 617.19 waiving the participation in training requirement for the individual.

(B) The participation in training requirement of paragraph (a)(2)(vii) of this section shall not apply to an individual with respect to claims for TRA for weeks of unemployment beginning prior to the filing of an initial claim for TRA, nor for any week which begins before the individual is notified that the individual is covered by a certification issued under the Act and is fully informed of the participation in training requirement of paragraph (a)(2)(vii) of this section and § 617.19.

(C) The participation in training requirement of paragraph (a)(2)(vii) of this section shall apply, as a qualifying requirement for TRA, to an individual with respect to claims for TRA for weeks of unemployment commencing on or after November 21, 1988, and beginning with the first week following the week in which a certification covering the individual is issued under the Act, unless the State agency has issued a written statement to the individual under § 617.19 waiving the participation in training requirement for the individual.

(D) For purposes of paragraph (a)(2)(vii) of this section, the following definitions shall apply:

(*1*) *Enrolled in Training.* A worker shall be considered to be enrolled in training when the worker's application for training is approved by the State agency and the training institution has furnished written notice to the State agency that the worker has been accepted in the approved training program which is to begin within 30 calendar days of the date of such approval. (A waiver under § 617.19 shall not be required for an individual who is enrolled in training as defined herein.)

(*2*) *Completed Training.* A worker shall be considered to have completed a training program if the training program was approved, or was approvable and is approved, pursuant to § 617.22, and the training was

completed subsequent to the individual's total or partial separation from adversely affected employment within the certification period of a certification issued under the Act, and the training provider has certified that all the conditions for completion of the training program have been satisfied.

(3) *Special rules for workers separated in 1981 to 1986 period.* (i) *Basic conditions.* Under section 1425(b) of the Omnibus Trade and Competitiveness Act of 1988 (the "OTCA") (Pub. L. 100–418) the time limit on the eligibility period for basic TRA in section 233(a)(2) of the Act (before and after the amendment by Public Law 100–418), and the 210-day time limit in section 233(b) of the Act on the filing of a bona fide application for training in order to qualify for additional TRA, are set aside and shall be disregarded for any individual separated from adversely affected employment in the period which began on August 13, 1981, and ended on April 7, 1986: *Provided*, That, any such individual must meet all of the following requirements of paragraphs (a)(3)(i)(A) through (E) of this section to qualify for TRA for any week.

(A) *Period of separation.* The separation of the individual must have occurred on a date within the period which began on August 13, 1981 and ended on April 7, 1986.

(B) *Total separation required.* Such separation must be a "total separation" as defined in § 617.3(ll), and a "total qualifying separation" as defined in § 617.3(t)(3)(i)(B); and, for the purposes of determining whether an individual has been continuously unemployed, as defined in § 617.3(t)(3)(i)(E), only the last such total separation within the August 13, 1981 to April 7, 1986 period shall be taken into account.

(C) *Other standard requirements.* The individual must, with respect to such total separation, meet all of the requirements of paragraphs (a)(2)(i) through (v) of this section.

(D) *Participation in training.* (*1*) The individual must meet the requirements of paragraph (a)(2)(vii) of this section, with respect to being enrolled in or participating in a training program approved pursuant to § 617.22(a), as to each week TRA is claimed, and not be ineligible under § 617.18(b)(2) for failure to begin participation in such training or for ceasing to participate in such training.

(*2*) With respect to participation in training, as required under paragraph (a)(3) of this section, the break in training provisions of § 617.15(d) shall be applicable, and the waiver of participation provisions in § 617.19 shall not be applicable.

(E) *Continuously unemployed.* (*1*) The individual must have been continuously unemployed since the date of the individual's total separation referred to in paragraph (a)(2)(vii)(B) of this section, not taking into account for the purposes of this determination any work in which the individual was employed in seasonal employment, odd jobs, or part-time, temporary employment.

(*2*) For purposes of § 617.11(a)(3)(i)(E)(*1*), continuously unemployed shall mean the individual has not been engaged in any employment, except for seasonal employment, odd-jobs, or part-time, temporary employment. Employment shall be considered:

(*i*) *Seasonal employment* when seasonality provisions of the applicable State law are applicable to such employment; or

(*ii*) An *odd job* when the established period of employment occurs within five (5) consecutive days or less; or

(*iii*) *Part-time, temporary employment* when a termination date of one hundred fifty (150) days or less was established at the time of employment, and the average weekly hours for the job, over the period of employment, was less than 30 hours per week.

(ii) *TRA payments prospective only.* The provisions of paragraph (a)(3) of this section apply to payments of TRA only for weeks which begin after August 23, 1988, and with respect to training in which the individual becomes enrolled and begins participation before or after such date, and which is approved under § 617.22(a) before or after such date. No payment of TRA may be authorized under paragraph (a)(3) of this section for any week which ends before such training is approved under § 617.22(a).

(iii) *Other special rules.* (*1*) Although the last total qualifying separation of an individual will be used for the purposes of the determination under paragraph (a)(3)(i)(B) of this section, the individual's first qualifying separation (as defined in paragraph (t)(3)(ii) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14.

(*2*) No individual shall be determined to be eligible for TRA under paragraph (a)(3) of this section if the individual has previously received all of the basic and additional TRA to which the individual was entitled.

(*3*) The 26-week eligibility period for additional TRA is applicable under paragraph (a)(3) of this section, as such term is defined in paragraph (m)(2) of § 617.3.

(4) *Special rules for oil and gas workers—retroactive.* (i) *Basic conditions.* Under section 1421(a)(1)(B) of the OTCA, individuals employed by independent firms engaged in exploration or drilling for oil and natural gas who were separated after September 30, 1985, may be entitled, retroactively, to TAA program benefits, but only if, as to any such individual, all of the conditions in the following provisions of paragraph (a)(4) of this section are met.

(ii) *Prior certification.* Individuals covered by this paragraph (a)(4) do not include any individual covered under a certification (made with respect to the same firm or subdivision of a firm) that was issued under section 223 of the Act without regard to the amendments to section 222 of the Act (relating to oil and gas workers) made by section 1421 (a)(1)(A) of the OTCA.

(iii) *Petition.* (A) To apply for a certification under section 223 covering workers referred to in section 1421 (a)(1)(B) of the OTCA, a petition must have been filed in the Office of Trade Adjustment Assistance after August 23, 1988, and on or before November 18, 1988, by or on behalf of a group of workers of such a firm or subdivision of a firm.

(B) A petition, to be valid, may not be signed by or on behalf of an individual referred to in paragraph (a)(4)(ii) of this section.

(iv) *Certification.* (A) As provided in section 1421(a) (1)(B) of the OTCA, a certification issued pursuant to section 223 of the Act will not be subject to the one-year limitation on the impact date which is specified in section 223(b) of the Act, but the impact date of any such certification may not be a date earlier than October 1, 1985.

(B) A certification shall not be issued under the authority of section 1421(a)(1)(B) of the OTCA if a certification could have been issued under section 223 of the Act before or after the amendment made by section 1421(a)(1)(A) of the OTCA.

(v) *Coverage of certification.* Individuals covered by a certification issued under the authority of section 1421(a)(1)(B) of the OTCA will be eligible to apply for TAA program benefits as follows:

(A) Basic and additional TRA, retroactively and prospectively, subject to the conditions stated in paragraph (a)(4) of this section;

(B) Training, prospectively, subject to the conditions stated in subpart C of this part;

(C) Job search allowances, prospectively, subject to the conditions stated in subpart D of this part; and

(D) Relocation allowances, prospectively, subject to the conditions stated in subpart E of this part.

(vi) *TRA entitlement.* To qualify for TRA for any week, an individual must meet all of the following requirements of paragraphs (a)(4)(vi)(A) through (D) of this section:

(A) *Certification.* The individual must be an adversely affected worker covered under a certification issued pursuant to section 223 of the Act and under the authority of section 1421(a)(1)(B) of the OTCA.

(B) *Date of separation.* The date of the individual's most recent total separation (as defined in § 617.3) must be a date after September 30, 1985, and within the certification period of the certification under which the worker is covered. Separations occurring prior to October 1, 1985, shall be disregarded for the purposes of determining whether an individual experienced a total separation after September 30, 1985.

(C) *Other standard requirements.* (*1*) With respect to weeks of unemployment that begin after September 30, 1985, but prior to November 21, 1988, the individual must, with respect to the separation referred to in paragraph (a)(4)(vi)(B) of this section, meet all of the requirements of paragraph (a)(1)(i) through (vii) of this section, and

(*2*) With respect to weeks of unemployment that begin on or after November 21, 1988, the individual must meet all of the requirements of paragraphs (a)(2)(i) through (vii) of this section.

(D) *Other special rules.* (*1*) Although an individual's most recent total or partial separation after September 30, 1985 must be used for the purposes of this paragraph (a)(4)(vi)(B) of this section, the individual's first qualifying separation (as defined in paragraph (t)(3)(ii) of § 617.3) must be used to determine the weekly and maximum amounts payable to the individual in accordance with §§ 617.13 and 617.14.

(*2*) The 60-day preclusion rule in paragraph (b)(1) of this section shall not be applicable to an individual covered by a certification referred to in paragraph (a)(4)(vi)(A) of this section, and who is eligible for TRA under the provisions of paragraph (a)(4) of this section.

(*3*) The 26-week eligibility period for additional TRA (as defined in paragraph (m)(2) of § 617.3) is applicable under paragraph (a)(4) of this section.

(b) *First week of entitlement.* The first week any individual may be entitled to a payment of basic TRA shall be the later of:

(1) The first week beginning more than 60 days after the date of the filing of the petition which resulted in the certification under which the individual is covered (except in the case of oil and gas workers to whom paragraph (a)(4) of this section applies); or

(2) The first week beginning after the individual's exhaustion of all rights to UI including waiting period credit, as determined under § 617.11(a)(1)(v) or § 617.11(a)(2), as appropriate.

8. Section 617.14(a)(2) is revised to read as follows:

§ 617.14 Maximum amount of TRA.

(a) *General rule.* * * *

(2) Subtracting from the product derived under paragraph (a)(1) of this section, the total sum of UI to which the individual was entitled (or would have been entitled if the individual had applied therefor) in the individual's first benefit period described in § 617.11(a)(1)(iv) or, as appropriate, § 617.11(a)(2)(iv). The individual's full entitlement shall be subtracted under this paragraph, without regard to the amount, if any, that was actually paid to the individual with respect to such benefit period.

9. Section 617.15 is revised to read as follows:

§ 617.15 Duration of TRA.

(a) *Basic weeks.* An individual shall not be paid basic TRA for any week beginning after the close of the 104-week eligibility period (as defined in § 617.3(m)(1)), which is applicable to the individual as determined under §§ 617.3 (m)(1), 617.3(t), and 617.67(e).

(b) *Additional weeks.* (1) To assist an individual to complete training approved under subpart C of this part, payments may be made as TRA for up to 26 additional weeks in the 26-week eligibility period (as defined in § 617.3(m)(2)) which is applicable to the individual as determined under §§ 617.3(m)(2) and 617.67(f).

(2) To be eligible for TRA for additional weeks, an individual must make a bona fide application for such training—

(i) within 210 days after the date of the first certification under which the individual is covered, or

(ii) if later, within 210 days after the date of the individual's most recent partial or total separation (as defined in §§ 617.3(cc) and 617.3(ll)) under such certification.

(3) Except as provided in paragraph (d) of this section, payments of TRA for additional weeks may be made only for those weeks in the 26-week eligibility period during which the individual is actually participating fully in training approved under § 617.22(a).

(c) *Limit.* The maximum TRA payable to any individual on the basis of a single certification is limited to the maximum amount of basic TRA as determined under § 617.14 plus additional TRA for up to 26 weeks as provided in paragraph (b) of this section.

(d) *Scheduled breaks in training.* (1) An individual who is otherwise eligible will continue to be eligible for basic and additional weeks of TRA during scheduled breaks in training, but only if a scheduled break is not longer than 14 days, and the following additional conditions are met:

(i) The individual was participating in the training approved under § 617.22(a) immediately before the beginning of the break; and

(ii) The break is provided for in the published schedule or the previously established schedule of training issued by the training provider or is indicated in the training program approved for the worker; and, further

(iii) The individual resumes participation in the training immediately after the break ends.

(2) A scheduled break in training shall include all periods within or between courses, terms, quarters, semesters and academic years of the approved training program.

(3) No basic or additional TRA will be paid to an individual for any week which begins and ends within a scheduled break that is 15 days or more.

(4) The days within a break in a training program that shall be counted in determining the number of days of the break for the purposes of paragraph (d) of this section shall include all calendar days beginning with the first day of the break and ending with the last day of the break, as provided for in the schedule of the training provider, except that any Saturday, Sunday, or official State or National holiday occurring during the scheduled break in training, on which training would not normally be scheduled in the training program if there were no break in training, shall not be counted in determining the number of days of the break for the purposes of paragraph (d) of this section.

(5) When the worker is drawing basic TRA, the maximum amount of TRA payable is not affected by the weeks the worker does not receive TRA while in a break period, but the weeks will count against the 104-week eligibility period.

(6) When the worker is drawing additional weeks of TRA to complete training, any weeks for which TRA is not paid will count against the continuous 26-week eligibility period and the number of weeks payable.

10. Section 617.16 is revised to read as follows:

§ 617.16 Applicable State law.

(a) *What law governs.* The applicable State law for any individual, for all of the purposes of this part 617, is the State law of the State—

(1) In which the individual is entitled to UI (whether or not the individual has filed a claim therefor) immediately following the individual's first separation (as defined in paragraph (t)(1) of § 617.3), or

(2) If the individual is not so entitled to UI under the State law of any State immediately following such first separation, or is entitled to UI under the Railroad Unemployment Insurance Act (RRUI), the State law of the State in which such first separation occurred.

(b) *Change of law.* The State law determined under paragraph (a) of this section to be the applicable State law for an individual shall remain the applicable State law for the individual until the individual becomes entitled to UI under the State law of another State (whether or not the individual files a claim therefor).

(c) *UI entitlement.* (1) An individual shall be deemed to be entitled to UI under a State law if the individual satisfies the base period employment and wage qualifying requirements of such State law.

(2) In the case of a combined-wage claim (Part 616 of this chapter), UI entitlement shall be determined under the law of the paying State.

(3) In case of a Federal UI claim, or a joint State and Federal UI claim (Parts 609 and 614 of this Chapter), UI entitlement shall be determined under the law of the State which is the applicable State for such claims.

(d) *RRUI claimants.* If an individual is entitled to UI under the Railroad Unemployment Insurance Act, the applicable State law for purposes of paragraphs (a) and (b) of this section is the law of the State in which the individual's first qualifying separation occurs.

(e) *Liable State.* The State whose State law is determined under this section to be the applicable State law for an individual shall be the liable State for the individual for all purposes of this part 617. Any State other than the liable State shall be an agent State.

11. Section 617.17 is revised to read as follows:

§ 617.17 Availability and active search for work.

(a) *Extended Benefit work test applicable.* Except as provided in paragraph (b) of this section, an individual shall, as a basic condition of entitlement to basic TRA for a week of unemployment—

(1) be unemployed, as defined in the applicable State law for UI claimants, and

(2) be able to work and available for work, as defined in the applicable State law for UI claimants, and

(3) satisfy the Extended Benefit work test in each week for which TRA is claimed, as set forth in §§ 617.11(a)(1)(vi) and 617.11(a)(2)(vi).

(b) *Exceptions*—(1) *Prior to November 21, 1988.* The conditions stated in paragraphs (a) and (b) of this section shall not be applicable to an individual actually participating in training approved under the applicable State law or under § 617.22(a), or during a scheduled break in the training program if (as determined for the purposes of § 617.15 (d)) the individual participated in the training immediately before the beginning of the break and resumes participation in the training immediately after the break ends, unless the individual is ineligible or subject to disqualification under the applicable State law or § 617.18 (b)(2).

(2) *On and after November 21, 1988.* The conditions stated in paragraphs (a)(2) and (a)(3) of this section shall not be applicable to an individual who is enrolled in or participating in a training program approved under § 617.22 (a), or during a break in the training program if (as determined for the purposes of § 617.15(d)) the individual participated in the training immediately before the beginning of the break and resumes participation in the training immediately after the break ends.

12. Paragraph (b) of § 617.18 is revised to read as follows:

§ 617.18 Disqualifications.

* * * * *

(b) *Disqualification of trainees*—(1) *State law inapplicable.* A State law shall not be applied to disqualify an individual from receiving either UI or TRA because the individual:

(i) Is enrolled in or is participating in a training program approved under § 617.22(a); or

(ii) Refuses work to which the individual has been referred by the State agency, if such work would require the individual to discontinue training, or if added to hours of training would occupy the individual more than 8 hours a day or 40 hours a week, except that paragraph (b)(1)(ii) of this section shall not apply to an individual who is ineligible under paragraph (b)(2) of this section; or

(iii) Quits work, if the individual was employed in work which was not suitable (as defined in § 617.22(a)(1)), and it was reasonable and necessary for the individual to quit work to begin or continue training approved for the individual under § 617.22(a).

(2) *Trainees ineligible.* (i) An individual who, without justifiable cause, fails to begin participation in a training program which is approved under § 617.22(a), or ceases to participate in such training, or for whom a waiver is revoked pursuant to § 617.19(c), shall not be eligible for basic TRA, or any other payment under this part 617, for the week in which such failure, cessation, or revocation occurred, or any succeeding week thereafter until the week in which the individual begins or resumes participation in a training program that is approved under § 617.22(a).

(ii) For purposes of this section and other provisions of this Part 617, the following definitions shall be used:

(A) *Failed to begin participation.* A worker shall be determined to have failed to begin participation in a training program when the worker fails to attend all scheduled training classes and other training activities in the first week of the training program, without justifiable cause.

(B) *Ceased participation.* A worker shall be determined to have ceased participation in a training program when the worker fails to attend all scheduled training classes and other training activities scheduled by the training institution in any week of the training program, without justifiable cause.

(C) *Justifiable cause.* For the purposes of paragraph (b)(2) of this section, the term "justifiable cause" means such reasons as would justify an individual's conduct when measured by conduct expected of a reasonable individual in like circumstances, including but not limited to reasons beyond the individual's control and reasons related to the individual's capability to participate in or complete an approved training program.

* * * * *

13. A new § 617.19 is added to read as follows:

§ 617.19 Requirement for participation in training.

(a) *In general*—(1) *Basic requirement.* (i) All individuals otherwise entitled to basic TRA, for all weeks beginning on and after November 21, 1988, must either be enrolled in or participating in a training program approved under § 617.22(a), or have completed a training program approved under § 617.22(a), as provided in § 617.11(a)(2)(vii), in order to be entitled to basic TRA payments for any such week (except for continuation of payments during scheduled breaks in training of 14 days or less under the conditions stated in § 617.15(d)). The training requirement of paragraph (a)(1)(i) of this section shall be waived in writing on an individual basis, solely in regard to entitlement to basic TRA, if approval of training for the individual is not feasible or is not appropriate, as determined in accordance with paragraph (a)(2) of this section.

(ii) As a principal condition of entitlement to additional TRA payments, all individuals must actually be participating in a training program approved under § 617.22(a), for all weeks beginning before November 21, 1988, and for all weeks beginning on and after November 21, 1988 (except for continuation of payments during breaks in training under the conditions stated in § 617.15(d)). Paragraph (a)(2) of this section is not applicable in regard to additional TRA, and the participation in training requirement of paragraph (a)(1)(ii) of this section may not be waived under any circumstances.

(2) *Waiver of participation requirement.* When it is determined, in accordance with paragraph (a)(2) of this section, that it is not feasible or is not appropriate (as such terms are defined in paragraph (b) of this section) to approve a training program for an individual otherwise entitled to basic TRA, the individual shall be furnished a formal written notice of waiver, with an explanation of the reason(s) for the waiver and a statement of why training is not feasible or is not appropriate in the case of such individual. At a minimum, the written statement furnished to the individual shall contain information required by § 617.50(e) as well as the following information:

(i) Name and social security number of the individual;

(ii) Petition number under which the worker was certified;

(iii) A statement why the agency has determined that it is not feasible or is not appropriate to approve training for the individual at that time, and the reason(s) for the finding;

(iv) A statement that the waiver will be revoked at any time that feasible and appropriate training becomes available;

(v) Any other advice or information the State agency deems appropriate in informing the individual;

(vi) Signature block (with signature) for the appropriate State official; and

(vii) Signature block (with signature) for the worker's acknowledgement of receipt.

(3) *Denial of a waiver.* In any case in which a determination is made to deny to any individual a waiver of the participation requirement, the individual shall be furnished a formal written notice of denial of waiver, which shall contain all of the information required of formal written notices under paragraph (a)(2) of this section.

(4) *Procedure.* Any determination under paragraph (a)(2) or paragraph (a)(3) of this section shall be a determination to which §§ 617.50 and 617.51 apply, including the requirement that any written notice furnished to an individual shall include notice of the individual's appeal rights as is provided in § 617.50(e).

(b) *Reasons for issuing a waiver.* (1) For the purposes of paragraphs (a)(2) and (a)(3) of this section, a waiver of the participation in training requirement shall be issued to an individual only upon a supported finding that approval of a § 617.22(a) training program for that individual is not feasible or is not appropriate at that time.

(i) *Feasible and appropriate.* For the purposes of this section:

(A) *Feasible.* The term *feasible* means:

(*1*) training is available at that time which meets all the criteria of § 617.22(a);

(*2*) the individual is so situated as to be able to take full advantage of the training opportunity and complete the training; and

(*3*) funding is available to pay the full costs of the training and any transportation and subsistence expenses which are compensable.

The funding referred to in paragraph (b)(1)(i)(A)(*3*) of this section includes not only TAA program funds but also all other funds available under any of the provisions of the Job Training Partnership Act (including Title III) or any other Federal, State or private source that may be utilized for training approvable under § 617.22(a). Further, the individual's situation in respect to undertaking training (as referred to in paragraph (b)(1)(i)(A)(*2*) of this section) shall include taking into account personal circumstances that preclude the individual from being able to participate in and complete the training program, such as the availability of transportation, the ability to make arrangements for necessary child care, and adequate financial resources if the weeks of training exceeds the duration of UI and TRA payments.

(B) *Appropriate.* The term *appropriate* means being suitable or compatible, fitting, or proper. Appropriate, therefore, refers to suitability of the training for the worker (including whether there is a reasonable prospect which is reasonably foreseeable that the individual will be reemployed by the firm from which separated), and compatibility of the training for the purposes of the TAA Program. In these respects, suitability of training for the individual is encompassed within the several criteria in § 617.22 (a), and compatibility with the program is covered by the various provisions of subpart C of this part which describe the types of training approvable under § 617.22(a) and the limitations thereon.

(ii) *Basis for application.* Whether training is feasible or appropriate at any given time is determined by finding whether, at that time, training suitable for the worker is available, the training is approvable under subpart C of this part including the criteria in § 617.22(a), the worker is so situated as to be able to take full advantage of the training and satisfactorily complete the training, full funding for the training is available from one or more sources in accordance with §§ 617.24 and 617.25, the worker has the financial resources to complete the training when the duration of the training program exceeds the worker's eligibility for TRA, and the training will commence within 30 days of approval.

(2) *Particular applications.* The reasons for any determination that training is not feasible or is not appropriate shall be in accord with the following:

(i) *Not feasible* because—

(A) The beginning date of approved training is beyond 30 days, as required by the definition for "Enrolled in training" in § 617.11(a)(2)(vii)(D),

(B) Training is not reasonably available to the individual,

(C) Training is not available at a reasonable cost,

(D) Funds are not available to pay the total costs of training, or

(E) Personal circumstances such as health or financial resources, preclude participation in training or satisfactory completion of training,

(F) Other (explain).

(ii) *Not appropriate* because—

(A)(*1*) The firm from which the individual was separated plans to recall the individual within the reasonably foreseeable future (State agencies must verify planned recalls with the employer),

(*2*) *Planned recall.* For the purpose of determining whether the recall or reemployment of an individual is reasonably foreseeable (for the purposes of this section and § 617.22), either a specific or general type of recall (as set out) shall be deemed to be sufficient.

(*i*) *Specific recall.* A specific recall is where an individual or group of individuals who was separated from employment is identified and notified by the employer to return to work within a specified time period.

(*ii*) *General recall.* A general recall is where the employer announces an intention to recall an individual or group of individuals, or by other action reasonably signals an intent to recall, without specifying any certain date or specific time period.

(*iii*) *Reasonably foreseeable.* For purposes of determining whether training should be denied and a training waiver granted, because of a planned recall that is reasonably foreseeable, such a planned recall includes a specific recall and also includes a general recall (as defined in paragraph (b)(2)(ii)(A)(*2*) of this section) if the general recall in each individual's case is reasonably expected to occur before the individual exhausts eligibility for any regular UI payments for which the individual is or may become entitled. A general recall, in which the timing of the recall is reasonably expected to occur after the individual's exhaustion of any regular UI to which the individual is or may become entitled, shall not be treated as precluding approval of training, but shall be treated as any other worker separation for these purposes.

(B) The duration of training suitable for the individual exceeds the individual's maximum entitlement to basic and additional TRA payments and the individual cannot assure financial responsibility for completing the training program,

(C) The individual possesses skills for "suitable employment" and there is a reasonable expectation of employment in the foreseeable future, or

(D) Other (explain).

(3) *Waivers and able and available.* An individual who has been furnished a written notice of waiver under paragraph (a)(2) of this section (or denial of waiver under paragraph (a)(3) of this section) shall be subject to all of the requirements of § 617.17(a), which shall continue until the individual is enrolled in a training program as required by paragraph (a)(2)(vii) of § 617.11.

(c) *Waiver review and revocations.* (1) State agencies must have a procedure for reviewing regularly (i.e., every 30 days or less) all waivers issued under this section to individuals, to ascertain that the conditions upon which the waivers were granted continue to exist. In any case in which the conditions have changed—i.e., training has become feasible and appropriate—then the waiver must be revoked, and a written notice of revocation shall be furnished to the individual involved.

(2) In addition to the periodic reviews required by paragraph (c)(1) of this section, State agencies must have a procedure for revoking waivers in individual cases promptly whenever a change in circumstances occurs. For example, a written notice of revocation shall be issued to the individual concurrent with the approval of the training in which the individual has enrolled (if such training is scheduled to commence within 30 days), and shall not be issued prior to such approval.

(3) State agencies may incorporate a revocation section in the waiver form or on a separate revocation form. Any determination under paragraph (c) of this section shall be a determination to which §§ 617.50 and 617.51 apply. The information included in a written notice of revocation issued under this paragraph (c) shall include all of the information required for written notices issued under paragraph (a)(2) of this section.

(d) *Recordkeeping and reporting.* (1) State agencies must develop procedures for compiling and reporting on the number of waivers issued and revoked, by reason, as specified in paragraphs (b) and (c) of this section, and report such data to the Department of Labor as requested by the Department.

(2) State agencies are not required to forward copies of individual waiver and revocation notices to the Department of Labor, unless specifically requested by the Department. However, each State agency shall retain a copy of every individual waiver and revocation notice issued by the State, for such period of time as the Department requires.

(Approved by the Office of Management and Budget under control number 1205–0016).

14. Section 617.20 is revised to read as follows:

§ 617.20 Responsibilities for the delivery of reemployment services.

(a) *State agency referral.* Cooperating State agencies shall be responsible for:

(1) Advising each adversely affected worker to apply for training with the State agency responsible for reemployment services, while the worker is receiving UI payments, and at the time the individual files an initial claim for TRA; and

(2) Referring each adversely affected worker to the State agency responsible for training and other reemployment services in a timely manner.

(b) *State agency responsibilities.* The responsibilities of cooperating State agencies under subpart C of this part include, but are not limited to:

(1) Interviewing each adversely affected worker regarding suitable training opportunities reasonably available to each individual under subpart C of this part, reviewing such opportunities with each individual, informing each individual of the requirement for participation in training as a condition for receiving TRA, and accepting each individual's application for training. Such training may be approved for any adversely affected worker at any time after a certification is issued and the worker is determined to be covered without regard to whether the worker has exhausted all rights to unemployment insurance;

(2) Registering adversely affected workers for work;

(3) Informing adversely affected workers of the reemployment services and allowances available under the Act and this Part 617, the application procedures, the filing date requirements for such reemployment services and the training requirement for receiving TRA;

(4) Determining whether suitable employment, as defined in § 617.22(a)(1), is available;

(5) Providing counseling, testing, placement, and supportive services;

(6) Providing or procuring self-directed job search training, when necessary;

(7) Providing training, job search and relocation assistance;

(8) Developing a training plan with the individual;

(9) Determining which training institutions offer training programs at a reasonable cost and with a reasonable expectation of employment following the completion of such training, and procuring such training;

(10) Documenting the standards and procedures used to select occupations and training institutions in which training is approved;

(11) Making referrals and approving training programs;

(12) Monitoring the progress of workers in approved training programs;

(13) Developing, and periodically reviewing and updating reemployment plans for adversely affected workers;

(14) Developing and implementing a procedure for reviewing training waivers and revocations at least every 30 days to determine whether the conditions under which they are issued have changed; and

(15) Coordinating the administration and delivery of employment services, benefits, training, and supplemental assistance for adversely affected workers with programs under the Act and under Title III of the Job Training Partnership Act.

15. The introductory text and paragraphs (e) and (g) of § 617.21 are revised to read as follows:

§ 617.21 Reemployment services and allowances.

Reemployment services and allowances shall include, as appropriate, the services and allowances as set forth in this section, provided that those services included within the scope of paragraphs (a) through (e) of this section shall be provided for under any other Federal law other than the Act.

* * * * *

(e) *Supportive services.* Supportive services shall be provided so individuals can obtain or retain employment or participate in employment and training programs leading to eventual placement in permanent employment. Such services may include work orientation, basic education, communication skills, child care, and any other services necessary to prepare an individual for full employment in accordance with the individual's capabilities and employment opportunities.

* * * * *

(g) *Classroom training.* This training activity is any training of the type normally conducted in a classroom setting, including vocational education, and may be provided to individuals when the conditions for approval of training are met, as provided in § 617.22(a), to impart technical skills and information required to perform a specific job or group of jobs. Training designed to enhance the employability of individuals by upgrading basic skills, through the provision of courses such as remedial education or English-as-a-second-language, shall be considered as remedial education approvable under § 617.22(a) if the criteria for approval of training under § 617.22(a) are met.

* * * * *

16. Paragraphs (a), (b), (c), and (f) (2), (3), and (4) of § 617.22 are amended to read as follows:

§ 617.22 Approval of training.

(a) *Conditions for approval.* Training shall be approved for an adversely affected worker if the State agency determines that:

(1) *There is no suitable employment (which may include technical and professional employment) available for an adversely affected worker.*

(i) This means that for the worker for whom approval of training is being considered under this section, no suitable employment is available at that time for that worker, either in the commuting area, as defined in § 617.3(k), or outside the commuting area in an area in which the worker desires to relocate with the assistance of a relocation allowance under subpart E of this part, and there is no reasonable prospect of such suitable employment becoming available for the worker in the foreseeable future. For the purposes of paragraph (a)(1) of this section only, the term "suitable employment" means, with respect to a worker, work of a substantially equal or higher skill level than the worker's past adversely affected employment, and wages for such work at not less that 80 percent of the worker's average weekly wage.

(2) *The worker would benefit from appropriate training.* (i) This means that there is a direct relationship between the needs of the worker for skills training or remedial education and what would be provided by the training program under consideration for the worker, and that the worker has the mental and physical capabilities to undertake, make satisfactory progress in, and complete the training. This includes the further criterion that the individual will be job ready on completion of the training program.

(3) *There is a reasonable expectation of employment following completion of such training.* (i) This means that, for that worker, given the job market conditions expected to exist at the time of the completion of the training program, there is, fairly and objectively considered, a reasonable expectation that the worker will find a job, using the skills and education acquired while in training, after completion of the training. Any determination under this criterion must take into account that "a reasonable expectation of employment" does not require that employment opportunities for the worker be available, or offered, immediately upon the completion of the approved training. This emphasizes, rather than negates, the point that there must be a fair and objective projection of job market conditions expected to exist at the time of completion of the training.

(4) *Training approved by the Secretary is reasonably available to the worker from either governmental agencies or private sources (which may include area vocational education schools, as defined in section 195(2) of the Vocational Education Act of 1963, and employers).* (i) This means that training is reasonably accessible to the worker within the worker's commuting area at any governmental or private training (or education) provider, particularly including on-the-job training with an employer, and it means training that is suitable for the worker and meets the other criteria in paragraph (a) of this section. It also means that emphasis must be given to finding accessible training for the worker, although not precluding training outside the commuting area if none is available at the time within the worker's commuting area. Whether the training is within or outside the commuting area, the training must be available at a reasonable cost as prescribed in paragraph (a)(6) of this section.

(ii) In determining whether or not training is reasonably available, first consideration shall be given to training opportunities available within the worker's normal commuting area. Training at facilities outside the worker's normal commuting area should be approved only if such training is not available in the area or the training to be provided outside the normal commuting area will involve less charges to TAA funds.

(5) *The worker is qualified to undertake and complete such training.* (i) This emphasizes the worker's personal qualifications to undertake and complete approved training. Evaluation of the worker's personal qualifications must include the worker's physical and mental capabilities, educational background, work experience and financial resources, as adequate to undertake and complete the specific training program being considered.

(ii) Evaluation of the worker's financial ability shall include an analysis of the worker's remaining weeks of UI and TRA payments in relation to the duration of the training program. If the worker's UI and TRA payments will be exhausted before the end of the training program, it shall be ascertained whether personal or family resources will be available to the worker to complete the training. It must be noted on the worker's record that financial resources were discussed with the worker before the training was approved.

(iii) When adequate financial resources will not be available to the worker to complete a training program which exceeds the duration of UI and TRA payments, the training shall not be approved and consideration shall be given to other training opportunities available to the worker.

(6) *Such training is suitable for the worker and available at a reasonable cost.* (i) Such training means the training being considered for the worker. Suitable for the worker means that paragraph (a)(5) of this section is met and that the training is appropriate for the worker given the worker's capabilities, background and experience.

(ii) Available at a reasonable cost means that training may not be approved at one provider when, all costs being considered, training substantially similar in quality, content and results can be obtained from another provider at a lower total cost

within a similar time frame. It also means that training may not be approved when the costs of the training are unreasonably high in comparison with the average costs of training other workers in similar occupations at other providers. This criterion also requires taking into consideration the funding of training costs from sources other than TAA funds, and the least cost to TAA funding of providing suitable training opportunities to the worker. Greater emphasis will need to be given to these elements in determining the reasonable costs of training, particularly in view of the requirements in § 617.11(a) (2) and (3) that TRA claimants be enrolled in and participate in training.

(iii) For the purpose of determining reasonable costs of training, the following elements shall be considered:

(A) Costs of a training program shall include tuition and related expenses (books, tools, and academic fees), travel or transportation expenses, and subsistence expenses;

(B) In determining whether the costs of a particular training program are reasonable, first consideration must be given to the lowest cost training which is available within the commuting area. When training, substantially similar in quality, content and results, is offered at more than one training provider, the lowest cost training shall be approved; and

(C) Training at facilities outside the worker's normal commuting area that involves transportation or subsistence costs which add substantially to the total costs shall not be approved if other appropriate training is available.

(b) *Allowable amounts for training.* In approving a worker's application for training, the conditions for approval in paragraph (a) of this section must be found to be satisfied, including assurance that the training is suitable for the worker, is at the lowest reasonable cost, and will enable the worker to obtain employment within a reasonable period of time. An application for training shall be denied if it is for training in an occupational area which requires an extraordinarily high skill level and for which the total costs of the training are substantially higher than the costs of other training which is suitable for the worker.

(c) *Previous approval of training under State law.* Training previously approved for a worker under State law or other authority is not training approved under paragraph (a) of this section. Any such training may be approved under paragraph (a) of this section, if all of the requirements and limitations of paragraph (a) of this section and other provisions of Subpart C of this part are met, but such approval shall not be retroactive for any of the purposes of this Part 617, including payment of the costs of the training and payment of TRA to the worker participating in the training. However, in the case of a redetermination or decision reversing a determination denying approval of training, for the purposes of this Part 617 such redetermination or decision shall be given effect retroactive to the issuance of the determination that was reversed by such redetermination or decision; but no costs of training may be paid unless such costs actually were incurred for training in which the individual participated, and no additional TRA may be paid with respect to any week the individual was not actually participating in the training.

* * * * *

(f) *Length of training and hours of attendance.* * * *

(2) *Length of training.* The maximum duration for any approvable training program is 104 weeks (during which training is conducted) and no individual shall be entitled to more than one training program under a single certification.

(3) *Training program.* (i) For purposes of this Part 617, a training program may consist of a single course or group of courses which is designed and approved by the State agency for an individual to meet a specific occupational goal.

(ii) When an approved training program involves more than one course and involves breaks in training (within or between courses, or within or between terms, quarters, semesters and academic years), all such breaks in training are subject to the "14-day break in training" provision in § 617.15(d), for purposes of receiving TRA payments. An individual's approved training program may be amended by the State agency to add a course designed to satisfy unforeseen needs of the individual, such as remedial education or specific occupational skills, as long as the length of the amended training program does not exceed the 104-week training limitation in paragraph (f)(2) of this section.

(4) *Full-time training.* Individuals in TAA approved training shall attend training full time, and when other training is combined with OJT attendance at both shall be not less than full-time. The hours in a day and days in a week of attendance in training shall be full-time in accordance with established hours and days of training of the training provider.

* * * * *

17. Section 617.24 is revised to read as follows:

§ 617.24 Preferred training.

Training programs that may be approved under § 617.22(a) include, but are not limited to—

(a) On-the-job training,

(b) Any training program provided by a State pursuant to Title III of the Job Training Partnership Act,

(c) Any training program approved by a private industry council established under the Job Training Partnership Act,

(d) Any program of remedial education,

(e) Any training program (other than a training program described in paragraph (c) of § 617.25) for which all, or any portion, of the costs of training the worker are paid—

(1) Under any other Federal or State program other than this Subpart C, or

(2) From any other source other than this section, but not including sources personal to the individual, such as self, relatives, or friends, and

(f) Any other training program approved by the Department.

18. Section 617.25 is revised to read as follows:

§ 617.25 Limitations on training under Subpart C of this part.

The second sentence of amended section 236(a)(1) of the Act provides that an adversely affected worker shall be entitled to have payment of the costs of training approved under the Act paid on the worker's behalf, subject, however, "to the limitations imposed by" section 236. The limitations in section 236 which are implemented in this section concern the restrictions on approval of training which are related directly or indirectly to the conditions on training which are approvable or on the funding of training costs.

(a) *On-the-job training.* The costs of on-the-job training approved Subpart C of this part for a worker, which are paid from TAA funds, shall be paid in equal monthly installments. Such costs may be paid from TAA funds, and such training may be approved under subpart C of this part, however, only if the State agency determines that:

(1) No currently employed individual is displaced by such eligible worker, including partial displacement such as a reduction in the hours of non-overtime work, wages, or employment benefits;

(2) Such training does not impair existing contracts for services or collective bargaining agreements;

(3) In the case of training which would be inconsistent with the terms of a collective bargaining agreement, written concurrence has been obtained from the concerned labor organization;

(4) No other individual is on layoff from the same or any substantially equivalent job for which such eligible worker is being trained;

(5) The employer has not terminated the employment of any regular employee or otherwise reduced the work force with the intention of filling the vacancy so created by hiring the eligible worker;

(6) The job for which the eligible worker is being trained is not being created in a promotional line that will infringe in any way upon the promotional opportunities of currently employed individuals;

(7) Such training is not for the same occupation from which the worker was separated and with respect to which such worker's group was certified pursuant to section 222 of the Act;

(8) The employer certifies to the State agency that the employer will continue to employ the eligible worker for at least 26 weeks after completing the training if the worker desires to continue such employment and the employer does not have due cause to terminate such employment;

(9) The employer has not received payment under this Subpart C or under any other Federal law for any other on-the-job training provided by such employer which failed to meet the requirements of paragraphs (a)(1) through (a)(6) of this section or such other Federal law; and

(10) The employer has not taken, at any time, any action which violated the terms of any certification described in paragraph (a)(8) of this section made by the employer with respect to any other on-the-job training provided by the employer for which the employer has received a payment under Subpart C of this part (or the prior provisions of Subpart C of this part).

(b) *Other authority and restrictions on funding—*

(1) *In general.* Section 236(a) contains several provisions which allow the costs of a training program approved under the Act to be paid—

(i) Solely from TAA funds,

(ii) Solely from other public or private funds, or

(iii) Partly from TAA funds and partly from other public or private funds,

but also precludes the use of TAA funds or funds under another Federal law where such use of funds would result in duplication of payment of training costs. Those authorities and restrictions are spelled out in paragraph (b) of this section: *Provided*, that, private funds may not include funds from sources personal to the individual, such as self, relatives, or friends.

(2) *Section 236(a)(5)(E) of the Act.* (i) *In general.* Paragraph (5)(E) of section 236(a) of the Act specifies one of the types of training programs approvable under the Act, as including a program (other than a training program described in section 236(a)(7) (paragraph (b)(5) of this section)) for which all, or any portion, of the costs of the training program are paid—

(A) Under any Federal or State program other than the Act, or

(B) From any source other than TAA funds.

(ii) *Application.* Paragraph (E) of section 236(a)(5) of the Act thus authorizes prearrangements between cooperating State agencies administering the TAA program and the authorities administering any other Federal, State, or private funding source, to agree upon any mix of TAA funds and other funds for paying the costs of a training program approved under Subpart C of this part. Any such prearrangement must contain specific commitments from the other authorities to pay the costs they agree to assume.

(3) *Section 236(a)(6) of the Act.* (i) *In general.* Paragraph (6) of section 236(a) of the Act is related to section 236(a)(5)(E) in providing that the costs of a training program approved under the Act are not required to be paid from TAA funds to the extent that such costs are paid under any Federal or State program other than the Act or from any source other than the Act.

(ii) *Application.* (A) Although paragraph (6) of section 236(a) of the Act is expressed in terms of the costs not being *required* to be paid from TAA funds, it authorizes the mixing of TAA funds and funds from any other Federal, State or private source. Therefore, sharing the future costs of training is authorized where prior costs were paid from another Federal, State or private source, but this does not authorize reimbursement from TAA funds of any training costs which were incurred and for which payment became due prior to the approval of the training program under Subpart C of this part. In utilizing the authority under paragraph (b)(3) of this section for sharing training costs, prearrangements shall be entered into as required under paragraph (b)(2) of this section before any TAA funds are obligated.

(B) Paragraph (6) of section 236(a) contains a special restriction on the authority derived thereunder to use TAA funds in sharing training costs. Therefore, before approving any training program under Subpart C of this part, which may involve sharing of the training costs under the authority of paragraph (b)(3) of this section, the cooperating State agencies for the TAA program shall require the worker to enter into a written agreement with the State under which TAA funds will not be applied for or used to pay any portion of the costs of the training the worker has reason to believe will be paid by any other governmental or private source.

(4) *Section 236(a)(4) of the Act.* (i) *In general.* (A) Paragraph (4) of section 236(a) of the Act (paragraph (3) of section 236(a) before August 23, 1988) continues to provide, as it did before the addition of paragraphs (5)(E), (6), and (7) to section 236(a), that:

(*1*) When the costs of training are paid from TAA funds under subpart C of this part, no other payment for such costs of training may be made under any other Federal law; and

(*2*) When the payment of the costs of training has already been made under any other Federal law, or the costs are reimbursable under any other Federal law and a portion of the costs has already been paid under such other Federal law, payment of such training costs may not be made from TAA funds.

(B) Paragraph (4) of section 236(a) also requires that: The provisions of paragraphs (b)(4)(i) (A)(*1*) and (A)(*2*) of this section shall not apply to, or take into account, any funds provided under any other provision of Federal law which are used for any purpose other than the direct payment of the identical costs incurred in training the adversely affected worker under the TAA Program, even if such other use has the effect of indirectly paying or reducing any portion of the costs involved in training the adversely affected worker.

(ii) *Application.* (A) Although the prohibition on duplicate payments in the first part of section 236(a)(4) remains fully implemented in this section, the second part of section 236(a)(4) on the sharing of costs from TAA funds and other Federal fund sources is modified by the explicit provisions of paragraphs (5)(E) and (6) of section 236(a), as set forth in paragraphs (b)(2) and (b)(3) of this section.

(B) When the direct costs of a training program approvable under subpart C of this part are payable from TAA funds and are also wholly or partially payable under another Federal law, or under any State law or from private, nongovernmental sources, the TAA Program agencies shall establish procedures which ensure that TAA funds shall not be utilized to duplicate funds available from another source, but this preclusion of duplication does not prohibit and shall not discourage sharing of costs under prearrangements

authorized under paragraphs (b)(2) and (b)(3) of this section.

(C)(*1*) Therefore, pursuant to paragraph (4) of section 236(a), paragraph (b)(4) of this section continues to prohibit duplicate payment of training costs, which is consistent with the general prohibition expressed in subpart C of this part, against any use of TAA funds to duplicate payment of training costs in any circumstances. Paragraph (b)(4) of this section also continues to prohibit taking into account, in determining whether training costs are payable from TAA funds, any payments to the worker under any other Federal law which may have the effect of indirectly paying all or a portion of the training costs. Such indirect payments include Veterans Educational Assistance, Pell Grants, and Supplemental Educational Opportunity Grants, which are paid to the individual. However, any payments to the individual under these programs are deductible from TRA payable to the individual under § 617.13(c)(2).

(*2*) When payments of Veterans Educational Assistance, Pell Grants, and Supplemental Educational Opportunity Grants are made to the training provider, instead of the individual, and are used for training costs, such payments shall be taken into account as direct payment of the training costs under other Federal law for the purposes of this section.

(5) *Section 236(a)(7) of the Act.* (i) *In general.* Paragraph (7) of section 236(a) of the Act provides that a training program shall not be approved under the Act if—

(A) all or a portion of the costs of such training program are paid under any nongovernmental plan or program,

(B) the adversely affected worker has a right to obtain training or funds for training under such plan or program, and

(C) such plan or program requires the worker to reimburse the plan or program from funds provided under the Act, or from wages paid under such training program, for any portion of the costs of such training program paid under the plan or program.

(ii) *Application.* Paragraph (7) of section 236(a), which is implemented in paragraph (b)(5) of this section, reinforces the prohibition in § 617.22(h) against approval of a training program under subpart C of this part if the worker is required to pay a fee or tuition. The provisions of paragraph (b) and paragraph (h) of this section shall be given effect as prohibiting the approval under subpart C of this part of any training program if the worker would be requested or required, at any time or under any circumstances, to pay any of the costs of a training program, however small, from any TAA funds given to the worker or from any other funds belonging to the worker from any source whatever. Aside from this stringent limitation, however, paragraph (7) of section 236(a) of the Act implicitly authorizes training approved under this subpart C to be wholly or partly funded from nongovernmental (i.e., employer, union or other private) sources.

19. Section 617.26 is revised to read as follows:

§ 617.26 Liable and agent State responsibilities.

(a) *Liable State.* The liable State means, for any individual, the State which administers the applicable State law (as determined under § 617.16). The liable State is responsible for making all determinations, redeterminations, and decisions on appeals on all claims for program benefits under this part 617, including waivers and revocations of waivers pursuant to § 617.19, subsistence payments pursuant to § 617.27, and transportation payments pursuant to § 617.28. Upon receiving a copy of a certification issued by the Department, with respect to an affected firm in the State, the liable State also is responsible for publishing newspaper notices as provided in § 617.4(d), furnishing information and assistance to workers as provided in § 617.4, furnishing reemployment services under subparts C, D, and E of this part to all eligible workers covered by such certification, and carrying out other activities and functions required by the State's Agreement with the Secretary entered into pursuant to § 617.59. All determinations pertaining to any individual's eligibility for or entitlement to any program benefit under this part 617 shall be subject to the provisions of §§ 617.50 and 617.51.

(b) *Agent State.* Agent State means, for any individual, any State other than the liable State for the individual. Agent States shall be responsible for cooperating fully with the liable State and assisting the liable State in carrying out its activities and functions. These agent State responsibilities shall be part of the activities and functions undertaken by the agent States under their Agreements entered into pursuant to § 617.59. Agent State responsibilities include cooperating with liable States in taking applications and claims for TAA, providing reemployment services to certified workers in accordance with subparts B, C, D and E of this part, providing interstate claimants with TAA program information and assistance, assisting applicants or claimants to file claims for TAA program benefits and services, cooperating with the liable State by providing information needed to issue determinations, redeterminations, and decisions on appeals, and procuring and paying the cost of any approved training, including subsistence and transportation costs, according to determinations issued by the liable State.

20. Section 617.32(a)(4) is revised to read as follows:

§ 617.32 Eligibility.

(a) *Conditions.* * * *

(4) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has a reasonable expectation of obtaining suitable employment of long-term duration outside the commuting area and in the area where the job search will be conducted. For the purposes of this section, the term "suitable employment" means suitable work as defined in § 617.3(kk) (1) or (2), whichever is applicable to the individual; and

* * * * *

21. Section 617.33 is revised to read as follows:

§ 617.33 Findings required.

(a) *Findings by liable State.* Before final payment of a job search allowance may be approved, the following findings shall be made by the liable State:

(1) The individual meets the eligibility requirements for a job search allowance specified in § 617.32(a) (1) through (4);

(2) The application for a job search allowance was submitted by the individual within the time limits specified in § 617.31(c); and

(3) The individual completed the job search within the time limits stated in § 617.32(a)(5), and the requirements of paragraphs (b) and (c) of § 617.32 have been met.

(b) *Agent State.* (1) When an individual files an application for a job search allowance with respect to a job search conducted in a State other than the liable State, the State agency of the State in which the individual conducts the job search shall serve as the agent State and be responsible for assisting the individual in conducting the job search and in filing an application for a job search allowance with the liable State, and for assisting the liable State by furnishing to it any information required for the liable State's determination of the claim.

(2) The agent State shall cooperate fully with the liable State in carrying out its activities and functions with regard to such applications.

22. Paragraph (b) of § 617.34 is revised to read as follows:

§ 617.34 Amount.

* * * * *

(b) *Limit.* The total job search allowances paid to an individual under a certification may not exceed $800, regardless of the number of job searches undertaken by the individual. The amounts otherwise payable under paragraph (a) of this section shall be reduced by any amounts the individual is entitled to be paid or reimbursed for such expenses from any other source.

23. Section 617.42(a)(6) is revised to read as follows:

§ 617.42 Eligibility.

(a) *Conditions.* * * *

(6) A determination by the State agency that the individual has no reasonable expectation of securing suitable employment in the commuting area, and has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, outside the commuting area and in the area of intended relocation. For the purposes of this section, the term "suitable employment" means suitable work as defined in § 617.3(kk) (1) and (2), whichever is applicable to the individual; and

* * * * *

24. Section 617.44 is revised to read as follows:

§ 617.44 Findings required.

(a) *Findings by liable State.* Before final payment of a relocation allowance may be approved, the following findings shall be made by the liable State:

(1) The individual meets the eligibility requirements for a relocation allowance specified in § 617.42(a) (1) to (6) and § 617.42(b).

(2) The application for a relocation allowance was submitted by the individual within the time limits specified in § 617.41(c);

(3) The individual began and completed the relocation within the limitations specified in § 617.42(a)(7) and § 617.43; and

(4) The liable State has verified (directly or through the agent State) with the employer, and finds, that the individual has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment, in the area of intended relocation, in accordance with § 617.42(a)(6).

(b) *Agent State.* (1) When an individual relocates in a State other than the liable State, the State agency of the State in which the individual relocates shall serve as the agent State and be responsible for:

(i) Assisting the individual in relocating to the State, and in filing an application for a relocation allowance with the liable State, and

(ii) Assisting the liable State by furnishing to it any information required for the liable State's determination on the claim.

(2) The agent State shall cooperate with the liable State in carrying out its activities and functions with regard to such applications. When requested by the liable State, the agent State shall verify with the employer and report to the liable State whether the individual has obtained suitable employment affording a reasonable expectation of employment of long-term duration, or a bona fide offer of such suitable employment.

25. Section 617.49 is amended by adding a new paragraph (e) to read as follows:

§ 617.49 Job search program.

* * * * *

(e) *Termination of requirement.* The job search program requirement set out in this section shall not be a condition of entitlement to TRA for any week which begins after November 20, 1988.

26. Paragraphs (a) and (d) of § 617.50 are revised to read as follows:

§ 617.50 Determinations of entitlement; notices to individuals.

(a) *Determinations of initial applications for TRA or other TAA.* The State Agency whose State law is the applicable State law under § 617.16 shall upon the filing of an initial application for TRA or other TAA promptly determine the individual's entitlement to such TRA or other TAA under this part 617, and may accept for such purposes information and findings supplied by another State agency under this part 617.

* * * * *

(d) *Use of State law.* In making determinations or redeterminations under this section, or in reviewing such determinations or redeterminations under § 617.51, a State agency shall apply the regulations in this part 617. As to matters committed by this part 617 to the applicable State law, a State agency, a hearing officer, or a State court shall apply the applicable State law and regulations thereunder, including procedural requirements of such State law or regulations, except so far as such State law or regulations are inconsistent with this part 617 or the purpose of this part 617: *Provided*, that, no provision of State law or regulations on good cause for waiver of any time limit, or for late filing of any claim, shall apply to any time limitation referred to or specified in this part 617, unless such State law or regulation is made applicable by a specific provision of this part 617.

27. Section 617.55 is revised to read as follows:

§ 617.55 Overpayments; penalties for fraud.

(a) *Determination and repayment.* (1) If a State agency or a court of competent jurisdiction determines that any person or individual has received any payment under this part 617 to which the person or individual was not entitled, including a payment referred to in paragraph (b) or paragraph (c) of this section, such person or individual shall be liable to repay such amount to the State agency, and the State agency shall recover any such overpayment in accordance with the provisions of this part 617; except that the State agency may waive the recovery of any such overpayment if the State agency determines, in accordance with the guidelines prescribed in paragraph (e)(2) of this section, that:

(i) The payment was made without fault on the part of such person or individual; and

(ii) Requiring such repayment would be contrary to equity and good conscience.

(2)(i)(A) In determining whether fault exists for purposes of paragraph (a)(1)(i) of this section, the following factors shall be considered:

(*1*) Whether a material statement or representation was made by the person or individual in connection with the application for TAA that resulted in the overpayment, and whether the person or individual knew or should have known that the statement or representation was inaccurate.

(*2*) Whether the person or individual failed or caused another to fail to disclose a material fact, in connection with an application for TAA that resulted in the overpayment, and whether the person or individual knew or should have known that the fact was material.

(*3*) Whether the person or individual knew or could have been expected to know, that the person or individual was not entitled to the TAA payment.

(*4*) Whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the person or individual or of which the person or individual had knowledge, and which

was erroneous or inaccurate or otherwise wrong.

(5) Whether there has been a determination of fraud under paragraph (b) of this section or section 243 of the Act.

(B) An affirmative finding on any one of the factors in paragraphs (a)(2)(i)(A) of this section precludes waiver of overpayment recovery.

(ii)(A) In determining whether equity and good conscience exists for purposes of paragraph (a)(1)(ii) of this section, the following factors shall be considered:

(1) Whether the overpayment was the result of a decision on appeal, whether the State agency had given notice to the person or individual that the case has been appealed and that the person or individual may be required to repay the overpayment in the event of a reversal on appeal, and whether recovery of the overpayment will not cause extraordinary and lasting financial hardship to the person or individual.

(2) Whether recovery of the overpayment will not cause extraordinary financial hardship to the person or individual, and there has been no affirmative finding under paragraph (a)(2)(ii)(A) of this section with respect to such person or individual and such overpayment.

(B) An affirmative finding on either of the foregoing factors in paragraphs (a)(2)(ii)(A) of this section precludes waiver of overpayment recovery.

(C)(1) For the purpose of paragraph (a)(2)(ii) of this section, an extraordinary financial hardship shall exist if recovery of the overpayment would result directly in the person's or individual's loss of or inability to obtain minimal necessities of food, medicine, and shelter for a substantial period of time; and an extraordinary and lasting financial hardship shall be extraordinary as described above and may be expected to endure for the foreseeable future.

(2) In applying this test in the case of attempted recovery by repayment, a substantial period of time shall be 30 days, and the foreseeable future shall be at least three months. In applying this test in the case of proposed recoupment from other benefits, a substantial period of time and the foreseeable future shall be the longest potential period of benefit entitlement as seen at the time of the request for a waiver determination. In making these determinations, the State agency shall take into account all potential income of the person or individual and the person's or individual's firm, organization, or family and all cash resources available or potentially available to the person or individual and the person's or individual's firm, organization, or family in the time period being considered.

(3) Determinations granting or denying waivers of overpayments shall be made only on request for a waiver determination. Such request shall be made on a form which shall be furnished to the person or individual by the State agency. Notices of determination of overpayments shall include an accurate description of the waiver provisions of paragraph (a) of this section, if the State agency has elected to allow waivers of TAA overpayments.

(4) Each State shall have the option to establish a policy as to whether the waiver provisions of this section shall be applied to TAA overpayments. A State's decision on its policy shall not be controlled by whether it waives UI overpayments, but the State's decision shall be published for the information of the public and the Department.

(5)(i) Unless an overpayment is otherwise recovered, or is waived under paragraph (a) of this section, the State agency shall recover the overpayment by deduction from any sums payable to such person or individual under:

(A) This part 617;

(B) Any Federal unemployment compensation law administered by the State agency; or

(C) Any other Federal law administered by the State agency which provides for the payment of unemployment assistance or an allowance with respect to unemployment.

(ii) In addition, a State agency may recover the overpayment from unemployment insurance payable to such person or individual under the State law.

(b) *Fraud.* If a State agency or a court of competent jurisdiction finds that any person or individual:

(1) Knowingly has made, or caused another to make, a false statement or representation of a material fact; or

(2) Knowingly has failed, or caused another to fail, to disclose a material fact; and as a result of such false statement or representation, or of such nondisclosure, such individual has received any payment under this part 617 to which the person or individual was not entitled, such person or individual shall, in addition to any other penalty provided by law, be ineligible for any further payments under this part 617.

(c) *Training, job search and relocation allowances.* (1) If an individual fails, with good cause, to complete training, a job search, or a relocation, any payment or portion of a payment made under this part 617 to such individual or any person that is not properly and necessarily expended in attempting to complete such training, job search, or relocation, shall constitute an overpayment.

(2) If an individual fails, without good cause, to complete training, a job search, or a relocation, any payment made under this part 617 to such individual or any person shall constitute an overpayment.

(3) Such overpayment shall be recovered or waived as provided in paragraph (a) of this section.

(d) *Final determination.* Except for overpayments determined by a court of competent jurisdiction, no repayment may be required, and no deduction may be made, under this section until a determination under paragraph (a) of this section by the State agency has been made, notice of the determination and an opportunity for a fair hearing thereon has been given to the person or individual concerned, and the determination has become final.

(e) *Deposit.* Any amount recovered by a State agency under this section shall be deposited into the Federal fund or account from which payment was made.

(f) *Procedural requirements.* (1) The provisions of paragraphs (c), (e), and (g) of § 617.50 shall apply to determinations and redeterminations made pursuant to this section.

(2) The provisions of § 617.51 shall apply to determinations and redeterminations made pursuant to this section.

(g) *Fraud detection and prevention.* State procedures for the detection and prevention of fraudulent overpayments of TAA shall be, as a minimum, commensurate with the procedures adopted by the State with respect to State unemployment compensation and consistent with the Secretary's "Standard for Fraud and Overpayment Detection," Employment Security Manual, Part V, sections 7510–7515 (Appendix B of this Part).

(h) *Debts due the United States or Others.* (1) Notwithstanding any provision of this part 617, TAA payable to a person or an individual under this part 617 shall be applied by the State agency for the recovery by offset of any debt due the United States from the person or individual.

(2) TAA shall not be applied or used by the State agency in any manner for the payment of any debt of any person or individual to any State or any other entity or person, except that TRA payable to an individual shall be payable to someone other than the individual if required by State law and Federal law to satisfy the individual's obligation for child support or alimony.

(i) *Definition of person.* For purposes of this section, a person includes any employer or other entity or organization as well as the officers and officials thereof who may bear individual responsibility.

28. Section 617.59 is amended by adding a new paragraph (h) and a new paragraph (i) to read as follows:

§ 617.59 Agreements with State agencies.

* * * * *

(h) *Program coordination.* State agencies providing employment services, training and supplemental assistance under Subpart C of this part shall, in accordance with their Agreements under this section, coordinate such services and payments with programs and services provided by State Service Delivery Areas, Private Industry Councils, and substate grantees under the Job Training Partnership Act and with the State agency administering the State law.

(i) *Administration absent State Agreement.* In any State in which no Agreement under this section is in force, the Secretary shall administer the Act and this part 617 and pay TAA hereunder through appropriate arrangements made by the Department, and for this purpose the Secretary or the Department shall be substituted for the State or cooperating State agency wherever appropriate in this part 617. Such arrangements shall include the requirement that TAA be administered in accordance with this part 617, and the provisions of the applicable State law except to the extent that such State law is inconsistent with any provision of this part 617 or section 303 of the Social Security Act (42 U.S.C. 503) or section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)), and shall also include provision for a fair hearing for any individual whose application for TAA is denied. A final determination under paragraph (i) of this section as to entitlement to TAA shall be subject to review by the courts in the same manner and to the same extent as is provided by section 205(g) of the Social Security Act (42 U.S.C. 405(g)).

29. Section 617.60 is added and reserved to read as follows:

§ 617.60 Administrative requirements. [Reserved]

30. Section 617.64 is revised to read as follows:

§ 617.64 Termination of TAA program benefits.

The following rules are applicable to the termination of TAA benefits under the Act:

(a) No application for TRA, or transportation or subsistence payment while in training approved under subpart C of this part 617, shall be approved, and no payment of TRA or payment for transportation or subsistence occurring on or before the termination date shall be made after the termination date specified in the Act, unless the claim for TRA or an invoice for transportation and subsistence is presented to the State agency and a final determination is made on the amount payable on or before the termination date in the Act.

(b) No payment of job search or relocation allowances shall be made after the termination date specified in the Act, unless an application for such allowances was approved, such job search or relocation was completed, and a final determination made on the amount payable for such benefits by the State agency on or before the termination date in the Act.

(c) No training under subpart C of this part shall be approved unless a determination regarding the approval of such training was made on or before the termination date in the Act, and such training commenced on or before such termination date. Consistent with the requirements of section 236(a)(1) of the Act, and the termination provisions of paragraph (c) of this section, a final determination must be made on the invoice for the training costs by the State agency on or before the termination date specified in the Act to cover tuition related expenses. Determinations on tuition bills shall be limited to the training term, quarter, semester or other period beginning on or before the termination date in the Act. The training period should be in accord with normal billing practices of the training provider and/or State agency approval practices.

31. Section 617.67 is added to read as follows:

§ 617.67 Transition guidelines for the 1988 Amendments.

The provisions of part 3 of subtitle D of title I of the Omnibus Trade and Competitiveness Act of 1988 (the "OTCA"), Public Law 100–418, approved on August 23, 1988, made material changes in the TAA Program for workers that are reflected in the amended regulations published with this new section on transition guidelines for the 1988 Amendments. States and cooperating State agencies shall be guided by the following paragraphs of this section in the transition to the TAA Program as modified by the 1988 Amendments and reflected in the preceding provisions of this part 617, as well as in the interim operating instructions issued by the Department which are superseded by these regulations. The operating instructions in GAL 15–90, and the Changes thereto, shall continue in effect as guidance on the proper application of the 1988 Amendments except as modified in these final regulations. (GAL 15–90 is available from the Office of Trade Adjustment Assistance, U.S. Department of Labor, 200 Constitution Ave., NW., room C–4318, Washington, DC 20210.)

(a) *Oil and gas workers—prospective.* Workers in firms or appropriate subdivisions of firms engaged in exploration or drilling for oil or natural gas are newly covered under the TAA Program by an amendment to section 222 of the Trade Act of 1974. This is a permanent change in the Act having prospective effect, and became effective on August 23, 1988. Oil and gas workers covered by a certification issued pursuant to section 223 of the Act and the regulations at 29 CFR part 90 shall be entitled to basic and additional TRA and other TAA Program benefits on precisely the same terms and conditions as apply to other workers covered by other certifications and which are specifically set forth in this part 617.

(b) *Oil and gas workers—retroactive.* Oil and gas workers referred to in paragraph (a) of this section, who were separated from adversely affected employment after September 30, 1985, are covered retroactively under section 1421(a)(1)(B) of the OTCA, if they are covered by a certification issued pursuant to section 223 of the Act which is in response to a petition filed in the Office of Trade Adjustment Assistance on or before November 18, 1988. Administration of TAA Program benefits to these workers shall be on precisely the same terms and conditions as apply to other workers covered by other certifications, except that the limitations of the impact date provision of section 223(b) and the 60-day preclusion in section 231(a) may not be applied to these workers.

(c) *Benefit information to workers.* (1) An amendment to section 225 of the Act requires individualized and published notices to workers covered by certifications issued pursuant to section 223 of the Act. This amendment became effective as a requirement on September 22, 1988, and is applicable to all certifications issued on and after that date. Individualized notices and

published notices shall contain the information specifically set forth in this part 617.

(2) Section 239(f) of the Act requires cooperating State agencies to furnish four discrete items of information and advice to individuals about TAA Program benefits, commencing with such advice and information to every individual who applies for unemployment insurance under each State's unemployment compensation law. See § 617.4(e). This amendment became effective on August 23, 1988. Information and advice required by section 239(f) shall be provided in accordance with this part 617.

(d) *Training and eligibility requirements for TRA.* Effective on November 21, 1988, in general, enrollment and participation in, or completion of, a training program approved under subpart C is required as a condition of entitlement to basic TRA. Amendments to sections 231(a)(5), 231(b), and 231(c) of the Act incorporate this new requirement, replacing the job search program requirement which remains in effect through November 20, 1988. Continuation of the job search program requirement through November 20, 1988, and installation of the training program requirement on and after November 21, 1988, is required of all applicants for basic TRA.

(e) *Eligibility period for basic TRA.* (1) Effective on August 23, 1988, and with respect to all decisions (i.e., all determinations, redeterminations, and decisions on appeals) issued on or after that date, the eligibility period for basic TRA is changed from the prior law. Prior to the OTCA amendments, section 233(a)(2) provided that the eligibility period for an individual was a fixed 104-week period that immediately followed the week with respect to which the individual first exhausted all rights to regular benefits after the individual's first qualifying separation. Under section 233(a)(2) the new eligibility period is movable, and is the 104-week period that immediately follows the week in which the worker's most recent total qualifying separation occurs under the same, single certification. Under the effective date provisions of the OTCA, section 233(a)(2) applies to all decisions (i.e., determinations, redeterminations, and decisions on appeals) issued on and after August 23, 1988. Further, the law to be applied in making any such decision is the law as in effect on the date such a decision is made. These interpretative rules apply in all cases, regardless of whether the total qualifying separation occurred before, on, or after August 23, 1988, except as noted in paragraph (e)(3) of this section

(2) The major significance of the change in section 233(a)(2) is that, effective for all decisions (i.e., determinations, redeterminations, and decisions on appeals) issued on or after August 23, 1988, it applies to the "most recent" total qualifying separation. This means that, after the first qualifying separation before August 23, 1988, or the first total qualifying separation on and after August 23, 1988, with each subsequent total qualifying separation of an individual under the same certification the individual's eligibility period must be redetermined as the 104-week period that immediately follows the week in which such subsequent separation occurred.

(3) Section 1430(g) of the OTCA requires that the new eligibility period not be applied with respect to any total qualifying separation occurring before August 23, 1988, if as a result of applying section 233(a)(2) the individual would have an eligibility period with an earlier expiration date than the expiration date of the eligibility period established under the prior law and based on a first qualifying separation which occurred under the same certification before August 23, 1988. Therefore, for decisions (i.e., determinations, redeterminations, and decisions on appeals) issued on or after August 23, 1988, for a worker who had a first qualifying separation under the same certification before August 23, 1988, it must be determined what the individual's eligibility period is based upon the prior law, and, if the individual also had a subsequent total qualifying separation, what the individual's eligibility period is based on the amended law. Only if the subsequent total qualifying separation occurred before August 23, 1988, and the expiration date of the new eligibility period ends on the same date or a later date than the expiration date of the old eligibility period may the new eligibility period be applied to the individual, and in that event it must be applied; if the new eligibility period would end on a date earlier than the ending date of the eligibility period based on the worker's first qualifying separation, section 1430(g) operates to preclude the application of amended section 233(a)(2).

(4) Computation of the weekly and maximum amounts of basic TRA do not change under the 1988 Amendments in the OTCA. They must continue to be based upon the first benefit period which is related to the worker's first total or partial separation under the same certification regardless of whether such first separation occurs before, on, or after August 23, 1988. Upon the occurrence of a second or subsequent separation under the same certification which is a total qualifying separation under this part 617, the individual's eligibility period will be 104 weeks after the week of such second or subsequent (total qualifying) separation, but no change will be made in the weekly or maximum amounts of basic TRA as computed in relation to the first separation. Therefore, for any decision (i.e., determination, redetermination, or decision on appeal) issued on or after August 23, 1988, whenever an individual files a new TRA claim it will be necessary to determine whether the individual's most recent separation was a total qualifying separation, and, if so, whether the individual had a prior partial or total separation within the certification period of the same certification which was a first qualifying separation. If such most recent (total qualifying) separation occurred before August 23, 1988, and was not the individual's first qualifying separation, then:

(i) The eligibility period will be the 104 weeks beginning with the week following the week in which the most recent total qualifying separation occurred or 104 weeks after the first exhaustion of regular UI following the first qualifying separation, whichever is longer, and

(ii) The individual's weekly amount of basic TRA, as computed under § 617.13, and the individual's maximum amount of basic TRA, as computed under § 617.14, are established or remain fixed as determined with respect to the individual's first benefit period following the first separation which is within the certification period of the certification covering the individual.

(f) *Eligibility period for additional TRA.* One technical and one conforming change are made by the OTCA in section 233(a)(3) of the Act, but have no effect on the 26-week eligibility period for additional TRA as the statute has been interpreted and applied in the past. Therefore, the 26-week eligibility period begins with the first week of training if the training begins after exhaustion of basic TRA. Further, if the training begins before approval is obtained under this part 617, the 26-week eligibility period begins with the week in which the determination of approval is issued, if there is any scheduled training session in that week after the date of the determination.

(g) *Eligibility for TRA during breaks in training.* (1) Paragraph (f) of section 233 of the Act, added by the OTCA, provides for the payment, under specified conditions, of both basic and additional TRA during scheduled breaks in a training program, provided the conditions for such payments are met as expressed in this part 617. By making this provision applicable to basic TRA as well as additional TRA, paragraph (f) of section 233 of the Act changes the prior law for both. Previously, basic TRA was payable during training breaks, but additional TRA was payable solely with respect to weeks of training. Under new section 233(f), both basic and additional TRA are payable during training breaks, but only if the break does not exceed 14 days. Now, as under the prior law, weeks when TRA is not payable will still count against the eligibility periods for both basic and additional TRA, and in the case of additional TRA it will also count against the number of weeks payable.

(2) Paragraph (f) of section 233 of the Act is effective with regard to all decisions (i.e., all determinations, redeterminations, and decisions on appeals) made on or after August 23, 1988, regardless of when the training was approved under section 236 of the Trade Act, or whether the training was approved or is approvable under section 236 as amended by the 1988 Amendments, or when the break in training began or ended. In making any decision involving paragraph (f) of section 233 of the Act, the law to be applied is the law as in effect on the date the decision is made.

(h) *Retroactive eligibility for TRA.* (1) Effective on August 23, 1988, section 1425(b) of the OTCA provides for an open-ended waiver of the time limit in section 233(a)(2) on the eligibility period for basic TRA, and the 210-day time limit in section 233(b) on filing a bona fide application for training in order to qualify for additional TRA. This waiver provision applies solely to workers who experienced a total qualifying separation in the period which began on August 13, 1981 and ended on April 7, 1986. Other conditions must be met that are specified in section 1425(b) and in this part 617.

(2) Altogether, nine conditions must be met for workers to obtain TRA payments under this special provision. (See § 617.11(a)(3).) Further, this special provision applies solely to weeks which begin after August 23, 1988; no retroactive payments may be made under this special provision. Finally, only the two specific time limitations are waived, and all other requirements of the prior and amended law apply, including the first separation rule (relating to computation of the weekly and maximum amounts of basic TRA payable), the 26-week eligibility period for additional TRA, and the break provision of section 233(f).

(i) *Training for adversely affected workers.* Extensive amendments to section 236 are made in the OTCA which, except for some technical and conforming changes that take effect on November 21, 1988, all became effective on August 23, 1988. These changes must be effectuated in accordance with this part 617.

(j) *Agreements with States.* Section 239 also was amended by the OTCA, to require new terms and conditions in the section 239 agreements. This requires new agreements to be executed between the States and the Secretary of Labor, and gives new emphasis to the contractual nature of the obligations entered into by the States to administer the TAA Program in strict accordance with the Act and the regulations and operating instructions issued by the Department.

(k) *Other.* Other matters covered by the OTCA amendments, as well as the matters discussed in the preceding paragraphs of this section, shall, to the extent that the States may be involved in their implementation, be effectuated in strict accordance with the Act and the regulations and operating instructions issued by the Department, and as of the respective effective dates of the various provisions of the OTCA.

32. By redesignating Appendixes A and B as Appendixes B and C.

§ 617.50 [Amended]

33. By amending § 617.50(g) by removing "(Appendix A of this part)" and adding in place "(Appendix B of this Part)".

§ 617.55 [Amended]

34. By amending § 617.55(g) by removing "(Appendix B of this part)" and adding in place "(Appendix C of this Part)".

§ 617.10 [Amended]

35. By amending § 617.10(c) by removing all words after "sections 5000 *et seq.*" and adding in place "(Appendix A of this Part)".

36. By adding a new appendix A to read as follows:

Appendix A to Part 617—Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services

EMPLOYMENT SECURITY MANUAL (Part V, Sections 5000–5004)

5000–5099 Claims Filing

5000 *Standard for Claim Filing, Claimant Reporting, Job Finding, and Employment Services*

A. *Federal law requirements.* Section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act require that a State law provide for:

"Payment of unemployment compensation solely through public employment offices or such other agencies as the Secretary may approve."

Section 3304(a)(4) of the Federal Unemployment Tax and section 303(a)(5) of the Social Security Act require that a State law provide for:

"Expenditure of all money withdrawn from an unemployment fund of such State, in the payment of unemployment compensation * * *"

Section 303(a)(1) of the Social Security Act requires that the State law provide for:

"Such methods of administration * * * as are found by the Secretary to be reasonably calculated to insure full payment of unemployment compensation when due."

B. *Secretary's interpretation of federal law requirements.*

1. The Secretary interprets section 3304(a)(1) of the Federal Unemployment Tax Act and section 303(a)(2) of the Social Security Act to require that a State law provide for payment of unemployment compensation solely through public employment offices or claims offices administered by the State employment security agency if such agency provides for such coordination in the operations of its public employment offices and claims offices as will insure (a) the payment of benefits only to individuals who are unemployed and who are able to work and available for work, and (b) that individuals claiming unemployment compensation (claimants) are afforded such placement and other employment services as are necessary and appropriate to return them to suitable work as soon as possible.

2. The Secretary interprets all the above sections to require that a State law provide for:

a. Such contact by claimants with public employment offices or claims offices or both, (1) as will reasonably insure the payment of unemployment compensation only to individuals who are unemployed and who are able to work and available for work, and (2) that claimants are afforded such placement and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible; and

b. Methods of administration which do not unreasonably limit the opportunity of individuals to establish their right to unemployment compensation due under such States law.

5001 *Claim Filing and Claimant Reporting Requirements Designed to Satisfy Secretary's Interpretation*

A. *Claim filing—total or part-total unemployment*

1. Individuals claiming unemployment compensation for total or part-total unemployment are required to file a claim weekly or biweekly, in person or by mail, at a public employment office or a claims office (these terms include offices at itinerant points) as set forth below.

2. Except as provided in paragraph 3, a claimant is required to file in person.

a. His new claim with respect to a benefit year, or his continued claim for a waiting week or for his first compensable week of unemployment in such year; and

b. Any other claim, when requested to do so by the claims personnel at the office at which he files his claim(s) because questions about his right to benefits are raised by circumstances such as the following:

(1) The conditions or circumstances of his separation from employment;

(2) The claimant's answers to questions on mail claim(s) indicate that he may be unable to work or that there may be undue restrictions on his availability for work or that his search for work may be inadequate or that he may be disqualified;

(3) The claimant's answers to questions on mail claims create uncertainty about his credibility or indicate a lack of understanding of the applicable requirements; or

(4) The claimant's record shows that he has previously filed a fraudulent claim.

In such circumstances, the claimant is required to continue to file claims in person each week (or biweekly) until the State agency determines that filing claims in person is no longer required for the resolution of such questions.

3. A claimant must be permitted to file a claim by mail in any of the following circumstances:

a. He is located in an area requiring the expenditure of an unreasonable amount of time or money in traveling to the nearest facility established by the State agency for filing claims in person;

b. Conditions make it impracticable for the agency to take claims in person;

c. He has returned to full-time work on or before the scheduled date for his filing a claim, unless the agency makes provision for in-person filing at a time and place that does not interfere with his employment;

d. The agency finds that he has good cause for failing to file a claim in person.

4. A claimant who has been receiving benefits for partial unemployment may continue to file claims as if he were a partially unemployed worker for the first four consecutive weeks of total or part-total unemployment immediately following his period of partial unemployment so long as he remains attached to his regular employer.

B. *Claim filing—partial unemployment.* Each individual claiming unemployment compensation for a week (or other claim period) during which, because of lack of work, he is working less than his normal customary full-time hours for his regular employer and is earning less than the earnings limit provided in the State law, shall not be required to file a claim for such week or other claim period earlier than 2 weeks from the date that wages are paid for such claim period or, if a low earnings report is required by the State law, from the date the employer furnished such report to the individual. State agencies may permit claims for partial unemployment to be filed either in person or by mail, except that in the circumstances set forth in section A 3, filing by mail must be permitted, and in the circumstances set forth in section A 2 b, filing in person may be required.

5002 *Requirement for Job Finding, Placement, and Other Employment Services Designed to Satisfy Secretary's Interpretation*

A. Claims personnel are required to assure that each claimant is doing what a reasonable individual in his circumstances would do to obtain suitable work.

B. In the discretion of the State agency:

1. The claims personnel are required to give each claimant such necessary and appropriate assistance as they reasonably can in finding suitable work and at their discretion determine when more complete placement and employment services are necessary and appropriate for a claimant; and if they determine more complete services are necessary and appropriate, the claims personnel are to refer him to employment service personnel in the public employment office in which he has been filing claim(s), or, if he has been filing in a claims office, in the public employment office most accessible to him; *or*

2. All placement and employment services are required to be afforded to each claimant by employment service personnel in the public employment office most accessible to him in which case the claims personnel in the office in which the claimant files his claim are to refer him to the employment service personnel when placement or other employment services are necessary and appropriate for him.

C. The personnel to whom the State agency assigns the responsibilities outlined in paragraph B above are required to give claimants such job-finding assistance, placement, and other employment services as are necessary and appropriate to facilitate their return to suitable work as soon as possible.

In some circumstances, no such services or only limited services may be required. For example, if a claimant is on a short-term temporary layoff with a fixed return date, the only service necessary and appropriate to be given to him during the period of the layoff is a referral to suitable temporary work if such work is being performed in the labor market area.

Similarly, claimants whose unemployment is caused by a labor dispute presumably will return to work with their employer as soon as the labor dispute is settled. They generally do not need services, nor do individuals in occupations where placement customarily is made by other nonfee charging placement facilities such as unions and professional associations.

Claimants who fall within the classes which ordinarily would require limited services or no services shall, if they request placement and employment services, be afforded such services as are necessary and appropriate for them to obtain suitable work or to achieve their reasonable employment goals.

On the other hand, a claimant who is permanently separated from his job is likely to require some services. He may need only some direction in how to get a job; he may need placement services if he is in an occupation for which there is some demand in the labor market area; if his occupation is outdated, he may require counseling and referral to a suitable training course. The extent and character of the services to be given any particular claimant may change with the length of his unemployment and depend not only on his own circumstances and conditions, but also on the condition of the labor market in the area.

D. Claimants are required to report to employment service personnel, as directed, but such personnel and the claims personnel required to so arrange and coordinate the contacts required of a claimant as not to place an unreasonable burden on him or unreasonably limit his opportunity to establish his rights to compensation. As a general rule, a claimant is not required to contact in person claims personnel or employment service personnel more frequently than once a week, unless he is directed to report more frequently for a specific service such as referral to a job or a training course or counseling which cannot be completed in one visit.

E. Employment service personnel are required to report promptly to claims personnel in the office in which the claimant files his claim(s): (1) his failure to apply for or accept work to which he was referred by such personnel or when known, by any other nonfee-charging placement facility such as a union or a professional association; and (2) any information which becomes available to it that may have a bearing on the claimant's ability to work or availability for work, or on the suitability of work to which he was referred or which was offered to him.

5004 *Evaluation of Alternative State Provisions*

If the State law provisions do not conform to the "suggested State law requirements" set forth in sections 5001 and 5002, but the State law contains alternative provisions, the Manpower Administrator, in collaboration with the State agency, will study the actual or anticipated affect of the alternative provisions. If the Manpower Administrator concludes that the alternative provisions satisfy the requirements of the Federal law as construed by the Secretary (see section 5000 B) he will so notify the State agency. If he does not so conclude, he will submit the matter to the Secretary. If the Secretary concludes that the alternative provisions satisfy such requirements, the State agency will be so notified. If the Secretary concludes that there is a question as to whether the alternative provisions satisfy such requirements, the State agency will be advised that unless the State law provisions are appropriately revised, a notice of hearing will be issued as required by the Code of Federal Regulations, title 20, section 601.3.

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WHAT: Free public briefings (approximately 3 hours) to present:
1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

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(TWO BRIEFINGS)

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AWP–5]

Establishment of Class D Airspace, Gila Bend Air Force Auxiliary Field, AZ

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on December 10, 1993. This final rule established Class D airspace at Gila Bend Air Force Auxiliary Field, AZ effective January 10, 1994. This correction to the final rule will establish the Class D airspace at Gila Bend effective on March 3, 1994.

EFFECTIVE DATE: Effective January 7, 1994. The effective date of the final rule at 58 FR 64879 is corrected to be 0901 U.T.C. March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Gene Enstad, Airspace Specialist, System Management Branch, AWP–530, Air Traffic Division, Western-Pacific Region, Federal Aviation Administration, 15000 Aviation Boulevard, Lawndale, California 90261: telephone (310) 297–0010.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Federal Aviation Administration (FAA) published a final rule that established Class D airspace at Gila Bend Air Force (AF) Auxiliary (AUX) Field, Gila Bend, Arizona (58 FR 64879). The effective date was established as 0901 U.T.C., January 10, 1994. That date was incorrect. The new effective date is now 0901 U.T.C., March 3, 1994.

Correction of Final Rule Effective Date

Accordingly, pursuant to the authority delegated to me, the publication on December 10, 1993; (58 FR 64879), is corrected as follows:

On page 64879, in the third column, in **EFFECTIVE DATE** by removing "0901 U.T.C., January 10, 1994" and inserting in its place "0901 U.T.C., March 3, 1994".

Issued in Lawndale on December 21, 1993.

Harvey R. Riebel,

Manager, System Management Branch, AWP–530.

[FR Doc. 94–364 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8456]

RIN 1545–AQ14

Capitalization of Certain Policy Acquisition Expenses; Correction

AGENCY: Internal Revenue Service, Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains a correction to the final regulations (T.D. 8456), which were published Tuesday, December 29, 1992 (57 FR 61813), relating to the requirement that insurance companies capitalize specified policy acquisition expenses for tax purposes.

EFFECTIVE DATE: December 29, 1992.

FOR FURTHER INFORMATION CONTACT: Gary Geisler (202) 622–3970, (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are the subject of this correction contains final income tax regulations under section 848 of the Internal Revenue Code.

Need for Correction

As published, T.D. 8456 contains an error which may prove to be misleading and is in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

PART 1—INCOME TAX; TAXABLE YEARS BEGINNING AFTER DECEMBER 31, 1953

Accordingly, 26 CFR part 1 is corrected by making the following correcting amendment:

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. In § 1.848–2(i)(4)(iii)(C), the language "Calculate the ratio between the results in paragraphs (i)(4)(ii) (A) and (B) of this section for each agreement;" is removed and the language "Calculate the ratio between the results in paragraphs (i)(4)(iii) (A) and (B) of this section for each agreement;" is added in its place.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–309 Filed 1–6–94; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 2 and 3

[CGD 93–020]

Captain of the Port Zone Boundaries; Correction

AGENCY: Coast Guard, DOT.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule on Captain of the Port (COTP) Zone Boundaries (CGD 93–020) which was published Monday, October 4, 1993, (58 FR 51726). The regulations related to extending the Coast Guard COTP zone boundaries seaward to the limit of the Exclusive Economic Zone (EEZ).

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT: Mary-Jo Cooney Spottswood, Project Manager and Project Counsel, Oil Pollution Act (OPA 90) Staff, (202) 267–6402.

SUPPLEMENTARY INFORMATION:

Background

The final rule that is the subject of this correction extended the COTP zone boundaries to the seaward limit of the

EEZ and made changes to the onshore boundaries of several COTP zones.

Need for Correction

A clarification of the boundaries of the Wilmington, North Carolina, Portland, Oregon, and Honolulu, Hawaii, COTP zones is necessary.

Correction of Publication

Accordingly, the publication on October 4, 1993, of the final rule on COTP Zone Boundaries (CGD 93–020), which is the subject of FR Doc. 93–24206, is corrected as follows:

§ 3.25–20 [Corrected]

1. On page 51728, in the third column, § 3.25–20(b) is corrected to read as follows:

* * * * *

(b) The boundary of the Wilmington Marine Inspection Zone and Captain of the Port Zone starts at the sea at 34°59.8′ N. latitude, 76°07.8′ W. longitude, and proceeds along a line northwesterly to a point 35°01.5′ N. latitude, 76°10′ W. longitude; thence westerly to a point 35°01.5′ N. latitude, 76°20′ W. longitude; thence westerly to a point 35°37′ N. latitude, 76°32′ W. longitude; thence northerly and westerly along the western boundaries of Hyde and Washington Counties to a point 36°00′ N. latitude, 76°41′ W. longitude; thence northerly along the west bank of the Chowan River to the North Carolina-Virginia boundary; thence westerly along the North Carolina-Virginia boundary to Kerr (Buggs Island) Lake; thence along the shore of Kerr Lake in North Carolina to the North Carolina-Virginia Boundary; thence westerly along the North Carolina-Virginia boundary to the Tennessee boundary; thence southwesterly along the North Carolina-Tennessee boundary to the Georgia boundary; thence easterly along the North Carolina-Georgia boundary to the South Carolina boundary; thence easterly along the South Carolina-North Carolina boundary to the sea. The offshore boundary of the Wilmington Captain of the Port Zone starts at the coast at 34°59.8′ N. latitude; thence proceeds easterly to the outermost extent of the EEZ; thence southerly along the outermost extent of the EEZ to a line bearing 122° T from the intersection of the South Carolina-North Carolina boundary and the sea to the outermost extent of the EEZ; thence westerly along a line bearing 122° T to the coast.

§ 3.65–15 [Corrected]

2. On page 51731, in the third column, in § 3.65–15(b), the sentence beginning on line 8 and ending on line 15 is corrected to read as follows:

* * * * *

(b) * * *

The offshore boundary is bounded on the south by the southern boundary of the Thirteenth Coast Guard District which is described in § 3.65–10, to the outermost extent of the EEZ; thence northerly along the outermost extent of the EEZ to 47°32′ N. latitude; thence easterly along 47°32′ N. latitude to the coast.

§ 3.70–10 [Corrected]

3. On page 51731, in the third column, § 3.70–10, paragraph (c)(8) is added before paragraph (d) to read as follows:

* * * * *

(c) * * *

(8) Midway Island and the adjacent waters of the EEZ.

* * * * *

Dated: December 23, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 94–263 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Corpus Christi, Texas, Regulation 93–023]

Safety Zone Regulations; Gulf Intracoastal Waterway, Matagorda Bay

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety zone is needed to prevent vessels from grounding on shoal areas near the narrowed channels. Entry into this zone is restricted to singlewide tows only. No oversize or doublewide tows are permitted to transit through the safety zone. All vessels are restricted to one way traffic, between green buoy 89 and green buoy 115.

EFFECTIVE DATE: This regulation becomes effective at 12 a.m., November 30, 1993. It terminates at 12:01 a.m., February 15, 1994, or upon completion of dredging by the Army Corps of Engineers and termination by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: ENS S. Montoya at telephone number (512) 888–3195.

SUPPLEMENTARY INFORMATION: Under 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to reduce the risk of vessel groundings and potential pollution incidents.

Drafting Information

The drafters of this regulation are ENS S. Montoya, Chief, Waterways Management Section, and CAPT R.J. Reining, Commanding Officer, U.S. Coast Guard Marine Safety Office, Corpus Christi, Texas, and CDR D. Dickman, project attorney, Eighth Coast Guard District, New Orleans, Louisiana.

Discussion of Regulation

The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety zone is needed to prevent vessels from grounding on shoal areas near the narrowed channels. Entry into this zone is restricted to singlewide tows only. No oversize or doublewide tows are permitted to transit through the safety zone. All vessels are restricted to one way traffic, between green buoy 89 and green buoy 115.

List of Subjects in 33 CFR Part 165

Harbors, Marine Safety, Navigation (water), Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1 and 160.5.

2. A temporary section 165.T08–066 is added to read as follows:

§ 165.T08–066 Safety zone: Gulf Intracoastal Waterway.

(a) Safety zone. The waters of the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455 including the entire width of the channel is a stationary safety zone.

(b) Regulations. The Coast Guard is establishing a safety zone in the Gulf Intracoastal Waterway from mile marker 475 to mile marker 455. Shoaling into the center of the channel has occurred between green buoy 97 and green buoy 105. The safety zone is needed to prevent vessels from grounding on shoal areas near the narrowed channels. Entry into this zone is restricted to singlewide tows only. No oversize or doublewide tows are permitted to transit through the safety zone. All vessels are restricted to one way traffic, between green buoy 89 and green buoy 115.

(c) Effective date. This regulation becomes effective at 12 a.m., November 30, 1993. It terminates at 12:01 a.m., February 15, 1994, or upon completion of dredging by the Army Corps of Engineers and termination by the Captain of the Port.

Dated: November 30, 1993.

Robert J. Reining,

Captain, U.S. Coast Guard, Captain of the Port, Corpus Christi, Texas.

[FR Doc. 94–267 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[COTP Wilmington, NC Regulation 94–001]

Safety Zone Regulations; Atlantic Intracoastal Waterway, Camp Lejuene, NC

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Atlantic Intracoastal Waterway, Camp Lejuene, NC, between mile boards 235 and 240. The safety zone is needed to protect the public, vessels and property from safety hazards associated with the removal of unexploded military munitions prior to dredging operations on the Atlantic Intracoastal Waterway. Entry into this zone is prohibited during actual operations unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective from 8 a.m. on January 10, 1994, and terminates on February 11, 1994 at 5 p.m., unless sooner terminated by the Captain of the Port, Wilmington, NC.

FOR FURTHER INFORMATION CONTACT: ENS K. J. DELOOFF, USCG, c/o U.S. Coast Guard Captain of the Port, suite 500, 272 N. Front Street, Wilmington, NC 28401–3907, Phone: (910) 343–4894.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking (NPRM) was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public's interest since immediate action is necessary to prevent possible damage to people, vessels and property in the area.

Drafting Information

The drafters of this regulation are ENS K. J. DELOOFF, project officer for the Captain of the Port, Wilmington, NC, and LCDR C. A. ABEL, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulation

The event requiring this regulation will begin on January 10, 1994 and terminate on February 11, 1994. U.S. Navy personnel will be diving in the Atlantic Intracoastal Waterway between the hours of 8 a.m. and 5 p.m. on the dates indicated above. Commercial traffic will not be severely impeded due to a one hour window between 12 p.m. and 1 p.m. in which vessels will be permitted to pass. The diving for unexploded munitions constitutes a potential hazard to the public, vessels and property in the vicinity. This safety zone is needed to protect the public from the hazards associated with this diving operation as well as to protect the diving crews during actual underwater operations.

Regulatory Evaluation

This regulation is not considered a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979).

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart F of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 160.5; 49 CFR 1.46.

2. A temporary § 165.T05–097 is added, to read as follows:

§ 165.T05–097 Safety Zone: Atlantic Intracoastal Waterway, between mile board 235 and 240, Camp Lejuene, North Carolina.

(a) *Location.* The following area is a safety zone:

(1) The waters of the Atlantic Intracoastal Waterway circumscribed by a line drawn from the following navigational points: latitude 34°38′ North, longitude 077°12.0′ West, then south to latitude 34°34.7′ North, longitude 077°15.9′ West, then east to latitude 34°34.7′ North, longitude 077°16.2′ West, then north to latitude 34°38′ North, longitude 077°12.2′ West, thence to the beginning.

(2) The safety zone boundary can be described as follows: the zone will be established between mile boards 235 and 240, Atlantic Intracoastal Waterway, Camp Lejuene, NC.

(b) *Effective Dates.* This regulation becomes effective on January 10, 1994 at 8 a.m., and terminates at 5 p.m. February 11, 1994, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* (1) In accordance with the general regulation in § 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port.

(2) The Patrol Commander will monitor radio communications on Channel 16.

(3) The operator of any vessel which enters or operates within this zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign, or by the U.S. Navy Patrol Commander aboard a U.S. Navy small craft.

(ii) Proceed as directed by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard Ensign, or by the U.S. Navy Patrol Commander aboard a U.S. Navy small craft.

Dated: December 21, 1993.

C.F. Eisenbeis,

Captain, U.S. Coast Guard, Captain of the Port, Wilmington, NC.

[FR Doc. 94–266 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP-300307A; FRL-4747-3]

RIN 2070-AB78

Acetyl Tributyl Citrate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document exempts from the requirement of a tolerance acetyl tributyl citrate (CAS Reg. No. 77-90-7) when used as an inert ingredient (plasticizer) in pesticide formulations applied to animals. This regulation was requested by Alpha Chemical and Plastics Corp.

EFFECTIVE DATE: This regulation becomes effective January 7, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300307A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1993 (58 FR 59700), EPA reissued a proposed rule that gave notice that Alpha Chemical and Plastics Corp., 1 Jabez St., Newark NJ 07105, had submitted a pesticide petition to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acetyl tributyl citrate when used as a component of plastic animal tags in pesticide formulations applied to animals. In the **Federal Register** of August 3, 1988 (53 FR 29244), EPA originally proposed such an exemption, but because of the time elapsed since the original proposal, the proposal was reissued. The basis for the proposed exemption was contained in the original proposal issuance (53 FR 29244). No comments were received in response to either proposal issuance.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the exemption from the requirement of a tolerance will protect the public health. Therefore, the tolerance exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
• • •	• • •	• • •
Acetyl tributyl citrate (CAS Reg. No. 77-90-7)		Component of plastic animal tags.
• • •	• • •	• • •

[FR Doc. 94-278 Filed 1-6-94; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300304A; FRL-4747-2]

RIN 2070-AB78

N,N-Bis 2-(Omega-Hydroxypolyoxyethylene/ Polyoxypropylene) Ethyl Alkylamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document amends the current exemption from the requirement of a tolerance for residues of *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine by expanding its use as an inert ingredient (to read "surfactants and related adjuvants of surfactants") and removing the limit on the amount used in pesticide formulations applied to growing crops only. This regulation was requested by Akzo Chemicals, Inc.

EFFECTIVE DATE: This regulation becomes effective January 7, 1994.

ADDRESSES: Written objections, identified by the document control number, [OPP-300304A], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of November 10, 1993 (58 FR 59699), EPA issued a proposed rule that gave notice that Akzo Chemicals, Inc., 300 South Riverside Plaza, Chicago, IL 60606, had submitted pesticide petition (PP) 2E4159 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by amending the current exemption from the requirement of a tolerance for residues of *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine by expanding its use as an inert ingredient (to read "surfactants and related adjuvants of surfactants") and removing the limit on the amount used in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125 and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the amended exemption from the requirement of a tolerance will protect the public health. Therefore, the amended exemption is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure,

Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
N,N-bis 2-(*omega*-hydroxypolyoxyethylene/polyoxypropylene) ethyl alkylamine; the reaction product of 1 mole of *N,N-bis*(2-hydroxyethyl alkylamine) and 360 moles of ethylene oxide and propylene oxide, where the alkyl group (C8-C18) is derived from coconut, cottonseed, soya, or tallow acids.		Surfactant, related adjuvants of surfactants
* * *	* *	* *

* * * * *

[FR Doc. 94–277 Filed 1–6–94; 8:45 am]

BILLING CODE 6560–50–F

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 201–17 and 201–20

[FIRMR Interim Rule 1]

Energy Efficient Computer Equipment

AGENCY: Information Resources Management Service, GSA.

ACTION: Interim rule with request for comments.

SUMMARY: This amendment implements provisions of Executive Order 12845 requiring agencies to purchase energy efficient computer equipment.

DATES: *Effective Date:* This amendment is effective on January 7, 1994.

Comments are due: February 7, 1994.

ADDRESSES: Comments should be addressed to General Services Administration (KMR), Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: R. Stewart Randall, GSA, Office of Information Resources Management Policy, telephone FTS/Commercial (202) 501–3194 (v) or (202) 501–0657 (tdd).

SUPPLEMENTARY INFORMATION: (1) This change is being made to bring the FIRMR into conformance with Executive Order 12845, dated April 21, 1993. This order recognizes that the Federal Government, the largest purchaser of computer equipment in the world, should set an example in the energy efficient operation of its facilities and the procurement of pollution preventing technologies. The use of energy efficient computers can help achieve this goal and also minimize the Government's operating costs. The order requires, among other things, that the heads of Federal agencies shall ensure that by October 18, 1993, all acquisitions of microcomputers, including personal computers, monitors, and printers, meet the Environmental Protection Agency (EPA) "Energy Star" requirements for energy efficiency. The heads of agencies may grant exemptions, on a case-by-case basis, to this requirement based upon the commercial availability of qualifying equipment, significant cost differential of the equipment, the agency's performance requirements, and the agency's mission. Any exemptions granted must be reported to GSA annually. The FIRMR is revised to require by October 18, 1993, that all agency requirements analyses include requirements for energy efficiency. These requirements must be reflected in request for proposals (RFPs) released after that date. The FIRMR is further revised to require that, at a minimum, agencies acquire microcomputers, monitors and printers equipped with the energy efficient low-power standby feature as defined by the EPA Energy Star computer program. The address where exemptions must be sent is also provided in this change. The first report is due October 18, 1994. FIRMR Bulletin C–35 will be issued in the near future to provide more detailed guidance on energy efficient requirements that should be included in RFPs.

(2) The General Services Administration has determined that this is not a major rule for the purposes of Executive Order 12291 of February 17, 1981. GSA decisions are based on adequate information concerning the need for, and the consequences of the rule. The interim rule is written to ensure maximum benefits to Federal agencies. This Governmentwide regulation will have little or no net cost effect on society. It is certified that this interim rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act 1980 (5 U.S.C. *et seq.).*

(3) The Paperwork Reduction Act does not apply because the proposed changes to the FIRMR do not impose recordkeeping information requirements or collection of information from offerors, contractors, or members of the public which require the approval of OMB under 44 U.S.C. 3501 *et seq.*

List of Subjects in 41 CFR Parts 201–17 and 201–20

Archives and records, Computer technology, Telecommunications, Government procurement, Property management, Records management, and Federal information processing activities.

PART 201–17—PREDOMINANT CONSIDERATIONS

1. The authority citation for part 201–17 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

2. Section 201–17.001 is amended by revising paragraphs (l) and (m) and adding paragraph (n) to read as follows:

§ 201–17.001 Predominant considerations.

* * * * *

(l) Review and evaluate existing resources and related management and acquisition activities on an ongoing basis;

(m) Replace outdated resources that are no longer the most advantageous alternative for satisfying the agency's requirements; and

(n) Acquire microcomputers, monitors, and printers that are energy efficient.

PART 201–20.1—REQUIREMENTS ANALYSIS

3. The authority citation for part 201–20.1 continues to read as follows:

Authority: 40 U.S.C. 486(c) and 751(f).

§ 201–20.1 [Amended]

4. Section 201–20.103–11 is added to read as follows:

§ 201–20.103–11 Energy efficiency requirements for microcomputers.

(a) Agencies shall include requirements for energy efficiency in the requirements analysis. At a minimum, agencies shall require that microcomputers, including personal computers, monitors, and printers, acquired by the agency be equipped with the energy efficient low-power standby feature as defined by the Environmental Protection Agency Energy Star computer program. This feature shall be activated when the equipment is shipped to the agency and shall be capable of entering and recovering from the low-power state, unless the equipment meets the Energy Star requirements at all times. To the extent permitted by law, agencies shall include this specification in all existing contracts, if any additional costs would be offset by the potential energy savings.

(b) Agencies shall consider the guidance contained in FIRMR Bulletin C–35 in developing their requirements and for the specific procedure for reporting exempted acquisitions.

(c) Agencies shall report annually, by October 18 on acquisitions exempted from this requirement. Agencies shall periodically review their exemptions, with the intent of bringing all purchases into compliance. Reports shall be sent to: GSA, Acquisition Reviews Division (KMA), 18th & F Streets, NW., Washington, DC 20405.

(d) Agencies shall ensure that Federal users are made aware of the significant economic and environmental benefits of the low energy efficient power standby feature and its aggressive use by including this information in routine computer training courses.

Dated: October 15, 1993.

Julia M. Stasch,

Acting Administrator of General Services.

[FR Doc. 94–294 Filed 1–6–94; 8:45 am]

BILLING CODE 6820–25–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 10

RIN 3067–AC21

Environmental Considerations/ Categorical Exclusions

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Interim rule.

SUMMARY: This interim rule amends 44 CFR 10 by adding certain purchases of flooded properties to the list of actions that FEMA categorically excludes from reviews under the National Environmental Policy Act (NEPA). Such purchases historically have no significant environmental effects. The intent of the change is to streamline the administrative process associated with implementation of hazard mitigation projects involving the purchase of flooded properties. The change ensures that environmental concerns and issues are still satisfied.

EFFECTIVE DATE: January 7, 1994. We invite comments on the interim rule, which must be received on or before March 8, 1994.

ADDRESSES: Please submit any written comments to the Rules Docket Clerk, Office of the General Counsel, Federal Emergency Management Agency, 500 C Street, SW., room 714, Washington, DC 20472, (fax) (202) 646–4536.

FOR FURTHER INFORMATION CONTACT: Laurence Zensinger, Mitigation Directorate, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–4240.

SUPPLEMENTARY INFORMATION: FEMA developed this categorical exclusion for property acquisition in response to suggestions for expanding FEMA's existing list of projects warranting categorical exclusions (CATEX) that FEMA lists at 44 CFR 10.8(c)(2). The intent of the change is to streamline the administrative process associated with approving hazard mitigation projects that involve the purchase of properties (and conversion to open space use of the land on which such properties are located) that floods damage. Based on the nature and history of such projects under normal circumstances there will be no significant environmental effects.

FEMA conducted a comprehensive review of its environmental actions before developing this interim rule. The Agency carries out hazard mitigation activities primarily under section 1362 of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4103, but also under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, 42 U.S.C. 5170c. Our review of environmental actions shows that FEMA's hazard mitigation activities relating to the conversion of property to open space use consistently result in Findings of No Significant Impact. Hazard mitigation relocation projects under normal circumstances do not have a significant environmental impact because they involve acquisition of properties to remove flooded structures from flood-prone areas and to revert the land to open space use. FEMA now adds 44 CFR 10.8(c)(2)(x) to authorize categorical exclusions ("CATEX") covering acquisition of properties that will have no significant environmental effects after acquisition and return of the land to its natural state. The new CATEX will only apply to those actions that involve acquisition of property and will not apply to any project involving the development of another site. The new CATEX will not apply in those situations described under the existing FEMA regulation, 44 CFR 10.8(b)(2), entitled "Actions That Normally Require an Environmental Impact Statement," or in situations involving extraordinary circumstances where FEMA's regulations normally require an Environmental Assessment. See 44 CFR 10.8(e).

In addition, the new CATEX will not affect FEMA's responsibility to comply with other environmental statutes. These include the Clean Air Act, the Clean Water Act, the Resource Conservation and Recovery Act, the Comprehensive Environmental Response, Compensation and Liability Act, the Coastal Zone Management Act, the Coastal Barrier Resources Act, the Endangered Species Act, the National Historic Preservation Act, and the Archeological and Historic Preservation Act. Nor will it affect FEMA's responsibilities under Executive Orders 11988 and 11990, or under FEMA's implementing regulations at 44 CFR 9, and FEMA's National Flood Insurance Program regulations at 44 CFR 59 through 77.

This interim rule is immediately effective because States and communities are acquiring properties more frequently than before to resolve public health and safety concerns following the Great Flood of 1993 in

nine midwestern States. Significant numbers of flooded properties must be acquired swiftly to avoid flooding the same properties again soon, with new and additional threats to public health and safety.

National Environmental Policy Act

The requirements of 44 CFR part 10, Environmental Consideration, exclude this rule. FEMA has not prepared an environmental impact assessment.

Regulatory Flexibility Act

I certify that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. The rule adds one category to FEMA's categorical exclusions from reviews under the National Environmental Policy Act, and FEMA does not expect the rule (1) to affect adversely the availability of disaster assistance funding to small entities, (2) to have significant secondary or incidental effects on a substantial number of small entities, or (3) to create any additional burden on small entities.

Regulatory Impact Analysis

This rule is not a major rule for the purposes of Executive Order 12291, Federal Regulation, February 17, 1981, 3 CFR, 1981 Comp., p. 127. FEMA has not prepared a regulatory impact analysis.

Paperwork Reduction Act

This rule does not involve any collection of information for purposes of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, October 26, 1987, 3 CFR, 1987 Comp., p. 252.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778, October 25, 1991, 56 FR 55195, 3 CFR, 1991 Comp., p. 309.

List of Subjects in 44 CFR Part 10

Environmental impact statements

Accordingly, 44 CFR Part 10 is amended to read as follows:

1. The authority citation for Part 10 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*; E.O. 11514 of March 7, 1970, 35 FR 4247, as amended by E.O. 11991, 3 CFR, 1977 Comp., p. 123; Reorganization Plan No. 3 of 1978, 5 U.S.C. App. 1; E.O. 12127, 3 CFR, 1979 Comp., p. 376; and E.O. 12148, 3 CFR, 1979 Comp., p. 412, as amended.

2. Section 10.8(c)(2) is amended by adding a new paragraph (c)(2)(x) to read as follows:

§ 10.8 [Amended]

* * * * *

(c) * * *

(2) * * *

(x) The acquisition of properties under section 1362 of the National Flood Insurance Act of 1968, as amended, under section 404 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, and under any other applicable authority when the acquisition is from a willing seller, the buyer coordinated acquisition planning with affected authorities, and the acquired property will be dedicated in perpetuity to uses that are compatible with open space, recreational, or wetlands management practices.

Dated: January 3, 1994.

James L. Witt,

Director.

[FR Doc. 94-356 Filed 1-6-94; 8:45 am]

BILLING CODE 6718-01-P

FEDERAL MARITIME COMMISSION

46 CFR Part 501

The Federal Maritime Commission—General

AGENCY: Federal Maritime Commission.

ACTION: Final rule.

SUMMARY: The Federal Maritime Commission is revising its statement of organization and functions, delegations and other procedures, and incorporating it in the CFR. This provides a current statement which includes all previously published items and preserves it in the CFR for easier public access.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT: Joseph C. Polking, Secretary Federal Maritime Commission 800 N. Capitol St., NW. Washington, DC 20573 (202) 523-5725.

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission is revising the official description of its organization, functions, delegations, and other procedures, and incorporating it in part 501 of title 46, Code of Federal Regulations.

Notice and public procedure are not necessary prior to the issuance of this rule because it deals solely with matters of agency organization and procedure. Neither is a delayed effective date required. 5 U.S.C. 553.

List of Subjects in 46 CFR Part 501

Administrative practice and procedure; Authority delegations; Organization and functions; Seals and insignia.

Therefore, pursuant to 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 801-848, 876, 1111 and 1701-1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 79 Stat. 195; and 5 CFR part 2638: Part 501 of title 46 of the CFR is revised to read as follows:

PART 501—THE FEDERAL MARITIME COMMISSION—GENERAL

Subpart A—Organization and Functions

Sec.
501.1 Purpose.
501.2 General.
501.3 Organizational components of the Federal Maritime Commission.
501.4 Lines of responsibility.
501.5 Functions of the organizational components of the Federal Maritime Commission.

Subpart B—Official Seal

501.11 Official seal.

Subpart C—Delegation and Redelegation of Authorities

501.21 Delegation of authorities.
501.22 [Reserved]
501.23 Delegation to the General Counsel.
501.24 Delegation to the Secretary.
501.25 Delegation to the Managing Director.
501.26 Delegation to the Director, Bureau of Trade Monitoring and Analysis.
501.27 Delegation to and redelegation by the Director, Bureau of Tariffs, Certification and Licensing.
501.28 Delegation to the Director, Bureau of Hearing Counsel.
501.29 [Reserved]
501.30 Delegation to and redelegation by the Director, Bureau of Administration.
501.31 Delegation to the Director, Bureau of Investigations.

Subpart D—Public Requests for Information

501.41 Public requests for information and decisions.

Appendix A to Part 501—Organization Chart

Authority: 5 U.S.C. 551-557, 701-706, 2903 and 6304; 31 U.S.C. 3721; 41 U.S.C. 414 and 418; 44 U.S.C. 501-520 and 3501-3520; 46 U.S.C. app. 801-848, 876, 1111, and 1701-1720; Reorganization Plan No. 7 of 1961, 26 FR 7315, August 12, 1961; Pub. L. 89-56, 79 Stat. 195; 5 CFR Part 2638.

Subpart A—Organization and Functions

§ 501.1 Purpose.

This part describes the organization, functions and Official Seal of, and the delegation of authority within, the Federal Maritime Commission ("Commission").

§ 501.2 General.

(a) *Statutory functions.* The Commission regulates common carriers by water and other persons involved in the foreign and domestic offshore commerce of the U.S. under provisions of the Shipping Act, 1916, (46 U.S.C. app. 801-842); the Intercoastal Shipping Act, 1933 (46 U.S.C. app. 843-848); the Shipping Act of 1984 (46 U.S.C. app. 1701-1720); section 19 of the Merchant Marine Act, 1920 (46 U.S.C. app. 876); the Foreign Shipping Practices Act of 1988 (46 U.S.C. app. 1710a); sections 2 and 3, Public Law 89-777, Financial Responsibility for Death or Injury to Passengers and for Non-Performance of Voyages (46 U.S.C. app. 817d and 817e); and other applicable statutes.

(b) *Establishment and composition of the Commission.* The Commission was established as an independent agency by Reorganization Plan No. 7 of 1961, effective August 12, 1961, and is composed of five Commissioners ("Commissioners" or "members"), appointed by the President, by and with the advice and consent of the Senate. Not more than three Commissioners may be appointed from the same political party. The President designates one of the Commissioners to be the Chairman of the Commission ("Chairman").

(c) *Terms and vacancies.* The term of each member of the Commission is 5 years and begins when the term of the predecessor of that member ends (i.e., on June 30 of each successive year), except that, when the term of office of a member ends, the member may continue to serve until a successor is appointed and qualified. A vacancy in the office of any Commissioner shall be filled in the same manner as the original appointment, except that any person chosen to fill a vacancy shall be appointed only for the unexpired term of the Commissioner whom he or she succeeds. Each Commissioner shall be removable by the President for inefficiency, neglect of duty, or malfeasance in office.

(d) *Quorum.* A vacancy in the Commission, so long as there shall be three Commissioners in office, shall not impair the power of the Commission to execute its functions. Any three Commissioners in office constitute a quorum for the transaction of the business of the Commission, and the affirmative votes of any three Commissioners shall be sufficient for the disposition of any matter which may come before the Commission. For purposes of holding a formal meeting for the transaction of the business of the Commission, the actual presence of two Commissioners shall be sufficient, with proxy votes of absent members permitted in order to obtain the required three affirmative votes. See Commission Order No. 84.

(e) *Meetings; records; rules and regulations.* The Commission shall, through its Secretary, keep a true record of all its meetings and the yea-and-nay votes taken therein on every action and order approved or disapproved by the Commission. In addition to or in aid of its functions, the Commission adopts rules and regulations in regard to its powers, duties and functions under the shipping statutes it administers.

§ 501.3 Organizational components of the Federal Maritime Commission.

The major organizational components of the Commission are set forth in the Organization Chart attached as Appendix A to this part. An outline table of the components/functions follows:

(a) Office of the Chairman of the Federal Maritime Commission. (*Chief Executive and Administrative Officer, and FOIA and Privacy Act Appeals Officer.*)
  (1) Information Security Officer.
  (2) Designated Agency Ethics Official.
(b) Offices of the Members of the Federal Maritime Commission. (*Include the Chairman, ADP Committee.*)
(c) Office of the Secretary. (*FOIA and Privacy Act Officer; Federal Register Liaison; Alternative Disputes Resolution Coordinator.*)
  (1) Office of Informal Inquiries, Complaints and Informal Dockets.
(d) Office of the General Counsel. (*Ethics Official.*)
(e) Office of Administrative Law Judges.
(f) Office of Equal Employment Opportunity.
(g) Office of the Inspector General.
(h) Office of the Managing Director. (*Chief Operating Officer; Senior IRM Official; Senior Procurement Executive and ATFI Contracting Officer; Audit Followup and Management Controls.*)
(i) Bureau of Trade Monitoring and Analysis.
  (1) Office of Agreements and Information Management.
  (2) Office of Monitoring I.
  (3) Office of Monitoring II.
(j) Bureau of Tariffs, Certification and Licensing.
  (1) Office of Tariffs.
  (2) Tariff Control Center.
  (3) Office of Service Contracts and Passenger Vessel Operations.
  (4) Office of Freight Forwarders.
(k) Bureau of Hearing Counsel.
(l) Bureau of Investigations; District Offices.
  (1) New York District
  (2) New Orleans District
  (3) Miami District
  (4) San Francisco District
  (5) Los Angeles District
  (6) Puerto Rico District
  (7) Houston District
(m) Bureau of Administration. (*Competition Advocate; Information Security; Principal Management Official on Small Agency Council.*)
  (1) Office of Administrative Services. (*Physical Security; FMC Contracting Officer.*)
  (2) Office of Budget and Financial Management. (*Chief Financial Officer.*)
  (3) Office of Personnel.
  (4) Office of Information Resources Management. (*IRM Manager; Computer Security; Forms Control; Records Management.*)
(n) Boards and Committees.
  (1) Executive Resources Board.
  (2) Committee on Automated Data Processing.
  (3) Performance Review Board.
  (4) Incentive Awards Committee.

§ 501.4 Lines of responsibility.

(a) *Chairman.* The Office of the Secretary, the Office of the General Counsel, the Office of Administrative Law Judges, the Office of Equal Employment Opportunity, the Office of the Inspector General, the Office of the Managing Director, and officials performing the functions of Information Security Officer and Designated Agency Ethics Official, report to the Chairman of the Commission.

(b) *Office of the Managing Director.* The Bureau of Trade Monitoring and Analysis; Bureau of Tariffs, Certification and Licensing; Bureau of Hearing Counsel; Bureau of Administration; and Bureau of Investigations report to the Office of the Managing Director. The Offices of Equal Employment Opportunity and of the Inspector General receive administrative assistance from the Managing Director. All other units of the Commission receive administrative guidance from the Managing Director.

(c) *Bureau of Investigations and District Offices.* The District Offices report to the Director, Bureau of Investigations.

§ 501.5 Functions of the organizational components of the Federal Maritime Commission.

As further provided in subpart C of this part, the functions, including the

delegated authority of the Commission's organizational components and/or officials to exercise their functions and to take all actions necessary to direct and carry out their assigned duties and responsibilities under the lines of responsibility set forth in § 501.4, are briefly set forth as follows:

(a) *Chairman.* As the chief executive and administrative officer of the Commission, the Chairman presides at meetings of the Commission, administers the policies of the Commission to its responsible officials, and assures the efficient discharge of their responsibilities. The Chairman provides management direction to the Offices of Equal Employment Opportunity, Inspector General, Secretary, General Counsel, Administrative Law Judges, and Managing Director with respect to all matters concerning overall Commission workflow, resource allocation (both staff and budgetary), work priorities and similar managerial matters; and establishes, as necessary, various committees and boards to address overall operations of the agency. The Chairman serves as appeals officer under both the Freedom of Information Act and the Privacy Act. The Chairman appoints the heads of major administrative units after consultation with other Commissioners. In addition, the Chairman, as "head of the agency," has certain responsibilities under Federal laws and directives not specifically related to shipping. For example, the special offices or officers within the Commission, listed under paragraphs (a)(1) through (a)(4) of this section, are appointed or designated by the Chairman, are under his or her direct supervision and report directly to the Chairman:

(1) Under the direction and management of the Office Director, the Office of Equal Employment Opportunity ("EEO") ensures that statutory and regulatory prohibitions against discrimination in employment and the requirements for related programs are fully implemented. As such, the Office administers and implements comprehensive programs on discrimination complaints processing, affirmative action and special emphasis. The Director, EEO, advises the Chairman regarding EEO's plans, procedures, regulations, reports and other matters pertaining to policy and the agency programs. Additionally, the Director provides leadership and advice to managers and supervisors in carrying out their respective responsibilities in equal employment opportunity. The Office administers and implements these program responsibilities in accordance with Equal Employment Commission ("EEOC") Regulations at 29 CFR part 1614 and other relevant EEOC Directives and Bulletins.

(2) Under the direction and management of the Inspector General, the Office of Inspector General conducts, supervises and coordinates audits and investigations relating to the programs and operations of the Commission; reviews existing and proposed legislation and regulations pertaining to such programs and operations; provides leadership and coordination and recommends policies for activities designed to promote economy, efficiency, and effectiveness in the administration of, and to prevent and detect waste, fraud and abuse in, such programs and operations; and advises the Chairman and the Congress fully and currently about problems and deficiencies relating to the administration of such programs and operations and the necessity for and progress of corrective action.

(3) The Information Security Officer is a senior agency official designated under § 503.52 of this chapter to direct and administer the Commission's information security program, which includes an active oversight and security education program to ensure effective implementation of Executive Order 12356.

(4) The Designated Agency Ethics Official and Alternate are appropriate agency employees formally designated under 5 CFR 2638.202 and § 500.105 of this chapter to coordinate and manage the ethics program as set forth in 5 CFR 2638.203, which includes the functions of advising on matters of employee responsibilities and conduct under part 500 of this chapter, and serving as the Commission's designee(s) to the Office of Personnel Management on such matters. They provide counseling and guidance to employees on conflicts of interest and other ethical matters.

(b) *Commissioners.* The members of the Commission, including the Chairman, implement various shipping statutes and related directives by rendering decisions, issuing orders, and adopting and enforcing rules and regulations governing persons subject to the shipping statutes; and perform other duties and functions as may be appropriate under reorganization plans, statutes, executive orders, and regulations.

(c) *Secretary.* Under the direction and management of the Secretary, the Office of the Secretary:

(1) Is responsible for the preparation, maintenance and disposition of the official files and records documenting the business of the Commission. In this regard, the Office:

(i) Prepares and, as appropriate, publishes agenda of matters for action by the Commission, prepares and maintains the minutes with respect to such actions; signs, serves and issues, on behalf of the Commission, documents implementing such actions, and coordinates follow-up thereon.

(ii) Receives and processes formal and informal complaints involving alleged statutory violations, petitions for relief, special dockets applications (including the issuance of decisions therein), applications to correct clerical or administrative errors in service contracts, requests for conciliation service, staff recommendations for investigation and rulemaking proceedings, and motions and filings relating thereto.

(iii) Disseminates information regarding the proceedings, activities, functions, and responsibilities of the Commission to the maritime industry, news media, general public, and other government agencies. In this capacity the Office also:

(A) Administers the Commission's Freedom of Information Act, Privacy Act and Government in the Sunshine Act responsibilities; the Secretary serves as the Freedom of Information Act and Privacy Act Officer.

(B) Authenticates records of the Commission.

(C) Receives and responds to subpoenas directed to Commission personnel and/or records.

(D) Compiles and publishes the bound volumes of Commission decisions.

(E) Coordinates publication of documents, including rules and modifications thereto with the Office of the Federal Register; the Secretary serves as the Federal Register Liaison Officer and Certifying Officer.

(2) Through the Secretary and, in the absence or preoccupation of the Secretary, through the Assistant Secretary, administers oaths pursuant to 5 U.S.C. 2903(b).

(3) Coordinates Alternative Dispute Resolution activities within the Commission.

(4) Through the Office of Informal Inquiries, Complaints and Informal Dockets:

(i) Advises the Commission on significant public interest issues in current and proposed policies, programs, and decisions;

(ii) Receives, coordinates, and responds to informal inquiries, complaints, suggestions, and expressions of concern from the public and contacts carriers, conferences, and other persons to effect solutions;

(iii) Publicizes Commission policies, programs, and activities of interest to the Commission's shipping public; and

(iv) Adjudicates small claims ($10,000 or less) arising from alleged violations of the shipping statutes.

(d) *General Counsel.* Under the direction and management of the General Counsel, the Office of the General Counsel:

(1) Reviews for legal sufficiency all staff memoranda and recommendations that are presented for Commission action and staff actions acted upon pursuant to delegated authority under §§ 501.26(i) and 501.26(k).

(2) Provides written or oral legal opinions to the Commission, to the staff, and to the general public in appropriate cases.

(3) Prepares and/or reviews for legal sufficiency, before service, all final Commission decisions, orders, and regulations.

(4) Monitors, reviews and, as requested by the Committees of the Congress, the Office of Management and Budget, or the Chairman, prepares comments on all legislation introduced in the Congress affecting the Commission's programs or activities, and prepares draft legislation or amendments to legislation; coordinates such matters with the appropriate Bureau, Office or official and advises appropriate Commission officials of legislation which may impact the programs and activities of the Commission. Also prepares testimony for Congressional hearings and responses to requests from Congressional offices.

(5) Serves as the legal representative of the Commission in courts and in administrative proceedings before other Government agencies.

(6) Monitors and reports on international maritime developments, including laws and practices of foreign governments which affect ocean shipping; and identifies potential state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, researches their status, and makes recommendations to the Commission concerning their classification.

(7) Represents the Commission in U.S. Government interagency groups dealing with international maritime issues; serves as a technical advisor on regulatory matters in bilateral and multilateral maritime discussions; and coordinates Commission activities through liaison with other Government agencies and programs and international organizations.

(8) Screens, routes, and maintains custody of U.S. Government and international organization documents, subject to the classification and safekeeping controls administered by the Commission's Information Security Officer.

(9) Reviews for legal sufficiency all adverse personnel actions, procurement activities, Freedom of Information Act and Privacy Act matters and other administrative actions.

(10) Manages the Commission's library and related services.

(e) *Administrative Law Judges.* Under the direction and management of the Chief Administrative Law Judge, the Office of Administrative Law Judges holds hearings and renders initial or recommended decisions in formal rulemaking and adjudicatory proceedings as provided in the Shipping Act, 1916, Shipping Act of 1984, and other applicable laws and other matters assigned by the Commission, in accordance with the Administrative Procedure Act and the Commission's Rules of Practice and Procedure.

(f) *The Office of the Managing Director.* (1) The Managing Director:

(i) As senior staff official, is responsible to the Chairman for the management and coordination of Commission programs managed by the operating Bureaus of Investigations; Hearing Counsel; Administration; Trade Monitoring and Analysis; and Tariffs, Certification and Licensing, as more fully described in paragraphs (g) through (k) of this section, and thereby implements the regulatory policies of the Commission and the administrative policies and directives of the Chairman;

(ii) Provides administrative guidance to all units of the Commission other than the operating bureaus listed in paragraph (f)(1) of this section, except the Offices of Equal Employment Opportunity and the Inspector General, which are provided administrative assistance;

(iii) Is the agency's Senior Procurement Executive under 41 U.S.C. 414(3) and Commission Order No. 112;

(iv) As the Designated Senior Information Resources Management Official under 44 U.S.C. 501–520 and 3501–3520 and Commission Order No. 117, reviews recommendations of the Commission's Committee on Automated Data Processing and submits them to the Chairman under Commission Orders Nos. 98 and 117;

(v) Is the Audit Follow-up and Management (Internal) Controls Official for the Commission under Commission Orders Nos. 103 and 106; and

(vi) Is the agency's Chief Operating Officer, as appointed by the Chairman in response to the President's October 1, 1993, memorandum on management reform.

(2) The Office of Managing Director ensures the periodic review and updating of Commission orders.

(3) A Deputy Managing Director, reporting directly to the Managing Director, supervises the development of, and serves as Contracting Officer for, the Commission's Automated Tariff Filing and Information ("ATFI") System.

(g) *Bureau of Trade Monitoring and Analysis.* Under the direction and management of the Bureau Director, the Bureau of Trade Monitoring and Analysis develops and administers programs in connection with the anticompetitive and cooperative arrangements and practices of common carriers by water, freight forwarders and terminal operators in the foreign and domestic commerce of the U.S., including the filing of common carrier agreements under section 15 of the Shipping Act, 1916, ocean common carrier agreements under section 5 of the Shipping Act of 1984, and the filing of agreements by marine terminal operators under section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984. The Bureau provides expert economic testimony and support in formal proceedings, particularly regarding unfair foreign shipping practices under section 19 of the Merchant Marine Act, 1920, the Foreign Shipping Practices Act of 1988, and domestic offshore rate-of-return cases under the Intercoastal Shipping Act, 1933.

(h) *Bureau of Tariffs, Certification and Licensing.* Under the direction and management of the Bureau Director, the Bureau of Tariffs, Certification and Licensing plans, develops and administers programs in connection with tariffs filed by common carriers and marine terminal operators; ocean common carrier service contracts; financial responsibility of non-vessel operating common carriers; licensing ocean freight forwarders; certifying the financial responsibility of passenger vessel owners and operators; and financial reporting by ocean common carriers in the domestic offshore trades. These programs carry out provisions of the Shipping Act, 1916; the Intercoastal Shipping Act, 1933; the Shipping Act of 1984; and Pub. L. 89–777, as implemented under Parts 510, 514, 515, 540, 550, 552, 580, 581, 582, and 583 of this chapter. The Bureau maintains tariff data filed in electronic form on the Commission's Automated Tariff Filing and Information System ("ATFI"). The Bureau develops long-range plans, new or revised policies and standards, and rules and regulations with respect to these programs. It also cooperates with other Commission components with

regard to the enforcement of the Commission's regulatory requirements, and provides expert testimony and support in formal proceedings. The Bureau's program activities are carried out by the Office of Tariffs, the Office of Service Contracts and Passenger Vessel Operations and the Office of Freight Forwarders.

(i) *Bureau of Hearing Counsel.* Under the direction and management of the Bureau Director, the Bureau of Hearing Counsel:

(1) Participates as trial counsel in formal Commission proceedings when designated by Commission order, or when intervention is granted;

(2) Initiates, processes and negotiates the informal compromise of civil penalties under § 501.28 of this part and § 502.604 of this chapter, and represents the Commission in proceedings and circumstances as designated;

(3) Acts as staff counsel to the Managing Director and other bureaus and offices; and

(4) Coordinates with the Bureau of Investigations and other bureaus to provide legal advice, attorney liaison, and prosecution, as warranted, in connection with field investigations and other enforcement matters.

(j) *Bureau of Investigations; District Offices.* (1) The mission of the Bureau of Investigations is to secure compliance with the shipping statutes. To fulfill this mission, the Bureau, under the direction and management of the Bureau Director and through its offices located in key locations throughout the United States, conducts investigations leading to enforcement action, advises the Federal Maritime Commission of evolving competitive practices in international and domestic offshore commerce, assesses the practical repercussions of Commission regulations, educates the industry regarding policy and statutory requirements, assists in the resolution of disputes within the industry, and provides liaison, cooperation, and other coordination between the Commission and the maritime industry, shippers, and other government agencies.

(2) The activities performed by the District Offices, under the direction and management of their respective Office Directors, include the following:

(i) Representing the Commission within their respective geographic areas;

(ii) Providing liaison between the Commission and the shipping industry and interested public; conveying pertinent information regarding regulatory activities and problems; and recommending courses of action and solutions to problems as they relate to the shipping public, the affected industry, and the Commission;

(iii) Furnishing to interested persons information, advice, and access to Commission public documents;

(iv) Receiving and resolving informal complaints, in coordination with the Director, Office of Informal Inquiries, Complaints and Informal Dockets;

(v) Investigating potential violations of the shipping statutes and the Commission's regulations;

(vi) Conducting shipping industry surveillance programs to ensure compliance with the shipping statutes and Commission regulations. Such programs include common carrier audits, service contract audits and compliance checks of ocean freight forwarders;

(vii) Upon request of the Bureau of Tariffs, Certification and Licensing, auditing passenger vessel operators to determine the adequacy of performance bonds and the availability of funds to pay liability claims for death or injury, and assisting in the background surveys of ocean freight forwarder applicants;

(viii) Conducting special surveys and studies, and recommending policies to strengthen enforcement of the shipping laws;

(ix) Maintaining liaison with Federal and State agencies with respect to areas of mutual concern; and

(x) Providing assistance to the various bureaus and offices of the Commission as appropriate and when requested.

(k) *Bureau of Administration.* Under the direction and management of the Bureau Director, the Bureau of Administration is responsible for the administration and coordination of the Offices of: Administrative Services; Budget and Financial Management; Information Resources Management; and Personnel. The Bureau provides administrative support to the program operations of the Commission. The Bureau interprets governmental policies and programs and administers these in a manner consistent with Federal guidelines, including those involving information management, procurement, financial management and personnel. The Bureau initiates recommendations, collaborating with other elements of the Commission as warranted, for long-range plans, new or revised policies and standards, and rules and regulations, with respect to its program activities. The Office of the Bureau Director is responsible for directing and administering the Commission's training and development function. The Bureau Director is the Commission's Competition Advocate under 41 U.S.C. 418(a) and Commission Order No. 112, as well as the Commission's representative, as Principal Management Official, to the Small Agency Council. Other Bureau programs are carried out by its Offices, as follows:

(1) The Office of Administrative Services, under the direction and management of the Office Director, directs and administers a variety of management support service functions of the Commission. The Director of the Office is the Commission's principal Contracting Officer under Commission Order No. 112. Programs include communications; audio and voice telecommunications; procurement of and contracting for administrative goods and services, including the utilization of small and disadvantaged businesses; management of property, space, printing and copying; mail and records services; forms and graphic designs; facilities and equipment maintenance; and transportation.

(2) The Office of Budget and Financial Management, under the direction and management of the Office Director, administers the Commission's financial management program, including fiscal accounting activities, fee and forfeiture collections, and payments, and ensures that Commission obligations and expenditures of appropriated funds are proper; develops annual budget justifications for submission to the Congress and the Office of Management and Budget; develops and administers internal controls systems that provide accountability for agency funds; administers the Commission's travel and cash management programs, as well as the Commission's Imprest Funds; ensures accountability for official passports; and assists in the development of proper levels of user fees. The Director of the Office is the Commission's Chief Financial Officer.

(3) Under the direction and management of the Office Director, the Office of Information Resources Management's major function is to administer the information resources management program under the Paperwork Reduction Act. Other functions include: Management studies and surveys; data telecommunications/database management and application development; records management; IRM contract administration; and development of Paperwork Reduction Act clearances for submission to the Office of Management and Budget. The Office is also responsible for the computer security and records and forms management programs. The Director of the Office serves as IRM Manager, Forms Control Officer, Computer Security Officer, Records Management Officer, and ADP Coordinator for the Committee on Automated Data Processing.

(4) The Office of Personnel, under the direction and management of the Office Director, plans and administers a complete personnel management program including: Recruitment and placement; position classification and pay administration; occupational safety and health; employee counseling services; employee relations; workforce discipline; performance appraisal; incentive awards; retirement; and personnel security. The Director of the Office is the Chairman of the Incentive Awards Committee.

(l) *Boards and Committees.* The following boards and committees are established by separate Commission orders ("C.O.") to address matters relating to the overall operations of the Commission:

(1) The Executive Resources Board is comprised of three voting members, chosen from the ranks of those above the grade 15 level, with the majority being career members of the Senior Executive Service. The members serve staggered terms of three years, beginning October 1 of each year; the member serving in the last year of his/her term serves as Chairman. The board meets on an ad hoc basis to discuss, develop and submit recommendations to the Chairman on matters related to the merit staffing process for career appointments in the Senior Executive Service, including the executive qualifications of candidates for career appointment. The board also plans and manages the Commission's executive development programs. Serving the board in a non-voting advisory capacity are the Director, Office of Equal Employment Opportunity, the Training Officer, and the Director, Office of Personnel, who also serves as the board's secretary. C.O. No. 95.

(2) The Committee on Automated Data Processing is chaired by a Commissioner designated by the Chairman, and is comprised of the Directors of the Bureaus of Trade Monitoring and Analysis; Tariffs, Certification and Licensing; Administration; Hearing Counsel; and Investigations; the General Counsel; the Secretary; the Inspector General; the Director, Office of Equal Employment Opportunity; the Chief Administrative Law Judge; a representative from the Chairman's office; the Deputy Managing Director in charge of the Commission's Automated Tariff Filing and Information System; and the Director, Office of Information Resources Management, who serves as Committee Coordinator for the Committee Chairperson. The Committee meets on an ad hoc basis to review, evaluate and recommend to the Chairman, through the Managing Director, policies and actions on the acquisition, management and use of ADP equipment and services. C.O. No. 98.

(3) The Performance Review Board is chaired by a Commissioner designated by the Chairman, and is composed of a standing register of members which is published in the **Federal Register**. Once a year, the PRB Chairman appoints performance review panels from the membership to review individual performance appraisals and other relevant information pertaining to Senior Executives at the Commission, and to recommend final performance ratings to the Chairman. C.O. No. 115.

(4) The Incentive Awards Committee is composed of two permanent voting members: The Director of Personnel, who serves as Chairman; and the Director of Equal Employment Opportunity; and two other voting members approved by the Chairman upon the recommendation of the Managing Director. The committee meets on an ad hoc basis to determine if incentive award nominations meet established criteria, and to review suggestions. C.O. No. 62.

Subpart B—Official Seal

§ 501.11 Official seal.

(a) *Description.* Pursuant to section 201 (c) of the Merchant Marine Act, 1936, as amended (46 U.S.C. app. 1111(c)), the Commission prescribes its official seal, as adopted by the Commission on August 14, 1961, which shall be judicially noticed. The design of the official seal is described as follows:

(1) A shield argent paly of six gules, a chief azure charged with a fouled anchor or; shield and anchor outlined of the third; on a wreath argent and gules, an eagle displayed proper; all on a gold disc within a blue border, encircled by a gold rope outlined in blue, end bearing in white letters the inscription "Federal Maritime Commission" in upper portion and "1961" in lower portion.

(2) The shield and eagle above it are associated with the United States of America and denote the national scope of maritime affairs. The outer rope and fouled anchor are symbolic of seamen and waterborne transportation. The date "1961" has historical significance, indicating the year in which the Commission was created.

(b) *Design.*



Subpart C—Delegation and Redelegation of Authorities

§ 501.21 Delegation of authorities.

(a) *Authority and delegation.* Section 105 of Reorganization Plan No. 7 of 1961, August 12, 1961, authorizes the Commission to delegate, by published order or rule, any of its functions to a division of the Commission, an individual Commissioner, an administrative law judge, or an employee or employee board, including functions with respect to hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter. In subpart A of this part, the Commission has delegated general functions, and in this subpart C, it is delegating miscellaneous, specific authorities set forth in §§ 501.23, et seq., to the delegatees designated therein, subject to the limitations prescribed in subsequent subsections of this section.

(b) *Deputies.* Where bureau or office deputies are officially appointed, they are hereby delegated all necessary authority to act in the absence or incapacity of the director or chief.

(c) *Redelegation.* Subject to the limitations in this section, the delegatees may redelegate their authorities to subordinate personnel under their supervision and direction; but only if this subpart is amended to reflect such redelegation and notice thereof is published in the **Federal Register.** Under any redelegated authority, the redelegator assumes full responsibility for actions taken by subordinate redelegatees.

(d) *Exercise of authority; policy and procedure.* The delegatees and redelegatees shall exercise the authorities delegated or redelegated in a manner consistent with applicable laws and the established policies of the Commission, and shall consult with the General Counsel where appropriate.

(e) *Exercise of delegated authority by delegator.* Under any authority delegated or redelegated, the delegator (Commission), or the redelegator, respectively, shall retain full rights to exercise the authority in the first instance.

(f) *Review of delegatee's action.* The delegator (Commission) or redelegator of authority shall retain a discretionary right to review an action taken under delegated authority by a subordinate delegatee, either upon the filing of a written petition of a party to, or an intervenor in, such action; or upon the delegator's or redelegator's own initiative.

(1) Petitions for review of actions taken under delegated authority shall be filed within ten (10) calendar days of the action taken:

(i) If the action for which review is sought is taken by a delegatee, the petition shall be addressed to the Commission pursuant to § 502.69 of this chapter.

(ii) If the action for which review is sought is taken by a redelegatee, the petition shall be addressed to the redelegator whose decision can be further reviewed by the Commission under paragraph (f)(1)(i) of this section, unless the Commission decides to review the matter directly, such as, for example, in the incapacity of the redelegator.

(2) The vote of a majority of the Commission less one member thereof shall be sufficient to bring any delegated action before the Commission for review under this paragraph.

(g) *Action—when final.* Should the right to exercise discretionary review be declined or should no such review be sought under paragraph (f) of this section, then the action taken under delegated authority shall, for all purposes, including appeal or review thereof, be deemed to be the action of the Commission.

(h) *Conflicts.* Where the procedures set forth in this section conflict with law or any regulation of this chapter, the conflict shall be resolved in favor of the law or other regulation.

§ 501.22 [Reserved]

§ 501.23 Delegation to the General Counsel.

The authority listed in this section is delegated to the General Counsel:

Authority to classify carriers as state-controlled carriers within the meaning of section 3(8) of the Shipping Act of 1984, except where a carrier submits a rebuttal statement pursuant to § 514.4(c)(2)(ii) or § 580.1(e)(3)(i) of this chapter.

§ 501.24 Delegation to the Secretary.

The authorities listed in this section are delegated to the Secretary (and, in the absence or preoccupation of the Secretary, to the Assistant Secretary).

(a) Authority to approve applications for permission to practice before the Commission and to issue admission certificates to approved applicants.

(b) Authority to extend the time to file exceptions or replies to exceptions, and the time for Commission review, relative to initial decisions of administrative law judges and decisions of Special Dockets Officers.

(c) Authority to extend the time to file appeals or replies to appeals, and the time for Commission review, relative to dismissals of proceedings, in whole or in part, issued by administrative law judges.

(d) Authority to establish and extend or reduce the time:

(1) To file documents either in docketed proceedings or relative to petitions filed under part 502 of this chapter, which are pending before the Commission itself; and

(2) To issue initial and final decisions under § 502.61 of this chapter.

(e) Authority to prescribe a time limit less than twenty days from date published in the **Federal Register,** for the submission of written comments with reference to agreements filed pursuant to section 15 of the Shipping Act, 1916, and to prescribe a time limit for the submission of written comments with reference to agreements filed pursuant to section 5 of the Shipping Act of 1984.

(f) Authority, in appropriate cases, to publish in the **Federal Register** notices of intent to prepare an environmental assessment and notices of finding of no significant impact.

(g) Authority to prescribe a time limit less than ten days from date published in the **Federal Register** for filing comments on notices of intent to prepare an environmental assessment and notice of finding of no significant impact and authority to prepare environmental assessments of No Significant Impact.

(h) Authority, after consultation with the Director, Bureau of Trade Monitoring and Analysis, to rule on requests to file amendments or supplements to documents concerning pending section 15 agreements which are filed pursuant to § 560.602(e) of this chapter.

(i) Authority, in the absence or preoccupation of the Managing Director and Deputy Managing Directors, to sign travel orders, nondocketed recommendations to the Commission, and other routine documents for the Managing Director, consistent with the programs, policies, and precedents established by the Commission or the Managing Director.

§ 501.25 Delegation to the Managing Director.

The authorities listed in this section are delegated to the Managing Director.

(a) Authority to adjudicate, with the concurrence of the General Counsel, and authorize payment of, employee claims for not more than $1,000.00, arising under the Military and Civilian Personnel Property Act of 1964, 31 U.S.C. 3721.

(b) Authority to determine that an exigency of the public business is of such importance that annual leave may not be used by employees to avoid forfeiture before annual leave may be restored under 5 U.S.C. 6304.

§ 501.26 Delegation to the Director, Bureau of Trade Monitoring and Analysis.

The authorities listed in this section are delegated to the Director, Bureau of Trade Monitoring and Analysis.

(a) Authority to approve, pursuant to section 15 of the Shipping Act, 1916, unprotested passenger agency agreements and modifications thereto, and container interchange agreements and modifications thereto between common carriers by water.

(b) Authority to approve modifications to agreements filed under section 15 of the Shipping Act, 1916, when such modifications are filed in accordance with regulations and are clearly in compliance with the criteria and/or intent of such regulations, and require modification of the filed amendment to the extent necessary to conform to such regulations.

(c) Authority to approve those classes of unprotested section 15 agreements, and modifications thereto, which, pursuant to section 35 of the Shipping Act, 1916, are specifically exempted from the approval requirements of that Act, but which, notwithstanding the exemption, have been filed for approval.

(d) Authority to approve, pursuant to section 15 of the Shipping Act, 1916, as amended, unprotested modifications to marine terminal conference agreements and unprotested marine terminal leases, licenses, assignments, or other agreements of a similar character for the use of terminal property or facilities between persons subject to the Shipping Act, 1916, as amended. In instances where an agreement for the use of terminal property or facilities of that character defined herein grants renewal options without providing that the Commission be notified in the event that such options are exercised, this authority extends to the issuance of conditional approval, the condition of approval being that the agreement be modified to provide for notification to the Commission in the event that such options are exercised and refiled with the Commission.

(e) Authority to determine that no action should be taken to prevent an agreement or modification to an agreement from becoming effective under section 6(c)(1), and to shorten the review period under section 6(e), of the Shipping Act of 1984, when the agreement or modification involves solely a restatement, clarification or change in an agreement which adds no new substantive authority beyond that already contained in an effective agreement. This category of agreement or modification includes, for example, the following: a restatement filed to conform an agreement to the format and organization requirements of part 572 of this chapter; a clarification to reflect a change in the name of a country or port or a change in the name of a party to the agreement; a correction of typographical or grammatical errors in the text of an agreement; a change in the title of persons or committees designated in an agreement; or a transfer of functions from one person or committee to another.

(f) Authority to grant or deny applications filed under § 572.404 of this chapter for waiver of the form, organization and content requirements of §§ 572.401, 572.402, 572.403, 572.501 and 572.502 of this chapter.

(g) Authority to determine that no action should be taken to prevent an agreement or modification of an agreement from becoming effective under section 6(c)(1) of the Shipping Act of 1984 for all unopposed agreements and modifications to agreements which will not result in a significant reduction in competition. Agreements which are deemed to have the potential to result in a significant reduction in competition and which, therefore, are not covered by this delegation include but are not limited to:

(1) New agreements authorizing the parties to collectively discuss or fix rates (including terminal rates).

(2) New agreements authorizing the parties to pool cargoes or revenues.

(3) New agreements authorizing the parties to establish a joint service or consortium.

(4) New sailing agreements.

(5) New equal access agreements.

(6) Significant modifications to the above categories of agreements as set forth in § 572.403(a)(3) of this chapter.

(h) Authority to grant or deny shortened review pursuant to § 572.605 of this chapter for agreements for which authority is delegated in paragraph (g) of this section.

(i) Subject to review by the General Counsel, authority to deny, but not approve, requests filed pursuant to § 572.605 of this chapter for a shortened review period for agreements for which authority is not delegated under paragraph (g) of this section.

(j) Authority to issue notices of termination of agreements which are otherwise effective under the Shipping Act, 1916, or the Shipping Act of 1984, after publication of notice of intent to terminate in the **Federal Register,** when such terminations are:

(1) Requested by the parties to the agreement;

(2) Deemed to have occurred when it is determined that the parties are no longer engaged in activity under the agreement and official inquiries and correspondence cannot be delivered to the parties; or

(3) Deemed to have occurred by notification of the withdrawal of the next to last party to an agreement without notification of the addition of another party prior to the effective date of the next to last party's withdrawal.

(k) Authority to determine whether agreements for the use or operation of terminal property or facilities, or the furnishing of terminal services, are within the purview of section 15 of the Shipping Act, 1916, or section 5 of the Shipping Act of 1984.

(l) Authority to request controlled carriers to file justifications for existing or proposed rates, charges classifications, rules or regulations, and review responses to such requests for the purpose of recommending to the Commission that a rate, charge, classification, rule or regulation be found unlawful and, therefore, requires Commission action under section 9(d) of the Shipping Act of 1984.

(m) Authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to suspected violations of the shipping statutes and rules and regulations of the Commission.

§ 501.27 Delegation to and redelegation by the Director, Bureau of Tariffs, Certification and Licensing.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director, Bureau of Tariffs, Certification and Licensing.

(a)(1) Authority to approve for good cause or disapprove special permission applications submitted by common carriers, or conferences of such carriers, subject to the provisions of section 8 of the Shipping Act, 1984, section 18 of the Shipping Act, 1916, or section 2 of the Intercoastal Shipping Act of 1933, for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(b)(1) Authority to approve or disapprove special permission applications submitted by a controlled carrier subject to the provisions of section 9 of the Shipping Act of 1984 for relief from statutory and/or Commission tariff requirements.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(c)(1) Authority contained in Supplemental Report No. 4 and Order in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce—Tariffs and Service Contracts, to grant special permission to deviate from the requirement that electronically-filed tariffs become effective no later than 90 days from the last day of the applicable filing window.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs, in the Bureau of Tariffs, Certification and Licensing.

(d) Authority contained in Part 514 of this chapter to temporarily exempt common carriers from the electronic tariff filing requirements of that part for a period not to exceed 90 days from the filing dates set forth in Supplemental Report No. 4 and Order, served in Docket No. 90–23 on May 28, 1993.

(e)(1) Authority to reject tariff filings of common carriers in the foreign and domestic offshore commerce of the U.S. or conferences of such carriers for failure to meet the requirements of pertinent statutes or the Commission's regulations, for lack of completeness or clarity, or for noncompliance with special permission or other orders of the Commission.

(2) The authority under this paragraph is redelegated to the Chief, Office of Tariffs; Chief, Tariff Control Center and Senior Transportation Specialists in the Bureau of Tariffs, Certification and Licensing.

(f) Authority to issue notices of intent to cancel inactive tariffs of common carriers in the foreign and domestic offshore commerce and marine terminal operators, after a diligent effort has been made to locate the carrier/terminal operator without success, or if the carrier/terminal operator has advised the Commission that it no longer offers a carrier/terminal operator service but refuses to cancel its tariff upon written request; and to cancel such tariff if, within 30 days after publication, the carrier/terminal operator does not furnish reasons why such tariff should not be canceled.

(g) (1) Authority to:

(i) Approve or disapprove applications for ocean freight forwarder licenses; issue or reissue or transfer such licenses; and approve extensions of time in which to furnish the name(s) and ocean freight forwarding experience of the managing partner(s) or officer(s) who will replace the qualified partner or officer upon whose qualifications the original licensing was approved;

(ii) Issue a letter stating that the Commission intends to deny an application, unless within 20 days, applicant requests a hearing to show that denial of the application is unwarranted; deny applications where an applicant has received such a letter and has not requested a hearing within the notice period; and rescind, or grant extensions of, the time specified in such letters;

(iii) Revoke the license of an ocean freight forwarder upon the request of the licensee;

(iv) Upon receipt of notice of cancellation of any bond, notify the licensee in writing that its license will automatically be suspended or revoked, effective on the bond cancellation date, unless a new or reinstated bond is submitted and approved prior to such date, and subsequently order such suspension or revocation for failure to maintain a bond;

(v) Approve changes in an existing licensee's organization; and

(vi) Return any application which on its face fails to meet the requirements of the Commission's regulations, accompanied by an explanation of the reasons for rejection.

(2) The authorities contained in paragraphs (g)(1)(iii) and (g)(1)(iv) of this section are redelegated to the Chief, Office of Freight Forwarders, in the Bureau of Tariffs, Certification and Licensing.

(h) Authority to:

(1) Approve applications for Certificates (Performance) and Certificates (Casualty) evidenced by a surety, insurance or guaranty issued by an approved entity, and issue, reissue, or amend such Certificates;

(2) Issue a written notice to an applicant stating intent to deny an application for a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising applicant of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; deny any application where the applicant has not submitted a timely request for a hearing; and rescind such notices and grant extensions of the time within which a request for hearing may be filed;

(3) Issue a written notice to a certificant stating that the Commission intends to revoke, suspend, or modify a Certificate (Performance) and/or (Casualty), indicating the reason therefor, and advising of the time for requesting a hearing as provided for under § 540.26(c) of this chapter; revoke, suspend or modify a Certificate (Performance) and/or (Casualty) where the certificant has not submitted a timely request for hearing; and rescind such notices and grant extensions of time within which a request for hearing may be filed;

(4) Revoke a Certificate (Performance) and/or (Casualty) which has expired, and/or upon request of, or acquiescence by, the certificant; and

(5) Notify a certificant when a Certificate (Performance) and/or (Casualty) has become null and void in accordance with §§ 540.8(a) and 540.26(a) of this chapter.

(i) Authority contained in §§ 514.7(j) and 581.8 of this chapter to notify filing parties of the Commission's intent to reject a service contract and/or statement of essential terms and subsequently reject and return such contracts.

(j) Authority contained in Parts 514 and 581 of this chapter to approve, but not deny, requests for permission to correct clerical or administrative errors in the essential terms of filed service contracts.

(k) Authority contained in parts 514, 580 and 583 of this chapter to cancel the tariffs of NVOCCs who fail to file a surety bond, guaranty or insurance policy or, if required, designate an agent for receipt of process, or whose surety bond or agent designation is canceled.

(l) Authority contained in Parts 514 and 582 of this chapter to cancel the tariff or tariffs of any common carrier, and suspend the license of any ocean freight forwarder, who fails to file an anti-rebate certification.

(m) Authority to approve or disapprove applications as specified in Part 552 of this chapter for extensions of time for filing (§ 552.2(c)), alternative data (§ 552.2(d)) and waiver of detailed filing requirements (§ 552.2(e)).

(n) Authority contained in § 514.8(d)(4)(ii) of this chapter to approve minor changes and additions to transaction set data for the ATFI system. Such minor changes include additions to any of the following term and reference lists: Cities; States and Provinces; Countries; Ports; Container sizes; Container types; Container temperatures; Hazard codes; Inland modes, Packaging types, Rate bases; Service types; Stuffing mode; Stripping mode; and Currencies.

(o) Authority to develop, prescribe, and administer programs to assure compliance with the provisions of the shipping statutes of all persons subject thereto, including without limitations those programs for: The submission of regular and special reports, information, and data; the conduct of a plan for the field audit of activities and practices of common carriers by water in the domestic offshore trade and the foreign commerce of the U.S., conferences of such carriers, marine terminal operators, ocean freight forwarders, and other persons subject to the shipping statutes; and the conduct of rate studies.

(p) Authority to review and determine the validity of alleged or suspected violations, exclusive of formal complaints, of the shipping statutes and rules and regulations of the Commission by freight forwarders; authority to determine corrective action necessary with respect to violations except where violations involve major questions of policy or major interpretations of statutes, or orders, rules, and regulations of the Commission, or acts having material effect upon the commerce of the U.S.; and authority to recommend to the Commission the initiation of formal proceedings or other actions with respect to such alleged or suspected violations.

§ 501.28 Delegation to the Director, Bureau of Hearing Counsel.

The authority to compromise civil penalty claims has been delegated to the Director, Bureau of Hearing Counsel, by § 502.604(g) of this chapter. See also §§ 501.5(i) and 521.21.

§ 501.29 [Reserved]

§ 501.30 Delegation to and redelegation by Director, Bureau of Administration.

Except where specifically redelegated in this section, the authorities listed in this section are delegated to the Director, Bureau of Administration, and, in the absence or preoccupation of the Director, to the Deputy Director of that Bureau.

(a)(1) Authority under part 514 of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing, and the Office of the Managing Director, to issue letters notifying applicants for certification of ATFI batch filing capability that their applications have or have not been granted.

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

(b)(1) Authority under § 514.21(m)(2) of this chapter, after consultation with the Bureau of Tariffs, Certification and Licensing and the Office of the Managing Director, to evaluate and approve or disapprove by letter the accounting or charging system the applicant intends to use for charging users and remitting to the Commission indirect (subsequent) access user fees under 46 U.S.C. app. 1107a(d)(1)(B)(ii).

(2) The authority under this paragraph is redelegated to the Director, Office of Information Resources Management.

(c)(1) Authority is delegated to the Director, Bureau of Administration, to approve, certify, or otherwise authorize those actions dealing with appropriations of funds made available to the Commission including allotments, fiscal matters, and contracts relating to the operation of the Commission within the laws, rules, and regulations set forth by the Federal Government.

(2) The authority under this paragraph is redelegated to the Director, Office of Budget and Financial Management.

(d)(1) Authority is delegated to the Director, Bureau of Administration, to classify all positions GS–1 through GS–15 and wage grade positions.

(2) The authority under this paragraph is redelegated to the Director, Office of Personnel.

§ 501.31 Delegation to the Director, Bureau of Investigations.

The authority listed in this section is delegated to the Director, Bureau of Investigations: Authority to approve administrative leave for employees in District Offices.

Subpart D—Public Requests for Information

§ 501.41 Public requests for information and decisions.

(a) General. Pursuant to 5 U.S.C. 552(a)(1)(A), there is hereby stated and published for the guidance of the public the established places at which, the officers from whom, and the methods whereby, the public may secure information, make submittals or requests, or obtain decisions, principally by contacting by telephone, in writing, or in person, either the Secretary of the Commission at the Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573, or the District Offices listed in paragraph (d) of this section. See also part 503 of this chapter.

(b) The Secretary will provide information and decisions, and will accept and respond to requests, relating to the program activities of the Office of the Secretary and of the Commission, generally. Unless otherwise provided in this chapter, any document, report, or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the functions of the Commission or of the Office of the Secretary shall be filed with or submitted to the Secretary.

(c) The Directors of the following bureaus and offices will provide information and decisions, and will accept and respond to requests, relating to the specific functions or program activities of their respective bureaus and offices as set forth in this chapter; but only if the dissemination of such information or decisions is not prohibited by statute or the Commission's Rules of Practice and Procedure:

(1) Office of the General Counsel;

(2) Office of the Administrative Law Judges;

(3) Office of the Managing Director;

(4) Office of the Inspector General ;

(5) Office of Equal Employment Opportunity;

(6) Bureau of Hearing Counsel;

(7) Bureau of Trade Monitoring and Analysis;

(8) Bureau of Tariffs, Certification and Licensing;

(9) Bureau of Investigations;

(10) Bureau of Administration;

(11) Office of Personnel;

(12) Office of Budget and Financial Management;

(13) Office of Information Resources Management;

(14) Office of Administrative Services; and

(15) Office of Informal Inquiries, Complaints and Informal Dockets.

(d) The Directors of the New York, New Orleans, San Francisco, Puerto Rico, Houston, Los Angeles and Miami District Offices will provide information and decisions to the public within their geographic areas, or will expedite the obtaining of information and decisions from headquarters, relating to the program activities of the District Offices as set forth in this part. The addresses of these offices are as follows:

New York District—Director, New York District, Federal Maritime Commission, 6 World Trade Center, suite 614, New York, New York 10048–0949

New Orleans District—Director, New Orleans District, Federal Maritime Commission, 1 Canal Place Tower, 365 Canal Street, suite 2260 New Orleans, Louisiana 70130–1134

Miami District—Director, Miami District, Federal Maritime Commission, 18441 NW. 2nd Avenue, suite 302, Miami, Florida 33169

San Francisco District—Director, San Francisco District, Federal Maritime Commission, 525 Market Street, suite 3510, San Francisco, California 94105–2743

Los Angeles District—Director, Los Angeles District, Federal Maritime Commission, 11 Golden Shore, suite 270, Long Beach, California 90802

Puerto Rico District—Director, Puerto Rico District, Federal Maritime Commission, U.S. District Courthouse, Federal Office Building, room 762, 150 Carlos Chardon Avenue, Hato Rey, Puerto Rico 00918–1735

Houston District—Director, Houston District, Federal Maritime Commission, 14950

Heathrow Forest Parkway, suite 110, Box 14, Houston, Texas 77032–3842

(e) Any document, report or other submission required to be filed with the Commission by statute or the Commission's rules and regulations relating to the specific functions of the bureaus and offices shall be filed with or submitted to the Director of such Bureau or Office.

By the Commission.

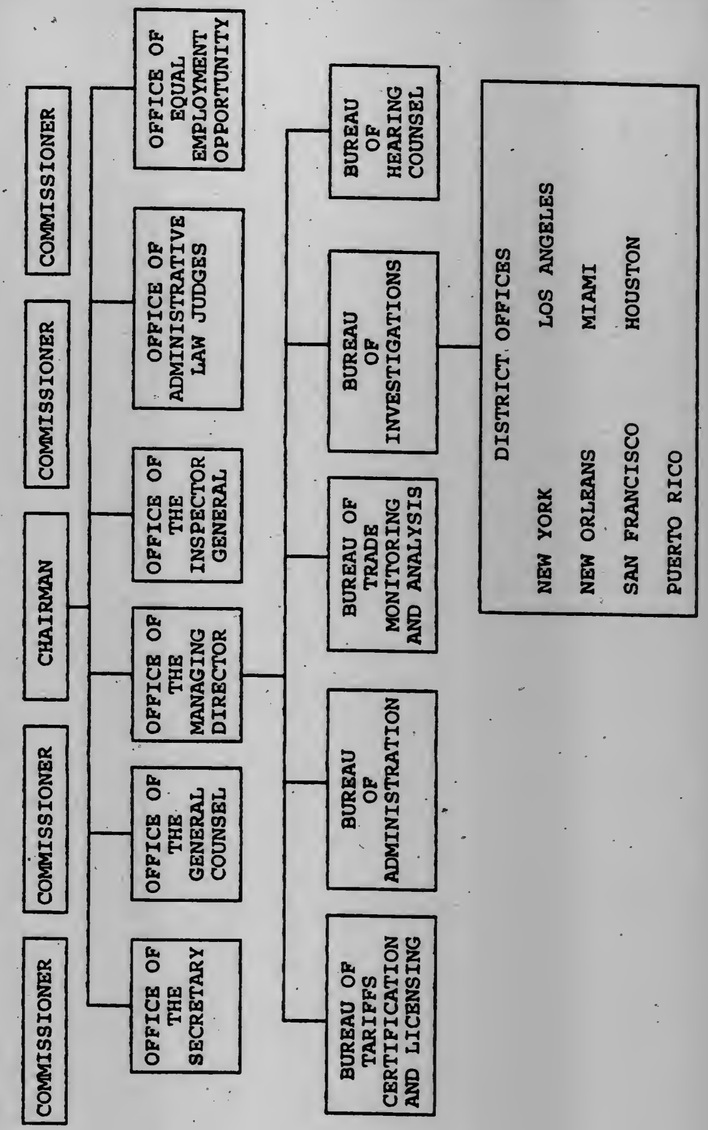
Joseph C. Polking

Secretary.

BILLING CODE 6730–01–W

APPENDIX A

FEDERAL MARITIME COMMISSION
ORGANIZATION CHART



[FR Doc. 94–52 Filed 1–6–94; 8:45 am]
BILLING CODE 6730–01–C

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 641

[Docket No. 930946–3338; ID 090993A]

RIN 0648–AE58

Reef Fish Fishery of the Gulf of Mexico

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues this final rule to implement Amendment 5 to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP) and to make other changes to the regulations This rule imposes a moratorium on additional participants in the Gulf of Mexico reef fish fishery who may use fish traps; imposes additional restrictions on the use of fish traps; increases the minimum allowable size of red snapper; requires that most finfish be maintained with head and fins intact through landing; closes an area southwest of Dry Tortugas, Florida, to all fishing during May and June each year; creates a special management zone (SMZ) in the EEZ off Alabama in which there are gear restrictions; and adds to the management measures that may be adjusted via a framework procedure the establishment or modification of SMZs and associated gear restrictions. In addition, NMFS simplifies and clarifies the regulations to conform them to current usage. The intended effects of this rule are to reduce fishing mortality of the reef fish resources so that they may be protected and rebuilt, to enhance enforceability of the regulations, and to otherwise clarify the regulations.

EFFECTIVE DATES: February 7, 1994, except that § 641.4(o) is effective February 7, 1994, through February 7, 1997.

FOR FURTHER INFORMATION CONTACT: Robert Sadler, 813–893–3161.

SUPPLEMENTARY INFORMATION: The reef fish fishery of the Gulf of Mexico is managed under the FMP. The FMP was prepared by the Gulf of Mexico Fishery Management Council (Council) and is implemented through regulations at 50 CFR part 641 under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act).

Detailed descriptions, backgrounds, and rationales for the management measures in Amendment 5 and the additional measures proposed by NMFS were included in the proposed rule (58 FR 52063, October 6, 1993) and are not repeated here.

Comments and Responses

Comments were received from 141 entities (including seven that opposed all measures proposed under Amendment 5, but did not offer specific rationale). Several comments referred to a specific management measure but suggested disapproval of all of Amendment 5. A minority report signed by four Council members objected to all provisions of Amendment 5 except for the requirement that all fish be landed with head and fins intact. Comments and responses are summarized, by subject, as follows.

Moratorium on Fish Traps

Comment: Nineteen individuals, one fish house, and the minority report objected to the fish trap moratorium as unfair and unnecessary. Most of the commenters anticipated severe economic impacts and disruption of their communities if the moratorium is approved. Generally, the individual commenters were persons who had not landed reef fish from fish taps before the cutoff date (November 19, 1992) and, therefore, would not be eligible for fish trap endorsements on their reef fish permits.

Response: The moratorium was developed in response to public testimony at Council meetings in 1992 that fishery and ecological damage, user group conflicts, and other social and economic impacts are expected if the trap fishery expands. Amendment 5 provides some data indicating that the use of fish traps in the Gulf of Mexico may be expanding, in terms of number of participants and geographical range. However, little or no data are available to assess catch composition or ecological effects of trap deployment. Although the number of reef fish vessels is capped by the permit moratorium, there is no limitation on the number of currently permitted vessels that may use fish traps, and each vessel may use up to 100 fish traps. The expressed intent of Amendment 5 is to freeze participation in the fish trap fishery at levels existing at the time of Council deliberations and public testimony (November 19, 1992). This includes all those who have historically depended on the fish trap fishery in the Gulf and who were participating in the fishery as of the specified cut-off date. It excludes only new participants entering after that date.

Since all landings by fish traps are required to be reported, vessel logbook records were selected as the means to verify use of fish traps. There are approximately 273 reef fish vessel permits that currently authorize the use of fish traps. Of these, 120 reported landings from fish traps by November 19, 1992, and 60 reported only after that date. The other 93 reported no reef fish landings with traps from 1991 to date.

The Council rejected more severe fish trap management proposals, including a total ban, and instead proposed the moratorium as an interim measure to control access to the trap fishery until better information could be obtained on ecological, biological, social, and economical effects. NMFS concurs with the Council proposal. Amendment 5 recognizes the need for better information, some of which may become available under a current NMFS research project.

Comment: Many of the comments also claimed that the Council acted without adequate public notification, most specifically to fishermen who made significant financial investments in the trap fishery but would be ineligible to continue trap fishing under the moratorium.

Response: The Council provided notification of proposed limitations on the use of fish traps in the reef fish fishery as follows: (1) A **Federal Register** notice (57 FR 47235, October 15, 1992) and a news release sent to Council constituents, NMFS statistical agents, Sea Grant agents, and newspapers announced upcoming public hearings on proposed changes to the reef fish regulations, including additional regulations on the use of fish traps—possibly prohibiting their use, and provided an opportunity for written comments or participation at the hearings; (2) a **Federal Register** notice (57 FR 48510, October 26, 1992) and a November 4, 1992, news release sent to Council constituents, NMFS statistical agents, Sea Grant agents, and newspapers announced the Council's scheduled meetings of November 16–19, 1992, specified the agenda, which included additional regulations on the use of fish traps, and scheduled a period at the meeting for public testimony on the proposed changes; (3) a **Federal Register** notice (57 FR 48510, October 26, 1992) announced a public meeting of the Council's Reef Fish Advisory Panel and its Standing and Special Reef Fish Scientific and Statistical Committee scheduled for November 9–10, 1992, and specified the agenda, which included additional regulations on the use of fish traps—possibly prohibiting their use; and (4) a newsletter distributed to Council constituents in early December 1992 announced the Council's vote on

November 19, 1992, for the moratorium. Eight public hearings at various locations between Key West, Florida, and Galveston, Texas, were held by the Council prior to the cutoff date, including a hearing attended by a relatively large number of participants at the Council meeting on November 18, 1992.

Comment: One individual suggested a total ban on the use of fish traps in the Gulf of Mexico; another suggested establishing an SMZ to ban fish traps in the Florida Keys, instead of implementing the proposed fish trap moratorium.

Response: A total ban on the use of fish traps was proposed in draft Amendment 5, but later was rejected by the Council in Amendment 5 based on a review of available data and objections raised by the public and NMFS. According to the analyses and data provided in Amendment 5, a fish trap ban would not comply with the Magnuson Act national standards or other applicable law. The moratorium is intended as a temporary control on the range and extent of the fishery, pending collection of additional fishery data (as referenced above).

Require Fish Traps To Be Returned to Port on Each Trip

Comment: Four individuals and the Council minority report opposed this measure as burdensome and unnecessary. Several commenters cited vessel safety problems and stated that their fishing efforts would be limited by the number of traps their vessels could carry. However, one individual supported the proposed requirement.

Response: The current regulations, which do not require that fish traps be returned to shore after each fishing trip, cause problems with locating and inspecting, dock-side or in transit, fish traps for enforcement purposes. Amendment 5 recognizes the costs and limitations associated with returning all traps to port after each trip, particularly for smaller vessels unable to carry safely all the traps they now use. Nonetheless, the Council determined that this measure provides benefits by providing enforcement opportunities for inspection of fish traps for compliance with construction, quantity, and tagging requirements. Moreover, many fish trap fishermen currently utilize this practice, and therefore would not be affected by the requirement. This requirement does not inherently create a vessel safety problem. Vessel owners and operators are encouraged to carry only that number of traps which can be safely carried given the size and weight of the traps, the size and tonnage of the vessel, and applicable weather conditions. Lastly, for these reasons, NMFS concurs with the Council and the individual commenter supporting the measure.

Buoying Requirements for Fish Traps

Comment: An environmental organization supported this measure. The minority report objected to the requirement for surface buoys for each single trap or end traps in a string of traps as increasing the chances of lost traps and ghost fishing in areas of strong currents and frequent ship traffic. The report argues that the presently allowed submerged buoys are sufficient.

Response: The current regulations allow trap buoys to be submerged and released with pop-up devices. This creates an enforcement problem locating fish traps at sea and may lead to increased numbers of lost traps. The requirement for surface buoys for individual traps, or for each end trap of traps that are connected by a line, is needed to enhance spotting of traps from the air or at sea for enforcement purposes. This requirement was not objected to by public comments. No fishermen agreed with the objections raised in the minority report. Since available information indicates a need for more effective regulation of the fish trap fishery, NMFS concurs with the Council and the environmental organization and supports this management measure as an appropriate means of regulating fish traps.

Special Management Zones (SMZs) Off Alabama

Amendment 5 proposes to establish three large SMZs off Alabama, wherein reef fish bag limits and a "no-sale" provision would apply to fishing for reef fish with buoy gear, longlines, or gear with more than three hooks per line. In response to concerns raised about the proposed SMZs, NMFS invited public comment on the proposed rule on the following specific concerns:

(1) What are the effects of establishing areas totaling approximately 820 square miles (2,124 square km) in which fishing under the commercial allocations would be severely limited;

(2) What are the effects of the 3-hook limit on the recreational and commercial user groups;

(3) What are the effects on the rebuilding plan of increasing availability of red snapper to the recreational fishery, particularly those in Alabama; and

(4) Are the Alabama SMZs consistent with the fairness and equity criteria proposed under the proposed framework procedure for adding SMZs and, if not, should they be consistent?

Comment: The minority report objected to the establishment of the SMZs. In addition, a total of 105 entities commented on the proposal, with 74 comments in support and 31 in opposition.

The minority report objected to the SMZs as unfair and therefore in violation of the Magnuson Act. The report also claimed that: (1) The Council acted without adequate public notification; (2) no information was presented on historical uses of the tracts; (3) testimony that commercial reef fish fishermen also had constructed reefs was ignored by the Council; and (4) the size of the tracts is so large that enforcement is impractical. In addition, 26 individuals, two commercial fishing organizations, and two fish houses offered various objections to the proposed SMZ designations and gear restrictions. Several disagreed with a statement in Amendment 5 that pulse and derby fishing on the red snapper resource was concentrated on the proposed SMZs off Alabama starting in April 1992. Additionally, a number of commenters objected to implications in Amendment 5 that the three tracts contained virtually no natural reefs or hard bottom area. Tracts B and C were frequently identified as having significant natural reef fish habitat.

Many of the reef fish fishermen claimed that once the red snapper season closes, bandit gear hook-and-line fishing occurs for vermilion snapper in the tracts. In addition, several fish houses and fishermen commented that the vermilion snapper fishery in tracts B and C typically is separated geographically and in time from the winter fishery for red snapper. Several comments indicated that vermilion snapper are relatively low-valued fish which have to be targeted with large numbers of hooks per line; i.e., they cannot profitably be fished commercially with three hooks or less. According to one dealer, the vermilion snapper fishery in the tracts includes as many as 18 vessels out of Pensacola, Florida, and a similar number from the Destin, Florida, area. Other commenters indicated that up to 150 commercial vessels would be impacted adversely by the 3-hook rule. This information was not available to the Council during debate on Amendment 5.

Several individuals also commented that this proposal, in effect, unfairly allocates part of the total allowable catch to reef fish harvesters who meet the 3-hook limit at the expense of users of longlines, buoy gear, or lines with more than three hooks. In addition, several of the public comments claim that enforcement efforts would be

complicated by allowing harvest of fish other than reef fish with lines having more than three hooks and by the unusually large size of the three tracts. One commenter recommended disapproving tract C; another recommended disapproving both tracts B and C.

An environmental organization indicated general support for the SMZs as a means of offering recreational fishing opportunities, but expressed concern over the resulting impacts on other fisheries once reef fish gear is restricted. The organization also indicated a need to control fishing effort on natural reefs.

Response: Concerning the minority report, NMFS has concluded that the Council provided adequate notification of Council meetings and public hearings on Amendment 5 (as outlined in our response to comments on the fish trap moratorium). Eight public hearings were held by the Council on Amendment 5, including a hearing attended by a relatively large number of participants in the reef fish fishery at the Council meeting on November 18, 1992.

Many of the objections raised by the minority report and individual commenters which contest statements found in Amendment 5 are supportable by available NMFS information. For example, red snapper commercial landings for 1992 totalled only about 130,000 pounds from the statistical grid which includes tracts B and C (statistical grid 10) and were less than previous years. This does not support the contention in Amendment 5 that pulse overfishing occurred in these two tracts, or that the artificial reefs produced additional red snapper which were then taken and landed in commercial quantities. Moreover, these data do not indicate that the short red snapper season caused more persons to take excessive advantage of the artificial reefs in tracts B and C.

The contention of many commenters that the proposed SMZs, particularly tracts B and C, supported a valuable vermilion snapper fishery is also supported by available data. NMFS commercial landing records for 1962–1990 indicate that statistical grid 10 produced the largest landings of vermilion snapper of all the Gulf grids (approximately 12 percent of the Gulf-wide catch). The actual catch from tracts B and C may be higher than 12 percent since 28 percent of the 1962–1990 vermilion snapper landings cannot be traced to any statistical grid, and part of tract C extends seaward of the grid 10 boundary.

Due to its proximity to shore, tract A is more readily available for the harvest of red snapper and could contribute to rapid harvest upon opening of the 1993 red snapper commercial harvest period. Additionally, landings data and several of the public comments indicate that tract A does not support a large fishery for vermilion snapper and as an SMZ would pose less adverse impact on historical fisheries. Therefore, tract A appears to be in greater need of the proposed protection as an SMZ than the other two tracts. The 3-hook rule could slow the rate of red snapper harvest in that tract should those who previously used non-conforming gear choose not to compensate by increasing effort or the number of lines per boat. Tract A also would incur the least amount of at-sea time needed by enforcement staff to verify the number of hooks on each reef fish line being used in the tract.

Tract B (360 square miles (932 square km)) and tract C (360 square miles (932 square km)) are significantly larger than tract A (100 square miles (259 square km)) and, according to public comments, contain natural reefs and substantial hard bottom habitat, which is important for supporting the vermilion snapper fishery. Without additional rationale, tracts B and C do not appear to be appropriate candidates for the proposed SMZ designation and gear restrictions, mainly because of public and NMFS concerns over adverse impacts to the vermilion snapper fishery documented in those areas.

For these reasons, NMFS approves only tract A for the SMZ designation and gear restrictions proposed by the Council. Approval of SMZ tracts B and C is not appropriate given the public comments and landings data which indicate the presence of an important fishery for vermilion snapper that was not addressed in Amendment 5 and that would be unnecessarily eliminated by the 3-hook limit and "no-sale" provision.

Comment: Seventy-two individuals, one wildlife organization, and one recreational fishing organization supported the SMZs and gear restrictions. The individuals included recreational fishermen and a builder of artificial reefs, all of whom indicated as a rationale for their support that artificial reef fish communities (primarily red snapper) are in need of protection from efficient commercial reef fish fishing gear. Other comments covered related topics and noted that the gear restriction would not in itself prohibit commercial fishing but may extend the season. Several commenters suggested management measures outside the scope of the proposed rule (i.e., allow only rod-and-reel fishing in the SMZs). However, many of the 74 comments that supported the SMZs provided little or no detailed rationale regarding the areas of concern listed in the proposed rule.

Response: NMFS acknowledges that SMZ designation of some nearshore artificial reefs may protect the reef fish resources from over exploitation (for the reasons stated above), and therefore has approved tract A.

Landings data from the statistical grid that contains tracts B and C do not support the Council's contention that a significant red snapper fishery in those tracts displaced either persons who constructed the artificial reefs or who traditionally fished with fewer hooks per line. Furthermore, Amendment 5 does not clearly indicate or analyze the extent of the vermilion snapper commercial fishery whose participants rely on those tracts for income year round. Unlike red snapper, vermilion snapper has not been shown to be overfished; moreover, artificial reefs have not been shown to be of specific benefit to vermilion snapper.

In addition to the 3-hook rule, a ban on reef fish commercial longlining (including use of three hooks or less per line) also was proposed for the area within tract C where that gear currently is allowed. Amendment 5 did not adequately address the impacts resulting from the proposed prohibition, particularly on the deepwater grouper longline fishery.

As indicated by some of the comments, the 3-hook rule in itself does not prohibit all commercial fishing. Available information, however, indicates that moving the boundary of the longline and buoy gear restricted area outside tract C, in combination with the 3-hook rule in tracts B and C, would effectively have eliminated the historical fisheries in those tracts.

Framework Procedure for Establishing SMZs

Comment: One environmental organization supported the regulatory amendment procedure as critical to protecting artificial reefs. One individual and the minority report objected to the procedure because they believe it would result in the placement of additional artificial reefs in tracts B and C, which they believe contain economically valuable natural reef or line bottom habitat.

Response: It is conceivable that approving the framework procedure could encourage additional construction of artificial reefs (as acknowledged in Amendment 5). However, the present disapproval of tracts B and C should resolve this issue. Furthermore, the framework procedure is designed to provide for a thorough scientific evaluation of the benefits and costs and environmental impacts of future proposed SMZs. The framework procedure specifies that each SMZ would have to be extensively reviewed by the Council's advisors, monitoring team, and scientific committee prior to Council review and submittal for abbreviated rulemaking. Moreover, each framework request must comply with the six criteria listed in the procedure, including fairness, equity, and consideration of natural bottom habitat. This would include tracts B and C should the Council choose to resubmit a revised framework proposal addressing these areas. Accordingly, NMFS concurs with the proposed framework procedure for establishing SMZs.

Increases in the Minimum Size Limit for Red Snapper

Comment: Six fishermen contended that additional release mortality and economic impacts of the increased size limit (including elimination of a market size) would outweigh any benefits. These concerns also were contained in the minority report, which noted the potential for imports replacing that size of red snapper in the U.S. market. One commenter also noted text from the regulation amendment prepared by the Council in 1990 that cites impacts of additional mortality in support of the status quo. Several fishermen feared decreased demand by consumers for the larger size fillets. Other comments indicated that red snapper are not in need of additional protection. An environmental organization and a recreational fishing organization commented in favor of the increased size limits.

Response: Although there may be some initial short-term adverse economic impacts associated with the incremental size limit increases, NMFS economic analyses indicate that the longer term economic gains should outweigh short-term revenue losses.

Concerning the comment on an earlier Council document that supported status quo, information is now available that supports the Council's proposal. For example, red snapper price information from the 1993 season indicates that there was a modest price premium paid for the one- to two-pound size in the early part of 1993, but by the end of the season, prices generally were the same for all size categories.

The major advantage of the incremental size increases is that it will allow for harvest of the fish when yield per recruit is maximized. Additionally, it aids in the rebuilding of the stock and reduces the urgency to implement in 1994 the program to reduce bycatch of juvenile red snapper in the shrimp trawl fishery. The FMP calls for a 50 percent bycatch reduction in the shrimp fishery by 1994. However, this goal could not be achieved without significant economic losses to the shrimp fishery. More recent stock assessment analyses assuming implementation of the size limit increases indicate various probabilities of stock recovery by the target year of 2009, based on the following dates for reaching the specified bycatch reduction goal of 50 percent: early 1994–95 percent, 1995—90 percent; or 1996—70 percent. Moreover, a very active research program is underway that potentially will provide bycatch and mortality information leading to the desired bycatch reduction goal without adversely impacting the fisheries for either shrimp or red snapper. For these reasons, NMFS concurs with the proposed increases in the minimum size limit for red snapper.

Mutton Snapper Spawning Aggregation Closure

Comment: The minority report questioned the need for protection of the aggregation, given that mutton snapper have not been shown to be overfished. One individual claimed that no significant bycatch of mutton snapper occurs while fishing for yellowtail snapper, and that closure of the area to all fishing is therefore unnecessary.

Response: Mutton snapper have been shown to be particularly vulnerable to harvest during the spawning season. Species that aggregate for spawning are vulnerable to fishing effort and traditionally are easier to catch at that time. In addition, they may be caught before spawning activity occurs. While the resource may not be overfished Gulf-wide, local overfishing could occur in the aggregation. Moreover, allowing fishing for other species could complicate enforcement of the closure, and vessels targeting mutton snapper could have the opportunity to discard their catch before being boarded by an authorized officer. The benefits of the action could be reduced significantly by mutton snapper release mortality as part of fishing for other species. For these reasons, the proposed closure to all fishing is necessary to protect the spawning individuals during this critical period. Accordingly, NMFS concurs with the spawning aggregation closure.

Finfish Landed With Head and Fins Intact

Comment: An environmental organization supported this proposal.

Response: NMFS concurs with the Council and the commenter.

Changes From the Proposed Rule

Section 641.4(b)(2)(xiii)(C) requires an applicant for a vessel permit to sign a statement that he or she will allow an authorized officer reasonable access to his or her property to examine fish traps for compliance with the regulations. NMFS finds that this requirement is unnecessary. Accordingly, as a technical amendment, this final rule removes § 641.4(b)(2)(xiii)(C).

Section 641.4(o)(1) in the proposed rule specified that a fish trap endorsement will not be issued or renewed unless the vessel for which the endorsement is requested and its current owner have records of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. As a result, persons with the qualifying catch record, but who have sold or transferred the vessel from which reef fish were harvested with fish traps and reported to NMFS, would be ineligible if the current regulations are implemented. NMFS finds that this requirement is inconsistent with the Council's intent, which was to limit the use of fish traps to those persons who had participated in the fish trap fishery and whose reports had been received as of November 19, 1992. Accordingly, § 641.4(o)(1) is re-written to specify that a fish trap endorsement will not be issued or renewed unless the current owner of the vessel for which the endorsement is requested has a record of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992.

Changes from the proposed rule to effect implementation of the moratorium have been made at § 641.4 (a)(4) and (o)(2) and § 641.7(y). For the initial implementation of the moratorium on fish trap endorsements, NMFS intends to reissue the permit for each vessel that meets the criteria for the fish trap endorsement. Such reissued permit will have a "Date Issued" of February 7, 1994, the effective date of this final rule, and will be endorsed for the use of fish traps. On and after that date, a fish trap

endorsement is valid only when it is on such a reissued permit. A fish trap endorsement on a permit issued before that date will not be valid. Each owner of a vessel that has a permit that currently authorizes the use of fish traps will receive by January 24, 1994, either a reissued permit with a fish trap endorsement or a letter advising him or her that the current fish trap endorsement on the permit will not be valid as of February 7, 1994.

With removal from the regulations of the specific information that must be included in required reports by fishing vessels, the term "statistical area" is no longer used. Accordingly, this final rule removes the definition of "statistical area" from § 641.2 and removes Figure 2, which depicts the statistical grids, from Appendix A. Depiction of the grids is included with the reporting forms that are provided by the Science and Research Director.

The proposed rule to implement Amendment 5 contained changes to § 641.5(d), the reporting requirements for dealers and processors. The proposed changes were minor, primarily for standardization. More substantive changes to these reporting requirements are contained in Amendment 7 to the FMP, the proposed rule for which was published on October 27, 1993 (58 FR 57771). Accordingly, the proposed changes to § 641.5(d) in the rule to implement Amendment 5 are deleted.

In § 641.22, paragraph (b)(2)(iii)(A) is revised to clarify that untreated jute string may not be wrapped or overlapped when used as degradable material. Wrapping or overlapping overly prolongs the time for the material to degrade.

In §§ 641.6(e) and 641.22(b)(7), language in the proposed rule regarding buoys on each end of a "string" of traps is revised. Trap fishermen refer to traps placed in a line as a "string," even when such traps are not connected. For clarity, this final rule requires buoys for marking individual, separate traps or each end trap of traps that are connected by a line.

In § 641.23(d), for the reasons discussed above, proposed SMZs B and C have been deleted. Concomitantly, in Appendix A, the proposed change to Table 2, and that part of the proposed change to Figure 5 that would have moved the seaward limits of the longline and buoy gear restricted area so that all of proposed SMZ C would be shoreward of the limits, are deleted.

Figures 4 and 5 in Appendix A have been enlarged to more clearly depict the seaward limits of the stressed area and of the longline and buoy gear restricted area, respectively. Figures 3 through 6 now depict each of the limits separately for the eastern and western portions of the Gulf of Mexico.

Partial Disapproval of Amendment 5

On December 16, 1993, the Secretary of Commerce (Secretary) partially disapproved Amendment 5. As discussed above, the provisions that would have established tracts B and C as SMZs were disapproved.

Classification

The Secretary determined that Amendment 5 is necessary for the conservation and management of the reef fish fishery and that it is consistent with the national standards, other provisions of the Magnuson Act, and other applicable law, with the exception of the provisions that would have established SMZs B and C.

The Council prepared a regulatory impact review as part of Amendment 5. A summary of the regulatory impacts was contained in the proposed rule and is not repeated here.

The Council prepared an initial regulatory flexibility analysis (RFA) for this action. The initial RFA has been adopted as final without change. The final RFA concludes that the measures in this final rule, considered individually, would not have a significant economic impact on small entities, but, considered collectively, would have a significant economic impact on a substantial number of small entities.

The Council prepared a final supplemental environmental impact statement (SEIS) for Amendment 5 that discusses the impacts on the environment of the reef fish fishery and the impacts that would result from implementation of the amendment. The final SEIS was filed with the Environmental Protection Agency (EPA). EPA published on October 15, 1993, (58 FR 53512) a notice of availability of the final SEIS for a 30-day comment period.

The Council determined that the proposed rule would be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal zone management programs of Alabama, Florida, Louisiana, and Mississippi. Texas does not have an approved coastal zone management program. These determinations were submitted for review by the responsible state agencies under section 307 of the Coastal Zone Management Act. Louisiana and Mississippi agreed with this determination. Alabama and Florida did not respond within the statutory time period; therefore, state agency agreement with the consistency determination is presumed.

This final rule involves, but does not change, collection-of-information requirements subject to the Paperwork Reduction Act, specifically, fishing vessel permits and fishing vessel reports. These requirements were previously approved by the Office of Management and Budget under OMB Control Numbers 0648–0205 and 0648–0016, respectively. The public reporting burdens for these collections of information, estimated to average 15 and 10–18 minutes per response, respectively, are not changed by this rule. Send comments regarding these burdens or any other aspect of these collections of information, including suggestions for reducing the burdens, to Edward E. Burgess, Southeast Regional Office, NMFS, 9450 Koger Boulevard, St. Petersburg, FL 33702, and to the Office of Information and Regulatory Affairs, Office of Management and Budget (Attention: NOAA Desk Officer), Washington, DC 20503.

This rule is not significant and is not subject to review under E.O. 12866.

This final rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 641

Fisheries, Fishing, Reporting and recordkeeping requirements.

Dated: December 30, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 641 is amended as follows:

PART 641—REEF FISH FISHERY OF THE GULF OF MEXICO

1. The authority citation for part 641 continues to read as follows:

Authority 16 U.S.C. 1801 *et seq.*

2. In § 641.1, paragraph (b) is revised to read as follows:

§ 641.1 Purpose and scope.

* * * * *

(b) This part governs conservation and management of reef fish in the Gulf of Mexico EEZ, except that §§ 641.5 and 641.25 also apply to fish from adjoining state waters. The boundary between the Gulf of Mexico EEZ and the Atlantic Ocean EEZ begins at the intersection of the outer boundary of the EEZ and 83°00′W. longitude, proceeds north to 24°35′N. latitude (near Dry Tortugas), east to Marquesas Key, then through the Florida Keys to the mainland.

§ 641.2 [Amended]

3. In § 641.2, the definition for "*Statistical area*" is removed.

4. In § 641.4, paragraphs (b)(2)(xiii)(C) and (b)(2)(xiv) are removed; paragraphs (a)(1), (a)(4), (b)(1), (b)(2) introductory text, (b)(2)(xi), (b)(2)(Xiii)(B), (h), (i), and (k) are revised; and new paragraph (o) is added to read as follows:

§ 641.4 Permits and fees.

(a) * * *

(1) As a prerequisite to selling reef fish and to be eligible for exemption from bag the limits specified in § 641.24(b), an owner or operator of a vessel that fishes in the EEZ must obtain an annual vessel permit.

* * * * *

(4) To possess or use a fish trap in the EEZ, an annual vessel permit for reef fish with a valid fish trap endorsement thereon must be issued to the vessel and must be on board the vessel. (See paragraph (o)(2) of this section for information on the validity of a fish trap endorsement.) In addition, a color code for marking the vessel and trap buoys must be obtained from the Regional Director.

* * * * *

(b) * * *

(1) An application for a vessel permit must be submitted and signed by the owner or operator of the vessel. The application must be submitted to the Regional Director at least 30 days prior to the date on which the applicant desires to have the permit made effective.

(2) A permit applicant must provide the following information:

* * * * *

(xi) A sworn statement by the applicant certifying that more than 50 percent of his or her earned income was derived from commercial fishing, that is, sale of the catch, or charter or headboat operations, during either of the two calendar years preceding the application;

* * * * *

(xiii) * * *

(B) The applicant's desired color code for use in identifying his or her vessel and buoys (white is not an acceptable color code).

* * * * *

(h) *Display.* A permit or endorsement issued under this section must be carried on board the fishing vessel and such vessel must be identified as provided for in § 641.6. The operator of a fishing vessel must present the permit or endorsement for inspection upon request of an authorized officer.

(i) *Sanctions and denials.* A permit or endorsement issued pursuant to this section may be revoked, suspended, or modified, and a permit or endorsement application may be denied, in accordance with the procedures governing enforcement-related permit sanctions and denials found at subpart D of 15 CFR part 904.

* * * * *

(k) *Replacement.* A replacement permit or endorsement may be issued. An application for a replacement permit or endorsement will not be considered a new application. A fee, the amount of which is stated with the application form, must accompany each request for a replacement.

* * * * *

(o) *Moratorium on fish trap endorsements.* The provisions of this paragraph (o) are effective through February 7, 1997.

(1) A fish trap endorsement will not be issued or renewed unless the current owner of the permitted vessel for which the endorsement is requested has a record of landings of reef fish from fish traps in the EEZ of the Gulf of Mexico during 1991 or 1992, as reported on fishing vessel logbooks received by the Science and Research Director on or before November 19, 1992. An owner will not be issued fish trap endorsements for vessels in numbers exceeding the number of vessels for which the owning entity had the requisite reported landings in 1991 or 1992.

(2) A fish trap endorsement on a vessel permit issued under this section that has a "Date Issued" of February 7, 1994, or later, is valid. Endorsements on permits issued before that date are not valid.

(3) An owner of a vessel with a fish trap endorsement may transfer the endorsement to another vessel owned by the same entity by returning the existing endorsement with an application for an endorsement for the replacement vessel.

(4) A fish trap endorsement is not transferable upon purchase of a vessel with a fish trap endorsement, the provisions of paragraph (1)(3) of this section regarding purchase of a vessel with a reef fish permit notwithstanding.

(5) A fish trap endorsement that is not renewed or that is revoked will not be reissued.

5. In § 641.5, paragraphs (b), (c), (f), (g), and (i) are revised to read as follows:

§ 641.5 Recordkeeping and reporting.

* * * * *

(b) *Vessels fishing with fish traps.* The owner or operator of a vessel for which a fish trap endorsement has been issued under § 641.4, or the owner or operator of a vessel that uses a fish trap in adjoining state waters, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director so as to be received not later than 7 days after the end of each fishing trip. If no fishing occurred during a month, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

(c) *Vessels not fishing with fish traps.* The owner or operator of a vessel for which a reef fish permit has been issued under § 641.4, or the owner or operator of a vessel that harvests reef fish in adjoining state waters, and who is selected by the Science and Research Director, must maintain a fishing record on a form available from the Science and Research Director. These forms must be submitted to the Science and Research Director on a monthly basis (or more frequently, if requested by the Science and Research Director) so as to be received not later than 7 days after the end of the reporting period. If no fishing occurred during a reporting period, a report so stating must be submitted on one of the forms to be received not later than 7 days after the end of the reporting period. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(f) *Charter vessels.* The owner or operator of a charter vessel that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining state waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip on forms provided by the Science and Research Director. These forms must be submitted to the Science and Research Director on a weekly basis so as to be received not later than 7 days after the end of each week (Sunday). Information to be reported is indicated on the form and its accompanying instructions.

(g) *Headboats.* The owner or operator of a headboat that fishes for or lands reef fish under the bag limits in the Gulf of Mexico EEZ or in adjoining state waters, and who is selected by the Science and Research Director, must maintain a daily fishing record for each trip, or a portion of such trips as specified by the Science and Research Director, on forms provided by the Science and Research Director. These forms must be submitted

to the Science and Research Director at least monthly so as to be received not later than 7 days after the end of each month. Information to be reported is indicated on the form and its accompanying instructions.

* * * * *

(i) *Additional data and inspection.* Additional data will be collected by authorized statistical reporting agents, as designees of the Science and Research Director, and by authorized officers. An owner or operator of a fishing vessel and a dealer or processor are required upon request to make reef fish or parts thereof available for inspection by the Science and Research Director or an authorized officer.

6. In § 641.6, the section heading and paragraphs (a) through (e) are revised to read as follows:

§ 641.6 Vessel and gear identification.

(a) *Official number.* A vessel for which a permit has been issued under § 641.4 must display its official number—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In block arabic numerals in contrasting color to the background;

(3) At least 18 inches (45.7 cm) in height for fishing vessels over 65 feet (19.8 m) in length and at least 10 inches (25.4 cm) in height for all other vessels; and

(4) Permanently affixed to or painted on the vessel.

(b) *Color code.* In addition to its official number, a vessel for which a fish trap endorsement has been issued under § 641.4 must display its color code—

(1) On the port and starboard sides of the deckhouse or hull and on an appropriate weather deck so as to be clearly visible from an enforcement vessel or aircraft;

(2) In the form of a circle at least 20 inches (50.8 cm) in diameter; and

(3) Permanently affixed to or painted on the vessel.

(c) *Duties of operator.* The operator of each fishing vessel specified in paragraph (a) or (b) of this section must—

(1) Keep the official number and color code clearly legible and in good repair; and

(2) Ensure that no part of the fishing vessel, its rigging, fishing gear, or any other material aboard obstructs the view of the official number and color code from an enforcement vessel or aircraft.

(d) *Fish traps.* A valid identification tag, available from the Regional Director, must be affixed to each fish trap used or possessed in the EEZ and to each fish trap aboard a vessel for which a fish trap endorsement has been issued under § 641.4. Such tag shows the specific tag number (normally 1 through 100, or less), the permit number, and the month and year through which the permit and tag are valid.

(e) *Buoys.* Each buoy used to mark a fish trap, or each end trap of traps that are connected by a line, must display the designated color code and permit number so as to be easily distinguished, located, and identified.

* * * * *

7. In § 641.7, paragraphs (a), (b), (g), (i), (k), (l), and (s) are revised and new paragraphs (y) through (cc) are added to read as follows:

§ 641.7 Prohibitions.

(a) Falsify information specified in § 641.4(b)(2) on an application for a vessel permit, or information on an application for an endorsement on a permit.

(b) Fail to display a permit or endorsement, as specified in § 641.4(h).

* * * * *

(g) Possess a finfish without its head and fins intact, as specified in § 641.21(b).

* * * * *

(i) Use or possess in the EEZ a fish trap that does not conform to the requirements for escape windows, panels and access doors with degradable fasteners, mesh sizes, and buoys, as specified in § 641.22 (b)(1), (b)(2), (b)(3), and (b)(7).

* * * * *

(k) Fish or possess in the EEZ more than 100 fish traps per vessel, as specified in § 641.22(b)(5).

(l) Pull or tend a fish trap, except during the hours specified in § 641.22(b)(6)(i); tend, open, pull, or otherwise molest or have in possession another person's fish trap, except as specified in § 641.22(b)(6)(ii); or fail to retrieve all fish traps and return them to port on each trip, as specified in § 641.22(b)(6)(iii).

* * * * *

(s) Purchase, barter, trade, or sell, or attempt to purchase, barter, trade, or sell, a reef fish possessed under the bag limits, as specified in § 641.24(g).

* * * * *

(y) Use or possess in the EEZ a fish trap without a valid fish trap endorsement, as specified in § 641.4(a)(4) and (o)(2).

(z) During May and June, fish in Riley's Hump, as specified in § 641.23(c).

(aa) In a special management zone, fish for reef fish with prohibited or unauthorized fishing gear, or, after having fished in a special management zone for species other than reef fish, exceed the possession and landing limits for reef fish; as specified in § 641.23(d).

(bb) Make any false statement, oral or written, to an authorized officer concerning the taking, catching, harvesting, landing, purchase, sale, possession, or transfer of a reef fish.

(cc) Interfere with, obstruct, delay, or prevent by any means an investigation, search, seizure, or disposition of seized property in connection with enforcement of the Magnuson Act.

8. In § 641.21, paragraphs (a)(1) and (b) are revised to read as follows:

§ 641.21 Harvest limitations.

(a) * * *

(1) Red snapper—

(i) Effective through December 31, 1995—14 inches (35.6 cm) total length;

(ii) Effective January 1, 1996, through December 31, 1997—15 inches (38.1 cm) total length;

(iii) Effective January 1, 1998—16 inches (40.6 cm) total length.

* * * * *

(b) *Head and fins intact.*

(1) Except as specified in paragraphs (b)(2), (b)(3), and (b)(4) of this section, a finfish possessed in the EEZ in the Gulf of Mexico must have its head and fins intact and such finfish taken from the EEZ must have its head and fins intact through landing. Such finfish may be eviscerated, gilled, and scaled but must otherwise be maintained in a whole condition.

(2) Shark, swordfish, and tuna species are exempt from the requirements of paragraph (b)(1) of this section.

(3) Bait is exempt from the requirements of paragraph (b)(1) of this section.

(i) For the purpose of this paragraph (b)(3), bait means—

(A) Packaged, headless fish fillets that have the skin attached and are frozen or refrigerated;

(B) Headless fish fillets that have the skin attached and are held in brine; or

(C) Small pieces no larger than 3 cubic inches (7.6 cubic cm) or strips no larger than 3 inches by 9 inches (7.6 cm by 22.9 cm) that have the skin attached and are frozen, refrigerated, or held in brine.

(ii) Paragraph (b)(3)(i) of this section notwithstanding, a finfish or part thereof possessed in or landed from the EEZ that is subsequently sold, purchased, traded, or bartered or attempted to be sold, purchased, traded, or bartered as a finfish species, rather than as bait, is not bait.

(4) Legal-sized finfish possessed for consumption at sea aboard the harvesting vessel are exempt from the requirements of paragraph (b)(1) of this section provided—

(i) Such finfish do not exceed any applicable bag limit;

(ii) Such finfish do not exceed 1.5 pounds (680 gm) of finfish parts per person on board; and

(iii) The vessel is equipped to cook such finfish on board.

* * * * *

9. In § 641.22, in paragraph (b)(3) introductory text, the reference to "Figure 3" is revised to read "Figure 2"; paragraphs (b)(2)(i), (b)(2)(ii), (b)(2)(iii) introductory text, (b)(2)(iii)(A), (b)(5) and (b)(6) are revised; and new paragraph (b)(7) is added to read as follows:

§ 641.22 Gear restrictions.

* * * * *

(b) * * *

(2) * * *

(i) A panel or access door must be located opposite each side of the trap that has a funnel.

(ii) The opening covered by each panel or access door must be 144 square inches (929 square cm) or larger, with one dimension of the area equal to or larger than the largest interior axis of the trap's throat (funnel) with no other dimension less than 6 inches (15.2 cm).

(iii) The hinges and fasteners of each panel or access door must be constructed of one of the following degradable materials:

(A) Untreated jute string of 3/16-inch (4.76-mm) diameter or smaller that is not wrapped or overlapped; or

* * * * *

(5) *Effort limitation.* The maximum number of traps that may be assigned to, possessed, or fished in the EEZ by a vessel is 100.

(6) *Tending traps.*

(i) A reef fish trap may be pulled or tended only during the period from official (civil) sunrise to official (civil) sunset.

(ii) Except for inspection of a fish trap by an authorized officer, a reef fish trap may be tended only by a person aboard the vessel for which the fish trap endorsement has been issued under § 641.4 to fish such trap, or aboard another vessel if such vessel has on board written consent of the owner or operator of the vessel with the fish trap endorsement. Such written consent is valid solely for the removal of fish traps from the EEZ, and harvest of fish incidental to such removal, when vessel or equipment breakdown prevents the vessel with the fish trap endorsement from retrieving its traps.

(iii) The operator of a vessel from which a fish trap is deployed in the EEZ must retrieve all the vessel's fish traps and return them to port on each trip. A fish trap that is not returned to port on a trip, and its attached line and buoy, may be disposed of in any appropriate manner by the Secretary (including an authorized officer). If an owner of such trap or the operator of the responsible vessel can be ascertained, the owner and/or operator is subject to appropriate civil penalties.

(7) *Buoys.* A buoy that floats on the surface must be attached to each fish trap, or to each end trap of traps that are connected by a line, used in the EEZ.

10. In § 641.23, in paragraphs (a)(3) and (b)(3), the concluding parenthetical phrases are revised; and new paragraphs (c) and (d) are added to read as follows:

§ 641.23 Area limitations.

(a) * * *

(3) * * * (See also Appendix A, Figures 3 and 4.)

(b) * * *

(3) * * * (See also Appendix A, Figures 5 and 6.)

(c) *Riley's Hump seasonal closure.* From May 1 through June 30 each year, Riley's Hump, southwest of Dry Tortugas, Florida, is closed to all fishing. Riley's Hump is enclosed by rhumb lines joining the following points in the order listed:

Point	Latitude	Longitude
A	24°32.2′ N	83°08.7′ W.
B	24°32.2′ N	83°05.2′ W.
C	24°28.7′ N	83°05.2′ W.
D	24°28.7′ N	83°08.7′ W.
A	24°32.2′ N	83°08.7′ W.

(d) *Special monogement zones (SMZs).*

(1) The following artificial reef and surrounding area is established as an SMZ: *Alabama—A.* The area is bounded by rhumb lines connecting the following points in the order listed:

Point	Latitude	Longitude
A	30°02.5′ N	88°07.7′ W.
B	30°02.6′ N	87°59.3′ W.
C	29°55.0′ N	87°55.5′ W.
D	29°54.5′ N	88°07.5′ W.
A	30°02.5′ N	88°07.7′ W.

(2) In the SMZ specified in paragraph (d)(1) of this section, fishing for reef fish is limited to hook-and-line gear with three or less hooks per line and spearfishing gear. For the purpose of this paragraph (d)(2), fishing for reef fish means possessing reef fish aboard or landing reef fish from—

(i) A vessel that is operating as a charter vessel or headboat;

(ii) A recreational vessel, that is, a vessel that is not in a commercial fishery; or

(iii) A vessel that has been issued a permit under § 641.4 when the reef fish aboard or landed from the vessel exceed a bag limit specified in § 641.24(b), for a species that has a bag limit, or exceed 5 percent by weight of all fish aboard, for other reef fish.

(3) A person aboard a vessel that uses in an SMZ gear other than hook-and-line gear with three or fewer hooks per line and spearfishing gear to fish for species other than reef fish may not possess reef fish in excess of the bag limits specified in § 641.24(b), for those species that have a bag limit, and in excess of 5 percent by weight of all fish aboard, for other reef fish, and may not land from a trip on which fishing was conducted in an SMZ, reef fish in excess of those limits.

11. In § 641.24, in paragraph (c)(1), the phrase "as required by the U.S. Coast Guard for trips of over 12 hours" is removed; and paragraphs (a) and (g) are revised to read as follows:

§ 641.24 Bag and possession limits.

(a) *Applicability.*

(1) Bag limits apply to a person—

(i) Who fishes from a fixed structure in the EEZ; or

(ii) Aboard a vessel that fishes in the EEZ, or aboard a fishing vessel that possesses reef fish in the EEZ,

(A) Without a permit specified in § 641.4 on board,

(B) With trawl gear or entangling net gear on board,

(C) With a longline or buoy gear on board when such vessel is fishing or has fished on its present trip in the longline and buoy gear restricted area specified in § 641.23(b),

(D) That is operating as a charter vessel or headboat, or

(E) For a species for which the quota specified in § 641.25 has been reached and closure has been effected.

(2) For the purpose of paragraph (a)(1)(ii)(B) of this section, a vessel is considered to have trawl gear on board when trawl doors and a net are on board. Removal from the vessel of all trawl doors or all nets constitutes removal of trawl gear.

(3) For the purpose of paragraph (a)(2)(ii)(C) of this section, a vessel is considered to have a longline on board when a power-operated longline hauler, a cable of diameter and length suitable for use in the longline fishery, and gangions are on board. Removal of any one of these three elements, in its entirety, constitutes removal of a longline.

* * * * *

(g) *Sale.* A reef fish possessed under the bag limits specified in paragraph (b) of this section may not be purchased, bartered, traded, or sold, or attempted to be purchased, bartered, traded, or sold.

§ 641.27 [Amended]

12. In § 641.27, in paragraph (a), the reference to "641.24(a)(2)(ii)" is revised to read "641.24(a)(1)(ii)(B)".

13. Section 641.28 is revised to read as follows:

§ 641.28 Adjustment of management measures.

In accordance with the procedures and limitations of the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico, the Regional Director may—

(a) Establish or modify for species or species groups in the reef fish fishery the following: target dates for rebuilding overfished species, total allowable catch, bag limits, size limits, vessel trip limits, closed seasons or areas, gear restrictions, and quotas; and

(b) Establish or modify special management zones and the gear restrictions applicable in each.

Appendix A to Part 641—[Amended]

14. In Appendix A to part 641, Figures 2, 4, Seaward Limits of the Stressed Area, and 5 are removed; Figure 4, Examples of mesh sizes meeting the measurement criteria, is redesignated as Figure 2; and new Figures 3 through 6 are added to read as follows:

BILLING CODE 3510-22-M

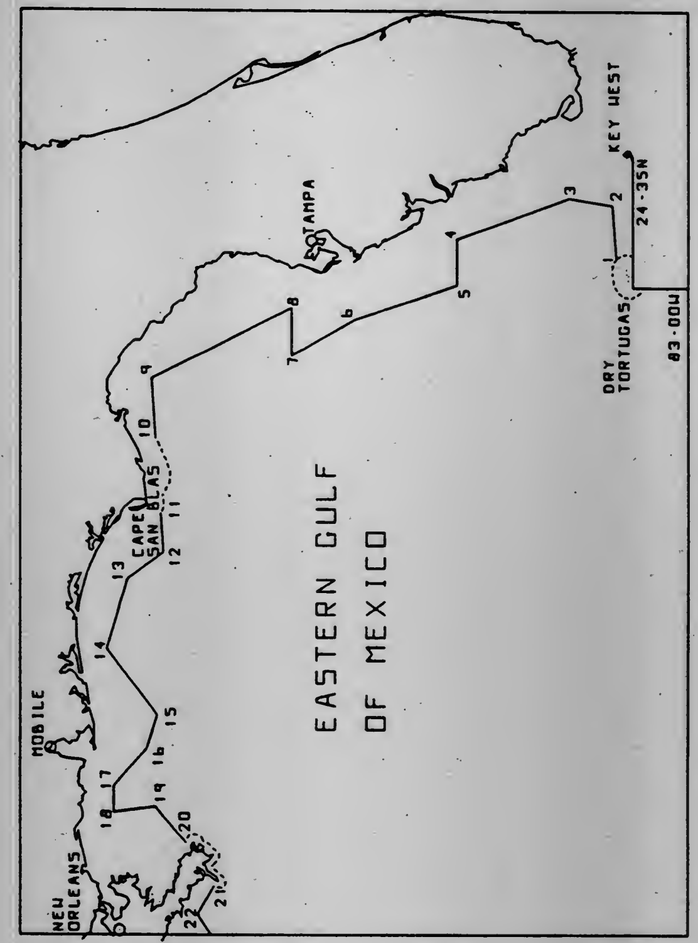


FIGURE 3. SEAWARD LIMITS OF THE STRESSED AREA - EASTERN GULF

FIGURE 4. SEAWARD LIMITS OF THE STRESSED AREA - WESTERN GULF

FIGURE 5. SEAWARD LIMITS OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA - EASTERN GULF

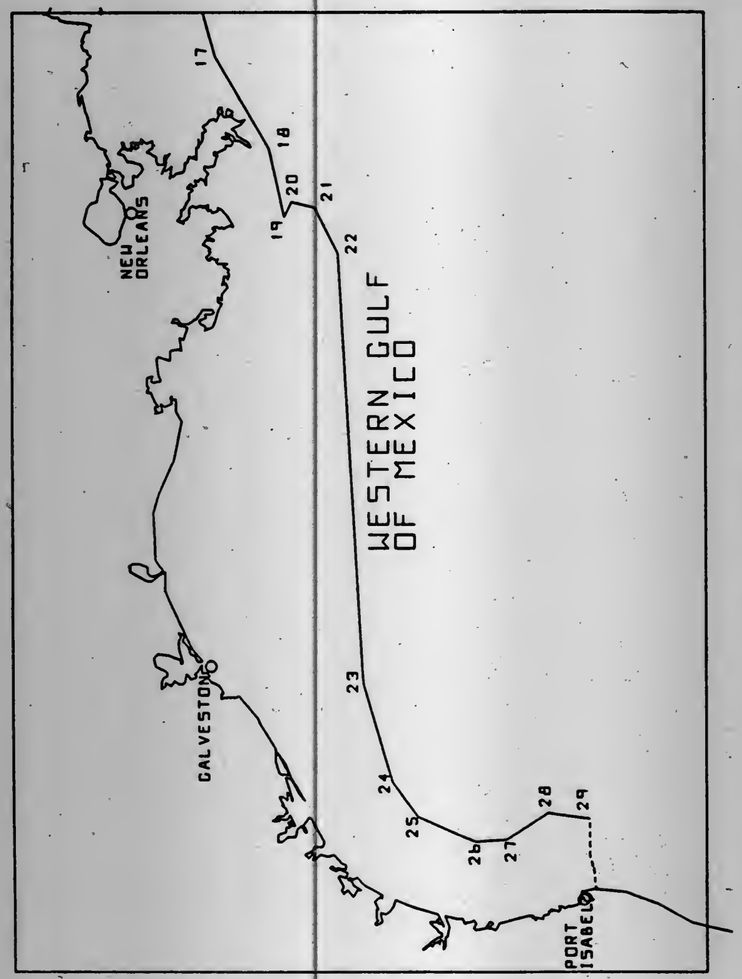


FIGURE 6. SEAWARD LIMITS OF THE LONGLINE AND BUOY GEAR RESTRICTED AREA - WESTERN GULF

[FR Doc. 94–118 Filed 1–6–94; 8:45 am]
BILLING CODE 3510–22–C

Proposed Rules

Federal Register
Vol. 59, No. 5
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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Part 50

RIN 3150–AC93

Codes and Standards for Nuclear Power Plants; Subsection IWE and Subsection IWL

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule.

SUMMARY: The Nuclear Regulatory Commission (NRC) proposes to amend its regulations to incorporate by reference the 1992 Edition with the 1992 Addenda of Subsection IWE, "Requirements for Class MC and Metallic Liners of Class CC Components of Light-Water Cooled Power Plants," and Subsection IWL, "Requirements for Class CC Concrete Components of Light-Water Cooled Power Plants," of Section XI, Division 1, of the American Society of Mechanical Engineers Boiler and Pressure Vessel Code (ASME Code) with specified modifications and a limitation. Subsection IWE of the ASME Code provides rules for inservice inspection, repair, and replacement of Class MC pressure retaining components and their integral attachments and of metallic shell and penetration liners of Class CC pressure retaining components and their integral attachments in light-water cooled power plants. Subsection IWL of the ASME Code provides rules for inservice inspection and repair of the reinforced concrete and the post-tensioning systems of Class CC components. Licensees would be required to incorporate Subsection IWE and Subsection IWL into their routine inservice inspection (ISI) program. Licensees would also be required to expedite implementation of the containment examinations and complete the expedited examination in accordance with Subsection IWE and Subsection IWL within 5 years of the effective date of this rule. Provisions have been proposed that would prevent unnecessary duplication of examinations between the expedited examination and the routine 120-month ISI examinations. Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC regulations. This proposed amendment would specify requirements to assure that the critical areas of containments are routinely inspected to detect defects that could compromise a containment's pressure-retaining integrity.

DATES: Comment period expires March 23, 1994. Comments received after this date will be considered if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before this date.

ADDRESSES: Written comments or suggestions may be submitted to the Secretary of the Commission, U S Nuclear Regulatory Commission, Washington, DC 20555, Attention. Docketing and Service Branch. Deliver comments to: 11555 Rockville Pike, Rockville, MD between 7:45 am and 4.15 pm Federal workdays. Copies of the regulatory analysis, the environmental assessment and finding of no significant impact, the supporting statement submitted to the Office of Management and Budget, and comments received may be examined in the Commission's Public Document Room at 2120 L Street, NW (Lower Level), Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr W.E Norris, Division of Engineering, Office of Nuclear Regulatory Research, U S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3805, or Mr H.L Graves, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3813

SUPPLEMENTARY INFORMATION:

Background

The NRC is taking the proposed action for the purpose of ensuring that containments continue to maintain or exceed minimum accepted design wall thicknesses and prestressing forces as provided for in industry standards used to design containments (e.g., Section III and Section VIII of the ASME Code, and the American Concrete Institute Standard ACI–318), as reflected in license conditions, technical specifications, and licensee commitments (e.g., the Final Safety Analysis Report). The NRC also believes enhanced ISI examinations are needed and are justified to supplement existing requirements specified in General Design Criterion (GDC) 16, and GDC 53, appendix A to 10 CFR part 50, and appendix J to 10 CFR part 50. Appendix J requires a general visual inspection of the containment but does not provide specific guidance on how to perform the necessary containment examinations. This has resulted in a large variation with regard to the performance and the effectiveness of containment inspections. In view of the increasing rate of occurrences of degradation in containments and variability of present containment examinations, the NRC has determined that it is necessary to include more detailed requirements for the periodic examination of containment structures in the regulations to assure that the critical areas of containments are periodically inspected to detect defects that could compromise the containment's pressure-retaining and leak-tight capability Recent changes and additions to the ASME Code include provisions to address the concerns outlined above The NRC proposes to make these provisions mandatory by amending 10 CFR 50.55a to incorporate by reference these additional portions of the ASME Code (Subsection IWE and Subsection IWL). Subsection IWE and Subsection IWL have not been previously incorporated by reference into the NRC's regulations.

The rate of occurrence of corrosion and degradation of containments has been increasing at operating nuclear power plants. Since 1986, twenty-one (21) instances of corrosion in steel containments have been reported. In two cases, thickness measurements of the walls revealed areas where the wall thickness was at or below the minimum design thickness. Since the early 1970s, thirty-one (31) incidents of containment degradation related to post-tensioning systems of concrete containments have been reported. Four recent additional incidents which involved grease leakage from tendons have been investigated. In addition to grease leakage, these incidents showed signs of leaching of the concrete.

Over one-third of the operating containments have experienced corrosion or other degradation. Almost one-half of these occurrences were

found by the NRC through its inspections or audits of plant structures, or by licensees because they were alerted to a degraded condition at another site. Examples of degradation not found by licensees, but initially detected at plants through NRC inspections include: Steel containment shell corrosion in the drywell sand cushion region (wall thickness reduced to below minimum design thickness); steel containment shell torus corrosion (wall thickness at or near minimum design thickness); grease leakage from the tendons of prestressed concrete containments, and water seepage, as well as concrete cracking in concrete containments.

There are several GDC criteria and ASME Code sections which establish minimum requirements for the design, fabrication, construction, testing, and performance of structures, systems, and components important to safety in water-cooled nuclear power plants Criterion 16, "Containment design," requires the provision of reactor containment and associated systems to establish an essentially leak-tight barrier against the uncontrolled release of radioactivity into the environment and to ensure that the containment design conditions important to safety are not exceeded for as long as required for postulated accident conditions Section III and Section VIII of the ASME Code and the American Concrete Institute provide design specifications for minimum wall thicknesses and prestressing forces of containments, and these are reflected in license conditions, technical specifications, and licensee commitments for the operating plants

Criterion 53, "Provisions for containment testing and inspection," requires that the reactor containment design permit (1) Appropriate periodic inspection of all important areas, such as penetrations; (2) an appropriate surveillance program, and (3) periodic testing at containment design pressure of the leak-tightness of penetrations which have resilient seals and expansion bellows. Appendix J, 'Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," of 10 CFR part 50 contains specific rules for leakage testing of containments. Paragraph V A of appendix J requires that a general inspection of the accessible interior and exterior surfaces of the containment structures and components be performed prior to any Type A test to uncover any evidence of structural deterioration that may affect either the containment structural integrity or leak-tightness. (Type A test means tests intended to measure the primary reactor containment overall integrated leakage rate: (1) After the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter). None of these existing requirements, however, provide specific guidance on how to perform the necessary containment examinations. This lack of guidance has resulted in a large variation in licensee containment examination programs, such that there have been cases of noncompliance with GDC 16. Based on the results of inspections and audits, as well as plant operational experiences, it is clear that many licensee containment examination programs have not detected degradation that could ultimately result in a compromise to the pressure-retaining capability Some containment structures have also been found to have undergone a significant level of degradation that was not detected by these programs

The NRC believes that more specific ISI requirements, which expand upon existing requirements for the examination of containment structures in accordance with GDC 53 and appendix J , are needed and are justified for the purpose of ensuring that containments continue to maintain minimum design wall thicknesses and prestressing forces as provided for in industry standards used to design containments (e.g , Section III and Section VIII of the ASME Code, and the American Concrete Institute Standard ACI–318), as reflected in license conditions, technical specifications, and written licensee commitments (e.g , the Final Safety Analysis Report) There exists a serious concern, based on actual operating experience, regarding continued compliance by the operating plants with existing requirements for ensuring containment minimum design wall thicknesses and prestressing forces if the proposed action is not taken. The NRC also believes that the occurrences of corrosion and other degradation discussed above would have been detected by licensees implementing the comprehensive periodic examinations set forth in Subsection IWE and Subsection IWL of the ASME Code proposed for incorporation by reference into 10 CFR 50.55a.

The Nuclear Management and Resources Council (NUMARC) has developed a number of industry reports to address license renewal issues. Two of them, one for PWR containments and the other for BWR containments, were developed for the purpose of managing age-related degradation of containments on a generic basis. The NUMARC plan for containments relies on the examinations contained in Subsection IWE and Subsection IWL to manage age-related degradation, and this plan assumes that these examinations are "in current and effective use." In the BWR Containment Industry Report, NUMARC concluded that "On account of these available and established methods and techniques to adequately manage potential degradation due to general corrosion of freestanding metal containments, no additional measures need to be developed and, as such, general corrosion is not a license renewal concern if the containment minimum wall thickness is maintained and verified." Similarly, in the PWR Containment Industry Report, NUMARC concluded that potentially significant degradation of concrete surfaces, the post-tensioning system, and the liners of concrete containments could be managed effectively if periodically examined in accordance with the requirements contained in Subsection IWE and Subsection IWL

The five modifications, which are contained in one paragraph of the proposed rule, address two concerns of the NRC The first concern is that certain recommendations for tendon examinations that are included in Regulatory Guide 1.35, Rev 3, are not addressed in Subsection IWL (this involves four of the modifications, (ix)(A)–(D)) .The ASME Code has considered these four issues and has adopted them in Subsection IWL These issues will be published in future addenda The second concern is that if there is visible evidence of degradation of the concrete (e.g , leaching, surface cracking) there may also be degradation of inaccessible areas .This fifth modification ((ix)(E)) contains a provision which would require an evaluation of inaccessible areas when visible conditions exist that could result in degradation of these areas

The limitation specifies the 1992 Edition with 1992 Addenda of Subsection IWE and Subsection IWL as the earliest version of the ASME Code the NRC finds acceptable. This edition and addenda combination incorporates the concept of base metal examinations and would provide a comprehensive set of rules for the examination of post-tensioning systems As originally published, Subsection IWE preservice examination and inservice examination rules focused on the examination of welds. This weld-based examination philosophy was established in the 1970s as plants were being constructed. It was based on the premise that the welds in pressure vessels and piping were the areas of greatest concern. As containments have aged, degradation of base metal, rather than welds, has been found to be the issue of concern. The 1991 Addenda to the 1989 Edition, the 1992 Edition and the 1992 Addenda to Section XI, Subsection IWE, all have furthered the incorporation of base metal examinations.

The proposed rulemaking incorporates a provision for an expedited examination schedule. This expedited examination schedule is necessary to prevent a delay in the implementation of Subsection IWE and Subsection IWL (Table 4 of Enclosure 2 lists each plant and the delay in implementation which would be encountered without an expedited implementation schedule). Provisions have been incorporated in the proposed rule so that the expedited examination which would be required 5 years after the effective date of the rule and the routine 120-month examinations are not duplicated.

The NRC has reviewed the 1992 Edition with the 1992 Addenda of Subsection IWE and Subsection IWL of Section XI of the ASME Code and has found that with the specified modifications these subsections of Section XI address current experience and provide a sound basis for ensuring the structural integrity of containments. NRC endorsement of Subsection IWE and Subsection IWL in its regulations would provide a method of improving containment examination practices by incorporating rules into the regulatory process that have received industry participation in their development and acceptance by the NRC.

Existing § 50.55a(g), "Inservice inspection requirements," specifies the requirements for preservice and inservice examinations for Class 1 (Class 1 refers to components of the reactor coolant pressure boundary), Class 2 (Class 2 quality standards are applied to water- and steam-containing pressure vessels, heat exchangers (other than turbines and condensers), storage tanks, piping, pumps, and valves that are part of the reactor coolant pressure boundary (e.g., systems designed for residual heat removal and emergency core cooling)), and Class 3 (Class 3 quality standards are applied to radioactive-waste-containing pressure vessels, heat exchangers (other than turbines and condensers), storage tanks, piping, pumps, and valves (not part of the reactor coolant pressure boundary)) components and their supports. Neither Subsection IWE (Class MC—metal containments) nor Subsection IWL (Class CC—concrete containments) is presently incorporated by reference into the NRC regulations.

Proposed § 50.55a(g)(4) specifies the containment components to which the ASME Code Class MC and Class CC inservice inspection classifications incorporated by reference in this proposed rule would apply.

Proposed § 50.55a (g)(4) (v)(A), (v)(B), and (v)(C) specify Subsection IWE and Subsection IWL rules for repairs and replacements of metal and concrete containments. This is consistent with the long-standing intent and ongoing application by NRC and licensees to utilize the rules of Section XI when performing repairs and replacements of applicable components and their supports.

Proposed § 50.55a(b)(2)(vi) would incorporate a limitation specifying the 1992 Edition with 1992 Addenda of Subsection IWE and Subsection IWL as the earliest ASME Code version the NRC finds acceptable. This edition and addenda combination incorporates the concept of base metal examinations and provides a comprehensive set of rules for the examination of post-tensioning systems.

Proposed § 50.55a(b)(2)(ix) would specify five modifications that must be implemented when using Subsection IWL. Four of these issues are identified in Regulatory Guide 1.35, Revision 3, but are not currently addressed in Subsection IWL.

Proposed § 50.55a(g)(4)(v) requires that licensees incorporate containment examinations as part of their routine 120-month inspection program. It is recognized that when this rule becomes effective, plants within 2 years of the end of the 120-month interval may have difficulty developing and completing the containment examination program in a timely manner. Therefore, proposed § 50.55a(b)(2)(x) specifies that licensees with less than 2 years remaining in their present ISI interval may complete the Subsection IWE and the Subsection IWL portions of their ISI update within 2 years from the end of the present ISI interval. This is intended to provide licensees with sufficient time to develop the initial ISI plan and to facilitate maintenance of one ISI plan instead of two separate plans (i.e, the current Section XI ISI plan, and the Subsection IWE and Subsection IWL plan). In order to further reduce the burden on licensees and NRC staff, the Subsection IWE and Subsection IWL portions of the ISI plan will not have to be submitted to the NRC for approval. Licensees may simply retain their initial Subsection IWE and Subsection IWL plans at the site for audit.

Proposed § 50.55a(g)(6)(ii)(B)(*1*) would require that licensees conduct the first containment examinations in accordance with Subsection IWE and Subsection IWL (1992 Edition with the 1992 Addenda), modified by proposed § 50.55a(b)(2)(ix) within 5 years of the effective date of the final rule. This expedited examination schedule is necessary to prevent possible delays in the implementation of Subsection IWE by as much as 20 years and Subsection IWL by as much as 15 years. Subsection IWE, Table IWE–2500–1, permits the deferral of most of the required examinations until the end of the 10-year inspection interval. Adding the ten years that could pass before some utilities are required to update their ISI plans, a period of 20 years could pass before the first examinations would take place. Subsection IWL is based on a 5-year inspection interval. Adding the possible 10 years before update of existing ISI plans, a period of 15 years could pass before the examinations were performed by plants that have not voluntarily adopted the provisions of Regulatory Guide 1.35, Rev. 3. Expediting implementation of the containment examinations is considered necessary because of the problems that have been identified at various plants, the need to establish expeditiously a baseline for each facility, and the need to identify any existing degradation.

Proposed paragraphs (g)(6)(ii)(B)(*2*) and (g)(6)(ii)(B)(*3*) would each provide a mechanism for licensees to satisfy the requirements of the routine containment examinations and the expedited examination without duplication. Paragraph (g)(6)(ii)(B)(*2*) would permit licensees to avoid duplicating examinations required by both the periodic routine and expedited examination programs. This provision is intended to be useful to those licensees that would be required to implement the expedited examination during the first periodic interval that routine containment examinations are required. Paragraph (g)(6)(ii)(B)(*3*) would allow licensees to use a recently performed examination of the post-tensioning system to satisfy the requirements for the expedited examination of the containment post-tensioning system. This situation would occur for licensees who perform an examination of the post-tensioning system using Regulatory Guide 1.35 between the effective date of this rule and the beginning of the expedited examination.

Submission of Comments in Electronic Format

The comment evaluation process will be improved if each comment is identified with document title, section heading, and paragraph number addressed. In addition to the original paper copy, submitters are encouraged to provide a copy of their letter in an electronic format on IBM PC compatible

3.5- or 5.25-inch diskettes. Data files should be provided as WordPerfect documents. ASCII text is also acceptable or, if formatted text is required, data files should be provided in IBM Revisable-Form Text/Document Content Architecture (RFT/DCA) format. The format and version should be identified on the diskette's external label.

Finding of No Significant Environmental Impact

The Commission has determined under the National Environmental Policy Act of 1969, as amended, and the Commission's regulations in subpart A of 10 CFR part 51, that this rule, if adopted, would not be a major Federal action significantly affecting the quality of the human environment and therefore an environmental impact statement is not required.

This proposed rule is one part of a regulatory framework directed to ensuring containment integrity. Therefore, in the general sense, the proposed rule would have a positive impact on the environment. The proposed rule would incorporate by reference in the NRC regulations requirements contained in the ASME Code for the inservice inspection of the containments of nuclear power plants. Actions required of applicants and licensees to implement the proposed rule are of a routine nature that should not increase the potential for a negative environmental impact.

The environmental assessment and finding of no significant impact on which this determination is based are available for inspection at the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the environmental assessment and the finding of no significant impact are available from Mr. W.E. Norris, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3805, or Mr. H.L. Graves, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3813.

Paperwork Reduction Act Statement

This proposed rule amends information collection requirements that are subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq). This rule has been submitted to the Office of Management and Budget for review and approval of the paperwork requirements.

The public reporting burden for this collection of information is estimated to average 4,000 hours per response for development of an initial inservice inspection plan and 10,000 hours per response for the update of the plan and periodic examinations, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Information and Records Management Branch (MNBB–7714), U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB–3019, (3150–0011), Office of Management and Budget, Washington, DC 20503.

Documented Evaluation

The Commission has prepared a draft summary of documented evaluation on this proposed regulation. The draft evaluation is available for inspection in the NRC Public Document Room, 2120 L Street NW. (Lower Level), Washington, DC. Single copies of the analysis may be obtained from Mr. W.E. Norris, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492–3805, or from Mr. H.L. Graves, Division of Engineering, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)492–3813.

The Commission requests public comment on the draft summary of documented evaluation. Comments on the draft evaluation may be submitted to the NRC as indicated under the **ADDRESSES** heading.

Regulatory Flexibility Certification

In accordance with the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission hereby certifies that this rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. This proposed rule affects only the operation of nuclear power plants. The companies that own these plants do not fall within the scope of the definition of "small entities" set forth in the Regulatory Flexibility Act or the Small Business Size Standards set out in regulations issued by the Small Business Administration at 13 CFR part 121. Since these companies are dominant in their service areas, this proposed rule does not fall within the purview of the Act.

Backfit Statement

The NRC is taking the proposed action for the purpose of ensuring that containment structures continue to maintain or exceed minimum accepted design wall thicknesses and prestressing forces as provided for in industry standards used to design containment structures, as reflected in license conditions, technical specifications, and licensee commitments. Therefore, under 10 CFR 50.109(a)(4)(i) a backfit analysis need not be prepared for this rule. A summary of the documented evaluation required by § 50.109(a)(4) to support this conclusion is set forth below.

GDC 16, "Containment design," requires the provision of reactor containment and associated systems to establish an essentially leak-tight barrier against the uncontrolled release of radioactivity into the environment and to ensure that the containment design conditions important to safety are not exceeded for as long as required for postulated accident conditions.

Criterion 53, "Provisions for containment testing and inspection," requires that the reactor containment design permit: (1) Appropriate periodic inspection of all important areas, such as penetrations; (2) an appropriate surveillance program; and (3) periodic testing at containment design pressure of the leak-tightness of penetrations which have resilient seals and expansion bellows. Appendix J, "Primary Reactor Containment Leakage Testing for Water-Cooled Power Reactors," of 10 CFR part 50 contains specific rules for leakage testing of containments. Paragraph V. A. of appendix J requires that a general inspection of the accessible interior and exterior surfaces of the containment structures and components be performed prior to any Type A test to uncover any evidence of structural deterioration that may affect either the containment structural integrity or leak-tightness (Type A test means tests intended to measure the primary reactor containment overall integrated leakage rate: (1) After the containment has been completed and is ready for operation, and (2) at periodic intervals thereafter). None of these existing requirements, however, provide specific guidance on how to perform the necessary containment examinations. This lack of guidance has resulted in a large variation in licensee containment examination programs, such that there have been cases of noncompliance with GDC 16. Based on the results of inspections and audits, and plant operational experiences, it is clear that many licensee containment examination programs have not detected degradation that could result in a compromise of pressure-retaining capability. The location and extent of corrosion or degradation in a containment can be critical to the containment's behavior during an accident.

The metal containment structure of operating nuclear power plants were designed in accordance with either Section III, Subsection NE, "Class MC Components," or Section VIII, of the ASME Code. These subsections contain provisions for the design and construction of metal containment structures, including methods for determining the minimum required wall thicknesses. The minimum wall thickness is determined so that the metal containment structure will continue to maintain its structural integrity under the various stressors and degradation mechanisms which act on it.

The American Concrete Institute Standard ACI–318 contains provisions for designing and constructing the post-tensioning systems of concrete containment structures, including methods for determining the prestressing forces. The post-tensioning system is designed so that the concrete containment structure will continue to maintain its structural integrity under the various stressors and degradation mechanisms which act on it.

These requirements for minimum design wall thicknesses and prestressing forces as provided in these industry standards used to design containment structures are reflected in license conditions, technical specifications, and licensee commitments (e.g., the Final Safety Analysis Report).

The rate of occurrence of corrosion and degradation of containment structures has been increasing at operating nuclear power plants. Over one-third of operating containment structures have experienced corrosion or other degradation. Almost one-half of the occurrences were first identified by the NRC through its inspections or structural audits, or by licensees because they were alerted to a degraded condition at another site. Examples of degradation not found by licensees, but initially detected at plants through NRC inspections include (1) corrosion of steel containment shells in the drywell sand cushion region, resulting in wall thickness reduced to below the minimum design thickness; (2) corrosion of the torus of the steel containment shell (wall thickness at or near minimum design thickness); (3) grease leakage from the tendons of prestressed concrete containments; and (4) water seepage, as well as concrete cracking in concrete containments.

The NRC believes that more specific ISI requirements, that expand upon existing requirements for the examination of containment structures in accordance with GDC 53, and appendix J are needed and are justified to ensure that containment structures continue to maintain or exceed minimum accepted design wall thicknesses and prestressing forces as reflected in license conditions, technical specifications, or licensee commitments. Based on actual operating experience, a serious concern exists regarding continued compliance by the operating plants with existing requirements for ensuring containment minimum design wall thicknesses and prestressing forces if the proposed action is not taken. The NRC also believes that the occurrences of corrosion and other degradation discussed above would have been detected by licensees when conducting the comprehensive periodic examinations set forth in Subsection IWE and Subsection IWL of the ASME Code, as proposed for incorporation by reference into 10 CFR 50.55a.

Recent changes and additions to the ASME Code include provisions to address the concerns outlined above; and the staff proposes to make these provisions mandatory by amending 10 CFR 50.55a to incorporate by reference these additional portions of the ASME Code (Subsection IWE and Subsection IWL). The Commission concludes that this proposed backfit is necessary to ensure compliance with GDCs 16 and 53, appendix J, minimum design wall thicknesses in metal containments, and the prestressing forces of concrete containments, which are applicable to all licensees through license conditions, technical specifications, and licensee commitments.

List of Subjects in 10 CFR Part 50

Antitrust, Classified information, Criminal Penalties, Fire protection, Incorporation by reference, Intergovernmental relations, Nuclear power plants and reactors, Radiation protection, Reactor siting criteria, Reporting and recordkeeping requirements.

For the reasons set out in the preamble and under the authority of the Atomic Energy Act of 1954, as amended, the Energy Reorganization Act of 1974, as amended, and 5 U.S.C. 533, the NRC is proposing to adopt the following amendments to 10 CFR part 50.

PART 50—DOMESTIC LICENSING OF PRODUCTION AND UTILIZATION FACILITIES

1. The authority citation for part 50 continues to read as follows:

Authority: Secs. 102, 103, 104, 105, 161, 182, 183, 186, 189, 68 Stat. 936, 937, 938, 948, 953, 954, 955, 956, as amended, sec. 234, 83 Stat. 1244, as amended (42 U.S.C. 2132, 2133, 2134, 2135, 2201, 2232, 2233, 2236, 2239, 2282); secs. 201, as amended, 202, 206, 88 Stat. 1242, as amended, 1244, 1246 (42 U.S.C. 5841, 5842, 5846).

Section 50.7 also issued under Pub. L. 95–601, sec. 10, 92 Stat. 2951 (42 U.S.C. 5851). Section 50.10 also issued under secs. 101, 185, 68 Stat 936, 955, as amended (42 U.S.C. 2131, 2235); sec. 102, Pub. L. 91–190, 83 Stat. 853 (42 U.S.C. 4332). Sections 50.13, 50.54(dd) and 50.103 also issued under sec. 108, 68 Stat. 939, as amended (42 U.S.C. 2138) Sections 50.23, 50.35, 50.55, and 50.56 also issued under sec. 185, 68 Stat 955 (42 U.S.C. 2235) Sections 50.33a, 50.55a and Appendix Q also issued under sec 102, Pub. L. 91–190, 83 Stat 853 (42 U.S.C. 4332). Sections 50.34 and 50.54 also issued under sec 204, 88 Stat 1245 (42.U.S C. 5844). Sections 50.58, 50.91, and 50.92 also issued under Pub L 97–415, 96 Stat 2073 (42 U.S.C 2239) Section 50.78 also issued under sec 122, 68 Stat. 939 (42 U S C 2152). Sections 50.80–50.81 also issued under sec 184, 68 Stat. 954, as amended (42 U.S.C. 2234). Appendix F also issued under sec 187 68 Stat 955 (42 U.S.C. 2237)

2. Section 50.55a is amended by adding paragraphs (b)(2)(vi), (b)(2)(ix), (b)(2)(x), (g)(4)(v), and (g)(6)(ii)(B), and revising the introductory text of paragraph (g)(4) to read as follows:

§ 50.55a Codes and standards.

* * * * *

(b) * * *

(2) * * *

(vi) *Effective edition and addenda of Subsection IWE and Subsection IWL, Section XI* When using Subsection IWE and Subsection IWL, the 1992 Edition with the 1992 Addenda is the only acceptable Edition and Addenda.

* * * * *

(ix) *Examination of concrete containments.*

(A) All grease caps that are accessible must be visually examined to detect grease leakage or grease cap deformations Grease caps must be removed for this examination when there is evidence of grease cap deformation that indicates deterioration of anchorage hardware.

(B) An Engineering Evaluation Report must be prepared as prescribed in IWL–3300(a), (b), (c), and (d) when evaluation of consecutive surveillances of prestressing forces for the same tendon or tendons in a group indicates a trend of prestress loss such that the tendon

force(s) would be less than the minimum design prestress requirements before the next inspection interval.

(C) When the elongation corresponding to a specific load (adjusted for effective wires or strands) during retensioning of tendons differs by more than 10 percent from that recorded during the last measurement, an evaluation must be performed to determine whether the difference is related to wire failures or slip of wires in anchorages. A difference of more than 10 percent must be identified in the ISI Summary Report.

(D) The licensee shall identify the following conditions, if they occur, in the ISI Summary Report:

(*1*) The sampled sheathing filler grease contains chemically combined water exceeding 10 percent by weight or the presence of free water;

(*2*) The absolute difference between the amount removed and the amount replaced may not exceed 10 percent of the tendon net duct volume.

(*3*) Grease leakage is detected during general visual examination of the containment surface.

(E) The licensee shall evaluate the acceptability of inaccessible areas when conditions exist in accessible areas that could indicate the presence of or result in degradation to such inaccessible areas. For each inaccessible area identified, the licensee shall provide the following in the ISI Summary Report.

(*1*) A description of the type and estimated extent of degradation, and the conditions that led to the degradation,

(*2*) An evaluation of each area, and the result of the evaluation, and,

(*3*) A description of necessary corrective actions.

(x) *Subsection IWE and Subsection IWL inservice inspection plans*

Licensees that have less than 2 years remaining in their present 120-month inservice inspection interval on (*effective date of the final rule*) may defer completion of the Subsection IWE and Subsection IWL portions of the inspection plan for the next 120-month inspection interval for up to 2 years from the end of the present interval.

* * * * *

(g) * * *

(4) Throughout the service life of a boiling or pressurized water-cooled nuclear power facility, components (including supports) which are classified as ASME Code Class 1, Class 2, and Class 3 must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of editions of the ASME Boiler and Pressure Vessel Code and Addenda that become effective subsequent to editions specified in paragraphs (g)(2) and (g)(3) of this section and are incorporated by reference in paragraph (b) of this section to the extent practical within the limitations of design, geometry and materials of construction of the components. Components which are classified as Class MC pressure retaining components and their integral attachments, and components which are classified as Class CC pressure retaining components and their integral attachments must meet the requirements, except design and access provisions and preservice examination requirements, set forth in Section XI of the ASME Boiler and Pressure Vessel Code and Addenda that are incorporated by reference in paragraph (b), subject to the limitation listed in paragraph (b)(2)(vi) and the modifications listed in paragraphs (b)(2)(ix) and (b)(2)(x) of this section, to the extent practical within the limitations of design, geometry and materials of construction of the components.

* * * * *

(v) For a boiling or pressurized water-cooled nuclear power facility whose construction permit was issued after January 1, 1956.

(A) Metal containment pressure retaining components and their integral attachments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class MC,

(B) Metallic shell and penetration liners which are pressure retaining components and their integral attachments in concrete containments must meet the inservice inspection, repair, and replacement requirements applicable to components which are classified as ASME Code Class CC, and

(C) Concrete containment pressure retaining components and their integral attachments, and the post-tensioning systems of concrete containments must meet the inservice inspection and repair requirements applicable to components which are classified as ASME Code Class CC.

* * * * *

(6) * * *

(ii) * * *

(B) *Expedited examination of containment*

(*1*) Licensees of all operating nuclear power plants shall implement the examinations specified for the first inspection interval in Subsection IWE and Subsection IWL of the 1992 Edition with the 1992 Addenda in conjunction with the modifications specified in § 50.55a (b)(2)(ix) by (*a date will be inserted that is 5 years later than the effective date of the final rule*).

(*2*) The expedited examination may be used to satisfy the requirements of routinely scheduled examinations of Subsection IWE subject to IWA–2430(c) when the expedited examination occurs during the first containment inspection interval.

(*3*) The requirement for the expedited examination of the containment post-tensioning system may be satisfied by written commitments that are in place before (*the effective date of the final rule*) for examinations of the post-tensioning system.

* * * * *

Dated at Rockville, Maryland, this 3d day of January 1994.

For the Nuclear Regulatory Commission.

Samuel J. Chilk,

Secretary of the Commission

[FR Doc 94–341 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 33

[Docket No. 93–ANE–65; Notice No. 33–ANE–04]

Special Conditions; Rolls-Royce Model(s) RB211–Trent–875–17/–877–17/–884–17 Turbofan Engines

AGENCY: Federal Aviation Administration, DOT

ACTION: Notice of proposed special conditions

SUMMARY: This notice proposes special conditions for the Rolls-Royce Model(s) RB211–Trent–875–17, –877–17, and –884–17 turbofan engines. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from medium and large bird ingestion. This notice proposes the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of Part 33 of the Federal Aviation Regulations (FAR).

DATES: Comments must be submitted on or before February 22, 1994

ADDRESSES: Comments on this proposal may be submitted in triplicate to: Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–65, 12 New England Executive Park, Burlington, Massachusetts 01803–5299. Comments must be marked: Docket No. 93–ANE–65. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: John Golinski, Engine and Propeller Standards Staff, ANE–110, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, Massachusetts 01803–5229; telephone (617) 238–7119; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under **ADDRESSES**. All communications received on or before the closing date for comments, specified under **DATES**, will be considered by the Administrator before taking action on the proposal. The proposal contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed special conditions. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this proposal will be filed in the docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–65." The postcard will be date stamped and returned to the commenter.

Background

On August 4, 1992, Rolls-Royce applied for type certification of Rolls-Royce Model(s) RB211–Trent–870–17, –877–17, and –884–17 turbofan engines. The application for type certification of the Model RB211–Trent–870–17 turbofan engine was withdrawn and a new application for type certification of the Model RB211–Trent–875–17 was made on April 6, 1993. The FAA has determined that the current foreign object ingestion requirements of § 33.77(a) for four pound birds; and § 33.77(b) for one and one-half pound flocking birds, do not adequately represent the bird threat encountered in service. A study of in-service bird ingestion events has indicated a need to modify the bird ingestion requirements of this section to ensure design integrity and demonstrate an adequate level of safety.

The FAA has concluded that additional safety standards must be applied to Rolls-Royce Model(s) RB211–Trent–875–17, –877–17, and –884–17 turbofan engines to demonstrate that they are capable of acceptable operation after medium and large bird ingestion. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for type certification with respect to the new design criteria. This new design criteria assumes the actual bird threat encountered in service.

Type Certification Basis

Under the provisions of § 21.101 of the FAR, Rolls-Royce must show that the Rolls-Royce Model(s) RB211–Trent–875–17, –877–17, and –884–17 turbofan engines meet the requirements of the applicable regulations in effect on the date of the application. Those Federal Aviation Regulations are § 21.21 and Part 33, effective February 1, 1965, as amended through August 10, 1990, Amendment 33–14.

The Administrator finds that the applicable airworthiness regulations in part 33, as amended, do not contain adequate or appropriate safety standards for the Rolls-Royce Model(s) RB211–Trent–800 series turbofan engine because of its unique design criteria. Therefore, the Administrator proposes these special conditions under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice and opportunity for comment, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Conclusion

This action affects only Rolls-Royce Model(s) RB211–Trent–875–17, –877–17, and –884–17 turbofan engines. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these new design criteria on the engine.

List of Subjects in 14 CFR Part 33

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these special conditions continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421, 1423; 49 U.S.C. 106(g); 14 CFR 21 16, and 14 CFR 11.28.

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Rolls-Royce Model(s) RB211–Trent–875–17, –877–17, and –884–17 turbofan engines.

In lieu of the requirements of FAR § 33.77(a) and (b), the following tests and analyses must be conducted, unless compliance can be shown by alternate methods acceptable to the Administrator:

(a) It must be shown that the ingestion of a single large bird, under the conditions prescribed in Appendix A, will not cause the engine to:

(1) catch fire;

(2) release hazardous fragments through the engine casing;

(3) generate loads greater than those ultimate loads specified under § 33.23(a);

(4) lose the ability to be shut down; or

(5) generate other conditions hazardous to the aircraft.

(b) Alternatively, if compliance with the bird ingestion requirements of paragraph (a) of this special condition is not established, the applicant must demonstrate that compliance with the containment requirements of § 33.94(a) constitutes a more severe demonstration than the requirements of paragraph (a) of this special condition. The engine type certification documentation will then be endorsed to reflect this alternative compliance method.

Appendix A—Large Bird Ingestion Test Procedures

(a) The test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted using one eight-pound bird targeted at the most critical location and ingested at a bird speed of 200 knots.

(c) Power lever movement is not permitted within 15 seconds following the ingestion event.

End of Appendix A

(c) It must be shown that the ingestion of medium birds, under the conditions prescribed in Appendix B, will not cause the engine to:

(1) Sustain more than a 25 percent thrust loss;

(2) Be shut down during the required run-on demonstration prescribed in Appendix B;

(3) Exceed any engine operating limitations to the extent that the engine cannot comply with this section; or

(4) Generate other conditions hazardous to the aircraft.

Appendix B—Medium Bird Ingestion Test Procedures

(a) The ingestion test shall be conducted with the engine stabilized at rated takeoff thrust for the test day ambient conditions prior to the ingestion.

(b) The test shall be conducted to simulate a flock encounter, with all birds ingested within approximately one second, and using the more severe of the following bird weight/quantity combinations:

(1) Six 1.5-pound and one 2.5-pound birds.

(2) Four 2.5-pound birds.

(c) Bird targeting shall be one 2.5-pound bird at the core primary flow path, and the remaining birds targeted at critical fan rotor locations.

(d) Bird ingestion velocity shall be the most critical velocity between V1 minimum through 250 knots.

(e) Power lever movements between stages must occur in 10 seconds or less. The following test schedule will be used as the post-ingestion run-on demonstration:

(1) Two minutes with no power lever movement.

(2) Three minutes at 75 percent of takeoff thrust.

(3) Six minutes at 75 percent of maximum continuous thrust.

(4) Six minutes at 50 percent of maximum continuous thrust.

(5) One minute at approach idle.

(6) Two minutes at 75 percent of takeoff thrust.

(7) Retard throttle to idle.

(8) Shut down the engine.

(f) An analysis or component/engine test(s) acceptable to the Administrator shall be conducted to determine the critical ingestion parameters for medium bird ingestion that relates to airspeeds from V1 minimum through 250 knots. The analysis or test(s) must also show satisfactory engine operation for medium bird ingestion at the most severe ambient operating condition approved for the engine that may be experienced in service.

End of Appendix B

(d) It must be shown that engine spinner impact by one large bird and by the single largest medium bird, under the respective conditions prescribed in Appendices A and B, will not affect the engine to the extent that it cannot comply with the requirements of paragraphs (a) and (b) of this special condition.

Issued in Burlington, Massachusetts, on December 29, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94-363 Filed 1-6-94; 8:45 am]

BILLING CODE 4910-13-M

Coast Guard

33 CFR Part 117

[CGD02 93-003]

RIN 2115-AE47

Drawbridge Operation Regulations, Illinois River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes amending a drawbridge regulation to add a new regulation which will allow the remote operation of the Chicago and Northwestern Transportation Company railway bridge at Pekin, Illinois. This action is being proposed at the request of the Chicago and Northwestern Transportation Company of Chicago, Illinois. The change to remote operation will provide for more efficient operation of the railway bridge.

DATES: Comments must be received on or before February 22, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Second Coast Guard District, 1222 Spruce Street, St. Louis, MO 63103-2832, Attention: Docket CGD02 93-003. Comments may also be delivered to room 2.107B at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. For information concerning comments, the telephone number is (314) 539-3724.

The Bridge Branch, Second Coast Guard District, maintains the public docket for this rulemaking. Comments will become part of the public docket and the docket will be available for inspection or copying in room 2.107B at the above address.

FOR FURTHER INFORMATION CONTACT: Roger K. Wiebusch, Bridge Administrator, Second Coast Guard District, (314) 539-3724.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking, CGD02 93-003, identify the specific section of this proposal to which each comment applies, and give the reason for each comment. Each person who wants an acknowledgment of the receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. The Coast Guard may change the proposal in view of the comments.

The Coast Guard does not plan to hold a public hearing. Persons may request a public hearing by writing to the Docket Clerk at the address under **ADDRESSES**. If the Coast Guard determines that the opportunity to make oral presentations will aid the rulemaking process, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Wanda G. Renshaw, Project Officer, Bridge Branch, and Lieutenant Commander Arne O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Background and Purpose

The Chicago and Northwestern Transportation Company (C&NW) has requested Coast Guard approval to change the method of operating their railway bridge at Pekin, Illinois. The draw of the Chicago and Northwestern railway bridge, Mile 151.2 Illinois River, is presently maintained in the open-to-navigation position, and closed by an on-site bridge tender upon the approach of a train. On average, six to eight trains cross the bridge daily. Communication between the bridge tender and vessel operators is conducted on marine radio.

C&NW proposes to install remote operating equipment and a control system, including radar, infrared boat detectors, high intensity lights and communications equipment, that would permit operation of the draw from the Chicago and Northwestern office in Chicago, Illinois. The equipment would indicate any malfunction in the bridge operation and enable the remote operator to ascertain the position of the lift span at any time. The marine radio system will receive and transmit on the VHF marine frequencies authorized by the Federal Communications Commission. The bridge could also be operated at the bridge site, at either portal, by authorized railroad personnel. Radio-telephone equipment would also be provided to permit direct communications with vessels when the bridge is operated at the bridge site. A radar antenna will be installed on the fixed portion of the bridge structure, and the received signal will be transmitted by fixed lines and a microwave link to the Chicago and Northwestern office in Chicago. The radar system will be designed to scan upstream and downstream of the bridge. Infrared scanners will be located on the upstream and downstream ends of the channel span piers to detect vessels in the channel span. If an obstruction is detected beneath the lift span during the closing cycle before the span is seated and locked, the lift span will be automatically stopped and immediately raised to the fully open position until the channel is clear.

During the bridge closing cycle, an automatic, synthesized-voice announcement will be broadcast. At the appropriate times in the closing cycle, the broadcast will announce that the bridge will close to navigation, that the bridge is closed to navigation, or that the bridge has reopened to navigation.

Discussion of Proposed Amendments

The proposed regulation will impose operating and equipment requirements on Chicago and Northwestern which will ensure the safe and timely operation of the railroad bridge. To do this, title 33 CFR part 117 needs to be amended. The present text of the existing subsection 117.393, Illinois River will be redesignated as subparagraph (a). This subsection regulates the Burlington Northern's railroad bridge at mile 88.8 of the Illinois River, at Beardstown, Illinois. Except for being renumbered, the regulation covering the operation of the Burlington Northern railroad bridge will not be changed. The proposed regulation will be numbered as subparagraph (b).

The proposed regulation will provide information about remote operation of the Chicago and Northwestern railroad bridge. The Chicago and Northwestern railroad bridge presently operates with an on-site bridge tender and is normally in the open position or opens on demand if it should be closed as a vessel approaches. If the Coast Guard approves operation from a remote site, the railroad bridge will continue to operate as a normally open span. However, the Coast Guard will require the use of additional sound, voice, and light signals to coincide with the various stages of the opening and closing of the span.

Regulatory Evaluation

This proposal is not considered a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary. A sample group of Illinois River users have expressed no objection to the proposal.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal will have a significant impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

The proposed change to the method for opening and closing the Chicago and Northwestern railroad bridge is not significantly different from the existing method which uses an on-site bridge tender. It does not appear to impose any new burdens or delays on vessel operators. Therefore, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant impact on a substantial number of small entities. If, however, you think that your business qualifies as a small entity and that this proposal will have a significant economic impact on your business, please submit a comment (see **ADDRESSES**) explaining why you think your business qualifies and in what way and to what degree this proposal will economically affect your business.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal in accordance with the principles and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

Environment

The Coast Guard has reviewed the environmental impact of this proposal and concluded that under section 2.B.2 of the NEPA Implementing Procedures, COMDTINST M16475.1B this proposal is categorically excluded from further environmental documentation because promulgation of changes to drawbridge regulations have been found to not have a significant effect on the human environment. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

PART 117—DRAWBRIDGE OPERATION REGULATIONS

For the reasons set out in the preamble, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations, as follows:

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05-1(g).

2. In § 117.393, paragraphs (a), (b), (c), (d), and (e) are redesignated as (a)(1) through (a)(5), respectively, the introductory paragraph of § 117.393 is redesignated as the introductory text of paragraph (a) and a new paragraph (b) is added to read as follows:

§ 117.393 Illinois River.

* * * * *

(b) The draw of the Chicago and Northwestern railroad bridge, Mile 151.2, at Pekin, Illinois, is operated by a remote operator located at the Chicago and Northwestern offices in Chicago, Illinois, as follows:

(1) The draw is normally maintained in the fully open position, displaying green midchannel lights to indicate that the span is fully open.

(2) The draw is equipped with the following:

(i) A radiotelephone link direct to the remote operator,

(ii) A horn for sound signals,

(iii) Eight high intensity amber warning lights, oriented upstream and downstream, with two secured to the uppermost chord and two secured to the lowermost chord of the drawspan,

(iv) A radar antenna on the lower portion of the drawspan capable of scanning one mile upstream and one mile downstream, and

(v) Infrared scanners located on the upstream and downstream ends of the channel span piers, to detect vessels or other obstructions under the bridge.

(3) The remote operator shall maintain a radiotelephone watch for mariners to establish contact as they approach the bridge to ensure that the draw is open or that it remains open until passage is complete.

(4) When a train approaches the bridge and the draw is in the open position, the remote operator initiates a ten minute warning period before closing the bridge. During this warning period, the amber lights begin flashing and a signal of four short blasts sounds on a horn. The four-blast signal will repeat after a five second interval. A synthesized-voice message is broadcast over the radiotelephone as follows: "The Chicago and Northwestern railroad bridge at Mile 151.2, Illinois River, will close to navigation in ten

minutes." The announcement is repeated every two minutes, counting down the time remaining until closure.

(5) At the end of the ten minute warning period, the remote bridge operator scans under the bridge using infrared detectors and the upstream and downstream approaches to the bridge using radar to determine whether any vessels are under or are approaching the bridge. If any vessels are under or are approaching the bridge within one mile as determined by infrared or radar scanning or by a radiotelephone response, the remote operator shall not close the bridge until the vessel or vessels have cleared the bridge.

(6) If no vessels are under or approaching the bridge, the midchannel navigation lights will change from green to red, the horn signal of four short blasts will sound, twice, and the radiotelephone message will change to: "The Chicago and Northwestern Railroad Bridge at Mile 151.2, Illinois River, is closed to navigation." The message will repeat every two minutes and the amber lights will continue to flash until the bridge is fully reopened.

(7) If the infrared scanners detect a vessel or other obstruction under the bridge before the drawspan is fully lowered and locked, the closing sequence is stopped, automatically, and the drawspan is raised to its fully open position until the channel is clear. When obstruction has cleared the navigation span, the remote operator confirms that the channel is clear, and reinitiates the ten-minute warning cycle.

(8) After the train has cleared the bridge, the remote operator initiates the lift span raising cycle. When the draw is raised to its full height and locked in place, the flashing lights stop and the midchannel navigation lights change from red to green. The synthesized voice announcement broadcasts at two minutes intervals for ten minutes that the bridge is reopened to navigation.

Dated: December 27, 1993.

Paul M. Blayney,

Rear Admiral, U.S. Coast Guard, Commander, Second Coast Guard District.

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ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[WV 5-1-5149 A1-FRL-4823-2]

Approval and Promulgation of Air Quality Implementation Plans; West Virginia: Limited Approval and Disapproval of PM-10 Implementation Plan for the Follansbee Area

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA today proposes limited approval and limited disapproval of the State Implementation Plan (SIP) submitted by the State of West Virginia for the purpose of bringing about the attainment of the national ambient air quality standard (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM-10). The implementation plan was submitted by the State to satisfy certain federal requirements for an approvable nonattainment area PM-10 SIP for a portion of the Follansbee area, Brooke County, West Virginia. The Act required that States make certain submittals by November 15, 1991 for those areas designated nonattainment and classified as moderate for PM-10 upon enactment (the "initial moderate nonattainment areas"). By today's action, EPA is proposing limited approval and limited disapproval of the PM-10 SIP for the Follansbee, West Virginia area.

DATES: Comments must be received in writing on or before February 7, 1994. Public comments on this document are requested and will be considered before taking final action on this SIP revision.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this notice are available for public inspection during normal business hours at the following locations: Air, Radiation and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and West Virginia Department of Environmental Protection, Office of Air Quality, 1558 Washington Street, East, Charleston, West Virginia, 25311.

FOR FURTHER INFORMATION CONTACT: Thomas A. Casey, U.S. Environmental Protection Agency, Region III (3AT14), 841 Chestnut Building, Philadelphia, PA 19107, (215) 597-2746.

SUPPLEMENTARY INFORMATION:

Background

The air quality planning requirements for moderate PM-10 nonattainment areas are set out in subparts 1 and 4 of Title I of the Act. The EPA has issued a "General Preamble" describing EPA's preliminary views on how EPA intends to review SIP's and SIP revisions submitted under Title I of the Act, including those State submittals containing moderate PM-10 nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)).

The Follansbee area of Brooke County, along with a portion of Jefferson County, Ohio near Steubenville, was classified as a Group I area on the basis of monitored PM-10 violations in Mingo Junction, Ohio. Upon enactment of the CAAA, all Group I areas (and Group II areas that had monitored violations before January 1, 1989) were designated nonattainment by operation of law. A list of these initial nonattainment areas, including the Follansbee area, was published on March 15, 1991 (56 FR 11101) with corrections on May 20, 1991 (56 FR 23105).[1]

Those States containing initial moderate PM-10 nonattainment areas were required to submit, among other things, the following provisions by November 15, 1991:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonably available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

[1] The Follansbee, West Virginia nonattainment area was defined in this notice as the area bounded on the north by the Market Street Bridge, on the east by West Virginia Route 2, on the south by the extension of the southern boundary of Steubenville Township, Jefferson County, Ohio, and on the West by the Ohio/West Virginia border.

4. Provisions to assure that the control requirements applicable to major stationary sources of PM-10 also apply to major stationary sources of PM-10 precursors except where the Administrator determines that such sources do not contribute significantly to PM-10 levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Some provisions are due at a later date. States with initial moderate PM-10 nonattainment areas were required to submit a permit program for the construction and operation of new and modified major stationary sources of PM-10 by June 30, 1992 (see section 189(a)). Such States also must submit contingency measures by November 15, 1993 which become effective without further action by the State or EPA, upon a determination by EPA that the area has failed to achieve RFP or to attain the PM-10 NAAQS by the applicable statutory deadline. See section 172(c)(9) and 57 FR 13543-44.

Responsibility for fulfilling the air quality planning requirements for the Follansbee and Steubenville areas lies in different states: West Virginia is responsible for the Follansbee area and Ohio is responsible for the Steubenville area. The plans are linked in that, according to their attainment demonstrations, emissions reductions in both states are necessary to effect attainment in either area. (West Virginia and Ohio corroborated on parts of the attainment demonstration; West Virginia prepared much of the emissions inventory, and Ohio performed the modeling analyses.) The submitted SIP revision of each State, however, stands alone. Today's proposed rulemaking applies only to West Virginia's SIP; EPA will act on Ohio's SIP separately.

While this notice proposes limited disapproval and limited disapproval of West Virginia's SIP revision, EPA will fully approve the State's submittal without further notice, if the unapprovable aspects of the State's submittal are corrected. The rationale for this proposal is set out both in this notice and in the supporting Technical Support Document (TSD) which is available at the address indicated below.

Summary of the SIP Revision and Criteria for Proposed Action

1. Procedural Background

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] Section 110(l) of the Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing.

EPA also must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by EPA 6 months after receipt of the submission.

The State of West Virginia held a public hearing on October 30, 1991 to solicit public comment on the implementation plan for the Follansbee nonattainment area. Following the public hearing, the plan was adopted by the State and signed by the Honorable John M. Ranson, Secretary, Department of Commerce, Labor & Environmental Resources on November 12, 1991, and submitted to EPA on November 15, 1991 as a formal request for revision to the SIP.

The State submittal revision was reviewed by EPA to determine completeness, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was determined to be complete, and a letter dated January 22, 1992 was forwarded to the Governor of West Virginia indicating the completeness of the submittal and the next steps to be taken in the review process.

2. Emissions Inventory

Section 172(c)(3) of the Clean Air Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. This section of the notice describes the adequacy of West Virginia's inventory of actual emissions as required by section 172(c)(3). The adequacy of the State's inventory of allowable emissions used as input to the demonstration of attainment (as required by section 189(a)) is discussed in a subsequent section of this notice.

West Virginia submitted an emissions inventory for base year 1990. The West Virginia submittal shows that activities related to steel making and shaping dominate the Follansbee area's emissions inventory.

There were some deficiencies related to the estimation of PM-10 emissions from coke oven batteries. Specifically, the calculations relating emissions of benzene soluble organics (BSO) to emissions of PM-10 are in error. The estimation of BSO-related PM-10 emissions effects estimates of both actual and SIP allowable emissions (and, consequently, the attainment demonstration). The error in BSO emissions notwithstanding, the inventory of actual emissions is generally comprehensive, accurate, and current, and therefore approvable as meeting the requirements of sections 172(c)(3) and 110(a)(2)(K) of the Act.[3] Therefore, EPA is proposing approval of the SIP for the purpose of satisfying the section 172(c)(3) requirement for an emissions inventory. A more detailed discussion of the shortcomings in the inventory of SIP allowable emissions used as input to dispersion models is presented in section II.C.4 of the TSD.[4]

3. RACM (Including RACT)

As noted, the initial moderate PM-10 nonattainment areas must submit provisions to assure that RACM (including RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C)). The General Preamble contains a detailed discussion of EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13540-45 and 13560-61). Guidance on identifying RACT is found in the supplement to the General Preamble (57 FR 18074); "Procedures for Identifying Reasonably Available Control Technology for Stationary Sources of PM-10" (EPA 450-R-93-001); and an August 7, 1980 memorandum from Edward E. Reich, Director, Stationary Source Enforcement Division to the regional air enforcement directors entitled "Steel Technical Support Options and Documents," (with the attached table entitled "Particulate

[2] Also section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

[3] The EPA issued guidance on PM-10 emissions inventories prior to the enactment of the Clean Air Act Amendments in the form of the 1987 PM-10 SIP Development Guideline. The guidance provided in this document appears to be consistent with the Act.

[4] Calculations of emissions from leaking doors were also in error. However, the error in the calculation of emissions from leaking doors only affects the inventory of SIP allowable emissions and has no bearing on the section 172(c)(3) requirement for an inventory of actual emissions.

Emission Limitations Generally Achievable on a Retrofit Basis").

West Virginia submitted six Consent Orders for incorporation into West Virginia's State Implementation Plan (SIP). By entering into the Consent Orders, Wheeling-Pittsburgh Steel Corporation; Standard Lafarge; Follansbee Steel Corporation; Koppers Industries, Incorporated; International Mill Service, Incorporated; and Starvaggi Industries, Incorporated have agreed to comply with reduced allowable emission rates for PM–10. Table 1 presents a summary of the controls required by the Consent Orders; more detail is provided by Tables 2 through 7. Consent orders with International Mill Service, Koppers Industries, Standard Lafarge, Starvaggi Industries, and Wheeling-Pittsburgh Steel provide for new or improved, specific dust control measures. Consent orders with Follansbee Steel and Koppers Industries require "add-on" control equipment.

TABLE 1

Company	Process	Control
Follansbee Steel	Terne Metal Coaters No. 1,2	Process control (probably an electrostatic precipitator).
International Mill	Sinter Receiving Hopper	Partial Enclosure & Spray.
	Sinter Hopper & Sinter Screens	Full Enclosure & Spray.
	Sinter Storage Piles	Water Spray.
	Unpaved Areas	Dust Control Plan.
Koppers	Pitch Dryer	Baghouse.
Standard Lafarge	Slag Processing Plant	Reduce Fugitives 95%.
	Slag Receiving Hopper	Increase Wet Suppression.
	Paved & Unpaved Roads	Dust Control Plan.
Starvaggi	Unpaved Areas	Dust Control Plan.
Wheeling-Pitt Steel	Coal Crusher	Full Enclosure.
	Coke Sizing No. 1,2	Full Enclosure.
	Coke Pushing No. 1,2,3	Mass limit on baghouse.
	Coke Underfiring No. 1,2,3,8	Mass limit on combustion stacks.
	Paved & Unpaved Roads	Dust Control Plan.

TABLE 2.—NEW LIMITS FOR FOLLANSBEE STEEL

Process	Control	Limit(s)		
		Unit	TSP (lb/hr)	PM–10 (lb/hr)
Terne Coaters No. 1, 2.	Company has flexibility. Will probably require a new pollution control device such as a commercial precipitator.	No. 1 ...	2.00 (approx. 53% control)	1.80 (approx. 53% control)
		No. 2 ...	1.80 (approx. 71% control)	1.66 (approx. 71% control)

TABLE 3.—NEW LIMITS FOR INTERNATIONAL MILL SERVICES

Process	Control	Limit(s)
Sinter Receiving Hopper	Partial Enclosure & Spray	TSP ≤ 0.092 lb/hr, PM–10 ≤ 0.046 lb/hr, 5% opacity, 95% control efficiency.
Sinter Hopper	Full Enclosure & Spray	Hopper—TSP (lb/hr) 0.092; PM–10 (lb/hr) 0.046.
Sinter Screens		Screening—TSP (lb/hr) 1.84; PM–10 (lb/hr) 0.938.
		10% opacity, 95% control.
Sinter Storage Piles	Water Spray	TSP ≤ 0.682 lb/hr; PM–10 ≤ 0.596 lb/hr; 5% opacity; 75% control of TSP & PM–10.
Unpaved Areas	Dust Control Plan	Program is the responsibility of Wheeling-Pittsburgh Steel Company under its consent order with WVAPCC. International Mill Service is also responsible should Wheeling-Pitt, for any reason, not implement the program. (See Table 7.)

TABLE 4.—NEW LIMITS FOR KOPPERS

Process	Control	Limit(s)
Pitch Dryer	Baghouse	TSP ≤1.86 lb/hr (0.93 lb/ton). PM–10 ≤0.59 lb/hr (0.30 lb/ton).

TABLE 5.—NEW LIMITS FOR STANDARD LAFARGE

Process	Control	Limit(s)
Slag Processing Plant	Company has flexibility	TSP ≤19.13 lb/hr. PM–10 ≤8.15 lb/hr. 10% opacity, 95% control.

TABLE 5.—NEW LIMITS FOR STANDARD LAFARGE—Continued

Process	Control	Limit(s)
Slag Receiving Hopper	Increase Web Suppression	TSP ≤0.07 lb/hr. PM–10 ≤0.06 lb/hr.
Paved & Unpaved Roads	Chemical Dust Suppressant	5% opacity, 80% control. 90% control.

TABLE 6.—NEW LIMITS FOR STARVAGGI INCORPORATED

Process	Control	Limit(s)
Unpraved Roads & Parking Lots	Chemical Suppressant	90% control.

TABLE 7.—NEW LIMITS FOR WHEELING-PITTSBURGH STEEL

Process	Control	Limit(s)		
Coal Crushing	Full Enclosure	TSP ≤ 1.0 lb/hr; PM–10 ≤ 0.51 lb/hr; No visible emissions; 90% Control (PM–10).		
Coal Sizing No. 1, 2	Full Enclosure	TSP ≤ 1.48 lb/hr; PM–10 ≤ 0.76 lb/hr; 5% opacity; 90% Control (PM–10).		
Coke Pushing No. 1, 2, 3	Existing Baghouse	2.14 lb/hr (approx. 0.022 lb/ton coal charged at maximum operating rate).		
		Battery Stack	(lb/hr)	Approx. lb/ton of coal charged at maximum capacity
Coke Underfiring No. 1, 2, 3, 8	None	TSP		
		No. 1	1.40	0.044
		No. 2	1.40	0.044
		No. 3	1.58	0.046
		No. 8	6.93	0.048
		PM–10		
		No. 1	1.35	0.043
		No. 2	1.35	0.043
		No. 3	1.52	0.046
		No. 8	6.65	0.047
Unpaved & Irregular Paved Surfaces	Chemical Suppression	95% Control.		
Paved Roads	Flushing and Vacuum Sweeping.	95% Control.		

EPA's longstanding definition of RACT is the lowest emission limitation or percent reduction that a particular source is capable of achieving by the application of control technology that is reasonably available considering technological and economic feasibility (see 57 FR 13541). Thus, EPA recommends that available control technology be applied to those existing sources in the area that are reasonable to control in light of the attainment needs of the area and the feasibility of controls.

In addition to determining that the requirements of the consent orders meet this definition of RACT, EPA also reviewed the requirements of the six consent orders and found them consistent with the EPA guidance documents on RACM referenced earlier in the notice. All of the requirements identified by EPA in the previously referenced August 7, 1980 memorandum as being normally achievable for iron and steel sources are in fact required by West Virginia. Although EPA has not developed such specific PM–10 RACM guidance for other applicable point sources, but the applicable control measures in the State's plan was found by EPA to require the implementation of RACM for other sources in the area.[5] In addition, the plan requires implementation of RACM in all cases by December 10, 1993. Consequently, West Virginia's plan is judged to satisfy the RACM requirement in Section 189(a)(1)(C).

4. Attainment Demonstration[6]

As noted, the initial moderate PM–10 nonattainment areas must submit a demonstration (including air quality modeling) showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the Act). The 24-hour PM–10 NAAQS is 150 micrograms/cubic meter (μg/m³), and the standard is attained when the expected number of days per calendar year with a 24-hour average concentration above 150 μg/m³ is equal to or less than one. The annual PM–10 NAAQS is 50 μg/m³, and the standard is attained when the expected annual arithmetic mean concentration is less than or equal to 50 μg/m³ (see 40 CFR 50.6). Alternatively, the State must show that attainment by December 31, 1994 is impracticable.

West Virginia performed dispersion modeling for the Follansbee area; this modeling is described in detail is

[5] The EPA has issued technological and economic parameters that should be considered in determining RACT for a particular source (see 57 FR 18073–74).

[6] It should be noted that the modeling techniques used in the attainment demonstration are based on the modeling guidelines in place at the time the analysis was performed. EPA approval of this analysis will not automatically apply to any other analysis of Follansbee to support any further regulatory action.

section II.C.4 of the TSD. The modeling is unapprovable as a demonstration of attainment because of deficiencies in estimating emissions from coke oven batteries, the lack of an approvable analysis of intermediate terrain, and the nonguideline use of the RAM dispersion model in a meteorologically rural area.

As described in the section of this notice entitled "Emissions Inventories," estimates of emissions from coke oven doors are in error. Calculations of emissions from leaking coke oven doors were based on an estimate of actual percent leaking doors leak rather than the allowable leak rate, and the calculation of the relation between BSO emissions and PM–10 emissions is in error.

EPA modeling guidance and policy require that receptors between stack height and plume height must be modeled with both an appropriate simple terrain model and an appropriate complex terrain model (see EPA's Guideline on Air Quality Models (EPA–450/2–78–027R), and June 8, 1989 Memorandum from Joseph Tikvart to Alan Cimorelli). No implementation of the intermediate terrain policy was included in the State's submittal.

The State employed the Gaussian Plume Multiple Source Air Quality Algorithm (RAM) to estimate the impacts of area sources such as agricultural tilling and residential heating. The use of RAM in a meteorologically rural area, such as the Steubenville, Ohio/Follansbee West Virginia area, is inconsistent with the recommendations of the Guideline on Air Quality Models.

Because of these deficiencies, EPA is proposing to disapprove the SIP revision for the limited purpose of fulfilling the section 189(a) requirement for a demonstration of attainment. For a more detailed description of the attainment demonstration and the control strategy used, see the Technical Support Document accompanying this notice. The TSD also provides EPA's detailed rationale for determining that the demonstration, as submitted, does not meet the criteria for approval.

5. PM–10 Precursors

The control requirements which are applicable to major stationary sources of PM–10, also apply to major stationary sources of PM–10 precursors unless EPA determines such sources do not contribute significantly to PM–10 levels in excess of the NAAQS in that area (see section 189(e) of the Act).

An analysis of air quality and emissions data for the Follansbee nonattainment area demonstrates that violations of the NAAQS are attributable chiefly to direct particulate matter emissions from industrial sources, and that sources of particulate matter precursors SO_2, and NO_x contribute less than 8 $\mu g/m^3$. Consequently, EPA is proposing to find that major sources of precursors of PM–10 do not contribute significantly to PM–10 levels in excess of the NAAQS. The consequences of this finding are to exclude these sources from the applicability of PM–10 nonattainment area control requirements. Further discussion of the analyses and supporting rationale for EPA's finding are contained in the Technical Support Document accompanying this notice. Note that while EPA is making a general finding for this area, today's finding is based on the current character of the area including, for example, the existing mix of sources in the area. It is possible, therefore, that future growth could change the significance of precursors in the area. EPA intends to issue future guidance addressing such potential changes in the significance of precursor emissions in PM–10 nonattainment areas.

6. Quantitative Milestones and Reasonable Further Progress (RFP)

The PM–10 nonattainment area plan revisions demonstrating attainment must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate RFP, as defined in section 171(l), toward attainment by December 31, 1994 (see section 189(c) of the Act). Reasonable further progress is defined in section 171(l) as such annual incremental reductions in emissions of the relevant air pollutant as are required by Part D or may reasonably be required by the Administrator for the purpose of ensuring attainment of the applicable NAAQS by the applicable date.

As stated previously, PM–10 plan revisions were due November 15, 1991, and RACM must be implemented no more than two years, 25 days later, by December 10, 1993. It would be unreasonable, and therefore not constitute RACT, to require a stationary source to install successive, incremental controls during this short period. In implementing RFP for the Follansbee area, EPA has reviewed the attainment demonstration and control strategy for the area to determine whether reductions different from those provided in the SIP should be required in order to ensure attainment of the PM–10 NAAQS by December 31, 1994 (see section 171(l)). Each of the Consent Orders submitted by West Virginia includes compliance dates for the various measures within each order. While these dates vary, none are later than December 10, 1993 and many measures are required well before that date. EPA, therefore, intends to approve West Virginia's submittal as fulfilling the part D requirements for quantitative milestones and reasonable further progress.

7. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and EPA (see sections 172(c)(6), 110(a)(2)(A) of the CAAA and 57 FR 13556). The EPA criteria addressing the enforceability of SIP's and SIP revisions were stated in a September 23, 1987 memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et al. (see 57 FR 13541). Nonattainment area plan provisions must also contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The particular control measures contained in the SIP are addressed above under the section headed "RACM (including RACT)." These control measures apply to the types of activities identified in Table 1 of that section including reduced emission limits on both stack and fugitive emissions. Through consent orders, the SIP provides applicable control measures on a source-by-source basis.

Consistent with the attainment demonstration described above, the submittal requires that all affected activities must be in full compliance with the applicable provisions by, in the latest case, December 10, 1993. In addition to the control measures, the submittal includes record-keeping requirements which are specified in the consent orders. In addition, the submittal (specifically, each consent agreement) sets out compliance schedules that include dates by which the source(s) must, for example, purchase and install equipment and commence dust suppression programs.

The State of West Virginia has a program that will ensure that the measures contained in the submittal are adequately enforced. The compliance schedules and associated test methods are described in detail in the consent orders. Each consent order specifically describes or references test methods or other means of determining compliance.

8. Contingency Measures

As provided in section 172(c)(9) of the Act, all moderate nonattainment area SIP's that demonstrate attainment must include contingency measures (see generally 57 FR 13543–44). These measures must be submitted by

November 15, 1993 for the initial moderate nonattainment areas. Contingency measures should consist of other available measures that are not part of the areas's control strategy. These measures must take effect without further action by the State or EPA, upon a determination by EPA that the area has failed to make RFP or attain the PM–10 NAAQS by the applicable statutory deadline. In their consent orders, Wheeling-Pittsburgh Steel, International Mill Services, and Follansbee Steel committed to develop contingency plans (by July 1, 1992) to reduce mass emissions by quantities specified in the consent orders. These companies agreed to the inclusion of these plans into consent orders to be approved by the WVAPCC by December 31, 1992. Koppers Industries, which shares the use of some property with Wheeling-Pittsburgh Steel, agreed to comply with such contingency plans in its consent order.

In the General Preamble to Title I of the CAAA, EPA established a November 15, 1993 deadline for state submittal of contingency plans. Consequently, West Virginia will have until November 15, 1993 to submit a detailed contingency plan necessary to satisfy section 172(c)(9) of the Act. This discussion of the contingency measures included in the Follansbee SIP will not be grounds for disapproval in whole or in part of the Follansbee SIP submittal.

Proposed Action

EPA is proposing to grant a limited approval and limited disapproval of the plan revision for the Follansbee, West Virginia area.

While the submittal does not meet specific provisions of Part D, it does contain some provisions (enforceable consent orders) which advance the NAAQS-related air quality protection goals of the Act. Thus, EPA is proposing a limited approval of the submittal to approve the consent agreements and make them part of the SIP. EPA has evaluated the consent agreements of West Virginia's SIP revision submittal for consistency with the Act and EPA regulations and has found that the submittal provides State and federally enforceable provisions to decrease PM–10 emissions in the nonattainment area. These measures, together with the existing SIP, constitute RACM, including RACT.

Because the submittal does not meet the section 189(a)(1)(B) requirement of Part D for an attainment demonstration and the section 172(c)(3) requirement for an accurate inventory of actual emissions (for the reasons described previously in this notice) EPA cannot grant full approval of this submittal under section 110(k)(3) and Part D of the Act. Also, because the submitted revision is not composed of separable parts which meet all the applicable requirements of the Act, EPA cannot grant partial approval of the submittal under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule(s) under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality improvement by strengthening the SIP.

If finalized, this limited disapproval would constitute a disapproval under section 179(a)(2) of the Act (see generally 57 FR 13566–67). As provided under section 179(a) of the Act, the State of West Virginia would have up to 18 months after a final SIP disapproval to correct the deficiencies that are the subject of the disapproval before EPA is required to impose either the highway funding sanction or the requirement to provide two-to-one new source review offsets. If the State has not corrected its deficiency within 6 months thereafter, EPA must impose the second sanction. Any sanction EPA imposes must remain in place until EPA determines that the State has come into compliance. Note also that any final disapproval would trigger the requirement for EPA to impose a federal implementation plan within 24 months as provided under section 110(c)(1) of the Act.

While this action proposes limited approval and limited disapproval of West Virginia's SIP revision, EPA will fully approve the State's submittal without further notice, if the unapprovable aspects of the State's submittal are corrected.

EPA is proposing no action on the contingency measures with respect to the requirements of section 172(c)(9) of the Act at this time.[7] In the General Preamble to Title I of the CAAA, EPA established a November 15, 1993 deadline for state submittal of contingency plans. Consequently, West Virginia will have until November 15, 1993 to submit a detailed contingency plan necessary to satisfy section 172(c)(9) of the Act.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIP's on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct 1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, Part D of the Act does not affect any existing requirements applicable to small entities. Any pre-existing federal requirements remain in place after this disapproval. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new federal requirements. Therefore, EPA certifies that this proposed disapproval action does not have a significant impact on a substantial number of small entities because it does not impose any new federal requirements.

Under Executive Order 12866, this action is not "significant." It has been submitted to OMB for review.

The Administrator's decision to approve or disapprove West Virginia's PM–10 SIP revision for the Follansbee nonattainment area will be based on whether it meets the requirements of Section 110(a)(2)(A)–(K), 110(a)(3), and Part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR Part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, and Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671.

Dated: July 13, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 94–275 Filed 1–6–94; 8:45 am]

BILLING CODE 6560–50–P

[7] As noted above, EPA is proposing to incorporate by reference all of the submitted consent orders into the SIP in their entirety.

40 CFR Part 55

[FRL–4822–1]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency ("EPA").

ACTION: Notice of proposed rulemaking ("NPR")—consistency update.

SUMMARY: EPA is proposing to update a portion of the Outer Continental Shelf ("OCS") Air Regulations. Requirements applying to OCS sources located within 25 miles of states' seaward boundaries must be updated periodically to remain consistent with the requirements of the corresponding onshore area ("COA"), as mandated by section 328(a)(1) of the Clean Air Act ("the Act"), the Clean Air Act Amendments of 1990. The portion of the OCS air regulations that is being updated pertains to the requirements for OCS sources for which the San Luis Obispo County Air Pollution Control District (San Luis Obispo County APCD), the Santa Barbara County Air Pollution Control District (Santa Barbara County APCD), and the Ventura County Air Pollution Control District (Ventura County APCD) are the designated COAs. The OCS requirements for the above Districts, contained in the Technical Support Document, are proposed to be incorporated by reference into the Code of Federal Regulations and are listed in the appendix to the OCS air regulations.

DATES: Comments on the proposed update must be received on or before February 7, 1994.

ADDRESSES: Comments must be mailed (in duplicate if possible) to: EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105.

Docket: Supporting information used in developing the proposed notice and copies of the documents EPA is proposing to incorporate by reference are contained in Docket No. A–93–16 (Section III). This docket is available for public inspection and copying Monday—Friday during regular business hours at the following locations: EPA Air Docket (A–5), Attn: Docket No. A–93–16, Environmental Protection Agency, Air and Toxics Division, Region 9, 75 Hawthorne St., San Francisco, CA 94105. EPA Air Docket (LE–131), Attn: Air Docket No. A–93–16, Environmental Protection Agency, 401 M Street SW, Room M–1500, Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Air and Toxics Division (A–5–3), U.S. EPA Region 9, 75 Hawthorne Street, San Francisco, CA 94105. (415) 744–1195.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 1992, EPA promulgated 40 CFR part 55,[1] which established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. Part 55 applies to all OCS sources offshore of the States except those located in the Gulf of Mexico west of 87.5 degrees longitude. Section 328 of the Act requires that for such sources located within 25 miles of a state's seaward boundary, the requirements shall be the same as would be applicable if the sources were located in the COA. Because the OCS requirements are based on onshore requirements, and onshore requirements may change, section 328(a)(1) requires that EPA update the OCS requirements as necessary to maintain consistency with onshore requirements.

Pursuant to § 55.12 of the OCS rule, consistency reviews will occur (1) at least annually; (2) upon receipt of a Notice of Intent (NOI) under § 55.4; and (3) when a state or local agency submits a rule to EPA to be considered for incorporation by reference in part 55. This NPR is being promulgated in response to the submittal of rules by three local air pollution control agencies. Public comments received in writing within 30 days of publication of this notice will be considered by EPA before promulgation of the final updated rule.

Section 328(a) of the Act requires that EPA establish requirements to control air pollution from OCS sources located within 25 miles of states' seaward boundaries that are the same as onshore requirements. To comply with this statutory mandate, EPA must incorporate applicable onshore rules into part 55 as they exist onshore. This limits EPA's flexibility in deciding which requirements will be incorporated into part 55 and prevents EPA from making substantive changes to the requirements it incorporates. As a result, EPA may be incorporating rules into part 55 that do not conform to all of EPA's state implementation plan (SIP) guidance or certain requirements of the Act. Consistency updates may result in the inclusion of state or local rules or regulations into part 55, even though the same rules may ultimately be disapproved for inclusion as part of the SIP. Inclusion in the OCS rule does not imply that a rule meets the requirements of the Act for SIP approval, nor does it imply that the rule will be approved by EPA for inclusion in the SIP.

EPA Evaluation and Proposed Action

In updating 40 CFR part 55, EPA reviewed the state and local rules submitted for inclusion in part 55 to ensure that they are rationally related to the attainment or maintenance of federal or state ambient air quality standards or part C of title I of the Act, that they are not designed expressly to prevent exploration and development of the OCS and that they are applicable to OCS sources. 40 CFR 55.1. EPA has also evaluated the rules to ensure they are not arbitrary or capricious. 40 CFR 55.12 (e). In addition, EPA has excluded administrative or procedural rules.[2]

A. After review of the rules submitted by the San Luis Obispo County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which the San Luis Obispo County APCD is designated as the COA. None of the existing OCS requirements were deleted. The following rules were submitted as amendments to existing requirements:

Rule 105 Definitions (Adopted 10/6/93)
Rule 204 Requirements, except B.3 and C. (Adopted 8/10/93)
Sections B.3 and C conflict with the language of part 55.
Rule 213 Calculations, except E.4 and F. (Adopted 8/10/93)
Sections E.4 and F are District administrative procedures.
Rule 305 Fees for Major Non-Vehicular Sources (title change—Adopted 9/15/92)
Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)

B. After review of the rules submitted by the Santa Barbara County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rule applicable to OCS sources for which the Santa Barbara County APCD is designated as the COA. None of the existing OCS requirements were deleted.

[1] The reader may refer to the Notice of Proposed Rulemaking, December 5, 1991 (56 FR 63774), and the preamble to the final rule promulgated September 4, 1992 (57 FR 40792) for further background and information on the OCS regulations.

[2] Upon delegation the onshore area will use its administrative and procedural rules as onshore. In those instances where EPA does not delegate authority to implement and enforce part 55, EPA will use its own administrative and procedural requirements to implement the substantive requirements. 40 CFR 55.14 (c)(4).

The following new rule was submitted by the District to be added:

Rule 212 Emission Statements (Adopted 10/20/92)

C. After review of the rules submitted by Ventura County APCD against the criteria set forth above and in 40 CFR part 55, EPA is proposing to make the following rules applicable to OCS sources for which Ventura County APCD is designated as the COA. None of the existing OCS requirements were deleted.

The following rules were submitted as amendments to existing requirements:

Rule 23 Exemptions from Permit (Adopted 6/8/93)
Rule 71 Crude Oil and ROC Liquids (Adopted 6/8/93)
Rule 71.4 Petroleum Sumps, Pits, Ponds and Well Cellars (Adopted 6/8/93)
Rule 72 NSPS (Adopted 7/13/93)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/3/91)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)

The following new rules were submitted by the District to be added:

Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)

The following rule was submitted by the District but will not be included:

Rule 42.M Air Toxics "Hot Spots" Program Fees (Adopted 5/4/93)

This is an administrative rule for requirements that are not related to the attainment and maintenance of ambient air quality standards or part C of title I of the Act and will not be incorporated into part 55.

Administrative Requirements

A. Executive Order

The Office of Management and Budget exempted this rule from the requirements of Section 3 of Executive Order 12291. This exemption continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." Small entities include small businesses, organizations, and governmental jurisdictions.

As was stated in the final regulation, the OCS rule does not apply to any small entities, and the structure of the rule averts direct impacts and mitigates indirect impacts on small entities. This consistency update merely incorporates onshore requirements into the OCS rule to maintain consistency with onshore regulations as required by section 328 of the Act and does not alter the structure of the rule.

The EPA certifies that this notice of proposed rulemaking will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the final OCS rulemaking dated September 4, 1992 under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control number 2060–0249. This consistency update does not add any further requirements.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer Continental Shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: December 14, 1993.

John Wise,

Acting Regional Administrator.

Title 40 of the Code of Federal Regulations, part 55, is proposed to be amended as follows:

PART 55—[AMENDED]

1. The authority citation for part 55 continues to read as follows:

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401, *et seq.*) as amended by Public Law 101–549.

2. Section 55.14 is proposed to be amended by revising paragraphs (e)(3)(ii)(E), (e)(3)(ii)(F), and (e)(3)(ii)(H) to read as follows:

§ 55.14 Requirements that apply to OCS sources located within 25 miles of states' seaward boundaries, by state.

* * * * *

(e) * * *

(3) * * *

(ii) * * *

(E) *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources.*

(F) *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

(H) *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources.*

* * * * *

4. Appendix A to 40 CFR part 55 is proposed to be amended by revising paragraphs (b)(5), (b)(6), and (b)(8) under the heading California to read as follows:

Appendix A to 40 CFR Part 55—Listing of State and Local Requirements Incorporated by Reference Into Part 55, by State

* * * * *

(California) * * *

(b) * * *

(5) The following requirements are contained in *San Luis Obispo County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 103 Conflicts Between District, State and Federal Rules (Adopted 8/6/76)
Rule 104 Action in Areas of High Concentration (Adopted 7/5/77)
Rule 105 Definitions (Adopted 10/6/93)
Rule 106 Standard Conditions (Adopted 8/6/76)
Rule 108 Severability (Adopted 11/13/84)
Rule 113 Continuous Emissions Monitoring, except F. (Adopted 7/5/77)
Rule 201 Equipment not Requiring a Permit, except A.1.b. (Adopted 11/5/91)
Rule 202 Permits, except A.4. and A.8. (Adopted 11/5/91)
Rule 203 Applications, except B. (Adopted 11/5/91)
Rule 204 Requirements, except B.3. and C. (Adopted 8/10/93)
Rule 209 Provision for Sampling and Testing Facilities (Adopted 11/5/91)
Rule 210 Periodic Inspection, Testing and Renewal of Permits to Operate (Adopted 11/5/91)
Rule 213 Calculations, except E.4. and F. (Adopted 8/10/93)
Rule 302 Schedule of Fees (Adopted 9/15/92)
Rule 305 Fees for Major Non-Vehicular Sources (title change—Adopted 9/15/92)
Rule 401 Visible Emissions (Adopted 8/6/76)
Rule 403 Particulate Matter Emissions (Adopted 8/6/76)
Rule 404 Sulfur Compounds Emission Standards, Limitations and Prohibitions (Adopted 12/6/76)
Rule 405 Nitrogen Oxides Emission Standards, Limitations and Prohibitions (Adopted 11/13/84)
Rule 406 Carbon Monoxide Emission Standards, Limitations and Prohibitions (Adopted 11/14/84)
Rule 407 Organic Material Emission Standards, Limitations and Prohibitions (Adopted 1/10/89)
Rule 411 Surface Coating of Metal Parts and Products (Adopted 1/10/89)
Rule 416 Degreasing Operations (Adopted 6/18/79)

Rule 417 Control of Fugitive Emissions of Volatile Organic Compounds (Adopted 2/9/93)
Rule 422 Refinery Process Turnarounds (Adopted 6/18/79)
Rule 501 General Burning Provisions (Adopted 1/10/89)
Rule 503 Incinerator Burning, except B.1.a. (Adopted 2/7/89)
Rule 601 New Source Performance Standards (Adopted 9/4/90)

(6) The following requirements are contained in *Santa Barbara County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 102 Definitions (Adopted 7/30/91)
Rule 103 Severability (Adopted 10/23/78)
Rule 201 Permits Required (Adopted 7/2/79)
Rule 202 Exemptions to Rule 201 (Adopted 3/10/92)
Rule 203 Transfer (Adopted 10/23/78)
Rule 204 Applications (Adopted 10/23/78)
Rule 205 Standards for Granting Applications (Adopted 7/30/91)
Rule 206 Conditional Approval of Authority to Construct or Permit to Operate (Adopted 10/15/91)
Rule 207 Denial of Application (Adopted 10/23/78)
Rule 210 Fees (Adopted 5/7/91)
Rule 212 Emission Statements (Adopted 10/20/92)
Rule 301 Circumvention (Adopted 10/23/78)
Rule 302 Visible Emissions (Adopted 10/23/78)
Rule 304 Particulate Matter-Northern Zone (Adopted 10/23/78)
Rule 305 Particulate Matter Concentration-Southern Zone (Adopted 10/23/78)
Rule 306 Dust and fumes-Northern Zone (Adopted 10/23/78)
Rule 307 Particulate Matter Emission Weight Rate-Southern Zone (Adopted 10/23/78)
Rule 308 Incinerator Burning (Adopted 10/23/78)
Rule 309 Specific Contaminants (Adopted 10/23/78)
Rule 310 Odorous Organic Sulfides (Adopted 10/23/78)
Rule 311 Sulfur Content of Fuels (Adopted 10/23/78)
Rule 312 Open Fires (Adopted 10/2/90)
Rule 317 Organic Solvents (Adopted 10/23/78)
Rule 318 Vacuum Producing Devices or Systems-Southern Zone (Adopted 10/23/78)
Rule 321 Control of Degreasing Operations (Adopted 7/10/90)
Rule 322 Metal Surface Coating Thinner and Reducer (Adopted 10/23/78)
Rule 323 Architectural Coatings (Adopted 2/20/90)
Rule 324 Disposal and Evaporation of Solvents (Adopted 10/23/78)
Rule 325 Storage of Petroleum and Petroleum Products (Adopted 12/10/91)
Rule 326 Effluent Oil Water Separators (Adopted 10/23/78)
Rule 327 Organic Liquid Cargo Tank Vessel Loading (Adopted 12/16/85)
Rule 328 Continuous Emission Monitoring (Adopted 10/23/78)
Rule 330 Surface Coating of Miscellaneous Metal Parts and Products (Adopted 11/13/90)
Rule 331 Fugitive Emissions Inspection and Maintenance (Adopted 12/10/91)
Rule 332 Petroleum Refinery Vacuum Producing Systems. Wastewater Separators and Process Turnarounds (Adopted 6/11/79)
Rule 333 Control of Emissions from Reciprocating Internal Combustion Engines (12/10/91)
Rule 342 Control of Oxides of Nitrogen (NOx from Boilers, Steam Generators and Process Heaters) (03/10/92)
Rule 505 Breakdown Conditions Sections A., B.1., and D. only (Adopted 10/23/78)
Rule 603 Emergency Episode Plans (Adopted 6/15/81)

* * * * *

(8) The following requirements are contained in *Ventura County Air Pollution Control District Requirements Applicable to OCS Sources:*

Rule 2 Definitions (Adopted 12/15/92)
Rule 5 Effective Date (Adopted 5/23/72)
Rule 6 Severability (Adopted 11/21/78)
Rule 7 Zone Boundaries (Adopted 6/14/77)
Rule 10 Permits Required (Adopted 7/5/83)
Rule 11 Application Contents (Adopted 8/15/78)
Rule 12 Statement by Application Preparer (Adopted 6/16/87)
Rule 13 Statement by Applicant (Adopted 11/21/78)
Rule 14 Trial Test Runs (Adopted 5/23/72)
Rule 15 Permit Issuances (Adopted 7/5/83)
Rule 16 Permit Contents (Adopted 12/2/80)
Rule 18 Permit to Operate Application (Adopted 8/17/76)
Rule 19 Posting of Permits (Adopted 5/23/72)
Rule 20 Transfer of Permit (Adopted 5/23/72)
Rule 21 Expiration of Applications and Permits (Adopted 6/23/81)
Rule 23 Exemptions from Permits (Adopted 6/8/93)
Rule 24 Source Recordkeeping, Reporting, and Emission Statements (Adopted 09/15/92)
Rule 26 New Source Review (Adopted 10/22/91)
Rule 26.1 New Source Review—Definitions (Adopted 10/22/91)
Rule 26.2 New Source Review—Requirements (Adopted 10/22/91)
Rule 26.3 New Source Review—Exemptions (Adopted 10/22/91)
Rule 26.6 New Source Review—Calculations (Adopted 10/22/91)
Rule 26.8 New Source Review—Permit To Operate (Adopted 10/22/91)
Rule 26.10 New Source Review—PSD (Adopted 10/22/91)
Rule 28 Revocation of Permits (Adopted 7/18/72)
Rule 29 Conditions on Permits (Adopted 10/22/91)
Rule 30 Permit Renewal (Adopted 5/30/89)
Rule 32 Breakdown Conditions: Emergency Variances, A., B.1., and D. only. (Adopted 2/20/79)
Appendix II-A Information Required for Applications to the Air Pollution Control District

Appendix II-B Best Available Control Technology (BACT) Tables

Rule 42 Permit Fees (Adopted 12/22/92)
Rule 44 Exemption Evaluation Fee (Adopted 1/8/91)
Rule 45 Plan Fees (Adopted 6/19/90)
Rule 45.2 Asbestos Removal Fees (Adopted 8/4/92)
Rule 50 Opacity (Adopted 2/20/79)
Rule 52 Particulate Matter—Concentration (Adopted 5/23/72)
Rule 53 Particulate Matter—Process Weight (Adopted 7/18/72)
Rule 54 Sulfur Compounds (Adopted 7/5/83)
Rule 56 Open Fires (Adopted 5/24/88)
Rule 57 Combustion Contaminants—Specific (Adopted 6/14/77)
Rule 60 New Non-Mobile Equipment—Sulfur Dioxide, Nitrogen Oxides, and Particulate Matter (Adopted 7/8/72)
Rule 62.7 Asbestos—Demolition and Renovation (Adopted 6/16/92)
Rule 63 Separation and Combination of Emissions (Adopted 11/21/78)
Rule 64 Sulfur Content of Fuels (Adopted 7/5/83)
Rule 66 Organic Solvents (Adopted 11/24/87)
Rule 67 Vacuum Producing Devices (Adopted 7/5/83)
Rule 68 Carbon Monoxide (Adopted 6/14/77)
Rule 71 Crude Oil and Reactive Organic Compound Liquids (Adopted 6/8/93)
Rule 71.1 Crude Oil Production and Separation (Adopted 6/16/92)
Rule 71.2 Storage of Reactive Organic Compound Liquids (Adopted 9/26/89)
Rule 71.3 Transfer of Reactive Organic Compound Liquids (Adopted 6/16/92)
Rule 71.4 Petroleum Sumps, Pits, Ponds, and Well Cellars (Adopted 6/8/93)
Rule 72 New Source Performance Standards (NSPS) (Adopted 7/13/93)
Rule 74 Specific Source Standards (Adopted 7/6/76)
Rule 74.1 Abrasive Blasting (Adopted 11/12/91)
Rule 74.2 Architectural Coatings (Adopted 08/11/92)
Rule 74.6 Surface Cleaning and Degreasing (Adopted 5/8/90)
Rule 74.6.1 Cold Cleaning Operations (Adopted 9/12/89)
Rule 74.6.2 Batch Loaded Vapor Degreasing Operations (Adopted 9/12/89)
Rule 74.7 Fugitive Emissions of Reactive Organic Compounds at Petroleum Refineries and Chemical Plants (Adopted 1/10/89)
Rule 74.8 Refinery Vacuum Producing Systems, Waste-water Separators and Process Turnarounds (Adopted 7/5/83)
Rule 74.9 Stationary Internal Combustion Engines (Adopted 12/3/91)
Rule 74.10 Components at Crude Oil Production Facilities and Natural Gas Production and Processing Facilities (Adopted 6/16/92)
Rule 74.11 Natural Gas-Fired Residential Water Heaters—Control of NOx (Adopted 4/9/85)
Rule 74.12 Surface Coating of Metal Parts and Products (Adopted 11/17/92)
Rule 74.15 Boilers, Steam Generators and Process Heaters (5MM BTUs and greater) (Adopted 12/3/91)
Rule 74.15.1 Boilers, Steam Generators and Process Heaters (1–5MM BTUs) (Adopted 5/11/93)
Rule 74.16 Oil Field Drilling Operations (Adopted 1/8/91)
Rule 74.20 Adhesives and Sealants (Adopted 6/8/93)
Rule 75 Circumvention (Adopted 11/27/78)
Appendix IV-A Soap Bubble Tests
Rule 100 Analytical Methods (Adopted 7/18/72)
Rule 101 Sampling and Testing Facilities (Adopted 5/23/72)
Rule 102 Source Tests (Adopted 11/21/78)
Rule 103 Stack Monitoring (Adopted 6/4/91)
Rule 154 Stage 1 Episode Actions (Adopted 9/17/91)
Rule 155 Stage 2 Episode Actions (Adopted 9/17/91)
Rule 156 Stage 3 Episode Actions (Adopted 9/17/91)
Rule 158 Source Abatement Plans (Adopted 9/17/91)
Rule 159 Traffic Abatement Procedures (Adopted 9/17/91)

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[FR Doc. 94–276 Filed 1–6–94; 8:45 am]
BILLING CODE 6050–50–P

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

43 CFR Part 426

[RIN: 1006–AA31]

Acreage Limitation Reporting Threshold

AGENCY: Bureau of Reclamation, Interior.

ACTION: Withdrawal of notice of intent to propose rulemaking.

SUMMARY: The Bureau of Reclamation (Reclamation) is withdrawing its intention to conduct rulemaking to revise the threshold that exempts landholders from the information requirements of the Reclamation Reform Act of 1982 (RRA). The notice of intent was published in 57 FR 47437, Oct. 16, 1992. Instead, the threshold issue will be included in an upcoming, proposed westwide rulemaking. This action eliminates the need for a separate rulemaking for threshold changes, thereby allowing for a more economical, comprehensive westwide rulemaking.

FOR FURTHER INFORMATION CONTACT: Mr. Terry Lynott, Director, Policy and Programs, Bureau of Reclamation, Denver Office, P.O. Box 25007, Denver CO 80225.

SUPPLEMENTARY INFORMATION: The RRA and 43 CFR part 426 require landholders to submit forms annually in order to be eligible to receive irrigation water from Reclamation projects. Landholders disclose the Reclamation project land in their holdings on forms known as "certification and reporting forms" and provide other information pertinent to their compliance with Reclamation law. Currently, 43 CFR 426.10(g) exempts landholders from the forms requirements if the total of their direct and indirect interests in Reclamation project landholdings is 40 acres or less. Reclamation's preliminary review indicated that an exemption threshold higher than 40 acres may improve Reclamation's ability to administer the law while reducing the reporting burden on the public. Therefore, Reclamation published a notice of intent in 57 FR 47437 on October 16, 1992, to conduct rulemaking to revise the 40-acre reporting threshold.

Reclamation is presently undertaking a westwide EIS and rulemaking to revise the regulations for implementing the RRA as a term of a settlement agreement. The settlement agreement, filed with the 9th Circuit Court on September 17, 1993, in the case *Natural Resources Defense Council, et al.* v. *Beard*, requires the draft EIS and rules to be prepared by December 1994, and the final EIS and rules, by August 1995. Revising the 40-acre reporting threshold, found in 43 CFR part 426, will be addressed in the above westwide EIS and rulemaking. It will be more economical to include the reporting threshold issue in the westwide EIS and rulemaking rather than address it separately and will also result in a more comprehensive westwide EIS and rulemaking.

Dated: December 28, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–348 Filed 1–6–94; 8:45 am]
BILLING CODE 4310–94–M

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB73

Endangered and Threatened Wildlife and Plants; Extension of Comment Period and Notice of Rescheduling of Public Hearing on Proposed Endangered Status and Designation of Critical Habitat for the Alabama Sturgeon

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of comment period and notice of rescheduling of public hearing.

SUMMARY: The Fish and Wildlife Service (Service) gives notice that the second public hearing scheduled for January 13, 1994 (59 FR 288), on the proposed rule to determine endangered status and designate critical habitat for the Alabama sturgeon, *Scaphirhynchus suttkusi*, has been canceled and rescheduled for January 31, 1994. The comment period is extended until February 15 to accommodate the public hearing.

DATES: The public hearing that was scheduled to be held from 6 p.m. to 10 p.m. on January 13, 1994, in Montgomery, Alabama, has been canceled. The hearing has been rescheduled and now will be held on January 31, 1994, in Montgomery, Alabama. The public comment period is further extended through February 15, 1994.

ADDRESSES: The rescheduled public hearing will be held at South Hall # 1, Montgomery Civic Center, 300 Bibb Street, Montgomery, Alabama. Written comments and materials should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213, or may be submitted at the public hearing. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: James H. Stewart, at the above address (601/965–4900).

SUPPLEMENTARY INFORMATION: The hearing announced in the **Federal Register** of January 4, 1994 (59 FR 288), is being canceled and rescheduled in order to provide more ample notice of the hearing to the public. The hearing is now scheduled to be held on January 31, 1994.

The Service proposed to determine the Alabama sturgeon, *Scaphirhynchus*

suttkusi, to be an endangered species and to designate its critical habitat on June 15, 1993 (58 FR 33148). The Alabama sturgeon, a small sturgeon with a maximum length of about 30 inches, is endemic to the Mobile River system, Alabama and Mississippi. Its current range is restricted to the lower Alabama River and the Cahaba River in Alabama. Both of these areas and the free flowing portion of the lower Tombigbee River are proposed as critical habitat. Factors in the strugeon's decline include dams, and possible adverse effects from altered water flows, channel maintenance and gravel dredging.

A public hearing on the proposed rule was announced in the **Federal Register** of September 13, 1993 (58 FR 47851) and was held on October 4, 1993 near Mobile, Alabama. The capacity of the facility selected for the public hearing was not sufficient for all the individuals that wished to attend. A second hearing was then announced in the **Federal Register** on October 25, 1993 (58 FR 55036). The second public hearing was originally scheduled for November 15, 1993, in Montgomery, Alabama, to allow additional oral statements to be presented and to receive comment on a scientific report prepared by experts on the taxonomy and on the likelihood of existence of the Alabama sturgeon.

The November 15 hearing was canceled in response to a preliminary injunction issued on November 9, 1993, that restrained the Service and others from: (1) Disseminating the scientific report to the public; and, (2) utilizing or relying upon the scientific report or any product of the experts' deliberations in connection with the decision-making process on the proposal to list the Alabama sturgeon and to designate its critical habitat. Because the notice announcing the November 15 hearing specifically addressed the availability of the scientific report and the Service's intent to receive comments on it, the Service decided to postpone the hearing until a revised notice could be published to announce the limitations imposed by, and to thereby avoid inadvertent violations of, the court order.

On December 22, 1993, the court that issued the November 9 order issued another order providing, in most relevant part, as follows:

> Federal defendants and defendant-intervenor, and those acting in active concert with them, are hereby PERMANENTLY ENJOINED from publishing, employing and relying upon the Advisory Committee report * * * for any purpose whatsoever, directly or indirectly, in the process of determining whether to list the Alabama sturgeon as an endangered species.

In order to give more ample notice than a January 13, 1994, hearing would have allowed, the second public hearing is rescheduled for January 31, 1994. The hearing will allow additional oral statements to be presented (of course, written comments will also be accepted and will be given equal consideration). The time allocated for individual oral statements may be limited if the number of parties present at the hearing, or if the conduct of the individual commenter, necessitate such a limitation. There is no limit, however, on the length or volume of written comments or materials presented at the hearing or mailed to the Service office in the **ADDRESSES** section.

In keeping with the court restrictions issued in *Alabama-Tombigbee Rivers Coalition* v. *Fish and Wildlife Service*, Civ. No. 93–AR–2322–S, the Service considers itself compelled to enforce the following constraints on the submission of oral and written comments while the court restrictions remain in effect:

(1) Individuals or organizations cannot refer to the scientific report, issued on November 5, 1993, or to any drafts or other product derived from the preparation of that report, in presenting any oral statement or written comment; and,

(2) Individuals or organizations cannot attempt to bolster their oral or written comments or opinions by reference to the scientific report as authority.

The Departmental hearing officer at the hearing on January 31, 1994, will be authorized to terminate the opportunity to speak of any person making a statement if, in the judgment of the hearing officer, that person disregards the instructions not to address the scientific report or its contents. Written comments or materials that contain information that violates the above restrictions will be marked and thereafter excluded from the administrative record while the court restrictions remain in effect.

The Service intends that any final action resulting from the proposed rule will be as accurate and as effective as possible. Except for the court-imposed restrictions set out above, the Service encourages the submission of all individual scientific opinions, biological data, and other relevant scientific data that will assist in arriving at the "best scientific and commercial data available," as mandated by section 4 of the Endangered Species Act.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: January 5, 1994.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 94–520 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register

Vol. 59, No. 5

Friday, January 7, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADVISORY COUNCIL ON HISTORIC PRESERVATION

Meeting

AGENCY: Advisory Council on Historic Preservation.

ACTION: Notice of meeting.

SUMMARY: Notice is hereby given that the Advisory Council on Historic Preservation will meet on Wednesday, January 12, 1994. The meeting will be held in Room M09 at the Old Post Office, 1100 Pennsylvania Avenue, NW., Washington, DC, beginning at 8:30 a.m.

The Council was established by the National Historic Preservation Act of 1966 (16 U.S.C. 470) to advise the President and the Congress on matters relating to historic preservation and to comment upon Federal, federally assisted, and federally licensed undertakings having an effect upon properties listed in or eligible for inclusion in the National Register of Historic Places. The Council's members are the Architect of the Capitol; the Secretaries of the Interior, Agriculture, and Transportation; the Administrators of the Environmental Protection Agency and the General Services Administration; the head of an additional Federal agency; the Chairman of the National Trust for Historic Preservation; the President of the National Conference of State Historic Preservation Officers; a Governor; a Mayor; a Native American or Native Hawaiian; and eight non-Federal members appointed by the President.

The agenda for the meeting includes the following:

I. Chairman's Welcome/Opening
II. Opportunities for Leadership: A Discussion of the Role of the Council in the Clinton Administration
III. Revision of the Council's Section 106 Regulations
IV. Historic Preservation Legislation
V. Executive Director's Report
VI. Section 106 Cases
VII. New Business
VIII. Adjourn

Note: The meetings of the Council are open to the public. If you need special accommodations due to a disability, please contact the Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., room 809, Washington, DC 202–606–8503, at least seven (7) days prior to the meeting.

FOR FURTHER INFORMATION CONTACT: Additional information concerning the meeting is available from the Executive Director, Advisory Council on Historic Preservation, 1100 Pennsylvania Ave., NW., #809, Washington, DC 20004.

Dated: January 4, 1994.

Robert D. Bush,

Executive Director.

[FR Doc. 94–399 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–10–M

DEPARTMENT OF AGRICULTURE

Forest Service

Oregon Creek Ecosystem Management Project, Tahoe National Forest, Yuba and Sierra Counties, CA

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The U.S. Department of Agriculture, Forest Service will prepare an environmental impact statement (EIS) for proposed timber harvest, plantation thinning, fuels reduction, and wildlife habitat improvement projects for areas in the Oregon Creek Watershed and an area in part of the North Yuba watershed in accordance with the requirements of 36 CFR 219.19. The project areas are located within portions of T.18N., R.8, 9, & 10E., T.19N., R.9 & 10E., MDB&M.

The agency invites comments and suggestions on the scope of the analysis. In addition, the agency gives notice of the full environmental analysis and decision-making process that will occur on the proposal so that interested and affected people are aware of how they may participate and contribute to the final decision.

DATES: Comments should be made in writing and received by February 22, 1994.

ADDRESSES: Written comments concerning the project should be directed to Jean Masquelier, District Ranger, Downieville Ranger District, North Yuba Ranger Station, 15924 Hwy 49, Camptonville, CA 95922.

FOR FURTHER INFORMATION CONTACT: Bob Willour, Resource Officer, Downieville Ranger District, Camptonville, CA 95922, telephone (916) 478–6253.

SUPPLEMENTARY INFORMATION: The Oregon Creek Analysis Area is about 25,000 acres in size. It incorporates the land in the Oregon Creek Watershed and is located two miles southwest of Comptonville and east to the junction of Pliocene and Henness Pass roads. The area is dominated by vast, uniform ponderosa pine plantations and brush fields that were a result of the 17,000-acre Mountain House Fire of 1959.

This project was chosen by the Forest Service's Regional Office (Region 5) to be conducted as an Ecosystem Management Project. It was selected due to the opportunities and challenges that this area has for multiple resource management. There exists an opportunity to increase the diversity within the many young pine plantations; this would improve wildlife habitat and derive needed wood fiber. Watershed problems, fire hazards within a mixed land ownership landscape, range problems, and wildlife habitat conditions represent some of the challenges and opportunities for improvements that will be looked at during this analysis.

In preparing the environmental impact statement, the Forest Service will identify and analyze a range of alternatives for treatment of the dense stands of young trees that address the issues developed for these sites. One of the alternatives will be no treatment. Other alternatives will consider differing levels of plantation thinning, timber harvest, new road construction and reconstruction, fuel hazard reduction, and wildlife habitat improvement projects. An ecological approach will be used to achieve multiple-use management of the Oregon Creek area. It also means that the needs of people and environmental values will be blended in a such way that the Oregon Creek area would represent a diverse, healthy, productive, and sustainable ecosystem.

Public participation will be important during the analysis, especially during the review of the Draft Environmental Impact Statement. The Forest Service is

seeking information, comments, and assistance from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. This input will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identifying potential issues.
2. Identifying issues to be analyzed in depth.
3. Eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Exploring additional alternatives.
5. Identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects and connected actions).
6. Determining potential cooperating agencies and task assignments.

The following list of issues has been identified through initial scoping:

(1) To what extent will future options for the management of California spotted owls be maintained?

(2) To what extent can the potential for large catastrophic wildfires, like the 17,000-acre Mountain House Fire of 1959, be reduced within the project area?

(3) To what extent can the forest health be improved in the Oregon Creek project area? In addition, what level of timber commodities could result from forest health improvement projects and other timber management proposals?

(4) To what extent will long-term transportation management objectives be met for the area?

(5) To what extent will the views from North Yuba River, Middle Yuba River, Oregon Creek, and Highway 49 be affected? What visual character will result from the proposed activities, and to what extent will these activities affect views from private land within the study area?

(6) To what extent will the outstandingly remarkable historical values that made Oregon Creek eligible as a Wild and Scenic River and classified as a recreation river be affected by the proposed activities with the study area?

(7) To what extent will water quality in the Oregon Creek and the Humbug Creek watersheds be affected by the proposed activities?

(8) To what extent will air quality in the Oregon Creek and North Yuba River drainages, and in the towns of Camptonville, Forest City, Pike, and Alleghany, be affected by proposed activities?

(9) To what extent will long-term productivity be affected by proposed activities?

Comments from other Federal, State, and local agencies, organizations, and individuals who may be interested in, or affected by the decision, are encouraged to identify other significant issues. Public participation has been previously solicited through mailing letters to mining claim owners, private land owners, and special use permittees within the Downieville Ranger District boundaries; posting information in local towns; and mailing letters to local timber industries, politicians, school boards, country supervisors, and environmental groups. Written comments that have already been received will still be considered when analyzing alternatives and impacts. Continued participation will be emphasized through individual contacts. No public meetings are scheduled.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by approximately the middle of March, 1994. The comment period on the draft EIS will be 45 days from the date the EPA publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of the court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is helpful if comments refer to specific pages or chapters of the draft EIS or the merits of the alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

The final EIS is expected to be available by the middle of June, 1994. The responsible official, who is the Tahoe National Forest Supervisor, will document the decision and reasons for the decision in the Record of Decision.

Dated: December 20, 1993.

Judie L. Tartaglia,

Deputy Forest Supervisor.

[FR Doc. 93-355 Filed 1-6-93; 8:45 am]

BILLING CODE 3410-11-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: Plant and Equipment Expenditures Survey.

Form Number(s): PE-1, PE-2, PE-3, PE-4(P), PE-5, PE-6.

Agency Approval Number: 0607-0641.

Type of Request: Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

Burden: 27,175 hours.

Number of Respondents: 15,000.

Avg Hours Per Response: 42 minutes.

Needs and Uses: The Bureau of the Census conducts the Plant and Equipment Expenditures Survey (P&E) on a quarterly and annual basis to obtain data on planned and actual investment in new plant and equipment from nonagricultural business firms. We collect data quarterly from most respondents and annually from small companies and from chronic non-respondents to the quarterly forms. These estimates are one of the most important indicators used by business and public officials in assessing near-term economic activity.

Affected Public: Businesses or other for-profit organizations, Non-profit institutions, Small businesses or organizations.

Frequency: Quarterly and Annually.

Respondent's Obligation: Quarterly forms-voluntary, Annual and counterpart forms-mandatory.

OMB Desk Officer: Maria Gonzalez, (202) 395-7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482-3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1994.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 94-396 Filed 1-6-94; 8:45 am]

BILLING CODE 3510-07-F

International Trade Administration

Export Trade Certificate of Review

ACTION: Notice of application.

SUMMARY: The Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, has received an application for an Export Trade Certificate of Review. This notice summarizes the conduct for which certification is sought and requests comments relevant to whether the Certificate should be issued.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, (202) 482-5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 (15 U.S.C. 4001-21) authorizes the Secretary of Commerce to issue Export Trade Certificates of Review. A Certificate of Review protects the holder and the members identified in the Certificate from state and federal government antitrust actions and from private, treble damage antitrust actions for the export conduct specified in the Certificate and carried out in compliance with its terms and conditions. Section 302(b)(1) of the Act and 15 CFR 325.6(a) require the Secretary to publish a notice in the **Federal Register** identifying the applicant and summarizing its proposed export conduct.

Request for Public Comments

Interested parties may submit written comments relevant to the determination whether a Certificate should be issued. An original and five (5) copies should be submitted no later than 20 days after the date of this notice to: Office of Export Trading Company Affairs, International Trade Administration, Department of Commerce, room 1800H, Washington, DC 20230. Information submitted by any person is exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552). Comments should refer to this application as "Export Trade Certificate of Review, application number 93-00003." A summary of the application follows.

Summary of the Application

Applicant: American Trade Partners, Inc., P.O. Box 165501, Miami, Florida 33116-5501, Contact: Morris Kessler, President, Telephone: (305) 266-1276.

Application No.: 93-00003.

Date Deemed Submitted: December 30, 1993.

Members (in addition to applicant): None.

American Trade Partners, Inc. seeks a Certificate to cover the following specific Export Trade, Export Markets, and Export Trade Activities and Methods of Operations.

Export Trade

1. Products

   All products.

2. Services

   All services.

3. Technology Rights

   All technology rights.

4. Export Trade Facilitation Services

   All export trade facilitation services.

Export Markets

The Export Markets include all parts of the world except the United States (the fifty states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, American Samoa, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands).

Export Trade Activities and Methods of Operation

American Trade Partners, Inc. may:

a. Export specific Products and or Services in response to specific orders and contact individual suppliers as to competitive prices, quality, and availability;

b. Provide and arrange for Export Trade Facilitation Services;

c. Exchange information only in one-on-one discussions with specific suppliers on specific orders or market conditions;

d. Enter into exclusive licensing and distributorship agreements with suppliers for the export of Products, Services, and Technology Rights to the Export Markets;

e. Allocate export sales or divide the Export Markets among suppliers for the sale, licensing or distribution of Products, Services, and Technology Rights;

f. Establish the price of Products, Services, and Technology Rights for sale, licensing or distribution in the Export Markets;

g. Negotiate and manage licensing agreements for the export of Technology Rights; and

h. Collect information on trade opportunities in the Export Markets and distribute such information to clients.

Dated: January 4, 1994.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 94-395 Filed 1-6-94; 8:45 am]

BILLING CODE 3510-DR-P

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification No. 3 to permit No. 628, Indianapolis Zoo (P409).

SUMMARY: Notice is hereby given that Permit No. 628, issued to the Indianapolis Zoological Society, Inc., Indianapolis, Indiana, has been modified.

ADDRESSES: Documents pertaining to the permit and modification are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Northeast Region, NMFS, NOAA, One Blackburn Drive, Gloucester, MA 01930 (508/281-9300); and

Director, Southeast Region, NMFS, NOAA, 9450 Koger Boulevard, St. Petersburg, FL 33702 (813/893-3141).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 628, issued to the Indianapolis Zoological Society, Inc., Indianapolis, Indiana 46222, on April 13, 1988 (53 FR 12801), modified October 5, 1989 (54 FR

42321) and October 28, 1993 (58 FR 58686), is further modified as follows:

Section B.6, the first sentence is changed to read:

"6. The authority to acquire the *Pseudorca crassidens* authorized herein shall extend from date of issuance through February 28, 1994."

All other conditions currently contained in the permit remain in effect.

This modification is effective on January 1, 1994.

Dated: December 30, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-351 Filed 1-6-94; 8:45 am]

BILLING CODE 3510-22-M

National Oceanic and Atmospheric Administration.

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

SUMMARY: Notice is hereby given that a request for modification of Scientific Research Permit No. 810 submitted by the University of Hawaii at Manoa, 96-043 Ala Ike, Pearl City, HI 96782, has been granted.

ADDRESSES: The modification and related documents are available for review upon written request or by appointment in the following office(s): Office of Protected Resources, NMFS, NOAA, 1315 East-West Hwy., Room 13130, Silver Spring, MD 20910 (301/713-2289); Coordinator, Pacific Area Office, Southwest Region, NMFS, NOAA, 2570 Dole Street, Honolulu, HI 96822-2396 (808/955-8831); and, Director, Southwest Region, NMFS, NOAA, 501 W. Ocean Boulevard, Suite 4200, Long Beach, CA 90802-4213 (310/980-4016).

SUPPLEMENTARY INFORMATION: On November 18, 1993, notice was published in the **Federal Register** (58 FR 60850) that a modification of Permit No. 810, issued January 12, 1993, had been requested by the above-named organization . The requested modification has been granted under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the provisions of sections 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act (ESA) of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the provisions of § 222.25 of the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 810 is modified to include Hawaiian monk seals (*Monachus schauinslandi*) and several odontocete species indigenous to Hawaii.

Issuance of this Modification as required by the ESA of 1973 was based on a finding that such Permit: (1) Was applied for in good faith; (2) will not operate to the disadvantage of the endangered species which is the subject of this permit; and (3) is consistent with the purposes and policies set forth in Section 2 of the ESA.

Dated: December 28, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-350 Filed 1-6-94; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 7, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603-7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51-2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following services to the Procurement List for production by the nonprofit agency listed:

Services

Grounds Maintenance for the following U.S. Army Corps of Engineers Reservations:
- Bayou Boeuf Lock, Berwick Lock, East Calumet Floodgate, West Calumet Floodgate, Charenton Floodgate
- Morgan City Vicinity, Louisiana
- Nonprofit Agency: Bayou Industrial Maintenance Services, Inc., Berwick, Louisiana

Janitorial/Grounds Maintenance
- Child Development Center, U.S. Coast Guard Academy, New London, Connecticut
- Nonprofit Agency: Constructive Workshops, Inc., New Britain, Connecticut

Repair and Distribution of Government-owned Shoe Lasts
- Defense Personnel Support Center, Philadelphia, Pennsylvania
- Nonprofit Agency: Cleveland Skilled Industries, Cleveland, Ohio at its facility in Elyria, Ohio

Deletions

It is proposed to delete the following commodities from the Procurement List:

Paper, Teletypewriter
- 7530-00-262-9178
- 7530-00-721-9691
- 7530-00-223-7969

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-352 Filed 1-6-94; 8:45 am]

BILLING CODE 6820-33-P

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List a commodity, military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 7, 1994.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202-3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603-7740.

SUPPLEMENTARY INFORMATION: On October 1, November 15 and 19, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 51319, 60181 and 61073) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodity, military resale commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodity, military resale commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46-48c and 41 CFR 51-2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodity, military resale commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodity, military resale commodities and service.

3. The action will result in authorizing small entities to furnish the commodity, military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46-48c) in connection with the commodity, military resale commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodity, military resale commodities and service are hereby added to the Procurement List:

Commodity

Stake, Vehicle Body, Rack Assembly
2510-01-180-1099

Military Resale Commodities

Cutlery, Heavy Duty
- M.R. 532 (Place Settings)
- M.R. 533 (Knife)
- M.R. 534 (Fork)
- M.R. 535 (Spoon)

Service

Janitorial/Custodial
Riverside National Cemetery, 22495 Van Buren Boulevard, Riverside, California.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94-353 Filed 1-6-94; 8:45 am]

BILLING CODE 6820-33-P

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice,

The Department of Defense has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Title, Applicable Form, and Applicable OMB Control Number: Statement of witness/suspect/complainant; AF Form 1168.

Type of Request: Existing collection in use without an OMB control number.

Average Burden Hours/Minutes per Response: 20 Minutes.

Responses per Respondent: 1.

Number of Respondents: 168,000.

Annual Burden Hours: 55,400.

Annual Responses: 168,000.

Needs and Uses: This form is used to collect vital information from witnesses, suspects, and complainants in reference to criminal activity, disturbances, and other law enforcement matters on military installations. The affected public includes retirees, dependents, other Federal agency personnel, civilian contractors, businesses, and other Government representatives.

Affected Public: Individuals or households, State and local governments, Federal agencies or employees, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Mr. Edward C. Springer.

Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, Suite 1204, Arlington, Virginia 22202-4302.

Dated: January 3, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-373 Filed 1-6-94; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary

Establishment of the Department of Defense (DoD) Historical Advisory Committee

ACTION: Notice.

SUMMARY: The DoD Historical Advisory Committee is being established in consonance with the public interest, and in accordance with the provisions of Public Law 92-463, the "Federal Advisory Committee Act." This Committee will replace three historical advisory committees of the military departments which were terminated September 30, 1993 in response to Executive Order 12838, Office of Management and Budget Bulletin 93-10, "Termination and Limitation of Federal Advisory Committees."

The DoD Historical Advisory Committee will provide advice to the Secretary of Defense, the secretaries of the military departments, and the heads of other DoD components who participate, regarding the professional standards, historical methodology, program priorities, liaison with professional groups and institutions, and adequacy of resources connected with the various historical programs and associated activities of the DoD. These include historical, archival, museum, library, art, curatorial, and related programs.

The Committee will be composed of a diverse group of experts in historical disciplines, numbering 35 to 40 members who represent academic and professional institutions, and other historical fields of endeavor. Efforts will

be made to ensure a balanced membership, considering the functions to be performed and the interest groups represented.

For further information regarding the DoD Historical Advisory Committee, contact: Dr. Alfred Goldberg, the OSD Historian, (703) 697–4216.

Dated: January 3, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–372 Filed 1–6–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Environmental Response Task Force

AGENCY: Office of the Deputy Under Secretary of Defense (Environmental Security).

ACTION: Notice of business meeting and hearing.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a business meeting and hearing of the Defense Environmental Response Task Force. The purpose of the meeting is to follow up on the September 23, 1993, meeting and to present and discuss three draft issue papers on the environmental baseline survey, leasing, and the implementation of fast-track cleanup. The task force also will discuss ways to expedite and improve environmental response actions at military installations that are being closed or realigned pursuant to Public Law 100–536 and Public Law 101–510. The business meeting and hearing will be open to the public. Public witnesses desiring to speak before the Task Force should contact LTC William Andrews, USA, Task Force Executive Secretary, and prepare a written statement that can be summarized orally before the Task Force at the time to be fixed for public witnesses. Written statements must be received by the close of business, January 19, 1993, at the Office of the Deputy Under Secretary of Defense (Environmental Security).

DATES: January 26, 1993, 8 a.m.–5:30 p.m.

ADDRESSES: San Francisco Hilton & Towers, 333 O'Farrell Street, San Francisco, CA 94102–2189, Telephone (415) 771–1400.

FOR FURTHER INFORMATION, CONTACT: LTC William Andrews, USA, Task Force Executive Secretary, Office of the Deputy Under Secretary of Defense (Environmental Security), RM–3C771, the Pentagon, Washington, DC, 20301–8000, telephone (703) 697–7475 or (703) 697–9793.

Dated: January 2, 1994.

L. M. Bynum,

Alternate OSD Federal Register, Liaison Officer, Department of Defense.

[FR Doc. 94–303 Filed 1–6–94; 8:45 am]

BILLING CODE 5000–04–M

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[OMB Control No. 9000–0090]

Clearance Request for Rights in Data and Copyrights

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Notice of request for an extension to an existing OMB clearance (9000–0090).

SUMMARY: Under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3051), the Federal Acquisition Regulation (FAR) Secretariat has submitted to the Office of Management and Budget (OMB) a request to review and approve an extension of a currently approved information collection requirement concerning Rights in Data and Copyrights.

FOR FURTHER INFORMATION CONTACT: Beverly Fayson, Office of Federal Acquisition Policy, GSA (202) 501–4755.

SUPPLEMENTARY INFORMATION:

A. Purpose

Rights in Data is a regulation which concerns the rights of the Government, and organizations with which the Government contracts, to information developed under such contracts. The delineation of such rights is necessary in order to protect the contractor's rights to not disclose proprietary data and to insure that data developed with public funds is available to the public.

The information collection burdens and recordkeeping requirements included in this regulation fall into the following four categories.

(a) A provision which is to be included in solicitations where the proposer would identify any proprietary data he would use during contract performance in order that the contracting officer might ascertain if such proprietary data should be delivered.

(b) Contract provisions which, in unusual circumstances, would be included in a contract and require a contractor to deliver proprietary data to the Government for use in evaluation of work results, or is software to be used in a Government computer. These situations would arise only when the very nature of the contractor's work is comprised of limited rights data or restricted computer software and if the Government would need to see that data in order to determine the extent of the work.

(c) A technical data certification for major systems, which requires the contractor to certify that the data delivered under the contract is complete, accurate and compliant with the requirements of the contract. As this provision is for major systems only, and few civilian agencies have such major systems, only about 30 contracts will involve this certification.

(d) The Additional Data Requirements clause, which is to be included in all contracts for experimental, developmental, research, or demonstration work (other than basic or applied research to be performed solely by a university or college where the contract amount will be $500,000 or less). The clause requires that the contractor keep all data first produced in the performance of the contract for a period of three years from the final acceptance of all items delivered under the contract. Much of this data will be in the form of the deliverables provided to the Government under the contract (final report, drawings, specifications, etc.). Some data, however, will be in the form of computations, preliminary data, records of experiments, etc., and these will be the data that will be required to be kept over and above the deliverables. The purpose of such recordkeeping requirements is to insure that the Government can fully evaluate the research in order to ascertain future activities and to insure that the research was completed and fully reported, as well as to give the public an opportunity to assess the research results and secure any additional information. All data covered by this clause is unlimited rights data paid for by the Government.

Paragraph (d) of the Rights in Data—General clause outlines a procedure whereby a contracting officer can challenge restrictive markings on data delivered. Under civilian agency contracts, limited rights data or restricted computer software is rarely, if ever, delivered to the Government. Therefore, there will rarely be any challenges. Thus, there is no burden on the public.

Under the procedures established for development of the FAR, agency and public comments were solicited and each comment was addressed before

finalization of the text. The comments which were received were for the most part from educational institutions, which stated that requiring their investigators to keep records of unlimited rights data for three years after acceptance of deliverables was unreasonable, in that such investigators in reality do not segregate their research by contract, but rather combine it with other data in order to continue their research. In light of this, the proposed rule was changed to state that the Additional Data Requirements clause would not be placed in contracts for basic or applied research with educational institutions where the value was $500,000 or less. The $500,000 threshold was adopted after surveying the major civilian research and development (R&D) agencies, whose data suggested that an average R&D contract was $250,000 to $300,000; commensurate with other clause thresholds (e.g., small business subcontracting), the $500,000 threshold was chosen. Thus, for most R&D contracts with universities, no recordkeeping is required.

B. Annual Reporting Burden

The annual reporting burden is estimated as follows: Respondents, *1,100*; responses per respondent, *1*; total annual responses, *1,100*; preparation hours per response, *2.7*; and total response burden hours, *2,970*.

C. Annual Recordkeeping Burden

The annual recordkeeping burden is estimated as follows: Recordkeepers, *9,000*; hours per recordkeeper, *3*; and total recordkeeping burden hours, *27,000*

OBTAINING COPIES OF PROPOSALS: Requester may obtain copies of OMB applications or justifications from the General Services Administration, FAR Secretariat (VRS), room 4037, Washington, DC 20405, telephone (202) 501–4755. Please cite OMB Control No. 9000–0090, Right in Data and Copyrights, in all correspondence.

Dated: December 28, 1993.

Beverly Fayson,

FAR Secretariat.

[FR Doc. 94–361 Filed 1–6–94; 8:45 am]

BILLING CODE 6820–34–M

Office of the Secretary

Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation

ACTION: Notice of Advisory Committee Meeting.

SUMMARY: The Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation will meet in open session on January 27–28, 1994 at the Pentagon, Room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Amy Jeffress at (703) 697–7228.

Dated: January 3, 1994.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–369 Filed 1–6–94; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Readiness

ACTION: Notice of Advisory Committee Meetings.

SUMMARY: The Defense Science Board Task Force on Readiness will meet in closed session on January 7, 14, and 19, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense (Acquisition and Technology) on scientific and technical matters as they affect the perceived needs of the Department of Defense. At these meetings the Task Force will provide advice, recommendations, and supporting rationale on the components of a Readiness Early Warning System to insure that our forces do not become "hollow," and, where deficiencies may begin to emerge, to suggest corrective actions.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II, (1988)), it has been determined that these DSB Task Force meetings, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly these meetings will be closed to the public.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–370 Filed 1–6–94; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary of Defense

Department of Defense Wage Committee; Notice of Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, February 1, 1994; Tuesday, February 8, 1994; Tuesday, February 15, 1994; and Tuesday, February 22, 1994, at 2 p.m. in room 800, Hoffman Building #1, Alexandria Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b.(c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b.(c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b.(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC. 20310.

Dated: January 3, 1994.

L.M. Bynum,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-371 Filed 1-6-94; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

Addendum to the Environmental Impact Statement for the Modification of Military Special Use Airspace To Support the 140th Fighter Wing, Colorado Air National Guard Buckley Air National Guard Base, Aurora, Colorado; Notice of Intent

The United States Air Force and the Air National Guard are announcing an addendum to the Colorado Airspace Initiative Environmental Impact Statement (EIS).

The addendum modifies proposed actions and alternatives to the Colorado Airspace Initiative Environmental Impact Statement as a result of the recently enacted Colorado Wilderness Act of 1993 and the Air National Guard's policy regarding aircraft overflight of Wilderness and Wild & Scenic River Areas.

The Air Force and Air National Guard are planning to conduct a Scoping meeting at the Blanca/Fort Garland Community Center, Fort Garland, Colorado, February 1, 1994, 5 p.m. ending at approximately 10 p.m. Additional nights will be scheduled depending upon attendance and will be announced at the meeting.

The purpose of this meeting is to present information concerning the addendum and to solicit public input with respect to issues to be addressed, effort to be expended, and alternatives that should be addressed in the EIS. Questions or clarifications concerning the proposal or any other information presented will be answered as they relate to the scope of the effort anticipated.

The Scoping meeting will include opportunities for clarification of the addendum and statements from representatives of government agencies and the public. To ensure the maximum opportunity for public participation, initial presentations and questions by individuals will be limited to a maximum of five minutes until all those desiring an opportunity to speak have been accommodated. Additional presentations and questions will be accepted at the end of the meeting. Submission of written comments and questions will be accepted. Submission of written comments is encouraged but is not required. Written comments and questions of any length submitted at the meeting or during the public comment period will be considered in their entirety.

To ensure the Air Force and the Air National Guard have sufficient time to consider public input on issues and alternatives in the preparation of the Draft EIS, comments should be submitted to the address below by February 28, 1994. The Air Force and Air National Guard will accept comments at the address below at any time during the environmental impact analysis process.

For further information concerning the addendum, preparation of the EIS for the Colorado Airspace Initiative, or to provide written comment, contact:

Environmental Support, Air National Guard Readiness Center, ANGRC/CEVS, Attention: Mr. Harry A. Knudsen, Jr., 3500 Fetchet Avenue, Mail Stop 18, Andrews Air Force Base, MD 20331-5157, Telephone: (301) 981-8143.

List of Subjects

Environmental Protection, Environmental Impact Statement, US Air Force-Air National Guard, Buckley ANGB, Colorado, Notice of Intent Addendum to the Environmental Impact Statement for the Modifications of Military Special Use Airspace to Support the 140th Fighter Wing, Colorado Air National Guard Buckley Air National Guard Base, Aurora, Colorado.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 94-302 Filed 1-6-94; 8:45 am]

BILLING CODE 3910-01-W

Department of the Navy

Record of Decision for Construction of Element II Breakwater/Pier at Naval Station Puget Sound, Everett, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 and the Council on Environmental Quality Regulations (40 CFR part 1500-1508), the Department of the Navy announces its decision to construct a breakwater/pier at Naval Station Puget Sound, Everett, Washington. This action was identified as the preferred alternative in the Draft and Final Supplemental Environmental Impact Statements (DSEIS/FSEIS) distributed to the public in March and November, 1993, respectively. The process leading to the SEIS and this decision are consistent with a Settlement Agreement with the Friends of the Earth, *et al.* concerning homeporting actions at Everett.

Comments received from the public on the DSEIS and during a public hearing held in April 1993 were concerned primarily with potential impacts from dredging and breakwater/pier physical obstruction/shading of salmonid migrations. These concerns were responded to in the FSEIS and there were no public comments on the FSEIS. The Navy is not aware of any remaining unresolved environmental issues.

The Element II breakwater/pier project consists of dredging and construction of a pile-supported breakwater/pier. The breakwater/pier will allow berthing for the currently planned ship-mix which cannot be adequately accommodated at the Element I facilities, and will provide wave attenuation for ships berthed at the Carrier Pier. The breakwater/pier will also provide for fish passage. Element II projects will not increase the number of vessels or personnel to be stationed at Everett, over those planned for in Element I.

The project will require dredging and disposal of about 150,000 cubic yards of marine sediments, construction of a baffle-wall breakwater structure, and, at a later date, conversion of the structure into a breakwater pier capable of berthing Navy ships. Dredging and construction of the breakwater component is expected to begin in Fiscal Year (FY) 1994. Construction of the pier component is scheduled to begin in FY 1997. The material to be dredged has been determined to be acceptable for disposal at the Port Gardner, Puget Sound Dredged Disposal site. Dredging will be scheduled to avoid the out-migration of juvenile salmon from the Snohomish River from March 15 to July 1.

The no action alternative was dismissed from further consideration because it would make it impracticable for the Navy to safely complete its mission at an established home port. Alternative designs and concepts for wave attenuation and berthing were evaluated in the SEIS and were rejected in preference to the proposed action for environmental, operational, and safety reasons that were described in detail in the DSEIS/FSEIS. The FSEIS incorporates the DSEIS by reference and the two must be used in conjunction.

The proposed action will not impact federally protected wetlands or endangered species. The proposed action conforms with the Washington State Implementation Plan for meeting ambient air quality standards. The proposed action will not impact archaeological, cultural, or historic resources listed, or determined eligible for listing, on the National Register of Historic Places. The Navy has determined that the proposed action is consistent with the maximum extent practicable with the Washington State Coastal Zone Management Plan.

Questions regarding the SEIS prepared for this action may be directed to the Engineering Field Activity Northwest, Naval Facilities Engineering Command, (Attn: Mr. Don Morris), 3505 NW Anderson Hill Road, Silverdale, Washington, telephone (206) 396-5976.

Dated: January 3, 1994.

Elsie L. Munsell,

Deputy Assistant Secretary of the Navy (Environment and Safety).

Dated: January 4, 1994.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 94-368 Filed 1-6-94; 8:45 am]

BILLING CODE 3810-AE-M

Department of the Army

Advance Notice of Intent To Implement Changes in DOD Airlift Procurement Responsibilities

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of intent.

SUMMARY: Headquarters, Military Traffic Management Command (HQMTMC) will transfer its airlift procurement responsibilities to Headquarters, Air Mobility Command (HQAMC) effective 1 January 1994. The decision to transfer these responsibilities responds to Commander-in-Chief, United States Transportation Command memorandum, September 27, 1993, subject: USTRANSCOM Single Points of Contact (POC) for Airlift—Action Memorandum. The current procedures for airlift procurement, agreement, and process responsibilities: Air Carrier Qualification; Air Carrier Service Evaluation; Air Freight Voluntary Tenders; General Services Administration (GSA) Small Package Program; Uniform Passenger Tender for Air; Group Passenger Movements; Military Air Transport Agreement (MATA); and the Carrier Review Board (air carrier only) process. The effect of this transfer will be to consolidate airlift procurement functions with HQAMC. HQMTMC will continue to be the traffic management interface with DOD customers for transportation requirements and the procurement of CONUS land transportation.

EFFECTIVE DATES: Effective dates of transfer of responsibilities are provided in supplementary information.

ADDRESSES: Headquarters, Military Traffic Management Command, ATTN: MTOP-T-M/LTC Moore, 5611 Columbia Pike, Falls Church, VA 22041-5050.

FOR FURTHER INFORMATION CONTACT: LTC John Moore, (703) 756-1196.

SUPPLEMENTARY INFORMATION: HQAMC will assume responsibilities for the following functions as indicated and become USTRANSCOM's single POC for airlift procurement to the air carrier industry. Summaries of the changes are as follows:

a. Air Carrier Qualification and Service Evaluation. HQAMC assumes responsibility for these functions effective January 1, 1994. This includes service evaluations under pre-January 1, 1994 solicitations. HQMTMC's airlift qualification and service evaluation authority expire as of midnight, December 31, 1993. HQAMC will publish new air carrier qualification and evaluation instructions.

b. Air Freight Voluntary Tenders. Air carriers will submit voluntary tenders in accordance with (IAW) HQAMC instructions effective January 1, 1994. HQAMC will process the tenders and, when approved, forward the tenders to MTMC Eastern Area Command for inclusion into the CONUS Freight Management System. HQMTMC will continue to provide the single POC for traffic management interface with the shipper. HQMTMC's air freight voluntary tender authority expires as of midnight, December 31, 1993. HQAMC will publish new voluntary tender instructions.

c. The GSA Small Package Program. HQAMC becomes the USTRANSCOM POC with GSA on January 1, 1994. Military services will continue to submit their requirements to HQMTMC in accordance with the Defense Traffic Management Regulation (DTMR). HQMTMC will forward requirements to HQAMC which will provide DOD requirements to GSA. GSA will award traffic and inform HQAMC and HQMTMC of the carriers and rates. HQMTMC will continue to provide the single POC for traffic management interface with the shipper. HQMTMC's POC responsibilities with GSA expire as of midnight, December 31, 1993.

d. Uniform Passenger Tender for Air. HQAMC will solicit uniform passenger tenders for air services starting January 1, 1994. Military services will continue to submit their requirements to HQMTMC IAW the DTMR. HQMTMC will forward requirements to HQAMC which will solicit the air industry for rates. HQAMC will process air carrier tenders and, when approved, forward tenders to HQMTMC for inclusion into the group move and recruit passenger systems. HQMTMC will continue to provide the single POC for traffic management and land procurement services with the shipper. HQMTMC's passenger tender authority expires as of midnight, December 31, 1993. HQAMC will publish new air passenger tender instructions.

e. Group Passenger Movements. HQAMC will procure air carrier services for group movements starting January 1, 1994. Military services will continue to submit their requirements to HQMTMC IAW the DTMR. HQMTMC will forward requirements to HQAMC which will process the solicitation and resulting air offers of service and forward the offers of service to HQMTMC via the Groups Operational Passenger system for evaluation. HQAMC will make air carrier awards. HQMTMC will continue to be the single POC for DOD passenger requirements and traffic management. HQMTMC's responsibilities regarding bus and rail carriers do not change. HQMTMC's passenger airlift procurement authority expires as of midnight, December 31, 1993. HQAMC will publish new airlift procurement instructions.

f. Direct Procurement Method (DPM) Air (Personal Property) Procedures. Military services will continue to submit their requirements to HQMTMC IAW the Personal Property Traffic Management Regulation. HQMTMC will forward requirements to HQMAMC which will solicit rates from the air industry. HQAMC will process air carrier rates and, when approved, forward the rates to HQMTMC for inclusion into the personal property systems. HQMTMC will continue to provide the single POC for traffic management interface with the shipper. HQMTMC's airlift DPM procurement authority expires with the solicitation of the International Winter Cycle—94 (Estimated—May 1994). HQAMC will publish new airlift procurement instructions.

g. Military Air Transport Agreement (MATA). HQAMC will publish a new MATA for comment and implementation on March 1, 1994.

h. Carrier Review Board process. HQAMC will publish new carrier review board (nonuse and disqualification) procedures for comment and implementation on January 1, 1994. Carrier review boards in process as of December 31, 1993 will continue under the authority of HQMTMC until the boards are finalized

or board findings expire. Long term board findings may be transferred to HQAMC.

Existing solicitations and traffic awards will continue under the authority of HQMTMC until they expire or are assumed by HQAMC.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94-489 Filed 1-6-94; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF EDUCATION

National Assessment Governing Board Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of Teleconference Meetings.

SUMMARY: This notice sets forth the schedule and proposed agenda of forthcoming meetings of the Executive Committee of the National Assessment Governing Board. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

Dates: January 25, 1994 and February 15, 1994.

Time: 11 a.m. (e.t.) to 1 p.m. (e.t.).

Location: National Assessment Governing Board, 800 North Capitol Street, NW., suite 825, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mary Ann Wilmer, Operations Officer, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC 20002-4233, Telephone: (202) 357-6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), Title III-C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100-297), (20 U.S.C. 1221e-1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. The Board is responsible for selecting subject areas to be assessed, developing assessment objectives, identifying appropriate achievement goals for each grade and subject tested, and establishing standards and procedures for interstate and national comparisons.

The Executive Committee of the National Assessment Governing Board will meet on January 25, 1994 from 11 a.m. until 1 p.m. and on February 15, 1994 from 11 a.m. until 1 p.m. Because these are teleconference meetings, facilities will be provided so the public will have access to the Committee's deliberations. There are two agenda items for the meeting on January 25, 1994, (1) discussion of issues related to reporting results of the Reading assessment, and (2) a briefing of the NCES/NAGB joint conference on standard-setting.

The meeting scheduled for February 15, 1994 will be held from 11 a.m. to 1 p.m. The Committee will review and approve the agenda for the March meeting of the Board.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 825, 800 North Capitol Street, NW., Washington, DC from 8:30 a.m. to 5 p.m.

Dated: January 5, 1994.

Roy Truby,

Executive Director, National Assessment Governing Board.

[FR Doc. 94-343 Filed 1-6-94; 8:45 am]

BILLING CODE 4000-01-M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to submit a request for a waiver of the allocation reduction for the underuse of funds under the Federal Perkins Loan, Federal Work-Study (FWS), or Federal Supplemental Educational Opportunity Grant (FSEOG) programs (known collectively as the campus-based programs).

SUMMARY: The Secretary gives notice to institutions of higher education of the deadline for an institution to submit a written request for a waiver of the allocation reduction being applied to its Federal Perkins Loan, FWS, or FSEOG allocation for the 1994-95 award year (July 1, 1994 through June 30, 1995) because the institution returned more than 10 percent of its allocation for that program for the 1992-93 award year (July 1, 1992 through June 30, 1993).

DATES: Closing Date for Submitting a Waiver Request and any Supporting Information or Documents. For an institution that returned more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for the 1992-93 award year to be considered for a waiver of the allocation reduction for its 1994-95 award year allocation, it must mail or hand-deliver its waiver request and any supporting information or documents on or before February 18, 1994. The Department will not accept a waiver request submitted by facsimile transmission. The waiver request must be submitted to the Campus-Based Programs Financial Management Division at one of the addresses indicated below.

ADDRESSES: Waiver Request and any Supporting Information or Documents Delivered by Mail. The waiver request and any supporting information or documents delivered by mail must be addressed to Gloria Easter, Chief, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, room 4621, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202-5452. An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice, or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If a waiver request is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An institution should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an institution should check with its local post office.

An institution is encouraged to use registered or at least first class mail. Institutions that submit waiver requests and any supporting information or documents after the closing date will not be considered for a waiver of the allocation reduction being applied to its allocation under any of the campus-based programs for award year 1994-95.

Waiver Requests and any Supporting Information or Documents Delivered by Hand. A waiver request and any supporting information or documents delivered by hand must be taken to Gloria Easter, Chief, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, room 4621, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. Hand-delivered waiver requests will be accepted between 8 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. A waiver request for the 1994-95 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under sections 413D(e)(2), 442(e)(2), and 462(j)(4) of the Higher Education Act of 1965, as amended, if an institution returns more than 10 percent of its Federal Perkins Loan, FWS, or FSEOG allocation for an award year, the institution will have its allocation for the next fiscal year for that program reduced by the dollar amount returned. The Secretary may waive this requirement for a specific institution if the Secretary finds that enforcement of the requirement would be contrary to the interest of the affected campus-based program.

The institution must provide a written waiver request and any supporting information or documents by the established February 18, 1994 closing date. The waiver request must be signed by an appropriate institutional official and above the signature the official must include the statement: "I certify that the information the institution provided in this waiver request is true and accurate to the best of my knowledge. I understand that the information is subject to audit and program review by representatives of the Secretary of Education." If the institution submits a waiver request and any supporting information or documents after the closing date, the request will not be considered.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR part 668.

(2) Federal Perkins Loan Program, 34 CFR part 674.

(3) Federal Work-Study Program, 34 CFR part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR part 600.

(6) New Restrictions on Lobbying, 34 CFR part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR part 85.

(8) Drug-Free Schools and Campuses, 34 CFR part 86.

FOR FURTHER INFORMATION CONTACT: For technical assistance concerning the waiver request or other operational procedures of the campus-based programs, contact: Gloria Easter, Chief, Fund Control Branch, Campus-Based Programs Financial Management Division, Accounting and Financial Management Service, Student Financial Assistance Programs, U.S. Department of Education, room 4621, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202-5452, Telephone (202) 708-7741. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.038 Federal Perkins Loan Program)

Dated: December 30, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94-315 Filed 1-6-94; 8:45 am]

BILLING CODE 4000-01-P

DEPARTMENT OF ENERGY

Notice of Determination To Renew the Secretary of Energy Advisory Board

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act and in accordance with title 41 of the Code of Federal Regulations, § 101-6.1015, and following consultation with the Committee Management Secretariat of the General Services Administration, notice is hereby given that the Secretary of Energy Advisory Board (the Board) has been renewed for an additional two years.

The committee will continue to provide expert advice to the Secretary of Energy on the Department's research, development, and technology activities; energy and national security responsibilities; economic issues relating to energy; and expert guidance in other activities and operations of the Department at the Secretary's request.

The Board members are selected to assure well-balanced representation from all sections of the country and on the basis of their professional experience and broad competence in areas relating to energy policy, science and technology, environmental science and policy, economics and other broad societal interests. Membership and representation of all interests will continue to be determined in accordance with the requirements of the Federal Advisory Committee Act, section 624(b) of the Department of Energy Organization Act (Pub. L. 95-91), and implementing regulations.

The renewal of the Board has been determined essential to the conduct of the Department's business and in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Board will operate in accordance with the provisions of Federal Advisory Committee Act (Pub. L. 92-463), the Department of Energy Organization Act (Pub. L. 95-91), the General Services Administration Final Rule on Federal Advisory Committee Management, and other directives and instructions issued in implementation of those acts.

Further information regarding this advisory committee can be obtained from Rachel M. Samuel at (202) 586-3279.

Issued in Washington, DC on: January 3, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94-386 Filed 1-6-94; 8:45 am]

BILLING CODE 6450-01-M

Financial Assistance: Aluminum Company of America (ALCOA); Cooperative Agreement

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice of intent.

SUMMARY: The U.S. Department of Energy, Idaho Operations Office, announces that pursuant to the DOE Financial Assistance Rules 10 CFR 600.14(e), it intends to award a new start Cooperative Agreement Number DE-FC07-94ID13237 to the Aluminum Company of America (ALCOA). The objective of this project is the development of an advanced fluidized bed pressure calciner. The project consists of two phases and is aimed at development of an advanced, energy efficient-pressure mineral calciner for the processing of bauxite to smelting grade alumina (SGA). The objective of this agreement is to provide funds for the work performed under Phase I; the design, fabrication, and test of a three-tube pilot plant (100 kg/hr). The Federal Domestic Catalog Number is 81.078.

FOR FURTHER INFORMATION CONTACT: Linda A. Hallum, U.S. Department of Energy, Idaho Operations Office, 785 DOE Place, MS 1221, Idaho Falls, Idaho 83401–1562, (208) 526–5545.

SUPPLEMENTARY INFORMATION: The statutory authority for the proposed award is the Steel and Aluminum Energy Conservation and Technology Competitiveness Act of 1988 (Pub. L. 100–680). The proposal meets the criteria for "unsolicited applications" for financial assistance as set forth in 10 CFR 600.14(e). The application is meritorious based on the general evaluation and the proposed project represents a unique approach to addressing a process in an energy intensive industry which would not be eligible for financial assistance under a recent, current, or planned solicitation. The anticipated total project period to be awarded is (6) years. The funds for this cooperative agreement are to be shared by DOE for 70% and ALCOA for 30% for a total estimated project cost of 13,798,100.

David W. Newnam,

Acting Director, Procurement Services Division.

[FR Doc. 94–383 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Financial Assistance Award; Purdue Research Foundation

AGENCY: U.S. Department of Energy.

ACTION: Intent to award based on an unsolicited application.

SUMMARY: The Department of Energy announces that pursuant to the provisions of 10 CFR 600.14, it intends to renew Grant No. DE–FG02–85CE40772 based on an unsolicited application received from Purdue Research Foundation for research and development in the Production of Higher Value Chemicals from Food Process Wastes Using a Novel Fermentor-Separator. The determination to renew this grant is based on the following information: A technical evaluation of the proposed project was performed pursuant to 10 CFR 600.14 (d) and (e). It is determined that the proposed project is meritorious based on the fact that it will provide value to all food processing companies with similar product waste streams. The probability of achieving the anticipated objectives are extremely high. The facilities and qualifications of the key personnel are appropriate. DOE knows of no other entity which is conducting or planning to conduct such an effort. This effort is not considered suitable for competitive financial assistance. The DOE share of funding is estimated at $589,000 for the three year project period and shall be used to pay for salaries and wages, fringe benefits, equipment, travel, direct and indirect costs. The anticipated term of the renewal period is March 1, 1994 through February 28, 1997.

FOR FURTHER INFORMATION CONTACT: Frederick T. Sienko, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2115. Ms. Kerry Cullerton, U.S. Department of Energy, Chicago Operations Office, Contracts Division, 9800 South Cass Avenue, Argonne, IL 60439, (708) 252–2107.

Issued in Chicago, Illinois on December 20, 1993.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–381 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–08; Microbial Genome Initiative

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Health and Environmental Research (OHER) of the Office of Energy Research, U.S. Department of Energy (DOE), hereby announces its interest in receiving applications for a cooperative agreement in support of the Microbial Genome Initiative. This new initiative will focus on developing a microbial genome sequencing capability that will provide genomic sequence and mapping information: (i) On microorganisms with environmental or energy relevance; (ii) of phylogenetic relevance; and (iii) of potential commercial importance and application. One to five awards are anticipated, from a total of approximately $3 million, subject to the availability of appropriated funds.

DATES: Formal applications in response to this notice should be received by 4:30 p.m., E.D.T., April 21, 1994, to be accepted for merit review and funding in FY 1994.

ADDRESSES: Formal applications referencing Program Notice 94–08 should be forwarded to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, Washington, DC 20585, ATTN: Program Notice 94–08. The following address must be used when submitting applications by U.S. Postal Service Express Mail or any commercial mail delivery service, or when hand-carried by the applicant: U.S. Department of Energy, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Dr. D. Jay Grimes, Environmental Sciences Division, ER–74, Office of Health and Environmental Research, Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, telephone 301–903–4183.

SUPPLEMENTARY INFORMATION: Molecular biological research on industrially important microorganisms and on microorganisms which live in extreme environments (including the deep subsurface, geothermal environments, and toxic waste sites) is a developing area of great scientific promise which will impact many DOE missions and U.S. industry. This new Microbial Genome Initiative will support diverse DOE program objectives, by providing microbial DNA sequence information that will further the understanding of microbial phylogeny, physiology and structural biology, and that will facilitate the exploitation of opportunities which have considerable direct industrial utility. This new thrust in exploring microbial genomic sequence diversity is a natural outgrowth of current OHER sponsored programs, including chromosome mapping and DNA sequencing technologies from the Human Genome Program, structural biology studies utilizing OHER-supported facilities and synchrotrons located at DOE laboratories, and molecular microbiological research supported by the Subsurface Science and Ocean Margins Programs. Conversely, this Microbial Genome Initiative could benefit directly from capabilities at DOE national laboratories, DOE and National Institutes of Health Human Genome Centers, and university capabilities, including the DOE-sponsored Subsurface Microbial Culture Collection. It could also be enriched by protein engineering efforts coupled with rapid structure determination using intense x-ray sources and powerful Nuclear Magnetic Resonance (NMR) technology. Thus, this initiative represents a considerable interdisciplinary effort and will contribute to, and draw from, a wide variety of public and private programs.

Applicants must demonstrate that they can apply the most recent, cost-effective technology to the production of sequence data and that they can adequately and efficiently accumulate and store those data for future interpretation and application. A plan for making the sequence data publicly available must be included in the application's description of work portion. Preference will be given to those applicants that demonstrate well developed plans for selecting candidate microorganisms for DNA sequencing. Candidate groups of microorganisms include, but are not limited to, eukaryotes, prokaryotes, and archaebacteria. The plan should include the creation of an advisory board (the Microbial Genome Advisory Board, MGAB) that will: (i) Oversee the program, and; (ii) approve proposed candidates for sequence development. Priorities regarding what to sequence would be made by the MGAB with direction from DOE. One model for a Microbial Genome Project would be a centralized sequencing facility that interacts with a changing consortium of other institutions. Applicants are encouraged to create process- and cost-effective partnerships that will maximize sequence data production, data dissemination, and progress towards understanding basic biological mechanisms that can further development of biotechnology. Joint support with industry is encouraged. The recipient of an award will be peer reviewed toward the end of the second year of the award and subsequently as needed to ensure high quality work.

Potential applicants are strongly encouraged to submit a brief preapplication, in accordance with 10 CFR 600.10(d)(2), which consists of two to three pages of narrative describing the research objectives and method of accomplishment. Preapplications will be reviewed relative to the scope and research needs of the OHER Microbial Genome Initiative, as outlined in the above **SUMMARY** paragraph to determine the suitability of an applicant's submitting a formal application. Preapplications referencing Program Notice 94–08 should be received by February 18, 1994, and sent to the following address: Dr. D. Jay Grimes, Office of Health and Environmental Research, ER–74, Office of Energy Research, U.S. Department of Energy, Washington, DC 20585, 301–903–4183, FAX 301–903–8519; electronic mail is acceptable for preapplications, although e-mail preapplicants should confirm an e-mail transmission by telephone (Internet address is darrell.grimes@mailgw.er.doe.gov). Principal investigator telephone and FAX numbers are required as part of the preapplication. A response to each preapplication discussing the potential programmatic relevance of a formal application will be communicated to the Principal Investigator within 30 days of receipt.

It is anticipated that approximately $3 million will be available for this award contingent on availability of appropriated funds. Multiple year funding is expected for the Microbial Genome Initiative, also contingent on availability of funds.

Information about development and submission of applications, eligibility, limitations, evaluation, selection processes, and other policies and procedures may be found in the Application Guide for the Office of Energy Research Financial Assistance Programs and 10 CFR part 605. The Office of Energy Research (ER), as part of its grant regulations, requires at 10 CFR 605.11(b) that a grantee funded by ER and performing research involving recombinant DNA molecules shall comply with the National Institutes of Health "Guidelines for Research Involving Recombinant DNA Molecules" (51 FR 16958, May 7, 1986), or such later guidelines as may be published in the **Federal Register**.

The technical portion of the application should not exceed thirty (30) pages, exclusive of attachments.

The Application Guide is available from the U.S. Department of Energy, Office of Health and Environmental Research, ER–74, Washington, DC 20585. Telephone requests may be made by calling 301–903–4902.

The Catalog of Federal Domestic assistance Number for this program is 81.049.

Issued in Washington, DC, on December 22, 1993.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 94–384 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–P

Advisory Committee To Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management; Open Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770) notice is hereby given of the following Advisory Committee meeting: Federal Advisory Committee to Develop On-Site Innovative Technologies for Environmental Restoration and Waste Management (FAC–DOIT).

DATES: Monday, January 31, 1994: 4:30 p.m.–5:45 p.m.

ADDRESSES: J.W. Marriott at National Place, 1331 Pennsylvania Avenue, NW., Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: Dr. Clyde Frank, Deputy Assistant Secretary, Technology Development, EM–50, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–6382.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The FAC–DOIT serves as the primary vehicle for implementing a Memorandum of Understanding (MOU) regarding cooperative technology development for environmental restoration and waste management in the western states. This MOU was signed in 1991 by representatives of the Department of Defense, Interior, Energy, the Environmental Protection Agency and the Western Governors' Association (WGA), the latter representing twenty western states and territorial governors. The DOIT Committee's purpose is to improve Federal environmental restoration and waste management efforts by identifying technology needs at Federal facilities in western states; identifying and assessing emerging technologies within the Federal and private sectors; identifying regulatory, institutional or other governmental barriers to technology development; and identifying workforce planning and education requirements.

Tentative Agenda

Monday, January 31, 1994

4:30 p.m. Introductory remarks by Governor Miller of Nevada, Chairman of the WGA; remarks by Dr. Clyde Frank, Designated Federal Official for the Advisory Committee

4:40 p.m. Overview of working group fact finding reports by Jim Souby, Executive Director, WGA; Discussion and announcements by Federal agencies and states; Recommendations of the Advisory Committee; Charge to the Advisory Committee by the sponsoring agency

5:30 p.m. Open time for public comment

5:45 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with

the Committee either before or after the meeting. Individuals who wish to make oral statements pertaining to agenda items should contact Dr. Clyde Frank's office at the address or telephone number listed above. Requests must be received 5 days prior to the meeting and reasonable provision will be made to include the presentation in the agenda. The Designated Federal Official is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Executive summaries of reports presented and recommendations made will be available at the meeting.

Minutes

The minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday–Friday, except Federal holidays.

Issued at Washington, DC, on January 3, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–388 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Fleet Conversion Task Force; Meeting

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of Executive Order 12844, notice is hereby given of a meeting of the Federal Fleet Conversion Task Force.

DATES: January 24, 1994: 1 p.m.–4 p.m.

ADDRESSES: Sheraton Gateway, 1900 Sullivan Road, College Park, GA 30337.

FOR FURTHER INFORMATION CONTACT: Tom P. Foltz, Assistant to the Assistant Secretary for Policy, Planning and Program Evaluation, PO–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4264.

SUPPLEMENTARY INFORMATION: The Federal Fleet Conversion Task Force, established by Executive Order 12844, has been charged with developing and recommending a coordinated public and private sector plan for accelerating the commercialization, production and market acceptance of alternatively fueled vehicles nationwide. Along with this plan, the task force has also recommended an implementation strategy to carry out this plan. The Task Force's First Interim Report was presented to the Secretary of Energy on October 8, 1993 and to the President on December 9, 1993.

The Secretary of Energy, has overall responsibility for carrying out the mandates set forth in the Energy Policy Act concerning the use of alternatively fueled vehicles in the Federal fleet of automobiles to alternative fuels.

Tentative Agenda

Monday, January 24, 1994

1 p.m. Welcome and opening remarks
- Garry Mauro—Chairman, Texas Land Commissioner
- Susan Tierney—Vice Chair, Assistant Secretary for Policy, Planning & Program Evaluation, United States Department of Energy

1:15 p.m. Olympics Presentation

1:30 p.m. Discussion of Implementation Strategy and Final Recommendations of Federal Fleet Conversion Task Force

2:30 p.m. Break

2:45 p.m. Re-convene for further discussion of Implementation Strategy and Final Recommendations of Federal Fleet Conversion Task Force

3:45 p.m. Period of Public Comment

4 p.m. Adjourn

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Task Force Staff either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Tom Foltz at the address and telephone number listed above. Request must be made 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda. Depending on the number of requests, comments may be limited to five minutes. The Designated Federal Officer is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcript and Minutes

A transcript and minutes of this meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Ave., SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. Copies of the minutes will also be available by request.

Issued at Washington, DC, on January 3, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–385 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

High Energy Physics Advisory Panel; Open Meeting

Purusant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: High Energy Physics Advisory Panel (HEPAP).

Date and Time: Friday, January 28, 1994, 9 a.m.–5 p.m.; Saturday, January 29, 1994, 9 a.m.–4 p.m.

Place: Brookhaven National Laboratory, Berkner Hall, room B, Upton, New York 11973.

Contact: Dr. Enloe T. Ritter, Executive Secretary, High Energy Physics Advisory Panel, U.S. Department of Energy, ER–221, GTN, Washington, DC 20585, Telephone: (301) 903–4829.

Purpose of Panel: To provide advice and guidance on a continuing basis with respect to the high energy physics research program.

Tentative Agenda

Friday, January 28, 1994, and Saturday, January 29, 1994

—Discussion of National Science Foundation (NSF) Elementary Particle Physics Programs
—Discussion of Department of Energy (DOE) High Energy Physics Programs
—Discussion of Department of Energy Superconducting Super Collider (SSC) Project Closeout Activities
—Presentation and Discussion of the Brookhaven National Laboratory High Energy Physics Program
—Report on Subpanel Activities
—Reports on and Discussions of Topics of General Interest in High Energy Physics
—Public Comment (10 minute rule)

Public Participation: The meeting is open to the public. The Chairperson of the Panel is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to make oral statements pertaining to agenda items should contact the Executive Secretary at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provision will be made to include the presentation on the agenda.

Minutes: Available for public review and copying at the Public Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on January 3, 1994.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 94–387 Filed 1–6–94; 8:45 am]

BILLING CODE 6450–01–M

Alaska Power Administration

Snettisham Surplus Power Marketing Plan

AGENCY: Alaska Power Administration, Department of Energy.

ACTION: Draft Surplus Power Marketing Plan.

SUMMARY: Alaska Power Administration (APA) is publishing its Draft Surplus Power Marketing Plan—Snettisham Project to start the process to establish allocations of surplus energy and surplus power sales contracts for the Snettisham Project. APA is publishing the draft plan to provide an opportunity for public review and comment. The Surplus Power Marketing Plan is fully compatible with the Department of Energy legislative proposal on APA divestiture which was submitted to Congress in November 1993.

DATES: Written comments must be submitted on or before February 7, 1994.

A public information and comment forum will be held January 18, 1994, at 7 p.m., at the office of Alaska Power Administration, 2770 Sherwood Lane, suite #2B, Juneau, Alaska.

ADDRESSES: Written comments should be submitted to Mr. Michael A. Deihl, Alaska Power Administration, 2770 Sherwood Lane, suite #2B, Juneau, AK 99801.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Willis, Alaska Power Administration, P.O. Box 020889, Juneau, AK 99802–0889, (907) 586–6963.

SUPPLEMENTARY INFORMATION:

Draft Surplus Marketing Plan—Snettisham Project

A. Background

Alaska Power Administration (APA) has established new long-term power sales agreements for the Snettisham Project. As part of the process of establishing new contracts, APA published a Marketing Plan for the Snettisham Project (57 FR 53320). According to the provisions in the Marketing Plan, if there was additional energy left over after the initial allocations, it would be offered for allocation in another round. The initial allocations are complete, a contract for firm energy deliveries has been negotiated and there is surplus energy available from the Snettisham Project. An Environmental Assessment was prepared for these power marketing activities and a Finding of No Significant Impact was issued by the Department of Energy.

B. Conditions for Allocation

Allocations of surplus energy will be made in accordance with the provisions of the Marketing Plan. These provisions include:

1. No energy will be allocated for export outside the Juneau market area (that is, the Alaska Electric Light & Power (AEL&P) service territory) without firm plans and commitment to finance and build the necessary transmission facilities.

2. In allocating surplus energy, APA will give preference to public bodies and cooperatives who conduct utility-type operations.

3. Surplus energy not allocated to preference customers may be available to serve major industrial loads. For this marketing plan, a major industrial load is one which is not currently a firm customer of AEL&P, does not conduct utility-type operations, and which has the capability to meet its own energy requirement in the absence of Snettisham energy. Major industrial loads are encouraged to work directly with AEL&P so that AEL&P can request an allocation to serve their needs. In this case, allocations will be made to AEL&P. APA will consider requests for direct service of major industrial loads only if it is demonstrated that service through the utility is infeasible.

C. Contract Provisions

Entities receiving an allocation of Snettisham resources will be offered an electric service contract which will include the following provisions:

1. Contracts will be for a period of 20 years or less beginning at contract execution. Contracts for less than 20 years may include an option to extend the period up to a total length of 20 years. Contracts will be compatible with the proposed APA divestiture. Contracts will contain language guaranteeing the continuation of the allocation after divestiture.

2. Surplus energy will be marketed at the Snettisham firm rate. The rate is presently 3.21 cents/kwh and is subject to periodic review and adjustment.

3. The contractor will be required to sign a contract within 270 days of APA's letter granting an allocation.

4. In order to reserve the allocation, the contractor will be required to deposit 10% of the expected cost of the following year's energy with APA. If the allocated energy is taken during the year the deposit will be credited toward the cost of the energy. If the allocation is not completely taken the deposit is non-refundable. In any year, energy reserved in this way but not taken by the contractor may be marketed by APA. In any case, an applicant must be ready, willing, and able to take initial delivery of power by January 1, 1997 or the allocation will be withdrawn and the energy reallocated.

5. If the contractor has not committed to a 20-year contract, the contractor will be required to pay a one-time, non-refundable payment within 30 days after contract execution. This payment will be based on 3% of the average estimated annual energy delivery during the years between the end of the contract period and the 20 year period times each year less than 20 years.

D. Amount Available for Allocation

Firm energy output (energy available 9 years out of 10) from the Snettisham Project is estimated at 275 gwh/year. Secondary energy is estimated to vary from 0 to 100 gwh/year and average around 50 gwh/year. This invitation is for requests for allocation for energy that is surplus to the needs of the Juneau community. An *estimate* of that need is shown in the table below. Applicants must be aware that these are only estimates and that the amount of energy required by the community may vary from these projections. In the event that there are competing requests from qualified applicants, the surplus energy will be divided equally among the applicants up to their maximum request.

Water year	Estimated community energy surplus requirement	Estimated available
1994	232	93
1995	242	83
1996	250	75
1997	255	70
1998	258	67
1999	259	66
2000	260	65
2001	263	62
2002	264	61
2003	266	59
2004	267	58
2005	270	55
2006	271	54
2007	274	51
2008	275	50
2009	277	48
2010	278	47
2011	281	44

Water year	Estimated community energy surplus requirement	Estimated available
2012	282	43
2013	285	40

Issued at Juneau, Alaska; December 13, 1993.

Michael A. Deihl,

Administrator.

[FR Doc. 94-382 Filed 1-6-94; 8:45 am]

BILLING CODE 6450-01-P

Federal Energy Regulatory Commission

[Docket No. EG94-10-000, et al.]

Keystone Energy Service Company, L.P., et al.; Electric Rates and Corporate Regulation Filings

December 27, 1993.

Take notice that the following filings have been made with the Commission:

1. Keystone Energy Service Company, L.P.

[Docket No. EG94-10-000]

On December 20, 1993, Keystone Energy Service Company, L.P. ("Keystone") filed an application for a determination by the Commission that Keystone is an exempt wholesale generator. Keystone is a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD, 20814-6161. Keystone states in its application that it is the operator of a 202 MW (net) clean coal-fired cogeneration facility (the "Facility") to be located adjacent to the Delaware River chemical plant of Monsanto Corporation ("Monsanto") in Logan Township, New Jersey. Keystone states that construction of the Facility commenced in May 1992 and that the facility is expected to commence commercial operation in the first quarter of 1995. Keystone further states that it will operate the Facility pursuant to a thirty-year lease agreement between Keystone and Keystone Urban Renewal Limited Partnership, its affiliate.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Keystone Urban Renewal Limited Partnership

[Docket No. EG94-9-000]

On December 20, 1993, Keystone Urban Renewal Limited Partnership ("KUR") filed an application for a determination by the Federal Energy Regulatory Commission that KUR is an exempt wholesale generator. KUR is a Delaware limited partnership with its principal place of business at 7500 Old Georgetown Road, Bethesda, MD 20814-6161. KUR further states that it is the owner of a 202 MW (net) clean coal-fired cogeneration facility (the "Facility") to be located adjacent to the Delaware River chemical plant of Monsanto Corporation in Logan Township, New Jersey. KUR further states that construction of the Facility commenced in May 1992 and that the Facility is expected to commence commercial operation in the first quarter of 1995.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-317 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-144-000, et al.]

Trunkline Gas Company, et al.; Natural Gas Certificates Filings

December 28, 1993.

Take notice that the following filings have been made with the Commission:

1. East Tennessee Natural Gas Company

[Docket No. CP94-144-000]

Take notice that on December 20, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252-2511, filed in Docket No. CP94-144-000 a request pursuant to § 157.205 of the Commission's Regulations to increase the capacity of an existing delivery point in Hamilton County, Tennessee for Chattanooga Gas Company (Chattanooga), an existing transportation customer, under East Tennessee's blanket certificate issued in Docket No. CP82-412-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

East Tennessee proposes to replace the existing two 2-inch meter tubes with 6-inch meter tubes and install electronic gas measurement equipment on the Chattanooga Volunteer Ordinance Delivery Point (Ordinance point) in Hamilton County, Tennessee to increase its capacity to approximately 35,000 dth of natural gas per day for delivery of natural gas to Chattanooga under Rate Schedule FT-A. Chattanooga has agreed to reimburse East Tennessee for the cost of these facilities which are estimated to cost $90,487, it is stated. East Tennessee states that the total quantities to be delivered to Chattanooga after the construction of these facilities to increase capacity would not exceed the total authorized quantities and the changes proposed are not prohibited by East Tennessee's tariff. East Tennessee has sufficient capacity in its system to accomplish the increased delivery of natural gas at the Ordinance point without detriment or disadvantage to any of East Tennessee's other customers, it is stated.

Comment date: February 11, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Avoca Natural Gas Storage

[Docket No. CP94-161-000]

Take notice that on December 23, 1993, Avoca Natural Gas Storage (Avoca), a general partnership with an office at One Bowdoin Square, Boston, Massachusetts 02114, filed an application in Docket No. CP94-161-000 pursuant to section 7 of the Natural Gas Act and part 157 and subpart G of part 284 of the Commission's Regulations. The part 157 application requests a certificate of public convenience and necessity authorizing Avoca to develop, construct and operate natural gas storage and related facilities. Avoca also seeks a blanket certificate, under part 284, authorizing self-implementing firm and interruptible storage services, with pregranted abandonment authority.

Avoca is a general partnership formed for the purpose of developing, constructing and operating a natural gas storage facility. Avoca is composed of four partners, including:

(1) JMC Avoca, Inc., a wholly-owned subsidiary of J. Makowski Company, a developer of gas-fired power generation, natural gas supply, transportation and storage projects;

(2) ET Storage, Inc., a wholly-owned subsidiary of Equitrans, Inc., the interstate pipeline subsidiary of Equitable Resources, Inc.;

(3) NGC Storage, Inc., a wholly-owned subsidiary of Natural Gas Clearinghouse, an independent gas marketer and an owner and operator of numerous gas gathering and processing facilities; and,

(4) Trillium Gas Storage, Inc., a subsidiary of Union Gas Limited, an integrated natural gas company in Southwestern Ontario, Canada, providing storage, distribution and transmission service.

Avoca proposes to develop several storage caverns by leaching underground salt deposits. The storage caverns will be located near Avoca, New York. Avoca's facilities will be connected to the H-C or 400 Line of Tennessee Gas Pipeline Company.

The Avoca facility will offer a total storage capacity of 6.72 Bcf and 5.0 Bcf of working gas capacity. The storage capacity is proposed to be made available in three phases:

(1) Phase I—2 Bcf will be available beginning January 1, 1996;

(2) Phase II—an additional 2 Bcf will be available beginning January 1, 1997; and,

(3) Phase III—an additional 1 Bcf will be available beginning January 1, 1998.

Avoca says that it has been marketing its proposed project to the general natural gas industry since June 1993. It notes that one customer, Orange and Rockland Utilities, Inc., has signed a Firm Storage Precedent Agreement for 550,000 Dth (.55 Bcf) of the Phase I capacity. Avoca proposes to offer the remaining 1.45 Bcf of the Phase I capacity during an open season. The open season will be between January 31, 1994 and February 28, 1994. Additional open seasons are proposed for Phases II and III.

Avoca filed a *pro forma* tariff containing the terms and conditions for firm and interruptible storage services. Avoca will allow customers to inject their maximum contract quantities over any consecutive twenty-day period and withdraw their maximum contract quantity over any consecutive ten-day period.

Avoca is proposing market-based pricing for its storage services. Bids for capacity will be evaluated on a net present value formula as described in the *pro forma* tariff. Avoca says that because it lacks market power, the Commission should allow it to negotiate market-based rates with its customers.

Finally, Avoca has filed an Applicant-Prepared Environmental Assessment covering the development of the storage caverns and the construction of the related facilities.

Comment date: January 18, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94-321 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-P

[Docket Nos. EC92-21-000, ER92-806-000 and EL94-13-000]

Entergy Services, Inc. and Gulf States Utilities Co.; Initiation of Proceeding and Refund Effective Date

December 30, 1993.

Take notice that on December 15, 1993, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL94-13-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL94-13-000 will be 60 days after publication of this notice in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 94-316 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-89-000]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 3, 1994.

Take notice that Northern Natural Gas Company (Northern) on December 23, 1993, tendered for filing to become part of Northern's FERC Gas Tariff Fifth Revised Volume 1, the following tariff sheets, proposed to be effective January 22, 1994:

First Revised Sheet No. 143
First Revised Sheet No. 144
First Revised Sheet No. 147
First Revised Sheet No. 446

Northern states that such tariff sheets are being submitted to revise Interruptible Deferred Delivery service, Rate Schedule IDD, to allow Shippers to withdraw quantities from their IDD accounts before the quantities are injected.

Northern further states that copies of the filing have been mailed to each of its customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests must be filed on or before January 10, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-319 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. EL93-28-000; EL93-40-000; ER93-465-000, ER93-507-000, ER93-922-000 and EL94-12-000]

Seminole Electric Cooperative, Inc. v. Florida Power & Light Co., Florida Municipal Power Agency v. Florida Power & Light Co., Florida Power & Light Co.; Initiation of Proceeding and Refund Effective Date

January 3, 1994.

Take notice that on December 27, 1993, the Commission issued an order in the above-indicated dockets initiating an investigation in Docket No. EL94-12-000 under section 206 of the Federal Power Act.

The refund effective date in Docket No. EL94-12-000 will be 60 days after publication of this notice in the **Federal Register**.

Lois D. Cashell,

Secretary.

[FR Doc. 94-318 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-M

[Cushman Relicense FERC Project No. 460]

Tacoma Public Utilities; Tacoma, WA; Public Conference

January 3, 1994.

Please take notice that on January 27, 1994 from 10 a.m. until 3 p.m. the Commission will convene at Commission Offices, 825 North Capitol Street, NE., Commission Meeting Room 9306, Washington, DC, a public conference regarding the relicense of the Cushman Hydroelectric Project.

Representatives from the U.S. Department of the Interior, Tacoma Public Utilities (license applicant), Intervenors, Indian Tribes and interested parties are invited to attend to discuss the following:

—Implementation of the Congressionally authorized land exchange between the Applicant and the National Park Service.
—Implementation of the Programmatic Cultural Resources Agreement for the Cushman Project.
—Completion of the Commission's ongoing Environmental Impact Statement for the Cushman Project.
—Other subjects that may arise regarding the relicense of the Cushman Project.

This is an open forum chaired by the Commission. Please notify the Commission by January 19 whether you will be attending. The telephone number is (202) 219-2781; please reference the Cushman Conference; give your name and affiliation.

Lois D. Cashell,

Secretary.

[FR Doc. 94-320 Filed 1-6-94; 8:45 am]

BILLING CODE 6717-01-P

ENVIRONMENTAL PROTECTION AGENCY

[ER-FRL-4707-3]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 20, 1993 through December 24, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260-5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D-AFS-L65212-ID Rating EO2, Prichard Creek Analysis Area, Land and Resource Management Plan, Implementation, Idaho Panhandle National Forests, Wallace Ranger District, Coeur d'Alene River, ID.

Summary: EPA had environmental objections with alternatives 1, 2 & 5 based on the potential for continued and increased adverse impacts on water quality and fisheries. EPA expressed environmental concerns with alternatives 2 and 6 due to potential impacts to water quality and fisheries. Additional information is needed on baseline water quality, cumulative impacts and monitoring.

ERP No. D-UAF-E11032-FL Rating EC2, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL.

Summary: EPA had environmental concerns with the impact due to the uncertainty associated with this proposal and the need for additional information. Depending on the particular alternative and/or mix of options which eventuate, additional NEPA evaluation may be necessary.

ERP No. D-USA-L11019-WA Rating EO2, Fort Lewis and Yakima Training Center, Stationing of Mechanized or Armored Combat Forces, COE Section 10 and 404 Permits, Pierce, Thurston, Yakima and Kittitas Counties, WA.

Summary: EPA had environmental objections based on the potential for adverse effects on air quality, the potential for further degradation of water bodies that are already water quality impaired, the potential for destruction of wetlands, and potential adverse effects on sage grouse. EPA requested additional analysis of air quality, water quality and wetland impacts. In addition the final EIS should discuss the effectiveness of the proposed mitigation measures and describe in detail the monitoring plan.

Dated: January 3, 1994

William D. Dickerson,

Deputy Director, Office of Federal Activities

[FR Doc. 94-390 Filed 1-6-94; 8:45 am]

BILLING CODE: 6560-50-P

[ER-FRL-4707-2]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260-5076 OR (202) 260-5075. Weekly receipt of Environmental Impact Statements Filed December 27, 1993 Through December 31, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930458, FINAL EIS, BLM, CA, Fort Cady Minerals Solution Mining Project, Construction and Operation, Associated Right-of-Way Grants and Mineral Material Sales Permits, San Bernardino County, CA, Due February 07, 1994, Contact: Ms Edy Seehafer (619) 256-3591.

EIS No. 930459, DRAFT EIS, AFS, MT, Helena National Forest and Elkhorn Mountain portion of the Deerlodge National Forest, Land and Resources Management Plan, Oil and Gas Leasing, Implementation, Several Counties, MT, Due: March 01, 1994. Contact: Thomas J. Anderson (406) 449-5201.

EIS No. 930460, FINAL EIS, FHW, CA, CA-87/Guadalupe Parkway Upgrading, between Julian Street and US 101 in the City of San Jose, Funding and COE Section 404 Permit, Santa Clara County, CA , Due: February 22, 1994, Contact: John R. Schultz (916) 551-1314.

EIS No. 930461, DRAFT EIS, SFW, IN, Patoka River Wetlands Project, Land Acquisition for Fish and Wildlife Protection and Management, Funding and COE Section 404 Permit, Gibson and Pike Counties, IN, Due: March 08, 1994, Contact: Jeanne Holler (612) 725-3306.

EIS No. 930462, DRAFT EIS, AFS, CO, Sheep Flats, Grove Creek and Valley View Timber Sales, Harvesting Timber and Road Constructions, Grand Mesa, Uncompahgre and Gunnison National Forests, Collban District, Mesa County, CO, Due: February 22, 1994, Contact: Stan Turley (303) 487-3534.

EIS No. 930463, FINAL EIS, AFS, MT, Upper Camp-Duncie Timber Sale, Harvesting Timber and Road Construction, Implementation, Deerlodge National Forest, Phillipsburg Ranger District, Granite County, MT, Due: February 07, 1994, Contact: Thomas W. Heintz (406) 859-3211.

EIS No. 930464, DRAFT EIS, AFS, OR, Newberry National Volcanic Monument Comprehensive Management Plan, Implementation, Deschutes National Forest, Deschutes County, OR, Due: February 28, 1994, Contact: Carolyn Wisdom (503) 383-4702.

Dated: January 3, 1994.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 94-389 Filed 1-6-94; 8:45 am]

BILLING CODE: 6560-50-P

[PF-584; FRL-4740-8]

E.I. DuPont de Nemours & Co., Inc., et al.; Notice of Initial Filing, Amendments, and Withdrawals of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces an initial filing of a food/feed additive petition, amended filings and withdrawals of pesticide petitions and a food/feed additive petition, and a correction to a previously published petition that propose establishing regulations for residues of certain pesticide chemicals in or on certain agricultural commodities.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC. In person, contact the PM named in each petition at the following office location/ telephone number:

Product Manager	Office location/ telephone number	Address
George LaRocca (PM-13).	Rm. 202, CM #2, 703-305-6100.	1921 Jefferson Davis Hwy., Arlington, VA.
Cynthia Giles-Parker (PM-22).	Rm. 229, CM #2, 703-305-5540.	Do.
Joanne Miller (PM-23).	Rm. 237, CM #2, 703-305-7830.	Do.
Robert Taylor (PM-25).	Rm. 241, CM #2, 703-305-6800.	Do.

SUPPLEMENTARY INFORMATION: EPA has received an initial filing of a food/feed additive petition, amended filings and withdrawals of petitions, and a correction to a previously issued petition as follows:

Initial Filing

1. *FAP 4H5683*. E.I. du Pont de Nemours & Co., Inc., Agricultural Products, P.O. Box 80038, Wilmington, DE 19880-0038, has submitted the food/feed additive petition proposing to amend 40 CFR parts 185 and 186 to establish food/feed additive tolerances for residues of the herbicide hexazinone, 3-cyclohexyl-6-(dimetylamino)-1-methyl-1,3,5-triazine-2,4(1H,3H)-dione, as follows: food additive tolerance for sugarcane molasses at 5 parts per million (ppm) and feed additive tolerances for sugarcane bagasse at 0.5 ppm and sugarcane molasses at 5.0 ppm. (PM 23)

Amended Filings

2. *PP 2F4107*. In the **Federal Register** of June 10, 1992 (57 FR 24644), EPA issued notice of the petition submitted by the Ciba-Geigy Corp., P.O. Box 18300, Greensboro, NC 27419-8300, proposing to amend 40 CFR part 180 by establishing a regulation to permit residues of difenoconazole, 1-(2-[4-chlorophenoxy)-2-chlorophenyl]-4-methyl-1,3-dioxolan-2-yl-methyl)-1H-1,2,4-triazole, in or on wheat forage at 0.1 ppm, wheat straw at 0.1 ppm, barley forage at 0.1 ppm, and barley straw at 0.1 ppm. Ciba-Geigy has submitted an amendment to the petition, proposing to establish additional tolerances as follows: cattle, fat, meat, and meat byproducts (mbyp) at 0.05 ppm; eggs at 0.05 ppm; milk at 0.05 ppm; goats, fat, meat, and mbyp at 0.05 ppm; hogs, fat, meat, and mbyp at 0.05 ppm; horses, fat, meat, and mbyp at 0.05 ppm; poultry, fat, meat, and mbyp at 0.05 ppm; barley grain at 0.1 ppm; and wheat grain at 0.1 ppm. The proposed analytical method for determining residues is gas chromatography with nitrogen/ phosphorous detection. (PM 22)

3. *PP 5F3251*. This petition, submitted by Rhone-Poulenc Ag Co., P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle, NC 27709, is a reproposal to amend 40 CFR 180.415 to establish a tolerance for residues of the fungicide aluminum tris (*O*-ethyl phosphonate) in or on hops at 45.0 ppm. Original notice of this petition appeared in the **Federal Register** of May 24, 1985 (50 FR 21503) and proposed amending 40 CFR 180.415 by establishing tolerances for residues of the fungicide in or on the commodities dried hops at 20.0 ppm and fresh or green hops at 10.0 ppm. The proposed analytical method for determining residues is gas chromatography. (PM 22)

4. *PP 7F3530*. In the **Federal Register** of June 17, 1987 (52 FR 23077), EPA issued notice of filing of the petition by

Janssen Pharmaceutica, 40 Kingsbridge Rd., Piscataway, NJ 08854, proposing to amend 40 CFR 180.413 by establishing a regulation to permit the residues of the fungicide imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole) and its metabolite 1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)-1-ethanol in or on melons (whole) at 5.0 ppm; melons (pulp) at 0.7 ppm; corn, sweet, kernels and cobs at 0.05 ppm; corn, sweet, forage at 0.05 ppm; citrus (whole) at 10.0 ppm citrus (pulp) at 0.2 ppm; citrus (peel) at 10.0 ppm; and imazalil (1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole, its metabolite 1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)-1-ethanol, and (3-(1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)ethoxy)-1,2-propane diol) in or on milk and meat, fat, and meat byproducts (except liver) of cattle, goats, hogs, horses, and sheep at 0.02 ppm and liver of cattle, goats, hogs, horses, and sheep at 1.5 ppm. Janssen Pharmaceutica has submitted an amended petition proposing to establish additional tolerances for the combined residues of the fungicide imazalil, 1-(2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl)-1H-imidazole and its metabolite 1-(2,4-dichlorophenyl)-2-(1H-imidazole-1-yl)-1-ethanol in or on the following raw agricultural commodities: melons (post-harvest) at 5.0 ppm; corn, fresh (including sweet kernels plus corn with husk removed) at 0.2 ppm; corn, forage at 0.2 ppm; and corn, fodder at 0.2 ppm. The proposed method for determining residues is liquid gas chromatography. (PM 22)

Withdrawn Petitions

5. *PP 4F3021.* Notice of the petition, originally filed by Shell Oil Co. and appearing in the **Federal Register** of February 23, 1984 (49 FR 6795), proposed to amend 40 CFR 180.379 by establishing tolerances for residues of the insecticide cyano (3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on the following commodities: barley, forage at 40.0 ppm; barley, grain at 5.0 ppm; barley, hay at 40.0 ppm; barley, straw at 40.0 ppm; wheat, forage at 25.0 ppm; wheat, grain at 1.0 ppm; wheat, hay at 25.0 ppm; and wheat, straw at 25.0 ppm. This petition was also listed in a notice, "Pesticide Petitions For Which No Correspondence Has Been Received" (56 FR 43764, Sept. 4, 1991). The petition was originally filed by Shell, and DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, was to provide bridging residue data between esfenvalerate and fenvalerate. However, DuPont has decided not to add this data and has requested that the petition be withdrawn without prejudice to future filing. (PM 13)

6. *FAP 4H5423.* Notice of the petition, originally filed by Shell Oil Co. and appearing in the **Federal Register** of February 23, 1984 (49 FR 6795), proposed to amend 21 CFR part 561 (later redesignated as 40 CFR part 186) by establishing a tolerance for residues of the insecticide cyano (3-phenoxyphenyl) methyl-4-chloro-alpha-(1-methylethyl) benzeneacetate in or on wheat milled products (except flour) at 5.0 ppm. This petition was also listed in a notice, "Pesticide Petitions For Which No Correspondence Has Been Received" (56 FR 43765, Sept. 4, 1991). The petition was originally filed by Shell, and DuPont Agricultural Products, Walker's Mill, Barley Mill Plaza, P.O. Box 80038, Wilmington, DE 19880-0038, was to provide bridging residue data between esfenvalerate and fenvalerate. However, DuPont has decided not to add this data and has requested that the petition be withdrawn without prejudice to future filing. (PM 13).

Correction

7. *PP 3F4238.* Notice appearing in the **Federal Register** of October 21, 1993 (58 FR 54355) is corrected to read as follows: Zeneca AG Products, Concord Pike and New Murphy Rd., P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR part 180 by establishing a regulation to permit the residues of Touchdown Herbicide (containing glyphosate-trimesium (formerly SC-0224 of sulfonate)) in or on stone fruit at .05 ppm. (PM 25)

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a.

Dated: December 21, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-279 Filed 1-6-94; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180913; FRL 4750-7]

Receipt of Application for Emergency Exemption to Use Imidacloprid Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Texas Department of Agriculture (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827-78-9) to treat up to 38,000 acres of cucurbits (cucumbers, melons, and squash) to control the sweet potato whitefly *Bemesia tabaci*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before January 24, 1994.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180913," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, (703) 308-8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on cucurbits to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The SPWF was first confirmed in Texas in 1987. The Applicant states that in 1990, cotton growers in the Lower Rio Grande Valley began to experience significant crop losses due to infestation by the SPWF. The sweet potato whitefly (SPWF) is a relatively new pest on cucurbits. The SPWF has caused severe economic damage to several other commodities nationwide including cotton, lettuce, squash, beans, peanuts, and ornamentals. The Applicant states that in 1991, SPWF severely infested many more fields of cotton and caused severe devastation to fall vegetable crops upon harvesting of the cotton. According to the Applicant, SPWF populations for this season are expected to be widespread, and heavy enough to cause serious economic loss to the cucurbit crop. SPWF causes damage through feeding activities, and also indirectly through the production of a honeydew, which encourages growth of sooty mold and other fungi. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered compounds. The Applicant estimates that losses in Texas cucurbit production could reach $18.6 million in net revenue if the SPWF is not adequately controlled, and is requesting the use of imidacloprid to control the SPWF.

Along with this request, the Applicant has also requested a specific exemption for use of a different chemical (bifenthrin) on cucurbits, also for control of the SPWF. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at or near planting/transplanting, as a soil-incorporated treatment; since imidacloprid is a systemic, it would be taken up by the small seedlings, and protect them from SPWF feeding during this early stage of development. The Applicant states that bifenthrin, being nonsystemic, is only of use as a foliar spray, which is of little value during the early phase of development, when there is limited leaf area. Thus the Applicant proposes that use of bifenthrin be allowed later in the crop season, as a foliar treatment, to maintain season-long control. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.25 lb. (dry) active ingredient (16 fluid oz. of product) per acre with a maximum of one application per crop season on a total of 38,000 acres of cucurbits. It is possible to produce two cucurbit crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. Therefore, use under this exemption could potentially amount to a maximum total of 19,000 lbs. of active ingredient, or 9,500 gal. of product. This is the first time that the Applicant has applied for the use of imidacloprid on cucurbits. However, the Applicant requested, and was granted, specific exemptions for the use of bifenthrin for SPWF control in cucurbits for the past two years (this is the third consecutive year for the request for bifenthrin).

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Texas Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: December 20, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94-379 Filed 1-6-94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1993]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

January 3, 1994.

The petition for reconsideration published on December 28, 1993, 58 FR 68649, is withdrawn because of an incorrect subject matter and is replaced with the following:

Petitions for reconsideration and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202)857-3800. Opposition to these petitions must be filed January 24, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Simplification of the Depreciation Prescription Process (CC Docket No. 92-296).

Petitons for Reconsideration: Number of Petitions Filed: 10.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 94-332 Filed 1-6-94; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-1006-DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA-1006-DR), dated December 1, 1993, and related determinations.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated December 1, 1993, is

hereby amended to include the following areas among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of Missouri:

Bulter, Crawford, Dent, Franklin, Perry, Stoddard, Texas, and Washington Counties for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Frank H. Thomas,

Deputy Associate Director, Response and Recovery Directorate.

[FR Doc. 94–358 Filed 1–6–94; 8:45 am]

BILLING CODE 6718–02–M

[FEMA–1007–DR]

Virginia; Major Disaster and Related Determinations

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This is a notice of the Presidential declaration of a major disaster for the State of Virginia (FEMA–1007–DR), dated December 22, 1993, and related determinations.

EFFECTIVE DATE: December 22, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, in a letter dated December 22, 1993, the President declared a major disaster under the authority of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 *et seq.*), as follows:

I have determined that the damage in certain areas of the Commonwealth of Virginia, resulting from severe storms and tornadoes on August 6, 1993, is of sufficient severity and magnitude to warrant a major disaster declaration under the Robert T. Stafford Disaster Relief and Emergency Assistance Act ("the Stafford Act"). I, therefore, declare that such a major disaster exists in the Commonwealth of Virginia.

In order to provide Federal assistance, you are hereby authorized to allocate from funds available for these purposes, such amounts as you find necessary for Federal disaster assistance and administrative expenses.

You are authorized to provide Individual Assistance in the designated area. Public Assistance may be designated at a later date, if warranted. Consistent with the requirement that Federal assistance be supplemental, any Federal funds provided under the Stafford Act for Public Assistance will be limited to 75 percent of the total eligible costs.

The time period prescribed for the implementation of section 310(a), Priority to Certain Applications for Public Facility and Public Housing Assistance, 42 U.S.C. 5153, shall be for a period not to exceed six months after the date of this declaration.

Notice is hereby given that pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Robert Gunter of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

I do hereby determine the following areas of the State of Virginia to have been affected adversely by this declared major disaster:

The city of Petersburg for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

James Lee Witt,

Director.

[FR Doc. 94–357 Filed 1–6–94; 8:45 am]

BILLING CODE 6718–02–M

GENERAL ACCOUNTING OFFICE

Notice of Transmittal of the United States General Accounting Office Compliance Report to the President and the Congress Covering Reports Issued During the Session of Congress Ending November 26, 1993

Pursuant to the Omnibus Budget Reconciliation Act of 1990, section 254(b), the United States General Accounting Office hereby reports that it has submitted its Compliance Report covering reports issued during the session of Congress ending November 26, 1993 to the President of the United States, the President of the Senate, and the Speaker of the House of Representatives.

Paul L. Posner,

Director, Budget Issues, Accounting and Information Management Division.

[FR Doc. 94–402 Filed 1–6–94; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Disabilities Prevention Program Project; Workshop

The National Center for Environmental Health (NCEH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Disabilities Prevention Program Project Workshop.

Times and dates: 10 a.m.–5 p.m., January 23, 1994, 8:30 a.m.–4 p.m., January 24, 1994, 8:30 a.m.–12:30 p.m., January 25, 1994.

Place: Swissotel Atlanta, 3391 Peachtree Road, NE., Atlanta, Georgia 30326.

Status: The meeting will be open to the public for observation, participation, and comment, limited only by the space available.

Purpose: The project workshop will provide a forum for presentations and discussions about primary and secondary disabilities, public health methods for prevention of disabilities, and current and future program priorities. In addition, individualized technical assistance related to project issues will be available to grantees upon request.

Matters to be discussed: The workshop will include discussions of secondary conditions, surveillance for developmental disabilities, surveillance for head and spinal cord injuries, community interventions, State strategic plans, and project management issues.

Contact person for further information: Larry Burt, Program Manager, Disabilities Prevention Program, NCEH, CDC, 4770 Buford Highway, Mailstop F–29, Atlanta, Georgia 30341, telephone (404) 488–7080 or FAX (404) 488–7075.

Dated: January 3, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–408 Filed 1–6–94; 8:45 am]

BILLING CODE 4160–18–M

Health Care Financing Administration

[OPA–009–N]

Medicare Program; Request for Nominations for Members for the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: In accordance with section 1868(a) of the Social Security Act, this notice requests nominations from medical organizations representing physicians for individuals to serve on the Practicing Physicians Advisory Council. Four vacancies will occur on February 28, 1994.

DATES: Nominations from medical organizations will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on February 7, 1994.

ADDRESSES: You may mail or deliver nominations for membership to the following address: Health Care Financing Administration, Office of the Administrator, Attention: Martha DiSario, room 314–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: Martha DiSario, Executive Director, Practicing Physicians Advisory Council, (202) 690–7874.

SUPPLEMENTARY INFORMATION: Section 4112 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90) (Pub. L. 101–508), enacted on November 5, 1990, added a new section 1868 to the Social Security Act (the Act), which established the Practicing Physicians Advisory Council (the Council). The Council advises the Secretary of the Department of Health and Human Services (the Secretary) on proposed regulations and manual issuances related to physicians' services. An advisory committee created by the Congress, such as this one, is subject to the provisions of the Federal Advisory Committee Act (5 U.S.C. App. 2), and, since this committee advises the Secretary, it is also subject to our regulations in 45 CFR part 11—Committee Management.

Section 1868(a) of the Act provides that the Council must consist of 15 physicians, each of whom must have submitted at least 250 claims for physicians' services under Medicare in the previous year. At least 11 Council members must be physicians as defined in section 1861(r)(1) of the Act, that is, State-licensed physicians of medicine or osteopathy. The other four Council members may include dentists, podiatrists, optometrists, and chiropractors. The Council must include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas.

In addition, section 1868(a) of the Act provides that nominations to the Secretary for Council membership must be made by medical organizations representing physicians. This is an invitation to all medical organizations representing physicians to submit nominees for membership on the Council. Current members whose terms expire in 1994 will be considered for reappointment. Final selection from among qualified candidates for each vacancy will be determined by the expertise required to meet specific agency needs and in a manner to ensure appropriate balance of membership. From these nominations, the Secretary will appoint the members of the Council. Each nomination must state that the nominee has expressed a willingness to serve as a Council member and has provided a short resume or description of the nominee's experience. To permit evaluation of possible sources of conflict of interest, potential candidates will be asked to provide detailed information concerning financial holdings, consultant positions, research grants, and contracts.

Section 1868(b) of the Act provides that the Council meet once each calendar quarter, as requested by the Secretary, to discuss proposed changes in regulations and manual issuances that relate to physicians' services.

Section 1868(c) of the Act provides for payment of expenses and a per diem allowance for Council members at a rate equal to payment provided to members of other advisory committees. In addition to making these payments, the Department of Health and Human Services provides management and support services to the Council.

(Section 1868 of the Social Security Act (42 U.S.C. 1395ee); 5 U.S.C. App. 2; and 45 CFR part 11)

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program.)

Dated: December 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–335 Filed 1–6–94; 8:45 am]

BILLING CODE 4120–01–P–M

[OPHC–030–N]

Health Maintenance Organizations: Qualification Determinations and Compliance Actions During the Period July 1, 1993, through September 30, 1993

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice sets forth the names, addresses, service areas or modified service areas, and dates of qualification or expansion of entities determined to be Federally qualified health maintenance organizations (FQHMOs) during the period July 1, 1993 through September 30, 1993. Additionally, this notice sets forth compliance actions taken by the Office of Prepaid Health Care Operations and Oversight for the period July 1, 1993 through September 30, 1993. This notice is being published in accordance with our regulations at 42 CFR 417.144 and 417.163, which require publication in the **Federal Register** of certain determinations relating to FQHMOs.

FOR FURTHER INFORMATION CONTACT: Christine Boesz (202) 619–0840.

SUPPLEMENTARY INFORMATION:

A. Qualification Determinations

As part of our evaluation and determination of whether an entity qualifies as a Federally qualified health maintenance organization (FQHMO), our regulations set forth at 42 CFR 417.144(e), promulgated under title XIII of the Public Health Service Act (the Act) (42 U.S.C. 300e), require publication in the **Federal Register** of the names, addresses and descriptions of the service areas of new FQHMOs. We interpret this requirement as applying to revisions of service areas of currently approved FQHMOs, as well. Our last notice containing this information was published on October 5, 1993 (58 FR 51833).

There are three categories of FQHMOs: operational, transitionally qualified, and preoperational. Definitions of these terms are set forth at 42 CFR 417.141.

The Office of Prepaid Health Care Operations and Oversight has determined that the following entities are operational FQHMOs under section 1310(d) of the Act (42 U.S.C. 300e–9(d)) or have expanded their previously qualified service areas:

Expansions and Additions of Service Area Regional Components by Existing FQHMOs

1. *FHP, Inc. (Arizona)* (Group Model, Requirements are set forth at section 1310(b)(1) of the Act), P.O. Box 52078, Phoenix, Arizona 85072–2078. FHP's Federally qualified service area has been expanded to include the following counties: Maricopa, Pima, Pinal.

Date of qualification for service area expansion: July 27, 1993.

2. *National Med, Inc. (NM)* (Group Model; Requirements are set forth at section 1310(b)(1) of the Act), 1005 West Orangebury, suite B, Modesto, CA 95350. NM's Federally qualified service area has been expanded to include—

a. Stanislaus County.

b. The following zip codes in portions of Merced and San Joaquin counties:

Merced	
95303	95324
95312	95334
95315	95374
95322	

San Joaquin					
95230		95336			
95231		95376			
95320		95385			
95330					

Date of qualification for service area expansion: August 27, 1993.

3. *PacifiCare* (Group Model); Requirements are set forth at section 1310(b)(1) of the Act), 4000 Civic Center Dr., suite 201, San Rafael, CA 94903–4133. PacifiCare's Federally qualified service area has been expanded to include—

a. The following counties: Alameda, Contra Costa, Sacramento, San Francisco.

b. The following zip codes in Santa Clara County:

Santa Clara

95002	95008	95009	95013	95014	95015
95016	95020	95021	95026	95030	95031
95032	95035	95036	95037	95038	95042
95044	95046	95050	95051	95052	95054
95055	95056	95070	95071	95100	95101
95102	95103	95106	95108	95109	95110
95111	95112	95113	95114	95115	95116
95117	95118	95119	95120	95121	95122
95123	95124	95125	95126	95127	95128
95129	95130	95131	95132	95133	95134
95135	95136	95137	95138	95139	95140
95141	95142	95148	95150	95151	95152
95153	95154	95155	95156	95157	95158
95159	95160	95161	95164	95170	95171
95172	95173				

Date of qualification for service area expansion: September 15, 1993.

B. Compliance Actions

The Office of Prepaid Health Care Operations and Oversight gives notice of the following compliance actions affecting FQHMOs for the period July 1, 1993, through September 30, 1993:

1. *Notice of Reestablished Compliance:*

Organization	Date re-established
Kaiser Foundation Health Plan of Georgia, Inc., Atlanta, GA	9/2/93

C. Availability of Additional Information

A cumulative list of FQHMOs and additional information may be obtained by writing to the following address: Office of Prepaid Health Care Operations and Oversight, Health Care Financing Administration, Room 4406 Cohen Building, 330 Independence Avenue, SW., Washington, DC 20201.

The list also may be obtained by visiting that office between the hours of 8:30 a.m. and 4:30 p.m. Monday through Friday, except for Federal holidays. Interested persons may contact Margie Sharif for an appointment by telephoning (202) 619–0845.

Authority: Title XIII of the Public Health Service Act (42 U.S.C. 300e).

Dated: December 29, 1993.

Bruce C. Vladeck,

Administrator, Health Care Finoncing Administration.

[FR Doc. 94–336 Filed 1–6–94; 8:45 am]

BILLING CODE 4120–01–P–M

National Institutes of Health

National Eye Institute; Meeting of the Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Eye Institute (NEI), January 10 and 11, 1994, in the NEI Conference Room, Building 31, Room 6A35, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on January 10 from 9 a.m. until approximately 4 p.m. for general remarks by the Institute's Director, Intramural Research Programs, on matters concerning the intramural programs of the NEI. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sec. 552b(c)(6), Title 5, U.S.C. and sec. 10(d) of Public Law 94–463, the meeting will be closed to the public on January 10 from approximately 4 p.m. until recess and on January 11 from 8:30 a.m. until adjournment for the review, discussion, and evaluation of individual projects conducted by the Laboratory of Retinal Cell and Molecular Biology. These evaluations and discussions could reveal personal information concerning individuals associated with the projects, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Consequently, this meeting is concerned with matters exempt from mandatory disclosure.

Ms. Lois DeNinno, Committee Management Officer, NEI, EPS/350, Bethesda, Maryland 20892, (301) 496–5301, will provide a summary of the meeting, roster of committee members, and substantive program information upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. DeNinno in advance of the meeting.

This notice is being published later than fifteen days prior to the meeting due to difficulty of coordinating the members' schedules.

(Catalog of Federal Domestic Assistance Program No. 93.867, Vision Research; National Institutes of Health.)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–521 Filed 1–6–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–65]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 7, 1994.

ADDRESSES: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: December 30, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94–1 Filed 1–6–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Operation of Glen Canyon Dam, Colorado River Storage Project, Arizona

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability and notice of public hearings on the draft environmental impact statement; INT–DES–94–01.

SUMMARY: In response to a July 27, 1989, directive from the Secretary of the Interior and pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as amended, and in accordance with the Grand Canyon Protection Act of 1992, the Bureau of Reclamation (Reclamation) has prepared a draft environmental impact statement (DEIS) on the operation of Glen Canyon Dam, Colorado River Storage Project in Arizona. The DEIS evaluates nine alternatives, including no action, and analyzes their impacts on downstream environmental and cultural resources and Native American interests in Glen and Grand Canyons. Seven public hearings will be held to receive comments from interested organizations and individuals on the environmental impacts of the proposal.

DATES AND LOCATIONS: A 90-day public review period begins with the publication of this notice. Written comments on the DEIS should be submitted to the Colorado River Studies Office by April 11, 1994.

Public hearings on the DEIS will be held on the following dates at the locations indicated. Address requests to speak at the hearings to the Colorado River Studies Office at the address provided on the following page.

- March 7, 1994, Los Angeles, California: Burbank Airport Hilton, 2500 Hollywood Way, Burbank CA 91505, 7 to 9:30 p.m.
- March 9, 1994, San Francisco, California: Fort Mason Center, Golden Gate National Recreation Area, San Francisco CA 94123, 7 to 9:30 p.m.
- March 14, 1994, Phoenix, Arizona: YWCA, 9440 North 25th Avenue, Phoenix AZ 91505, 7 to 9:30 p.m.
- March 15, 1994, Flagstaff, Arizona: Little America, 2515 East Butler Avenue, Flagstaff AZ 86003, 7 to 9:30 p.m.
- March 17, 1994, Salt Lake City, Utah: Salt Lake Hilton, 150 West 500 South, Salt Lake City UT 84101, 7 to 9:30 p.m.
- March 21, 1994, Denver, Colorado: Marriott Denver West, 1717 Denver West Marriott Boulevard, Golden CO 80401, 7 to 9:30 p.m.
- March 24, 1994, Washington, DC: Dirksen Senate Office Building, room 562, 2 to 4:30 p.m.; Stouffer Concourse (Crystal City), 2399 Jefferson Davis Highway, Arlington VA 22202, 7 to 9:30 p.m.

ADDRESSES: Written comments on the DEIS, requests for copies, and requests to testify should be addressed to: Mr. Lee J. McQuivey, Colorado River Studies Office, Bureau of Reclamation, Attention: UC–1500, PO Box 11568, 125 South State Street, Salt Lake City UT 84147; telephone: (801) 524–5479.

Copies of the DEIS are available for inspection at the address above and also at the following locations:

- Office of the Commissioner, Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington DC 20240.
- Denver Office, Bureau of Reclamation, Library, room 167, Building 67, Denver Federal Center, Denver CO 80225.
- Upper Colorado Regional Office, Bureau of Reclamation, Library, room 7101, 125 South State Street, Salt Lake City UT 84147.
- Center for Environmental Studies, Arizona State University, 905 South Mill Avenue, Tempe AZ 85287–3211.
- Glen Canyon Environmental Studies Office, Security Bank Building, 121 East Birch, room 307, Flagstaff AZ 86002.

Libraries

Arizona

Arizona Department of Water Resources Library, Phoenix.
Arizona State Library, Department of Library, Archives and Public Records, Phoenix.
Arizona State Regional Library for the Blind and Physically Handicapped, Phoenix.
Arizona State University, Noble Science and Engineering Library, Tempe.
Arizona State University, Hayden Library, Tempe.
Flagstaff City-Coconino County Public Library, Flagstaff.
Grand Canyon Community Library, Grand Canyon.
Maricopa County Library, Phoenix.
Mesa Public Library, Mesa.
Mohave County Library/Kingman Public Library, Kingman.
Northern Arizona University, Cline Library, Flagstaff.
Page Public Library, Page.
Phoenix City Library, Phoenix.
Scottsdale Public Library, Scottsdale.
Tempe Public Library, Tempe.
Tucson Public Library, Tucson.
University of Arizona Library, Tucson.

California

California State Library, Sacramento.
California State University, Hayward Library, Hayward.
California State University, University Library, Los Angeles.
Colorado River Board of California Library, Glendale.
Environmental Protection Agency, Regional IX Library, San Francisco.
Los Angeles Public Library, Los Angeles.
Los Angeles Public Library, Water and Power Section, Los Angeles.
San Francisco Public Library, San Francisco.
Stanford University Libraries, Stanford.
University of California, General Library, Berkeley.
University of California, University Research Library, Los Angeles.
University of California, Shields Library, Davis.
University of Southern California, Doheny Memorial Library, Los Angeles.

Colorado

Colorado State University Libraries, Fort Collins.
Denver Central Library, Denver.
University of Colorado at Boulder, Norlin Library, Boulder.
University of Denver, Penrose Library, Denver.
U.S. Air Force Academy, Academy Library, Colorado Springs.

Nevada

Boulder City Library, Boulder City.
Clark County Library District, Las Vegas.
Nevada State Library, Carson City.
University of Nevada, Reno Library, Reno.
University of Nevada at Las Vegas, James Dickinson Library, Las Vegas.

New Mexico

Albuquerque Public Library, Albuquerque.
New Mexico State Library, Santa Fe.
New Mexico State University, Las Cruces.
University of New Mexico, Albuquerque.

Utah

Brigham Young University, Harold B. Lee Library, Provo.
Cedar City Public Library, Cedar City.
Kanab City Library, Kanab.
Moab Public Library, Moab.
Salt Lake City Public Library, Salt Lake City.
Salt Lake County Library System, Salt Lake City.
Southern Utah State University Library, Cedar City.

University of Utah, Marriott Library, Salt Lake City.
Utah State University, Merrill Library, Logan.
Utah State Library, Salt Lake City.
Washington County Library, St. George.
Weber State University Stewart Library Ogden.

Wyoming

Laramie County Library System, Cheyenne.
Rock Springs Public Library, Rock Springs.
University of Wyoming, Coe Library, Laramie.
Wyoming State Library, Cheyenne.

Washington, DC

District of Columbia Public Library.
Library of Congress.
Natural Resources Library, Department of the Interior.
Other States—any U.S. Government Regional Depository Library.

FOR FURTHER INFORMATION CONTACT: Mr. Lee J. McQuivey, Colorado River Studies Office, Bureau of Reclamation, PO Box 11568, Salt Lake City UT 84147; telephone: (801) 524–5479.

SUPPLEMENTARY INFORMATION: The Secretary of the Interior called for a reevaluation of dam operations to determine specific options that could be implemented, consistent with law, to minimize adverse impacts on the downstream environmental and cultural resources and Native American interests in Glen and Grand Canyons.

In accordance with the National Environmental Policy Act and the Grand Canyon Protection Act of 1992, Reclamation has prepared a DEIS in cooperation with other Interior agencies—Bureau of Indian Affairs, Fish and Wildlife Service, and National Park Service. Other cooperating agencies are the Department of Energy's Western Area Power Administration, Arizona Game and Fish Department, Hopi Tribe, Hualapai Tribe, Navajo Nation, Pueblo of Zuni, San Juan Southern Paiute Tribe, and the Southern Utah Paiute Consortium.

The DEIS presents analyses of the impacts of nine alternatives for operating Glen Canyon Dam. Two alternatives, including no action, would allow unrestricted hourly fluctuations in riverflow; four would provide various levels of restricted fluctuating flows; and three would provide steady flows. Additional measures have been combined with the alternative operations, where appropriate, to provide additional resource protection or enhancement. The preferred alternative is the Modified Low Fluctuating Flow Alternative.

Hearing Process Information

Those wishing to request time to make comments at the public hearing should write or call the Bureau of Reclamation Regional Office in Salt Lake City, Utah. The address and telephone number are listed above. Requests should be received on or before February 28, 1994, and should indicate where the speaker wishes to appear. Speakers will be called upon to present their comments in the order in which their requests were received. Requests to speak also may be made at each hearing. These commentors will be called on after the advance request speakers. Oral comments will be limited to 5 minutes per individual.

For inclusion in the hearing record, written comments from those unable to attend the hearing or wishing to supplement their oral presentation should be received at the Bureau of Reclamation Regional Office in Salt Lake City by April 11, 1994.

Dated: January 3, 1994.

Jonathan Deason,

Director, Office of Environmental Policy and Compliance.

[FR Doc. 94–306 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–94–M

Fish and Wildlife Service

Notice of Availability of Draft Environmental Impact Statement for the Proposed Patoka River National Wetlands Project, Pike and Gibson Counties, Indiana

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the U.S. Fish and Wildlife Service (Service) has prepared a Draft Environmental Impact Statement (DEIS), which is available for public review. The DEIS evaluates a proposal to establish the Patoka River National Wetlands Project (Project) in Pike and Gibson Counties in southwest Indiana. Four alternatives, including a No Action alternative are being considered. The three action alternatives are aimed at protecting and enhancing the valuable resources of the Patoka River valley. The Project encompasses one of the last remaining stretches of bottomland forest in Indiana and the Midwest. It provides some of the best wood duck production habitat in the state and is used by endangered species including bald eagles. Alternative 4 is the Service's preferred alternative. It proposes to acquire 22,083 acres of land from willing sellers. Full acquisition may take 20 years or more. About 6,800 acres would be purchased as the Patoka River National Wildlife Refuge. Additionally, wildlife management areas would be purchased from within an adjacent 15,283-acre selection area. Project lands would be managed to protect and enhance bottomland hardwood forests, other wetland habitat, and complementary uplands. The goal would be to provide essential food, cover and resting areas for migratory birds, threatened and endangered species, and resident fish and wildlife; and to improve outdoor recreation and education opportunities.

DATES: Public comment on the DEIS is solicited pursuant to National Environmental Policy Act regulations (40 CFR 1503.1). All agencies and individuals are urged to provide comments and suggestions for improving this DEIS. The formal comment period extends for a 60-day period from the date of distribution of the DEIS. All comments received by March 8, 1994, will be considered in preparation of the Final EIS.

Formal comments will be received at any time during this 60-day period in person or by mail at the Project and Regional Offices as well as at the scheduled public open house and meeting. The Project Office in Oakland City, Indiana, is open weekdays from 8 a.m. to 4:30 p.m. The Regional Office in the Twin Cities, Minnesota, is open weekdays from 7:30 a.m. to 4 p.m. In addition, the Service will hold a public open house on Friday, February 11, 1994, from 9 a.m. to 7 p.m. and Saturday, February 12, 1994, from 8 a.m. to 12 m. (noon) at the Wirth Park Community Building on the west side of Oakland City, Indiana, for general information. A public meeting will be held on Saturday, February 12, 1994, starting at 1:30 p.m. in the East Gibson School cafeteria in Oakland City to receive verbal and written comments.

WRITTEN COMMENTS SHOULD BE ADDRESSED TO: Project Manager, U.S. Fish and Wildlife Service, Patoka River National Wetlands Project, 510½ West Morton, Box 217, Oakland City, Indiana 47660.

FOR FURTHER INFORMATION CONTACT: William McCoy, Project Manager, Patoka River National Wetlands Project, at the above address, telephone (812) 749–3199; or Jeanne Holler, Wildlife Biologist, U.S. Fish and Wildlife Service, Bishop Henry Whipple Federal Building, 1 Federal Drive, Fort Snelling, Minnesota 55111–4056, telephone (612) 725–3306. Individuals wishing copies of this DEIS for review should contact Mr. McCoy or Ms. Holler. Copies have been sent to all landowners and renters within the proposed Project boundaries; to Federal, state and local government officials; interested parties; and to all individuals, agencies, and organizations who requested copies.

Dated: December 22, 1993.

Sam Marler,

Regional Director.

[FR Doc. 94–207 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Missouri National Recreational River Advisory Group Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). Meeting Date and Time: Wednesday, February 2, 1994; 1:30 p.m. until 4:30 p.m.

ADDRESS: City Hall Meeting Room, 106 Sheridan Street, Wagner, South Dakota. (Inclement weather date: February 10, 1994, same time and location.) The agenda for the meeting consists of discussion of the advisory group's response to the draft management alternatives and draft boundary alternatives which were presented to the group at the last meeting (12/8/93); an update on the status of the Missouri Recreational River general management plan presented by the National Park Service noting any changes since the previous meeting; additional public comment received from the newsletter; the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The advisory commission was established by the law that established the Missouri National Recreational River, Public Law 102–50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile, free-flowing segment of the Missouri from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402)–336–3970.

Dated: December 27, 1993.

David N. Given,

Acting Regional Director, Midwest Region.

[FR Doc. 94–405 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–70–P

Mississippi River Coordinating Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth changes in the meeting schedule for the Mississippi River Coordinating Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92–463). Meeting Date and Time: Friday, February 25, 1994, 8 a.m. until 5 p.m.

ADDRESS: Metropolitan Council Chambers, Mears Park Centre, 230 East Fifth Street, Saint Paul, Minnesota.

The agenda for the meeting consists of Commission review and discussion of a revised draft comprehensive management plan for the Mississippi National River and Recreation Area. The discussion continues the Commission's deliberation on public input received on the previously released draft comprehensive management plan and draft environmental impact statement.

SUPPLEMENTARY INFORMATION: The Mississippi River Coordinating Commission was established by Public Law 100–696, November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Superintendent, Mississippi National River and Recreation Area, 175 East Fifth Street, Suite 418, St. Paul, Minnesota 55101, (612)–290–4160.

Dated: December 22, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 94–406 Filed 1–6–94; 8:45 am]

BILLING CODE 4310–70–P

Native American Graves Protection and Repatriation Review Committee; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting of the Native American Graves Protection and Repatriation Review Committee.

Notice is hereby given in accordance with the Federal Advisory Committee Act (FACA), 5 U.S.C. appendix (1988), that a meeting of the Native American Graves Protection and Repatriation Act Review Committee will be held on January 23, 24, and 25, 1994, in Phoenix, AZ.

The Committee will meet on Sunday, January 23, and Monday, January 24, at the Heard Museum, 22 East Monte Vista Road, Phoenix. The Committee will meet on Tuesday, January 25, in the multi-purpose room at the Salt River Pima-Maricopa Recreation Center, 10000 East McDowell Road, Scottsdale. Meetings will begin each day at 8:30 a.m. and conclude not later than 5 p.m.

The Native American Graves Protection and Repatriation Act Review Committee was established by Public Law 101–601 to monitor, review, and assist in implementation of the inventory and identification process and repatriation activities required under the statute.

The matters to be discussed at this meeting include development of regulations implementing the statute, particularly sections reserved for civil penalties, a sample inventory, and sample memoranda of understanding regarding repatriation and intentional excavation. The Committee also is soliciting recommendations from members of the public regarding the disposition of culturally identifiable human remains in museum or Federal collections, the disposition of unclaimed human remains and cultural items from Federal or tribal lands, and the future applicability of the statute.

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited. Persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with Dr. Francis P. McManamon, Departmental Consulting Archeologist.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Dr. Francis P. McManamon, Departmental Consulting Archeologist, Archeological Assistance Division, National Park Service, P.O. Box 37127–suite 210, Washington, DC 20013–7127, Telephone (202) 343–4101. Draft summary minutes of the meeting will be available for public inspection about eight weeks after the meeting at the office of the Departmental Consulting Archeologist, room 210, 800 North Capital Street, Washington, DC.

Dated: December 22, 1993.

Francis P. McManamon,

Departmental Consulting Archeologist and Chief, Archeological Assistance Division.

[FR Doc. 94-329 Filed 1-6-94; 8:45 am]

BILLING CODE 4310-70-F

Niobrara Scenic River Advisory Commission Meeting

AGENCY: National Park Service, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Niobrara Scenic River Advisory Commission. Notice of this meeting is required under the Federal Advisory Committee Act (Public Law 92–463).

Meeting Date and Time: February 9, 1993 1 p.m.

Address: American Legion Club meeting room, 201 E. Buchanan Street, Bassett, Nebraska.

(In the event of inclement weather, the meeting will be held the following week, February 16, 1993, at 1 p.m. at the same location. Cancellation notice will be communicated over the local radio stations.)

Agenda topics include: an update and discussion on the status of the draft management plan for the Niobrara Scenic River by the National Park Service planning team (including boundary alternatives, and meeting with landowners); the opportunity for public comment, and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting. In order to accomplish the agenda for the meeting the Chair may want to limit or schedule public presentations.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTAL INFORMATION: The Commission was established pursuant to Public Law 102–50, section 5. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, on matters pertaining to the development of a management plan, and on the management and operation of the 40-mile and 30-mile segments of the Niobrara River designated by section 2 of Public Law 102–50 which lie outside the boundary of the Fort Niobrara National Wildlife Refuge and that segment of the Niobrara River from its confluence with Chimney Creek to its confluence with Rock Creek.

FOR FURTHER INFORMATION CONTACT: Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763–0591, (402) 336–3970.

Dated: December 22, 1993.

William W. Schenk,

Acting Regionol Director, Midwest Region.

[FR Doc. 94-403 Filed 1-6-94; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 731–TA–677; Preliminary]

Coumarin From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a preliminary antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigation No. 731–TA–677 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China of coumarin,[1] provided for in subheading 2932.21.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 14, 1994.

For further information concerning the conduct of this investigation and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Douglas Corkran (202–205–3177), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted in response to a petition filed on December 30, 1993, by Rhone-Poulenc Specialty Chemicals Company, Cranbury, NJ.

Participation in the Investigation and Public Service List

Persons (other than petitioners) wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this preliminary investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with this investigation for 9:30 a.m. on January 20, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Douglas Corkran (202–205–3177) not later than January 18, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in this investigation and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigation. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed.

The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Dated: January 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-400 Filed 1-6-94; 8:45 am]

BILLING CODE 7020-02-P

[1] The chemical coumarin is a lactone with the formula $C_9H_6O_2$.

[Investigations Nos. 731–TA–678 through 682; Preliminary]

Stainless Steel Bar From Brazil, India, Italy, Japan, and Spain

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–678 through 682 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. § 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, India, Italy, Japan, and Spain of stainless steel bar, provided for in subheadings 7220.11.00, 7220.12.50, 7222.10.00, 7222.20.00, and 7222.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value.[1] The Commission must complete preliminary antidumping investigations in 45 days, or in this case by February 14, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jonathan Seiger (202–205–3183), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on December 30, 1993, by Al Tech Specialty Steel Corp., Dunkirk, NY; Carpenter Technology Corp., Reading, PA; Republic Engineered Steels, Inc., Massillon, OH; Slater Steels Corp., Fort Wayne, IN; Talley Metals Technology, Inc., Hartsville, SC; and the United Steelworkers of America, AFL–CIO/CLC.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in §§ 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on January 20, 1994, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Jonathan Seiger (202–205–3183) not later than January 18, 1994, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such

[1] For purposes of these investigations, the term "stainless steel bar" means articles of stainless steel in straight lengths that have been either hot-rolled, forged, turned, cold-drawn, cold-rolled, or otherwise cold-finished, or ground, having a uniform solid cross section along their whole length in the shape of circles, segments of circles, ovals, rectangles (including squares), triangles, hexagons, octagons, or other convex polygons, as well as hot-rolled flat-rolled products from 6.35 to 254 mm (inclusive) in width and 3.18 mm and over in thickness. Except as specified above, the term does not include stainless steel flat-rolled products, wire, angles, shapes, or sections. Stainless steel bar includes cold-finished stainless steel bars that are turned or ground in straight lengths, whether produced from hot-rolled bar or from straightened and cut rod or wire, and reinforcing bars that have indentations, ribs, grooves, or other deformations produced during the rolling process.

duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before January 25, 1994, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Dated: January 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–401 Filed 1–6–94; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1134X)]

Consolidated Rail Corporation—Abandonment Exemption—In Crawford County, PA; Notice of Exemption

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments* to abandon its approximately 1.1-mile line of railroad known as the Vallonia Branch from milepost 0.0 to milepost 1.1 In Meadville, Crawford County, PA.

Conrail has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) no overhead traffic has moved over the line for at least 2 years; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in complainant's favor within the 2-year period; and (4) it has met the notice requirements at 49 CFR 1105.7(b) (service of environmental report on agencies), 49 CFR 1105.8(c) (service of historic report on State Historic Preservation Officer), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies).

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

This exemption will be effective on February 6, 1994, unless stayed or a formal expression of intent to file an offer of financial assistance (OFA) is filed. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29 must be filed by January 18, 1994.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 27, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to Conrail's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 12, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: December 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–285 Filed 1–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the exemption. See *Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of the exemption.

[2] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use requests as long as it retains jurisdiction to do so.

[Finance Docket No. 32405]

The Kansas City Southern Railway Company—Merger Exemption—MidSouth Corporation, MidSouth Rail Corporation, SouthRail Corporation, MidLouisiana Rail Corporation, and TenRail Corporation; Notice of Exemption

On December 20, 1993, The Kansas City Southern Railway Company (KCSR), a class I common rail carrier, and MidSouth Corporation (MSC), a noncarrier, and its common carrier rail subsidiaries described below, jointly filed a notice of exemption under 49 CFR 1180.2(d)(3), for: (1) The merger of MSC and its subsidiaries [1], with MSC being the surviving entity and (2) the subsequent merger of MSC and KCSR, with KCSR being the surviving entity.

KCSR, a class I carrier, and MSC, a regional railroad holding company that provides freight transportation through its common carrier subsidiaries, are both wholly owned subsidiaries of Kansas City Southern Industries, Inc. (KCSI).[2]

MSR, a class II carrier, and TR, a class III carrier, are wholly owned subsidiaries of MSC. MLR, a class III carrier, is a wholly owned subsidiary of MSR. SR is a class II carrier with all of its stock owned by MSC (25 shares) and MSR (15 shares).

The parties intend to consummate the proposed merger transactions on January 4, 1994.[3]

Because the parties are members of the same corporate family, and apparently the mergers will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers operating outside the corporate family, the transaction qualifies for the class exemption at 49 CFR 1180.2(d)(3). The purpose of the transactions is to eliminate duplicative recordkeeping, filing, and reporting requirements and to render more efficient current billing and car reporting processes.

To ensure that all employees who may be affected by the transactions are given no less than the minimum protection under 49 U.S.C. 10505(g)(2) and 11347, the labor conditions set forth in *New York Dock Ry.—Control—Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979) are imposed.

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert K. Dreiling, The Kansas City Southern Railway Company, 114 West 11th Street, Kansas City, MO 64105.

Decided: December 29, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 94–287 Filed 1–6–94; 8:45 am]

BILLING CODE 7035–01–P

[1] MidSouth Rail Corporation (MSR), SouthRail Corporation (SR), MidLouisiana Rail Corporation (MLR), and TenRail Corporation (TR).

[2] On June 7, 1993, K&M Newco., Inc. (K&M), a wholly owned subsidiary of KCSI, acquired all of the outstanding stock of MSC.

[3] As stated in the agreements attached as exhibits to the notice, the effective date of the merger of MSC with its subsidiaries will be December 31, 1993, and the effective date of the merger of MSC into KCSR will be January 4, 1994.

DEPARTMENT OF JUSTICE

Federal Bureau of Prisons

Notice of Intent To Prepare a Draft Environmental Impact Statement (DEIS) for the Conversion of the Former University of Minnesota Technical College in Waseca, MN

AGENCY: U.S. Department of Justice, Federal Bureau of Prisons.

ACTION: Notice of intent to prepare a Draft Environmental Impact Statement (DEIS).

SUMMARY:

Proposed Action

The United States Department of Justice, Federal Bureau of Prisons has determined that a Federal Correctional Institution (FCI) is needed in its system.

The Federal Bureau of Prisons has preliminarily evaluated the former technical college for conversion potential and proposes to convert the existing campus to correctional use to house 1,100 sentenced low-security male inmates. The facility appears to be technically suitable for use as a correctional institution, and the EIS will address the environmental consequences of converting the facility to correctional use.

The proposed site is approximately 90 acres located in the Southwest corner of the City of Waseca, Waseca County, Minnesota. The property is bound on the North by Seventh Avenue SW., on the South by County Road 57, on the East by Sixth Street SW., and on the West by College Parkway.

It is anticipated that the former campus buildings and grounds are of sufficient size to provide space for housing, programs, services and support areas as well as administration, parking and staff training.

The Process

In the process of evaluating the site, several aspects will receive detailed examination including: utilities, traffic patterns, noise levels, visual intrusion, threatened and endangered species, cultural resources and socio-economic impacts.

Alternatives

The Bureau's plans are site specific, in that the former campus has been offered to the Federal Bureau of Prisons via donation. Thus, alternatives other than the Waseca Technical College buildings and grounds are not being evaluated or considered. In development of the DEIS, the option of "no action" is being fully and thoroughly examined.

Scoping Process

During the preparation of the DEIS, there will be opportunities for public involvement in order to determine the issues to be examined. A Scoping Meeting will be held at 7 p.m. on Thursday, January 20, 1994 at the Waseca High School Little Theater. The meeting will be well publicized and will be held at a time which will make it possible for the public and interested agencies or organizations to attend. In addition, public information meetings have been held by representatives of the Bureau of Prisons with interested citizens, officials and community leaders.

DEIS Preparation

Public notice will be given concerning the availability of the DEIS for public review and comment.

ADDRESSES: Questions concerning the proposed action and the DEIS can be directed to: K. Bradley Wiggins, Site Selection and Environmental Review Specialist, Federal Bureau of Prisons, 320 First Street, NW., Washington, DC 20534, (202) 514–8697.

Dated: January 3, 1994.

Patricia K. Sledge,

Chief, Site Selection and Environmental Review Branch.

[FR Doc. 94–308 Filed 1–6–94; 8:45 am]

BILLING CODE 4410–5–M

DEPARTMENT OF LABOR

Employment Standards Administration

All-Agency Memorandum No. 174 Under the Davis-Bacon and Related Acts

AGENCY: Wage and Hour Division, Employment Standards Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing All Agency Memorandum No. 174, which was forwarded to Federal contracting agencies on December 2, 1993. This memorandum provides guidance concerning the suspension of "helper" regulations under the Davis-Bacon and related Acts in Fiscal Year 1994, and is being published to inform the public on policies and procedures now in effect as a result of the suspension.

FOR FURTHER INFORMATION CONTACT: William W. Gross, Acting Assistant Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, room S–3028, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone (202) 219–8353. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On Thursday, October 21, 1993, President Clinton signed the FY 1994 Appropriations Act for the Department of Labor, Health and Human Services, and Education, and related agencies (Pub. L. 103–112). Section 104 of this act contains a provision that prohibits the Department of Labor (Department) from expending funds appropriated under the act to implement or administer the Davis-Bacon "helper"

regulations at 29 CFR sections 1.7(d), 5.2(n)(4) and 5.5(a)(1)(ii). As a result, these regulations were suspended and former rules concerning conformance procedures were reinstated at 29 CFR 5.5(a)(1)(v). (See **Federal Register** 58 FR 58954, (November 5, 1993).) The Wage and Hour Division routinely uses an "All Agency Memoranda" procedure to advise procurement agencies of applicable policies and procedures in the administration and enforcement of the labor standards requirements of the Davis-Bacon and related Acts. In this regard, All Agency Memorandum No. 174 provides guidance to procurement agencies on the suspension of "helper" regulations during FY 1994. Because of the interest in the use of helpers under the Davis-Bacon and related Acts, All Agency Memorandum No. 174 is published for general information.

Document Preparation

This document was prepared under the direction and control of Maria Echaveste, Administrator, Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor.

Signed in Washington, DC, on this 30th day of December, 1993.

Maria Echaveste,

Wage and Hour Administrator.

U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division.

December 2, 1993.

Memorandum No. 174

Memorandum for All Contracting Agencies of the Federal Government and the District of Columbia

From: Maria Echaveste, Administrator

Subject: Prohibition on Department of Labor Implementation/Administration of Davis-Bacon Helper Regulations Pursuant to Fiscal Year (FY) 1994 Appropriation Act

On Thursday, October 21, 1993, President Clinton signed the FY 1994 Appropriations Act for the Department of Labor, Health and Human Services, and Education, and related agencies (Pub. L. 103–112). Section 104 of this act contains a provision that prohibits the Department of Labor (Department) from expending funds appropriated under the act to implement or administer the Davis-Bacon "helper" regulations that were previously codified at 29 CFR 1.7(d), 5.2(n)(4) and 5.5(a)(1)(ii). (See **Federal Register**, 54 FR 4234, 55 FR 50148, and 57 FR 28776). Those regulations have therefore been suspended and the former rules reinstated. (See Notice of suspension of regulations and reinstatement of former regulation published in the **Federal Register** on November 5, 1993 (58 FR 58954), copy attached.

As of October 21, the Department of Labor ceased activities that were related to the administration and implementation of suspended helper regulations. The discontinued activities included:

- Issuing classifications and wage rates for helpers in wage determinations based on data yielded by new surveys.
- Processing survey data to determine whether the use of helpers is prevailing on construction in areas where Davis-Bacon surveys are being conducted to determine prevailing wage rates for any particular type of construction.
- Processing requests for the approval of additional classifications and wage rates for helpers pursuant to the suspended conformance procedures formerly set forth in 29 CFR 5.5(a)(1)(ii).
- Processing requests for the reconsideration of rulings or final determinations concerning the use of helper classifications and/or wage rates.

Guidance regarding the effect of the newly enacted prohibition on contracts at various stages of the procurement process follows.

Contracts awarded on or after October 21, 1993.[1]

Contractors and subcontractors may not employ "helpers" as that term was defined in § 5.2(n)(4) of the suspended regulations on any Davis-Bacon covered contract awarded on or after October 21, 1993. Semi-skilled helper classifications and wage rates that were issued in wage determinations pursuant to the suspended regulations and that have been included in contracts awarded on or after October 21, 1993, are not valid. Moreover, the regulatory provision that allowed the consideration of additional classification actions for helpers is suspended; therefore, the Department will not consider any additional classification requests that would permit the use of helpers as defined in the suspended regulations on such contracts. Davis-Bacon general wage determinations are being modified to omit those helper classifications and wage rates that were issued pursuant to the suspended regulations.

In accordance with its prior practice, the Department will, however, recognize helper classifications that are separate and distinct classes of workers performing duties distinguished from those of journey-level workers or other classifications listed on the wage determination; whose use prevails in an area; and who are not employed in an informal apprenticeship or training capacity. As detailed in the November 5, 1993, notice, the Department will issue such helpers on wage determinations or consider additional classification requests for such helpers where these criteria are met and a specific description of duties is associated with the particular helper class. Helpers may be employed on contracts awarded after October 21, 1993, only if a definition of the helper's duties establishing the helper as a separate and distinct classification is set forth in the wage determination or on the additional classification approval documents.

Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses and the contract wage determination contains a helper classification or a helper classification has been approved for use on the project.

Contractors and subcontractors may continue to employ individuals in helper classifications that were issued for application to contracts or approved for use on contracts awarded prior to the suspension of the regulations. The workers must, however, be employed in accordance with the regulatory definition set forth in § 5.2(n)(4) of regulations, part 5, which was applicable at the time the contract was awarded, and the workers must be paid at least the corresponding wage rate for the helper classification in which they are performing.

The Department will continue to take action to ensure that workers erroneously classified as helpers are reclassified as journey-level workers or laborers in accordance with the work performed (those cases, for example, where employees perform work solely of a skilled nature, where individuals do not work under the supervision and direction of a journey-level classification, or where workers perform duties beyond the duties performed by helpers pursuant to the practice in the area). The Department will also take enforcement action against any contractor or subcontractor that fails to compensate its helpers according to the applicable wage determination rate or approved conformance wage rate. Contracting agencies are also reminded of their enforcement responsibilities under Reorganization Plan No. 14 of 1950 and encouraged to take action as may be necessary to ensure compliance in such situations.

[1] In the case of projects assisted under the National Housing Act, the applicable date is the start of construction or the initial endorsement of the mortgage, whichever occurs first. Similarly, in the case of projects to receive housing assistance payments under section 8 of the U.S. Housing Act of 1937, the applicable date is the beginning of construction or the date the housing assistance payment contract is executed, whichever occurs first.

Contracts awarded prior to October 21, 1993 where the contract contains the newly-suspended helper clauses but the contract wage determination does not contain a helper classification and a helper classification has not yet been approved for use on this project.

Contractors and subcontractors may not employ any classification, including helpers, on a Davis-Bacon covered project unless the wage determination contains the classification or the classification is approved pursuant to the Department's additional classification procedures. The regulations provide that the wage rates determined for unlisted classifications under the additional classification procedures shall be paid to all workers performing work in that classification from the first day on which work was performed. This regulatory provisions permits retroactive application of approved additional classifications and wage rates and, at the same time, also allows for retroactive enforcement action against a contractor or subcontractor whose proposed additional classification and/or wage rate is denied by the Department.

Clearly, the Department cannot act on conformance requests for helpers or requests for reconsideration of such conformance actions given the Congressional action. Thus, contractors or subcontractors who classify and pay individuals as helpers with the expectation that the Department will approve an additional classification request at some future point place themselves at risk of subsequent enforcement action, including the withholding of contract funds. Under these circumstances, agencies should use their enforcement discretion in determining whether withholding action is appropriate to protect the interest of employees where contractors pay individuals less than the journey-level rate during the period of the prohibition. Agencies clearly should withhold contract funds where the Department has denied a conformance request, even through the contractor or subcontractor may have or may intend to request reconsideration of the additional classification denial. Agencies should also withhold contract payments on any contracts completed or nearing completion during the suspension of the helper regulations so that any back wages potentially due employees are not lost because the contract was closed and contract funds paid out.

Contracts awarded prior to October 21, 1993 where the contract does not contain the revised helper clauses.

In implementing the helper regulations after the lifting of the prohibition imposed by section 303 of the 1991 Dire Emergency Supplement Appropriation Act, the Department suggested that contracting agencies modify existing contracts to include the revised helper contract clauses, thereafter permitting the addition of helper classifications through the additional classification procedures in § 5.5(a)(1)(ii) of regulations, part 5. However, in light of the Congressional action, that option no longer exists for contracts that were awarded without the helper contract clauses and which have not yet been modified. Contractors and subcontractors performing on such contracts may not employ helpers as those classifications were defined by § 5.2(n)(4) of regulations, part 5.

Prior background concerning the regulations in question is contained in All Agency Memoranda Nos. 154, 161, 163 and 165, issued on January 2, 1991, January 29, 1992, June 22, 1992, and July 24, 1992, respectively. Application of these All-Agency Memoranda is also suspended.

Agencies are reminded of the need to make appropriate changes in the procurement regulations (see especially 48 CFR 22.406–3, 52.222–6(b) and 52.222–9) and related contract documents to conform to the revised regulations.

[FR Doc. 94–328 Filed 1–6–94; 8:45 am]

BILLING CODE 4510–27–M

Employment Standards Administration Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersede as decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing in encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution

Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I:

Maryland, MD930048 (Jan. 7, 1994), MD930049 (Jan. 7, 1994)
Virginia, VA930104 (Jan. 7, 1994), VA930105 (Jan. 7, 1994), VA930106 (Jan. 7, 1994), VA930107 (Jan. 7, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I:

District of Columbia, DC930001 (Feb. 19, 1993)
Maine, ME930026 (Dec. 10, 1993)
West Virginia, WV930003 (Feb. 19, 1993)

Volume II:

Iowa, IA930001 (Feb. 12, 1993)
Ohio, OH930001 (Feb. 12, 1993), OH930002 (Feb. 12, 1993), OH930003 (Feb. 12, 1993), OH930028 (Feb. 12, 1993), OH930029 (Feb. 12, 1993), OH930034 (Feb. 12, 1993)
Texas, TX930027 (Feb. 12, 1993), TX930028 (Feb. 12, 1993), TX930029 (Feb. 12, 1993), TX930030 (Feb. 12, 1993), TX930031 (Feb. 12, 1993), TX930036 (Feb. 12, 1993), TX930043 (Feb. 12, 1993), TX930045 (Feb. 12, 1993), TX930047 (Feb. 12, 1993), TX930048 (Feb. 12, 1993), TX930051 (Feb. 12, 1993)

Volume III:

Colorado, CO930001 (Feb. 19, 1993), CO930002 (Feb. 19, 1993), CO930005 (Feb. 19, 1993), CO930006 (Feb. 19, 1993), CO930007 (Feb. 19, 1993), CO930010 (Feb. 19, 1993), CO930011 (Feb. 19, 1993), CO930014 (Feb. 19, 1993)
Hawaii, HI930001 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 30th day of December 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–167 Filed 1–6–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–28,672]

Allied Signal Automotive Friction Materials, Troy, NY; Negative Determination Regarding Application for Reconsideration

By an application dated October 21, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was published in the **Federal Register** on September 22, 1993 (58 FR 49321).

Pursuant to 29 CFR 90.18(c) reconsideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produce automotive and truck friction materials.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. The "contributed importantly" test is generally demonstrated through a survey of the firm's major customers. The Department's survey of the subject firm major declining customers shows that none of the respondents imported automotive or truck friction materials in the relevant period.

Your petition indicates approximately 100 workers were laid off on October 8, 1990. These workers are covered under the certification the Department issued on July 3, 1991, TA–W–25,766.

Investigation findings show that the worker separations in 1993 involved the Engineering Department. However, that Department is being consolidated with an affiliate plant in Ohio. A domestic transfer of operations would not form a basis for a worker group certification.

Further, your amended sales data shows either increased or constant sales and production of drum segments and cerametalix in 1992 compared to 1991 and in the first six months of 1993 compared to the same period in 1992. All manufacturing on medium and heavy truck disc brakes ceased in October, 1992. Worker separations resulting from the cessation of production on truck disc brakes in 1992 would have been covered under TA–W–25,766.

Domesitc production from a foreign owned plant (transplant production) would not form a basis for a worker group certification. Such production is not considered an import.

With respect to Allied Signal's lost bids, most occurred when the plant was under a worker group certification. Further, by the company's own admission, there were some company imports of friction materials but these were products which either were not available at Troy or for which retooling in the U.S. would be uneconomic.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of December 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–324 Filed 1–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,911]

Honeywell Keyboard Division, El Paso, TX; Negative Determination Regarding Application for Reconsideration

By an application dated November 4, 1993, the company requested administrative reconsideration of the subject petition for trade adjustment assistance, TAA. The denial notice was published in the **Federal Register** on October 21, 1993 (58 FR 54377).

Pursuant to 29 CFR 90.18(c) consideration may be granted under the following circumstances:

(1) If it appears on the basis of facts not previously considered that the determination complained of was erroneous;

(2) If it appears that the determination complained of was based on a mistake in the determination of facts not previously considered; or

(3) If in the opinion of the Certifying Officer, a misinterpretation of facts or of the law justified reconsideration of the decision.

Investigation findings show that the workers produced keyboards.

The Department's denial was based on the fact that the "contributed importantly" test of the Group Eligibility Requirements of the Trade Act was not met. Worker separations on July 30, 1993 resulted from the purchase of the plant by Key-Tronic of Spokane, Washington. No customer survey was conducted because there were no sales declines in 1992 compared to 1991 and in the first six months of 1993 compared to the same period in 1992. The findings also show that there were no company imports during the period of the investigation.

The company states that the Honeywell workers should be certified eligible to apply for TAA because Key-Tronic which purchased the Honeywell plant in August 1993 also produces keyboards and was certified for TAA in 1992.

Each petition is investigated on its own merits and in the time frame in which it was filed. Key-Tronic increased its reliance on company imports of keyboard and computer peripherals while decreasing production and employment during the investigation period. Accordingly, Key-Tronic met all three of the Group Eligibility Requirements of the Trade Act and a worker group certification was issued on January 17, 1992.

If after August 1, 1993, the El Paso plant experiences company imports that adversely affect sales or production and employment declines, the Department would entertain a new petition.

Conclusion

After review of the application and investigative findings, I conclude that there has been no error or misinterpretation of the law or of the facts which would justify reconsideration of the Department of Labor's prior decision. Accordingly, the application is denied.

Signed at Washington, DC, this 27th day of December 1993.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 94–325 Filed 1–6–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,999]

Phillips Petroleum Co., Lafayette, LA; Dismissal of Application for Reconsideration

Pursuant to 29 CFR 90.18 an application for administrative reconsideration was filed with the Director of the Office of Trade Adjustment Assistance for workers at Phillips Petroleum Company, Lafayette, Louisiana. The review indicated that the application contained no new substantial information which would bear importantly on the Department's determination. Therefore, dismissal of the application was issued.

TA–W–28,999; Phillips Petroleum Company, Lafayette, Louisiana (December 27, 1993)

Signed at Washington, DC this 30th day of December, 1993.

Marvin M. Fooks,

Director, Office of Adjustment Assistance.

[FR Doc. 94–326 Filed 1–6–94; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221 (a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2 of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 1994.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 18, 1994.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 27th day of December, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Tomorrow Today Corp. (Wkrs)	Westfield, MA	Dec. 27, 1993	Nov. 23, 1993	29,349	Giftware and ornaments.
Sundown Operating, Inc. (Wkrs)	Sundown, TX	Dec. 27, 1993	Dec. 18, 1993	29,350	Oil and gas.
Imperial Wallpaper, Inc. (UPIU)	Plattsburgh, NY	Dec. 27, 1993	Dec. 9, 1993	29,351	Wallcoverings.
Hasbro, Inc. (Wkrs)	El Paso, TX	Dec. 27, 1993	Dec. 14, 1993	29,352	Children's toys.

APPENDIX—Continued

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
General Electric Co. (Co)	Cincinnati, OH	Dec. 27, 1993	Dec. 7, 1993	29,353	Rotating parts and turbine mid frame.
General Motors Corp, Delco Chassis (UAW).	Livonia, MI	Dec. 27, 1993	Dec. 13, 1993	29,354	Bumpers, suspension springs.
Data Integrators (Wkrs)	Houston, TX	Dec. 27, 1993	Dec. 15, 1993	29,355	Seismic data.
Cooper Industries/Connectron (IBEW).	Laurence Harbor, NJ.	Dec. 27, 1993	Dec. 9, 1993	29,356	Circuit breakers, fuse holders.
Aerovox Aero M (Wkrs)	Glasgow, KY	Dec. 27, 1993	Dec. 13, 1993	29,357	Aluminum electrolytic capacitors.
White Rodgers (Wkrs)	Logansport, IN	Dec. 27, 1993	Dec. 8, 1993	29,358	Automotive electrical equipment.
Atlas of Boston (LGPN)	Philadelphia, PA	Dec. 27, 1993	Dec. 17, 1993	29,359	Leather attache cases.
Flint Ink (GCIU)	Lodi, NJ	Dec. 27, 1993	Dec. 14, 1993	29,360	Printing ink, solvents, driers.
Bailey Controls Co. (Wkrs)	Williamsport, PA	Dec. 27, 1993	Dec. 17, 1993	29,361	Circuit boards.
The American Olean Tile Co. (URW).	Lansdale, PA	Dec. 27, 1993	Dec. 10, 1993	29,362	Ceramic wall tile and trim tile.
Accessories by Pearl (Wkrs)	New York, NY	Dec. 27, 1993	Dec. 15, 1993	29,363	Leather goods.
First Base, Inc. (Wkrs)	Bayshore, NY	Dec. 27, 1993	Dec. 10, 1993	29,364	Miss sportwear.
Mitoro Industries (Wkrs)	Bayshore, NY	Dec. 27, 1993	Dec. 10, 1993	29,365	Jrs sportswear.
General Seafood (Wkrs)	Magnolia, MA	Dec. 27, 1993	Dec. 10, 1993	29,366	Frozen seafood.
Waco, Inc (Wkrs)	Danvers, MS	Dec. 27, 1993	Dec. 10, 1993	29,367	Frozen crab meat.

[FR Doc. 94–327 Filed 1–6–94; 8:45 am]
BILLING CODE 4510–30–M

LEGAL SERVICES CORPORATION

Solicitation for Proposals for the Provision of Civil Legal Services to the Fort Apache Area of Arizona

AGENCY: Legal Services Corporation.
ACTION: Solicitation for proposals.

SUMMARY: The Legal Services Corporation (LSC) is soliciting proposals to provide effective, efficient, and high quality civil legal services in 1994 to the LSC-eligible Native American client population in the Fort Apache Indian Reservation Area.

DATES: Proposals must be received by 5 p.m., February 17, 1994.

ADDRESSES: A solicitation package, containing the grant application guidelines, proposal content requirements, and specific selection criteria, is available from the Grants and Budget Division, Office of Program Services, Legal Services Corporation, 750 First Street, NE, 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants and Budget Division, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. LSC is seeking applicants from the private bar and other organizations (including currently funded LSC grantees) with a demonstrated sensitivity and commitment to deliver services to low-income persons, to provide civil legal services to the Native Americans in the Fort Apache area.

The grant amount, $104,468, is nine-twelfths of the Native American funds for this area mandated by the 1994 LSC Appropriations Act.

The selected applicant will be awarded a one-time, nonrecurring grant that will begin no earlier than April 1, 1994, and will end on December 31, 1994. This one-time grant will be awarded pursuant to authority conferred by sections 1006(a)(1)(B) of the Legal Services Corporation Act of 1974 (LSC Act), as amended.

Dated: January 3, 1994.
Ellen J. Smead,
Director, Office of Program Services.
[FR Doc. 94–307 Filed 1–6–94; 8:45 am]
BILLING CODE 7050–01–P

INTERNATIONAL BOUNDARY AND WATER COMMISSION UNITED STATES AND MEXICO

Rio Grande American Canal Extension Project, El Paso, Texas; Availability of Final Environmental Assessment and Finding of No Significant Impact

AGENCY: U.S. International Boundary and Water Commission.
ACTION: Notice of availability of final environmental assessment and finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Final Regulations (40 CFR parts 1500 through 1508); and the U.S. Section's Operational Procedures for Implementing section 102 of NEPA, published in the **Federal Register** September 2, 1981 (46 FR 44083–44094); the U.S. Section hereby gives notice that the Final Environmental Assessment and Final Finding of No Significant Impact for the proposed action of constructing an extenstion to the existing American Canal is available. A Notice of Finding of No Significant Impact dated October 21, 1993, provided a thirty day review and comment period before making the Finding final. The Notice was published in the Federal Register November 1, 1993 (58 FR 58377–58379).

FOR FURTHER INFORMATION CONTACT: Dr. Conrad G. Keyes, Jr., Principal Engineer, Planning; U.S. Section, International Boundary and Water Commission, United States and Mexico, 4171 North Mesa Street, building C–310, El Paso, Texas 79902–1422. Telephone: 915/534–6703.

SUPPLEMENTARY INFORMATION:

Proposed Action

The proposed Rio Grande American Canal Extension (RGACE), with or without the immediate participation of Mexico, involves the rehabilitation and enlargement of segments of the existing Franklin Canal; the construction of a new, reinforced concrete-lined canal; and other associated works. The United States Section (U.S. Section) of the International Boundary and Water Commission, United States and Mexico (Commission) is authorized under the Rio Grande American Canal Extension Act of 1990 (the Act of 1990), Public Law 101–438, dated October 15, 1990, to construct, operate, and maintain an extension of the existing American Canal in El Paso, Texas. The Act of 1990 also allows for the participation of Mexico in the proposed action for the purpose of conveying their 1906 Convention waters.

In the Act of 1990, the United States Congress authorized the negotiation of international agreements for use of the proposed RGACE to convey Mexican waters. The government of Mexico considers there is merit in conveying its 1906 Convention waters in the proposed RGACE in view of the conveyance losses and safety issues inherent in Mexico's existing canal system. The Act of 1990 makes possible the immediate or future participation by Mexico in financing the proposed RGACE capacity improvements and other works and measures necessary to convey Mexican waters in the canal, including future restoration of the internatonal grade control structure located at Riverside Diversion Dam.

As stated in section 2(6) of the Act of 1990, "(t)he construction and operation of an extension of the American Canal which would lie wholly in the United States would provide for a more equitable distribution of waters between the United States and Mexico, reduce water losses, and minimize many hazards to public safety." This would hold true for both America and Mexico since both countries currently experience unauthorized diversions of water, water losses, and public health and safety hazards associated with their respective conveyance systems. The canal extension and associated facilities would be located adjacent to the Rio Grande Rectification Flood Control Project within the City of El Paso, El Paso County, Texas.

Water for domestic and irrigation use is diverted into the American Canal at the American Dam located on the Rio Grande upstream from downtown El Paso. The diversion dam and canal were constructed completely within United States territory to divert United States waters away from the Rio Grande and to permit the discharge into the international reach of the Rio Grande only those waters assigned to the Republic of Mexico under the Convention of 1906. This ensured that United States waters diverted at the American Dam area completely retained within the United States to a point downstream of the location where the United States delivers the 1906 Convention waters near International Dam. Depending on the schedule submitted by Mexico, up to 8.5 cubic meters per second (cms) or 300 cubic feet per second (cfs) of water is released into the Rio Grande channel downstream from American Dam for delivery to the Republic of Mexico in the bed of the river near the head works of the Acequia Madre, Mexico's principal canal, immediately upstream of International Dam. As provided in the 1906 Convention, a total of 74.009 thousand cubic meters (60,000 acre-feet) of water is delivered to Mexico annually.

United States Rio Grande Project waters assigned to water districts are currently in part conveyed in the international reach of the Rio Grande from International Dam to Riverside Diversion Dam. A significant amount of these waters (an estimated 39,471 thousand cubic meters or 32,000 acre-feet annually) is lost through seepage, evaporation, transpiration, and by unauthorized diversion or collection as they are conveyed in the international reach of the Rio Grande. A significant amount of these water losses (an estimated 25,900 to 37,000 thousand cubic meters or 21,000 to 30,000 acre-feet annually) could be salvaged by conveying them in the proposed concrete-lined canal extension.

Alternatives Considered

Four alternatives, including the Proposed Action Alternative and the No Action Alternative, were considered during the preparation of the environmental assessment. The alternatives are summarized here:

1. No Action Alternative

Under this alternative, there would be no construction of an extension to the existing American Canal. United States waters in the international reach of the Rio Grande from International Dam to Riverside Diversion Dam would continue to be susceptible to unauthorized diversion or withdrawal and would continue to be lost through seepage, evaporation, and transpiration while flowing in the Rio Grande and the unlined canals. There would be no change in existing facilities or conditions under this alternative, and existing hazards to public health and safety would remain the same.

2. Proposed Action Alternative

This Alternative contains three distinct options:

(1) Construction of the proposed RGACE without immediate Mexican participation;

(2) Construction of the proposed RGACE with immediate Mexican participation; and

(3) Construction of the proposed RGACE with a regulating reservoir located near the canal terminus to facilitate project operations. Any one of the options under this Alternative would ensure the equitable distribution of United States and Mexican waters, reduce water losses that would otherwise occur within the unlined canals and the river channel, and eliminate many hazards to public safety and health.

The proposed RGACE is composed of both reconstruction and new construction of a concrete lined channel. Even though work has not yet been authorized for the existing American Canal upstream of International Dams, it is possible that some rehabilitation will be necessary throughout its 3.2 kilometers (1.98 miles) length to make it compatible with the design capacity for the proposed action of 42.5 cms (1,500 cfs) and could be accomplished by the construction of parapet walls. An existing portion of the Franklin Canal from International Dam to the Leon Street Wasteway will be reconstructed throughout its 2.4 kilometers (1.48 miles) length as a trapezoidal or rectangular concrete lined channel to convey the design capacity. The existing Wasteway No. 1 in this segment will also be upgraded. The deteriorated, unreinforced concrete lining in the existing Franklin Canal from the Leon Street Wasteway to the Second Street Lateral will be replaced with reinforced concrete. This 2.7 kilometers (1.69 miles) segment will be designed to convey the design capacity. The new construction segment extends for 19.4 kilometers (12.1 miles) from the Second Street Lateral to Riverside Canal at Riverside Diversion Dam. It will obliterate the portion of the Playa Lateral which is located between Loop 375 (Border Highway) and the United States Levee of the Rio Grande Rectification Project, and incorporate a turnout for the Playa Lateral at the point where it deviates from the proposed RGACE alignment. The existing Playa Intercepting Drain will be relocated or abandoned. The constructed extension will be an open, concrete lined channel designed to convey 42.5 cms (1,500 cfs).

Although funds have not been appropriated in sufficient amounts to construct the proposed action with a regulating reservoir near the terminus of the proposed RGACE, it is possible that it could be constructed by an interested entity in the future. The reservoir would have a design capacity of 1.233 million cubic meters (1,000 acre-feet) at a maximum water depth of 3 meters (10 feet).

3. Extension of Existing Canal to Ascarate Wasteway Alternative

This alternative would involve a 12 kilometer (7.5 mile) extension of the American Canal to Ascarate Wasteway.

Water would be delivered to the Franklin Canal through the Ascarate Lateral by a pump station or other means and excess flows returned to the Rio Grande for subsequent diversion at Riverside Diversion Dam. This alternative would not accomplish the authorized purpose of keeping United States waters totally out of the Rio Grande between International Dam and Riverside Diversion Dam. Unauthorized diversion or withdrawal of United States waters would continue to occur below Ascarate Lateral. Construction of this alternative would not significantly reduce water losses since seepage losses would continue to accrue in the Rio Grande below Ascarate Lateral. Though the 12 kilometers (7.5 miles) extension would be fenced, existing public health and safety hazards would not be significantly reduced.

4. Franklin Canal Reconstruction Alternative

Under this alternative, the existing Franklin Canal would be reconstructed to convey 42.5 cms (1,500 cfs) to the heading of the Southside Feeder Canal at Ysleta. The feeder canal would transmit water to the Riverside Canal at a point downstream from the Riverside Diversion Dam. The Southside Feeder Canal would be reconstructed, a 4.8 kilometers (3 miles) section of the Riverside Canal would require excavation, and the Riverside Wasteway No. 1 would be reconstructed to accommodate the design capacity of 42.5 cms (1,500 cfs). Even though this alternative meets the criteria of the authorizing legislation, evaluation has shown that it would greatly exceed the design and construction costs of the proposed action. For this reason it is considered the least favored alternative to the proposed RGACE.

Availability

Single copies of the Final Environmental Assessment and Final Finding of No Significant Impact may be obtained at the above address.

Dated: December 29, 1993.

Suzette Zaboroski,

Staff Counsel.

[FR Doc. 94–359 Filed 1–6–94; 8:45 am]

BILLING CODE 4710–03–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 94–001]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Aerodynamics

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on aerodynamics.

DATES: January 24, 1994, 8:15 a.m. to 5:30 p.m.; January 25, 1994, 8:15 a.m. to 5:30 p.m.; and January 26, 1994, 8:15 a.m. to 11:45 a.m.

ADDRESSES: National Aeronautics and Space Administration, Ames Research Center, Building 258, room 221, Moffett Field, CA 94035.

FOR FURTHER INFORMATION CONTACT: Dr. F. Ron Bailey, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/604–5065.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Program Update
—Aerodynamics Program Review
—Aeronautics Thrust Reviews

Dated: January 3, 1994.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 94–330 Filed 1–6–94; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Music Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Chamber Music/Jazz Ensembles/Composer in Residence Section) to the National Council on the Arts will be held on January 24–28, 1994. The panel will meet from 9 a.m. to 5:30 p.m. on January 24–27, 1994 and from 9 a.m. to 5 p.m. on January 28, 1994. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 2 p.m. to 2:30 p.m. on January 24, 1994 for a discussion of policy and guidelines for the Composer in Residence category; and on January 28, 1994, from 4 p.m. to 5 p.m. for a discussion of policy and guidelines for the Chamber Music/Jazz Ensembles categories.

The remaining portions of this meeting, from 9 a.m. to 2 p.m. and from 2:30 p.m. to 5:30 p.m. on January 24, 1994; from 9 a.m. to 5:30 p.m. on January 25–27, 1994; and from 9 a.m. to 4 p.m. on January 28, 1994 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation of the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: January 3, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–304 Filed 1–6–94; 8:45 am]

BILLING CODE 7537–01–M

Presenting and Commissioning Advisory Panel; Meetings

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Presenting and Commissioning Advisory Panel (Commissioning Projects Section) to the National Council on the Arts will be held on January 25–28, 1994. The panel will meet from 9 a.m. to 6:30 p.m. on January 25–27, 1994, and from 9 to 5 p.m. on January 28, 1994.

This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public on January 28, 1994 from 1:30 p.m. to 5 p.m. for a Round IV policy review.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on January 25 to January 27, 1994 and from 9 a.m. to 1:30 p.m. on January 28, 1994, are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: January 3, 1994.

Yvonne M. Sabine,

Director, Office of Panel Operation, National Endowment for the Arts.

[FR Doc. 94–305 Filed 1–6–94; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–305]

Wisconsin Public Service Corporation, Wisconsin Power and Light Company, Madison Gas and Electric Company, Kewaunee Nuclear Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of a partial exemption from the requirements of 10 CFR part 50 appendix J, section III.D.1.(a) and an amendment to Facility Operating License No. DPR–43 to Wisconsin Public Service Corporation, Wisconsin Power and Light Company, and Madison Gas and Electric Company (the licensees), for the Kewaunee Nuclear Power Plant located in Kewaunee County, Wisconsin.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a partial exemption from the requirements of section III.D.1.(a) of appendix J to 10 CFR part 50. This section requires that a set of three Type A tests be performed at approximately equal intervals during each 10-year service period and that the third test of each set be conducted when the plant is shut down for the 10-year plant inservice inspection (ISI). The licensees' request is for an exemption from the requirement to perform the third Type A test when the plant is shutdown for the 10-year plant ISI. Additionally, the proposed action would amend the Facility Operating License by removing the current Technical Specification requirement that couples the performance of the Type A leakage tests to the 10-year inservice inspection program requirements.

The proposed action is in accordance with the licensees' request for exemption and application for amendment dated November 16, 1993.

The Need for the Proposed Action

The proposed exemption and license amendment is needed to avoid unnecessary restraints in outage scheduling. The licensees propose to perform the three Type A tests at approximately equal intervals within each 10-year period, with the third test of each set conducted as close as practical to the end of the 10-year period. However, there would be no required connection between the Appendix J 10-year interval and the inservice inspection (ISI) 10-year interval. The Type A tests and the 10-year ISI program are independent of each other and provide assurances of different plant characteristics. The licensees perform the ISI inspection requirements throughout the 10-year inspection interval. As a result, there is no extended outage in which the 10-year ISI examinations are performed. Consequently, the subject coupling requirement offers no benefit either to safety or to economical operation of the facility.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that granting the proposed exemption and license amendment would not significantly increase the probability or amount of expected primary containment leakage and that containment integrity would, thus, be maintained.

The only difference between the proposed requirements and the current requirements of 10 CFR part 50 appendix J, section III.D.1.(a) and the technical specifications would be that the third Type A test for each 10-year service period would not necessarily be conducted when the plant is shutdown for the 10-year plant inservice inspection. The number of required Type A tests and the periodicity of these tests would not be changed.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Nuclear Regulatory Commission's Final Environmental Statement, dated December 1972, related to the operation of the Kewaunee Nuclear Power Plant.

Agencies and Persons Consulted

The staff consulted with the State of Wisconsin regarding the environmental impact of the proposed action. The state official had no comment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption and license amendment. Based upon the foregoing environmental assessment, we conclude that the proposed action will

not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption and license amendment dated November 16, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington DC and at the University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 29th day of December 1993.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–340 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–271]

Vermont Yankee Nuclear Power Corporation; Vermont Yankee Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has taken action with regard to a Petition for action under 10 CFR 2.206 received from Messrs. Michael Daley and Jonathan M. Block, dated September 1, 1993, on behalf of the New England Coalition on Nuclear Pollution (Petitioner), regarding the Vermont Yankee Nuclear Power Station.

The Petitioner requested that the NRC reconsider the August 2, 1993 civil penalty assessed against the Vermont Yankee Nuclear Power Corporation for operating the Vermont Yankee Nuclear Power Station outside Technical Specifications from October 15, 1992 to April 6, 1993.

The Petitioner requested reconsideration based on its view that: (A) the seriousness of the event was greater than determined by the NRC; (B) the licensee failed to adequately respond to a number of questions posed by the NRC in the cover letter to the May 24, 1993 inspection report documenting the review of the issue; (C) the licensee has consistently failed to heed and learn from industry experience and practice, which in this case involved industry and NRC guidance on materials used in scram solenoid pilot valves; and (D) the NRC failed to effectively penalize the licensee in relation to the income generated by plant operation during the period that the plant operated in violation of the Technical Specifications.

The Director of the Office of Enforcement has reviewed the bases for the Notice of Violation and civil penalty that was issued and found the enforcement action to be proper. Therefore, the Petitioner's request has been denied. The reasons for the denial are explained in the "Director's Decision Under 10 CFR 2.206" (DD–93–23) which is available for public inspection at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Vermont Yankee Nuclear Power Station, Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301.

A copy of this Decision will be filed with the Secretary of the Commission for the Commission's review in accordance with 10 CFR 2.206(c) of the Commission's regulations. As provided by that regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission, on its own motion, institutes a review of the decision within that time.

Dated at Rockville, Maryland, this 28th day of December 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 94–339 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–416]

Entergy Operations, Inc., South Mississippi Electric Power Assoc., Mississippi Power and Light Co., Grand Gulf Nuclear Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–29, issued to the Entergy Operations, Inc. (the licensee), for operation of the Grand Gulf Nuclear Station (GGNS), located in Clairborne County, Mississippi.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new part 20. The changes would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendment dated August 11, 1993, implementing the 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TSs) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TSs, any alternative to the amendment either will have no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement related to the operation of the Grand Gulf Nuclear Station, dated September 1981.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated August 11, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Judge George W. Armstrong Library, Post Office Box 1406, S. Commerce at Washington, Natchez, Mississippi 39120.

Dated at Rockville, Maryland, this 3rd day of January, 1994.

For the Nuclear Regulatory Commission.

David L. Wigginton,

Acting Director, Project Directorate IV–3, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94–337 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 30–29567–CivP; ASLBP No. 94–686–01–CivP]

Cameo Diagnostic Centre, Inc., Byproduct Material License No. 20–27908–01; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1992, published in the **Federal Register**, 37 FR 28710 (1972), and sections 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding:

Cameo Diagnostic Centre, Inc.
Byproduct Material License No. 20–27908–01
EA 93–005

This Board is being established pursuant to the request of the Licensee for an enforcement hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards and Operations Support, dated November 24, 1993, entitled "Order Imposing a Civil Monetary Penalty" (58 FR 64341, December 6, 1993).

An order designating the time and place of any hearing will be issued at a later date.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board is comprised of the following Administrative Judges:

Judge Ivan W. Smith, Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Richard F. Cole, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Judge Charles N. Kelber, Board Member, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555

Issued at Bethesda, Maryland, this 30th day of December, 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 94–342 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–261]

Carolina Power & Light Co., (H.B. Robinson Steam Electric Plant, Unit No. 2); Exemption

I

Carolina Power and Light Company (CP&L or the licensee) is the holder of Facility Operating License No. DPR–23, which authorizes operation of the H.B. Robinson Steam Electric Plant, Unit No. 2 (HBR), at steady-state reactor power level not in excess of 2300 megawatts thermal. The facility consists of one pressurized water reactor located at the licensee's site in Darlington County, South Carolina. The license provides, among other things, that it is subject to all rules, regulations and Orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect.

II

Section 50.54(q) of 10 CFR part 50 requires a licensee authorized to operate a nuclear power reactor to follow and maintain in effect emergency plans that meet the standards of 10 CFR 50.47(b) and the requirements of appendix E to 10 CFR part 50. Section IV.F.2 of appendix E requires that each licensee annually exercise its emergency plan. Section IV.F.3 of appendix E requires that each licensee shall exercise with offsite authorities such that the State and local emergency plans are exercised biennially.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances. Special circumstances exist when the exemption would result in benefit to the public health and safety that compensates for any decrease in safety that may result from the granting of the exemption (10 CFR 50.12(a)(2)(iv)). In addition, special circumstances exist when the exemption would provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulation (10 CFR 50.12(a)(2)(v)).

III

By letters dated November 21 and 22, 1993, the licensee requested an exemption from the requirements of 10 CFR 50.47 and 10 CFR part 50, appendix E, section F.2, to conduct an annual exercise of the Emergency Plan in 1993. The licensee had planned to conduct a full-participation exercise involving the licensee's onsite response organization, the State of South Carolina and local response organizations on November 30, 1993. The licensee requested that an exemption be granted for the conduct of the onsite portion of the exercise because the licensee would not have sufficient staff to exercise in a meaningful way the HBR Emergency Plan due to resource constraints caused by an unscheduled outage to investigate and address core design issues. This proposed delay will prevent HBR from meeting the requirement to conduct an annual exercise of the HBR Emergency Plan. However, the licensee proposes that the offsite portion of the exercise involving the State of South Carolina and local governmental authorities be conducted as scheduled on November 30, 1993.

The licensee states that the granting of a delay in the implementation of the 1993 exercise for the onsite portion of the HBR Emergency Plan would allow management to focus on the safety issues identified during startup after refueling outage 15. The HBR plant was proceeding to full power operation after a refueling outage when low power physics testing revealed an improper configuration emanating from the design of the new fuel. The new fuel consisted of 44 fuel assemblies, 6 of which were found to be configured improperly against design specifications. As a result, the NRC dispatched an Augmented Inspection Team to the HBR site and the licensee formed three investigative teams. All of these efforts currently divert focus and resources to develop corrective actions for core

reconfiguration and to investigate and resolve any industry implications of fuel configuration problems.

The previous emergency preparedness exercise at HBR was successfully conducted on November 17, 1992, and included the partial participation of State and local agencies for notifications and communications only. The licensee had scheduled, planned, and coordinated the 1993 exercise with participating Federal, State, and local agencies for November 30, 1993. The scope and objectives, and the final scenario documentation for the November 1993 exercise were submitted to the NRC on September 13, 1993, and October 14, 1993, respectively, which is within the time frame established for their submittal in support of a November 1993 exercise. In addition, the licensee states that a training exercise with the State of South Carolina and local governmental agencies was conducted on November 16, 1993, which activated all emergency facilities and included participation from all major responder groups.

The schedule for future exercises will not be affected by this exemption. CP&L has stated it will conduct the previously scheduled 1994 exercise the week of November 15, 1994, as planned. Thus, the requested exemption would provide only temporary relief from the requirement to conduct an annual exercise and the licensee has made a good faith effort to comply with the regulation.

The November 30, 1993, exercise was conducted and evaluated by the Federal Emergency Management Agency (FEMA) as planned and included full participation by the State of South Carolina and the surrounding counties in the Plume Exposure Emergency Planning Zone. The exercise was fully supported by onsite exercise controllers such that no detection of simulation was apparent to the offsite participants. FEMA had concurred in this concept. The licensee stated that the State of South Carolina would support the delayed onsite exercise.

The most recent NRC Systematic Assessment of Licensee Performance (SALP) report for HBR, issued on September 8, 1992, for the period March 31, 1991, through June 27, 1992, indicated that adequate management support for the emergency preparedness program was evident during the period, as the licensee continued to maintain in a state of basic readiness the emergency preparedness elements needed to implement the emergency in response to emergency events. The licensee has been rated as Category 2 (Improving) in the functional area of emergency preparedness. Additionally, the May 14, 1993, inspection report (50–261/93–09) of the H. B. Robinson Emergency Preparedness Program, conducted April 12–16, 1993, indicates the emergency preparedness strengths were management's commitment to improving the site's emergency preparedness program and the licensee's annual emergency preparedness audit. It was determined that the licensee's emergency preparedness program and response capability were being maintained in an adequate state of operational readiness.

IV

Based upon a review of the licensee's request for an exemption from the requirement to conduct an exercise of the HBR Emergency Plan in 1993, the NRC staff finds that there will be a benefit to the public health and safety which compensates for any decrease in safety that may result from the rescheduling of the November 30, 1993, exercise to the week of March 21, 1994. By not conducting the exercise at this time, HBR will be able to concentrate its effort in the investigation and analysis of the core design issue. The adequate response capability demonstrated by the licensee during the 1992 emergency preparedness exercise, the activities in preparation for the 1993 exercise, including the comprehensive training exercise conducted with offsite authorities on November 16, 1993, and the readiness of the licensee's emergency preparedness program as reflected in its SALP rating and the most recent inspection report, provide assurance that the resources and personnel necessary for proper emergency response are in place to respond to a nuclear emergency at the HBR site. Thus, not conducting an exercise in 1993 would be offset by allowing the licensee to focus its attention on the investigation and core design issues and the requested exemption from the requirement in 10 CFR Part 50, Appendix E, Section IV.F, to defer the performance of an exercise of the HBR Emergency Plan until the week of March 21, 1994, will not adversely affect the overall state of emergency preparedness at the HBR site.

The Commission has determined that, pursuant to 10 CFR 50.12, the exemption requested by the licensee's letters dated November 21 and 22, 1993, as discussed above, is authorized by law and will not endanger life or property and are otherwise in the public interest. Furthermore, the Commission has determined, pursuant to 10 CFR 50.12(a), that special circumstances as set forth in 10 CFR 50.12(a)(2)(iv) and (v) are present and applicable in that the benefit to the public health and safety compensates for any decrease in safety that may result from this exemption, and this exemption will provide only temporary relief from the applicable regulation and the licensee has made good faith efforts to comply with the regulations.

The Commission hereby grants an exemption from the schedular requirements of 10 CFR Part 50, Appendix E, Section IV.F.2., for an extension of the onsite portion of the required biennial exercise of the HBR2 Emergency Plan from November 30, 1993, until week of March 21, 1994.

Pursuant to 10 CFR 51.32, the Commission has determined that granting this exemption will have no significant impact on the environment.

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 30th day of December 1993.

For the Nuclear Regulatory Commission.

Gus C. Lainas,

Acting Director, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–338 Filed 1–6–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

National Partnership Council; Meeting; Confirmation

AGENCY: Office of Personnel Management.

ACTION: Notice of meeting; confirmation.

SUMMARY: Notwithstanding the announcement to the contrary at the December 17, 1993 meeting of the National Partnership Council (the Council), this notice confirms that the time and place of the January 14, 1994, meeting of the Council as published December 6, 1993 (58 FR 64347) have not changed.

TIME AND PLACE: The Council will meet on January 14, 1994 at 2 p.m. in the auditorium at the Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., Washington, DC 20415–0001. The auditorium is located on the ground level.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 94–375 Filed 1–6–94; 8:45 am]

BILLING CODE 6325–01–M

POSTAL RATE COMMISSION

[Docket No. A94–5; Order No. 998]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued January 3, 1994.

Before Commissioners: W.H. "Trey" LeBlanc, III, Vice Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–5.

Name of Affected Post Office: Moriah, New York 12960.

Name(s) of Petitioner(s): Donald M. Baker and others.

Type of Determination: Closing.

Date of Filing of Appeal Papers: December 23, 1993.

Categories of Issues Apparently Raised: 1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).

2. Effect on the community (39 U.S.C. 404(b)(2)(A)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the filing date of this appeal (39 U.S.C. 404(b)(5)). In the interest of expedition, in the light of the 120-day decision schedule, the Commission reserves the right to request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioners. The Commission reserves the right to ask petitioners for more information.

If the Postal Service files a brief or motion to dismiss or a motion to affirm the appeal, the Postal Service may incorporate by reference any memoranda it previously filed in this docket.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by January 7, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedure Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

Dec. 23, 1993 ...	Filing of Appeal Letter.
Jan. 3, 1994	Commission Notice and Order of Filing of Appeal.
Jan. 18, 1994	Last day of filing of petitions to intervene (see 39 CFR 3001.111(b)).
Jan. 27, 1994	Petitioners' Participant Statements or Initial Briefs (see 39 CFR 3001.115(a) and (b)).
Feb. 16, 1994	Postal Service's Answering Brief (see 39 CFR 3001.115(c)).
Mar. 3, 1994	Petitioners' Reply Briefs should Petitioners choose to file them (see 39 CFR 3001.115(d)).
Mar. 10, 1994 ...	Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116).
Apr. 21, 1994 ...	Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5)).

[FR Doc. 94–314 Filed 1–6–94; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33404; File No. SR–CBOE–93–60]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Filing and Order Granting Partial Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Extension and Request for Permanent Approval of the Pilot Program Involving Debit Put Spreads in Broad-Based Indexes With European-Style Exercise

December 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), and Rule 19b–4 thereunder,[1] notice is hereby given that on December 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] 17 CFR 240.19b–4 (1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Exchange Rule 24.11A, "Debit Put Spread Cash Account Transactions," to extend through December 31, 1994, a pilot program allowing approved public customers with qualified portfolios ("spread exemption customers") to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[2] In addition, the CBOE seeks permanent approval of the pilot program.

The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Currently, § 220.8 of Regulation T under the Act precludes customers from effecting spread transactions in cash

[2] The Commission approved the pilot program on a one-year basis through November 25, 1992. See Securities Exchange Act Release No. 29992 (November 26, 1991), 56 FR 63526 (order approving File Nos. SR-Amex-91–14 and SR–CBOE–91–17) ("Debit Put Spread Approval Order"). Subsequently, both the CBOE and the American Stock Exchange, Inc. ("Amex") amended the definition of "debit put spread" to provide that the strike price of the long leg of the spread must exceed, not equal, the strike price of the short leg. See Securities Exchange Act Release Nos. 30267 (January 21, 1992), 57 FR 3234 (order approving file No. SR–CBOE–91–50) and 30419 (February 26, 1992), 57 FR 7825 (order approving File No. SR-Amex-92–07). On June 30, 1993, the Commission approved an extension of the pilot program through December 31, 1993. See Securities Exchange Act Release No. 32556 (June 30, 1993), 58 FR 32556 (order approving File No. SR–CBOE–93–13) ("Pilot Extension Order").

accounts. Specifically, § 220.8(a)(3)(ii) of Regulation T includes in permissible cash account transactions a creditor's issue, endorsement or guarantee of a put option for a customer if the creditor obtains cash in an amount equal to the exercise price of the option or holds in the account any of the following instruments with a current market value at least equal to the exercise price of the option and with one year or less to maturity: U.S. government securities, negotiable bank certificates of deposit, or bankers acceptances issued by a U.S. bank and payable in the United States. Because offsetting options positions fail to satisfy these criteria, spreads are not included in permissible cash account transactions and therefore must be effected in margin accounts.

On November 26, 1991, the Commission approved proposals submitted by the CBOE and the Amex which established one year pilot programs allowing approved public customers[3] with qualified portfolios of stock to effect and maintain in cash accounts debit put spread transactions in broad-based index options with European-style exercise.[4] The Commission approved an extension of the CBOE's pilot program through December 31, 1993.[5] The CBOE now proposes to extend its debit put spread pilot program through December 31, 1994, and, in addition, the Exchange requests permanent approval of the pilot program.

The pilot program defines a "debit put spread" as "a long put position coupled with a short put position overlying the same broad-based index and having an equivalent underlying aggregate index value, where the short put(s) expires with the long put(s), and the strike price of the long put(s) exceeds the strike price of the short put(s)." Under the terms of the pilot, only public customers approved by the CBOE are permitted to participate in the pilot program. To obtain the CBOE's approval, customers are required, among other things, to hold a qualified stock portfolio or its equivalent that is composed of net long positions in common stocks in at least four industry groups and that contains at least twenty stocks, none of which accounts for more than fifteen percent of the value of the portfolio. A portfolio must meet these standards at all times, regardless of trading activity in the stocks. In addition, the debit put spread positions must be carried in an account with an Exchange member organization and the qualified portfolio must be maintained with either an Exchange member organization, another broker-dealer, a bank, or a securities depository.

In conjunction with the creation of the pilot programs, the Commission staff also issued no-action letters to the Amex and the CBOE stating that the staff would not recommend enforcement action against the Amex and the CBOE due to the operation of the pilot programs, namely the maintenance of spread positions in a cash account.[6] The staff of the Board of Governors of the Federal Reserve System ("Board") also informed the Commission staff that Board staff would not object to the Commission staff's issuance of these no-action positions in connection with the pilot programs.[7] As required by the Debit Put Spread Approval Order, the CBOE submitted a report assessing the effectiveness of the pilot program.[8] In addition, as required under the Pilot Extension Order, the CBOE has submitted a report dated as of November 10, 1993, assessing the effectiveness of the pilot program from January 1993 through September 1993.[9] In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception. As it concluded in its initial Pilot Report, the CBOE states that the pilot program has provided an efficient means for investors who are limited to cash account transactions to effectively hedge their portfolios against market declines. The CBOE states that it has neither experienced nor detected any problems related to the pilot program and, in addition, that no activity of any participant appeared to violate the requirements of the pilot program or other Exchange Rules. The Exchange has found no evidence of market manipulation or other negative impact on market operations arising from the pilot program.

Accordingly, in order to allow the pilot to continue, the CBOE requests an extension of the pilot program through December 31, 1994, and permanent approval of the program at the time the Board staff notifies the Commission that it does not object to such approval.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5), in particular, in that it is designed to facilitate transactions in securities and to protect investors and the public interest by allowing investors to hedge qualified portfolios against market declines by purchasing and maintaining debit put spread transactions in cash accounts.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The CBOE has requested that the proposed rule change be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposal to extend the pilot program through December 31, 1994, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6.[10] Specifically, the Commission believes, as it has previously concluded,[11] that this pilot program is designed to benefit qualified public customers who are prohibited or restricted in their use of margin accounts by facilitating their purchase of index option debit put spreads. Specifically, because the purchaser of a debit put spread uses the call premium to reduce the cost of purchasing the put, index option put spreads provide investors with an affordable means to hedge their portfolios against adverse market moves. In addition, to the extent that the pilot program has increased index options transactions, the program has benefited all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission continues to believe that the economic characteristics of index option debit put spreads permit an exception to the application of Regulation T. In a debit put spread, the long put entitles the spread exemption customer to receive payment when the index reaches the put option's strike price; because the strike price of the long put must exceed the strike price of the short put, the spread exemption customer's right to receive payment under the long put will offset any obligations he incurs from the sale of the short put. Because the short position must expire with the long position, the offset provided by the long put will last for the duration of the spread exemption customer's obligation as a short put writer. In addition, there is no risk that the short put will be exercised prior to the long put because the exemption applies solely to European-style options, which may be exercised only during a specified period prior to expiration.

In its 1993 Pilot Report, the CBOE states that no participant has operated in violation of the pilot since its inception, nor have the CBOE's surveillance procedures revealed evidence of manipulation or abuse of knowledge of impending expiration-related program trades for each expiration Friday during the review period. The 1993 Pilot Report indicates that the pilot program's 39 participants included corporations, pension/retirement plans, non-profit organizations, mutual funds, and individual or family trusts, the majority of which were prohibited by contractual agreements from using margin accounts. The debit put spreads of all of the participants were comprised of Standard & Poor's ("S&P") 500 Index ("SPX") options with one to four months remaining until expiration. During the review period the total number of spreads effected on a monthly basis under the pilot program each month ranged from 3,696 to 12,544.

On the basis of the 1993 Pilot Report, the Commission believes that the debit put spread pilot program has facilitated the needs of qualified public customers who are limited to cash account transactions by providing them with an effective means to hedge their portfolios against adverse market moves. At the same time, the 1993 Pilot Report indicates that no pilot participant has violated the pilot's parameters, nor has the Exchange discovered any market manipulation or abuse in connection with the pilot program. For these reasons, the Commission believes that the debit put spread pilot program has provided qualified public customers with additional means to implement their hedging strategies and, by facilitating index options transactions, has benefited all options investors by contributing to the depth and liquidity of the CBOE's options markets.

The Commission requests that the CBOE submit a report on the continued operation of the pilot by September 30, 1994 in the event that the pilot program has not been permanently approved by the Commission prior to that date. The report should contain information comparable to that provided in the 1993 Pilot Report. Additionally, the Commission expects the CBOE to notify the Commission promptly of any problems arising in connection with the pilot program.

The Commission finds good cause for approving the portion of the CBOE's proposal extending the pilot program through December 31, 1994, prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** in order to allow the pilot program to continue. In addition, because the Commission has received no comments regarding the operation of the pilot program since its implementation, and because the pilot program has been utilized by a number of qualified public customers, the Commission believes that granting accelerated approval of the CBOE's proposal is appropriate and consistent with sections 19(b)(2) and 6(b)(5) of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of the filings will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the File No. SR-CBOE-93-60 and should be submitted by January 28, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the portion of the proposal (SR-CBOE-93-60), relating to an extension of the CBOE's debit put spread pilot program until December 31, 1994, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-313 Filed 1-6-94; 8:45 am]

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[3] For purposes of its pilot program, a public customer is a customer whose orders are eligible to be placed on a CBOE limit order book under Exchange Rule 7.4(a).

[4] See Debit Put Spread Approval Order, *supra* note 2.

[5] See Pilot Extension Order, *supra* note 2.

[6] See Letter from Howard L. Kramer, Assistant Director, Division of Market Regulation ("Division"), Commission, to Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, dated November 25, 1991, and Letter from Howard L. Kramer, Assistant Director, Division, Commission, to James M. McNeil, Assistant Vice President, Chief Examiner, Amex, dated November 25, 1991.

[7] See Letter from Laura Homer, Securities Credit Officer, Board, to Howard L. Kramer, Assistant Director, Division, Commission, dated July 12, 1991.

[8] See Letter from Mary L. Bender, First Vice President, Division of Regulatory Services, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated October 1, 1992 ("Pilot Report"). In the Pilot Report, the CBOE stated that the pilot program has been an efficient means for investors that are limited to cash account transactions to effectively hedge their portfolios against declines in the market. The CBOE represented that it had neither experienced nor detected any problems related to the pilot. Moreover, the Exchange stated that no activity of any pilot participant appeared violative of the program's requirements or other Exchange rules, nor did Exchange studies find evidence of market manipulation or other negative impact on market operations.

[9] See Letter from Mary L. Bender, CBOE, to Sharon Lawson, Assistant Director, Division, Commission, dated November 10, 1993 ("1993 Pilot Report").

[10] 15 U.S.C. 78f(b)(5) (1988).

[11] See Debit Put Spread Approval Order, *supra* note 3.

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33407; File No. SR-PSE-93-17]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Permanent Approval of the Options Trading Crowd Performance Evaluation Pilot Program

December 30, 1993.

On July 28, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change seeking permanent approval of the Options Trading Crowd Performance Evaluation pilot program provided in Options Floor Procedure Advice ("OFPA") B-13, "Subject: Evaluation of Options Trading Crowd Performance."[3]

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] On April 22, 1988, the Commission approved the PSE's Options Trading Crowd Performance Evaluation program on a two-year pilot basis. See Securities Exchange Act Release No. 25611 (April 22, 1988), 53 FR 15325 (order approving SR-PSE-87-26). Subsequently, the Commission approved proposals which extended the pilot program

Continued

The proposed rule change was published in Securities Exchange Act Release No. 33094 (October 22, 1993), 58 FR 58365. No comments were received on the proposed rule change.

Currently, under the pilot program, the Options Allocation Committee ("Committee") conducts quarterly evaluations of options trading crowds to determine whether they have fulfilled performance standards relating to quality of markets, competition among market makers, observance of ethical standards, and administrative requirements.[4] In making its evaluations, the Committee may consider any relevant information, including (1) the results of a trading crowd evaluation questionnaire which the Committee distributes each quarter to floor brokers and floor brokerage firms;[5] (2) trading data; (3) reports filed with the Exchange (*e.g.*, Order Book Official Unusual Activity Reports); and (4) the regulatory history of the members in the crowd.

Trading crowds rated in the bottom 10% of the aggregate results of overall evaluation scores are presumed under OFPA B–13(b) to have failed to meet minimum performance standards. Under OFPA B–13 the Committee may call an informal meeting or conduct a formal hearing with a trading crowd that has failed to meet minimum performance standards. Prior to the close of the informal meeting, the Committee must inform the crowd of possible consequences if the unsatisfactory performance continues.

At a formal hearing under OFPA B–13(e), rights of confrontation and rights to counsel apply. Based on the information adduced at the formal hearing, the Committee has the authority to take action against a trading crowd or individual market makers in the crowd. Specifically, under OFPA B–13(a), the Committee may restrict the allocation of new options classes and reallocate existing options classes. The remedial actions provided in paragraph (a) may not be taken without a formal hearing and may be reviewed by the PSE's Board of Governors pursuant to PSE Rule XX, section 11(d), "Procedure Following Applications for Hearing or Review," of the Rules of the Board of Governors, upon submission of a timely application for review. The Exchange's Board of Governors may also review any Committee decision under OFPA B–13 on its own initiative.

The PSE has evaluated the Options Trading Crowd Evaluation Program and concluded that the program has provided an accurate and useful means of evaluating trading crowd and LMM performance. In this regard, the Exchange notes that the questionnaires are completed by options floor brokers, who are uniquely qualified to evaluate the trading crowds and LMMs. Based upon the increases in the survey ratings over the third and fourth quarters of 1992 and the first quarter of 1993, the Exchange believes that the program has improved the performances of the Exchange's market makers and LMMs.[6] The PSE notes that the general evaluation results are disseminated to the trading floor on a quarterly basis and that the Committee reviews the detailed survey responses and comments and considers them in allocating options to trading crowds and LMMs.

During the last quarter of 1992 and the first three quarters of 1993, the Committee held seven informal meetings with trading crowds and five informal meetings with LMMs.[7] The Exchange has held one formal hearing since the inception of the pilot program, regarding the performance of Post X–17. As a result of the hearing, the Exchange's Options Listing Committee reallocated three options and removed six options to another post. The members of Post X–17 appealed the decision to the Exchange's Board of Governors and thereafter to the Commission. On December 26, 1989, the Commission denied Post X–17's request for a stay of the Options Listing Committee's reallocation of three options.[8] On December 29, 1992, the Commission ruled that the PSE's reallocation of the options was not reviewable by the Commission under section 19(d)(2) of the Act because the reallocation was not imposed as a disciplinary sanction and because no limitation or prohibition to access occurred within the meaning of section 19(d) of the Act.[9]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5)[10] in that it is designed to remove impediments to and protect the mechanism of a free and open market and to protect investors and the public interest. The Commission believes that the trading crowd evaluation program is designed to help the Exchange to maintain the quality and integrity of its markets by setting minimum standards of market maker performance and providing a means to identify market makers and trading crowds which fail to meet performance standards. By allowing the Exchange to assess the quality of its trading crowds and market makers, and to take appropriate remedial measures where necessary, the Commission believes that the trading crowd evaluation program helps the Exchange to provide a more competitive, efficient and fair market.

Specifically, the Commission believes that the evaluation program furthers the PSE's ability to ensure liquid and continuous markets for options by permitting the Exchange to enforce more effectively the affirmative and negative obligations imposed on PSE market makers. In particular, the trading crowd evaluation questionnaire enables the PSE to determine whether market makers are making continuous, two-sided markets in all option series for each option class located at a trading station and whether deep and liquid markets are provided as a result of competition among market makers. The Commission believes that the more stringent, formalized market maker standards should further enhance the integrity of the PSE's markets and contribute to investor confidence and protection. In addition, the Commission believes that the Committee's consideration of the trading crowd survey results in allocating options to trading crowds and LMMs should provide an incentive for improved market maker performance.

The Commission also notes that the evaluation program provides procedural rights in connection with remedial actions taken under the program. Specifically, the Committee may restrict the allocation of new options and reallocate existing options under paragraph (a) of OFPA B–13 only after a formal hearing. At a formal hearing, the OFPA provides for a right to counsel and a record of the proceedings. In addition, the Committee's decision is reviewable by the Exchange's Board of Governors upon the submission of a timely application for review and the Exchange's Board of Governors may review any Committee decision on its own initiative. The Board review panel or the Chairman of the Board may grant or deny a stay of the Committee's action. By requiring that the Committee implement the remedial measures provided in paragraph (a) only after a formal hearing, and by providing a right to appeal the Committee's decision to the Exchange's Board of Governors, the Commission believes that the evaluation program contains processes designed to safeguard the procedural rights of individuals affected by remedial actions.

Finally, the Commission notes that the PSE's trading crowd evaluation program is similar to a program adopted previously by the Chicago Board Options Exchange ("CBOE").[11]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–394 Filed 1–6–94; 8:45 am]

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through October 1, 1993. See Securities Exchange Act Release Nos. 29930 (November 12, 1991), 56 FR 58596 (order approving File No. SR–PSE–91–30) and 31613 (December 17, 1992), 57 FR 61464 (order approving File No. SR–PSE–92–34). Most recently, the Commission approved an extension of the pilot program through January 1, 1994. See Securities Exchange Act Release No. 33094 (October 22, 1993), 58 FR 58365 (notice of filing and order granting partial accelerated approval of File No. SR–PSE–93–17).

[4] Prior to June 1992, the Options Listing Committee conducted the quarterly evaluations. In June 1992, the Commission approved a proposal allowing the Options Allocation Committee to assume the evaluation function. See Securities Exchange Act Release No. 30843 (June 19, 1992), 57 FR 28889 (order approving File No. SR–PSE–92–07).

[5] The PSE has stated that the questionnaire is distributed to 90% of the Exchange's floor brokers, and that 80% of those who receive the questionnaire complete it. Telephone conversation between Michael D. Pierson, Senior Attorney, Market Regulation, PSE, to Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on October 7, 1993.

[6] The Committee has not distributed the evaluation questionnaires since the first quarter of 1993. However, the Committee plans to distribute questionnaires covering the last two quarters of 1993 early in 1994. Telephone conversations between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on December 15 and 16, 1993.

[7] Telephone conversations between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Yvonne Fraticelli, Staff Attorney, Options Branch, Division, Commission, on December 15 and 16, 1993.

[8] See Securities Exchange Act Release No. 27568 (December 26, 1989) (Order Denying Stay, File No. 3–7285).

[9] See Securities Exchange Act Release No.31666 (December 29, 1992), File No. 3–7285.

[10] 15 U.S.C. 78f(b) (1982).

[11] See Securities Exchange Act Release No. 28012 (May 14, 1990), 55 FR 20679 (order approving File No. SR–CBOE–90–04) and CBOE Rule 8.60, "Evaluation of Trading Crowd Performance."

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30–3(a)(12) (1992).

[Release No. 34–33406; File No. SR–PHLX–93–63]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to an Extension of the Effectiveness of its Pilot Program and Accompanying Rules Regarding the Trading of Nasdaq/National Market System Securities Through December 31, 1994

December 30, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on December 27, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to grant accelerated approval of the proposed rule change.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PHLX proposes to extend the effectiveness of the pilot program and its accompanying rules regarding the trading of Nasdaq/National Market System ("NMS") securities on the Exchange for the one-year period ending December 31, 1994.[3]

The Exchange requests the Commission to find good cause, pursuant to section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication in the **Federal Register**. The PHLX states that it respectfully is requesting accelerated approval of this filing due to the noncontroversial nature of the pilot program coupled with the impending lapse of the PHLX's OTC/UTP privileges on December 31, 1993.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

On June 26, 1993, the Commission approved a transaction reporting plan ("Plan") submitted by the National Association of Securities Dealers, Inc. ("NASD"), the American Stock Exchange ("Amex"), the Boston Stock Exchange ("BSE"), the Midwest Stock Exchange (currently the Chicago Stock Exchange, or "CHX"), and the PHLX (cumulatively, "Participants").[4] The Plan governs the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities traded on exchanges and by NASD market makers.[5]

Although the CHX has been trading Nasdaq/NMS securities since 1987, the PHLX obtained temporary approval of its rules to facilitate trading Nasdaq/NMS securities in late 1992,[6] and the PHLX began trading those securities pursuant to unlisted trading privileges ("UTP") and the pilot program in February, 1993. Since that time, the PHLX has been operating the program without any adverse consequences or developments which negatively impact upon the program and, therefore, seeks

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] The Commission initially approved this pilot program and the accompanying rules for a temporary period ending on December 31, 1993. Securities Exchange Act Release No. 31672 (December 30, 1992), 58 FR 3054 (order temporarily approving File No. SR–PHLX–92–04) ("1992 PHLX Pilot Order").

[4] Securities Exchange Act Release No. 28146 (June 26, 1990), 55 FR 27917. The Commission notes that certain enhancements to electronic linkages were required before trading pursuant to the Plan could begin. These enhancements were completed and trading pursuant to the Plan commenced in June 1993 on a one-year pilot basis.

[5] See Securities Exchange Act Release No. 30994 (July 31, 1992), 57 FR 36114 (notice of filing of proposed rule change, File No. SR–PHLX–92–04). The Plan also superseded an interim transaction reporting plan filed by the NASD and the CHX and approved by the Commission on April 29, 1987. See Securities Exchange Act Release No. 24407 (April 29, 1987), 52 FR 17349.

[6] 1992 PHLX Pilot Order, *supra* note 3.

an extension of the pilot program to develop the UTP program further.[7]

The PHLX will continue to submit OTC/UTP applications to the Commission for specific securities for approval pursuant to section 12(f) of the Act.[8] Further, the PHLX understands that in considering an application for the extension of UTP to an OTC security pursuant to section 12(f)(2), the Commission considers, *inter alia*, the public trading activity in the security, the character of that trading, the impact of an extension of UTP on the existing markets for the security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

2. Statutory Basis

This proposal is consistent with the requirements of the Act and the rules and regulations promulgated thereunder. Specifically, the proposal complies with section 6(b)(5) of the Act insofar as it is calculated to promote just and equitable principles of trade and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Written comments were neither solicited nor received with respect to the proposed rule change.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PHLX. All submissions should refer to File No. SR–PHLX–93–63 and should be submitted by January 28, 1994.

IV. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission believes that the PHLX's proposal to extend the effectiveness of its pilot program and accompanying rules with respect to UTP in OTC securities is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.[9] Specifically, the Commission believes that the proposed rule change is consistent with sections 6(b)(5), 11A and 12(f) of the Act.[10]

In 1985, the Commission published its policy to extend UTP to national securities exchanges in certain OTC securities provided certain terms and conditions are satisfied.[11] The Commission's policy stated that UTP approval would be conditioned, in part, on the approval of a plan to consolidate and disseminate exchange and OTC quotation data and transaction data upon which UTP is granted. As noted above, in 1990, the Commission approved the Plan which provides for the collection, consolidation, and dissemination of quotation and transaction information for Nasdaq/NMS securities listed on an exchange or traded on an exchange pursuant to a grant of UTP.[12] Trading subject to Plan requirements in securities approved for UTP on the PHLX pursuant to section 12(f)(2) are and will continue to be reported in the consolidated transaction reporting system established under the Plan.

In our 1992 PHLX Pilot Order, the Commission emphasized that PHLX specialists trading Nasdaq/NMS securities pursuant to the grant of UTP are subject to Plan requirements as well as the PHLX By-Laws and Rules. Moreover, the Commission stated its intent to monitor any potential abuse of the informational advantage that options traders could acquire from the PHLX equity floor with respect to securities traded under the PHLX pilot program. In extending the PHLX pilot for an additional year, the Commission again emphasizes that PHLX specialists trading Nasdaq/NMS securities pursuant to the grant of UTP continue to be subject to Plan requirements as well as the PHLX By-Laws and Rules. The Commission also will continue to monitor side-by-side trading concerns during this extension of the pilot procedures.

In approving the Plan, the Commission noted that the Plan should enhance market efficiency and fair competition, avoid investor confusion, and facilitate regulatory surveillance of concurrent exchange and OTC trading. The Commission continues to believe that the proposed rule change will further promote these goals and the development of a national market system. However, in approving the Plan and in our 1992 PHLX Pilot Order, the Commission requested that the Participants evaluate the effect of OTC/UTP trading on the OTC market. The Commission also requested that the UTP Participants evaluate the quality of executions of customer orders and whether the Plan facilitates the goals of a national market system. To date, the Commission has not received the Participants' evaluations regarding these concerns.

While the PHLX has provided the Commission with useful information concerning trading volume in the relevant securities,[13] and the PHLX states in this filing that it has suffered no adverse consequences under the pilot, the PHLX should evaluate the effect of OTC/UTP trading on the OTC market, the quality of execution on customer orders, and whether the Plan facilitates the goals of a national market system.[14] The Commission requests that the PHLX submit to the Commission a written evaluation of these issues, along with a statement addressing the Commission's side-by-side trading concerns discussed above, on or before November 1, 1994, along with either a request for permanent approval or an additional extension of this PHLX pilot program and the accompanying rules.

The Commission believes that it is appropriate to extend the PHLX pilot program of OTC/UTP trading for an additional year while the Commission awaits the Participants' evaluations of their trading experience pursuant to the Plan. Moreover, the Commission believes that PHLX OTC/UTP trading, as limited by the Plan and this pilot program, generally furthers the objectives of a national market system and is consistent with the maintenance of fair and orderly markets and the protection of investors as required by sections 6(b)(5), 11A and 12(f) of the Act.

V. Conclusion

For the reasons stated above, the Commission believes that it is appropriate to extend the PHLX pilot program for OTC/UTP trading for an additional year.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission believes that accelerated approval of the proposal is appropriate in order to allow the PHLX to continue trading pursuant to the pilot program on an uninterrupted basis. Further, the pilot program and the accompanying rules have been noticed previously in the **Federal Register** for the full statutory period, and the Commission received no comments on the proposal.[15]

It is therefore ordered, pursuant to section 19(b)(2)[16] that the proposed rule change is hereby approved on a pilot basis through December 31, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[17]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–398 Filed 1–6–94; 8:45 am]

BILLING CODE 8010–01–M

[7] The Exchange attached Exhibit B to the proposal which provides an accounting of the number of shares and number of trades executed on the PHLX pursuant to the pilot program since its inception in February, 1993. Exhibit B states a total PHLX pilot program volume through November 19, 1993 of 457,790 shares.

[8] Commission approval of the Plan limits the PHLX authority to submit OTC/UTP applications for trading in up to a maximum of 100 Nasdaq/NMS securities. The PHLX must submit OTC/UTP applications to the Commission for specific securities for approval pursuant to section 12(f) of the Act.

[9] For a more detailed discussion of the Commission's findings with respect to the pilot program and its consistency with the Act, see 1992 PHLX Pilot Order, *supra* note 3.

[10] 15 U.S.C. 78f(b)(5), 78k–1, 78l(f) (1988). Section 6(b)(5) requires, among other things, that the rules of an exchange be designed to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. Section 11A provides, among other things, that it is in the public interest and appropriate for the protection of investors to assure fair competition among brokers and dealers, among exchange markets, and between exchange markets and markets other than exchange markets. Section 12(f) provides the terms and conditions regarding exchange applications for unlisted trading privileges and Commission approval of those applications.

[11] Securities Exchange Act Release No. 22412 (September 16, 1985), 50 FR 38640.

[12] See note 4, *supra*.

[13] See discussion of Exhibit B, note 7, *supra*.

[14] The Commission also stated in our 1992 PHLX Pilot Order that the Participants should develop an intermarket trading linkage and an accompanying trade-through rule. The Commission believes that the Participants should continue working toward these goals.

[15] See *supra* note 4.

[16] 15 U.S.C. 78s(b)(2) (1988).

[17] 17 CFR 200.30–3(a)(12) (1991).

[Rel. No. IC–19990; No. 811–5746]

Crown America Separate Account B

December 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for an Order under the Investment Company Act of 1940 (the "1940 Act").

APPLICANT: Crown America Separate Account B ("Applicant").

RELEVANT 1940 ACT SECTION: Order requested under Section 8(f) of the 1940 Act.

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company as defined by the 1940 Act.

FILING DATE: The application was filed on September 30, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 1994, and should be accompanied by proof of service on Applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the requestor's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Applicant, 120 Bloor Street East, Toronto, Canada M4W 1B8.

FOR FURTHER INFORMATION CONTACT: Yvonne M. Hunold, Senior Counsel, on (202) 272–2676, or Michael V. Wible, Special Counsel, on (202) 272–2060, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. On December 14, 1988, the Applicant was established as a separate account of Crown America Life Insurance Company ("Crown America") under Kentucky insurance law for the purpose of investing payments received under certain variable annuity contracts issued by Crown America.

2. On January 5, 1989, Applicant filed a notification of registration as an investment company, unit investment trust, on Form N–8A under section 8(a) of the 1940 Act (File No. 811–5746). Applicant also filed on January 5, 1989, a registration statement on Form N–4 (File No. 33–26413) under the Securities Act of 1933 ("1933 Act") for a class of variable annuity contracts and, under Rule 24f–2 of the 1940 Act, registered an indefinite amount of securities under the 1933 Act. This registration statement was declared effective on August 2, 1990. However, no variable annuity contracts were sold under this registration statement.

3. On February 1, 1991, Applicant filed a registration statement on Form N–4 under the 1933 Act (File No. 33–38840) for a second class of variable annuity contracts funded by the Applicant. Pursuant to Rule 24f–2 of the 1940 Act, Applicant registered an indefinite amount of securities under the 1933 Act. This registration statement was declared effective on June 10, 1991 and four variable annuity contracts were sold under this registration statement.

4. Crown America Holding Company ("Crown Holding"), Crown America's sole shareholder, entered into a Stock Purchase Agreement ("Agreement"), dated May 12, 1993, with Keyport Life Insurance Company ("Keyport"), to sell all of its issued and outstanding shares of Crown America to Keyport. Crown Holding's shares of Crown America consisted of its holdings in Applicant (File Number 811–5746), Crown America Separate Account A (File Number 811–5777), and Crown America Separate Account D (File Number 811–5747). The closing of the sale of shares occurred on October 1, 1993. Under the Agreement, Crown Holding agreed to take all reasonable steps to terminate the registration of certain separate accounts, including Applicant. On September 27, 1993, Crown America's Board of Directors adopted a resolution authorizing the deregistration and termination of Applicant.

5. Applicant's only securities issued consisted of four variable annuity contracts, all of which were surrendered and terminated by February 19, 1992. Applicant's assets when the Contracts were outstanding consisted of shares of the Annuity Management Series Trust. All such shares were surrendered for their redemption proceeds, which in turn were used to pay the surrender values on the Contracts. Since the payment of surrender proceeds on termination of the Contracts, the Applicant has had no assets or security holders and, accordingly, has made no distributions to security holders in connection with the winding-up of its affairs pursuant to its termination.

6. Crown America has paid or will pay all expenses incurred by all parties in connection with the liquidation and termination of the Applicant.

7. During the past 18 months, Applicant has not, for any reason, transferred any of its assets to a separate trust, the beneficiaries of which were or are security holders of the Applicant.

8. Applicant has retained no assets and has no security holders. Applicant does not have any debts or other liabilities which remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

9. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding-up of its affairs.

10. Applicant filed a final Form N–SAR with the Commission on March 2, 1993.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–312 Filed 1–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19991; 812–8596]

Lincoln Renaissance Fund, Inc., et al.; Notice of Application

December 30, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Lincoln Renaissance Fund, Inc. (the "Existing Fund"), Lincoln National Investment Management Company ("LNIMC"), and LNC Equity Sales Corporation ("LNC Equity Sales").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), 22(c), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the Existing Fund and its series to (a) issue multiple classes of shares representing interests in the same portfolio of securities and (b) assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATE: The application was filed on September 27, 1993, and amended on November 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 24, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 1300 South Clinton Street, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202)272–3026, or Robert A. Robertson, Branch Chief, at (202)272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Existing Fund is an open-end management investment company registered under the Act consisting of nine series. LNIMC serves as the Fund's investment adviser and LNC Equity Sales serves as distributor. LNIMC and LNC Equity Sales are both wholly-owned subsidiaries of Lincoln National Corporation ("Lincoln National").

2. Applicants request that relief be extended to any investment companies (a)(i) whose investment adviser or administrator is LNIMC, or a person controlling, controlled, or under common control with LNIMC ("Investment Adviser"), or (ii) whose principal underwriter is LNC Equity Sales, or a person controlling, controlled, or under common control with LNC Equity Sales ("Distributor") and (b) that (i) are within the same "group of investment companies" as that term is defined in rule 11a–3 under the Act, and (ii) issue classes of shares on a basis identical in all material respects to that described in the application (collectively with the Existing Fund, the "Funds").

A. The Multiple Class Distribution System

1. Applicants propose to establish a multiple distribution arrangement to enable each of the Funds, or series thereof, to create a potentially unlimited number of classes representing different pricing arrangements (the "Alternative Purchase Plans"). Applicants initially propose that each Fund, and series thereof, have the ability to offer investors the option of purchasing classes of shares that would be subject to a front-end sales load or subject to a CDSC, a combination of front-end sales load and CDSC, or not subject to any such sales charge. The shares offered pursuant to any of these options could be subject to a 12b–1 plan. The sum of any front-end load, asset based sales charge, and CDSC will not exceed the maximum sales charge provided for in article III, section 26 of the Rules of Fair Practice of the National Association of Securities Dealers ("NASD").

2. The net asset value of all outstanding shares of the classes would be computed seperately for each class of shares by first allocating gross income and expenses (other than rule 12b–1 fees, the transfer agency fees of each class, and other incremental expenses properly attributable to a particular class) to each class based on the net assets attributable to each class at the beginning of the day and then by separately recording the differing rule 12b–1 fees, transfer agency fees of each class, and any other incremental expenses properly attributable to the class. The net asset value attributable to each shares of each class then would be calculated by dividing the net assets calculated for each class by the number of shares outstanding in that class.

3. Applicants propose an exchange program in which shares of a Fund will be exchangeable for the same class, or a class with a similar pricing structure, or another Fund. Under limited circumstances, shares of a Fund may be exchangeable for a class of shares of the same or another Fund with different pricing structures. For instance, shares subject to a CDSC of certain retirement and deferred compensation plans with total assets in excess of a specified dollar amount and whose accounts are held directly with the Fund's transfer agent and for which the transfer agent does individual account recordkeeping will be exchahgeable for shares of a class with lower 12b–1 fees. All exchanges that are made at other than relative net asset value will be made in accordance with rule 11a–3 under the Act.

4. Future classes may provide for a conversion feature in which shares subject to a higher rule 12b–1 fee ("Higher 12b–1 Class") could convert, automatically after a period of time, to shares of another class with a lower 12b–1 fee ("Lower 12b–1 Class"). With a conversion feature, shares of Higher 12b–1 Classes would automatically convert after the expiration of a set number of years after purchase to shares of Lower 12b–1 Classes without the imposition of any additional sales charge and thereafter be subject to the lower rule 12b–1 fee, if any, applicable to the Lower 12b–1 Class.

B. The CDSC

1. Applicants also request an exemption to permit the Funds to impose a CDSC on redemptions of shares of the Funds, and to waive the CDSC under certain circumstances. No CDSC will be imposed on an amount that represents an increase in the shareholder's account resulting from capital appreciation or on those shares purchased more than a specified period prior to redemption. Furthermore, no CDSC will be charged on shares purchased prior to the effective date of the requested order.

2. Applicants seek the ability to waive the CDSC on redemptions (a) following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code of 1986 (the "Code"), of a shareholder; (b) in connection with distributions from a tax deferred retirement plan, an individual retirement account, a custodial account maintained pursuant to Code section 403(b)(7), or a pension plan or profit-sharing plan when the redemptions are (i) after termination of employment or retirement or, in the case of individual retirement accounts, after attaining age 59½, (ii) resulting from the return of an excess contribution, deferral amounts or aggregate contributions pursuant to the Code, (iii) or resulting from the death or disability of employee, (iv) by any 401(k) plan or pension, profit-sharing, stock bonus plans, deferred compensation, or annuity plans under sections 401, 403(b)(7), or 457 of the Code ("Benefit Plans") whose accounts are held directly with a Fund's transfer agent for which the transfer agent does individual record keeping ("Direct Account Benefit Plans"), (v) of shares of Benefit Plans sponsored by LNC Equity Sales ("Prototype Benefit Plans"), (vi) of shares acquired with amounts used to repay a loan from Direct Account Benefit Plans and on which a CDSC was previously imposed, and (vii) by Direct Account Benefit Plans and Prototype Benefit Plans which represent borrowings from such plans; (c) by trust accounts following the death or disability of the beneficiary or the grantor, trustee, or other fiduciary; (d) of shares purchased through a LNC Equity Sales sales representative which were purchased with the proceeds from the sale of any unaffiliated open-end investment company other than a money market fund; (e) by profit-sharing or stock bonus plans upon "hardship" of an employee, as determined by the plan; (f) pursuant to a qualified domestic relations order, as defined in section 414(p) of the Code; (g) by Direct Account Benefit Plans of shares originally purchased subject to a CDSC and subsequently exchanged for a Lower 12b–1 Class pursuant to an exchange privilege afforded to such plans with total assets in excess of a specified dollar amount; (h) of shares purchased with dividends or distributions earned in other Funds; (i) made in connection with a systematic withdrawal plan; and (j) by directors and officers of the Funds and employees of LNIMC, LNC Equity Sales, and Lincoln National and their subsidiaries.

3. In regards to waiver category (d) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a CDSC, fee, or other charge in connection with the redemption of shares of such other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a CDSC, fee, nor other charge was imposed upon the redemption, and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a CDSC, fee, or other charge in connection with the redemption of shares.

Applicants' Legal Analysis

1. Applicants request an exemption under section 6(c) from sections 18(f)(1), 18(g), and 18(i) of the Act to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that by implementing the multiple class distribution system, the Funds would be able to facilitate the distribution of their shares and provide a broad array of services without assuming excessive accounting and bookkeeping costs. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. The proposed arrangement also will not increase the speculative character of the shares of a Fund, since all such shares will participate in the Fund's appreciation, income, and expenses in the manner described above.

3. Applicants also request an exemption under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that their request to permit the CDSC arrangement would place the purchaser in a better position than if a sales load were imposed at the time of sale, since the shareholder may have to pay only a reduced sales charge or no sales charge at all.

Applicants' Conditions

A. The Multiple Class Distribution System

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund, and will be identical in all respects, except as set forth below. The only differences among the classes of the same Fund will relate solely to: (a) The impact of the disproportionate rule 12b–fees, any higher incremental transfer agency costs attributable solely to the classes, and any other incremental expenses subsequently identified that should be properly allocated to one or more classes and which shall be approved by the SEC pursuant to an amended order; (b) the fact that the classes will vote separately with respect to the rule 12b–1 plan, if any, adopted by each class of the Fund, except as set forth in condition 14 below; (c) the difference in exchange privileges of the classes of shares; (d) the designation of each class of shares of the Fund; and (e) the difference in conversion features of the classes of shares.

2. The directors of a Fund, including a majority of the independent directors, will approve the creation and issuance of any new classes of shares in the Fund. The minutes of the meetings of the board of directors of a Fund regarding the deliberations of the directors with respect to the approvals necessary to add or change a class of shares will reflect in detail the reasons for determining that offering any of the proposed Alternative Purchase Plans is in the best interests of the Fund and its shareholders.

3. On an ongoing basis, the directors of a Fund, pursuant to their fiduciary responsibilities under the Act and

otherwise, will monitor the Fund for the existence of any material conflicts between the interests of the various classes of shares offered by the Fund. The directors, including a majority of the independent directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Investment Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the boards of directors. If a conflict arises, the Investment Adviser and the Distributor at their own cost will remedy such conflict up to and including, if necessary, establishing new registered management investment companies.

4. The directors of the Funds with regard to Funds with rule 12b–1 plans will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify the rule 12b–1 fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the directors to justify rule 12b–1 fees charged to shareholders of that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent directors in the exercise of their fiduciary duties.

5. Dividends paid by a Fund with respect to its various classes of shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time on the same day, and will be in the same amount, except that rule 12b–1 fee payments relating to each respective class of shares will be borne exclusively by that class and except that any higher incremental transfer agency costs attributable solely to one class will be borne exclusively by that class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of multiple classes and the proper allocation of expenses among them has been reviewed by an expert (the "Independent Examiner") which has rendered a report to applicants, which has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Independent Examiner, or an appropriate substitute Independent Examiner, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Funds that the calculations and allocations are being made properly. The reports of the Independent Examiner shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Independent Examiner with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Independent Examiner is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the various classes of shares and this representation has been concurred with by the Independent Examiner in the initial report referred to in condition (6) above and will be concurred with by the Independent Examiner, or an appropriate substitute Independent Examiner, on an ongoing basis at least annually in the ongoing reports referred to in condition (6) above. Applicants will take immediate corrective measures if this representation is not concurred in by the Independent Examiner or an appropriate substitute Independent Examiner.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different levels of compensation with respect to one particular class of shares over another in a Fund.

9. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the boards of directors of the Funds with respect to the Alternative Purchase Plans will be set forth in guidelines which will be furnished to the boards of directors.

11. Each Fund will disclose the expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares of the Fund in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Fund as a whole generally and not on a per class basis. A Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each outstanding class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to rule 12b–1 plans in reliance on the exemptive order.

13. Any class of shares with a conversion feature ("Purchase Class") will convert into another class ("Target Class") of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in article III, section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

14. If a Fund implements any amendment to a rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment to a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by a Target Class under the plan, existing Purchase Class shares will stop converting into shares of such Target Class unless Purchase Class, voting separately as a class, approve the amendment. The directors shall take such action as is necessary to ensure that existing Purchase Class shares and exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to Target Class shares as they existed prior to implementation of the amendment, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the board of directors to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class") of shares, identical to existing Purchase Class shares in all material respects except that the New Purchase Class will convert into the New Target Class. The New Target Class and New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the board of directors reasonably believe will not be subject to federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of the New Target Class or New Purchase Class shall be borne solely by the Investment Adviser and the Distributor. Purchase Class shares sold after the implementation of the amendment may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class are disclosed in an effective registration statement.

B. The CDSC

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted or amended.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–310 Filed 1–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25969]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 30, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 24, 1994 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

The Southern Company (70–8181)

The Southern Company ("Southern"), 64 Perimeter Center East, Atlanta, Georgia 30346, a registered holding company, has filed a post-effective amendment under sections 6(a) and 7 under the Act to their declaration under sections 6(a), 7 and 12(e) of the Act and Rule 62 thereunder.

By order dated November 2, 1993 (HCAR No. 25917), Southern was authorized to amend ("Amendment") the fourth Article of its Certificate of Incorporation in order to increase, from 500 million to 1 billion, the total number of shares of common stock, par value $5.00 per share, that Southern shall have authority to issue. By notice dated April 9, 1993 (HCAR No. 25788), Southern was granted the authority to solicit proxies from its shareholders in order to seek shareholder approval of the Amendment at the annual meeting of shareholders.

Southern now proposes to effect a stock split in the form of a stock distribution at any time on or prior to December 31, 1995. Southern proposes to issue and distribute to the holders of record of the then outstanding shares of common stock up to one additional share of such stock for each share held at such time. The proposed stock split would be effected pursuant to authorization by the Board of Directors of Southern at such time as the Board considers the same to be desirable and in the best interests of Southern and its stockholders. The par value of the shares of common stock, $5.00 per share, will not be affected by the proposed stock split.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–311 Filed 1–6–94; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19992; File No. 812–8692]

Nationwide Life Insurance Company, et al.

January 3, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "1940 Act").

APPLICANTS: Nationwide Life Insurance Company ("Nationwide Life"), Nationwide Variable Account–5 (the "Separate Account"), and Nationwide Financial Services, Inc., collectively, the "Applicants."

RELEVANT 1940 ACT SECTIONS: Order requested under section 6(c) of the 1940 Act for exemptions from sections 26(a)(2)(C) and 27(c)(2) thereof.

SUMMARY OF APPLICATION: Applicants seek an order permitting the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as a funding medium for certain variable annuity contracts (the "Contracts") issued by Nationwide Life.

FILING DATE: The application was filed on November 22, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing on the application by writing to the Secretary of the SEC and serving the Applicants with a copy of the request, either personally or by mail. Hearing requests must be received by the SEC by 5:30 p.m. on January 28, 1994, and should be accompanied by proof of service on the Applicants in the form of

an affidavit or, for lawyers, by certificate. Hearing requests should state the nature of the interest, the reason for the request, and the issues contested. Persons may request notification of the date of a hearing by writing to the Secretary of the SEC.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicants, c/o Carol Edwards Dunn, Esq., McCutchan, Druen, Maynard, Rath & Dietrich, One Nationwide Plaza, Columbus, Ohio 43216.

FOR FURTHER INFORMATION CONTACT: Patrice M. Pitts, Attorney, or Michael V. Wible, Special Counsel, Division of Investment Management, Office of Insurance Products, at (202) 272–2060.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Nationwide Life is a stock life insurance company incorporated under the laws of Ohio.

2. Nationwide Life established the Separate Account on November 1, 1989, under Ohio law. The Separate Account is registered under the 1940 Act as a unit investment trust, and serves as a funding medium for the Contracts. Just prior to the filing of this application, the Separate Account filed a Form N–4 registration statement with the SEC to register the Contracts under the Securities Act of 1933.

3. The Separate Account consists of several subaccounts, each of which invests in one or more portfolios of several underlying registered investment companies.

4. Nationwide Financial Services, Inc., will serve as the general distributor for the Contracts.

5. The Contracts are sold to individuals either as non-qualified Contracts or for use in retirement plans which may qualify for special federal tax treatment under the Internal Revenue Code of 1986, as amended.

6. The initial first year purchase payment must be at least $1,500 for non-qualified Contracts. However, if periodic payments are expected by Nationwide Life, the initial first year minimum purchase payment may be satisfied by purchase payments made on an annualized basis. The cumulative total of all purchase payments under a Contract may not exceed $1,000,000 without the prior consent of Nationwide Life.

7. The Contract owner may select one of three annuity payment options, each of which provides for a series of annuity payments commencing on the annuity commencement date. If the designated annuitant dies prior to the annuity commencement date, a death benefit will be paid to the beneficiary either as a single sum payment or in accordance with an annuity payment option, as elected by the beneficiary. If the annuitant dies prior to age 75, the amount of the death benefit will be the greater of the Contract value, or the sum of all purchase payments less any amounts surrendered. The amount of the death benefit will be limited to the Contract value if the annuity commencement date is deferred beyond age 75 of the annuitant and the annuitant dies after attaining such age. If the annuitant dies after the annuity commencement date, the death benefit (if any) will be as specified in the annuity payment option elected.

8. If the Contract value at the date on which annuity payments commence is less than $500, the Contract value may be distributed in one lump sum instead of annuity payments. If any annuity payment would be less than $20, Nationwide Life shall have the right to change the frequency of payments to such intervals as will result in payments of at least $20.

9. No sales charge is deducted from purchase payments made under the Contracts. If part or all of the Contract value is withdrawn, a contingent deferred sales charge ("CDSC") may be assessed by the Company, and deducted from the amount withdrawn. For purposes of the CDSC, withdrawals are considered to come first from the oldest purchase payment made to the Contract, then the next oldest purchase payment, and so forth. The CDSC is calculated by multiplying the applicable CDSC percentage noted below by the purchase payments being withdrawn:

Number of completed years from the date of purchase payment	Contingent deferred sales charge percentage
0	7
1	6
2	5
3	4
4	3
5	2
6	1
7	0

Each Contract year after the first, the Contract owner may withdraw without CDSC an amount equal to 10% of the total sum of all purchase payments made to the Contract, less any purchase payments previously withdrawn which were subject to CDSC. This CDSC-free withdrawal privilege is non-cumulative. Free amounts not taken during any given Contract year cannot be taken as free amounts in a subsequent Contract year.

10. An annual Contract Maintenance Charge of $30 is deducted from the Contract value, as well as an Administration Charge equal on an annual basis to 0.05% of the daily net asset value of the Variable Account. The 0.05% Administration Charge is deducted during both the "pay-in" accumulation phase and the "pay-out" annuity phase. Nationwide Life relies upon Rule 26a–1 to assess both the Contract Maintenance Charge and the Administration Charge. In this regard, Nationwide Life will monitor the proceeds of the Administration Charge to ensure that they do not exceed expenses.

11. Nationwide Life seeks to assess a mortality and expense risk charge at an annual rate of 1.25% of the value of the daily net asset value of the Separate Account. Of this amount, 0.80% represents mortality risks and 0.45% represents expense risks.

12. The mortality risk Nationwide Life assumes is twofold: (a) the risk of guaranteeing to make monthly payments—at rates set at the time the Contract is issued—for the lifetime of the annuitant, no matter how long the annuitant may live, and no matter how long all annuitants as a class may live; and (b) the guaranteed minimum death benefit risk assumed by Nationwide Life in connection with its promise to return, at a minimum, the Contract owner's purchase payments upon death of the designated annuitant prior to the annuity commencement date, even if the investment experience in the Separate Account has eroded the Contract owner's principal investment.

13. The expense risk Nationwide Life assumes results from its guarantee that the annual Contract charges (i.e., the Contract Maintenance Charge, the Administration Charge and the mortality and expense risk charge) will never be increased regardless of the actual expense incurred by Nationwide Life.

14. If the mortality and expense risk charge is insufficient to cover the actual cost of the mortality and expense risk, the loss will be borne by Nationwide Life. Conversely, if the mortality and expense risk charge proves more than sufficient, the excess will be a profit to Nationwide Life and will become part of its general account surplus.

Applicants' Legal Analysis and Conclusions

1. The Applicants request an exemption from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to the extent

relief is necessary to permit the deduction of a mortality and expense risk charge from the assets of the Separate Account which serves as a funding medium for the Contracts.

2. Sections 26(a)(2)(C) and 27(c)(2), as herein pertinent, prohibit a registered unit investment trust and any depositor thereof or underwriter therefor from selling periodic payment plan certificates unless the proceeds of all payments (other than sales load) are deposited with a qualified bank as trustee or custodian and held under arrangements which prohibit any payment to the depositor or principal underwriter except a fee, not exceeding such reasonable amounts as the Commission may prescribe, for performing bookkeeping and other administrative services.

3. The Applicants represent that the mortality and expense risk charge is within the range of industry practice for comparable annuity products and is reasonable in relation to the risks assumed under the Contracts. This representation is based upon Nationwide Life's analysis of publicly available information of other insurance companies of similar size and risk ratings offering similar products. Nationwide Life will maintain, and make available to the Commission, a memorandum setting forth in detail the products analyzed in the course of, and the methodology and results of, its comparative survey.

4. Nationwide Life also maintains a supporting actuarial memorandum demonstrating the reasonableness of the mortality and expense risk charge, given the risks assumed under the Contracts. This memorandum will be made available to the Commission upon request.

5. Should revenue from the CDSC prove insufficient to cover all sales expenses, Nationwide Life bears this shortfall in the general account. To this extent, some portion of the profit, if any, from the mortality and expense risk charge could be used to make up unrecovered sales expenses. Nationwide Life has concluded that there is a reasonable likelihood that the proposed distribution financing arrangement will benefit the Separate Account and the owners of the Contracts. The basis for this conclusion is set forth in a memorandum which will be made available to the Commission upon its request.

6. Nationwide Life represents that the Separate Account will invest only in investment companies which, if they should adopt any distribution financing plan under Rule 12b–1 under the 1940 Act, will have a board of trustees or directors, the majority of which will be "disinterested," as defined by the Act. Such boards of directors or trustees must formulate and approve any such distribution plan.

Applicants' Conclusion

The Applicants assert that for the reasons set forth above, the requested exemptions from sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act to deduct a mortality and expense risk charge under the Contracts meet the standards in section 6(c) of the 1940 Act. The Applicants assert that the requested exemptions are necessary or appropriate in the public interest or for the protection of investors, and for the purposes fairly intended by the policy and provisions of the 1940 Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–397 Filed 1–6–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of Defense Trade Controls

[Public Notice 1928]

Statutory Debarment Under the International Traffic in Arms Regulations

AGENCY: Department of State.

ACTION: Notice.

SUMMARY: Notice is hereby given of which persons have been statutorily debarred pursuant to § 127.7(c) of the International Traffic in Arms Regulations (22 CFR parts 120–130) (ITAR).

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT: Clyde G. Bryant Jr., Chief, Compliance Enforcement Branch, Office of Defense Trade Controls, Department of State (703–875–6650).

SUPPLEMENTARY INFORMATION: Section 38(g)(40(A) of the Arms Export Control Act (AECA), 22 U.S.C. 2778, prohibits export licenses to be issued to a person, or any party to the export, who has been convicted of violating certain U.S. criminal statutes, including the AECA. The term "person," as defined in 22 CFR 120.14 of the International Traffic in Arms Regulations (ITAR), means a natural person as well as a corporation, business association, partnership, society, trust, or any other entity, organization or group, including governmental entities. The ITAR, specifically § 126.7(e), defines the term "party to the export" to include the president, the chief executive officer, and other senior officers and officials of the license applicant; the freight forwarders or designated exporting agent of the license applicant; and any consignee or end-user of any item to be exported. The statute permits certain limited exceptions to this prohibition to be made on a case-by-case basis. 22 U.S.C. 2778(g)(4).

The ITAR, § 127.7, authorizes the Assistant Secretary of State for Political-Military Affairs to prohibit certain persons convicted of violating, or conspiring to violate, the AECA from participating directly or indirectly in the export of defense articles or in the furnishing of defense services. Such a prohibition is referred to as a "statutory debarment," which may be imposed on the basis of judicial proceedings that resulted in a conviction for violating, or of conspiring to violate, the AECA. See 22 CFR 127.7(c). The period for debarment will normally be three years from the date of conviction. At the end of the debarment period, licensing privileges may be reinstated at the request of the debarred person following the necessary interagency consultations, after a thorough review of the circumstances surrounding the conviction, and a finding that appropriate steps have been taken to mitigate any law enforcement concerns, as required by the AECA, 22 U.S.C. 2778(g)(4).

Statutory debarment is based solely upon a conviction in a criminal proceeding, conducted by a United States court. Thus, the administrative debarment procedures, as outlined in the ITAR, 22 CFR part 128, are not applicable in such cases.

The Department of State will not consider applications for licenses or requests for approvals that involve any person or any party to the export who has been convicted of violating, or of conspiring to violate, the AECA during the period of statutory debarment. Persons who have been statutorily debarred may appeal to the Under Secretary for International Security Affairs for reconsideration of the ineligibility determination. A request for reconsideration must be submitted in writing within 30 days after a person has been informed of the adverse decision. 22 CFR 127.7(d).

The Department of State policy permits debarred persons to apply for an exception one year after the date of the debarment, in accordance with the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, § 127.7. This request is made to the Director of the Office of Defense

Trade Controls. Any decision to grant an exception can be made only after the statutory requirements under section 38(g)(4) of the AECA have been satisfied. If the exception is granted, the debarment will be suspended.

Pursuant to the AECA, 22 U.S.C. 2778(g)(4)(A), and the ITAR, 22 CFR 127.7, the Assistant Secretary for Political-Military Affairs has statutorily debarred nine persons who have been convicted of conspiring to violate or violating the AECA.

These persons have been debarred for a three-year period following the date of their conviction, and have been so notified by a letter from the Office of Defense Trade Controls. Pursuant to ITAR, § 127.7(c), the names of these persons, their offense, date of conviction(s) and court of conviction(s) are hereby being published in the **Federal Register.** Anyone who requires additional information to determine whether a person has been debarred should contact the Office of Defense Trade Controls.

This notice involves a foreign affairs function of the United States encompassed within the meaning of the military and foreign affairs exclusion of the Administrative Procedure Act. Because the exercising of this foreign affairs function is discretionary, it is excluded from review under the Administrative Procedure Act.

In accordance with these authorities the following persons are debarred for a period of three years following their conviction for conspiring to violate or violating the AECA (name/address/offense/conviction date/court citation):

1. Jetborne, Inc., 4010 N.W. 36th Avenue, Miami, FL 33142, 22 U.S.C. 2778 (violating the Arms Export Control Act), December 3, 1992, *United States* v. *Jetborne, Inc.*, (U.S. District Court, Southern District of Florida, Criminal Docket No. 91–199–CR–MORENO(S)(01))
2. John L. Broussard, 110 Churchill Drive, Lafayette, LA 70501, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), June 26, 1992, *United States* v. *John L. Broussard*, (U.S. District Court, Western District of Louisiana, Criminal Docket No. 91–60025–01)
3. Hilton Langley, 101 North Pine, Lafayette, LA 70501, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778), June 26, 1992, *United States* v. *Hilton Langley*, (U.S. District Court, Western District of Louisiana, Criminal Docket No. 91–60025–02)
4. Edouard Michel Heldewier, 15630 S.W. 46th Terrace, Miami, FL 33185, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778 (violating the Arms Export Control Act), June 3, 1991, *United States* v. *Edouard Michel Heldewier*, (U.S. District Court, Eastern District of Michigan, Criminal Docket No. CR–90–81079–DT–01)
5. Miles Andrew Maynard, 1588 South Shore Drive, East Lansing, MI 48823, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778 (violating the Arms Export Control Act), June 3, 1991, *United States* v. *Miles Maynard*, (U.S. District Court, Eastern District of Michigan, Criminal Docket No. CR–90–81079–DT–02)
6. Phyllis Ware, 1588 South Shore Drive, East Lansing, MI 48823, 22 U.S.C. 2778 (violating the Arms Export Control Act), June 3, 1991, *United States* v. *Phyllis Ware*, (U.S. District Court, Eastern District of Michigan, Criminal Docket No. CR–90–81079–DT–03
7. Louis Haneef, Metropolitan Correctional Center, 15801 S.W. 137th Avenue, Miami, FL 33177 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778 (violating the Arms Export Control Act), December 30, 1991, *United States* v. *Louis Haneef, et al.*, (U.S. District Court, Southern District of Florida, Criminal Docket No. 90–6161–CR–PAINE)
8. Colin J. Devellerez, 148 East 122nd Street, Upland, CA 91786, 18 U.S.C. 371 (conspiracy to violate 22 U.S.C. 2778) and 22 U.S.C. 2778 (violating the Arms Export Control Act), September 14, 1993, *United States* v. *Japan Aviation Electronics Industry, Ltd., et al.*, (U.S. District Court, District of Columbia, Criminal Docket No. 91–516–06)
9. Glenda Joyce Tucker, 1634 Edom Street, Carson, CA 90746, 22 U.S.C. 2778 (violating the Arms Export Control Act), September 20, 1993, *United States* v. *Glenda Joyce Tucker*, (U.S. District Court, Central District of California, Docket No. CR–93–425(A)–RSWL)

Dated: December 10, 1993.

William B. Robinson,

Director, Office of Defense Trade Controls, Bureau of Political-Military Affairs, Department of State.

[FR Doc. 94–360 Filed 1–6–94; 8:45 am]

BILLING CODE 4710–25–M

Office of the Secretary

[Public Notice 1924]

Delegation of Authority No. 208; to the Assistant Secretary for Intelligence and Research

By virtue of the authority vested in me as Secretary of State, including by Public Law 98–164, as amended (the "Act") and section 4 of the Act of May 26, 1949, as amended (22 U.S.C. 2658), I hereby delegate to the Assistant Secretary of State for Intelligence and Research the functions vested in me under section 804(a) of the Act.

Notwithstanding any provision of this delegation of authority the Secretary of State may at any time exercise the functions delegated by this delegation of authority. Functions delegated by this delegation of authority may be redelegated, to the extent consistent with law. Any act, executive order, regulation or procedure affected by this delegation of authority shall be deemed to be such act, executive order, regulation or procedure as amended from time to time.

This delegation of authority should be published in the **Federal Register**

Dated: November 30, 1993.

Peter Tarnoff,

Acting Secretary of State.

[FR Doc. 94–362 Filed 1–6–94; 8:45 am]

BILLING CODE 4710–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Summary Notice No. PE–93–54]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before January 27, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–200), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–200), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on December 30, 1993.

Joseph A. Conte,

Acting Manager, Regulations Division, Office of Chief Counsel.

Petitions for Exemption

Docket No.: 26478
Petitioner: United States Air Force
Sections of the FAR Affected: 14 CFR 91.209
Description of Relief Sought: To allow the petitioner to continue to conduct lights out training in support of law enforcement and drug interdiction operations.

Docket No.: 27429
Petitioner: Community College of the Air Force
Sections of the FAR Affected: 14 CFR 147.31(a)(iii)
Description of Relief Sought/ Disposition: To permit individuals who have completed military aviation maintenance training courses to be evaluated using the same criteria that is used for the civilian sector.

Docket No.: 27484
Petitioner: Delaware State University
Sections of the FAR Affected: 14 CFR 141.27(c)(2)
Description of Relief Sought/ Disposition: To permit Delaware State University to reapply for a provisional pilot school certificate in less than 180 days after the expiration date of its prior certificate.

Docket No.: 27487
Petitioner: Ms. Rebecca Cohen-Pardo
Sections of the FAR Affected: 14 CFR 61.39
Description of Relief Sought: To allow the petitioner to be eligible for a flight test even though more than 24 months have elapsed since the required written examination was passed.

Docket No.: 27492
Petitioner: American Express Company
Sections of the FAR Affected: 14 CFR 91.411(b)
Description of Relief Sought: To allow the petitioner's experienced technicians, using certified equipment, to conduct data correspondence tests when American Express Company removes and reinstalls a Digital Air Data Computer on its Gulfstream IV aircraft.

Docket No.: 27539
Petitioner: Association of Air Medical Services and Helicopter Association International
Sections of the FAR Affected: 14 CFR 135.213(b), 135.219 and 135.255 (a)(1), (a)(2), (f) and (g)
Description of Relief Sought/ Disposition: To permit the petitioners to file an instrument flight rule (IFR) flight plan, take off under IFR, and conduct IFR approaches and takeoffs at airports/heliports that do not have weather reporting capability.

Docket No.: 27546
Petitioner: Mr. Theodore L. Herbert
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 25286
Petitioner: United States Parachute Association
Sections of the FAR Affected: 14 CFR 91.307(a)(2) and 105.43(a)
Description of Relief Sought/ Disposition: To amend Exemption No. 4946C to exempt foreign nationals participating at USAP-sponsored events from using FAA-approved equipment while practice jumping in preparation for the event.
Denial, December 6, 1993, Exemption No. 5805

Docket No.: 26101
Petitioner: America West Airlines, Inc.
Sections of the FAR Affected: 14 CFR 93.225
Description of Relief Sought/ Disposition: To permit the petitioner to continue to operate four flights (two arrivals and two departures) at Washington National Airport (DCA).
Grant, November 15, 1993, Exemption No. 5133E

Docket No.: 26577
Petitioner: Jet Tech, Inc.
Sections of the FAR Affected: 14 CFR 61.55(b)(2); 61.56(b)(1); 61.57(c) and (d); 61.58(c)(1) and (d); 61.63(c)(2) and (d)(2) and (3); 61.67(d)(2); 61.157(d)(1) and (2) and (e)(1) and (2); and Appendix A of part 61.
Description of Relief Sought: To allow Jet Tech, Inc., and persons who contract for services from Jet Tech, Inc. to continue to use FAA-approved simulators to meet certain training and testing requirements.
Grant, December 9, 1993, Exemption No. 5377A

Docket No.: 27235
Petitioner: United Air Lines, Inc.
Sections of the FAR Affected: 14 CFR 121, Appendix H
Description of Relief Sought: To allow the petitioner to use its 747 #2 simulator, qualified at Level C (Phase II), as if it were qualified at Level D (Phase III).
Partial Grant, December 8, 1993, Exemption No. 5807

Docket No.: 27416
Petitioner: Airways Service
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought/ Disposition: To permit the petitioner to operate without a TSO–C112 (Mode S) transponder on its aircraft operating under the provisions of part 135.
Grant, December 20, 1993, Exemption No. 5808

Docket No.: 27461
Petitioner: Sierra Industries Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, December 20, 1993, Exemption No. 5809

Docket No.: 27486
Petitioner: Carroll Aviation, Inc.
Sections of the FAR Affected: 14 CFR 135.143(c)(2)
Description of Relief Sought: To allow the petitioner to operate without a TSO–C112 (Mode S) transponder installed on its aircraft operating under the provisions of part 135.
Grant, December 20, 1993, Exemption No. 5810

[FR Doc. 94–365 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 3, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0130.

Form Numbers: ATF F 4473, Part II (ATF F 5300.9).

Type of Review: Extension.

Title: Firearms Transaction Record, Part II Intrastate, Non-Over the Counter.

Description: Form is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is used in law enforcement in investigations/ inspections to trace firearms or to confirm criminal activity of persons violating the Gun Control Act (GCA).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 20,900.

Estimated Burden Hours Per Respondent/Recordkeeping: 24 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/ Recordkeeping Burden: 11,843 hours.

Clearance Officer: Robert N. Hogarth (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–354 Filed 1–6–94; 8:45 am]

BILLING CODE 4810–31–P

Bureau of Alcohol, Tobacco and Firearms

[Notice No. 786]

Commerce in Explosives; List of Explosive Materials

Pursuant to the provisions of section 841(d) of title 18, United States Code, and 27 CFR 55.23, the Director, Bureau of Alcohol, Tobacco, and Firearms, must publish and revise at least annually in the **Federal Register** a list of explosives determined to be within the coverage of 18 U.S.C. chapter 40, Importation, Manufacture, Distribution and Storage of Explosive Materials. This chapter covers not only explosives, but also blasting agents and detonators, all of which are defined as explosive materials in section 841(c) of title 18, United States Code. Accordingly, the following is the 1994 List of Explosive Materials subject to regulation under 18 U.S.C. Chapter 40, which includes both the list of explosives (including detonators) required to be published in the **Federal Register** and blasting agents. The list is intended to also include any and all mixtures containing any of the materials in the list. Materials constituting blasting agents are marked by an asterisk. While the list is comprehensive, it is not all inclusive. The fact that an explosive material may not be on the list does not mean that it is not within the coverage of the law if it otherwise meets the statutory definitions in section 841 of Title 18, United States Code. Explosive materials are listed alphabetically by their common names followed by chemical names and synonyms in brackets. This revised list supersedes the List of Explosive Materials dated January 15, 1993, (58 FR 4736) and will be effective as of the date of publication in the **Federal Register.**

List of Explosive Materials

A

Acetylides of heavy metals.
Aluminum containing polymeric propellant.
Aluminum ophorite explosive.
Amatex.
Amatol.
Ammonal.
Ammonium nitrate explosive mixtures (cap sensitive).
*Ammonium nitrate explosive mixtures (non cap sensitive).
Aromatic nitro-compound explosive mixtures.
Ammonium perchlorate explosive mixtures.
Ammonium perchlorate composite propellant.
Ammonium picrate [picrate of ammonia, Explosive D].
Ammonium salt lattice with isomorphously substituted inorganic salts.
*ANFO [ammonium nitrate-fuel oil].

B

Baratol.
Baronol.
BEAF [1,2-bis (2,2-difluoro-2-nitroacetoxyethane)].
Black powder.
Black powder based explosive mixtures.
*Blasting agents, nitro-carbo-nitrates, including non cap sensitive slurry and water-gel explosives.
Blasting caps.
Blasting gelatin.
Blasting powder.
BTNEC [bis (trinitroethyl) carbonate].
Bulk salutes.
BTNEN [bis (trinitroethyl) nitramine].
BTTN [1,2,4 butanetriol trinitrate].
Butyl tetryl.

C

Calcium nitrate explosive mixture.
Cellulose hexanitrate explosive mixture.
Chlorate explosive mixtures.
Composition A and variations.
Composition B and variations.
Composition C and variations.
Copper acetylide.
Cyanuric triazide.
Cyclotrimethylenetrinitramine [RDX].
Cyclotetramethylenetetranitramine [HMX].
Cyclonite [RDX].
Cyclotol.

D

DATB [diaminotrinitrobenzene].
DDNP [diazodinitrophenol].
DEGDN [diethyleneglycol dinitrate].
Detonating cord.
Detonators.
Dimethylol dimethyl methane dinitrate composition.
Dinitroethyleneurea.
Dinitroglycerine [glycerol dinitrate].
Dinitrophenol.
Dinitrophenolates.
Dinitrophenyl hydrazine.
Dinitroresorcinol.
Dinitrotoluene-sodium nitrate explosive mixtures.
DIPAM.
Dipicryl sulfone.
Dipicrylamine.
Display fireworks.
DNDP [dinitropentano nitrile].
DNPA [2,2-dinitropropyl acrylate].
Dynamite.

E

EDDN [ethylene diamine dinitrate].
EDNA.
Ednatol.
EDNP [ethyl 4,4-dinitropentanoate].
Erythritol tetranitrate explosives.
Esters of nitro-substituted alcohols.
EGDN [ethylene glycol dinitrate].
Ethyl-tetryl.
Explosive conitrates.
Explosive gelatins.
Explosive mixtures containing oxygen releasing inorganic salts and hydrocarbons.
Explosive mixtures containing oxygen releasing inorganic salts and nitro bodies.
Explosive mixtures containing oxygen releasing inorganic salts and water insoluble fuels.

Explosive mixtures containing oxygen releasing inorganic salts and water soluble fuels.
Explosive mixtures containing sensitized nitromethane.
Explosive mixtures containing tetranitromethane (nitroform).
Explosive nitro compounds of aromatic hydrocarbons.
Explosive organic nitrate mixtures.
Explosive liquids.
Explosive powders.

F

Flash powder.
Fulminate of mercury.
Fulminate of silver.
Fulminating gold.
Fulminating mercury.
Fulminating platinum.
Fulminating silver.

G

Gelatinized nitrocellulose.
Gem-dinitro aliphatic explosive mixtures.
Guanyl nitrosamino guanyl tetrazene.
Guanyl nitrosamino guanylidene hydrazine

H

Hexogene or octogene and a nitrated N-methylaniline.
Hexolites.
HMX [cyclo-1,3,5,7-tetramethylene-2,4,6,8-tetranitramine; Octogen].
Hydrazinium nitrate/hydrazine/aluminum explosive system.
Hydrazoic acid.

I

Igniter cord.
Igniters.
Initiating tube systems.

K

KDNBF [potassium dinitrobenzo-furoxane].

L

Lead azide.
Lead mannite.
Lead mononitroresorcinate.
Lead picrate.
Lead salts, explosive.
Lead styphnate [styphnate of lead, lead trinitroresorcinate].
Liquid nitrated polyol and trimethylolethane.
Liquid oxygen explosives.

M

Magnesium ophorite explosives.
Mannitol hexanitrate.
MDNP [methyl 4,4-dinitropentanoate].
MEAN [monoethanolamine nitrate].
Mercuric fulminate.
Mercury oxalate.
Mercury tartrate.
Metriol trinitrate.
Minol-2 [40% TNT, 40% ammonium nitrate, 20% aluminum].
MMAN [monomethylamine nitrate]; methylamine nitrate.
Mononitrotoluene-nitroglycerin mixture.
Monopropellants.

N

NIBTN [nitroisobutametriol trinitrate].
Nitrate sensitized with gelled nitroparaffin.
Nitrated carbohydrate explosive.
Nitrated glucoside explosive.
Nitrated polyhydric alcohol explosives.
Nitrates of soda explosive mixtures.
Nitric acid and a nitro aromatic compound explosive.
Nitric acid and carboxylic fuel explosive.
Nitric acid explosive mixtures.
Nitro aromatic explosive mixtures.
Nitro compounds of furane explosive mixtures.
Nitrocellulose explosive.
Nitroderivative of urea explosive mixture.
Nitrogelatin explosive.
Nitrogen trichloride.
Nitrogen tri-iodide.
Nitroglycerine [NG, RNG, nitro, glyceryl trinitrate, trinitroglycerine].
Nitroglycide.
Nitroglycol (ethylene glycol dinitrate, EGDN)
Nitroguanidine explosives.
Nitroparaffins Explosive Grade and ammonium nitrate mixtures.
Nitronium perchlorate propellant mixtures.
Nitrostarch.
Nitro-substituted carboxylic acids.
Nitrourea.

O

Octogen [HMX].
Octol [75% HMX, 25% TNT].
Organic amine nitrates.
Organic nitramines.

P

PBX [RDX and plasticizer].
Pellet powder.
Penthrinite composition.
Pentolite.
Perchlorate explosive mixtures.
Peroxide based explosive mixtures.
PETN [nitropentaerythrite, pentaerythrite tetranitrate, pentaerythrltol tetranitrate].
Picramic acid and its salts.
Picramide.
Picrate of potassium explosive mixtures.
Picratol.
Picric acid (manufactured as an explosive).
Picryl chloride.
Picryl fluoride.
PLX [95% nitromethane, 5% ethylenediamine].
Polynitro aliphatic compounds.
Polyolpolynitrate-nitrocellulose explosive gels.
Potassium chlorate and lead sulfocyanate explosive.
Potassium nitrate explosive mixtures.
Potassium nitroaminotetrazole.
Pyrotechnic compositions.
PYX (2,6-bis(picrylamino))-3,5-dinitropyridine.

R

RDX [cyclonite, hexogen, T4, cyclo-1,3,5,-trimethylene-2,4,6,-trinitramine; hexahydro-1,3,5-trinitro-S-triazine].

S

Safety fuse.
Salutes, (bulk).
Salts of organic amino sulfonic acid explosive mixture.
Silver acetylide.
Silver azide.
Silver fulminate.
Silver oxalate explosive mixtures.
Silver styphnate.
Silver tartrate explosive mixtures.
Silver tetrazene.
Slurried explosive mixtures of water, inorganic oxidizing salt, gelling agent, fuel and sensitizer (cap sensitive).
Smokeless powder.
Sodatol.
Sodium amatol.
Sodium azide explosive mixture.
Sodium dinitro-ortho-cresolate.
Sodium nitrate-potassium nitrate explosive mixture.
Sodium picramate.
Special fireworks.
Squibs.
Styphnic acid explosives.

T

Tacot [tetranitro-2,3,5,6-dibenzo-1,3a,4,6a tetrazapentalene].
TATB [triaminotrinitrobenzene].
TEGDN [triethylene glycol dinitrate].
Tetrazene [tetracene, tetrazine, 1(5-tetrazolyl)-4-guanyl tetrazene hydrate].
Tetranitrocarbazole.
Tetryl [2,4,6 tetranitro-N-methylaniline].
Tetrytol.
Thickened inorganic oxidizer salt slurried explosive mixture.
TMETN (trimethylolethane trinitrate).
TNEF [trinitroethyl formal].
TNEOC [trinitroethylorthocarbonate].
TNEOF [trinitroethylorthoformate].
TNT [trinitrotoluene, trotyl, trilite, triton].
Torpex.
Tridite.
Trimethylol ethyl methane trinitrate composition.
Trimethylolthane trinitrate-nitrocellulose.
Trimonite.
Trinitroanisole.
Trinitrobenzene.
Trinitrobenzoic acid.
Trinitrocresol.
Trinitro-meta-cresol.
Trinitronaphthalene.
Trinitrophenetol.
Trinitrophloroglucinol.
Trinitroresorcinol.
Tritonal.

U

Urea nitrate.

W

Water bearing explosives having salts of oxidizing acids and nitrogen bases, sulfates, or sulfamates (cap sensitive).
Water-in-oil emulsion explosive compositions.

X

Xanthamonas hydrophilic colloid explosive mixture.

FOR FURTHER INFORMATION CONTACT: Linda Deel, Specialist, Firearms and Explosives Operations Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW, Washington, DC 20226 (202–927–8310).

Approved: December 30, 1993.

Daniel R. Black,

Acting Director.

[FR Doc. 94–333 Filed 1–6–94; 8:45 am]

BILLING CODE 4810–31–P

Customs Service

Annual User Fee for Customs Brokers Permit

AGENCY: Customs Service, Department of the Treasury.

ACTION: Notice of due date of broker's user fee.

SUMMARY: This document advises Customs brokers that for 1994 the annual user fee of $125 that is assessed for each permit held by an individual, partnership, association, or corporate broker is due by March 1, 1994. This announcement is being published to comply with the Tax Reform Act of 1986.

DATES: Due date for fee: March 1, 1994.

FOR FURTHER INFORMATION CONTACT: Bruce Friedman, Chief, Drawback and Broker Licensing Branch: (202) 927–0916.

SUPPLEMENTARY INFORMATION:

Background

Section 13031 of the Consolidated Omnibus Budget Reconciliation Act of 1985 (Pub. L. 99–272) established that an annual user fee of $125 is to be assessed for each Customs broker's permit held by an individual, partnership, association or corporate broker. This fee is set forth in the Customs Regulations in § 111.96 (19 CFR 111.96).

Section 111.96 Customs Regulations provides that the fee is payable for each calendar year in each district where a broker has a permit to do business by the due date which will be published in the **Federal Register** annually.

Section 1893 of the Tax Reform Act of 1986 (Pub. L. 99–0415), provides that notice of the date on which payment is due of the user fee for each broker permit shall be published by the Secretary of the Treasury in the **Federal Register** no later than 60 days before such due date.

This document notifies brokers that for 1994, the due date for payment of the user fee is March 1, 1994. It is expected that annual user fees for brokers for subsequent years will be due on or about the 15th of January each year.

George J. Weise,

Commissioner of Customs.

[FR Doc. 94–189 Filed 1–6–94; 8:45 am]

BILLING CODE 4820–02–M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 5

Friday, January 7, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. COMMISSION ON CIVIL RIGHTS

DATE AND TIME: January 14, 1994, 9:00 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 540, Washington, DC 20425.

STATUS: Open to the Public.

January 14, 1994

I. Approval of Agenda
II. Approval of Minutes of November 29 and December 3, 1993 Meetings
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Alaska (interim), Connecticut, Nevada, Texas, and Virginia (interim) Advisory Committees
VI. White Supremacist Activity in Montana
VII. Hate Crime in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations
VIII. New York Hearing Update
IX. Fair Housing Report
X. Commissioner Task Force Report on SAC Projects and Reports
XI. Staff Director's Report
XII. Future Agenda Items

CONTACT PERSON FOR FUTURE INFORMATION: Barbara Brooks, Press and Communications, (202) 376–8312.

Emma Mongroig,

Solicitor.

[FR Doc. 94–501 Filed 1–5–94; 2:23 pm]

BILLING CODE 6335–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:30 a.m., Friday, January 14, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement Matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–524 Filed 1–5–94; 3:24 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Tuesday, January 25, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Quarterly review, First Quarter/FY 1994

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–525 Filed 1–5–94; 3:24 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Tuesday, January 25, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement objectives

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–526 Filed 1–5–94; 3:24 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 11:00 a.m., Tuesday, January 25, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–527 Filed 1–5–94; 3:25 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:00 a.m., Monday, January 31, 1994.

PLACE: 2033 K St., NW., Washington, DC, Lower Level Hearing Room.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Proposed rules on holding company risk assessment
Final rules relating to reparation proceedings

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, Secretary of the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–528 Filed 1–5–94; 3:25 pm]

BILLING CODE 6351–01–M

COMMODITY FUTURES TRADING COMMISSION

TIME AND DATE: 10:30 a.m., Monday, January 31, 1994.

PLACE: 2033 K St., NW., Washington, DC, 8th Floor Hearing Room.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Enforcement matters

CONTACT PERSON FOR MORE INFORMATION: Jean A. Webb, 254–6314.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–529 Filed 1–5–94; 3:25 pm].

BILLING CODE 6351–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, January 13, 1994.

PLACE: Room 600, 1730 K Street NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Dolese Brothers Co.*, Docket No. CENT 92–110–M. (Issues include whether the judge erred in finding that Dolese violated 30 CFR 56.14211(d) by suspending a work platform from the load line of a hydraulic crane that was not equipped with an anti-two block device to prevent contact between the load block and the tip of the boom.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFORMATION: Jean Ellen (202) 653–5629 / (202) 708–9300 for TDD Relay / 1–800–877–8339 for toll free.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 94–488 Filed 1–5–94; 2:22 pm]

BILLING CODE 6735–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, January 12, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 5, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–465 Filed 1–5–94; 12:10 pm]

BILLING CODE 6210–01–P

FOREIGN CLAIMS SETTLEMENT COMMISSION

FCSC Meeting Notice No. 4–94

Announcement in Regard to Commission Meetings and Hearings

The Foreign Claims Settlement Commission, pursuant to its regulations (45 CFR Part 504), and the Government in the Sunshine Act (5 U.S.C. 552b), hereby gives notice in regard to the scheduling of open meetings and oral hearings for the transaction of Commission business and other matters specified, as follows:

Date, Time, and Subject Matter

Friday, January 14, 1994 at 10:30 a.m.: Hearings on the record on objections to Proposed Decisions in the following claims against Iran:

—IR–0623—James Hopper
—IR–2319—James A. Corbett

Consideration of Proposed Decisions on Claims against Iran.

Subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

All meetings are held at the Foreign Claims Settlement Commission, 601 D Street, NW., Washington, DC. Requests for information, or advance notices of intention to observe a meeting, may be directed to: Administrative Officer, Foreign Claims Settlement Commission, 601 D Street, NW., Room 10000, Washington, DC 20579. Telephone: (202) 208–7727.

Dated at Washington, DC, on January 4, 1994.

Judith H. Lock,

Administrative Officer.

[FR Doc. 94–485 Filed 1–5–94; 12:32 pm]

BILLING CODE 4410–01–M

federal register

Friday
January 7, 1994

Part II

Department of Commerce

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments; Proposed Rules

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

RIN 0648-AE13

[No. P20105-3196]

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: Section 1006(e)(1) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessments of natural resource damages resulting from discharges of oil. By today's Notice, NOAA is seeking comments concerning the proposed rule. The proposed rule is for the use of authorized federal, state, and tribal officials referred to in the Oil Pollution Act of 1990 (OPA) as "trustees," for the assessment of damages to natural resources and/or services from a discharge of oil. Natural resource damage assessments are not identical to response or remedial actions addressed by the larger statutory scheme of OPA. Assessments are not intended to replace response actions, which have as their primary purpose the protection of human health, but to supplement them, by providing a process for determining proper compensation to the public for injury to natural resources.

DATES: Written comments should be received no later than April 7, 1994.

ADDRESSES: Written comments are to be submitted to Linda Burlington, Project Manager, or Eli Reinharz, Assistant Project Manager, Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1305 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Eli Reinharz, Office of General Counsel, DART, telephone (202) 606-8000, FAX (202) 606-4900.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees to use in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the designation of federal, state, Indian tribal, and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship.

NOAA has published eight **Federal Register** Notices, 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), 57 FR 23067 (June 1, 1992), 57 FR 44347 (September 25, 1992), 57 FR 56292 (November 27, 1992), and 58 FR 4601 (January 15, 1993), requesting information and comments on approaches to developing damage assessment procedures. NOAA conducted a public meeting on March 20, 1991, for additional public participation into the process and held four regional workshops during 1991 in Rockville, Maryland; Houston, Texas; San Francisco, California; and Chicago, Illinois, to learn of regional concerns in coastal and inland waters. One workshop held in Alexandria, Virginia, in November, 1991, provided a forum for early discussions of various economic issues likely to be raised during the damage assessment rulemaking process. In addition, on August 12, 1992, NOAA held a public hearing on the issue of whether constructed market methodologies, including Contingent Valuation (CV), can be used to calculate reliably passive use values for natural resources, and if so, under what circumstances and under what guidance. On January 15, 1993, at 58 FR 4601, NOAA published in full the report of the panel commissioned by NOAA to evaluate the reliability of CV in calculating passive use values for natural resources.

The proposed rule summarizes the written comments received by the agency and issues raised during the public meetings and workshops, responds to those comments, and contains proposed regulatory language on the various issues raised. Many of the specific comments summarized in the proposed rule refer to the status report published by NOAA in the March 13, 1992, **Federal Register** notice.

This preamble is organized in the following manner: the Introduction gives an overview of the proposed rule and is followed by a discussion of each of the subparts of the proposed rule. Subpart A deals with the optional prespill planning for a damage assessment and other general topics, subpart B describes the Preassessment Phase, and subparts C, D, E, F, and G contain the description of the Assessment Phase and the range of assessment procedures. Subpart H describes the Post-assessment Phase.

INTRODUCTION

Overview of Process

I. General

The proposed rule simplifies the task of the natural resource trustee(s) by providing a flexible and logical process for assessing natural resource damages resulting from a discharge of oil. To assist the trustee(s) in conducting damage assessments, the proposed rule defines a number of key statutory terms relevant to damage assessment and identifies a number of damage assessment techniques that NOAA has determined are the best available. In addition, the proposed rule is intended to facilitate public and responsible party (RP) involvement in the restoration of injured natural resources and/or services by creating an open, administrative process for selection of restoration measures. The proposed rule promotes a cooperative approach to resolution of natural resource damage cases by providing greater certainty regarding the measure of damages and the process by which damages will be determined.

The proposed rule is intended to provide the trustee(s) with maximum flexibility in conducting damage assessments. It is important to bear in mind that the proposed rule is optional. The trustee(s) is free to depart from the proposed rule, however, section 1006(e)(2) of OPA provides that damage assessments conducted pursuant to this proposed rule shall have a rebuttable presumption of accuracy in any administrative or judicial proceedings under OPA. Also, this proposed rule makes possible judicial review on the administrative record for the Assessment/Restoration Planning process. The administrative record is the repository of all the information and data considered by the trustee(s) during the assessment. The trustee(s) may use damage assessment techniques outside the scope of this proposed rule at the cost of assuming the burden of proof with respect to those components of the damage assessment.

The nature and scope of this proposed rule can best be understood in the context of the overall statutory scheme for natural resource damage cases. The elements of liability under sections 1002(a) and (b)(2) of OPA are simple and straightforward: (1) A discharge (2) of oil (3) from a vessel or facility (4) into or upon navigable waters, adjoining shorelines or the Exclusive Economic Zone, (5) which results in injury to natural resources and/or services. Thus, liability is established when there is some injury to a natural resource and/or service resulting from a discharge of oil. The damage assessment is designed to determine and quantify injury, the appropriate restoration approach, and the damages resulting from the injury.

The damage assessment process described in this proposed rule has three major phases: (1) The Preassessment Phase; (2) the Assessment Phase; and (3) the Post-Assessment Phase (See Figure 1).

BILLING CODE 3510-12-P

NATURAL RESOURCE DAMAGE ASSESSMENT PROCESS
PROPOSED RULE UNDER OPA 1990

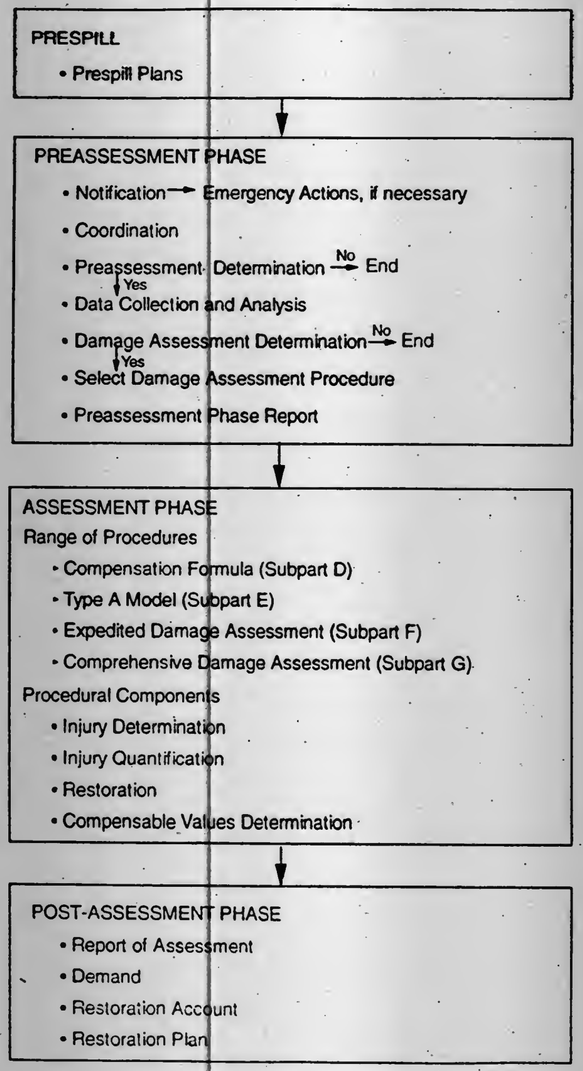


FIGURE 1

BILLING CODE 3510-12-C

Prespill planning involves planning and coordination among trustees, coordination with the Area Committees, potential RPs, and the public to ensure a cost-effective and coordinated assessment once a discharge of oil occurs. Thus, it is not part of an incident-specific assessment, but an important part of preparation by the trustee(s) for fulfilling their natural resource damage assessment responsibilities during spill response. The Preassessment Phase involves two basic decisions: The decision whether to proceed with the Preassessment Phase and the decision as to the scope of the assessment to conduct, if any. The Assessment Phase offers a choice involving four types of assessment procedures: compensation formulas, computer models, expedited procedures, and comprehensive procedures. The Post-Assessment Phase gives guidance on using the recoveries effectively and efficiently to bring about the recovery of injured natural resources and/or services.

NOAA is also developing detailed guidance on various aspects of damage assessment. It is anticipated that guidance documents will soon be available on: Preassessment, injury determination and quantification, and restoration. NOAA will publish a Notice of Availability when these documents are ready for the public. These guidance documents are being prepared in conjunction with this rulemaking to provide more specific technical information to those performing assessments and restorations under OPA and other interested members of the public. These documents will not constitute regulatory guidance nor must they be followed to obtain the rebuttable presumption. The documents, in their final form, will be made available through a public information distribution service.

II. Prespill Planning

Prespill planning and coordination by various parties are likely to be involved in damage assessments under OPA. Prespill activities are a crucial component of trustee responsibilities. Immediately after an oil discharge, it is extremely difficult to determine the availability of baseline scientific data, plan additional data collection, and coordinate the damage assessment approach of the trustee(s). Thus, baseline data collection and planning are important to a successful assessment.

The proposed rule strongly encourages natural resource trustees to coordinate among themselves, the response agencies, the public, and any potential RPs interested in developing contingency plans for a damage assessment. These prespill plans can consist of products of previous planning efforts, or can be management plans modified or supplemented to cover damage assessment issues.

In prespill planning, the trustee(s) should anticipate what may be required to document the damage assessment. The documentation requirements in the proposed rule are drawn largely from the comparable process set out in the National Contingency Plan (NCP) for selection of remedies at hazardous waste sites. The trustee(s) should have the procedures in place to begin the assessment and restoration planning process when a discharge occurs.

III. Preassessment Phase

A. Introduction

A natural resource damage assessment begins with the Preassessment Phase, which consists of two basic components: (1) Preassessment Determination and (2) Damage Assessment Determination. The Preassessment Determination requires a decision by the trustee(s) whether to initiate the Preassessment Phase. During the Preassessment Phase, the trustee(s) may conduct limited data collection and analysis (data collection). At the end of the Preassessment Phase, the trustee(s) decides whether to proceed with a damage assessment in the Damage Assessment Determination.

The Preassessment Phase also identifies the conditions for notification, coordination, estimation of assessment costs, reporting, and emergency restoration. Guidance on conducting the Preassessment Phase will be available in the Preassessment Phase Guidance Document.

B. Relationship of Preassessment Activities to Response Activities

It is very probable that the Preassessment Phase will be conducted simultaneously with the On-Scene Coordinator (OSC)-coordinated response activities. Any activities conducted in the discharge area should be coordinated with the OSC or designee, especially with regards to damage assessment trustee(s) requests for response operations resources. The trustee(s) at the discharge site is likely to be participating as a part of the OSC's response organization and member of the damage assessment team. The response activities are under the jurisdiction of the OSC, whereas the damage assessment activities are under the jurisdiction of the trustee(s).

C. Preassessment Process

1. *Preassessment Determination.* After notification, the trustee(s) should determine if conducting the Preassessment Phase is justified. The Preassessment Determination is largely a "desktop" exercise based upon readily available information on the discharge and environmental setting.

Based on that information, the trustee(s) should determine if: (1) The discharge of oil meets the exclusionary conditions as set forth in section 1002(c) of OPA; (2) the trustee(s) has authority under OPA to assert damage claims for natural resources and/or services that may be adversely affected by the discharge of oil; and (3) there is a reasonable probability that the trustee(s) can make a successful damage claim based on the scientific, economic, and legal merits of the case, i.e., potential for injury resulting from the discharge and successful and meaningful restoration and/or compensation. If these conditions are met, the trustee(s) may proceed with the Preassessment Phase.

2. *Damage Assessment Determination.* In the Damage Assessment Determination, the trustee(s) decides which, if any, damage assessment procedure to conduct. Further, damage assessment is appropriate for those injured natural resources and/or services that can be restored or for which damages can be estimated. As part of the Damage Assessment Determination, the trustee(s) should make a preliminary determination regarding the applicability of the damage assessment procedures. These decisions should be documented in the Preassessment Phase Report.

The trustee(s) has a great deal of flexibility in selecting appropriate damage assessment methods. If at any time during the Preassessment Phase the trustee(s) determines sufficient information was collected in order to select a damage assessment procedure, the trustee(s) may complete the preassessment and move into the Assessment Phase. The proposed rule provides factors for the trustee(s) to consider in the selection of appropriate assessment procedures.

3. *Preassessment Phase Report.* At the conclusion of the Preassessment Phase, the trustee(s) should document briefly: preassessment actions, such as data collection and emergency restoration; estimated costs directly related to those actions; and decisions to proceed with preassessment and damage assessment. The report should provide sufficient information for input in the damage assessment/restoration process.

If no further damage assessment actions are taken, the Preassessment Phase Report becomes the Report of Assessment. If damage assessment actions are undertaken, the Preassessment Phase Report becomes part of the Report of Assessment. If the trustee(s) decides to proceed with an assessment, the trustee(s) should develop a Draft Assessment/Restoration Plan (DARP) as a guide to how the damage assessment will be conducted.

D. Data Collection and Analysis

The primary reason for data collection and analysis (data collection) in the Preassessment Phase is to ensure that there is sufficient information to evaluate the risk to natural resources and/or services resulting from the exposure to oil. The scope of the trustee's(s') data collection should be reasonable in light of the characteristics of the discharge and natural resources and/or services potentially affected by the discharge. However, the trustee(s) and RP(s) may agree to undertake limited injury determination studies to verify that no significant injury to natural resources and/or services has resulted from the discharge, although costs for such undertakings are not recoverable.

When reasonably practicable, the trustee(s) should collect the following types of information during the Preassessment Phase: (1) Data that are necessary to make a determination to proceed with the Preassessment Phase; (2) ephemeral or perishable data that may be lost if not collected immediately; and (3) necessary data that serves as the basis for the selected damage assessment procedure, the absence for which data would prevent the trustee(s) from proceeding with the damage assessment determination of § 990.23 (i.e., input into the compensation formulas of Type A models, or the study design for the Expedited Damage Assessment (EDA) or Comprehensive Damage Assessment (CDA)).

E. Emergency Restoration

At any time after the discharge, the trustee(s), with the approval of the OSC, may decide to conduct emergency restoration as long as it does not interfere with response actions. These actions are designed to protect natural resources and/or services where there is insufficient time to await completion of the entire damage assessment/restoration planning process.

Emergency restoration is not subject to required public review and comment. Consequently, the proposed rule requires the trustee(s) to document that any actions taken under this authority are necessary and, to the extent reasonably practicable, cost-effective.

IV. Assessment Phase

A. General

Through this proposed rule, NOAA is providing the trustee(s) with a variety of assessment procedures in recognition of the need for flexibility in dealing with situations that, by their nature, are incident-specific. The trustee(s) can choose among the various procedures based upon the circumstances of the discharge or natural resource and/or service involved.

In the selection process, the trustee(s) should first consider the simplified procedures, either the compensation formula, the Type A model, or Expedited Damage Assessment (EDA), before a Comprehensive Damage Assessment (CDA). The RP(s) may request that the trustee(s) use a more complex assessment procedure than that chosen by the trustee(s), only if the RP(s) provides the money up front to fund such an effort, and it is understood that the trustee(s) has the ultimate responsibility for the design and management of that study. The trustee(s) has the option to decline to conduct the more complex assessment procedure, but must justify and document that decision in the Report of Assessment.

B. Draft Assessment/Restoration Plan (DARP)

The proposed rule requires that the trustee(s) prepare a DARP for all assessments. The DARP is the document that gives the trustee(s) the opportunity to present for comment the chosen approach for restoration, replacement, rehabilitation, or acquisition of the equivalent of the injured resources and services. The DARP will also give enough information about the injury determination and quantification to allow for a meaningful review of the trustee's(s') determination of the restoration approach. The DARP will also contain the estimated costs of implementing the chosen approach. The DARP also may, at the trustee's discretion, contain a list of the planned valuation studies.

After the DARP has been reviewed by the public, the trustee(s) will then modify it as appropriate. The DARP then becomes the Report of Assessment, which is the final description of the restoration approach selected by the trustee(s) and the estimated costs of implementing that approach.

Although each assessment will be incident-specific, many elements of a DARP will be essentially the same. At a minimum, the DARP should identify the following: (1) The objectives of the trustee(s); (2) how the trustee(s) plans to accomplish the objectives; and (3) whether the planned actions are conducted in a cost-effective manner to the extent reasonably practicable. It is expected that the DARP will address issues such as study design, data collection and analysis, quality assurance (QA), data management, and guidelines for conducting the overall assessment/restoration process and individual studies within that process. The proposed rule addresses these common components as they are addressed through the DARP. Not all of these elements will be required in every DARP, particularly in a compensation formula or Type A assessment.

As mentioned throughout this preamble and proposed rule, the trustee(s) is strongly encouraged to develop prespill plans for conducting an assessment. Those prespill plans could even identify the type of assessment procedure conducted under certain discharge scenarios. When the trustee(s) determines that the assessment will be conducted pursuant to prespill plans, the DARP shall document that decision and be consistent with the actions identified in the prespill plan to the maximum extent practicable. If the circumstances of the incident are such that the trustee(s) determines that the assessment will be conducted on an incident-specific manner rather than pursuant to any prespill plans, the DARP shall document that decision.

The trustee(s) will prepare a DARP following the determination to proceed with further assessment activities. The DARP should be based upon the findings of the Preassessment Phase, identify the assessment procedures the trustee(s) is planning to use, describe proposed studies relating to injury determination and quantification, if any, and describe proposed actions relating to the determination of the type and nature of restoration actions, if any, subject to the prespill plans. Although the trustee(s) should view the development of the DARP as one process, it may be reasonable to develop the restoration component separately and at a later date than the assessment component.

The development of a DARP will assist the trustee(s) in conducting an efficient assessment and, subject to prespill plans, be available for public review. The scope of the public notice and review should be comparable to the scope of the extent of the assessment area and expected effects. The DARP (including comments and responses) is to be included in the administrative record accompanying the assessment. The DARP will also ultimately become the Report of Assessment. The trustee(s) is not required under the proposed rule to provide a review and comment period of any specific injury determination/quantification studies, only general notification of the nature and type of assessment being conducted.

The trustee(s) must review and respond to public comments during preparation of the restoration component of the DARP. In addressing comments received concerning the proposed restoration approach, it is not necessary for the trustee(s) to respond to each comment received. Comments may be summarized in like-subject areas and responded to only once.

The proposed rule allows the trustee(s) to modify the restoration component of the DARP, if necessary. Public review is required for modifications deemed significant by the trustee(s). Large discharges or discharges with extensive environmental effects may require the trustee(s) to develop multi-year plans. Again, modifications of the annual restoration plans that are significantly different from the preceding year should be provided for public review.

C. Compensation Formulas

The estuarine/marine and inland waters compensation formulas described in this proposed rule would be applicable to the vast majority of oil discharges. An analysis of reported coastal discharges of oil from 1973–1990 shows that 99.8% of the discharges were less than 50,000 gallons and 99% were less than 10,000 gallons. Compensation formulas could be used for most of these relatively small discharges, particularly for those that occur in areas where it would be difficult to ascertain precise environmental effects, e.g., small discharges in open water or in areas that are subject to frequent discharges.

These formulas allow an estimate of damages per gallon taking into account average restoration costs, plus average lost direct use values pending restoration. The formulas assume various levels of natural resource effects likely to result from the discharge of oil. These assumptions consider the amount and type of oil discharged and region and habitat type in which the discharge occurs. The formulas are applicable to a wide range of the most commonly discharged oil products. This approach allows both a national consistency and regional specificity.

D. Computer Models

NOAA is proposing that the natural resource trustee(s) may use the Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 1.2, known as the Type A model, developed by the U.S. Department of the Interior (DOI), for damage assessments under OPA. The Type A model is described at 43 CFR Part 11, subpart D. The Type A model may be used when the conditions of the discharge are sufficiently similar to the conditions at 43 CFR 11.33(b).

It is likely NOAA will also recommend the new set of computer models being developed by DOI. The current computer model, for use in coastal and marine environments, is being revised to comply with the circuit court's decision in *Colorado* v. *U.S. Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989) (*Colorado* v. *DOI*) and as part of the statutorily-mandated review and update. The court in *Colorado* v. *DOI* held that natural resource damage assessments should be based upon costs to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources, plus the diminution of all reliably calculated values pending recovery. Until the revisions to the Type A model are completed, the trustee(s) may use the current Type A model for lost use values and supplement the resulting figure with estimates of restoration costs and other applicable damages. DOI is also developing a second computer model for use in the Great Lakes and their connecting channels.

These new computer models are under development through DOI, but are not yet available for public review. NOAA is working closely with DOI in its development of these computer models. Based upon an initial evaluation of these models, it is likely that NOAA will recommend that there be available procedures that the trustee(s) may choose to use.

E. Expedited Damage Assessment (EDA)

Included in the proposed rule is a new type of assessment procedure—Expedited Damage Assessment. EDA reflects a damage assessment approach that is intermediate between the current Type A and the CDA procedures. This approach recognizes that a Type A model may not address all key natural resources and/or services injured or at risk, particularly for inland discharges. The approach also recognizes that the size, location, and timing of a given discharge may not warrant the extensive procedures associated with a CDA. The EDA offers an option that addresses a broader range of natural resources and/or services than a Type A model but is less time consuming and less expensive than a CDA.

The goal of an EDA is to initiate necessary restoration as quickly as possible by truncating the injury determination and quantification components. Accordingly, an EDA does not include comprehensive or long-term injury determination and quantification studies nor does it address injury for every natural resource and/or service that may be injured.

An EDA is not necessarily a unitary approach to damage assessment. It encompasses a range of techniques that permit the trustee(s) to determine injury based on limited, focused observations. In some circumstances, an EDA may entail supplementing the Type A model with field studies. In other situations, an EDA may comprise an abbreviated CDA approach. Accordingly, the EDA should be viewed as a dynamic, flexible process rather than a rigid step-by-step approach.

Simply stated, the goals of an EDA are to: (1) Identify and quantify injuries to selected natural resources and/or services resulting from a discharge, (2) accomplish the above goal using focused studies and/or preexisting information, and (3) provide the basis for restoration and recovery of natural resources and/or services. The trustee(s) may undertake injury determination and quantification only for selected natural resources and/or services.

Ideally, data collection in an EDA should not exceed two field seasons. During this period, the trustee(s) should quickly develop appropriate injury determination and quantification studies, and a draft restoration plan. The remaining time should be devoted to completion of the restoration plan, and to public review of the consent decree and/or restoration plan.

F. Comprehensive Damage Assessment (CDA)

1. *General.* Whereas the EDA described above is intended primarily for situations involving cooperative efforts completed within a relatively short time, the CDA should be used where it is anticipated that the assessment will require prolonged (i.e., multi-year) studies. The CDA is particularly appropriate where the trustee(s) expects complex effects for which there is little documentation in the literature. The CDA includes guidance on: injury determination, injury quantification, restoration planning and costs, and economic valuation.

2. *Injury determination.* The purpose of the injury determination component in CDA is to verify injury to natural resources and/or services. Before beginning the CDA, the trustee(s) must assess the feasibility of detecting injury based on a scientifically valid study design.

If an injury cannot be determined or cannot be linked to the discharge, further assessment efforts should be terminated and the results of the injury determination component documented in the Report of Assessment. If injury is determined, the approach for the next two components (i.e., quantification and damages) must be selected consistent with the findings of the injury determination.

3. *Injury quantification.* After establishing that a natural resource and/or service is injured by the discharge of oil, the next step calls for quantifying the effects on natural resources and/or services. Close coordination is required between natural resource specialists and economists in planning and implementing this phase of the assessment to estimate values in the economic valuation phase. Quantification should only be conducted for natural resources and/or services that can be restored and for which damages will be sought.

The proposed rule allows the trustee(s) to quantify injuries in one of two ways: (1) Measuring direct changes in the natural resource itself (i.e., changes in the chemical, physical, or biological parameters); or (2) measuring changes in the level of services provided by the natural resource. In either case, injury quantification requires before-after and reference/contol-impact comparisons. Such comparisons will depend on the recovery period of both the affected natural resources and/or services. Quantification will ultimately be essential for the evaluation of restoration alternatives, and measuring the compensable value of lost services.

4. *Restoration Planning.* The purposes of the restoration component are to: (1) Determine the most appropriate restoration approach for the recovery of natural resources and/or services injured by a discharge of oil; and (2) estimate the costs of implementing that approach. The goal of restoration is to return an injured natural resource and/or service to as close to the baseline condition as possible. OPA provides the trustee(s) the following options to remedy injury to natural resources and/or services: restoration, rehabilitation, replacement, and acquisition of the equivalent natural resources. Natural recovery is an option that should always be considered. When acquisition of equivalent natural resources is selected, the DARP shall define clearly the relationship of acquired natural resources to the injured natural resources and/or services.

5. *Compensable Values Determination.* Natural resources are public assets. Like other assets they provide a flow of services. The basic types of services associated with natural resources include, but are not limited to: (1) Recreational, (2) commercial, (3) ecological, (4) special significance, and (5) passive use. Lost services may result from the loss of, or reduction in, the quality or quantity of services provided by a natural resource as a result of a discharge of oil. The final estimate of interim lost value will, therefore, depend on the most likely restoration approach. If no restoration is being considered for the injured natural resources and/or services, damages include the value of the lost or impaired/diminshed services from the time of the discharge through the completion of natural recovery.

The total diminution in the value of natural resources and/or services, whether with restoration actions or natural recovery, is referred to as "compensable values." For the purposes of this proposed rule, compensable values include all reliably calculated values that comprise the total diminution in value of lost or diminished services of trust resources as a result of a discharge, from the onset of the event until recovery to baseline or comparable conditions is deemed complete by the trustee(s), i.e., interim lost values. "Compensable values" are defined broadly to encompass both direct use and passive use values that can be reliably calculated in a manner that is trustworthy or worthy of confidence.

Direct use values are defined as the value individuals derive from direct use of a resource. Passive use values are defined as the values individuals place on resources independent of direct use of a resource by the individual. The term "nonuse values" has also been used to refer to the same concept, but NOAA prefers the term "passive use values."

Factors to consider in calculating compensable values include: (1) The value of the services injured or lost, (2) the predicted level of services if the discharge had never occurred, (3) the predicted level of services given injury and natural recovery, and (4) the predicted level of services given injury and a feasible restoration plan. For some categories of economic damage, it will be possible to conduct site-specific analyses. For example, the economic damages associated with the loss of access to a marine transportation corridor due to closure of a waterway can be estimated using existing site-specific data in most instances. In other cases the trustee(s) may employ benefits transfer procedures to apply valuation estimates or valuation functions from existing valuation studies from other contexts to estimate losses in the present incident.

Several methodologies exist to measure direct use and passive use values. This proposed rule provides maximum flexibility to the trustee(s) for selecting any methodology that can provide reliable and valid resource values and that is appropriate for valuing the injuries associated with a particular discharge. The trustee(s) will have broad discretion in selecting among existing and potential new methodological approaches that may be employed in damage assessment. The flexibility to exercise professional judgment in selecting and applying specific analytical techniques is necessary because of the "site-specific" nature of discharges of oil. Further, the trustee(s) may use different methodologies to produce separate damage estimates for different resource services, so long as there is no double recovery of losses. The choice of methodological approaches in a particular context will depend upon the types of injuries associated with a discharge. Estimates of the value of lost services pending recovery of injured natural resources and/or services will be submitted as part of the total damage determination.

V. Post-Assessment Phase

At the conclusion of an assessment the trustee(s) shall prepare a Report of Assessment. The Report of Assessment, which is the final description of the restoration approach selected by the trustee(s) and the estimated costs of implementing that approach serves as the basis for the judicial review on the record of the assessment.

Once the Report of Assessment is compiled, the trustee(s) should present to the RP(s) a demand in writing for the total damages. The demand is the document that is presented as the summation of all damages claimed by the trustee(s) resulting from the discharge. The demand will consist of an identification of the discharge, the identity of the trustee(s), the amount of damages, and the Report of Assessment as an attachment.

The total damage figure may be divided into two components: estimated restoration costs and other damages, including but not limited to assessment costs and compensable values. Judicial review of that portion of the demand representing costs shall be conducted on the administrative record. Judicial review of that portion of the demand representing compensable values shall be conducted with the trustee(s) receiving the benefit of the rebuttable presumption.

There are several issues involving handling sums recovered. One issue is management of the account into which sums recovered are placed. The proposed rule allows trustees to establish a "joint trustee account." This trustee account should be managed by all trustees through a mutually agreed upon trustee committee or council. However, if for some reason, the trustees cannot establish a joint account, the proposed rule allows the trustees to divide the recoveries and deposit their respective amounts into separate accounts.

The second issue is the possible pooling of recoveries from more than one discharge into one account for Regional Restoration Plans. Whether the trustee(s) establishes joint or separate accounts, there are two possibilities for handling sums recovered from discharges. The trustee(s) may establish an incident-specific account into which sums recovered from a single discharge may be placed. However, an alternative allowed by the proposed rule would be for the trustee(s) to establish a combined account into which sums recovered from several discharges could be placed.

Finally, whether joint or separate, incident-specific or combined, these various accounts may be established within the trustee agency's own treasury, in an account under the registry of the applicable federal court, or in a commercial account. The commercial account may be an escrow account or any other type of account not prohibited by law. Each of these various types of accounts should be interest bearing. The trustee(s) should provide that money may only be withdrawn from such accounts with trustee(s) approval. Also, because of the multiple types of accounts, the trustee(s) must maintain appropriate accounting and reporting methods to ensure the proper use of sums recovered. The damages representing compensation for injuries to natural resources and/or services are to be spent to develop and implement a final restoration plan.

The proposed rule describes two types of post-assessment restoration plans. First, the trustee(s) may develop an incident-specific restoration plan to address the effects of the discharge of concern. This plan shall be based upon the restoration component of the DARP developed using guidance given in the CDA phase of the proposed rule.

Second, the trustee(s) is allowed to pool recoveries to apply them to a Regional Restoration Plan for a specific area. This Regional Restoration Plan would have to be developed through a public review and comment process consistent with the restoration planning process described in the proposed rule. Where such a plan already exists, whether developed pursuant to this proposed rule or under other management efforts, that plan may be used subject to the requirements for such a plan listed in the proposed rule. This Regional Restoration Plan would allow the trustee(s) to apply several relatively small recoveries to a specific area, such as a bay or estuary to achieve a more comprehensive restoration than what may otherwise be achieved through a smaller, more segmented approach.

Relationship to 43 CFR Part 11

The U.S. Department of the Interior (DOI) has promulgated natural resource damage assessment regulations under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (CERCLA), 42 U.S.C. 9601 *et seq.* These regulations, which are codified at 43 CFR part 11, establish an administrative process and procedures for the assessment of damages for injuries to natural resources affected by a release of a hazardous substance or a discharge of oil. These regulations currently provide guidance for damage assessments resulting from both oil and hazardous substances. After the OPA regulations are promulgated, the 43 CFR part 11 procedures can still be used to assess damages for natural resource injuries resulting from a release of a hazardous substance or a discharge of oil not covered under OPA.

The procedures identified in 43 CFR part 11 provided a base from which to identify assessment procedures to be promulgated under OPA. NOAA requested comments on the applicability to oil discharges of 43 CFR part 11, as modified by the court decisions of *Ohio* v. *U.S. Department of the Interior*, 880 F.2d 432 (D.C. Cir. 1989), and *Colorado* v. *U.S. Department of the Interior*, 880 F.2d 481 (D.C. Cir. 1989). In addition, NOAA and DOI are coordinating their respective rulemakings to ensure consistency, when practicable, for the trustee(s) and RP(s) in conducting natural resource damage assessments due to either a discharge of oil or release of a hazardous substance. Although similar, these proposed procedures vary in several aspects from the DOI rule.

Procedural Comparison

Figure 2 shows a rough structural comparison between the two processes. First, this proposed rule strongly encourages actions conducted prior to a discharge for "prespill planning."

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COMPARISON BETWEEN CERCLA AND OPA PROCESSES

CERCLA	OPA
	I. Prespill A. Prespill Planning B. Trustee Coordination
I. Preassessment Phase A. Preassessment Screen B. Data Collection & Sampling C. Preassessment Screen Determination	II. Preassessment Phase A. Preassessment Determination B. Data Collection and Sampling C. Damage Assessment Determination D. Emergency Actions
II. Assessment Phase A. Coordination B. Notification C. Planning D. Decision on Type of Assessment 1. Type A or Type B E. Assessment 1. Injury Determination 2. Injury Quantification 3. Damage Determination	III. Assessment Phase A. Plan Development B. Assessment (Comp. Formula/ Type A/ EDA/ CDA) 1. Injury Determination 2. Injury Quantification 3. Restoration 4. Compensable Values Determination
III. Post Assessment Phase A. Report of Assessment B. Demand C. Restoration Account D. Restoration Plan	IV. Post Assessment Phase A. Report of Assessment B. Demand C. Restoration Account D. Restoration Plan

FIGURE 2

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NOAA wishes to emphasize with this designation that actions taken before a discharge actually occurs are important to the conduct of an assessment after the discharge has occurred.

Second, the Preassessment Phase described in this proposed rule has been expanded to reflect more clearly those actions that must occur before beginning an assessment. This phase includes the Preassessment Determination, similar to the Preassessment Screen found in 43 CFR part 11. However, the decision as to what kind of assessment procedure is appropriate for a given incident has been moved up to the Preassessment Phase in this proposed rule in recognition that this decision must, by necessity, precede the actual assessment.

Third, the Assessment Phase in this proposed rule lists a wider range of assessment procedures available to the trustee(s). Section 301(c) of CERCLA, which requires the development of the 43 CFR part 11 process, calls for two types of assessment procedures. Section 1006(e) of OPA, which requires the promulgation of this proposed rule, does not specify the number of assessment procedures to be made available to the trustee(s). Therefore, this proposed rule offers four types of assessment procedures—two new procedures and two procedures based upon 43 CFR part 11. The two new procedures contained in this proposed rule are the compensation formulas and the expedited damage assessment procedures. The compensation formulas are the simplest procedure available and are designed to address the vast majority of discharges, those under 50,000 gallons. The expedited damage assessment procedure recognizes the need for a procedure that falls somewhere on a scale between the current Type A and Type B procedures found in 43 CFR part 11. Besides these two new procedures, NOAA recognizes the need for assessment procedures like the Type A and Type B procedures. Therefore, NOAA is proposing to adopt the use of the current Type A procedure of 43 CFR part 11, subpart D, for use in assessments conducted pursuant to this proposed rule. Finally, NOAA has also used the current Type B procedure as a base to develop the comprehensive damage assessment procedure in this proposed rule. The current Type B process has been modified to allow a streamlining of the process to recognize the dynamic nature of a discharge of oil, even a discharge requiring a multi-year assessment process.

Fourth, the Post-assessment Phase of this proposed rule is structured in a similar way to 43 CFR part 11. NOAA recognizes that, at the completion of a damage assessment, the same basic actions are necessary.

Substantive Comparison

In reviewing this proposed rule, the reader will find numerous substantive differences between this proposed rule and 43 CFR part 11. Some of these differences are dictated by the differences between OPA and CERCLA. Other differences are necessary either to reflect lessons learned in damage assessments in the last several years or to acknowledge the inherent differences between oils and hazardous substances. One example of the substantive differences between the two rules is in the components of the assessment procedures. In this proposed rule, restoration planning and compensable value determination are separated, as opposed to the "Damage Determination" step of 43 CFR part 11. This separation is necessary to allow a clear line for the record review of the restoration component without trying to include the compensable valuation component into that review. Other substantive differences appear throughout the proposed rule.

Issues of Interest in Proposed Rule

Several specific issues within the rulemaking process have been the focus of attention among interested parties. Some of the interest is in response to the fact that damage assessment regulations were promulgated under CERCLA. These current regulations, codified at 43 CFR part 11, apply to both hazardous substances and oils. The OPA rule, when it becomes effective, will supersede those parts of the CERCLA rule that deal with oil. Therefore, NOAA is specifically seeking comments on those aspects of this proposed rule that are different from the CERCLA rule.

Although the entire proposed rule is open for comment, NOAA is also particularly interested in receiving comments on several issues that have drawn much interest from very different points of view. These issues include: The appropriate standard of judicial review of damage assessments; the proposed definition of assessment costs; causation as it relates to injury; the use of a compensation formula and the nature of its results; and whether the trustee(s) may pool recoveries from various "small" discharges to conduct restoration efforts from a regional or watershed approach. Specific economic issues include: the recovery of passive use values for natural resources and the measurement of these values using the contingent valuation method; and the appropriate discount rate to use in converting damages to current dollars. Each of these issues is discussed in the following pages.

Review on the Record

Section 1006(c) of OPA provides that the trustees shall "develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship." Section 1006(c)(5) provides that "plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing and consideration of all public comment." NOAA is proposing to implement these provisions by requiring the trustee(s) to document development of restoration plans in an administrative record through notice and comment procedures.

A majority of the commenters who have spoken to the issue of the administrative record and judicial review "on the record" support the concept. Several commenters pointed out that these assessments involve highly technical, scientific findings in which courts have traditionally treated the agency's determination with great deference. Therefore, the commenters conclude that judicial review of the assessment/restoration plan should be conducted on the administrative record, applying an arbitrary and capricious standard.

Other commenters, however, contend that NOAA would exceed its statutory authority in granting such a standard of review. Several commenters stated that the responsible party has the legal right to a jury trial in natural resource damage assessment disputes as guaranteed by the United States Constitution. The commenters argued that every CERCLA natural resource damage case that has addressed the issue has required a jury trial for these actions at law, therefore, issues related to the selection of assessment/restoration plans must be decided by a trial court.

NOAA notes that the administrative record provisions in the proposed rule are intended to implement several important policy concerns expressed by Congress in OPA. NOAA has considered administrative law principles and various comparable policies found in CERCLA to be relevant to the natural resource damage assessment process in several areas. The administrative record provisions of this proposed rule are intended to create an open assessment/restoration process to allow an objective evaluation of how to restore or replace resources injured by discharges of oil. Whether these provisions would result

in "record review" is ultimately the decision of the courts. However, NOAA feels that record review is essential for the type of expeditious, fair assessments called for by OPA, and specifically asks for comments on this approach.

Assessment Costs

OPA allows recovery of damages for injury to natural resources as well as the reasonable costs of assessing those damages. Under the CERCLA rule, reasonable costs are defined in terms of the costs being less than the anticipated damage amount. NOAA has received several comments in support of adopting the CERCLA rule's definition of "reasonable costs" to avoid exorbitant assessment costs. However, some commenters have argued that it is difficult at the onset of a discharge to make a preliminary damage estimate that will then be used to shape the subsequent assessment.

Within the proposed rule, NOAA is defining reasonable costs to mean those costs associated with performing an assessment in accordance with the proposed rule. The proposed rule, in turn, gives guidance for each phase of the assessment as to the reasonableness of assessment activities. The proposed rule requires that any studies or procedures be directly related to the purpose of the assessment and are conducted in a cost-effective manner. This approach does not require the trustee(s) in the early stages of a discharge to devise a preliminary estimate of total damages likely to result from that discharge. However, the proposed rule does require that the assessment be conducted in such a manner to avoid unnecessary and excessive costs.

Injury/Causation

Under section 1002 of OPA, liability is established when there is any injury to a natural resource resulting from a discharge of oil. Injury under OPA encompasses the phrases "injury to," "destruction of," "loss," and "loss of use." The definition of "injury" proposed by NOAA is different from that contained in the CERCLA rule.

According to the CERCLA rule, injury is defined as "a measurable adverse change, either long- or short-term, in the chemical or physical quality or the viability of a natural resource resulting either directly or indirectly from exposure to a discharge of oil or release of a hazardous substance, or exposure to a product of reactions resulting from the discharge of oil or release of a hazardous substance." The definition of injury under CERCLA incorporates the concepts of injury and causality. Specific injury definitions and causation for resources are detailed in the CERCLA rule.

Under the OPA proposed rule, NOAA has attempted to more clearly delineate these terms. The definition of injury under the OPA proposed rule is more relaxed because it does not require that there be a "measurable" adverse change. Consequently, any discharge is likely to result in an injury. The OPA proposed rule defines injury as "any adverse change in a natural resource, or any impairment of a human or ecological service provided by a resource." Injury causation (i.e., definition of "injury resulting from a discharge") has been determined when the trustee(s) has demonstrated that: (1) With direct exposure, (a) the natural resource was exposed; (b) there is a pathway between the discharge and exposed natural resource; and (c) the exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or (2) in the absence of direct exposure, (a) the adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and (b) the adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge. The rationale for this approach is to simplify the legal determination of liability. Basically, liability is established by the presence of oil in the water. The trustee(s), however, recovers damages by establishing a causal link between the presence of oil and the observed adverse change in the resource or impairment of a human or ecological service. Conceptually, this approach does not change substantially the definition of injury under the CERCLA rule.

Compensation Formulas

The proposed rule offers a new damage assessment procedure in the form of compensation formulas for both estuarine/marine and inland waters. The estuarine/marine and inland waters compensation formulas described in this proposed rule are applicable to the vast majority of oil discharges. An analysis of reported coastal discharges of oil from 1973–1990 shows that 99.8% of the discharges were less than 50,000 gallons and 99% were less than 10,000 gallons. Compensation formulas would be used for most of these relatively small discharges. These formulas would allow an estimate of damages per gallon taking into account average restoration costs, plus average lost direct use values pending restoration. For various reasons, passive use values are not included in these formulas at this time. The formulas assume various levels of natural resource effects likely to result from the discharge of oil. These assumptions consider the amount and type of oil discharged and region and habitat type in which the discharge occurs. The formulas are applicable to a wide range of the most commonly discharged oil products. This approach allows both a national consistency and regional specificity.

Some commenters expressed concern that such formulas may under-value resources in industrialized or biologically degraded areas. Others noted several disadvantages in simplified assessments, including the potential overlapping trustee interests in certain natural resources, damages will not sufficiently reflect the extent of the actual injury, and the risk that a compensatory assessment could be transformed into a punitive exercise.

Since the compensation formula is based upon averages, it is impossible to include all known coastal habitats and every combination of discharges. As proposed, the Estuarine and Marine Environments Compensation Formula is based upon 55 representative province/habitat combinations, ranging from Northern Maine to the Alaskan coast, the Hawaiian and Pacific Islands. The Inland (Freshwater) Waters Compensation Formula is based upon 100 representative province/habitat combinations representing the Great Lakes and other inland waters by type. i.e., river, lake, fast flowing stream, etc. By comparing the habitat of the actual discharge with the province and specific habitat used to estimate the damages in the formula, the trustee(s) should, in most cases, find the most applicable scenario. NOAA emphasizes that the primary advantages of a compensation formula are for simplicity and cost-effectiveness.

In cases where the circumstances of an actual discharge are determined to be far out of the bounds of the compensation formula, the trustee(s) should consider the use of another assessment procedure. The compensation formulas generate damages based on average restoration costs and average diminution of value of the affected natural resources and are thus compensatory as authorized by OPA. Therefore, the compensation formulas are not akin to punitive damages.

NOAA is also proposing that the damages generated by the compensation formulas will be conclusive in nature. That is, once the rule becomes final and survives any judicial review, parties may challenge the information used in applying the formulas in a particular assessment, but may not challenge within that assessment the underlying data used in developing the formulas.

Regional Restoration Plans

Section 1006(f) of OPA requires that sums recovered as damages be used to develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the injured natural resources. The proposed rule describes two types of Restoration Plans. First, the trustee(s) may develop an Incident-Specific Restoration Plan to address the effects of the discharge of concern. This plan would be based upon the restoration planning guidance given in the proposed rule. This plan should serve to define the objectives and approach based on a sound decisionmaking process for the particular discharge site. However, under this proposed rule, the trustee(s) would also be allowed to pool recoveries to apply them to a Regional Restoration Plan. These plans could be developed on a geographical or habitat basis to allow the recovery of the system covered by the plan. Where such a plan already exists, whether developed through prespill planning efforts or under regular management efforts, that plan may be used if it has been developed through a public review and comment process that considers the major factors contained in the restoration planning guidance in the rule. The plan must also address the same or similar resource injuries as those identified in the assessment procedure. These requirements are completely consistent with the current CERCLA rule, which also allows for pooling damages. This option will likely be most useful in areas with long-term pollution effects where damages from a single discharge would be too small to "restore" the ecosystem or where the planning costs for the restoration after a single discharge would be quite high compared to the damage figure. However, where a Regional Restoration Plan has not been developed, an Incident-Specific Restoration Plan must be developed for use of the damages recovered.

Several commenters have strongly rejected the use of recoveries from several discharges for an ecosystem, bay, or area approach. The commenters argued that pooling and usage of funds is contrary to the principles of compensatory damages and avoidance of double damages enunciated by Congress in passing OPA. Further, this usage contradicts section 1006(f) that "there be a nexus between monies recovered resulting from a particular spill and their use to restore or enhance the specific resources 'affected by a discharge.'" Other commenters, however, have supported a pooling of funds in order to fund a restoration plan for an entire region, provided a legally-approved regional restoration plan exists.

NOAA does not believe that pooling recoveries for use in a Regional Restoration Plan contradicts the requirement in OPA that recoveries be used to restore the resources affected by a discharge. A relatively small recovery, assessed by a compensation formula, is unlikely to be sufficient to restore a bay or estuary affected by a discharge where many forces are working to degrade that ecosystem. By pooling recoveries, the trustee(s) has a chance to carry out meaningful actions to help that system recover. The responsible party will be able to defend against an attempted double recovery by showing how the damage figure is to be applied within the regional plan.

Resource Values

The major focus on economic issues within the rulemaking has been the question of what types of values should be included in a damage assessment and what methods should be used to measure those values. Section 1006(d) of OPA authorizes the trustee(s) to recover: The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured or lost natural resources and/or services; the diminution in value of the injured or lost natural resources pending restoration; plus the reasonable cost of assessing those damages. In the proposed rule, the total diminution in value of resources and/or services affected by a discharge is referred to as compensable values, which include all reliably calculated values that comprise the total diminution in value of lost or diminished services of trust resources as a result of a discharge, from the onset of the event until recovery to baseline or comparable conditions is deemed complete by the trustee(s). In accordance with the OPA Conference Report, "diminution of value" refers to the standard for measuring resource damages cited in the D.C. Circuit Court decision on *Ohio* v. *DOI*. The *Ohio* opinion defines "use values" broadly, to encompass both direct use and passive use values that can be reliably calculated, i.e., calculated in a manner that is trustworthy or worthy of confidence.

Direct use values are defined as the value individuals derive from direct use of a natural resource. Direct uses of resources include both consumptive uses, such as fishing and hunting in which resources are harvested, and nonconsumptive uses, in which the activity does not reduce the stock of resources available for others at another time, such as bird watching and swimming. Passive use values are defined as the values individuals place on natural resources independent of direct use of a resource by the individual. The term "nonuse values" has also been used to refer to the same concept, but NOAA prefers the term "passive use values." Passive use values include, but are not limited to: the value of knowing the resource is available for use by family, friends, or the general public; and the value derived from protecting the natural resource for its own sake; and the value of knowing that future generations will be able to use the resource.

Some interested parties have asserted that passive use value damages should only be assessed for permanent or long-lasting injuries to unique natural resources—atypical conditions for discharges of oil. They argued there is no need for compensation for lost passive use values when the resource will fully recover and when compensation will be paid for direct use losses pending restoration.

Others have argued that passive use values should be included in damage assessment, because exclusion would understate the true cost of exposing natural resources to environmentally risky activities. They have also argued that exclusion of passive use values would induce systematic reallocation of environmentally risky activities to those environments that generate greater passive use values relative to direct use values.

NOAA has found no empirical evidence to suggest that a natural resource must be unique, non-reproducible and/or permanently injured in order to have significant passive use values. NOAA recognizes that, in cases involving temporary injury, individuals may not experience a significant sense of loss because the existence of the resource is not permanently threatened. NOAA has found ample evidence, from the OPA Conference Report and the decision in *Ohio* v. *DOI*, to believe that "diminution of value" refers to the standard for measuring resource damages cited in *Ohio* v. *DOI*. This opinion defines "use values" broadly, to encompass both direct use and passive use values that can be reliably measured. NOAA

believes that failure to include all relevant categories of damages in a claim would understate the true loss to the American public attributable to a discharge of oil. Under OPA, and in accordance with the *Ohio* v. *DOI* decision, passive use values are a component of compensable values that are necessary to fully compensate the public for losses as a result of a discharge, and to return the public, as nearly as possible, to the level of well-being it enjoyed before the discharge.

Contingent Valuation Method

In the *Ohio* decision, the D.C. Circuit Court determined that the interim lost value portion of the claim was to include total resource value, encompassing both direct use (recreational, commercial, cultural/historical) and passive use of resources. In the comments, there has been substantial discussion about contingent valuation (CV), the only known methodology for measuring the passive use component of total resource value. CV is a survey-based approach to the valuation of nonmarket goods and services that relies on a questionnaire for the direct elicitation of information about the value of the good or service in question.

Contingent valuation surveys generally measure total value of a good or service, which includes both direct use value and passive use values. Because passive uses of resources leave no behavioral trace, they are difficult to validate externally. A number of criticisms of CV pertain specifically to its use in valuing the passive use component of total use value and the difficulty of external validation of that component of total value. Proponents of CV assert that these problems are not inherent to the method and that well-designed and well-executed CV studies can eliminate them or render them inconsequential.

Though no other methods are available to provide alternative estimates of the passive use component of total value, it is possible to develop a variety of tests to evaluate the validity of the responses. Due to the substantial interest in the topic, NOAA convened a panel of experts co-chaired by two Nobel laureates, to evaluate the reliability of CV to measure passive use values. The report issued by the panel is part of the administrative record of this rulemaking, along with the comments received from economists, industry representatives and other interested parties. Based upon information in the panel's report and other comments, NOAA is recommending several validity tests in guidance for designing and conducting CV studies provided in the proposed rule.

NOAA is proposing that reliable estimates of lost passive use value due to discharges of oil can be estimated using CV so long as the CV study follows the guidance offered in this preamble and the proposed regulations. This guidance basically states that the trustee(s) should follow a conservative approach when designing a CV instrument, that is, to choose the design that would understate the natural resource damage rather than overstate the damage.

One commenter has noted that any damage assessment rule authorizing CV to measure passive use damages could well cost the U.S. economy hundreds of millions of dollars annually by generating excessively high estimates of passive use damages and could result in the bankruptcy of some responsible parties. The proposed rule has been designated as a "major" rule because of the significant issues involved in the rulemaking. However, because of the difficulty of evaluating the effects of alternatives to this proposal, a Regulatory Impact Analysis under E.O. 12866 is not necessary and has been waived.

Discounting Damages

Calculation of natural resource damages will generally require the use of discounting in the estimation of: (1) Estimated restoration costs; (2) diminution in value of the injured or lost resources pending restoration; and (3) damage assessment and restoration costs incurred by the trustee(s). "Discounting" is a widely used economic procedure that allows the trustee(s) to convert past and future damage sums to current dollars. This conversion is necessary for the trustee(s) to be able to present a claim for a "sum certain." Currently, the CERCLA rule requires that a 10% discount rate be used. NOAA is proposing that the U.S. Treasury rate should be used for discounting a trustee damage claim.

DISCUSSION

Subpart A

Scope, Applicability, Purpose

OPA provides for the prevention of, liability for, removal of, and compensation for the discharge of oil into or upon the navigable waters or adjoining shorelines of the United States, including the natural resources of the Exclusive Economic Zone. OPA provides for the designation of federal, state, Indian tribe, and/or foreign officials to act on behalf of the public as trustee(s) for the nation's natural resources. In the event that natural resources are injured, destroyed, lost, or the loss of use of natural resources occurs as a result of a discharge of oil covered by OPA, these officials are to assess natural resource damages, present a claim to the RP(s), recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of natural resources and/or services under their trusteeship.

This part applies to assessments of damages resulting from discharges of oil where those discharges occurred after the effective date of OPA (August 18, 1990). Discharges involving mixtures of oil and hazardous substances would ordinarily be covered by CERCLA. However, the U.S. Environmental Protection Agency (U.S. EPA) has issued guidance on the petroleum exclusion under sections 101(14) and 104(a)(2) of CERCLA. (U.S. EPA Memorandum on the Petroleum Exclusion under the Comprehensive Environmental Response, Compensation, and Liability Act, July 31, 1987; BNA Environment Reporter 41:3321, 2/12/88.) Under this guidance oil covered by OPA would be: (1) Crude oil and fractions of crude oil including the hazardous substances, such as benzene, toluene, and xylene, which are indigenous to petroleum and its refined products; and (2) hazardous substances that are normally mixed with or added to crude oil or crude oil fractions during the refining process, including hazardous substances that have increased in level as a result of the refining process. However, hazardous substances added to petroleum that increase in concentration through any process other than refining, or added as a result of contamination of the petroleum during use (including waste oil), would not be excluded from CERCLA. For example, the presence of dioxin in oil used as a dust suppressant on highways would bring a discharge of such a mixture under the jurisdiction of CERCLA, not OPA.

This part applies to all natural resource damages caused by oil (as defined by the Clean Water Act amended by OPA) discharged into navigable waters of the United States. The "oil" definition includes petroleum and non-petroleum (e.g., animal, vegetable, and wood chemical). A natural resource damage assessment may be appropriate even in discharges caused by carriers transporting quantities smaller than the threshold limits that would require OPA response plans. The determination of when natural resource damage assessment will be conducted is a responsibility of the trustee(s) acting on behalf of the public.

NOAA is using in the proposed rule, the OPA definition of natural resources that provides for various degrees of government regulation, management or other form of control over the natural resources to make the OPA natural resource damage provisions applicable. The proposed rule repeats the statutory language of "belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by," and thus covers a broad range of government interest in natural resources on behalf of the public. Pursuant to that language, general sources of authority for recovery under the rule could include, but not necessarily be limited to, relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement.

The statutory phrase "belonging to" connotes ownership and would cover government-owned lands, as well as resources affixed, i.e., permanently attached, to such lands. However, the remaining terms, "managed by, held in trust by, appertaining to, or otherwise controlled by," ensure a wide range of legitimate government interest in natural resources that may, in fact, be held in private ownership.

Therefore, the proposed rule directs the trustee(s), or co-trustees, to state briefly the authority for asserting trusteeship, or co-trusteeship in the Preassessment Report and in the Draft Assessment/Restoration Plan. In describing the natural resources of concern to the trustee(s), the trustee(s) will cite the relevant treaty or other provision of international law, constitution, statute, common law, regulation, order, deed or other conveyance, permit, or agreement providing the basis for the trusteeship.

This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300, for the identification, investigation, study, and response to a discharge of oil, and provides procedures for a natural resource trustee(s) to determine compensation for injuries to natural resources and/or services that have not been nor are expected to be sufficiently addressed by response actions conducted pursuant to the NCP.

This part provides for a process to develop a DARP to document the most appropriate restoration approach for the administrative record, with its estimated costs, for a particular discharge. Therefore, any judicial review of the development of the restoration component of the assessment would be based solely upon the administrative record. Once the restoration approach is developed, the trustee(s) then can determine the expected interim lost values. It is anticipated that the calculation of those values would not be included in the administrative record and would not, therefore, be reviewed on the basis of the administrative record.

Response to Comments

Scope, Applicability, Purpose

Comment: Several commenters noted that the damage assessment procedures outlined in this proposed rule apply only to discharges of oil under OPA. These commenters pointed out that this rule replaces the current DOI rule, at 43 CFR part 11, for natural resource damage assessments in discharges of oil. One of these commenters noted that the DOI rule cannot be incorporated since parts of that rule were declared illegal and are not yet revised.

Response: NOAA agrees that the proposed rule only applies to natural resource damage assessments performed for discharges of oil under OPA. When this proposed rule is promulgated as a final rule, it will supersede those parts of the current 43 CFR part 11 that deal with discharges of oil covered by OPA. The status of 43 CFR part 11 is immaterial to this ongoing rulemaking since only those sections upheld by the Court in the *Ohio* decision were used as a starting point for the OPA regulations.

Comment: One of these commenters specifically stated that, since the decisions of *Ohio* v. *U.S. Department of the Interior (Ohio) and State of Colorado* v. *U.S. Department of the Interior (Colorado)* concerning 43 CFR part 11 were decided before OPA's passage, those two decisions are not controlling over NOAA's rule. These commenters argue that Congress was aware of the decisions but did not incorporate them in the NOAA charge to promulgate this proposed rule.

Response: NOAA notes that the decisions in *Ohio* and *Colorado* cases are not directly controlling on the OPA rules. However, the decisions do represent the only existing case law on some of the issues involved in this rulemaking. Also, Congress did specifically reference the *Ohio* decision's definition of "diminution of value" in the Conference Report on OPA.

Comment: Several commenters noted that the natural resource damage assessment rule is a part of the regulatory scheme covered by OPA. These commenters urged NOAA to keep this perspective in mind so that NOAA's rule does not duplicate or overlap other OPA regulations; therefore, NOAA's rule should not allow punitive damages, since penalties are set up in other provisions of OPA, nor should this rule allow scientific research beyond what is needed to determine the natural resource damages.

Response: NOAA recognizes that this proposed rule is but a small part of the larger scheme of regulations required by OPA. For example, this proposed rule would supplement the overall activities surrounding a response to oil discharges set out in the NCP, 40 CFR part 300. There are also regulatory requirements for transport of oil, certification of vessels, etc., called for by Title IV of OPA. These other rulemakings are separate and apart from this proposed rule. NOAA has been coordinating with other federal agencies, particularly those other agencies that have regulatory and planning responsibilities under OPA to ensure consistency and avoid overlapping requirements.

NOAA also notes that Title VII of OPA authorizes an ambitious research and development program on oil pollution to cover the basic research that is beyond a natural resource damage assessment. As noted elsewhere in the preamble, this proposed rule disallows work beyond that needed to determine, quantify, restore, rehabilitate, replace, acquire the equivalent, and value injury to, destruction of, loss of, or loss of use of natural resources and/or services resulting from a discharge of oil.

NOAA further recognizes that penalties or other punitive measures are provided for elsewhere in OPA. The natural resource damage provisions of OPA are compensatory, not punitive. A discussion of allowable damages is found in the discussion of § 990.14—"Recovery of Damages" and elsewhere in this preamble.

Comment: One commenter recommended that NOAA consider clarifying whether CERCLA or OPA would cover a particular discharge of oil.

Response: NOAA notes that the previous preamble discussion on the scope of this proposed rule describes the types of oil that are covered by OPA.

Comment: One commenter suggested that NOAA's rule should serve to provide the basic framework from which different state and local agencies can adopt and expand upon through implementation.

Response: NOAA notes that, while the use of the proposed rule is optional, it is hoped that the guidance and procedures in this proposed rule will prove useful to all trustee agencies.

Comment: A few commenters discussed the requirement that new regulations result in greater benefits than costs to society, as directed by E.O. 12291 [now E.O. 12866].

Response: NOAA notes that this proposed rule is explicitly designed to allow for expeditious and fair compensation to the public for effects of a discharge on the public's natural resources. Purely speculative damages clearly are not allowed under this damage assessment process.

Comment: One commenter suggested that the natural resource damage assessment rule allow for consideration of the size of the business enterprise responsible for the damages. Another commenter suggested that damages should be allocated somehow proportionately across the different stages of oil production, i.e., production, transport, use.

Response: NOAA points out that the RP's ability to pay based on its financial "size" should not be a determining factor. The damage assessment process required under section 1006(e) of OPA is to determine the type and extent of adverse effects and define the best approach for the recovery of the affected natural resources and/or services. In fact, Congress explicitly removes this concern from the assessment of damages by allowing uncompensated claims against the Fund. Allocation across stages of production is not possible within this proposed rule.

Comment: One commenter stated that loss of subsistence use of resources should be covered in the natural resource damage assessment process.

Response: NOAA points out that section 1002(b)(2)(C) of OPA specifically provides for the recovery of damages for the loss of subsistence use of natural resources. Such damages are recoverable by anyone who uses natural resources for subsistence.

Comment: Although several commenters mentioned that section 1006(e) of OPA provides a rebuttable presumption for assessments performed pursuant to the natural resource damage assessment rule, one commenter specifically raised the question of how one might define the phrase "in accordance with." One commenter noted that, so long as the trustee(s) follows the rule and the public is given the opportunity to review and comment on the restoration plans called for by section 1006(c)(5), the trustee's(s') determination of damages is granted the rebuttable presumption. Another commenter suggested that the rebuttable presumption should only apply to issues and components of an assessment that are specifically included in the proposed rule. A few commenters questioned the relationship between the statutorily granted rebuttable presumption and the NOAA suggestion of assessments being conducted "on the record" to be reviewed under the "arbitrary, capricious, or otherwise not in accordance with law" standard of review. Another commenter pointed out that the trustee(s) is also entitled to the rebuttable presumption when presenting a claim to the Fund.

Response: NOAA notes that the damage assessment and restoration planning process developed through this rulemaking is a framework that offers both guidance and a range of procedures for the trustee(s) to design the assessment/restoration approach most appropriate for the specific discharge. The philosophy of this proposed rule is to provide flexibility to allow the most cost-effective assessment/restoration approach for a particular incident while giving guidance on how this assessment can be conducted using "good science."

The rebuttable presumption applies, in the statutory language, to "any determination or assessment of damages to natural resources." This language indicates that the entire assessment, including the dollar figure is granted the presumption. Given the need for flexibility in an assessment, the presumption will apply to any part of the assessment conducted pursuant to this proposed rule, even if some part of the assessment activities are not specifically listed in the rule. NOAA also notes that section 1006(e) applies both to actions against an RP and claims against the Fund.

In response to the commenters' questioning the relationship between the rebuttable presumption and a review on the record, NOAA notes that the rebuttable presumption goes to the trustee(s) who conducts an assessment "in accordance with" this proposed rule. This language is comparable to the "not inconsistent with the NCP" language found in section 107(a)(4)(A) of CERCLA, which allows recovery of response costs that are not inconsistent with the NCP by the United States, a state, or an Indian tribe. Therefore, one challenging such costs must show that the claimant acted in a way that was inconsistent with the NCP. In a natural resource damage assessment under OPA, the trustee(s) gets a rebuttable presumption for the assessment conducted "in accordance with" this proposed rule. Therefore, someone challenging the assessment must affirmatively prove that the assessment was inconsistent with the assessment process set forth in this proposed rule.

Reviewing a damage assessment "on the record" refines the phrase "in accordance with." The review is of the information, data, and procedures used in the assessment/restoration planning process, to determine the type and extent of effects and best approach for ecosystem recovery. In this way, therefore, the rebuttable presumption and record review complement each other. (A further discussion of record review and this proposed rule is provided later in this preamble.)

Comment: Several commenters noted that NOAA should develop guidance and technical support documents, rather than rigid rules. One other commenter, however, stated that the proposed rule should contain a clear process to ensure the consistent application of the damage assessment process and gain public trust in that process. This commenter urged that NOAA not limit the rulemaking to developing "guidance" for damage assessment instead of providing clear requirements. Other commenters recognized that national uniformity is a desirable goal, but less formalized, i.e., flexible procedures are preferable in dealing with a wide range of incidents.

Response: NOAA believes that flexibility is important in the proposed rule. The trustee(s) must be allowed the ability to design an assessment/restoration approach that is appropriate for the situation at hand. No national scheme could possibly anticipate all possible discharge situations. In response to the requests for guidance, NOAA is providing guidance on the best approaches to an assessment, in addition to certain required steps and criteria. NOAA is also developing technical guidance documents on: Preassessment, Injury Determination and Quantification, and Restoration (Guidance and Bibliography), as part of this rulemaking.

II. Definitions

Response to Comments

"Acquisition"

Comment: One commenter disagreed with grouping "replacement" and "acquisition" together, as acquisition implies an off-site activity. Another commenter indicated that the proposed definition describes "replacement," but the definition of "acquisition of the equivalent" should also incorporate the requirement of "proximity to the affected area," for the purpose of "enhancing the recovery * * * of the ecosystem affected by a discharge." In addition, the commenter stated that the regulations should reflect Congress' preference for on-site restoration and should limit the availability of acquiring equivalent resources to those rare situations where the cost of site specific restoration would be "grossly disproportionate to the value of the resources involved."

Another commenter noted that acquisition must be accompanied by some effort to restore the discharge-impaired habitat. Acquisition involves only a transfer of property accompanied by a net loss of the species affected by the discharge. However, the commenter also stated that acquisition may be used to replace the loss of resources between the time of initial loss and full recovery of the habitat affected by a discharge. One commenter noted that acquisition of equivalent resources is not the same as replacement because it does not occur in the area affected by the discharge.

Response: NOAA agrees that the terms "acquisition" and "replacement" should be defined separately. NOAA recognizes that the Conference Report accompanying OPA states that the alternative of acquiring equivalent natural resources should be chosen only when the other alternatives are not possible, or when the cost of those alternatives would, in the judgment of the trustee(s), be grossly disproportionate to the value of the natural resources involved. This discussion, however, is more appropriate in other parts of the preamble and proposed rule.

"Baseline"

Comment: One commenter requested a more clear definition of "baseline." Another commenter recommended that the definition of "baseline" reflect that, in the absence of reliable data on natural variability, the baseline condition will be the condition of the resources that existed at the location and time of the discharge. Further, the commenter suggested that the definition be replaced or supplemented with the following definition: Baseline data are those which have been collected for natural resources and environmental variables of interest for an extended period of time (typically years) on a regular basis (e.g., annually, quarterly) up to the time of the discharge. This database should describe the temporal mean and variation of the variable(s) of interest, so that statistically significant departures from this mean could be measured. Baseline data, therefore, should "take into account the natural variability that would have existed at the assessment area." The commenter suggested that ideally, the last sampling period in a baseline would have occurred immediately prior to the discharge and included specific locations that are or will be affected by the discharge. The commenter stated that the early sampling program cannot provide a baseline (as defined above), and should be clearly distinguished from a baseline. The early sampling program cannot document the temporal variability in the natural environment, especially for resources that have life cycles longer than a few days or environmental variables that have seasonal components.

Response: NOAA agrees that the definition of baseline should be clarified and has revised the definition accordingly. The definition of early sampling has been deleted.

"Biological Resources"

Comment: One commenter recommended that habitats, such as the water column or substrate, must be included as "biological resources" along with the interrelationships between species that are necessary for a normal healthy functioning ecosystem. The commenter argued that species depend on these habitats for successful completion of their normal life histories. If the discharge adversely affects these ecosystem components, then it should be presumed that injury to biological resources has occurred.

Response: NOAA has deleted the definition of "biological resources" along with those for "air," "drinking water supply," and "surface water." NOAA believes that these natural resources are included in the statutory definition of natural resources, which encompass "other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by," the trustee(s). NOAA takes the position that this provision includes biological resources, and therefore there is no need for a separate definition. Further, NOAA interprets the statutory definition as sufficiently broad to include the water column or substrate. Accordingly, a trustee(s) may seek damages for injury to the water column or substrate.

"Compensation"

Comment: One commenter suggested "compensation" is the sum total of payment for damages to natural resources. The commenter noted that payment shall include costs for injury and assessment investigations, restoration of affected resources in the assessment area, monitoring of the restoration implementation, necessary mid-course adjustments to the restoration plan based on monitoring results, and acquisition of additional habitat for the same or comparable resources affected by the discharge to offset resource injuries between the time of the discharge incident and full recovery following implementation of the restoration plan. The term "compensation" must either be incorporated as a part of the definition for "restoration or rehabilitation" or contained in a separate definition as proposed. This concept for compensation should also be included within the scope of "damages."

Response: NOAA has not specifically defined "compensation." However, § 990.14 of this proposed rule addresses recoveries and includes items that the commenter suggested should be compensable. The trustee(s), therefore, may recover: (1) For injury to natural resources and/or services through the recovery period, including monitoring costs, (2) costs of emergency restoration, (3) the reasonable costs of assessment including preassessment and methodologies provided for in the various assessment procedures, (4) the cost of restoration, rehabilitation, replacement, or acquiring equivalent resources, and (5) interest on the amounts recoverable, as provided in section 1005 of OPA.

"Control Area" or "Resource and Reference Area" or "Resource"

Comment: One commenter believed "control area," "control resource," "reference area," or "reference resource" need further definition and clarification. The commenter stated that all have identical definitions and are cross-referenced in the earlier notice. The commenter recommended that the terms "control area" and "control resource" be deleted or restricted in the regulation, and that the terms "reference area" and "reference resource" be used instead. The word "control" should only be used in relation to the laboratory or some microcosm and mesocosm testing facilities. The commenter believed that "control area" refers to completely controlled systems. Natural environments, however, are affected by many variables (in time and/or space). The commenter noted that "reference area" data and information are collected following the discharge, but in areas unaffected by the discharge. The reference areas should be as nearly identical to the affected areas as practical, except that there will not be oil from the incident in the reference area. The reference area sampling program(s) should be identical to those in the affected areas in order to conduct quantitative comparisons regarding effects, recovery, natural variation, etc. Further, the commenter stated the "reference area" concept is based on the reality that there may be frequent and

often substantial change in physical, chemical, and ultimately, biological variables in the natural resources of interest, due to natural, not man-made, factors. These natural changes should be monitored so that their influence on the affected, and recovering, community can be evaluated. The commenter noted that the effect of natural variation, as documented in reference areas, on affected areas may be very important in the injury assessment and quantification phases of the natural resource damage assessment, and thus in the ultimate damages assessed against the RP.

Response: NOAA recognizes that the terms "control" and "reference" are distinct. NOAA has incorporated the commenter's concerns both in the rule and preamble language. NOAA further has addressed the importance of natural variation in the damage assessment process.

"Destruction"

Comment: One commenter believed the definition of "destruction" is so narrow that almost nothing will be covered because "total" and "irreversible loss" are very difficult to achieve. Further, the commenter suggested that this definition be omitted.

Response: NOAA agrees, in part, and has revised the definition by deleting the phrase "irreversible loss."

"Drinking Water Supply"

Comment: One commenter suggested that a "drinking water supply" for less than ten people would not justify restoration so that an alternate supply would be a better answer for the limited period an oil discharge would affect such a water supply. Another commenter noted the definition is too broad as it would cover any water supply that one person might drink once. The commenter suggested that the definition be amended to read "drinking water supply" means any raw or finished water which is or may be used by a public water system, as defined in the Safe Drinking Water Act, or as drinking water by one or more individuals on a regular basis.

Response: NOAA has deleted the definition of "drinking water supply" because it is included in the statutory definition of natural resources.

"Early Sampling Data"

Comment: One commenter noted "early sampling data" are those obtained in the early sampling of both affected and reference areas immediately after the discharge occurs. The commenter stated that often this program will be designed without benefit of baseline or historical data (as defined earlier). The early sampling program provides data on the natural resources and environmental variables at the time of the discharge. It may be described as a "time slice," a "benchmark," or a "base point" in time, compared to a baseline (i.e., a series of "base points").

Response: NOAA agrees with the commenter's description of early sampling data. While NOAA has not included the phrase "early sampling data" in the definitions section, the concepts outlined by the commenter are included in the preamble and this proposed rule.

"Equivalent"

Comment: Two commenters stated "equivalent" resources under this section are resources that the trustee(s) determines are comparable to the injured resources. They noted "equivalent" resources should be acquired to enhance the recovery, productivity, and survival of the ecosystem affected by a discharge, preferably in proximity to the affected area. Another commenter defined "equivalent" as, "to have equal power * * * equal in force, amount or value * * * corresponding or virtually identical especially in effect or function * * *" Webster's New Collegiate Dictionary (1981). The commenter noted that NOAA does not define the term "equivalent" and recommends a nationally consistent definition be developed.

Response: The OPA Conference Report, H.R. 101–653 at p. 109, defines "equivalent" to mean natural resources that the trustee(s) determines are comparable to the injured natural resources. NOAA adopts a similar definition.

"Exposed to" or "Exposure of"

Comment: One commenter noted that the definition of "exposed to" properly implies that physical contact with the oil discharge must be the proximate cause of any compensable natural resource damage.

Response: NOAA disagrees that the definition of "exposed to" implies that physical contact with oil discharge must be the proximate cause of any compensable natural resource damage. NOAA defines "exposed to" to mean that all or part of a natural resource that may be in contact with oil or with any medium containing oil. Further, NOAA is not limiting recovery of damages to natural resources that have been exposed to oil (see definition of "resulting from").

"Geologic Resources"

Comment: One commenter believed the definition of "geologic resources" is redundant under the OPA regulations and should be omitted.

Response: NOAA has adopted the statutory definition of natural resources which implies that "geologic resources" are included. Specifically, the definition includes "other resources belonging to, managed by, held in trust by, appertaining to, or otherwise controlled by," the trustee(s). NOAA takes the position that this provision may include geologic resources, and therefore, there is no need to include a separate definition of geologic resources.

"Historical Data"

Comment: One commenter believed "historical data" are those that have been collected prior to the incident, but may not have been collected for several periods (e.g., months, quarters, years) prior to the incident. This database may provide a description of the resources in the past, but there may be a temporal discontinuity long enough that there could have been a significant change in the variable during that time. The temporal gap, therefore, may be sufficient so that: (a) It exceeds a few generation times of the "important" resources, (b) a major episodic recruitment event could have occurred, or (c) that a major disturbance event (e.g., storm) could have occurred. Further, "historical data" from areas similar to the affected area, though the areas may not be suitable as reference areas, may be appropriate. "Historical data" may provide a "gestalt" about the present affected areas, in some cases, but may not be appropriate for quantitative comparison.

Response: NOAA agrees with the commenter's discussion of historical data and has revised the definition accordingly.

"Natural Resource Damage Assessment"

Comment: One commenter believed the definition of "natural resource damage assessment" should include new scientifically developed methodologies that may be devised for the unique resource damage circumstance related to the discharge at hand. Such methodologies may not necessarily exist in a prescribed state prior to the discharge.

Response: NOAA agrees and has eliminated the restrictions in the earlier notice.

"Natural Resources"

Comment: One commenter urged that areas that are privately owned but that support public natural resources should be included. A commenter agreed with NOAA's decision not to attempt to limit the broad statutory definition of "natural resources" by providing specific guidelines on the degree of governmental control necessary to allow public recovery. The commenter stated that a natural resource located on private property may have both public and private value, and it is the trustee(s) who should determine whether the public has an interest in the resource.

Response: NOAA recognizes that there are times when natural resources located on private property may have public value. However, the "public" nature of the resource would have to be decided on a case-by-case basis. At the time of the Preassessment Phase, the trustee(s) is required to determine if there are resources of concern to the trustee(s) that might be affected by the discharge. It is at that time that the determination could be made of the nature of the public's interest in the resource.

Comment: One commenter stated that NOAA should attempt to ensure inclusion of all potentially affected trustee resources, such as archeological resources and park lands or other preserved natural areas valued particularly for their pristine state, into the natural resource damage assessment process.

Response: NOAA has included a new definition of "resources of special significance." This definition is designed to address the concerns of the comments (see "resources of special significance").

"Nonuse (Passive use) Value"

Comment: Two commenters questioned whether a regulatory definition for passive use value is necessary, except to refer to values that cannot be reliably calculated. Another commenter urged the inclusion of the phrase, "such services encompass values associated with the knowledge that such resources simply exist as well as associated with the option to directly use or not use such resources in the future."

Response: NOAA believes that a definition of nonuse values, referred to as passive use values, is appropriate and therefore will continue to include such definition. NOAA's definition of passive use values is broad and therefore includes the notions included in the second commenter's proposed definition.

"Oil"

Comment: One commenter contended that unless the material under consideration is definitely a single hazardous compound derived from processing oil, it should be classified as "oil" (e.g., diesel or gasoline would be oil for this purpose). Another commenter believed the definition seems practical and reasonable to focus on what has been discharged and not on its degradation products. The commenter recognized the potential for dual regulation (CERCLA and OPA) of one discharge of oil due to the hazardous constituents contained in some oils. The same commenter noted, however, that the proposed definition is cumbersome.

Response: NOAA agrees that the definition of oil is cumbersome and has revised it accordingly.

"Reasonable Cost"

Comment: One commenter urged NOAA to revise the definition of "reasonable cost." Two commenters urged NOAA to adopt the requirements in DOI's rule 43 CFR 11.14(ee). One of those commenters requested adoption of DOI's rule provided it is modified to show that the reasonable cost test applies to separable subparts of the assessment, as well as the assessment as a whole. Another commenter believed that this definition is circular and recommended the cost of a natural resource damage assessment be reasonable in keeping with the size of the discharge and type and amount of natural resource damages to be determined. Another commenter believed the definition is incomplete, stating that just because a cost can be recovered, does not mean it is reasonable.

Response: NOAA agrees that the definition in the Advance Notice of Proposed Rulemaking (ANPRM) is somewhat circular and has revised the definition. The costs of the damage assessment are deemed reasonable if the assessment is conducted in accordance with this proposed rule, or if the costs are otherwise reasonable under the circumstances. NOAA believes this definition is simpler than the DOI definition.

Comment: One commenter stated that making the definition of reasonable costs contingent on a preliminary and probably inaccurate estimate is unreasonable because scientists' present understanding of the effects of oil pollution is limited. In addition, the full extent of damages may not be apparent for several years following a discharge.

Response: NOAA's definition of reasonable cost avoids the problems the commenter identified with respect to the difficulty of ascertaining reasonable costs based on preliminary information.

"Responsible Party(ies)" (RP(s))

Comment: One commenter noted that the proposed definition of "responsible party(ies)" is confined to "person or persons." The commenter noted the RP should include the company or corporate entity that owns or is otherwise responsible for the vessel or facility that contained the discharged material. The owner of the discharged material perhaps should also be initially included until the investigation ascertains responsibility.

Response: NOAA agrees and that definition has been modified in the proposed rule.

"Restoration or Rehabilitation"

Comment: One commenter endorsed the existing DOI definition of "restoration," as occurring once resources are capable of providing baseline service levels. This definition is consistent with *Ohio* v. *DOI* as well as OPA's legislative history, which revealed no Congressional intent to alter that definition. Another commenter agreed that restoration occurs when the resources are capable of providing the "without spill" service levels. One commenter urged NOAA to clarify the definition as meaning "measures to restore the services provided by the affected resources." Another commenter agreed with the proposed definition as encompassing all four management options set forth. The same commenter, however, urged NOAA to state that these techniques should be designed to achieve the best possible overall restoration of resources. One commenter disagreed with grouping "restoration" or "rehabilitation" together. The commenter argued that "restoration" is commonly used as an inclusive term for restoration, rehabilitation and replacement as all are in situ approaches. For example, "replacement" may mean reestablishing a population at the site.

One commenter noted the proposed definitions of "restoration" and "rehabilitation" appear to expand the measure of natural resource damages to include restoration of both "the injured resources' physical, chemical or biological properties." Any attempt by NOAA to expand the measure of damages to require restoration of the resources' properties beyond what is necessary to restore their services would be contrary to economic principles and inconsistent with the structure of section 1006(d)(1) of OPA. The same commenter suggested the definitions of "restoration" and "rehabilitation" should be refined to read "measures adopted to return injured natural

resources to the condition where they provide the same or substantially similar services as they would have provided if the spill of oil had not occurred."

Response: NOAA agrees that the terms restoration and rehabilitation should be defined separately. In the revised definition, NOAA distinguishes restoration from rehabilitation. Restoration actions are designed to return the injured natural resources and/or services to baseline conditions. The baseline condition is measured in terms of the physical, chemical, or biological properties of those resources and/or services prior to the discharge. Rehabilitation refers to actions that are designed to bring the injured natural resources and services to a different state from baseline conditions, but still beneficial to both the environment and public. NOAA agrees with the suggestion that sometimes a combination of techniques would best serve the overall goals of resource recovery. Under those circumstances, the trustee(s) may consider a combination of restoration techniques.

"Restoration, Rehabilitation, Replacement and Acquisition"

Comment: One commenter noted the definitions of "restoration, rehabilitation, replacement, and acquisition of equivalent" resources that are set forth in the notice do not maintain the hierarchy of choices and their interrelationship as contemplated by OPA.

Response: The OPA Conference Report specifies that acquisition of the equivalent resources will be undertaken when the alternatives of restoration, rehabilitation, and replacement of damaged natural resources will be technically infeasible or grossly disproportionate to the value of the resources involved. Discussion regarding the use of any of these options is addressed elsewhere in the preamble and the proposed rule.

"Technical Feasibility"

Comment: One commenter suggested the definition of "technical feasibility" seems to preclude the implementation of new or innovative strategies in restoration/rehabilitation efforts. The commenter believed that nontraditional approaches should be explored where appropriate. The commenter also recommended that these approaches should be encouraged where there is mutual agreement among the trustees. Another commenter believed the proposed definition of "technically feasible" is too stringent. Currently very few recovery techniques are well known. The same commenter recommended the definition be revised as, "technical feasibility means those on-site restoration actions that are deemed possible following appropriate planning, implementation, monitoring, and necessary mid-course corrections of a restoration project." The commenter also noted that project costs shall not be a part of technical feasibility but may be considered as part of the overall settlement for damages taking into account technical feasibility of restoration, acquisition, or other means to make the damaged resources whole over a reasonable period of time.

Response: NOAA agrees that the definition of technical feasibility is too stringent and has revised the definition accordingly.

"Trauma"

Comment: One commenter recommended the definition of "trauma" include all adverse, sublethal, chemical, physical and behavioral changes to living fish and wildlife resources, including adverse change in the presence and activity levels of enzymes and other vital components of living systems, caused by a discharge of oil and attendant necessary cleanup and response activities. Trauma may include disruption of reproductive rate or reproductive cycles normally associated with a species. As used within this context, the commenter argued that trauma is an injury and should be included within the scope of damages.

Response: NOAA does not agree that a separate category of injury defined as trauma should be included in this proposed rule. The current injury definition is broad enough to include much of what the commenter is concerned about.

"Use Value or Values"

Comment: One commenter agreed with the definition for "use value or values" under OPA in the March 13, 1992, Notice.

Response: The proposed rule no longer defines "use value" separately, but defines "compensable values" to incorporate all use values, including direct and passive uses.

"Water"

Comment: One commenter recommended "water" in the definition be revised to "waters of the United States" consistent with the definition in the Clean Water Act.

Response: OPA defines "navigable waters" to mean the waters of the United States, including the territorial sea. NOAA has adopted this definition in the proposed rule.

"Wetlands"

Comment: One commenter recommended that "wetlands" be included in the definition of "natural resources."

Response: NOAA has adopted the definition of natural resources from OPA and believes that the definition encompasses wetlands. Therefore, there is no need to revise the definition to specifically include wetlands.

III. Recoveries

Section 990.14 identifies what is recoverable as damages. In section 1006 of OPA, Congress clearly delineates the measure of damages to include the costs (both direct and indirect) of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured natural resources, the diminution in value of those natural resources pending restoration, plus the reasonable costs of assessing those damages. These damages are based upon injuries occurring from the onset of a discharge of oil through the recovery period (including monitoring costs), less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries that are a result of response actions taken or anticipated. Damages may also include the costs of emergency restoration actions and the reasonable costs of the assessment, which includes the cost of performing the preassessment, assessment, and post-assessment phases; administrative or legal or other enforcement costs, including base and incremental costs, and expenses necessary for and incidental to the preassessment, assessment, restoration planning, and post-assessment (including salaries); any restoration or replacement undertaken; restoration monitoring; mid-course corrections, and interest on the amounts recoverable as set forth in section 1005 of OPA. The period for which interest shall be paid is the period beginning on the 30th day following the date on which the claim is presented to the RP(s) or guarantor(s) and ending on the date on which the claim is paid. Interest is to be calculated in accordance with Section 1005 of OPA. The determination of the damage amount shall consider any applicable limitations provided for in section 1004 of OPA.

In accordance with section 1006(d)(3) of OPA, there shall be no double recovery under this rule. Actions for damages and assessment costs shall comply with the statute of limitations set forth in section 1017(f) of OPA.

Finally, this proposed rule clearly authorizes the trustee(s) to settle claims without completing an assessment. The trustee(s) is authorized to reach settlement with the RP(s) at any time following a discharge; neither OPA nor this proposed rule requires that an assessment procedure of any type be completed. However, the trustee(s) should be mindful of the great public interest in many discharges of oil and may provide the public an opportunity to review and comment upon the settlement terms and/or the restoration component of the DARP should the assessment not be completed.

Response to Comments

Recoveries

"Assessment Costs"

Comments: Several comments were received regarding the appropriate definition of "reasonable costs" and to the extent that such costs are recoverable. Many of these comments are addressed in the section dealing with definitions within the rule. Others indicated that the trustee(s) could capture many of the administrative costs by simple bookkeeping, i.e., recording the number of man-hours, travel costs, etc. Several commenters indicated that the individual study costs conducted in the context of an assessment should only be recoverable if the individual study costs are reasonable. Other commenters indicated their preference for the overall approach, i.e., the total costs of the assessment are anticipated to be less than the damages.

Response: NOAA agrees that the trustee(s) should document all administrative costs. The costs of damage assessments are deemed reasonable if the damage assessment is conducted in accordance with this proposed rule or if the costs are otherwise reasonable under the circumstances. However, the trustee(s) is required to conduct only studies that will provide data directly relating to the purpose of the assessment, to the extent practicable under the circumstances, and to conduct those studies in a cost-effective manner. NOAA does not require the trustee(s) to consider whether individual study costs are reasonable so long as the trustee(s) meets the requirements specified in the previous sentence. To determine reasonableness, the trustee(s) should consider the overall costs of the assessment against the expected recovery.

Comment: Some commenters requested that the costs of monitoring during the Assessment Phase be recoverable.

Response: NOAA has specifically included monitoring costs in the recoverable damages.

Comment: Several commenters suggested that recoverable costs should include the costs of recovering damages.

Response: NOAA agrees that the costs of "assessing damages" includes the costs of recovering those damages.

Comment: Some commenters desired more clarification on recoverable damages, specifically, whether the rule would allow recovery of funds in excess of the costs of restoration plus the assessment cost.

Response: The proposed rule allows for the recovery of damages required by OPA, namely: (1) The cost of restoring, rehabilitating, replacing, or acquiring the equivalent of, the injured natural resources and/or services pending restoration; (2) the diminution in value of those natural resources and/or services pending restoration; plus (3) the reasonable cost of assessing those damages. The recovery of those three items is not excess recovery. The trustee(s) is to use the money to restore, rehabilitate, replace, or acquire the equivalent of the injured natural resources and/or services and to be reimbursed for the reasonable costs of conducting the assessment. Any recoveries that remain after implementing the restoration plan shall be deposited in the Oil Spill Liability Trust Fund in accordance with section 1006(f) of OPA.

Comment: One commenter indicated that the costs of emergency restoration are more properly classified as response costs and not associated with restoration.

Response: NOAA agrees that the appropriate avenue of redress is through the OSC's response structure, which may consist of simply having the OSC approve the trustee actions and costs as removal actions and costs. While these actions/costs are not strictly preassessment activities, it is likely that such actions/costs will be taken while the trustee(s) is conducting the preassessment and can be included in the Preassessment Phase. In circumstances where the trustee(s) takes emergency restoration to repair or replace habitat or resources, these are technically restoration costs, but again can be claimed in the costs of conducting an assessment. NOAA reminds the trustee(s) that emergency restorations are the exception, not the usual course of business. NOAA expects fully that close cooperation and coordination with the response agency(ies) and the RP(s) will greatly alleviate the need for emergency restoration.

Comment: One commenter noted several disadvantages in simplified assessments, including the potential overlapping trustee interests in certain natural resources, damages will not sufficiently reflect the extent of the actual injury, and the risk that a compensatory assessment could be transformed into a punitive exercise.

Response: NOAA notes that double recovery is prohibited to the extent provided by section 1006(d)(3) of OPA. The simplified damage assessment procedures produce calculations based on statistical averages and will reasonably reflect the damages of the actual injury in a timely and economical manner. Finally, NOAA disagrees with the charge that simplified damage assessments are akin to punitive damages. The computer models and compensation formulas generate damages based on average restoration costs and average diminution of value of the affected natural resources and are thus compensatory as authorized by OPA.

"Coordination With Legal Counsel"

Comment: Commenters covered the possible range concerning the appropriate involvement of legal counsel. Some indicated that attorneys will slow down the assessment process while others indicated that assessments are complicated legal processes that may involve a variety of legal issues, including Freedom of Information Act requests and coordination among federal and state laws, and that attorneys must be involved in the process from the onset. Most commenters indicated that a formal process for attorneys need not be identified in the rule. Some commenters indicated that, since many assessments have been conducted under the threat of litigation, attorneys have more say than the scientists in the assessment process. One commenter suggested that early involvement of attorneys leads to adoption of extreme positions by both parties and encourages unnecessary and poorly designed studies aimed at litigation, not restoration.

Response: NOAA has determined that there is no need to specifically provide a role for either trustee agency counsel or attorneys representing the RP(s) in the proposed rule. NOAA has attempted to propose a rule that is scientifically driven, and not specifically geared to the potential of litigation, even though that potential certainly looms ever-present. As a practical matter, NOAA encourages trustee agencies to keep their respective counsels informed of the assessment and seek their advice in legal matters. It is expected that the

RP(s) will rely upon its attorney(s) for advice and counsel throughout most assessments.

"Private Causes of Action"

Comment: Some commenters encouraged NOAA to specifically allow the trustee(s) to recover for private causes of action under OPA. They reasoned that often it is the government that is the most logical party to recover for what are arguably "private" harms, i.e., increased prices due to fishery closures, since the consumers would have no mechanism to individually recover those damages. Another example cited was recreational users, who would be unlikely to pursue individual claims.

Response: Section 1002 of OPA provides specifically for damages recoverable under OPA, including natural resources, real or personal property, subsistence use, revenues, profits and earning capacity and public services. However, although OPA states that a natural resource trustee may seek recovery of damages for injuries to, or loss of use of, natural resources, OPA gives the right of action for the other types of damages to the actual users or owners of the property affected.

"Punitive Damages"

Comment: Some commenters expressed the opinion that recoveries under OPA should not include punitive damages.

Response: NOAA agrees fully. The proposed rule is designed to assess compensatory damages for the injury to, and loss of use of natural resources, their corresponding diminution in value pending restoration, and the reasonable costs of conducting an assessment.

"Future Damages"

Comment: Some commenters suggested that the damage figure should include an added amount to pay for cumulative unknown effects that cannot be determined by the assessment, comparable to the Superfund provision with respect to damages for unforseen future liability. One of these commenters suggested that these damages could be used to carry out additional research, monitoring, etc.

Response: NOAA does not believe that OPA requires damages for unforeseen future natural resource injuries. Such recoveries may be speculative in nature. However, for any particular discharge the trustee(s) and RP(s) may agree, through negotiations, to establish an escrow account to cover future effects, perhaps with unused sums reverting back to the RP(s) after a specified amount of time.

"Limits of Liability"

Comment: One commenter stated that liability limits for oil and gas extractive facilities should hold under OPA, except on cases of proven gross negligence, willful misconduct, or violation of certain federal stipulations.

Response: NOAA notes that the commenter is requesting a statutory change, clearly outside the scope of this rulemaking.

IV. Assessment on the Record

Purpose

Section 1006(c) of OPA provides that the trustee(s) shall "develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent, of the natural resources under their trusteeship." 33 U.S.C. section 2706(c)(1)(C), (c)(2)(B), (c)(3)(B) and (c)(4)(B). Section 1006(c)(5), 33 U.S.C. section 2706(c)(5), provides that "plans shall be developed and implemented under this section only after adequate public notice, opportunity for a hearing and consideration of all public comment." Thus, Congress intended that restoration plans be developed by the trustee(s) pursuant to an administrative process that provides an adequate opportunity for public participation in the selection of restoration measures. In accordance with traditional principles of administrative law, NOAA is proposing to implement these provisions by requiring the trustee(s) to document development of draft assessment/restoration plans (DARP) in an administrative record through notice and comment procedures.

The administrative record has four basic purposes. First, it facilitates selection of restoration, rehabilitation, replacement, or equivalent acquisition actions by providing a central repository for scientific data. Second, it documents the relevant factors the trustee(s) considered in selecting restoration actions. Third, it facilitates public participation. Fourth, it provides the basis for judicial review.

The DARP serves to document, for the administrative record, the most appropriate restoration approach, with its estimated restoration, rehabilitation, replacement, or equivalent acquisition costs for a particular discharge. Therefore, the judicial review standard of "arbitrary, capricious, or otherwise not inconsistent with law" would apply to determinations through the development of the restoration approach. Once the restoration approach is developed, the trustee(s) then can determine the expected interim lost resource values. It is anticipated that the calculation of those values would not be included in the administrative record. This approach is suggested in the legislative history of OPA, which states:

> Calculating the total measure of damages under this section will ordinarily be dependent upon the development by the trustees of the appropriate plans for mitigating the injury to those resources. This is because the estimated cost of implementing the plans will be a major component of the measure of damages. Therefore, the trustees should, in sequence, conduct the necessary assessments, develop and estimate the cost of implementing the appropriate plans, and calculate the diminution in lost use and other values of the injured resources pending restoration. At that point, the total liability of a responsible party under this section can be calculated (Committee of Conference Report No. 101-653; 101 Cong. 2d Sess. at 109 (Aug. 1, 1990)).

Content and Level of Detail

The administrative record must contain sufficient information to support judicial review of the assessment. The administrative record should contain all documents considered by the trustee(s) in selecting assessment and restoration measures, including documents that support options the trustee(s) ultimately rejected. Pertinent documents that are timely submitted by the RP(s) or the public shall be included in the administrative record.

The administrative record should be limited to final documents when possible. For example, draft documents that are superseded by final documents are not considered documents on which the trustee(s) specifically relies and therefore are not included in the record. Where no final document is available at the time of selection of assessment/restoration measures, the draft may be included in the record if the document contains information not found in other documents in the record but which is considered by the trustee(s) in selecting a restoration approach.

Pre-decisional, deliberative internal agency memoranda will ordinarily not be included in the administrative record. Like draft documents, however, portions of these documents may be included if they contain information that is not included in other documents. Documents relating exclusively to liability will ordinarily not be included in the administrative record unless they are relied upon in selecting restoration measures. The trustee(s) may maintain a confidential file for materials in the administrative record that might be sensitive (e.g., the U.S. EPA Superfund process allows for Confidential Business Information to be maintained in a confidential appendix to the administrative record for a Superfund remedial action). If the restoration approach is challenged, the judge may review that confidential information in *camera*, i.e., in the judge's chambers in a confidential manner. Scientific data and other information concerning damages to natural resources, however, may not be subject to a claim of being Confidential Business Information. Scientific data that fail appropriate quality assurance/quality control requirements should not be included in the administrative record except where such data are relied upon in some manner in selecting restoration measures.

Ordinarily, the record should include documents regarding the nature of the discharge, preassessment determination, restoration planning, the draft assessment/restoration plan, public comments, response to public comments, transcripts of public hearings, if any, relevant investigation reports, scientific studies, work plans, quality assurance plans, engineering evaluations, decision documents, and an index to the documents in the administrative record.

The volume of material compiled for the administrative record should be consistent with the scope of the assessment/restoration. Compilation of massive documentation for a minor discharge with limited restoration measures would not be appropriate.

Certain types of information will be common to all assessments, regardless of the type of procedure selected. Therefore, each administrative record will contain: (1) Information considered in the Preassessment Phase; (2) a copy of the DARP; (3) any comments received in response to public review of the DARP, with the responses to those comments; (4) a copy of the demand made to the RP(s), including the Report of Assessment; and (5) the costs of conducting that assessment. Other items included in the record will be specific to the particular type of assessment procedure selected. For a Compensation Formula assessment, in addition to the common items listed above, the administrative record should include documentation of the information requirements for use of the formula and identification of the formula used. For a Type A assessment using one of the computer models developed by DOI, the administrative record should include documentation of the information requirements for the Type A model listed in 43 CFR part 11, subpart D, and the computer printout of the application of the Type A model. For an Expedited Damage Assessment (EDA) or Comprehensive Damage Assessment (CDA) the administrative record should include all documentation supporting the restoration determinations required in the EDA or CDA. Determinations in EDA or CDA may include, but are not limited to: the injury determination/quantification component and the restoration component (specifically including the test results of any and all methodologies performed in these phases).

Post-decisional Documents

Occasionally, the administrative record may require supplementing after finalization of the DARP. Supplements to the record may be allowed if: the interested party(ies) did not receive actual or constructive notice of the DARP and the opportunity to comment on the plan; the information submitted does not duplicate information already contained in the administrative record; and the information raises sufficiently significant issues regarding the scope, effectiveness, or cost of the plan as to warrant having the trustee(s) reconsider the plan. If the trustee(s) supplements the administrative record with documents submitted by the RP(s) or the public, the trustee(s) may also add to the record other documents pertinent to the matters addressed by the RP(s) or the public.

Post-decisional documents are generally not part of the administrative record. However, where these documents result in modification of the DARP, the administrative record should be supplemented to include the post-decisional documents. Also, where the DARP provides for the development of certain components at a later date, the information or documents used to develop these components should be added to the administrative record as they become available.

The trustee(s) has the discretion, of course, to modify the plan at any time. However, the public will have the right to review and comment upon modifications that are, in the opinion of the trustee(s), significant.

Availability of the Record

To the extent practicable, the administrative record should be compiled and made available for review as documents are generated or received by the trustee(s). NOAA believes that public information is critical to the credibility of assessments and restoration efforts. However, the degree of public notice and involvement in the administrative record will necessarily vary depending on the choice of damage assessment procedures. NOAA is proposing that the administrative record be open for public review and comment concurrently with the DARP. The availability and review of the administrative record may also be arranged in prespill planning conducted by the trustee(s).

Judicial Review

Under the Administrative Procedure Act, 5 U.S.C. 706(2)(A), review of selection of restoration measures would be conducted on the administrative record. Review on the record would address several major concerns expressed by Congress in passing OPA. First, Congress mandated public participation in restoration planning. Section 1006(c)(5) of OPA requires the development and implementation of the restoration plan "only after adequate public notice, opportunity for a [public] hearing, and consideration of all public comment." A trial *de novo* would circumvent public participation in the selection and implementation of the restoration plan by allowing the litigants and the court to make the decision as to the type of restoration approach. In interpreting similar Congressional intent with respect to the selection of remedial action under CERCLA, courts have held that a trial *de novo* of selection of a response action is inconsistent with meaningful public involvement in selection of remedies for hazardous waste sites. A discussion of these cases was provided in Appendix III of the ANPRM of March 13, 1992 (57 FR 8964, at 8987). Inherent in these decisions is the recognition that the general public does not have the resources or the procedural mechanisms to protect its interests in the courtroom.

Further, a trial *de novo* of assessment/restoration measures creates incentives for parties to withhold scientific data for use at trial. One of the most significant criticisms of the EXXON VALDEZ case noted by commenters was the unavailability of scientific data produced by the parties to the litigation. By contrast, a public administrative process should create the incentive to disclose scientific data. The government will be required to publicly disclose its scientific data and conclusions in the administrative record developed in connection with the DARP. Other parties will be required to publicly disclose their scientific data and conclusions in connection with the administrative development of the DARP or risk waiving their objections to the plan during judicial review.

Second, record review is necessary to carry out the Congressional mandate that the trustee(s), as the resource

manager(s) and expert(s), select assessment/restoration measures. NOAA's interpretation of OPA indicates that Congress intended the Restoration Plan be developed and implemented by the trustee(s) pursuant to an administrative process, not by a courtroom battle of experts. Adequate evaluation of the complex scientific issues involved in assessment/restoration is more likely to result from a public administrative process conducted by agencies with specialized scientific expertise.

Finally, Congress emphasized that assessment of damages be conducted at "reasonable" costs. By requiring the various parties involved in an assessment to submit their findings to a central repository, much duplicative study can be avoided. Limiting the review of the assessment/restoration to the administrative record will greatly reduce the transaction costs.

Administrative Record

Response to Comments

"General"

Comment: A majority of the commenters who spoke to the issue of the administrative record and judicial review "on the record" supported the concept. Several commenters noted that general administrative law principles and case law prior to the Superfund reauthorization of 1986 supported record review of expert agency decisions on injury, restoration, and economic assessments. One commenter explicitly stated that the injury determination, restoration strategies, and economic damage amount would receive both the rebuttable presumption and the deferential standard of judicial review. Some commenters referred to OPA's reference to the rebuttable presumption's use in "any administrative . . . proceeding," as well as OPA's provisions for claims against the Fund in an administrative proceeding, as support for NOAA's creation of an administrative process that would be granted record review. Other commenters, however, objected to NOAA's attempt to allow a standard of review that these commenters perceived to be inconsistent with the rebuttable presumption. Finally, some commenters stated that assessment studies and restoration planning within the context of an assessment should not be made public unless record review were granted.

Response: NOAA notes that the administrative record provisions in the proposed rule are intended to implement several important policy concerns expressed by Congress in OPA. NOAA has considered administrative law principles and various comparable policies found in CERCLA to be relevant to natural resource damage assessment process in several areas. In both CERCLA and OPA, Congress has reflected the public's concern over expeditious recovery of resources injured by pollution. Further, in OPA, Congress has explicitly provided that restoration measures be selected by the natural resource trustee(s) through notice and comment procedures. Therefore, NOAA feels that there is statutory authority to establish review on the record. The administrative record provisions of this proposed rule are intended to create an open assessment/restoration process to allow an objective evaluation of how to restore or replace resources injured by discharges of oil. Whether these provisions would result in "record review" is ultimately the decision of the courts. However, NOAA feels that record review is essential for the type of expeditious, fair assessments called for by OPA. As discussed earlier in this preamble, judicial review on the record would apply to the entire assessment process with the exception of the determination of the compensable value component of damages. Finally, NOAA points out that the "rebuttable presumption" is not a standard of review.

"Advantages"

Comment: Many of the commenters pointed out that an administrative record would avoid the costs associated with a protracted trial *de novo* and result in a more timely restoration of the affected resources. Many of these commenters also noted that an administrative record of an assessment would allow for the availability of scientific information on the effects of oil and the efficacy of various cleanup strategies. Others pointed out that this process would, in effect, allow for peer review of assessments. Quite a few commenters noted that limiting judicial review to the administrative record of the assessment would facilitate the Congressional goal that the agency, as the organization with the expertise, undertake the assessment as well as the restoration. Some commenters noted that creating an administrative record would ensure a more fair and objective process by encouraging participation by the public and the RP(s). One of these commenters pointed out that having such an open process would avoid the public distrust that results from secrecy. Another commenter noted that an "open record" would foster a more cooperative process that could avoid having litigators shield assessment studies and having scientists conduct unnecessary research. Finally, a few commenters were pleased to see an assessment/restoration process that is similar to the Remedial Investigation/Feasibility Study process in Superfund with which so many agencies are familiar.

Response: NOAA agrees with the advantages of an administrative record process outlined by these commenters. In particular, creating an open process that facilitates access to the science in the restoration process is an important advantage. An open process will also allow consideration of a wider range of views. Finally, NOAA relied upon, with some modification, the NCP's administrative record provisions since those provisions have already undergone extensive rulemaking development and are somewhat familiar to most trustee agencies.

"Disadvantages"

Comment: Some commenters stated that an administrative record requirement would result in a slower and more costly assessment process and could seriously prejudice the ability of the trustee(s) to negotiate a settlement. One of these commenters stated that the requirement could overwhelm the ability of the trustee(s) to conduct an effective assessment. Another commenter noted that such an open record may allow parties to influence the results of the assessment and skew the economic data gathered. Some commenters noted that outside information submitted to the record is strictly advisory in nature, and not controlling upon the trustee(s). Yet another commenter warned that a court could decide to conduct a trial *de novo* anyway, which could make the trustee(s) vulnerable. Finally, one of these commenters noted that the RP(s) could totally disrupt the process.

Response: NOAA does not intend an administrative record requirement that would add to the time and/or expense of a damage assessment. The preamble discusses the requirement that the administrative record be tailored to the scope of the assessment. The fact that materials submitted "for the record" would be intended to influence the assessment in a particular way is inherent in an open record. However, the trustee(s) is given responsibility to manage and consider the record in a manner that is consistent with the reasonable cost requirement of the proposed rule, using best professional judgment. With respect to the possibility that the courts might not uphold record review for restoration, NOAA believes that this is unlikely, given the statutory language. Because

lack of record review would undercut a number of the policies underlying the use of an administrative process for selection of restoration measures, NOAA would review the process as a whole if record review were not upheld by the courts.

Comment: Several commenters expressed concern regarding the involvement of the RP(s) in the administrative record. One of these commenters noted that, since the trustee(s) compiles the record, the RP(s) has no incentive to disclose information that the trustee(s) might decide to exclude from the record. Another commenter stated that due process for the RP would require judicial review of the findings and conclusions of the trustee(s), particularly in a tort type action.

Response: NOAA notes that under general principles of administrative law, the RP(s) will be entitled to submit relevant material to the administrative record if timely submitted. The reviewing court will examine the documentation of the assessment/restoration process for any significant omissions.

"Scope"

Comment: Several commenters spoke to the issue of the scope of the administrative record of assessment. Some of these commenters stated that the administrative record should include all data and information gathered for the assessment. One commenter pointed out, however, that confidential information gathered by the RP(s) for use in litigation should not be included. Other commenters also noted that information pertaining to liability, that may be litigated as a separate issue, would not go into the record.

Response: NOAA notes that, with few exceptions, all data and information considered by the trustee(s) in selecting restoration measures would be contained in the record. Also, participants in an assessment must recognize that any document that is put into the record is in fact "public." The RP(s) is free to decide whether to submit information for the record, at the risk that, if he does not do so, the information may not be considered when the court reviews the assessment/restoration plan.

Comment: Other commenters noted specific questions regarding the administrative record. One asked if (1) any documents could remain confidential; (2) all data required by the trustee(s) must be given to the RP(s) and the public; (3) chain of custody procedures would apply; and (4) deliberative documents would be subject to FOIA. Another asked that NOAA clearly identify the kinds of documents to be included in the record, the requirements for public access and comment, and the type of scientific basis for decisionmaking. Finally, one commenter suggested that additions to the record after closure of the public comment period should be carefully and narrowly defined.

Response: NOAA has noted the requests for specific information on the types of documents to be included in an administrative record. The general discussion in the preamble above lists examples of documents that would be included or excluded in an administrative record. Generally, those documents releasable under FOIA would be included in the administrative record. Those documents not releasable under FOIA would be excluded. The preamble and proposed rule provide guidance as to what types of documents would be allowed into the record after the public review period is closed.

"Components"

Comment: Some commenters stated that all documents relied upon by the trustee(s) should be placed in the administrative record. One commenter provided the following as examples of what should be included in the administrative record: (1) Scientific data collected, generated, and analyzed during the assessment; (2) the determination of scope of injury; (3) comments and data provided by the public and the RP(s), and the consideration of that information by the trustee(s); and (4) relevant facts relied on in selecting the restoration plans and calculating the damages.

Response: NOAA agrees that all documents and data forming the basis for the selection of restoration measures, including these in each phase of the assessment leading up to the development of a restoration approach should be placed in administrative record. Additional data and comments that are timely submitted by the RP(s) and the public should also be included in an administrative record. Guidance for documentation is provided in this preamble.

"Additional Components"

Comment: One commenter noted that its state open records law would apply to the administrative record if maintained by a state trustee and that the record requirements are broader than those suggested by NOAA. The commenter noted that the state law requires that the following types of documents be made available for public review: (1) Draft documents; (2) pre-decisional, deliberative internal agency memoranda; and (3) scientific data generated by the state or a contractor and in the possession of the state regardless of whether it fails quality assurance. The commenter noted, however, that documents relating exclusively to liability, if prepared by or for an attorney under client privilege, can be excluded from public view.

Response: NOAA recognizes that some state laws may require broader availability of documents than what is described in this proposed rule for the administrative record. If a state has additional requirements for public availability of documents beyond those outlined in this proposed rule, the state requirements may apply to state trustees. NOAA's proposed rule describes the minimum requirements for public review for the various types of assessment procedures. It should also be noted that because record review of restoration measures selected by federal trustees alone or jointly with state trustees is premised upon the requirements of the federal Administrative Procedure Act, selection of restoration measures by state trustees alone may be subject to different principles of judicial review.

"Conditions"

Comment: Several commenters stated that their agreement with a record review standard was conditional upon having the review available for the assessment and restoration selection/cost decisions, but not for the calculation of economic damages. These commenters stated that the economics determination should then be entitled to the same protection as other work product until trial. One commenter noted that the legislative history of CERCLA (relevant to OPA) makes it clear that Congress, by stressing the restitutionary nature of natural resource damages, intended at least the selection of restoration plans to be reviewed by the court on an administrative record.

Response: NOAA believes that the statutory language clearly contemplates record review of selection of restoration measures. The availability of record review for all aspects of the damage assessment is less clear. The proposed rule provides for an administrative record process only for those aspects of the assessment leading to selection of restoration measures, including the estimate of the costs of such measures. NOAA solicits comment on whether the administrative record provisions should be extended in the final rule to other aspects of the damage assessment.

Comment: Other commenters agreed with the open record so long as the rule

ensured that the RP would be given a joint and meaningful role in the assessment. These commenters stated that the integration of the open record with the later proposed "jointly conducted, phased assessments" with responsible parties, would be essential.

Response: NOAA agrees that the RP(s) would play a major role in the development of the administrative record for the assessment/restoration process. As noted in the section of this preamble on cooperative assessments, NOAA strongly encourages joint work with the RP(s). Also, the administrative record process will work more smoothly where there is a joint assessment in progress. However, there will undoubtedly be instances where such joint efforts will not be possible. In those cases, the administrative record is even more important, because it gives both the RP(s) and the public the opportunity to provide material for the administrative record, and it will require the trustee(s) to address that material if relevant.

"Time of Review"

Comment: Another commenter stated that the record of assessment actions should be final only after the trustee(s) has determined damages and selected a restoration approach. Some commenters stated that NOAA should consider the applicability of the concept of "preenforcement review," which would allow selection, possibly implementation, of the Restoration Plan without first having to prove its validity in court.

Response: NOAA notes in its general discussion above that review on the record would generally take place in an action to obtain damages. Prior to this time, there would be no final agency action subject to review.

"Levels of Documentation Required"

Comment: One commenter noted that, even where there is an expedited damage assessment conducted, an administrative record should be compiled to provide at least some information for public review.

Response: NOAA notes that, in the general discussion of detail of an administrative record, documentation requirements would have to be tailored to the scope of the case. In all cases other than emergency restoration actions, however, final restoration measures would be selected only after public review and comment.

"Support—Legal Arguments"

Comment: Several commenters noted that natural resource damages are not measured by the traditional common law methods. These commenters pointed out that these assessments involve highly technical, scientific findings in which courts have traditionally treated the agency's determination with great deference. A few of these commenters suggested that the federal courts have neither the time nor the expertise to decide these scientific issues. Therefore, the commenters conclude that judicial review of the assessment/restoration plan should be conducted on the administrative record, applying an arbitrary and capricious standard.

Response: NOAA agrees that courts generally defer to agency expertise in cases involving highly technical or scientific content. For this reason, NOAA agrees that review of restoration measures, which involve highly technical judgments, should be on the record.

Comment: Some commenters spoke to the issue of consistency with the provisions for claiming natural resource damages against the Fund. These commenters pointed out that, in presenting such a claim against the Fund, the trustee is entitled to a rebuttable presumption of correctness. The United States is then subrogated to the rights of the trustee in pursuing the claim against the RPs. It follows that the documented determination of injury, selection of restoration plans, and calculation of the costs to assess, restore, and compensate for lost use/nonuse value by the trustee is the only available evidentiary basis on which the United States can proceed in court on behalf of the Fund, to recover the damages paid out to the trustee(s) from that Fund. The commenters then argue that the same standard should apply to assessments reviewed by courts.

Response: NOAA agrees that consistency in the implementation of a statute is a desirable goal. If there were two standards for determining compensation for injuries to natural resources under OPA, expensive and confusing assessments would result. Accordingly, the same standard of review would apply to restoration in actions by the OPA fund as to actions by the trustee(s).

Comment: Other commenters noted that, where the right to sue for damages to private property existed at common law through a tort action, the public's right to sue for restitutionary money to make an injured environment whole did not exist. These commenters pointed out that all components of natural resource "damages" (as defined under OPA) are restitutionary in nature including quantification of lost use/nonuse values. The commenters suggested that, when Congress creates a public right by statute that did not exist at common law (such as the ability to seek money to make whole an environment injured by an oil discharge), it may entrust the determination of such public rights to an administrative body. Therefore, the commenters argued that the right to trial by jury for common law damages would not present an obstacle to record review of a damage assessment.

Response: NOAA notes that Congress, in the legislative history of CERCLA and OPA, pointed out problems with pre-CERCLA common law actions for damages to public resources. This concern resulted in the set of environmental statutes specifically allowing recovery by a public government agency for damages as compensation for injuries to natural resources. Because natural resource damage claims are essentially restitutionary and because Congress has required that trustees (rather than courts in the first instance) select a restoration approach and compute damages to natural resources, NOAA agrees that the right to a jury trial would not apply to damage actions under OPA. Further, most OPA actions are likely to be brought in the courts' admiralty jurisdiction, where there is no right to jury trial.

Comment: Several commenters noted that NOAA has the authority to declare that judicial review of damage assessments would be on the administrative record since there was no explicit statement as to the standard of review in OPA. These commenters pointed out that, where the legislative delegation to an agency on a particular question is implicit rather than explicit, a court will generally defer to a reasonable interpretation made by the agency.

Response: NOAA agrees that Congress' directions to NOAA were not explicit as to the type of judicial review to be accorded to damage assessments. However, the legislative history does note that this proposed rule is to create a system of damage assessment that is expeditious and fair. The report of the Committee of Conference states that these regulations "should be designed to simplify the trustees' task of assessing and recovering the full measure of damages resulting from an incident." See H. Con. Rept. No. 653, 101st. Cong., 2d Sess. at 109 (1990). NOAA feels that providing for record review of damage assessments is necessary to achieve this goal. Further, while the issue of the standard of judicial review will ultimately be decided by the courts, NOAA believes that, as the agency charged with implementing the natural resource damage provisions of OPA, its views should be entitled to some deference.

"Against—Legal Arguments"

Comment: Several commenters stated that the RP has the legal right to a jury trial in natural resource damage assessment disputes as guaranteed by the United States Constitution. The commenters pointed out that a damage assessment is not a rulemaking under section 553 of the Administrative Procedure Act, but is similar to an adversarial administrative activity that will often result in litigation. The commenters argued that every CERCLA natural resource damage case that has addressed the issue has required a jury trial for these actions at law. These commenters stated that issues related to the selection of assessment/restoration plans must be decided by a trial court.

Response: As stated in the above discussion, the due process rights of the RP(s) will not be sacrificed in the administrative record process. While a few district courts have held that there is a right to jury trial for the lost compensable value aspects of CERCLA natural resource damage cases, at least one court has held that there is no right to jury trial for the restoration aspects of natural resource damage cases. Further, even if there is a right to jury trial, NOAA does not perceive a conflict between a non-jury record review of restoration measures and cost estimates under the "arbitrary, capricious, or otherwise not in accordance with law" standard, and a jury trial on other issues.

Comment: Some of these commenters spoke to the issue of the rebuttable presumption in relation to record review. Some commenters suggested that a court should review the choice of restoration alternatives by the trustee(s) on an "arbitrary and capricious" standard, i.e., the trustee(s) is presumed to be correct unless it can be proven that the trustee(s) acted in an arbitrary or capricious manner. Other commenters argued that Congress would not have offered the favorable rebuttable presumption as a standard of review if the trustees had any underlying entitlement to the "arbitrary and capricious" standard. The commenters contended that Congress was attempting to offer the trustee(s) the slightly more favorable review standard of a "rebuttable presumption" as an incentive for trustees to follow the regulations; failure by the trustee(s) to follow regulations apparently results in their having to prove their case, by a preponderance of the evidence, on the *de novo* review standard. Reconciling the congressional provision of a "rebuttable presumption" with the Administrative Procedure Act's arbitrary and capricious standard of judicial review would require that, to rebut the presumption, the RP would have to point to clear and convincing evidence in the aforementioned administrative record demonstrating that the injury determination, restoration selection, or monetary quantification by the trustee(s) was arbitrary and capricious.

Response: The selection of restoration alternatives by the trustee(s) for a particular incident will either be identified during prespill planning as part of a Regional Restoration Plan (see the discussion of § 990.16) or in an incident-specific restoration plan developed for that incident. NOAA agrees that the "arbitrary, capricious, or otherwise not in accordance with law" standard of judicial review for that choice is appropriate. NOAA points out that the rebuttable presumption is a rule concerning level of evidence, not a standard of review. Therefore, the statutory provision for a rebuttable presumption for the damage assessment as a whole does not preclude the development of an administrative record for the assessment through restoration components of a damage assessment. There is no reason why different aspects of the assessment cannot be subject to different standards of review, which is precisely what the language of OPA appears to require.

Comment: Several commenters stated that NOAA had exceeded its statutory authority in declaring record review of assessments. These commenters contended that Congress was not silent on the issue of the standard of review. These commenters contended that Congress did not delegate to NOAA the authority to determine the standard of review a court will apply when considering a trustee's natural resource damage claim filed before the court. These commenters pointed out that, in section 1006(e)(2) of OPA, Congress specified that: "Any determination or assessment of damages to natural resources for the purposes of this Act made * * * by a * * * trustee in accordance with the regulations * * * shall have the force and effect of a rebuttable presumption. * * *" In contrast, the commenters pointed out that OPA's directive to NOAA for promulgating regulations is limited to the assessment of damages. OPA contains several provisions that address the procedure for the trustee(s) to file a claim(s) against the RP(s). These commenters stated that the issue of the standard of judicial review is determined by the Congress and courts, not by regulation, and that NOAA should not attempt to preempt judicial resolution of that issue.

Response: NOAA agrees that the ultimate decision as to the standard of review for a damage assessment is for the courts. Nevertheless, NOAA believes that its mandate to develop an assessment process that is both fair and expeditious requires it to provide its views on the appropriate standard of review, since this has crucial implications for the assessment process. As noted above, administrative record review is contemplated by OPA's requirement for selection of restoration measures based on notice and comment procedures. Further, this position is supported by the courts' consistent interpretation of CERCLA's provisions with respect to lead agency selection of a response action for a Superfund site. While the issue of the appropriate standard of review is ultimately for the courts, NOAA's views on the interpretation of the statute should be entitled to some deference.

Comment: Some commenters noted that NOAA might wish to explore the possibility that non-RP challenges to an assessment/restoration plan would be subjected to more limited judicial review.

Response: Provided that the non-RP has standing and right to sue, NOAA notes that, to ensure fairness in implementation of OPA, the same standard of review should apply to all who seek judicial review of trustee's(s') actions.

"Miscellaneous"

Comment: One commenter noted that, while the rule might provide that changes in plans or decisions predicated upon public comments should not be available for critical use against an assessment in administrative or court proceedings, a trustee who changes a decision or plan because of public comment should be able to defend that change easily on facts and reasoning, and thus will not feel a constraint to defend a wrong initial determination.

Response: NOAA agrees that a trustee who changes initial findings or plans based upon later information gained through public comment would simply document that change in the administrative record. One of the crucial advantages of an administrative process is the incentive created for disclosure and public participation. The trustee(s) will be required to disclose information relevant to selection of restoration measures in a public record, and the trustee(s) will be required to fairly

evaluate public and RP comments in selecting restoration measures. Based on NOAA's experience in numerous cases, it expects that public comment will be seriously considered by the trustee(s) and in some cases may lead to significant modifications of proposed restoration measures.

Comment: One commenter stated that NOAA should seek to ensure that scientific studies are conducted openly, with full and rigorous scientific peer interaction and review, to avoid a trustee expending large sums of money non-competitively on poor quality science that will not withstand scientific scrutiny.

Response: NOAA believes that an administrative process is the best method of ensuring thorough review of restoration by both the scientific community and public.

V. Prespill Planning

General

In many discharges, multiple trustees have been able to reach agreement on coordinating assessment and restoration activities. In light of that experience, the proposed rule strongly encourages federal, state, tribal and foreign trustees to develop prespill plans at the local area or regional level. In a corresponding effort, these plans might be implemented through a general Memorandum of Understanding (MOU) among trustees on a state level for the state trustee(s), and local area or regional basis for the rest of the trustee(s).

This proposed rule includes, in Appendix A, a sample MOU that has been reviewed in an earlier Notice, that could establish a coordination framework for trustees for prespill planning. Trustees could develop MOUs with provisions for specific areas such as bays, ports, waterways, or areas of special sensitivity concerns.

To the extent practicable, it is strongly encouraged that this planning process mirror the areas covered by Area and/or Regional Contingency Plans authorized by section 4204(a) of OPA under the NCP or could be on a state-by-state basis. The trustees should establish working groups at the regional or local area level to undertake these activities.

Prespill Plans

Without regulating the exact contents of the plans, the proposed rule notes that the plans should identify the responsibilities of the trustees, and other willing participants where appropriate, in the event of a discharge of oil covered by OPA. Suggested prespill planning activities include, but are not limited to, the following areas:

1. *Develop a natural resource damage assessment management and technical team.* The natural resource damage assessment team is responsible for planning and conducting damage assessments in the event of a discharge of oil. The size of the team should be a function of the scope and complexity of the assessment, and may include a natural resource trustee agency coordinator, resource biologist, environmental (petroleum) chemist, resource economist, restoration expert, QA specialist, data manager/sample custodian, statistician, and resource attorney. It is not always necessary to have a different person for each role, but experience has shown that each role is a full-time commitment, especially for highly significant discharges. Each person on the team, to the extent relevant to his or her own discipline, should have a working knowledge of natural resource damage assessment regulations and requirements, and be ready to begin preassessment activities immediately upon notification of a discharge. The team should not be *ad hoc*; members should be knowledgeable in natural resource damage assessment issues and have established working relationships with each other, the co-trustees, and the response community.

2. *Identify outside experts.* Since discharges of oil are sudden and episodic, it is not always possible to maintain sufficient staff to conduct all natural resource damage assessment activities. Depending on the discharge conditions, the trustees will need different experts on the team to assist in designing and conducting of studies for different natural resources and/or services. The trustees should identify the types of natural resource damage assessment expertise needed if there is a discharge in their area, and prepare a list of potential contacts available to provide that expertise. Experts without conflicts of interest should be used as an independent peer review group for potential natural resource damage assessment activities.

3. *Identify support services.* Certain support services, such as analytical and testing laboratories capable of performing the specialized hydrocarbon chemistry, toxicity testing, and histopathology needed for a discharge of oil natural resource damage assessment, should be identified ahead of time. Backup services should also be identified since the needs of both response and damage assessment activities can exceed even regional capabilities. Support activities conducted at the discharge site or potentially affecting any response activities must be coordinated with the OSC or designee. Other types of support services that may be needed include:

a. Field support for reconnaissance surveys by aircraft or vessel;

b. Monitoring logistics for sample collection, handling, preservation, storage, and transport;

c. Data management support;

d. Human health and safety support; and

e. Natural resource damage assessment training support.

4. *Collect information on natural resources and/or services potentially affected by oil discharges along high risk areas.* Area Planning Committees are responsible for the identification of sensitive natural resources and/or services in their areas, and development of protection priorities and strategies for these resources and/or services. The trustee(s) is encouraged to serve on these committees to ensure incorporation of all special concerns and considerations, and ensure consistency with the natural resource damage assessment Prespill Plans. Examples of issues include the seasonality of natural resources, along with unique protection approach questions, the overall effectiveness of cleanup countermeasures and effect versus natural recoveries, etc. These types of response issues are addressed in the Fish and Wildlife and Sensitive Environments Annexes to Area Contingency Plans (ACP). Besides having an opportunity to assist in creating and updating the ACPs, the trustee(s) is also given an opportunity to comment when those ACPs are submitted to the Regional Response Team (RRT) for review. The trustee(s) conducting damage assessment should coordinate with response personnel on issues affecting natural resources and/or services; clarifying the anticipated activities and roles of each during the discharge, and identifying the data needs of the trustee(s) that could be implemented through joint activities. Strategies for data sharing among the trustees, response agencies, and possibly the RPs, should be developed. This is particularly important since damage assessment data are often not made immediately available to the public. The trustee(s) is encouraged to participate in training and coordination activities of the response community, such as drills for the discharge of oil.

5. *Lead Administrative Trustee (LAT).* Whether planned in advance of a discharge or not, when assessments involve more than one trustee, trustees should select a LAT, although the proposed rule does not require that a LAT must be selected. The selection of a LAT should be by consensus and can be based on such factors as the trustee with a majority of natural resources at risk or the ability of a particular trustee agency to provide administrative support. While the federal trustees are required to select a LAT under E.O. 12777, 56 FR 54757 (October 22, 1991), this proposed rule does not require that the LAT be a federal agency when non-federal trustees are involved. In such cases, the federal trustees will still select a federal LAT, who will coordinate federal efforts with the LAT. Where appropriate, trustees may designate Co-LATs, consisting of a federal LAT and the state, tribal, or foreign trustee(s). It is also possible that, under certain circumstances, it might be appropriate for the LAT to be a single non-federal agency.

The LAT will not have veto or arbitration authority over the other trustees, but should be responsible for activities such as: scheduling meetings of the trustee working group or committee, preparing agendas, procuring space, etc.; acting as a central contact point for damage assessment trustee agencies involved in the incident, liaison with the appropriate OSC or designee; coordinating preassessment data gathering and other activities; and establishing and maintaining the administrative record, as well as other records, for the trustees.

6. *Identify sources of information for background data.* The trustees should develop lists or databases on the types of background information currently collected that may be of potential use in a natural resource damage assessment. If practicable, the trustees should identify and prioritize the most important information, and encourage or support the collection of such information in a cost-effective manner. Types of information considered potentially important include: petroleum hydrocarbon contamination in indicator organisms and exposure pathways; species census and inventory, baseline data on species populations, recreational use statistics, and economic values for selected natural resources and/or services. Familiarity with the types of baseline data available will allow the trustees to formulate better data collection strategies. The trustees should also collect information on successful restoration efforts for trust resources and/or services, and needed restoration efforts in their region.

7. *Design a general approach and develop protocols for data collection and analysis.* The trustees may want to develop scenarios for the types of natural resources and/or services that may be affected by a discharge of oil, and plan for an appropriate study design, including data collection and analysis protocols. Where practicable, protocols should be similar to those used in baseline studies to ensure comparability with the incident-specific assessment. The trustees should prepare standard protocols in a format that allows easy customization for a specific discharge. With prespill planning, initial damage assessment efforts may be better-implemented and generate more useful data. The trustees should prepare field kits for collection of samples and measurements in the early or emergency stages of a discharge.

8. *Establish a centralized data management system for natural resource damage assessment data.* There is a pressing need to have a data management plan in place that provides efficient access to collected data following a discharge of oil. Typical natural resource damage assessment studies are highly multidisciplinary, involving experts from many different organizations, who need access to data collected by various groups. For example, wetlands specialists studying injury to oiled marshes should use the same degree-of-oiling classifications as mapped by shoreline survey teams. The trustees are encouraged to develop a centralized data management system to support natural resource damage assessment needs. At a minimum, the plan should address the type and volume of data, uses of the data, existing data management capabilities, types of analyses conducted, QA needs, reporting requirements, and access to data. The data management plan should also include provisions for distribution of updates to natural resource damage assessment team members on a timely basis.

Regional Restoration Plans

Restoration plans have typically been directed towards a single resource (i.e., species or habitat type). In recent years for example, projects have focused on the preservation of rare and endangered species. The resource by resource management approach tends toward a never ending cycle of salvage operations. There is now a concern for maintaining and conserving genetic diversity. This goal requires that healthy, viable populations be maintained in the environment in which they co-evolved. The essential argument is that the community is the level of hierarchy needed to maintain the level of ecological diversity, ensuring the conservation of threatened/endangered species, gene pools, species diversity, natural community interactions, and known and unknown ecosystem species and processes.

Since human values arise from the attributes that are naturally scaled to the region, it makes sense that such a regional perspective be considered. Regional evaluation can be addressed through the consideration of five technical issues; (1) spatial boundaries (i.e., size of the study required to encompass the range of resources of concern); (2) time scale (i.e., timeframe or lifecycle of the resources); (3) ecological complexity (i.e., identification of ecosystem components based on habitat structure and/or function); (4) ecosystem pattern (i.e., patch size, continuity and contiguity); and (5) increment of the environmental change (i.e., setting goals and limits to restore the resource base). This follows from the proposed approach by Gosselink, J.G. and L.C. Lee, CUMULATIVE IMPACT ASSESSMENT IN BOTTOMLAND HARDWOOD FORESTS; Center for Wetland Resources, Louisiana State University, Baton Rouge; LSU–CEI–86–09 (1987). The area of concern should be evaluated relative to its importance and significance to the regional resource base as well as the special status of the area's components.

Where appropriate, the trustee(s) can develop, as part of the prespill planning, such Regional Restoration Plans. These plans could be developed on geographical or habitat basis to allow the recovery of the system covered by the plan. The trustee(s) may develop these plans as new efforts, but are encouraged to use existing plans that can be modified to meet the needs of this proposed rule. Examples of preexisting plans are Coastal Zone Management or the National Estuary Program Plans. To qualify as an appropriate Regional Restoration Plan pursuant to this proposed rule, a plan would have to be developed, or an existing plan modified, through a public review and comment process consistent with the restoration planning process described in subpart G of this proposed rule. Recoveries from damage assessments pursuant to this proposed rule may be applied to these plans, as provided in § 990.84(b) of this proposed rule. Coordination with Response Agencies: OPA covers inland navigable waters as well as coastal areas. From a federal perspective, as a general rule, the U.S. Coast Guard directs response activities in the coastal zone including the Great Lakes. The U.S. EPA directs response activities in the inland zone. See NCP, 55 FR 8815, 8816 (March 8, 1990). State response agencies may also direct response activities.

Effective coordination with the response activities necessitates that coordination procedures be established prior to a discharge. This proposed rule strongly encourages the trustee(s) to plan and coordinate damage assessment activities prior to a discharge. Similarly, the trustee(s) is encouraged to either develop prespill agreements with the OSC, participate in the OSC's Area Committee planning meeting, and/or attempt to include the OSC in general prespill planning. Agreements or joint plans should address, but are not limited to, the following issues: establishment of communication roles; identification of a damage assessment trustee and OSC contact; human health and safety requirements; development of joint activities, i.e., sampling, spill drills; identification of natural resources of particular concern; and information and data sharing. These issues can be facilitated by the NOAA Scientific Support Coordinator in the U.S. Coast Guard District.

Such coordination has already effectively taken place in the development of the Fish and Wildlife and Sensitive Environments Annexes to the ACPs being developed as part of the NCP. Section 311(d)(2)(M) of the Clean Water Act (CWA), as amended by section 4201(b) of OPA, requires the development of a fish and wildlife response plan, and section 311(j)(4)(B)(i) and (ii) of the CWA, as added by section 4202(a) of OPA, calls for preplanning in area committees to include concerns for sensitive environmental areas as well as fisheries and wildlife.

The trustee(s) recognizes that the OSC should not be unduly hindered by the trustee's(s') requests for use of equipment and/or information. Conversely, response agencies also recognize the trustee(s) as a potential source of information for damage assessment activities.

Coordination With the Public

OPA requires public notice, opportunity for a hearing and consideration of all public comments prior to implementation of the restoration plan. NOAA, however, does not believe that public involvement should always be limited to the restoration plan alone. NOAA is of the opinion that because the natural resource damage assessment process will be enhanced by public comment, the trustee(s) may provide for public review of the natural resource damage assessment component in addition to the restoration plan. The proposed rule, therefore, urges the trustee(s) to provide the public with an opportunity to review and comment on prespill plans discussed elsewhere in this preamble as well as to comment on the natural resource damage Assessment Restoration Plan. Additional public involvement, i.e., oversight or advisory committees, open trustee meetings, etc., will be at the option of the trustee(s). The scope of public participation in meetings would be advisory, not as voting membership. NOAA is also ensuring public involvement and information through the requirement for an administrative record for assessments.

Response to Comments

"Coordination—General"

Comment: All of the commenters who spoke to the issue of coordinated assessments agreed that all natural resource trustees should coordinate their damage assessment activities among themselves and with other interested parties. Many of these commenters supported NOAA's efforts to encourage prespill planning to accomplish this coordination. One commenter stated that there should also be strong incentives for trustee coordination, the implementation of MOUs, and the development of local and regional assessment protocols. Other commenters urged NOAA to develop detailed guidance as to how coordination might occur and explicit details on how prespill plans would be formulated and implemented by an MOU.

Response: NOAA agrees that coordination among parties involved with discharges of oil is crucial. NOAA cannot offer incentives for such coordination within this rulemaking, but notes that the increased efficiency and chances of successful recovery of the environment are incentives in and of themselves. This preamble discussion on the different aspects and avenues of coordination offers guidance on those areas NOAA has identified through this rulemaking process. There are undoubtedly more areas where the various parties can work together.

Comment: Most of the commenters agreed that trustee coordination is crucial to a successful and expeditious damage assessment and that this coordination is strongly encouraged by OPA. These commenters urged NOAA to provide clear but flexible guidance on trustee coordination. They noted that, absent such language, the assessment process is more likely to be adversarial and have the potential for overlapping studies and claims. Another commenter stated that this coordination would help to ensure that all potentially affected trust resources are included in the assessment process.

Response: NOAA agrees that coordinated efforts are best for all parties involved and can spare much wasted time and expense.

Comment: A large number of commenters on this issue pointed out that good coordination among trustees is essential to avoid double recovery, prohibited by OPA. Some of these commenters suggested that the trustees should be required to include in their damage claim a certification of how the assessment avoids double recovery. Several commenters stated that coordination among trustees would do much to improve the efficiency of assessments, particularly to avoid duplicate assessments, and the success of the assessment. Other commenters pointed out that better coordination could avoid prolonged and unnecessary litigation, and speed the actual restoration and recovery of injured resources. One commenter noted that coordination would help avoid competition among trustees for sometimes limited funds available to pay damages. Finally, some commenters noted that when faced with multiple assessments and claims the RP(s) is forced to commission parallel assessments in its own defense.

Response: Coordinated efforts would help avoid double recovery of damages. NOAA does not include in this proposed rule a requirement that the trustee(s) include a certification of how double recovery is avoided. That kind of detail will be resolved through the cooperative process. These cooperative efforts allow trustee agencies to efficiently use limited budget and personnel for a successful effort. These efforts may also foster cooperative efforts with the RP(s) as well.

Comment: Several commenters urged NOAA to prescribe specific sanctions against trustees who do not coordinate assessments. Most of these commenters stated that trustees who do not coordinate their assessments should be denied the rebuttable presumption for the assessment. Others stated that if trustees do not coordinate, they should be required to affirmatively carry the burden of proof to show no overlapping of claims. Finally, some of these stated that they would urge the U.S. Coast Guard, in the promulgation of its claims against the Fund regulations, to deny payment from the Fund to trustees who do not coordinate.

Response: This proposed rule does not contain penalties for failure to cooperate. Since these coordinated efforts are encouraged and not required by the proposed rule, the rebuttable presumption would not hinge on the presence or absence of coordination. Trustees should recognize, however, that assessments will be more effective and successful if coordinated. The suggestion that disbursements from the Fund be denied to trustees who do not cooperate is clearly outside the scope of this proposed rule.

Comment: Several commenters stated that the rule should encourage, or require, trustees to establish a committee to coordinate resource damage assessment and restoration activities among trustees as well as RPs. These commenters stated that the trustee council should also designate a committee chair.

Response: NOAA points out that past experience has shown the success of, and need for, trustee committees or councils. These councils are discussed in the section of this preamble describing the trustee MOU.

Comment: Several commenters stated that, since federal and state trustees are co-equals under OPA, there should be an equal number of state and federal trustees involved in the assessment activities, each with his own vote or, failing that, the trustees should operate on consensus.

Response: NOAA agrees that natural resource trustees are equal partners in the protection and restoration of the environment. However, the number and type of trustees involved in a particular discharge is entirely incident-specific. NOAA would certainly not like to see trustees jockeying for control of a situation by "stacking" committees with large numbers of representatives. Since decisions should be made through the consensus of the trustees involved, the number of particular representatives is immaterial.

Comment: Although many of the commenters agreed that decisions among trustees should be through consensus, the commenters pointed out that NOAA should provide guidance for the case involving controversial issues where consensus among multiple trustees is not possible. One of these commenters suggested that NOAA might consider having trustees use a mediator or facilitator for these deliberations.

Response: NOAA encourages trustees to decide upon a decisionmaking process before a discharge occurs. Such agreements may easily be modified at a later date, but are extremely difficult to decide during a discharge event. NOAA does not believe that the proposed rule could provide a mechanism that would apply to all discharges.

Comment: At least one commenter indicated that NOAA should develop a list of technical experts that could be called upon to carry out preassessment and assessment/restoration activities in order to ensure efficacy in the process.

Response: NOAA agrees that such a list may be useful. However, since the majority of damage assessments will likely be localized, a list provided by NOAA may not prove useful to the local trustee(s). NOAA encourages the trustee(s) to assemble such lists as part of the prespill planning process, based upon past experience and the qualifications of potential experts. The trustee(s) is advised to be aware of conflicts of interest when developing such lists.

"Lead Administrative Trustee (LAT)"

Comment: Many of the commenters stated that the designation of a Lead Administrative Trustee (LAT) is crucial to the success of an assessment. One commenter noted that the current practice results in a *de facto* LAT in the person of the litigator who conducts the negotiation, a process which takes the issues out of the hands of the resource manager.

Response: NOAA agrees that trustees are in a much better position during a discharge if they can decide among themselves whether a LAT would be useful, and if so, who should serve in that position.

Comment: Some commenters stated that the LAT be a federal trustee, others that the LAT be a state official. Some suggested that the rule allow for the LAT to be either an official from a federal or state agency or a tribe with no restrictions. One commenter suggested that there be appointed co-LATs, with the duties rotating among these accordingly. Another commenter suggested that there may be many cases in which it would be appropriate for there to be a single non-federal LAT. Finally, one commenter pointed out that U.S. EPA is required by E.O. 12777, to amend the NCP to indicate that the federal trustees shall designate one federal trustee to act as the LAT in the event of a discharge of oil.

Response: NOAA points out that any of the possible suggestions for LAT designation could be appropriate. The designation of a LAT is so fundamentally affected by the circumstances of the event that it would simply not be possible for NOAA to decide ahead of time on behalf of the trustees. Finally, a discussion of federal trustee requirements under E.O. 12777 is given in the discussion in this preamble on prespill planning.

Comment: Several commenters stated that where there are both federal and state trustee agencies involved, there should be one federal LAT and one state LAT selected. One commenter noted, however, that the correct allocation would be one federal LAT and one non-federal LAT.

Response: NOAA notes that, as mentioned in an earlier discussion, it is possible that trustees at an incident could decide to appoint co-LATs. Another way to deal with potential multiple LATs would be to rotate or split LAT duties on a mutually agreeable schedule among the trustees.

Comment: Many of the commenters who spoke to the issue of how one would select a LAT stated that the rule should allow for the trustees to make that decision at the time of the discharge, based upon the particular situation. One commenter, however, asked for specific guidance in the rule as to how a LAT would be selected, while another stated that such designation would take place in the prespill planning. Some of the commenters suggested that the trustees consider such things as the habitat affected, the experience of the trustees involved, or the liability limits of possible state law as opposed to OPA. Other commenters pointed out that the scope of the effects should be the deciding factor. A state agency may have the majority of concerns in a particular situation, but in other situations the effects may extend well beyond the state's borders so that the federal trustee may be the logical choice. Finally, one commenter suggested NOAA adopt the provisions found in 43 CFR 11.32(a)(1)(ii), which suggests appointment of a lead official based upon the trusteeship of the resources most affected or upon the ownership of the waters or land upon which the incident occurs.

Response: Again, NOAA notes that all of these suggestions may be considered in the selection of a LAT, but that it would be impossible to require a particular designation within the proposed rule.

Comment: Several commenters stated that the LAT's duties should be ministerial, i.e., scheduling meetings, coordinating communications with the OSC and the RP(s), serving as a central contact for information exchange and data collection. Some of the commenters noted that the nature of the LAT's duties should not be allowed to usurp or interfere with the rights of the other trustees. Other commenters, however, suggested that the LAT should have a true leadership role.

Response: NOAA agrees that the LAT's duties should be mainly administrative unless all trustees agree otherwise.

Comment: Commenters on the issue of arbitration authority for the LAT were split. Many of the commenters stated that the LAT must not have the authority to preempt the other trustees' exercise of their trustee responsibilities. These commenters noted, as support, that OPA requires the various classes of trustees be responsible for conducting assessments for their own resources. These commenters also pointed out that arbitration authority in one trustee would be an impossible situation where that trustee is also the response agency or the RP.

Response: NOAA points out that the intent of Congress is quite clear on the issue of any trustee having preemptive authority over other trustees. The OPA Conference Report, at 209, states that "[o]ne class of trustees cannot preempt the right of other trustees to exercise their trustee responsibilities."

Comment: The other side of the argument was presented by quite a few commenters. These commenters noted that a LAT with arbitration authority is a necessity for any assessment. They pointed out that there must be someone with the authority to settle disputes, or the integrity and effectiveness of the assessment are lost. These commenters argued that any assessment without a decisionmaker would break down into a contentious, ineffective process. Some endorsed 43 CFR 11.32(a)(1)(ii) as an effective way to appoint an arbitrator LAT.

Response: NOAA agrees that some process should be worked out for settling disagreements or disputes. However, as stated earlier, this rulemaking could not dictate that process. Also, as mentioned elsewhere in this proposed rule, there is no prohibition against trustees doing parallel assessments so long as there is no double recovery of damages.

Comment: Some commenters expressed concern over the trustees' ability to reach agreement by consensus. One commenter even suggested that the LAT be vested with the sole decisionmaking authority. One suggested that the LAT should have arbitration authority, and one suggested that all trustees always acknowledge NOAA in that role.

Response: No trustee can abrogate another trustee's(s') responsibility. Experience has shown that once the trustees have become fully informed of the facts of a particular incident, their common interests lead to consensus decisionmaking. NOAA agrees that in any incident an agreement upon the appointment of a LAT should be an early order of business. For the reasons discussed regarding agreement by consensus, giving arbitration authority to the LAT would not be workable. Since the selection of the LAT is usually dependent upon the circumstances peculiar to each incident, advance designation of NOAA, or any other trustee in that role, would not appear to be a prudent procedure.

Comment: One area that some commenters felt needed clear language in the rule was where a trustee is also the RP. In such cases, these commenters stated that the trustee/RP should never be allowed to serve as the LAT, unless, as suggested by one commenter, there is unanimous consent of the other trustees.

Response: NOAA notes that trustees at the time of an incident may need to decide whether another trustee who is also an RP could serve as the LAT. Such selection is not impossible, but should be considered at the time.

Comment: Some commenters suggested that in some cases no LAT may be designated, at the option of the trustees.

Response: NOAA agrees that there may be cases where there is no LAT selected, but only where there are state and no federal trustees.

Comment: Various commenters agreed with appointing a LAT. Many suggested that all trustees should agree upon a LAT prior to receiving funds from the OPA trust fund, so that all would have the necessary incentives to meet reasonable and responsible guidelines for their expenditures.

Response: Federal trustees, under E.O. 12777, may need to agree to designate a federal LAT before receiving monies from the OPA Fund. The management of that Fund, however, is not within the scope of this proposed rule.

Comment: Several commenters agreed that trustees should coordinate the assessment/restoration process, but pointed out that OPA does not preclude different trustees from conducting parallel assessments with individual plans, so long as there is no double recovery of damages.

Response: NOAA notes that these commenters are correct. The trustee(s) may, under OPA and this proposed rule, conduct separate, parallel assessments so long as there is no double recovery of damages.

Comment: One commenter suggested that NOAA should propose guidance on when a foreign trustee could serve as the LAT, particularly when the LAT's duties require spending U.S. public funds.

Response: Like so many of the other issues in trustee situations, the option of selecting a foreign trustee to serve as LAT is best decided by parties involved in a particular discharge.

Comment: Quite a few commenters suggested that NOAA has the technical expertise and experience to assume the role of LAT for assessments conducted pursuant to OPA.

Response: NOAA appreciates the commenters who suggested that NOAA should serve as the federal LAT at discharges. However, it would clearly be inappropriate for NOAA, within this rulemaking, to appoint itself LAT.

"Model MOU"

Comment: A number of commenters recommended increased coordination between state and federal agencies through a Memorandum of Understanding (MOU). One commenter suggested that MOUs should be generic enough to cover any applicable discharge, but specific enough to avoid conflict. Some were concerned that a state would be given only one voice or participant pursuant to an MOU. Some cited the need for multiple-state, and state-by-state/regional MOUs, or even MOUs based upon tribal jurisdictional areas. Another commenter noted that the model MOU should not require unanimous decisionmaking.

Response: The model MOU contained in NOAA's notice was included as an illustration of the type of agreement that would facilitate and coordinate the trustees' activities. The nature of an MOU developed by trustees would need to be as general or specific as deemed necessary by the particular trustees. It is understandable that each region and/or incident would require some modification to adapt to local circumstances. For example, the inclusion in the model MOU of one state signature line was not intended to preclude the situation where more than one state agency exercises trustee responsibilities, or the situation where more than one state or tribe might be involved in the same incident or region. Also, with consensus decisionmaking, the number of voices (or "votes" in the words of one commenter) speaking for any given trustee is essentially immaterial.

Comment: One commenter suggested that an MOU should be developed through prespill planning to include provisions for the establishment of: damage assessment working groups, trustee responsibilities, trustee notification, coordination with the OSC or designee and trustees' activities in the response structure, opportunity for participation by all affected trustees, designation of a lead trustee, decisionmaking procedures, contracting objectives and guidelines, maintenance and use of damage recoveries, and other such provisions.

Response: To the extent practicable, NOAA agrees that all parties would benefit from having such provisions included in a prespill MOU.

Comment: Another commenter suggested that NOAA, in particular, should enter into MOUs with state trustees concerning every important aspect of the state trustee's assessment process.

Response: NOAA has worked with certain state trustees under MOUs for particular discharges and would hope to reach agreement on the model MOU language with as many states as possible.

Comment: The concept of prespill planning and development of an MOU between the potentially affected trustees was favorably received and encouraged by those who commented upon it.

Response: NOAA agrees fully and through this proposed rule is encouraging prespill planning in order to reduce, to the extent reasonably practicable, the waste of precious time in start-up activities when an incident occurs.

Comment: Two commenters suggested that failure to participate in an MOU, or failure to coordinate efforts between the trustees, should result in the loss of the rebuttable presumption that the trustees' assessments were conducted in accordance with the regulations. Another commenter noted that the MOU should provide for the loss of the rebuttable presumption if NOAA's rule is not followed.

Response: A trustee cannot be forced to enter into an MOU, and the failure to do so cannot result in the elimination of a right granted to it by statute. Further, the use of this proposed rule is optional, not mandatory. Therefore, although the trustees may agree on an MOU to use this proposed rule, such an agreement would be optional to the trustee(s).

Comment: One commenter suggested that development of local and regional assessment protocols or MOUs be required by the proposed rule.

Response: The proposed rule recommends that such agreements be developed.

Comment: One commenter addressed the "confidentiality" provision contained in the model MOU, and expressed concern that its inclusion would hinder public participation in the decisions to be made by the trustees.

Response: NOAA is committed to public participation to the greatest extent possible in all of these situations. However, on a case-by-case basis, some provision for confidentiality may be necessary in the event of a potential adversarial proceeding against the RP(s).

"MOUs With Potential RP's"

Comment: Some commenters suggested that potential RPs should be involved in the development of, or included as parties to, the trustees' MOUs. Another commenter pointed out, however, that the RP MOUs should be developed separately from the trustee MOUs because the responsibilities of the parties are so different. One commenter specifically suggested that a generic enforceable agreement be drafted and negotiated with a large group of potential RPs. This agreement could then be offered to an RP following a specific discharge to allow early RP involvement without wasting time negotiating. The commenter noted that the agreement would be enforceable and would allow the trustee(s) to oversee all work done by the RP(s). Finally, the commenter noted that the development of such an agreement prior to a discharge would allow meaningful public comments on the contents of the agreement.

Response: The basic concept underlying these MOUs is an attempt to organize and coordinate the efforts and duties of the various trustees at the time of an incident or, hopefully, prior to the occurrence of an incident. The trustee(s) is encouraged, where appropriate, to consider potential RPs in this process, or to negotiate separately with potential RPs to develop prespill enforceable agreements.

"Advantages of Prespill Planning"

Comment: The vast majority of the commenters agreed that prespill planning would be advantageous. Some of the advantages included: helping to define the response priorities of the damage assessment activities to be accomplished during response; presenting a united front to the RP(s); increasing the public's perception of a coordinated effort; improving the transition from "cleanup" to "restoration;" sorting out organization and administrative responsibilities in advance; increasing chances of a successful recovery; increasing timeliness of the natural resource damage assessment; and improving chances of involving more interests in advance of a discharge.

Response: NOAA agrees that all of these goals are in the best interest of the public and environment.

"Disadvantages"

Comment: Some of the commenters pointed out potential problems associated with the concept of prespill planning. These possible problems included: The potential for conflicting provisions with the existing response structure; adding another layer of planning activities that would burden smaller companies, and the personnel and budget constraints of many states; and adding another layer of plans that might cause confusion during a response. Some commenters noted that the prespill planning process would be quite expensive, diverting millions of dollars that could be used for true environmental purposes, and would not be practical for all locations, but should be limited to endangered species, sensitive areas, or areas where large discharges or effects are likely to occur. Another commenter noted that such plans might identify unnecessary studies that might be carried out in the event of a discharge, with little or no connection to the actual or anticipated effects related to that specific discharge.

Response: NOAA notes that engaging in prespill planning is not intended as an empty exercise. Where prespill planning would complement preparedness plans already in place, or create such a plan not yet in existence, the planning would be a worthwhile effort. It would not be worthwhile, however, to go through the effort if the result is not beneficial or would interfere with other duties. The level of effort and expense should depend upon the need. Also, the purpose of the prespill planning is to clearly identify the types of concerns and possible solutions that the trustee(s) is likely to encounter when the oil hits the water.

"Optional"

Comment: Several commenters stated that the prespill planning should be discretionary, particularly if funding is not available, and should not lose the rebuttable presumption argument for an assessment conducted in an area where there are no applicable prespill plans in place. Another commenter suggested that these plans should be funded by the federal, e.g., Oil Spill Liability Trust Fund, and/or state governments.

Response: NOAA agrees that the prespill planning is optional and recognizes that agencies need funding for such activities. Trustees will undoubtedly need to draw to some extent from their budgets to develop such plans. The management of and disbursement of some funds, e.g., Oil Spill Liability Trust Fund, will be dependent on the regulating agency and is outside the scope of this rule.

"Other Plans"

Comment: Many commenters spoke to the issue of other existing or future plans under OPA, particularly the NCP. Some commenters stated that the

damage assessment prespill plans should be appended as discrete documents to the various contingency plans, such as the Spill Prevention Control and Countermeasure Plan program for oil storage facilities (U.S. EPA, 40 CFR 1 12, 1974). Other commenters stated that the trustees should defer to the new NCP, especially the fish and wildlife response plans, and not require a separate level of planning that might be duplicative and counterproductive for trustee concerns. Other commenters stated that the NCP would not be the appropriate vehicle for trustee plans because the contingency plans are focused on response scenarios, not resource concerns. Many of the commenters suggested that the trustee planning would fit in well with the contingency planning at the local area committee level since these area committees are to be formed in logical geographical areas and many of the personnel and agencies involved in a discharge will have a chance to meet and discuss issues of common concern at the local level. This prespill interaction at the local level will provide increased response and cooperative actions during both spill drills and actual discharge events. One commenter even suggested that Local Area Plans be amended to provide for assessment procedures.

Response: NOAA agrees that some trustees may want to have damage assessment prespill plans referenced by or attached to response contingency plans so that the OSC would have the broadest possible base of information available during a discharge. Such decisions would be left to the trustee(s), in coordination with the OSC. However, NOAA does not agree that this type of planning is unnecessary for the purposes of response cleanup and natural resource concerns occurring as part of the response phase of a discharge incident. Resource planning is a vital part of ACPs. Prespill plans will be needed to address the damage assessment coordination issues of the natural resource trustees. NOAA does agree that the Area Planning Committees called together for response planning would, in many cases, be a logical starting point for setting up follow-up meetings of the trustees for damage assessment planning activities. It should be left to the trustee(s) to choose the appropriate vehicle and areal extent of trustee planning exercises.

"Parties Involved"

Comment: Many of the commenters agreed that representatives of federal, state, tribal, and foreign trustees in logical geographical areas should meet to develop prespill plans. Several commenters, however, noted that prespill planning should involve not only the various trustees, but members of the response agencies and representatives from industries that may be involved in transport or storage of oil in those areas covered by the plans. Some commenters noted that private response contractors should also become involved and not only gain from meeting and establishing relationships with agency personnel, but also through becoming more aware of environmental concerns associated with various response strategies.

Response: NOAA agrees that the broader the planning and information base the better for prespill planning purposes. However, the most appropriate forum for relaying the issues would be as technical working group members of the OPA Area Committees. Additionally, NOAA again cautions that the scope of these planning actions is left to the judgment of the trustees.

"Specific Response-Reloted Prespill Planning Issues"

Comment: Some commenters specifically noted certain areas of common concern to both the trustee(s) and OSCs. For example, it was suggested that prespill agreements could be worked out with the OSC-chaired area response structure to cover: establishing communication roles; identifying trustee damage assessment and OSC contacts; human health and safety requirements; conducting spill drills that include damage assessment components; working with the Fish and Wildlife and Sensitive Environments working groups of Area Committees to identify resources of particular concern; and issues of sampling, information, and data sharing.

Response: NOAA agrees that there are numerous areas of overlapping interests between the damage assessment trustee(s) and OSC coordinated response structure. These issues are discussed at length in the section of this preamble concerning coordination between damage assessment trustees and the OSC coordinated response structure.

"Public Involvement"

Comment: Many commenters stated that the trustee(s) should involve the public in the prespill planning activities. Some commenters stated that this involvement could be accomplished through a review and comment process of drafted prespill plans. Other commenters suggested that members of the public could be helpful in developing those plans. One commenter noted that public involvement in the prespill plan is important to avoid litigation.

Response: NOAA believes that public involvement in prespill planning is important to the success of these plans. Public awareness is generally high during an actual discharge. Much public anxiety could be avoided if the public is informed of the operations of the network of agencies during a discharge. As these commenters noted, vital information can be gained by those members of the public most familiar with the natural resources.

"Scope"

Comment: Several commenters suggested that the prespill plans be as broad as possible to cover as many trustee concerns as possible before the oil hits the water. Another commenter, however, recommended that damage assessment prespill plans not be rigidly drawn. The commenter cautioned that the plan could become a liability where the nature of a particular discharge is not contemplated in the prespill plan. Further, the commenter stated it could be an unwise expenditure to develop a contingency plan broad enough in scope to address an endless array of possible discharges.

Response: NOAA agrees that such plans should be as broad as possible. However, as noted previously, there are many demands upon the time and resources of trustee agencies. The plans, therefore, should be tailored to meet the needs of the trustee(s) and must, of necessity, be flexible.

"Contents"

Comment: Most of the commenters had specific suggestions as to the particular items to be included in prespill plans. These items included: identification of sensitive areas; appropriate response techniques that would have the least adverse effect on resources of concern; location, types, and level of detail of baseline information; identification of the types of data needs of trustees during a discharge and subsequent assessment; agency contacts for the purpose of notification and information sharing; surveillance and monitoring schemes; sampling protocols; sensitive ecological, economic, and social areas and priorities for protection; resource inventories; avenues for trustee input on response actions; response plans for trustee actions; methods for public information and involvement; socioeconomic effects; prespill drills; and a compilation of various environmental and safety laws that might apply to a damage assessment effort.

Response: NOAA agrees that the components listed in these comments are the types of concerns that should be addressed. However, the items mentioned for inclusion in prespill plans mixes: (1) Issues that should be covered in the ACPs and only referenced in the natural resource damage assessment prespill plans; (2) issues that should be covered in both (but normally collected only once, sometimes by working groups of the Area Committees and others by the natural resource damage assessment prespill plan working groups); and (3) items belonging only in the damage assessment prespill plans. In the first group belongs: appropriate response technologies, priorities for protection, avenues for trustee input on response actions, response plans for trustee actions, and most of the surveillance and monitoring. In the second group belongs: identification of sensitive areas, public information, contacts notification and information sharing. The remainder falls in the third group.

Comment: A commenter proposed that NOAA establish a centralized database that can be accessible to all trustees nationally. The Lead Administrative Trustee at each incident should be obliged to ensure that the data are collected and submitted to the central database in a compatible manner. Several states are now implementing and upgrading Geographical Information Systems (GIS) that could be the repository of this data. Such a database would save time and money for both the trustee(s) and RP(s). It would be a useful way to build a history of scientific information and costs.

Response: NOAA agrees that a centralized database would be helpful to trustees in the future, but has no plans for such a project at this time. However, NOAA has conducted a comprehensive literature survey of restoration techniques that is available as an additional guidance document.

Comment: One commenter stated that NOAA should emphasize the need for involvement of experts on the fate, behavior, and ecological effects of oil and various cleanup and restoration options. One commenter noted that scientific literature is available to guide decisionmakers. Another commenter recommended that the trustee(s) refer to area contingency plans in determining environmentally sensitive areas.

Response: NOAA agrees that the trustee(s) should take advantage of existing sources of appropriate information. The Area Contingency Plan's Fish and Wildlife and Sensitive Environments Annex is also the repository of trustee(s) input for response actions and should contain a mechanism for ongoing input during the spill's response phase to the OSC about response actions affecting natural resources.

Comment: One commenter suggested NOAA, with its extensive experience and expertise in habitat and species restoration, offer the services of NOAA's "Restoration Center" or NOAA's HAZMAT group to the trustees as necessary.

Response: NOAA appreciates the opinion of the commenter and notes that NOAA, in appropriate circumstances, may lend any expertise it has to the other trustee(s). However, there may be discharges in which NOAA does not have experience to share.

"Restoration"

Comment: One commenter stated that trustees might include in prespill planning the development of an overall restoration approach.

Response: NOAA agrees that the earlier the trustee(s) begins to think in terms of restoration, where possible, the better. Elsewhere in this preamble, NOAA states that, where the trustee(s) has adopted a regional restoration plan for a specific area, recoveries of several discharges may be pooled to help fund such plans. This option for use of recoveries will likely be most useful in areas with long-term pollution effects where damages recovered from a single discharge would be too small to improve the ecosystem.

"Limits/Exclusions"

Comment: Several commenters pointed out that even comprehensive prespill plans will not be able to foresee the multitude of possible unique circumstances and events associated with a particular discharge. One commenter pointed out that the trustee(s) should stress that there may be some data requirements for a particular discharge that might not be covered by generic prespill plans. Another commenter suggested that, instead of trying to list within prespill plans specifics on sampling, data collection, baseline studies, and specific contract obligations and performance standards, the trustee(s) could reference the locations of such items in a supplemental document format. Another commenter stated that long-range damage assessment and restoration management plans should be developed only after a discharge, when the specifics of the resource injury are known.

Response: NOAA recognizes that no plan can ever encompass all possible events. Therefore, any plan must be flexible and recognize that it is subject to change in the event of a discharge. NOAA also agrees that any long-range damage assessment would have to be tailored to the specific discharge, but points out that certain components, such as administrative management, will likely need to be addressed for all discharges. As to restoration management, as noted previously, some restoration planning for areas frequently affected by discharges might be possible.

"Guidance"

Comment: One commenter suggested that prespill planning activities should include the development of a "generic" damage assessment "initiation" workbook. Such a workbook could include a general list of the types of information that the trustee(s) would routinely need during the early stages of response and damage assessment. Another commenter stated that the trustee(s), in prespill planning activities, should recognize the importance of developing socioeconomic damage assessment responsibilities, guidelines, and procedures. Finally, one commenter stated that prespill plans should reflect the fact that planning officials from agencies may not be the trustee officials who would actually be involved in the assessment and restoration activities.

Response: NOAA encourages the development of guidance documents or workbooks wherever possible. Such knowledge should be documented so that one is not "reinventing the wheel" with each discharge. NOAA also notes that socioeconomic damage assessment issues might be covered in prespill planning, should the trustee(s) desire. Finally, NOAA recognizes that in some entities, contingency planning and response personnel may not be the same personnel involved in damage assessment and activities. Therefore, it is important that all those concerned in a discharge, both from the response side and the trust resources side, become familiar with the various responsibilities of each other before the oil hits the water.

Coordination With Response Agencies Response to Comments

"General"

Comment: Commenters were almost unanimous in agreeing that the actions of OSC response agencies and the response and damage assessment

trustees should be coordinated to ensure effective and efficient cleanup and minimize the environmental effects of the discharge. Some of these commenters urged NOAA to clearly define each agency's role in the cleanup and assessment processes. Others noted that such coordination is already addressed in section 1011 of OPA and, therefore, should not be repeated within NOAA's rule. These commenters were concerned that another layer of required coordination would add possible confusion and conflict. Therefore, these commenters suggested general, non-binding guidance for this proposed rule.

Response: NOAA agrees that trustee agencies should work closely with OSC agencies to minimize the effects of a discharge through cleanup strategies. Although NOAA cannot dictate to OSC agencies their roles in cleanup, NOAA does give guidance to the damage assessment trustee(s), in this proposed rule, on interaction with the response structure regarding damage assessment issues. NOAA recognizes that coordination between the OSC and trustee agencies is covered in section 1011 of OPA and that such duties will be covered in other rulemakings under OPA. Any guidance in this proposed rule is intended to supplement the explanation of the damage assessment trustee's concerns about efficient coordination. As such, NOAA agrees that any guidance in this proposed rule is not binding.

"Role of OSC"

Comment: Many commenters pointed out that, during a response to a discharge, the On-Scene Coordinator (OSC) is the government's authorized source of information and directions to the RP(s). As such, the OSC must be advised of and retain oversight over all activities occurring during that response phase. Other commenters, however, noted that the OSC cannot divert his attention from the response to coordinate damage assessment. Also, any concerns over litigation, whether for response costs or natural resource damages, should not come up during the response where the common goal should be prompt and effective response.

Response: NOAA agrees that only the OSC is the spokesperson for response purposes at a discharge and, as such, has oversight of all response activities. However, the OSC has quite enough to do during a response without needing to be burdened with assessment duties as well. In any event, the trustee(s) has these assessment duties as statutory requirements and cannot pass those duties off to an OSC.

"Response Preeminent"

Comment: Several commenters stress that coordination between the trustee(s) and the OSC must not deter the OSC from overseeing the response effort, or undermine the cleanup as effectively and promptly as possible or hamper free flow of information.

Response: NOAA agrees that the trustee(s) should not disrupt the cleanup directed by the OSC.

"Role of Trustee(s) During Response"

Comment: Several commenters pointed out that the trustee(s), because of resource expertise, has an advisory role to provide input in the response planning process and help influence response priorities and techniques for protection. These commenters noted that, during the response, the trustee(s), not the OSC, has the responsibility for damage assessment issues and should be the one collecting information for the damage assessment, not the OSC or the RP(s). Some commenters stated that the trustee(s) does not, in fact, have a response role as such and should not issue orders to the RP(s) during a response. One commenter noted that, if the trustee(s) is involved in natural resource damage assessment activities during a discharge, he should not have a part in decisionmaking since there may be a conflict of interest or conflict of mission when one agency has both responsibilities. Another commenter noted, however, that there is no conflict of interest if one agency is both trustee(s) and response agency since the role of the response agency is to protect, enhance, and restore the environment, which is consistent with the mission of the trustee(s).

Response: NOAA agrees that the trustee(s) when acting as the resource expert, has an advisory role, as the resource expert, to the response planning process and that the trustee(s) has the responsibility for damage assessment. However, in the interest of efficiency, if an OSC or the RP(s) is collecting samples, those samples may be shared with the trustee(s) if all parties are agreeable. NOAA believes that the trustee(s) should always be involved with response decisions. As one of the commenters pointed out, both the trustee(s) and OSC agencies have the same basic mission—protection of the environment. These roles complement, not conflict with, each other.

"Decisionmaking"

Comment: Several commenters noted that an emergency response cannot be directed by committee or consensus. One of these commenters suggested that the goal of coordination is to involve the most knowledgeable discharge experts, not simply to involve the greatest number of interested parties. Finally, this same commenter noted that the Advance Notice of Proposed Rulemaking was not clear as to the extent to which NOAA is recommending participation of trustee agencies in discharge response decisionmaking.

Response: NOAA acknowledges that emergency decisions cannot be directed by outside committees and did not mean to suggest differently. NOAA agrees that decisionmaking should be focused through knowledgeable advice. NOAA also points out that discharge response decisions are the ultimate responsibility of the OSC, but the OSC does not make these decisions without foundation. The trustee(s), in their response role, have a consultation role to play in the decisions.

"Notification/Consultation"

Comment: One commenter pointed out that to fulfill the statutory obligation of section 1011 of OPA, the OSC will need to initiate immediate contact after a discharge with all affected trustees and will also need to communicate with them throughout the removal process. Some commenters stated that they wanted to be notified of every discharge. One commenter noted that this kind of notification would ensure that only the trustee(s) would be deciding if the discharge warrants a damage assessment or not. Another commenter stated that, even if the affected trustee(s) does not take damage assessment action at each discharge, the notification requirement is important to build a comprehensive history of a particular site. Some commenters suggested that a routine notification procedure, for example, once a week for most discharges, with basic information sent to all potential trustees, would be sufficient for a trustee(s) to determine whether trustee resources may suffer significant injury. However, for significant oil discharges that may affect trustee resources, the trustee(s) will still require simultaneous notification. One commenter suggested that, to differentiate those discharges that would require weekly rather than simultaneous notification, resources could be categorized hierarchically in terms of value. One commenter stated that the DOI rules suggest that the most likely federal or non-federal trustee could receive the notification and be responsible for notifying other trustees. Another commenter suggested that NOAA consider the creation of a Damage Assessment Officer position, through NOAA resources, to work with

OSC for the purpose of notification and communication. This person would augment the resources targeted to the notification process and allow expeditious determination of the discharge's significance.

Response: NOAA agrees that the OSC will notify the trustee(s) of discharges. It is also understood that it is the statutory duty of the trustee(s) to determine whether a discharge warrants a damage assessment, especially since the trustee(s) cannot assign this duty to the OSC or any other entity. NOAA also notes that notification of discharges helps the trustee(s) build an important history of the area's exposure to discharges of oil. NOAA notes that a weekly notification of the numerous relatively small discharges might be a good arrangement to establish in the prespill planning. However, this proposed rulemaking cannot dictate the timing or manner of notification for either the small discharges or the larger ones. Nor can NOAA establish in this proposed rulemaking that one or another trustee agency will have the duty to notify all other trustees. There are several problems with that kind of assumption of responsibility. First, that duty to notify is already conferred upon the OSC by OPA. It is unclear that it would be beneficial for some other agency to assume that duty. Second, any trustee agency that might agree to serve such a function as a surrogate for the response agency would have to recognize the budget and personnel costs of such a duty. NOAA believes that prespill planning is essential for working out such notification requirements.

Comment: Other commenters noted that there are numerous regulations to be promulgated by the response agencies pursuant to OPA that would address, among other things, multiple duties in consultation with the natural resource trustee(s). These commenters pointed out that the OSC should not be burdened with the responsibility of determining all the trustees to notify for a particular discharge.

Response: NOAA agrees that the consultation procedures should be worked out during other pertinent rulemaking efforts. The identification of trustees requiring notification is a good example of the kind of process that should be developed in the prespill planning.

Comment: Some commenters cautioned that the current statutory requirement that the RP(s) notify the National Response Center when discharges occur does not include notification of such discharges to the trustee(s). These commenters noted that the trustee(s) and OSC must establish communication roles and identify contacts for purposes of such notification. These commenters pointed out that the RP(s) should not have trustee notification added to its responsibilities.

Response: NOAA acknowledges the fact that the only reporting requirement of the RP(s) is to the National Response Center. There is no duty to notify the trustee(s) over and above what is provided in OPA. This proposed rule would not be an appropriate vehicle for such a requirement.

"Data Sharing During Response"

Comment: Many commenters noted that information should flow freely between response and damage assessment trustee agencies during an event.

Response: NOAA agrees with these commenters and will encourage such information sharing as much as possible.

Comment: One commenter suggested that the OSC may be able to gather data on samples more efficiently than the damage assessment trustee agencies and save time and avoid additional effects. Another commenter, however, suggested that there should be damage assessment trustee data collection teams separate from the OSC's response structure.

Response: NOAA agrees that it would be more efficient and less risky to the natural resources to have the OSC-coordinated response structure collect all information needed at the site of a discharge. However, in most cases, such data collection is simply not possible. Separate data collection teams may be a good idea so long as there is no interference with the response and no "unreasonable" costs associated with it.

Comment: Commenters noted that the OSC relies primarily upon information about sensitive or valuable resources contained in the appropriate ACP, but that this information can be augmented by the advice of the trustee(s) during a discharge. Many of these commenters noted that any information requested by an OSC to make a response decision must be immediately provided, if available. These commenters stated that withholding information due to litigation concerns does not outweigh the need to minimize environmental damage. Some of these commenters noted, however, that such information will become public information through the OSC.

Response: NOAA notes that all of these concerns are valid. The fact that some information may be used in some future litigation is not a good reason for possibly impeding a response action.

Comment: Many commenters noted that the OSC, by nature of being on scene, has information critical to the trustee's(s') preassessment work and that this information should be shared with the trustee(s). One of these commenters pointed out that by sharing such information with damage assessment trustee(s), the OSC is allowing the trustee(s) to spend time compiling any additional information it needs rather than duplicating efforts. Other commenters noted that where the trustee(s) damage assessment data needs are clear and not burdensome, the OSC might be able to collect additional information on behalf of the damage assessment trustee(s), so long as such efforts do not interfere with the response effort.

Response: NOAA agrees that the OSC may be able to share much information with the damage assessment trustee(s), thereby improving the efficiency of both. The possibility that the OSC could actually collect additional information beyond what is needed for response might be worth exploring in the prespill plans and ACPs so long as the parties understand that the OSC could not conduct such work if it would interfere with the response.

Comment: Several commenters pointed out that the trustee(s) should not exclusively rely upon the OSC to collect information necessary for an assessment, but should be allowed to gather additional information during the discharge.

Response: NOAA is of the opinion that where OSC-collected information is relevant to the damage assessment process, such information should be used to avoid redundancy and double counting. However, it is ultimately the responsibility of the damage assessment trustee(s) to collect the necessary data for a damage claim.

Comment: Some commenters noted that the OSC should seek early involvement of the trustee(s) in order to share information about the characteristics of the discharge and the potential effect to the environment, particularly information on local conditions and resources. Several commenters pointed out that this sharing of information would also allow the trustee(s) to evaluate and make recommendations on the response activities themselves, so that the damage caused by the discharge is not worsened by the type of response and cleanup techniques, but that the cleanup might accelerate the recovery of the resources.

Response: NOAA points out that there is currently a mechanism for funneling

important resource information to the OSC, providing technical advice and recommendations to minimize the effects of the oil and response activities. The OSC accomplishes this by soliciting input from trustee agency experts, academia, etc. The mechanism for relaying this information is already in place through the ACPs, but could be restated in the prespill plans.

Comment: One commenter stated that high-impact cleanup methods that remove living organisms and greatly modify the habitat are not justified when the oil left in the environment has already lost most of its toxicity. There may be less injury and faster recovery with limited or no removal and natural recovery. The commenter stated more research is needed in all areas of restoration ecology. Several commenters urged trustees to help plan response and cleanup actions that will have lesser effects on the resources.

Response: NOAA agrees that more research is needed in the field of resource restoration. The commenters are correct in pointing out that trustee input to cleanup decisions may greatly reduce resource effects to be corrected by restoration. NOAA agrees that the ecological effects of any planned action should be considered in the restoration planning. There may be certain instances where the public uses of an area may require removal of residual oil in order to restore the services provided prior to the discharge.

"Funding"

Comment: Some commenters were encouraged that there would be provisions for the use of the Oil Spill Liability Trust Fund for trustee activities, including the initiation of natural resource damage assessments and time-sensitive damage assessment activities where other funding is not available. Another commenter noted that agencies within a state might not be the ones designated to apply for funding, but still need access to the Fund to participate in the process.

Response: NOAA points out that the procedures for the management of the Fund are the subject of different rulemaking efforts by the U.S. Coast Guard and are outside the scope of this proposed rule. The problem noted by one commenter as to different agencies within a state having different roles is an internal state issue, clearly not within this rulemaking. Hopefully, such problems can be identified and resolved within the prespill planning.

"Define When 'Cleanup' is Over"

Comment: Quite a few commenters requested guidance on when the removal portion of a response would be deemed to have ended, and when remedial and/or assessment activities might be more appropriate and suggested criteria for the OSC to use in making this determination. Some of these commenters noted that this determination is important since liability for restoration measures can only be determined to be necessary if natural resource injuries still exist after the legal conclusion of the "removal" phase. Another commenter pointed out that, although data on the scientific effects of a discharge should be collected as soon after the discharge as possible, damage assessment activities should occur only after the response and cleanup activities are completed.

Response: NOAA notes that the end of the removal portion of a response is defined by the OSC and it would not be appropriate for this proposed rule to try to dictate the criteria for making that decision. NOAA does note that there is a clear line of division, legally, between removal and restoration. The commenters are correct in noting that restoration is residual to response efforts. The trustee(s) must determine what, if any, further actions beyond response work are necessary for the recovery of the system. However, the trustee(s) cannot always wait until the end of all response work before beginning assessment/restoration activities. Such a delay would not be in keeping with OPA's policy of expeditious actions on behalf of the environment.

"'Cleanup' vs. 'Restoration'"

Comment: Several commenters were concerned with the issue of allowing the trustee(s) to undertake emergency restoration during response. These commenters were concerned that the proposed rule might blur the distinction between cleanup and restoration. Some of these commenters noted that in practice the distinction between cleanup and restoration eventually becomes difficult to maintain. These commenters pointed out that failure to make the distinction clear could result in: (1) Trustee-directed damage assessment activities conflicting with ongoing cleanup operations; (2) restoration money spent to reimburse cleanup activities; and (3) RP(s) requesting credits for "restoration" projects against assessed damages, when in fact those restoration projects were actually cleanup activities. As an example, one commenter pointed out that NOAA implied that physical removal of contaminated sediments and bioremediation are restoration techniques, whereas these were both considered to be cleanup methods during the EXXON VALDEZ response.

Response: NOAA agrees that, although there must be a separation under OPA between response and restoration because of the liability provisions and different implementing authorities, in the practical sense the two can sometimes involve the same type of activities. NOAA notes that "emergency restoration" (discussed in the section on the Preassessment Phase) should not conflict with on-going activities so long as they are part of the OSC-coordinated response. NOAA also notes that damages recovered for emergency restoration actions are not reimbursements for response actions, but are to reimburse the trustee(s) for actions deemed necessary due to the exigencies of the situation. Also, the RPs is not granted a "credit" to offset damages for funding emergency restoration. The effect of these emergency actions is to lessen, perhaps dramatically, increased effects and, therefore, larger future damages.

In some circumstances, the same action could be considered either a removal or restoration action, depending upon the purpose of the action and agency that is carrying it out. For example, if dredging is done for human health concerns by the response agency, it is a removal action. However, if the trustee(s) decides that cleanup to lower levels of contamination is needed to take care of resource concerns, then additional dredging may be necessary by the trustee to be able to "restore" the system.

Comment: One commenter pointed out that the natural resource trustee(s) currently has authority under 43 CFR part 11 to undertake emergency "restorations" to avoid, prevent, or mitigate certain imminent threats to particular natural resources. However, this commenter noted that restorative efforts, though important, cannot be allowed to physically interfere with emergency response.

Response: NOAA is familiar with the 43 CFR part 11 provision for emergency restoration and is hoping to foster consistency with this proposed rule. As mentioned earlier, trustee actions are not to interfere with response actions.

Coordination With the Public

Response to Comments

"Advantages"

Comment: One commenter pointed out that openness that allows for broad participation encourages directness. Another commenter pointed out that the public has the right to ensure that the assessment and restoration are done accurately and thoroughly. Some commenters noted that such participation will help find the most cost-effective actions and equitable damages. Other commenters noted that the public has an important and legitimate interest in the process and, in many cases, members of the public have expertise in a particular area of concern and can help with the assessment as well as restoration process. This commenter also noted that public participation is needed as a counterweight to the RP's participation. One commenter pointed out that withholding information would impede public and scientific input into the assessment process. Several commenters noted that every effort must be made to ensure that the assessment and restoration process is conducted in an objective manner to preserve public confidence in the process.

Response: NOAA agrees that each phase of an assessment/restoration process, including prespill planning, should involve the public to the extent practicable. Members of the public are an excellent source of information about particular natural resources and available expertise in the community. The public, as the owners of the natural resources, have a real interest in the assessment and restoration and might provide a balanced representation of the public interest.

"Not Necessary"

Comment: Some commenters stated that there is no need for extensive public involvement in the assessment process since the public natural resource trustees are, after all, the representative of the public. One of these commenters stated that the trustees' involvement in developing plans and assessments satisfies OPA requirements of public involvement. Another commenter pointed out that OPA directs the trustees to act on behalf of the public.

Response: NOAA recognizes that the trustee(s) is, in fact, acting on behalf of the public. However, this relationship does not mean that the trustee(s) is not accountable to the public. The involvement of the public in the assessment/restoration process does not mean the trustee(s) is abdicating fiduciary duties to the public. One of these duties is to adequately ascertain the wishes of the public concerning the management of the public's natural resources.

"Scope/Extent"

Comment: One commenter stated that public participation should be limited to safeguarding the trustees' accountability. Some commenters stated that there should be some exceptions to the amount of public participation allowed for an assessment. For example, one commenter suggested that members of the public should be allowed access to raw data if they demonstrate they have the resources to carry out the analysis. One commenter stated that providing for less than full review and comment by the public might appear that the trustee(s) is trying to exclude the public from the process. Another commenter stated that public review of purely scientific data would probably not interfere with litigation or negotiations. Other commenters stated, however, that the public review and participation should be mandatory for the entire process, including any modifications of plans that have already been available for public review and comment.

Response: NOAA notes that there will undoubtedly be some exceptions to the public involvement in this process. After all, the trustee(s) simply may not have the budget or time to allow for extensive public involvement. There are times when quick action is necessary, in which cases it would be unreasonable for the trustee(s) to wait for an opportunity for a public meeting before acting. In fact, this need for expediency is another reason for involving the public in the prespill planning. Also, there may well be sensitive information that is simply not possible to make public, e.g., litigation-sensitive material relating to liability. NOAA agrees that public review of data would not, in many cases, delay litigation or the assessment/restoration process. Also, NOAA agrees that significant modifications to materials that have already undergone public review should also be reviewed wherever possible.

"Levels of Review"

Comment: Several commenters pointed out that the extent and degree of public involvement on a particular discharge would depend upon the particular situation and the type of activity. One commenter suggested that the trustee(s) could inform the public through press conferences, press releases, open meetings, and Federal Register notices. Other commenters pointed out that public participation in each stage of an assessment may be impossible due to the dynamics of the discharge and would overburden the trustee(s) staff and budget.

Response: NOAA has stated elsewhere that the extent and degree of public involvement must be left to the judgment of the trustee(s). There will undoubtedly be discharges in which public review of documents would be quite expensive when compared to the effects caused by the discharge. Costs associated with dissemination of information for review must be reasonable.

Comment: A few commenters suggested that NOAA is proposing greater public participation in the assessment process than is provided for in OPA.

Response: OPA describes the assessment process in terms of the restoration planning process. Therefore, NOAA believes the trustee(s) has the discretion to determine the level and extent of public involvement.

"Timing"

Comment: One commenter suggested that the public have notice and opportunity to comment after the Preassessment Phase, after the full assessment, and before the adoption of a restoration plan. Another commenter stated that OPA provides the public with an opportunity to comment before restoration plans are developed and implemented. One commenter suggested that the public should have the option to review any modification of the Assessment/Restoration Plan. Another commenter stated that even preliminary plans for discharges into sensitive areas should be open for public review and comment. Another commenter stated that public comment should not be requested until after the post-recovery restoration plan is developed. One commenter stated that public participation should be sought at the prespill stage, not during a discharge investigation. Finally, one commenter stated that public comment at any stage should be at the discretion of the trustee.

Response: NOAA is leaving the timing and scope of public involvement to the judgment of the trustee(s). Clearly, in most oil discharge cases, the trustee(s) will be unable to delay action to allow for public review of all actions. However, at the first sensible opportunity, the trustee(s) should inform the public of the state of the process and seek public review as appropriate. NOAA agrees that the best time for public involvement is in prespill planning when the trustee(s) is not engaged in actual discharge activities. This does not mean, however, that this prespill involvement would substitute for appropriate public involvement in the case of an actual discharge. NOAA also notes that the discussion of the assessment/restoration planning process, found in subpart C of this proposed rule, provides for the review of "significant" revisions.

"Notice of Meetings"

Comment: One commenter noted that notice of public meetings concerning an assessment should be timely and posted in a publication of general circulation.

Response: NOAA agrees that, to be successful, notice of any meeting seeking public input must be published in a timely and visible manner and in a local publication of general circulation.

"Delays"

Comment: Several commenters noted that public involvement should take place during the response planning stage, not during an incident when such involvement might delay the response. These commenters noted that opening up the entire assessment process would significantly decrease efficiency and could interfere with an objective evaluation of the situation. Some of these commenters also noted that such public involvement in early restoration planning could delay the early start on restoration actions that may be possible. One commenter noted that delays caused by public involvement might increase the damages owed by the RP(s).

Response: NOAA emphasizes that the overall goal of this proposed damage assessment rule is to get from a discharge to the recovery of affected natural resources and services as quickly as possible. Therefore, unnecessary delays should be avoided wherever possible. However, as discussed elsewhere in this preamble, public involvement does not necessarily mean holding a large public meeting for each and every discharge. The same principle works in restoration planning and implementation. The trustee(s) is not serving the public if his actions slow down the healing process. However, the RP(s) is responsible for all reasonable damages caused by the discharge. When public natural resources are affected, it is reasonably foreseeable that the trustee(s) must comply with certain administrative processes and may have the duty to inform and involve members of the public during that time.

"Litigation Concerns"

Comment: One commenter noted that public comment specifically on the issue of the economic damages would strengthen those figures and increase the likelihood of successful recovery. However, another commenter noted that the trustee(s) needs free and open discussion of options with staff, outside of the public domain, as part of litigation approach. Another commenter noted that putting out the proposed restoration plan that would show proposed acquisition of land as an approach would cause a sharp increase in the price of that land.

Response: NOAA recognizes that public review and comment on various aspects of a study plan is a desirable goal. However, public information laws, such as the Freedom of Information Act (FOIA), take note of the fact that there is an exception to public review where a free discussion of litigation strategies or other sensitive issues are necessary. Also, any descriptions of land to be acquired as part of a restoration plan should remain general so that the prices would not be elevated.

"Limits on Public Involvement"

Comment: Several commenters noted that public involvement should be limited to the Congressional intent as shown by section 1006(c)(5) of OPA, which calls for opportunity for public involvement in restoration planning.

Response: NOAA notes that the section 1006(c)(5) requirement for public involvement in restoration planning is read as a minimum requirement in OPA. The clear Congressional intent revealed in OPA and its legislative history is that the public be involved in a meaningful way. Therefore, NOAA hopes to ensure that goal is met.

"Public Involvement in Restoration Planning"

Comment: Most of the commenters agreed that public involvement is necessary in the development of restoration plans.

Response: NOAA agrees that the development of restoration plans should be open to public involvement as noted above.

"Rebuttable Presumption"

Comment: One commenter noted that an assessment based upon a restoration plan that had not been developed with public review and comment would not receive the rebuttable presumption.

Response: NOAA points out that OPA specifically requires public review and comment on restoration plans. As noted earlier, however, full restoration planning for hundreds of small discharges may not be possible for all trustees. In such cases, the trustee(s) should consider developing regional or local plans that would go through the public review and comment process, receive the rebuttable presumption, and be ready to implement when funding is available.

"Citizen Oversight Committees (COC)"

"COC: Advantages"

Comment: Many of the commenters noted that allowing representatives of local groups to either attend trustee meetings to monitor the assessment process or participate in oversight committees will further the goal of meaningful public participation. One commenter pointed out that such participation is needed to gain a full understanding of effects on the affected community. Another commenter stated that such public involvement is crucial if jointly conducted, phased assessments are permitted. Another commenter suggested that assessment groups or teams should give adequate notice to and be open for public participation.

Response: NOAA agrees with the goal of involving the public and keeping the public informed of progress of the assessment and restoration of its natural resources. It is also expected that such public participation will add to the information pool available to the trustee(s). The point raised by the commenter that public involvement is needed in joint RP-trustee assessments, is well taken. If such efforts are to succeed, they must be conducted in the open. Finally, NOAA agrees that the public must be aware of the opportunities for involvement. Notice of meetings should be given in the manner most appropriate for any particular assessment.

"COC: Disadvantages"

Comment: Several commenters argued that there is no need for such groups since the trustee(s), the source of expertise in this area, is the representative of the public. Others warned that such oversight would impede the assessments, negotiations, and subsequent restoration efforts, if for no other reason than the sheer numbers of persons involved. Another commenter noted that this involvement would also greatly add to the cost of the assessment and restoration.

Response: NOAA agrees that the resource management agencies do have a wealth of expertise concerning their natural resources. Because no trustee can be omniscient, agencies must remain open to new sources of information. It is also unlikely that the process would be overwhelmed by vast numbers of citizens wanting to participate. In most cases, citizen or environmental groups represent the general views of the community and serve as focal points for interaction. Any discharge that invokes the personal interest of large numbers of people is clearly a discharge that needs public involvement. NOAA does not wish to suggest that these groups are being given the responsibility of running the assessment/restoration process. NOAA does not read the term "oversight" to mean "control." The trustee(s), by law, cannot give up their trust duties. Therefore, the citizen groups cannot have decision or arbitration authority. The term "oversight" in this context simply means participation, not authority. Public participation in this rule does not include "oversight" of management functions. Although the costs of preparation of materials and distribution of such materials would be considered part of the regular costs of an assessment, the costs borne by citizens interested in attending meetings or other citizen-borne costs of participation would not be included in the assessment costs.

"COC: Makeup of COC's"

Comment: Several commenters noted that Citizen Oversight Committees (COCs) should involve groups with environmental expertise in a systematic way to increase the collective knowledge available during an assessment. Another commenter suggested that a group similar to the National Science Foundation or the National Academy of Sciences could help minimize decisions and associated expenditures founded on poor science or made for political reasons.

Response: NOAA notes that the makeup of any group representing the public interest is highly incident-specific. The types of interest groups or organizations noted in these comments are good examples of groups that are likely to contribute the most to an assessment and restoration.

"COC: Optional"

Comment: Several commenters noted that, if NOAA decides to include a provision for a COC in the rule, this involvement should be strictly optional at the discretion of the trustee(s). Several other commenters, however, pointed out that, even if such provisions were optional, groups would come to see this participation as an entitlement and would demand it in each case.

Response: NOAA notes that the fear of some kind of "entitlement" specter should not prevent the trustee(s) from carrying out their duties in the most appropriate manner for a particular discharge. This proposed rule strongly encourages public involvement in assessments, but leaves the timing, scope, and extent of such participation to the judgment of the trustee(s). No national rule could possibly cover all scenarios that might arise due to a discharge of oil; therefore, this proposed rule must leave the trustee(s) with the flexibility to tailor the process to fit the discharge.

VI. Participation of the Responsible Party

While liability and responsibility of the RP(s) for removal and/or response activities are addressed clearly in OPA, little guidance is given in either the statutory language or the legislative history concerning the role of the RP(s) in the assessment process.

The degree of involvement of the RP(s) in the assessment process will likely have a direct bearing on several aspects of the assessment. For instance, active and early involvement of a cooperative RP(s) may eliminate some of the problems trustees have encountered immediately following a discharge of oil, such as the lack of funding, personnel and equipment. In addition, a joint trustee/RP assessment may be more cost effective and avoid duplicate studies by the trustee(s) and RP(s).

After reviewing and analyzing all comments concerning this issue, NOAA's proposed rule strongly encourages RP involvement but leaves the ultimate decision with the trustee(s) and RP(s) on a case-by-case basis. The reasons were many, varied, and well argued by the numerous commenters that expressed an opinion on this issue ranging from full to no involvement, but it is impossible to dictate through this proposed rule a one-size-fits-all solution for all discharges. The trustee(s) is entrusted by Congress in section 1006 of OPA to assess natural resource damages and develop and implement restoration plans. While active RP involvement is the preferred method of conducting assessments, the trustee(s) can ill afford to delay assessment activities while attempting to entice RP involvement.

In determining the nature of RP involvement in the assessment/restoration process, the trustee(s) and RP(s) have many opportunities for cooperative participation, from preassessment activities to implementation of restoration activities.

Preassessment Phase: As noted in this preamble and in subpart B of the proposed rule, this step requires the collection of preliminary data concerning the circumstances of the discharge, characteristics of the oil, nature of the receiving environment, and characteristics of the affected natural resources and services potential for further injury to natural resources. Based upon this information, the trustee(s) will determine which, if any damage assessment procedure to proceed. While there is no specific time limit for the Preassessment Phase, the effectiveness of this phase will depend on how early the trustee(s) is able to gather that information. Since time is critical, the proposed rule does not require that the trustee(s) invite the RP(s) to participate in this phase. It is the option of the trustee(s) whether to invite the RP(s) to participate and enter into an agreement to gather Preassessment Phase information. In making this determination, the trustee(s) should consider, but not be limited to, the following factors: whether the RP(s) has been identified; the willingness of the RP(s) to participate in the preassessment; the willingness of the RP(s) to pay preassessment activities; and the ability of the trustee(s) to conduct the Preassessment Phase in a timely and cost-effective manner.

The completion of the Preassessment Phase includes written notification to the identified RP(s), by the trustee(s) of the decision to proceed with further damage assessment procedures. The proposed rule provides that the trustee(s) must invite the RP(s) to participate in the assessment process, if it is reasonably practicable to do so. The RP(s) has ten calendar days in which to respond. If the response is positive, the trustee(s) and RP(s) begin negotiations as soon as practicable on an agreement detailing the RP(s) involvement. Should the trustee(s) determine that the RP(s) is no longer participating in good faith, but is using participation as an opportunity to obstruct the assessment, the trustee(s) may terminate the agreement. The trustee(s) may proceed with necessary assessment actions such as the assessment/restoration plan and necessary data collection during those negotiations, although the initial plan may have to be modified before public review, once RP involvement is established. It is expected that all parties will negotiate in good faith, realizing that a cooperative assessment will likely result in the implementation of assessment and the resultant restoration activities as soon as possible. If, however, some type of agreement (including a phased joint agreement discussed later or an agreement to agree in the future) cannot be reached within 45 calendar days, the trustee(s) may terminate the negotiations.

Phased Joint Assessments: To encourage cooperation between the trustee(s) and the RP(s), the proposed rule authorizes the trustee(s) and the RP(s) to enter into a phased joint assessment administrative procedure for conducting assessments. A phased approach to conducting joint assessments is authorized due to the

apparent reluctance of the trustee(s) and RP(s) to agree to work together before the actual assessment process begins. The phased approach may allow a working relationship to develop between the trustee(s) and RP(s) yet allow maximum freedom to both parties should the joint process be determined unworkable.

The assessment process may be divided into distinct phases and components, and the RP(s) may be invited to participate in the various phases and components. Prior to the beginning of each phase or component, the RP(s) and trustee(s) may enter into an enforceable agreement to conduct that particular phase or component. The responsibilities of each party, including financial contributions by the RP(s), will be identified in the agreement with provisions for termination of the agreement and for nonperformance. The agreement should identify who should collect the data and under what guidelines. The agreement should also include provisions for actual possession and ownership of data jointly collected and for funding. In addition, the parties could agree who will analyze the data; and what criteria will be used in the analysis. The use of oversight groups or public involvement might also be addressed.

While it may be most expedient for the trustee(s) and RP(s) to use internal personnel for data collection and analysis, such use may not be possible. Should both parties not be able to agree upon the use of joint internal personnel, the data gathering and/or preliminary analysis of the data may be contracted out to an agreed upon third party. Regardless of who conducts the assessment activities, the trustee(s) maintains management and control of all such activities. Once each phase or component is complete, the data collected and analyzed will be provided in the administrative record, and will eventually become part of the Report of Assessment.

The key incentive to a phased joint assessment is the agreement that the trustee(s) and RP(s) are limited to the use of the jointly collected data for that phase or component, even though they might not enter into an agreement for the next phase or component. For example, the trustee(s) and RP(s) may enter into an agreement to jointly collect data for all injury determination studies. Once the data are collected, the parties decide to forgo any other joint ventures. However, both parties are barred from introducing collateral data collected outside the assessment process for the injury determination studies covered by the agreement. Each may conduct his own analysis of that existing data, but the injury determination data collected outside the joint venture could not be entered in the administrative record of the assessment, and thus remain outside the assessment process and any judicial determination under OPA. The purpose of the bar on collateral data is to encourage cooperative assessments instead of the trustee(s) and RP(s) conducting separate, duplicative assessments. Where a joint phase or component is completed, it is a waste of time and money for either party to repeat the study. To make this provision clear and enforceable to all parties and equally enforceable, the regulations suggest that the bar be spelled out in the enforceable agreement as well as provided for in § 990.17 of the proposed rule.

Assessment Phase

Assessment Component: The agreement to conduct portions of the assessment component of the Assessment Phase should be as specific as possible, with trustee and RP activities identified. NOAA suggests that the following steps of the assessment component be considered for joint agreements for Expedited and Comprehensive Damage Assessments: Injury data collection and/or analysis of injury determination data to quantify loss of natural resources' services. When practicable, the trustee(s) and RP(s) are encouraged to combine data collection and analysis into one agreement, resulting in a more efficient assessment process.

Restoration Component: As with the rest of the assessment process, the degree of participation of the RP(s) in developing the restoration component is discretionary with the trustee(s) and RP(s). However, the use of the knowledge and expertise of many RPs could be useful to the trustee(s) and is encouraged. The proposed rule provides that the trustee(s) must invite the participation of the RP(s) in the restoration planning process if the RP(s) has participated in the earlier assessment activities to date. In determining whether to invite the RP(s) into the restoration process, the trustee(s) should consider, but not be limited to, the following factors: (1) The willingness of the RP(s) to participate and the reasons the RP(s) was not involved in the earlier assessment activities (an uncooperative RP may have delayed the earlier assessment process, or was unable to participate, but is able to do so in the restoration effort; if the RP(s) has already indicated no interest, it would be a waste of time to invite him to join in the process); (2) the ability, i.e., knowledge, expertise, unique natural resources, etc., of the RP(s) to participate in the restoration process; and (3) the willingness of the RP(s) to pay for restoration activities and for trustee costs.

If the RP(s) is involved in restoration, the trustee(s) and the RP(s) shall develop a joint agreement describing the specific responsibilities of the RP(s) and trustee(s). The agreement should cover the activities of the RP(s) related to determination and implementation of restoration activities. Since it is likely a range of possible restoration activities and costs will be identified early in the injury determination component, the development of a restoration component of the DARP is actually initiated in the Assessment Phase. Some RPs may want to actively assist in developing and implementing a restoration plan. Others may prefer to pay the damages and leave the restoration activities to the trustee(s). Again, agreements should include specific responsibilities of the trustee(s) and RP(s). Such agreements could cover the determination and implementation of restoration alternatives.

Management Structure: NOAA does not propose a specific management structure in order to conduct either a trustee or joint trustee-RP assessment. However, NOAA recommends that the trustee(s) establish committees or teams to manage the assessments. The core members of these committees may already be selected in the prespill plans. As discussed earlier, the committees should have a lead administrative trustee and include representatives from all affected trustee agencies and provide opportunities, ad hoc, for involvement from response agencies and other interested parties, as deemed necessary by the trustee(s).

Other Porty Involvement: A great number of commenters indicated a real concern that RP involvement will result in less than complete recoveries through less than comprehensive assessments. To ensure that the assessment and recoveries are adequate, the proposed rule authorizes and encourages the trustee(s) to provide for "outside" review of assessment/restoration plans by the scientific and economic communities. Comments as a result of the "peer review process" will be a part of the administrative record. Peer reviewers will be selected by the RP(s) and trustee(s). The trustee(s) should consult local and/or national interest groups, scientific agencies, and universities for suggestions of appropriate reviewers.

Also, the joint-management team will keep the public informed of the progress of the assessment/restoration process and will allow public review and comment of the on-going assessment and restoration plans. In addition, at the discretion of the trustee(s), representatives of local interested groups may be invited to attend assessment management meetings to monitor the decisionmaking process.

Participation of the Responsible Party

Response to Comments

Comment: Some commenters recommended that all prespill planning efforts be channeled through the development of the Area Contingency Plans under section 4202 of OPA.

Response: NOAA agrees. When practicable, the trustee(s) and potential RP(s) should use existing planning mechanisms to coordinate their efforts. To do otherwise would be inefficient and duplicative. Industry should be strongly encouraged to participate in and/or coordinate with the technical working groups of the Area Committees (including appropriate trustees) in the development and update of Area Contingency Plans. Such plans identify and rank sensitive environments and define appropriate protective strategies and removal technologies. In addition, such prespill meetings with industry would allow the trustee(s) to clarify the damage assessment process. Where prespill planning is appropriate, the trustee(s) is still encouraged to involve potential RP(s) in prespill planning and identification of potential natural resources at risk.

RP(s) Involvement in the Assessment Process (General): While the comments were very numerous and often very detailed on this subject, they largely fell into two categories: (1) No RP involvement vs. unlimited RP involvement and (2) RP involvement is possible under some circumstances, with appropriate trustee oversight. The comments and responses for this section follow these general categories.

Comment: Commenters indicated a wide range of views on this issue, from unlimited RP involvement to no RP involvement, except to pay the required damages. In this vein, many commenters stated that the RP(s) will approach the damage assessment process with the goal of minimizing the injury and resulting damage assessment. A multiple trustee conducted assessment is difficult enough, but allowing the RP(s) into the process could disrupt the assessment. Others indicated further potential problems, claiming that allowing the RP(s) in the assessment process is tantamount to allowing the RP(s) to determine its own damages. In any assessment, it is in the public's interest to conduct a full and fair assessment. It is in the interest of the RP to show little injury so that the damages will be lessened. Others were concerned that consultation and involvement of the RP in the assessment process may seriously prejudice the trustees' ability to recover damages, particularly through negotiations. Any involvement of the RP should require unanimous approval of the trustees.

Many commenters expressed the opposite view, claiming that the opportunity for RP involvement in a damage assessment is a legal necessity as well as fortuitous. Since the damage assessment process determines the amount of damages the RP will pay, it would be unfair to exclude the RP from the process. In addition, the RP would serve as a control on "state and federal bureaucrats," ensuring that assessments would be cost-effective. At least one commenter indicated that assessments conducted without providing the RP the opportunity to participate should not be awarded the force and effect of a rebuttable presumption. Others indicated that while the RP's interests may be different than those of the trustees, involvement of the RP will likely encourage the RP to pay the damages rather than challenge the assessment in court. Other possible advantages of RP involvement included: Elimination of costly duplication of studies; ensuring that studies/investigations are planned to answer pertinent questions; and providing another source of funding for studies that must be conducted in a timely manner. RPs are fully aware of the legal responsibilities under OPA and are quite willing to cooperate with the trustee(s) to resolve them in a fair and timely fashion. Others justified substantial and preferential involvement of the RP based upon the ruling in *Ohio v. Department of the Interior,* which upheld DOI's decision to allow greater RP participation than the public as a whole. Other commenters insisted that any participation by the RP is at the discretion of the RP and/or the trustee(s).

Other commenters stressed that cooperation must work both ways. The trustee(s) should also be willing to cooperate with the RP. The commenters noted that it can be more expeditious for the RP to fund the work, with oversight or "audit" by the trustee(s). Some RPs (either foreign or domestic based) may have neither the motivation nor the resources for close cooperation with the trustee(s). Such RPs should not be penalized for not participating to the fullest possible extent. Some suggested that public perception of the RP conducting the assessment might be helped by agreeing in advance upon a list of "pre-approved" consultants to assist in "peer review" and/or to carry out the actual studies. The use of assessment "over-sight" groups consisting of RPs, scientists, environmental groups and the public was also suggested. One commenter suggested that a generic agreement be drafted by representatives of trustees and RP and be provided as a model agreement for use in the event of an actual discharge. This agreement would identify the activities of the RP and trustees leaving little need for additional negotiations for specific discharges. This model agreement would have gone through a public review process and the roles of the respective parties would be already identified, thereby reducing the time needed to negotiate specific activities and ensuring that the public's concerns were addressed.

Response: Many of the concerns over RP involvement represent actual discharge scenarios where involvement of the RP(s) was difficult and frustrating to the trustee(s). On the other hand, the advantages of a cooperative RP in an assessment have resulted in smooth assessments and a focus on the environment, not the courthouse. It is virtually impossible for the proposed rule to dictate the level of involvement of the RPs in every possible assessment. Each discharge will present a different set of circumstances, with different RPs and trustees. As explained elsewhere in the preamble the eventual degree of involvement of the RP(s) is at the discretion of all the trustees involved in the assessment and RP(s). On the whole, cooperative involvement of the RP(s) will likely provide many benefits to the assessment process, but currently trustees and RPs have little experience in conducting cooperative assessments. The proposed rule reflects this lack of experience, and strongly encourages that the trustee(s) first look to a cooperative assessment, even if such cooperation can only be fostered through the use of a series of joint agreements. However, OPA does not necessitate the loss of the rebuttable presumption due to lack of RP involvement and neither does the proposed rule. Since participation of the RP is optional on the part of the RP(s) and trustee(s), those opting not to participate are not penalized. The assessment remains under the direction of the trustee(s).

NOAA agrees with the suggestion that a model agreement would be beneficial and provides a sample of such an agreement for comment in Appendix B.

Such an agreement, however, would not be mandatory. NOAA perceives that trustees and potential RPs are on the verge of conducting a new generation of cooperative assessments, but they need time to work out the details and provide for adequate checks in the process. The proposed rule provides for that period of testing and adjustment.

A large number of commenters also expressed the opinion that RP involvement is helpful in some phases of the assessment if conducted under the oversight of the trustee(s). However, there was little agreement over which phases of an assessment might be appropriate for RP involvement and the appropriate degree of oversight. Various phases of the assessment and respective comments are discussed below.

Comment: Some commenters were strongly opposed to allowing the RP(s) more access to the assessment process than the public in general. Others indicated that additional access was a right accorded the RP(s), because of the financial stake of the RP(s). One commenter contended that the RP could serve in an "advisory" role to avoid duplication of effort and studies. Another commenter noted that, although the RP has the constitutional right to participate in the assessment, participation is discretionary on the part of the RP and cannot be mandatory.

Response: The proposed rule does provide the RP(s) with more access to the assessment process than the general public. This is consistent with other provisions in connection with oil discharges, i.e., the response and cleanup. The greater access is not because of the financial stake of the RP(s), it is NOAA's position that a cooperative RP can assist in restoring the environment in as short a time as possible and, like the cleanup, may be able to provide services, funding and/or personnel not available to the trustee(s) in either a cooperative or advisory role. However, the trustee(s) is required to keep the public informed of the participation of the RP(s) and provide an opportunity for meaningful public participation, not only regarding the involvement of the RP(s), but for the entire assessment process. Also the RP(s) does have the right to refuse participation.

"Preassessment"

Comment: Concerning the preassessment, several commenters indicated that since preassessment decisions need to be made quickly, involvement of the RP would likely delay the process. Involving the RP in the preassessment may prevent the trustee(s) from fully exploring all the options for the assessment and resulting restoration activities. Others indicated that the RP should be invited to participate from the onset of the discharge, since it is possible that the RP can provide data necessary for use in the preassessment to determine the nature and extent of subsequent assessment activities. A cooperative preassessment would likely foster a cooperative assessment and possible early settlement of claims. In addition, early RP involvement does not prejudice public participation, since the assessment/restoration plan will be available for public review.

Response: The proposed rule encourages the trustee(s) to involve known RPs in the Preassessment Phase. However, because of the constraints in the Preassessment Phase, the proposed rule does not require the trustee(s) to invite the RP(s) into the preassessment. The various affected trustee agencies must focus the initial efforts into coordinating their early efforts and coordinating with the OSC agency. Efforts to involve the RP(s) should not detract from this focus.

"Assessment/Restoration"

Comment: Commenters who agreed with the general principle of RP involvement indicated that the assessment and restoration components of the assessment are the most appropriate for such involvement. However, the nature and extent of this involvement were widely contested. Concerning the initial invitation and acceptance, many commenters indicated that the thirty-day waiting period after Notice of Intent To Perform An Assessment provided in 43 CFR part 11 is not practicable for discharges of oil and some recommended a ten-calendar day period for response from the RP. Considering the degree of involvement, some commenters indicated that the RP can provide very useful information and financial resources for planning the assessment/restoration that might be unavailable to the trustees. An assessment/restoration plan developed with the full involvement of the RP will likely be cost effective and efficient. In addition, the RP would likely be more willing to participate in the assessment and restoration activities if involved in the planning process. One commenter noted that participation by the RP should also allow for keeping the RP informed as to how monies recovered are spent in restoration. Some commenters recommended the RP's role be similar to response actions, where the RP could develop and submit plans to assess natural resource damages to the trustee(s) for their approval. Once approved, the RP could implement the plans under the direction and monitoring of the trustee(s). One commenter recommended that the degree (size, duration, etc.,) of the discharge is immaterial to the involvement of the RP in the assessment process. Another commenter asked for clarification of what circumstances might justify denial of RP participation.

Others recommended a more limited role for the RP, i.e., the up-front funding or the conduct of actual assessment and restoration activities planned and approved by the trustee(s). However, such involvement must be tempered by the realization that under OPA the trustee(s) is ultimately and continuously responsible for all assessment/restoration activities, regardless of who pays for and/or conducts them. Some commenters indicated that OPA requires that the trustee(s) develop and implement a restoration plan, and any involvement of the RP contravenes this statutory mandate. One commenter noted that a "requirement" to invite RP participation contradicts the statement in the proposed rule that such participation is at the discretion of the trustee.

Response: The nature of these comments and past experience with oil discharges indicate to NOAA the wide range of concern as well as support concerning RP involvement in any natural resource damage assessment. In some instances, extensive participation of the RP(s) has led to an early settlement of claims. In other assessments, RP involvement has, from the trustee's point of view, resulted in undue delays and a laborious process. The proposed rule follows NOAA's general philosophy of active involvement of the RP(s), but leaves the degree of that involvement up to the trustee(s), since it is the trustee(s) who is ultimately responsible for the conduct of the assessment/restoration process. The trustee(s) is encouraged to invite the known RPs to be involved in the assessment/restoration process. If not contacted during the Preassessment Phase, the trustee(s) should contact the known RPs as soon as practicable following the determination to proceed with some form of assessment procedure. The RP(s) should indicate a willingness to participate within ten days of receipt of the invitation. The trustee(s) and interested RP(s) should begin negotiations concerning the degree of involvement as soon as possible following that ten-day period.

Incentives for the trustee(s) to involve the RP(s) are numerous, including a less litigious atmosphere, possible immediate funding for assessment activities, and additional data and personnel support. The RP(s) should also recognize the advantages of involvement, including lower costs since dual assessments may be avoided. The RP(s) can also often provide considerable expertise in the effects of oil upon natural resources and benefit from the public perception that there is a real interest by the RP(s) in restoring the environment.

Both parties should negotiate in good faith, with restoration of the environment as the ultimate goal. The participation of the RP(s) throughout the entire assessment/restoration process need not be established, and parties are free to negotiate a series of agreements as the assessment/restoration continues. The involvement of the RP(s) should be clearly identified in the DARP, so that appropriate review and comment will be accorded. All assessment/restoration activities must remain under the direction and responsibility of the trustee(s), although the trustee(s) may allow the RP(s) to conduct all or part of an assessment. As with all restoration components and assessment components under EDA and CDA, appropriate peer review must be provided to ensure that the components are adequate. In addition, the trustee(s) is reminded that the ultimate responsibility and results of the damage assessment rest with the trustee(s).

While the size of the discharge may be immaterial to the basic decision of RP involvement, it is relevant to the degree of RP involvement. Discharges appropriate for the compensation table or the Type A model require minimal assessment activities; therefore possible RP activity would be limited to restoration planning and implementation, unless the RP(s) opted to finance and possibly conduct either an EDA or CDA.

"Phased Joint Assessments"

Comments: During the workshops and the March 13, 1992, ANPRM, NOAA presented the concept of a "phased joint assessment," allowing the trustee(s) and RP(s) to jointly conduct certain phases of an assessment. Commenters indicated that, for joint work, industry would need some assurance that the damages amount determined by the process is reasonable and supportable. Others indicated that such agreements should be designed to avoid the conduct of dual assessments and provide provisions for nonperformance. Some commenters indicated that nonperformance provisions should only apply to RPs and not trustees, since the financial obligations for the assessment always rest with the RP.

Others suggested a dispute resolution mechanism involving impartial third parties. At least one commenter stressed that it must be absolutely clear that completion of one phase indicates no obligation to proceed with another phase. Such agreements would give the RP(s) the greatest incentive to participate in and fund the assessment work, and still allow the trustee(s) to ensure that the assessment is carried out in accordance with OPA. Some commenters indicated that the joint assessment process may work well for data collection and analysis or for determining the extent of injury to the natural resources. However, some thought this cooperation would be unacceptable in the economic valuation portion of the assessment process where the actual amount of damages is determined based upon that injury because of the controversial nature of such damages in the RP community.

Response: The proposed rule authorizes the trustee(s) and RP(s) to enter into enforceable agreements in order to conduct any phase or component of a natural resource damage assessment. The purpose of these agreements is to foster cooperation when practicable and provide incentives to both the trustee(s) and RP(s) to meet their respective obligations. The phased joint assessments are not mandatory and may cover any phase or component in the assessment process. The completion of one agreement does not obligate either the trustee(s) or the RP(s) to any further joint activities. Since these agreements can cover distinct phases, NOAA does not deem it necessary for third party dispute resolution, although non-binding mediation has been suggested. If disputes could not be settled through regular trustee and RP channels, parties could agree to terminate the agreement and not participate in any further joint activities.

These agreements seem most appropriate for the conduct of assessment/restoration activities, but are certainly allowed for preassessment activities. The trustee(s) and RP(s) will most likely use these agreements for the EDA, since a cooperative RP is important to that procedure, and there is a limited suite of studies upon which agreements could be negotiated and finalized in a reasonable amount of time. However, these types of agreements may also be applicable to a CDA, where the trustee(s) and RP(s) wish to eliminate dual assessment studies.

NOAA disagrees with the general notion that nonperformance provisions should only apply to RPs. Trustee agencies should also meet their agreed upon duties.

VII. Compliance/Conflict With Applicable Laws

Section 990.18 pertains to the relationship of this proposed rule to other laws. Section 990.18(a) requires that the trustee(s) comply with all human worker health and safety requirements, as specified in the NCP. In many cases, the conduct of an assessment will require extensive field work during an actual discharge and/or cleanup. The trustee(s) is responsible for ensuring that the assessments are conducted in accordance with those applicable laws.

Section 990.18(b) provides that other environmental and procedural laws also apply to the assessment/restoration process. This proposed rule mentions some of the more well-known laws, but the indicated list is for the purpose of example and is not inclusive.

Subsection (c) mirrors the OPA provision that OPA does not preempt state oil spill laws and related regulations, thus allowing for the potential for possible duplicative and conflicting claims and recoveries. Since section 1018 of OPA does not prevent states from establishing additional liability as a result of a discharge of oil, this proposed rule cannot require state trustees to adopt or follow the procedures promulgated by NOAA in lieu of other state laws or damage assessment schemes. However, since OPA also prohibits the double recovery of natural resource damages, all trustees will be encouraged to conduct joint assessments and present a total unified claim for damages. Such claims should be deemed sufficient by the trustees to restore the injured natural resources and/or services and for diminution in values until restoration is complete.

As discussed in the "Use of Sums Recovered" section of this proposed rule, any monies received under OPA must be used to restore, rehabilitate, replace, or acquire the equivalent of the affected natural resources and/or services. In this proposed rule, NOAA encourages the trustee(s) to concentrate upon "fixing the resources" and not be distracted by ill-fated ventures of attempting to divide the natural resources and pursue individual claims.

The unified trustee approach will also encourage participation from the RP(s), instead of a multi-assessment process that would encourage the RP(s) to pursue litigation in order to lessen the number of claims. In addition, unified trustees will allow the pooling of resources for a more effective assessment and, if necessary, litigation.

While NOAA cannot require the coordination and cooperation of all trustees, there are some incentives for such cooperation. For example, state trustees should be encouraged to coordinate with federal trustees, since section 7 of E.O. 12777, 56 FR 54757 (October 22, 1991), requires that monies from the Fund for the "initiation of assessments" are provided to the federal trustees. The federal trustees may then distribute such monies to other trustees.

As discussed in "Trustee Coordination" and "Prespill Planning," many of these potential conflicts could be settled in advance of an actual discharge.

Response to Comments

Compliance With Applicable Laws and Statutes

"Double Recovery"

Comment: Many commenters were concerned that since OPA does not preempt state laws, the trustee(s) would pursue claims under both state law and OPA, thereby using conflicting methodologies and enhancing the possibility of double recovery. Some suggested that the NOAA regulations should preclude recovery under OPA if damages were being pursued under state law. Others suggested that NOAA require that the trustee(s) proceed under either state law or OPA and thereby waive all claims under the statutory scheme not selected. Some commenters, recognizing that NOAA could not direct the trustee(s) to forgo claims under applicable state or federal statutes, suggested that early coordination among the trustees be strongly encouraged to avoid parallel assessment and claims procedures. Other commenters suggested that double recovery can be avoided by the trustees conducting joint assessments resulting in a single unified claim.

Response: NOAA agrees with the last commenters. Where Congress has specifically declined to preempt state law in section 1018 of OPA, NOAA's proposed rule cannot force trustees to limit their options under applicable state or federal law. However, the regulations do encourage early coordination among the trustees and, in accordance with section 1006(d)(3) of OPA, prohibit double recovery. Congress, in the Conference Report accompanying OPA, encourages coordinated assessments but does not preclude parallel assessments. (H. Con. Rep. No. 101–653, 101st Cong. 2d Sess. 109 (1990).) Accordingly, NOAA has determined that the proposed rule cannot require joint trustee assessments. NOAA emphasizes, however, that trustees must recognize the potential of violating the double recovery prohibition if separate assessments are conducted, and trustees are encouraged to avoid even the appearance of double recovery by conducting a single joint assessment. In addition, the possibility of multiple assessments will likely foster litigation between the trustee(s) and the RP(s), thus delaying the assessment and restoration process. NOAA also notes that the trustee(s) could address many of these concerns through prespill planning and coordination.

Comment: While double recovery is clearly disallowed under OPA, NOAA received comments that argued that natural resource damage assessment regulations must guard against "counting any resource for two purposes."

Response: Injury to a given natural resource and the attributable cost of restoration, rehabilitation, replacement, or acquisition, can only be assessed once for purposes of a compensable claim. However, OPA also provides for recovery of diminution in value during the interval between the discharge and complete restoration. Any number of "service flow" costs, attributable to the natural resource injury, may be appropriately claimed, under OPA rules. These compensable losses would be additive, and would not constitute double recovery. Therefore, it would be incorrect to suggest, as the comment cited above seems to, that the OPA rules disallow counting any resource for two purposes.

Comment: One commenter expressed concern over the lack of discussion of the applicability of the National Environmental Policy Act (NEPA) to the assessment/restoration process.

Response: NOAA, in a change from the earlier notice, has determined that NEPA does apply to the assessment/restoration actions conducted by the trustee(s) following a discharge of oil. NEPA requirements should not pose an additional burden in time and effort on the trustee(s), but will be incorporated into the assessment/restoration process.

Comment: Some commenters pointed out that certain states are in the process of completing, or have completed, procedures for conducting natural resource damage assessments. Concerns were raised over the possibility of conflicting procedures.

Response: NOAA fully recognizes that states have the authority to develop their own assessment procedures under applicable state law. NOAA has attempted to consider the different procedures in the course of the rulemaking, but since many state statutes do not require that the measure of damages be the same as OPA, many procedures are not applicable to this rulemaking or OPA. When possible, NOAA has attempted to be as consistent with the applicable state procedures. It is also expected that the states currently contemplating developing assessment procedures will attempt to be consistent with this proposed rule.

Comment: One commenter was concerned that a unified trustee approach may not always be practical, particularly where the RP is also a trustee.

Response: If those circumstances would arise, a unified approach may still be possible, but different representatives of the trustee/RP may need to be identified for either RP or trustee purposes. Of course, there may be circumstances where parallel assessments would be preferable until liability issues were settled with the RP/trustee.

Comment: Commenters also raised the issue of trustee conflicts over ownership of a particular resource, and that the regulations should attempt to clarify which resources should be appropriately claimed by which trustee. Other commenters indicated the regulations should not attempt to address the issue.

Response: NOAA agrees with the latter approach. Congress provided very broad authority for federal, state, tribal and foreign trustees to claim trusteeship over natural resources. Section 1006 of OPA states that each trustee entity may exert trusteeship over natural resources "belonging to, managed by, controlled by or appertaining to" that trustee entity. See 33 U.S.C. 2706(a). Additionally, many natural resources fall within the trusteeship of two or more trustees. For example, a salmon spends part of its life in federal waters, and part in state waters. Further, a tribe may also have certain rights over the salmon. Thus, rather than waste time and resources on negotiations and litigation in allocating natural resources into federal, state, tribal, and possible foreign categories, NOAA encourages the trustees to conduct unified assessments, complete with restoration plans that address the affected natural resources as a whole and not as a trustee-specific piece-meal process. Trustees are encouraged to remember that the purpose of the OPA assessment/restoration process is to restore affected natural resources and/or services in an efficient and orderly manner. Arguments over such things as the ownership of a duck merely delay this process and, from the duck's point of view, are immaterial. As mentioned earlier, trustee prespill planning and coordination could alleviate this concern.

VIII. Review of Regulations

Although OPA does not contain a specific provision for the update of this proposed rule, NOAA strongly believes that the proposed rule must be reviewed on a regular basis to keep the procedures current with new developments. Therefore, NOAA is recommends that this proposed rule be reviewed and revised as appropriate at least every five years.

Preassessment Phase

Subpart B Preamble

General

Purpose/Scope

Natural resource damage assessment begins with the Preassessment Phase. The Preassessment Phase provides guidance to the natural resource trustee(s) for early action in the case of a discharge of oil through a two step process: (1) Preassessment Determination; and (2) Damage Assessment Determination. The first step or Preassessment Determination requires a decision by the trustee(s) to continue with the Preassessment Phase. Once preassessment is justified, the trustee(s) proceeds to the Damage Assessment Determination. In this second step, the trustee(s) decides which damage assessment procedures to undertake, if any. The trustee(s) may conduct limited data collection and analysis during these steps. The Preassessment Phase also identifies the conditions for notification, coordination, estimation of assessment costs, reporting, and emergency restoration. Additional guidance on conducting preassessment can be found in the Preassessment Phase Guidance Document. Michel, J., and E. Reinharz. 1993. Preassessment Phase Guidance Document. Research Planning Inc., Columbia, SC & NOAA-Damage Assessment Regulations Team, Washington, DC.

Notification: A natural resource damage assessment begins with notification of a discharge of oil. Notification should be consistent with the NCP. According to the NCP, the OSC or lead response agency generally provides notification to the natural resource trustee(s) when natural resources and/or services may be injured by a discharge of oil. If the trustee(s) learns of an unidentified or unreported discharge of oil, the trustee(s) must report that discharge to the appropriate authority as designated in the NCP.

After learning of a discharge of oil, the trustee(s) should attempt to notify all other known potential trustees of the possibility of a natural resource damage assessment. Actions taken by the trustee(s) must be consistent with the NCP and this subpart.

In addition, in accordance with section 1011 of OPA, the OSC or lead response agency must consult with the affected trustee(s) concerning removal actions.

Coordination: To the extent practicable, the Preassessment Phase should be coordinated with the response agency(ies) (consistent with the NCP), trustee(s), and possibly RP(s). Such coordination fosters cooperation and early and effective implementation of the Preassessment Phase. While the proposed rule encourages the trustee(s) to contact the RP(s), the trustee(s) cannot afford to delay the Preassessment Phase while negotiating with the RP(s). Although not required by this proposed rule, prespill planning, as outlined in § 990.16, will facilitate the coordination of the Preassessment Phase and other assessment/restoration actions.

Preassessment Phase Costs: Preassessment Phase costs include and are recoverable only for trustee-approved activities that deal directly with preassessment. Examples of Preassessment Phase costs include, but are not limited to, costs necessary for: (1) Notification; (2) coordination; (3) preassessment determination; (4) damage assessment determination; (5) data collection and analysis; (6) report preparation; and (7) emergency restoration. Excluded from preassessment costs are strictly response-related actions, and costs that reflect non-incident specific activities performed by the trustee(s) in the management of natural resources and/or services. Preassessment costs should be supported by appropriate and sufficient documentation.

Preassessment Phase Report: At the conclusion of the Preassessment Phase, the trustee(s) should document: preassessment actions, estimated costs related to those actions, and decisions whether to proceed with preassessment and damage assessment/restoration actions. These materials become the Preassessment Phase Report. The report should provide sufficient information for use in the damage assessment/restoration process, if necessary. If no additional actions are undertaken, the Preassessment Phase Report becomes the Report of Assessment. If the trustee(s) conducts further assessment/restoration actions, the Preassessment Phase Report becomes part of the Report of Assessment. If the trustee(s) decides to proceed with damage assessment and restoration actions, the next step involves the development of a DARP to guide the trustee(s).

Preassessment Phase Process

Preassessment Determination: Following notification of a discharge of oil, the trustee(s) must conduct a Preassessment Determination to decide whether to continue with the Preassessment Phase. The determination is intended to be primarily a "desktop" exercise that is based upon readily available information on the nature of the discharge and environmental setting; namely the circumstances of the discharge incident, oil characteristics, nature of the receiving environment, and natural resources and/or services characteristics.

Using this information, the trustee(s) should determine if: (1) The discharge of oil does not qualify for the exclusionary conditions as set forth in section 1002(c) of OPA; (2) the trustee(s) has authority under OPA to assert damage claims for natural resources and/or services that may be adversely affected by the discharge of oil; and (3) there is a reasonable probability that the trustee(s) can make a successful damage claim based on the scientific, economic, and legal merits of the case (i.e., potential for injury resulting from the discharge of oil and successful and meaningful restoration and/or compensation).

If these conditions are met, the trustee(s) may proceed with preassessment actions. If the trustee(s) determines that all three conditions are not met, further preassessment activities should not be conducted. Costs incurred to this point are not recoverable as damages if the discharge meets the exclusionary conditions of section 1002(c) of OPA. Otherwise, the costs up to this point are recoverable from the RP(s) or Fund. Damage Assessment Determination: Following the decision to proceed with the Preassessment Phase, the trustee(s) collects data sufficient to decide which damage assessment procedures to conduct, if any. The proposed rule provides that the trustee(s) should follow the steps outlined below in Damage Assessment Determination:

(1) Characterize Discharge and Environmental Setting. Based on data collection and analysis, the trustee(s) should first characterize the discharge and environmental setting. These characterizations encompass the following categories: circumstances of the discharge incident; oil

characteristics; nature of the receiving environment; and natural resources and/or services characteristics. These activities are similar to those undertaken in the Preassessment Determination, but are now conducted in greater detail. Characterization of the discharge and environmental setting will serve as the basis for the analysis of the following steps:

(2) Determine Potential Exposure. Once the trustee(s) has characterized the discharge and environmental setting, he should then determine the potential for direct exposure from the discharge of oil. The exposure pathway through which the oil may be transported should also be determined. The potential for exposure may be based upon fingerprinting or chemical analyses of the pathway, bioaccumulation information, and transport/fate models. The trustee(s) is further required to consider the indirect adverse effects in a natural resource and/or service, such as the reduction or elimination of higher trophic level resources not exposed to the discharge of oil which rely on affected lower food chain resources exposed to the discharge of oil, e.g. birds that feed on fish. In the absence of exposure, the trustee(s) should determine impaired/diminished use of a natural resource and/or service, such as a recreational beach threatened by a discharge of oil. Such injury determinations are conducted in the following step.

(3) Determine Potential Injury. Simultaneous with the above step, the trustee(s) should determine those natural resources and/or services that may be directly or indirectly injured from the discharge of oil. Potential injury determination requires that the trustee(s) describe the manner in which the physical, chemical, biological, or other attributes of natural resources and/or services may be adversely affected. Chemistry, toxicity and ecological effects information, and effects models may be useful in determining potential injury to natural resources and/or services. If there is no potential for injury, preassessment actions should cease and no further damage assessment procedures should be conducted.

(4) Characterize Potential Risk to Natural Resources and/or Services. Characterizing risk requires that the trustee(s) evaluate the potential cause-effect associations from the weight of evidence developed in the previous steps as well as using best professional judgment. A formalized risk assessment procedure may be used, but is not required. Potential risk of injury to natural resources and/or services may occur if it is likely to result from the discharge of oil as defined in this proposed rule.

The correlation of field and laboratory information is the best means of establishing potential risk. If such correlation is not possible, potential risk may be determined relative to established standards or criteria, health advisories, bans on the use or consumption, or limits on harvesting applicable to the resource. Where literature or regulatory information is insufficient, transport/fate/effects models may provide evidence of possible links between the discharged oil and predicted injuries.

Once the trustee(s) determines that there is the potential for risk of injury to natural resources and/or services, the trustee(s) should continue with the Damage Assessment Determination. If there is no potential for risk, preassessment actions should cease and no further damage assessment activities should be conducted.

(5) Estimate Extent of Injury to Natural Resources and/or Services. The trustee(s) should estimate the current and future extent, i.e., magnitude and duration, of injury to natural resources and/or loss of services after establishing potential risk to those resources and/or services. This determination requires that the trustee(s) define the spatial and temporal boundaries of the discharge and its effects on natural resources and/or services. This information should be described or mapped in such a way as to provide a sequential summary of the discharge and associated effects.

Defining boundaries for potentially affected natural resources and/or services requires comparison of affected to unaffected conditions using baseline, reference, and/or control data. Current trends can be based on measurements and/or model predictions of existing conditions. Future trends can be based on model predictions of anticipated conditions. Identification of boundaries makes it more likely that all natural resources and/or services affected by the discharge of oil will be included.

If estimates on the extent of injury to natural resources and/or services can be determined in a cost-effective manner, the trustee(s) should then proceed with the damage estimation using any of the procedures in the proposed rule. If such estimates cannot be determined in a cost-effective manner, the trustee(s) should cease preassessment activities.

(6) Estimate Damages. Damage estimation should encompass: (1) the environmental and/or economic values of a natural resource and/or service potentially injured until recovery; (2) the likely cost of restoration actions, if any; and (3) all assessment-related costs. As with all estimates during the Preassessment Phase, such estimates are strictly preliminary and subject to change as more information is obtained.

If damage estimation is practicable, the trustee(s) should then proceed with selecting the most appropriate damage assessment procedure. However, if the Preassessment Phase results in a determination that further data collection and analysis are not necessary, no additional assessment actions are to be taken.

The proposed rule authorizes the trustee(s) and RP(s) to agree to undertake limited injury determination studies to determine that no significant injury to natural resources and/or services has resulted from the discharge. While this may seem to be an unlikely scenario, there may be circumstances when the trustee(s), possibly in conjunction with the RP(s), would like to conduct additional studies for scientific or public information purposes. Where no injury is identified, the costs of these studies are not recoverable under this subpart and must be borne by the trustee(s). Should such additional studies indicate that significant and quantifiable injury has occurred to natural resources and/or services, the trustee(s) may reinitiate the Preassessment Phase, and the costs are then part of the assessment costs.

Select Damage Assessment Procedures

Following the decision to continue damage assessment, the trustee(s) is encouraged to use the damage assessment procedure that is most appropriate to the discharge. To assist the trustee(s) in making this decision, the proposed rule identifies general considerations and specific factors when selecting the procedure(s). These proposed considerations and factors are not rigid, nor does the proposed rule require the trustee(s) to select a particular procedure for a particular discharge. The trustee(s) shall generally consider the following in determining which type of damage assessment approaches to utilize: (1) The size and nature of the discharge and environmental setting; (2) the extent to which the discharge of oil is expected to cause injury to natural resources and/or services; (3) the expected environmental and/or economic values provided by the affected natural resources and/or services; (4) the extent to which response actions carried out or planned will avoid further injury to natural resources and/or services without further action; (5) the extent to which the discharge meets the conditions for using the potential

damage assessment procedures; (6) the extent to which injury to natural resources and/or services can be determined with available information and quantification methods; (7) the extent to which restoration alternatives can return injured natural resources and/or services to their baseline or comparable conditions; (8) the extent to which damages based on injury to natural resources and/or services can be determined with available information and quantification methods; and (9) whether the anticipated damage assessment procedure(s) is cost-effective. Specific selection factors for each damage assessment procedure are provided below.

The trustee(s), using his best professional judgment, has the option to use any of the four procedures, singly or in combination, to craft an assessment process that is most appropriate for the situation at hand. The assessment designed by the trustee(s) would receive the rebuttable presumption, so long as the procedures included in that assessment are encompassed by this proposed rule and there is no double recovery.

NOAA is specifically requesting comments on the advantages or disadvantages of proposing such a range of procedures. It is hoped that the trustee(s) can use this set of standard procedures in a beneficial manner to craft an assessment that is most appropriate for the particular discharge of concern.

Compensation Formulas: The estuarine/marine and inland waters compensation formulas proposed are applicable to the vast majority of discharges of oil. These compensation formulas are available for use by the trustee(s) for relatively small discharges, particularly when assessing discharges that occur in areas where it would be difficult or very costly to ascertain precise environmental effects, e.g., small discharges in open water or occurring in areas that are subject to frequent environmental insults. Where the circumstances of the actual discharge are determined by the trustee(s) to be far out of bounds of the compensation formula, then the trustee(s) should use one of the other assessment procedures.

The formulas assume various effects to natural resources likely to occur as a result of a discharge of oil. These assumptions take into account the amount and type of oil discharged and region and habitat type in which the discharge occurs. This approach allows both a national consistency and regional specificity. Also, the use of dispersants cannot be factored in since there likely will be additional effects in the water column as a result of using them. For the purposes of the compensation formulas, residual and tidal currents are assumed to be zero, the discharge is assumed to be instantaneous at the water surface, seasonal temperatures and wind speed are "set at average values," as explained in volume I of the technical document, and wind direction is controlled to avoid having the discharge move into a different habitat. Also, the ranges of discharge sizes covered by the formulas are: 10 gallons to <1,000 gallons; 1,000 gallons to <5,000 gallons; 5,000 gallons to <10,000 gallons; and 10,000 gallons to 50,000 gallons.

However, if there are significant differences between the assumptions in the formulas and incident of concern, then the formulas may not be appropriate for the discharge of concern. Finally, these formulas allow an estimate of damages per gallon, taking into account average restoration costs plus average lost direct use values pending restoration. Passive use (nonuse) values are currently not included in the formulas. Therefore, discharges under 50,000 gallons that are likely to result in a significant loss in passive use values should be assessed under another procedure.

The Type A model: When considering using the Type A model for an assessment under OPA, the trustee(s) should consider several factors. Basically, the Type A may be appropriate when the trustee(s) determines that the compensation formulas of subpart D of this part alone are not sufficient to estimate the injury and damages resulting from the discharge, and that there is no other cost-effective procedure available to estimate the injury and damages resulting from the discharge.

Key factors involved in the decision to use the Type A model for an assessment under OPA are found at 43 CFR 11.33. In the preamble to the final rule incorporating the Type A model, DOI stated:

> The rule requires that whenever an injury to a natural resource due to an incident occurs in the coastal or marine environment a Type A assessment shall be performed unless the limitations of the Natural Resource Damage Assessment Model—Coastal and Marine Environments (NRDAM/CME) make it inappropriate to the given incident. The assumptions and data bases contained in the NRDAM/CME constrain its applicability to only selected types of discharges or releases and resources. For example, the discharge or release must occur in, or enter into, a coastal or marine environment; the substance discharged or released must be contained in the chemical data base of the NRDAM/CME; and estimates of the type and quantity of biological resource potentially injured should not differ significantly from the averages listed within the biological data base for the area in which the discharge or release occurred.
>
> Whether certain of these conditions exist will necessarily be a subjective decision required by the authorized official in some incidents. The NRDAM/CME, including its data bases, is based upon averaged values and may not necessarily reflect the actual events of any specific incident (52 FR at 9048 (March 20, 1987)).

The factors discussed at 43 CFR 11.33 include the following requirements: the substance discharged or released is contained in the database of the model; the estimated quantity and species type of biological resources potentially injured are not expected to differ significantly from the average biomass listed in the database of the model, for the season, province, and bottom type in which the discharge or release occurred; the discharge or release was of a short duration; the discharge or release was minor; the discharge or release was a single event; the estimated injury to biological resources due to the discharge or release is expected to be primarily due to mortality of a species listed in data base of the model; the discharge or release resulted in the closure of a fishing area, a beach area, or a hunting area; the discharge or release occurring outside the coastal or marine environment resulted in the substance entering the coastal or marine environment; the use of chemical dispersants or other agents or management actions used in a cleanup of a discharge or release is not estimated to have caused significant injury to natural resources; the discharge or release occurred at or near the water surface of the coastal or marine environment or in the intertidal area; the discharge or release is not expected to cause a significant change in the price of species categories by season, province, or bottom type contained in the data base of the model; and the expected injury to the biological resource due to the discharge or release is not expected to have been primarily due to exposure through the air pathway (43 CFR 11.33).

Expedited Damage Assessment: Included in the range of proposed damage assessment procedures is the expedited damage assessment (EDA). EDA reflects a damage assessment approach that is intermediate between the current Type A model and proposed Comprehensive Damage Assessment (CDA) procedures. This approach recognizes that the trustee(s) may want to address more effects than currently available in the Type A model or the proposed compensation formula,

particularly for inland discharges. The approach also recognizes that the size, location, and timing of a given discharge may not warrant the complex, prolonged procedures associated with a CDA.

The trustee(s) may determine that the use of an EDA is appropriate after considering the factors discussed below. (1) The use of the compensation formulas or Type A models alone would not sufficiently account for the injury and damages resulting from the discharge. This decision may be influenced by the following data: The volume of the discharge is not known or readily estimated; the discharge occurred over a period greater than a few days; injuries to unique habitats or species occurred and are readily quantified; a complex discharge trajectory that covers very large areas that are not readily modeled; the distribution and/or abundance of affected biota are known to differ significantly from seasonal averages (e.g., usually large concentrations of wintering waterfowl were present and affected); the ecosystems affected are not addressed by the model (e.g., rivers, small lakes); and there are known, readily determined injuries resulting from chronic discharges.

The injury and damages resulting from the discharge may be adequately calculated using a combination of the Type A Model, and limited, focused injury determination/quantification and compensable values studies. For some discharges, the Type A model may address most of the potential injuries and damages, with a few notable exceptions that can be readily determined from limited data collection efforts. The most cost-effective approach is the use of components of the Type A model to calculate damages for those natural resources and/or services that are appropriate, and conduct the limited studies needed to address the remaining injuries to natural resources and/or services. For example, the Type A model may be used to calculate damages to fisheries, assuming the conditions of the discharge generally meet the assumptions in the model. Recreational losses from beach closures may be calculated separately based upon incident-specific, baseline data on user days, and surveys conducted after the discharge.

(2) There is readily available information on the nature of the discharge and its effect on natural resources and/or services. To the extent practicable, the trustee(s) should rely on existing information regarding natural resources and/or services at risk when undertaking an EDA. This is particularly true for information that helps establish a baseline for natural resources and/or services. Such data enable the trustee(s) to: (a) Establish background levels and types of hydrocarbons in key exposure pathways prior to the discharge; (b) characterize the physical and chemical parameters prior to the discharge; (c) characterize the status of the biological and habitat resources prior to the discharge; and (d) identify other information sources, such as population surveys or catch statistics that may be useful in quantifying injury and determining lost services. In addition to baseline data, other information useful for an EDA includes literature that documents injuries to similar natural resources and identifies the level and flow of services provided by injured natural resources.

Sources of information include government, academia, and private organizations. Existing federal monitoring programs that may provide the data for environmental parameters include NOAA's National Status and Trends (NS&T), U.S. Fish and Wildlife's Biological and Environmental Status and Trends (BEST), U.S. Geological Survey's National Water Quality Assessment Program (NAWQA), the U.S. EPA's Environmental Monitoring and Assessment Program (EMAP), and Fisheries of the United States (NMFS, NOAA). Abundant baseline information in each of the categories may not always be available to the trustee(s). Failure to locate relevant information, however, does not preclude the trustee(s) from selecting an EDA. An EDA may still be appropriate provided that the trustee(s) can obtain the necessary data from limited focused studies.

Selection of an EDA may depend on general categories and characteristics of oil. The physical and chemical properties of oil may help determine the exposure pathway, natural resources likely to be injured, and duration of that injury. The nature and extent of injury to natural resources, in turn, will depend on the type of petroleum hydrocarbons. Many types of oil have been studied extensively and their particular characteristics and effects upon natural resources are often well established in scientific literature. Discharges of such oil are most suitable for an EDA. In circumstances where the trustee(s) determines that the characteristics and effects of the particular discharge are not well known or are uncertain, an EDA may yet be appropriate provided that injury can be established by limited, focused studies.

Petroleum hydrocarbons can generally be organized into the categories of: (1) Very light refined products (i.e., gasoline and jet fuel), (2) light oil (i.e., diesel, No. 2 fuel oil, and certain light crudes), (3) medium crude oil, and (4) heavy oil (i.e., No. 6 fuel oil and Bunker C). For each category, some generalizations can be made regarding the volatility, degree of persistence, and toxicity associated with oil. These characteristics should assist the trustee(s) in determining whether an EDA is appropriate. See Appendix C for a discussion regarding the attributes of each of the categories and the suitability of each category for an EDA.

Size and location are other important factors to be considered in determining whether an EDA is appropriate. Accordingly, the proposed rule encourages the trustee(s) to take both size and location of the discharge into account when selecting the relevant damage assessment procedure.

Discharges smaller than 50,000 gallons in open water generally either disperse, contaminate small areas, or have limited effects. Compensation formulas or the Type A model may adequately address damage assessment needs for these discharges. Discharges larger than 1,000,000 gallons may spread over large areas and lead to extensive contamination and effects to natural resources and/or services. Accordingly, discharges greater than 1,000,000 gallons may require a CDA with greater emphasis on injury determination and quantification. The EDA approach, therefore, may be most appropriate for most discharges between 50,000 and 1,000,000 gallons. These guidelines do not preclude the trustee(s) from conducting an EDA for discharges below 50,000 or above 1,000,000 gallons. A discharge less than 50,000 gallons that occurs in a unique or sensitive habitat, for example, may lead the trustee(s) to conclude that the Type A model should be supplemented with limited, focused studies. Likewise, injury determination and quantification for a discharge of 1,000,000 gallons in open water may be adequately addressed by an EDA. Accordingly, the trustee(s) will have to assess the size of the discharge in the context of the location of the discharge and natural resources and/or services affected when selecting the appropriate damage assessment procedure.

When discharges occur in unique or sensitive habitats, such as marshes, mangroves, or coral reefs, or where there are synergistic effects, the effects relative to the size of the discharge may be disproportionately large. Under those circumstances, selection of an EDA will be based upon the trustee's(s') determination that the procedure can accurately account for this injury.

Where there are studies documenting important aspects of a unique or sensitive habitat, for example, the existence of this data may be relevant in a trustee's(s') decision to select an expedited approach.

Occasionally, a single location may be plagued by consecutive discharges in a relatively short time frame. Likewise, a discharge may occur in a chronically degraded location where multiple pollutants have been discharged over long periods of time. Under either of these two scenarios, it may be difficult for the trustee(s) to differentiate effects resulting from each discharge with only minimal field data. Designing and implementing a study to differentiate effects pursuant to the CDA procedures, however, is likely to be very costly. Accordingly, where the trustee(s) expects that the costs of a CDA under such circumstances are likely to greatly exceed the estimated damages, the trustee(s) may wish to consider an EDA.

(3) The injury and damages resulting from the discharge can be adequately calculated by conducting limited, focused injury determination/ quantification and compensable values studies. These studies are generally limited in two ways. First, the trustee(s) should be able to limit the types of natural resources for which injuries will be sought to those of recreational, commercial, or ecological importance as well as resources of special significance. Second, the scope of injuries the trustee(s) will examine should be limited to mortality, sublethal effects that can be determined with limited and focused studies, and/or lost services.

Natural resources and/or services of commercial, recreational, or ecological importance, or resources of special significance are most appropriate for an EDA because such resources are often being managed, conserved, or protected. Accordingly, extensive data on life history, population, distribution, abundance, and economic values for services may already exist for these resources. Further, concern regarding the effects of oil on these resources may have stimulated studies that document certain effects. Extensive new data collection requirements to establish injury for these natural resources and/or services, therefore, may not be necessary.

The scope of injuries addressed in an EDA should be more limited than that of a CDA. For an EDA, the trustee(s) should focus primarily on mortality, sublethal effects that are considered significant and can be documented with limited, focused studies, and loss of services provided by natural resources.

(4) Potential restoration actions can be implemented without complex (i.e., multiple habitats/biological resources), prolonged (i.e., multi-year) injury determination/quantification and compensable values studies. One of the main objectives of an EDA approach is to speed the damage assessment process so that restoration is initiated more quickly. Thus, the restoration alternatives for the affected resources and/or services should be technically feasible, have a high probability of success, are cost-effective, and result in a net environmental benefit. In addition, the injury determination/quantification and compensable values studies should be cost-effective when compared to the likely level of damages. Where, for example, the costs of a CDA greatly exceed the expected damages, the trustee(s) should consider narrowing the scope of studies and using an EDA. Finally, restoration actions should be derived from the limited, focused injury studies.

Comprehensive Damage Assessment: Comprehensive Damage Assessment (CDA), by its nature, is complex, requiring extensive field and/or laboratory studies to document and quantify injury, plan a restoration approach, and estimate compensable values. Such studies usually require scientifically valid study designs so that the resulting data and analyses meet the standards of litigation-quality products. The key factors for selection of CDA are summarized below.

(1) The injury and damages resulting from the discharge can best be determined through a complex, prolonged process, involving a broad scope of injury determination/ quantification and compensable values studies. The discharge conditions that would not be sufficiently considered by any of the other damage assessment approaches include, but are not limited to: the extent of exposure and injury is large spatially and temporally (e.g., affecting many habitats and species through multiple pathways that are pervasive and persistent); injury via chronic toxicity is likely to comprise a significant component; the discharge conditions are likely to result in significant bioaccumulation; community- and ecosystem-level effects are likely; and there are no standards or criteria with which to make comparison. Injury at discharges where ecosystem-level effects may be significant can only be assessed from in-depth, incident-specific studies. Further, when chronic exposure via contaminated sediments and food webs resulting in sublethal effects is believed a significant component of the injury, the only approach for determining and quantifying is through detailed studies. For these conditions, there are seldom sufficient baseline data or a basis for calculating damages.

(2) Information concerning the nature of the discharge and its effects on natural resources and/or services is not readily available. All of the other approaches only consider effects that are well-documented or readily determined. There are many conditions of a discharge that are not adequately studied in the past and would require detailed studies to determine natural resource and/or service injuries and damages, such as: discharges of an unusual oil type for which there were insufficient data on behavior, fate, and toxicity; when the exposure pathway is not clearly identifiable; significant effects are likely to occur to natural resources that were not previously studied, e.g., there are little data on the effects of oil on terrestrial mammals, reptiles, or amphibians; and economic valuation techniques are not well-developed for the affected natural resources and/or services.

(3) Potential restoration actions cannot be determined or implemented without substantive injury determination/ quantification and compensable values determination studies. Where the distribution and abundance of injured natural resources and quality and quantity of services are poorly understood or considered unique, more complex and prolonged assessments may be needed as a basis for restoration. Limited injury studies may be insufficient to determine the feasibility, effectiveness, success, and cost-benefit of various restoration alternatives in such cases. Quantitative information on injury may be critical to recovery, monitoring (especially if more than one generation of a natural resources is injured), and potential restoration research (new approaches to restore natural resources and/or services not recovering or recovering at lower than expected rates).

Data Collection and Analysis

Purpose/Scope: The proposed rule allows the trustee(s) to conduct limited data collection and analysis (data collection) throughout the Preassessment Phase. The purpose of data collection is to ensure that there is sufficient information to evaluate the risk to natural resources and/or services resulting from the discharge of oil. Selection of protocols and Quality Assurance (QA) for data collection in preassessment should be based on the guidance provided in subpart C.

Only information that provides a connection to natural resources and/or services injury or is considered necessary to the assessment process, likely restoration alternatives to be implemented, and/or compensable values should be collected. Where practicable, such information should be collected from other sources such as response agencies in order to avoid or, at least, minimize duplication of efforts. Appropriate data collection in the Preassessment Phase include: (1) Data necessary to make a determination to proceed with the Preassessment Phase; (2) ephemeral or perishable data that may be lost if not collected immediately; and (3) necessary data that serves as the basis for the selected damage assessment procedure, the absence of which data would prevent the trustee(s) from proceeding with damage assessment determination of § 990.23 (i.e., input into the compensation formulas or Type A models, or the study design for the EDA or CDA).

Baseline and Reference/Control Information: Data collection encompass baseline and reference/control information. Baseline information refers to on-site data of conditions prior to the discharge that are compared to incident-specific information of those same conditions subsequent to the discharge. Reference and control information refers to off-site data of unaffected conditions that are compared to similar or the same on-site conditions affected by the discharge. Case histories of previous discharge events or other relevant studies, although not considered as baseline or reference/control information, may also prove useful where conditions of the case or study are comparable in some manner to the actual discharge.

When available, the trustee(s) should collect baseline data. Baseline data is important because it provides a temporal comparison of conditions on natural and other (human-induced) variability. The value of baseline information depends on the: (1) Corresponding quality of baseline and incident-specific data; (2) absence of intervening events such as ancillary contamination, storms, droughts, etc.; and (3) comparability of the study design between baseline and incident-specific activities. In many circumstances, though, the quality or quantity of baseline data may not be adequate or sufficient to determine the potential risk of injury to natural resources and/or services. When such baseline information is lacking, the trustee(s) may need to rely on historical data, if available, that may serve to identify preexisting trends.

In contrast to baseline information, the value of reference or control data lies in the ability to make spatial comparisons. Reference and control conditions should be selected based on their resemblance and proximity to the affected conditions of the discharge, and exclusion from potential impact from the discharge. However, such conditions may not always be available because of the nature or size of the discharge relative to natural resources and/or services affected, or the special status of specific natural resources and/or services (protected natural resources and/or services). In such cases, the trustee(s) may need to rely on other comparable measures, such as case histories or other relevant studies.

The trustee(s) is encouraged to collect both baseline and reference/control information when practicable. Together, such collection efforts provide the optimal means of determining potential risk and estimating damages to natural resources and/or services.

Emergency Restoration

Section 990.25 of the proposed rule provides authority for the trustee(s) to conduct emergency restoration to be taken by the trustee(s) under limited circumstances. Emergency restoration is not considered to be an actual part of the Preassessment Phase, but is included in this discussion and the proposed rule since it will likely occur during the time frame of the Preassessment Phase. Ideally, emergency restoration would be addressed through the response actions authorized by the OSC. Emergency restoration is intended for those limited situations where immediate action is required to avoid an irreversible loss or prevent or reduce any continuing danger to natural resources and/or services. Emergency restoration may be taken following notification and during response with the approval of the OSC such that it does not interfere with response actions. The proposed rule does not augment the existing authority of the trustee(s). For example, if the trustee(s) has independent authority to undertake emergency restoration, the trustee(s) should exercise that authority. This provision creates no additional authority to take actions on lands or waters the trustee(s) would not otherwise have authority to take.

If practicable under the circumstances, the RP(s) should be invited to participate prior to the trustee(s) proceeding with emergency restoration. However, the trustee(s) cannot delay such restoration for any reason. The costs for conducting emergency restoration are recoverable as damages and are not considered response-related costs.

As consistent with section 1012(j)(2) of OPA, emergency restoration is an exception to the requirement that actions be subject to prior public review and comment. Because of this exception, the proposed rule requires that the trustee(s) demonstrate that any emergency restoration taken under this authority are reasonable and necessary, and conducted in a cost-effective manner as defined in the proposed rule. Any costs associated with emergency restoration may be claimed as part of the damage claim or as uncompensated claims under section 1012(a)(4) of OPA. The appropriateness of such claims against the Fund is currently under consideration.

Response to Comments

Comment: Several commenters discussed the concept that the trustee(s) must meet certain criteria in the Preassessment Phase before proceeding with additional assessment actions. Those criteria mentioned were: (1) A discharge of oil has occurred; (2) natural resources for which the trustee(s) may assert trusteeship have been or are likely to have been injured by the discharge of oil; (3) the quantity and concentration of the discharged oil are sufficient to potentially cause injury to those natural resources; (4) data sufficient to pursue an assessment are readily available or likely to be obtained at reasonable cost; and (5) response actions carried out or planned do not or will not sufficiently remedy the injury to natural resources or the public has not been adequately compensated for a loss of natural resource services.

Many commenters strongly supported the notion that the proposed rule should require that all five criteria be met. One commenter indicated that the fifth criterion should be eliminated, since it is premature, unduly vague and subjective and duplicates the first four criteria. Some commenters were concerned that the meeting of all five criteria was unnecessary and contrary to OPA. In addition, the fourth criterion is unwarranted since lack of data or its cost is irrelevant to the extent of injury and should not prevent the assessment from proceeding. Some commenters stated that only significant and compensable injuries to natural resources must exist before proceeding with additional assessment procedures. One commenter was concerned that NOAA would allow the trustee(s) to continue assessments "if the public has not been adequately compensated for a

significant loss of natural resource services." This language was thought to be vague and subjective.

Response: NOAA is proposing a two-step Preassessment Phase to determine: (1) if preassessment is should continue, and (2) with which assessment procedure to proceed, if any. While no longer identified as five separate criteria, the trustee(s) will have to determine that it is legally, scientifically, and economically justified to proceed with some form of damage assessment. In the first step, the trustee(s) will likely rely upon readily available data. In order to proceed with a preassessment, the trustee(s) must determine that: (1) the discharge does not qualify for an exclusion under section 1002(c) of OPA; (2) natural resources and/or services under trusteeship may be adversely affected by the discharge; and (3) there is a reasonable probability that the trustee(s) can make a successful damage assessment claim based on the scientific, economic, and legal merits of the case (i.e., potential for injury resulting from the discharge of oil and successful and meaningful restoration and/or compensation).

If these conditions are not met, the trustee(s) must discontinue any further preassessment activities. Once the trustee(s) has met these conditions, additional data collection and analysis may be conducted to determine the most appropriate damage assessment procedure.

The previous five criteria are incorporated in this proposed rule at different steps, and should still be addressed by the trustee(s) during the Preassessment Phase. The first two criteria are two of the conditions for the Preassessment Determination of § 990.21(c). The essence of the other three "criteria" would be considered during the Damage Assessment Determination of § 990.22.

Comment: Most commenters indicated that the trustee(s) should initiate the Preassessment Phase as soon as possible following a discharge. Some commenters thought that the Preassessment Phase should be merely a desktop determination of whether to proceed with additional assessment activities. These commenters were concerned that NOAA's initial proposal would require the trustee(s) to engage in more than a desktop review. If so, one commenter suggested that time limits should be placed upon the trustee(s), to ensure timely decisions regarding assessments. Other commenters indicated that any preassessment process must allow flexibility to the trustee(s) to gather sufficient data in order to proceed with and decide upon damage assessment. Some data may not be available immediately following the discharge, but will have to be collected later in the process in order to make such decisions.

Response: NOAA agrees that preassessment should begin as soon as possible after the discharge occurs. However, the proposed rule, as stipulated in the above response, provides for more than a desktop review. The Preassessment Phase provides a mechanism for initiating a damage assessment. The Preassessment Phase is not intended to be extensive, expensive, or time-consuming. The Preassessment Phase may indicate that the use of the compensation formula, Type A model, expedited damage assessment, or comprehensive damage assessment will appropriately address injuries to natural resources and/or services. For some discharges, the trustee(s) might also determine that no further damage assessment actions are necessary.

This preassessment process also allows the trustee(s) to collect ephemeral or perishable data that may be lost if not collected immediately, data that are necessary to make a determination required in the Preassessment Phase, and data necessary for any of the damage assessment procedures. The extent of data collection is left to the discretion of the trustee(s). Since the circumstances surrounding any discharge will vary, only general time frames can be suggested for completing the Preassessment Phase.

Comment: Some commenters indicated that, where the RP(s) is adequately remedying injuries to natural resources, considerable effort and expense of conducting any part of an assessment are unnecessary. Another commenter noted that small offshore discharges that pose no threat to natural resources do not justify the trustee(s) conducting a preassessment.

Response: NOAA disagrees with the general thrust of these comments. While many discharges will not require a comprehensive damage assessment in order to fulfill the mandate under OPA, the trustee(s) must make some type of determination shortly following a discharge of what type of damage assessment should be completed, if any. Further, even if the RP(s) responds adequately to the discharge, the lost use value pending restoration is still recoverable.

Comment: Many commenters suggested developing a plan that allows the trustee(s) to make decisions based on data collection efforts. Such a framework should address the nature and extent of injuries to natural resources and/or services. Another commenter was concerned that preassessment should not be distinct from data collection and early sampling.

Response: NOAA considers identification and extent of injuries to natural resources and/or services as essential and is incorporating those factors into the Preassessment Phase. In the Preassessment Phase, the trustee(s) will consider the: Nature of the discharge and environmental setting; potential for exposure, injury, and risk; extent of injury; and estimated damages. Such a framework will aid the trustee(s) to select the most appropriate damage assessment approach, if any. Data collection and analysis may be conducted throughout the Preassessment Phase.

Comment: One commenter indicated the importance of realizing that the quantity of oil estimated during the preassessment is only an estimate and is certainly subject to change.

Response: Oil quantity and other estimates made during the preassessment are preliminary and subject to change as additional information is collected by the trustee(s).

Comment: Most commenters indicated that both data collection and early sampling activities are helpful in defining the need for potential damage assessment and restoration and were supportive of such efforts so long as they were relevant to existing or anticipated injury to natural resources and/or services. A few commenters questioned the utility of baseline data collection, and others questioned the usefulness of early sampling efforts as originally outlined in the ANPRM. Another commenter indicated that baseline data collection might be redundant to other ongoing efforts.

One commenter suggested that all compiled information be put in a form that would also prove useful in future prespill planning. Some commenters offered examples of the type and sources of information that should be used.

Response: NOAA agrees that only information on natural resources and/or services (current or planned) that the trustee(s) considers relevant should be collected. The information should provide a connection to the damage assessment process and likely restoration actions.

Baseline collection efforts could provide a basis for information needed during the Preassessment Phase. Baseline data collection should not be

redundant, but should be coordinated with other data collection efforts.

NOAA agrees that the information collected could be useful in future prespill planning activities and is recommending such integration. NOAA is also providing information on the types and sources of information that might be required in the Preassessment Phase in the proposed rule and the Preassessment Phase Guidance Document.

Comment: Several commenters stressed the importance of baseline data and reference areas over background data. If these areas are properly selected, then such data may provide the best type of information to estimate injury than are baseline and historical comparisons. Both baseline and reference information serve as the basis for damage assessment and restoration.

Response: NOAA agrees with these comments and has incorporated this notion in the proposed rule.

Comment: At least one commenter stressed that preassessment activities must be consistent with the NCP or other response plans developed under OPA.

Response: NOAA agrees. The Preassessment Phase stresses coordination and following all applicable plans (i.e., area contingency plans, etc.) in order to ensure consistency and efficiency.

Comment: Some commenters encouraged the early participation of the RP(s) in the preassessment and assessment process. Early cooperation could set the tone for a productive joint assessment and allow the trustee(s) and RP(s) to settle major issues, including the scope of the damage assessment and funding. The lack of early participation and cooperation could result in parallel assessments. Others were concerned that early participation by the RP(s) might encourage the trustee(s) to delay the process while negotiating with the RP(s). In addition, the RP(s) could influence the trustee(s) to lessen the scope of the preassessment and eventual assessment. Other commenters indicated that it should be the option of the RP(s) whether to participate in preassessment, and the RP(s) should not be forced to do so. To encourage participation early in the damage assessment process, one commenter suggested that the RP(s) have an active role, if desired, in the development and implementation of data collection and early sampling activities, and that the information and cost be shared on a mutually acceptable basis. Another commenter suggested that the trustee(s) should take the lead role with the RP(s) having the opportunity to review and comment on proposed activities.

Response: To the extent practicable, NOAA encourages the trustee(s) to invite cooperative RP(s) participation early in the damage assessment process. Such an invitation is in line with NOAA's goal of fostering cooperation and early resolution rather than litigation. The trustee(s) will maintain oversight over all activities so that the quality and integrity of information are ensured. NOAA is also recommending that, when appropriate, all data collection and analysis be coordinated with the RP(s) so that there is no duplication of effort. The RP(s) can provide immediate financial and technical support to the preassessment process that might be unavailable to the trustee(s). However, OPA provides that the overall responsibility for any part of the assessment resides with the trustee(s). It will be up to the trustee(s) in each preassessment to determine the appropriate involvement of the RP(s). Where the RP(s) is known, the trustee(s) may contact the RP(s) and invite the RP(s) to participate in the preassessment. However, the trustee(s) cannot significantly delay the onset of the preassessment while waiting for a response from the RP(s). The proposed rule does not require participation of the RP(s). Thus, the RP(s) may always opt not to participate.

Comment: One commenter argued the RP(s) must be allowed to conduct a full scientific assessment to determine actual damages, regardless of the assessment procedure chosen by the trustee(s). Another commented that the RP(s) must be in agreement with the selection of modeling to assess damage.

Response: Section 990.23 of the proposed rule allows the RP(s) to request a more comprehensive damage assessment than the trustee(s) selection if the RP(s) is willing to bear the additional costs at the outset of the more comprehensive assessment. The RP(s) is also free to fund a separate assessment.

Comment: Another commenter argued that the RP(s) should not be allowed to conduct a different type of assessment to be presented in court when they are dissatisfied with the trustee's damage assessment selection. If the RP(s) does disagree with the selection, he should be required to submit a contrary position early in the administrative process in an attempt to persuade the trustee to reconsider. The trustee's selection should be reviewed on the administrative record. Another commented that the RP(s) should not be allowed to challenge simplified methods of assessment based on the fact that more accurate data exist, since protracted litigation would defeat their very purpose.

Response: As mentioned above, the proposed rule does allow the RP(s) to request and fund a more comprehensive damage assessment. NOAA agrees that the trustee(s) should be notified of the RP's(s') request early in the process and provides for that early notification. In addition, the trustee(s) decisions must be documented in the administrative record, including the choice of an assessment procedure. NOAA's proposed rule establishes that a reviewing court will be limited to the administrative record.

Comment: At least one commenter indicated that public participation in the preassessment is vital and that preassessment decisions should be available for public review.

Response: Since discharges of oil are dynamic and rapid events, the early activities of the trustee(s) will necessarily be conducted without concurrent public review and comment. As indicated in the prespill planning of the proposed rule, the trustee(s) is encouraged to involve the public in the formation of plans of what to do in case of a discharge. In addition, § 990.20(e) of the proposed rule requires that the trustee(s) prepare a Preassessment Report, which will be available for public review as part of the assessment record.

Comment: One commenter indicated the requirement in 43 CFR 11.23(b), which calls for a "reasonable probability of making a successful claim," is noticeably lacking from the proposal in the ANPRM of March 13, 1992.

Response: NOAA agrees. This proposed rule provides language based on the potential for injury resulting from the discharge of oil. The trustee(s) should first seek to recover damages from the RP(s). If the RP(s) is insolvent or unreachable under OPA, NOAA's position is that such claims may then be pursued from the Oil Spill Liability Trust Fund under section 1012(a)(4) of OPA.

Comment: Another commenter suggested that "reasonable cost" be more clearly defined.

Response: NOAA has revised the definition of reasonable cost. All costs of conducting the overall assessment in accordance with this proposed rule are reasonable. Although no longer included in the definition of reasonable cost, the trustee(s) should be cautious about proceeding with assessments in which the anticipated costs of conducting the total assessment (not individual studies) are more than the anticipated damages.

Comment: One commenter suggested that a RP who responds quickly to the discharge and is cooperative should be awarded good faith points and reduced assessment costs.

Response: The RP(s) that has adequately responded to the discharge may, in effect, have reduced the damages for injuries to natural resources since rapid containment and cleanup would likely reduce the effect of the oil in the environment. However, OPA does not provide the trustee(s) the authority to reduce damage claims for any RP(s) on this basis. It is expected that the overall costs of conducting assessments will be lower to the RP(s) when the RP(s) is cooperative, since both the RP(s) and trustee(s) will not be conducting separate assessments.

Comment: Several commenters suggested that funding be available to the trustee(s) to conduct data collection and early sampling and that funding not be subject to a lengthy approval process. In addition, some commenters suggested that NOAA establish a fund through the proposed rule that would provide funds for emergency response/restoration actions.

Response: OPA does not authorize NOAA to establish such a fund for either purpose. It is NOAA's position that uncompensated costs of emergency restoration actions authorized under § 990.25 may be pursued as uncompensated claims under section 1012(a)(4).

Comment: A commenter argued for allowing the use of increased costs required to protect natural resources at risk from a discharge to be recoverable, if these costs are not covered by private claimants. The commenter concluded that, often such increased costs are a reasonable estimate of the value of natural resources at risk.

Response: The proposed rule allows recovery of such increased costs. However, it would not be correct to suggest that such additional costs are, in any way, a measure of the true value society places on natural resources at risk. For example, if a discharge of oil were to occur in an area adjacent to a breeding and rearing habitat for an endangered or threatened species, the cost of preventing the oil from fouling that habitat, and thus injuring the resident population of animals, would have no obvious or direct relationship to the "value" society places on those endangered or threatened species.

Comment: Several commenters cautioned against NOAA requiring the trustee(s) to estimate costs of assessment and restoration activities. Many indicated that this practice would lead to a strict cost/benefit analysis and such estimates are preliminary and may be substantially revised as new information is collected. Others indicated that such estimates are not needed in the Preassessment Phase.

Response: Since the costs of conducting an assessment and restoration are a part of the measure of damages under OPA, NOAA feels that preliminary estimates of both are necessary for determining cost effectiveness and for planning purposes. However, such estimates at this stage are merely preliminary and are to be used in determining whether to proceed with further assessment procedures. Estimates are subject to change as more information is collected. The trustee(s) is cautioned against using these preliminary figures for other purposes since they are subject to change. A strict cost/benefit analysis is not required by OPA or this proposed rule.

Comment: At least one commenter indicated that the regulations should identify the recoverable costs and require the trustee(s) to document such costs.

Response: NOAA agrees, and § 990.20(e) of the proposed rule identifies examples of preassessment costs and requires adequate documentation.

Comment: Several commenters indicated the usefulness of emergency restoration activities in reducing injury and future restoration costs. Others recommended limited public review of such actions due to the emergency situation, yet noted efforts should be made to keep the public informed of such activities.

Response: NOAA agrees and provides for emergency restoration in § 990.25 of the proposed rule. Since these actions would only be taken in emergency situations, full public review and comment would be impossible. However, to the extent practicable, the trustee(s) should keep the public informed of such actions. Of course, such actions will be a part of the Preassessment Report and eventually part of the Report of Assessment. As part of prespill planning, generic restoration/protective plans could be developed with public review.

Comment: One commenter requested that the rule should not limit emergency restoration to situations involving endangered or threatened species and their habitats.

Response: NOAA agrees, and no such limitation is proposed in § 990.25.

Comment: Some commenters raised concern over a trustee(s) conducting emergency restoration without coordinating with the response agency. Others indicated that such actions should be part of the established response mechanism.

Response: NOAA agrees with this concern. In the proposed rule, the trustee(s) is to take emergency restoration only after notification and/or consultation with the response agency and the trustee's(s') determination that current or anticipated response actions are insufficient. The response agency(ies) and where identified, the RP(s), should be given an opportunity to address the emergency situation before the trustee(s) takes such actions. In addition, NOAA recognizes that the possibility of needing to conduct such emergency restoration should be greatly reduced following the completion of the Fish and Wildlife and Sensitive Environments Plan required under section 4201 of OPA. However, emergency restoration will be incident- or resource-specific and may not be specifically identified in the Fish and Wildlife and Sensitive Environments Plan.

Comment: Other commenters indicated that emergency restoration was not properly part of the Preassessment Phase.

Response: NOAA has included this subpart under the Preassessment Phase because that is the time-frame during which the trustee(s) may likely be faced with the possibility of conducting emergency restoration.

Comment: A number of commenters provided support for the development of national, regional, and local protocols; each respectively being more specific. Others cautioned against a strong emphasis on the use of local plans and protocols, since a discharge may never occur in many areas.

Response: NOAA does not require the development of such protocols, but encourages the trustee(s) to develop appropriate protocols for assessment activities through prespill planning in order to avoid confusion and lengthy delays in a damage assessment. It is the determination of the trustee(s) whether such protocols should be developed for specific area(s). Areas that have a history of oil discharges will likely benefit from the development of such protocols.

Draft Assessment/Restoration Plan (DARP)

Subpart C Preamble

General

The proposed rule authorizes the trustee(s) to use a variety of assessment procedures, depending on the nature and extent of potential effects of the discharge of oil. Although each assessment will be incident-specific

there are many common elements. For example, the trustee(s) will always conduct the Preassessment Phase as outlined in subpart B and develop a DARP under this subpart. The purposes of the DARP are to ensure that the assessment/restoration is performed in a planned, cost-effective, and systematic manner, and provide for public review and comment of the restoration plans as required under section 1006 of OPA. The DARP should be developed in accordance with the requirements and procedures in this subpart and in subparts D, E, F, and G.

In addition, NEPA and ESA compliance shall be incorporated into the restoration planning process and be made part of the DARP. NEPA complements the purposes of OPA to develop an integrated approach to environmental planning and decisionmaking. NOAA encourages the trustee(s) to integrate NEPA procedures with the DARP procedures described below at the earliest possible time. The DARP should be combined with the appropriate NEPA document to create a single integrated environmental planning tool for the trustee(s) and the public. The scoping and public review procedures of these regulations should be implemented to provide compliance with NEPA.

NEPA compliance should not impose additional burdens upon the trustee(s). Rather, those procedures normally contemplated as part of the DARP can be framed as NEPA analysis and full NEPA compliance achieved without additional paperwork or data gathering. The regulations of the Council on Environmental Quality (CEQ) require environmental impact statements (EIS) to be analytic rather than encyclopedic (40 CFR 1502.2) and encourage the discussion of impacts in proportion to their significance. The DARP need not be expanded in scope or length to achieve NEPA's goal of producing an environmental decision document useful to the trustee(s) and the public. (40 CFR 1502.14, 40 CFR 102.15) Rather, concise analysis of available restoration alternatives, and the consequences of their implementation in the post-spill environment is at the heart of the DARP as well as any NEPA document with which it may be combined.

As mentioned throughout this preamble and proposed rule, the trustee(s) is strongly encouraged to develop prespill plans for conducting an assessment and restoration. Those prespill plans could be so specific as to identify the type of assessment procedure and restoration actions likely to be conducted under certain discharge scenarios. If so, the DARP should be consistent with the actions identified in the prespill plan to the maximum extent practicable. NOAA also encourages the trustee(s) to view the prespill planning process as an opportunity to develop broad or programmatic NEPA documents to which future site or project specific NEPA documents may be tiered. (See 40 CFR 1502.20, 40 CFR 1502.40) The inclusion of the NEPA analysis with the prespill plan will assist both the trustee(s) and the public to anticipate necessary restoration actions, their impacts and successes, and promote early resolution of oil spill incidents.

The DARP, along with any significant modifications and associated comments and responses, shall be placed in the administrative record. The DARP shall also become the Report of Assessment. The trustee(s) shall have final approval as to the content and development of the DARP. The DARP shall be developed in order to fulfill applicable NEPA requirements. Those restoration actions that do not individually or cumulatively have a significant effect on the human environment may be categorically excluded from NEPA compliance by a federal trustee through its NEPA implementation regulations. (See 40 CFR 1508.4) The federal trustee(s) should also consider the need for coastal states consistency evaluations and rulings, pursuant to the Coastal Zone Management Act for the DARP.

NOAA specifically solicits comments upon NEPA compliance and the availability of the "functional equivalence" doctrine to federal trustees.

Content

Just as each assessment/restoration will have common elements, each DARP will address the same components of each assessment/restoration. The DARP will address each of the four components of the Assessment Phase: (1) The injury determination component, i.e., results of injury determination studies, to the extent they are known, with documentation of those results; (2) the injury quantification component, i.e., the results of quantification studies, to the extent they can be calculated, with documentation of those results; (3) the restoration component, i.e., the evaluation, selection, and estimated cost of planned restoration actions; and (4) the compensable values component, i.e., valuation studies planned, subject to some exceptions, with the results of those studies if deemed appropriate by the trustee(s). It is recognized that, for CDAs, where there are prolonged (multi-year) studies, the trustee(s) need not develop all components of the DARP simultaneously, but may develop annual reports to update the DARP as the assessment progresses.

Each DARP should include the following common elements. First, the DARP shall identify the discharge of concern and give descriptions of the natural resources and/or services involved. The trustee(s) should include a statement of authority for asserting trusteeship, or co-trusteeship, for those natural resources and/or services considered in the DARP. The DARP shall also include the Preassessment Phase Report and the information requirements of each of the assessment procedures, as described in subparts D, E, F, and G. For example, for a Type A assessment, subpart E requires that the trustee(s) provide a copy of the inputs used to apply the model. These are the types of information requirements that would be included in a DARP for a Type A assessment. Therefore, the level of detail for each component of the DARP shall be consistent with what is appropriate for the type of assessment procedures being conducted.

Development

Because of the dynamic nature of discharges of oil, the trustee(s) should begin implementation of the injury determination and quantification components of the assessment/restoration as soon as practicable after these components are developed and approved by the trustee(s). As data are produced in the injury determination and quantification components, the trustee(s) should then complete the restoration component and design of the compensable values component for the injured natural resources and/or services. However, except as provided for in prespill plans (§ 990.30(c) of the proposed rule) or for emergency restoration (§ 990.25 of the proposed rule), the restoration planning and compensable values components may not be implemented before public review and comment, as discussed below.

Where there are multiple trustees, these trustee(s) should also jointly develop the DARP. The proposed rule provides that, where there are multiple trustees, a lead administrative trustee should be designated to administer the DARP. The lead administrative trustee should act as coordinator and contact regarding all aspects of the DARP. The trustees are encouraged to cooperate and coordinate any DARP that involves coexisting or contiguous natural resources or concurrent jurisdiction, but they arrange to divide responsibility for implementing the components of the assessment in any manner that is agreed upon by all of the affected natural resource trustees.

The proposed rule requires public involvement in various aspects and stages of the assessment/restoration process. Therefore, the proposed rule does not require the trustee(s) to seek public review and comment of injury determination/quantification studies proposed in the DARP except those undertaken pursuant to a CDA. For the compensation formula, the Type A model, and the EDA, the trustee(s) need only notify the public as to the type of assessment procedure being conducted. The trustee(s), however, always has the option to provide for formal public review and comment should the trustee(s) deem this appropriate. For a CDA, the trustee(s) must provide for public review and comment of the injury determination and quantification studies.

The trustee(s) must provide an opportunity for public comment on the restoration component of the DARP. Where there is no Regional Restoration Plan developed and adopted following public review and comment pursuant to prespill planning, as described in § 990.16 of this part, the trustee(s) must provide for public review and comment of the restoration component of DARPs developed pursuant to the compensation formula, Type A model, EDA, and CDA. However, where a Regional Restoration Plan has been developed and adopted, following public review and comment pursuant to prespill planning, as described in § 990.16 of this part, the trustee(s) must notify the public of the availability of a DARP for a compensation formula or Type A assessment and seek comment on that decision. The trustee(s) may provide for such public comment on each assessment using a compensation formula or Type A assessment or may provide periodic notice (e.g., once a month) of the intent to apply several recoveries from these assessments to a Regional Restoration Plan. The trustee(s) must provide for public review and comment of the restoration components of DARPs developed pursuant to an EDA or CDA.

It is at the discretion of the trustee(s), however, to provide for notification, review, and comment of those portions of the DARP concerning the calculation of compensable values. The trustee(s), at his discretion, may withhold the description of studies and methodologies for determining the damages for the compensable values from public review and comment. Such damages are still afforded the rebuttable presumption, but may not be eligible for judicial review on the record.

Where the trustee(s) is required to provide for public review and comment, the trustee(s) must provide a minimum of 30 calendar days. The trustee(s), in his discretion, may grant reasonable extensions for that review. Notification or publication of a DARP may be provided in a publication of local, state, regional, or national circulation, as deemed appropriate to the scope of the assessment/restoration by the trustee(s).

The proposed rule states that the DARP may be modified at any stage of the assessment/restoration process as new information becomes available. Any modification to the DARP that is significant in the judgment of the trustee(s) shall be made available for review and comment for a period of at least 30 calendar days, with reasonable extensions granted at the discretion of the trustee(s), before tasks subject to modification are begun. However, any modification to the DARP that is not significant in the judgment of the trustee(s) may be made available for review at the discretion of the trustee(s), but the implementation of such modification need not be delayed as a result of such review.

The proposed rule provides that the trustee(s) must review and respond to public comments during preparation of the restoration component of the DARP. In addressing comments received concerning the proposed restoration approach, it is not necessary for the trustee(s) to respond to each comment received. Comments may be summarized in like-subject areas and responded to only once.

Finally, the proposed rule provides that, at the option of the trustee(s), and if agreed to by any RP(s) acting jointly, the RP(s) or any other party under the direction, guidance, and monitoring of the trustee(s) may implement all or any part of the DARP as approved by the trustee(s). Any decision to involve the RP(s) shall be documented in the DARP.

Other Common Elements of a DARP

Protocols: Selection or development of specific data collection protocols in the preassessment and assessment/restoration activities is left to the discretion of the trustee(s) because of the incident-specific nature of discharges and broad range of natural resources and/or services potentially affected. Therefore, only general guidelines for protocol selection are provided to the trustee(s) in this preamble and proposed rule. Protocols should be chosen that: (1) Are applicable to the discharge and environmental setting; (2) are cost effective; and (3) will provide information consistent with data quality requirements. Factors that should be considered in selecting the protocols include, but are not limited to: (1) The nature of the discharge and environmental setting; (2) applicable study design requirements, such as that developed by Green, R.H., Sampling Design and Statistical Methods for Environmental Biologists; John Wiley & Sons, New York, NY (1979); (3) QA and data management requirements; (4) potential human health and safety; and (5) benefits and costs of alternative protocols.

Where practicable, the trustee(s) should use protocols that are scientifically verified, well documented and standardized by the U.S. Environmental Protection Agency (U.S. EPA), U.S. Fish and Wildlife Service, U.S. Army Corps of Engineers, American Society for Testing and Materials, American Public Health Association, Organization of Economic Cooperation and Development, or other government or scientific agencies. Some protocols may not be standardized but nevertheless are appropriate for incident-specific evaluations or may be the only protocols available at the time. Other protocols may need to be modified or developed. The trustee(s) should have the option to use whatever protocols may be relevant to the discharge.

Quality Assurance (QA): When practicable, data collection in preassessment and subsequent damage assessment should be consistent with the QA guidance developed by the U.S. EPA, Guidelines and Specifications for Preparing Quality Assurance Program Plans; Office of Monitoring Systems and Quality Assurance, Washington, DC, EPA–QAMS–005/80, (1980); U.S. EPA, Interim Guidelines and Specifications for Preparing Quality Assurance Project Plans; Office of Monitoring Systems and Quality Assurance, Washington, DC, EPA–QAMS–005/80, (1980); and U.S. EPA, Preparing Perfect Project Plans; Office of Research and Development, Cincinnati, OH, EPA/600/9–89/087, (1989). The Program Plan outlines the overall quality of assessment activities; addressing QA issues in regard to policy, planning, review, and implementation. Project Plans, a vital part of the Program Plan, serve as guidance on aspects of data collection for the individual studies comprising the damage assessment. Preassessment project plans should serve to assess suppositions for the damage assessment process. EDA project plans may be combined among studies with similar scope and substance. CDA project plans

should be of sufficient scope and substance that they can stand on their own. The trustee(s) should develop both Program and Project Plans in an EDA and a CDA.

It is understood that due to the nature of oil discharges, certain QA requirements as prescribed by the U.S. EPA may not be practicable. Therefore, the trustee(s) is encouraged to develop his own QA plans to allow for relevant data collection. Data collection involving actual measurement may also be subject to the provisions concerning human health and safety and applicability of natural resource protection statutes.

Data Management: Where appropriate, the trustee(s) should also develop a data management plan. This is most appropriate for an EDA or a CDA. Establishment of a data management system provides efficient access to collected data and information. The trustee(s) is encouraged to develop such a centralized data management plan, if not done so during prespill planning, to accommodate the volume and complexity of data. An effective data management plan should address, at a minimum, the following: (1) Type and volume of data; (2) uses of the data; (3) existing data management capabilities; (4) types of analyses conducted; (5) QA needs; (6) reporting requirements; and (7) access to data further information is available in the Preassessment Phase Guidance Document referenced earlier in this preamble.

Responses to Comments

Comment: One commenter recommended that damage assessment contingency plans not be rigidly drawn. The commenter cautioned that such a plan could become a liability where the nature of a particular discharge is not contemplated in the plan. Further, it could be an unwise expenditure to develop a contingency plan broad enough in scope to address an endless array of possible discharges.

Response: NOAA agrees that damage assessment and restoration plans should not be rigidly drawn.

Comment: One commenter stated that NOAA must guard against the frivolous spending of company funds, when the company has little or no input into how that money is spent.

Response: NOAA agrees. The assessment/restoration guidance procedures allow for public notice, comment, and consideration of all public comment before a final restoration plan is developed. These procedures should mitigate against any frivolous expenditures.

Comment: Most commenters indicated that the trustee(s) should follow quality assurance (QA) procedures developed by or similar to those of the U.S. EPA. Some commenters, however, indicated that the full QA procedure may add more expense without necessarily increasing the quality of the data.

Response: NOAA agrees that, when appropriate, the trustee(s) and RP(s) together should develop and implement QA plans. However, NOAA suggests that the trustee(s) determine those components of the U.S. EPA's QA procedures that are relevant to the discharge.

Compensation Formulas

Subpart D Preamble

General

Through this proposed rule, NOAA is providing the trustee(s) with a variety of assessment procedures in recognition of the need for flexibility in dealing with situations that, by their nature, are incident-specific. The criteria for the selection of any procedure are not rigid, nor does the proposed rule require the trustee(s) to select a particular procedure for a particular discharge. To assist the trustee(s) in making this decision, NOAA is providing guidance to the trustee(s) in selecting the procedure most appropriate for a particular discharge. The trustee(s) is then able to choose among the various procedures based upon the circumstances of the discharge or the resources and/or services involved. However, due to the large number of small discharges, it is expected that the trustee(s) will use the compensation formulas or the Type A model to determine damages more frequently than either the EDA or the CDA.

The availability of a compensation formula or a computer model for a particular discharge, for example, would not necessarily rule out the use of an expedited or comprehensive damage assessment procedure where the trustee(s) finds that either the formula or the model would not be the best method for assessing damages. Parallel assessments using a combination of more than one procedure may be allowed, provided there is no double recovery. NOAA is suggesting that the trustee(s) may exercise best professional judgment in fashioning an approach to an assessment using the four proposed procedures singly or in some combination. This approach is consistent in concept with the parallel assessments provided for under the current CERCLA rule.

The compensation formulas were developed after extensive review of the scientific and economic literature, with particular emphasis on restoration of various habitat types. This information was then compiled to be used with both the current Type A model for Coastal and Marine Environments and a draft version of the Type A model under development for the Great Lakes Environment in developing the compensation formulas. NOAA is proposing these formulas for use in certain circumstances as a reasonable approach to natural resource damage assessment. NOAA is specifically seeking comments on the reasonableness and appropriateness of such an approach.

Range of Formulas

The estuarine/marine and inland waters compensation formulas proposed are applicable to the vast majority of oil discharges. An analysis of reported coastal oil discharges from 1973 through 1990 shows that 99.8% of the discharges were less than 50,000 gallons (99% were less than 10,000 gallons). These compensation formulas are available for use by the trustee(s) for these relatively small discharges, particularly when assessing discharges that occur in areas where it might be difficult or very costly to ascertain precise environmental effects, e.g., small discharges in open water or discharges occurring in areas that are subject to frequent discharges.

The compensation formulas cover a range of sizes by volume of discharge. These ranges are broken down into four categories: 10 gallons to <1,000 gallons; 1,000 gallons to <5,000 gallons; 5,000 gallons to <10,000 gallons; and 10,000 gallons to 50,000 gallons. Ten gallons is the lower limit on discharges covered by the compensation formulas. NOAA is not saying that discharges of less than 10 gallons do not cause injury. However, after evaluating thousands of simulations of scenarios involving very small spills, NOAA determined that ten gallons is a statistically valid lower limit for this type of assessment procedure.

An analysis of the data used to develop the formulas showed that the smaller discharges, i.e., fewer than 10 gallons, were statistically meaningless, i.e., too much scatter, from which to draw "average" assumptions. However, this lower limit is not meant to preclude recovery for these smaller discharges. There are several options available to the trustee(s). In some cases, it may be reasonable for the trustee(s) to linearly extrapolate downward from the lower damage figure contained in the formulas for the 10-gallon discharges. On the other hand, where the environmental conditions at the time of the discharge indicate that extrapolation from the averages in the formulas is inappropriate, the trustee(s) may apply the Type A model at 43 CFR 11 to the discharge. Finally, if there are unusual circumstances that indicate the need for site-specific analysis, the trustee(s) may decide that an EDA would be more appropriate.

As for the upper limit of 50,000 gallons, experience indicates that discharges over 50,000 gallons are likely to result in injury that would be more appropriately addressed by another assessment procedure, e.g., the Type A or EDA. These large discharges do not typify the "small" discharges described by the scenarios used to develop the compensation formulas. Determining the "volume" of oil discharged is dependent upon whether the trustee(s) is using the estuarine/marine formula or the inland formula. This distinction is due to the different treatment of cleanup between the two types of water systems. Therefore, the discussion concerning estimating the volume discharges is given below within the discussion of each formula.

Damage Formula

Generally, with increasing volume discharged, damage totals increase while damages per gallon decrease. However, this relationship between damages and volume discharged is a complex non-linear function that varies by scenario. The results of the scenarios showed a definite damage curve. The goal then was to define as accurately as possible the shape of that curve. Breaking down the scenarios into the four ranges of size defined earlier gives a linear interpolation of the scenario results. The formula itself is designed to place the incident of concern on a given point of the curve. The formula is given as "1991$=m(VOL)+b." In this formula, "m" is multiplier, multiplied by the number of gallons discharged, that represents the change in dollars per gallons discharged, and "b" (positive or negative) represents the number of dollars added to that product to arrive at the actual damages for the volume discharged. Both "m" and "b" are given in the tables in Appendix A of each of the technical documents. "(VOL)" is the amount of oil discharged, as defined in the proposed rule. This formula, as applied, defines damages as a function of volume discharged.

The dollar figures produced by applying the compensation formula described above represent 1991 U.S. dollars. These damages calculated in 1991 U.S. dollars may be translated to U.S. dollars for another year using the gross national product price deflator price index. This index may be obtained from the Economic Report of the President, issued annually, or the Survey of Current Business, issued monthly, for years not yet in the Economic Report.

These formulas allow an estimate of damages per gallon, taking into account average restoration costs plus average direct lost use values pending restoration. The following types of damages are included in the formulas: fishery species consumptive use values (fishing), wildlife species consumptive use values (hunting) and nonconsumptive (viewing) use values, restocking costs and direct restoration costs of affected habitats. Restoration costs are included for restoration activities that are technically feasible and cost-effective.

Passive use (nonuse) values are currently not included in the formulas, since, at the time of their development, NOAA determined that sufficient information did not exist concerning average passive use values applicable to the compensation formula approach. NOAA has decided to propose the formulas without passive use values so that they would be available for use by the trustee(s) rather than delay proposing to a future date. Even though passive values are not included in the proposed compensation formulas, NOAA is considering how such values may be included. Therefore, NOAA specifically requests comments on how such passive values might be included in the compensation formulas. Until that time, discharges under 50,000 gallons that are likely to result in a significant loss in passive use values should be assessed under another procedure.

Variations in Type of Oil, Region, Habitat, and Seasons

The formulas assume degrees of injuries to natural resources likely to result from a discharge of oil. These assumptions take into account the amount and type of oil discharged and the region and habitat type in which the discharge occurs. The scenarios consider the various discharges in each of the four seasons. The proposed rule defines the four seasons as: Winter being from January 1 through March 31; spring being from April 1 through June 30; summer being from July 1 through September 30; and fall being from October 1 through December 31. These seasonal boundaries correspond closely with biological seasonal variations. The trustee(s), therefore, identifies the correct scenario by locating the season in which the date of the discharge falls. This approach allows both a national consistency and a regional specificity.

Damage Claim

Section 1017(a) of OPA provides:

Review of any regulation promulgated under this Act may be had upon application by any interested person only in the Circuit Court of Appeals of the United States for the District of Columbia. Any such application shall be made within 90 days from the date of promulgation of such regulations. Any matter with respect to which review could have been obtained under this subsection shall not be subject to judicial review in any civil or criminal proceeding for enforcement or to obtain damages or recovery of response costs.

Because the compensation formulas are being developed as a regulation through public review and comment, any challenges to the data or models used to develop the formulas would have to be made within ninety days of the promulgation of this regulation rather than in a particular natural resource damage case, as provided in section 1017(a) of OPA. If a trustee(s) uses one of the compensation formulas in a particular damage case, the RP would still have an opportunity to challenge the damage claim; however, that opportunity would be limited to challenging the applicability of the formulas and the accuracy of any site-specific input data used by the trustee(s). The damages calculated by the use of the compensation formula are conclusive for the injuries included in that formula.

The damages computed by using the compensation formulas may be combined with damages determined for beach and/or shoreline closure. These damages, along with the reasonable costs of assessing those damages, are included in the demand presented to the RP(s) pursuant to § 990.81 of this part. Additional damages determined by conducting a parallel assessment may be added to the damages determined with the compensation formula so long as there is no double recovery.

The trustee(s) shall document the data required to use a compensation formula. This documentation shall be included in the Report of Assessment required by § 990.80 of this part.

Final Restoration Plan

The trustee(s) shall develop a Final Restoration Plan based upon the damages recovered through the use of a compensation formula. This plan shall be developed pursuant to subpart H of this part.

References

The proposed formulas and supporting documents for both the Estuarine and Marine Environments and the Inland (Freshwater) Environments are incorporated into the proposed rule by reference. They are: "Compensation Formula for Natural Resource Damage Assessment under OPA: Oil Spills Into Estuarine and Marine Environments, Volumes I–IV" and "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills Into Inland (Freshwater) Waters, Volume I–III." Copies can be obtained from the address at the beginning of this preamble.

Estuarine and Marine Compensation Formula

General

The estuarine and marine compensation formula is based upon the various coastal provinces with representative habitat types for each of these provinces, giving a total of 55 province/habitat combinations. Each possible province/habitat combination has an associated set of damage estimates based upon each of the four seasons, five representative oils, and five possible discharge sizes. The compensation tables given in Appendix A of Volume I of the "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Estuarine and Marine Environments Document" (the Document) are based upon simulated discharge scenarios of the possible combinations listed above, for a total of 5,500 resulting damage estimate ranges. Each of these 5,500 scenarios has certain environmental and other conditions that were specified at a predetermined level to allow for representation of relatively "simple" discharges. Basically, the fates and effects portions of the NRDAM/CME were run, augmented with updated biological and economic data bases and a restoration cost data set. These scenarios were run with an augmented natural resource damage assessment model, Coastal and Marine Environments, Version 1.2 (NRDAM/CME) found at 43 CFR part 11 subpart D.

For the purposes of the compensation formulas, residual and tidal currents are assumed to be zero, the discharge scenario is assumed to be instantaneous at the water surface, seasonal temperatures and wind speed are "set at average values" for the scenario location as explained in volume I of the document, and wind direction is controlled to avoid having the discharge move into a different habitat. The oil products contained in the formulas are: heavy crude oil; light crude oil; No. 2 fuel oil, diesel, and gasoline. However, there is a conversion table to determine which commonly discharged oil products correspond to the types of oils covered in the formulas.

Using the Formula

To use the formulas, the trustee(s) must identify: (1) Whether the discharge occurred in a marine, estuarine, subtidal, or intertidal area, as defined in Volume I of the Document; (2) location of discharge, using the boundaries and definitions of the provinces provided in Volume I of the Document; (3) the habitat type that typifies the habitat affected by the discharge, as described in Volume I of the Document; (4) type of oil discharged; (5) amount discharged (the user may subtract from the discharge amount the volume of oil that is cleaned up *if* the cleanup is from the water and conducted within 24 hours of the onset of the discharge. Because the compensation formulas are intended for relatively small discharges, it is expected that in these smaller discharges much of the toxic constituents or the surface slick will dissipate within 24 hours of discharge. Most of the effects of the discharge will occur within that 24-hour period. Therefore, cleanup must be carried out quickly to be effective in avoiding or minimizing impacts. For these reasons, NOAA is proposing that any oil removed from the environment within 24 hours from the onset of the discharge may be subtracted from the total amount discharged to determine the volume of oil to which the formula is applied. Cleanup from shorelines shall not be subtracted since the majority of impacts on shore are immediate. Also, the use of dispersants cannot be factored in since there likely will be additional effects in the water column as a result of using them.); and (6) season of discharge based upon date of discharge and the definitions of the seasons given in the proposed rule.

Determining Damage Figure

For the purposes of valuing the effects of discharges, the estuarine and marine waters compensation formula is based upon the probability of effects in particular province/habitat combinations from oil discharges through a range of discharge sizes. To determine the damage figure for a particular discharge, the trustee(s) would first locate the appropriate table in Appendix A of the Document based upon province and habitat type using the guidance in Volume I of the "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Estuarine and Marine Environments." The trustee(s) would then select from that table corresponding to the season of the discharge, the substance discharged, and the size of the discharge. The trustee(s) would then compute the dollar figure based on linear interpolation from the range of discharge sizes listed. To do this, the trustee(s) takes the "m" figure and multiplies that figure by the number of gallons discharged. The trustee(s) then adds the "b" figure number to this first total to get the final damages figure.

For example, for a discharge of 500 gallons of diesel fuel discharged in the area covered by scenario M01 (NEW ENGLAND OFF SHORE) on November 1, the trustee(s) would locate the table representing a discharge of diesel in the fall, follow the M01 line to the appropriate column (spills between 100 and under 1,000 gallons) and apply the following formula derived from that table: 500(7.87)+0 = $3,935.00. A 1,000 gallon discharge of heavy crude on November 1 in the same area would be computed as follows:
1,000(19.7778)+4481 = $24,258.00.

Volume III of the Document provides guidance to the trustee(s) in calculating losses due to beach and/or shoreline closure. Such losses would be in addition to the damage figure arrived through the formulas.

Unlike inland (freshwater) systems, there were no data that could be used to develop damages for lost recreational boating opportunities within the estuarine/marine compensation formula. However, the trustee(s) may add such damages to the formula where there is information to develop such estimates.

Inland Waters Compensation Formula

General

The compensation formula for the freshwater systems covered by OPA was developed using the same concept as the Estuarine and Marine Formula. The compensation tables given in Appendix A of Volume I of the "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters" (the Document) are based on simulated scenarios of a total of 100 province/habitat combinations. These scenarios cover Great Lakes habitats, fast and slow flowing rivers, streams, brooks, lakes, ponds, and wetlands. In addition, the tables are grouped by provinces, including: Each of the Great Lakes and connecting channels, Northeast, Southeast, South Florida and West Indian, North Central, South Central, Mountain, Pacific Northwest, Southwest, Alaska, and Pacific Islands. Each possible province/habitat combination has an associated set of damage estimates based upon each of the four seasons, five representative oils, and five possible discharge sizes. The compensation tables given in Appendix A of the Document are based upon simulated discharge scenarios of the possible combinations listed above, for a total of 10,000 resulting damage estimate ranges. Each of these 10,000 scenarios has certain environmental and other conditions that were specified at a predetermined level to allow for representation of relatively "simple" discharges. The computer model used to develop the formula was a draft of the Type A model for the Great Lakes Environment.

The Natural Resource Damage Assessment Model for the Great Lakes Environments (NRDAM/GLE) is scheduled for publication in 1994 as a proposed rule, and thus will not be available to the public at the same time as the inland waters compensation formula is published. In order to ensure adequate public review, the version of the draft NRDAM/GLE used to develop the inland waters formula, along with the technical documentation, is available from the address given at the front of this Notice. Anyone wishing to review this material should call the contacts listed in this Notice and indicate whether a hard copy or electronic version is preferred. NOAA encourages requestors to ask for the electronic version [as a WordPerfect 5.1 document in IBM format] to reduce the expense of printing.

The version of the NRDAM/GLE that is eventually published as a proposed rule by the U.S. Department of the Interior (DOI) may differ somewhat from the version used by NOAA to develop the inland waters formula. Moreover, the NRDAM/GLE will undoubtedly be revised as a result of the public review and comment of the DOI's rulemaking effort. Therefore, once the NRDAM/GLE has been issued as a final rule, NOAA will revise, as necessary, the inland waters compensation formula to reflect the final version of that computer model. Because NOAA's proposed rule may be published as a final rule before the NRDAM/GLE is promulgated as a final rule, NOAA is considering three options: (1) Publish the inland waters formula as a final rule, with the option to revise once the NRDAM/GLE is promulgated as a final rule; (2) publish the inland waters formula as an interim final rule, pending revision based upon the completion of the NRDAM/GLE; or (3) reserve the inland waters formula as a proposed rule pending the completion of the NRDAM/GLE, with the rest of the NOAA rule being published as a final rule. NOAA seeks comments on these options.

For the purposes of the compensation formulas, residual and tidal currents are assumed to be zero, the discharge scenario is assumed to be instantaneous at the water surface, seasonal temperatures and wind speed are "set at average values" for the scenario location as explained in volume I of the document, and wind direction is controlled to avoid having the discharge move into a different habitat. The oil products contained in the formulas are: heavy crude oil; light crude oil; No. 2 fuel oil, diesel, and gasoline. However, there is a conversion table to determine which commonly discharged oil products correspond to the types of oils covered in the formulas.

Using the Formula

To use the formula, the trustee(s) must identify: (1) Location of discharge to determine in which province the discharge occurred; (2) the habitat type that typifies the habitat affected by the discharge, as described in Volume I of the Document; (3) substance discharged; (4) amount discharged (the user may subtract from the discharge amount the volume of oil that is cleaned up in certain large river and large lakes specified in Volume I of the Document *if* the cleanup is from the water and conducted within 24 hours of the discharge. Cleanup from shorelines shall not be subtracted. Also, the use of dispersants cannot be factored in since there likely will be additional effects in the water column as a result of using them.); and (5) season of discharge based upon date of discharge and the definitions of the seasons given in the proposed rule.

Determining Damage Figure

For the purposes of valuing the effects of discharges, the inland waters compensation formula is based upon the probability of effects in particular province/habitat combinations from oil discharges through a range of discharge sizes. To determine the damage figure for a particular discharge, the trustee(s) would first locate the appropriate table in Appendix A of the Document based upon province and habitat type using the guidance in Volume I of the "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters." The trustee(s) would then select from that table corresponding to the season of the discharge, the substance discharged, and the size of the discharge. The trustee(s) would then compute the dollar figure based on linear interpolation from the range of discharge sizes listed. To do this, the trustee(s) finds the "m" figure and multiplies that figure by the number of gallons discharged. The trustee(s) then adds the "b intercept" number to this first total to get the final damages figure.

For example, a discharge of 6,000 gallons of road oil would result in the following. The representative oil product for road oil is heavy crude. The season is spring and the province and habitat are represented by scenario N73, a Pacific Northwest stream. Using the formula, m=2.18 and b=13969 for the range of discharges between 5,000 and under 10,000 gallons. The calculation is (6,000)(2.18)+13969=$27,049. A same size discharge of diesel in the summer would result in a calculation of: (6,000)(2.255)+16616=$30,146.

Volume III of the Document provides guidance to the trustee(s) in calculating losses due to beach and/or shoreline closure and boating closures. Such losses would be in addition to the damage figure arrived through the formulas.

The trustee(s) may also recover for lost recreational boating opportunities. Volume III of the Document describes how the trustee(s) may estimate these losses. Volume III contains average figures for densities of boating trips for several types of lakes. These densities are given both for those lakes that provide year-round boating and for seasonal boating sites.

Volume III of the Document also has an analysis of various freshwater boating values that sets the average value of an inland boating day at $36.48. The trustee(s) can then use the densities and value given in Volume III, together with the area closed to boating to compute damages for the lost boating opportunities. The formula used to compute these damages is: $V_2A_2T_2$ ($36.48) where V_2=density (given in Volume III) of boating trips per square kilometer per day, A_2=area closed in square kilometers, T_2=time area was closed in days, and $36.48=the value per trip per day.

Responses to Comments

Comment: NOAA received several comments concerning the average costs of restoration. One commenter asked if it was currently possible to accurately model the costs of restoration, particularly in Alaska. One commenter asserted that NOAA should institute a comprehensive data collection program to acquire sufficient baseline information. Only then could NOAA

implement reliable desktop assessment options in Alaska. Were NOAA to pursue this course, data collection activities should be concentrated in high risk areas, such as Cook Inlet and Prince William Sound.

Another urged assessment procedures to be inexpensive but as accurate as possible, and based on science. Another commenter asserted that multiple assessment costs should only be compensable up to the reasonable cost of a single assessment.

Response: NOAA agrees that economical and accurate scientific assessment procedures are in the best interest of every party. In determining the "average" costs of restoration for the compensation formula, an extensive research study was conducted of information concerning restoration of natural resources in several environments, including Alaska (See "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Estuarine and Marine Environments, Volumes I–IV" and "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters, Volumes I–III"). This information was factored into the formula in order to reflect the best available information to date. Of course, all simplified assessments are based upon average conditions. If the trustee(s) decides that the use of the formulas does not adequately address the specific circumstances surrounding a particular discharge, another assessment procedure should be used. Concerning the reasonable costs of assessments, costs of parallel assessments are allowed, provided the separate assessments do not result in double recovery.

Comment: Some commenters were concerned that traditional comprehensive damage assessment techniques would be inefficient for small discharges. One commenter recommended an established de minimis discharge volume that would not lead to a recovery of damages.

Response: The proposed rule provides guidance and criteria for the trustee(s) to determine the appropriate procedures for a particular discharge. The decision to proceed with a claim is left to the discretion of the trustee(s) based upon the information and data collected through the Preassessment Phase. NOAA's proposed rule does not adopt the use of a rigid de minimis standard to excuse liability. OPA addresses the effect and not the nature of a discharge—the characteristics of a particular environment may render it vulnerable to even a small discharge of oil. The range of assessment procedures available to the trustee(s) should ensure that an appropriate type of assessment will be conducted. NOAA's proposed rule does provide, however, that the compensation formula is appropriate for determining damages for discharges of ten or more gallons, up to 50,000 gallons.

Comment: NOAA received several comments recommending specific factors to include in the simplified assessments, such as season and location of the discharge, and wind and surface currents present at the time of the discharge.

Response: NOAA agrees that the inclusion of these factors is helpful in the assessment. These types of variables are accounted for in the Type A model. In the compensation formula, wind and surface currents are predetermined to maintain the scenario of a "small" discharge.

Comment: A number of commenters challenged the use of computer models and compensation tables for damage assessment. One commenter was opposed to these methods because of insufficient data. Another commenter speculated that trustees would not use the models for fear of the passive use valuations being challenged.

Response: NOAA believes that the computer model and compensation formulas provide a reasonable means for conducting rapid and economical damage assessments. Based upon extensive review of available literature, NOAA believes that the data collected for the formula are sufficient to make a reasonable determination of damages. If the trustee(s) determines that there are insufficient data for an appropriate assessment based on the model, an incident-specific analysis may be appropriate, such as an EDA or CDA. The compensation formula does not include passive use values at this time. Discharges that are likely to have resulted in significant reduction for passive use values should be assessed through a CDA, and possibly an EDA.

Comment: Several commenters supported the development of compensation tables for the assessment of small discharges. Some conceded that the tables were in some instances less accurate than incident-specific assessments but were justified by their cost effectiveness.

Response: NOAA agrees. Not only is the reduced cost a factor, but there is a more predictable outcome following a discharge and the trustee(s) and the RP(s) are able to focus on the actual restoration or acquisition of the equivalent resources as soon as possible.

Comment: One commenter questioned the reliability of desktop models that require highly technical, current environmental information that is not always available. Another commenter agreed and stressed that such assessment methods must meet clearly defined criteria of scientific validity. One commenter noted that, although compiling scientific information would be cumbersome at first, trustees would come to appreciate the efficiencies of the structured tables that would facilitate expedited settlements.

Response: NOAA concurs that desktop models are most effective when the averages that are produced reflect the most current and detailed information available. For regions where little data are known, however, models are still capable of producing reasonable estimates. Although the proposed rule only requires revision of the rule every five years, the computer model and formulas will be the subject of continuing evaluation. As new scientific literature becomes available which enables further refinements to the models by DOI, NOAA will evaluate whether revisions to the formulas are appropriate in advance of the five-year requirement.

Comment: One commenter charged that tables and models are based on statistical averages and by their nature cannot produce values that are reasonably related to actual costs. As such, they are not authorized by OPA. However, the commenter continued to state that small discharges with limited effects may not call for a Comprehensive Damage Assessment (CDA).

Response: NOAA believes that the development of formulas and models is within the scope of its authority under OPA. Although based on statistical averages, the values do reasonably assess restoration/replacement costs and are therefore authorized by OPA. The computer models and compensation formulas are appropriate for small discharges of limited effect where a comprehensive damage assessment may be impracticable.

Comment: One commenter noted that restoration is a new and rapidly changing field where there are few case studies from which to draw information and calculate damages. Therefore, restoration costs may have to be determined on a case-by-case basis.

Response: NOAA agrees with this statement when the trustee(s) is conducting either an EDA or CDA.

Comment: One commenter recommended that NOAA's proposed regulations should address only the framework for comprehensive and expedited damage assessments,

especially where OPA, unlike CERCLA, does not specifically call for the preparation of regulations for simplified assessment methods. Further, the feasibility of simplified assessment procedures should be explored in the context of a negotiated rulemaking, comprised of representatives from industry, insurers, environmental groups and other trustees.

Response: NOAA disagrees with the notion that OPA limits this rulemaking to EDA or CDA procedures. Simplified assessments provide an opportunity for quick recoveries and therefore lower transaction costs to both the trustee(s) and the RP(s). The use of negotiated rulemaking for development of the compensation formula was considered to be very time consuming, expensive, and potentially resulting in damages based more upon compromise than restoration costs and compensable values.

Comment: One commenter noted that areas that are presently "biologically degraded" will be retarded in the recovery following a discharge. NOAA's suggestion that the compensation table could be used where there may be difficulty in ascertaining precise injury, seems to equate difficulty with insignificance. This approach will encourage the trustee(s) to use a cookbook approach rather than a fact-based assessment.

Response: In the selection of the appropriate assessment procedures, the trustee(s), at the time following the discharge, will be in the best position to determine the most appropriate procedure for the discharge conditions.

Comment: Two commenters expressed concern that tables may under-value resources in industrialized or biologically degraded areas. Another commenter particularly noted that any table should fully value urban resources. One commenter felt that NOAA is being optimistic in that the tables can cover many issues.

Response: The Estuarine and Marine Environments Compensation Formula is based upon 55 representative province/habitat combinations, ranging from Northern Maine to the Alaska Coast, the Hawaiian and Pacific Islands. Since the compensation formula is based upon averages, it is impossible to include all known coastal habitats and every combination of discharges. However, several industrialized areas are specifically represented, i.e., Boston Harbor, New York Harbor, Mobile Bay, etc.

The Inland (Freshwater) Waters Compensation Formula is based upon 100 representative province/habitat combinations representing the Great Lakes and other inland waters by type, i.e., river, lake, fast flowing stream, etc.

By comparing the habitat of the actual discharge with the province and specific habitat used to estimate the damages in the formula, the trustee(s) should, in most cases, find the most applicable scenario. NOAA emphasizes that the primary advantages of a compensation formula are for simplicity and cost-effectiveness. In addition, any time a simplified assessment is used, it is unlikely that the exact circumstances of an actual discharge will be represented, only approximated. In cases where the circumstances of an actual discharge are determined to be far out of the bounds of the compensation formula, the trustee(s) should consider the use of another assessment procedure, i.e., EDA or CDA.

Comment: One commenter suggested using tables in small discharges to establish base damages, and conducting more incident-specific assessments for larger discharges or sensitive areas. Others indicated that tables would be too simplistic and have limited value.

Response: The compensation formula is specifically designed for use in most discharges of under 50,000 gallons. It is likely that discharges over 50,000 gallons would result in injuries that would be more appropriately addressed by another assessment procedure. Again, the trustee(s) will determine if a specific discharge may be appropriately assessed by the compensation formula. It is well within NOAA's statutory authority to include compensation formulas with the proposed rule.

Comment: One commenter was concerned with the formulas that give no credit for responsible cleanup. Another commenter cited that no adjustment is made for short-term versus long-term injuries. This commenter also stated that there is no difference for companies that take remedial action to clean up or reduce injuries of a discharge. The commenter stated that the lack of these adjustments is a disincentive to RPs. Others indicated that the tables should be based upon the assumption that the total cargo was discharged, requiring the RP to produce evidence to the contrary.

Response: The formulas introduced in this proposed rule provide that the gallon amount used is the estimated amount of oil left in the water environment 24 hours after the onset of the discharge. Hence, if oil is immediately contained and cleaned up, the ten gallon threshold of the compensation formula may not be reached. Discharges of highly volatile oil products may result in significant negative injuries to the environment, even if cleaned up within 24 hours. Such discharges would be more appropriately assessed using another assessment procedure. This should provide a significant incentive for RP(s) to begin immediate cleanup and yet allow for the assessment of injuries resulting from the actual discharge. Discharges that may result in long-term injuries may be more appropriately assessed through the use of another assessment procedure. NOAA is confident that the lead response agency and the RP(s) can and will identify the amount of oil discharged to a degree of confidence necessary to conduct a damage assessment, either through the formulas or other assessment procedure.

Comment: Some commenters stated formulas should not be based simply on mortality counts or gallons discharged. Yet another stated that, if a dollar per gallon formula is used, NOAA should consider toxicity of discharged oil as well as persistence. Another indicated that any compensation formula based on destroyed flora or fauna ignores the rate of natural replenishment. This commenter also stated that damages should not be based on artificial valuation of "commercially valueless creatures."

Response: The compensation formulas introduced in the proposed rule are based upon gallons discharged, restoration costs (where appropriate), restocking costs, and average direct use values of the affected resources. Restoration costs are only included when the scenario is one in which anticipated habitat restoration efforts would have lessened the overall damage figure, i.e., done more good than harm. Since the formula represents small discharges few scenarios resulted in habitat restoration costs. However, restocking costs of fish, shellfish, and wildlife are included when it is expected that there would be a loss of those resources. Restocking costs and direct use values could only be calculated for resources that had a current value that could be determined.

In addition, the formulas provide for five different representative types of oil: (1) Heavy crude; (2) light crude; (3) No. 2 fuel oil; (4) diesel oil; and (5) gasoline. If the oil discharged is not one of those types of oil, the trustee(s) is given guidance on which representative oil is the closest to the type of oil discharged. The data used to develop the formula recognize the different toxicity properties of each representative oil.

Comment: Some commenters strongly objected to the inclusion of passive use values in simplified assessments. One noted that passive use values are "particularly ill-suited" in the context

of small discharges, but NOAA should not rule them out for those discharges. The model or table will not capture passive use losses well, but NOAA should continue to explore inclusion of them in such a table or model as the number of passive use value studies is rapidly increasing.

Response: Through a lengthy, deliberative, and exhausting process for the review of contingent valuation, NOAA has determined that the formulas in the proposed rule will not include passive use values. In addition, the formulas are designed for small discharges that would generally not have a significant effect upon passive use values. Small discharges likely to have a significant effect upon passive use values, as determined by the trustee(s), should be assessed through a different procedure.

NOAA is considering how passive use values might be included in the compensation formulas and is requesting comments on this issue.

Comment: One commenter stated that use of a compensation table would avoid the cost of performing an assessment and represent a savings to the RP. The commenter stated the RP should not have the ability to challenge a table by using "real data." However, some collection of "real data" between the RP(s) and trustee(s) should be allowed. RP-collected data should not be admissible in court, unless submitted to the trustee(s) as a part of the administrative record.

Response: One of the advantages of using the compensation formula is the reduced cost. However, the proposed rule specifically allows the RP(s) to request a more comprehensive damage assessment, provided those costs are borne up front by the RP(s). Where the trustee(s) and the RP(s) determine it necessary to collect additional data, another assessment procedure can be used. As outlined in this proposed rule, all data to be considered in the restoration process must be submitted to the administrative record. Once the formulas are final, including possible judicial review, NOAA believes that the bases of the formulas will no longer be subject to challenge, although the trustee(s) may be challenged concerning the data inputs, i.e., size of discharge, type of oil, etc. To avoid unnecessary litigation, NOAA encourages the RP(s) and the trustee(s) to enter into enforceable agreements to use the formulas to determine the appropriate damages.

Comment: One commenter stated that any compensation formulas or computer modeling must include a continuous "reality check" of observed effects and results for assessment awards. Another commenter took the opposite view, favoring compensation tables only if they are not subject to unilateral "reality checks."

Response: NOAA believes that the proposed compensation formulas represent the best available information at the time of compilation in terms of the fate and effect of oil, the likely biological effects, and the average restoration costs and direct use values, for a variety of discharges. As stated earlier, if the circumstances of an actual discharge are significantly out of the parameters of the formulas, an alternative assessment procedure should be used. Again, any simplified assessment procedure will not mirror reality in every single discharge. The proposed rule does provide, however, for NOAA to review the procedures every five years. This will allow the formulas to be kept current on biological, toxicological, and valuation information.

Comment: One commenter stated that formulas should not be used as an assessment tool. Another cited a compensation formula as a theory of "liquidated damages" or "worker's compensation" recovery, being contrary to the statutory injunctions of OPA. Also cited was the *Zoe Colocotroni* case as discrediting compensation formulas.

Response: NOAA disagrees that compensation formulas are not appropriate as assessment tools, provided the formulas are based upon the measure of damages required by OPA. These include: The costs of restoring, rehabilitating, replacing, or acquiring the equivalent of the damaged resources; the diminution of value; plus the reasonable costs of conducting the assessment. The proposed formula is based upon that premise, although it is likely that costs of conducting the assessment will be very low. As stated throughout the proposed rule, the formula is one of four procedures available to the trustee(s). If the particular circumstances of the discharge are beyond the scope of the formula, another procedure should be used.

Comment: One commenter recommended that any simplified damage assessment technique be based on the equation that: Total Damages = Cost of Restoration + Diminution of Value of the Resource Pending Restoration + Cost of Conducting the Assessment.

Response: NOAA agrees that a simplified damage assessment procedure based on such an equation satisfies the criteria of being simple, accurate, reliable, and understandable and is in accordance with OPA.

Type A Model

Subpart E Preamble

NOAA is proposing that a natural resource trustee(s) may use the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), Version 1.2, known as the Type A model, developed by the U.S. Department of the Interior (DOI), for damage assessments under OPA. The Type A model is described at 43 CFR Part 11, subpart D. The Type A model may be used when the conditions of the discharge are sufficiently similar to the conditions of 43 CFR 11.33(b) to make the Type A model a useful method for the discharge of concern. The trustee(s) shall publish the DARP stating the intent to use the NRDAM/CME and identifying the inputs to be used in that application. The public will have thirty calendar days in which to comment on the use of the NRDAM/CME. If the trustee(s) has set out, as part of prespill planning, the circumstances under which the NRDAM/CME would be used and a different process for public input in that use, the process identified in the prespill plan may be used, subject to the provisions for prespill planning in § 990.16 of this part.

It is likely that NOAA will also recommend the new set of computer models being developed by DOI for use in estimating damages for injuries to natural resources resulting from relatively minor discharges of oil. The current computer model for use in coastal and marine environments is being revised by DOI to comply with the court's decision in *Colorado* v. *DOI* and as part of the statutorily-mandated review and update. The court in *Colorado* v. *DOI*, held that natural resource damage assessments should be based upon costs to restore, replace, rehabilitate, or acquire the equivalent of the injured resources, plus the diminution of all reliably calculated compensable values pending recovery. The current model is still in effect pending those revisions. DOI is also developing a second computer model for use in the Great Lakes and their connecting channels.

These computer models use the same basic approach to estimating damages. Each model is composed of several major components modeling the physical and chemical fate of the substance discharged, spread of the substance throughout the environment, the present and future biological effects of the discharge, the restoration approach and its costs where appropriate, and the value of natural resources and services lost pending recovery.

These new computer models, are under development through DOI, but are not yet available for public review. NOAA is working closely with DOI in its development of these computer models. Based upon an initial evaluation of these models, it is likely that NOAA will recommend that they are available procedures that the trustee(s) may choose to use under OPA.

Response to Comments

"Use of Computer Models"

Comment: Several commenters noted that simplified procedures are most applicable for small discharges that would otherwise not be addressed because the cost of conducting an assessment might be greater than the ultimate recovery. Commenters noted that the use of simplified procedures would be less costly to the trustee(s) as well as the RP(s), and will result in more timely recoveries.

Response: NOAA agrees that a major advantage of a simplified assessment procedure like a computer model would allow for more timely and cost-effective assessments for a majority of oil discharges.

Comment: Concerning the use of a computer model, commenters indicated that it would more accurately evaluate variables than a simplistic formula. Models incorporating a number of key variables could be a useful assessment tool and provide a cost-effective, reliable, and rapid assessment.

Response: NOAA agrees that a computer model that allows a large range of variables to be considered in a standardized fashion is a valuable assessment tool.

Comment: Several commenters indicated that a computer model must be based upon an accurate estimate of restoration costs and that such costs must bear a reliable relationship both to actual injuries to natural resources as a result of the discharge and restoration actions.

Response: NOAA agrees that a computer model would look at the most appropriate type of restoration action typically considered for the type of incident being modelled. This action would be based on the average types of expected injuries. The model would then calculate the average, regional costs of carrying out such an action.

Comment: Several commenters expressed concern about the use of a model because of the possibility that it would underestimate the damages. Commenters in this category, therefore, argued for the inclusion of passive use values. According to these commenters, even if the resource does recover, there will be some diminution in value over the recovery period. Similarly, passive use values may remain impaired/diminished until recovery.

Other commenters, however, argued that the factors taken into account by a model should be limited. Since OPA is compensatory and not punitive, a model should not incorporate values that may be difficult to measure. Accordingly, these commenters would not allow the use of any passive use values. Also, one commenter stated a model would be improper for large values.

Response: NOAA points out that the court's direction in the *Ohio* and *Colorado* decisions was to include in all types of assessments all reliably calculated values. Therefore, to the extent possible, these values would be included in a computer model.

Comment: One commenter stated that, where multiple trustees are involved in one discharge, the RP is unlikely to agree to a damage figure derived from a computer model or compensation table until all the trustees agree that the resulting damage figure is the sole measure of damages for all injuries. Otherwise, the commenter noted that the RP would be faced with paying damages to satisfy the computer model or table figure while still facing claims for specific restoration projects, all resulting from the same discharge.

Response: NOAA notes that the danger of double recovery can be avoided by the RP(s) scrutinizing a natural resource and/or injury upon which damage claims are made by several trustees. Such review would show whether the same resource injury is being claimed by the various trustees.

Comment: Some commenters suggested NOAA develop and propose a similar computer model for rivers, streams, lakes, and interior wetlands.

Response: NOAA is currently developing the inland compensation formula for relatively minor discharges in inland waters (see discussion elsewhere in this preamble). DOI is also investigating possible additional damage assessment methods for use as inland Type A procedures. NOAA will work with DOI in this effort to the extent possible.

"DOI's Type A Model"

Comment: Several commenters stated that the revised Type A model, under development by DOI, must contain more accurate data than the current Type A model. It should be area specific and reflect the actual species densities and distributions, as well as variations in those distributions and densities. The commenter noted that entire coastlines should not be classified within the model as one biologically homogenous unit. Some commenters identified factors that the table or model should take into account. These factors include: The scarcity of a resource or the presence of a critical species in a given area; seasonal differences; the size of the discharge; and the cumulative effects of small discharges over time. In addition, the data should be periodically updated.

Response: NOAA notes that DOI is updating the data considered in the Type A model and collecting all available information. As for including such things as regional or local information on species densities and distributions, NOAA is helping to gather such data, but notes that such detailed information is only available for certain well-studied areas that represent a relatively small portion of the entire coastal and marine environments of the United States and its territories.

Comment: Some commenters noted that the original Type A model severely underestimated damages in its use of a flawed economic valuation and that the damages should be significant enough to act as a deterrent.

Response: The court in *Colorado* v. *DOI* instructed DOI to include in the Type A models, damages based upon costs to restore, replace, rehabilitate, or acquire the equivalent of the injured resource, plus the diminution of all reliably calculated direct use and passive use values pending the recovery of the injured natural resources and their services. DOI has stated that the Type A models will incorporate these components of the damages to the extent practicable. The Type A models are compensatory, not punitive, so they are not intended to serve as deterrents.

Comment: One commenter stated that the model should provide for frequent information updating, and should require public input in the process.

Response: NOAA agrees that the Type A model should be periodically updated through a public review and comment process. In fact, section 301(c) of CERCLA requires a review and revision, as appropriate, every two years. DOI is currently conducting such a revision of the Type A model for coastal and marine environments, along with the *Colorado* court's suggested revisions.

Expedited Damage Assessment

Subpart F Preamble

General

Purpose/Scope

Included in the range of proposed damage assessment procedures is the expedited damage assessment (EDA). EDA reflects a damage assessment approach that is intermediate between the current Type A model and proposed CDA procedures. This approach recognizes that the trustee(s) may want to address more effects than currently available in the Type A model or proposed compensation formula, particularly for inland discharges. The approach also recognizes that the size, location, and timing of a given discharge may not warrant the broad, extensive procedures associated with a CDA. An EDA encompasses a variety of methods that permit the trustee(s) to determine and quantify injury based on limited, focused studies. The trustee(s) is accorded considerable discretion in determining which methods are the most suitable for a given EDA. Accordingly, the EDA should be viewed as a dynamic process rather than a rigid, step-by-step approach.

The goal of an EDA is to initiate restoration as quickly as possible. This goal can be achieved by truncating the injury determination and quantification process. Using limited, focused studies, the trustee(s) may determine and quantify injury in one of two general approaches. First, the trustee(s) may supplement the Type A model with additional injury or compensable value studies for those natural resources and/or services not specifically included in the model's assumptions. Second, the trustee(s) may undertake an attenuated CDA. The latter approach involves the trustee(s) selecting only certain key resources and/or services that warrant injury assessment and conducting focused studies to quantify injuries to determine the restoration approach and compensable values. The proposed rule encourages the trustee(s) to begin initial restoration planning early in the assessment/restoration process in order to focus efforts on developing a restoration approach. These early restoration alternatives, however, may be modified as the injury determination and quantification data is refined.

The EDA process allows the trustee(s) to exercise his best professional judgment to narrow the scope of studies conducted during the Assessment/Restoration Phase to a few key natural resources and/or services. To help select the appropriate resources for inclusion, the proposed rule recommends that the trustee(s) focus on those natural resources and/or services that are of commercial, recreational or ecological importance, or of special significance. The trustee(s) may determine, for example, that studies focusing only on one, or few resources (i.e., murres or wetlands), will produce a restoration approach sufficient to restore the affected resources and/or services. The proposed rule also provides guidance for focusing the injury determination and quantification components.

In examining the relationship of the EDA with the other proposed assessment procedures, it is helpful to think in terms of what EDA is not. Large or unusually destructive discharges may require a broad suite of extensive studies over a multi-year period to determine the nature and extent of the injuries to natural resources and/or services and calculate compensable values. While it is important to have a comprehensive damage assessment option, NOAA believes that most assessments will not require an extensive, often litigation-driven, approach. Through this proposed rule, NOAA has interpreted Congress' apparent desire to spend less time rediscovering that a discharge is harmful to the environment, and focus more efforts on restoration measures. EDA provides a vehicle for that purpose.

Finally, the proposed rule provides that the trustee(s) should complete the natural resource and/or service injury determination/quantification process and develop a restoration approach within two years from the date of the discharge, where possible. This time-frame is not required, but an assessment taking longer to reach this point is not expedited.

Guidance in Selecting the EDA Approach

In evaluating whether an EDA is appropriate for a given discharge, the trustee(s) should take into account the guidance provided by the proposed rule. This guidance is not intended to be rigidly applied. Rather, the trustee(s) should exercise best professional judgment in evaluating the usefulness of this guidance for any given discharge.

Near the close of the Preassessment Phase, the trustee(s) will examine the information regarding the discharge in light of the guidance and decide whether to select the EDA approach or another assessment procedure. In all cases, this decision is reserved for the trustee(s). See discussion earlier in this preamble.

The Expedited Damage Assessment Approach

EDA Objectives: The steps involved in the EDA or CDA damage assessment are similar. The scope of effort associated with each step, however, differs considerably between the two procedures.

The objectives of an EDA are to: (1) Expeditiously determine and quantify injuries to selected natural resources and/or services resulting from a discharge using limited, focused studies and baseline or reference/control information, and (2) provide the basis for restoration and recovery of natural resources and/or services. To achieve these objectives, the EDA procedure consists of: (1) Injury determination; (2) injury quantification; (3) restoration component; and (4) compensable value determination.

Injury Determination

General

Injury resulting from (or caused by) the discharge of oil has been determined when the trustee(s) has demonstrated that: (1) With direct exposure, (a) the natural resource was exposed; (b) there is a pathway between the discharge and exposed natural resource; and (c) the exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or (2) in the absence of direct exposure, (a) the adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and (b) the adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge. The trustee(s) should establish baseline or reference/control conditions from which changes in environmental and biological parameters may be measured.

Contributing Factor: Where multiple factors may have contributed to an indivisible injury to a natural resource and/or service, the discharge of oil may be considered a contributing factor to the injury.

Exposure

Once the discharge of oil has been documented, the next step involves either confirmation of exposure or threat of exposure to the natural resources to the oil. Confirmation and exposure entails determining the amount of product discharged into the environment. Initial estimates developed in the Preassessment Phase should now be verified or modified as appropriate. Where practicable, the trustee(s) should rely on figures developed by the On-Scene Coordinator (OSC) and request continual updates. The OSC may also be requested to provide a final estimate of the amount discharged, recovered, or removed. The trustee(s), however, may conduct additional surveys to determine the amount of oil discharged into the environment, should the figures provided by the OSC prove insufficient.

Using field data collected thus far, the next step should be to identify exposure pathways. Field data that may help the trustee(s) accomplish this step include documentation of the areal extent of the oil and collection of water samples along the oil contamination gradient. The trustee(s) may rely on models, in conjunction with limited field data, to document exposure pathways. These models should be relatively simple and acceptable to the scientific and regulatory community. The trustee(s) should confirm that natural resources were in fact exposed to oil.

Where the injury is an indirect adverse effect or impaired/diminished use, the trustee(s) should begin to document the nature and extent of such injury. An example of impaired/diminished use is where a recreational beach is closed in anticipation of oiling. An example of an indirect adverse effect is where exposure to oil has resulted in the reduction or elimination of food chain resources thereby resulting in starvation of a higher trophic level resource (e.g., birds). If such injuries are readily quantifiable, studies that document the injury are appropriate for an EDA. Determination of impaired/dimished use or adverse effects is addressed in the section entitled Injury Determination: Scope of Injuries.

Identify Natural Resources: The trustee(s) should identify those natural resources for which injury determination and quantification will be conducted. Eligible natural resources will include those which are of commercial, recreational, ecological importance, or of special significance.

Initiate Early Restoration Planning: At this point in the process, the trustee(s) should initiate early restoration planning. To supplement the information on restoration provided in this section, the trustee(s) should refer to the restoration discussion in subpart G of the preamble, in the proposed rule, and the Restoration Guidance Document.

The trustee(s) should develop a restoration scoping statement to focus the planning process. The scoping statement should identify those restoration alternatives that the trustee(s) may consider to remedy discharge effects, including source control and remediation where appropriate. The "natural recovery" alternative should be specifically addressed. In addition, the trustee(s) may consider acquisition of the equivalent natural resources as an alternative, but only in light of OPA's preference for the other alternatives. The scoping statement will rely on information derived from the Preassessment Phase and exposure determination, and may be developed along a roughly parallel time line as the DARP. (See preamble discussion of the DARP in subpart C.)

Scope of Injuries

The scope of injuries in an EDA are limited relative to a CDA. Injuries to natural resources and/or services that may be appropriate for an EDA include, but are not limited to, mortality, and sublethal effects that are relatively easy to document. Categories of injury that meet the acceptance criteria in § 990.71(e) of the proposed rule and are appropriate for an EDA are currently being developed.

With respect to fish and wildlife resources, the trustee(s) should estimate direct mortality using body counts in the affected areas in accordance with standard field procedures (such as the "fish-kill" investigation methods described by the American Fisheries Society). (See Part II (Fish-Kill Counting Guidelines) of "Monetary Values of Freshwater Fish and Fish-Kill Counting Guidelines," American Fisheries Society Special Publication Number 13, 1992.) The trustee(s) should correct the estimates using established procedures in the literature along with "off-the-shelf" models. Published water and sediment toxicity data can be used in the models. In addition, toxicity tests may be conducted on the discharged oil to provide specific information for the model on the effects of the discharged oil at the estimated concentrations on the species and life stages of concern. The toxicity tests, however, should be time- and cost-effective. Mortality may also be determined by baseline and reference/control comparisons.

Mortality estimates may be less applicable to vegetation associated with natural resource habitats. Oiled vegetation may suffer considerable sublethal injury including, but not limited to, reduction in growth rates, loss of above-ground biomass, and reproductive impairment. These injuries, especially the loss of plant biomass, may result in changes in species diversity and abundance utilizing the habitat. Nevertheless, chronic contamination or a severe discharge may result in direct mortality. The trustee(s) may need to undertake limited surveys to verify early vegetative mortality, as well as mortality likely with time.

As mentioned earlier, mortality resulting from a discharge may also be indirect. The trustee(s) may include indirect mortality in the injury focus provided there is baseline information documenting such injury or the indirect mortality can be determined with limited, focused studies. Measures of indirect mortality include, but are not limited to, starvation; failure to nest; hatching failure; and loss of critical habitat.

Sublethal effects as measures of injury should be carefully selected in an EDA. Only those that can be determined using limited, focused studies and that are expected to result in quantifiable injuries should be included. Sublethal effects that may meet these requirements include, but are not limited to, impairment of growth, reproduction, development and behavior.

The trustee(s) should also consider injuries to services. The first step in determining injury to the services is to inventory the services provided by a natural resource prior to discharge and identify those services affected or expected to be affected by the discharge. Services commonly affected by a discharge of oil to the natural environment include recreational, commercial, ecological, and those of special significance as defined earlier in this proposed rule. Recreational services provided by natural systems include, but are not limited to, provision of recreational fishing, boating, boat mooring, bathing, beach-use, wildlife viewing, sightseeing, and hunting opportunities. Commercial services include finfish and shellfish harvest, as well as marine transportation, marine development, and industrial and municipal water use. Commercial services differ from recreational, ecological, and passive use services in that some parties other than the trustee(s) (e.g., commercial fishermen) may make claims related to the diminution of value. Therefore, the potential for overlap between the trustee's(s') and a private claim should be carefully considered. Typical ecological services (i.e., biological diversity, habitat protection, food chain transfer, contaminant control/assimilation, water quality/quantity aesthetics) could include wetland functions, such as water quality enhancement, waterfowl nesting sites,

and estuary functions, such as provision of nurseries for fin and shellfish or habitat to endangered or threatened species. Services provided by resources of special significance include, but are not limited to, subsistence fishing, education, scientific and cultural research.

Not all services inventoried will suffer injury or a reduction in their flow. The trustee(s), therefore, must identify those services to be addressed by the EDA. For example, wetlands provide a range of services including, but not limited to flood control, fish nurseries, and recreational opportunities. A discharge that results in oiling of above ground wetland vegetation may leave the roots intact, therefore leaving the flood control service unaffected. The oiling of the emergent vegetation, however, could substantially reduce the bird viewing opportunities. The trustee(s) should include in the EDA only those services that have actually been interrupted or lost.

Injury Quantification

General

The trustee(s) should quantify injuries to natural resources and/or services identified through injury determination. Based on the services identified as interrupted or lost, the trustee(s) should select a subset of this list for detailed analysis. The trustee(s) should determine the duration of lost or diminished services. This is accomplished by comparing the level of baseline or reference services (i.e., the conditions as they existed prior or adjacent to the discharge and would have continued to exist in the future but for the discharge) to the level of services after the discharge. In some cases, baseline or reference service flow estimates may not be available. For example, state and federal agencies may not maintain data on commercial fish catch at the level of detail required for economic damage assessment. Where critical information is lacking, the trustee(s) must decide whether to: (1) Continue with the EDA in the absence of the compensable value estimate for the given service flow; or (2) reconsider the appropriateness of the EDA approach, given the magnitude or importance of the service flow in question.

Develop Restoration Component

The trustee(s) should develop the restoration component of the DARP at this phase in the process. The restoration component should include an analysis of restoration alternatives and the preferred restoration approach for each injured resource or service. The trustee(s) should refer to subpart G for a full discussion on the restoration component of the DARP.

Compensable Values Component

The compensable values component for an EDA contains the study design to estimate the values of the lost services. In this part of the EDA, the trustee(s) will consider the interim lost services associated with the restoration component and identify available methodologies for estimating these values.

While an EDA does not necessarily preclude large-scale original studies such as a site-specific travel cost model, economic assessment of lost values should be accomplished by limited, focused efforts where possible. The EDA, therefore, may rely on simplified valuation models or the applications of benefits transfer. As discussed here and in the "Compensable Values" section of the preamble accompanying subpart G, a wide range of methods exist for estimating lost resource values.

Applicability of market valuation techniques will depend on site-specific factors, such as the types of services affected and data availability. Important and commonly-applied approaches include: Market price and appraisal value; travel cost models; random utility models, and hedonic property valuation models. The trustee(s) may determine that economic methods currently do not exist to estimate the damages resulting from the loss or reduction in one or more of the important service flow categories. Where the trustee(s) anticipates that implementing a particular technique will exceed a reasonable time to accomplish an EDA or will result in implementation costs that are unreasonable relative to the expected level of damages, the trustee(s) should consider selecting another damage assessment technique. Factors influencing this decision will include increase in the precision of the damage assessment, and the time and budget required to complete such research.

Once the extent of the lost services has been estimated, economic values must be assigned to these services to estimate the compensable values. For some categories of economic damage, it will be possible to conduct site-specific analyses. For example, the damages associated with the closure of a marine transportation corridor will, in most instances, be estimated using site-specific data. In other cases, the trustee(s) will apply estimates, equations, models, or data from existing valuation studies, through the use of benefits transfer. Benefits transfer may be used where the trustee(s) determines that benefit estimates are available to support a defensible benefits transfer (see discussion of benefits transfer in the preamble discussion of valuation methodologies). If such estimates do not exist, the trustee(s) may undertake a cost-effective study at the site.

The EDA procedure is a new concept, that is designed to facilitate the damage assessment process for a large number of discharges. It represents a hybrid approach that entails either supplementing the Type A model with limited, focused studies, or studying key natural resources and/or services for which limited, focused studies will be undertaken. NOAA wishes to solicit comments regarding the scope and applicability of the EDA.

Response to Comments

Comment: NOAA received comments supporting the use of an Expedited Damage Assessment (EDA) procedure so long as it could make accurate estimates and meet, in an expedited way, other natural resource damage assessment criteria.

Response: The proposed rule provides for an EDA in this subpart and meets those criteria.

Comprehensive Damage Assessment

Subpart G Preamble

General

Purpose/Scope

The Comprehensive Damage Assessment (CDA) is the most detailed of the assessment procedures available to the trustee(s). The purposes of a CDA are to: (1) Comprehensively determine the nature and extent of injury to natural resources and/or services; (2) develop a restoration plan to remedy that injury; and (3) determine the total compensable values for discharges requiring a complex, prolonged assessment/restoration process as deemed necessary by the trustee(s). Since there is no single CDA approach appropriate for every discharge, the trustee(s) must tailor each CDA to the specific oil discharge circumstances.

A CDA consists of four components, including Injury Determination, Injury Quantification, Restoration Planning, and Compensable Values Determination. After completion of a CDA, a Report of Assessment, which includes the determinations made in each of these components, must be prepared.

CDA Costs

CDA costs include those costs associated with injury determination and quantification, restoration planning, and compensable values determination. Costs incurred should be limited to those the trustee(s) considers necessary. Such costs should be supported by appropriate records and documentation in the administrative record, and must not reflect regular activities performed by the trustee(s) in the management of natural resources and/or services not related to the discharge of oil.

Report of Assessment

At the conclusion of a CDA, the natural resource trustee(s) should document all pertinent activities and decisions in the administrative record and prepare the Report of Assessment. The Report of Assessment is the basis of the CDA claim. The Report of Assessment is the DARP, as modified based upon comments received during the public comment period. The Report of Assessment contains the trustee's(s') selected restoration approach. The administrative record should contain the rationale for conclusions regarding each component of the CDA process.

Injury Determination

Purpose/Scope

The purpose of Injury Determination in a CDA is to verify or modify the nature of the injury to natural resources and/or services resulting from the discharge of oil. Injury determination in a CDA should be made for natural resources and/or services that can be restored or for which the public can be compensated.

Should the trustee(s) be able to document the nature of the injury to a natural resource and/or service resulting from the discharge of oil, he should then proceed to Injury Quantification. If the trustee(s) is unable to determine such injury, further assessment efforts should be terminated and the results of the Injury Determination documented in the Report of Assessment.

Objectives and Study Designs

Based on the information regarding the discharge and environmental setting collected in the Preassessment Phase, the trustee(s) should first develop objectives governing the overall CDA and for the individual component studies comprising the CDA. These objectives provide direction for the design of the CDA and each study. Once the objectives are defined, the trustee(s) should develop appropriate study designs. Study designs address the level of effort for each given study. The study design may include, but is not limited to, identification of: (1) The hypotheses or questions posed; (2) changes in injury that may be considered statistically and environmentally significant; (3) expected endpoints, i.e., effects, for each resource and/or service; (4) the appropriate assessment methods for each endpoint; (5) data quality objectives to ensure that data are collected and analyzed effectively; (6) sampling design that provides the logical structure on how to collect the data; and (7) the statistical analyses to test the hypotheses. Guidance on study designs can be found in the Injury Determination and Quantification Guidance Document, currently being prepared.

Injury Determination

Once the individual study designs are complete, the trustee(s) should then document the nature of the injury resulting from the discharge of oil. Injury resulting from (or caused by) the discharge of oil has been determined when the trustee(s) has demonstrated that: (1) With direct exposure, (a) the natural resource was exposed; (b) there is a pathway between the discharge and exposed natural resource; and (c) the exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or (2) in the absence of direct exposure, (a) the adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and (b) the adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge.

Where multiple factors may have contributed to an indivisible injury to a natural resource and/or service, the discharge of oil may be considered a contributing factor to the injury.

The trustee(s) should identify the pertinent exposure pathways, and relevant injuries to natural resources and/or services. The definitions of exposure, injury, and causality in the proposed rule are different, but not inconsistent, than that found in the CERCLA natural resource damage assessment rule, known as the Type B rule (43 CFR 11.62(b)-(f)). Guidance on natural resource and service injuries exclusive to oil discharges can be found in the Injury Determination and Quantification Guidance Document, currently being prepared.

The method for determining injury in this proposed rule is also different than that of the CERCLA rule. These methods should be chosen based on the capability of the method to demonstrate an effect on or impaired/diminished use of a natural resource. For any injury to be considered such under this proposed rule, it must satisfy the following acceptance criteria: (1) For natural resources, (i) the exposure to oil, its components, or by-products has been demonstrated to cause an adverse effect on the natural resource in laboratory experiments or the field; and (ii) the measurement for a natural resource adverse effect is cost-effective and can be obtained through the application of a scientifically rigorous and appropriate methodology. Categories of natural resource and service injury for the CDA (as well as the EDA) that meet the acceptance criteria specified for discharges of oil are also currently being developed.

The public is asked to review these changes relative to the CERCLA rule. Constructive comments should reflect the flexibility and discretion accommodated to the trustee(s) throughout the OPA proposed rule.

Injury Quantification

Purpose/Scope

The purpose of injury quantification is to determine the effects on natural resources and/or services resulting from the discharge as defined in the proposed rule. The proposed rule allows the trustee(s) to measure the change in either a natural resource itself, or directly in a service. The trustee(s) is encouraged to use whichever approach proves to be most appropriate for a natural resource and/or service being considered. In either case, Injury Quantification usually requires comparisons to baseline or reference/control conditions, or some other known measures. Such comparisons are based upon the completion of any response actions, and will depend on the recovery period of both resources and/or services.

Should the trustee(s) be able to quantify injury to natural resources and/or services resulting from the discharge of oil, the trustee(s) should then proceed to the restoration component. If the trustee(s) is unable to quantify such injury, further assessment efforts should be terminated and the results of the Injury Quantification documented in the Report of Assessment. Quantification of Injury: In certain circumstances, the trustee(s) may decide to quantify natural resource injury and translate that injury to the reduction in services. If the trustee(s) bases quantification on natural resources injury, he should determine the: (1) Extent to which a natural resource injury has occurred; (2) extent to which the injured natural resources

differ from baseline or reference/control conditions; (3) services normally produced by the injured natural resources and (4) reduction of services resulting from the discharge of oil.

However, where there are insufficient data to quantify natural resource injury or where there is no associated injured natural resource, the trustee(s) may directly quantify the reduction in the services resulting from the discharge.

Even where natural resource injury does occur, direct quantification of the reduction in services may be the approach of choice. In these cases, the reduction in services may be a measure of injury when the: (1) Extent of change in the services resulting from natural resource injuries can be determined without also calculating the extent of change in the resources; and (2) services to be determined are expected to provide a better indication of compensable values caused by the natural resources injury than would direct quantification of the resources themselves.

If the trustee(s) bases quantification on injury to services, he should determine the: (1) Extent of impaired/diminished services; and (2) extent to which the level of impaired/diminished services differs from baseline and/or reference/control conditions.

Quantification Methods

Guidance on quantification methods can be found in the Injury Determination and Quantification Guidance Document, currently being prepared. Quantification methods generally include before/after (using baseline data) and reference/control-impact study designs, using combined (at the community/population level) and/or individual (at the organism/biomarker level) injuries. Since particular quantification methods cannot be recommended to the trustee(s) at this time, guidance on specific natural resources and/or services to quantify can be provided. Such selection can be based upon the: (1) Extent to which a particular natural resource and/or service is affected; (2) extent to which a given natural resource and/or service can be used to represent a broad range of related resources or services; (3) consistency of the quantification method with the requirements of the compensable values determination component to be used; (4) ability to quantify changes in a given natural resource and/or service at reasonable cost; and (5) preliminary estimates of services.

Injury quantification for a CDA requires information on the extent of injured natural resources and/or services. Information needed for natural resource injury includes: (1) Total area or volume, if appropriate, or quantity of natural resources and/or services affected; (2) degree to which natural resources and/or services are affected; (3) ability of a natural resources and/or service to recover; (4) proportion of a natural resources and/or service affected; and (5) services that the injured natural resources provide to other resources and humans. Information needed for injured natural resource services include: (1) a list of the relevant natural resource services; (2) availability and characteristics of those services; and (3) information on past and current services. Sources for this information include government agencies, trade associations, academic organizations, resident population, response personnel, RP(s), experts, databases, and the open literature.

Recovery Analysis

The trustee(s) should estimate the time necessary for natural recovery without restoration efforts and beyond response activities. Recovery is defined as a return of natural resources and/or services to baseline or comparable conditions within the limits of natural or other (human-induced) variability. It is possible for the recovery of resource services to occur long before or after natural resources recovery is complete. However, in many cases, resource services are directly derived from natural resources and the recovery of resource services should correspond closely with the recovery of the natural resource.

Response to Comments

Comment: Some commenters suggested that injury should be hypothesized or justified within a reasonable period (e.g., one to two weeks).

Response: NOAA disagrees. A good faith effort to expeditiously complete an injury hypothesis should be made following a discharge. Nonetheless, it would be unreasonable to require completion of such an initial assessment within a specific interval, because conditions and circumstances will vary widely from site-to-site and situation-to-situation. Further, all concerned should recognize that an initial hypothesis of injury is just that. Because not all injuries will occur immediately following a discharge, and those that do may not be discernable until some time later, the hypothesis may be subject to significant, and perhaps repeated, revision over time.

Comment: One commenter was concerned that statistical analysis be used judiciously and also indicated that although specific statistical analysis cannot be prescribed, statistical criteria can be set forth.

Response: NOAA agrees with this comment and is suggesting judicious use of statistics.

Comment: Many commenters wanted NOAA to carefully consider the ultimate use of the data collected so as to be cost- and time-effective.

Response: NOAA understands this concern all too well. Data use is integral to the development of damage assessment strategies and designs. Therefore, NOAA is recommending that data use be specified early on in the process as part of the objectives of the study as well as in data quality objectives in the study design.

Comments: One commenter indicated that NOAA does not adequately address the assessment of the impact on services on natural resource injury. Another commenter contends that actual, proven services are all that are included in OPA for quantification purposes. Some commenters suggested that natural resource damage assessment should include injury to archaeological and historical services in particular.

Response: To assert natural resource damages under OPA, injury to natural resources and/or services must be demonstrated. NOAA recognizes that there is both direct and indirect injury. The trustee(s) should account for both forms so long as such injuries are relevant to restoration and compensation efforts. Further, all damages, except those that are considered speculative, are included under OPA. Injuries to natural resource services may include archaeological sites and other resources of historical significance.

Comment: One commenter stated that natural resources are valued in terms of the services or functions they provide to society, either directly by providing services to humans or indirectly by providing services to other natural resources.

Response: NOAA agrees and states in the definition of "services" that natural resources provide a wide range of functions that include, but are not limited to, functions provided to society.

Restoration

Subpart H—Preamble Language

General

Purpose

OPA provides the trustee(s) with the following range of alternatives to remedy injury to natural resources and/or services: restoration, rehabilitation, replacement, or acquisition of the equivalent natural resources and/or services. The proposed rule provides that natural recovery is also an alternative that must be considered. If the trustee(s) deems that natural recovery is not an acceptable alternative for a particular incident, i.e., cannot be achieved given the scope, scale, and timing of natural recovery, then restoration, rehabilitation, replacement, or acquisition of equivalent natural resources and/or services should be examined. For each alternative, there may be various options or procedures to accomplish that alternative. Each of the alternatives and options mentioned above may be considered by itself or combined in a number of ways.

The purposes of the restoration planning process are to: (1) Determine the most appropriate restoration alternatives for the recovery of injured natural resources and/or services resulting from a discharge of oil; and (2) estimate the costs of implementing restoration.

The goal of restoration is to return the injured natural resources and/or services to their baseline conditions. Site-specific restoration objectives should be established and prioritized throughout the assessment/restoration planning process to provide a blueprint for restoring the injured natural resources and/or services to baseline or comparable conditions. These objectives should be clear and identify the desired outcome.

Restoration Component

The first step in the development of a restoration component by the trustee(s) is to develop a scoping statement. The scoping statement identifies natural resources and/or services of concern, as well as potential restoration alternatives to focus the restoration planning process. The trustee(s) should develop preliminary restoration alternatives that address specific injuries.

As the assessment process progresses and significant new information becomes available, the trustee(s) should begin developing the restoration component of the DARP. The restoration component, incorporating preliminary results of the injury determination and quantification studies, should be based upon the scoping statement. The DARP will provide the means for soliciting public comments on the proposed restoration alternatives.

Coordination

Early coordination and cooperation is essential in restoration as well as assessment where multiple trustees are involved. When multiple trustee involvement is indicated, a Memorandum of Understanding (MOU) should be considered to clearly delineate trustee responsibilities. An example of such an MOU is given in appendix A of the proposed rule.

Participation of the RP(s) early on in restoration planning is also encouraged in the proposed rule, particularly if the RP(s) is active in the assessment process. The knowledge and expertise of the RP(s) could be useful to the trustee(s). The trustee(s), however, has the ultimate responsibility for all restoration activities and should develop a joint enforceable agreement or Memorandum of Agreement (MOA) describing the specific responsibilities of all parties if the RP(s) is selected to participate. An example of such an MOA is given in appendix B in the proposed rule.

Emergency Restoration

Emergency restoration prior to the development of the restoration component is permitted where immediate action is necessary to avoid irreversible loss, or to prevent or reduce continuing danger to natural resources and/or services. These actions are described in detail in the preamble discussion of subpart B—Preassessment Phase.

Restoration Costs

Restoration costs include the costs of implementing the restoration plan. Both direct and indirect restoration costs, including those associated with pre-settlement, will be used in the determination of the total damages.

Restoration Component Development

Requirements

In developing the restoration component for a CDA, the trustee(s) should: Develop a restoration scoping statement; develop the restoration component of the DARP; and estimate the costs of implementing the restoration component described below. The trustee(s) should also address NEPA implementation requirements relative to the restoration component.

Scoping Statement

During the preliminary stage of the assessment/restoration planning process, the trustee(s) should develop a restoration scoping statement. The scoping statement is intended to serve as a tool to focus the restoration planning process. The scoping statement should identify those potential restoration alternatives that the trustee(s) may consider as potential actions to remedy the effects of the discharge of oil. The scoping statement will rely on information provided during the injury determination and quantification studies and may be developed along a slightly delayed but parallel time line as those components. This offset but parallel development will facilitate coordination between the injury determination/quantification and restoration planning, thereby encouraging the collection of data for both processes.

The scoping statement should include a summary of the natural resources and/or services of concern, an evaluation of the circumstances of the discharge, and the expected injured natural resources and/or services. Next, the scoping statement should identify the range of alternatives available to the trustee(s). Where appropriate, source control and remediation should be considered. Finally, the scoping statement should identify any opportunity to pool the recovery with other similar recoveries in a given region in order to develop a more encompassing restoration plan.

As a tool for the trustee(s), the scoping statement should help identify the most appropriate restoration alternatives as well as clarify additional information needs for the restoration component. While some of this information may be gathered from existing sources, much may be gleaned from the results of injury determination and quantification studies. It is expected, therefore, that the alternatives identified in the scoping statement will evolve as new information from the assessment process becomes available. The scoping statement should be included in the administrative record of the assessment.

If prespill plans or similar supporting documents have been developed that address the injured natural resources and/or services and the public was fully involved in the prespill planning, the trustee(s) may decide that a scoping statement is not needed. However, the trustee(s) should begin developing the restoration component at an early stage.

Restoration Component of the DARP

The restoration component of the DARP should be developed during the latter stage of the injury quantification component. It should be based upon the scoping statement as well as the results of injury determination/quantification studies, and feasibility or pilot studies that may affect the analysis of a given restoration alternative.

The restoration component of the DARP should consist of three broad components. First, it should include an analysis of the restoration alternatives considered for each natural resource

and/or service and provide the basis for estimating the restoration costs associated with each alternative. Included in this analysis should be an estimate of the rate and degree of recovery for the injured natural resources and/or services depending upon a given restoration alternative. Second, the restoration component should identify the preferred approach for each injured natural resource and/or service under consideration for restoration. Finally, the restoration component should include the results of any feasibility or pilot studies proposed. To the extent practicable, the restoration component should consider opportunities for pooling recoveries from multiple cases and identify other statutory review and consultation requirements.

The restoration component of the DARP will be made available for at least a thirty calendar day public review and comment period, as provided by § 990.32(c)(4) of the proposed rule. The trustee(s) should consider the comments received on this plan and make any revisions necessary. Significant changes, in the judgment of the trustee(s), should also be made available to the public.

The restoration component will be the basis for the Post-Assessment Restoration Plan that will be developed after compensation is received. The Post-Assessment Restoration Plan must reflect the amount of the actual damage award. This Final Restoration Plan is discussed in detail in the preamble discussion of the Post-Assessment Phase.

In order to provide for the timely development of the DARP, the injury determination, quantification, and restoration components should be conducted concurrently, where practicable. The proposed rule provides that the trustee(s) will develop, where practicable, the restoration component early in the assessment/restoration process so that the trustee(s) can focus efforts towards restoring, rehabilitating, replacing, or acquiring the equivalent natural resources and/or services.

Estimate Restoration Costs: Costs of restoration will include direct, as well as indirect (e.g., overhead) costs. Both direct and indirect restoration costs will be incurred by the trustee(s) throughout the damage assessment/restoration process. The costs of the trustee's(s') recommended restoration component will be used in the determination of damages. Also, the anticipated costs of the public review of the Post-assessment Restoration Plan, the plan refined after the damage award, should be included in the damage figure that the trustee(s) presents to the RP(s). These are part of the planning and implementation costs estimated by the trustee(s) when developing the restoration component.

Direct costs are those that the financial management system of the trustee(s) records on a site-specific basis and hence are costs that are readily allocated to the damage claim made against the RP(s) for that incident. Examples of direct restoration costs associated with preliminary survey work and planning prior to implementation of restoration include: Site visits; chemical/physical/biological analyses; restoration plan development; human health and safety plan; and community relations program; trustee oversight of restoration activities by the RP(s); and site plan. Examples of direct costs associated with specific restoration actions include: contaminant removal; habitat reconstruction and creation; replanting and restocking; physical and chemical treatment; any trustee oversight of any restoration activities of the RP(s); and bioremediation. Other examples of direct restoration costs include salaries and benefits, travel costs, materials and supplies purchased specifically for the implementation of the selected alternative, equipment lease costs, building related costs if a building is leased or purchased for the sole purpose of implementing the selected alternative, and payments for goods and services furnished by private companies or other government agencies under contract with the trustee agency. Direct costs can include all costs of other entities performing actions for the trustee agency. These costs include a contractor's overhead, labor and material costs, which the contractor bills directly to the trustee agency, if such costs are paid by the trustee(s). Other direct costs might include capital, labor, and materials, as well as administrative costs associated with the development of task orders for engineering design, evaluation and selection of contractors for project management and implementation, provision of relevant QA, and other independent technical/analytical support functions. The cost estimates for restoration shall include not only the cost of planning and implementing the recommended restoration component, but the costs of a monitoring program, mid-course corrections, and feasibility studies, and other elements the trustee(s) determines appropriate to carry out his restoration activities, including the oversight of any actions taken by the RP(s).

Indirect costs are support costs, compared to a private company's overhead, which support assessments or restoration actions, but which cannot be directly accounted for on a site-specific basis. Such indirect costs may include support services to those involved in the assessment and restoration process, e.g., facilities or personnel, budgeting, procurement, auditing, or other administrative management services, as well as policy formulation and assessment/restoration program costs that are not accounted for on a site-specific basis. In the related context of cost recovery under CERCLA, the courts have upheld the recovery of indirect costs. See, e.g., *United States* v. *R.W. Meyer, Inc.*, 889 F.2d 1497, 1502–04 (6th Cir. 1989); *United States* v. *Hardage*, 750 F. Supp. 1460, 1504 (W.D. Tex. 1990), *aff'd*, 982 F.2d 1436 (10th Cir. 1992); *United States* v. *American Cyanamid Co.*, 786 F. Supp. 152, 159 (D.R.I. 1992); *United States* v. *Bell Petroleum Services, Inc.*, 734 F. Supp. 771, 782-83 (W.D. Tex. 1990). The trustee(s) may calculate indirect costs in accordance with any reasonably sound method.

The estimated restoration costs make up that component of the damage claim representing the costs to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and/or services. These estimates are to be documented in the administrative record and included in the DARP.

Phased Restoration Planning

Because of the large scale and present rudimentary knowledge of the science of restoration, the trustee(s) should consider undertaking restoration planning in phases. Phased planning and implementation is proposed through an Adaptive Management Approach (AMA). AMA considers the following steps: (1) Design and implement the initial phase; (2) monitor the results; (3) evaluate and interpret the results; (4) recommend and prioritize follow-up studies; and (5) decide needs for next phase. This process will facilitate the learning process because early phases will generate information about how well procedures work, what problems develop, and what unforeseen benefits might be capitalized upon in designing future phases. AMA will allow the trustee(s) to make reasoned assessments of the outcome of the actions taken so as to protect existing resource values and ensure likelihood of successful restoration. This approach is a mechanism for dealing with uncertainty and variability in managing resources. It involves a process whereby alternatives can be suggested and tested (i.e., pilot projects) often in small scale before undertaking full scale restoration. Results of initial experiments are then evaluated to select the approach for later projects. Later phases will benefit from information generated in earlier phases. While adaptive management depends on results from previous work, new projects can be started before previous phases prove successful, provided the new phase contains everything thought necessary for successful restoration.

Significant costs may be incurred as a result of the phased approach to restoration simply as a result of repeated mobilization and demobilization of necessary equipment, personnel and support functions. However, the needs of the resource should outweigh any need for human expediency. The phased approach was developed to respond to a complex planning milieu as is often the case in a CDA. A programmatic NEPA Environmental Impact Statement (EIS) with subsequent environmental assessments serves as the appropriate framework for timely restoration. A phased approach will allow the trustee(s) to work within funding constraints, which may enable them to implement complementary projects more easily than collaborating on a single, large project.

Analysis and Selection of Restoration Alternatives

Restoration Alternatives

The trustee(s) may choose natural recovery, restoration, rehabilitation, replacement, acquisition of the equivalent, or a combination thereof in deciding on the most appropriate restoration alternatives to select for particular natural resources and/or services injured by the discharge of oil. These alternatives are described herein and in the Restoration Guidance Document available from the address given at the front of this preamble.

(1) *Natural Recovery:* The natural recovery alternative (comparable to the "No Action Alternative") is based upon the process of natural succession following a discharge whereby the injured resource is left to recover without any intervention by man. This alternative may not always result in restoring natural resources and/or services to their baseline conditions, but should always be considered. Natural recovery may be selected when: (1) There is evidence that the natural recovery process will be more effective than other available restoration alternatives; (2) the resulting natural resources and/or services are predicted to resemble the original, within the constraints of natural or other (human-induced) variability, in a time frame not significantly different from that resulting from human intervention; (3) other natural resources and/or services will not be adversely affected prior to the recovery of those originally injured resources and/or services; and (4) there are no threats to human health and safety from the length of time for natural recovery.

Where it is clear that natural recovery can restore injured natural resources and/or services to baseline conditions, additional restoration measures may not be justified. Nevertheless, because some natural resources and/or services will eventually recover on their own does not necessarily mean that restoration should be excluded. Since one intent of OPA is restoring the environment from the effects of a discharge of oil, the public should not unduly bear the burden of natural healing if there are reasonable alternatives available to hasten the recovery. The trustee(s) should document the decision on the adequacy of natural recovery in the administrative record.

The ability to determine when natural recovery is optimal may be constrained by the quality and quantity of baseline information. Nevertheless, the trustee(s) should attempt to estimate the rate of natural recovery for each relevant injured natural resource and/or service based on the information derived from damage assessment and restoration studies, the scientific literature, and other sources. If it appears that natural recovery may effectively restore natural resources and/or services without significant, concomitant adverse effects, then the trustee(s) should select the natural recovery alternative. However, if it appears that natural recovery may not effectively achieve baseline or comparable conditions, the trustee(s) should consider other restoration alternatives.

(2) *Restoration:* "Restoration" means actions undertaken to return injured natural resources and/or services to their baseline conditions. Generally, restoration relates to man's efforts to enhance the recovery process. Restoration is usually distinguished from response as being performed after the completion of cleanup activities. Response is commonly defined as action to contain and clean up oil immediately following a discharge or to protect natural resources and/or services by a response agency. Restoration actions, such as the removal of contaminated resources, may be performed during and after response to facilitate the recovery of relevant natural resources and/or services. In the present context, restoration performed at the location of impact is referred to as "direct restoration." The other alternatives identified below may result in beneficial, but not duplicative, natural resources and/or services to those injured, and are therefore described as "compensatory restoration."

(3) *Rehabilitation:* "Rehabilitation" refers to actions to bring injured natural resources and/or services to a state different from baseline conditions but still beneficial to the environment and public. This alternative is particularly important when direct restoration is technically or economically infeasible, but the affected site retains the potential to support alternative valuable natural resources and/or services. The definition of rehabilitation encompasses enhancement actions taken on an affected site to increase one or more values, possibly at the expense of other values. This alternative should be distinguished from the "natural recovery" alternative, which relies exclusively upon natural recovery unassisted by man.

(4) *Replacement:* "Replacement" refers to actions that substitute natural resources and/or services that provide the same or comparable natural resources and/or services as those injured. Replacement, as opposed to "direct" restoration, results from restoration actions taken away from the affected site to furnish or create equivalent natural resources and/or services within the region. For example, habitats away from the discharge site may be created to provide equivalent services within the region in terms of fish and wildlife production. Injured services provided by natural resources that might be replaced include those of recreational, commercial, or ecological importance, or those of special significance.

(5) *Acquisition of Equivalent:* "Acquisition of equivalent resources" refers to obtaining natural resources and/or services that the trustee(s) determines are comparable to those injured. Equivalent natural resources should be acquired to hasten recovery, and protect and maintain the natural resources affected by a discharge. Acquisition of equivalent resources is distinguished from replacement of resources by the fact that the acquired resources already exist rather than being created or enhanced. "Acquisition of equivalent resources" addresses specifically "resources," not "services." Acquisition of equivalent resources should only be used when the trustee(s) has determined that restoration, rehabilitation, or replacement of specific natural resources is technically infeasible or the cost is grossly disproportionate to the value of the resources involved.

(6) *Combination of Alternatives:* Each alternative discussed above may be considered individually or combined in various ways; depending upon feasibility, environmental-effectiveness, and relative cost considerations. Also, each alternative may be implemented through one or more options or procedures selected by the trustee(s). When mentioned, alternatives imply associated options. Differences among combinations of alternatives and the related options within each alternative could be based upon the severity of the natural resource injuries, quality and quantity of knowledge about recovery, expected effectiveness of the alternatives, or the environmental or human significance of the injured natural resources and/or services.

Analysis of Restoration Alternatives

As the results of the injury and quantification studies become available, the trustee(s) should revise the list of restoration alternatives developed. As this list is revised, the trustee(s) should analyze each alternative taking into account not only the feasibility, but also the effectiveness and relative cost (described below). The choice of restoration alternatives is influenced by the nature of the injuries to the natural resources and/or services, and the extent to which immediate action is taken to remedy those injuries. Also, the restoration alternatives should seek to ensure the recovery of injured natural resources and/or services. Examples of services provided by the natural resources that might be returned to baseline conditions include human uses (e.g., recreational, commercial), ecological, or those of special significance. Certain services that are of cultural significance (e.g., archaeological sites) are not typically living, renewable resources and have no capacity to heal themselves. Therefore, such services cannot recover "naturally" and, to the extent restoration is practicable, will need human intervention.

Certain factors should be considered for each restoration alternative. If, based upon these considerations, an alternative is unacceptable, it will be eliminated from further consideration. The evaluation of the relevant factors should be documented in the administrative record. When the DARP is made publicly available, the trustee(s) should provide for the administrative record a brief description of how the restoration alternatives contained in the DARP comply with these factors.

(1) *Feasibility:* The key factor to consider in selecting restoration alternatives is feasibility. Feasibility depends upon whether an action is possible given certain constraints. These constraints include, but are not limited to: Availability of services, materials and equipment; expertise; construction and operational limitations; need or capability for future restoration; and administrative, legal, or regulatory requirements.

Where practicable, the trustee(s) should consider methods currently available, i.e., proven methods should take preference over unproven methods. Under many circumstances, however, existing methods will need to be modified for a given discharge. For example, the trustee(s) may propose providing artificial nesting sites for a particular species of bird to replenish the population. While there is ample information on the nesting requirements of a similar species of bird, little information is available about the nesting requirements of the injured bird species. The trustee(s), therefore, may have to rely upon the requirements of the similar species in designing nesting site alternatives for the injured species.

(2) *Environmental Effectiveness:* Once the trustee(s) determines that a restoration alternative is feasible, the trustee(s) should then evaluate the environmental effectiveness of the alternative. Effectiveness deals with the general question of whether an action accomplishes the goals and objectives of restoration. Effectiveness is dependent upon the: (1) Extent to which the proposed alternative can return natural resources and/or services to acceptable conditions; (2) extent to which the proposed alternative causes additional injury; (3) extent to which the proposed alternative improves the rate of recovery and success; and (4) level of risk and uncertainty in the success of the proposed alternative.

(3) *Relative Cost:* Simultaneous with the environmental effectiveness determination, the trustee(s) should evaluate the relationship of the expected costs of implementing the alternative relative to other alternatives and to their anticipated benefits. This requires that the trustee(s) consider, among other things, the: (1) Significance of the natural resource and/or service to the environment and public; (2) extent to which the proposed alternative benefits more than one natural resource and/or service; (3) cost of the proposed alternative; (4) relationship of the expected costs to the expected benefits; and (5) level of risk and uncertainty in the cost-benefit analysis.

Total damages will depend on the sum of compensable value and restoration costs. Often, there will be tradeoffs between compensable value and restoration costs. For example, faster-paced and more-intensive restoration activities may reduce the associated compensable values, e.g., interim lost use values, but may do so at the expense of substantially higher restoration costs. In some cases, there may be sufficient data to demonstrate that some (combinations of) restoration alternatives would result in substantially lower total damages than others. NOAA seeks comment on the following questions. Where restoration data on costs and benefits are sufficient, should the trustee(s) be required to select the (combination of) restoration alternatives that minimize total damages? If not, should the trustee(s) be required to explain the rationale for selecting (a combination of) restoration alternatives that do not minimize total damages?

Cost evaluation is not a straight economic cost/benefit analysis. Rather, it is primarily a consideration of qualitative, rather than quantitative, factors. There may be overriding policy considerations that would cause the trustee(s) to consider certain "collateral benefits." For example, if a scenario involves certain non-renewable natural resources, i.e., an endangered species or a resource of cultural significance, the costs of restoration may appear, under a straight cost/benefit analysis, to be grossly disproportionate to the value of the benefit of restoration over natural recovery. However, the possibility of continuing or additional effects to these nonrenewable resources may require that restoration actions be taken.

In this regard, NOAA's approach is similar to the one proposed earlier by the U.S. Department of the Interior (DOI). In April of 1991, DOI proposed revisions to its damage assessment rule to comply with the ruling in the *Ohio* decision. In those proposed revisions, DOI stated that the trustee(s) should:

> consider the relationship of the expected costs of an alternative to the benefits from the implementation of that alternative, both in terms of the recovery of the resource and the benefits to the public that would result. This consideration is not intended to be a straight cost/benefit analysis. The trustee should weigh circumstances unique to each assessment against the expected alternative costs.

56 FR at 19758.

Basically, the trustee(s) must judge the advantage or desirability of a particular restoration alternative in terms of the expected costs of implementing the alternative compared to the benefit of that alternative. When possible, the trustee(s) should attempt to quantify such benefits. However, NOAA recognizes that situations will arise when it is more reasonable for the trustee(s) to forgo such quantification. For example, if the cost of restoration is $3 million, and it will cost more than that to quantify the benefits, the trustee(s) should rely on a qualitative approach, i.e., one that considers the other factors discussed in this subpart. Those factors include technical feasibility, effectiveness of the restoration component, nonrenewability of the resource (i.e., archaeological resource), and the significance or uniqueness of the resource (i.e., an endangered species or a resource of cultural significance). Further, any analysis must take into account discounting and uncertainty, as well as other factors deemed relevant by the trustee(s). (These concepts are discussed in a later section of this preamble.)

Depending upon the type of discharge and nature and extent of the injury, the proposed alternatives and related costs may vary significantly. A determination that expected costs are reasonable when compared to the anticipated benefits includes a careful comparison of direct and indirect expenses. Of all alternatives that achieve similar benefits and meet the goals and objectives of restoration, the most cost-effective alternative should be chosen. A restoration alternative will be cost-effective if it is determined to have the lowest costs expressed in present value for a given amount of benefits. If the benefits can be quantified in dollars, that dollar figure should be discounted to present value. However, should the benefits be quantified in terms other than dollar values, those benefits should also be discounted to present value.

This proposed rule does not define the term "grossly disproportionate" as a numeric ratio. Instead, NOAA adopts the approach recommended by DOI in its April 1991 proposed rulemaking. The trustee(s) must consider all of the factors discussed in this subpart in selecting the most appropriate alternative. However, it is not required that each factor be given the same weight for each discharge situation or even for each alternative considered. As stated in the DOI proposed rule,

> * * * the various alternatives considered may address and balance these factors in different ways. In practice, the alternative selected by the trustee as the most appropriate might not satisfy all the considerations, yet still be "correct" for the purposes of the assessment. The trustee, after considering all the relevant factors, may make a selection that gives greater weight to some factors over others.

56 FR at 19757.

In addition, the trustee(s) must document this consideration in the administrative record. Such documentation will constitute the grossly disproportionate determination.

Selection of Restoration Alternatives: Based upon the analysis of the restoration alternatives for each category of injured natural resources and/or services, the trustee(s) should select the alternative or some combination thereof that best meets the needs of each injured natural resource and/or service based upon the factors listed above. The trustee(s) should then develop the restoration component of the DARP based upon this selection for each natural resource and/or service.

The restoration component is that part of the DARP that will be used to estimate the restoration costs. The restoration component should also contain the site-specific objectives of the restoration and an initial listing of priorities of natural resources and/or services of concern. The restoration component and its estimated costs of the DARP then goes out for public review and comment.

Feasibility (Pilot) Studies

Because restoration science is continually evolving, and injuries to natural resources and/or services may be unique on a site-specific basis, restoration alternatives for certain natural resources and/or services may be limited. Therefore, the scoping statement may conceptually identify small-scale, focused feasibility or pilot studies where the trustee(s) finds that a particular restoration alternative needs to be tested to determine whether implementation is not only technically and economically feasible, but also effective. The costs associated with the implementation of these studies are part of the costs of developing the DARP.

Where possible, the scoping statement should conceptually identify feasibility or pilot studies the trustee(s) may require to evaluate alternatives. The scoping statement should also provide the public with notice that additional feasibility or pilot studies, associated with the development of restoration alternatives, may be conducted throughout the development of the DARP.

As appropriate, the trustee(s) should coordinate with the OSC prior to proceeding with any feasibility or pilot studies during the response phase to ensure that such studies are not incompatible with response activities. Anticipated studies become part of the DARP and costs of these actions become part of the trustee's(s') damage claim.

Evaluation of Recovery and Success of Restoration

Definition

Recovery is defined in the proposed rule as the return of the injured natural resources and/or services to baseline or comparable conditions, within the limits of natural or other (human-induced) variability. This definition recognizes the inherent tendency for natural resources and/or services characteristics to vary over space and time. Defining restoration goals, selecting appropriate criteria for monitoring goal achievement, identifying appropriate performance standards (endpoints), and measuring levels of achievement of these standards are necessary to determine success in restoration. Particular attention should be paid to reestablishing and maintaining the diversity of the site(s) as evidence of the total health of the recovering system. The recovered condition is not required to be identical to the baseline or reference/control condition; however, it should not be functionally different from that condition.

Monitoring

Monitoring should be an integral part of the recovery implementation process. Recovery cannot be properly established without a well-designed and executed monitoring plan. Every natural resource and/or service is unique, which makes it inappropriate to propose fixed monitoring plans for a generic habitat or biological resource. Nevertheless, there are several general principles that apply to any such effort: (1) Monitoring should be sufficiently long to ensure recovery to a stable condition; (2) all relevant components of the affected environment should be monitored, as it relates to the restoration alternative; (3) the progress of recovery should be compared with natural changes occurring in similar unaffected reference or control areas; (4) sampling should be designed to provide statistically significant and defensible results; and (5) the monitoring plan should be sufficiently flexible to permit mid-course corrections if the need arises. In the event that maintenance is required to ensure success, the decision on the need for such maintenance should be part of the restoration component.

Mid-Course Corrections

The restoration component should incorporate provisions allowing for mid-course corrections. Monitoring and evaluating recovery will enable the trustee(s) to determine when mid-course corrections are necessary. Mid-course

corrections should be based upon, but not limited to, the nature and extent of injuries suffered by the natural resources and/or services, actual effectiveness of the restoration alternatives, and results of monitoring.

The possibility of the need for mid-course corrections should be considered in the restoration component. It could be that feasibility or pilot studies will obviate the need for mid-course corrections. In some cases, settlement agreements have specifically addressed this issue. One possible approach is to include in a settlement agreement a "reopener" clause, i.e., a specific provision to revisit an issue if it becomes necessary at a future time. Another possibility is for the RP(s) to deposit an agreed-upon amount of money in an escrow account to cover future restoration actions that could not be fully developed at the time of the settlement. These funds would then be used for these future actions, or would revert to the RP(s) if not needed for restoration.

Responses to Comments

Comment: One commenter indicated there may be some confusion with semantics in the terms used for and hierarchy of restoration, rehabilitation, replacement, or acquisition of the equivalent.

Response: NOAA hopes to minimize confusion by defining all terms in the proposed rule. Further, the proposed rule does not suggest a hierarchy of restoration alternatives, except in the case of acquisition of equivalent resources, and leaves such prioritization to the discretion of the trustee(s) on a case-by-case basis.

Comment: One commenter suggested that the assessment process should focus on natural resources that may actually benefit from restoration. The commenter noted that such an approach would reduce contention between the trustee(s) and RP(s), and reassure the public that its resources are receiving attention.

Response: NOAA agrees with the suggestion that restoration should be implemented only where the trustee(s) determines that such efforts would benefit the natural resources and/or services. However, the trustee(s) cannot totally ignore those natural resources that either will recover naturally or are not recoverable. The trustee(s) must still seek restoration of or compensation for these interim lost services.

Comment: One commenter stated that the primary objective of the restoration process should be the timely restoration of the affected natural resources to levels that are adequate to support the services they normally provide to the biological community in general and humans in particular.

Response: NOAA agrees with the commenter based on the assumption that "normally" means baseline or reference/control conditions.

Comment: A few commenters noted that restoration, beyond what is needed to return to baseline conditions and specific numeric levels, would be an inefficient use and an over-investment of society's economic resources. Such efforts would result in a net loss in economic welfare, which is inconsistent with section 1006(d)(1) of OPA.

Response: The goal of restoration is the recovery of the natural resources and/or services to baseline conditions in the most cost-effective and beneficial manner. Recovery refers to structural or functional equivalence, which is left to the discretion of the trustee(s). If the result of the trustee(s)' actions are to somewhat enhance the level of services to a level higher than existed before the discharge, such an action may be justified. These actions are appropriate so long as the public is made whole for those services denied from the time of the discharge until recovery is complete.

Comment: Many commenters indicated that the trustee(s) should choose a restoration procedure on a case-by-case basis.

Response: NOAA agrees that restoration procedures must be chosen on an incident-specific basis, except for those situations where an approach has been developed through prespill planning pursuant to § 990.16(c).

Comment: Several commenters urged that plans be revised as the restoration progresses and new information becomes available to provide the greatest potential for recovery of all its natural resources. Several commenters stated that the trustee(s) should base decisions on previous studies and restoration efforts.

Response: The proposed rule does allow for revision of the restoration component as new information becomes available. NOAA agrees that access to information on previous restoration studies would be beneficial to the trustee(s). The restoration literature survey that NOAA has compiled will assist the trustee(s) in this regard.

Comment: One commenter noted that when total restoration is impossible, NOAA should, at a minimum, require: (1) The use of sites identical to the site of the discharge that are adversely affected by other oil discharges; (2) the use of sites identical to the site of the discharge that are assured success as a mitigation bank; or (3) the consideration of alternatives to a mitigation bank.

Response: NOAA chooses not to "require" the suggestions listed by the commenter and leaves this to the discretion of the trustee(s). The Restoration Guidance Document does give some guidance on what might be "identical" sites. The trustee(s) has many possibilities on how to approach restoration. If total restoration is not possible, the trustee(s) can estimate lost compensable values, discount to present value, and use that sum to acquire equivalent services.

Comment: One commenter noted that restoration science is relatively new and this science is not yet sufficiently developed to assure the success of human-initiated restoration of resources over natural recovery.

Response: NOAA notes that restoration is a relatively new science and that there are no absolute guarantees that any planned effort will succeed. However, the trustee(s) cannot afford to wait for such assurances before acting to help systems recover from discharges. The trustee(s) should be mindful of the overall goal of restoration. The restoration component should be designed to come as close as possible to that goal.

Comment: One commenter stated that biologic resources exhibit natural variability. Biological communities are not static. They are drastically affected by natural forces such as weather, food supply, and predation. The commenter argues that despite these adverse forces, biological systems are accepted as "healthy and vibrant" if the plants and animals characteristic of that community are present and functioning normally.

Response: NOAA agrees that certain biological communities have a high degree of natural variability. In such cases, only restoration that allows the natural cycle to continue as before should be considered.

Comment: One commenter noted it may not always be appropriate to give preference to sites closest to the discharge area since this may increase use pressures on already injured ecosystems.

Response: NOAA agrees that such factors as possible increased pressures on the affected system should be considered by the trustee(s).

Comment: One commenter argued that the RP(s) has a discretionary right under the Fifth Amendment to take part in any of the trustee(s) assessment activities. Another strongly opposed the RP(s) having sole responsibility for monitoring the affected area.

Response: NOAA points out that participation by the RP(s) in either the assessment or restoration is

discretionary with the trustee(s). The proposed rule does not require participation. The trustee(s) has the right to offer the RP(s) the chance to participate, and the RP(s) has the right to decline.

Comment: One commenter noted oil removal activities are mentioned as feasible restoration alternatives, and that restoration activities should be confined to those needed after response is completed.

Response: NOAA points out that a particular action, e.g., removal of contaminated sediment, might be considered as either a response action or restoration action. The dividing line for such classifications is dependent upon timing and authority of the person carrying out the actions. The response agency is acting under the NCP to respond to incidents to protect human health and the environment. The trustee(s) may be directed under other statutory schemes to take similar actions for the protection of its trust resources. For example, the response agency might remove a certain amount of contaminated sediment to bring concentrations to a certain level set for human health reasons. The trustee(s), however, may determine that an additional amount of contaminated sediment may need to be removed to attain concentrations that will not result in bioaccumulation in fish populations.

Comment: One commenter suggested that empowering the trustees to pursue emergency restoration outside response under the direction of the OSC will lead to chaos.

Response: NOAA notes that the OSC does not have the authority to implement restoration of natural resources. The trustee(s) is ultimately responsible for that duty. If response actions are continuing while the trustee(s) is developing the restoration component, the two entities should work closely together.

Comment: Many commenters recommended NOAA require the trustee(s) to identify and consider a full range of restoration alternatives, including cleanup or remediation actions. Some commenters also recommended limits on the range of restoration alternatives the trustee(s) can consider for final selection. A number of commenters suggested a preference for restoration, rehabilitation, and replacement over acquisition of the equivalent. One commenter noted inclusion of the four alternatives is consistent with DOI's proposed definition of restoration. One commenter thought the descriptions of the restoration alternatives should be contained in guidance material, rather than in regulatory language.

Response: NOAA does not agree with the commenters who recommended a limit on the range of alternatives the trustee(s) should consider. The trustee(s) should consider a range of alternatives that is "reasonable" for the discharge of concern. The consideration of a "reasonable number" of alternatives should give a full range of options that might be suitable for the specific natural resources and/or services. NOAA notes that, although the alternatives might include acquiring equivalent natural resources, acquisition of equivalent resources should be considered appropriate in those cases where restoration is technically infeasible or costs are grossly disproportionate to the value of the resources. Guidance on the types of alternatives and how they might be considered is given in the Restoration Guidance Document.

Comment: Several commenters noted some discharges will not require full action. These commenters requested an alternative requiring no action (except, perhaps, for monitoring) beyond the cleanup actions taken or planned. Other commenters recommend "No Action Natural Recovery" as the preferred restoration alternative, e.g., prohibiting human activity, and that all other alternatives be compared to it for cost-effectiveness, reasonableness of costs, technical feasibility, rate of restoration of lost services, and ecological sensitivity. A number of commenters questioned whether human intervention will result in more rapid recovery than would occur naturally.

Response: NOAA agrees that "Natural Recovery" should be an alternative considered in every case. This proposed rule does direct the trustee(s) to consider such an alternative in each restoration component drafted.

Comment: A few commenters stated a restoration alternative should not be selected unless the trustee(s) had included in the administrative record evidence the trustee(s) used to determine that that alternative is both possible and preferable to the other alternatives considered.

Response: NOAA is sensitive to the concern regarding the public's opportunity to have access to information available to the trustee(s). Therefore, documentation of the trustee's(s') decisionmaking process is one of the reasons behind NOAA's decision to provide for the administrative record process established in § 990.15 of the proposed rule. A discussion of the types of documentation available to the public in this record can be found in the earlier section of this preamble that discusses subpart A of this proposed rule.

Comment: Several commenters believe acquisition should not be a last resort, while others suggested that acquisition should never be considered as an alternative. Exceptions to acquisition as a last alternative were indicated when natural resources or services are subject to intense or continuous pressures, or unique habitats or threatened/endangered species are involved not under the protection of another regulatory program. The rationale for eliminating acquisition altogether was based on the notion that this alternative would diminish the underlying benefit of resource sustainability as a result of restoration, accelerating depreciation of natural resource assets.

Response: NOAA does not agree that "acquisition of the equivalent" should be eliminated from consideration by the trustee(s), and retains this alternative in the proposed rule. NOAA points out that the legislative history of OPA states that acquisition of equivalent natural resources should be chosen if restoration is infeasible or its costs are grossly disproportionate to the value of the resources.

Comment: One commenter noted that NOAA provides different standards for replacement and acquisition of natural resources. The commenter recommends NOAA define "substantially similar" to meet the mandate in OPA requiring equivalence between the affected natural resource and "new" natural resource. The commenter also stated that NOAA should recognize the fact that, although acquisition may be necessary, it only protects the status quo and will not replace the lost functions of the affected area.

Response: NOAA did not intend to suggest different standards for replacement and acquisition of equivalent natural resources. The term "substantially similar" is defined to ensure that the services provided after the event are as close as possible to baseline conditions. In response to the suggestion that acquisition of equivalent natural resources simply preserves the status quo, NOAA notes that the evaluation of restoration alternatives should seek to ensure return to baseline or comparable conditions of natural resources and/or services. Therefore, acquisition of equivalent resources might also include some improvement of the acquired resources to make up for what the public lost.

Comment: A number of commenters suggested a screening process for selecting a restoration alternative to ensure the selected alternative is

technically feasible, environmentally-effective, and has costs that are not grossly disproportionate to the anticipated benefits. In the screening process, the trustee(s) should identify all restoration alternatives that could be pursued. The trustee(s) should then eliminate those that are not technically feasible, inconsistent with applicable federal and state laws and policies, not cost-effective, or have costs that are grossly disproportionate to the anticipated benefits of restoration, but not using a numerical criterion. The "grossly disproportionate" criterion should apply to incremental, not marginal, costs and benefits as well as total costs and benefits. Finally, from the remaining alternatives, the trustee(s) should select the one most suitable for restoring the natural resource injuries. One commenter cited one court, in *Commonwealth of Puerto Rico* v. *Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980), that suggested similar factors be considered in the planning of restoration.

Response: NOAA notes that the selection factors indicated by the commenters are incorporated in some form in the proposed rule and Restoration Guidance Document.

Comment: One commenter opposed the promulgation of any rule that allows the use of mitigation banking. The commenter noted mitigation banks have not been successful in restoring other affected natural resources such as wetlands, and urged NOAA consider other methods of restoration where total restoration of the affected area is not possible. The commenter stated no preference should be given to sites that have similar resources in another watershed since it has no restorative effect on the affected area, and would potentially result in the total sacrifice of the discharge area.

Response: NOAA notes that the concept of "mitigation banking" has met with criticism in recent years. However, NOAA does not wish to preclude the use of any tool that may be useful to the trustee(s). Therefore, although not required, mitigation banking would still be an option to consider where the trustee(s) feels it may be appropriate. The location of the activity, i.e., one watershed or another, would be a factor that the trustee(s) should consider.

Comment: Some commenters noted that pilot projects prior to full restoration are appropriate in some cases, but should not be required. Several others agreed pilot projects should be used, but only prior to restoration. Another noted that pilot studies are unnecessary under any circumstances.

Response: NOAA points out that the proposed rule allows feasibility or pilot studies to determine the effectiveness of restoration actions. However, the such efforts should be carefully defined and their need documented.

Comment: Many commenters stated that both early and long-term monitoring is essential to evaluate the recovery of the affected resource. One commenter recommended that the affected area be monitored for a minimum of five years.

Response: NOAA agrees that the restoration component should consider monitoring, but leaves the details to the trustee(s) regarding the nature and extent of such activities. NOAA does not agree that there should be an absolute time requirement for monitoring since these plans are site-specific.

Comment: A number of commenters agree that mid-course corrections be used as a gauge for measuring the effectiveness of restoration. Another agreed that such corrections should be required until the system has stabilized. Several commenters supported the inclusion of mid-course corrections, so long as the RP(s) is not held accountable for additional costs, unless the RP(s) participated in the original restoration plan, or unless there was a stipulation for mid-course corrections previously included in the restoration component of the damage settlement.

Response: NOAA notes that the proposed rule does allow for mid-course corrections in restoration. However, it would not be reasonable to expect a damage award to have reopeners in perpetuity for taking new approaches to restoration of a system following one discharge. Therefore, the trustee(s) needs to design the restoration component carefully to spell out the conditions under which mid-course corrections would be called for and try to anticipate an endpoint to the restoration process.

Comment: One commenter pointed out that OPA does not mention "grossly disproportionate" costs. The commenter noted that the phrase is only discussed in OPA's legislative history in terms of a factor to consider in choosing between restoration and acquisition of the equivalent. As such, the phrase cannot be used to relieve the RP(s) from the obligation to either restore or acquire equivalent resources, as seems possible under the *Ohio* decision.

Response: NOAA agrees that discussion of the phrase "grossly disproportionate" in OPA's legislative history is different from the discussion found in the *Ohio* decision. Under OPA, the trustee(s) is to consider whether the costs of restoration, rehabilitation, or replacement would be grossly disproportionate to the value of the injured natural resource only in deciding to acquire equivalent natural resources.

Comment: Several commenters indicated that the selection of a restoration alternative not be "grossly disproportionate" to the benefits derived from the action.

Response: NOAA agrees with this comment to the extent that it uses the term "grossly disproportionate" as discussed in this proposed rule. As previously noted, NOAA believes that the OPA proposed rule should not strictly define a numeric ratio delimiting the term "grossly disproportionate." Instead, NOAA has established a number of factors that the trustee(s) must consider. NOAA concludes that this is the most appropriate approach for meeting OPA's strict objective of complete "restoration, rehabilitation, replacement, and/or acquisition of the equivalent resources, * * *," following the discharge of oil.

Comment: Several commenters discussed the earliest treatment by a court of the issue of grossly disproportionate restoration costs, *Commonwealth of Puerto Rico* v. *Zoe Colocotroni*, 628 F.2d 652 (1st Cir. 1980). The court in *Zoe Colocotroni* stated that the appropriate measure of damages would be the cost reasonably incurred to restore or rehabilitate the injured resources to as close to baseline condition as is feasible without grossly disproportionate costs. The court suggested that where such restoration is either physically impossible or disproportionately expensive, the measure of damages might be the acquisition of comparable lands. The commenters suggested that NOAA should use the standards given by the *Zoe Colocotroni* court.

Response: NOAA notes that the standards listed in the *Zoe Colocotroni* decision are, in fact, included in the factors to be considered in evaluating restoration alternatives under OPA.

Comment: Several commenters proposed that the OPA rule provide for restoration cost estimates in tabular format based historical data. One other commenter noted the dearth of restoration cost information from which to draw estimates.

Response: NOAA feels there is sufficient information to proceed with the development of damage cost estimates in tabular format, i.e., compensation formulas. The data on costs will be based upon a "dollar-per-gallon" formula, taking into account average restoration costs, plus average

lost direct use pending restoration. NOAA recognizes, however, that for certain incidents or types of natural resources and/or services, site-specific restorations must be planned for which detailed cost estimates could then be established.

Comment: One commenter stated that it is premature to limit the quality or quantity of restoration to the ability of the RP(s) to pay. The RP(s) must, in principle, be held to fully offsetting the damages that was caused by the discharge. Another commenter noted that because of the limited liability of the RP(s) in section 1004 of OPA, all costs may not be recovered from the RP(s). Therefore, restoration priorities must be made and funded by the proven claimants.

Response: NOAA does believe that the RP(s) should be liable for all reasonable damages. However, NOAA also notes that the trustee(s) must develop realistic plans if any benefit is to be expected rather than spend time and effort on unrealistic plans. Also, the trustee(s) may be able to fund necessary restoration actions through an "uncompensated claim" submission, pursuant to section 1012(a)(4) of OPA.

Comment: One commenter pointed out that intervening outside influences and their effects must not be charged against the RP(s).

Response: NOAA notes that ordinarily independent, intervening actions or conditions may not be within the liability of the RP(s).

Comment: One commenter noted that if there is no impairment of the services of a natural resource, then society suffers no damage. Following, if society suffers damage due to impairment of a resource's services, that damage is fully remedied when the resource's services are restored, since society's welfare is then returned to the state in which it would have been in the absence of the injury.

Response: Damages include the value of lost services pending recovery of the natural resources and/or services. Return to baseline levels of services does end the current losses of values but does not address the past losses to the public pending that return. Therefore, those past losses are recoverable as a part of the damage figure.

Comment: One commenter agreed that NOAA's ANPRM correctly recognizes that the measure of natural resource damages is based on the services provided by the affected natural resources. Another commenter, however, stated that restoring services is not the same as restoring natural resources and, therefore, should not be the preferred measure of damages.

Response: NOAA agrees that the value of lost services is one component of the damage figure. However, restoration of the injured natural resource is always preferred where practicable.

Comment: Several commenters objected to the suggestion that the trustees "improve" access to the injured site or another site as a method of restoration. These commenters argued that use of sums recovered for such purposes would be inconsistent with OPA.

Response: NOAA did not intend to suggest that increased use of an injured natural resource is a viable restoration alternative. NOAA suggests that one way of providing services for interim lost use pending recovery might be to provide public use of a substitute site. The substitute site would have to be capable of sustaining such use without impairment. This suggestion of alternative services may also be a way to use those sums recovered representing diminution of use in a way to make the public whole for its loss.

Compensable Values Determination

I. Introduction

Section 1006(d) of OPA authorizes the trustee(s) to recover: The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured or lost natural resources and/or services; the diminution in value of the injured or lost natural resources pending restoration; plus the reasonable cost of assessing those damages. Guidance on estimating restoration costs is discussed previously in this preamble. This discussion provides guidance to the trustee(s) for estimating the total diminution in value of resources and/or services affected by a discharge, hereinafter referred to as compensable values.

For the purposes of this proposed rule, compensable values include all reliably calculated values that comprise the total diminution in value of lost or diminished services of trust resources as a result of a discharge, from the onset of the event until recovery to baseline conditions is deemed complete by the trustee(s), i.e., interim lost values. If the resources and/or services will not fully recover with the implementation of the Restoration Plan, the calculation of compensable values will include the value of a perpetual stream of lost services. Failure to include all relevant categories of damages in a claim would understate the true loss to the American public attributable to the discharge of oil. In accordance with the Congressional Conference Report (H. Conf. Rep. No. 653, 101st Cong., 2nd Sess. at 108), "diminution of value" refers to the standard for measuring resource damages cited in the D.C. Circuit Court decision on *Ohio* v. *DOI*. The *Ohio* opinion defines "use values" broadly, to encompass both direct use and passive use values that can be reliably calculated, i.e., calculated in a manner that is trustworthy or worthy of confidence. (See 57 FR at 23067.)

Direct use values are defined as the value individuals derive from direct use of a resource. Direct uses of resources include both consumptive uses, such as fishing and hunting, in which resources are harvested, and nonconsumptive uses, in which the activity does not reduce the stock of resources available for others at another time, such as birdwatching and swimming.

Passive use values are defined as the values individuals place on resources independent of direct use of a resource by the individual. The term "nonuse values" has also been used to refer to the same concept, but NOAA prefers the term "passive use values." Passive use values include, but are not limited to: the value of knowing the resource is available for use by family, friends, or the general public; the value derived from protecting the resource for its own sake; and the value of knowing that future generations will be able to use the resource. Passive use values pertain to the provision of, improvement to, or prevention of injury to natural resources.

The total value of a resource to an individual consumer encompasses both direct use and passive use values. When an injury occurs to a resource, the measure of damages to an individual is the change in the individual's utility or level of well-being, as measured in monetary terms (i.e., monetized changes in utility). Economic analysis provides two exact monetary measures of any change in individual's well-being: Willingness to pay (WTP) and willingness to accept (WTA). WTP is the maximum amount of money that an individual would be willing to give up to ensure access to, provision of, improvements to, or prevention of injury to a natural resource. WTA is the amount of money that would be needed to compensate an individual for the loss of access to or for the injury of a natural resource. To calculate the monetized change in an individual's utility resulting from a resource injury, net willingness to pay or willingness to accept is calculated. Net willingness to pay or willingness to accept is total WTP or WTA minus the costs an individual incurs to use the resource services, including travel and time costs.

An approximation for the exact measures of the change in utility or well-being is the Marshallian "consumer surplus," the value of which generally falls between WTP and WTA. Marshallian consumer surplus is the difference between the maximum sum of money an individual would be willing to pay for a good or service, as calculated from a Marshallian demand function, and the amount the individual is actually required to pay. The Marshallian consumer surplus is calculated directly from observed behavior in market or market-like transactions. This measure of value of a good or service incorporates the income effects of changes in its price or quality; for example, a reduction in price or an increase in quality would have the effect of increasing real buying power. As a result, Marshallian consumer surplus does not measure value from a fixed baseline level of utility. In contrast, the exact measures of WTP and WTA are so labeled because they calculate the monetized change in utility or well-being from a fixed baseline level of utility.

In any given context, the more appropriate choice between the exact value measures depends upon the allocation of property rights. Because the government is holding natural resources in trust for the public, the WTA criterion is conceptually the more appropriate measure of damages for natural resource damage claims. However, in some circumstances it may be infeasible or impractical to provide reliable measures of WTA. In those circumstances, the more conservative measures of WTP or the Marshallian consumer surplus are appropriate for measuring damages.

In addition to losses in value to individuals, compensable values also include losses to trustee agencies or Indian tribes that protect and manage the resources for the individual members of the public. The losses include the reduction in fees collected for the use of natural resources in the public domain by government agencies or Indian tribes that are designated as trustees of the natural resources. Similarly, the reduction in economic rent accruing to a private party because the government or Indian tribe does not charge a fee equal to the value of the resource in that use also represents a loss to the public. In this context, economic rent refers to the difference between the fees that users would be willing to pay for the use of a public natural resource, and the fees actually paid. Finally, the loss to the public includes the reduction in net revenues to public enterprises controlled by the trustee(s) as a result of the injury to natural resources.

In summary, the compensable values that may be claimed by a trustee for the losses to the public include, but are not limited to: (i) The value of losses to all public uses of natural resources (including passive use) as measured by changes in (a) monetized changes in utility, or consumer surplus, (b) fees or other payments collectable by the government or an Indian tribe for use of the natural resource by a private party, and (c) any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource equal to the value of the resource services, provided such economic rent is not recovered under a private cause of action; and (ii) in instances where the natural resource trustee(s) is the majority operator or controller of a for-profit or not-for-profit enterprise, and the injury to the natural resource results in a reduction of net income to such an enterprise, that portion of the lost net income due the trustee(s) from this enterprise resulting directly or indirectly from the injury to the natural resource.

Although section 1002 of OPA allows other types of recoveries for damages resulting from a discharge of oil, this proposed rule covers only damages recoverable by natural resource trustees for injuries to natural resources and/or services resulting from the discharge. Therefore, damages assessed in accordance with this proposed rule do not include: (1) Taxes forgone, because these are transfer payments from individuals to governments; (2) wages and other income lost by private individuals, except for that portion of income that represents uncollected economic rent, because these values do not accrue to the trustee(s) and may be the subject of lawsuits brought by the individuals suffering the loss; or (3) any speculative losses.

II. Economic Valuation Process

Natural resources can be viewed as long-lived assets that provide flows of services through time; for example, fisheries and forests provide continuing opportunities for commercial harvests of fish and timber, as well as for fishing, hiking, and other recreational activities. A fundamental principle of asset valuation is that the current value of an asset is equal to the present discounted value of the stream of future services from the asset. When a discharge injures trust resources and/or services, the diminution in value will equal the sum of the changes in the present discounted values of all affected services.

The basic types of services associated with natural resources include: (1) Recreational; (2) commercial; (3) cultural/historical; (4) ecological; (5) subsistence; and (6) passive use. A discharge may affect any or all of these services.

Injuries resulting from a discharge may reduce either the quality or the quantity of services and resources available to provide services. For example, if a municipal beach is oiled by a discharge, recreational beach use will be identified as a category of services to be analyzed. If the beach is closed for some period, the quantity of recreational beach services available to the public is reduced. In addition, after the beach is reopened, the continuing presence of tarballs on the sand and in the water may reduce the quality of services available at the beach. The reduction in service quality may result in a lower value to the user from a visit, and consequently individuals may reduce their visitation at the beach, with some stopping visitation entirely during the affected period. In summary, damages during the period of injury after the reopening of the beach may include lost values due to reduction in visitation and decreased value per trip for trips that do occur.

Where resources are used as inputs into a production process, a reduction in the quantity or quality of the resource may effectively increase the costs of the input. For example, a closure or a fish kill in a commercial fishery may increase the transportation costs of achieving a given commercial catch level. As a result, the injury may reduce the economic rent accruing to the producer from use of the public trust resource, the fishery. If the producer is able to pass part of the effective cost increase onto the consumer, the injury will reduce consumer surplus as well.

The first step in measuring compensable interim lost values is to identify the services provided by the natural resources before the injury. For example, wetlands provide a wide range of services including, but not limited to, flood control, habitat for plants and animals (particularly during early life stages), and recreational opportunities. Any given discharge may not affect all of these services. For example, a discharge that results in oiling of wetland vegetation above ground may leave the roots intact. As a result, the flood control services may be relatively unaffected, while the quality of habitat for plants and animals may be significantly reduced.

Once a list of services potentially affected by the discharge has been developed, the trustee(s) will identify

which services to consider in the damage assessment process and the methods for quantifying economic damages due to those lost or diminished services. As discussed below, a variety of valuation methodologies are available to the trustee(s). However, for a given service affected by the discharge, there may be only one or two methods that are suitable for valuing the specific type of loss. The availability of data can also affect the choice of methodology.

The next step involves estimating the change in the quantity and quality of services attributable to the discharge. This effort requires information from the Injury Quantification portion of the damage assessment that identifies the change in the quantity or quality of resources available to provide services. Users' behavioral responses to the quantity or quality changes can be estimated, where relevant. For example, when a fish kill affects a recreational fishery, the lost recreational services result in the reduction of angler days at the site. To calculate the change in participation, the change in fish stock needs to be translated into the resulting change in anglers' hourly catch rate. Then, the anglers' behavioral response to the change in quality can be modeled to determine the reduction in recreational fishing at the site attributable to the discharge.

Once the magnitude of the lost services has been estimated, economic values are assigned to these services. For example, with recreational demand models, the change in consumer surplus attributable to the discharge is calculated directly from the model along with the change in number of trips. Alternatively, where welfare losses accrue due to increased input costs, the full welfare loss can be captured by measuring the reduction in factor income (or surplus).

The diminution of value pending full recovery of the resource is calculated as the present discounted value of services in the absence of the injury minus the present discounted value of services with the injury. To determine the present discounted value with the injury, the choice of restoration method must be explicit: If no restoration actions are planned, the with-injury calculation will be based on a natural recovery scenario. If restoration actions are planned, the with-injury calculation will need to take into account the effect of restoration actions on resource recovery paths.

When the recovery period for a resource extends over multiple time periods, it is important to adjust the damage calculations for each period for the increases in the quantity and/or quality of the resource prior to full recovery: In most cases the services will be increasing toward baseline as the quantity and/or quality of the resource recovers. The recovery path may differ for each service, so each may need to be considered separately. For example, in the wetland context cited above, individuals may choose to return to the wetland to view wildlife in a matter of weeks, whereas recovery of the habitat to support a fish hatchery may take months or years.

For some categories of economic damage, it will be possible to conduct site-specific analyses. For example, the economic damages associated with the loss of access to a marine transportation corridor due to closure of a waterway can be estimated using existing site-specific data in most instances. In other cases the trustee(s) may employ benefits transfer procedures to apply valuation estimates or valuation functions from existing valuation studies from other contexts to estimate losses in the present incident.

III. Measurement Techniques

A. Introduction

Several methodologies exist to measure direct use and passive use values. This proposed rule provides maximum flexibility to the trustee(s) for selecting any methodology that can provide reliable and valid estimates of resource values and that is appropriate for valuing the injuries associated with a particular discharge. The trustee(s) will have broad discretion in selecting among existing and potential new methodological approaches that may be employed in damage assessment. The flexibility to exercise professional judgment in selecting and applying specific analytical techniques is necessary because of the "site-specific" nature of discharges of oil. Further, the trustee(s) may use different methodologies to produce separate damage estimates for different resource services, so long as there is no double recovery of losses. Either market or nonmarket resource methodologies may be employed, as relevant to the specific valuation issues in a given context.

To measure consumer values economists often rely upon directly observable data on prices and quantities from transactions in private markets. By definition, nonmarket goods and services are not traded in traditional markets, generally because such exchange arrangements are not practical or efficient. For example, national defense, the interstate highway system, and national parks are nonmarket commodities provided by the public sector and generally are not traded in private markets. For goods that are not provided through private markets, alternative means of determining values have been developed.

The proposed rule identifies reliable valuation techniques for assessing the economic value of natural resources and/or services including: The travel cost method; the factor income approach; the hedonic price model; market models of demand and supply; and the contingent valuation method. The trustee(s) is not limited to these methods, and may use any method suitable for calculating compensable value. Where the circumstances are such that a site-specific application of one of these valuation methods is not appropriate and/or does not meet the reasonable lost criterion, the trustee(s) may estimate compensable values using benefits transfer or may estimate damages for interim lost services using the habitat or species replacement cost method. The choice of approach(es) in a particular context will depend upon the types of injuries associated with a discharge.

B. Measurement Techniques

1. Site-specific valuation methods—

a. *Travel cost method.* The travel cost method is principally employed to model demand for recreational experiences. This measurement technique evolved from the insight that the travel costs an individual incurs to visit a site are like a price for the site visit. In essence, the travel cost method assesses an individual's willingness to travel further (and thereby incurring higher travel costs) in order to recreate at more highly valued sites. A site demand function for a sample of households can be estimated with information on total trips to the site and travel cost to the site. With trip participation data for before and after a discharge, it is generally possible to estimate the shift in demand induced by the discharge (holding all other factors constant) and calculate either the resulting change in the exact welfare measures of willingness-to-accept or the Marshallian consumer surplus approximation. However, if recovery of the resource will occur in increments over an extended time period, it will not be feasible to collect site-specific participation data for the full period of the recovery within the timeframe of the assessment. Adjustments to the immediate decline in site-specific participation will need to be made to capture the incremental recovery in participation throughout the period of resource recovery.

Recent advances in the travel cost method may allow the trustee(s) to value the variation in quality at a site due to a discharge even when before and after participation data are not available. Instead of focusing on the number of recreation trips to a given site (or to all sites) in a season, the random utility method focuses attention on the recreationist's choice among alternative recreational sites. This version of the travel cost model is particularly appropriate where many substitutes are available to the individual and when the discharge affected quality at multiple sites.

b. Factor income approach. This approach relies upon the production function model, which relates the contribution of inputs to the production of an output. (Inputs are also referred to as factors of production.) Changes in the availability or price of inputs will affect the availability and price of the output and hence the level of income accruing to the producer. Where unpriced natural resources are an input in the production process, producer income will include both economic profit (the amount of profit a producer requires to keep capital in this use in the long run) and economic rent (the income accruing to a producer as a result of access to an unpriced resource). For example, fish stocks allocated to commercial fisheries are inputs to the production of commercially sold fish; access to navigable waterways is an input into the transport of raw materials and processed goods. Though the government generally does not charge fees (or charges only a nominal fee) for the use of fishery or navigational channel resources or their services, the producer does incur labor and equipment costs to acquire the services of the natural resource.

A discharge may decrease the quality and/or quantity of a resource and thereby effectively increase the cost of acquiring the natural resource input. For example, closure of a fishery may force commercial fishermen to travel farther to obtain catch, or closure of a commercial waterway may force vessels to travel longer distances or may delay docking at port; in both cases, producer costs have increased. As a result, the injury may reduce the economic rent accruing to the producer from use of the public trust resource. The change in economic rent attributable to a discharge can be evaluated by calculating the change in surplus either in the product market or in the input markets. Where the output price is not affected, the change in economic rent is simply the sum of the change in factor costs (or factor income) for each affected input.

c. Hedonic price model. The hedonic price model relates the price of a marketed commodity to its various attributes. In the natural resource damage assessment context, it may be used to determine the change in value of some nonmarket services from public trust resources (for example, environmental amenities such as water or air quality) where they function as attributes of private market goods, such as property. For example, the value of beach front property may be directly related to the quality and accessibility of the adjacent coastline. Reduction in the quality or accessibility, as may occur due to a discharge, will be captured in the value of the property. All else equal, the decrease in property values as a result of a discharge measures the change in use value of the injured coastline resources accruing to a subset of the potentially affected public, i.e., the local property owners. This measure is only a partial accounting of the reduction in value of coastline resources because it does not capture the loss in value of the resources accruing to members of the public who own no property in the area.

d. Market models of demand and supply. For those goods and services regularly traded in markets, economists typically rely upon market transactions to reveal the values that individuals place on the goods and services and the costs of producing them. When the quality of the resource directly affects the value individual consumers place on a good or service, the correct measure of damage is the change in consumer surplus, or individuals' willingness-to-accept compensation for the injuries associated with the discharge. The standard method for valuing injuries that affect consumers' value of a marketed resource is to estimate models of market supply and demand for the resource and/or service. Assuming the injury does not affect the production side of the market, the damages are calculated as the difference between the total consumer surplus for the marketed resource with and without the injury, holding all else constant. The calculation is more complicated when the production side is also affected. With some demand models, it is possible to calculate exact willingness-to-accept measures from the demand analysis; in other cases, the more readily available measure of Marshallian consumer surplus is used as a proxy.

When the supply of the resource is fixed (or quasi-fixed), then the observed or predicted change in market price may be used as a proxy for the change in resource values. An example of a quasi-fixed resource would be land—the supply of land is fixed in the short-run, but in the medium-run, improvements to the land may change the flow of services (agricultural, floral/faunal habitat, housing) available from individual parcels of land. Market-based methods only capture the reduced value of services accruing to owners of the resource, and will not capture the lost value of services provided to the members of the public with no ownership rights in the resource.

When the resource is regularly traded in the market, the change in market price may be readily observable. If the injured resource is not regularly traded in a market, but similar or like resources are traded, the trustee(s) may use the appraisal technique. The appraisal technique also will only capture the reduced value of services accruing to owners of the resource, and will not capture the lost value of services provided to the members of the public with no ownership rights in the resource. To the extent possible, all appraisals should conform to the "Uniform Appraisal Standards for Federal Land Acquisitions" (Uniform Appraisal Standards), Interagency Land Acquisition Conference, Washington, DC, 1973. In those instances when state statutes may be in variance with these standards, a state trustee(s) should follow the applicable state guidance on performing appraisals.

e. Contingent Valuation Method. Contingent valuation (CV) is a survey-based approach to the valuation of nonmarket goods and services, that relies on a questionnaire for the direct elicitation of information about the value of the good or service in question. The value obtained for the good or service is said to be contingent upon the nature of the constructed (hypothetical or simulated) market and the good or service described in the survey scenario. This aspect of CV gives the approach great flexibility, allowing valuation of a wider variety of nonmarket goods and services than is possible with any of the other aforementioned techniques. Indeed, it is the only method currently available for the express purpose of estimating passive use values. In the area of natural resources, CV studies generally derive values through elicitation of respondents' willingness to pay (WTP) to prevent injuries to natural resources or to restore injured natural resources.

The first published CV study, valuing outdoor recreation, appeared in 1963. There are now over 1,400 documented papers, reports and books on CV. In recent years, it has become one of the most widely used methods of nonmarket valuation.

Four basic elements common to CV questionnaires are: (1) An explanation of the structure and rules of the market in which the good or service being valued is either bought or sold; (2) a description of the good/service and how it is to be provided; (3) the value elicitation question; and (4) validation questions, to verify comprehension and acceptance of the scenario and to elicit socioeconomic and attitudinal characteristics to interpret the variation in responses to the valuation question across respondents. There are no universal rules on how each of these elements of a CV questionnaire should be designed, since the appropriate formulation of each depends on the good or service being valued and its context and, consequently, will vary across applications.

CV surveys generally measure total value of a good or service, which includes both direct use value and passive use value. Because passive uses of resources leave no behavioral record, they are difficult to validate externally. A number of criticisms of CV pertain specifically to its use in valuing the passive use component of total value and the difficulty of external validation of that component of total value. Among the most commonly cited criticisms are: The stated intentions of willingness to pay in CV surveys may exceed "true" willingness to pay; CV may produce results that appear inconsistent with the tenets of rational choice; respondents to CV surveys on passive use may be unfamiliar with the good/service being valued and therefore may not have an adequate basis for articulating their true value; CV respondents may be expressing a value for the satisfaction ("warm glow") of giving rather than the value of the good/service in question; and respondents may fail to take CV questions seriously because the financial implications of their responses are not binding. Most proponents of CV acknowledge that poorly designed and administered CV studies can produce results that reflect the potential problems identified above. However, proponents also assert that these problems are not inherent to the method and that well designed and well executed CV studies can eliminate them or render them inconsequential. Further, survey design, development and administration standards will promote quality control for CV surveys. NOAA proposes standards on survey design, development and administration, and the nature of results below.

There is considerable interest over the inclusion of passive use values as part of a natural resource damage claim and the use of CV to measure such values. NOAA received many, often conflicting, comments on this issue. To provide a thorough analysis, NOAA convened a Contingent Valuation Panel (Panel) of economic and survey experts to evaluate the reliability of CV to measure passive use values. By establishing this Panel, NOAA attempted to provide an atmosphere in which an unbiased academic analysis of CV could be conducted. The Panel received hundreds of pages of comments and conducted a public meeting to hear all sides of the issue. Upon completion of its study, the Panel submitted its report to NOAA. That report constitutes a public comment and as such is part of the administrative record of this rulemaking. A copy of that report can be found at 58 FR 4601 (Jan. 15, 1993). NOAA considered that report along with the comments received from economists, industry representatives and other interested parties in the development of this proposed rule.

Based upon consideration of all comments received, NOAA believes that the trustee(s) should have the discretion to include passive use values as a component within the natural resource damage assessment determination of compensable values. This position is consistent with OPA legislative history that specifically refers to diminution in value as a part of damages and cites the *Ohio* decision definition of value, which includes both direct use and passive use. Further, NOAA believes that reliable estimates of lost passive use value due to discharges of oil can be estimated using CV so long as the CV study follows the standards provided in the proposed regulations. NOAA worked closely with the Department of the Interior during the development of the proposed standards for CV in order to ensure consistency between the two sets of natural resource damage assessment regulations. NOAA understands that the Department of the Interior will soon propose identical standards for inclusion in its damage assessment regulations.

NOAA believes that the proposed standards are necessary when CV surveys are used for natural resource damage assessment, because such studies will be given a rebuttable presumption in litigation over the specific amount of money a particular party must pay as compensation for liability. However, this same level of precision for CV surveys is not necessarily required for other applications of CV.

In proposing its standards for the use of CV in the damage assessment context, NOAA has relied heavily on the recommendations of the Panel. NOAA bases this reliance on the fact that the Panel reviewed a number of studies and considered the viewpoints of many individuals in reaching its conclusions.

The Panel's recommendations fall into two categories—those that should be met to assure reliability and those that must be met. Regardless of the category in which the recommendations are included, almost all the recommendations deal with survey design, development and administration. Because NOAA believes that a properly designed and administered survey is essential to ensure reliable responses, NOAA has proposed a number of standards in these areas.

There is also considerable interest in "performance standards." Performance standards would be those tests that can be used to determine whether reliable measures of passive use value were obtained. The Panel briefly addresses this issue in its discussion of whether CV results violate assumed properties of rational choice. The Panel returns to this area only in the form of one of the five conditions CV surveys must meet—responsiveness to the scope of the environmental insult. NOAA proposes a performance standard for this condition, which is discussed in more detail below.

The standards for passive use value estimation in the proposed rule cover three distinct aspects of a CV study: (1) Survey instrument design and development, (2) survey administration, and (3) the nature of the results. The regulatory standards proposed by NOAA are intended to provide flexibility to the trustee(s) so that it can take advantage of new developments that may occur in CV methodology. Further, the standards are subject to amendment as new research is conducted and additional knowledge is achieved.

Survey Instrument Design and Development. The reliability of a CV estimate of passive use value begins with the design and development of the survey instrument. The proposed rule contains a number of standards for the design and development of the survey instrument, including standards regarding the selection of a choice mechanism. Past CV studies have used different methods to elicit values. These methods include open-ended WTP questions; bidding cards; and voting formats typically termed "referenda." In the damage assessment context, the survey will be offering a public good in

one of two forms—prevention of injury or restoration of the injured resource. NOAA proposes that the trustee(s) use a choice mechanism and payment vehicle that are both credible and incentive compatible, i.e., do not impose strategic bias. The trustee(s) is to use his discretion in selecting the choice mechanism, and is to document the rationale for the choice and explain how it is incentive compatible.

However, NOAA would encourage the trustee(s) to consider the Panel's recommendation to pose the valuation question as a vote on a referendum. NOAA believes that there are many advantages for using a voting format for a CV survey for natural resource damage assessment purposes. NOAA believes that the method of elicitation should be one with which people are familiar and one which provides a realistic context in which respondents can choose to increase levels of public goods. Local jurisdictions and state governments often ask voters to increase taxes on themselves so that public goods may be increased (i.e., school bond issues; special assessments for public infrastructure). Thus, the voting mechanism is both a familiar and realistic context for individuals to make choices regarding public goods. Second, in our society, most goods are offered using posted prices. Asking an individual to reveal his or her maximum WTP for a good is both unfamiliar and unrealistic. Third, it is important that respondents should believe that they will receive the program offered in the CV survey. To CV respondents, the cost of the program naturally determines the price they must pay. If no set price is offered, the respondents may perceive uncertainty regarding the program's costs and therefore uncertainty regarding the provision of the program. Finally, the voting format is incentive compatible. If respondents desire the program at the stated price, they must reveal their preference and vote for the program. Voting against or refusing to vote will only lower the probability of obtaining the program.

Survey Administration. The most carefully designed CV survey can produce unreliable results if the survey administration is faulty. Therefore, NOAA proposes standards for survey administration. For the most part, the standards specified for survey administration are similar to those one would expect any high quality survey to meet.

One of the aspects of survey administration dealt with in the proposed rule is determination of an appropriate response rate. NOAA proposes that the trustee(s) should obtain as high a response rate as possible consistent with the requirements of reasonable cost in order to ensure reliable inferences to the general population. Low response rates pose a risk of compromising the statistical validity of the survey when nonrespondents have systematically different passive use values than respondents. Another risk associated with low response variance may be significantly affected such that the indicated confidence of survey results is questioned. Since the likelihood of this risk cannot be determined unless nonrespondents have been surveyed, the trustee(s) should minimize nonresponse in the final survey to the extent practicable. For example, the trustee(s) may design the survey instrument so that individuals must decide whether to respond before the exact nature of the environmental insult is revealed.

Balancing the desirability of a high response rate against cost considerations, NOAA has proposed that response rates should not fall below 70%. NOAA is interested in further comments on whether there should be a specified response rate and, if so, whether 70% is a reasonable floor.

Another aspect of survey administration addressed in the proposed rule is selection of the mode of administration. The three generally used CV survey administration modes are in-person, mail and telephone. Recently, mixed mode surveys have combined mailed information with telephone interviews. There are advantages and disadvantages of each method, and often the selection of the appropriate method is dependent on a number of factors such as cost, turn-around time, desired response rate, type of information to be conveyed, use of visual aids, required population coverage and the ultimate use of the survey results. For example, telephone surveys can approximate simple random sampling of households through random digit dialing; can produce fast results; are relatively easy to administer; and are less expensive than in-person interviews. On the other hand, visual aids cannot be used; interviews need to be relatively short; interviewer bias may be involved; and individuals without telephones are necessarily omitted from the sample. Self-administered mail surveys are the least costly of the three methods. However, probability sampling is exceeding difficult; respondents can review the survey before deciding to participate (imparting self-selection bias); there can be no random selection within the household and no control of question sequencing; and a higher number of incomplete responses are likely to result because there is no interviewer to motivate the respondent. Finally, in-person interviews permit random selection of the respondent within the household; maintain control of question ordering; allow the use of visual materials; and generate high response rates. In-person interviews, though, are the most costly method to administer and may involve interviewer bias. Administration requires complex field operations and involves the use of many documents and forms (i.e., calling cards, interviewer evaluation forms, verification forms). For a more in-depth discussion of each method, see EPA, "Survey Management Handbook," vol. II, pp. 24–35, 230/12–84–002, December 1984.

In analyzing the advantages and disadvantages of the use of each method for CV surveys of natural resource damages, NOAA considered the Panel's report. In that report, the Panel stated that "[i]t is unlikely that reliable estimates of values could be elicited with mail surveys. Face-to-face interviews are usually preferable, although telephone interviews have some advantages in terms of cost and centralized supervision."

While recognizing that mail surveys can provide invaluable information for many academic studies and regulatory purposes (e.g., U.S. decennial census), NOAA believes that mail surveys at this time lack certain features that are desirable for use in the natural resource damage assessment area. In deciding between the use of telephone and in-person surveys, NOAA suggests that the trustee(s) consider seriously the use of in-person interviews for the final survey because of the characteristics of a survey needed for damage assessment purposes. A CV survey designed for natural resource damage assessment purposes is likely to impart a large amount of information to respondents causing interviews to be lengthy and often complex. In-person interviews offer the opportunity to motivate the respondents and to hold their interest by providing important information in a graphical and pictorial format and asking interactive questions regarding the respondents' understanding and acceptance of key features of the instrument. It also permits interviewers to record verbatim responses to important open-ended questions. Such information may be critical in demonstrating that the trustee(s) has adhered to the regulatory standards proposed by NOAA.

Even though NOAA recommends the use of in-person interviews for the final survey, it recognizes that there may be instances where other modes of administration may be appropriate. Therefore, under the proposed rule, selection of the mode of administration is left to the discretion of the trustee(s); however, the trustee(s) must document the rationale for the selected mode of administration. NOAA anticipates that this documentation would include a discussion of the factors that led the trustee(s) to reject use of in-person interviews.

NOAA also encourages the trustee(s) to consider the use of modes of administration other than in-person interviews during the survey instrument development stage. For example, a telephone survey may be an appropriate and cost-effective method to test a design feature such as question ordering or the understanding of technical terms. Further, NOAA is interested in comparative empirical testing of other administration modes, such as random digit dialing for initial contacts, followed by mailed descriptive information and visual materials, culminating with a telephone survey. If such testing demonstrates that other modes can produce the type of information and results comparable to in-person interviews, NOAA would encourage the trustee(s) to consider the use of those methods for the final survey.

Regardless of the mode of administration, NOAA proposes that all surveys be administered by a survey research organization because the preparation and administration of a general population survey require practical survey expertise and substantial logistical support. NOAA also recommends that the trustee(s) select a survey research organization that has implemented procedures to meet the standards outlined in either the Council of American Survey Research Organizations' Code of Standards for Survey Research or the American Association for Public Opinion Research's Code of Professional Ethics and Practices. Use of such an organization will help to maintain reliability and confidentiality. Further, such organizations are likely to have proven track records and the staff necessary to conduct a survey in accordance with the proposed regulatory standards.

Nature of Results. In addition to the standards for survey instrument design and development and for survey administration, the proposed rule contains a standard for evaluating the results of CV surveys. The Panel report stated that one indication that a CV study is unreliable is when respondents show inadequate responsiveness to the scope of variations in the environmental insult. This statement suggests that the Panel was concerned that WTP be sensitive to characteristics of the described natural resource injuries and of methods of preventing those injuries or restoring the injured resources. The proposed rule includes a performance standard to address this concern.

The scope of an environmental insult such as a discharge of oil is multi-dimensional, where the dimensions are influenced by biological and social attributes. A discharge can affect all or part of an ecosystem. Its effects can be short- or long-lived, lethal or sublethal, geographically contained or widely dispersed. From the human perspective, the effects of a discharge may be directly visible and disturbing, or out of sight and perceived only indirectly once there is knowledge about the loss of natural resources.

In the first phase of the scope analysis, the many dimensions of the scope of the discharge under investigation need to be identified. Once the trustee(s) has defined the dimensions of scope deemed to be important to passive use losses, the trustee(s) shall employ a split sampling technique where some respondents are provided with an alternative survey instrument. The trustee(s) begins the analysis with the primary survey instrument that will be used to estimate the passive use losses due to the discharge in question. This instrument is designated the base instrument. It is assumed that the trustee(s) has pre-tested and performed field pilot tests on the instrument and is convinced that the instrument meets the design or guidance criteria laid out in the proposed rule. Analyses performed using incompletely developed or tested preliminary instruments cannot be considered evaluations of scope sensitivity because in these situations it is not possible to distinguish the effects of variations in instrument design from those effects on respondent decisions of changes in the scope of injury or the proposed program.

In designing a CV survey instrument, the trustee(s) must determine the dimensions of scope that are relevant to the discharge under investigation and decide whether there exists a subset of dimensions that are important to passive use value or whether all of the dimensions are linked and therefore equally important. In cases where a subset is deemed important, the trustee(s) must choose whether to scale these dimensions up or down in relation to the levels described in the base instrument and by how much to scale the dimensions. If all relevant dimensions are to be scaled, the trustee(s) must still decide in which direction and magnitude to scale each dimension. The dimensions should be designed to be ordinal in scope, i.e., A>B>C, unless such ordinal scope is infeasible.

After the trustee(s) has decided on the dimensions to be scaled, in what direction and by how much, the trustee(s) shall produce second and third instruments that differ from the base instrument only with respect to the scope dimensions. NOAA recognizes that the trustee(s) may choose to scale dimensions regarding the injury description, dimensions concerning the CV prevention or restoration programs offered to respondents, or both.

After the scaled instruments are pre-tested, all three instruments should be employed in a split sample design. Since inferences to the relevant population will not be part of a scope analysis, true probability sampling is not required and convenience samples may be employed so long as random assignment of the two treatments is maintained. The trustee(s) should endeavor to employ large samples in these analyses since scope effects may be small and large samples will be needed to attain the desired 95 percent confidence levels of statistical significance. The trustee(s) is free to demonstrate sensitivity to scope using statistical techniques of its choosing; however, pooling both samples and employing a simple dichotomous variable (analysis of covariance) framework allowing general differences in the WTP valuation function will usually be a sufficient basis for testing. In some circumstances, more complex designs may be required.

The validity of the scope analysis depends upon the respondents' perception of differences in the scope dimensions across the three treatments. It is incumbent upon the CV designer to include questions that can be used to determine whether the understanding and credibility criteria laid out in these regulations have been met. This determination is vitally important and, if it is found to be violated, the analysis may lead to unreliable results.

The three-scenario approach is not required when the trustee(s) provides a reasonable showing that it is infeasible due to considerations of cost or lack of plausibility of the scenarios. In such circumstances, the trustee(s) may perform the analysis using only the original scenario and one alternative scenario. However, as CV surveys of passive values are routinized and their costs fall, the trustee(s) may find that

the three-scenario analysis is feasible in most cases.

Concern was expressed that differences between the scenarios not be so large that passing the total value test would be a foregone conclusion, nor so small that it would be very difficult to demonstrate statistical differences without extremely large (and costly) split samples. The issue is complicated by the possibility, based on the State of Alaska-sponsored study of the Exxon Valdez spill, that a significant minority of the population may be insensitive to any reasonable differences in scenarios: some individuals may not be willing to pay anything for any environmental cleanup, others may be willing to pay unrealistically high (and invariant) amounts for any size environmental cleanup. The trustees are to develop procedures for identifying these people, so that the demonstration that the scenarios are meaningfully different would rest on the remaining participants. To accept the scenarios for the total value test, no more than 95% of the remaining participants may indicate that the differences between the scenarios are real and meaningful—i.e., that the values of the respective commodities differ. NOAA is seeking comment on whether it is feasible to design such a procedure to demonstrate differences in scenarios, and if not, on alternative schemes to achieve a comparable goal. For example, the total value test is to be performed on split samples: how should "insensitive" individuals be excluded? If so, how should the threshold defining "meaningful differences" be characterized? Is it feasible to identify scenario differences also using a split sample procedure? If not, should the threshold criterion for determining "meaningful difference" be adjusted, since individuals impose internal consistency on their answers in the face of direct comparisons (recognizing much finer differences than in split samples)? Once a procedure has been developed to determine if individuals are sensitive to the scope of the injury, should this information be incorporated into the selection of the sample for the total value test?

While the proposed rule requires a split sample with multiple scenarios for demonstrating the total value test, NOAA seeks comment on the option of alternatively using an indirect test to explain variation in WTP as a function of independent variables, including belief in the size of the damage scenario, and/or effectiveness of the avoidance policy. Commenters should consider under what circumstances an indirect test should be allowed for performing the scope test. An indirect approach examines the sensitivity to scope indirectly through the use of a WTP valuation function, relying entirely on the base instrument. In the context of a single dichotomous choice referendum (or a double bounded formulation), a WTP valuation function may relate the probability of a yes vote to a list of variables assumed to underlie the voting decision (e.g., the amount the household is asked to pay, household demographics, etc.). The indirect approach may expand this list to include variables based on information collected from respondents that are related to the scope dimensions of the discharge. These measures must be meaningful to the respondent given the information provided in the survey. For example, a useful question following the WTP elicitation question is one that asks whether the respondent believed the injuries caused by the discharge were more severe or were less severe than described. All other things equal (i.e., similar preferences, budget constraints, etc.), respondents believing the injuries to be worse than described, and having equal confidence in the prospects for restoring the injured resources through the offered plan, might be willing to pay more. Such a finding would be an indirect verification of scope sensitivity.

"Calibration"

Estimates of hypothetical willingness-to-pay (WTP) may incorporate biases in opposite directions. On the one hand, the appropriate measure of damages is willingness-to-accept (WTA) not WTP, although the former is not recommended in the proposed rule because of a concern for limited reliability of current procedures for eliciting WTA. There are theoretical arguments for why WTA may exceed WTP by a substantial margin in a natural resource context with relatively few substitutes, although there is debate on this point. On the other hand, several experimental studies (of a lower quality survey design than proposed in this rule) suggest that stated intentions of WTP in CV surveys exceed observed responses in simulated markets or in solicitations for charitable contributions. (There is, however, debate as to whether the simulated markets or charitable contribution solicitations capture "actual" WTP in the available studies.)

Because of the various possible biases, a discount factor is included in the proposed rule to apply to estimated WTP. The proposed rule gives a default factor of fifty percent for the purposes of soliciting comment. However, the trustee(s) may adopt a different calibration factor if it can be shown that a different factor is appropriate for a specific application of CV. NOAA is asking commenters to propose other reasonable calibration tests. In particular, NOAA requests comment on how such calibration could be done consistent with the framework of these proposed regulations and for the type of public goods likely to be injured by an oil spill. Commenters should consider adopting a stringent discount factor while at the same time suggesting relaxing some of the other standards contained in the proposed rule.

Reporting. Because a well-designed study will include questions that assist in the interpretation of responses to the WTP elicitation, the final report should include a breakdown of WTP by various categories such as income, belief in the scenario, and attitudes toward the environment. Data from the survey should be retained by the trustee(s) and ultimately made part of the administrative record once the trustee(s) considers the survey a public document.

Additional Guidance. NOAA recognizes that implementation of a CV survey requires decisionmaking about a variety of features, not all of which are specifically addressed in the standards in the proposed rule. In many instances, the trustee(s) can turn to established economic theory and survey research for guidance, but in other instances economic theory and survey research provide little or no guidance and reasonable decisions must be based on other criteria. In these circumstances, NOAA recommends that the trustee(s) follow a conservative approach. That is, when one is deciding among alternatives, and economic theory or survey research cannot inform the decisions, the trustee(s) is encouraged to choose that alternative that would understate the natural resource damages rather than overstate the damages.

The following examples are instructive. Suppose the trustee(s) selects a referendum framework for the elicitation of willingness-to-pay values from respondents. Using such a framework, respondents might be asked to vote on a program that would be paid for in a one-time (or lump-sum) payment, or annually over a period of years. Economic theory does not generally differentiate between these two alternatives, viewing each as equally appropriate. However, because it is less financially burdensome for credit-constrained individuals to make installment payments than to pay for a good in a single payment, requiring payment only for a proposed restoration or protection program in a lump-sum may provide a smaller value than if the same individuals were asked to pay in installments. In this case, the adoption of a conservative approach would lead to the use of the lump-sum payment. Similar decisions involve the selection of photographs for use in the description of injuries or the proposed prevention or restoration program in a CV survey. While a picture of dead, oiled sea otters might accurately depict an injury, NOAA believes that more neutral photographs would be the appropriate and conservative approach. Additional examples of conservative design and guidance can be found in the Response to Comments section of this preamble.

Request for Comments

NOAA requests comments directed toward additional tests for determining the reliability of CV results that could be considered for inclusion in a more detailed guidance document. NOAA intends to work with the Department of the Interior to develop a guidance document on use of CV to estimate passive use values. This document will provide additional technical information on possible means of satisfying the standards contained in the proposed rule as well as other issues involved in conducting CV studies. In order to evaluate any additional tests, NOAA requests that commenters proposing such tests address four issues. First, NOAA requests that commenters provide a complete list of the behavioral assumptions underlying their theoretical framework of rational choice. NOAA assumes that all commenters will begin with the generally accepted axioms of neoclassical consumer choice theory or revealed preference theory. NOAA requests that commenters clearly state all further assumptions underlying the test and describe the sensitivity of the test's results to the assumptions presented. Second, if commenters are proposing tests that rely on marginal or infra-marginal changes in the scope of the injuries, the commenter should define the variation of quantity dimensions of injuries involved in the test. Third, and perhaps most important, NOAA asks that commenters demonstrate that any proposed test can be accomplished feasibly within the CV design and administration standards specified in the proposed rule. Tests causing CV surveys to violate these design and administration standards are themselves unreliable tests. Finally, the commenter should give examples of how these tests would be structured in the context of an oil spill.

"Prior Knowledge"

The objective of conducting a CV study in connection with these regulations is to determine the damages suffered by the public as a result of a discharge of oil into the environment. For consideration of passive use values, the relevant public may include the entire U.S. population, or may include a regional subset of the population. Damages may be sustained by each individual in the relevant public, but only a small fraction of the public will actually participate in the survey. The damages an individual suffers from an oil spill depend on many factors. These include the effects of the spill on the natural environment, how much the individual uses the services provided by the injured environment, individual preferences, and the individual's information about the spill and the world in general.

In conducting the survey, it is necessary to educate the respondent about the natural resource itself, the facts surrounding a spill and the impacts of the spill on the environment. This education process greatly changes the respondent's information set. Upon gaining this new information, respondents are then asked to place a value on the damages suffered. There is general agreement that the losses an individual experiences from the spill after learning the new information are likely to be systematically different than the losses they would experience prior to learning the new information. The fact that the CV method itself actively changes the information set of an individual prior to valuing the good or service makes it fundamentally different than other economic valuation methodologies.

Some commenters have questioned whether it is appropriate to extrapolate value estimates based on post-survey information to the general population. Given the assessment's objective of estimating damages to the public at large, the small fraction of the public that actually participates in the survey, some have argued that the relevant information set for the purposes of extrapolating to the general population is the pre-survey information set. One way to move towards value estimates that reflect the information set of the general public is to obtain information in the survey itself regarding respondents' pre-existing knowledge about the resource and injury to it. Regardless of the value a respondent states after learning information from the survey, those respondents who were not aware of the resource or an injury to it or both would be assigned a value of zero. The rationale for assigning a zero value is that if X percent of the survey respondents did not know about the resource or injury, then X percent of the relevant public is likely to be similarly uninformed. (Implicit is the assumption that individuals who are unaware of the injury at the time of the survey would continue unaware, but for the survey, for the foreseeable future.)

Other commenters have articulated the point of view that the level of respondents' prior information about the injury is irrelevant to the determination of natural resource damages. The basis for this position is that the resources being injured are common property resources, for which governments and Indian tribes are the trustees for the public. Consequently, to determine fair compensation for injury to property held in the public trust, the responsible parties should contract to provide full compensation to all members of the public ex ante, based on information about expected injuries. By this logic, it is inappropriate to require that respondents' values only be counted if they were aware of the injured resources before the survey.

NOAA seeks comments on whether or not it is appropriate to use information regarding pre-existing knowledge of respondents to reassign to zero any positive values expressed by individuals who were unaware of the injuries prior to the survey in the calculation of natural resource damages. Commenters who believe that it is inappropriate to assign zero damages to individuals with limited prior knowledge should articulate their rationale for using the post-survey information set to extrapolate damages to a public that only has pre-survey information.

"Screening or Threshold Factor"

Because of a concern by many commenters that CV surveys may be undertaken in damage cases where expected damages may be too small to justify the costs of the CV survey, NOAA is seeking comment on the concept of a screening factor the trustee(s) should apply in deciding whether to conduct a CV survey in a particular case. Factors currently limiting the use of contingent valuation include the high costs for surveys to meet the proposed requirements, trustee budget and staff limits, trustee desire for speedy judgment to enable expeditious restoration activities, and the procedures necessary to justify a Comprehensive Damage Assessment (the only assessment procedure incorporating contingent valuation surveys). To employ an additional screening factor, expected damages

might be estimated using a small sample with protocols designed to minimize survey costs and, therefore, not necessarily subject to the standards contained in this rule. Alternatively, expected damages might be estimated by scaling damages estimated in other contingent valuation studies. Other methods may be possible. Several/possible thresholds have been suggested. These possibilities include setting the threshold for a particular case at the greater of twice the expected cost of a full CV survey or the product of multiplying $5.00 per household by the number of households expected to hold passive values for the resource of concern. NOAA is specifically seeking comment on the concept of setting such a screening factor and, if so, what form such a factor might take, and whether it should apply to total damages or only to passive use losses.

2. Alternative methods—a. Benefits transfer approach. Given the expense and time associated with designing and implementing site-specific studies or models to value resource services, "benefits transfer" may be a reasonable alternative method to determine interim lost values. Benefits (or valuation) transfer involves the application of existing valuation point estimates or valuation functions and data that were developed in one context to address a similar resource valuation question in a different context. Benefits transfer provides a less time consuming and less expensive procedure than original valuation analysis, but may not provide as accurate results.

Where resource values exist that have been developed through an administrative or legislative process, the trustee(s) may use these values, as appropriate, in a benefits transfer context. An example of such values is found in the approach to use in estimating recreational benefits given in Chapter II, Section VIII, Appendix 3 (pp. 83–87) of Economic and Environmental Principles and Guidelines for Water and Related Land Resources Implementation Studies; U.S. Water Resource Council, February 1983. Other values may be used so long as three basic issues are considered in determining the appropriateness of their use: the comparability of the users and of the natural resource and/or service being valued in the initial study(ies) and the transfer context; the comparability of the change in quality or quantity of resources and/or services in the initial study and in the transfer context (where relevant); and the quality of the study(ies) being transferred.

It may be possible in some contexts to tailor the results from a prior study to the site of the discharge by transferring or creating a valuation function characterizing willingness-to-pay as a function of socioeconomic, demographic, or discharge characteristics. Where data from the site of the discharge are available, the valuation function may be used to calculate site-specific resource values.

Comparability of the Resource/Services

To evaluate whether existing data are sufficiently similar to the conditions of a particular assessment to allow a benefits transfer, the trustee(s) should consider at a minimum the following questions: Are the markets for the services in the original study similar to those services being valued, in terms of size of the user population and availability of substitutes? Does the existing study consider the same or a similar geographic area in terms of demographic and socio-economic characteristics? Were baseline environmental (and other) conditions in the existing study similar to baseline conditions in the case at hand? Did the existing study address a specific or unique problem that may have influenced the magnitude of the estimates obtained? Have general attitudes, perceptions, or levels of knowledge changed in the period since the existing study was performed in a way that would influence the value of the benefit estimate? If the value being considered is for a generic resource category (e.g., common song birds), are the species considered in the original study relevant to the case at hand?

Comparability of the Change in Quality or Quantity

To evaluate the comparability of the changes in quality or quantity of resources and/or services in the existing study and in the incident of concern, the trustee(s) should consider at a minimum the following questions: Was the original analysis conducted to value all organisms of a given species, a sub-population, individual members of the species, or some other grouping? Is this level of analysis suited to valuing injuries at the site(s) of impact? Is the discharge-related change in the resource and/or service in question within the range of changes valued in the original study?

Quality of the Study

To evaluate the quality of the existing study, the trustee(s) should consider at a minimum the following questions: Was the initial study based on proper survey design and sampling procedures, sound economic analysis, and appropriate statistical techniques? Was the study peer reviewed? If current "best practice" was not used to generate the value estimate(s), can the estimate(s) be adjusted to reflect changes in the state-of-the-art?

In all cases the trustee(s) should evaluate all available estimates and/or valuation functions, based on the factors described above, to determine which are the most appropriate for benefits transfer. Consideration should be given to the range of value estimates generated from alternative methods. If the value estimates in the relevant studies differ significantly, or if values generated using alternative models within the same study differ significantly from one another, consideration should be given as to whether the values differ in a predictable and consistent manner. Such predictable variation may indicate that a more selective choice of studies or models would be appropriate for the specific context.

It is recommended that use of benefits transfer by the trustee(s) in a natural resource damage assessment be predicated on guidance from the professional and academic economics community on the current minimum conditions for quality assurance of the benefits transfer.

The Economic Analysis and Research Branch of the U.S. EPA, Office of Policy Planning and Evaluation has prepared a data base, Environmental Economics Database, of some of the existing natural resource or environmental resource valuation studies that are available to the trustee(s). This database may be obtained from the Economic Analysis and Research Branch, Office of Policy Planning and Evaluation, U.S. EPA.

b. Habitat or Species Replacement Cost Method. Alternatively, the habitat or species replacement cost methodology may be used to estimate damages for lost services from injured habitats and/or biological resources. This method is suitable for use when the trustee(s) determines that the human services provided by the habitat or species are difficult to quantify. This method involves estimating damages in terms of the cost of obtaining from alternative sources the equivalent of the value of services diminished by the injury until full recovery of the resource and/or services. The recovery process may occur through natural recovery or may be expedited or enhanced by human intervention. If full recovery is not expected to occur, then the "interim" loss in services continues in perpetuity. Depending on the nature of the injury, damages may be calculated as the cost of replacing individual species or of replacing entire habitats that support multiple species and provide a variety of resource services. This methodology provides a practical alternative to the sometimes difficult estimation of consumer value in the valuation methods identified above.

In order to ensure that the scale of the compensatory restoration or replacement project(s) on which the cost calculation is based does not over- or under-compensate the public for injuries incurred, the trustee(s) must establish an equivalency between the present discounted value (PDV) of the quantity of lost services and the PDV of the quantity of services provided by the replacement project(s) over time. The trustee(s) is to incorporate a factor reflecting any differences in the efficacy of replacement habitat or resources in providing services from that of the injured habitat or resources in absence of the injury. If the value of the additional units of services provided by the replacement project is expected to be reasonably comparable to the value of units of services lost due to injury, then equivalency may be established by comparing total services without actually estimating a dollar value of those services. However, the values may not be comparable, for example due to changes in the scale of total services or the temporal pattern of replacement services. In this case, an adjustment factor reflecting the relative values should be included in the calculation of equivalencies. Alternatively, another measurement technique may be employed.

It may be useful to consider a specific scenario where the habitat or species replacement cost method might be used. If ten acres of a habitat were completely destroyed and no recovery is expected through natural processes or restoration activities, the goal of the restoration program would be to provide a replacement project equivalent to the lost ten acres of habitat. However, since the replacement project may not provide baseline levels of services for several years at a minimum, the public will experience interim lost services for which they are entitled compensation. Additional acres will need to be replaced to make the public whole.

In another context with ten injured acres of habitat, the resources and services may recover fully in five years with natural recovery, and this may be the most appropriate recovery option. In this instance, there will be no formal restoration program for this resource, but the compensation for the five years of losses prior to full recovery can be calculated in terms of the costs of a compensating restoration program. Such a program might consist of acquisition and creation or enhancement of habitat to provide a flow of services equivalent to the lost services equivalent to the lost services.

Establishing the resource equivalencies necessary to ensure the proper level of compensation is a four-step process. First, the trustee(s) must quantify a total discounted measure of lost services over the full duration of the injury, taking into account the extent to which the resource and/or service will recover over time. These lost services can be expressed in a resource-time measure, such as lost "acre-years" of services provided by an oiled wetland, where an acre-year of services is the total level of services provided by one acre of wetland over the course of a single year. Factors to be considered in quantifying the level of services lost include, but are not limited to: The severity of the initial injury (i.e., did the injury result in a full or partial loss of services); the duration of injury; and the rate of recovery of services.

The second step in establishing resource equivalency is to determine the total discounted measure of services provided by the proposed restoration or replacement projects over the full life of the relevant habitat or species. Again, these services may be expressed in a resource-time measure, such as acre-years. Factors to be considered in quantifying the level of services provided include, but are not limited to: the productivity of the replacement resource relative to the productivity of the injured resource but for the discharge; the amount of time required for the replacement resource to reach its maximum productivity level; and the life-span of the replacement resource. If the value of additional units of services provided by the restoration project is not comparable to the value of lost services, then an adjustment factor reflecting the relative value should be included in the calculation of equivalency.

In the third step, the trustee(s) calculates the appropriate scale of the replacement project(s), such that the total discounted value of services provided by the replacement project is equivalent to the total discounted value of interim lost services due to the injury. The final step consists of the determination of replacement costs. Total replacement costs are obtained by multiplying the scale of the project (e.g., number of acres of wetlands to be created) by the unit cost of restoration or replacement, including acquisition, construction, maintenance, and monitoring costs. These unit costs can be obtained either from existing literature values or from experts in the field.

IV. Implementation Guidance on Calculating Compensable Values

A. Committed Use

As stated in the proposed rule, damages are recoverable for all committed uses of injured natural resources and/or services. For the purposes of this proposed rule, committed uses include: (1) Any direct or passive use of the injured natural resource and/or service available to the public but for the discharge; and (2) any documented planned future use. The concept of committed use is intended to avoid recovery for purely speculative uses of injured resources and/or services. Any future use is considered a committed use if it is adequately documented through such things as permit application, purchase or investment agreement, engineering or architectural plans, etc. Because there are no behavioral records comparable to those that exist for direct uses, documentation of committed use is not required for valuing passive use losses and option values claimed under OPA as well.

B. Willingness To Accept and Willingness To Pay

Humans derive both direct use and passive use values from the flow of services provided by natural resources. If the quantity or quality of a service is reduced or eliminated by a discharge of oil, the measure of damages to an individual is the change in the individual's utility or level of well-being, as measured in monetary terms. Economic analysis provides two exact monetary measures of any change in an individual's well-being: Willingness-to-pay (WTP) and willingness-to-accept (WTA). Given the occurrence of a discharge of oil, WTP would measure the individual's willingness-to-pay to have avoided the injury; WTA would measure the amount the individual would require in order to be as well off (i.e., to have the same level of utility), given the injury occurred, as before the injury. To calculate the monetized change in an individual's WTP or WTA resulting from a resource injury, net willingness to pay or willingness to accept is calculated. Net willingness to pay or willingness to accept is total WTP or WTA minus the costs an individual incurs to use the resource services, including travel and time costs.

An approximation for the exact measures of the change in utility or well-being is the Marshallian "consumer surplus," the value of which is between WTP and WTA. Marshallian consumer surplus is the difference

between the maximum sum of money an individual would be willing to pay for a good or service, as calculated from a Marshallian demand function, and the amount the individual is actually required to pay. The Marshallian consumer surplus is calculated directly from observed behavior in market or market-like transactions. This measure of value of a good or service incorporates the income effects of changes in its price or quality; for example, a reduction in price or an increase in quality would have the effect of increasing real buying power. As a result, Marshallian consumer surplus does not measure value from a fixed baseline level of utility. In contrast, the exact measures of WTP and WTA are so labeled because they calculate the monetized change in utility or well-being from a fixed baseline level of utility.

The choice as to which criterion is more appropriate in a given context depends upon the allocation of the property rights. Because the government is holding natural resources in trust for the public, the WTA criterion is more appropriate as the measure of damages. The conventional wisdom in the academic literature regarding changes in the price of a commodity indicates that WTP and WTA are likely to be fairly close in value, with the difference depending directly on the size of the income elasticity of demand for the commodity whose price changes. However, it has recently been shown that in this context where the quality of public goods or services is reduced due to injuries caused by a discharge, the difference between WTP and WTA may be substantial if the public goods have few substitutes.

In some circumstances it may be infeasible or impractical to provide reliable measures of WTA. In those circumstances, the more conservative measures of WTP or the Marshallian consumer surplus are appropriate for measuring damages. For example, WTA is very difficult to elicit from respondents in CV studies, and consequently may create greater empirical uncertainties than eliciting WTP. At present, recognizing that WTP provides a lower-bound estimate of WTA (for normal goods), NOAA recommends that the more conservative WTP criterion be elicited in CV studies at present. For the methodologies in which exact welfare measures, providing the monetized changes in individual utility, can be derived from the Marshallian models through analytical techniques, WTA and WTP measures are of equal reliability. In those circumstances, WTA should be used where feasible and practical.

C. Substitutability

In calculating the diminution of value, the availability of substitute resources and/or services should be taken into account. For example, substitutes may exist for individuals who have lost or diminished use of a resource and/or service, such as a recreational site. Generally, the fewer substitutes available for a particular resource and/or service or the poorer the match of attributes between the injured and substitute sites, the greater is the lost value to the public. However, though substitute sites may exist, congestion at these sites will increase as they absorb displaced participants from the injured site. Consequently, the quality of the recreational experience at the substitute sites may deteriorate due to the discharge. Potential effects of congestion on reducing quality at alternate sites should be taken into account in the damage calculation.

Incorporating the availability of substitute resources and/or services, for example in recreational demand models, may increase the cost and complexity of a damage assessment. Therefore, the additional cost and complexity should be undertaken only if the probable benefits from an increase in accuracy of the damage estimate are greater than the probable increase in damage assessment costs.

D. Uncertainty

Uncertainty regarding the predicted consequences of restoration options and predicted supply and demand of natural resources and/or the services they provide should be addressed in the economic analysis of restoration alternatives and determination of diminution in values and documented in the Report of Assessment.

E. Discounting

In calculating natural resource damages, the trustee(s) should discount the three components of a claim: (1) Interim lost value of injured resources pending full recovery, also referred to as compensable values; (2) restoration costs; and (3) damage assessment and restoration costs already incurred. Discounting is a widely used economic procedure that allows the trustee(s) to convert past and future damage sums to current dollars. (Discounting expenditures from the past to the present is also referred to as capitalizing or compounding forward past expenditures.) This conversion is necessary for the trustee(s) to be able to present a claim for a "sum certain." NOAA recommends that the trustee(s) use the U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis to discount each of the components. The reference date for the discounting calculation is the date at which the claim is presented.

Note that discounting the components of the claim is separate from calculating the pre-judgment interest. Section 990.14 of the proposed rule, as required by section 1005(b) of OPA, provides for pre-judgment interest and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a claim is presented until the date the claim is paid. (For a discussion of pre-judgment interest see the earlier preamble discussion of § 990.14 of this proposed rule.)

Logical consistency requires that the analysis be conducted either in terms of nominal values or in constant dollars. The nominal Treasury rate shall be used if the components of the claim are denominated in dollar values of the year a loss or expenditure is to occur (i.e., in nominal terms). Otherwise, if components of the claim are denominated in constant dollars (of the discounting reference year), then real Treasury rates are to be used. The real rates are calculated by removing expected inflation over the period of analysis from nominal Treasury interest rates. To characterize expected inflation, NOAA recommends the trustee(s) use the Administration's assumption about the rate of increase in the Gross Domestic Product deflator for the period of analysis (as reported in the Budget of the President). For projects or programs that extend beyond the six-year budget horizon, the inflation assumption can be extended by using the inflation rate for the sixth year of the budget forecast. The logic of the choice of the U.S. Treasury rate is discussed for each component of the claim in turn below.

1. Compensable values. The compensable values component of the damage claim reflects the lost consumer surplus, lost fees, and lost economic rent (that could have been charged by the government for use of a public resource) resulting from injuries caused by the discharge. The losses may occur from the time of the discharge over many years into the future. To value these losses, the trustee(s) must determine how much compensation consumers would require as of the date of the claim presentation to make them as well off as they would have been, but for the discharge. Because the purpose of the litigation is to make the public whole, the relevant discount rate is the consumers' rate of time preference, which is the rate of interest at which an individual would be indifferent between consuming goods or services in the present and postponing consumption to a later date.

Market interest rates available to consumers provide an estimate of the consumer rate of time preference for lost services. To identify the discount rate that reflects the "pure" time preference, one looks to the yield on a "safe" investment with little or no default risk, such as the U.S. Treasury rate.

2. Estimated restoration costs. Most restoration projects will be carried out over a period of years. The effectiveness and ultimate success of a restoration strategy depends on the ability of the trustee(s) to conduct restoration activities until the resource recovery is complete, including post-construction maintenance and monitoring operations. If funds are insufficient to cover the full costs of restoration, natural resource recovery will be incomplete or will be further delayed, and the public will be deprived of full compensation for the injuries. The recommendation that trustee(s) use the U.S. Treasury rate for marketable securities of comparable maturity to the period of analysis is predicated on the assumption that this rate of return is available to the trustee(s) for investment of settlement monies.

If legal and/or institutional constraints prevent investment of settlement monies yielding the U.S. Treasury rate, then it is incumbent upon the trustee(s) to structure the damage claim to ensure that sufficient funds will be available to fund the entire set of restoration activities. One option is to calculate the discounted value of this component of the claim, using an alternative discount rate that represents the yield on settlement monies available to the trustees. An alternative option is to structure a multi-year schedule for claim payments to ensure it provides the cash flow for each year required for planned expenditures.

3. Past Costs Incurred. The third category of damages is damage assessment and emergency restoration costs, which may have been accruing from the time of the discharge. To calculate the present value of these costs at the time the claim is presented to the RP, the trustee(s) will discount forward (also referred to as capitalize or compound forward) the costs already incurred. Note that if the trustees are discounting damages denominated in the year the claim is presented (i.e., constant dollars) using a real Treasury rate, then expenditures from previous years must also be translated to dollars of the claim year using an appropriate inflation index, prior to discounting (or compounding forward). Because the rate of interest employed as the discount rate for past costs incurred should reflect the opportunity cost of the money spent, NOAA recommends the U.S. Treasury rate for discounting this component of the claim as well.

U.S. Treasury bond rates may be found in the Federal Reserve Bulletin, issued monthly, or the Treasury Bulletin, issued quarterly. The Gross Domestic Product fixed-weighted price index may be found in the Survey of Current Business, issued monthly, and the Economic Report of the President, issued annually. The Administration prediction for future Gross Domestic Product deflators (for translating the nominal Treasury rates to real terms for future years) is updated twice annually at the time the budget is published in January or February and at the time of the Mid-Session Review of the Budget in July. The current Treasury rates and inflation adjustment assumptions are reported in regular updates of Appendix C of Circular No. A–94, available from the OMB Publications Office (202–395–7332).

Response to Comments

"Value of a Claim"

Comment: Commenters were divided over interpretation of the meaning of "diminution of value" within the natural resource damage assessment context. Some suggested that there was no clear indication provided, either by the courts or the Congressional Conference Report, as to the intent within CERCLA and OPA concerning measurement of diminution of value. Others disagreed, finding specific guidance on this matter. Two commenters quoted the ruling by the court in *Ohio* v. *DOI* to mean that values should not be limited to strictly consumptive use values, but also should include non-consumptive use values.

Response: NOAA finds that there is ample evidence, from the Congressional Conference Report (H. Conf. Rep. No. 653, 101st Cong., 2d Sess. at 108), and the D.C. Circuit Court decision on *Ohio* v. *DOI*, to believe that "diminution of value" refers to the standard for measuring resource damages cited in the D.C. Circuit Court decision on *Ohio* v. *DOI*. This opinion defines "use values" broadly, to encompass both direct use and passive use values that can be reliably measured. Failure to include all relevant categories of damages in a claim would understate the true loss to the American public attributable to a discharge of oil. NOAA concurs with commenters that recoverable losses include direct consumptive use losses (for example, to hunting or fishing activities), direct non-consumptive use losses (for example, bird watching or swimming activities), and passive use losses (for example, existence values).

Comment: Some commenters argued that passive use values should be included in damage assessment, because exclusion would understate the true cost of exposing natural resources to environmentally risky activities and induce systematic reallocation of environmentally risky activities to those environments that generate greater passive use values relative to direct use values. Another commenter stated that if passive use values are not considered in the determination of total value of the resource, it is more likely that the cost of restoration will be inappropriately characterized by the RP(s) as "grossly disproportionate" to the value of the resource being restored.

Other commenters contended that in some cases the cost of trying to measure the passive use losses may well exceed the potential total value of passive use damages, and hence the effort would not be worthwhile and would violate the reasonable cost test.

Response: As previously stated, under OPA, and in accordance with the *Ohio* decision, passive use values are a component of compensable values that are necessary to compensate fully the public for its losses resulting from a discharge and to return the public, as nearly as possible, to the level of well-being it enjoyed before the discharge. By determining total compensable value, the natural resource trustee(s) avoids serious resource misallocation effects. When the true value of the loss is positive, but not known with certainty, the use of zero as a measure of that positive loss will be in error, creating downward bias in the damage estimate by understating the true social loss. The result of such a systematic bias will be: (1) Smaller than appropriate recovery for, and thus investments in, restoration, rehabilitation, replacement, or acquisition of equivalent resources; (2) smaller than appropriate investments in spill prevention, mitigation, and clean-up technology; and (3) more intensive use of the natural resources of the nation than appropriate. Thus, it is important that the total compensable value be determined to rebut an argument that the cost of restoration is grossly disproportionate to the value of the resource being restored. However, as discussed earlier in this preamble, NOAA is not adopting a strictly quantitative approach to the grossly disproportionate determination. Rather,

a number of qualitative factors must also be considered.

The decision to include passive use value estimates as part of total value in a damage assessment should be predicated upon the probable magnitude of passive use losses associated with a specific discharge, as well as on the specific attributes of the injured natural resources. If the expected value of the passive use loss is small relative to the cost of estimating it, then its inclusion in the damage assessment may not be justified.

Comment: A number of commenters asserted that passive use value damages should only be assessed for permanent or long-lasting injuries to unique natural resources—atypical conditions for discharges of oil. They argued there is no need for compensation for lost passive use values when the resource will fully recover and when compensation will be paid for direct use losses pending restoration. They further argued, even when significant lost use values are present, the potential for significant lost passive use values is not very great. One commenter stated that this criterion applies most obviously in the case of bequest value when resources will be restored in a reasonable time frame and so future generations will not be denied the bequest. One commenter stated that there is no credible evidence that inherent or existence values are likely to be significant even if the resource is unique and non-reproducible and the injury is irreversible.

Response: NOAA has found no empirical evidence to suggest that a natural resource must be unique (i.e., have few substitutes), non-reproducible and/or permanently injured in order to have significant passive use values. NOAA recognizes that in cases involving temporary injury, individuals may not experience a significant sense of loss because the resource's existence is not permanently threatened. Further, after restoration, rehabilitation, replacement, and/or acquisition of equivalent resource, the resource will be available for future use and may be left as a legacy to future generations. However, there are cases where the death of individual members of a species may cause a significant loss in passive use values even though species levels may return to baseline. While complete recovery of an injured resource or service may result in lower passive use losses than otherwise, there is no evidence to suggest that compensable passive use losses do not exist in the interim pending recovery. The extent and magnitude of the losses will depend on the restoration alternative chosen, biological and ecological factors, including availability of substitute resources, and the type and extent of the original injury.

Comment: Several commenters expressed concern as to whether "option values" and/or "existence values" could be affected by a discharge, if the injured natural resources were ultimately restored through natural recovery or restoration. One commenter suggested that option values arise because of uncertainty about future availability and future demand for the resources in question. Thus, the shorter the elapsed time between injury and restoration, the less such uncertainty will matter. Similarly, several commenters suggested that passive use losses may be small or insignificant in situations where the loss in services is only for a short period of time until restoration or natural recovery is completed. Therefore, there is no reason to include passive use losses in a natural resource damage assessment.

Response: Regardless of whether complete recovery occurs naturally or through human intervention (i.e., restoration), there may be a loss or diminution of passive use values during the time period from the injury through recovery. For example, in the case of "option" value, the precise timing of a decision to exercise the option to use the resource may be unspecified, therefore the potential for access must be continuously available to maintain the full value of the option. Absent the uninterrupted opportunity to exercise the option to access the resource, the "option" is diminished and a loss accrues. Likewise, even when complete restoration to baseline conditions is possible, during the time between injury and recovery, the resource, as defined prior to the discharge, effectively does not exist. Therefore, existence value may be diminished. In addition, individuals may experience a loss in well-being because animal deaths occurred through anthropogenic causes. The size of passive use value losses is an empirical question that can only be answered with further empirical studies in these cases.

Comment: One commenter noted the difficulty of disaggregating total values into direct use and passive use components.

Response: NOAA believes that a consensus is emerging in the economics community that the appropriate conceptual approach for valuing natural resources is to measure the total value of the resource, which includes both direct use and passive use values. Contingent valuation is the only methodology currently available to provide estimates of combined direct use and passive use value. When other valuation studies are included in a damage assessment along with a CV study, the total damages are to be calculated in such a way as to avoid possible double-counting for compensable values between estimates from the contingent valuation study and from the direct use valuation study(ies).

Comment: Several commenters noted that OPA prohibits double recovery in the damage assessment claim. They claimed that CV as currently applied results in double recovery.

Response: NOAA believes that direct use and passive use losses are additive and the inclusion of each in the damage assessment does not result in double recovery. However, the potential for double recovery does exist when a CV study and a direct use study both elicit direct use values in the same category in samples covering the same usergroups. For example, if the trustee(s) considers use of both CV-based and travel cost method-based estimates of the value of recreational fishing losses, double recovery could occur if the relevant CV study elicited total value of the resource and its sample included recreational anglers. Double recovery can be avoided through careful preparation of the damage claim.

Comment: One commenter suggested that CV cannot be justified on the grounds that it is necessary to provide incentives for deterrence of a discharge, without a careful analysis of the entire system of regulations and other incentives that a potential RP faces.

Response: As discussed earlier, OPA's incentives to avoid environmental injuries are dependent upon knowing what the potential liability from discharges is likely to be. Without the availability of CV as an assessment tool, that full potential liability cannot be estimated.

Comment: A number of commenters discussed passive use values—some questioning the inclusion of such values by suggesting that they are poorly defined while others felt that such valuation has no relevance because the environment is priceless. Other commenters supported inclusion of passive use values.

Response: NOAA notes that there is a general consensus in the economic community that passive use values exist; there is no basis in economic theory to suggest otherwise.

Comment: One commenter noted a continuing debate over defining passive use values. The commenter suggested that any judgment on the definition of passive use values in the rule is premature. Rather, the rule should allow analysts to make use of emerging, state-of-the-art theories and techniques for defining and measuring passive use values.

Response: NOAA believes that passive use values are well-defined and are an appropriate component within a damage assessment determination of compensable values. To facilitate consistent usage, NOAA defines passive use values in the definition section of subpart A of the proposed rule. As stated in the preamble, the proposed rule allows the trustee(s) broad discretion in the selection of valuation methods specifically to allow for the use of new methods of valuation as they become recognized and accepted in the economics profession.

Comment: A number of commenters contended that the relevant law, the *Ohio* decision, and the precedents do not require that passive use value damages be calculated by CV or any other methodology and that nothing in OPA mandates use of CV to impose liability for potential impairment of passive use values.

Response: NOAA believes that the *Ohio* decision should be considered in this rulemaking because the natural resource provisions of OPA are patterned after those of CERCLA. In that decision, the circuit court upheld CV as an allowable method for calculating passive use damages. The trustee(s) has the discretion to use CV where appropriate.

Comment: One commenter stated that if NOAA does not recognize the practical limits on the ability of the marine industry to insure against speculative losses, the result will be awards that the industry cannot afford to pay. Similarly, other commenters noted that the financial resources of the insurance market and individual shipowners should govern the size of recoverable claims under OPA.

Response: NOAA disagrees. In the statutory language of OPA, the Congress of the United States established a standard of strict liability and the objective of full compensation for all attributable loss. NOAA does not have discretion to change these requirements and substitute others.

Further, NOAA believes that economic theory supports a comprehensive definition of the social cost of a discharge when identifying cost elements to be included in an assessment. Alternatively, if damage claims systematically understate the size of compensable losses resulting from discharges of oil, society will underinvest in preventing damages from future discharges.

Comment: Numerous commenters indicated that damages under OPA should be compensable, not punitive.

Response: NOAA concurs that natural resource damages under OPA are compensatory rather than punitive.

Comment: One commenter stated that the existence of substitute sites in an evaluation of lost resources becomes irrelevant if the damage was caused by negligence.

Response: NOAA believes that there is no theoretical reason to separate the estimation of damages caused by negligence from those which were not. (The discussion of how to treat substitutability among resources appears below.)

Comment: Several commenters suggested that a trustee(s) should be required to select the "minimum social cost" restoration alternative, including natural recovery, when selecting a restoration approach.

Response: NOAA disagrees that this will be true for all cases. These commenters are essentially recommending that NOAA adopt the "lesser-of" rule contained in the natural resource damage assessment regulations promulgated by DOI, and rejected by the court in *Ohio* v. *DOI*. This rule specified, in essence, that the trustee(s) should choose to do restoration projects only if restoration costs were less than the interim lost value avoided by the restoration project. Consequently, cost-effectiveness and benefit/cost comparisons are factors in restoration alternatives analysis, as outlined in subpart G of the draft regulations and in the Restoration Guidance Document, but are not the sole factors to be applied in choosing among competing restoration alternatives.

Comment: A few commenters suggested that the value of the claim should be the cost of the most cost-effective restoration alternative.

Response: NOAA disagrees. Section 1006 of the OPA Conference Report (H. Conf. Rep. No. 653, 101st Cong., 2d Sess. at 108 (Aug. 1, 1990)) provides a clear mandate to NOAA to "establish a system for assessing damages to natural resources, including a measure of damages equal to the costs of restoration, replacement or acquisition of equivalent resources, *and* the diminution in value of those resources pending restoration" (emphasis added). Moreover, the appropriate restoration approach to include in a damage claim may not be the one that is most cost-effective because the trustee(s) must consider a number of factors when selecting restoration options. It is important to note that cost-effectiveness only allows ranking of alternatives that accomplish the same increase in services at the same rate over time. Other criteria are necessary to compare alternatives that accomplish different outcomes.

Comment: Some commenters indicated that actions taken by the RP(s) in connection with a discharge may be beneficial to the environment and/or the local economy and thus should be considered as an offset to damages resulting from the discharge. For example, one commenter argued that passive use and/or nonmarket losses should not enter into damage assessments because for every category of persons suffering a loss as a result of a natural resource injury, there will be other individuals who gain. Other commenters said that such "offsetting" is not authorized by OPA and that the trustee(s) must not consider any such actions.

Response: NOAA agrees that offsetting public damages against private gains is not authorized by OPA. The scope of a natural resource damage assessment is limited to the losses to the public due to injury to public trust natural resources—losses that are not actionable under private actions. To the extent that some actions taken by the RP(s) may mitigate the injuries to the environment and speed restoration of the resources, the impacts will be lessened, as will the damages; consequently the size of the damage claim will be smaller than it would have been if the RP(s) had not taken the mitigative actions.

However, damage claims brought by public trustees do not include the positive or negative effects on private parties, such as reduced income accruing to local recreation-related businesses due to declining tourism or increased income to spill response firms. Further, to the extent that such expenditures are simply shifted from one location to another, the gain of businesses in one location is the loss of businesses in another and the net effect on the private parties throughout the whole country is essentially zero.

Comment: Several commenters were concerned about "double counting" or "double recovery" within the damage assessment process. Each observed that OPA does not allow double recovery of damages, and proposed that the NOAA rules explicitly disallow such claims.

Response: NOAA agrees that no double recovery is permitted under OPA.

Comment: One commenter raised the issue of "rents" within the compensable claim. One commenter recommended that the regulations state that the trustee(s) cannot collect forgone

resource rents accruing to a private party(ies), even if that rent is generated from the private party's use of public resources.

Response: NOAA does not concur. In the event of a discharge covered under OPA, the trustee(s) is entitled to recover from the RP(s) the total diminution in value of lost or diminished services from affected public trust resources that is not recoverable by a private party. One part of the diminution in value of affected resources is the resulting reduction in economic rent, which represents the fee or price the trustee(s) could charge for use of the public trust resource. The loss in value created by the public resource occurs whether or not the rent was collected from the private parties before the discharge. Unless such rents are recovered under a private action, the trustee(s) is entitled to recover them.

Comment: A number of commenters suggested the OPA rules should exclude recovery of damages for injury to privately owned natural resources, or that recovery should be limited to those natural resources in which the government has a dominant interest.

Response: NOAA agrees that recoveries for injuries to private resources shall not be included in any estimate of the public damage claim under OPA, and shall be accomplished through private causes of action. NOAA recognizes, however, that trust resources (e.g., birds) can use private resources (e.g. land). To the extent that an injury to a privately-owned natural resource causes injury to a trust resource, the trustee(s) can recover for the injuries to the trust resource.

Comment: One commenter noted that aesthetic injury should be considered in addition to physical impacts. The long-term assessment should account for impacts, too.

Response: NOAA believes that, if the aesthetic injury affects the physical experience of users or affects passive use values, then by definition this is a compensable loss.

"Valuation Methodologies"

Comment: Several commenters reflected the position that, because each discharge and the injury it causes are unique, no single procedure or standard economic equation could or should apply to all situations. One of these commenters recommended that an analyst should have the flexibility to examine each valuation problem on a case-by-case basis, and determine which type of valuation technique is likely to generate the most valid and useful results.

Response: NOAA agrees that flexibility in the determination of assessment procedures is important. NOAA is therefore providing four alternative assessment procedures from which the trustee(s) may choose. In addition, parallel assessments, in which the valuation of damages for one incident employs different assessment procedures, are permitted under OPA provided there is no double recovery of damages. One example of parallel assessments would be supplementing Type A model calculations with expedited damage assessment calculations for service losses that are excluded or not fully estimated in the Type A model. In addition, within the comprehensive damage assessment procedures, allowable calculation procedures range from benefits transfer procedures to original studies conducted with site-specific data.

Comment: Some commenters expressed the opinion that monetary measures of value, in particular for natural resources and related services, must be empirically "stable" in order to be characterized as "well formed" value preferences. Others argued that no such "stability" criterion is required for such values to be theoretically consistent with consumer theory.

Response: NOAA notes that monetary measures of economic values for all goods and services, including natural resources and services from natural resources, are derived in theory from consumer preference orderings. From an individual's complete preference ordering, one can derive the trade-offs individuals are willing to make between alternative bundles of goods and services, holding all else constant. It is also possible to determine monetary measures of value. Where consumer preference orderings are stable, but an individual's circumstances change because the price, quality or availability of other goods changes, then the individual's monetary measures of value are expected to adjust as well.

Comment: One commenter noted that since Congress intended that full compensation for natural resource damages be awarded, NOAA's regulations should not limit available economic valuation methodologies and should allow the trustee(s) broad discretion in choosing between currently available standard methodologies and new methodologies that may become available and accepted. The commenter stated that, while minimum standards of quality might be useful, regulations should not "lock in" the current state-of-the-art as improvements in nonmarket valuation techniques continue to occur at a rapid pace.

Response: NOAA stresses that the trustee(s) should use all applicable, reliable economic value measurement techniques in order to adequately assess all compensable values to be incorporated in the damage claim. As stated earlier, NOAA is determined to take no action that would arbitrarily preclude the use of new methodologies, as they become recognized and accepted in the economics profession.

Comment: Other commenters warned that exclusion of nonmarket techniques may result in undervaluing the effect of oil pollution on a wide range of goods and services such as real estate values, recreational use and wildlife viewing. They argued that ignoring such values leads to distorted and incomplete damage assessments.

Response: NOAA concurs with the suggestion that the trustee(s) should have broad discretion in selecting the methodologies that will be employed in performing the damage assessment, because each discharge will be unique in some respects. The nonmarket valuation techniques, including Contingent Valuation (CV), Travel Cost Method (TCM) and Hedonic Price Model (HPM), would appropriately be among the range of methodological options available to the trustee(s). Each of the identified methodological approaches values injuries to different resource services. As a result, for the most part the methods are not substitutes for one another; the choice of which to use depends upon the injuries to be valued in the given application

Comment: A few commenters argued that all nonmarket valuation techniques are inherently less reliable than market-based approaches. Other commenters supported CV, as well as TCM, and HPM. Many of the economic methodologies for estimating the diminution in value of resource services are nonmarket methodologies that do not have a long history of experience to indicate when and how they can be applied to produce reliable estimates in individual cases. They noted these valuation techniques have been shown to produce reliable estimates of WTP, when "appropriately" applied. Another commenter noted empirical market-based valuation techniques are subject to many of the same potential problems as nonmarket-based valuation techniques, such as conceptual difficulties, data limitations, and accuracy of statistical estimation techniques.

Response: NOAA does not support the conclusion that all nonmarket valuation techniques are inherently less reliable than market-based approaches. In fact, it is widely recognized that market-based valuation techniques are potentially subject to many of the same criticisms and weaknesses attributed to nonmarket techniques. In addition, it is not possible to use market valuation techniques for natural resource services that are not traded in markets.

NOAA observes that CV, TCM, and HPM techniques have each been successfully employed in a wide range of nonmarket valuation applications, and have undergone extensive scrutiny. NOAA finds no justification for arbitrarily ranking, nor unilaterally precluding the use of, any valuation methodology that is regarded by the trustee(s) as useful and appropriate to the specific injuries of a given discharge of oil. The specific characteristics of the discharge event and the nature of the injuries to be valued should guide the choice of valuation method.

Comment: One commenter recommended that NOAA establish criteria or guidelines to ensure that estimates of the diminution in use value of injured resources are valid and reliable. Further, NOAA should provide criteria and guidance to the trustee(s) regarding the selection and use of such methodologies to ensure that the value estimates are valid, reliable, and accurate.

Response: NOAA, in the proposed rule, has stated that the trustee(s) should follow the best practices established in the literature. This recommendation is generally the best guidance NOAA could provide. However, where new information has been made available to NOAA as part of the rulemaking, that guidance has been provided, e.g., guidance concerning CV.

Comment: Two commenters questioned the validity of the hedonic price model (HPM) in discharge cases because "the environmental value of a site is difficult to isolate in comparison studies" due to the innumerable other variables that affect property values.

Another commenter noted that impacts are typically of short duration and unlikely to cause any measurable change in property values. Further, where property value changes are observed and are solely caused by a discharge of oil, they would represent otherwise compensable private losses, not natural resource damages. The commenter argues that any such private losses would be poor indicators of a public loss.

Response: NOAA agrees that the type of injuries HPM is designed to value may not be significant in most discharges. Most discharges will have only small effects on housing prices. Even where there are effects, it may be difficult to estimate them using standard econometric methods because so many factors influence housing prices, and many are correlated. However, the HPM technique is reasonably straightforward to apply and may be useful in certain situations. Therefore, NOAA supports the inclusion of the HPM in the list of available value measurement techniques.

One of these commenters misinterpreted the use of HPM in damage assessments. The technique is not used to estimate the private property loss to consumers; rather, the method takes into account the fact that the quality of local environmental resources (e.g., water, air, biological resources) is a factor in the value of property. Further, because local environmental quality is part of any purchase of private property, environmental quality is considered an attribute of the property. As a result, the value of the environmental quality is reflected in property values. Hedonic valuation analysis uses the reduction in property prices of local residents as a measure of a portion of the reduced value of public resources due to the discharge.

Comment: Another commenter argues that HPM is based upon questionable assumptions, such as the ideas that households continually reevaluate their location decisions, that decisions are based upon current environmental quality, and that a family can easily move its entire household in response to nearby natural resource damage.

Response: The HPM is predicated on the assumption that the preferences for nonmarket goods and services can be revealed through directly observable transactions in related markets. To the extent that the housing transaction costs are high, individuals may not respond to marginal changes in attributes of housing. As a result, the method is likely to understate the sensitivity of individual's values to the attributes.

Comment: One commenter strongly recommends that hedonic property damages can be determined by following normal tort (e.g., trespass) type damage procedures.

Response: Given the range in approaches by various jurisdictions to property and natural resource damages, it is difficult to determine what is meant by "normal" tort procedures. NOAA believes that its approach is consistent with that envisioned by OPA.

Comment: One commenter was concerned that an earlier Notice suggests that single-site travel cost models do not account for substitute sites, but multiple-site models do.

Response: NOAA did not mean to imply that single-site travel cost models are incapable of treating substitutes. In practice, however, the collinearity among travel cost (price) and environmental attributes of the set of substitute sites substantially limits the number of substitutes that can be incorporated in a single equation model.

Comment: One commenter stated that the rules should emphasize that the travel cost model, for the purpose of measuring lost use value, is only a technique for estimating interim lost value to supplement restoration/replacement value during the time period after the discharge and before restoration. The commenter noted that because restoration efforts in most cases will gradually reduce the natural resource injury from its peak within a short time after the discharge, TCM damage estimates should be adjusted for the improvement factor, and should be phased out entirely when restoration is complete.

Response: NOAA concurs that, as an injured resource (say a recreational fishery) recovers through time, the quality of the services will generally increase. As the quality of the recreational fishery improves toward baseline, the value per fishing trip will tend to increase and as a consequence, so will the demand for fishing. For versions of the TCM in which recreational demand is a function of both the travel cost and the environmental quality of the site (such as catch rate), the model may be used to predict these changes in value and participation so long as data on expected environmental quality improvements (such as the increase in catch rate) during the recovery period are available. When the relationship between quality and participation is not explicitly modeled, and the TCM only predicts total participation at the site, adjustments in the damage calculations will be necessary as participation returns to baseline. NOAA concurs that the interim lost values are calculated from the time of the discharge until restoration is deemed complete by the trustee(s).

Comment: Two commenters noted problems with TCM. One said TCM provides estimates of the value of a site as a whole and does not measure the impact of relatively slight changes in the availability of natural resources. Another indicated visitors may lack information or have a misconception about a particular site, which will skew the resulting data. Another noted it is also very difficult and ultimately ambiguous to attempt to measure lost opportunity costs, which depend on

each individual's wage rate as well as his/her ability and inclination to work during travel time. Also, the commenter notes there is an unsettled controversy over whether individual data on travel cost are better than zonal aggregation of travel costs.

Response: NOAA recognizes the limitations in applicability of the TCM. The greatest disadvantage of the TCM, and other indirect techniques as well, is that it cannot be employed unless there is some easily observable behavior that can be used to reveal values. Advances in the TCM incorporating multiple-site visits, improved models of the value of time, and the availability of substitutes continue to broaden the range of this measurement technique. In addition, the economics profession has developed procedures for valuing changes in environmental quality of a site, in addition to valuing access to a particular site. Random utility models, a multi-site extension of TCM, can value changes in quality at sites without requiring observed participation levels. This feature is useful, because for sites in which recovery is expected to occur over a long period, it will not be feasible to collect site-specific data through the full period of recovery within the time frame of the damage assessment.

In prevailing economic theory and practice, it is assumed that individuals' behavioral responses are derived from their personal perceptions of reality. These behavioral responses provide the basis for valuation. Therefore, if a discharge of oil produces an injury to a site, it is not necessary that a user know with scientific certainty what the specific extent of the injury has been. If the consumer perceives that the value of the site has been diminished as a result of the discharge, there has been a reduction in utility, and thus a potentially compensable loss. If additional information eventually reduces the perception and experience of loss, then the damages will be reduced accordingly. However, past losses derived from uncertainty regarding consequences of a discharge may still be a compensable loss. To the extent that individuals are unaware of injuries to resources, their responses may understate the values they might express with full information. Since these individuals will most likely eventually experience the service losses (though they be unaware of the cause), these future losses should be estimated and included as compensable values.

Comment: Two commenters stated TCM will be superior to HPM in most cases.

Response: NOAA contends that both the TCM and HPM have their advantages and disadvantages, and are suited to different circumstances. NOAA finds that both models should be considered for potential use in damage assessment.

"Contingent Valuation Methodology"

"General"

Comment: Several commenters stated that compensatory natural resource damage assessment is all that is included in OPA. They claimed that CV as currently applied has such an upward bias as to be punitive.

Response: Under OPA, the compensatory framework includes calculations of both direct use and passive use values. NOAA has found no empirical evidence to support the contention that CV measures of passive use values are so upwardly biased as to be punitive.

Comment: A number of commenters contended that authorizing the application of unreliable methodologies such as CV for measuring speculative elements of loss, such as theoretical passive use damages, even under limited circumstances, will result in increased litigation costs because the RP(s) will be more likely to go to trial on the grounds that CV will significantly overstate passive use damages.

Response: The use of CV, in and of itself, does not promote litigation. The potential for litigation depends upon the nature and quality of the damage assessment and the litigious nature of the trustee(s) and RP(s). A CV study that is carefully constructed, administered, and analyzed should not meet with the skepticism that many past CV estimates have received.

Comment: One commenter stated that the use of CV is inconsistent with the general law of damages. That commenter contended that a decision to employ CV measures of passive use losses would invite wider use of CV, with potentially serious repercussions for the legal system and could lead to speculative claims like a claim for harm due to the death of a friend.

Commenters further compared traditional tort law and the natural resource damages under OPA. These commenters noted that imposing liability for natural resource damages based upon CV studies for passive use values does not further the public's interest in preserving and restoring publicly owned natural resources. Additionally, these commenters stated that liability under OPA is limited to the costs to restore or replace injured resources, and that any passive use values assessed above those costs are punitive damages. These commenters also noted that even if OPA authorized such damages, tort law actions generally do not allow damages for losses that cannot be determined with sufficient evidentiary reliability and economy.

In contrast, other commenters stated that recovery for passive use values is not punitive since OPA specifically recognizes two components of the damage figure—costs to restore, replace, rehabilitate, or acquire the equivalent of the injured resources and diminution in value pending that restoration. Failure to include passive use values in a natural resource damage claim under OPA would, in fact, be a violation of law. Also, these commenters noted that there is no requirement in private tort law that the damages must be proven with mathematical precision and that difficulty in determining damages is not a bar to their recovery.

Response: Although NOAA observes that certain claims, such as those for emotional distress, etc., are recognized by the American judicial system, it also points out that it is not the role of this rulemaking to speculate whether CV will gain acceptance in areas of the law other than that dealing with natural resource injuries. Because OPA explicitly includes diminution in value as part of the damage claim for natural resource injuries, damages under OPA are not limited to the costs to restore, rehabilitate, replace, or acquire the equivalent. As stated elsewhere in this proposed rule, the OPA compensatory framework includes both direct use and passive use values. Thus, the inclusion of passive use values in a damage claim cannot be considered punitive. Rather determination of passive use values furthers the public interest by ensuring adequate compensation to restore, rehabilitate, replace, or acquire the equivalent of the injured resources.

As indicated in this rule, CV is a valid, proven technique when properly structured and professionally applied, and as such is an acceptable method for use by natural resource trustees. Further, use of CV to measure passive use values has been sanctioned in the *Ohio* decision. As stated earlier, NOAA believes that CV studies of passive use values can produce reliable estimates of damages. In cases where passive use values cannot be estimated at reasonable costs, they may be omitted from the damage claim.

Comment: One commenter stated that assessment of damages for impacts on existence or option values is inappropriate because no restoration effort will serve to avoid this claimed impact. Therefore, it is an irremediable element of the event and constitutes a penalty.

Response: NOAA does not agree that impacts to existence or option values are an irremediable element of a discharge of oil unless restoration, replacement, or rehabilitation of the injured resources (and thus services) is impossible. Liability is for foregone direct use and passive use values during the interval from the discharge to complete recovery. Should recovery be impossible, these losses are, by definition, irremediable. Such losses are, nonetheless, compensable under OPA and do not constitute a penalty. Recovery for such losses can be used to acquire the equivalent of the injured resources.

Comment: One commenter recommended that the federal government produce standard damage assessments for a few specific reference discharges of oil, either hypothetical or actual, ranging from small to large. These standard valuations could be generated by any method, including through a jury of experts. These benchmarks could serve as reference points for later CV studies. That is, when a damage assessment is required, surveys could be used to elicit answers to questions like: "Would you pay [much more, more, about the same, less, much less] to prevent this spill than you would to prevent Standard Spill A?"

A few commenters suggested as an alternative to using CV to estimate interim lost values, that NOAA consider establishing a range of pre-set monetary values that reflect lost passive use values. For any specific discharge or incident, NOAA could establish a methodology for applying these values to calculate the precise amount of payment due to compensate the public for lost passive use values. The values and methodology should be established by an expert panel.

Response: NOAA will consider the feasibility and desirability of establishing reference studies. NOAA is proposing a compensation formula with values for relatively small discharges. Though the current version of the formula does not include passive use values, the intention is to include passive use values when reliable estimates are available for such discharges.

Comment: A number of commenters asserted that use of CV will reduce the credibility of the entire trustee framework and result in undesirable social consequences.

Response: NOAA believes the use of CV will not reduce the credibility of the damage assessment process if it is done correctly, with consideration of the guidance and guidelines set forth in the proposed rule. In addition, use of CV should produce some socially desirable consequences by enabling the trustee(s) to determine total compensable value and ensure that there is adequate compensation to restore the injured natural resources.

Comment: One commenter noted that any damage assessment rule authorizing CV to measure passive use damages could well cost the U.S. economy hundreds of millions of dollars annually by generating excessively high estimates of passive use damages. This could result in reduction of the number of competitors in the transportation industry, including bankruptcy of some responsible parties. Industry concentration could follow which, in turn, could lead to higher freight rates and unnecessary costs borne by U.S. oil consumers. Under E.O. 12291 (now E.O. 12866), a rule imposing such costs cannot be promulgated prior to completion of a regulatory impact analysis.

Response: NOAA has considered the possible impacts of the proposed rule. The proposed rule has been designated as a "major" rule because of the significant issues involved in the rulemaking. However, because of the difficulty of evaluating the effects of alternatives to this proposal, a Regulatory Impact Analysis under E.O. 12866 is not necessary and has been waived.

"Reliability"

Comment: A great deal of controversy surrounds the use of CV to estimate passive use values. Critics state that, as an approach to assessing these values, CV is: (1) Deeply and irretrievably flawed; (2) highly unreliable as a measurement tool for passive use values; and (3) unable to meet basic standards of accuracy such as tests of theoretical validity and convergent validity. These critics pointed out that studies frequently cited as providing support for the reliability of CV have never been replicated and do not provide clear scientific evidence in support of CV.

Another commenter stated that the empirical literature on CV estimates of passive use values is too thin at this time to establish or dismiss the credibility of reported estimates, while another suggested that no perfect instrument exists for measuring peoples' values for any commodity—marketed or nonmarketed—and that we will never know the exact nature of peoples' true value functions for any commodity.

Proponents stated that CV is the only viable means to meet OPA's mandate that both direct use and passive use values be considered in assessing natural resource damages. Thus, passive use values measured by CV need to be sanctioned. These individuals argued that the fact that it is difficult to quantify passive use values using CV does not justify ignoring such values. Further, CV should not be held to a higher standard of reliability than other types of analysis.

Response: NOAA includes CV as one of the measurement techniques available to the trustee(s) for the determination of the diminution in value of natural resources and/or their services as a result of a discharge. NOAA believes that CV studies can produce reliable estimates of damages. Further, NOAA agrees that CV should be held to the same, not a greater, standard of reliability as other types of analysis.

Comment: Several commenters argued that the use of CV to measure passive use values cannot be tested or validated by comparison to valuations derived by other methods. Thus, there is no standard against which CV answers can be compared to detect bias. Since no valid alternative method currently exists for assessing "true" passive use values, it is impossible to judge the extent of any overestimation produced by CV surveys. Several commenters acknowledged that there have been some attempts to investigate criterion validity, which provide some suggestive evidence establishing the validity of estimated passive use values.

Response: NOAA agrees that it is difficult to validate externally the results of CV studies measuring passive use values as there are no other methods currently available to provide external validation with an alternative estimate. This same disadvantage, however, will exist for any method used to estimate passive use values. To minimize any potential bias, CV studies should consider the guidance provided elsewhere in this proposed rule concerning survey design, development and administration. Furthermore, this rule proposes a test for determining the validity of the results.

"Survey Design Issues"

"Injured Substitute Commodities, Budget Constraints, and Alternative Expenditure Possibilities"

Comment: Several commenters expressed the view that CV-based estimates of willingness to pay would be overstated if respondents: (1) Were unaware of the availability of substitute natural resources that were not injured by the discharge under investigation, (2)

were not cognizant of their existing financial claims (i.e., their budget constraint), or (3) were unaware that they may be asked to pay for future public programs. These commenters suggested that respondents be reminded of uninjured substitute natural resources, budget constraints, and future expenditure possibilities prior to the CV willingness to pay elicitation question.

Response: NOAA agrees that it is important to inform respondents of related natural resources that have not been injured by a discharge if such resources exist and to remind respondents prior to the elicitation question that there may be things they would wish to spend their money on other than the program offered in the survey. However, NOAA does not agree that respondents should be told about speculative future programs that might be proposed as people are not reminded of future potential expenditures when they purchase a marketed good or make decisions concerning expenditures for public commodities. For example, voters are not reminded of issues that may appear on future ballots at the time they cast their votes in actual referenda. Further, if the trustee(s) selects the conservative lump-sum payment vehicle recommended by NOAA in the preamble to this proposed rule, this design component will greatly reduce the respondents' need to consider the future financial implications of their willingness-to-pay decisions.

"Sensitivity to the Scope of Injuries"

Comment: Many commenters expressed concern that estimates of willingness to pay (WTP) for the services of natural resources obtained through CV studies are not sufficiently sensitive to the magnitude of the services being offered, and therefore, those results are inconsistent with accepted economic theory and must be deemed unreliable estimates of lost passive use value.

Response: NOAA is sympathetic to this concern; however, NOAA is not convinced that phenomena such as insensitivity to scope are endemic to the CV approach. The concern of the commenters can be illustrated with a simple example. Consider two samples of respondents, identical in all respects. The first sample is confronted with a CV survey that elicits a WTP for a well-defined natural resource service. The second sample is confronted with the identical survey, with the exception that the quantity of the natural resource service offered is significantly larger than that in the first survey. If environmental services enter individuals' utility functions in a manner analogous to common consumer goods (e.g., household electronics, clothing etc.), one might expect WTP from the second sample to be larger than that from the first, although relevant economic theory states only that the WTP of the second sample should not be smaller than that of the first.

"Substitutes"

Comment: A number of commenters contended that CV responses for generic sites indicate that survey respondents have not considered substitute sites sufficiently because their responses are too close to the responses for irreplaceable sites. Lacking clear preferences, individuals are unlikely to recognize substitutes for the service in question, unless a description of these substitutes is specifically included in the survey instrument.

Response: Reminding respondents of undamaged substitutes has been outlined in the literature as a good CV practice. In order to obtain reliable estimates of WTP, NOAA recommends that the survey instrument places the commodity to be valued in the context of related natural resources, if such related resources exist or describes the future state of the same natural resources. This reminder should be introduced prior to the main valuation question to ensure that respondents have the alternatives in mind when revealing their willingness-to-pay.

"Hypothetical Questions"

Comment: One commenter claimed that CV surveys cannot provide reliable estimates of lost passive use since such surveys ask respondents about hypothetical programs to provide public goods and that respondents view the survey as a purely hypothetical exercise. Under these conditions the commenter claimed that the respondent undertakes no mental effort to answer the questions since there is no cost to being wrong.

Response: NOAA acknowledges that poorly designed and administered CV surveys may be subject to the criticism that individuals do not take the decisions posed by the survey seriously and do not undertake the effort necessary to make decisions consistent with their preferences and financial constraints. However, NOAA rejects this comment when applied to all CV surveys. CV surveys designed and conducted according to the guidance laid out in this proposed rule will lead to careful decisionmaking on the part of respondents. This is ensured by the proposed regulations which require: (1) An accurate and understandable injury description; (2) credible prevention or restoration programs that are offered to the respondent; (3) a realistic choice mechanism and payment vehicle and (4) followup questions that ask respondents to explain aspects of their decisions. Further, NOAA believes that its recommendation to use in person interviews will motivate respondents to complete the interview and will maintain the respondents' interest in the subject matter of the survey.

"Referendum"

Comment: Several commenters recommended the use of a referendum format to pose the valuation question. Critics, however, contended that the use of the currently popular dichotomous-choice payment question format can lead to even less credible results than those using open-ended formats. They argued that studies show means from dichotomous-choice data to be significantly larger than the means from the open-ended data and that results of dichotomous-choice models suffer from starting-point bias.

Response: NOAA believes that the more appropriate method of questioning for the estimation of reliable estimates of WTP is the dichotomous-choice or referendum format. Open-ended CV questions are less likely to provide the most reliable valuations because they lack realism. In our society, most goods are offered using posted prices. Asking an individual to reveal his or her maximum WTP for a good is both unfamiliar and unrealistic. On the other hand, a voting format for public goods is one with which people are familiar (i.e., school bond issues; special assessments for public infrastructure). Further, an open-ended request for WTP may invite strategic overstatement or failure to respond to the valuation question.

"Strategic Behavior"

Comment: One commenter claimed that respondents confronted with CV questions regarding public environmental programs will attempt to increase the amount of money spent on the proposed project by increasing their expressed willingness-to-pay beyond the level consistent with their preferences.

Response: Strategic behavior is less likely to occur if the trustee(s) uses the voting format recommended by NOAA. If this approach is used, the survey will specify that some public entity, such as a state or federal government, is considering a plan that would provide a public good and is conducting a survey to see how individuals would vote on this plan if it were offered on a ballot and the cost to the respondent's household was $X. The referendum format does not permit the respondent to express an amount greater than that asked nor does it suggest that the level of the public good offered is being debated, thus the respondent cannot increase the amount of the public good provided by offering to pay a greater amount. Moreover, it has been shown that the referendum format is incentive compatible, implying that respondents' only incentive is to vote for the plan if his or her WTP equals or exceeds the required payment, or to vote no if his or her WTP is less than the required payment.

"Warm Glow"

Comment: Several comments suggested that expressed willingness-to-pay for the programs offered in CV surveys are not expressions of value for the services provided by the natural resources described in the programs, but rather are expressions of the simple pleasure one receives from giving to any good cause (sometimes referred to as the warm glow of giving).

Response: NOAA finds no evidence to suggest that the warm glow motivation is prevalent in properly designed and administered CV surveys that follow the guidance outlined in the proposed rule. If warm glow were a prevalent motivation, one would not expect to find large numbers of respondents refusing to pay anything at all for environmental programs offered in a CV survey.

A very common and effective payment vehicle employed in CV studies is a lump-sum tax payment. NOAA finds no evidence to support the notion that the warm glow hypothesis would imply that individuals get a similar warm glow from taxing themselves. Certainly, casual evidence suggests the opposite is true. Since a tax vehicle is one of the preferred methods of payment in CV surveys, NOAA believes that responses to such surveys are not amenable to explanation via the warm glow hypothesis.

"Sensitivity of Results to Various Factors"

Comment: Several commenters voiced concern that in the absence of clear preferences, respondents are subject to even unintentional influence by the framing of the survey instrument. These commenters stated that WTP values derived from CV are highly sensitive to variables that, according to economic theory, should be irrelevant to the valuation of a specific resource, including elicitation format, the sequence of questions, and the starting point value given in the questionnaire. Conversely, they assert that CV results are quite insensitive to changes that, according to economic theory, should matter, including variation in the quantity or quality of the resource. This evidence further demonstrates that CV results do not reflect valid economic measures of value.

Response: NOAA is not persuaded that CV results do not represent valid measures of lost value. NOAA recommends that CV surveys be designed to provide the highest degree of realism possible. Additional guidance is discussed in this preamble in the responses to comments on embedding, income constraints, and uninjured substitutes. In addition, NOAA proposes a test in its proposed regulations to demonstrate sensitivity to the scope of the environmental insult.

"Present Value Calculation of Interim Losses"

Comment: One commenter noted the distinction between interim and steady state passive use losses and claimed that respondents to a CV survey are unlikely to be able to discount appropriately the specific time path of interim losses. The commenter then presented an alternative procedure whereby respondents would value interim losses for a single year and technical experts would estimate how the services provided by the resource will vary from year to year as the restoration takes place. These experts would scale the respondents' valuation by the amount of the recovery that has taken place each year and compute the appropriate present value.

Response: There is no evidence to suggest that respondents' expressions of willingness to pay embody inappropriate discounting. Moreover, the alternative approach advocated in the comment is not only inconsistent with economic theory, but, at an implementation level, infuses the valuation with unnecessary economic and ecological uncertainty. Rates of time preference for the restoration of natural resources are specific to each individual. CV valuation of natural resource injuries is consistent with this fact and permits individuals to discount at their own rates. The alternative proposed by the comment would abandon individual-specific time preference rates, for a single rate chosen by some expert. This would clearly lead to discounting errors and is therefore an unacceptable approach. At the implementation stage, the alternative would require experts to estimate the actual time path of recovery and levels of recovery for each of the natural resources injured, and then to form a suitable index of the recovery that could be used to scale the respondents' willingness to pay amounts. Even if the experts could quantify the specific time path of recovery for each of the resources, they could not form the appropriate aggregate since this would rely on information about each respondent's preferences. Therefore, NOAA finds the proposed alternative unacceptable.

"Temporal Averaging"

Comment: One commenter stated that time dependent measurement noise should be reduced by averaging across independently drawn samples taken at different points in time. The commenter also suggested that a clear and substantial time trend in responses would cast doubt on the reliability of the finding.

Response: NOAA disagrees with this comment. Expressed willingness to pay can vary over time for valid economic reasons (e.g., increase certainty concerning expected recovery) and simple time averaging would mask these economic reasons. Moreover, even if such averaging were appropriate and warranted, it would require the trustee(s) to field several full-scale surveys that would greatly increase damage assessment costs and, at best, add nothing to the reliability of the CV results.

"Unfamiliarity With the Good"

Comment: A great deal of concern was voiced over the complexity of the policy issue and/or the level of familiarity of the good (environmental amenity) and changes in the level of the good with which the CV respondent is faced. Moreover, the benefits from environmental projects can be complicated, cumulative, and systemic, and knowledge about these things cannot be quickly absorbed and used by average survey respondents. As a result, the respondent has no experience or basis for valuing the good, leading them to construct values that are not related to the good itself. On the other hand, a number of commenters criticized the empirical research used to support claims of the unreliability of CV, due to the ambiguity of the valuation scenarios used in this research.

Response: If CV surveys are to elicit useful information about WTP, respondents must understand what it is they are being asked to value and must accept the scenario in formulating their responses. NOAA recognizes that some past CV surveys have provided only sketchy details about the program(s) being valued, calling into question the estimates derived from those surveys. NOAA posits that a conservative

approach should be taken regarding the knowledge of the respondent. A conservative CV study will provide sufficient information about the environmental program such as frequency and magnitude of discharges of oil, the peculiar features of the discharge in question, and similar relevant information.

"Embedding"

Comment: A number of commenters highlighted a form of embedding which is sometimes related to the inclusiveness of the resource. This form of embedding is suggested by the very different responses given by an individual when asked about a single resource as compared to surveys when the individual is asked to begin with an overall sum for environmental causes and is asked to then allocate this amount among various resources. The difference between a "bottom up" approach and a "top down" approach indicates that an individual is not observing his budget constraint in the bottom up approach. Because the respondent is unable to distinguish between what he is being asked to value and a more inclusive good, he may state an identical or similar WTP for a subset of a resource as for the entire resource.

Other commenters suggested that some of the phenomena associated with the embedding effect are simply standard propositions in utility theory (diminishing marginal utility of the asset in question). Further, a poorly designed survey instrument can contribute to embedding effects that can be largely avoided with an instrument that identifies more effectively the good(s) to be valued.

Another commenter suggested that the measurement issues raised by the embedding controversy involve a well recognized and potentially serious category of biases that are referred to as "amenity misspecification." Although these potential biases pose a methodological challenge to CV researchers and require careful attention in the design phase of the study, they are often avoidable if the scenario is plausible and the good is well described.

Response: NOAA rejects the "top down" approach advocated by the commenters because it suffers from two problems that invalidate its use in CV studies of lost passive use. First, the "top down" approach permits respondents to change the levels of vast aggregates of public goods as they move down a decision tree ordering of public goods toward the injuries to be valued. Thus, the value given for the injuries is predicated on the new levels of public goods chosen by the respondent as he moves down the decision tree. Since each respondent may choose his own levels for all public goods offered, and the levels of other public goods in part determine the value of the injuries, it is impossible to recover the value of the injuries associated with the level of public goods that actually prevailed at the time the injuries occurred from survey responses.

Second, at points in the decision tree lying above the injuries to be valued, the definitions of the public goods provided to respondents are necessarily broad and cover vast aggregates of public goods. The result of this broad definition of the goods offered is a lack of specificity regarding the components of any aggregate. It is left to the respondent to decide for himself what the precise components of the aggregate might be. The value finally given for the injuries in question is dependent on the definitions of the public goods made by the respondents at earlier levels and these definitions are unknown. Therefore, no consistent set of definitions may be inferred and thus no value for injuries, contingent upon those definitions, may be measured.

Finally, NOAA agrees with the commenters who believe that alleged biases in CV responses resulting from the embedding phenomenon can be avoided through careful questionnaire design and execution of the survey.

"Pristine Environment"

Comment: One commenter noted that proponents of CV have not addressed the issue of CV's capability of measuring passive use values for less than pristine environments. That commenter questioned whether CV can reliably measure passive use values in an already diminished area.

Response: NOAA notes that there is nothing in the empirical literature to suggest that respondents cannot formulate WTP estimates for less than pristine environments. A well-designed survey instrument that describes the baseline conditions before the discharge and the impacts of the discharge should provide respondents with adequate information upon which to base WTP.

"Temporal Measurement"

Comment: One commenter was concerned that CV has not been proven capable of measuring passive use damages when there is gradual restoration of the injured resources over time.

Response: In order to obtain reliable estimates of WTP, the CV survey should provide a description of possible restoration activities and their expected outcomes as well as the time period for natural recovery. This information allows the respondent to distinguish between interim and steady state losses and the timing of restoration. Given such information, there is nothing in the empirical literature to suggest that a respondent cannot submit a reliable WTP estimate.

Comment: One commenter asserted that in implementing a CV survey, it should be made apparent that respondents can distinguish interim from steady state losses. This assertion is based on the assumption that most passive use values of natural resources may be derived only or mostly from its steady state and not from its day-to-day state.

Response: NOAA rejects this comment as there is no empirical evidence to suggest that passive use values are derived solely from the steady state characteristics of the resource.

"Extent of the Market"

Comment: One commenter noted that the passive use values derived from an environmental good are likely to be concentrated locally, but may extend to a large distance. Deciding where to draw the line for valuation is crucial. Another commenter noted that there is currently no accepted theoretical or empirical structure for determining the appropriate geographic extent of the population across which to extrapolate the WTP values. Thus, damage figures derived from CV studies for passive use values have no reliable or predictable basis.

Response: NOAA agrees that there is no clear line for determining extent of the market, but it does not follow that passive use value estimates have no reliable basis. The extent of the market is an empirical question best left to the discretion of the trustee(s) in consultation with their survey research experts, based on the particular case in question and guided by the results of survey pretests and pilots.

Comment: A few commenters asserted that CV studies focus on controversial subjects and, as a result, exaggerated perceptions almost certainly undermine the objectivity of the study. If CV is to be used, it is imperative that surveys not be framed in terms of discharges of oil, but rather should describe reductions in resource services due to some noncontroversial source, such as natural mortality.

Response: The underlying concern of these commenters is whether the potential controversy surrounding a discharge can undermine the objectivity of a CV survey. NOAA believes that this potential problem will not be a factor in well-designed CV surveys because they are generally conducted at times sufficiently distant from the discharge. This time lapse occurs because of the long lead-time necessary to determine the likely injuries from the discharge so that they can be accurately represented to the respondent and because of the time needed to prepare and implement the final CV survey. Further, media attention that may generate controversy will likely have focused on other events by the time the full survey can be conducted. The referendum approach also prevents potential controversy from tainting WTP. Because respondents are voting to increase their own taxes or the price of a consumer product such as oil rather than voting on how much the oil and gas company should pay to remedy the injury, respondents cannot vent their frustrations at the oil or gas company. Thus there is little or no possibility that potential controversy will undermine the objectivity of the CV study.

"Ex-ante v. Ex-post Questioning"

Comment: One commenter contended that CV surveys are biased and inaccurate because they do not really measure the value of the resource but are designed instead to determine WTP to prevent harm to a resource. This is because CV is always carried out in the aftermath of an accident and does not reflect pre-existing values independent of the accident and the valuation process.

A number of critics of CV claimed that CV questionnaires focus on total values (although passive use values dominated) in an ex-ante setting—that is, protecting waterfowl and preventing injury resulting from the discharge. They suggested that such ex-ante CV studies are better suited for damage assessment than are assessments that involve an ex-post valuation.

Response: In NOAA's judgment, the conceptually correct measure of damages is the ex-ante WTA. That is, ideally one would wish to place individuals at a point in time just prior to the injury and elicit from them an expression of WTA for the future injury. For reasons discussed earlier in the preamble, WTP, not WTA, is proposed as the basis for measuring passive use values. Thus, the obvious WTP analog is ex-ante prevention. It is true, though, that under certain circumstances, it may not be possible to develop an ex ante WTP CV commodity that is both plausible and reasonable to respondents. In these instances, the trustee(s) is free to use ex-post WTP programs. The trustee(s) should determine whether to use an ex-ante or an ex-post scenario on a case-by-case basis.

"Distribution of Responses"

Comment: A number of critics of CV contended that the mean WTP is estimated with low statistical precision, due to extreme responses. The distribution of WTP appears to be strongly skewed, so that trying to circumvent the problem by using medians or similar statistical devices is likely to introduce serious bias. These commenters assert that very large samples should be required to provide acceptable statistical accuracy.

Response: NOAA agrees with the commenters that extreme responses may skew results. However, standard practice in empirical research is to begin with a large sample size and treat outliers appropriately. NOAA believes that probability sampling is essential for a survey used for damage assessment and that the size of the sample must be large enough to ensure statistical precision. Due to the complexity of sample-specific design and size, the trustee(s) should consult with sampling statisticians in the design of a CV survey.

"Calibration/Scaling"

Comment: One commenter asked whether a CV study can generate useful information when respondents fail to answer truthfully. This commenter suggested that a "calibration approach" can be applied to environmental goods, for example, a CV response predicated on a hypothetical scenario could be statistically mapped into a response that would be obtained if the opportunity to purchase the good were actually provided. A number of commenters suggested that if systematic divergence existed between actual behavior and CV survey responses and this divergence could be quantified, then calibration of CV results could be undertaken.

Response: NOAA notes that there are some studies that suggest that stated intentions of WTP in CV surveys significantly exceed observed responses in simulated markets or in solicitations for charitable contributions (though none of the surveys meet the standards proposed in the rule, and there is debate as to whether the simulated markets or charitable contributions capture "actual" WTP). Because of the possible bias, a discount factor is included in the proposed rule to apply to estimated WTP. The proposed rule gives a default factor of 50 percent for the purposes of soliciting comment. However, the trustee(s) may adopt a different calibration factor if it can be shown that a different factor is appropriate for a specific application of CV.

"WTP vs. WTA"

Comment: A number of commenters addressed the subject of WTP versus WTA compensation measures within the damage assessment context. Some of these commenters noted that WTA is the correct measure because the public trust doctrine embodied in OPA implies that the property right for the resources rests with the government, in trust for the public. Consequently, the public has the right to be compensated when injuries occur. Another commenter stated that CV studies frequently find large differences between WTP and WTA and that this difference is another sign of the failure of CV to measure correctly any genuine underlying preferences for passive use values. Other commenters noted that the conventional wisdom applies only to changes in the price (of marketed goods). Recent research has shown that, for changes in the quality of either marketed or unmarketed goods, large differences between WTP and WTA may be consistent with economic theory, particularly for public goods.

Response: While NOAA agrees that the conceptually correct measure of lost passive use value for environmental damage is WTA, it is concerned that respondents to CV questionnaires would give unrealistically high answers to such questions. Therefore, NOAA contends that the WTP format should be used instead of the compensation required (WTA) because the former is the conservative choice unless future empirical evidence suggests otherwise. NOAA encourages the trustee(s) to remain current with the state-of-the-art in this area and to use the criterion that reflects the best available practice among natural resource economists. NOAA disagrees with the assertion that the large difference between WTA and WTP is an indication that CV fails to correctly measure underlying preferences, as experiments have shown that such differences also exist for market goods.

"Research"

Comment: Several commenters stated that the results of past CV studies are sufficiently interesting and demonstrate sufficient promise to warrant the commitment of substantial resources to further research. There is an urgent need for methodological research on CV.

Response: NOAA encourages further research in this area.

"Expressions of Punishment"

Comment: One commenter claimed that CV surveys of passive use permit the respondents in such surveys to express in their WTP amounts feelings that responsible parties should be fined or punished for the effects of discharges of oil.

Response: Such problems can be avoided in a properly designed survey if the trustee(s) selects a voting format as the choice vehicle coupled with a tax as the payment mechanism. By asking the respondent how he or she would vote on such a plan if the plan would cost the household $X, the respondent cannot express any anger directed at the RP in terms of the respondent's household's willingness to pay for the program offered, except possibly to refuse to answer the question or to answer the question based on a belief that taxpayers should not be required to pay for impacts resulting from the discharge.

"Survey Methods"

Comment: Several commenters argued that high nonresponse rates in CV surveys would bias survey results, producing unreliable estimates.

Response: While NOAA agrees that a high response rate is desirable, there is no bright line to determine at what level of response a survey's results become "unreliable." NOAA proposes that the trustee(s) shall obtain as high a response rate as possible that can be achieved at a reasonable cost while ensuring reliable inferences to the general population.

In addition, good survey technique generally involves a followup analysis of nonrespondents and/or respondents to determine whether the sample is representative of the target population for the survey.

"Self-Selection Bias"

Comment: One commenter claimed that respondents with strong environmental preferences have a higher survey response rate than those with weaker preferences and thus are overrepresented in the final sample employed in the passive use value calculations.

Response: NOAA disagrees with this comment. Under the survey administration guidelines laid out in the proposed rule, probability sampling is specified. Probability sampling ensures that the sample drawn does not over-sample those with strong environmental preferences.

The proposed regulations also direct the trustee(s) to minimize self-selection bias related to the contents of the survey instrument. NOAA's recommended use of in-person interviews will help to ensure that respondents do not know the true intent of the survey until the interviewing process has started. Only at this time can a self-selection bias enter, and previous evidence from in-person CV interviews suggests that interviews once started are completed.

"No-answer Option"

Comment: One commenter asserted that a "no-answer" option should be explicitly allowed in addition to the "yes" and "no" vote options on the main valuation question of a CV survey.

Response: It is not clear at this time that the inclusion of a "no-answer" option would substantially change the measure of passive use values for the injury. NOAA supports further research in the area.

"Survey Mode"

Comment: Several commenters criticized the use of mail and telephone interviews in CV surveys, especially in the context of complex goods. A few commenters argued in favor of mail surveys, asserting that telephone and face-to-face interviews typically provide the respondents with inadequate time to formulate a response or test it against their actual budget and expenditures.

Other commenters argued that in-person interviews are simply not required to elicit the "opinions and feelings" required from CV questionnaires and may lead to bias in results by giving the issue high apparent importance and exposing the respondent to undue influence from the interviewer.

Response: There are advantages and disadvantages of each mode of administration, and the selection of the appropriate method is dependent on a number of factors such as cost, turn-around time, desired response rate, type of information to be conveyed, use of visual aids, required population coverage and the ultimate use of the survey results.

After analyzing the advantages and disadvantages of each method, NOAA believes that while mail surveys can provide invaluable information for many academic studies and regulatory purposes (i.e., U.S. decennial census), mail surveys at this time lack certain features that are desirable for use in the natural resource damage assessment area. In deciding between the use of telephone and in-person surveys, NOAA suggests that the trustee(s) consider seriously the use of in-person interviews for the final survey because of the characteristics of a survey needed for damage assessment purposes. A CV survey designed for natural resource damage assessment purposes is likely to impart a large amount of information to respondents causing interviews to be lengthy and often complex. In-person interviews offer the opportunity to motivate the respondents and to hold their interest by providing important information in a graphical and pictorial format and asking interactive questions regarding the respondents' understanding and acceptance of key features of the instrument. It also permits interviewers to record verbatim responses to important open-ended questions. Such information may be critical in demonstrating that the trustee(s) has adhered to the regulatory guidance proposed by NOAA.

NOAA, however, encourages the trustee(s) to consider the use of the other modes of administration during the survey development stage. For example, a telephone survey may be an appropriate and cost effective method to test a design feature such as question ordering or the understanding of technical terms. Further, NOAA is interested in comparative empirical testing of other administration modes. If such testing demonstrates that other modes can produce the type of information and results comparable to in-person interviews, NOAA would encourage the trustee(s) to consider the use of those methods for the final survey.

"Standards for CV Studies"

Comment: Several commenters observed that if CV is to be included in the rule, it is critical that NOAA provide strict guidelines that minimize the problems associated with CV and identify cases where the problems are relevant, despite efforts to minimize them.

Response: In this proposed rule, NOAA has provided guidelines for the use of CV. The guidelines are discussed earlier in this preamble.

"Interviewer Effects"

Comment: One commenter suggested that CV surveys differ from actual referenda since an interviewer is present. The commenter argued that the presence of the interviewer can cause "social desirability" bias since many of the programs that would be valued in a CV survey would preserve or restore the environment, which may be considered "socially or politically" correct. The implication of this bias would be exaggerated expressions of willingness to pay. This comment recommended that CV studies should test for the presence of such effects.

Response: Evidence of interviewer effects is sometimes found in surveys that ask respondents questions about illegal behavior, such as drug use, but there is no evidence to support the claim that the presence of interviewers would bias the willingness-to-pay amounts elicited in a CV survey used to assess natural resource damages. Nevertheless, until research on this issue has produced definitive conclusions, NOAA encourages the trustee(s) to be cognizant that such effects may be present.

"Prior Approval"

Comment: One commenter recommended that the trustee(s) seeks concurrence of the RP(s) prior to using a CV to measure passive use values.

Response: NOAA always encourages cooperation between the trustee(s) and RP(s) when appropriate. Due to the trustee's(s') fiduciary responsibilities, however, the trustee(s) cannot be placed in the posture of compromising his position in on-going or potential litigation. Thus, the decision to seek prior concurrence from the RP(s) is left to the discretion of the trustee(s). However, NOAA encourages the trustee(s) and other interested parties, such as industry or environmental groups, to consider cooperative development of CV surveys for natural resources that may be at risk of being impacted by discharges (i.e., resources of national marine sanctuaries). Such studies could then be used as a reference value should a discharge occur that injures such resources.

"Benefits Transfer Method"

Comment: One commenter stated that the concept of a "unit day" consisting of "average per day values for resource uses" is unsound because it unfairly undervalues the injured resource by treating unique resources as fungible. The commenter cited a statement in an earlier Notice that unit day values should be accepted as a measure of damages when there is a "small spill or a small impact," and stated that if such a measure is adopted, its use should only be allowed where there is a "small spill" and "small impact" and the resource ranks low in biodiversity.

Response: NOAA finds that the unit day value methodology is appropriate to damage assessment, when applied under standard and accepted procedures, and within the appropriate context. NOAA agrees with the commenter that most applications of unit values are regarded as relatively crude approximations of resource values. However, they have proven useful when more rigorous, detailed, and theoretically sound techniques are too costly or time consuming for the specific application.

Comment: One commenter noted the use of user-day values of an activity (i.e., recreation) or administratively-determined values have been common for a variety of policy purposes in the past. Another commenter noted that the absence of any accepted protocols for benefits transfer make it important for NOAA to provide reasonable guidelines for such transfers. Absence of such will assure lengthy and expensive litigation for many incidents. Such guidance must be specific and yet flexible. These guidelines should include the following criteria: (1) Studies must meet minimum standards for quality assurance in terms of data, theory, and analysis; (2) the activities from the transferred studies must accurately mirror those impacted by the incident; and (3) methodologies used for transfer should conform with standards for benefits transfer, as they are developed.

Response: For purposes of damage assessments under OPA, use of "benefits transfer" is a practical necessity, given the time and resources typically available to the trustee(s). While extensive research into these procedures is underway in the academic community, no formal benefits transfer protocol presently exists. The current state-of-the-art in benefits transfer does suggest that where feasible, it may be preferable to transfer a valuation function that characterizes the variation in use values with characteristics of the individuals and of the experience. However, NOAA agrees that the quality of the studies to be transferred and the applicability of the study context to the damage assessment context are important considerations.

"Generol Guidance"

Comment: Many comments were received concerning the appropriate discount rate. Several commenters stated that the rules should establish that present value of future year damages be discounted at the 10% discount rate as upheld in the *Ohio* vs. *DOI* ruling. Other commenters were critical of the 10% rate. Those commenters indicated that the 10% rate was too high, unrealistic, and inadequately represented future generations' interest. Instead of the 10% rate, some commenters recommended much lower rates, ranging from 0% to 3%. Others recommended that NOAA allow the rate to be determined on a case-by-case basis.

Response: NOAA finds that the appropriate rate of discount to be used by a trustee(s) is the U.S. Treasury note. For a detailed explanation of the rationale for this choice, see the earlier preamble discussion on discount rates.

Comment: Several commenters addressed the concept of "committed use," i.e., current or planned public uses at the time of the discharge, within OPA damage assessment regulations. Some expressed concern that restricting damage determination to "committed uses" would significantly understate the true value of the injured resource, and thus fail to provide adequate compensation to fully offset the public loss.

Response: NOAA feels that the concept of committed use adequately provides compensation for public losses resulting from resource injury due to a discharge of oil. As stated in the preamble, committed use implies that a resource is or has been directly utilized or employed or there exist attributable passive use values. In addition, a documented future use is considered a committed use, and thus would be included in compensable and recoverable damages, assuming incomplete recovery of the resource or delay in implementation of a future use due to a recovery timelag.

Comment: One commenter suggested that estimates of diminution of value must consider the availability of substitutes.

Response: NOAA agrees that in calculating the diminution in value, it is desirable to take into account the availability of substitute services. However, incorporating such information may increase the cost and complexity of a damage assessment. Therefore the additional cost and complexity should be undertaken only if the potential benefits from an increase in accuracy of the damage estimate outweighs the potential increase in damage assessment costs.

Comment: Some commenters observed that in assessing diminution in value the extra cost of obtaining substitute services may be regarded as the upper bound estimate of that loss.

Response: NOAA disagrees that the extra cost of obtaining substitute services is necessarily an upper bound of the loss. Unless the substitute source(s) is a perfect equivalent and has sufficient capacity to accommodate additional demand without congestion, the extra cost of obtaining those services will not reflect the true and complete attributable loss.

Comment: A number of commenters addressed the subject of WTP versus WTA compensation measures within the damage assessment context. Some of these commenters noted that WTA would be the correct measure.

Response: As noted above, NOAA concurs that WTA is the correct measure of compensation. At present, WTA is very difficult to elicit from respondents in a reliable manner. Consequently, NOAA recommends that CV studies elicit the more conservative WTP criterion at the present time. For methodologies such as the travel cost model in which exact (Hicksian) welfare measures, measuring monetized changes in utility, can be derived from the Marshallian models through analytical techniques, WTA and WTP measures are of equal reliability. In those circumstances, WTA should be used where feasible.

Subpart H—Post-Assessment Preamble Language

Introduction

At the completion of an assessment of any type described in this proposed rule, the trustee(s) shall prepare a Report of Assessment, present a demand for damages to the RP, set up an account to receive any payment of those sums, and develop a Final Restoration Plan. If a settlement agreement is reached at any point before the formal completion of the assessment, the same basic steps are required, except that the sum agreed upon as damages constitutes the demand for damages. Also, if there is a Regional Restoration Plan in place through prespill planning to which the damages may be appropriately applied, the trustee(s) need not develop a separate Final Restoration Plan.

Report of Assessment

At the conclusion of an assessment, the trustee(s) shall prepare a Report of Assessment as described in § 990.80 of the proposed rule. The Report of Assessment should be made available to the public; but the timing of publication may vary. In some cases, the trustee(s) may wish to issue the Report of Assessment in connection with entry of a consent decree resolving natural resource damage claims, in order to give the court and the public adequate information to evaluate the settlement.

The Report of Assessment consists of the DARP, as modified based upon any comments received on the DARP. The Report of Assessment describes the selected restoration approach and the estimated costs of implementing that approach. The Report of Assessment will also contain an index of the administrative record of the assessment as an attachment.

Demand

At the conclusion of the assessment, the trustee(s) should present to the RP(s) a demand in writing for the damages, as described in § 990.81 of the proposed rule. The demand should be delivered to the RP(s) in a manner that will establish the date of receipt.

The demand shall include an identification of the discharge of oil from which the claim arises, the natural resource trustee(s) asserting the claim, and a brief description of the natural resources and/or services for which the claim is being brought. The demand will include the Report of Assessment as an attachment. Finally, the demand shall state the amount of damages being sought.

The damages presented in the demand will include the estimated costs to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and/or their services, the diminution in value pending that recovery, costs already incurred in carrying out emergency restoration, and the reasonable costs of conducting the assessment and recovering the damages.

Review of Damage Figure

As explained earlier in this preamble, NOAA is proposing that the restoration component of the Report of Assessment be granted record review. Therefore, of the total damage figure, that part of damages representing the estimated costs of implementing the restoration component is that portion subject to record review. The other damages, including but not limited to assessment costs and compensable values, are to be reviewed with the trustee(s) receiving the benefit of the rebuttable presumption.

Account

This proposed rule allows the use of various types of accounts into which the trustee(s) may place sums recovered. If more than one trustee is involved in the recovery, the proposed rule, in § 990.82(a), allows trustees to establish a "joint trustee account" under the registry of the applicable federal court when there is a joint recovery involving both federal trustees and state or Indian tribe trustees. A federal court is listed since section 1017(b) of OPA states that actions for natural resource damages shall be filed in a United States district court. Such an account may be interest bearing, depending upon the rules of the court. The joint trustee account should be managed by all trustees through a mutually agreed upon trustee committee or council. Such an account and its management could be agreed to in a Memorandum of Understanding (MOU) such as the one suggested in § 990.16 and given as an example in Appendix A.

While the joint trustee account may be the preferred alternative, trustees also have the option of dividing the recoveries and depositing their respective amounts in their own separate accounts. These accounts should be interest-bearing, revolving trust accounts. These accounts may be new, separate accounts established for each incident or preexisting accounts to which additional deposits are allowed for specific purposes. In addition, trustees may establish escrow accounts or any other type of investment account(s) unless specifically prohibited by law.

Regardless of the placement of recoveries into joint or separate accounts, the sums shall be used as specified in § 990.83 of this proposed rule. Also, the trustee(s) must maintain appropriate accounting and reporting methods to ensure the proper use of sums recovered, including independent auditing.

Although OPA clearly intends that trustee accounts are to be interest bearing, there may be circumstances where this is not the case, e.g., the rules of the court on court registry accounts do not allow it. Therefore, it is essential that the trustee(s) determines the likely repository of any potential recovery when determining the appropriate damage amount to demand. The calculation of the expected present value of the damages amount should be adjusted to correct for the anticipated effects of inflation over the time estimated to complete the restoration alternative chosen. The damage amount should be adjusted by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete the chosen restoration alternative.

Because of the possibly long-term nature of the Regional Restoration Plan described in § 990.84(b) of this proposed rule, this adjustment for inflation applies only to the incident- specific restoration plans described in § 990.84(a) of the proposed rule.

Use of Sums Recovered

As mentioned earlier, section 1006 of OPA establishes damages for injury to natural resources to be the: (1) Costs of restoring, rehabilitating, replacing, or acquiring the equivalent of the injured natural resources and their services; (2) diminution in value of those natural resources and/or services pending the restoration; and (3) reasonable costs of assessing those damages. The damages recovered are to be placed, upon receipt, into one of the accounts described in § 990.82 of the proposed rule.

At the trustee's(s') option, prior to the deposit of a recovery in an account, the trustee(s) may request immediate receipt of those sums recovered that represent assessment costs already incurred, costs necessary to complete the assessment, emergency expenses, costs necessary to develop the final restoration plan and costs to implement a restoration plan or individual project that is part of that restoration plan. The remaining sums, those consisting of restoration or replacement costs and diminution of value, are damages representing compensation for the injuries to the natural resources.

The damages representing compensation are to be spent to develop and implement a final restoration plan. In order to refine this restoration plan, the trustee(s) should be allowed to immediately use that part of the damages representing compensation necessary to meet the expenses involved in developing the final restoration plan.

Final Restoration Plan

The proposed rule describes two types of Final Restoration Plans. First, the trustee(s) may develop an Incident-Specific Restoration Plan to address the effects of the discharge of concern. This plan shall be based upon the restoration component developed under subpart G of the proposed rule. This Final Restoration Plan is the post-assessment restoration planning document. This plan should serve to define the objectives and the approach for the particular discharge site, and establish the procedures for restoration, and where applicable, rehabilitation, replacement, and acquisition of the equivalent actions. The Final Restoration Plan incorporates all proposed restoration activities for the discharge site that have been selected by the trustee(s), taking into consideration public comments. Once damages are awarded or a settlement with the RP(s) reached, the trustee(s) shall review the restoration plan for possible modifications. The Final Restoration Plan shall take into account the available funds; priorities of natural resources and/or services of concern; direct and indirect (i.e., interdependency and feedback between restoration options) benefits to the natural resources and/or services of concern; and sequence of restoration steps. If there are significant modifications between the restoration component of the DARP made available to the public prior to the damage award, and the restoration plan that the trustee(s) intends to implement after receiving the award, the rule requires the trustee(s) to make the revised plan available to the public for a 30 calendar day comment period. The trustee(s) should make the plan publicly available, along with a response to public comments.

Under this proposed rule, the trustee(s) would also be allowed to pool recoveries to apply them to a Regional Restoration Plan, as described in § 990.16 of this proposed rule. Where such a plan already exists, whether developed through prespill planning efforts or under regular management efforts, that plan may be used subject to the conditions listed below. This option will likely be most useful in areas with long-term pollution effects where damages from a single discharge would be too small to "restore" the ecosystem or where the planning costs for the restoration after a single discharge would be quite high compared to the damage figure. This type of approach may allow meaningful restoration efforts to result from several recoveries received through the use of a compensation table or one of the Type A models developed by DOI. However, where a Regional Restoration Plan has not been developed, an Incident-Specific Restoration Plan must be developed for use of the damages recovered.

The proposed rule states that, to qualify as a Regional Restoration Plan under this rule, the plan must be developed through a process consistent with the prespill planning process described in § 990.16 of the proposed rule. The plan must also address the same or similar resource injuries as those identified in the assessment procedure. These requirements are completely consistent with the DOI rule at 43 CFR 11.93, which also allows for pooling damages assessed using a Type A procedure.

Post Assessment Response to Comments

"Account"

Comment: Some commenters suggested the OPA rule allow for the establishment of an account in the court registry, particularly where federal and state trustees are jointly seeking natural resource damages. One commenter suggested this joint account may ensure that monies will be spent on restoration without obtaining special appropriations from the legislature. It also provides a mechanism for state and federal trustees to decide on expenditure of funds. Other commenters, however, stated that the role of the court should be limited to ensuring that uses of sums recovered are consistent with the statutory directives, and noted that such accounts do not yield a high rate of interest.

Response: NOAA agrees with the commenters suggesting deposit of sums recovered into an account in the court registry and has allowed that as an option in § 990.82(a) of the proposed rule. NOAA also notes that there are concerns over expanding the role of the court to assume a greater role than the statute seems to allow. However, it is unlikely that a court would usurp the role of the trustee(s) over the management of the natural resources where the trustee(s) has developed a plan for the use of such sums.

Comment: A few commenters indicated that a joint fund system will only work if the trustees work well together and can agree on a process to manage and disburse the funds. These commenters suggested that there should be provisions for dispute mechanisms and for a working group dissolution. Otherwise, the commenters were concerned that funds for restoration would be stuck in the account pending resolution of disputes.

Response: NOAA agrees that the trustee(s) should establish a process for management and disbursement of the funds in a way to avoid deadlock.

Comment: Two commenters noted that funds awarded for natural resource damages under 43 CFR part 11 must go into non-interest bearing accounts in the Federal Treasury, but that supplemental appropriations language permitted DOI to place award monies into an interest-bearing account.

Response: NOAA notes that the 43 CFR part 11 rule may have a different provision for interest-bearing accounts. However, OPA does provide for such accounts.

Comment: One commenter, although agreeing with the joint trustee account, encouraged NOAA to develop alternatives that would eliminate a trustee's submissions to a legislative appropriations process before using the awarded monies. Another commenter suggested an alternative of an additional "Joint Trust Fund" to be applied to costs other than those paid by the RP(s). The single account would simplify administration of the monies, as opposed to the trustees dividing the funds into their various agency accounts.

Response: NOAA points out that the accounts provided for in § 990.82 of the proposed rule allow for use of funds without appropriations, as provided for in section 1006(c) of OPA. Also, it would be allowable for the trustee(s) to deposit monies other than those paid by the RP(s) into these accounts.

Comment: One commenter recommended that the RP(s) pay directly for services performed under its supervision in lieu of depositing funds in the Federal Treasury. One commenter noted that if the RP(s) is to underwrite a joint fund, or any fund, the RP(s) must legally have a primary role in the management of the funds.

Response: NOAA agrees that the RP(s) may pay directly for restoration actions (see discussion on "Participation of the Responsible Party" earlier in this preamble). However, NOAA cannot agree that the RP(s) who pays into an account would have a primary role in managing the account. Once the money is paid to the trustee(s), it is then the responsibility of the trustee(s) to manage the account according to statutory directions. Under the discretion of the trustee(s), the RP(s) may have the right to participate in the development of the restoration plan, which will be paid for by the monies in the account.

"Accounting for Expenditures"

Comment: One commenter also urged a final disclosure and accounting of the recovered funds to the RP(s) and to the public.

Response: NOAA agrees that the trustee(s) must provide an accounting of the way recovered sums are used. Therefore, § 990.82(d) of this proposed rule requires the trustee(s) to maintain appropriate accounting and reporting methods to document the use of the sums recovered.

"Use of Sums"

Comment: Several commenters noted that the only activities to which recovered sums can be dedicated are assessments and the implementation of restoration plans. Some commenters stated that the first priority of the funds should be restoration, and only if restoration is not possible, or when the cost of those restoration alternatives would be grossly disproportionate to the value of the resources involved, should other actions, such as acquisition of the equivalent be considered. Another commenter strongly urged that any sums recovered by the federal government for discharges occurring in a state should be spent in the same state.

Response: NOAA agrees that sums recovered as damages should be used to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources as required by OPA. OPA suggests that restoration, replacement, or rehabilitation be the first choices of action, with the trustee(s) acquiring equivalent natural resources only when restoration is not possible or the cost would be grossly disproportionate to the value of the resources. The proposed rule allows the trustee(s) to make those determinations. NOAA does not agree that the rule should require that sums recovered by the federal government always be spent in the state in which the incident occurred. The nature of the federal trust resources that are not "land" is such that those resources are likely either to cross state boundaries or to be of national interest. For example, if a large number of migratory birds is killed by a discharge of oil in a flyway, the most appropriate method of restoring those populations may be to enhance the birds' nesting grounds hundreds of miles away from the discharge site.

"Reimbursement of Assessment Costs"

Comment: Another commenter stated the rules should be clear about the use of recovered sums that represent the costs of the assessment and emergency restoration by ensuring the trustee(s) will have ready access to that portion.

Response: NOAA agrees with this commenter and points out that § 990.83(a) specifies that the trustee(s) is to have immediate reimbursement of assessment costs already incurred, costs necessary to complete the assessment, emergency restoration expenses, costs necessary to develop the final restoration plan and costs to implement a restoration plan or individual project that is part of that restoration plan.

Comment: Several commenters strongly rejected uses of "recoveries from previous spills" or current recoveries held in suspense until there is a sufficient amount of money to conduct restoration activities "on an ecosystem, bay or area approach." Commenters argued that pooling and usage of funds is contrary to the principles of compensatory damages and avoidance of double damages enunciated by Congress in passing OPA. Further, this usage contradicts section 1006(f) that "there be a nexus between monies recovered resulting from a particular spill and their use to restore or enhance the specific resources 'affected by a discharge.'" They cite section 1006(c), that requires the trustee(s) to "implement" the specific restoration plans that have provided the basis of the RP's(s') liability. Some commenters argue that, only when the RP(s) can refer to the site-specific restoration measures undertaken by the trustee(s) for a specific discharge of oil, can it defend itself against overlapping claims by other trustees.

One commenter noted that Congress defined "equivalence" as properly focused on "enhanc[ing] the recovery, productivity, and survival of the ecosystem affected by a discharge." As such, both the statute and legislative history reflect congressional intent for a strong connection between recovered monies in a case and their application.

Another commenter, however, supports a pooling of funds in order to fund a restoration plan for an entire region, provided a legally-approved regional restoration plan exists. The commenter supports this so long as NOAA maintains the definition of "acquisition of the equivalent" or "replacement" as it appeared in the ANPRM of March 13, 1992, so that sums are not spent on unlike resources.

Response: NOAA does not believe that pooling recoveries for use in a Regional Restoration Plan contradicts the requirement in OPA that recoveries be used to restore the resources affected by a discharge. A relatively small recovery, assessed by a compensation table or Type A model, is unlikely to be sufficient to restore a bay or estuary affected by a discharge where many forces are working to degrade that ecosystem. By pooling recoveries, the trustee(s) has a chance to carry out meaningful actions to help that system recover. The trustee(s), in the assessment, is to outline how the damage figure was derived, i.e., compensation table or Type A model. Those procedures are based on restoration costs when feasible. If restoration is not feasible for such a discharge, both the compensation table and Type A model base damages on compensable value. Therefore, recoveries are to go to restoring the services previously provided by the injured resources. In this way, a Regional Restoration Plan will help return those services. The RP(s) will be able to defend against an attempted double recovery by showing how the damage figure is to be applied within the regional restoration plan. As one commenter pointed out in the legislative history, the monies recovered are closely tied to the "ecosystem affected." The definitions of "replacement" and "acquisition of the equivalent" remain in the proposed rule and should help ensure that the pooled recoveries are, in fact, meaningfully used for the recovery of the system.

"'Excess' Recoveries"

Comment: Many commenters noted that any excess monies should be deposited in the Oil Pollution Trust Fund and not be used for unrelated environmental projects.

Response: The proposed rule allows for the recovery of damages required by OPA, namely: (1) the cost of restoring, rehabilitating, replacing or acquiring the equivalent of, the damaged resources pending restoration; (2) the diminution in value of those natural resources pending restoration; plus (3) the reasonable cost of assessing those damages. The recovery of those three items is not excess recovery. The trustee(s) is to use the money to restore, rehabilitate, replace, or acquire the equivalent of the damaged resources and/or services provided by those resources and to reimburse the reasonable costs of conducting the assessment. Any recoveries that may be left over after implementing the restoration plan shall be deposited in the Oil Spill Liability Trust Fund.

National Environmental Policy Act, Executive Order 12866, Regulatory Flexibility Act, and Paperwork Reduction Act

The National Oceanic and Atmospheric Administration has determined that this rule does not constitute a major federal action significantly affecting the quality of the human environment. Therefore, no further analysis pursuant to Section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(C)) has been prepared. The General Counsel, in accordance with the Regulatory Flexibility Act, certifies to the Chief Counsel for Advocacy, Small Business Administration, that this proposed rule will not have a significant economic effect on a substantial number of small entities.

The National Oceanic and Atmospheric Administration has determined that this document is not a major rule under Executive Order 12866. The rule provides optional procedures for the assessment of damages to natural resources. It does not directly impose any additional cost. In addition, estimates of the potential economic effects of this rule are well below $100 million annually. As the rule applies to federal, state, and tribal entities acting as trustees for natural resources, it is not expected to have a significant effect on a substantial number of small entities.

It has been determined that this rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*

List of Subjects in 15 CFR Part 990

Coastal zone, Endangered and threatened species, Energy, Environmental protection, Estuaries, Fish, Fisheries, Fishing, Gasoline, Historic preservation (archeology), Hunting, Incorporation by reference, Indian lands, Marine pollution, Migratory birds, National forests, National parks, National Wild and Scenic Rivers System, Natural resources, Navigable waters, Oil, Oil pollution, Petroleum, Plants, Public lands, Recreation and recreation areas, Rivers, Seashores, Shipping, Waterways, Water pollution control, Water resources, Water supply, Water transportation, Wetlands, Wildlife.

Dated: December 30, 1993.

Katharine W. Kimball,

Deputy Assistant Secretary for Oceans and Atmosphere.

Under the authority of the Oil Pollution Act of 1990, and for the reasons set out in this preamble, title 15 of the Code of Federal Regulations, chapter IX is proposed to be amended to add a new Subchapter E—Oil Pollution Act Regulations and a new part 990 as set forth below.

SUBCHAPTER E—OIL POLLUTION ACT REGULATIONS

PART 990—NATURAL RESOURCE DAMAGE ASSESSMENTS

Subpart A—General

Sec.
990.10 Scope and Applicability.
990.11 Purpose.
990.12 Overview.
990.13 Definitions.
990.14 Recovery of Damages.
990.15 Administrative Record for Development of Draft Assessment/Restoration Plan.
990.16 Prespill Planning.
990.17 Participation of the Responsible Party(ies). RP(s).
990.18 Compliance with Other Applicable Laws and Statutes.
990.19 Review of Regulations.

Subpart B—Preassessment Phase

990.20 Preassessment Phase—General.
990.21 Preassessment Phase—Preassessment Determination.
990.22 Preassessment Phase—Damage Assessment Determination.
990.23 Preassessment Phase—Damage Assessment Selection.
990.24 Preassessment Phase—Data Collection and Analysis.
990.25 Preassessment Phase—Emergency Restoration.

Subpart C—Draft Assessment/Restoration Plan

990.30 Draft Assessment/Restoration Plan—General.
990.31 Draft Assessment/Restoration Plan—Content.
990.32 Draft Assessment/Restoration Plan—Development.
990.33 Draft Assessment/Restoration Plan—Other Elements.

Subpart D—Assessment Phase—Compensation Formulas

990.40 Compensation Formulas—General.
990.41 Compensation Formulas—Estuarine and Marine Formula.
990.42 Compensation Formulas—Inland (Freshwater) Waters Formula.

Subpart E—Assessment Phase—Type A Models

990.50 Type A Models—General.
990.51 Type A Models—Natural Resource Damage Assessment Model for Coastal and Marine Environments, Version 1.2.

Subpart F—Assessment Phase—Expedited Damage Assessment

990.60 Expedited Damage Assessment—General.
990.61 Expedited Damage Assessment—Selection.
990.62 Expedited Damage Assessment—Objectives and Approach.
990.63 Expedited Damage Assessment—Injury Determination.
990.64 Expedited Damage Assessment—Injury Quantification.

Subpart G—Assessment Phase—Comprehensive Damage Assessment

990.70 Comprehensive Damage Assessment—General.
990.71 Comprehensive Damage Assessment—Injury Determination.
990.72 Comprehensive Damage Assessment—Injury Quantification.
990.73 Comprehensive Damage Assessment—Restoration/General.
990.74 Comprehensive Damage Assessment—Restoration Component Development.
990.75 Comprehensive Damage Assessment—Analysis and Selection of Restoration Alternatives.
990.76 Comprehensive Damage Assessment—Evaluation of Restoration.
990.77 Comprehensive Damage Assessment—Compensable Values.
990.78 Comprehensive Damage Assessment—Compensable Values, Measurement Techniques.
990.79 Comprehensive Damage Assessment—Compensable Values, Implementation Guidance.

Subpart H—Post-Assessment Phase

990.80 Post-assessment Phase—Report of Assessment.
990.81 Post-assessment Phase—Demand.
990.82 Post-assessment Phase—Accounts.
990.83 Post-assessment Phase—Use of Sums Recovered.
990.84 Post-assessment Phase—Final Restoration Plan.

Appendix A to Part 990—Draft Memorandum of Understanding

Appendix B to Part 990—Memorandum of Agreement

Appendix C to Part 990—Expedited Damage Assessment: Oil Characteristics

Appendix D to Part 990—List of Acronyms

Authority: 33 U.S.C. 2706(e).

Subpart A—General

§ 990.10 Scope and applicability.

The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge of oil into or upon navigable waters, adjoining shorelines, or the Exclusive Economic Zone. OPA also provides for the designation of federal, state, tribal, and foreign officials to act on behalf of the public as trustee(s) for natural resources. In the event that natural resources are injured, lost, destroyed, or the loss of use of natural resources occurs as a result of a discharge of oil covered by OPA, these officials are authorized to assess natural resource damages, present a claim for those damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources under their trusteeship. Because the assessment procedures provided in this part are not mandatory, a trustee(s) may use other assessment procedures. However, this proposed rule must be used by the natural resource trustee(s) in order to obtain the rebuttable presumption provided by section 1006(e)(2) of OPA. This part applies to discharges covered by OPA. This part supplements the procedures established under the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR Part 300, for the identification, investigation, study, and response to a discharge of oil, and provides procedures by which the natural resource trustee(s) can determine compensation for injuries to natural resources that are not addressed by response actions conducted pursuant to the NCP.

§ 990.11 Purpose.

This part provides a range of standardized and cost- effective procedures for assessing natural resource damages. These procedures will allow expeditious actions on the part of the trustee(s) to return natural resources and/or services to the public as compensation for injuries resulting from a discharge of oil. The results of an assessment performed by the federal, state, or tribal natural resource trustee(s) according to these procedures shall be accorded the evidentiary status of a rebuttable presumption as provided in section 1006(e)(2) of OPA.

§ 990.12 Overview.

(a) General. This part provides guidance on three basic phases that may be a part of a natural resource damage assessment under OPA. These three phases are: Preassessment Phase, Assessment Phase, and Post-Assessment Phase.

(b) Organization. Each of the three basic phases described above has various components. Phase I includes the Preassessment Phase—subpart B of this part. Phase II includes the Assessment Phase—subparts C, D, E, F and G of this part. Finally, Phase III includes the Post-Assessment Phase—subpart H of this part.

§ 990.13 Definitions.

Acquisition of the equivalent means obtaining natural resources and/or services that the trustee(s) determines are comparable to those injured.

Assessment area means the area in which natural resources and/or services are affected by the discharge of oil.

Baseline means the condition(s) of the natural resources and/or services, taking into account natural or other (human-induced) variability, that would have existed had the discharge of oil under investigation not occurred. In the absence of reliable data on variability, the baseline is the condition of the resources and/or services of interest immediately prior to the discharge.

Baseline data means those data that are systematically collected for natural resources and/or services environmental parameters of interest over a period of time and on a regular basis.

CERCLA means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. 9601 *et seq.*, frequently referred to as the "Superfund Act."

Commercial services or "resources of commercial importance" means those natural resources and/or services that are oriented toward the provision of income or profit for a private party. Examples include: agriculture, shipping, commercial fishing, charter boat operations, water intake for plant operations, mining, and log harvesting.

Compensable values means the total diminution in value of the injured natural resources and/or services as a result of the discharge, from the onset of the discharge until recovery to baseline or comparable conditions is deemed complete by the trustee(s).

Comprehensive damage assessment (CDA) means a range of procedures to assess damages to natural resources and/or services based on complex, prolonged studies.

Contributing factor means where multiple factors may have contributed to an indivisible injury to a natural resource and/or service, the discharge of oil may be considered a contributing factor to the injury.

Control means conditions where all variables, except the presence of the discharged oil, are the same, and which can be manipulated, measured, and monitored.

Cost-effective means that when two or more activities provide the same or comparable level of benefits to the natural resources and/or services, the least costly activity providing that level of benefits will be selected.

Damages means the amount of money calculated to compensate for injury to, destruction of, loss of, or loss of use of natural resources, including the reasonable costs of assessing or determining the damage, which shall be recoverable by the United States, a state, Indian tribe, or foreign trustee.

Destruction means the total loss of a natural resource and/or service.

Direct use value means the value individuals derive from direct use of a natural resource, including consumptive and nonconsumptive uses.

Discharge means any emission of oil (other than natural seepage), intentional or unintentional and includes, but is not limited to, spilling, leaking, pumping, pouring, emptying, or dumping.

Ecological services or "resources of ecological importance" means the physical, chemical, and biological functions that one natural resource provides for another. Examples include the provision of food, protection from predation, nesting habitat, biodiversity, erosion control, and waste assimilation.

Effect means the impact on or result of a natural resource and/or service exposed to the discharge of oil.

Equivalent resources mean those natural resources that provide the same or comparable services as the injured resources.

Exclusive Economic Zone means the zone established by Presidential Proclamation Number 5030, dated March 10, 1983, including the ocean waters of the areas referred to as "eastern special areas" in Article 3(1) of the Agreement between the United States of America and the Union of Soviet Socialist Republics on the Maritime Boundary, signed June 1, 1990.

Expedited damage assessment (EDA) means a range of procedures to assess damages to natural resources and/or services based on limited, focused studies.

Exposed to means all or part of a natural resource that may be in contact with oil or with any medium containing the oil.

Exposure means that the natural resource was exposed and there is a pathway between the discharge and exposed natural resource.

Fund means the Oil Spill Liability Trust Fund, established by section 9509 of the Internal Revenue Code of 1986 (26 U.S.C. 9509).

Historical data means those data that are collected for natural resources and/or services but that may be temporally or spatially discontinuous.

Incident means an occurrence having the same origin, involving one or more vessels, facilities, or any combination thereof, resulting in the discharge or substantial threat of discharge of oil.

Injury means any adverse change in a natural resource or impairment of a service provided by a resource relative to baseline, reference, or control conditions. Injury incorporates the definitions of "destruction," "loss," and "loss of use."

Injury resulting from a discharge of oil (or injury caused by the discharge of oil) has been determined when the trustee(s) has demonstrated that:

(1) With direct exposure,

(i) The natural resource was exposed;

(ii) There is a pathway between the discharge and exposed natural resource; and

(iii) The exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or

(2) In the absence of direct exposure,

(i) The adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and

(ii) The adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge.

Lead administrative trustee (LAT) means a natural resource trustee who is designated on an incident-by-incident basis for the purpose of preassessment and damage assessment, and chosen by the other trustees whose natural resources are affected by the incident. The LAT facilitates effective and efficient communication between the OSC and other natural resource trustees regarding their activities during the Response Phase. An LAT may also be chosen to coordinate prespill planning for damage assessment.

Loss means a reduction in a natural resource.

Loss of use of means a reduction in a service provided by the natural resource.

Natural resource(s) or *resource(s)* means land, fish, wildlife, biota, air, water, ground water, drinking water supplies, and other such resources belonging to, managed by, held in trust by, appertaining to or otherwise controlled by the United States (including the resources of the Exclusive Economic Zone), any state or local government, Indian tribe or foreign government.

Natural resource damage assessment or *assessment* means the process of collecting and analyzing information to determine damages for injuries to natural resources and/or services as set forth in this part.

Navigable waters means waters of the United States, including the territorial sea.

Oil means oil of any kind or in any form, including, but not limited to, petroleum, fuel oil, sludge, oil refuse, oil mixed with wastes other than dredged spoil, but does not include petroleum, including crude oil or any fraction thereof, which is specifically listed or designated as a hazardous substance under subparagraphs (A) through (F) of section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA, 42 U.S.C. 9601) and which is subject to the provisions of that Act.

OPA means Oil Pollution Act of 1990, 33 U.S.C. 2701 *et seq.*

Passive use value means the value individuals place on natural resources that are not linked to direct use of a natural resource by the individual, including, but not limited to, the value of knowing the natural resource is available for use by family, friends, or the general public; the value derived from protecting the natural resource for its own sake; and the value of knowing that future generations will be able to use the natural resources.

Pathway means the course the oil takes from the point of discharge to, between, and among natural resources.

Person means an individual, corporation, partnership, association, state, municipality, commission, or political subdivision of a state, or any interstate body.

Protocol means scientific, economic, legal, or regulatory accepted procedures used as guidance to implement an activity.

Reasonable cost of assessment means those costs incurred in performing a natural resource damage assessment, or any part thereof, in accordance with this rule.

Recovery means the return of the injured natural resource and/or service to its baseline or comparable condition within the constraints of natural or other (human-induced) variability.

Recovery period means the length of time required for the injured natural resources and/or services to return to their baseline or comparable condition.

Recreational services or *resource of recreational importance* means the direct use of natural resources by individuals for purposes of enjoyment or relaxation. Examples include consumptive uses (those uses that involve harvesting of the resource) such as fishing and hunting, as well as nonconsumptive uses such as swimming, picnicking, boating, bird watching, nature photography, hiking, and camping.

Reference means a natural resource and/or service that is physically, chemically, and/or biologically similar to that affected by the discharge.

Rehabilitation means actions that bring injured natural resources and/or services to a state different from baseline conditions, but still beneficial to the environment and public.

Replacement means actions that substitute natural resources and/or services for those injured. The natural resources and/or services that are substituted provide the same or comparable resources and/or services as those injured.

Resources of special significance means a category of natural resources that is afforded statutory or regulatory protection (e.g., threatened or endangered species), or is of cultural or archaeological significance (e.g., religious or native American artifacts).

Responsible party (RP) means a person described in or potentially described in one or more of the categories set forth in section 1001(32) of OPA.

Restoration means actions that return injured natural resources and/or services to their baseline condition.

Services or *natural resource services* means the physical, chemical, biological, aesthetic, and cultural functions performed by the natural resources, including the human uses of those functions.

State means the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the U.S. Virgin Islands, the Commonwealth of Northern Marianas, and any other territory or possession over which the United States has jurisdiction.

Technical feasibility or *technically feasible* means that the technology necessary to implement an element of the damage assessment plan or a restoration methodology has a reasonable chance of successful completion in an acceptable period of time.

Trustee(s) means those officials of the federal and state governments, of Indian tribes, and of foreign governments designated according to section 1006(b)

of OPA who may present a claim for and recover damages for injury to natural resources.

Type A procedure means one of the simplified natural resource damage assessment procedures requiring minimal field observation, found in subpart D of 43 CFR part 11.

Type B procedure means an alternative procedure for comprehensive natural resource damage assessments, currently found in subpart E of 43 CFR part 11.

§ 990.14 Recovery of damages.

(a) *General.* In an action filed pursuant to section 1006 of OPA, the natural resource trustee(s) may recover:

(1) Damages based on injuries occurring from the onset of the discharge through the recovery period (including monitoring costs), less any mitigation of those injuries by response actions taken or anticipated, plus any increase in injuries as a result of response actions taken or anticipated;

(2) The costs of emergency restoration under § 990.20(g) of this part; and

(3) The reasonable costs of the assessment, including:

(i) The cost of performing the preassessment, assessment, and post-assessment phases and procedures provided in this part; and

(ii) Any administrative or legal costs, including base and incremental costs, incidental to assessment and restoration; and

(4) Interest on the amounts recoverable as provided in section 1005 of OPA.

(b) *Statutory limitations on liability.* The determination of the damage amount shall consider any applicable limitations on liability provided for in section 1004 of OPA.

(c) *Double recovery.* There shall be no double recovery for damages as a result of the same discharge, as set forth in section 1006(d)(3) of OPA.

(d) *Parallel assessments.* Nothing in this part precludes the determination of damages for injuries to separate natural resources and/or services resulting from a single discharge, so long as such determination does not result in the double recovery of damages. Therefore, the trustee(s) may conduct parallel assessments, combining assessment procedures for separate resources and/or services.

(e) *Statute of limitations.* Actions for damages and assessment costs shall consider the statute of limitations set forth in section 1017(f) of OPA.

(f) *Settlements.* The trustee(s) and responsible party(ies) may settle a claim for natural resource damages at any time following a discharge of oil. Federal trustees shall seek the approval of the Department of Justice in the compromise of any claim of the United States. Subject to prespill restoration plans, the trustee(s) shall provide for public review of such agreed upon settlements and the related restoration plans.

(g) *Oil Spill Liability Trust Fund.* Any excess damages shall be deposited in the Oil Spill Liability Trust Fund in accordance with section 1006(f) of OPA.

§ 990.15 Administrative record for development of draft assessment/restoration plans

(a) *Purpose.* The administrative record has four basic purposes:

(1) Facilitate selection of restoration alternatives by providing a central repository for scientific data;

(2) Document the trustee's(s') consideration of the relevant factors in selecting restoration actions;

(3) Facilitate public participation; and

(4) Provide the basis for judicial review.

(b) *General.* The trustee(s) shall establish an administrative record upon which the trustee(s) shall base the selection of restoration alternatives. The restoration plan shall include the rationale for selection of the alternatives and an estimate of the cost of implementing the plan.

(c) *Content.* An administrative record should consider the documents that form the basis of the selection of the trustee's(s') plan to restore, rehabilitate, replace, or acquire equivalent resources.

(1) Documents that form the basis of the trustee's(s') selection of this plan will generally include:

(i) Documents containing factual information, data, or analysis of the factual information or data, that may form a basis for the selection of a plan;

(ii) Guidance documents, technical literature, and site-specific policy memoranda that may form a basis for the selection of a plan;

(iii) Relevant documents that are timely submitted by the RP(s) or other members of the public; and

(iv) Decision documents such as the Report of Assessment.

(2) Documents that do not form the basis for the selection of a plan, such as draft documents, internal memoranda, and day-to-day notes of staff, should not be included in the administrative record, unless such documents contain information that forms the basis of selection of the plan and the information is not included in any other document in the administrative record. Documents relating exclusively to liability or calculation of compensable values will ordinarily not be included in the administrative record.

(d) *Level of detail.* The contents and level of detail of the record will vary according to the type of procedure selected. Certain types of information will be common to all assessments, regardless of the type of procedure selected. However, the volume of material compiled for the administrative record should be consistent with the scope of the assessment and restoration.

(e) *Supplementing the record.* (1) Supplements to the record may be allowed if the:

(i) Interested party did not receive actual or constructive notice of the Draft Assessment/Restoration Plan and the opportunity to comment on the plan;

(ii) Information submitted does not duplicate information already contained in the administrative record; and

(iii) Information raises sufficiently significant issues regarding the scope, effectiveness, or cost of the plan as to warrant having the trustee(s) reconsider the plan.

(2) Where the Draft Assessment/Restoration Plan provides for the development of certain components at a later date, the information or documents used to develop these components should be added to the administrative record as they become available.

(3) Where the Draft Assessment/Restoration Plan is modified, the public will have the right to review and comment upon modifications that are, in the opinion of the trustee(s), significant.

(4) Where the Final Restoration Plan of § 990.84 is a result of significant modifications of the restoration component in the Report of Assessment, the administrative record should be supplemented with any additional material or data considered in developing that modification.

(f) *Availability of the administrative record.* (1) To the extent practicable, the administrative record should be compiled and made available for review and comment as documents are generated or received by the trustee(s). However, the degree of public notice and involvement in the administrative record should be determined by the trustee(s) on a case-by-case basis.

(2) The administrative record should be made available for public review and comment concurrently with the Draft Assessment/Restoration Plan.

(g) *Judicial review.* The administrative record shall form the basis of review of the Report of Assessment in any judicial or administrative proceeding.

§ 990.16 Prespill planning.

(a) *Prespill planning.* To the extent practicable and in conjunction with other willing participants where appropriate, the trustee(s) should conduct the following prespill activities:

(1) Develop a natural resource damage assessment management and technical team. The size of the team should be a function of the scope and complexity of the assessment.

(2) Identify outside experts to assist in the design and conduct of studies, and serve in independent peer review;

(3) Identify support services;

(4) Collect information on natural resources and/or services potentially affected by discharge of oil along high risk areas;

(5) Identify the potential trustee(s) and a process to designate a lead administrative trustee (LAT), using guidance in paragraph (b) of this section at sites that may be affected by discharges of oil;

(6) Identify sources of information for background data;

(7) Design a general approach and develop protocols for an early sampling program; and

(8) Establish a centralized data management system for natural resource damage assessment baseline data.

(b) *Lead Administrative Trustee.* (1) Trustees are encouraged to cooperate and coordinate any assessment that involves coexisting or contiguous natural resources or concurrent jurisdiction. They may arrange to divide responsibility for implementing the assessment in any manner that is agreed to by all of the affected natural resource trustees with the following conditions:

(i) A lead administrative trustee should be designated to administer the assessment. The lead administrative trustee should act as coordinator and contact regarding all aspects of the assessment. The lead administrative trustee should be designated by mutual agreement of all the natural resource trustees.

(ii) If there is a reasonable basis for dividing the assessment, the natural resource trustees may act independently and pursue separate assessments, actions, or claims so long as the claims do not overlap. In these instances, the natural resource trustees should coordinate their efforts, particularly those concerning the sharing of data and the development of the Draft Assessment/Restoration Plan (DARP).

(iii) If a natural resource trustee(s) takes action as a result of a discharge of oil prior to the designation of a lead administrative trustee, all damage assessment actions performed by that trustee(s) shall be documented and transmitted to the lead administrative trustee to avoid duplication of efforts and double counting.

(2) If the discharge affects trust resources of the other natural resource trustee(s) as a result of coexisting or contiguous natural resources or concurrent jurisdiction, the trustee(s) may conduct an assessment pursuant to this rule without designating a lead administrative trustee. However, if appointed the lead administrative trustee, conducting an assessment pursuant to this rule, shall ensure that all other known affected natural resource trustees are notified that a DARP is being developed. This notification shall include the results of the Preassessment Phase.

(c) *Regional restoration plan.* The trustee(s) is encouraged in prespill planning to develop Regional Restoration Plans. These plans should be developed, or existing plans modified, through a public review and comment process consistent with the restoration planning process described in subpart G of this part.

(d) *Trustee memorandum of understanding (MOU).* It is strongly recommended that, to the extent practicable, natural resource trustees, on some logical geographic or political basis, enter into a Memorandum of Understanding (MOU) to ensure the coordination and cooperation of the trustees in the initiation of assessment and assessment of damage determination for injuries to natural resources and/or services resulting from a discharge of oil and the application of any natural resource damages recovered toward the restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources.

The MOU is recommended because of the importance of integrating and coordinating the assessment of natural resource damages for injuries to natural resources affected by a discharge, seeking compensation for those injuries to natural resources and/or services, and restoration of those affected resources and/or services. This MOU should be prepared either in anticipation of a discharge of oil or as soon as possible after an actual discharge of oil. A sample MOU is given in Appendix A of this part.

§ 990.17 Participation of the responsible party(ies) RP(s).

(a) *General.* When practicable, the trustee(s) should seek the participation of the responsible party(ies) in the natural resource damage assessment process. Such participation is not mandatory and is at the discretion of the trustee(s).

(b) *Prespill activities.* The trustee(s) is encouraged to invite the participation of the potential responsible party(ies) in prespill planning activities authorized in § 990.16 of this part. Where practicable, such prespill planning shall be in connection or coordination with the development of Area Contingency Plans authorized under section 4202 of OPA. In their prespill plans, the trustee(s) and potential responsible party(ies) may consider, but not be limited to, the following: identification of likely natural resources at risk, possible protective measures taken in the event of a discharge, and identification of personnel and agencies likely involved in the event of a discharge.

(c) *Preassessment activities.* If deemed practicable by the trustee(s), the trustee(s) should invite the responsible party(ies) to participate in the conduct of the Preassessment Phase in accordance with § 990.20 of this part.

(d) *Assessment activities*—(1) Offer to participate. Upon completion of the preassessment and determination by the trustee(s) under § 990.23 of this part to continue assessment procedures under subpart F (EDA) or subpart G (CDA) of this part, the trustee(s) should invite the participation of the identified RP(s) in such assessment actions. Such offer shall be in writing and will serve as the notification under § 990.23(c) of this part. The RP(s) shall have ten calendar days to respond to the trustee's(s') invitation. Sampling or data collection and emergency restoration that are appropriate and necessary during the ten-day waiting period may continue. If the RP(s) has not responded to the trustee(s) in that time, the trustee(s) may continue activities geared towards the conduct of a solo assessment/restoration process.

(2) Development of agreement. If the responsible party(ies) indicates a willingness to participate in further assessment activities, the trustee(s) and RP(s) shall, in good faith, initiate negotiations to develop an enforceable agreement considering the guidance in subsection (f) of this section. However, such negotiations should not prevent the trustee(s) from conducting assessment activities during this time period. Such agreement may address all or any part of the damage assessment and may be conditioned upon the RP(s) agreement to pay trustee costs. If the trustee(s) and RP(s) cannot reach any agreement within 45 calendar days from the first day of negotiations, the trustee(s) may continue activities geared towards a solo assessment/restoration process.

(3) Draft Assessment/Restoration Plan. The participation of the responsible party(ies) must be specifically noted in the Draft Assessment/Restoration Plan

developed under subpart C of this part in order to provide an adequate opportunity for public review.

(e) Restoration activities. The trustee(s) and responsible party(ies) may agree to participate jointly in restoration activities identified in the Restoration Plan developed through any of the assessment procedures identified in this part. In determining whether to invite the responsible party(ies), the trustee(s) may consider, but not be limited to, the following factors:

(1) The willingness of the responsible party(ies) to participate in restoration activities (If the responsible party(ies) has not participated in earlier phases of the assessment, the trustee(s) may also consider the reasons for the responsible party(ies) not participating in those earlier activities.);

(2) The ability (knowledge, expertise, personnel) of the responsible party(ies) to participate in restoration activities; and

(3) The willingness of the responsible party(ies) to pay for restoration activities and for trustee costs.

(f) Jointly-conducted phased assessments.

(1) To encourage cooperative assessments, the trustee(s) and responsible party(ies) are authorized to enter into enforceable agreements to jointly conduct any assessment activities in steps or phases. These enforceable agreements should contain, but are not limited to, the following provisions:

(i) Identification of the step or phase jointly conducted and end product of enforceable agreement (data collection, data analysis, etc.);

(ii) Identification of the activities and responsibilities of the respective parties;

(iii) Conditions for terminating the enforceable agreement;

(iv) Provisions for nonperformance;

(v) Provision that the end product of the enforceable agreement (data, studies, and other information) will be included in the administrative record;

(vi) Provisions for funding for the various activities; and

(vii) An agreement that end products of the joint effort cannot be challenged by either party with collateral data, studies, and other information, collected outside the joint assessment process.

(2) The trustee(s) and responsible party(ies) should stipulate that all data, studies, and other information, jointly collected shall be included in the administrative record at the completion of each enforceable agreement. The trustee(s) and RP(s) should also stipulate that each party to the agreement will be barred from introducing new or different data, studies, or other information collected outside the joint process to challenge the jointly collected data in either a judicial or administrative proceeding under OPA.

(3) A sample enforceable agreement is given in appendix B of this part.

§ 990.18 Compliance with other applicable laws and statutes.

(a) *Worker human health and safety.* All worker human health and safety considerations specified in the NCP for response actions shall also apply to the assessment/restoration process.

(b) *Resource protection.* Before taking any actions under this part, particularly before taking samples or making determinations of restoration or replacement, compliance is required with any applicable statutory consultation or review requirements, including, but not limited to, the Endangered Species Act; the Migratory Bird Treaty Act; the Marine Protection, Research, and Sanctuaries Act; and the Marine Mammal Protection Act, that may govern the taking of samples or in other ways affect alternative management actions.

(c) *State laws.* Nothing in this part shall affect, or be construed or interpreted as preempting, any state or political subdivision thereof from promulgating natural resource damage assessment regulations under applicable state or common law. Nothing in this part shall affect or be construed or interpreted as preempting any state or political subdivision thereof from the use of their applicable natural resource damage assessment regulations under applicable state or common law.

§ 990.19 Review of regulations.

NOAA plans to review and revise as appropriate these regulations as often as necessary, but no less than once every five years.

Subpart B—Preassessment Phase

§ 990.20 Preassessment phase—General.

(a) *Purpose/Scope.* The Preassessment Phase provides for early action in the case of a discharge of oil through a two-step process consisting of: Preassessment Determination, to decide whether to continue with preassessment; and Damage Assessment Determination, to decide which damage assessment procedure to conduct, if any. This process is based on limited data collection and analysis. This part also provides for notification, coordination, estimation of assessment costs, reporting, and emergency restoration.

(b) *Notification.* (1) Notification should be consistent with the NCP. According to the NCP, the OSC or lead response agency generally provides notification to the natural resource trustee(s) when natural resources and/or services may be injured by a discharge of oil. If the trustee(s) learns of an unidentified or unreported discharge of oil, the trustee(s) shall report that discharge to the appropriate authority as designated in the NCP.

(2) After learning of a discharge of oil, the trustee(s) should attempt to notify all other known potential trustees of the possibility of a natural resource damage assessment. Actions taken by the trustee(s) shall be consistent with the NCP and this subpart.

(3) In addition, in accordance with section 1011 of OPA, the OSC or lead response agency shall consult with the affected trustee(s) concerning removal actions.

(c) *Coordination.* The trustee(s) should coordinate the Preassessment Phase with the response agency(ies), as appropriate, consistent with the NCP and prespill plans developed pursuant to OPA. To the extent practicable, the Preassessment Phase should also be coordinated with the trustee(s) whose natural resources and/or services are affected by the discharge of oil. The trustee(s) may invite the RP(s) to participate in the Preassessment Phase.

(d) *Preassessment Phase costs.* (1) Preassessment Phase costs include and are recoverable only for trustee-approved activities that deal directly with preassessment. Examples of preassessment costs include, but are not limited to, costs necessary for: Notification; coordination; Preassessment Determination; Damage Assessment Determination; data collection and analysis; report preparation, and emergency restoration.

(2) Preassessment Phase costs shall not reflect response-related actions and non-incident specific activities performed by the trustee(s) in the management of natural resources and/or services.

(3) The costs stipulated in § 990.20 (d)(1) shall be supported with appropriate and sufficient documentation.

(e) Preassessment Phase Report. At the conclusion of the Preassessment Phase, the trustee(s) shall prepare a Preassessment Phase Report documenting all preassessment actions taken, estimated costs related to those actions, and decisions to proceed with preassessment and damage assessment/restoration actions. If no additional actions are undertaken, the Preassessment Report becomes the Report of Assessment. If the trustee(s) conducts further actions, the Preassessment Phase Report becomes a part of the Report of Assessment.

§ 990.21 Preassessment phase—preassessment determination.

(a) *Purpose.* Following notification of a discharge of oil, the trustee(s) shall conduct a Preassessment Determination to decide whether to continue with the Preassessment Phase.

(b) *Scope.* The trustee(s) shall gather readily available information on the nature of the discharge and environmental setting, i.e., circumstances of the discharge incident, oil characteristics, nature of the receiving environment, and natural resources and/or services characteristics.

(c) *Conditions.* Using such information, the trustee(s) will decide if the following conditions are met:

(1) The discharge does not qualify for an exclusion under section 1002(c) of OPA;

(2) Trust natural resources, as defined by OPA, and/or services may be adversely affected by the discharge; and

(3) There is a reasonable probability that the trustee(s) can make a successful damage claim based on the scientific, economic, and legal merits of the case, i.e., potential for injury resulting from the discharge and successful and meaningful restoration and/or compensation.

(d) *Continuing with preassessment.* If these conditions are met, the trustee(s) may continue with the Preassessment Phase. If all conditions are not met, further preassessment activities should not be conducted.

§ 990.22 Preassessment phase—damage assessment determination.

(a) *Purpose.* Following the decision to proceed with the Preassessment Phase, the trustee(s) collects data sufficient to decide which damage assessment procedures to conduct, if any.

(b) *Scope.* Damage Assessment Determination requires that the trustee(s):

(1) Characterize the discharge and environmental setting based on similar but more detailed data collection and analysis efforts conducted in Preassessment Determination, encompassing circumstances of the discharge incident, oil characteristics, nature of the receiving environment, and natural resources and/or services characteristics;

(2) Determine potential exposure based on direct and indirect exposure or the threat of exposure;

(3) Determine potential injury based on physical, chemical, biological, or other attributes of the natural resource and/or service;

(4) Characterize the potential risk (probable cause-effect associations) to natural resources and/or services based on the weight of evidence and best professional judgment of the information developed above;

(5) Estimate extent of injury to natural resources and/or services based on spatial and temporal boundaries; and

(6) Estimate damages based on possible environmental and/or economic values, likely cost of restoration actions, and all assessment-related costs.

(c) Additional injury determination studies. If the trustee(s) determines that no further assessment activities are to be conducted, but that additional information regarding the discharge may be beneficial, the trustee(s) with or without the RP(s) may decide to conduct limited injury determination studies to collect additional information verifying that no significant injury to natural resources and/or services has resulted from the discharge. Where no injury is identified, the costs of such studies are not recoverable under this subpart and shall be borne by the trustee(s). Should such additional studies indicate that significant and quantifiable injury has occurred to natural resources and/or services, the trustee(s) may reinitiate the Preassessment Phase and the costs are then part of the assessment costs.

§ 990.23 Preassessment phase—damage assessment selection.

(a) *Decision on type of assessment.* The trustee(s), at his discretion, may select any of the following assessment procedures at the completion of the Preassessment Phase:

(1) Compensation Formula;

(2) Type A model;

(3) Expedited Damage Assessment (EDA); or

(4) Comprehensive Damage Assessment (CDA).

(b) *Parallel assessments.* The trustee(s) may use more than one procedure for a discharge of oil, provided there is no double counting.

(c) *Responsible Party option.* The RP(s) may request the trustee(s) to conduct an EDA or CDA procedure, so long as the costs of that study are provided by the RP(s) in advance of conducting the procedure.

(d) *Estimates.* Using the estimates developed in § 990.22(b)(6), the trustee(s) should select the assessment procedure(s) that is reasonable. These estimates will necessarily be of a preliminary nature, subject to change as more information is obtained. The trustee(s) may select from the procedures identified in subparts D, E, F, and G of this part.

(e) *General considerations.* The trustee(s) should examine the following general considerations for the most appropriate damage assessment procedure:

(1) The size and nature of the discharge and environmental setting;

(2) The extent to which the discharge of oil is expected to cause injury to natural resources and/or services;

(3) The expected environmental and/or economic values provided by those affected natural resources and/or services;

(4) The extent to which response actions carried out or planned will avoid further injury to natural resources and/or services without further action;

(5) The extent to which the discharge meets the conditions for using the selected damage assessment procedures;

(6) The extent to which injury to natural resources and/or services can be determined with available information and quantification methods;

(7) The extent to which restoration alternatives can return injured natural resources and/or services to their baseline or comparable conditions;

(8) The extent to which damages based upon injury to natural resources and/or services can be determined with available information and quantification methods; and

(9) Whether the anticipated damage assessment procedure(s) is cost effective.

(f) *Specific factors.* The trustee(s) should consider the following specific factors in selecting a particular damage assessment procedure.

(1) *Compensation formulas.* The Compensation Formulas require the least amount of information concerning the discharge. All information necessary for the use of the procedures is likely gathered during the Preassessment Phase. Procedures for conducting the compensation formulas are found in subpart D of this part. The trustee(s) shall consider, but not be limited to, the following factors when determining whether use of the compensation formulas is appropriate:

(i) The amount of the discharge is between 10 gallons and 50,000 gallons, 24 hours after the discharge begins;

(ii) The likely injury and damages resulting from the discharge are appropriate for calculation using the compensation formulas as described in either: "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Estuarine and Marine Environments, Volumes I–IV" or "Compensation Formula for Natural Resource Damage Assessments

under OPA: Oil Spills into Inland (Freshwater) Waters, Volumes I–III"; and

(iii) The discharge is of the nature where the accurate quantification of injury and damages would not be cost-effective in the determination of the trustee(s).

(2) *Type A models.* Any one of the Type A models found at 43 CFR part 11 subpart D may be used to determine the damages resulting from a discharge. Procedures for conducting the Type A models are found in subpart E of this part. The trustee(s) shall consider, but not be limited to, the following factors when determining whether use of a Type A model is appropriate:

(i) The conditions of the discharge are sufficiently similar to the conditions of 43 CFR 11.33(b);

(ii) The compensation formulas of subpart D of this part are not sufficient alone to estimate the injury and damages resulting from the discharge; and

(iii) There is no other cost-effective procedure available to estimate the injury and damages resulting from the discharge.

(3) *Expedited Damage Assessment (EDA).* This procedure focuses the trustee(s) on determining and quantifying injuries to selected natural resources and/or services. Procedures for conducting an EDA are found in subpart F of this part. The trustee(s) may determine that the use of an expedited damage assessment procedure is appropriate after considering, but not limited to, the following factors:

(i) The use of the compensation formula or Type A model alone may not sufficiently account for the injury and damages resulting from the discharge;

(ii) There is readily available information on the nature of the discharge and its effect on natural resources and/or services;

(iii) The injury and damages resulting from the discharge can be adequately calculated by conducting limited, focused injury determination/quantification and compensable values studies as outlined in subpart F of this part; or

(iv) Potential restoration actions can be implemented without complex, prolonged injury determination/quantification and compensable values studies.

(4) *Comprehensive Damage Assessment (CDA).* The trustee(s) may determine that the circumstances of the particular discharge will require a more lengthy and detailed damage assessment. Procedures for conducting a CDA are found in subpart G of this part. The trustee(s) shall consider, but not be limited to, the following factors in selecting a CDA:

(i) The injury and damages resulting from the discharge can best be determined through a complex, prolonged process, involving a broad scope of injury determination/quantification and compensable values studies;

(ii) Information concerning the nature of the discharge and its effects on the natural resources and/or services at risk is not readily available; and

(iii) Potential restoration actions cannot be determined or implemented without substantive injury determination/quantification and compensable values studies.

§ 990.24 Preassessment phase—data collection and analysis.

(a) *Purpose.* The purpose of data collection and analysis (data collection) in the Preassessment Phase is to ensure that there is sufficient information to evaluate the risk to natural resources and/or services resulting from the discharge of oil.

(b) *Scope.* (1) The trustee(s) may conduct limited data collection throughout the Preassessment Phase.

(2) Only information on natural resources and/or services that is related to the discharge, and considered relevant to the assessment process, restoration alternatives likely to be implemented, and/or compensable values, should be collected. Such information serves as the basis for the Assessment Phase.

(3) When practicable, data collection protocols and Quality Assurance (QA) procedures should follow the guidance provided in subpart C of this part.

(4) When reasonably practicable, the trustee(s) should collect the following types of information during the Preassessment Phase:

(i) Data necessary to make a determination to proceed with the Preassessment Phase;

(ii) Ephemeral or perishable data that may be lost if not collected immediately; and

(iii) Necessary data that serves as the basis for the selected damage assessment procedure, the absence of which data would prevent the trustee(s) from proceeding with damage assessment determination of § 990.23, i.e., input into the compensation formulas or Type A models, or the study design for the EDA or CDA.

(5) The trustee(s) is encouraged to collect baseline, reference, control, or other necessary information to determine the appropriate assessment procedures to the extent that such information is available or can be readily determined.

§ 990.25 Preassessment phase—emergency restoration.

(a) *Purpose.* After notification and during response, the trustee(s), with the approval of the OSC, may undertake emergency restoration such that it does not interfere with response actions. Emergency restoration is deemed necessary to restore natural resources and/or services in those limited situations where the imminent loss of that resource and/or service may occur before any assessment of injury and restoration plan could be developed and implemented.

(b) *Costs.* Any costs associated with emergency restoration may be claimed as part of the damage claim or as uncompensated claims under section 1012(a)(4) of OPA.

Subpart C—Draft Assessment/Restoration Plan

§ 990.30 Draft assessment/restoration plan—general.

(a) *Purpose.* The purpose of the Draft Assessment/Restoration Plan (DARP) is to ensure that the assessment/restoration is performed in a planned, cost-effective, and systematic manner, and provide for public review and comment of the restoration plans as required under section 1006 of OPA.

(b) *DARP requirement.* The trustee(s) shall develop plans for the assessment of damages and restoration of natural resources and/or services affected by the discharge. These plans shall be developed in accordance with the requirements and procedures provided in this subpart and in subparts D, E, F, and G of this part.

(c) *Prespill plans.* To the maximum extent practicable, a DARP developed by the trustee(s) under this subpart shall be consistent with any applicable prespill plans completed under § 990.16, unless the trustee(s) justifies and documents the departure from such plans.

(d) *Administrative Record, Report of Assessment.* The DARP, along with any significant modifications and associated comments and responses, shall be placed in the administrative record. The DARP, as modified after public review, as appropriate, is the basis of the Report of Assessment.

(e) *Plan approval.* The trustee(s) shall have final approval as to the content and development of the DARP.

(f) *NEPA compliance.* The DARP shall be developed in order to fulfill applicable NEPA requirements.

§ 990.31 Draft assessment/restoration plan—content.

(a) *General.* (1) The DARP shall address the four major components of the Assessment Phase, the:

(i) Injury determination component, i.e., results of injury determination studies, to the extent they are known, with documentation of those results;

(ii) Injury quantification component, i.e., the results of quantification studies, to the extent they can be calculated, with documentation of those results;

(iii) Restoration planning component, i.e., the evaluation, selection, and estimated cost of planned restoration actions; and

(iv) Compensable values component, i.e., valuation studies planned, subject to § 990.32(c)(4) of this part, with the results of those studies if deemed appropriate by the trustee(s).

(2) For CDAs, where there are prolonged (multi-year) plans, the trustee(s) need not develop all components of the DARP simultaneously, but may develop annual reports to update the DARP as the assessment progresses.

(b) *DARP information requirements.* The DARP should include:

(1) A brief identification of the discharge of concern based upon information from the Preassessment Phase;

(2) Descriptions of the natural resources and/or services involved;

(3) A statement of authority for asserting trusteeship, or co-trusteeship, for those natural resources and/or services considered in the DARP;

(4) The Preassessment Phase Report; and

(5) Those requirements of each of the assessment procedures, described in subparts D, E, F, and G of this part, used by the trustee(s).

(c) *Level of detail.* The level of detail for each component of the DARP shall be consistent with what is appropriate for the type of assessment procedures being conducted.

§ 990.32 Draft assessment/restoration plan—development.

(a) *Timing of DARP development.* (1) Following the development and trustee approval of the injury determination and quantification components of the DARP, the trustee(s) should implement those components of the DARP to the extent practicable.

(2) As data are produced in the injury determination and quantification components, the trustee(s) should complete the restoration component and the design of the compensable values component for the injured natural resources and/or services.

(b) *Development requirements for multiple trustees.* The trustee(s) should fulfill the following requirements in developing a DARP for assessments in which there are multiple trustees:

(1) A lead administrative trustee should be designated to administer the DARP. The lead administrative trustee should act as coordinator and contact regarding all aspects of the DARP.

(2) The trustees are encouraged to cooperate and coordinate any DARP that involves coexisting or contiguous natural resources or concurrent jurisdiction. They may arrange to divide responsibility for implementing the components of the assessment in any manner that is agreed upon by all of the affected natural resource trustees.

(c) *Public involvement.* (1) Injury determination and quantification components of the DARP. The trustee(s) shall provide notification of the selection of the methodologies used to determine and quantify injury to natural resources and/or services pursuant to the compensation formula, Type A model, and the EDA. The trustee(s) shall provide formal public review and comment for the injury determination and quantification components of the CDA.

(2) Restoration planning component of the DARP. The trustee(s) must provide for public notice and comment of the restoration planning component of the DARP. Where there is no Regional Restoration Plan developed and adopted following public review and comment pursuant to prespill planning, as described in § 990.16 of this part, the trustee(s) must provide for public review and comment of the restoration component of DARPs developed pursuant to the compensation formula, Type A model, EDA, and CDA. Where a Regional Restoration Plan has been developed and adopted following public review and comment pursuant to prespill planning as described in § 990.16 of this part, the trustee(s) must provide for public notice, review and comment of the intent to apply one or more recoveries from a compensation formula or Type A assessment to the Regional Restoration Plan. The trustee(s) must provide for public review and comment of the restoration components of DARPs developed pursuant to an EDA or CDA.

(3) The trustee(s) may provide for public notification or review of the compensable values component of the DARP, subject to § 990.32(c)(5) of this part.

(4) Public review period. Where the trustee(s) is required to provide a minimum for public review and comment, the trustee(s) must provide a minimum of 30 calendar days for public review and comment. The trustee(s) may grant reasonable extensions for that review.

(5) Exception to public notification, review, and comment. It is at the discretion of the trustee(s) to provide for notification, review, and comment of those portions of the DARP concerning the calculation of compensable values. The trustee(s) may further withhold the description of studies and methodologies for determining the damages for the compensable values from public review and comment. Such damages are still afforded the rebuttable presumption, but may not be eligible for judicial review on the record.

(6) Method of publication. Notification or publication of a DARP may be provided in a publication of local, state, regional, or national circulation, as deemed appropriate to the scope of the assessment/restoration by the trustee(s).

(d) *Modification.* (1) The DARP may be modified at any stage of the assessment/restoration process as new information becomes available.

(2) Any modification to that portion of the DARP that has been the subject of review and comment that, in the judgment of the trustee(s), is significant shall be made available for review and comment for a period of at least 30 calendar days, with reasonable extensions granted as appropriate, before tasks subject to modification are begun.

(3) Any modification to the DARP that in the judgment of the trustee(s) is not significant may be made available for review at the discretion of the trustee(s), but the implementation of such modification need not be delayed as a result of such review.

(e) *DARP implementation by RP(s).* At the option of the trustee(s) and if agreed to by any RP(s) acting jointly, the RP(s) or any other party under the direction, guidance, and monitoring of the trustee(s) may implement all or any part of the DARP as approved by the trustee(s). Any decision to involve the RP(s) shall be documented in the DARP.

§ 990.33 Draft assessment/restoration plan—other elements.

(a) *Protocols.* Selection of specific data collection protocols in damage assessment is left to the discretion of the trustee(s). In general, protocols should be applicable to the discharge and environmental setting, cost-effective, and provide information consistent with data quality requirements.

(b) *Quality Assurance (QA).* The trustee(s) may implement or modify existing, or develop new quality

assurance (QA) program and project plans relative to the requirements and constraints of incident.

(c) *Data Management.* Where appropriate, the trustee(s) should develop a data management plan to accommodate the input, uses, needs, and access for the data.

Subpart D—Compensation Formulas

§ 990.40 Compensation formulas—general.

(a) *General.* Based upon best professional judgment, the trustee(s) may determine damages as compensation for injury to natural resources and/or services using the compensation formulas authorized by this subpart for all or part of the assessment. The formulas may be used by the trustee(s) for discharges of oil ranging from ten gallons to 50,000 gallons and where the trustee(s) determines that there has not been a significant loss in passive use values.

(b) *Seasons.* For the purposes of this subpart, the seasons of the year are defined as follows:

(1) Winter=January 1 through March 31;

(2) Spring=April 1 through June 30;

(3) Summer=July 1 through September 30; and

(4) Fall=October 1 through December 31.

(c) *Incorporation by reference.* The following publications are incorporated by reference:

(1) "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Estuarine and Marine Environments," Volumes I–IV. Available from DART, Suite 604, 1825 Connecticut Avenue, N.W., Washington, DC 20235.

(2) "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters," Volumes I–III. Available from DART, Suite 604, 1825 Connecticut Avenue, N.W., Washington, DC 20235.

(d) *Damage claim.* (1) The damages include the compensation formula result plus any damages computed by the trustee(s) due to beach and/or shoreline closure, plus for inland (freshwater) waters damages due to lost boating days, plus the reasonable costs of conducting the assessment. Additional damages determined through other assessment methods may also be included so long as there has been no double counting. This damage figure is included in the Report of Assessment and the Demand under §§ 990.80 and 990.81 of this part, and is documented in the administrative record.

(2) Damages calculated using one of the compensation formulas provided in subpart D of this part are conclusive for the injuries included in that formula. Judicial review of the demand shall be limited to the applicability of the formula and the accuracy of any site-specific input data.

(e) *Final Restoration Plan.* Based upon the final damages recovered, the trustee(s) shall develop a restoration component plan, either implementing restoration actions identified in a prespill Regional Restoration Plan or as an incident-specific plan as provided by subpart H of this part.

§ 990.41 Compensation formulas—estuarine and marine formula.

(a) *Use of estuarine and marine formula.* To use the Estuarine and Marine formula, the trustee(s) must identify:

(1) Whether the discharge occurred in a marine, estuarine, subtidal, or intertidal area using the definitions given in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments;"

(2) Location of discharge, using the boundaries and definitions of the provinces provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments," to determine in which province the discharge occurred;

(3) Habitat type that typifies the habitat affected by the discharge using definitions provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments;"

(4) Type of oil discharged as determined by the definitions provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills in Estuarine and Marine Environments;"

(5) Amount discharged. The trustee(s) shall subtract from the total amount discharged the trustee's(s') estimate of the volume of oil that is cleaned up within 24 hours from the beginning of the discharge, if the cleanup is from the water. Cleanup from shorelines shall not be subtracted;

(6) Season of discharge, as defined in § 990.40 of this subpart; and

(7) Amount of beach and/or shoreline closed, if any, determined by linear measure and days closed.

(b) *Determining damage figure.* The trustee(s) should:

(1) Determine the damages using the estuarine and marine compensation formula based upon the requirements of this subsection and "Volumes I through IV—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments;"

(2) Determine the appropriate habitat/province scenario using "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills in Estuarine and Marine Environments." Locate the table in Appendix A corresponding to the season discharge and the type of oil discharged using the scenario and volume discharged, identify the applicable formula. Compute the damage figure as instructed in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments;" and

(3) Determine damages for beach and/or shoreline closure by identifying the linear measure of beach and/or shoreline closed, in accordance with Volume III of the "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Estuarine and Marine Environments," and multiplying the length by the time period for which the beach and/or shoreline was closed.

§ 990.42 Compensation formulas—inland (freshwater) waters formula.

(a) *Use of Inland (Freshwater) formula.* To use the Inland (Freshwater) Waters formula, the trustee(s) must identify:

(1) The appropriate freshwater habitat in which the discharge occurred, as defined in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters;"

(2) Location of the discharge, using the boundaries and definitions of the provinces provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters;" to determine in which province the discharge occurred;

(3) Habitat type that typifies the habitat affected by the discharge using definitions provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under

OPA: Oil Spills into Inland (Freshwater) Waters;"

(4) The type of oil discharged as determined by the definitions provided in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters;"

(5) Amount discharged. For those large water bodies identified in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters;" the trustee(s) may subtract from the total amount discharged the trustee's(s') estimate of the volume of oil that is cleaned up within 24 hours from the beginning of the discharge, if the cleanup is from the water. Cleanup from all other inland (freshwater) waters and from shorelines shall not be subtracted;

(6) Season of discharge, as defined in § 990.40 of this subpart;

(7) Amount of shoreline and/or beach closed, if any, determined by linear measure; and

(8) Amount of recreational boating area closed, if any, determined by square kilometer.

(b) *Determining damage figure.* The trustee(s) should:

(1) Determine the damages using the Inland (Freshwater) Waters compensation formula based upon the requirements of this subsection and "Volumes I through III—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA; Oil Spills in Inland (Freshwater) Waters;"

(2) Determine the appropriate habitat/province scenario using "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills in Inland (Freshwater) Waters." Locate the table in Appendix A corresponding to the season discharge and the type of oil discharged using the scenario and volume discharged, identify the applicable formula. Compute the dollar figure as instructed in "Volume I—Technical Documentation" of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters;"

(3) Determine damages for beach and/or shoreline closure by identifying the linear measure of beach and/or shoreline closed in accordance with Volume III of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters," and multiplying the length by the time period for which the beach and/or shoreline was closed; and

(4) Determine damages for lost recreational boating closure by identifying the square kilometers closed and multiplying by the density of use and value per day as found in Volume III of "Compensation Formula for Natural Resource Damage Assessments under OPA: Oil Spills into Inland (Freshwater) Waters," and the number of days the area was closed.

Subpart E—Type A Models

§ 990.50 Type A models—general.

(a) The trustee(s) may use a computer model for natural resource damage assessments under OPA.

(b) The trustee(s) shall document the use of a computer model through the development of the DARP under subpart C of this part.

§ 990.51 Type A models—natural resource damage assessment model for coastal and marine environments, version 1.2.

(a) The trustee(s) may use the Natural Resource Damage Assessment Model for Coastal and Marine Environments (NRDAM/CME), Version 1.2, incorporated by reference in 43 CFR 11.18 and 11.41. The trustee(s) must show that the conditions of the discharge are sufficiently similar to the conditions of 43 CFR 11.33(b).

(b) The assessment component for application of the NRDAM/CME will contain the items required in 43 CFR 11.41(c), which are the inputs required to apply the NRDAM/CME.

(c) *Damage claim.* The total damage figure includes the result of the application of the NRDAM/CME plus the reasonable costs of conducting the assessment. This damage figure is included in the Report of Assessment and the Demand under §§ 990.80 and 990.81 of this part and documented in the administrative record.

(d) *Restoration.* Based upon the final damages recovered, the trustee(s) shall develop a restoration component plan, either implementing restoration actions identified in the prespill plan developed under § 990.16(a) or as an incident-specific plan under subpart G of this part.

Subpart F—Expedited Damage Assessment

§ 990.60 Expedited damage assessment—general.

(a) *Purpose/Scope.* The purpose of an EDA is to determine and quantify injury based on limited, focused studies in order to facilitate restoration as soon as possible. This subpart provides the trustee(s) with guidance and procedures for selecting and undertaking an EDA.

(b) *Scope of natural resources and services.* The trustee(s) should focus injury determination and quantification on those resources that are of commercial, recreational, or ecological importance or of special significance as deemed by the trustee(s).

(c) *Time frame.* Where possible, the trustee(s) should complete the Assessment Phase, including, but not limited to, the development of a restoration component within two years from the date of the discharge. This time frame, however, is not mandatory. The trustee(s) need not complete the Assessment Phase before beginning to prepare the damage claim, undertake settlement negotiations, if appropriate, provide public review of the restoration component and finalize the restoration plan.

(d) *EDA costs.* EDA costs cover the same categories as those defined in a CDA, including costs associated with injury determination and quantification, restoration planning, and compensable values determination. However, costs associated with injury determination and quantification should be limited to the focused studies undertaken.

(e) *Administrative Record.* The trustee(s) should document all pertinent activities and decisions within the Administrative Record, as with a CDA.

§ 990.61 Expedited damage assessment—selection.

(a) *Guidelines.* The trustee(s) should examine the various guidelines in evaluating whether an EDA is appropriate for a given discharge and exercise best professional judgment in making the final determination. Factors to be considered by the trustee(s) include, but are not limited to:

(1) The use of the compensation formulas or Type A models alone would not sufficiently account for the injury and damages resulting from the discharge.

(2) There is readily available information on the nature of the discharge and its effect on natural resources and/or services.

(3) The injury and damages resulting from the discharge can be adequately calculated by conducting limited, focused injury determination/quantification and compensable values studies.

(4) Potential restoration actions can be implemented without complex, prolonged injury determination/quantification and compensable values studies.

(b) [Reserved].

§ 990.62 Expedited damage assessment—objectives and approach.

(a) The objectives of an EDA are to:

(1) expeditiously determine and quantify injuries to selected natural resources and/or services resulting from a discharge using limited, focused studies and baseline or reference/control information, and

(2) Provide the basis for restoration and recovery of natural resources and/or services.

(b) To achieve these objectives, the EDA procedure consists of: (1) Injury determination; (2) Injury quantification; (3) Restoration; and (4) Compensable values.

§ 990.63 Expedited damage assessment—Injury determination.

(a) *General.* Injury resulting from (or caused by) a discharge of oil has been determined when the trustee(s) has demonstrated that:

(1) With direct exposure,

(i) The natural resource was exposed;

(ii) There is a pathway between the discharge and exposed natural resource; and

(iii) The exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or

(2) In the absence of direct exposure,

(i) The adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and

(ii) The adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge. The trustee(s) should establish baseline or reference/control conditions from which changes in environmental and biological parameters may be measured.

(b) *Contributing factor.* Where multiple factors may have contributed to an indivisible injury to a natural resource and/or service, the discharge of oil may be considered a contributing factor to the injury.

(c) *Exposure.* The trustee(s) shall confirm that at least one of the natural resources and/or services identified as potentially injured in the Preassessment Phase has been exposed or threatened to be exposed to the oil. To confirm exposure, the trustee(s) should determine that:

(1) The natural resource was exposed to the discharge; and

(2) There is a pathway between the discharge and the exposed natural resource.

(d) *Identify natural resources and services.* The trustee(s) should identify those natural resources and services for which injury determination and quantification will be conducted. Eligible natural resources will include those that are of recreational, commercial, or ecological importance, or of special significance.

(e) *Initiate early restoration planning.* The trustee(s) should begin the restoration planning process by developing a restoration Scoping Statement to identify potential restoration alternatives to remedy the effects of the discharge of oil. In undertaking restoration planning for an EDA, the trustee(s) should refer to §§ 990.73, 990.74, 990.75 and subpart G to supplement the guidance provided in this section.

(f) *Scope of injuries.* Injuries to natural resources and/or services for which the trustee(s) may claim damages will, by definition, be limited relative to a CDA, and may include, but not limited to, mortality, sublethal effects, and lost or diminished services. Categories of injury which meet the acceptance criteria specified in § 990.71(e) and which are appropriate to the EDA are currently being developed.

(1) Mortality. (i) The trustee(s) may derive estimates of acute mortality to fish and wildlife resources from body counts in the affected area in accordance with acceptable procedures such as the American Fisheries Society Fish-Kill Investigations (See PART II of "Monetary Values of Freshwater Fish and Fish-Kill Counting Guidelines," American fisheries Society Special Publication Number 13, 1992). In addition, the trustee(s) may determine acute mortality using standard, laboratory toxicity testing or acceptable models.

(ii) Where appropriate, the trustee(s) shall identify direct mortality of the flora resulting from the oil. Surveys may be employed to estimate both initial and delayed mortality.

(iii) The trustee(s) may estimate indirect mortality such as starvation, failure to nest, and hatching failure, loss of critical habitat from the existing literature or from limited, focused studies.

(2) Sublethal effects. The trustee(s) should identify sublethal effects that the trustee(s) deems significant and that can be documented with limited, focused studies. Sublethal effects may include, but are not limited to, reproductive impairment, reduction in growth rates of the flora and/or fauna, and changes in species diversity and abundance utilizing the habitat.

(3) Services. The trustee(s) should determine injury to services.

(i) The trustee(s) should inventory all services provided by the resource prior to the discharge and identify those lost or diminished, or expected to be lost or diminished. Services that may be considered for an EDA include, but are not limited to, recreational, commercial, ecological, and those of special significance.

(ii) The trustee(s) should determine whether there are adequate baseline data to support the calculation of lost or diminished services.

§ 990.64 Expedited damage assessment Injury quantification.

(a) *General.* The trustee(s) should quantify injuries to natural resources and/or services identified through injury determination. The trustee(s) should also establish the extent of the lost or diminished services. Quantification of natural resources and/or services can be accomplished through before-after (using baseline data) or reference/control-impact study designs, using combined (at the community/population level) and/or individual (at the organism/biomarker effects level) injuries.

By definition, EDA quantification will be scaled down relative to the CDA.

(b) *Develop Restoration Component.* The trustee(s) shall develop the restoration component pursuant to the guidance in §§ 990.73–990.76 of this part.

(c) *Compensable Values Component.* (1) The trustee(s) should develop the compensable value component by:

(i) Determining the lost services associated with the restoration components;

(ii) Identifying the appropriate measurement methods to estimate the compensable values of those services; and

(iii) Implementing these methods.

(2) Estimating compensable values may be based on site-specific analysis, provided such analysis falls within the trustee's(s') general time parameters prescribed by the EDA. Assignment of compensable values may also be based on estimates, equations, models, or data from existing valuation studies through the use of benefits transfer.

(3) The trustee(s) should follow the guidance in §§ 990.77–990.79 of subpart G in developing the compensable values component of an EDA.

Subpart G—Comprehensive Damage Assessment (CDA)

§ 990.70 Comprehensive damage assessment—general.

(a) *Purpose/Scope.* The purposes of the CDA are to:

(1) Comprehensively determine the nature and extent of injury to natural resources and/or services;

(2) Develop a restoration plan to remedy that injury; and

(3) Determine the total compensable values for discharges requiring a complex, prolonged assessment/restoration process as deemed necessary by the trustee(s). The CDA consists of Injury Determination, Injury Quantification, Restoration, and Compensable Values.

(b) *CDA costs.* CDA costs include those costs associated with injury determination and quantification, restoration planning, and compensable values determination. Costs incurred should be limited to those the trustee(s) considers necessary.

(c) *Administrative Record.* The trustee(s) should document all pertinent activities and decisions within the Administrative Record. The Administrative Record should provide the rationale for conclusions regarding each component of the CDA process.

§ 990.71 Comprehensive damage assessment—injury determination.

(a) *Purpose/Scope.* (1) The purpose of injury determination in a CDA is to verify or modify the nature of the injury to natural resources and/or services resulting from the discharge of oil.

(2) Injury determination in a CDA should be made for natural resources and/or services that can be restored or for which the public can be compensated.

(3) Should the trustee(s) be able to document the nature of the injury to the natural resources and/or services resulting from the discharge of oil, he should then proceed to Injury Quantification. If the trustee(s) is unable to determine the nature of the injury to the natural resources and/or services resulting from the discharge, further assessment efforts should be terminated and the results of the Injury Determination documented in the Report of Assessment.

(b) *Objectives and study designs.* The trustee(s) should develop objectives governing the overall CDA and for the individual component studies. The trustee(s) should also develop individual study designs to serve as the framework for the CDA.

(c) *Injury determination.* Once the individual study designs are complete, the trustee(s) should then document the nature of the injury resulting from the discharge of oil. Injury resulting from (or caused by) a discharge of oil has been determined when the trustee(s) has demonstrated that:

(1) With direct exposure,

(i) The natural resource was exposed;

(ii) There is a pathway between the discharge and exposed natural resource; and

(iii) The exposure of oil, its components, or by-products has been shown by rigorous and appropriate scientific methodology to have an adverse effect on the natural resource in laboratory experiments or the field; or

(2) In the absence of direct exposure,

(i) The adverse effect on or impaired/diminished use of a natural resource has been shown by rigorous and appropriate scientific methodology; and

(ii) The adverse effect on or impaired/diminished use of the natural resource would not have occurred but for the fact of the discharge or threat of a discharge.

(d) *Contributing factor.* Where multiple factors may have contributed to an indivisible injury to a natural resource and/or service, the discharge of oil may be considered a contributing factor to the injury.

(e) *Injury criteria.* The method for determining injury should be chosen based on the capability of the method to demonstrate an effect on or impaired/diminished use of a natural resource. For any injury to be considered such under this proposed rule, the trustee(s) must satisfy the following acceptance criteria:

(1) For natural resources,

(i) The exposure to oil, its components, or by-products has been demonstrated to cause an adverse effect on the natural resource in laboratory experiments or the field; and

(ii) The measurement for a natural resource adverse effect is cost-effective and can be obtained through the application of a scientifically rigorous and appropriate methodology.

(2) For resource services,

(i) The use of a natural resource has been demonstrated to be impaired/diminished; and

(ii) The measurement for impaired/diminished use is cost-effective and can be obtained through the application of a scientifically rigorous and appropriate methodology.

(f) *Categories of injury.* Categories of natural resource and/or service injury for the CDA (as well as the EDA) that meet the acceptance criteria specified in (e) for discharges of oil are currently being developed.

§ 990.72 Comprehensive damage assessment—injury quantification.

(a) *Purpose/Scope.* (1) The purpose of injury quantification is to determine the extent of effects on natural resources and/or services resulting from the discharge as defined in the proposed rule.

(2) The trustee(s) has the option to measure the change in the natural resource itself, or directly in the services. The trustee(s) is encouraged to use whichever approach proves to be most appropriate for the natural resources and/or services being considered.

(3) Should the trustee(s) be able to quantify injury to natural resources and/or services resulting from the discharge of oil, the trustee(s) should then proceed to the restoration component. If the trustee(s) is unable to quantify injury, further assessment efforts should be terminated and the results of the injury quantification documented in the Report of Assessment.

(b) *Quantification of injury.* (1) For quantifying injury to natural resources, the trustee(s) may quantify the injury to the natural resources themselves and translate that injury to the reduction in services provided by the resources prior to the discharge.

(2) For quantifying injury to services where there are insufficient data to quantify a natural resource injury or where there is no associated injured natural resource, the trustee(s) may directly quantify the reduction in the services resulting from the discharge.

(3) If the trustee(s) chooses to quantify the natural resource injury, the trustee(s) should determine the:

(i) Extent to which the natural resource injuries have occurred;

(ii) Extent to which the injured natural resources differ from baseline or reference/control conditions;

(iii) Services normally provided by the injured natural resources; and

(iv) Reduction of services resulting from the discharge of oil.

(4) To quantify the injury to services, the trustee(s) should determine the:

(i) Extent of impaired/diminished services; and

(ii) Extent to which the level of impaired/diminished services differs from baseline and/or reference/control conditions.

(c) *Quantification methods.* (1) Specific natural resources and/or services to quantify should be selected based upon the: extent to which a particular natural resource and/or service is affected; extent to which a given natural resource and/or service can be used to represent a broad range of related resources and/or services; consistency of the quantification method with the requirements of the compensable values determination component to be used; ability to quantify changes in a given natural resource and/or service at reasonable cost; and preliminary estimates of services.

(2) The trustee(s) should consider before-after (using baseline data) or reference/control-impact study designs, using combined (at the community/population level) and/or individual (at the organism/biomarker effects level) injuries. Quantification methods appropriate to a CDA are currently being developed.

(d) *Recovery.* The trustee(s) should estimate the time necessary for natural recovery without restoration efforts and beyond response activities. Recovery is defined as a return of natural resources and/or services to baseline or comparable conditions within the limits of natural or other (human-induced) variability.

§ 990.73 Comprehensive damage assessment—restoration/general.

(a) *Purpose.* The purposes of the restoration planning process are to:

(1) Determine the most appropriate restoration alternatives for the recovery of natural resources and/or services resulting from a discharge of oil; and

(2) Estimate the costs of implementing restoration.

(b) *Restoration component.* The restoration component outlines the most appropriate approach to bring about the recovery of the natural resources and/or services to baseline or comparable conditions based upon a consideration of available alternatives.

(c) *Coordination.* Where multiple trustees are involved, coordination and responsibilities may be facilitated through a Memorandum of Understanding (Appendix A). Participation of the RP(s) in the restoration process is encouraged, as described in § 990.17 of this part, and should be identified in the restoration component. The trustee(s), however, has the ultimate responsibility for all restoration activities. A joint enforceable agreement or Memorandum of Agreement (Appendix B) should be considered between the trustee(s) and RP(s) where the RP(s) is involved.

(d) *Emergency restoration.* Consistent with § 990.25, emergency restoration prior to the development of an incident-specific restoration plan is permitted where immediate action is necessary to avoid irreversible loss, or to prevent or reduce continuing danger to natural resources and/or services.

(e) *Restoration costs.* Costs of restoration will include direct and indirect costs. These costs will be one component of the total damage figure.

§ 990.74 Comprehensive damage assessment—restoration component development.

(a) *Requirements.* In developing the restoration component for a CDA, the trustee(s) should:

(1) Develop a restoration Scoping Statement;

(2) Develop the restoration component of the DARP; and

(3) Estimate the costs of implementing the restoration component.

(b) *Restoration scoping statement.* (1) The trustee(s) should develop a restoration Scoping Statement to identify those restoration alternatives that the trustee(s) may consider as potential actions to remedy the effects of the discharge of oil.

(2) The Scoping Statement should:

(i) Include a summary of the natural resources and/or services of concern, an evaluation of the circumstances of the discharge, and the expected injured natural resources and/or services;

(ii) Identify the range of restoration alternatives available to the trustee(s); and

(iii) Identify the opportunity to pool the recovery with other similar recoveries in a given region for a more encompassing restoration plan.

(3) The Scoping Statement should be included in the administrative record.

(4) If prespill plans have been developed that encompass the injured natural resources and/or services, the trustee(s) may decide that a Scoping Statement is not needed.

(c) Restoration component of the DARP.

(1) The restoration component of the DARP should be based on the Scoping Statement and injury determination/quantification studies, and will serve as the basis of the Post-assessment Restoration Plan.

(2) The restoration component of the DARP should:

(i) Include an analysis of the restoration alternatives considered for each natural resource and/or service, and provide the basis for estimating the restoration costs associated with each alternative;

(ii) Identify the preferred restoration approach for each injured natural resource and/or service; and

(iii) Include the results of any feasibility or pilot studies.

(3) The restoration component of the DARP should analyze opportunities for pooling recoveries from multiple cases and identify other statutory review and consultation requirements.

(4) The restoration component of the DARP, including any significant changes, will be made available pursuant to § 990.32(c) of this part.

(d) *Estimate restoration costs.* (1) Once the restoration component is chosen, the trustee(s) must estimate the costs of planning, developing, and implementing that component. These costs shall include both direct and indirect costs.

(2) Direct costs are those that are identified by the trustee(s) as charged directly to the conduct of the selected restoration alternative. Direct costs would include trustee agency expenses for a specific action(s).

(3) Indirect costs are costs associated with a particular action for restoration, rehabilitation, replacement, and/or acquisition of equivalent natural resources and/or services where there is no direct way to calculate or attribute them to a particular action(s).

(4) Compensation for indirect costs can be included in the damage claim in one of two ways. The trustee(s) could either identify indirect costs or claim a certain indirect cost rate for expenses.

(5) Restoration component of the damage claim. The estimated restoration costs make up that component of the damage claim representing the costs to restore, replace, rehabilitate, or acquire the equivalent of the injured natural resources and/or services. These estimates are to be documented in the administrative record.

(e) *Phased Restoration Planning.* NOAA recommends that the trustee(s) should consider undertaking restoration planning in phases. Phased planning and implementation is proposed through an Adaptive Management Approach (AMA). AMA involves a process whereby alternatives can be suggested and tested (i.e., pilot projects) often in small scale before undertaking full scale restoration. Results of initial experiments are then evaluated to select the approach for later projects.

§ 990.75 Comprehensive damage assessment—analysis and selection of restoration alternatives.

(a) *Restoration alternatives.* In developing the restoration component, the trustee(s) should consider the following alternatives. Each alternative may be implemented through one or more options or methods selected by the trustee(s). When mentioned, alternatives imply associated options.

(1) The natural recovery (no-action) alternative should always be considered. Natural recovery may be selected when:

(i) There is evidence that the natural recovery process will be more effective than other available restoration alternatives;

(ii) The resulting natural resources and/or services are predicted to resemble the original, within the constraints of natural or other (i.e., human-induced) variability, in a time frame not significantly different from that resulting from human intervention;

(iii) Other natural resources and/or services will not be adversely affected prior to the recovery of those originally injured resources and/or services; and

(iv) There are no threats to human health and safety from the length of time for natural recovery.

(2) The restoration alternative, i.e., direct restoration, includes actions undertaken to return injured natural resources and/or services to their baseline conditions.

(3) The rehabilitation alternative includes actions to bring resources and/or services to a state different from baseline conditions but still beneficial to the environment and public.

(4) The replacement alternative includes actions that substitute a natural resource and/or service that provides the same or comparable resources and/or services as those injured.

(5) The acquisition of equivalent natural resources alternative includes obtaining natural resources and/or services that the trustee(s) determines are comparable to those injured. Equivalent natural resources should be acquired to hasten recovery, and protect and maintain the natural resources affected by the discharge.

(6) Each alternative discussed above may be considered individually or combined in various ways, depending upon the factors outlined in § 990.75(b).

(b) *Analysis of restoration alternatives.* As the results of the injury and quantification studies become available, the trustee(s) should revise the list of restoration alternatives developed. The trustee(s) should analyze each alternative taking into account the feasibility, environmental effectiveness, and relative cost described below. If an alternative is unacceptable, it will be eliminated from further consideration. The rationale for this determination must be documented in the administrative record.

(1) Feasibility is determined upon, but not limited to, the following factors: availability of services, materials and equipment; expertise; construction and operational limitations; need or capability of future restoration; and administrative, legal, or regulatory requirements. The trustee(s) should consider technically feasible methods, i.e., those methods that are currently available.

(2) Once the trustee(s) determines that a restoration alternative is feasible, the trustee(s) should then evaluate the environmental effectiveness of the alternative. Effectiveness addresses whether an action accomplishes the goals and objectives of restoration. Effectiveness is dependent upon the:

(i) Extent to which the proposed alternative can return natural resources and/or services to acceptable conditions;

(ii) Extent to which the proposed alternative causes additional injury;

(iii) Extent to which the proposed alternative improves the rate of recovery and success; and

(iv) Level of risk and uncertainty in the success of the proposed alternative.

(3) Simultaneous with environmental effectiveness determination, the trustee(s) should evaluate the expected cost of implementing the alternative relative to other alternatives and its expected benefits. The trustee(s) should consider, among other things:

(i) Significance of the natural resource and/or service to the environment and public;

(ii) Extent to which the alternative benefits more than one resource and/or service;

(iii) Cost of the alternative;

(iv) Relationship of the expected costs to the expected benefits; and

(v) Level of risk and uncertainty in the cost-benefit analysis.

For alternatives that achieve similar benefits and meet the goals and objectives of restoration, the most cost-effective alternative should be chosen. In the event that value estimates are not available, the alternative will be judged on the basis of the increase in the rate of recovery time relative to the costs of the alternative.

(c) *Selection of restoration alternatives.* Based upon the analysis of the restoration alternatives for each category of injured natural resource and/or service, the trustee(s) should select the alternative or some combination thereof that best meets the needs of each injured natural resource and/or service. The trustee(s) should then develop the restoration component of the DARP based upon this selection for each natural resource and/or service.

(d) *Feasibility (pilot) studies.* (1) If restoration alternatives for certain natural resources and/or services are limited or poorly developed, the trustee(s) may implement small-scale feasibility or pilot studies. The costs associated with these actions are recoverable under this proposed rule.

(2) The trustee(s) should coordinate with the OSC prior to proceeding with any feasibility or pilot studies during the Preassessment Phase to ensure that such studies are not incompatible with response activities. The RP(s) may be given the opportunity to participate in such studies, if appropriate.

§ 990.76 Comprehensive damage assessment—evaluation of restoration.

(a) *Recovery and success.* The trustee(s) should define restoration goals, select appropriate criteria for monitoring goal achievement, identify performance standards (endpoints), and measure levels of achievement of those standards in determining recovery and success in restoration.

(b) *Monitoring.* The trustee(s) should evaluate recovery through effective monitoring until recovery is attained without human intervention. To enable the trustee(s) to accomplish this goal:

(1) Monitoring should be sufficiently long to ensure recovery to a stable condition;

(2) All relevant components of the affected environment should be monitored (as it relates to the restoration alternative);

(3) The progress of recovery should be compared with natural changes occurring in similar unaffected reference or control areas;

(4) Sampling should be designed to provide statistically significant and defensible results; and

(5) The monitoring plan should be sufficiently flexible to permit mid-course corrections if the need arises.

(c) Mid-course corrections. Restoration components should incorporate provisions allowing for necessary mid-course corrections. Mid-course corrections should be based upon, but limited to, the:

(1) Nature and extent of the injured natural resources and/or services;

(2) Actual effectiveness of the restoration alternatives; and

(3) Results of monitoring.

§ 990.77 Comprehensive damage assessment—compensable values.

(a) *Purpose.* Section 1006(f) of OPA authorizes the trustee(s) to recover: The cost of restoring, rehabilitating, replacing or acquiring the equivalent of the injured or lost natural resources and/or services; the diminution in value of the injured or lost natural resources pending restoration; plus the reasonable cost of assessing those damages. The purpose of this subpart is to provide guidance to the trustee(s) for estimating the total diminution in value of resources and/or services affected by the discharge, hereinafter referred to as compensable values.

(b) *Requirement.* The trustee(s) shall determine the compensable values resulting from the discharge of oil based upon the information collected during the assessment/restoration process and the guidance provided in this subpart.

(c) *Services.* Before estimating compensable values under this subpart, the trustee(s) should determine the uses of the resources identified in the Injury Quantification component.

(d) *Time period of losses.* Compensable values include, for each affected resource and/or service, the diminution in value of the resource and/or service from the onset of the discharge through the estimated time of full recovery to baseline or comparable conditions, as determined by the trustee(s). As identified in subpart G of this part, to the extent possible, restoration actions will be designed to yield full recovery of the resources and/or services; however, in some cases, only partial recovery may occur. If the resources and/or services will not fully recover with the implementation of the Restoration Plan, the calculation of compensable values will include the value of a perpetual stream of lost services.

(e) *Completion of the Compensable Values Component.* Upon completion of the valuation component, the results shall be briefly described in the Report of Assessment. Those results, combined with the restoration costs and costs of conducting the assessment, shall comprise the trustee(s) damage claim.

(f) Compensable values are the total diminution in value of the injured natural resource(s) and/or services as a result of a discharge, from the onset of the discharge until recovery to baseline or comparable conditions is deemed complete by the trustee(s).

(g) *Compensable values include:*

(1) Direct use value, i.e., the value individuals derive from direct use of a natural resource, including consumptive and nonconsumptive uses, and

(2) Passive use value, i.e., the value individuals place on natural resources that is not linked to direct use of a natural resource by the individual, including the value of knowing the natural resource is available for use of family, friends, or the general public; the value derived from protecting the natural resource for its own sake; and the value of knowing that future generations will be able to use the natural resource.

(h) *Compensable values include, but are not limited to:*

(1) The value of losses to all public uses of natural resources as measured by changes in:

(i) Monetized measures in utility, or consumer surplus,

(ii) Fees or other payments collectable by the government or an Indian tribe for use of the natural resource by a private party, and

(iii) Any economic rent accruing to a private party because the government or Indian tribe does not charge a fee or price for the use of the resource, provided such economic rent is not recovered under a private cause of action; and

(2) In instances where the natural resource trustee(s) is the majority operator or controller of a for-profit or not-for-profit enterprise, and the injury to the natural resource results in a reduction of net income to such an enterprise, that portion of the lost net income due the trustee(s) from this enterprise resulting directly or indirectly from the injury to the natural resource.

(i) Compensable values do not include:

(1) Taxes forgone, because these are transfer payments from individuals to the government;

(2) Wages and other income lost by private individuals, except for that portion of income that represents uncollected economic rent, because these values do not accrue to the trustee(s) and may be the subject of lawsuits brought by the individuals suffering the loss; or

(3) Any speculative losses.

§ 990.78 Comprehensive damage assessment—compensable values, measurement techniques.

(a) *General.* (1) The methodologies listed in this subpart, or other appropriate methodologies selected by the trustee(s), shall be used to estimate compensable values. The trustee(s) should select only those methods that can provide valid and reliable resource values and that are appropriate for valuing the injuries associated with a particular discharge.

(2) Nothing in this part precludes the use of different methodologies to produce separate damage estimates for different resource services, so long as there is no double counting.

(b) *Site-specific valuation techniques.* (1) Travel cost method. The travel cost method may be used to estimate the value of recreational services provided by a specific site based on information on the number and costs of recreational visits to that site. The value of recreational losses resulting from injury to an area (which may include multiple sites) is measured as the difference between the values of recreational services provided by the area with and without the discharge of oil.

(2) Factor income method. If a lost or injured resource and/or service is an input to a production process, the factor income methodology may be used. This methodology may be used to estimate the change in economic rent attributable to the injured natural resource as a result of the discharge. When the price of the good being produced is not affected by the injuries, the change in economic rent is simply the sum of the changes in factor costs for each affected input.

(3) Hedonic price model. The hedonic price model relates the price of a marketed commodity, such as property, to its attributes, such as the quality of the surrounding environment or access to environmental amenities. Where nonmarket services provided by public trust resources, such as local water or air quality, function as attributes of private property or other market goods, the hedonic price model may be used to determine the value of the change in services for property owners.

(4) Market models of supply and demand. (i) For natural resources that are traded in markets, the trustee(s) may estimate models of market supply and demand for the natural resource. The measure of damages to consumers of the marketed natural resource or of its marketed services is the difference between the total consumer surplus for the marketed natural resource/service with and without injury.

(ii) When the supply of the natural resource is fixed (or quasi-fixed), then the observed or appraised change in market price may be used as a proxy for damages per unit of affected natural resource or of affected service. The measure of damages to consumers of the marketed services is the sum of difference between the without- and with-injury market or appraisal prices for each affected unit. When the appraisal method is employed, damages should be measured, to the extent possible, in accordance with the applicable sections of the "Uniform Appraisal Standards for Federal Land Acquisition," Uniform Appraisal Standards, Interagency Land Acquisition Conference, Washington, DC, 1973.

(5) Contingent valuation method. The trustee(s) may use the contingent valuation method to determine individuals' valuation of natural resources or of the services provided by natural resources in order to estimate compensable values. When using contingent valuation pursuant to this part, the trustee(s) shall adhere to the following:

(i) Survey instrument design and development—(A) Willingness to pay for Prevention or Restoration.

(*1*) The survey instrument shall elicit from respondents their willingness-to-pay (WTP) either to prevent described injuries to natural resources or to restore injured resources as described to their baseline or comparable condition.

(*2*) The trustee(s) shall document the rationale for selecting a prevention program or restoration program as the commodity to be valued.

(B) Commodity definition. (*1*) During development of the survey, the trustee(s) shall determine whether respondents understood and found credible the description of the injuries (including whether they are permanent or interim losses) and the program (including the timing of the process) for preventing injuries or restoring the natural resource.

(*2*) Prior to the value elicitation, the trustee(s) shall identify the natural resource context of the injured resources, if related resources exist, including commodities that might serve as substitutes.

(C) Budget constraints. Prior to the value elicitation, respondents shall be reminded of their budget constraints and their alternative expenditure possibilities. Respondents shall be reminded that their WTP for the environmental program in question would reduce their expenditures on other goods. This reminder should be more than perfunctory but less than overwhelming. The goal is to induce respondents to keep in mind other likely expenditures, including those on other environmental goods, when evaluating the main scenario. After the value elicitation, respondents shall be reminded again of their alternative expenditure possibilities. Respondents shall be given an opportunity to reconsider and change their votes (bid) after this second reminder of alternative expenditure possibilities.

(D) Comparability with real transactions. (*1*) The survey instrument shall use a credible choice mechanism and payment vehicle.

(*2*) The trustee(s) shall select a choice mechanism that is incentive compatible and shall document the rationale for the selected choice mechanism.

(*3*) The trustee(s) shall ask follow-up questions to determine whether the respondents accepted the choice mechanism and payment vehicle as credible.

(*4*) The survey instrument or analysis method shall provide a mechanism for calibrating hypothetical WTP to actual WTP. The trustee(s) shall document the rationale for the selected calibration mechanism. If the survey instrument or analysis method fails to provide such a mechanism or the trustee(s) fails to document the rationale for the selected calibration mechanism, actual WTP shall be presumed to be one-half of stated WTP.

(E) Pretesting. (*1*) Survey development shall include adequate field testing to ensure that the above design criteria are met.

(ii) Survey administration—(A) Sampling procedures. (*1*) The trustee(s) shall determine the relevant population(s) to be sampled and document the rationale for that determination.

(*2*) The trustee(s) shall draw a probability sample(s) from the target population for the administration of the final survey. Less rigorous sampling is suitable for pretesting and pilot surveys so long as the heterogeneity of the target population is considered.

(*3*) The sample size(s) shall be sufficient to draw statistically significant population inferences and to estimate WTP valuation functions or to test relevant statistical hypotheses.

(*4*) The trustee(s) shall minimize nonresponse bias to the extent practicable by striving for as high a response rate in the final survey as possible, consistent with the requirements of reasonable cost. In no case shall the response rate be less than seventy percent.

(*5*) The trustee(s) shall document the rationale for the selected response rate.

(B) Mode of administration. (*1*) The trustee(s) shall document the rationale for the selected mode of survey administration.

(*2*) If interviewers are used, the survey administration shall be conducted by trained interviewers who are supervised by experienced interviewer field managers.

(*3*) Regardless of the mode of administration, the trustee(s) shall use an experienced survey research organization to administer the survey.

(C) Confidentiality. The trustee(s) should ensure respondent confidentiality.

(iii) Nature of results—(A) Scope test. Controlling for attitudinal, demographic, perceptual, and other differences across respondents, the trustee(s) shall demonstrate statistically that the aggregate WTP across all respondents for the prevention or restoration program increases (decreases) as the scope of the environmental insult is expanded (contracted). The scope of the environmental insult is characterized by the severity of the natural resource injuries and the level of effectiveness and timing of the restoration or prevention program. The demonstration shall be conducted through the use of split samples.

(B) Number of scenarios. The trustee(s) shall administer to split samples different survey instruments containing three variations of the scope of the environmental insult that respondents perceive as different unless the trustee(s) can provide a reasonable showing that the three-scenario test is infeasible due to considerations of cost or lack of plausibility of scenarios. Where three scenarios are feasible, the statistical test shall involve pairwise comparisons. In either case, the scenarios may vary along any of the margins of intensity, geography, and duration of damage and, for prevention scenarios, the probability of an event occurring. The trustee(s) shall document the rationale for the selected variations of the scope of the environmental insult. In determining the descriptions to be used with the split samples, the trustee(s) shall use realistic injury scenarios and prevention or restoration programs that the respondents accept as credible.

(C) Maximum amount of difference between scenarios. The trustee(s) shall develop scenarios for the total value test. Prior to the performance of the test, the trustee(s) shall demonstrate that not more than ninety-five percent of respondents in a pre-test or in focus groups indicate that there are meaningful value differences between the scenarios to be tested in any pairwise comparison. The demonstration shall be based on a minimum of sixty valid responses. The trustee(s) shall exclude from this demonstration any individuals who indicate in screening questions that they are not willing to pay anything for any size environmental cleanup or who would be willing to pay unrealistically large and invariant amounts for any size environmental cleanup.

(iv) Reporting. The trustee(s) shall ensure that reports of contingent valuation studies discuss the relevant factors identified in the standards pertaining to survey instrument design and development, survey administration, and nature of results in this section. A copy of the survey instrument shall be included.

(c) *Alternative techniques.* (1) Benefits transfer approach. Benefits (or valuation) transfer involves the application of existing valuation point estimates or valuation function estimates and data that were developed in one context to value a similar resource and/or service affected by the discharge of concern. When using benefits transfer, the trustee(s) should consider:

(i) The comparability of the users and of the resource and/or services being valued in the initial study(ies) and the changes resulting from the discharge of concern;

(ii) The comparability of the change in quality or quantity of resources and/or services in the initial study(ies) and the ones affected by the discharge of concern; and

(iii) The quality of the study(ies) being used for the transfer(s).

(2) Habitat or species replacement cost method. The habitat or species replacement cost method involves estimating damages in terms of the cost of obtaining from alternative sources the equivalent of the quality and quantity of services diminished by the injury from the onset of the discharge through full recovery. As appropriate, damages may be calculated as the cost of replacing entire habitats that support multiple species and provide a variety of resource services. In applying this method, the trustee(s) should:

(i) Quantify a total discounted measure of the value of lost services over the full duration of the injury, taking into account the extent to which the resource and/or service will recover over time;

(ii) Determine the total discounted measure of the value of services provided by the restoration or replacement project over the full life of the relevant species or habitat;

(iii) Calculate the appropriate scale of the restoration or replacement project, such that the total discounted value of services provided is equivalent to the total discounted value of interim lost services; and

(iv) Estimate the cost of implementing the restoration or replacement project.

§ 990.79 Comprehensive damage assessment—compensable values, implementation guidance.

(a) *Committed use.* Only losses in committed uses of injured natural resources and/or services shall be recoverable. Damages for losses of purely speculative uses are not recoverable. For the purposes of this subpart, a committed use is:

(1) Any direct or passive use of the injured natural resource and/or service available to the public, but for the discharge; or

(2) Any documented, planned future use.

(b) *Willingness to accept and willingness to pay.* For purposes of this part, the trustee(s) may use willingness to accept, willingness to pay, or Marshallian consumer surplus (the value of which is between willingness to accept and willingness to pay) as the criterion to measure damages. However, only willingness to pay shall be elicited in contingent valuation survey instruments.

(c) *Substitutability.* When calculating compensable values, the trustee(s) should take into account, to the extent practicable, the ability to substitute alternative resources and/or services for the injured resources.

(d) *Uncertainty.* Uncertainty regarding the predicted consequences of restoration options and predicted supply and demand of natural resources and/or services should be addressed in the economic analysis of restoration alternatives and determination of compensable values and documented in the administrative record.

(e) *Discounting.* (1) The trustees should discount the three components of the damage claim: Compensable values; future restoration costs; and assessment and restoration costs already incurred. NOAA recommends that the trustee(s) use the U.S. Treasury borrowing rate on marketable securities of comparable maturity to the period of analysis for discounting the value of each of the components. The reference date for the discounting calculation is the date at which the claim is presented. Section 9.14 of the proposed rule, as required by section 1005(b) of OPA, provides for pre-judgment interest and post-judgment interest to be paid at a commercial paper rate, starting from 30 calendar days from the date a claim is presented until the date the claim is paid.

(2) Trustees are referred to Appendix C of OMB Circular A–94 for information about nominal and real U.S. Treasury rates of various maturities and for further guidance in calculation procedures. Copies of the Appendix, which is regularly updated, and of the Circular are available from the OMB Publications Office (202–395–7332).

(f) *Economic definitions.* (1) "Commodity" as used in contingent valuation, refers to the item respondents are asked to value. In damage assessment, the item to be valued will generally be a plan or program to protect against future oil spills or a plan or program to restore an already injured set of resources.

(2) "Payment vehicle" is the method by which contingent valuation survey respondents will pay for the commodity being valued. Common payment vehicles used in contingent valuation include increases in local, state or federal taxes, or increases in process of consumer goods or services.

(3) "Choice mechanism" is the institutional format in which contingent valuation survey respondents are asked to express their value for the commodity offered in the survey. A frequently used choice mechanism is the voting format (referendum) where respondents express their value for the commodity offered by choosing to vote for or against a ballot proposal that would provide the commodity by raising respondents' taxes.

(4) "Probability sampling" refers to the use of sampling techniques that assign each sampling unit in the target population a known non-zero probability of being included in the sample. Sampling units for survey research are usually individuals or households.

Subpart H—Post Assessment Phase

§ 990.80 Post-assessment phase—report of assessment.

(a) *Requirement.* At the conclusion of any of the assessment procedures provided in this part or upon reaching settlement with the RP(s) under § 990.14(f) of this part, the trustee(s) shall prepare a Report of Assessment.

(b) *Contents.* The Report of Assessment shall contain:

(1) The selected restoration approach;

(2) The estimated costs of implementing that approach; and

(3) An index to the administrative record.

§ 990.81 Post-assessment phase—demand.

(a) *Requirement.* Where the trustee(s) and RP(s) have not reached settlement by the conclusion of the Assessment Phase, the trustee(s) shall present to the RP(s), jointly or individually, a demand in writing for a sum certain representing the damages as determined by the trustee(s). The demand should be delivered in such a manner as will establish the date of receipt.

(b) *Contents.* The demand shall include the following items:

(1) Identification of the discharge of oil from which the claim arises;

(2) The natural resource trustee(s) asserting the claim;

(3) A brief description of the natural resources and/or services for which the claim is being brought;

(4) The Report of Assessment, as an attachment; and

(5) The amount of damages being sought.

(c) *Damages. (1) The damages presented in the demand include:*

(i) Costs of restoration, replacement, rehabilitation, or acquisition of equivalent natural resources and/or services;

(ii) Compensable values; and

(iii) Reasonable costs of the assessment.

(2) The damage figure should be adjusted, if necessary, by the guidance in § 990.82(e) of this part.

(d) *Review of damage figure.* The total damage figure may be divided into two components: costs (both assessment costs and estimated costs of restoration) and compensable values. Judicial review of that portion of the demand representing costs shall be conducted on the administrative record. Judicial review of that portion of the demand representing compensable values shall be conducted with the trustee(s) receiving the benefit of the rebuttable presumption.

§ 990.82 Post-assessment phase—accounts.

(a) *Joint account.* For joint recoveries involving both federal trustees and state or Indian tribe trustees, trustees may establish an interest-bearing joint trustee account under the registry of the applicable federal court. The account should be jointly managed by all the trustees through a mutually agreed upon trustee committee or council. Such funds shall be used only as specified in § 990.83 of this part.

(b) *Separate accounts.* The trustees have the option of dividing the recoveries and depositing their respective shares in separate interest-bearing accounts. Such funds should be retained by each trustee in a revolving trust account, without further appropriation, for use only as specified in § 990.83 of this part.

(c) *Other accounts.* The trustees may establish escrow accounts or any other investment account(s) unless specifically prohibited by law. Such funds shall be used only as specified in § 990.83 of this part.

(d) *Records.* Regardless of the type of account used, the trustee(s) must maintain appropriate accounting and reporting methods to document the use of those sums, including independent auditing.

(e) *Adjustments.* (1) If, for any reason, a recovery cannot be placed in an interest-bearing account, prior to the presentation of a demand for the damage amount, the calculation of the expected present value of the damage amount should be adjusted to correct for the anticipated effects of inflation over the time estimated to complete the restoration, rehabilitation, replacement, or acquisition of the equivalent of the natural resources and/or services.

(2) In order to make the adjustment in paragraph (e)(1) of this section, the trustee(s) should adjust the damage amount by the rate payable on notes or bonds issued by the United States Treasury with a maturity date that approximates the length of time estimated to complete the restoration, rehabilitation, replacement, or acquisition of the equivalent.

(3) The adjustment outlined in this paragraph applies only to those sums to be expended through an Incident-Specific Restoration Plan described in § 990.84 of this part.

§ 990.83 Post-assessment phase—use of sums recovered.

(a) *Reimbursable costs.* Prior to deposit of the sums recovered, as provided in § 990.82 of this part, the trustee(s) may immediately request receipt of those sums recovered that represent the:

(1) Costs of the assessment already incurred and costs necessary to complete the damage assessment;

(2) Costs already incurred for emergency restoration as described in § 990.25;

(3) Costs necessary to develop the final restoration plan; and

(4) Costs necessary to implement a restoration plan or individual project that is part of that restoration plan.

(b) *Damages representing compensation.* Damages recovered as compensation for injuries to natural resources and/or services, as specified in § 990.81 of this part, shall be paid out of the account established under § 990.82 of this part only for those actions described in a restoration plan developed pursuant to the guidance in § 990.84 of this part.

§ 990.84 Post-assessment phase—final restoration plan.

(a) *Incident-specific Restoration Plan.* The Final Restoration Plan is that plan implemented after damages have been received. The Final Restoration Plan can be either one of two types: Incident-specific or regional.

(1) Upon determination of the amount of the award of a natural resource damage claim, as authorized by section 1006(a)(2) of OPA, the trustee(s) shall prepare a Final Restoration Plan as provided in section 1006(c) of OPA.

(2) This post-assessment restoration plan should be based upon the restoration component developed pursuant to subpart G of this part.

(3) If there are significant modifications between the restoration component developed under subpart G of this part, which was made available to the public, and the Final Restoration Plan, the Final Restoration Plan shall be made available for a 30 calendar day public review and comment period.

(4) Before implementing the significantly modified plan discussed in paragraph (a)(3) of this section, the plan and a response to any public comments received, should be made available to the public.

(5) This Final Restoration Plan shall be implemented using the sums in one or more of the accounts described in § 990.82 of this subpart.

(b) *Regional Restoration Plan.* (1) Where the trustee(s) has developed a Regional Restoration Plan, as described in § 990.16 of this part, through a public review and comment process, for a specific area, e.g., bay or estuary, monies placed in an account established under § 990.82 of this part may be pooled with other recoveries to implement that Regional Restoration Plan, in whole or in part.

(2) Where a Regional Restoration Plan has not been or is not in the process of being developed, an incident-specific plan must be developed for use of the damages recovered.

(3) To qualify as a Regional Restoration Plan for use of sums recovered pursuant to this part, the plan must:

(i) Be developed through a process consistent with the prespill planning process described in § 990.16 of this part, including public review and comment; and

(ii) Address the same or similar resource injuries as those identified in the assessment.

Appendix A to Part 990—Draft Memorandum of Understanding (MOU)

I. Introduction

This Memorandum of Understanding (MOU) by and between the state of _____ (state), the National Oceanic and Atmospheric Administration of the United States Department of Commerce (NOAA), the United States Department of the Interior (DOI) and the United States Department of Agriculture (USDA) (collectively referred to as the Trustees) is entered into to ensure the coordination and cooperation of the trustees in the initiation of assessment and assessment of damages for injuries to natural resources and/or services resulting from _____, and the application of any natural resource damages recovered toward the restoration, rehabilitation, replacement and/or acquisition of equivalent natural resources.

[Note: Obviously, in any given incident there may be more or fewer trustees than those indicated above.]

II. Parties

The following officials, or their designees, are parties to this MOU and act on behalf of the public as Trustees for natural resources under this MOU:

1. The _____ of the state of _____,

2. The Under Secretary for Oceans and Atmosphere, Administrator of the National Oceanic and Atmospheric Administration, acting on behalf of the Secretary of Commerce,

3. The Secretary of the Department of the Interior,

4. The Secretary of the Department of Agriculture,

5. [The Secretary of Department of Defense, Department of Energy, and/or the designated

trustee of a Tribe and any foreign [international] trustee.]

III. Location

This MOU is intended to address natural resources injured [damaged] * * * [Identify as precisely as possible geographic location and incident(s) involved] * * * (the Incident).

IV. Purpose

The trustees recognize the importance of integrating and coordinating the assessment of natural resource damages for injuries to natural resources affected by the Incident, seeking compensation for those injuries to natural resources and/or services and restoration of those affected resources and/or services. The purpose of this MOU is to provide a framework for such coordination and cooperation between the trustees, and for the implementation of the activities of the trustees in furtherance of their natural resource trustee responsibilities. The trustees' activities will primarily involve assessing damages for injuries to natural resources, seeking compensation for those injuries to natural resources and/or services and restoring the injured natural resources and/or services affected by the incident. Nothing in this MOU is to imply that any signatory trustee is in any way abrogating or ceding any responsibility or authority inherent in its control or trusteeship over natural resources.

V. Authority

The trustees enter into this MOU in accordance with the natural resource trustee authorities provided for each trustee by the Federal Water Pollution Control Act, 33 U.S.C. 1251 *et seq.*, the Oil Pollution Act of 1990, Public Law 101–380, the Comprehensive Environmental Response, Compensation and Liability Act, as amended, 42 U.S.C. 9601 *et seq.*, and, if utilized, the Natural Resource Damage Assessment Regulations, 43 CFR part 11, or the OPA regulations, when promulgated.

VI. Organization

The trustees recognize the importance of coordinating their efforts in order to effectively and efficiently meet their respective natural resource trustee responsibilities under applicable federal and state law. Accordingly, there is hereby created a Trustee Council (Council) to implement the MOU to which each trustee will designate a representative and an alternate. The Council may create subcommittees when they are deemed necessary to effect the purposes of this MOU. A representative designated by unanimous consent of the Trustee Council members will serve as Lead Administrative Trustee for administrative purposes. This representative shall fully coordinate his activities with and act under the direction of the Council. The Trustee Council will also seek advisory participation from the United States Department of Justice, the United States Department of Transportation (Coast Guard), the State Attorney General or other legal advisor and the United States Environmental Protection Agency, when appropriate.

VII. Duties and Responsibilities

On behalf of the trustees, the Trustee Council shall coordinate and authorize all trustee activities and matters under this MOU in accordance with the decisionmaking requirements contained in Section VIII. The Trustee Council may take whatever actions the Council, in its discretion, determines are necessary to fulfill the trust responsibilities of each trustee under and to effectuate the purposes of applicable federal and state law. It is expected that the Trustee Council, in accordance with applicable laws and policies, may take the following actions, among others, to address the trustees' natural resource trustee responsibilities:

A. Conduct scientific and technical studies, sampling and other matters related to the assessment of natural resource damages for injury to natural resources with respect to trust resources which may be lost, injured or destroyed.

B. Seek compensation from responsible parties for the damages assessed by the trustees and for the costs of planning and implementing the assessment.

C. Acting in concert with its attorneys, participate in negotiations with responsible parties.

D. In accordance with applicable law, supervise, manage and obligate any money paid to the trustees by or on behalf of responsible parties for the purpose of assessing, restoring, replacing, rehabilitating, and/or acquiring the equivalent of the affected natural resources.

E. Oversee the development and implementation of a plan for the restoration, replacement, rehabilitation, and/or acquisition of equivalent resources for those trust resources, and/or services, that may be injured, destroyed or lost.

F. In accordance with applicable law, make all necessary decisions for the management and administration of funds pursuant to Section IX of this MOU.

G. In accordance with applicable law, arrange for one or more contracts with professional consultants, technical or otherwise, that the Trustee Council determines are necessary and best qualified to provide services to the Council.

H. Identify a contact for coordination with the U.S. Coast Guard regarding access to the Oil Spill Liability Trust Fund.

The duties of the Lead Administrative Trustee shall include, but are not limited to: coordination and monitoring of the progress of the natural resource damage assessment process; scheduling of meetings of the Trustee Council, and preparation of agendas for those meetings; acting as a central contact point for the Trustee Council; establishment and maintenance of the administrative record and other records and relevant documents; and such other duties as directed by the Trustee Council. The Lead Administrative Trustee will be responsible for informing the other trustees of all pertinent developments on a timely basis.

VIII. Decisionmaking

The trustees agree that all decisions implementing this MOU shall require unanimous approval. In the event that unanimous agreement cannot be reached among the members of the Trustee Council, the matter in dispute will be elevated to the Trustees for resolution. If necessary, the trustees may establish further mechanisms by which disputes may be resolved. The trustees further agree that decisionmaking deliberations will focus upon the trustees' mutual purpose of assessing, restoring, rehabilitating, replacing and/or acquiring the equivalent of the affected natural resources, rather than upon control or respective trusteeship over those resources.

IX. Funds

The trustees agree to cooperate in good faith to attempt to establish, to the extent consistent with applicable law, a joint trust account for purposes of receiving, depositing, holding, disbursing, managing and expending all natural resource damage recoveries obtained or received by the trustees relating to the natural resource injuries arising out of the Incident and interest earned thereon. This joint trust account will be established under the registry of the applicable Federal district court. Such recovered damages shall be used for restoration activities conducted under this MOU to address those injuries to natural resources and/or services. Any recoveries for injury to natural resources obtained or received by or on behalf of any trustee shall be deposited in this joint trust account.

The Trustee Council, in accordance with its decisionmaking process in section VIII of this MOU, shall establish standards and procedures governing the joint use of all natural resource damages received by the Trustees for the purposes of restoring, replacing, rehabilitating and/or acquiring the equivalent of natural resources injured as a result of the Incident and the reduced or lost services provided by such resources pursuant to the final Restoration Plan.

The trustees further agree that the following damage assessment costs shall be advanced or reimbursed to each trustee out of any damage assessment cost recoveries or payments thereon, including funds received from the Oil Spill Liability Trust Fund: reasonable unreimbursed costs jointly agreed upon for the planning, conduct, evaluation and coordination of all natural resource damage assessment activities pursued by the Trustee Council with respect to injuries incurred resulting from the Incident.

X. Confidentiality

The trustees agree that it is in the public interest that all scientific data arising out of their review of the injury to natural resources as a result of the Incident be made public. Therefore, such data shall be made public as soon as publication will not prejudice the on-going assessment. Public sharing of scientific data will be the general policy of the trustees.

However, all parties to this MOU recognize that all written or oral communications related to the assessment and recovery of damages for injury to natural resources and/or services may be undertaken in anticipation of litigation. Accordingly, all oral and written communications and work product will be treated as privileged attorney-client communications, attorney work product or protected by other applicable privilege (or a combination thereof), as appropriate, and will be protected from disclosure to the maximum extent possible under applicable federal or state law. They further agree that when a request for production of such a record is received pursuant to any applicable federal or state law, the request will be forwarded for response to the trustee or trustees to which the privilege applies or whose representatives originally generated or contributed the record requested. Nothing contained herein shall be construed as prohibiting or restraining the trustees or the Trustee Council from agreeing to release any record.

XI. Reservation of Rights

Except for the confidentiality agreement contained in Section X, all parties understand that this document is not intended to create any further legal rights or obligations between the parties, the trustees or any other persons not a party to this MOU.

XII. Modification of Agreement

It is acknowledged that additional agreements may be executed by the trustees with regard to natural resource damage claims that arise and to planning for the restoration, replacement, rehabilitation, and/or acquisition of equivalent natural resources that may be injured, destroyed or lost. Therefore, modification of this MOU must be in writing and upon approval of all Trustees currently parties to the MOU.

XIII. Termination

This MOU shall be in effect from the date of execution until termination by agreement of the trustees. At any time the trustees determine that the purposes underlying this MOU have been addressed, the MOU will terminate upon such a finding. In the event any trustee withdraws from the MOU, such withdrawal must be in writing at least thirty calendar days in advance of the withdrawal. In the event of such withdrawal, this MOU remains in full force and effect for the remaining parties.

In the event of the withdrawal of any trustee, or at the termination of this MOU, there shall be a full and complete accounting of all funds received, deposited, held, disbursed, managed, expended pursuant to Section IX of this MOU, or otherwise controlled in any joint account by the trustees as a result of the incident.

XIV. Limitation

Nothing in this MOU shall be construed as obligating the United States, a state or any other public agency, their officers, agents or employees, to expend any funds in excess of appropriations authorized by law.

XV. Third Party Challenges or Appeals

The rights and responsibilities contained in this MOU are subject to the availability of funding and are intended to be guidance for the respective trustees. They may not be the basis of any third party challenges or appeals.

XVI. Execution: Effective Date

This MOU may be executed in counterparts. A copy with all original executed signature pages affixed shall constitute the original MOU. The date of execution shall be the date of the final trustee's signature.

Appendix B to Part 990—Memorandum of Agreement (MOA)

This memorandum of agreement (MOA) is between the [trustee(s)], referred to as _____, and [responsible party(ies)], referred to as _____. The [trustee(s)] and [RP(s)] are hereafter collectively referred to as "the parties." This MOA shall become effective as of the last date of its execution by the authorized representatives of the parties.

The parties, in order to pursue a [negotiated settlement of possible claims or phased joint assessment (PJA)] arising from [description of discharge], have executed this MOA, which addresses the nature and scope of [settlement negotiations in this case or the PJA].

The parties agree that, by entering into this MOA, neither party is making any admission of fact or law. This MOA shall not be admissible as evidence of proof of liability or nonliability or the validity or nonvalidity of any claim or defense in the above-referenced or other discharge. This MOA shall not prejudice the position of either party in the above-referenced or other discharge, nor shall it be used for any purpose other than the attempted [settlement of this case or PJA].

Recitals

Whereas, the parties to this MOA seek to resolve without further litigation all issues in the [case or PJA];

Whereas, the parties are entering into the negotiations in good faith and agree to consider and discuss all issues that either party deems necessary or appropriate to a final resolution;

Whereas, the parties intend to negotiate in good faith through their expressly designated representatives and do not intend to undermine negotiations through other means or methods;

Now, therefore, based upon the above premises and the mutual covenants and considerations set forth below, the parties agree as follows:

PJA Process and Schedule

The [settlement or PJA] process shall take the (five)-phase approach, described below. The parties will use their best efforts to adhere to the schedule set forth in Attachment A, hereto. This (five)-phase approach and schedule may be modified upon written agreement of the parties.

Phase I—Agreeing to the Settlement Process

During Phase I the parties discussed and formulated a process to engage in substantive settlement negotiations. The agreements of the parties as a result of those discussions are contained in this MOA. If this MOA is negotiated as part of a claim, this MOA will be submitted to the Court in the litigation in conjunction with a joint petition of the parties for a stay of the litigation. Phase II of the settlement process shall proceed upon the Court's approval of such joint petition.

[The following section outlines the maximum extent of agreement between the possible parties. This section is designed to be modular in nature, i.e., one may pick appropriate phases or components to revise and include in a particular MOA.]

Phase II—Preassessment Phase

During Phase II the parties will discuss the technical, scientific, and other issues pertaining to preassessment, particularly as to the type of assessment procedure to conduct for [the expected area of impacts]. The discussions will proceed on the basis of natural resource units. The natural resource units were chosen because they logically lend themselves to segregated discussion. The natural resource units will be:

[Natural resource units may consist of resource categories, e.g., surface waters, geologic units; aquatic resources, including surface water, sediments, fish, etc.; terrestrial resources; acres of particular wetland or other habitat type; certain populations of fish and/or wildlife species; recreational areas.]

The substantive discussions on a particular natural resource unit will proceed according to the Settlement Process Schedule provided in Attachment A as follows:

A. The basis for the [trustee's(s')] trusteeship of the resources and the precise geographical location and extent of the same; and

B. The [trustee's(s')] initial recommendation of the type of assessment procedure to implement for this incident.

Phase III—Assessment/Restoration Phase

During Phase III, the parties will discuss the nature and extent of the injuries, along with the appropriate restoration approach, the cost of implementing that approach, and compensation for resources or services that are not restored. Phase III may be broken down into as many as three components as described below:

A. Injury determination/quantification component:

—Baseline/reference/control conditions
—Change from above conditions
—Quantification of injured natural resources and/or services

B. Restoration Component:

—Development of an approach
—Estimating rate of recovery
—Estimating interim lost uses

C. Economic Valuation Component:

—Estimate lost compensable values

Phase IV—Post-Assessment Phase

During Phase IV, the parties will discuss the actions to be carried out in the Post-Assessment Phase, including the components listed below:

A. Development of Final Restoration Plan.
B. Compensatory Restoration.
C. Accounts and Disbursements.
D. Monitoring.

Phase V—Final Settlement Negotiations

During Phase V, the parties will discuss and attempt to resolve the outstanding issues necessary for a final settlement. If not previously resolved, these will include: (1) The amount of any natural resource damages and assessment costs to be paid to the [trustee(s)] by [RP(s)]; and (2) the contents and details of the final settlement agreement and consent decree.

By the conclusion of Phase V, the parties should have agreed to a settlement agreement and consent decree resolving all issues that will be made available for public review and comment and submitted for court approval. The parties will submit to each other written statements of their positions as necessary during the Phase V discussions. Phase V should conclude no later than _____.

Joint Data

The [trustee(s)] and the [RP(s)] stipulate that each party to the agreement shall be barred from introducing new or different data (information, analysis, etc.) collected outside the joint process to challenge the jointly collected data in either a judicial or administrative proceeding under OPA.

Public Review

During the settlement process, appropriate public review shall be provided as follows:

1. Following the complete execution of this MOA, the MOA shall be submitted to the Court and released to the public. Any subsequent modifications of this MOA shall also be submitted to the Court and released to the public.

2. During Phases II, III, IV, and V of the [settlement or assessment] process, the [trustee(s)] at its discretion may make available for public review copies of any information that it has submitted to the [RP(s)], provided that such information does not contain information submitted by the [RP(s)] to the [trustee(s)] in the [settlement or assessment] process. Ten (10) days prior to any submission of such information, the [trustee(s)] shall deliver to the [RP(s)] a general written description of such information that is sufficient to assure the [RP(s)] that such information will not contain any confidential information submitted by the [RP(s)] to the [trustee(s)] in the [settlement or assessment] process.

3. During Phases II, III, IV, and V, of the [settlement or assessment] process, the [trustee(s)], following the express written agreement of the [RP(s)], may make available for public review any information that the [RP(s)] has submitted to the [trustee(s)].

4. During Phases II, III, IV, and V, of the [settlement or assessment] process, the [trustee(s)] shall make available for public review and comment any final agreements reduced to writing by the parties.

5. The [trustee(s)] negotiators, at their discretion, may meet with the general public or with individual members of the public regarding the status of the settlement process, provided that the [trustee(s)] does not discuss at such meetings information submitted by the [RP(s)] to the [trustee(s)] in the settlement process. The [RP(s)] may have a representative present at the meetings that are open to the general public.

6. At the completion of each phase, the [trustee(s)] shall enter all documentation developed for that phase into the Administrative Record of the [settlement or assessment] process to be made available to the public during the review of the settlement agreement or consent decree.

7. Following the complete execution of any final settlement agreement(s) and consent decree(s) that will be submitted for court approval, the [trustee(s)] shall make such agreement(s) and decree(s) available for public review and comment for a period of ____ days. The [trustee(s)] may hold a public meeting to receive comments during the comment period. The parties agree that any such consent decree(s) shall not be approved as an order of the court until the comment period expires and all comments received have been duly considered by the parties and jointly submitted to the court together with responses and/or mutually agreed amendments to the consent decree(s).

Stay of Litigation

[For Litigation-Driven Assessments]

Upon complete execution of this MOA, the parties shall file the MOA with a joint petition to the Court to stay the litigation in its entirety, including all discovery and motions practice, except as hereinafter provided dealing with matters or issues covered by this MOA. It is agreed that the parties will use their best efforts (provided that such efforts are reciprocal as between the parties) to respond to all Rule 34 F.R. Civ. P. requests for production of documents which were served prior to (some date prior to this MOA). It is agreed that should any disputes over production of documents arise, no motions to compel shall be filed during the pendency of this stay and each party shall reserve its right to file any such motion after the stay is lifted.

In addition, either party at any time may request, in writing, that the other party make available to it, for review and/or copying, documents not previously requested or produced in the litigation that are reasonably required in the negotiation process. Such requests shall be limited in nature and reasonably precise in their description of the documents requested; such requests shall not be burdensome or overly-broad. Further, the parties reserve their right to withhold any such documents that, under applicable law, are irrelevant or qualify as attorney-client or litigation work product materials. It is agreed that should any disputes over document production under this paragraph arise, such disputes shall not affect the [settlement or assessment] process schedule and no motions to compel may be filed during the pendency of this stay; and each party shall reserve its right to file any appropriate discovery requests or motions to compel production of such documents after the stay is lifted.

The parties in their joint petition shall request that the court vacate all deadlines dealing with matters or issues covered by this MOA. The parties agree that the stay of litigation should remain in effect so long as the parties are engaged in the [settlement or assessment] process pursuant to this MOA. If this MOA should terminate prior to a final settlement and court approval of a final consent decree, all litigation shall continue as before, all pending motions shall be recalendered, and all court deadlines shall be reimposed, except all such deadlines shall be extended as set forth in Attachment ____, hereto.

The parties may jointly request the court to designate a mediator or special master, with expertise in natural resource damage actions, for assistance in resolving disputes over legal or other issues upon which the parties cannot agree. Such involvement by the court's designee shall not result in any final or binding decision on any such issue, but rather shall be in the form of mediation assistance to help the parties reach mutual agreement on such disputed issues. The costs for any such mediator or special master shall be shared equally between the [trustee(s)] and the [RP(s)].

Confidentiality

To encourage full and frank discussions, the parties further agree to jointly petition the court to order that the substance of all settlement negotiations are confidential and that all documents and information related thereto, except the parties' joint petition, the court's Order, and the matters described in Section ____ above, shall not be released to anyone outside of the attorneys, consultants, and administrative personnel involved in this action or the negotiations and their principals.

Modification

This MOA may be modified by agreement of the parties. All modifications shall be in writing and signed by authorized representatives of the parties. All modifications shall be submitted to and filed with the court.

Termination

At any time either party may terminate this MOA and the [settlement or assessment] process upon thirty (30) days' written notice to the other party. The stay of litigation shall be lifted thirty (30) days after receipt by the non-terminating party of the notice of termination; and the date upon which the stay is lifted shall be the "MOA Termination Date."

Non-Waiver of Claims, Defenses, and Privilege

Neither party waives any privilege, defenses, or claims that could otherwise be asserted with respect to any claims made or information or data communicated or acquired by virtue of these settlement discussions or related proceedings. Statements made in the negotiation process shall not constitute a waiver of any claims or defenses nor serve any party as a substitute for the need to develop evidence to be used in any litigation now pending or which may subsequently be filed for or against the parties. Neither party will oppose discovery, including the depositions of witnesses, relating to the natural resource damage action on the grounds that the discussions as contemplated herein serve as a substitute for discovery or that discovery shall be repetitive of information obtained during the negotiations. These negotiations shall be conducted pursuant to Rule 408, Federal Rules of Evidence, which shall be binding upon all participants in the [settlement or assessment] process discussions. These negotiations do not protect from discovery any information otherwise discoverable merely because it is presented in these or subsequent negotiations.

Attachment A—Schedule for Performance

[Note: Parties should devise reasonable time tables for each phase and component. Parties should also provide for an expedited process for modifications that may become necessary in the schedule.]

Appendix C to Part 990—Expedited Damage Assessment: Oil Characteristics

Very light refined products, such as gasoline and jet fuel, are extremely volatile and usually evaporate within hours to days after being discharged. They usually contain high concentrations of toxic compounds that can result in high but localized mortality to water-column and intertidal resources. Yet, because of their volatility, they are generally non-persistent and cause little or no residual contamination of sediments and organisms. Where a discharge of these products results in minimal residual contamination of sediments and organisms, the trustee(s) may determine an EDA is appropriate.

Light oil includes diesel, No. 2 fuel oil, and certain light crudes. These oils are considered to be moderately volatile. Up to 50 percent can evaporate within the first 24 hours depending upon the air and water temperatures. Like very light, refined products, light oils contain high concentrations of the most toxic water-soluble compounds and therefore may be acutely toxic to water-column organisms. These oils are moderately persistent and likely to leave residual oil in the environment with the attendant risk of long-term contamination of sediments and chronic toxicity to benthic organisms. Because of these characteristics, the trustee(s) should evaluate discharges of light oil very carefully prior to selecting EDA procedures.

Medium crude oils comprise the third category of oil types. Up to one-third of these oils can evaporate within the first 24 hours leaving a significant amount of oil persistent in the environment. The water soluble fraction is acutely toxic immediately after the discharge. In addition, residual contamination of the sediment creates chronic toxicity problems. However, there are extensive databases regarding toxicity problems associated with the sediment and water column. There are also studies from previous discharges that have documented the effects of the contamination of certain habitats, fish and wildlife. The trustee(s) may adopt the EDA approach where existing data are sufficient to determine injury using limited, focused studies.

Finally, heavy oils, such as No. 6 fuel oil and Bunker C, result in little or no loss by evaporation and have very low water solubilities. These oils can sink in fresh-water habitats and may be highly persistent in both fresh and salt water systems. Acute effects may result from smothering rather than aquatic toxicities. While persistent, the bioavailability and resulting toxicity of the high molecular-weight polynuclear aromatic hydrocarbons (PAHs) is not well known. Where extensive contamination of intertidal or subtidal sediments is likely, it may be necessary to conduct extensive studies, more appropriate for a CDA, to determine the injury to resources and/or services.

Appendix D to Part 990—List of Acronyms

ANPRM—Advance Notice of Proposed Rulemaking.
BNA—Bureau of National Affairs.
CDA—Comprehensive Damage Assessment.
CERCLA—Comprehensive Environmental Response, Compensation, and Liability Act of 1980.
CEQ—Council on Environmental Quality.
CFR—Code of Federal Regulations.
COC—Citizen Oversight Committee.
CV—Contingent Valuation.
CWA—Clean Water Act, as Amended.
DARP—Draft Assessment/Restoration Plan.
DART—Damage Assessment Regulations Team.
DOI—U.S. Department of the Interior.
EDA—Expedited Damage Assessment.
EIS—Environmental Impact Statement.
E.O.—Executive Order.
Fund—Oil Spill Liability Trust Fund.
HVM—Hedonic Valuation Methodology.
LAT—Lead Administrative Trustee.
MOA—Memorandum of Agreement.
MOU—Memorandum of Understanding.
NCP—National Oil and Hazardous Substance Pollution Contingency Plan.
NEPA—National Environmental Policy Act of 1969.
NMFS—National Marine Fisheries Service.
NOAA—National Oceanic and Atmospheric Administration.
NRDAM/CME—Natural Resource Damage Assessment Model/Coastal and Marine Environments.
NRDAM/GLE—Natural Resource Damage Assessment Model/Great Lakes Model.
OMB—Office of Management and Budget.
OPA—Oil Pollution Act of 1990.
OSC—On-Scene Coordinator.
PAH—Polynuclear Aromatic Hydrocarbons.
PJA—Phased Joint Assessment.
QA—Quality Assurance.
RI/FS—Remedial Investigation/Feasibility Study
RP—Responsible Party.
RRT—Regional Response Team.
TCM—Travel Cost Methodology.
U.S. EPA—U.S. Environmental Protection Agency.
U.S.C.—United States Code.
USDA—United States Department of Agriculture.
WTA—Willingness to Accept.
WTP—Willingness to Pay.

[FR Doc. 94-225 Filed 1-4-94; 8:45 am]
BILLING CODE 3510-12-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Part 990

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meetings.

SUMMARY: Section 1006(e)(1) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to promulgate regulations for the assessments of natural resource damages resulting from the discharge of oil. The National Oceanic and Atmospheric Administration (NOAA) is proposing those regulations in a separate Notice in this issue of the **Federal Register.** NOAA also wishes to announce a series of six regional meetings to receive additional comments and permit more detailed discussion of issues presented in today's proposed rule. The meetings will be held during the months of January and February, 1994. The locations of the meetings are New Orleans, LA; Chicago, IL; Atlanta, GA; Boston, MA; San Francisco, CA; and Seattle, WA. Those persons wishing further information should contact NOAA at the address below.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1305 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Linda Burlington or Eli Reinharz, Office of General Counsel, DART, telephone (202) 606-8000, FAX (202) 606-4900.

SUPPLEMENTARY INFORMATION: The Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides for the prevention of, liability for, removal of, and compensation for the discharge, or substantial threat of discharge, of oil into or upon the navigable waters of the United States, adjoining shorelines, or the Exclusive Economic Zone. Section 1006(e) requires the President, acting through the Under Secretary of Commerce for Oceans and Atmosphere, to develop regulations establishing procedures for natural resource trustees to use in the assessment of damages for injury to, destruction of, loss of, or loss of use of natural resources covered by OPA. Section 1006(b) provides for the designation of federal, state, Indian tribe and foreign natural resource trustees to determine resource injuries, assess natural resource damages (including the reasonable costs of assessing damages), present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources under their trusteeship.

NOAA has published eight **Federal Register** Notices, 55 FR 53478 (December 28, 1990), 56 FR 8307 (February 28, 1991), 57 FR 8964 (March 13, 1992), 57 FR 14524 (April 21, 1992), 57 FR 23067 (June 1, 1992), 57 FR 44347 (September 25, 1992), 57 FR 56292 (November 27, 1992), and 58 FR 4601

(January 15, 1993), requesting information and comments on approaches to developing damage assessment procedures. Prior to developing the proposed regulations published in this issue of the **Federal Register** NOAA conducted a public meeting on March 20, 1991, for additional public participation into the process and held four regional workshops during 1991 in Rockville, Maryland; Houston, Texas; San Francisco, California; and Chicago, Illinois, to learn of regional concerns in coastal and inland waters. One workshop held in Alexandria, Virginia, in November, 1991, provided a forum for early discussions of various economic issues likely to be raised during the damage assessment rulemaking process. In addition, on August 12, 1992, NOAA held a public hearing on the issue of whether constructed market methodologies, including Contingent Valuation (CV), can be used to calculate reliably passive use values for natural resources, and if so, under what circumstances and under what guidance. On January 15, 1993, at 58 FR 4601, NOAA published in full the report of the panel commissioned by NOAA to evaluate the reliability of CV in calculating passive use values for natural resources.

The proposed rule published elsewhere in this issue of the **Federal Register** summarizes the written comments received by the agency and issues raised during the public meetings and workshops, responds to those comments, and contains proposed regulatory language.

In order to gather general information and specific comments on the proposed rule, NOAA will hold a series of six regional meetings in 1994, similar to the series held during the development of the proposed rule during 1991. These meetings will be open to the public, however representatives of organizations that have a direct interest in the assessment process are encouraged to attend. Such interested organizations can include, but are not limited to: Federal response and trustee agencies; states; foreign trustees; Indian tribes; industries, or industry organizations; environmental organizations; natural scientists; and economists.

The locations and schedules for these meetings are as follows:

New Orleans, LA, January 10–11
Chicago, IL, January 12–13
Atlanta, GA, January 24–25
Boston, MA, January 26–27
San Francisco, CA, February 7–8
Seattle, WA, February 9–10

Due to the necessary time constraints of the meetings, it is suggested that attendees focus their remarks to the following broad issues: (1) Prespill planning; (2) preassessment phase; (3) assessment planning; (4) simplified assessment procedures; (5) site-specific, detailed assessment procedures; (6) quantification of injuries; (7) valuation of resources; (8) post-assessment actions; and (8) certain legal principles involved in the assessment process.

Dated: December 30, 1993.

Katharine W. Kimball,

Deputy Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 94–226 Filed 1–4–94; 8:45 am]

BILLING CODE 3510–12–P

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15 CFR Part 990

Natural Resource Damage Assessments

AGENCY: National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of cooperative prespill planning.

SUMMARY: The National Oceanic and Atmospheric Administration (NOAA) wishes to announce that, in conjunction with the American Petroleum Institute and Coastal States Organization, six regional workshops are being co-sponsored to allow industry and trustees to begin planning for cooperative natural resource damage assessments. These planning sessions will be held immediately following the six regional public meetings being held by NOAA on the proposed natural resource damage assessment regulations, which are published in a separate notice in this issue of the **Federal Register**. Participation in the workshops will be limited to specific individuals to allow for meaningful discussions. However, these meetings will be open to others interested in observing the process. Those interested in more information should contact one of the organizations listed below.

ADDRESSES: Written inquiries are to be submitted to: Damage Assessment Regulations Team (DART), c/o NOAA/DAC, 1305 East-West Highway, SSMC #4, 10th Floor, Workstation #10218, Silver Spring, MD 20910.

FOR FURTHER INFORMATION CONTACT: Doug Helton, NOAA, 301–713–3038, ext. 197; Grayson Cecil, American Petroleum Institute, 703–464–9664; Ray Perry, Coastal States Organization, 202–508–3860.

SUPPLEMENTARY INFORMATION: In the event of an oil spill, the Oil Pollution Act of 1990 (OPA), 33 U.S.C. 2701 *et seq.*, provides that federal, state, Indian tribal and/or foreign natural resource trustees may determine natural resource injuries, assess natural resource damages, present a claim, recover damages, and develop and implement a plan for the restoration, rehabilitation, replacement, or acquisition of the equivalent of the injured natural resources and their services under their trusteeship. NOAA was directed by Congress to promulgate regulations for the assessment of natural resource damages resulting from a discharge of oil.

In order to foster cooperation between trustees and industry in damage assessments, a series of six prespill planning workshops will be held in 1994, following each of the NOAA regional rulemaking meetings described in a separate notice in today's **Federal Register**. The locations and schedules for these workshops as well as the NOAA regulation review meetings are as follows:

Location	NOAA review meeting	Planning workshop
New Orleans, LA	Jan. 10–11	Jan. 11–12
Chicago, IL	Jan. 12–13	Jan. 13–14
Atlanta, GA	Jan. 24–25	Jan. 25–26
Boston, MA	Jan. 26–27	Jan. 27–28
San Francisco, CA.	Feb. 7–8	Feb. 8–9
Seattle, WA	Feb. 9–10	Feb. 10–11

These sessions will be limited to people from the trustee and industry communities who are familiar with natural resource damage assessment issues and are prepared to represent the views of their government or organization. However, these meetings will be open to others interested in observing the process. The co-sponsors believe that the workshops will be a positive first step toward producing agreed upon ground rules for cooperative natural resource damage assessments. By the same token, they recognize that much will remain to be done afterward. To make cooperative natural resource damage assessment a reality, follow-up efforts will be required.

The central premise of these workshops is that a cooperative approach to damage assessment, as opposed to an adversarial one, will benefit both trustees and industry and will lead to earlier restoration of the injured resources. However, because there is no statutory mandate to plan for cooperative damage assessments in

OPA, development of such a process will have to proceed from a realization by both industry and trustees that the alternative of costly litigation is both inefficient and ineffective.

In the exigency of an oil spill, often the best intentions of trustees and responsible parties are waylaid by the need for hurried decisions. It is more productive to approach a spill with a vigorous plan for cooperation between trustees and responsible parties. If, in the event of a spill, the representatives of the parties have met beforehand and, even tentatively, considered the ground rules for working cooperatively in a scientific investigation aimed toward early recovery of the environment, there is a significantly better chance that litigation can be avoided. Such an approach must involve the planning and development of a model for cooperation before the time of an oil spill, a model that can be applied across the nation. The workshops will consider the draft documents necessary to develop such a model.

Dated: December 30, 1993.

Katharine W. Kimball,

Deputy Assistant Secretary for Oceans and Atmosphere.

[FR Doc. 94–227 Filed 1–4–94; 8:45 am]

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January 7, 1994

Part III

Corporation for National and Community Service

45 CFR Part 2510, et al.
Corporation Grant Programs and Support and Investment Activities; Proposed Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Parts 2510, 2513, 2515, 2516, 2517, 2518, 2519, 2520, 2521, 2522, 2523, 2524, 2530, 2531, 2532, 2533, and 2540

Corporation Grant Programs and Support and Investment Activities

AGENCY: Corporation for National and Community Service.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this rule concerning the Corporation's grantmaking programs and various support and investment activities as authorized by the National and Community Service Act of 1990, as amended by the National and Community Service Trust Act of 1993 (the Act). The activities and grants described in this rule are designed to help address the Nation's human, educational, environmental, and public safety needs through national and community service. This rulemaking describes the different types of national and community service programs the Corporation may support, funding available for those programs, processes by which grants will be awarded, training and technical support services available for program development and applications, and Corporation plans to invest in service infrastructure.

DATES: Comments on the proposed rule, as well as the draft applications, must be received no later than February 7, 1994.

ADDRESSES: Comments may be mailed to the Corporation for National and Community Service, P.O. Box 34680, Washington, DC 20043–4680. Comments received may also be inspected at the Corporation for National and Community Service, Office of the General Counsel, Room 9200, 1100 Vermont Avenue, Washington, DC 20525, between 9 a.m. and 5 p.m.

The Corporation also will make available copies of drafts of applications for programs described in these regulations. These applications may be obtained by writing to the above address.

FOR FURTHER INFORMATION CONTACT: Terry Russell, (202) 606–4949 (Voice) or (202) 606–5256 (TDD), between the hours of 9 a.m. and 6 p.m. Eastern Standard Time. For individuals with disabilities, information will be made available in alternative formats, upon request.

SUPPLEMENTARY INFORMATION: The Supplementary Information section explains the basis and purpose of the proposed regulations—providing a context for understanding the policy decisions that underly them—and provides information on the Corporation's plans for fiscal year 1994. This Supplementary Information section should not be viewed as comprehensive. Congress made numerous policy decisions that went into the writing of the Act. These decisions, along with minor decisions made by the Corporation in interpreting the Act, are not discussed.

Invitation to Comment

Regulations

The Corporation invites written comments on the text of the proposed regulations and requests that the comments identify the specific regulatory provisions to which they relate. However, comments on the Supplementary Information section should focus on policy issues rather than specific language or construction.

Applications

Interested parties may obtain copies of drafts of the various grant applications from the Corporation as they become available. These applications will be in draft form, however, and should not be used to apply for funds. The forms are being reviewed by the Office of Management and Budget. We estimate that, on average, it will take approximately ten hours to fill out each of the forms. Any comments on the forms should be sent as soon as possible to the Corporation at the above address, as well as to the U.S. Office of Management and Budget, Attention: Steve Semenuk, New Executive Office Building, room 3001, Washington, DC 20503.

The Corporation's Mission and the Purpose of This Rule

Overall Mission

The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service.

Purpose of this Rule

The purpose of this rule is to establish policies and procedures for the activities the Corporation will undertake to achieve the goals described above. This rule should serve as a guide to explain the eligibility requirements, application processes, selection criteria, program requirements, and other relevant information for individuals, programs, public and private nonprofits, institutions of higher education, States, Indian tribes, and other entities wishing to participate.

Impact of Programs

All programs under the National and Community Service Act have in common the goal of achieving three types of impact: "getting things done," improving the lives of participants, and strengthening the ties that bind communities together. All programs, whether they involve elementary school children or senior citizens, are equally able to achieve the last "community-building" impact—by involving people of different backgrounds together in a common effort, by promoting civic responsibility so that every member of a community feels responsibility for its stewardship, and by breaking down barriers of mistrust and misunderstanding. The other two impacts are weighted differently for different program types based on the age and experience of the participants.

At the one extreme, the service-learning programs for school-age youth may indeed help to solve the pressing problems of communities, but their primary impact will be and should be on the lives of the participants. They should improve their educational motivation and achievement, citizenship skills, teamwork, and problem solving abilities. At the other extreme, for a professional corps of adults who are highly educated and highly skilled, the primary impact must be on getting things done in communities, with the receipt of an educational award for loan repayment as the main participant impact. Given the higher costs of these programs and the advanced education level of the participants, it is imperative that the work they do be highly valued by communities and the Nation. Programs like youth corps, which lie somewhere in the middle in terms of age and education level of participants, should achieve a balance of impacts. By keeping this calculus in mind, potential applicants can appropriately gauge the amount of program resources that should be dedicated to participant

education, life skills training, and other types of participant support.

STATE PLAN ISSUES

(1) General Purpose

Section 178(e) of the Act requires every State Commission to prepare a national service plan (the "State Plan") for submission to the Corporation for approval. The law requires that the State Plan (a) be developed through an open and public process that ensures outreach to diverse community-based agencies that serve underrepresented populations, and (b) cover a three year period and be updated annually. With the exception of section 122(c) of the Act, which requires each State to establish State-based priorities through the State Plan, the law is silent as to the overall purpose and content of the plan itself.

In part 2513 of this rule, the Corporation has clarified the purpose of the State Plan, indicating the information it must contain and the criteria by which it will be evaluated. In general, the Corporation intends for the State Plan to be an essential component of a State's overall application; it should indicate a State's strategy for supporting national and community service activities—including proposed programs and other volunteer activities—within the State. The State Plan is intended to bring diverse constituencies within the State together for the purpose of promoting and supporting national and community service, and it will be a factor in the Corporation's evaluation of State applications.

(2) Development of the State Plan

The State Plan should be developed through an open, public and inclusive process (such as through regional forums, hearings, or other means) that provides for maximum participation and input from national and community service programs within the State and other interested individuals, including representatives of the private sector, organizations involved in meeting educational, public safety, human, and environmental needs, community-based organizations, and constituencies that might not otherwise be formally involved with national and community service programs. The State Plan should also be developed in a non-partisan, non-political manner.

(3) Required Components

Section 2513.30 of this rule details the required components of the State Plan. The following information is provided as supplemental information on three aspects of the Plan:

(a) *Overview of State experience and "historical context" for service programming.* The State Plan, especially in the first year, should provide a context for understanding the development of national and community service activities within the State, including the extent to which the State has been involved in the development or support of such activities. It should also provide an overview of the broad array of organized service activities within the State, including, to the extent practicable, activities not funded by the Corporation. The primary goal for this section is to gain a "snapshot" of service within the State, and to determine the extent to which States have an established infrastructure to support high quality national and community service programs, including the capacity to provide technical assistance to prospective applicants and funded programs. In this regard, the Plan will provide a baseline against which the Corporation may assess future progress and activities.

(b) *Establishment of goals and priorities.* This section of the plan should detail the goals and strategies identified by the State to achieve the purposes of the Plan set forth above. In addition, any State priorities that will govern the programs proposed for support with formula funding should be clearly identified and explained, including if appropriate a description of why the priorities were established and how they relate to the national priorities established by the Corporation.

(c) *Description of process.* The State Plan must specifically describe the manner in which the State has conducted an open and inclusive process to develop the State Plan and the priorities.

(4) Evaluation Criteria

The State Plan will be evaluated on two principal criteria: quality and sustainability. These criteria are described in part 2513.40. In addition, the quality of the State Plan itself will also be factored into the Corporations overall evaluation of a State Commission's application. Specifically, the submission of a State Plan that meets the quality criteria established by the Corporation is an eligibility requirement for States seeking formula funding under the national and community service grant program. The quality of the State Plan will also be factored into the Corporation's selection of programs for competitive State funding. Finally, the Corporation may consider the quality of the State Plan in determining whether to renew State Commission administrative support under part 2550 of this rule.

SERVICE-LEARNING ISSUES

The K–12 service-learning programs—i.e., the school- and community-based programs described in parts 2516 and 2517 of this rule—as well as the Higher Education service-learning programs described in part 2519 of this rule, aim to engage school-age youth and students of all ages in activities to help meet the educational, public safety, human, and environmental needs of America's communities. Service-learning programs provide participants with structured, sometimes curriculum-based opportunities to reflect on and learn from their service experiences, often enhancing their academic skills, their sense of civic responsibility, their ability to solve community problems, and their understanding of important concepts such as community, diversity, and citizenship.

In similar ways, the higher education programs strive to develop the academic and civic skills of students by supporting efforts of colleges and universities to help meet community needs.

(A) K–12 SERVICE-LEARNING ISSUES

(1) Coordination With State Plans

Any State or grantmaking entity that applies for school-or community-based K–12 service-learning support must coordinate its service-learning activities with the development of the comprehensive State Plan described in part 2513 of this rule. This requirement is designed to facilitate the integration of K–12 service-learning programs into the overall national service efforts of each State.

The Corporation will consider the extent and quality of coordination with the development of the State Plan in assessing the merits of applications submitted by States or grantmaking entities. However, because State Plans will be in different stages of development, any applicant that makes a good faith effort at coordination will not be disadvanteged in the selection process.

(2) Terms of Grants

The Corporation has set the maximum term of most grants at three years, subject to satisfactory performance and annual appropriations. In addition to facilitating coordination with the State Plan, the three year term (a) allows programs to evolve and improve over time, learning from mistakes and making adjustments to ensure quality, and (b) allows the Corporation to track

and learn from the development of programs over time.

A one-year term will be set for planning grants made to school-based program applicants, as well as grants to local partnerships States not participating. This policy reflects the purpose of a planning grant: to move programs from a sound program concept to the brink of implementing a fully operational program. These grants thus should be used for such activities as seeking community input, building partnerships, developing curricula and materials, recruiting staff, etc.

(3) Treatment of ACTION Student Community Service Program and Commission on National and Community Service Grantees

High quality programs that received ACTION Student Community or Commission funds are encouraged to seek Corporation grants.

(4) Stipends

The Act prohibits using school-based service-learning funds to provide stipends to participants. With this rule, the Corporation extends this restriction to Corporation funds awarded to community-based service-learning programs in order to conserve and focus the relatively small amount of funds available for community-based programs.

(B) HIGHER EDUCATION SERVICE-LEARNING ISSUES

(1) Coordination With State Commissions

The Act is silent on the extent to which Higher Education service-learning programs should be coordinated with State Commissions. In considering this issue, the Corporation sought to balance (1) a desire to promote coordination among national and community service programs within each State, with (2) the concerns that programs not be unduly burdened with bureaucratic procedures and that the Corporation, as the direct funder of Higher Education service-learning programs, retain control of selection, monitoring, and evaluation.

As a result, in fiscal year 1994 the Corporation is requiring an assurance that, prior to submitting a Higher Education service-learning application, applicants will send one copy of the final proposal to the State Commission in each State where the program will operate. The State will have no part in selecting programs to be funded. However, as stated in the selection criteria of the application, evidence of support from a State Commission or consistency with a State comprehensive plan may improve the competitiveness of a program in the review process.

(2) Educational Awards

Section 119(f) of the Act states that "a participant in a program funded under this part shall be eligible for the national service educational award if the participant served in an approved national service position." However, the Act provides no guidance on what kinds of Higher Education service-learning programs involve participants in positions eligible to be approved AmeriCorps positions.

Since institutions of higher education are eligible to apply for AmeriCorps program support, campus-based programs fitting one or more of the AmeriCorps program types described in § 2522.110 should apply as AmeriCorps programs rather than as Higher Education service-learning programs. This reflects the idea that Higher Education service-learning programs should have a distinctive service-learning emphasis; it was not intended to be a grant program that merely supplements the AmeriCorps funds.

The Corporation examined whether certain other types of positions in a Higher Education service-learning programs should be provided AmeriCorps educational awards. In § 2519.320 of this rule, the Corporation retains flexibility on this issue. In the fiscal year 1994 application, the Corporation expects to provide AmeriCorps educational awards only to programs with positions designed to increase participation in community service on campus, to develop projects and partnerships in the community, or to facilitate service-learning in campus-based programs. They are similar to other AmeriCorps positions such as service-learning coordinators for school-based service-learning programs or crew leaders in youth corps. Positions of this type are essential for the longevity and progress of the service movement.

Any Higher Education service-learning program whose participants receive educational awards must meet the minimum AmeriCorps program requirements described in Section 2522.100 of this rule. As Higher Education service-learning programs, however, they will be reviewed according to selection criteria and priorities that apply to all Higher Education service-learning applicants.

(3) Treatment of Existing Grantees of the ACTION Student Community Service Program and the Commission on National and Community Service

ACTION and Commission grantees may seek funds to continue and build on activities carried out under their current grants. In the fiscal year 1994 application, the Corporation requires these grantees to submit an application that will be reviewed on a competitive basis according to the selection criteria applicable to all Higher Education service-learning applicants. However, the Corporation will give preference to applicants that offer evidence of positive performance relative to stated objectives under their existing grants. This policy is consistent with the Corporation's intent to select among all Higher Education service-learning applicants on the basis of quality, while giving existing grantees in good standing sufficient opportunity to develop and become self-sustaining.

Applicants for renewal funding are expected to reduce their dependence on Federal funds and to demonstrate clearly their potential for sustainability, in accordance with the guidelines in the application.

(4) Priorities

This rule gives priority to proposals that (among other characteristics) demonstrate the commitment of the higher education institution as a whole and specify how grant funds will be used to strengthen the capacity of institutions of higher education to support service.

The Corporation aims to fund programs supported not only by students but also by the college or university presidents, faculty members, and even trustees. An institutional commitment, beginning with the institution's top leadership, enhances program quality and sustainability by making resources from diverse areas of the institution available to the program, by ensuring continuity of the program as students come and go, and by signaling to the community that the institution views the program as an integral part of—not an "add-on" to—its core functions.

Moreover, as colleges and universities across the Nation develop more model programs, the Corporation aims to fund efforts to link individual initiatives within a campus or across several campuses in supportive networks that facilitate replication of effective models, delivery of training and technical assistance, access to information and resources, development and dissemination of materials, and evaluation of impacts. These activities, which build the capacity of higher education institutions to improve the quality of community service and service-learning programs, require strong infrastructures within and across institutions.

AMERICORPS PROGRAM ISSUES

Section I: Programmatic Issues

(A) Overview and Purpose of Grant Program: "Getting Things Done"

AmeriCorps is about getting things done. It will engage the energy and idealism of the American people, especially young people, in addressing the most critical educational, public safety, human, and environmental needs of our communities. It will strengthen communities and the civic character of our people through service, and reward those who answer the call to service with enhanced educational opportunity. The purpose of the AmeriCorps grant program, therefore, is to support locally driven programs that meet rigorous national standards. This strategy will enable communities across the Nation to channel the unique talents and creativity of America toward effectively addressing these most important needs. For these efforts to be successful, however, it is essential to ensure that they provide direct and demonstrable benefits that are valued by communities.

To achieve this outcome, the Corporation has attempted through these regulations to provide clear guidance to programs seeking assistance under the grant program. First, the regulations clarify the nature of service activities eligible for support under the Act. Second, to enhance the collective impact that all programs will have within the four broad issue areas specified by law, the Corporation has also exercised its authority to establish national priorities. Third, to ensure that each of the diverse programs supported through the grant program is of the highest possible quality, the Corporation has also specified minimum program requirements that all programs must address. And finally, the Corporation has clarified issues pertaining to participant eligibility and benefits.

(B) Eligible Service Activities

(1) Description of Eligible Service Activities

There are numerous pressing needs throughout our communities that may be appropriately addressed by AmeriCorps programs. But given the realities of limited resources and the extent to which other public, private and non-profit responses to many of these needs already exist, it is important that an AmeriCorps program undertake activities that are appropriate to the program's overall mission and capacity and that achieve the greatest positive impact possible. To this end, the Corporation has provided a framework for eligible service activities that builds on the parameters specified in the law.

The Corporation's proposed regulation (as set forth in part 2520) limits service to activities that provide a direct benefit to the community where they are performed or that involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. The Corporation determined, based upon the inclusion in the Act of several program types involving such supervision, such as service-learning coordinator programs, that Congress intended for supervision of participants or others performing service to be included as an eligible service activity, provided that the service of those supervised would itself qualify.

In determining whether service "provides a direct benefit to the community where it is performed," the Corporation will take into consideration several factors, including whether the service must be performed physically in the community to be effective and whether the service brings participants face-to-face with residents of the community served or in contact with the physical environment that is the "beneficiary" of the service. Direct service includes physical projects like renovating low-income housing or creating a playground in a vacant lot, as well as less tangible projects like tutoring, mentoring and conflict resolution.

To further define what constitutes a "direct benefit," the Corporation's proposed regulation offers several examples of activities that would not meet this test: fundraising, clerical work, and research. This list is not intended to be limiting; other activities may also fail the "direct benefit" test. However, if an activity does not provide a direct benefit, it is not necessarily altogether prohibited. Rather, unless it falls into one of the "prohibited" categories discussed below, the activity may be performed if it is incidental to the direct service. For example, a team whose project involves providing meals, transportation, and health services to the homebound might conduct a door to door survey of community residents to help locate those in need of services; if they then went on to provide those services, this kind of research would be an appropriate activity for the team.

(2) Prohibited Activities

Prohibited activities (specified in § 2520.30) may not be performed by participants in the course of their duties, at the request of program staff, or in a manner that would associate the activities with the AmeriCorps program or the Corporation. These activities include: influencing legislation, as defined in the section of the IRS code relating to non-profit organizations; organizing protests, petitions, boycotts, or strikes; assisting, promoting or deterring union organizing; participating in partisan political activities; and performing religious activities, such as conducting worship services or engaging in religious proselytization. Of course, participants may engage in any of these activities at their own initiative, on their own time, and in a manner that is not associated with their participation in the program.

(3) General Guidance

In all cases, service activities must result in a specific identifiable service or improvement that otherwise would not be provided with existing funds or volunteers and that does not duplicate the routine functions of workers or displace paid employees. Further, service opportunities should be appropriate to the skill levels of participants, and they should provide a long-lasting, identifiable, and demonstrable benefit that is valued by the community.

While the Corporation reserves the right to further restrict eligible service, it has not done so because it recognizes that the character of service often depends on its content and context. For example, distributing leaflets may provide a "direct benefit" if the leaflets inform readers about the availability of free immunizations or how to conserve energy in the home. Conversely, distributing leaflets supporting a political candidate, or urge individuals to write their legislators about an issue, would be prohibited. Given the great educational, public safety, human, and environmental needs of our communities, it should not be difficult for programs to identify projects that clearly provide a direct benefit.

(C) Establishment of State and National Priorities

(1) State Priorities

As discussed earlier, States must establish and, through the State planning process, periodically alter priorities in the areas of educational, public safety, humen, and environmental needs. These priorities apply to programs that receive assistance (funding or AmeriCorps educational awards) provided on a formula basis as described in § 2521.30(a)(1). The State priorities will be subject to Corporation review as part of the AmeriCorps application process

under Subpart C of part 2522 of this rule.

(2) National Priorities

In order to concentrate national efforts on addressing certain educational, public safety, human, and environmental needs, the Corporation will establish and, after review of the strategic plan approved by the Corporation's Board of Directors, periodically alter priorities regarding the AmeriCorps programs that will receive assistance (funding or AmeriCorps educational awards) and the purposes for which such assistance may be used. These priorities apply to assistance provided on a competitive basis as described in § 2521.30(a)(2) and (b)(3), and to any assistance provided through a subgrant of such funds.

(a) *National Priorities for Fiscal Year 1994.* For fiscal year 1994, the Corporation has established the following national priorities within each of the four broad issue areas:

(i) Education. (A) School Readiness: Furthering early childhood development; and

(B) School Success: Improving the educational achievement of school-age children.

(ii) Public safety. (A) Crime Prevention: Reducing the incidence of violence; and

(B) Crime Control: Improving criminal justice services, law enforcement, and victim services.

(iii) Human needs. (A) Health: Providing independent living assistance and home-and community-based health care; and

(B) Home: Rebuilding neighborhoods and helping people who are homeless.

(iv) Environment. (A) Neighborhood Environment: Reducing community environmental hazards; and

(B) Natural Environment: Conserving, restoring, and sustaining natural habitats.

(b) *Application of Priorities to Programs.* The National priorities established by the Corporation apply to programs seeking State competitive and national direct grants from the Corporation, as specified in § 2521.30 of this rule. Programs included in the State formula application are not governed by these priorities, but rather by priorities established by the State consistent with part 2513 of this rule. A more thorough description of how these National priorities will affect program selection in each of the major grant areas is described in Section II, Subsection B, Number 3 of this Supplementary Information section, below.

(D) Minimum Program Requirements To Ensure Quality

In an effort to ensure that all programs supported by the Corporation are high quality, the Corporation has specified a number of minimum requirements (in addition to those already provided in the law) that all programs must satisfy. These provisions, specified in § 2522.100 of this rule, seek not only to enhance the quality of individual programs, but to further the ability of each program to contribute to the achievement of the overall goals and purposes of AmeriCorps as set forth by the Corporation.

Because the minimum program requirements represent elements essential to the success of any AmeriCorps program, every program receiving assistance from the Corporation through part 2522 of this rule is required to address each requirement. The following sections discuss the most salient of these requirements:

(1) Getting Things Done

First and foremost, every AmeriCorps program that receives funding or AmeriCorps educational awards from the Corporation must address educational, public safety, human, and environmental needs, and provide a direct and demonstrable benefit that is valued by the community. This requirement reflects the Corporation's intent to make efficient use of limited funds—to have every grant made to an AmeriCorps program in some way help to address our Nation's most pressing needs.

(2) Strengthening Communities

In addition to addressing the Nation's most pressing community needs, the Corporation also seeks to strengthen the communities in which we live through AmeriCorps programs. As social and economic forces continually drive people apart, the need arises to promote opportunities for diverse Americans to enjoy common experiences and share common values that, in the words of the President, "strengthen the cords that bind us together as a people." Thus, the Corporation has established the requirement that each program must seek "to strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic backgrounds, educational levels, among both men and women and individuals with disabilities."

This requirement reinforces several of the Corporation's goals for AmeriCorps. First, it affirms that a necessary ingredient of active, productive citizenship is the ability of diverse citizens to live and work together, notwithstanding differences in race, class, gender, physical or mental ability, etc. Second, the requirement supports the objective of strengthening not just individual relationships among people, but the collective relationships among all Americans as expressed in the spirit of community and in citizens' sense of personal responsibility to that community. Third, it acknowledges that diversity within programs can be an effective resource for community problem-solving. Finally, the requirement supports a number of legislative objectives and requirements found within the Act.

For example, an initial finding of the statute is that "Americans desire to affirm common responsibilities and shared values, and join together in positive experiences, that transcend race, religion, gender, age, disability, region, income, and education." Furthermore, section 179 of the Act instructs the Corporation to evaluate programs based on their effectiveness in "recruiting and enrolling diverse participants * * * based on economic background, race, ethnicity, age, marital status, education levels, and disability." These legislative provisions thus reinforce the Corporation's objective.

One way in which this important objective may be accomplished is to involve diverse participants in programs. Therefore, the Corporation requires each program to seek actively to engage participants from diverse backgrounds in AmeriCorps, including individuals from the community served. It also recognizes that in practice, it is not always possible (or in some cases desirable) for this objective to be realized in every case. Specifically, the Corporation recognizes two instances in which programs may lack diversity in one or more ways:

First, despite its best efforts, a program simply may be unable to recruit the participants necessary to achieve diversity in some respect. In recognition of this the Corporation requires that programs "seek to achieve" rather than "ensure" diversity. However, programs will be required to specify the specific strategy or activities to be undertaken to recruit participants in accordance with this provision.

Second, some programs may have legitimate, substantive or philosophical reasons to involve individuals who share a particular characteristic. Examples of such programs include, but are not limited to the following: (1) A youth corps or other program might be designed to impart specific job skills and provide basic education through service-learning and thus might lack educational or economic diversity by design; (2) a professional corps that requires participants to possess specific post-secondary training necessarily would lack educational diversity.

Although such programs would thus lack diversity in one or more of the required aspects, they nevertheless must strive for diversity in other areas. For instance, a professional corps enlisting participants of a common educational background would still be required to seek to include a racially and ethnically diverse group of individuals, individuals with disabilities, and both men and women. Equally important, all programs should undertake activities that will provide opportunities for citizens who might not otherwise serve, work or learn together to do so, regardless of what the overall composition of the program might be.

While the Corporation is committed to making AmeriCorps opportunities available to Americans of all backgrounds, it will also ensure, consistent with the Act, that at least 50 percent of Corporation funds provided to States will go to programs that operate in areas of greatest need and that place a priority on recruiting participants who are residents in these high need areas (as specified in § 2521.30(a)(3)(iii) of this rule), or on Federal or other public lands. The Corporation does not consider this requirement, which affects the overall national composition of programs and participants, at odds with its goals of encouraging the participation of citizens of all backgrounds.

The Corporation recognizes that recruiting and retaining diverse participants requires special efforts. This is particularly true for qualified individuals with disabilities, including people with mental disabilities. Because the Corporation intends to assist programs in achieving the goal of diversity, the Corporation anticipates making technical and other assistance available to programs to assist in the attainment of recruitment goals. In addition to program development assistance for strengthening recruitment or outreach components of individual programs, the Corporation will make other resources available to programs, including financial support for programs seeking to involve qualified individuals with disabilities (as described in § 2524.50 of this rule), as well as referral information on participants identified through the national recruiting system described in § 2522.210 of this rule and in section (E)(3), below.

(3) Participant Selection Requirements

Through this rule, the Corporation offers guidance to programs regarding participant selection. First, the proposed regulation encourages programs to select participants who possess leadership potential and a commitment to the goals of the AmeriCorps program. This guidance is not intended to discourage the enrollment of individuals who have not attained educational or job success; rather, it acknowledges that within every social strata, there are people who possess leadership ability that has not been tapped or directed at productive activities. Second, the regulation calls for programs to select participants in a non-political, non-partisan, and non-discriminatory manner. The third participant selection rule is found in the Act itself—the requirement that programs establish minimum qualifications for participants. Among other things, this provision prohibits AmeriCorps participants from performing service that (1) is or was recently performed by paid employees (2) would infringe upon the promotional opportunities of paid employees (3) would supplant the hiring of employees or (4) would reduce the hours, wages, or benefits of paid employees.

Finally, although the Corporation expects that most programs will involve young adults or recent college graduates as participants, the regulations encourage programs to consider intergenerational approaches because of the natural mentoring relationships that arise in these programs. For example, a youth corps might involve seniors on each crew or a corps of young attorneys might include retired lawyers volunteering on a part-time basis.

In addition, the Corporation may require programs to establish pre-service orientation and training periods for participants. The goal of such periods would be to establish a common orientation process for all programs and participants that would be tied to the efforts to create a national identity. The Corporation might specify, for example, that the official AmeriCorps logo may not be worn until participants have satisfactorily completed the orientation period and have been officially enrolled in the program through the administration of a national oath. These efforts, among other things, may reduce prospective attrition rates and contribute to a positive *esprit de corps* across programs.

The statute also directs the Corporation to establish a national leadership pool and a national system for the recruitment of participants; States also must establish recruitment systems. National and State recruitment will contribute to the diversity of the overall participant pool by supplementing local recruitment with participants from across the Nation and with participants who possess specialized skills or training. The national and State recruitment efforts will also facilitate the participation of individuals who desire to serve but live in areas where there are few or no AmeriCorps programs available. The Corporation may therefore require programs to select a small percentage of participants from the national recruitment pool. In addition, as specified in the application materials, the Corporation may provide for the coverage of certain relocation expenses for a limited number of participants who are recruited through the national referral system. While the Corporation will not require programs to select any participants through the national system in fiscal year 1994, programs are strongly encouraged to do so.

(4) AmeriCorps Identification

In addition to those activities noted in paragraph (3) above, the Corporation will also require programs to agree to identify themselves as part of a larger national effort and to participate in such AmeriCorps activities as the Corporation may specify. Examples might include the use of a national logo or common application and informational materials as well as participation in special activities such as a national service day, a conference or common training, or the use of a common orientation component. This provision would not preclude an AmeriCorps program from developing its own training or materials, or from using its own name as the primary identification for the program. These efforts not only will enhance the visibility of the AmeriCorps programs but will contribute to a national recognition of the value and importance of the work being undertaken by the programs.

(5) Promoting Active, Productive Citizenship

In addition to "Getting Things Done" in communities throughout the Nation, another central goal for all AmeriCorps programs is to promote active, productive citizenship on the part of all participants, which may include fostering a sense of personal responsibility and a life-long ethic of service. To this end, programs are encouraged to design projects that employ service-learning methods to enhance participants understanding of the relationship between the activities

undertaken to address needs and the larger social context in which the efforts are made. In addition, programs must provide participants with appropriate training and support to carry out assignments, including background information on the community in which the service will be performed and on why the particular project is needed. Finally, because AmeriCorps programs seek to promote active citizenship, and because voting is a critical component of citizenship in any democracy, every program must encourage, in a non-partisan manner, each participant eligible to do so to register to vote.

(6) Start of Operations

To further the goal of creating a national identity for programs, this rule requires all programs to agree to begin operations at such times as the Corporation may reasonably require. Creating "classes" of participants who all begin and "graduate" from their terms of service during the same time period will foster a greater sense of national identity. The Corporation's current policy requires participants to begin service in June, September, or January. The Corporation may waive this requirement for programs that can demonstrate compelling reasons for alternative starting dates.

This requirement should also contribute toward the achievement of other programmatic goals. For example, common schedules and operating timelines will enable the Corporation to support, where appropriate, staff and participant training. In addition, this provision will enable many programs' term of service to treck the traditional school year, making the recruitment of college and college-bound participants easier. For example, a program that begins in January and ends in October would require participants to miss two years of school, whereas a program that begins in September and ends in June would only require participants to miss one year of school.

In addition, this rule states that programs must agree to comply with any policy the Corporation may implement regarding filling approved AmeriCorps positions left vacant by attrition. The Corporation is currently considering a policy which would allow programs to fill such vacant positions only within the first month of the enrollment of a given class of participants. The Corporation encourages interested parties to comment on this proposed policy. This provision is aimed at providing a sense of cohesion within each AmeriCorps program. Experience shows, especially in team- or crew-based programs, that the process of continually filling positions left vacant by attrition tends to erode the sense of teamwork and identity among participants and can interrupt an efficient flow of operations, thereby affecting the quality of service provided in the community. Through this provision, the Corporation would require programs to wait until the next approved intake period before enrolling additional participants.

(7) Allocation of Educational Awards Within Programs

Because of the limited amount of funding available for program assistance, the Corporation anticipates that in some cases programs (especially existing programs) may not apply for or receive adequate support for all participants enrolled in the program, and the potential may thus arise for some participants (who are serving in approved AmeriCorps positions) to receive AmeriCorps educational awards while others do not. The Corporation is therefore requiring every applicant to describe the rationale for its distribution of educational awards to program participants in those cases where distinctions among participants are necessary. In general, this distribution should treat equally all participants doing the same or essentially similar work. This reflects a matter of principle as well as a pragmatic concern for the equal treatment of participants within a single program.

The Corporation recognizes that equal treatment may not be feasible or desirable in some instances. For example, an intergenerational program or a program with a specialized component or division assigned special projects may make distinctions among participants that justify the provision of educational awards to some but not to others. Similarly, a program may choose to offer alternative post-service benefits to participants in lieu of the AmeriCorps educational awards provided by the Corporation. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards. The Corporation will evaluate on a case-by-case basis the rationales of programs that do not plan to provide all participants with educational awards. However, the Corporation anticipates that it will not approve rationales based solely on a determination of economic need of participants.

(8) Evaluation Requirements

In order to ensure that only high quality programs continue to receive Corporation support, AmeriCorps programs must perform continuous monitoring and evaluation. The provisions of this rule emphasize the importance of monitoring and evaluation at all levels—by individual programs, States or grantmaking entities, and the Corporation.

This rule allows programs to conduct internal rather than independent evaluations. The Corporation will conduct independent evaluations at the national level because, due to economies of scale, that is where they will be most cost-effective. Each program, State, and grantmaking entity must collect data and cooperate fully in all of the Corporation's monitoring and evaluation activities.

A key provision of the Corporation's evaluation strategy requires all programs to set annual objectives in concert with the Corporation and applicable grant-making entity. Programs will be required to track, and report to the Corporation, progress towards these objectives. Programs will be evaluated annually, in part, based on their success at achieving their objectives.

Finally, this rule promotes continuous quality improvement and provides examples of techniques available to programs.

(E) Program Types and Size

(1) Program Types

Section 2522.110 of this rule lists fourteen discrete types of service programs that may qualify for AmeriCorps program funding. These types, while sharing the goal of meeting our Nation's pressing needs, differ in terms of which need is addressed, how the participants are organized, the age and background of the participants, and the nature of the sponsoring organization.

After careful and thorough consideration, the Corporation decided not to include in the regulations any program types not listed in the Act. This decision is not an attempt to restrict the types of eligible AmeriCorps programs. On the contrary, it was specifically intended to leave open-ended the types of programs that may be eligible.

The Act states that the Corporation may designate other AmeriCorps types aside from those listed to qualify for AmeriCorps grants. The Corporation decided that instead of attempting to list additional types of programs, it would interpret this provision broadly, allowing for the eligibility of any program type that meets the criteria applicable to all programs.

The fourteen program types listed are clearly eligible for support, and they may serve as guidelines for developing programs. However, programs that meet

the Corporation's eligibility and quality criteria but that do not fit one of these types will not be disadvantaged in the selection process. Conversely, because the Corporation wishes to fund the highest quality programs that meet the Nation's most pressing needs, the Corporation will not give priority to a program simply because it fits the description of one of the listed program types.

Finally, any organization considering applying should determine whether they are more appropriately a project sponsor than a program. A program is responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects. While the program may also serve as the project sponsor by supervising the day-to-day service of participants, the program may instead place participants in projects overseen by another organization.

For example, a local police department could apply for funds to run a community policing support program. It would recruit and select participants, train them, and supervise them in a variety of projects. In this case, the police department would be both the program and the project sponsor. Alternatively, an organization that runs a program may work in collaboration with one or more other organizations that will serve as project sponsors. For example, a community-based organization (CBO) may apply for funds to operate an early childhood development corps. The CBO, as the program, would recruit and select participants, provide them with specialized training in child development, and bring them back together regularly for additional training and other activities. The participants would be assigned individually or in small groups to child care, Head Start, and preschool programs in the community, which would serve as project sponsors.

In general, organizations who can engage productively no more than four participants or that lack the capacity to perform the duties, required of programs should consider becoming project sponsors. Such an organization may form a partnership with another organization in the community with a shared vision and mission that is interested in becoming a program sponsor. Together, the organizations in the partnership should be able to present a coherent program, including common training and ongoing group activities, rather than a loosely federated consortia with unrelated elements. Such an organization may also contact the State Commission for information about funded programs in the area that might place participants with the organization, or contact the State ACTION office about the possibility of a VISTA being assigned there.

(2) Minimum Program Size

It is extremely important for all programs, regardless of type, to be large enough to achieve a demonstrable impact on the community served. Thus, while the actual size of each program may vary depending on the size of the community in which it operates, the design of the program, and other factors, in general the Corporation encourages programs to enroll at least twenty full-time equivalent participants, regardless of whether participants are placed individually or in teams. And while the Corporation will likely fund programs that exceed this preferred minimum size, any applicant seeking support for a program that does not intend to enroll at least twenty participants should demonstrate why a smaller program is necessary or appropriate to a specific circumstance.

This guideline should not only enhance the impact that programs will have on a particular issue or within specific communities, but it should also increase the ability of the Corporation and State Commissions to ensure the delivery of high quality programming and compliance with legislative and regulatory requirements. Accomplishing these outcomes would be significantly more difficult with many small groups of participants dispersed throughout a State or region.

It is important to note that this requirement relates to programs, not to project sponsors. Thus, while programs should enroll at least twenty participants, there is no minimum requirement for the number of AmeriCorps participants which may be placed in an approved service site or organization.

(F) Participant Eligibility and Benefits

(1) Terms of Service

Section 2522.220 specifies appropriate definitions and guidance pertaining to terms of service. This rule clarifies that participants shall receive benefits, including AmeriCorps educational awards, only for their first two terms of service, regardless of whether those terms of service are full-time, part-time, or a combination of both. It also establishes that admission to a second or further term of service is contingent upon successful completion and a positive performance review of the first term. (§ 2522.220(c)(i) of this rule explains the performance review.)

Participants and programs have substantial latitude in mixing different types of terms of service. For example, a high school graduate could participate full-time in a youth corps for one year, use his or her educational award to pay for two years of community college, participate in a part-time AmeriCorps program during college, and earn another award to help pay the costs of attending a four-year university. Alternatively, a participant could serve two consecutive 1½ year part-time terms of service while attending college; such a participant would thus, in total, serve 1800 hours and earn two part-time educational awards. A good example of this type of mixing of terms of service would be a during-college program analogous to the Reserve Officer Training Corps program, which engages participants in part-time service during college, followed by a full-time placement after graduation.

(2) Release from Terms of Service

Generally, participants can be released for two reasons: (i) they want to be released due to compelling personal circumstances; or (ii) they are released from the program for cause. In both cases, this rule puts primary responsibility for determining when to release a participant in the hands of the programs. Programs should be aware that participants released due to compelling personal circumstances may receive prorated educational awards whereas those released for cause may not.

In addition, this rule requires programs to establish in writing clear guidelines that establish the circumstances under which participants will be released for cause. These documents must be signed by the participant and by a representative of the program. The Corporation encourages programs to establish attainable but high standards for participant conduct. The Corporation requires programs to release participants for cause if they are convicted of a felony. If participants are charged with a violent felony or the sale or distribution of a controlled substance, or if they are convicted of the possession of a controlled substance, programs must suspend their service without a living allowance and without receiving credit for hours missed.

A participant who is wrongly released or suspended for cause will receive credit for any service missed and reimbursement for missed stipends. This rule further describes the conditions under which participants

whose service has been suspended may be reinstated, the impact of release for cause, and the grievance procedure available to participants. (See § 2522.230)

(3) Living Allowances

In general, the Act requires that all programs receiving Corporation assistance provide living allowances to full-time participants. The amount of the living allowance must be at least the average annual amount provided to VISTA volunteers (approximately $7,440 for FY 1994 or about $4.40 per hour assuming a total of 1700 hours served) but not more than twice that amount. Of this, the Corporation's share may not exceed 85% of the basic VISTA allowance (or approximately $6,375). Programs must therefore provide a cash match for their share of the stipend.

There are a number of exceptions to these requirements: a program that was in existence prior to September 21, 1993, is by law exempt from meeting the minimum stipend requirement; programs may, but are not required to, provide living allowances to part-time participants; and the Corporation may waive or reduce the minimum requirement at its discretion (see § 2522.240(b)(4) of this rule).

With this rule the Corporation also clarifies that the Corporation's share will not exceed 85% of the living allowance, regardless of whether the allowance has been reduced or prorated from the minimum full-time allowance. Thus, if a program provides part-time participants who serve 900 hours per year with an annualized stipend of $3,960, the Corporations share would not exceed $3,366 (85% of the part-time allowance).

Finally, the Corporation will pay no share of participant stipends for a professional corps described in § 2522.110(b)(3) that provides stipends to participants in excess of the maximum allowance. However, a program involving professionals that wishes to seek Corporation support for participant stipends or benefits while not technically a "professional corps" may do so by applying under the general provision (§ 2522.110(g)). Such a program would be subject to the same restrictions on stipends as other AmeriCorps programs.

(4) Child Care

The Act requires that programs provide child care or a child care allowance to any full-time participant who needs such assistance in order to participate. The regulations define need based on three factors: total family income of the participant must be less than 75 percent of the State median income; the participant must reside with and be a parent or guardian of a child under the age of 13; and the participant must not be receiving child care assistance from another source at the time of acceptance into the program, unless the participant would become ineligible for child care by virtue of enrollment in the program. These requirements were selected to be consistent with the Child Care and Development Block Grant Act of 1990, the major program through which the Federal government provides child care to low- and middle-income families. To ensure that funded care meets minimum health and safety standards, the regulations also tie eligible providers and the amount of the child care allowance to the Child Care and Development Block Grant of 1990. In implementing this provision, the Corporation expects to reserve program funds for child care benefits. Programs are asked in their applications to indicate how many participants they expect to require such benefits. This will help the Corporation determine the amount of funds that should be reserved.

(5) Health Insurance

The legislation requires the provision of health care benefits to full-time AmeriCorps participants who are not otherwise insured. The regulations provide for the Corporation to establish a minimum benefits package and to tie the amount of funding for health care policies to an affordable policy that provides these minimum benefits. The Corporation welcomes comments on the contents of the minimum benefits package. Any program wishing to provide alternative benefits may do so with approval from the Corporation, provided that the policy has a fair market value equal to or greater than the minimum benefits package.

Section II: Available Grants and Distribution of Funds

(A) Types of Grants Available

Eligible applicants may apply for planning, operating, or replication grants. Applicants seeking operating or replication grants also may apply for AmeriCorps educational awards. In addition, an applicant may seek AmeriCorps educational awards only.

(1) Planning Grants

The purpose of a planning grant is to bring a program to the verge of implementation so that it may compete successfully for operating assistance in the following grant cycle. The Corporation will make planning grants available to eligible applicants that already have identified a sound concept for an AmeriCorps program, but that require resources in order to plan, develop, and prepare the program for implementation. (In this sense, planning grants more accurately may be called "development grants.")

For example, a planning grant might be appropriate for an applicant that has already identified the type of program to be developed, including key design elements such as the specific need(s) to be addressed, types of projects to be conducted, and kinds of participants to be recruited. The program might lack, however, a specific training or education curriculum, or it might need to build additional community partnerships to identify specific service projects and activities to be conducted. It might also lack a specific staffing or recruitment plan and materials, or it might need to raise additional matching funds. Thus, while the specific elements of the program might require developmental assistance, the program design is nevertheless clear enough to enable the Corporation to evaluate fully the nature of the program and the prospective activities that it will undertake (including the expected impact it will have on a particular issue or problem). While the average size of grants awarded for planning and development will vary by circumstance and need, in general, grants will range from $50,000 to $250,000, depending on the size of the prospective full-time program, and may cover a period of between six months and one year, depending on the expected timing of the next grant cycle.

(2) Operating Grants

The purpose of an operating grant is to support an applicant that is ready to implement a fully developed new or expanded program. Operating grants may include a short planning phase to complete the final stages of program development before implementation. The Corporation may award operating grants for a term of up to three years, with annual renewal funding subject to periodic assessment of program quality, successful performance against stated objectives, and availability of appropriations. In general, the size of an operating grant will reflect the size and costs of the proposed program. However, the Corporation anticipates making few operating grants in excess of $4 million. While there are no absolute limitations on the number of AmeriCorps educational awards an applicant may seek, the Corporation will apportion these positions in a manner consistent with the reasonable needs of programs. Moreover, programs are encouraged to take a cost-effective approach based on per-participant costs. The Corporation also encourages new or start-up programs to start relatively small (generally between 20 and 50 participants, depending on the needs of the program) in order to ensure high quality operations in the first year. For new programs proposing multi-State or multi-site operations, the Corporation also encourages piloting efforts in a limited number of communities or locations to ensure quality before undertaking significant expansion.

(3) Replication Grants

The purpose of a replication grant is to support the replication to other sites or programs of a program model or component that has a track record of success, identifiable core elements that account for its effectiveness, and sufficient adaptability to local circumstances. In its first year, the Corporation will evaluate proposals for replication against criteria similar to those that apply to operating grants. In future years, the Corporation may establish criteria that are specific to replication grants, including a requirement for independent evaluation results demonstrating the quality and effectiveness of the program seeking replication.

The terms and size of replication grants, as well as the allotment of AmeriCorps educational awards, are the same as for operating grants as described in paragraph 2 above.

(4) Educational Awards Only

For programs that have adequate resources to cover program costs and that meet all the requirements for an AmeriCorps program set forth in part 2522 of this rule, the Corporation may make grants consisting only of AmeriCorps educational awards. This rule clarifies that these grants may be made either to programs that do not apply for program assistance or to programs that apply for but do not receive program assistance (see § 2521.30(c)).

These types of grants are integral to the overall success of AmeriCorps: they are an efficient use of limited resources; and they allow for the inclusion of high-quality programs that might otherwise be excluded due to the supplantation rule (which states that Corporation assistance cannot supplant State, local or private funds). However, programs that receive this type of grant must be of at least as high-quality as programs that receive program assistance.

(5) Other Assistance

(a) *Program development, training and technical assistance.* The Corporation will make grants to provide program development, training, and technical assistance to improve the quality of service projects, assist in the recruitment of diverse participants, improve educational or other materials, and for other purposes (see § 2524.40 of this rule; also see part 2532, which describes other grants available for training and technical assistance).

(b) *Challenge grants.* Section 2524.40 of this rule allows the Corporation to make challenge grants to programs already receiving Corporation assistance. With these challenge grants the Corporation may provide up to $1 in assistance for every dollar raised by a program in excess of the matching funds required for its existing Corporation grant. More details concerning the specifics of this program are provided in § 2524.40 of this rule.

The Corporation views the challenge grant program as an important component of its efforts to support AmeriCorps. It allows the Corporation to leverage funds and expand the scope and reach of the highest-quality AmeriCorps programs. However, because programs generally will not receive AmeriCorps program grants until three-quarters of the way through the fiscal year, the Corporation anticipates making only a limited number of challenge grants in fiscal year 1994.

(c) *Grants for outreach to qualified individuals with disabilities.* The Act authorizes the Corporation to make grants:

(i) To assist AmeriCorps grantees in placing applicants who require reasonable accommodation (as defined in § 101(9) of the Americans with Disabilities Act of 1990) (42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act) (42 U.S.C. 12102(1)) in an AmeriCorps program; and

(ii) To conduct outreach activities to qualified individuals with mental or physical disabilities to recruit them for participation in AmeriCorps programs.

(d) *Disaster relief.* With this rule, the Corporation has determined that in light of limited resources for this grant program, disaster relief grants will only be made available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

The Corporation has also clarified eligibility requirements by specifying that any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a State or Federal agency) that is supported by the Corporation may apply to the Corporation for disaster relief grants.

Finally, the Corporation has specified that due to the limited duration of disaster relief activities, it may waive certain matching or program requirements if appropriate.

(B) Distribution of AmeriCorps Funds and Educational Awards

(1) State Formula Allotment and Corresponding Educational Awards

The Act specifies that of amounts available for allocation under the grant program, the Corporation will make one-third available to eligible State applicants through a population-based formula. For fiscal year 1994, the Corporation expects that $51,833,333 will be available for award by formula allotment. Because the Corporation is committed to supporting only high quality AmeriCorps programs, this formula distribution is not and will not be treated as an entitlement for states. These regulations specify that only those applicants that submit high quality applications consistent with the requirements contained in part 2522 of this rule and have an approved State Plan under part 2513 will receive their formula allotment. The Corporation is committed to working with States to ensure that the programs funded through their formula allotment will meet the quality standards established in this rule. For fiscal year 1994, all States must submit to the Corporation a notice of intent to apply for formula funds by March 31, 1994. The formula allotment for States not intending to apply (or that do not submit a notice of intent to apply by the required date) will be made available to eligible local applicants within the State consistent with § 2521.30(d) of this rule.

In addition, the Act instructs the Corporation to distribute to States receiving their formula allotment a "corresponding allotment" of AmeriCorps educational awards; however, the statute does not clarify what "corresponding allotment" means. The Corporation has therefore determined that the appropriate interpretation of the legal meaning of the expression "corresponding allotment" is the number of educational awards that directly corresponds with the expected number of approved AmeriCorps positions to be supported with program assistance.

Because a direct correlation does not exist between program dollars and educational awards, the Corporation determined that it needed to establish a plausible monetary relationship between the total value of a State's formula award and the number of educational awards it would receive. This relationship was determined by dividing each State's formula award by the anticipated average Federal share of the cost of an AmeriCorps position, calculated at $13,800 per participant (Program Money÷$13,800=Educational Awards).[1] Basing the definition of "corresponding allotment" on a relationship between program dollars and educational awards reflects the Corporation's intent to ensure that any State receiving program assistance for the support of AmeriCorps participants would be ensured of receiving the requisite number of educational awards for those participants. Thus, according to the above calculus, Ohio, for example, will receive $2,228,498 through its formula allotment and will also receive 161 AmeriCorps educational awards. The overall expected distribution of formula grants and educational awards is provided by State in the table below.

FORMULA ALLOCATION OF PROGRAM FUNDS AND AMERICORPS EDUCATIONAL AWARDS TO STATES[1]

State	Program funds	Educational awards
Alabama	$831,565	60
Alaska	112,977	8
Arkansas	483,521	35
Arizona	752,837	55
California	6,107,718	443
Colorado	677,088	49
Connecticut	674,582	49
Delaware	136,874	10
District of Columbia	124,841	9
Florida	2,661,624	193
Georgia	1,332,191	97
Hawaii	228,283	17
Idaho	207,141	15
Illinois	2,347,085	170
Indiana	1,138,927	83
Iowa	570,551	41
Kansas	508,771	37
Kentucky	757,132	55
Louisiana	867,509	63
Maine	252,425	18
Maryland	982,217	71
Massachusetts	1,234,071	89
Michigan	1,909,484	138
Minnesota	897,970	65
Mississippi	529,412	38
Missouri	1,051,644	76
Montana	164,498	12
Nebraska	324,351	24
Nevada	246,884	18
New Hampshire	228,004	17
New Jersey	1,586,048	115
New Mexico	311,489	23
New York	3,693,483	268
North Carolina	1,362,733	99
North Dakota	131,279	10
Ohio	2,228,498	161
Oklahoma	646,322	47
Oregon	584,123	42
Pennsylvania	2,440,838	177
Puerto Rico	736,670	53
Rhode Island	205,912	15
South Carolina	717,574	52
South Dakota	143,281	10
Tennessee	1,002,281	73
Texas	3,491,927	253
Utah	353,656	26
Vermont	115,641	8
Virginia	1,272,453	92
Washington	1,000,500	72
West Virginia	368,770	27
Wisconsin	1,004,349	73
Wyoming	93,332	7
Totals	51,833,333	3,756

[1] This amount is exclusive of the national service educational award, which is provided separately through the National Service Trust Fund. This award represents an average estimated cost per participant for start-up programs based on the experience of the national service model programs funded by the Commission on National and Community Service. Average costs for established programs, including youth corps programs, are generally significantly lower. Because the Corporation anticipates funding start-up programs as well as programs that build on the infrastructure of existing programs and organizations, and because the Corporation will strongly encourage programs to exceed the minimum matching requirements, it is expected that many programs will achieve significantly lower average costs per position.

[1] The actual amount of each State's grant will be proportionally reduced if the Corporation chooses to set aside money for participant health and/or child care costs. In addition, numbers are based on the 1990 census but will be updated to incorporate the latest census estimates from the Census Bureau.

The Corporation will consider the number of educational awards that corresponds to a State's formula allotment as a minimum, and not as a maximum, number of educational awards potentially provided to a State. Thus, a State's "minimum" formula and award allotments should not necessarily drive the design or size of programs applying for assistance through State applications. Indeed, insofar as the formula application includes high quality, cost-effective programs that request more educational awards than would otherwise be provided through the minimum allotment, those programs would be eligible to receive additional awards from the Corporation on a competitive basis.

This mechanism for distributing educational awards not only satisfies the legislative requirement but also makes sense for policy and programmatic reasons. In making this determination, the Corporation did, however, consider other alternatives. For example, the Corporation considered the possibility of distributing the awards on a basis proportional to the distribution of formula grants. Thus a State receiving 12% of the total amount of funding available by formula allocation would also receive the same percentage of educational awards. The Corporation did not choose this option for several reasons.

First, from a legal standpoint, if the Congress had intended for there to be a direct, proportional correlation between the overall distribution of program funds and the overall distribution of AmeriCorps educational awards, it would not have created educational award set-asides for VISTA and CCC volunteers; nor would it have allowed for the distribution of educational awards to programs the Corporation does not fund or programs, such as professional corps, that necessitate different levels of Federal support than other programs.

Second, from a programmatic standpoint, the distribution of educational awards on a strict proportional basis would have resulted, in some cases, in the unfortunate consequence of leaving some States with insufficient programmatic funds to support the number of participants for whom they would have received educational awards. Finally, this approach also would have resulted in a lack of flexibility on the part of the Corporation to provide support to programs on the basis of quality and need, rather than on the basis of an arbitrary proportional rule that, as noted above, bears no relationship to anticipated or real program costs.

In short, the Corporation's need to support quality programs, to ensure adequate financial support for all approved AmeriCorps positions and educational awards within those programs, and the need to retain flexibility to respond to individual State and program needs are addressed through this distributive scheme.

(2) State Competition

In order to receive consideration for competitive funds, a State must receive its formula allotment. In addition to the grants made available to States by formula allocation, the Corporation will make at least one-third of program funds, as well as an appropriate number of educational awards as determined by the Corporation, available to States on a competitive basis. For fiscal year 1994, the Corporation expects that $51,833,333 will be available for this competition. The following priorities will govern the competitive distribution of AmeriCorps funds and educational awards to States:

(a) *Priority for small states.* The Corporation is committed to ensuring that every State is able to participate in a meaningful way in the AmeriCorps grant program. Specifically, the Corporation seeks to enable every State that so desires to support at least one high quality AmeriCorps program that meets the preferred minimum size guidelines of 20 full-time equivalent participants as stipulated in section I(D)(2), above. Thus, for fiscal year 1994 the Corporation has established a priority for small States, whereby any State that: (i) Does not otherwise receive through the legislatively required formula allocation adequate funding to support at least 20 full-time AmeriCorps positions, and the same number of educational awards, and (ii) which can demonstrate the existence of a high quality program(s), will receive priority consideration for assistance through competitive State funding.

In essence, this priority effectively establishes a small State floor in the amounts of $276,100[2] and 20 AmeriCorps educational awards for those affected States (indicated in the table in section II(B)(1)) that meet the quality and need criteria indicated above. This priority does not, however, constitute a guarantee of assistance to any State. Although the priority for small States will result in programs otherwise supported through a State's formula allotment receiving limited competitive funding, these programs will not be required to address the national priorities established by the Corporation, notwithstanding the provision specified in § 2522.410(b)(1)(ii) of this rule. Thus, every State meeting the guidelines will be able to support at least one program of the minimum preferred size that addresses State-based priorities.

(b) *National issue priorities.* All programs, except those affected by paragraph (a) above, that are submitted through State applications for competitive funding should address the national issue priorities explained in section I(C)(2) of this supplementary section. In general, most activities conducted by programs should substantially address one or more of the national priorities. However, the Corporation may grant waivers if a program demonstrates that its proposed activities are (i) more essential for their communities and (ii) not being met in any other way.

(c) *Priority for existing grantees.* In fiscal year 1994, the Corporation will give priority to National Service Demonstration Programs and American Conservation and Youth Service Corps Programs that received funding from the Commission on National and Community Service. While this one-year priority does not constitute a guarantee for renewal funding, the Corporation expects that those programs that meet the minimum requirements and quality standards stipulated in this rule will receive support. In addition, States should give priority to these programs as well.

(3) Direct National Competition

(a) *Allocation.* After funds have been allotted to the States and set aside for Indian tribes and U.S. territories, any remaining AmeriCorps program funds will be distributed directly by the Corporation on a competitive basis. In fiscal year 1994, the Corporation anticipates making $48.8 million available for award in this category. In general, subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies may apply for these funds, although no more than one-third may go to Federal agencies. Unless a program has a clear and compelling reason not to do so, programs funded through this competition should address any national priorities established pursuant to § 2522.410(b)(1)(ii) of this rule.

(b) *Limitations for fiscal year 1994.* The Corporation will limit this category of funding in fiscal year 1994 to the following:

(i) Programs operated or funded by Federal agencies.

(ii) Programs operated or funded by national nonprofit organizations.

(iii) Professional corps programs.

(iv) Programs operated in more than one State.

The Corporation intends to use this category of funding primarily to support programs that are national or regional in scope.

In general, programs that are operated locally by nonprofits, subdivisions of States or institutions of higher education can and should apply through their respective States; doing so will increase the chances that the programs are part of a comprehensive State plan, which will enable the Corporation to ensure that all local programs are appropriately monitored and receive technical assistance necessary to support high-quality programs.

To clarify the eligibility of applicants in fiscal year 1994, the Corporation will consider a national nonprofit organization to be one whose membership, activities, constituencies, or mission is national in scope. In addition, although programs operated or funded by States are not otherwise eligible to receive direct national competitive funds, those National Service Demonstration Programs supported by the Commission on National and Community Service that operate in more than one State may compete for support in fiscal year 1994.

(c) *Agreements with Federal agencies.* Technically, when a Federal agency competes for and receives program funds under this category, the Corporation will not give that agency a grant but rather will enter into a contract or cooperative agreement that includes the transfer of funds. Federal agencies may either subgrant to other nonprofits or other eligible entities, or operate programs directly. Through this rule the Corporation has clarified the scope and purposes of the prospective awards to Federal Agencies as follows:

(i) AmeriCorps grants should serve as "seed money" to leverage agencies' existing resources and grant-making capacity toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan, ultimately, to support independently service initiatives developed or expanded with Corporation assistance.

(ii) Only Cabinet level departments and independent agencies may apply. Bureaus, division, and local and regional offices of such departments and agencies can only apply through the central department or agency. An application may, however, include proposals for more than one program. The primary purpose of this restriction is to ensure that all national and community service efforts within a department or agency are centrally coordinated and are part of a coherent strategy.

The Corporation also expects that many programs supported by Federal agencies with Corporation assistance will be sub-granted or operated in partnership with community-based organizations.

[2] This figure was calculated by multiplying the preferred minimum number of national service participants per state (20) by the average Federal cost per participant ($13,800)

(C) Application Requirements/Issues

(1) Content and Degree of Specificity

In §§ 2522.300–320 of this rule, the Corporation specifies the application requirements for all applicants seeking AmeriCorps program assistance, including national service educational awards. While the Corporation will provide applicants with additional guidance through approved application materials, the Corporation will require every applicant—regardless of whether the applicant is a State or other eligible entity applying directly to the Corporation—to include a complete, detailed description of the proposed program(s) to be funded.

In essence, applicants will not be able to apply to the Corporation for assistance for the purpose of subgranting awards to programs or organizations that are not yet known at the time of application. Especially in the case of States or other subgranting entities, applicants will therefore need to know the specific programs to be proposed and will need to provide required information on such programs at the time of application. This requirement will ensure that the Corporation will have complete information with which to select the highest quality programs.

In general, this requirement will apply to States for both formula and competitive applications, although the degree of specificity about programs may vary slightly. In fiscal year 1994, the Corporation—through the application materials—will require States to summarize in the narrative of the proposal information on programs proposed under the formula allotment (although States will be required to provide a complete application for each program in the appendix to the State's application). Specific, detailed information will be required for each individual program included in any application for competitive funding.

In addition, the statute requires that the Corporation obtain certain information on all programs prior to making any award. This information includes:

(a) *A description of service placements.* The Act requires that an application for AmeriCorps program funds and/or educational awards include a description of the positions into which participants will be placed, as well as a description of the minimum qualifications that individuals must meet to be placed in those positions.

With this rule, the Corporation requires that such descriptions describe the nature of specific tasks to be performed by participants. Although individual "job descriptions" are not required for every participant, applicants should clearly identify the specific nature of assignments to be performed by participants within service projects. This provision not only addresses a legislative requirement but also provides additional information that will enable the Corporation to assess the expected impact the program will achieve.

(b) *Coordination with State Plan.* The Corporation proposes to require all applicants that are not States coordinate their activities with the application of the State, including the State Plan, so as to build upon existing programs and not duplicate efforts. Applicants applying directly to the Corporation in fiscal year 1994 will be required to coordinate their planned efforts with the State in which the program(s) will operate, notwithstanding the fact that the application of the State will be due to the Commission after the applications of applicants other than States. The application should identify efforts undertaken to this effect, including documentation of meetings or correspondence.

(2) Special Requirements for State Applicants

(a) *Number of programs in the competitive portion of a State application.* To ensure that States submit only the highest quality programs for funding, the Corporation has limited the number of programs a State may include in its application for competitive funding as indicated in the table below. Every State may include at least three programs, and each State may include an additional program for each full percentage point of the population that State contains. New York, for example, will receive the initial three, plus an additional seven corresponding to the 7% of the total population New York contains, for a total of ten.

MAXIMUM NUMBER OF PROGRAMS THAT MAY BE INCLUDED IN STATES' APPLICATIONS FOR COMPETITIVE FUNDING

State	Maximum number of programs
Alabama	5
Alaska	3
Arkansas	4
Arizona	4
California	15
Colorado	4
Connecticut	4
Delaware	3
District of Columbia	3

MAXIMUM NUMBER OF PROGRAMS THAT MAY BE INCLUDED IN STATES' APPLICATIONS FOR COMPETITIVE FUNDING—Continued

State	Maximum number of programs
Florida	8
Georgia	6
Hawaii	3
Idaho	3
Illinois	8
Indiana	5
Iowa	4
Kansas	4
Kentucky	4
Louisiana	5
Maine	3
Maryland	5
Massachusetts	5
Michigan	7
Minnesota	5
Mississippi	4
Missouri	5
Montana	3
Nebraska	4
Nevada	3
New Hampshire	3
New Jersey	6
New Mexico	4
New York	10
North Carolina	6
North Dakota	3
Ohio	7
Oklahoma	4
Oregon	4
Pennsylvania	8
Puerto Rico	4
Rhode Island	3
South Carolina	4
South Dakota	3
Tennessee	5
Texas	10
Utah	4
Vermont	3
Virginia	5
Washington	5
West Virginia	4
Wisconsin	5
Wyoming	3
Totals	256

Because of the limited amount of funding available, the selection process will be very competitive, with only about one in five proposed programs likely to receive support. Furthermore, the Corporation does not anticipate that any one State will receive more than a third of the available funds, and most States will receive considerably less. States are advised to submit applications proposing only coherent, high quality programs that: address the program and size requirements explained in part 2522 of this rule; are consistent with the State plan; and are cost-effective. States will not increase the chances of their programs receiving funding by increasing the total number of programs they submit.

(b) *Use of competitive funds to support programs included in the formula portion of a State application.* The cost of programs included in the formula application may not exceed a State's formula allotment. However, from the competitive State funds, States may request additional funds and educational awards for programs listed in the formula section of the applications if either (i) the State receives small State priority consideration (as explained in § II(B)(2), above), or (ii) programs listed in the formula portion of the application meet the national priorities explained in § I(C)(2), above. Nevertheless, States should clearly indicate which programs will be supported with formula assistance if competitive funding is not received.

(c) *Limitation on State-run programs.* The Act requires an assurance that at least sixty percent of Corporation assistance provided to a State will be used to support programs that are not operated by the State or State agency. However, the Corporation may waive this requirement if a State demonstrates that it did not receive an adequate number of acceptable applications from applicants other than States during the competitive selection process.

The Corporation recognizes that this provision may be problematic for some States with large existing AmeriCorps programs previously supported by the Commission on National and Community Service, especially if the programs are operated by the State (through a department or agency). Such States should not attempt to comply with the 60% requirement if doing so would necessitate submission of more than five program proposals for competitive funding, proposals with inflated budgets, or proposals for programs that are not of high quality. In order to ensure that States with large existing grantees may participate, the Corporation will consider such States unable to comply.

(D) Selection Criteria Issues

In order to preserve maximum flexibility from year to year to respond to changing priorities, the proposed regulations do not substantively add to or modify the selection criteria listed in the statute, except that, for State applicants, the quality of the State plan will be a criterion in the selection of programs. As explained in the "State Plan" section of this Supplementary Section above, the quality of the State plan will be one factor in determining whether a State's application for its formula allotment is accepted or rejected, and insofar as a State has a high-quality State plan it will benefit those programs in the competitive selection process as well. Other changes or additions to the selection criteria will be provided annually in the Corporation's application materials.

Investment for Quality and Innovation Issues

(1) Purpose

The Investment for Quality and Innovation activities are a relatively small but nevertheless critical component of the Corporation's overall national and community service efforts. Activities funded under this part aim to build service infrastructure, and include training, technical assistance, fellowships, service awards, clearinghouses, research, recruitment, and innovative and demonstration programs.

The Investment for Quality and Innovation activities apply to a broad spectrum of service areas, including, but not limited to, the service-learning and AmeriCorps programs described in parts 2515–2524 of this rule. (Conversely, the training and technical assistance activities described in part 2524 of this rule target strictly the AmeriCorps programs described in parts 2520–2523.) All of these activities, however, are aimed at improving the quality of the service field and, ultimately, at finding the best ways to meet the Nation's needs through service.

(2) Priorities

This rule divides these activities into three groups: Innovative and Special Demonstration Programs; Technical Assistance, Training, and Other Service Infrastructure-building Activities; and Special Activities. The precise activities that are allowable under each area are specified in parts 2531–2533. Given the limited resources that will be allotted to these activities (the Corporation anticipates the availability of $15 million in fiscal year 1994), the Corporation may exercise its statutory authority to set priorities that will limit the categories of activities that will be eligible for funding. If the Corporation chooses to establish such priorities for fiscal year 1994, it will seek to concentrate funds on those activities that will be most effective and efficient in building service infrastructure.

Miscellaneous Requirements

Interested parties should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), grantees will be required to comply with the aforementioned provisions of Federal law.

Grant recipients will be expected to expend Corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. Grantees must keep records according to Corporation guidelines, including records that fully disclose the amount and disposition of the proceeds of a Corporation grant. The Inspector General of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of grantees that may be related or pertinent to the Corporation grant.

Grantees should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published prior to awarding grants.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

The Corporation has separately submitted to the Office of Management and Budget, under the terms of the Paperwork Reduction Act, application packages to be used by applicants when applying for Corporation grants. To request copies of the applications, please contact the Corporation for National and Community Service at the address listed above.

As required by the Paperwork Reduction Act of 1980, the Corporation will submit the information collection requirements contained in this rule to the Office of Management and Budget for its review (44 U.S.C. 3504(h)). The information collection requirements are needed in order to provide assistance to parties affected by these regulations, in accordance with statutory mandates.

(Catalog of Federal Domestic Assistance Numbers: 94.003 for State Commissions,

Alternative Administrative Entities, and Transitional Entities; 94.004 for K–12 Service-Learning Programs; 94.005 for Higher Education Service-Learning Programs; 94.006 for AmeriCorps Programs; 94.007 for Investment for Quality and Innovation Programs)

List of Subjects

45 CFR Part 2510

Grant programs—social programs, Volunteers.

45 CFR Part 2513

Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2515

Grant programs—social programs, Nonprofit organizations, Volunteers.

45 CFR Part 2516

Elementary and secondary education, Grant programs—social programs, Indians, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2517

Community development, Grant programs—social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2518

Grant programs—social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2519

Colleges and universities, Grant programs—social programs, Nonprofit organizations, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2520

AmeriCorps, Grant programs—social programs, Volunteers.

45 CFR Part 2521

AmeriCorps, Grant programs—social programs, Volunteers.

45 CFR Part 2522

AmeriCorps, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

45 CFR Part 2523

AmeriCorps, Grant programs—social programs, Volunteers.

45 CFR Part 2524

AmeriCorps, Grant programs—social programs, Technical assistance, Volunteers.

45 CFR Part 2530

Grant programs—social programs, Volunteers.

45 CFR Part 2531

Grant programs—social programs, Volunteers.

45 CFR Part 2532

Grant programs—social programs, Volunteers, Technical assistance.

45 CFR Part 2533

Decorations, Medals, Awards, Scholarships and fellowships, Volunteers.

45 CFR Part 2540

Administrative practice and procedure, Grant programs—social programs, Reporting and recordkeeping requirements, Volunteers.

Dated: January 3, 1994.

Catherine Milton,

Vice President and Director of National and Community Service Programs.

Accordingly, the Corporation amends title 45, chapter XXV of the Code of Federal Regulations by adding parts 2510, 2513, 2515 through 2524, 2530 through 2533, and 2540 to read as follows:

PART 2510—OVERALL PURPOSES AND DEFINITIONS

Sec.

2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?
2510.20 Definitions.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2510.10 What are the purposes of the programs and activities of the Corporation for National and Community Service?

The National and Community Service Trust Act of 1993 established the Corporation for National and Community Service (the Corporation). The Corporation's mission is to engage Americans of all ages and backgrounds in community-based service. This service will address the Nation's educational, public safety, human, and environmental needs to achieve direct and demonstrable results. In doing so, the Corporation will foster civic responsibility, strengthen the ties that bind us together as a people, and provide educational opportunity for those who make a substantial commitment to service. The Corporation will undertake activities and provide assistance to States and other eligible entities to support national and community service programs and to achieve other purposes consistent with its mission.

§ 2510.20 Definitions.

The following definitions apply to terms used in 45 CFR parts 2510 through 2550:

Act. The term *Act* means the National and Community Service Act of 1990, as amended (42 U.S.C. 12501 *et seq.*).

Administrative costs. The term *administrative costs* means costs associated with the overall administration of a Corporation program.

(1) Administrative costs include such costs as the following:

(i) Indirect costs (i.e., costs identified with two or more cost objectives but not identified with a particular cost objective) as described in applicable provisions of Office of Management and Budget Circulars that relate to indirect costs.

(ii) Costs for financial, accounting, or contracting functions.

(iii) Costs for insurance that protects the entity that operates the program.

(iv) Costs for salaries and benefits of the director and any other administrative staff of the program.

(2) Administrative costs do not include allowable costs directly related to program operations. These program costs include such costs as the following:

(i) Costs for living allowances and training of participants.

(ii) Costs for staff training.

(iii) Costs for travel.

(iv) Costs related to the evaluation of the program.

(v) Costs for salaries and benefits of staff who recruit, train, place, or supervise participants.

(3) Particular costs such as those associated with staff who perform both administrative and program functions may be prorated between administrative costs and costs directly related to program operations.

Adult volunteer. The term *adult volunteer* means an individual, such as an older adult, an individual with a disability, a parent, or an employee of a business or public or private nonprofit organization, who—

(1) Works without financial remuneration in an educational institution to assist students or out-of-school youth; and

(2) Is beyond the age of compulsory school attendance in the State in which the educational institution is located.

AmeriCorps. The term *AmeriCorps* means the combination of all AmeriCorps programs and participants.

AmeriCorps educational award. The term *AmeriCorps educational award* means a national service educational award described in section 147 of the Act.

AmeriCorps participant. The term *AmeriCorps participant* means any individual who is serving in—

(1) An AmeriCorps program;

(2) An approved AmeriCorps position; or

(3) Both.

AmeriCorps program. The term *AmeriCorps program* means—

(1) Any program that receives approved AmeriCorps positions;

(2) Any program that receives Corporation funds under section 121 of the Act; or

(3) Both.

Approved AmeriCorps position. The term *approved AmeriCorps position* means an AmeriCorps position for which the Corporation has approved the provision of an AmeriCorps educational award as one of the benefits to be provided for successful service in the position.

Carry out. The term *carry out*, when used in connection with an AmeriCorps program described in section 122 of the Act, means the planning, establishment, operation, expansion, or replication of the program.

Chief Executive Officer. The term *Chief Executive Officer*, except when used to refer to the chief executive officer of a State, means the Chief Executive Officer of the Corporation appointed under section 193 of the Act.

Community-based agency. The term *community-based agency* means a private nonprofit organization (including a church or other religious entity) that—

(1) Is representative of a community or a significant segment of a community; and

(2) Is engaged in meeting educational, public safety, human, or environmental community needs.

Corporation. The term *Corporation* means the Corporation for National and Community Service established under section 191 of the Act.

Economically disadvantaged. The term *economically disadvantaged* means, with respect to an individual, an individual who is determined by the Chief Executive Officer to be low-income according to the latest available data from the Department of Commerce.

Elementary school. The term *elementary school* has the same meaning given the term in section 1471(8) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(8)).

Indian. The term *Indian* means a person who is a member of an Indian tribe, or is a 'Native', as defined in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)).

Indian lands. The term *Indian lands* means any real property owned by an Indian tribe, any real property held in trust by the United States for an Indian or Indian tribe, and any real property held by an Indian or Indian tribe that is subject to restrictions on alienation imposed by the United States.

Indian tribe. The term *Indian tribe* means—

(1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the 'Indian Reorganization Act', 25 U.S. C. 461 *et seq.*); and

(ii) Any Regional Corporation or Village Corporation, as defined in subsection (g) or (j), respectively, of section 3 of the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (1) of this definition.

Individual with a disability. Except as provided in section 175(a) of the Act, the term *individual with a disability* has the meaning given the term in section 7(8)(B) of the Rehabilitation Act of 1973 (29 U.S.C. 706(8)(B)), and includes an individual with a physical or mental impairment.

Infrastructure-building activities. The term *infrastructure-building activities* refers to activities that increase the capacity of organizations, programs and individuals to provide high quality service to communities.

Institution of higher education. The term *institution of higher education* has the same meaning given the term in section 1201(a) of the Higher Education Act of 1965 (20 U.S.C. 1141(a)).

Local educational agency (LEA). The term *local educational agency* has the same meaning given the term in section 1471(12) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(12)).

National nonprofit. The term *national nonprofit* means any nonprofit organization whose mission, membership, activities, or constituencies are national in scope.

National service laws. The term *national service laws* means the Act and the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4950 *et seq.*).

Objective. The term *objective* means a desired accomplishment of a program.

Out-of-school youth. The term *out-of-school youth* means an individual who—

(1) Has not attained the age of 27;

(2) Has not completed college or its equivalent; and

(3) Is not enrolled in an elementary or secondary school or institution of higher education.

Participant. (1) The term *participant* means an individual enrolled in a program that receives assistance under the Act.

(2) A participant may not be considered to be an employee of the program in which the participant is enrolled.

Partnership program. The term *partnership program* means a program through which an adult volunteer, a public or private nonprofit organization, an institution of higher education, or a business assists a local educational agency.

Program. The term *program*, unless the context otherwise requires, and except when used as part of the term academic program, means a program described in section 111(a) (other than a program referred to in paragraph (3)(B) of that section), 117A(a), 119(b)(1), or 122(a) of the Act, or in paragraph (1) or (2) of section 152(b) of the Act, or an activity that could be funded under sections 198, 198C, or 198D of the Act.

Program sponsor. The term *program sponsor* means an entity responsible for recruiting, selecting, and training participants, providing them benefits and support services, engaging them in regular group activities, and placing them in projects.

Project. The term *project* means an activity, carried out through a program that receives assistance under the Act, that results in a specific identifiable service or improvement that otherwise would not be done with existing funds, and that does not duplicate the routine services or functions of the employer to whom participants are assigned.

Project sponsor. The term *project sponsor* means an organization, or other entity, that has been selected to provide a placement for a participant.

Qualified individual with a disability. The term *qualified individual with a disability* has the meaning given the term in section 101(8) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111(8)).

School-age youth. The term *school-age youth* means—

(1) Individuals between the ages of 5 and 17, inclusive; and

(2) Children with disabilities, as defined in section 602(a)(1) of the Individuals with Disabilities Education

Act (20 U.S.C. 1401(a)(1)), who receive services under part B of that Act.

Secondary school. The term *secondary school* has the same meaning given the term in section 1471(21) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(21)).

Service-learning. The term *service-learning* means a method under which students or participants learn and develop through active participation in thoughtfully organized service that—

(1) Is conducted in and meets the needs of a community and is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community;

(2) Helps foster civic responsibility;

(3) Is integrated into and enhances the academic curriculum of the students or the educational components of the community service program in which the participants are enrolled; and

(4) Includes structured time for the students and participants to reflect on the service experience.

Service-learning coordinator. The term *service-learning coordinator* means an individual trained in service-learning who identifies community partners for LEAs; assists in designing and implementing local partnerships service-learning programs; provides technical assistance and information to, and facilitates the training of, teachers; and provides other services for an LEA.

State. The term *State* means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. The term also includes Palau, until the Compact of Free Association is ratified.

State Commission. The term *State Commission* means a State Commission on National and Community Service maintained by a State pursuant to section 178 of the Act. Except when used in section 178, the term includes an alternative administrative entity for a State approved by the Corporation under that section to act in lieu of a State Commission.

State educational agency (SEA). The term *State educational agency* has the same meaning given that term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

Student. The term *student* means an individual who is enrolled in an elementary or secondary school or institution of higher education on a full-time or part-time basis.

Subdivision of a State. The term *subdivision of a State* means a governmental unit within a State other than a unit with Statewide responsibilities.

PART 2513—STATE PLAN: PURPOSE, APPLICATION REQUIREMENTS AND SELECTION CRITERIA

Sec.

2513.10 Who must submit a State Plan?
2513.20 What are the purposes of a State Plan?
2513.30 What information must a State Plan contain?
2513.40 How will the State Plans be evaluated?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2513.10 Who must submit a State Plan?

The fifty States, the District of Columbia and Puerto Rico, through a Corporation-approved State Commission, Alternative Administrative Entity, or Transitional Entity must submit a comprehensive national and community service plan ("State Plan") in order to apply to the Corporation for support under parts 2515 through 2524 of this chapter.

§ 2513.20 What are the purposes of a State Plan?

The purposes of the State Plan are:

(a) To set forth the State's plan for promoting national and community service and strengthening its service infrastructure, including how Corporation-funded programs fit into the plan;

(b) To establish specific priorities and goals that advance the State's plan for strengthening its service program infrastructure and to specify strategies for achieving the stated goals;

(c) To inform the Corporation of the relevant historical background of the State's infrastructure for supporting national and community service and other volunteer opportunities, as well as the current status of such infrastructure;

(d) To assist the Corporation in making decisions on applications to receive formula and competitive funding under § 2521.30 of this chapter and to assist the Corporation in assessing a State's application for renewal funding for State administrative funds as provided in part 2550 of this chapter; and

(e) To serve as a working document that forms the basis of on-going dialogue between the State and the Corporation and which is subject to modifications as circumstances require.

§ 2513.30 What information must a State Plan contain?

The State Plan must include the following information:

(a) An overview of a State's experience in coordinating and supporting the network of service programs within the State that address educational, public safety, human, and environmental needs, including, where appropriate, a description of specific service programs. This overview should encompass programs that have operated independently of and/or without financial support from the State;

(b) A description of the State's priorities and vision for strengthening the service program infrastructure, including how programs proposed for Corporation funding fit into this vision. The plan should also describe how State priorities relate to any national priorities established by the Corporation;

(c) A description of the goals established to advance the State's plan, including the strategies for achieving such goals. With respect to technical assistance activities (if any) and programs proposed to be funded by the Corporation, the plan should describe how such activities and programs will be coordinated with other service programs within the State. The plan should also describe the manner and extent to which the proposed programs will build on existing programs, including Corporation programs such as Serve-America, Higher Education, and programs funded under the Domestic Volunteer Service Act and other programs;

(d) A description of the extent to which the State entity has coordinated its efforts with the State educational agency (SEA) in the SEA's application for school-based service learning funds;

(e) A description of how the State reached out to a broad cross-section of individuals and organizations to obtain their participation in the development of the State plan, including a discussion of the types of organizations and individuals who were actually involved in the process and the manner and extent of their involvement; and

(f) Such other information as the Corporation may reasonably require.

§ 2513.40 How will the State Plans be evaluated?

State plans will be evaluated on the basis of the following criteria:

(a) The quality of the plan as evidenced by:

(1) The development and quality of realistic goals and objectives for moving service ahead in the State;

(2) The extent to which proposed strategies can reasonably be expected to accomplish stated goals;

(3) The extent of input in the development of the State plan from a broad cross-section of individuals and organizations including community-based agencies; organizations with a demonstrated record of providing educational, public safety, human, or environmental services; residents of the State, including youth and other prospective participants, State Education Agencies; traditional service organizations; and labor unions;

(b) The sustainability of the national service efforts outlined in the plan, as evidenced by the extent to which they are supported by:

(1) The State, through financial, in-kind and bi-partisan political support, including the existence of supportive legislation; and

(2) Other support, including the financial, in-kind and other support of the private sector, foundations, and other entities and individuals; and

(c) Such other criteria as the Corporation deems necessary.

PART 2515—SERVICE-LEARNING PROGRAM PURPOSES AND DEFINITIONS

Sec.

2515.10 What are the service-learning programs of the Corporation for National and Community Service?
2515.20 What definitions apply to service-learning programs?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2515.10 What are the service-learning programs of the Corporation for National and Community Service?

(a) There are three service-learning programs:

(1) School-based programs, described in part 2516 of this chapter.

(2) Community-based programs, described in part 2517 of this chapter.

(3) Higher education programs, described in part 2519 of this chapter.

(b) Each program gives participants the opportunity to learn and develop their own capabilities through service-learning, while addressing needs in the community.

§ 2515.20 What definitions apply to service-learning programs?

In addition to the definitions in § 2510.20 of this chapter, the following definitions apply to terms used in parts 2515 through 2519 of this chapter.

Grantmaking entity. (1) For school-based programs, the term *grantmaking entity* means a public or private nonprofit organization experienced in service-learning that—

(i) Submits an application to make grants for school-based service-learning programs; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

(2) For community-based programs, the term *grantmaking entity* means a qualified organization that—

(i) Submits an application to make grants to qualified organizations to implement, operate, expand, or replicate community-based service programs that provide for educational, public safety, human, or environmental service by school-age youth in two or more States; and

(ii) Was in existence at least one year before the date on which the organization submitted the application.

Partnership. The term *partnership* means an organization comprised of two or more entities that have entered into a written agreement specifying the responsibilities of each partner with respect to a service-learning program.

Qualified organization. The term *qualified organization* means a public or private nonprofit organization, other than a grantmaking entity, that—

(1) Has experience in working with school-age youth; and

(2) Was in existence at least one year before the date on which the organization submitted an application for a service-learning program.

U.S. Territory. The term *U.S. Territory* means the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palua, until the Compact of Free Association with Palau is ratified.

PART 2516—SCHOOL-BASED SERVICE-LEARNING PROGRAMS

Subpart A—Eligibility to Apply

Sec.

2516.100 Who may apply for a direct grant from the Corporation?
2516.110 Who may apply for a subgrant from a Corporation grantee?

Subpart B—Use of Grant Funds

2516.200 How may grant funds be used?

Subpart C—Eligibility to Participate

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2516.310 May private school students participate?

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Subpart E—Application Review

2516.500 How does the Corporation review the merits of an application?
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2516.520 How does a State, Indian tribe, or grantmaking entity review the merits of an application?

Subpart F—Distribution of Funds

2516.600 How are funds for school-based service-learning programs distributed?

Subpart G—Funding Requirements

2516.700 Are matching funds required?
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2516.720 What is the length of each type of grant?
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2516.800 What are the purposes of monitoring and evaluation?
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2516.860 Will information on individual participants be kept confidential?

Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Eligibility to Apply

§ 2516.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State, through a State educational agency (SEA) as defined in § 2510.20 of this chapter. For the purpose of this part, "State" means one of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and, except for the purpose of § 2516.600 (b), U.S. Territories.

(2) An Indian tribe.

(3) A U.S. Territory as defined in § 2515.20 of this chapter.

(4) A grantmaking entity as defined in § 2515.20 of this chapter.

(5) For activities in a nonparticipating State, a local educational agency (LEA) as defined in § 2510.20 of this chapter or a local partnership as described in § 2516.110.

(b) The types of grants for which each entity is eligible are described in § 2516.200.

§ 2516.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State, Indian tribe, or grantmaking entity are:

(a) An LEA, for a grant from a State for planning school-based service-learning programs.

(b) A local partnership, for a grant from a State or a grantmaking entity to implement, operate, or expand a school-based service learning program.

(1) The partnership must include an LEA and one or more community partners. The partnership may include a private for-profit business or private elementary or secondary school.

(2) The community partners must include a public or private nonprofit organization that has demonstrated expertise in the provision of services to meet educational, public safety, human, or environmental needs; was in existence at least one year before the date on which the organization submitted an application under this part; and will make projects available for participants, who must be students.

(c) A local partnership, for a grant from a State or a grantmaking entity to implement, operate, or expand an adult volunteer program. The partnership must include an LEA and one or more public or private nonprofit organizations, other educational agencies, or private for-profit businesses.

(d) A qualified organization as defined in § 2515.20 of this chapter, for a grant from a State or Indian tribe for planning or building the capacity of the State or Indian tribe.

Subpart B—Use of Grant Funds

§ 2516.200 How may grant funds be used?

Funds under a school-based service-learning grant may be used for the purposes described in this section.

(a) Planning and capacity-building for States and Indian tribes. (1) A State or Indian tribe may use funds to pay for planning and building its capacity to implement school-based service-learning programs. These entities may use funds either directly or through subgrants or contracts with qualified organizations.

(2) Authorized activities include the following:

(i) Providing training for teachers, supervisors, personnel from community-based agencies (particularly with regard to the utilization of participants) and trainers, conducted by qualified individuals or organizations experienced in service-learning.

(ii) Developing service-learning curricula to be integrated into academic programs, including the age-appropriate learning components for students to analyze and apply their service experiences.

(iii) Forming local partnerships described in § 2516.110 to develop school-based service-learning programs in accordance with this part.

(iv) Devising appropriate methods for research and evaluation of the educational value of service-learning and the effect of service-learning activities on communities.

(v) Establishing effective outreach and dissemination of information to ensure the broadest possible involvement of community-based agencies with demonstrated effectiveness in working with school-age youth in their communities.

(b) *Implementing, operating, and expanding programs.* (1) A State or grantmaking entity may use funds to make subgrants to local partnerships described in § 2516.110(b) to implement, operate, or expand school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for programs in that State.

(3) A grantmaking entity may use funds to provide technical assistance and training to appropriate persons relating to its subgrants.

(c) *Planning programs.* (1) A State may use funds to make subgrants to LEAs for planning school-based service-learning programs.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from LEAs for planning programs in that State.

(3) Authorized activities include paying the costs of—

(i) The salaries and benefits of service-learning coordinators as defined in § 2510.20 of this chapter; and

(ii) The recruitment, training, supervision, and placement of service-learning coordinators who are participants in an AmeriCorps program described in parts 2520 through 2524 of this chapter or who receive AmeriCorps educational awards.

(d) *Adult volunteer programs.* (1) A State, Indian tribe, U.S. territory, or grantmaking entity may use funds to make subgrants to local partnerships described in § 2516.110(c) to implement, operate, or expand school-based programs involving adult volunteers to utilize service-learning to improve the education of students.

(2) If a State does not submit an application that meets the requirements for an allotment grant under § 2516.400, the Corporation may use the allotment to fund applications from those local partnerships for adult volunteer programs in that State.

(e) *Planning by Indian tribes and U.S. Territories.* If the Corporation makes a grant to an Indian tribe or a U.S. Territory to plan school-based service-learning programs, the grantee may use the funds for that purpose.

(f) *Allowable expenses.* An LEA, local partnership, or qualified organization may use funds under this part for the Corporation share of reasonable costs related to the supervision of participants, program administration, transportation, insurance, evaluations, and other reasonable expenses related to the funded activities.

Subpart C—Eligibility To Participate

§ 2516.300 Who may participate in a school-based service-learning program?

Students who are enrolled in elementary or secondary schools on a full-time or part-time basis may participate in school-based programs.

§ 2516.310 May private school students participate?

(a) Yes. To the extent consistent with the number of students in the State or Indian tribe or in the school district of the LEA involved who are enrolled in private nonprofit elementary or secondary schools, the State, Indian tribe, or LEA must (after consultation with appropriate private school representatives) make provision—

(1) For the inclusion of services and arrangements for the benefit of those students so as to allow for the equitable participation of the students in the programs under this part; and

(2) For the training of the teachers of those students so as to allow for the equitable participation of those teachers in the programs under this part.

(b)(1) If a State, Indian tribe, or LEA is prohibited by law from providing for the participation of students or teachers from private nonprofit schools as required by paragraph (a) of this section, or if the Corporation determines that a State, Indian tribe, or LEA substantially fails or is unwilling to provide for their participation on an equitable basis, the Corporation will waive those requirements and arrange for the provision of services to the students and teachers.

(2) Waivers will be subject to the consultation, withholding, notice, and judicial review requirements of section 1017(b) (3) and (4) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2727(b)).

Subpart D—Application Contents

§ 2516.400 What must a State or Indian tribe include in an application for a grant?

In order to apply for a grant from the Corporation under this part, a State (SEA) or Indian tribe must submit the following:

(a) A three-year strategic plan, or a revision of a previously approved three-year strategic plan, for promoting service-learning through programs under this part. The application of a SEA must include a description of how the SEA will coordinate its service-learning plan with the State Plan under part 2513 of this chapter and with other federally-assisted activities.

(b) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation; and

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

§ 2516.410 What must a grantmaking entity, local partnership, or LEA include in an application for a grant?

In order to apply to the Corporation for a grant, a grantmaking entity, local partnership, or LEA must submit the following:

(a) A detailed description of the proposed program goals and activities. The application of a grantmaking entity must include—

(1) A description of how the applicant will coordinate its activities with the State Plan under part 2513 of this chapter and with other federally-assisted activities; and

(2) A description of how the program will be carried out in more than one State.

(b) The specific program, budget, and other information specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Prior to the placement of a participant, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as that proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees;

(3) Develop an age-appropriate learning component for participants in the program that includes a chance for participants to analyze and apply their service experiences; and

(4) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter.

(d) For a local partnership, an assurance that the LEA will serve as the partnerships fiscal agent.

§ 2516.420 What must an LEA, local partnership, or qualified organization include in an application for a subgrant?

In order to apply for a subgrant from an SEA, Indian tribe, or grantmaking entity under this part, an applicant must include the information required by the Corporation grantee.

Subpart E—Application Review

§ 2516.500 How does the Corporation review the merits of an application?

(a) In reviewing the merits of an application submitted to the Corporation under this part, the Corporation evaluates the quality, innovation, replicability, and sustainability of the proposal on the basis of the following criteria:

(1) Quality, as indicated by the extent to which—

(i) The program will provide productive meaningful, educational experiences that incorporate service-learning methods;

(ii) The program will meet community needs and involve individuals from diverse backgrounds (including economically disadvantaged youth) who will serve together to explore the root causes of community problems;

(iii) The principal leaders of the program will be well qualified for their responsibilities;

(iv) The program has sound plans and processes for training, technical assistance, supervision, quality control, evaluation, administration, and other key activities; and

(v) The program will advance knowledge about how to do effective and innovative community service and service-learning and enhance the broader elementary and secondary education field.

(2) Replicability, as indicated by the extent to which the program will assist others in learning from experience and replicating the approach of the program.

(3) Sustainability, as indicated by the extent to which—

(i) An SEA or grantmaking entity applicant demonstrates the ability and willingness to coordinate its activities with the State Plan under part 2513 of this chapter and with other federally assisted activities;

(ii) The program will foster collaborative efforts among local educational agencies, local government agencies, community based agencies, businesses, and State agencies;

(iii) The program will enjoy strong, broad-based community support; and

(iv) There is evidence that financial resources will be available to continue the program after the expiration of the grant.

(b) The Corporation also gives priority to proposals that—

(1) Involve participants in the design and operation of the program;

(2) Reflect the greatest need for assistance, such as programs targeting low-income areas;

(3) Involve students from public and private schools serving together;

(4) Involve students of different ages, races, genders, ethnicities, abilities and disabilities, or economic backgrounds, serving together;

(5) Are integrated into the academic program of the participants;

(6) Best represent the potential of service-learning as a vehicle for education reform and school-to-work transition;

(7) Develop civic responsibility and leadership skills and qualities in participants;

(8) Demonstrate the ability to achieve the goals of this part on the basis of the proposal's quality, innovation, replicability, and sustainability; or

(9) Address any other priority established by the Corporation for a particular period.

(c) In reviewing applications submitted by Indian tribes and U.S. Territories, the Corporation—

(1) May decide to approve only planning of school-based service-learning programs; and

(2) Will set the amounts of grants in accordance with the respective needs of applicants.

§ 2516.510 What happens if the Corporation rejects a State's application for an allotment grant?

If the Corporation rejects a State's application for an allotment grant under § 2516.600 (b)(2) the Corporation will—

(a) Promptly notify the State of the reasons for the rejection;

(b) Provide the State with a reasonable opportunity to revise and resubmit the application;

(c) Provide technical assistance, if necessary; and

(d) Promptly reconsider the resubmitted application and make a decision.

§ 2516.520 How does a State, Indian tribe, or grantmaking entity review the merits of an application?

In reviewing the merits of an application for a subgrant under this part, a Corporation grantee must use the criteria and priorities in § 2516.500.

Subpart F—Distribution of Funds

§ 2516.600 How are funds for school-based service-learning programs distributed?

(a) Of the amounts appropriated to carry out this part for any fiscal year, the Corporation will reserve not more than three percent for grants to Indian tribes and U.S. Territories to be allotted in accordance with their respective needs.

(b) The Corporation will use the remainder of the funds appropriated as follows:

(1) Competitive Grants. From 25 percent of the remainder, the Corporation may make grants on a competitive basis to States, Indian tribes, or grantmaking entities.

(2) Allotments to States. (i) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the number of school-age youth in the State bears to the total number of school-age youth of all States.

(ii) From 37.5 percent of the remainder, the Corporation will allot to each State an amount that bears the same ratio to 37.5 percent of the remainder as the allocation to the State for the previous fiscal year under Chapter 1 of Title I of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2711 *et seq.*) bears to the allocations to all States.

(iii) Notwithstanding other provisions of paragraph (b)(2) of this section, no State will receive an allotment that is less than the allotment the State received for fiscal year 1993 from the Commission on National and Community Service. If the amount of funds made available in a fiscal year is insufficient to make those allotments, the Corporation will make additional funds available from the 25 percent described in paragraph (b)(1) of this section for that fiscal year to make those allotments.

(3) For the purpose of paragraph (b) of this section, "State" means one of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(c) If a State or Indian tribe does not submit an application that meets the requirements for approval under this part, the Corporation (after making any grants to local partnerships or LEAs for activities in nonparticipating States) may use its allotment for States and Indian tribes with approved applications, as the Corporation determines appropriate.

(d) Notwithstanding other provisions of this section, if less than $20,000,000 is made available in any fiscal year to carry out this part, the Corporation will make all grants to States and Indian tribes on a competitive basis.

Subpart G—Funding Requirements

§ 2516.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to a lack of available financial resources at the local level.

§ 2516.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part:

(a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b)(1) An SEA or Indian tribe must spend between ten and 15 percent of the grant to build capacity through training, technical assistance, curriculum development, and coordination activities.

(2) However, the Corporation may waive this requirement in order to permit an SEA or a tribe to use between ten percent and 20 percent of the grant funds to build capacity. To be eligible to receive the waiver, the SEA or tribe must submit an application to the Corporation.

(c) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part or part 2517 or 2519 of this chapter except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2516.720 What is the length of each type of grant?

(a) One year is the maximum length of—

(1) A planning grant under § 2516.200 (a), (c) or (f); and

(2) A grant to a local partnership for activities in a nonparticipating State under § 2516.200 (b) and (d).

(b) All other grants are for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2516.730 May an applicant submit multiple applications for the same project?

No. The Corporation will reject an application if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

Subpart H—Monitoring and Evaluation Requirements

§ 2516.800 What are the purposes of monitoring and evaluation?

(a) Monitoring is a continuous effort to assess performance and improve quality. Evaluation is an assessment of program effectiveness and outcomes at the end of a given period of time.

(b) Every monitoring and evaluation requirement serves one or more of the following purposes:

(1) Ensuring quality programs.

(2) Examining the benefits of national and community service.

(3) Fulfilling legislative requirements.

§ 2516.810 By what standards will service-learning programs be evaluated?

The Corporation will evaluate programs based on the following:

(a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award.

(b) The extent to which the program is cost-effective.

(c) Other criteria as determined and published by the Corporation.

§ 2516.820 What must grantees and subgrantees do to monitor and evaluate the effectiveness of their programs?

Grantees and subgrantees must undertake the following activities:

(a) Monitor management effectiveness, the quality of services provided, and the satisfaction of both participants and service recipients. Monitoring should be a continuous process, allowing for frequent feedback and quick correction of weaknesses. Monitoring approaches such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and service recipient and participant surveys are encouraged.

(b) Track progress toward pre-established objectives. Objectives must be established by programs and approved by the Corporation. Programs must submit to the Corporation (or the Corporation grantee as applicable) periodic performance reports and, as part of an annual report, an annual performance report.

(c) Collect and submit to the Corporation (through the Corporation grantee as applicable) the following data:

(1) The total number of participants in each program and basic demographic characteristics of the participants including sex, age, economic background, education level, ethnic group, disability classification, and geographic region.

(2) Other information as required by the Corporation.

§ 2516.830 What must a Corporation grantee do to monitor and evaluate the effectiveness of the programs of its subgrantees?

A Corporation grantee that makes subgrants must undertake the following activities:

(a) Ensure that subgrantees comply with the requirements of § 2516.820.

(b) Track program performance in terms of progress toward pre-established objectives; ensure that corrective action is taken when necessary; and submit to the Corporation periodic performance reports and, as part of an annual report, an annual performance report for each subgrantee.

(c) Collect from programs and submit to the Corporation the descriptive information required in § 2516.820(c)(1).

§ 2516.840 Must grantees or subgrantees perform independent evaluations?

No. An independent evaluation is not required but is permissible.

§ 2516.850 What will the Corporation do to evaluate the overall success of the service-learning program?

(a) The Corporation will conduct independent evaluations. These evaluations will consider the opinions of participants and members of the communities where services are delivered. If appropriate, these evaluations will compare participants with individuals who have not participated in service-learning programs. These evaluations will—

(1) Study the extent to which service-learning programs as a whole affect the involved communities;

(2) Determine the extent to which service-learning programs as a whole increase academic learning of participants, enhance civic education, and foster continued community involvement; and

(3) Determine the effectiveness of different program models.

(b) The Corporation will also determine by June 30, 1995, whether outcomes of service-learning programs are defined and measured appropriately, and the implications of the results from such a study for authorized funding levels.

§ 2516.860 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in § 2516.850. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees under this part must comply with the provisions of paragraph (a) of this section.

PART 2517—COMMUNITY-BASED SERVICE-LEARNING PROGRAMS

Subpart A—Grant Applications

Sec.

2517.100 Who may apply for a direct grant from the Corporation?
2517.110 Who may apply for a subgrant from a Corporation grantee?

Subpart B—Use of Grant Funds

2517.200 How may grant funds be used?

Subpart C—Eligibility to Participate

2517.300 Who may participate in a community-based service-learning program?

Subpart D—Application Contents

2517.400 What must a State Commission or grantmaking entity include in an application for a grant?
2517.410 What must a qualified organization include in an application for a grant or a subgrant?

Subpart E—Application Review

2517.500 How is an application evaluated?

Subpart F—Distribution of Funds

2517.600 How are funds for community-based service-learning programs distributed?

Subpart G—Funding Requirements

2517.700 Are matching funds required?
2517.710 Are there limits on the use of funds?
2517.720 What is the length of a grant?
2517.730 May an applicant submit multiple applications for the same project?

Subpart H—Evaluation and Monitoring Requirements

2517.800 What are the evaluation and monitoring requirements for community-based programs?

Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Grant Applications

§ 2517.100 Who may apply for a direct grant from the Corporation?

(a) The following entities may apply for a direct grant from the Corporation:

(1) A State Commission established under part 2550 of this chapter.

(2) A grantmaking entity as defined in § 2515.20 of this chapter.

(3) A qualified organization as defined in § 2515.20 of this chapter.

(b) The types of grants for which each entity is eligible are described in § 2517.200 of this chapter.

§ 2517.110 Who may apply for a subgrant from a Corporation grantee?

Entities that may apply for a subgrant from a State Commission or grantmaking entity are qualified organizations that have entered into a partnership with one or more—

(a) Local educational agencies (LEAs);

(b) Other qualified organizations; or

(c) Both.

Subpart B—Use of Grant Funds

§ 2517.200 How may grant funds be used?

Funds under a community-based service-learning grant may be used for the purposes described in this section.

(a) A State Commission or grantmaking entity may use funds—

(1) To make subgrants to qualified organizations described in § 2517.110 to

implement, operate, expand, or replicate a community-based service program that provides direct and demonstrable educational, public safety, human, or environmental service by participants, who must be school-age youth; and

(2) To provide training and technical assistance to qualified organizations.

(b)(1) A qualified organization may use funds under a direct grant or a subgrant to implement, operate, expand, or replicate a community-based service program.

(2) If a qualified organization receives a direct grant, its program must be carried out at sites in two or more States or be particularly innovative.

Subpart C—Eligibility to Participate

§ 2517.300 Who may participate in a community-based service-learning program?

School-age youth as defined in § 2510.20 of this chapter may participate in a community-based program.

Subpart D—Application Contents

§ 2517.400 What must a State Commission or grantmaking entity include in an application for a grant?

(a) In order to apply for a grant from the Corporation under this part, a State Commission or a grantmaking entity must submit the following:

(1) A three-year strategic plan for promoting service-learning through programs under this part. The plan must identify and describe the community-based programs proposed to be carried out during the first year.

(2) A proposal containing the specific program, budget, and other information specified by the Corporation in the grant application package.

(3) A description of how activities under the grant will be coordinated with the State Plan under part 2513 of this chapter and with other federally-assisted activities.

(4) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the programs as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Ensure that, prior to placing a participant in a program, the entity carrying out the program will consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out that are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In addition, a grantmaking entity must submit information demonstrating that the entity will make grants for a program—

(1) To carry out activities in two or more States, under circumstances in which those activities can be carried out more efficiently through one program than through two or more programs; and

(2) To carry out the same activities, such as training activities or activities related to exchanging information on service experiences, through each of the projects assisted through the program.

§ 2517.410 What must a qualified organization include in an application for a grant or a subgrant?

(a) In order to apply to the Corporation for a direct grant, a qualified organization must submit the following:

(1) A three-year plan describing the goals and activities of the proposed program;

(2) The specific program, budget, and other information specified by the Corporation in the grant application package; and

(3) Assurances that the applicant will—

(i) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(ii) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter; and

(iii) Prior to placing a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area in which the program will be carried out who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement of those employees.

(b) In order to apply to a State Commission or a grantmaking entity for a subgrant, a qualified organization must submit the following:

(1) A plan describing the goals and activities of the proposed program; and

(2) Such specific program, budget, and other information as the Commission or entity reasonably requires.

Subpart E—Application Review

§ 2517.500 How is an application evaluated?

In evaluating an application for a grant or a subgrant, the Corporation, a State Commission, or a grantmaking entity will apply the following criteria:

(a) The quality of the program proposed.

(b) The innovation of, and feasibility of replicating, the program.

(c) The sustainability of the program, based on—

(1) Strong and broad-based community support;

(2) Multiple funding sources or private funding; and

(3) Coordination with the State Plan under part 2513 of this chapter and other federally-assisted activities.

(d) The quality of the leadership of the program, past performance of the program, and the extent to which the program builds on existing programs.

(e) The applicant's efforts—

(1) To recruit participants from among residents of the communities in which projects would be conducted;

(2) To ensure that the projects are open to participants of different ages, races, genders, ethnicities, abilities and disabilities, and economic backgrounds; and

(3) To involve participants and community residents in the design, leadership, and operation of the program.

(f) The extent to which projects would be located in areas that are—

(1) Empowerment zones, redevelopment areas, or other areas with high concentrations of low-income people; or

(2) Environmentally distressed.

Subpart F—Distribution of Funds

§ 2517.600 How are funds for community-based service-learning programs distributed?

All funds are distributed by the Corporation through competitive grants.

Subpart G—Funding Requirements

§ 2517.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed—

(1) Ninety percent of the total cost for the first year for which the program receives assistance;

(2) Eighty percent of the total cost for the second year;

(3) Seventy percent of the total cost for the third year; and

(4) Fifty percent of the total cost for the fourth year and any subsequent year.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

§ 2517.710 Are there limits on the use of funds?

Yes. The following limits apply to funds made available under this part:

(a)(1) The recipient of a direct grant from the Corporation may spend no more than five percent of the grant funds on administrative costs for any fiscal year.

(2) If a Corporation grantee makes a subgrant to an entity to carry out a service-learning program, the Corporation grantee may determine how the allowable administrative costs will be distributed between itself and the subgrantee.

(b) Funds made available under this part may not be used to pay any stipend, allowance, or other financial support to any participant in a service-learning program under this part or part 2516 or 2519 of this chapter except reimbursement for transportation, meals, and other reasonable out-of-pocket expenses directly related to participation in a program assisted under this part.

§ 2517.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2517.730 May an applicant submit multiple applications for the same project?

No. The Corporation will reject an application if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

Subpart H—Evaluation and Monitoring Requirements

§ 2517.800 What are the evaluation and monitoring requirements for community-based programs?

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2518—SERVICE-LEARNING CLEARINGHOUSE

Sec.
2518.100 What is the purpose of a Service-Learning Clearinghouse?
2518.110 What are the functions of a Service-Learning Clearinghouse?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2518.100 What is the purpose of a Service-Learning Clearinghouse?

The Corporation will provide financial assistance, from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter, to public or private nonprofit organizations that have extensive experience with service-learning, including use of adult volunteers to foster service-learning, to establish a clearinghouse, which will carry out activities, either directly or by arrangement with another such organization, with respect to information about service-learning.

§ 2518.110 What are the functions of a Service-Learning Clearinghouse?

An organization that receives assistance from funds appropriated to carry out the activities listed under parts 2530 through 2533 of this chapter may—

(a) Assist entities carrying out State or local service-learning programs with needs assessments and planning;

(b) Conduct research and evaluations concerning service-learning;

(c)(1) Provide leadership development and training to State and local service-learning program administrators, supervisors, project sponsors, and participants; and

(2) Provide training to persons who can provide the leadership development and training described in paragraph (c)(1) of this section;

(d) Facilitate communication among entities carrying out service-learning programs and participants in such programs;

(e) Provide information, curriculum materials, and technical assistance relating to planning and operation of service-learning programs, to States and local entities eligible to receive financial assistance under this title;

(f) Provide information regarding methods to make service-learning programs accessible to individuals with disabilities;

(g)(1) Gather and disseminate information on successful service-learning programs, components of such successful programs, innovative youth skills curricula related to service-learning, and service-learning projects; and

(2) Coordinate the activities of the Clearinghouse with appropriate entities to avoid duplication of effort;

(h) Make recommendations to State and local entities on quality controls to improve the quality of service-learning programs;

(i) Assist organizations in recruiting, screening, and placing service-learning coordinators; and

(j) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

PART 2519—HIGHER EDUCATION INNOVATIVE PROGRAMS FOR COMMUNITY SERVICE

Subpart A—Purpose and Eligibility to Apply

Sec.
2519.100 What is the purpose of the Higher Education programs?
2519.110 Who may apply for a grant?

Subpart B—Use of Grant Funds

2519.200 How may grant funds be used?

Subpart C—Participant Requirements and Benefits

2519.300 Who may participate in a Higher Education program?
2519.310 Is a participant eligible to receive an AmeriCorps educational award?
2519.320 May a program provide a stipend to a participant?

Subpart D—Application Contents

2519.400 What must an applicant include in an application for a grant?
2519.410 Are there any limitations on the use of funds?
2519.420 How many years of assistance may an eligible applicant seek?

Subpart E—Application Review

2519.500 How does the Corporation review the merits of an application?

Subpart F—Distribution of Funds

2519.600 How are funds for Higher Education programs distributed?

Subpart G—Funding Requirements

2519.700 Are matching funds required?
2519.710 Are there limits on the use of funds?
2519.720 What is the length of a grant?
2519.730 May an applicant submit multiple applications for the same project?

Subpart H—Monitoring and Evaluation Requirements

2519.800 What are the monitoring and evaluation requirements for Higher Education programs?

Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Purpose and Eligibility to Apply

§ 2519.100 What is the purpose of the Higher Education programs?

service is to expand participation in community service by supporting high-quality, sustainable community service programs carried out through institutions of higher education, acting as civic institutions helping to meet the educational, public safety, human, and environmental needs of neighboring communities.

§ 2519.110 Who may apply for a grant?

The following entities may apply for a grant from the Corporation:

(a) An institution of higher education.

(b) A consortium of institutions of higher education.

(c) A partnership comprised of one or more public or private nonprofit organizations and one or more institutions of higher education.

Subpart B—Use of Grant Funds

§ 2519.200 How may grant funds be used?

Funds under a higher education program grant may be used for the following activities:

(a) Enabling an institution of higher education or partnership to create or expand an organized community service program that—

(1) Engenders a sense of social responsibility and commitment to the community in which the institution is located; and

(2) Provides projects for participants, as described in § 2519.300.

(b) Supporting student-initiated and student-designed community service projects.

(c) Strengthening the leadership and instructional capacity of teachers at the elementary, secondary, and postsecondary levels with respect to service-learning by—

(1) Including service-learning as a key component of the preservice teacher education of the institution; and

(2) Encouraging the faculty of the institution to use service-learning methods throughout the curriculum.

(d) Facilitating the integration of community service carried out under the grant into academic curricula, including integration of clinical programs into the curriculum for students in professional schools, so that students may obtain credit for their community service projects.

(e) Supplementing the funds available to carry out work-study programs under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*) to support service-learning and community service.

(f) Strengthening the service infrastructure within institutions of higher education in the United States that supports service-learning and community service.

(g) Providing for the training of teachers, prospective teachers, related education personnel, and community leaders in the skills necessary to develop, supervise, and organize service-learning.

Subpart C—Participant Requirements and Benefits

§ 2519.300 Who may participate in a Higher Education program?

Students, faculty, administration and staff of an institution, as well as residents of the community may participate. For the purpose of this part, the term "student" means an individual who is enrolled in an institution of higher education on a full-time or part-time basis.

§ 2519.310 Is a participant eligible to receive an AmeriCorps educational award?

In general, no. However, certain positions in programs funded under this part may qualify as approved AmeriCorps positions. The Corporation will establish eligibility requirements for these positions as a part of the application package.

§ 2519.320 May a program provide a stipend to a participant?

(a) A program may provide a stipend for service activities for a participant who is a student if the provision of stipends is reasonable in the context of a program's design and objectives.

(1) A program may not provide a stipend to a student who is receiving academic credit for service activities unless the service activities require a substantial time commitment beyond that expected for the credit earned.

(2) A participant who is earning money for service activities under the work-study program described in § 2519.200(e) may not receive an additional stipend from funds under this part.

(b) Consistent with the AmeriCorps program requirements in § 2522.100 of this chapter, a program with participants serving in approved full-time AmeriCorps positions must ensure the provision of a living allowance and, if necessary, health care and child care to those participants.

Subpart D—Application Contents

§ 2519.400 What must an applicant include in an application for a grant?

In order to apply to the Corporation for a grant, an applicant must submit the following:

(a) A plan describing the goals and activities of the proposed program.

(b) The specific program, budget, and other information and assurances specified by the Corporation in the grant application package.

(c) Assurances that the applicant will—

(1) Keep such records and provide such information to the Corporation with respect to the program as may be required for fiscal audits and program evaluation;

(2) Comply with the nonduplication, nondisplacement, and grievance procedure requirements of part 2540 of this chapter;

(3) Prior to the placement of a participant in the program, consult with the appropriate local labor organization, if any, representing employees in the area who are engaged in the same or similar work as the work proposed to be carried out by the program, to prevent the displacement and protect the rights of those employees; and

(4) Comply with any other assurances that the Corporation deems necessary.

§ 2519.410 Are there any limitations on the use of funds?

Not more that five percent of funds awarded under this part in any fiscal year may be used for administrative costs.

§ 2519.420 How many years of assistance may an eligible applicant seek?

Grants may be for up to three years, subject to satisfactory performance and annual appropriations.

Subpart E—Application Review

§ 2519.500 How does the Corporation review the merits of an application?

(a) The Corporation will evaluate the merits of an application submitted under this part on the basis of the quality, innovation, replicability, and sustainability of the proposed program and such other criteria as the Corporation establishes in an application package.

(b) In addition, in reviewing an application submitted under this part, the Corporation will give a proposed program increased priority for each characteristic described in paragraphs (b)(1) through (7) of this section. Priority programs—

(1) Demonstrate the commitment of the institution of higher education, other than by demonstrating the commitment of its students, to supporting the community service projects carried out under the program;

(2) Specify how the institution will promote faculty, administration, and staff participation in the community service projects;

(3) Specify the manner in which the institution will provide service to the community through organized programs, including, where appropriate, clinical programs for students in professional schools;

(4) Describe any partnership that will participate in the community service projects, such as a partnership comprised of the institution, a student organization, a community-based agency, a local government agency, or a nonprofit entity that serves or involves school-age youth or older adults;

(5) Demonstrate community involvement in the development of the proposal;

(6) Specify that the institution will use funds under this part to strengthen the infrastructure in institutions of higher education; or

(7) With respect to projects involving delivery of service, specify projects that involve leadership development of school-age youth.

(c) In addition, the Corporation may designate additional priorities in an application package that will be used in selecting programs.

Subpart F—Distribution of Funds

§ 2519.600 How are funds for Higher Education programs distributed?

All funds under this part are distributed by the Corporation through grants.

Subpart G—Funding Requirements

§ 2519.700 Are matching funds required?

(a) Yes. The Corporation share of the cost of carrying out a program funded under this part may not exceed 50 percent.

(b) In providing for the remaining share of the cost of carrying out a program, each recipient of assistance must provide for that share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services, and may provide for that share through State sources, local sources, or Federal sources (other than funds made available under the national service laws).

(c) However, the Corporation may waive the requirements of paragraph (b) of this section in whole or in part with respect to any program in any fiscal year if the Corporation determines that the waiver would be equitable due to lack of available financial resources at the local level.

§ 2519.710 Are there limits on the use of funds?

Yes. The recipient of a grant under this part may spend no more than five percent of the grant funds for any fiscal year on administrative costs.

§ 2519.720 What is the length of a grant?

A grant under this part is for a period of up to three years, subject to satisfactory performance and annual appropriations.

§ 2519.730 May an applicant submit multiple applications for the same project?

No. The Corporation will reject an application if the application describes a project proposed to be conducted using assistance requested by the applicant and the project is already described in another application pending before the Corporation.

Subpart H—Monitoring and Evaluation Requirements

§ 2519.800 What are the monitoring and evaluation requirements for Higher Education programs?

The monitoring and evaluation requirements for recipients of grants and subgrants under part 2516 of this chapter, relating to school-based service-learning programs, apply to recipients under this part.

PART 2520—PURPOSES AND DEFINITIONS: AMERICORPS PROGRAMS

Sec.

2520.10 What is the purpose of this part?
2520.20 What types of service activities are allowable for programs supported under parts 2521 through 2524 of this chapter?
2520.30 Are there any activities that are prohibited?
2520.40 Definitions.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2520.10 What is the purpose of this part?

The purpose of this part is to describe the AmeriCorps grant program, including the manner in which eligible applicants may apply for funding. AmeriCorps programs must address educational, public safety, human, or environmental needs and provide AmeriCorps educational awards to eligible participants.

§ 2520.20 What types of service activities are allowable for programs supported under parts 2521 through 2524 of this chapter?

(a) The service must either provide a direct benefit to the community where it is performed, or involve the supervision of participants or volunteers whose service provides a direct benefit to the community where it is performed. Moreover, the approved AmeriCorps activities must result in a specific identifiable service or improvement that otherwise would not be provided with existing funds or volunteers and that does not duplicate the routine functions of workers or displace paid employees. Programs must develop service opportunities that are appropriate to the skill levels of participants and that provide a demonstrable, identifiable benefit that is valued by the community.

(b) In certain circumstances, some activities may not provide a direct benefit to the communities in which service is performed. Such activities may include, but are not limited to, clerical work and research. However, a participant may engage in such activities on his or her own time or if the performance of the activity is incidental to the participant's provision of service that does provide a direct benefit to the community in which the service is performed.

§ 2520.30 Are there any activities that are prohibited?

Yes. Some activities are prohibited altogether. Prohibited activities may not be performed by participants in the course of their duties; at the request of program staff, or in a manner that would associate the activities with the AmeriCorps program or the Corporation. These activities include:

(a) Any effort to influence legislation, as prohibited under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c));

(b) Organizing protests, petitions, boycotts, or strikes;

(c) Assisting, promoting or deterring union organizing;

(d) Engaging in partisan political activities, or other activities designed to influence the outcome of an election to any public office;

(e) Engaging in religious instruction, conducting worship services, providing instruction as part of a program that includes mandatory religious education or worship, constructing or operating facilities devoted to religious instruction or worship, maintaining facilities primarily or inherently devoted to religious instruction or worship, or engaging in any form of religious proselytization;

(f) Providing a direct benefit to—

(1) A business organized for profit;

(2) A labor union;

(3) A partisan political organization;

(4) A nonprofit organization that fails to comply with the restrictions contained in section 501(c) of the Internal Revenue Code of 1986; and

(5) An organization engaged in the religious activities described in paragraph (e) of this section, unless Corporation assistance is not used to support those religious activities; and

(g) Such other activities as the Corporation may prohibit.

§ 2520.40 Definitions.

AmeriCorps Program. The term *AmeriCorps program* means any

program, including VISTA and the National Civilian Community Corps, that provides AmeriCorps educational awards in exchange for substantial full- or part-time service.

PART 2521—ELIGIBLE AMERICORPS PROGRAM APPLICANTS AND TYPES OF GRANTS AVAILABLE FOR AWARD

Sec.

2521.10 Who may apply to receive an AmeriCorps grant?
2521.20 What types of AmeriCorps program grants are available for award?
2521.30 How will AmeriCorps program grants be awarded?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2521.10 Who may apply to receive an AmeriCorps grant?

(a) States (including Territories), subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education are eligible to apply for AmeriCorps grants. The Corporation may also enter into agreements with other Federal agencies as described in part 2523 of this chapter.

(b) In addition, eligible applicants must meet the following specific requirements:

(1) The fifty States, the District of Columbia and Puerto Rico must first receive Corporation authorization for the use of a State Commission or alternative administrative or transitional entity pursuant to 45 CFR part 2550; and

(2) Only Federal agencies that are cabinet-level departments or independent agencies are eligible to receive an AmeriCorps grant; bureaus, divisions, and local and regional offices of such departments and agencies may only apply through the central department or agency.

§ 2521.20 What types of AmeriCorps program grants are available for award?

The Corporation may make the following types of grants to eligible applicants. The requirements of this section will also apply to any State or other applicant receiving assistance under this part that proposes to conduct a grant program using the assistance to support other national or community service programs.

(a) *Planning grants.*—(1) *Purpose.* The purpose of a planning grant is to assist an applicant in completing the planning necessary to implement a sound concept that has already been developed.

(2) *Eligibility.* (i) States, Territories, and Federal agencies may apply to the Corporation for planning grants.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for planning grants.

(3) *Duration.* A planning grant will be negotiated for a term not to exceed one year.

(b) *Operational grants.*—(1) *Purpose.* The purpose of an operational grant is to fund an organization that is ready to implement a fully developed plan for a new or expanded program. An operational grant may include a short planning period if necessary to implement a program.

(2) *Eligibility.* (i) States, Territories and Federal agencies may apply to the Corporation for operational grants, including AmeriCorps educational awards.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), and institutions of higher education may apply either to a State or directly to the Corporation for operational grants including AmeriCorps educational awards. The Corporation may limit the categories of applicants eligible to apply directly to the Corporation for assistance under this subsection consistent with its National priorities.

(3) *Duration.* An operational grant will be negotiated for a term not to exceed three years. Within a three-year term, renewal funding will be contingent upon periodic assessment of program quality, progress to date, and availability of Congressional appropriations.

(c) *AmeriCorps educational awards only.*—(1) *Purpose.* The purpose of these awards is to provide AmeriCorps educational awards to programs that are not receiving or applying to the Corporation for program assistance but that meet the criteria for approved AmeriCorps positions, and desire to provide an AmeriCorps educational award to participants serving in approved positions.

(2) *Eligibility.* (i) States and Territories may apply to the Corporation for AmeriCorps educational awards only.

(ii) Subdivisions of States, Indian Tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies may apply directly to the Corporation for AmeriCorps educational awards only.

(d) *Training, technical assistance and other special grants.*—(1) *Purpose.* The purpose of these grants is to ensure broad access to AmeriCorps programs for all Americans, including those with disabilities; support disaster relief efforts; assist efforts to secure private support for programs through challenge grants; and ensure program quality by supporting technical assistance and training programs.

(2) *Eligibility.* Eligibility varies and is detailed under "Technical Assistance and Other Special Grants."

(3) *Duration.* Grants will be negotiated for a renewable term of up to three years.

§ 2521.30 How will AmeriCorps program grants be awarded?

In any fiscal year, the Corporation will award AmeriCorps program grants as follows:

(a) *Grants to State applicants.* (1) One-third of the funds available under this part and a corresponding allotment of AmeriCorps educational awards, as specified by the Corporation, will be distributed according to a population-based formula to States (including Puerto Rico and the District of Columbia) that have applications approved by the Corporation.

(2) At least one-third of funds available under this part and an appropriate number of AmeriCorps awards, as determined by the Corporation, will be awarded to States on a competitive basis. In order to receive these funds, a State must receive funds under paragraph (a)(1) of this section in the same fiscal year.

(3) In making subgrants with funds awarded by formula or competition under paragraphs (a) (1) or (2) of this section, a State must:

(i) Provide a description of the process used to select programe for funding including a certification that the State or other entity used a competitive process and criteria that were consistent with the selection criteria in § 2522.410 of this chapter. In making such competitive selections, the State must ensure the equitable allocation within the State of assistance and approved AmeriCorps positions provided under this subtitle to the State taking into consideretion such factors as the location of the programs applying to the State, population density, and economic distress;

(ii) Provide a written assurance that not less than 60 percent of the assistance provided to the State will be used to make grants in support of AmeriCorps programs other than AmeriCorps programs supported by the State or a State agency. The Corporation may permit a State to deviate from this percentage if the State demonstrates that it did not receive a sufficient number of acceptable applications; and

(iii) Ensure that a minimum of 50 percent of funds going to the State will be used for programs that operate in the areas of need and that place a priority on recruiting participants who are residents in high need areas, or on Federal or other public lands. The Corporation may waive this requirement for an individual State if at least 50 percent of the total amount of assistance to all States will be used for such programs.

(b) *Grants to applicants other than States.* (1) One percent of available funds will be distributed to the U.S. Territories[1] that have applications approved by the Corporation according to a population-based formula.[2]

(2) One percent of available funds will be reserved for distribution to Indian tribes on a competitive basis.

(3) The Corporation will use any funds available under this part remaining after the award of the grants described in paragraphs (a) and (b) (1) and (2) of this section to make direct competitive grants to subdivisions of States, Indian tribes, public or private nonprofit organizations (including labor organizations), institutions of higher education, and Federal agencies. No more than one-third of these remaining funds may be awarded to Federal agencies.

(c) *Allocation of AmeriCorps educational awards only.* The Corporation will determine on an annual basis the appropriate number of educational awards to provide eligible applicants who have not applied for program assistance.

(d) *Effect States' or Territories' failure to apply.* If a State or U.S. Territory does not apply for or fails to give adequate notice of its intent to apply for a formula-based grant as announced by the Corporation and published in applications and the Notice of Funds Availability, the Corporation will use the amount of that State's allotment to make grants to eligible entities within that State or Territory to carry out AmeriCorps programs in that State or Territory. Any funds remaining from that State's allotment after making such grants will be reallocated to the States, Territories, and Indian tribes with approved AmeriCorps applications at the Corporation's discretion.

(e) *Effect of rejection of State application.* If a State's application for a formula-based grant is ultimately rejected by the Corporation pursuant to § 2522.320 of this chapter, the State's allotment will be available for redistribution by the Corporation to the States, Territories, and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

(f) The Corporation will make grants for training, technical assistance and other special programs described in part 2524 of this chapter at the Corporation's discretion.

(g) *Matching funds.*—(1) *Requirements.* In addition the matching requirements for participant benefits specified in § 2522.240(b)(5) of this chapter, the Federal share of the cost of carrying out an AmeriCorps program that receives the assistance under parts 2521 through 2524 of this chapter, whether the assistance is provided directly or as a subgrant from the original recipient of the assistance, may not exceed 75 percent of such cost.

(2) *Calculation.* In providing for the remaining share of the cost of carrying out an AmeriCorps program, the program—

(i) Must provide for its share through a payment in cash or in kind, fairly evaluated, including facilities, equipment, or services; and

(ii) May provide for its share through State sources, local sources, or other Federal sources (other than funds made available by the Corporation).

(3) *Waiver.* The Corporation reserves the right to waive, in whole or in part, the requirements of paragraph (g)(1) of this section.

(h) *Administrative costs.* (1) Grants or transfers of funds made under this part are subject to the five percent limitation on administrative costs specified in § 2540.110 of this chapter.

(2) Rules on use. States or other grantmaking entities that make subgrants to programs may retain no more than one-half of the five percent maximum administrative costs allowed for each Corporation grant.

[1] The United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and Palau (until such time as the Compact of Free Association with Palau is ratified).

[2] The amount allotted as a grant to each such territory or possession is equal to the ratio of each such Territory's population to the population of all such territories multiplied by the amount of the one percent set-aside.

PART 2522—AMERICORPS PARTICIPANTS, PROGRAMS, AND APPLICANTS

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Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Minimum Requirements and Program Types

§ 2522.100 What are the minimum requirements that every AmeriCorps program, regardless of type, must meet?

Although a wide range of programs may be eligible to apply for and receive

support from the Corporation, all AmeriCorps programs must meet certain minimum program requirements. These requirements apply regardless of whether a program is supported directly by the Corporation or through a subgrant. All AmeriCorps programs must:

(a) Address educational, public safety, human, or environmental needs, and provide a direct and demonstrable benefit that is valued by the community in which the service is performed;

(b) Perform projects that are designed, implemented, and evaluated with extensive and broad-based local input, including consultation with representatives from the community served, participants (or potential participants) in the program, community-based agencies with a demonstrated record of experience in providing services, and local labor organizations representing employees of project sponsors (if such entities exist in the area to be served by the program);

(c) Obtain, in the case of a program that also proposes to serve as the sponsor, the written concurrence of any local labor organization representing employees of the project sponsors who are engaged in the same or substantially similar work as that proposed to be carried out by the AmeriCorps participant;

(d) Establish and provide outcome objectives, including a strategy for achieving these objectives, upon which self-assessment and Corporation-assessment of progress can rest. Such assessment will be used to help determine the extent to which the program has had a positive impact:

(1) On communities and persons served by the projects performed by the program;

(2) On participants who take part in the projects; and

(3) In such other areas as the program or Corporation may specify;

(e) Strengthen communities and encourage mutual respect and cooperation among citizens of different races, ethnicities, socioeconomic backgrounds, educational levels, both men and women and individuals with disabilities;

(f) Agree to seek actively to include participants from the communities in which projects are conducted, as well as individuals of different races and ethnicities, socioeconomic backgrounds, educational levels, both men and women as well as individuals with disabilities unless a program design requires emphasizing the recruitment of participants who share a specific characteristic or background. In no case may a program violate the nondiscrimination, nonduplication and nondisplacement rules governing participant selection described in part 2540 of this chapter. In addition, programs are encouraged to establish, if consistent with the purposes of the program, an intergenerational component that combines students, out-of-school youths, and older adults as participants;

(g)(1) Determine the projects in which participants will serve and establish minimum qualifications that individuals must meet to be eligible to participate in the program; these qualifications may vary based on the specific tasks to be performed by participants. Regardless of the educational level or background of participants sought, programs are encouraged to select individuals who posses leadership potential and a commitment to the goals of the AmeriCorps program. In any case, programs must select participants in a non-partisan, non-political, non-discriminatory manner, ensuring fair access to participation. In addition, programs are required to ensure that they do not displace any existing paid employees as provided in part 2540 of this chapter. To this end, programs may not select any prospective participant who is or was previously employed by a prospective project sponsors within six months of the time of enrollment in the program.

(2) In addition, all programs are required to comply with any pre-service orientation or training period requirements established by the Corporation to assist in the selection of motivated participants. Finally, all programs must agree to select a percentage (to be determined by the Corporation) of the participants for the program from among prospective participants recruited by the Corporation or State Commissions under part 2532 of this chapter. The Corporation may also specify a minimum percentage of participants to be selected from the national leadership pool established under § 2522.120. The Corporation may vary either percentage for different types of AmeriCorps programs;

(h) Provide reasonable accommodation, including auxiliary aids and services (as defined in section 3(1) of the Americans with Disabilities Act of 1990 (42 U.S.C. 12102(1))) based on the individualized need of a participant who is a qualified individual with a disability (as defined in section 101(8) of such Act (42 U.S.C. 12111(8)). For the purpose of complying with this provision, AmeriCorps programs may apply for additional financial assistance from the Corporation pursuant to § 2524.50 of this chapter;

(i) Use service experiences to help participants achieve the skills and education needed for productive, active citizenship, including the provision, if appropriate, of structured opportunities for participants to reflect on their service experiences. In addition, all programs must encourage every participant who is eligible to vote to register prior to completing a term of service;

(j) Provide participants in the program with the training, skills, and knowledge necessary to perform the tasks required in their respective projects, including, if appropriate, specific training in a particular field and background information on the community, including why the service projects are needed;

(k) Provide support services—

(1) To participants who are completing a term of service and making the transition to other educational and career opportunities; and

(2) To those participants who are school dropouts in order to assist them in earning the equivalent of a high school diploma;

(l) Ensure that participants serving in approved AmeriCorps positions receive the living allowance and other benefits described in §§ 2521.240 through 2521.250 of this chapter, including a living allowance and other benefits;

(m) Describe the manner in which the AmeriCorps educational awards will be apportioned among individuals serving in the program. If a program proposes to provide such benefits to less than 100 percent of the participants in the program, the program must provide a compelling rationale for determining which participants will receive the benefits and which participants will not. AmeriCorps programs are strongly encouraged to offer alternative post-service benefits to participants who will not receive AmeriCorps educational awards;

(n) Agree to identify the program, through the use of logos, common application materials, and other means, as part of a larger national effort (to be specified by the Corporation) and to participate in other activities such as common opening ceremonies (including the administration of a national oath or affirmation), service days, and conferences designed to promote a national identity for all AmeriCorps programs and participants, including those participants not receiving AmeriCorps educational awards. This provision does not preclude an AmeriCorps program from continuing to use its own name as the primary identification, or from using its name, logo, or other identifying materials on uniforms or other items;

(o) Agree to begin operations at such times as the Corporation may reasonably require and to comply with any restrictions the Corporation may establish as to the length of time (subsequent to the starting date(s) of a program) that the program may take to fill an approved AmeriCorps position left vacant due to attrition;

(p) Prior to receiving Corporation support, comply with all evaluation procedures specified by the Corporation, as explained in §§ 2522.500 through 2522.560;

(q) In the case of a program receiving funding directly from the Corporation, consult with and coordinate activities with the State Commission for the State in which the program operates; and

(r) Address any other requirements as specified by the Corporation.

§ 2522.110 What types of AmeriCorps programs are eligible to compete for AmeriCorps grants?

Types of AmeriCorps programs eligible to compete for AmeriCorps grants include the following:

(a) *Specialized skills programs.* (1) A service program that is targeted to address specific educational, public safety, human, or environmental needs and that—

(i) Recruits individuals with special skills or provides specialized pre-service training to enable participants to be placed individually or in teams in positions in which the participants can meet such needs; and

(ii) If consistent with the purposes of the program, brings participants together for additional training and other activities designed to foster civic responsibility, increase the skills of participants, and improve the quality of the service provided.

(2) A preprofessional training program in which students enrolled in an institution of higher education—

(i) Receive training in specified fields, which may include classes containing service-learning;

(ii) Perform service related to such training outside the classroom during the school term and during summer or other vacation periods; and

(iii) Agree to provide service upon graduation to meet educational, public safety, human, or environmental needs related to such training.

(3) A professional corps program that recruits and places qualified participants in positions—

(i) As teachers, nurses and other health care providers, police officers, early childhood development staff, engineers, or other professionals providing service to meet educational, public safety, human, or environmental needs in communities with an inadequate number of such professionals;

(ii) That may include a salary in excess of the maximum living allowance authorized in § 2522.240(b)(2); and

(iii) That are sponsored by public or private nonprofit employers who agree to pay 100 percent of the salaries and benefits (other than any AmeriCorps educational award from the National Service Trust) of the participants.

(b) *Specialized service programs.* (1) A community service program designed to meet the needs of rural communities, using teams or individual placements to address the development needs of rural communities and to combat rural poverty, including health care, education, and job training.

(2) A program that seeks to eliminate hunger in communities and rural areas through service in projects—

(i) Involving food banks, food pantries, and nonprofit organizations that provide food during emergencies;

(ii) Involving the gleaning of prepared and unprepared food that would otherwise be discarded as unusable so that the usable portion of such food may be donated to food banks, food pantries, and other nonprofit organizations;

(iii) Seeking to address the long-term causes of hunger through education and the delivery of appropriate services; or

(iv) Providing training in basic health, nutrition, and life skills necessary to alleviate hunger in communities and rural areas.

(3) A program in which economically disadvantaged individuals who are between the ages of 16 and 24 years of age, inclusive, are provided with opportunities to perform service that, while enabling such individuals to obtain the education and employment skills necessary to achieve economic self-sufficiency, will help their communities meet—

(i) The housing needs of low-income families and the homeless; and

(ii) The need for community facilities in low-income areas.

(c) *Community-development programs.* (1) A community corps program that meets educational, public safety, human, or environmental needs and promotes greater community unity through the use of organized teams of participants of varied social and economic backgrounds, skill levels, physical and developmental capabilities, ages, ethnic backgrounds, or genders.

(2) A program that is administered by a combination of nonprofit organizations located in a low-income area, provides a broad range of services to residents of such an area, is governed by a board composed in significant part of low-income individuals, and is intended to provide opportunities for individuals or teams of individuals to engage in community projects in such an area that meet unaddressed community and individual needs, including projects that would—

(i) Meet the needs of low-income children and youth aged 18 and younger, such as providing after-school "safe-places," including schools, with opportunities for learning and recreation; or

(ii) Be directed to other important unaddressed needs in such an area.

(d) *Programs that expand service program capacity.* (1) A program that provides specialized training to individuals in service-learning and places the individuals after such training in positions, including positions as service-learning coordinators, to facilitate service-learning in programs eligible for funding under Serve-America.

(2) An AmeriCorps entrepreneur program that identifies, recruits, and trains gifted young adults of all backgrounds and assists them in designing solutions to community problems.

(e) *Campus-based programs.* A campus-based program that is designed to provide substantial service in a community during the school term and during summer or other vacation periods through the use of—

(1) Students who are attending an institution of higher education, including students participating in a work-study program assisted under part C of title IV of the Higher Education Act of 1965 (42 U.S.C. 2751 *et seq.*);

(2) Teams composed of such students; or

(3) Teams composed of a combination of such students and community residents.

(f) *Intergenerational programs.* An intergenerational program that combines students, out-of-school youths, and older adults as participants to provide needed community services, including an intergenerational component for other AmeriCorps programs described in this subsection.

(g) *Youth development programs.* A full-time, year-round youth corps program or full-time summer youth corps program, such as a conservation corps or youth service corps (including youth corps programs under subtitle I, the Public Lands Corps established under the Public Lands Corps Act of 1993, the Urban Youth Corps

established under section 106 of the National and Community Service Trust Act of 1993, and other conservation corps or youth service corps that perform service on Federal or other public lands or on Indian lands or Hawaiian home lands), that:

(1) Undertakes meaningful service projects with visible public benefits, including natural resource, urban renovation, or human services projects;

(2) Includes as participants youths and young adults between the ages of 16 and 25, inclusive, including out-of-school youths and other disadvanteged youths (such as youths with limited basic skills, youths in foster care who are becoming too old for foster care, youths of limited English proficiency, homeless youths, and youths who are individuals with disabilities) who are between those ages; and

(3) Provides those participants who are youths and young adults with—

(i) Crew-based, highly structured, and adult-supervised work experience, life skills, education, career guidance and counseling, employment training, and support services; and

(ii) The opportunity to develop citizenship values and skills through service to their community and the United States.

(h) *Individualized placement programs.* An individualized placement program that includes regular group activities, such as leadership training and special service projects.

(i) *Other programs.* Such other AmeriCorps programs addressing educational, public safety, human, or environmental needs as the Corporation may designate.

Subpart B—Participant Eligibility, Requirements and Benefits

§ 2522.200 What are the eligibility requirements for AmeriCorps participants?

(a) An AmeriCorps participant must be 17 years of age or older at the commencement of service (unless the participant is in a youth corps described in § 2522.110(a)(1)(ii), in which case the participant must be between the ages of 16 and 25, inclusive).

(b) An AmeriCorps participant must either have a high school diploma or its equivalent (including an alternative diploma or certificate for those individuals with disabilities for whom such an alternative diploma or certificate is appropriate) or agree to obtain a high school diploma or its equivalent. However, if the program in which the individual seeks to become a participant conducts an independent evaluation demonstrating that an individual is incapable of obtaining a high school diploma or its equivalent, the Corporation may waive this requirement.

(c) Unless an individual is enrolled in an institution of higher education on an ability to benefit basis and is considered eligible for funds under section 484 of the Higher Education Act of 1965 (20 U.S.C. 1091), he or she may not have dropped out of elementary or secondary school in order to enroll as an AmeriCorps participant.

(d) An AmeriCorps participant must be a citizen or national of the United States or lawful permanent resident alien of the United States.

§ 2522.210 How are AmeriCorps participants recruited and selected?

(a) *Local recruitment and selection.* In general, AmeriCorps participants will be selected locally by an approved AmeriCorps program, and the selection criteria will vary widely among the different programs. Nevertheless, AmeriCorps programs must select their participants in a fair and non-discriminatory manner which complies with part 2542 of this chapter. In selecting participants, programs must also comply with the recruitment and selection requirements specified in this section.

(b)(1) *National and State recruitment and selection.* The Corporation and each State Commission will establish a system to recruit individuals who desire to perform national service and to assist the placement of these individuals in approved AmeriCorps positions, which may include positions available under titles I and II of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The national and State recruitment and placement system will be designed and operated according to Corporation guidelines.

(2) *Dissemination of information.* The Corporation and State Commissions will disseminate information regarding available approved AmeriCorps positions through cooperation with secondary schools, institutions of higher education, employment service offices, State vocational rehabilitation agencies within the meaning of the Rehabilitation Act of 1973 (29 U.S.C. 701 et seq.) and other State agencies that primarily serve qualified individuals with disabilities, and other appropriate entities, particularly those organizations that provide outreach to disadvantaged youths and youths who are qualified individuals with disabilities.

(c) *National leadership pool.* (1) *Selection and training.* From among individuals recruited under paragraph (b) of this section, the Corporation may select individuals with significant leadership potential, as determined by the Corporation, to receive special training to enhance their leadership ability. The leadership training will be provided by the Corporation directly or through a grant or contract as the Corporation determines.

(2) *Emphasis on certain individuals.* In selecting individuals to receive leadership training under this provision, the Corporation will make special efforts to select individuals who have served—

(i) In the Peace Corps;

(ii) As VISTA volunteers;

(iii) As participants in AmeriCorps programs receiving assistance under parts 2520 through 2524 of this chapter;

(iv) As participants in National Service Demonstration programs that received assistance from the Commission on National and Community Service; or

(v) As members of the Armed Forces of the United States and who were honorably discharged from such service.

(3) *Assignment.* At the request of a program that receives assistance, the Corporation may assign an individual who receives leadership training under paragraph (c)(1) of this section to work with the program in a leadership position and carry out assignments not otherwise performed by regular participants. An individual assigned to a program will be considered to be a participant of the program.

§ 2522.220 What are the required terms of service for AmeriCorps participants, and may they serve for more than one term?

(a) *Term of service.* In order to be eligible for the educational award described in § 2522.240(a), participants serving in approved AmeriCorps positions must complete a term of service as defined in this section:

(1) *Full-time service.* 1,700 hours of service during a period of not less than nine months and not more than one year.

(2) *Part-time service.* 900 hours of service during a period of not more than two years, or, if the individual is enrolled in an institution of higher education while performing all or a portion of the service, not more than three years.

(3) *Reduced part-time term of service.* The Corporation may reduce the number of hours required to be served in order to receive an educational award for certain part-time participants serving in approved AmeriCorps positions. In such cases, the educational award will be reduced in direct proportion to the reduction in required hours of service. These reductions may be made for summer programs, for categories of participants in certain approved AmeriCorps programs and on a case-by-case, individual basis as the Corporation deems prudent.

(b) *Restriction on multiple terms.* While there is no limit on the number of terms an individual may serve in one or more AmeriCorps program, an AmeriCorps participant may only receive the benefits described in §§ 2522.240 through 2522.250 for the first two successfully-completed terms of service, regardless of whether those terms were served on a full-, part-, or reduced part-time basis.

(c) *Eligibility for second term.* A participant will only be eligible to serve a second or additional term of service if that individual has received satisfactory performance review(s) for any previous term(s) of service. Mere eligibility for a second or further term of service in no way guarantees a participant selection or placement.

(d) *Participant performance review.* For the purposes of determining a participant's eligibility for a second or additional term of service and/or for an AmeriCorps educational award, each AmeriCorps program will evaluate the performance of a participant mid-term and upon completion of a participants term of service. The end-of-term performance evaluation will assess the following:

(1) Whether the participant has completed the required number of hours described in paragraph (a) of this section;

(2) Whether the participant has satisfactorily completed assignments, tasks or projects; and

(3) Whether the participant has met any other performance criteria which had been clearly communicated both orally and in writing at the beginning of the term of service.

(e) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program's ruling of unsatisfactory performance may file a grievance according to the procedures set forth in part 2540 of this chapter. If that grievance procedure or subsequent binding arbitration procedure finds that the participant did in fact satisfactorily complete a term of service, then that individual will be eligible to receive an educational award and/or be eligible to serve a second term of service.

§ 2522.230 Under what circumstances may AmeriCorps participants be released from completing a term of service, and what are the consequences?

In general, AmeriCorps programs have the authority to release participants serving in approved AmeriCorps positions from completing a term of service for two reasons: for compelling personal circumstances as demonstrated by the participant or for cause.

(a) *Release for compelling personal circumstances.* In general, AmeriCorps programs have the authority to define the circumstances by which a participant may be released for compelling personal circumstances. Programs wishing to release participants serving in approved AmeriCorps positions may elect either—

(1) To grant the release and provide a portion of the educational award equal to the portion of the term served; or

(2) To permit the participant to temporarily suspend performance of the term of service for a period of up to two years (and such additional period as the Corporation may allow for extenuating circumstances) and, upon completion of such period, to allow the participant to return to the program with which he or she was serving or to a similar AmeriCorps program with the assistance of the Corporation, in order to complete the remainder of the term of service and obtain the entire AmeriCorps educational award.

(b) *Release for cause.* AmeriCorps programs have the authority to define the circumstances by which a participant may be released for cause, except as specified in paragraph (b)(1) of this section. AmeriCorps programs must establish a written policy to be signed both by the participant and the program directors that clearly states the circumstances under which participants may be released for cause. Examples of conduct which programs may decide constitutes grounds for release for cause include chronic truancy, consistent failure to follow directions, and failure to adhere to program rules and guidelines. Under no circumstances may a participant's disability constitute grounds for release for cause.

(1) *Circumstances requiring release for cause.* AmeriCorps programs are required to release for cause any participant who is convicted of a felony during a term of service. Any participant who is officially charged with a violent felony (e.g., rape or homicide), or sale or distribution of a controlled substance, or any participant convicted of the possession of a controlled substance, will have his or her service suspended without a living allowance and without receiving credit for hours missed. Any individual whose service was suspended because of being charged with a violent felony or sale or distribution of a controlled substance may resume service if he or she is found not guilty or if such charge is dismissed. Any individual whose service was suspended because of being convicted of a first offense of the possession of a controlled substance may resume service by demonstrating that he or she has enrolled in an approved drug rehabilitation program. A person convicted of a second or third possession of a controlled substance may resume service by demonstrating successful completion of a rehabilitation program.

(2) *Impact of release for cause.* A participant released for cause may not receive any portion of the AmeriCorps educational award. In addition, any individual released for cause who wishes to reapply to the program from which he or she was released or to any other AmeriCorps program is required to disclose the release to that program. Failure to disclose to an AmeriCorps program any history of having been released for cause from another AmeriCorps program will render an individual ineligible to receive the AmeriCorps educational award, notwithstanding whether or not that individual successfully completes the term of service.

(3) *Grievance procedure.* Any AmeriCorps participant wishing to contest a program decision to release that participant for cause may file a grievance according to the procedures set forth in part 2540 of this chapter. Pending the resolution of such grievance procedure, a program may suspend the service of that participant. If the initial grievance procedure or subsequent binding arbitration proceedings find that there was not cause for release, the AmeriCorps program must reinstate the participant; moreover, the program must credit the participant with any service hours missed and pay the participant the full amount of any living allowance the participant did not receive as a result of such suspension. The Corporation retains the discretion to determine whether Corporation funds may be used to pay the living allowance withheld during a participant's suspension.

§ 2522.240 What benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *AmeriCorps Educational Awards.* An individual serving in an approved AmeriCorps position will receive an educational award from the National Service Trust upon successful completion of each of up to two terms of service as defined in § 2522.220.

(b) *Living allowances*—(1) *Amount.* Subject to the provisions of this part, any individual who participates on a full-time basis in an AmeriCorps program carried out using assistance provided under § 2521.30 of this chapter

will receive a living allowance in an amount equal to or greater than the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). This requirement will not apply to any program that was in existence prior to September 21, 1993 (the date of the enactment of the National and Community Service Trust Act of 1993) or to any program which receives only educational awards from the Corporation.

(2) *Maximum living allowance.* With the exception of a professional corps described in § 2521.110(b)(3) of this chapter, the AmeriCorps living allowances may not exceed 200 percent of the average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955). A professional corps AmeriCorps program may provide a stipend in excess of the maximum, subject to the following conditions:

(i) Corporation assistance may not be used to pay for any portion of the allowance; and

(ii) The program must be operated directly by the applicant, selected on a competitive basis by submitting an application directly to the Corporation, and may not be included in a State's application for the AmeriCorps program funds distributed by formula, or competition described in § 2521.30 (a)(1) and (a)(2) of this chapter.

(3) *Living allowances for part-time participants.* Programs may, but are not required to, provide living allowances to individuals participating on a part-time basis (or a reduced term of part-time service authorized under § 2522.220(a)(3). Such living allowances should be prorated to the living allowance authorized in paragraph (b)(1) of this section and will comply with such restrictions therein.

(4) *Waiver or reduction of living allowance.* The Corporation may, at its discretion, waive or reduce the living allowance requirements if a program can demonstrate to the satisfaction of the Corporation that such requirements are inconsistent with the objectives of the program, and that participants will be able to meet the necessary and reasonable costs of living (including food, housing, and transportation) in the area in which the program is located.

(5) *Limitation on Federal share.* Excepting the provision concerning professional corps in paragraph (b)(2)(i) of this section, the Federal share, including Corporation and other Federal funds, may not exceed 85% of the total amount provided to an AmeriCorps participant for a living allowance and may not exceed 85% of the minimum required living allowance enumerated in paragraph (b)(1) of this section.

§ 2522.250 What other benefits do AmeriCorps participants serving in approved AmeriCorps positions receive?

(a) *Child care.* Grantees must provide child care through an eligible provider or a child care allowance in an amount determined by the Corporation to those full-time participants who need child care in order to participate.

(1) *Need.* A participant is considered to need child care in order to participate in the program if he or she:

(i) Is the parent or legal guardian of, or is acting in loco parentis for, a child under 13 who resides with the participant;

(ii) Has a family income that does not exceed 75 percent of the State's median income for a family of the same size;

(iii) At the time of acceptance into the program, is not currently receiving child care assistance from another source, including a parent or guardian, which would continue to be provided while the participant serves in the program; and

(iv) Certifies that he or she needs child care in order to participate in the program.

(2) *Provider eligibility.* Eligible child care providers are those who are eligible child care providers as defined in the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858n(5)).

(3) *Child care allowance.* The amount of the child care allowance will be determined by the Corporation based on payment rates for the Child Care and Development Block Grant Act of 1990 (42 U.S.C. 9858c(4)(A)).

(4) *Federal share.* The Corporation will pay 100 percent of the child care allowance, or, if the program provides child care through an eligible provider, the actual cost of the care or the amount of the allowance, whichever is less.

(b) *Health care.* In general, grantees must provide a health care policy meeting the minimum or alternative benefits determined by the Corporation, to any full-time participant who is eligible for health care benefits.

(1) *Participant eligibility.* A full-time participant is eligible for health care benefits if he or she is not otherwise covered by a health care policy providing minimum benefits established by the Corporation at the time he or she is accepted into a program. If, as a result of participation, or if, during the term of service, a participant demonstrates loss of coverage through no deliberate act of his or her own, such as parental or spousal job loss or disqualification from Medicaid, the participant will be eligible for health care benefits.

(2) *Minimum benefits.* The Corporation will determine the minimum benefits that must be included in the policy provided to eligible participants.

(3) *Alternative benefits.* A grantee may provide a health care policy that does not include the minimum benefits if the fair market value, as determined by the Corporation, of the proposed plan is equal to or greater than a plan that includes the minimum benefits.

(4) *Federal share.* The Corporation will pay 85% of the cost of the most affordable policy for any policy that provides minimum benefits. The most affordable policy will be determined by the Corporation. The Corporation will not pay any share of the cost of a policy that does not include the minimum benefits.

Subpart C—Application Requirements

§ 2522.300 What are the application requirements for AmeriCorps program grants?

All eligible applicants seeking AmeriCorps program grants must—

(a) Provide a description of the specific program(s) being proposed, including the type of program and of how it meets the minimum program requirements described in § 2522.100; and

(b) Comply with any additional requirements as specified by the Corporation in the application package.

§ 2522.310 What are the application requirements for AmeriCorps educational awards only?

(a) Eligible applicants may apply for AmeriCorps educational awards only for one of the following eligible service positions:

(1) A position for a participant in an AmeriCorps program that:

(i) Is carried out by an entity eligible to receive support under part 2521 of this chapter;

(ii) Would be eligible to receive assistance under this rule, based on criteria established by the Corporation, but has not applied for such assistance;

(2) A position facilitating service-learning in a program described in parts 2515 through 2519 of this chapter;

(3) A position involving service as a crew leader in a youth corps program or a similar position supporting an AmeriCorps program; and

(4) Such other AmeriCorps positions as the Corporation considers to be appropriate.

(b) Because programs applying only for AmeriCorps educational awards must, by definition, meet the same basic requirements as other approved AmeriCorps programs, applicants must comply with the same application requirements specified in § 2522.300.

§ 2522.320 May an applicant submit more than one application to the Corporation for the same program at the same time?

No. The Corporation will reject a second or subsequent application submitted if a project proposed to be conducted using assistance requested by the applicant is included in another application already pending before the Corporation.

Subpart D—Selection of AmeriCorps Programs

§ 2522.400 How will the basic selection criteria be applied?

From among the eligible programs that meet the minimum program requirements and that have submitted applications to the Corporation, the Corporation must select the best ones to receive funding. Although there is a wide range of factors that must be taken into account during the selection process, there are certain fundamental selection criteria that apply to all programs in each grant competition, regardless of whether they receive funding or educational awards directly or through subgrants. States and other subgranting applicants are required to use these criteria during the competitive selection of subgrantees. The Corporation may adjust the relative weight given to each criterion. (Additional and more specific criteria will be published in the applications.)

§ 2522.410 What are the basic selection criteria for AmeriCorps programs?

The Corporation will consider elements relating to the program design and the capacity of the organization to carry it out; factors relating to need; and whether the program contributes to meeting the Corporation's overall goals relating to geographic, program and participant mix. These criteria are discussed in this section. Additional detail relating to these criteria may be published in any notice of availability of funding.

(a) *Program criteria.* The Corporation will consider four factors relating to the program design: the quality of the program proposed to be carried out directly by the applicant or supported by a grant from the applicant; the innovative aspects of the AmeriCorps program; the feasibility of replicating the program; and the sustainability of the program, based on evidence such as the existence of strong and broad-based community support for the program and of multiple funding sources or private funding. The Corporation will also consider an organization's capacity to carry out the program based on—

(1) The quality of the leadership of the AmeriCorps program;

(2) The past performance of the organization or program; and

(3) The extent to which the program builds on existing programs.

(b) *Need criteria.* In selecting programs, the Corporation will take into consideration the extent to which projects address State-identified issue priorities (if the program will be funded out of formula funds) or national priorities (if the program will be funded out of competitive funds), and whether projects would be conducted in areas of need.

(1) *Issue priorities.* In order to concentrate national efforts on meeting certain educational, public safety, human, or environmental needs, and to achieve the other purposes of this Act, the Corporation will establish, and after review of the strategic plan approved by the Board, periodically alter priorities regarding the AmeriCorps programs that will receive assistance (funding or approved AmeriCorps positions) and the purposes for which such assistance may be used. These priorities will be applied to assistance provided on a competitive basis as described in § 2521.30 of this chapter, and to any assistance provided through a subgrant of such funds.

(i) States must establish, and through the national service plan process described in part 2513 of this chapter, periodically alter priorities regarding the programs that will receive assistance (funding or approved AmeriCorps positions) provided on a formule basis as described in § 2521.30(a)(1) of this chapter. The State priorities will be subject to Corporation review as part of the application process under part 2521 of this chapter.

(ii) The Corporation will provide advance notice to potential applicants of any AmeriCorps priorities to be in effect for a fiscal year. The notice will describe any alternation made in the priorities since the previous notice. If a program receives multi-year funding based on conformance to national or state priorities and such priorities are altered after the first year of funding, the program will not be adversely affected due to the change in priorities until the term of the grant is ended.

(2) *Areas of need.* Areas of need are:

(i) Communities designated by the Federal government or states as empowerment zones or redevelopment areas, targeted for special economic incentives, or otherwise identifiable as having high concentrations of low-income people;

(ii) Areas that are environmentally distressed;

(iii) Areas adversely affected by Federal actions related to the management of Federal lands that result in significant regional job losses and economic dislocation;

(iv) Areas adversely affected by reductions in defense spending or the closure or realignment of military installations; and

(v) Areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available.

(c) *Program and participant mix criteria.* The Corporation will select programs that will help achieve participant, program type, and geographic diversity across programs.

(d) *Additional considerations.* The Corporation may publish in any notice of availability of funding additional factors that it may take into consideration in selecting programs, including any additional priorities applicable to any or all funds.

§ 2522.420 Can a State's application for formula funds be rejected?

Yes. Formula funds are not an entitlement.

(a) *Notification.* If the Corporation rejects an application submitted by a State Commission under part 2550 of this chapter for funds described in § 2521.30 of this chapter, the Corporation will promptly notify the State Commission of the reasons for the rejection of the application.

(b) *Revision.* The Corporation will provide a State Commission notified under paragraph (a) of this section with a reasonable opportunity to revise and resubmit the application. At the request of the State Commission, the Corporation will provide technical assistance to the State Commission as part of the resubmission process. The Corporation will promptly reconsider an application resubmitted under this paragraph.

(c) *Redistribution.* The amount of any State's allotment under § 2521.30(a) of this chapter for a fiscal year that the Corporation determines will not be provided for that fiscal year will be available for redistribution by the Corporation to the States, Territories and Indian Tribes with approved AmeriCorps applications as the Corporation deems appropriate.

Subpart E—Monitoring and Evaluation Requirements

§ 2522.500 What are the purposes of monitoring and evaluation?

Monitoring is a continuous effort to assess performance and improve quality. Evaluation is an assessment of program effectiveness and outcomes at the end of given period of time. Every monitoring and evaluation requirement serves one or more of the following purposes:

(a) Ensuring quality programs;

(b) Examining the benefits of national and community service; or

(c) Fulfilling legislative requirements.

§ 2522.510 How will individual AmeriCorps programs be evaluated?

The Corporation will evaluate programs based on the following:

(a) The extent to which the program meets the objectives established and agreed to by the grantee and the Corporation before the grant award;

(b) The extent to which the program is cost-effective; and

(c) The effectiveness of the program in meeting the following legislative objectives:

(1) Providing direct and demonstrable services and projects that benefit the community by addressing educational, public safety, human, or environmental needs;

(2) Recruiting and enrolling diverse participants consistent with the requirements of part 2540 of this chapter, based on economic background, race, ethnicity, age, gender, marital status, education levels, and disability;

(3) Promoting the educational achievement of each participant based on earning a high school diploma or its equivalent and future enrollment in and completion of increasingly higher levels of education;

(4) Encouraging each participant to engage in public and community service after completion of the program based on career choices and participation in other service programs;

(5) Promoting an ethic of active and productive citizenship among participants;

(6) Supplying additional volunteer assistance to community agencies without providing more volunteers than can be effectively utilized;

(7) Providing services and activities that could not otherwise be performed by employed workers and that will not supplant the hiring of, or result in the displacement of, employed workers; and

(8) Other criteria determined and published by the Corporation.

§ 2522.520 What types of activities will programs be required to undertake in order to monitor and evaluate their effectiveness?

Programs will be required to:

(a) Monitor management effectiveness, the quality of services provided, and the satisfaction of both participants and persons served. Monitoring should be a continuous process, allowing for frequent feedback and quick correction of weaknesses. Monitoring approaches such as community advisory councils, participant advisory councils, peer reviews, quality control inspections, and customer and participant surveys are encouraged;

(b) Track progress toward objectives. Objectives will be established by programs and approved by the Corporation. Programs must submit to the Corporation (or State or grantmaking entity as applicable) periodic performance reports and, as part of an annual report, an annual performance report; and

(c) Collect and submit to the Corporation (through the State or grantmaking entity as applicable) the following data:

(1) Information on participants including the total number of participants in the program, and the number of participants by race, ethnicity, age, gender, economic background, education level, ethnic group, disability classification, geographic region, and marital status;

(2) Information on services conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are environmentally distressed, in areas that are adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate; and

(3) Other information as required by the Corporation.

§ 2522.530 What types of activities will States or grantmaking entities be required to undertake in order to monitor and evaluate the effectiveness of their subgrantees?

In cases where a State or grantmaking entity is the direct grantee they will be required to:

(a) Ensure that subgrantees comply with the requirements of this subpart;

(b) Track program performance in terms of progress towards pre-established objectives and ensure that corrective action is taken when necessary. Submit periodic performance reports and, as part of an annual report, an annual performance report to the Corporation for each subgrantee; and

(c) Collect from programs and submit to the Corporation the descriptive information required in this subpart.

§ 2522.540 Are programs or State/grantmaking entities required to perform independent evaluations?

No. An independent evaluation is not required but is permissible.

§ 2522.550 What types of activities will the Corporation be required to undertake in order to evaluate the overall success of the AmeriCorps programs?

(a) The Corporation will conduct independent evaluations of programs, including in-depth studies of selected programs. These evaluations will consider the opinions of participants and members of the community where services are delivered. Where appropriate these studies will compare participants with individuals who have not participated in service programs. These evaluations will:

(1) Study the extent to which the national service impacts involved communities;

(2) Study the extent to which national service increases positive attitudes among participants regarding the responsibilities of citizens and their role in solving community problems;

(3) Determine the costs and effectiveness of different program models in meeting program objectives including full- and part-time programs, programs involving different types of national service, programs using different recruitment methods, programs offering alternative non-federally funded vouchers or post-service benefits, and programs utilizing individual placements and teams;

(4) Determine the impact of programs in each State on the ability of VISTA and National Senior Volunteer Corps, each regular and reserve component of the Armed Forces, and the Peace Corps to recruit individuals residing in that State; and

(5) Determine the levels of living allowances paid in all AmeriCorps programs and American Conservation and Youth Corps, individually, by State, and by region and determine the effects that such living allowances have had on the ability of individuals to participate in such programs.

(b) The Corporation will also determine by June 30, 1995:

(1) Whether the State and national priorities designed to meet educational, public safety, human, or environmental needs are being addressed;

(2) Whether the outcomes of both stipended and nonstipended service programs are defined and measured appropriately;

(3) Whether stipended service programs, and service programs providing educational benefits in return for service, should focus on economically disadvantaged individuals or at risk youth, or whether such programs should include a mix of individuals, including individuals from middle and upper income families;

(4) The role and importance of stipends and educational benefits in achieving desired outcomes in the service programs;

(5) The income distribution of AmeriCorps participants, to determine the level of participation of economically disadvantaged individuals. The total income of participants will be determined as of the date the participant was first selected to participate in a program and will include family total income unless the evaluating entity determines that the participant was independent at the time of selection. Definitions for "independent" and "total income" are those used in section 480(a) of the Higher Education Act of 1965;

(6) The amount of assistance provided under the AmeriCorps programs that has been expended for projects conducted in areas classified as empowerment zones (or redevelopment areas), in areas that are environmentally distresses or adversely affected by Federal actions related to the management of Federal lands, in areas that are adversely affected by reductions in defense spending, or in areas that have an unemployment rate greater than the national average unemployment rate for the most recent 12 months for which satisfactory data are available; and

(7) The implications of the results of these studies as appropriate for authorized funding levels.

§ 2522.560 Will information on individual participants be kept confidential?

(a) Yes. The Corporation will maintain the confidentiality of information regarding individual participants that is acquired for the purpose of the evaluations described in this § 2522.550. The Corporation will disclose individual participant information only with the prior written consent of the participant. However, the Corporation may disclose aggregate participant information.

(b) Grantees and subgrantees that receive assistance under this chapter must comply with the provisions of paragraph (a) of this section.

PART 2523—AGREEMENTS WITH OTHER FEDERAL AGENCIES FOR THE PROVISION OF AMERICORPS PROGRAM ASSISTANCE

Sec.

2523.10 Are Federal agencies eligible to apply for AmeriCorps program grants?
2523.20 Which Federal agencies may apply for such grants?
2523.30 Must Federal agencies meet the requirements imposed on other grantees?
2523.40 For what purposes should Federal agencies use AmeriCorps programs grants?
2523.50 What types of grants are Federal agencies eligible to receive?
2523.60 May Federal agencies enter into partnerships or participate in consortia?
2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?
2523.80 Are there restrictions on the use of Corporation funds?
2523.90 Is there a matching requirement for Federal agencies?
2523.100 Are participants in programs operated by Federal agencies Federal employees?
2523.110 Can Federal agencies submit multiple applications?
2523.120 Must Federal agencies consult with State Commissions?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2523.10 Are Federal agencies eligible to apply for AmeriCorps program grants?

Yes. Federal agencies may apply for and receive AmeriCorps grants under parts 2521 and 2522 of this chapter, and they are eligible to receive up to one-third of the funds available for competitive distribution under § 2521.30(b)(3) of this chapter. The Corporation may also enter into a contract or cooperative agreement with another Federal agency to support an AmeriCorps program carried out by the agency. The Corporation may transfer funds available to it to other Federal agencies.

§ 2523.20 Which Federal agencies may apply for such grants?

The Corporation will consider applications only from Cabinet level departments and independent agencies. Bureaus, divisions, and local and regional offices of such departments and agencies can only apply through the central department or agency; however, it is possible for the department or agency to submit an application proposing more than one program.

§ 2523.30 Must Federal agencies meet the requirements imposed on other grantees?

Yes. Federal agency programs must meet the same requirements and serve the same purposes as all other applicants seeking support under part 2522 of this chapter.

§ 2523.40 For what purposes should Federal agencies use AmeriCorps program grants?

AmeriCorps grants should enable Federal agencies to establish programs that leverage agencies' existing resources and grant-making powers toward the goal of integrating service more fully into agencies' programs and activities. Agencies should plan to ultimately support new service initiatives out of their own budgets and appropriations.

§ 2523.50 What types of grants are Federal agencies eligible to receive?

Federal agencies may apply for planning and operating grants subject to the terms established by the Corporation in § 2521.20 of this chapter, except that operating grants will be awarded with the expectation that the Federal agencies will support the proposed programs from their own budgets once the Corporation grant(s) expire.

§ 2523.60 May Federal agencies enter into partnerships or participate in consortia?

Yes. Such partnerships or consortia may consist of other Federal agencies, Indian Tribes, subdivisions of States, community based organizations, institutions of higher education, or other non-profit organizations.

§ 2523.70 Will the Corporation give special consideration to Federal agency applications that address certain needs?

Yes. The Corporation will give special consideration to those applications that address the national priorities established by the Corporation. The Corporation may also give special consideration to those applications that demonstrate the agency's intent to leverage its own funds through an approved partnership or consortium, by raising other funds from Federal or non-Federal sources, by giving grantees incentives to build service opportunities into their programs, by committing appropriate in-kind resources, or by other means.

§ 2523.80 Are there restrictions on the use of Corporation funds?

Yes. The supplantation and nondisplacement provisions specified in part 2540 of this chapter apply to the Federal AmeriCorps programs supported with such assistance.

§ 2523.90 Is there a matching requirement for Federal agencies?

No. In general, a Federal agency is not required to match funds in programs that receive support under this chapter.

§ 2523.100 Are participants in programs operated by Federal agencies Federal employees?

No. Participants in these programs follow the same employee status as participants in other approved AmeriCorps programs, and are not considered Federal employees, except for the purposes of the Family and Medical Leave Act as specified in § 2540.220(b) of this chapter.

§ 2523.110 Can Federal agencies submit multiple applications?

No. The Corporation will only consider one application per agency. The application may propose more than one program, however, and the Corporation may choose to fund any or all of those programs.

§ 2523.120 Must Federal agencies consult with State Commissions?

Yes. Federal agencies must provide a description of the manner in which the proposed AmeriCorps program(s) is coordinated with the application of the State in which the projects will be conducted. Agencies must also describe proposed efforts to coordinate AmeriCorps activities with State Commissions and other funded AmeriCorps programs within the State in order to build upon existing programs and not duplicate efforts.

PART 2524—AMERICORPS TECHNICAL ASSISTANCE AND OTHER SPECIAL GRANTS

Sec.

2524.10 For what purposes will technical assistance and training funds be made available?
2524.20 What are the guidelines for program development assistance and training grants?
2524.30 What are the guidelines for challenge grants?
2524.40 What are the guidelines for grants to involve persons with disabilities?
2524.50 What are the guidelines for assistance with disaster relief?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2524.10 For what purposes will technical assistance and training funds be made available?

(a) To the extent appropriate and necessary, the Corporation may make technical assistance available to States, Indian tribes, labor organizations, organizations operated by young adults, organizations serving economically disadvantaged individuals, and other entities eligible to apply for assistance under parts 2521 and 2522 of this chapter that desire—

(1) To develop AmeriCorps programs; or

(2) To apply for assistance under parts 2521 and 2522 of this chapter or under a grant program conducted using such assistance.

(b) In addition, the Corporation may provide program development assistance and conduct, directly or by grant or contract, appropriate training programs regarding AmeriCorps in order to—

(1) Improve the ability of AmeriCorps programs assisted under parts 2521 and 2522 of this chapter to meet educational, public safety, human, or environmental needs in communities—

(i) Where services are needed most; and

(ii) Where programs do not exist, or are too limited to meet community needs, as of the date on which the Corporation makes the grant or enters into the contract;

(2) Promote leadership development in such programs;

(3) Improve the instructional and programmatic quality of such programs to build an ethic of civic responsibility;

(4) Develop the management and budgetary skills of program operators;

(5) Provide for or improve the training provided to the participants in such programs;

(6) Encourage AmeriCorps programs to adhere to risk management procedures, including the training of participants in appropriate risk management practices; and

(7) Assist in such other manner as the Corporation may specify.

§ 2524.20 What are the guidelines for program development assistance and training grants?

(a) *Eligibility.* States, Federal agencies, Indian tribes, public or private nonprofit agencies, institutions of higher education, for-profit businesses, and individuals may apply for assistance under this section.

(b) *Duration.* A grant made under this section will be for a term of up to one year and is renewable.

(c) *Application requirements.* Eligible applicants must comply with the requirements specified in the Corporation's application package.

§ 2524.30 What are the guidelines for challenge grants?

(a) *Purpose.* The purpose of these grants is to challenge high quality AmeriCorps programs to diversify their funding base by matching private dollars they have raised with Corporation support. The Corporation will provide not more than $1 for each $1 raised in cash by the program from private sources in excess of amounts otherwise required to be provided by the program to satisfy the matching funds requirements specified under § 2521.30(g) of this chapter.

(b) *Eligibility.* Only Corporation grantees that meet all of the following eligibility criteria may apply for challenge grants:

(1) They are funded under parts 2520 through 2523 of this chapter.

(2) They are high quality programs with demonstrated experience in establishing and implementing projects that provide benefits to participants and communities.

(3) They have operated with Corporation funds for at least six months.

(4) They have secured the matching funds required described in §§ 2521.30(g), 2522.240(b)(5), 2522.250(a)(4), and 2522.250(b)(4) of this chapter.

(c) *Allowable program activities.* Challenge grants are intended to provide special opportunities for national and community service programs to enroll additional participants or undertake other activities specified by the Corporation.

(d) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(e) *Limitation on use of the funds.* Each year the Corporation will establish a maximum award that a program may receive as a challenge grant.

(f) *Allocation of funds.* The Corporation will determine annually how much funding will be allocated to challenge grants from funds appropriated for AmeriCorps programs.

§ 2524.40 What are the guidelines for grants to involve persons with disabilities?

(a) *Purpose.* There are two general purposes for these grants:

(1) To assist AmeriCorps grantees in placing applicants who require reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12111(9)) or auxiliary aids and services (as defined in section 3(1) of such Act, 42 U.S.C. 12102(1)) in an AmeriCorps program; and

(2) To conduct outreach activities to individuals with disabilities to recruit them for participation in AmeriCorps programs.

(b) *Eligibility—(1) Placement, accommodation, and auxiliary services.* Eligibility for assistance under this part is limited to AmeriCorps programs that:

(i) Receive competitive funding from the Corporation under §§ 2521.30(a)(2) or 2521.30(b)(3) of this chapter; and

(ii) Demonstrate that the program has received a substantial number of applications for placement from persons who are individuals with a disability and who require a reasonable accommodation (as defined in section 101(9) of the Americans with Disabilities Act of 1990, or auxiliary aids and services (as defined in section 3(1) of such Act) in order to perform national service; and

(iii) Demonstrate that additional funding would assist the program in placing a substantial number of such individuals with a disability as participants in projects carried out through the program.

(2) *Outreach.* Corporation grantees and any public or private nonprofit organization may apply for funds to conduct outreach to individuals with disabilities to recruit them for participation in AmeriCorps programs. Outreach funds can also be used by any organization to assist AmeriCorps programs in adapting their programs to encourage greater participation by individuals with disabilities.

(c) *Application procedures.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

§ 2524.50 What are the guidelines for assistance with disaster relief?

(a) *Purpose.* Disaster relief funds are intended to provide emergency assistance not otherwise available to enable national and community service programs to respond quickly and effectively to a Presidentially-declared disaster.

(b) *Eligibility.* Any AmeriCorps program (including youth corps, the National Civilian Community Corps, VISTA, and other programs authorized under the Domestic Volunteer Services Act) or grant making entity (such as a State or Federal agency) that is supported by the Corporation may apply for disaster relief grants.

(c) *Application process.* Eligible applicants must comply with the requirements specified in the Corporation's application materials.

(d) *Waivers.* In appropriate cases, due to the limited nature of disaster activities, the Corporation may waive specific program requirements such as matching requirements and the provision of AmeriCorps educational awards for participants supported with disaster relief funds.

PART 2530—PURPOSES, DEFINITIONS, AND AVAILABILITY OF GRANTS

Sec.

2530.10 What are the purposes of the Investment for Quality and Innovation activities?
2530.20 Funding priorities.

Authority: 42 U.S.C. 12501 *et seq.*

2530.10 What are the purposes of the Investment for Quality and Innovation activities?

Investment for Quality and Innovation activities are designed to develop service infrastructure and improve the overall quality of national and community service efforts. Specifically, the Corporation will support innovative and model programs that otherwise may not be eligible for funding; and support other activities, such as training and technical assistance, summer programs, leadership training, research, promotion and recruitment, and special fellowships and awards. The Corporation may conduct these activities either directly or through grants to or contracts with qualified organizations.

§ 2530.20 Funding priorities.

The Corporation may choose to set priorities (and to periodically revise such priorities) that limit the types of innovative and model programs and support activities it will undertake or fund in a given fiscal year. In setting these priorities, the Corporation will seek to concentrate funds on those activities that will be most effective and efficient in fulfilling the purposes of this part.

PART 2531—INNOVATIVE AND SPECIAL DEMONSTRATION PROGRAMS

Sec.

2531.10 Military Installation Conversion Demonstration programs.
2531.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.
2531.30 Other innovative and model programs.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2531.10 Military Installation Conversion Demonstration programs.

(a) *Purposes.* The purposes of this section are to:

(1) Provide meaningful service opportunities for economically disadvantaged youth;

(2) Fully utilize military installations affected by closures or realignments;

(3) Encourage communities affected by such closures or realignments to convert the installations to community use; and

(4) Foster a sense of community pride in the youth in the community.

(b) *Definitions.* As used in this section:

(1) *Affected military installation.* The term *affected military installation* means a military installation described in section 325(e)(1) of the Job Training Partnership Act (29 U.S.C. 1662d(e)(1)).

(2) *Community.* The term *community* includes a county.

(3) *Convert to community use.* The term *convert to community use,* used with respect to an affected military installation, includes—

(i) Conversion of the installation or a part of the installation to—

(A) A park;

(B) A community center;

(C) A recreational facility; or

(D) A facility for a Head Start program under the Head Start Act (42 U.S.C. 9831 *et seq.*); and

(ii) Carrying out, at the installation, a construction or economic development project that is of substantial benefit, as determined by the Corporation, to—

(A) The community in which the installation is located; or

(B) A community located within such distance of the installation as the Chief Executive Officer may determine by regulation to be appropriate.

(4) *Demonstration program.* The term *demonstration program* means a program described in paragraph (c) of this section.

(c) *Demonstration programs—(1) Grants.*—The Corporation may make grants to communities and community-based agencies to pay for the Federal share of establishing and carrying out military installation conversion demonstration programs, to assist in converting to community use affected military installations located—

(i) Within the community; or

(ii) Within such distance from the community as the Chief Executive Officer may by regulation determine to be appropriate.

(2) *Duration.* In carrying out such a demonstration program, the community or community-based agency may carry out—

(i) A program of not less than 6 months in duration; or

(ii) A full-time summer program.

(d) *Use of Funds—(1) Stipend.*—A community or community-based agency that receives a grant under paragraph (c) of this section to establish and carry out a project through a demonstration program may use the funds made available through such grant to pay for a portion of a stipend for the participants in the project.

(2) *Limitation on amount of stipend.* The amount of the stipend provided to a participant under paragraph (d)(1) of this section that may be paid using assistance provided under this section and using any other Federal funds may not exceed the lesser of—

(i) 85 percent of the total average annual subsistence allowance provided to VISTA volunteers under section 105 of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4955); and

(ii) 85 percent of the stipend established by the demonstration program involved.

(e) *Participants*—(1) *Eligibility.* A person will be eligible to be selected as a participant in a project carried out through a demonstration program if the person is—

(i) Economically disadvantaged and between the ages of 16 and 24, inclusive;

(ii) In the case of a full-time summer program, economically disadvantaged and between the ages of 14 and 24; or

(iii) An eligible youth as described in section 423 of the Job Training Partnership Act (29 U.S.C. 1693).

(2) *Participation.* Persons desiring to participate in such a project must enter into an agreement with the sponsor of the project to participate—

(i) On a full-time or a part-time basis; and

(ii) For the duration referred to in paragraph (f)(2)(iii) of this section.

(f) *Application*—(1) *In general.*—To be eligible to receive a grant under paragraph (c) of this section, a community or community-based agency must submit an application to the Corporation at such time, in such manner, and containing such information as the Chief Executive Officer may require.

(2) *Contents.* At a minimum, such application must contain—

(i) A description of the demonstration program proposed to be conducted by the applicant;

(ii) A proposal for carrying out the program that describes the manner in which the applicant will—

(A) Provide preservice and inservice training, for supervisors and participants, that will be conducted by qualified individuals or qualified organizations;

(B) Conduct an appropriate evaluation of the program; and

(C) Provide for appropriate community involvement in the program;

(iii) Information indicating the duration of the program; and

(iv) An assurance that the applicant will comply with the nonduplication, nondisplacement and grievance procedure provisions of part 2540 of this chapter.

(g) *Limitation on grant.* In making a grant under paragraph (c) of this section with respect to a demonstration program to assist in converting an affected military installation, the Corporation will not make a grant for more than 25 percent of the total cost of the conversion.

§ 2531.20 Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.

(a) *Special Demonstration Project for the Yukon-Kuskokwim Delta of Alaska.* The Corporation may award grants to, and enter into contracts with, organizations to carry out programs that address significant human needs in the Yukon-Kuskokwim delta region of Alaska.

(b) *Application*—(1) *General requirements.* To be eligible to receive a grant or enter into a contract under paragraph (a) of this section with respect to a program, an organization must submit an application to the Corporation at such time, in such manner, and containing such information as the President may require.

(2) *Contents.* The application submitted by the organization must, at a minimum—

(i) Include information describing the manner in which the program will utilize VISTA volunteers, individuals who have served in the Peace Corps, and other qualified persons, in partnership with the local nonprofit organizations known as the Yukon-Kuskokwim Health Corporation and the Alaska Village Council Presidents;

(ii) Take into consideration—

(A) The primarily noncash economy of the region; and

(B) The needs and desires of residents of the local communities in the region; and

(iii) Include specific strategies, developed in cooperation with the Yupi'k speaking population that resides in such communities, for comprehensive and intensive community development for communities in the Yukon-Kuskokwim delta region.

§ 2531.30 Other innovative and model programs.

(a) The Corporation may support other innovative and model programs such as the following:

(1) Programs, including programs for rural youth, described in parts 2515 through 2524 of this chapter;

(2) Employer-based retiree programs;

(3) Intergenerational programs;

(4) Programs involving individuals with disabilities providing service;

(5) Programs sponsored by Governors; and

(6) Summer programs carried out between May 1 and October 1 (which may also contain a year-round components).

(b) The Corporation will support innovative service-learning programs.

PART 2532—TECHNICAL ASSISTANCE, TRAINING, AND OTHER SERVICE INFRASTRUCTURE-BUILDING ACTIVITIES

Sec.
2532.10 Eligible activities.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2532.20 Eligible activities.

The Corporation may support—either directly or through a grant, contract or agreement—any activity designed to meet the purposes described in part 2530 of this chapter. These activities include, but are not limited to, the following:

(a) *Community-based agencies.* The Corporation may provide training and technical assistance and other assistance to project sponsors and other community-based agencies that provide volunteer placements in order to improve the ability of such agencies to use participants and other volunteers in a manner that results in high-quality service and a positive service experience for the participants and volunteers.

(b) *Improve ability to apply for assistance.* The Corporation will provide training and technical assistance, where necessary, to individuals, programs, local labor organizations, State educational agencies, State Commissions, local educational agencies, local governments, community-based agencies, and other entities to enable them to apply for funding under one of the national service laws, to conduct high-quality programs, to evaluate such programs, and for other purposes.

(c) *Conferences and materials.* The Corporation may organize and hold conferences, and prepare and publish materials, to disseminate information and promote the sharing of information among programs for the purpose of improving the quality of programs and projects.

(d) *Peace Corps and VISTA training.* The Corporation may provide training assistance to selected individuals who volunteer to serve in the Peace Corps or a program authorized under title I of the Domestic Volunteer Service Act of 1973 (42 U.S.C. 4951 et seq.). The training will be provided as part of the course of study of the individual at an institution of higher education, involve service-learning, and cover appropriate skills that the individual will use in the Peace Corps or VISTA.

(e) *Promotion and recruitment.* The Corporation may conduct a campaign to solicit funds for the National Service Trust and other programs and activities authorized under the national service laws and to promote and recruit participants for programs that receive assistance under the national service laws.

(f) *Training.* The Corporation may support national and regional participant and supervisor training, including leadership training and training in specific types of service and in building the ethic of civic responsibility.

(g) *Research.* The Corporation may support research on national service, including service-learning.

(h) *Intergenerational support.* The Corporation may assist programs in developing a service component that combines students, out-of-school youths, and older adults as participants to provide needed community services.

(i) *Planning coordination.* The Corporation may coordinate community-wide planning among programs and projects.

(j) *Youth leadership.* The Corporation may support activities to enhance the ability of youth and young adults to play leadership roles in national service.

(k) *National program identity.* The Corporation may support the development and dissemination of materials, including training materials, and arrange for uniforms and insignia, designed to promote unity and shared features among programs that receive assistance under the national service laws.

(l) *Service-learning.* The Corporation will support innovative programs and activities that promote service-learning.

(m) *National Youth Service Day.*—(1) *Designation.* April 19, 1994, and April 18, 1995 are each designated as "National Youth Service Day". The President is authorized and directed to issue a proclamation calling on the people of the United States to observe the day with appropriate ceremonies and activities.

(2) *Federal activities.* In order to observe National Youth Service Day at the Federal level, the Corporation may organize and carry out appropriate ceremonies and activities.

(3) *Activities.* The Corporation may make grants to public or private nonprofit organizations with demonstrated ability to carry out appropriate activities, in order to support such activities on National Youth Service Day.

(n) *Clearinghouses.*—(1) *Authority.* The Corporation may establish clearinghouses, either directly or through a grant or contract. The service-learning clearinghouse to be established pursuant to part 2518 of this chapter is eligible to apply for a grant under this section. In addition, public or private nonprofit organizations are eligible to apply for clearinghouse grants; however, such organizations must have extensive experience in training, technical assistance and service and/or volunteer program development, and management and evaluation.

(2) *Function.* A Clearinghouse may perform the following activities:

(i) Assist entities carrying out State or local community service programs with needs assessments and planning;

(ii) Conduct research and evaluations concerning community service;

(iii) Provide leadership development and training to State and local community service program administrators, supervisors, and participants; and provide training to persons who can provide such leadership development and training;

(iv) Facilitate communication among entities carrying out community service programs and participants;

(v) Provide information, curriculum materials, and technical assistance relating to planning and operation of community service programs, to States and local entities eligible to receive funds under this chapter;

(vi) Gather and disseminate information on successful community service programs, components of such successful programs, innovative youth skills curriculum, and community service projects;

(vii) Coordinate the activities of the clearinghouse with appropriate entities to avoid duplication of effort;

(viii) Make recommendations to State and local entities on quality controls to improve the delivery of community service programs and on changes in the programs under this chapter; and

(ix) Carry out such other activities as the Chief Executive Officer determines to be appropriate.

(o) *Assistance for Head Start.* The Corporation may make grants to, and enter into contracts and cooperative agreements with, public or nonprofit private agencies and organizations that receive grants or contracts under the Foster Grandparent Program (part B of title II of the Domestic Volunteer Service Act of 1973 (29 U.S.C. 5011 *et seq.*)), for projects of the type described in section 211(a) of such Act (29 U.S.C. 5011) operating under memoranda of agreement with the ACTION Agency, for the purpose of increasing the number of low-income individuals who provide services under such program to children who participate in Head Start programs under the Head Start Act (42 U.S.C 9831 *et seq*).

(p) *Other assistance.* The Corporation may support other activities that are consistent with the purposes described in part 2530 of this chapter.

PART 2533—SPECIAL ACTIVITIES

Sec.
2533.10 National service fellowships.
2533.20 Presidential awards for service.

Authority: 42 U.S.C. 12501 *et seq.*

§ 2533.10 National service fellowships.

The Corporation may award national service fellowships in such a manner, in such amounts, for such periods, and at such times as it deems appropriate. National service fellowships, however, will only be awarded on a competitive basis.

§ 2533.20 Presidential awards for service.

The President, acting through the Corporation, may make Presidential awards for service to individuals providing significant service, and to outstanding programs. Information about recipients of such awards will be widely disseminated. The President may provide such awards to any deserving individual or program, regardless of whether the individual is serving in a program authorized by this chapter or whether the program is itself authorized by this chapter. In no instance, however, may the award be a cash award.

PART 2540—GENERAL ADMINISTRATIVE PROVISIONS

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

Sec.
2540.100 What restrictions govern the use of Corporation assistance?
2540.110 Limitation on use of Corporation funds for administrative costs.

Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

2540.200 Under what circumstances may participants be engaged?
2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?
2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted projects eligible for family and medical leave?
2540.230 What grievance procedures must recipients of Corporation assistance establish?

Subpart C—Other Requirements for Recipients of Corporation Assistance

2540.300 What must be included in State reports to the Commission?
2540.310 Must programs that receive Corporation assistance establish standards of conduct?
2540.320 How are participant benefits treated?

Subpart D—Suspension and Termination of Corporation Assistance

2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

Authority: 42 U.S.C. 12501 *et seq.*

Subpart A—Requirements Concerning the Distribution and Use of Corporation Assistance

§ 2540.100 What restrictions govern the use of Corporation assistance?

(a) *Supplantation.* Corporation assistance may not be used to replace State and local funding streams that had been used to support programs of the type eligible to receive Corporation support. For any given program, this condition will be satisfied if the aggregate non-Federal expenditure for that program in the fiscal year that support is to be provided is not less than the previous fiscal year.

(b) *Religious use.* Corporation assistance may not be used to provide religious instruction, conduct worship services, or engage in any form of proslytization.

(c) *Political activity.* Corporation assistance may not be used by program participants or staff to assist, promote, or deter union organizing; or finance, directly or indirectly, any activity designed to influence the outcome of a Federal, State or local election to public office.

(d) *Contracts or collective bargaining agreements.* Corporation assistance may not be used to impair existing contracts for services or collective bargaining agreements.

(e) *Nonduplication.* Corporation assistance may not be used to duplicate an activity that is already available in the locality of a program. And, unless the requirements of paragraph (f) of this section are met, Corporation assistance will not be provided to a private nonprofit entity to conduct activities that are the same or substantially equivalent to activities provided by a State or local government agency that such entity resides in.

(f) *Nondisplacement.* (1) An employer may not displace an employee or position, including partial displacement such as reduction in hours, wages, or employment benefits, as a result of the use by such employer of a participant in a program receiving Corporation assistance.

(2) A service opportunity will not be created under this title that will infringe in any manner on the promotional opportunity of an employed individual.

(3) A participant in a program receiving Corporation assistance may not perform any services or duties or engage in activities that would otherwise be performed by an employee as part of the assigned duties of such employee.

(4) A participant in any program receiving assistance under this chapter may not perform any services or duties, or engage in activities, that—

(i) will supplant the hiring of employed workers; or

(ii) are services, duties, or activities with respect to which an individual has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures.

(5) A participant in any program receiving assistance under this title may not perform services or duties that have been performed by or were assigned to any—

(i) presently employed worker;

(ii) employee who recently resigned or was discharged;

(iii) employee who is subject to a reduction in force or who has recall rights pursuant to a collective bargaining agreement or applicable personnel procedures;

(iv) employee who is on leave (terminal, temporary, vacation, emergency, or sick); or

(v) employee who is on strike or who is being locked out.

§ 2540.110 Limitation on use of Corporation funds for administrative costs.

Not more than five percent of the amount of assistance provided to the original recipient of any grant or any transfer of assistance from the Corporation in any fiscal year may be used to pay for administrative costs incurred by—

(a) The original recipient of assistance; and

(b) Any subgrantee of that recipient.

Subpart B—Requirements Directly Affecting the Selection and Treatment of Participants

§ 2540.200 Under what circumstances may participants be engaged?

A State may not engage a participant to serve in any program that receives Corporation assistance unless and until amounts have been appropriated under section 501 of the Act (42 U.S.C. 12681) for the provision of AmeriCorps educational awards and for the payment of other necessary expenses and costs associated with such participant.

§ 2540.210 What provisions exist to ensure that Corporation-supported programs do not discriminate in the selection of participants and staff?

(a) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate against a participant in, or member of the staff of, such project on the basis of race, color, national origin, sex, age, or political affiliation of such participant or member, or on the basis of disability, if the participant or member is a qualified individual with a disability.

(b) Any Corporation assistance constitutes Federal financial assistance for purposes of title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), title IX of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*), section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), and the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*), and constitutes Federal financial assistance to an education program or activity for purposes of the Education Amendments of 1972 (20 U.S.C. 1681 *et seq.*).

(c) An individual with responsibility for the operation of a project that receives Corporation assistance may not discriminate on the basis of religion against a participant in such project or a member of the staff of such project who is paid with Corporation funds. This provision does not apply to the employment (with Corporation assistance) of any staff member of a Corporation-supported project who was employed with the organization operating the project on the date the Corporation grant was awarded.

§ 2540.220 Under what circumstances and subject to what conditions are participants in Corporation-assisted programs eligible for family and medical leave?

(a) *Participants in State, local, or private nonprofits programs.* A participant in a State, local, or private nonprofit program receiving support from the Corporation is considered an eligible employee of the program's project sponsor under the Family and Medical Leave Act if—

(1) The participant has served for at least 12 months and 1,250 hours during the year preceding the start of the leave; and

(2) The program's project sponsors engages in commerce or any industry or activity affecting commerce, and employs at least 50 employees for each working day during 20 or more calendar workweeks in the current or preceding calendar year.

(b) *Participants in Federal programs.* Participants in Federal programs operated by the Corporation or by another Federal agency will be considered Federal employees for the purposes of the Family and Medical Leave Act if the participants have completed 12 months of service and the project sponsor is an employing agency as defined in 5 U.S.C. 6381 *et seq.*; such participants therefore will be eligible for the same family and medical leave benefits afforded to such Federal employees.

(c) *General terms and conditions.* Participants that qualify as eligible employees under paragraphs (a) or (b) of this section are entitled to take up to 12 weeks of unpaid leave during a 12 month period for any of the following reasons (in the cases of both paragraphs (c) (1) and (2) of this section. The entitlement to leave expires 12 months after the birth or placement of such child):

(1) The birth of a child to a participant;

(2) The placement of a child with a participant for adoption or foster care;

(3) The serious illness of a participant's spouse, child or parent; or

(4) A participant's serious health condition that makes that participant unable to perform his or her essential service duties (a serious health condition is an illness or condition that requires either inpatient care or continuing treatment by a health care provider).

(d) *Intermittent leave or reduced service.* The program, serving as the project sponsor, may allow a participant to take intermittent leave or reduce his or her service hours due to the birth of or placement of a child for adoption or foster care. The participant may also take leave to care for a seriously ill immediate family member or may take leave due to his or her own serious illness whenever it is medically necessary.

(e) *Alternate placement.* If a participant requests intermittent leave or a reduced service hours due to a serious illness or a family member's sickness, and the need for leave is foreseeable based on planned medical treatment, the program, or project sponsor may temporarily transfer the participant to an alternative service position if the participant:

(1) Is qualified for the position; and

(2) Receives the same benefits such as stipend or living allowance and the position better accommodates the participants recurring periods of leave.

(f) *Certification of cause.* A program, or project sponsor may require that the participant support a leave request with a certification from the health care provider of the participant or the participant's family member. If a program sponsor requests a certification, the participant must provide it in a timely manner.

(g) *Continuance of coverage.* (1) If a State, local or private program provides for health insurance for the full-time participant, the sponsor must continue to provide comparable health coverage at the same level and conditions that coverage would have been provided for the duration of the participant's leave.

(2) If the Federal program provides health insurance coverage for the full-time participant, the sponsor must also continue to provide the same health care coverage for the duration of the participant's leave.

(h) *Failure to return.* If the participant fails to return to the program at the end of leave for any reason other than continuation, recurrence or onset of a serious health condition or other circumstances beyond his or her control, the program may recover the premium that he or she paid during any period of unpaid leave.

(i) *Applicability to term of service.* Any absence, due to family and medical leave, will not be counted towards the participant's term of service.

§ 2540.230 What grievance procedures must recipients of Corporation assistance establish?

State and local applicants that receive assistance from the Corporation must establish and maintain a procedure for the filing and adjudication of grievances from participants, labor organizations, and other interested individuals concerning programs that receive assistance from the Corporation. A grievance procedure may include dispute resolution programs such as mediation, facilitation, assisted negotiation and neutral evaluation.

(a) *Alternative dispute resolution.* (1) The aggrieved party may seek resolution through alternative means of dispute resolution such as mediation or facilitation. Dispute resolution proceedings must be initiated within 45 calendar days from the date of the alleged occurrence. At the initial session of the dispute resolution proceedings, the party must be advised in writing of his or her right to file a grievance and right to arbitration. If the matter is resolved, and a written agreement is reached, the party will agree to forego filing a grievance in the matter under consideration.

(2) If mediation, facilitation, or other dispute resolution processes are selected, the process must be aided by a neutral party who, with respect to an issue in controversy, functions specifically to aid the parties in resolving the matter through a mutually achieved and acceptable written agreement. The neutral party may not compel a resolution. Proceedings before the neutral party must be informal, and the rules of evidence will not apply. With the exception of a written and agreed upon dispute resolution agreement, the proceeding must be confidential.

(b) *Grievance procedure for unresolved complaints.* If the matter is not resolved within 30 calendar days from the date the informal dispute resolution process began, the neutral party must again inform the aggrieving party of his or her right to file a formal grievance. In the event an aggrieving party files a grievance, the neutral may not participate in the formal complaint process. In addition, no communication or proceedings of the informal dispute resolution process may be referred to or introduced into evidence at the grievance and arbitration hearing. The advisory decision may not be binding unless both parties agree. Grievances that allege fraud or criminal activity must immediately be brought to the attention of the Corporation's inspector general.

(c) *Time limitations.* Except for a grievance that alleges fraud or criminal activity, a grievance must be made no later than one year after the date of the alleged occurrence. If a hearing is held on a grievance, it must be conducted no later than 30 calendar days after the filing of such grievance. A decision on any such grievance must be made no later than 60 calendar days after the filing of the grievance.

(d) *Arbitration.* If there is an adverse decision against the party who filed the grievance, or 60 calendar days after the filing of a grievance no decision has been reached, the filing party may submit the grievance to binding arbitration before a qualified arbitrator who is jointly selected and independent of the interested parties. If the parties cannot agree on an arbitrator within 15 calendar days after receiving a request from one of the grievance parties, the Corporations Chief Executive Officer will appoint an arbitrator from a list of qualified arbitrators. An arbitration proceeding must be held no later than 45 calendar days after the request for arbitration. If the arbitrator is appointed by the Chief Executive Officer, the proceeding must occur no later than 30 calendar days after the arbitrators appointment. A decision must be made by the arbitrator no later than 30 calendar days after the date the arbitration proceeding begins. The cost

of the arbitration proceeding must be divided evenly between the parties to the arbitration. If, however, a participant, labor organization, or other interested individual prevails under a binding arbitration proceeding, the State or local applicant that is a party to the grievance must pay the total cost of the proceeding and the attorneys fees of the prevailing party.

(e) *Suspension of placement.* If a grievance is filed regarding a proposed placement of a participant in a program that receives assistance under this chapter, such placement must not be made unless the placement is consistent with the resolution of the grievance.

(f) *Remedies.* In general, remedies for a grievance filed include suspension or termination of payments for assistance under this chapter, and prohibition of a placement of a participant, and in grievance cases where there is a violation of nonduplication or nondisplacement requirements and the employer of the displaced employee is the recipient of Corporation assistance, the displaced employee must—

(1) Be reinstated to the position he or she held prior to the displacement;

(2) Be paid lost wages and benefits;

(3) Regain any other relevant terms, conditions and privileges of employment; and

(4) Obtain any equitable relief that is necessary to correct any violation of the nonduplication or nondisplacement requirements or to make the displaced employee whole.

(g) *Suspension or termination of assistance.* The Corporation may suspend or terminate payments for assistance under this chapter.

(h) *Effect of noncompliance with arbitration.* A suit to enforce arbitration awards may be brought in any Federal district court having jurisdiction over the parties without regard to the amount in controversy or the parties' citizenship.

Subpart C—Other Requirements for Recipients of Corporation Assistance

§ 2540.300 What must be included in State reports to the Commission?

(a) *In general.* Each State receiving assistance under this title must prepare and submit, to the Corporation, an annual report concerning the use of assistance provided under this title and the status of the national and community service programs that receive assistance under such title in such State.

(b) *Local grantees.* Each State may require local grantees that receive assistance under this title to supply such information to the State as is necessary to enable the State to complete the report required under paragraph (a) of this section, including a comparison of actual accomplishments with the goals established for the program, the number of participants in the program, the number of service hours generated, and the existence of any problems, delays or adverse conditions that have affected or will affect the attainment of program goals.

(c) *Report demonstrating compliance*—(1) *In general.* Each State receiving assistance under this title must include information in the report required under paragraph (a) of this section that demonstrates the compliance of the State with the provisions of this chapter.

(2) *Local grantees.* Each State may require local grantees to supply such information to the State as is necessary to enable the State to comply with the requirement of paragraph (a) of this section.

(d) *Availability of report.* Reports submitted under paragraph (a) of this section must be made available to the public on request.

§ 2540.310 Must programs that receive Corporation assistance establish standards of conduct?

Yes. Programs that receive assistance under this title must establish and stringently enforce standards of conduct at the program site to promote proper moral and disciplinary conditions.

§ 2540.320 How are participant benefits treated?

Section 142(b) of the Job Training Partnership Act (29 U.S.C. 1552(b)) shall apply to the programs conducted under this chapter as if such programs were conducted under the Job Training Partnership Act (29 U.S.C. 1501 *et seq.*).

Subpart D—Suspension and Termination of Corporation Assistance

§ 2540.400 Under what circumstances will the Corporation suspend or terminate a grant or contract?

(a) *Suspension of a grant or contract.* In emergency situations, the Corporation may suspend a grant or contract for not more than 30 calendar days. Examples of such situations may include, but are not limited to:

(1) Serious risk to persons or property;

(2) Violations of Federal, State or local criminal statutes; and

(3) Material violation(s) of the grant or contract that are sufficiently serious that they outweigh the general policy in favor of advance notice and opportunity to show cause.

(b) *Termination of a grant or contract.* The Corporation may terminate or revoke assistance for failure to comply with applicable terms and conditions of this chapter. However, the Corporation must provide the recipient reasonable notice and opportunity for a full and fair hearing, subject to the following conditions:

(1) The Corporation will notify a recipient of assistance by letter or telegram that the Corporation intends to terminate or revoke assistance, either in whole or in part, unless the recipient shows good cause why such assistance should not be terminated or revoked. In this communication, the grounds and the effective date for the proposed termination or revocation will be described. The recipient will be given at least 7 calendar days to submit written material in opposition to the proposed action.

(2) The recipient may request a hearing on a proposed termination or revocation. Providing five days notice to the recipient, the Corporation may authorize the conduct of a hearing or other meetings at a location convenient to the recipient to consider the proposed suspension or termination. A transcript or recording must be made of a hearing conducted under this section and be available for inspection by any individual.

[FR Doc. 94–322 Filed 1–6–94; 8:45 am]
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Federal Register

Friday
January 7, 1994

Part IV

Department of Justice

Bureau of Prisons

28 CFR Part 571, et al.
Control, Custody, Care, Treatment and Instruction of Inmates; Compassionate Release; Drug Abuse Treatment Programs; Rule and Proposed Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Parts 571 and 572

RIN 1120–AA09

Control, Custody, Care, Treatment and Instruction of Inmates; Compassionate Release

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: This rule revises the procedures for early inmate release under extraordinary or compelling circumstances in order to include provisions applicable to inmates who were sentenced under the new law sentencing guidelines that eliminated parole. In addition, the rule provisions relating to inmate release in response to prison overcrowding have been eliminated in conformance with revised Parole Commission procedures, a section has been added to note the ineligibility of certain offenders, and various administrative procedures have been simplified. Releases have been most often applied in cases where the inmate is terminally ill. The application of the rule has not been modified. The practical effect should remain the release or parole of a limited number of inmates under extraordinary or compelling circumstances.

EFFECTIVE DATE: January 7, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC Room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on Procedures for the Implementation of 18 U.S.C. 4205(g). A final rule on this subject was published in the **Federal Register** October 21, 1983 (48 FR 48973).

The regulations have been revised for two main reasons. First, the revisions now include sentence modifications as stated in 18 U.S.C. 3582(c)(1)(A), the provisions applicable to inmates sentenced under the 1984 Sentencing Guidelines, as well as the sentence modifications found in 18 U.S.C. 4205(g) for those inmates eligible for parole under the prior sentencing rules. Also, the regulations have modified the language of the standard employed to conform to the statutory language of "extraordinary and compelling" reasons for the request. The standards to evaluate requests for early release remain the same. The only additional procedure required of inmates who request early release is the inclusion of a proposed release plan. The plan verifies that the inmate will be properly cared for upon release, and it may be completed by staff if the inmate is unable to complete the proposal.

Additional changes include the removal of former § 572.42 in conformance with revised regulations of the Parole Commission, the removal of the requirement that the inmate provide in the request information which can be obtained by staff through a review of the inmate's record, and the addition of new § 571.64 noting the ineligibility of certain offenders.

As an editorial amendment, the revised compassionate release provisions have been redesignated from part 572 to part 571 in order to reflect applicability to new law commitments. A cross-reference remains in part 572.

Because the revised rule imposes no additional burdens or restrictions on inmates, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing to the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866; this rule was reviewed by the Office of Management and Budget pursuant to E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 571 and 572

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 571 and 572 in subchapter D of 28 CFR, chapter V are amended as set forth below.

SUBCHAPTER D—COMMUNITY PROGRAMS AND RELEASE

PART 571—RELEASE FROM CUSTODY

1. The authority citation for 28 CFR part 571 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3565, 3568–3569 (Repealed in part as to offenses committed on or after November 1, 1987), 3582, 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4161–4166 and 4201–4218 (Repealed as to offenses committed on or after November 1, 1987), 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5031–5042; 28 U.S.C. 509, 510; U.S. Const., Art. II, Sec. 2; 28 CFR 0.95–0.99, 1.1–1.10.

2. In part 571, subpart G, consisting of §§ 571.60 through 571.64, is added to read as follows:

Subpart G—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g))

Sec.

571.60 Purpose and scope.
571.61 Initiation of request—extraordinary or compelling circumstances.
571.62 Approval of request.
571.63 Denial of request.
571.64 Ineligible offenders.

Subpart G—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 3582(c)(1)(A) and 4205(g))

§ 571.60 Purpose and scope.

Under 18 U.S.C. 4205(g), a sentencing court, on motion of the Bureau of Prisons, may make an inmate with a minimum term sentence immediately eligible for parole by reducing the minimum term of the sentence to time served. Under 18 U.S.C. 3582(c)(1)(A), a sentencing court, on motion of the Director of the Bureau of Prisons, may reduce the term of imprisonment of an inmate sentenced under the Comprehensive Crime Control Act of 1984. The Bureau uses 18 U.S.C. 4205(g) and 18 U.S.C. 3582(c)(1)(A) in particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing.

§ 571.61 Initiation of request—extraordinary or compelling circumstances.

(a) A request for a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) shall be submitted to the Warden. Ordinarily, the request shall be in writing, and submitted by the inmate. An inmate may initiate a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only when there are particularly extraordinary or compelling circumstances which could not reasonably have been foreseen by the court at the time of sentencing. The inmate's request shall at a minimum contain the following information:

(1) The extraordinary or compelling circumstances that the inmate believes warrant consideration.

(2) Proposed release plans, including where the inmate will reside, how the inmate will support himself/herself, and, if the basis for the request involves the inmate's health, information on where the inmate will receive medical treatment, and how the inmate will pay for such treatment.

(b) The Bureau of Prisons processes a request made by another person on behalf of an inmate in the same manner as an inmate's request. Staff shall refer a request received at the Central Office or at a Regional Office to the Warden of the institution where the inmate is confined.

§ 571.62 Approval of request.

(a) The Bureau of Prisons makes a motion under 18 U.S.C. 4205(g) or 3582(c)(1)(A) only after review of the request by the Warden, the Regional Director, the General Counsel, and either the Medical Director for medical referrals or the Assistant Director, Correctional Programs Division for non-medical referrals, and with the approval of the Director, Bureau of Prisons.

(1) The Warden shall promptly review a request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A). If the Warden, upon an investigation of the request determines that the request warrants approval, the Warden shall refer the matter in writing with recommendation to the Regional Director.

(2) If the Regional Director determines that the request warrants approval, the Regional Director shall prepare a written recommendation and refer the matter to the Office of General Counsel.

(3) If the General Counsel determines that the request warrants approval, the General Counsel shall solicit the opinion of either the Medical Director or the Assistant Director, Correctional Programs Division depending upon the nature of the basis of the request. With this opinion, the General Counsel shall forward the entire matter to the Director, Bureau of Prisons, for final decision.

(4) If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 4205(g), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Bureau of Prisons to reduce the minimum term of the inmate's sentence to time served. If the Director, Bureau of Prisons, grants a request under 18 U.S.C. 3582(c)(1)(A), the Director will contact the U.S. Attorney in the district in which the inmate was sentenced regarding moving the sentencing court on behalf of the Director of the Bureau of Prisons to reduce the inmate's term of imprisonment to time served.

(b) Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 4205(g), the Warden of the institution where the inmate is confined shall schedule the inmate for hearing on the earliest Parole Commission docket. Upon receipt of notice that the sentencing court has entered an order granting the motion under 18 U.S.C. 3582(c)(1)(A), the Warden of the institution where the inmate is confined shall release the inmate forthwith.

(c) In the event the basis of the request is the medical condition of the inmate, staff shall expedite the request at all levels.

§ 571.63 Denial of request.

(a) When an inmate's request is denied by the Warden or Regional Director, the disapproving official shall provide the inmate with a written notice and statement of reasons for the denial. The inmate may appeal the denial through the Administrative Remedy Procedure (28 CFR part 542, subpart B).

(b) When an inmate's request for consideration under 18 U.S.C. 4205(g) or 3582(c)(1)(A) is denied by the General Counsel, the General Counsel shall provide the inmate with a written notice and statement of reasons for the denial. This denial constitutes a final administrative decision.

(c) When the Director, Bureau of Prisons, denies an inmate's request, the Director shall provide the inmate with a written notice and statement of reasons for the denial within 20 workdays after receipt of the referral from the Office of General Counsel. A denial by the Director constitutes a final administrative decision.

(d) Because a denial by the General Counsel or Director, Bureau of Prisons, constitutes a final administrative decision, an inmate may not appeal the denial through the Administrative Remedy Procedure.

§ 571.64 Ineligible offenders.

The Bureau of Prisons has no authority to initiate a request under 18 U.S.C. 4205(g) or 3582(c)(1)(A) on behalf of state prisoners housed in Bureau of Prisons facilities or D.C. Code offenders confined in federal institutions. The Bureau of Prisons cannot initiate such a motion on behalf of federal offenders who committed their offenses prior to November 1, 1987, and received non-parolable sentences.

PART 572—PAROLE

3. The authority citation for part 572 is revised to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4205, 5015 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In part 572, subpart E, consisting of §§ 572.40 through 572.44, is revised to consist of § 572.40 as follows.

Subpart E—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 4205(g))

Sec.

572.40 Compassionate release under 18 U.S.C. 4205(g).

Subpart E—Compassionate Release (Procedures for the Implementation of 18 U.S.C. 4205(g))

§ 572.40 Compassionate release under 18 U.S.C. 4205(g).

18 U.S.C. 4205(g) was repealed effective November 1, 1987, but remains the controlling law for inmates whose offenses occurred prior to that date. For inmates whose offenses occurred on or after November 1, 1987, the applicable statute is 18 U.S.C. 3582(c)(1)(A). Procedures for compassionate release of an inmate under either provision are contained in 28 CFR part 571, subpart G.

[FR Doc. 94–366 Filed 1–6–94; 8:45 am]

BILLING CODE 4410–05–P

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 545, 550

RIN 1120–AA16

Control, Custody, Care, Treatment and Instruction of Inmates; Drug Abuse Treatment Programs

AGENCY: Bureau of Prisons, Justice.

ACTION: Proposed rule.

SUMMARY: In this document, the Bureau of Prisons is proposing to amend its rule on Chemical Abuse Programs by renaming it as Drug Abuse Treatment Programs, by expanding programming available to inmates, and by requiring participation from certain inmates. Any inmate who has been recommended for drug programming by the sentencing judge, or whose presentence investigation contains evidence that alcohol or other drug use contributed to the commission of the instant offense, or for whom alcohol or drug abuse was a reason for violation of parole or probation will be required to participate in drug abuse education courses. Further program opportunities are presented through voluntary participation in residential and non-residential programs and through transitional services. This amendment also proposes conforming changes with respect to program eligibility and inmate financial responsibility requirements and with respect to mandatory work requirements. This amendment is intended to fulfill statutory requirements to make available to inmates appropriate substance abuse treatment.

DATES: Comments due by March 8, 1994.

ADDRESSES: Office of General Counsel, Bureau of Prisons, HOLC room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is proposing to amend its regulations on Chemical Abuse Programs. A final rule on this subject was published in the **Federal Register** on July 18, 1986 (51 FR 26129). The Bureau is also proposing conforming or related amendments to its regulations on Inmate Financial Responsibility and on Inmate Work and Performance Pay Program. A final rule on Inmate Financial Responsibility was published in the **Federal Register** on May 21, 1991 (56 FR 23477). A final rule on Inmate Work and Performance Pay was published in the **Federal Register** on October 1, 1984 (49 FR 38915), and was amended on May 21, 1991 (56 FR 23478) and on July 10, 1991 (56 FR 31531).

Section 2903 of Public Law 101–647 (18 U.S.C. 3621(b)) requires the Bureau to make available appropriate substance abuse treatment for each inmate the Bureau determines has a treatable condition of substance addiction or abuse. Existing Bureau regulations in subpart F (§§ 550.50 through 550.51) of 28 CFR part 550 allow for the voluntary participation by inmates in chemical abuse programs. This proposed amendment renames such programming as drug abuse treatment programs and distinguishes between mandatory and voluntary requirements for inmate participation in these programs.

Proposed § 550.52 requires participation in a drug abuse education course by any inmate who has been recommended for drug programming by the sentencing judge, or whose presentence investigation contains evidence that alcohol or other drug use contributed to the commission of the instant offense, or for whom alcohol or drug abuse was a reason for violation of parole or probation. This section includes provision for exemption to the mandatory requirement. Participation by other inmates in drug abuse treatment programs remains voluntary, but such participation requires recommendation by the screening psychologist or drug abuse treatment staff. The section defines program completion and notes the effects of program failure for inmates whose participation is required.

Section 550.53 specifies requirements for participation in an institution's residential and non-residential program, while § 550.54 covers transitional services available to inmates.

This proposed amendment makes conforming changes to the Bureau's provisions on inmate financial responsibility (28 CFR 545.11) to specify that an inmate must meet his or her financial program responsibility obligations before being able to receive an incentive for his or her residential program participation. Another conforming change is being made to the provisions on institution work and performance pay (28 CFR 545.23) to allow for an inmate's voluntary participation in drug programming in lieu of working full time.

Interested persons may participate in this proposed rulemaking by submitting data, views, or arguments in writing to the Bureau of Prisons, 320 First Street, NW., HOLC Room 754, Washington, DC 20534. Comments received during the comment period will be considered before final action is taken. All comments received remain on file for public inspection at the above address. The proposed rule may be changed in light of the comments received. No oral hearings are contemplated.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Parts 545 and 550

Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), parts 545 and 550 in subchapter C of 28 CFR, chapter V are proposed to be amended as set forth below.

SUBCHAPTER C—INSTITUTIONAL MANAGEMENT

PART 550—DRUG PROGRAMS

1. The authority citation for 28 CFR part 550 is added to read as follows, and all other authority citations within the part are removed:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 3622, 3624, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4251–4255, 5006–5024 (repealed October 12, 1984 as to conduct occurring after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Subpart F, consisting of §§ 550.50 and 550.51, is revised to consist of §§ 550.50 through 550.54 as follows:

Subpart F—Drug Abuse Treatment Programs

Sec.

550.50 Purpose and scope.
550.51 Institution staff roles/responsibilities.
550.52 Drug abuse education course.
550.53 Institution residential and non-residential program.
550.54 Transitional services.

Subpart F—Drug Abuse Treatment Programs

§ 550.50 Purpose and scope.

The Bureau of Prisons provides, to the extent practicable, appropriate drug abuse treatment programs to inmates.

§ 550.51 Institution staff roles/responsibilities.

(a) The Warden shall designate a Drug Abuse Treatment Program Coordinator (DATC) for his/her institution.

(b) The DATC shall ensure that:

(1) Each institution shall provide new inmates during the Admission and Orientation information about drug abuse treatment opportunities and procedures available at the institution and throughout the Bureau; and

(2) A psychologist or drug abuse treatment staff member shall screen all new institution admissions for drug abuse problems.

(c) The DATC may designate a drug abuse treatment specialist to conduct drug education or drug abuse treatment in non-residential or residential settings.

§ 550.52 Drug abuse education course.

(a) An inmate is required to participate in the institution's drug abuse education course if that inmate has been sentenced or returned to custody as a violator after September 30, 1991 and it is determined by unit and/or drug abuse treatment program staff, through a combination of interview and file review, that:

(1) There is evidence in the Presentence Investigation that alcohol or other drug use contributed to the commission of the instant offense;

(2) Alcohol or other drug use was a reason for violation of either supervision or BOP community status (CCC placement) for which the inmate is now incarcerated; or

(3) The inmate was recommended for drug programming during incarceration by the sentencing judge. An inmate may be exempted from the required drug abuse education course due to cognitive impairment or other learning disabilities only after evaluation and recommendation by a psychologist. An inmate may also be exempted from the drug abuse education course if that inmate has volunteered for immediate admission to a residential drug abuse treatment program, and then proceeds to complete that program.

(b) An inmate who is not required by paragraph (a) of this section to participate in the drug abuse education course, but for whom participation is recommended or approved by the screening psychologist or drug abuse treatment staff for participation, shall be offered the opportunity to participate voluntarily in the drug abuse education course, provided it is approved by the DATC, space is available, and the inmate signs an agreement acknowledging the requirements for participating in this course.

(c) Completion of the drug abuse education course requires participating in, and passing an examination on the course. A certificate of achievement will be awarded to all who successfully complete the program. Inmates required to participate in this program ordinarily are provided at least three chances to pass the final examination before privileges are lost (see paragraph (d) of this section).

(d) Any inmate who is required by paragraph (a) of this section to participate in the drug abuse education course, but who refuses this participation, who withdraws, who is expelled, or who otherwise fails to meet the attendance and testing standards shall be held at the lowest pay grade within the institution and shall be ineligible for community programs. The Warden, for good cause, may make exception to this paragraph, with such exemptions documented in writing.

§ 550.53 Institution residential and non-residential program.

(a) Participation by an inmate in an institution's residential and/or nonresidential drug treatment program is voluntary, but such participation must be recommended by unit and/or drug treatment staff.

(1) An inmate may apply for these programs by submitting a request to a staff member (ordinarily, a member of the inmate's unit team or the DATC).

(2) An inmate who volunteers to participate in one of the drug abuse treatment programs is required to sign an agreement acknowledging his/her program responsibility.

(b) An inmate may apply for an institution's residential treatment program at any time during that inmate's incarceration. Residential treatment ordinarily consists of treatment in a unit-based setting within the institution. Where an institution does not have a residential program, the unit team, in coordination with the DATC, may consider the inmate for transfer to an institution with this type of program.

(c) An inmate may receive incentives for his or her involvement in the residential program. These incentives may include, but are not limited to, the following.

(1) Limited financial awards, based upon the inmate's achievement/completion of program phases.

(2) Consideration for the maximum period of time (currently 180 days) in a Community Corrections Center placement, provided the inmate is otherwise eligible for this designation.

(3) Local institution incentives such as preferred living quarters or special recognition privileges. An inmate must meet his/her financial program responsibility obligations (see 28 CFR part 545) prior to being able to receive an incentive for his/her residential program participation.

(d) An inmate may voluntarily withdraw from a residential drug abuse program or, based on disruptive or negative behavior, may be removed by staff. Removal from the residential program is within the discretion of the DATC, and may result, in part, in the inmate's being returned to his/her prior institution (when the inmate had been specifically transferred for the purpose of program participation), and/or return of tangible incentives previously achieved.

(e) When residential treatment programming cannot be used due to time constraints, staff may refer the inmate for the institution's non-residential drug treatment. Non-residential treatment ordinarily consists of individual and/or group counseling and self-help programming.

§ 550.54 Transitional services.

(a) Transitional treatment programming is required for all inmates completing an institutions's residential treatment program. Transitional treatment includes treatment provided to inmates who, upon completing the residential program, return to the general population of that or another institution. An inmate's refusal to participate in this program is considered a program failure and disqualifies the inmate for any additional incentives consideration, and may result in the inmate's redesignation.

(b) An inmate who successfully completes a residential drug abuse program and who, based on eligibility, is transferred to a Community Corrections Center (CCC), is required to participate in a community-based treatment program each week, in addition to the required employment and other program activities of the CCC. The inmate's failure to meet the requirements of treatment may result in the inmate's being returned to the institution for refusing a program assignment.

(c) Staff may offer an inmate who has not been involved in the institution's drug abuse treatment program the opportunity to become involved in the transitional drug treatment program as

part of the inmate's CCC placement. In addition, with DATC approval, an inmate may volunteer, and be accepted for transitional drug treatment programming.

3. The authority citation for 28 CFR part 545 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3013, 3571, 3621, 3622, 3624, 3663, 4001, 4042, 4081, 4082 (Repealed in part as to offenses committed on or after November 1, 1987), 4126, 5006–5024 (Repealed October 12, 1984 as to offenses committed after that date), 5039; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

4. In § 545.11, a new paragraph (d)(11) is added to read as follows:

§ 545.11 Procedures.

* * * * *

(d) * * *

(11) The inmate will not receive an incentive for participation in residential drug treatment programs.

5. In § 545.23, paragraph (a) is amended by revising the last sentence to read as follows:

§ 545.23 Inmate work/program assignment.

(a) * * * An inmate, for whom educational, vocational, or drug treatment participation is not required by either policy or statute, may request and, upon approval of the Warden or designee, participate in an educational or vocational training program or drug treatment program rather than work full-time.

* * * * *

6. In § 545.25, new paragraph (d) is added to read as follows:

§ 545.25 Eligibility for performance pay.

* * * * *

(d) An inmate who is required by 28 CFR 550.51 (c)(1) to participate in drug education programming but who fails to do so because he or she refuses participation, withdraws, is expelled, or fails to meet attendance and testing standards, shall be held at the lowest pay grade within the institution.

[FR Doc. 94–367 Filed 1–6–94; 8:45 am]

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federal register

Friday
January 7, 1994

Part V

Department of Housing and Urban Development

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 945 and 960

Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 945 and 960

[Docket No. R–94–1694; FR–3425–P–01]

RIN 2577–AB27

Designated Housing; Public Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 622(a) of the Housing and Community Development Act of 1992. Section 622(a) provides public housing agencies (PHAs) with the option, subject to certain requirements, to designate public housing projects, or portions of public housing projects, for occupancy by disabled families; elderly families; or disabled families and elderly families.

This proposed rule would also amend existing regulations, which currently provide for preference for elderly families and disabled families, and discretionary preference for near-elderly families in "public housing projects for the elderly"—that is, public housing projects that house both elderly families and disabled families. The regulations would continue to provide for preference for disabled families and elderly families in public housing projects that house a population of disabled families and elderly families. However, certain amendments would be made to include new and revised definitions pertaining to "family" as set forth in section 621 of the 1992 Act, and to provide for recognition of the designated housing process.

DATES: Comment due date: March 8, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Edward Whipple, Director, Occupancy Division, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4206, Washington, DC 20410. Telephone number (202) 708–0744 (this is not a toll-free number). Hearing-impaired persons may contact these offices via TDD by calling (202) 708–9300 or 1–(800) 877–8339.

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act Statement

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until the requirements have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register**. The public reporting burden for the collection of information requirements contained in this proposed rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Information on the estimated public reporting burden is provided under the preamble heading, *Other Matters*. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3001, Washington, DC 20503, Attention: HUD Desk Officer.

II. Overview of Section 622(a) of the 1992 Act

Section 622(a) of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (the 1992 Act) amended section 7 of the United States Housing Act of 1937 (the 1937 Act) (42 U.S.C. 1437e) to provide public housing agencies (PHAs) [1] with the option, subject to certain requirements, to designate public housing projects, or portions of public housing projects for occupancy by (1) disabled families; (2) elderly families; or (3) disabled families and elderly families. (Section 7 of the 1937 Act, previously titled "Congregate Housing" was retitled "Designated Housing" by the 1992 Act. Unless the context indicates otherwise, the references to section 7 in this preamble are to section 7 as amended by section 622(a) of the 1992 Act.)

Section 7 provides for designation of public housing projects, or portions of public housing projects (see section 7(a)(1)). Section 7 further provides that in determining priority for occupancy in designated projects, a PHA may make units in the designated project available only to the types of families for whom the project is designated (see section 7(a)(2)).

Section 7(f) provides that a project may be designated following HUD review and approval of the PHA's written plan for allocating its housing resources among the various populations that it serves, and its plan for securing additional housing resources sufficient to provide housing assistance to not less than the number of non-elderly disabled families that would have been housed by the PHA if occupancy in a project, or portion thereof, was not restricted to certain families as a result of a PHA's designation of a project. The information, at a minimum, to be contained in the allocation plan, and which is listed in section 7(f)(2), is information pertaining to current residents of the project to be designated, the PHA's current housing inventory, families on waiting lists, and future demand for particular types of housing. Section 7(f)(4) establishes the criteria by which the Department will approve or disapprove a PHA's allocation plan.

In connection with allocating its housing resources among the various populations that it serves, section 7(d) provides that each PHA shall meet, to the extent practicable, the housing and service needs of eligible families applying for assistance under this title, as provided in any allocation plan of the PHA. (This "title" refers to title VI of the 1992 Act—"Housing for Elderly Persons and Persons with Disabilities.") To meet such needs, section 7(d) provides that PHAs, wherever practicable and in accordance with any allocation plan, may: (1) Provide housing in which supportive services are provided, facilitated, or coordinated, such as mixed housing, shared housing, family housing, group homes, congregate housing and other housing as the PHA considers appropriate; (2) carry out major reconstruction of obsolete public

[1] Section 626 of the 1992 Act provides that the amendments made by subtitle B of title VI of the 1992 Act (which amendments pertain to the authority of PHAs to provide designated housing) shall not apply to lower income housing developed or operated pursuant to a contract between HUD and an Indian housing authority.

housing projects and reconfiguration of public housing dwelling units; and (3) provide tenant-based assistance under section 811(b)(1) of the National Affordable Housing Act (NAHA) (Pub. L. 101–625, approved November 28, 1990; see 42 U.S.C. 8013).

With respect to projects to be designated for occupancy by disabled families, section 7(e) requires the PHA to comply with all the requirements of section 7 (which include submission of the allocation plan) and to submit for HUD review and approval an "application for designated housing for disabled families." This application requires the PHA to include a supportive services plan, which describes the needs of the disabled families that the designated housing is expected to serve, and provides for delivery of supportive services appropriate to meet the disabled family's needs.

Section 7(f)(5) requires PHAs that receive permission to operate designated housing to submit not less than once every two years, an updated allocation plan, and describes the information that must be included, at a minimum, in the updated plan. This information is directed to helping the PHA and the Department determine whether the initial data and projections provided in the allocation plan were accurate.

Section 7 establishes certain requirements that must be followed in the PHA's operation of designated housing. (See sections 7(a)(4), 7(b), 7(c) and 7(g).) These requirements address, among other things, such issues as (1) tenant choice to live in designated projects; (2) vacancies in designated projects (i.e., units that are vacant for more than 60 consecutive days), and (3) prohibition against requiring tenants (who are not members of the group for whom a project was designated) to vacate designated housing.

III. Proposed Rule

This section of the preamble provides a summary of the proposed organization and principal provisions of new part 945, and the proposed conforming amendments that would be made to 24 part 960, subpart D.

Proposed Part 945—Designated Housing—PHA Housing Designated for Occupancy by Disabled, Elderly, or Disabled and Elderly Families

New part 945 would be divided into three subparts: Subpart A—General; Subpart B—Application and Approval Procedures; and Subpart C—Operating Designated Housing.

Subpart A—General

Subpart A would set forth the purpose of part 945, and the general policies applicable to the designated housing process. These general policies include, among others, that designation of projects is limited to PHAs, and "projects" eligible for designation are limited to public housing projects.

Subpart A also would define the principal terms used in part 945. Several terms proposed to be included in the definition section of subpart A are those defined in section 621 of the 1992 Act, which amended section 3(b) of the 1937 Act. Section 3(b) contains the statutory definitions for certain terms used in the 1937 Act. Several of the terms defined in section 621 are applicable to the designated housing process, such as: "family," "elderly person," "near-elderly person," and "person with disabilities."

The definitions for "family" and "elderly person" and other related terms (e.g., "single person") are currently contained in 24 CFR part 912, entitled "Definition of Family and Other Related Terms; Occupancy by Single Persons." Part 912, however, has not yet been amended to reflect the revised definitions provided by section 621 or to add the new terms defined in section 621. (For example, the definition of "person with disabilities" would replace two definitions in part 912—"disabled person" and "handicapped person.") Under separate final rulemaking, part 912 will be amended to include several of the revised and new definitions set forth in section 621 (and which are proposed by this rule to be included in part 945). If the part 912 final rule is published before the part 945 final rule, the part 945 final rule, rather than define terms such as "family," and "elderly person," will list these terms in the part 945 definition section, and cross-reference to the definitions provided in part 912. If the part 945 final rule is published before the part 912 final rule, the definition section of the part 945 will be amended at the time of publication of the part 912 final rule to cross-reference to the definitions provided in part 912. The advantage in keeping these definitions in part 912 (which was established to define "family" and related terms) is that part 912 offers a convenient location to place the definitions for terms that are applicable to all public housing programs. Additionally, by placing these definitions in one location, it reduces the number of program regulations that must be amended to reflect changes in these terms as a result of statutory amendments, or administrative policy decisions.

Other terms defined in part 945 include "housing," "project," "portion of project," "public housing," "service provider," "supportive services," and "public housing projects for disabled families and elderly families."

"Housing," and "public housing" would have the same meaning as "project" in part 945 to reflect the interchangeable use of these terms in section 7. "Project" would be defined to mean low-income housing developed, acquired or assisted by a PHA under the U.S. Housing Act of 1937 (other than section 8) and for which there is an Annual Contributions Contract (ACC) between HUD and the PHA.

The definition for "project" would provide that, unless otherwise indicated in part 945, wherever the term "project" appears in part 945 it includes the plural, and also includes the term "portion of a project." Project is defined in this encompassing manner because a PHA may request designation of one or more of the following: A single project, one or more projects, a portion of a project, or portions of several projects.

The term "portion of a project" would be defined to include a building or buildings (in a multi-building project), a floor or floors of a building or buildings, or a certain number of dwelling units in a project or projects. The definition would clarify that designation of a portion of a project does not require that the buildings, floors, or units designated for occupancy by disabled families or elderly families be contiguous. The buildings, floors, and units may be scattered throughout PHA projects.

The definition for "service provider" would be modeled on the definition provided for this term in the Congregate Housing Service Program interim rule published in the **Federal Register** on December 8, 1992 (57 FR 58042).

With respect to "public housing projects for disabled families and elderly families," part 945 will include this term in its definition section, and cross-reference to the definition provided in part 960, subpart D. As will be discussed later in this preamble under the proposed amendments to part 960, the term "public housing project for disabled families and elderly families" will be defined to mean (1) a public housing project or portion of a project that was reserved for occupancy by disabled families and elderly families at its inception (and has retained that character), or (2) although not so reserved at its inception, a public housing project or portion of a project for which the PHA has obtained HUD's approval to give preference in tenant

selection for all units in the project to disabled families and elderly families. Subpart D currently uses the term "designated" and not "reserved." However, to avoid confusion with the designated housing process provided by new part 945, a process which requires the submission of an allocation plan, HUD proposes to use the term "reserved" in connection with projects for which a PHA provides preference for disabled families and elderly families in accordance with part 960, subpart D.

Subpart B—Application and Approval Procedures

Subpart B would incorporate the requirements established by section 7 for obtaining HUD approval to designate public housing for occupancy by disabled families or elderly families. Consistent with section 7, subpart B would provide that to designate a public housing project for occupancy by disabled families or elderly families, a PHA must submit to HUD, and receive HUD approval of, the allocation plan required by section 7(f).

The allocation plan would consist of the data required to be included by section 7(f), and includes additional items added by the Department, which items are consistent with the type of information solicited under section 7(f). The information solicited by section 7(f) is intended to help the PHA and HUD determine whether designation of a project will (1) benefit the group for whom the project is proposed to be designated, and (2) not adversely affect families who are not members of the group for whom the project is to be designated.

In incorporating the statutory components of the allocation plan, the Department has altered the statutory language of an information item only where the Department considered further clarification or elaboration was needed. The Department does not propose through this rule to prescribe methods by which the PHA should calculate the number of families, number of units, or the number of times housing assistance may be denied or delayed to a family in order to arrive at the information required to be included in the allocation plan. The Department prefers to allow each PHA to rely on its own occupancy policies and procedures (including procedures for maintaining waiting lists) and other methods that may be derived by the PHA for producing the information required to be included in the allocation plan.

* * * The Department, however, specifically requests comment from PHAs on whether additional guidance is needed on how to determine one or more of the information items required to be included in the allocation plan.

The Department added to the allocation plan requirements the goals or objectives which the PHA should strive to achieve in allocating its housing resources among the population it serves. These goals or objectives include the following.

First, the PHA should strive to provide, regardless of the designation proposed to be made, as broad a range of housing choices (with respect to types of housing, types of housing features (e.g. accessible units for persons with disabilities) and accessible location to social, commercial facilities, such as shopping markets) that would be available to elderly families and disabled families if there was no designation of projects in accordance with part 945.

Second, the PHA should strive to provide its disabled families with the most integrated setting possible. Under the designated housing process, the PHA only should seek to provide public housing that separates families on the basis of disability when the types of supportive services required by disabled families necessitate the concentration of families in a single location (i.e., a building, contiguous floors or units). An example of a supportive service that may require the concentration of families in a single location is the service of a live-in attendant, and to achieve efficiency in cost and delivery of this service, several families may share the services of this attendant.

The Department may disapprove an allocation plan which fails to indicate that the PHA strived to (1) provide as broad a range of housing choices that would have been available to elderly families and disabled families if there had been no designation, or (2) provide its disabled families with the most integrated setting possible.

In addition to the above two objectives, section 7 requires that the allocation plan disclose the PHA's strategy for securing additional housing resources that will be sufficient to provide housing assistance to not less than the number of non-elderly disabled families that would have been housed by the PHA if there was no designated project. The proposed rule would provide, consistent with section 7(f)(2)(G) that these resources must be owned or controlled by the PHA, or that the PHA has received preliminary notification that it will obtain these resources, or the PHA intends to apply for these resources. The requirement to secure housing resources sufficient to address the housing needs of the PHA's non-elderly disabled families who would have been housed but for the designation of a project is not to be construed as a requirement for one-for-one replacement of housing assistance. Rather, this requirement is intended to ensure that persons with disabilities not be under-served by the PHA that designates a project for occupancy only by elderly families. The types of housing resources available to the PHA, and the methods by which a PHA may obtain additional housing resources include the following:

The PHA may utilize vacancies and turnover in other public housing projects that are not designated and that are not intended to be designated, as well as turnover in section 8 certificates and vouchers.

The PHA may provide local preferences for a specific number of non-elderly disabled persons, in accordance with 24 CFR 960.211, for public housing general occupancy projects, public housing projects for disabled families and elderly families as provided in 24 CFR part 960, subpart D, or for the section 8 certificate or voucher program. In choosing this method, the PHA must demonstrate that the preference will result in the desired increase in the number of non-elderly disabled persons housed.

The PHA may provide for allocation of a certain number of public housing units (existing or new) or section 8 certificates or vouchers, which will be accompanied by a supportive services package. This may be achieved by the PHA entering into an agreement with a supportive service provider to make available a certain number of units in exchange for the provider delivering supportive services to disabled families. In accordance with the objective to maintain the most integrated housing setting, public housing units allocated for this purpose should not be contiguous, except where the type of supportive services to be provided require that the families be concentrated in a single location. The units or certificates or vouchers provided under this method would be allocated to non-elderly disabled families in the order of their application date on the waiting list. Clients of the service provider delivering the supportive services would not be provided these units, or certificates or vouchers, before other non-elderly disabled families already on the PHA's waiting list who need the supportive services being offered with this housing assistance. Additionally, occupancy of these units may not be limited to members of a particular disability group, but may be limited to persons who need the available supportive services (as will be discussed later in this preamble, projects designated for disabled families may not be designated for occupancy only by persons with a specific disability). This type of additional housing resource may be selected by a PHA that has a population of non-elderly disabled families who would not otherwise benefit from the housing without the supportive services.

The PHA may use modernization funds to reconfigure units and buildings to appropriate sizes or uses for non-elderly disabled families.

The PHA may designate projects, or portions of projects, for occupancy by disabled families (note that projects designated for occupancy by disabled families must have a supportive service plan).

The PHA may allocate to non-elderly disabled families the units vacated in other PHA projects by elderly families who intend to relocate to a project designated for occupancy by elderly families.

Consistent with section 7(d)(1), the PHA may utilize housing owned or controlled by the PHA in which supportive services are provided, facilitated, or coordinated, such as mixed housing, shared housing, family housing, group homes, congregate housing, and other housing as the PHA considers appropriate.

Consistent with section 7(d)(2), the PHA may use development funds or funds for major reconstruction of obsolete public housing (MROP) to provide housing for disabled families in accordance with section 624 of the 1992 Act, which provides for development and reconstruction of housing for disabled families from funds, which may be not less than five percent, of funds reserved, respectively, for public housing development and for MROP.

Consistent with section 7(d)(3), the PHA may provide tenant-based assistance under the Supportive Housing for Persons with Disabilities Program (section 811 of the NAHA).

Additionally, a PHA may use all or a portion of net increases in units available for occupancy in a project as a result of the rehabilitation of vacant units in the project which previously had been uninhabitable.

The foregoing provides a few examples of ways in which PHAs may secure additional housing resources for non-elderly disabled families.

* * * The Department specifically requests comment from PHAs on any problems they may foresee with the above examples provided by the Department, and suggestions for other methods by which PHAs may obtain additional housing resources.

In securing additional housing resources, PHAs must take into account the supportive service needs of disabled persons, especially those persons with disabilities who require units with accessible features. The PHA should be able to make this assessment on information provided by its public housing waiting list, and from information collected in the comprehensive housing affordability strategy (CHAS) provided in accordance with section 105 of the NAHA. Consideration of the accessibility needs of persons with disabilities is not a new requirement proposed to be imposed on PHAs through this proposed rule. The Department's regulations at 24 CFR part 8 implementing section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) require PHAs to assess, on a PHA-wide basis, the needs of current tenants and applicants on its waiting list for accessible units. In reiterating this requirement in this proposed rule, the Department seeks to ensure that PHAs will not reduce the availability of accessible units that would have been allocated to persons with disabilities were it not for the designation of a project as elderly-only.

In reviewing a PHA's strategy for addressing the current and future housing needs of the families in the PHA's jurisdiction, HUD will examine closely both the PHA's proposed allocation of its immediately available housing resources (e.g., vacancies in projects, available section 8 certificates or vouchers), and the PHA's plan to secure and allocate additional housing resources that it owns or controls. HUD will not approve an allocation plan that does not adequately provide for the housing needs of (1) families who are members of the group for whom a project was designated, (2) families who are not members of the group for whom a project was designated, or (3) both of these groups. In deciding how its housing resources will be allocated, the PHA should strive to provide disabled families and elderly families with dwelling units, whether in designated housing or non-designated housing, that are comparable to units that would have been offered to them if there were no designated project.

HUD also will not approve an allocation plan that reduces the available current supply of housing for non-elderly disabled families, and provides for increased housing for these families at some distant, or indefinite, point in the future. For example, HUD will not approve an allocation plan submitted by a PHA that has a percentage of non-elderly disabled families on its waiting list that is two to three times the percentage residing in public housing, and through which plan the PHA (1) requests designation of an elderly-only project, and (2) proposes, as its only additional housing resource for non-elderly disabled families on its waiting list, a public housing project that has yet to be built. Since development of public housing is a complex and competitive process, such a proposal falls substantially short of adequately addressing the housing needs of non-elderly disabled families on a PHA's waiting list.

An approvable allocation plan is one that, given the housing inventory of the PHA and the population it serves, provides its disabled families and elderly families with as broad a range of housing choice as possible, with respect to the level of supportive services provided, the availability of accessible units, and integration with other family groups (i.e., non-elderly families, non-disabled families, and families with children).

Subpart B would not require a PHA to submit an allocation plan and seek formal designation for public housing projects which currently house a combination of disabled families and elderly families, or for a project in which the PHA intends to house a combination of disabled families and elderly families. The Department does not seek to impose on PHAs the administrative burden of preparing an allocation plan for providing housing to a combination of disabled families and elderly families where no administrative burden of this type is currently imposed on PHAs for this type of housing. (As will be discussed later in this preamble, PHAs must, however, obtain approval for this type of housing under 24 part 960, subpart D.) To require submission of an allocation plan solely for the purpose that the PHA may provide, continue to provide, or provide in the future, public housing projects that house a combination of disabled families and elderly families may discourage PHAs from continuing to provide this type of housing.

The proposed rule, however, would require that public housing projects for disabled families and elderly families must obtain designation as housing for disabled families and elderly families when a PHA decides to submit an allocation plan for designation of a public housing project, or portion thereof, for occupancy by disabled families, or by elderly families. In its allocation plan, the PHA would identify any public housing projects that house disabled families and elderly families

and that were approved as housing for these two types of families in accordance with 24 CFR part 960, subpart D. "Designation" as housing for disabled families and elderly families would be granted to these projects when designation is granted for the PHA's proposed housing for disabled families or housing for elderly families. If a PHA does not seek designation of housing for elderly families or for disabled families, the PHA is not required to obtain designation for its mixed housing of disabled families and elderly families.

For designation of housing for occupancy by disabled families, section 7(e) requires submission and approval of an "application for designated housing for disabled families" in addition to the PHA meeting the other requirements imposed by section 7, which requirements include the submission of the allocation plan. The information required by section 7(e) to be contained in this application largely focuses on the PHA's supportive services plan. Section 7(e) requires that the PHA describe the supportive service needs of the persons with disabilities that the proposed designated project is expected to serve, and the manner in which these services will be provided to the disabled families; and identify the service provider who will provide the supportive services to the designated housing population. (The service provider is the person or entity licensed under applicable State or local law to provide the supportive services for the designated housing population.)

The application for designated housing for disabled families should not be construed to mean, and subpart B would clarify that it does not mean, that PHAs only may provide supportive services to disabled families occupying designated projects for disabled families. As discussed earlier in Section II of this preamble, section 7(d) provides that PHAs shall meet, to the extent practicable, the housing and supportive service needs of eligible families applying for assistance under this title. Since eligible families applying for assistance under title VI of the 1992 Act include elderly families, the regulation encourages PHAs to provide supportive services to projects designated for occupancy by elderly families, and by disabled families and elderly families, in addition to providing supportive services to those projects designated for occupancy by disabled families. The Department recognizes that PHAs have been providing supportive services to elderly families occupying public housing. A supportive services plan is not necessary to continue the delivery of these services to elderly families, or to initiate the delivery of supportive services to elderly families occupying designated housing for elderly families.

In designating a project (or portion thereof) for occupancy by disabled families, a PHA may not designate the project for occupancy by persons who have a specific disability. For example, PHAs may not designate a project for occupancy only by persons who have developmental disabilities, or by persons with HIV disease. PHAs may limit access to a designated project to only those persons who need the types of services that are being provided.

In addition to listing the information required to be contained in the allocation plan and in the application for designated housing for disabled families, subpart B would list the information to be included in the PHA's updated allocation plan. Consistent with section 7, subpart B requires each PHA that owns or operates a designated housing project to update its allocation plan not less than once every two years. The updated allocation plan allows HUD to determine whether the projections made by the PHA (e.g., with respect to occupancy in the designated housing project, availability of housing for families who are not members of the group for whom the project was designated) were accurate.

Subpart B also would specify the criteria governing approval of these documents, and the procedures applicable to the submission of these documents to HUD, and notification of approval or disapproval by HUD.

* * * The Department specifically invites PHAs and other interested members of the public to comment on the requirements of the allocation plan and of the application for designated housing for disabled families, and to offer any suggestions on how these requirements may be revised in a way that will facilitate the production of this information by the PHA without, however, forfeiting any information that is necessary to accurately assess the impact of designated housing on the families served by the PHA. As noted earlier in this preamble, the purpose of the information required to be submitted in subpart B is to assist the PHA and the Department in assessing the advantages and disadvantages, if any, of designated housing. Therefore, in commenting on the requirements of subpart B, the Department requests the commenters to be mindful of this purpose, and of those requirements that are statutorily imposed.

Subpart C—Operating Designated Housing

Subpart C would require designated projects to be operated in conformity with all applicable public housing regulations and requirements, including compliance with nondiscrimination and accessibility requirements and regulations. Subpart C also would incorporate the special admission and occupancy requirements imposed by section 7.

The special admission and occupancy requirements applicable to designated housing include, among others, that in determining priority for admission to occupancy in projects that have been designated in accordance with the procedures established in section 7, the PHA may make units in such projects available only to the types of families for whom the project is designated. For designated projects for elderly families, section 7 permits PHAs to make units available to near-elderly families if there are an insufficient number of elderly families to fill all the units in a designated project.

The special admission and occupancy requirements applicable to designated housing also include a provision that, notwithstanding the authority to make units in a designated project available only to the types of families for whom the project is designated, the PHA shall make any dwelling unit that is ready for occupancy in such a project and that has been vacant for more than 60 consecutive days generally available for occupancy without regard to the types of families for whom the project was designated.

Compliance with Nondiscrimination and Accessibility Requirements in the Designated Housing Process.

With respect to compliance with nondiscrimination and accessibility requirements, the proposed rule would provide that the approval to operate a designated project does not relieve a PHA of its obligations to comply with the Fair Housing Act (42 U.S.C. 3601–3619) and with section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794). While a PHA may designate a project or portion thereof for occupancy solely by disabled families and/or elderly families, in accordance with the procedures of part 945, the PHA also must administer the designated project, as well as its additional housing resources, in a manner that does not violate either section 504 or the Fair Housing Act.

An example of application of the Fair Housing Act requirements is as follows. A person with a disability who is residing in a project designated for occupancy by disabled families requires an accommodation in service that differs from the supportive services provided to the designated project. If it is determined that the accommodation (1) may be necessary to afford the individual equal opportunity for the use and enjoyment of a dwelling unit or public and common use areas, and (2) is reasonable (i.e., a reasonable accommodation), the accommodation must be provided by the PHA in accordance with the requirements of the Fair Housing Act. Alternatively, if a person with a disability requires a reasonable accommodation and has been offered, but has declined, to live in a designated project where supportive services are provided, the PHA must provide the reasonable accommodation, even if the accommodation is identical or similar to the services provided in the designated project.

An example of the application of section 504 requirements is as follows. A PHA designates a certain number of units scattered within a public housing project for occupancy by persons with disabilities, some of whom are in need of various features of accessible design within the dwelling units and premises, and all of whom are in need of a range of regularly provided supportive services, such as meal services, transportation, nonmedical counseling, and assistance with housekeeping and other chores. The PHA cannot require a person who uses a wheelchair to live in the designated project. Section 504 requires, to the maximum extent feasible, and subject to reasonable health and safety requirements, that accessible dwelling units be made available throughout the PHA's projects, and in a range of sizes and amenities. Section 504 also requires housing adjustments when such adjustments to policies and practices do not change the basic nature of the program, or result in undue financial and administrative burdens. Section 504 also requires PHAs to operate each existing housing program or activity receiving Federal financial assistance so that the program or activity, when viewed in its entirety, is readily accessible to and usable by individuals with disabilities. Providing the person who uses a wheelchair with an accessible unit (other than a unit in the designated project) that accommodates the individual's needs would comply with the requirements of section 504. Further, it should be noted that section 7(b)(1) provides that the decision of any disabled family not to accept occupancy in an appropriate type of project shall not adversely affect the family's opportunities to be offered other appropriate housing assistance.

In addition to compliance with the Fair Housing Act and section 504 requirements, the Department has determined that title II of the Americans with Disabilities Act (ADA) (42 U.S.C. 12101–12165) applies to all PHAs, regardless of their source of funding. Title II of the ADA ("Public Services") applies to any program, service, or activity provided or made available by States and local governments or any department, agency, special purpose district or other instrumentality of a State or local government. (The Department will be publishing guidance for PHAs with respect to title II of the ADA in the near future.)[2]

IV. Proposed Amendments to Part 960, Subpart D

Subpart D of part 960, titled "Preference for Elderly Families and Discretionary Preference for Near Elderly Families in Public Housing Projects for the Elderly," establishes a preference for elderly families and disabled families in "public housing projects for the elderly." Under existing subpart D, the term "elderly family" is defined to include "disabled family," and although subpart D is titled "preference for elderly families," subpart D in fact establishes a preference for elderly families and disabled families in projects that house a combination of elderly families and disabled families. Subpart D also permits a PHA to give preference to near-elderly families for admission to public housing projects for elderly families and disabled families when the PHA determines, in accordance with § 960.407 (Selection Preference), that there are not enough elderly families and disabled families to fill all the units in the project that are currently vacant, or that are expected to be vacant in the next 12 months.

Existing subpart D provides that a public housing project, or portion of a project, acquires the identity of a public housing project that is reserved for occupancy by elderly (and disabled) families if the project (1) was "designated for occupancy by the elderly at its inception (and has retained that character)," or (2) "although not so designated, for which the PHA gives preference in tenant selection (with HUD approval) for all units in the project (or for a portion of units in the project) to elderly families."

Because section 621 of the 1992 Act distinguishes between elderly families and disabled families, and because section 622 provides for a "designated housing process," changes are required to be made to subpart D. This proposed rule would amend subpart D to clarify that the preference established by subpart D for elderly families for admission to "public housing projects for elderly families" is a preference for elderly families and disabled families, and that projects for elderly families are projects for elderly families and disabled families. Accordingly, subpart D would be retitled "Preference for Disabled Families and Elderly Families in Public Housing Projects for Elderly Families and Disabled Families."

As noted earlier in this preamble, a public housing project for disabled families and elderly families is a public housing project, or portion of a project, that was reserved for occupancy by disabled families and elderly families at its inception (and has retained that character), or although it was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the project to disabled families and elderly families. As also noted earlier in this preamble, although subpart D uses the term "designated" and not "reserved" HUD proposes to use "reserved" in connection with the preference process provided by subpart D to avoid confusion with "designated housing process" provided by new part 945. Additionally, to date, the public housing projects for disabled families and elderly families provided in accordance with subpart D have not established a limit on the number or percentage of disabled families that may be admitted to these projects.

Subpart D, as proposed to be revised by this rule, would continue this practice, and would not establish a limitation or cap on the number of disabled families that may be admitted to these projects, but would clarify that the absence of such a limitation is a condition for approval to operate public housing reserved for occupancy by disabled families and elderly families. For example, approval to operate a public housing project for disabled families and elderly families would not be granted or would be withdrawn if the PHA establishes a policy of admitting disabled families to only 10 percent of

[2] The Department notes that title III of the ADA (Public Accommodations and Services Operated by Private Entities) may apply to PHAs in certain situations. Although title III pertains to private entities, and not public entities (which include PHAs), the applicability of title III to PHAs may arise in the designated housing process in connection with housing at which certain activities are conducted that would cause the housing to be classified as a "place of accommodation" under title III. PHAs are encouraged to obtain further information from the Department of Justice about the possible applicability of title III.

the units with the remaining 90 percent of the units reserved for elderly families.

The discretionary preference which subpart D currently provides for near-elderly families in public housing projects for elderly families (as this term is used in existing subpart D) would be removed. The discretionary preference for near-elderly families would be limited to admission to housing designated for occupancy by elderly families under part 945, in accordance with the requirements of amended section 7, which imposes such limit.

The amendments that would be made to part 960, subpart D, would provide for the definitions of "family" and related terms to cross-reference to the definitions for these terms provided in part 945. Again, however, if the part 912 final rule is published before the part 945 final rule, then subpart D would provide for a cross-reference to the definition section in part 912.

V. Submission of Allocation Plans in Advance of Final Rulemaking

Allocation plans submitted to HUD before final rulemaking is completed will be required to comply with the final regulations.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implements section 102(2)(c) of the National Environmental Policy Act of 1969 (NEPA). This Finding of No Significant Impact is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget under Executive Order 12866 as a significant regulatory action.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this proposed rule before publication and by approving it certifies that the proposed rule will not have a significant impact on a substantial number of small entities. The proposed rule would establish the requirements and procedures by which PHAs may designate projects, or portions of projects, for occupancy only by: (1) Elderly families, (2) disabled families, or (3) disabled families and elderly families. The proposed rule would incorporate the requirements established by statute for such designation. The designation of housing for occupancy by elderly families, disabled families, or disabled families and elderly families is an option provided to, not a requirement imposed on, PHAs by this proposed rule.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule would not have potential for significant impact on family formation, maintenance, and general well-being within the meaning of the order. This proposed rule would implement the designation process provided by section 622 of the 1992 Act, the purpose of which is to assist PHAs in meeting the housing and supportive service needs of disabled families and elderly families. The supportive services provided by PHAs to disabled and elderly families are expected to assist these families in avoiding possible institutionalization, and to reduce unnecessary stress and financial burden on these families. Thus, the supportive services component of the program is anticipated to have a beneficial impact on disabled families and elderly families.

Since the designation process, however, provides for elderly-only housing and disabled-only housing, there is the possibility that the designation process authorized by section 622 of the 1992 Act would limit the availability of housing for (1) disabled families (if a PHA designates elderly family-only housing), (2) elderly families (if a PHA designates disabled family-only housing) or (3) families with children (if a PHA designates disabled families and/or elderly family-only housing), and thus adversely impact the maintenance and well-being of these families. (Although it should be noted that PHAs would be required to admit eligible elderly families with children to designated projects for elderly families, and admit eligible disabled families with children to projects designated for disabled families.) The proposed rule, however, would provide certain protections for all family types, including the protection provided by HUD's review and approval of a PHA's housing allocation plan. The purpose of this review is to ensure that the availability of public housing, and other housing resources available to the PHA, is not reduced for any of these families, especially non-elderly disabled families. Thus, the impact on family maintenance and well being that may result from the designation process, as proposed to be implemented by the Department through this rule, would not be significant within the meaning of the order.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this proposed rule would not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities among the various levels of government. The proposed rule is limited to implementing the procedures under which PHAs may opt, subject to certain requirements and procedures, to designate public housing projects, or portions of public housing projects, for occupancy by elderly families, disabled families, or disabled families and elderly families.

Regulatory Agenda

This proposed rule was listed as sequence number 1635 in the Department's Semiannual Agenda of Regulations, published on October 25, 1993 (58 FR 56402, 56448) under Executive Order 12866 and the Regulatory Flexibility Act.

Public Reporting Burden

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). The following provisions of the proposed rule have been determined by the Department to contain collection of information requirements:

Information collection requirement	Reference in proposed rule	Number of respondents	Number of responses per respondent	Hours per response	Total hours[1]
Allocation plan	§ 945.203	795	1	20	15,900

Information collection requirement	Reference in proposed rule	Number of respondents	Number of responses per respondent	Hours per response	Total hours[1]
Application for designated housing for disabled families	§ 945.205	80	1	30	2,400
Total burden hours					18,300

[1] There is no annual submission requirement. A PHA may submit an allocation plan or application for designated housing anytime the PHA seeks to designate a housing project for occupancy by disabled families or elderly families. Additionally, a PHA may seek designation of more than one project in one allocation plan or one application.

List of Subjects

24 CFR Part 945

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 960

Aged, Grant programs—housing and community development, Individuals with disabilities, Public housing.

Accordingly, chapter IX of title 24 of the Code of Federal Regulations would be amended as follows:

1. A new part 945, consisting of §§ 945.101 through 945.303, would be added to read as follows:

PART 945—DESIGNATED HOUSING—PUBLIC HOUSING DESIGNATED FOR OCCUPANCY BY DISABLED, ELDERLY, OR DISABLED AND ELDERLY FAMILIES

Subpart A—General

Sec.
945.101 Purpose.
945.103 General policies.
945.105 Definitions.

Subpart B—Application and Approval Procedures

945.201 Approval to designate housing.
945.203 Allocation plan.
945.205 Application for designated housing for disabled families.

Subpart C—Operating Designated Housing

945.301 General requirements.
945.303 Requirements governing occupancy in designated housing.

Authority: 42 U.S.C. 1473e and 3535(d).

Subpart A—General

§ 945.101 Purpose.

The purpose of this part is to implement the designated housing process established by section 7 of the U.S. Housing Act of 1937 (42 U.S.C. 1437e). Section 7 provides public housing agencies with the option, subject to the requirements and procedures of this part, to designate public housing projects, or portions of public housing projects, for occupancy by disabled families, elderly families, or disabled families and elderly families.

§ 945.103 General policies.

(a) *Agency participation.* Participation in this program is limited to public housing agencies (PHAs) (as this term is defined in 24 CFR 913.102) that elect to designate public housing projects for occupancy by disabled, elderly, or disabled and elderly families, as provided by this part.

(b) *Eligible housing.* (1) *Designation of public housing.* Projects eligible for designation under this part are public housing projects as described in the definition of "project" in § 945.105.

(2) *Additional housing resources.* To meet the housing and supportive service needs of elderly families, and disabled families, including non-elderly disabled families, who will not be housed in a designated project, PHAs shall utilize housing resources which they own, control, or have received preliminary notification that they will obtain (e.g., section 8 certificates and vouchers). PHAs also may utilize any housing facilities which they own or control and in which supportive services are already provided, facilitated or coordinated, such as mixed housing, shared housing, family housing, group homes, and congregate housing.

(3) *Exemption of public housing projects for disabled families and elderly families.* Except as provided in § 945.201, a PHA which seeks to house all of its disabled families and elderly families in public housing projects that have been reserved for occupancy by both disabled families and elderly families is not required to meet the designation requirements of this part, but is required to meet the requirements of 24 CFR part 960, subpart D.

(c) *Family participation in designated housing.* (1) *Voluntary participation.* The election to reside in designated housing is voluntary on the part of a family. No disabled family or elderly family may be required to reside in designated housing, nor shall a decision not to reside in designated housing adversely affect the family with respect to occupancy of another appropriate project.

(2) *Meeting stated eligibility requirements.* Nothing in this part shall be construed to require or permit a PHA to accept for admission to a designated project a disabled family or elderly family who does not meet the stated eligibility requirements for occupancy in the project (for example, income), as set forth in HUD's regulations in 24 CFR parts 912 and 913, and in the PHA's admission policies.

(d) *Supportive services.* The requirement in § 945.205 to submit a supportive services plan for approval to designate housing for disabled families shall not be construed to mean that PHAs only may provide supportive services to disabled families occupying designated housing for disabled families. In accordance with section 7(d) of the Act, PHAs should seek to provide supportive services to all families occupying designated housing which need such services.

§ 945.105 Definitions.

As used in this part:

Act means the United States Housing Act of 1937 (42 U.S.C. 1437–1440).

Allocation Plan. See § 945.201.

CHAS means the comprehensive housing affordability strategy required by section 105 of the National Affordable Housing Act (42 U.S.C. 12705).

Designated housing or *designated project* means a project (or projects), or a portion of a project (or projects) (as these terms are defined in this section), that has been designated for occupancy by either disabled families, elderly families, or disabled families and elderly families, in accordance with the requirements of this part.

Disabled families means families whose heads (or their spouses), or whose sole members are persons with disabilities. The term "disabled families" includes a person with disabilities, two or more persons with disabilities living together, and one or more persons with disabilities living with one or more persons who are determined to be essential to the care or well-being of the person or persons with disabilities.

Elderly families means families whose heads (or their spouses), or whose sole members are elderly persons. The term "elderly families" includes an elderly person, two or more elderly persons living together, and one or more elderly persons living with one or more persons who are determined to be essential to the care or well-being of the elderly person or persons.

Elderly person means a person who is at least 62 years of age.

Families includes but is not limited to a single person (as defined in 24 CFR part 912), one or more single persons, a displaced person (as defined in 24 CFR part 912), disabled families, elderly families, near-elderly families, and families with children.

FY means Federal Fiscal Year (starting with October 1, and ending September 30, and designated by the calendar year in which it ends).

Housing has the same meaning as "project," which is defined in this section.

HUD or *Department* means the Department of Housing and Urban Development including its Regional and Field Offices to which authority has been delegated to perform functions under this part.

NAHA means the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990).

Near-elderly families means families whose heads (or their spouses), or whose sole members are near-elderly persons. The term "near-elderly families" includes two or more near-elderly persons living together, and one or more near-elderly persons living with one or more persons who are determined to be essential to the care or well-being of the near-elderly person or persons.

Near-elderly person means a person who is at least 50 years of age but below the age of 62.

Person with disabilities means a person who:

(1) Has a disability as defined in section 223 of the Social Security Act (42 U.S.C. 423); or

(2) Is determined, pursuant to regulations issued by the Secretary, to have a physical, mental, or emotional impairment which:

(i) Is expected to be of long-continued and indefinite duration,

(ii) Substantially impedes his or her ability to live independently, and

(iii) Is of such a nature that such ability could be improved by more suitable housing conditions, or

(3) Has a developmental disability as defined in section 102 of the Developmental Disabilities Assistance and Bill of Rights Act (42 U.S.C. 6001(5)).

The term "person with disabilities" shall not exclude persons who have the disease of acquired immunodeficiency syndrome or any conditions arising from the etiologic agent for acquired immunodeficiency syndrome.

Portion of project includes but is not limited to: one or more buildings in a multi-building project; one or more floors of a project or projects; a certain number of dwelling units in a project or projects. (Designation of a portion of a project does not require that the buildings, floors or units be contiguous.)

Project means low-income housing developed, acquired, or assisted by a PHA under the U.S. Housing Act for 1937 (other than section 8) for which there is an Annual Contributions Contract (ACC) between HUD and the PHA. For purposes of this part, the terms "housing" and "public housing" mean the same as project. Additionally, as used in this part, and unless the context indicates otherwise, the term "project" when used in the singular includes the plural, and when used in the plural, includes the singular, and also includes a "portion of a project," as defined in this section.

Public housing or *public housing project*. See definition of "project" in this section.

Public housing agency or *PHA* means any State, county, municipality or other governmental entity or public body (or agency or instrumentality thereof) which is authorized to engage in or assist in the development or operation of low-income housing.

Public housing project for disabled families and elderly families. See definition in 24 CFR part 960, subpart D.

Secretary means the Secretary of Housing and Urban Development.

Service provider means a person or organization licensed or otherwise approved in writing by a State or local agency (e.g., Department of Health, Department of Human Services or Welfare) to provide supportive services. The service provider may provide the service on either a for-profit or not-for-profit basis.

Single person includes a person who lives alone or intends to live alone, and includes an elderly person, a disabled person, a displaced person, and the remaining member of a tenant family.

Supportive service plan. See § 945.205.

Supportive services means services designed to meet the special needs of tenants, and may include meal services, health-related services, mental health services, services for nonmedical counseling, meals, transportation, personal care, bathing, toileting, housekeeping, chore assistance, safety, group and socialization activities, assistance with medications (in accordance with any applicable State laws), case management, personal emergency response, and other appropriate services.

Subpart B—Application and Approval Procedures

§ 945.201 Approval to designate housing.

(a) *Designated housing for elderly families*. To designate a project for occupancy by elderly families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203.

(b) *Designated housing for disabled families*. To designate a project for occupancy by disabled families, a PHA must have a HUD-approved allocation plan that meets the requirements of § 945.203, and a HUD-approved application, which includes a supportive service plan, as required by § 945.205.

(c) *Designated housing for disabled families and elderly families*. (1) A PHA which seeks to provide a project for occupancy by only disabled families and elderly families is not required to meet the requirements of this part, but is required to meet the requirements of 24 CFR part 960, subpart D.

(2) Designation of a project that already has been approved for occupancy by disabled families and elderly families under 24 CFR part 960, subpart D is not necessary unless a PHA seeks to provide designated housing for disabled families or designated housing for elderly families.

(3) A PHA which seeks to provide designated housing for disabled families or designated housing for elderly families must identify in its allocation plan, in accordance with § 945.203(6), any public housing projects that have been reserved for occupancy by disabled families and elderly families under 24 CFR part 960, subpart D. Designation of projects approved under 24 CFR part 960, subpart D, as designated housing for disabled families and elderly families will be made automatically upon HUD's approval of:

(i) The PHA's allocation plan, in the case of designated housing for elderly families; and

(ii) The PHA's allocation plan and application, in the case of designated housing for disabled families.

§ 945.203 Allocation Plan.

(a) *General*. (1) *Applicable terminology*. As used in this section, the terms "initial allocation plan" refers to the PHA's first submission of an allocation plan, and "updated allocation plan" refers to the biennial update (once every two years) of this plan, which is described in paragraph (f) of this section. As provided in § 945.105, the term "project" includes the plural ("projects") and includes a portion of a project.

(2) *Allocation of housing resources*. The PHA, in developing a plan to allocate its housing resources among the population it serves:

(i) Should strive to provide, regardless of the designation proposed to be made, as broad a range of housing choice as possible to elderly families and disabled families with respect to the level of supportive services, and the availability of accessible units;

(ii) Should strive to provide, regardless of the designation proposed to be made, housing for disabled families in the most integrated setting possible (designated units need not be contiguous);

(iii) For designated housing for disabled families, may make units available in conjunction with a specific package of services (such units may not be limited to persons with a specific disability, but rather must be made available to all disabled persons who need the types of services that are being offered).

(b) *Consultation in plan development*. In preparing the initial allocation plan, or any update of the allocation plan as provided in paragraph (f) of this section, the PHA shall consult with:

(1) The State or unit of general local government in whose jurisdiction the area served by the PHA is located;

(2) Public and private service providers;

(3) Advocates for the interests of disabled families, elderly families, and families with children;

(4) Representatives of the residents of the PHA's projects, including representatives from resident councils or resident management corporations where they exist; and

(5) Other interested parties, including management and residents of independent living centers, congregate housing and group homes.

(c) *Contents of initial plan*. The initial allocation plan shall contain, at a minimum, the information set forth in paragraph (c) of this section:

(1) *Identification of the project to be designated and type of designation to be made*. The first item to be addressed in the allocation plan is identification of the project to be designated and the type of designation to be made. The PHA must describe the building or buildings, floor or floors or units which will comprise the "designated project" and their location in the PHA's jurisdiction. (In providing the identification or location of floors or units to be designated, the PHA need not identify the precise floors or units to be designated (e.g., units 202–208, but should identify the projects in which the designated floors or units are located. The floors or units need not be contiguous.) The PHA also must state the type of designation to be made (i.e., housing for disabled families or housing for elderly families) and the reasons for designation. In discussing the reasons for the designation, the PHA may refer to data that will be provided in other parts of the allocation plan.

(2) *Identification of groups and persons consulted and comments submitted*. This component of the plan documents that the PHA's proposal to designate housing under this part was based on consideration of comments, suggestions and recommendations of all interested parties. This component of the plan must:

(i) Identify the groups and persons with whom the PHA has consulted in the development of the allocation plan;

(ii) Include a summary of comments received on the plan from the groups and persons consulted (these comments, and transcripts of any meetings that may have been held on the PHA's proposal to designate a project, must be maintained for a period of five years from the date of submission of the allocation plan, and must be available for review by HUD, if HUD requests review); and

(iii) Describe how the plan addresses these comments.

(3) *Profile of proposed designated project in its pre-designation state*. This component of the plan provides information on the project proposed to be designated as the project exists and operates in its pre-designation stage. This component of the plan must include:

(i) The total number of families currently occupying the project; and

(A) The number of families who are members of the group for whom the project is to be designated; and

(B) The number of families who are not members of the group for whom the project is to be designated;

(ii) An estimate of the total number of elderly families and of disabled families who are potential tenants of the project (i.e., as the project now exists), based on information provided by:

(A) The waiting list for the project; and

(B) The Comprehensive Housing Affordability Strategy (CHAS) for the jurisdiction within which the area served by the PHA is located;

(iii) If the project is proposed to be designated as housing for elderly families, an estimate of the number of potential tenants who are non-elderly disabled families based on the same sources of information provided in paragraphs (c)(3)(ii) (A) and (B) of this section.

(iv) An estimate of the number of potential tenants who will need accessible units based on information provided by:

(A) The needs assessment prepared in accordance with 24 CFR 8.25, and

(B) The CHAS for the jurisdiction within which the area served by the PHA is located;

(v) The number of units in the project which became vacant and available for occupancy during the year preceding the date of submission of the allocation plan to HUD;

(vi) The average length of vacancy for dwelling units in the project for the year preceding the date of submission of the allocation plan to HUD;

(vii) An estimate of the number of units in the project that are anticipated to become vacant and available for occupancy during the two-year period following the date of submission of the allocation plan to HUD.

(viii) An estimate of the average length of time all applicants currently have to wait for a dwelling unit in the project.

(4) *Projected profile of project in designated stage*. This component of the plan provides information on projected or anticipated changes of the information provided in paragraph (c)(3) of this section as a result of designation of the project. This component of the plan must:

(i) Discuss the advantages and disadvantages that the choice of designation is expected to have on families who are members of the group for whom the project is to be designated for occupancy, and families who are not members of the group for whom the project is to be designated;

(ii) Identify the source of selection of families for the designated project (e.g., from current residents of the project, families currently on the waiting list for the project, residents of other projects, and potential tenants for the project based on information provided by the CHAS);

(iii) For projects proposed to be designated for occupancy by elderly families, provide an estimate of the number of near-elderly families who may be needed to fill units in the designated project for elderly families, as provided in § 945.303(c);

(iv) Describe how the PHA will document:

(A) The number of families who are members of the designated group who will be denied or delayed housing because of a lack of a sufficient number of designated units; and

(B) The number of families who are not members of the designated group who will be denied or delayed housing because of an insufficient number of non-designated units as a result of the designation;

(v) Provide an estimate of the average length of time all applicants will have to wait for a dwelling unit as a result of designation of a project (i.e., this information should be given both for applicants who are members of the group for whom the project is to be designated, and for applicants who are not members of the group for whom the group to be designated).

(5) *PHA occupancy policies and procedures.* This component of the plan provides information on the PHA's existing occupancy policies and procedures, and how these policies and procedures may need to be altered for purposes of operating designating housing. This component of the plan must:

(i) Contain a description of the PHA's HUD-Approved Tenant Selection and Assignment Plan, admission policies and procedures, including:

(A) How these policies and procedures apply to disabled families and elderly families, especially the preference system and the transfer policy;

(B) How the waiting list is maintained; and

(C) How dwelling units are assigned;

(ii) Describe any changes the PHA intends to make in its admission policies to accommodate the designation.

(6) Strategy for addressing the current and future housing needs of the families in the PHA's jurisdiction. This component of the plan describes the PHA's strategy for meeting the current and future housing needs of the families in the PHA's jurisdiction. This component of the plan must:

(i) Identify any "public housing projects for disabled families and elderly families," planned or in existence, as provided in 24 CFR part 960, subpart D;

(ii) Describe the steps to be taken by the PHA to ensure that disabled families (if a project is to be designated for occupancy by elderly families) or elderly families (if a project is to be designated for occupancy by disabled families) maintain access to services and housing facilities similar to those that otherwise would have been available to them if the project had not been designated, and a description of the housing choices currently available, and anticipated to be available to these families;

(iii) Describe the steps to be taken by the PHA to replace any accessible units (accessible to persons with varying types of disabilities) that will be unavailable (as a result of the designation of a project that contained such units) to families who need accessible units;

(iv) In the case of designation of a project for elderly families, identify the additional housing resources which the PHA determines will be sufficient to provide assistance to not less than the number of non-elderly disabled families that would have been housed by the PHA if occupancy in units in the designated project were not restricted to elderly families, and the PHA's plan for securing these additional housing resources (one-for-one replacement is not required). These additional housing resources may include but are not limited to:

(A) Providing local preferences for a specific number of non-elderly disabled persons for general occupancy projects in accordance with the preference provisions of 24 CFR 960.211; for public housing projects for disabled families and elderly families, as provided in 24 CFR part 960, subpart D; or for section 8 certificates and vouchers. Within the context of the PHA's overall preference system, there must be a demonstration that the preference will result in the desired increase in the number of non-elderly disabled persons housed;

(B) Allocation of a certain number of existing or new public housing units or section 8 certificates or vouchers, which will be accompanied by a supportive services package, which may be achieved by the PHA entering into an agreement with a supportive service provider to make these units or certificates or vouchers available in exchange for the provider delivering supportive services to disabled families. Clients of the service provider delivering the supportive services may not be provided these units or certificates or vouchers before other non-elderly disabled families already on the PHA's waiting list.

(C) Use of modernization funds to reconfigure units and buildings to appropriate sizes or uses for non-elderly disabled families;

(D) Designation of projects for occupancy only by disabled families (projects designated for occupancy by disabled families must have a supportive services plan in accordance with the requirements of § 945.205);

(E) Allocation to non-elderly disabled families those units in other projects owned or controlled by the PHA that will be vacated by elderly families who will relocate to the project designated for occupancy by elderly families;

(F) Use of public housing development funds, or funds appropriated for major reconstruction of obsolete public housing to provide housing for disabled families;

(G) Use of all or a portion of net increases in units available for occupancy in a project as a result of the rehabilitation of vacant units in this project which had been uninhabitable.

(v) Describe any incentives that the PHA intends to offer:

(A) To families who are members of the group for whom a project was designated for occupancy to achieve voluntary transfers to the designated project; and

(B) To families who are not members of the group for whom a project was designated for occupancy to achieve voluntary transfers from the project proposed to be designated;

(vi) Summarize how the PHA's allocation plan strives to meet the objectives described in paragraph (a)(2) of this section.

(d) *Criteria for allocation plan approval.* HUD shall approve an initial allocation plan, or updated allocation plan, if HUD determines that:

(1) The information contained in the plan is complete and accurate (a plan that is incomplete, i.e., missing required statements or items, will be disapproved), and the projections are reasonable;

(2) Implementation of the plan will not result in excessive vacancy rates in the project identified in paragraph (c)(1) of this section;

(3) Implementation of the plan will not result in excessive denial or delay in housing assistance to families on the PHA's waiting list;

(4) The plan for securing sufficient additional housing resources for non-elderly disabled persons, as provided under paragraph (c)(6) of this section, can reasonably be achieved; and

(5) The plan conforms to the requirements of this part.

(e) *Allocation plan approval or disapproval.* (1) *Written notification.* HUD shall notify each PHA, in writing, of approval or disapproval of the initial or updated allocation plan.

(2) *Timing of notification.* An allocation plan, which meets the requirements and contains the information required by paragraphs (b) through (d) of this section, shall be considered to be approved by HUD if HUD fails to provide the PHA with notification of approval or disapproval of the plan, as required by paragraph (e)(1) of this section, within:

(i) 90 days after the date of submission of an allocation plan that contains comments, as provided in paragraph (c)(2) of this section; or

(ii) 45 days after the date of submission of all other plans, including

(A) Initial plans for which no comments were received;

(B) Updated plans, as provided in paragraph (f) of this section; and

(C) Revised initial plans or revised updated plans, as provided in paragraph (e)(4) of this section.

(3) *Approval limited solely to approval of designated housing.* HUD's approval of an initial plan or updated allocation plan under this section may not be construed to constitute approval of any request for assistance for major reconstruction of obsolete projects, assistance for development or acquisition of public housing, or assistance under 24 CFR part 890 (supportive housing for persons with disabilities).

(4) *Resubmission following disapproval.* If HUD disapproves an initial allocation plan, a PHA shall have a period of not less than 45 days following notification of disapproval as provided in paragraph (e)(2) of this section, to submit amendments to the plan, or to submit a revised plan.

(f) *Biennial update of plan.* (1) *General.* Each PHA that owns or operates a public housing project that is designated for occupancy under this part shall update its allocation plan not less than once every two years, from the date of HUD approval of the initial allocation plan.

(2) *Failure to submit updated plan.* Failure by the PHA to submit the updated plan as required by paragraph (f) of this section shall result in the PHA's designated housing losing its designation in accordance with the provisions of paragraph (f)(4)(ii) of this section.

(3) *Contents of updated plan.* The updated allocation plan shall contain, at a minimum, the following information:

(i) A review of the data and projections contained in the allocation plan, and the most recent update of the data and projections;

(ii) An assessment of the accuracy of the projections contained in the initial allocation plan and in the updated allocation plan;

(iii) The number of times a vacancy was filled in accordance with § 945.303(d);

(iv) The number of times an application for housing assistance by a disabled family or elderly family was denied or delayed because of a lack of appropriately designated units;

(v) The number of times an application for housing assistance by any family type (disabled, elderly, non-elderly, non-disabled, families with children, etc.) was denied or delayed because of a lack of an appropriate number of non-designated units;

(vi) A plan for adjusting the allocation of designated units, if necessary. This adjustment or reallocation plan shall reflect:

(A) the use of and demand for the designated and non-designated dwelling units, as revealed by the information submitted as part of the updated allocation plan; and

(B) An assessment of the availability and adequacy of the supportive services; and

(4) *Criteria for approval of updated plan.* (i) HUD shall approve an updated allocation plan based on HUD's review and assessment of the updated plan, and where HUD considers appropriate or necessary, any on-site review and monitoring of PHA performance in the administration of its designated housing and in the allocation of the PHA's housing resources. Notification of approval or disapproval of the updated allocation plan shall be provided in accordance with § 945.203(e);

(ii) If a PHA's updated plan is not approved, existing projects that have been designated for occupancy by disabled families or elderly families will revert to their project type before designation. New projects (for which there was no previous project type) designated for occupancy by disabled families or elderly families, will be considered general occupancy projects. PHAs may request that an existing or new project which lost its designation as a result of disapproval of the updated plan be approved as a public housing project for disabled families and elderly families in accordance with 24 CFR part 960, subpart D.

(5) *Notification of approval or disapproval of updated plan.* HUD shall notify each PHA submitting an updated plan of approval or disapproval of the updated plan, in accordance with the form of notification and within the time periods required by paragraph (e) of this section.

§ 945.205 Application for designated housing for disabled families.

(a) *General.* To designate a project for occupancy by disabled families, a PHA must submit an application, which shall consist of the allocation plan required by § 945.203, and the supportive service plan described in paragraph (b) of this section. A project may not be designated for occupancy by persons with a specific disability. A PHA, however, may limit access to a designated project for disabled families to only those persons who need the types of services that are being offered.

(b) *Supportive service plan.* The supportive service plan shall describe how the PHA will provide or arrange for the provision of supportive services appropriate to meet the needs of the disabled families who will occupy the designated housing. The supportive service plan, at a minimum, must:

(1) Identify the number of disabled families that will need supportive services;

(2) Describe the types of supportive services that will be needed, and, where known, the length of time the supportive services will be needed;

(3) Identify the service provider, and describe the experience of the service provider in providing supportive services;

(4) Describe the manner in which the supportive services will be provided to the disabled families that the designated housing is expected to serve (the manner in which the services will be provided depends upon the type of service offered; e.g., if the package includes transportation assistance, how will transportation assistance be provided to disabled families);

(5) If applicable, explain why the supportive services to be provided require that the disabled families to be served live in contiguous units;

(6) Identify all sources of funding available to the PHA (State, local, other Federal, or private funding) for providing supportive services to residents of the proposed designated housing, or the supportive service resources to be provided in lieu of funding;

(7) Submit evidence of the commitment(s) provided to the PHA by these sources to make the funds, or the delivery of supportive services available to the PHA for at least two calendar years, and evidence of a general ongoing commitment from these or other sources to continue to provide funding or supportive services relevant to the needs of the families that the designated housing is expected to serve;

(8) Identify any public and private service providers, advocates for the interests of designated housing families, and other interested parties with whom the PHA consulted in the development of this supportive service plan, and summarize the comments and recommendations made by these parties

(these comments must be maintained for a period of five years from the date of submission of the application, and be available for review by HUD, if HUD requests review of the comments);

(9) If applicable, address the ability to provide residential supervision of disabled families (on-site supervision within the designated housing);

(10) Include any other information which the PHA determines would assist HUD in assessing the suitability of the PHA's supportive service plan; and

(11) Include any additional information which HUD may request, and which is appropriate to a determination of the suitability of the supportive services plan.

(c) *Approval.* HUD shall approve an application for designated housing for disabled families if the allocation plan meets the requirements of § 945.203, and if HUD determines on the basis of the information provided in the supportive services plan that:

(1) The persons with disabilities who will occupy the designated project will receive supportive services based on their individual needs;

(2) The supportive services are adequately designed to meet the special needs of the disabled families;

(3) The service provider has sufficient experience in providing supportive services (i.e., the service provider currently administers or has past experience administering an effective supportive service delivery program for persons with disabilities, or has demonstrated capability to obtain expertise based on other supportive service program delivery experience;

(4) Residential supervision will be provided in the designated housing sufficient to facilitate the provision of supportive services, if necessary. (If residential supervision is to be provided, the supportive plan includes written commitments from the providers of supportive services to provide appropriate resident supervision);

(5) Written commitment(s) of support from organizations and entities appear to be sufficient to provide, or fund the cost of providing, the supportive services needed by the disabled families that are expected to occupy the designated housing.

Subpart C—Operating Designated Housing

§ 945.301 General requirements.

Designated projects shall be operated in conformity with the regulations of this part, and the regulations applicable to PHAs in 24 CFR chapter IX, including 24 CFR parts 913, 960 and 966, and, in particular, the nondiscrimination requirements of 24 CFR 960.211(b)(3), which include but are not limited to section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794), Fair Housing Act (42 U.S.C. 3601–3619), title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d), section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C. 1701u), the Age Discrimination Act (42 U.S.C. 6101–6107), Executive Order 11246 (3 CFR, 1964–1965 Comp., p. 339), Executive Order 11063, as amended by Executive Order 12259 (3 CFR, 1958–1963 Comp., p. 652 and 3 CFR, 1980 Comp., p. 307), the Americans with Disabilities Act (42 U.S.C. 12101–12213) (to the extent the Americans with Disabilities Act is applicable) and the implementing regulations of these statutes and authorities; and other applicable Federal, State, and local laws prohibiting discrimination and promoting equal opportunity.

§ 945.303 Requirements governing occupancy in designated housing.

(a) *Priority for occupancy.* Except as provided in paragraphs (c) and (d) of this section, in determining priority for admission to designated housing, the PHA shall make units in the designated housing available only to the category of families for whom the project has been designated for occupancy.

(b) *Compliance with preference regulations.* Among the category of families for whom a project has been designated for occupancy, the PHA shall give preference for occupancy in accordance with the occupancy preferences set forth in 24 CFR part 960, subpart B.

(c) *Eligibility of near-elderly families for designated housing for the elderly.* If a PHA determines that there are insufficient numbers of elderly families to fill all the units in a project designated for occupancy by elderly families, the PHA may, in accordance with an approved allocation plan, provide that near-elderly families, who qualify for preferences for occupancy under 24 CFR part 960, subpart B, may occupy dwelling units in the project. If there are insufficient numbers of near-elderly families to fill all the units in a project designated for elderly families, the provisions of paragraph (d) of this section shall apply.

(d) *Vacancies in designated housing.* Notwithstanding the authority provided by this part to designate housing for occupancy by disabled families, elderly families, or disabled families and elderly families, a PHA shall make available to families, other than the category of families for whom occupancy in the project has been designated, any dwelling unit in the designated housing that is:

(1) Ready for re-rental and for a new lease to take effect; and

(2) Vacant for more than 60 consecutive days.

(e) *Tenant choice of housing.* (1) Subject to paragraph (e)(2) of this section, the decision of any disabled family or elderly family not to occupy or accept occupancy in designated housing shall not adversely affect:

(i) The family's right to continued occupancy in public housing; or

(ii) The family's admission to public housing; or

(iii) The family's place on a public housing waiting list or the family's placement on a public housing waiting list.

(2) The protection provided by paragraph (e)(1) of this section shall not apply to any family whose refusal to occupy or accept occupancy in designated housing is based on the race, color, religion, sex, disability, familial status, or national origin of the occupants of the designated housing or the surrounding area. The protection provided by paragraph (e)(1) of this section shall apply to an elderly family or disabled family that declines to accept occupancy, respectively, in a designated project for elderly families or a designated project for disabled families, and requests occupancy in a general occupancy project or a project that houses both disabled families and elderly families.

(f) *Appropriateness of dwelling unit to family size.* This part may not be construed to require a PHA to offer occupancy in a designated housing dwelling unit to any family who is not of appropriate family size for the dwelling unit. The temporary absence of a child from the home due to placement in foster care is not considered in determining family composition and family size.

(g) *Prohibition of evictions.* Any tenant who is lawfully residing in a dwelling unit in a public housing project may not be evicted or otherwise required to vacate the unit because of the designation of the project, or because of any action taken by HUD or the PHA in accordance with this part.

(h) Reserved.

(i) *Prohibition of coercion to accept supportive services.* As with other HUD-assisted housing, no disabled family or elderly family residing in designated housing may be required to accept supportive services made available by the PHA under this part.

(j) *Availability of grievance procedures in 24 CFR part 966.* The grievance procedures in 24 CFR part 966, subpart B, are applicable to this part.

PART 960—ADMISSION TO, AND OCCUPANCY OF, PUBLIC HOUSING

2. The authority citation for part 960 would continue to read as follows:

Authority: 42 U.S.C. 1437a, 1437c, 1437d, 1437n, 3535(d).

3. The heading of subpart D would be revised, § 960.409 would be removed, and §§ 960.401, 960.403, 960.405, and 960.407 would be revised to read as follows:

Subpart D—Preference for Disabled Families and Elderly Families in Public Housing Projects for Disabled Families and Elderly Families

Sec.
960.401 Purpose.
960.403 Applicability.
960.405 Definitions.
960.407 Selection preference; other preferences; single person occupancy.

§ 960.401 Purpose.

This subpart establishes a preference for disabled families and elderly families for admission to public housing projects for disabled families and elderly families, as defined in § 960.405.

§ 960.403 Applicability.

This subpart applies to all dwelling units in public housing projects, or portions of public housing projects, for disabled families and elderly families assisted under the U.S. Housing Act of 1937. This subpart does not apply to section 23 and section 10(c) leased housing projects or the section 23 Housing Assistance Payments Program where the owners enter into leases directly with the tenants, or to the Section 8 Housing Assistance Payments Program, the Low-Rent Housing Homeownership Opportunities Program (Turnkey III), the Mutual Help Homeownership Opportunities Program, or to Indian Housing Authorities. (For applicability to Indian Housing Authorities, see part 905 of this chapter.) Additionally, this subpart is not applicable to projects designated for occupancy by disabled families or elderly families in accordance with 24 CFR part 945.

§ 960.405 Definitions.

Designated housing. See definition of "designated housing" in 24 CFR part 945.

Disabled families. See definition of "disabled families" in 24 CFR part 945.

Elderly families. See definition of "elderly families" in 24 CFR part 945.

Public housing project for disabled families and elderly families means a public housing project, or portion of a project, that was reserved for occupancy by disabled families and elderly families at its inception (and has retained that character), or although it was not so reserved at its inception, the PHA has obtained HUD approval to give preference in tenant selection for all units in the project to disabled families and elderly families.

§ 960.407 Selection preference; other preferences; single person occupancy.

(a) A PHA must give preference to disabled families and elderly families in determining priority for admission to public housing projects for disabled families and elderly families. A PHA may not establish a limit on the number of disabled families or elderly families who may be accepted for occupancy in a public housing project for disabled families and elderly families.

(b) The PHA must follow its policies and procedures for applying the Federal preferences contained in subpart B of this part when selecting applicants for admission from among disabled families and elderly families.

(c) Disabled families and elderly families who do not qualify for a Federal preference contained in subpart B of this part, and who are given preference for admission under paragraph (a) of this section over non-elderly families and non-disabled families that qualify for such a Federal preference, are not subject to the statutory 10 percent limitation on admission of families without a Federal preference over families with such a Federal preference that may initially receive assistance in any one-year period, as provided in 24 CFR 960.211(b)(2)(ii).

(d) If a disabled or elderly applicant is a single person, as this term is defined in 24 CFR part 912, the disabled single person or the elderly single person shall be given a preference for admission to public housing projects for disabled families and elderly families.

(e) In offering available units to disabled families and elderly families in public housing projects for disabled families and elderly families, units with accessible features should first be offered to persons with disabilities that require the accessibility features of the unit in accordance with the requirements of 24 CFR 8.27 and 24 CFR 100.202(c)(3).

Dated: November 18, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–259 Filed 1–6–94; 8:45 am]
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federal register

Friday
January 7, 1994

Part VI

The President

Proclamation 6644—Death of Thomas P. O'Neill, Jr.

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Vol. 59, No. 5
Friday, January 7, 1994

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Title 3—

The President

Proclamation 6644 of January 6, 1994

Death of Thomas P. O'Neill, Jr.

By the President of the United States of America

A Proclamation

As a mark of respect for the memory of the Honorable Thomas P. O'Neill, Jr., former Speaker of the House of Representatives, I hereby order, by the authority vested in me as President of the United States of America by section 175 of title 36 of the United States Code, that the flag of the United States shall be flown at half-staff upon all public buildings and grounds, at all military posts and naval stations, and on all naval vessels of the Federal Government in the District of Columbia and throughout the United States and its Territories and possessions until his interment. I also direct that the flag shall be flown at half-staff for the same length of time at all United States embassies, legations, consular offices, and other facilities abroad, including all military facilities and naval vessels and stations.

IN WITNESS WHEREOF, I have hereunto set my hand this sixth day of January, in the year of our Lord nineteen hundred and ninety-four, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 94–591
Filed 1–6–94; 11:32 am]
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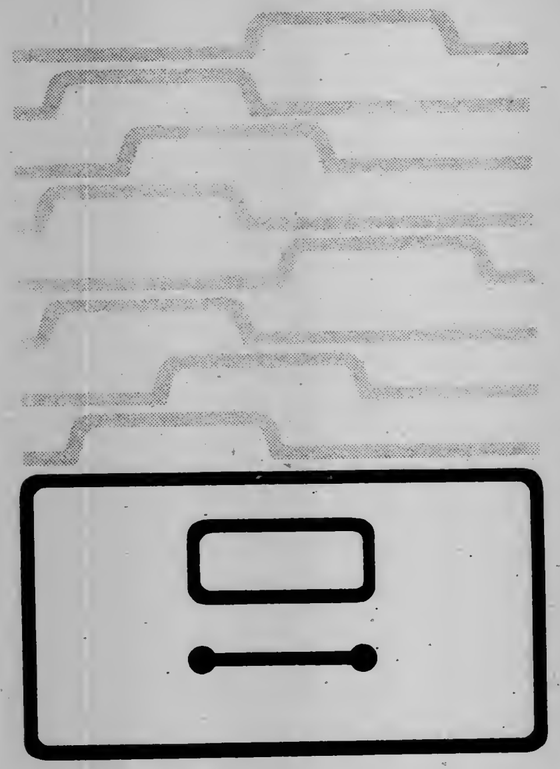
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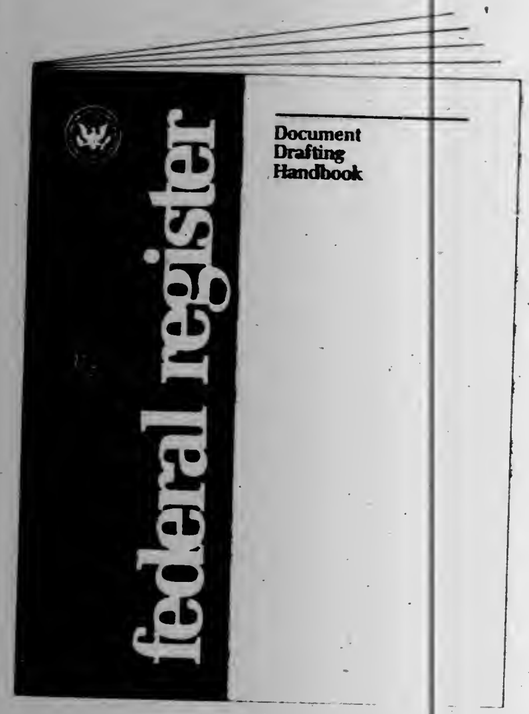
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Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 58

[DA-92-18]

Grading and Inspection, General Specifications for Approved Plants and Standards for Grades of Dairy Products; United States Standards for Grades of Whipped Butter

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule promulgates new United States Standards for Grades of Whipped Butter. These standards establish quality criteria for grade determination and optional microbiological and keeping-quality tests for whipped butter.

The Department has determined that the grading of butter sold in consumer-size packages bearing USDA official identification (grade-label) should be conducted when the product is in the final package. Previously, the quality of whipped butter was evaluated prior to the whipping process using the U.S. Standards for Grades of Butter. The U.S. Standards for Grades of Whipped Butter change this procedure.

EFFECTIVE DATE: February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Diane D. Lewis, Dairy Products Marketing Specialist, Dairy Standardization Branch, USDA/AMS/Dairy Division, room 2750–S, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–7473.

SUPPLEMENTARY INFORMATION: This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule does not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

The final rule also has been reviewed in accordance with the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* The Administrator, Agricultural Marketing Service, has determined that the final rule will not have a significant economic impact on a substantial number of small entities because use of the standards is voluntary and this action will not increase costs to those utilizing the standards.

The Department is issuing this rule in conformance with Executive Order 12866.

In 1991, the Department evaluated the procedures used to assign U.S. grades to butter in consumer-size packages. The Department concluded that grading of the product should be conducted in the final package because the evaluation of whipped butter at that time is more accurate.

Previously, the procedure for evaluating grade-label whipped butter was to either grade the butter in the bulk form prior to whipping or obtain a sample of fresh butter taken during the manufacturing process and evaluate it. These methods are changed by this action because of the Department's decision to conduct grading in the final package. The new standards have received general support from many of the manufacturers of whipped butter who utilize the USDA grade-label program, as well as from the American Butter Institute. In addition, the standards were field-tested by the Dairy Grading Branch and found to be satisfactory.

In view of the need for new standards, the Department published on June 30, 1993 (58 FR 34937) proposed United States Standards for Whipped Butter. Except for minor format changes, the standards contained in this final rule are the same as those set forth in the proposal. The new standards establish the following.

1. Provide Quality Specifications for Whipped Butter at Two U.S. Grade Levels: U.S. Grade AA and U.S. Grade A

Whipped butter is produced by uniformly incorporating air or inert gas into butter to improve its spreadability characteristics. The percent overrun, based on buyer or consumer preference, is usually between 50 and 100 percent. Market analysis conducted during the development of these standards supports the opinion that consumers prefer the higher quality products. Therefore, standards are established for quality designations at two levels: U.S. Grade AA and U.S. Grade A.

2. Define Flavor Characteristics

Production and processing practices influence flavor characteristics in whipped butter. To manufacture whipped butter with a highly pleasing flavor, the raw milk and cream must be free of objectionable flavors. This final rule defines acceptable flavor characteristics to assist the graders in identifying and classifying the flavor.

3. Define Body, Color, and Salt Characteristics and Establish Disratings

Just as production and processing practices influence the flavor of whipped butter, they also influence body, color, and salt characteristics. This final rule describes distinguishing body, color, and salt characteristics and establishes disratings which are used to determine the U.S. grade.

4. Illustrate How Flavor, Body, Color, and Salt Characteristics Influence Grade Determination

These standards provide step-by-step instructions in determining the final grade of whipped butter. The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics. Then body, color, and salt characteristics are noted and disratings established. When total disratings exceed the permitted amount identified in the standards, the final U.S. grade is lowered.

5. Establish Optional Microbiological and Keeping-Quality Tests (Not Mandatory for Grade Designation)

Since 1975, the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service have required microbiological and keeping-quality testing of whipped butter bearing USDA official identification. The market analysis conducted during the development of these standards revealed that the industry utilized tighter microbiological specifications for proteolytic and yeast and mold counts than those listed in the "General Specifications". To be more aligned with current industry standards, this

final rule tightens these microbiological requirements. This final rule also incorporates these same tests as optional tests (not mandatory for grade designation) in the United States Standards for Grades of Whipped Butter.

This final rule also makes corollary changes in the General Specifications for Dairy Plants Approved for USDA Inspection and Grading Service (subpart B of 7 CFR part 58) to conform the definition and grade designations of whipped butter set forth therein with the new United States Standards for Grades of Whipped Butter (in subpart G of 7 CFR part 58).

USDA grade standards are voluntary standards that are developed pursuant to the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 *et seq.*) to facilitate the marketing process. Manufacturers of dairy products are free to choose whether or not to use these grade standards. USDA grade standards for dairy products have been developed to identify the degree of quality in the various products. Quality in general refers to usefulness, desirability, and value of the product—its marketability as a commodity. When whipped butter is officially graded, the USDA regulations and standards governing the grading of manufactured or processed dairy products are used. These regulations also require a charge for the grading service provided by USDA. This action makes minor format changes for purposes of clarity to Tables I and III to the format that appeared in the proposed rule.

Public Comments

On June 30, 1993, the Department published a proposed rule (58 FR 34937) to promulgate the United States Standards for Whipped Butter. The public comment period closed August 30, 1993. No comments were received during this time.

List of Subjects in 7 CFR Part 58

Dairy products, Food grades and standards, Food labeling, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 58 is amended as follows:

PART 58—[AMENDED]

1. The authority citation for 7 CFR part 58 continues to read as follows:

Authority: Agricultural Marketing Act of 1946, Secs. 202–208, 60 Stat. 1087, as amended; 7 U.S.C. 1621–1627, unless otherwise noted.

2. In subpart B, § 58.305 (f) is revised to read as follows:

§ 58.305 Meaning of words.

* * * * *

(f) *Whipped butter.* The food product is made by the uniform incorporation of air or inert gas into butter.

§ 58.323 [Removed and Reserved].

3. In subpart B, § 58.323 is removed and reserved.

4. In subpart B, § 58.346 is revised to read as follows:

§ 58.346 Whipped butter.

(a) The quality requirements for whipped butter shall be in accordance with the U.S. Standards for Grades of Whipped Butter for U.S. Grade AA and U.S. Grade A, respectively.

(b) Whipped butter shall also be subject to the following specifications when sampled and tested in accordance with § 58.336 and § 58.337, respectively:

(1) Proteolytic count, not more than 50 per gram; yeast and mold count, not more than 10 per gram; coliform count, not more than 10 per gram; and keeping-quality test, satisfactory after 7 days at 70°F.

(2) Optional except when required or requested: Copper content, not more than 0.3 ppm; iron content, not more than 1.0 ppm; enterococci, not more than 10 per gram.

5. A new Subpart G—United States Standards for Grades of Whipped Butter is added to read as follows:

Subpart G—United States Standards for Grades of Whipped Butter

Definitions

Sec.
58.2425 Whipped butter.
58.2426 Butter.
58.2427 Cream.

U.S. Grades

58.2428 Nomenclature of U.S. grades.
58.2429 Basis for determination of U.S. grade.
58.2430 Specifications for U.S. grades.
58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.
58.2432 Optional tests.
58.2433 U.S. grade not assignable.
58.2434 Test methods.

Explanation of Terms

58.2435 Explanation of terms.

Subpart G—United States Standards for Grades of Whipped Butter[1]

Definitions

§ 58.2425 Whipped butter.

Whipped butter is the food product made by the uniform incorporation of air or inert gas into butter.

§ 58.2426 Butter.

The food product usually known as butter, and which is made exclusively from milk or cream, or both, with or without common salt, with or without additional coloring matter, and containing not less than 80 percent by weight of milkfat, all tolerances having been allowed for.

§ 58.2427 Cream.

The term *cream* when used in this subpart G means cream separated from milk produced by healthy cows. The cream shall be pasteurized at a temperature of not less than 165°F and held continuously in a vat at such temperature for not less than 30 minutes; or pasteurized at a temperature of not less than 185°F for not less than 15 seconds; or pasteurized by other approved methods giving equivalent results.

U.S. Grades

§ 58.2428 Nomenclature of U.S. grades.

The nomenclature of U.S. grades is as follows:

(a) U.S. Grade AA.
(b) U.S. Grade A.

§ 58.2429 Basis for determination of U.S. grade.

The U.S. grade of whipped butter is determined on the basis of classifying first the flavor characteristics and then the characteristics in body, color, and salt of a representative sample. Flavor is the basic quality factor in grading whipped butter and is determined organoleptically by smell and taste. The flavor characteristic and intensity is identified and rated according to the applicable classification contained in Table I in § 58.2430. When more than one flavor characteristic is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating. Body, color, and salt characteristics are then noted and disratings are made in accordance with the established classification in Table II in § 58.2430. The final U.S. grade for the sample is then established in accordance with the flavor classification, subject to permitted disratings for body, color, and salt as outlined in § 58.2431.

[1] Compliance with these standards does not excuse failure to comply with provisions of the Federal Food, Drug and Cosmetic Act.

§ 58.2430 Specifications for U.S. grades.

The specifications for the U.S. grades of whipped butter are as follows:

(a) *U.S. Grade AA.* U.S. Grade AA whipped butter conforms to the following: Shall possess a fine and highly pleasing butter flavor. Whipped butter may also have a lactic culture flavor. May possess a slight feed, or a definite cooked flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(b) *U.S. Grade A.* U.S. Grade A whipped butter conforms to the following: Shall possess a pleasing and desirable butter flavor. Whipped butter may also have a lactic culture flavor. May possess to a slight degree the following flavors: acid, aged, bitter, coarse, flat, smothered, and storage. May possess a definite feed flavor. The permitted disratings in body, color, and salt characteristics are limited to one-half (½). For detailed specifications and classification of flavor characteristics, see Table I of this section. For body, color, and salt disratings, see Table II of this section.

(c) *General.* Whipped butter of all U.S. grades shall be free from foreign materials and visible mold. When total disratings exceed the permitted amount, the final U.S. grade shall be lowered one grade level for each additional one-half (½) disrating.

TABLE I.—CLASSIFICATION OF FLAVOR WITH CORRESPONDING U.S. GRADE

Flavor characteristics[1]	U.S. grade designation	
	AA	A
Acid	—	S
Aged	—	S
Bitter	—	S
Coarse	—	S
Cooked	D	
Feed	S	D
Flat	—	S
Smothered	—	S
Storage	—	S

[1] When more than one flavor is discernible in a sample of whipped butter, the flavor classification of the sample shall be established on the basis of the flavor that carries the lowest rating.
(—) = Not Permitted
S = Slight
D = Definite

TABLE II.—CHARACTERISTICS AND DISRATINGS IN BODY, COLOR AND SALT

Characteristics	Disratings	
	Slight	Definite
Body:		
Free moisture	½	1
Mealy or grainy	½	1
Color:		
Color specks	1	1½
Mottled	½	1
Wavy	½	1
Salt:		
Gritty	1	1½
Sharp	1	1½

§ 58.2431 Relationship of U.S. grade of whipped butter to the flavor classifications as affected by disratings in body, color, and salt characteristics.

When the disratings for body, color, and salt exceed the permitted amount of (½) for any flavor classification, the final U.S. grade shall be lowered accordingly:

TABLE III

Flavor classification	Total disratings	U.S. grade
AA	½	AA
AA	1	A
AA	1½	(*)
A	½	A
A	1	(*)

(*)=No U.S. grade assigned.

§ 58.2432 Optional tests.

(a) There are optional tests (not mandatory for grade designation) that may be made on whipped butter that can be requested by the buyer or seller. If requested, the product must comply with the microbiological and keeping-quality specifications as follows:

Proteolytic count—not more than 50 per gram
Yeast and mold count—not more than 10 per gram
Coliform count—not more than 10 per gram
Keeping-quality test—satisfactory after 7 days at 70 °F.

(b) All required tests, and optional tests when specified, shall be performed in accordance with the test methods identified in § 58.2434.

§ 58.2433 U.S. grade not assignable.

Whipped butter shall not be assigned a U.S. grade for one or more of the following reasons:

(a) The butter fails to meet or exceed the requirements for U.S. Grade A.

(b) The butter, when tested, does not comply with the provisions of the Federal Food, Drug, and Cosmetic Act, or the minimum milkfat requirements of 80.0 percent.

(c) The butter is produced in a plant that is rated ineligible for USDA grading service or is not USDA-approved.

§ 58.2434 Test methods.

Testing methods contained in the latest edition of the "Standard Methods for the Examination of Dairy Products" or the "Official Methods of Analysis of the Association of Official Analytical Chemists" are used to determine bacterial estimates and milkfat content.

Explanation of Terms

§ 58.2435 Explanation of terms.

(a) With respect to flavor intensity and characteristics:

(1) *Slight.* Detected only upon critical examination.

(2) *Definite.* Not intense but detectable.

(3) *Acid.* Lacks a delicate flavor or aroma and is associated with an acid condition but there is no indication of sourness.

(4) *Aged.* Characterized by lack of freshness.

(5) *Bitter.* Astringent, similar to taste of quinine and produces a puckery sensation.

(6) *Coarse.* Lacks a fine, delicate, smooth flavor.

(7) *Cooked.* Smooth, nutty-like characteristic resembling a custard flavor.

(8) *Feed.* Aromatic flavor characteristic of the feed eaten by cows.

(9) *Flat.* Lacks natural butter flavor.

(10) *Smothered.* Suggestive of improperly cooked cream.

(11) *Storage.* Characterized by a lack of freshness and more intensified than "aged" flavor.

(b) With respect to body:

(1) *Free moisture.* "Free moisture" is present when beads of moisture are visible on the surface of the sample. The intensity is described as "slight" when the droplets or beads of moisture are barely visible, few in number, and about the size of a pinhead; and "definite" when the moisture droplets are clearly visible, more numerous, and are somewhat larger in size.

(2) *Mealy or grainy.* A "mealy" or "grainy" condition imparts a granular consistency when the whipped butter is melted on the tongue. The intensity is described as "slight" when the mealiness or graininess is barely detectable; and "definite" when the mealiness or graininess is clearly detectable.

(c) With respect to color:

(1) *Mottled.* "Mottled" appears as a dappled condition with spots of lighter

and deeper shades of yellow. The intensity is described as "slight" when the small spots of different shades of yellow, irregular in shape, are barely discernible on the sample of whipped butter; and "definite" when the mottles are more clearly discernible.

(2) *Color specks.* "Specks" usually appear in whipped butter as small white or yellow spots. The intensity is described as "slight" when the spots are few in number; and "definite" when they are noticeable in larger numbers.

(3) *Wavy.* "Wavy" color in whipped butter is an unevenness in the color that appears as waves of different shades of yellow. The intensity is described as "slight" when the waves are barely discernible; and "definite" when they are readily noticeable.

(d) With respect to salt:

(1) *Gritty.* A "gritty" salt condition imparts a sand-like feeling on the tongue due to grains of undissolved salt. The intensity is described as "slight" when only a few grains of undissolved salt are detected; and "definite" when the condition is more readily noticeable.

(2) *Sharp.* "Sharp" salt is characterized by taste sensations suggestive of salt. The intensity is described as "slight" when the salt taste predominates in flavor; and "definite" when the taste distinctly predominates in flavor.

Dated: January 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–425 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 906 and 928

[Docket Nos. FV93-906-1, Amendment 1; and FV93-928-2, Amendment 1]

Finalization of Interim Final Rules for Specified Marketing Orders (Oranges, Grapefruit, and Papayas)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of the interim final rules that authorized expenses and established assessment rates for the Texas Valley Citrus Committee and the Papaya Administrative Committee (Committees) under Marketing Order Nos. 906 and 928, respectively. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Section 906.233 is effective August 1, 1993, through July 31, 1994; § 928.233 is effective July 1, 1993, through June 30, 1994.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090-6456; telephone: (202) 720-5127; Belinda Garza (§ 906.233), McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, TX 78501, telephone: (512) 682-2833; or Kurt J. Kimmel (§ 928.233), California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, CA 93721, telephone: (209) 487-5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906 [7 CFR part 906] regulating the handling of oranges and grapefruit grown in the lower Rio Grande Valley in Texas; and Marketing Agreement and Marketing Order No. 928, as amended [7 CFR part 928] regulating the handling of papayas grown in Hawaii. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, oranges and grapefruit grown in Texas and papayas grown in Hawaii are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable oranges, grapefruit, and papayas handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994 (M.O. 906), and July 1, 1993, through June 30, 1994 (M.O. 928). This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 135 handlers of oranges and grapefruit, and 120 handlers of papayas subject to regulation under their respective marketing orders each season. In addition, there are approximately 2,500 orange and grapefruit producers in Texas, and 300 papaya producers in Hawaii. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the orange, grapefruit, and papaya producers and handlers may be classified as small entities.

The respective marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable oranges, grapefruit, and papayas handled from the beginning of such year. An annual budget of expenses is prepared by each Committee and submitted to the Department for approval. The members of the Committees are handlers and producers of the regulated commodities. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected

persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of oranges, grapefruit, and papayas. Because these rates are applied to actual shipments, they must be established at rates which will produce sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

An interim final rule was issued for the Texas Valley Citrus Committee (TVCC), on July 7, 1993, and published in the **Federal Register** [58 FR 37635, July 13, 1993] effective for the period August 1, 1993, through July 31, 1994, with a 30-day comment period ending August 12, 1993. The interim final rule authorized expenses of $984,319 and an assessment rate of $0.15 per 7/10 bushel carton for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

The TVCC met again on August 3, 1993, and unanimously recommended increasing authorized expenses to $1,180,925, a $196,606 increase from the previously authorized amount. The TVCC also unanimously recommended increasing the assessment rate from $0.15 per 7/10 bushel carton to $0.18 per 7/10 bushel carton, a $0.03 increase per 7/10 bushel carton from the previously established assessment rate.

An amended interim final rule was issued on October 7, 1993, and published in the **Federal Register** [58 FR 53111, October 14, 1993] effective for the period August 1, 1993 through July 31, 1994, and provided a 30-day comment period. This amended interim final rule increased authorized expenses to $1,180,925, and increased the assessment rate to $0.18 per 7/10 bushel carton of assessable oranges and grapefruit for the 1993–94 fiscal year under the order. The $196,606 expense increase is necessary to provide additional funds for order operations, including $172,606 to fund increased administrative and compliance expenses, primarily for the maintenance of road guard stations, and $24,000 to cover a shortfall in the Mexican Fruit Fly support program. The increase in the assessment rate along with the withdrawal of additional funds from the TVCC's reserves, will adequately fund the increased expenses.

An amended interim final rule was issued for the Papaya Administrative Committee (PAC), on June 14, 1993, and published in the **Federal Register** [58 FR 33759, June 21, 1993] effective for the period July 1, 1993, through June 30, 1994, with a 30-day comment period ending July 21, 1993. The interim final rule authorized expenses of $700,580 and an assessment rate of $0.0085 per pound of fresh papayas for the 1993–94 fiscal year. No comments were filed on the expenses and assessment rate in the interim final rule.

However, the PAC met again on August 13, 1993, and unanimously recommended decreasing authorized expenses from $700,580 to $597,860, a $102,720 decrease in expenses from the authorized amount. The PAC also unanimously recommended decreasing the assessment rate from $0.0085 to $0.0069, a $0.0016 decrease in the assessment rate, based upon 58 million pounds of fresh papayas, from the previously established assessment rate.

An amended interim final rule was issued on October 7, 1993, and published in the **Federal Register** [58 FR 53117, October 14, 1993] effective for the period July 1, 1993, through June 30, 1994, and provided a 30-day comment period. This amended interim final rule decreased authorized expenses to $597,860, and reduced the assessment rate to $0.0069 per pound of fresh papayas for the 1993–94 fiscal year under the order. Program income for the PAC decreased from $701,660 to $599,356, a $102,304 decrease from the previous estimate. Major program income reductions come from a $92,800 decrease in assessment income due to the lower assessment rate and a $9,504 reduction in income from the Department's Foreign Agricultural Service.

The $102,720 decrease in expenses results from reductions in a number of expense items. Major expense reductions include expenditures for salaries and wages, office rent, auto expenses, and Japanese advertising and promotion. The projected income over expenses has increased from $1,080 to $1,496, a $416 increase from the previous amount. The excess funds will be added to the PAC's operational reserve.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The amended interim final rules were published in the **Federal Register** [58 FR 53111 October 14, 1993], for 7 CFR part 906, and [58 FR 53117, October 14, 1993], for 7 CFR part 928. Each interim final rule provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553]. The Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal years for the programs began on August 1, 1993, for Texas citrus and July 1, 1993, for Hawaii papayas. The marketing orders require that the rates of assessment for the fiscal year apply to all assessable oranges, grapefruit, and papayas handled during the fiscal years. In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules. No comments were received concerning the two interim final rules that are adopted in this action as final rules without change.

List of Subjects

7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

7 CFR Part 928

Marketing agreements, Papayas, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 906 and 928 are hereby amended as follows:

1. The authority citation for 7 CFR parts 906 and 928 continue to read as follows:

Authority: 7 U.S.C. 601–674.

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

2. For the reasons set forth in the preamble, the interim final rule revising § 906.233 which was published at 58 FR 53111, is adopted as a final rule without change.

PART 928—PAPAYAS GROWN IN HAWAII

3. For the reasons set forth in the preamble, the interim final rule revising § 928.233 which was published at 58 FR 53117, is adopted as a final rule without change.

Dated: January 3, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–421 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Parts 907 and 908

[FV93–907–4IFR]

Navel and Valencia Oranges Grown in Arizona and Designated Parts of California; Suspension of Form 8 and Form 3

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; suspension.

SUMMARY: This rule invites comments on changes to the reporting requirements currently prescribed under the California-Arizona navel and Valencia orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment), and will reduce the burden of information collection requirements currently provided for under the marketing orders.

DATES: Effective Date: January 10, 1994.

Comments received by February 9, 1994, will be considered prior to issuance of a final action.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, room 2525–S, P.O. Box 96456, Washington, DC 20090–6456. All comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Maureen Pello, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California 93721; telephone: (209) 487–5901; or Christian Nissen, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This document is issued under Marketing Order Nos. 907 and 908 [7 CFR parts 907 and 908], as amended, regulating the handling of navel and Valencia oranges grown in Arizona and designated parts of California, hereinafter referred to as the "orders." These orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the "Act."

The Department of Agriculture is issuing this rule in conformance with Executive Order 12866.

This action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 140 handlers of navel oranges and 125 handlers of Valencia oranges who are subject to regulation under the respective marketing order and approximately 3,750 producers of navel oranges and 3,700 producers of Valencia oranges in the regulated areas. Small agricultural service firms have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $3,500,000, and small agricultural producers are defined as those whose annual receipts are less than $500,000. The majority of handlers and producers of California-Arizona navel and Valencia oranges may be classified as small entities.

This rule invites comments on two changes to the reporting requirements currently prescribed under the California-Arizona orange marketing orders. This rule suspends language in the orders and in the orders' rules and regulations to discontinue the use of Form 8 (Certificate of Assignment of Allotment) and Form 3 (Daily Manifest Report of Oranges Subject to Allotment). These changes were unanimously recommended by the committees.

Currently, sections 907.58 and 908.58 of the navel and Valencia orange marketing orders specify that, for the handling of oranges other than by rail car (primarily truck shipments), handlers issue to the consignee an assignment of allotment certificate covering each quantity of oranges so handled. Sections 907.112 and 908.112 of the orders' rules and regulations require handlers to submit such information on Form 8. Handlers are also required to segregate the information on Form 8 by size of oranges shipped and destination (i.e., U.S. and Alaska or Canada).

Since the inception of the orders, the committees have utilized Form 8 primarily for tracking and verifying truck shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended [58 FR 53,114; October 14, 1993], the committees believe that continued submission of Form 8 creates an additional burden on handlers that is unnecessary.

According to the committees, many handlers have long questioned the value of Form 8 (commonly referred to in the industry as "the daily truck ticket") during periods of no volume regulation. Shipment information from Form 8 is transferred to Form 4 (Weekly Report). Handlers maintain their own manifest records of these shipments and, without weekly volume regulation, Form 4 provides similar data with the exception of number of cartons shipped by size. The committees plan on requesting size information from handlers as needed on a voluntary basis and anticipate revising the weekly Form 4 at a later time to provide for the collection of size information.

Thus, the committees believe that continued submission of Form 8, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending sections 907.58 and 908.58 of the orders and §§ 907.112 and 908.112 of the orders' rules and regulations so that Form 8 will be discontinued.

The second change that the committees recommend concerns Form 3 (Daily Manifest Report of Oranges Subject to Allotment). Currently, sections 907.71 and 908.71 of the orange orders provide that handlers furnish to the committees information regarding cartons of oranges handled, segregated by size, within 24 hours of shipment. Handlers must also indicate whether the shipments were destined to points in the U.S. and Alaska or Canada. Sections 907.141 and 908.141 of the orders' rules and regulations require handlers to submit this information for rail car shipments on Form 3.

The information collected on Form 3 is similar to the information collected on Form 8 described earlier, but pertains to rail car shipments rather than truck shipments. Again, this information has historically been utilized primarily for tracking and verifying shipments of oranges that were subject to volume regulation. However, with the volume regulation features of the orders suspended, the committees believe that continued submission of Form 3, like Form 8, creates an additional burden on handlers that is unnecessary. Handlers are also required to submit similar information on rail car shipments on the weekly Form 4. As with size information pertaining to truck shipments, the committees plan on requesting size information from handlers for rail car shipments on a voluntary basis until the weekly Form 4 is appropriately revised.

Like Form 8, the committees believe that continued submission of Form 3, particularly during periods of no volume regulation, is not necessary. Accordingly, the committees have recommended suspending §§ 907.71 and 908.71 of the orders and §§ 907.141 and 908.141 of the orders' rules and regulations so that Form 3 will be discontinued.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in the referenced sections have been previously approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB numbers 0581–0116 for navel oranges and 0581–0121 for Valencia oranges. This rule will reduce the reporting burden on approximately 265 handlers of navel and Valencia oranges who have been completing Form 8, taking about .40 hour to complete each report. This rule will also reduce the reporting burden on about 80 orange handlers who ship by rail at some point during a season and utilize Form 3, taking about 0.20 hours to complete each report.

After consideration of all relevant material presented, including the committee's recommendation, and other available information, it is found that the provisions detailed below, at this time, do not tend to effectuate the declared policy of the Act.

It is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this action into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) Handlers are currently shipping navel oranges and these actions will reduce the burden of information collection placed on such handlers; (2) the committees unanimously recommended these actions at public meetings and all interested persons had an opportunity to provide input; (3) these actions relax reporting requirements; (4) California-Arizona orange handlers are aware of this action and need no additional time to comply with the relaxed requirements; and (5) this action provides a 30-day comment period and any comments received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Parts 907 and 908

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 907 and 908 are amended as follows:

PART 907—NAVEL ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

1. The authority citation for both 7 CFR parts 907 and 908 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Sections 907.58, 907.71, 907.112, and 907.141 are suspended in their entirety.

PART 908—VALENCIA ORANGES GROWN IN ARIZONA AND DESIGNATED PARTS OF CALIFORNIA

3. Sections 908.58, 908.71, 908.112, and 908.141 are suspended in their entirety.

Dated: January 3, 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–428 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 910

[FV93–910–3 FIR]

Lemons Grown in California and Arizona; Increase in the Organic Exemption Provision

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This document finalizes without change an interim final rule that amended the rules and regulations established under the marketing order covering California-Arizona lemons to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship without regard to volume and size regulations. The marketing order regulates the handling of lemons grown in California and Arizona and is administered locally by the Lemon Administrative Committee (Committee). This final rule recognizes additional opportunity to market organic lemons to organic or health food wholesalers and retailers.

EFFECTIVE DATE: February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Kellee J. Hopper, Marketing Specialist, California Marketing Field Office, Marketing Order Administration Branch, F&V, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901; or Kenneth G. Johnson, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2522–S, P.O. Box 96456, Washington, DC 20090–6456: telephone: (202) 720–5127.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Order No. 910 [7 CFR part 910], as amended, regulating the handling of lemons grown in California and Arizona, hereinafter referred to as the "order." This order is

effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the "Act."

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 2,000 producers of lemons in the production area and approximately 70 handlers subject to regulation under the marketing order. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

Section 910.80 of the order authorizes the Committee, with the approval of the Secretary, to establish minimum quantities and types of shipments which shall be free from regulation under this order. Section 910.180(d)(3) of the administrative rules and regulations prescribes procedures governing exemption from volume and size regulations for organic lemons handled in minimum quantities.

On July 23, 1993, Mr. Rich Hart, President of Rainbow Valley Orchards, sent a letter to the Committee requesting an increase in the amount of organic lemons a handler may ship free of order regulations to 500 cartons per week. Currently, handlers can ship up to 350 cartons of such lemons weekly. At its August 3, 1993, meeting, the Committee recommended increasing the organic exemption provision from 350 to 500 cartons per week that handlers may ship to organic or health food wholesalers and retailers without regard to volume and size regulations. The vote on the recommendation was 12 in favor and 1 abstention. The person who abstained expressed a concern with the definition of organic.

Shippers of organic lemons have indicated that organic fruit markets can absorb more fruit than in the past, and that they need to take advantage of the additional marketing opportunity. The Committee expects the increase in shipments allowed will provide shipping flexibility for organic shippers and will facilitate the marketing of organic lemons. The Committee also believes that sales of organic lemons will not adversely impact sales of regulated lemons.

The interim final rule was issued on October 4, 1993, with an effective date of October 8, 1993, and published in the **Federal Register** [58 FR 52401, October 8, 1993]. The interim final rule provided a 30-day comment period ending November 8, 1993, and no comments were received.

The interim final rule amended the rules and regulations of the lemon marketing order. This rule modifies language in the order's rules and regulations to increase from 350 to 500 cartons per week, the amount of organic lemons handlers may ship free of order regulations.

Based on these considerations, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the information collection requirements that are contained in this rule have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0120.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 910

Lemons, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 910 is amended as follows:

1. The authority citation for 7 CFR part 910 continues to read as follows:

Authority: 7 U.S.C. 601–674.

PART 910—LEMONS GROWN IN CALIFORNIA AND ARIZONA

2. Accordingly, the interim final rule amending § 910.180, which was published in the **Federal Register** [58 FR 52401, October 8, 1993], is adopted as a final rule without change.

Dated: January 3, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–422 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 932 and 944

[Docket Nos. FV93–932–1FIR and FV93–944–1FIR]

Olives Grown in California and Imported Olives; Finalize the Establishment of Limited Use Olive Requirements During the 1993–94 Crop Year

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of an interim final rule that authorizes the use of smaller sized olives in the production of limited use styles for California olives. This rule is effective during the 1993–94 crop year and establishes minimum grade and size requirements for such olives in the order's rules and regulations. This final rule also adopts, without change, the provisions of an interim final rule that authorizes the importation of certain bulk olives into the United States to be used in the production of limited use styles of olives such as wedges, halves, slices, or segments. This action is intended to allow more olives into fresh market channels and is consistent with current market requirements. This action also updates the Federal-State inspection office address list contained in the import regulation.

EFFECTIVE DATE: February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Caroline C. Thorpe, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2525–S, Washington, DC 20090–6456; telephone (202) 720–5127, or Terry Vawter, California Marketing Field Office, Fruit and Vegetable division, AMS, USDA, 2202 Monterey Street, suite 102–B, Fresno, CA 93721, telephone (209) 487–5901.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement and Order No. 932 (7 CFR part 932), as amended, regulating the handling of olives grown in California, hereinafter referred to as the order. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is also issued under section 8e of the Act, which requires the Secretary of Agriculture to issue grade, size, quality, or maturity requirements for certain listed commodities imported into the United States that are the same as, or comparable to, those imposed upon the domestic commodities under the Federal marketing orders.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This rule would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of import regulations issued under section 8e of the Act.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are 5 handlers of California olives that will be subject to regulation under the order during the current season, and there are about 1,350 olive producers in California. There are approximately 25 importers of olives subject to the olive import regulation. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those whose annual receipts are less than $500,000, and small agricultural service firms, have been defined by the Small Business Administration as those having annual receipts of less than $3,500,000. None of the domestic olive handlers may be classified as small entities. The majority of olive producers and importers may be classified as small entities.

This rule finalizes an interim final rule that establishes grade and size requirements for olives grown in California, which are authorized for limited use styles. The interim final rule was published in the September 17, 1993, **Federal Register** [58 FR 48592], and provided 30 days to interested persons to file comments. No comments were received.

This rule also finalizes an interim final rule that authorizes the importation of smaller sized olives for limited uses. The interim final rule was published in the September 17, 1993, **Federal Register** [58 FR 48595], and provided 30 days for interested persons to file comments. No comments were received.

Nearly all of the olives grown in the United States are produced in California. The growing areas are scattered throughout California with most of the commercial production coming from inland valleys. In 1990, about 77 percent of the production came from the San Joaquin Valley and 23 percent from the Sacramento Valley. California olives are primarily used for canned ripe whole and whole pitted olives which are eaten out of hand as hors d'oeuvres or used as an ingredient in cooking and in salads. The canned ripe olive market is essentially a domestic market. Very few shipments of California olives are exported.

Olive production has fluctuated from a low of 24,200 tons during the 1972–73 crop year to a high of 168,500 tons during the 1992–93 crop year. The California Olive Committee (committee) indicated that 1991–92 production totalled about 63,260 tons. The various varieties of olives produced in California have alternate bearing tendencies with high production one year and low the next. Total production for the 1992–93 crop year is approximately 163,500 tons. Total production for the 1993–94 crop year is estimated to be 110,000 tons. However, based on past production and marketing experience, the committee believes that handlers will need smaller sized olives during the 1993–94 crop year to meet market requirements for limited use styles of canned olives for the 1993–94 year. Absent this action, olives which are smaller than those authorized for whole and whole pitted canning uses would have to be disposed of by handlers into non-canning uses such as crushing into oil.

Paragraph (a)(3) of § 932.52 of the order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. Until October 1, 1991, paragraph (a)(3) also prescribed minimum sizes, by variety group, which could be authorized for use in the production of limited use styles by the Secretary.

Effective October 1, 1991, certain non-canning size disposition requirements specified in § 932.51(a)(3) and minimum sizes authorized for limited use specified in § 932.52(a)(3) of the marketing order were suspended. The committee may now recommend the use of olives for limited uses that are smaller than those previously permitted under the order. Minimum size and grade requirements may be recommended annually by the committee and approved by the

Secretary. The sizes authorized herein are the same as those established for the 1992–93 crop year. The minimum sizes which could previously be authorized for limited uses were established in a 1971 amendment to the marketing order. Olives smaller than the prescribed minimum sizes which could be authorized for limited uses had to be disposed of through less profitable non-canning uses such as crushing for oil. Returns to producers are lower on smaller fruit used for such purposes. The use of smaller sized olives for limited use styles has been authorized in all but two crop years since the order was instituted in 1965.

Since the 1971 amendment, there have been substantial changes within the olive industry. In spite of the annual limited use authorization, in recent years the industry has not been able to meet market needs for its products, especially the limited use styles used primarily by the food service industry. The demand for processed olives and for limited use styles is expected to continue to increase. At the same time, the industry has not been able to increase production to meet market needs for canned ripe olives.

The committee conducted a study during the 1990–91 crop year to determine the feasibility of utilizing smaller sized olives in the production of limited use styles and to determine which sizes could be efficiently processed into such styles. All olive handlers within the industry participated in the study. All handlers reported that smaller sizes can be efficiently processed into limited use styles. Advanced technology in the form of better processing equipment is currently available. The new technology allows handlers to process smaller olives into limited use styles more efficiently than was possible in the past.

This action will help growers and handlers to meet the growing market requirements for limited use style olives based upon current conditions. The size requirements allow the use of sizes which would otherwise have to be disposed of for non-canning use. In turn, growers should receive a larger return from such olives.

By a mail ballot vote ending June 15, 1993, the committee unanimously recommended establishment of grade and size regulations during the 1993–94 crop year pursuant to paragraph (a)(3) of § 932.52 of the order. The grade requirements are the same as established in recent seasons. The specific sizes for the variety groups are the minimum sizes which are deemed desirable for use in the production of limited use styles at this time. As in past years, permitting the use of the smaller olives in the production of limited use styles allowed handlers to take advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Handlers will be able to market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supplies and facilitate market expansion, thereby increasing returns to growers. In the absence of this action, the smaller fruit would have to be disposed of for less profitable, non-canning uses.

Section 8(e) of the Act requires that whenever grade, size, quality, or maturity requirements are in effect for olives under a domestic marketing order, imported olives must meet the same or comparable requirements. This action allows smaller olives for limited use styles under the marketing order. Therefore, a corresponding change is needed in the olive import regulation.

Canned ripe olives, and bulk olives for processing into canned ripe olives, imported into the United States must meet certain minimum grade and size requirements specified in *Olive Regulation 1* (7 CFR 944.401). All canned ripe olives are required to be inspected and certified prior to importation (release from custody of the United States Custom Service), and all bulk olives for processing into canned ripe olives must be inspected and certified prior to canning. "Canned ripe olives" means olives in hermetically sealed containers and heat sterilized under pressure, of two distinct types, "ripe" and "green-ripe", as defined in the current U.S. Standards for Grades of Canned Ripe Olives (7 CFR 52.3751–52.3764). The term does not include Spanish-style green olives. Any lot of olives failing to meet the import requirements may be exported or disposed of under the supervision of the Processed Products Branch of the Fruit and Vegetable Division, with the costs of certifying the disposal of the olives borne by the importer. Any person may import up to 100 pounds (drained weight) of canned ripe olives or bulk olives exempt from these grade and size requirements.

This final rule modifies paragraph (b)(12) of the olive import regulation (7 CFR 944.401 (b)(12)) to authorize the importation of bulk olives which do not meet the minimum size requirements established for olives for whole and whole pitted uses to be used in the production of limited use styles for the 1993–94 season which begins August 1, 1993. This rule also establishes size regulations for such olives in paragraph (b)(12).

Import regulations issued under the Act are based on regulations established under Federal marketing orders to regulate domestically produced products. The grade and size requirements contained in the olive import regulation are based on those in effect for olives grown in California under Marketing Order No. 932. This action reflects a recommendation by the committee to change the requirements for olives for limited use styles grown in California. The committee works with the Department in administering the marketing order program for California olives.

Paragraph (a)(3) of § 932.52 of the California olive marketing order provides that processed olives smaller than the sizes prescribed for whole and whole pitted styles may be used for limited uses if recommended by the committee and approved by the Secretary. The sizes are specified in terms of minimum weights for individual olives in various size categories by variety groups. This is to recognize the different sizing characteristics of the individual varieties and types of California olives. Olives used in limited use styles are too small to be desirable for use as whole or whole pitted canned olives because their flesh-to-pit ratio is too low. However, they are satisfactory for use in the production of limited use styles.

The committee unanimously recommended to authorize establishment of minimum sizes for use in the production of limited use styles during the 1993–94 season. These minimum sizes would be the same as those established for the 1992–93 season. The sizes are specified in terms of minimum weights for individual olives in various variety groups and are the same for both domestic and imported olives. An extra category is continued in the import regulation to apply comparable requirements for varieties not grown domestically. The minimum sizes are as follows:

Variety Group I, except the Ascolano, Barouni, or St. Agostino varieties—1/105 pound

Variety Group I of the Ascolano, Barouni, or St. Agostino varieties—1/180 pound

Variety Group 2, except the Obliza variety—1/205 pound

Variety Group 2 of the Obliza variety—1/180 pound

Olives not identifiable as to variety or variety group—1/205 pound

Each of the categories includes a 35 percent tolerance for olives weighing less than the specified minimum size.

This action is necessary because section 8e of the Act provides that when domestically produced olives are regulated under a Federal marketing order, imported olives must meet the same or comparable grade, size, quality, and maturity requirements. Thus, authorizing the use of smaller sized California olives in the production of limited use styles and establishing size regulations for such olives requires that the same or comparable regulations be issued for imported bulk olives.

Permitting the use of smaller olives in the production of limited use styles will allow importers to take better advantage of the strong market for halved, segmented, sliced, and chopped canned ripe olives. Importers will be able to import and market more olives than would be permitted in the absence of this relaxation in size requirements. This additional opportunity is provided to maximize the use of the available olive supply and facilitate market expansion. In the absence of this action, the smaller fruit could not be imported for limited uses, and would have to be disposed of through less profitable, non-canning uses under the supervision of the inspection service or exported.

A change in paragraph (c) to be implemented indefinitely, updates the list of regional inspection offices listed in the import regulation. The change reflects consolidation of the Southeastern and Central offices into the Eastern Regional Office and the relocation of the Western Regional Office.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

In accordance with section 8e of the Act, the U.S. Trade Representative has concurred with the issuance of this final rule.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that finalizing the interim final rules, without change, as published in the **Federal Register** [FR 58 48592 and 48595], will tend to effectuate the declared policy of the Act.

List of Subjects

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

List of Subjects

7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, and Oranges.

For the reasons set forth in the preamble 7 CFR parts 932 and 944 are amended as follows:

1. The authority citation for 7 CFR Parts 932 and 944 are revised to read as follows:

Authority: 7 U.S.C. 601–674.

PART 932—OLIVES GROWN IN CALIFORNIA

2. Accordingly, the interim final rule revising the provisions of § 932.153, which was published in the September 17, 1993, **Federal Register** [58 FR 48592], is adopted as a final rule without change.

PART 944—FRUITS; IMPORT REGULATIONS

3. Accordingly, the interim final rule amending the provisions of § 944.401, which was published in the September 17, 1993, **Federal Register** [58 FR 48595], is adopted as a final rule without change.

Dated: January 3, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–429 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1106

[DA–94–03]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This document suspends indefinitely certain portions of a provision of the Southwest Plains Federal milk marketing order (Order 106), beginning on the date this document is published in the **Federal Register**. The suspension will allow transfers of Class I fluid milk products from a distributing plant to other plants regulated under Order 106 to be counted as part of the distributing plant's route sales for the purpose of determining the plant's pool status under the order. The suspension was requested by Associated Milk Producers, Inc. (AMPI), and Mid-America Dairymen, Inc. (Mid-America), who stated that it was necessary to restore equity among producers supplying handlers regulated under Order 106.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Notice of Proposed Suspension: Issued November 23, 1993; published November 30, 1993 (58 FR 63120).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this final rule would not have a significant economic impact on a substantial number of small entities. This suspension will lessen the opportunity for disorderly marketing conditions and will tend to ensure that dairy farmers continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is not intended to have a retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900).

Notice of proposed rulemaking was published in the **Federal Register** on November 30, 1993 (58 FR 63120), concerning the proposed suspension of certain words from the route disposition definition of Order 106. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by December 7, 1993. One comment letter was received.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provision of the order regulating the handling of milk in the Southwest Plains marketing area will not tend to effectuate the declared policy of the Act for an indefinite period commencing with the publication of this document in the **Federal Register**:

In § 1106.3, the parenthetical phrase "(except to a plant)".

Statement of Consideration

This document will suspend certain words from the route disposition definition of the order. The effect of this change will be to include transfers of fluid milk products to other plants regulated under Order 106 in determining if the transferor plant meets the pool qualification requirements specified in § 1106.7(a) of the order.

According to Mid-America and AMPI, two cooperative associations representing a substantial number of producers whose milk is pooled under Order 106, a Tulsa, Oklahoma, handler receiving milk from non-member producers is also supplied supplemental milk from cooperative associations that pool milk on the Southwest Plains milk order. The proponents argued that as a result of excluding transfers of fluid milk products to other plants regulated under Order 106, the handler has been a partially regulated plant in recent months and could be again in the future. Mid-America and AMPI explained that, since the handler's Class I utilization is higher than the market's average, the handler has been able to pay its non-member producers a price in excess of the order's blend price. In addition to the inequity resulting from this price disparity, AMPI, during the month of September, was required to depool milk that it had diverted from the Tulsa plant because the plant otherwise would have failed to qualify as a pool plant during the month of September. This resulted in additional financial loss to the cooperative.

A letter supporting the suspension was filed on behalf of the proponents. There were no comment letters received in opposition to the suspension.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given to interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective upon publication in the **Federal Register**.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, title 7, part 1106 is amended as follows:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106, continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.3 [Suspended]

2. In § 1106.3 the phrase "(except to a plant)" is suspended.

Dated: January 3, 1994.

Patricia Jensen,

Acting Assistant Secretary.

[FR Doc. 94–420 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1464

RIN 0560–AD53

Tobacco; Importer Assessments: Effective Date

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Correction; interim rule; effective date.

SUMMARY: This document contains a correction to the interim rule concerning tobacco importer assessments, which was published on Thursday, December 23, 1993, at 58 FR 68017. The effective date was inadvertently omitted from the interim rule. This document establishes an effective date of January 1, 1994, for the interim rule.

EFFECTIVE DATE: The effective date for the interim rule published at 58 FR 68017 is January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Gary W. Wheeler, Tobacco Marketing Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–0215, telephone 202–720–7562.

Signed in Washington, DC, on January 4, 1994.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–448 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–05–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

[Regulations No. 4 and 16]

RIN 0960–AB00

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

AGENCY: Social Security Administration, HHS.

ACTION: Correction to final rules.

SUMMARY: This document contains corrections to the final rules published Thursday, October 7, 1993 (58 FR 52346). The rules revised the criteria in the Listing of Impairments (the listings) that we use to evaluate respiratory impairments for adults and children who claim Social Security benefits or supplemental security income payments based on disability under titles II and XVI of the Social Security Act.

EFFECTIVE DATE: October 7, 1993.

FOR FURTHER INFORMATION CONTACT: Sandy Bond, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1794.

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of these corrections revised the respiratory listings to reflect advances in medical knowledge, treatment, and methods of evaluating respiratory impairments.

The final rules, as published, contain a number of errors and omissions in several tables and cross-references which require correction.

Accordingly, the publication on October 7, 1993, of the final rules, which were the subject of FR Doc. 93–24238, is corrected as follows:

Appendix 1 [Amended]

1. On page 52361, in the first column, in listing 3.00E, the first sentence after the introductory text is corrected by adding the words "and paragraph A of 3.04" after the words "paragraph A and B of 3.02".

2. On page 52361, in the third column, in listing 3.00E, the first sentence of the last paragraph is corrected by adding the words "and 3.04" after the words "in 3.02".

3. On page 52364, in the second column, in listing 3.04C., in table IV, the last entry in the second column, "71 or less", is corrected to read "71 or more".

Dated: December 21, 1993.

Neil J. Stillman,

Deputy Assistant Secretary for Information Resources Management.

[FR Doc. 94–221 Filed 1–7–94; 8:45 am]

BILLING CODE 4190–29–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL–4823–6]

South Dakota; Final Authorization of State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: The State of South Dakota has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). The Environmental Protection Agency (EPA) has reviewed South Dakota's application and has made a decision, subject to public review and comment, that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve South Dakota's hazardous waste program revisions. South Dakota's application for program revision is available for public review and comment.

DATES: Final authorization for South Dakota shall be effective March 11, 1994, unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on South Dakota's program revision application must be received by the close of business February 9, 1994.

ADDRESSES: Copies of South Dakota's program revision application are available during regular business hours at the following addresses for inspection and copying: Division of Environmental Regulation, Department of Water and Natural Resources, Office of Waste Management, 319 S. Coteau, Pierre, South Dakota 57501, phone: 605/773–3153 and U.S. EPA Region VIII Library, 999 18th Street, suite 144, Denver, CO 80204–2466, Phone 303/293–1444. Written comments should be sent to: Marcella DeVargas (HWM–WM), U.S. Environmental Protection Agency, 999 18th Street, suite 500, Denver, Colorado 80202–2466, Phone 303/293-1670.

FOR FURTHER INFORMATION CONTACT: Marcella DeVargas, Waste Management Branch, U.S. EPA, 999 18th Street, suite 500, Denver, CO 80202–2466, Phone: 303/293–1670.

SUPPLEMENTARY INFORMATION

A. Background

States with final authorization under section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or the "the Act"), 42 U.S.C. 6929(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the Federal hazardous waste program.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 124, 260 through 268 and 270.

B. South Dakota

South Dakota initially received final authorization in November 1984. Revisions to the program were approved on June 17, 1991, June 29, 1992, and September 8, 1993.

EPA has reviewed South Dakota's application, and has made an immediate final decision that South Dakota's hazardous waste program revision satisfies all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to South Dakota. The public may submit written comments on EPA's immediate final decision up until February 9, 1994. Copies of South Dakota's application for program revision are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of South Dakota's program revision shall become effective in 60 days unless an adverse comment pertaining to the State's revision discussed in this notice is received by the end of the comment period. If an adverse comment is received EPA will publish either: (1) A withdrawal of the immediate final decision or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

A draft application was submitted on April 30, 1993. The State of South Dakota addressed all of EPA's concerns prior to submittal of the final application. Thus, the South Dakota program is granted immediate final authorization for the provisions in the following Table.

PROVISIONS

Federal Register reference	State authority
1. Listing of Spent Pickle Liquor, 51 FR 19320, 5/28/86	74:28:22:01
2. Liability Coverage-Corporate Guarantee, 51 FR 25350, 7/11/86	74:28:25:01, 74:28:28:01
3. Standards for Hazardous Waste Storage and Treatment Systems, 51 FR 25422, 7/14/86; 51 FR 29430, 8/15/86	74:28:21:02, 74:28:22:01, 74:28:23:01, 74:28:25:01, 74:28:28:01, 74:28:26:01
4. Corrections to List of Commercial Chemical Products and Appendix VIII Constituents, 51 FR 28296, 8/6/86	74:28:22:01
5. Biennial Report Correction, 51 FR 8/8/86	74:28:25:01, 74:28:28:01
6. Exports of Hazardous Waste, 51 FR 28664, 8/8/86	74:28:22:01, 74:28:23:01, 74:28:24:01
7. Standards for Generators, 51 FR 35190, 10/1/86	74:28:23:01
8. Listing of EBDC, 51 FR 37725, 10/24/86	74:28:22:01

PROVISIONS—Continued

Federal Register reference	State authority
9. Revised Manual SW–846; Amended Incorporation by Reference, 52 FR 8072, 3/16/87	74:28:21:02, 74:28:26:01
10. Closure/Post-closure Care for Interim Status Surface Impoundments, 52 FR 8704, 3/19/87	74:28:28:01
11. Definition of Solid Waste; Technical Corrections, 52 FR 21306, 6/5/87	74:28:22:01, 74:28:27:01
12. Amendments to Part B Information Requirements for Disposal Facilities, 52 FR 23447, 6/22/87, amended 9/9/87	74:28:26:01
13. List (Phase I) of Hazardous Constituents for Ground-Water Monitoring, 52 FR 25942, 9/9/87	74:28:25:01, 74:28:26:01
14. Identification and Listing of Hazardous Waste, 52 FR 26012, 7/10/87	74:28:22:01
15. Exception Reporting for Small Quantity Generators of Hazardous Waste, 52 FR 35894, 9/23/87	74:28:23:01
16. Liability Requirements for Hazardous Waste Facilities; Corporate Guarantee, 52 FR 44314, 11/18/87	74:28:25:01, 74:28:28:01
17. HSWA Codification Rule 2 52 FR 45788, 12/1/87	74:28:26:01, 74:28:25:01, 74:28:28:01
18. Hazardous Waste Miscellaneous Units, 52 FR 46946, 12/10/87	74:28:21:02, 74:28:25:01
19. Technical Corrections: Identification and Listing of Hazardous Waste, 53 FR 13382, 4/22/88	74:28:22:01
20. Identification and Listing of Hazardous Waste; Technical Correction, 53 FR 27162, 7/19/88	74:28:22:01
21. Farmer Exemption; Technical Corrections, 53 FR 27164, 7/19/88	74:28:23:01, 74:28:25:01, 74:28:28:01, 74:28:30:01
22. Identification and Listing of Hazardous Waste; Treatability Studies Sample Exemption, 53 FR 27290, 7/19/88	74:28:21:02, 74:28:22:01
23. Hazardous Waste Management System; Standards for Hazardous Waste Tanks, 53 FR 34079, 9/2/88	74:28:21:02, 74:28:25:01, 74:28:28:01, 74:28:26:01
24. Identification and Listing of Hazardous Waste; Designation of Reportable Quantities, 53 FR 35412, 9/13/88	74:28:22:01
25. Permit Modification for Hazardous Waste Management Facilities 53 FR 37912, 9/28/88, amended 10/24/88	74:28:26:01, 74:28:25:01, 74:38:28:01
26. Statistical Methods for Evaluating Ground-Water Monitoring DA, 53 FR 39720, 10/11/88	74:28:25:01
27. Identification and Listing of Hazardous Waste; Removal of Iron Dextran from List of Hazardous Wastes, 53 FR 43878, 10/31/88	74:28:22:01
28. Identification and Listing of Hazardous Waste; Removal of Strontium Sulfide from List, 53 FR 43881, 10/31/88	74:28:22:01
29. Standards for Generators of Hazardous Waste, 53 FR 45089, 11/8/88	74:28:23:01
30. Hazardous Waste Misc. Units Standards Applicable to Owners and Operators, 54 FR 615, 1/9/89	74:28:26:01
31. Amendment to Requirements for Hazardous Waste Incinerator Permits, 54 FR 4288, 1/30/89	74:28:26:01
32. Mining Waste Exclusions 54 FR 36592, 9/1/89	74:28:22:01
33. Testing and Monitoring Activities, 54 FR 40260, 9/29/89	74:28:21:02, 74:28:22:01
34. Reportable Quantity Adjust. Methyl Bromide Production Wastes, 54 FR 41402, 10/6/89	74:28:22:01
35. Reportable Quantity Adjust. 54 FR 50968, 12/11/89	74:28:22:01
36. Changes to Part 124 48 FR 14146, 4/1/83, amended 6/30/83, 7/26/83, 9/26/83, 1/4/89	74:28:28:01, SDCL 34A–11–12 SDCL 1–26–17, MOA
37. Mining Waste Exclusion II 55 FR 2322, 1/23/90	74:28:21:02, 74:28:22:01, 74:28:23:01
38. Modification of F019 Listing 55 FR 5340, 2/14/90	74:28:22:01
39. Testing and Monitoring Activities; Technical Correction 55 FR 8948, 3/9/90	74:28:21:02, 74:28:22:01
40. Listing of 1,1-dimethylhydrazine, Production Wastes 55 FR 18496, 5/2/90	74:28:22:01
41. Criteria for Listing Toxic Wastes; Tech. Amend. 55 FR 18726, 5/4/90	74:28:22:01
42. HSWA Codification Rule Double Liners, Correction, 55 FR 19262, 5/9/90	74:28:25:01
43. Organic Air Emission Standards, for Process Vents and Equipment Leaks, 55 FR 25454, 6/21/90	74:28:21:02, 74:28:22:01, 74:28:25:01, 74:28:28:01, 74:28:26:01

C. Decision

I conclude that South Dakota's application for program revision meets all of the statutory and regulatory requirements established by RCRA. Accordingly, South Dakota is granted final authorization to operate its hazardous waste program as revised.

South Dakota has not requested authorization to operate its hazardous waste program, as revised, in "Indian Country" as defined in 18 U.S.C. 1151. Accordingly, today's decision to grant South Dakota final hazardous waste authorization, as revised, does not extend to Indian Country. The Environmental Protection Agency retains all hazardous waste authority under RCRA which applies to "Indian Country" in South Dakota.

South Dakota now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitation of its revised program application and previously approved authorities. South Dakota also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to issue orders under sections 3008, 3013, and 7003 of RCRA.

South Dakota has agreed to submit a draft application for RCRA cluster 1 and land disposal restriction rules by December 31, 1993, a draft application for RCRA cluster 2 by December 31, 1994. Final applications will be submitted within 60 working days of receipt of EPA's comments on the draft application. The State has agreed to submit a final application for the TC rules within six months of EPA's decision on the proposed rule (December 24, 1992) to suspend the Toxicity Characteristics rule (Hazardous Waste Codes D018 through D043).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 4 U.S.C. 605(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of South Dakota's program, thereby eliminating duplicative requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Environmental protection, Administrative practice and procedure, Confidential business information, Hazardous materials transportation, Hazardous waste Indian lands, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006 and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: December 28, 1993.

Jack W. McGraw,

Acting Regional Administrator.

[FR Doc. 94–494 Filed 1–7–94; 8:45 am]

BILLING CODE 6560–60–P

GENERAL SERVICES ADMINISTRATION

41 CFR Part 105–57

Collection of Debts by Federal Tax Refund Offset

AGENCY: General Services Administration.

ACTION: Final rule.

SUMMARY: This document amends the General Services Administration (GSA) Regulations by adding procedures to implement the Federal Tax Refund Offset Program in GSA. Participation in the program is mandated by the Cash Management Improvement Act amendments of 1992. The GSA expects to improve the collection of delinquent debts due the agency by participation in the Federal Tax Refund Offset Program.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Bernie Kanzler, Office of Finance, Financial Information Control Division (BCD), (202–501–2923).

SUPPLEMENTARY INFORMATION: The General Services Administration (GSA) has determined that this rule is not a significant rule for the purposes of Executive Order (E.O.) 12866 of September 10, 1993, because it is not likely to result in an economic impact exceeding $100 million or more, to have a material adverse effect on the economy, environment or safety, to interfere with the actions of another agency, to materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or to raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. Therefore, a regulatory assessment has not been prepared. GSA has based all administrative decisions underlying this rule on adequate information concerning the need for and the consequence of this rule; has determined that the potential benefits to society from this rule outweigh the potential costs; has maximized the net benefits; and has chosen the alternative approach involving the least net cost to society.

Regulatory Flexibility Act

The General Services Administration has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq.).

List of Subjects in 41 CFR Part 105–57

Administrative practice and procedure, Claims, Income taxes.

Accordingly, 41 CFR chapter 105 is amended by adding part 105–57 to read as follows:

PART 105–57—COLLECTION OF DEBTS BY TAX REFUND OFFSET

Sec.

105–57.001 Purpose.
105–57.002 Applicability and scope.
105–57.003 Administrative charges.
105–57.004 Reasonable attempt to notify.
105–57.005 Notice requirement before offset.
105–57.006 Consideration of evidence.
105–57.007 Change in conditions after submission to IRS.

Authority: 31 U.S.C. 3720A.

§ 105–57.001 Purpose.

This part establishes procedures for the General Services Administration (GSA) to refer past due debts to the Internal Revenue Service (IRS) for offset against income tax refunds of taxpayers owing debts to GSA.

§ 105–57.002 Applicability and scope.

(a) This part implements 31 U.S.C. 3720A which authorizes the IRS to reduce a tax refund by the amount of a past due legally enforceable debt owed to the United States.

(b) For purposes of this section, a past due legally enforceable debt referable to the IRS is a debt which is owed to the United States and:

(1) Has been delinquent for at least three months but, except in the case of a judgment debt, has not been delinquent more than ten years at the time the offset is made;

(2) With respect to which, GSA has given the taxpayer at least 60 days, from the date of notification, to present evidence that all or part of the debt is not past due or legally enforceable, has considered such evidence, and has determined that the debt is past due and legally enforceable;

(3) Cannot be currently collected pursuant to the salary offset provisions of 5 U.S.C. 5514(a)(1);

(4) Cannot be currently collected pursuant to the administrative offset provisions of 31 U.S.C. 3716;

(5) Has been disclosed by GSA to a credit reporting agency, including a consumer reporting agency as authorized by 31 U.S.C. 3711(f);

(6) With respect to which, GSA has notified, or has made a reasonable attempt to notify, the taxpayer that the debt is past due and, unless repaid within 60 days thereafter, will be referred to the IRS for offset against any income tax refunds due the taxpayer;

(7) Is at least $25.00;

(8) All other requirements of 31 U.S.C. 3720A and the Department of the Treasury regulations relating to eligibility of a debt for tax refund offset, at 26 CFR 301.6402–6T, have been satisfied.

§ 105–57.003 Administrative charges.

All administrative charges incurred in connection with the referral of debts to the IRS will be added to the debt, thus increasing the amount of the offset.

§ 105–57.004 Reasonable attempt to notify.

In order to constitute a reasonable attempt to notify the debtor, GSA must have used a mailing address for the debtor obtained from the IRS pursuant to the Internal Revenue Code, 26 U.S.C. 6103 (m)(2) or (m)(4), within one year preceding the attempt to notify the debtor.

§ 105–57.005 Notice requirement before offset.

The notification provided by GSA to the debtor will inform the debtor how to go about presenting evidence to GSA that all or part of the debt is either not past due or is not legally enforceable.

§ 105–57.006 Consideration of evidence.

Evidence submitted by the debtor will be considered by officials or employees of GSA. Any determination that an amount of such debt is past due and legally enforceable will be made by such officials or employees. Evidence that the debt is affected by a bankruptcy proceeding involving the debtor shall bar referral of the debt.

§ 105–57.007 Change in conditions after submission to IRS.

If the amount of a debt is reduced after submission by GSA and offset by IRS, GSA will refund to the debtor any excess amount and will promptly notify IRS of the refund. GSA will also promptly notify the IRS if, after submission of a debt to the IRS for offset, GSA:

(a) Determines that an error has been made with respect to the information submitted;

(b) Receives a payment or credits a payment to an account submitted; or

(c) Receives notification that the debtor has filed for bankruptcy under Title 11 of the United States Code or has been adjudicated bankrupt and the debt has been discharged.

Dated: November 30, 1993.

Dennis J. Fischer,

Chief Financial Officer.

[FR Doc. 94–11 Filed 1–7–94; 8:45 am]

BILLING CODE 6820–34–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 405, 410, 413, and 414

[BPD–737–F]

RIN 0938–AF54

Medicare Program; Coverage of Epoetin (EPO) Used by Competent Home Dialysis Patients

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule adopts as final the interim final rule that provided for Medicare coverage of EPO used by ESRD beneficiaries who dialyze at home and are competent to use the drug without medical or other supervision and established criteria for selection of patients that can be considered "competent" and for monitoring of the patients who are selected. It also makes minor changes in response to public comments on the interim rule.

The interim rule was necessary to implement section 4201(d)(1) of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90). The purpose of the amendments is to facilitate use of EPO at home, while ensuring that such use of the drug is safe.

EFFECTIVE DATE: These rules are effective on February 9, 1994.

FOR FURTHER INFORMATION CONTACT: Jackie Sheridan, (410) 966–4635.

SUPPLEMENTARY INFORMATION:

I. Background

Chronic renal failure (CRF) is a progressive and usually irreversible decline in kidney function that does not always require regular dialysis. However, CRF patients who have end-stage renal disease (ESRD) do require a regular course of dialysis or kidney transplantation in order to sustain life.

Section 2991 of the Social Security Amendments of 1972 (Pub. L. 92–603) established the Medicare ESRD benefit by extending coverage to any individual who requires either dialysis or transplantation and meets the following requirements:

- Is fully or currently insured or entitled to monthly benefits under title II of the Social Security Act; or
- Is the spouse or dependent child of the insured or entitled individual.

The methods and amounts of payment for services to ESRD patients have changed over the years and are currently set forth in §§ 410.50, 410.52, and 413.170–413.179 of the HCFA rules. Law and program policy have moved over the years towards encouraging greater use of self-dialysis and home dialysis.

On June 1, 1989, the Food and Drug Administration (FDA) approved the generic drug epoetin which we commonly refer to as "EPO". EPO is a sterile, colorless, preservative-free, liquid, biologically engineered protein that stimulates the bone marrow to make new red blood cells. EPO may be covered under the Medicare program when used to treat anemia associated with chronic renal failure. Most chronic renal failure patients are anemic because their kidneys are unable to produce sufficient amounts of a substance called erythropoietin.

Patients with chronic renal failure include those who require renal dialysis and are eligible for Medicare under the end-stage renal disease (ESRD) provisions of the law. In accordance with the labeling approved by the FDA, EPO may be administered either intravenously or subcutaneously for the treatment of anemia associated with chronic renal failure or anemia induced by the drug AZT used by patients with the HIV virus. Individuals with chronic renal failure use the drug to elevate or maintain the red blood cell level (as measured by the hematocrit or hemoglobin level) and to decrease the need for blood transfusions. Chronic renal patients considered for initiation of EPO therapy should generally have a hematocrit of less than 30%.

In July, 1989, we issued instructions in the Provider Reimbursement Manual—Part 1 (Chapter 27, Transmittal 11) authorizing Medicare contractors to start paying for the drug EPO, as of June 1, 1989. Coverage instructions were issued in November 1989 in the Intermediary Manual—Part 3 (Transmittal 1449), Carriers Manual—Part 3 (Transmittal 1329), Hospital Manual (Transmittal 576) and the Renal Dialysis Facility Manual (Transmittal 42). The effective date of the coverage instructions was also June 1, 1989. The Medicare regulations were not amended at that time.

Before enactment of Public Law 101–508 (OBRA '90), home use of EPO was not covered. For patients who dialyzed at home to receive Medicare payment for EPO, the drug had to be administered either in an ESRD facility or as a service "incident to" a physician's professional services.

II. Statutory Provisions

Section 4201(d)(1) of OBRA '90 amended section 1861(s)(2) of the Act by adding a new subparagraph (Q) that—

- Provides for coverage, effective July 1, 1991, of EPO that is used by home dialysis patients who are competent to use the drug without medical or other supervision and for coverage of items related to administration of the drug; and
- Requires the Secretary to establish by regulation methods and standards for the safe and effective use of the drug at home.

Section 4201(c) of that same law provided for payment for EPO furnished to ESRD patients by Medicare approved dialysis facilities to be made at the rate of $11 per 1,000 units, rounded to the nearest 100 units, effective January 1, 1991. Section 13566 of the Omnibus Budget Reconciliation Act of 1993 (OBRA '93, Pub. L. 103–66) sets the rate at $10 per 1,000 units effective January 1, 1994.

Typically, EPO is administered at the end of the dialysis treatment. Therefore, unless medical documentation shows that it is necessary to administer EPO at a time other than during dialysis, payment for patients who dialyze at a facility is made only to the facility.

The change made by section 13555(b) of OBRA '93, which provides for coverage of EPO self-administered by any dialysis patient (not limited to those who dialyze at home) will be implemented by separate regulations.

For home use of EPO supplied to a home dialysis patient competent to administer the drug without medical supervision, HCFA pays only a Medicare approved dialysis facility or a supplier of home dialysis equipment and supplies, if the patient obtains the drug directly from the supplier. In either case, payment for home use of EPO is made at the rate described above.

If a home patient is competent to use EPO without supervision and the drug has been prescribed, generally the patient's dialysis facility would furnish it. If a physician administers EPO to the patient, it should be the physician who receives the Monthly Capitation Payment (MCP) for furnishing the beneficiary's renal-related services. If a physician other than the MCP physician furnishes EPO, this physician must look to the MCP physician for payment for EPO administration. In this latter case, HCFA pays on a reasonable charge basis for the drug, but makes no additional payment to the physician for administration.

HCFA will announce annually, for public comment, whether an update in the EPO allowance is appropriate. By statute, any increase will not exceed the percentage increase (if any) in the implicit price deflator for the gross national product for the second quarter of the preceding year over the implicit price deflator for the second quarter of the second preceding year.

III. Provisions of the Interim Final Rule

In the interim final rule with comment period, published on September 4, 1991, we made the changes discussed below:

A. Major changes.

We amended subpart U of part 405 of the HCFA rules, which sets forth the conditions for coverage of services furnished to ESRD beneficiaries, as follows:

1. Patient selection.

To ensure the safe and effective use of EPO by home dialysis patients, we amended § 405.2163 to require that the patient's dialysis facility or the physician responsible for all dialysis-related services make a comprehensive assessment of the patient and the patient's needs at the time of selection for EPO therapy.

We emphasized that proper patient selection is necessary for a safe, effective program of EPO therapy at home. It is necessary for the dialysis facility or the physician responsible for all dialysis-related services to assess—

- Whether the patient will actually be able to administer the drug or have available the necessary assistance from a care-giver; and
- Whether the patient complies with certain elements necessary for successful EPO therapy.

Accordingly, we required that, in order to be selected for home use of EPO, a patient must—

- Be a home dialysis patient (either peritoneal or hemodialysis method).
- Have a hematocrit (or comparable hemoglobin) of less than 30 percent unless medical documentation justifies a patient's need for EPO with a hematocrit higher than 30 percent. For example, a patient with severe angina, severe pulmonary disease, or severe hypotension may require EPO to prevent adverse symptoms even though the patient has a higher hematocrit.
- Be under the care of the physician who is responsible for the dialysis-related services and who prescribes EPO, and under the care of the renal dialysis facility that establishes the plan of care for the services and monitors the progress of the home EPO therapy.
- Be trained by the facility to inject EPO or have an appropriate caregiver who is trained to inject EPO.

In addition, as part of the assessment, we required the following:

a. The patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

b. An appropriate protocol, developed by the patient's physician or facility and including monitoring of blood pressure, must be given to the patient for the safe and effective use of the drug.

c. The patient must be capable of performing self-administration of EPO, be able to learn aseptic technique, and be able to read the drug labeling, or must have a primary care-giver who can perform these tasks.

d. The patient must be able to adhere to a disciplined medical regimen.

2. Patient care plan.

To ensure adequate monitoring of home EPO therapy, we amended § 405.2137(b) to add a new paragraph (b)(7) which requires that the patient plan for a home dialysis patient who uses EPO in the home include the following:

- Review of diet and fluid modifications to monitor iron stores and hyperkalemia related to dietary indiscretion or elevated blood pressure.
- Reevaluation of the patient's dialysis prescription taking into account the patient's increased appetite and red blood cell volume.
- A method of teaching the patient to identify the signs and symptoms of hypotension and hypertension.
- The decrease or discontinuance of EPO if hypertension is uncontrolled.
- A method of followup on blood work and a means to keep the physician informed of the results.

3. Other concerns.

In order to minimize possible abuse of EPO, we revised § 405.2163(g)(4) to require that the physician or facility ensure that "on hand" EPO is limited to a two-month supply.

We also requested the public's views and suggestions regarding this policy, and any other issues, including whether it is necessary to impose special storage requirements for safe-keeping of EPO, considering that the drug contains no preservatives and that its presence might entail possible risks to children in the household.

B. Other minor changes.

We also made minor changes to codify in the rules the coverage of EPO in general and to reflect the expansion of that coverage to include EPO used at home by home dialysis patients. (As explained in the "Background" section of the preamble to the interim rule, previous coverage of EPO was implemented through general instructions issued by HCFA, but not reflected in the rules.)

Section 410.10 We amended this section to show that EPO used at home by home-dialysis patients is now covered as one of the services included in "Medical and other health services", as defined in section 1861(s) of the Social Security Act.

Section 410.29 We amended this section to show that EPO may be covered as an exception to the general exclusion of drugs that may be self-administered.

Section 410.50 We amended this section to show that medically necessary drugs and biologicals are covered as part of institutional dialysis services furnished in a dialysis facility. (EPO covered as a dialysis facility service is paid as an add-on to the facility payment rate.)

Section 410.52 We amended this section to show that EPO for use by competent patients in the home is now included in the scope of ESRD services furnished in the patient's home.

Section 413.170(a)(1) We amended this section to update the cross references to the ESRD program coverage provisions in the regulations.

Section 413.170(c) We added a new paragraph (c)(6) to describe reimbursement for EPO when it is furnished by a Medicare-approved

dialysis facility or a supplier of home dialysis equipment and supplies.

Sections 414.300 and 414.335 We added a new paragraph (d) to § 414.300 and a new § 414.335 to specify method of payment for EPO that the beneficiary obtains directly from a supplier of home dialysis equipment and supplies.

IV. Discussion of Comments

We received fifteen letters of comment from two nephrologists, three renal dietitians, three nephrology nurses, two dialysis centers, two professional associations, one home health agency, one medicare carrier, and one law firm.

A. Patient Selection

Comment: Two commenters, both nephrologists, recommended that EPO be given for patients with hematocrits greater than 30 percent, even up to 35 percent. One of the commenters stated that a hematocrit of 30 percent is not normal and that in a male, for whom normal hematocrit would be closer to 40 percent, a 30 percent reading means that the individual is functioning at three-quarters of his or her ability to do exercises as well as other things. That, combined with the chronic uremic state, which all dialysis patients have, makes it much more difficult for these patients to function in a useful manner. The commenter believes hematocrits closer to 35 percent would make much more sense for keeping these patients in a normal state and making them generally much more functional. The other commenter stated that his dialysis center is not required to justify continuation of EPO to patients with hematocrits of up to 35 percent. Commenters asked whether justification would be required each month or a single letter of justification would suffice.

Response: The drug labeling for EPO recommends dosage to maintain a patient's hematocrit in the range of 30–33 percent (target range) with a maximum of 36 percent. It also states that the dose of EPO should be reduced when the hematocrit reaches the target range of 30–33 percent or increases by more than 4 points in any two-week period. Therapy with EPO can result in an abnormal increase in red blood cells if the hematocrit is not carefully monitored and the dose appropriately adjusted.

We believe we are justified in requiring a hematocrit of less than 30 percent for initiation of EPO therapy at home. Thirty percent is the low end of the target range. Medical review guidelines in the manuals used by Medicare intermediaries and carriers provide for payment of subsequent claims for EPO without documentation of medical necessity as long as the hematocrit is below 36 percent. We have revised § 405.2163(g)(2) to clarify that the 30 percent hematocrit threshold applies only to initiation of EPO therapy.

Comment: One commenter, operating a renal dialysis program in a university hospital, pointed out that, due to the close working relationship that exists between the renal physicians, dialysis staff and outpatient department, a physician may order EPO for an ESRD patient, note that order in the patient's chart, and verbally inform the pharmacist of the order without providing a written prescription. The commenter believes this procedure to be the norm. However, the fiscal intermediary processing those claims will not pay for any claims for which a written prescription is not provided. The commenter believes this process to be burdensome, especially since the order is documented in the patient's medical chart. The commenter also asked whether there will be any policy affecting refillable prescriptions.

Response: We are sympathetic to the concerns expressed by the commenter and remain sensitive to requirements that may appear to be overly burdensome. However, we believe the intermediary is justified in requiring a written prescription. While in the case the commenter presented it might seem to create additional paperwork, a written prescription protects the pharmacist as well as providing a basis for payment by the intermediary. The intermediary or carrier has discretion to determine whether to require documentation on refillable prescriptions on the basis of reasonableness and necessity.

Comment: The same commenter suggested that we establish more specific guidelines for "regular monitoring" of patients who self-administer EPO, especially with regard to maximum hematocrit readings. Two commenters recommended including guidelines similar to those in the manufacturer's labeling. Two other commenters suggested that we include a mechanism for monitoring patient compliance such as the completion of a patient log.

Response: The drug labeling for EPO provides general therapeutic guidelines with regard to the starting dose and maintenance dose, as well as when the dose should be reduced or increased. We believe the labeling provides adequate guidelines and that physicians should have the flexibility to interpret those guidelines with regard to their patients. Since drug regimens will vary depending on the individual patient's prescribed plan of treatment, we do not wish to be overly prescriptive with respect to specific monitoring protocols. We have, however, revised language at § 405.2163(g)(2)(iii) to require that the physician follow the drug labeling instructions when monitoring the EPO home therapy as well as in developing appropriate protocols. We also agree that a patient log is a valid means to monitor compliance. To encourage use of that mechanism or similar effective mechanisms, we have added "(such as a patient log)" in § 405.2137(b)(7).

Comment: One commenter asked what type of medical documentation will be required to support payment for occasional use of EPO prior to dialysis, required because of temporary patient weakness or a low hematocrit reading.

Response: Medicare eligibility based on ESRD is not established until the patient has been undergoing routine dialysis for three months or has a kidney transplant. Thus it is unlikely that a patient undergoing EPO therapy before dialysis would be a Medicare beneficiary. However, if a beneficiary whose Medicare eligibility is based on age or disability receives EPO for either of the types of anemia listed on the drug labeling, the drug may be covered if furnished "incident to a physician's service". Routine documentation requirements for this treatment include appropriate diagnostic coding on the HCFA–1500 claim form filed by the physician.

Comment: One commenter stated that the rule implies that home dialysis patients have not been receiving EPO and that the need for EPO must be evaluated for each patient. The commenter points out that many patients have met the criteria for EPO, have been monitored monthly by appropriate laboratory tests and frequent blood pressure checks, and may already have been determined to have hematocrits within the target range. The commenter recommended that we not require full evaluation of patients who are already on EPO.

Response: We realize that a patient who is receiving EPO may have a hematocrit within the target range of 30–33 percent. We also realize that any patient considered for home use of EPO would be under the care of a physician who furnishes all dialysis-related services. We assume that, in determining whether the patient is an appropriate candidate for home use, the physician would take into account any previous evaluations and whether the patient is currently receiving EPO. Nevertheless, we continue to believe that every patient must be evaluated before being approved for home use of EPO. The physician may base the evaluation in part on information previously obtained in the course of monitoring dialysis, but must also evaluate other factors, such as competence to inject the drug and capacity for proper storage of the drug, that are not pertinent to receiving EPO in a facility or a physician's office.

Comment: One commenter believes that home health agencies (HHAs) should not have to adhere to the standard of ensuring that the two-month supply limitation is met, especially in a patient's own household. The commenter believes that such a standard could impose on the HHA inappropriate and unwarranted liability, especially since EPO is a drug that allegedly "may be abused." The same commenter also requested that the phrase, "in the judgment of the home health agency," be inserted after the word "patient" in § 405.2163(g)(2) to prevent reviewing agencies from alleging that the patient did not have the abilities necessary to self-administer EPO.

Response: Under § 405.2163 (g)(2) and (h)(3), the patient's physician or dialysis facility (and not the supplier) is responsible for ensuring that the patient is capable of self-administering the drug and, through the drug prescriptions, that the amount "on hand" does not exceed a 2-month supply. Accordingly, if an HHA qualifies to be a supplier of home dialysis equipment and supplies, that HHA would not be subject to the responsibilities that aroused the commenter's concern. Ordinarily, HHAs would not be involved in monitoring self-administration of EPO.

Comment: One professional association commented that the wording in § 405.2163(g)(2)(iii), that is, "being able to adhere to a disciplined medical regimen", is a broad subjective statement that lacks meaning without some measurement of nonadherence. It recommended replacing the language with the words "be able to meet the requirements of an established home dialysis training program and periodic reassessment by qualified training staff."

Response: We agree that the cited current language lacks specificity and have removed it. However, we did not add the suggested language because, in this context, it is training in the self-administration of EPO (rather than in self-dialysis as such) that is pertinent, and that is already dealt with in paragraph (g)(3).

B. Patient Care Plan

Comment: Three commenters, all renal dietitians, questioned the wording of the requirement to review a patient's diet and fluid modifications to monitor adequate iron stores and hyperkalemia. All commented that the amount of iron required during EPO therapy can rarely be met with dietary iron, since such diets are typically iron deficient. They noted that oral or even intravenous supplemental iron is required and recommended that we revise the language to include the following:

- Review of diet and fluid intake for indiscretions as reflected by hyperkalemia and elevated blood pressure secondary to volume overload.
- Review of medications for adequate provision of supplemental iron.
- Evaluation of hematocrit and measures of iron stores.

Response: We agree with these comments and have revised § 405.2137(b)(7) (i)–(iii) to include the suggested content.

C. Other Concerns

Comment: One commenter asked for clarification of the effective date.

Response: The law (section 4201(c) of the Omnibus Budget Reconciliation Act of 1990) that set the payment rate at $11 per 1,000 units was effective January 1, 1991. However, under section 4201(d) of that Act, coverage of EPO self-administered at home by home dialysis patients is effective July 1, 1991. Thus, Medicare payment is available for services that are furnished on or after that date and that also meet the requirements of the interim final rule published on September 4, 1991.

Comment: Two commenters felt that an initial 2-month EPO supply might be too much since (1) patients who receive the drug from a renal facility must be seen by their physician monthly and (2) a 2-month supply might discourage patients from maintaining blood pressure and hematocrit monitoring. The commenters were also concerned that the supplier or renal facility may be requested to take back unused portions of EPO, if the home dialysis patient received a kidney transplant or died soon after receiving the supply. They suggested that a smaller quantity would alleviate the beneficiary's coinsurance responsibility.

Response: First, we note that the provision sets the 2-month initial supply as a maximum limit, to be used when circumstances make a 2-month supply appropriate. We recognize that patients who obtain their supplies directly must be monitored monthly, and we would expect a physician to prescribe a lesser amount for some patients. In § 405.2163, we have added a paragraph (h) to highlight the responsibilities of the physician and the dialysis facility. Paragraph (h)(3) makes clear that the 2-month supply is a maximum.

Comment: One commenter stated that billing procedures instructing an initial billing of up to a 2-month supply followed by subsequent billings limited to a 1-month supply are inconsistent with our proposed regulations which appear to intend that the beneficiary maintain a 2-month supply at all times.

Response: The commenter has misinterpreted the intent of the policy. The intent is not to require a "minimum" 2-month supply, but rather to ensure that the patient has at least a 1-month supply. As stated above, the physician may initially prescribe "up to" a 2-month supply. When half of the initial 2-month supply is used, the next 1-month supply may be ordered, and so on.

Comment: In response to our specific request for comments on whether it is necessary to impose special storage requirements for safe-keeping of EPO, two commenters stated that storage and home safety issues need to be more specifically addressed and documented. They recommended that we require, as part of the assessment, assurance that the patient has the ability to store EPO under refrigeration, secure from tampering and out of the reach of children.

Response: We agree with the commenters and have revised § 405.2163(g) to add the suggested language.

Comment: One commenter questioned whether HCFA will establish regional intermediaries to process home EPO claims.

Response: EPO claims from home dialysis patients who obtain their dialysis supplies directly from suppliers will be processed by four regional carriers that were designated under a final rule published on June 16, 1992 (at 57 FR 27290), and that also process claims for durable medical equipment, prosthetics, orthotics and other items covered under Medicare Part B.

However, claims for items furnished incident to a physician's service as defined in 42 CFR 410.10(b) will continue to be processed under the current carrier configuration, and regional intermediaries will continue to process claims from facilities.

Comment: One commenter stated that at least one 8-hour day should be allocated to train a patient in proper techniques of self-administration. The commenter also asked whether a

training fee can be charged for this training time or whether any additional reimbursement can be obtained since this added monitoring activity expands physician activities under the monthly capitation plan.

Response: We agree that patients need to be properly trained in the self-administration of EPO; however, we do not believe that we should set a specific minimum time limit for training as suggested by the commenter. We believe there should be sufficient flexibility to allow for differences in individual patients' learning ability.

There is no separate payment for training or retraining in, and monitoring of, home use of EPO. A patient should be trained to self-administer EPO as part of the home dialysis training program that is paid for at the home dialysis training composite rate in accordance with § 413.170 of the HCFA rules. With respect to monitoring self-administration of EPO, we believe the additional physician's time and effort are minimal and should be subsumed within the physician's monthly capitation payment under § 414.314 of those rules.

Comment: Two commenters asked whether reimbursement can be expected for home supplies needed to self-administer EPO, e.g., syringe, needle, alcohol wipes.

Response: Payment for the medical supplies needed for administration of EPO, whether in the home or in a facility, is included in the Medicare payment rate for EPO. Both before OBRA '90 and since the implementation of those provisions, HCFA has always included the cost of supplies as part of the Medicare payment for EPO. We see no basis for different treatment of supplies for self-administration of EPO in the home.

The payment rate for EPO is $11.00 per 1,000 units and, we believe, is more than adequate to cover the minimal cost of supplies (less than 20 cents per administration). The manufacturer of EPO is protected from competition for seven years by the Orphan Drug Act. The company reports substantial profits and gives rebates to facilities depending upon usage. It appears that facilities pay considerably less for EPO than the Medicare rate, providing sufficient payment for supplies needed for administration.

The source of this information is the Department's Office of the Inspector General (OIG) study, "Draft Report—Review of Epogen Reimbursement" (Audit No. A–01–92–00506). The OIG reviewed invoices paid by dialysis facilities and financial reports filed by the manufacturer and found that facilities generally pay nine to ten percent less for EPO than the Medicare payment rate. In addition, the manufacturer gave surveyed facilities end-of-year rebates ranging from two percent to eight percent depending upon the volume of EPO used.

Comment: Two commenters expressed the hope that local physicians will be able to continue to administer EPO incident to a physician's service.

Response: This regulation is in no way intended to preclude provision of EPO furnished incident to a physician's service.

Comment: One commenter was of the opinion that there is no statutory authority for the provision in § 413.170(c)(6)) requiring suppliers to accept assignment of benefits for EPO.

Response: The statutory provisions for payment of benefits for EPO are in section 1881(b)(1). Section 1881(b)(1)(B) of the Act provides for payments "to or in behalf of" beneficiaries for home dialysis supplies and equipment. However, with respect to payment for self-administered EPO, section 1881(b)(1)(C) permits payment only to a supplier of home dialysis supplies and equipment that is not a provider of services, a renal dialysis facility, or a physician. There is no authority in the law to pay this benefit to a beneficiary. Therefore, the law implicitly requires payment to a supplier under assignment.

Furthermore, any other reading of the statute would have anomalous results. For example, if the statute did not require suppliers to accept assignment, the beneficiary would be protected for charges for home dialysis supplies and equipment, but not for EPO furnished directly by the supplier. Nothing in the legislative history suggests the Congress intended such a result.

V. Specific Changes to the Interim Final Rule.

In response to the comments discussed above, we have made the following changes in the text of the interim final rule published on September 4, 1991.

1. Patient care plan.

We have revised § 405.2137(b)(7) to establish separate requirements for review of medication and evaluation of hematocrit for iron stores and to suggest use of a patient log for keeping the physician informed of the results of blood tests.

2. Patient selection.

We have revised § 405.2163 to—

- Require that the physician follow the drug labeling when he or she establishes the protocol and monitors home use of EPO;
- Include as an assessment requirement obtaining assurance that EPO can be stored under refrigeration, secure from tampering and out of reach of children in the patient's residence.
- Add a paragraph (h) to highlight the responsibilities of the physician and the dialysis facility and to make clear that the "two-month" supply of EPO is a maximum and that control of the amount "on hand" is maintained through the physician's prescriptions.

B. Technical amendments.

1. Throughout the text "Erythropoietin" is changed to "Epoetin", which is the generic name of the drug.

2. In § 413.170(c)(6), the cross-reference is corrected.

VI. Regulatory Impact Statement

A. Executive Order 12866

Executive Order 12866 (E.O. 12866) requires us to prepare an analysis for any document that meets one of the E.O. 12866 criteria for a "significant regulatory action"; that is, that may—

- Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;
- Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;
- Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or
- Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866.

In the proposed rule, we determined that a regulatory impact analysis was not required for these rules because they would not have an annual impact of $100 million or more or meet any of the other threshold criteria. However, we indicated our intention to include in the final rule a cost and benefit analysis that considers the social benefits to Medicare beneficiaries who use EPO at home. We asked for specific comments concerning benefits from home administration of EPO. We listed, as examples of these benefits, savings in travel and transportation costs previously required to obtain EPO or the ability of the beneficiary to resume employment. We also requested public comment on any benefits and costs that may be anticipated as a result of this regulation.

No comments were received concerning the benefits of self-administration of EPO or on any portion of the impact analysis. Thus, we have prepared an analysis based on our review of data available to us and of pertinent literature.

The following chart summarizes home dialysis beneficiary records for the period February 28, 1991 through February 29, 1992. It reflects the most current data on file and also encompasses the time immediately before and after July 1, 1991, the effective data of coverage of home administration of EPO. We identified, as ESRD beneficiaries who are potentially eligible for home use of EPO, beneficiaries who have completed the necessary home dialysis training or were home dialysis patients during this period. The chart indicates the number of beneficiaries on home dialysis and the number receiving EPO therapy as of June 30, 1991. The same information is shown for the billing period November 1, 1991 through January 31, 1992, the most current billing information for home dialysis beneficiaries.

HOME DIALYSIS BENEFICIARIES

[February 28, 1991–February 29, 1992]

	Home Dialysis Beneficiaries	Self-Adm.*	Fac/Phy.**	Not Receiv'g EPO
As of 6/30/91	38,515		12,733	25,782
Billing Period 11/1/91–1/31/92	38,515	1,656	11,890	24,969

* Self-Adm. stands for self-administered.
** Fac/Phy. stands for facility or physician administered.

Our records indicate that as of June 30, 1991 there were 38,515 beneficiaries that dialyzed at home. Before coverage of home administration of EPO, 12,733 of these beneficiaries received EPO in the ESRD facility or in a physician's office. As a result of coverage of home administration of EPO, 1,656 beneficiaries or 4.3 percent of home dialysis beneficiaries self-administer EPO. We estimate that this number will increase as more beneficiaries become qualified to self-administer EPO and realize the benefits of home administration.

In attempting to perform a cost-benefit analysis, we reviewed three published reports and one unpublished report. We also relied upon billing information submitted by intermediaries. Average expenditure for ESRD beneficiaries receiving EPO therapy approximate $6,900 exclusive of dialysis treatment. This amount includes the cost of the drug and other services such as iron treatment and hypertension therapy. The average annual cost for patients not using EPO approximates $450, exclusive of dialysis treatments, and includes the cost of other services such as blood transfusions and hepatitis therapy. The annual expenditures for EPO users represent very gross estimates. More definitive cost data and experience with the administration of EPO is needed in order to permit analysis of actual costs and EPO's relative effects.

As mentioned earlier in this preamble, use of EPO by chronic renal failure patients reduces or eliminates the need for blood transfusions. EPO also reduces the recipients' risk of transfusion-related illnesses. The transmission of non-A, non-B hepatitis is of greatest concern (see "Recombinant Human Erythropoietin: Factors to Consider in Cost-Benefit Analysis", American Journal of Kidney Diseases, Vol. XVII, No. 1, January 1991). Although rare, the threat of acquired immunodeficiency syndrome (AIDS) and hepatitis B should also be considered. For ESRD patients receiving EPO, the risk of hepatitis infection related to transfusions has been reduced from 13.8 to 4.5 percent because the patient's need for blood transfusions has been reduced and in some cases eliminated.

Reducing the need for transfusions also increases kidney transplant success in chronic renal failure patients by reducing sensitization. According to the above cited article, some individuals receiving frequent transfusions may develop cytotoxic antibodies. Excessive cytotoxity levels may result in increased waiting time for suitable organs. Also, when high cytotoxity levels are present, graft survival rates are reduced. When EPO is used, thus reducing or eliminating the need for transfusions, patients are more likely to retain transplanted organs successfully.

There are other potential benefits associated with the use of EPO. Since EPO stimulates the production of red blood cells thereby reducing or eliminating anemia, the need for hospitalization due to anemia or anemia-related illnesses could be expected to decline.

Another very important though not quantifiable benefit of receiving EPO is improved quality of life. An article appearing in The Journal of the American Medical Association (JAMA) (The Quality of Life of Hemodialysis Recipients Treated with Recombinant Human Erythropoietin, Vol. 263, No. 6, February 9, 1990) reported on the results of a study of over 300 hemodialysis patients in nine dialysis centers. The study showed that hemodialysis patients receiving EPO are happier—their energy levels are higher, physical functioning is improved, physical activity levels are increased, etc. Similar results were also reported in the American Journal of Kidney Diseases article mentioned earlier in this impact statement. Although these studies did not specifically study home dialysis patients, we believe that results would be equally true for this group.

In reviewing the literature on EPO, we also found that most EPO recipients require additional medications or therapies to counteract possible adverse effects. Some of the possible side effects of EPO therapy are iron depletion, hypertension, and arteriovenous graft clotting.

Iron Depletion—EPO recipients may not get the full benefit of increased hematocrits from EPO if they lack sufficient iron reserves. EPO increases the body's production of red blood cells. This requires sufficient iron reserves. Consequently, patients on EPO may become iron deficient. Their iron reserves must be monitored and iron supplements administered to ensure that the patient's iron reserves are not depleted.

Hypertension—Use of EPO may elevate a patient's blood pressure, a reaction that may be related to the rate of increase in hematocrit. Therefore, an EPO patient's blood pressure must be carefully monitored. Thirty percent of all EPO patients receive hypertension therapy.

Arteriovenous (AV) Graft Clotting—Fourteen percent of all EPO patients experience clotting of AV graft as compared to 6 percent of chronic renal patients not receiving EPO. The cause of the AV clotting is believed due to increased hematocrit.

The foregoing benefits and adverse effects of using EPO are the same for patients who receive the drug in a physician's office or ESRD facility as for patients who self-administer the drug. Those beneficiaries who received EPO in a physician's office or ESRD facility and, as a result of this regulation, shift to self-administration will realize further benefits, such as savings of time and in transportation costs. In order to receive the full benefit of EPO therapy, most patients receive it at least three times a week. Therefore, we estimate that the savings in transportation costs will average approximately $300 per beneficiary for calendar year 1992. Of course, this estimate is only an average; the actual saving will vary depending on distance traveled to and from the ESRD facility or physician's office by a particular beneficiary.

Since EPO is a relatively new drug, definitive information on its large scale effectiveness, direct costs, savings, etc., is not available. Literature supports the view that ESRD beneficiaries receiving EPO experience an improved quality of life, resulting in higher energy levels and improved physical functioning. For those beneficiaries who did receive EPO in a physician's office or ESRD facility and meet the criteria for self-administration, the change to self-administration will save time and eliminate travel expenses associated with office and facility visits. We expect that over time more home dialysis beneficiaries who did not receive EPO or received a reduced dosage because they were unable to travel to the physician's office or ESRD facility as often as needed will become candidates for self-administration of EPO. We do not have data on which to base a prediction of the number who will choose this form of administration. Obviously, each beneficiary's physician will need to consider potential adverse as well as beneficial effects.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 602 through 612) unless the Secretary certifies that a final rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, individuals are not considered to be small entities.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a final rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this rule will not have a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

Paperwork Reduction Act

Section 405.2137 of this rule contains information collection requirements that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980. When OMB approves these provisions, we will publish a **Federal Register** notice to that effect. If you comment on the information collection requirements, please send a copy of those comments directly to: Office of Information and Regulatory Affairs, Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503, Attention: Allison Herron Eydt, Desk Officer for HCFA.

List of Subjects

42 CFR Part 405

Administrative practice and procedure, Health facilities, Health professions, Kidney disease, Laboratories, Medicare, Reporting and recordkeeping requirements, Rural areas, X-rays.

42 CFR Part 410

Health facilities, Health professions, Kidney diseases, Laboratories, Medicare, Rural areas, X-rays.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 414

End-stage renal (ESRD), Health professions, Laboratories, Medicare.

42 CFR CHAPTER IV HEALTH CARE FINANCING ADMINISTRATION, DEPARTMENT OF HEALTH AND HUMAN SERVICES

The interim rule with comment period that was published on September 4, 1991, at 56 FR 43706, to amend Parts 405, 410, 413, and 414 of this chapter is adopted as final with the changes set forth below.

PART 405—FEDERAL HEALTH INSURANCE FOR THE AGED AND DISABLED

Subpart U—Conditions for Coverage of Suppliers of End-Stage Renal Disease (ESRD) Services

1. The authority citation for subpart U continues to read as follows:

Authority: Secs. 1102, 1861, 1862(a), 1871, 1874, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395y(a), 1395hh, 1395kk, and 1395rr), unless otherwise noted.

2. Section 405.2137 is amended to revise paragraph (b)(7), to read as follows:

§ 405.2137 Condition: Patient long-term program and patient care plan.

* * * * *

(b) *Standard: Patient care plan.* * * *

(7) For a home dialysis patient who uses EPO in the home, the plan must provide for monitoring home use of EPO that includes the following:

(i) Review of diet and fluid intake for indiscretions as indicated by hyperkalemia and elevated blood pressure secondary to volume overload.

(ii) Review of medications to ensure adequate provision of supplemental iron.

(iii) Ongoing evaluations of hematocrit and iron stores.

(iv) A reevaluation of the dialysis prescription taking into account the patient's increased appetite and red blood cell volume.

(v) A method for physician followup on blood tests and a mechanism (such as a patient log) for keeping the physician informed of the results.

(vi) Training of the patient to identify the signs and symptoms of hypotension and hypertension.

(vii) The decrease or discontinuance of EPO if hypertension is uncontrollable.

3. Section 405.2163 is amended to revise paragraph (g) and add a new paragraph (h), to read as follows:

§ 405.2163 Condition: Minimal service requirements for a renal dialysis facility or renal dialysis center.

* * * * *

(g) *Use of EPO at home: Patient selection.* The dialysis facility, or the physician responsible for all dialysis-related services furnished to the patient, must make a comprehensive assessment that includes the following:

(1) *Pre-selection monitoring.* The patient's hematocrit (or hemoglobin), serum iron, transferrin saturation, serum ferritin, and blood pressure must be measured.

(2) *Conditions the patient must meet.* The assessment must find that the patient meets the following conditions:

(i) Is a home dialysis patient.

(ii) Has a hematocrit (or comparable hemoglobin level) that is as follows:

(A) For a patient who is initiating EPO treatment, no higher than 30 percent unless there is medical documentation showing the need for EPO despite a hematocrit (or comparable hemoglobin level) higher than 30 percent. (Patients with severe angina, severe pulmonary distress, or severe hypertension may require EPO to prevent adverse symptoms even if they have higher hematocrit or hemoglobin levels.)

(B) For a patient who has been receiving EPO from the facility or the physician, between 30 and 33 percent.

(iii) Is under the care of—

(A) A physician who is responsible for all dialysis-related services and who prescribes the EPO and follows the drug labeling instructions when monitoring the EPO home therapy; and

(B) A renal dialysis facility that establishes the plan of care and monitors the progress of the home EPO therapy.

(3) *Conditions the patient or the patient's caregiver must meet.* The assessment must find that the patient or a caregiver who assists the patient in performing self-dialysis meets the following conditions:

(i) Is trained by the facility to inject EPO and is capable of carrying out the procedure.

(ii) Is capable of reading and understanding the drug labeling.

(iii) Is trained in, and capable of observing, aseptic techniques.

(4) *Care and storage of drug.* The assessment must find that EPO can be stored in the patient's residence under refrigeration and that the patient is aware of the potential hazard of a child's having access to the drug and syringes.

(h) *Use of EPO at home: Responsibilities of the physician or the dialysis facility.* The patient's physician or dialysis facility must—

(1) Develop a protocol that follows the drug label instructions;

(2) Make the protocol available to the patient to ensure safe and effective home use of EPO; and

(3) Through the amounts prescribed, ensure that the drug "on hand" at any time does not exceed a 2-month supply.

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

1. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1835, 1861 (r), (s), and (cc), 1871, and 1881 of the Social Security Act. (42 U.S.C. 1302, 1395k, 1395l, 1395n, 1395x (r), (s), and (cc), 1395hh, and 1395rr).

2. Nomenclature change.

In §§ 410.10(k), 410.50(d), and 410.52(a)(4), "erythropoietin" is revised to read "epoetin".

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT

1. The authority citation for part 413 is revised to read as follows:

Authority: Secs. 1102, 1122, 1814(b), 1815, 1833(a), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1320c–1, 1395f(b), 1395g, 1395l(a), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww).

§ 413.170 [Amended]

2. In § 413.170(c)(6), "Erythropoietin" is revised to read "Epoetin", and "§ 413.170(c)(5)(iii)" is revised to read "paragraph (c)(6)(iii) of this section."

PART 414—PAYMENT FOR PART B MEDICAL AND OTHER HEALTH SERVICES

1. The authority citation for part 414 continues to read as follows:

Authority: Secs. 1102, 1833(a), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395l(a), 1395hh, and 1395rr).

§ 414.300 [Amended]

2. In § 414.300(d), "Erythropoietin" is revised to read "Epoetin".

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: September 23, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Approved: October 13, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–480 Filed 1–7–94; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 22, 25, 80, 87, 90, 95 and 99

[GN Docket No. 93-252; FCC 94–2]

Private Land Mobile Licenses; Reclassification

In the matter of implementation of sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services.

AGENCY: Federal Communications Commission.

ACTION: Procedures for waiver petitions.

SUMMARY: As a result of recent legislation, certain private land mobile radio licensees will be reclassified as commercial mobile radio service licensees and will be subject to foreign ownership restrictions within the Communications Act of 1934, as amended. The Commission has now established a procedure by which such licensees may file a waiver petition with the Commission to request retention of existing foreign ownership that would otherwise not be permitted. Such waiver petitions must be received at the Commission by February 10, 1994.

DATES: This document is effective January 10, 1994. Petitions for waiver must be filed with the Commission by February 10, 1994.

ADDRESS: Federal Communications Commission, 1919 M St. NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: The Private Radio Bureau, Licensing Division, Consumer Assistance Branch, (717) 337–1212 (for information regarding the filing of waiver petitions). For information regarding this First Report and Order, contact Carmen Cintron at (202) 632–6450 (Common Carrier Bureau, Mobile Services Division) or Eric Malinen at (202) 632–6497 (Private Radio Bureau, Land Mobile and Microwave Division).

SUPPLEMENTARY INFORMATION:

First Report and Order

Adopted: January 4, 1994; Released: January 5, 1994.

By the Commission:

I. Introduction

1. On September 23, 1993, we adopted a Notice of Proposed Rule Making (Notice) [1] in which we proposed, inter alia, to establish a procedure by which private land mobile radio licensees that will be reclassified as commercial mobile radio service (CMRS) providers pursuant to this rule making proceeding could file a waiver petition to retain existing foreign ownership. We now establish the filing procedure for these waiver petitions and remind all potentially affected licensees of the February 10, 1994, filing deadline. We also emphasize that filing such a petition will not prejudice the licensee's right at a later date to assert

[1] GN Docket No. 93–252, 8 FCC Rcd 7988, 8002–03 ¶¶ 76–78 (1993). 58 FR 53169 (October 14, 1993).

that it should not be classified as a CMRS provider.

II. Background

2. The Omnibus Budget Reconciliation Act of 1993 (Budget Act)[2] amended sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n), 332 (Communications Act), to create a comprehensive regulatory framework for all mobile radio services. "[A]ny provider of a private land mobile service that will be treated as a common carrier as a result of the enactment of the Omnibus Budget Reconciliation Act of 1993" is subject to the foreign ownership restrictions imposed on common carriers by section 310(b) of the Communications Act, 47 U.S.C. 310(b).[3] Nevertheless, the statute allows affected licensees to petition the Commission for waiver of the application of section 310(b) to any foreign ownership that lawfully existed as of May 24, 1993. The statute requires that these petitions for waiver be filed with the Commission by February 10, 1994 (within 6 months of enactment of the Budget Act). The Commission may grant such waivers to eligible petitioners only upon the following conditions:

(A) The extent of foreign ownership interest shall not be increased above the extent which existed on May 24, 1993.

(B) Such waiver shall not permit the subsequent transfer of ownership to any other person in violation of section 310(b).

47 U.S.C. 332(c)(6)(A), (B).[4]

3. Section 310(b) states in relevant part:

No * * * common carrier * * * license shall be granted to or held by—

(1) any alien or the representative of any alien;

(2) any corporation organized under the laws of any foreign government;

(3) any corporation of which any officer or director is an alien or of which more than one-fifth of the capital stock is owned of record or voted by aliens or their representatives or by a foreign government or representative thereof or by any corporation organized under the laws of a foreign country;

(4) any corporation directly or indirectly controlled by any other corporation of which any officer or more than one-fourth of the directors are aliens, or of which more than one-fourth of the capital stock is owned of record or voted by aliens, their representatives, or by a foreign government or representative thereof, or by any corporation organized under the laws of a foreign country, if the Commission finds that the public interest will be served by the refusal or revocation of such license.

For the purposes of section 310(b), certain partnership interests, as well as certain other interests held by non-corporate entities and associations, may be considered ownership interests.[5]

4. The Notice proposed to establish a petition procedure to allow licensees to "grandfather" their foreign ownership. Under this procedure, petitioners would be required to (1) identify all foreign persons or entities holding an interest in the licensee and the percentage of ownership interest for each; and (2) certify that the identity and level of foreign ownership are unchanged since May 24, 1993, and that no change will occur in the future (other than divestiture of a foreign ownership interest to a domestic person or entity) without prior notice to the Commission.[6]

5. The Notice indicated that we intend to place the burden on licensees to file petitions, regardless of whether we have made a final determination as to whether the licensee is subject to reclassification as a CMRS provider. Furthermore, the Notice stated that while the filing of a petition would not prejudice a licensee's future arguments as to whether it should be reclassified, licensees who failed to file a timely petition would be subject to immediate enforcement of our foreign ownership restrictions.[7]

III. Comments

6. A single commenter responded to this issue. Roamer One, Inc., argues that the Notice misread the Budget Act's amendment to the Communications Act to the extent that it imposes "immediate" foreign ownership restrictions on all private radio licensees.[8] It maintains that while the Notice refers to private land mobile service providers that "may" be treated as common carriers, the statute refers to existing private land mobile service providers that "will" be treated as common carriers as a result of the enactment of the Budget Act.[9] It contends that, prior to the completion of this rule making proceeding, the Commission may not impose alien ownership restrictions on private radio licensees who are unlikely to be classified as CMRS providers.[10]

IV. Discussion

A. Who Should File a Waiver Petition

7. Initially, we agree with Roamer One that Section 332(c)(6) does not impose foreign ownership restrictions on all private radio licensees. As noted above, the foreign ownership restrictions apply only to those current private land mobile service providers that "will be" classified as CMRS providers "as a result of enactment of the [Budget Act]." As we discussed in the Notice, a private land mobile radio licensee could potentially be reclassified as a CMRS licensee if it meets two criteria: Its service: (1) Is "provided for profit," and (2) makes "interconnected service" available "to the public" or "to such classes of eligible users as to be effectively available to a substantial portion of the public." In addition, it is possible that a service might not fully satisfy the two criteria, but nonetheless be classified as CMRS if the Commission were to find that the service is the "functional equivalent" of CMRS.[11] If a licensee determines that there is a possibility that it will be reclassified as a CMRS provider, it must also determine whether its foreign ownership as of May 24, 1993, would be prohibited under section 310(b).[12]

8. Final rules governing regulatory classification of mobile services may not be available on or before the February 10, 1994, filing deadline. We recognize that this presents private land mobile licensees with the potentially difficult decision of whether they should file petitions for waiver. Therefore, in instances where there is any chance at all that the licensee might later be classified as a CMRS provider, we strongly encourage the licensee to err on the side of filing and thereby preserve all of its rights under the new statutory provisions. Similarly, if a licensee is uncertain of whether it would be affected by section 310(b) restrictions absent a waiver, we strongly recommend that the licensee file a petition.

B. Contents of Waiver Petition

9. As noted above, section 332(c)(6) permits the Commission to grant waiver petitions only where two conditions are met. First, the waiver can only cover "the [licensee's] extent of foreign ownership interest [that has] not * * * increased above the extent which existed on May 24, 1993." Consistent with the legislative history quoted previously (see note 4, supra), we interpret this language to refer to the precise identities of persons or entities and not merely to preexisting levels of foreign ownership interests. Petitioners must therefore identify in their petitions all foreign interests in the licensee as of May 24, 1993, that would, absent a waiver, be subject to the section 310(b) restrictions and for which a waiver is sought. For instance, except as noted below, petitioners should specifically identify all foreign persons or entities holding an ownership interest in the licensee and the percentage of ownership interest of each and identify all foreign partners,[13] officers, and directors, regardless of whether they have any ownership interest. While we will not require publicly traded corporations[14] to identify each foreign stockholder in instances where this requirement would be especially onerous,[15] we note that it is the responsibility of all petitioners to ensure that all foreign ownership listed in the petition, including that held by individual stockholders, did exist as of May 24, 1993, and to retain documentation substantiating that ownership.

10. The second condition is that the waiver cannot permit any "subsequent transfer of ownership to any other person in violation of section 310(b)." We interpret "subsequent" here to mean subsequent to May 24, 1993. Petitioners must therefore certify in their petitions that the identity and percentages of each listed component of foreign ownership are unchanged since May 24, 1993, and that each listed foreign officer, director or partner continues to hold the same position. The waiver can recognize only the particular person or entity that held the ownership interest on May 24, 1993; it cannot recognize any subsequent transfers to other foreign owners or foreign officers or directors.[16] If, following the grant of a waiver in light of the above condition, a licensee wishes to transfer "grandfathered" foreign ownership interests, the waiver will remain valid (for the remaining "grandfathered" interests) only if the transfer is made to a domestic person or entity.[17] The same is true for "grandfathered" partners, officers, and directors.

C. Effective Date of Section 310(b) Restrictions

11. Roamer One appears to object to our statement in the *Notice* that "all reclassifiable private licensees are *immediately* subject to the foreign ownership restrictions on common carriers by section 310(b)."[18] As noted above, Roamer One contends that, prior to the completion of this rule making proceeding, the Commission should not impose alien ownership restrictions on private radio licensees who are unlikely to be classified as CMRS providers. We agree that the restrictions in section 310(b) would only apply to licensees that are actually reclassified pursuant to the statute and its implementation in this rule making. Section 310(b) does not and will not apply to private land mobile radio licensees who will not be reclassified as CMRS providers. On the other hand, the statute does require immediate enforcement of section 310(b) for private land mobile providers that are reclassified as CMRS. Section 6002(c)(2)(B) of the Budget Act states:

[A]ny private land mobile service provided by any person before [the Budget Act's] date of enactment, and any paging service utilizing frequencies allocated as of January 1, 1993, for private land mobile services, shall, *except for purposes of section 332(c)(6) of [the Communications Act]*, be treated as a private mobile service until 3 years after such date of enactment.

Budget Act, section 6002(c)(2)(B) (emphasis added). Although other common carrier regulation may not apply to some licensees for 3 years, unless a licensee timely files and is granted a waiver pursuant to section 332(c)(6), section 310(b) will apply immediately upon the effective date of our rules reclassifying the licensee's service as CMRS. Accordingly, as stated above, licensees that may be reclassified should file a timely waiver request to grandfather any foreign ownership or other interest that existed as of May 24, 1993, and that might be affected by the application of section 310(b).

V. Petitioning Procedure

12. In light of the above, we adopt the following petitioning procedure. First, petitions should be in an informal, letter format, and must contain the caption "COMMERCIAL MOBILE RADIO SERVICE FOREIGN OWNERSHIP WAIVER PETITION." Petitions must clearly specify the licensee's name, radio service, call sign(s), station address(es) or geographical location(s), and contact person with telephone number. Petitions must specifically request a waiver of section 310(b), identify the particular subsection(s) of section 310(b) for which the waiver is requested, and state that the waiver is sought under section 332(c)(6). The original copy of the waiver petition must be signed by the licensee,[19] and this signature will be taken to certify that all statements made in the petition are true, complete, correct, and made in good faith.

13. In addition, as proposed in the Notice, petitions must:

(1) identify by name,[20] as of May 24, 1993, all foreign persons or other entities holding ownership interests in the licensee, directly or indirectly, that would, absent a waiver, not be permitted to hold such interests under section 310(b), and for which a waiver is

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[2] Pub. L. No. 103–66, Title VI, § 6002(b), 107 Stat. 312, 392, 395 (1993); see H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 492, 494–95 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1179, 1183–84.

[3] See 47 U.S.C. 332(c)(6); see also Budget Act, Section 6002(c)(2)(B) (effective dates). For the text of Section 310(b), see paragraph 3, infra.

[4] In regard to condition (B), the legislative history of the amended statute states: "In effect, this condition "grandfathers" only the particular person who holds the foreign ownership on May 24, 1993; the "grandfathering" does not transfer to any future foreign owners." H.R. Conf. Rep. No. 213, 103d Cong., 1st Sess. 495 (1993), reprinted in 1993 U.S. Code Cong. & Admin. News 1184.

[5] See e.g., Wilner & Scheiner, 103 FCC 2d 511 (1985), reconsideration granted in part, 1 FCC Rcd 12 (1986); see also Moving Phones Partnership, L.P. v. FCC, 998 F.2d 1051, 1055–57 (D.C. Cir. 1993). Section 310(b) was amended in 1974 to eliminate the restriction on alien ownership of private radio licensees, Pub. L. 93–505, 88 Stat 1576; H.R. Report No. 93–1423, 93rd Cong., 2d Sess., reprinted in 1974 U.S. Code Cong. & Admin. News 6305, 6307. However, the ban on licensing radio facilities to foreign governments or representatives, established in section 310(a), still applies to all licensees.

[6] Notice, 8 FCC Rcd at 8002–03 ¶ 77.

[7] Id. at 8003 ¶ 78.

[8] Comments of Roamer One, Inc., at 15–16 (Nov. 8, 1993); see also id. at iii–iv.

[9] Id. at 15.

[10] Id.

[11] See Notice, 8 FCC Rcd at 7990–96 ¶¶ 10–40.

[12] See paragraph 3, supra.

[13] Petitioners must list all foreign partners regardless of whether they are general or limited partners, except that petitioners need not list a limited partner (1) whose level of ownership interest in the licensee does not exceed the level allowed by section 310(b), and (2) who is "insulated" from the management and control of the partnership. See, e.g., Wilner and Scheiner, supra, 103 FCC 2d at 517 n. 31, 520 n. 43; Attribution of Ownership Interests, Memorandum Opinion and Order in MM Docket No. 83–46, 58 RR 2d 604, 619–20 ¶¶ 48–50 (1985).

[14] For a definition of such corporations, see First Report and Order and Memorandum Opinion and Order on Reconsideration in CC Docket Nos. 90–6, 85–388, 6 FCC Rcd 6185, 6213 ¶ 63 (1991).

[15] See, e.g., Advanced Mobile Phone Inc., 54 RR 2d 354, 362 ¶ 29 (Com. Car. Bur. 1983) (applicant demonstrated sufficient compliance with the requirements of FCC Form 401 by indicating the percentage of its common stock held or voted by aliens, and by listing the identities of its ten largest stockholders and stating that none of them was an alien, and would not be required to circulate a questionnaire to all of its stockholders). The burden will be on any entity claiming such an onerous burden to explain why identifying individual shareholders would be extraordinarily burdensome.

[16] See note 4, supra. Thus, transfers to aliens that occurred after May 24 are not covered by the grandfathering provisions of the Budget Act even if they occurred before the Budget Act was enacted on August 10, 1993. Where such a transfer is found to create an ownership interest in violation of section 310(b), the licensee will be required to comply with section 310(b) with respect to that interest, regardless of whether alien ownership in the licensee that existed prior to May 24 is grandfathered.

[17] Licensees seeking to transfer their ownership or control would also be required to comply with section 310(d) of the Communications Act, 47 U.S.C. 310(d), and with applicable Commission rules.

[18] Notice, 8 FCC Rcd at 8002 ¶ 78 (emphasis added).

[19] See Section 1.913 of the Commission's Rules, 47 CFR 1.913.

[20] As noted previously, publicly traded corporations are not required to identify all individual stockholders when to do so would constitute an especially onerous burden. See notes 14–15, supra, and accompanying text.

sought; likewise, petitions must identify similarly situated foreign partners, officers, or directors of the licensee, regardless of whether they have any ownership interest in the licensee;

(2) as applicable, as of May 24, 1993, identify the following for each person or other entity (including officers, directors and partners) identified in (1) above: residence, citizenship, office or directorship held, number of shares or nature of partnership interests, number of votes, and percentage of votes; also, if the entity is other than an individual, petitions must also identify the name, address, and citizenship of the natural person authorized to vote the stock; and

(3) Answer the following:

(a) Have the ownership and other interests listed pursuant to (1) and (2) above remained the same since May 24, 1993?

(b) Have the officers, directors or partners continued to retain their positions since May 24, 1993?

If the answer to (a) or (b) is "No," please explain.

14. Petitioners must also certify that, in the case of an individual petitioner, he or she is not subject to a denial of federal benefits, that includes FCC benefits, pursuant to section 5301 of the Anti-Drug Abuse Act of 1988, 21 U.S.C. section 862, or, in the case of a non-individual petitioner, (e.g., corporation, partnership, or other unincorporated association), no party to the application is subject to a denial of federal benefits, that includes FCC benefits, pursuant to that section. For the definition of a "party" for these purposes, see 47 CFR 1.2002(b).

15. The Commission has no authority to extend the Congressionally mandated deadline date, so it is imperative that waiver petitions be filed on time. To be timely received, petitions must, by February 10, 1994, be either (1) hand-delivered to the offices of the FCC in Gettysburg, Pennsylvania, at the address below, or (2) received through the U.S. Mail or other mail delivery service at the address below.

Federal Communications Commission,
Attn: CMRS Foreign Ownership Waiver Petition, 1270 Fairfield Road, Gettysburg, Pennsylvania 17325—7245.

Licensees should file one original and two copies. These petitions do not require a filing fee.

VI. Final Regulatory Flexibility Analysis

16. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 604, the Commission's final analysis is as follows:

A. Need for, and Purpose of, This Action

As a result of recent legislation, certain private land mobile radio licensees will be reclassified as commercial mobile radio service licensees and will be subject to foreign ownership restrictions within the Communications Act of 1934, as amended. This present First Report and Order describes the procedure by which such licensees may file a waiver petition with the Commission to request retention of existing foreign ownership that would otherwise not be permitted.

B. Summary of the Issues Raised by the Public Comments in Response to the Initial Regulatory Flexibility Analysis

In regard to the foreign ownership issue addressed by this First Report and Order, no comments were submitted in response to our Initial Regulatory Flexibility Analysis.

C. Significant Alternatives Considered

No significant alternatives were considered.

VII. Ordering Clauses

17. Accordingly, *It is Ordered That*, pursuant to the authority of sections 4(i), 303(r), and 332(c)(6) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(r), and 332(c)(6), this First Report and Order is adopted, effective upon publication in the **Federal Register.**[21]

18. For further information on filing a waiver petition, contact the Private Radio Bureau, Licensing Division, Consumer Assistance Branch, (717) 337–1212. For further information regarding this First Report and Order, contact Carmen Cintron at (202) 632–6450 (Common Carrier Bureau, Mobile Services Division) or Eric Malinen at (202) 632–6497 (Private Radio Bureau, Land Mobile and Microwave Division).

Federal Communications Commission.
William F. Caton,
Acting Secretary.

[FR Doc. 94–511 Filed 1–7–94; 8:45 am]
BILLING CODE 6712–01–M

[21] In light of the statutory deadline for filing petitions, we find that there is good cause to make this action effective immediately upon publication in the **Federal Register.**

DEPARTMENT OF DEFENSE

48 CFR Parts 225 and 252

Defense Federal Acquisition Regulation Supplement; North American Free Trade Agreement Implementation Act

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for public comments.

SUMMARY: The Director of Defense Procurement is issuing an interim rule amending the Defense Federal Acquisition Regulation Supplement (DFARS) to integrate Buy American Act and Balance of Payments Program waivers necessitated by the North American Free Trade Agreement Implementation Act with similar existing Department of Defense waivers for countries with memoranda of understanding or other international agreements.

DATES: *Effective Date:* January 1, 1994. This rule applies to solicitations issued on or after January 1, 1994.

Comment Date: Comments on the interim DFARS rule should be submitted in writing to the address shown below on or before February 9, 1994, to be considered in the formulation of a final rule. Please cite DFARS Case 93–D310 in all correspondence related to this issue.

ADDRESSES: Interested parties should submit written comments to The Defense Acquisition Regulations Council, ATTN: Mrs. Alyce Sullivan, OUSD (A&T)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mrs. Alyce Sullivan, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Chapter Ten of the North American Free Trade Agreement (NAFTA) Implementation Act of 1993 requires the United States, Canada, and Mexico to eliminate "buy national" restrictions on non-defense related purchases by the federal governments. NAFTA is being implemented in the Federal Acquisition Regulation but also requires revision of the DFARS to integrate Buy American Act and Balance of Payments Program waivers necessitated by NAFTA with similar existing Department of Defense waivers for countries with memoranda of understanding or other international agreements.

B. Regulatory Flexibility Act

The interim rule may have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because the rule waives the Buy American Act for certain Mexican and Canadian products. An Initial Regulatory Flexibility Analysis (IRFA) has been prepared and will be provided to the Chief Counsel for Advocacy for the Small Business Administration. Comments are invited. Comments from

small entities concerning the affected DFARS subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and cite DFARS Case 93–610 in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act applies because the provisions at 252.225–7006, Buy American Act-Trade Agreements-Balance of Payments Program Certificate, and 252.225–7035, Buy American Act-North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate, require offerors to list the line item number and country of origin for any end product other than a domestic end product. Accordingly, a request for clearance of a new information collection requirement concerning the North American Free Trade Agreement Act is being submitted to the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. This action is necessary because the North American Free Trade Agreement Implementation Act, signed into law on December 8, 1993, becomes effective on January 1, 1994. However, pursuant to Public Law 98–577 and Federal Acquisition Regulation 1.501, public comments received in response to this interim rule will be considered in formulating the final rule.

List of Subjects in 48 CFR Parts 225 and 252

Government procurement.

Claudia L. Naugle,
Executive Editor, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 225 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 225 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR subpart 1.3.

PART 225—FOREIGN ACQUISITION

2. Section 225.000–70 is amended by revising paragraph (m) to read as follows:

225.000–70 Definitions.

As used in this part—

* * * * *

(m) *U.S. made end product* is defined in the clause at 252.225–7007, Trade Agreements.

3. Section 225.000–71 is amended by revising paragraphs (a)(2) and (c)(1) to read as follows:

225.000–71 General guidelines.

* * * * *

(a) *Statutory or policy restrictions.*

* * * * *

(2) Where an exception to or waiver of a restriction would result in award of a foreign end product, apply the policies and procedures of the Buy American Act or the Balance of Payments Program, and, if applicable, the trade agreements.

* * * * *

(c) *Trade agreements.* (1) Determine whether the product is covered by the Trade Agreements Act or the North American Free Trade Agreement Implementation Act (see subpart 225.4).

* * * * *

4. Section 225.105 (3) and (5)(ii)(A) are revised to read as follows:

225.105 Evaluating offers.

* * * * *

(3) Treat offers of eligible products under acquisitions subject to the Trade Agreements Act or NAFTA as if they were qualifying country offers. (See Example 4 of Table 25–1, Evaluation.)

* * * * *

(5) * * *

(ii) * * *

(A) "U.S. made end product" under trade agreements;

* * * * *

5. Section 225.109(a) is revised to read as follows:

225.109 Solicitation provisions and contract clauses.

(a) Use the provision at 252.225–7000, Buy American Act—Balance of Payments Program Certificate, instead of the provisions at FAR 52.225–1, Buy American Certificate, and FAR 52.225–6, Balance of Payments Program Certificate. Use the provision in any solicitation which includes the clause at 252.225–7001, Buy American Act and Balance of Payments Program, unless the solicitation includes either the clause at 252.225–7007, Trade Agreements Act, or the clause at 252.225–7036, North American Free Trade Agreements Implementation Act.

* * * * *

6. Section 225.401 is revised to read as follows:

225.401 Definitions.

Eligible product means, instead of the definition at FAR 25.401, a designated, NAFTA, or Caribbean Basin country end product in the categories listed in 225.403.70.

7. Section 225.402 is amended by revising paragraphs (c) (i) and (ii) to read as follows:

225.402 Policy.

* * * * *

(c)(i) Except as provided in paragraph (c)(ii) of this section, do not purchase nondesignated country end products subject to the Trade Agreements Act unless they are NAFTA, Caribbean Basin or qualifying country end products (see 225.872–1).

(ii) National interest waivers under section 302(b)(2) of the Trade Agreements Act are approved on a case-by-case basis. Except as delegated in paragraphs (c)(ii) (A), (B), and (C) of this section, a request for a national interest waiver shall include supporting rationale and be submitted under department/agency procedures to the Director of Defense Procurement.

* * * * *

8. Section 225.403–70 is amended by revising the introductory paragraph and by removing Federal Supply Group (FSG) 52, and the Category/Description of Measuring tools, to read as follows:

225.403–70 Products subject to trade agreement acts.

Foreign end products subject to the Trade Agreements Act and NAFTA are those in the following Federal supply groups (FSG). If a product is not in one of the listed groups, the Trade Agreements Act and NAFTA do not apply. As noted in FAR 25.401, Caribbean Basin country end products are those in the following Federal supply groups (FSG) which are eligible for duty-free treatment under 19 U.S.C. 2703(b). The list of products has been annotated to indicate those products which, due to this limitation, are eligible for designated and NAFTA countries, but are not presently eligible for Caribbean Basin countries.

* * * * *

225.407 [Amended]

9. Section 225.407 is redesignated as 225.408; paragraphs (a)(1) and (a)(2)(A) of newly designated section 225.408 are amended by removing the word "Act" wherever it appears after "Trade Agreements"; and new paragraphs (a) (3) and (4) are added, to read as follows:

225.408 Solicitation provision and contract clause.

(a) * * *

(3) Use the provision at 252.225–7035, Buy American Act—North American Free Trade Agreement Implementation

Act—Balance of Payments Program Certificate, instead of the provision at FAR 52.225–20, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, in all solicitations that include the clause at 252.225–7036, North American Free Trade Agreement Implementation Act.

(4) (A) Use the clause at 252.225–7036, North American Free Trade Agreement Implementation Act, instead of the clause at FAR 52.225–21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B) Use the clause in all solicitations and contracts for the items listed at 225.403–70, when the estimated value is $50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(C) Application of the procedures in 225.402(a) and the acquisition of noneligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

10. Section 225.602(3)(ii) is revised to read as follows:

Subpart 225.6—Customs and Duties

225.602 Policy.

* * * * *

(3) * * *

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act or NAFTA; and

* * * * *

11. Section 225.603 is amended to add new paragraph (1)(ii)(C), and to revise paragraph (1)(iii)(C)(*3*) to read as follows:

225.603 Procedures.

* * * * *

(1) * * *

(ii) * * *

(C) 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies; or

* * * * *

(iii) * * *

(C) * * *

(*3*) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225–10, Duty-Free Entry, and 252.225–7009, Duty-Free Entry—Qualifying Country End Products and Supplies, and 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, to the extent practicable.

* * * * *

12. Section 225.605–70 is amended by redesignating paragraph (c) as paragraph (d), and adding new paragraph (c) to read as follows:

225.605–70 Additional solicitation provisions and contract clauses.

* * * * *

(c) Use the clause at 252.225–7037, Duty-Free Entry—NAFTA Country End Products and Supplies, in all solicitations and contracts for supplies and services when the clause at FAR 52.225–10, Duty-Free Entry, is not used and NAFTA applies (see 225.403–70).

* * * * *

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

13. Section 252.225–7001 is amended by revising the clause heading and paragraph (c) to read as follows:

252.225–7001 Buy American Act and Balance of Payments Program.

As prescribed in 225.109(d), use the following clause:

Buy American Act and Balance of Payments Program (January 1994)

* * * * *

(c) The Contractor agrees that it will deliver only domestic end products unless, in its offer, it specified delivery of other end products in the Buy American Act and Balance of Payments Certificate or the Buy American Act—Trade Agreements—Balance of Payments Program Certificate. An offer certifying that a qualifying country end product will be supplied requires the Contractor to deliver a qualifying country end product or a domestic end product.

* * * * *

(End of clause)

14. Section 252.225–7006 is amended by revising the section heading, the clause title, and paragraph (a); paragraph (b) is revised; paragraph (c)(2)(v) is redesignated as paragraph (vi) and reprinted for the convenience of the reader; and a new paragraph (c)(2)(v) is added, to read as follows:

252.225–7006 Buy American Act—Trade Agreements—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(1), use the following provision:

Buy American Act—Trade Agreements—Balance of Payments Program Certificate (Jan. 1994)

(a) *Definitions.*

Caribbean Basin country end product, designated country end product, domestic end product, NAFTA country end product, nondesignated country end product, qualifying country end product, and *U.S. made end product* have the meanings given in the Trade Agreements or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.*

Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products over other end products.

(c) *Certifications.* * * *

(v) The Offeror certifies that the following supplies qualify as NAFTA country end products: *(insert line item number) (insert country of origin).*

(vi) The Offeror certifies that the following supplies are other nondesignated country end products. *(insert line item number) (insert country of origin).* (End of provision)

15. Section 252.225–7007 is amended by revising the section heading and clause title; to revise the introductory language; to redesignate current paragraphs (a)(5), (6), and (7) as (a)(7), (8), and (9) respectively and add new paragraphs (a)(5) and (6); to revise newly designated paragraph (a)(9)(ii); and to revise paragraphs (b), (c), and (d), to read as follows:

252.225–7007 Trade Agreements.

As prescribed in 225.408(a)(2), use the following clause:

Trade Agreements (Jan. 1994)

(a) * * *

(5) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of the NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(6) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

* * * * *

(9) * * *

* * * * *

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the Trade Agreements Act of 1979 (19 U.S.C. 2501 *et seq.*), the North American Free Trade Agreement Implementation Act of 1993, and the Caribbean Basin Initiative by providing a preference for U.S. made end products and designated country end products over nondesignated country end products, except nondesignated country end products which are qualifying country end products, NAFTA country end products, or Caribbean Basin end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or nondesignated country end products in the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision.

(1) Offerors may not supply a nondesignated country end product unless it is a qualifying country end product, NAFTA country end product, or Caribbean Basin country end product, or a national interest waiver has been granted under section 302 of the Trade Agreements Act of 1979 (see FAR 25.402(c)).

(2) An offer certifying that a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product will be supplied, requires the Contractor to supply a qualifying country end product, a designated country end product, a NAFTA country end product, or a Caribbean Basin country end product, whichever is certified, or, at the Contractor's option, a U.S. made end product.

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (vi) of the Buy American Act—Trade Agreements—Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products, designated country end products, NAFTA country end products, and Caribbean Basin country end products for line items subject to the Trade Agreements Act or the North American Free Trade Agreement Implementation Act, should not include customer fees or duty. (End of clause)

16. Section 252.225–7010 is amended by revising the introductory text to read as follows:

252.225–7010 Duty Free Entry—Additional Provisions.

As prescribed in 225.605–70(d), use the following clause:

* * * * *

17. A new section 252.225–7035 is added to read as follows:

252.225–7035 Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate.

As prescribed in 225.408(a)(3), use the following provision:

Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate (Jan. 1994)

(a) *Definitions.*

Domestic end product, qualifying country end product, and *U.S. made end product* have the meanings given in the North American Free Trade Agreement Implementation Act or Buy American Act and Balance of Payments Program clauses of this solicitation.

(b) *Evaluation.*

Offers will be evaluated by giving preference to U.S. made end products, qualifying country end products, or NAFTA country end products over other end products.

(c) *Certifications.*

(1) The Offeror certifies that—

(i) Each end product, except the end products listed in paragraph (c)(2) of this provision, is a domestic end product (as defined in the Buy American Act and Balance of Payments Program clause of this solicitation); and

(ii) Components of unknown origin are considered to have been mined, produced, or manufactured outside the United States or a qualifying country.

(2) The Offeror must identify and certify all end products that are not domestic end products.

(i) The Offeror certifies that the following supplies qualify as "U.S. made end products" but do not meet the definition of "domestic end product": *(insert line item number).*

(ii) The Offeror certifies that the following supplies are qualifying country end products: *(insert line item number) (insert country of origin).*

(iii) The Offeror certifies that the following supplies qualify as NAFTA country end products: *(insert line item number (insert country of origin).*

(iv) The Offeror certifies that the following supplies are other non-NAFTA country end products: *(insert line item number) (insert country of origin).* (End of provision)

18. A new section 252.225–7036 is added to read as follows:

252.225–7036 North American Free Trade Agreement Implementation Act.

As prescribed in 225.408(a)(4), use the following clause:

North American Free Trade Agreement Implementation Act (Jan. 1994)

(a) *Definitions.*

(1) *Components, domestic end product, end product, nonqualifying country, qualifying country,* and *qualifying country end product* have the meanings given in the Buy American Act and Balance of Payments Program clause of this contract.

(2) *North American Free Trade Agreement (NAFTA) country* means Canada or Mexico.

(3) *NAFTA country end product* means an article that—

(i) Is wholly the growth, product, or manufacture of a NAFTA country; or

(ii) Has, in the case of an article which consists in whole or in part of materials from another country or instrumentality, been substantially transformed in a NAFTA country into a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed. The term includes services (except transportation services) incidental to its supply, provided that the value of those incidental services does not exceed the value of the product itself. It does not include service contracts as such.

(4) *Non-NAFTA country end product* means any end product which is not a U.S. made end product or a NAFTA country end product.

(5) *United States* means the United States, its designated possessions, Puerto Rico, and any other place subject to its jurisdiction, but does not include leased bases or trust territories.

(6) *U.S. made end product* means an article which is—

(i) Wholly the growth, product or manufacture of the United States, or

(ii) In the case of an article which consists in whole or in part of materials from another country or instrumentality, has been substantially transformed in the United States into a new and distinct article of commerce with a name, character, or use distinct from that of the article or articles from which it was so transformed.

(b) This clause implements the North American Free Trade Agreement Implementation Act of 1993 by providing a preference for U.S. made end products and NAFTA country end products over non-NAFTA country end products, except non-NAFTA country end products which are qualifying country end products.

(c) The Contractor agrees to deliver under this contract only U.S. made end products unless, in its offer, it specified delivery of qualifying country, NAFTA country, or non-NAFTA country end products in the Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate provision. An offer certifying that a qualifying country end product or a NAFTA country end product will be supplied requires the Contractor to supply a qualifying country end product or a NAFTA country end product, whichever is certified, or, at the Contractor's option, a U.S. made end produce.

(d) The offered price of end products listed and certified under paragraphs (c)(2)(i) and (iv) of the Buy American Act—North American Free Trade Agreement Implementation Act-Balance of Payments Program Certificate provision of the solicitation must include all applicable duty. The offered price of qualifying country end products or NAFTA country end products for line items subject to the North American Free Trade Agreement Implementation Act, should not include custom fees or duty. (End of clause)

19. A new section 252.225–7037 is added to read as follows:

252.225-7037 Duty-Free Entry—NAFTA Country End Products and Supplies.

As prescribed in 225.605-70(c), use the following clause:

Duty-Free Entry—NAFTA Country End Products and Supplies (Jan. 1994)

(a) *Definitions.*

NAFTA country and *NAFTA country end products* have the meaning given in the North American Free Trade Agreement Implementation Act clause of this contract.

(b) The requirements of this clause apply to this contract and subcontracts, including purchase orders, that involve supplies to be accorded duty-free entry whether—

(1) Placed directly with a foreign concern as a prime contract; or

(2) As a subcontract or purchase order under a contract placed with a domestic concern.

(c) Except as otherwise approved by the Contracting Officer, no amount is or will be included in the contract price for duty for NAFTA country end products.

(d) The Contractor warrants that—

(1) All NAFTA country supplies, for which duty-free entry is to be claimed, are intended to be delivered to the Government; and

(2) The Contractor will pay duty to the extent that such supplies, or any portion thereof (if not scrap or salvage) are diverted to nongovernmental use, other than as a result of a competitive sale made, directed, or authorized by the Contracting Officer.

(e) The Government agrees to execute duty-free entry certificates and to afford such assistance as appropriate to obtain the duty-free entry of NAFTA country supplies for which the shipping documents bear the notation specified in paragraph (f) of this clause, except as the Contractor may otherwise agree.

(f) All shipping documents submitted to Customs, covering foreign end products or supplies for which duty-free entry certificates are to be issued under this clause, shall—

(1) Consign the shipments to the appropriate—

(i) Military department in care of the Contractor, including the Contractor's delivery address; or

(ii) Military installation; and

(2) Include the following information—

(i) Prime contract number, and delivery order if applicable;

(ii) Number of the subcontract/purchase order for foreign supplies if applicable;

(iii) Identification of carrier;

(iv) The notation: *United States Government, Department of Defense Duty-Free Entry* to be claimed pursuant to Section XXII, Chapter 98, Subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States. Upon arrival of shipment at the appropriate port of entry, District Director of Customs, please release shipment under 19 CFR part 142, and notify Commander, Defense Contract Management Area Operations (DCMAO) New York, ATTN: Customs Division, International Logistics Office, 201 Varick Street, New York, NY 10014, for execution of Customs Forms 7501, 7501A, or 7506 and any required duty-free entry certificates. (Note: This notation shall be used only for direct shipments to a U.S. military installation. In cases where the shipment will be consigned to other than a military installation, e.g., a domestic contractor's plan, the shipping document notation shall be altered to insert the name and address of the contractor, agent or broker who will notify Commander, DCMAO, NY, for execution of the duty-free certificate.)

(v) Gross weight in pounds (if freight is based on space tonnage, state cubic feet in addition to gross shipping weight);

(vi) Estimated value in U.S. dollars; and

(vii) Activity Address Number of the contract administration office actually administering the prime contract, e.g., for DCMAO Dayton, DLA8DP.

(g) *Preparation of customs forms.*

(1) Except for shipments consigned to a military installation, the contractor shall prepare, or authorize an agent to prepare, any customs forms required for the entry of foreign supplies in connection with DoD contracts into the United States, its possessions, or Puerto Rico. Submit the completed customs forms to the District Director of Customs with a copy to DCMAO NY for execution of any required duty-free entry certificates. Shipments consigned directly to a military installation will be released in accordance with 10.101 and 10.102 of the U.S. Customs regulations.

(2) For shipments containing both supplies which are to be accorded duty-free entry and supplies which are not, the Contractor shall identify on the customs forms those items that are eligible for duty-free entry.

(h) The Contractor agrees—

(1) To prepare (if this contract is placed directly with a foreign supplier), or to instruct the foreign supplier to prepare, a sufficient number of copies of the bill of lading (or other shipping document) so that at least two of the copies accompanying the shipment will be available for use by the District Director of Customs at the port of entry;

(2) To consign the shipment as specified in paragraph (f) of this clause; and

(3) To mark the exterior of all packages as follows:

(i) "United States Government, Department of Defense;" and

(ii) The activity address number of the contract administration office actually administering the prime contract.

(i) The Contractor agrees to notify the Contracting Officer administering the prime contract in writing of any purchase under the contract of NAFTA country supplies to be accorded duty-free entry that are to be imported into the United States for delivery to the Government or for incorporation in end items to be delivered to the Government. The notice shall be furnished to the contract administration office immediately upon award to the qualifying country supplier. The notice shall contain—

(1) Prime contractor's name, address, and CAGE code;

(2) Prime contract number, and delivery order number if applicable;

(3) Total dollar value of the prime contract or delivery order;

(4) Expiration date of the prime contract or delivery order;

(5) Foreign supplier's name and address;

(6) Number of the subcontract/purchase order for NAFTA supplies;

(7) Total dollar value of the subcontract for NAFTA supplies;

(8) Expiration date of the subcontract for NAFTA supplies;

(9) List of items purchased; and

(10) Certification by the purchaser of NAFTA supplies as follows: I certify that all supplies for which duty-free entry is to be claimed are intended to be delivered to the Government or incorporated in the end items to be delivered under this contract, and that duty shall be paid by the Contractor to the extent that such supplies, or any portion (if not scrap or salvage) are diverted to nongovernmental use other than as a result of a competitive sale made, directed or authorized by the Contracting Officer; and

(11) The scheduled delivery date(s).

(j) This clause does not apply to purchases of NAFTA country supplies in connection with this contract if—

(1) The NAFTA country supplies are identical in nature to supplies purchased by the Contractor or any subcontractor in connection with its commercial business; and

(2) It is not economical or feasible to account for such supplies so as to ensure that the amount of the supplies for which duty-free entry is claimed does not exceed the amount purchased in connection with this contract.

(k) The Contractor agrees to insert the substance of this clause, including this paragraph (k) in all subcontracts for supplies. Each subcontract shall require the subcontractor to identify this contract by including its contract number on any shipping documents submitted to Customs covering supplies for which duty-free entry is to be claimed pursuant to this clause. The Contractor also agrees that the name and address of the Contracting Officer administering the prime contract (name and address of the contract administration office cognizant of the prime contract), and its activity address number (Appendix G of the Defense FAR Supplement), and the information required by paragraphs (i) (1), (2), and (3) of this clause will be included in applicable subcontracts. (End of clause)

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Proposed Rules

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 701

RIN 0560-AD08

Conservation and Environmental Programs

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule revises the Agricultural Stabilization and Conservation Service (ASCS) regulations governing the Agricultural Conservation Program (ACP), Emergency Conservation Program (ECP), and the Forestry Incentives Program (FIP). This proposed rule incorporates amendments made to the ACP, ECP, and FIP; revises procedures to reflect current policies; and incorporates the Water Quality Incentive Projects (WQIP) into the ACP.

DATES: Comments must be received on or before February 9, 1994 in order to be assured of consideration.

ADDRESSES: Send comments on this proposed rule to Director, Conservation and Environmental Protection Division, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013-2415. All written submissions made pursuant to this rule will be available for further inspection in room 4714, South Building, USDA, between the hours of 8:15 a.m. and 4:45 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Chief, Conservation and Environmental Activities Branch, Conservation and Environmental Protection Division, ASCS, USDA, P.O. Box 2415, Washington, DC 20013-2415, telephone 202-720-7333.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

Information collection requirements contained in the current regulation at 7 CFR part 701 have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35 and have been assigned OMB Number 0560-0082. ASCS will resubmit these requirements to OMB for review in light of the amendments set forth in this proposed rule.

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this proposed rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the Presidents's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The titles and numbers of the Federal Assistance Programs, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Agricultural Conservation Program (ACP)—10.063; Emergency Conservation Program (ECP)—10.054; and Forestry Incentives Program (FIP)—10.064.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this rule since ASCS is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment, health, and safety. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and preempt State laws to the extent they are not consistent with the provisions of this proposed rule. Before any judicial action may be brought regarding the provisions of this proposed rule, the administrative appeal provisions of 7 CFR part 780 must be exhausted.

Background

The ACP is authorized generally by Sections 7-17 of the Soil Conservation and Domestic Allotment Act as amended (the Act) (16 U.S.C. 2590g *et seq.*). The program provides financial and technical assistance to encourage agricultural producers to voluntarily perform enduring soil and water conservation, water quality, and pollution abatement measures, including practices or programs which are deemed essential to maintain soil productivity, prevent soil depletion, maintain water quality, or prevent increased cost of production.

A WQIP is authorized by the Food, Agriculture, Conservation, and Trade Act of 1990 (16 U.S.C. 3831 *et seq.*). However, Congress funded WQIP as a part of the ACP. Accordingly, the WQIP is a voluntary incentive program conducted pursuant to the Act to develop and implement agricultural water quality protection plans on up to 10 million acres.

The ECP is authorized by the Agricultural Credit Act of 1978 (16 U.S.C. 2201 *et seq.*). This program is designed to provide cost-share

assistance for emergency restoration work to meet only the critical needs of agricultural producers due to drought or other natural disaster.

The FIP is authorized by section 4 of the Cooperative Forestry Assistance Act of 1978 (16 U.S.C. 2103) and is designed to increase the nation's supply of timber products from private nonindustrial forest lands. The purpose of FIP is to encourage private landowners to apply forestry practices that will provide for afforestation of suitable open lands and reforestation of cut-over or other nonstocked forest lands and to encourage intensive multi-purpose forest resource management and protection so as to provide for cost-effective timber production and other related forest resources needs.

The regulation governing these programs is being restructured and simplified to provide an easier and more effective structure for the use of this regulation. The ACP is being revised to:

(1) Incorporate several amendments that have been published in the **Federal Register**;

(2) Incorporate the WQIP;

(3) Clarify that producers wanting to participate with practice WP4, Agricultural Waste Control Facilities, must have been in operation for at least 5 years;

(4) Adjust the LTA payment limitation to reflect that the payment limitation shall be based on the number of years remaining on the LTA; and

(5) reflect that payments shall be based on attribution. The ECP is being revised to:

(1) Reflect that the Disaster Assistance Act of 1989 (16 U.S.C. 2202) authorized assistance for confined livestock operations; and

(2) Define land subject to frequent damage which is ineligible for cost-share assistance.

The FIP is being restructured for clarity.

Currently, ACP practices are prioritized locally by county Agricultural Stabilization and Conservation committees to ensure that the most severe conservation and environmental problems are addressed. However, this county committee prioritization process has been criticized as not addressing the most severe conservation and environmental problems. Therefore, comments are requested regarding the manner in which ACP practices and allocation of funds could be prioritized to achieve greater conservation and environmental benefits at the least Federal cost. Although not exclusive, such considerations for prioritization may be based on temporary versus longer-term practices or type of conservation or environmental benefit. Further, consideration should be given to whether priorities should be established by the National, State, or county Agricultural Stabilization and Conservation Service offices. Moreover, for ACP, ECP and FIP, comments are requested on ways in which the programs can best be targeted in order to ensure that public benefits, rather than private benefits are maximized with Federal expenditures. For example, the use of ACP for temporary practices may not provide large public benefits.

Comments are requested as to whether funds should be targeted toward designated areas with impaired water quality. Similarly, cost-share practices could be selected for a region where they will contribute to an identified problem. Thus, nutrient management practices would be designated as a cost-share option in areas where nutrients have been identified as a water quality problem.

List of Subjects in 7 CFR Part 701

Disaster assistance, Forest and forest products, Grant programs—agriculture, Grant programs—natural resources, Reporting and recordkeeping requirements, Rural areas, Soil conservation, Water resources, Wildlife.

For the reasons set forth in the preamble, 7 CFR Part 701 is proposed to be revised to read as follows:

PART 701—CONSERVATION AND ENVIRONMENTAL PROGRAMS

Subpart A—General Provisions

Sec.

701.1 Background.
701.2 Administration.
701.3 Definitions.
701.4 Restriction on program eligibility.
701.5 Practice specifications.
701.6 Responsibility for referred technical phases of practices.
701.7 Items of costs on which rates of cost-share assistance may be based.
701.8 Repair, upkeep, and maintenance of practices.
701.9 Public benefits when installing practices.
701.10 Payments for uncompleted practices.
701.11 Practices involving the establishment or improvement of vegetative cover.
701.12 Failure to meet minimum requirements or failure to comply fully with program provisions.
701.13 Practices carried out with aid from ineligible persons.
701.14 Division of cost-share assistance.
701.15 Applying cost-share assistance limitations.
701.16 Persons eligible to file application for payment of cost-share assistance.
701.17 Time and manner of filing application and required information.
701.18 Death, incompetency, or disappearance.
701.19 Appeals.
701.20 Performance based on advice or action of COC or STC.
701.21 Compliance with regulatory measures.
701.22 Maintenance and use of practice.
701.23 Actions defeating purpose of program.
701.24 Depriving others of cost-share assistance.
701.25 Filing false claims.
701.26 Cost-share assistance not subject to claims.
701.27 Assignments.
701.28 Environmental considerations.
701.29 Information collection requirements.
701.30–701.99 [Reserved]

Subpart B—Agricultural Conservation Program

701.100 Program objective.
701.101 State funds.
701.102 County funds.
701.103 Availability of funds.
701.104 Eligible person.
701.105 Eligible land.
701.106 Conservation practices.
701.107 County programs.
701.108 State programs.
701.109 Selection of practices.
701.110 Levels and rates of cost-share assistance.
701.111 Starting practices.
701.112 Method of approval.
701.113 Long-term agreements.
701.114 Replacement, enlargement, or restoration.
701.115 Pooling agreements.
701.116 Special provisions for low-income farmers and ranchers.
701.117 Maximum cost-share assistance limitation.
701.118 Completion of practices.
701.119 Time of filing payment application.
701.120 Water Quality Incentive Projects.
701.121–701.199 [Reserved]

Subpart C—Emergency Conservation Program

701.200 Program objective.
701.201 Program availability.
701.202 Eligibility of person and land.
701.203 Emergency Conservation Program practices.
701.204 Practice approval.
701.205 Extent of cost-share assistance.
701.206 Eligible costs.
701.207 Filing requests.
701.208 Approving requests.
701.209 Pooling agreements.
701.210 Payment approval.
701.211–701.299 [Reserved]

Subpart D—Forestry Incentives Program

701.300 Program objective.
701.301 Designated counties.
701.302 Eligible person, land, and ownerships.
701.303 Program funds.
701.304 Eligible practices and cost-share assistance requirements.
701.305 The national FIP.
701.306 Development of State FIP.
701.307 Development of county FIP.
701.308 Adaptation of practices.
701.309 Levels and rates of cost-share assistance.
701.310 Prior approval for cost-share assistance.
701.311 Methods of approval.
701.312 Long-term agreements.
701.313 Restoration of practices.
701.314 FIP maximum cost-share assistance limitations.
701.315 Completion of practice.
701.316 Time of filing payment application.
701.317–701.399 [Reserved]

Authority: 16 U.S.C. 590d, 590g–590o, 590p(a), 590q, 1501–1510, 1606, 2101–2111, 2201–2205, 3831; 48 U.S.C. 1469d(c).

Subpart A—General Provisions

§ 701.1 Background.

(a) Through the conservation and environmental programs administered by the Department of Agriculture, the Federal Government will share with farmers, ranchers, and other eligible private landowners in the United States and the applicable territories and possessions of the United States, the cost of performing:

(1) Approved soil and water conservation, water quality, and pollution abatement practices including related wildlife conservation practices.

(2) Emergency conservation measures.

(3) Approved forestry practices.

(b) The Federal Government will provide incentive payments to farmers, ranchers, and other private landowners in applicable areas of the United States to establish Water Quality Incentive Projects (WQIP) practices.

(c) Cost-share assistance or incentive payments may be made available to eligible program participants by the Agricultural Stabilization and Conservation Service (ASCS) for:

(1) Soil and water conservation, water quality, and pollution abatement practices under the Agricultural Conservation Program (ACP) which includes WQIP.

(2) Practices to correct damage to land or conservation practices caused by natural disaster under the Emergency Conservation Program (ECP).

(3) Installation of water conservation measures under the ECP during periods of severe drought.

(4) Forestry practices under the ACP and the Forestry Incentives Program (FIP).

(d) Information on the practices for which costs will be shared, the exact specifications and rates of cost-share assistance for such practices, and the eligibility requirements for participating in the programs, may be obtained from the County Agricultural Stabilization and Conservation (ASC) Committee (county committee) for the county in which the farm, ranch, or other eligible land is administered or from the State ASC committee (State committee) for the State in which such county is located.

(e) The provisions at subpart A apply to the programs specified in subparts B through D.

§ 701.2 Administration.

(a) The regulations in this part will be administered under the general supervision of the Administrator, ASCS and shall be carried out in the field by State and county Agricultural Stabilization and Conservation committees (State and county ASC committees).

(b) State and county ASC committees, and representatives and employees thereof do not have the authority to modify or waive any of the provisions of the regulations of this part.

(c) The State ASC committee shall take any action required by these regulations which has not been taken by the county ASC committee. The State ASC committee shall also:

(1) Correct, or require a county ASC committee to correct any action taken by such county ASC committee which is not in accordance with the regulations of this part, or

(2) Require a county ASC committee to withhold taking any action which is not in accordance with the regulations of this part.

(d) No provision or delegation herein to a State or county ASC committee shall preclude the Administrator, ASCS, or a designee, from determining any question arising under the regulations of this part or from reversing or modifying any determination made by a State or county ASC committee.

§ 701.3 Definitions.

(a) The terms defined in part 719 of this chapter shall be applicable to this part and all documents issued in accordance with this part, except as otherwise provided in this section.

(b) The following definitions shall apply to this part:

ACP means the Agricultural Conservation Program.

Applicant means a person who submits to ASCS an intention to participate in a cost-share program.

ASCS means the Agricultural Stabilization and Conservation Service of the United States Department of Agriculture.

Conservation District (CD) means a subdivision of a State organized pursuant to an applicable State Conservation District law or in instances where a CD does not exist, the State Conservationist of the Soil Conservation Service.

Cost-share payment means the payment made by ASCS to producers who complete an approved program practice.

County committee (COC) means the Agricultural Stabilization and Conservation county committee of the ASCS.

County Conservation Review Group (CCRG) consists of the county ASC committee; the county extension agent; a Soil Conservation Service (SCS) representative; a Forest Service (FS) representative; a Farmers Home Administration representative; a representative of the State forestry agency or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the CD in the county, where the governing board of the district accepts an invitation to designate a representative (if there is more than one district in the county, the governing boards of the districts may jointly designate one person to represent all the districts). The CCRG shall have the responsibilities as provided for in §§ 701.107 and 701.307.

CPO means the conservation plan of operations developed for the participant by the SCS.

Deputy Administrator means the Deputy Administrator, State and County Operations, or designee, of the ASCS.

ECP means the Emergency Conservation Program.

Eligible person means a person who meets all program eligibility requirements and is eligible to participate and receive assistance.

Farm or ranch means that area of land considered as a farm under the regulations governing reconstitution of farms, allotments, and bases, at part 719 of this chapter, as amended, for ACP, ECP, and WQIP, and, for the FIP, farm or ranch means eligible land (or ownership tracts) as provided in § 701.302.

FIP means the Forestry Incentives Program.

FS means the Forest Service of the United States Department of Agriculture.

Incentive payment means, unless the context indicates otherwise, the incentive payment specified in the WQIP agreement which, subject to the availability of funds, is made to a participant to compensate such participant who implemented conservation practices or management changes that reduce agricultural pollutants.

National Conservation Review Group (NCRG) consists of representatives of

the ASCS; SCS; U.S. Forest Service; Extension Service; Economic Research Service; Farmers Home Administration; Agricultural Research Service; Office of General Counsel, U.S. Department of Agriculture; Office of Budget, Planning and Analysis, U.S. Department of Agriculture; Environmental Protection Agency; Office of Management and Budget; and Fish and Wildlife Service, U.S. Department of the Interior (DOI). The NCRG is responsible for recommending changes to the Administrator, ASCS, in program administrative procedures and policy guidelines, and evaluations of program effectiveness and operating arrangements.

Participant means an owner, operator, landlord, tenant, or sharecropper of a farm or ranch who shares in the cost of the practice and who will receive cost-share or incentive assistance.

Program year means the Federal fiscal year for accounting purposes.

SCS means the Soil Conservation Service of the United States Department of Agriculture.

State means any one State of the United States, Puerto Rico, the Virgin Islands, and:

(1) In the case of the ACP and ECP, Guam, the American Samoa, and the Commonwealth of the Northern Mariana Islands; and

(2) In the case of the FIP, Guam, the American Samoa, the Commonwealth of the Northern Mariana Islands, the Trust Territory of the Pacific Islands and the territories and possessions of the United States.

State committee (STC) means the ASCS State Agricultural Stabilization and Conservation Committee.

State Conservation Review Group (SCRG) consists of the STC, the State Director of Extension; the State Conservationist of the SCS; a representative of the U.S. Forest Service; a representative of the Farmers Home Administration; a representative of the State forestry agency, or its equivalent, when the representative accepts an invitation to be a member of the group; a representative of the State Soil Conservation Committee, or its equivalent, when the representative accepts an invitation to be a member of the group; and a representative of the State water quality agency, or its equivalent when it accepts an invitation to be a member of the group. The SCRG has the responsibility provided for in § 701.108.

State Forestry Committee, or its equivalent, consists of the State forester or equivalent State official, who serves as chairperson; and a representative at the State level of the following USDA agencies: ASCS; FS; Extension Service; Farmers Home Administration; and SCS. At the discretion of the State Forestry Committee, State and local interests may also be involved. The function of the State Forestry Committee is to coordinate forestry budget proposals, agency roles in education, technical assistance, technology transfers, and forestry incentives.

WQIP means the Water Quality Incentive Projects authorized under the ACP.

WQIP Agreement means the program agreement including the applicable water quality resource management plan entered into between ASCS and the participant. Such agreement shall set forth the terms and conditions for participation in the WQIP pursuant to this part.

§ 701.4 Restriction on program eligibility.

The regulations in part 796 of this chapter prohibiting the making of payments to program participants who harvest or knowingly permit to be harvested for illegal use, marijuana or other such prohibited drug-producing plants on any part of the land owned or controlled by such program participants are applicable to these programs.

§ 701.5 Practice specifications.

(a) Minimum specifications that practices must satisfy to be eligible for cost-share assistance shall be set forth in the county program within the authority established by the STC and Deputy Administrator, State and County Operations (DASCO) or incorporated by specific reference to a standard publication or other written document containing such specifications.

(b) Practice specifications shall represent the minimum levels of performance needed in order for the practice to be effective in meeting the program objective. Cost-share assistance shall be limited to these minimum levels.

§ 701.6 Responsibility for referred technical phases of practices.

The SCS and the FS are responsible for technical phases of practices as assigned and such assignment will be specified in State and county programs.

(a) The SCS State Conservationist may use the expertise from private consultants, State, or Federal agencies in performing the assigned responsibilities if SCS certifies that assigned practices are completed properly. No responsibilities will be assigned for counties when DASCO and the Chief, SCS, determine that it would not be administratively practicable for the SCS to discharge such responsibilities. In such counties, these responsibilities shall be assumed by COC's. The SCS may utilize resources of the State forestry agencies in performing assigned responsibilities for practices involving the establishment of windbreaks or shelterbelts on farmland to prevent wind erosion.

(b) The FS is responsible for the technical phases of practices or components of practices involving the planting of trees for forestry purposes and those involving the improving or protecting of a stand of forest trees as specified in State and county programs. The FS may use the assistance of private consultants, State, or Federal agencies in performing these assigned responsibilities if FS certifies that assigned practices are completed properly; however, services of State forestry agencies will be used to the extent that such services are available.

§ 701.7 Items of cost on which rates of cost-share assistance may be based.

Except as otherwise provided by ASCS, the cost of any direct and significant factor in the performance of a practice may be considered in establishing the rate of cost-share assistance for the practice.

§ 701.8 Repair, upkeep, and maintenance of practices.

Cost-share assistance shall not be authorized for repairs or for normal upkeep or maintenance of any practice.

§ 701.9 Public benefits when installing practices.

Persons responsible for any aspect of performing practices shall install the practices to promote public benefits by:

(a) Improving or preserving environmental quality and ecological balance by preventing or abating pollution and other environmental degradation;

(b) Benefiting the community by such means as preserving open space or enhancing the appearance of the area;

(c) Benefiting wildlife and other desirable life forms;

(d) Preserving historic, archeological, or scenic sites, wetlands, ecologically critical areas, and prime farmlands;

(e) Avoiding the creation of hazards to persons or animals; and

(f) Avoiding actions that may adversely affect an endangered or threatened species or flood plains.

§ 701.10 Payments for uncompleted practices.

Cost-share assistance approved under these programs shall not be considered earned until all components of the approved practice are completed according to applicable specifications and program provisions. Cost-share assistance for completed components of an approved practice may be paid only on the condition that the eligible participant will complete the remaining components of the practice within the time prescribed by the COC regardless of whether cost-share assistance is offered for them unless the COC subsequently determines they are prevented from doing so because of reasons beyond their control.

§ 701.11 Practices involving the establishment or improvement of vegetative cover.

(a) Costs may be shared even though an adequate stand is not established, for practices involving the establishment or improvement of vegetative cover, including trees, if the COC determines, according to standards approved by the STC, that the practice was carried out in a manner which could normally result in the establishment of an adequate stand and that failure to establish an adequate stand was due to weather or other conditions beyond the control of the participant. The COC may require, as a condition of cost-share assistance in such cases, that the area be reseeded or replanted or that other needed protective measures be performed. Cost-share assistance in such cases may also be approved for repeat applications of measures previously performed or for additional eligible measures. Cost-share assistance for such measures may be approved to the extent such measures are needed to ensure an adequate stand even though the measures may be less than that required by the applicable practice wording for initial approvals.

(b) In the case of FIP, replanting of trees is required where the landowner received cost-share assistance for site preparation.

§ 701.12 Failure to meet minimum requirements or failure to comply fully with program provisions.

(a) Notwithstanding other provisions of these programs, costs may be shared for performance actually rendered even though the minimum requirements for a practice are not satisfied, if the participant establishes to the satisfaction of the COC and the county representative of any other agency having responsibility for technical phases of the practice that a reasonable effort was made to satisfy the minimum requirements and that the practice as performed adequately solves the need for the practice.

(b) Notwithstanding the provisions in paragraph (a) of this section, the Deputy Administrator may in accordance with part 791 of this chapter authorize relief when a participant acting in good faith failed to fully comply with the program provisions.

§ 701.13 Practices carried out with aid from ineligible persons.

Financial assistance which is made available, or will be made available, to a program participant from a person ineligible for cost-share assistance under this part for the practice, including aid from a State or Federal agency other than aid made available under this part, shall be deducted from the program participant's total costs incurred for the practice for purposes of determining the applicant's eligible reimbursable costs under this part.

§ 701.14 Division of cost-share assistance.

(a) The cost-share assistance shall be credited to the participant who performed the practice. If more than one person contributed to the performance of the practice, the cost-share assistance for the practice shall be divided among those persons in the proportion that the COC determines they contributed to the performance of the practice. In making this determination, the COC shall consider the value of the labor, equipment, or material contributed by each person toward performance.

(b) The allowance by an eligible person of a credit to another eligible person in the form of an adjustment in rental, an exchange of cash or other consideration shall not be considered as a contribution to the performance of any practice, unless ASCS is satisfied that such credit is directly related to the cost of the practice. A person fully reimbursed through an adjustment in rental, an exchange of cash, or other consideration shall not be considered as having contributed to the practice performance.

§ 701.15 Applying cost-share assistance limitations.

(a) All or any part of cost-share assistance which otherwise would be due any participant for a program year may be withheld, or required to be refunded, if, with respect to that program year, the participant has adopted, or participated in adopting, any scheme or device designed to evade a maximum cost-share limitation.

(b) The provisions of 7 CFR 1497.109(a), which provide that payments shall be attributed to each member of an entity, shall apply in determining whether certain individuals or other entities are to be considered as separate persons for the purpose of applying any maximum payment limitations provided for in this part.

§ 701.16 Persons eligible to file application for payment of cost-share assistance.

Any eligible person as defined in §§ 701.104, 701.202, and 701.302, who bore a part of the cost of an approved practice, is eligible to file an application for cost-share assistance. For ACP practice WP4, Agricultural Waste Control Facilities, an eligible person is one who has been in an operation from which the agricultural waste is produced for at least 5 years.

§ 701.17 Time and manner of filing application and required information.

(a) Participants shall submit to the county office the information needed to establish the extent of the performance of approved practices and compliance with applicable program provisions. The time limits for submission of such information shall be established where necessary for efficient administration of the programs. Such time limits shall afford a full and fair opportunity to those eligible to submit the information within the period prescribed. At least 2 weeks notice of any general time limit prescribed shall be provided to the public.

(b) Other means of notification of program availability including radio announcements and individual notices to the person affected, shall be used to the extent practicable. Notice of such time limits which are applicable to individual persons, such as time limits for reporting performance of approved practices, shall be issued in writing to the person affected. Exceptions to the time limits may be made in cases where failure to submit required forms and information within the applicable time limits is due to reasons beyond the control of the farmer or rancher.

§ 701.18 Death, incompetency, or disappearance.

In case of death, incompetency, or disappearance of any participant, any cost shares due shall be paid to the successor, determined in accordance with provisions of the regulations in part 707 of this chapter.

§ 701.19 Appeals.

Any person may obtain reconsideration and review of determinations affecting participation in these programs, in accordance with part 780 of this chapter.

§ 701.20 Performance based on advice or action of COC or STC.

Cases involving performance rendered in good faith in reliance upon action or advice of an authorized representative of a STC or COC shall be considered according to part 790 of this chapter.

§ 701.21 Compliance with regulatory measures.

Participants who perform practices shall be responsible for obtaining the authorities, rights, easements, or other approvals necessary to the performance and maintenance of the practices according to applicable laws and regulations. The participant with whom the cost of the practice is shared shall be responsible to the Federal Government for any losses it may sustain because such participant infringes on the rights of others or fails to comply with applicable laws or regulations.

§ 701.22 Maintenance and use of practice.

Each participant receiving cost-share assistance is responsible for the required maintenance and proper use of the practice. Each practice shall have an established lifespan or minimum period of time that it is expected to function as a conservation practice with proper maintenance. If ASCS determines that a practice has not been properly maintained for the established lifespan, the participant receiving the cost-share assistance shall refund all or any part of such cost-share assistance as determined appropriate by the ASC COC. Further, any agreement providing for cost-share assistance will be terminated, with respect to the land on which the practice is located, if there is voluntary loss of control of the land by the participant receiving the cost-share assistance and the person acquiring control of such land elects not to become a successor in interest to the agreement. If the agreement providing for cost-share assistance is terminated as a result of the voluntary loss of control of the land, each participant receiving cost-share assistance under that agreement shall be liable for refunding to ASCS any cost-share assistance which has been received with respect to the practice. In addition, such person shall forfeit any right to receive any further cost-share assistance with respect to the land on which the practice is located.

§ 701.23 Actions defeating purpose of program.

If the STC or COC determines that a participant has taken any action which tends to defeat the purposes of these programs, the participant may be required to refund all or part of any of these program payments otherwise due or paid that participant during the program year. These actions include, but are not limited to, failure to properly maintain or deliberately destroying a practice carried out under a prior program year.

§ 701.24 Depriving others of cost-share assistance.

If the STC or COC determines that any participant has employed any scheme or device to deprive any other person of cost-share assistance, the participant may be required to refund all or part of any of these program payments otherwise due or paid that person during the program year. A scheme or device includes, but is not limited to, coercion, fraud, or misrepresentation.

§ 701.25 Filing false claims.

If the STC or COC determines that any person has knowingly supplied false information or filed a false claim, that person is ineligible for cost-share assistance under the program year with respect to which information or claim was filed. False information or a false claim includes, but is not limited to, a request for payment for a practice not carried out or for practices which do not meet the required specifications. Any amounts paid under these circumstances shall be refunded and any amounts otherwise due the participant shall be withheld. The withholding or refunding of cost shares will be in addition to any other penalty or liability otherwise imposed by law.

§ 701.26 Cost-share assistance not subject to claims.

Any cost-share assistance or portion thereof due any participant shall be allowed without regard to questions of title under State law, and without regard to any claim or lien against the crop, or proceeds thereof, in favor of the owner or any other creditor except agencies of the U.S. Government. The regulations issued by the Secretary governing offsets and withholdings at part 1403 of this title shall be applicable to these programs.

§ 701.27 Assignments.

Any participant who may be entitled to any cost-share assistance under these programs may assign the right thereto, in whole or in part, according to the regulations governing the assignment of payments at 7 CFR part 1404.

§ 701.28 Environmental considerations.

All actions implemented under the programs in this part shall be in compliance with regulations issued at part 799 of this chapter, which includes the procedures for complying with the National Environmental Policy Act, Floodplain Management and Wetland Protection and other environmental concerns.

§ 701.29 Information collection requirements.

Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions at 44 U.S.C. Chapter 35 and have been assigned OMB Number 0560–0082.

§§ 701.30–701.99 [Reserved]

Subpart B—Agricultural Conservation Program

§ 701.100 Program objective.

(a) The objective of the ACP is to restore and protect the Nation's land and water resources. This objective will be accomplished through a program that considers:

(1) The need to control erosion and sedimentation from agricultural land and conserve the water resources on such land.

(2) The need to control pollution from animal wastes.

(3) The need to facilitate sound resource management systems through soil and water conservation.

(4) The need to encourage voluntary compliance by agricultural producers with Federal and State requirements to solve point and nonpoint sources of pollution.

(5) National priorities reflected in the National Environmental Policy Act of 1969, the Resource Conservation Act of 1977, and other congressional and administrative actions.

(6) The degrees to which the measures contribute to the national objective of ensuring a continuous supply of food and fiber necessary for the maintenance of a strong and healthy people and economy.

(7) The type of conservation measures needed to improve water quality.

(8) The need to improve water quality.

(b) These objectives will ensure the continued supply of food and fiber necessary for the maintenance of a strong and healthy people and economy and provide for environmental conservation or enhancement.

§ 701.101 State funds.

Funds available for practices to be performed under the ACP will be distributed among the States as determined by the Deputy Administrator.

§ 701.102 County funds.

The STC will allocate the funds available for practices among the counties within the State consistent with the ACP's objective, and will give particular consideration to the furtherance of special projects, watershed conservation projects, resource conservation development projects, approved State water quality plans, and other conservation and pollution abatement projects sponsored locally.

§ 701.103 Availability of funds.

(a) The paying of the cost-share assistance provided herein is contingent upon such appropriation as the Congress may provide for such purpose; and the amounts of such cost shares shall be within the limits authorized by such appropriation.

(b) Funds available for the ACP may be made available as needed for practices to be performed under the Naval Stores Conservation Program, according to instructions issued by the Deputy Administrator.

§ 701.104 Eligible person.

An eligible person is a farmer or rancher who as an individual, partnership, association, corporation, estate, trust, other business enterprise, or other legal entity (excluding districts which have taxing authority, Federal agencies, States and State agencies, including political subdivisions of a State) and, as an owner, landlord, tenant, or sharecropper, participates or has an interest in the operation of a farm or ranch for which cost share assistance has been requested.

§ 701.105 Eligible land.

(a) The program is applicable to:

(1) Privately-owned lands;

(2) Land owned by a State or political subdivision of a State;

(3) Lands owned by corporations which are partly owned by the United States;

(4) Lands temporarily owned by the United States or a corporation wholly owned by it, which were not acquired or reserved for conservation purposes, including lands administered by the Farmers Home Administration, the U.S. Department of Defense, or by any other Government agency designated by the Deputy Administrator.

(5) Any cropland operated by private persons which is owned by the United States or a corporation wholly owned by it;

(6) Native American lands, except that where grazing operations are carried out on Native American lands administered by the DOI, such lands are within the scope of the program only if covered by a written agreement approved by the DOI giving the operator an interest in the grazing and forage growing on the land and a right to occupy the land in order to carry out the grazing operations; and

(7) Noncropland owned by the United States on which practices are performed by private persons where such practices directly conserve or benefit nearby or adjoining privately owned lands of the persons performing the practices and such persons maintain and use such federally owned noncropland under agreement with the Federal agency having jurisdiction thereof.

(b) The program is not applicable to:

(1) Noncropland owned by the United States which was acquired or reserved for conservation purposes, or which is to be retained permanently under Government ownership, including, but not limited to, grazing lands administered by the FS, or by the Bureau of Land Management, DOI (including lands administered under the Taylor Grazing Act), or the Fish and Wildlife Service, DOI, except as indicated in paragraph (a)(7) of this section.

(2) Nonprivate persons for performance of practices on any land owned by the United States or a corporation wholly owned by it. A nonprivate person is anyone except an individual, partnership, association, corporation, estate, trust, or other business enterprise, or other legal entity (excluding districts which have taxing authority, Federal agencies, States and State agencies, including political subdivisions of a State).

§ 701.106 Conservation practices.

Conservation practices as specified by the Deputy Administrator are made available nationally under the ACP and may be included in the State and county programs. Practices shall not be primarily production-oriented and shall have primarily conservation, environmental, or pollution abatement benefits. The practices are designed to be consistent with the agricultural conservation policy stated in section 7 of the Soil Conservation and Domestic Allotment Act, as amended, and national program policy, and are developed primarily to meet a definite need to accomplish one or more of the following:

(a) Establish long-lasting protective cover.

(b) Improve or sustain existing protective cover.

(c) Conserve or safely dispose of water.

(d) Benefit wildlife.

(e) Establish or improve stands of forest trees.

(f) Give protection against soil erosion.

(g) Prevent or abate agricultural-related pollution of water, land, and air.

(h) Meet special State or county conservation needs.

(i) Encourage energy conservation practices.

(j) Improve water quality.

§ 701.107 County programs.

(a) ACP shall be developed in each county by the COC, in consultation with the CCRG in accordance with the National and State development guidelines and policies provided. Subject to the availability of funds, at least one public meeting per year shall be held for this purpose.

(b) The county ACP shall be effective after approval by the STC.

§ 701.108 State programs.

(a) The SCRG shall develop recommendations for the State ACP. The chairperson of the SCRG may also invite others with conservation or water quality interests to participate in such deliberations. Subject to the availability of funds, at least one public meeting per year shall be held for this purpose.

(b) The State ACP shall consist of the guidelines and practices authorized by the STC and approved by the Deputy Administrator after considering the recommendations submitted by COC's.

§ 701.109 Selection of practices.

The practices to be included in the State or county ACP shall be only those practices authorized by Deputy Administrator for which cost-share assistance is essential to permit accomplishment of the ACP objective.

§ 701.110 Levels and rates of cost-share assistance.

(a) The maximum level of cost-share assistance for each practice shall be the percentage of the average cost of performing the practice considered necessary to obtain the needed performance of the practice and established at a level such that the participant will make a significant contribution to the cost of performing the practice.

(b) Levels of cost-share assistance under annual agreements for each practice shall not be in excess of seventy-five (75) percent of the average cost of performing the practice as determined by the COC. Where the Deputy Administrator determines a higher level of cost-share assistance is necessary to provide adequate incentive for a participant to perform a conservation practice, the Deputy Administrator may specifically authorize a higher level. See § 701.116 for special provision for low-income farmers.

(c) Levels of cost-share assistance under long-term agreements shall not be in excess of seventy-five (75) percent nor less than 50 percent of the average cost for each practice as determined by the COC.

(d) For the purpose of establishing rates of cost-share assistance, the average cost of performing a practice may be the average cost for either a county or a part of a county as determined by the COC.

§ 701.111 Starting practices.

Costs will not be shared for practices or components of practices that are started before COC approval.

§ 701.112 Method of approval.

(a) The COC shall determine the extent to which Federal funds may be made available to share the cost of each approved practice, taking into consideration the county allocation, the conservation and environmental problems in the county, the land involved, and the practices for which requested cost-share assistance is considered by the COC as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost-share assistance for the performance of that number of units of the practice. To the extent practicable, notices of approved practices shall be issued before performance of the practice is started. No practice may be approved for cost-share assistance except as authorized by the county program, or according to procedures incorporated therein. Available funds for cost-share assistance shall not be allocated on a proportionate share basis; however, cost-share funds shall be directed to the accomplishment of the most enduring benefits attainable.

(b) Cost-share assistance may be approved under annual agreements or long-term agreements.

(c) Annual agreements may be approved in all counties. Long-term agreements are limited to farms or ranches which are within Soil Conservation Districts (or comparable districts) through which the SCS provides planning and technical services, except:

(1) Farms and ranches located within a county designated for the Great Plains Conservation Program (GPCP) are only eligible if not covered by GPCP contract.

(2) Farms and ranches not located within a Soil Conservation District or comparable district may be eligible for a long-term agreement provided CPO's are developed by the farmer or rancher in cooperation with the SCS and approved by an appropriate State official or, in cases where an appropriate State official is not available, approved by the SCS.

§ 701.113 Long-term agreements.

(a) The period of a long-term agreement shall be for not less than three (3) program years nor more than ten (10) program years. The COC and the signors to the long-term agreement in consultation with the SCS representative shall mutually determine the period of the agreement.

(b) The long-term agreement will be based on a CPO for the farm or ranch or portion thereof which has been approved by the Soil Conservation District or comparable district or for farms or ranches not located in a Soil Conservation District or comparable district, by an appropriate State Official or the SCS, as applicable.

(c) The long-term agreement will provide that the farmer or rancher will perform those measures in the CPO's which are determined to be essential to meeting the basic conservation needs of the farm or ranch, or portion thereof, regardless of whether cost-share assistance is approved for such measures.

(d) The owner of the farm or ranch will be required to sign a long-term agreement regardless of whether that person contributes to the cost of approved practices thereon except in cases where the long-term agreement consists wholly of integrated crop management practices.

(e) Any party to a long-term agreement who is not an owner of the farm or ranch shall provide assurance of control of the land for the duration of the period of the agreement.

(f) The level of cost-share assistance as provided in § 701.110, in effect for practices in all years of a long-term agreement shall be the level in effect at the beginning year of the agreement. The rate of cost-share assistance for payment purposes for such practice shall be based on the average cost of performing the practice at the time the practice is performed.

(g) A long-term agreement may be canceled for failure to fully comply with the terms of the agreement if, after consulting with the Soil Conservation District or comparable district board or if none exists with a representative of the SCS, the State or COC determines that the seriousness of the irregularities warrant such action. If the agreement is canceled, the parties to the agreement are jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments under the agreement. In such a case, no other refund or forfeiture provisions of these regulations apply.

(h) A long-term agreement may be revised according to instructions issued by the Deputy Administrator by mutual agreement between the parties to the agreement and the COC based on approved changes in the CPO's for the farm or ranch.

(i) An otherwise eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(j) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the parties to the agreement, the COC will determine whether any cost-share assistance previously paid shall be refunded; however, in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories to the agreement, the signatories will be jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. However, a refund will not be required for cost shares where the COC or the STC determine, after consulting with a representative of the SCS, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices have provided conservation benefits consistent with the cost shares which have been paid.

(k) An agreement may be terminated by the COC, after considering the recommendation of the Soil Conservation District or comparable district board or if none exists with a representative of the SCS if such action is in the public interest. The COC will determine the amount of cost shares previously paid that shall be refunded.

(l) An agreement may be terminated by the COC upon the written request of the participant to a long-term agreement where no cost-share assistance has been paid for any of the scheduled practices and where the participant does not intend to perform any of the scheduled practices.

§ 701.114 Replacement, enlargement, or restoration.

The establishment or installation of a practice, for the purposes of the program shall be deemed to include the replacement, enlargement, or restoration of a practice for which cost-share assistance has been allowed if the practice has served its normal lifespan

or if all of the following conditions exist:

(a) Replacement, enlargement, or restoration of the practice is needed to solve the related conservation or environmental problem.

(b) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(c) The COC believes that the replacement, enlargement, or restoration of the practice merits consideration to an equal extent with other practices.

(d) The replacement, enlargement, or restoration of the practice is not being performed because the producer has increased his operation to where these measures are needed to solve the increased conservation or environmental problem.

§ 701.115 Pooling agreements.

Eligible persons in any local area may agree in writing with the approval of the COC to perform designated practices which will solve a mutual conservation, pollution, or other environmental problem on the land of the participants. For purposes of eligibility for cost-share assistance, practices carried out under such an approved written agreement shall be regarded as having been carried out on the land of the persons who performed the practices.

§ 701.116 Special provisions for low-income farmers and ranchers.

(a) Except as otherwise provided in § 701.110(c), the COC may approve in the case of low-income farmers and ranchers as defined in this section a level of cost-share assistance of up to eighty (80) percent of the average cost of performing practices.

(b) A low-income farmer or rancher is one who as determined by the COC is a small producer whose livelihood is largely dependent on the farm or ranch and whose prospective income and financial resources for the current year are such that the low-income farmer or rancher could not reasonably be expected to perform needed conservation practices at levels of cost-share assistance applicable to other persons in the county.

§ 701.117 Maximum cost-share assistance limitation.

For each program year, the total amount which may be received by any person under this subpart for approved practices shall not exceed $3,500 except that:

(a) The total amount received for approved practices, including those carried out under pooling agreements, shall not exceed $10,000; and

(b) The total amount received under an ACP long-term agreement (LTA) shall not exceed the annual payment limitation ($3,500) multiplied by the number of years remaining in the LTA. The payment limitation in effect after the first year of LTA or after an LTA payment has been made shall be equal to the lessor of the following:

(1) The number of years remaining in the LTA times the annual payment limitation; or

(2) The difference between the LTA's maximum payment limitation and the ACP cost-share assistance previously earned during the contract period.

§ 701.118 Completion of practices.

Cost-share assistance for the practices contained in this part is conditioned upon the performance of the practice according to all applicable specifications and program provisions.

§ 701.119 Time of filing payment application.

Payment of cost-share assistance will be made only upon application submitted on the prescribed form to the county office by a date established by the COC. Any application for payment may be denied if any form or information required of the applicant is not submitted to the county office within the applicable time limit.

§ 701.120 Water Quality Incentive Projects.

(a) The WQIP administered through the ACP provides both financial and technical assistance to achieve the source reduction of pollutants in an environmentally and economically sound manner in order to assist in compliance with State and Federal environmental laws to enhance the environment.

(b) Other provisions as contained in subpart A and this subpart apply to WQIP.

(c) Any representative of USDA, or designee thereof, shall have the right of access to land which is the subject of a WQIP application, or land which is under a WQIP agreement; and shall have the right to examine records, with respect to crop management systems, use of agricultural inputs, recordkeeping, land use decisions, resource inventory, and impacts on water quality for the purpose of determining whether there is compliance with the terms and conditions of the WQIP agreement.

(d) A participant may, in addition to any payment earned under WQIP, receive other financial assistance, rental payments, or tax benefits from a State or subdivision of such State for enrolling lands in WQIP.

(e) Eligible land areas must be:

(1) Wellhead areas included by the Secretary or designee in consultation with Environmental Protection Agency (EPA) and the State agency responsible for the State's operations under the Safe Drinking Water Act (42 U.S.C. 300 h-7);

(2) Critical nonpoint agricultural areas identified in Clean Water Act 319 plans;

(3) Karst topography areas with sinkholes;

(4) Agricultural nonpoint source areas that may adversely impact threatened or endangered species habitat;

(5) Areas recommended by State environmental agencies and approved by the Secretary;

(6) Areas recommended by EPA and DOI in consultation with the Secretary;

(7) Lands not located within approved or designated areas but that are in proximity and if allowed to continue to operate under the existing management practices would defeat the purpose of the program; and

(8) Areas contributing to identified water quality problems in Secretarial designated areas.

(f) WQIP agreements shall be administered through long-term agreements. These agreements shall be a minimum of three (3) years to a maximum of five (5) years in duration as determined by the Deputy Administrator.

(g) The applicant, in consultation with the SCS or other designated technical agency, shall develop a Water Quality Resource Management Plan which will:

(1) Include an assessment of the resources and management measures needed to achieve the source reduction of agricultural pollutants;

(2) Cover the entire tract or tracts owned or operated by the applicant within the WQIP area;

(3) Be reviewed and approved by SCS;

(4) Be reviewed and approved by the local Conservation District; and

(5) Be consistent with conservation compliance goals.

(h) Technical assistance will be provided by the SCS as the lead agency with assistance from the Cooperative Extension Service, Agricultural Research Service, and other Federal agencies and private consultants as deemed necessary by the Secretary.

§§ 701.121–701.199 [Reserved]

Subpart C—Emergency Conservation Program

§ 701.200 Program objective.

The objective of the ECP is to cost share with eligible persons to rehabilitate farmlands damaged by wind and water erosion, floods, hurricanes, or other natural disasters and to provide water conservation or water

enhancement measures during periods of severe drought.

§ 701.201 Program availability.

(a) The COC may implement the program subject to the availability of funds where new conservation problems have been created on farmland by a natural disaster or wind erosion which if not treated will:

(1) Impair or endanger the land;

(2) Materially affect the productive capacity of the land;

(3) Represent damage which is unusual in character and except for wind erosion shall not be the type that would recur frequently in the same area; and

(4) Be so costly to rehabilitate that Federal assistance is or will be required to return the land to productive agricultural use.

(b) Subject to the availability of funds, the COC with the concurrence of the STC and approval of the Deputy Administrator may implement the program to carry out emergency water conservation and water enhancement measures during periods of severe drought.

(c) Land normally used for farming or ranching which is protected by levees or dikes is eligible for enrollment in the ECP, except as follows:

(1) Land adjacent to water impoundment reservoirs subject to inundation when the reservoir is filled to capacity;

(2) Land that is subject to frequent damage which is any of the following:

(i) Land has been severely damaged 3 or more times in the last 25 years, including the current disaster. Also land protected by levees or dikes that have physically failed and severely damaged adjoining land 3 or more times in the last 25 years, including the current disaster.

(ii) Land that is susceptible to severe damage because of its location, regardless of whether it has been severely damaged in the last 25 years.

(iii) Flowage or flood easements acquired by the U.S. Army Corps of Engineers or other authorities that are subject to inundation when water is released under the course of normal operations.

(3) Land located in old or new channels of a stream, creek, river, or other similar body of water or on any of the inside banks unless approved by DASCO. Facilities in irrigation canals or on their inside banks may be approved if the canal is not a channel subject to flooding;

(4) Land in greenhouses or other confined areas; and (5) Land on which poor farming practices, such as failure to farm on the contour, have materially contributed to damaging the land.

§ 701.202 Eligibility of person and land.

Person and land eligibility requirements are the same as for the ACP as provided in §§ 701.104 and 701.105 except in cases of severe drought conditions then cost-share assistance is limited to supplying:

(a) Emergency livestock water, including measures to assist confined livestock operations, and

(b) Water for existing irrigation systems serving orchards and vineyards.

§ 701.203 Emergency Conservation Program practices.

(a) Except for severe drought and wind erosion, cost-share assistance may be offered for emergency conservation practices only to replace or restore farmland to a condition similar to that existing before the natural disaster. Cost-share assistance may not be offered for the solution of conservation problems existing before the disaster.

(b) ECP practices for which cost-share assistance may be authorized are:

(1) Removing debris from farmland.

(2) Grading, shaping, releveling, or similar measures.

(3) Restoring permanent fences.

(4) Restoring structures and other installations.

(5) Emergency wind control measures.

(6) Drought emergency measures.

(7) Other emergency conservation measures.

§ 701.204 Practice approval.

Practices listed in § 701.203 (b)(1) through (b)(5) may be approved by COC's. Authorization to offer practices at § 701.203 (b)(6) and (b)(7) shall be approved by the Deputy Administrator.

§ 701.205 Extent of cost-share assistance.

(a) The maximum payment under this subpart per person, per disaster, is limited to $200,000 including the amount of any payment received by such person as the result of the disaster under a pooling agreement.

(b) The cost-share payments which may be made by ASCS for a practice under the program shall, subject to the maximum payment amount specified in paragraph (a) of this section and any other limitation as may apply, be further limited to the level of cost-share assistance established by the COC not to exceed:

(1) Sixty four (64) percent of the first $62,500 of the eligible cost of restoring the loss;

(2) Forty (40) percent of the second $62,500 of the eligible cost of restoring the loss; and

(3) Twenty (20) percent of the eligible cost above $125,000 to restore the loss.

§ 701.206 Eligible costs.

Upon determination that a person is eligible for ECP assistance, cost-share assistance may be authorized for all reasonable costs incurred in the completion of the practice. Such costs may include personal labor, equipment, and other such costs which are determined by the COC to be related to the costs of performing the practice. COC's shall limit costs for the use of personal equipment to an amount that reflects out-of-pocket expenses. Expenses for personal labor and personal equipment shall be less than rates charged by contractors who expect to make a profit for their efforts.

§ 701.207 Filing requests.

(a) The COC shall establish an enrollment period for filing cost-sharing requests immediately after the COC's authorization or the Deputy Administrator's authorization in cases of drought to implement the ECP in the county. Such periods shall be at least 30 days in length. Late-filed requests may be accepted by the COC in justifiable cases.

(b) Costs will not be shared for practices or components of practices that are started before a request is filed with the county office.

§ 701.208 Approving requests.

COC's shall issue practice approvals only when:

(a) Funds are available;

(b) The requested practice has been determined eligible for cost-share assistance; and

(c) The eligible person has indicated a readiness to start the practice.

§ 701.209 Pooling agreements.

Pooling agreements may be used on the same basis as provided for at § 701.115.

§ 701.210 Payment approval.

The COC is authorized to approve payments not to exceed $10,000 per person per disaster. The STC is authorized to approve payments not to exceed $20,000 per person per disaster. Cost-share assistance in excess of $20,000 must be approved by the Deputy Administrator.

§§ 701.211–701.299 [Reserved]

Subpart D—Forestry Incentives Program

§ 701.300 Program objective.

The objective of the FIP is to help ensure a future supply of timber will be accomplished by encouraging landowners to apply forestry practices for:

(a) Production of softwood and hardwood timber and other associated forest resources to increase afforestation of suitable open lands.

(b) Reforestation of cutover and understocked forest lands.

(c) Timber stand improvement.

(d) Intensive multipurpose management.

(e) Protection of forest resources.

§ 701.301 Designated counties.

The STC in consultation with the State Forester will designate the counties or parts of counties in which FIP will be operated. The following will be considered in making the designations:

(a) The total acreage in the county devoted to desirable types of softwood and hardwood timber.

(b) The estimated area in the county that is under eligible ownership.

(c) The estimated acreage suitable for the production of forest products.

(d) The availability of funds.

(e) The enhancement of other forest resources.

§ 701.302 Eligible person, land, and ownerships.

(a) An eligible person is a private individual, group, Native American Tribe or other native group, association, corporation excluding corporations whose stocks are publicly traded, or other legal entity which owns eligible land. Firms principally engaged in the manufacture of wood products are not eligible. However, forest landowners who manufacture forest products on a part-time or irregular basis are eligible.

(b) Eligible land is nonindustrial private forest land capable of producing at least fifty (50) cubic feet of wood per acre per year.

(c) Eligible farms are those not exceeding a total of 1,000 acres of eligible private nonindustrial forest land in the United States or any commonwealth, territory, or possession of the United States. The STC with the concurrence of the State Forester may approve cost-share assistance with landowners owning more than 1,000 acres but not more than 5,000 acres of eligible forest land where it is deemed to be to the public's significant benefit.

(d) Significant public benefits are primarily those resulting from cost-effective timber production with related benefits to aesthetics, recreation, wildlife habitat, watershed protection, erosion reduction, and other resource values.

§ 701.303 Program funds.

(a) Each designated State and county will receive a share of the funds provided for the program. Funds will be distributed on the basis of the forest production opportunities in each State, considering the acreage of private nonindustrial forest lands, the number of eligible owners, the potential productivity of such lands and the need for reforestation, timber stand improvement, other forestry management needs, and the enhancement of other forest resources. The Deputy Administrator will allocate funds after consultation with representatives of the FS and a committee of not less than five State foresters or equivalent State officials selected by a majority of the State foresters or equivalent State officials. The STC will consult with the State forester when determining the allocation of such funds to the designated counties.

(b) A limitation on the amount of funds which may be obligated under long-term agreements shall be established by the STC according to guidelines provided by the Deputy Administrator.

§ 701.304 Eligible practices and cost-share assistance requirements.

(a)(1) Cost-share assistance may be available for the following National practices and authority:

(i) Planting Trees.

(ii) Improving a Stand of Forest Trees.

(iii) Special Forestry Practices.

(2) The Deputy Administrator after consultation with the FS, may approve special forestry practices needed to solve a significant and unique local condition for which the National practices are not adequate. Such practices may be approved for inclusion in a county program after consultation with the program development group and the recommendation of the COC, the service forester, the STC, and the State forester.

(b) A forest management plan is required as a condition for cost-share assistance. The Forest Management plan will be developed in consultation with the landowner, approved by the service forester, and will contain information for accurate evaluation of practice effectiveness. The participant will be required to perform those measures in the Forest Management plan which are essential to the effectiveness of the practice for which costs are shared. In the development of the Forest Management plan, consideration will be given to wildlife, watershed protection, recreation, erosion control, aesthetics, and other associated forest resources values as well as cost-effective timber production.

§ 701.305 The National FIP.

The National FIP is jointly developed by ASCS, the FS and the committee of State foresters provided for in § 701.303.

§ 701.306 Development of State FIP.

(a) A State FIP shall be developed in each applicable State or territory according to the provisions contained in this part and in the National FIP. The State FIP shall be developed by the State forestry committee as provided in § 701.303.

(b) The State FIP shall be:

(1) Recommended by the STC and State forester; and

(2) Approved by the Deputy Administrator after consulting with the FS.

§ 701.307 Development of county FIP.

(a) A county FIP shall be developed in each designated county according to the provisions of the State FIP. The county FIP shall be developed by the CCRG. The CCRG, working with the governing body of the conservation district, the State forestry agency representatives, the county supervisor of the Farmers Home Administration, and others with conservation and environmental interest shall develop recommendations for the county program.

(b) The county FIP shall be recommended by the COC and service forester and approved by the STC and State forester.

§ 701.308 Adaptation of practices.

(a) The practices included in the State FIP shall satisfy the conditions and requirements of the National FIP. The STC and State Forester may modify or delete National FIP provisions to make practices more restrictive where such changes satisfy the objectives of the program.

(b) The practices included in the county FIP must meet the conditions and requirements of the State FIP. The COC in consultation with State Forestry representative or Service Forester may modify or delete State FIP provisions to make practices more restrictive where such changes satisfy the objectives of the program.

§ 701.309 Levels and rates of cost-share assistance.

(a) The maximum cost-share assistance for each practice shall be the percentage of the actual cost of performing the practice considered necessary by ASCS to ensure completion of the practice by the participants.

(b) Levels of cost-share assistance shall be approved by the STC and shall

not be in excess of sixty-five (65) percent of actual costs incurred by the landowners.

(c) For the purpose of establishing rates of cost-share assistance, the average cost of performing a practice may be the average cost for a State, a county or a part of a county, as determined by the STC.

(d) The rates of cost-share assistance for practices included in the county FIP may be lower than the rates approved for general use in the State, as determined by the COC.

§ 701.310 Prior approval for cost-share assistance.

Costs will be shared only for those practices, or components of practices, for which cost-share assistance is requested and approval issued before performance is started.

§ 701.311 Methods of approval.

The COC shall determine the extent to which Federal funds may be made available to share the cost of each approved practice. Approvals shall be made based on consideration of the county allocation, cost-effective opportunities for increasing timber production, potential for enhancing other forest resources, the forestry needs in the county, and the practices for which requested cost-share assistance is considered by the COC as most needed. The method approved shall provide for the issuance of notices of approval showing for each approved practice the number of units of the practice for which the Federal Government will share in the cost and the amount of the cost share for the performance of that number of units of the practice. Notices of approved requests shall be issued before the practice may be started. No practice may be approved for cost-share assistance except as authorized by the county FIP. Available funds for cost-share assistance shall not be allocated on a pro-rata basis, but shall be directed to the accomplishment of the most production attainable.

(a) Cost-share assistance may be approved under annual agreements or long-term agreements.

(b) Land covered by a GPCP contract is not excluded from an annual or long-term agreement if the land is otherwise eligible.

(c) The same practices, cost-share levels, and general program provisions apply to both annual agreements and long-term agreements.

§ 701.312 Long-term agreements.

(a) The period of a long-term agreement shall be for not less than three (3) years nor more than ten (10) years. The COC and the parties to the agreement in consultation with the State forestry representative will mutually determine the scheduling of essential practices and practice cost-sharing over the period of the agreement.

(b) The long-term agreement shall be based on a forest management plan for the land which shall be developed by the service forester.

(c) The long-term agreement shall provide that the owner shall perform those measures in the forest management plan which are determined to be essential regardless of whether cost-share assistance is approved for such measures.

(d) The level of cost-share assistance in effect for practices in all years of a long-term agreement shall be the level in effect for the beginning year of the agreement. The rate of cost-sharing for payment purposes for such practices will be based on the average cost of performing the practice at the time the practice is performed.

(e) A long-term agreement may be canceled for failure to fully comply with the terms of the agreement if, after consulting with the service forester, the STC or COC determines that the seriousness of the irregularities warrant such action. If the agreement is canceled, the signors to the agreement are jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments under the agreement. In such a case, no other refund or forfeiture provisions of these regulations apply.

(f) A long-term agreement may be revised in accordance with instructions issued by the Deputy Administrator where there is a change in status of the participants or the land under agreement.

(g) An eligible person who acquires control of land under an approved agreement may elect to become a successor in interest under such agreement.

(h) An agreement will be terminated with respect to land for which loss of control has occurred and where the person acquiring control of such land elects not to become a successor in interest under the agreement. If the loss of control is for reasons beyond the control of the signatories to the agreement, the COC will determine whether or not any cost-share assistance previously paid shall be refunded; however, in no event shall the refund be greater than would be required in cases where loss of control is voluntary. If the loss of control is voluntary on the part of the signatories, they will be jointly and severally responsible for refunding all cost shares paid and will forfeit all rights to further payments, with respect to the land for which control is lost. A refund will not be required for cost-share assistance where the COC or the STC determines, after consulting with the service forester, that failure to perform the remaining practices in the agreement will not impair the effectiveness of the practices which have been performed and that the completed practices will provide forestry benefits consistent with the cost-share assistance which have been paid.

(i) An agreement may be terminated if, after considering the recommendation of the service forester, the STC or COC recommends that such action is in the public interest.

§ 701.313 Restoration of practices.

(a) Cost-share assistance may be authorized under FIP for the establishment or installation of the practices contained in this part. Cost-share assistance may not be authorized for repeating any of the practices in this part with the same owner on the same acreage, except as provided in paragraph (b) or (c) of this section.

(b) Cost-share assistance may be authorized for the replacement, enlargement, or restoration of practices for which such assistance has been allowed under the program only if all of the following conditions exist:

(1) Replacement or restoration of the practice is needed to solve a conservation or environmental problem.

(2) The failure of the original practice was not due to the lack of proper maintenance by the current operator.

(3) The COC believes that the replacement or restoration of the practice merits consideration under the program to an equal extent with other practices cost-shared.

(c) Cost-share assistance may be authorized for timber stand improvement measures carried out in repetitive steps where the stand treatment warrants such silvicultural practice in the judgment of the service forester.

§ 701.314 FIP maximum cost-share assistance limitations.

For each program year, the total amount which may be received by any person under this subpart shall not exceed $10,000 with respect to eligible owners (§ 701.302) in the United States or any commonwealth, territory, or possessions of the United States for approved practices performed under annual or long-term agreements.

§ 701.315 Completion of practice.

Cost-share assistance for the practices contained in this subpart is conditioned upon the performance of the practices according to all applicable specifications and program provisions.

§ 701.316 Time of filing payment application.

Cost-share assistance will be made only upon an application submitted to the county office by the prescribed time limit or any authorized extension. Any application for payment may be rejected if any information required of the applicant is not submitted to the county office within the applicable time limit.

§§ 701.317–701.399 [Reserved]

Signed at Washington, DC, on December 30, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service.

[FR Doc. 94–415 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Parts 1005, 1007, 1011, and 1046

[DA–93–29]

Milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Marketing Areas; Revised Proposed Suspension of Certain Provisions of the Orders

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rules.

SUMMARY: This document invites written comments on a proposal that would suspend for nearly two years certain provisions of the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville Federal milk orders. If adopted, the proposal would regulate a plant at Kingsport, Tennessee, under the Tennessee Valley order, instead of the Carolina order, and it would keep regulated under the Tennessee Valley order a plant at Somerset, Kentucky, that otherwise might become regulated under the Louisville-Lexington-Evansville order. The proposals were submitted by Land-O-Sun Dairies, which operates the Kingsport, Tennessee, plant, and Southern Bell Dairy, Inc., which operates the Somerset, Kentucky, plant. These handlers contend that without the suspension they would be subject to pricing disparities that could jeopardize their business.

DATES: Comments are due no later than January 20, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension (DA–93–29): Issued October 22, 1993; published October 28, 1993 (58 FR 57970).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. This action would lessen the regulatory burden on small entities by removing pricing disparities that are causing or could cause financial hardship for certain distributing plants.

The Department is issuing this proposed action in conformance with Executive Order 12866.

This proposed suspension has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58 FR 57970) on October 28, 1993, concerning the proposed suspension of certain provisions of the Georgia, Carolina, and Tennessee Valley Federal milk orders (DA–93–29). The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by November 4, 1993. Six comment letters were received concerning the three-market proposed suspension.

Subsequent to the issuance of the above proposed suspension, a suspension request was received from a handler regulated under the Tennessee Valley order that in effect expands the initial suspension issue to the Louisville-Lexington-Evansville order. It also affects a proposed suspension that was issued earlier for the Louisville order. Because of the interrelationship of these several requests, it has been determined that a revised proposed suspension involving all four orders should be issued for comment. Therefore, notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), the suspension of the following provisions of the orders regulating the handling of milk in the Carolina, Georgia, Tennessee Valley, and Louisville-Lexington-Evansville marketing areas is being considered for a 23-month period beginning February 1, 1994:

1. In § 1005.7(d)(3) of the Carolina order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area";

2. In § 1007.7(e)(3) of the Georgia order, the words ", except as provided in paragraph (e)(4) of this section,";

3. In § 1007.7 of the Georgia order, paragraph (e)(4);

4. In § 1011.7(d)(3) of the Tennessee Valley order, the words "from", "there", "a greater quantity of route disposition, except filled milk, during the month", and "than in this marketing area"; and

5. In § 1046.2 of the Louisville-Lexington-Evansville order, the word "Pulaski".

All persons who desire to send written data, views or arguments about the proposed suspension should send two copies of them to the USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, by the 10th day after publication of this notice in the **Federal Register**.

The comment period is limited to 10 days so that the suspension, if found appropriate, can be implemented quickly and thereby minimize financial hardship and disruptive marketing conditions.

The comments that are sent will be made available for public inspection in the Dairy Division during normal business hours (7 CFR 1.27(b)).

Statement of Consideration

This proposed suspension would allow a distributing plant at Kingsport, Tennessee, that is located within the Tennessee Valley marketing area and that meets all of the pooling standards of the Tennessee Valley order to be regulated under that order rather than the Carolina order, as now, despite the plant having greater sales in the Carolina marketing area. It would also allow a distributing plant located at Somerset, Kentucky, that has been regulated under the Tennessee Valley order to remain regulated there even if it should develop greater sales in the Louisville-Lexington-Evansville (Order 46) marketing area. In addition, the proposed suspension would allow a supply plant at Springfield, Kentucky, that has been supplying the Somerset plant to remain pooled under the Tennessee Valley order without having to make uneconomic shipments of milk that it contends would be necessary if the Southern Belle plant shifted to Order 46.

1. The problem of Land-O-Sun Dairies, Inc. In recent months, the blend price to producers at Kingsport, Tennessee, under the Tennessee Valley order has been significantly higher than the blend price at that location under the Carolina order. For example, during the months of July through October 1993, the Tennessee Valley blend price at Kingsport was 32 cents, 29 cents, 20 cents, and 20 cents, respectively, higher than the Carolina blend price at Kingsport. Although the Class I price at Kingsport is identical under both of these orders, the Tennessee Valley order's higher Class I utilization has resulted in a higher blend price at Kingsport during nearly every month for the past two years.

The difference in blend prices at Kingsport requires Land-O-Sun Dairies, as a Carolina order handler, to pay significant over-order prices to retain its milk supply in competition with nearby handlers regulated under the Tennessee Valley order. Land-O-Sun has indicated that it cannot continue to pay these over-order prices without jeopardizing the existence of its business. It therefore proposed a suspension of certain provisions of Orders 5 and 11 that would allow it to become regulated under Order 11.

As noted in the earlier proposed suspension, the paragraph that is proposed to be suspended from the Georgia order is merely a conforming change to preserve the status quo between the Carolina and Georgia orders. This change is necessary to continue the regulation of a Greenville, South Carolina, plant under the Georgia order. Without the suspension, the plant would become regulated under the Carolina order.

2. The problem of Southern Belle Dairy Company. Southern Belle Dairy at Somerset, Kentucky, has been regulated under Order 11 for the past four years. However, recently it has acquired accounts that could cause it to shift to Order 46.

In recent months, the blend price at Somerset under Order 11 has been significantly higher than the blend price at that location under Order 46. For example, during the months of July through October 1993, the blend price under Order 11 at Somerset was 67 cents, 62 cents, 49 cents, and 25 cents, respectively, higher than the Order 46 price at that location. Of these amounts, 19 cents is attributable to a 19-cent higher Class I price at that location under Order 11. Southern Belle contends that if it should shift to Order 46 it would have to pay substantial over-order prices to its producers to retain its milk supply. Moreover, slight changes in sales could cause it to shift back and forth between the two orders, causing market instability and uncertainty under the base-excess programs applicable to both orders.

3. The problem of Armour Food Ingredients Company. Armour Food operates a supply plant and a nonpool manufacturing plant at Springfield, Kentucky. The supply plant has been regulated under Order 11 since August 1992. If the Southern Belle plant shifts to Order 46, Armour's supply plant would also become subject to the regulations of Order 46 because the plant is supplying milk to the Southern Belle plant. Armour contends that the plant would not qualify as a pool plant based on its present milk handling practices because, under the net shipment provision of Order 46, all of the shipments sent to its manufacturing facility from pool distributing plants for surplus disposal would be subtracted from its shipments to pool distributing plants. Armour states that to keep the milk of its producers pooled under Order 46 it would have to incur substantial increases in transportation and assembly costs. To avoid these costs, Armour proposed suspending language in the net shipment provision of Order 46.

4. Industry responses to the earlier proposed suspensions (DA–93–29 and DA–93–26). On the basis of the Land-O-Sun request, a notice of proposed suspension of provisions in Orders 5, 7, and 11 was issued on October 22, 1993 (DA–93–29)(58 FR 57970). Four comments were submitted in support of the action, and two comments were filed in opposition to it.

Milkco, Inc., a handler regulated under the Carolina order with a plant in Asheville, North Carolina, stated that it supported the proposed suspension. Southern Belle Dairy also submitted a letter in support of the suspension.

A letter supporting the suspension also was received from Mid-America Dairymen, Inc., on behalf of Southern Milk Sales, Inc., a dairy cooperative with producer milk pooled on the Tennessee Valley, Georgia, and Carolina orders. The cooperative notes in its letter that "paying higher over-order values to maintain its supply of milk would jeopardize the existence of the affected distributing plant."

Additionally, an individual dairy farmer who supplies producer milk to Land-O-Sun filed a comment in support of the suspension. He stated that if Land-O-Sun paid him a lesser price for his milk he would have to sell to another handler.

Coburg Dairy, a Carolina order handler located in Charleston, South Carolina, filed a comment opposing the suspension. Coburg competes with the Kingsport plant for Class I sales in the Carolina market. The handler argued that the regulation of the Kingsport plant under the Tennessee Valley order would give the plant a competitive advantage in the Carolina market since it has a lower Class I price and because it presumably would not have to pay over-order prices to its producers.

The North Carolina Farm Bureau Federation, a general farm organization, also objected to the proposed suspension on the grounds that regulation of the Kingsport plant under Order 11 would jeopardize the over-order prices in the Carolina market. The Federation indicated that eroding Class I premiums and lower Class I utilization were threatening the health of the dairy industry in North Carolina.

In response to the Armour Food request, a notice of proposed suspension of the net shipment provision of Order 46 was issued on September 22, 1993 (DA–93–26) (58 FR 50526). Three comments were submitted.

Southern Belle supported the suspension, indicating that Armour was supplying it with milk and could encounter problems of assembly and transportation if the plant became subject to the provisions of Order 46 because of a shift in regulation of the Southern Belle plant from Order 11 to Order 46.

Milk Marketing, Inc., a cooperative association with 688 dairy farmers under Order 46, and The Kroger Company, a handler operating Winchester Farms Dairy at Winchester, Kentucky, filed comments opposing the proposed suspension of the net shipment provision. MMI argued that if the net shipment provision is suspended, the intent of the order would not be carried out appropriately and that the needs of the order would not be met in an efficient manner. Kroger stated that there was not an abundant amount of milk available for fluid use under Order 46 and that the net shipment provision was needed to help assure that distributing plants have sufficient supplies of milk to meet their fluid requirements. It contends that there is no justification to relax the performance provisions of the order during the season when milk availability is reduced and Class I sales increase simply because there is a "possibility" that a distributing plant may switch regulation from Order 11 to Order 46.

No final action has been taken on Armour's request to suspend the net shipment provision. However, since that issue would become moot under the proposed suspension being considered herein, final action on the Armour proposal is being held in abeyance pending the outcome of the current proposal.

List of Subjects in 7 CFR Parts 1005, 1007, 1011, and 1046

Milk marketing orders.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: January 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–424 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 1094

[DA–94–06]

Milk in the New Orleans-Mississippi Marketing Area; Proposed Suspension of a Provision of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This document invites written comments on a proposal to suspend, for 23 months, the 45 percent delivery requirement for a plant operated by a cooperative association that is located within the New Orleans-Mississippi marketing area. The suspension was requested by Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana. The association states that without the suspension, it will be forced to make inefficient qualifying shipments of milk merely to keep the milk of its producers qualified for pooling under the order.

DATES: Comments are due no later than January 20, 1994.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the regulatory impact of the order on certain milk handlers and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

The Department is issuing this proposed action in conformence with Executive Order 12866.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Agricultural Marketing Agreement Act, suspension of the following provision of the order regulating the handling of milk in the New Orleans-Mississippi marketing area is being considered for the period from February 1, 1994 through December 31, 1995:

In § 1094.7(c), the words "45 percent or more of the".

All persons wishing to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 10th day after publication of this notice in the **Federal Register**. The filing period is limited to ten days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend for the months of February 1994 through December 1995 the 45 percent delivery requirement for a cooperative association plant that is located in the New Orleans-Mississippi marketing area.

Gulf Dairy Association, Inc., which operates a manufacturing plant at Kentwood, Louisiana, that is regulated under Order 94 submitted the suspension request. The cooperative stated that because of the present 45 percent delivery requirement applicable to a cooperative association that wishes to qualify a manufacturing plant for pooling, it has had to shift some of its producers to neighboring Greater Louisiana (Order 96) pool plants to keep its Kentwood plant qualified as a pool plant under Order 94. It indicated that Order 96 requires that six days' production of a producer must be received at pool plants each month in order to qualify the milk for pooling by diversion to a nonpool plant. Accordingly, it has had to move the milk of selected producers to Order 96 pool plants six days per month. Since this milk is not actually needed by these

pool plants, the cooperative has then had to back-haul the milk to its Kentwood manufacturing plant for processing. The problem is now particularly acute, according to the cooperative, because two Order 94 pool plants have notified Gulf Dairy Association that they will no longer purchase milk from them after February 1, 1994.

Gulf Dairy Association noted that the problem it is experiencing will be resolved through the proposed merger of milk orders that is now under consideration by the Department. It urged that the proposed suspension be effective pending the completion of that proceeding.

List of Subjects in 7 CFR Part 1094

Milk marketing orders.

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: January 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–427 Filed 1–7–94; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 103

[INS No. 1384–92; AG Order No. 1821–93]

RIN 1115–AD18

Adjustment to the Examinations Fee Schedule

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule proposes to adjust the current Examinations Fee schedule for the Immigration and Naturalization Service (INS) in order to generate sufficient revenue to recover the costs of providing immigration and naturalization services, and to change procedures and charges for the Petition for a Nonimmigrant Worker, Form I–129, in response to INS and user experiences. The fee adjustment is needed to comply with specific Federal immigration laws and the Federal user fee statute and regulations, which require the recipients of special benefits from Government services that are not directed to the public at large to bear the costs to the Government of providing those services. The fees proposed in this rule result from an analysis of adjudication and naturalization services and associated costs for fiscal years 1993 and 1994, and are calculated to recover the costs of providing these special services and benefits. This proposed rule ensures that funds will be available to continue to improve the quality of service to users. Its financial impact on users of the services is small. In most cases the proposed fee increase is five dollars. In the aggregate this proposed fee increase is slightly less than the projected change in the consumer price index since the last general fee increase in April 1991.

DATES: Written comments must be submitted on or before February 9, 1994.

ADDRESSES: Comments must be submitted in writing for consideration. Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch; Immigration and Naturalization Service; 425 I Street, NW.; room 5307; Washington, DC 20536–0002. To ensure proper handling, please reference INS No. 1384–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Barbara J. Atherton, Chief, Fee Analysis and Operations Branch, Office of Finance; Immigration and Naturalization Service; 425 I Street, NW.; room 6240; Washington, DC 20536–0002; telephone 202–616–2754.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Immigration and Naturalization Service (INS) of the Department of Justice (DOJ) is required by law to charge fees to the users of its services. Such fees presently comprise about 36 percent of the INS budget. There are four fee accounts, and the fees which are collected in each account are used to fund specific services. The four fee accounts are the Immigration Examinations Fee Account, the Immigration User Fee Account, the Land Border Inspection Fee Account, and the Legalization Fee Account. Because the fees in each of these accounts are designed to recover the costs which are incurred to provide specific services, they must be reviewed regularly and adjusted as costs change or more precise cost determination processes become available. This rule proposes to modify the examinations fee schedule.

The Immigration Examinations Fee Account (Examinations Fee Account) provides funds for immigration adjudication and naturalization services. It is funded by a total of 32 separate fees for processing the various applications used by INS. Examples include applications for permanent resident status, petitions for relatives, employment authorization applications, reentry permits, and extensions of temporary stay. The separate fees currently range from $30 to $140.

To cover the costs of providing adjudication and naturalization services, it has been determined that a fee increase of 7.5 percent is needed. This increase reflects inflation since the last general fee increase in April 1991, the assignment of certain additional costs to the Examinations Fee Account for services that support adjudications and naturalization functions, and the costs of investments to improve services to users. This proposed rule would adjust the current fee schedule by 7.5 percent.

A. Refining the Fee Development Process

INS has initiated a process of continuous improvement in the management of the finances of the fee accounts and the development of fee schedules. Areas that are being addressed over a projected multi-year time horizon include: Identifying the INS resources consumed in providing services to our customers which by law must be recovered through fee revenues; refining definitions of direct and indirect costs; and refining cost measurement systems, in concert with wider Department of Justice initiatives to improve financial management information systems.

Of necessity, to ensure the availability of necessary funds for maintaining operations, the first phase of this effort has been identification of INS resource use that must be recovered through fees. Prior to 1992, INS had not analyzed rigorously the full extent of its costs related to fee-supported services. In 1992, INS undertook a comprehensive review of the work that should properly be charged to fee accounts in order to meet statutory requirements. Extensive information gathering and analysis were performed as part of this effort. The aggregate cost of the work in support of the Examinations Fee Account was computed based on the budget for fiscal year 1993 and the estimated budget for fiscal year 1994.

This information was used to compute the percentage revenue increase required to cover the costs, and that percentage, with limited exceptions, was applied to the existing fee schedule that has been in place since 1991 to arrive at the proposed fees, through the steps explained in this proposed rule.

Instead of using the existing fee schedule as a base for the percentage increases, INS also considered whether it would have been feasible to base the proposed fees on 1992 cost measurements. INS rejected this approach because of problems with 1992 data caused by the transition to a more automated system of productivity measurement.

Future fee adjustments will reflect efforts to refine direct and indirect cost definitions and measurements, and will address alternative approaches to the allocation of indirect costs among applicants for services. At this time, however, the current fee schedule, with the adjustments specifically identified below, reflects the best available comprehensive data on service costs, and was therefore judged to be the soundest foundation for computing the proposed fee schedules for fiscal year 1994.

II. Directives and Guidelines

INS's examinations fees have been designed in accordance with legislation, guidance from the Office of Management and Budget (OMB) and the Department, and accepted principles of ratemaking in regulated public and commercial enterprises. The overall principle employed is one of cost causation, which means the fees are designed to cover the costs associated with providing the services funded through the Examinations Fee Account.

A. Legislation

The enabling legislation for the Examinations Fee Account is the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1989 (Pub. L. 100–459), a U.S.C. 1356(n), which provides that the receipts collected shall "* * * remain available * * * to reimburse any appropriation the amount paid out of such appropriation for expenses in providing immigration adjudication and naturalization services and the collection, safeguarding and accounting for fees * * *". The Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1991 (Pub. L. 101–515), 8 U.S.C. 1356(m), provides further "* * * that fees for providing adjudication and naturalization services may be set at a level that will ensure recovery of the full costs of providing all such services, including the costs of similar services provided without charge to asylum applicants or other immigrants. Such fees may also be set at a level that will recover any additional costs associated with the administration of the fees collected." The general authority to assess fees for services is found in the Independent Offices Appropriation Act, 1952 (Pub. L. 82–137) (IOAA), 31 U.S.C. 9701, frequently referred to as the "user fee statute," which provides for Federal agencies to define special services provided to unique segments of the population and to charge fees for those services instead of supporting them through general tax revenues. The IOAA provides that "* * * each service or thing of value provided by an agency * * * to a person * * * is to be self-sustaining to the extent possible." These charges, among other things, are to be based on "* * * [t]he costs to the Government * * *."

In 1986, proposed fee increases for adjudication services were challenged in the Federal District Court for the District of Columbia on the grounds that the Attorney General lacked authority to impose fees for the services in question and that, even if the fees were legally permissible, the specific fees under challenge were arbitrarily excessive. In *Ayuda, Inc.* v. *Attorney General*, 661 F. Supp. 33 (D.D.C., 1987), the District Court rejected these arguments:

> Accordingly, it appearing that the service fees were established through appropriate administrative procedures after adequate cost analysis and with opportunity for public participation, and that they are in all respects consistent with the statutes being implemented, summary judgment must be granted to the Attorney General and denied to plaintiffs.

661 F.Supp. at 36.

In upholding the District Court decision, the Court of Appeals held that:

> In light of settled law, we are constrained to conclude that the INS fees at issue are for a "service or thing of value" which provides the recipients with a special benefit * * *. Since these procedures are triggered only at the instance of the individual who seeks, obviously, to benefit from them, this fee regime cannot in fairness be characterized as an INS effort to charge for activities that are carried on principally to benefit the public generally. The benefit is simply too direct and immediate to a specific, identifiable beneficiary to consider such services as constituting primarily a broad part of INS' overall mission to serve the public.

Ayuda, Inc. v. *Attorney General*, 848 F.2d 1297, at 1301 (D.C. Cir. 1988).

B. Office of Management and Budget (OMB) Guidelines

OMB circular A–25, User Charges, states that as a general policy "a user charge * * * will be assessed against each identifiable recipient for special benefits derived from Federal activities beyond those received by the general public." The following discussion is provided:

> When a service (or privilege) provides special benefits to an identifiable recipient beyond those that accrue to the general public, a charge will be imposed (to recover the full cost to the Federal Government for providing the special benefit, or the market price). For example, a special benefit will be considered to accrue and a user charge will be imposed when a Government service:
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> (a) Enables the beneficiary to obtain more immediate or substantial gains or values (which may or may not be measurable in monetary terms) than those that accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or
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> (b) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks); or
>
> (c) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

Circular No. A–25, User Charges, Executive Office of the President, Office of Management and Budget, July 8, 1993, pp. 2–3.

C. Department of Justice Guidelines

The Department of Justice issued guidance on User Fee Programs in April 1993. The guidance states that as a general policy "a charge shall be imposed to recover the full cost to the Federal Government of rendering a service that provides specific benefits to an identifiable recipient above and beyond those that accrue to the public at large." The following discussion is provided:

> Cost is a financial measurement of resources used in accomplishing a specified purpose, carrying out an activity, or completing a unit of work or a specific project * * *. Direct costs are those which are proximate and directly traceable to the unit of output for which the fee is charged. Indirect costs are those which are more distant, general in nature, and not directly traceable to the product or service produced.
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> * * * [E]xisting legislation may require the inclusion of costs for selected activities not directly related to the unit of performance or product for which a fee is charged. Where this occurs, both the direct and indirect costs of such activities should be included in the cost computation.

User Fee Programs, Department of Justice, Justice Management Division, April 1993, pp. 3 and 12. The policies and procedures followed in the development of the proposed fee schedules are consistent with this guidance.

D. Ratemaking Principles

The above-stated policies, as set forth by statute and more fully developed by OMB and the Department, comport with reasonable standards for user charges and are strongly supported by the

prescriptions of economic experts with widely recognized credentials in the field of ratemaking policy. Any other approach would burden taxpayers with costs that can be traced directly to the needs of specific individuals, not to society at large.

One of many similar statements on cost of service as a basic standard of reasonableness is stated as follows in the authoritative text by Bonbright, Danielsen, and Kamerschen:

> No writer whose views on public utility rates command respect purports to find a single yardstick by sole reference to which rates may be judged reasonable or socially desirable as distinguished from rates that are unreasonable or adverse to the public interest. A complex of tests of acceptability is required just as would be the case with the tests of a good automobile, a good income-tax law, or a good poem. Nevertheless, one standard of reasonable rates can fairly be said to outrank all others in the importance attached to it by experts and public opinion alike—the standard of costs of service, often qualified by the stipulation that the relevant cost is necessary, true (i.e., private and social) cost or cost reasonably or prudently incurred. * * *
>
> A cost standard of ratemaking has been most generally accepted in the regulation of the levels of rates charged by private utility companies. But even more significant is the widespread adherence to cost, or to some approximation of cost, as a basis of ratemaking under public ownership* * * *
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> Bonbright, Danielsen, and Kamerschen, Principles of Public Utility Rates, Public Utilities Reports, Inc., Arlington, Va., 2nd ed. 1988, pp. 109–110.

While the foregoing reference is extracted from a discussion of public utility rates, the rate standard cited also is applicable to other pricing situations that require cost recovery in a fair and reasonable manner.

III. Examinations Fee Account

This section describes the major programs funded by the Examinations Fee Account.

A. Adjudications and Naturalization Program

The function of this program is to process, adjudicate, and ultimately grant or deny applications and petitions for benefits provided under the immigration laws of the United States. Adjudications activities include processing applications for permanent resident status, petitions for relatives, temporary and permanent worker petitions, reentry permits, refugee travel documents, extensions of temporary stay, employment authorizations, and temporary protected status. Naturalization activities include the examination of aliens to determine their qualifications for naturalization, administration of the oath for citizenship, and issuance of citizenship documents.

B. Refugees and Overseas Program

The function of this program is to adjudicate refugee and asylum applications, conduct investigations for preference and relative visa petitions, and conduct other records checks and background investigations as are required at overseas INS offices. Officers assigned to this program also provide assistance to citizens and lawful permanent residents abroad regarding adoptions, immigration, or parole of alien spouses and children, and other benefits under the Immigration and Nationality Act. They also review requests for the Attorney General to grant humanitarian parole into the United States for deserving persons.

C. Information and Records Management

The Information and Records Management program provides a variety of services critical to the adjudications and naturalization processes. These services include: Creating, updating, storing, retrieving, and tracking alien files; responding to inquiries on application status; providing information to the public, both in-person and by telephone, on immigration-related matters; printing and distributing application forms and instructions and providing them to the public.

D. Data and Communications

The Data and Communications program develops and operates INS automated information systems which support the adjudications and naturalization program, and operates the identification card production facility. Adjudications and naturalization support systems are currently being integrated and consolidated into the Computer Linked Application Information Management System (CLAIMS), which provides adjudication support to service centers, district offices, and ports of entry. The system, which is operating in the service centers and is being installed in other field offices, reduces application processing time and response time to inquiries.

IV. Fee Setting Procedures

This section provides a description of INS fee-setting procedures, including an explanation of the cost bases for setting fees. Descriptions of the examinations fees and their cost components and an explanation of the procedures employed by INS to calculate the costs are included.

A. History of Current Examinations Fees

Policies pertaining to the assessment of INS user fees and their underlying costs have evolved over 25 years, beginning in 1968. The Examinations Fee Account itself has a more recent history, starting in 1989. Prior to 1989, all examinations fee revenues were treated as general revenues of the Federal Government. They are now credited to the Examinations Fee Account and used to fund related services.

Procedures to compute examinations fees involve the development and summation of three cost components: direct costs, indirect costs, and a surcharge to recover the costs of the Refugees and Overseas program. These three cost components are described more fully below.

Salient developments preceding the analyses that led to this proposed rule include the issuance in December 1992 of an audit report prepared by the Office of the Inspector General (OIG) of the Department of Justice. That report, entitled "Controls Over Established User Fee Accounts in the Immigration and Naturalization Service" (DOJ OIG Audit Report No. 93–3), stated that INS's accounting system did not identify properly all costs that ought to be recovered from user fee accounts. This view is summarized below:

> The review of actual program costs disclosed that all identified costs were charged to the proper user fee accounts. However, the INS accounting system does not provide usable cost data applicable to the user fee program and INS program managers had not identified all the direct program costs that should have been reimbursed from the user fee accounts. In addition, various INS units providing indirect support of personnel and services were not receiving user fee reimbursement commensurate with the level of resources expended * * * Since valid direct and indirect program costs went unidentified, appropriated funds essentially subsidized user fee related program costs that should have been reimbursed from user fee revenue.
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> DOJ OIG Audit Report No. 93–3, at p. i.

The finding that all program costs were not being recovered from user fee accounts triggered several actions by INS that culminated in the current proposed rule. At the same time that the OIG was conducting its audit, a senior Justice Department official reviewed the fee-setting process and proposed changes. As a result, the OIG deferred additional work in this area. According to the audit report:

> A plan was developed and approved and the same Justice official was detailed to compile user fee costs, revise fee schedules as necessary to collect revenues sufficient to make each account self-sustaining, and obtain Congressional approval to reprogram INS appropriations accordingly. This project was initiated in March 1992 and is scheduled to be completed by the end of FY 1992. Since the project covered most of the problem areas disclosed by our audit, we deferred additional audit work in this area.
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> DOJ OIG Audit Report No. 93–3, at p. ii.

The review of the process conducted during 1992 consisted of a detailed survey and extensive consultations with all INS program offices to review the extent to which they provide services to fee account activities, whether they were commensurately reimbursed for those services, and whether specific service improvement investments would be appropriate if additional fee account revenues were available.

An initial reallocation (reprogramming) of program costs proposed earlier by the Attorney General was approved by Congress, with the effect of properly assigning some costs of user fee activities to the fee accounts. The budget enacted by Congress for fiscal year 1993 reflected these reallocations.

The 1992 review found that the Attorney General's reprogramming had substantially corrected the assignment of costs identifiable at that point as related to fee account activities, with two exceptions: The costs of legal proceedings and the costs of management and administration. In the case of these two programs, some costs are being charged to fee accounts, but not enough to cover the substantial work associated with the fee account activities.

The review also concluded that although a number of investments were recommended by review participants, the recommendations generally anticipated actions that were planned in future budget cycles. Therefore the investments would generally be addressed as part of INS's normal budget review process, rather than as a part of the current fee adjustment process.

This proposed fee increase incorporates the results of this extensive review of INS programs, inflationary cost increases since the last general fee increase in April 1991, and the projected costs of presently budgeted program investments to improve services to INS's customers.

B. Costs

1. Cost Components

OMB Circular A–25, in its discussion of cost determination for purposes of setting fees, provides that "user charges will be sufficient to recover the full cost to the Federal Government * * * of providing the service * * *." It also provides that those costs shall include an "appropriate share of the management and supervisory costs." Circular No. A–25, User Charges, Executive Office of the President, Office of Management and Budget, July 8, 1993, pp. 3–5. Direct costs are only the most readily identifiable costs of providing user services. Each service also has indirect components which, although not as easily identifiable, are nevertheless causally related to the costs of providing services. Each examinations fee has three components: direct costs, indirect costs, and a surcharge to cover the costs of the Refugees and Overseas Program.

a. Direct costs. Direct costs are those costs directly related to the processing of a particular application form for a particular benefit. Direct costs include: the pay of the Adjudications officers and clerical staff working on each type of application and the costs of their associated personnel benefits; the costs of Federal Bureau of Investigation (FBI) name and fingerprint checks; where applicable, the costs by application of naturalization ceremonies conducted by United States Courts; and the costs of INS immigration document and card production. The pay costs are calculated by multiplying average adjudications processing time by the hourly pay for the average grade levels of adjudicators and clerks.

b. Indirect costs. Indirect costs reflected in the current fee structure are defined as the costs of supervisory, management, and administrative activities, related staff training, records, data processing, and files services, legal services, and space and support costs of providing immigration benefits under the Immigration and Nationality Act and related statutes.

Indirect costs also include costs in the management and administration portion of the INS budget, such as the costs of the personnel administration work needed to recruit and pay the officers and clerks who process customers' applications for benefits. The activities associated with these costs are no less essential to providing INS services to its customers than are the direct costs. These indirect costs are distinguished only by the somewhat greater complexity of determining the portion of such costs that are attributable to work done for fee-paying customers. In addition, indirect costs include the cost of auditing the Examinations Fee Account by the Department of Justice Inspector General.

c. Surcharge. The costs to carry out the Refugees and Overseas Program are borne by the Examinations Fee Account, at the direction of Congress. See section 286(m) of the INA, 8 U.S.C. 1356(m). These costs are treated as a surcharge that is added to the examinations fees.

2. Cost Transfers

A transfer is the shift of costs from one account to another. Transfers arise when costs from one account are identified as appropriately charged to another account. Transfers have been prompted by cost reviews such as that conducted in 1992 to refine the identification of costs attributable to user fee activities. Transfers found in the 1992 review to be necessary to meet statutory requirements are as follows:

a. *Legal proceedings.* A review of INS workload statistics identified the equivalent of 78 additional positions and work years of legal activities that properly should be charged to Examinations Fee Account activities. These legal activities include appearances before the Immigration Court for hearings related to asylum, adjustment of status, registry, waivers of inadmissibility, and rescission; the preparation of arguments and briefs for such hearings; appearances before Federal and state courts for contested naturalization hearings; appearances in U.S. District Courts in mandamus and declaratory judgment cases; preparation of arguments, briefs, and litigation reports in such cases; and associated legal consultations and preparation of legal memoranda. Also included are resources for support staff, and Special Assistant U.S. Attorney, Regional Counsel, and District Counsel positions chargeable for Examinations work. INS will propose to transfer these 78 positions, work years, and associated costs from the Salaries and Expenses appropriation to the Examinations Fee Account. Copies of this review are available upon request.

b. *Management and administration.* Management and Administration (M&A) resources have been assigned to the Examinations Fee Account using a "distribution-key" concept. Distribution-key is a term borrowed from the U.S. Postal Service's cost allocation practice. With this practice, costs which cannot be directly related to a certain class or account are distributed on the basis of costs which can be directly assigned. For example, in the case of mail processing, the costs associated with supervision of mail clerks (where no direct statistical assignment mechanisms are in place) are distributed on the same basis as are the costs for the mail clerks themselves

(where statistical workload measurement systems are in place). See, for example, Postal Rate Commission, Docket No. R90–1, United States Postal Service Library Reference F–1, Summary Description of USPS Cost Development by Segments and Components, fiscal year 1988, pp. 2–2 through 2–5.

For this process, a full-time equivalent work year (referred to as "work year" or "FTE") was chosen as the distribution-key. Costs were allocated based upon the percentage distribution of work years between the Examinations Fee Account and all other accounts in INS. See Exhibit 1, Derivation of Management and Administration Distribution Key.

At INS, examinations officer work years relate directly to workload volume, and the management and administration work that supports the examinations officers are dependent upon the number of officer work years. Work years are a useful gauge of the resources needed in each program because they include the contributions of both full and part-time staff. Other possible distribution-keys (positions and dollars) are believed to be inferior to work years. Positions alone are inferior as a distribution-key because they include only full-time permanent staff and vacancies. The use of positions would understate proper assignment levels to the extent that part-time workers are ignored, but would overstate proper assignment levels to the extent that vacancies are included. Dollars are also an inferior distribution-key because they may be skewed by the inclusion of one-time expenditures or other unique costs.

The distribution-key concept is consistent with the guidance provided by the Department. The following discussion is provided:

> For each overhead activity * * *, estimate, on a rational basis, approximately what percentage of the amount is indirectly relatable or incidental to the functions and costs * * *. The percentage assigned ordinarily should be based on the relative amount of time or outputs traceable to the particular unit of performance. In the case of very general, non-traceable activities (e.g., executive direction or congressional and public affairs), where there are labor-intensive performance units, general or non-traceable cost allocations may be predicated on relative employment (costs or full time personnel equivalents) devoted directly to the fee account revenue-generating programs vis-a-vis all other programs.

User Fee Programs, Department of Justice, Justice Management Division, April 1993, pp. 10–11.

To distribute costs properly, based on the distribution-key concept, INS will propose to transfer 143 positions, 133 work years, and associated costs from the Salaries and Expenses appropriation to the Examinations Fee Account. However, INS will not propose to use all of the resources potentially available as a result of the transfer to correct documented deficiencies in M&A program support activities in fiscal year 1994. Rather, INS will propose to use part of these resources to support additional work years for the Adjudications and Naturalization Program to ensure good service during the period of transition when more work will be shifted from district offices to service centers (the "Direct Mail III" program). INS will defer full use of the resources for program support activities until fiscal year 1995 or 1996, as conditions warrant.

3. Investments to Improve Service Quality

Service quality improvements are made possible by investments in staff additions and capital assets. One investment which will be financed by the examinations fee increase will be the continued expansion of INS service center operations. These expanded automation-intensive facilities will improve productivity and reduce delays in application processing operations. The transfer of work now conducted at the district offices to the service centers will improve processing at district offices and allow district office staff to devote more time to those applications which require personal contact with people applying for benefits.

C. Proposed Fee Increase

The need for increased revenues which underlies the proposed fee increase was calculated by adjusting the projected total costs of providing adjudications and naturalization services to include the transfers and service improvements described above, and comparing the costs to the revenue projected under the current fee schedule. Because they are reflected in INS budget projections, the calculation incorporates the effects of inflation-based cost increases that have occurred since the last general fee increase in April 1991 and all other mandatory adjustments to the cost base. This calculation yields a required percentage revenue increase which, with limited exceptions, was then uniformly applied to the existing schedule of fees. The exceptions to this procedure, required because of (i) the consolidation of forms and (ii) certain technical adjustments, are described below.

Exhibit 2, Projected Examinations Fee Account, shows the projected fiscal year 1994 resource allocations to the Examinations Fee Account. The projected transfers from the Salaries and Expenses appropriation, which are incorporated in Exhibit 2, are shown in Exhibit 3, Projected Transfers From Salaries and Expenses Appropriation to Examinations Fee Account.

Exhibit 4, Proposed Examinations Fee Revenue Adjustment, shows how the proposed fee increase was computed. The calculations are based on the projected fiscal year 1994 budget, and begin with an estimate of the funds that will remain in the Examinations Fee Account at the close of fiscal year 1993.

INS projects that $18.7 million will be carried forward in the Examinations Fee Account from fiscal year 1993 to fiscal year 1994 (Line 1). Revenue of $314.7 million is anticipated in fiscal year 1994 at the fee levels currently in place (Line 2). The sum of these two amounts is $333.4 million, which is the total amount projected to be available for the Examinations Fee Account for fiscal year 1994 in the absence of a fee increase (Line 3).

INS projects that the costs of Examinations Fee Account programs for fiscal year 1994 will be $331.5 million (Line 4). Because of the impossibility of predicting precisely the number of applications and associated revenue and workload in any given time period, and in order to ensure that there are sufficient resources to adjudicate applications, including those currently in process, INS has determined the need to retain a balance equivalent to one month of costs, or $27.6 million (Line 5). The remainder of that amount, if any, would be carried forward to the next fiscal year to continue processing applications. The existence of a carryforward balance is consistent with INS' past practice. As explained below, technical adjustments were applied to the fee base for some forms to ensure fair distribution of costs among users. The net effect of those adjustments is subtracted so that they will have no net impact on the aggregate INS fee revenue requirement (Line 6). The algebraic sum of these three amounts is the total revenue requirement of $356.9 million (Line 7).

Subtracting the revenue requirement from the funds available shows a revenue shortfall of $23.5 million (Line 8). Dividing this shortfall by the revenues projected under the current fee schedule produces the percentage by which the fees must be increased, 7.5 percent (Line 9).

D. Computation of the Fees

The proposed fees for most Immigration and Naturalization forms were calculated by applying the increase of 7.5 percent to the current fee, and rounding the result upward or downward to the nearest $5.00. Fees adjusted in this manner are shown on Exhibit 5.

There were two exceptions to this computational procedure. One exception is a consequence of forms consolidation actions affecting the Petition for a Nonimmigrant Worker, I–129, where procedures and charges have been altered in response to experience with the consolidated forms and suggestions from users. The new charges associated with the I–129 are described below, and presented in Exhibit 6. The other exception is associated with technical adjustments to the computational base for certain forms, as described below and shown in Exhibit 7.

1. Petition For a Nonimmigrant Worker, I–129

On October 4, 1991, INS published a proposed revision of Form I–129, Petition for a Nonimmigrant Worker (56 FR 50350). This revision consolidated a number of separate application and petition processes that had previously been handled on separate application forms, each with separate fees. To the extent possible, the new form retained the original fee structure, which was based upon the costs associated with each separate adjudication.

After the consolidation of Form I–129, INS received a number of comments and questions regarding the I–129 process. As a result, INS proposes to revise Form I–129 to incorporate several additional processes created by the Immigration Act of 1990 (Pub. L. 101–649) and the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (Pub. L. 102–232), and to simplify the application procedures in response to public comments. For example, INS proposes to revise procedures in instances where an employer is filing for one worker to allow the worker's dependents to be included in the petition instead of requiring separate applications. In addition, INS would no longer require separate petitions for groups where the members will be applying for visas at more than one consulate or for visa-exempt workers applying for admission at different ports of entry.

Current Form I–129 Fee Structure:

The fee for a Petition for a Nonimmigrant Worker consists of a base fee of $70 plus either:

—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;

—$80 per worker if requesting a change of status; or

—$50 per worker if requesting an extension of stay.

Proposed Form I–129 Fee Structure:

The proposed fee for a Petition for a Nonimmigrant Worker is $120 per petition plus $10 for each dependent if filing for one worker, and $100 per petition plus $20 for each worker if filing for more than one worker. The changes simplify the application process and more fairly distribute the costs of processing.

Because INS has consolidated actions which were previously separate, data are not yet available for establishing a fee based upon actual cost experience. Therefore, the proposed fee is based upon estimates of these costs.

2. Technical Adjustments to Computation Base for Certain Applications

Before undertaking the percentage computations to arrive at the fee schedules proposed in this rule, INS reviewed the cost information supporting the current fee schedule. The information on processing times and related costs, the costs of FBI name and fingerprint checks, the costs of naturalization ceremonies conducted by United States Courts, the costs of INS immigration document and card production, the indirect costs and the surcharge were examined. (Copies of this analysis are available upon request.) Some differences were found between the current fees and the statistical information on the associated costs. The differences are small, and probably result from data corrections after the fees were computed.

In order to ensure fair distribution of costs among users, INS adjusted, upward or downward as necessary, the current fees for forms where differences were identified, before computing the proposed fee increase for those forms. INS ensured that this process had no net effect on the total revenue increase proposal by deducting the revenue increase that would be caused by the technical adjustments from the total revenue requirement before calculating the percentage fee revenue adjustment that would be applied to all forms. As previously noted, this deduction appears on Line 6 of Exhibit 4, where the fee revision requirement is calculated.

V. Proposed Fee Adjustments

Proposed fee adjustments are shown in Exhibits 5–7.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects in 8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Fees, Forms, Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

Accordingly, part 103 of chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. Section 103.7, paragraph (b)(1) is amended by revising the entries listed to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

Form I–17. For filing application for school approval, except in the case of a school or school system owned or operated as a public educational institution or system by the United States or a state or political subdivision thereof—$140.

Form I–90. For filing application for Alien Registration Receipt Card (Form I–551) in lieu of an obsolete card or in lieu of one lost, mutilated or destroyed, or in a changed name—$75.

Form I–102. For filing application (Form I–102) for Arrival-Departure Record (Form I–94) or Crewman's Landing Permit (Form I–95), in lieu of one lost, mutilated, or destroyed—$65.

* * * * *

Form I–129. For filing a petition for a nonimmigrant worker—$120 per petition plus $10 for each dependent if

filing for one worker; $100 per petition plus $20 for each worker if filing for more than one worker.

Form I–192F. For filing petition to classify nonimmigrant as fiancee or fiance under section 214(d) of the Act—$75.

* * * * *

Form I–130. For filing petition to classify status of alien relative for issuance of immigrant visa under section 204(a) of the Act—$80.

Form I–131. For filing application for issuance of reentry permit—$70.

Form I–140. For filing petition to classify preference status of an alien on basis of profession or occupation under section 204(a) of the Act—$75.

Form I–191. For filing application for discretionary relief under section 212(c) of the Act—$90.

Form I–192. For filing application for discretionary relief under section 212(d)(3) of the Act, except, in an emergency case, or where the approval of the application is in the interest of the United States Government—$90.

Form I–193. For filing application for waiver of passport and/or visa—$95.

Form I–212. For filing application for permission to reapply for an excluded or deported alien, an alien who has fallen into distress and has been removed as an alien enemy, or an alien who has been removed at Government expense in lieu of deportation—$95.

* * * * *

Form I–360. For filing petition for an Amerasian, Widow(er), or Special Immigrant—$80, except there is no fee for a petition seeking classification as an Amerasian.

Form I–485. For filing application for permanent residence status or creation of a record of lawful permanent residence—$130 for an applicant 14 years of age or older; $100 for an applicant under the age of 14 years.

* * * * *

Form I–526. For filing a petition for an alien entrepreneur—$155.

* * * * *

Form I–539. For filing an application to extend or change nonimmigrant status—$75 plus $10 per co-applicant.

* * * * *

Form I–600. For filing petition to classify orphan as an immediate relative for issuance of immigrant visa under section 204(a) of the Act. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–600A. For filing application for advance processing of orphan petition. (When more than one petition is submitted by the same petitioner on behalf of orphans who are brothers or sisters, only one fee will be required.)—$155.

Form I–601. For filing application for waiver of ground of excludability under section 212 (h) or (i) of the Act. (Only a single application and fee shall be required when the alien is applying simultaneously for a waiver under both those subsections)—$95.

Form I–612. For filing application for waiver of the foreign-residence requirement under section 212(e) of the Act—$95.

* * * * *

Form I–751. For filing an application to remove the conditions on residence which is based on marriage—$80.

* * * * *

Form I–765. For filing an application for employment authorization pursuant to 8 CFR 274a.13—$70.

* * * * *

Form I–817. For filing application for voluntary departure under the Family Unity Program—$80. The maximum amount payable by the members of a family filing their applications concurrently shall be $225.

* * * * *

Form N–300. For filing application for declaration of intention—$75.

* * * * *

Form N–400. For filing an application for naturalization—$95. For filing an application for naturalization under section 405 of the Immigration Act of 1990, if the applicant will be interviewed in the Philippines—$120.

* * * * *

Form N–470. For filing application for section 316(b) or 317 of the Act benefits—$115.

Form N–565. For filing application for a certificate of naturalization or declaration of intention in lieu of a certificate or declaration alleged to have been lost, mutilated, or destroyed; for a certificate of citizenship in a changed name under section 343 (b) or (d) of the Act; or for a special certificate of naturalization to obtain recognition as a citizen of the United States by a foreign state under section 343(c) of the Act—$65.

Form N–600. For filing application for certificate of citizenship under section 309(c) or section 341 of the Act—$100.

Form N–643. For filing an application for a certificate of citizenship on behalf of an adopted child—$80.

Form N–644. For filing an application for posthumous citizenship—$80.

* * * * *

Dated: December 23, 1993.

Janet Reno,

Attorney General.

Exhibit 1

Note: The following exhiblt will not appear in the Code of Federal Regulations.

DERIVATION OF MANAGEMENT AND ADMINISTRATION (M&A) DISTRIBUTION KEY

[Fiscal Year 1994]

Description	Full-Time Equivalent Work Years (FTE)		
	Examinations Fee Account	All Other INS Accounts	Total
Non-M&A Work Years	3,951	13,291	17,242
Percent	22.9	77.1	100

Exhibit 2

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT—PROJECTED POSITIONS, WORK YEARS AND DOLLARS

[Fiscal Year 1994]

Program	Positions	Work years	Dollars ($000)
Inspections	241	240	15,847
Border Patrol			
Investigations	100	100	7,533
Detention & Deportation			
Adjudications & Naturalization	2,258	2,129	145,859
Refugees & Overseas	412	472	40,761
Training	22	20	3,153
Data & Communications	72	68	34,863
Information & Records Management	736	801	51,359
Intelligence	8	8	549
Legal Proceedings	116	112	9,432
Construction & Engineering	1	1	178
Management & Administration	213	204	21,939
Total	4,179	4,155	331,473

Exhibit 3

Note: The following exhibit will not appear in the Code of Federal Regulations.

PROJECTED TRANSFERS; SALARIES AND EXPENSES APPROPRIATION TO EXAMINATIONS FEE ACCOUNT—POSITIONS, WORK YEARS AND DOLLARS

[Fiscal Year 1994]

Program	Positions	Work years	Dollars ($000)
Inspections			
Border Patrol			
Investigations			
Detention & Deportation			
Adjudications & Naturalization			
Refugees & Overseas			
Training			
Data & Communications			
Information & Records Management			
Intelligence			
Legal Proceedings	78	78	6,304
Construction & Engineering			
Management & Administration [1]	126	117	12,311
Total	204	195	$18,615

[1] To distribute costs properly, INS would transfer 143 positions, 133 work years and associated costs. However, in FY 1994 INS will propose to transfer only 126 positions, 117 work years and associated costs, so that the difference can be used to support additional work years in the adjudications and naturalization program during the period of transition when work is shifted to service centers.

Exhibit 4

Note: The following exhibit will not appear in the Code of Federal Regulations.

PROPOSED EXAMINATIONS FEE REVENUE ADJUSTMENT

[Fiscal Year 1994]

Line	Description	Dollars (000)
	Funds Availability	
1	Carry-forward from FY 1993	$18,677
2	Anticipated FY 1994 Revenue at Current Fee Levels	314,741
3	Projected FY 1994 Funds Availability (Line 1 + Line 2)	333,418
	Costs	
4	Funding Requirements (1994 Costs)	331,473
5	Planned Carry-forward to FY 1995 (1 months' cost)	27,623
6	Less: Effect of Technical Adjustments	2,180
7	Total Revenue Requirement (Line 4 + Line 5 − Line 6)	356,916
	Impact on Fee Schedule	
8	Additional Revenue Required (Line 3 − Line 7)	23,498
9	Fee Revenue Adjustment Required (Line 8 ÷ Line 2)	7.5%

Exhibit 5

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Current Fees and Proposed Fees]

Form No.	Form name/description	Current fee	Proposed fee
I–17	Petition for Approval of School for Attendance by Nonimmigrant Students	$130	140
I–90	Application to Replace Alien Registration Card	70	75
I–130	Petition for Alien Relative	75	80
I–131	Application for Travel Document	65	70
I–140	Immigrant Petition for Alien Worker	70	75
I–192	Application for Advance Permission to Enter as Nonimmigrant	85	90
I–193	Application for Waiver of Passpart and/or Visa	90	95
I–212	Application for Permission to Reapply for Admission into the U.S. After Deportation or Removal	90	95
I–360	Petition for Amerasian, Widow(er), or Special Immigrant (except for a petition seeking classification as an Amerasian in which case the fee is waived).	75	80
I–485	Application to Register Permanent Residence or Adjust Status		
	If 14 years of age or older	120	130
	If under 14 years of age	95	100
I–539	Application to extend/Change Nonimmigrant Status	70	75
I–601	Application for Waiver of Grounds of Excludability	90	95
I–612	Application for Waiver of the Foreign Residence Requirement	90	95
I–751	Petition to Remove the Condition on Residence	75	80
I–817	Application for Voluntary Departure Under Family Unity Program	75	80
N–300	Application to File Declaration of Intention	70	75
N–400	Application for Naturalization	90	95

Exhibit 6

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

Current Fee and Proposed Fee

Petition for a Nonimmigrant Worker (I–129)

Current Fee Structure:

The fee for a petition is a base fee of $70 plus either:

—$10 per worker if requesting consulate or port-of-entry notification for visa issuance or admission;

—$80 per worker if requesting a change of status; or

—$50 per worker if requesting an extension of stay.

Proposed Fee Structure:

If filing for one worker, $120 per petition plus $10 for each dependent.

If filing for more than one worker, $100 per petition plus $20 for each worker.

Exhibit 7

Note: The following exhibit will not appear in the Code of Federal Regulations.

EXAMINATIONS FEE ACCOUNT

[Current Fee and Proposed Fee, with Technical Adjustments]

Form No.	Form name/description	Current fee	Adjusted fee	Proposed fee
I–102	Application for Replacement/Initial Nonimmigrant Arrival Departure Document	$50	$60	$65
I–129F	Petition for Alien Fiance(e)	75	70	75
I–191	Application for Advance Permission to Return to Unrelinquished Domicile	90	85	90
I–526	Immigrant Petition by Alien Entrepreneur	140	145	155
I–600	Petition to Classify Orphan as an Immediate Relative	140	145	155
I–600A	Application for Advance Processing of Orphan Petition	140	145	155
I–765	Application for Employment Authorization	60	65	70
N–470	Application to Preserve Residence for Naturalization Purposes	90	105	115
N–565	Application for Replacement Naturalization/Citizenship Document	50	60	65
N–600	Application for Certification of Citizenship	90	95	100
N–643	Application for Certificate of Citizenship in Behalf of an Adopted Child	85	75	80
N–644	Application for Posthumous Citizenship	60	75	80

[FR Doc. 94–298 Filed 1–7–94; 8:45 am]
BILLING CODE 4410–01–M

8 CFR Parts 103, 211, 216, 235, and 242

[INS No. 1429–92]

RIN 1115–AC53

Conditional Permanent Resident Regulations for Alien Entrepreneurs, Spouses, and Children

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This rule implements provisions of section 121 of the Immigration Act of 1990, by providing for conditional resident status to certain alien entrepreneurs, their spouses, and their unmarried minor children. It also provides for the removal of the conditional basis of such status through the filing of a petition by the alien entrepreneur. This rule will allow alien entrepreneurs to continue their commercial enterprises while providing jobs in the United States.

DATES: Written comments must be submitted on or before February 9, 1994.

ADDRESSES: Please submit written comments, in triplicate, to the Records Systems Division, Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street, NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS number 1429–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael W. Straus, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7122, Washington, DC 20536; telephone (202) 514–5014.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service (the Service) notes that the legislative history on conditional permanent residence status for alien entrepreneurs is limited in its guidance; therefore, this rule relies heavily on the language of the statute itself. Congress, however, did indicate that the two-year conditional status for alien entrepreneurs exists for the primary purpose of ensuring that "all aliens receiving visas in this section * * * continue their new commercial enterprises so that the creation of U.S. jobs and the infusion of capital into the U.S. economy is sustained." S. Rep. No. 101–55, 101st Cong., 1st Sess. 22 (1989).

Accordingly the Service proposes to amend 8 CFR parts 211, 216, 235, and 242 by providing conditional permanent resident status for certain alien entrepreneurs, their spouses, and their children.

Petition for Removal of Conditions

The Immigration and Nationality Act (the Act), as amended by the Immigration Act of 1990, Public Law 101–649, November 29, 1990, requires that an alien entrepreneur file a petition for removal of conditions during the 90-day period before the second anniversary of the alien's obtaining conditional permanent resident status (section 216A(d)(2)(A) of the Act). The petition should include any spouse or children accorded conditional permanent resident status. Children who have reached the age of twenty-one or who have married during the period of conditional permanent residence will remain eligible for removal of conditions. The statute also calls for a personal interview of the alien within 90 days after the date the alien files the petition for removal of conditions. The Service may waive the requirement of an interview in appropriate cases (section 216A(d)(3) of the Act).

This rule provides that the required petition shall be filed with the Service Center having jurisdiction over the location of the alien's commercial enterprise. The petition will be reviewed by the Service Center, and a determination will be made on the necessity of an interview. If the Service Center director determines in his or her discretion that a decision may be made on the basis of the petition and accompanying evidence without the necessity of an interview, the decision on the petition will be rendered at the Service Center. If the director determines that an interview is needed, the Service Center director will schedule the alien for an interview to be held at the local Service district office or sub-office having jurisdiction over the alien entrepreneur's commercial enterprise in the United States. The local district office will then take responsibility for the case to its conclusion.

Decision on Petition

If the alien's petition is approved, the conditional basis of the beneficiaries' permanent resident status will be removed as of the second anniversary of the alien's entry as a conditional permanent resident. Denial of a petition will result in termination of the alien's lawful permanent resident status and issuance by the Service of an order to show cause why the alien should not be deported from the United States. There is no appeal from this denial, but the alien may seek review of the decision by the immigration judge in deportation proceedings. In such deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true.

The Service explored the possibility of establishing by regulation some form of hardship waiver similar to that set forth at 8 CFR 216.5 for removal of conditions for certain alien spouses and sons and daughters. The Service has concluded that such a waiver cannot, consistent with the statute, be created by regulation for alien entrepreneurs. Section 216A(c)(3)(C) of the Act sets out a mandatory instruction: The Attorney General shall terminate the permanent resident status of an alien entrepreneur who has failed to comply with the requirements for removal of conditions. Unlike section 216, section 216A of the Act does not provide for the waiver of these requirements in cases of hardship.

Although the statute does not provide for a waiver of requirements for removal of conditions for alien entrepreneurs, the requirement that an alien entrepreneur has sustained his or her investment of the requisite capital during the two years of conditional residence will be interpreted flexibly. The alien entrepreneur will be considered to have "sustained" the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. This liberal interpretation of the term "sustained" in section 216A(a)(1)(C) of the Act permits the Service maximum flexibility in determining whether the prerequisites for removal of the conditions have been met in light of the congressional intent underlying this provision. The Service recognizes that a bona-fide and good faith investment may not meet all of the expectations envisioned when the alien entrepreneur obtained conditional residence status. For example, the fact that an alien entrepreneur has less than the requisite capital invested in the enterprise at the end of the two-year conditional period would not necessarily require the deniel of the petition to remove conditions. The petition could be granted if the alien entrepreneur had invested a substantial portion of the requisite capital, thereby demonstrating that he or she was actively sustaining his or her investment in the enterprise as required by the statute. The determination of whether

an alien entrepreneur had invested a substantial portion of the requisite capital in good faith will be made on a case-by-case basis. The proposed rule reflects this standard at 8 CFR 216.6(a)(4)(iii) and 8 CFR 216.6(c)(1)(iii).

The following example illustrates how the alien entrepreneur can "substantially meet" the capital investment requirement. An alien entrepreneur is granted conditional residence based on a business plan which envisioned an investment of $1.2 million. At the end of the conditional residence period, he or she has invested only $800,000 in a non-targeted employment area, because through circumstances beyond the alien's control, construction of a facility took longer than anticipated. The Service may remove the conditions; if the entrepreneur can show that he or she can and will invest the additional capital within a reasonable time to complete the investment. On the other hand, if the entrepreneur cannot show that he or she will be able to generate additional capital within a reasonable time, regardless of his or her good-faith efforts, the Service will not remove the conditions.

In determining whether an alien entrepreneur has demonstrated that he or she invested in good faith, the Service will examine his or her intent based on both objective and subjective standards. The following example illustrates the "good faith" analysis. An entrepreneur invests $600,000 in a non-targeted employment area prior to obtaining conditional residence, but is unable to provide the additional capital as envisioned in the Form I–526 application. At the time he or she obtained conditional residence, he or she had no realistic prospect of obtaining funds to meet the capital investment requirement and in fact is unable to acquire the additional $400,000 required to complete the investment. Even though the entrepreneur sincerely wished to make the investment succeed, under the objective part of the good faith analysis, the entrepreneur will be unable to establish that he or she substantially met the capital investment requirement in good faith.

This rule also permits the director for good cause to remove conditions for the spouse and/or unmarried minor children of a deceased principal alien entrepreneur. If the spouse and/or children can show that, despite the entrepreneur's death, the requirements for removal of conditions have been met, the director may approve the petition and remove the conditions. This procedure makes humanitarian as well as economic sense and fufills the goals of the statute in that the economy of the United States will have benefited in the manner sought by Congress notwithstanding the death of the principal entrepreneur.

Other Reasons for Termination

The statute calls for termination of the alien's conditional permanent residence status during the two-year period if the Service determines: That establishment of the new commercial enterprise was for the sole purpose of evading United States immigration laws; that the new commercial enterprise in fact was not established; that the alien did not invest or was not in the process of investing the prescribed capital; that the alien was not sustaining the new commercial enterprise or the investment of capital; or that the alien was not otherwise conforming to the requirements of the status (section 216A(b)(1) of the Act). If the Service determines any of the foregoing, the alien's status will be terminated and an order to show cause will be issued. The alien may request review of this decision in deportation proceedings. In such proceedings, the burden of proof will rest with the Service to establish by a preponderance of the evidence that one of the foregoing reasons for termination is true.

Termination will also result, and an order to show cause will be issued, if the alien enterpreneur fails to file the required petition for removal of conditions or, without good cause, fails to appear for a personal interview when requested by the Service (section 216A(c)(2) of the Act). The decision may be reviewed in deportation proceedings, but, in either instance, the burden will rest with the alien to show compliance with the filing and interview requirments. The Service may accept and consider a late petition if the alien demonstrates good cause and extenuating circumstances for having failed to file a timely petition. Furthermore, the Service may stay deportation proceedings and consider a petition for an alien who is the subject of deportation proceedings for failure to file a timely petition if the alien demonstrates good cause and extenuating circumstances.

Finally, the legislative history of this provision at S. Rep. No. 101–55, 101st Cong., 1st Sess. 21 (1989) indicates Congress's wish that "* * * processing of an individual visa not continue if it becomes known to the Government that the money invested was obtained by the alien through other than legal means (such as money received through the sale of illegal drugs)." This position is clearly part of Congress's general policy to penalize one who prospers as a result of an illegal enterprise. That policy is evidenced elsewhere in the federal law, such as the statute which defines money laundering crimes as aggravated felonies, 8 U.S.C. 1101(a)(43), and the provisions of the United States Code which provide for the forfeiture of proceeds of unlawful activities to the United States, 21 U.S.C. 881(a)(6) (forfeiture of proceeds of controlled substance exchange) and 18 U.S.C. 1963(a)(3) (forfeiture of proceeds of racketeering activity or unlawful debt collection). In light of Congress's specific statement of intent with regard to this provision, and its overall policy concerning proceeds from illegal activities, termination of status will result at any time during the two-year conditional residence period or at the time a petition for removal of conditions is filed, if the Service determines that the alien's investment funds have been obtained through other than legal means.

Application Fee

In accordance with Office of Management and Budget Circular A–25, *User Charges*, "user charges will be sufficient to recover the full cost to the Federal Government * * * of providing the service * * *. Full cost shall be determined or estimated from the best available records of the agency * * *." The Service proposes to institute an application fee of $90.00 for filing form I–829. This fee is based on the estimated costs of processing the petition.

The I–829 fee will be one of many examinations fees assessed for providing adjudication and naturalization services. Each examinations fee has three components: Direct costs, indirect costs, and a surcharge to cover the costs of the International Affairs and Outreach Program (formerly the Refugees and Overseas Program).

Direct costs are those costs directly related to the processing of a particular application form for a particular benefit. Generally, direct costs include: The pay of the adjudications officers and clerical staff working on each type of application and the costs of their associated personnel benefits; the costs of Federal Bureau of Investigation name and fingerprint checks; where applicable, the costs by application of naturalization ceremonies conducted by the United States Courts; and the costs of INS immigration document and card production. The pay costs are calculated by multiplying average adjudications processing time by the hourly pay for the average grade level of adjudicators and clerks. For the I–829, the direct costs include the pay costs of the adjudications officers and clerical staff and the costs of producing the Alien Registration Card.

Indirect costs are defined as the costs of supervisory, management, and administrative activities, related staff training, records, data processing, files services, legal services, and space and support costs of providing immigration benefits under the Immigration and Nationality Act and related statutes. Indirect costs also include costs in the management and administration portion of the INS budget, such as the costs of personnel administration work needed to recruit and pay the officers and clerks who process customers' applications for benefits. The activities associated with these costs are no less essential to providing INS services to its customers than are the direct costs. These indirect costs are distinguished only by the somewhat greater complexity of determining the portion of such costs that are attributable to work done for fee-paying customers.

The costs to carry out the International Affairs and Outreach Program are borne by the Examinations Fee Account, at the direction of Congress. See section 286(m) of the Act. These costs are treated as a surcharge that is added to the examinations fees.

The total cost of processing the I–829 is estimated at $90.45. The proposed fee was determined by rounding the total cost to the nearest $5.00. As the Service gains experience in processing this new application, the fee will be adjusted as necessary based on improved data.

Technical Changes

The proposed regulation also contains some minor technical changes resulting from the merger of Form I–751 and Form I–752 into the new Form I–751 (see 56 FR 55931 on October 30, 1991; 57 FR 6181 on February 21, 1992). This regulation eliminates reference to the Form I–752, which has been cancelled.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not, if promulgated, have a significant adverse economic impact on a substantial number of small entities. Insofar as this proposed rule merely sets forth the procedures for terminating the conditional resident status of alien entrepreneurs already present in the country and for removing the conditional basis of permanent resident status for such persons, any impact the proposed rule will have on small business entities will be, at most, indirect or attenuated. This rule is not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

This rule contains information collection requirements which have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act. The OMB control numbers for these collections are contained in 8 CFR 299.5. This rule also contains a new collection requirement which has been forwarded to OMB under the provisions of the Paperwork Reduction Act for review and clearance.

List of Subjects

8 CFR Part 103

Administrative practice and procedures Archives and records, Authority delegations (Government agencies), Bonding, Fees, Forms, Freedom of Information, Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 211

Immigration, Passports and visas, Reporting and recordkeeping requirements.

8 CFR Part 216

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 235

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 242

Administrative practice and procedure, Aliens.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 552, 552a; 8 U.S.C. 1101, 1103, 1201, 1252, note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557; 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In § 103.7, paragraph (b)(1) is amended by:

a. Removing the "Form I–752" from the listing of forms;

b. Revising the description for "Form I–751"; and by

c. Adding the "Form I–829", to the listing of forms, in proper numerical sequence, to read as follows:

§ 103.7 Fees.

* * * * *

(b) * * *

(1) * * *

* * * * * *

Form I–751. For filing petition to remove the conditions on residence which is based on marriage—$75.00.

* * *

Form I–829. For filing petition by entrepreneur to remove conditions—$90.00.

* * * * *

PART 211—DOCUMENTARY REQUIREMENTS: IMMIGRANTS; WAIVERS

3. The authority citation for part 211 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1181, 1182, 1203, 1225, 1257.

4. In § 211.1, paragraph (b)(1)(i) introductory text is revised to read as follows:

§ 211.1 Visas.

* * * * *

(b)(1) * * *

(i) *Alien not travelling pursuant to government orders.* An Alien Registration Receipt Card may be presented in lieu of an immigrant visa by an immigrant alien who is returning to an unrelenquished lawful permanent residence in the United States, is returning prior to the second anniversary of the date on which he or she obtained such residence if subject to the provisons of section 216 or 216A of the Act, whichever is applicable, or within six months of the date of filing a Petition to Remove the Conditions on Residence (Form I–751) or a Petition By Entrepreneur to Remove Conditions (Form I–829) pursuant to 8 CFR part 216, if the alien is in possession of a Service-issued receipt for such filing, and:

* * * * *

PART 216—CONDITIONAL BASIS OF LAWFUL PERMANENT RESIDENCE STATUS

5. The heading for part 216 is revised as set forth above.

6. The authority citation for part 216 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1154, 1184, 1186a, 1186b, and 8 CFR part 2.

§ 216.1 [Amended]

7. Section 216.1 is amended in the first sentence by revising the phrase "section 216 of the Act" to read: "section 216 or 216A of the Act, whichever is applicable,".

§ 216.2 [Amended]

8. Section 216.2(b) is amended in the first sentence by adding the phrase "or he alien entrepreneur" between the words "spouse" and "must".

9. Section 216.2(c) is amended by adding the phrase ", or the alien entrepreneur" between the words "spouse" and "of"; and by removing the word "joint".

10. In § 216.3 is revised to read as follows:

§ 216.3 Termination of conditional resident status.

(a) *During the two-year conditional period.* The director shall send a formal written notice to the conditional permanent resident of the termination of the alien's conditional permanent resident status if the director determines that any of the conditions set forth in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or it becomes known to the government that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs). If the Service issues a notice of intent to Terminate an alien's conditional resident status, the director shall not adjudicate Form I–751 or Form I–829 until it has been determined that the alien's status shall not be terminated. During this time, the alien shall continue to be a lawful conditional permanent resident with all the rights, privileges, and responsibilities provided to persons possessing such status. Prior to issuing the Notice of Termination, the director shall provide the alien with an opportunity to review and rebut the evidence upon which the decision is to be based, in accordance with § 103.2(b)(2) of this chapter. The termination of status, and all of the rights and privileges concomitant thereto (including authorization to accept or continue in employment in this country), shall take effect as of the date of such determination by the director, although the alien may request a review of such determination in deportation proceedings. In addition to the notice of termination, the director shall issue an order to show cause why the alien should not be deported from the United States, in accordance with part 242 of this chapter. During the ensuing deportation proceedings, the alien may submit evidence to rebut the determination of the director. The burden of proof shall be on the Service to establish, by a preponderance of the evidence, that one or more of the conditions in section 216(b)(1) or 216A(b)(1) of the Act, whichever is applicable, are true, or that an alien entrepreneur who was admitted pursuant to section 203(b)(5) of the Act obtained his or her investment capital through other than legal means (such as through the sale of illegal drugs).

(b) *Determination of fraud after two years.* If, subsequent to the removal of the conditional basis of an alien's permanent resident status, the director determines that an alien spouse obtained permanent resident status through a marriage which was entered into for the purpose of evading the immigration laws or an alien entrepreneur obtained permanent resident status through a commercial enterprise which was improper under section 216A(b)(1) of the Act, the director may institute rescission proceedings pursuant to section 246 of the Act (if otherwise appropriate) or deportation proceedings under section 242 of the Act.

§ 216.4 [Amended]

11–12. In § 216.4, paragraph (a)(1) is amended by revising the phrase "a Joint Petition to Remove the Conditional Basis of Alien's Permanent Resident Status" in the first sentence, to read: "a Petition to Remove the Conditions on Residence".

13. In § 216.4, the heading is revised and paragraph (a)(1) is amended by adding a new sentence at the end of the paragraph to read as follows:

§ 216.4 Joint petition to remove conditional basis of lawful permanent resident status for alien spouse.

(a) * * *

(1) *General procedures.* * * *Upon receipt of a properly filed Form I–751, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition.

* * * * *

§ 216.4 [Amended]

14. In § 216.4, paragraph (a)(2) is amended in the last sentence, by revising the phrase "an Application for Waiver of Requirement to File Joint Petition for Removal of Conditions (Form I–752)" to read: "a separate Petition to Remove the Conditions on Residence (Form I–751)".

15. In § 216.4, paragraph (a)(6) is amended in the first sentence by removing the phrase "or Form I–752".

16. In § 216.5, the section heading and paragraph (a), introductory text, are revised to read as follows:

§ 216.5 Waiver of requirement to file joint petition to remove conditions by alien spouse.

(a) *General.* A conditional resident alien who is unable to meet the requirements under section 216 of the Act for a joint petition for removal of the conditional basis of his or her permanent resident status may file a Petition to Remove the Conditions on Residence (Form I–751), if the alien requests a waiver, was not at fault in failing to meet the filing requirement, and the conditional resident alien is able to establish that:

* * * * *

§ 216.5 [Amended]

17. In § 216.5, paragraphs (b) and (c) are amended by revising the phrase "Form I–752" to read: "Form I–751".

18. A new § 216.6 is added to read as follows:

§ 216.6 Petition by entrepreneur to remove conditional basis of lawful permanent resident status.

(a) *Filing the petition*—(1) *General procedures.* A petition to remove the conditional basis of the permanent resident status of an alien accorded conditional permanent residence pursuant to section 203(b)(5) of the Act must be filed by the alien entrepreneur on Form I–829, Petition by Entrepreneur to Remove Conditions. The alien entrepreneur must file Form I–829 within the 90-day period preceding the second anniversary of his or her admission to the United States as a conditional permanent resident. Before Form I–829 may be considered as properly filed, it must be accompanied by the fee required under § 103.7(b)(1) of this chapter, and by documentation as described in paragraph (a)(4) of this section, and it must be properly signed by the alien. Upon receipt of a properly filed Form I–829, the alien's conditional permanent resident status shall be extended automatically, if necessary, until such time as the director has adjudicated the petition. The entrepreneur's spouse and children should be included in the petition to remove conditions. Children who have reached the age of twenty-one or who have married during the period of conditional permanent residence may be included in the petition.

(2) *Jurisdiction.* Form I–829 must be filed with the regional service center having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Physical presence at time of filing.* A petition may be filed regardless of whether the alien is physically present in the United States. However, if the alien is outside the United States at the time of filing, he or she must return to the United States, with his or her spouse and children, if necessary, to comply with the interview requirements contained in the Act. Once the petition has been properly filed, the alien may travel outside the United States and return if in possession of documentation as set forth in § 211.1(b)(1) of this chapter, provided the alien complies with the interview requirements described in paragraph (b) of this section. An alien who is not physically present in the United States during the filing period but subsequently applies for admission to the United States shall be processed in accordance with § 235.11 of this chapter.

(4) *Documentation.* The petition for removal of conditions must be accompanied by the following evidence:

(i) Evidence that a commercial enterprise was established by the alien. Such evidence may include, but is not limited to, Federal income tax returns;

(ii) Evidence that the alien invested or was actively in the process of investing the requisite capital. Such evidence may include, but is not limited to, an audited financial statement; and

(iii) Evidence that the alien sustained the actions described in paragraphs (a)(4)(i) and (a)(4)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence. Such evidence may include, but is not limited to, bank statements, invoices, receipts, contracts, business licenses, Federal or State income tax returns, and Federal or State quarterly tax statements.

(iv) Evidence that the alien created or can be expected to create within a reasonable time ten full-time jobs for qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien entrepreneur must submit evidence that the commercial enterprise maintained the number of existing employees at no less than the pre-investment level for the period following his or her admission as a conditional permanent resident. Such evidence may include payroll records, relevant tax documents and Forms I–9.

(5) *Termination of status for failure to file petition.* Failure to properly file Form I–829 within the 90-day period immediately preceding the second anniversary of the date on which the alien obtained lawful permanent residence on a conditional basis shall result in the automatic termination of the alien's permanent residence status and the initiation of deportation proceedings. The director shall send a written notice of termination and an order to show cause to an alien entrepreneur who fails to timely file a petition for removal of conditions. No appeal shall lie from this decision; however, the alien may request a review of the determination during deportation proceedings. In deportation proceedings, the burden of proof shall rest with the alien to show by a preponderance of the evidence that he or she complied with the requirement to file the petition within the designated period. The director may deem the petition to have been filed prior to the second anniversary of the alien's obtaining conditional permanent residence status and accept and consider a late petition if the alien demonstrates to the director's satisfaction that failure to file a timely petition was for good cause and due to extenuating circumstances. If the late petition is filed prior to jurisdiction vesting with the immigration judge in deportation proceedings and the director excuses the late filing and approves the petition, he or she shall restore the alien's permanent resident status, remove the conditional basis of such status, and cancel any outstanding order to show cause in accordance with § 242.7 of this chapter. If the petition is not filed until after jurisdiction vests with the immigration judge, the immigration judge may terminate the matter upon joint motion by the alien and the Service.

(6) *Death of entrepreneur and effect on spouse and children.* If an entrepreneur dies during the prescribed two-year period of conditional permanent residence, the spouse and children of the entrepreneur will be eligible for removal of conditions if it can be demonstrated that the conditions set forth in paragraph (a)(4) of this section have been met.

(b) *Petition review*—(1) *Authority to waive interview.* The director of the service center shall review the Form I–829 and the supporting documents to determine whether to waive the interview required by the Act. If satisfied that the requirements set forth in paragraph (c)(1) of this section have been met, the service center director may waive the interview and approve the petition. If not so satisfied, then the service center director shall forward the petition to the district director having jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States so that an interview of the alien entrepreneur may be conducted. The director must either waive the requirement for an interview and adjudicate the petition or arrange for an interview within 90 days of the date on which the petition was properly filed.

(2) *Location of interview.* Unless waived, an interview relating to the Form I–829 shall be conducted by an immigration examiner or other officer so designated by the district director at the district office that has jurisdiction over the location of the alien entrepreneur's commercial enterprise in the United States.

(3) *Termination of status for failure to appear for interview.* If the alien fails to appear for an interview in connection with the petition when requested by the Service, the alien's permanent resident status will be automatically terminated as of the second anniversary of the date on which the alien obtained permanent residence. The alien will be provided with written notification of the termination and the reasons therefore, and an order to show cause shall be issued placing the alien under deportation proceedings. The alien may seek review of the decision to terminate his or her status in such proceedings, but the burden shall be on the alien to establish by a preponderance of the evidence that he or she complied with the interview requirements. If the alien has failed to appear for a scheduled interview, he or she may submit a written request to the district director asking that the interview be rescheduled or that the interview be waived. That request should explain his or her failure to appear for the scheduled interview, and if a request for waiver of the interview, the reasons such waiver should be granted. If the district director determines that there is good cause for granting the request, the interview may be rescheduled or waived, as appropriate. If the district director waives the interview, he or she shall restore the alien's conditional permanent resident status, cancel any outstanding order to show cause in accordance with § 242.7 of this chapter, and proceed to adjudicate the alien's petition. If the district director reschedules that alien's interview, he or she shall restore the alien's conditional residence status, and cancel any outstanding order to show cause in

accordance with § 242.7 of this chapter. If the interview is rescheduled at the request of the alien, the Service shall not be required to conduct the interview within the 90-day period following the filing of the petition.

(c) *Adjudication of petition.* (1) The decision on the petition shall be made within 90 days of the date of filing or within 90 days of the date of interview, whichever is later. In adjudicating the petition, the director shall determine whether:

(i) A commercial enterprise was established by the alien;

(ii) The alien invested or was actively in the process of investing the requisite capital; and

(iii) The alien sustained the actions described in paragraphs (c)(1)(i) and (c)(1)(ii) of this section throughout the period of the alien's residence in the United States. The alien will be considered to have sustained the actions required for removal of conditions if he or she has, in good faith, substantially met the capital investment requirement of the statute and continuously maintained his or her capital investment over the two years of conditional residence.

(iv) The alien created or can be expected to create within a reasonable period of time ten full-time jobs to qualifying employees. In the case of a "troubled business" as defined in 8 CFR 204.6(j)(4)(ii), the alien maintained the number of existing employees at no less than the pre-investment level for the previous two years.

(2) If derogatory information is determined regarding any of these issues or it becomes known to the government that the entrepreneur obtained his or her investment funds through other than legal means (such as through the sale of illegal drugs), the director shall offer the alien entrepreneur the opportunity to rebut such information. If the alien entrepreneur fails to overcome such derogatory information or evidence the investment funds were obtained through other than legal means, the director may deny the petition, terminate the alien's permanent residence, and issue an order to show cause. If derogatory information not relating to any of these issues is determined during the course of the interview, such information shall be forwarded to the investigations unit for appropriate action. If no unresolved derogatory information is determined relating to these issues, the petition shall be approved and the conditional basis of the alien's permanent residence status removed, regardless of any action taken or contemplated regarding other possible grounds for deportation.

(d) *Decision*—(1) *Approval.* If, after initial review or after the interview, the director approves the petition, he or she will remove the conditional basis of the alien's permanent resident status as of the second anniversary of the alien's entry as a conditional permanent resident. He or she shall provide written notice of the decision to the alien and shall require the alien to report to the appropriate district office for processing for a new Alien Registration Receipt Card, Form I–551, at which time the alien shall surrender any Alien Registration Receipt Card previously issued.

(2) *Denial.* If, after initial review or after the interview, the director denies the petition, he or she shall provide written notice to the alien of the decision and the reasons(s) therefor, and shall issue an order to show cause why the alien should not be deported from the United States. The alien's lawful permanent resident status and that of his or her spouse and any children shall be terminated as of the date of the director's written decision. The alien shall also be instructed to surrender any Alien Registration Receipt Card previously issued by the Service. No appeal shall lie from this decision; however, the alien may seek review of the decision in deportation proceedings. In deportation proceedings, the burden shall rest with the Service to establish by a preponderance of the evidence that the facts and information in the alien's petition for removal of conditions are not true and that the petition was properly denied.

PART 235—INSPECTION OF PERSONS APPLYING FOR ADMISSION

19. The authority citation for part 235 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1183, 1201, 1224, 1225, 1226, 1227, 1228, 1252.

20. In § 235.11, paragraphs (a) and (c) are revised to read as follows:

§ 235.11 Admission of conditional permanent residents.

(a) *General*—(1) *Conditional residence based on family relationship.* An alien seeking admission to the United States with an immigrant visa as the spouse or son or daughter of a United States citizen or lawful permanent resident shall be examined to determine whether the conditions of section 216 of the Act apply. If so, the alien shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the alien and his or her petitioning spouse must file a Petition to Remove the Conditions on Residence (Form I–751) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

(2) *Conditional residence based on entrepreneurship.* An alien seeking admission to the United States with an immigrant visa as an alien entrepreneur (as defined in section 216A(f)(1) of the Act) or the spouse or unmarried minor child of an alien entrepreneur shall be admitted conditionally for a period of two years. At the time of admission, the alien shall be notified that the principal alien (entrepreneur) must file a Petition by Entrepreneur to Remove Conditions (Form I–829) within the 90-day period immediately preceding the second anniversary of the alien's admission for permanent residence.

* * * * *

(c) *Expired conditional permanent resident alien status.* The lawful permanent resident alien status of a conditional resident automatically terminates if the conditional basis of such status is not removed by the Service through approval of a Petition to Remove the Conditions on Residence (Form I–751) or, in the case of an alien entrepreneur (as defined in section 216A(f)(1) of the Act), a Petition by Entrepreneur to Remove Conditions (Form I–829). Therefore, an alien who is seeking admission as a returning resident subsequent to the second anniversary of the date on which conditional residence was obtained (except as provided in § 211.1(b)(1) of this chapter) and whose conditional basis of such residence has not been removed pursuant to section 216(c) or 216A(c) of the Act, whichever is applicable, shall be placed under exclusion proceedings. However, in a case where conditional residence was based on a marriage, exclusion proceedings may be terminated and the alien may be admitted as a returning resident if the required petition (Form I–751) is filed jointly, or by the alien alone (if appropriate), and approved by the Service. In the case of an alien entrepreneur, exclusion proceedings may be terminated and the alien admitted as a returning resident if the required petition (Form I–829) is filed by the alien entrepreneur and approved by the Service.

PART 242—PROCEEDINGS TO DETERMINE DEPORTABILITY OF ALIENS IN THE UNITED STATES, APPREHENSION, CUSTODY, HEARING, AND APPEAL

21. The authority citation for part 242 continues to read as follows:

Authority: 8 U.S.C. 1103, 1182, 1186a, 1251, 1252, 1252 note, 1252b, 1254, 1362; 8 CFR part 2.

22. In § 242.17, paragraph (a) is revised to read as follows:

§ 242.17 Ancillary matters, applications.

(a) *Creation of the status of an alien lawfully admitted for permanent residence.* The respondent may apply to the immigration judge for suspension of deportation under section 244(a) of the Act; for adjustment of status under section 245 of the Act, or under section 1 of the Act of November 2, 1966, or under section 101 or 104 of the Act of October 28, 1977; or for the creation of a record of lawful admission for permanent residence under section 249 of the Act. The application shall be subject to the requirements of parts 244, 245, and 249 of this chapter. The approval of any application made to the immigration judge under section 245 of the Act by an alien spouse (as defined in section 216(g)(1) of the Act) or by an alien entrepreneur (as defined in section 216A(f)(1) of the Act), shall result in the alien's obtaining the status of lawful permanent resident on a conditional basis in accordance with the provisions of section 216 or 216A of the Act, whichever is applicable. However, the Petition to Remove the Conditions on Residence required by section 216(c) of the Act or the Petition by Entrepreneur to Remove Conditions required by section 216A(c) of the Act shall be made to the director in accordance with part 216 of the chapter. In conjunction with any application for creation of status of an alien lawfully admitted for permanent residence made to an immigration judge, if the respondent is inadmissible under any provision of section 212(a) of the Act and believes that he or she meets the eligibility requirements for a waiver of the ground of inadmissibility, he or she may apply to the immigration judge for such waiver. The immigration judge shall inform the respondent of his or her apparent eligibility to apply for any of the benefits enumerated in this paragraph and shall afford the respondent an opportunity to make application therefor during the hearing. In exercising discretionary power when considering an application under this paragraph, the immigration judge may consider and base the decision on information not contained in the record and not made available for inspection by the respondent, provided the Commissioner has determined that such information is relevant and is classified under Executive Order No. 12356 (47 14874, April 6, 1982) as requiring protection from unauthorized disclosure in the interest of national security. Whenever the immigration judge believes that he or she can do so while safeguarding both the information and its source, the immigration judge should inform the respondent of the general nature of the information in order that the respondent may have an opportunity to offer opposing evidence. A decision based in whole or in part on such classified information shall state that the information is material to the decision.

* * * * *

Dated: November 5, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–391 Filed 1–7–94; 8:45 am]

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FEDERAL HOUSING FINANCE BOARD

12 CFR Part 960

[No. 93–94]

Affordable Housing Program

AGENCY: Federal Housing Finance Board.

ACTION: Proposed rule.

SUMMARY: The Federal Housing Finance Board (Board) is proposing to amend in its entirety its regulation governing the operation of the Affordable Housing Program (AHP or Program). The proposed rule modifies or carries forward requirements of the Board's existing AHP regulation, adds new provisions, and incorporates, with modifications, the provisions of the Board's existing policy guidelines governing the award of funds to loan funds and loan consortia.

DATES: Comments on this proposed rule must be received in writing on or before March 11, 1994.

ADDRESSES: Comments should be mailed to: Federal Housing Finance Board, Executive Secretary, 1777 F Street, NW., Washington, DC 20006. Comments will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: Diane E. Dorius, Deputy Director, or Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2576, or Sharon B. Like, Attorney-Advisor, (202) 408–2930, or Brandon B. Straus, Attorney-Advisor, (202) 408–2589, Office of Legal & External Affairs-Legal Division, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

I. Statutory and Regulatory Background

A. General

Section 10(j)(1) of the Federal Home Loan Bank Act (Act) requires each Federal Home Loan Bank (Bank) to establish a Program to subsidize the interest rate on advances to members of the Federal Home Loan Bank System (Bank System) engaged in lending for long-term, low- and moderate-income, owner-occupied and affordable rental housing at subsidized interest rates. The Board is required to promulgate regulations governing the Program. 12 U.S.C. 1430(j)(1). The Board's existing regulation governing the operation of the AHP appears at part 960 of the Board's regulations. 12 CFR part 960.

This proposed rule amends the Board's existing AHP regulation to address operational issues that have arisen during the three and one-half years that the AHP has been in existence. The proposed amendments are intended to make the AHP more responsive to low-income housing needs in each of the twelve Federal Home Loan Bank Districts (Districts), to increase efficiency in the administration of the Program, and to enhance coordination of the AHP with other housing programs whose funds are used in conjunction with AHP funds. These issues are discussed in greater detail below in the Analysis of Proposed Rule section.

II. Analysis of Proposed Rule

A. AHP Application Approval Process

The proposed rule makes a fundamental change to the AHP by vesting the Banks, instead of the Board, with the authority to approve AHP applications. The current application approval process implemented by the Board's existing AHP regulation may be briefly described as follows. The Banks receive AHP applications and first evaluate them for satisfaction of certain threshold requirements contained in the existing regulation. See 12 CFR 960.5(a)(1), (2). Those applications meeting the threshold requirements are evaluated by the Banks to determine if they meet at least three of the priorities contained in the existing regulation. If they do, they are scored by the Banks on the priorities and on other scoring objectives contained in the existing regulation before applications that meet fewer than three priorities. See *id.* § 960.5(a)(3), (b) through (e). Under the existing regulation, the Bank then forwards to the Board the highest scoring applications, and submits a summary of such applications. See *id.*

§ 960.5(f)(1), (2). The Board reviews the applications to ensure consistency with the threshold, priorities and scoring requirements, and makes final funding decisions on the applications. See *id.* § 960.5(f)(3).

While section 10(j) of the Act requires each Bank to establish an AHP, and vests in the Board broad authority to regulate the Banks' AHP activities through regulations implementing the Act, section 10(j) does not specifically assign the responsibility of operating the AHP to the Board. See 12 U.S.C. 1430(j). The Board does have other statutorily designated duties, including issuing regulations that specify activities eligible to receive subsidized advances under the AHP, ensuring advances are used to assist projects for which adequate long-term monitoring is available, ensuring that a preponderance of assistance provided under the AHP is ultimately received by low- and moderate-income households, and ensuring that AHP subsidies provided by Banks to members are passed on to the ultimate borrower. See *id.* Section 1430(j)(9) (A), (C), (D), (E). However, section 10(j) does not specify what entity is responsible for administering the AHP, and what entity is responsible for determining which AHP applications are approved for funding.

For the following reasons, the Board is proposing that the Banks assume the responsibility for determining which AHP applications are approved for funding. First, the Banks have had three and one-half years of experience with the AHP, which experience has included processing AHP applications, scoring the applications, and recommending applications for approval to the Board as described above. Consequently, the Banks are already processing and reviewing applications under the existing system.

Second, decentralization of the AHP is consistent with the Bank System's Strategic Plan, which calls for decentralization of a number of functions currently conducted by the Board, with the exception of those Board activities involving oversight and supervision of the Banks. See "System 2000: A Long-Term Strategic Plan For The Federal Home Loan Bank System."

The details of the proposed new application approval process are discussed further below.

The Board specifically requests comments as to whether the Banks should be given the authority to approve and disapprove AHP applications.

The proposed rule also revises the Board's existing AHP regulation by allowing each Bank to define more specifically its own priorities and scoring criteria, subject to certain overall priority and scoring parameters established in the proposed rule. The Bank would be required to include such proposed priorities and scoring criteria in its AHP implementation plan which must be approved by the Board. Under the Board's existing AHP regulation, the Banks have much less flexibility in defining priorities and scoring criteria. See 12 CFR 960.5 (a) through (e). In addition, under the proposed rule, certain point values for scoring categories would be revised.

The details of the proposed revisions for adopting priorities and scoring criteria are discussed further below under the scoring of AHP applications section.

B. Bank Establishment of AHP and Adoption of AHP Implementation Plan

Section 960.2(a) of the proposed rule generally reiterates the statement in § 960.2(a) of the Board's existing AHP regulation that it is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through providing subsidized advances and direct subsidies to members pursuant to the AHP. See 12 CFR 960.2(a).

Section 960.2(b) of the proposed rule provides that each Bank's board of directors shall establish an AHP, which shall be funded pursuant to the requirements of § 960.18 of the proposed rule. (See discussion below under the required annual AHP contributions section.) The Bank is required to make subsidized advances to applicants pursuant to its AHP and to operate its AHP in conformity with an annual AHP implementation plan and the requirements of this part. Direct subsidies provided by a Bank to applicants pursuant to its AHP also shall be provided in conformity with the Bank's AHP implementation plan and the requirements of this part. Each Bank's AHP implementation plan shall be approved by the Board before it is effective.

Section 960.2(b) of the proposed rule further provides that the AHP implementation plan must meet the requirements of this part, and shall include:

(1) The Bank's AHP funding cycle schedule, including application due dates, as required by proposed § 960.6(a)(1);

(2) The Bank's priorities, and scoring criteria for applications, as required by proposed §§ 960.8(a) and 960.10;

(3) The Bank's procedures to ensure satisfaction of the long-term requirement, as required by proposed § 960.5 (a)(1) and (b);

(4) The Bank's requirements for and verification procedures concerning (i) the use of subsidized advances or direct subsidies within a reasonable period of time after approval of an AHP application, as required by proposed § 960.12(a), or (ii) the use of loans or grants within a reasonable period of time after repayment of such funds to a loan fund or loan consortium, as required by proposed § 960.17(c)(5);

(5) The Bank's verification procedures upon initial disbursement of subsidized advances or direct subsidies, as required by proposed § 960.13;

(6) The Bank's monitoring plan, as required by proposed § 960.14(b);

(7) The Bank's reporting requirements for applicants during the construction or rehabilitation phase, as required by proposed § 960.15(b)(2);

(8) An explanation of circumstances justifying undue hardship waivers by the Bank of imposition of remedial actions, as required by proposed § 960.16 (c)(1) and (d)(1); and

(9) The Bank's determination regarding the number of persons that may serve on the Bank's Advisory Council and their terms, as required by proposed § 960.21(a)(1) and (4).

Section 960.2(c) of the proposed rule provides that the Bank's proposed AHP implementation plan shall be submitted to its Advisory Council at least 45 calendar days before it is considered by the Bank's board of directors. The Advisory Council shall review the proposed plan and submit its recommendations to the Bank's board of directors at least seven calendar days before the Bank's board of directors is scheduled to vote on the proposed plan. The Bank's board of directors shall vote on the proposed AHP implementation plan, and shall submit its approved plan to the Board for action. The Board shall approve or disapprove the proposed plan within 60 calendar days of receipt. The Bank's plan is not effective until it is approved by the Board, and it must become effective at least 45 calendar days before the due date for AHP applications established by the Bank. Each Bank must submit its AHP implementation plan to the Board for approval no later than 180 calendar days after the publication of this rule as a final rule in the **Federal Register**.

Section 960.2(d) of the proposed rule provides that the Bank's approved AHP implementation plan shall be made available by the Bank to the public upon request.

Section 960.2(e) of the proposed rule provides that the Board will approve or disapprove proposed amendments to a Bank's approved AHP implementation plan submitted by the Bank within 60 calendar days of receipt.

C. Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies

Section 960.3 of the proposed rule states the general authorized uses of AHP subsidized advances and direct subsidies by applicants, § 960.4 provides specific examples of such authorized and unauthorized uses and other use requirements, and § 960.5 sets forth the long-term income-eligibility, affordability and income-targeting requirements for such uses. These proposed sections are discussed further below.

1. Authorized Uses of Subsidized Advances or Direct Subsidies

Section 960.3 of the proposed rule, consistent with § 960.3(b) (1) and (2) of the Board's existing AHP regulation, provides that applicants may use subsidized advances or direct subsidies received from a Bank under the AHP to either:

(a) Finance the purchase, construction or rehabilitation of owner-occupied housing units by or for low- or moderate-income households; or

(b) Finance the purchase, construction or rehabilitation of rental housing units, at least 20 percent of the units of which will be occupied by and affordable for very low-income households. See 12 CFR 960.3(b) (1) and (2).

2. Specific Use Requirements for Subsidized Advances or Direct Subsidies

Section 960.3(c) of the Board's existing AHP regulation provides that "Program funds may only be used for direct costs required to produce and/or finance affordable housing units." 12 CFR 960.3(c). A number of questions have arisen as to whether specific types of costs associated with the financing or production of housing may be considered "direct costs" for purposes of the Board's regulation. Because of the confusion in this area, the Board believes that it would be helpful to set forth in the rule examples of specific types of costs it considers to be authorized and unauthorized for AHP purposes. Accordingly, § 960.4(a) (1) and (2) of the proposed rule sets forth examples of specific costs related to the purchase, construction or rehabilitation of housing that are authorized and unauthorized uses of AHP subsidized advances or direct subsidies. However, because it is impossible to anticipate all types of costs that may arise in the course of financing or producing housing, the list of authorized and unauthorized costs in proposed § 960.4(a) is not exclusive. Other costs not included arguably may or may not qualify as costs of financing the purchase, construction or rehabilitation of housing. If an applicant seeks to use funds under the AHP to pay for costs not specifically included in this rule, it should consult with the Bank before submitting its application for approval. The Board specifically asks for comments as to whether these authorized and unauthorized costs are appropriate.

Specifically, § 960.4(a)(1) of the proposed rule provides that authorized uses of subsidized advances or direct subsidies include, but are not limited to, the following costs related to the purchase, construction or rehabilitation of housing:

(i) Real property purchase and improvement costs;

(ii) Construction or rehabilitation costs, including labor and materials, and contractor profit and overhead allowances;

(iii) Costs integral to the purchase or development of housing including, but not limited to, project-related: Architectural, inspection and engineering fees; local building permit and planning fees; accounting costs; survey costs; appraisal fees; title insurance and other insurance costs; performance bond and other bond fees; recording fees; credit report fees; property taxes; residential relocation costs where such costs are part of a relocation plan; legal fees; syndication fees; costs of translating resident documents to another language; loan commitment, loan origination and other loan financing fees for administrative costs other than costs of administering the AHP award; developer's fees; and marketing costs;

(iv) Prepayment fees imposed by the Bank on an applicant for a subsidized advance that is prepaid in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(v) Capitalization of reserve fund(s) necessary for the successful operation of rental housing projects, including replacement reserves, rent-up reserves, operating deficit reserves, and sinking fund reserves used for the transfer of the project to nonprofit ownership when associated with a low income housing tax credit transaction (26 U.S.C. 42);

(vi) Cancellation fees imposed by the Bank on an applicant for a subsidized advance commitment that is canceled and converted to and disbursed as a direct subsidy in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(vii) Refinancing of an existing loan in conjunction with the purchase, construction or rehabilitation of housing, provided the subsidized advance or direct subsidy and the proceeds of the refinancing are used only to retire existing debt and to benefit low- or moderate-income households and, in the case of refinancing in order to rehabilitate a project, there is a minimum of $2,500 per unit spent on such rehabilitation; and

(viii) Tenant services, tenant counseling and homeowner counseling costs that are a condition imposed by a lender to obtain financing from such lender and which are necessary for the successful operation of the project.

Cancellation fees identified in paragraph (vi) above, where there is purchase, construction or rehabilitation of housing and the borrower is required to pay the fee, are a cost of financing such purchase, construction or rehabilitation and therefore are authorized uses of funds under the AHP. Because the advance would be converted to a direct subsidy, such cancellation fees would be payable only if the application also meets the requirements for modification of applications contained in § 960.11 of the proposed rule. (These requirements are discussed in greater detail in the modification section below.) However, AHP subsidized advances or direct subsidies may not be used to pay for cancellation fees in situations where the cancellation of the advance is not part of a restructuring that results in the purchase, construction or rehabilitation of housing.

The conditions identified in paragraph (vii) above on the use of funds under the AHP for refinancing are intended to ensure that the funds are not used by the borrower to take out its equity in the project and to ensure that the funds are used for authorized purposes under the AHP. The Board specifically requests comments on whether the $2,500 minimum per unit is a reasonable minimum amount to be required to be spent on rehabilitation in conjunction with a refinancing.

Questions have arisen as to whether funds under the AHP should be used to pay for pre-development costs that may or may not result in the purchase, construction or rehabilitation of AHP housing. Pre-development costs are costs incurred prior to the closing of a purchase, construction or rehabilitation loan for the purpose of determining the feasibility of a proposed project.

Examples of pre-development costs include architectural and engineering fees, legal fees, the costs of surveys and appraisals, local building permit and planning fees, and earnest money deposits. Since AHP applications are required to meet the threshold feasibility requirement provided in proposed § 960.9(d) in order to be scored, authorizing the use of funds for pre-development costs raises the question how applications for such costs can or should be scored since the funds would be disbursed to applicants before the feasibility of a proposed project could be established.

In addition, there is a greater likelihood that costs incurred during the pre-feasibility period, rather than during the post-feasibility period, will not result in the purchase, construction or rehabilitation of housing. Thus, if applications for AHP funds to finance pre-development costs are approved, AHP funds in perhaps significant amounts could go towards pre-development costs that do not result in the financing or production of housing. If such costs are authorized, one option for dealing with this concern could be to cap the total amount of AHP funds that may be used for pre-development costs at a specific dollar amount or percentage, such as the lesser of $200,000 or 5 percent of the Bank's total AHP contributions for the year. These funds could be set aside and disbursed in a separate competitive process.

The Board specifically requests comments on whether funds under the AHP should be used for pre-development costs, how applications for such costs can or should be scored, and what limits, if any, should be placed on the amount of funds used for such purposes under the AHP.

3. Use of Funds Requirements

Section 960.4(b)(1)(i) of the proposed rule provides that the total amount of a direct subsidy provided by the Bank to an applicant under the AHP must be passed on by the applicant to the recipient. Consistent with § 960.9(c) of the Board's existing AHP regulation, § 960.4(b)(1)(ii) of the proposed rule provides that an applicant receiving a subsidized advance shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus an interest rate spread approved by the Bank. See 12 CFR 960.9(c). These provisions implement section 10(j)(9)(E) of the Act, which provides that the Board's AHP regulation shall ensure that AHP subsidies provided by Banks to applicants are passed on to the ultimate borrower. See 12 U.S.C. 1430(j)(9)(E).

Section 960.4(b)(2) of the proposed rule provides that if an applicant receives a subsidized advance or direct subsidy from a Bank or prepayment of a loan originally made under the AHP, any interest or other income earned by the applicant on such funds, not including any approved fee or interest rate spread charged to the borrower, must be forwarded to the Bank to be used for additional AHP projects, except for interest or other income earned by the applicant within 30 calendar days of receiving the subsidized advance or direct subsidy or of receiving prepayment of a loan originally made under the AHP.

Section 960.4(b)(3) of the proposed rule provides that a direct subsidy received by an applicant from a Bank that is provided by such applicant to a sponsor may be lent by the sponsor in connection with an AHP rental housing project involving low-income housing tax credits (LIHTC), provided the subsidy is lent by the sponsor for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such a loan is repaid before the end of the 30-year term, the entire amount of the direct subsidy must be repaid to the Bank.

For various tax reasons, sponsors prefer to structure LIHTC projects so that the AHP direct subsidy is lent to the project for a specific long-term period, with principal and interest payments deferred until the end of such term. The lending of a direct subsidy by a sponsor raises the question whether the subsidy is being passed on to the ultimate recipient, as required under section 10(j)(9)(E) of the Act and proposed § 960.4(b)(1)(i), since the subsidy ultimately is being repaid to the Bank. See 12 U.S.C. 1430(j)(9)(E). The Board believes that the lending of a direct subsidy for the long-term period of income eligibility and affordability required by § 960.5 of the proposed rule, with all principal and interest payments deferred until the end of such term, satisfies section 10(j)(9)(E) and proposed § 960.4(b)(1)(i), because the project will have had the use of such funds for the period the project must remain occupied by and affordable for low- or moderate-income households, even though the funds may be repaid at the end of such term. As discussed below, § 960.5(a)(1) of the proposed rule defines this long-term period generally as not less than 30 years for rental housing projects. Accordingly, the direct subsidy must be lent for a term of 30 years or more, with all principal and interest payments deferred until the end of such term.

Section 960.4(b)(4) of the proposed rule provides that if an applicant receives a subsidized advance or a direct subsidy from a Bank, and in turn provides both a loan and a grant to a borrower and charges an origination fee for providing the loan, then any fee charged by the applicant for providing the grant may not be paid with the AHP subsidized advance or direct subsidy. The fee may not be paid with the AHP subsidized advance because the applicant has already covered the underwriting costs for the loan and the grant in its origination fee for the loan. The fee may not be paid with the direct subsidy because otherwise the entire amount of the AHP subsidy would not be passed through to the borrower, as required by section 10(j)(9)(E) of the Act and proposed § 960.4(b)(1)(i). See 12 U.S.C. 1430(j)(9)(E).

4. Long-term Requirements

a. *Owner-occupied housing units.* (1) Long-term requirement. Section 10(j)(1) of the Act states that pursuant to regulations promulgated by the Board, each Bank shall establish a Program to subsidize the interest rate on advances to members engaged in lending for long-term, low- and moderate-income, owner-occupied housing at subsidized interest rates. *Id.* § 1430(j)(1). In addition, section 10(j)(2)(A) of the Act states that the Board's regulations shall permit Bank members to use subsidized advances received from the Banks to finance homeownership by families with incomes at or below 80 percent of the median income for the area. *Id.* § 1430(j)(2)(A).

The Act permits more than one possible interpretation of the requirement that owner-occupied housing must be "long-term." One way to interpret this requirement is that owner-occupied housing units assisted under the AHP must be added to and retained as part of the stock of affordable housing for a long-term period. Alternatively, the Act may be interpreted to require that under the AHP, assistance must be provided to low- or moderate-income households to make owner-occupied housing units affordable to such households for as long as they own the unit. These two possible interpretations are incorporated in options A and B described below. The Board specifically requests comments on these two options.

Option A. Under option A, the long-term requirement would be met by providing that owner-occupied housing units be required to be retained as affordable units for 30 years or, at the election of the sponsor, the remaining useful life of the units, regardless of

changes in occupancy. In order to enforce this retention requirement, owner-occupied units assisted with a loan or a grant under the AHP would have to be subject to a deed restriction or other legally enforceable mechanism restricting transfer of the unit to a low- or moderate-income household if the unit were sold within 30 years of the purchase, construction, or rehabilitation or prior to the end of the remaining useful life of the unit, as the case may be.

A household purchasing such a unit would have to qualify as a low- or moderate-income household only at the time of purchase or at the time of closing on the financing for the unit. A household rehabilitating a unit would have to qualify as a low- or moderate-income household only at the time the household received a commitment for funding through the AHP.

If an owner-occupied unit assisted by a loan under the AHP were sold prior to the end of the 30-year period or the remaining useful life of the unit, as the case may be, to a household that was not a low- or moderate-income household, then the applicant would have to either: (1) Repay to the Bank that portion of the advance used to make the loan to the seller, or (2) convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller would be made available by the Bank for additional AHP projects.

If an owner-occupied unit assisted by a grant under the AHP were sold prior to the end of the 30-year period or the remaining useful life of the unit, as the case may be, to a household that was not a low- or moderate-income household, then the seller would have to repay to the applicant a *pro rata* portion of the grant from any profit realized upon the sale of the unit, and any amount repaid to the applicant would have to be forwarded to the Bank and made available for additional AHP projects. The Bank would have the discretion to waive this recapture requirement if imposition of the requirement would cause undue hardship on the seller, as defined in the Bank's AHP implementation plan. In addition, for owner-occupied units assisted by a grant, the Bank would have to monitor the unit during the required long-term period by reviewing land title records or reports or certifications from the sponsor or a regulatory agency, as determined by each Bank in its AHP implementation plan, to determine whether the unit had been sold to a household whose income exceeded a low-or moderate-income.

As an alternative to requiring that each owner-occupied unit assisted by a grant be subject to a restriction on transfer, the Bank could have a legally binding agreement with the sponsor providing that if such unit were sold prior to the end of the required long-term period to a household that was not a low- or moderate-income household, the sponsor would make another unit available to a low- or moderate-income household.

Option B. Under option B, the long-term requirement would be met by providing that an owner-occupied unit assisted by a grant or a loan under the AHP must be affordable for the initial household for the duration of that household's occupancy of the unit. However, to minimize opportunities for speculation, the unit would have to be subject to a deed restriction or other legally enforceable mechanism restricting transfer of the unit to a low- or moderate-income household if the unit were sold within five years of the purchase, construction, or rehabilitation of the unit.

As under option A, a household purchasing such a unit under option B would have to qualify as a low- or moderate-income household only at the time of purchase or at the time of closing on the financing for the unit, and a household rehabilitating a unit would have to qualify as a low- or moderate-income household only at the time the household received a commitment for funding through the AHP.

If an owner-occupied unit assisted by a loan under the AHP were sold prior to the end of the five-year period to a household that was not a low- or moderate-income household, then the applicant would have to either: (1) Repay to the Bank that portion of the advance used to make the loan to the seller, or (2) convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller would be made available by the Bank for additional AHP projects.

If an owner-occupied unit assisted by a grant under the AHP were sold prior to the end of the five-year period to a household that was not a low- or moderate-income household, then the seller would have to repay to the applicant a *pro rata* portion of the grant from any profit realized upon the sale of the unit, and any amount repaid to the applicant would have to be forwarded to the Bank and made available for additional AHP projects. The Bank would have the discretion to waive this recapture requirement if imposition of the requirement would cause undue hardship on the seller, as defined in the Bank's AHP implementation plan. In addition, for owner-occupied units assisted by a grant, the Bank would have to monitor the unit during the required long-term period by reviewing land title records or reports or certifications from the sponsor or a regulatory agency, as determined by each Bank in its AHP implementation plan, to determine whether the unit had been sold to a household whose income exceeded a low or moderate income.

As under option A, as an alternative to requiring that each owner-occupied unit assisted by a grant be subject to a restriction on transfer, the Bank under option B could have a legally binding agreement with the sponsor providing that if such unit were sold prior to the end of the required long-term period to a household that was not a low- or moderate-income household, the sponsor would make another unit available to a low- or moderate-income household.

(2) Definitions of "low- or moderate-income household" and "very low-income household". Section 10(j)(13)(A) of the Act defines the term "low- or moderate-income household" as a household which has an income of 80 percent or less of the area median. 12 U.S.C. 1430(j)(13)(A). Section 10(j)(13)(B) of the Act defines the term "very low-income household" as a household that has an income of 50 percent or less of the area median. *Id.* section 1430(j)(13)(B). Thus, the term low- or moderate-income household incorporates households that meet the definition of very low-income household.

The Board's existing AHP regulation defines "low- and moderate-income households" as households for which the aggregate income is 80 percent or less of the area median income, and "very low-income households" as households for which the aggregate income is 50 percent or less of the area median income. See 12 CFR 960.1(g), (o). "Median income" is defined as "the median family income for an area as determined and published by the U.S. Department of Housing and Urban Development." *Id.* § 960.1(h). "Area" is defined as "a metropolitan statistical area, a county, or a nonmetropolitan

area, as established by the U.S. Office of Management and Budget." *Id.* § 960.1(c).

(i) Adjustments of income limit. On November 5, 1993, the Board published a proposed rule to amend the definitions of these terms. See 58 FR 58988 (November 5, 1993). As discussed in the preamble to the proposed amendment, under section 3 of the United States Housing Act of 1937, the Secretary of the U.S. Department of Housing and Urban Development (Secretary) establishes income limits to be used in determining whether a family qualifies as a "low-income family" or as a "very low-income family" that is eligible to receive assistance under the Department of Housing and Urban Development's (HUD) housing programs. See 42 U.S.C. 1437a(b)(2). These income limits are calculated as a percentage of the median income of a four-person family living in a particular area. In general, the income limit for qualifying as a "low-income family" is set at 80 percent of the area median income, and the income limit for qualifying as a "very low-income family" is set at 50 percent of the area median income.

The Secretary may adjust the income limits for very low-income families and low-income families upward or downward to take into account unusually high or low family incomes in an area. See *id.* In addition, the income limit for low-income families may be adjusted to take into account prevailing levels of construction costs. See *id.* Then an adjustment in this figure is made to establish the comparable income limits for larger and smaller families living in the area. See *id.*

In 31 higher-income metropolitan statistical areas (MSAs) and 18 counties, the Secretary adjusts the area-based income limit for a four-person, low-income family downward if it would otherwise exceed the U.S. median income for a four-person family. In these areas, the Secretary caps the income limit for a four-person, low-income family at the U.S. median income for a four-person family.

In four MSAs and 107 counties, the Secretary adjusts the area-based income limit for four-person, very low- and low-income families downward because housing costs are low compared to incomes.

Adjusting the income limit downward decreases the number of households in an area that are eligible to receive assistance under HUD's housing programs.

As discussed in the proposed amendment, the Board believes that affordable housing financed through the AHP should be available to the greatest number of households possible, within the limits established by the Act. Further, households should not be excluded from affordable housing in a particular local market on the basis that housing costs are lower or household incomes are higher in that market than in other regions of the United States.

Applying the income limits that have been adjusted downward for prevailing construction costs, low housing costs, or unusually high household incomes for purposes of administering the AHP reduces the number of households eligible to live in affordable housing financed through the AHP. This limits a member's ability to use funds under the AHP to fulfill its obligation under the Community Reinvestment Act. See 12 U.S.C. 2901 *et seq.* It also limits a member's ability to use funds under the AHP to meet the "community investment or service" requirement of section 10(g) of the Act, 12 U.S.C. 1430(g), and the Board's Community Support Regulation, 12 CFR part 936.

Accordingly, the Board is proposing that in administering the AHP and in defining the standards governing the "community investment or service" requirement of the Act, the income limits used to determine whether a household in a particular area qualifies as a "very low-income household" or as a "low- or moderate-income household" should not be adjusted downward based on prevailing construction costs, low housing costs, or unusually high household incomes.

Therefore, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule defines "low- or moderate-income household" as a household which has an income of 80 percent or less of the median income for the area, as adjusted and published by HUD, except in areas where the Secretary adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes. For areas where the Secretary makes this downward adjustment, "low- or moderate-income household" would be defined to mean a household which has an income of 80 percent or less of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes.

In addition, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule defines "very low-income household" as a household which has an income of 50 percent or less of the median income for the area, as adjusted and published by HUD, except in areas where the Secretary adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes. For areas where the Secretary makes this downward adjustment, "very low-income household" would be defined to mean a household which has an income of 50 percent or less of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes.

While HUD publishes tables with adjusted income information that incorporates the adjustments for family size, prevailing construction costs, low housing costs, and unusually high family incomes, it does not publish tables with income information that adjusts only for family size and not these other factors. Therefore, as set forth in the Board's proposed amendment, § 960.1 of this proposed rule adds a definition of "adjustment for household size" in order to provide additional guidance in calculating this adjustment.

An adjustment for household size is made by taking a specified percentage of the income limit of a four-person household for a particular area, according to the following scale:

No. persons	Percent adjustment
1	70.
2	80.
3	90.
4	Base.
5	108.
6	116.
7	124.
8	132.

For each person in excess of eight, eight percent of the four-person household base income limit should be added to the income limit for an eight-person household for the area. These adjustment factors are the same as those used by HUD in administering its housing programs.

Section 960.1 of the proposed rule retains the definition of "area" from the Board's existing AHP regulation. See 12 CFR 960.1(c). "Area" means, for purposes of defining "median income for the area," a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget. Consistent with the proposed amendment, § 960.1 of this proposed rule does not include a definition of "median income" because it is included in the proposed definitions of "very low-income household" and "low- or moderate-income household."

(ii) Definition of "income". The Act is silent on how to define the term "income," *i.e.*, what are eligible sources of household income that should be considered in determining whether the household satisfies the definition of "low- or moderate-income household" or "very low-income household." The Board has determined not to define the term "income" in the proposed rule. Homeownership projects typically involve the participation of a lender which provides permanent financing for the homeowner over an extended period of time. The lender generally verifies a household's income prior to issuing a financing commitment during the underwriting of the loan. Eligible sources of income are identified by the lender during the mortgage underwriting process. Identifying eligible sources of income in the rule could cause inconsistency with lenders' customary and usual underwriting practices, or with the standards applied by the entity providing the major source of financing for the project.

b. *Rental housing units.* Section 960.5(a)(1) of the proposed rule provides generally that at least 20 percent of the rental housing units in a project financed under the AHP with subsidized advances or direct subsidies shall remain affordable for and occupied by very low-income households for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units.

Proposed § 960.5(a)(1) implements section 10(j)(2)(B) of the Act, which provides that Bank members may use subsidized advances received from the Banks to finance the purchase, construction, or rehabilitation of rental housing, at least 20 percent of the units of which will be occupied by and affordable for very low-income households for the remaining useful life of such housing or the mortgage term. 12 U.S.C. 1430(j)(2)(B).

Proposed § 960.5(a)(1) provides that the applicant and project sponsor shall state in the AHP application their commitment regarding satisfaction of the long-term income-eligibility, affordability and income-targeting requirements. In addition, an applicant may commit to maintain additional units as affordable for and occupied by low- or moderate-income households, which commitment shall be a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units.

(1) *Long-term requirement.* Section 10(j) of the Act does not define "remaining useful life" as used in section 10(j)(2)(B) of the Act. See 12 U.S.C. 1430(j). However, the legislative history of section 21A(c) of the Act regarding residential properties sold by the Resolution Trust Corporation (RTC), which was enacted as part of the same legislation that enacted section 10(j), states that the remaining useful life of such RTC property is intended to cover the property as long as it is habitable and assumes good faith efforts by the purchaser to maintain the property and to rehabilitate it as necessary. See Joint Explanatory Statement of the Committee of the Conference, H.R. Conf. Rep. No. 101–222, 101st Cong., 1st Sess., 419 (1989) (FIRREA Conference Report); 12 U.S.C. 1441a(c). The RTC has in fact adopted a specific uniform period of useful life for all buildings instead of a period of useful life based on physical habitability. See 12 CFR 1609.2(kk). The legislative history of a recently enacted affordable housing statute, the Low Income Housing Preservation and Residential Homeownership Act (LIHPRHA), provides further support for a definition of "remaining useful life" based on the period of physical habitability of a property by explicitly rejecting the RTC's regulatory definition.

Accordingly, § 960.1 of the proposed rule defines "remaining useful life" as the period during which the housing remains in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced or repaired as becomes necessary.

Section 10(j) of the Act does not define "mortgage term" as used in section 10(j)(2)(B) of the Act. See 12 U.S.C. 1430(j). The legislative history of section 10(j) states that the conferees expect that the Board will encourage the use of the longest practicable mortgage term in order to aid in making the housing affordable for very low-income households. See FIRREA Conference Report at 431. Accordingly, the Board believes that "mortgage term" should be defined as the mortgage term only of long-term mortgage loans and believes that 30 years is consistent with Congress' intent in section 10(j)(2)(B) of the Act to ensure that AHP-assisted rental housing projects remain occupied by and affordable for income-eligible households for a long-term period.

(2) Definitions of "low- or moderate-income household" and "very low-income household". The definitions of "low- or moderate-income household" and "very low-income household" discussed above for AHP-assisted owner-occupied housing projects apply for AHP-assisted rental housing projects as well.

With respect to the definition of "income," rental housing projects typically have multiple providers of financing, each of which may specify the eligible sources of income, which sometimes conflict with each other. However, as with AHP-assisted owner-occupied housing projects, the Board has determined that the proposed rule should not specify the eligible sources of income for rental housing projects, but rather that applicants should be permitted to follow their usual underwriting guidelines, or may follow those of the predominant source of financing in the project.

(3) Increase in household income or sale of project before end of required long-term period. (i) *Increase in household income.* Section 960.5(a)(2) of the proposed rule provides that all households occupying a rental housing unit subject to the income-targeting requirement of paragraph (a)(1) of this section must satisfy the income-eligibility requirement applicable to such income-targeted unit, as committed to in the AHP application, upon initial occupancy. The household may continue to occupy the income-targeted unit even if its income increases above the income-eligibility requirement for such unit. The unit may continue to count toward meeting the income-targeting requirement committed to in the AHP application, provided the rent charged remains affordable to the household as defined in proposed § 960.1 (as further discussed below). However, if the household's income rises above 140 percent of the income-targeting level committed to in the AHP application, the sponsor must make the next available rental housing unit in the project affordable to and available for occupancy by a household whose income is at or below the income-targeting level committed to in the AHP application for the original unit. Once the next available rental housing unit is so occupied, the rent charged on the unit occupied by the household whose income has risen shall no longer be subject to the requirement that it be affordable for households at the income-targeting level committed to in the AHP application.

This approach is consistent with the approach followed in the LIHTC program. Under the LIHTC program, a unit is in compliance with the occupancy requirements until the tenant's income has risen to 140 percent of the qualifying income. See 26 U.S.C. § 42(g)(2)(D)(i). The next available unit must then be rented to an income-

eligible tenant at an affordable rent. See *id.* Section 42(g)(2)(D)(ii). This approach allows the household to achieve stability by allowing increases in income without fear of displacement or increased rents. In addition, it does not cause destabilization of the project's cash flow by having the project sponsor provide additional income-eligible units with reduced rents that may reduce the income of the project. It also would be consistent with the treatment of rents under the AHP's 20 percent requirement (also known as the maximum subsidy rule), which is currently an interim rule of the Board, and which is incorporated in § 960.9(c) of this proposed rule. (See discussion of 20 percent requirement below.)

Section 960.1 of the proposed rule defines "affordable for very low-income households" to mean:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 50 percent of the median income for the area, as adjusted and published by HUD, except that in areas where the Secretary adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for very low-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 50 percent of the median income for the area, as published by HUD, with adjustment for household size, but without the adjustments made by the Secretary for prevailing construction costs, low housing costs, or unusually high household incomes;

(2) If a rental unit is targeted to a household whose income is less than 50 percent of the median income for the area, then "affordable for very low-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

This proposed definition implements section 10(j)(13)(D) of the Act, which defines "affordable for very low-income households" to mean that rents charged to tenants for units made available for occupancy by low-income families shall not exceed 30 percent of the adjusted income of a family whose income equals 50 percent of the income for the area (as determined by the Secretary of HUD) with adjustment for family size. 12 U.S.C. 1430(j)(13)(D). Section 960.1(b) of the Board's existing AHP regulation contains a definition of the term that is similar to the statutory definition. See 12 CFR 960.1(b).

The Board has determined that an estimate for reasonable utility costs should be included in the determination of rents charged to households under this section, if they are not already included in the projected rents. Including utility costs would reduce the housing cost burden for very low-income households under the AHP, and would allow all rental projects to be treated equally, since some projects include the cost of utilities in the rent, while others do not include such costs in the rent. Including utility costs would be consistent with the treatment of rents in other federal housing programs, such as HUD's Section 8 program and the LIHTC program. It also would be consistent with the treatment of rents under the AHP's 20 percent requirement, which is currently an interim rule of the Board, and which is incorporated in § 960.9(c) of this proposed rule. (See discussion of 20 percent requirement below.)

The definition of "affordable for low- or moderate-income households" in § 960.1 of the proposed rule is similar to the above definition, except that the household must have an income of 80 percent, instead of 50 percent, of the median income for the area, since the Act defines a "low- or moderate-income household" as any household which has an income of 80 percent or less of the area median. 12 U.S.C. 1430(j)(13)(A).

(ii) *Sale of AHP-assisted rental housing project.* Section 960.5(a)(3) of the proposed rule provides that an owner of an AHP-assisted rental housing project may sell the project prior to the end of the long-term period during which the project's rental units, or applicable portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application; however, either:

a. The purchaser must agree to continue the project's rental units, or applicable portion thereof, as affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and must agree to be subject to the same restrictions on resale that applied to the seller; or

b. If the purchaser does not satisfy the requirements in paragraph a. above, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a *pro rata* portion of the grant as provided in § 960.16(d)(1); or

c. If the purchaser does not satisfy the requirements in paragraph a. above, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

Proposed § 960.5(b) further provides that the Bank's AHP implementation plan shall permit the owner of an AHP-assisted rental housing project to sell such project as provided for in paragraph (a)(3).

D. Establishment of AHP Funding Cycles and Available AHP Subsidies

Section 960.6(a)(1) of the proposed rule requires each Bank to establish at least two but no more than four AHP funding cycles per year during which applications for AHP subsidized advances or direct subsidies will be accepted. This is a change from the Board's existing AHP regulation, which provides that the Banks may accept AHP applications during two of four quarterly periods each year. See 12 CFR 960.4(a).

Section 960.6(a)(1) of the proposed rule also provides that the AHP funding cycle schedule, including application due dates, is to be determined by the Bank in its discretion, but shall allow for sufficient time intervals to ensure an adequate pool of applicants to compete in each funding cycle. The funding cycles schedule, including application due dates, shall be described in detail in the Bank's AHP implementation plan. This is also a change from the Board's existing AHP regulation, which sets forth specific application due dates. See 12 CFR 960.4(a).

Section 960.6(a)(2) of the proposed rule provides that each Bank shall inform the general public and its members of the number and dates of its AHP funding cycles for the year and the approximate amount of available AHP subsidies for each funding cycle at least 45 calendar days before the due date for AHP applications for the first funding cycle for the year. This is a change from the Board's existing AHP regulation, which requires each Bank to announce its funding cycles by December 1 of the preceding year, and to notify only its members of the approximate amount of AHP subsidies to be offered in each funding cycle. See 12 CFR 960.4(a), (b).

Consistent with § 960.4(b) of the Board's existing AHP regulation, § 960.6(b) of the proposed rule provides that each Bank shall allocate comparable amounts of AHP subsidies for each AHP funding cycle during the year. See 12 CFR 960.4(b).

E. Specific Application and Scoring Requirements

1. Application Requirements

The proposed rule does not mandate use of a uniform AHP application form by all of the Banks. Rather, the Board believes that, consistent with current practice under the AHP, each Bank should continue to devise its own AHP application form, because each Bank will have its own special information requirements as a result of the specific priorities and scoring criteria adopted by the Bank.

However, as discussed further below, all AHP applications must satisfy certain threshold requirements in order to be considered for scoring under the proposed rule. Thus, certain information from applicants must be received by all Banks in order for the Banks to be able to determine whether the applications satisfy the threshold requirements in the proposed rule and to score the applications under the scoring criteria. Accordingly, § 960.7(a) of the proposed rule provides that each Bank shall require applicants for subsidized advances or direct subsidies under the AHP to submit to the Bank an application which, at a minimum, contains all of the information described below and any other information which the Bank determines is necessary in order to take action on such application, including the following:

(1) A concise description of the purpose of the request and proposed uses of the funds, and its relationship to the priorities identified in proposed § 960.10(d), the targeting criterion identified in proposed § 960.10(e), and the other objectives identified in proposed § 960.10(f);

(2) A statement of how the project will satisfy the authorized uses and long-term requirements, including a description of legal mechanisms to be used to ensure compliance by the project with such requirements, contained in proposed §§ 960.3 and 960.5;

(3) A statement of how the project will comply with the fair housing law requirement contained in proposed § 960.9(b);

(4) A statement of how the project will satisfy the feasibility requirement contained in proposed § 960.9(d);

(5) A statement of how the project's sponsor satisfies the qualification requirement contained in proposed § 960.9(e);

(6) A statement of whether a subsidized advance or direct subsidy has been requested and the amount of such funds requested;

(7) A disclosure of whether or not the applicant has a direct or indirect interest in the property or project. If the applicant has an interest in the property and the application is approved, then prior to the transfer of AHP funds to the project, an independent current appraisal of the fair market value of such property must be provided, unless the applicant demonstrates that the property is being sold or otherwise transferred to the sponsor at a price substantially below the fair market value;

(8) A statement of the project's costs; and

(9) A certification from the applicant's, the sponsor's and the loan fund's or loan consortium's board of directors, or president or senior officer if so delegated by the board of directors, that the applicant, the sponsor and the loan fund or loan consortium will comply with all requirements of this part and all obligations committed to in the AHP application.

Section 960.4(c) of the Board's existing AHP regulation also generally requires an applicant to include in its AHP application the information identified in paragraphs (3) through (6) above, as well as any other information the Bank may require. See 12 CFR 960.4(c).

Section 960.4(c)(6) of the Board's existing AHP regulation also requires an applicant to disclose in its AHP application any direct or indirect interest of the applicant in the property or project. See 12 CFR 960.4(c)(6). Under § 960.7(a)(7) of the proposed rule, if such an interest exists and the application is approved, then prior to the transfer of AHP funds to the project, the applicant generally is required to provide an appraisal of the property or project. This is to ensure that the sales price of such property or project owned by the applicant has not been inflated and that the applicant is not receiving the benefit of the AHP subsidy.

Section 960.4(c)(7) of the Board's existing AHP regulation requires the applicant to include in its AHP application an explanation of how the applicant intends to monitor the use of any funds received under the AHP, including an explanation of how the structure of the project ensures that a preponderance of the subsidy is ultimately received by the targeted beneficiaries. See 12 U.S.C. 1430(j)(9)(D); 12 CFR 960.4(c)(7). As discussed in greater detail in the monitoring section below, as long as adequate monitoring is otherwise provided for, the proposed rule does not require the applicant in all instances to monitor the AHP-assisted project for compliance with the long-term requirement of the proposed rule. Accordingly, this provision of the existing regulation is deleted in the proposed rule.

Section 960.4(c)(8) of the Board's existing AHP regulation requires the applicant to certify that the maximum subsidy limitation requirements of the AHP rule will not be violated. See 12 CFR 960.4(c)(8). However, since the maximum subsidy limitation requirements are threshold requirements that all AHP applications must satisfy (see discussion below of the 20 percent requirement), this requirement is incorporated into proposed § 960.7(a)(9), which provides generally that the applicant and sponsor must certify that all requirements of the AHP regulation will be satisfied.

Section 960.4(c)(8) of the Board's existing AHP regulation also requires the applicant to explain in its AHP application how any AHP subsidy that exceeds the maximum subsidy requirements will be recaptured. See 12 CFR 960.4(c)(8). Since AHP applications must satisfy the threshold maximum subsidy limitation requirements at the outset in order to be scored and approved for AHP funding, this issue does not arise and therefore has been deleted in the proposed rule.

As discussed above, the requirement in § 960.4(c)(9) of the Board's existing AHP regulation that the applicant's managing officer must certify that the AHP subsidy shall be only for authorized uses is expanded in proposed § 960.7(a)(9) to require a certification by the applicant, the sponsor and the loan fund or loan consortium not only that funds received under the AHP will be used for authorized uses, but also a certification of compliance with all requirements of the AHP regulation and all obligations committed to in the AHP application. See 12 CFR 960.4(c)(9). In addition, the proposed rule requires the applicant, the sponsor and the loan fund or loan consortium, not just the applicant, as in the Board's existing AHP regulation, to make the certification in the AHP application. This change is proposed because the applicant, the sponsor and the loan fund or loan consortium are all subject to specific requirements under the AHP and therefore should be required to certify that they will comply with such requirements.

2. Action on Applications

As discussed above, the proposed rule makes a major change in the Board's existing AHP regulation by taking the

Board out of the approval process for AHP applications. Section 960.7(b)(1) of the proposed rule provides that each Bank shall review, score and take action on an AHP application pursuant to the requirements contained in proposed §§ 960.8, 960.9 and 960.10, and shall notify the applicant of such action no later than 60 calendar days after the application due date for the AHP funding cycle. Section 960.5(f)(1) of the existing regulation requires the Banks to forward to the Board their recommended applications no later than 30 days after each offering deadline. See 12 CFR 960.5(f)(1). Since the Banks would have greater responsibilities in the approval process under the proposed rule, the 30-day period is proposed to be extended to 60 calendar days.

Section 960.7(b)(2) of the proposed rule provides specifically that the board of directors of each Bank shall have the authority to approve or disapprove AHP applications received, and may delegate such authority to the president or other senior officers of the Bank.

Section 960.7(b)(3) of the proposed rule provides that within 30 calendar days of each Bank's approval of the AHP applications for a given AHP funding cycle, the Bank shall forward to the Board a summary of each approved AHP application. The summary shall:

(i) Briefly describe the project, including the applicant, the loan fund or loan consortium, if applicable, and the sponsor—whether nonprofit, for-profit or public agency, the type of housing, the location, the long-term period committed to, the number of housing units including the number of units affordable for very low-, low- or moderate-income households or for households at any other income levels committed to in the AHP application, the development cost, other financing sources, and special needs populations served;

(ii) State the reason for the points awarded under each of the Bank's scoring criteria for the project;

(iii) Indicate whether a subsidized advance or direct subsidy was approved by the Bank for the project, the use of such funds, and the amount of such funds approved; if a subsidized advance was approved, the summary shall indicate the amount of the advance, the advance rate, the amortization schedule for the advance, the term to maturity, the applicable cost of funds, and the date as of which the cost of funds was determined;

(iv) Indicate whether the project received approval in a prior AHP funding cycle, or whether the project is an extension, expansion, continuation or reconfiguration of a previously approved AHP project;

(v) Describe how the project will be monitored and by what entity;

(vi) Describe the legal mechanisms to be used to ensure compliance by the project with the long-term requirement contained in § 960.5 of the proposed rule;

(vii) Include a summary in chart form showing all AHP applications received by the Bank in the particular AHP funding cycle, with the score each application received for each scoring criterion, and the total score received by each project; and

(viii) Include any other information required by the Board.

The Board has general oversight responsibility over the AHP under section 10(j) of the Act. See 12 U.S.C. 1430(j). In addition, section 10(j)(12)(A) of the Act requires the Board to monitor and report annually to the Congress and the Advisory Council for each Bank the support of low-income housing and community development by the Banks and the utilization of advances for these purposes. *Id.* § 1430(j)(12)(A). Since the Board would no longer be receiving and approving AHP applications under the proposed rule, the Board would no longer have these applications as a source of data to assist the Board in exercising its oversight and monitoring responsibilities and preparing the annual report to the Congress and the Advisory Councils. Accordingly, the Board will need the Banks to provide this additional information to the Board in the summary, as required in proposed § 960.7(b)(3).

F. Requirements For Approval of AHP Applications

1. General

Section 960.8(a) of the proposed rule provides that each Bank shall evaluate the AHP applications received to determine if they satisfy the threshold criteria in proposed § 960.9. All applications that meet the threshold criteria shall be scored pursuant to the criteria contained in proposed § 960.10 as set forth in the Bank's approved AHP implementation plan.

Section 960.8(b) of the proposed rule provides that the Bank shall approve the applications in descending order starting with the highest scoring application until the total AHP funding amount for the particular funding cycle, except for any amount insufficient to fund the next highest scoring project, has been allocated. The Bank also may approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP funds become available.

2. Threshold Criteria for Approval of AHP Applications

Section 960.9 of the proposed rule provides that an AHP application must meet all of the threshold criteria set forth in a. through f. below in order to be considered for scoring under proposed § 960.10 and for AHP funding approval. These criteria are discussed in detail below.

a. *Authorized and required uses requirements.* The AHP application must indicate that the use of the subsidized advance or direct subsidy set forth in the AHP application for the proposed project will comply with the requirements for authorized and required uses of such funds contained in proposed §§ 960.3, 960.4 and 960.5. See proposed § 960.9(a).

This proposed provision is consistent with the intent of § 960.5(a)(1) of the Board's existing AHP regulation. See 12 CFR 960.5(a)(1).

b. *Fair housing law requirements.* The AHP application must indicate that the project sponsor will comply with any applicable fair housing law requirements and must indicate how the sponsor proposes to affirmatively further compliance with such requirements. See proposed § 960.9(b).

This proposed provision is consistent with the requirement of compliance with fair housing laws contained in § 960.5(a)(2)(i) of the Board's existing AHP regulation, and the requirement under existing practice that applications indicate how the sponsor proposes to affirmatively further such compliance. See 12 CFR 960.5(a)(2)(i).

c. *The twenty percent requirement and alternatives.* Section 960.9(c) of the proposed rule incorporates the existing maximum subsidy limitation requirement and alternatives contained in § 960.9 of the Board's interim rule, with minor changes in language and one substantive modification discussed below. See 12 CFR 960.9 (58 FR 17968 (April 7, 1993)). The 20 percent requirement and the alternatives discussed below implement the maximum subsidy limitation requirement contained in section 10(j)(9)(F) of the Act. See 12 U.S.C. 1430(j)(9)(F). Since the 20 percent requirement or an alternative must be satisfied by all AHP applications to avoid over-subsidization of a project, it is set forth as a threshold requirement in the proposed rule.

(i) The twenty percent requirement. Section 960.9(c)(1)(i) of the proposed rule provides generally that a Bank shall not offer subsidized advances or direct subsidies to applicants in excess of that amount needed to reduce the monthly housing costs for income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income (the 20 percent requirement). In projects where other forms of federal, state, local or private subsidized assistance are being used in conjunction with AHP subsidized advances or direct subsidies, the total amount of subsidized assistance, including funds provided under the AHP, shall not be in excess of the amount needed to reduce the monthly housing costs for the income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income.

Monthly housing costs are defined in proposed § 960.9(c)(1)(ii) as:

(1) For households in AHP-assisted owner-occupied housing units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

(2) For households in AHP-assisted rental housing units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service.

Section 960.9(c)(1)(iii) of the proposed rule provides that a household subject to the 20 percent requirement is required to meet such requirement only at the time it initially purchases or occupies a unit.

(ii) Alternative requirements. Section 960.9(c)(2)(i) of the proposed rule provides that the 20 percent requirement shall not apply where a Bank provides subsidized advances or direct subsidies to an applicant for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the household meets the housing payment requirements of the other program.

Section 960.9(c)(2)(ii)(A) of the proposed rule provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance rehabilitation of a housing unit by a very low-income household that already owns and occupies the housing unit is $10,000 or less per such household. In addition, proposed § 960.9(c)(2)(ii)(B) provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance the purchase of a housing unit by a very low-income household is $5,000 or less per such household. This is a change from the interim rule which permits this alternative to the 20 percent requirement only for households that are above the threshold income level for very low-income households and at or below the income level to qualify as low- or moderate-income households. The Board did not intend to exclude very low-income households from taking advantage of this alternative when it adopted the interim rule. Accordingly, proposed § 960.9(c)(2)(ii)(B) corrects this error.

Section 960.9(c)(2)(iii) of the proposed rule provides that the 20 percent requirement shall not apply where the total amount of AHP funds provided through a Bank subsidized advance or direct subsidy used to finance rehabilitation or purchase of a housing unit by a low- or moderate-income household is $5,000 or less per such household.

Section 960.9(c)(2)(iv) of the proposed rule provides that the 20 percent requirement shall not apply where a Bank provides subsidized advances or direct subsidies ultimately benefiting a household with an income at or below the level committed to in the AHP application, which is participating in a self-help, sweat equity or similar housing program. Under the proposed rule, the household is required to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household. The household must work cooperatively with others to construct or rehabilitate housing which the household or other program participants are purchasing or already own and occupy, and the program must involve supervision of the work performed by skilled builders or rehabilitators.

d. *Project feasibility.* The AHP application must indicate that the proposed project is feasible. This determination must be based on an analysis of project sources and uses of funds, project multi-year operating pro formas for rental housing projects, projections of sales and prices for owner-occupied housing units, and local market conditions. The analysis must show that the project is financially viable and likely to be completed within a reasonable period of time, and is likely to operate or sell and remain affordable to the designated income-eligible households over the long-term period committed to in the AHP application. See proposed § 960.9(d).

A feasibility requirement also is contained in § 960.5(a)(2)(ii) of the Board's existing AHP regulation. See 12 CFR 960.5(a)(2)(ii).

e. *Qualifications of sponsor.* The AHP application must indicate that the sponsor has the qualifications and ability to perform its responsibilities as committed to in the AHP application. See proposed § 960.9(e).

This proposed provision is not included as a threshold requirement in the Board's existing AHP regulation, although it is required under the regulation to be included by an applicant in its AHP application. See 12 CFR 960.4(c)(4). The Board believes that this provision should be included as a threshold requirement, since a project should not be funded if the sponsor lacks the qualifications and ability to undertake the project.

f. *Creditworthiness of applicant.* Consistent with the Board's existing AHP regulation, § 960.9(f) of the proposed rule provides that the applicant must have the ability to qualify for an advance from the Bank to fund the project described in the AHP application. See 12 CFR 960.5(a)(2)(iii).

The Board's existing AHP regulation also includes as a threshold requirement the ability of the project to begin using Bank assistance within 12 months. See 12 CFR 960.5(a)(2)(iv). Since this involves the use of funds after a project has been approved for funding, it does not belong as a threshold requirement and has been omitted in this section of the proposed rule. The requirements under the proposed rule for use of funds under the AHP within a reasonable period of time after approval of the application are discussed below in the use and verification section.

Finally, it has been suggested that a threshold criterion should be added requiring that the project costs set forth in the AHP application are reasonable and appropriate for the type and location of the housing.

Section 10(j)(9)(F) of the Act requires the Board to establish maximum subsidy limitations under the AHP. 12 U.S.C. 1430(j)(9)(F). Section 10(j)(9)(D) of the Act also requires the Board to ensure that a preponderance of assistance provided under the AHP is ultimately received by low- and moderate-income households. *Id.*

Section 1430(j)(9)(D). Requiring that project costs be reasonable is one way of controlling the amount of AHP subsidies that fund a project in order to keep the project from being over-subsidized, and to ensure that a preponderance of the funds are being received by the ultimate households by lowering their housing costs and not providing undue benefit to the intermediaries in the development process.

A project costs requirement is not explicitly prescribed in the threshold requirements under the Board's existing AHP regulation, although some Banks do currently review project costs to determine if they are reasonable under the feasibility requirement in the existing regulation. See 12 CFR 960.5(a)(2)(ii). The feasibility requirement as defined in the proposed rule would not incorporate a project costs limit requirement.

The Board specifically requests comments on how the Banks currently deal with applications with excessive project costs, whether the project costs option discussed above should be required as a threshold criterion in approving AHP applications, and how such a requirement could be implemented by the Banks.

3. Scoring of AHP Applications

Section 960.10(a) of the proposed rule provides that the Bank shall score AHP applications that satisfy all of the threshold criteria in proposed § 960.9 according to the scoring methodology set forth in proposed § 960.10, which shall be included in the Bank's approved AHP implementation plan. Section 960.10 of the proposed rule modifies the existing scoring methodology, and the Board specifically requests comments on this proposed new scoring methodology.

a. *Priority treatment and scoring.* Section 960.10(b) of the proposed rule provides that each application is first evaluated to determine if it will receive priority treatment. The Board's existing AHP regulation contains seven priorities: Homeownership projects; rental projects; projects using government properties; projects with a non-profit or public agency sponsor; projects promoting empowerment; homeless housing projects; and projects meeting a Bank priority. Under the existing AHP regulation, an application must meet at least three of the seven priorities to receive priority treatment. The proposed rule would contain only five priorities. The proposed rule would eliminate the priorities for homeownership and rental properties because a project must be either a rental or homeownership project in order to qualify for AHP funding. The proposed rule would replace the empowerment and homeless housing priorities with a priority for "special needs" housing. In addition, the proposed rule would add a new priority for projects promoting economic mobility.

Under § 960.10(b) of the proposed rule, for purposes of determining priority, an application can receive a maximum of eight points for each of the five priority categories described below. A Bank in its AHP implementation plan shall define more specifically each of the five priority categories and explain specifically how points will be awarded for satisfying each category. An application will be deemed to meet a particular priority category if it is awarded at least four points for that priority category. Applications meeting at least two priority categories shall receive priority treatment.

Section 960.10(c) of the proposed rule provides that applications that qualify for such priority treatment shall be scored before applications that do not qualify for priority treatment. The applications that do not qualify for priority treatment will not be scored unless there are insufficient priority treatment applications to utilize the total AHP funding amount for the funding cycle. Under the proposed rule, the total points available for the priorities would be increased from 25 to 40. Section 960.10(d) of the proposed rule provides that the Bank shall total the points received by each applicant for purposes of determining priority for all of the five priority categories and shall award 40 points to the application(s) that receive the highest number of total points, and the remaining application scores shall be adjusted and awarded points on a declining scale basis.

The five priority categories are set forth below.

(1) Government-owned properties. Applications for projects that finance the purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, including but not limited to HUD, the RTC, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation. (See proposed § 960.10(d)(1).)

(2) *Nonprofit or state or local government sponsored projects.* Applications for projects that finance the purchase, construction or rehabilitation of housing sponsored by a nonprofit organization, a state or political subdivision of a state, a local housing authority or a state housing finance agency. (See proposed § 960.10(d)(2).)

(3) *Special needs projects.* Applications for projects that address special needs, which shall be defined by the Bank in its AHP implementation plan, which special needs may include but are not limited to:

(i) Empowering the households or residents through programs such as resident management of the property, self-help housing, homesteading, and sweat equity;

(ii) Providing housing for special needs populations such as homeless persons, abused or battered persons, persons with AIDS, mentally or physically disabled persons, or persons with substance abuse problems;

(iii) Providing housing in rural areas or areas targeted by local, state or federal governments for community development or revitalization through the development of affordable housing or economic investment; or

(iv) Providing housing with special services to meet the needs of low- or moderate-income households including, but not limited to, child care, job training, medical care, substance abuse programs, independent living skill training, and rental household and homeowner household counseling. (See proposed § 960.10(d)(3).)

In defining the special needs priority in its AHP implementation plan, a Bank is not required to include all of the special needs listed as examples above. Rather, a Bank may be selective in giving priority to some special needs and not others in devising its scoring system. In addition, the Bank may select other special needs not listed as examples above if the special needs chosen are similar in nature to such examples.

(4) District Bank priority. Applications for projects that meet one or more priorities recommended by the Bank's Advisory Council and adopted by the Bank's board of directors that each address a housing need in the Bank's district and are consistent with the purposes of this part. The Bank shall describe in its AHP implementation plan how the points for the priority or priorities will be distributed. (See proposed § 960.10(d)(4).)

(5) Economic mobility priority. Applications for projects that provide housing for low- or moderate-income households that move from low- or moderate-income neighborhoods or housing projects to neighborhoods, mixed-income buildings or owner-occupied housing developments in which at least 50 percent of the households have incomes above the median income for the area, as published by the U.S. Department of Housing and Urban Development. (See proposed § 960.10(d)(5).)

b. *Scoring for objectives.* The Board's existing AHP regulation contains the following "objectives" scoring criteria: Targeting; long-term retention; effectiveness; community involvement; community stability; and innovation. The proposed rule makes long-term retention a threshold criteria and adds a new objective called "applicant participation." A description of this new objective and the other criteria are set forth below.

c. *Scoring for targeting objective.* Section 960.10(e) of the proposed rule provides that an application can receive a maximum of 20 points for the targeting objective category. This is an increase from 15 points under the existing regulation. The proposed rule provides that the Bank shall award points to applications based on the extent to which the project(s) serve(s) the greatest percentage of very low-, low- and moderate-income households, in that priority order. In the alternative, if a weighted-average scoring methodology is provided in the Bank's AHP implementation plan, the Bank shall award points to an application based on the extent to which the project has the lowest weighted-average income determined by multiplying the percentage of units reserved for households at certain income levels by those incomes expressed as a percentage of median income, and adding the totals. Applications shall be scored relative to each other with the maximum number of points allowable awarded to the application(s) that best achieve(s) the targeting objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. However, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group.

d. *Scoring for other objectives.* Section 960.10(f) of the proposed rule sets forth five other objectives categories for scoring AHP applications. The proposed rule requires the Bank in its AHP implementation plan to define more specifically each of the five other objectives categories and explain specifically how points will be awarded for satisfying each category. For each category, the Bank shall award the maximum number of points allowable for such category to the application(s) that best achieve(s) the objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. The five other objectives categories are set forth below.

(1) AHP subsidy per unit. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-subsidized unit. Projects should be scored relative to each other; however, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group. This scoring criterion may not include a leveraging criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy. This replaces the effectiveness criterion that can receive a maximum of 15 points in the existing scoring methodology.

(2) Applicant participation. An application can receive a maximum of five points for this category. The Bank shall award points to applications based on the extent to which the project involves participation by applicants other than the receipt of a subsidized advance or direct subsidy under the AHP. Such participation can be financial or non-financial, including but not limited to debt or equity financing of the project, grants to the project, applicant involvement on the boards of nonprofit sponsors, and applicant provision of technical assistance to the nonprofit sponsors for the project. This is a new scoring criterion.

(3) Community involvement. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor. The Banks should not award points for this category based solely on the number of letters of support received for the project.

(4) Community stability. An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project(s) maximize(s) community stability, such as by: committing to maintain a greater long-term period pursuant to § 960.5; revitalizing vacant or abandoned properties or being integrally part of a neighborhood stabilization plan, if such revitalization or stabilization is not identified as a special needs category by the Bank pursuant to § 960.10(d)(3)(iii); and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(5) Innovation. An application can receive a maximum of five points for this category. This is a reduction from 10 points under the existing regulation. The Bank shall award points to applications based on the extent to which the project(s) involve(s) a particularly new or unusual approach, either financial or non-financial, for meeting the requirements of this part.

G. Modifications of Approved AHP Applications

Section 960.11(a) of the proposed rule provides that an applicant that seeks a modification of an approved AHP application before completion and occupancy of the project must submit a request for such modification in writing to the Bank for review and approval. A modification is any change that affects or could potentially affect the material facts under which the application was originally evaluated and scored. Modifications are changes in the specifics of an application such as requests for additional AHP subsidy or changes in approved income targeting.

Section 960.11(b) of the proposed rule provides that a request for a modification of an approved AHP application must include, at a minimum:

1. A description of how the proposed modification differs from the original application;

2. The reason for the proposed modification; and

3. Any other information that the Bank determines is necessary to review the proposed modification.

Section 960.11(c)(1) of the proposed rule provides that the Bank shall review the request for modification, shall re-score the application as proposed to be modified according to the scoring criteria used in the AHP funding cycle in which the application was originally approved, and may approve such request if the following factors are satisfied:

1. The project as proposed to be modified continues to meet all of the requirements of this part; and

2. The project as proposed to be modified continues to score high enough that it would have been approved in its AHP funding cycle.

Section 960.11(c)(2) of the proposed rule provides that if the application does not satisfy the requirements in paragraph (c)(1), the Bank in its

discretion may approve the request for modification if the reason for the modification is due to circumstances outside the control of the applicant or sponsor.

Section 960.11(d) of the proposed rule provides that the Bank shall forward to the Board a detailed summary of any modification of an AHP application approved by the Bank, including how the Bank re-scored the project, within 30 calendar days of the approval of such modification.

H. Use, Calculation and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies

1. Use of Subsidized Advances or Direct Subsidies Within Reasonable Period of Time and Verification of Reasonable Progress

As discussed above, the threshold requirement in the Board's existing AHP regulation that the project have the ability to begin using Bank assistance within 12 months is omitted as a threshold requirement in the proposed rule. See 12 CFR 960.5(a)(2)(iv). In addition, setting a fixed period of 12 months may not be appropriate in all cases, because what is a reasonable period of time will vary from project to project depending on the type of project and the circumstances of the project. However, the Board does believe that funds received under the AHP should be used within a reasonable period of time after approval of an AHP application. Because what is a reasonable period of time is so project specific, the Board believes that the determination of such periods should be left to the discretion of the Banks.

Accordingly, § 960.12(a) of the proposed rule provides that the Bank shall in its AHP implementation plan identify what constitutes reasonable progress by the sponsor towards using subsidized advances or direct subsidies within a reasonable period of time after the approval of an AHP application for different types of projects, and explain how it intends to verify such reasonable progress.

Section 960.12(b) of the proposed rule provides that the sponsor must demonstrate that reasonable progress is being made towards using the requested funds within a reasonable period of time after approval of the AHP application, as determined by the Bank.

Section 960.12(c) of the proposed rule provides that the Bank shall verify the efforts of the sponsor to determine whether it has satisfied the requirement in paragraph (b).

Section 960.12(d) of the proposed rule provides that if the sponsor fails to satisfy the requirement in paragraph (b), the Bank shall cancel the AHP award, and shall not disburse any subsidized advances or direct subsidies through the applicant to the sponsor, and the full amount of any previously disbursed subsidized advances or direct subsidies shall be returned to the Bank.

2. Calculation of AHP Subsidy

The Board is considering adopting rules on the calculation of AHP subsidies for subsidized advances and specifically requests comments on the following proposals. Under consideration is whether AHP application approvals should commit to provide a dollar amount of subsidy, or should commit to make a subsidized advance at a specific interest rate. Another possibility is that the Bank can select on a case-by-case basis to do one or the other or both but the choice must be specified in its approval. The rule could require the Bank's AHP implementation plan to describe the Bank's procedures in this area.

The Board specifically requests comments as to whether an AHP approval should commit to provide a specific dollar amount of subsidy for a subsidized advance. If interest rates rise after the approval, should the interest rate on the subsidized advance be increased so that the present value of the amount needed to subsidize the reduction in interest rate is equal to the subsidy amount originally approved? Should the applicant be given the option of either reducing the principal amount of the loan and keeping the originally requested interest rate unchanged, or increasing the interest rate on the loan and keeping the principal amount of the loan unchanged? If interest rates fall after the approval, should the specific dollar amount of approved subsidy stay the same, or be adjusted?

Alternatively, if the AHP approval commits to make a subsidized loan at a specified interest rate, then a number of issues are raised. First, should the amount of the subsidy to be charged against the AHP fund be calculated at the time the application is approved, or at the time of disbursement. If the calculation is not done at the time the application is approved but is done at the time of funding and interest rates have fallen since the approval, the amount of the subsidy provided to subsidize the advance would decrease and the amount of subsidy charged against the AHP fund would decrease. If the calculation is done at the time of funding and interest rates have risen since the approval, the amount of the subsidy provided to subsidize the advance would increase and the amount of subsidy charged against the AHP fund would increase. If the increase in subsidy is permitted to be charged against the AHP fund, should there be any limits on the amount of increase in subsidy? If the amount that could be charged against the AHP fund could be increased without limit, these charges could reduce the amount of funds available for future cycles of AHP funding. One option would be to put an upper limit, for example a specified number of basis points, as the maximum amount by which additional AHP funds would be provided to cover the interest rate increase. Another option would be to approve the amount of the subsidy as well as the interest rate on the advance at the time the advance is approved and permit the subsidy to be increased up to a specified amount. Another issue is whether funds from future AHP funding cycles should be used to pay for increased subsidies due to interest rate increases. The Board specifically requests comments on these options.

The Board is concerned about the calculation of subsidies where non-amortizing subsidized advances are used by members to fund amortizing AHP loans from members to sponsors. Since principal is repaid on a different schedule for amortizing loans than non-amortizing loans, the Banks must adjust their subsidy calculation methodologies to ensure that they have properly adjusted for these differences. As AHP principal is repaid to a member but not repaid to the Bank, the benefit of these subsidized funds may not be passed on to the ultimate borrower, as required in section 10(j)(9)(E) of the Act. See 12 U.S.C. 1430(j)(9)(E). Without proper adjustment for differences in the cash flows for an amortizing loan and an interest-only advance, the amount of subsidy actually received by a project will be less than the amount incurred by the Bank as an AHP expense. The Board specifically requests comments as to whether an amortizing advance structure is required to assure that the subsidy amount incurred by the Bank as an AHP expense matches the amount of the subsidy actually received by a sponsor. In addition, the Board requests comments as to whether there are alternative appropriate methods to deal with the discrepancy in the subsidy amounts where such advances are used to fund amortizing loans.

3. Verification at Initial Disbursement of Subsidized Advances or Direct Subsidies

Section 960.13 of the proposed rule provides that at the time of initial disbursement of a subsidized advance or a direct subsidy by a Bank for an approved AHP application, the Bank shall verify in writing that the project complies with all applicable requirements contained in proposed § 960.9 and all obligations committed to in the approved AHP application. The Bank shall verify the amount of subsidy being provided in connection with the application and being charged against the AHP fund. The Bank shall include in its AHP implementation plan its verification procedures for such purposes.

I. Monitoring Requirements

Section 960.14 of the proposed rule sets forth the requirements for monitoring AHP-assisted housing projects. Section 960.14 is intended to implement the statutory requirement of section 10(j)(9)(C) of the Act, which provides that the Board's regulations shall ensure that advances made under the AHP be used only to assist projects for which adequate long-term monitoring is available. See 12 U.S.C. 1430(j)(9)(C).

The Board's existing AHP regulation provides that each Bank must monitor housing projects funded through its AHP. See 12 CFR 960.7(b). Section 960.14(a) of the proposed rule carries forward this requirement, and § 960.14(e) through (h) of the proposed rule sets forth the specific monitoring requirements for the Banks, which are discussed further below. Section 960.14(b) of the proposed rule provides that each Bank shall include in its AHP implementation plan an explanation of how it intends to meet the monitoring requirements of § 960.14 of the proposed rule.

Under § 960.14(c) of the proposed rule, a Bank may contract with an applicant, a state housing finance agency, or another entity to perform the tasks required to carry out the Bank's monitoring responsibilities; however, the Bank remains ultimately responsible for meeting the monitoring requirements set forth in § 960.14 (e) through (h) of the proposed rule. Thus, a Bank may decide in its monitoring plan that applicants will have no long-term monitoring responsibilities. Alternatively, the Bank may decide to require applicants to perform long-term monitoring as a condition of approval of an AHP award, or the Bank may determine what entity has the responsibility for monitoring on a project-by-project basis.

1. Applicant Monitoring of Construction or Rehabilitation

Section 960.14(d) of the proposed rule adds a new requirement that if a subsidized advance or direct subsidy is used to finance construction or rehabilitation of a project, the Bank shall require the applicant to monitor the construction or rehabilitation until completion, and to make progress reports to the Bank. Where an applicant finances construction or rehabilitation, the applicant usually monitors the progress of the project in connection with approving disbursements of funds to the borrower. Therefore, the Board believes that where an applicant uses a subsidized advance or direct subsidy to make loans for construction or rehabilitation of an AHP-assisted project, the applicant is in the best position to monitor the progress of such construction or rehabilitation and to make progress reports to the Bank.

2. Bank Monitoring Requirements

Section 960.14 (e) through (h) of the proposed rule sets forth the specific aspects of an AHP project that a Bank is required to monitor. Section 960.14(e) of the proposed rule sets for the monitoring responsibilities that are long-term in nature, as required by section 10(j)(9)(C) of the Act. See 12 U.S.C. 1430(j)(9)(C). Section 960.14(f) and (h) of the proposed rule sets forth the short-term monitoring responsibilities for compliance with the special needs and economic mobility priorities. Section 960.14(g) sets forth the monitoring responsibilities for the District Bank priority or priorities, which may or may not be long-term, depending on the nature of the priority selected by the Bank.

a. *Monitoring of long-term requirements.* Section 960.14(e) of the proposed rule sets forth the requirements for monitoring the long-term requirements for owner-occupied and rental housing projects assisted under the AHP.

(i) Owner-occupied housing units. Section 960.14(e)(1)(i) of the proposed rule provides that at the time a household enters into a purchase contract for an AHP-assisted housing unit or by the closing on the financing for such unit, or at the time a household that already owns the housing unit receives a commitment of a loan or a grant pursuant to the AHP, the Bank or its designee shall obtain a certification from the sponsor that the household has an income at or below the level committed to in the AHP application.

Section 960.14(e)(1)(ii)(A) of the proposed rule provides that during the required long-term period applicable to an owner-occupied housing unit assisted by a grant provided under the AHP, the Bank or its designee shall monitor the unit to determine whether it has been sold to a household with an income that exceeds the level committed to in the AHP application.

The Board requests comments on two proposed options for implementing this requirement. These options incorporate the use of sampling to monitor AHP-assisted projects. The Board recognizes that as the number of AHP-assisted projects in existence grows, the costs of monitoring these projects may place an undue financial burden on the Banks and the AHP. Monitoring AHP-assisted projects on a sample basis may be one way to minimize the costs of monitoring while continuing to meet the monitoring requirements of the Act.

Section 960.14(e)(1)(ii)(B) of the proposed rule proposes that monitoring shall include, but is not limited to, periodic review of relevant reports or certifications obtained from the sponsor, including any reports or certifications received pursuant to § 960.15(c)(1)(ii) of the proposed rule and, at least on a sample basis, periodic review of land title records at intervals determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

An alternative option would be to require that the Bank only would have to review land title records on a sample basis, as determined by the Bank.

(ii) Rental housing projects. Section 960.14(e)(2)(i) of the proposed rule provides that the Bank shall require an AHP-assisted rental housing project to be subject to a deed restriction or other legally enforceable mechanism which requires that upon sale of the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the level committed to in the AHP application, the Bank or its designee must receive notice of the sale, and:

(1) The project's rental units, or portion thereof, must continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and the purchaser agrees to be subject to the same restrictions on resale that applied to the seller; or

(2) If the purchaser does not satisfy the requirements in (1) above, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a pro rata portion of the grant to the

applicant, as provided in § 960.16(d)(1) of the proposed rule; or

(3) If the purchaser does not satisfy the requirements in (1) above, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

Section 960.14(e)(2)(ii) of the proposed rule provides that upon initial full occupancy of the units in an AHP-assisted rental housing project or one year after initial disbursement of the subsidized advance or direct subsidy, whichever occurs first, the Bank or its designee shall obtain a certification from the sponsor or the owner that the project's units, or portion thereof, are affordable for and occupied by households with incomes at initial occupancy at or below the levels committed to in the AHP application.

Section 960.14(e)(2)(iii)(A) of the proposed rule provides that during the long-term period for which the units, or portion thereof, of a rental housing project must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee shall monitor the project to determine whether the project's units, or portion thereof, remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application. The Board requests comments on several options for implementing this requirement.

Section 960.14(e)(2)(iii)(B) of the proposed rule proposes that monitoring shall include, but is not limited to, periodic review of relevant household income and rent reports or certifications obtained from the sponsor or the owner and, at least on a sample basis, periodic inspections of the project at intervals to be determined by the Bank, based on the amount of AHP assistance received by the project, the type and complexity of the project, and other factors deemed relevant by the Bank.

Another option would be that where funds other than funds provided under the AHP are the predominant source of financing for an AHP-assisted rental housing project and the monitoring activities of such other funding source are sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, the monitoring requirement would be deemed to be fulfilled. However, if the monitoring activities of such other funding source are not sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, the Bank would be required to monitor the project by conducting inspections, at least on a sample basis, as determined by the Bank, based on the amount of the funds received by the project under the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank. In the alternative, if the monitoring activities of such other funding source are not sufficient to determine the project's compliance with the requirements of the AHP, as committed to in the AHP application, could the Bank rely on monitoring activities of the predominant funding source as long as it is monitoring for compliance with requirements that are substantially similar to the AHP requirements?

The Board specifically requests comments on how random sampling could be used to monitor AHP-assisted rental housing projects to determine whether, during the long-term period committed to in the AHP application, the project's units continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application. For example, sampling could involve monitoring a portion of AHP-assisted rental projects at fixed intervals. The sampling method could be devised so that each project is monitored at least once during the long-term period committed to in the AHP application. Alternatively, the sampling method might be structured so that some, but not all, AHP-assisted rental projects are monitored during the long-term period committed to in the AHP application.

The Act requires that the AHP regulation must ensure that the AHP will be used only to assist projects for which adequate long-term monitoring is available to guarantee that affordability standards and other requirements of the Act are satisfied. See 12 U.S.C. 1430(j)(9)(C). The Board requests comments as to whether it is appropriate to interpret this requirement in a manner that permits monitoring to be done by sampling that could result in some AHP-assisted rental projects not being monitored during the long-term period committed to in the AHP application. In addition, the Board specifically requests comments on whether there are sampling techniques that would ensure that each project is monitored in satisfaction of the monitoring requirement in the Act.

b. *Monitoring of special needs projects.* Section 960.14(f) of the proposed rule sets forth the requirements for monitoring a project that commits to meet a special need pursuant to proposed § 960.10(d)(3), either through providing units for persons with a special need or through providing a special service to occupants, as defined in the Bank's AHP implementation plan. If an applicant commits to fund a project that provides owner-occupied or rental housing units for persons with a special need, as defined in the Bank's AHP implementation plan, § 960.14(f)(1) of the proposed rule requires the Bank or its designee to obtain a certification from the sponsor or the owner upon completion and occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special need.

If an applicant in its AHP application commits to fund a project that will provide a continuing special service to its occupants, as defined in the Bank's AHP implementation plan, such as child care, job training, medical care, or other services designed to meet the special needs of occupants, then § 960.14(f)(1) of the proposed rule provides that the Bank or its designee shall obtain a certification from the sponsor or owner upon completion and occupancy of the project that the special service is being provided to the occupants, as committed to in the AHP application.

Section 960.14(f)(2) of the proposed rule provides that, where an applicant in its AHP application commits to fund a housing project that will provide a continuing special service, the Bank or its designee shall monitor the project, as determined by the Bank in its AHP implementation plan, for at least one year from the date of initial full occupancy of the project to verify that the special service continues to be provided to the occupants, as committed to in the AHP application.

c. *Monitoring of District Bank priority or priorities.* Section 960.14(g) of the proposed rule sets forth the requirement for monitoring compliance with the District Bank priority or priorities established pursuant to proposed § 960.10(d)(4). Section 960.14(g)(1) of the proposed rule provides that if an applicant in its AHP application commits to fund a project that meets a District Bank priority or priorities, the Bank or its designee shall monitor the project to verify that it continues to meet the priority or priorities. Section 960.14(g)(2) of the proposed rule provides that the Bank shall set forth in its AHP implementation plan the nature, frequency and duration for monitoring compliance with the District Bank priority or priorities.

d. *Monitoring of economic mobility priority.* Section 960.14(h) of the proposed rule sets forth the requirement for monitoring compliance with the economic mobility priority set forth under § 960.5(d)(5) of the proposed rule. Section 960.14(h) provides that if an applicant in its AHP application commits to fund a project that meets the requirements of § 960.5(d)(5), the Bank or its designee shall obtain a certification from the sponsor or the owner upon completion and full occupancy of the project, as required under § 960.15(c)(4), that the sponsor or the owner has met such requirements, as committed to in the AHP application.

J. Reporting Requirements

Section 960.15 of the proposed rule sets forth the reporting requirements for the Banks, the applicants, and the sponsors or owners of AHP-assisted projects. Section 960.15(a) of the proposed rule provides that each Bank shall provide accurate and timely reports and documentation to, and in the format requested by, the Board concerning the Bank's AHP, as the Board may from time to time require. See 12 CFR 960.6(a).

1. Applicant Reporting Requirements

Section 960.15(b)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall require an applicant receiving a subsidized advance or direct subsidy to report at least annually to the Bank on the manner in which it has used the funds, with such reports continuing until the funds have been fully disbursed by the applicant. See 12 CFR 960.6(b).

The proposed rule eliminates the requirement in the Board's existing AHP regulation that the applicant certify that the AHP subsidy has been passed through to the borrower and continues to be used for approved purposes because, as discussed previously in the section on monitoring requirements, under the proposed rule applicants are not required to monitor the use of a subsidy in AHP-assisted projects, except during the period when a subsidized advance or direct subsidy is used to finance construction or rehabilitation of a project or where the applicant has agreed to undertake monitoring. See 12 CFR 960.6(c).

Section 960.15(b)(2) of the proposed rule adds a new requirement that if subsidized advances or direct subsidies are used to finance construction or rehabilitation of an AHP-assisted project, the Bank shall require the applicant to report to the Bank at reasonable intervals determined by the Bank, and described in the Bank's AHP implementation plan, on the progress of the construction or rehabilitation, until completion. This reporting requirement coincides with the requirement in § 960.14(d) of the proposed rule that the Bank shall require the applicant to monitor the construction or rehabilitation of an AHP-assisted project and make progress reports to the Bank where AHP subsidized advances or direct subsidies are used to finance such construction or rehabilitation.

2. Sponsor and Owner Reporting Requirements

Section 960.15(c) of the proposed rule sets forth the reporting requirements for sponsors and owners. These requirements coincide with the monitoring requirements set forth in § 960.14(e) through (h) of the proposed rule. Section 960.15(c)(1)(i) of the proposed rule provides that where a subsidized advance or direct subsidy is used to finance the purchase of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a household enters into a purchase contract for such unit or at the closing on the financing for such unit that the unit has been sold to a household with an income at or below the level committed to in the AHP application. Where a subsidized advance or direct subsidy is used to finance the rehabilitation of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a loan or grant is committed to fund such rehabilitation that the household that owns and occupies the unit has an income at or below the level committed to in the AHP application.

Section 960.15(c)(1)(ii) of the proposed rule provides that if an owner-occupied housing unit assisted by a grant provided under the AHP is not subject to a deed restriction or other legally enforceable mechanism restricting transfer of ownership to a household with an income at or below the level committed to in the AHP application, the Bank shall require the sponsor to report to the Bank or its designee, at least annually for the required long-term period, the number of any such units that are sold to households whose incomes exceed the level committed to in the AHP application, and to certify to the Bank that it is continuing to satisfy its commitment pursuant to its legally binding agreement with the Bank.

Section 960.15(c)(2) of the proposed rule provides that the Bank shall require the sponsor or the owner to certify upon initial full occupancy of the units in an AHP-assisted rental housing project, but no later than one year after initial disbursement of the subsidized advance or direct subsidy, and annually thereafter, that the project's units, or portion thereof, are affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

Section 960.15(c)(3) of the proposed rule provides that if an applicant in its AHP application commits to fund a project that will provide housing units for persons with a special need, or will provide a continuing special service to occupants pursuant to § 960.10(d)(3) of the proposed rule, the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special needs or that a special service is being provided to occupants, as committed to in the AHP application.

Section 960.15(c)(4) of the proposed rule provides that if an applicant in its AHP application commits to fund a housing project that meets the requirements of the economic mobility priority under § 960.10(d)(5) of the proposed rule, the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the sponsor or owner has met such requirements, as committed to in the AHP application.

Section 960.15(d) of the proposed rule provides that each Bank shall require applicants or sponsors to provide such other reports to the Bank, in addition to the reports and documentation required by § 960.15 of the proposed rule, as the Bank deems necessary in order to fulfill its monitoring obligations under § 960.14 of the proposed rule.

K. Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements

Section 10(j) of the Act is silent on what specific corrective and remedial actions should be imposed when there is fraud or non-compliance with the requirements of the AHP. See 12 U.S.C. 1430(j). Accordingly, the Board has the discretion to determine, as a matter of policy, what those requirements should be.

The Board's existing AHP regulation provides that, where funds provided under the AHP will not be or are no longer being used for their approved purposes, the amount of committed but unused subsidy or improperly used subsidy shall be recovered and made available by the Bank for future AHP projects. See 12 CFR 960.8(a). The existing regulation requires the Bank, in recapturing such funds, to take any or all of the following actions, without limitation on other remedies, in its discretion:

a. Reprice the advance at the interest rate charged to members on non-subsidized advances of comparable type and maturity at the time of the original advance;

b. Call the advance;

c. Assess a prepayment fee; or

d. Require the member to reimburse the Bank for the amount of the unused or improperly used subsidy on the advance or other assistance.

Id. § 960.8(b). In addition, some Banks have adopted procedures that require a direct subsidy to be converted to an advance if the project is found to be in non-compliance with the requirements of the AHP regulation.

A number of concerns have been raised about this recapture requirement. First, it may not be equitable to require the applicant to reimburse the Bank when it is the sponsor that is in non-compliance with the AHP requirements. Second, requiring recapture of the AHP subsidy could in some situations result in the applicant having to foreclose against a property in order to recover the funds to repay an advance to the Bank, thereby eliminating affordable housing units even when only a few of the units in the project may be out of compliance with AHP requirements.

In short, it has become clear through the operation of the AHP that the recapture remedy may not be the appropriate remedial action in all circumstances. Other less severe remedial actions may be more appropriate depending on the nature of the non-compliance that has occurred. In addition, the remedial actions should be directed only at the parties that are in non-compliance. Accordingly, the proposed rule contains provisions that tailor the remedial actions required to the nature of the non-compliance and the party committing the non-compliance, which are discussed further below.

1. Fraud or Willful Non-Compliance

Fraud and willful non-compliance are the most extreme examples of non-compliance with the AHP requirements. Accordingly, the proposed rule applies the most severe remedial actions—exclusion or suspension from future participation in the AHP and recovery of the full amount of the AHP subsidy—to parties that have committed fraud or are in willful non-compliance with respect to the AHP requirements.

Specifically, § 960.16(a)(1) of the proposed rule provides that in the event of an applicant's, sponsor's or owner's fraud with respect to the AHP requirements, the Bank shall exclude the applicant, sponsor or owner, respectively, on a permanent basis, from future participation in the AHP. In the event of an applicant's, sponsor's or owner's willful non-compliance with the AHP requirements, the Bank shall suspend the applicant, sponsor or owner, respectively, at least on a temporary basis, from future participation in the AHP during the period such willful non-compliance continues, and may exclude such party permanently from future participation in the AHP. The Board specifically requests comments as to whether the Banks should be able to determine whether fraud or willful non-compliance has occurred, or whether such determination should be made by the Board, or by either the Bank or the Board.

In addition, § 960.16(a)(2) of the proposed rule provides that in the event of an applicant's fraud or willful non-compliance with respect to the AHP requirements, the Bank shall recover from the applicant the full amount of the AHP subsidy provided to the project.

Section 960.16(a)(3)(i) of the proposed rule provides that in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements, the full amount of the AHP subsidy shall be recovered from the sponsor or owner by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the sponsor or owner. If efforts to recover the AHP subsidy from the sponsor or owner are unsuccessful, the applicant shall not be liable for such funds.

In order to be able to implement this recapture requirement, the applicant is required, under proposed § 960.16(a)(3)(ii), to have in place either:

(1) A legally binding agreement or other legally enforceable mechanism that permits it to recover these funds from the sponsor or owner; or

(2) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the sponsor or owner and the applicant that permits the Bank to recover these funds from the sponsor or owner.

Section 960.16(a)(4) of the proposed rule provides that the Board in its discretion may grant a waiver of any required remedial actions under this paragraph (a) upon written request by the Bank, applicant, sponsor or owner.

2. Other Types of Non-Compliance

Non-compliance by a party with the AHP requirements, such as due to inadvertent errors by such party or changes in circumstances that are outside such party's control, does not warrant imposition of the most severe remedial actions since the party lacked the intent to violate such requirements. In addition, in many such cases, the non-compliance can be rectified within a reasonable period of time.

Accordingly, § 960.16(b) of the proposed rule provides that in the event of inadvertent non-compliance by an applicant, sponsor or owner, the Bank shall provide such party with a reasonable period of time in which to take reasonable efforts, pursuant to a compliance plan approved by the Bank, to remedy the non-compliance. The Bank in its discretion may exclude such party from participation in the AHP while it is under a compliance plan, or in its discretion may require the applicant to increase the long-term period committed to in its AHP application for the project by the amount of time the project has been in non-compliance.

Section 960.16(b) of the proposed rule further provides that if the applicant, sponsor or owner takes no reasonable efforts to comply with the compliance plan, then such party is in willful non-compliance with the requirements of this part and is subject to the remedial actions contained in paragraph (a) of this section. If the applicant, sponsor or owner takes reasonable efforts pursuant to the compliance plan to remedy the non-compliance under paragraph (b) and such efforts are unsuccessful, the applicant, sponsor or owner would be subject to the remedial actions for fraud or willful non-compliance, but may apply to the Bank for a waiver of any such required remedial actions. The Bank shall report to the Board in writing on any waivers approved pursuant to paragraph (b) within 30 calendar days of such approval.

3. Sale of AHP-assisted Owner-Occupied Housing Unit to Income-Ineligible Household

a. Recapture requirement. Section 960.16(c) of the proposed rule provides generally that in the event that a household sells its AHP-assisted owner-occupied housing unit to a household whose income exceeds the level committed to in the AHP application prior to the end of the required long-term period, then:

(i) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller. The amount to be repaid shall be reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the unit after deduction for sales expenses, and to be returned to the Bank. The proposed rule provides, however, that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(ii) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, then the applicant shall either repay to the Bank that portion of the advance used to make the loan to the seller or the Bank shall convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller shall be made available by the Bank for additional AHP projects.

b. Exception to recapture requirement. Section 960.16(c)(3) of the proposed rule provides that the recapture requirements described above shall not apply provided the sponsor, pursuant to a legally binding agreement with the Bank, assists another household with an income at or below the level committed to in the AHP application in the manner originally committed to in the AHP application.

This alternative approach is discussed in greater detail above under the monitoring section.

4. Sale of AHP-Assisted Rental Housing Project

Section 960.16(d) of the proposed rule provides that in the event that the owner of an AHP-assisted rental housing project sells the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, and the purchaser does not agree to maintain the project according to such commitments and to be subject to the same restrictions on resale that applied to the seller, then:

(i) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the project after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(ii) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, then the applicant shall either repay the advance to the Bank or the Bank shall convert the advance to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize the advance shall be made available by the Bank for additional AHP projects.

L. AHP Applications Involving Loan Funds and Loan Consortia

Section 960.17 of the proposed rule sets forth specific requirements governing the use of loans and grants received by loan funds and loan consortia pursuant to the AHP. The Board's existing AHP regulation does not address specifically the use of loans or grants by loan funds or loan consortia pursuant to the AHP. See 12 CFR part 960. However, the Board has adopted policy guidelines for the Banks governing the award of subsidized advances and direct subsidies to applicants that then make loans or grants to loan funds and loan consortia (policy guidelines). See Board Resolution No. 93–54, June 23, 1993. The provisions in § 960.17 of the proposed rule, if adopted in final form by the Board, would incorporate the policy guidelines, with some modifications.

Section 960.17(a)(1) of the proposed rule provides generally that an applicant may use a subsidized advance or a direct subsidy to make a loan or a grant to a loan fund or loan consortium. Section 960.17(a)(2) of the proposed rule provides that AHP applications involving the use of loans or grants by loan funds or loan consortia are governed by the provisions of part 960, except as provided in § 960.17 of the proposed rule.

Section 960.17(b) of the proposed rule provides that the requirements for approval of an AHP application that proposes to use subsidized advances or direct subsidies to make a loan or a grant to a loan fund or loan consortium are the same as the requirements for approval applicable to all other AHP applications under § 960.8 of the proposed rule, except that an AHP application that involves a loan fund or loan consortium will be scored on the criteria that the loan fund or loan consortium proposes to use to select projects that will ultimately receive a loan or grant from the loan fund or loan consortium that is subsidized by the AHP.

This provision is intended to address the fact that loan funds and loan consortia do not have specific proposed projects in place at the time they apply for funds under the AHP. Section 960.17(b)(1) of the proposed rule therefore requires the Banks to score AHP applications involving loan funds or loan consortia based on the criteria that the loan fund or loan consortium commits to use when selecting the projects it will fund. This provision carries forward a requirement of the Board's existing policy guidelines.

In addition, § 960.17(b)(2) of the proposed rule provides that the Bank shall review and shall require the applicant to review each new rental housing project funded by a loan fund or loan consortium prior to disbursing a loan or grant to ensure that the project meets the threshold requirements of § 960.9 of the proposed rule and the project selection criteria committed to in the approved AHP application.

This is a change from the provision in the Board's existing policy guidelines that requires the Bank and the applicant to review both rental and owner-occupied housing projects prior to funding by a loan fund or loan consortium under the AHP. This change is intended to eliminate duplicative review of loan fund or loan consortium activities where funds are used to finance owner-occupied housing units under the AHP. However, since rental housing projects are more complex than owner-occupied housing projects, the Board believes that the applicant and the Bank should continue to review each rental housing project funded by a loan fund or loan consortium prior to disbursement of any funds to ensure that the project meets the feasibility, maximum subsidy, and other threshold requirements of § 960.9 of the proposed rule.

Section 960.17(c)(1) of the proposed rule carries forward the requirement in the Board's existing policy guidelines that if an applicant receives a subsidized advance and uses the proceeds of the advance to make a loan to a loan fund or loan consortium, the total value of the interest rate subsidy must be passed on to the borrower of the funds. Thus, § 960.17(c)(1) provides that a loan fund or loan consortium shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus a reasonable interest rate spread approved by the Bank. The applicant and the loan fund or loan consortium may determine between themselves

what proportion of the interest rate spread the applicant and the loan fund or loan consortium will share.

Section 960.17(c)(2)(i) of the proposed rule provides that a loan fund or loan consortium that receives a grant from an applicant pursuant to the AHP must either:

(A) Pass the entire grant on to the recipient;

(B) Use the entire grant to lower the interest rate on a loan to the borrower; or

(C) Lend the entire grant to the borrower to finance a rental housing project for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such loan is repaid before the end of the 30-year term, the entire amount of the grant must be repaid to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

This is a change from the provision in the Board's existing policy guidelines that prohibits a loan fund or loan consortium from using a grant from an applicant to make a loan to the borrower. The Board believes that if a loan fund or loan consortium lends a grant to a sponsor to finance rental housing units that will remain affordable for and occupied by income-eligible households for not less than 30 years, with all principal and interest payments deferred until the end of the loan term, then the loan fund or loan consortium has passed on the full amount of the AHP subsidy to the recipient or borrower of the funds, as required by section 10(j)(9)(E) of the Act. See 12 U.S.C. 1430(j)(9)(E). However, if the borrower repays the loan before maturity, the entire amount of the subsidy must be repaid to the applicant and forwarded by the applicant to the Bank to be returned to the AHP fund. Therefore, a loan fund or loan consortium may use a grant under the AHP to make a loan to the borrower under the conditions specified in § 960.17(c)(2)(i)(C) of the proposed rule.

Section 960.17(c)(2)(ii) of the proposed rule provides that if a loan fund or loan consortium provides both a loan and a grant to the borrower and the loan fund or loan consortium charges an origination fee for providing the loan, then any fee charged by the loan fund or loan consortium for providing the grant may not be paid with AHP subsidized advances or direct subsidies. The Board does not believe that such funds should be used to pay a fee for providing a grant to a project if the loan fund or loan consortium charges a fee for underwriting a loan to the same project.

Section 960.17(c)(2)(iii) of the proposed rule provides that when a loan fund or loan consortium receives a grant from an applicant pursuant to the AHP and uses the grant to lower the interest rate on a loan to the borrower, the interest rate calculation must be consistent with the procedure used by the Bank for calculating the amount of AHP subsidy needed for a subsidized advance, taking into account the source of funds used by the loan fund or loan consortium for its loans and the rate that normally would be charged for a loan of the type and term that is provided to the borrower.

Section 960.17(c)(3) of the proposed rule provides that any interest or other income earned by a loan fund or loan consortium on a loan or a grant received from an applicant, other than any approved fee or interest rate spread charged to the borrower, either (i) must be used by the loan fund or loan consortium to provide funds for additional projects meeting the threshold requirements in § 960.9 of the proposed rule and the criteria committed to in the approved AHP application, or (ii) must be forwarded to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects. This is a change from the provision in the Board's existing policy guidelines that allows loan funds and loan consortia to earn and retain *de minimis* amounts of income on loans or grants received from applicants. The Board believes that accounting for *de minimis* amounts of interest or other income earned on loans or grants received from an applicant is no less of an administrative burden than accounting for all such interest or other income earned. Therefore, the proposed rule requires all interest or other income earned on loans or grants received from an applicant to be used by the loan fund or loan consortium for additional AHP projects or returned to the applicant.

Section 960.17(c)(4) of the proposed rule provides that if loans or grants received by a loan fund or loan consortium pursuant to one AHP funding cycle are combined with loans or grants received by such entity pursuant to another AHP funding cycle in a single rental housing project, the loan fund or loan consortium shall require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria. This requirement does not apply when loans or grants received by a loan fund or loan consortium pursuant to separate AHP funding cycles are combined to finance a single owner-occupied housing project. The reason for this provision is that funds are more easily traceable to separate units in an owner-occupied housing project than to separate units in a rental housing project. Therefore, for purposes of owner-occupied housing projects, it is possible to use loans or grants from different AHP funding cycles according to the different criteria approved by the Bank in each of the respective funding cycles. However, the loan fund or loan consortium in its discretion may require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria.

Section 960.17(c)(5) of the proposed rule provides that any loans provided by a loan fund or loan consortium pursuant to the AHP that are repaid to such entity must be re-lent or provided as grants by such entity within a reasonable period of time after such repayments; or must be repaid to the applicant, which in turn must repay such funds to the Bank, and must be made available by the Bank for additional AHP projects. The Bank shall in its AHP implementation plan identify what constitutes a reasonable period of time for such purposes.

Section 960.17(d) of the proposed rule sets forth the monitoring and reporting requirements where an applicant makes loans or grants pursuant to the AHP to a loan fund or loan consortium which uses the funds to finance owner-occupied or rental housing units.

Section 960.17(d)(1)(i) of the proposed rule requires the Bank to monitor such units, according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule, to determine compliance with the long-term requirements, as well as compliance with the special needs priority, the District Bank priority or priorities, and the economic mobility priority, where applicable. In addition, § 960.17(d)(1)(ii) of the proposed rule provides that the Bank shall require the sponsor or owner of a project receiving a loan or grant from the loan fund or loan consortium to submit to the Bank such reports and certifications as are required under § 960.15(c) of the proposed rule. Section 960.17(d)(1)(iii) of the proposed rule provides that the Bank shall require the loan fund or loan consortium to report to the Bank any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

Section 960.17(d)(2) of the proposed rule provides that the Bank may contract with either the applicant or the loan fund or loan consortium to meet the monitoring requirements of § 960.14(e) through (h). Under § 960.17(d)(2)(i) of the proposed rule, if the Bank contracts with the applicant to meet such monitoring requirements, the Bank shall require the applicant to monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule. The Bank also shall require the applicant to require the sponsor or owner of the project to submit to the applicant such reports and certifications as are required under § 960.15(c) of the proposed rule. In addition, the applicant shall require the loan fund or loan consortium to report to the applicant any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

Under § 960.17(d)(2)(ii) of the proposed rule, if the Bank contracts with the loan fund or loan consortium to meet the monitoring requirements in § 960.14(e) through (h) of the proposed rule, the Bank shall require the loan fund or loan consortium to monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14(e) through (h) of the proposed rule. The Bank also shall require the loan fund or loan consortium to require the sponsor or owner of the project to submit to the loan fund or loan consortium such reports and certifications as are required under § 960.15(c) of the proposed rule. In addition, the loan fund or loan consortium shall report to the Bank any new loan or grant made using repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

The monitoring and reporting requirements in § 960.17(d) of the proposed rule are a change from the provisions on monitoring and reporting in the Board's existing policy guidelines, which require the applicant to monitor the loan fund or loan consortium and require the Bank to monitor the applicant. This change is intended to conform the monitoring and reporting requirements for projects involving loan funds or loan consortia with the proposed monitoring and reporting requirements applicable to AHP-assisted housing projects generally under §§ 960.14 and 960.15 of this proposed rule.

Section 960.17(e)(1) of the proposed rule provides that a loan fund or loan consortium receiving loans or grants from applicants pursuant to the AHP and the project sponsors and owners receiving loans or grants from loan funds or loan consortia are subject to the corrective and remedial actions contained in § 960.16 of the proposed rule for fraud and non-compliance with respect to the AHP requirements.

Section 960.17(e)(2)(i) of the proposed rule provides that in the event of a loan fund's or loan consortium's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the loan fund or loan consortium by the applicant and returned to the Bank, or if previously agreed to by the Bank, shall be recovered by the Bank from the loan fund or loan consortium.

Section 960.17(e)(2)(ii) of the proposed rule requires an applicant that provides a loan or a grant to a loan fund or loan consortium pursuant to the AHP to have in place either:

(1) A legally binding agreement or other legally enforceable mechanism that permits the applicant to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the AHP requirements, the full amount of the AHP subsidy; or

(2) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the applicant, and the loan fund or loan consortium, that permits the Bank to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the AHP requirements, the full amount of the AHP subsidy.

Section 960.17(e)(3)(i) of the proposed rule provides that in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements, the full amount of the AHP subsidy shall be recovered by the loan fund or loan consortium from the sponsor or owner to be used for additional AHP projects.

Section 960.17(e)(3)(ii)(A) of the proposed rule provides that the loan fund or loan consortium shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the loan fund or loan consortium such amount recovered by the loan fund or loan consortium from the sponsor or owner.

Section 960.17(e)(3)(ii)(B) of the proposed rule also provides that the applicant shall have in place, if the Bank agrees and such agreement is legally enforceable, a four-party agreement that includes the Bank, the applicant, the loan fund or loan consortium, and the sponsor or owner, that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the AHP requirements.

Section 960.17(e)(4) of the proposed rule provides that the Board in its discretion may grant a waiver of any required remedial actions for fraud or willful non-compliance with respect to the AHP requirements, upon written request by the Bank, applicant, loan fund or loan consortium, sponsor or owner.

M. Required Annual AHP Contributions

Section 960.18 of the proposed rule requires each Bank to fund its AHP annually in accordance with the formula set forth in section 10(j)(5) of the Act. See 12 U.S.C. 1430(j)(5). Proposed § 960.18 is consistent with § 960.10 of the Board's existing AHP regulation, except for minor wording changes and deletion of language regarding required funding in 1990 through 1993 which is no longer necessary. See 12 CFR 960.10.

Specifically, proposed § 960.18 provides that each Bank shall fund its AHP in accordance with the following formula:

(a) In 1994, the greater of:

(1) 6 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

(b) In 1995 and each year thereafter, the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

The term "net earnings of a Bank" is defined in proposed § 960.1. The definition has been revised from the

definition in the Board's existing AHP regulation in order to more accurately track its definition in section 10(j)(8) of the Act. See 12 CFR 960.1(j); 12 U.S.C. 1430(j)(8).

N. Temporary Suspension of AHP Contributions

Section 960.19 of the proposed rule sets forth the provisions governing temporary suspensions by Banks of their required annual AHP contributions. A number of revisions have been made to this section in the Board's existing AHP regulation in order to more accurately track the language in section 10(j)(6) of the Act concerning this section and to provide greater clarity. See 12 CFR 960.11; 12 U.S.C. 1430(j)(6).

1. Application for Temporary Suspension

Section 960.19(a)(1) of the proposed rule provides that if a Bank finds that the contributions required pursuant to proposed § 960.18 are contributing to the financial instability of the Bank, the Bank shall notify the Board promptly, and may apply in writing to the Board for a temporary suspension of such contributions.

Section 960.19(a)(2) of the proposed rule provides that a Bank's application for a temporary suspension of contributions shall:

(i) State the period of time for which the Bank seeks a suspension;

(ii) State the grounds for a suspension;

(iii) Include a plan for returning the Bank to a financially stable position; and

(iv) Be accompanied by the Bank's preceding year's annual financial report, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Board to consider.

The requirement in paragraph (ii) above is not explicitly required in the Board's existing AHP regulation. See 12 CFR 960.11(a).

Paragraph (iv) above adds to the Board's existing regulation that the Bank may include any other financial data it wishes the Board to consider.

2. Board Review of Application for Temporary Suspension

a. *Grounds for approval of application.* Section 960.19(b)(1) of the proposed rule provides that, in reviewing a Bank's application for a temporary suspension of contributions to determine the Bank's financial instability, the Board shall consider the following factors:

(i) Whether the Bank's earnings are severely depressed. This language was added to track the statutory standard in section 10(j)(6) of the Act. See 12 U.S.C. 1430(j)(6). In addition, the Board shall consider the extent to which the Bank's quarterly or annual net earnings have decreased from the preceding quarter or year, and whether such decline is projected to continue;

(ii) Whether there has been a substantial decline in the Bank's membership capital. The Board shall consider the extent to which the Bank's paid-in membership capital has declined in any given quarter or year, and whether such decline is projected to continue;

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding. The Board shall consider the extent to which the Bank's level of advances has declined in any given quarter or year, and whether such decline is projected to continue; and

(iv) Whether any other financial condition exists with respect to the Bank which has resulted in, or is likely to result in, the financial instability of the Bank.

b. *Limitations on grounds for approval of application.* Section 960.19(b)(2) of the proposed rule provides that the Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances (other than subsidized advances) to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

The "reduction in earnings" language replaces the term "financial instability" used in the Board's existing regulation, because the former is the term used in the Act. See 12 CFR 960.11(c); 12 U.S.C. 1430(j)(6).

In addition, the requirement in § 960.11(c)(5) of the Board's existing regulation that the Bank shall disapprove an application if for any other reason the temporary suspension is not warranted, is deleted in the proposed rule because it is not required by the Act, and limits the Board's discretion to balance reasons warranting approval of an application for a temporary suspension. See 12 CFR 960.11(c)(5); 12 U.S.C. 1430(j)(6).

3. Board Decision

Section 960.19(c) of the proposed rule provides that the Board shall approve or disapprove a Bank's application for a temporary suspension within 30 calendar days of receipt of such application, and the Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. A copy of the Board's decision shall be forwarded to each of the Banks.

4. Board Approval of Application for Temporary Suspension

Section 960.19(d)(1) of the proposed rule provides that if the Board approves a Bank's application for a temporary suspension, the Board's written decision shall specify the period of time such suspension shall remain in effect.

Section 960.19(d)(2) of the proposed rule provides that during the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of the Bank, and the Board shall continue to monitor the Bank's financial condition. The requirement that the Board shall monitor the Bank's financial condition is added because it is required by the Act. See 12 U.S.C. 1430(j)(6)(D).

Section 960.19(d)(3) of the proposed rule provides that if, prior to the conclusion of the temporary suspension period, the Board determines that the Bank has returned to a position of financial stability, the Board may, upon written notice to the Bank, terminate the temporary suspension.

5. Application for Extension of Temporary Suspension Period

Section 960.19(e)(1) of the proposed rule provides that if a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

Proposed § 960.19(e)(2) provides that the Board shall approve or disapprove a Bank's application for an extension of a temporary suspension period within 30 calendar days of receipt of such application.

Proposed § 960.19(e)(3) provides that the Board's decision on an application for an extension of a temporary suspension period shall be in writing, shall be accompanied by specific findings and reasons for such action, and shall state the effective date and time period if an extension is approved.

6. Notice to Congress

Section 960.19(f)(1) of the proposed rule provides that the Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate not less than 60 calendar days before any temporary suspension (or extension of such suspension) approved pursuant to this section takes effect.

Deleted from this provision is the requirement in the Board's existing regulation that a copy of the Board's suspension decision shall be forwarded to the Congress since, as discussed above, the Act only requires that the Board provide notice to Congress of the suspension decision. See 12 CFR 960.11(f); 12 U.S.C. 1430(j)(6)(F).

Proposed § 960.19(f)(2) provides that a temporary suspension (or extension of such suspension) shall become effective as determined by the Board, unless a joint resolution of Congress is enacted disapproving such suspension (or extension thereof). The proposed rule deletes the provision in the Board's existing regulation that a temporary suspension extension may not take effect until at least 30 days after the Board gives the required notice to Congress, because this is inconsistent with the requirement in the existing regulation that the Board must notify the Congress at least 60 days before such extension takes effect. See 12 CFR 960.11(g).

Proposed § 960.19(f)(2) also deletes from the Board's existing regulation the requirement that a joint resolution of Congress disapproving a suspension or extension of a suspension must be enacted prior to the Board's determined effective date, in order to track more closely the actual language in the Act. See 12 U.S.C. 1430(j)(6)(F).

O. Affordable Housing Reserve Fund

Consistent with the Board's existing AHP regulation, § 960.20(a) of the proposed rule provides that if a Bank fails to use or commit the full amount of its required annual contribution to the AHP, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Board. See 12 CFR 960.12. The 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. A Bank is deemed to have used or committed its required contribution where amounts are remaining at the end of the year because funding the next highest ranking project would exceed the Bank's required AHP contribution for the year. Such amounts remaining shall be combined with returned AHP funds to fund the next highest scoring AHP project or projects, or carried over by the Bank to the next year's AHP funding cycles.

The language allowing these amounts to remain at the end of the year is added in the proposed rule to take into account situations where amounts remain uncommitted at the end of the year because the balance of required AHP contributions remaining is too small to fund the Bank's next highest scoring AHP application.

The last sentence in proposed paragraph (a) also is new, making explicit that such amounts remaining and funds returned to the Bank shall fund other AHP projects and need not be transferred to the Affordable Housing Reserve Fund.

Section 960.20(b) of the proposed rule provides that by January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

Proposed § 960.20(c) provides that by January 31 of each year, the Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

Section 960.12(d) of the Board's existing regulation governing how any Reserve Funds would be made available to the Banks, is deleted in the proposed rule. See 12 CFR 960.12(d). The Act states that such provisions would be determined pursuant to regulations issued by the Board. See 12 U.S.C. 1430(j)(7). Since there currently are no Reserve Funds and it is not anticipated that there will be any Reserve Funds in the near future, it is not necessary at this time to include provisions in the proposed rule dealing with this issue. The Board can issue regulations on this issue at a future date if such eventuality should arise.

P. Advisory Councils

Section 960.21 of the proposed rule sets forth provisions governing the appointment, operation, and responsibilities of the Advisory Councils to the Banks.

Section 960.21(a)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall appoint an Advisory Council of seven to 15 persons who shall reside in the Bank's District and shall be drawn from community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District. See 12 CFR 960.14(a). In addition, § 960.21(a)(1) of the proposed rule provides that the size of the Advisory Council shall be stated in the Bank's AHP implementation plan.

Section 960.21(a)(2) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that the Bank must actively solicit nominations from Bank members and community and nonprofit organizations and shall allow sufficient time for response, so that the nomination and appointment process is as broad and as participatory as possible. See 12 CFR 960.14(b), (d). The Bank also should solicit nominations from any other interested parties. In addition, § 960.21(a)(3) of the proposed rule provides that Advisory Council members shall be appointed by the Banks giving consideration to the size of the District and the diversity of low-income housing needs within the District.

The Board's existing AHP regulation provides that officials of state and local housing finance agencies may serve as members of an Advisory Council, provided that such officials do not constitute an undue proportion of the membership of the Advisory Council. See 12 CFR 960.14(c). It has been suggested that such officials should only be able to serve as non-voting members of an Advisory Council, unless the officials also are employed or associated with a private community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District. This suggestion is based on the view that the Advisory Councils are intended to serve as vehicles for private sector community and nonprofit organizations, not public agencies, to advise the Banks on low- and moderate-income housing programs and needs in the District and on the utilization of Bank advances for such purposes. See 12 U.S.C. 1430(j)(11). While acknowledging that officials of state and local housing finance agencies make valuable contributions to the Advisory Councils, the supporters of this viewpoint argue that these agencies have opportunities to influence the allocation of housing finance credit through means other than by voting representation on the Advisory Councils.

The Board specifically requests comments on whether or not officials of state and local housing finance agencies should be able to vote on the Advisory Councils and whether their representation should be limited so that it does not constitute an undue proportion of the Advisory Council membership.

Section 960.21(a)(4) of the proposed rule provides that Advisory Council

members shall serve for terms of two or three years, as determined by the Bank and set forth in its AHP implementation plan. The Board is proposing to give the Banks the option of appointing Advisory Council members for three-year terms in order to allow the Banks to benefit from the experience and familiarity with the AHP that Advisory Council members develop the longer they serve on an Advisory Council. In addition, § 960.21(a)(4) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that terms of Advisory Council members shall be staggered to provide continuity and experience in service. See 12 CFR 960.14(f). The proposed rule requires the Banks to explain in their AHP implementation plans how Advisory Council member terms will be staggered.

Section 960.21(a)(4) of the proposed rule contains a new provision limiting an Advisory Council member to six years of consecutive service. The Bank may set its own limits on consecutive terms within the six-year limit. This provision is intended to ensure that the membership of the Advisory Councils reflects the diverse and changing viewpoints of private sector community and nonprofit organizations on the low-income housing programs and needs of the Bank Districts.

Section 960.21(a)(5) of the proposed rule provides that an Advisory Council member who, subsequent to appointment, is no longer employed by or associated with a community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District may continue to serve on the Advisory Council until the end of his or her term. Allowing the Advisory Council member to serve out the remainder of his or her term promotes continuity in the collective experience of the Advisory Council. Further, the member may still have relevant experience related to low-income housing needs in the District, which may continue to benefit the Advisory Council. However, the Board recognizes that the Advisory Council member may no longer represent the interests of the community and nonprofit sector. Therefore, the Board specifically requests comments on this provision of the proposed rule. The Board also specifically requests comments on whether a member who is no longer employed by or associated with a community or nonprofit organization should be entitled to vote on the Advisory Council if he or she becomes a state or local housing finance agency official.

Section 960.21(b) of the proposed rule provides that each Advisory Council shall elect from among its voting members a chairperson and a vice chairperson.

Section 960.21(c) of the proposed rule carries forward the requirement of the Board's existing AHP regulation that each Advisory Council shall designate a member, or request that a member of the Bank's staff be designated, to act as secretary to the Advisory Council. See 12 CFR 960.14(g). The secretary shall record and maintain the minutes of the meetings of the Advisory Council, which shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

Section 960.21(d)(1) of the proposed rule adds a new requirement that, prior to the approval of the Bank's proposed AHP implementation plan by the Bank's board of directors, the Bank's Advisory Council shall review the proposed AHP implementation plan and provide its recommendations to the Bank's board of directors pursuant to the requirements of § 960.2(c) discussed above under the section on the adoption of the AHP implementation plan. This provision is intended to give the Advisory Councils a greater role in advising the Banks on how AHP funds should be allocated to meet the low-income housing needs in their Districts.

Section 960.21(d)(2) of the proposed rule adds a new requirement that upon request of the Advisory Council, the Bank shall provide the Advisory Council with copies of any AHP applications from prior AHP funding cycles. The Board is aware that some Banks have already adopted this practice. This requirement is intended to aid the Advisory Council members in evaluating how the AHP application priorities and scoring criteria adopted by the Bank in its AHP implementation plan affect the allocation of AHP funds among different types of housing projects. Further, this requirement is subject to any limitations of other laws that may require the Bank to keep information in an AHP application confidential. The Bank may require Advisory Council members to agree to keep all or parts of AHP applications confidential. The Board specifically requests comments on the advantages and disadvantages of allowing Advisory Council members to examine AHP applications received by the Bank in prior AHP funding cycles.

Section 960.21(e) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that the Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on low- and moderate-income housing programs and needs in the Bank's District and on the utilization of AHP subsidized advances and direct subsidies for these purposes. See 12 CFR 960.14(a).

Section 960.21(f) of the proposed rule requires each Advisory Council to submit to the Board annually by March 1 its analysis of the low-income housing activity of its Bank. This is a change from the January 31 date in the Board's existing AHP regulation, and is intended to give the Advisory Councils sufficient time after the end of the year to compile and evaluate year-end data in order to prepare their reports to the Board. See 12 CFR 960.14(j).

Section 960.21(g)(1) of the proposed rule carries forward the requirement in the Board's existing AHP regulation that each Bank shall reimburse members of its Advisory Council for transportation and subsistence expenses they incur for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank. See 12 CFR 960.14(e). Section 960.21(g)(2) of the proposed rule adds a new requirement that each Bank shall pay members of its Advisory Council a fee for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank. The Board is proposing this change in light of the additional responsibility given to Advisory Council members under the proposed rule to advise the Banks on preparation of the AHP implementation plans. The Board specifically requests comments as to whether the Banks should be required to pay fees, and whether the amount to be paid should be set forth in the final AHP rule so that a uniform fee is paid to all Advisory Council members, or whether the fees should be set by the board of directors of each Bank.

Q. Effective Dates

Section 960.22 of the proposed rule provides that, if published as a final rule, this part shall become effective 30 days from such publication in the **Federal Register.** In addition, the provisions of this part, or portion thereof, may be applied to projects approved for AHP funding prior to the effective date of the final rule to the extent all relevant parties egree thereto in writing. The Finance Board would not need to approve any such retroactive application of the final rule. This proposed provision is intended to allow the retroactive application to existing AHP projects of provisions of the revised AHP rule that are less restrictive than existing AHP requirements, to the extent all relevant parties (the Bank, the applicant, the sponsor, the owner, and if applicable, the loan fund or loan consortium) agree to such application of the new provisions. The Board specifically requests comments on this proposed provision.

III. Regulatory Flexibility Act

The proposed rule applies only to the Banks, which do not come within the meaning of "small entities," as defined in the Regulatory Flexibility Act (RFA). See 5 U.S.C. 601(6). Therefore, in accordance with section 605(b) of the RFA, see *id.* section 605(b), the Finance Board hereby certifies that this proposed rule, if promulgated as a final rule, will not have a significant economic impact on a substantial number of small entities.

IV. Paperwork Reduction Act

The information collection requirements contained in this proposed rule have been submitted to the Office of Management and Budget (OMB) for review under section 3504(h) of the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35. The title, description of need and use, and the respondent description for the information collection requirements are discussed in the **SUPPLEMENTARY INFORMATION.**

Any comments on the proposed information collections should be sent to Gary Waxman, Paperwork Reduction Project, OMB, room 3208, New Executive Office Building, Washington, DC 20503.

In accordance with 5 CFR 1320.12 and 1320.15, the following table discloses the estimated annual reporting burden for each collection of information in the proposed rule:

ESTIMATED ANNUAL REPORTING BURDEN

Description of information collected	Average No. of respondents	×	Average No. of responses per respondent	=	Total average responses	×	Average hours per response	=	Total average hours
1. AHP application	1800		1		1800		16.00		28,800.0
2. Summary of approved AHP applications.	12		3		36		20.00		720.0
3. Request for modification of approved AHP application.	100		1		100		2.00		200.0
4. Summary of approved modifications to approved AHP applications.	12		4		48		4.00		192.0
5. Request for waiver of AHP remedial actions.	75		1		75		10.00		750.0
6. Advisory council report	12		1		12		200.00		2,400.0
Totals	2,011		2		3,872		8.54*		33,066.9

*Weighted average hours per response.

List of Subjects in 12 CFR Part 960

Credit, Federal home loan banks, Housing, Reporting and recordkeeping requirements.

Accordingly, the Federal Housing Finance Board hereby proposes to amend chapter IX, title 12, subchapter E, Code of Federal Regulations, by revising part 960 to read as follows:

SUBCHAPTER E—AFFORDABLE HOUSING

PART 960—AFFORDABLE HOUSING PROGRAM

Subpart A—Definitions

Sec.
960.1 Definitions.

Subpart B—Establishment of AHP

960.2 Bank establishment of AHP and adoption of AHP implementation plan.

Subpart C—Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies

960.3 Authorized uses of AHP subsidized advances or direct subsidies.
960.4 Specific use requirements for AHP subsidized advances or direct subsidies.
960.5 Long-term requirements.

Subpart D—Applications for AHP Subsidized Advances or Direct Subsidies

960.6 Establishment of AHP funding cycles and available AHP subsidies.
960.7 AHP application approval process.

Subpart E—Requirements for Approval of AHP Applications

960.8 General requirements for approval of AHP applications.
960.9 Threshold criteria for approval of AHP applications.
960.10 Scoring of AHP applications.
960.11 Modifications of approved AHP applications.

Subpart F—Use and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies

960.12 Use of AHP subsidized advances or direct subsidies within reasonable period of time and verification of reasonable progress.
960.13 Verification at initial disbursement of AHP subsidized advances or direct subsidies.

Subpart G—Monitoring and Reporting Requirements

960.14 Monitoring requirements.
960.15 Reporting requirements.

Subpart H—Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements

960.16 Corrective and remedial actions for fraud or non-compliance.

Subpart I—AHP Applications Involving Loan Funds and Loan Consortia

960.17 AHP applications involving loan funds and loan consortia.

Subpart J—Required AHP Contributions

960.18 Required annual AHP contributions.
960.19 Temporary suspension of AHP contributions.

Subpart K—Affordable Housing Reserve Fund

960.20 Affordable Housing Reserve Fund.

Subpart L—Advisory Councils

960.21 Advisory Councils.

Subpart M—Effective Dates

960.22 Effective dates.

Authority: 12 U.S.C. 1430(j).

Subpart A—Definitions

§ 960.1 Definitions.

As used in this part:

Act means the Federal Home Loan Bank Act, as amended (12 U.S.C. 1421 through 1449).

Adjustment for household size means:

(1) Adjusting the household income limit according to the following adjustment factors for households of more than or fewer than four persons:

No persons	Percent adjustment
1	70.
2	80.
3	90.
4	Base.
5	108.
6	116.
7	124.
8	132.

(2) For each person in excess of eight, eight percent of the four-person household base income limit shall be added to the income limit for an eight-person household for the area.

Advance means a loan from a Bank that is:

(1) Provided pursuant to a written agreement;

(2) Supported by a note or other written evidence of the borrower's obligation; and

(3) Fully secured by collateral in accordance with the Act and part 935 of this chapter.

Affordable for low- or moderate-income households means:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 80 percent of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for low- or moderate-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 80 percent of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes; or

(2) If a rental housing unit is targeted to households whose income is less than 80 percent of the median income for the area, then "affordable for low- or moderate-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

Affordable for very low-income households means:

(1) For purposes of rental housing units, that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household (assuming a household size of 1.5 persons per bedroom or 1.0 person per unit without a separate bedroom) which has an income of 50 percent of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this income figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "affordable for very low-income households" means that rents, including reasonable utility costs, charged to households for such units do not exceed 30 percent of the income of a household which has an income of 50 percent of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

(2) If a rental housing unit is targeted to a household whose income is less than 50 percent of the median income for the area, then "affordable for very low-income households" means that the rent, including reasonable utility costs, charged to a household for such unit does not exceed 30 percent of the maximum qualifying income of the targeted households of the size expected to occupy the unit.

AHP means the Affordable Housing Program established pursuant to this part.

Applicant means a member that applies to the Bank of which it is a member for AHP funds to be used pursuant to the requirements of this part.

Area means, for purposes of defining "median income for the area," a metropolitan statistical area, a county, or a nonmetropolitan area, as established by the U.S. Office of Management and Budget.

Bank means a Federal Home Loan Bank established under the authority of the Act.

Board means the Federal Housing Finance Board.

Cost of funds means the estimated cost of issuing Bank System consolidated obligations with maturities comparable to the maturity of the AHP subsidized advance, as published from time to time by the Bank System's Office of Finance.

Direct subsidy means the direct cash payments of AHP funds made to the applicant by the Bank.

Loan consortium means:

(1) A nonprofit or for-profit corporation whose members are regulated financial institutions including at least one Bank member and that provides housing loans that benefit low- or moderate-income households; or

(2) A group of regulated financial institutions including at least one Bank member that have entered into a legal agreement with each other to jointly make loans to finance housing for low- or moderate-income households.

Loan fund means a nonprofit or for-profit organization that is not owned or controlled by a regulated financial institution and which eggregates capital from public and private sources to provide financing for housing for low- or moderate-income households.

Low- or moderate-income household means a household which has an income of 80 percent or less of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "low- or moderate-income household" means a household which has an income of 80 percent or less of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

Low- or moderate-income neighborhood means any neighborhood in which 51 percent or more of the households are low- or moderate-income households.

Member means an institution that has been approved for membership in a Bank and has purchased capital stock in the Bank in accordance with §§ 933.7 and 933.11 of this chapter.

Neighborhood means a census tract; a combination of census tracts; or a geographic location designated in comprehensive plans, ordinances or other local documents as a neighborhood, village or similar geographical designation that is within the boundary but does not encompass the entire area of a unit of general local government and for which income information is available to determine the percentage of households with incomes satisfying the requirements of § 960.10(d)(5). If the unit of general local government has a population under 25,000, the neighborhood may, but need not, encompass the entire area of a unit of general local government.

Net earnings of a Bank means the net earnings of a Bank for a calendar year after deducting the Bank's *pro rata* share of the annual contribution to the Resolution Funding Corporation required under section 21A or 21B of the Act (12 U.S.C. 1441a, 1441b), and before declaring any dividend under section 16 of the Act (12 U.S.C. 1436).

Nonprofit organization means a private organization that is a tax-exempt entity under section 501(c) of the Internal Revenue Code of 1986 (26 U.S.C. 501(c)), or a private nonprofit organization that is organized or chartered under state or local laws and has no part of its net earnings inuring to the benefit of any member, founder, contributor or individual.

Remaining useful life means the period during which the housing remains in a condition suitable for occupancy, assuming normal maintenance and repairs are made and major systems and capital components are replaced or repaired as becomes necessary.

Sponsor means a nonprofit or for-profit organization or public entity that is integrally involved in a rental housing project by owning or being the general partner of a partnership that owns the project, or that is integrally involved in exercising control over an owner-occupied housing project by developing the project or by qualifying borrowers and providing or arranging financing for the owners of the housing units.

State means a state of the United States, the District of Columbia, Guam, Puerto Rico, or the U.S. Virgin Islands.

Subsidized advance means an advance whose interest rate is reduced below the cost of funds, with the interest rate differential subsidized using AHP funds in the amount of the net present value of the difference between the cost of funds and the rate charged on the subsidized advance over the term of the advance.

Subsidy means:

(1) The direct cash payments of AHP funds provided by the Bank to the applicant; or

(2) The amount of AHP funds necessary to compensate the Bank for the net present value of the difference between the cost of funds and the rate charged on the subsidized advance to the applicant over the term of the advance.

Very low-income household means a household which has an income of 50 percent or less of the median income for the area, as adjusted and published by the U.S. Department of Housing and Urban Development, except that in areas where the Secretary of Housing and Urban Development adjusts this figure downward because of prevailing construction costs, low housing costs, or unusually high household incomes, then "very low-income household" means a household which has an income of 50 percent or less of the median income for the area, as published by the U.S. Department of Housing and Urban Development, with adjustment for household size, but without the adjustments made by the Secretary of Housing and Urban Development for prevailing construction costs, low housing costs, or unusually high household incomes.

Subpart B—Establishment of AHP

§ 960.2 Bank establishment of AHP and adoption of AHP implementation plan.

(a) It is the policy of the Board and the Banks to promote decent and safe affordable housing and to address critical affordable housing needs through providing subsidized advances and direct subsidies to members pursuant to this part.

(b) Each Bank's board of directors shall establish an AHP, which shall be funded pursuant to the requirements of § 960.18. The Bank shall make subsidized advances to applicants pursuant to its AHP and shall operate its AHP in conformity with an annual AHP implementation plan and the requirements of this part. Direct subsidies provided by a Bank to applicants pursuant to its AHP shall be provided in conformity with the Bank's AHP implementation plan and the requirements of this part. Each Bank's AHP implementation plan shall be approved by the Board before it is effective. The Bank's AHP implementation plan shall meet the requirements of this part, and shall include:

(1) The Bank's AHP funding cycle schedule, including application due dates, as required by § 960.6(a)(1);

(2) The Bank's priorities, and scoring criteria for applications, as required by §§ 960.8(a) and 960.10;

(3) The Bank's procedures to ensure satisfaction of the long-term requirement, as required by § 960.5 (a)(1) and (b);

(4) The Bank's requirements for and verification procedures concerning:

(i) The use of subsidized advances or direct subsidies within a reasonable period of time after approval of an AHP application, as required by § 960.12(a); or

(ii) The use of loans or grants within a reasonable period of time after repayment of such funds to a loan fund or loan consortium, as required by § 960.17(c)(5);

(5) The Bank's verification procedures upon initial disbursement of subsidized advances or direct subsidies, as required by § 960.13;

(6) The Bank's monitoring plan, as required by § 960.14(b);

(7) The Bank's reporting requirements for applicants during the construction or rehabilitation phase, as required by § 960.15(b)(2);

(8) An explanation of circumstances justifying undue hardship waivers by the Bank of imposition of remedial actions, as required by § 960.16 (c)(1) and (d)(1); and

(9) The Bank's determination regarding the number of persons that may serve on the Bank's Advisory Council and their terms, as required by § 960.21(a) (1) and (4).

(c) The Bank's proposed AHP implementation plan shall be submitted to its Advisory Council at least 45 calendar days before it is considered by the Bank's board of directors. The Advisory Council shall review the proposed AHP implementation plan and submit its recommendations to the Bank's board of directors at least seven calendar days before the Bank's board of directors is scheduled to vote on the AHP implementation plan. The Bank's board of directors shall vote on the proposed AHP implementation plan, and shall submit its approved plan to the Board for action. The Board shall approve or disapprove any proposed AHP implementation plan it receives within 60 calendar days of receipt. A Bank's AHP implementation plan must be effective at least 45 calendar days before the due date for AHP applications. Each Bank shall submit its AHP implementation plan to the Board for approval no later than 180 calendar days after [the publication of the final rule in the **Federal Register**].

(d) The Bank's AHP implementation plan adopted pursuant to this section

shall be made available by the Bank to the public upon request.

(e) The Board will approve or disapprove proposed amendments to a Bank's approved AHP implementation plan submitted by the Bank within 60 calendar days of receipt.

Subpart C—Authorized and Required Uses of AHP Subsidized Advances or Direct Subsidies

§ 960.3 Authorized uses of AHP subsidized advances or direct subsidies.

(a) *General.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part only for the uses set forth in paragraphs (b) and (c) of this section and subject to the long-term requirements set forth in § 960.5.

(b) *Owner-occupied housing units.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part to finance the purchase, construction or rehabilitation of owner-occupied housing units by or for low- or moderate-income households.

(c) *Rental housing units.* Applicants may use subsidized advances or direct subsidies received from a Bank pursuant to this part to finance the purchase, construction or rehabilitation of rental housing units, at least 20 percent of the units of which will be occupied by and affordable for very low-income households.

§ 960.4 Specific use requirements for AHP subsidized advances or direct subsidies.

(a) *Examples of specific authorized and unauthorized uses.* (1) Authorized uses of subsidized advances or direct subsidies include, but are not limited to, the following costs related to the purchase, construction or rehabilitation of housing:

(i) Real property purchase and improvement costs;

(ii) Construction or rehabilitation costs, including labor and materials, and contractor profit and overhead allowances;

(iii) Costs integral to the purchase or development of housing including, but not limited to, project-related: Architectural, inspection and engineering fees; local building permit and planning fees; accounting costs; survey costs; appraisal fees; title insurance and other insurance costs; performance bond and other bond fees; recording fees; credit report fees; property taxes; residential relocation costs where such costs are part of a relocation plan; legal fees; syndication fees; costs of translating resident documents to another language; loan commitment, loan origination and other loan financing fees for administrative costs other than costs of administering the AHP award; developer's fees; and marketing costs;

(iv) Prepayment fees imposed by the Bank on an applicant for a subsidized advance that is prepaid in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(v) Capitalization of reserve fund(s) necessary for the successful operation of rental housing projects, including replacement reserves, rent-up reserves, operating deficit reserves, and sinking fund reserves used for the transfer of the project to nonprofit ownership when associated with a low income housing tax credit transaction (26 U.S.C. 42);

(vi) Cancellation fees imposed by the Bank on an applicant for a subsidized advance commitment that is canceled and converted to and disbursed as a direct subsidy in connection with the purchase, construction or rehabilitation of housing, if the applicant requires the borrower to pay such fee;

(vii) Refinancing of an existing loan in conjunction with the purchase, construction or rehabilitation of housing, provided the subsidized advance or direct subsidy and the proceeds of the refinancing are used only to retire existing debt and to benefit low- or moderate-income households and, in the case of refinancing in order to rehabilitate a project, there is a minimum of $2,500 per unit spent on such rehabilitation; and

(viii) Tenant services, tenant counseling and homeowner counseling costs that are a condition imposed by a lender to obtain financing from such lender and which are necessary for the successful operation of the project.

(2) Uses of subsidized advances or direct subsidies that are not authorized include, but are not limited to, AHP administrative costs of the applicant or the Bank.

(b) *Use of funds requirements.* (1)(i) The total amount of a direct subsidy provided by the Bank to an applicant under this section must be passed on by the applicant to the recipient.

(ii) An applicant receiving a subsidized advance from a Bank shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus an interest rate spread approved by the Bank.

(2) If an applicant receives a subsidized advance or direct subsidy from a Bank or prepayment of a loan originally made under the AHP, any interest or other income earned by the applicant on such funds, not including any approved fee or interest rate spread charged to the borrower, must be forwarded to the Bank to be used for additional AHP projects, except for interest or other income earned by the applicant within 30 calendar days of receiving the subsidized advance or direct subsidy or of receiving prepayment of a loan originally made under the AHP.

(3) A direct subsidy received by an applicant from a Bank that is provided by such applicant to a sponsor may be lent by the sponsor in connection with an AHP rental housing project involving low-income housing tax credits, provided the subsidy is lent by the sponsor for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such a loan is repaid before the end of the 30-year term, the entire amount of the direct subsidy must be repaid to the Bank.

(4) If an applicant receives a subsidized advance or direct subsidy from a Bank, and in turn provides both a loan and a grant to a borrower and charges an origination fee for providing the loan, then any fee charged by the applicant for providing the grant may not be paid with the AHP subsidized advance or direct subsidy.

§ 960.5 Long-term requirements.

(a) *Rental housing units.* (1) At least 20 percent of the rental housing units in a project financed under the AHP with subsidized advances or direct subsidies shall remain affordable for and occupied by very low-income households for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units, except as provided in paragraph (a)(3) of this section. An applicant and the project sponsor shall state in the AHP application their commitment regarding satisfaction of the long-term income-eligibility, affordability and income-targeting requirements contained in this paragraph (a)(1). An applicant may commit to maintain additional units as affordable for and occupied by low- or moderate-income households, which commitment shall be for a minimum period of 30 years or, at the election of the sponsor, the remaining useful life of such units, except as provided in paragraph (a)(3) of this section. The Bank's AHP implementation plan shall set forth the procedures that the Bank will follow to effectively implement the requirements of this paragraph (a)(1).

(2) A household occupying a rental housing unit subject to the income-targeting requirement of paragraph (a)(1) of this section is required to satisfy the income-eligibility requirement of such paragraph applicable to such income-targeted unit, as committed to in the AHP application, upon initial occupancy. The household may continue to occupy the income-targeted unit even if its income increases above the income-eligibility requirement for such unit. The unit may continue to count toward meeting the income-targeting requirement committed to in the AHP application, provided the rent charged remains affordable to the household as defined in § 960.1; however, if the household's income rises above 140 percent of the income-targeting level committed to in the AHP application, the sponsor must make the next available rental housing unit in the project affordable to and available for occupancy by a household whose income is at or below the income-targeting level committed to in the AHP application for the original unit, and once the next available rental housing unit is so occupied, the rent charged on the unit occupied by the household whose income has risen shall no longer be subject to the requirement that it be affordable for households at the income-targeting level committed to in the AHP application.

(3) An owner of an AHP-assisted rental housing project may sell the project prior to the end of the long-term period during which the project's rental units, or applicable portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application; however, either:

(i) The purchaser must agree to continue the project's rental units, or applicable portion thereof, as affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and must agree to be subject to the same restrictions on resale that applied to the seller; or

(ii) If the purchaser does not satisfy the requirements of paragraph (a)(3)(i) of this section, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay a pro rata portion of the grant as provided in § 960.16(d)(1); or

(iii) If the purchaser does not satisfy the requirements of paragraph (a)(3)(i) of this section, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

(b) The Bank's AHP implementation plan shall permit the owner of an AHP-assisted rental housing project to sell such project as provided for in paragraph (a)(3) of this section.

Subpart D—Applications for AHP Subsidized Advances or Direct Subsidies

§ 960.6 Establishment of AHP funding cycles and available AHP subsidies.

(a) *Establishment of AHP funding cycles.* (1) Each Bank shall establish at least two but no more than four AHP funding cycles per year during which applications for subsidized advances or direct subsidies will be accepted. The schedule for such funding cycles, including application due dates, is to be determined by the Bank in its discretion, but shall allow for sufficient time intervals to ensure an adequate pool of applicants to compete in each funding cycle. The funding cycle schedule, including application due dates, shall be described in detail in the Bank's AHP implementation plan.

(2) Each Bank shall inform the general public and its members of the number and dates of its AHP funding cycles for the year and the approximate amount of available AHP subsidies for each funding cycle at least 45 calendar days before the due date for AHP applications for the first funding cycle for the year.

(b) *Available AHP subsidies.* Each Bank shall allocate comparable amounts of AHP subsidies for each AHP funding cycle during the year.

§ 960.7 AHP application approval process.

(a) *Application.* Each Bank shall require applicants for subsidized advances or direct subsidies to submit to the Bank an application which, at a minimum, contains all of the information described in this paragraph and any other information which the Bank determines is necessary in order to take action on such application pursuant to this part, including the following:

(1) A concise description of the purpose of the request and proposed uses of the funds, and its relationship to the priorities identified in § 960.10(d), the targeting criterion identified in § 960.10(e), and the other objectives identified in § 960.10(f);

(2) A statement of how the project will satisfy the authorized uses and long-term requirements, including a description of legal mechanisms to be used to ensure compliance by the project with such requirements, contained in §§ 960.3 and 960.5;

(3) A statement of how the project will comply with the fair housing law requirement contained in § 960.9(b);

(4) A statement of how the project will satisfy the feasibility requirement contained in § 960.9(d);

(5) A statement of how the project's sponsor satisfies the qualification requirement contained in § 960.9(e);

(6) A statement of whether a subsidized advance or direct subsidy has been requested and the amount of such funds requested;

(7) A disclosure of whether or not the applicant has a direct or indirect interest in the property or project. If the applicant has an interest in the property and the application is approved, then prior to the transfer of AHP funds to the project, an independent current appraisal of the fair market value of such property must be provided, unless the applicant demonstrates that the property is being sold or otherwise transferred to the sponsor at a price substantially below the fair market value;

(8) A statement of the project's costs; and

(9) A certification from the applicant's, the sponsor's and the loan fund's or loan consortium's board of directors, or president or senior officer if so delegated by the board of directors, that the applicant, the sponsor and the loan fund or loan consortium will comply with all requirements of this part and all obligations committed to in the AHP application.

(b) *Action on applications.* (1) The Bank shall review, score and take action on an AHP application pursuant to the requirements contained in §§ 960.8, 960.9 and 960.10, and shall notify the applicant of such action no later than 60 calendar days after the application due date for the AHP funding cycle.

(2) The board of directors of each Bank shall have the authority to approve or disapprove AHP applications received, and may delegate such authority to the president or other senior officers of the Bank.

(3) Within 30 calendar days of each Bank's approval of the AHP applications for a given AHP funding cycle, the Bank shall forward to the Board a summary of each approved AHP application. The summary shall:

(i) Briefly describe the project, including the applicant, the loan fund or loan consortium, if applicable, and the sponsor—whether nonprofit, for-profit or public agency, the type of housing, the location, the long-term period committed to, the number of housing units including the number of units affordable for very low-, low- or moderate-income households or for

households at any other income levels committed to in the AHP application, the development cost, other financing sources, and special needs populations served;

(ii) State the reason for the points awarded under each of the Bank's scoring criteria for the project;

(iii) Indicate whether a subsidized advance or direct subsidy was approved by the Bank for the project, the use of such funds, and the amount of such funds approved; if a subsidized advance was approved, the summary shall indicate the amount of the advance, the advance rate, the amortization schedule for the advance, the term to maturity, the applicable cost of funds, and the date as of which the cost of funds was determined;

(iv) Indicate whether the project received approval in a prior AHP funding cycle, or if the project is an extension, expansion, continuation or reconfiguration of a previously approved AHP project;

(v) Describe how the project will be monitored and by what entity;

(vi) Describe the legal mechanisms to be used to ensure compliance by the project with the long-term requirement contained in § 960.5;

(vii) Include a summary in chart form showing all AHP applications received by the Bank in the particular AHP funding cycle, with the score each application received for each scoring criterion, and the total score received by each project; and

(viii) Include any other information required by the Board.

Subpart E—Requirements for Approval of AHP Applications

§ 960.8 General requirements for approval of AHP applications.

(a) Each Bank shall evaluate the AHP applications received to determine if they satisfy the threshold criteria in § 960.9. All applications that meet the threshold criteria shall be scored pursuant to the criteria contained in § 960.10, as set forth in the Bank's approved AHP implementation plan.

(b) The Bank shall approve the applications in descending order starting with the highest scoring application until the total AHP funding amount for the particular funding cycle, except for any amount insufficient to fund the next highest scoring project, has been allocated. The Bank also may approve the next four highest scoring applications as alternates and, within one year of approval by the Bank, may fund such alternates if any previously committed AHP funds become available.

§ 960.9 Threshold criteria for approval of AHP applications.

Threshold criteria. An AHP application must meet all of the threshold criteria set forth in this section in order to be considered for scoring under § 960.10 and for AHP funding approval.

(a) *Authorized and required uses requirements.* The AHP application must indicate that the use of the subsidized advance or direct subsidy set forth in the AHP application for the proposed project will comply with the requirements for authorized and required uses of such funds contained in §§ 960.3, 960.4 and 960.5.

(b) *Fair housing law requirements.* The AHP application must indicate that the project sponsor will comply with any applicable fair housing law requirements and must indicate how the sponsor proposes to affirmatively further compliance with such requirements.

(c) *Twenty percent requirement and alternatives.*—(1) *General.* (i) Except as provided in paragraph (c)(2) of this section, a Bank shall not offer subsidized advances or direct subsidies to applicants in excess of that amount needed to reduce the monthly housing costs (as defined in paragraph (c)(1)(ii) of this section) for income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income. In projects where other forms of federal, state, local or private subsidized assistance are being used in conjunction with AHP subsidized advances or direct subsidies, the total amount of subsidized assistance, including funds provided under the AHP, shall not be in excess of the amount needed to reduce the monthly housing costs (as defined in paragraph (c)(1)(ii) of this section) for the income-eligible households, as committed to in the AHP application, to 20 percent of the household's gross monthly income.

(ii) For purposes of paragraph (c)(1) of this section, monthly housing costs are defined as:

(A) For households in AHP-assisted owner-occupied housing units, mortgage principal and interest payments, real property taxes, homeowners' insurance, a reasonable estimate of utility costs excluding telephone service, and for households in AHP-assisted condominium, cooperative, mutual housing or other housing projects involving common ownership, those portions of any regular operating assessment or fee allocated for principal and interest payments, taxes, insurance and a reasonable estimate of utilities attributable to the household's share of the common area and/or the individual unit; and

(B) For households in AHP-assisted rental housing units, rent payments, and where they are not already included in rent payments, a reasonable estimate of utility costs excluding telephone service.

(iii) A household subject to the 20 percent requirement set forth in paragraph (c)(1) of this section is required to meet such requirement only at the time it initially purchases or occupies a unit.

(2) *Alternative requirements.* (i) The requirement in paragraph (c)(1) of this section shall not apply where a Bank provides subsidized advances or direct subsidies to an applicant for a rental housing project, which project also receives funds from a federal or state rental housing program that requires qualifying households to pay as rent a certain percentage of their monthly income or a designated amount, provided that the household meets the housing payment requirements of the other program.

(ii) The requirement in paragraph (c)(1) of this section shall not apply where:

(A) The total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance rehabilitation of a housing unit by a very low-income household that already owns and occupies the housing unit is $10,000 or less per such household; or

(B) The total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance the purchase of a housing unit by a very low-income household is $5,000 or less per such household.

(iii) The requirement in paragraph (c)(1) of this section shall not apply where the total amount of the AHP funds provided through a subsidized advance or direct subsidy used to finance rehabilitation or purchase of a housing unit by a low- or moderate-income household is $5,000 or less per such household.

(iv) The requirement in paragraph (c)(1) of this section shall not apply where a Bank provides subsidized advances or direct subsidies ultimately benefiting a household with an income at or below the level committed to in the AHP application, which is participating in a self-help, sweat equity or similar housing program that requires the household to contribute its skilled or unskilled labor valued at a minimum of $2,000 per household, working cooperatively with others, to construct or rehabilitate housing which the household or other program participants

are purchasing or already own and occupy, and that involves supervision of the work performed by skilled builders or rehabilitators.

(d) *Project feasibility.* The AHP application must indicate that the proposed project is feasible in that, based on an analysis of project sources and uses of funds, project multi-year operating pro formas for rental housing projects, projections of sales and prices for owner-occupied housing units, and local market conditions, the project is financially viable and likely to be completed within a reasonable period of time, and is likely to operate or sell and remain affordable to the designated income-eligible households over the long-term period committed to in the AHP application.

(e) *Qualifications of sponsor.* The AHP application must indicate that the sponsor has the qualifications and ability to perform its responsibilities as committed to in the AHP application.

(f) *Creditworthiness of applicant.* The applicant must have the ability to qualify for an advance from the Bank to fund the project described in the AHP application.

§ 960.10 Scoring of AHP applications.

(a) *General.* The Bank shall score AHP applications that satisfy all of the threshold criteria in § 960.9 according to the scoring methodology set forth in this section which shall be included in the Bank's approved AHP implementation plan.

(b) *Priority treatment.* Each application is first evaluated to determine if it will receive priority treatment. For purposes of determining priority, an application can receive a maximum of eight points for each of the five priority categories set forth in paragraph (d) of this section. A Bank in its AHP implementation plan shall define more specifically each of the five priority categories and explain specifically how points will be awarded for satisfying each category. An application will be deemed to meet a particular priority category if it is awarded at least four points for that priority category. Applications meeting at least two priority categories shall receive priority treatment.

(c) *Order of scoring.* Applications that qualify for priority treatment pursuant to paragraph (b) of this section shall be scored before applications that do not qualify for priority treatment. The applications that do not qualify for priority treatment will not be scored unless there are insufficient priority treatment applications to utilize the total AHP funding amount for the funding cycle.

(d) *Priorities—40 point category.* The Bank shall total the points received by each applicant for purposes of determining priority for all of the five priority categories set forth in this paragraph (d); it shall award 40 points to the application(s) that receive the highest number of total points, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. The five priority categories are as set forth in the following paragraphs (d)(1) through (5) of this section.

(1) *Government-owned properties.* Applications for projects that finance the purchase or rehabilitation of housing owned or held by the United States Government or any agency or instrumentality of the United States, including but not limited to the Department of Housing and Urban Development, Resolution Trust Corporation, Farmers Home Administration, Veterans Administration, Federal National Mortgage Association, or Federal Home Loan Mortgage Corporation.

(2) *Nonprofit or state or local government sponsored projects.* Applications for projects that finance the purchase, construction or rehabilitation of housing the sponsor of which is a nonprofit organization, a state or political subdivision of a state, a local housing authority or a state housing finance agency.

(3) *Special needs projects.* Applications for projects that address special needs, which shall be defined by the Bank in its AHP implementation plan, which special needs may include but are not limited to:

(i) Empowering the households or residents through programs such as resident management of the property, self-help housing, homesteading, and sweat equity;

(ii) Providing housing for special needs populations such as homeless persons, abused or battered persons, persons with AIDS, mentally or physically disabled persons, or persons with substance abuse problems;

(iii) Providing housing in rural areas or areas targeted by local, state or federal governments for community development or revitalization through the development of affordable housing or economic investment; or

(iv) Providing housing with special services to meet the needs of low- or moderate-income households including, but not limited to, child care, job training, medical care, substance abuse programs, independent living skill training, and rental household and homeowner household counseling.

(4) *District Bank priority.* Applications for projects that meet one or more priorities recommended by the Bank's Advisory Council and adopted by the Bank's board of directors that each address a housing need in the Bank's district and are consistent with the purposes of this part. The Bank shall describe in its AHP implementation plan how the points for the priority or priorities will be distributed.

(5) *Economic mobility priority.* Applications for projects that provide housing for low- or moderate-income households that move from low- or moderate-income neighborhoods or housing projects to neighborhoods, mixed-income buildings or owner-occupied housing developments in which at least 50 percent of the households have incomes above the median income for the area, as published by the U.S. Department of Housing and Urban Development.

(e) *Targeting—20-point category.* An application can receive a maximum of 20 points for this category. The Bank shall award points to applications based on the extent to which the project(s) serve(s) the greatest percentage of very low-, low- and moderate-income households, in that priority order. In the alternative, if a weighted-average scoring methodology is provided in the Bank's AHP implementation plan, the Bank shall award points to an application based on the extent to which the project has the lowest weighted-average income determined by multiplying the percentage of units reserved for households at certain income levels by those incomes expressed as a percentage of median income, and adding the totals. Applications shall be scored relative to each other with the maximum number of points allowable awarded to the application(s) that best achieve(s) the targeting objective, and the remaining application scores shall be adjusted and awarded points on a declining scale basis. However, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group.

(f) *Other objectives.* The five other objectives categories are as set forth in the following paragraphs (f)(1) through (5) of this section. The Bank in its AHP implementation plan shall define more specifically each of the five other objectives categories and explain specifically how points will be awarded for satisfying each category. For each category, the Bank shall award the maximum number of points allowable for such category to the application(s) that best achieve(s) the objective, and the remaining application scores shall

be adjusted and awarded points on a declining scale basis.

(1) *AHP subsidy per unit—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project proposes to use the least amount of AHP subsidy per AHP-subsidized unit. Projects should be scored relative to each other; however, owner-occupied housing projects shall be scored as one group and rental housing projects shall be scored as a separate group. This scoring criterion may not include a leveraging criterion whereby the application is scored based on the percentage of the project's total development cost that is to be financed with the AHP subsidy.

(2) *Applicant participation—5-point category.* An application can receive a maximum of 5 points for this category. The Bank shall award points to applications based on the extent to which the project involves participation by applicants other than the receipt of a subsidized advance or direct subsidy under the AHP. Such participation can be financial or non-financial, including but not limited to debt or equity financing of the project, grants to the project, applicant involvement on the boards of nonprofit sponsors, and applicant provision of technical assistance to the nonprofit sponsors for the project.

(3) *Community involvement—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which there is demonstrated support for the project by local community organizations and individuals other than as project sponsors, such as through the commitment by such organizations and individuals of funds, goods and services, and volunteer labor.

(4) *Community stability—10-point category.* An application can receive a maximum of 10 points for this category. The Bank shall award points to applications based on the extent to which the project(s) maximize(s) community stability, such as by: committing to a greater long-term period pursuant to § 960.5; revitalizing vacant or abandoned properties or being integrally part of a neighborhood stabilization plan, if such revitalization or stabilization is not identified as a special needs category by the Bank pursuant to § 960.10(d)(3)(iii); and not displacing low- or moderate-income households, or if such displacement will occur, indicating how such households will be assisted to minimize the impact of such displacement.

(5) *Innovation—5-point category.* An application can receive a maximum of 5 points for this category. The Bank shall award points to applications based on the extent to which the project(s) involve(s) a particularly new or unusual approach, either financial or non-financial, for meeting the requirements of this part.

§ 960.11 Modifications of approved AHP applications.

(a) An applicant that seeks a modification of an approved AHP application before completion and occupancy of the project must submit a request for such modification in writing to the Bank for review and approval. A modification is any change that affects or could potentially affect the material facts under which the application was originally evaluated and scored.

(b) A request for a modification of an approved AHP application must include, at a minimum:

(1) A description of how the proposed modification differs from the original application;

(2) The reason for the proposed modification; and

(3) Any other information that the Bank determines is necessary to review the proposed modification.

(c)(1) The Bank shall review the request for modification, shall re-score the application as proposed to be modified according to the scoring criteria used in the AHP funding cycle in which the application was originally approved, and may approve such request if the following factors are satisfied:

(i) The project as proposed to be modified continues to meet all of the requirements of this part; and

(ii) The project as proposed to be modified continues to score high enough that it would have been approved in its AHP funding cycle.

(2) If the application does not satisfy the requirements in paragraph (c)(1) of this section, the Bank in its discretion may approve the request for modification if the reason for the modification is due to circumstances outside the control of the applicant or sponsor.

(d) The Bank shall forward to the Board a detailed summary of any modification of an AHP application approved by the Bank, including how the Bank re-scored the project, within 30 calendar days of the approval of such modification.

Subpart F—Use and Verification at Initial Disbursement of AHP Subsidized Advances or Direct Subsidies

§ 960.12 Use of AHP subsidized advances or direct subsidies within reasonable period of time and verification of reasonable progress.

(a) The Bank shall in its AHP implementation plan identify what constitutes reasonable progress by the sponsor towards using subsidized advances or direct subsidies within a reasonable period of time after the approval of an AHP application for different types of projects, and explain how it intends to verify such reasonable progress.

(b) The sponsor must demonstrate that reasonable progress is being made towards using the requested funds within a reasonable period of time after approval of the AHP application, as determined by the Bank under paragraph (a) of this section.

(c) The Bank shall verify the efforts of the sponsor to determine whether it has satisfied the requirement in paragraph (b) of this section.

(d) If the sponsor fails to satisfy the requirement in paragraph (b) of this section, the Bank shall cancel the AHP award, and shall not disburse any subsidized advances or direct subsidies through the applicant to the sponsor, and the full amount of any previously disbursed subsidized advances or direct subsidies shall be returned to the Bank.

§ 960.13 Verification at initial disbursement of AHP subsidized advances or direct subsidies.

At the time of initial disbursement of a subsidized advance or a direct subsidy by a Bank for an approved AHP application, the Bank shall verify in writing that the project complies with all applicable requirements contained in § 960.9 and all obligations committed to in the approved AHP application. The Bank shall verify the amount of subsidy being provided in connection with the application and being charged against the AHP fund. The Bank shall include in its AHP implementation plan its verification procedures for such purposes.

Subpart G—Monitoring and Reporting Requirements

§ 960.14 Monitoring requirements.

(a) *Monitoring by the Banks.* Each Bank has the responsibility to monitor the projects funded through its AHP according to the monitoring requirements described in this section.

(b) *Monitoring plan.* Each Bank shall include in its AHP implementation plan an explanation of how it intends to meet the monitoring requirements of this section.

(c) *Monitoring by Bank's designee.* A Bank may contract with an applicant, a state housing finance agency, or other entity to perform the tasks required to meet the monitoring requirements described in paragraphs (e) through (h) of this section; however, the Bank remains ultimately responsible for compliance with the monitoring requirements of this section.

(d) *Monitoring during construction or rehabilitation.* If subsidized advances or direct subsidies are used to finance construction or rehabilitation of a project, the Bank shall require the applicant to monitor the construction or rehabilitation until completion, and to make progress reports to the Bank, as required under § 960.15(b)(2).

(e) *Monitoring long-term requirements.*—(1) *Owner-occupied housing.*—(i) *Initial certification.* At the time a household enters into a purchase contract for an AHP-assisted housing unit or at the closing on the financing for such unit, or at the time a household that already owns a housing unit receives a commitment of a loan or a grant pursuant to the AHP, the Bank or its designee shall obtain a certification from the sponsor, as required under § 960.15(c)(1)(i), that the household has an income at or below the level committed to in the AHP application.

(ii) *Monitoring after initial sale.* (A) During the required long-term period applicable to an owner-occupied housing unit assisted by a grant provided under the AHP, the Bank or its designee shall monitor the unit to determine whether it has been sold to a household with an income that exceeds the level committed to in the AHP application.

(B) Monitoring shall include, but is not limited to, periodic review of relevant reports or certifications obtained from the sponsor, including reports and certifications received pursuant to § 960.15(c)(1)(ii) and, at least on a sample basis, periodic review of land title records at intervals to be determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

(2) *Rental housing.*—(i) *Restriction on transfer.* The Bank shall require an AHP-assisted rental housing project to be subject to a deed restriction or other legally enforceable mechanism which requires that upon sale of the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee receives notice of the sale, and:

(A) The project's rental units, or portion thereof, must continue to be affordable for and occupied by households with incomes at or below the levels committed to in the AHP application for the remainder of the long-term period committed to in the AHP application, and the purchaser agrees to be subject to the same restrictions on resale that applied to the seller; or

(B) If the purchaser does not satisfy the requirements in paragraph (e)(2)(i)(A) of this section, and if the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the seller must repay the grant as provided in § 960.16(d)(1); or

(C) If the purchaser does not satisfy the requirements in paragraph (e)(2)(i)(A) of this section, and if the Bank provided a subsidized advance to the applicant which in turn provided a below market rate loan to the seller, then the provisions of § 960.16(d)(2) shall apply.

(ii) *Initial certification.* Upon initial full occupancy of the units in an AHP-assisted rental housing project, or one year after initial disbursement of the subsidized advance or direct subsidy, whichever occurs first, the Bank or its designee shall obtain a certification from the sponsor or the owner, as required under § 960.15(c)(2), that the project's units, or portion thereof, are affordable for and occupied by households with incomes at initial occupancy at or below the levels committed to in the AHP application.

(iii) *Monitoring after initial occupancy.* (A) During the long-term period for which the units, or portion thereof, of an AHP-assisted rental housing project must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, the Bank or its designee shall monitor the project to determine whether the project's units, or portion thereof, remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

(B) Monitoring shall include, but is not limited to, periodic review of relevant household income and rent reports or certifications obtained from the sponsor or the owner, including certifications received pursuant to § 960.15(c)(2) and, at least on a sample basis, periodic inspections of the project at intervals to be determined by the Bank, based on the amount of funds received by the project pursuant to the AHP, the type and complexity of the project, or other factors deemed relevant by the Bank.

(f) *Monitoring compliance with the special needs priority.* If an applicant in its AHP application commits to fund a housing project that will address a special need pursuant to § 960.10(d)(3), either through providing units for persons with a special need, or through providing a special service for occupants, as defined in the Banks AHP implementation plan:

(1) The Bank or its designee shall obtain a certification from the sponsor or owner upon completion and occupancy of the project, as required under § 960.15(c)(3), that the project's units, or portion thereof, are occupied by persons with such special need, as committed to in the AHP application, or that a special service is being provided, as committed to in the AHP application; and

(2) In the case of a special service being provided pursuant to § 960.10(d)(3), the Bank or its designee shall monitor the project, as determined by the Bank in its AHP implementation plan, for at least one year from the date of initial full occupancy of the project, to verify that such special service continues to be provided to the households, as committed to in the AHP application.

(g) *Monitoring compliance with the District Bank priority or priorities.* (1) If an applicant in its AHP application commits to fund a project that meets a District Bank priority or priorities established by the Bank pursuant to § 960.10(d)(4), the Bank or its designee shall monitor the project to verify that it continues to meet the Bank priority or priorities.

(2) The Bank shall set forth in its AHP implementation plan the nature, frequency and duration for monitoring compliance with the District Bank priority or priorities.

(h) *Monitoring compliance with the economic mobility priority.* If an applicant in its AHP application commits to fund a project that meets the requirements of § 960.10(d)(5), the Bank or its designee shall obtain a certification from the sponsor or the owner upon completion and full occupancy of the project, as required under § 960.15(c)(4), that the sponsor or the owner has met such requirements as committed to in the AHP application.

§ 960.15 Reporting requirements.

(a) *Reporting by the Banks.* Each Bank shall provide accurate and timely

reports and documentation to, and in the format requested by, the Board concerning the Bank's AHP, as the Board may from time to time require.

(b) *Reporting by applicants.* (1) Each Bank shall require an applicant receiving a subsidized advance or direct subsidy pursuant to this part to report at least annually to the Bank on the manner in which it has used the funds, with such reports continuing until the funds have been fully disbursed by the applicant.

(2) If subsidized advances or direct subsidies are used to finance construction or rehabilitation of a project, the Bank shall require the applicant to report to the Bank at reasonable intervals determined by the Bank, and described in the Bank's AHP implementation plan, on the progress of the construction or rehabilitation until completion.

(c) *Reporting by the sponsor or owner.*—(1) *Owner-occupied housing units*—(i) *Initial certification.* Where a subsidized advance or direct subsidy is used to finance the purchase of an owner-occupied housing unit, the Bank shall require the sponsor to certify, at the time a household enters into a purchase contract for such unit or at the closing on the financing for such unit, that the unit has been sold to a household with an income at or below the level committed to in the AHP application. Where a subsidized advance or direct subsidy is used to finance the rehabilitation of an owner-occupied housing unit, the Bank shall require the sponsor to certify at the time a loan or grant is committed to fund such rehabilitation that the household that owns and occupies the unit has an income at or below the level committed to in the AHP application.

(ii) *Reports of subsequent sale.* If an owner-occupied housing unit assisted by a grant provided under the AHP is not subject to a deed restriction or other legally enforceable mechanism restricting transfer of ownership to a household with an income at or below the level committed to in the AHP application, the Bank shall require the sponsor to report to the Bank or its designee, at least annually for the required long-term period, the number of any such units that are sold to households whose incomes exceed the level committed to in the AHP application, and to certify to the Bank that it is continuing to satisfy its commitment, pursuant to its legally binding agreement with the Bank.

(2) *Rental housing units—certification.* The Bank shall require the sponsor or owner to certify, upon initial full occupancy of the units in an AHP-assisted rental housing project but no later than one year after initial disbursement of the subsidized advance or direct subsidy, and annually thereafter, that the project's units, or portion thereof, are affordable for and occupied by households with incomes at or below the levels committed to in the AHP application.

(3) *Special needs—initial certification.* If an applicant in its AHP application commits to fund a housing project that will provide housing units for persons with a special need, or will provide a continuing special service to occupants pursuant to § 960.10(d)(3), the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the project's units, or portion thereof, are occupied by persons with such special needs or that a special service is being provided to occupants, as committed to in the AHP application.

(4) *Economic mobility—certification.* If an applicant in its AHP application commits to fund a housing project that meets the requirements for economic mobility under § 960.10(d)(5), the Bank shall require the sponsor or the owner to certify upon completion and full occupancy of the project that the sponsor or owner has met such requirements, as committed to in the AHP application.

(d) *Other reports.* The Bank shall require applicants or sponsors to provide such other reports as the Bank deems necessary in order to fulfill its monitoring obligations under § 960.14.

Subpart H—Corrective and Remedial Actions for Fraud or Non-Compliance With AHP Requirements

§ 960.16 Corrective and remedial actions for fraud or non-compliance.

(a) *Fraud or willful non-compliance.* (1) In the event of an applicant's, sponsor's or owner's fraud with respect to the requirements of this part, the Bank shall exclude the applicant, sponsor or owner, respectively, on a permanent basis, from future participation in the AHP. In the event of an applicant's, sponsor's or owner's willful non-compliance with the requirements of this part, the Bank shall suspend the applicant, sponsor or owner, respectively, at least on a temporary basis, from future participation in the AHP during the period such willful non-compliance continues, and may exclude such party permanently from future participation in the AHP.

(2) In the event of an applicant's fraud or willful non-compliance with respect to the requirements of this part, the Bank shall recover from the applicant the full amount of the AHP subsidy provided to the project.

(3)(i) In the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the sponsor or owner by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the sponsor or owner. If efforts to recover the AHP subsidy from the sponsor or owner are unsuccessful, the applicant shall not be liable for such funds.

(ii) The applicant shall have in place either:

(A) A legally binding agreement or other legally enforceable mechanism that permits it to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part; or

(B) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the sponsor or owner and the applicant that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part.

(4) The Board in its discretion may grant a waiver of any required remedial actions under this paragraph (a) upon written request by the Bank, applicant, sponsor or owner.

(b) *Other types of non-compliance.* In the event of an applicant's, sponsor's or owner's non-compliance with the requirements of this part that is not willful, such as due to inadvertent errors by such party or changes in circumstances that are outside such party's control, the Bank shall provide the party a reasonable period of time in which to take reasonable efforts, pursuant to a compliance plan approved by the Bank, to remedy the non-compliance. The Bank in its discretion may exclude the applicant, sponsor or owner from participation in the AHP while such party is under a compliance plan, or in its discretion may require the applicant to increase the long-term period committed to in its AHP application for the project by the amount of time the project has been in non-compliance. If the applicant, sponsor or owner takes no reasonable efforts to comply with the compliance plan, then such party is in willful non-compliance with the requirements of this part and is subject to the remedial actions contained in paragraph (a) of this section. If the applicant, sponsor or owner takes reasonable efforts pursuant to the compliance plan to remedy the non-compliance under this paragraph (b) and such efforts are unsuccessful, the applicant, sponsor or owner would be subject to the remedial actions contained in paragraph (a) of this section, but may apply to the Bank for a waiver of any such required remedial actions. The Bank shall report to the Board in writing on any waivers approved pursuant to this paragraph (b) within 30 calendar days of such approval.

(c) *Sale of AHP-assisted owner-occupied housing unit to income-ineligible household.* Except as provided in paragraph (c)(3) of this section, in the event that a household sells its AHP-assisted owner-occupied housing unit to a household whose income exceeds the level committed to in the AHP application prior to the end of the required long-term period, then the provisions of either paragraph (c)(1) or (2) of this section shall apply.

(1) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the unit after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan.

(2) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, the applicant shall either repay the advance to the Bank or the Bank shall convert that portion of the advance used to make the loan to the seller or the Bank shall convert that portion of the advance used to make the loan to the seller to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize that portion of the advance used to make the loan to the seller shall be made available by the Bank for additional AHP projects.

(3) The requirements of paragraphs (c)(1) and (2) of this section shall not apply provided the sponsor, pursuant to a legally binding agreement with the Bank, assists another household with an income at or below the level committed to in the AHP application in the manner originally committed to in the AHP application.

(d) *Sale of AHP-assisted rental housing project.* In the event that the owner of an AHP-assisted rental housing project sells the project prior to the end of the long-term period during which the project's rental units, or portion thereof, must remain affordable for and occupied by households with incomes at or below the levels committed to in the AHP application, and the purchaser does not agree to maintain the project according to such commitments and to be subject to the same restrictions on resale that applied to the seller, then the provisions of either paragraph (d)(1) or (2) of this section shall apply.

(1) If the Bank provided a direct subsidy to the applicant which was passed on as a grant to the seller, the Bank shall require the seller to repay a *pro rata* share, except for *de minimis* amounts, of the grant received by such seller, reduced for every year the seller owned the unit, to be repaid from any net gain from the sale of the project after deduction for sales expenses, and to be returned to the Bank, except that the Bank in its discretion may waive such requirement if the imposition of such requirement will cause undue hardship on the seller, as defined by the Bank in its AHP implementation plan; or

(2) If the Bank provided a subsidized advance to the applicant and the applicant provided a below market rate loan to the seller, the applicant shall either repay the advance to the Bank or the Bank shall convert the advance to a market rate advance with an interest rate equal to the market rate of interest at the time the advance was made, and any unused AHP subsidy which had been set aside by the Bank to subsidize the advance shall be made available by the Bank for additional AHP projects.

Subpart I—AHP Applications Involving Loan Funds and Loan Consortia

§ 960.17 AHP applications involving loan funds and loan consortia.

(a) *General.* (1) An applicant may use a subsidized advance or a direct subsidy to make a loan or a grant to a loan fund or loan consortium as provided in paragraph (c) of this section.

(2) AHP applications involving the use of loans or grants by loan funds or loan consortia pursuant to the AHP are governed by the provisions of this part, except as otherwise provided in this section.

(b) *AHP application approval requirements.* The requirements for approval of an AHP application that proposes to use subsidized advances or direct subsidies to make a loan or a grant to a loan fund or a loan consortium are governed by the provisions of § 960.8, except that:

(1) The application will be scored on the criteria that the loan fund or loan consortium proposes to use to select projects that will ultimately receive a loan or grant from the loan fund or loan consortium that is subsidized by the AHP; and

(2) The Bank shall review and shall require the applicant to review each new rental housing project funded by a loan fund or loan consortium prior to disbursing the loan or grant to ensure that:

(i) The project meets the threshold requirements of § 960.9; and

(ii) The project meets the criteria committed to in the approved AHP application.

(c) *Use of funds.*—(1) *Subsidized advances.* If an applicant receives a subsidized advance and uses the proceeds of the advance to make a loan to a loan fund or loan consortium, the loan fund or loan consortium shall extend credit to the borrower at a rate of interest equal to the rate of interest charged on the subsidized advance plus a reasonable interest rate spread approved by the Bank. The applicant and the loan fund or loan consortium may determine between themselves what proportion of the interest rate spread the applicant and the loan fund or loan consortium will share.

(2) *Direct subsidies.* (i) If an applicant receives a direct subsidy from a Bank and in turn provides a grant to a loan fund or loan consortium, the loan fund or loan consortium must either:

(A) Pass the entire grant on to the recipient;

(B) Use the entire grant to lower the interest rate on a loan to the borrower; or

(C) Lend the entire grant to the borrower to finance a rental housing project for a term of not less than 30 years, with all principal and interest payments deferred until the end of such term. If such loan is repaid before the end of the 30-year term, the entire amount of the grant must be repaid to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

(ii) If a loan fund or loan consortium provides both a loan and a grant to a borrower and the loan fund or loan consortium charges an origination fee for providing the loan, then any fee charged by the loan fund or loan consortium for providing the grant may not be paid with AHP subsidized advances or direct subsidies.

(iii) *Calculation of interest rate.* When a loan fund or loan consortium receives a grant from an applicant pursuant to

the AHP and uses the grant to lower the interest rate on a loan to the borrower, the interest rate calculation must be consistent with the procedure used by the Bank for calculating the amount of AHP subsidy needed for a subsidized advance, taking into account the source of funds used by the loan fund or loan consortium for its loans and the rate that normally would be charged for a loan of the type and term that is provided to the borrower.

(3) *Interest or other income earned on loans or grants.* If an applicant receives a subsidized advance or direct subsidy from a Bank and in turn provides a loan or grant to a loan fund or loan consortium, any interest or other income earned by the loan fund or loan consortium on such funds, not including any approved fee or interest rate spread charged to the borrower, either:

(i) Must be used by the loan fund or loan consortium to provide funds for additional projects meeting the threshold requirements in § 960.9 and the criteria committed to in the approved AHP application; or

(ii) Must be forwarded to the applicant, which in turn must forward the funds to the Bank to be used for additional AHP projects.

(4) *Loans or grants from multiple AHP funding cycles.* If loans or grants received by a loan fund or loan consortium pursuant to one AHP funding cycle are combined with loans or grants received by such entity pursuant to another AHP funding cycle in a single rental housing project, the loan fund or loan consortium shall require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria. The requirement does not apply when loans or grants received by a loan fund or loan consortium pursuant to separate AHP funding cycles are combined to finance a single owner-occupied housing project; however, the loan fund or loan consortium in its discretion may require the recipient of the funds to follow the requirements for the use of such funds from the AHP funding cycle that is more restrictive as to the approved AHP criteria.

(5) *Using repayments of loans within reasonable period of time.* Any loans provided by a loan fund or loan consortium pursuant to the AHP that are repaid to such entity must be re-lent or provided as grants by such entity within a reasonable period of time after such repayments, or must be repaid to the applicant, which in turn must repay such funds to the Bank, and must be made available by the Bank for additional AHP projects. The Bank shall in its AHP implementation plan identify what constitutes a reasonable period of time for such purposes.

(d) *Monitoring and reporting*—(1) *General.* Where loans or grants are provided by an applicant pursuant to the AHP to a loan fund or loan consortium which uses the funds to finance owner-occupied or rental housing units, the Bank shall:

(i) Monitor such units according to the monitoring requirements of § 960.14(e) through (h);

(ii) Require the sponsor or owner of a project receiving loans or grants from the loan fund or loan consortium to submit such reports and certifications to the Bank as are required under § 960.15(c); and

(iii) Require the loan fund or loan consortium to report to the Bank any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(2) *Exceptions.* (i) The Bank may contract with the applicant to meet the monitoring requirements of § 960.14 (e) through (h), in which case the applicant shall:

(A) Monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14 (e) through (h);

(B) Require the sponsor or owner of the project to submit to the applicant such reports and certifications as are required under § 960.15(c); and

(C) Require the loan fund or loan consortium to report to the applicant any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(ii) The Bank may contract with the loan fund or loan consortium to meet the monitoring requirements of § 960.14 (e) through (h), in which case the loan fund or loan consortium shall:

(A) Monitor the AHP-assisted housing units according to the monitoring requirements of § 960.14 (e) through (h);

(B) Require the sponsor or owner of the project to submit to the loan fund or loan consortium such reports and certifications as are required under § 960.15(c); and

(C) Report to the Bank any new loan or grant made using the repayments of loans by the borrower. If a loan fund or loan consortium receives loans or grants from an applicant pursuant to separate AHP funding cycles, the use of such funds must be reported separately.

(e) *Corrective and remedial actions for fraud or non-compliance with AHP requirements.* (1) A loan fund or loan consortium receiving loans or grants from an applicant pursuant to the AHP and the project sponsors or owners receiving loans or grants from a loan fund or loan consortium are subject to the corrective and remedial actions contained in § 960.16 for fraud and non-compliance with respect to the requirements of this part.

(2)(i) In the event of a loan fund's or loan consortium's fraud or willful non-compliance with respect to the requirements of this part, the full amount of the AHP subsidy shall be recovered from the loan fund or loan consortium by the applicant and returned to the Bank or, if previously agreed to by the Bank, shall be recovered by the Bank from the loan fund or loan consortium.

(ii) An applicant that provides loans or grants to a loan fund or loan consortium pursuant to the AHP shall have in place either:

(A) A legally binding agreement or other legally enforceable mechanism that permits it to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the requirements of this part, the full amount of the AHP subsidy; or

(B) If the Bank agrees and such an agreement is legally enforceable, a three-party agreement that includes the Bank, the applicant and the loan fund or loan consortium that permits the Bank to recover from the loan fund or loan consortium, in the event of fraud or willful non-compliance by the loan fund or loan consortium with respect to the requirements of this part, the full amount of the AHP subsidy.

(3)(i) In the event of a sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, the full amount the AHP subsidy shall be recovered by the loan fund or loan consortium from the sponsor or owner, to be used for additional AHP projects.

(ii)(A) The loan fund or loan consortium shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part, and the applicant shall have in place a legally binding agreement or other legally enforceable mechanism that permits it to recover from the loan fund or loan consortium such amount recovered by the loan fund or loan consortium from the sponsor or owner; or

(B) The applicant shall have in place, if the Bank agrees and such agreement is legally enforceable, a four-party agreement that includes the Bank, the applicant, the loan fund or loan consortium and the sponsor or owner, that permits the Bank to recover from the sponsor or owner the full amount of the AHP subsidy provided to the project in the event of the sponsor's or owner's fraud or willful non-compliance with respect to the requirements of this part.

(4) The Board in its discretion may grant a waiver of any required remedial actions under this paragraph (e) for fraud or willful non-compliance with respect to the requirements of this part, upon written request by the Bank, applicant, loan fund or loan consortium, sponsor or owner.

Subpart J—Required AHP Contributions

§ 960.18 Required annual AHP contributions.

Each Bank shall fund its AHP in accordance with the following formula:

(a) In 1994, the greater of:

(1) 6 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $75 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

(b) In 1995 and each year thereafter, the greater of:

(1) 10 percent of the Bank's net earnings for the previous year; or

(2) That Bank's *pro rata* share of an aggregate of $100 million to be contributed in total by the Banks, such proration being made on the basis of the net earnings of the Banks for the previous year.

§ 960.19 Temporary suspension of AHP contributions.

(a) *Application for temporary suspension.* (1) If a Bank finds that the contributions required pursuant to § 960.18 are contributing to the financial instability of the Bank, the Bank shall notify the Board promptly, and may apply in writing to the Board for a temporary suspension of such contributions.

(2) A Bank's application for a temporary suspension of contributions shall:

(i) State the period of time for which the Bank seeks a suspension;

(ii) State the grounds for a suspension;

(iii) Include a plan for returning the Bank to a financially stable position; and

(iv) Be accompanied by the Bank's preceding year's annual financial report, if available, and the Bank's most recent quarterly and monthly financial statements and any other financial data the Bank wishes the Board to consider.

(b) *Board review of application for temporary suspension.*—(1) *Grounds for approval of application.* In reviewing a Bank's application for a temporary suspension of contributions to determine the Bank's financial instability, the Board shall consider the following factors:

(i) Whether the Bank's earnings are severely depressed. The Board shall consider the extent to which the Bank's quarterly or annual net earnings have decreased from the preceding quarter or year, and whether such decline is projected to continue;

(ii) Whether there has been a substantial decline in the Bank's membership capital. The Board shall consider the extent to which the Bank's paid-in membership capital has declined in any given quarter or year, and whether such decline is projected to continue;

(iii) Whether there has been a substantial reduction in the Bank's advances outstanding. The Board shall consider the extent to which the Bank's level of advances has declined in any given quarter or year, and whether such decline is projected to continue; and

(iv) Whether any other financial condition exists with respect to the Bank which has resulted in, or is likely to result in, the financial instability of the Bank.

(2) *Limitations on grounds for approval of application.* The Board shall disapprove an application for a temporary suspension if it determines that the Bank's reduction in earnings is a result of:

(i) A change in the terms of advances (other than subsidized advances) to members which is not justified by market conditions;

(ii) Inordinate operating and administrative expenses; or

(iii) Mismanagement.

(c) *Board decision.* The Board shall approve or disapprove a Bank's application for a temporary suspension within 30 calendar days of receipt of such application, and the Board's decision shall be in writing and shall be accompanied by specific findings and reasons for its action. A copy of the Board's decision shall be forwarded to each of the Banks.

(d) *Board approval of application for temporary suspension.* (1) If the Board approves a Bank's application for a temporary suspension, the Board's written decision shall specify the period of time such suspension shall remain in effect.

(2) During the term of a temporary suspension approved by the Board, the affected Bank shall provide to the Board such financial reports as the Board shall require to monitor the financial condition of the Bank, and the Board shall continue to monitor the Bank's financial condition.

(3) If, prior to the conclusion of the temporary suspension period, the Board determines that the Bank has returned to a position of financial stability, the Board may, upon written notice to the Bank, terminate the temporary suspension.

(e) *Application for extension of temporary suspension period.* (1) If a Bank's board of directors determines that the Bank has not returned to, or is not likely to return to, a position of financial stability at the conclusion of the temporary suspension period, the Bank may apply in writing for an extension of the temporary suspension period, stating the grounds for such extension.

(2) The Board shall approve or disapprove a Bank's application for an extension of a temporary suspension period within 30 calendar days of receipt of such application.

(3) The Board's decision on an application for an extension of a temporary suspension period shall be in writing, shall be accompanied by specific findings and reasons for such action, and shall state the effective date and time period if an extension is approved.

(f) *Notice to Congress.* (1) The Board shall notify the Committee on Banking, Finance and Urban Affairs of the House of Representatives and the Committee on Banking, Housing and Urban Affairs of the Senate not less than 60 calendar days before any temporary suspension (or extension of such suspension) approved pursuant to this section takes effect.

(2) A temporary suspension (or extension of such suspension) shall become effective as determined by the Board, unless a joint resolution of Congress is enacted disapproving such suspension (or extension thereof).

Subpart K—Affordable Housing Reserve Fund

§ 960.20 Affordable Housing Reserve Fund.

(a) If a Bank fails to use or commit the full amount it is required to contribute to the AHP in any year pursuant to

§ 960.18, 90 percent of the amount that has not been used or committed in that year shall be deposited by the Bank in an Affordable Housing Reserve Fund established and administered by the Board. The 10 percent of the unused and uncommitted amount retained by the Bank should be fully used or committed by the Bank during the following year, and any remaining portion must be deposited in the Affordable Housing Reserve Fund. A Bank is deemed to have used or committed its required contribution where amounts are remaining at the end of the year because funding the next highest ranking project would exceed the Bank's required AHP contribution for the year. Such amounts remaining shall be combined with returned AHP funds to fund the next highest scoring AHP project or projects, or carried over by the Bank to the next year's AHP funding cycles.

(b) By January 15 of each year, each Bank shall provide to the Board a statement indicating the amount of unused and uncommitted funds from the prior year, if any, which will be deposited in the Affordable Housing Reserve Fund.

(c) By January 31 of each year, the Board will notify the Banks of the total amount of funds, if any, available in the Affordable Housing Reserve Fund.

Subpart L—Advisory Councils

§ 960.21 Advisory Councils.

(a) *Appointment.* (1) Each Bank shall appoint an Advisory Council of seven to 15 persons, as provided in the Bank's AHP implementation plan. Advisory Council members shall reside in the Bank's district and shall be drawn from community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District.

(2) The Bank shall actively solicit nominations from Bank members and community and nonprofit organizations actively involved in providing or promoting low- or moderate-income housing in the Bank's District, and shall allow sufficient time for such organizations to respond, so that the nomination and appointment process is as broad and as participatory as possible.

(3) Advisory Council members shall be appointed by the Banks giving consideration to the size of the District and the diversity of low-income housing needs within the District.

(4) Advisory Council members shall serve for terms of two or three years, and such terms shall be staggered to provide continuity and experience in service, as provided in the Bank's AHP implementation plan. An Advisory Council member may not serve for more than six years consecutively.

(5) An Advisory Council member who, subsequent to appointment, is no longer employed by or associated with a community or nonprofit organization actively involved in providing or promoting low- or moderate-income housing in the Bank's District, may continue to serve on the Advisory Council until the end of his or her term.

(b) *Election of chairperson and vice chairperson.* Each Advisory Council shall elect from among its voting members a chairperson and a vice chairperson.

(c) *Designation of secretary.* Each Advisory Council shall designate a member, or request that a member of the Bank's staff be designated, to act as secretary of the Advisory Council. The secretary shall record and maintain minutes of the meetings of the Advisory Council. Minutes of each meeting shall contain, among other things, a record of the persons present, a description of the matters discussed, and recommendations made. The person acting as secretary at a meeting shall certify to the accuracy of the minutes of that meeting.

(d) *Review of Bank's proposed AHP implementation plan and prior AHP applications.* (1) Prior to approval of the Bank's proposed AHP implementation plan by the Bank's board of directors, the Bank's Advisory Council shall review the proposed AHP implementation plan and provide its recommendations to the Bank's board of directors pursuant to the requirements in § 960.2(c).

(2) Upon request of the Advisory Council, the Bank shall provide the Advisory Council with copies of any AHP applications from prior AHP funding cycles.

(e) *Meetings with the Banks.* The Advisory Council shall meet with representatives of the board of directors of the Bank at least quarterly to advise the Bank on low- and moderate-income housing programs and needs in the Bank's District and on the utilization of AHP subsidized advances or direct subsidies for these purposes.

(f) *Report to the Board.* Each Advisory Council shall submit to the Board annually by March 1 its analysis of the low-income housing activity of its Bank.

(g) *Payment of expenses and compensation.—(1) Expenses.* Each Bank shall reimburse members of its Advisory Council for transportation and subsistence expenses they incur for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank.

(2) *Fees.* Each Bank shall pay members of its Advisory Council a fee for each day devoted to attending quarterly meetings with representatives of the board of directors of the Bank.

Subpart M—Effective Dates

§ 960.22 Effective dates.

This part shall become effective [30 days after publication of the final rule in the **Federal Register**]. The provisions of this part, or portion thereof, may be applied to projects approved for AHP funding prior to [30 days after publication of the final rule in the **Federal Register**] to the extent all relevant parties (the Bank, the applicant, the sponsor or the owner, and if applicable, the loan fund or loan consortium) agree thereto in writing.

Dated: December 15, 1993.

By the Federal Housing Finance Board.

Philip L. Conover,

Managing Director.

[FR Doc. 94–412 Filed 1–7–94; 8:45 am]

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SMALL BUSINESS ADMINISTRATION

13 CFR Part 121

Small Business Size Standards; Waiver of the Nonmanufacturer Rule

AGENCY: Small Business Administration.

ACTION: Notice of intent to terminate waivers of the Nonmanufacturer Rule for several classes of metal products.

SUMMARY: The Small Business Administration (SBA) intends to terminate existing waivers of the Nonmanufacturer Rule for: (1) Bars and rods, high nickel alloy; (2) plate sheet, strip and foil, stainless steel and high nickel alloy; (3) wire, nonelectrical, high nickel alloy; (4) bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass; (5) plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper; (6) sheet and plate aluminum products; and (7) structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy. SBA's intent to terminate these waivers of the Nonmanufacturer Rule is based on our recent discovery of small business manufacturers for these classes of products. Terminating these waivers will require recipients of contracts set aside for small or 8(a) businesses to provide the products of small business manufacturers or processors on such contracts.

DATES: Comments must be received on or before February 9, 1994.

ADDRESSES: Written comments should be addressed to Mr. Robert J. Moffitt, Associate Administrator for Procurement Assistance, U.S. Small Business Administration, Mail Code 6250, 409 3rd Street SW., Washington, DC 20416.

FOR FURTHER INFORMATION CONTACT: James Parker, Procurement Analyst, phone (703) 695–2435.

SUPPLEMENTARY INFORMATION: Public Law 100–656, enacted on November 15, 1988, incorporated into the Small Business Act the previously existing regulation that recipients of Federal contracts set aside for small businesses or SBA 8(a) Program procurements must provide the products of small business manufacturers or processors. The SBA regulations imposing this requirement are found at 13 CFR 121.906(b) and 121.1106(b). Section 210 of Public Law 101–574 further amended the law to allow for waivers for classes of products for which there are no small business manufacturers or processors "available to participate in the Federal procurement market." The actions which the SBA is proposing to take with respect to existing waivers and the reasons for those actions follow:

1. SBA announced its decision to grant the waiver of the Nonmanufacturer Rule for bars and rods, high nickel alloy, in the **Federal Register** on May 15, 1991, p. 22306. Recently, while researching SBA's Procurement Automated Source System (PASS) on a related issue, SBA became aware of the existence of small business manufacturers for items within this class of product. For this reason, SBA intends to terminate the waiver previously granted for bars and rods, high nickel alloy, identified under Product and Service Code (PSC) 9510 and Standard Industrial Classification (SIC) Code 3312.

2. The SBA announced its decision to grant the waiver for plate, sheet, strip and foil, stainless steel and high nickel alloy in the **Federal Register** on May 15, 1991, p. 22306. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for plate, sheet, strip and foil, stainless steel and high nickel alloy identified under Product and Service Code (PSC) 9515 and Standard Industrial Classification (SIC) Code 3312.

3. SBA announced its decision to grant a class waiver for wire, nonelectrical, high nickel alloy, in the **Federal Register** on May 15, 1991, p. 22306. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for wire, nonelectrical, high nickel alloy, identified under Product and Service Code (PSC) 9525 and Standard Industrial Classification (SIC) Code 3356.

4. SBA announced its decision to grant a class waiver for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass in the **Federal Register** on May 15, 1991, p. 22306. The Defense Industrial Supply Center recently brought to SBA's attention the existence of a small business manufacturer for items within this class of products. For this reason, SBA intends to terminate the waiver previously granted for bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass identified under Product and Service Code (PSC) 9530 and Standard Industrial Classification (SIC) Code 3356.

5. SBA announced its decision to grant the waiver for plate, sheet and strip, titanium, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper in the **Federal Register** on August 23, 1991, p. 41787. SBA announced its decision to exclude titanium bars, rods, plates, sheets and strips from this class waiver in the **Federal Register** on April 30, 1992, p. 18396. The remaining class waiver included plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper. While researching the PASS on a related issue, SBA became aware of the existence of a small business manufacturer for items within the class of products of plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper. For this reason, SBA intends to terminate the waiver previously granted for plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper identified under Product and Service Code (PSC) 9535 and Standard Industrial Classification (SIC) Code 3353.

6. SBA announced its intent to grant the waiver for sheet and plate aluminum products in the **Federal Register** on July 13, 1991, p. 28772. It was recently brought to SBA's attention by the Defense Industrial Supply Center that a small business manufacturer exists for items within this class of products. For this reason, SBA intends to terminate the waiver for sheet and plate aluminum products identified under Product and Service Code (PSC) 9535 and Standard Industrial Classification (SIC) Code 3353.

7. SBA announced its decision to grant the waiver for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy in the **Federal Register** on May 15, 1991, p. 22306. It was recently brought to SBA's attention by the Defense Industrial Supply Center that a small business manufacturer exists for items within this class of products. For this reason, SBA intends to terminate the waiver for structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy identified under Product and Service Code (PSC) 9540 and Standard Industrial Classification (SIC) Code 3354.

In summary, based on the above information, the SBA proposes to terminate the class waivers of the Nonmanufacturer Rule for:

1. Bars and rods, high nickel alloy, PSC 9510, SIC 3312;
2. Plate, sheet, strip and foil, stainless steel and high nickel alloy, PSC 9515, SIC 3312;
3. Wire, nonelectrical, high nickel alloy, PSC 9525, SIC 3356;
4. Bars and rods, high nickel alloy, aluminum, nickel-copper, nickel-copper-aluminum, copper, copper-nickel, aluminum-bronze, and naval brass, PSC 9530, SIC 3356;
5. Plate, sheet and strip, nickel-copper, nickel-copper-aluminum, copper-nickel, and copper, PSC 9535, SIC 3353;
6. Sheet and plate aluminum products, PSC 9535, SIC 3353; and
7. Structural shapes, angles, channels, tees and zees, aluminum and high nickel alloy, PSC 9540, SIC 3354.

The public is invited to comment to SBA on its proposed termination of the waivers for the classes of products specified. All comments by the public will be duly considered by SBA in determining whether to finalize its intent to terminate these waivers.

Dated: December 27, 1993.

Robert J. Moffitt,

Associate Administrator for Procurement Assistance.

[FR Doc. 94–474 Filed 1–7–94; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Docket No. 27581, Notice No. 94–1]

Regulatory Review

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Request for comments.

SUMMARY: This notice requests that the public identify regulations that it believes should be amended or eliminated to reduce undue regulatory burdens, if any, consistent with the FAA's statutory safety, security, and other public interest responsibilities. This notice asks each commenter to identify, in order of priority, those regulations that are believed to be unwarranted or inappropriate. In order to focus agency consideration, each commenter is asked to concentrate on no more than three regulations he or she believes to be of primary concern. The agency asks further that each commenter provide a brief explanation of: (1) The bases for the three highest priority recommendations to amend or eliminate the regulations; (2) the ways in which each regulation's objective is otherwise fulfilled (e.g., by duplicative regulations or by technological advances that render the regulations obsolete); and (3) where appropriate, a suggested substitute or amended version of the regulations identified. This information will help the FAA to respond to the Administration's direction to design regulations in the most effective manner to achieve their regulatory objective.

DATES: Comments should be submitted on or before March 11, 1994.

ADDRESSES: Comments should be mailed, in triplicate, to: Federal Aviation Administration, Office of Chief Counsel, Attention: Rules Docket (AGC–200), Docket No. 27581, 800 Independence Avenue, SW., Washington, DC 20591.

Comments delivered must be marked Docket No. 27581. Comments may be examined in room 915G weekdays between 8:30 a.m. and 5 p.m., except on Federal holidays.

FOR FURTHER INFORMATION CONTACT: Chris Christie, Director, Office of Rulemaking, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–9677.

SUPPLEMENTARY INFORMATION: With this Notice, the FAA is undertaking an evaluation aimed at eliminating or amending existing rules and regulations that may not be necessary to achieve the agency's safety, security, and other public interest responsibilities. This effort initiates a response to the recommendations of the 15-member National Commission to Ensure a Strong Competitive Airline Industry, the recommendations of the Vice President's National Performance Review, and DOT and FAA regulatory initiatives.

In April 1993, the National Commission to Ensure a Strong Competitive Airline Industry (Commission) was established by Public Law No. 103–13. The Commission was asked to investigate, study and make policy recommendations regarding the financial vitality and future competitiveness of the U.S. airline and aerospace industries.

In August 1993, the Commission issued a report to the President and Congress that addressed, among other things, the legal and administrative policies that govern the regulatory responsibilities imposed on United States airlines. The Commission found that Federal regulations impose a cumulative burden on airlines. While the FAA has not quantified that burden, the Commission estimated that existing rules have added to airline costs and concluded that the costs of these rules have a direct impact on the airlines' financial condition.

To enhance the FAA's ability to perform its statutory role without undue economic impact on the aviation industry, the Commission recommends that the "FAA/DOT undertake a short-range regulatory review—in close consultation with industry and other interested parties—to eliminate or amend existing regulations to reduce regulatory burdens consistent with safety and security considerations."

In addition, Executive Order 12866 requires that agencies "identify regulations that are cumulative, obsolete, or inconsistent, and where appropriate, eliminate or modify them." In light of these concerns, and consistent with the Administration's Civil Aviation Initiative, this notice solicits public comment that will assist the FAA in focusing attention on areas where the public believes the regulatory burden is excessive and unjustified. In particular, the agency requests that each commenter identify the most significant regulations that the commenter believes may no longer be necessary, are unduly burdensome, or impose excessive costs or red tape. In some cases, for example, important innovations, technologies, or new market opportunities may have taken place or may have been created since a rule was promulgated, potentially rendering a rule obsolete.

The FAA requests commenters to focus their recommendations on up to three regulations they believe to be of primary concern—rather than catalogue all rules that they may view to be objectionable in some respect. This will facilitate development of a manageable overall proposal. Further, each commenter should rank *in priority order* the regulations that the commenter believes the agency should address first. In addition, each submission should include an explanation of: (1) How the identified regulatory requirement is burdensome; (2) how the requirement should be changed or deleted, including, where possible, suggested draft substitutes; (3) how a regulatory change would benefit the public; and (4) how a proposed regulatory change would provide an adequate level of safety, security, or environmental protection. Specific economic information to support a reliable cost/benefit analysis of the proposed change will also be of assistance.

Comments in response to this notice are also expected to facilitate the FAA's regulatory review envisioned by Executive Order No. 12866, "Regulatory Planning and Review," issued September 30, 1993. This executive order requires each agency to create a program under which it will periodically review its existing significant regulations to determine whether any should be modified or eliminated to make the agency's regulatory program more effective and less burdensome.

The comments provided in response to this notice will assist the agency in establishing its priorities for future regulatory changes, including repeal or modification of rules where appropriate, to maintain safety and security while reducing regulatory burdens.

Issued in Washington, DC, on January 5, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–544 Filed 1–6–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 422

RIN 0960–AD45

Organization and Procedures; Procedures of the Office of Hearings and Appeals; Authority of Appeals Officers to Deny a Request for Appeals Council Review

AGENCY: Social Security Administration, HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would amend 20 CFR 422.205, which describes the organization and procedures of the Appeals Council, to authorize Appeals Officers, as well as members of the Appeals Council, to deny a request for review of a decision by an Administrative Law Judge (ALJ).

DATES: To be sure that your comments are considered, we must receive them no later than March 11, 1994.

ADDRESSES: Comments should be submitted in writing to the Commissioner of Social Security, Department of Health and Human Services, P.O. Box 1585, Baltimore, Maryland 21235, or delivered to the Office of Regulations, Social Security Administration, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235, between 8 a.m. and 4:30 p.m. on regular business days. Comments received may be inspected during these same hours by making arrangements with the contact person shown below.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–4 Operations Building, 6401 Security Boulevard, Baltimore, Maryland 21235 (410) 965–1769.

SUPPLEMENTARY INFORMATION:

Background

Part 422 of 20 CFR provides information regarding the organization and procedures of the Social Security Administration (SSA). Subpart C of part 422 describes the procedures of the Office of Hearings and Appeals (OHA). Section 422.205 describes the organization and functions of the Appeals Council, a part of OHA.

By direct delegation of authority from the Secretary of Health and Human Services (Secretary), the Appeals Council is authorized to review hearing decisions and orders of dismissal issued by SSA's ALJs. Through the exercise of this authority, the Appeals Council is responsible for ensuring that the final decisions of the Secretary involving benefits under titles II, XI, XVI and XVIII of the Social Security Act (the Act) and part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended, are proper and in accordance with the law, regulations, and binding agency policy established in Social Security Rulings and Acquiescence Rulings.

Currently, 20 Appeals Council members, hereinafter referred to as either "Administrative Appeals Judges (AAJs)" or "members," comprise the membership of the Appeals Council. The Associate Commissioner for OHA is the Chair of the Appeals Council and is the administrative officer directly responsible to the Commissioner of Social Security for carrying out OHA's mission of holding ALJ hearings and deciding appeals. Each AAJ, other than the Chair, is assisted by an Appeals Officer who serves as a legal clerk. Organizationally, Appeals Officers are a part of the Appeals Council.

The Appeals Council considers appeals under titles II, XI, XVI, and XVIII of the Act, and under part B of title IV of the Federal Mine Safety and Health Act of 1977, as amended. The regulations setting forth the responsibilities of the Appeals Council appear in 20 CFR part 404 (subpart J, §§ 404.967 *et seq.*), part 410 (subpart F, §§ 410.657 *et seq.*), part 416 (subpart N, §§ 416.1467 *et seq.*), and 42 CFR part 405 (subpart G, §§ 405.701(c) and 405.724), part 417 (subpart Q, § 417.634 and part 473 (subpart B, §§ 473.46 and 473.48(b)). These regulations provide that after an ALJ has issued a decision or dismissed a request for a hearing, the Appeals Council may review a case on its own motion or at the request of a party to the hearing decision or dismissal. The Council may deny or dismiss a party's request for review, or it may grant the request and either issue a decision or remand the case to an ALJ. If the Appeals Council denies a request for review of a decision by an ALJ, the ALJ's decision becomes the final decision of the Secretary subject to judicial review under the provisions of section 205(g) of the Act. If the Appeals Council grants a request for review and issues a decision, that decision becomes the final decision of the Secretary subject to judicial review pursuant to section 205(g) of the Act.

Sections 404.970 and 416.1470 describe cases involving Social Security and supplemental security income benefits payable under title II and title XVI of the Act that the Appeals Council will review. Those sections provide that the Appeals Council will review a case if the action, findings or conclusions of the ALJ are not supported by substantial evidence; there is an error of law; or there appears to be an abuse of discretion by the ALJ. Those sections also provide that the Appeals Council will review a case that presents a broad policy or procedural issue that may affect the general public interest. The same standards apply to determine if the Appeals Council will review a case under title XVIII of the Act or under part B of title IV of the Federal Mine Safety and Health Act of 1977.

Over the years, there have been questions about the functions and operations of the Appeals Council. Some commenters have questioned the usefulness of review by the Appeals Council. Several studies have addressed the role of the Appeals Council, resulting in many recommendations for improving the Council's structure and operations.

In its Recommendation 87–7: A New Role for the Social Security Appeals Council (adopted December 18, 1987), the Administrative Conference of the United States (ACUS) concluded that the high volume of work of the Council (up to 500 cases per member per month) precluded it from detecting emerging problems, identifying new issues to be resolved, and identifying and developing needed policies. ACUS recommended that the Secretary and SSA restructure the Appeals Council in "a fashion that redirects the institution's goals and operations from an exclusive focus on processing the stream of individual cases and toward an emphasis on improved organizational effectiveness" (1 CFR 305.87–7). To this end, ACUS recommended that "the Appeals Council should be provided the authority to reduce significantly its caseload and also be given, as its principal mandate, the responsibility to recommend and, where appropriate, develop and implement adjudicatory principles and decisional standards for the disability determination process." ACUS also recommended that the agency enhance the status of the Appeals Council and provide law clerks to its members.

To address the workload problems ACUS discussed in its recommendation, SSA decided, in 1988, to add Appeals Officers to the Council to enable the members to focus their attention on the more complex and significant cases, including those cases presenting important policy or procedural issues.

Appeals Officers presently assist AAJs in considering recommendations made by the Council's support staff in OHA's Office of Appellate Operations. Appeals Officers, who are attorneys, also act as

the AAJs' staff attorneys, researching and providing legal memoranda on issues arising from cases that come to the attention of the Appeals Council. However, because the Appeals Officers do not have authority under our existing regulations to carry out any of the decision making responsibilities of the AAJs, one or more AAJs must make these decisions.

Research we have supported since we established the Appeals Officer position has persuaded us that if the Appeals Officers are authorized to assume some of the responsibilities of the AAJs, the AAJs will be able to focus more of their attention on cases that present broad policy or procedural issues. In a report commissioned by ACUS in 1989 (Report and Recommendations on the Social Security Administration's Administrative Appeals Process), Professor Frank S. Block discussed the Appeals Council's workload and stated that the Council could not be expected to assume a meaningful review function for all claims that might be presented to it. One of the recommendations in the report was that the Appeals Council be authorized "to use staff or lower level Council members to deny a request for review, and limit the review of cases by the Appeals Council to those raising significant policy issues." See Recommendation No. 12.

To complete the changes we contemplated when we established the Appeals Officer position, we propose to amend § 422.205 to authorize Appeals Officers to deny a request for review of an ALJ hearing decision. Because an ALJ's dismissal of a request for a hearing is not subject to judicial review, AAJs will continue to decide whether to grant or deny a request for review of a hearing dismissal. Appeals Officers will continue to receive guidance, direction and supervision from AAJs, including instructions as to specific issues or kinds of cases requiring the attention of the AAJ.

We believe this proposed change, which provides Appeals Officers a specific and limited authority, will improve both the quality and efficiency of the service the Appeals Council is able to provide. The proposed change should allow the Council to give the public a more timely response to their requests for review and increase the ability of the AAJs to carry out their important function of providing review of many ALJ decisions.

Although the Appeals Officer under the proposed rule would have authority to deny a request for review of an ALJ decision, he or she may also refer a particular case to an AAJ with a recommendation if it involves complex factual issues or complicated interpretative issues of law and/or regulations. In addition, all cases in which an analyst in OHA's Office of Appellate Operations prepares a recommendation to grant a request for review will be submitted directly to an AAJ for disposition. We believe this process will serve two purposes: (1) It will expedite bringing the "close cases," which are normally more complex, to the AAJ's attention; and (2) it will allow the AAJs to focus on those cases raising significant issues.

We propose to make this change in the regulation concerning the operating procedures of the Appeals Council under the provisions of sections 205, 1102, and 1631 of the Act. These statutory sections give the Secretary broad regulatory authority to establish procedures that are necessary and appropriate to carry out the Act's provisions.

Regulatory Provisions

The proposed rule will enable the Appeals Officers to decide whether a request for review of an ALJ decision should be denied, thereby making the decision of the ALJ the final decision of the Secretary for the purpose of any request for judicial review which a party to the decision may decide to file under section 205(g) of the Act. The Appeals Officers will not have authority to grant a request for review, to decide to review a case on the Appeals Council's own motion, to remand a case to an ALJ, to grant or to deny a request to review a hearing dismissal, or to issue a final decision. The authority to exercise those powers of the Council will remain exclusively with the AAJs.

Appeals Officers will be required to apply the same criteria as the AAJs in determining whether to deny a request for review. The Appeals Officers will apply the provisions of §§ 404.970 and 416.1470, which specify when the Appeals Council will review a case, in determining the appropriate action. Judges," or by the proposed change to expand the authority of the Appeals Officers, who organizationally are part of the Council.

Regulatory Procedures

Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. Individuals are not included in the definition of a small entity. However, for purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the proposed rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which substantial number of small entities. Individuals are not included in the definition of a small entity. However, for purposes of the RFA, we consider the majority of Medicare providers, physicians and suppliers to be small entities.

Inasmuch as the proposed rule does not alter the standards for Appeals Council review, we believe that it will have little, if any, effect on providers, physicians and suppliers which request Appeals Council review of Medicare claims. Accordingly, we have determined, and the Secretary certifies, that this proposed rule will not result in a significant economic impact on a substantial number of small entities. Therefore, we have not prepared an RFA analysis.

Paperwork Reduction Act

This regulation imposes no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.773 and 93.774, Medicare; Reporting and recordkeeping requirements; 93.802–93.805 Social Security; and 93.807 Supplemental Security.)

List of Subjects in 20 CFR Part 422

Administrative practice and procedure, Freedom of information, Organization and functions (government agencies), Social security.

Dated: September 1, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: December 22, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we propose to amend part 422 of chapter III of title 20 of the Code of Federal Regulations as follows:

PART 422—ORGANIZATION AND PROCEDURES

1. The authority citation for Subpart C continues to read as follows:

Authority: Secs. 205, 221, 1102, 1869, and 1871 of the Social Security Act; 42 U.S.C. 405, 421, 1302, 1395ff, and 1395hh; sec. 413(b) of the Federal Mine Safety and Health Act of 1977; 30 U.S.C. 923(b).

2. Section 422.205 is amended by revising paragraph (c) to read as follows:

§ 422.205 Review by Appeals Council.

* * * * * *

(c) The denial of a request for review of a hearing decision concerning a determination under § 422.203(a)(1) shall be by such appeals officer or appeals officers or by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair. The denial of a request for review of a hearing dismissal, the dismissal of a request for review, or the refusal of a request to reopen a hearing or Appeals Council decision concerning a determination under § 422.203(a)(1) shall be by such member or members of the Appeals Council as may be designated in the manner prescribed by the Chair or Deputy Chair.

* * * * * *

[FR Doc. 94–481 Filed 1–7–94; 8:45 am]
BILLING CODE 4190–29–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–307, RM–8386]

Radio Broadcasting Services; Jensen Beach and Melbourne, FL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a joint petition by HLG, Inc., licensee of Station WHLG(FM), Jensen Beach, Florida, and City Broadcasting Co., Inc., license of Station WGGD(FM), Melbourne, Florida, proposing the substitution of Channel 272C3 for Channel 272A at Jensen Beach, Florida, and modification of the license for Station WHLG(FM) to specify the higher powered channel, and the substitution of Channel 236A for Channel 272A at Melbourne, Florida, and the modification of Station WGGD(FM)'s license to specify the alternate Class A channel. Channel 272C3 can be allotted to Jensen Beach in compliance with the minimum distance separation requirements of the Commission's Rules at the licensed transmitter site. The coordinates for Channel 272C3 at Jensen Beach are 27–12–53 North Latitude and 80–15–24 West Longitude. Channel 236A can be allotted to Melbourne in compliance with the minimum distance separation requirements of the Commission's Rules with a site restriction of 6.4 kilometers (4.0 miles) north of the community, in order to avoid a short-spacing to Station WWRM(FM), Channel 235C, Tampa, Florida. The coordinates for Channel 236A at Melbourne are 28–08–08 North Latitude and 80–35–35 West Longitude.

DATES: Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Bruce A. Eisen, Kaye, Scholer, Fierman, Hays & Handler, 901 15th Street, NW., suite 1100, Washington, DC 20005–2327 (Counsel for HLG, Inc. and City Broadcasting Company, Inc.).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–307, adopted December 8, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–471 Filed 1–7–94; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–316, RM–8403]

Radio Broadcasting Services; Douglas and Unionville, GA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition by Orchon Media, Inc., permittee of Station WKZZ(FM), Channel 223A, Douglas, Georgia, requesting the substitution of Channel 223C3 for Channel 223A at Douglas, Georgia, and the reallotment of Channel 223C3 from Douglas to Unionville, Georgia, and the modification of the construction permit for Station WKZZ(FM) to specify Unionville as its community of license, in accordance with Section 1.420(i) of the Commission's rules. The coordinates for Channel 223C3 at Unionville are North Latitude 31–31–05 and West Longitude 83–20–43.

DATES: Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Robert S. Stone, McCampbell & Young, 2021 Plaza Tower, P.O. Box 550, Knoxville, TN 37901–0550 (Attorney for petitioner).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–316, adopted December 13, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in

Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-472 Filed 1-7-94; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93-315, RM-8320]

Radio Broadcasting Services; Huntsville, MO

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Contemporary Broadcasting, Inc., proposing the substitution of Channel 278C1 for Channel 278C2 at Huntsville, Missouri, and modification of the construction permit for Station KTDI to specify operation on the higher class channel. The coordinates for Channel 278C1 are 39-39-30 North Latitude and 92-13-10 West Longitude. We shall propose to modify the construction permit for Station KTDI in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 25, 1994, and reply comments on or before March 14, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Janet P. Cox, Vice President, Contemporary Broadcasting, Inc., 222 Indacom Drive, St. Peters, Missouri 63376.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-315, adopted December 13, 1993, and released January 4, 1994. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94-473 Filed 1-7-94; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Parts 391, 392, and 396

[FHWA Docket No. MC-93-32]

RIN 2125-AD28

Removal of Obsolete and Redundant Regulations and Appendices

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The FHWA is proposing to remove obsolete and redundant regulations and appendices from the Federal Motor Carrier Safety Regulations (FMCSRs). In addition, the FHWA is proposing minor technical changes in an effort to keep the FMCSRs current. The removal of obsolete and redundant regulations and appendices is one of the first actions taken by the FHWA following the Agency's Zero Base Regulatory Review public outreach sessions. The deletion of these regulations should result in the reduction of the paperwork burden on the industry without any reduction in safety benefits.

DATES: Comments must be received on or before March 11, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. MC-93-32, room 4232, HCC-10, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street SW., Washington, DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped postcard.

FOR FURTHER INFORMATION CONTACT: Mr. William Blount, Office of Motor Carrier Standards, (202) 366-4009, or Mr. Charles E. Medalen, Office of Chief Counsel, (202) 366-1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION:

Background

The primary focus of the FHWA's Motor Carrier Safety Program is to reduce commercial motor vehicle (CMV) accidents and the attendant fatalities, injuries, and property losses. To remain effective, regulations must reflect trends in State regulatory practices as well as technical and operational changes in the motor carrier industry. The motor carrier safety regulations were initially promulgated and enforced by the Interstate Commerce Commission (ICC) in 1937. In 1967 the Department of Transportation (DOT) was created by the Department of Transportation Act of 1966, (Pub. L. 89-670, 80 Stat. 931) and the regulatory and enforcement authority for motor carrier safety was transferred to the DOT. Today this authority is vested in the FHWA.

Over the years, the FMCSRs have been modified incrementally, usually by addition of new provisions and often because of congressional mandates. Some sections, however, no longer correspond to current practices in the motor carrier industry, and others have been superseded by State or local initiatives. In September 1992, the Federal Highway Administration began a comprehensive multi-year effort to re-create a body of safety rules and regulations that are (1) understandable, (2) enforceable, (3) capable of being implemented by industry, and above all, (4) consistent with highway safety. The effort has been termed "Zero Base Regulatory Review." The review will not edit the current regulations, but will start with the basic questions of who, what, and how do we regulate and what is essential to improve motor carrier safety.

Concurrent with the Zero Base effort, the FHWA participated in a governmentwide review of regulations designed to identify regulations that were no longer required or unnecessarily hindered economic growth. The FHWA's proposed deletions were incorporated into an NPRM published by the Office of the Secretary of Transportation (OST) on May 20, 1992 (57 FR 21362). On December 22, 1992, the OST published a final rule but declined to take final action on the FHWA proposals. 57 FR 60725.

Docket comments submitted in response to the May 20 NPRM, and other comments received in conjunction with the FHWA's Zero Base review effort, were evaluated by the FHWA in preparing the current NPRM. The FHWA has identified several requirements that are obsolete or redundant, i.e., which are repeated by State law or covered in another part of the FMCSRs or which could be reissued as non-regulatory guidance.

Discussion

Criteria Used for Regulation Review

The objectives of the FHWA's regulatory review were to (1) eliminate requirements not needed to carry out the regulatory program; (2) ensure that rules are clear and succinct; (3) reduce lengthy and excessively detailed regulations whenever possible; (4) eliminate redundancy; (5) eliminate excessive reporting requirements; and (6) reduce or eliminate paperwork burdens wherever possible, without compromising safety.

Section-by-Section Analysis

Part 391—Qualifications of Drivers

The primary function of part 391 is to ensure that operators of CMVs meet minimum physical standards and possess the knowledge, skills, and abilities to operate CMVs safely. The FHWA has reviewed the regulations in part 391 and has determined that all requirements pertaining to the written examination and record of violations are unnecessary, for the reasons set forth below.

Written examination. The written examination tests prospective drivers on the rules and requirements established by the FMCSRs. However, the examination is an instructional tool only and a person's qualification is not affected by his or her performance on the examination. Carriers are not obligated to take applicants' scores into consideration when making hiring decisions, so the Federal requirement is of only marginal usefulness. Carriers may continue to give the test, but the FHWA will no longer require them to do so. Moreover, drivers who are subject to the Commercial Driver's License (CDL) requirements must pass a knowledge test to obtain a CDL, so for CDL holders the written exam is both redundant and ineffectual. Therefore, the written examination (contained in appendix C) and all related qualification and recordkeeping requirements would be removed. The sections to be removed or amended by this proposal include §§ 391.11(b)(11); 391.35; 391.37; 391.51(c)(5); 391.51(d)(3); 391.61; 391.67(a); 391.67(c); 391.69(b); 391.71(a) and appendix C to subchapter B.

List of violations. The objective of the record of violations is to notify the employing motor carrier of all of a driver's moving violations of motor vehicle traffic laws. This information is to be used by the carrier to ensure that its drivers have not been disqualified to drive a CMV.

The CDL regulations require CMV drivers to notify their current employers within 30 days of any conviction for a non-parking violation in any kind of vehicle (not only a CMV). If the conviction occurred in a jurisdiction other than the one that issued the CDL, the driver must also report it to the issuing jurisdiction within 30 days (49 CFR 383.31). Therefore, the provisions in § 391.27 for motor carriers to require their drivers to prepare and furnish a list of all traffic violations during the preceding 12 months at least once every year, and to maintain the record of violations in driver qualification files for three years, are unnecessary and redundant. Furthermore, it is a common practice for motor carriers or their insurance providers to obtain from the State licensing agency the motor vehicle records on each of their drivers once or more per year, although this is not required. The FHWA is therefore proposing to delete § 391.27 and all related qualification and recordkeeping requirements. The sections to be removed or amended by this proposal include §§ 391.11(b)(8); 391.27; 391.51(b)(4); 391.51(h)(3); 391.63(a)(4); 391.67(a).

Miscellaneous. The FHWA is also proposing minor technical corrections to § 391.51(b)(2) and § 391.51(g). These corrections will bring the regulation into conformance with organizational changes of the regional offices of the Federal Highway Administration, and will correctly identify the new title of the Regional Director of Motor Carriers.

Drivers operating in Hawaii. The limited exemption in § 391.69(a) for drivers operating in the State of Hawaii is obsolete. Section 391.69(a) states that "drivers who will reach the age of 21 no later than April 1, 1976, may continue to drive within the State of Hawaii." Since this date has passed, the provision should be removed.

Part 392—Driving of Motor Vehicles

The FHWA has identified regulations within part 392, Driving of Motor Vehicles, that are redundant of State and local laws. The regulations in part 392 are designed to reduce Commercial Motor Vehicle accidents by requiring that every motor vehicle be operated in accordance with State and local laws and ordinances, or FHWA regulations, whichever imposes the higher standard of care. The driving regulations and rules of the road in part 392 resemble traffic laws and ordinances. Basic rules of the road for trucks and buses are more appropriately monitored and enforced by State and local authorities under their own laws than by Federal regulators. In order to reduce duplication of enforcement requirements, many of the rules contained in part 392 should be removed. The FHWA is proposing to remove the sections discussed below:

Section 392.9a Corrective lenses to be worn.

The FHWA is proposing to remove this section because it is duplicated by State driver licensing laws. State laws routinely require drivers who need glasses or contact lenses to wear them while driving. In addition, the requirement that wearers of contact lenses carry an extra set of them while driving does nothing to improve safety since a spare lens could not be inserted before bringing the vehicle to a stop.

Section 392.12 Drawbridges; stopping of buses.

Section 392.18 slow moving vehicles; hazard warning signal flashers.

Section 392.21 Stopped vehicles not to interfere with other traffic.

The FHWA is proposing to remove these sections because they are unenforceable by FHWA field staff and are more appropriately addressed by State and local ordinances. In most, if not all, cases, State and local laws provide that drivers are required to observe traffic signs. State and local enforcement officers are responsible for maintaining proper traffic flow and handling slow moving and stepped vehicles.

Section 392.30 Lighted lamps; moving vehicles.

Section 392.31 Lighted lamps; stopped or parked vehicles.

Section 392.32 Upper and lower headlamp beams.

The FHWA is proposing to remove these sections because they are duplicated by State laws and can only be enforced by State or local agencies. In addition, the requirements for lighting devices are addressed in part 393 of the FMCSRs.

Section 392.40 All accidents.

Section 392.41 Striking unattended vehicle.

The FHWA is proposing to remove these two sections because they duplicate State ordinances.

Section 392.61 Driving by unauthorized person.

Section 392.62 Bus driver; distraction.

Section 392.65 Sleeper berth; transfer to or from.

Section 392.69 Sleeper berth, occupation.

The FHWA is proposing to remove §§ 392.61 and 392.69 because the FHWA believes that these situations should be governed by company policy or a labor management agreement. Section 392.62 duplicates State and local regulations and should be removed. Section 392.65 is proposed to be removed because it is obsolete. There are very few truck tractors still in use that require entry into the sleeper berth from outside the vehicle.

Part 396—Inspection, Repair, and Maintenance

Part 396 places the responsibility upon the motor carrier to insure that its vehicles are properly maintained. The FHWA is proposing to remove § 396.3(b)(4) because it is redundant. Section 396.3(b)(3) already requires motor carriers to maintain for vehicles controlled for 30 consecutive days or more a record of inspection, repairs and maintenance indicating their date and nature. Since the lubrication record required by § 396.3(b)(4) is a maintenance record, the requirement is duplicative and should be removed.

Appendix A to Subchapter B

Appendix A to subchapter B includes all interpretations that were issued by the FHWA up to the publication of a collection of interpretations on November 23, 1977 (42 FR 60078). A new compilation of interpretations was recently published in the **Federal Register** on November 17, 1993 (58 FR 60734). Therefore, appendix A is redundant and obsolete, and the FHWA is proposing it be removed.

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practicable, but the FHWA may issue a final rule at any time after the close of the comment period. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This proposed rule would remove obsolete and redundant regulations from the FMCSRs. The FHWA has determined that this document is not a significant regulatory action under Executive Order 12866 or a significant regulation under the regulatory policies and procedures of the DOT. It is anticipated that the economic impact of this rulemaking will be minimal. Therefore, a full regulatory evaluation is not required.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA has evaluated the effects of this proposal on small entities. This action would lessen the regulatory burden on small and large entities subject to the FMCSRs by removing recordkeeping requirements associated with the written examination and record of violations. Based on the evaluation of this proposal, the FHWA certifies that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rule does not have sufficient federalism implications to warrant the preparation of a full Federalism Assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This rulemaking action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*

National Environmental Policy Act

The agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Parts 391, 392, and 396

Highway safety, Highways and roads, Motor carriers, and Motor vehicle safety.

Issued on: January 3, 1994.

Rodney E. Slater,

Federal Highway Administrator.

In consideration of the foregoing, the FHWA proposes to amend title 49, Code of Federal Regulations, chapter III, subchapter B, parts 391, 392, 396, and appendices A and C to subchapter B as set forth below:

PART 391—QUALIFICATIONS OF DRIVERS [AMENDED]

1. The authority citation for part 391 continues to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 504 and 3102; 49 CFR 1.48.

§ 391.11 [Amended]

2. Section 391.11 is amended by removing paragraphs (b)(8) and (b)(11), and redesignating paragraphs (b)(9), (10) and (12) as paragraphs (b)(8), (9) and (10).

§§ 391.27, 391.35, and 391.37 [Removed and Reserved]

3. Sections 391.27, 391.35, and 391.37 are removed and reserved.

§ 391.51 [Amended]

4. Section 391.51 is amended as follows:

a. In paragraph (b)(2), by removing "The Regional Federal Highway Administrator's letter" and inserting in lieu thereof the words "The letter from the Regional Director of Motor Carriers";

b. By removing paragraph (b)(4) and redesignating paragraph (b)(5) as paragraph (b)(4), and by adding the word "and" at the end of paragraph (b)(3);

c. In paragraph (c)(4), by removing "; and" and inserting in lieu thereof a period, and by removing paragraph (c)(5);

d. By removing paragraph (d)(3) and redesignating paragraph (d)(4) as paragraph (d)(3), and by adding the word "and" at the end of paragraph (d)(2);

e. In paragraph (g), by removing the words "Director, Regional Motor Carrier Safety Office" and "Directors of Regional Motor Carrier Safety Offices" and inserting in lieu thereof "Regional Director of Motor Carriers" and "Regional Directors of Motor Carriers", respectively; and

f. By removing paragraph (h)(3) and redesignating paragraph (h)(4) as paragraph (h)(3).

5. Section 391.61 is revised to read as follows:

§ 391.61 Drivers who were regularly employed before January 1, 1971.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(8) of § 391.11 (relating to qualifications of drivers).

§ 391.63 [Amended]

6. Section 391.63 is amended by removing paragraph (a)(4), and paragraph (a)(3) is amended by removing "; or" and inserting in lieu thereof a period.

7. Section 391.67 is revised to read as follows:

§ 391.67 Drivers of articulated (combination) farm vehicles.

The following rules in this part do not apply to a farm vehicle driver (as defined in § 390.5) who is 18 years of age or older and who drives an articulated motor vehicle:

(a) Paragraphs (b)(1), (b)(9), and (b)(10) of § 391.11 (relating to driver qualifications in general).

(b) Subpart C (relating to disclosure of, investigation into, and inquiries about the background, character, and driving record of, drivers).

(c) Subpart D (relating to road tests).

(d) So much of §§ 391.41 and 391.45 as require a driver to be medically examined and to have a medical examiner's certificate on his person before January 1, 1973.

(e) Subpart F (relating to maintenance of files and records).

8. Section 391.69 is revised to read as follows:

§ 391.69 Drivers operating in Hawaii.

The provisions of § 391.21 (relating to applications for employment), § 391.23 (relating to investigations and inquiries), and § 391.31 (relating to road tests) do not apply to a driver who has been a regularly employed driver (as defined in § 390.5 of this subchapter) of a motor carrier for a continuous period which began before January 1, 1971, as long as he/she continues to be a regularly employed driver of that motor carrier. Such a driver is qualified to drive a motor vehicle if he/she fulfills the requirements of paragraphs (b)(1) through (b)(8) of § 391.11 (relating to qualifications of drivers).

§ 391.71 [Amended]

9. In § 391.71 paragraph (a) introductory text is amended by removing the words "and § 391.35 (relating to written examination)" and inserting the word "and" before the reference to "§ 391.31."

PART 392—DRIVING OF MOTOR VEHICLES

10. The authority citation for part 392 is revised to read as follows:

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

§§ 392.9a, 392.12, 392.18, 392.21, 392.30, 392.31, 392.32, 392.40, 392.41, 392.61, 392.62, 392.65, and 392.69 [Removed and Reserved]

11. Sections 392.9a, 392.12, 392.18, 392.21, 392.30, 392.31, 392.32, 392.40, 392.41, 392.61, 392.62, 392.65, and 392.69 are removed and reserved.

PART 396—INSPECTION, REPAIR, AND MAINTENANCE

12. The authority citation for part 396 continues to read as follows:

Authority: 49 U.S.C. app. 2509; 49 U.S.C. 3102; 49 CFR 1.48.

§ 396.3 [Amended]

13. Section 396.3 is amended by removing paragraph (b)(4) and redesignating paragraph (b)(5) as paragraph (b)(4), and by adding the word "and" at the end of paragraph (b)(3).

Appendices A and C [Removed and Reserved]

14. In chapter III, suchapter B, appendices A and C are removed and reserved.

[FR Doc. 94–444 Filed 1–7–94; 8:45 am]

BILLING CODE 4910-22-M

Notices

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

Summer Food Service Program for Children; Program Reimbursement for 1994

AGENCY: Food and Nutrition Service, USDA.

ACTION: Notice.

SUMMARY: This notice informs the public of the annual adjustments to the reimbursement rates for meals served in the Summer Food Service Program for Children (SFSP). These adjustments reflect changes in the Consumer Price Index and are required by the statute governing the Program.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie, Chief, Policy and Program Development Branch, Child Nutrition Division, Food and Nutrition Service, U.S. Department of Agriculture, Alexandria, Virginia 22302, (703) 305–2620.

SUPPLEMENTARY INFORMATION: This action is not a rule as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612) and thus is exempt from the provisions of that Act. In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), no new recordkeeping or reporting requirements have been included that are subject to approval from the Office of Management and Budget.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.559 and is subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials, (7 CFR part 3015, subpart V, and final rule related notice published at 48 FR 29114, June 24, 1983).

Definitions

The terms used in this Notice shall have the meaning ascribed to them in the regulations governing the Summer Food Service Program for Children (7 CFR part 225).

Background

Pursuant to section 13 of the National School Lunch Act (42 U.S.C. 1761) and the regulations governing the SFSP (7 CFR part 225), notice is hereby given of adjustments in Program payments for meals served to children participating in the SFSP during the 1994 Program. Adjustments are based on changes in the food away from home series of the Consumer Price Index for All Urban Consumers for the period November 1992 through November 1993.

The new 1994 reimbursement rates in dollars are as follows:

MAXIMUM PER MEAL REIMBURSEMENT RATES

Operating Costs:	
Breakfast	1.1600
Lunch or Supper	2.0825
Supplement	.5450
Administrative Costs:	
a. For meals served at rural or self-preparation sites:	
Breakfast	.1075
Lunch or Supper	.1975
Supplement	.0525
b. For meals served at other types of sites:	
Breakfast	.0850
Lunch or Supper	.1650
Supplement	.0425

The total amount of payments to State agencies for disbursement to Program sponsors will be based upon these Program reimbursement rates and the number of meals of each type served. The above reimbursement rates, before being rounded-off to the nearest quarter-cent, represent a 1.91 per cent increase during 1993 (from 141.5 in November 1992 to 144.2 in November 1993) in the food away from home series of the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor. Because of the relatively small adjustment, the Department points out that several of the new administrative rates are identical to the rates in effect for the 1993 Program.

Authority: Secs. 9, 13 and 14, National School Lunch Act, as amended (42 U.S.C. 1758, 1761 and 1762a).

Dated: January 3, 1994.

George A. Braley,

Acting Administrator, Food and Nutrition Service.

[FR Doc. 94–478 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–30–M

Forest Service

Grand Island Advisory Commission; Meeting

AGENCY: Forest Service, USDA.

ACTION: Grand Island Advisory Commission meeting.

SUMMARY: The Grand Island Advisory Commission will meet on January 21, 1994 at 8 a.m. at the Comfort Inn on M–28 East in Munising, Michigan. An agenda for the one day meeting will consist of a final planning team update, a review of the final changes to the alternatives and a discussion by the Advisory Commission on the recommendation to the Secretary

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions about this meeting to Dennis Jones, Public Service Team Leader, Hiawatha National Forest, 2727 N. Lincoln Road, Escanaba, MI 49829, (906) 786–4062.

Dated: January 3, 1994.

Deborah Rebholz,

Acting Forest Supervisor.

[FR Doc. 94–419 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Municipal Interest Rates for First Quarter of 1994

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of interest rates for the first quarter of 1994.

SUMMARY: REA hereby announces the interest rates for municipal rate loans with interest rate terms beginning during the first calendar quarter of 1994.

DATES: These interest rates are effective for interest rate terms that commence during the period beginning January 1, 1994, and ending March 31, 1994.

FOR FURTHER INFORMATION CONTACT: Sue Arnold, Management Analyst, U.S. Department of Agriculture, Rural Electrification Administration, room 2230–s, 14th Street & Independence Avenue, SW., Washington, DC 20250–1500. Telephone: 202–720–0736. FAX: 202–720–4120.

SUPPLEMENTARY INFORMATION: On December 20, 1993, at 58 FR 66260, REA published a rule establishing a program for electric loans at municipal interest rates. Pursuant to 7 CFR 1714.5 of this rule, the interest rates on these municipal rate loans are based on indexes published in the "Bond Buyer" for the four weeks prior to the first Friday of the last month before the beginning of the quarter. In accordance with 7 CFR 1714.5, the interest rates are established as shown in the following table for all interest rate terms that begin at any time during the first calendar quarter of 1994.

Interest rate term ends in (year)	Interest rate (0.000 percent)
2015 or later	5.375
2014	5.375
2013	5.375
2012	5.375
2011	5.375
2010	5.250
2009	5.250
2008	5.250
2007	5.125
2006	5.000
2005	4.875
2004	4.750
2003	4.750
2002	4.625
2001	4.500
2000	4.375
1999	4.250
1998	4.125
1997	3.875
1996	3.625
1995	3.375

Dated: January 4, 1994.

Wally Beyer,

Administrator.

[FR Doc. 94–479 Filed 1–7–94; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Order No. 676]

Tampa, Florida; Expansion of Foreign-Trade Zone 79

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Expansion of Foreign-Trade Zone 79, Tampa, Florida.

Whereas, an application from the City of Tampa, Florida, grantee of Foreign-Trade Zone No. 79, for authority to expand its general-purpose zone in Tampa, Florida, within the Tampa Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on April 20, 1992, (Docket 12–92, 57 FR 19596, 5/7/92) (Amendments: 58 FR 31362, 6/2/93; 58 FR 36932, 7/9/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, as amended, subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–512 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 675]

Maytag Corp., Galesburg, Illinois; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Removal of Restriction, Maytag Corp., (Household Refrigerators), Subzone 133A, Galesburg, Illinois.

Whereas, pursuant to § 400.32(b)(1) of the Board's regulations, the Maytag Corporation, operator of FTZ Subzone 133A in Galesburg, Illinois (Maytag refrigerator manufacturing plant), has requested removal of Restriction #2 of Board Order 448 (filed 6–4–93 as A(32b1)–2–93; Doc. 61–93 was assigned 12–10–93);

Whereas, Board Order 448 (54 FR 47246; 11–13–89) approving Subzone 133A included Restriction #2 requiring the election of privileged foreign status on foreign compressors (the restriction was temporarily suspended until 12–31–93, Board Order 485, 55 FR 37341, 9–11–90);

Whereas, pursuant to § 400.32(b)(1), the Commerce Department's Assistant Secretary for Import Administration has the authority to act for the Board in making decisions relating to changes in manufacturing/processing activity within existing zones in situations where the proposed activity is similar to that recently approved by the Board; and,

Whereas, the FTZ Staff reviewed the proposal, pursuant to said provision and found that there is no longer a reason for the restriction, and the Executive Secretary concurs in the staff report recommending approval;

Now, therefore, the Acting Assistant Secretary for Import Administration, acting for the Board pursuant to § 400.32(b)(1), concurs in the recommendation and hereby approves the request subject to the Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–510 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 674]

Boone County, Kentucky; Expansion of Foreign-Trade Zone 47

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Expansion of foreign-trade zone 47, Boone County, Kentucky.

Whereas, an application from the Greater Cincinnati Foreign-Trade Zone, Inc., grantee of Foreign-Trade Zone No. 47, for authority to reorganize and expand its general-purpose zone in Boone County, Kentucky, within the Cincinnati Customs port of entry, was filed by the Foreign-Trade Zones (FTZ) Board on November 12, 1992 (Docket 34–92, 57 FR 54568, 11/19/92);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board has found that the requirements of the Act and the regulations are satisfied, and that approval is in the public interest;

Now, Therefore, the Board hereby orders:

The grantee is authorized to expand its zone as requested in the application, subject to the Act and the Board's regulations, including Section 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–509 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 678]

American Food Service Corp., Pennsylvania; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Expansion of foreign-trade zone 35 and approval of export processing activity (beef products), Philadelphia, Pennsylvania area.

Whereas, an application from the Philadelphia Regional Port Authority, grantee of Foreign-Trade Zone No. 35 (Philadelphia, Pennsylvania area), for authority to expand its general-purpose zone to include a site in King of Prussia, Pennsylvania, adjacent to the Philadelphia Customs port of entry, and for authority on behalf of American Foodservice Corporation (AFSC) to conduct activity within FTZ 35 involving the processing of beef products for export, was filed by the Foreign-Trade Zones (FTZ) Board on June 21, 1993, (Docket 26–93, 58 FR 35428, 7/1/93);

Whereas, notice inviting public comment was given in the **Federal Register** and the application has been processed pursuant to the FTZ Act and the Board's regulations; and,

Whereas, the Board, in consultation with the U.S. Department of Agriculture, has found that the requirements of the Act and the regulations are satisfied, and that approval of the expansion and the beef processing activity for export is in the public interest;

Now, therefore, the Board hereby orders:

The application for said expansion and for said processing activity is approved, subject to the Act and the Board's regulations, including § 400.28, and further subject to the following restrictions:

1. AFSC shall reexport all beef admitted to the zone in foreign status (19 CFR 146.41 and 146.42); and,

2. AFSC shall comply with all meat inspection requirements of the U.S. Department of Agriculture's Food Safety and Inspection Service.

Signed at Washington, DC, this 29th day of December 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–507 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 679]

SmithKline Beecham Pharmaceuticals Co., Cidra, Puerto Rico; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of authority for subzone status, SmithKline Beecham Pharmaceuticals Co., (Pharmaceutical Products), Cidra, Puerto Rico.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR Part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61 (San Juan, Puerto Rico), for authority to establish a special-purpose subzone at the pharmaceutical manufacturing plant of SmithKline Beecham Pharmaceuticals Company, located in Cidra, Puerto Rico, was filed by the Board on January 15, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1-93, 58 FR 7529, 2-8-93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application is in the public interest;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61C) at the SmithKline Beecham Pharmaceuticals Company plant in Cidra, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 29th day of December 1993.

Barbara R. Stafford

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–508 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[Order No. 677]

Sterling Pharmaceuticals Inc., Barceloneta, Puerto Rico; Application

Pursuant to its authority under the Foreign-Trade Zones Act of June 18, 1934, as amended (19 U.S.C. 81a–81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Grant of Authority for subzone status, Sterling Pharmaceuticals Inc., (Pharmaceutical Products), Barceloneta, Puerto Rico.

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a–81u) (the Act), the Foreign-Trade Zones Board (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved;

Whereas, an application from the Puerto Rico Commercial and Farm Credit and Development Corporation, grantee of Foreign-Trade Zone 61 (San Juan, Puerto Rico), for authority to establish a special-purpose subzone at the pharmaceutical products manufacturing plant of Sterling Pharmaceuticals Inc., located in Barceloneta, Puerto Rico, was filed by the Board on May 12, 1993, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 1–8–93, 58 FR 29192, 5–19–93) (Amendment: 58 FR 36933, 7–9–93); and,

Whereas, the Board has found that the requirements of the Act and Board's regulations are satisfied, and that approval of the application, as amended, is in the public interest;

Now, Therefore, the Board hereby authorizes the establishment of a subzone (Subzone 61B) at the Sterling Pharmaceuticals Inc., plant in Barceloneta, Puerto Rico, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28.

Signed at Washington, DC, this 23rd day of December 1993.

Barbara R. Stafford

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

Attest:

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–513 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–807]

Final Results of Antidumping Duty Administrative Reviews; Industrial Belts and Components and Parts Thereof, Whether Cured or Uncured, From Japan

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative reviews.

SUMMARY: On November 4, 1993, the Department of Commerce (the Department) published the preliminary results of its administrative reviews of the antidumping duty order on industrial belts and components thereof, whether cured or uncured (industrial belts), from Japan. These reviews cover one manufacturer/exporter and the periods June 1, 1991 through May 31, 1992 and June 1, 1992 through May 31, 1993.

We gave interested parties the opportunity to comment on our preliminary results. Based on our analysis of the comments received, we have not changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Charles Vannatta or John Kugelman, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On November 4, 1993, the Department published in the **Federal Register** (58 FR 58839) the preliminary results of its 1991–92 and 1992–93 administrative reviews of the antidumping duty order on industrial belts from Japan (June 14, 1989, 54 FR 25314, amended August 4, 1989, 54 FR 32104). The Department has now completed these reviews in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Reviews

Imports covered by these reviews are shipments of industrial belts and components and parts thereof, whether cured or uncured, from Japan. These products include V-belts, synchronous belts, and other industrial belts, in part or wholly of rubber or plastic, and containing textile fiber (including glass fiber) or steel wire, cord or strand, and whether in endless (i.e., closed loops) belts, or in belting in lengths or links. These reviews exclude conveyor belts and automotive belts, as well as front engine drive belts found on equipment powered by internal combustion engines, including trucks, tractors, buses, and lift trucks.

During the periods of review the merchandise was classifiable under Harmonized Tariff Schedule (HTS) subheadings, 3926.90.55, 3926.90.56, 3926.90.57, 3926.90.59, 3926.90.60, 4010.10.10, 4010.10.50, 4010.91.11, 4010.91.15, 4010.91.19, 4010.91.50, 4010.99.11, 4010.99.15, 4010.99.19, 4010.99.50, 5910.00.10 5910.00.90, and 7326.20.00. The HTS subheadings are provided for convenience and Customs purposes. The written description remains dispositive.

These reviews cover one Japanese manufacturer and exporter of industrial belts to the United States, Mitsuboshi Belting Limited (MBL), and the periods June 1, 1991 through May 31, 1992, and June 1, 1992 through May 31, 1993.

Analysis of the Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results of these administrative reviews. We received a case brief from MBL, and a rebuttal brief from the petitioner, Gates Rubber Company. We did not receive a request for a hearing.

Comment: MBL acknowledges that the Department's resort to best information available (BIA) is authorized under section 776(c) of the Tariff Act, since MBL did not respond to the Department's questionnaire.

MBL argues, however, that the Department should use information obtained in the first administrative review (1989–90) as BIA instead of the rate from the original less-than-fair-value (LTFV) investigation. MBL contends that the Department is required to consider the most recent information available in deciding upon a BIA rate. According to MBL, the information provided by the respondent in the first administrative review is the most probative evidence of the current margin because the LTFV margin was based solely on information provided by the petitioner for the period October 1986 through March 1988.

Furthermore, MBL argues that it could not make an informed decision to reply to the questionnaires. MBL claims that since the Department has not completed the 1990–91 review before distributing questionnaires for the 1991–92 and 1992–93 reviews, the Department cannot infer that MBL would have responded to these questionnaires if it believed the margins for the 1991–92 and 1992–93 reviews would be lower. Therefore, MBL claims that the Department's conduct in this case is punitive.

Finally, MBL points out that the International Trade Commission's affirmative injury determination is being appealed at the Court of Appeals for the Federal Circuit (CAFC). MBL urges the Department not to assess antidumping duties and order liquidation of their entries in a review where the validity of the underlying order is in question.

Gates argues that the Department should not change its preliminary decision to resort to the LTFV margin from the original investigation as BIA. Gates states that MBL has provided no authority for the proposition that the Department should use as BIA the margin from the preliminary results in the 1989–90 administrative review. Gates contends that knowledge of results of prior reviews is irrelevant. Gates submits that MBL knew it might receive the highest rate, and that it would have submitted information proving lower margins if it could. Finally, Gates asserts that there is no justification for delaying completion of the reviews.

Department's Position: Section 776(c) of the Tariff Act requires us to use BIA "whenever a party or any other person refuses or is unable to produce information requested in a timely manner and in the form required, or otherwise significantly impedes an

investigation." In deciding what to use as BIA, the Department's regulations provide that the Department may take into account whether a party refuses to provide information requested (19 CFR 353.37(b)). MBL's contention that the Department should use the information obtained in the 1989–90 administrative review is contrary to Department policy. When a respondent refuses to cooperate with the Department, it is our policy to assign as a dumping margin to that respondent, as BIA, the higher of: (1) The highest rate found for any firm in the original LTFV investigation or previous administrative review, or (2) the highest rate found in the current review (Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France et al, Final Results of Antidumping Duty Administrative Reviews, 57 FR 28360; 28379 (June 24, 1992)). The Department's methodology for assigning BIA has been upheld by the CAFC (see *Allied-Signal Aerospace Co.* v. *United States*, 996 F.2d 1185 (Fed. Cir. 1993), *Krupp Stahl AG et al.* v. *United States*, 822 F. Supp. 789 (CIT 1993)). Because MBL refused to respond to the Department's questionnaire, it was reasonable for the Department to assign to MBL, as BIA, a rate of 93.16 percent, the highest rate found for any firm in the original LTFV investigation. Furthermore, because the law does not provide for extensions of deadlines pending the outcome of court decisions in other proceedings, we have not delayed our final results.

Final Results of the Review

As a result of these administrative reviews, the Department determines that a dumping margin of 93.16 percent exists for MBL for the periods June 1, 1991 through May 31, 1992 and June 1, 1992 through May 31, 1993.

The Department will instruct the U.S. Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of this notice of final results of review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act:

(1) For subject merchandise exported by Mitsuboshi Belting Ltd., a cash deposit of 93.16 percent;

(2) For subject merchandise exported by manufacturers not covered in these reviews but covered in previous reviews or in the original LTFV investigation, a cash deposit based on the most recently published rate in a final result or determination for which the manufacturer or exporter received a company-specific rate;

(3) If the exporter is not a firm covered in these reviews, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and

(4) If neither the exporter nor the manufacturer is a firm covered in these or any previous reviews conducted by the Department, the cash deposit rate will be 93.16 percent, the "all other" rate established in the LTFV investigation, as discussed below.

On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty orders.

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during these review periods. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning the disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

These administrative reviews and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–516 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–703]

Certain Internal-Combustion Industrial Forklift Trucks From Japan; Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On January 28, 1992, the Department of Commerce published the preliminary results of its 1989–90 administrative review of the antidumping duty order on certain internal-combustion, industrial forklift trucks from Japan. The review covers two manufacturers/exporters of this merchandise to the United States during the period June 1, 1989 through May 31, 1990.

The Department gave interested parties the opportunity to comment on the preliminary results. Based on the analysis of the comments received, the Department adjusted the margins for both companies.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Marchal or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377–3813.

SUPPLEMENTARY INFORMATION:

Background

On January 28, 1992, the Department of Commerce (the Department) published the preliminary results of its administrative review of the antidumping duty order (June 7, 1988, 53 FR 20882) on certain internal-combustion, industrial forklift trucks from Japan in the **Federal Register** (57 FR 3164). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Tariff Act).

Scope of the Review

The products covered by this review are certain internal-combustion, industrial forklift trucks, with lifting capacity of 2,000 to 15,000 pounds. The products covered by this review are

further described as follows: Assembled, not assembled, and less than complete, finished and not finished, operator-riding forklift trucks powered by gasoline, propane, or diesel fuel internal-combustion engines of off-the-highway types used in factories, warehouses, or transportation terminals for short-distance transport, towing, or handling of articles. Less than complete forklift trucks are defined as imports which include a frame by itself or a frame assembled with one or more component parts. Component parts of the subject forklift trucks which are not assembled with a frame are not covered by this order. During the review period such merchandise was classifiable under item numbers 692.4025, 692.4030, and 692.4070 of the Tariff Schedules of the United States Annotated (TSUSA). The merchandise is currently classifiable under the Harmonized Tariff System (HTS) item numbers 8427.20.00–0, 8427.90.00–0, and 8431.20.00–0. The TSUSA and HTS item numbers are provided for convenience and Customs purposes only. The written description remains dispositive.

The review covers sales made by Toyota Motor Corporation (Toyota) and Toyo Umpanki Company, Limited (TCM) during the period from June 1, 1989 through May 31, 1990.

Such or Similar Comparisons

For all respondent companies, pursuant to section 771(16) of the Tariff Act, the Department established categories of "such or similar" merchandise on the basis of load (lifting) capacity of the forklift as imported. Within these categories, the product comparisons were based on six primary characteristics, to which points were assigned to indicate their relative importance. These characteristics and their point totals are as follows: Tire type, 6 points; upright style, 5 points; engine type, 4 points; transmission type, 3 points; maximum forklift height, 2 points; and engine size, 1 point. The sum of these numbers, the "SSM Index Number", was used to match U.S. and home market (HM) sales. We considered models that both summed to 21 points as identical. Where there were no identical products sold in the home market, the Department selected the most similar product on the basis of the point totals resulting from the six characteristics listed above.

Data Changes Included in the Final Results of Review

We found that in TCM's purchase price (PP) sales analysis, we did not include in the credit expense calculation the time between shipment from Japan and subsequent shipment to the customer by TCM's U.S. subsidiary. Therefore, for the final results, we included these expenses.

Analysis of Comments Received

The Department gave interested parties the opportunity to comment on the preliminary results. At the request of the petitioners, (Hyster-Yale Company, Independent Lift Truck Builders Union, International Association of Machinists and Aerospace Workers, International Union, Allied Industrial Workers of America (AFL–CIO), and United Shop and Service Employees) and one respondent, a hearing was held on March 19, 1992. Case and rebuttal briefs were received from petitioners, Toyota, and TCM.

General Comments

Comment 1: Petitioners contend that the Department should run its sales below cost of production (COP) test on comparison models only, not on entire such or similar categories. Petitioners argue that forklifts are not a fungible product, but are instead similar to "job order" products such as mechanical transfer presses, offshore oil platforms, and large power transformers. Petitioners assert that the unique nature of each product means that there is often just one HM sale that is comparable to the U.S. sale, and that if the single HM sale is sold below COP, there likely will be no dumping margin. Petitioners state that this case is distinguishable from other dumping cases (*e.g.*, agricultural, chemical, or metals cases) because relatively few HM sales are weight-averaged. Petitioners accordingly argue that the Department should conduct the sales below COP test on the concordance tape containing comparison models only, not on the universe of HM sales.

TCM argues that, because forklift trucks are not custom-built products, the Department correctly applied the COP test. TCM further states that the Department should maintain its policy of conducting the COP test on each load capacity category.

Department's Position: We agree with petitioners. In accordance with our standard policy, we have revised the sales below COP test so that the test is conducted on a model-specific basis instead of on a such-or-similar category basis.

Comment 2: Petitioners state that the Department should revise its model match methodology because it gives insufficient weight to tire type and, therefore, results in more matches of merchandise, but not in matches that are the most similar. Petitioners contend that tire type is a crucial attribute of a forklift truck because the tire type determines the construction of the frame of the truck, which the Department found to be the "identifying feature and principal component of the product" in the final determination in this case (Final Determination of Sales at Less Than Fair Value: Certain Internal Combustion Industrial Forklift Trucks from Japan (Forklifts LTFV), 53 FR 12552 (April 15, 1988)).

Petitioners suggest three alternative methods for the such or similar comparisons and tire type matching. First, petitioners recommend that the Department return to the original less than fair value matching methodology. Second, petitioners propose increasing the weight for tire type from six to ten points. Finally, petitioners state that matches with less than fifteen points do not constitute similar merchandise because the predominant features of the HM merchandise would be substantially different from the U.S. truck; petitioners argue that the Department should therefore omit all HM sales with less than fifteen points.

TCM notes that the Department's current model match methodology was revised in order to improve the model match process. TCM and Toyota argue that the Department's matching methodology, which gives tire type the highest weight, establishes tire type as the most important criterion. Toyota contends that petitioners' assertion that forklift trucks cannot be similar unless they have an SSM index number of fifteen is unreasonable. This cut-off would eliminate matches of trucks that are "identical in every respect * * * except upright style and its related maximum fork height." Respondents further argue that the Department's twenty percent difference in merchandise test already eliminates dissimilar models, and that the cut-off suggested by petitioners would merely result in a greater number of unmatched sales.

Department's Position: We agree with respondents. During the first administrative review, we refined the model match methodology used in the less-than-fair-value (LTFV) investigation. We are employing this same model match methodology for these final results. One such improvement was the use of a point-weighting scheme, which increased the precision and simplified the reporting requirements. Of the six model match elements, we attach the most weight to tire type. Petitioners did not provide evidence to support their claim that the points accorded to tire type should be

increased from six to ten, or that dissimilar models were matched as the result of a flaw in our methodology. For further discussion of our model match methodology see Comment 80, Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review (Forklifts I), (57 FR 3167, January 28, 1992).

Comment 3: Petitioners' claim that the Department's adjustment for the consumption tax forgiven upon exportation of forklift trucks to the United States is erroneous in several respects. Petitioners state that the Court of International Trade (CIT) has held that taxes on sales in the HM must be passed through to the customer before an upward adjustment of an imputed tax can be made to United States price (USP), and cite *Zenith Electronics Corp.* v. *United States*, 755 F. Supp. 397 (CIT 1990) (*Zenith I*), *Daewoo Electronics Co.*, v. *United States*, 712 F. Supp. 931 (CIT 1989) (*Daewoo*), and *Zenith Electronics Corp.* v. *United States*, 633 F. Supp. 1382 (CIT 1988) (*Zenith II*) in support of this proposition. Petitioners contend that no adjustment is warranted in this case, since neither Toyota nor TCM claimed or proved that the consumption tax imposed on HM sales is passed through to the customers in Japan.

Petitioners further argue that the Department improperly made an adjustment to foreign market value (FMV) to eliminate the absolute difference between the amount of tax in the two markets by adding to FMV the amount of the consumption tax imputed to the U.S. sale. Petitioners state that it is improper for the Department to make such an adjustment in the interest of achieving tax neutrality.

Toyota argues that petitioners' arguments disregard the Department's policy and practice with respect to adjustments to FMV and USP for the Japanese consumption tax. Toyota cites the Department's disagreement with the CIT decisions cited by petitioners. Toyota asserts that it is the Department's long-standing practice not to attempt to measure the amount of tax passed through to customers in the HM. Under the Department's interpretation, section 772(d)(1)(C) of the Tariff Act does not require the Department to measure the incidence of tax in an economic sense. Rather, according to Toyota, the full adjustment for consumption tax is necessary to make an appropriate comparison between USP and FMV. Toyota states that in determinations involving HM taxes, the Department has repeated that it has not had an opportunity to appeal the issue on the merits. Until such time as the issue is finally resolved on appeal, the Department should maintain its long-standing practice.

TCM argues that the Department's consumption tax adjustment is proper and accords with the law, regulations and long-standing practice.

Department's Position: On October 7, 1993, the United States Court of International Trade (CIT), in *Federal-Mogul Corp. and The Torrington Co.* v. *United States*, Slip Op. 93–194 (CIT, October 7, 1993), rejected the Department's methodology for calculating an addition to USP under section 772(d)(1)(C) of the Tariff Act to account for taxes that the exporting country would have assessed on the merchandise had it been sold in the home market. The CIT held that the addition to USP under section 772(d)(1)(C) of the Tariff Act should be the result of applying the foreign market tax rate to the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. *Federal-Mogul*, Slip Op. 93–194 at 12.

The Department has changed its methodology in accordance with the *Federal-Mogul* decisions. The Department will add to USP the result of multiplying the foreign market tax rate by the price of the United States merchandise at the same point in the chain of commerce that the foreign market tax was applied to foreign market sales. The Department will also adjust the USP tax adjustment and the amount of tax included in FMV. These adjustments will deduct the portions of the foreign market tax and the USP tax adjustment that are the result of expenses that are included in the foreign market price used to calculate foreign market tax and are included in the United States merchandise price used to calculate the USP tax adjustment and that are later deducted to calculate FMV and USP. These adjustments to the amount of the foreign market tax and the USP tax adjustment are necessary to prevent our new methodology for calculating the USP tax adjustment from creating antidumping duty margins where no margins would exist if no taxes were levied upon foreign market sales.

This margin creation effect is due to the fact that the bases for calculating both the amount of tax included in the price of the foreign market merchandise and the amount of the USP tax adjustment include many expenses that are later deducted when calculating USP and FMV. After these deductions are made, the amount of tax included in FMV and the USP tax adjustment still reflects the amounts of these expenses. Thus, a margin may be created that is not dependent upon a difference between USP and FMV, but is the result of the price of the United States merchandise containing more expenses than the price of the foreign market merchandise. The Department's policy to avoid the margin creation effect is in accordance with the United States Court of Appeals' holding that the application of the USP tax adjustment under section 772(d)(1)(C) of the Tariff Act should not create an antidumping duty margin if pre-tax FMV does not exceed USP. *Zenith Electronics Corp.* v. *United States*, 988 F.2d 1573, 1581 (Fed. Cir. 1993). In addition, the CIT has specifically held that an adjustment should be made to mitigate the impact of expenses that are deducted from FMV and USP upon the USP tax adjustment and the amount of tax included in FMV. *Daewoo Electronics Co., Ltd.* v. *United States*, 760 F. Supp. 200, 208 (CIT, 1991). However, the mechanics of the Department's adjustments to the USP tax adjustment and the foreign market tax amount as described above are not identical to those suggested in *Daewoo*.

Comments Specific to Toyota

Comment 4: Toyota contends that for the final results, the Department should not rely on best information available (BIA) to calculate ocean freight, U.S. coop advertising, certain indirect selling expenses (ISE) incurred in Japan on behalf of U.S. sales, and the offset expense for income and profit from other business ventures included in value-added. Toyota claims that the Department made clear in its supplemental questionnaire that, because it was conducting two administrative reviews simultaneously, Toyota should provide only a narrative description of how reallocations and corrections were to be made, which were then to be the subject of petitioners' comment and Department scrutiny. In its supplemental questionnaire response dated June 7, 1991, Toyota responded as directed, providing only narrative descriptions, and not revised data on computer tape.

Once the Department made its decision regarding the accuracy of these reallocations and corrections, it would give Toyota an opportunity to resubmit its data employing the proper reallocations and corrections. Toyota states that it was therefore awaiting the Department's decisions concerning these recalculations for the first administrative review before submitting revised computer tapes for the second review.

Toyota claims that at no time prior to the preliminary results, despite numerous contacts, did the Department ask Toyota to submit the reallocations or corrections, instead directing Toyota to await the Department's decision regarding these corrections.

Toyota contends that in the preliminary results of this review the Department applied BIA because it mistakenly held that Toyota had failed to comply with the Department's request for data incorporating the reallocations and corrections. Toyota claims that it did not provide such data because the Department never issued any instructions for doing so.

Toyota therefore, proposes that the Department use data on the record to make the correct reallocations and corrections for ocean freight, U.S. coop advertising, value-added, and Toyota Automatic Loom Works, Ltd. (TAL) ISE.

Petitioners assert that the Department specifically requested that Toyota submit corrections and reallocations in its supplemental questionnaire. Petitioners state that Toyota failed to submit this data as requested, but rather advised the Department that it would await the Department's decisions on these issues in the first administrative review before submitting a complete response.

Department's Position: We agree with Toyota. In our supplemental questionnaire dated May 23, 1991, we requested Toyota to provide within a specified period of time a narrative explanation of its claimed adjustments to price after publication of the preliminary results.

For the final results, we did not request additional information for ocean freight, TAL ISE, and value-added because we recalculated these expenses using information previously submitted by Toyota. See Comments 5, 7, and 8, respectively. We did request supplemental information for coop advertising. See Comment 6.

Comment 5: Toyota claims that the Department's BIA recalculation of ocean freight and marine insurance is overstated because the Department misunderstood documents provided by Toyota in conjunction with sales preselected by the Department for a mini-verification of sales in Washington, DC prior to, or perhaps in lieu of, an on-site verification. One of the sales involved a forklift which had a "mast swap" in the United States. In other words, the truck was imported with one mast, but, prior to sale in the U.S., the mast was switched with that of another imported truck. Toyota provided one invoice, marked "chassis" showing the truck as imported, including its original mast, and a second invoice, marked "mast" for another truck, which included the mast which was subsequently fitted onto the first truck. Toyota contends that the Department erroneously calculated a per-truck ocean freight expense by adding the amounts on the two invoices, thereby yielding a per-unit figure for ocean freight equal to ocean freight for two trucks.

Toyota argues that the Department requested pre-verification documents, not explanations of these documents, and that the documents were only provided to establish a paper trail for importation of the truck and not for calculation of ocean freight.

Toyota requests that the Department recalculate ocean freight based on one invoice or the other, or perhaps an average, but not on two per-truck amounts added together. Toyota maintains that its original allocation of ocean freight is accurate and should be incorporated in the final results.

Department's Position: We agree with Toyota. For the final results of review, we have recalculated the ocean freight expenses by averaging the invoices together to derive the per unit expense.

Comment 6: Toyota notes a discrepancy between statements by the Department in the notice of preliminary results and the actual BIA used to calculate sale-by-sale U.S. coop advertising expenses. The notice of preliminary results states that the Department used the amounts Toyota reported for the first administrative review as U.S. coop expenses. See Certain Internal-Combustion, Industrial Forklift Trucks from Japan; Final Results of Antidumping Duty Administrative Review (Forklifts I), 57 FR 3164 (January 28, 1992). Toyota observes that the Department actually used the largest single reported U.S. coop expense from the second review and applied it to all sales as BIA. Toyota requests that the Department use instead the per-customer coop expense from the first administrative review, as described in the preliminary notice. Toyota maintains, however, that the appropriate allocation of this expense is over all sales, rather than by dealer.

Petitioners contend that the BIA based on information from the second, rather than the first, administrative review is reasonable because it is based on data that is on the record in this proceeding. Accordingly, petitioners argue that the Department should continue to apply the largest single reported U.S. coop expense from the second review to all sales.

Department's Position: In a supplemental questionnaire dated May 23, 1991, we requested that Toyota allocate by dealer U.S. coop advertising expenses on a sale-by-sale basis. In a letter dated March 30, 1992, we again requested that Toyota recalculate U.S. coop advertising expenses by dealer. On April 13, 1992, Toyota submitted this information in an acceptable form, and we have used it in lieu of BIA for the final results.

Comment 7: Toyota claims that in calculating the TAL ISE incurred with respect to U.S. sales in Japan, the Department should have applied the ISE ratio to the TAL selling price, not to the much higher selling price of Toyota Motor Sales (TMS) in the United States. Because the Department applied the ISE ratio to the wrong value, it greatly overstated the expense.

Toyota further contends that, as is evident from the information submitted and verified in the first review, TAL incurred the identical category of indirect selling expenses for HM sales as for U.S. sales. Toyota states that if the Department deducts TAL indirect selling expenses from U.S. price, it must also in fairness deduct the same category of expenses from HM price.

Department's Position: We agree with Toyota that in the preliminary results we incorrectly calculated ISE incurred in Japan by TAL with respect to U.S. sales. For the final results, we have applied the ISE factor to the reported transfer price between TAL and TMS instead of to TMS' reported selling price in the United States. We have made a corresponding adjustment for TAL's ISE incurred on HM sales.

Comment 8: Toyota contends that the Department erred in calculating an offset to value-added expenses for income and profit earned from other business ventures. Toyota explains that the Department reduced general and administrative (G&A) expenses associated with value-added activity by an amount for net income and profit from other business ventures that greatly exceeded that reported in its questionnaire response. Toyota requests that the Department revise its income "offset" calculation for the final results to reflect the information contained in its questionnaire response.

Department's Position: We agree with Toyota. For the final results, we have revised the offset calculation to reflect accurately the amounts reported for net income and profit from other business ventures in Toyota's questionnaire response.

Comment 9: Toyota claims that the Department incorrectly calculated U.S. credit expenses by using an intra-company interest rate and not a rate based on its actual cost of borrowing

from unrelated sources. Specifically, in calculating credit expenses, the Department used the interest rate paid by TMS to Toyota Motor Credit Corporation (TMCC), its related finance company. As a result, Toyota argues that the Department created a fictional "expense" that is based on an internal transaction between TMS and TMCC which is irrelevant to the dumping analysis. Toyota urges the Department to use the interest rate paid by TMCC on its short-term borrowings to calculate credit expenses for sales by TMS because the rate paid by TMCC reflects Toyota's actual cost of financing from unrelated sources.

Petitioners disagree, arguing that the interest rate paid to outside sources by TMCC does not account for the total cost actually incurred by TMCC to extend credit to TMS. Petitioners note that TMCC incurs expenses to obtain funds to finance its operations as well as numerous operating expenses. It would, therefore, be inappropriate to base credit expenses for TMS simply on the short-term interest rate paid by TMCC to outside sources without accounting for the additional expenses incurred by TMCC to extend credit on sales made by TMS.

Department's Position: We disagree with Toyota. For the final results, we calculated U.S. credit expenses based on the experience of the sales division of Toyota. Because TMS is the selling division in the United States, not TMCC, we determined that the interest rate that should be used in the calculation of credit expense is one based on TMS' experience. Because TMS does not have any short-term loans from unrelated sources, we have used the interest rate that TMCC charged TMS to reflect the credit expenses incurred on U.S. sales. This approach is consistent with the credit expense methodology used in the previous administrative review.

Comment 10: Petitioners claim that Toyota did not report certain direct magazine advertising expenses incurred on U.S. sales. Petitioners state that these expenses consist of advertisements in national industry publications that were directed at end-user customers of Toyota's U.S. forklift dealers, and refer to the Toyota Industrial Equipment Division (TIE) of Toyota Motor Sales, U.S.A., Inc. Petitioners propose recalculating Toyota's direct U.S. selling expenses to include these advertising expenses. Petitioners suggest that the Department divide Toyota's reported cost for magazine advertisements during the period of review (POR) by the number of forklifts sold in the U.S. over the POR, and add this amount to U.S. direct selling expenses for each forklift.

Toyota acknowledges that these magazine advertising expenses were classified as direct expenses by the Department in the first review. See Forklifts I. However, respondent claims that petitioners' proposed recalculation of these expenses is incorrect. Toyota notes that these expenses are specifically identified in its questionnaire response and, therefore, should be separated out from reported ISE and reclassified as direct selling expenses.

Department's Position: We agree with both petitioners and Toyota that these magazine advertising expenses should be properly classified as direct selling expenses. However, we disagree with petitioners' contention that Toyota failed to report such expenses. Toyota did report these expenses under ISE in its questionnaire response. Thus, for these final results, we deducted the amount of magazine advertising expenses identified by Toyota from reported ISE and reclassified such expenses as direct selling expenses.

Comment 11: Petitioners claim that Toyota did not report the cost incurred to retrofit its forklifts with redesigned seats under its operator restraint safety seat ("ORS") program. In support of this contention, petitioners have submitted a Toyota advertisement, which petitioners claim offers free installation of new winged safety seats and seat belts to end-users of subject merchandise.

Petitioners argue that all costs incurred under this program, including the cost of all advertisements, the cost of the new seats, and the costs incurred to install the seats, should be considered direct U.S. selling expenses. Petitioners assert that absent submission of proper information by Toyota, the Department should use the total ORS costs reported by Toyota for the first administrative review and allocate those costs to sales during this review.

Toyota maintains that the retrofit expenses referred to by petitioners were incurred solely for forklift trucks imported and sold prior to the first period of review. Toyota notes that petitioners' argument erroneously implies that the Department included retrofit expenses in its margin analysis for the first review. Respondent states that the Department's first review verification report confirms that all trucks imported and sold during the first administrative review period were manufactured with an ORS, thereby obviating the necessity of retrofittings.

Department's Position: We agree with Toyota. Because there is no evidence on the record indicating that forklifts sold during the POR required retrofitting, we determine that no adjustment is required. The advertisement submitted by petitioners makes no reference to products sold during the POR. Petitioners have thus provided no evidence that Toyota incurred any such expenses with respect to the Toyota sales made in the current POR.

Comment 12: Petitioners claim that Toyota failed to report U.S. product demonstration expenses, which were categorized by the Department as direct selling expenses in the first review. Petitioners argue that Toyota should therefore be required to provide its U.S. demonstration expenses for the final results. Petitioners assert that absent a proper submission from Toyota, the Department should assume as BIA that the per unit product demonstration expenses in the United States are equal to the per unit demonstration expenses reported by Toyota for its HM sales.

Citing 19 CFR 353.56(a)(2) and Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From the Federal Republic of Germany; Final Results of Antidumping Administrative Review (AFBs I), 56 FR 31692, 31725 (July 11, 1991), Toyota maintains that it correctly categorized product demonstration expenses incurred in the United States as ISE. Toyota claims that demonstration expenses incurred in the United States were incurred in demonstrating forklifts to Toyota's national account customers. In contrast, Toyota states that demonstration expenses incurred in the HM, which were reported as direct selling expenses, were incurred in demonstrating forklifts to dealers so that they could demonstrate new models to *their* customers.

Department's Position: We disagree with petitioners that Toyota failed to report U.S. product demonstration expenses. By letter of March 30, 1992, we requested that Toyota separately report total demonstration expenses and allocate the same per forklift truck. In its response dated April 6, 1992, Toyota claimed that it reallocated such expenses using the ratio of forklifts under investigation to all units as reported in Exhibit C.4.i.1, page 2 of its December 5, 1990 response. However, after reviewing the calculation, we determined that Toyota did not actually use this ratio. Thus, we corrected Toyota's allocation for the final results.

We agree with petitioners that demonstration expenses incurred in the United States should be categorized as direct selling expenses because in both the HM and the United States, Toyota incurs demonstration expenses in order to make sales to end-users. Toyota's citation to AFBs I is irrelevant because AFBs I does not offer a clear statement of policy with regard to demonstration expenses. Absent evidence that demonstrations serve different purposes in different markets, we determine that Toyota's U.S. demonstration expenses should be treated as direct selling expenses. See Forklifts I.

Comment 13: Petitioners contend that Toyota did not include certain U.S. customs fees (merchandise processing fee and harbor maintenance fee) in its reported movement charges. Petitioners state that the merchandise processing fee was 0.17 percent of entered value and the harbor maintenance fee was 0.04 percent of entered value during the period of review. For the final results, petitioners request that the Department increase Toyota's reported movement charges by these amounts for all of Toyota's U.S. sales.

Toyota argues that it appropriately reported such fees under brokerage and handling expenses.

Department's Position: We agree with Toyota. These expenses are included in respondent's reported brokerage and handling expenses. Therefore, no adjustment is necessary.

Comment 14: Petitioners claim that the Department should resort to BIA in determining the amount of certain U.S. inland freight costs incurred on sales made after May 1, 1990 that Toyota failed to report.

Toyota agrees with petitioners that it failed to report certain inland freight costs incurred on sales made during May of 1990 and that the Department should account for such costs in its final analysis.

Department's Position: All parties concur that Toyota failed to report certain U.S. inland freight costs for May 1990. For the final results we therefore used Toyota's highest reported inland freight as BIA.

Comment 15: Petitioners claim that Toyota understated its U.S. value-added labor and overhead costs. Petitioners' reason for this assertion is based on proprietary information. Petitioners request that the Department use the data in Attachment 4 of petitioners' case brief to correct these costs.

Toyota agrees that the labor cost portion of the labor and overhead variable has been miscalculated due to a computer programming error, but that the overhead portion is correct.

Department's Position: We agree that the labor portion of the "labor and overhead" variable was improperly calculated, and have made the necessary corrections, as described by Toyota, for the final results. We agree with Toyota that overhead was both properly calculated and properly included in the calculation of the labor and overhead variable. For a complete discussion of this issue, please refer to the analysis memorandum.

Comment 16: Petitioners state that Toyota reported negative amounts for net selling price proxy 3 (which Toyota states represents switching operations performed in TIE processing centers and includes other U.S. expenses and profit) on many of its ESP sales. Petitioners note that these negative amounts always occur when Toyota reports a negative value for the variable manufacturing cost of options switched by TIE.

Petitioners argue that these facts, in addition to other proprietary information, indicate Toyota assumed negative U.S. value-added expenses on any sale for which the cost of the options removed from the forklift by TIE exceeded the cost of options installed by TIE. Petitioners contend that Toyota incurs actual expenses to operate its value-added facilities and to perform switching operations. They state that, for example, removing the forks from an imported forklift results in an actual expense rather than a negative expense to TIE. Petitioners request that the Department correct the negative costs and expenses reported by Toyota for net selling price proxy 3 by using the absolute values of the negative amounts reported by Toyota.

Toyota contends that petitioners misinterpreted Toyota's value-added calculation. Toyota explains that labor and overhead are always positive; however, if the value-added materials are negative and are added to labor and overhead, the value-added will be increased, but remain negative.

Department's Position: We agree with Toyota. While the reported amount for value-added and switching operations is negative, Toyota accounted for its expenses of labor and overhead in its calculation. For further discussion of respondents' further processing operations and the potential for negative value-added, refer to the discussion of TCM's further processing in Comment 20 below.

Comment 17: Petitioners argue that Toyota's claimed credit revenue for its U.S. sales should be rejected because the credit revenue for certain sales is actually earned on sales by unrelated dealers to end-user customers and not on the sale from Toyota to the unrelated dealer. Petitioners state that Toyota sells forklifts in the United States to unrelated dealers and that the first unrelated sale is the sale from Toyota to the dealer. Petitioners contend that the purpose of this review, as stated in the questionnaire, is to examine sales by Toyota to the first unrelated customer. Petitioners argue that credit revenue earned on sales from the unrelated dealer to the end-user, which are financed through TMCC, is therefore irrelevant to this review, because the financing arranged by TMCC is a separate transaction from the sale of the forklift.

Toyota argues that TMCC retains both the title to, and the Uniform Commercial Code (UCC) interest in, the forklift until TMCC receives payment from either the dealer or end-user. Toyota contends that a shift in the credit transaction from the dealer to the end-user is no more than a shift in the source of payment. In both cases, TMCC retains ownership and the UCC interest in the forklift. Because Toyota retains a direct relationship with the dealer or end-user, the credit revenue is directly related to the sale of the forklift, and therefore, the credit transaction should be adjusted for. Toyota further contends that its ability to sell forklifts is contingent upon its ability to encourage end-users to buy forklifts. Toyota notes, for example, that the Department considers its subsidies of yellow page advertisements for dealers a direct selling expense. Toyota's provision of favorable financing to end-users similarly is intended to encourage end-user sales, which in turn create sales to dealers. Toyota concludes by noting that it would be unfair and illogical to account for TMCC's credit expense and not its revenue.

Department's Position: In accordance with section 353.41 of the Department's regulations, we used the price to the first unrelated purchaser in the United States as the basis of U.S. price. Toyota's USP was based on the price TMS/TIE charged its unrelated dealers. Therefore, we consider revenue generated as a result of the sale by the dealer to the end-user through a financing arrangement a separate transaction, and as such, not directly associated with the sales under review, as claimed by Toyota. This credit arrangement is unlike Toyota's subsidy for yellow pages advertisements, which is properly treated as a direct selling expense. That TMCC retains both the title to, and the UCC interest in, the financed forklift until TMCC receives the final payment from the end-user has no bearing on the calculation of USP. Finally, we note that, contrary to Toyota's assertion, we are not accounting for TMCC's credit expense. We therefore disallowed the claimed adjustment for credit revenue for the sales financed by the end-user.

Comment 18: Petitioners contend that the Department should not have deducted Toyota's HM advertising costs

as a direct selling expense for PP comparisons. Petitioners contend that the Department should follow its practice in the first review and treat these expenses as ISE.

Toyota does not believe that the Department applied the correct legal test for determining whether these advertising expenses are direct or indirect. Toyota submits that these expenses, incurred on behalf of Toyota's customers, are direct and should therefore be deducted from FMV in PP comparisons.

Department's Position: We agree with petitioners. These advertising expenses are indirect because they are not directed at Toyota's customer's customer. In the first administrative review, we determined that these advertising expenses were indirect selling expenses. See Forklifts I, Comment 18. The data submitted in this proceeding is very similar to that submitted and disproved during verification in the previous administrative review. We have no compelling evidence on the record in this proceeding which indicates that the situation is any different from that found previously. We have therefore continued to treat these HM expenses as ISE and have not deducted them from FMV in PP comparisons.

Comment 19: Petitioners claim that Toyota failed to support adequately its claim concerning credit expenses incurred by Toyota on PP sales. Petitioners state that, for reasons based on proprietary information, the claimed method of payment used with respect to these sales is incorrect. Petitioners assert that, accordingly, the Department should use BIA with respect to this expense for the final results. According to petitioners, the Department should also consider associated bank charges in determining this BIA. Petitioners state that bank charges should be among several elements considered in this BIA. Petitioners provide a calculation, using data from Toyota's ESP response, of the average time between the date the forklifts were exported from Japan and the date the forklifts were imported into the United States. Petitioners contend that this calculation represents the best method for imputing Toyota's credit expense for PP sales.

Toyota asserts that, because of the immediate payment term on PP sales, there is no credit expense, as concluded by the Department in Forklifts LTFV and Forklifts I, which included two verifications. Toyota states that the Department should not change its practice in this administrative review.

Department's Position: We agree with petitioners that reported credit expenses are incorrect. Although Toyota's PP sales are made on immediate payment terms (immediate with respect to the date of delivery in the United States), Toyota still incurs some credit expense on these transactions for the time between shipment and payment. An expense must therefore be imputed on PP sales for the time between shipment from Japan and payment. Because entry dates are unavailable, we used the average number of days between shipment and payment calculated by petitioners in their case brief. Petitioners' figure is based on data provided by Toyota. However, we have no information on the record indicating that Toyota incurred bank charge fees associated with the immediate payment PP sales and, thus, we cannot make an adjustment for such fees.

Comments Specific to TCM

Comment 20: TCM objects to the Department's allocation of selling, general and administrative expenses (SG&A) over U.S. further manufacturing cost in cases involving "swap-downs" of masts (substitutions of low-value masts for masts of higher value). In such situations, TCM has allocated a negative SG&A amount to further manufacturing. In the Department's preliminary results ESP computer program, wherever a negative amount was reported for the further manufacturing SG&A expense, this amount was multiplied by negative one in order to convert it to a positive value. TCM claims that these negative amounts should not have been converted to positive amounts because the SG&A expenses that were allocated to the import values were inflated so as to include an offset amount equal to the absolute value of the negative value-added SG&A amounts. As a result, according to TCM, the amount of total U.S. SG&A deducted from USP has been inflated well beyond the total actual expense incurred. TCM requests that the Department correct this problem in the computer program so that only the actual SG&A expenses will be deducted from U.S. price.

Petitioners argue that the Department should recalculate TCM's value-added using positive U.S. SG&A amounts for those U.S. value-added sales where TCM listed negative SG&A amounts. Petitioners state that it is not possible to have negative labor, factory overhead, or SG&A from value-added operations. Petitioners suggest applying the highest reported SG&A amount to these sales as BIA or, in the alternative, assigning a positive value to all SG&A expenses.

Petitioners also argue that, despite the arguments in its brief, TCM has not offered support for its contention that TCM allocated the total U.S. SG&A amount, plus an offsetting increase, to the truck as imported for those sales where it allocated negative SG&A in further manufacturing. Petitioners also contend that there is insufficient information (i.e., calculation of total SG&A, or identification of the field where the SG&A amount allocated to the value of the truck as imported is recorded) on the record for the Department to verify TCM's claim. Finally, petitioners claim that TCM's use in its case brief of a hypothetical—rather than an actual—example is not sufficient. Petitioners, therefore, contend that the Department should continue to use the same methodology for allocating U.S. SG&A to U.S. further manufacturing costs that was used for the preliminary results.

Department's Position: We agree with petitioners that it is not appropriate to attribute negative SG&A expenses to further processing operations. However, in the preliminary results, our treatment of SG&A understated the value of TCM's imported product and overstated TCM's value-added for those products for which TCM reported negative SG&A. As a result of these over- and under-statements, we have decided not to follow the methodology employed in Forklifts I and in the preliminary results of this review.

Two facts must be considered in determining how to treat TCM's reported negative SG&A properly. First, the processing that TCM undertook must result in the allocation of positive SG&A expenses both to the imported product and to the further processing operations conducted by TCM. Second, the sum of the SG&A allocated to TCM's imported product and TCM's value-added must be equal to the amount incurred.

Therefore, we have allocated a portion of TCM's SG&A expenses to the COM of the further processing operations and deducted this amount from USP. The COM of the further processing operations is the sum of the cost of all materials added to the forklift truck, plus the labor and factory overhead costs incurred by TCM. The remaining SG&A amount, which we attributed to the imported product, was not deducted. This allocation distributes the actual amount of SG&A expense incurred between further manufacturing and the imported product. This methodology therefore results in an allocation of positive SG&A to both the further manufacturing operations and the imported product. The amount allocated to the imported product also does not exceed the amount incurred for the sale.

To do this, we calculated on a sale-by-sale basis the factor represented by TCM's reported SG&A as a share of the total reported manufacturing costs associated with further manufacturing (*i.e.*, positive and negative values). We then used this factor, which was always positive [1], to generate an SG&A amount for each transaction by applying the factor only to the positive costs associated with further manufacturing. We thereby guaranteed that the SG&A value attributed to further manufacturing was always positive.

Under this methodology we succeed both in allocating an amount for SG&A expense equal to that incurred by TCM, and in attributing a positive value for SG&A expenses to all TCM's further processing operations, *i.e.*, including cases of "swap-downs" of masts (substitutions of low-value masts for masts of higher value).

Comment 21: TCM argues that, in the ESP program, for situations in which FMV is based on constructed value (CV), the Department neglected to deduct direct selling expenses from FMV. TCM argues that such an adjustment is in accordance with the Department's longstanding practice. TCM cites section 772(e) of the Tariff Act and 19 CFR 353.41(e); Tapered Roller Bearings from Japan (52 FR 30700, August 17, 1987); Cellular Mobile Telephones and Subassemblies from Japan (50 FR 45447, October 31, 1987); and Spun Acrylic Yarn from Italy (50 FR 35849, September 4, 1985).

Petitioners assert that the Department must first define the direct selling expenses variable before a COS adjustment can be made, noting that the variable was not defined in either the Department's January 29, 1992 ESP program or in a memorandum dated February 5, 1992. Petitioners claim that, if the direct selling expenses variable is not defined, neither the respondent nor petitioners will be able to verify that the correct COS adjustments were made.

Department's Position: We agree with TCM. We were satisfied with the respondent's reporting of direct and indirect selling expenses as submitted. Therefore, we have made a COS adjustment using the direct selling expenses variable.

Comment 22: TCM argues that the Department incorrectly accounted for credit income earned on U.S. sales in PP comparisons. According to TCM, the Department added credit income earned on U.S. sales to both USP and FMV, despite the fact that credit income is realized on U.S. sales only. Accordingly, TCM requests that the Department revise its calculations to eliminate the addition to FMV of credit income earned on U.S. sales for these final results.

Department's Position: We agree with TCM and have eliminated the addition of credit income to FMV for these final results.

Comment 23: Petitioners argue that verification of TCM's cost data is necessary because this data has never been verified. Petitioners state that TCM's cost data was neither verified in the investigation, because the cost data was not accepted, nor in the first administrative review, due to the outbreak of the Persian Gulf War. Petitioners assert that good cause for verification still exists and is shown by petitioners' April 9, 1991 letter to the Department, which petitioners claim documents extensive discrepancies in TCM's unverified cost data. Accordingly, petitioners claim that the Department should conduct verification of TCM's cost information prior to issuing its final results.

TCM replies that the Department is not required to conduct verification of TCM's COP data in this review. According to TCM, the Department is required to conduct verification in an administrative review only if an interested party files a timely request for verification and if the Department has not conducted a verification during the two immediately preceding reviews. TCM also notes that the Department is not required to verify all sections of a respondent's questionnaire response. In this context, TCM argues that the Department satisfied these requirements in the previous review by conducting verification of TCM's HM and U.S. sales, and further manufacturing expenses. Because the Department was able to verify TCM's information in the previous review, TCM argues that no further verification is necessary in this review.

Department's Position: With respect to administrative reviews, the Department is required to verify information under section 776(b)(3) of the Tariff Act if the Secretary concludes that good cause for verification exists, or if a timely request for verification is received from an interested party and the Department has not conducted a verification during either of the two immediately preceding administrative reviews. The current administrative review is the second review of the antidumping order in this case. Thus, verification is not required under section 776(b)(3) of the Act. TCM's HM sales, U.S. sales and U.S. costs, including value-added cost data from TCM's related facilities in the United States, were verified in the previous administrative review. The Department determined that TCM's data reporting methodology was sound and reliable.

Because verification was not required and all other aspects of TCM's sales were successfully verified in the previous review, because our analysis of TCM's response did not indicate any significant discrepancies, and because petitioners did not make a compelling case that TCM's data was seriously flawed, we determined that presently there was no good cause to verify TCM's submitted cost data.

Comment 24: Petitioners argue that for the final results, the Department should revise the method it used to adjust for commissions on TCM's sales. For PP transactions, petitioners submit that the commission offset rule directs the Department to reduce USP by the lesser of the HM commission or U.S. ISE when commissions are paid in one market and not in the other. Petitioners contend that TCM failed to report ISE for its PP sales and that the Department should accordingly deny the commissions claimed by TCM for its HM sales.

With respect to ESP transactions, petitioners state that the preliminary margin program incorrectly deducted all HM commissions from HM price and all U.S. commissions from USP. Petitioners state that commissions should be deducted from both home market price and U.S. price only with respect to ESP comparisons that include a commission in both transactions.

TCM responds that the special rule governing commission offsets does not require that commissions be paid on every sale in both markets. Rather, TCM contends that this rule applies only when no commissions are paid on any sales in one of the markets under consideration. Because TCM pays commissions on certain sales in both markets, TCM concludes that the Department should continue to treat commissions as direct selling expenses in both the U.S. and home markets, and thereby not employ the offset rule in comparisons in which commissions are incurred in only one transaction.

Department's Position: Petitioners' assertion that TCM failed to report U.S. ISE on PP transactions is incorrect. For the final results, we modified our PP computer program to deduct HM commissions from FMV and then offset them by adding U.S. ISE up to the amount of the HM commissions.

[1] This factor will always be positive because TCM always assigned a negative SG&A to the negative total manufacturing costs associated with the further manufacturing of the swapdown models. The negative SG&A divided by the negative total COM yields a positive factor.

With regard to ESP sales, we agree with petitioners to the extent that the mere existence of commissions on some sales in both markets does not automatically preclude the use of the offset rule. Our standard practice requires that for comparisons involving ESP for which a commission is incurred in both markets, we deduct the U.S. commission from ESP and the HM commission from FMV. For comparisons in which there is a commission paid in one market and none in the other market, we offset the commission with ISE incurred in the other market, to the extent of the lesser of the commission in the one market or the ISE in the other. In order to follow this standard practice, we have modified our ESP computer program for the final results because, in our preliminary results calculations, we did not offset the commission with ISE for comparisons in which a commission was paid in one market and not in the other.

Comment 25: Petitioners contend that TCM's HM commission sales are outside the ordinary course of trade because they were unusual and infrequent, as stated by TCM in its June 24, 1991 questionnaire response. Petitioners argue that the Department should accordingly exclude TCM's HM commission sales from FMV.

Department's Position: We disagree that TCM's HM commission sales are outside the ordinary course of trade. TCM paid commissions to both related and unrelated dealers on TCM's sales to end-users. Although sales to end-users constitute a very small portion of TCM's HM sales, and are included as comparison models, these end-users are TCM's usual commercial customers. As a result, we consider them to be in the ordinary course of trade.

Comment 26: Petitioners contend that HM transactions that have shipment dates prior to March 1, 1989 are not within the relevant reporting period (March 1, 1989 to July 31, 1990) and therefore should be disregarded for comparison purposes. Petitioners note that the questionnaire states that "[t]here can be no new dates of sale after shipment and any subsequent price modifications must be reported as either a rebate or a discount." Petitioners further contend that TCM's response supports the use of shipment date as the appropriate date of sale, because it states that the date of sale is equivalent to the estimated date of receipt by the customer. In the interests of consistency, petitioners also suggest matching U.S. sales to HM sales on the basis of shipment dates.

In response, TCM argues that the date of sale, rather than the date of shipment, determines the reporting period for HM sales. TCM further argues that, in accordance with Department practice, TCM reported as the date of sale the date on which the parties were bound by the terms of sales. Because TCM followed the Department's requirements in determining dates of sale and reporting HM sales, and because the Department did not request from TCM additional information regarding sale dates, TCM concludes that the Department should not revise its reporting requirements for HM dates of sale.

Department's Position: We agree with petitioners. Any given sale cannot have a date of sale later than the date of shipment to the customer. Any adjustments to price or quantity that take place after the date of shipment must be reported as discounts or rebates, in the case of changes in price, or quantity adjustments in the case of changes in quantity.

We have therefore used the HM date of shipment as the date of sale instead of the date of delivery, which TCM reported as the date of sale. We analyzed these HM shipment dates in order to determine whether they met our criterion for contemporaneity with regard to matching to the U.S. sale dates. We found that all but two of TCM's proposed matches were suitably contemporaneous, and that these transactions were only used for matching with two ESP sales. We assigned these two sales the weighted-average dumping margin calculated for ESP sales.

Comment 27: Petitioners claim that TCM failed to include the G&A expenses of one of its related subsidiaries, C. Itoh Industrial Machinery Inc. (CIM). Petitioners state that TCM calculated a G&A factor for U.S. ISE but failed to apply this factor to the selling price and, therefore, did not include an amount for the G&A portion of U.S. selling expenses in its reported sale-by-sale ISE.

TCM responds that it reported the expenses in question in accordance with the Department's instructions. According to TCM, it initially reported all SG&A expenses that it incurred in the United States as either direct or indirect selling expenses. The Department subsequently requested, however, that TCM segregate G&A from selling expenses, and allocate the G&A expenses to TCM's U.S. further processing operations. Thus, TCM asserts that petitioners' argument is incorrect because the expenses in question are included, at the Department's request, in TCM's further manufacturing submissions.

Department's Position: We agree with petitioners. The G&A expenses in question pertain to all of TCM's U.S. sales of subject merchandise, regardless of whether the merchandise is further processed in the United States. Because these G&A expenses are applicable to all U.S. sales, we have included them in our calculation of U.S. ISE for these final results.

Comment 28: Petitioners claim that there are two errors in the U.S. ISE that TCM reported for sales by another related subsidiary, Mitsui Machinery Distribution, Inc. (MMD). First, petitioners claim that sale-by-sale ISE shown in TCM's sales listing does not reconcile with the formula provided by TCM (ISE factor x net price). In particular, petitioners state that the amounts reported for certain ESP sales are lower than the amount that results from applying the formula. Petitioners request that the Department recalculate this expense using the formula provided by TCM.

Second, petitioners claim that TCM failed to report an amount for MMD's G&A in TCM's reported ISE. Petitioners request that the Department allocate a portion of the "General G&A" reported by TCM to MMD's forklift truck sales to derive a G&A ratio for MMD, then multiply this factor by net sales price for each of MMD's sales to compute G&A expenses for each sale.

Department's Position: We agree with petitioners that TCM did not calculate a G&A factor for MMD. We have corrected this omission using the factor, calculated using TCM's data, provided by petitioners in their case brief because this factor offers a reasonable estimate of MMD's G&A expenses.

We disagree that TCM failed to calculate properly the amounts reported for ISE on MMD's sales. In reviewing petitioners' Attachment 4 to the case brief, we found that petitioners included an incorrect amount for dealer inspection/prep charge and that petitioners did not, as TCM's sample calculation showed, allocate a portion of the ISE to U.S. value-added. After adjusting petitioners' calculations in Attachment 4 to account for the correct dealer inspection/prep charge and the ISE reported in U.S. value-added, we found that for the calculations sampled, the results matched the amounts calculated and reported by TCM.

Comment 29: Petitioners argue that for two sales, TCM did not recalculate, as requested by the Department in its supplemental questionnaire, certain value-added costs. Therefore, petitioners assert that the Department should use the highest costs reported by TCM for these expense categories as BIA.

Department's Position: We agree with petitioners. For the final results, we used the highest costs reported by TCM for these expense categories as BIA.

Comment 30: Petitioners contend that TCM's brokerage expenses are understated because the brokerage allocation factor (total brokerage costs for U.S. forklift sales divided by total revenue from U.S. forklift sales) was multiplied by transfer price instead of sales price. Petitioners request that the Department recalculate this expense by multiplying the brokerage factor by sales price.

TCM replies that the total revenue over which it allocated brokerage expenses was the revenue of TCM's factory in Japan, which represents the aggregate of all TCM's transfer prices. Because it calculated its brokerage expense factor by allocating brokerage expenses over transfer prices, TCM argues that it is appropriate to calculate per-unit brokerage expenses by multiplying this expense factor by TCM's reported transfer prices.

Department's Position: We agree with TCM. We find TCM's allocation method for calculating Japanese brokerage charges to be reasonable. TCM calculated a factor by dividing total Japanese brokerage paid on its exports of forklift trucks to the United States by the total transfer prices (revenue recorded by the factory at Shiga) of the forklifts exported to the United States. Because the Japanese brokerage charges would have been paid on the basis of the transfer price, it is reasonable that TCM would use this in the denominator of the allocation equation.

Comment 31: Petitioners state that TCM failed to report the actual trading company expense incurred for one sale. Petitioners contend that the Department should treat this expense as a movement expense, in accordance with the first review, and should assign the highest reported trading company markup as BIA for this observation.

TCM argues that petitioners misunderstand TCM's method for calculating trading company markups. According to TCM, it pays trading companies a single fee that includes movement expenses incurred by the trading companies and the trading companies' markup. In its response, TCM separately reported the movement expenses and the markup; the total of these items represented the single fee that TCM paid to the trading company. In those instances in which the trading company markup is negative, the actual movement expenses incurred by the trading company exceed the fee that the trading company receives from TCM; thus, the negative markup reported by TCM is a downward adjustment to actual movement expenses, paid by the trading company, to reflect the amount paid by TCM. Because TCM's reporting method is accurate and is based on actual expenses, TCM asserts that the use of BIA is unwarranted. Should the Department determine to reject TCM's negative trading company markup, TCM requests that the Department set any negative amounts equal to zero, in order to reflect the actual movement expenses incurred by the trading companies.

Department's Position: As in the first review, we treated the trading company markups as a movement charge. The appropriate deduction to USP for inland freight is the expense incurred by TCM. Because the addition of the negative markup yields the actual expense incurred by TCM for this sale, we have, for the final results, recalculated inland freight using TCM's submitted data.

Comment 32: Petitioners contend that interest income claimed by TCM from long-term installment sales may have been earned on sales from TCM's unrelated dealers to end-users rather than on sales from TCM to its dealers, and as such should not be added to the price of TCM's sales. Petitioners assert that installment sales are generally sales to end-users rather than to dealers. In addition, petitioners claim that TCM did not properly justify the interest rate it used in calculating this income.

TCM argues that the credit income at issue is earned by TCM itself, not by its dealers. TCM further argues that such income is a legitimate increase to U.S. price, because it is agreed to by the customer at the time of sale. Therefore, TCM claims that the Department should continue to add credit income to U.S. price for the final results.

Department's Position: We disagree with petitioners. Concerning the issue of whether the installment sales in question were made by TCM to its unrelated dealers, as opposed to sales from the dealers to end-users, we have not found any evidence that these transactions did not concern sales by TCM to its dealers. We also do not have any evidence that TCM did not collect the credit income that it has reported, regardless of the interest rate that it charged. Therefore we have continued to add credit income to USP for the final results.

Comment 33: Petitioners, citing Color Picture Tubes from Korea (52 FR 44186, November 18, 1987), contend that TCM's U.S. advertising expenses are direct selling expenses because the advertisements are aimed at a purchaser who buys the merchandise from the first unrelated purchaser or from a subsequent purchaser, *i.e.*, the customer's customer. Petitioners further contend that a TCM advertisement submitted as Exhibit 6 of petitioners' case brief is proof that these expenses are direct advertising expenses because the advertisement: (1) specifically promotes internal-combustion forklifts subject to this review; (2) identifies TCM Manufacturing, USA, Inc., TCM America, Inc., and C. Itoh Industrial Machinery, Inc., as the source of the advertisement; and (3) does not refer to or promote specific TCM dealers.

Petitioners submit that TCM failed to support its claim that all of its U.S. advertisements were indirect selling expenses and state that the Department should therefore reject TCM's claim and treat all of the advertising expenses as direct expenses. Petitioners provide calculations for allocating this expense as a direct selling expense to forklifts sold through CIM and to forklifts sold through MMD.

In rebuttal, TCM argues that the only advertising expenses related to subject merchandise were for general corporate advertising, rather than advertising for specific products. TCM further argues that the advertising cited by petitioner does not relate to subject merchandise, because it concerns forklift trucks manufactured in the United States. Because TCM's advertising is either intended to promote the company as a whole, or is not related to forklift trucks produced in Japan, TCM concludes that the Department should treat TCM's U.S. advertising expenses as indirect selling expenses.

Department's Position: We agree with petitioners that these expenses are direct selling expenses because these advertisements, as evident from the examples submitted by TCM, are aimed at the ultimate consumer. We disagree with TCM regarding TCM's claim that the advertising in question is unrelated to subject merchandise because the trucks sold by TCM in the United States were in fact manufactured in Japan, and were, at most, customized through further processing in the United States. Therefore, we have treated these advertising expenses as a direct selling expense in the final results.

Final Results of Review

We determine the following percentage margins to exist for the period June 1, 1989 through May 31, 1990:

Manufacturer/exporter	Margin percent
Toyota Motor Corporation	6.87
Toyo Umpanki Co., Ltd.	4.48

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. Individual differences between USP and FMV may vary from the percentages stated above. The Department will issue appraisement instructions concerning all respondents directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of these final results of administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption, as provided by section 751(a)(1) of the Tariff Act: (1) the cash deposit rate for the reviewed companies will be the rates as listed above; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; and (3) if the exporter is not a firm covered by this review, a prior review, or the original LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 39.45 percent. On May 25, 1993, the CIT in *Floral Trade Council* v. *United States*, Slip Op. 93–79 and *Federal Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the LTFV investigation (or that rate as amended for correction of clerical errors as a result of litigation) in proceedings governed by antidumping duty order for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical errors or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 39.45 percent, the "all others" rate established in the amended final notice of the LTFV investigation by the Department (53 FR 20882, June 7, 1988).

These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a final reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This notice also serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This administrative review and this notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: December 23, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–506 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

[C–333–502]

Deformed Steel Concrete Reinforcing Bar From Peru; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru.

EFFECTIVE DATE: January 10, 1994.

FOR FURTHER INFORMATION CONTACT: Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 61069) its intent to revoke the countervailing duty order on deformed steel concrete reinforcing bar from Peru (50 FR 48819; November 27, 1985).

Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On December 3, 1993, Florida Steel Corporation and Chaparral Steel Co., domestic producers and petitioners in the original investigation, objected to our intent to revoke the order. Accordingly, the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, and we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: December 30, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 94–517 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 010394B]

Draft Fishery Management Plan for Corals, Plants, and Associated Invertebrates for Puerto Rico and the U.S. Virgin Islands

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The Caribbean Fishery Management Council will hold public hearings on the Draft Fishery Management Plan for Corals, Plants, and Associated Invertebrates for Puerto Rico and the U.S. Virgin Islands (FMP).

DATES: Written comments on the draft FMP should be submitted on or before February 15, 1994. See **SUPPLEMENTARY INFORMATION** for dates, time, and location of the public hearings.

ADDRESSES: Send written comments to Miguel A. Rolón, Executive Director, Caribbean Fishery Management Council, 268 Muñoz Rivera Avenue, suite 1108, San Juan, Puerto Rico 0918–2577.

FOR FURTHER INFORMATION CONTACT: Miguel A. Rolón, (809) 753–6910.

SUPPLEMENTARY INFORMATION: The draft FMP proposes the following management measures: (1) Prohibit the harvest or possession of stony corals, whether dead or alive, except for legally permitted research, education, and restoration programs; (2) prohibit the harvest or possession of sea fans and gorgonians (octocorals) and any species in the fishery management unit if attached or existing upon live-rock, live or dead, except for legally permitted research, education, and restoration programs; (3) prohibit the sale or possession of any prohibited species unless the specimen entered the management area in interstate or international commerce and is fully documented as to point of origin; (4) prohibit the use of chemical, plants or plant-derived toxins, and explosives to harvest organisms in the coral fishery management unit, except for legally permitted research, education, and restoration programs; (5) limit harvest of fishery management unit organisms except for those listed in Appendix A, to hand-held dip-nets, slurp guns, hand and other non-habitat destructive gear, except for legally permitted research, education, and restoration programs; (6) require an annual permit to harvest or possess organisms in the fishery management unit; (7) require collectors, dealers, and exporters of species managed under the coral plan to acquire an annual permit, to submit monthly records and report harvest, shipments, and unit cost; and (8) establish a Marine Conservation District (MCD) in the exclusive economic zone, due south of St. John, U.S. Virgin Islands, within the coordinates specified below; no possession while moored, fishing, or harvesting of any organisms will be allowed in the MCD; no anchoring will be allowed in the MCD. Exceptions to the above restrictions are allowed for legally permitted research, education, and restoration programs.

PROPOSED COORDINATES FOR MARINE CONSERVATION DISTRICT

Point	Latitude	Longitude
A	18°15.3′ N.	64°46.9′ W.
B	18°15.0′ N.	64°42.2′ W.

PROPOSED COORDINATES FOR MARINE CONSERVATION DISTRICT—Continued

Point	Latitude	Longitude
C	18°10.0′ N.	64°42.2′ W.
D	18°10.0′ N.	64°46.9′ W.

All hearings will be held from 7 p.m. to 10 p.m. and are scheduled on the following dates at the following locations:

1. Tuesday, February 1, 1994—Conference Room, Legislature Building, Charlotte Amalie, St. Thomas, U.S. Virgin Islands.
2. Wednesday, February 2, 1994—Boulon Center, Legislature Room, St. John, U.S. Virgin Islands.
3. Thursday, February 3, 1994—Conference Room, Legislature Building, Christiansted, St. Croix, U.S. Virgin Islands.
4. Tuesday, February 8, 1994—Conference Room, Hotel Antibes, Cabo Rojo, Puerto Rico.
5. Wednesday, February 9, 1994—Restaurant Mesón Criollo, Road 987 Km 3.2, Las Croabas, Fajardo, Puerto Rico.

Testimony may be presented at any of the hearings. Copies of the draft FMP are available (see **ADDRESSES**).

Dated: January 5, 1994.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–504 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Establishment of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China and Permanent Denial of Goods Exported in Excess of Import Restraint Limits in 1994

January 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and notice of permanent denial of goods shipped in excess of the 1994 limits.

EFFECTIVE DATE: January 17, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

Inasmuch as no agreement was reached in recent consultations between the Governments of the United States and the People's Republic of China on a mutually satisfactory solution regarding the extension of the bilateral textile agreement, including quota limits, illegal transshipment of textile products from China, overshipping annual limits, and other violations of the provisions of the bilateral agreement, the United States Government has decided to establish limits for the period beginning on January 1, 1994 and extending through December 31, 1994. The annual limits for January 1, 1994 through December 31, 1994 shall be effective January 17, 1994.

It should be noted that CITA, under Executive Order 11651, as amended, and section 204 of the Agricultural Act of 1956, as amended, intends to permanently deny entry to goods which have been shipped in excess of the 1994 limits.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 5, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 17, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in China and exported during

the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
200	463,566 kilograms.
218	7,919,394 square meters.
219	1,609,888 square meters.
226	7,310,063 square meters.
237	1,245,294 dozen.
239	1,991,612 kilograms.
300/301	2,694,290 kilograms.
313	29,829,197 square meters.
314	33,939,959 square meters.
315	116,403,311 square meters.
317/326	13,957,535 square meters of which not more than 2,670,351 square meters shall be in Category 326.
331	3,539,461 dozen pairs.
333	64,133 dozen.
334	222,374 dozen.
335	278,482 dozen.
336	113,030 dozen.
338/339	1,525,465 dozen of which not more than 1,157,995 dozen shall be in knit shirts other than T-shirts and tank tops in Categories 338–S/339–S[1].
340	603,342 dozen of which not more than 301,671 dozen shall be in shirts made from fabric with two or more colors in the warp and/or the filling, excluding napped shirts in Category 340–Z[2].
341	482,186 dozen of which not more than 289,312 dozen shall be in blouses made from fabric with two or more colors in the warp and/or the filling in Category 341–Y[3].
342	188,380 dozen.
345	83,037 dozen.
347/348	1,556,789 dozen.
350	109,122 dozen.
351	354,168 dozen.
352	1,159,137 dozen.
359–C[4]	395,659 kilograms.
359–V[5]	587,624 kilograms.
360	5,073,230 numbers of which not more than 3,460,433 numbers shall be in Category 360–P[6].
361	2,864,699 numbers.
363	21,823,736 numbers.
369–D[7]	3,230,177 kilograms.
369–H[8]	3,303,681 kilograms.
369–L[9]	2,170,919 kilograms.
369–S[10]	395,021 kilograms.
410	1,440,098 square meters of which not more than 1,154,393 square meters shall be Category 410–A[11] and not more than 1,154,393 square meters shall be in Category 410–B[12].
433	16,947 dozen.
434	9,656 dozen.
435	17,736 dozen.
436	11,036 dozen.
438	19,312 dozen.
440	27,590 dozen of which not more than 15,765 dozen shall be in Category 440–M[13].
442	30,743 dozen.
443	99,320 numbers.
444	147,656 numbers.
445/446	184,452 dozen.
447	57,398 dozen.
448	16,135 dozen.
607	2,169,081 kilograms.
611	3,707,576 square meters.
613	5,088,830 square meters.
614	7,996,731 square meters.
615	16,647,741 square meters.
617	11,631,609 square meters.
631	845,508 dozen pairs.
633	38,564 dozen.
634	419,550 dozen.
635	438,256 dozen.
636	386,545 dozen.
638/639	1,738,928 dozen.
640	1,067,699 dozen.
641	960,852 dozen.
642	220,625 dozen.
645/646	530,970 dozen.
647	1,109,833 dozen.
648	792,968 dozen.
649	619,581 dozen.
650	77,894 dozen.
651	530,873 dozen of which not more than 93,464 dozen shall be in Category 651–B[14].
652	1,776,617 dozen.
659–C[15]	281,050 kilograms.
659–H[16]	1,924,991 kilograms.
659–S[17]	414,247 kilograms.
669–P[18]	1,352,112 kilograms.
670–L[19]	10,761,357 kilograms.
831	348,384 dozen pairs.
833	18,439 dozen.
835	87,104 dozen.
840	338,840 dozen.
842	184,388 dozen.
845	1,567,105 dozen
846	121,724 dozen.
847	898,893 dozen.
863–S[20]	6,336,219 numbers.
870	21,638,621 kilograms.
Group II	
330, 332, 349, 353, 354, 359–O[21], 431, 432, 439, 459, 630,632, 643, 653, 654 and 659–O[22], as a group.	93,858,209 square meters equivalent.
Sublevel in Group II	
643	353,211 numbers.
Group III	
201, 220, 222–225, 227, 229, 362, 369–O[23], 400, 414,464, 465, 469, 600, 603, 604–O[24], 606, 618–622, 624–629, 665, 666, 669–O[25] and 670–O[26], as a group.	253,179,660 square meters equivalent.
Group IV	
832, 834, 836, 838, 839, 843, 644/844, 850–852, 858 and 859, as agroup.	20,140,687 square meters equivalent.
Sublevel in Group IV	
644/844	2,554,380 numbers.
836	188,478 dozen.

[1] Categories 338–S/339–S: all HTS numbers except 6109.10.0012, 6109.10.0014, 6109.10.0018, 6109.10.0023, 6109.10.0040, 6109.10.0045, 6109.10.0060 and 6109.10.0065.

[2] Category 340–Z: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2050 and 6205.20.2060.

[3] Category 341–Y: only HTS numbers 6204.22.3060, 6206.30.3010, 6206.30.3030 and 6211.42.0054.

[4] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[5] Category 359–V: only HTS numbers 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070.

[6] Category 360–P: only HTS numbers 6302.21.1010, 6302.21.2010, 6302.21.2020, 6302.31.1010, 6302.31.1020, 6302.31.2010 and 6302.31.2020.

[7] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[8] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[9] Category 369–L: only HTS numbers 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015 and 4202.92.6090.

[10] Category 369–S: only HTS number 6307.10.2005.

[11] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 6111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 6212.22.1010, 5212.23.1010, 6212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[12] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.22.0520, 5515.92.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[13] Category 440–M: only HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0930.

[14] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[15] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, b104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[16] Category 659–H: only HTS numbers 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090 and 6505.90.8090.

[17] Category 659–S: only HTS numbers 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020.

[18] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[19] Category 670–L: only HTS numbers 4202.12.8030, 4202.12.8070, 4202.92.3020, 4202.92.3030 and 4202.92.9025.

[20] Category 863–S: only HTS number 6307.10.2015.

[21] Category 359–O: all HTS numbers except 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025, 6211.42.0010 (Category 359–C); 6103.19.2030, 6103.19.4030, 6104.12.0040, 6104.19.2040, 6110.20.1022, 6110.20.1024, 6110.20.2030, 6110.20.2035, 6110.90.0044, 6110.90.0046, 6201.92.2010, 6202.92.2020, 6203.19.1030, 6203.19.4030, 6204.12.0040, 6204.19.3040, 6211.32.0070 and 6211.42.0070 (Category 359–V).

[22] Category 659–O: all HTS numbers except 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017, 6211.43.0010 (Category 659–C); 6502.00.9030, 6504.00.9015, 6504.00.9060, 6505.90.5090, 6505.90.6090, 6505.90.7090, 6505.90.8090 (Category 659–H); 6112.31.0010, 6112.31.0020, 6112.41.0010, 6112.41.0020, 6112.41.0030, 6112.41.0040, 6211.11.1010, 6211.11.1020, 6211.12.1010 and 6211.12.1020 (Category 659–S).

[23] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005, 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[24] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[25] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[26] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–571 Filed 1–6–94; 11:21 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

January 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs reducing limits.

EFFECTIVE DATE: January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The 1994 limits for Categories 340/640 and 351/651 are being reduced for carryforward used.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993). Also see 58 FR 61679, published on November 22, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 5, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 12, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994.

Effective on January 12, 1994, you are directed to reduce the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Guatemala:

Category	Adjusted twelve-month limit
340/640	943,400 dozen.
351/651	200,000 dozen.

The guaranteed access level for Categories 340/640 and 351/651 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–514 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DR–F

New Visa Stamp for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Romania

January 5, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs authorizing the use of a new visa stamp.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of Romania has notified the United States Government that instead of the former "Ministry of Commerce and Tourism—Department of Foreign Trade," officials of the newly established "Ministry of Commerce—Department of Foreign Trade" will issue and sign visas for textile products exported from Romania. Effective on February 1, 1994, textile products produced or manufactured in Romania and exported from Romania on and after February 1, 1994 shall be accompanied by a visa issued by the "Ministry of Commerce—Department of Foreign Trade." From February 1, 1994 through March 2, 1994, visas from either will be accepted. After March 2, 1994, only visas issued by the "Ministry of Commerce—Department of Foreign Trade" will be accepted.

A facsimile of the new visa stamp is on file at the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW, room 3106, Washington, DC.

See 49 FR 493, published on January 4, 1984.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 5, 1994.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 29, 1983, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive directs you to prohibit entry of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Romania for which the Government of Romania has not issued an appropriate visa.

The Government of Romania has notified the United States Government that instead of the "Ministry of Commerce and Tourism—Department of Foreign Trade," officials of the "Ministry of Commerce—Department of Foreign Trade" will sign and issue visas for textile products exported from Romania. Effective on February 1, 1994, you are directed to amend further the directive dated December 29, 1983 to provide for the use of the new visa stamp to accompany shipments of textile products, produced or manufactured in Romania and exported from Romania on and after February 1, 1994. From February 1, 1994 through March 2, 1994, visas from either will be accepted. After March 2, 1994, only visas issued by the "Ministry of Commerce—Department of Foreign Trade" will be accepted. A facsimile of the new visa stamp is enclosed with this letter.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–515 Filed 1–7–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF DEFENSE

Office of the Secretary of the Army

Notice of Availability, Environmental Assessment and Finding of No Significant Impact for the Disposal and Reuse of Cameron Station, VA

AGENCY: Department of the Army, DOD.

ACTION: Notice of availability.

SUMMARY: This notice of availability is for the Final Environmental Assessment (EA) and Finding of No Significant Impact (FNSI) prepared for the disposal and reuse of Cameron Station, Virginia. The EA has assessed the potential environmental impacts for two proposed reuse alternatives: to develop Cameron Station for mixed use; or to place Cameron Station into caretaker status. The first alternative involves the development of Cameron Station as follows: mixed residential on 70 acres, commercial/retail on 16 acres, open space/recreation on 50.5 acres, and 16 acres for infrastructure use. The second alternative would place all buildings and grounds in caretaker status.

FOR FURTHER INFORMATION CONTACT: Ms. Maria De La Torre, U.S. Army Corps of Engineers, (CENAB–PL–E), P.O. Box 1715, Baltimore, Maryland 21203–1715, (410) 962–2996.

SUPPLEMENTARY INFORMATION: Copies of the EA and FNSI will be available to the public for review for 30 days following publication of this notice.

Dated: December 29, 1993.

Lewis D. Walker,

Deputy Assistant Secretary of the Army (Environment, Safety and Occupational Health), OASA (I, L&E).

[FR Doc. 94–446 Filed 1–7–94; 8:45 am]

BILLING CODE 3710–08–M

Department of the Army

Advisory Committee Meeting Notice

AGENCY: Headquarters, I Corps and Fort Lewis, Fort Lewis, WA, DOD.

ACTION: Notice.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following committee meeting:

Name of the Committee: Yakima Training Center Cultural and Natural Resources Committee—Technical Committee.

Date of the Meeting: January 20, 1994.

Place: Yakima Training Center, Building 266, Yakima, Washington.

Time: 1 p.m.

Proposed Agenda: Cultural and Natural Resources Management Plan Development and Review.

All proceedings are open. For further information contact Stephen Hart, (206) 967–4540.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–490 Filed 1–7–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Draft Feasibility Study/Proposed Plan-Environmental Impact Statement for Remedial Action at the Tonawanda Site, Tonawanda, NY

AGENCY: Department of Energy (DOE).

ACTION: Extension of public comment period.

SUMMARY: DOE, in response to public comments received to date, has decided to extend to February 10, 1994, the public comment period on the draft feasibility study/proposed plan-environmental impact statement (FS/PP-EIS) for remedial action at the Tonawanda Site, Tonawanda, New York (DOE/EIS–0191D, EPA EIS No. 930393).

DATES: Comments on the draft FS/PP-EIS should be postmarked by February 10, 1994, to ensure consideration. Comments postmarked after that date will be considered to the extent practicable.

ADDRESSES: Comments or requests for copies of the draft FS/PP-EIS should be addressed to: Ron Kirk, New York Site Manager, Former Sites Restoration Division, U.S. Department of Energy, Oak Ridge Operations Office, P.O. Box 2001, Oak Ridge, Tennessee 37831. Telephone: (615) 576–7477. Fax number (615) 576–0956.

FOR FURTHER INFORMATION CONTACT: For further information on the Tonawanda Site, contact Ron Kirk at the above address. For further information on DOE's National Environmental Policy Act (NEPA) procedures, contact: Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4600 or leave a message at (800) 472–2756. For further information on DOE's Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA) procedures, contact: Randall Kaltreider, Acting Director, Office of Environmental Compliance (EH–22), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585. Telephone: (202) 586–4440.

SUPPLEMENTARY INFORMATION: On November 12, 1993, the Environmental Protection Agency published a notice in the **Federal Register** (58 FR 60022) announcing the availability of the draft FS/PP-EIS (DOE/EIS–0191D, EPA EIS No. 930393) and the close of the public comment period scheduled for January 11, 1994. DOE's draft FS/PP-EIS for the Tonawanda Site integrates NEPA values with the procedural and documentation requirements of CERCLA, whenever practicable pursuant to DOE Order 5400.4. In response to requests from several parties to extend the comment period, and to ensure that all interested parties have the opportunity to comment, DOE is extending the comment period to February 10, 1994. Comments should be postmarked by February 10, 1994, to ensure consideration; comments postmarked after that date will be considered to the extent practicable.

Issued in Washington, DC, January 4, 1994.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 94–499 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–P

Notice of Program Interest for Minority Technical Education Program

AGENCY: Department of Energy, San Francisco Operations Office.

ACTION: Notice of Program Interest.

SUMMARY: The Department of Energy (DOE), Office of Economic Impact and Diversity, desires to encourage the submission of unsolicited proposals in support of the Department's Minority Technical Education Program. Such support is authorized by 42 U.S.C. 7141 (d) and 7256(a); Public Law 95–619, part 3, sec. 2.11(d), which states that the Director of the Office of Minority Economic Impact may provide appropriate assistance to minority educational institutions to enable these institutions to participate in the activities of the Department. It is intended in particular to obtain proposals from post secondary two-year educational institutions, or from teams of organizations including qualified post secondary two-year educational institutions. For purposes of this solicitation, a qualified "Minority Education Institution" is a post secondary two-year educational institution of higher learning (such as a community college or vocational college) that is a non-profit entity with a minimum of 25 percent total minority enrollment. Pursuant to Public Law 95–619, "Minority" means any individual who is a citizen of the United States and who is a Negro, American Indian, Eskimo, Oriental, or Aleut or is a Spanish speaking individual of Spanish descent. This notice describes the principal scope of the activity and provides some guidance on submitting proposals.

DATES AND ADDRESSES: Proposals (3 copies) should be submitted to Estela Romo, HRMD, U.S. Department of Energy, 1301 Clay St., Oakland, CA 94612. Applications received after March 15, 1994, will be held for one year and may be eligible for awards in FY 95. Proposers receiving awards in FY 1994 will be notified not later than June 15, 1994. Each proposal must contain a cover sheet (Standard Form 424), a technical proposal and budget justification.

FOR FURTHER INFORMATION CONTACT: All questions concerning this program notice should be directed to Arlene Coleman at (510) 637–1870.

SUPPLEMENTARY INFORMATION: With this notice, it is DOE's intent to encourage the submission of proposals for minority two year post secondary training that would address the following program objectives:

1. Increase the number of minority students that select a course of study leading to energy-related careers to enable and encourage them to bridge from high school to community college to four year educational institutions; and/or, increase the career opportunities through retention programs, retraining, and bridge programs in energy related careers.

2. Strengthen the quantity and quality of energy-related technical and academic curricula with emphasis on applied training provided for minority students at two-year post secondary schools.

3. Establish partnerships with industry and other community entities that promote economic growth opportunities of the community serviced by enriching energy-related technology transfer activities.

The purpose of this notice is to encourage the submission of proposals that address one or more of the following:

1. Provide financial assistance to financially needy honor students participating in the program.

2. Establish linkages with DOE contractors and private and/or public energy-related institutions to support student and faculty internships.

3. Institute energy related training in computer science, the physical sciences, the life sciences, environmental sciences, engineering, software engineering, engineering technologies.

4. Enhance the development of tech-prep education program curricula and bridge programs related to dropout prevention, re-entry, limited English proficiency, technical skills, and career opportunities to prepare high school students.

5. Enhance the articulation agreements from vocational schools and community colleges to four-year colleges and universities.

6. Identify and establish technology transfer activities between the population serviced by the two-year post secondary institution and private/or public institutions as it relates to economic growth and development of the community.

7. Establish linkages with DOE contractors, and private or public energy related institutions to support student and faculty internships and apprenticeships.

8. Provide support for travel expenses associated with participants' attendance at technology transfer meetings, workshops, and visits to national laboratories.

9. Establish linkages to overcome isolation of the institution through cooperative agreements, specialized curricula or other outreach activities.

10. Enhance the academic core and/or the basic principles of applied technology and science of the energy related curricula.

11. Identify and establish technology transfer activities between the population serviced by the two-year post secondary institution and private/or public institutions as it relates to economic growth and development of the community.

Authority: 10 CFR part 600, subparts A and B.

Eligibility

To be eligible to participate in this program, an institution must be a nonprofit institution of higher education which offers a two year associate degree program, a two year certificate program, and which is qualified as an institution of higher education. The education institution must have 25 percent or more minority enrollment. It should have a history of graduating minority students in some energy-related or technical field such as applied mathematics, engineering technologies, environmental science, computer sciences, software engineering, engineering, life sciences, or physical sciences. This program is open to institutions within the United States and its territories. Institutions having more than one eligible component may choose whether to apply on behalf of the institution as a whole or to submit freestanding applications on behalf of one or more components. Individual components of a community, vocational, or other institutions are separately eligible.

Indirect Costs

Indirect costs will be limited to eight percent.

Project Director

The Project Director is the representative and spokesperson for the institution in matters concerning the award. The Project Director should be available for consultation with the DOE Program Manager and assist in resolving issues or problems encountered by the DOE Program Manager during the tenure of the project.

Project Funding

FY 1994 funding up to $537,110 is available for awards under this program. It is estimated that these funds will support awards from seven to eight schools with funding levels of approximately $67,000 for this first fiscal year. Funding for the second year through the fifth year is estimated at $50,000 per year subject to the availability of funds. These estimates of funding and number of awards do not bind the U.S. Department of Energy to a specific number of awards unless otherwise specified by statute or regulation.

Evaluation Process and Selection Criteria

Applications may be subjected to external review following preliminary screening.

Projects will be selected for funding based on their quality as determined by DOE staff evaluation of the merit of the application using the following general criteria. The general criteria will be either Acceptable or Unacceptable based on the following:

1. The potential contribution which the proposed effort is expected to make to the program's objectives, if pursued at this time.
2. Evidence of overall merit.
3. Use of unique, innovative, or meritorious methods, approaches, or ideas, including formal agreements between institutions.
4. Qualifications, capabilities, and experience of the application's Project Director and key personnel who are considered to be critical in achieving applicant objectives.
5. Demonstrate cost-sharing from non-Department of Energy sources.
6. The number of minority categories, number of participants that are expected to be impacted.
7. The degree to which the past efforts have impacted the local community in relationship to education in general.

The following specific criteria will be applied to projects. These criteria, along with the general criteria described previously, will be used for the technical evaluation of each project. Final selection of projects will be made by DOE based on the technical evaluations and other factors such as duplication of activities, total program balance, geographic distribution, balance of minority category and sub-category, demonstration of cost-sharing, and other factors.

1. Identification of needs of the project.
   a. Institutional assessment and profile in meeting proposed requirement.
   b. Identification of specific basic applied technologies and training objectives.
   c. Involvement of community entities serviced by the two-year educational institution and other appropriate entities in establishment of project needs. Specifically, the project must address energy related technology transfer activities as it relates to economic growth of the community serviced by the education institution.
2. Plan of operation.
   a. Definition of project activities needed with appropriate time and resource projections.
   b. Management Plan.
   c. Relationship of this project to the overall institutional plan.
3. Pool of potential student trainee participants.
4. Overall benefits to the institution(s) and the community served by the institution.

Proposal Preparation Guidelines

Proposals submitted in response to this solicitation shall contain the information required in this announcement and should reference Program Notice DE–FG03–94SF20212 Proposals will be evaluated, independently, as received and selected for awards up to the limit of available funding. DOE assumes no responsibility for any costs associated with proposal preparation under this announcement.

Issued in Oakland, CA, on December 21, 1993.

Department of Energy

Martin J. Domagala,

Acting Manager.

[FR Doc. 94–380 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangement", under the Additional Agreement for Corporation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Norway concerning Peaceful Uses of Nuclear Energy.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval for the following retransfer: RTD/NO(EU)–60 for the transfer from the Federal Republic of Germany to Norway of 17.63 kilograms of uranium containing 3.517 kilograms of the isotope uranium-235 (19.95 percent enrichment) for test fuel fabrication for the Halden reactor.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC, on January 5, 1994.

Salvador N. Ceja,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 94–498 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket No. ERA–FE–81–012]

Tucson Electric Power Co.; Application for Rescission of a Prohibition Order Issued Pursuant to the Powerplant and Industrial Fuel Use Act of 1978

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application to rescind Prohibition Order.

SUMMARY: Tucson Electric Power Company has requested that DOE rescind a Fuel Use Act Prohibition Order issued to electric generating units at its Irvington Generating Station located near Tucson, Arizona.

DATES: Comments must be submitted on or before February 24, 1994.

ADDRESSES: Comments should be submitted to the Department of Energy, Office of Fossil Energy, Office of Fuels Programs, Docket room 3F–056, 1000 Independence Avenue, SW., Washington, DC 20585.

Docket No. ERA–FC–81–012 should be printed on the outside of the envelope and on the documents contained therein.

FOR FURTHER INFORMATION CONTACT: Xavier Puslowski (Program Office) 202–586–4708 or Michael T. Skinker, Esq. (Program Attorney) 202–586–6667.

SUPPLEMENTARY INFORMATION: The Office of Fossil Energy (FE) of the Department of Energy (DOE) has received an application by Tucson Electric Power Company (TEP) to rescind the Prohibition Order issued on July 15, 1981 (46 FR 37960, July 23, 1981), pursuant to the Powerplant and Industrial Fuel Use Act of 1978 (FUA) 42 U.S.C. 8301 *et seq.* The order prohibited the burning of oil or natural gas in TEP's Irvington Generating Station Units 1, 2 and 3, located near Tucson, Arizona.

Pursuant to 10 CFR 501.102(b), TEP filed its application based on a substantial change in the circumstances upon which the Prohibition Order was originally issued. TEP claims this change in circumstances to be beyond its control. TEP cites the sharp reduction in economic benefits to be realized from the conversion to coal and the potentially costly environmental disincentives to using coal, combined with TEP's financial situation, as the impetus for the requested relief. TEP requests rescission to permit the company to continue to use oil or natural gas above the percentage limits specified in the prohibition order.

Procedural Matters

Any party or person desiring to be heard or to protect this application for rescission should file five copies of any comments, petitions to intervene, or protests at the address provided above. Any request for a public hearing must be made within the public comment period. In making its decision regarding the requested rescission action, DOE will consider all relevant information submitted or otherwise available to it.

The public file containing a copy of the application and other documents and supporting materials on this proceeding is available, upon request, at the address above.

Issued in Washington, DC, on January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–500 Filed 1–7–94; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

Duke Power Co.; Notice of Intent To Prepare an Environmental Assessment

[Project No. 2607–001]

January 4, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicensing of the existing Spencer Mountain Hydroelectric Project, Project No. 2607–001. The project is located on the South Fork Catawba River in Gaston County, North Carolina.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

The purpose of this notice and the attached scoping document is to solicit comments from interested individuals, organizations, and agencies with environmental expertise and concerns that will assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

The scoping document will: (1) Identify preliminary environmental issues related to the proposed projects, (2) identify preliminary resource issues that are not important and do not require detailed analysis, (3) identify reasonable alternatives to be addressed in the EA, and (4) solicit all available information, especially quantified data, on the resource issues, including points of view in opposition to, or in support of, the staff's preliminary views.

Written comments must be filed no later than March 1, 1994 with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., room 3100, Washington, DC 20426.

All written correspondence should clearly show the following caption on the first page: **Spencer Mountain Hydroelectric Project, (FERC No. 2607–001).**

Intervenors—those on the Commission's service list for this proceeding (parties)—are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

Lois D. Cashell,

Secretary.

[FR Doc. 94–455 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–162–000, et al.]

NGC Energy Resources Limited Partnership, et al.; Natural Gas Certificate Filings

January 3, 1994.

Take notice that the following filings have been made with the Commission:

1. NGC Energy Resources Limited Partnership.

[Docket No. CP94–162–000]

Take notice that on December 22, 1993, NGC Energy Resources, Limited Partnership (NER), located at 13430

Northwest Freeway, suite 1200, Houston, TX 77040, filed in the above-referenced docket, pursuant to section 1(b) of the Natural Gas Act (NGA), 15 U.S.C. 717(b) and Rule 207(a)(2) of the Commission's rules of Practice and Procedure, 18 CFR 385.207, a Petition for Declaratory Order Disclaiming Jurisdiction over certain facilities acquired from Northern Natural Gas Company (Northern), all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is stated that NER entered into an agreement with Northern under which Northern will sell NER the "Bear Paw" facilities located in Blaine, Chouteau and Hill Counties, Montana, and interconnecting with the pipeline owned by Many Islands Pipe Lines (Canada) Limited at the Montana/Saskatchewan border. NER will acquire approximately 500 miles of various diameter gathering lines along with three compressors totaling 13,600 horsepower.

It is further stated that NER requests that the Commission declare the entire Bear Paw system to be gathering facilities under section 1(b) of the NGA. NER also states that Northern has filed an application in Docket No. CP94–130–000 to authorize the abandonment and sale of these facilities to NER.

Comment date: January 24, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Questar Pipeline Company

[Docket No. CP94–159–000]

Take notice that on December 23, 1993, Questar Pipeline Company (Questar) of 79 South State Street, Salt Lake City, Utah 84111 filed in Docket No. CP94–159–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon minor pressure regulating facilities under the blanket authorization issued by the Commission in Docket No. CP82–491–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Questar proposes to abandon its Huntington District Regulator Station (HU0005 DRS) located adjacent to its six-inch Jurisdictional Lateral (J.L.) No. 44 located in Emery County, Utah, used in conjunction with providing gas service to Mountain Fuel Supply Company (Mountain Fuel), Questar's local distribution company affiliate. Questar states that the facilities to be abandoned at the HU0005 DRS comprise approximately 100 feet of three, four and six-inch piping and one pressure regulating valve assembly. Questar states that the investment associated with the facilities to be abandoned is $15,129. Questar states that because these facilities function solely to reduce delivery pressures for individual downstream sales and transportation delivery meter stations, no actual deliveries were made directly through these facilities. Questar states that following abandonment, the 3-inch Huntington Tap will remain in service. Questar states that because Mountain Fuel will continue to deliver to its customers via individual meter and regulating stations along the length of J.L. No. 44, there will be no abandonment of gas service to Mountain Fuel or its customers as a result of granting it permission to abandon the HU0005 DRS.

Comment date: February 17, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP94–143–000]

Take notice that on December 20, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP94–87–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations and Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate a new delivery point near Chippewa Township, Isabella County, Michigan, to provide Midland Cogeneration Venture Limited (MCV) the flexibility and the security of a second delivery point to receive natural gas transported by Great Lakes, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that MCV is an existing shipper to whom it provides firm transportation service of up to 80,000 Mcf of gas per day under Part 284 of the Commission's regulations. Great Lakes states that it currently receives the gas at its Emerson Receipt Point, located in Great Lakes' Western Zone, and delivers gas to MCV through the Chippewa Meter Station on Great Lakes' mainline. Great Lakes states that the design capability of the Chippewa Meter Station has now been exceeded and that MCV has requested it to construct and operate a new delivery point (Midland Meter Station) to provide flexibility and the security of a second delivery point. Great Lakes states that the Midland Meter Station will consist of taps, two turbine meters, a gas separator, and an electronic measurement system. Great Lakes estimates that the cost to construct the facilities will be about $1.4 million. Great Lakes states that the Midland Meter Station and existing transportation service will not impact its existing peak day and annual deliveries, and the transportation service will continue to be provided, under Part 284 of the Commission's regulation, without detriment to service to any other shipper on its system.

Comment date: February 17, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–457 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–163–000, et al.]

Kansas Gas Supply Corp., et al.; Natural Gas Certificate Filings

December 30, 1993.

Take notice that the following filings have been made with the Commission:

1. Kansas Gas Supply Corporation

[Docket No. CP94–163–000]

Take notice that on December 21, 1993, Kansas Gas Supply Corporation (KGS), 10200 Grogans Mill Road, The Woodlands, Texas 77380, filed in Docket No. CP94–163–000 a petition for an order declaring that the gathering system, which KGS proposes to acquire from Williams Natural Gas Company (WNG), is a gathering facility pursuant to Section 1(b) of the Natural Gas Act and therefore exempt from the Commission's jurisdiction, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

KGS states in its petition that it seeks a declaration from the Commission that the Barber County Gathering System located in Barber County, Kansas and Woods County, Oklahoma, which KGS proposes to acquire from WNG, is a gathering facility. Further, KGS states that it seeks a declaration that the acquisition, ownership and operation of the Barber County Gathering System will not subject KGS, or any of the facilities of KGS (including the Barber County Gathering System), or any of the services performed or to be performed by KGS, to the jurisdiction of the Commission under the Natural Gas Act or the Commission's regulations thereunder.

Comment date: January 20, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Williams Natural Gas Company

[Docket No. CP94–147–000]

Take notice that on December 20, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94–147–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon, by sale, WNG's Barber County gathering system and the assignment and abandonment of gas purchase contracts and direct sales contracts to Kansas Gas Supply Corporation (KGS), all as more fully set forth in the application on file with the Commission and open to public inspection.

WNG proposes to abandon, by sale to KGS, the Barber County gathering system located in Barber County, Kansas and Woods County, Oklahoma; to assign and abandon the sales obligation of producers of Natural Gas Act gas presently or previously under contract to WNG to KGS; and to assign and abandon all of WNG's pipeline rights in the sale facilities to KGS.

Comment date: January 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Florida Gas Transmission Company.

[Docket No. CP94–141–000]

Take notice that on December 20, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–141–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate new delivery point facilities for City Gas Company of Florida (CGF) in Brevard County, Florida, under FGT's blanket certificate issued in Docket No. CP82–553–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

FGT proposes to install a meter station, to be known as the Indian River Meter Station, to serve as a delivery point for CGF. It is stated that the delivery point will permit deliveries of up to 480 MMBtu equivalent of natural gas per hour. It is asserted that the deliveries will be made under the terms of the existing FTS–1 service agreement between FGT and CGF. It is further asserted that the deliveries are within CGF's existing entitlement from FGT and that the deliveries would not disadvantage FGT's other customers. It is estimated that construction of the facilities would cost $81,000, to be reimbursed by CGF.

Comment date: February 14, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. High Island Offshore System

[Docket No. CP94–127–000]

Take notice that on December 13, 1993, High Island Offshore System (HIOS), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–127–000 an application pursuant to section 7(b) of the Natural Gas Act (NGA), as amended, and the Rules and Regulations of the Federal Energy Regulatory Commission (Commission), for authorization to abandon transportation service currently being rendered for Fina Natural Gas Company (Fina), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

HIOS proposes to terminate 12,000 Mcf per day in firm transportation service which it renders for Fina according to HIOS' Rate Schedule T–19. HIOS also proposes to terminate 20,000 Mcf per day in associated Interruptible Overrun Transportation Service volumes it renders according to its Rate Schedule I. HIOS notes that service for Fina was certificated in Docket No. CP75–104 by order issued March 29, 1982, 18 FERC ¶ 61,274 (1982). HIOS states that according to timely notice given to it by Fina's letter dated July 26, 1993, it proposes to terminate these services effective August 22, 1994—the end of the primary term of an agreement between HIOS and Fina dated September 25, 1987, and designated as HIOS' Rate Schedule T–19.

Comment date: January 20, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, D.C. 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes

that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–456 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11311–001 Nevada]

TS Hydro; Notice of Surrender of Preliminary Permit

January 4, 1994.

Take notice that TS Hydro, Permittee for the TS Ranch Project No. 11311, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11311 was issued November 13, 1992, and would have expired October 31, 1995. The project would have been located partially on lands administered by the Bureau of Land Management on TS Ranch in Lander and Eureka Counties, Nevada.

The Permittee filed the request on December 8, 1993, and the preliminary permit for Project No. 11311 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–458 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EG94–13–000]

Brooklyn Energy Limited Partnership; Application for Determination of Exempt Wholesale Generator Status

January 4, 1994.

On January 3, 1994 Brooklyn Energy Limited Partnership ("BELP") (c/o Mary Ann Ralls, Reid & Priest, 701 Pennsylvania Avenue, NW., Washington, DC 20004) filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's Regulations. BELP is a Nova Scotia limited partnership formed to own an electric and steam generating facility to be located in Brooklyn, the Province of Nova Scotia, Canada.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions and comments should be filed on or before January 14, 1994 and must be served on Applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–431 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–101–000]

Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 8A, to become effective January 31, 1994.

Carnegie states that it is filing the above tariff sheet as a limited application under Section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to New Jersey Natural Gas Company, Carnegie's former Rate Schedule LVWS customer Account No. 191 costs billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's filing in Docket No. RP94–47–000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–459 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–102–000]

Carnegie Natural Gas Co.; Notice of Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Carnegie Natural Gas Company (Carnegie) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 7A, to become effective January 31, 1994.

Carnegie states that it is filing the above tariff sheet as a limited application under section 4 of the Natural Gas Act and the Commission's Order No. 636 to direct bill to Carnegie's former bundled firm sales customer the pre-restructuring balance of Account No. 858 costs included in Carnegie's Account No. 186.7, as adjusted for carrying charges and interest, together with amounts direct billed to Carnegie by Carnegie's upstream pipeline, Texas Eastern Transmission Corporation (Texas Eastern), pursuant to Texas Eastern's filing in Docket No. RP93–204–000.

Carnegie states that copies of its filing were served on all jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington,

DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–460 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–96–000]

CNG Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, CNG Transmission Corporation (CNG) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets listed on Appendix A to the filing, to become effective on February 1, 1994.

CNG states the proposed rate changes would increase CNG's revenues by $106.8 million based on a test period cost of service for the twelve months ended September 30, 1993, as adjusted for known and measurable changes through June 30, 1994. CNG states that increased rates are necessary primarily to recover increased operation and maintenance expenses, increased costs of material and supplies, increased costs of transportation by others, increased depreciation expense, increased taxes, stranded costs, and increased plant investment. The filed rate of return is based on a capitalization of 65.73 percent common equity and 34.27 percent debt with an equity return of 14 percent.

CNG's filing includes primary and alternate tariff sheets. CNG states that the primary tariff sheets reflect the end of CNG's gathering rate moratorium and the establishment of a two-part gathering rate. The alternate tariff sheets reflect continuation of the gathering rate moratorium that was approved for CNG in Docket No. RP88–211.

CNG states that it has posted and served its filing in accordance with § 154.16 of the regulations.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–436 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–98–000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, Original Sheet No. 31 changes in rates for effectiveness on January 1, 1994.

Granite State further states that its filing includes Second Revised Sheet No. 20 containing a revised Index in its tariff.

According to Granite State the charges on Original Sheet No. 31 allocate the accumulated balance in its A/C 191 as of October 31, 1993 to its customers, Bay State Gas Company and Northern Utilities, Inc. Granite State further states that it proposes to directly bill the balance in A/C 191 as transitional costs pursuant to Order Nos. 636, et al. It is further stated that Granite State commenced restructured operations on November 1, 1993 under a compliance plan and tariff approved by the Commission in Docket No. RS93–1–000.

Granite State states that copies of its filing have been served on its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–461 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–83–000]

K N Interstate Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, K N Interstate Gas Transmission Co. (KNI), tendered for filing proposed changes in its FERC Gas Tariff, Second Revised Volume Nos. 1–A and 1–B. KNI states that the proposed changes would increase revenues from jurisdictional transportation, no-notice, and storage service by $12.0 million based on the twelve-month period ending September 30, 1993, as adjusted for known and measurable changes.

KNI states that the jurisdictional rates filed herewith are designed to enable KNI to recover increases in its jurisdictional cost of service resulting from: (1) Additional facilities, and (2) increased operating costs and higher costs of materials and supplies.

KNI requests that the tendered sheet(s) be accepted for filing and be permitted to become effective February 1, 1994.

KNI states that copies of the filing were served upon KNI's jurisdictional customers and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–434 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–16–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, National Fuel Gas Supply Corporation (National) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheet to be effective on February 1, 1994:

Second Revised Sheet No. 225

National states that the purpose of this filing is to update the amount of take-or-pay charges approved by the Federal Energy Regulatory Commission and to be recovered by National by operation of Section 20 of the General Terms and Conditions to National's FERC Gas Tariff, Third Revised Volume No. 1. National further states that the pipeline supplier that has received approval to bill revised take-or-pay charges, as reflected in National's filing herein is: Tennessee Gas Pipeline Corporation.

National states that copies of National's filing were served on National's jurisdictional customers and on the interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 or 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All such motions to intervene or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–438 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–88–000]

Pacific Gas Transmission Co.; Change in Rates

January 4, 1994.

Take notice that on December 23, 1993, Pacific Gas Transmission Company (PGT) submitted for filing pursuant to section 4 of the Natural Gas Act and § 154.63 of the Commission's Regulations thereunder, certain tariff sheets to establish a mechanism to adjust the effective and fuel and line loss percentages to reflect more closely the current requirements for fuel and line loss on PGT's system.

PGT proposes to make the revised tariff sheets needed to implement this mechanism effective on January 22, 1994.

A copy of this filing has been served on the parties on PGT's jurisdictional sales customers and interested state commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–432 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–94–000]

Southern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Southern Natural Gas Company (Southern) tendered for filing as part of its FERC Gas Tariff, the tariff sheets listed on appendix A to the filing, to become effective March 1, 1994.

Southern states that the tariff sheets reflect an anticipated reduction in the level of firm service from its customer, Atlanta Gas Light Company, and a reduced level of jurisdictional revenues from the level established under the compliance filing in Docket No. RS92–10.

Southern states that it has continued to employ the Straight Fixed Variable method for cost classification, cost allocation and rate design and has utilized the mitigation methods required by the Commission in its Order of September 3, 1993. In order to prevent a significant increase to Southern's remaining firm customers as a result of the reduced firm service entitlements Southern proposes to (1) design IT rates based on a 75% load factor basis, (2) charge separately for injections and withdrawals into the Contract Storage Service (CSS) and the ANR Storage Service, and (3) revise the allocation methodology for the ANR Storage Service to reflect the use of contract demands for allocating costs to this incremental service.

Southern requests waiver of the five-month suspension period in order to allow the proposed tariff sheets to become effective March 1, 1994, the date the anticipated reduced service levels will become effective.

Southern states that copies of the filing were served upon all of Southern's jurisdictional purchasers, shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–433 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–95–000]

Southern Natural Gas Co.; GSR Cost Recovery Filing

January 4, 1994.

Take notice that on December 30, 1993, Southern Natural Gas Company (Southern) filed pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717(c)

(1988), to recover gas supply realignment ("GSR") costs incurred as a consequence of Southern's implementation of restructured pipeline services under Order No. 636, et seq. Southern states that the tariff sheets identified below were filed in compliance with the Commission's orders in Southern's restructuring proceeding in Docket No. RS92–10–000 and the procedures set forth in Section 31 of the General Terms and Conditions of Southern's FERC Gas Tariff, Seventh Revised Volume No. 1:

First Revised Second Revised Sheet No. 15
First Revised Second Revised Sheet No. 17
First Revised Second Revised Sheet No. 18
Second Revised Sheet No. 29
Second Revised Sheet No. 30
Second Revised Sheet No. 31

Southern states that the purpose of this filing is to set forth additional known and measurable GSR costs which have been paid or incurred by Southern since the filing on December 1, 1993 of its first GSR cost recovery filing in Docket No. RP94–67–000. Southern states that it sets forth in this filing the revised demand surcharges and revised interruptible rates that will be charged in connection with its recovery of GSR costs associated with the reformation of additional gas supply contracts that have become unnecessary and/or unmarketable as a result of the receipt by Southern of revised service elections from its customers following the mandatory restructuring by Southern of its pipeline services under Order No. 636. Southern requests that the tariff sheets be made effective on February 1, 1994.

Southern states that it seeks to recover $53.8 million in GSR costs which has been paid or incurred in connection with the reformation of two gas supply contracts. Southern states that these GSR costs have arisen as a direct result of the need to realign gas supply contracts following customers' elections during restructuring to terminate their sales entitlements under Order No. 636. Southern further states that none of the GSR costs sought to be recovered in the instant filing constitute take-or-pay settlement costs under gas supply contracts existing at March 31, 1989 which would be subject to the provisions of Southern's 1988 take-or-pay settlement in Docket No. RP86–63–000.

Southern states that copies of the filing were served upon Southern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of Southern's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–435 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–17–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the revised tariff sheets listed on Appendix A to the filing, to become effective February 1, 1994.

Texas Eastern states that these revised tariff sheets are filed pursuant to Section 15.1, Electric Power Cost (EPC) Adjustment, of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1. Section 15.1 provides that Texas Eastern shall file to be effective each February 1 revised rates for each applicable zone and rate schedule based upon the projected annual electric power costs required for the operation of transmission compressor stations with electric motor prime movers and to also reflect the EPC Surcharge which is designed to clear the balance in the Deferred EPC Account as of October 31, 1993.

Texas Eastern states that these revised tariff sheets are being filed to reflect changes in Texas Eastern's projected expenditures for electric power for the twelve month period beginning February 1, 1994 based upon actual expenditures for the twelve month period ending October 31, 1993.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and current Rate Schedule FT–1 and IT–1 shippers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–439 Filed 1–7–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–99–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) filed a limited application pursuant to section 4 of the Natural Gas Act, 15 U.S.C. 717c (1988), and the Rules and Regulations of the Commission promulgated thereunder to recover Account No. 858 costs (Stranded Costs) incurred as a consequence of Texas Eastern's implementation of Order No. 636.

Texas Eastern states that it is filing to recover Stranded Costs pursuant to § 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume 1.

Original Sheet No. 175
Original Sheet No. 176
Original Sheet No. 177
Original Sheet No. 178
Sheet Nos. 179–199

The proposed effective date of these tariff sheets is February 1, 1994.

Texas Eastern states that by this filing it seeks to recover known and measurable Stranded Costs totalling $2,238,018.86 incurred from September 1, 1993 through November 30, 1993. Texas Eastern has paid $2,241,497.61 in demand charges during this period and received a rate refund of $23,879.88 in principal and interest from Columbia Gulf Docket Nos. RP91–160 and RP91–161 et al. on October 25, 1993, related to September, 1993 activity. Interest of $20,401.13 at the current FERC annual rate of 6.00%, net of deferred income tax impact, is added for the carrying

charges from the date of payment of the costs to the projected date of payment by the customers.

Texas Eastern states that Stranded Costs shall be allocated to Texas Eastern's customers under Rate Schedules CDS, FT-1, and SCT in accordance with the methodology specified in § 15.2(D) of the General Terms and Conditions. At each customer's individual option, payment of these Stranded Costs amounts may be amortized over as much as a twelve month period with carrying charges calculated on amounts uncollected, net of deferred taxes, pursuant to § 154.305 of the Commission's Regulations.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-462 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-97-000]

Transwestern Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Transwestern Pipeline Company (Transwestern) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the following tariff sheet, to be effective February 1, 1994:

1st Revised Sheet No. 148

Transwestern states that the tariff sheet revises Transportation Service Agreement—Form N, Operator Balancing Agreement, Sheet No. 148 in order to revise the Index Price contained therein. The revised Index Price (i) will be based on three geographic locations, rather than one, and (ii) will reflect the average of the daily prices for such locations as quoted in Gas Daily for the applicable month, rather than a price based on a price quoted in the first publication of Gas Daily in a particular month.

Transwestern states that copies of the filing were served on its gas utility customers, interested state commissions, and all parties to this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-463 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-100-000]

Viking Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 4, 1994.

Take notice that on December 30, 1993, Viking Gas Transmission Company (Viking) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, revised tariff sheets listed on Appendix A to the filing, to be effective February 1, 1994.

Viking states that the purpose of this filing is to make several miscellaneous tariff modifications to reflect the acquisition of Viking's stock by Northern States Power Company and changes in personnel, addresses and telephone numbers occasioned by that acquisition. In addition, Viking proposes to: (1) Change the time for commencement of the gas day from 8 a.m. to 12:00 noon; (2) establish a minimum delivery threshold for the installation of electronic measurement equipment; (3) delete the PGA clause from its tariff, as no longer required; (4) eliminate references to Order No. 497 that are no longer appropriate in view of the Commission's recent finding that Viking is currently not subject to Order No. 497 (see East Tennessee Natural Gas Co., et al., Dockets Nos. MG91-4-001 et al., 65 FERC Paragraph 61,389 (December 23, 1993), mimeo at 39-40); (5) delete a reference to common operating personnel with Viking's former affiliate, Minnesota Intrastate Transmission System; (6) change the governing law in its pro-forma service agreements from Texas to Minnesota; and (7) revise the index of shippers to reflect contract modifications occasioned by implementation of Order No. 636. Finally, Viking has modified its tariff to correct several miscellaneous typographical errors.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94-464 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-3-49-000]

Williston Basin Interstate Pipeline Co.; Fuel Reimbursement Charge Filing

January 4, 1994.

Take notice that on December 30, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff the following revised tariff sheets:

Second Revised Volume No. 1
Third Revised Sheet No. 15
Second Revised Sheet No. 15A
Third Revised Sheet No. 16
Second Revised Sheet No. 16A
Third Revised Sheet No. 18
Second Revised Sheet No. 18A
Second Revised Sheet No. 19
Second Revised Sheet No. 20
Third Revised Sheet No. 21
Original Volume No. 2
Fifty-second Revised Sheet No. 10
Fiftieth Revised Sheet No. 11B

The proposed effective date of the tariff sheets is February 1, 1994.

Williston Basin states that the revised tariff sheets reflect revisions to the fuel reimbursement charge and percentage components of the Company's relevant gathering, transportation and storage rates, pursuant to Williston Basin's Fuel Reimbursement Adjustment Provision, contained in Section 38 of the General Terms, and Conditions of Second Revised Volume No. 1 of Williston Basin's FERC Gas Tariff.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-437 Filed 1-7-94; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4823-3]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before February 9, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Request for Information for the bioremediation Field Initiative Database Systems (EPA ICR No. 1672.01).

Abstract: This is a new ICR for gathering information on the design, operation, and performance of biological treatment technologies from remediation experts and managers working at sites where biological treatment technologies are being tested or implemented. The authority for collecting information on innovative treatment technologies is described at Section 311 of the Superfund Amendments and Reauthorization Act, Section 8003 of the Resource Conservation and Recovery Act, Section 7001 of the Oil Pollution Act, and Section 10 of the Toxic Substance Control Act. The information will help the EPA to deploy innovative technologies more quickly at Superfund and other sites.

Selected respondents will be asked to complete and return, via mail, a two-part questionnaire. The first part requests general site information, such as location, contacts, contaminants, and legislative authority under which the site is being remediated. The second part requests site-specific biotechnology information, such as the stage of the operation, wastes and media being treated, clean-up level goals, and the performance and cost of the treatment. All responses will be strictly voluntary. Following the initial questionnaire, respondents will receive follow-up questionnaires on a semi-annual basis to update the information already provided.

The EPA will enter the information from completed questionnaires into computer databases that will be publicly accessible through computerized bulletin boards.

Burden Statement: Public reporting burden for respondents is estimated to average 1.6 hours per response with 5 hours per response for the first-time respondents and 0.5 hours for respondents updating previous responses, including time for reviewing instructions, gathering and compiling the data needed, and completing and reviewing the questionnaire.

Respondents: Respondents may be State and local governments, businesses, non-profit institutions, and small businesses and organizations involved in the use of innovative technologies at Superfund or other remediation sites.

Estimated No. of Respondents: 767.

Estimated Responses Per Respondent: 2.

Frequency of Collection: Semiannual.

Estimated Total Annual Burden on Respondents: An estimated annual average of 2,401 hours over three years.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M St. SW., Washington, DC 20460.

and

Timothy Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th St., NW., Washington, DC 20503.

Dated: January 4, 1994.

David Schwarz,

Acting Director, Regulatory Management Division.

[FR Doc. 94-495 Filed 1-7-94; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4823-4]

Notice of Open Meeting of the Federal Facilities Environmental Restoration Dialogue Committee

AGENCY: Environmental Protection Agency.

ACTION: FACA Committee Meeting—Federal Facilities Environmental Restoration Dialogue Committee.

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), we are giving notice of the next meeting of the Federal Facilities Environmental Restoration Dialogue Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to discuss issues related to enhancing the federal facilities environmental restoration process.

DATES: The meeting will be held on January 19, 1994 from 9 a.m. until 6:15 p.m. and on January 20, 1994 from 9 a.m. until 4 p.m.

ADDRESSES: The meeting will be held at the Hyatt Regency Crystal City, 2799 Jefferson-Davis Highway, Arlington, Virginia.

FOR FURTHER INFORMATION CONTACT: Anyone needing further information on any aspect of the Federal Facilities Environmental Restoration Dialogue Committee should contact Marilyn Null, Office of Federal Facilities Enforcement, U.S. EPA (Mail Code 2262), 401 M Street, SW., Washington, DC 20460, (202) 260-5686.

Dated: December 16, 1993.

Marilyn Null,

Designated Federal Official.

[FR Doc. 94-496 Filed 1-7-94; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

Please note: The Commission has requested expedited OMB review of this item by January 7, 1994, under the provisions of 5 CFR 1320.18.

OMB Number: None.

Title: Implementation of sections 3(n) and 332 of the Communications Act, GN Docket No. 93–252, First Report and Order.

Action: New collection.

Respondents: Individuals or households, state or local governments, federal agencies or employees, non-profit institutions and businesses or other for-profit (including small businesses).

Frequency of Response: One time filing requirement due by February 10, 1994.

Estimated Annual Burden: 50 responses; 2 hours average burden per response; 100 hours total annual burden.

Needs and Uses: The Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, title VI, section 6002(b), 107 Stat. 312, 395 (1993), amended sections 3(n) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 153(n) and 332, to create a comprehensive regulatory framework for all mobile radio services. Under the amended statute, certain private land mobile radio licensees will be reclassified as "commercial mobile radio service" licensees and will be treated as common carriers subject to the foreign ownership and control restrictions of section 310(b) of the Communications Act. A "grandfathering" provision, however, in new section 332(c)(6) permits the Commission to grant waivers of section 310(b) to private land mobile licensees that petition the Commission by February 10, 1994. This present action clarifies the filing procedures for such petitions and reminds all potentially affected private radio licensees of the February 10, 1994 filing deadline. The Commission will use the waiver petitions to determine whether each given petitioner should be permitted to retain foreign ownership or control, pursuant to statute.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–518 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0048.

Title: Application for Consent to Transfer of Control.

Form Number: FCC Form 704.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 800 responses; 8 hours average burden per response; 6,400 hours total annual burden.

Needs and Uses: Section 310(d) of the Communications Act of 1934, as amended, requires that common carriers and noncommon carrier permittees or licensees contemplating a transfer of control apply for authority to make such transfer. In addition to information specified on FCC Form 704, applicants may be required to file other information. Information is used by FCC staff to determine whether an entity seeking control of an existing permittee or licensee is legally and financially qualified to become a common carrier or noncommon carrier telecommunications licensee. If the information is not submitted the above determination required by the Communications Act could not be made. The FCC Form 704 has been revised to incorporate a certification pursuant to rules implementing the provisions of section 5301 of the Anti-Drug Abuse Act of 1988.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–519 Filed 1–7–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

Grupo Financiero Banamex Accival, S.A., de C.V.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Grupo Financiero Banamex Accival, S.A. de C.V., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Banco Nacional de Mexico, S.A., Mexico, D.F., Mexico, and thereby indirectly acquire Banamex USA Bancorp, Los Angeles, California, and California Commerce Bank, Los Angeles, California.

In connection with this application, Applicant also proposes to acquire ACCI Securities, Inc., New York, New York, and thereby engage in full service brokerage pursuant to §§ 225.25(b)(4) and (b)(15) of the Board's Regulation Y; and private placement services (soliciting purchasers in the private placement of all types of securities) pursuant to the criteria set forth in *NCNB Corporation*, 76 Federal Reserve Bulletin 664 (1990).

Board of Governors of the Federal Reserve System, January 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-467 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

Home Bancorp, et al.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 27, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Home Bancorp, Fort Wayne, Indiana; to engage *de novo* in making and servicing a loan to the Employee Stock Ownership Plan of Home Loan Bank SB, Fort Wayne, Indiana, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 3, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-468 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

Triangle Bancorp, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 31, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Triangle Bancorp, Inc., Raleigh, North Caroline; to acquire 100 percent of the voting shares of Roanoke Valley Savings Bank, Inc., SSB, formerly known as Roanoke Valley Savings Bank, SSB, Roanoke Rapids, North Carolina.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank Corporation of Georgia, Macon, Georgia; to acquire 49.7 percent of the voting shares of AmeriCorp, Inc., Savannah, Georgia, and thereby indirectly acquire Ameribank, N.A., Savannah, Georgia.

2. 1st United Bancorp, Boca Raton, Florida; to acquire 99.72 percent of the voting shares of Suburban Bank, Lake Worth, Florida.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Community Grain Company, Coon Rapids, Iowa; to acquire 100 percent of the voting shares of Farmers National Bank, Bayard, Iowa.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Banks, Inc., St. Louis, Missouri; to acquire 100 percent of the voting shares of Heritage National Bank, St. Louis, Missouri.

2. Independent Southern Bancshares, Inc. Employee Stock Ownership Plan and Trust, Brownsville, Tennessee; to become a bank holding company by acquiring at least 25 percent of the

voting shares of Independent Southern Bancshares, Inc., Brownsville, Tennessee, and thereby indirectly acquire Brownsville Bank, Brownsville, Tennessee; Union Savings Bank, Covington, Tennessee; and Tennessee Bank and Trust, Millington, Tennessee.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Avon State Bank Employee Stock Ownership Plan and Trust, Avon, Minnesota; to become a bank holding company by acquiring an additional 15.31 percent of the voting shares of Avon Bancshares, Inc., Avon, Minnesota, for a total of 30.58 percent, and thereby indirectly acquire Avon State Bank, Avon, Minnesota.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Bancrecer, S.A., Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

2. Extraco Bankshares, Inc., Waco, Texas; to acquire 94.97 percent of the voting shares of Guaranty Bank and Trust Company, Gatesville, Texas.

3. Grupo Financiero Bancrecer, S.A., De C.V., Mexico City, Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank & Trust, N.A., Dallas, Texas.

G. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Grupo Financiero Bancomer, S.A., Mexico, D.F., Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Bancomer, S.A., Mexico City, Mexico; Bancomer Holding Company (Antilles) N.V., Curacao, Netherlands Antilles; Bancomer Holding Company (Netherlands) B.V., Rotterdam, Netherlands; Bancomer Holding Company, Los Angeles, California; and Grossmont Bank, La Mesa, California.

Board of Governors of the Federal Reserve System, January 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-469 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

Betty Ruth Whittington, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 27, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Betty Ruth Whittington and Jimmy Harold Whittington, St. Francisville, Louisiana; to each acquire 23.18 percent of the voting shares of Commerce Corporation, St. Francisville, Louisiana, and thereby indirectly acquire Bank of Commerce and Trust Company, St. Francisville, Louisiana.

Board of Governors of the Federal Reserve System, January 3, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-470 Filed 1-7-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88D-0087]

Manufacture of in Vitro Diagnostic Products; Current Good Manufacturing Practice Final Guideline; Availability

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the availability of a final guideline entitled "Guideline for the Manufacture of In Vitro Diagnostic Products" that contains production practices which are acceptable to FDA for assuring the safety and effectiveness of in vitro diagnostic products. Manufacturers of in vitro diagnostic products may find the information in the guideline useful in developing procedures that comply with the current good manufacturing practice (CGMP) regulations for these products. A draft document was previously made available for public comment.

DATES: Comments by March 11, 1994.

ADDRESSES: Submit written requests for single copies of the final guideline to the Division of Small Manufacturers Assistance (HFZ-220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-6597 (toll free outside MD 800-638-2041). Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments on the final guideline to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857. Requests and comments should be identified with the docket number found in brackets in the heading of this document. The final guideline and received comments are available for public examination in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Z. Frank Twardochleb, Center for Devices and Radiological Health (HFZ-300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-1128.

SUPPLEMENTARY INFORMATION: FDA first announced the availability for public comment of the draft guideline in the **Federal Register** of April 7, 1988 (53 FR 11561). In that same issue of the **Federal Register** (53 FR 11561), FDA announced the forthcoming meeting of the agency's Device Good Manufacturing Practice Advisory Committee (the committee). As a result of the notice and the open public meeting, FDA received 17 letters providing comments—14 from manufacturers, 2 from trade associations, and 1 from an attorney representing a manufacturer. Presentations before the committee by industry and FDA resulted in committee recommendations that the agency: (1) Continue to handle the document as a guideline; (2) change the title and/or scope of the document to clarify which products are subject to the guideline; and (3) extend the comment period from June 6, 1988 to July 15, 1988.

FDA extended the comment period as recommended by the committee and revised the guideline based on the comments received. A notice of availability of the second draft was published in the **Federal Register** of April 19, 1990 (55 FR 14863).

Since release of the second draft, four letters of comment have been received from two trade associations, one manufacturer, and one user association. Meetings have also been held with the two trade associations—the Association of Microbiological Diagnostic Manufacturers and the Health Industry Manufacturers Association. A total of 21 letters of comment were received in response to all notices. These comments are on file with the Dockets Management Branch under Docket No. 88D-0087.

The notice of availability of the draft guideline stated that it would be issued under § 10.90(b) (21 CFR 10.90(b)), which provides for the use of guidelines to establish procedures or standards of general applicability that are not legal requirements but that are acceptable to the agency. The agency is now in the process of considering whether to revise § 10.90(b). Although that decision has not been made, the agency has decided to publish this guideline. However, this notice and the final guideline are not being issued under the authority of § 10.90(b), and the final guideline, although called a guideline, does not operate to bind FDA or any other person in any way. The agency advises that this final guideline represents its current position on the requirements of the CGMP regulations for in vitro diagnostic products. The guideline may be useful to manufacturers of in vitro diagnostic products. A person may also choose to use alternate procedures even though they are not provided for in the guideline. If a person chooses to depart from the practices and procedures set forth in the final guideline, that person may wish to discuss the matter further with the agency to prevent an expenditure of money and effort on activities that may later be determined to be unacceptable by FDA. This guideline does not bind the agency, and it does not create or confer any rights, privileges, or benefits for or on any person.

On November 23, 1993 (58 FR 61952), FDA issued a notice of proposed rulemaking to revise the medical device CGMP regulations. Any revisions to the CGMP regulations may result in the need for changes to this guideline. Therefore, on issuing a final rule to revise the CGMP regulations, FDA will review the guideline and make any necessary changes.

Copies of this final guideline, along with previous drafts and submitted comments, are available for public examination in the Dockets Management Branch (address above).

Interested persons may submit written comments on the final guideline to the Dockets Management Branch. Additional comments will be considered in determining the future need for amending the final guideline. Two copies of comments should be submitted, except that individuals may submit one copy. Comments should be identified with the docket number found in brackets in the heading of this document.

Dated: January 4, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94-466 Filed 1-7-94; 8:45 am]

BILLING CODE 4160-01-F

National Institutes of Health

National Cancer Institute; Meetings of the Board of Scientific Counselors (BSC), Division of Cancer Prevention and Control and its Subcommittees

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the Division of Cancer Prevention and Control, Board of Scientific Counselors National Cancer Institute, and its Subcommittees on January 20-21, 1994, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892. Meetings of the Subcommittees will also be held at the times and places listed below. The meetings of the Board will be open to the public from 8:30 a.m. to 3:30 p.m. on January 20 and from 8:30 a.m. to adjournment on January 21 to discuss issues relating to Board business as indicated in the notice. The Subcommittee meetings will be held on January 20 from 8:30 a.m. to 10:30 a.m. and will be open to the public. Attendance by the public to any of these meetings will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92-463, the meeting will be closed on January 20 from 3:30 p.m. to adjournment for discussion of activities carried out by and through the National Cancer Institute which will include a discussion of extramural/intramural programmatic and personnel policies of a sensitive nature. These discussions could disclose information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 630, 9000 Rockville Pike, Bethesda, Maryland 20892 (301/496-5708) will provide a summary of the meeting and roster of Board members, upon request.

Other information pertaining to these meetings can be obtained from the Executive Secretary, Linda M. Bremerman, National Cancer Institute, National Institutes of Health, Executive Plaza North, room 232, 9000 Rockville Pike, Bethesda, Maryland 20892 (301-496-8526), upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Linda M. Bremerman in advance of the meeting.

Name of Committee: Board of Scientific Counselors, Division of Cancer Prevention and Control.

Dates of Meeting: January 20-21, 1994.

Place of Meeting: Building 31 Conference Room 10.

Open: January 20-10:45 a.m. to 3:30 p.m. January 21-8:30 a.m. to adjournment.

Agenda: Review progress of programs within the Division and review of concepts being considered for funding.

Closed: January 20-3:30 p.m. to 5 p.m.

Agenda: Extramural/Intramural programmatic and personnel policies of a sensitive nature.

The following open meetings will be held on January 20, 1994, from 8:30 a.m. to 10:30 a.m.

Name of Committee: Surveillance Subcommittee.

Place of Meeting: Building 31C, Conference Room 9.

Agenda: Discuss current and future programs of Surveillance Subcommittee and review of concepts being considered for funding.

Name of Committee: Early Detection and Community Oncology Subcommittee.

Place of Meeting: Building 31C, Conference Room 10.

Agenda: Discuss current and future programs of Early Detection and Community Oncology Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Control Science Subcommittee.

Place of Meeting: Building 31C, Conference Room 8.

Agenda: Discuss current and future programs of Cancer Control Science Subcommittee and review of concepts being considered for funding.

Name of Committee: Cancer Prevention Research Subcommittee.

Place of Meeting: Building 31C, Conference Room 7.

Agenda: Discuss current and future programs of Cancer Prevention Research

Subcommittee and review of concepts being considered for funding.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflict schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control.)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–523 Filed 1–7–94; 8:45 a.m.]

BILLING CODE 4140–01–M

National Institute of Mental Health; Notice of Meeting

The Division of Extramural Activities of the National Institute of Mental Health announces an ad hoc concept review. This committee will be performing review of a Request for Applications entitled "Multi-Site Study of Mental Health Service Use, Need, Outcomes, and Costs for Child and Adolescent Populations (UNO–CAP)."

This meeting will be held January 18, 1994, from 9 a.m. to 1 p.m. at the Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815, and will be open to the public. Attendance by the public will be limited to space available. Anyone who plans to attend and any individual who needs special assistance, such as sign language interpretation or other reasonable accommodations, should contact Victoria Levin, Parklawn Building, room 9C–15, 5600 Fishers Lane, Rockville, MD 20857, (301) 443–1177 by January 14, 1994. Other information pertaining to the meeting may also be obtained from Ms. Levin.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, (301) 443–4333, will provide a summary of the meeting and a roster of the committee members upon request.

(Catalog of Federal Domestic Assistance Program Numbers 93.126, Small Business Innovation Research; 93.178, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award.)

Dated: January 5, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–522 Filed 1–7–94; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[WY–030–94–5101–10–K014; WYW–130382]

Wyoming Wind Energy Project; Intent To Prepare an Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS) and to conduct scoping for the U.S. Windpower, Wyoming Wind Energy Project, Carbon County, Wyoming.

SUMMARY: Under section 102(2)(C) of the National Environmental Policy Act (NEPA) of 1969 as amended, the Bureau of Land Management, Rawlins District Office, will direct the preparation of an EIS on the potential impacts of a proposed wind energy project. A total of 1,390 wind turbines and associated facilities will be constructed on 62,000 acres (25,091 hectares) of private, Federal and state lands over a 10–12 year development period in Carbon County, Wyoming. The EIS will be prepared by a third party contractor. If the project is approved, the BLM will issue a Right-of-Way Grant under section 501 of the Federal Land Policy and Management Act of 1976.

DATES: Comments will be accepted through February 25, 1994. Public Scoping Meetings will be held at the Jeffrey Center, Third and Spruce Streets, Rawlins, Wyoming on February 2, 1994, at 7 p.m. and on February 3, 1994, at the Albany Country Public Library, Large Meeting Room, 310 S. 8th Street, Laramie, Wyoming, at 7 p.m.

ADDRESSES: Comments should be sent to Bureau of Land Management, Rawlins District Office, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 670, Rawlins, WY 82301, or Bonneville Power Administration (BPA), Office of Energy Resources (R&E), Richard Stone, Environmental Specialist, P.O. Box 3621, Portland, OR 97208.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, Walter E. George, Project Leader, 1300 3rd Street, P.O. Box 870, Rawlins, WY 82301, phone number (307) 324–7171 or Bonneville Power Administration, Richard Stone, Environmental Specialist, P.O. Box 3621, Portland, OR 97208, phone number (503) 230–3797.

SUPPLEMENTARY INFORMATION: U.S. Windpower proposes to construct a 500 megawatt (MW) Wind Energy Project to be located on Foote Creek Rim and Simpson Ridge in Carbon County, Wyoming. The project area is located approximately 40 miles (64.35 Km) southeast of Rawlins and 40 miles (64.36 Km) northwest of Laramie, Wyoming. The Foote Creek Rim portion is in all or portions of approximately 10 sections in Townships 19N and 20N, Ranges 78W and 79W north and west of Arlington. Access to the Foote Creek Rim site is from I–80 and State Highway 13. The Simpson Ridge portion is in all or portions of 92 sections in Townships 20N, 21N, and 22N, Ranges 80W and 81W, south of Hanna. Access to the Simpson Ridge portion is from I–80 and State Highway 287 and State Highway 72. Land ownership in the project area is approximately 62% private, 28% Public (administered by BLM), and 10% State of Wyoming.

The project will be constructed in phases over a 10–12 year period. The first phase, involving 75 MW of electrical power generated by approximately 215 Wind Turbine Generators (WTGs), would be constructed on Foote Creek Rim in 1995–96. Later phases would involve 50MW (approximately 75 WTGs/50 MW) increases per year, as utility contracts are approved, until the 500 MW capacity is reached (for a total of 1,390 WTGs). Ancillary facilities include, but are not limited to: above and below-ground electric and communication lines, access roads, substations, control/maintenance building and transformer sites. The Bonneville Power Administration, Department of Energy, a Cooperating Agency for the EIS, will execute a power output contract to purchase 25 MW of electricity from the project under element 2b of BPA's Resource Supply Expansion Program. The Foote Creek Rim phase of the project would meet this requirement.

The wind turbines will be erected on 80 to 120 ft (24 to 37 m) lattice towers with height determined by specific meteorological and geographic characteristics. The WTGs are variable speed, up-wind, three-fiberglass-bladed machines with a rotor diameter of 108 ft (33 m). The WTGs will be spaced approximately 162 to 216 ft (49 to 66 m) apart with approximately 1,080 to 1,620 ft (329 to 494 m) between each row.

Two potential electrical utility interconnections are proposed. The first is with the PacifiCorp 230 kV system at the Miner's substation at Hanna, WY. A wood pole 230 kV line would be erected from the project site northwest, approximately 25 mi (40 Km), to the Miner's substation. The second proposed interconnection would be with the Western Area Power Administration's parallel 115 kV lines at a site in T21N, R77W, Sec. 34. A transmission line of approximately 7 mi (11 Km) would extend from the project site northeast to the proposed tap substation.

Dated: January 3, 1994.

Ray Brubaker,

State Director.

[FR Doc. 94–349 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–22–M

[AK–930–4410–02–2410–P]

Availability of Proposed Resource Management Plan and Final Environmental Impact Statement; Fort Greely, Alaska

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of availability of Fort Greely Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606), the Department of the Interior, Bureau of Land Management, Steese/White Mountains District has prepared a Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS) for the Fort Greely military withdrawal, which is located near Delta Junction, Alaska, southeast of Fairbanks. The U.S. Army's 6th Infantry Division (Light) assisted in drafting the plan. The document addresses planning for nonmilitary use of the withdrawal. It addresses questions such as access, recreation, timber and fuel wood harvesting, and wildlife habitat and cultural resource protection. Although mining is discussed, none would be allowed in the immediate future because of potential conflicts with the military's mission.

DATES: Protests on the PRMP/FEIS must be postmarked by February 15, 1994.

ADDRESSES: Protests on the PRMP/FEIS should be sent to: Bureau of Land Management, Division of Planning and Environmental Coordination (WO–760), 1849 C Street NW. (406 L St.), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513; phone (907) 271–3369.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS is available by contacting Jim Ducker at the address or phone number listed above.

The Proposed Plan refines the Preferred Alternative presented in the Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). These refinements are the result of comments from the public and the availability of information developed since the distribution of the draft.

The PRMP/FEIS describes the Proposed Plan and its impacts in full and presents summaries of five alternatives and their impacts. Complete descriptions of the alternatives and their impacts can be found in the DRMP/DEIS which are available at the main public libraries in Fairbanks, Delta Junction, and Anchorage, and at the Steese/White Mountains District Office in Fairbanks and the Alaska State Office in Anchorage.

Dated: December 29, 1993.

Roger Bolstad,

District Manager, Steese/White Mountains District.

[FR Doc. 94–417 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–JA–P

[AK–930–4410–02–2410–P]

Availability of Proposed Resource Management Plan and Final Environmental Impact Statement; Fort Wainwright, Alaska

AGENCY: Bureau of Land Management, DOI.

ACTION: Notice of availability of Fort Wainwright Proposed Resource Management Plan and Final Environmental Impact Statement.

SUMMARY: Pursuant to the Military Lands Withdrawal Act of 1986 (Pub. L. 99–606), the Department of the Interior, Bureau of Land Management, Steese/White Mountains District, has prepared a Proposed Resource Management Plan (PRMP)/Final Environmental Impact Statement (FEIS) for the portion of the Fort Wainwright military withdrawal known as the Yukon Maneuver Area. This tract is southeast of Fairbanks, and adjacent to and east and north of Eielson Air Force Base. The U.S. Army's 6th Infantry Division (Light) assisted in drafting the plan. The document addresses planning for nonmilitary use of the withdrawal. It addresses questions such as access, recreation, timber and fuel wood harvesting, and wildlife habitat and cultural resource protection. Although mining is discussed, none would be allowed in the immediate future because of potential conflicts with the military's mission.

DATES: Protests on the PRMP/FEIS must be postmarked by February 15, 1994.

ADDRESSES: Protests on the PRMP/FEIS should be sent to: Bureau of Land Management, Division of Planning and Environmental Coordination (WO–760), 1849 C Street NW. (406 L St.), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Jim Ducker, Military Withdrawals Planning Team Leader, Bureau of Land Management, Alaska State Office, 222 W. 7th Avenue, Anchorage, Alaska 99513; phone (907) 271–3369.

SUPPLEMENTARY INFORMATION: The PRMP/FEIS is available by contacting Jim Ducker at the address or phone number listed above.

The Proposed Plan refines the Preferred Alternative presented in the Draft Resource Management Plan/Draft Environmental Impact Statement (DRMP/DEIS). These refinements are the result of comments from the public and the availability of information developed since the distribution of the draft.

The PRMP/FEIS describes the Proposed Plan and its impacts in full and presents summaries of five alternatives and their impacts. Complete descriptions of the alternatives and their impacts can be found in the DRMP/DEIS which are available at the main public libraries in Fairbanks and Anchorage and at the Steese/White Mountains District Office in Fairbanks and the Alaska State Office in Anchorage.

Dated: December 29, 1993.

Roger Bolstad,

District Manager, Steese/White Mountains District.

[FR Doc. 94–416 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–JA–P

National Park Service

Chesapeake and Ohio Canal National Historical Park Commission Meeting

Notice is hereby given in accordance with Federal Advisory Committee Act that a special meeting will be held at 10:00 a.m., Saturday, January 22, 1994, at Ferry Hill headquarters, 16500 Shepherdstown Pike, Route 34, West, Sharpsburg, Maryland.

The Commission was established by Public Law 91–664 to meet and consult with the Secretary of the Interior on general policies and specific matters related to the administration and

development of the Chesapeake and Ohio Canal National Historical Park.

The members of the Commission are as follows:

Mrs. Sheila Rabb Weidenfeld, Chairman, Washington, DC
Ms. Diane C. Ellis, Brunswick, Maryland
Brother James T. Kirkpatrick, F.S.C., Cumberland, Maryland
Ms. Anne L. Gorner, Cumberland, Maryland
Ms. Elise B. Heinz, Arlington, Virginia
Mr. George M. Wykoff, Jr., Cumberland, Maryland
Mr. Rockwood H. Foster, Washington, DC
Mr. Barry A. Passett, Washington, DC
Mrs. Jo Reynolds, Potomac, Maryland
Ms. Nancy C. Long, Glen Echo, Maryland
Ms. Mary Elizabeth Woodward, Shepherdstown, West Virginia
Dr. James H. Gilford, Frederick, Maryland
Mr. Edward K. Miller, Hagerstown, Maryland
Mrs. Sue Ann Sullivan, Williamsport, Maryland
Mr. Terry W. Hepburn, Hancock, Maryland
Mr. Laidley E. McCoy, Charleston, West Virginia
Ms. Jo Ann M. Spevacek, Burke, Virginia
Mr. Charles J. Weir, Falls Church, Virginia

The purpose of this special meeting is to hear the recommendation of the special committee on the Cumberland Environmental Impact Statement (EIS) and reach a decision on a formal position on the EIS.

The meeting will be open to the public. Any member of the public may file with the Commission a written statement concerning the matter to be discussed. Persons wishing further information concerning this meeting, or who wish to submit written statements, may contact Thomas O. Hobbs, Superintendent, C&O Canal National Historical Park, P.O. Box 4, Sharpsburg, Maryland 21782.

Minutes of the meeting will be available for public inspection six (6) weeks after the meeting at Park Headquarters, Sharpsburg, Maryland.

Dated: December 28, 1993.

Chrysandra L. Walter,

Regional Director, National Capital Region.

[FR Doc. 94–404 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

[Docket No. 93–29700]

Environmental Impact Statement Related to New Rules and Regulations for Implementing the Reclamation Reform Act of 1982

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of additional meeting.

SUMMARY: The Bureau of Reclamation is amending the notice of intent published in 58 FR 64336, Dec. 6, 1993 to add a scoping meeting in Boise, Idaho.

DATE AND ADDRESS: This additional scoping meeting is scheduled for:

• Boise, Idaho; January 24, 1994, Bureau of Reclamation's Regional Office, room 204, 1150 North Curtis Road, 1 p.m. to 3 p.m.

FOR FURTHER INFORMATION CONTACT: Mr. Rusty Schuster, Attention: D–5604, Bureau of Reclamation, PO Box 25007, Denver CO 80225. To be placed on a mailing list for any subsequent information, either write Mr. Schuster or telephone (303) 236–1061, extension 237.

Dated: January 4, 1994.

J. William McDonald,

Assistant Commissioner—Resources Management.

[FR Doc. 94–450 Filed 1–7–94; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 55 (Sub-No. 93)]

Passenger Operations by Mexican Motor Carriers—Implementation of North American Free Trade Agreement

AGENCY: Interstate Commerce Commission.

ACTION: Notice of policy statement.

SUMMARY: The purpose of this Notice is to announce implementation of the provisions of the first phase of the North American Free Trade Agreement (NAFTA) relating to land transportation. Effective January 1, 1994, the Commission will accept and process applications by Mexican passenger carriers for operating authority to provide charter and tour bus service across the United States-Mexico International Border line into the United States.

DATES: The policy announced here will apply to applications filed on or after January 1, 1994. Comments must be filed by January 18, 1994.

ADDRESSES: Send comments referring to Ex Parte No. 55 (Sub-No. 93) to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Joseph B. O'Malley (202) 927–6292, or Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Section 6 of the Bus Regulatory Reform Act of 1982 (codified at 49 U.S.C. 10922(l)) imposed a 2-year moratorium (subject to renewal) on the Commission's issuance of new grants of operating authority to motor carriers domiciled in or owned or controlled by persons of Mexico or Canada. Under this statute, the President has the authority to remove or modify the moratorium if he determines it to be in the national interest, that is, if overriding economic or foreign policy considerations make such an action advisable, or if a negotiated settlement with one country or the other can be reached. Under the moratorium, the President must notify the Congress in writing 60 days before the date on which the removal or modification is to take effect.

Shortly after it went into effect, the President exercised his authority and removed the moratorium with respect to Canada. The President indicated in a memorandum to the United States Trade Representative that the United States and Canada had reached a bilateral understanding that would ensure fair and equitable treatment for both U.S. and Mexican motor carriers on both sides of the International Boundary line. 47 FR 54053.

The moratorium remained in place for Mexican motor carriers because the Mexican Government continued to restrict U.S. motor carriers' access to Mexico. Under the terms of the statute, the President extended the moratorium for 2-year periods in 1984, 1986, 1988, 1990, and, most recently, in 1992. On November 3, 1993, however, in a Statement of Administrative Action, the President gave notice to Congress that he would lift the moratorium with respect to Mexican charter and other tour services on NAFTA's effective date, that is, on January 1, 1994.[1]

Under NAFTA, the moratorium will be lifted in phases.[2] The schedule of liberalization is as follows:

1. Upon entry into force of NAFTA, for access by Mexican charter and tour bus operators;
2. Three years after signature of NAFTA, for access by Mexican motor property carriers into United States border States, and for establishing companies to distribute international cargo within the United States;
3. Three years after entry into force, for access by Mexican regular-route passenger carriers;
4. Six years after entry into force, access for cross-border operations by Mexican motor property carriers.

In Phase 1 of NAFTA, Mexican domiciled or owned or controlled passenger carriers may now apply for authority under 49 U.S.C. 10922(c) to transport passengers in charter and tour bus service in the United States in foreign commerce, that is, the service must begin or end in Mexico (or Canada). Wholly domestic interstate operations in the United States cannot be authorized or permitted.

NAFTA authorizes the granting of authority for charter operations and tour bus service only. By statute, we may authorize motor common carriers of passengers to operate over either regular or irregular routes, but irregular-route services must be limited to charter and special operations. Regular-route operations ordinarily involve the expeditious transportation of passengers between fixed termini, over defined routes and according to established schedules. Charter operations, on the other hand, ordinarily contemplate providing transportation for a group, assembled by someone other than the carrier, which group contracts for the exclusive use of certain equipment for the duration of a particular trip or tour. Generally, a flat rate for the use of the vehicle is charged, on either a "mileage" or an "hourly" basis, and the passengers travel together for the entire trip.

As we recognized most recently in Adirondack Transit Lines, Inc.—Adirondack Trailways, 8 I.C.C.2d 330, 334 n.5 (1992), special operations originally were described as services rendered (generally on weekends, holidays, or other special occasions) to a number of passengers that the carrier itself has assembled into a travel group through its own sales of a ticket to each individual passenger covering a particular trip or tour. Fordham Bus Corp. Common Carrier Application, 29 M.C.C. 293, 297 (1941). In *Asbury Park-N.Y. Transit Corp.* v. *Bingler Vacation Tours*, 62 M.C.C. 731, 740 (1954) (*Bingler*), aff'd sub nom. *Bingler Vacation Tours* v. *United States*, 132 F. Supp. 793 (D. N.J. 1955), aff'd per curiam, 350 U.S. 921 (1955), though, the Commission adopted the position that "special operations" is a catchall classification, which may include almost anything that is neither charter operations nor the usual operations of a regular-route carrier.

Accordingly, "tour service" is only one form of special operations, as the Commission discussed in Passenger Transportation in Special Operations, 112 M.C.C. 160, 165–67, 171–74 (1970), which clearly distinguishes the requirements of "tour service" from those of ordinary special operations. Thus, under the Bingler criterion, to constitute a "tour service", the carrier must furnish something substantial in addition to, or different from, bare expeditious transportation between two points. This contemplates a common interest of passengers visiting a particular place(s) or event(s) and does not include ordinary, point-to-point transportation, over either regular or irregular routes.[3] It appears that the "tour service" that NAFTA is intended to cover is this type of special operations.

Accordingly, certificates that we issue to Mexican carriers will usually be framed, in accord with our usual practices with regard to such authorities, to authorize service Over irregular routes, in foreign commerce, transporting passengers, in charter operations and in special operations, in tour service, between ports of entry on the international boundary between the U.S. and Mexico, on the one hand, and, on the other, points in the United States (except Alaska and Hawaii).

Because this notice is occasioned by a partial lifting of the moratorium, no special rules or rulemaking are necessary. The same application procedure and regulations apply to Mexican and United States carriers alike. For example, carriers must abide by all U.S. Department of Transportation safety regulations, comply with the Commission's insurance requirements (49 U.S.C. 10927), publish and file with the Commission applicable tariffs (49 U.S.C. 10761, 10762), and file with the Commission agents for service of process (49 U.S.C. 10330). We will, however, provide a short comment period to enable interested persons to submit written views, arguments or representations regarding this subject. Because we have little or no discretion in this area, we do not contemplate a subsequent decision unless we receive comments raising substantial issues it would be helpful or necessary to address. Notice of this proceeding will be published in the **Federal Register** and the *ICC Register* and interested parties will have 7 days from the date of publication to comment.

Finally, the current application form OP–1 requires all applicants for ICC operating authority to certify that they are not domiciled in Mexico or owned or controlled by persons of Mexico. We will modify that certification requirement when we revise the application form. For the present, Mexican charter and special operations applicants should either disregard the certification section, or simply indicate "not applicable." Applicants not completing the certification affirmatively will receive charter and special operations tour service authority limited to movements in foreign commerce.

Decided: December 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–503 Filed 1–7–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32446]

Soo Line Railroad Co.—Trackage Rights—Over a Line of Chicago, Central and Pacific Railroad Co. in Rockford, IL

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 11343–11345, the acquisition by Soo Line Railroad Company of temporary overhead trackage rights over approximately 4 miles of Chicago, Central and Pacific Railroad Company rail line in Rockford, IL, subject to conditions.

DATES: The exemption became effective on January 6, 1994. Petitions to reopen must be filed by January 31, 1994.

ADDRESSES: Send pleadings referring to Finance Docket No. 32446 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2)

[1] This satisfies the 60-day notice period called for under 49 U.S.C. 10922(l). In any event, Congress, in approving NAFTA, specifically consented to the President's modifying the moratorium as announced on November 3, 1993.

[2] The NAFTA schedule of liberalization does not remove all barriers for Mexican motor carrier operations in the United States. The moratorium will remain in place for Mexican carriers in the one area that was not liberalized, namely, point to point carriage of domestic cargo in the United States.

[3] Special operations that are not "tour services" might include, for example, limousine services in which door-to-door service is provided, over irregular routes (according to the specific locations to be served on any particular trip), to and from any point in a given territory. Such services will not be authorized by authority to provide "tour service".

petitioner's representatives, Terence M. Hynes and Molly A. Meegan, Sidley & Austin, 1722 Eye Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610; TDD for the hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

Decided: January 5, 1994.

By the Commission, Chairman McDonald, Vice Chairman Phillips, Commissioners Simmons, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–609 Filed 1–7–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Corporation for Open Systems International; Notice Pursuant to the National Cooperative Research and Production Act of 1993

Notice is hereby given that, on October 20, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Corporation for Open Systems International ("COS") has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing certain changes. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the changes are as follows: (1) Electric Power Research Institute, Inc., Palo Alto, CA, became a member of COS on July 23, 1993; (2) Xerox Corporation and the Foxboro Company ceased membership in COS effective August 2, 1993 and August 31, 1993, respectively; (3) COS was advised that the name of Defense Communications Agency, a member of COS, was changed to Defense Information Systems Agency; (4) COS was advised that the name of Honeywell Bull, a member of COS, was changed to Bull HN Information Systems, Inc.; and (5) COS was advised that Control Data Corporation, a member of COS, has been reorganized and that its membership in COS would be continued by Control Data Systems, Inc.

On May 14, 1986, COS filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 11, 1986, (51 FR 21260).

The last notification was filed with the Department on July 20, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on September 23, 1993 (58 FR 49527).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–492 Filed 1–7–94; 8:45 am]

BILLING CODE 4410–01–M

LIBRARY OF CONGRESS

Copyright Office

[Docket No. RM 93-13]

General Provisions - Copyright Restoration of Certain Mexican and Canadian Works

AGENCY: Copyright Office; Library of Congress.

ACTION: Notice of policy decision.

SUMMARY: The Copyright Office publishes this notice to inform the public that the North American Free Trade Agreement which entered into force on January 1, 1994, and its implementing legislation (Pub. L. No. 103-182) authorizes the Copyright Office to establish procedures for copyright restoration of certain works first fixed or published in Mexico or Canada after January 1, 1978 and before March 1, 1989. This notice is intended to summarize the content of that legislation. Copyright owners of affected works must file a statement of intent with the Copyright Office to restore copyright for eligible works; details of new procedures to file these statements will be published within the next 60 days.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Policy Planning Advisor, Copyright Office, Library of Congress, Washington, D.C. 20540. Telephone: (202) 707-8350. Fax: (202) 707-8366.

SUPPLEMENTARY INFORMATION: The North American Free Trade Agreement and the North American Free Trade Agreement Implementation Act (Pub. L. No. 103-182) provide for the restoration of copyright for certain works that are currently in the public domain in the United States. Under new section 104A of title 17, copyright protection may be restored for certain motion pictures that were first fixed or published in Mexico or Canada, and any work included in such motion pictures that was first fixed or published with these motion pictures, if the work "entered the public domain in the United States because it was first published on or after January 1, 1978, and before March 1, 1989, without the notice required by sections 401, 402, or 403 of [title 17], the absence of which has not been excused by the operation of section 405 of [title 17], as such sections were in effect during that period." 17 U.S.C. 104A(a) (1993). A motion picture or underlying work (such as original music or dramatic text embodied in the motion picture) meeting these requirements "shall have copyright protection under [title 17] for the remainder of the term of copyright protection to which it would have been entitled in the United States had it been published with such notice." *Id.*

Copyright owners of qualifying works must file a "statement of intent" with the Copyright Office between January 1, 1994 (the date on which the Agreement entered into force) and January 1, 1995 to notify the public of their intent to restore copyright protection for these works in the United States. After January 1, 1995, the Copyright Office must publish in the Federal Register, the list of works for which statements have been filed and which are determined to be properly qualified for protection. The restoration of copyright protection for these works will be provided at that time in accordance with section 104A of title 17. Section 104A(c) of title 17 provides that persons who are copying, performing or selling copies of such works may continue such activities for a period of one year following publication of the 1995 Federal Register notice. This exemption applies only to copies produced or acquired before the date of enactment of the implementing legislation (December 8, 1993).

Within the next 60 days, the Copyright Office will announce in the Federal Register the procedures necessary to file a "statement of intent" with the Office, including the applicable statements and materials that must be submitted. In the meantime, copyright owners and other interested parties can contact Eric Schwartz, Policy Planning Advisor, Copyright Office, at (202) 707-8350, for additional information.

January 3, 1994.

Barbara Ringer,

Acting Register of Copyrights.

James H. Billington,

The Librarian of Congress.

[FR Doc. 94-441 Filed 1-7-94;8:45am]

BILLING CODE: 1410-07F

PROSPECTIVE PAYMENT ASSESSMENT COMMISSION

Meetings

Notice is hereby given of the meetings of the Prospective Payment Assessment Commission on Wednesday and Thursday, January 19–20, 1994, at the Madison Hotel, 15th & M Streets, Northwest, Washington, DC.

The Full Commission will convene at 9 a.m. on each day in Executive Chambers 1, 2 and 3.

All meetings are open to the public.

Donald A. Young,

Executive Director.

[FR Doc. 94–209 Filed 1–7–94; 8:45 am]

BILLING CODE 6820–BW–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office—John J. Lane, (202) 942–8800.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Extension
Rule 19d–2
File No. 270–204

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 34501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for extension of Office of Management and Budget approval Rule 19d–2 under the Securities Exchange Act of 1934 (15 U.S.C. 78 *et seq.*). Rule 19d–2 prescribes the form and content of applications to the Commission for stays of final disciplinary sanctions and summary actions of self-regulatory organizations. It is anticipated that approximately 30 respondents will spend a total of 90 hours complying with Rule 19d–2.

Direct general comments to Gary Waxman at the address below. Direct any comments concerning the accuracy of the estimated average burden hours for compliance with the Commission rules and forms to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (3235–0205), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: January 3, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–482 Filed 1–7–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33410; File No. SR–Phlx–93–62]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a Discount of its Transaction, Comparison and Floor Brokerage Transaction and Assessment Fees for November 29, 1993 to December 31, 1993

January 4, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to discount its transaction, comparison and floor brokerage transaction and assessment fees encompassing all transactions executed on the Phlx in equities, equity options, index options and foreign currency options on the Phlx for the billing cycle beginning settlement date November 29, 1993, to settlement date December 31, 1993. The discount shall be a 33 percent reduction across-the-board for all fees, charges and assessments as described above.[1]

[1] The Phlx proposes to discount the following fees, charges and assessments: Equity Transaction Value Charge; Equity Floor Brokerage Assessment; Equity Floor Brokerage Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Brokerage Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Broker Transaction Fee; Option Comparison Charge; Option Transaction Charge; Option Floor Brokerage Assessment; Floor Broker Transaction Fee; and Volume Discount For Currency Option Transaction Charge Activity.

II. Self-regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange seeks to discount its transaction, comparison and floor brokerage transaction and assessment fees encompassing all transactions executed on the Phlx in equities, equity options, index options and foreign currency options on the Phlx for the billing cycle beginning settlement date November 29, 1993, to settlement date December 31, 1993. The discount shall be a 33 percent reduction across-the-board for all fees, charges and assessments as described above for the limited period from November 29, 1993, to December 31, 1993 (Phlx's final month's billing cycle) in recognition of record volume and cost efficiencies anticipated to continue through December. In this regard, discounts will not apply to non-transaction related fees and charges such as the floor facilities fees, booth and post rental fees, as well as membership dues, etc.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities. The proposed fee schedule change also aligns service fees more closely to the cost of providing those services.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not

necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR-Phlx-93-62 and should be submitted by January 28, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-430 Filed 1-7-94; 8:45 am]

BILLING CODE 8010-01-M

SMALL BUSINESS ADMINISTRATION

DSC Ventures II, LP

[License No. 09/09-0391]

Surrender of License

Notice is hereby given that DSC Ventures II, LP, 20111 Stevens Creek Boulevard, Cupertino, California 95014, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended (the Act).

DSC Ventures II, LP was licensed by the Small Business Administration on March 1, 1991.

Under the authority vested by the Act and pursuant to the Regulations promulgated thereunder, the surrender was accepted on December 14, 1993, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 22, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 94-475 Filed 1-7-94; 8:45 am]

BILLING CODE 8025-01-M

[License # 01/01-0340]

Monarch-Narragansett Ventures, Inc., Notice of License Surrender

Notice is hereby given that Monarch-Narragansett Ventures, Inc., ("MNVI"), Monarch Place, 1414 Main Street, Springfield, Massachusetts 01144, has surrendered its license to operate as a small business investment company under the Small Business Investment Act of 1958, as amended ("the Act"). MNVI was licensed by the Small Business Administration on December 8, 1986.

Under the Authority vested by the Act and pursuant to the regulations promulgated thereunder, the surrender of the license was accepted on December 3, 1933, and accordingly, all rights, privileges, and franchises derived therefrom have been terminated.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: December 6, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 94-476 Filed 1-7-94; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended December 30, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49337
Date filed: December 30, 1993
Parties: Members of the International Air Transport Association
Subject:
TC31 Resp/P 1009 dated November 5, 1993
North & Central Pacific Resos r-1 to r-3
TC31 Reso/P 1010 dated November 5, 1993
TC3 (EXc. Japan)—N.Amer./Caribbean r-4 to r-18
TC31 Reso/P 1011 dated November 5, 1993
Japan-North America/Caribbean r-19 to r-33
TC31 Reso/P 1012 dated November 5, 1993
TC3-Central/South America Resos r-34 to r-45
Proposed Effective Date: April 1, 1994

Phyllis T. Kaylor,

Chief Documentary Services Division.

[FR Doc. 94-483 Filed 1-7-94; 8:45 am]

BILLING CODE 4910-62-P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended December 30, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49339
Date Filed: December 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 27, 1994
Description: Application of Czechoslovak Airlines, pursuant to Section 402 of the Act and Subpart Q of the Regulations, requests renewal of its permit authority so as to permit CSA to continue to conduct its operations to and from the United States fully in accordance with the terms of the Bilateral Aviation Agreement in effect between the United States and the Czech Republic (formerly Czechoslovakia).

Docket Number: 49341
Date Filed: December 30, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: January 27, 1994
Description: Application of Aries Del Sur Sociedad Anonima Transportes Aereos De Carga, pursuant to section 402 of the Act and subpart Q of the Regulations, requests the issuance of a Foreign Air Carrier Permit authorizing it to engage in nonscheduled foreign air transportation of property and mail between a point or points in Argentina, via the intermediate points Sao Paulo and Rio de Janeiro, Brazil, to the coterminal points Miami and New York and beyond to Montreal, Canada; between a point or points in Argentina, via the intermediate points Santiago, Chile; La Paz, Bolivia; Lima, Peru; Guayaquil or Quito, Ecuador; and Bogota, Colombia; to the coterminal points Miami and New York; between a point or points in Argentina, via the intermediate points La Paz, Bolivia; Lima, Peru; Guayaquil or Quito, Ecuador; Bogota, Colombia; and Mexico City, Mexico; to the terminal point Los Angeles; and between a point or points in Argentina, via the intermediate point Caracas, Venezuela, to the coterminal points Miami and New York; and to engage in charter foreign air transportation of property and mail between a point or points in Argentina and a point or points in the United States, its territories and possessions, and between a point or points in third countries and a point or points in the United States, its territories, and possessions.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 94-484 Filed 1-7-94; 8:45 am]

BILLING CODE 4910-62-P

Coast Guard

[CGD 91-202]

RIN 2115-AE10

Escort Vessels for Certain Oil Tankers

AGENCY: Coast Guard, DOT.

ACTION: Notice of availability.

SUMMARY: A two-part study assessing the capability of escort tugs to control disabled tankers in Prince William Sound, Alaska, was commissioned by the Disabled Tanker Towing Study Group (DTTSG). The study will specifically review the present equipment, personnel, and procedures aboard the tankers and escort vessels operating in Prince William Sound, as well as the assist capabilities of the vessels presently in service for escorting these tankers. Part 1 of the study has been completed, and the U.S. Coast Guard has been granted permission to make it available to the public. Certain technical findings of this study will aid the U.S. Coast Guard in promulgating national-level tug escort regulations under section 4116(c) of the Oil Pollution Act of 1990 (OPA 90).

ADDRESSES: Part 1 of the Prince William Sound Disabled Tanker Towing Study, entitled "Evaluation of Existing Equipment, Personnel and Procedures," is available for inspection or copying at the Office of the Executive Secretary, Marine Safety Council (G-LRA/3406) (CGD 91-202), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593-0001, between 8 a.m. and 3 p.m., Monday through Friday, except Federal Holidays. The telephone number is (202) 267-1477.

Additionally, copies of Part 1 of the study may be ordered from the National Technical Information Service, Springfield, VA 22161 (phone orders (703) 487-4650). The NTIS publication number is PB94-120961; price $27.00 for paper copy, or $12.50 for microfiche copy.

FOR FURTHER INFORMATION CONTACT: Thomas Jordan, Project Manager, OPA 90 Staff, at U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593-0001, or by phone at (202) 267-6751.

SUPPLEMENTARY INFORMATION:

Background and Discussion

In the aftermath of the EXXON VALDEZ grounding, the state of Alaska established a contingency plan that includes provisions requiring laden tankers to be escorted through Prince William Sound. The escort vessels are expected to provide immediate assistance to a tanker in the event it suffers a propulsion or steering failure. The escort vessels also have some spill response capabilities. At present, there are 11 tugs and escort vessels in this service, operating out of Port Valdez and escorting tankers to Hinchinbrook Entrance.

The Disabled Tanker Towing Study Group (DTTSG) was formed to review the present escort vessel practices in Prince William Sound. The DTTSG is formed of representatives from the Regional Citizen's Advisory Council (RCAC) for Prince William Sound, the Prince William Sound Tanker Association, the Alyeska Pipeline Service Company, the Alaska Department of Environmental Conservation, and the U.S. Coast Guard.

The DTTSG commissioned The Glosten Associates, Inc., to prepare a two-part study. The first part was to conduct an expert review and evaluation of the emergency towing equipment aboard the tankers and escort vessels operating in Prince William Sound. The second part was to determine, by means of actual tanker/tug trials and computer simulation analyses, the capabilities of the escort vessels to actually control disabled tankers.

The Oil Pollution Act of 1990 (OPA 90)

Section 4116(c) of OPA 90 requires the Secretary of Transportation to initiate issuance of regulations that define areas where single hull tankers over 5,000 gross tons transporting oil in bulk must be escorted by at least two towing vessels (as defined under 46 U.S.C. 2101), or by other vessels which the Secretary considers appropriate. These defined areas must include Prince William Sound, Alaska, and Rosario Strait and Puget Sound, Washington (including those portions of the Strait of Juan de Fuca east of Port Angeles, Haro Strait, and the Strait of Georgia subject to U.S. jurisdiction). The Secretary has delegated this responsibility to the Coast Guard.

Federal Regulatory Action to Date

The Coast Guard's regulatory response to this section of OPA 90 has been divided into two rulemaking projects: the first project (CGD 91-202) focuses on the Prince William Sound and Puget Sound waters specifically identified in the statute, the second project (CGD 91-202a) focuses on other navigable waters where escorts might be required.

In order to issue effective national escort rules, the Coast Guard finds it necessary to determine the realistic capabilities of the various types of tugs that may be used for escort service. To this end, the Disabled Tanker Towing Study (DTTS) is expected to provide valuable technical information. In addition to its participation in the DTTSG, Coast Guard's other actions to date have been as follows:

(1) A notice of proposed rulemaking (NPRM) for the Prince William Sound

and Puget Sound waters was published in the **Federal Register** on July 7, 1992 (57 FR 30058). Because the original public comments did not include sufficient information on certain issues, the comment period was reopened March 26, 1993 (58 FR 16391), with a request for more-detailed comments on some specified issues. Altogether, more than 100 public comments were received.

(2) An advance notice of proposed rulemaking (ANPRM) seeking public comment on other navigable waters where escort vessels should be required was published April 27, 1993 (58 FR 25766). This ANPRM also requested detailed comments on some specified issues. More than 45 public comments were received.

(3) Three public hearings were held: in Anchorage, Alaska, on June 3, 1993; Valdez, Alaska, on June 5, 1993; and Seattle, Washington, on June 7, 1993. Both Alaska hearings had teleconferencing arrangements to include outlying communities in the Exxon Valdez impacted areas. All three hearings were well attended. Locally-interested parties, including individuals and representatives of environmental, commercial fishing, and recreational groups, tug operators, pilots, and tanker operators, made presentations at each hearing. Transcripts of the three hearings have been put in files 43, 44, and 45 of Coast Guard docket 91–202a.

Summary of the Study

The Executive Summary from Part 1 of the DTTS, "Evaluation of Existing Equipment, Personnel and Procedures," is reprinted here verbatim:

"This study has been undertaken by The Glosten Associates, Inc., to evaluate the existing capability for emergency towing at Prince William Sound and to examine alternatives that could enhance the escort and assist capabilities for disabled tankers within the waterway from the Alyeska Oil Terminal at the Port of Valdez to the Gulf of Alaska outside Hinchinbrook Entrance.

Part 1, reported herein, is an objective evaluation by an experienced salvage towing master of the existing tugs, emergency towing equipment, towing practices, and discussion of alternate tug types. Part 2 will evaluate alternative equipment and deployments, using engineering methods, including simulation, that could improve the safety or cost-effectiveness of the response system.

The Part 1 investigation was performed by subcontractor Smit Tak BV, based in Rotterdam. Captain Jan ter Haar, a senior Smit Tak salvage master, conducted interviews and observed normal operations and emergency drills in the Valdez area.

Captain ter Haar feels that, with some changes such as improved bow fendering, the existing escort/response vessels (ERVs) are adequate to control a ship's heading in the event of a steering failure and to tow it in the event of loss of propulsive power. He reserves any final opinion on the number of such vessels required to control an incident, in relation to the size of tanker and the weather conditions, to the results of simulations in Part 2.

All tankers calling at Valdez are required to carry specific emergency towing gear for rapid deployment and connection to a rescue tug. This "Prince William Sound Emergency Towing Package" is stowed and deployed differently on various vessels. Captain ter Haar recommends that all vessels adopt systems that can be readied for deployment in 15 minutes or less by a crew of two without using winch power.

Captain ter Haar demonstrated in drills several effective alternative methods of making towing connections with the tugs' own gear, without deploying the ship's Prince William Sound Towing Package. Drills were also used to assess crew skills in towing large tankers in adverse weather with multiple tugs. He concludes that additional drills and training, both in the makeup and towing operations, would be beneficial.

With regard to escort vessel operations, Captain ter Haar recommends that, in the Valdez Narrows area, escort position should be in close proximity to tankers for faster response to a steering failure. However, in the more open waters of Prince William Sound, where a power or steering failure will not result in immediate peril of grounding, close escort does not increase the level of safety of the system. Escort vessels strategically positioned at key locations would appear to provide the same level of protection. This deployment issue will be analyzed more thoroughly in Part 2.

Captain ter Haar concludes that the vessels presently under contract are suitable for rescue towing in Prince William Sound under a full range of weather conditions. In the open waters of the Gulf of Alaska, at and beyond Hinchinbrook Entrance, he concludes that a larger salvage tug would improve the capability to prevent a major casualty."

Anticipated Course of Action

The second phase of the DTTS (tanker/tug maneuvering trials and computer simulation analyses) is currently underway. The Coast Guard has been informed that the technical data collection should be completed by January, 1994, and that Part 2 of the study will be released by spring, 1994.

In the meantime, the Coast Guard is now reviewing all public comments and studying various technical submittals, including Part 1 of the DTTS. Because the Federal regulations that it ultimately proposes as a result of this review will probably differ from those proposed in the NPRM, the Coast Guard plans to issue a Supplementary Notice of Proposed Rulemaking (SNPRM). The Coast Guard anticipates issuing the SNPRM after Part 2 of the study has been reviewed and analyzed.

Dated: January 4, 1994.

W. J. Ecker,

Rear Admiral, U.S. Coast Guard, Chief, Office of Navigation Safety and Waterway Services

[FR Doc. 94–487 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–14–M

Federal Aviation Administration

Intent To Rule on Application To Impose and Use and Impose Only the Revenue From a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Pullman, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pullman-Moscow Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

This document supersedes the notice, "Intent to rule on application to impose and use and impose only the revenue from a Passenger Facility Charge (PFC) at Pullman-Moscow Regional Airport, Pullman, Washington", published on December 29, 1993 (58 FR 68985).

DATES: Comments must be received on or before February 9, 1994.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. David Crowner, airport Manager at the following address: Pullman-Moscow Regional Airport, 3200 Airport Complex N., Pullman, WA 99163.

Air carriers and foreign air carriers may submit copies of written comments previously provided to Pullman-Moscow Regional Airport under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Mary Vargas, (206) 227–2660; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration; 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Pullman-Moscow Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On December 20, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Pullman, WA and the City of Pullman, WA and the City of Moscow, ID was substantially complete with the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than March 22, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: 3.00

Proposed charge effective date: April 1, 1994

Proposed charge expiration date: October 31, 1997

Total estimated PFC revenue: $169,287.65

Brief description of proposed project(s): Impose and Use projects: Runway 5/23 rehabilitation, runway and taxiway signage, lighting upgrade and runway 5 safety area stabilization, master plan update, aircraft rescue and fire fighting (ARFF) vehicle acquisition and storm water pollution prevention plan development, modify ARFF building and expand general aviation (GA) apron.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Only those Air taxi's defined as follows: the carriage in air commerce of persons for compensation or hire as a commercial operator, but not an air carrier, on an "on-demand" basis with aircraft having a maximum seating capacity of less than twenty passengers or a maximum payload capacity of less than 6,000 pounds.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the City of Pullman.

Issued in Renton, Washington on December 22, 1993.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 94–248 Filed 1–7–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects in the exhibit, "Egon Schiele" (see list [1]) imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lender. I also determine that the temporary exhibition of the objects at the National Gallery of Art, Washington, DC from on or about February 6, 1994, to on or about May 8, 1994; at the Indianapolis Museum of Art; Indianapolis, IN from on or about June 11, 1994, to on or about August 6, 1994; and the San Diego Museum of Art, San Diego, CA from on or about August 27, 1994, to on or about October 30, 1994, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 4, 1994.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 94–418 Filed 1–7–94; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Ms. Nelia Sheahan of the Office of the General Counsel of USIA. The telephone number is 202/619–6975, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register

Vol. 59, No. 6

Monday, January 10, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: January 12, 1994, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, DC 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note.—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 992nd Meeting—January 12, 1994, Regular Meeting (10:00 a.m.)

CAH–1.
Project No. 8369–024, Village of Saranac Lake
CAH–2.
Project No. 553–020, City of Seattle, Washington
CAH–3.
Project No. 8436–092, Smith Falls Hydropower
CAH–4.
Project No. 5223–021, International Falls Power Company
CAH–5.
Project No. 2519–004, Central Maine Power Company

Consent Agenda—Electric

CAE–1.
Docket No. ER93–985–000, New England Power Pool
CAE–2.
Docket No. ER94–129–000, Massachusetts Electric Company
CAE–3.
Docket No. ER94–166–000, Gulf States Utilities Company
CAE–4.
Docket No. ER94–52–000, Upper Peninsula Power Company
CAE–5.
Docket No. ER93–254–001, Consolidated Edison Company of New York, Inc.
CAE–6.
Docket No. EF93–5091–001, Western Area Power Administration
CAE–7.
Docket No. ER93–938–002, Southwestern Electric Power Company
CAE–8.
Docket No. ER92–183–003, Florida Power Corporation
CAE–9.
Docket No. ER93–219–001, Western Massachusetts Electric Company
CAE–10.
Docket No. QF90–143–002, Yuma Cogeneration Associates
CAE–11.
Docket No. ER93–251–001, Wisconsin Electric Power Company
CAE–12.
Omitted
CAE–13.
Omitted
CAE–14.
Omitted
CAE–15.
Docket No. EL92–41–000, Nevada Power Company

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RS92–15–000, Equitrans, Inc.
CAG–2.
Docket No. RP94–80–000, National Fuel Gas Supply Corporation
CAG–3.
Docket Nos. RP93–56–003, RP93–86–003 and RP93–139–003, Transwestern Pipeline Company
CAG–4.
Docket No. PR93–12–000, Dow Intrastate Gas Company
CAG–5.
Docket Nos. RP91–161–014, *et al.*, RP92–3–000, *et al.*, RP90–108–016, RP91–82–008 and RS92–5–000, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–011, *et al.*, RP92–2–000, *et al.*, RP90–107–013 and RS92–6–000, Columbia Gulf Transmission Company
CAG–6.
Docket Nos. RP93–192–002 and 004, Texas Eastern Transmission Corporation
CAG–7.
Docket No. RP94–63–000, Black Marlin Pipeline Company
CAG–8.
Docket No. RP94–77–000, Mojave Pipeline Company
CAG–9.
Docket Nos. RP92–104–008 and RP92–131–009, K N Energy, Inc.
CAG–10.
Docket Nos. RP91–224–012 and RP92–1–018, Northern Natural Gas Company
CAG–11.
Docket No. IS94–4–001, All American Pipeline Company
CAG–12.
Docket Nos. RP85–203–013 and RP88–203–010, Panhandle Eastern Pipe Line Company
Docket No. RP85–202–011, Trunkline Gas Company
Docket Nos. RP93–127–001, 002 and RP93–102–002, Columbia Gas Transmission Corporation
CAG–13.
Docket No. RP85–170–009, Texas Eastern Transmission Corporation
CAG–14.
Docket No. RP85–181–006, Texas Gas Transmission Corporation
CAG–15.
Docket No. CP93–707–001, Transcontinental Gas Pipe Line Corporation
CAG–16.
Docket No. CP92–459–001, Texas Eastern Transmission Corporation
Docket No. CP92–460–001, Trunkline Gas Company
CAG–17.
Docket No. CP93–75–001, Sunrise Energy Company v. Transwestern Pipeline Company
CAG–18.
Docket No. CP93–520–000, Texas Gas Transmission Corporation
CAG–19.
Docket No. CP93–183–000, Northern Natural Gas Company and Continental Gas Storage, L.P.
CAG–20.
Docket No. CP93–304–000, Northern Natural Gas Company
CAG–21.
Docket No. CP92–508–000, Penn-York Energy Corporation and National Fuel Gas Supply Corporation
CAG–22.
Omitted
CAG–23.
Docket No. CP93–750–000, Western Resources, Inc. and Southern Union Company d/b/a Missouri Gas Energy
CAG–24.
Omitted
CAG–25.
Docket No. CP92–479–002, New York State Electric & Gas Corporation
Docket No. CP93–36–001, North Penn Gas Company
CAG–26.
Docket Nos. RP93–151–000, 001, 002, 003, 005, RP94–39–000 and 001, Tennessee Gas Pipeline Company
Docket Nos. RP94–48–000, 001 and 002, Williston Basin Interstate Pipe Line Company
CAG–27.
Omitted
CAG–28.
Docket No. RP94–35–002, Colorado Interstate Gas Company

Hydro Agenda

H–1.
Reserved

Electric Agenda

E–1.
Docket No. EC93–6–001, Cincinnati Gas & Electric Company and PSI Energy, Inc. Order on rehearing.

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Omitted
RS–2.
Docket Nos. RS92–19–003, 004, 007, 008, RP92–104–000 and RP92–131–000, K N Energy, Inc. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Reserved

Dated: January 5, 1994.

Lois D. Cashell,

Secretary.

[FR Doc. 94–595 Filed 1–6–94; 11:37 am]

BILLING CODE 6717–01–P

NATIONAL WOMEN'S BUSINESS COUNCIL

SUMMARY: In accordance with the Women's Business Ownership Act, Public Law 100–533 as amended, the National Women's Business Council announces a forthcoming Council Meeting. The meeting will cover action items to be taken by the National Women's Business Council in Fiscal Year 1994 including but not limited to increasing procurement opportunities and access to capital for women business owners.

DATE: January 21, 1994, 11:00 a.m. to 12:00 p.m.

ADDRESS: Federal Reserve Martin Building.

STATUS: Open to the public.

CONTACT: For further information contact Maia Jourgensen, Deputy Director or Gilda Washington, Administrative Officer, National Women's Business Council, 409 Third Street, SW., suite 5850, Washington, DC 20024, (202) 205–3850.

Maia Jourgensen,

Deputy Director, National Women's Business Council.

[FR Doc. 94–545 Filed 1–5–94; 4:43 pm]

BILLING CODE 6820–AB–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of January 10, 1994.

An open meeting will be held on Wednesday, January 12, 1994, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, January 13, 1994, at 3:00 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Beese, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, January 12, 1994, at 10:00 a.m., will be:

Consideration will be given to whether to propose for public comment amendments to Form ADV and related rules under the Investment Advisers Act of 1940 that would require investment advisers sponsoring wrap fee programs to prepare a separate disclosure or "brochure" for wrap fee program clients, and specify the information required in the brochure. For further information, please contact Eric C. Freed at (202) 272–2107.

The subject matter of the closed meeting scheduled for Thursday, January 13, 1994, at 3:00 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Opinion.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Blair Thomas at (202) 272–2300.

Dated: January 6, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–614 Filed 1–6–94; 2:23 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 6
Monday, January 10, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

[Regulations No. 4 and 16]
RIN 0960-AB00

Federal Old-Age, Survivors and Disability Insurance and Supplemental Security Income; Listing of Impairments—Respiratory System

Correction

In rule document 93-24238 beginning on page 52346 in the issue of Thursday, October 7, 1993 make the following corrections:

PART A of Appendix 1 [Corrected]

1. On page 52363, in the second column, under Table I, in the second column of the table, in the last line, "75 or more" should read "72 or more".

2. On the same page, in the same column, in the last paragraph, in the last line, "see 2.00E.);" should read "see 3.00E.);".

PART B of Appendix 1 [Corrected]

3. On page 52366, in the third column, under Table I, in the third column of the table, in the last entry, ".165" should read "1.65".

4. On the same page, in the same column, under Table II, in the third column of the table, in the first line of the heading, "FEV" should read "FVC".

5. On the same page, in the same column, under Table II, in the third column of the table, the last two entries, "175" should read "1.75" and "205" should read "2.05".

BILLING CODE 1505-01-D

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Youth Fair Chance Demonstration Projects

Correction

In notice document 93-31200 beginning on page 67814 in the issue of Wednesday, December 22, 1993, make the following corrections:

1. On page 67814, in the second column, in **DATES:**, in the fourth line, "March 22, 1993," should read "March 22, 1994,".

2. On page 67817, in the third column, in the first full paragraph, in the eighth line, "$1200" should read "$100".

BILLING CODE 1505-01-D

federal register

Monday
January 10, 1994

Part II

Department of Education

34 CFR Parts 462 and 472
National Workplace Literacy Program; Final Regulations and Notice

DEPARTMENT OF EDUCATION

[CFDA No. 84.198]

National Workplace Literacy Program; Inviting Applications for New Awards for Fiscal Year (FY) 1993

Note to Applicants: This notice is a complete application package. Together with the statute authorizing the program and applicable regulations governing the program, including the Education Department General Administrative Regulations (EDGAR), the notice contains all of the information, application forms, and instructions needed to apply for a grant under this competition

Purpose of Program: The National Workplace Literacy Program provides assistance for demonstration projects that teach literacy skills needed in the workplace through exemplary education partnerships between business, industry, or labor organizations and educational organizations.

The Secretary wishes to highlight, for potential applicants, that this program can help to further National Education Goal 5—ensuring that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. The program helps by improving approaches and methods used in meeting the literacy needs of adults in the workplace, including those with limited English proficiency.

Eligible Applicants: (a) Awards are provided to exemplary partnerships between—

(1) A business, industry, or labor organization, or private industry council; and

(2) A State educational agency, local educational agency, institution of higher education, or school (including an area vocational school, an employment and training agency, or a community-based organization).

(b) A partnership must include as partners at least one entity from paragraph (a)(1) of this section and at least one entity from paragraph (a)(2) of this section and may include more than one entity from each group.

(c)(1) The partners shall apply jointly to the Secretary for funds.

(2) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the grantee. The agreement must also detail the role each partner plans to perform, and must bind each partner to every statement and assurance made in the application. Applications are governed by the EDGAR provisions in 34 CFR 75.127–75.129 regarding group applications.

Deadline For Transmittal of Applications: March 11, 1994.

Deadline for Intergovernmental Review: March 10, 1994.

Available Funds: $18,527,425 for the first 12 months. Funding for the second and third year is subject to availability of funds and to a grantee meeting the requirements of 34 CFR 75.253.

Estimated Range of Awards: $105,469–$1,205,234 (funding for first 12 months).

Estimated Average Size of Awards: $370,549 (funding for first 12 months).

Estimated Number of Awards: 50.

Note: The Department is not bound by any estimates in this notice.

Project Period: Up to 36 months (3 twelve-month budget periods).

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR part 74 (Administration of Grants to Institutions of Higher Education, Hospitals, and Nonprofit Organizations), part 75 (Direct Grant Programs), part 77 (Definitions that Apply to Department Regulations), part 79 (Intergovernmental Review of Department of Education Programs and Activities), part 80 (Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), part 81 (General Education Provisions Act—Enforcement), part 82 (New Restrictions on Lobbying), part 85 (Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants)), and part 86 (Drug-Free Schools and Campuses); and (b) the regulations for this program in 34 CFR parts 460 and 472, including amendments to part 472 that are found elsewhere in this issue of the **Federal Register**.

Description of Program: The Secretary provides grants or cooperative agreements to projects designed to improve the productivity of the workforce through improvement of literacy skills in the workplace by—

(a) Providing adult literacy and other basic skills, services, and activities;

(b) Providing adult secondary education services and activities that may lead to the completion of a high school diploma or its equivalent;

(c) Meeting the literacy needs of adults with limited English proficiency;

(d) Upgrading or updating basic skills of adult workers in accordance with changes in workplace requirements, technology, products, or processes;

(e) Improving the competency of adult workers in speaking, listening, reasoning, and problem solving; or

(f) Providing educational counseling, transportation, and child care services for adult workers during nonworking hours while the workers participate in the project.

The statute authorizing this program requires that projects use Federal funds to supplement, and not supplant, funds otherwise available for the purposes of the program.

Selection Criteria: The Secretary uses the following selection criteria to evaluate applications for new grants under this competition.

The maximum score for all of these criteria is 100 points. The maximum score for each criterion is indicated in parentheses.

In addition to the points awarded based on the selection criteria, the Secretary assigns five points to applications from partnerships that include as a partner one or more small businesses that have signed the partnership agreement. An applicant must provide on the Partnership Agreement form the Small Business Administration's (SBA) Standard Industrial Classification (SIC) code for the small business partner. See the Small Business Size Standards: Final and Interim Final Rules (13 Code of Federal Regulations (CFR) part 121). These rules may be found at many public libraries or by contacting a Small Business Administration local district office or regional office, or by calling the SBA's Office of Size Standards in Washington, DC at (202) 205–6618.

Reserved points: The program regulations in 34 CFR 472.21(b) provide that the Secretary may award up to 100 points for selection criteria, including a reserved 10 points. For this competition, the Secretary distributes the reserved 10 points as follows:

Program Factors (34 CFR 472.22(a)).

Five points are added to this criterion for a possible total of 20 points.

Plan of Operation (34 CFR 472.22(d)). Five points are added to this criterion for a possible total of 20 points.

The criteria: (a) *Program Factors.* (20 points) The Secretary reviews each application to determine the extent to which the project—

(1) Demonstrates a strong relationship between skills taught and the literacy requirements of actual jobs, especially the increased skill requirements of the changing workplace;

(2) Is targeted to adults with inadequate skills for whom the training described is expected to mean new employment, continued employment, career advancement, or increased productivity;

(3) Includes support services, based on cooperative relationships within the partnership and from helping organizations, necessary to reduce barriers to participation by adult workers. Support services could include educational counseling, transportation, and child care during non-working hours while adult workers are participating in a project;

(4) Demonstrates the active commitment of all partners to accomplishing project goals; and

(5) Focuses on improving performance in jobs or job functions that have a broad representation within the nation's workforce so that the products can be adapted for use by similar workplaces across the Nation.

(b) *Extent of need for the project.* (10 points) The Secretary reviews each application to determine the extent to which the project meets specific needs, including consideration of—

(1) The extent to which the project will focus on demonstrated needs for workplace literacy training of adult workers;

(2) The adequacy of the applicant's documentation of the needs to be addressed by the project;

(3) How those needs will be met by the project; and

(4) The benefits to adult workers and their industries that will result from meeting those needs.

(c) *Quality of training.* (15 points) The Secretary reviews each application to determine the quality of the training to be provided by the project, including the extent to which the project will—

(1) Develop or use curriculum materials for adults based on literacy skills needed in the workplace;

(2) Use individualized educational plans developed jointly by instructors and adult learners;

(3) Take place in a readily accessible environment conducive to adult learning;

(4) Provide training through the partner classified under 34 CFR 472.2(a)(2), unless transferring this activity to the partner classified under 472.2(a)(1) is necessary and reasonable within the framework of the project; and

(5) Provide, and document for others, a program of training for staff including, but not limited to, techniques of curriculum development and special methods of teaching that are appropriate for workplace environments.

(d) *Plan of operation.* (20 points) The Secretary reviews each application to determine the quality of the plan of operation for the project, including—

(1) The quality of the project design, especially the establishment of measurable objectives for the project that are based on the project's overall goals;

(2) The extent to which the plan of management is effective and ensures proper and efficient administration of the project, and includes—

(i) A description of the respective roles of each member of the partnership in carrying out the plan;

(ii) A description of the activities to be carried out by any contractors under the plan;

(iii) A description of the respective roles, including any cash or in-kind contributions, of helping organizations;

(iv) A description of the respective roles of any sites; and

(v) A realistic time table for accomplishing project objectives;

(3) How well the objectives of the project relate to the purposes of the program;

(4) The quality of the applicant's plan to use its resources and personnel to achieve each objective; and

(5) How the applicant will ensure that project participants, who are otherwise eligible to participate, are selected without regard to race, color, national origin, gender, age, or disability.

(e) *Applicant's experience and quality of key personnel.* (8 points)

(1) The Secretary reviews each application to determine the extent of the applicant's experience in providing literacy services to working adults.

(2) The Secretary reviews each application to determine the quality of key personnel the applicant plans to use on the project, including—

(i) The qualifications, in relation to project requirements, of the project director;

(ii) The qualifications, in relation to project requirements, of each of the other key personnel to be used in the project;

(iii) The time that each person referred to in paragraph (e)(2) (i) and (ii) of this section will commit to the project; and

(iv) How the applicant, as part of its nondiscriminatory employment practices, will ensure that its personnel are selected for employment without regard to race, color, national origin, gender, age, or disability.

(3) To determine personnel qualifications under paragraphs (e)(2) (i) and (ii) of this section, the Secretary considers—

(i) Experience and training in fields related to the objectives of the project;

(ii) Experience and training in project management; and

(iii) Any other qualifications that pertain to the quality of the project.

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the plan for an independent evaluation of the project, including the extent to which the applicant's methods of evaluation—

(1) Are clearly explained and appropriate to the project;

(2) To the extent possible, are objective and produce data that are quantifiable;

(3) Identify expected outcomes of the participants and how those outcomes will be measured;

(4) Include evaluation of effects on job advancement, job performance (including, for example, such elements as productivity, safety, and attendance), and job retention;

(5) Are systematic throughout the project period and provide data that can be used by the project on an ongoing basis for program improvement; and

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

Note: The Program Effectiveness Panel (PEP) is a mechanism the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies. The PEP is composed of experts in the evaluation of educational programs and in other areas of education, at least two-thirds of whom are non-Federal employees who are appointed by the Secretary. Regulations governing the PEP are codified in 34 CFR parts 785–789. Specific criteria for PEP review are found in 34 CFR 786.12 or 787.12.

(g) *Budget and cost-effectiveness.* (7 points) The Secretary reviews each application to determine the extent to which—

(1) The budget is adequate to support the project;

(2) Costs are reasonable and necessary in relation to the objectives of the project; and

(3) The applicant has minimized the purchase of equipment and supplies in order to devote a maximum amount of resources to instructional services.

(h) *Demonstration.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan, during the grant period, to disseminate the results of the project, including—

(i) Demonstrating promising practices used by the project to others interested in implementing these techniques;

(ii) Conducting workshops or delivering papers at national conferences or professional meetings; and

(iii) Making available material that will help others implement promising practices developed in the project.

(i) *Commitment.* (5 points) The Secretary reviews each application to

determine the quality of the partnership's plan to increase, during the project, the capacity of partners to provide a coherent program of learning in the workplace that is based on promising practices demonstrated in the project. For example, the partners could—

(1) Integrate workplace literacy services into long-term planning of partner organizations;

(2) Create and implement policies and practices that encourage worker participation in the project;

(3) Provide training that will enable each partner to build a capacity to furnish necessary workplace literacy services in the future; or

(4) Include in the project design an opportunity to assess what workplace literacy services partners may provide in the future.

Additional Factor: In making awards under this program, the Secretary may consider, in addition to the selection criteria, whether funding a particular applicant would improve the geographical distribution of projects funded under this program.

Intergovernmental Review of Federal Programs: This program is subject to the requirements of Executive Order 12372 (Intergovernmental Review of Federal Programs) and the regulations in 34 CFR part 79.

The objective of the Executive order is to foster an intergovernmental partnership and to strengthen federalism by relying on State and local processes for State and local government coordination and review of proposed Federal financial assistance.

Applicants must contact the appropriate State Single Point of Contact to learn about, and to comply with, the State's process under Executive Order 12372. Applicants proposing to perform activities in more than one State should contact the Single Point of Contact for each of those States and follow the procedure established in each State under the Executive order. If you want to know the name and address of any State Single Point of Contact, see the list published in the **Federal Register** on September 24, 1993 (58 FR 50162–50164).

In States that have not established a process or chosen a program for review, State, areawide, regional, and local entities may submit comments directly to the Department.

Any State Process Recommendation and other comments submitted by a State Single Point of Contact and any comments from State, areawide, regional, and local entities must be mailed or hand-delivered by the date indicated in this notice to the following address: The Secretary, E.O. 12372–CFDA 84.198, U.S. Department of Education, room 4181, 400 Maryland Avenue, SW., Washington, DC 20202–0125.

Proof of mailing will be determined on the same basis as applications (see 34 CFR 75.102). Recommendations or comments may be hand-delivered until 4:30 p.m. (Washington, DC time) on the date indicated in this notice.

Please note that the above address is not the same address as the one to which the applicant submits its completed application. Do not send applications to the above address.

Instructions for Transmittal of Applications: (a) If an applicant wants to apply for a grant, the applicant shall—

(1) Mail the original and six copies of the application on or before the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Washington, DC 20202–4725; or (2) Hand deliver the original and six copies of the application by 4:30 p.m. (Washington, DC time) on the deadline date to: U.S. Department of Education, Application Control Center, Attention: (CFDA #84.198), Room #3633, Regional Office Building #3, 7th and D Streets, SW., Washington, DC.

(b) An applicant must show one of the following as proof of mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other proof of mailing acceptable to the Secretary.

(c) If an application is mailed through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing:

(1) A private metered postmark.

(2) A mail receipt that is not dated by the U.S. Postal Service.

Notes: (1) The U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

(2) The Application Control Center will mail a Grant Application Receipt Acknowledgement to each applicant. If an applicant fails to receive the notification of application receipt within 15 days from the date of mailing the application, the applicant should call the U.S. Department of Education Application Control Center at (202) 708–9494.

(3) The applicant must indicate on the envelope and—if not provided by the Department—in Item 10 of the Application for Federal Assistance (Standard Form 424) the CFDA number of the competition under which the application is being submitted.

Application Instructions and Forms: To apply for an award under this program competition, your application must be organized in the following order and include the following six parts:

Part I: Application for Federal Assistance (Standard Form 424 (Rev. 4–88)) and Instructions.

Part II: Partnership Agreement Form.

Part III: Budget Information and Instructions.

Part IV: Budget Narrative.

Part V: Application Narrative.

Part VI: Additional Assurances and Certification:

a. Assurances—Non-Construction Programs (Standard Form 424B).

b. Certifications Regarding Lobbying; Debarment, Suspension, and Other Responsibility Matters; and Drug-Free Workplace Requirements (ED form 80–0013) and Instructions.

c. Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion: Lower Tier Covered Transactions (ED Form 80–0014) and Instructions.

(**Note:** ED Form 80–0014 is intended for the use of grantees and should not be transmitted to the Department.)

d. Disclosure of Lobbying Activities (Standard Form LLL) (if applicable) and Instructions, and Disclosure of Lobbying Activities Continuation Sheet (Standard Form LLL–A).

All forms and instructions are included as Appendix A of this notice. Questions and answers pertaining to this program are included, as Appendix B, to assist potential applicants.

An applicant may submit information on a photostatic copy of the forms in Appendix A. However, each of the pertinent documents must include an original ink signature. All applicants must submit ONE original signed application, including ink signatures on all forms and assurances and SIX copies of the application. Please mark each application as original or copy. Local or State Agencies may choose to submit two copies with the original.

No grant may be awarded unless a complete application form has been received.

FOR FURTHER INFORMATION CONTACT: Liz Miller or Jeanne Williams, Special Programs Branch, Division of National Programs, Office of Vocational and Adult Education, U.S. Department of Education, room 4513–MES, 400 Maryland Avenue SW., Washington, DC 20202–7327. Telephone (202) 205–9750.

Information about the Department's funding opportunities, including copies of application notices for discretionary grant competitions, can be viewed on the Department's electronic bulletin board (ED Board), telephone (202) 260–9950; or on the Internet Gopher Server at GOPHER.ED.GOV (under Announcements, Bulletins, and Press Releases). However, the official application notice for a discretionary grant competition is the notice published in the **Federal Register**.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

PROGRAM AUTHORITY: 20 U.S.C. 1211(a).

Dated: January 3, 1994.

Augusta S. Kappner,

Assistant Secretary Vocational and Adult Education.

BILLING CODE 4000-01-M

Appendix A

APPLICATION FOR FEDERAL ASSISTANCE

OMB Approval No. 0348-0043

1. TYPE OF SUBMISSION: Application ☐ Construction ☐ Non-Construction; Preapplication ☐ Construction ☐ Non-Construction	2. DATE SUBMITTED	Applicant Identifier
	3. DATE RECEIVED BY STATE	State Application Identifier
	4. DATE RECEIVED BY FEDERAL AGENCY	Federal Identifier

5. APPLICANT INFORMATION

Legal Name	Organizational Unit:
Address (give city, county, state, and zip code)	Name and telephone number of the person to be contacted on matters involving this application (give area code)

6. EMPLOYER IDENTIFICATION NUMBER (EIN): ☐☐ – ☐☐☐☐☐☐☐

7. TYPE OF APPLICANT: (enter appropriate letter in box) ☐

A. State — H. Independent School Dist.
B. County — I. State Controlled Institution of Higher Learning
C. Municipal — J. Private University
D. Township — K. Indian Tribe
E. Interstate — L. Individual
F. Intermunicipal — M. Profit Organization
G. Special District — N. Other (Specify) _____

8. TYPE OF APPLICATION: ☐ New ☐ Continuation ☐ Revision

If Revision, enter appropriate letter(s) in box(es): ☐ ☐
A. Increase Award B. Decrease Award C. Increase Duration
D. Decrease Duration Other (specify): _____

9. NAME OF FEDERAL AGENCY: U.S.Department of Education

10. CATALOG OF FEDERAL DOMESTIC ASSISTANCE NUMBER: 8 4 . 1 9 8

TITLE: Workplace Literacy Program

11. DESCRIPTIVE TITLE OF APPLICANT'S PROJECT:

12. AREAS AFFECTED BY PROJECT (cities, counties, states, etc.):

13. PROPOSED PROJECT		14. CONGRESSIONAL DISTRICTS OF	
Start Date	Ending Date	a. Applicant	b. Project

15. ESTIMATED FUNDING:		
a. Federal	$	.00
b. Applicant	$	.00
c. State	$	.00
d. Local	$	.00
e. Other	$	.00
f. Program Income	$	.00
g. TOTAL	$	.00

16. IS APPLICATION SUBJECT TO REVIEW BY STATE EXECUTIVE ORDER 12372 PROCESS?

a. YES THIS PREAPPLICATION/APPLICATION WAS MADE AVAILABLE TO THE STATE EXECUTIVE ORDER 12372 PROCESS FOR REVIEW ON

DATE _____

b. NO ☐ PROGRAM IS NOT COVERED BY E.O. 12372

☐ OR PROGRAM HAS NOT BEEN SELECTED BY STATE FOR REVIEW

17. IS THE APPLICANT DELINQUENT ON ANY FEDERAL DEBT?

☐ Yes If "Yes," attach an explanation ☐ No

18. TO THE BEST OF MY KNOWLEDGE AND BELIEF, ALL DATA IN THIS APPLICATION/PREAPPLICATION ARE TRUE AND CORRECT. THE DOCUMENT HAS BEEN DULY AUTHORIZED BY THE GOVERNING BODY OF THE APPLICANT AND THE APPLICANT WILL COMPLY WITH THE ATTACHED ASSURANCES IF THE ASSISTANCE IS AWARDED

a. Typed Name of Authorized Representative	b. Title	c. Telephone number
d. Signature of Authorized Representative		e. Date Signed

Previous Editions Not Usable

Standard Form 424 (REV 3-88)
Prescribed by OMB Circular A-102

Authorized for Local Reproduction

INSTRUCTIONS FOR THE SF 424

This is a standard form used by applicants as a required facesheet for preapplications and applications submitted for Federal assistance. It will be used by Federal agencies to obtain applicant certification that States which have established a review and comment procedure in response to Executive Order 12372 and have selected the program to be included in their process, have been given an opportunity to review the applicant's submission.

Item: Entry:

1. Self-explanatory.
2. Date application submitted to Federal agency (or State if applicable) & applicant's control number (if applicable).
3. State use only (if applicable).
4. If this application is to continue or revise an existing award, enter present Federal identifier number. If for a new project, leave blank.
5. Legal name of applicant, name of primary organizational unit which will undertake the assistance activity, complete address of the applicant, and name and telephone number of the person to contact on matters related to this application.
6. Enter Employer Identification Number (EIN) as assigned by the Internal Revenue Service.
7. Enter the appropriate letter in the space provided.
8. Check appropriate box and enter appropriate letter(s) in the space(s) provided:
   - —"New" means a new assistance award.
   - —"Continuation" means an extension for an additional funding/budget period for a project with a projected completion date.
   - —"Revision" means any change in the Federal Government's financial obligation or contingent liability from an existing obligation.
9. Name of Federal agency from which assistance is being requested with this application.
10. Use the Catalog of Federal Domestic Assistance number and title of the program under which assistance is requested.
11. Enter a brief descriptive title of the project. If more than one program is involved, you should append an explanation on a separate sheet. If appropriate (e.g., construction or real property projects), attach a map showing project location. For preapplications, use a separate sheet to provide a summary description of this project.

Item: Entry:

12. List only the largest political entities affected (e.g., State, counties, cities).
13. Self-explanatory.
14. List the applicant's Congressional District and any District(s) affected by the program or project.
15. Amount requested or to be contributed during the first funding/budget period by each contributor. Value of in-kind contributions should be included on appropriate lines as applicable. If the action will result in a dollar change to an existing award, indicate *only* the amount of the change. For decreases, enclose the amounts in parentheses. If both basic and supplemental amounts are included, show breakdown on an attached sheet. For multiple program funding, use totals and show breakdown using same categories as item 15.
16. Applicants should contact the State Single Point of Contact (SPOC) for Federal Executive Order 12372 to determine whether the application is subject to the State intergovernmental review process.
17. This question applies to the applicant organization, not the person who signs as the authorized representative. Categories of debt include delinquent audit disallowances, loans and taxes.
18. To be signed by the authorized representative of the applicant. A copy of the governing body's authorization for you to sign this application as official representative must be on file in the applicant's office. (Certain Federal agencies may require that this authorization be submitted as part of the application.)

SF 424 (REV 4-88) Back

PARTNERSHIP AGREEMENT FORM

INSTRUCTIONS: Partners must submit a signed Partners' Agreement form and enclose it with the application. As indicated in 34 CFR 472.2 it is essential that the partners sign and submit this document in order for their application to be considered complete. If the document is not signed by all partners and submitted with the application, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Please note that every partnership must include at least one entity from each of the following two categories and may, but need not, include more than one entity from each category. Category 1 includes a business, industry, or labor organization, or private industry council. Category 2 includes a State educational agency, local educational agency, or school (including an area vocational school, and employment and training agency, or a community-based organization). This means that the Partnership Agreement must be signed by at least one Category 1 partner and at least one Category 2 partner and must also be signed by any other partner(s) included in the partnership. Any questions about forming a valid partnership and properly completing the Partnership Agreement may be referred to one of the program officers listed as an information contact in this application notice.

If you are claiming the small business preference because one or more of the proposed partners has small business status, please indicate the partner's Standard Industrial Classification (SIC) code in the space provided. If this information is not included, the small business preference will not be applied to the application.

Partners' Agreement

As authorized representatives of our organizations, we agree on their behalf to the following terms with respect to our application as a condition of applying for and receiving a grant from the National Workplace Literacy Program. We:

- designate partner _____ as the applicant on behalf of the partnership;
- are willing to be partners in this project;
- will perform the role detailed for each of us in the application;
- will be bound by every statement and assurance made in the application including, but not limited to, the assurance that any funds provided to the partnership under Section 371 of Public Law 100-297 will be used to supplement and not supplant funds otherwise available for the purposes of the National Workplace Literacy Program.

Category One Partner	Category Two Partner
_____	_____
Original Ink Signature	Original Ink Signature
_____	_____
Name (Typed)	Name (Typed)
_____	_____
Title (Typed)	Title (Typed)
_____	_____
Organization (Typed)	Organization (Typed)
_____	
SIC Code (only if small business)	
_____	_____
Date (Typed)	Date (Typed)

Note: Applicant must add signature spaces including the above information for any additional partner(s).

BILLING CODE 4000-01-C

Instructions for Part II—Partnership Agreement Form

Partners must submit a signed Partnership Agreement Form and enclose it with the application. As indicated in 34 CFR 472.2, it is essential that the partners sign and submit this document in order for their application to be considered complete. If the agreement is retyped, the applicant should make sure that none of the wording is changed. Any changes in wording could alter the meaning of the agreement and thus render the application ineligible. Any reference in the application to an organization as a partner in the project is considered to mean a bona fide partner in the partnership who must sign the partnership agreement. If the document is not signed by all organizations identified as partners and submitted with the application or if the wording is changed and alters the meaning of the agreement, the Secretary will return the application without further consideration for funding pursuant to 34 CFR 75.216.

Preference is given under this program to an application that includes one or more small businesses as a partner. For the purpose of this program, to claim a small business preference, the applicant must certify which of the partner enterprises is a small business under the Small Business Administration's Size Standards: Final and Interim Final Rules (13 CFR part 121) and furnish the Standard Industrial Classification (SIC) code in the Final and Interim Final Rules within which each such enterprise classifies itself. The SIC code for a small business partner must be entered in the space provided on the Partnership Agreement Form.

BILLING CODE 4000-01-M

PART III - BUDGET INFORMATION

SECTION A - Budget Summary by Categories

	A	B	C
1. Personnel			
2. Fringe Benefits (Rate %)			
3. Travel			
4. Equipment			
5. Supplies			
6. Contractual			
7. Other			
8. Total, Direct Cost (lines 1 through 7)			
9. Indirect Cost (Rate %)			
10. Training Costs/Stipends			
11. TOTAL, Federal Funds Requested (lines 8 through 10)			

SECTION B - Cost Sharing Summary (if appropriate)

	A	B	B
1. Cash Contribution			
2. In-Kind Contribution (only costs specifically for this project)			
3. TOTAL, Cost Sharing (Rate 30%)			

NOTE: For FULLY-FUNDED PROJECTS use Column A to record the entire project budget period.

For MULTI-YEAR PROJECTS use Column A to record the first 12-month budget period; Column B to record the second 12-month budget period; and Column C to record the third 12-month budget period.

BILLING CODE 4000-01-C

Instructions for Part III-Budget Information

Section A—Budget Summary by Categories

1. *Personnel:* Show salaries to be paid to project personnel.

2. *Fringe Benefits:* Indicate the rate and amount of fringe benefits.

3. *Travel:* Indicate the amount requested for both inter- and intra-State travel of project staff. Include funds for three people to attend three developmental staff meetings in Washington, DC.

4. *Equipment:* Indicate the cost of non-expendable personal property that has a useful life of more than one year and a cost of $300 or more per unit ($5,000 or more if State, Local, or Tribal Government).

5. *Supplies:* Include the cost of consumable supplies and materials to be used during the project.

6. *Contractual:* Show the amount to be used for (1) procurement contracts (except those which belong on other lines such as supplies and equipment); and (2) sub-contracts.

7. *Other:* Indicate all direct costs not clearly covered by lines 1 through 6 above, including consultants.

8. *Total, Direct Costs:* Show the total for lines 1 through 7.

9. *Indirect Costs:* Indicate the rate and amount of indirect costs (see Note).

10. *Training/Stipend Cost:* (not allowable)

11. *TOTAL, Federal Funds Requested:* Show total for lines 8 through 10.

Note: The National Workplace Literacy Program includes a statutory requirement that Federal funds supplement, and not supplant, non-Federal funds. 34 CFR 75.563 requires programs of this type to use a restricted indirect cost rate. 34 CFR 75.564–75.568 provides the formula for determining the restricted indirect cost rate and provides definitions of terms used in the formula. A grantee other than a State or local government may use the restricted indirect cost rate or eight percent, whichever is less. Copies of part 75 of 34 CFR may be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. These regulations may also be found at many local libraries.

Section B—Cost Sharing Summary

Indicate the actual rate and amount of cost sharing. The National Workplace Literacy Program requires that the partnership provide at least 30 percent cost sharing. The share required refers to a percentage of Total project cost, not of Federal funds.

Part IV—Instructions for Budget Narrative

Prepare a detailed Budget Narrative for the first year of the project that justifies, and/or clarifies the budget figures shown in sections A and B. (Please note that the National Literacy Act of 1991 (Pub. L. 102–73) amended the section of the Adult Education Act that authorizes the National Workplace Literacy Program to permit any eligible organization to use 100 percent Federal funds for administrative costs incurred in establishing a project during a start-up period. 34 CFR 472.32(b) requires that an applicant minimize the start-up period, if any, proposed for its project and that the start-up period not exceed six months.) Explain:

1. The basis used to estimate certain costs (professional personnel, consultants, travel, indirect costs) and any other cost that may appear unusual;

2. How the major cost items relate to the proposed project activities;

3. The costs of the project's evaluation component;

4. What matching occurs in each budget category; and

5. A breakdown of expenditures in the start-up period, and in the subsequent operational period.

Provide estimated budget totals for the second and third years of the project.

Instructions for Part V—Application Narrative

Before preparing the Application Narrative, an applicant should read carefully the description of the program and the selection criteria the Secretary uses to evaluate applications.

The narrative should encompass each function or activity for which funds are being requested and should—

1. Begin with an Abstract; that is, a summary of the proposed project including a list of the members of the partnership;

2. Describe the proposed project in light of each of the selection criteria in the order in which the criteria are listed in this application package; and

3. Include any other pertinent information that might assist the Secretary in reviewing the application.

The Secretary strongly requests the applicant to limit the Application Narrative to no more than 50 double-spaced, typed, 8½" x 11" pages (on one side only), although the Secretary will consider applications of greater length. Be sure that each page of your application is numbered consecutively.

Include as an appendix to the Application Narrative supporting documentation, also on 8½" x 11" paper (e.g., letters of support, footnotes, resumes, etc.), or any other pertinent information that might assist the Secretary in reviewing the application.

Applicants are advised that—(1) Under § 75.217 of the Education Department General Administrative Regulations (EDGAR), the Department considers only information contained in the application in ranking applications for funding consideration. Letters of support sent separately from the formal application package are not considered by the technical review panels.

(2) In reviewing applications, the technical review panel evaluates each application solely on the basis of the established technical review criteria. Letters of support contained in the application will strengthen the application only if they contain commitments that pertain to the established technical review criteria, such as commitment of resources.

Include any other pertinent information that might assist the Secretary in reviewing the application under the Adult Education Act, as amended.

Instructions for Estimated Public Reporting Burden

Under terms of the Paperwork Reduction Act of 1980, as amended, and the regulations implementing that Act, the Department of Education invites comment on the public reporting burden in this collection of information. Public reporting burden for this collection of information is estimated to average 90 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. You may send comments regarding this burden to the U.S. Department of Education, Information Management and Compliance Division, Washington, DC 20202–4651; and to the Office of Management and Budget, Paperwork Reduction Project, OMB 1830–0521, Washington, DC 20503.

(Information collection approved under OMB control number 1830–0521. Expiration date: December 31, 1995.)

BILLING CODE 4001-01-P

OMB Approval No. 0348-0040

ASSURANCES — NON-CONSTRUCTION PROGRAMS

Note: Certain of these assurances may not be applicable to your project or program. If you have questions, please contact the awarding agency. Further, certain Federal awarding agencies may require applicants to certify to additional assurances. If such is the case, you will be notified.

As the duly authorized representative of the applicant I certify that the applicant:

1. Has the legal authority to apply for Federal assistance, and the institutional, managerial and financial capability (including funds sufficient to pay the non-Federal share of project costs) to ensure proper planning, management and completion of the project described in this application.
2. Will give the awarding agency, the Comptroller General of the United States, and if appropriate, the State, through any authorized representative, access to and the right to examine all records, books, papers, or documents related to the award; and will establish a proper accounting system in accordance with generally accepted accounting standards or agency directives.
3. Will establish safeguards to prohibit employees from using their positions for a purpose that constitutes or presents the appearance of personal or organizational conflict of interest, or personal gain.
4. Will initiate and complete the work within the applicable time frame after receipt of approval of the awarding agency.
5. Will comply with the Intergovernmental Personnel Act of 1970 (42 U.S.C. §§ 4728-4763) relating to prescribed standards for merit systems for programs funded under one of the nineteen statutes or regulations specified in Appendix A of OPM's Standards for a Merit System of Personnel Administration (5 C.F.R. 900, Subpart F).
6. Will comply with all Federal statutes relating to nondiscrimination. These include but are not limited to: (a) Title VI of the Civil Rights Act of 1964 (P.L. 88-352) which prohibits discrimination on the basis of race, color or national origin; (b) Title IX of the Education Amendments of 1972, as amended (20 U.S.C. §§ 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; (c) Section 504 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794), which prohibits discrimination on the basis of handicaps; (d) the Age Discrimination Act of 1975, as amended (42 U.S.C. §§ 6101-6107), which prohibits discrimination on the basis of age; (e) the Drug Abuse Office and Treatment Act of 1972 (P.L. 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; (f) the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; (g) §§ 523 and 527 of the Public Health Service Act of 1912 (42 U.S.C. 290 dd-3 and 290 ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; (h) Title VIII of the Civil Rights Act of 1968 (42 U.S.C. § 3601 et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; (i) any other nondiscrimination provisions in the specific statute(s) under which application for Federal assistance is being made; and (j) the requirements of any other nondiscrimination statute(s) which may apply to the application.
7. Will comply, or has already complied, with the requirements of Titles II and III of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (P.L. 91-646) which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal or federally assisted programs. These requirements apply to all interests in real property acquired for project purposes regardless of Federal participation in purchases.
8. Will comply with the provisions of the Hatch Act (5 U.S.C. §§ 1501-1508 and 7324-7328) which limit the political activities of employees whose principal employment activities are funded in whole or in part with Federal funds.
9. Will comply, as applicable, with the provisions of the Davis-Bacon Act (40 U.S.C. §§ 276a to 276a-7), the Copeland Act (40 U.S.C. § 276c and 18 U.S.C. §§ 874), and the Contract Work Hours and Safety Standards Act (40 U.S.C. §§ 327-333), regarding labor standards for federally assisted construction subagreements.

Standard Form 424B (4-88)
Prescribed by OMB Circular A-102

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10. Will comply, if applicable, with flood insurance purchase requirements of Section 102(a) of the Flood Disaster Protection Act of 1973 (P.L. 93-234) which requires recipients in a special flood hazard area to participate in the program and to purchase flood insurance if the total cost of insurable construction and acquisition is $10,000 or more.
11. Will comply with environmental standards which may be prescribed pursuant to the following: (a) institution of environmental quality control measures under the National Environmental Policy Act of 1969 (P.L. 91-190) and Executive Order (EO) 11514; (b) notification of violating facilities pursuant to EO 11738; (c) protection of wetlands pursuant to EO 11990; (d) evaluation of flood hazards in floodplains in accordance with EO 11988; (e) assurance of project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972 (16 U.S.C. §§ 1451 et seq.); (f) conformity of Federal actions to State (Clear Air) Implementation Plans under Section 176(c) of the Clear Air Act of 1955, as amended (42 U.S.C. § 7401 et seq.); (g) protection of underground sources of drinking water under the Safe Drinking Water Act of 1974, as amended, (P.L. 93-523); and (h) protection of endangered species under the Endangered Species Act of 1973, as amended, (P.L. 93-205).
12. Will comply with the Wild and Scenic Rivers Act of 1968 (16 U.S.C. §§ 1271 et seq.) related to protecting components or potential components of the national wild and scenic rivers system.
13. Will assist the awarding agency in assuring compliance with Section 106 of the National Historic Preservation Act of 1966, as amended (16 U.S.C. 470), EO 11593 (identification and protection of historic properties), and the Archaeological and Historic Preservation Act of 1974 (16 U.S.C. 469a-1 et seq.).
14. Will comply with P.L. 93-348 regarding the protection of human subjects involved in research, development, and related activities supported by this award of assistance.
15. Will comply with the Laboratory Animal Welfare Act of 1966 (P.L. 89-544, as amended, 7 U.S.C. 2131 et seq.) pertaining to the care, handling and treatment of warm blooded animals held for research, teaching, or other activities supported by this award of assistance.
16. Will comply with the Lead-Based Paint Poisoning Prevention Act (42 U.S.C. §§ 4801 et seq.) which prohibits the use of lead based paint in construction or rehabilitation of residence structures.
17. Will cause to be performed the required financial and compliance audits in accordance with the Single Audit Act of 1984.
18. Will comply with all applicable requirements of all other Federal laws, executive orders, regulations and policies governing this program.

SIGNATURE OF AUTHORIZED CERTIFYING OFFICIAL	TITLE
APPLICANT ORGANIZATION	DATE SUBMITTED

SF 424B (4-88) Back

CERTIFICATIONS REGARDING LOBBYING; DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS; AND DRUG-FREE WORKPLACE REQUIREMENTS

Applicants should refer to the regulations cited below to determine the certification to which they are required to assert. Applicants should also review the instructions for certification included in the regulations before completing this form. Signature of this form provides for compliance with certification requirements under 34 CFR Part 82, "New Restrictions on Lobbying," and 34 CFR Part 85, "Government-wide Debarment and Suspension (Nonprocurement) and Government-wide Requirements for Drug-Free Workplace (Grants)." The certifications shall be treated as a material representation of fact upon which reliance will be placed when the Department of Education determines to award the covered transaction, grant, or cooperative agreement.

1. LOBBYING

As required by Section 1352, Title 31 of the U.S. Code, and implemented at 34 CFR Part 82, for persons entering into a grant or cooperative agreement over $100,000, as defined at 34 CFR Part 82, Sections 82.105 and 82.110, the applicant certifies that:

(a) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making of any Federal grant, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal grant or cooperative agreement;

(b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal grant or cooperative agreement, the undersigned shall complete and submit Standard Form - LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions;

(c) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subgrants, contracts under grants and cooperative agreements, and subcontracts) and that all subrecipients shall certify and disclose accordingly.

2. DEBARMENT, SUSPENSION, AND OTHER RESPONSIBILITY MATTERS

As required by Executive Order 12549, Debarment and Suspension, and implemented at 34 CFR Part 85, for prospective participants in primary covered transactions, as defined at 34 CFR Part 85, Sections 85.105 and 85.110 –

A. The applicant certifies that it and its principals:

(a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

(b) Have not within a three-year period preceding this application been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

(c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1)(b) of this certification; and

(d) Have not within a three-year period preceding this application had one or more public transactions (Federal, State, or local) terminated for cause or default; and

B. Where the applicant is unable to certify to any of the statements in this certification, he or she shall attach an explanation to this application.

3. DRUG-FREE WORKPLACE (GRANTEES OTHER THAN INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. The applicant certifies that it will or will continue to provide a drug-free workplace by:

(a) Publishing a statement notifying employees that the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance is prohibited in the grantee's workplace and specifying the actions that will be taken against employees for violation of such prohibition;

(b) Establishing an on-going drug-free awareness program to inform employees about–

(1) The dangers of drug abuse in the workplace;

(2) The grantee's policy of maintaining a drug-free workplace;

(3) Any available drug counseling, rehabilitation, and employee assistance programs; and

(4) The penalties that may be imposed upon employees for drug abuse violations occurring in the workplace;

(c) Making it a requirement that each employee to be engaged in the performance of the grant be given a copy of the statement required by paragraph (a);

(d) Notifying the employee in the statement required by paragraph (a) that, as a condition of employment under the grant, the employee will–

(1) Abide by the terms of the statement; and

(2) Notify the employer in writing of his or her conviction for a violation of a criminal drug statute occurring in the workplace no later than five calendar days after such conviction;

(e) Notifying the agency, in writing, within 10 calendar days after receiving notice under subparagraph (d)(2) from an employee or otherwise receiving actual notice of such conviction. Employers of convicted employees must provide notice, including position title, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3),

Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant;

(f) Taking one of the following actions, within 30 calendar days of receiving notice under subparagraph (d)(2), with respect to any employee who is so convicted–

(1) Taking appropriate personnel action against such an employee, up to and including termination, consistent with the requirements of the Rehabilitation Act of 1973, as amended; or

(2) Requiring such employee to participate satisfactorily in a drug abuse assistance or rehabilitation program approved for such purposes by a Federal, State, or local health, law enforcement, or other appropriate agency;

(g) Making a good faith effort to continue to maintain a drug-free workplace through implementation of paragraphs (a), (b), (c), (d), (e), and (f).

B. The grantee may insert in the space provided below the site(s) for the performance of work done in connection with the specific grant:

Place of Performance (Street address, city, county, state, zip code)

_____

_____

_____

Check ☐ if there are workplaces on file that are not identified here.

DRUG-FREE WORKPLACE (GRANTEES WHO ARE INDIVIDUALS)

As required by the Drug-Free Workplace Act of 1988, and implemented at 34 CFR Part 85, Subpart F, for grantees, as defined at 34 CFR Part 85, Sections 85.605 and 85.610 –

A. As a condition of the grant, I certify that I will not engage in the unlawful manufacture, distribution, dispensing, possession, or use of a controlled substance in conducting any activity with the grant; and

B. If convicted of a criminal drug offense resulting from a violation occurring during the conduct of any grant activity, I will report the conviction, in writing, within 10 calendar days of the conviction, to: Director, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue, S.W. (Room 3124, GSA Regional Office Building No. 3), Washington, DC 20202-4571. Notice shall include the identification number(s) of each affected grant.

As the duly authorized representative of the applicant, I hereby certify that the applicant will comply with the above certifications.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0013, 6/90 (Replaces ED 80-0008, 12/89; ED Form GCS-008, (REV. 12/88); ED 80-0010, 5/90; and ED 80-0011, 5/90, which are obsolete)

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion — Lower Tier Covered Transactions

This certification is required by the Department of Education regulations implementing Executive Order 12549, Debarment and Suspension, 34 CFR Part 85, for all lower tier transactions meeting the threshold and tier requirements stated at Section 85.110.

Instructions for Certification

1. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

2. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

3. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

6. The prospective lower tier participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion—Lower Tier Covered Transactions," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

8. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

9. Except for transactions authorized under paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

Certification

(1) The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

(2) Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

NAME OF APPLICANT	PR/AWARD NUMBER AND/OR PROJECT NAME
PRINTED NAME AND TITLE OF AUTHORIZED REPRESENTATIVE	
SIGNATURE	DATE

ED 80-0014, 9/90 (Replaces GCS-009 (REV. 12/88), which is obsolete)

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:	2. Status of Federal Action:	3. Report Type:
☐ a. contract b. grant c. cooperative agreement d. loan e. loan guarantee f. loan insurance	☐ a. bid/offer/application b. initial award c. post-award	☐ a. initial filing b. material change For Material Change Only: year _____ quarter _____ date of last report _____

4. Name and Address of Reporting Entity:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime:
☐ Prime ☐ Subawardee Tier _____, if known: Congressional District, if known:	Congressional District, if known:
6. Federal Department/Agency:	7. Federal Program Name/Description: CFDA Number, if applicable: _____
8. Federal Action Number, if known:	9. Award Amount, if known: $
10. a. Name and Address of Lobbying Entity (if individual, last name, first name, MI):	b. Individuals Performing Services (including address if different from No. 10a) (last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment (check all that apply):	13. Type of Payment (check all that apply):
$ _____ ☐ actual ☐ planned	☐ a. retainer ☐ b. one-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other; specify: _____
12. Form of Payment (check all that apply): ☐ a. cash ☐ b. in-kind; specify: nature _____ value _____	

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

16. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

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Standard Form - LLL

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by OMB
0348-0046

Reporting Entity: _____ Page ____ of ____

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Standard Form - LLL-A

BILLING CODE 4000-01-C

Appendix B

Potential applicants frequently direct questions to officials of the Department regarding application notices and programmatic and administrative regulations governing various direct grant programs. To assist potential applicants the Department has assembled the following most commonly asked questions.

Q. Can we get an extension of the deadline?

A. No. A closing date may be changed only under extraordinary circumstances. Any change must be announced in the **Federal Register** and apply to all applications. Waivers for individual applications cannot be granted, regardless of the circumstances.

Q. We just missed the deadline for a previous Department of Education competition. May we submit the application we prepared for it under this competition?

A. Yes. However the likelihood of success is not good. A properly prepared application must meet the specifications of the competition to which it is submitted.

Q. I'm not sure which competition is most appropriate for my project. What should I do?

A. We are happy to discuss any questions with you and provide clarification on the unique elements of the various competitions.

Q. How can I best ensure that my application is received on time and is considered under the correct competition?

A. Applicants should carefully follow the instructions for filing applications that are set forth in this notice. Be sure that Block 10 of the face page of the application (Standard form 424) clearly indicates the CFDA number 84.198, and the title of the program—National Workplace Literacy Program—representing the competition in which the application should be considered.

Q. Will you help us prepare our application?

A. We are happy to provide general program information. Clearly, it would not be appropriate for staff to participate in the actual writing of an application, but we can respond to specific questions about application requirements, evaluation criteria, and the priority. Applicants should understand that this previous contact is not required, nor will it in any way influence the success of an application.

Q. How long should an application be?

A. The Department of Education is making a concerted effort to reduce the volume of paperwork in discretionary program applications. However, the scope and complexity of projects is too variable to establish firm limits on length. Your application should provide enough information to allow the review panel to evaluate the significance of the project against the criteria of the competition. We recommend that you address all of the selection criteria in an "Application Narrative" of no more than 50 pages in length. Supporting documentation may be included in appendices to the Application Narrative. Some examples:

(1) Staff qualifications. These should be brief. They should include the person's title and role in the proposed project and contain only information about his or her qualifications that are relevant to the proposed project. Qualifications of consultants should be provided and be similarly brief. Resumes may be included in the appendices.

(2) Copies of evaluation instruments proposed to be used in the project in instances where such instruments are not in general use.

(3) Copies (samples) of any curricula that reflect the applicant's experience and the scope and direction of any current or previous projects related to this application.

Note that a Budget Narrative describing specific uses of funds requested in the budget form also is required. No applications will be funded without this material. The Budget Narrative is not included in the recommended 50 page limit.

Q. How should my application be organized?

A. The applicant should assemble its package in the following order: The SF 424 on top, followed by the abstract, Partnership Agreement Form, table of contents, Budget Information Form, Budget Narrative, Application Narrative, assurances and certifications, and appendices.

Do not substitute your own cover for the SF 424. Please include one extra, loose copy of the SF 424 for use by the Application Control Center. Please number all pages. The Application Narrative should be organized to follow the exact sequence of the components in the selection criteria in this notice.

Q. Can project funds be used to cover travel expenses?

A. Travel associated with carrying out the project can be funded using program funds if necessary and reasonable. The Secretary anticipates that the project director, one business or labor representative, and the evaluator will attend three developmental staff meetings over the course of the project (one start-up conference, one mid-point conference, and one close-out conference). Therefore, you may wish to include the costs of nine trips to Washington, D.C. in the travel budget.

Q. How can I ensure that my application is filed on behalf of a validly formed partnership?

A. The requirements for forming a partnership and filing an application on its behalf are explained in § 472.2 of the program regulations. A partnership requires a signed agreement between at least one entity described in § 472.2(a)(1) and at least one entity described in § 472.2(a)(2). Note that State and local governments—like any other entities—may not qualify as partners unless they fall within these descriptions. For example, under the regulations, a State or local educational agency or a municipal employment and training agency is an eligible partner, but a State or city government is not an eligible partner. No agency of the Federal government is an eligible partner. Federal employees including members of the armed services are not eligible for training. If you are not sure whether a particular entity is an eligible partner, please call the program officers listed as information contacts in the application notice.

Q. Can entities that are not eligible partners be involved in a workplace literacy project?

A. Yes. They could potentially be involved as "contractors," "helping organizations," or "sites," as defined in § 472.5 of the regulations. Note that entities that are "helpers" or "sites" may not receive funds from the grant.

Q. Must the signed partnership agreement be submitted with the application?

A. Yes. The agreement is required both to establish the partnership's legal eligibility and to ensure each partner's continuing commitment during the workplace literacy project. Prior to submitting an application, partners should ensure that each partner clearly understands its role and responsibilities in the project.

The Department interprets even a single reference in the application to an organization as a partner to mean that it is a bona fide partner in the partnership and, thus, is required to sign the partnership agreement. The applicant should be careful to designate partners, helpers, contractors, etc. in the same way wherever they are mentioned throughout the application. Because partnership requirements are established by law, the Department reviews each agreement form to be certain that it meets the terms of the law requiring all entities named as partners to sign the agreement. The Department wishes to underscore that if any of the entities named as partners in the application have not signed the agreement form, the application will be returned to the applicant without further consideration for funding.

Q. How does the Department define "small business"?

A. In 34 CFR 472.5, the Department defines "small business" as a business entity that—

(1) Is organized for profit, with a place of business located in the United States and that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor, or both; and

(2) May be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative, except that where the form is a joint venture there can be no more than 49 percent participation by foreign business entities in the joint venture; and

(3) Meets the requirements found in 13 CFR part 121 concerning Standard Industrial Classification codes and size standards.

If you are not sure whether or not you meet the definition of a small business, you may want to contact your local district office or regional office of the Small Business Administration (SBA) for advice. If you are unable to locate those offices you may call the SBA's Office of Size Standards at (202) 205–6618.

Q. May an application including a business partner that is a small local affiliate of a larger corporation receive the small business priority points?

A. The overall size of the business partner and its affiliates will determine the answer. Size determinations must include the business partner and all its domestic and foreign affiliates regardless of whether the affiliates are organized for profit. 13 CFR 121.401 describes affiliating circumstances for size determination purposes and establishes exceptions thereto.

Q. May an application including a business partner that operates as the small local franchisee or licensee of a larger corporation receive the small business priority points?

A. Small business priority points may be awarded when a business partner meets the following three conditions: It (1) is a local franchisee or licensee within the size determination standards, (2) has the right to profit from its efforts and (3) bears the risk of loss commensurate with ownership. Exceptions to this general interpretation may arise where affiliation results from other means than the franchise or license agreement such as common ownership, common management or excessive restrictions on the sale of the franchise interest. See § 121.401(m) of 13 CFR.

Q. Must a small business participant be a partner for the application to qualify for the small business priority points?

A. Yes. The small business participant must be a partner who has signed the Partnership Agreement for the application to qualify for the extra points.

Q. Must an applicant provide the Standard Industrial Classification (SIC) code for the small business partner in order to receive the small business priority points?

A. Yes. The SIC code must be entered on the line provided on the Partnership Agreement form.

Q. What is meant by a required percent of non-Federal cost-sharing or matching funds?

A. In this program, the recipient of Federal funds is required to "match" the Federal grant by paying at least a minimum percentage of total program costs. Total program costs include both the Federal funds received and the non-Federal contribution. For example, a partnership that is required to pay 30 percent of total program costs of $100,000 would have to contribute $30,000 to match a Federal award of $70,000 ($30,000 = 30 percent of $100,000 ($30,000 plus $70,000)). All partnerships must contribute at least 30 percent of total program costs, except that partnerships may receive full reimbursement for their necessary and reasonable administrative costs incurred in establishing a project during the project start-up period. That period should be minimized and may not exceed six months, at which time the project is expected to provide services to adult workers.

Q. What costs may be included in the 30 percent match (cash or in-kind)?

A. Any cost that can be paid with Federal funds from this program is allowable as match (see Education Department General Administrative Regulations, 34 CFR 74.50–74.57 and 34 CFR 80.24).

Q. What costs are not allowed using project funds (Federal or non-Federal match)?

A. The following items are not allowable costs in the National Workplace Literacy Program:

- Life skills such as balancing a checkbook, learning to read to children, writing personal correspondence, etc.
- Personal counseling such as counseling for alcoholism, mental health, health, domestic problems, or housing issues.
- Job skills or vocational training such as direct training in statistical process control (SPC) rather than literacy skills needed for SPC.
- Computer literacy, defined as any training above the level of computer competence needed to operate a computer-assisted program of instruction used in a workplace literacy project. Non-allowable costs include teaching of word processing, WordPerfect, Lotus, dBase, etc.
- Stipends or tuition payments.
- Training of supervisors, other than those one step up from targeted workers such as maintenance crew supervisors.
- Construction costs.
- Institutional allowance.
- Any unreasonable or unnecessary cost.

Q. May a project provide vocational or job training activities?

A. No. Projects must provide adult education programs that teach literacy skills needed in the workplace. Workplace literacy activities include only the adult education activities listed in the Description of Program section of the Notice Inviting Applications. This list does not include vocational or job training activities such as auto mechanics, dye casting, tailoring, and statistical process control. Workplace literacy instruction, however, may enable individuals to benefit subsequently or simultaneously from advanced vocational skills training provided from other funds. If you are not sure whether a particular activity is eligible under this program, please call one of the program officers listed as information contacts in the application notice.

Q. May a project provide training in operating a computer?

A. Training to operate a computer that is part of the performance of a job is a form of vocational or job training and is not an eligible activity under this program. However, computers could be used as a means of instruction if this were necessary and reasonable under the circumstances of a particular project. In such a context, it would be permissible to ensure that students possessed those rudimentary skills that are necessary to interact with computer-assisted literacy instruction.

Q. What should be disseminated?

A. The criterion "Demonstration" encourages applicants to use certain dissemination strategies but does not preclude the use of additional strategies that are appropriate for a particular project. Projects should distribute materials that will help others to adopt promising practices arising from the

project, such as assessment instruments, recruitment materials, job task analysis materials, staff development materials, curricula, etc. The Department does not expect or anticipate that partnerships will disseminate trade secrets or other protected information. However, a project's dissemination activities should clearly benefit businesses and workplaces outside of the partnership.

Q. What is the Department of Education's Program Effectiveness Panel?

A. As mentioned in the note to the criterion "Evaluation plan," the Program Effectiveness Panel (PEP) is a mechanism that the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies.

Specific criteria for PEP review are found at 34 CFR 786.12 or 787.12. For further information about PEP, prospective applicants may wish to read Making the Case: Evidence of Effectiveness in Schools and Classrooms, which contains criteria and guidelines for submitting project results to PEP. This publication is available from the U.S. Department of Education's Office of Educational Research and Improvement, 555 New Jersey Avenue NW., Washington, DC 20208–5645. Telephone: (202) 219–2134.

Q. How many copies of the application should I submit and must they be bound?

A. The original application should be bound and clearly marked as the original application bearing the original signatures. In addition six copies should be submitted and marked as copies. Local or State Agencies may choose to submit two copies with the original. Applications should not include foldouts, photographs, audio-visuals, or other materials that are hard to duplicate.

Q. When will I find out if I'm going to be funded?

A. You can expect to receive notification within 8 to 9 months of the application closing date, depending on the number of applications received and the number of competitions with closing dates at about the same time.

Q. Will my application be returned?

A. We do not return applications. Therefore, applicants should retain at least one copy of the application.

Q. What happens during negotiations between high ranking applicants and the U.S. Department of Education grants office?

A. During negotiations, technical and budget issues may be raised. These are issues that have been identified during panel and staff reviews that require clarification. Sometimes issues are stated as "conditions." These are issues that have been identified as so critical that the award cannot be made unless those conditions are met. Questions may also be raised about the proposed budget. Generally, these issues are raised because there is inadequate justification or explanation of a particular budget item, or because the budget item seems unimportant to the successful completion of the project. If you are asked to make changes that you feel could seriously affect the project's success, you may provide reasons for not making the changes or provide alternative suggestions. Similarly, if proposed budget reductions will, in your opinion, seriously affect the project activities, you may explain why and provide additional justification for the proposed expenses. An award cannot be made until all negotiation issues have been resolved.

Q. Where can copies of the **Federal Register**, program regulations, and Federal statutes be obtained?

A. Copies of these materials can often be found at your local library. If not, they can be obtained from the Government Printing Office by writing to the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402. Telephone: (202) 783–3238. When requesting copies of regulations or statutes, it is helpful to use the specific name, public law number, or part number. The materials related to this notice should be referred to as follows:

(1) The Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988, Public Law 100–297, title III, sections 301–385.

(2) The National Literacy Act of 1991, title II, Public Law 102–73, section 202.

(3) The Education Department General Administrative Regulations (EDGAR) (34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86).

(4) 34 CFR parts 460 and 472 (National Workplace Literacy Program).

Note: Amendments to 34 CFR 472 are published in this issue of the **Federal Register**.

(5) Small Business Size Regulations (13 CFR part 121).

[FR Doc. 94–443 Filed 1–7–94; 8:45 am]
BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

34 CFR Parts 462 and 472

RIN 1830–AA11

State-Administered Workplace Literacy Program; National Workplace Literacy Program

AGENCY: Department of Education.
ACTION: Final regulations.

SUMMARY: The Secretary amends existing regulations that govern the State-Administered Workplace Literacy Program and the National Workplace Literacy Program. These amendments are needed to increase project accountability and to make technical changes. The regulations provide rules for applying for and expending Federal funds under these programs.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact persons. A document announcing the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Sarah E. Newcomb, Department of Education, 400 Maryland Avenue SW., room 4417, Mary E. Switzer Building, Washington, DC 20202–7320. Telephone: (202) 205–9872. Or Ms. Jeanne Williams, Department of Education, 400 Maryland Avenue, SW., room 4518, Mary E. Switzer Building, Washington, DC 20202–7327. Telephone: (202) 205–5977. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The State-Administered Workplace Literacy Program and the National Workplace Literacy Program are important activities that assist in achieving the National Education Goals. Specifically, the workplace literacy programs address Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship. Moreover, the National Workplace Literacy Program supports this goal by providing grants to exemplary partnerships between a business, industry, or labor organization, or a private industry council, and an education organization to support work-related literacy education.

These regulations increase the accountability of workplace literacy projects. The Department is implementing this strategy in order to expand the demonstration and dissemination activities of projects, thereby increasing the number of instructional approaches, materials, and techniques for providing work-related literacy education that are submitted to and approved by the Department's Program Effectiveness Panel, and subsequently made available to practitioners.

On May 27, 1993, the Secretary published a notice of proposed rulemaking (NPRM) for these programs in the **Federal Register** (58 FR 30916).

Analysis of Comments and Changes

In response to the Secretary's invitation in the NPRM, 33 parties submitted comments on the proposed regulations. An analysis of the comments and of the changes in the regulations since publication of the NPRM follows.

Issues are grouped according to subject, with appropriate sections of the regulations referenced in parentheses.

Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority and comments on subjects outside the scope of these regulations—are not addressed.

PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

Partnership Agreement (§§ 462.30(c) and 462.32(b))

Comments: Some commenters were concerned that requiring partners to enter into a binding agreement would have a dampening effect on businesses joining partnerships, and recommended a less restrictive approach. Another commenter supported requiring a binding agreement.

Discussion: For five years the Secretary has required, under the National Workplace Literacy Program, the types of binding agreements that would become part of the State-Administered program. The Secretary's experience is that these agreements are essential to eliciting quality applications, promoting project success, and ensuring accountable grant performance.

Changes: None.

PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

Definitions—Employment and Training Agency (§ 472.5)

Comments: One commenter mistakenly thought the proposed change, which would clarify that employment and training agencies are nonprofit agencies, would exclude from participation as partners profit-making organizations that provide employment and training services. Other commenters agreed with the proposed change to the definition of "employment and training agency."

Discussion: The proposed change would codify an existing program practice that requires an education partner classified as an employment and training agency to be a nonprofit entity. However, profit-makers can continue to participate as partners under the classification "business" or "industry" organization. See § 472.2(a)(1). Profit-making organizations should note that a selection criterion in § 472.22(c)(4) requests applications to indicate the extent to which training will be provided through the education partner classified under § 472.2(a)(2), rather than through the business or labor partner classified under § 472.2(a)(1), unless transferring this activity to the business or labor partner is necessary and reasonable within the framework of the applicant's proposed project.

Changes: None.

Project Director (§§ 472.5 and 472.32(e))

Comments: Several commenters supported the regulations defining the term "project director" and requiring that each project provide for a director. Some of these commenters recommended additional regulations, including requiring a full-time project director, specifying the qualifications of a project director, and requiring that proposed personnel demonstrate substantive experience, education, and training in the workplace.

Discussion: Because the project director will be responsible for the day-to-day operation of the project, the qualifications of that person should be directly related to the specific requirements of the project, and will naturally differ somewhat from project to project. The Secretary strongly encourages applicants to hire project directors with experience and training in project management and in fields related to objectives of the project, but believes that a list of standardized qualifications would limit the discretion of applicant partnerships to hire directors who respond to the needs of the project. The regulations do not

specifically require a full-time project director, and this may not be needed—especially in small projects. However, each project must provide for a director who will devote sufficient time to exercising day-to-day operational responsibility and ensure that the project is well managed.

Changes: None.

Preapplications (§§ 472.10 and 472.11)

Comment: One commenter suggested retaining §§ 472.10 and 472.11, which describe a preapplication process, because the process would save time for projects that might not be appropriate for a national competition. Another commenter supported the Department's proposal to delete these sections because a preapplication would be a burdensome paperwork requirement.

Discussion: Historically, these sections were included in the regulations to authorize use of a preapplication process where it would be helpful to applicants. However, the provision has never been needed, and the Department does not foresee its use in the future.

Changes: None.

Preference for Small Business Partners (§ 472.21(e))

Comments: One commenter agreed that preference points should be given for applications involving a small business, but thought that the points should be given even if the business is not involved as a project partner. The commenter stated that it is unrealistic to expect small businesses to become partners because this would burden them with paperwork, meetings, and unnecessary reports. Another commenter suggested giving an additional preference to partnerships involving small businesses with less than 100 or 250 employees.

Discussion: A small business can potentially be involved in a workplace literacy project as a "partner," a "contractor," a "helping organization," or a "site." Each of these terms is defined in 34 CFR 472.5, which clarifies that only a partner can receive program funds and be fully involved in project policy and operations. The Secretary believes that preference should be given only to those partnerships that include small businesses as partners. To interpret the preference more broadly would benefit applications that involve large businesses as partners—and merely involve small businesses in a less significant role. Each partnership agreement designates one of the partners to serve as the project grantee. This partner is principally responsible for project administration, including paperwork and reports. Any small business partner that does not wish to serve as a grantee can enter into an agreement designating another partner as the grantee, and can thus avoid the paperwork burden. The Secretary has adopted a definition of the term "small business" modeled on regulations of the Small Business Administration and does not believe it would be beneficial to modify that definition by giving an additional preference to small businesses having particularly small numbers of employees.

Changes: None.

Selection Criteria—Program Factors (§ 472.22(a)(5))

Comment: Section 472.22(a)(5) proposed adding language to a selection criterion encouraging applicants to focus "on improving performance in jobs or job functions that have a broad representation within the Nation's workforce so that the products can be adapted for use by similar workplaces across the Nation." Several commenters interpreted this language as a statement of the scope of services that are allowable under the National Workplace Literacy Program, believed that this scope had been defined too narrowly, and urged that it be expanded to include a variety of activities. It was also suggested that a project be permitted to provide any services identified in a needs assessment. One commenter asked whether use of the term "jobs or job functions" was intended to shift focus away from job-specific competencies of current job titles to broader competencies that are identified in the report issued by the Department of Labor Secretary's Commission on Achieving Necessary Skills (SCANS). The commenter asked that the Department clarify or define which jobs or job functions have "broad representation within the Nation's workforce." Other commenters stated that a broader scope of services is needed to meet the National Education Goals.

Discussion: Section 472.22(a)(5) is a selection criterion used to evaluate applications and is not a statement of the scope of allowable program services. That scope is stated in § 472.3, which reflects sections 371(a)(1) and (3) of the Adult Education Act, and lists allowable activities. Many activities mentioned by the commenters, such as speaking, listening, reasoning, problem-solving, team building, GED preparation, and meeting the literacy needs of adults with limited English proficiency, are allowable under § 472.3. Further guidance on the scope of allowable activities is included in the notice inviting applications published elsewhere in this issue of the Federal Register. Generally, workplace literacy projects teach literacy skills needed in the workplace that improve the productivity of the workforce. The program is not a program of general adult education and cannot serve needs that are not directly related to the workplace. At the same time, projects serving needs that are directly related to the workplace are encouraged to use creative approaches to stimulate workers' interests and to develop individualized education plans that reflect workers' goals. See § 472.22(c)(2).

The purpose of the language encouraging a focus on nationally representative jobs or job functions is to enhance the capability of a project to demonstrate results that can be adapted by similar employers and industries. Section 472.22(a)(5) was not proposed specifically to respond to the recommendations of the SCANS report, nor was the report intended to modify the scope of services under the workplace literacy program. The Secretary believes that it is unnecessary to define by regulation what jobs or job functions are broadly representative. Applicants are encouraged to make their own evaluation of current and future labor market conditions, and design a project that can help similar workplaces in the future. This should assist in meeting National Education Goal 5, that every adult American will be literate and will possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Changes: None.

Selection Criteria—Demonstration (§ 472.22(h)) (Proposed § 472.22(h)(1))

Comments: Several commenters agreed that the Department should emphasize dissemination activities, and recommended the inclusion of various other dissemination strategies. Two commenters were concerned that dissemination activities could be hampered because the instructional materials produced by a project might contain protected information.

One commenter suggested that, because carrying out both the demonstration and commitment activities described in proposed § 472.22(h)(1) and (2) would be overwhelming, applicants should be asked to address only one of these criteria.

Discussion: The dissemination strategies listed in proposed § 472.22(h)(1) are among the regulatory changes designed to transform the National Workplace Literacy Program into a true demonstration program. See the previous discussion of the background of these regulations and note also § 472.31(c), which requires that a project be independently evaluated for "spread" and "transportability" to other sites. Proposed § 472.22(h)(1) encouraged applicants to use certain dissemination strategies but was not intended to preclude the use of additional strategies when they are appropriate for a particular project.

The Secretary does not expect or anticipate that partnerships will disseminate trade secrets or other protected information. However, a project's dissemination activities should clearly benefit businesses and workplaces outside of the partnership.

While, ideally, all partners will be involved in demonstration and commitment activities, these activities may be accomplished through the efforts of particular partners. The Secretary desires that the factors listed in the criteria on "Demonstration" and "Commitment" be reflected in an applicant's program design, management plan, and budget. However, the Secretary does not anticipate that addressing both criteria will be burdensome if partners adequately plan and budget for them.

Changes: The selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). Also see the discussion on § 472.22(i).

Selection Criteria—Commitment (§ 472.22(i)) (Proposed § 472.22(h)(2))

Comments: Several commenters opposed the criterion that encouraged applicants to state how partners plan to establish a program of workplace literacy services that can continue after Federal funding ends. Many of these commenters believed this criterion would adversely affect small businesses since they might not have the resources needed to continue a workplace literacy project. Other commenters pointed out that some businesses, especially small businesses, have short-term training needs that can be met during the course of the project and, therefore, would not need to continue the project. Still other commenters thought that because small businesses would not be able to continue a project, this criterion would nullify the five-point preference given for partnerships that include a small business.

Some commenters supported the inclusion of the criterion on commitment and indicated past success with this concept, but suggested that small businesses be exempted. Other commenters believed that expecting business partners to make a commitment to continue a project that is unproven is unreasonable and could scare away potential business partners. These commenters thought that commitment is best sought and obtained during a successful project.

Some commenters suggested such alternative methods of demonstrating commitment as release time for assessment and training, strategic planning for capacity-building, training business partners to provide workplace literacy, active participation of all partners, or gradual assumption of costs.

Discussion: The Secretary acknowledges the many helpful comments on this topic. Although proposed § 472.22(h)(2) did not involve a commitment to any unforeseeable or unnecessary post-project activities, the Secretary wishes to avoid any implication that this is the case. The Secretary also desires to preserve the competitive preference for partnerships involving small businesses. Accordingly, the selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). Moreover, § 472.22(i) makes it clear that plans for continuing workplace literacy after Federal funding ends should be based on realistic forecasts of the literacy needs of partners and should take into consideration a partner's capacity to continue services. To emphasize this point, the criterion now provides a range of examples of practical strategies for institutionalizing workplace literacy, many of which can be carried out by small businesses. The criterion also recognizes the importance of an applicant's commitment to institutionalizing learning in the workplace specifically during the project itself. These changes are intended to accommodate the legitimate concerns of the commenters while preserving the overall purpose of a selection criterion on commitment. The recently published study Adult Literacy in America points out that some 90 million adults demonstrate low levels of literacy and depicts a society in which the vast majority of Americans do not have the skills needed to earn a living in our increasingly technological society and international marketplace. The Secretary believes that a commitment to institutionalize learning will naturally lead to continuing efforts to promote workplace literacy after Federal funding ends and will assist in transforming American workplaces to meet the challenges of a world market.

Changes: The selection criterion "Demonstration and commitment" in proposed § 472.22(h) has been separated into a criterion on "Demonstration" in § 472.22(h) and a criterion on "Commitment" in § 472.22(i). The criterion on "Commitment" clarifies that applicants are to develop practical strategies for institutionalizing workplace literacy that are based on realistic forecasts of literacy needs and the capacity of partners. The criterion also encourages applicants to demonstrate a commitment to institutionalizing learning in the workplace during the project.

Reporting (§ 472.30(b))

Comments: Numerous commenters expressed the view that a two-page semi-annual performance and financial report would not be overly burdensome. These commenters felt that the data would be a good planning tool, would help projects monitor their progress, and would contribute to the standardization of the workplace literacy program nationwide. Other commenters suggested that the reports be made available at the time of award so that data bases could be designed to facilitate collection. Some commenters strongly advocated quarterly reports that include, in addition to the information the Secretary proposed collecting, a brief update on the success of the project in achieving its objectives. Two commenters recommended annual reporting, one because of the project's cycle for collecting evaluative data and the other because of the possibility that the Department might not have adequate staff resources to use the performance and financial data as intended.

Discussion: The Secretary considered requiring quarterly reports for the National Workplace Literacy Program, but determined that they would be burdensome for grantees. However, the Secretary believes that annual reports would not provide sufficient information to ensure program accountability and ready access to information that is comparable across projects. Grantees will be required to submit brief continuation applications annually in order to receive funding for the second and third year of their projects.

The Secretary believes that the continuation application and a two-page semi-annual report on progress and total spending for the reporting period will be adequate. The reports will be made available to grantees at the start of their projects to enable them to set up appropriate recordkeeping procedures,

and the Department will work with grantees to ensure that reports are used appropriately both to monitor and to improve projects.

Changes: None.

Evaluation (§ 472.31)

Comments: Several commenters thought that the requirement for projects to have a third-party evaluator would be expensive, burdensome, or too costly. Several other commenters supported the evaluation requirement because a rigorous evaluation design is essential to demonstrating impact and replicable results and would strengthen projects. One commenter was concerned that tying student learning gains to higher job productivity and performance would not result in reliable or valid measures of the effectiveness of projects because learning gains are not the only conditions affecting these factors.

Discussion: Program experience over the life of the National Workplace Literacy Program indicates that a third-party evaluation enhances the quality of e project without being expensive, burdensome, or too costly. The Secretary agrees with the comment that multiple conditions, including learning gains, may contribute to measured improvements in job productivity and performance. This comment supports the need for a rigorous evaluation design that includes, insofar as possible, controls for other variables that may also contribute to the improvements measured. Evaluations of this rigor require highly trained research and evaluation personnel who cannot always be found among staff persons employed within funded projects.

Changes: None.

Start-up Period (§ 472.32(b))

Comments: Numerous commenters supported lengthening the grant period to three years and extending the start-up period. However, one commenter questioned the necessity of a six-month start-up period.

Discussion: The heightened emphasis on demonstration and dissemination activities requires lengthening the grant period to three years, and, as necessary, lengthening the time needed to establish a project before services are provided to adult workers. Although § 472.32(b)(1) permits applicants to take up to a six-month start-up period, § 472.32(b)(2) requires applicants to "minimize the start-up period, if any, proposed for their projects."

Changes: None.

Continuation of a Project After a Partner Withdraws (§ 472.34)

Comments: One commenter suggested that the regulations specifically apply to business partners. Another commenter thought the regulations favored projects with more than two partners, and requested greater flexibility in the renegotiation of the scope of work of a grant. A commenter suggested that a project be allowed to continue despite the withdrawal of a partner, even if the conditions of § 472.34 are not satisfied. One commenter inquired whether all, or only one, of the conditions outlined in § 472.34 must be met by withdrawing partners.

Discussion: Although each partnership is required to designate one partner as its applicant and grantee, an award is made on the basis of the partnership agreement that is signed by all members of the partnership and that binds the partners to every statement and assurance made in the application, in addition to carrying out their respective roles. It is therefore reasonable to expect that the approved scope of work will continue to be carried out if a partner withdraws, regardless of the type of partner withdrawing or the number of partners in the original partnership. The regulations do not favor projects with more than two partners. Section 472.34(b)(1) allows for the full substitution of a partner even in the case of a two-party partnership so long as the partnership continues to meet the requirement in § 472.2(b) that there be at least one education partner and one business or labor partner. The Secretary wishes to point out that the conditions in § 472.34 are to be met by the remaining partners. They are not conditions to be met by the withdrawing partners as suggested by the commenter. Moreover, all of the conditions described in § 472.34 must be met before the Secretary will allow a project to continue.

Changes: Section 472.34 has been changed to clarify that all of the conditions described in this section must be met if a project is to be allowed to continue after the withdrawal of a partner.

Union and Worker Involvement (Part 472)

Comments: Several commenters thought unions should be involved in the development and implementation of projects. Some of these commenters recommended requiring a written statement indicating consultation with and concurrence by the union. Others suggested requiring a statement from the union that it either agrees to full partnership with the education partner and business partner or it acknowledges the collaboration between the education and business partner. One commenter suggested that points be awarded to proposals with employer and union partnerships.

One commenter suggested that, in the absence of a union, workers should be involved in planning the project. Another commenter suggested that points be awarded to applications—(1) with effective plans to involve workers in the educational provider's decision-making process; and (2) that emphasize participatory teaching methods.

Several commenters thought that union and worker involvement would improve the recruitment, interest, and commitment of the workforce, and help to allay fears that a project would result in the loss of jobs for employees failing to demonstrate learning gains.

Discussion: Section 371(a)(1) of the Act permits, but does not require, a labor organization to be a partner in an application under this program. This provision is reflected in § 472.2(a) and (b). As indicated in § 472.2(c), a labor organization, like any partner, must participate in a joint application for funding and sign a partnership agreement. However, the Secretary does not believe that a written statement regarding union consultation should be required of partnerships that do not include a labor organization. Nevertheless, the Secretary encourages all partnerships to involve workers and, as appropriate, labor organizations in matters related to the project. This arrangement should provide a number of benefits, including allaying any concerns that workers may have about participating in a project.

Changes: None.

Intergovernmental Review

These programs are subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

In the notice of proposed rulemaking, the Secretary requested comments on whether the proposed regulations would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 462

Adult education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Workplace literacy.

34 CFR Part 472

Adult education, Business and industry, Labor unions, Reporting and recordkeeping requirements, and Workplace literacy.

Dated: January 3, 1994.

Richard W. Riley,

Secretary of Education.

(Catalog of Federal Domestic Assistance Number 84.198 National Workplace Literacy Program. Catalog of Federal Domestic Assistance Number has not been assigned for the State-Administered Workplace Literacy Program.)

The Secretary amends Parts 462 and 472 of Title 34 of the Code of Federal Regulations as follows:

PART 462—STATE-ADMINISTERED WORKPLACE LITERACY PROGRAM

1. The authority citation for part 462 continues to read as follows:

Authority: 20 U.S.C. 1211a(b), unless otherwise noted.

2. Section 462.30 is amended by adding a new paragraph (c) to read as follows:

§ 462.30 Who is eligible to apply to a State for an award?

* * * * *

(c) The partners shall enter into an agreement, in the form of a single document signed by all partners, designating one member of the partnership as the applicant and the subgrantee or contractor. The agreement must also detail the role each partner plans to perform and bind each partner to every statement and assurance made in the application.

(Approved by the Office of Management and Budget under control number 1830–0521)

3. Section 462.32 is revised to read as follows:

§ 462.32 What are the local application requirements?

A local partnership application, submitted to an SEA for funding under the State-administered Workplace Literacy Program, must contain—

(a) The information in section 371(a)(4) of the Act; and

(b) A signed partnership agreement as described in § 462.30(c).

(Approved by the Office of Management and Budget under OMB control number 1830–0521)

(Authority: 20 U.S.C. 1211(b)(5))

PART 472—NATIONAL WORKPLACE LITERACY PROGRAM

4. The authority citation for Part 472 continues to read as follows:

Authority: 20 U.S.C. 1211(a), unless otherwise noted.

Subpart B—[Removed and Revised]

5. Part 472 is amended by removing and reserving subpart B.

6. Section 472.5 is amended by revising paragraph (a) and the definition of "Employment and training agency" in paragraph (b) and by adding new definitions of "Project director" and "Small business" to paragraph (b) in alphabetical order to read as follows:

§ 472.5 What definitions apply?

(a) The definitions in 34 CFR 460.4 apply to this part.

(b) * * *

Employment and training agency includes any nonprofit agency that provides—as a substantial portion of its activity—employment and training services, either directly or through contract.

* * * * *

Project director means the person with day-to-day operational responsibility for the project.

* * * * *

Small business means a business entity that—

(1) Is organized for profit, with a place of business located in the United States and that makes a significant contribution to the U.S. economy through payment of taxes or use of American products, materials, or labor, or both; and

(2) May be in the legal form of an individual proprietorship, partnership, corporation, joint venture, association, trust or a cooperative, except that if the form is a joint venture, there can be no more than 49 percent participation by foreign business entities in the joint venture; and

(3) Meets the requirements found in 13 CFR part 121 concerning Standard Industrial Classification codes and size standards.

§ 472.20 [Amended]

7. Section 472.20 is amended by removing paragraph (c).

8. Section 472.21 is amended by revising paragraph (b) and adding a new paragraph (e) to read as follows:

§ 472.21 How does the Secretary evaluate an application?

* * * * *

(b) The Secretary may award up to 100 points, including a reserved 10 points to be distributed in accordance with paragraph (d) of this section, based on the criteria in § 472.22.

* * * * *

(e) In addition to the points to be awarded based on the criteria in § 472.22, the Secretary awards five points to applications from partnerships that include as a partner a small business that has signed the partnership agreement.

9. Section 472.22 is amended by removing the word "and" after the semicolon at the end of paragraph (a)(3); removing the period at the end of paragraph (a)(4), and adding, in its place, "; and"; adding a new paragraph (a)(5); revising paragraph (b), introductory text; revising paragraph (c)(1); removing the word "and" after the semicolon at the end of paragraph (c)(3); removing the period at the end of paragraph (c)(4), and adding, in its place, "; and"; adding a new paragraph (c)(5); revising paragraph (d), introductory text; removing the word "and" after the semicolon at the end of paragraph (d)(2)(iii); adding the word "and" after the semicolon at the end of paragraph (d)(2)(iv); adding a new paragraph (d)(2)(v); revising paragraph (e), introductory text; revising paragraph (e)(2)(i); revising paragraph (f), introductory text; removing the word "and" after the semicolon at the end of paragraph (f)(4); removing the period at the end of paragraph (f)(5), and adding, in its place, "; and"; adding a new paragraph (f)(6) and a "Note to § 472.22(f)(6)" following the paragraph; revising paragraph (g), introductory text; and adding a new paragraph (h) to read as follows:

§ 472.22 What selection criteria does the Secretary use?

(a) * * *

(5) Focuses on improving performance in jobs or job functions that have a broad representation within the Nation's workforce so that the products can be adapted for use by similar workplaces across the Nation.

(b) *Extent of need for the project.* (10 points) * * *

* * * * *

(c) * * *

(1) Develop or use curriculum materials for adults based on literacy skills needed in the workplace;

* * * * *

(5) Provide, and document for others, a program of training for staff including, but not limited to, techniques of curriculum development and special methods of teaching that are appropriate for workplace environments.

(d) *Plan of operation.* (15 points) * * *

* * * * *

(2) * * *

(v) A realistic time table for accomplishing project objectives;

* * * * *

(e) *Applicant's experience and quality of key personnel.* (8 points) * * *

* * * * *

(2) * * *

(i) The qualifications, in relation to project requirements, of the project director;

* * * * *

(f) *Evaluation plan.* (10 points) The Secretary reviews each application to determine the quality of the plan for an independent evaluation of the project, including the extent to which the applicant's methods of evaluation—

* * * * *

(6) Will yield results that can be summarized and submitted to the Secretary for review by the Department's Program Effectiveness Panel.

Note to § 472.22(f)(6): The Program Effectiveness Panel (PEP) is a mechanism the Department has developed for validating the effectiveness of educational programs developed by schools, universities, and other agencies. The PEP is composed of experts in the evaluation of educational programs and in other areas of education, at least two-thirds of whom are non-Federal employees who are appointed by the Secretary. Regulations governing the PEP are codified in 34 CFR parts 785–789. Specific criteria for PEP review are found in 34 CFR 786.12 or 787.12.

(g) *Budget and cost-effectiveness.* (7 points) * * *

* * * * *

(b) *Demonstration.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan, during the grant period, to disseminate the results of the project, including—

(1) Demonstrating promising practices used by the project to others interested in implementing these techniques;

(2) Conducting workshops or delivering papers at national conferences or professional meetings; and

(3) Making available material that will help others implement promising practices developed in the project.

(i) *Commitment.* (5 points) The Secretary reviews each application to determine the quality of the applicant's plan to institutionalize learning in the workplace based on promising practices demonstrated in the project. In making this determination, the Secretary considers—

(1) The general, but realistic, forecast of literacy needs of members of the partnership and the capacity of the partners;

(2) Activities that will increase, during the grant period, the capacity of partners to provide a coherent program of learning in the workplace; and

(3) Activities that will lead to the continued provision or expansion of work-based literacy services built on successful outcomes of the project. For example, the partners could—

(A) Integrate workplace literacy services into the long-term planning of partner organizations;

(B) Create and implement policies and practices that encourage worker participation in workplace literacy and other education and training opportunities;

(C) Provide training that will enable partners to build a capacity to furnish necessary workplace literacy services in the future;

(D) Establish relationships within the partnership or with other entities that will continue provision of necessary workplace literacy services after the project ends; or

(E) Plan, after the project has ended, to expand services to other locations, divisions, or suppliers of the business or industry partners or labor organizations.

(Approved by the Office of Management and Budget under OMB control number 1830–0521)

10. Sections 472.30 and 472.31 are redesignated as §§ 472.32 and 472.33, respectively.

11. A new § 472.30 is added to read as follows:

§ 472.30 What are the reporting requirements?

(a) A recipient of a grant or cooperative agreement under this program shall submit to the Secretary performance and financial reports.

(b) These reports must be submitted at times required by the Secretary and at least semi-annually.

(c) These reports must contain information required by the Secretary.

(Authority: 20 U.S.C. 1211(a))

12. A new § 472.31 and "NOTE to § 472.31" are added to read as follows:

§ 472.31 What are the evaluation requirements?

(a) Each recipient of a grant or cooperative agreement under this program shall provide and budget for an independent evaluation of project activities.

(b) The evaluation must be both formative and summative in nature.

(c) The evaluation must be based on student learning gains and the effects on job advancement, job performance (including, for example, such elements as productivity, safety, and attendance), and project and product spread and transportability.

(d) A proposed project evaluation design for the entire project period, expanding on the plans outlined in the application pursuant to § 472.22(f), must be submitted to the Secretary for review and approval prior to the end of the first year of the project period.

(e) A summary of evaluation activities and results that can be reviewed by the Department's Program Effectiveness Panel, as described in 34 CFR parts 785–789, must be submitted to the Secretary during the last year of the project period.

(f) If a grantee cooperates in a Federal evaluation of its project, the Secretary may determine that the grantee fully or partially meets the evaluation requirements of this section and the reporting requirements in § 472.30.

(Approved by Office of Management and Budget under OMB control number 1830–0522)

(Authority: 20 U.S.C. 1211(a))

Note to § 472.31: As used in § 472.31(c)—

"*Spread*" means the degree to which—

(1) Project activities and results are demonstrated to others;

(2) Technical assistance is provided to others to help them replicate project activities and results;

(3) Project activities and results are replicated at other sites; or

(4) Information and material about or resulting from the project are disseminated; and

"*Transportability*" means the ease by which project activities and results may be replicated at other sites, such as through the development and use of guides or manuals that provide step-by-step directions for others to follow in order to initiate similar efforts and reproduce comparable results.

13. Section 472.32, as redesignated, is amended by revising paragraphs (b), (d)(1), and (e) to read as follows:

§ 472.32 What other requirements must be met under this program?

* * * * *

(b)(1) The project period may include a start-up period, not to exceed six months, during which the project is being established and prior to the time services are provided to adult workers.

(2) Applicants shall minimize the start-up period, if any, proposed for their projects.

* * * * *

(d) * * *

(1) 100 percent of the administrative costs incurred in establishing a project during the start-up period described in paragraph (b) of this section by an SEA, LEA, or other entity described in § 472.2(a), that receives a grant under this part; and

* * * * *

(e) Each recipient of an award under this program shall provide for a project director.

14. A new § 472.34 is added to read as follows:

§ 472.34 Under what circumstances may a project continue if a partner withdraws?

(a) A project may continue despite the withdrawal of a partner that is unable to perform its role as outlined in the grant award document if all of the following conditions are met:

(1) Written approval is given by the Secretary.

(2) The partnership continues to meet the requirements in § 472.2(b).

(3) The partnership will be able to complete the remainder of the project.

(4) The partner's withdrawal will not cause a change in the scope or objectives of the grant or cooperative agreement.

(b) In determining that the condition in paragraph (a)(4) of this section is satisfied, the Secretary considers such factors as whether—

(1) A similar new partner will sign the partnership agreement and agree to carry out the role of the withdrawing partner as described in the grant agreement;

(2) One or more of the remaining partners will agree to carry out the role of the withdrawing partner as described in the grant agreement; or

(3) One or more of the remaining partners will expand its activities as approved under the grant in order to compensate for the activities that would have been carried out under the grant agreement by the partner that is withdrawing without a change in the project's scope or objectives.

(Authority: 20 U.S.C. 1211(a))

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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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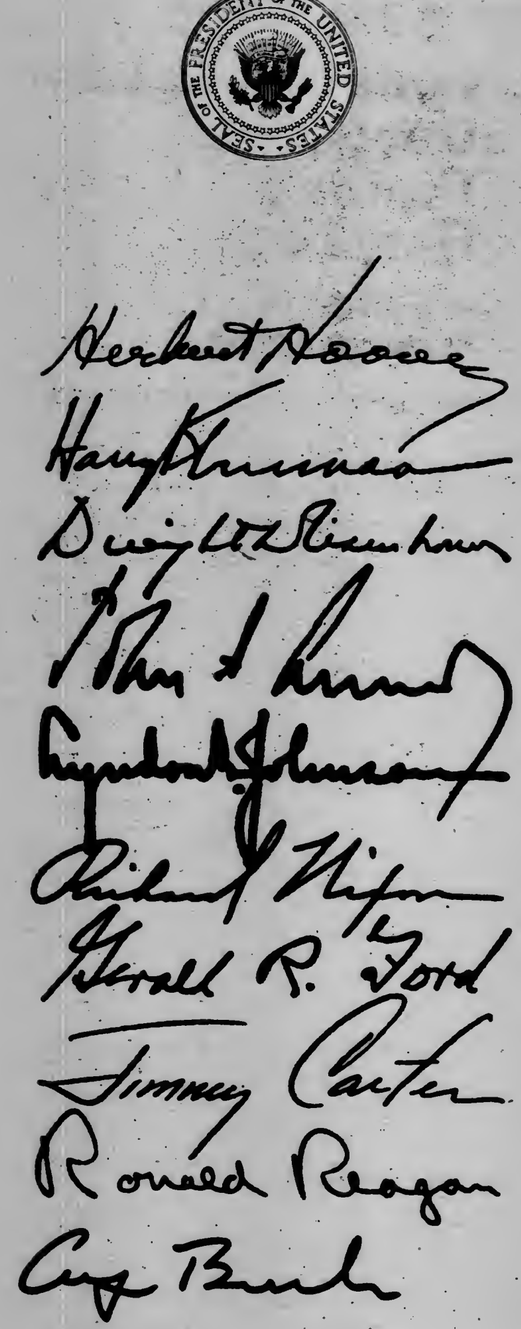
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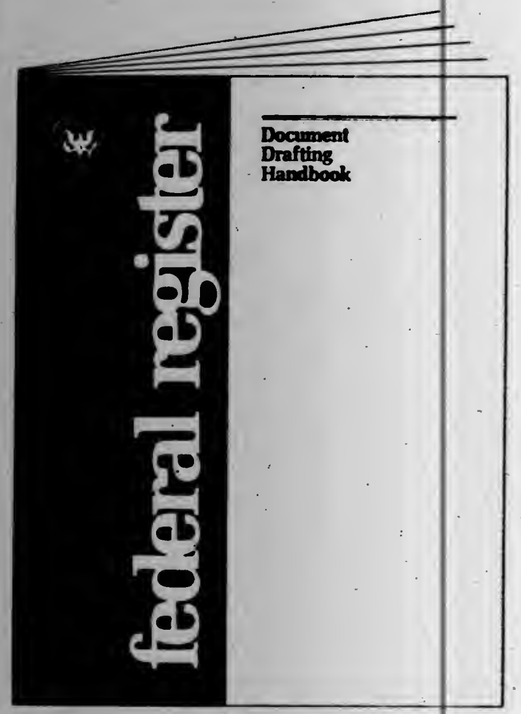
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Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Food and Nutrition Service

7 CFR Parts 253 and 254

RIN Number 0584–AB67

Definition of "Indian Tribal Household"

AGENCY: Food and Nutrition Service, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule broadens the current regulatory definition of "Indian tribal household" in the Food Distribution Program on Indian Reservations (FDPIR) and the Food Distribution Program for Indian Households in Oklahoma (FDPIHO). First, this change mandates that all households which pass the program means test, reside in designated areas near a reservation where an Indian Tribal Organization (ITO) or State agency provides program services, and include a Native American be eligible to participate in the FDPIR, regardless of the Native American's tribal affiliation or age. Secondly, it also makes such households which lack a Native American adult, but which include Native American children, eligible to participate in the FDPIHO. Finally, this rule clarifies that all households which pass the program means test and live on a reservation where an ITO or State agency administers the FDPIR, are eligible to receive benefits regardless of whether they contain a Native American.

DATES: This interim rule becomes effective February 10, 1994. Comments must be received on or before March 14, 1994.

ADDRESSES: Comments should be sent to Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302–1594, telephone (703) 305–2662.

FOR FURTHER INFORMATION CONTACT: Philip K. Cohen, Chief, Program Administration Branch, Food Distribution Division, Food and Nutrition Service, U.S. Department of Agriculture, 3101 Park Center Drive, room 502, Alexandria, Virginia 22302–1594, telephone (703) 305–2662.

SUPPLEMENTARY INFORMATION:

Classification

Executive Order 12866

This interim rule is issued in conformance with E.O. 12866.

Regulatory Flexibility Act

This action has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–12). Ellen Haas, Assistant Secretary for Food and Consumer Services, has certified that this interim rule will not have a significant economic impact on a substantial number of small entities. Since this rule will not result in significant changes in participation for the Food Distribution Program on Indian Reservations and the Food Distribution Program for Indian Households in Oklahoma, the impact on Indian Tribal Organizations and State agencies which participate in these programs will be minimal.

Executive Order 12372

The programs addressed in this action are listed in the Catalog of Federal Domestic Assistance under 10.550 and 10.570 and are subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with state and local officials (7 CFR part 3015, subpart V, and final rule-related notice published June 24, 1983 (48 FR 29114)).

Poperwork Reduction Act

This interim rulemaking imposes no new reporting or recordkeeping provisions that are subject to Office of Management and Budget review in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

Executive Order 12778

This interim rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any state or local laws, regulations, or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the **EFFECTIVE DATE** section of the preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. This includes any administrative procedures provided by state or local governments. For disputes involving procurements by State agencies or Indian Tribal Organizations, this includes any administrative appeal procedures to the extent required by 7 CFR 253.5(l), 7 CFR 254.3(a), and 7 CFR part 3016.

The rule published on October 20, 1987 (52 FR 39158), proposed to authorize ITOs and State agencies to serve income-eligible households residing in near areas which contain an Indian tribal member, regardless of that person's tribal affiliation. This interim rule will mandate that all such households be provided program benefits upon application. Because the Department believes that permitting ITOs and State agencies to exclude these Native Americans from program participation simply because they do not live on a reservation or near their tribe's reservation is inequitable and counter to the intent of FDPIR, the Administrator of FNS has determined that prior notice and comment on this provision of this rule would be unnecessary and contrary to public interest. For this reason, the Administrator has determined, in accordance with 5 U.S.C. 553(b)(3)(B), that good cause exists to waive the solicitation of public comments prior to implementation. However, the Department believes this rule may be improved by public comment based on actual operating experience. Therefore, comments solicited on this rule must be postmarked or submitted on or before March 14, 1994. All comments will be analyzed, and any appropriate changes to the rule will be incorporated in the subsequent publication of a final rule.

Background

The Food Distribution Program on Indian Reservations (FDPIR) was established by section 4(b) of the Food Stamp Act of 1977, as amended (7

U.S.C. 2013(b)), as an alternative to food stamps for low-income Native Americans who, because they live on or near Indian reservations in sparsely populated areas, may not have convenient access to food stamp certification offices or authorized food stamp retailers. However, the current regulatory definition of "Indian tribal household" at 7 CFR 253.2(c) and 254.2(d) renders ineligible certain categories of such Native Americans.

The first category is comprised of households which lack a Native American adult, but which include Native American children. Although such households do not exist in large numbers, they reside in many of the areas adjacent to reservations (i.e., "near areas") which Indian Tribal Organizations or State agencies have chosen to serve. Native American children may be part of a household that lacks a Native American adult due, for example, to death of a parent or divorce. Also, Native American children may be living with non-Native American foster or adoptive parents. These children are not necessarily in any less need of the program than children living with Native American adults in near areas, who may participate. The definition of "Indian tribal household" in the FDPIR at 7 CFR 253.2(c) requires that all households residing in a near area have an adult Indian tribal member in order to participate. The definition in the FDPIHO at 7 CFR 254.2(d) also requires that all households have an adult Indian member in order to participate. Thus, Native American children in otherwise eligible households are denied access to both of these programs.

The second category excluded from participating applies only to FDPIR: Native American households, residing in near areas, which lack a member of a tribe that is represented by the ITO or State agency administering the program on the adjacent reservation. The definition of "Indian tribal household" at 7 CFR 253.2(c) excludes such households, in effect, due to the combination of their tribal affiliation and where they reside. They could be eligible if they lived on the reservation in question, or on or near the reservation of the tribe of which they are a member. The Department believes that exclusion of these Native Americans from program participation simply because they do not live on a reservation or near their tribe's reservation, is inequitable and counter to the intent of FDPIR. Their Native American identity and potential need for the program are in no way diminished by their current residence. In contrast, Native American tribal households residing in any program service area in Oklahoma may participate in FDPIHO regardless of their tribal affiliation.

In § 253.2(e) of the proposed rule published on October 20, 1987 (52 FR 39158), the Department proposed to amend the FDPIR definition of "Indian tribal household" to give ITOs and State agencies the option to serve a household which lacks a member of a tribe they represent, but which includes a member of another recognized Indian tribe. All 16 comments received on this proposed change supported it. During its 1992 annual meeting, the National Association of Food Distribution Programs on Indian Reservations (NAFDPIR) also supported the proposal. In resolution 92–7, NAFDPIR supported the broadening of the current definition of "Indian tribal household" to include "any household in which at least one household member is recognized as an Indian." NAFDPIR believes that all Native Americans in near areas should be eligible to participate regardless of their tribal affiliation as has always been the case in FDPIHO service areas. The language in the proposed rule addressing this issue is therefore implemented in this interim rule with two clarifications.

First, the definition of "Indian tribal household" in § 253.2(c) is revised by changing "recognized by the appropriate ITO as a tribal member" to "recognized as a tribal member by any Indian tribe as defined in this part." This change in definition would make those households containing a member of an "Indian tribe" as defined in Section 253.2(d) eligible to apply for FDPIR without regard to whether the person is a member of a tribe represented by the ITO or State agency administering the program in the near area. Thus, based on the definition of "Indian tribe," any household containing a person belonging to any Indian tribe, band, or other organized Indian group on a reservation which is recognized as eligible for Federal programs and services provided to Indians, or which holds a treaty with a State government, would be eligible to receive FDPIR benefits if he/she also meets the income eligibility requirements. This same amendment is made to the definition of "Indian tribal household" in § 254.2(d) of the FDPIHO regulations. However, in the FDPIHO, income-eligible Native American households residing in any program service area in the State have always been permitted to participate regardless of their tribal affiliation. Therefore, this amendment as applied to FDPIHO constitutes a clarification only and not, as in the case of the FDPIR, a substantive change which affects program eligibility.

Second, § 253.6(b)(1) is changed to clarify that all households which pass the program means test, reside in near areas and include a Native American must be allowed to participate in the FDPIR, regardless of the Native American's specific tribal affiliation. Thus, if a household member can obtain documentation from his/her tribe of origin that he/she is recognized as a member of an "Indian tribe" as defined in § 253.2(d), the ITO or State agency administering the program in the near area must accept that recognition for purposes of program eligibility. The ITO or State agency itself has no discretion to decide which tribes it will recognize in the near area. It should be pointed out that the ITO or State agency also has no discretion to decide issues of tribal membership since each Indian tribe has always been responsible for defining its own members. Thus, for eligibility purposes, the ITO or State agency simply makes a determination as to whether or not an applicant household has official documentation of membership from its tribe of origin. If the tribe of origin is an "Indian tribe," as defined in § 253.2(d), the ITO or State agency must serve the household as long as it meets all other FDPIR eligibility requirements.

The October 20, 1987, proposed rule did not clearly propose to mandate that all households with Indian tribal members be eligible for program benefits in near areas. Rather, its thrust was to remove a regulatory barrier to participation of such households. Thus the language authorized ITOs and State agencies to serve such households. Upon further consideration of the issue, the Department has concluded that ITOs or State agencies themselves should not be in a position to impose barriers to participation based on the tribal affiliation of a member of a household residing in a near area. Therefore, this interim rule mandates that such households be served under the program if they are determined income-eligible, rather than permitting the administering agency to serve them at its discretion. Given the shift from allowing such households to be served in the proposed rule to mandating that they be served, the Department is publishing this rule as an interim regulation with provision for public comment.

Current FDPIR regulations do not clearly state that non-Native American households living on the reservation who meet the program means test are eligible to receive program benefits, although this has always been the policy under which FDPIR has operated on all participating reservations. While the 1987 proposed rule did not specifically address this issue, this interim rule does so in order to formalize and clarify what has always been household eligibility policy and practice. Therefore, § 253.6(b)(1) is revised to clarify that all households living on the reservation, and meeting the program means test, are eligible to receive program benefits, even if they do not contain a Native American.

The 1987 proposed rule did not specifically propose to remove the FDPIR requirement that households living in a near area must include an adult Native American in order to be eligible for participation in FDPIR. However, in the preamble, the Department indicated that this suggestion had been made, summarized the reason for such a change, and solicited comments to determine how extensive this problem is and whether others believe that a change in the definition is necessary. Nineteen of the 20 comments received in response to this solicitation supported removal of the requirement. Accordingly, the definition of "Indian tribal household" in FDPIR at 7 CFR 253.2(c) in the interim rule reads as follows: "a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in this part." This same amendment is also made to the definition of "Indian tribal household" at 7 CFR 254.2(d). Since the requirement that the household include an adult Native American in order to be eligible also exists in FDPIHO, the change will have the same remedial effect in this program.

List of Subjects

7 CFR Part 253

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 254

Administrative practice and procedure, Food assistance programs, Grant programs, Social programs, Indians, Reporting and recordkeeping requirements, Surplus agricultural commodities.

Accordingly, 7 CFR parts 253 and 254 are amended as follows:

PART 253—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR HOUSEHOLDS ON INDIAN RESERVATIONS

1. The authority citation for part 253 continues to read as follows:

Authority: 91 Stat. 958 (7 U.S.C. 2011–2027).

2. In Section 253.2, paragraph (c) is revised to read as follows:

§ 253.2 Definitions.

* * * * *

(c) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in paragraph (d) of this section.

* * * * *

3. In § 253.6, the first sentence of paragraph (b)(1) is removed and four new sentences are added to read as follows:

§ 253.6 Eligibility of households.

* * * * *

(b) * * * (1) All households residing on a reservation on which the FDPIR operates shall be eligible to apply for program benefits on that reservation regardless of whether they include an Indian member. All Indian tribal households as defined in § 253.2(c) of this part which reside in near areas established under § 253.4(d) of this part shall be eligible to apply for program benefits. The ITO or State agency shall serve all income-eligible applicant households residing on reservations who apply for benefits, and all income-eligible applicant Indian tribal households residing in near areas. The ITO or State agency administering the program in a near area shall, for purposes of determining program eligibility, accept documentation from a household member's tribe of origin as proof of tribal membership. * * *

* * * * *

PART 254—ADMINISTRATION OF THE FOOD DISTRIBUTION PROGRAM FOR INDIAN HOUSEHOLDS IN OKLAHOMA

1. The authority citation for part 254 continues to read as follows:

Authority: Pub.L. 97–98, sec. 1338; Pub.L. 95–113.

2. In § 254.2, paragraph (d) is revised to read as follows:

§ 254.2 Definitions.

* * * * *

(d) *Indian tribal household* means a household in which at least one household member is recognized as a tribal member by any Indian tribe, as defined in § 253.2(d) of this title.

* * * * *

Dated: January 4, 1994.

George Braley,

Acting Administrator.

[FR Doc. 94–574 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV93–906–2 FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Temporary Relaxation of Minimum Size Requirements for Texas Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule that temporarily relaxed the minimum size requirements for certain Texas grapefruit for the entire 1993–94 season. The Texas Valley Citrus Committee (committee) met July 15, 1993, and unanimously recommended this action. This rule is expected to help the Texas citrus industry successfully market the 1993–94 season grapefruit crop.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Charles L. Rush, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–2431; or Belinda G. Garza, McAllen Marketing Field Office, USDA/AMS, 1313 East Hackberry, McAllen, Texas 78501; telephone: 210–682–2833.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 906, as amended (7 CFR part 906), regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies,

unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 15 citrus handlers subject to regulation under the marketing order covering oranges and grapefruit grown in Texas, and about 750 producers of oranges and grapefruit in Texas. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee, which administers the order locally, meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations, information submitted by the committee and other information, to determine whether modification, suspension, or termination of the handling regulation is needed.

The interim final rule was issued on October 18, 1993, with an effective date of October 25, 1993, and published in the **Federal Register** (58 FR 54925, October 25, 1993). The interim final rule provided a 30-day comment period ending November 24, 1993, and no comments were received.

The interim final rule revised paragraph (a)(4) of § 906.365 by temporarily relaxing the minimum size requirement to permit shipment of grapefruit measuring at least 3 5/16 inches in diameter (pack size 112) for the entire 1993–94 season ending July 31, 1994, provided such grapefruit grade at least U.S. No. 1.

This relaxation is expected to help the Texas citrus industry successfully market its 1993–94 season grapefruit crop and have a positive effect on producer returns. Permitting shipment of pack size 112 grapefruit grading at least U.S. No. 1 for the entire 1993–94 season will enable Texas grapefruit handlers to meet market needs and compete with similar sized grapefruit expected to be shipped from Florida. This action is based on the current and prospective crop and market conditions for Texas grapefruit. Fresh Texas grapefruit shipments began in mid-September this season.

The interim final rule also removed paragraph (c) of § 906.365. That paragraph set forth quality requirements for oranges and grapefruit which were in effect through February 15, 1992. Thus, the provisions in that paragraph were obsolete.

Texas grapefruit shipments to fresh markets in the United States, Canada, and Mexico are subject to handling requirements effective under this order. Exempt from such handling requirements are shipments made: (1) Within the production area in Texas; (2) in individually addressed gift packages aggregating not more than 500 pounds which are not for resale; (3) under the 400 pound minimum quantity exemption provision; and (4) for relief, charity, and home use. In addition, fruit shipped to approved processors located outside of the production area may be exempted from the handling requirements.

This final rule reflects the committee's and the Department's appraisal of the need to finalize the relaxed requirements set forth in the interim final rule. The Department believes that this action will have a beneficial impact on producers and handlers because it will permit 1993–94 season grapefruit shipments consistent with anticipated crop and market conditions. The application of handling requirements to Texas grapefruit over the years has been beneficial to the Texas citrus industry in marketing its crops.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR Part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending the provisions of § 906.365, which was published in the **Federal Register** at 58 FR 54925, October 25, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–606 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 906

[Docket No. FV93–906–3FR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of the Handling Requirements for Oranges and Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule finalizes without change an interim final rule which revised the handling requirements for Texas oranges and grapefruit to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the Texas Valley Citrus Committee (committee). This revision was designed to help the Texas citrus industry ensure that all fresh oranges and grapefruit are inspected prior to shipment from the production area.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Belinda Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, Texas 78501, telephone: (210) 682–2833; or Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone: (202) 720–2431.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR Part 906) regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the order. The agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12788, Civil Justice Reform. This action is not intended to have retroactive effect. This rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this action.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 15 handlers of oranges and grapefruit regulated under the marketing order each season and approximately 750 orange and grapefruit producers in Texas. Small agricultural producers have been defined by the Small Business Administration [13 CFR § 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of these handlers and producers may be classified as small entities.

The committee met on August 3, 1993, and unanimously recommended revising paragraph (a)(5) of § 906.365 to require handlers to ensure that an inspection certificate accompanies each shipment of fruit when it is transported by motor vehicle, and that such inspection certificates are surrendered upon leaving the production area when requested by Texas Department of Agriculture (TDA) road guard station personnel designated as agents of the committee. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for fruit regulated under the marketing order. Committee meetings are open to the public, and interested persons may express their views at these meetings.

The committee recommended this action after discussions with TDA road guard station personnel on the subject of operating road guard stations located on the major roads leading out of the production area for Texas oranges and grapefruit. TDA informed the committee that, heretofore, TDA road guard station personnel had not been authorized to require handlers to surrender a copy of their inspection certificates to them, when checking fruit being transported from the production area to determine if it had been inspected and certified as meeting order requirements. Requiring handlers to surrender a copy of their inspection certificates to the TDA will enable TDA personnel to determine whether the fruit meets order requirements, thereby helping ensure compliance with order provisions. The Department reviews committee recommendations and information, as well as information from other sources, to determine whether modification, suspension, or termination of the handling regulation is needed.

The interim final rule was issued on October 4, 1993, with an effective date of October 8, 1993, and published in the **Federal Register** (58 FR 52400, October 8, 1993). The interim final rule provided a 30-comment period ending November 8, 1993, and no comments were received.

The interim final rule amended § 906.365 by adding the following sentence at the end of paragraph (a)(5). "No handler may transport by motor vehicle or cause the transportation of any shipment of fruit for which an inspection certificate is required unless each such shipment is accompanied by a copy of the inspection certificate applicable thereto, and a copy of such inspection certificate is surrendered upon request to Texas Department of Agriculture Road Guard personnel as designated by the committee."

This final rule reflects the committee's and the Department's appraisal of the need to finalize the revision of handling requirements set forth in the interim final rule. The Department's view is that this action will have a beneficial impact on producers and handlers, since it will authorize TDA road guard station personnel to require surrender of inspection certificates upon leaving the production area.

Based on the above the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the committee and other available information, it is hereby found that this rule as hereinafter set forth will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 906

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 906 is amended as follows:

PART 906—ORANGES AND GRAPEFRUIT GROWN IN LOWER RIO GRANDE VALLEY IN TEXAS

1. The authority citation for 7 CFR part 906 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Accordingly, the interim final rule amending part 906, which was published in the **Federal Register** at 58 FR 54200, October 8, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–605 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 959

[Docket No. FV93–959–1IFR; Amendment 1]

South Texas Onions; Increased Expenses and Establishment of Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized administrative expenses for the South Texas Onion Committee (Committee) under M.O. No. 959. This interim final rule increases the level of authorized expenses and establishes an increased assessment rate to generate funds to pay those expenses. Authorization of this increased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by February 10, 1994, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or Belinda G. Garza, McAllen Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 1313 East Hackberry, McAllen, TX 78501, telephone 210–682–2833.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 143 and Order No. 959, both as amended (7 CFR part 959), regulating the handling of onions grown in South Texas. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, South Texas onions are subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable onions handled during the 1993–94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 47 producers of South Texas onions under this marketing order, and approximately 34 handlers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of South Texas onion producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal period was prepared by the South Texas Onion Committee, the agency responsible for local administration of the marketing order, and submitted to the Department of Agriculture for approval. The members of the Committee are producers and handlers of South Texas onions. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of South Texas onions. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

Committee administrative expenses of $80,000 for personnel, office, and compliance expenses were recommended in a mail vote completed August 4, 1993. The assessment rate and funding for the research and promotion projects were to be recommended at a later Committee meeting. The Committee administrative expenses of $80,000 were published in the **Federal Register** as an interim final rule September 28, 1993 (58 FR 50509). That interim final rule added § 959.234, authorizing expenses for the Committee, and provided that interested persons could file comments through October 28, 1993. No comments were filed.

The Committee subsequently met on November 9, 1993, and unanimously recommended increases of $2,500 for personnel expenses and $125,000 for compliance activities in the recently approved 1993–94 budget. The compliance increase will provide for funds to operate road guard stations surrounding the production area. The Committee also unanimously recommended $210,000 in market development activities and $105,600 in production research. These expenditures represent increases over last year's budget of $65,000 for market development and $11,412 for production research. Under this amended budget, expense items for the 1993–94 fiscal period are as follows: $37,472 for personnel, $29,028 for office expenses, $141,000 for compliance activities, $210,000 for market development, and $105,600 for production research.

The initial 1994 budget, published on September 28, 1993, did not establish an assessment rate. Therefore, the Committee also unanimously recommended an assessment rate of $0.10 per 50-pound container or equivalent of onions, $0.03 more than last year's assessment rate. This rate, when applied to anticipated shipments of approximately 5 million 50-pound containers or equivalents, will yield $500,000 in assessment income, which, along with $23,100 from the reserve, will be adequate to cover budgeted expenses. Funds in the reserve as of September 30, 1993, were $346,415, which is within the maximum permitted by the order of two fiscal periods' expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis; (2) the fiscal period began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal period apply to all assessable onions handled during the fiscal period; (3) handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and is similar to that taken for the 1992–93 fiscal period; and (4) this interim final rule provides a 30-day comment period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR Part 959

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 959 is amended as follows:

PART 959—ONIONS GROWN IN SOUTH TEXAS

1. The authority citation for 7 CFR part 959 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 959.234 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 959.234 Expenses and assessment rate.

Expenses of $523,100 by the South Texas Onion Committee are authorized and an assessment rate of $0.10 per 50-pound container or equivalent of onions is established for the fiscal period ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–607 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Parts 966 and 984

[Docket Nos. FV93–966–2FIR, FV93–984–1FIR]

Expenses and Assessment Rates for Specified Marketing Orders (Florida Tomatoes and California Walnuts)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that authorized expenditures and established assessment rates under Marketing Orders 966 and 984 for the 1993–94 fiscal period. Authorization of these budgets enables the Florida Tomato Committee and the Walnut Marketing Board (Committee and Board) to incur expenses that are reasonable and necessary to administer the programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: August 1, 1993, through July 31, 1994.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918; John R. Toth (M.O. 966), Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770; or Richard P. Van Diest (M.O. 984), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, Suite 102B, 2202 Monterey Street, Fresno; California 93721, telephone 209–487–5901.

SUPPLEMENTARY INFORMATION: This rule is effective under Marketing Agreement No. 125 and Order No. 966, both as amended (7 CFR part 966), regulating the handling of tomatoes grown in Florida; and Marketing Agreement and Order No. 984, both as amended (7 CFR part 984), regulating the handling of walnuts grown in California. The marketing agreements and orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, Florida tomatoes and California walnuts are subject to assessments. It is intended that the assessment rates as issued herein will be applicable to all assessable tomatoes and walnuts handled during the 1993–94 fiscal period, which began August 1, 1993, and ends July 31, 1994. This rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any

handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order, is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS), has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 250 producers of Florida tomatoes under Marketing Order 966, and approximately 50 handlers. Also, there are approximately 5,000 producers of California walnuts under Marketing Order 984, and approximately 65 handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the producers and handlers covered under these orders may be classified as small entities.

The budgets of expenses for the 1993–94 fiscal period were prepared by the Committee and the Board, the agencies responsible for local administration of their respective orders, and submitted to the Department for approval. The members of the Florida Tomato Committee are producers. The members of the California Walnut Board are producers and handlers. They are familiar with the Committee's and Board's needs and with the costs for goods and services in their local areas and are thus in a position to formulate appropriate budgets. The budgets were formulated and discussed in public meetings. Thus, all directly affected persons have had an opportunity to participate and provide input into these processes.

The recommended assessment rates were derived by dividing anticipated Committee and Board expenses by expected respective shipments of Florida tomatoes and merchantable California walnuts. Because these rates will be applied to actual shipments of tomatoes and of certified merchantable walnuts, the assessment rates must be established at levels that will provide sufficient income to pay the Committee's and Board's expenses.

The Florida Tomato Committee met September 9, 1993, and unanimously recommended a 1993–94 budget of $2,682,000, which is $4,000 less than the previous year. Increases in expenditures, which include $6,250 for office rent, $200 for miscellaneous, and $4,000 for research expense, will be offset by decreases of $7,000 for office salaries and $7,450 for employees' retirement program. Major expense items include $276,000 for office salaries, $200,000 for research expense, and $2,000,000 for education and promotion expense.

The Committee also unanimously recommended an assessment rate of $0.04 per 25-pound container, the same as last year. This rate, when applied to anticipated shipments of 58,000,000 25-pound containers, will yield $2,320,000 in assessment income. This, along with $20,000 in interest and other income and $342,000 from the Committee's authorized reserve, will be adequate to cover budgeted expenses. Funds in the Committee's authorized reserve at the beginning of the 1993–94 fiscal period were $1,349,348, which is within the maximum permitted by the order of one fiscal period's expenses.

The Walnut Marketing Board met September 10, 1993, and unanimously recommended a 1993–94 budget of $1,941,647, $69,551 more than the previous year. Increases include $4,511 for administrative salaries, $171 for general insurance, $200 for audit, $7,649 for group life, retirement, and medical plan, $835 for office salaries, $7,904 for office rent, $6,000 for office supplies and miscellaneous, $1,000 for telephone and FAX, $2,000 for equipment maintenance and warranties, $9,000 for furniture, fixtures, and automobiles, $7,450 for production research director, and the addition of a $43,000 acreage survey category. These increases will be partially offset by decreases of $300 for social security and hospital insurance taxes, $5,000 for domestic market research and development, and $14,869 for production research. Major expenses include $101,331 for administrative salaries, $40,771 for office salaries, $875,000 for domestic market research and development, $490,488 for production research, $91,068 for production research director, and $43,000 for a walnut acreage survey. A reserve for contingencies of $50,000 is also included in the 1993–94 budget.

The Board also unanimously recommended an assessment rate of $0.009 per kernelweight pound, $0.001 less than the previous year. This rate, when applied to anticipated shipments of 2,157,386 kernelweight pounds of merchantable walnuts, will yield $1,941,647 in assessment income, which will be adequate to cover budgeted expenses. Unexpended funds may be used temporarily during the first five months of the subsequent marketing year, but must be made available to the handlers from whom collected within that period.

Interim final rules were published in the **Federal Register** in October 27, 1993, for 7 CFR part 966 (58 FR 57719); and on October 28, 1993, for 7 CFR Part 984 (58 FR 57959). Those rules added § 966.231 and § 984.344 which authorized expenses and established assessment rates for the Committee and Board. Those rules provided that interested persons could file comments through November 26, 1993, for 7 CFR part 966 and through November 29, 1993, for 7 CFR part 984. No comments were received.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

It is found that the specified expenses for the marketing orders covered in this rulemaking are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** [5 U.S.C. 553] because the Committee and Board need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal periods for the programs began on August 1, 1993. The marketing orders require that the rates of assessment for the fiscal periods apply to all assessable tomatoes and walnuts handled during the fiscal periods. In addition, handlers are aware of these actions which were recommended by the Committee and Board at public meetings and published in the **Federal Register** as interim final rules.

List of Subjects

7 CFR Part 966

Marketing agreements, Reporting and recordkeeping requirements, Tomatoes.

7 CFR Part 984

Marketing agreements, Nuts, Reporting and recordkeeping requirements, Walnuts.

For the reasons set forth in the preamble, 7 CFR parts 966 and 984 are amended as follows:

1. The authority citation for 7 CFR parts 966 and 984 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 966—TOMATOES GROWN IN FLORIDA

2. Accordingly, the interim rule adding § 966.231 which was published at 58 FR 57719 on October 27, 1993, is adopted as a final rule without change.

PART 984—WALNUTS GROWN IN CALIFORNIA

3. Accordingly, the interim rule adding § 984.344 which was published at 58 FR 57959 on October 28, 1993, is adopted as a final rule without change.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–604 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 103, 214, 223, 223a, 248, 264 and 292

[INS No. 1324–92]

RIN No. 1115–AC20

Changes in Processing Procedures for Certain Applications and Petitions for Immigration Benefits

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule streamlines evidence rules and the processes by which persons may apply for and receive certain immigration documents and benefits. The rule is necessary to improve service to the public and to streamline operations.

EFFECTIVE DATE: This rule is effective February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Michael L. Aytes, Director, Service Center Operations, Immigration and Naturalization Service, 425 I Street, NW., room 4014, Washington, DC 20536, telephone (202) 514–3156.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service published a proposed rule on December 2, 1991 at 56 FR 61201 as part of a comprehensive initiative to simplify and streamline the filing and processing of applications and petitions for immigration benefits. This initiative has already led to a number of steps which have begun to significantly improve efficiency and the quality of service provided to the public.

A number of comments were received about this proposal. Many were prepared by a working group of interested organizations. The following sections discuss the comments and explain the revisions adopted.

Representation by Another Person

Several commenters opposed the proposed requirement that an applicant or petitioner sing Form G–28, Notice of Entry of Appearance as Attorney or Representative, to show that he or she authorized the representation. For example, one commenter argued that an attorney's indication that he or she represents someone should be accepted as "absolutely definitive evidence" since submission by an attorney where not so authorized would be a violation of his or her ethical and legal obligations, and would subject him or her to disciplinary action and a malpractice suit.

However, a number of other commenters within the industry supported the new requirement. Some pointed out that the form is not only used by attorneys. Others noted that requiring the signature can help combat the unauthorized practice of law. Still others felt that the signature would address potential Privacy Act concerns.

For the reasons given by those supporting the new requirement, as well a those enumerated in the proposed rule, this proposal has been retained. An applicant or petitioner must sign the Form G–28 to definitively indicate to the Service that he or she has authorized the person to represent him or her in the proceeding. The person submitting the Form G–28 must be authorized under 8 CFR part 292 to represent the applicant or petitioner. Where a Form G–28 is submitted that is not properly signed, the application or petition will be processed as if a Form G–28 had not been submitted.

Notification Procedures

Where an applicant or petitioner has an authorized representative, the Service now mails two copies of each written notice. One goes to the applicant or petitioner, and the other goes to the authorized representative. The proposed rule suggested sending only one notice in such a case, and sending it to the representative. This would have meant that the Service would communicate with the applicant or petitioner through his or her authorized representative if he or she had one.

The commenters pointed to past problems in representatives receiving their copy, and argued that separate notices should be continued as a safeguard. After review, the Service will therefore continue to send separate notices to the applicant or petitioner and his or her authorized representative.

Several commenters also asked that the Service begin sending copies of notices to anyone assisting an applicant or petitioner, and not simply to authorized representatives. However, while the Service cannot limit or control who can assist others in filling out and filing an application or petition, only a person who meets the criteria in 8 CFR parts 1 and 292 can act as the applicant or petitioner's authorized representative and submit a Form G–28. A person who does not meet these criteria cannot represent the applicant or petitioner, and cannot be notified of any action taken on the application or petition.

Several commenters opposed the proposed modification of when the Service would send a notice by certified mail. After review, this proposal has been withdrawn.

Filing

A number of commenters requested that additional filing instructions be included on forms to eliminate confusion about where to file. Last year the Service began to include such specific information on the new generation of application and petition forms. This process will continue as older versions of forms are replaced or eliminated.

Several commenters asked that application and petition forms be published for public comment since the

instructions have the effect of regulation. All form revisions are carefully reviewed to ensure they are consistent with regulations. In addition to informally circulating significant changes to forms for comment, the Service intends to begin to publish form revisions as required and as deemed necessary for effective communications. The Service is committed to revising forms on a more frequent basis to keep up with ever changing immigration laws and changes in procedures. The Service wants to assist people in learning about immigration benefits for which they may be eligible, and help them understand what is required to file a complete application. This will facilitate quicker processing and minimize the delays and additional processing costs associated with requests for more information or evidence.

As suggested by many commenters, language has been added to clarify that a child can file an application or petition for himself or herself, in addition to allowing a parent or legal guardian to file. Other commenters suggested that anyone be allowed to file such a petition, pointing to 8 CFR 101.6(b)(1), which permits such a broad group of persons to file petitions for juveniles dependent on a juvenile court in the United States. However, except for these unique circumstances, there is no valid reason to allow a person who has no legal authority over a child to assume the right to act in the child's behalf before the Service. Therefore, this suggestion has not been adopted.

The proposal to allow the filing of photocopies of documents with applications and petitions instead of originals was universally applauded as a significant step in streamlining filing procedures. However, one commenter asked whether each copy would need to be certified that it is exact and unaltered.

Evidence submitted in the context of an application or petition is part of that application or petition. See 8 CFR 270.1. By signing the application or petition form, the person certifies under penalty of perjury that the application or petition, and all evidence submitted with it, is true and correct. The rule has been clarified to indicate that a separate certification for each copy is not necessary.

Several commenters asked that the rule be revised so that in cases where an applicant or petitioner submits an original when he or she could have submitted a copy, the Service would be required to make the copy and return the original.

The Service recognizes that people need to retain original documents for their records. This was one of the primary reasons why the Service made the decision to accept photocopies. However, the Service processes over 4 million applications and petitions each year. In cases where a person chooses to submit originals instead of copies, the Service is not in a position to make the copies for him or her so the originals can be returned.

The proposed rule provided that where the Service determines a need to review the original of a document, the applicant or petitioner would have 30 days to submit the original document. Several commenters suggested that 30 days does not allow enough time, since people might not have the document and would have to get one from the issuing authority. They suggested a 60 or 90-day period instead.

The idea of allowing copies was proposed so applicants and petitioners can file a copy and keep the original, not so they can file a copy because they don't have an original. By filing a copy as part of their application or petition, they are attesting that the copy is true and correct. This would be problematic if they do not have an original. However, to minimize confusion and to standardize the various response periods provided in this rule, the final rule provides 12 weeks, without extension, for submission of an original document. If an applicant or petitioner does not submit the requested original document within that 12-week period, the application or petition will be denied for failure to provide the original.

Several commenters asked that the Service begin to accept copies and computer-generated versions of application and petition forms, and to allow filing by facsimile. The Service will accept photocopies and computer-generated versions that are *identical* to Service forms in all respects, including placement, perforations and fastener holes. We cannot accept facsimiles because they do not meet these requirements. It is essential that the forms not vary in any way from the original since the Service is introducing imaging systems and other systems to speed processing that depend on exact form specifications. The Service is also very interested in electronic filing as a way of speeding processing and reducing costs, and is researching various technologies that would allow such filing with fee transmittal.

Initial Evidence

Almost every commenter discussed the initial evidence rules, which proposed that an application or petition filed without the evidence required by the instructions on the application or petition form would be denied, but without prejudice to the later filing of a complete application or petition. A number of commenters agreed that the proposal would reduce the percentage of cases in which the Service has to ask for more evidence during the adjudications process, and thus review twice, and that this would help speed overall processing times. Several commenters noted that the additional explanations on the new application and petition forms of what evidence is required will help people to file complete applications and petitions. Others supported threshold standards for filing. However, a number of commenters had serious reservations about the initial evidence requirements described in the proposed rule.

Several commenters suggested that the Service should help applicants and petitioners correct cases that lack the required initial evidence rather than require them to start over and file again. Others suggested the proposed rule did not sufficiently recognize that some people may unintentionally fail to file the required initial evidence. A few suggested that while the Service should deny clearly deficient cases, it should not deny "marginal" cases, but should give those people a chance to correct their cases.

One commenter suggested that the Service continue to add evidence explanations to its new forms, but only monitor the effect and not implement procedures to deny incomplete applications. Another commenter, who opposed the entire concept of threshold requirements, asserted that allowing the Service to deny an application or petition for lack of initial evidence would give it "unbridled" discretion.

Initial evidence is the evidence necessary to establish a basis for filing and to allow the Service to process the average case through to completion the first time. As indicated by many commenters, it is in the best interest of applicants and petitioners, as well as in the interest of the Service, that an application or petition be complete when first filed so a decision can be entered quickly and correctly, without delays caused by having to go back and ask an applicant or petitioner for more evidence.

The initial evidence explanations included in revised application and petition forms are designed to help people know what types of basic evidence they should always submit with their application or petition. The explanations also clarify statutory and regulatory eligibility criteria by translating them into more concrete terms. The question here is what the Service should do when someone files without the required threshold evidence.

The most basic issues in processing an application or petition for an immigration benefit are determining eligibility for the benefit, and treating all applicants and petitioners fairly and equitably. Among other things, this means using processing systems that ensure that cases are not processed in a way that enables one applicant or petitioner to derive an unfair advantage over another applying for the same benefit. For example, this means ensuring that priority dates for immigration and case processing dates are accorded in ways that do not encourage a person to file an incomplete application as a means of stepping in line in front of someone else who waits to obtain all the necessary evidence before filing. It also means establishing processing parameters to minimize instances where the Service has to handle repeatedly an application because basic documents are missing. This increases average processing time, and raises costs which are transferred to all applicants through filing fees.

However, the Service recognizes that these processes must operate in an environment in which a significant number of applicants and petitioners are unfamiliar with the English language and government requirements. The Service's goal is to recognize the needs of the population we serve while setting processing parameters that allow the agency to process applications quickly, correctly and fairly.

In the past, most applications were submitted in person at a local Service office. This provided an opportunity to review the application, and not accept it at that time if it lacked necessary evidence. However, this has led to occasions where discrepancies in local acceptance standards have been alleged. In order to make filing easier as the volume of applications has grown, and to make processing more consistent, the Service has moved towards a mail-in process. Since advance review is not possible in such a situation, there must be clear guidelines for handling cases filed without necessary evidence.

The Service has revised the initial evidence process as a result of the comments received. In general, the Service will not deny a case for lack of initial evidence. An application or petition will be reviewed after fee receipting. If required initial evidence is missing and there is no evidence of ineligibility in the record, the applicant or petitioner will be notified and given 12 weeks from the date of the notice, without extension, to submit the missing initial evidence. However, if the application is pre-screened by INS prior to its submission, such as in a situation where the person files the application in person, and the person insists on filing the application even though necessary initial evidence is missing, the case shall be denied for lack of required initial evidence.

This rule does require that where the Service requests evidence after filing, it must be submitted in one response. In addition, as requested by a commenter, it clarifies that a case that is missing initial evidence will not result in the loss of its priority date until a final decision is made.

This revised process encourages applicants and petitioners to obtain the necessary threshold evidence before filing so that their case can be processed in order and without delay. However, it also allows people who fail to file this threshold evidence a limited period to submit the missing evidence. A time limit of 12 weeks was set because while the Service wants to afford people an opportunity to correct a filing deficiency, we must balance that with ensuring that the process does not encourage people to file before they have a complete application or petition.

If an applicant or petitioner does not submit the missing initial evidence within the time limit, the application or petition will be automatically denied for lack of initial evidence. While the rule clarifies that an applicant or petitioner may immediately refile after such a denial, it should be noted that if the subsequent case is filed without the required initial evidence, it may be denied without a grace period.

While this process will normally be sufficient, there are situations where a person's immediate status in the United States hinges on the application or petition, or he or she becomes entitled to a benefit because the case is pending. For example, a person who files for adjustment of status would in certain instances be able to obtain an advance parole to travel based on the pending application. An applicant for an employment authorization document may be entitled to interim employment authorization because the Service cannot make a decision within a certain period. Applying the general process outlined above in such situations would allow a person to obtain interim benefits based on an incomplete application or petition while the Service waits for him or her to submit the necessary initial evidence, or because he or she asks that an interview be rescheduled, delaying processing.

The filing of an application or petition without the required initial evidence, or asking that a case be rescheduled, effectively hampers our ability to make a definitive determination of eligibility. An applicant or petitioner may not be allowed to either inadvertently or intentionally hamper the Service's ability to render a decision and as a result gain a potential or actual benefit. Therefore, the Service considers processing time for any application or petition to refer to time unhampered by the applicant or petitioner's action or lack of required action. This means there is nothing under the applicant or petitioner's control that hampers our ability to make a final decision.

Under the process outlined earlier, filing an application or petition without required initial evidence hampers the Service's ability to render a final decision. Similarly, requesting a scheduled interview be rescheduled will delay full adjudication of a request for benefits, and will require the Service to duplicate several processing and review steps. The process must balance the need to ensure that persons do not receive undue interim benefits with the need to ensure that any applicable statutory or regulatory processing timeframes are adhered to once we are no longer hampered from making a decision.

Accordingly, in such circumstances the processing clock will stop with respect to any time limits for adjudicating the request for Service action at the time the Service sends a notice for initial evidence, and it will start over at the time the Service receives the evidence. Similarly, the processing clock will start over when the Service receives a request to reschedule an interview. The clock stops because the lack of required initial evidence or request for rescheduling hampers the Service's ability to make a final decision. It starts over again because to merely have it resume would effectively shorten the Service's processing window because we have to duplicate several processing and review steps because the application or petition was not complete when submitted or because we were asked to reschedule the interview. Having the clock start over also serves to encourage the filing of complete applications, which, as indicated above, is in the legitimate interests of all applicants and petitioners as well as in the legitimate interest of the Service. However, this process also preserves the processing clock concept because it does not

suspend the clock indefinitely until we can resume processing.

Since the Service is hampered from making a final decision, interim benefits will not be granted based on a case held in suspense for the submission of requested initial evidence, except that the Service will normally allow the applicant or person the petition is for to remain in the country while an application or petition to extend or obtain status while it is pending. In addition, employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) notwithstanding the case being held in suspense for the submission of necessary initial evidence. The Service of course reserves the right to pursue other actions to seek the removal of persons notwithstanding a pending application where required, such as in cases involving fraud or clearly frivolous applications.

This rule also provides for denial where evidence submitted later does not establish eligibility at the time of filing. The evidence must establish that the applicant or petitioner was eligible for the benefit when the application or petition was filed. As suggested, the Service will monitor the rate of cases in which initial evidence is not submitted at the time of filing as a way of determining how we can further clarify form instructions, and to determine if we need to implement other changes, including those originally proposed in the rule, in order to ensure equity and fairness to all applicants and petitioners.

Additional Evidence, Documents and Translations

At times, an application or petition will meet threshold evidence requirements, but the evidence submitted, or other evidence available, rises additional questions. In such instances the Service usually provides the applicant or petitioner an opportunity to respond or to submit additional evidence about the points in question in support of the claim. Several commenters asked that the Service extend the 60-day period provided for response, as least where good cause was demonstrated.

The rule has been revised to provide 12 weeks for such submissions. However, waiting for the applicant or petitioner to respond hampers the Service's ability to make a final decision. Since the applicant has already met the threshold evidence requirements, the processing clock will merely stop as of the date of the request. It will resume at the point where it stopped when the Service receives the requested evidence or a request for a decision based on the evidence submitted.

One commenter asserted that the Service should eliminate the distinction between primary and secondary evidence, and accept any type of credible document with an application or petition. However, historically there have been serious problems establishing the reliability of many kinds of documents. Further, it is important in judging a claim to know whether documents that should normally exist actually do.

For example, a woman who files a petition claiming someone is her adult son. There is no birth certificate or other civil or religious documents from around the time of the birth to support the claim, but she does have several documents issued years later that suggest that he is her son. After analysis the Service may accept the claim, but the fact the birth certificate and other documents dating from the birth do not exist is important to that analysis. We could not adequately review the case if the record was silent about the types of documents that commonly exist. Without evidentiary guidelines, the Service also would not know whether she merely forgot to attach them or whether they did not exist. This would mean the Service would have to go back and ask, delaying processing.

However, as requested by several commenters, the Service has clarified the distinction between primary evidence, secondary evidence and affidavits. The Service has also clarified the rule to indicate that a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. The Service has also revised the rule as requested to allow a person to file evidence showing that repeated good faith attempts were made to obtain a required document or certification of unavailability along with less definitive evidence.

The above changes will also apply to secondary evidence. However, because secondary evidence and affidavits are inherently less reliable and, consequently, have less probative value than primary evidence, such secondary evidence and affidavits must overcome the fact that more probative primary evidence is unavailable, affidavits must overcome the absence of all other more probative forms of evidence that would normally be available. If the Service concludes that primary or secondary evidence should be available, the applicant or petitioner will be asked to obtain it.

Several commenters requested that the rule be revised to only require a translation of the relevant portion of a foreign language document instead of a full translation. However, only requiring an extract leaves to the applicant or petitioner and the translator the judgment of what is germane. The Service has found that in many instances the applicant or petitioner's determination of what is germane is not consistent with the Service's. A full translation is necessary for us to fully analyze documents submitted.

Withdrawals, Denials, Appeals and Motions

One commenter opposed the proposed bar to retracting a withdrawal, asserting that an applicant or petitioner may have a legitimate reason for again changing his or her mind. The rule does not question the legitimacy of a change of heart or mind, nevertheless, under the rule, a withdrawal is considered definitive. An applicant or petitioner who withdraws a case and later changes his or her mind again may refile a new application or petition. the Service has clarified this in the rule, and has also clarified that a petitioner may withdraw an approved petition until such time as the beneficiary has been admitted or has adjusted status.

The proposed rule would allow a motion to reopen a case denied for lack of initial evidence, but would preclude a subsequent administrative appeal. One commenter suggested that an appeal should be allowed. However, since the issue is simply whether a stipulated document was or was not submitted, the avenue of a motion is a sufficient safeguard.

Several commenters asked that the proposed rule allowing 30 days to file a motion to reopen or a motion to reconsider be extended to 60 days to give applicants and petitioners time to retain legal counsel and file a response. However, the 30-day period provided is equivalent to that for filing an appeal, which itself was extended several years ago, and thus will not be changed.

One commenter suggested that the proposed rule set the level of proof too high for motions to reopen. The provision has accordingly been revised to clarify the facts that must be demonstrated in the motion. Another commenter asked that the Service use this rulemaking to make all decisions of the Board of Immigration Appeals available to the public. The concern will be referred to the Executive Office of Immigration Review for future consideration.

Change of Status, Extension of Stay and Use of Form I–94

The proposed rule provided that where a person demonstrated eligibility for an extension or change of status, the application could be approved at the discretion of the Service. One commenter asserted that discretion should not enter into the decision. However, sections 214 and 248 of the Immigration and Nationality Act give the Service discretionary authority to approve or deny applications for extension or change of status. In addition, a decision on this type of application, and on most other types of applications and petitions, is rarely a simple matter. An alien is not automatically entitled to these types of benefits. The decision to grant a change of status or extension of stay involves weighing various factors, and a judgement by the deciding official of whether to grant the benefit.

In response to a number of comments, this rule allows a worker's dependents to be included in a company's petition where there is only one worker in the petition. This provision will go into effect at the time the form providing for this process becomes available.

A person was previously required to submit his or her original Form I–94, Nonimmigrant Arrival-Departure Record, with an application to extend or change nonimmigrant status so the Service could annotate the Form I–94 with its decision on the application. The rule proposed altering this process in certain cases to permit the filing of a copy of the Form I–94. The notice of decision would serve as evidence of any decision and alteration to the terms of the person's status.

Several commenters supported this idea, suggesting it will eliminate problems with aliens not having evidence of status while their application is pending, and that it will streamline filing. In fact, several asked why it was not being extended to all such applications. However, several others opposed it, arguing that the change would create yet another document employers would have to deal with, further confusing them as to who is authorized to work.

The Service is moving to limit to two the number of INS documents employers are required to examine when a person applies for employment: (a) Form I–551, Alien Registration Card, issued to permanent residents; and (b) Form I–688B, Employment Authorization Document, also called an EAD, issued to persons who can accept employment in the open labor market.

However, after determining that an alien is not otherwise authorized to work, an employer may file a petition to temporarily employ him or her as a nonimmigrant. If the Service approves the petition, we notify the employer. If the alien is not first required to be admitted in the status, and the Service's approval authorizes immediate employment, we include this in the notice. The approval of such a petition does not authorize the alien to work elsewhere, but only for the employer under the terms and conditions of the approved petition. An EAD is not necessary in such a context since the employer has already determined the alien cannot work unless we approve its petition.

Previously when sending a notice that we had approved such a petition we also made a handwritten notation on the alien's Form I–94. The computer system we are installing to improve service will allow us to replace such handwritten notes with a computer generated notice that can be confirmed by the system. Therefore, the rulemaking proposed simplifying filing requirements and allowing aliens to keep their existing Form I–94 as evidence of their status while their new application is pending.

To eliminate any confusion, we are revising our approval notice to the employer to include a replacement Form I–94 that the employer can review and then give to the employee. In the interim the original Form I–94 must be filed with the petition for annotation. The Service will publish a notice in the **Federal Register** when the revised approval notice is implemented, at which time only a copy of the individual's I–94 will be required.

Reentry permits, refugee travel documents and advance paroles

Several commenters stated that applicants for asylum should be eligible for a refugee travel document. However, an applicant for asylum is an applicant for a benefit, and does not acquire any status or travel authorization merely as a result of having submitted the asylum application. It would be inappropriate to grant a travel document until a decision is made that the person is eligible for asylum. If an asylum applicant chooses to leave the United States, he or she may apply abroad for refugee status to reenter.

A commenter requested clarification that a refugee travel document may be accepted in lieu of a passport as well as a visa. The final rule clearly refers to the document as a travel document issued pursuant to article 28 of the United Nations Convention of July 28, 1951 for the purpose of travel.

The Service received many comments regarding advance parole. Although this subject needs to be addressed, the Service has decided to defer this action to a separate rulemaking.

A number of commenters addressed the reentry permit provisions of the proposed rule. Most suggested that the proposed provision precluding issuance to most aliens who have been abroad for more than 4 of the last 5 years since becoming a permanent resident was too limiting, did not provide for exceptions, and did not recognize the needs of permanent residents who are employed by multi-national companies on extended assignments abroad.

As was explained in the proposed rule, the Service's intent was to minimize the current broad review by the Government of all the circumstances surrounding a person's absence, and instead focus on the simpler issue of how long he or she has been gone. The language of the rule was written in such a way that a person is able to stay abroad for almost 6 years, with only short trips back to the United States every 2 years, before he or she would become ineligible for a reentry permit. This standard would have meant some people would not have received a permit, but, again, this ineligibility in and of itself would not have jeopardized permanent resident status.

We believe a clear standard is preferable to an abstract one in which the Government must look at the person's intent, location of domiciles and assets, employment circumstances, and other circumstances of his or her life and make a discretionary decision of whether to issue a permit.

However, upon further consideration, the Service recognizes that there may be those who will be unable to obtain a travel document other than the reentry permit. Therefore, the rule will be modified so that rather than precluding the issuance of the document, any such further issuance will be limited to a validity of one year. This simply means that a person who remains abroad for more than the specified period will thereafter have to return annually to file an application for a reentry permit instead of every 2 years.

Also, based on the comments received, the Service has revised the list of exceptions to the time limit rule to include permanent residents defined in 8 CFR 211.1(b)(1)(i)(B), 211.1(b)(1)(ii) or 211.1(b)(4), as well as persons employed by a public or national organization of which the United States is a member by treaty or statute, and their dependents. The rule also exempts professional

athletes who compete in the United States and worldwide.

Other issues

Several commenters suggested that the Service issue to any applicant for a replacement alien registration card an interim work authorization document while it considers his or her application. However, this would encourage people to file merely to get a document to enter the labor market. Under such circumstances, it would be inappropriate for the Service to give a benefit before having an opportunity to determine if the person is actually eligible for it. Instead, the Service is taking steps to accelerate the processing of this type of application in order to deliver a replacement card more rapidly to those who are eligible.

Several commenters pointed to the situation of permanent residents in exclusion or deportation proceedings, and suggested that the rule should clearly prohibit the confiscation of the permanent resident alien registration card until a final order of deportation or exclusion is entered. The rule has been clarified to indicate that such a person is entitled to evidence of permanent resident status until a final order of deportation or exclusion is entered.

As requested by several commenters, the Service has modified the proposed rule to clearly allow for the concurrent or subsequent filing of an application for further action on an application or petition, and to provide flexibility to incorporate additional, similar processes by revising the form. The Service has also made minor editorial changes in the rule for clarity.

One commenter suggested that to further streamline processing, the Service should require applicants to mail all adjustment of status applications to the INS Service Centers, and eliminate the mandatory interview requirement. The Service has since addressed this issue in a separate rulemaking, which was published in the **Federal Register** on November 2, 1992 at 57 FR 49374–49375.

It should be noted that most of the § 264 items addressed in the proposed rule were published in the **Federal Register** on September 20, 1993 at 58 FR 48775–48780, and therefore are not included in this rule.

In addressing filing requirements and procedures, this rule also clarifies the effect of a "bounced" check or other filing fee remittance being returned as not payable.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This regulation merely sets forth evidentiary rules and processes by which persons may apply for and receive certain immigration benefits and does not alter substantive requirements. This rule is not considered to be a major rule within the meaning of section 1(b) of Executive Order 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

The information collection requirements contained in this rule have been approved by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 214

Administrative practice and procedure, Aliens, Employment, Foreign officials, Health professions, Reporting and recordkeeping requirements, Students.

8 CFR Part 223

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 223a

Immigration, Refugees, Reporting and recordkeeping requirements.

8 CFR Part 248

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 264

Aliens, Reporting and recordkeeping requirements.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, under authority 8 U.S.C. 1101, chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 103—POWERS AND DUTIES OF SERVICE OFFICERS; AVAILABILITY OF SERVICE RECORDS

1. The authority citation for part 103 continues to read as follows:

Authority: 5 U.S.C. 522, 522a; 8 U.S.C. 1101, 1103, 1201, 1252 note, 1252b, 1304, 1356; 31 U.S.C. 9701; E.O. 12356, 47 FR 14874, 15557, 3 CFR, 1982 Comp., p. 166; 8 CFR part 2.

2. In section 103.2 paragraph (a) is revised to read as follows:

§ 103.2 Applications, petitions, and other documents.

(a) *Filing.* (1) *General.* Every application, petition, appeal, motion, request, or other document submitted on the form prescribed by this chapter shall be executed and filed in accordance with the instructions on the form, such instructions being hereby incorporated into the particular section of the regulations requiring its submission. The form must be filed with the appropriate filing fee required by § 103.7. Such fees are non-refundable and, except as otherwise provided in this chapter, must be paid when the application or petition is filed.

(2) *Signature.* An applicant or petitioner must sign his or her application or petition. However, a parent or legal guardian may sign for a person who is less than 14 years old. A legal guardian may sign for a mentally incompetent person. By signing the application or petition, the applicant or petitioner, or parent or guardian certifies under penalty of perjury that the application or petition, and all evidence submitted with it, either at the time of filing or thereafter, is true and correct.

(3) *Representation.* An applicant or petitioner may be represented by an attorney in the United States, as defined in § 1.1(f) of this chapter, by an attorney outside the United States as defined in § 292.1(a)(6) of this chapter, or by an accredited representative as defined in § 292.1(a)(4) of this chapter. A beneficiary of a petition is not a recognized party in such a proceeding. An application or petition presented in person by someone who is not the applicant or petitioner, or his or her representative as defined in this paragraph, shall be treated as if received through the mail, and the person advised that the applicant or petitioner, and his or her representative, will be notified of the decision. Where a notice of representation is submitted that is not properly signed, the application or petition will be processed as if the notice had not been submitted.

(4) *Oath.* Any required oath may be administered by an immigration officer or person generally authorized to administer oaths, including persons so authorized by Article 136 of the Uniform Code of Military Justice.

(5) *Translation of name.* If a document has been executed in an anglicized version of a name, the native form of the name may also be required.

(6) *Where to file.* Except as otherwise provided in this chapter, an application or petition should be filed with the INS office or Service Center with jurisdiction over the application or petition and the place of residence of the applicant or petitioner as indicated in the instructions with the respective form.

(7) *Receipt date.* (i) *General.* An application or petition received in a Service office shall be stamped to show the time and date of actual receipt and, unless otherwise specified in part 204 or part 245 of this chapter, shall be regarded as filed when so stamped, if it is properly signed and executed and the required fee is attached or a fee waiver is granted. An application which is not properly signed or is submitted with the wrong fee shall be rejected as improperly filed. Rejected applications, and ones in which the check or other financial instrument is returned as not payable, will not retain a filing date. An application or petition taken to a local Service office for the completion of biometric information prior to filing at a Service Center shall be considered received when physically received at the appropriate Service Center.

(ii) *Non-payment.* If a check or other financial instrument used to pay a filing fee is subsequently returned as not payable, the remitter shall be notified and requested to immediately pay the filing fee and associated service charge within 14 days, without extension. If the application or petition is pending and these charges are not paid, it shall be rejected as improperly filed. If it was already approved, and these charges are not paid, it shall be automatically revoked because it was improperly filed. If it was already denied, revoked, or abandoned, that decision will not be affected by the non-payment of the filing fee. A new fee will be required with any new application or petition. Any fee and service charges collected as the result of collection activities or legal action on the prior application or petition shall be used to cover the cost of the previous rejection, revocation, or other action.

* * * * *

3. Section 103.2 is amended by:

a. Revising the heading for paragraph (b) and paragraph (b)(1);

b. Redesignating existing paragraph (b)(2) as paragraph (b)(18), and revising the paragraph heading to read "*Withholding adjudication.*";

c. Redesignating paragraph (b)(3) as paragraph (b)(16), and revising in paragraph (b)(16)(i), the reference "(b)(3)(ii), (iii) and (iv)" to read: "(b)(16)(ii), (iii) and (iv)"; and revising in paragraph (b)(16)(ii), the reference "(b)(3)(iv)" to read: "(b)(16)(iv)"; and by

d. Adding new paragraphs (b)(2) through (b)(15), (b)(17), and (b)(19), to read as follows:

§ 103.2 Applications, petitions, and other documents.

* * * * *

(b) *Evidence and processing.* (1) *General.* An applicant or petitioner must establish eligibility for a requested immigration benefit. An application or petition form must be completed as applicable and filed with any initial evidence required by regulation or by the instructions on the form. Any evidence submitted is considered part of the relating application or petition.

(2) *Submitting secondary evidence and affidavits.* (i) *General.* The non-existence or other unavailability of required evidence creates a presumption of ineligibility. If a required document, such as a birth or marriage certificate, does not exist or cannot be obtained, an applicant or petitioner must demonstrate this and submit secondary evidence, such as church or school records, pertinent to the facts at issue. If secondary evidence also does not exist or cannot be obtained, the applicant or petitioner must demonstrate the unavailability of both the required document and relevant secondary evidence, and submit two or more affidavits, sworn to or affirmed by persons who are not parties to the petition who have direct personal knowledge of the event and circumstances. Secondary evidence must overcome the unavailability of primary evidence, and affidavits must overcome the unavailability of both primary and secondary evidence.

(ii) *Demonstrating that a record is not available.* Where a record does not exist, the applicant or petitioner must submit an original written statement on government letterhead establishing this from the relevant government or other authority. The statement must indicate the reason the record does not exist, and indicate whether similar records for the time and place are available. However, a certification from an appropriate foreign government that a document does not exist is not required where the Department of State's Foreign Affairs Manual indicates this type of document generally does not exist. An applicant or petitioner who has not been able to acquire the necessary document or statement from the relevant foreign authority may submit evidence that repeated good faith attempts were made to obtain the required document or statement. However, where the Service finds that such documents or statements are generally available, it may require that the applicant or petitioner submit the required document or statement.

(3) *Translations.* Any document containing foreign language submitted to the Service shall be accompanied by a full English language translation which the translator has certified as complete and accurate, and by the translator's certification that he or she is competent to translate from the foreign language into English.

(4) *Submitting copies of documents.* Application and petition forms must be submitted in the original. Forms and documents issued to support an application or petition, such as labor certifications, Form IAP–66, medical examinations, affidavits, formal consultations, and other statements, must be submitted in the original unless previously filed with the Service. When submission is required, expired Service documents must be submitted in the original, as must Service documents required to be annotated to indicate the decision. In all other instances, unless the relevant regulations or instructions specifically require that an original document be filed with an application or petition, an ordinary legible photocopy may be submitted. Original documents submitted when not required will remain a part of the record, even if the submission was not required.

(5) *Request for an original document.* Where a copy of a document is submitted with an application or petition, the Service may at any time require that the original document be submitted for review. If the requested original, other than one issued by the Service, is not submitted within 12 weeks, the petition or application shall be denied or revoked. There shall be no appeal from a denial or revocation based on the failure to submit an original document upon the request of the Service to substantiate a previously submitted copy. Further, an applicant or petitioner may not move to reopen or reconsider the proceeding based on the subsequent availability of the document. An original document submitted pursuant to a Service request shall be returned to the petitioner or applicant when no longer required.

(6) *Withdrawal.* An applicant or petitioner may withdraw an application

or petition at any time until a decision is issued by the Service or, in the case of an approved petition, until the person is admitted or granted adjustment or change of status, based on the petition. However, a withdrawal may not be retracted.

(7) *Testimony.* The Service may require the taking of testimony, and may direct any necessary investigation. When a statement is taken from and signed by a person, he or she shall, upon request, be given a copy without fee. Any allegations made subsequent to filing an application or petition which are in addition to, or in substitution for, those originally made, shall be filed in the same manner as the original application, petition, or document, and acknowledged under oath thereon.

(8) *Request for evidence.* If there is evidence of ineligibility in the record, an application or petition shall be denied on that basis notwithstanding any lack of required initial evidence. If the application or petition was pre-screened by the Service prior to filing and was filed even though the applicant or petitioner was informed that the required initial evidence was missing, the application or petition shall be denied for failure to contain the necessary evidence. Except as otherwise provided in this chapter, in other instances where there is no evidence of ineligibility, and initial evidence or eligibility information is missing or the Service finds that the evidence submitted either does not fully establish eligibility for the requested benefit or raises underlying questions regarding eligibility, the Service shall request the missing initial evidence, and may request additional evidence, including blood tests. In such cases, the applicant or petitioner shall be given 12 weeks to respond to a request for evidence. Additional time may not be granted. Within this period the applicant or petitioner may:

(i) Submit all the requested initial or additional evidence;

(ii) Submit some or none of the requested additional evidence and ask for a decision based on the record; or

(iii) Withdraw the application or petition.

(9) *Request for appearance.* An applicant, a petitioner, and/or a beneficiary may be required to appear for an interview. A petitioner shall also be notified when an interview notice is mailed or issued to a beneficiary. The person may appear as requested by the Service or, prior to the date and time of the interview:

(i) The person to be interviewed may, for good cause, request that the interview be rescheduled; or

(ii) The applicant or petitioner may withdraw the application or petition.

(10) *Effect of a request for initial or additional evidence or for interview rescheduling.* (i) *Effect on processing.* The priority date of a properly filed petition shall not be affected by a request for missing initial evidence or request for other evidence. If an application or petition is missing required initial evidence, or an applicant, petitioner, or beneficiary requests that an interview be rescheduled, any time period imposed on Service processing will start over from the date of receipt of the required initial evidence or request for interview rescheduling. If the Service requests that the applicant or petitioner submit additional evidence or respond to other than a request for initial evidence, any time limitation imposed on the Service for processing will be suspended as of the date of the request. It will resume at the same point where it stopped when the Service receives the requested evidence or response, or a request for a decision based on the evidence submitted.

(ii) *Effect on interim benefits.* Interim benefits will not be granted based on an application or petition held in suspense for the submission of requested initial evidence, except that the applicant or beneficiary will normally be allowed to remain while an application or petition to extend or obtain status while in the United States is pending. The Service may choose to pursue other actions to seek removal of a person notwithstanding the pending application. Employment authorization previously accorded based on the same status and employment as that requested in the current application or petition may continue uninterrupted as provided in 8 CFR 274a.12(b)(20) during the suspense period.

(11) *Submission of evidence in response to a Service request.* All evidence submitted in response to a Service request must be submitted at one time. The submission of only some of the requested evidence will be considered a request for a decision based on the record.

(12) *Effect where evidence submitted in response to a request does not establish eligibility at the time of filing.* An application or petition shall be denied where evidence submitted in response to a request for initial evidence does not establish filing eligibility at the time the application or petition was filed. An application or petition shall be denied where any application or petition upon which it was based was filed subsequently.

(13) *Effect of failure to respond to a request for evidence or appearance.* If all requested initial evidence and requested additional evidence is not submitted by the required date, the application or petition shall be considered abandoned and, accordingly, shall be denied. Except as provided in § 335.6 of this chapter, if a person requested to appear for an interview does not appear, the Service does not receive his or her request for rescheduling by the date of the interview, or the applicant or petitioner has not withdrawn the application or petition, the application or petition shall be considered abandoned and, accordingly, shall be denied.

(14) *Effect of request for decision.* When an applicant or petitioner does not submit all requested additional evidence and requests a decision based on the evidence already submitted, a decision shall be issued based on the record. Failure to submit requested evidence which precludes a material line of inquiry shall be grounds for denying the application or petition. Failure to appear for a required interview, or to give required testimony, shall result in the denial of any related application or petition.

(15) *Effect of withdrawal or denial due to abandonment.* The Service's acknowledgement of a withdrawal may not be appealed. A denial due to abandonment may not be appealed, but an applicant or petitioner may file a motion to reopen under § 103.5. Withdrawal or denial due to abandonment does not preclude the filing of a new application or petition with a new fee. However, the priority or processing date of a withdrawn or abandoned application or petition may not be applied to a later application petition. Withdrawal or denial due to abandonment shall not itself affect the new proceeding; but the facts and circumstances surrounding the prior application or petition shall otherwise be material to the new application or petition.

* * * * *

(17) *Verifying claimed permanent resident status.* The status of an applicant or petitioner who claims that he or she is a permanent resident of the United States will be verified from official records of the Service. The term official records, as used herein, includes Service files, arrival manifests, arrival records, Service index cards, Immigrant Identification Cards, Certificates of Registry, Declarations of Intention issued after July 1, 1929, Alien Registration Receipt Cards Forms AR–3, AR–103, I–151 or I–551), passports, and reentry permits. To constitute an official record a Service index card must bear a designated immigrant visa symbol and must have been prepared by an authorized official of the Service in the course of processing immigrant admissions or adjustments to permanent resident status. Other cards, certificates, declarations, permits, and passports must have been issued or endorsed by the Service to show admission for permanent residence. Except as otherwise provided in 8 CFR part 101, and in the absence of countervailing evidence, such official records shall be regarded as establishing lawful admission for permanent residence.

* * * * *

(19) *Notification.* An applicant or petitioner shall be sent a written decision on his or her application, petition, motion, or appeal. Where the applicant or petitioner has authorized representation pursuant to § 103.2(a), that representative shall also be notified. Documents produced after an approval notice is sent, such as an alien registration card, shall be mailed directly to the applicant or petitioner.

* * * * *

4. Section 103.5 is amended by:

a. Revising, in paragraph (a)(1)(i), the reference to "part 242 of this chapter", to read: "8 CFR parts 210, 242, or 245a";

b. Adding, to the end of paragraph (a)(1)(i), a new sentence;

c. Revising the first sentence in paragraph (a)(1)(iii) introductory text;

d. Revising paragraph (a)(1)(iii)(C);

e. Revising paragraphs (a)(2), (a)(3), and (a)(4); and by

f. Adding a new paragraph (a)(8), to read as follows:

§ 103.5 Reopening or reconsideration.

(a) * * *

(1) * * *

(i) * * * Any motion to reconsider an action by the Service filed by an applicant or petitioner must be filed within 30 days of the decision that the motion seeks to reconsider. Any motion to reopen a proceeding before the Service filed by an applicant or petitioner, must be filed within 30 days of the decision that the motion seeks to reopen, except that failure to file before this period expires, may be excused in the discretion of the Service where it is demonstrated that the delay was reasonable and was beyond the control of the applicant or petitioner.

* * * * *

(iii) *Filing Requirements*—A motion shall be submitted on Form I–290A, and may be accompanied by a brief. * * *

* * * * *

(C) Accompanied by a nonrefundable fee as set forth in § 103.7:

* * * * *

(2) *Requirements for motion to reopen.* A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence. A motion to reopen an application or petition denied due to abandonment must be filed with evidence that the decision was in error because:

(i) The requested evidence was not material to the issue of eligibility;

(ii) The required initial evidence was submitted with the application or petition, or the request for initial evidence or additional information or appearance was complied with during the allotted period; or

(iii) The request for additional information or appearance was sent to an address other than that on the application, petition, or notice of representation, or that the applicant or petitioner advised the Service, in writing, of a change of address or change of representation subsequent to filing and before the Service's request was sent, and the request did not go to the new address.

(3) *Requirements for motion to reconsider.* A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

(4) *Processing motions in proceedings before the Service.* A motion that does not meet applicable requirements shall be dismissed. Where a motion to reopen is granted, the proceeding shall be reopened. The notice and any favorable decision may be combined.

* * * * *

(8) *Treating an appeal as a motion.* The official who denied an application or petition may treat the appeal from that decision as a motion for the purpose of granting the motion.

* * * * *

5. A new § 103.5b is added to read as follows:

§ 103.5b Application for further action on an approved application or petition.

(a) *General.* An application for further action on an approved application or petition must be filed on Form I–824 by the applicant or petitioner who filed the original application or petition. It must be filed with the fee required in § 103.7 and the initial evidence required on the application form. Form I–824 may accompany the original application or petition, or may be filed after the approval of the original application or petition.

(b) *Requested actions.* A person whose application was approved may, during its validity period, apply for a duplicate approval notice or any other action specifically provided for on the form. A petitioner whose petition was approved may, during the validity of the petition, request that the Service:

(1) Issue a duplicate approval notice;

(2) Notify another consulate of the approved petition;

(3) Notify a consulate of the person's adjustment of status for the purpose of visa issuance to dependents; or

(4) Take any other action specifically provided for on the form.

(c) *Processing.* The application shall be approved if the Service determines the applicant has fully demonstrated eligibility for the requested action. There is no appeal from the denial of an application filed on Form I–824.

PART 214—NONIMMIGRANT CLASSES

6. The authority citation for part 214 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1187, 1221, 1281, 1282; 8 CFR part 2.

7. Section 214.1 is amended by:

a. Redesignating the text of paragraph (a) as paragraph (a)(3) and adding the paragraph heading;

b. Adding paragraphs (a)(1) and (a)(2);

c. Revising paragraph (c); and by

d. Revising paragraph (d), to read as follows:

§ 214.1 Requirements for admission, extension, and maintenance of status.

(a) *General.* (1) *Nonimmigrant classes.* For the purpose of administering the nonimmigrant provisions of the Act, the following administrative subclassifications of nonimmigrant classifications as defined in section 101(a)(15) of the Act are established:

(i) Section 101(a)(15)(B) is divided into (B)(i) for visitors for business and (B)(ii) for visitors for pleasure;

(ii) Section 101(a)(15)(C) is divided into (C)(i) for aliens who are not diplomats and are in transit through the United States; (C)(ii) for aliens in transit to and from the United Nations Headquarters District; and (C)(iii) for alien diplomats in transit through the United States;

(iii) Section 101(a)(15)(H) is divided to create an (H)(iv) subclassification for the spouse and children of a nonimmigrant classified under section 101(a)(15) (H) (i), (ii), or (iii);

(iv) Section 101(a)(15)(J) is divided into (J)(i) for principal aliens and (J)(ii) for such alien's spouse and children;

(v) Section 101(a)(15)(K) is divided into (K)(i) for the fiance(e) and (K)(ii) for the fiance(e)'s children; and

(vi) Section 101(a)(15)(L) is divided into (L)(i) for principal aliens and (L)(ii) for such alien's spouse and children.

(2) *Classification designations.* For the purpose of this chapter the following nonimmigrant designations are established. The designation in the second column may be used to refer to the appropriate nonimmigrant classification.

Section	Designation
101(a)(15)(A)(i)	A–1.
101(a)(15)(A)(ii)	A–2.
101(a)(15)(A)(iii)	A–3.
101(a)(15)(B)(i)	B–1.
101(a)(15)(B)(ii)	B–2.
101(a)(15)(C)(i)	C–1.
101(a)(15)(C)(ii)	C–2.
101(a)(15)(C)(iii)	C–3.
101(a)(15)(D)(i)	D–1.
101(a)(15)(D)(ii)	D–2.
101(a)(15)(E)(i)	E–1.
101(a)(15)(E)(ii)	E–2.
101(a)(15)(F)(i)	F–1.
101(a)(15)(F)(ii)	F–2.
101(a)(15)(G)(i)	G–1.
101(a)(15)(G)(ii)	G–2.
101(a)(15)(G)(iii)	G–3.
101(a)(15)(G)(iv)	G–4.
101(a)(15)(g)(v)	G–5.
101(a)(15)(H)(i)(A)	H–1A.
101(a)(15)(H)(i)(B)	H–1B.
101(a)(15)(H)(ii)(A)	H–2A.
101(a)(15)(H)(ii)(B)	H–2B.
101(a)(15)(H)(iii)	H–3.
101(a)(15)(H)(iv)	H–4.
101(a)(15)(I)	I.
101(a)(15)(J)(i)	J–1.
101(a)(15)(J)(ii)	J–2.
101(a)(15)(K)(i)	K–1.
101(a)(15)(K)(ii)	K–2.
101(a)(15)(L)(i)	L–1.
101(a)(15)(L)(ii)	L–2.
101(a)(15)(M)(i)	M–1.
101(a)(15)(M)(ii)	M–2.
101(a)(15)(N)(i)	N–8.
101(a)(15)(N)(ii)	N–9.
101(a)(15)(O)(i)	O–1.
101(a)(15)(O)(ii)	O–2.
101(a)(15)(O)(iii)	O–3.
101(a)(15)(P)(i)	P–1.
101(a)(15)(P)(ii)	P–2.
101(a)(15)(P)(iii)	P–3.
101(a)(15)(P)(iv)	P–4.
101(a)(15)(Q)	Q.
101(a)(15)(R)(i)	R–1.
101(a)(15)(R)(ii)	R–2.
Cdn FTA, Professional	TC.
NAFTA, Principal	TN.
NAFTA, Dependent	TD.
Visa Waiver, Business	WB.
Visa Waiver, Tourist	WT.

(3) *General requirements.* * * *

* * * * *

(c) *Extensions of stay.* (1) *Filing on Form I–129.* An employer seeking the services of an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant beyond the period previously granted, must petition for an extension of stay on Form I–129. The petition must be filed with the fee required in § 103.7 of this chapter, and the initial evidence specified in § 214.2, and on the petition form. Dependents holding derivative status may be included in the petition if it is for only one worker and the form version specifically provides for their inclusion. In all other cases dependents of the worker should file on Form I–539.

(2) *Filing on Form I–539.* Any other nonimmigrant alien, except an alien in F or J status who has been granted duration of status, who seeks to extend his or her stay beyond the currently authorized period of admission, must apply for an extension of stay on Form I–539 with the fee required in § 103.7 of this chapter together with any initial evidence specified in the applicable provisions of § 214.2, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the other co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on his or her status. Extensions granted to members of a family group must be for the same period of time. The shortest period granted to any member of the family shall be granted to all members of the family.

(3) *Ineligible for extension of stay.* A nonimmigrant in any of the following classes is ineligible for an extension of stay:

(i) B–1 or B–2 where admission was pursuant to the Visa Waiver Pilot Program;

(ii) C–1, C–2, C–3;

(iii) D–1, D–2;

(iv) K–1, K–2; or

(v) Any nonimmigrant admitted for duration of status, other than as provided in § 214.2(f)(7).

(4) *Timely filing and maintenance of status.* An extension of stay may not be approved for an applicant who failed to maintain the previously accorded status or where such status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service and without separate application, with any extension granted from the date the previously authorized stay expired, where it is demonstrated at the time of filing that:

(i) The delay was due to extraordinary circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(ii) The alien has not otherwise violated his or her nonimmigrant status;

(iii) The alien remains a bona fide nonimmigrant; and

(iv) The alien is not the subject of deportation proceedings under 8 CFR part 242.

(5) *Decision in Form I–129 or I–539 extension proceedings.* Where an applicant or petitioner demonstrates eligibility for a requested extension, it may be granted at the discretion of the Service. There is no appeal from the denial of an application for extension of stay filed on Form I–129 or I–539.

(d) *Termination of status.* Within the period of initial admission or extension of stay, the nonimmigrant status of an alien shall be terminated by the revocation of a waiver authorized on his or her behalf under section 212(d) (3) or (4) of the Act; by the introduction of a private bill to confer permanent resident status on such alien; or, pursuant to notification in the **Federal Register**, on the basis of national security, diplomatic, or public safety reasons.

* * * * *

8.–9. Part 223 is revised to read as follows:

PART 223—REENTRY PERMITS, REFUGEE TRAVEL DOCUMENTS, AND ADVANCE PAROLE DOCUMENTS

Sec.

223.1 Purpose of documents.
223.2 Processing.
223.3 Validity and effect on admissibility.

Authority: 8 U.S.C. 1103, 1181, 1182, 1186a, 1203, 1225, 1226, 1227, 1251; Protocol Relating to the Status of Refugees, November 1, 1968, 19 U.S.T. 6223 (TIAS 6577).

§ 223.1 Purpose of documents.

(a) *Reentry permit.* A reentry permit allows a permanent resident to apply for admission to the United States upon return from abroad during the period of the permit's validity without the necessity of obtaining a returning resident visa.

(b) *Refugee travel document.* A refugee travel document is issued pursuant to this part and article 28 of the United Nations Convention of July 28, 1951, for the purpose of travel. A person who holds refugee status pursuant to section 207 of the Act, or asylee status pursuant to section 208 of the Act, must have a refugee travel document to return to the United States after temporary travel abroad unless he or she is in possession of a valid advance parole document.

§ 223.2 Processing.

(a) *General.* An application for a reentry permit, refugee travel document, or advance parole document must be filed on Form I–131, with the fee required in § 103.7 of this chapter and with the initial evidence required on the application form.

(b) *Eligibility.* (1) *Reentry permit.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application and is a lawful permanent resident or conditional permanent resident.

(2) *Refugee travel document.* Except as otherwise provided in this section, an application may be approved if filed by a person who is in the United States at the time of application, and either holds valid refugee status under section 207 of the Act, valid asylee status under section 208 of the Act, or is a permanent resident and received such status as a direct result of his or her asylee or refugee status.

(c) *Ineligibility.* (1) *Prior document still valid.* An application for a reentry permit or refugee travel document shall be denied if the applicant was previously issued a reentry permit or refugee travel document which is still valid, unless it was returned to the Service or it is demonstrated that it was lost.

(2) *Extended absences.* A reentry permit issued to a person who, since becoming a permanent resident, or during the last 5 years, whichever is less, has been outside the United States for more than 4 years in the aggregate, shall be limited to a validity of one year, except that a permit with a validity of two years may be issued to:

(i) A permanent resident as defined in 8 CFR 211.1(b)(1)(ii) or 211.1(b)(4);

(ii) A permanent resident employed by a public international organization of which the United States is a member by treaty or statute, and his or her permanent resident spouse and children; or

(iii) A permanent resident who is a professional athlete who regularly competes in the United States and worldwide.

(3) *Permanent resident entitled to nonimmigrant diplomatic or treaty status.* A permanent resident entitled to nonimmigrant status under section 101(a)(15) (A), (E), or (G) of the Act because of occupational status may only be issued a reentry permit if the applicant executes and submits with the application, or has previously executed and submitted, a written waiver on Form I–508 required by section 247(b) of the Act and part 247 of this chapter and, if applicable, Form I–508F (election as to tax exemption under the Convention between the United States and the French Republic) required by part 247 of this chapter.

(d) *Effect of travel before a decision is made.* Departure from the United States before a decision is made on an application for a reentry permit or refugee travel document shall not affect the application.

(e) *Processing.* Approval of an application is solely at the discretion of the Service. If the application is approved, the requested document shall be issued as provided in this part.

(f) *Issuance.* A reentry permit or refugee travel document may be sent in care of a United States Consulate or an overseas office of the Service if the applicant so requests at the time of filing. Issuance of a reentry permit or refugee travel document to a person in exclusion or deportation proceedings shall not affect those proceedings.

(g) *Appeal.* Denial of an application for a reentry permit or refugee travel document may be appealed to the Service's Administrative Appeals Unit.

§ 223.3 Validity and effect on admissibility.

(a) *Validity.* (1) *Reentry permit.* Except as provided in § 223.2(c)(2), a reentry permit issued to a permanent resident shall be valid for 2 years from the date of issuance. A reentry permit issued to a conditional permanent resident shall be valid for 2 years from the date of issuance, or to the date the conditional permanent resident must apply for removal of the conditions on his or her status, whichever comes first.

(2) *Refugee travel document.* A refugee travel document shall be valid for 1 year, or to the date the refugee or asylee status expires, whichever comes first.

(b) *Invalidation.* A document issued under this part is invalid if obtained through material false representation or concealment, or if the person is ordered excluded or deported. A refugee travel document is also invalid if the United Nations Convention of July 28, 1951, ceases to apply or does not apply to the person as provided in Article 1C, D, E, or F of the convention.

(c) *Extension.* A reentry permit or refugee travel document may not be extended.

(d) *Effect on admissibility.* (1) *Reentry permit.* A permanent resident or conditional permanent resident in possession of a valid reentry permit who is otherwise admissible shall not be deemed to have abandoned status based solely on the duration of an absence or absences while the permit is valid.

(2) *Refugee travel document.* (i) *General.* Every alien returning to the United States who presents a valid unexpired refugee travel document shall be permitted to come physically within the territory of the United States to receive consideration of his or her application for admission in conformity with paragraphs (d)(2)(ii) and (d)(2)(iii) of this section.

(ii) *Inspection and immigration status.* Upon arrival, an alien who presents a valid unexpired refugee travel document shall be examined as to his or her admissibility under the Act. An alien shall be accorded the immigration status endorsed in his or her refugee travel document unless he or she is no longer eligible therefor, or he or she applies for and is found eligible for some other immigration status.

(iii) *Exclusion.* If an alien who presents a valid unexpired refugee travel document appears to the examining immigration officer to be excludable as provided in § 236.5(c) of this chapter, he or she shall be referred for proceedings under section 236 and 237 of the Act. Section 235(c) of the Act shall not be applicable.

PART 223a—REFUGEE TRAVEL DOCUMENTS [REMOVED]

10. Part 223a is removed.

PART 248—CHANGE OF NONIMMIGRANT CLASSIFICATION

11. The authority citation for part 248 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1184, 1187, 1258; 8 CFR part 2.

12. In § 248.1, paragraph (a) is amended by removing the "." and adding ", or as an alien in transit under section 101(a)(15)(C) of the Act."

13. In section 248.1, paragraph (b) is revised to read as follows:

§ 248.1 Eligibility.

* * * * *

(b) *Timely filing and maintenance of status.* A change of status may not be approved for an alien who failed to maintain the previously accorded status or whose status expired before the application or petition was filed, except that failure to file before the period of previously authorized status expired may be excused in the discretion of the Service, and without separate application, where it is demonstrated at the time of filing that:

(1) The failure to file a timely application was due to extraordinary

circumstances beyond the control of the applicant or petitioner, and the Service finds the delay commensurate with the circumstances;

(2) The alien has not otherwise violated his or her nonimmigrant status;

(3) The alien remains a bona fide nonimmigrant; and

(4) The alien is not the subject of deportation proceedings under 8 CFR part 242.

* * * * *

14. Section 248.3 is amended by:

a. Removing and reserving paragraph (d), and

b. Revising paragraphs (a), (b), and (c), to read as follows:

§ 248.3 Application.

(a) *Change of status on Form I–129.* An employer seeking the services of an alien as an E–1, E–2, H–1A, H–1B, H–2A, H–2B, H–3, L–1, O–1, O–2, P–1, P–2, P–3, Q, R–1, or TC nonimmigrant, must, where the alien is already in the U.S. and does not currently hold such status, apply for a change of status on Form I–129. The form must be filed with the fee required in § 103.7 of this chapter and the initial evidence specified in § 214.2 of this chapter and on the petition form. Dependents holding derivative status may be included in the petition if the form is for only one worker. In all other cases, dependents of the worker should file on Form I–539.

(b) *Change of status on Form I–539.* Any nonimmigrant who desires a change of status to any nonimmigrant classification, other than those listed in paragraph (a) of this section, or to E–1 or E–2 classification as the spouse or child of a principal E–1 or E–2, must apply for a change of status on Form I–539. The application must be filed with the fee required in § 103.7 of this chapter and any initial evidence specified in the applicable provisions of § 214.2 of this chapter, and on the application form. More than one person may be included in an application where the co-applicants are all members of a single family group and either all hold the same nonimmigrant status or one holds a nonimmigrant status and the co-applicants are his or her spouse and/or children who hold derivative nonimmigrant status based on the principal's nonimmigrant status.

(c) *Special provisions for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15) (A) or (G) of the Act.* Each application for change of nonimmigrant classification to, or from, a position classified under section 101(a)(15)(A) or (G) must be filed on Form I–539 and be accompanied by a Form I–566, completed and endorsed in accordance with the instructions on that form. If the Department of State recommends against the change, the application shall be denied. An application for a change of classification by a principal alien in a position classified A–1, A–2, G–1, G–2, G–3, or G–4 shall be processed without fee. Members of the principal alien's immediate family who are included on the principal alien's application shall also be processed without fee.

* * * * *

PART 264—REGISTRATION AND FINGERPRINTING OF ALIENS IN THE UNITED STATES

15. The authority citation for part 264 continues to read as follows:

Authority: 8 U.S.C. 1103, 1201, 1201a, 1301–1305

§ 264.1 [Amended]

16. In § 264.1, paragraph (b), is amended by removing the Form No. and Class references for form "I–90".

17. Section 264.1 is amended by:

a. Removing paragraph (c)(1); and

b. Redesignating paragraph (c)(2) as paragraph (c)(1).

18. Part 264 is further amended by adding §§ 264.4 and 264.6, to read as follows:

§ 264.4 Application to replace a Non-resident Border Crossing Card.

An application for a replacement Non-Resident Border Crossing Card must be filed pursuant to § 212.6(e) of this chapter. An application for a replacement Non-resident Alien Canadian Border Crossing Card must be filed on Form I–175. An application for a replacement Non-resident Mexican Border Crossing Card must be filed on Form I–190.

§ 264.6 Application for an initial or replacement Form I–94, Nonimmigrant Arrival-Departure Document, or Form I–95, Crewman's Landing Permit.

(a) *General.* An application for a new or replacement Form I–94 or replacement Form I–95 must be made on Form I–102. The application must be filed with the fee required in § 103.7 of this chapter and the initial evidence required on the application form.

(b) *Filing.* An application may be approved if filed by an alien in the United States who:

(1) Applies to replace a lost or stolen Form I–94 or Form I–95 that had been issued to him or her;

(2) Applies to replace a mutilated Form I–94 or Form I–95 issued to him or her; or

(3) Was not issued a Form I–94 pursuant to § 235.1(f)(1)(i), (iii), (iv), (v), or (vi) of this chapter, when last admitted as a nonimmigrant, has not since been issued a Form I–94, and now requires a Form I–94.

(c) *Processing.* A pending application filed under paragraph (a) of this section shall be considered temporary evidence of registration. If the application is approved, the document shall be issued. There is no appeal from the denial of an application filed on Form I–102.

19. In § 264.5, a new paragraph (g) is added to read as follows:

§ 264.5 Application for a replacement Alien Registration Card.

* * * * *

(g) *Eligibility for a card while in deportation or exclusion proceedings.* A person in exclusion proceedings shall be entitled to evidence of permanent resident status until ordered excluded. Such evidence shall be in the form of a temporary Form I–551 issued for a period sufficient to accomplish the exclusion proceedings. A person in deportation proceedings shall be entitled to evidence of permanent resident status until ordered deported or excluded. Issuance of an alien registration card to a person in exclusion or deportation proceedings, provided the person had status as a lawful permanent resident when the proceeding commenced, shall not affect those proceedings.

PART 292—REPRESENTATION AND APPEARANCES

20. The authority citation for part 292 continues to read as follows:

Authority: 8 U.S.C. 1103, 1252b, 1362.

21. In § 292.4, paragraph (a), is amended by adding a new sentence at the end of the paragraph, to read as follows:

§ 292.4 Appearances.

(a) * * * A notice of appearance entered in application or petition proceedings must be signed by the applicant or petitioner to authorize representation in order for the appearance to be recognized by the Service.

* * * * *

Dated: November 16, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–392 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

8 CFR Part 212

[INS No. 1225-92]

RIN 1115-AB40

Waiver of Certain Types of Visas

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the Immigration and Naturalization Service (Service) regulations to permit district directors, acting alone, to waive a nonimmigrant visa or passport under section 212(d)(4)(A) of the Immigration and Nationality Act in individual cases, if satisfied that a nonimmigrant alien is unable to present these documents because of an unforeseen emergency. Formerly, in such circumstances the district director was required to seek concurrence of the Department of State Visa Office to grant a waiver of the nonimmigrant visa or passport. In eliminating the step of seeking concurrence on each waiver, this amendment will save resources for both agencies and reduce the time it takes to admit certain nonimmigrant aliens.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Diane Hinckley, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street NW., room 7228, Washington, DC 20536, telephone number (202) 616–7493.

SUPPLEMENTARY INFORMATION: Section 212(d)(4)(A) of the Immigration and Nationality Act allows the Secretary of State and the Attorney General, acting jointly, to waive a nonimmigrant alien's visa or passport when an alien is unable to present the required documents due to an unforeseen emergency. Previously, when such a nonimmigrant appeared at a port of entry, the Immigration and Naturalization Service district director was required to seek the concurrence of the Department of State Visa Office prior to granting the waiver. Pursuant to the authority delegated to the Commissioner of the Immigration and Naturalization Service by title 8 U.S.C. section 103 and to the Director of the Visa Office of the Department of State by title 8 U.S.C. section 104, the Commissioner and the Director of the Visa Office, acting jointly, determined that the previous procedure was unnecessarily burdensome. Officers of the Department of State concurred with the recommendations from the ports of entry in over 95% of the cases presented. Having the district director exercise the function of the Department of State Visa Office simultaneously with the function assigned to the Immigration and Naturalization Service will save resources for both agencies and result in a quicker admission of the alien. If the district director is satisfied that the alien failed to present a passport or a visa because of an unforeseen emergency and that the alien should be granted the waiver, then the procedure at the ports of entry will remain the same. The alien will fill out an application for the waiver, the information will be checked, and a fee will be charged. The Department of State is promulgating a similar regulation that amends § 41.2 of title 22, Code of Federal Regulations.

The Immigration and Naturalization Service (The Service) published a proposed rule, with a request for comments, in the **Federal Register** on July 30, 1991, at 56 FR 36028, amending 8 CFR 212.1(g). The comment period ended on August 29, 1991. The Service received three comments. One commentor endorsed the rule's practicality but recommended a change in language in the phrase "unable to obtain the required documents" so that it reads "unable to present the required documents". The Service agrees that the change improves the rule by allowing waivers to be granted in cases where the alien possesses the required documents but cannot produce them at the port of entry. This change is incorporated in the final rule.

Another commentor expressed concern that language in the proposed regulation might mislead a reader to think that the Service will seek concurrence from the Visa Office without first determining that the alien is entitled to a waiver of documents. Such a procedure would be a deviation from the Service's past practice rather than a continuation of it, as the Service intends, except for eliminating the step of seeking concurrence from the Department of State Visa Office. Language in the final rule has been changed to clarify this point.

Another commentor noted that transportation companies cannot board an alien passenger traveling in emergency circumstances who lacks the required documents without incurring a fine at the port of entry. The commentor recommended adding a provision to the rule which would specify the steps a carrier must take to board such a passenger without incurring a fine. This rule is not intended to expand the circumstances under which an alien may apply for a waiver of documents, only to simplify the administrative procedure for granting a waiver, and therefore the recommendation will not be incorporated into the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule merely reflects an agreement reached between the Department of State and the Immigration and Naturalization Service that results in a less burdensome administrative procedure. In addition, members of the public are serviced in a more expeditious manner as a result of the effect of this rule.

This rule is not significant within the meaning of section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirement contained in this rule has been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. The OMB control number for this collection is contained in 8 CFR 299.5.

List of Subjects in 8 CFR Part 212

Aliens, Documentation, Nonimmigrant, Passport and visas, Waivers.

Accordingly, part 212 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for part 212 continues to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1225, 1226, 1228, 1252; 8 CFR part 2.

2. In § 212.1, the first two sentences in paragraph (g) are revised to read as follows:

§ 212.1 Documentary requirements for nonimmigrants.

* * * * *

(g) *Unforeseen emergency.* A visa and a passport are not required of a nonimmigrant who, either prior to his or her embarkation at a foreign port or place or at the time of arrival at a port of entry in the United States, satisfies the district director at the port of entry that, because of an unforeseen emergency, he or she is unable to present the required documents, in which case a waiver application shall be made on Form I–193. The district director may approve a waiver of documents in each case in which he or she is satisfied that the nonimmigrant cannot present the required documents

because of an unforeseen emergency and the waiver would be appropriate in the circumstances. * * *

* * * * *

Dated: January 5, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94-646 Filed 1-10-94; 8:45 am]

BILLING CODE 4410-10-M

8 CFR Part 214

[INS 1452-92]

RIN 1115-AC72

Temporary Alien Workers Seeking H-1B Classification Under the Immigration and Nationality Act

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule implements certain provisions of the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MTINA) by establishing petitioning procedures for H-1B nonimmigrants and new eligibility criteria for foreign physicians seeking employment in the medical professions in the United States. This rule contains the new procedures required by the legislation and makes Service policy consistent with the intent of Congress. This rule sets forth the new filing procedures and eligibility standards and clarifies for businesses, academic institutions, and the general public the requirements for classification and admission under section 101(a)(15)(H) of the Immigration and Nationality Act (ACT).

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: John W. Brown, Senior Immigration Examiner, Adjudications Division, Immigration and Naturalization Service, 425 I Street, NW., room 7215, Washington, DC 20536, telephone (202) 514-3240.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (IMMACT), Public Law 101-649, November 29, 1990, dramatically altered the H-1B nonimmigrant classification. IMMACT, among other things, removed prominent aliens from the H-1B nonimmigrant classification and required prospective employers to obtain an approved labor condition application from the Department of Labor prior to the admission of the H-1B nonimmigrant into the United States.

In response to concerns raised by a number of interested parties, Congress incorporated numerous provisions in the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991, Public Law 102-232, December 12, 1991, which amended some of the provisions created by IMMACT. Specifically, Public Law 102-232 amended the definition of an H-1B nonimmigrant alien by removing the requirement that the intending employer obtain an approved labor condition application prior to the alien's admission into the United States, amended the criteria which the Secretary of Labor could use in invoking the penalty provisions relating to misrepresentations and omissions on the labor condition application, and, lastly, addressed the issue of foreign physicians coming to the United States to perform services in the medical profession.

On April 9, 1992, the Service published in the **Federal Register** at 57 FR 12177, an interim rule with requests for comments to incorporate the changes contained in Public Law 102-232. Interested persons were invited to submit written comments on or before June 8, 1992.

Discussion of Comments on the Interim Regulations

The Service received comments from sixteen individuals on the interim rule. Some of the commenters addressed more than one issue in their comments. A number of commenters offered suggestions and improvements for the final rule, many of which have been adopted in the final rule. The following discussion addresses the issues raised, provides the Service's position on the issues, and, indicates the revisions adopted in the final rule based on the public's comments.

Labor Condition Application—§ 214.2(h)(4)(i)(B)(1)

Prior to the passage of Public Law 102-232, petitioners in H-1B cases were required to submit a copy of an approved labor condition application with the petition. Public Law 102-232 amended this language by requiring only that petitioners attach a certification from the Secretary of Labor indicating that the petitioner has filed a labor condition application with the Secretary of Labor. The interim rule contained language reflecting this amendment to the statute.

One commenter suggested that a petitioner could meet this statutory requirement by merely submitting a copy of the labor condition application without waiting for the Department of Labor to certify the labor condition application. However, submitting a copy of the labor condition application is not sufficient to show that the application has been filed. Only when the application has been certified can the Service be assured that the petitioner has complied with the filing requirement. Therefore, the Service did not adopt this recommendation.

One commenter noted that IMMACT imposed a number of penalties on employers who failed to meet certain conditions of the labor condition application process. Section 212(n)(2)(C)(ii) of the Act states that in those situations the Attorney General shall not approve petitions filed by the offending employer under section 204 or 214(c) of the Act for a period of one year. The commenter noted that § 214.2(h)(4)(i)(B)(5) of the interim regulation indicated only that the Attorney General shall not approve petitions under the H-1B category. In response to this comment the final rule will be amended to indicate that this provision applies to petitions filed under both sections 204 and 214(c) of the Act as required by statute.

Return Transportation Provision—§ 214.2(h)(4)(iii)(E) and § 214.2(h)(6)(vi)(E)

One commenter suggested that petitioners in H-1B and H-2B cases should be required to post a bond in order to prove to the Service that the return transportation requirement will be met. It is the opinion of the Service that the statute and regulations clearly state the requirement that a petitioner in these instances is responsible for the alien beneficiary's return transportation. The filing of the petition is sufficient assurance to the Service that the petitioner will comply with this requirement.

Criteria and Documentary Requirements for Physicians—§ 214.2(h)(4)(viii)

Prior to the passage of IMMACT, alien graduates of foreign medical schools were excluded from classification as H-1B nonimmigrants unless they were coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such institution or agency. These physicians were not authorized to perform direct patient care unless it was incidental to the teaching or research. This restriction, however, was not contained in IMMACT, thereby allowing graduates of foreign medical schools to perform direct patient care in the United States.

Public Law 102-232 addressed the issue of foreign physicians coming to the United States to perform services in the medical profession. The legislation provided that these aliens could obtain H-1B classification in either of two ways.

First (mirroring the pre-IMMACT statutory language), an alien may be accorded H-1B classification if the alien is coming to the United States pursuant to an invitation from a public or nonprofit private educational or research institution or agency to teach or conduct research, or both, at or for such institution or agency.

Second, an alien may be accorded H-1B classification if he or she has passed the Federation Licensing Examination (FLEX) or an equivalent examination as determined by the Secretary of Health and Human Services. Eligibility under this criterion also requires a demonstration that the alien has competency in oral and written English or that the alien has graduated from a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

In the preamble to the interim rule, it was stated that there was no distinction between alien physicians educated in the United States and those educated abroad and that both had to pass the Federation Licensing Examination (FLEX) in order to be classified as an H-1B nonimmigrant in order to perform direct patient care.

Three commenters stated that the FLEX requirement should not be applicable to alien graduates of United States medical schools since, over the previous decade, the Service has consistently permitted these aliens to engage in direct patient care under the H-1B classification. These commenters also noted that graduates of United States medical schools are not normally required to take the FLEX examination as part of their training and licensing requirements.

Subsequent to the publication of the interim rule, the Service altered its position on this issue, reaffirming that the FLEX requirement did not apply to aliens educated at United States medical schools. This position now will be codified in the final rule. It should be noted, however, that the FLEX requirement does apply to aliens educated in foreign medical schools, including schools in Canada. The final rule will be amended to reflect the Service's present position.

Two commenters noted that aliens of national or international renown in the field of medicine, pursuant to section 101(a)(41) of the Act, are not considered graduates of a medical school and should be exempt for the FLEX requirement. The Service agrees with this comment and the final rule will be amended to indicate that aliens of national or international renown in the field of medicine are exempt from the FLEX requirement as well as the other requirements set forth in section 212(j)(2) of the Act. They are, however, required to meet the licensure requirements for the state of intended employment.

Equivalency to the FLEX

Public Law 102-232 provides that alien physicians who wish to perform patient care in the United States must, among other things, pass the FLEX examination or an equivalent examination as determined by the Secretary of Health and Human Services. By notice published on September 16, 1992 at 57 FR 42755, the Secretary of Health and Human Services designated Parts I, II, and III of the National Board of Medical Examiners certifying examinations and the Steps 1, 2, and 3 examinations of the United States Medical Licensing Examinations program as equivalent to the FLEX.

Six commenters suggested that the Licentiate of the Medical Council of Canada (LMCC), the Canadian medical licensing procedure, or a State license should also be determined to be equivalent to the FLEX. A determination that the LMCC or a state license is equivalent to the FLEX is outside the scope of the Service's authority.

Competency in the English Language

Public Law 102-232 also requires that graduates of medical schools coming to the United States to perform services in the medical professions must demonstrate competency in oral and written English or be a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education. The interim rule contains the requirement that a petitioner may demonstrate English competency by submitting evidence that the alien has passed the English test given by the Educational Commission for Foreign Medical Graduates (ECFMG). The interim regulation did not contain any additional tests or mechanisms to establish competency in the English language but it was stated in the preamble to the interim rule that the Service would consider other suggestions to demonstrate competency.

Two commenters suggested that the Test of English as a Foreign Language (TOEFL) should be recognized as an alternate test to establish English competency. Since the results of the TOEFL are reported as a raw score which must be interpreted by the entity reviewing the score, and the administrators of the test have not established a passing grade for the test, the Service cannot adopt this suggestion since it does not have the expertise or resources to interpret this test.

Two commenters also suggested that the Service recognize that graduates of medical schools located in an English-speaking country in which the language of instruction is also English have competency in the English language. Since the statutory language already addresses the issue of language competency in relation to graduation from certain universities, the adoption of this suggestion would be in conflict with the statutory language.

Licensure

The interim rule requires that a petition for a physician coming to the United States to perform services in the medical profession must be accompanied by evidence that the physician has a license or authorization required by the State of intended employment, if the state requires such license or authorization. This language was adopted to ensure that at the time the petition was filed the physician and met the regulatory requirements relating to the practice of medicine in the state of intended employment. The regulation also recognizes that, in certain instances, a state may not require a physician to obtain an actual medical license in order to perform the duties of a particular position.

Two commenters suggested that the regulations of the state of intended employment should dictate which type of license, if any, should be required by the Service. This suggested regulatory change is unnecessary since it is already provided for in the language of the interim rule at § 214.2(h)(4)(viii)(A)(1).

One commenter also noted that certain physicians employer by the United States government, such as the Veterans Administration, are not required to possess a license issued by the state of intended employment hut merely require a license from any state. The final rule has been amended to accommodate this situation.

One commenter suggested that an alien physician should not be required to obtain a medical license if the alien is not coming to the United States to perform patient care. As written, the interim rule requires that licensure must be obtained only in those situations where the alien beneficiary will be performing clinical care. An alien physician coming to fill a position which does not normally require licensure, e.g., medical research, would not be required to obtain a license. Thus, this suggestion need not be adopted.

Approval and Validity of Petitions—§ 214.2(h)(9)(iii)(B)

The initial approval of an H–1B petition is currently limited to three years. One commenter suggested that H–1B petitions should be approved for the validity period of the supporting labor condition application, not to exceed six years. The Service does not deem it appropriate to consider extending the initial validity period of H–1B petitions without first soliciting public comment on the issue. This issue will be addressed in a future proposed rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule merely clarifies provisions of the MTINA which establish certain new petitioning procedures for H–1B nonimmigrants and new eligibility criteria for foreign physicians seeking employment in the medical profession in this country, and therefore has a *de minimus* economic impact on small entities. This rule is not considered to be significant within section 3(f) of E.O. 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 214

Administrative practice and procedures, Aliens, Employment, Organization and functions (Government agencies).

Accordingly, the Interim Rule amending 8 CFR part 214 which was published at 57 FR 12177–12179 on April 9, 1992, is adopted as a final rule with the following changes:

PART 214—NONIMMIGRANT CLASSES

1. The authority citation for part 214 continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1182, 1184, 1186a, 1221, 1281, 1282; 8 CFR part 2.

2. Section 214.2 is amended by:
a. Revising paragraph (h)(1)(ii)(B)(*1*);
b. Revising paragraph (h)(4)(i)(B)(*5*);
c. Revising paragraph (h)(4)(viii)(A)(*1*);
d. Revising paragraph (h)(4)(viii)(B)(*2*); and
e. Adding paragraph (h)(4)(viii)(C) to read as follows:

§ 214.2 Special requirements for admission, extension, and maintenance of status.

* * * * *

(h) * * *
(1) * * *
(ii) * * *
(B) * * *

(*1*) To perform services in a specialty occupation (except registered nurses, agricultural workers, and aliens described in section 101(a) (15) (O) and (P) of the Act) described in section 214(i)(1) of the Act, that meets the requirements of section 214(i)(2) of the Act, and for whom the Secretary of Labor has determined and certified to the Attorney General that the prospective employer has filed a labor condition application under section 212(n)(1) of the Act;

* * * * *

(4) * * *
(i) * * *
(B) * * *

(*5*) If the Secretary of Labor notifies the Service that the petitioning employer has failed to meet a condition of paragraph (B) of section 212(n)(1) of the Act, has substantially failed to meet a condition of paragraphs (C) or (D) of section 212(n)(1) of the Act, has willfully failed to meet a condition of paragraph (A) of section 212(n)(1) of the Act, or has misrepresented any material fact in the application, the Service shall not approve petitions filed with respect to that employer under section 204 or 214(c) of the Act for a period of at least one year from the date of receipt of such notice.

* * * * *

(viii) * * *
(A) * * *

(*1*) Has a license or other authorization required by the state of intended employment to practice medicine, or is exempt by law therefrom, if the physician will perform direct patient care and the state requires the license or authorization, and

* * * * *

(B) * * *

(*2*) The alien has passed the Federation Licensing Examination (or an equivalent examination as determined by the Secretary of Health and Human Services) or is a graduate of a United States medical school; and

(*i*) Has competency in oral and written English which shall be demonstrated by the passage of the English language proficiency test given by the Educational Commission for Foreign Medical Graduates; or

(*ii*) Is a graduate of a school of medicine accredited by a body or bodies approved for that purpose by the Secretary of Education.

(C) *Exception for physicians of national or international renown.* A physician who is a graduate of a medical school in a foreign state and who is of national or international renown in the field of medicine is exempt from the requirements of paragraph (h)(4)(viii)(B) of this section.

* * * * *

§ 214.2 [Amended]

3. In § 214.2, paragraph (h)(2)(i)(B) is amended by removing the last sentence.

Dated: January 6, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–569 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

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8 CFR Part 245a

[INS No. 1618–93]

RIN 1115–AD44

Determination of Public Charges for Legalization Benefits, Amendment

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This rule amends the regulations of the Immigration and Naturalization Service (Service) relating to applications for lawful temporary residence under section 245A of the Immigration and Nationality Act. Specifically, this rule amends the special rule for determination of public charge to provide that aliens who are self-supporting despite earning income below the poverty level may be admissible without having to apply for a waiver of inadmissibility under 8 CFR 245a.2(k) (2).

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Jane Gomez, Senior Immigration Examiner, Immigration and Naturalization Service, room 7223, 425 I Street, NW., Washington, DC 20536, Telephone: (202) 514–5014.

SUPPLEMENTARY INFORMATION: On August 27, 1993, the Immigration and Naturalization Service published in the **Federal Register** at 58 FR 45235–45236, an interim rule with request for comments to amend 8 CFR part 245a. The interim rule was issued to remove language that had been inadvertently added in a previous final rule which was published in the **Federal Register** on July 12, 1989, at 54 FR 29449. Specifically, the interim rule clarified that persons described in the special rule for determination of public charge are in fact admissible without having to apply for a waiver of inadmissibility. The Service received two comments on the interim rule, both of which viewed the amendment favorably, noting that the amendment brought the regulation in conformity with section 245A of the Immigration and Nationality Act.

In accordance with 5 U.S.C. 605(b), the Commissioner certifies that this rule will not have a significant adverse economic impact on a substantial number of small entities. This rule provides a benefit for individual aliens. It does not affect small entities. This rule is not significant within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 245a

Administrative practice and procedure, Aliens, Immigration, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending part 245a of chapter I of title 8 of the Code of Federal Regulations which was published at 58 FR 45235–45236 on August 27, 1993, is adopted as a final rule without change.

Dated: Decmeber 30, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–540 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–230–AD; Amendment 39–8791; AD 94–01–09]

Airworthiness Directives; Canadair Model CL–600–2B19 "Regional Jet" Series 100 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to Canadair Model CL–600–2B19 "Regional Jet" Series 100 airplanes. This action requires a revision to the Airplane Flight Manual (AFM) to limit altitude and airspeed operations of the airplane under certain conditions of hydraulic system failure. This amendment is prompted by a report of sheared-off shear pins found on one airplane's elevator dampers. The actions specified in this AD are intended to prevent undampened vibration of the elevators in normal cruise conditions when combined with hydraulic system failures, a condition which could result in reduced controllability of the airplane.

DATES: Effective January 26, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–230–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

FOR FURTHER INFORMATION CONTACT: Franco Pieri, Aerospace Engineer, Airframe Branch, ANE–172, New York Aircraft Certification Office, FAA, Engine and Propeller Directorate, 181 South Franklin Avenue, room 202, Valley Stream, New York 11581; telephone (516) 791–6221; fax (516) 791–9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL–600–2B19 "Regional Jet" Series 100 airplanes. Transport Canada Aviation advises that one operator of these airplanes found that the shear pins on the airplane elevator dampers had sheared off. This finding was made during a routine check of the airplane. The cause of the pin failure has not been determined. Failure of the shear pins on the elevator damper, if not detected and corrected, may lead to undampened vibration of the elevators during normal cruise conditions when combined with hydraulic system failures. This situation could result in reduced controllability of the airplane.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above.

In order to assure the continued airworthiness of these airplanes in Canada, Transport Canada Aviation issued a Canadian airworthiness directive on December 17, 1993, that restricts operation of these airplanes to certain altitude and airspeed limits under various conditions of hydraulic system failure. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent undampened vibration of the elevators during normal cruise conditions in the event of hydraulic system failures, which could result in reduced controllability of the airplane. This AD requires a revision to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to restrict altitude and airspeed operations under conditions of single or double hydraulic failure.

This is considered interim action until final action is identified, at which time the FAA may consider additional rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES.** All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments

submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–230–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–01–09 Canadair: Amendment 39–8791. Docket 93–NM–230–AD.

Applicability: Model CL–600–2B19 "Regional Jet" Series 100 airplanes; serial numbers 7003 and subsequent; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent undampened vibration of the elevators during normal cruise conditions in the event of hydraulic system failures, which could result in reduced controllability of the airplane, accomplish the following:

(a) Within 30 days after the effective date of this AD, revise the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to include the following restrictions of altitude and airspeed operations under conditions of single or double hydraulic system failure; and advise the flight crew of these revised limits. Revision of the AFM may be accomplished by inserting a copy of this AD in the AFM.

Note 1: The restrictions described in the AFM Temporary Revision (TR) RJ/30 meet the requirements of this paragraph. Therefore, inserting a copy of TR RJ/30 in lieu of this AD in the AFM is considered an acceptable means of compliance with this paragraph.

Altitude limit (maximum)	Airspeed limit (maximum)
Single Hydraulic System Failure:	
31,000 feet	0.55 Mach (199 KIAS).
30,000 feet	0.55 Mach (204 KIAS).
28,000 feet	0.55 Mach (213 KIAS).
26,000 feet	0.55 Mach (222 KIAS).
24,000 feet	0.55 Mach (232 KIAS).
22,000 feet	0.55 Mach (241 KIAS).
20,000 feet and below.	252 KIAS.
Double Hydraulic System Failure:	
10,000 feet	200 KIAS.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 26, 1994.

Issued in Renton, Washington, on January 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–344 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 91–ANM–14]

Alteration of VOR Federal Airway V–220

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published on September 10, 1993. This final rule alters the description of VOR Federal Airway V–220, located in Colorado and Nebraska, to coincide with the scheduled opening date of the new Denver International Airport. This action is necessary to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO, which became effective on November 11, 1993.

EFFECTIVE DATE: 0701 UTC, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 10, 1993, the Federal Aviation Administration (FAA) published a final rule that alters VOR Federal Airway V–220, located in Colorado and Nebraska, to coincide with the scheduled opening date of the new Denver International Airport (58 FR 47631). This action is necessary to incorporate a recent amendment to V–220 between Grand Junction, CO, and Meeker, CO, which became effective on November 11, 1993 (58 FR 51010).

Correction of Final Rule

Accordingly, pursuant to the authority delegated to me, the publication on September 10, 1993 (58 FR 47631) and the description in FAA Order 7400.9A, which is incorporated by reference in 14 CFR 71.1, are corrected as follows:

§ 71.1 [Corrected]

On page 47633, in the first column, the description for V–220 is corrected to read as follows:

V–220 [Corrected]

From Grand Junction, CO; INT Grand Junction 075° and Rifle, CO, 163° radials; Rifle; Meeker, CO; Hayden, CO; Kremmling, CO; INT Kremmling 081° and Gill, CO, 234° radials; Gill; Akron, CO; INT Akron 094° and McCook, NE, 264° radials; McCook; INT McCook 072° and Grand Island, NE, 241° radials; Kearney, NE; Hastings, NE; Columbus, NE. From Norfolk, NE; Yankton, SD; INT Yankton 015° and Sioux Falls, SD, 231° radials; Sioux Falls; INT Sioux Falls 004° and Watertown, SD, 154° radials; Watertown; INT Watertown 021° and Fargo, ND, 172° radials; Fargo; INT Fargo 004° and Grand Forks, ND, 152° radials; to Grand Forks.

Issued in Washington, DC, on December 29, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–627 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1931]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Waiver by Secretary of State and Attorney General of Passport and/or Visa Requirements for Certain Categories of Nonimmigrants

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Final rule.

SUMMARY: This final rule authorizes the District Director of the Immigration and Naturalization Service to exercise the Department of State's function with respect to the waiver of the passport and/or visa requirement under the provisions of section 212(d)(4)(A) of the Immigration and Nationality Act (INA). The rule eliminates time consuming procedures for obtaining the concurrence of passport and/or visa waivers, and benefits certain nonimmigrant aliens who, because of unforeseen circumstances, are subjected to delays when seeking admission to the United States without the required documents.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Services, Washington, DC, (202) 663–1204.

SUPPLEMENTARY INFORMATION: On July 30, 1991, the Department of State published a Notice of Proposed Rulemaking (NPRM) at 56 FR 36029. The rule proposed to amend part 41, § 41.2(j), which provided for the waiver of the passport and/or visa requirement by the District Director of the Immigration and Naturalization Service (INS) at the port of entry, with the concurrence of the designated State Department official, if such officials were satisfied that the nonimmigrant alien was unable to obtain the required documentation because of an unforeseen emergency. This final rule authorizes the District Director of the Immigration and Naturalization Service at the port of entry to exercise the Department of State's function with respect to the waiver of the passport and/or visa requirement under the provisions of INA 212(d)(4)(A).

Comment

During the comment period the Department received only one comment. The commenting organization noted that under the proposed regulations nonimmigrants who are "unable to obtain" the required documents may benefit from such a waiver. The commenter suggested that the proposed language be amended to read "unable to present" the required documents.

A review of the historical files reveals that the language in question has been in use since at least 1958. The focus at that time was on fact patterns in which the alien indeed could not for geographical, political, and other reasons obtain the required documents. Circumstances have changed radically since that time. The Department believes that the recommendation to change the word "obtain" to read "present" has merit as it more accurately reflects current world circumstances and the intent of the statute. In order to gain admission to the United States an alien must present the required pertinent documentation, whether one has the ability or not to obtain such. Absent such documentation, the immigration officer in charge at the port of entry must decide whether the applicant for admission is indeed qualified for the desired nonimmigrant visa classification and whether the inability to present the required documentation was due to an unforeseen emergency.

Furthermore, the Department wishes to clarify the limited extent of the authority delegated to the Immigration and Naturalization Service. Although the proposed rule permits the District Director to waive the documentary requirements of INA 212(a)(7)(B), the Department of State will continue to exercise the authority vested in the Secretary of State and the Attorney General under the provisions of INA 212(d)(4)(A) relating to the joint concurrence in documentary waivers, except in the circumstances described in § 41.2(j) of this final rule.

Consequently, this final rule makes minor modifications to the text of the regulation as discussed in the preamble.

This final rule is not considered to be a major rule for purposes of E.O. 12291 nor is it expected to have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. In addition, this rule does not impose information collection requirements under the provisions of the Paperwork Reduction Act of 1980. This rule has been revised as required by E.O. 12778 and certified to be in compliance therewith.

List of Subjects in 22 CFR Part 41

Aliens, Documentation, Nonimmigrants, Passport and visas, Waivers.

Accordingly, 22 CFR part 41 is amended as follows:

PART 41—[AMENDED]

1. The authority citation for part 41 continues to read as follows:

Authority: Sec. 104, 66 Stat. 174, 8 U.S.C. 1104; Sec. 109(b)(1), 91 Stat. 847.

2. In § 41.2, paragraph (j) is revised to read as follows:

§ 41.2 Waiver by Secretary of State and Attorney General of passport and/or visa requirements for certain categories of nonimmigrants.

* * * * *

(j) *Individual cases of unforeseen emergencies.* A visa and passport are not required of an alien if, either prior to the alien's embarkation abroad or upon arrival at a port of entry, the responsible district director of the Immigration and Naturalization Service in charge of the port of entry concludes that the alien is unable to present the required documents because of an unforeseen emergency. Any waiver of the visa or passport requirement may be granted by the INS district director pursuant to INA 212(d)(4)(A) without the prior concurrence of the Department of State in each case in which the district director concludes that the alien's claim of emergency circumstances is legitimate and bona fide and that approval of the waiver would be appropriate under all of the attendant facts and circumstances.

* * * * *

Dated: January 5, 1994.

Mary A. Ryan,

Assistant Secretary for Consular Affairs.

[FR Doc. 94–645 Filed 1–10–94; 8:45 am]

BILLING CODE 4710–06–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 251, 252 and 255

[Docket No. R-93-1589; FR-2951-F-02]

RIN 2502-AF09

GNMA Requests for Full Insurance on Coinsurance Loans

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This rule revises currently applicable multifamily and health facility coinsurance regulations to eliminate the requirement that the Government National Mortgage Association (GNMA), in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages held by a defaulting lender-issuer before requesting full insurance endorsement by the Federal Housing Administration (FHA). The purpose of the rule is to eliminate a current regulatory requirement which has proved to be time-consuming and, in most cases, unnecessary.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Albert B. Sullivan, Director, Office of Multifamily Housing Management, room 6160, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, voice (202) 708-3730, TDD (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The Department's former regulations concerning GNMA's right to assignment of coinsured mortgages were found at 24 CFR 251.827 (Multifamily Coinsurance—New Construction and Substantial Rehabilitation), § 252.827 (Coinsurance of Nursing Homes and Related Facilities), and § 255.827 (Coinsurance of Mortgages Covering Existing Multifamily Projects), before their recent removal as part of the termination of the Coinsurance program sections on right to assignment provided that, for any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will first attempt to have the Mortgage assigned to another eligible coinsuring lender by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are indicated on a periodically updated listing furnished to GNMA by the Commissioner and that are also GNMA issuers. If GNMA rejects all offers or no offers are received, GNMA will then have the right to perfect an assignment of the Mortgage to itself. The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance effective as of the date of assignment in accordance with the appropriate provisions of title 24 of the Code of Federal Regulations.

On October 10, 1990, a final rule was published (55 FR 41312) terminating the FHA multifamily coinsurance programs and revising parts 251, 252 and 255. As a result of the final rule, parts 251, 252 and 255 each now consist of a single section dealing with the program phase-out process. However, while the former rule's provisions are no longer included in the Code of Federal Regulations, those regulations in effect before November 12, 1990 continue to govern the rights and obligations of mortgagors, coinsuring lenders and HUD in existence before the termination of the coinsurance programs. The effect of this rule is to revise those regulations as they relate to the handling of mortgage assignments to GNMA.

On December 15, 1992 the Department published a proposed rule (57 FR 59314) identical in text to this final rule. No comments were received from the public concerning this proposed rule.

In lieu of the above-quoted paragraphs (a)(1) and (a)(2), this rule provides that "For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless it determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market or other conditions). The assignment will be attempted by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner."

Given the facts that (a) the authority to coinsure mortgages has been terminated; (b) for the most part, no market exists for the purchase of coinsurance servicing rights; and (c) none of the few remaining approved coinsuring lenders has shown any interest to date in assuming additional coinsuring risk by assignment of loans from GNMA, implementation of the regulatory requirement earlier set forth in paragraphs (a)(1) and (a)(2) has proved to be a time-consuming, burdensome and fruitless process. Therefore, this rule amends parts 251, 252 and 255 to eliminate the requirement that GNMA, in every case, first attempt to assign issuer-servicer responsibility on current coinsured mortgages before perfecting assignment of the Coinsured Mortgage to itself and requesting full insurance endorsement by FHA.

Procedural Matters

Executive Order 12866

This final rule was reviewed and approved by the Office of Management and Budget as a significant regulatory action under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993. Any changes made to the rule as a result of that review are a part of the public docket file in the office of the Rules Docket Clerk listed at the beginning of this preamble.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. This rule is procedural in nature. It effects no substantive changes in HUD programs or policies.

This rule was listed as item number 1540 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56431) under Executive order 12291 and the Regulatory Flexibility Act.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule do not have Federalism implications and, thus, are not subject to review under the Order. No programmatic or policy changes result from this rule's promulgation which would affect existing relationships between the Federal Government and State and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. The rule is procedural in nature and no

significant change in existing HUD policies or programs impacting on the family result from promulgation of this rule.

Environment

An environmental assessment is unnecessary, since internal administrative procedures whose content does not constitute a development decision affecting the physical condition of specific project areas or building sites are categorically excluded from the Department's National Environmental Policy Act procedures under 24 CFR 50.20(k).

List of Subjects

24 CFR Part 251

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

24 CFR Part 252

Health facilities, Loan programs—housing and community development, Loan programs—health, Mortgage insurance, Reporting and recordkeeping requirements, Nursing homes.

24 CFR Part 255

Low and moderate income housing, Mortgage insurance, Reporting and recordkeeping requirements.

Accordingly, 24 CFR parts 251, 252 and 255 are amended to read as follows:

PART 251—COINSURANCE FOR THE CONSTRUCTION OR SUBSTANTIAL REHABILITATION OF MULTIFAMILY HOUSING PROJECTS

1. The authority citation for 24 CFR part 251 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

2. Section 251.2 is added to read as follows:

§ 251.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 221. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 221, except that any payment will be made in cash instead of debentures.

PART 252—COINSURANCE OF MORTGAGES COVERING NURSING HOMES, INTERMEDIATE CARE FACILITIES AND BOARD AND CARE HOMES

3. The authority citation for 24 CFR part 252 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9; 42 U.S.C. 3535(d).

4. Section 252.2 is added to read as follows:

§ 252.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However, before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 232. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 232, except that any payment will be made in cash instead of debentures.

PART 255—COINSURANCE FOR THE PURCHASE OR REFINANCING OF EXISTING MULTIFAMILY HOUSING PROJECTS

5. The authority citation for 24 CFR part 255 is revised to read as follows:

Authority: 12 U.S.C. 1715b, 1715z-9 (42 U.S.C. 3535(d).

6. Section 255.2 is added to read as follows:

§ 255.2 GNMA right to assignment.

If the lender-issuer defaults on its obligations under the GNMA Mortgage-Backed Securities Program, GNMA will have the right to cause all Coinsured Mortgages held in GNMA pools by the defaulting coinsuring lender-issuer to be assigned to another GNMA-approved coinsuring lender-issuer, or to GNMA itself.

(a) For any Coinsured Mortgage that is not in default and is held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the mortgage to itself. However,

before exercising this right, GNMA will attempt to have the Mortgage assigned to another eligible coinsuring lender (unless GNMA determines, with the agreement of the Commissioner, that the attempt would prove ineffectual because of market conditions or other factors). This attempt will be undertaken by soliciting offers to assume the defaulting lender-issuer's rights and obligations under the Mortgage from those eligible coinsuring lenders that are also GNMA issuers and that are indicated on a periodically updated listing furnished to GNMA by the Commissioner.

(b) For any Coinsured Mortgage that is in default and held by a defaulting lender-issuer, GNMA will have the right to perfect an assignment of the Coinsured Mortgage directly to itself before extinguishing the Mortgage by completion of foreclosure action or acquisition of title by deed-in-lieu of foreclosure.

(c) GNMA, as assignee, will give the Commissioner written notice, within 30 days after taking a Mortgage by assignment in accordance with this section, in order to allow an appropriate endorsement and necessary changes in the Commissioner's records.

(d) The Commissioner will endorse any Mortgage assigned to GNMA as provided by this section for full insurance, effective as of the date of assignment in accordance with the appropriate provisions of 24 CFR part 207. Any future claim by GNMA, or any assignment of the fully insured Mortgage, will be governed by the appropriate provisions of 24 CFR part 207, except that any payment will be made in cash instead of debentures.

Dated: December 16, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–35 Filed 1–10–94; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8474]

RIN 1545–AQ99

Removal of Final and Temporary Regulations Relating Primarily to Provisions of Prior Law; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to the removal of final regulations.

SUMMARY: This document contains a correction to the final and temporary regulations (T.D. 8474) which was published in the **Federal Register** for Tuesday, April 27, 1993 (58 FR 25556). The regulations relate primarily to provisions of prior law for which action is taken in response to the Regulatory Burden Reduction Initiative.

EFFECTIVE DATE: April 27, 1993.

FOR FURTHER INFORMATION CONTACT: Paul C. Feinberg, (202) 622–3325 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this correction amended the Code of Federal Regulations by removing regulations under parts 1, 5, 5c, 12, 54 and 602.

Need for Correction

As published, T.D. 8474 contains an error which is misleading and is in need of correction.

Correction of Publication

Accordingly, the publication of the removal of final and temporary regulations (T.D. 8474), which was the subject of FR Doc. 93–9694, is corrected as follows:

PART 1—[CORRECTED]

On page 25557, column 2, in part 1, in the table at the end of the column, third entry following the column headings, the language

Section	Description of amendment
• • • • •	
1.48–1(e)	Removed and Reserved.
• • • • •	

is corrected to read

Section	Description of amendment
• • • • •	
1.48–1(f)	Removed and Reserved.
• • • • •	

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 94–454 Filed 1–10–94; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–4822–4]

RIN 2060–AD10

Criteria for Exercising Discretionary Sanctions Under Title I of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rulemaking sets forth criteria that EPA must consider when exercising its discretionary authority to impose sanctions on a statewide basis pursuant to the Clean Air Act as amended in 1990 (Act). If EPA makes one of the findings of State implementation plan (SIP) deficiency described in the Act, EPA may impose an emissions offset or highway funding sanction on any portion of the State that the Administrator determines is reasonable and appropriate for the purpose of ensuring that the requirements of the Act relating to plans are met. This rulemaking establishes the criteria EPA shall use in exercising its discretionary authority during the 24-month period following a finding of a plan deficiency to ensure that these sanctions are not applied on a statewide basis when one or more political subdivisions are principally responsible for such deficiency. In addition, EPA describes the discretionary sanctions provision and EPA's anticipated application of these sanctions "at any time" after the Agency makes a finding.

EFFECTIVE DATE: This rule will be effective February 10, 1994.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–91–66. A reasonable fee may be charged for copying docket materials. The Docket is located at the following address and may be inspected from 8:30 a.m. until noon and from 1:30 p.m. until 3:30 p.m., Monday through Friday: Room M–1500 (LE–131), Waterside Mall, 401 M Street SW., Washington, DC 20640.

FOR FURTHER INFORMATION CONTACT: Ted Creekmore, U.S. EPA, MD–15, Research Triangle Park, North Carolina 27711, (919) 541–5699.

SUPPLEMENTARY INFORMATION:

I. Overview

The EPA is promulgating criteria under section 110(m) of the Act to ensure that, during the 24-month period following a finding, disapproval, or

determination (hereinafter "finding") referred to in section 179(a), sanctions pursuant to section 110(m) are not applied on a statewide basis where one or more political subdivisions are principally responsible for such deficiency. Thus, these criteria apply only in the limited circumstance in which EPA is considering the imposition of statewide sanctions under section 110(m) within 24 months after the Agency makes a section 179(a) finding.

On September 28, 1992 (57 FR 44534), EPA proposed criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) of the Act may not be applied statewide. The preamble to the proposed rule contains a detailed discussion of the background of the Act, of the proposed criteria, and of the provisions of section 179 and section 110(m) (see 57 FR 44534–44535).

New § 52.30(c) of the rule provides five criteria that EPA will use to determine if sanctions imposed pursuant to section 110(m) may not be imposed statewide. If at least one political subdivision meets all five of the criteria, then that political subdivision will be considered principally responsible, and EPA will not impose sanctions on a statewide basis. Rather, EPA will impose sanctions only on the areas of the State for which EPA determines it is reasonable and appropriate to impose sanctions. If all of the criteria are not met by at least one political subdivision, then no political subdivision is principally responsible, and EPA will use its discretion to determine whether to apply statewide sanctions. However, if EPA, using its discretion, initially determines that less-than-statewide sanctions should be applied, the Agency will not need to consider the criteria; EPA will impose sanctions on those political subdivisions the Agency has determined to be reasonable and appropriate. Such decisions will be made on a case-by-case basis and each action will be subject to the notice-and-comment rulemaking procedures of the Administrative Procedure Act.[1]

In the final rule, EPA has changed four provisions from the proposal based on comments received regarding specific details of the regulatory text. They are as follows:

1. In § 52.30(a)(2), the definition of "required activity" was revised in two ways. First, the phrase "may include, but is not limited to" was deleted from the definition. Second, the phrase "adequate SIP or SIP element" is replaced by the phrase "plan or plan item." These two changes were made in order to follow more clearly the language of section 110(m). Since section 110(m) refers only to actions required with respect to a "plan or plan item," EPA agrees that the phrase "may include, but is not limited to" is unnecessary because it appears to imply EPA has authority to impose sanctions with respect to findings other than those for a plan or plan item. Furthermore, since section 110(m) uses the phrase "plan or plan item," EPA believes it would be more consistent to use that phrase in the regulatory language rather than the phrase "adequate SIP or SIP element."

2. The terms "plan or plan items" are added to the definitions section of the rule, § 52.30(a)(4), and are defined as follows: "For purposes of § 52.30, the terms 'plan' or 'plan item' mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Act, as amended in 1990, or in response to a SIP Call under section 110(k)(5) of the amended Act."

3. In § 52.30(c), "criteria," as defined in the proposal, provides: "The EPA will use the following five criteria, all of which must be met, to determine whether a political subdivision is principally responsible for the deficiency." This section is clarified by revising it to read as follows: "For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met." Thus, the rule clarifies that all five criteria are to be met, not merely used by EPA to determine how sanctions will be imposed.

4. In its proposed rule, § 52.30(d)(1), EPA provides: "If all of the criteria in paragraph (c) of this section have been met through the action or inaction of the 'same' political subdivision, EPA will not impose sanctions on a statewide basis." Although no comments were received from the public on this language, a review by the Agency suggested that the phrase "same political subdivision" may be confusing. By including that language in the rule, EPA was attempting to indicate that one political subdivision must meet all five of the criteria before EPA's authority to impose sanctions on a statewide basis would be constrained (see 57 FR 44536). For example, if a State has two nonattainment areas and a rule, which was past due under the Act, was not yet adopted and submitted to EPA for either area, EPA would look at each nonattainment area independently to determine whether the five criteria were met. If the first three criteria were met by one nonattainment area and the last two by the second nonattainment area, then EPA's authority to impose statewide sanctions would not be constrained. However, if one nonattainment area met all five of the criteria, EPA could not impose statewide sanctions based on the finding for that area. The EPA is replacing the word same with the word one in the rule in order to alleviate any confusion. This provision will be implemented in accordance with the interpretation above.

II. Background

In general, the preamble to the proposed rule notes that the Act contains two sanctions provisions:

1. Section 110(m),[2] provides the Administrator with discretion to impose sanctions at any time on any portion of the State that she determines is reasonable and appropriate;

2. Section 179(a)[3] requires the Administrator to impose sanctions after specific timeframes if the deficiencies on which the sanctions are based are not corrected.[4]

This rulemaking considers the application of sanctions under section 110(m). However, because section 110(m) and section 179 are interrelated. the preamble to the proposed rulemaking discussed sanctions under section 179 (a) and (b) in order to clarify what is required by section 110(m).

The specific types of sanctions which may be imposed under section 110(m), or must be imposed under section 179(a), are listed in section 179(b). The two sanctions provided are a highway

[1] As noted in EPA's proposed rule, the Agency will follow notice-and-comment rulemaking in every instance that EPA anticipates imposing section 110(m) sanctions (57 FR 44534, September 28, 1992). In each rulemaking action, the public will have an opportunity to comment on the proposed geographic scope of the sanctions, the timing of the sanctions, and the order in which the two available sanctions will be imposed. To the extent the public has commented on these issues as a general matter in this rulemaking action, EPA has responded by suggesting that the issue is more appropriately raised in independent rulemaking actions in which section 110(m) sanctions are proposed.

[2] 42 U.S.C. section 7410(m).

[3] 42 U.S.C. section 7509(a).

[4] It is necessary, for clarity's sake, to understand that section 179(a) performs two very distinct functions: it defines several types of findings, and requires EPA to impose sanctions if one of these findings has been made. Section 179(a) (1) through (4) sets forth the four types of findings which may lead to the imposition of a sanction. The introduction and latter part of section 179(a) mandate that at least one sanction must be imposed 18 months after a finding has been made with respect to certain types of plans if the deficiency is not corrected.

funding sanction and a 2:1 offset sanction. These two sanctions are described in more detail in the preamble to the proposed rule (see 57 FR 44535).

Section 179(b) sanctions may be applied pursuant to section 110(m) when the Administrator makes a finding under section 179(a) (1) through (4), provided that the Agency has followed all procedural requirements for imposing a sanction. The Administrator has no authority under section 110(m), nor any mandatory duty under section 179(a), to impose sanctions until she has made a finding. The types of findings provided under section 179(a) are discussed in more detail in the preamble to the proposed rule (see 57 FR 44535).

Section 110(m) may be divided into two distinct parts (see 57 FR 44535). The first part of section 110(m) contains four distinct elements:

1. The timing of the imposition of section 110(m) sanctions;
2. The availability under section 110(m) of the sanctions listed in section 179(b);
3. The reference to a finding, disapproval, or determination under section 179(a) (1) through (4); and
4. The geographic scope of application of sanctions under section 110(m).

The second part requires the Administrator to propose criteria to be used when considering the application of sanctions on a statewide basis under section 110(m) within 24 months of a section 179(a) finding. Although not central to the purpose of this rulemaking, EPA presented a detailed discussion of the four elements referred to in the first part of section 110(m) in the proposed rule. The purpose was to explain how sections 110(m) and 179 provisions are interrelated. As shall be evident in the "Response to Comments" section, the preamble language discussing these four elements was the basis for numerous comments. The criteria, which are the basis of this action, seemed to generate significantly fewer comments.

III. Development of Criteria

The second sentence of section 110(m) requires the Agency to establish criteria that EPA must apply if the Agency considers applying sanctions under section 110(m) on a statewide basis within 24 months of a section 179(a) finding. These criteria should enable EPA to determine when a political subdivision,[5] rather than the entire State, is principally responsible for a section 179(a) deficiency. Where the political subdivision is principally responsible, EPA may not impose sanctions on a statewide basis.

The EPA recognizes that an understanding of the term "principal responsibility" was integral to the development of the criteria. The preamble to the proposed rule contains a detailed discussion on how a political subdivision may be held "principally responsible" for a section 179(a) failure when the EPA recognizes that the States have primary responsibility for meeting the requirements of the Act (see 57 FR 44535–36). The EPA believes that the criteria promulgated today will clearly indicate when the political subdivision carries the principal burden of carrying out an activity.

The EPA is promulgating five criteria (summarized below) that it believes will enable a determination of when a State has relinquished its primary control over an activity to a political subdivision and the political subdivision has failed to perform that required activity. The EPA believes that the political subdivision is principally responsible when the political subdivision:

1. Has the legal authority to perform the required activity;
2. Has traditionally performed, or has been delegated the responsibility to perform, the required activity;
3. Has received, where appropriate, adequate funding or authority to obtain funding from the State to perform the required activity;
4. Has agreed to perform (and has not revoked that agreement) or is required to accept responsibility for performing the required activity; and
5. Has failed to perform the required activity.

If one or more political subdivisions each meet all five of the criteria, EPA will consider those subdivisions principally responsible, and EPA may impose sanctions only on those political subdivisions and on other areas (short of the entire State) for which the Agency determines reasonable and appropriate. The EPA would not impose sanctions statewide. However, if all of the criteria have not been met by at least one political subdivision, EPA will use its discretion to determine whether to apply sanctions on a statewide basis.

These five criteria are intended to be applicable to SIP failures relating to stationary, area, and mobile sources. The EPA believes that the criteria developed here will enable it to successfully determine when a political subdivision is principally responsible for a deficiency.

IV. Limits of This Rulemaking

Nothing in the Act precludes EPA from applying sanctions pursuant to section 110(m), without examining the criteria, if the Agency elects to impose a sanction on a less-than-statewide basis or where EPA imposes statewide sanctions more than 24 months after a finding. Furthermore, this rulemaking does not affect the situation where each of a group of political subdivisions, whose combined area comprises the entire State, suffer a deficiency. The EPA could impose a sanction on each of those political subdivisions as an independent area without applying the criteria, even though this may appear to be a statewide sanction. All decisions to impose section 110(m) sanctions will be made on a case-by-case basis, and will be subject to notice-and-comment rulemaking.

This rule is not intended to identify which sanction EPA will apply in a particular circumstance, nor the type of deficiency for which EPA might use its discretion to apply sanctions. Furthermore, it is not intended to describe the notice and comment procedures EPA will ultimately use to impose a sanction pursuant to section 110(m).

V. Response to Comments

The EPA received comments from 15 sources including business associations, and Federal, State and local government entities. The following section provides a summary of the responses to major comments.

A. The EPA's Interpretation of the Statutory Requirements of Section 110(m)

Under this category, the commenters expressed concern with respect to the timing of sanctions and the application of sanctions beyond a nonattainment area. Although, as stated before, these issues are not central to the criteria being promulgated, EPA has responded to these comments below.

1. Imposition of Sanctions Earlier Than 18 Months

Comment. The Illinois EPA (IEPA) and the Virginia Department of Transportation (DOT) believe section 110(m) does not give EPA the authority to impose sanctions earlier than 18 months after a finding under section 179. These commenters believe it is incorrect to impose any sanctions during the 18-month period immediately following a finding because section 179 clearly states that EPA may not impose sanctions if the deficiency is corrected within 18 months. The IEPA believes Congress included this 18-month period in recognition of the magnitude of the State's responsibilities under the Act as well as the time involved in the legislative and rulemaking processes. Also, the Illinois DOT states that because section 179 is the more detailed sanctions provision, under established principles of statutory construction and interpretation, it must prevail over section 110(m).

The IEPA suggests that if EPA determined to impose sanctions earlier than the 18-month period specified in section 179, EPA should develop specific criteria for when these early sanctions will be imposed, and provide notice and opportunity for potentially affected parties to comment prior to imposing sanctions. The IEPA also indicates that these criteria are necessary to avoid placing industries that are located in States that meet deadlines in a timely manner at a competitive disadvantage.

Response. Section 110(m) provides that the Administrator "* * * may apply any of the sanctions listed in section 179(b) (at any time or at any time after) the Administrator makes a finding. * * *" under section 179(a). This language plainly authorizes sanctions without regard to a waiting period after a finding is made.

The EPA believes that section 179 is phrased to require sanctions after 18 months not, as the commenters say, to prohibit sanctions before 18 months. Section 179 states "for any implementation plan or plan revision required under this part (or required in response to a finding of substantial inadequacy as described in section 110(k)(5)), if the Administrator [makes a finding], unless such deficiency has been corrected within 18 months after the finding * * * one of the sanctions referred to in subparagraph (b) shall apply. * * *" This provision mandatorily imposes sanctions at 18 months if the deficiency has not been corrected, but does not prohibit sanctions earlier. Because section 179 does not prohibit the earlier application of sanctions, it does not conflict with section 110(m), which provides that sanctions may be imposed earlier than 18 months. Therefore, there is not a statutory construction issue of whether section 179 needs to prevail over section 110(m).

Regarding the request by the IEPA that EPA develop specific criteria for when an early sanction will be imposed, the EPA does not believe such criteria are statutorily required; however, since EPA will provide the public with an opportunity to comment on any sanction action under section 110(m) through notice-and-comment rulemaking prior to imposition of the sanctions, the public will have the opportunity to comment on EPA's rationale for the application of sanctions earlier than 18-months following the finding. Although EPA does not intend to develop specific criteria, Section A(4) of this preamble provides further discussion on application of sanctions earlier than 18-months following a finding.

As to IEPA's concern about competitive disadvantage, imposition of sanctions under section 110(m) should benefit sources located in those areas that make timely submittal of plans and plan revisions. Rather than delaying sanctions until 18 months after a finding, under section 110(m) sanctions may be applied much earlier than 18 months. Therefore, delinquent areas may be burdened much sooner than the 18-month period under section 179. Imposition of section 110(m) sanctions should inhibit any advantage achieved through delayed submittal of required plans and revisions.

2. Application of Sanctions Beyond Nonattainment Areas Comment

Five commenters believe highway sanctions should not be imposed outside of a nonattainment area. The Texas DOT, New York DOT, Illinois DOT and IEPA are concerned that EPA has not extended the nonattainment limitations of section 179 (a) and (b) to the imposition of sanctions under section 110(m). These commenters indicate that sanctions should apply only to nonattainment areas. The Virginia DOT believes that section 110(m) sanctions should not extend beyond a nonattainment area, except in extreme cases (such as where lack of good faith exists) and after a 24-month correction period has passed.

The New York DOT and IEPA believe that EPA's position regarding the geographic applicability of offset and highway sanctions is inconsistent, and that the reasoning that is applied to make the offset sanction applicable to a specific area should benefit the highway sanction as well. The IEPA feels that section 110(m) refers to the section 179(b) sanctions without exempting the Administrator from complying with the geographic limitations specified in section 179(b).

The Illinois DOT comments that section 110(m) allows EPA to sanction an area less than a whole nonattainment area if a unit of local government is really to blame.

The New York and Illinois DOT also state that since the statute is clear and understandable on its face, no reference to legislative history is required or allowed. The Illinois DOT believes that section 110(m) should be viewed in conjunction with section 179(b)(1), and if Congress had not meant to limit the use of highway funding sanctions to nonattainment areas, it would not have placed that limitation in section 179(b). The Illinois DOT comments that Congressman Anderson had prefaced his remarks as expressing the intent of only four members of the House Public Works and Transportation Committee. The commenter noted that in May 1990 the House Energy and Commerce Committee sent out a version of the Amendments with no limit in section 179(b) on the area for sanctions (see H. Rep. No. 140, 101st Cong., 2d Sess., Part 1). The House Public Works Committee responded with a report of its own at that time amending section 110(m) and repeating almost the same words quoted by EPA in the proposed rulemaking. Congressman Anderson's words may have been on the point then, but they did not agree with the language of section 179(b) the way it was finally passed by Congress.

Also, the Illinois DOT cites the House Conference Committee Report which accompanied the final version of the Act as evidence that sanctions are to be limited to nonattainment areas [H. Rep. No. 952, 101st Cong., 2d Sess. 335–6; Cong. Rec. H13101, 13197; Oct. 26, 1990; 1990 U.S. Code Cong. & Adm. News 3385, 3867–8 (Discussing imposition of sanctions "* * * in an area that fails to prepare or implement a plan to attain air quality standards. * * *")].

Response. To address the concerns of all five commenters, EPA believes that section 110(m) and section 179, although interrelated, do set up two distinct sanctions processes. In general, section 179 provides for mandatory sanctions with respect to failures under part D (in general, the nonattainment area provisions). As provided in the proposed rule, section 179 focuses on nonattainment areas in several respects (see 57 FR 44536–37). First, the general introductory language of section 179(a) provides that sanctions must be imposed for a failure with respect to "* * * any implementation plan or plan revision required under this

[5] In § 52.30(a)(1), EPA defines the term *political subdivision* as "* * * the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C., section 7504, by the State to carry out the air planning responsibilities under part D."

part. * * *" The provision is referring to part D of title I, the portion of the Act dealing with nonattainment area requirements. While some part D requirements may also apply to attainment areas in limited circumstances, the primary focus of part D is nonattainment areas. Second, the highway sanction language expressly limits the application of sanctions under section 179(a) to nonattainment areas. Finally, the offset sanction requires new or modified sources in complying with the requirements of section 173 to increase their offsets to 2:1. Typically, only sources in nonattainment areas need to comply with section 173 and, therefore, in most instances the offset sanction will only affect sources in nonattainment areas. For the above reasons, EPA believes that section 179(a) does not require statewide imposition of sanctions.

On the other hand, section 110(m) clearly provides for the imposition of sanctions beyond nonattainment areas. The express language of section 110(m) provides that the Administrator may impose sanctions on "* * * any portion of the State the Administrator determines reasonable and appropriate. * * *" Beyond that, section 110(m) provides for the discretionary imposition of sanctions for a finding that an area has failed to meet any requirement with respect to any "plan or plan item" under the Act. Such requirements could apply to nonattainment, attainment, or unclassified areas. Although section 110(m) refers to the sanctions established in section 179(b), there is no language stating that the geographical limitations in section 179 override section 110(m)'s express authorization for sanctions on any part of the State that EPA determines reasonable and appropriate. Section 110(m) refers only to the sanctions themselves, not the accompanying limitations. For the above reasons, EPA believes that section 110(m) does establish its own geographic scope.

The Virginia DOT suggests that EPA should limit application of section 110(m) sanctions beyond the nonattainment area to circumstances where there is a lack of good faith. While EPA may take good faith into consideration in determining the geographic scope of section 110(m) sanctions, EPA does not agree that it should establish lack of good faith as a prerequisite for imposition of section 110(m) sanctions beyond the nonattainment area.

With respect to the comment of Illinois DOT that EPA can sanction less than an entire nonattainment area, the Agency agrees that under section 110(m)'s broad grant of authority for the imposition of discretionary sanctions, EPA may select an area smaller than the nonattainment area.

The IEPA comments that EPA is treating the geographic limitations of the highway and offset sanctions differently and that EPA should say that highway sanctions are also limited in scope. The EPA disagrees. First, we believe that both sanctions may be imposed on any portion of the State. However, by its method of application, the offset sanction will only have effect in those areas that must apply the emission offset requirements of section 173. Therefore, the offset sanction would have no effect in certain areas. The highway sanction is not self-limiting; therefore, it will have a broader effect.

Second, the EPA did not rely on legislative history to override statutory language, but rather to support statutory language that grants EPA discretion to apply sanctions to other than nonattainment areas. The Illinois DOT bases its argument that the legislative history does not support the imposition of sanctions beyond the nonattainment area on an assumption that section 110(m) does not provide an independent grant of authority to impose sanctions. However, the Act does provide two separate grants of sanction authority with different geographic scopes; this is supported by the language of the Act, as described above, and by the legislative authority. The language from H. Conf. Rep. No. 101–952 that references the imposition of sanctions on an area that fails to attain the air quality standard appears to refer to the imposition of sanctions under section 179 because it discusses the required imposition of sanctions. The language cited by EPA in the preamble to the proposed rule addresses a different grant of statutory authority to impose sanctions, namely, that authority under section 110(m). In addition, Illinois DOT cites H. Rep. No. 101–490, which clearly provides that EPA may impose sanctions beyond nonattainment areas by stating that EPA "* * * is empowered to apply sanctions to any portion of a State." The committee goes on to clarify how it believes EPA should use this broad grant of authority, indicating that EPA should impose sanctions on the governmental entity that is "primarily responsible," and noting that a State legislature's failure to adopt an inspection/maintenance program is a circumstance where statewide sanctions are appropriate.

3. Section 110(m) Does Not Establish Independent Authority to Sanction

Comment. The Virginia DOT believes section 179 is the basis for imposing sanctions and is not superseded by section 110(m). Furthermore, the Virginia DOT comments that section 110(m) expands on section 179 by requiring that an additional minimum 6-month grace period must be observed after the initial 18-month period (i.e., 24 months) before sanctions may be imposed on a statewide basis where a political subdivision is principally responsible for the deficiency. The City of Chicago comments that EPA's proposed imposition of statewide sanctions under section 110(m) as an alternative to section 179 would vitiate section 179. Once EPA determines none of the political subdivisions meet the criteria, and thus the entire State is principally responsible for a section 179(a) deficiency, EPA is bound by the requirements of section 179.

Response. The EPA agrees that sanctions cannot be imposed statewide within the first 24 months following a finding where a political subdivision is found principally responsible for the deficiency. However, EPA disagrees that section 179 provides the sole authority for imposing sanctions and, in doing so, allows for the imposition of statewide sanctions. As discussed in the response to Comment 2 above, section 179 does not refer to the imposition of statewide sanctions and, in fact, focuses on the imposition of sanctions in nonattainment areas. In fact, the EPA believes the reference to statewide sanctions under section 110(m) makes it clear that section 110(m) establishes a different authority to sanction States and that statewide sanctions are not required under section 179. Section 110(m) provides that statewide sanctions shall not be applied within 24 months of the time a finding is made if a political subdivision is principally responsible for the deficiency; this provision means that statewide sanctions may be imposed earlier than 24 months if no political subdivision is found principally responsible. If section 179 required statewide sanctions after 18 months, it would be contrary to the section 110(m) provision that sanctions shall not apply within the 24 months following the finding if a political subdivision is principally responsible for the deficiency. Therefore, EPA believes that its ability to impose statewide sanctions during the 24-month period following a finding is based on a determination under section 110(m) that a political subdivision is not principally responsible for the deficiency.

Section 110(m) does not vitiate section 179 because section 179 sanctions are not statewide but are imposed on the specific area for which the deficiency arises, in most instances nonattainment areas. As stated previously, section 179 mandates that sanctions be imposed 18 months after a finding is made. While the imposition of sanctions earlier under section 110(m) could remove the need to impose sanctions under section 179 sanctions in that area, section 179 has continued force and effect in areas where section 110(m) sanctions are not imposed. The EPA does not believe that imposition of sanctions under section 110(m) conflicts with section 179 sanctions. Application of sanctions earlier than 18 months is not inconsistent because EPA believes the purpose of section 179 was to ensure that EPA did not delay sanctions beyond the periods prescribed in that action.

4. Regulatory Limitation on Early Imposition of Sanctions

Comment. The United States Department of Transportation (U.S. DOT) recommends adding a statement to the rule that EPA expects to impose sanctions on a statewide basis earlier than 18 months only in limited circumstances, after notice-and-comment rulemaking.

Response. This statement was not in the proposed rule and EPA believes it should not be included in the final rule. The EPA stated in the preamble to the proposed rule that it would only apply sanctions early in "unusual circumstances where the State has indicated explicit resistance to working to resolve a plan deficiency" (see 57 FR 44534). The final rule revises this preamble language because EPA believes the term "unusual circumstances" provides little guidance as to when EPA intended to use its discretionary sanction authority.

While EPA does not intend to use the section 110(m) authority in all situations where a finding is made, the Agency needs to ascertain that it has the flexibility to use this option when necessary. In order to develop some plans or plan items, States must perform certain steps that EPA can track to determine whether the State will meet deadlines in the Act. When a State believes that EPA can impose sanctions only after a deadline is missed and 18 months have gone by, then there is little incentive for the State to take the necessary actions to complete authorization and implementation of politically-difficult rules and regulations. The EPA needs to maintain its flexibility to respond rapidly to situations where it appears a State will not meet a deadline, and to assure the State that it does not, in fact, have an extended grace period for noncompliance. The certainty and swiftness of imposition of the Act's penalties are critical to timely completion of the SIP's. Consequently, the revised language, clarifies EPA's position concerning when discretionary sanctions may be appropriate while retaining EPA's flexibility to use such sanctions to ensure compliance with the Act. Thus, EPA will exercise section 110(m) sanctions earlier than 18 months only in cases where:

1. The State has indicated an explicit resistance to resolving a plan or program deficiency or to making a required plan or program submittal; or

2. Where special circumstances, particular program needs, or time constraints dictate the need for use of such sanctions.

Thus, the rule retains the Administrator's discretion to apply sanctions at any time after a finding is made; however, EPA will provide notice and opportunity for comment on the basis for all section 110(m) actions.

B. EPA Discretion to Determine the "Reasonable and Appropriate" Area for Imposition of Sanctions

1. *Comment.* The City of Chicago believes the discretion in § 52.30(d)—that if the criteria are met EPA may impose sanctions on a less than statewide basis to the area it determines is reasonable and appropriate—was not Congress' intent in enacting section 110(m). The City of Chicago believes EPA's only discretion is whether to apply sanctions to political subdivisions that meet the criteria. Thus, the City of Chicago believes EPA has no basis to apply sanctions when the criteria are not met (i.e., to apply sanctions to political subdivisions that were thought to be principally responsible, but did not meet the criteria, and to any other surrounding political subdivisions EPA determines is reasonable and appropriate) and that to apply sanctions to these areas is arbitrary and capricious.

Response. Section 110(m) states that sanctions may be applied to any portion of the State the Administrator determines reasonable and appropriate, with one exception. If one or more political subdivisions are principally responsible for the deficiency, sanctions may not be applied statewide. Therefore, if the criteria are met, i.e., a political subdivision is principally responsible, then EPA may not impose sanctions on a statewide basis. However, if no political subdivision is principally responsible, the text of section 110(m) expressly authorizes EPA to move forward and impose sanctions on a statewide basis. The EPA would make a determination, however, concerning what area of the State for which sanctions would be reasonable and appropriate. Furthermore, EPA is not required to establish criteria to determine the area of the State for which it is reasonable and appropriate to apply sanctions under section 110(m).

2. *Comment.* Four commenters, New York DOT, the Orange County Transportation Authority (OCTA), the City of Chicago, and the U.S. DOT, requested clarification of how EPA will determine the "reasonable and appropriate" area to apply sanctions. The City of Chicago and the U.S. DOT assert that the statute requires such clarification. The New York DOT believes that the lack of adequate guidance on what area is "reasonable and appropriate" will create confusion and continual uncertainty on the part of States as well as Federal agencies. The New York DOT suggests that the prime consideration should be whether a good faith effort has been made to bring the nonattainment area into compliance. The New York DOT believes that if this issue is not addressed in this rulemaking, it should be the subject of another rulemaking.

The OCTA cites the example of California, which consists of several regional authorities, which, in turn, each consist of several local jurisdictions. The OCTA is concerned about how EPA would impose sanctions in the case where a regional authority contains several local jurisdictions and where a local authority failed to do everything mandated by a regional plan. The commenter believes it would be more reasonable and appropriate to apply sanctions to the single local jurisdiction, not the regional authority. In addition to assuring that the State does not suffer sanctions if one political subdivision is principally responsible for the deficiency, the commenter suggests that EPA assure that regions within a State would not be subject to sanctions if one or more local jurisdictions is/are principally responsible for the deficiency.

The U.S. DOT comments that in situations where a nonattainment area contains multiple political subdivisions, none of which are principally responsible according to the five criteria, the rule must clarify how EPA will determine whether to apply sanctions to the specific responsible

political subdivision(s) rather than the entire nonattainment area.

The City of Chicago and U.S. DOT assert that the statutory mandate to promulgate criteria is not limited to the determination of principal responsibility. These commenters argue that EPA must also develop criteria to determine when the imposition of sanctions would be reasonable and appropriate, and the criteria should be sufficient to put potentially affected political subdivisions on notice of the activities or agreements which may put them at risk of sanctions.

Response. Section 110(m) specifically provides that EPA may impose sanctions on any part of the State that EPA deems is reasonable and appropriate. Section 110(m) then requires that EPA "* * * establish criteria for exercising (this) authority * * * to ensure that * * * such sanctions are not applied on a statewide basis where one or more political subdivisions covered by the applicable implementation plan are principally responsible for such deficiency." The EPA believes this language strictly limits the required development of criteria to those necessary to determine if a political subdivision is principally responsible for the deficiency. There is no requirement that the criteria must guide EPA's further decision of which area is "reasonable and appropriate" for the imposition of sanctions. At this time, EPA does not have experience with imposing these sanctions and, therefore, does not want to constrain the Agency in the exercise of this discretion. The variety of circumstances would make it difficult to develop criteria that would be applicable in every instance. As to the comments of the City of Chicago and the U.S. DOT that EPA needs to establish criteria for when it will impose sanctions under section 110(m), EPA does not believe that such criteria are mandated. The public will have an opportunity to comment on EPA's determination of the area on which it will impose sanctions and the timing of sanctions during each specific section 110(m) rulemaking action.

C. Selection and Design of Criteria

Under this category, the commenters focused their particular concerns on the sanction criteria.

1. *Comment.* The OCTA suggests that the rule clarify that all five criteria are to be met, not merely used, by EPA to determine if a subdivision is principally responsible for the deficiency. The OCTA suggests the following language: "Criteria. The EPA will use the following five criteria, all of which must be met, to determine whether a political subdivision is principally responsible for the deficiency."

Response. The EPA agrees with this comment but determined that language other than that suggested would be clearer. Therefore, EPA has revised § 52.30(d)(1) to read as follows: "For the purposes of this action, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met."

2. *Comment.* The New York DOT comments that the necessity for all five criteria to be met is overly strict and biased toward imposition of sanctions statewide, and it may be difficult to establish that all five have been met. Therefore, the New York DOT suggests that only a majority (three out of five) be met.

Response. The EPA believes all five criteria are needed to determine whether a political subdivision is principally responsible. The EPA sees no compelling reason to weaken this requirement. In addition, the failure to determine that one or more areas are principally responsible does not presuppose the imposition of statewide sanctions; the EPA must determine that the area sanctioned is the reasonable and appropriate area.

3. *Comment.* The U.S. DOT requests clarification of what State actions are necessary to provide adequate legal authority under the proposed Criterion 1. Criterion 1 states that the State must provide adequate legal authority to a political subdivision to perform the required activity.

Response. The EPA does not believe that there is a single distinct definition of the term "legal authority." What constitutes adequate legal authority may vary from State to State. This should be handled on a case-by-case basis.

4. *Comment.* The New York DOT comments that under the proposed Criterion 2 [§ 52.30(c)(2)], there must be a very clear agreement in the SIP or some other document as to which functions are to be performed by which agencies. For example, functions traditionally performed by local agencies may not be performed that way under the Intermodal Surface Transportation Efficiency Act (ISTEA).

Response. The EPA agrees with the commenter and encourages States to develop clear agreements as to which functions are being performed by which agencies. Note in particular that section 174 of the Act requires States to jointly review and update, as necessary, their planning procedures that were in effect before the Act was amended in 1990 or to develop new procedures as appropriate. In preparing such procedures, State and local elected officials must determine which elements of a revised SIP will be developed, adopted, and implemented by the State, and which elements will be carried out by local or regional entities. The EPA has provided guidance on this and other section 174 requirements in a document entitled "1992 Transportation and Air Quality Planning Guidelines" (July 1992, EPA 420/R-92-001). The EPA will work with the State and the political subdivision to ascertain if this criterion has been met. In addition, any comments raised as to this issue during the rulemaking process on a specific section 110(m) action will be properly considered by EPA.

5. *Comment.* Concerning Criterion 4 [§ 52.30(c)(4)], the U.S. DOT also comments there should be a provision included to provide against "State failure." If a local agency cancels an agreement to perform a certain function, it might leave the State without the time or resources to perform the function. Thus, the State, instead of the local agency, would become principally responsible. The U.S. DOT believes it would be inappropriate to apply statewide sanctions in such a case.

Response. If the local agency cancels its agreement to perform a function, EPA would take this into consideration when determining whether the political subdivision is principally responsible in causing the deficiency. Moreover, this factor may be considered in determining the area to which it is reasonable and appropriate to apply sanctions. The EPA can consider all factors in determining what area is reasonable and appropriate.

6. *Comment.* The Massachusetts DOT believes the rule should contain a specific provision for State consultation in determining principal responsibility because many factors such as regional demographic trends, changing local traffic patterns, and land-use decisions in adjoining areas have a larger impact on emissions than institutional arrangements for air quality planning. The proposed criteria may be the best way to evaluate whether the State or the political subdivision is solely responsible for the emissions requirements, but it may not be relevant in targeting the actual source of the problem or in defining solutions.

Response. To the extent it determines appropriate, EPA will consult with the State when evaluating the criteria under section 110(m). In any event, the State will have adequate opportunity to raise any such concerns in the comment period following the notice of proposed rulemaking for imposition of section 110(m) sanctions.

D. Other Relevant Comments

1. *Comment.* The State of Vermont comments that it is the only State in attainment with the ozone national ambient air quality standards and also located within the Northeast Ozone Transport Region. Vermont requests clarification in the rule of whether attainment status or inclusion in the ozone transport region (OTR) is the deciding factor with respect to applicability of these rules.

Response. Neither attainment status nor inclusion in the OTR is the deciding factor. Under section 110(m), EPA may impose sanctions on a statewide basis or on any area of the State deemed reasonable and appropriate based on the failure of the State or a political subdivision of the State to meet a requirement of the Act with respect to a plan or plan element. If a requirement is applicable to a political subdivision of the State, EPA will determine whether that political subdivision was principally responsible for the failure, using the criteria established in this rulemaking. The EPA's ability to use the section 110(m) sanctions is not limited to nonattainment areas or areas that must meet the title I, part D nonattainment requirements.

2. *Comment.* The City of Chicago comments that the term "required activity" contravenes the definition of required activity in section 179 and permits EPA to sanction entities without providing any prior notice that EPA considers a particular action to be sanctionable. The City of Chicago also comments that since section 110(m) incorporates section 179(a), EPA is not permitted to create a second, conflicting definition. Furthermore, the proposed definition does not identify covered activities, and it does not give entities prior notice of sanctionable activities. Finally, the City of Chicago is concerned about the ambiguity of the definition and that it may mean EPA is expanding the definition from section 179(a).

Response. Section 179(a) does not define required activity. Rather, EPA believes this introductory phrase under section 179(a) refers to submittals required under part D of the Act. The four general categories of activities listed in section 179(a) are the four possible types of State failure with respect to the required activities under part D. The types of failure are not synonymous with required activities under the introductory language of section 179(a). Finally, the City of Chicago contends that the definition of "required activity" is too open-ended because of the language "may include, but is not limited to."

The EPA interprets the term "required activity" for purposes of section 110(m) in a manner similar to that for section 179(a); however, EPA recognizes that for section 110(m), "required activity" refers to any plan or plan item requirement under the Act, not just those required under part D. Finally, EPA agrees that the language "may include, but is not limited to" may provide broader authority than that granted under section 110(m). Therefore, EPA has changed the definition in the final rule to provide: "The term 'required activity' refers to the submission of a plan or plan item or the implementation of a plan or plan item under the Clean Air Act."

3. *Comment.* The OCTA and the U.S. DOT request clarification of the term "political subdivision." Both commenters appear concerned about whether EPA in making a determination of "principal responsibility" may consider less than the entire nonattainment area. The OCTA notes that California has several regional authorities that each are composed of numerous local jurisdictions. These local jurisdictions often have the responsibility for "adopting and implementing air pollution controls."

Response. The definition of "political subdivision" set forth in § 52.30(a)(1) includes all types of governmental entities, including local jurisdictions. The EPA could sanction less than an entire nonattainment area based on a determination that a local jurisdiction was principally responsible for the deficiency on which the sanction is based.

4. *Comment.* The OCTA comments that the proposed rule should include a definition of "plan item." The OCTA notes that section 110(m) reads in part "* * * in relation to any plan or plan item (as that term is defined by the Administrator). * * *" The OCTA cites the example of the California SIP, which is partially composed of regional plans. Some regional plans require local jurisdictions to take certain actions, which to the commenter appear to be plan items.

Response. As discussed earlier, to make this clearer, EPA replaces the phrase "adequate SIP or SIP element" under § 52.30(a)(2) with the phrase "plan or plan item." Although EPA interpreted the phrase "adequate SIP or SIP element" to essentially mean the same as the phrase "plan or plan item," this replacement is more consistent with the language of section 110(m) which refers to "plan or plan item." "Plan and plan item" are also defined under § 52.30(a)(4).

E. Comments on Policy Stated In Preamble to Proposed Rule

1. Choice of Sanctions

Comment. The Texas DOT, the Chemical Manufacturers Association (CMA), and the Northwest Indiana Regional Planning Commission (NIRPC) asked EPA to identify which sanction will be applied for various types of SIP deficiencies. These commenters all state that the sanction should be tied to the underlying deficiency. For example, the commenters state that highway sanctions should only be applied when there is a SIP deficiency relative to mobile sources and the offset sanction where the deficiency is relative to stationary sources. The CMA recommends adding extra language to the rule as follows: "The EPA will assess the nature of the deficiencies and take this into account when determining which sanction to apply."

The NIRPC further asserts that only those projects which have the potential for increasing emissions should be targeted; withholding highway funds which may correct a problem is inappropriate.

Response. The type of sanction to be applied and the selection procedure are not part of this rulemaking. Sanction determinations will be made on a case-by-case basis. The EPA will go through notice-and-comment rulemaking on selection and imposition of sanctions under section 110(m). The notice will propose for comment which sanctions or sanction will be applied. In addition, the Act sets forth those projects exempted from the highway funding restrictions. The EPA will act consistently with the requirements of the Act in imposing the highway funding restrictions.

2. Impact of Rule on Title 23 Funds

Comment. The American Public Transit Association is concerned about how EPA's sanction determination process could affect the process and procedures of transferring flexible funds (i.e., certain title 23 program funds) from highway to transit purposes. The Southeastern Pennsylvania Transportation Authority requests clarification of how any imposed restrictions on highway funds would affect funds previously flexed to transit as provided for in the ISTEA.

Response. This rulemaking is not intended to address how the highway sanctions will be implemented. The EPA is in the process of developing procedures with the U.S. DOT to

provide for the coordinated implementation of the highway sanction. The EPA and the U.S. DOT will develop procedures consistent with the specifications in section 179(b).

3. Authority to Sanction For Failure to Implement

Comment. The Massachusetts DOT comments that EPA's authority to sanction a State if "* * * a requirement of an approved plan is not being implemented is too broad, given the large number of agencies, regulatory authorities, and group interests which can prevent a planned project from being implemented." Instead, a State's good faith effort to implement an approved project should be identified as an exception to this policy.

Response. The types of findings that may lead to the imposition of sanctions are specified in the Act; they are not being developed by this rulemaking. Therefore, once a finding of failure to implement a plan has been made, section 179(a) requires that the 18-month mandatory sanctions clock begins. Furthermore, any finding made under section 179(a) provides EPA with discretion to impose sanctions under section 110(m).

4. Clarification of Offset Sanction

Comment. The Massachusetts DOT requests clarification of the requirement for a 2:1 emissions reduction from existing sources to offset emissions from major new facilities. The Massachusetts DOT believes it is not reasonable to require reductions from existing, older or congested facilities before major new improvements are made.

Response. The procedure by which facilities offset emissions is not the subject of this rulemaking. Those issues must be resolved in regulations adopted by the State pursuant to the requirements of section 173.

VI. Miscellaneous

A. Relationship to Permit Program

The Act includes specific sanctions provisions for permitting requirements in section 502(d) and (i), 42 U.S.C., 7661a(d) and (i). The section 110(m) sanctions procedure does not apply with respect to findings regarding permit program failures.

B. Executive Order 12866

Under Executive Order 12866, (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, OMB has notified EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

C. Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C 605(b), the Administrator hereby certifies that the attached rule will not have a significant economic impact on a substantial number of small entities. Since the rule requires EPA to consider criteria before applying sanctions on a statewide basis, it potentially could result in a reduced burden on small entities.

D. Paperwork Reduction Act

This proposed rule does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone, Carbon monoxide, Nitrogen oxides, Sulfur dioxide, PM–10, Sanctions.

Dated: December 29, 1993.

Carol M. Browner,

Administrator.

40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATIONS PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Part 52 is amended by adding a new § 52.30 to subpart A to read as follows:

§ 52.30 Criteria for limiting application of sanctions under section 110(m) of the Clean Air Act on a statewide basis.

(a) *Definitions.* For the purpose of this section:

(1) The term "political subdivision" refers to the representative body that is responsible for adopting and/or implementing air pollution controls for one, or any combination of one or more of the following: city, town, borough, county, parish, district, or any other geographical subdivision created by, or pursuant to, Federal or State law. This will include any agency designated under section 174, 42 U.S.C. 7504, by the State to carry out the air planning responsibilities under part D.

(2) The term "required activity" means the submission of a plan or plan item, or the implementation of a plan or plan item.

(3) The term "deficiency" means the failure to perform a required activity as defined in paragraph (a)(2) of this section.

(4) For purposes of § 52.30, the terms "plan" or "plan item" mean an implementation plan or portion of an implementation plan or action needed to prepare such plan required by the Clean Air Act, as amended in 1990, or in response to a SIP call issued pursuant to section 110(k)(5) of the Act.

(b) *Sanctions.* During the 24 months after a finding, determination, or disapproval under section 179(a) of the Clean Air Act is made, EPA will not impose sanctions under section 110(m) of the Act on a statewide basis if the Administrator finds that one or more political subdivisions of the State are principally responsible for the deficiency on which the finding, disapproval, or determination as provided under section 179(a)(1) through (4) is based.

(c) *Criteria.* For the purposes of this provision, EPA will consider a political subdivision to be principally responsible for the deficiency on which a section 179(a) finding is based, if all five of the following criteria are met.

(1) The State has provided adequate legal authority to a political subdivision to perform the required activity.

(2) The required activity is one which has traditionally been performed by the local political subdivision, or the responsibility for performing the required activity has been delegated to the political subdivision.

(3) The State has provided adequate funding or authority to obtain funding (when funding is necessary to carry out the required activity) to the political subdivision to perform the required activity.

(4) The political subdivision has agreed to perform (and has not revoked that agreement), or is required by State law to accept responsibility for performing, the required activity.

(5) The political subdivision has failed to perform the required activity.

(d) *Imposition of sanctions.* (1) If all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will not impose sanctions on a statewide basis.

(2) If not all of the criteria in paragraph (c) of this section have been met through the action or inaction of one political subdivision, EPA will determine the area for which it is reasonable and appropriate to apply sanctions.

[FR Doc. 94–551 Filed 1–10–94; 8:45 am]
BILLING CODE 6560–50–P

40 CFR Part 52

[ND4–1–5670, UT8–1–5842; FRL–4823–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Programs for the States of North Dakota and Utah

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: On August 25, 1993 EPA published the notices of proposed rulemaking to approve the State Implementation Plan (SIP) revisions submitted by the States of North Dakota and Utah for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM) in each State. The implementation plans were submitted by the States to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval was set forth in the proposals. No comments were received pursuant to these proposed actions. Therefore, EPA is proceeding with its approval of the revisions to the North Dakota and Utah SIPs for establishing a PROGRAM in each State.

EFFECTIVE DATE: This rule will become effective on February 10, 1994.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code–8ART-AP, USEPA Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background of Revisions

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The States of North Dakota and Utah submitted SIP revisions to EPA in order to satisfy the requirements of section 507 of the CAA. In order to gain full approval, the State's submittals must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses required by section 507(a);

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process which is required by section 507(a)(3); and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP required by section 507(e).

II. Summary of Submittals

The State of North Dakota has met all of the requirements of section 507 of the CAA by submitting a SIP revision that implements all required PROGRAM elements. N.D.C.C. sections 23–25–02 and 23–25–03 grants the Department the authority to undertake the elements of the PROGRAM. The Governor, through Executive Order 1992–5, established the Small Business Compliance Advisory Panel. The North Dakota State Department of Health and Consolidated Laboratories (the Department) formally adopted the SIP revision on October 23, 1992, which identifies a plan to implement the PROGRAM. This SIP revision is being added to the North Dakota SIP as section 12. The North Dakota PROGRAM was submitted to EPA by the Governor of North Dakota on November 2, 1992, and was initially reviewed for administrative and technical completeness. In a letter dated December 15, 1992, EPA requested additional information from the State in order to make a positive determination on the submittal. After receiving the additional information on January 18, 1993, EPA notified the State in a letter dated February 2, 1993, that the submittal was administratively and technically complete. The submittal then underwent review by EPA headquarters, and received a concurrence from all reviewers.

The State has met the first PROGRAM element by committing in its SIP revision section 12.5 to meet the six requirements set forth in section 507(a)(3) for the Small Business Assistance Program. The State has met the second PROGRAM element by locating the position of the Small Business Ombudsman in the Office of the Chief of the Environmental Health Section effective April 6, 1992, as stated in its SIP revision section 12.3. The State has met the third PROGRAM element through Executive Order 1992–5 dated May 21, 1992, issued by the Governor of North Dakota, which established a Small Business Compliance Advisory Panel in the State of North Dakota, and by outlining in its SIP revision section 12.4 the functions of the CAP and how the members will be determined, which is consistent with section 507(e). Additionally, the State of North Dakota has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's

eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in section 12.2 of the State's SIP revision.

The State of Utah has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. Section 19–2–109.2 of the Utah Code Annotated, 1953, as amended authorizes the Utah Air Quality Board to establish a SBAP, and create a Compliance Advisory Panel. A new section 17, which is a plan for implementation of the SBAP, will be added to the Utah SIP. R307–2 of the Utah Air Conservation Rules incorporates this SIP revision by reference. The Utah PROGRAM was submitted to EPA by the Governor of Utah on November 9, 1992, with supplemental information sent on November 5, 1992, and January 11, 1993. EPA notified the State in a letter dated December 30, 1992, that the submittal was administratively and technically complete. The submittal then underwent review by EPA headquarters, and received a concurrence from all reviewers.

The State of Utah has met the first PROGRAM element by committing in section 17.3 of its regulations to meet the six requirements set forth in section 507(a)(3) of the CAA for the Small Business Assistance Program. The State of Utah has met the second PROGRAM element by locating the Office of the Small Business Ombudsman in the Department of Environmental Quality, Office of the Executive Director, as stated in section 17.5.1 of its regulations. The State of Utah has met the third PROGRAM element by outlining in sections 17.4.1 and 2 of its regulations the functions of the CAP and how the members will be determined, which is consistent with section 507(e) of the CAA. Additionally, the State of Utah has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in section 507(c)(1) of the CAA. This mechanism is contained in section 17.2 of the State's regulations.

III. Final Action

EPA is approving the SIP revisions submitted by the States of North Dakota and Utah. The revisions were made to satisfy the requirements of section 507 of the CAA.

This action has been classified as a Table 3 action by the Acting Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By this action, EPA is approving two State programs created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. These programs do not impose any new regulatory burdens on small businesses; they are programs under which small businesses may elect to take advantage of assistance provided by the States. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control.

Dated: December 28, 1993.

Jack W. McGraw,

Acting Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart JJ—North Dakota

2. Section 52.1833 is added to subpart JJ to read as follows:

§ 52.1833 Small business assistance program.

The Governor of North Dakota submitted on November 2, 1992 a plan to develop and implement a Small Business Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to EPA on the program's effectiveness.

Subpart TT—Utah

3. Section 52.2348 is added to subpart TT to read as follows:

§ 52.2348 Small business assistance program.

The Governor of Utah submitted on November 9, 1992 a plan to develop and implement a Small Business Assistance Program to meet the requirements of section 507 of the Clean Air Act by November 15, 1994. The plan commits to provide technical and compliance assistance to small businesses, hire an Ombudsman to serve as an independent advocate for small businesses, and establish a Compliance Advisory Panel to advise the program and report to EPA on the program's effectiveness.

[FR Doc. 94–661 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF THE INTERIOR

Office of Hearings and Appeals

43 CFR Part 4

RIN 1094–AA43

Special Rules Applicable to Surface Coal Mining Hearings and Appeals

AGENCY: Office of Hearings and Appeals, Interior.

ACTION: Final rule.

SUMMARY: The Office of Hearings and Appeals (OHA) amends several existing rules that govern procedures for hearings and appeals under the Surface Mining Control and Reclamation Act of 1977 in order to bring the rules up to date. Because of events that have occurred since they were adopted, the existing rules omit references or contain incorrect references, are inconsistent with other rules, or fail to provide necessary information or procedures. The amendments correct these defects. In this document OHA also updates telephone numbers of offices of field solicitors and field offices of the Office of Surface Mining Reclamation and Enforcement (OSM), listed in the existing rules, to reflect changes which have been effected heretofore.

EFFECTIVE DATE: February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior, 4015 Wilson Boulevard, Arlington, Virginia 22203. Telephone: 703–235–3750.

SUPPLEMENTARY INFORMATION: On November 19, 1991, OHA proposed amendments to existing procedural rules governing hearings and appeals under the Surface Mining Control and Reclamation Act of 1977, 30 U.S.C. 1201 *et seq.* (1988), because rules subsequently adopted or cases decided have rendered the existing rules out of date or shown them to be incomplete or inaccurate. See 56 FR 58330–58332 (Nov. 19, 1991). No comments were received on the published proposed amendments. The amendments effected by this final rulemaking are explained below under the heading for each rule involved.

Amendment of 43 CFR 4.1100

As a result of previous amendments of 43 CFR 4.1109(a) to provide current addresses and jurisdictions of field solicitors who are to be served documents (see 56 FR 2139, 2142–43 (Jan. 22, 1991), 56 FR 5061 (Feb. 7, 1991)), the definition of "field solicitor" in 43 CFR 4.1100(d) is superfluous. It was proposed to remove that definition and redesignate the following definitions in alphabetical order. No comments were received on this proposal. That definition is therefore removed and the following definitions (e) and (f) are redesignated (d) and (e).

Amendment of 43 CFR 4.1105(a)

30 CFR 842.15(d) provides a right of appeal to the Interior Board of Land Appeals (IBLA or the Board) under 43 CFR 4.1280 *et seq.* of the written determination, after informal review by the Director of the OSM or his or her designee, concerning the decision of an authorized representative of the Secretary not to inspect or take enforcement action concerning an alleged violation that is the subject of a request for a federal inspection under 30 CFR 842.12.

Similarly, 30 CFR 843.12(i) provides that any determination by an authorized representative of the Secretary granting or denying an abatement period exceeding 90 days under 30 CFR 842.12(h) shall contain a right of appeal to IBLA under 1280 *et seq.*

As the Board has had occasion to observe, however, 43 CFR 4.1105 does not name the permittee of the operation that is the subject of a determination of the Director or an authorized representative, or any person whose interests might be adversely affected by the outcome on appeal and who participated before OSM, as a party who must be served with a copy of the notice of appeal and statement of reasons under 43 CFR 4.1283(a) and who may participate under §§ 4.1284 and 4.1286. See Save Our Cumberland Mountains, Inc., 108 IBLA 70, 83 n.7, 96 I.D. 139, 146 n.7 (1989). OHA therefore proposed to amend 43 CFR 4.1105(a) by adding subsection (5) naming such permittees and persons as parties.

After this addition to 43 CFR 4.1105(a) was proposed, however, the Board decided Robert L. Clewell, 123 IBLA 253 (1992). In that case, citizens who had requested their identity be kept confidential, in accordance with 30 CFR 842.12(b), later revealed their identity to the coal company whose operation they had requested be inspected by sending a copy of their statement of reasons of appealing the denial of their request for inspection to the company. Had they not done so, under the terms of § 842.12(b), their "identity may not be revealed, even to other parties to a case, unless and until a competent official acting in response to a formal request filed under 5 U.S.C. 552 (1988) or other Federal law has determined that [their] identity must be made public because it does not fall within the scope of 5 U.S.C. 552(b)(7) (1988) or any other exemption from disclosure provided by law. See 42 FR 62665–66 (Dec. 13, 1977)." Robert L. Clewell, *supra* at 257 n.1.

As a result of this decision, OHA has added a statement to the new § 4.1105(a)(5) that a person who wishes his or her identity kept confidential under 30 CFR 842.12(b) is responsible for maintaining that confidentiality when serving documents in accordance with § 4.1109.

Amendment of 43 CFR 4.1109(a)

43 CFR 4.1109(a) is amended to update field solicitor office telephone number to reflect changes which have been effected heretofore.

Amendment of 43 CFR 4.1151(b)

OSM amended 30 CFR 723.19(a) and 845.19(a) to provide 30 days rather than 15 days in which a person may file a petition for review of a proposed civil penalty with the Hearings Division of OHA after the date of service of notice of an assessment conference officer's action. See 56 FR 10060, 10063 (Mar. 8, 1991). OHA therefore proposed to amend the corresponding procedural rule, 43 CFR 4.1151(b), to provide the same time and to add a reference to 30 CFR 845.18. No comments were received on the proposed change, so it is adopted.

Amendments of 43 CFR 4.1152, 4.1154, and 4.1157

The references to 30 CFR part 723 in 43 CFR 4.1152(a)(2); to 30 CFR 723.15 in 43 CFR 4.1154(a); and to 30 CFR 723.12 and 723.13 in 43 CFR 4.1157 (a) and (b) need to be updated by correcting the references in 43 CFR 4.1154(a) and in 43 CFR 4.1157 (a) and (b) and by adding references to the corresponding sections in 30 CFR part 845. OHA proposed to amend 43 CFR 4.1152, 4.1154, and 4.1157 for this purpose. No comments on these proposed changes were received, so they are adopted.

Amendment of 43 CFR 4.1266(b)(2)

43 CFR 4.1266(b)(2) is amended to update OSM field office telephone numbers to reflect changes which have been effected heretofore.

Amendment of 43 CFR 4.1271(a)

When 43 CFR part 4, subpart L was originally promulgated in 1978, 43 CFR 4.1271(a) provided that an aggrieved party could file a "notice of appeal" from an order or decision of an administrative law judge disposing of a proceeding "under this subpart, except a civil penalty proceeding under § 4.1150." This is still the language of the rule. Since 1978, however, other rules have been added to subpart L that provide for a "petition for discretionary review," rather than a notice of appeal, as the document to file with IBLA when seeking review of the initial decision of an administrative law judge. See 43 CFR 4.1309, 4.1369 (56 FR 2139, 2144, Jan. 22, 1991; 56 FR 5061, Feb. 7, 1991). OHA has also proposed rules that provide for petitions for discretionary review. See 43 CFR 4.1377, 4.1387 (56 FR 45806, Sept. 6, 1991). Further, special procedures for seeking IBLA review exist for other proceedings in subpart L. See 43 CFR 4.1187, 4.1196, 4.1391.

Although it is possible for IBLA to clarify by decision which avenue of appeal is appropriate for each proceeding, see *The Hopi Tribe* v. *Office of Surface Mining Reclamation & Enforcement*, 107 IBLA 329 (1989), it is preferable for the procedural rules themselves to contain this information. OHA therefore proposed to amend 43 CFR 4.1271(a) so that the rule will

specify for which proceedings a notice of appeal is appropriate. No comments on the proposed change were received, so it is adopted. Proceedings not covered by the procedural rules set forth in the revised § 4.1271(a) contain special provisions for seeking review of initial decisions.

Determination of Effects

The Department has determined that these rules will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). These rules were not subject to OMB review under Executive Order 12866.

National Environmental Policy Act

The Department has determined that these rules will not significantly affect the quality of the human environment on the basis of the categorical exclusion of regulations of a procedural nature set forth in 516 DM 2, Appendix 1, section 1.10.

Paperwork Reduction Act

These rules contain no information collection requirements requiring Office of Management and Budget approval under 44 U.S.C. 3501 *et seq.*

Takings Implication Assessment

These rules do not pose any takings implications requiring preparation of a Takings Implication Assessment under Executive Order No. 12630 of March 18, 1988.

Drafting Information

The primary author of these regulations is Will A. Irwin, Administrative Judge, Interior Board of Land Appeals, Office of Hearings and Appeals, U.S. Department of the Interior.

List of Subjects in 43 CFR Part 4

Administrative practice and procedure, Mines, Public lands, Surface mining.

For the reasons set forth in the preamble, subpart L of part 4 of title 43 of the Code of Federal Regulations is amended as set forth below.

Dated: December 12, 1993.

Bonnie R. Cohen,

Assistant Secretary—Policy, Management and Budget.

43 CFR part 4 is amended as follows:

PART 4—[AMENDED]

Subpart L—Special Rules Applicable to Surface Coal Mining Hearings and Appeals

1. The authority citation for part 4, subpart L, continues to read as follows:

Authority: 30 U.S.C. 1256, 1260, 1261, 1264, 1268, 1271, 1272, 1275, 1293; 5 U.S.C. 301.

§ 4.1100 [Amended]

2. Section 4.1100 is amended by removing paragraph (d) and redesignating paragraphs (e) and (f) as paragraphs (d) and (e) respectively.

3. Section 4.1105 is amended by adding paragraph (a)(5) to read as follows:

§ 4.1105 Parties.

(a) * * *

(5) In an appeal to the Board in accordance with 43 CFR 4.1280 through 4.1286 from a determination of the Director of OSM or his or her designee under 30 CFR 842.15(d) or a determination of an authorized representative under 30 CFR 843.12(i), the permittee of the operation that is the subject of the determination and any person whose interests may be adversely affected by the outcome on appeal and who participated before OSM. A person who wishes his or her identity kept confidential under 30 CFR 842.12(b) is responsible for maintaining that confidentiality when serving documents in accordance with § 4.1109.

* * * * *

4. Section 4.1109 is amended by revising the phone numbers in paragraph (a) to read as follows:

§ 4.1109 Service.

(a) * * *

East of the Mississippi River—

* * * * *

Telephone: (615) 545–4292, FAX (615) 545–4314.

* * * * *

Telephone: (412) 937–4000, FAX (412) 937–4003.

West of the Mississippi River—

* * * * *

Telephone: (303) 231–5350, FAX, (303) 231–5360.

* * * * *

5. Section 4.1151 is amended by revising paragraph (b) to read as follows:

§ 4.1151 Time for filing.

(a) * * *

(b) If a timely request for a conference has been made pursuant to 30 CFR 723.18 or 845.18, a petition for review must be filed within 30 days from service of notice by the conference officer that the conference is deemed completed.

* * * * *

6. Section 4.1152 is amended by revising paragraph (a)(2) to read as follows:

§ 4.1152 Contents of petition; payment required.

(a) * * *

(2) If the amount of penalty is being contested based upon a misapplication of the civil penalty formula, a statement indicating how the civil penalty formula contained in 30 CFR part 723 or 845 was misapplied, along with a proposed civil penalty utilizing the civil penalty formula;

* * * * *

7. Section 4.1154 is amended by revising paragraph (a)(2) to read as follows:

§ 4.1154 Review of waiver determination.

(a) Within 10 days of the filing of a petition under this part, petitioner may move the administrative law judge to review the granting or denial of a waiver of the civil penalty formula pursuant to 30 CFR 723.16 or 845.16.

* * * * *

8. Section 4.1157 is amended by revising paragraphs (a) and (b)(1) to read as follows:

§ 4.1157 Determination by administrative law judge.

(a) The administrative law judge shall incorporate in his decision concerning the civil penalty, findings of fact on each of the four criteria set forth in 30 CFR 723.13 or 845.13, and conclusions of law.

(b) If the administrative law judge finds that—

(1) A violation occurred or that the fact of violation is uncontested, he shall establish the amount of the penalty, but in so doing, he shall adhere to the point system and conversion table contained in 30 CFR 723.13 and 723.14 or 845.13 and 845.14, except that the administrative law judge may waive the use of such point system where he determines that a waiver would further abatement of violations of the Act. However, the administrative law judge shall not waive the use of the point system and reduce the proposed assessment on the basis of an argument that a reduction in the proposed assessment could be used to abate other violations of the Act; or

* * * * *

9. Section 4.1266 is amended by revising the following phone numbers in paragraph (b)(2):

§ 4.1266 Determination on application concerning an order of cessation issued pursuant to section 521(a)(2) or section 521(a)(3) of the act.

* * * * *

(b) * * *

(2) * * *

Alabama Field Office (also serving Georgia): 205–290–7282

Illinois Field Office: 217–492–4495

Indiana Field Office: 317–226–6700

Kentucky Field Office: 606–233–2494

Missouri Field Office (also serving Iowa, Kansas and Nebraska): 816–374–6405

* * * * *

Oklahoma Field Office (also serving Arkansas, Louisiana and Texas): 918–581–6430

* * * * *

Tennessee Field Office: 615–545–4103

* * * * *

Wyoming Field Office (also serving Alaska, Idaho, Montana, North Dakota, Oregon, South Dakota and Washington): 307–261–5778

* * * * *

10. Section 4.1271 is amended by revising paragraph (a) to read as follows:

§ 4.1271 Notice of appeal.

(a) Any aggrieved party may file a notice of appeal from an order or decision of an administrative law judge disposing of a proceeding under §§ 4.1160 through 4.1171, 4.1200 through 4.1205, 4.1260 through 4.1267, 4.1290 through 4.1296, and 4.1350 through 4.1356.

* * * * *

[FR Doc. 94–601 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–79–M

Buresu of Land Management

43 CFR Public Land Order 7026

[NV–930–4210–06; N–57060]

Withdrawal of Public Land for Recreation Site; Nevada

AGENCY: Bureau of Land Management, Interior

ACTION: Public Land Order.

SUMMARY: This order withdraws 105 acres of public land from surface entry and mining for a period of 20 years for the Bureau of Land Management to protect a recreation site in Nye County. The land has been and remains open to mineral leasing.

EFFECTIVE DATE: January 11, 1994.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, 702–785–6526.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Subject to valid existing rights, the following described public land is hereby withdrawn from settlement, sale, location, or entry under the general land laws, including the United States mining laws (30 U.S.C. Ch. 2(1988)), but not from leasing under the mineral leasing laws, to protect the Bureau of Land Management's Gap Mountain Recreation Site:

Mount Diablo Meridian

T. 6 N., R. 61 E.,
sec. 26, S½N½SW¼NW¼, S½SW¼NW¼, and N½NW¼SW¼;
sec. 27, SW¼NE¼NE¼, W½SE¼NE¼NE¼, and SE¼NE¼.

The area described contains 105 acres in Nye County.

2. The withdrawal made by this order does not alter the applicability of those public land laws governing the use of the lands under lease, license, or permit, or governing the disposal of their mineral or vegetative resources other than under the mining laws.

3. This withdrawal will expire 20 years from the effective date of this order unless, as a result of a review conducted before the expiration date pursuant to section 204(f) of the Federal Land Policy and Management Act of 1978, 43 U.S.C. 1714(f) (1988), the Secretary determines that the withdrawal shall be extended.

Dated: January 3, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–599 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–HC–M

Proposed Rules

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket No. FV-92-303]

Apricots: Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise the United States Standards for Grades of Apricots. The proposal would specify definitions that do not appear in the standard but are described in the inspection handbooks and bring up to date any obsolete terms and definitions. In addition, the proposed rule will provide metric equivalents for dimensions given in terms of U.S. Customary units and contains conforming and editorial changes.

DATES: Comments must be postmarked or courier dated on or before March 14, 1994.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC. 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Thomas G. Gambill, at the above address or call (202) 720-2185.

SUPPLEMENTARY INFORMATION: The Department is issuing this rule in conformance with Executive Order 12866.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Administrator of the Agricultural Marketing Service (AMS) has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Apricots will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the use of these standards is voluntary.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Agencies periodically review existing regulations. An objective of the review is to ensure that the grade standards are serving their intended purpose, the language is clear, and the standards are consistent with AMS policy and authority.

The United States Standards for Grades of Apricots became effective on May 25, 1928 and has not been revised since then. In June 1992, the Washington Apricot Marketing Committee (WAMC) requested the USDA to revise the standard. Consisting of producers from various districts throughout the State, the WAMC recommends minimum size, pack, and grade requirements each year for the Federal Marketing Order on Washington State grown apricots. Specifically, the WAMC requested that skin breaks (cuts and stem punctures), and stem pulls be changed from "free from" defects to "free from damage" or "serious damage" defects in the U.S. No. 1 and U.S. No. 2 grades, respectively. Such changes would have the effect of allowing these defects on fruit in various degrees without being scored against the grade (versus "free from" which means they are scored on sight). WAMC also suggested that the Department should make any other revisions deemed necessary.

AMS reviewed these issues to ascertain the need for the change proposed by WAMC as well as other technical changes or updates that the Agency believes may be helpful. Many suggestions and comments were received pertaining to a recent informal market survey by AMS. The California Apricot Advisory Board advised AMS that the changes proposed pertaining to skinbreaks and stem pulls are not warranted and would allow the export of otherwise unsaleable product.

Therefore, it would appear that there is not a widespread consensus among interested parties that skin breaks, stem punctures or similar defects should be allowed in these grades. However, in order for the Department to receive comments in a more widespread and formal manner this requested change as well as the following changes by the Department which would bring the standard up to date with current industry practices, are being proposed.

Sections 51.2925 and 51.2926 are proposed to be revised to remove cuts and skin breaks as free from defects (and change them to free from damage and serious damage defects, respectively). According to the Washington Apricot Marketing Committee, the "Washington Apricot industry has had difficulty in meeting the U.S. Grade Standards for Apricots with regard to 'skin breaks.' This has caused a great deal of hardship as the industry attempts to make sales into Canada. Over the past year members of the Washington Apricot Marketing Committee have been expressing a desire to gain some sort of relief from the strict interpretation of the 'free from' portion of the grade standards. The real problem, as our industry sees it, is that there is no definition of what constitutes 'damage' and 'serious damage' relative to 'skin breaks' and/or 'punctures.' Consequently, all of these types of defects are scored no matter how small or insignificant they might be."

It is proposed that §§ 51.2925 and 51.2926 be revised to include bruises as a specified defect. Bruising is a prevalent defect on apricots that should have specific areas designated which constitute damage and serious damage. Presently, this defect is scored based on the general definitions for damage and serious damage. It is proposed that any bruise causing discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter or one-eighth inch (3.1 mm) in depth (damage) or five-eighths inch (15.9 mm) in diameter or three-sixteenths inch (4.8 mm) in depth (serious damage), or an aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as the depth or area requirements previously mentioned be scored against the grade.

Section 51.2926a Unclassified is being removed. Unclassified is not a grade in itself but was simply a designation for apricots that do not meet any grade requirement. However, it is often mistaken as an actual grade. Since the designation is rarely used and may create some confusion in the market place it should be discontinued.

It is proposed that paragraph (c) Description of Pack of § 51.2927 be removed. This paragraph provides for pack designations in 4-basket crates. Apricots are seldom, if ever, packed in these types of containers for today's markets. Therefore, this paragraph is no longer needed.

Paragraph (d) Tolerance would also be removed. This paragraph allows a tolerance for offsize specimens. The proposed rule would make referencing of these tolerances easier and bring the format into conformity with more recent standards by establishing a separate "Tolerances" section. This new section, 51.2928 would respecify not only the size tolerances which are being removed from paragraph (d), but would also apply tolerances to packages marked according to count, and defect tolerances as well.

Section 51.2928 Mature is revised so that the definition of mature does not contain the word as part of the definition.

As previously mentioned a new section which would now be designated § 51.2928 Tolerances, would list all applicable tolerances for the grades. Other than the provision for packages marked according to count, there are no new tolerances proposed in this section. Rather than scatter the tolerances under different sections throughout the standard, they have been grouped together under one section.

A new section, 51.2929 Application of Tolerances, is being proposed. This section will designate a limit on excessively high defect percentages for an individual sample which, if exceeded, would cause the lot to fail to grade even though the average of these defects may be within the lot tolerances provided. It is proposed that for lot tolerances of ten percent or more, individual samples may not contain more than one and one-half times the tolerance specified, and for tolerances of less than 10 percent, individual samples may contain not more than double the tolerance specified.

The general definition for damage would be revised to reflect that which is currently used in most other standards. It also specifies that the dimensions provided for defect limits are based on an apricot one and seven-eighths inches (4.8 cm) in diameter, and correspondingly lesser or greater dimensions are allowed for smaller or larger sized apricots.

Under the new section (51.2932) proposed for damage, each defect is listed as a separate paragraph. New definitions under this section include dirt, scab, scale hail, skin breaks, stem pulls, and bruises. All specifications except for bruises, skin breaks, and stem pulls are taken from the inspection handbook on scoring these defects under the general definitions of damage and serious damage. The scoring for skin breaks and stem pulls was recommended by WAMC.

It is proposed that scale occurring as scale insects, scale marks, or similar marks which are heavily concentrated or are scattered and aggregating more than one-fourth inch (6.3 mm) in diameter (damage) or one-half inch (12.7 mm) in diameter (serious damage); scab spot when cracked or aggregating more than three-eighths inch (9.5 mm) in diameter in the aggregate (damage) or when the skin has been broken or when more than three-sixteenths of an inch (4.8 mm) deep or more than one-half inch (12.7 mm) in diameter in the aggregate (serious damage); and bruises when any bruise causes discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter or one-eighth inch (3.1 mm) in depth (damage) or when any bruise causes discoloration exceeding the area of a circle five-eighths inch (15.9 mm) in diameter or three-sixteenths (4.8 mm) in depth; skin breaks in the form of cuts and punctures which exceed individually or in the aggregate, an area equivalent to a circle three-sixteenths inch (4.8 mm) in diameter (damage) or three-eighths inch (9.6 mm) in diameter (serious damage); stem pulls which exceed an area equivalent to a circle three-eighths inch (9.6 mm) in diameter (damage) or one-half inch (12.7 mm) in diameter (serious damage); be specified as definitions under the appropriate sections.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1. The authority citation for 7 CFR Part 51 is revised to read as follows:

Authority: 7 U.S.C. 1622, 1624.

2. In Part 51, Subpart—United States Standards for Apricots is revised to read as follows:

Subpart—United States Standards for Grades of Apricots

Grades

Sec.
51.2925 U.S. No. 1.
51.2926 U.S. No. 2.

Marking and Packing Requirements

51.2927 Marking and packing requirements.

Tolerances

51.2928 Tolerances.

Application of Tolerances

51.2929 Application of tolerances.

Definitions

51.2930 Mature.
51.2931 Well formed.
51.2932 Damage.
51.2933 Serious damage.
51.2934 Diameter.

Subpart—United States Standards for Grades of Apricots

Grades

§ 51.2925 U.S. No. 1.

"U.S. No. 1" shall consist of apricots of one variety which are mature but not soft, overripe, or shriveled and which are well formed, free from decay, worm holes and from damage caused by limbrubs, russeting, growth cracks, dirt, scab, scale, hail, bruises, disease, insects, skin breaks, stem pulls, or mechanical or other means. For tolerances see § 51.2928.

§ 51.2926 U.S. No. 2.

"U.S. No. 2" shall consist of apricots of one variety which are mature but not soft, overripe or shriveled and which are free from decay, worm holes and free from serious damage caused by limbrubs, growth cracks, dirt, scale, hail, bruises, disease, insects, skin breaks, stem pulls or mechanical or other means. For tolerances see § 51.2928.

Marking and Packing Requirements

§ 51.2927 Marking and packing requirements.

The minimum size or numerical count of the apricots in any package shall be plainly labeled, stenciled, or otherwise marked on the package.

(a) *Numerical count.* When the numerical count is used the fruit in any sample shall not vary more than one-fourth inch in diameter. See § 51.2928 (b) Size for tolerances.

(b) *Minimum size.* "Minimum size" refers to the diameter of the smallest apricot in the package. It shall be stated in terms of whole and eighth inches, as 1½ inches min., 1⅜ inches min., etc., in accordance with the facts.

Tolerances

§ 51.2928 Tolerances.

In order to allow for variations incident to proper grading and handling the following tolerances are provided as specified:

(a) *Defects.*—(1) *U.S. No.1 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade and provided that not more than 5 percent, shall be allowed for defects causing serious damage and further provided that not more than 1 percent, shall be allowed for decay.

(2) *U.S. No. 2 grade.* Not more than 10 percent, by count, of any lot may be below the requirements of this grade, and not more than one-tenth of this amount, or 1 percent shall be allowed for decay.

(b) *Size.* (1) If packages are marked with numerical count: Not more than 10 percent of the samples in a lot may fail the one-quarter inch variation requirement designated in § 51.2927 paragraph (a).

(2) If packages are marked with minimum size: Not more than 10 percent, by count, of the apricots in any sample may be below the minimum size specified.

Application of Tolerances

§ 51.2929 Application of tolerances.

Individual samples are subject to the following limitations: Provided, that the averages for the entire lot are within the tolerances specified for the grade.

(a) For a tolerance of 10 percent or more; individual samples in any lot may contain not more than one and one-half times the tolerance specified.

(b) For a tolerance of less than 10 percent, individual samples in any lot may contain not more than double the tolerance specified.

Definitions

§ 51.2930 Mature.

Mature means having reached the stage of development which will insure a proper completion of the ripening process.

§ 51.2931 Well formed.

Well-formed means having the shape characteristic of the variety.

§ 51.2932 Damage.

Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which materially detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as damage:

(a) *Growth Cracks* which are well healed and over three-eighths of an inch in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-fourth inch (6.4 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds 10 percent of the surface or thick, rough, and very dark and exceeds 5 percent of the surface.

(d) *Dirt* including spray residue appearing to the extent that it is readily apparent.

(e) *Scab* spots when cracked or aggregating more than three-eighths inch (9.5 mm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks which are heavily concentrated or are scattered and aggregating more than one-fourth inch (6.3 mm) in diameter.

(g) *Hail* when the skin has been broken or when not shallow and superficial or more than three-eighths inch (9.5 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than one-eighth of an inch (3.1 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle three-eighths inch (9.5 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h) (1) or (2) of this section.

(i) *Skin Breaks* including cuts or punctures which exceed individually or in the aggregate an area equivalent to a circle three-sixteenths inch (4.8 mm) in diameter.

(j) *Stem Pulls* which exceed an area equivalent to a circle three-eighths inch (9.6 mm) in diameter.

§ 51.2933 Serious damage.

Serious Damage means any specific defect defined in this section; or an equally objectionable variation of any one of these defects, any other defect, or a combination of defects, which seriously detracts from the appearance, or the edible or shipping quality of the apricot. The dimensions given for these defects are based on an apricot with a diameter of 1⅞ inches (4.8 cm). Correspondingly larger or smaller dimensions are allowed on larger or smaller apricots. The following specific defects shall be considered as serious damage:

(a) *Growth Cracks* which are unhealed or when well healed and over one-half inch (12.7 mm) in length.

(b) *Limbrubs* which are smooth and shallow and are more than one-half inch (12.7 mm) in diameter.

(c) *Russeting* which is reddish to brown in color and exceeds one-third of the surface or thick, rough, and very dark and exceeds 15 percent of the surface.

(d) *Dirt* including spray residue which is readily apparent and seriously affects the appearance.

(e) *Scab* spots when cracked or when well healed and aggregating more than one inch (2.5 cm) in diameter.

(f) *Scale* occurring as scale insects, scale marks, or similar marks aggregating more than one-half inch (12.7 mm) in diameter.

(g) *Hail* when the skin has been broken or when more than three sixteenths (4.8 mm) of an inch deep or more than one-half inch (12.7 mm) in diameter in the aggregate.

(h) *Bruises* when: (1) The flesh is discolored deeper than three-sixteenths of an inch (4.8 mm); or

(2) Any bruise causing discoloration exceeding the area of a circle five-eighths inch (15.9 mm) in diameter; or

(3) An aggregate of lesser bruises detracting from the appearance, edible or shipping quality of the apricot as much as paragraph (h) (1) or (2) of this section.

(i) *Skin Breaks* including cuts or punctures which exceed individually or in the aggregate an area equivalent to a circle three-eighths inch (9.6 mm) in diameter.

(j) *Stem Pulls* which exceed an area equivalent to a circle one-half inch (12.7 mm) in diameter.

§ 51.2934 Diameter.

Diameter means the greatest diameter, measured through the center of the apricot, at right angles to a line running from the stem to the blossom end.

Dated: January 3, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–426 Filed 1–10–94; 8:45 am]

BILLING CODE 3410-02-P

Agricultural Stabilization and Conservation Service

7 CFR Part 723

RIN 0560–AD56

Tobacco Marketing Quotas, Acreage Allotments, and Production Adjustment

AGENCY: Agricultural Stabilization and Conservation Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Omnibus Budget Reconciliation Act of 1993 (the 1993 Act) was enacted on August 10, 1993. Section 1106 of the 1993 Act amended the Agricultural Adjustment Act of 1938 (the 1938 Act) by adding new section 320C that imposes a domestic tobacco content requirement for cigarettes made in the United States by any "domestic manufacturer of cigarettes" as defined in the 1938 Act. Under the provisions of the Act, as amended, each such manufacturer of cigarettes must certify the percentage of tobacco produced in the United States which was used by the manufacturer to produce cigarettes during the preceding calendar year. If the percentage of United States produced tobacco used by a domestic manufacturer of cigarettes in the manufacture of cigarettes is less than 75 percent, the manufacturer will be subject to a domestic marketing assessment and must purchase a quantity of tobacco from inventories of the producer owned burley and flue-cured cooperative marketing associations in an amount equal to the quantity of imported tobacco used by the manufacturer to produce cigarettes during the preceding calendar year that exceeds 25 percent of the total quantity of tobacco used in such cigarette production. When a manufacturer is subject to a domestic content marketing assessment, the assessment rate will be based on the amount by which ½ the sum of the average prices per pound received during the most recent marketing year, by producers of domestically produced burley tobacco and flue-cured tobacco, respectively, exceeds the average price per pound paid for unmanufactured imported tobacco during the preceding calendar year. This proposed rule would amend the regulations to implement the provisions of section 320C.

DATES: Comments must be received on or before February 10, 1994, in order to be assured of consideration.

ADDRESSES: Interested persons are invited to submit written comments to: Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Michael D. Thompson, Agricultural Program Specialist, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415, telephone 202–720–4281.

SUPPLEMENTARY INFORMATION:

Executive Order 12886

This proposed rule is issued in conformance with Executive Order 12866. Based on a preliminary regulatory impact analysis, this proposed rule has been determined to be economically significant. To obtain a copy of the Preliminary Regulatory Impact Statement, contact Dr. Robert Miller, Director, Tobacco and Peanut Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415, telephone (202) 720–8839.

The 75 percent domestic tobacco content requirement is expected to increase the usage of domestic tobacco by 188 million pounds for 1994 which will cost domestic manufacturers about $200 million. Since the cost of domestic tobacco is about double that of imported tobacco, domestic cigarette manufacturers are expected to shift cigarette production to foreign based operations. As this shift in production occurs, domestic cigarette production is expected to decline about 9 percent a year for the next four years. This will result in the loss of about 11,000 jobs in domestic cigarette manufacturing plants. The use of domestically produced tobacco will eventually decline to a level less than if there were no domestic content requirement. Domestic cigarette output is expected to decline about 40 percent by 1998. The impact statement indicates little effect on the consumer prices for cigarettes because the tobacco accounts for only about 3 percent of the cost of cigarettes. The regulatory impact analysis does not consider any effects that an increase in cigarette excise tax may have on domestic cigarette production.

The initial increase in the use of domestic tobacco is expected to draw down current loan stocks of burley and flue-cured tobacco. This will benefit tobacco producers in the short term since the Commodity Credit Corporation's net loan outlays for the 1994 marketing year are estimated to be about $380 million less as a result of the domestic tobacco content requirement. This will reduce the amount of the no-net-cost assessments paid by producers and purchasers of tobacco.

Except for the cigarette manufacturing sector, this proposed regulatory action is not expected to have an adverse effect on the environment, public health or safety, or State, local, or tribal governments or communities. This regulatory action is not expected to be inconsistent nor interfere with an action taken or planned by another federal agency. Other than as indicated in the summary of the regulatory impact statement, this action would not alter the budgetary impact of entitlements, grants, user fees, loan programs, or the rights and obligations of the recipients thereof. This proposed rule would be consistent with the President's priorities and principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this proposed rule since the Agricultural Stabilization and Conservation Service is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rule making with respect to the subject matter of this rule.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is needed.

Executive Order 12372

This activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This proposed rule has been reviewed in accordance with Executive Order 12778. The provisions of this proposed rule are not retroactive and preempt

State laws to the extent that such laws are inconsistent with the provisions of this proposed rule. Before any legal action is brought regarding determinations made under the provisions of 7 CFR part 723, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

This proposed rule would impose new record keeping and information collection requirements on domestic manufacturers of cigarettes and related tobacco industry business beginning January 1, 1994. The contents of and justification for the reporting and record keeping requirements will be submitted to the Office of Management and Budget, under OMB No. 0560–0058, for review and approval in accordance with the requirements of the Paperwork Reduction Act of 1980, as amended. Comments regarding these requirements in this proposed rule and suggested alternatives may be sent to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503; and to the Department of Agriculture, Clearance Officer, OIRM, room 404–W, Washington, DC 20250.

Summary of Statutory Provisions

Section 320B of the 1938 Act imposes certain requirements on "domestic manufacturers of cigarettes" and those manufacturers are defined in section 301 of the 1938 Act to be those that produce and sell at least one percent of the cigarettes produced and sold in the United States. Section 320B requires that those manufacturers specify each year, in advance, their expected purchases of burley and flue-cured tobacco. The sanction for failing to do so accurately, within certain limits, is that the manufacturer must pay an additional assessment to offset the cost of the Federal tobacco program.

Section 320C provides for additional requirements that must be met by "domestic manufacturers of cigarettes" to avoid additional assessments. The provisions of section 320C are set out in greater detail below in the description of the content and organization of the proposed rule. Generally, under section 320C manufacturers who are "domestic manufacturers of cigarettes" must certify each year the percentage of U.S. tobacco used in their cigarettes. If more than 25 percent is imported tobacco, the manufacturer must pay an assessment. Also, if this limit is exceeded, the manufacturer must make compensatory purchases of tobacco from the burley and flue-cured producer loan associations and may be required to pay a penalty for failing to make such compensatory purchases in a timely manner. Under section 320C(f), the 75/25 ratio may be reduced if the Secretary determines that U.S. tobacco supply conditions warrant a reduction due to conditions beyond the control of producers. Also, section 320C requires that manufacturers file reports and maintain records as specified by the Secretary to enforce that section. Failure to file required reports or maintain records, or the submission of false information can lead to criminal penalties as well as other sanctions. Other new provisions concerning assessments on imported tobacco enacted in the 1993 Act will be implemented in a separate rule.

Coverage of the Proposed Rule; Definition of Tobacco

The 75/25 ratio is referred to in the rule as the "domestic content requirement." Since this requirement is a calendar year requirement under section 320C, the proposed rule would apply the requirement first in 1994. The authorizing statute was enacted well into 1993. There is nothing in the Act to provide for making the provisions retroactive.

The requirement applies only to "domestic manufacturers of cigarettes." The statute does not limit, as such, the content requirement to cigarettes produced by those manufacturers in the United States. The fact that section 320C applies the requirement only to certain "domestic" manufacturers, and given other provisions of section 320C, the proposed rule limits the coverage to cigarettes produced by subject manufacturers in the United States. For that purpose, the rule defines "United States," consistent with section 301 of the 1938 Act, to be the fifty States, the territories of the United States, the District of Columbia and Puerto Rico. With respect to limiting coverage to domestic production, section 320C(b) provides that the sanctions in 320C(c), (d), and (e) will apply when the use of "imported tobacco" exceeds 25 percent. Tobacco becomes "imported" only by reference to a domestic market. Hence, it appears clear that the statute was intended to cover only domestic production of cigarettes.

The domestic content requirement requires counting all the "tobacco" in the cigarettes and computing the amount of "imported tobacco" in those cigarettes. The 1938 Act covers many commodities, including tobacco. Until recently the tobacco provisions of the 1938 Act dealt mainly with regulating the production of tobacco by domestic producers and the definition of "tobacco" in section 301 of the 1938 Act, which is made generally applicable to the entire 1938 Act, appears to have been drafted accordingly when it was enacted in 1938. The term "tobacco" is used in section 320C without a modifier and in combination with the word "imported." Tobacco is classified by kind and by type number. For example, domestic burley tobacco is commonly referred to as type 31. Section 301 refers to the "Service and Regulatory Announcement 118 of the U.S. Department of Agriculture (USDA) Bureau of Agricultural Economics" published in 1929 and defines tobacco to mean certain specified tobacco types by type number as identified in Announcement 118. All of the identified types, however, are identified in Announcement 118 as domestic tobaccos. Foreign tobaccos are assigned other type numbers and, thus, under the section 301 definition, they technically would not appear to be, "tobacco" at all under that definition. However, section 320C clearly was intended to measure the amount of use of "imported tobacco," as those words would be defined in their common meaning as compared with domestic tobacco use. Use of the section 301 definition of "tobacco" would make that comparison impossible and make the statute essentially meaningless. Thus, the proposed rule presumes that the Congress did not intend for the section 301 definition of "tobacco" to be used for the section 320C purpose. The proposed rule has been drafted accordingly. "Tobacco" is defined in the proposed rule to mean that which is commonly considered to be "tobacco" in the trade. As there is no provision in the statute to do otherwise, that would include all foreign tobacco, including those like Turkish and Oriental tobaccos, which may not have as close a domestic counterpart as other tobaccos. This inclusion is consistent with the Conference report issued with the 1993 Act (H. Conf. Report No. 103–213) where the Conference managers stated their belief that the 75/25 ratio, by allowing the maintenance of current blends, would be sufficient to "permit the continued importation of Turkish and Oriental tobaccos." If Turkish and Oriental tobaccos were not subject to section 320C, the ratio would be irrelevant. These conclusions, as with all aspects of the proposed rule, are subject to further consideration on receipt of comments.

Discussion of Proposed Rule

1. Domestic Tobacco Content Requirement (§ 723.502)

A "domestic manufacturer of cigarettes" is defined in section 301(b)(17) of the 1938 Act as "a person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States." To avoid the domestic marketing assessment and other sanctions imposed by section 320C of the amended 1938 Act, beginning in 1994 and each succeeding calendar year, each domestic manufacturer of cigarettes must use at least 75 percent domestically grown tobacco in the cigarettes manufactured by such manufacturer. In determining compliance with the domestic content requirement, the proposed rule specifies that imported tobacco will include all tobacco imported into the United States including Oriental and Turkish tobaccos. The domestic tobacco content requirement will apply to all cigarettes manufactured in the United States by a domestic manufacturer of cigarettes without regard to whether the manufactured cigarettes are sold domestically or exported. The domestic content requirement would not apply to cigarettes manufactured outside the United States by a domestic manufacturer of cigarettes. Likewise, the domestic tobacco content requirement would not apply to tobacco processed in the United States for use in making cigarettes outside the United States. Domestic manufacturers of cigarettes with operations located outside the United States would not be required to file reports for cigarettes manufactured in such foreign based operations for foreign-made cigarettes and the domestic content rules would not apply to such cigarettes.

2. Reports and Certifications by Domestic Manufacturers of Cigarettes (§ 723.502)

Under the proposed rule, beginning with the 1994 and each succeeding calendar year, each domestic manufacturer of cigarettes would be required to maintain records, file reports and certify to the quantities of domestic and imported tobacco used by such manufacturer to manufacture cigarettes in the United States. Determinations as to content percentages would be based on the weight of the tobacco when it is ready for the cigarette manufacturing process. Adjustments, to avoid double-counting, will be made for any tobacco which loses its identity during the manufacturing process and is recaptured and reused to manufacture cigarettes by the same manufacturer and for tobacco in any cigarettes returned to the manufacturer and reused by such manufacturer to manufacture other cigarettes. Such adjustments will be made only to the extent that records are maintained which prove the reuse of such tobacco. For the purpose of determining the domestic content percentage, any tobacco reconstituted, or otherwise processed, so as to lose its respective identity as either imported tobacco or domestic tobacco, before being acquired by a domestic manufacturer of cigarettes shall be considered to be imported tobacco when it is used to produce cigarettes by a domestic manufacturer of cigarettes. The proposed rule provides that reports and certifications must be mailed or otherwise delivered to Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, U. S. Department of Agriculture, P. O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which reports and certifications apply. Failure to file timely reports or make required certifications will result in all tobacco used by the manufacturer in the manufacturing of cigarettes in the United States being considered as imported tobacco and sanctions would be applied accordingly. Such a presumption is provided for in section 320C(b) of the 1938 Act.

3. Domestic Marketing Assessment and Required Purchases of Tobacco (§§ 723.503 and 723.504)

Section 320C(c) of the Act provides that if the quantity of imported tobacco used by a domestic manufacturer for making cigarettes for the year exceeds 25 percent, such manufacturer must pay a domestic marketing assessment on each pound of imported tobacco used in excess of 25 percent. In addition, as provided in section 320C(d) and (e), such manufacturer must purchase tobacco from the existing burley and flue-cured tobacco inventories of producer owned cooperative marketing associations in an amount equal to the weight of imported tobacco used in excess of 25 percent.

The per pound domestic marketing assessment rate set by section 320C(c) is the difference between one-half the sum of the average market prices received by domestic producers of burley tobacco and flue-cured tobacco, respectively, and the average price of unmanufactured imported tobacco. Domestically produced burley and flue-cured tobaccos are marketed on a marketing year basis. The average price per pound paid to domestic producers for a kind of tobacco is determined for the marketing year. The marketing years are: for burley tobacco, October 1 through September 30; and for flue-cured tobacco, July 1 through June 30. Under the proposed rule, the average prices for domestically produced burley tobacco and flue-cured tobacco would be calculated using data published by the Department of Agriculture's National Agricultural Statistics Service (NASS). For the other side of the comparison, a weighted average price of all unmanufactured tobacco imported for consumption in the United States, with no allowance for tobacco reexported, would be calculated from Bureau of Census data. For example, if the calculated average market prices were $1.83 per pound for burley tobacco and $1.73 per pound for flue-cured tobacco, the average price would be $1.78 per pound. If the weighted average price of unmanufactured imported tobacco for the relevant period was $1.28 per pound, a domestic marketing assessment rate of $0.50 per pound would apply. That rate would be multiplied by the pounds of imported tobacco used in excess of the 25 percent limit (unless a higher limit had been set under the Secretary's discretionary authority to adjust the limit as provided for in section 320C(f)). If noncompliance is indicated, the cigarette manufacturer will have an opportunity for an administrative hearing before any domestic marketing assessments or other sanctions are imposed. Under the proposed rule payment of the assessment would be required to be made within 30 days after the manufacturer is notified of the amount due.

Where a domestic content violation has occurred, the compensatory purchases of tobacco by a manufacturer, as required by section 320C(d) and (e), must be in equal quantities of burley and flue-cured tobacco and must be from the inventories of producer owned cooperative marketing associations that handle price support loans for tobacco. However, the statute provides that if the total required compensatory purchases by all noncomplying manufacturers would reduce the associations inventories of loan stocks of burley or flue-cured tobacco below the reserve stock level for the respective kind of tobacco, the required purchase of such kind of tobacco, for each manufacturer, may be reduced proportionately. These provisions of section 320C would be implemented by § 723.504 of the proposed rule. The required purchases of burley tobacco could be made from either of the two producer owned marketing associations for burley

tobacco: the Burley Tobacco Growers Cooperative Association and the Burley Stabilization Corporation. There is only one applicable producer association for flue-cured tobacco, the Flue-Cured Tobacco Cooperative Stabilization Corporation. Under the proposed rule, required purchases of tobacco must be at the applicable list price published by the association without discounts of any kind. The manufacturer would be allowed to make such purchases from any grade or grades of uncommitted tobacco in the association's inventories. Compensatory purchases of tobacco would be required to be made within 30 days after the manufacturer is notified of the quantities of burley and flue-cured tobacco that must be purchased. However, the time could be extended if the manufacturer requests reconsideration of the compensatory purchase determination. As provided in sections 320C (d) and (e) of the statute, if a manufacturer fails to make the required compensatory purchases in a timely manner, the manufacturer, under the proposed rule, would be subject to a penalty of 75 percent of the average market price for the applicable kind of tobacco for the most recent marketing year multiplied by the quantity of tobacco involved. Further, as provided in sections 320C(d)(5) and (e)(5), these compensatory purchases could not be counted by the manufacturer for purchases in the application of section 320B of the 1938 Act.

4. Reduction of Domestic Content Required Percentage (§ 723.505)

Section 320C(f) provides that the Secretary may reduce the 75 percent domestic content requirement for a calendar year following a crop loss if the Secretary, in consultation with the producer owned tobacco associations, determines that: (1) Because of drought, insect or disease infestation, or other natural disaster or other conditions beyond the control of producers, the total quantity of a crop of domestic burley or flue-cured tobacco which is harvested and suitable for marketing is substantially less than the expected production for the crop and (2) loan stock inventories for the kind of tobacco have been depleted. Under the proposed rule, the expected production would be calculated based on the planted acreage of the kind of tobacco, as reported by the NASS, multiplied by the average of the 5 most recent years' average yields per acre as published by the NASS for that kind of tobacco. The loan stock inventory of a kind of tobacco would be considered to be depleted if the Secretary, in consultation with the associations, concluded that the loan stock inventories at the beginning of the next marketing year for such kind of tobacco would not likely exceed 25 percent of the reserve stock level. Under the proposed rule, the Secretary would make the determination to announce any reduced percentage for the domestic content requirement by November 30 of the year preceding the year of the reduction. Under the proposed rule, the Secretary's authority for making the determinations on reducing the domestic content percentage would be delegated to the Director, Tobacco and Peanuts Division.

5. Required Records and Reports (§ 723.506); False Statements (§ 723.507); and Confidentiality (§ 723.508)

Section 320C(b) of the 1938 Act requires that manufacturers maintain records and make such reports as are necessary to show compliance with the domestic tobacco content requirement. That section also provides that the Secretary and the USDA Office of Inspector General may examine such records and other matters as the Secretary has reason to believe may be relevant and that the Secretary may charge a fee to the manufacturer for the reasonable cost of any such examination. Section 320C(b) provides, as well, that any person who fails to provide requested information or provides false information shall be subject to 18 U.S.C. 1001 which, generally, provides that persons who knowingly and willfully supply false or misleading information, or cover up information, on matters within the jurisdiction of federal agencies, may be fined up to $10,000 or imprisoned up to five years. Section 320C(b) also provides that information submitted regarding cigarette content and levels of production will be exempt from disclosure to other members of the public under the Freedom of Information Act provisions of 5 U.S.C. 552. These provisions of section 320C are implemented in § 723.506 through § 723.508 of the proposed rule.

Under the proposed rule, with respect to records and reports, manufacturers would be required, at a minimum, to file reports and maintain records concerning the kind, quantity, form (stemmed, unstemmed, reconstituted, etc.), and country of origin of all tobacco which is:

(1) In inventory at the beginning of the calendar year,

(2) Acquired during the calendar year,

(3) Used to manufacture cigarettes in the United States during the calendar year, and

(4) Disposed of other than through the manufacture of cigarettes in the United States during the calendar year.

Separate records would be required for each lot, batch, or blend that is used to manufacture cigarettes. These records would be required to indicate the quantity of tobacco by category, domestic or import, and the total quantity of tobacco for each specific lot, batch, or run of tobacco. Regarding confidentiality, while the provisions of the statute controls disclosure of information regarding individual manufacturers, summary statistical data and general statements that are not related to a specific cigarette manufacturer could be released.

List of Subjects in 7 CFR Part 723

Acreage allotments, Assessments, Marketing quotas, Penalties, Recording and recordkeeping requirements, Tobacco.

For the reasons set out in the preamble, it is proposed that 7 CFR part 723 be amended as follows:

PART 723—TOBACCO

1. The authority citation for part 723 is revised to read as follows:

Authority: 7 U.S.C. 1301, 1311–1314, 1314–1, 1314b, 1314b-1, 1314b-2, 1314c, 1314d, 1314e, 1314f, 1314i, 1315, 1316, 1362, 1363, 1372–75, 1421, 1445–1, and 1445–2.

2. Part 723 is amended by adding subpart E to read as follows:

Subpart E—Domestically Produced Cigarettes

Sec.
723.501 Definitions.
723.502 Domestic tobacco content.
723.503 Domestic content marketing assessment.
723.504 Required purchases from tobacco loan stocks.
723.505 Reduction of domestic content percentage.
723.506 Required records and reports; Burden of proof.
723.507 False reports; Failure to file reports; and Examination of records.
723.508 Reconsideration and appeal.
723.509 Confidentiality of information.

Subpart E—Domestically Produced Cigarettes

§ 723.501 Definitions.

In addition to the definitions set forth at § 723.104, the definitions set forth in this section shall be applicable for purposes of administering the provisions of this subpart.

Domestic manufacturer of cigarettes. A person that produces and sells more than 1 percent of the cigarettes produced and sold in the United States.

Domestic tobacco. Any quantity of harvested tobacco which has been cultivated, grown, and produced in the United States.

Imported tobacco. Any tobacco, including Oriental and Turkish tobaccos, not produced in the United States if such tobacco has been entered into the United States. Any tobacco that cannot be verified as being domestic tobacco shall be presumed to be imported tobacco.

Manufactured tobacco. Tobacco that has been processed and packaged into cigarettes or other consumer tobacco products.

Producer owned cooperative marketing association. Those loan associations that offer price support for burley and flue-cured tobacco through contractual agreements with the Commodity Credit Corporation of USDA. These associations are the Burley Tobacco Growers Cooperative Association, the Burley Stabilization Corporation, and the Flue-Cured Tobacco Cooperative Stabilization Corporation.

Tobacco. Any commodity or substance that is commonly considered to be tobacco in the trade.

United States. The 50 States of the United States, the District of Columbia, Puerto Rico, or any Territory or Possession of the United States.

Unmanufactured tobacco. Any tobacco that is not processed and packaged as a consumer tobacco product.

USDA. The U.S. Department of Agriculture.

§ 723.502 Domestic tobacco content.

(a) *General requirement.* (1) Except as provided in § 723.505 of this part, during each calendar year beginning with 1994, the total domestic tobacco used for cigarettes manufactured in the United States by a domestic manufacturer of cigarettes shall, for the calendar year, equal or exceed 75 percent of the total quantity of tobacco used by such manufacturer in such cigarettes.

(2) Any tobacco that has been reconstituted, or otherwise processed to the extent that it has lost its respective identity as either domestic tobacco or imported tobacco before its acquisition by such domestic manufacturer of cigarettes, shall be considered as imported tobacco when determining compliance with the domestic tobacco content requirements of this subpart.

(3) Any tobacco having lost its identity with respect to its origin of production during the manufacturing process which is recaptured and reused to manufacture cigarettes in the United States by the same manufacturer and any cigarettes returned to the manufacturer and reused by such manufacturer to manufacture cigarettes in the United States shall not be recounted. The burden of establishing such re-use shall be on the manufacturer.

(b) *Reports required by manufacturers.* (1) Beginning with the 1994 calendar year, a domestic manufacturer of cigarettes shall report to the Director, for each calendar year, the following on the basis of weights of tobacco as it begins use in manufacturing cigarettes:

(i) The total quantity of tobacco used by the manufacturer to produce cigarettes in the United States during such calendar year.

(ii) The total quantity of imported tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(iii) The total quantity of domestic tobacco used by the manufacturer in the production of cigarettes in the United States during such calendar year.

(2) For purposes of the report required by paragraph (b)(1) of this section, tobacco weights shall be reported based on the weight of tobacco when it is ready for manufacturing into cigarettes and to the extent, if any, that a conversion is needed, tobacco weight shall be converted to such weights based on normal processing yields with respect to the various forms and kinds of tobacco, subject to review by the Director.

(c) *Where and when to report.* The reports required by this subpart shall be mailed or otherwise delivered to Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report applies.

(d) *Failure to report.* A manufacturer who fails to report the quantities of domestic and imported tobacco used for manufacturing cigarettes shall be presumed to have used only imported tobacco in such cigarettes. The Director may determine the total quantity of tobacco used by any method determined reasonable by the Director to arrive at that estimate.

(e) *Failure to comply.* Each domestic manufacturer of cigarettes who fails to comply with the requirements of this section shall pay a domestic marketing assessment and shall purchase loan stocks of tobacco in accordance with §§ 723.503 and 723.504.

§ 723.503 Domestic content marketing assessment.

(a) *General.* Each domestic manufacturer of cigarettes who fails to comply with the domestic content requirement in § 723.502 shall pay a nonrefundable domestic marketing assessment to the Commodity Credit Corporation as provided in this section.

(b) *Assessment rate.* A domestic marketing assessment rate, for purposes of this section, shall be determined for each calendar year. The assessment rate shall be equal to the difference between one-half the sum of the average prices per pound received by domestic producers of burley tobacco and flue-cured tobacco, respectively, for the previous marketing year as determined by the Director. The Director may use for that purpose data published by the National Agricultural Statistic Service of USDA and the weighted average price of unmanufactured tobacco which was imported during the previous calendar year, as calculated from Bureau of Census data for such calendar year. Other data may be used in lieu of that data.

(c) *Amount of assessment due.* The Director shall assess a domestic marketing assessment against each domestic manufacturer of cigarettes who fails to comply with the domestic content requirement of this subpart. The domestic marketing assessment shall be determined by:

(1) Multiplying the required percentage of domestic content by the total pounds of tobacco used to produce cigarettes during the applicable calendar year;

(2) Subtracting the pounds of domestic tobacco used in such cigarettes from the result determined in paragraph (c)(1) of this section, and

(3) Multiplying the result determined in paragraph (c)(2) of this section, if a positive number, by the assessment rate determined under the provisions of paragraph (b) of this section.

(d) *Time for paying assessment.* The manufacturer shall pay the domestic marketing assessment provided for in this section within 30 calendar days after demand for payment. However, if the manufacturer timely requests reconsideration or timely appeals the determination, the time for payment of the amount in dispute may be extended by the Director to a date no later than 30 calendar days after the final determination is rendered.

(e) *Failure to timely pay assessment.* If a domestic manufacturer of cigarettes fails in a timely manner to pay any assessment under this section, such manufacturer shall be subject to a penalty in an amount equal to twice the

amount of the initial assessment. The penalty shall be payable in addition to the initial assessment and any other charges that apply.

§ 723.504 Required purchases from tobacco loan stocks.

(a) *General.* In addition to paying a domestic marketing assessment, each domestic manufacturer of cigarettes who fails to comply with § 723.502, as determined by the Director, shall purchase a quantity of burley and flue-cured tobacco from the loan stocks of the producer owned cooperative marketing associations as provided in this section.

(b) *Purchase quantity.* The amount of tobacco that must be purchased shall be an amount equal to the amount of imported tobacco on which the assessment in § 723.503 can be levied. The total amount of required purchases shall be divided equally between burley and flue-cured tobacco. If it is determined that the required amount of purchases by all manufacturers would reduce the inventories of burley or flue-cured tobacco below the reserve stock level, the Director may reduce the required purchase quantity on a pro rata basis. Required purchases under this section shall not be considered as purchases for purposes of meeting the manufacturer's purchase intentions under section 320B of the 1938 Act.

(c) *Purchase price.* In order to receive credit for a purchase to satisfy a purchase required by this section, the purchase price must not be less than published offer list price of the applicable producer cooperative marketing association. Credit for required purchases shall not be allowed if discounts, rebates, or other special incentives have been offered and received in connection with purchases of tobacco loan stocks from association inventories.

(d) *Failure to purchase required amount.* Each manufacturer shall have 30 calendar days from date of notification of the required purchase amount to complete the purchases required under this section. The producer cooperative marketing association shall report to the Director the quantities of required purchases that have been made. A manufacturer who fails to purchase within the allotted time the required quantity of burley or flue-cured tobacco shall be liable for penalty on each pound of tobacco for which there has been a failure to make a timely purchase. The penalty rate shall be the amount determined to be equal to 75 percent of the average market price for the kind of tobacco required to be purchased for the year preceding the year of the violation.

§ 723.505 Reduction of domestic content percentage.

(a) *General.* The Director, in consultation with the producer owned cooperative marketing associations, may reduce the domestic content level to a percentage below 75 percent for any calendar year, when the Director determines that the production of burley or flue-cured tobacco for the preceding year was substantially reduced because of natural disaster or other conditions beyond the control of producers for the immediately preceding crop year and that the loan stock inventory for the kind of tobacco involved will be depleted to 25 percent of the reserve stock level for that kind of tobacco.

(b) *Expected production.* For purposes of this section, the Director may determine, but shall not be required to determine, the expected production of tobacco based on the planted acreage as reported by the National Agricultural Statistics Service for the respective kind of tobacco multiplied by the simple average of the five most recent years' average yields per acre for the respective kind of tobacco.

(c) *Deadline for determination.* The Director shall announce the reduced percentage level for domestic content by November 30 of the year preceding the calendar year to which the reduced percentage will apply.

§ 723.506 Required records and reports; Burden of proof.

(a) *Required records.* (1) Each domestic manufacturer of cigarettes, for all manufacturing plants producing cigarettes chargeable to the manufacturer under this subpart, shall maintain records, on a calendar year basis, by kind of tobacco, the quantity, form and country of origin of all unmanufactured tobacco which is:

(i) In inventory at the beginning of the calendar year,

(ii) Acquired during the calendar year,

(iii) Used to manufacture cigarettes in the United States during the calendar year, and

(iv) Used, or otherwise disposed of, other than to manufacture cigarettes during the calendar year.

(2) Each domestic manufacturer of cigarettes shall maintain a record with respect to each batch or lot of tobacco used in each separate run or blend of cigarettes for the subject manufacturing plants as follows:

(i) The total quantity of tobacco used,

(ii) The quantity of domestic tobacco used,

(iii) The quantity of imported tobacco used,

(iv) The quantity of reconstituted tobacco used in the manufacturing of cigarettes and with respect to such tobacco:

(A) The quantity that resulted from tobacco that lost its identity during the manufacturing process and was recaptured and reused to manufacture cigarettes by such manufacturer.

(B) The quantity that resulted from cigarettes returned to the manufacturer and reused by such manufacturer to manufacture other cigarettes.

(3) Records shall be retained for at least 3 calendar years after the calendar year for which the report and certification in § 723.502 is made. Records shall be retained for a longer period upon written notification by the USDA Office of Inspector General, the Administrator, Deputy Administrator or Director. In any case, the destruction of records shall not release any party from any burden that may be lawfully imposed and shall not release any manufacturer from the burden of proof imposed by this section.

(b) *Required reports.* In addition to the reports and certifications required in § 723.502, each domestic manufacturer of cigarettes shall submit a report of the information required by paragraph (a)(1) of this section.

(c) *When and where to report.* The report required by this section shall be mailed or otherwise delivered to the Director, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, USDA, P.O. Box 2415, Washington, DC 20013–2415 by February 15 of the year after the calendar year for which the report and certification applies.

(d) *Burden of proof.* The manufacturer shall bear the burden of proof on all issues arising under this subpart.

§ 723.507 False reports; Failure to file reports; and Examination of records.

(a) *False reports, failure to file report.* In addition to any other sanction or remedy or presumption that may apply, a person shall be subject to all other remedies provided for by law including, but not limited to, those that apply under section 320C of the 1938 Act and 18 U.S.C. 1001 for any:

(1) False report, certification, or statement, or

(2) Failure to provide required information.

(b) *Examination of records.* The Director, the Office of Inspector General, or an authorized representative may examine such records, books, computer files, or any other material to determine the correctness of any report or information provided to the Director or to obtain required information. The reasonable cost incurred by such audit may be charged to the cigarette manufacturer who is the subject of the audit or examination.

§ 723.508 Reconsideration and appeal.

A domestic manufacturer of cigarettes may request that the Director reconsider any determination of such manufacturer's failure to comply with the provisions of this subpart. A request for reconsideration shall be made within 15 calendar days after the date of the notification of failure to comply. If such manufacturer is dissatisfied with the determination rendered with respect for reconsideration, such manufacturer may appeal the determination to the Director, National Appeals Division in accordance with part 780 of this title.

§ 723.509 Confidentiality of information.

The reports, certifications, and other information furnished by a cigarette manufacturer shall be kept confidential by all officials and employees of the Department of Agriculture. Only such data as may be determined relevant shall be disclosed to investigative authorities, under court orders, or at administrative hearings and to the extent permitted by law. Such information shall not be available to the public under the provisions of the Freedom of Information Act contained in 5 U.S.C. 552. Aggregate data and general statements not identified to an individual manufacturer may be released if otherwise allowed by law.

Signed at Washington, DC, on January 7, 1994.

Grant Buntrock,

Administrator, Agricultural, Stabilization and Conservation Service.

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BILLING CODE 3410–05–P

Food Safety and Inspection Service

9 CFR Chapter III

[Docket No. 93–024N]

Hazard Analysis and Critical Control Point Round Table; Solicitation of Participation

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Solicitation of participation.

SUMMARY: Secretary Espy announced in late May 1993 that he was requesting the Food Safety and Inspection Service (FSIS) to present him with a plan for making the Hazard Analysis and Critical Control Point (HACCP) system of process control mandatory in all the Nation's federally inspected meat and poultry establishments. At the Secretary's direction to ensure greater input from all constituent and other interests, it was determined by FSIS that it would be beneficial to provide all constituent groups with a forum to comment on development of a mandatory HACCP system. Therefore, FSIS announces that a HACCP Round Table discussion will be held.

This notice outlines the Round Table process and solicits participation in the Round Table from the constituent groups identified below in the **SUPPLEMENTARY INFORMATION.** Furthermore, this notice offers the opportunity for persons who believe that an affected interest is not represented below to request participation at the Round Table.

DATES: A HACCP Round Table discussion will be held in about 60 days of the date of publication of this notice in the **Federal Register.** Individuals and organizations interested in participating in the Round Table must submit their names by January 25, 1994.

ADDRESSES: Interested persons should submit their names to Mr. Mark Manis, Director, Import Inspection Division, International Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, room 0114, South Building, 14th and Independence Avenue, SW., Washington, DC 20250.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Manis at (202) 720–2952.

SUPPLEMENTARY INFORMATION: FSIS views this Round Table as an opportunity to allow free and frank discussion of the legitimate concerns of all constituents prior to the issuance of a proposed regulation on HACCP. This meeting is envisioned as a substantive opportunity to assist FSIS through a thorough discussion of the issues regarding HACCP. This will aid FSIS when it begins drafting the rule for implementing a HACCP system of production in all meat and poultry establishments.

The Round Table will be facilitated by a neutral third party. The facilitator will seek the full participation of all Round Table participants, will ensure that all identified issues are addressed by the Round Table participants, and will invite comments at the end of the Round Table. After the Round Table meeting, the facilitator will provide a transcript of the meeting, and will prepare a final report, which will include any comments submitted at the Round Table meeting and will summarize the positions of all Round Table participants.

The Round Table meeting will be open to the public. Issue papers will be prepared in advance of the meeting by the participants, and will be publicly available through the FSIS hearing clerk. All issues relative to a HACCP system shall be open for consideration.

FSIS has preliminarily identified the following categories of constituents:

- Meat and Poultry Industry and Their Representatives (Including Grocers and Retailers)
- Consumers and Their Representatives
- Scientists and Professional Scientific Organizations
- Producers and Farmers
- FSIS Employees and Their Representatives
- Federal, State, and Local Governments
- Public Health Officials and Medical Doctors

Any individual or organization that is interested in participating in the Round Table must communicate that interest, and identify his or her constituent category, to Mr. Mark Manis whose address and phone number appear in this notice in the paragraph entitled **FOR FURTHER INFORMATION CONTACT,** within 2 weeks of the date of the publication of this notice in the **Federal Register.** After the 2-week notification period, FSIS will: (1) Compile a list, for each category, of those who expressed an interest in participating in the Round Table meeting; and (2) share that list, by category, with the members of each category. FSIS will then request, within 2 weeks after sending the list to members of each category, that the members of each category select representatives to serve as both Round Table and Steering Committee participants.

To ensure the effectiveness of this process, the estimated number of Round Table participants will be between 25 and 30, and the total number of attendees will be determined by the capacity of the meeting room. FSIS will request each constituent category to appoint one representative to serve on the Steering Committee. FSIS will request that five representatives be appointed for the Round Table by each of the following constituent categories: Meat and Poultry Industry and Their Representatives; Consumers and Their Representatives; and Scientists and Professional Scientific Organizations. FSIS will request that four representatives be appointed for the Round Table from the Producers and Farmers category. FSIS will request that three representatives be appointed for the Round Table from the FSIS Employees and Their Representatives; and Federal, State, and Local Governments categories. FSIS will

request that two representatives be appointed for the Round Table from the Public Health Officials and Medical Doctors category.

If any constituent category is unable to designate its representatives, USDA will assist in the selection.

Furthermore, any person who believes that an affected interest is not represented by the identified categories of constituent groups may request, within 2 weeks of the date of publication of this notice in the **Federal Register**, Round Table participation for that affected interest.

Once the representatives are appointed, FSIS will convene a Steering Committee to be held in the Washington, DC, area in advance of the Round Table meeting. The Steering Committee will address all relevant pre-meeting issues and determine the: (1) Round Table issues; (2) process for developing issue papers prior to the Round Table; (3) timeframes; (4) meeting schedule; (5) Round Table discussion rules; and (6) any other matter which would assist in an effective and full discussion.

Done at Washington, DC, on: January 5, 1994.

H. Russell Cross,

Administrator, Food Safety and Inspection Service.

[FR Doc. 94–556 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–DM–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–43]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc Spey series turbofan engines. This proposal would require a one-time inspection of stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) steel disks for cracks and corrosion pitting. This proposal is prompted by a report of a stage 7 high pressure compressor steel disk found cracked due to corrosion. The actions specified by the proposed AD are intended to prevent an HPT or LPT steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Comments must be received by March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–43, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from the Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–43." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–43, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) Spey series turbofan engines. The CAA advises that they have received a report of a three-inch crack extending radially outward from the bore of a steel stage 7 high pressure compressor disk installed in an R–R Spey 506–14D engine. The crack had originated from a corrosion pit that apparently had been present at the disk's entry into service. Subsequent investigation revealed that engine failure due to disk burst was imminent.

The CAA has determined that steel stage 1 and stage 2 high pressure turbine (HPT) and low pressure turbine (LPT) disks could also contain corrosion pitting that could have been present since original manufacture. Rolls-Royce, plc has informed the FAA that all turbine disks installed in Spey engine models type certificated in the United States are made of steel. This condition, if not corrected, could result in an HPT or LPT steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

Testing and further analysis indicate that to ensure that steel stage 1 and stage 2 HPT and LPT disks do not operate under prolonged exposure to levels of corrosion greater than the overhaul manual limits, at least one inspection is required after 40% of the disk cyclic life is expended in order for the disk to continue in service and to reliably attain full disk cyclic life. Rolls-Royce, plc has issued Service Bulletin No. Sp72–1044, dated September 1992, that specifies a one-time inspection of steel stage 1 and stage 2 HPT and LPT disks for cracks and corrosion pitting. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R–R Spey series turbofan engines in the United Kingdom.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R Spey series turbofan engines of the same type design registered in the United States, the proposed AD would require a one-time inspection of steel stage 1 and stage 2 HPT and LPT disks for cracks and corrosion pitting once the disks have completed at least 40% of their published Group "A" cyclic life limits as specified in the applicable overhaul manual. These disks must be inspected in accordance with the applicable overhaul manual during the engine's next shop visit for either HPT or LPT overhaul after the effective date of this AD. Accomplishment of this inspection will allow stage 1 and stage 2 HPT and LPT disks to complete the remainder of their current published cyclic life limits.

The FAA estimates that 173 engines installed on aircraft of U.S. registry would be affected by this proposed AD and that the average labor rate is $55 per work hour. The FAA estimates that it would take no additional work hours per engine to accomplish the proposed actions to the HPT's as the inspection is performed during scheduled overhauls. Approximately 80% of the engines will require an additional 25 work hours of extra access, inspection, and rebuild time to perform the required LPT inspection. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $189,750.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 28, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce, plc: Docket No. 93–ANE–43.

Applicability: Rolls-Royce, plc (R–R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines, installed on but not limited to British Aerospace BAC 1–11 series and Fokker F28 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a high pressure turbine (HPT) or low pressure turbine (LPT) steel turbine disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following:

(a) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 HPT disks that on the effective date of this airworthiness directive (AD) have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R–R Service Bulletin (SB) No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD.

(b) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 HPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(c) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 LPT disks that on the effective date of this AD have completed 40% or more of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the next shop visit after the effective date of this AD.

(d) Perform a one-time inspection for cracks and corrosion pitting in steel stage 1 and stage 2 LPT disks that on the effective date of this AD have completed less than 40% of their published Group "A" lives, in accordance with the procedures and schedule described in R–R SB No. Sp72–1044, dated September 1992, at the first shop visit after completing 40% of their published Group "A" lives.

(e) Replace with a serviceable part, disks that do not meet the inspection requirements described in section 72–50 of the applicable R–R Spey Engine Overhaul Manual, prior to return to service.

(f) Mark disks that meet the inspection requirements described in section 72–50 of the applicable R–R Spey Engine Overhaul Manual in accordance with R–R SB No. Sp72–1044, dated September 1992, prior to return to service.

(g) For the purpose of this AD, a shop visit is defined as an engine removal where engine maintenance entails removal of either HPT or LPT disks for the purposes of scheduled disk inspections.

(h) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 27, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–00586 Filed 01–10–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–31]

Airworthiness Directives; Rolls-Royce, plc Spey Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Rolls-Royce, plc (R–R) Spey series turbofan engines. This document proposes to supersede Telegraphic AD T89–02–52, which superseded Telegraphic AD T88–22–51. Telegraphic AD T88–22–51 reduced cyclic life limits for seventh stage high pressure compressor (HPC) disk from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. Telegraphic AD T89–02–52 currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks. This proposal would increase the AD's effectivity to include additional R–R Spey engine models, eliminate the option for repetitive inspections, and further reduce the cyclic life limits. This proposal is prompted by further investigation into disk bore cracking that was caused by corrosion. The actions specified by the proposed AD are intended to prevent a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

DATES: Comments must be received by February 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in this AD may be obtained from the Service Manager, Spey engines, Rolls-Royce, plc, East Kilbride, Glasgow G74 4PY, Scotland. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: John Fisher, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7149, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–31." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–31, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion:

The Civil Aviation Authority (CAA), which is the airworthiness authority of the United Kingdom, notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on Rolls-Royce, plc (R–R) Spey series turbofan engines. The CAA advises that they have received a report of a three-inch crack extending radially outward from the bore on a seventh stage high pressure compressor (HPC) disk installed in a R–R Spey Model 506–14D engine. The crack originated from a corrosion pit that apparently had been present at the disk's entry into service. Investigation indicated that failure of the engine due to disk burst was imminent. That condition, if not corrected, could result in a seventh stage HPC disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure.

This engine model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that airworthiness directive (AD) action is necessary for products of this type design that are certificated for operation in the United States.

On October 20, 1988, the FAA issued Telegraphic AD T88–22–51, which reduced cyclic life limits for seventh stage HPC disks from 40,000 total part cycles in service (TPC) to 35,000 TPC for the R–R Spey Model 506–14 and –14D engines. On January 26, 1989, the FAA issued Telegraphic AD T89–02–52, which supersedes Telegraphic AD T88–22–51, and currently requires repetitive inspections or further reduced cyclic life limits for seventh stage HPC disks.

Since the issuance of these two previous AD's, further investigation of the cracked disk revealed that the crack originated from a corrosion pit that could have been present at the disk's entry into service. A testing program investigated the effects of corrosion on seventh stage HPC disks, and as a result of this investigation, disk cyclic life has been reevaluated, assuming the possible presence of corrosion at entry into service. To account for the possible presence of corrosion, this proposed AD would further reduce the cyclic life limit, and would require removing from service seventh stage HPC disks that exceed the revised cyclic life limits following the schedule established in this AD.

This revised limit reduces the cyclic life limit below the point that intermediate, repetitive inspections are practical; therefore, this AD does not provide for repetitive inspections. In addition, this AD would increase the effectivity to include additional R–R Spey engine models not affected by the previous Telegraphic AD's.

Rolls-Royce issued Mandatory Service Bulletin No. Sp72–1034, Revision 1, dated May 4, 1990, that describes the revised cyclic life limits for seventh stage HPC disks, and the additional R–R Spey engine models affected. The CAA classified this service bulletin as mandatory in order to assure the airworthiness of these R–R Spey series turbofan engines in the United Kingdom.

Since an unsafe condition has been identified that is likely to exist or develop on other R–R Spey series turbofan engines of this same type design installed on aircraft registered in the United States, the proposed AD would supersede Telegraphic AD T89–02–52 to increase the AD's effectivity to include additional R–R Spey engine models, eliminate the option for repetitive inspections of seventh stage HPC disks, further reduce the cyclic life limits, and require removing from service disks that exceed the revised cyclic life limits following the schedule established in this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 173 engines installed on aircraft of U.S. registry would be affected by this proposed AD, and that it would not take any additional work hours per engine to accomplish the proposed actions. Replacement parts, prorated for the reduced life, would cost approximately $1,718 per engine. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $297,214.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Rolls-Royce, plc: Docket No. 93–ANE–31

Applicability: Rolls-Royce, plc (R–R) Spey 506–14 series, 511–14 series, and 555–15 series turbofan engines installed on but not limited to British Aerospace BAC 1–11 and Fokker F28 aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent a seventh stage high pressure compressor (HPC) disk burst due to cracking attributed to corrosion, which may result in an uncontained engine failure, accomplish the following:

(a) For seventh stage HPC disks that on the effective date of this airworthiness directive (AD) exceed the revised cyclic life limits described in R–R Service Bulletin (SB) Sp72–1034, Revision 1, dated May 4, 1990, remove from service and replace with a serviceable part within 60 days after the effective date of this AD.

(b) For seventh stage HPC disks that on the effective date of this AD do not exceed the revised cyclic life limits described in R–R SB Sp72–1034, Revision 1, dated May 4, 1990, remove from service and replace with a serviceable part: either prior to exceeding the revised cyclic life limits, or within 60 days after the effective date of this AD, whichever occurs later.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety, may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 29, 1993.

Jay J. Pardee,

Acting Monoger, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–00587 Filed 01–10–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–ANE–04]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. This proposal would require installation of a fan stator case stiffening ring assembly, and a new stage one fan shroud. This proposal is prompted by a report of an uncontained stage one fan blade failure, which resulted in an inflight engine shutdown, and damage to the aircraft. The actions specified by the proposed AD are intended to prevent an uncontained stage one fan blade failure, which can result in an inflight engine shutdown, and damage to the aircraft.

DATES: Comments must be received by February 10, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines. CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, ANE–142, Engine and Propeller Directorate, Aircraft Certification Service, FAA, New England Region, 12 New England Executive Park, Burlington, MA 01803–5299, telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as

they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered by the Administrator before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–04." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–04, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) has received a report of an uncontained stage one fan blade failure, attributed to excessive fan blade tip clearance. Engines without a fan stator case stiffening ring assembly, and a new stage one fan shroud, operate with relatively open stage one fan blade tip clearances. Increased fan rotor vibration occurs when the average tip clearance exceeds the maximum allowable clearance tolerances. This increased vibration increases stresses in the fan blade shank, which leads to cracking and subsequent blade failure. This condition, if not corrected, could result in an uncontained stage one fan blade failure, which can result in an inflight engine shutdown, and damage to the aircraft.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 72–573, Revision 5, dated September 15, 1981, that describes procedures for the installation of the stiffening ring assembly and new stage one fan shroud.

Since an unsafe condition has been identified that is likely to exist, or develop, on other engines of this same type design, the proposed AD would require installation of a fan stator case stiffening ring assembly and a new stage one fan shroud, which will result in reduced running clearances, and lower fan blade stresses. The compliance end date of August 31, 1995, ensures timely compliance without forced engine removals based on hardware availability. The actions would be required to be accomplished, in accordance with the service bulletin described previously.

There are approximately 67 GE CF6–45/–50 series turbofan engines of the affected design in the worldwide fleet. The FAA has been advised by the manufacturer that there are no engines on U.S. registered aircraft that would be affected by this AD. However, should an affected engine be imported on an aircraft and placed on the U.S. registry in the future, it would take approximately 48 work hours to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $9,360 per engine. Based on these figures, the total cost impact of the proposed AD is estimated to be $12,000 per engine.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12886; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 93–ANE–04.

Applicability: General Electric Company (GE) CF6–45/–50 series turbofan engines installed on, but not limited to, Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent an uncontained stage one fan blade failure, which can result in inflight engine shutdown, and damage to the aircraft, accomplish the following:

(a) For engines that have not been modified in accordance with any revision level of GE CF6–50 Service Bulletin (SB) No. 72–573, prior to the effective date of this AD, install a fan stator case stiffening ring assembly and stage one fan shroud, in accordance with GE CF6–50 SB No. 72–573, Revision 5, dated September 15, 1981, by August 31, 1995.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(c) Special flight permits may be issued, in accordance with FAR 21.197 and 21.199, to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 21, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–589 Filed 1–10–94; 8:45 am]

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14 CFR Part 39

[Docket No. 93–ANE–69]

Airworthiness Directives; General Electric Company CF6 Series Turbofan Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. This proposal would require repetitive inspections of the left compressor discharge pressure (CDP) manifold and lower CDP tube for cracks, and if found cracked, rework or replacement with serviceable parts. This proposal would also require rework or replacement of the left CDP manifold, lower CDP tube, stage 14 turnbuckle, and other related CDP bleed air hardware, and inspection of the compressor rear frame (CRF) as a terminating action to the inspection program. This proposal is prompted by reports of cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, that have resulted in inflight engine shutdowns and rejected takeoffs. The actions specified by the proposed AD are intended to prevent cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle.

DATES: Comments must be received by March 14, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from General Electric Aircraft Engines, CF6 Distribution Clerk, room 132, 111 Merchant Street, Cincinnati, OH 45246. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Robert J. Ganley, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7138; fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–69." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–69, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

This proposed airworthiness directive (AD) is applicable to General Electric Company (GE) CF6–45/–50 series turbofan engines. The Federal Aviation Administration (FAA) has received 228 reports of cracks in the left compressor discharge pressure (CDP) manifold, lower CDP tube, and compressor rear frame (CRF) bleed port struts. Of these 228 reports, 24 have resulted in inflight engine shutdowns, and 24 in rejected takeoffs. The current type design hardware has been found to crack, allowing hot air to leak into the core cowl area, resulting in false fire warnings.

The cracks in the current type design hardware are the result of high cycle fatigue (HCF). The excessive stress is the result of both thermal and airframe installation loading factors. New hardware exists which decreases operating stresses, therefore reducing the chance of cracks due to HCF. This condition, if not corrected, may result in cracks in the left CDP manifold, lower CDP tube, and CRF bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle.

The FAA has reviewed and approved the technical contents of GE CF6–50 Service Bulletin (SB) No. 75–065, Revision 1, dated March 26, 1993, that describes procedures for rework or replacement of the left CDP manifold, lower CDP tube, and other related CDP bleed air hardware, and inspection of the CRF bleed port struts; GE CF6–50 SB No. 75–067, dated March 15, 1993, that describes procedures for rework or replacement of the stage 14 turnbuckle; and GE CF6–50 SB No. 75–064, Revision 2, dated July 23, 1992, that describes procedures for repetitive inspections of the left CDP manifold and lower CDP tube for cracks.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require repetitive inspections of the left CDP manifold and lower CDP tube for cracks, and if found cracked, rework or replacement with serviceable parts. This proposal would also require rework or replacement of the left CDP manifold, lower CDP tube, stage 14 turnbuckle, and other related CDP bleed air hardware, and inspection of the CRF as a terminating action to the inspection program. The compliance end-date of October 31, 1996, is proposed to ensure timely compliance. Based upon engine shop visit rates, a compliance end-date of October 31, 1996, will ensure timely compliance while minimizing the number of forced engine removals. The actions would be required to be accomplished in accordance with the service bulletins described previously.

There are approximately 2202 GE CF6–45/–50 series engines of the affected design in the worldwide fleet. The FAA estimates that 223 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per engine to accomplish the proposed inspections, 32 work hours per engine to accomplish the proposed terminating action, and that the average labor rate is $55 per work hour. Required parts would cost approximately $27,500 per engine.

Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $6,549,510.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

General Electric Company: Docket No. 93–ANE–69.

Applicability: General Electric Company (GE) CF6–5/–50 series turbofan engines installed on but not limited to Airbus A300 series, Boeing 747 series, and McDonnell Douglas DC–10 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent cracks in the left compressor discharge pressure (CDP) manifold, lower CDP tube, and the compressor rear frame (CRF) bleed port struts, which could result in an inflight engine shutdown, rejected takeoff, or damage to the engine nacelle, accomplish the following:

(a) Inspect the left CDP manifold, Part Number (P/N) 9057M84G02 and 9057M84G03, and lower CDP tube, P/N 9068M40G01, in accordance with GE CF6–50 Service Bulletin (SB) No. 75–064, Revision 2, dated July 23, 1992, within the next 500 hours time in service (TIS) or 150 cycles in service (CIS) after the effective date of this airworthiness directive (AD), whichever occurs later. Thereafter, inspect at intervals not to exceed 500 hours TIS or 150 CIS since the last inspection, whichever occurs later.

(b) For left CDP manifolds and lower CDP tubes found cracked, accomplish the following prior to further flight:

(1) Rework or replace the left CDP manifold, lower CDP tube, and other related CDP bleed air hardware, and fluorescent penetrant inspect (FPI) the CRF in accordance with GE CF6–50 SB No. 75–065, Revision 1, dated March 26, 1993. For CRF's found cracked, either repair in accordance with GE CF6–50 Task Number Shop Manual, GEK 50481, Chapter 72–34–01, or replace with a serviceable part.

(2) Rework or replace the stage 14 turnbuckle, P/N 1555M42P01, in accordance with GE CF6–50 SB No. 75–067, dated March 15, 1993.

(c) Rework or replace the left CDP manifold, P/N 9057M84G02 and 9057M84G03, lower CDP tube, P/N 9068M40G01, and other related CDP bleed air hardware, and FPI the CRF in accordance with GE CF6–50 SB No. 75–065, Revision 1, dated March 26, 1993, at the next engine shop visit, or by October 31, 1996, whichever occurs earlier. For CRF's found cracked, either repair in accordance with GE CF6–50 Task Number Shop Manual, GEK 50481, Chapter 72–34–01, or replace with a serviceable part.

(d) Rework or replace the stage 14 turnbuckle, P/N 1555M42P01, in accordance with GE CF6–50 SB No. 75–067, dated March 15, 1993, at the next engine shop visit, or by October 31, 1996, whichever occurs earlier.

(e) Rework or replacement of the left CDP manifold, lower CDP tube, and stage 14 turnbuckle, in accordance with paragraph (b), or paragraphs (c) and (d), as applicable, of this AD constitutes terminating action to the repetitive inspections required in paragraph (a) of this AD.

(f) For the purpose of this AD, an engine shop visit is defined as the induction of an engine into a shop for maintenance involving the separation of any major module.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on December 27, 1993.

Jay J. Pardee,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 94–588 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1, 30, 33, and 190

Risk Disclosure by Futures Commission Merchants, Introducing Brokers, Commodity Pool Operators and Commodity Trading Advisors to Customers; Bankruptcy Disclosure

AGENCY: Commodity Futures Trading Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is requesting public comment on the text of a draft two page generic risk disclosure statement currently being discussed among various international futures regulators that potentially could be used to meet the risk disclosure requirements for both domestic and foreign commodity futures and commodity option products subject to regulation by the CFTC. As contemplated by Commission rule 1.55(c), the text of the generic risk disclosure statement is being published, in part, to further these discussions relative to the development of one document to satisfy the risk disclosure requirements of the CFTC and such foreign jurisdictions as may choose to adopt its language for use in their jurisdictions. Based on the comments received, the CFTC may be better able to provide input to these discussions and to consider rule amendments to permit the substitution of this statement under rule 1.55(c) and certain other rules for firms doing cross-border business.

DATES: Comments must be submitted on or before February 10, 1994.

ADDRESSES: Comments should be sent to the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Reference should be made to "Generic Risk Disclosure—Advance Notice."

FOR FURTHER INFORMATION CONTACT: Jane C. Kang, Esq., or Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581; telephone (202) 254–8955.

SUPPLEMENTARY INFORMATION:

Background

On March 30, 1993, the Commission, among other things, adopted final rule amendments to Commission rule 1.55(b) which simplified the risk disclosure process by consolidating the risk disclosure statements applicable to domestic futures transactions and foreign futures and foreign commodity options transactions in rules 1.55 and 30.6, respectively.[1] The use of such a statement was intended to greatly simplify the risk disclosure process for U.S. firms conducting cross-border business.

In response to Commission suggestions in the notice of proposed rulemaking concerning rule 1.55 that it also was considering the development of a "plain language" options disclosure statement,[2] some commenters supported that course of action and further suggested that the Commission not only shorten the rule 33.7 disclosure statement applicable to exchange-traded commodity option transactions but also consolidate it with the new combined domestic futures and foreign futures and foreign commodity options statement. In response, the Commission noted that certain international regulators were endeavoring to develop a single risk disclosure statement that could be used in multiple jurisdictions to satisfy the risk disclosure requirements applicable to domestic and cross-border transactions in futures and options. The Commission stated that if a universal statement were to be developed, it would consider permitting the use of such a statement in lieu of the new consolidated rule 1.55 risk disclosure statement as well as the options risk disclosure statement required by current rule 33.7.[3] Under amended rule 1.55(c), the Commission may permit the substituted use of a risk disclosure statement approved by a foreign regulatory or self-regulatory organization if the Commission determines that such statement reasonably is calculated to provide the disclosure required by Commission rule 1.55(b).[4]

For some time, a working group [5] of international regulators worked towards developing a single risk disclosure statement which could satisfy the risk disclosure requirements applicable, in the multiple participating jurisdictions, to domestic and cross-border transactions in futures and options ("generic disclosure statement").[6] Following extensive discussions, the draft generic disclosure statement set forth herein was developed and the draft text was passed to those regulatory authorities (including the CFTC) who were interested in taking the work forward. The text remains subject to final discussion and approval by the regulatory authorities of the participating jurisdictions.

It is intended that the generic disclosure statement would specify, in an addendum on a third page, the participating jurisdictions and the specific products for which it could be used. The addendum would be updated periodically as new jurisdictions adopted the text. In the United States, it is contemplated that such risk disclosure statement, if ultimately proposed and adopted after further public comment, would satisfy only those risk disclosure obligations set forth in Commission rules 1.55 (which incorporates the risk-disclosure contained in Commission rule 30.6),[7] the special disclosures related to futures-style margining of options permitted on certain foreign exchanges,[8] and the special bankruptcy disclosures of Commission rule 190.10(c) related to the acceptance of non-cash margin.

Approach Taken By Working Group

The approach taken by the international working group with respect to risk disclosure has been to develop a draft generic statement which focuses on the major risks of trading and contains the basic generic disclosures required by most jurisdictions.

Thus, the approach of the working group was to eliminate much of the definitional and educational material which currently is required to be disclosed by Commission rule 33.7 and to treat options disclosure in a manner equivalent to disclosure for futures. As such, the statement is intended to focus customer attention on the risks of trading, as currently is the practice with futures risk disclosure. Further, the statement would highlight the importance of obtaining sufficient information as to the specifics of trading without attempting to address the differences from market to market.

The elimination of a Commission mandated description of options trading and other educational material from the mandated risk disclosure statement does not mean, however, that firms do not have the obligation to provide all material disclosures in compliance with Commission and National Futures Association (NFA) rules.[9]

Additional Topics

As the working group's objective was not only to create a risk disclosure statement that categorized existing disclosure requirements in most jurisdictions but also to incorporate new matters deemed relevant in an evolving marketplace, the generic statement also contains the following additional topics.

[1] 58 FR 17496 (April 5, 1993). These amendments also:

—eliminated the requirement that the rule 190.10 disclosure regarding treatment of non-cash margin be acknowledged by the customer;

—clarified that the rule 1.55 risk disclosure statement may be included in a booklet of account opening documents, provided it appears on the cover page or following the cover page of such booklet;

—provided that the Commission may approve a risk disclosure statement that has been approved by a foreign jurisdiction or foreign SRO for use in lieu of the Commission-required statement;

—permitted the use of a single acknowledgement for rule 1.55 and 33.7 statements and other elections, subject to specified conditions; and

—simplified the disclosure requirements regarding the bulk transfer of accounts.

[2] See 57 FR 46101, 46108 (October 7, 1992).

[3] 58 FR at 17497 and 17502 (April 5, 1993).

[4] 58 FR at 17503–17504 (April 5, 1993).

[5] The working group was composed of representatives from Canada (Ontario Securities Commission), France (the French Conseil du Marche a Terme), Switzerland (the Swiss Ministry of Finance), the United Kingdom (the U.K. Securities and Investments Board, which chaired the working group), and the United States (the CFTC).

[6] See 58 FR at 17496, 17497 and 17502 (April 5, 1993).

[7] The Commission notes in this regard that pending resolution of the Commission's determination on this draft generic risk disclosure statement, firms operating pursuant to Commission rule 30.10 relief should continue to comply with the risk disclosure requirements set forth in the relevant Commission orders and that for these purposes may continue to use the text of rule 30.6 as published prior to the 1993 revisions to Commission rules 1.55 and 30.6 (which incorporated the rule 30.6 disclosures for foreign futures into the rule 1.55 disclosures for domestic futures) (see 58 FR 17496 (April 5, 1993)).

[8] See, e.g., CFTC Advisory No. 90–1 [1987–1990 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,597 (disclosure statement relating to the deferred payment of option premiums for options, superseding separate disclosure addenda required by orders concerning the London International Financial Futures Exchange (54 FR 37636 (September 12, 1989)), the International Petroleum Exchange (54 FR 50356 (December 6, 1989)), and the London Futures and Options Exchange (renamed as the London Commodity Exchange) (54 FR 50348 (December 6, 1989)); and 55 FR 14238 (April 17, 1990) (Sydney Futures Exchange).

[9] See, e.g., Commission rule 1.55(d), which provides that: This section [requiring distribution of a risk disclosure statement] does not relieve a futures commission merchant or introducing broker from any other disclosure obligation it may have under applicable law.

See also, NFA Compliance Rule 2–30 (customer information and risk disclosure).

1. Supporting Systems

The current draft generic disclosure statement would briefly disclose the fact that most open-outcry and electronic trading facilities are supported by computer-based component systems, which are vulnerable to temporary disruption or failure.

2. Electronic Trading

Differences in electronic trading systems are such that a common disclosure appropriate to the specifics of each such system may not be feasible and, in the case of domestic contract market electronic systems, the draft generic disclosure statement would not substitute for disclosure requirements that currently are required by individual contract markets for such systems. However, as the purpose of the draft generic disclosure statement is to articulate general risks common to futures and options trading, it is possible in the case of electronic systems to identify the risks common to any such system, such as the possibility of system failure and that the liability of the system provider may be limited. No attempt has been made to describe in detail the specifics of any one system. On the contrary, the proposed disclosure text encourages the customer to ask the firm with which it is dealing for details in this respect.

3. Off-Exchange Trading

The draft generic disclosure statement also contains a reference to the risks of off-exchange trading. The international working group drafting the consolidated disclosure statement concluded that such a provision, if worded appropriately, would not mislead or confuse customers in those jurisdictions which, for example, do not permit retail customers to participate in off-exchange markets.

Request For Comment

The Commission is inviting public comment and suggestions generally on the draft text of the generic risk disclosure statement so that any material public concerns can be considered by the Commission. The Commission also requests public comment on whether the use of a generic disclosure statement to substitute for current disclosures contained in rules 1.55, 33.7, 190.10 and Commission orders and Advisories regarding disclosures related to futures-style margining of option premiums allowed by certain foreign exchanges would be most useful if made mandatory for certain categories of registrants, and if so, which categories should be included, and whether use should be limited to firms doing cross-border business or more broadly available.

Text of Draft Generic Risk Disclosure Statement

Risk Disclosure Statement for Futures and Options

This brief statement does not disclose all of the risks and other significant aspects of trading in futures and options. In light of the risks, you should undertake such transactions only if you understand the nature of the contracts (and contractual relationships) into which you are entering and the extent of your exposure to risk. Trading in futures and options is not suitable for many members of the public. You should carefully consider whether trading is appropriate for you in light of your experience, objectives, financial resources and other relevant circumstances.

Futures

1. Effect of "Leverage" or "Gearing"

Transactions in futures carry a high degree of risk. The amount of initial margin is small relative to the value of the futures contract so that transactions are "leveraged" or "geared." A relatively small market movement will have a proportionately larger impact on the funds you have deposited or will have to deposit: this may work against you as well as for you. You may sustain a total loss of initial margin funds and any additional funds deposited with the firm to maintain your position. If the market moves against your position or margin levels are increased, you may be called upon to pay substantial additional funds on short notice to maintain your position. If you fail to comply with a request for additional funds within the time prescribed, your position may be liquidated at a loss and you will be liable for any resulting deficit.

2. Risk-reducing Orders or Strategies

The placing of certain orders (e.g. "stop-loss" orders, where permitted under local law, or "stop-limit" orders) which are intended to limit losses to certain amounts may not be effective because market conditions may make it impossible to execute such orders. Strategies using combinations of positions, such as "spread" and "straddle" positions may be as risky as taking simple "long" or "short" positions.

Options

3. Variable Degree of Risk

Transactions in options carry a high degree of risk. Purchasers and sellers of options should familiarize themselves with the type of option (i.e. put or call) which they contemplate trading and the associated risks. You should calculate the extent to which the value of the options must increase for your position to become profitable, taking into account the premium and all transaction costs.

The purchaser of options may offset or exercise the options or allow the options to expire. The exercise of an option results either in a cash settlement or in the purchaser acquiring or delivering the underlying interest. If the option is on a future, the purchaser will acquire a futures position with associated liabilities for margin (see the section on Futures above). If the purchased options expire worthless, you will suffer a total loss of your investment which will consist of the option premium plus transaction costs. If you are contemplating purchasing deep-out-of-the-money options, you should be aware that the chance of such options becoming profitable ordinarily is remote.

Selling ("writing" or "granting") an option generally entails considerably greater risk than purchasing options. Although the premium received by the seller is fixed, the seller may sustain a loss well in excess of that amount. The seller will be liable for additional margin to maintain the position if the market moves unfavorably. The seller will also be exposed to the risk of the purchaser exercising the option and the seller will be obligated to either settle the option in cash or to acquire or deliver the underlying interest. If the option is on a future, the seller will acquire a position in a future with associated liabilities for margin (see the section on Futures above). If the option is "covered" by the seller holding a corresponding position in the underlying interest or a future or another option, the risk may be reduced. If the option is not covered, the risk of loss can be unlimited.

Certain exchanges in some jurisdictions permit deferred payment of the option premium, exposing the purchaser to liability for margin payments not exceeding the amount of the premium. The purchaser is still subject to the risk of losing the premium and transaction costs. When the option is exercised or expires, the purchaser is responsible for any unpaid premium outstanding at that time.

Additional Risks Common to Futures and Options

4. Terms and Conditions of Contracts

You should ask the firm with which you deal about the terms and conditions of the specific futures or options which you are trading and associated obligations (e.g. the circumstances under which you may become obligated to make or take delivery of the underlying interest of a futures contract and, in respect of options, expiration dates and restrictions on the time for exercise). Under certain circumstances the specifications of outstanding contracts (including the exercise price of an option) may be modified by the exchange or clearing house to reflect changes in the underlying interest.

5. Suspension or Restriction of Trading and Pricing Relationships

Market conditions (e.g. illiquidity) and/or the operation of the rules of certain markets (e.g. the suspension of trading in any contract or contract month because of price limits or "circuit breakers") may increase the risk of loss by making it difficult or impossible to effect transactions or liquidate/offset positions. If you have sold options, this may increase the risk of loss.

Further, normal pricing relationships between the underlying interest and the future, and the underlying interest and the option may not exist. This can occur when, for example, the futures contract underlying the option is subject to price limits while the option is not. The absence of an underlying reference price may make it difficult to judge "fair" value.

6. Deposited Cash and Property

You should familiarize yourself with the protections accorded money or other property you deposit for domestic and foreign transactions, particularly in the event of a firm insolvency or bankruptcy. The extent to which you may recover your money or property may be governed by specific legislation or local rules. In some jurisdictions, property which had been specifically identifiable as your own will be pro-rated in the same manner as cash for purposes of distribution in the event of a shortfall.

7. Commission and Other Charges

Before you begin to trade, you should obtain a clear explanation of all commission, fees and other charges for which you will be liable. These charges will affect your net profit (if any) or increase your loss.

8. Transactions in Other Jurisdictions

Transactions on markets in other jurisdictions, including markets formally linked to a domestic market, may expose you to additional risk. Such markets may be subject to regulation which may offer different or diminished investor protection. Before you trade you should enquire about any rules relevant to your particular transactions. Your local regulatory authority will be unable to compel the enforcement of the rules of regulatory authorities or markets in other jurisdictions where your transactions have been effected. You should ask the firm with which you deal for details about the types of redress available in both your home jurisdiction and other relevant jurisdictions before you start to trade.

9. Currency Risks

The profit or loss in transactions in foreign currency-denominated contracts (whether they are traded in your own or another jurisdiction) will be affected by fluctuations in currency rates where there is a need to convert from the currency denomination of the contract to another currency.

10. Trading Facilities

Most open-outcry and electronic trading facilities are supported by computer-based component systems for the order-routing, execution, matching, registration or clearing of trades. As with all facilities and systems, they are vulnerable to temporary disruption or failure.

11. Electronic Trading

Trading on an electronic trading system may differ not only from trading in an open-outcry market but also from trading on other electronic trading systems. If you undertake transactions on an electronic trading system, you will be exposed to risks associated with the system including the failure of hardware and software. The result of any system failure may be that your order is either not executed according to your instructions or is not executed at all. Your ability to recover certain losses which are particularly attributable to trading on a market using an electronic trading system may be limited to less than the amount of your total loss. Limits on liability may be imposed by the system provider, the market, the clearing house and/or member firms. Such limits may vary: You should ask the firm with which you deal for details in this respect.

12. Off-exchange Transactions

In some jurisdictions, and only then in restricted circumstances, firms are permitted to effect off-exchange transactions. The firm with which you deal may be acting as your counterparty to the transaction. It may be difficult or impossible to liquidate an existing position, to assess the value, to determine a fair price or to assess the exposure to risk. For these reasons, these transactions may involve increased risks.

Off-exchange transactions may be less regulated or subject to a separate regulatory regime. Before you undertake such transactions, you should familiarize yourself with applicable rules.

This disclosure document meets the risk disclosure requirements in the jurisdictions identified below ONLY for those instruments which are specified:

Jurisdiction "A":
  futures
  options on futures
Jurisdiction "B":
  futures
  options on futures
  options on commodities
Jurisdiction "C":
  futures
  options on futures
  options on equities
etc.

Issued in Washington, DC. on January 5, 1994 by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94-608 Filed 1-10-94; 8:45 am]

BILLING CODE 6351-01-P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 202, 229, and 240

[Release No. 34-33429; File No. S7-40-92]

RIN 3235-AF91

Rules of Practice—Extension of Comment Period

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Securities and Exchange Commission is extending from January 6, 1994 to February 4, 1994 the comment period for Securities Exchange Act Release No. 34-33163 (58 FR 61732 [Nov. 22, 1993]), which proposed comprehensive revisions to the Commission's Rules of Practice governing Commission administrative proceedings including, among others, evidentiary hearings before administrative law judges, appeals of

self-regulatory organization disciplinary actions and administrative law judge initial decisions and certain rulemaking proceedings. Since publication of the rules, the Commission has received from interested persons a number of requests for extension of the comment period.

DATES: Comments must be submitted on or before February 4, 1994.

ADDRESSES: Comments should be addressed to File No. S7–40–92, Attention: Jonathan G. Katz, Secretary; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–9; Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 272–2428; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–6; Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

On November 5, 1993, the Commission authorized publication in the Federal Register of a proposal to make major amendments to the Commission's Rules of Practice. Published on November 22, 1993 (58 FR 61732), this proposal stems from the work of the Commission's Task Force on Administrative Proceedings, chaired by Commissioner Mary Schapiro. In addition to updating the Commission's existing rules and make them more consistent with actual practices, the proposed revisions would establish procedures to implement the authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act. The Commission requested that comments the received by January 6, 1994.

Since the publication of the Rules, the Commission has received from interested persons a number of requests for an extension of the comment period. On December 27, 1993, an Ad Hoc Committee of the American Bar Association that is preparing comments in response to the Commission's proposal sent a letter requesting that the comment period be extended from January 6, 1994 to February 1, 1994. The stated reason for this request is the ABA requires more time because of the breadth of the Commission's proposal and its accompanying commentary. Three other parties have contacted the Commission's Office of the General Counsel to request an extension of the comment period.

II. Discussion

In light of the length and complexity of the release and the benefits to the Commission of receiving carefully considered comments, the Commission believes a reasonable extension of the comment period is appropriate. Therefore, in order to assist interested participants in their consideration and preparation of carefully reasoned comments, the Commission is extending the comment period for all persons to February 4, 1994.

III. Conclusion

The comment period for responding to Securities Exchange Act Release No. 34–33163 is extended to February 4, 1994.

Dated: January 5, 1994.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–621 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Part 9

[Notice No. 787 and 93F–022P]

RIN 1512–AA07

Seiad Valley Viticultural Area

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Department of the Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Bureau of Alcohol, Tobacco and Firearms (ATF) is considering the establishment of a viticultural area located in Siskiyou County, California, to be known as "Seiad Valley." This proposal is the result of a petition filed by Brian J. Helsaple of Seiad Valley Vineyards. ATF believes that the establishment of viticultural areas and the subsequent use of viticultural area names as appellations of origin in wine labeling and advertising allows wineries to designate the specific areas where the grapes used to make the wine were grown and enables consumers to better identify the wines they purchase.

DATES: Written comments must be received by March 14, 1994.

ADDRESSES: Send written comments to: Chief, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 50221, Washington, DC 20091–0221, Attn: Notice No. 787. Copies of written comments received in response to this notice of proposed rulemaking will be available for public inspection during normal business hours at: ATF Reference Library, Office of Public Affairs and Disclosure, room 6300, 650 Massachusetts Avenue, NW., Washington, DC 20226.

FOR FURTHER INFORMATION CONTACT: Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms, 650 Massachusetts Avenue, NW., Washington, DC 20226 (202–927–8230).

SUPPLEMENTARY INFORMATION:

Background

On August 23, 1978, ATF published Treasury Decision ATF–53 (43 FR 37672, 54624) revising regulations in 27 CFR part 4. These regulations allow the establishment of definite American viticultural areas. The regulations also allow the name of an approved viticultural area to be used as an appellation of origin in the labeling and advertising of wine.

On October 2, 1979, ATF published Treasury Decision ATF–60 (44 FR 56692) which added a new part 9 to 27 CFR, providing for the listing of approved American viticultural areas. Section 4.25a(e)(1), title 27, CFR, defines an American viticultural area as a delimited grape-growing region distinguishable by geographical features, the boundaries of which have been delineated in Subpart C of part 9. Section 4.25a(e)(2) outlines the procedure for proposing an American viticultural area. Any interested person may petition ATF to establish a grape-growing region as a viticultural area. The petition should include:

(a) Evidence that the name of the proposed viticultural area is locally and/or nationally known as referring to the area specified in the petition;

(b) Historical or current evidence that the boundaries of the viticultural area are as specified in the petition;

(c) Evidence relating to the geographical features (climate, soil, elevation, physical features, etc.) which distinguish the viticultural features of the proposed area from surrounding areas;

(d) A description of the specific boundaries of the viticultural area, based on features which can be found on United States Geological Survey (U.S.G.S.) maps of the largest applicable scale; and

(e) A copy of the appropriate U.S.G.S. map(s) with the boundaries prominently marked.

Petition

ATF has received a petition from Brian J. Helsaple of Seiad Valley Vineyards proposing to establish a viticultural area in Siskiyou County, California, to be known as "Seiad Valley." The proposed viticultural area is located in northwestern California, about 15 miles south of the Oregon border. It contains approximately 2160 acres, of which approximately 2.5 acres are planted to vineyards. Seiad Valley Vineyards is the only commercial grower and the only wine producer currently active within the proposed viticultural area.

Evidence of Name

Evidence that the name of the proposed area is locally and/or nationally known as referring to the area specified in the petition includes:

(a) The U.S.G.S. map used to show the boundaries of the proposed area (the Seiad Valley Quadrangle 7.5 minute series map) uses the name "Seiad Valley" to describe the area immediately surrounding Seiad Creek, corresponding to the portion of the proposed area which is north of the Klamath River. The map also shows the town of Seiad Valley within this area. The map shows no separate designation for the portion of the proposed area south of the Klamath River, which is drained by Grider Creek.

(b) The petitioner provided excerpts from the 1957 issue of Siskiyou Pioneer, an annual publication of the Siskiyou County Historical Society, which discuss the history of the name Seiad Valley, and local understanding of the extent of the area known as Seiad, or Seiad Valley. "Sciad," by Betty Livingston and Hazel Davis, states the name Seiad was originally spelled Sciad, and the creek and valley were called that by the trappers "before the prospectors came in 1850." Sometime after 1871, the spelling of the name changed to Seiad. In "Gold Mining from Scott Bar to Happy Camp," by J.B. Grider, the following description appears:

> Seiad is a small valley two miles long and one mile wide * * * There are two large creeks in Seiad, Grider Creek and Seiad Creek. Grider Creek flows north into the Klamath from the Marble Mountain territory. Seiad creek flows south into the Klamath from the Siskiyous and Red Mountain."

(c) The petitioner also provided a copy of a claim document dated August 26, 1942, which states the Grider Creek mining claim is "situate in the Seiad Mining District."

Evidence of Boundaries

The petitioner has defined the proposed area primarily by its elevation, using the 1600 and 1800 foot contour lines. As evidence that the proposed boundaries for the area are as specified in the petition, the petitioner states that the vegetation within and outside the area provides a dramatic contrast. Within the proposed area, cottonwood, oak and willow trees and wild blackberries and grapes grow in addition to the cultivated crops. Outside the proposed area, on the higher slopes of the surrounding mountains, conifers such as cedar, Douglas fir and Ponderosa pine predominate in the thin, eroded soils with scant summer moisture.

Geographical Features

The proposed viticultural area consists of the valleys drained by Seiad Creek and Grider Creek, which both flow into the Klamath River in northwestern California. According to the petitioner, these valleys and an expanse of land along the Klamath River which connects them share characteristics of topography, soil composition and climate which distinguish the proposed viticultural area from the surrounding areas. The petitioner provided the following evidence to support his claims:

Topography

The U.S.G.S. topographic map submitted by the petitioner shows the proposed area is a relatively flat area varying in elevation from 1,400 to 1,600 feet, with a small portion as high as 1,800 feet, surrounded by steeply rising terrain. Outside the area, the elevation ranges from 2,000 to 2,800 feet, with peaks exceeding 3,000 feet on all sides, and some peaks as high as 3,900 feet. The petitioner explains that snow melt, runoff, and erosion from these higher areas into the valley create a contrast in both the quality of soils and the availability of water within and outside the proposed area. The lower elevation within the proposed area also contributes to more moderate temperatures there.

Soil

The petitioner states that the valley floor "is composed of deep fertile soil mixtures of loam, sand, clay and rocks eroded from the surrounding mountain slopes." According to a draft environmental impact report prepared in 1975 by the California Department of Transportation, the valley floor is "mostly alluvium deposits which were widely dredged and hydraulically mined for gold. Chromite was also mined within the Seiad Valley area." Dredging left "tailings," or piles of rounded rocks, wherever the dredge operated. The petitioner states that these granite-dominated rock tailings store heat during the day and provide protection against frost in spring and fall.

Climate

The petitioner provided the following material related to the climate in the area:

(a) An article in the Pioneer Press of September 16, 1992, titled "Rock-pile grapevines surprising all experts," contrasted Siskiyou County growing conditions with those in Seiad Valley vineyard: "What's stopped the area from becoming a wine-producing area are the erratic late spring freezes in the zone where elevations are low enough to even make it possible. And in some of the county's lowest elevation areas, the precipitation levels are too high." The article stated the rock tailings in his vineyard "may give Helsaple just the edge he needs to be the county's first successful longterm wine grape grower."

(b) The Sunset New Western Garden Book, 1979 edition, climate map of northern California and western Nevada showed Seiad Valley as Zone 7, and characterizes a Zone 7 climate as having hot summers and mild but pronounced winters, favorable for deciduous fruit that requires a marked seasonal pattern.

Proposed Boundary

The boundary of the proposed Seiad Valley viticultural area may be found on one United States Geological Survey (U.S.G.S.) map with a scale of 1:24000. The boundary is described in § 9.148.

Executive Order 12866

It has been determined that this proposed regulation is not a significant regulatory action as defined in Executive Order 12866. Accordingly, this proposal is not subject to the analysis required by this Executive Order.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Any benefit derived from the use of a viticultural area name is the result of the proprietor's own efforts and consumer acceptance of wines from a particular area. No new requirements are

proposed. Accordingly, a regulatory flexibility analysis is not required.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice of proposed rulemaking because no requirement to collect information is proposed.

Public Participation

ATF requests comments from all interested parties. We are particularly interested in comments concerning application of the name "Seiad Valley" to the area south of the Klamath River, which is drained by Grider Creek. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so, but assurance of consideration cannot be given except as to comments received on or before the closing date.

ATF will not recognize any comment as confidential. Comments may be disclosed to the public. Any material which a commenter considers to be confidential or inappropriate for disclosure to the public should not be included in the comment. The name of the person submitting a comment is not exempt from disclosure. During the comment period, any person may request an opportunity to present oral testimony at a public hearing. However, the Director reserves the right to determine, in light of all circumstances, whether a public hearing will be held.

Drafting Information

The principal author of this document is Marjorie D. Ruhf, Wine and Beer Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 9

Administrative practices and procedures, Consumer protection, Viticultural areas, and Wine.

Authority and Issuance

Title 27, Code of Federal Regulations, part 9, American Viticultural Areas, is proposed to be amended as follows:

PART 9—AMERICAN VITICULTURAL AREAS

Paragraph 1. The authority citation for part 9 continues to read as follows:

Authority: 27 U.S.C. 205.

Par. 2. Subpart C is amended by adding § 9.148 to read as follows:

Subpart C—Approved American Viticultural Areas

* * * * *

§ 9.148 Seiad Valley.

(a) *Name.* The name of the viticultural area described in this section is "Seiad Valley."

(b) *Approved map.* The appropriate map for determining the boundary of the Seiad Valley viticultural area is a U.S.G.S. 7.5 minute series topographical map of the 1:24000 scale, titled "Seiad Valley, Calif.," 1980.

(c) *Boundary.* The Seiad Valley viticultural area is located in Siskiyou County, California. The boundary is as follows:

(1) The beginning point is the intersection of the 1600 foot contour line with the power transmission line north of the Klamath River, near Mile 130;

(2) From the beginning point, the boundary follows the 1600' contour line in a generally northeasterly direction until it reaches the intersection of an unnamed light duty road and an unimproved road just west of Canyon Creek;

(3) The boundary then follows the unimproved road north to its end, then goes east in a straight line until it reaches the 1800' contour line;

(4) The boundary then follows the 1800' contour line in a northeasterly direction to the point, near Sawmill Gulch, where the contour line crosses Seiad Creek and turns south and west;

(5) The boundary continues to follow the 1800' contour line as it proceeds southwest for approximately 4.5 miles, then turns sharply south-southeast for approximately 0.3 miles, until the contour line turns sharply east at a point just north of the Klamath River;

(6) The boundary then diverges from the 1800' contour line and proceeds south-southeast in a straight line, across the Klamath River and State route 96, until it intersects with the 1600' contour line;

(7) The boundary then follows the 1600' contour line south and west, then north and west, roughly following the course of the Klamath River, until it reaches an unnamed peak 1744 feet high;

(8) The boundary continues along the 1600' contour line as it diverges from the Klamath River and proceeds south, just to the east of an unnamed light duty road, to the point where that road crosses Grider Creek;

(9) The boundary diverges from the contour line and proceeds west in a straight line across the road and Grider Creek until it intersects with the 1600' contour line on the west side of Grider Creek;

(10) The boundary then follows the 1600' contour line north, west and north again until it reaches a point where the contour line turns west, just south of the Klamath River;

(11) The boundary diverges from the 1600' contour line and proceeds in a straight line in a northeasterly direction, back to the point of beginning.

Approved: December 28, 1993.

Daniel R. Black

Acting Director

[FR Doc. 94–477 Filed 01–10–94; 8:45 am]

BILLING CODE 4810–31–U

POSTAL SERVICE

39 CFR Part 111

Special Bulk Third-Class Eligibility Restrictions

AGENCY: Postal Service.

ACTION: Proposed rule, notice of public meeting.

SUMMARY: In response to requests from postal customers, the Postal Service has decided to hold a public meeting to facilitate the receipt of comments regarding a proposal to implement new statutory restrictions on the use of special bulk third-class mail.

DATES: January 28, 1994; 10 a.m.

ADDRESSES: U.S. Postal Service Headquarters, 475 L'Fanfant Plaza, SW., Benjamin Franklin Room, 11th Floor South, Washington, DC 20260.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: On December 10, 1993, the Postal Service published proposed rule changes to implement recently enacted statutory restrictions on the use of special bulk third-class mail. 58 FR 64918. See also 58 FR 65959 (December 17, 1993) which extended the period for comment on this proposal. A number of customers have requested an opportunity to present their views and concerns in person regarding the proposed rule change. The Postal Service generally does not hold, nor does it generally find a need for, public meetings concerning proposed rules. Nevertheless, in this limited instance, the Postal Service has determined to grant the request for a public meeting. Interested parties may, of course, submit written comments in accordance with the instructions in the **Federal Register** notice. Comments submitted at the meeting may be written or oral. Oral comments will be transcribed for future reference, and will be available for inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 8430 at the above address. Individuals wishing to present comments are asked to limit their oral presentations to ten minutes. In order that the Postal Service may properly plan for the meeting, individuals who will attend are required to notify the person identified above by telephone or in writing no later than January 21, 1994.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 94–736 Filed 1–10–94; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO21–1–5685; CO21–1–5110; A–1–FRL–4824–6]

Approval and Promulgation of Air Quality Implementation Plans for the State of Colorado; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve State Implementation Plan (SIP) revisions submitted by the State of Colorado. The Colorado revisions include revisions to Regulation No. 13 (oxygenated gasoline program) submitted on August 6, 1990 and November 27, 1992, implementing and amending oxygenated gasoline programs in the Fort Collins-Loveland, Colorado Springs, and Boulder-Denver Metropolitan Statistical Areas (MSA) as required by section 211(m) of the Clean Air Act, as amended by the Clean Air Act Amendments of 1990 (the Act). This action is being taken under section 110 of the Clean Air Act.

DATES: Comments must be received on or before February 10, 1994.

ADDRESSES: Comments may be mailed to: Doug Skie, Chief, Air Programs Branch, Air, Radiation and Toxics Division (8ART-AP), Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466. Copies of the documents relevant to this action are available for public inspection during normal business hours at United States Environmental Protection Agency, Region 8, 999 18th Street, Suite 500, Denver, Colorado 80202–2466.

FOR FURTHER INFORMATION CONTACT: Scott P. Lee, State Implementation Plan Section (8ART-AP), Air Programs Branch, US Environmental Protection Agency, Region 8, Denver, Colorado 80202–2466, (303) 293–1887.

SUPPLEMENTARY INFORMATION:

A. Background for This Action Regarding Section 211(m) of the Act

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starts, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the Consolidated Metropolitan Statistical Area (CMSA) or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992.[1]

In addition to the guidance on establishment of control period by area, EPA has issued guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**.[2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992.[3]

The Oxygenated Gasoline Program areas in the State of Colorado are designated nonattainment for carbon monoxide and classified as moderate with design values of 11.3, 11.8, and 16.2 parts per million, respectively, for the Fort Collins-Loveland control area, the Colorado Springs control area, and the Boulder-Denver[4] control area, based on 1988 and 1989 data.[5] Under section 211(m) of the Act, Colorado was required to submit a revised SIP, meeting the criteria specified in section 110 and part D of title I of the Act, which includes oxygenated gasoline programs for the Fort Collins-Loveland MSA, the Colorado Springs MSA, and the Boulder-Denver MSA, by November 15, 1992.[6] On November 27, 1992, Roy Romer, Governor of Colorado, submitted to EPA a revised SIP including the oxygenated gasoline program that was adopted by the State on September 17, 1992, which updates the State's existing oxygenated gasoline program based on the criteria outlined in EPA's program guidance. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated September 25, 1993, which is available from the Region 8 office, listed in the **Addresses** section.

1. Type of Program and Oxygen Content Requirement

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or

[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended—Notice of Availability," 57 FR 47849 (October 20, 1992).

[2] See footnote 1. EPA issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found in 40 CFR 80.35.

[4] See credit program guidelines in footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

[5] See "Designation of Areas for Air Quality Planning Purposes," 56 FR 56694 (November 6, 1991).

[6] See credit program guidelines in footnote 3, wherein the November 15, 1992 SIP revision due date was specified.

dispensed for use in the specified control areas contain not less than 2.7 percent oxygen by weight. Under section 211(m)(5), the EPA Administrator issued guidelines for credit programs allowing the use of marketable oxygen credits. The State of Colorado, by the authority of the Air Quality Control Commission (AQCC), has elected to adopt a regulation requiring 2.7% oxygen content for each gallon of gasoline sold in a control area, not allowing for the use of marketable oxygen credits. The following sections of this notice address some specific elements of the State's submittal. Parties desiring more specific information should consult the TSD.

2. Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. Colorado has established control periods consistent with the EPA guidance. The control period for all of Colorado's affected areas begins on the first day of November each year and ends following the last day of February. Colorado State oxygenated gasoline regulations require oxygenated gasoline to be sold in the Fort Collins-Loveland MSA, the Colorado Springs MSA, and the Boulder-Denver MSA, consistent with the requirements of section 211(m)(2) of the Act.

3. Transfer Documents

Colorado has no requirements related to transfer documentation in its oxygenated gasoline regulation. EPA feels that the State's policy of presumptive liability provides the incentive for all parties to ensure gasoline meets the oxygen content requirements of the program. In lieu of transfer documentation indicating oxygen content, the State provides for presumptive liability on the part of the party in possession of gasoline found to be in violation of the required oxygen content, and allows for no defenses. The State has historically inspected refineries, bulk fuel storage plants, fuel distribution plants, pipelines, and retail station for fuel compliance, holding all parties responsible to meet oxygen content requirements for gasoline in their possession.

4. Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Colorado oxygenated gasoline regulation is legally enforceable by the Colorado Department of Health, Division of Air Pollution Control (APCD). The APCD is committed to the enforcement of this program requiring a level of sampling greater than EPA's recommendation for the sampling of 20% of all oxygenated gasoline dispensing sites. Violation of this regulation results in a civil penalty not to exceed $25,000 per day of violation. The APCD considers three factors when assessing penalties: the penalty constraint; the economic benefit of noncompliance; and a gravity component taking into consideration the intentional nature of the violation, whether the violator cooperated with the APCD, whether a repeat violation has occurred, the actual oxygen content of the sample, and an other relevant factors as detailed in the Oxygenated Gasoline Program Policy and Procedure Manual (Procedure Manual), published by the Colorado Department of Health, Air Pollution Control Division, October 1992. Penalty authority is contained in section 25–7–122 C.R.S.

5. Test Methods and Laboratory Review

Each state regulation must include a test method. EPA's guidelines recommend the use of the OFID test, although parties may elect to use ASTM-D4815–89 or another method, approved by EPA.

EPA has tentatively approved a variation of the ASTM-D4815–89 testing method for use in Colorado, as detailed in the Procedure Manual. The State may continue to use this testing method unless otherwise instructed by EPA.

EPA has established an interim testing tolerance, which states appropriate ranges for credit and per-gallon programs.[7] As EPA states in the memorandum, for a per-gallon program, such as adopted by Colorado, the purpose of the testing is to determine whether the gasoline contains less than 2.7 percent oxygen by weight. Colorado is using testing tolerances consistent with the tolerances in the EPA memo.

6. Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[8], required the following statement be posted for a per-gallon program or credit program with minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. Colorado has adopted labeling regulations which conform to Federal regulation.

B. Background for This Action Regarding Regulation No. 13 Prior to the Requirements of Section 211(m) of the Act

On August 6, 1990, the Governor of Colorado submitted additional revisions to Regulation No. 13. The Regulation 13 amendments were necessary because the Colorado Air Pollution Control Division (APCD) found that progress toward attaining the carbon monoxide (CO) standard was not adequate to meet the December 31, 1987, Clean Air Act deadline. The August 6, 1990, revisions required between December 1 and March 1 of each winter season, a 2.6 percent level of oxygen for all gasoline except premium unleaded.

EPA recognizes that this, August 6, 1990, revision to Regulations No. 13 does not meet EPA's current guidance for oxygenated gasoline programs. However, Colorado's present SIP revision, November 27, 1993, for the oxygenated gasoline program amends the State's existing program, which includes elements that were contained in the past SIP revision, August 6, 1990. EPA is also proposing to approve this past revision, in order for the SIP to be considered fully approved.

Request for Public Comment

The EPA is soliciting public comments on this notice and on issues relevant to EPA's proposed action. Comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the address above. Comments must be received on or before February 10, 1994.

Proposed Action

EPA is proposing to approve the revisions to the Colorado SIP for both Regulation No. 13 (oxygenated gasoline program) revisions, meeting the requirements of section 211(m) of the Act.

[7] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[8] See footnote 3.

Executive Order

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. The USEPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on USEPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Regulatory Flexibility

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over population of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.* 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Nitrogen dioxide, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 10, 1993.

Jack McGraw,

Acting Regional Administrator.

[FR Doc. 94–616 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–60–F

40 CFR Parts 63 and 430

[FRL–4825–4]

Public Meeting on the Rulemaking for the Pulp, Paper, and Paperboard Industry

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: The EPA is announcing the first of two public meetings to be held during the 90-day public comment period on the notice of proposed rulemaking for the pulp, paper, and paperboard industry, published on December 17, 1993, at 58 FR 66078. The public meetings are intended to be forums at which the EPA can discuss the status of regulatory development and at which interested parties can provide information and ideas on key technical, scientific, and other issues and can ask clarifying questions about the notice of proposed rulemaking.

DATES: The public meeting will be held on January 19, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: The meeting will be held at the Omni Durham Hotel, 201 Foster Street, Durham, North Carolina in Ballroom 103. Seating will be available for approximately 225 attendees.

FOR FURTHER INFORMATION CONTACT: Contact Wendy Smith, Engineering and Analysis Division (4303), US EPA, 401 M Street, SW., Washington, DC 20460, or telephone (202) 260–7184.

SUPPLEMENTARY INFORMATION: The EPA plans to sponsor two public meetings and two public hearings. The dates and locations of the second public meeting and the public hearings will be announced in a subsequent notice.

The public meetings will be in a format similar to the public meetings held prior to publication of the notice of proposed rulemaking. These meetings will not be recorded by a reporter or transcribed for inclusion in the record for the pulp, paper, and paperboard industry rulemaking. Comments and speakers are invited at the meetings, but comments to be included in the record must be either submitted in writing in accordance with the instructions in the notice of proposed rulemaking or provided orally at the formal public hearings.

All written comments submitted in accordance with the instructions in the notice of proposed rulemaking will be incorporated into the record and considered before promulgation. It is not necessary to present oral comments at the public meetings or hearings for comments to be considered.

Inspection of Documents

Documents relating to the topics mentioned above and a more detailed agenda will be available at the meeting.

Dated: January 5, 1994.

John S. Seitz,

Director, Office of Air Quality Planning and Standards.

[FR Doc. 94–752 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket No. 93–22]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission by Notice of Proposed Rulemaking published November 24, 1993 (58 FR 62077) proposed amendments to its Non-Vessel-Operating Common Carriers (NVOCC) coloading rules to clarify ambiguities and to address current practices resulting in increased application of untariffed NVOCC charges. Sixty days was allowed for comment. Requests for additional time to comment ranging from 30 to 90 days have been filed by various interests. Upon consideration of the requests, the Commission has determined to grant a 30-day extension, thereby providing a total of 90 days for comment, which is deemed adequate under the circumstances.

DATES: Comments due on or before February 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Investigations, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5860.

By the Commission.
Joseph C. Polking,
Secretary.
[FR Doc. 94–641 Filed 1–10–94; 8:45 am]
BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Redelegation of Authority To Approve Releases of Liability In Connection With Voluntary Liquidations

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: On September 11, 1992, the Farmers Home Administration (FmHA) redelegated certain authorities to all State Directors dealing with the settlement of and/or the release of liability on FmHA debts owed by borrowers who made application to settle their FmHA debts or request release of liability. Notice of this redelegation was published in 57 FR 43688 (September 22, 1992). The redelegation authority, granted on September 11, 1992, expired on September 30, 1993, and the Administrator now gives notice to extend that redelegation until December 31, 1994. All release of liability cases of $1,000,000 or more (including principal, interest and other charges) must be submitted to the National Office for approval by the Administrator. This action is taken to expedite the processing of requests of borrowers who are unable to repay all of their FmHA debts.

The effect of the extension of the redelegation of the Administrator's authority is to continue to expedite the administrative review process for releases of liability, permitting more timely debt relief to FmHA borrowers, and to consequently reduce the Agency's portfolio of inactive uncollectible accounts.

EFFECTIVE DATE: October 1, 1993 though December 31, 1994.

FOR FURTHER INFORMATION CONTACT: Melvin R. Padgett II, Senior Loan Officer, Farmer Programs Loan Servicing and Property Management Division, Farmers Home Administration, USDA, room 5444, South Agriculture Building, 14th and Independence Avenue SW., Washington, DC 20250, telephone (202) 720–6293.

SUPPLEMENTARY INFORMATION:

Programs Affected

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans.
10.406 Farm Operating Loans.
10.407 Farm Ownership Loans.
10.410 Low-Income Housing Loans.
10.416 Soil and Water Loans.
10.417 Very Low-Income Housing Repair Loans and Grants.
10.428 Economic Emergency Loans.

The notice of the delegation of authority for approving release of liability cases reads as follows:

This extends the authority to approve Release of Liability cases given under the unnumbered memorandum dated September 11, 1992, entitled "Extension of the Delegation of Authority for Approving Debt Settlement/Release of Liability Cases." You were given authority to approve debt settlement cases of less $1,000,000 in FmHA Instruction 1956–B, Section 1956.84(a) on April 21, 1993, under Procedure Notice Number 204.

Pursuant to authority delegated to me as Administrator of Farmers Home Administration, I hereby redelegate to State Directors authority to approve the following:

1. Release of Lability cases in accordance with Sections 1955.10(f)(2) and 1955.20(b)(2) of FmHA Instruction 1955–A, "Liquidation of Loans Secured by Real Estate and Acquisition of Real and Chattel Property."

2. Release of Liability cases in accordance with Section 1962.34(h) of FmHA Instruction 1962–A, "Servicing and Liquidation of Chattel Security," and Sections 1965.26(f)(5)(ii) and 1965.27(f) of FmHA Instruction 1965–A, "Servicing of Real Estate Security for Farmer Programs Loans and Certain Note Only Cases."

This authority does not extend to Release of Liability cases for Nonprogram loans, Economic Opportunity loans, and claims against third party converters.

Cases where the borrower's total indebtedness, including principal, interest, and other charges, is $1,000,000 or more must be submitted to the National Office for approval by the Administrator.

This extension of the redelegation shall be effective through December 31, 1994, unless revoked or otherwise modified in writing. The authority delegated to the State Director cannot be further delegated.

Dated: December 29, 1993.
Michael V. Dunn,
Administrator, Farmers Home Administration.
[FR Doc. 94–555 Filed 1–10–94; 8:45 am]
BILLING CODE 3410–07–M

Forest Service

Rocky Mountain Region: Colorado, Kansas, Nebraska, South Dakota, Eastern Wyoming; Legal Notice of the Opportunity To Comment on Certain Proposed Actions and of Decisions Subject to Notice and Comment

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This is a list of those newspapers that will be used to publish notice of all decisions which are subject to appeal under 36 CFR 217, notice of the opportunity to comment on certain proposed actions pursuant to 36 CFR 215.5, and notice of decisions subject to appeal under the general provisions of 36 CFR part 215. As required at 36 CFR 215.5 and 215.9, such notice shall constitute legal evidence that the agency has timely and constructive notice of decisions that are subject to public notice and comment and administrative appeal. Newspaper publication of notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested in or affected by a specific decision.

DATES: Use of these newspapers for purposes of publishing the notices required under the provisions of 36 CFR part 215 shall begin January 3, 1994.

FOR FURTHER INFORMATION CONTACT: John P. Halligan, Regional Appeals and Litigation Coordinator, Rocky Mountain Region, Box 25127, Lakewood, Colorado 80225, Area Code 303–275–5148.

SUPPLEMENTARY INFORMATION: Responsible Officials in the Rocky Mountain Region shall give notice of the opportunity to comment on certain proposed actions and of decisions subject to appeal pursuant to 36 CFR part 215 in the following newspapers which are listed by Forest Service unit. Where more than one newspaper is listed for any unit, the first newspaper listed is the primary newspaper which shall be used to constitute legal evidence that the agency has given timely and constructive notice of decisions that are subject to administrative appeal. The day after the publication of the public notice in the primary newspaper shall be the first day of the appeal filing period.

Decisions by the Regional Forester

The Denver Post, published daily in Denver, Denver County, Colorado, for decisions affecting National Forest System lands in the States of Colorado, Nebraska, Kansas, and eastern Wyoming and for any decision of Region-wide impact. In addition, notice of decisions made by the Regional Forester will also be published in the Rocky Mountain News, published daily in Denver, Denver County, Colorado. Notice of decisions affecting National Forest System lands in the State of South Dakota will also be published in the Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota. For those decisions affecting a particular unit, the newspaper specific to that unit will be used.

Arapaho and Roosevelt National Forests, Colorado

Forest Supervisor Decisions

The Denver Post, published daily in Denver, Denver County, Colorado.

District Ranger Decisions

Redfeather and Estes-Poudre Districts: Coloradoan, published daily in Fort Collins, Larimer County, Colorado.

Pawnee District: Greeley Tribune, published daily in Greeley, Weld County, Colorado.

Boulder District: Boulder Daily Camera, published daily in Boulder, Boulder County, Colorado.

Clear Creek District: Clear Creek Courant, published weekly in Idaho Springs, Clear Creek County, Colorado.

Sulphur District: Sulphur Sky High News, published weekly in Granby, Grand County, Colorado.

Grand Mesa, Uncompahgre and Gunnison National Forests, Colorado

Forest Supervisor Decisions

Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

District Ranger Decisions

Collbran and Grand Junction Districts: Grand Junction Daily Sentinel, published daily in Grand Junction, Mesa County, Colorado.

Paonia District: Delta County Independent, published weekly in Delta, Delta County, Colorado.

Cebolla and Taylor River Districts: Gunnison Country Times, published weekly in Gunnison, Gunnison County, Colorado.

Norwood District: Telluride Times-Journal, published weekly in Telluride, San Miguel County, Colorado.

Ouray District: Montrose Daily Press, published daily in Montrose, Montrose County, Colorado.

Pike and San Isabel National Forests

Forest Supervisor Decisions

Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado.

District Ranger Decisions

San Carlos District: Pueblo Chieftain, published daily in Pueblo, Pueblo County, Colorado

Comanche District: Plainsman Herald, published weekly in Springfield, Baca County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the La Junta Tribune Democrat, published daily in La Junta, Otero County, Colorado, and in the Ark Valley Journal, published weekly in La Junta, Otero County, Colorado.

Cimarron District: Tri-State News, published weekly in Elkhart, Morton County, Kansas.

South Platte District: Daily News Press, published daily in Castle Rock, Douglas County, Colorado. In addition, notice of decisions made by the District Ranger will also be published in the High Timber Times, published weekly in Conifer, Jefferson County, Colorado, and in the Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Leadville District: Herald Democrat, published weekly in Leadville, Lake County, Colorado.

Salida District: The Mountain Mail, published daily in Salida, Chaffee County, Colorado.

South Park District: Fairplay Flume, published weekly in Fairplay, Park County, Colorado.

Pikes Peak District: Gazette Telegraph, published daily in Colorado Springs, El Paso County, Colorado.

Rio Grande National Forest, Colorado

Forest Supervisor Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

District Ranger Decisions

Valley Courier, published daily in Alamosa, Alamosa County, Colorado.

Routt National Forest, Colorado

Forest Supervisor Decisions

Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will also be used.

District Ranger Decision

Bears Ears District: Northwest Colorado Daily Press, published daily in Craig, Moffat County, Colorado. In addition, notice of decisions by the District Ranger will also be published in the Hayden Valley Press, published weekly in Hayden, Routt County, Colorado, and in the Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Yampa and Hahns Peak Districts: Steamboat Pilot, published weekly in Steamboat Springs, Routt County, Colorado.

Middle Park District: Middle Park Times, published weekly in Kremmling, Grand County, Colorado.

Noarth Park District: Jackson County Star, Published weekly in Walden, Jackson County, Colorado.

San Juan National Forest, Colorado

Forest Supervisor Decision

Durango Herald, published daily in Durango, La Plata County, Colorado.

District Ranger Decisions

Durango Herald, published daily in Durango, La Plata County, Colorado.

White River National Forest, Colorado

Forest Supervisor Decisions

The Glenwood Post, published Monday through Friday in Glenwood Springs, Garfield County, Colorado.

District Ranger Decisions

Aspen District: Aspen Times, published weekly in Aspen, Pitkin County, Colorado.

Blanco District: Meeker Herald, published weekly in Meeker, Rio Blanco County, Colorado.

Dillon District: Summit Sentinel, published twice weekly in Frisco, Summit County, Colorado.

Eagle District: Eagle Valley Enterprise, published weekly in Eagle, Eagle County, Colorado.

Holy Cross District: Vail Trail, published weekly in Minturn, Eagle County, Colorado.

Rifle District: Rifle Telegram, published weekly in Rifle, Garfield County, Colorado.

Sopris District: Valley Journal, published weekly in Carbondale, Garfield County, Colorado.

Nebraska National Forest, Nebraska

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota for decisions affecting National Forest System lands in the State of South Dakota.

The Omaha World Herald, published daily in Omaha, Douglas County, Nebraska for decisions affecting National Forest System lands in the State of Nebraska.

District Ranger Decisions

Bessey District: The North Platte Telegraph, published daily in North Platte, Lincoln County, Nebraska.

Samuel R. McKelvie National Forest: The Valentine Newspaper, published weekly in Valentine, Cherry County, Nebraska.

Fall River and Wall Districts: The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Pine Ridge District: The Chadron Record, published weekly in Chadron, Dawes County, Nebraska.

Black Hills National Forest, South Dakota and Eastern Wyoming

Forest Supervisor Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

District Ranger Decisions

The Rapid City Journal, published daily in Rapid City, Pennington County, South Dakota.

Bighorn National Forest, Wyoming

Forest Supervisor Decisions

Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming. In addition, for decisions affecting an individual district(s), the local district(s) newspaper will be used (see listing below).

District Ranger Decisions

Tongue District: Sheridan Press, published daily in Sheridan, Sheridan County, Wyoming.

Buffalo District: Buffalo Bulletin, published weekly in Buffalo, Johnson County, Wyoming.

Medicine Wheel District: Lovell Chronicle, published weekly in Lovell, Big Horn County, Wyoming.

Tensleep District: Northern Wyoming Daily News, published daily in Worland, Washakie County, Wyoming.

Paintrock District: Greybull Standard, published weekly in Greybull, Big Horn County, Wyoming.

Medicine Bow National Forest, Wyoming

Forest Supervisor Decisions

Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

District Ranger Decisions

Laramie District: Laramie Daily Boomerang, published daily in Laramie, Albany County, Wyoming.

Douglas District: Casper Star-Tribune, published daily in Casper, Natrona County, Wyoming.

Brush Creek and Hayden Districts: Rawlins Daily Times, published daily in Rawlins, Carbon County, Wyoming.

Shoshone National Forest, Wyoming

Forest Supervisor Decisions

Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

District Ranger Decisions

Clarks Fork District: Powell Tribune, published twice weekly in Powell, Park County, Wyoming.

Wapiti and Greybull Districts: Cody Enterprise, published twice weekly in Cody, Park County, Wyoming.

Wind River District: The Dubois Frontier, published weekly in Dubois, Teton County, Wyoming.

Lander District: Wyoming State Journal, published twice weekly in Lander, Fremont County, Wyoming.

Dated: January 3, 1994.

Elizabeth Estill,

Regional Forester.

[FR Doc. 94–598 Filed 1–10–94; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 931246–3346]

Review of Draft Report of the Federal Internetworking Requirements Panel

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the availability, after January 14, 1994, of the draft report of the Federal Internetworking Requirements Panel (FIRP). This panel was named by NIST to review open systems network requirements and to recommend policies on the use of networking standards by the Federal government. Organized in cooperation with the Federal Networking Council and the Federal Information Resources Management Policy Council, the FIRP has been considering issues related to interoperability requirements, security, ease of use, national and international connectivity, and standards maintenance for the Internet Protocol Suite (IPS), Open Systems Interconnection (OSI) specifications, and proprietary networking protocols.

Prior to submitting its final report to NIST, the FIRP solicits the views of industry, the public, and Federal, State and local governments on the draft report. The purpose of this notice is to solicit such views.

The draft report will be available after January 14, 1994 and can be obtained in any of the following ways:

Anonymous file transfer can be achieved through FTP, FTAM and Gopher. Electronic files are named draft-firp-report.asc and report0.fir. For anonymous FTP:

1. ftp to osi.ncsl.nist.gov (129.6.48.100)

2. respond to the "login:" prompt with user name "anonymous" (do not type the quotes)

3. respond to the "password:" prompt with your E-mail address.

4. you are now logged in. Use "cd" to change directory to ./pub/firp. Use "ls" or "dir" to get directory listings. Use "get" to transfer a file.

For anonymous FTAM:

Paddr=(1,1,1,47:0005 : 80 : 005A00 : 0000 : 0001 : E137 : 080020079EFC : 00)

userid=anon, no password, realstore=unix

The corresponding "ISODE isoentities" entry is:

osi.ncsl.nist.gov filestore NULL / #1 / #1 / #1 / NS + 47000580005a 0000000001e 137080020079 efc00

Questions regarding these services should be sent via SMTP mail to staff@osi.ncsl.nist.gov.

An electronic mail request for the draft report may be sent to:firp-draft@osi.ncsl.nist.gov.

Paper copies of the draft report are available from Joan Wyrwa, Technology Building, Room B217, NIST, Gaithersburg, MD 20899; telephone: (301) 975–3643; facsimile: (301) 590–0932.

DATES: Comments on the draft report must be received on or before February 18, 1994.

ADDRESSES: Written comments concerning the draft report should be sent to: Anastase Nakassis; Acting Chief, Systems and Network Architecture Division; ATTN: Draft Report of FIRP; Technology Building, Room B217; National Institute of Standards and Technology; Gaithersburg, MD 20899. Comments may also be sent by electronic mail to firp-comments@osi.ncsl.nist.gov. Please limit written comments to five printed pages or less. Electronic comments should not exceed five pages when printed.

FOR FURTHER INFORMATION CONTACT: Anastase Nakassis, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone: (301) 975–3632. E-mail: firp.staff@osi.ncsl.nist.gov.

Dated: January 3, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–538 Filed 1–10–94; 8:45 am]

BILLING CODE 3510–CN–M

[Docket No. 900820–3141]

RIN No. 0693–AA68

Approval of Federal Information Processing Standards (FIPS) Publication 140–1, Security Requirements for Cryptographic Modules

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: The purpose of this notice is to announce that the Secretary of Commerce has approved a revision of Federal Information Processing Standard 140, General Security Requirements for Equipment Using the Data Encryption Standard, which will be published as FIPS Publication 140–1. This revised standard supersedes FIPS 140 in its entirety.

SUMMARY: On January 8, 1991, a notice was published in the **Federal Register** (56 FR 681) that a revision of Federal Information Processing Standards Publication (FIPS PUB) 140, General Security Requirement for Equipment Using the Data Encryption Standard, was being proposed for Federal use.

The written comments submitted by interested parties and other material available to the Department relevant to this proposed revision were reviewed by NIST. On the basis of this review, NIST recommended that the Secretary approve the revised standard as Federal Information Processing Standards Publication (FIPS PUB) 140–1, and prepared a detailed justification document for the Secretary's review in support of that recommendation.

The detailed justification document which was presented to the Secretary is part of the public record and is available for inspection and copying in the Department's Central Reference and Records Inspection Facility, room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenue, NW., Washington, DC 20230.

This FIPS contains two sections: (1) An announcement section, which provides information concerning the applicability, implementation, and maintenance of the standard; and (2) a specifications section which deals with the technical requirements of the standard. Only the announcement section of the standard is provided in this notice.

EFFECTIVE DATE: This standard is effective on January 11, 1994.

ADDRESSES: Interested parties may purchase copies of this standard, including the technical specifications portion, from the National Technical Information Service (NITS). Specific ordering information from NTIS for this revised standard is set out in the Where to Obtain Copies Section of the announcement section of the standard.

FOR FURTHER INFORMATION CONTACT: Mr. Miles E. Smid, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975–2938.

Dated: January 4, 1994.

Samuel Kramer,

Associate Director.

Federal Information Processing Standards Publication 140–1

(Date)

Announcing the Standard for Security Requirements for Cryptographic Modules

Federal Information Processing Standards Publications (FIPS PUBS) are issued by the National Institute of Standards and Technology (NIST) after approval by the Secretary of Commerce pursuant to Section 111(d) of the Federal Property and Administrative Services Act of 1949 as amended by the Computer Security Act of 1987, Public Law 100–235.

1. *Name of Standard.* Security Requirements for Cryptographic Modules (FIPS PUB 140–1).

2. *Category of Standard.* Computer Security.

3. *Explanation.* This standard specifies the security requirements that are to be satisfied by a cryptographic module utilized within a security system protecting unclassified information within computer and telecommunication systems (including voice systems). The standard provides four increasing, qualitative levels of security: Level 1, Level 2, Level 3, and Level 4. These levels are intended to cover the wide range of potential applications and environments in which cryptographic modules may be employed. The security requirements cover areas related to the secure design and implementation of a cryptographic module. These areas include basic design and documentation, module interfaces, authorized roles and services, physical security, software security, operating system security, key management, cryptographic algorithms, electromagnetic interference/electromagnetic compatibility (EMI/EMC), and self-testing. This standard supersedes FIPS 140, General Security Requirements for Equipment Using the Data Encryption Standard, in its entirety.

4. *Approving Authority.* Secretary of Commerce.

5. *Maintenance Agency.* Department of Commerce, National Institute of Standards and Technology, (Computer Systems Laboratory).

6. *Cross Index.*

a. FIPS PUB 46–1, Data Encryption Standard.

b. FIPS PUB 48, Guidelines on Evaluation of Techniques for Automated Personal Identification.

c. FIPS PUB 74, Guidelines for Implementing and Using the NBS Data Encryption Standard.

d. FIPS PUB 81, DES Modes of Operation.

e. FIPS PUB 83, Guideline of User Authentication Techniques for Computer Network Access Control.

f. FIPS PUB 112, Password Usage.

g. FIPS PUB 113, Computer Data Authentication.

h. FIPS PUB 171, Key Management Using ANSI X9.17.

i. FIPS PUB 180, Secure Hash Standard.

j. Special Publication 500–157, Smart Card Technology: New Methods for Computer Access Control.

k. Special Publication 800–2, Public Key Cryptography.

Other NIST publications may be applicable to the implementation and use of this standard. A list (NIST Publications List 91) of currently available computer security publications, including ordering information, can be obtained from NIST.

7. *Applicability.* This standard is applicable to all Federal agencies that use cryptographic-based security systems to protect unclassified information within computer and telecommunication systems (including voice systems) that are not subject to Section 2315 of Title 10, U.S. Code, or Section 3502(2) of Title 44, U.S. Code. This standard shall be used in designing, acquiring and implementing cryptographic-based security systems within computer and telecommunication systems (including voice systems), operated by a Federal agency or by a contractor of a Federal agency or other organization that processes information (using a computer or telecommunications system) on behalf of the Federal Government to accomplish a Federal function. Federal agencies which use cryptographic-based security systems for protecting classified information may use those systems for protecting unclassified information in lieu of systems that comply with this standard. Non-Federal government organizations are encouraged to adopt and use this standard when it provides the desired security for protecting valuable or sensitive information.

8. *Applications.* Cryptographic-based security systems may be utilized in various computer and telecommunication (including voice) applications (e.g., data storage, access control and personal identification, radio, facsimile, video) and in various environments (e.g., centralized computer facilities, office environments, hostile environments). The cryptographic services (e.g., encryption, authentication, digital signature, key management) provided by a cryptographic module will be based on many factors which are specific to the application and environment. The security level of a cryptographic module shall be chosen to provide a level of security appropriate for the security requirements of the application and environment in which the module is to be utilized and the security services which the module is to provide. The security requirements for a particular security level include both the security requirements specific to that level and the security requirements that apply to all modules regardless of the level. System characteristics not related to security (e.g., telecommunications interoperability) are beyond the scope of this standard.

9. *Specifications.* Federal Information Processing Standard (FIPS) 140–1, *Security Requirements for Cryptographic Module* (affixed).

10. *Implementations.* This standard covers implementations of cryptographic modules including, but not limited to, hardware components or modules, software programs or modules, computer firmware, or any combination thereof. Cryptographic modules that are validated by NIST, or that comply with the requirements of the FIPS 140–1 implementation and FIPS 140 acquisition schedules in Section 14 of the announcement of this standard, will be considered as complying with this standard. Information about the FIPS 140–1 validation program can be obtained from the National Institute of Standards and Technology, Computer Systems Laboratory, Gaithersburg, MD 20899.

11. *FIPS Approved Security Methods.* Cryptographic modules that comply with this standard shall employ cryptographic algorithms, cryptographic key generation algorithms and key distribution techniques, and authentication techniques that have been FIPS approved for protecting Federal Government unclassified information. FIPS approved cryptographic algorithms, cryptographic key generation algorithms and key distribution techniques, and authentication techniques include those that are either:

a. Specified in a Federal Information Processing Standard (FIPS), or

b. Adopted in a FIPS and specified either in an appendix to the FIPS or in a document referenced by the FIPS.

If a cryptographic module is required to incorporate a trusted operating system, then the module shall employ trusted operating systems that have been evaluated by a NIST accredited evaluation authority and against a FIPS approved evaluation criteria.

Information about approved cryptographic methods and approved operating system evaluation authorities and criteria can be obtained from NIST.

12. *Interpretation.* Resolution of questions regarding this standard will be provided by NIST. Questions concerning the content and specifications should be addressed to: Director, Computer Systems Laboratory, ATTN: FIPS 140–1 Interpretation, National Institute of Standards and Technology, Gaithersburg, MD 20899.

13. *Export Control.* Certain cryptographic devices and technical data regarding them are deemed to be defense articles (i.e., inherently military in character) and are subject to Federal government export controls as specified in Title 22, Code of Federal Regulations, parts 120–128. Some exports of cryptographic modules conforming to this standard and technical data regarding them must comply with these Federal regulations and be licensed by the U.S. Department of State. Other exports of cryptographic modules conforming to this standard and technical data regarding them fall under the licensing authority of the Bureau of Export Administration of the U.S. Department of Commerce. The Department of Commerce is responsible for licensing cryptographic devices used for authentication, access control, proprietary software, automatic teller machines (ATMs), and certain devices used in other equipment and software. For advice concerning which agency has licensing authority for a particular cryptographic device, please contact the respective agencies.

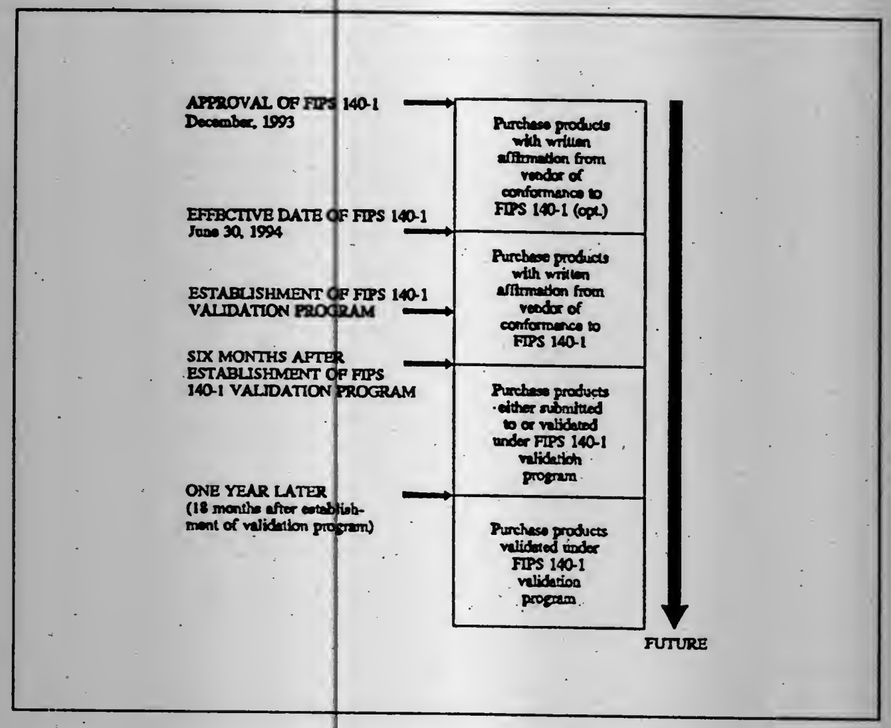


Table 1: FIPS 140-1 Implementation Schedule

14. *Implementation Schedule.* Table 1 summarizes the implementation schedule for FIPS 140–1. The effective date of this standard is June 30, 1994.

From approval of FIPS 140–1 to its effective date, agencies may purchase equipment with FIPS 140–1 cryptographic modules that have been affirmed in writing from the manufacturer as complying with this standard. From June 30, 1994 until six months after the establishment of the FIPS 140–1 validation program by NIST, agencies that have determined a need for equipment with cryptographic modules shall purchase equipment with FIPS 140–1 cryptographic modules that have been affirmed in writing by the manufacturer as complying with this standard. A copy of the written affirmation shall have been sent to the Director, Computer Systems Laboratory, National Institute of Standards and Technology, Gaithersburg, MD 20899.

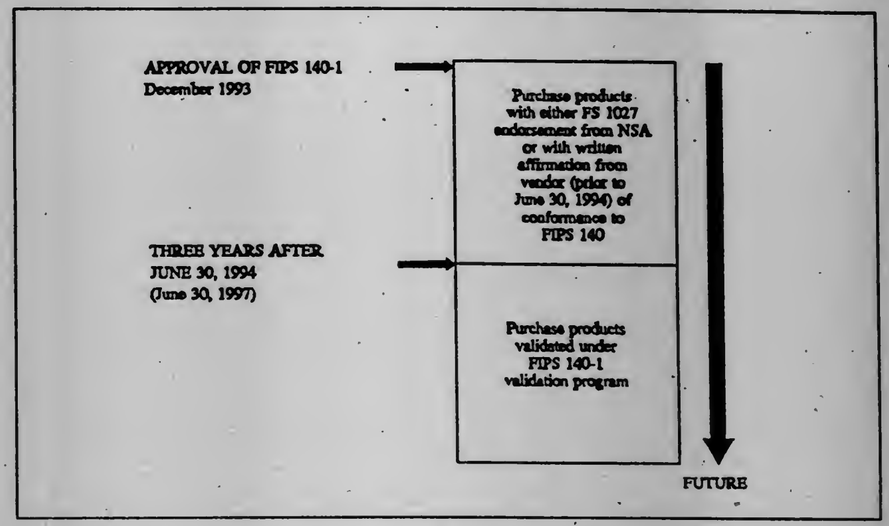


Table 2: FIPS 140 Schedule for Acquisition of Validated Products

For a one year period following the six months after the establishment of the FIPS 140–1 validation program, agencies shall purchase either equipment with validated FIPS 140–1 cryptographic modules, or equipment whose cryptographic modules have been submitted for FIPS 140–1 validation. After this period, only FIPS 140–1 validated cryptographic modules will be considered as meeting the provisions of this standard.

Table 2 summarizes the schedule for acquisition of FIPS 140 compliant equipment. For up to three years following June 30, 1994, equipment with cryptographic modules complying to FIPS 140, General Security Requirements for Equipment Using the Data Encryption Standard (formerly Federal Standard 1027), may be purchased in lieu of equipment with modules that comply with this standard. These modules either shall have been endorsed by the National Security Agency (NSA) as complying to Federal Standard 1027, or shall be affirmed in writing by the manufacturer as complying to FIPS 140. NSA endorsed modules shall have been endorsed prior to December, 1993. A list of endorsed products (NSA Endorsed Data Encryption Standard (DES) Products List) is available from the NSA. For modules affirmed by the manufacturer as complying with FIPS 140, a copy of the written affirmation shall have been sent by the manufacturer to the Director of the Computer Systems Laboratory at NIST prior to June 30, 1994. A list of these methods is available from NIST.

Equipment purchased under the above conditions may continue to be used for the lifetime of the equipment without the need for further affirmation or validation for conformance to this standard.

15. *Qualifications.* The security requirements specified in this standard are based upon information provided by many sources within the Federal government and private industry. The requirements are designed to protect against adversaries mounting cost-effective attacks on unclassified government or commercial data (e.g., hackers, organized crime, economic competitors). The primary goal in designing an effective security system is to make the cost of any attack greater than the possible payoff.

While the security requirements specified in this standard are intended to maintain the security of a cryptographic module, conformance to this standard does not guarantee that a particular module is secure. It is the responsibility of the manufacturer of a cryptographic module to build the module in a secure manner.

Similarly, the use of a cryptographic module that conforms to this standard in an overall system does not guarantee the security of the overall system. The responsible authority in each agency shall assure that an overall system provides an acceptable level of security.

Since a standard of this nature must be flexible enough to adapt to advancements and innovations in science and technology, this standard will be reviewed every 5 years in order to consider new or revised requirements that may be needed to meet technological and economic changes.

16. *Waiver Procedure.* Under certain exceptional circumstances, the heads of Federal agencies may approve waivers to Federal Information Processing Standards (FIPS). The head of such agency may redelegate such authority only to a senior official designated pursuant to Section 3506(b) of Title 44, U.S. Code. Waivers shall be granted only when:

a. Compliance with a standard would adversely affect the accomplishment of the mission of an operator of a Federal computer system, or

b. Cause a major adverse financial impact on the operator which is not offset by Government-wide savings.

Agency heads may act upon a written waiver request containing the information detailed above. Agency heads may also act without a written waiver request when they determine that conditions for meeting the standard cannot be met. Agency heads may approve waivers only by a written decision which explains the basis on which the agency head made the required finding(s). A copy of each such decision, with procurement sensitive or classified portions clearly identified, shall be sent to: National Institute of Standards and Technology; ATTN: FIPS Waiver Decisions, Technology Building, Room B–154; Gaithersburg, MD 20899.

In addition, notice of each waiver granted and each delegation of authority to approve waivers shall be sent promptly to the Committee on Government Operations of the House of Representatives and the Committee on Government Affairs of the Senate and shall be published promptly in the **Federal Register.**

When the determination on a waiver applies to the procurement of equipment and/or services, a notice of the waiver

determination must be published in the Commerce Business Daily as a part of the notice of solicitation for offers of an acquisition or, if the waiver determination is made after that notice is published, by amendment to such notice.

A copy of the waiver, any supporting documents, the document approving the waiver and any supporting and accompanying documents, with such deletions as the agency is authorized and decides to make under Section 552(b) of Title 5, U.S. Code, shall be part of the procurement documentation and retained by the agency.

17. *Where to obtain copies.* Copies of this publication are available for sale by the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161. When ordering, refer to Federal Information Processing Standards Publication 140–1 (FIPS PUB 140–1), and title. When microfile is desired, this should be specified. Payment may be made by check, money order, credit card, or deposit account.

[FR Doc. 94–539 Filed 1–10–94; 8:45 am]
BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of Public Display Permit No. 884.

SUMMARY: On Tuesday, September 21, 1993, notice was published in the **Federal Register** (58 FR 49024) that an application (P2Y) had been filed by Sea World, Inc. for a permit to import one adult male killer whale (*Orcinus orca*) identified as "Ulysses" from the Barcelona Zoo in Barcelona, Spain.

Notice is hereby given that on January 4, 1994, as authorized by the provisions of the Marine Mammal Protection Act (MMPA) of 1972 (16 U.S.C. 1361 *et. seq.*) the NMFS issued a permit for the above activities subject to the special conditions set forth therein.

Issuance of this permit is based on a finding that the proposed taking is consistent with the purposes and policy of the MMPA. The NMFS has determined that Sea World, Inc. offers an acceptable program for education or conservation purposes. Sea World, Inc. facilities are open the public on a regularly scheduled basis and access to these facilities is not limited or restricted other than by the charging of an admission fee.

The permit is available for review by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, NOAA, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289);

Director, Southeast Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702 (813/893–3141); and

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 90302 (310/980–4016).

Dated: January 5, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94–585 Filed 1–10–94; 8:45 am]
BILLING CODE 3510–22–M

COMMODITY FUTURES TRADING COMMISSION

Trilateral Cross-Margining Program Among the Chicago Mercantile Exchange, the Intermarket Clearing Corporation, and the Options Clearing Corporation

The Intermarket Clearing Corporation ("ICC") and the Chicago Mercantile Exchange ("CME") have submitted to the Commodity Futures Trading Commission ("Commission"), pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. § 7a(a)(12)(A), and Commission Regulation 1.41(b), 17 CFR 1.41(b), a proposal to implement a trilateral cross-margining program with the Options Clearing Corporation ("OCC") (CME, ICC, and OCC together being the "participating clearing organizations). The CME–ICC–OCC program would involve the cross-margining of positions in specified commodity futures, commodity options, and securities options ("eligible contracts") carried for, among others, certain market professional customers. These market professionals would include CME members and firms owning CME memberships, members of exchanges cleared by ICC, and market makers, specialists, and registered traders on securities options markets whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(y), 17 CFR 1.3(y), ("participating market professionals") and whose positions are carried by participating futures commission merchants ("FCMs") that also are participating broker-dealers ("B/Ds") or by participating FCMs and their affiliated participating B/Ds which may also be FCMs (together "participating clearing firms").

Section 5a(a)(12)(A) of the Act provides that the Commission shall approve contract market rules only if such rules "are determined by the Commission not to be in violation of [the] Act or the regulations of the Commission." Commingling of futures and non-futures funds of customers currently is not permitted under the Commission's regulations. Section 4d(2) of the Act, 7 U.S.C. § 6d(2), however, authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property (received by an FCM to margin, guarantee or secure the commodity futures trades or contracts of a customer) may be commingled * * * with any other money, securities, and property received by such [FCM] and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such [FCM]." Accordingly, any proposal which would permit such commingling would require Commission action pursuant to section 4d(2) of the Act, as well as Section 5a(a)(12)(A).

Whereas, the CME–ICC–OCC non-proprietary cross-margining proposal provides for calculation by the participating clearing organizations of a single margin requirement to support the positions of participating market professionals in eligible contracts carried by participating clearing firms;

Whereas, the Commission has reviewed the CME–ICC–OCC cross-margining proposal; new ICC rules 514, 515, 516, 517, 518, 519, and 520; proposed amendments to ICC Rules 101, 301, 302, 513 and 614; the proposed agreement among the participating clearing organizations; the proposed agreements among the participating clearing firms and the participating clearing organizations; and the proposed agreements among the participating market professionals and participating clearing firms submitted by letters dated September 21, 1992 through April 22, 1993; the representations of the participating clearing organizations as to the operation of the program; the representations of the Securities Investor Protection Corporation ("SIPC") and the Securities and Exchange Commission ("SEC"); and such other documents as constitute the complete record in this matter ("Record");

Whereas, the agreements among participating market professionals, participating clearing firms, and participating clearing organizations require that:

(a) Each participating market professional acknowledge in writing that any money, securities or property, including securities option positions, held on his behalf in a non-proprietary cross-margining account ("cross-margining property") will be treated in a manner consistent with the terms of this Order and any other applicable order issued by the Commission;

(b) Each participating market professional acknowledge and agree in writing that any cross-margining property held on his behalf by a participating FCM or a participating B/D affiliated with a participating FCM will be customer property deemed to be received by the participating FCM to be accounted for, treated, and dealt with by such FCM as belonging to such market professional in a manner consistent with Section 4d of the Act;

(c) Each participating market professional agree in writing that, in the event of the bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm against which such market professional has a customer net equity claim in respect of the cross-margining property, such claim shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), 17 CFR 190.01(hh), of such clearing firm that do not relate to money, securities, or property in any cross-margining account; and

(d) Each participating market professional acknowledge and agree in writing that cross-margining property held for or on his behalf will not be customer property under the Federal securities laws to the extent necessary to effect this Order and will not be customer property under Subchapter III of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. §§ 741–752 or the Securities Investor Protection Act ("SIPA"), 15 U.S.C. § 78aaa *et seq.*, and will not be claimed as such, and will be customer property under the Act, Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, 11 U.S.C. 761–766, and part 190 of the Commission's regulations, 17 CFR part 190;

Whereas, each participating market professional which signs such a participant agreement will be a customer of a participating FCM;

Whereas, each participating clearing firm will treat money, securities, and property received in respect of all accounts other than cross-margining accounts in a manner consistent with the requirements of the Commission and the SEC appropriate thereto;

Whereas, SIPC has represented that it has no objection to the agreements under which a participating market professional's cross-margining property would not be deemed to be customer property for the purposes of SIPA; and

Whereas, the SEC has concurred with the treatment of securities positions and cross-margining accounts set forth in this Order;

Now Therefore, based on the Record in this matter, and provided that the cross-margining proposal submitted by CME and ICC and related proposed rules and rule amendments submitted by ICC are implemented consistently with the representations and agreements cited herein, and provided that:

(a) Each participating clearing organization, participating clearing firm, and participating market professional execute the agreements referred to herein;

(b) Each participating clearing organization, participating clearing firm, and depository separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;

(c) Each participating clearing organization, participating clearing firm, participating market professional, and depository provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;

(d) Each participating clearing firm include all cross-margining property received from participating market professionals as provided herein to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions or securities option transactions, when calculating segregation requirements for the purposes of Section 4d of the Act;

(e) Each participating clearing firm compute total segregation requirements under Section 4d of the Act and Commission Regulation 1.32, 17 CFR 1.32, by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;

(f) Each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;

(g) Each participating clearing organization calculate the margin requirements for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to non-proprietary cross margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals; and

(h) Each participating clearing organization satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds;

(i) Notwithstanding the foregoing, a participating clearing firm may commingle cross-margining property maintained in respect of the non-proprietary cross-margining arrangement among CME, ICC, and OCC with money, securities and property maintained in respect of similar Commission-approved non-proprietary cross-margining arrangements between CME and other commodity clearing organizations, between ICC and other commodity clearing organizations, or between OCC and other commodity clearing organizations, and may apply such commingled money, securities, and property to meet its obligations to a commodity or option clearing organization arising from trades or positions held in its non-proprietary cross-margining account established pursuant to one or more of such cross-margining arrangements, provided that the participating clearing firm:

(i) Separately identify and account for the money, securities and property held pursuant to each of the non-proprietary cross-margining arrangements; and

(ii) separately calculate the margin requirements with respect to each of the non-proprietary-cross-margining arrangements, treating each position as being held pursuant to only one such arrangement;

It Is Hereby Ordered pursuant to section 4d(2) of the Act:

(1) That all money, securities, and property received by a participating FCM or a participating B/D affiliated with a participating FCM to margin, guarantee, or secure securities option trades or contracts carried in a non-proprietary-cross-margining account for or on behalf of participating market professionals, or accruing as a result of such trades or contracts, and held subject to the terms of this Order, shall be deemed to have been received by the participating FCM and shall be accounted for and treated and dealt with as belonging to the participating market professional customers of the participating FCM consistently with Section 4d of the Act;

(2) That, subject to the terms of this Order, notwithstanding any provisions to the contrary in the Commission's regulations (including, but not limited to, Regulations 1.20(a), 1.22, and 1.24, 17 CFR 1.20(a), 1.22, and 1.24), the money, securities, and property described in the preceding paragraph of this Order may be commingled in a non-proprietary cross-margining account with money, securities, and property received by a participating FCM to margin, guarantee, or secure trades or positions in eligible commodity futures or commodity option contracts, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act; and

(3) That, in the event of bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm, any customer net equity claim which a participating market professional has in respect of cross-margining property held by such participating clearing firm in a non-proprietary cross-margining account shall be treated as a customer net equity claim, under Part 190 of the Commission's regulations and Subchapter IV of Chapter 7 of Title 11 of the Bankruptcy Code, but shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), of such clearing firm that do not relate to cross-margining property.

It is further ordered, Pursuant to section 5a(a)(12)(A) of the Act and based upon the Commission action in the three preceding paragraphs of this Order, that the CME's and ICC's request for Commission approval of their proposal to establish a CME–ICC–OCC cross-margining program for proprietary and market professional accounts and approval of the related proposed rules and rule amendments is hereby granted.

Editorial note: This document was received at the Office of the Federal Register on January 5, 1994.

Issued in Washington, DC, this second day of June 1993.

By the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–543 Filed 1–10–94; 8:45 am]

BILLING CODE 6351–01–P

Trilateral Cross-Margining Program Among the Commodity Clearing Corp., the Intermarket Clearing Corp., and the Options Clearing Corp.

The Intermarket Clearing Corporation ("ICC") and the Commodity Clearing Corporation ("CCC") have submitted to the Commodity Futures Trading Commission ("Commission"), pursuant to section 5a(a)(12)(A) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(a)(12)(A), and Commission Regulation 1.41(b), 17 CFR 1.41(b), a proposal to implement a trilateral cross-margining program with The Options Clearing Corporation ("OCC") (CCC, ICC, and OCC together being the "participating clearing organizations"). The CCC–ICC–OCC program would involve the cross-margining of positions in specified commodity futures, commodity options, and securities options ("eligible contracts") carried for, among others, certain market professional customers. These market professionals would include New York Cotton Exchange ("NYCE") or FINEX members and firms owning NYCE or FINEX memberships, members of exchanges cleared by ICC, and market makers, specialists, and registered traders on securities options markets whose accounts would not be proprietary within the meaning of Commission Regulation 1.3(y), 17 CFR 1.3(y), ("participating market professionals") and whose positions are carried by participating futures commission merchants ("FCMs") that also are participating broker-dealers ("B/Ds") or by participating FCMs and their affiliated participating B/Ds which may also be FCMs (together "participating clearing firms").

Section 5a(a)(12)(A) of the Act provides that the Commission shall approve contract market rules only if such rules "are determined by the Commission not to be in violation of [the] Act or the regulations of the Commission." Commingling of futures and non-futures funds of customers currently is not permitted under the Commission's regulations. Section 4d(2) of the Act, 7 U.S.C. 6d(2), however, authorizes the Commission to issue an order prescribing the terms and conditions under which "money, securities, and property [received by an FCM to margin, guarantee or secure the commodity futures trades or contracts of a customer] may be commingled * * * with any other money, securities, and property received by such [FCM] and required by the Commission to be separately accounted for and treated and dealt with as belonging to the customers of such [FCM]." Accordingly, any proposal which would permit such commingling would require Commission action pursuant to section 4d(2) of the Act, as well as section 5a(a)(12)(A).

Whereas, the CCC–ICC–OCC non-proprietary cross-margining proposal provides for calculation by the participating clearing organizations of a single margin requirement to support the positions of participating market professionals in eligible contracts carried by participating clearing firms;

Whereas, the Commission has reviewed the CCC–ICC–OCC cross-margining proposal; the proposed agreement among the participating clearing organizations; the proposed agreements among the participating clearing firms and the participating clearing organizations; and the proposed agreements among the participating market professionals and participating clearing firms submitted by letters dated April 7 through November 16, 1993; the representations of the participating clearing organizations as to the operation of the program; the representations of the Securities Investor Protection Corporation ("SIPC") and the Securities and Exchange Commission ("SEC"); and such other documents as constitute the complete record in this matter ("Record");

Whereas, the agreements among participating market professionals, participating clearing firms, and participating clearing organizations require that:

(a) Each participating market professional acknowledge in writing that any money, securities, or property, including securities option positions, held on his behalf in a non-proprietary cross-margining account ("cross-margining property") will be treated in a manner consistent with the terms of this Order and any other applicable order issued by the Commission;

(b) Each participating market professional acknowledge and agree in writing that any cross-margining property held on his behalf by a participating FCM or a participating B/D affiliated with a participating FCM will be customer property deemed to be received by the participating FCM to be accounted for, treated, and dealt with by such FCM as belonging to such market professional in a manner consistent with section 4d of the Act;

(c) Each participating market professional agree in writing that, in the event of the bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm against which such market professional has a customer net equity claim in respect of the cross-margining property, such claim shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), 17 CFR 190.01(hh), of such clearing firm that do not relate to money, securities, or property in any cross-margining account; and

(d) Each participating market professional acknowledge and agree in writing that cross-margining property held for or on his behalf will not be customer property under the Federal securities laws to the extent necessary to effect this Order and will not be customer property under subchapter III of chapter 7 of title 11 of the Bankruptcy Code, 11 U.S.C. 741–752 or the Securities Investor Protection Act ("SIPA"), 15 U.S.C. 78aaa *et seq.*, and will not be claimed as such, and will be customer property under the Act, subchapter IV of chapter 7 of title 11 of the Bankruptcy Code, 11 U.S.C. 761–766, and part 190 of the Commission's regulations, 17 CFR part 190;

Whereas, each participating market professional which signs such a participant agreement will be a customer of a participating FCM;

Whereas, each participating clearing firm will treat money, securities, and property received in respect of all accounts other than cross-margining accounts in a manner consistent with the requirements of the Commission and the SEC appropriate thereto;

Whereas, SIPC has represented that it has no objection to the agreements under which a participating market professional's cross-margining property would not be deemed to be customer property for the purposes of SIPA; and

Whereas, the SEC has concurred with the treatment of securities positions and cross-margining accounts set forth in this Order;

Now Therefore, based on the Record in this matter, and provided that the cross-margining proposal submitted by CCC and ICC is implemented consistently with the representations and agreements cited herein, and provided that:

(a) Each participating clearing organization, participating clearing firm, and participating market professional execute the agreements referred to herein;

(b) Each participating clearing organization, participating clearing firm, and depository separately account for cross-margining property maintained in non-proprietary cross-margining accounts and not commingle such cross-margining property with money, securities, and property maintained in any non-cross-margining accounts or proprietary cross-margining accounts;

(c) Each participating clearing organization, participating clearing firm, participating market professional, and depository provide the Commission with access to its books and records with respect to non-proprietary cross-margining accounts and positions in a manner consistent with Commission Regulation 1.31, 17 CFR 1.31;

(d) Each participating clearing firm include all cross-margining property received from participating market professionals as provided herein to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions, or accruing to such participating market professionals as a result of such trades, contracts, commodity option transactions, or securities option transactions, when calculating segregation requirements for the purposes of Section 4d of the Act;

(e) Each participating clearing firm compute total segregation requirements under Section 4d of the Act and Commission Regulation 1.32, 17 CFR 1.32, by calculating separately the requirements for cross-margining and non-cross-margining accounts without using any net liquidating equity in one account to reduce a deficit in the other;

(f) Each participating clearing firm designate non-proprietary cross-margining accounts and positions as such in its books and records, including both internal documents maintained at the firms and account statements sent to participating market professionals;

(g) Each participating clearing organization calculate the margin requirements for each non-proprietary cross-margining account separately from the margin requirements for other accounts, including proprietary cross-margining accounts; collect any margin required with respect to non-proprietary cross-margining accounts separately without applying any margin in any such account to satisfy a margin requirement in any proprietary account or any non-cross-margining customer account and without applying any margin in a non-cross-margining customer account to satisfy a margin requirement in any proprietary account or any non-proprietary cross-margining account; and maintain all cross-margining property received from participating clearing firms to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for non-proprietary cross-margining accounts or held in such accounts, and all accruals resulting from such trades, contracts, commodity option transactions, or securities option transactions, separately from money, securities, and property received to margin, guarantee, or secure commodity futures trades, commodity futures contracts, commodity option transactions, or securities option transactions that are effected for or held in any proprietary account or any non-cross-margining customer account, and related accruals; and

(h) Each participating clearing organization satisfy any deficiency in a non-proprietary cross-margining account without recourse to non-cross-margining segregated funds;

(i) Notwithstanding the foregoing, a participating clearing firm may commingle cross-margining property maintained in respect of the non-proprietary cross-margining arrangement among CCC, ICC, and OCC with money, securities, and property maintained in respect of similar Commission-approved non-proprietary cross-margining arrangements between CCC and other commodity clearing organizations, between ICC and other commodity clearing organizations, or between OCC and other commodity clearing organizations, and may apply such commingled money, securities, and property to meet its obligations to a commodity or option clearing organization arising from trades or positions held in its non-proprietary cross-margining account established pursuant to one or more of such cross-margining arrangements, provided that the participating clearing firm:

(i) Separately identify and account for the money, securities, and property held pursuant to each of the non-proprietary cross-margining arrangements; and

(ii) Separately calculate the margin requirements with respect to each of the non-proprietary-cross-margining

arrangements, treating each position as being held pursuant to only one such arrangement;

It is hereby ordered, Pursuant to section 4d(2) of the Act:

(1) That all money, securities, and property received by a participating FCM or a participating B/D affiliated with a participating FCM to margin, guarantee, or secure securities option trades or contracts carried in a non-proprietary-cross-margining account for or on behalf of participating market professionals, or accruing as a result of such trades or contracts, and held subject to the terms of this Order, shall be deemed to have been received by the participating FCM and shall be accounted for and treated and dealt with as belonging to the participating market professional customers of the participating FCM consistently with section 4d of the Act;

(2) That, subject to the terms of this Order, notwithstanding any provisions to the contrary in the Commission's regulations (including, but not limited to, Regulations 1.20(a), 1.22, and 1.24, 17 CFR 1.20(a), 1.22, and 1.24), the money, securities, and property described in the preceding paragraph of this Order may be commingled in a non-proprietary cross-margining account with money, securities, and property received by a participating FCM to margin, guarantee, or secure trades or positions in eligible commodity futures or commodity option contracts, or accruing as a result of such trades or contracts, and otherwise required by the Commission to be segregated under the Act; and

(3) That, in the event of bankruptcy, liquidation, or receivership of or other proceeding involving the distribution of funds held by a participating clearing firm, any customer net equity claim which a participating market professional has in respect of cross-margining property held by such participating clearing firm in a non-proprietary cross-margining account shall be treated as a customer net equity claim, under part 190 of the Commission's regulations and subchapter IV of chapter 7 of title 11 of the Bankruptcy Code, but shall be subordinated to the customer net equity claims of "public customers," as that term is defined in Commission Regulation 190.01(hh), of such clearing firm that do not relate to cross-margining property.

It is further ordered, Pursuant to section 5a(a)(12)(A) of the Act and based upon the Commission action in the three preceding paragraphs of this Order, that the CCC's and ICC's request for Commission approval of their proposal to establish a CCC–ICC–OCC cross-margining program for proprietary and market professional accounts and approval of the related proposed rules and rule amendments is hereby granted.

Issued in Washington, DC, this 28th day of December 1993.

By the Commission,

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–541 Filed 1–10–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Closed Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 26 & 27 January 1994.

Time of Meeting: 0800–1700, 26 January 1994; 0800–1200, 27 January 1994.

Place: Washington, DC, Pentagon.

Agenda: The Army Science Board's (ASB) Summer Study on "Capabilities Needed to Counter Current and Evolving Threats" will conduct an initial kick-off meeting. This meeting is closed to the public in accordance with section 552b(c) of Title 5, U.S.C., specifically subparagraphs (1) thereof, and Title 5, U.S.C., Appendix 2, subparagraph 10(d). The classified, and unclassified information to be discussed are so inextricably intertwined so as to preclude opening any portions of the meeting. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–612 Filed 1–10–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Noncompetitive Award of Financial Assistance; Industrialized Housing: Product and Process Research Proposal

AGENCY: Department of Energy.

ACTION: Notice of noncompetitive financial assistance award.

SUMMARY: The Department of Energy (DOE), Chicago Field Office, through the Seattle Support Office, announces that pursuant to DOE Financial Assistance Rules 10 CFR 600.7(b)(2), it intends to award a cooperative agreement to University of Oregon (UO). The award represents a continuation of DOE funded research for the UO to produce marketable industrialized housing that is more energy efficient. Public Law 95–224 provides the statutory authority for the proposed award.

SUPPLEMENTARY INFORMATION: UO has been engaged in industrialized housing research for the last four years and has made successful advances to produce marketable industrialized housing that is more energy efficient and has a lower operating and first cost than conventional "stick-built" construction. Research under the cooperative agreement will provide needed data to DOE and industry utilizing industrialized housing technologies.

Therefore, the financial assistance application is being accepted because the work to be funded is necessary to continue activities presently being funded by DOE and the work will enhance the public benefit. DOE knows of no other entity which is conducting such an activity in the near or distant future. The project period for the cooperative agreement is expected to begin in November 1993 for a five year period. DOE plans to provide funding in the amount of $10,075,000 for this project period.

FOR FURTHER INFORMATION CONTACT: Jeffrey James, U.S. Department of Energy, Seattle Support Office, 800 Fifth Avenue, suite 3950, Seattle, WA 98104, (206) 553–2079.

Issued in Chicago, Illinois, on December 29, 1993.

Timothy S. Crawford,

Assistant Manager for Human Resources and Administration.

[FR Doc. 94–634 Filed 1–10–94; 8:45 am]

BILLING CODE 6450–01–M

Future Use of the Naval Oil Shale Reserves Numbers 1 and 2; Meeting

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of meeting.

SUMMARY: The Department of Energy plans to evaluate options for future use of Naval Oil Shale Reserves Numbers 1 and 2, including options for development of the conventional oil and natural gas resources that may be contained within these Reserves. Reserve Number 1 occupies 41,000 acres in Garfield County, Colorado, and Reserve Number 2 occupies 90,000 acres in Carbon and Uintah Counties, Utah. Approximately 40 percent of the Utah Reserve is included within the Uintah and Ouray Indian Reservation. Two open hearings are planned to provide opportunity for public comment on possible, future uses for these properties.

DATES AND ADDRESSES: The meeting will be held on January 25, in Salt Lake City, Utah, the Airport Holiday Inn, 1–4 p.m.; and on January 27, in Denver, Colorado, Red Lion Inn, Quebec Ave., 1–4 p.m..

FOR FURTHER INFORMATION CONTACT: Gary V. Latham, U.S. Department of Energy, Office of Naval Petroleum and Oil Shale Reserves, 1000 Independence Ave., SW., Washington, DC 20585, Ph: (202) 586–0475, FAX: (202) 586–4446.

SUPPLEMENTARY INFORMATION: Naval Oil Shale Reserves Numbers 1 and 2 originally were set aside by Congress to furnish the Navy with a supply of fuel in the event of a national emergency. Naval Oil Shale Reserve No. 1 is estimated to have more than 18 billion barrels of oil in place, with approximately 2.5 billion barrels of oil recoverable from shale rated at 30 gallons or more per ton. Naval Oil Shale Reserve No. 2 is estimated to have almost 4 billion barrels of shale oil in place. No estimate of recoverable shale oil has been made. The Department of Energy has no current plans to develop the oil shale resources of either Reserve No. 1 or Reserve No. 2.

The Naval Petroleum and Oil Shale Reserves' Strategic Plan recognizes that although development of shale oil has been deferred, the potential for conventional oil and gas resources within the Naval Oil Shale Reserves properties must be assessed and plans formulated to develop these resources in the near to mid-term. Based upon current and past production from oil and gas fields located in the vicinities of the Naval Oil Shale Reserves, the potential for recovery of substantial quantities of oil and natural gas from within the Reserves' boundaries is quite high. Options for development of these resources includes partnerships with industry (lease or farmout), Federal development, or simply deferring development, maintaining all or a portion of the properties as wilderness areas. Attendance at each of the two scheduled hearings will be limited to sixty persons. Oral and/or written presentations are invited. Oral presentations will be limited to five minutes each.

Dated: January 4, 1994.

Jack S. Siegel,

Acting Assistant Secretary for Fossil Energy.

[FR Doc. 94–644 Filed 1–10–94; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of request submitted for expedited review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (EIA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (Pub. L. 96–511, 44 U.S.C. 3501 *et seq.*). The listing does not include collections of information contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection; (2) Collection number(s); (3) Current OMB docket number (if applicable); (4) Collection title; (5) Type of request, e.g., new, revision, extension, or reinstatement; (6) Frequency of collection; (7) Response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) Affected public; (9) An estimate of the number of respondents per report period; (10) An estimate of the number of responses per respondent annually; (11) An estimate of the average hours per response; (12) The estimated total annual respondent burden; and (13) A brief abstract describing the proposed collection and the respondents.

DATES: DOE has requested expedited OMB approval by January 14, 1994. The Desk Officer may be telephoned at (202) 395–3084. (Also, please notify the EIA contact listed below.)

ADDRESSES: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503. (Comments should also be addressed to the Office of Statistical Standards at the address below.)

FOR FURTHER INFORMATION AND COPIES OF RELEVANT MATERIALS CONTACT: Jay Casselberry, Office of Statistical Standards (EI–73), Forrestal Building, U.S. Department of Energy, Washington, DC 20585. Mr. Casselberry may be telephoned at (202) 254–5348.

SUPPLEMENTARY INFORMATION: The energy information collection submitted to OMB for review was:

1. Energy Information Administration, Office of Oil and Gas
2. EIA–14, 182, 782A,B,C, 821, 856, 863, 877, 878, and 888
3. 1905–0174
4. Petroleum Marketing Program
5. Revision—A new survey, EIA–888, "On-Highway Diesel Fuel Price Survey," will be included in the Petroleum Marketing Program when approved by OMB. The survey is designed to collect data on the National and Petroleum Administration for Defense (PAD) District level cash price of self-serve, motor vehicle diesel fuel. The data will be used to monitor changes in motor vehicle prices, and to report to the Congress and others upon request. Respondents will be a scientifically selected sample of companies owning retail outlets which sell motor vehicle diesel fuel.
6. Weekly, Monthly, Annually (EIA–888 Weekly)
7. Mandatory
8. Businesses or other for-profit
9. 16,803 respondents (250 respondents for EIA–888)
10. 6.54 responses per respondent (52 responses for EIA–888)
11. 1.46 hrs per response (10 minutes per response for EIA–888)
12. 160,578 hours (650 hrs. for EIA–888)
13. The Petroleum Marketing Program surveys collect information on costs, sales, prices, and distribution for crude oil and petroleum products. Data are published in petroleum publications and in multifuel reports. Respondents are refiners, first purchasers, gas plant operators, resellers/retailers, motor gasoline wholesalers, suppliers, distributors and importers.

Statutory Authority: Section 2(a) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511), which amended chapter 35 of title 44, United States Code (See 44 U.S.C. 3506 (a) and (c)(1)).

Issued in Washington, DC, January 4, 1994.

John Gross,

Acting Director, Statistical Standards, Energy Information Administration.

BILLING CODE 6450–01–M

EIA-888 ( )

U.S. DEPARTMENT OF ENERGY
Energy Information Administration

Form Approved
OMB Number:
Form Expires:

EIA-888:
ON-HIGHWAY DIESEL FUEL PRICE SURVEY

This report is mandatory under Public Law 93-275. For the provisions concerning the confidentiality of information and sanctions, see Sections V and VI of the instructions. Public reporting burden for this collection of information is estimated to average 3 minutes per response, including the time of reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Energy Information Administration, Office of Statistical Standards EI-73, 1000 Independence Ave. SW, Washington, DC 20585; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

PART I. IDENTIFICATION DATA

Company Name

Name of Contact Person

Contact's Telephone Number
( ) –

Street/Box/RFD

City | State | Zip Code

DOE ID No.

Parent Company: _____

Parent DOE ID No: _____

Reference Dates: Price as of:

Month Day Year

PART II. PRICE DATA

(Retail price of Motor Vehicle Diesel Fuel, self-service, cash only, including all taxes)

	Date Called	Price ($0.000 per gallon)

Comments:

Completed by: _____

Title 18 USC 1001 makes it a criminal offense for any person knowingly and willingly to make to any Agency or Department of the United States any false, fictitious or fraudulent statements as to any matter within its jurisdiction.

Printed with soy ink on recycled paper

EIA-888 ( )

U.S. DEPARTMENT OF ENERGY
Energy Information Administration

Form Approved
OMB Number:
Form Expires:

INSTRUCTIONS FOR FILING THE EIA-888: ON-HIGHWAY DIESEL FUEL PRICE SURVEY

GENERAL INFORMATION

I. Purpose

The EIA-888 survey is designed to collect data on the National and Petroleum Administration for Defense (PAD) District level cash price of self-serve, motor vehicle diesel fuel. The data are used to monitor changes in motor vehicle diesel fuel prices, and to report to the Congress and others when requested.

The data are used by the U.S. Department of Energy's (DOE) Energy Information Administration (EIA) in accordance with Section 13(b) of the Federal Energy Administration Act of 1974 (FEAA), (P.L. 93-275).

II. Who Must Submit

The Form EIA-888 must be completed by a scientifically selected sample of companies owning retail outlets which sell motor vehicle diesel fuel.

III. When to Submit

The data collected on Form EIA-888 are requested on Monday of each week by telephone. No written confirmation of your data submission is required.

IV. Where to Submit

EIA personnel collect the data by telephone. Respondents are not required to submit any information. If you have any questions concerning these instructions, please contact the Form EIA-888 Project Manager at the toll free number, 1-800-638-8812. Firms located in Maryland should call 301-495-8440.

V. Sanctions

The timely submission of EIA-888 by those required to report is mandatory under Section 13(b) of the Federal Energy Administration Act of 1974 (FEAA) (Public Law 93-275), as amended. Failure to respond may result in a civil penalty of not more than $2,500 for each violation, or a fine of not more than $5,000 for each willful violation. The government may bring a civil action to prohibit reporting violations which may result in a temporary restraining order or a preliminary or permanent injunction without bond. In such civil action, the court may also issue mandatory injunctions commanding any person to comply with these reporting requirements.

VI. Provisions Regarding Confidentiality of Information

The Office of Legal Counsel of the Department of Justice concluded on March 20, 1991, that the Federal Energy Administration Act requires the Energy Information Administration to provide company-specific data to the Department of Justice, or to any other Federal agency when requested for official use, which may include enforcement of Federal law. The information contained on this form may also be made available, upon request, to another component of the Department of Energy (DOE); to any Committee of Congress, the General Accounting Office, or other Congressional agencies authorized by law to receive such information. A court of competent jurisdiction may obtain this information in response to an order.

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EIA-888 ( )

GENERAL INFORMATION (Continued)

The information contained on this form will be kept confidential and not disclosed to the public to the extent that it satisfies the criteria for exemption under the Freedom of Information Act (FOIA), 5 U.S.C. §552, the DOE regulations, 10 C.F.R. §1004.11, implementing the FOIA, and the Trade Secrets Act, 18 U.S.C. §1905.

Upon receipt of a request for this information under the FOIA, the DOE shall make a final determination whether the information is exempt from disclosure in accordance with the procedures and criteria provided in the regulations. To assist us in this determination, respondents should demonstrate to the DOE that, for example, their information contains trade secrets or commercial or financial information whose release would be likely to cause substantial harm to their company's competitive position. A letter explaining (on an element-by-element basis) the reasons why the information would be likely to cause the respondent substantial competitive harm if released to the public would aid in this determination. A new justification does not need to be provided each time information is submitted, if the company has previously submitted a justification for that information and the justification has not changed.

SPECIFIC INSTRUCTIONS

Part I
Identification Data

I. Report corrections to information contained on the label if the label is incomplete or incorrect.

II. DOE Identification (ID) Number

Your DOE identification (ID) number is the 10-digit number printed on the label.

III. Reference Dates

The report period is as of 8:00 a.m. Monday

Indicate month, day, and year (e.g., November 5, 1993 is: Month 11 Day 05 Year 93).

Part II
Price Data

The reported price should be the cash price for self-serve motor vehicle diesel fuel. If the station does not offer self-serve, then report the cash price for mini-serve (if available) or full serve.

[FR Doc. 94–635 Filed 1–10–94; 8:45 am]
BILLING CODE 6450–01–C

Federal Energy Regulatory Commission

[Docket No. ER94–282–000, et al.]

Wisconsin Public Service Corporation, et al.; Electric Rates and Corporate Regulation Filings

December 30, 1993.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Public Service Corporation

[Docket No. ER94–282–000]

Take notice that on December 17, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over a retail rate schedule under which WPSC serves the Du Bay Campground in Mosinee, Wisconsin ("the Campground) at WPSC's rural small commercial and industrial (CG–2) rate, or if the Commission asserts jurisdiction, to accept the agreement for filing and waive the notice requirement to allow that the rate schedule to become effective May 1, 1992.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Wisconsin Public Service Corporation

[Docket No. ER94–281–000]

Take notice that on December 17, 1993, Wisconsin Public Service Corporation (WPSC) requested the Commission to disclaim jurisdiction over a retail rate schedule CZ–1 under which WPSC served the Northern Mobile Home Court (Northern) until November of 1993. WPSC provided the service to Northern under "Option 2" of rate schedule, which provides that the customer may install its own meters at each trailer stall and rebill electric service to the tenant. WPSC asserts that the service is clearly nonjurisdictional; however, WPSC wishes to be absolutely certain to avoid any late filing penalties. If the Commission asserts jurisdiction, WPSC requests that the CZ–1 rate schedule be accepted for filing and that the notice requirement be waived to allow that rate schedule to become effective as to the Northern service on January 1, 1963, which is approximately when service to Northern commenced.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Kentucky Power Company

[Docket No. ER94–121–000]

Take notice that on December 16, 1993, Kentucky Power Company (Kentucky) tendered for filing an amendment in the above-referenced docket.

Comment date: January 12, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. New England Power Company

[Docket No. ER94–110–000]

Take notice that on December 17, 1993, New England Power Company (NEP) tendered for filing an amendment in the above-referenced docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. New England Power Company

[Docket No. ER94–70–000]

Take notice that on December 15, 1993, New England Power Company (NEP) tendered for filing an amendment in the above-referenced docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER94–225–000]

Take notice that on December 14, 1993, New England Power Company tendered for filing an amendment to its filing in this docket.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER94–265–000]

Take notice that on December 16, 1993, PacifiCorp tendered for filing agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993, under Docket No. PL93–2–002, the Settlement Agreement between Bonneville Power Administration (Bonneville), Washington Public Power Supply System (Supply System) and PacifiCorp dated February 27, 1990.

Copies of this filing were supplied to Bonneville, the Supply System, the Public Utility Commission of Oregon, and the Utah Public Service Commission.

PacifiCorp requests waiver of prior notice requirements be granted.

Comment date: January 14, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–552 Filed 1–10–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RP94–103–000]

Williston Basin Interstate Pipeline Company; Report of Refund

January 4, 1994.

Take notice that on December 30, 1993 Williston Basin Interstate Pipeline Company (Williston Basin), 200 North Third Street, Suite 300, Bismarck, North Dakota 58501, tendered for filing with the Federal Energy Regulatory Commission (Commission) a refund report pursuant to Section 39 of Williston Basin's Second Revised Volume No. 1 of its FERC Gas Tariff.

Williston Basin states that on December 30, 1993, refunds were mailed to affected customers previously served under Rate Schedules G–1 and SGS–1 of First Revised Volume No. 1 to Williston Basin's FERC Gas Tariff to refund the remaining balance in Williston Basin's Account No. 191 as of October 31, 1993, with interest through December 29, 1993. Williston Basin states that the total amount refunded was $37,245, including interest of $6,222.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 11, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file

with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–553 Filed 1–10–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4824–8]

Final Outer Continental Shelf Air Permit Decision

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final Outer Continental Shelf air permit.

SUMMARY: The United States Environmental Protection Agency (EPA) hereby gives notice of the final Outer Continental Shelf air permit decision for the Chevron U.S.A. Production Company, Inc., Destin Dome Block 97 Exploratory Well. Destin Dome Block 97 is located approximately 29 miles offshore of Pensacola, Florida. After due consideration of the facts applicable to this Outer Continental Shelf source as they appear in the Administrative Record and the requirements expressed in the Clean Air Act and appropriate regulations, the Regional Administrator has determined that the Outer Continental Shelf air permit, OCS-FL–001, should be issued with the revisions incorporated since the preliminary determination announced by the previous public notice for this permit (Public Notice Date: October 3, 1993). This action constitutes EPA's final permit decision in accordance with Title 40, Code of Federal Regulations (40 CFR) § 124.15(a). The permit will become effective as specified in this notice, provided that no timely request for review under 40 CFR 124.19 is received by EPA.

Any person who filed comments on the draft Outer Continental Shelf permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision. Any person who failed to file comments or failed to participate in the public hearing on the draft permit may petition for administrative review only to the extent of the changes from the draft to the final permit decision. The petition shall include a statement of the reasons supporting that review, including a demonstration that any issues being raised were raised during the public comment period (including any public hearing) to the extent required by 40 CFR Part 124 and when appropriate, a showing that the condition in question is based on a finding of fact or conclusion of law which is clearly erroneous, or an exercise of discretion or an important policy consideration.

EFFECTIVE DATE: This action is effective February 9, 1994. The date of service of notice of this final permit decision was January 10, 1994.

The petition must be submitted to the Regional Administrator by February 9, 1994.

ADDRESSES: Send petitions addressed to Mr. John L. Hankinson, Jr., Regional Administrator, at the EPA address in this notice (Attention: R. Scott Davis/APTMD). Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations:

Region IV Library, Environmental Protection Agency, 345 Courtland Street NE, Atlanta, GA 30365.

Air Resources Management Division, Florida Department of Environmental Protection, 111 South Magnolia Drive, Tallahassee, Florida 32399.

West Florida Regional Library, 200 West Gregory, Pensacola, Florida 32501–4878.

Orange County Library, 101 East Central Boulevard, Orlando, Florida 32801.

FOR FURTHER INFORMATION CONTACT: R. Scott Davis, Air, Pesticides, and Toxics Management Division, U.S. EPA Region IV, 345 Courtland Street, NE, Atlanta, GA 30365. Telephone (404) 347–5014.

Dated: January 5,1994.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 94–617 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4824–7]

National Drinking Water Advisory Council Request for Nominations

The U.S. Environmental Protection Agency (EPA) invites all interested persons to nominate qualified individuals to serve as members of the National Drinking Water Advisory Council. This Advisory Council was established to provide practical and independent advice, consultation and recommendations to the Agency on the activities, functions and policies related to the implementation of the Safe Drinking Water Act as amended. The Council consists of fifteen members, including a Chairperson. Five members represent the general public; five members represent appropriate state and local agencies concerned with water hygiene and public water supply; and five members represent private organizations or groups demonstrating an active interest in the field of water hygiene and public water supply. Each member holds office for a term of three years and is eligible for reappointment. On December 15 of each year, five members complete their appointment. This notice solicits names to fill the five vacancies as of December 16, 1993.

Any interested person or organization may nominate qualified individuals for membership. Nominees should be identified by name, occupation, position, address and telephone number. Nominations must include a current resume providing the nominee's background, experience, and qualifications.

Persons selected for membership will receive compensation for travel and a nominal daily compensation while attending meetings.

Nominations should be submitted to Charlene E. Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW, Washington, DC 20460, no later than 30 days after publication of this notice in the **Federal Register**. The agency will not formally acknowledge or respond to nominations.

Dated: January 5, 1994.

James R. Elder,

Director, Office of Ground Water and Drinking Water.

[FR Doc. 94–618 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4822–7]

Environmental Information and Assessment Committee of the National Advisory Council for Environmental Policy and Technology; Public Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of public meeting.

SUMMARY: Under the Federal Advisory Committee Act, PL 92463, EPA gives notice of a one-day meeting of the Environmental Information and Assessment (EIA) Committee of the National Advisory Council for Environmental Policy and Technology (NACEPT). NACEPT provides advice and recommendations to the Administrator of EPA on a broad range of environmental policy issues, and the EIA Committee examines issues associated with the gathering, dissemination, and use of environmentally related data and information.

Three topics will be discussed during the meeting:

1. A new EIA Committee project to devise recommendations that may be incorporated in the Information Resources Management (IRM) Strategic Plan EPA is developing.
2. Previous EPA IRM planning efforts.
3. The status of current EPA IRM programs.

Scheduling constraints preclude oral comments from the public during the meeting. Written comments can be submitted by mail, and will be transmitted to Committee members for consideration.

DATES: The public meeting will be held on Wednesday, January 19, 1994, from 9 a.m. to 5 p.m.

ADDRESSES: Written comments should be sent to: Mark Joyce 1601F, Office of Cooperative Environmental Management, U.S. EPA, 401 M Street SW., Washington, DC 20460.

The public meeting will be held at the National Governor's Association Hall of the States, Room 333, 444 North Capitol Street, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Joyce, Designated Federal Official, Direct line (202) 260–6889, Secretary's line (202) 260–6892.

Dated: December 22, 1993.

Mark Joyce,

Designated Federal Official.

[FR Doc. 94–619 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4824–2]

CWA 303(d): EPA's Intent To Approve and Availability of State List Submissions

AGENCY: Environmental Protection Agency, Region II.

ACTION: Notice.

SUMMARY: This notice announces the U.S. Environmental Protection Agency's (EPA) intent to approve the lists submitted to the U.S. EPA pursuant to Clean Water Act (CWA) section 303(d) by the State of New York, the State of New Jersey, and the Commonwealth of Puerto Rico on September 4, 1992, May 20, 1993, and November 18, 1993, respectively. Please be advised that the U.S. Virgin Islands is not required to submit a 303(d) list because there are no water quality-limited segments in the U.S. Virgin Islands requiring Total Maximum Daily Loads (TMDL). EPA issued its intent to approve the New York State September 4, 1992 list submittal on May 18, 1993. With regard to the New Jersey May 20, 1993 and the Puerto Rico November 18, 1993 list submittals, although EPA has not yet sent out approval letters, EPA does intend to approve both of these list submittals as well.

In the case of the Puerto Rico section 303(d) list, it should be noted that several modifications, which will affect the Commonwealth's section 303(d) list, have been agreed upon by the Puerto Rico Environmental Quality Board (PREQB) and EPA subsequent to the November 18, 1993 submittal. These proposed modifications reflect recent negotiations between PREQB and EPA regarding 1994 permitting priorities in Puerto Rico. The current Puerto Rico section 303(d) list does not reflect these specific modifications. Since the section 303(d) process is ongoing, another comprehensive review/revision of all State section 303(d) lists is scheduled to take place in April, 1994. At that time the Puerto Rico section 303(d) list will be updated to include all agreed upon modifications.

EPA is soliciting public comment on its intent to approve these 303(d) lists, which, together with EPA's tentative approval documents, are available to the public.

DATES: Comments on EPA's intent to approve these lists and the list submittals, must be submitted to EPA on or before February 10, 1994.

ADDRESSES: Copies of the lists submitted pursuant to 303(d) and EPA's tentative approval documents can be obtained by writing to Mr. Wayne Jackson, Surface Water Quality Branch, U.S. Environmental Protection Agency Region II, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278 or calling (212) 264–5685. Comments on these items should be sent to Mr. Wayne Jackson at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne Jackson, telephone (212) 264–5685.

SUPPLEMENTARY INFORMATION: Section 303(d) of the Clean Water Act (CWA), as amended by the Water Quality Act of 1987, requires every State to: Identify those waters within its boundaries for which the effluent limitations required by section 301(b)(1)(A) and section 301(b)(1)(B) of the CWA are not stringent enough to meet any water quality standard applicable to such waters. Each State is required to identify the pollutants causing the impairment of the listed waters. Section 303(d) further requires the State to establish a priority ranking for such waters, taking into account the severity of the pollution and the designated uses of these waters. Finally, the State is required to identify waters targeted for TMDL development over the next two (2) years. TMDLs establish the allowable pollutant loadings necessary for a waterbody to meet applicable State water quality standards. State 303(d) lists and TMDLs are submitted to EPA for approval or disapproval. The deadline for submitting the above lists to the United States Environmental Protection Agency (EPA) was October 22, 1992 (See 57 FR 33047 (July 24, 1992)).

Consistent with 40 CFR 130.7, New York, New Jersey and Puerto Rico submitted to EPA, for approval, their listing decisions under section 303(d) on September 4, 1992, May 20, 1993, and November 18, 1993, respectively. EPA today notices its intent to approve these lists and solicits public comment on both the intent to approve and on the lists. EPA is soliciting comments on the New York, New Jersey, and Puerto Rico 1992 CWA section 303(d) lists and approvals. All future biennial submissions of the 303(d) lists will provide for public comment at the State level.

The lists and approvals are available by mail or for public inspection at the EPA Region 2 office by appointment. To request a copy of a list and/or approval, to make arrangements to examine the lists, or to submit comments, contact the Agency representative identified above. Comments must be submitted within thirty (30) days of the publication of this notice.

Following the close of the comment period, EPA will make a final determination on the State lists and will issue a response to comments received. A copy of EPA's decision and response to comments document will be sent to all parties submitting comments in response to this notice.

Dated: December 27, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 94–620 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4823–8]

Water Pollution Control; Approval of Application by South Dakota To Administer the National Pollutant Discharge Elimination System Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Approval of application.

SUMMARY: On December 30, 1993, the Acting Regional Administrator for the Environmental Protection Agency (EPA), Region VIII, approved the application by the State of South Dakota to administer and enforce the national pollutant discharge elimination system (NPDES) program for regulating discharges of pollutants into waters within the State.

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janet LaCombe at (303) 293–1593, NPDES Branch, (8WM–C); U.S.E.P.A., Region VIII; Denver Place, 999 18th Street, suite 500; Denver, CO 80202–2466.

SUPPLEMENTARY INFORMATION: The application of the South Dakota Department of Environment and Natural Resources (DENR) was received by EPA on April 28, 1993. Several modifications were made to the application package, based on discussions between the EPA, the DENR, and the Office of the Attorney General. The final changes, including the signing of the Memorandum of Agreement by the Governor, were completed on August 30, 1993.

South Dakota's application was described in **Federal Register** notices dated September 1 and 9, 1993, at 58 FR 46145 and 47417, and in notices published in the Rapid City Journal and the Sioux Falls Argus-Leader on August 27 and September 10, 1993. In the September 1, 1993 **Federal Register** notice and the August 27, 1993 newspaper notices, EPA highlighted three issues upon which it specifically requested public comment. These issues concerned unsigned complaints from the general public, penalty authority, and citizen intervention in enforcement actions.

Copies of South Dakota's application package were available for public review at the EPA Region VIII office and at the DENR office in Pierre, South Dakota. Copies also could be purchased from the DENR at a cost of $10.00.

EPA provided copies of South Dakota's public notices to permitted facilities, tribal councils and tribal environmental agencies, and environmental groups in South Dakota. The mailing list used is part of the record of the program application and review process. By letter dated August 25, 1993, EPA provided copies of South Dakota's application to the U.S. Fish & Wildlife Service, and to the South Dakota State Historic Preservation Officer.

As part of the public comment process, EPA conducted two public hearings on South Dakota's application. The hearings occurred on October 14, 1993 at the Matthew Training Center, Joe Foss Building, 523 East Capitol, Pierre, South Dakota, beginning at 3 and 7 p.m. The first hearing lasted approximately one hour, and the second lasted about 45 minutes. The register of those attending is contained in the administrative record. In addition, until October 22, 1993, EPA accepted written comments from the public. All comments or objections presented at either public hearing or received in writing by EPA Region VIII by October 22, 1993, were considered by EPA.

Comments were received regarding the following issues: (1) Unsigned complaints, (2) penalty authority, (3) citizen intervention, (4) jurisdiction over Indian Country, (5) pretreatment program, (6) mechanisms for ensuring protection of endangered and threatened species, and (7) overall benefits or lack of benefits resulting from authorization. EPA response to all comments are contained in this notice. Summaries of the comments and EPA's responses follow. The comments and hearing record are contained in the administrative record supporting this notice.

I. Unsigned Complaints

Federal regulations at 40 CFR 123.26(b)(3) and (4) require a State approved to administer the NPDES program to maintain a program for investigating information regarding violations of applicable program and permit requirements, to maintain procedures for receiving and ensuring proper consideration of information submitted by the public about violations of applicable program and permit requirements, to encourage public efforts in reporting violations, and to make available information on reporting procedures.

As outlined in EPA's September 1, 1993 **Federal Register** notice and August 27, 1993 newspaper notices, Section 34A–2–111 of the South Dakota Codified Laws (SDCL) prohibits the DENR from performing inspections or conducting other investigatory activities pursuant to SDCL Sections 34A–2–40, 34A–2–44, and 34A–2–45 based on, or as a result of, information received from the general public unless the person providing the information signs a complaint, which is to remain confidential with the DENR. The statement by the South Dakota Attorney General notes that information in complaints from the general public made to another agency or DENR program and then referred to the DENR NPDES program is not considered "as a result of" a complaint from the general public.

The State has described the means by which it will consider and respond to NPDES-related information from the general public and from other state governmental agencies. The DENR will investigate and respond to all citizen complaints where a signed complaint form has been received and will investigate all complaints received from other government agencies. At the time an unsigned complaint is received, DENR will determine whether appropriate department authorities exist under any state environmental statute to handle the unsigned complaint. If not, the citizen shall be referred to the South Dakota Department of Emergency and Disaster Services, the South Dakota Department of Game, Fish & Parks, or another appropriate State agency. The appropriate State agencies shall receive anonymous complaints and either investigate under their authorities or sign and refer the complaint to DENR. The process used for investigating and responding to unsigned complaints will be published in major newspapers in South Dakota and will be prominently posted in the main office and the field offices of the DENR.

In its oversight role, EPA has established a "hotline" (1–800–227–8917) to receive complaints, both identified and anonymous, regarding NPDES-related activities in South Dakota. To communicate this fact to the general public, EPA will publish the hotline number in the Rapid City "Journal" and the Sioux Falls "Argus-Leader", as well as sending a notice to public interest groups and permitted facilities. The hotline number may be used by callers who have information concerning a possible violation of an NPDES permit or program requirement. The caller will be referred to a staff member of the EPA Region VIII NPDES Branch. This staff person will record the information received and make a decision whether or not an investigation is needed. EPA may conduct the investigation or request that the DENR investigate.

A. Comments in Support of Sec. 34A–2–111

Those supporting South Dakota's system for addressing unsigned complaints included the DENR, municipal, agricultural, and mining associations, municipalities, another State agency, and industrial dischargers.

1. Several commenters questioned the motives of people who submit unsigned complaints and/or the merits of such complaints. They referred to the right to face one's accusers. Their comments included:

A few persons stated that unsigned complaints result from feuds, cranks, or competitors.

Two expressed the opinion that if a complaint is genuine, the person making it should have the commitment to sign it. A representative of an agricultural group that identified itself as the prime sponsor of Sec. 34A–2–111 stated that "there should be a great deal of responsibility laid at the feet of those people making the complaint * * * [South Dakota is] a stand-up place * * * South Dakota newspapers, by and large, don't accept letters to the editors that are unsigned. South Dakota State agencies, by and large, do not accept letters of complaint or phone calls that are anonymous. South Dakota Attorney General's office does not accept complaints that are anonymous, with some exceptions." Two commenters stated that a person is entitled to face his accusers and is protected from anonymous harassment. One of them cited the Sixth Amendment of the U.S. Constitution.

2. Some commenters indicated that the state government and the regulated community should be protected from unsigned complaints:

One city official noted that unsigned complaints can have a detrimental effect upon an organization otherwise trying to work cooperatively to achieve compliance.

"* * * an anonymous phone call or letter is too easy a method to trigger an environmental audit * * *."

"[Section] 34A–2–111 is a necessary statute that helps to limit the expenditure of staff time on frivolous personal grudge type complaints."

3. Some commenters praised DENR's record in conducting investigations and allowing for public participation. They also noted the existence of the EPA "800" number. Their remarks included:

The Secretary, DENR, asserted in his written statement: "To our knowledge, since the passage of this law [SDCL Section 34A–2–111], this law has never hindered our ability to address water pollution incidents nor has it hindered public involvement."

"* * * the current SDCL Section 34A–2–111 is working very well. DENR is very responsible in investigating complaints and has a system in place to guarantee that investigations take place once a complaint arises and to keep the identity of the party making the complaint confidential."

A few commenters referred to the fact that EPA is maintaining an "800" number for persons not wishing to communicate with the state.

4. Several commenters indicated that the state's system provides sufficient opportunity for public participation and agency investigation of complaints. They supported this point by identifying three ways in which Section 34A–2–111 was restricted in its applicability:

a. The prohibition applies to complaints from the general public, not to complaints made or passed on by another federal, state or local level of government. If DENR determines that it lacks authority to investigate a complaint, the complaint is then referred to another agency.

b. The prohibition does not apply to the state's mining laws, solid waste laws, and hazardous waste laws. Most complaints from factory workers will relate to hazardous waste violations, which are not covered by this prohibition.

c. The prohibition does not apply to DENR's right of entry, to the issuance of an emergency order, to determinations of responsibility for discharges, to waste disposal into state waters, and to more general authorities to investigate violations of Chapter 34A–2.

B. Comments Opposing Sec. 34A–2–111

Those opposing South Dakota's system for handling unsigned complaints included environmental groups and individuals working in municipal facilities.

1. Some commenters stated that people hesitate to sign complaints because they fear reprisals:

An anonymous individual who described himself or herself as a "person employed in the wastewater and pretreatment field in the State of South Dakota" stated, "Many times people are reluctant to sign complaints because of some type of repercussion."

"It is a reality that many individuals are reluctant to report suspected or obvious discharge violations for fear of reprisal. Real or perceived, it is a reality."

An environmental group (which stated that it had recently concluded a successful citizen's suit against a mining company in South Dakota) commented that it had filed written complaints with the DENR based on anonymous tips that it, rather than the DENR, had received. Citizens had been reluctant to file a complaint even if it was considered "confidential." This group also stated that it had never found any citizen complaint to be frivolous or harassing.

2. Several commenters criticized the process for investigating and responding to unsigned complaints, described in Item E.4. on page 7 of the MOA. Their comments included:

"The MOA should contain unequivocal language setting forth a specific procedure for SDDENR to follow for maintaining (1) an investigation of violations and (2) procedures for ensuring proper consideration of information from the public about violations."

"We do find fault, at times, with the depth and timeliness of the 'investigation' conducted by DENR upon our filed complaints. Investigations conducted several days to weeks after a complaint is filed may miss a violation."

"In South Dakota, with its small population and overlapping networks of personal and business relationships, unsigned complaints—if they are seriously considered by SDDENR are likely to be the most fruitful sources of violation reporting."

"It is not clear * * * whether department authorities exist within SDDENR to appropriately handle unsigned citizen complaints if referred by another State agency. . . . We do not consider it appropriate to burden other State agencies whose administrative and field staff are already clearly overworked."

"Any unsigned complaint will simply fall into the cracks between agencies and nothing will be done."

"The Departments of Agriculture and Game, Fish and Parks do not have authority or expertise for dealing with complaints that are properly the concern of SDDENR."

3. Some commenters indicated that SDCL prevented South Dakota's application from meeting pertinent authorization requirements:

"We believe neither SDCL 34A–2–111 nor EPA's proposed solution meets the requirements of Section 402(b)(2)(B) and Section 402(b)(7) of the Clean Water Act, and 40 CFR Sections 123.26(b)(3) and (4) * * *. EPA should withhold NPDES delegation until SDCL 34A–2–111 is repealed."

"The requirements of forty (sic) CFR Sections 123.26(b)(3) and (4) will not be met under the MOA because of the convoluted nature of provisions for receiving and dealing with unsigned complaints."

4. Some commenters stated that the state's procedure for handling unsigned complaints created the impression that the state favored special interests over the general public:

"If there's a problem, [most citizens] want action, no matter whom they call. For a citizen to be told they have to call another agency to get a water problem addressed just confirms [the] citizen's view of government as controlled by special interests who get laws like 34A–

2–111 approved * * *. State government should not be empowered by EPA to cripple or make more difficult and confusing citizens' ability to work directly with the proper state regulators because of paranoia on the part of the special interests who are regulated under water quality laws." Two individuals commented in a letter that they were "appalled of (sic) the manner in which the State intends on handling or rather not handling citizen complaints and the legalese double talk the State Attorney General's office is trying to portray as meaningful procedures."

C. EPA's Response to Comments on Sec. 34A–2–111

The State has a program and procedures for public reporting of violations that ensures their proper consideration, even though the existence of § 34A–2–111 appears to require a more cumbersome process than is desirable. EPA might propose a simpler program or procedures for a hypothetical "model" state program. However, under the Clean Water Act, a State is provided flexibility in achieving the minimum requirements of the Act, including those for public participation. If approached by another state on suggestions for public reporting, EPA would recommend against inclusion of a Section 111-type provision. EPA encourages South Dakota to repeal Section 111 as inefficient and having the potential to limit the discretion of the very state agency entrusted to exercise enforcement discretion.

EPA doubts that facilities subject to DENR investigations could use Section 111 as a means to avoid the consequences for failing to comply with § 34A–2–40, –44, and –45. DENR investigators are not required by any provision of state law to identify the basis for the information leading to investigation. Moreover, DENR has authority to initiate prosecution based on verified information. Notwithstanding questions about enforceability, DENR has indicated its intention to faithfully implement applicable provisions of state law, as well as to implement public participation procedures to meet the requirements of 40 CFR 123.27(d). EPA encourages DENR to periodically evaluate the effectiveness of its public reporting procedures in providing public participation in the NPDES enforcement program in South Dakota, particularly in light of the existence of Section 111.

The fact that the prohibition in 34A–2–111 does not apply to complaints from governmental entities or to other State environmental programs provides the State some options for the general public to use in reporting concerns about possible violation or problems related to wastewater treatment or effluent. The description of the State process will be published in major newspapers in South Dakota and posted in the DENR offices located throughout the State. Therefore, mechanisms exist to ensure proper consideration of information from the general public and are sufficient to meet the minimum requirements of public participation consistent with 40 CFR 123.26.

EPA acknowledges there may be some delay in investigation of information received from the general public because of the requirement for a signed complaint. South Dakota has explained, however, that the requirement should not unduly delay prompt investigation when the member of the general public indicates a willingness to identify himself or herself and sign a complaint.

The volume of unsigned complaints which are received by any one entity is not expected to be so great that it would strain the resources available to that organization. However, the DENR is responsible for assuring whatever resources needed to respond to unsigned complaints are available, as well as providing adequate resources to administer the NPDES program as a whole.

EPA notes that the adequacy and effectiveness of DENR's public reporting requirements are easily verified, both by EPA and the general public. If the described procedures do not, in practice, provide for adequate and effective public reporting, DENR's compliance with public reporting requirements may be reexamined. Should subsequent administrative or judicial interpretations of Section 111 broaden its scope from that described in the program submission or otherwise impair implementation of the public reporting procedures, EPA may reevaluate whether the existence of Section 111 yet enables DENR to adequately administer the NPDES program.

Motives of Anonymous Tipsters, Rights of the Accused, and Complainant Fear of Reprisal

EPA does not dispute that some complaints may be submitted with questionable motives or that signed complaints may often be more credible than unsigned ones. "Crank" calls may be from disgruntled neighbors or business competitors. However, a statute is not needed to eliminate the problems associated with frivolous calls. The DENR has professionally trained staff capable of screening out such calls, based on the information provided or not provided. Such calls are also possible from persons who do sign their names.

The fact that the prohibition applies only to the general public and not to other governmental entities allows the NPDES program to use information referred to it by these entities. This information may be provided as problems the entities have identified in the course of their duties (including accepting referrals). It may also come from problems identified by complainants to other entities about their programs which contain information also applicable to the NPDES program.

Regarding the rights of the accused, the Sixth Amendment right to face accusers applies in criminal cases when the testimony of an informant is to be used in trial. However, if an informant's tip is independently confirmed by a law enforcement agency and the testimony of the informant is not needed at trial, then any rights under this amendment have not been affected.

Fear of reprisal may occur even in situations where a person does not have to provide a name, since in small communities it might be fairly easy to figure out or at least narrow down the persons likely to have reported the information. In addition, employees may fear reprisal from their employers should they report possible violations of NPDES statutes, regulations, or permit conditions. However, such fears may be diminished by the fact that SDCL 34A–2–111 requires the identity of the complainant to be kept confidential.

Protection of Agencies and Regulated Community/Favoring Special Interests

A frivolous claim may place a strain on an organization trying to cooperate. However, the potential for strain is offset by the potential to promote the general good which complaints may provide the State in identifying and correcting problems early on. Also, it would seem that there would be few instances of complaints being merely frivolous or harassing.

There is always the chance that actions by governmental entities may be misconstrued by the general public. This is not a basis for determining a program does not meet the requirements for delegation. However, this is an issue both the SDDENR and the EPA will be sensitive to as they administer and oversee the NPDES program.

The State of South Dakota is a sparsely populated state with relatively few industries. Moreover, the existence of overlapping business and personal networks provides an opportunity for someone removed from a situation to provide information instead of someone concerned about retaliation from an employer. South Dakota's small population and overlapping networks may be productive sources of information. These networks can work to the advantage of the NPDES program in that possible NPDES violations, particularly those affecting surface waters may be reported in connection with information supplied to other environmental programs. For example, according to the DENR, the DENR Ground Water program has the lead on spills and contacts the NPDES staff when there is a potential for surface waters to be affected. The Mining program will generally receive any tips regarding mining problem spills/discharges (e.g. cyanide) and share them with the NPDES staff. Game Fish & Parks recently referred a case of a discharge without a permit to the DENR. That agency also uses its own authority when the discharge is in the area of a fishery. All of these programs are not affected by the prohibition in SDCL 34A–2–111 and, in the past, have received and forwarded complaints which also related to NPDES-related activities.

The concern expressed that information may fall between the cracks is a valid one. It is possible this could occur in any process for receiving information sources outside the administering office. However, the system established for investigating and responding to complaints provides that the DENR will investigate and respond to all citizen complaints where a signed complaint form has been received and will investigate all complaints received from other government agencies.

Conclusion

EPA determines that the procedure South Dakota has established is adequate to comply with the Clean Water Act and with NPDES federal regulations. South Dakota has established a process to deal with issues raised by the general public by accepting signed complaints and being required to keep the identity of the source confidential and by referring other complaints to another State agency. The Governor, as a signatory to the MOA, has committed to follow the process for receiving and responding to information from sources outside the State NPDES program.

Though section 111 may not provide an adequate program for public reporting in other states or for other programs, under the particular circumstances of the DENR NPDES program, the state procedures are adequate for the following reasons: (1) South Dakota is not heavily industrialized, (2) the prohibition pertains only to water programs and not other media programs, (3) the state is sparsely populated for the most part, (4) the right of entry (§ 34A–2–46) is not impaired, (5) the prohibition provision does not appear to be directly enforceable by dischargers, and (6) the State NPDES program retains the authority to respond in emergencies (see 34A–2–68), to enforce against persons causing pollution of waters (see 34A–2–21), and to conduct investigations to determine the responsible person for causing a discharge which may cause or has caused pollution of state waters (see 34A–2–71.1) regardless of the source of information leading to these actions.

The situation in South Dakota is such that there are overlapping networks of state agencies and there are active environmental groups which will identify issues on behalf of their membership and of individuals who communicate information and concerns to their groups.

EPA notes that anonymous tips are just one source of complaints, albeit a significant source. The statute does not place restrictions on any other sources of information or other activities than those defined in 34A–2–40, –44, and –45.

EPA oversight includes an hotline number (1–800–227–8917) to receive complaints from all sources. Oversight also includes monitoring the DENR process and results from public participation in compliance and enforcement. If there appears to be a problem, EPA will revisit this aspect of the program with DENR.

II. Penalty Authority

Section 402(b)(2)(B) of the CWA requires an authorized state program to have authority to inspect, monitor, enter, and require reports to at least the same extent as required by section 308 of the CWA. Section 402(b)(7) of the CWA requires an authorized state program to have adequate authority to abate violations of permits or the permit program through penalties and other means of enforcement. EPA State NPDES program requirements at 40 CFR 123.27(a)(3)(i) provide that an approved state program is to have the authority to recover civil penalties for the violation of "any NPDES filing requirement" and "any duty to allow or carry out inspection, entry or monitoring activities," as well as for the violation of any NPDES permit condition or any regulation or order issued by the state program director.

As outlined in EPA's September 1, 1993, **Federal Register** notice and August 27, 1993 newspaper notices, South Dakota does not have direct statutory authority to collect civil penalties, or criminally enforce, a failure to comply with SDCL 34A–2–44 (record-keeping), 34A–2–45 and –46 (inspection authorities), due to a lack of citation to SDCL 34A–2–75 (penalty provision) in these sections. However, because the Department [of Environment and Natural Resources] can prosecute (both civilly and criminally) violations of permit conditions and because it can set permit conditions for recording, reporting, monitoring, entry, and inspection under 34A–2–40, it can enforce these statutes for permitted facilities.

The Department can, with regard to unpermitted facilities, obtain both the records and entry for inspections pursuant to search warrants issued on the basis of the criminal provisions of SDCL 34A–2–75 and the violation of SDCL 34A–2–36 (operating without the required permit). Civil penalties for failure to comply with SDCL 34A–2–44, –45, and –46 by an unpermitted facility are available only through violation of an order issued by the Department pursuant to SDCL 34A–2–53.

A. Comments Favoring Existing Penalty Authority

The DENR and various members of the regulated community expressed opinions that the lack of a direct authority to impose penalties for violations of the cited statutes would have little affect on the ability of the State to exact penalties for failure to comply with the statutes.

One commenter from the regulated community thought that no detrimental effects would be expected and, therefore, the system for collecting penalties was adequate until such time as the matter was corrected by the legislative process. The Secretary of the DENR noted that the Attorney General's Statement indicated that reporting requirements will be included in the permit, and are therefore enforceable for permitted facilities. As to unpermitted facilities, the Secretary of the DENR (who would be the party issuing orders) stated that the DENR could issue an enforcement order in a timely manner to require any necessary reporting or sampling and that the DENR could enforce these orders. The Secretary also cited a recent water pollution enforcement case settlement which included a penalty of $489,000 and was accomplished without the authority to enforce any NPDES condition or requirement. He stated that delegation

would only increase the abilities of the DENR to enforce violations of the state's environmental laws. Another state agency noted that "It appears * * * that the case where this EPA concern would be applicable is for facilities that are discharging without a permit and not keeping records. For these facilities, failure to have a permit would be a more severe violation than the failure to keep records."

One commenter thought that penalties for items normally found in a permit should not begin to accrue for an unpermitted facility until after the state issues an order.

B. Comments Criticizing Existing Penalty Authority

Those who criticized the existing authority were the pretreatment coordinator for a municipal treatment facility and one environmental group. They questioned the ability of the authority to stand up to judicial review and the round-about means the DENR would have to use to exercise the authority in collecting penalties.

One commenter expressed the opinion that the state's authority to collect penalties from unpermitted facilities is not clear, particularly in light of the *Freeman* v. *South Dakota* lawsuit. In that case, the court found that Mr. Freeman's civil rights were violated when, upon refusing State health inspectors entry, he was served with a closure order. The commenter stated that the finding was made because the citation under licensure statutes failed to cite an enforcement provision.

An environmental group indicated that the State's roundabout legal reasoning to support its authority to obtain records and entry to inspect at unpermitted facilities may be overlooked by a judge faced with what appears to be a clear failure to provide for criminal and civil sanctions for record-keeping or inspection violations. Specific penalty provision language must be added to 34A–2–44, –45, and –46 in order to comply with 40 CFR 123.27(a)(3)(i).

Another environmental organization stated that the state should have direct statutory authority to collect civil penalties and to criminally enforce a failure to comply with Sec. 34A–2–44. They also noted that the MOA should require South Dakota to adopt less round-about methods to obtain records and entry and to be able to do so without the DENR having to issue an order. They believed that formal issuance of orders and search warrants can take too much time.

C. EPA's Response to Comments on Penalty Authority

EPA's authorization regulations require civil penalties to be recoverable for the violation of any NPDES permit condition; any NPDES filing requirement; any duty to allow or carry out inspection, entry or monitoring activities; or any regulation or orders issued by the State Director. See 40 CFR 123.27(a)(3)(i). The State has demonstrated an adequate authority and methodology for collecting penalties from permitted and unpermitted facilities. However, EPA would recommend a legislative amendments to 34A–2–44, –45, and –46 to define failure to comply with each as a violation enforceable through 34A–2–53. These amendments would allow a more direct, and thereby more effective, implementation of the enforcement program.

Adequacy of the Ability To Recover Penalties

The State has shown that legal mechanisms exist for exacting penalties tied to permitted and unpermitted facilities which fail to comply with SDCL 34A–2–44, –45, and –46. The authorities used are not specifically based on a violation of these statutes. However, they do provide for 'civil penalties to be recoverable' for refusal to allow or carry out inspection, entry or monitoring activities, which is what 40 CFR 123.27(a)(3)(i) requires.

The situation in *Freeman* v. *South Dakota* does not apply to the State's authority to collect penalties for refusals to allow the state to inspect potential water pollution violations. In that case, State inspectors had summarily terminated a campground's license because the campground's operator would not allow the state to inspect without a warrant. In *Freeman*, civil rights were violated because the State inspectors lacked statutory enforcement authority. In the Case of South Dakota NPDES, SDDENR does have adequate statutory authority to issue administrative orders. The South Dakota Attorney General has stated South Dakota has adequate statutory authority to implement the program described.

Calculation of Penalties

Ignorance of the law is not an argument for deferring penalties. The regulated community is notified through public notice of the requirements for permits, right of entry, etc. It is their responsibility to be aware of these requirements and be accountable for them from the time the requirements become effective.

EPA agrees that the penalty for failure to have a permit might be more severe than for a failure to keep records by itself. However, both requirements are normally available to the regulator in taking enforcement actions. The existence of a penalty for a discharge without a permit does not, by itself, offset the need for a mechanism to collect penalties for failure to allow or carry out inspection, entry or monitoring requirements. As noted earlier, such a mechanism exists.

Regarding the date at which a violation begins, the State has asserted that administrative orders or search warrants could be issued within one or two days. Therefore, the number of days of violation used to calculate penalties for unpermitted facilities would be almost the same as for permitted facilities. In cases where a discharge causes pollution of any waters of the state, the penalty can be calculated for each day the discharge occurred as a violation of 34A–2–21, subject to a § 34A–2–75 order. The number of days of violation is just one factor applied in calculating penalties. The small difference in the number of days of violation between permitted and unpermitted facilities could be offset by the presence of other factors in calculating and negotiating the final penalty (e.g. the existence of another violation -discharge without a permit). Therefore, the immediate revision of SDCL 34A–2–44, –45, and –46 is not required. However, EPA does consider such revisions desirable, so that the State would have more direct remedies for these violations.

It should also be noted that EPA, in its oversight role, can take enforcement action. Typically, EPA would send to the State a Notice of Violation and give the State 30 days to take action. If the State were not to take sufficient action, including not collecting a large enough penalty, EPA could file an order and collect penalties from the date the violations started. Citizen suits are also a means to assure appropriate penalties are collected.

Conclusion

EPA finds that the penalty authority and process for collecting penalties is adequate and serves as a protection against noncompliance with water pollution control law, rules, and permits. EPA's oversight role offers a second level of protection. A third level of protection is offered by related statutes, such as prohibiting discharges which may cause or cause pollution of waters of the state (see 34A–2–21), prohibiting discharge of waste or pollutants without a permit (see 34A–2–36), and prohibiting reduction of existing water quality (see 34A–2–22). Therefore, the DENR NPDES program adequately meets the requirements for recovering penalties.

III. Citizen Intervention

EPA's September 1, 1993 **Federal Register** and August 27, 1993 newspaper notices requested public comment on South Dakota's statutory procedure for citizen intervention in administrative enforcement actions, as required by 40 CFR 123.27(d). South Dakota has certified that it allows intervention as of right in administrative enforcement actions pursuant to SDCL Sec. 34A–10–2. It has indicated that Sec. 34A–10–2, considered alone, appears to grant merely "permissive intervention"; that is, intervention if no other party objects). However, South Dakota has also certified that if a citizen is denied intervenor status in an administrative case, he may file a lawsuit in circuit court to have the court order him to be named as a party in the administrative proceeding, pursuant to Sec. 34A–10–5. Because of the possibility for such a circuit court proceeding, South Dakota's Attorney General construes SDCL 34A–10–2 to allow mandatory intervention in administrative procedures. The Memorandum of Agreement, a document signed both by the State of South Dakota and the EPA, states that the SDDENR will allow intervention as of right in civil proceedings to at least the same extent required by 40 CFR 123.27(d)(1) and shall not oppose intervention in administrative proceedings as provided by § 34A–10–2.

A. Comments Favoring Existing Intervention Procedure

Members of the regulated community commented that the statutory procedure afforded citizens an adequate right of intervention. One specific comment, made by a member of the regulated community, was that the State assurance in the MOA makes the citizen right to intervention mandatory. This commenter also noted that the Attorney General Statement interprets SDCL 34A–10–2 to mean that the citizen's right to intervene is mandatory.

B. Comments Opposing Existing Intervention Procedure

Environmental groups and individual citizens criticized the existing intervention procedure and its application by the DENR.

1. Some commenters stated that intervention rights were not being honored.

One environmental group stated that it was "* * * especially concerned about the problems posed * * * by the progressive subtle and not so subtle deterioration of participation by citizens and non-profit citizens organizations in quasi-judicial hearings." It referred to individual citizens being ignored at public hearings, public documents being unavailable for review and comment before a contested case hearing, and decisions being given little publicity. One individual commented that at a public hearing in the Fall of 1992 he "* * * watched (and objected) as BME Board members subverted the rules of that hearing by allowing a mining industry lawyer take control of the hearing. Board members allowed the attorney to cross examine citizens as if they were under oath when the citizens were simply there to testify on their own behalf. The incidents are a matter of record. They are also quite typical of DENR."

Another environmental group cited instances where it or individual citizens were excluded from permit modification, remediation, and negotiation processes.

Another individual citizen's letter provided comments which "* * * center[ed] on the State of South Dakota's continued and specific efforts to stifle and judicially dissuade individuals from pursuing environmental issues. They concluded that "[O]bviously, the state of South Dakota has little understanding of citizen participation and rights to involvement."

"Politically powerful applicants regularly 'short-circuit' the contested case procedure with active help from the Attorney General and the DENR. In several controversial cases * * * DENR and/or the applicant have used various procedures to obtain 'quickie hearings' designed to thwart due process and a fair hearing. One state board, at the urging of the Attorney General, * * * carved out a novel justification, citing SDCL 1–22–27, that allows applicants the right to short-circuit the contested case process."

"A circuit court remedy for denial of intervenors status is NO remedy because of expense and unwieldiness."

2. Commenters expressed the concern that public interest and environmental groups must be represented by an attorney at contested cases hearings.

An environmental group stated that DENR has denied them intervention in administrative hearings if they are not represented by an attorney. They noted that the State's application does not clearly state whether an attorney is required.

"Public interest groups must be represented by an attorney at contested case hearings. Since hardly any of us can afford such, the public interest has rarely been represented in the past few years."

"The Board [of Minerals and the Environment] [h]as so decreed, and the state Attorney General's office has rendered an opinion of agreement that only attorney's (sic) can present cases before the Board if the group appearing before the Board is an association, corporation, or other similar entity. The Board has effectively prevented environmental groups from appearing before the Board without the considerable expense of an attorney. It is our understanding that other State Boards do not have the attorney requirement."

C. EPA's Response to Comments Concerning Intervention Procedure

EPA has determined that DENR intervention authority and procedures adequately meets the requirement of 40 CFR 123.27(d). Citizen intervention rights will be honored. There is currently no requirement for public interest groups to be represented by attorneys at NPDES contested case proceedings.

Honoring Intervention Rights

The great majority of the comments expressing concerns with the application of intervention rights pertained to non-NPDES State program topics (e.g. mining, sewage ash, landfills) and a State board (Board of Minerals and Environment) which will not administer the NPDES program in South Dakota.

South Dakota statutes, rules, and program documents provide citizen access to information. SDCL 1–27–1 specifically allows for open inspection of all records and documents during normal business hours. The MOA (page 7, item E.1) provides public access to NPDES files during normal working hours. Public notice of proposed general permits, major permits, and pretreatment program applications is provided for in the MOA (page 7, item E.3) and the Program Description (page 9). South Dakota Rule 74:03:13:02 requires the DENR to public notice any contested case hearing requested and the reasons for the hearing. The public notice of any proposed settlement of a State enforcement action is required only when the authority which allows intervention as of right is not demonstrated (see 40 CFR 123.27(d)).

The Attorney General Statement construes the language of SDCL 34A–10–2 concerning intervention to be

mandatory. In addition, both the MOA (page 3, item A.13) and the Program Description (page 19) allow for citizen intervention as of right in civil proceedings equivalent to that required by 40 CFR 123.26(d)(1).

Representation by an Attorney

The South Dakota Bar Association has issued an ethics opinion that appearance before administrative agencies on behalf of corporations or associations must be by licensed attorneys. The ruling concerning representation at contested case hearings was in reference to contested case hearings held by the Board of Minerals and Environment. The requirement for representation by an attorney does not appear to apply to the NPDES program. However, even in the case of the Board of Minerals and Environment, the Board does not exclude individual citizens from full participation at hearings, but applies the requirement for legal representation of organizations.

The DENR clarified in an addendum to the MOA regarding the NPDES program that individual members of the general public and nonprofit organizations shall not be required to be represented by attorneys in NPDES program contested case hearings to the extent allowed by the State Bar Association and the State Supreme Court. EPA believes that a state bar association does not have the authority to direct the policies and procedures of a state agency which derives its authority from the state legislature. EPA does recognize that a state bar association can constrain the activities of individual attorneys employed by a state agency. In its oversight role, EPA will monitor future rulings of the South Dakota Bar Association and the State Supreme Court regarding citizen intervention and whether environmental organizations are being required to be represented by attorneys. If either of these occur, EPA will consider the impact these rulings and requirements have on the viability of the State's NPDES enforcement program.

Conclusion

EPA has determined that DENR intervention authority and procedures adequately meets the requirement of 40 CFR 123.27(d).

IV. Jurisdiction Over Indian Country

As outlined in EPA's September 1, 1993 **Federal Register** and August 27, 1993 newspaper notices, EPA withheld from NPDES program authorization consideration those lands which were in Indian Country or for which there was significant controversy over whether or not the land was Indian Country. As noted earlier, EPA provided copies of South Dakota's public notices to tribal councils and tribal environmental agencies. Tribal governments and affected permittees were also provided with copies of the list of permitted facilities which EPA would continue to administer.

In withholding authorization for these areas, EPA was not making a determination as to whether or not South Dakota had adequate jurisdiction. This issue was considered deferred. Nevertheless, a number of comments were received regarding jurisdiction. No comments were received from tribal councils or tribal environmental organizations.

A. Comments Regarding EPA's Continued Administration of the NPDES Program in Indian Country

One commenter, a member of the regulated community, stated that EPA's retaining authority within the identified Indian Reservations should lighten the load for SDDENR.

A number of commenters however, disagreed with EPA's administering the program in Indian Country or land in controversy. Some of the comments were the following:

"* * * EPA is asserting a jurisdictional authority which it cannot for regulatory and resource reasons, carry out; the result is inconsistent environmental protection, and some geographical areas left without environmental protection * * * If EPA insists that it carve out geographical areas of the state which should not have equal environmental protection, then I want to make it very clear that the State of South Dakota will further pursue the issue of jurisdiction on non-Indian lands within reservation boundaries."

"To the extent that EPA retains authority over facilities located on lands other than retained Indian allotments, we believe EPA violates the holding * * * [that] exclusive tribal and federal jurisdiction is limited to the retained allotments * * * We believe the better policy, at least as it applies to former reservation areas, is to grant the State authority unless the Tribe can show authority for the dischargers being within the exclusive jurisdiction of the Tribe or federal government."

"We feel South Dakota has demonstrated its intent and ability to administer programs fairly in the entire state. Therefore, the SDDENR should administer the NPDES program throughout the State. The department will need to work closely with tribal governments. Splitting the non-Federal responsibilities could result in ineffective protection of the waters of the state."

A state agency expressed concern that the split in administering the program would cause confusion.

B. EPA's Response to Comments Regarding Jurisdiction Over Indian Country

As noted in the public notice, EPA made the decision to withhold authorization to administer the NPDES program on "Indian Country," as defined in 18 U.S.C. 1151, which includes lands inside reservation boundaries and trust lands found outside reservations. For the most part, these include nine Federal Indian reservations:

1. Cheyenne River Indian Reservation
2. Crow Creek Indian Reservation
3. Flandreau Indian Reservation
4. Lower Brule Indian Reservation
5. Pine Ridge Indian Reservation
6. Rosebud Indian Reservation (includes Todd County and portions of Millette and Gregory Counties)
7. Sisseton Indian Reservation
8. Standing Rock Indian Reservation
9. Yankton Indian Reservation.

This issue was deferred until a satisfactory demonstration of jurisdiction over Indian Country is made by the State of South Dakota or another governmental entity. Otherwise, delegation of any part of the program would have to be held up pending a lengthy resolution of this complicated issue.

While a number of comments were received regarding jurisdiction, this issue is deferred until such time as an appropriate analysis is made of the State's authority to assert jurisdiction over lands for which EPA is retaining jurisdiction. EPA will specifically mail copies of public notices of future assertions to those who provided comments, so they may make their comments during the appropriate public comment period.

It should be noted that EPA has prepared a list of NPDES-permitted facilities which will continue to be administered by EPA. Operators or owners of facilities subject to the NPDES program which are located on these lands should continue to send original or renewal permit applications to EPA. They will be notified of this at the time all permittees are notified of the program authorization decision. Persons with questions as to whether their facilities may be in Indian Country are advised to consult with the Bureau of Indian Affairs and the EPA.

V. Pretreatment Program

A state pretreatment program must meet the requirements of 40 CFR 403.10(f) before being approved for program administration by the EPA. Under 40 CFR 403.10(f)(1)(i) and 403.3(j), an approved state program must have the authority to require industrial users to comply with pretreatment standards for specific industrial subcategories, as established by EPA regulations in 40 CFR, Chapter I, Subchapter N, "Effluent Guidelines and Standards." When South Dakota submitted its proposed program to EPA, subchapter N had not been incorporated into the State program. However, incorporation was approved at the July 28, 1993, public hearing of South Dakota Water Management Board and became effective on September 5, 1993.

A. Comments Regarding the Pretreatment Program

One commenter, a pretreatment program manager, expressed concerns and raised questions regarding the clarity of the pretreatment program procedures and the level of resources needed by the DENR to administer the pretreatment program:

"1. I feel DENR must elaborate and develop a procedure for entering into a joint powers agreement with a municipality in order for DENR to run a municipal pretreatment program. There is nothing in the submission that indicates the extent to which DENR will administer the program, especially if a large municipality requests the Department run their program.

2. Does DENR have the authority to flatly refuse to administer a municipal pretreatment program?

3. If DENR issues a SWD Permit to a POTW and mandates the development of a pretreatment program, can the POTW in turn request the State to administer the program? If so, what are the procedures for requesting that DENR administer the program?

4. Assuming the State becomes delegated, what is the timeframe for previously approved pretreatment programs to submit notice to the DENR that the POTW wishes to continue administering the program?

5. I honestly feel that if ONE of the larger POTW's [sic] request that DENR administer their pretreatment program, along with all of the other smaller POTW pretreatment responsibilities the state will assume, the Department will not have enough personnel to adequately administer this program."

A second commenter proposed that the following be added to the administrative rules:

"74:03:26—A POTW that intends to discharge wastewater to a separate POTW which is under a different authority must submit a request for approval to the Secretary at least 90 days prior to discharge. The Secretary must evaluate the impact of industrial user wastes on contributing POTW and receiving POTW.

The Secretary may choose one of the following options to protect both POTWs from significant industrial user discharges:

(1) Require contributing jurisdiction to establish a Pretreatment Program in accordance to [sic] the requirements in 40 CFR Part 403.8(a) and the State provide direct oversight over program.

(2) State implement a POTW Pretreatment Program in lieu of the contributing jurisdiction as set forth in 40 CFR Part 403.8(e).

(3) Control all significant industrial users in the contributing jurisdiction directly by conditions established in 74:03:26:03 to 74:03:26:14 and the State of SD Pretreatment Program."

B. EPA's Response to Comments

ARSD Section 74:03:26:02 and Section V of the Program Description provide for development of a joint powers agreement in cases where a POTW required to develop a pretreatment program has requested the DENR to assume pretreatment program requirements. This request is to be made within 30 days of notification that the State has been delegated the pretreatment program or within 30 days of the facility being notified that it is required to develop a pretreatment program. In the latter case, this notification would be made either at the time of issuance of an NPDES permit with such a requirement or the conclusion of an enforcement action imposing such a requirement.

EPA believes that any POTW can request that the State assume responsibility for a local pretreatment program, subject to implementation of an agreed-upon joint powers agreement. It appears that the DENR may refuse to administer a program only if no joint powers agreement is developed within forty-five days after notification of intent by the POTW.

EPA agrees that the DENR should provide more detailed instructions to POTWs regarding the joint powers agreement process. This can be done at the time the POTW requests the DENR to administer its pretreatment program, since the procedures may vary somewhat depending on the extent and content of local legal authorities and procedures at each facility when the request is received.

The DENR will be required upon authorization to supply whatever resources are necessary to ensure that all pretreatment program activities are fully implemented and enforced. DENR staff are knowledgeable about the resources required to implement a program. SDCL 34A-2-120 provides for the DENR to collect annual fees from, not only the POTW for which it administers the pretreatment program ($35,000), but each pretreatment industrial user ($600 plus up to $1,600 per process line for analytical testing). These fees, plus any legislative appropriations, would be the financial basis for DENR administering the overall state pretreatment program and individual programs with which it has joint powers agreements.

Regarding the proposed rule changes, EPA finds additional rules are not needed to provide the State the authority to require a POTW to develop a pretreatment program or to request that the DENR administer the program in lieu of the POTW. The State is not required to offer POTWs the option to develop or have programs developed at POTWs which do not meet the criteria contained in 40 CFR 403.8(a), as seems to be suggested by the second commenter's proposed rules.

Conclusion

The pretreatment program described adequately meets the requirements of 40 CFR 403.10(f). The Program Description outlines the process for joint powers agreements. EPA recognizes that the specific steps for developing joint powers agreements between the DENR and an individual POTW may vary according to the situation at each municipality. EPA will continue to play a significant review and oversight role in the development and implementation of joint powers agreements.

VI. Endangered Species Act

In our August 25, 1993 letter to the United States Fish and Wildlife Service (FWS), EPA initiated informal consultation under section 7 of the Endangered Species Act (ESA) on EPA's proposal to authorize the DENR to administer the NPDES Program under section 402 of the Clean Water Act in South Dakota. The FWS responded to EPA on October 20, 1993. EPA responded to that letter with a letter on November 19, 1993 describing permitting and variance procedures and providing a biological assessment of the impact of program authorization on endangered and threatened species in South Dakota delineated in the FWS October 20th letter. The November 19th letter also stated that EPA believed that

the delegation would have no effect on the listed species. Responding in its November 30, 1993 letter to the EPA, the FWS indicated that it could concur with our no adverse effect finding if EPA agreed to four conditions.

EPA and DENR staff met with staff at the FWS South Dakota Field Office in Pierre to discuss the conditions. Based on that meeting, the EPA and DENR agreed to these conditions, as follows. FWS concurred on EPA's Finding of No Adverse Affect on December 15, 1993. The MOA between EPA and South Dakota on the administration of the South Dakota NPDES program addressed these conditions.

1. In each individual public notice or variance, the State shall make an initial determination of effect on all federally listed endangered and threatened species that may occur in the project area of influence.

• This information will be provided to the Service as well as to the EPA with sufficient time to review and, if necessary, provide comments, as reflected in the Memorandum of Agreement signed between EPA and the State of South Dakota.

• The State will communicate with the Service, on a periodic basis, on the permits that it will be issuing. The Service will work with the State to identify those permits for which there are species in the project area.

2. If it is determined by the State that the individual permit or variance to the permit provided to the Service may adversely affect any federally listed and/or proposed endangered and threatened species, the State will work with the Service to eliminate the adverse affect.

3. If the Service does not concur with the State's "no affect" determination, the State will work with the Service to eliminate the adverse effect.

4. If any adverse effects cannot be eliminated, the permit application or variance will be held in abeyance and the EPA, with their oversight responsibilities, will require consultation with the Service, after EPA has completed the formal objection process and the permit has reverted to EPA for issuance.

A. Comments Concerning Information Needed and the Consultation Process

One environmental organization urged EPA to engage in formal consultation with the FWS pursuant to Section 7 of the Endangered Species Act. Another environmental group questioned whether EPA had complied with requirements to consult with the FWS and with the State Game, Fish, and Parks Department.

B. EPA's Response to Comments

The EPA successfully completed informal consultation with the U.S. Fish & Wildlife Service, as described above. Therefore, there was no need to engage in the formal consultation process.

VII. Overall Delegation Issues

EPA received a number of public comments regarding the overall capability and intent of the DENR to administer an authorized NPDES program.

A. Comments Regarding the Benefits of Delegation

1. Many commenters praised the capabilities, competency, knowledge, and past performance of the DENR staff.

"* * * we have relied on the South Dakota Department of Environment and Natural resources as a resource for questions and concerns we have had with the NPDES program. We have found the DENR to be staffed by a group of well-informed professionals dedicated to the enhancement of water quality. Their guidance and advice have always been valuable * * *."

"The DENR has established itself as a very competent department and has a very positive working relationship with a variety of industries within the state. The DENR will be very effective in administering and enforcing the NPDES program for the State of South Dakota * * * we haven't always agreed with DENR on our positions, but let me say clearly we have always been treated very fairly." "To me, the State seems very capable of making decisions and taking action, while at the Federal level, response does not occur with promptness."

"We are aware of the efforts the Department made prior to and during the 1992 State Legislative session to secure funding needed to upgrade staff capability to take over management of the NPDES program."

"* * * environmental regulations are best administered at the state level. State administration provides both the permittee and the regulator better opportunity for face to face communication and for better understanding of the specifics of an operation through regular inspections. Administration and enforcement are both enhanced by having the regulators in close proximity to the regulated facilities."

2. Numerous commenters emphasized the advantages of regulation by an agency actually in the State. Comments included the following:

"EPA technical staff are normally available by phone only, while state staff are frequent visitors to the area and are available for valuable on-site assistance * * *. Our experience in working with [a delegated state regarding other facilities] has been one where positive environmental benefits have been achieved in an efficient, timely manner. We deal directly and in person with all the regulatory people involved, which drastically reduces the questions of interpretation, improves timeliness of permit compliance and in the end provides quicker, effective solutions to environmental problems."

"I believe that delegation of the NPDES program for regulating the discharges of pollutants into waters within the State will mean a more effective operation on both a programmatic and cost basis."

"We are as concerned for the environment of our employees as much as anyone else is, but we have a desire for cooperation rather than dictation."

"I believe a program administered by the state of South Dakota, with regional offices in efforts to help industry clean up our environment, should we be polluting it, would be a tremendous benefit to all manufacturers."

"Having the answers in state and accountable to South Dakotans will enhance businesses' ability to comply."

"[The State Feedlot Program Regulation Review] * * *. Committee concluded that State management of the NPDES program was needed to accomplish effective regulation of feedlot wastes in South Dakota."

"The National Performance Review recently cited recommendations to create a system of program delivery that works better and costs less. The very first recommendation (EPA01) specifically states: 'Improve Environmental Protection Through Increased Flexibility for Local Government'. The United States Environmental Protection Agency has a real opportunity today to act on this recommendation by approving South Dakota's application!"

"There are several reasons why the Legislature supported this [Second Century Environmental Protection] Act:

—State administration of the federal program would enhance economic development;
—Improved coordination would exist between local and state governmental agencies; and
—The state would better safeguard the public health, safety, welfare and the environment of this state through a customer service approach."

B. Comments Opposing Authorization

A number of commenters identified problems associated with delegation.

both in public participation issues and in other areas:

"If [program authorization] were to happen, South Dakota citizens, although they might not know it, would be without protection."

"DENR's activities last year demonstrate clearly the agency's tendency toward advocacy for, rather than regulation of, the entities it is, by law, required to oversee * * *. [This group] seeks denial of state delegation until the philosophy of DENR changes from that of advocate for the regulated community to one of regulator." An environmental group criticized the state's commitment to enforcement. An environmental group requested that EPA require monitoring data to be submitted and housed at DENR. They also suggested that issued and denied permits require equivalent levels of clearances.

C. EPA's Response to Comments on Overall Authorization Issues

EPA noted and considered all public comments considering the overall advantages and disadvantages of approving the NPDES program administration by the State of South Dakota.

Many of the comments reflected the advantage of State program approval which the Clean Water Act envisioned: the program can be administered more effectively closer to the regulated community when the agency and its staff are competent and committed to protecting the environment and public health.

Resources to be used meet the minimum requirements of the NPDES program as it now exists. The State would be responsible for devoting the resources needed to maintain this program and implement additional requirements, as they occur.

EPA's responses to public participation issues are found under the sections on "Unsigned Complaints" and "Citizen Intervention".

EPA typically does not require submission of monitoring data other than discharge monitoring reports (DMRs) when it administers the NPDES program in a state. Therefore, it does not require an approved state to do so.

It appears that there are equivalent levels of clearance for permit issuance and denial. In both cases, the Secretary makes that decision. This is noted in the flow chart on page 9 of the Program Description.

Conclusion

The State of South Dakota has demonstrated that it adequately meets the requirements for program authorization as defined in the Clean Water Act, 40 CFR part 123, and 40 CFR part 403. The U.S. Fish & Wildlife Service concurred with the EPA "no adverse affect" determination regarding program authorization. The State Historic Preservation Office concurred with the EPA "no effect" determination. This authorization does not include the sludge management program.

At this time, EPA is withholding authorization to administer the NPDES program on Indian Country located within South Dakota, including lands for which there is significant controversy over whether or not the land is Indian Country.

Federal Register Notice of Approval of State NPDES Programs or Modifications

EPA must provide **Federal Register** notice of any action by the Agency approving or modifying a State NPDES program. The following table will provide the public with an up-to-date list of the status of NPDES permitting authority throughout the country. Today's **Federal Register** notice is to announce the approval of South Dakota's authority to administer the NPDES permit program, including regulation of federal facilities and issuance of general permits and to administer the pretreatment program.

STATE NPDES PROGRAM STATUS

	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
Alabama	10/19/79	10/19/79	10/19/79	06/26/91
Arkansas	11/01/86	11/01/86	11/01/86	11/01/86
California	05/14/73	05/05/78	09/22/89	09/22/89
Colorado	03/27/75	.....	.....	03/04/83
Connecticut	09/26/73	01/09/89	06/03/81	03/10/92
Delaware	04/01/74	.....	.....	10/23/92
Georgia	06/28/74	12/08/80	03/12/81	01/28/91
Hawaii	11/28/74	06/01/79	08/12/83	09/30/91
Illinois	10/23/77	09/20/79	.....	01/04/84
Indiana	01/01/75	12/09/78	.....	04/02/91
Iowa	08/10/78	08/10/78	06/03/81	08/12/92
Kansas	06/28/74	08/28/85	.....	11/24/93
Kentucky	09/30/83	09/30/83	09/30/83	09/30/83
Maryland	09/05/74	11/10/87	09/30/85	09/30/91
Michigan	10/17/73	12/09/78	04/16/85	11/29/93
Minnesota	06/30/74	12/09/78	07/16/79	12/15/87
Mississippi	05/01/74	01/28/83	05/13/82	09/27/91
Missouri	10/30/74	06/26/79	06/03/81	12/12/85
Montana	06/10/74	06/23/81	.....	04/29/83
Nebraska	06/12/74	11/02/79	09/07/84	07/20/89
Nevada	09/19/75	08/31/78	.....	07/27/92
New Jersey	04/13/82	04/13/82	04/13/82	04/13/82
New York	10/28/75	06/13/80	.....	10/15/92
North Carolina	10/19/75	09/28/84	06/14/82	09/06/91
North Dakota	06/13/75	01/22/90	.....	01/22/90
Ohio	03/11/74	01/28/83	07/27/83	08/17/92
Oregon	09/26/73	03/02/79	03/12/81	02/23/82
Pennsylvania	06/30/78	06/30/78	.....	08/02/91
Rhode Island	99/17/84	09/17/84	09/17/84	09/17/84
South Carolina	06/10/75	09/26/80	04/09/82	09/03/92

STATE NPDES PROGRAM STATUS—Continued

	Approved State NPDES permit program	Approved to regulate federal facilities	Approved State pretreatment program	Approved general permits program
South Dakota	12/30/93	12/30/93	12/30/93	12/30/93
Tennessee	12/28/77	09/30/86	08/10/83	04/18/91
Utah	07/07/87	07/07/87	07/07/87	07/07/87
Vermont	03/11/74	.....	03/16/82	08/26/93
Virgin Islands	06/30/76	.....	.....	.....
Virginia	03/31/75	02/09/82	04/14/89	05/20/91
Washington	11/14/73	.....	09/30/86	09/26/89
West Virginia	05/10/82	05/10/82	05/10/82	05/10/82
Wisconsin	02/04/74	11/26/79	12/24/80	12/19/86
Wyoming	01/30/75	05/18/81	.....	09/24/91
Totals	40	35	28	39

Number of Fully Authorized Programs (Federal Facilities, Pretreatment, General Permits)=26

Review Under Regulatory Flexibility Act and Executive Order 12866

Under the Regulatory Flexibility Act, EPA is required to prepare a Regulatory Flexibility Analysis for all rules that may have a significant impact on a substantial number of entities. The proposed approval of the South Dakota NPDES program does not alter the regulatory control over any industrial category. No new substantive requirements are established by this action. Therefore, because this notice does not have a significant impact on a substantial number of small entities, a Regulatory Flexibility Analysis is not needed.

On October 12, 1993, the Office of Management and Budget exempted this Agency action from the requirements of Executive Order 12866.

Dated: December 30, 1993.

Jack W. McGraw,

Acting Regional Administrator, Environmental Protection Agency, Region VIII.

[FR Doc. 94–493 Filed 1–10–94; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

January 5, 1994.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0093.

Title: Application for Renewal of Radio Station License in Specified Services.

Form Number: FCC Form 405.

Action: Revision of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Annually and every decade.

Estimated Annual Burden: 540 responses; 2.25 hours average burden per response; 1,215 hours total annual burden.

Needs and Uses: FCC Form 405 is used by all common carriers and Multipoint Distribution Service non-common carriers to apply for renewal of radio station licenses. Section 307(c) of the Communications Act of 1934 limits the terms of common carrier radio licenses to ten years and requires that written applications be submitted for renewal. Applicants granted developmental and special temporary authority are required to apply for renewal in shorter intervals—usually one year after date of grant and annually thereafter. FCC Form 405 has been revised to incorporate a certification required by the Commission's rules implementing the provisions of Section 5301 of the Anti-Drug Abuse Act of 1988. Licensing Branches evaluate the information submitted; review the particulars and conditions of the current authorization; and take action to renew the license for a new term. If the information were not submitted, the Commission would not be able to carry out its responsibilities mandated by the Communications Act of 1934, as amended.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–593 Filed 1–10–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1994]

Petition for Reconsideration of Action in Rulemaking Proceeding

January 4, 1994.

Petition for reconsideration has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed January 26, 1994. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

SUBJECT: Amendment of § 73.606(b) Table of Allotments, TV Broadcast Stations (Ridgecrest, California) (MM Docket No. 92–246 RM–8091).

Petition for Reconsideration

Number of Petitions Filed: 1.

Federal Communications Commission.

LaVera Marshall,

Acting Secretary.

[FR Doc. 94–592 Filed 1–10–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Stevedoring, Terminal, CFS and Maintenance and Repair Services; Agreement Filed; et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 224–200815.

Title: Stevedoring, Terminal, CFR and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Naviera Interamericana Navicana S.A. (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Naviera Interamericana Navicana S.A. ("Naviera").

Synopsis: The proposed Agreement permits Matson to furnish Naviera with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Agreement No.: 224–200816.

Title: Stevedoring, Terminal, CFR and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Compania Sudamericana De Vapores (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Compania Sudamericana De Vapores ("CSDV").

Synopsis: The proposed Agreement permits Matson to furnish CSDV with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Agreement No.: 224–200817.

Title: Stevedoring, Terminal, CFS and Maintenance and Repair Services Agreement between Matson Terminals, Inc./Flota Mercante Gran Colombiana (Ports of Los Angeles, Oakland and Seattle).

Parties: Matson Terminals, Inc. ("Matson") Flota Mercante Gran Colombiana ("Flota").

Synopsis: The proposed Agreement permits Matson to furnish Flota with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Dated: January 5, 1994.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–549 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

[Docket No. 94–01]

Ceres Marine Terminal, Inc. v. Maryland Port Administration; Filing of Complaint and Assignment

Notice is given that a complaint filed by Ceres Marine Terminal, Inc. ("Complainant") against Maryland Port Administration ("Respondent") was served January 6, 1994. Complainant alleges that Respondent has violated sections 16 and 17 of the Shipping Act, 1916, 46 U.S.C. 815 and 816, and sections 10 (b)(11), (b)(12), (d)(1) and (d)(3) of the Shipping Act of 1984, 46 U.S.C. app §§ 1709 (b)(11), (b)(12), (d)(1) and (d)(3) by granting more favorable lease terms to other terminals with respect to terminal services and barge services, providing superior crane service to another terminal while failing to provide adequate crane service to Complainant, refusing to permit Complainant to install one of its own cranes, and denying equivalent lease terms to Complainant.

This proceeding has been assigned to the Office of Administrative Law Judges. Hearing in this matter, if any is held, shall commence within the time limitations prescribed in 46 CFR 502.61, and only after consideration has been given by the parties and the presiding officer to the use of alternative forms of dispute resolution. The hearing shall include oral testimony and cross-examination in the discretion of the Presiding Officer only upon proper showing that there are genuine issues of material fact that cannot be resolved on the basis of sworn statements, affidavits, depositions, or other documents or that the nature of the matter in issue is such that an oral hearing and cross-examination are necessary for the development of an adequate record. Pursuant to the further terms of 46 CFR 502.61, the initial decision of the Presiding Officer in this proceeding shall be issued by January 6, 1995, and the final decision of the Commission shall be issued by May 8, 1995.

Joseph C. Polking,

Secretary.

[FR Doc. 94–642 Filed 1–10–94; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR part 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

E.R. Hawthorne & Co., Inc., 9370 Wallisville Rd., suite 100, Houston, TX 77013. Officers: John E. Guida, President/Director. Charles B. Dorf, Vice President/Director. Charles M. Schayer, Secretary/Director

All State International Freight Inc., 500 Carson Plaza Dr., suite 205, Carson, CA 90746. Officer: Jae Hoon Yoon, President

Clutch Cargo International, Inc., 1401 Mark Street, Elk Grove Village, IL 60007. Officers: Peter Mourousias, President. Lance Lucibello, Director. Keith Halvorsen, Stockholder

Traders of Miami, Inc., 4710 N.W. 170th Street, Carol City, FL 33055. Officers: Heriberto Canela, President. Lissette Canela, Vice President/Secretary

R.E. Rogers, Inc., 6242 Westchester Parkway, 160, Los Angeles, CA 90045. Officers: Ronald K. Burchett, President. James O. Kelty, Vice President. Louis M. Kerpan, Jr., Director of Operations

Olympic International Freight Forwarders, Inc., 4411 NW 74th Ave., Miami, FL 33166. Officers: Teresa Guzman, President. Jose L. Guzman, Stockholder. Rodrigo Guzman, Vice President

Aeroships International, Inc., 110 Leawood Drive, Roselle, IL 60172–1612. Officers: Thomas E. Bates, President/Treasurer. Jeannine K. Ellenwood, Vice President/Secretary

Dated: January 5, 1994.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94-550 Filed 1-10-94; 8:45 am]

BILLING CODE 6730-01-M

[Petition Nos. P1-94 and P2-94]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of Effective Tariff Management Corporation on Behalf of Various Common Carriers; and Petition of Transax Data on Behalf of Various Common Carriers; Filing of Petitions

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic tariff filing requirements of the Commission's ATFI System. To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than January 18, 1994. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served as follows:

P1-94—Tanga S. Fitzgibbon, Executive Vice President, Effective Tariff Management Corporation, 4000 Mitchellville Road, Suite 326-B, Bowie, Maryland 20716

P2-94—Michael A. Sarro, Account Manager, Transax Data, 721 Route 202/206, Bridgewater, New Jersey 08807

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 94-643 Filed 1-10-94; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Report to Congressional Committees Regarding Differences in Capital and Accounting Standards Among the Federal Banking and Thrift Agencies

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of report to the Committee on Banking, Housing, and Urban Affairs of the United States Senate and to the Committee on Banking, Finance and Urban Affairs of the United States House of Representatives.

SUMMARY: This report has been prepared by the Federal Reserve Board pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991. Section 121 requires each Federal banking and thrift agency to report annually to the above specified Congressional Committees regarding any differences between the accounting or capital standards used by such agency and the accounting or capital standards used by other banking and thrift agencies. The report must also contain an explanation of the reasons for any discrepancy in such accounting or capital standards. The report must be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Rhoger H Pugh, Assistant Director (202/728-5883), Norah M. Barger, Manager (202/452-2402), Gerald A. Edwards, Jr., Assistant Director (202/452-2741), Robert E. Motyka, Supervisory Financial Analyst (202/452-3621), or Nancy J. Rawlings, Senior Financial Analyst (202/452-3059), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

Introduction and Overview

This is the fourth annual report[1] on the differences in capital standards and accounting practices that currently exist among the three banking agencies (the Board of Governors of the Federal Reserve System (FRB), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC)) and the Office of Thrift Supervision (OTS).[2] Section One of the report focuses on differences in the agencies' capital standards; Section Two discusses differences in accounting standards. The remainder of this introduction provides an overview of the discussion contained in these sections.

[1] The first two reports prepared by the Federal Reserve Board were made pursuant to section 1215 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). The third report was made pursuant to section 121 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), which superseded section 1215 of FIRREA.

[2] At the federal level, the Federal Reserve System has primary supervisory responsibility for state-chartered banks that are members of the Federal Reserve System as well as all bank holding companies. The FDIC has primary responsibility for state nonmember banks and FDIC-supervised savings banks. National banks are supervised by the OCC. The OTS has primary responsibility for savings and loan associations.

Capital Standards

As stated in the previous reports to the Congress, the three bank regulatory agencies have, for a number of years, employed a common regulatory framework that establishes minimum capital adequacy ratios for commercial banking organizations. In 1989, all three banking agencies as well as the OTS, adopted a risk-based capital framework that was based upon the international capital accord developed by the Basle Committee on Banking Regulations and Supervisory Practices (Basle Accord) and endorsed by the central bank governors of the G-10 countries.

The risk-based capital framework establishes minimum ratios of total and Tier 1 (core) capital to risk-weighted assets. The Basle Accord requires banking organizations to have total capital equal to at least 8 percent, and Tier 1 capital equal to at least 4 percent, of risk-weighted assets after a phase-in period which ended on December 31, 1992. Tier 1 capital is principally comprised of common shareholders' equity and qualifying perpetual preferred stock, less disallowed intangibles such as goodwill. The other component of total capital, Tier 2, may include certain supplementary capital items, such as general loan loss reserves and subordinated debt. The risk-based capital requirements are viewed by the three banking agencies and the OTS as minimum standards, and most institutions are expected to, and generally do, maintain capital levels well above the minimums.

In addition to specifying identical ratios, the risk-based capital framework implemented by the three banking agencies includes a common definition of regulatory capital and a uniform system of risk weights and categories. While the minimum standards and risk weighting framework are common to all the banking agencies, there are some technical differences in language and interpretation among the agencies. The OTS employs a similar risk-based capital framework although it differs in some respects from that adopted by the three banking agencies. These differences, as well as other technical differences in the agencies' capital standards, are discussed in Section One of this report.

In addition to the risk-based capital requirements, the agencies also have established leverage standards setting forth minimum ratios of capital to total assets. As discussed in Section One, the three banking agencies employ uniform leverage standards, while the OTS has established, pursuant to FIRREA, somewhat different standards.

The staffs of the agencies meet regularly to identify and address differences and inconsistencies in their capital standards. The agencies are committed to continuing this process in an effort to achieve full uniformity in their capital standards. In this regard, Section One contains discussions of the banking agencies' efforts during the past year to achieve uniformity with respect to the risk categories of certain assets, specifically, identifiable intangible assets, loans to finance construction of 1- to 4-family residential homes that have been pre-sold, and multifamily housing loans. In addition, the agencies have worked together to revise the risk-based capital requirements as required by provisions of section 305 of FDICIA to take account of interest rate risk and risks arising from concentrations of credit and nontraditional activities. Finally, staffs of the agencies have been meeting in 1993 to discuss a uniform draft proposal that would amend their risk-based capital guidelines to provide for recognition of bilateral netting arrangements associated with rate contracts that genuinely reduce credit risk.

Accounting Standards

Over the years, the three banking agencies, under the auspices of the Federal Financial Institutions Examination Council (FFIEC), have developed Uniform Reports of Condition and Income (Call Reports) for all commercial banks and FDIC-supervised savings banks. The reporting standards followed by the three banking agencies are substantially consistent, aside from a few limited exceptions, with generally accepted accounting principles (GAAP) as they are applied by commercial banks.[3] The uniform bank Call Report serves as the basis for calculating risk-based capital and leverage ratios, as well as for other regulatory purposes. Thus, material differences in regulatory accounting and reporting standards among commercial banks and FDIC-supervised savings banks do not exist.

The OTS requires each thrift institution to file the Thrift Financial Report (TFR), which is consistent with GAAP as it is applied by thrifts. The TFR differs in some respects from the bank Call Report. One reason is that thrift GAAP is different in a few limited areas from GAAP as it is applied by banks; another, as previously mentioned, is that there are a few minor areas in which the bank Call Report departs from bank GAAP. A summary of the differences between the bank Call Report and the TFR is presented in Section Two.

Over the past year, the three banking agencies and the OTS have continued to undertake projects that seek to simplify and reduce differences in reporting standards between commercial banks and thrift institutions. On June 10, 1993, the four agencies announced six initiatives to implement the President's March 10 program to improve the availability of credit to businesses and individuals. These initiatives included changes to regulatory reporting requirements, all of which are consistent with GAAP. In this respect, the agencies separately issued guidance to banks and thrifts that generally conforms regulatory reporting requirements for sales of Other Real Estate Owned (OREO) with GAAP, as set forth in FASB Statement No. 66. These changes generally eliminated a 10 percent minimum down payment requirement needed by the borrower/purchaser to record a sale of OREO for regulatory reporting purposes. In addition, as part of these initiatives, the agencies issued joint policies on restoring nonaccrual loans to performing status and improving the reporting guidance on insubstance foreclosures.

Although these actions end the first phase of the President's credit availability program, the agencies are continuing efforts to reduce paperwork and regulatory burdens. These efforts include considering the remaining few differences between GAAP and regulatory accounting principles. In this regard, the agencies now have projects under way that are to refine and improve policies and addresses a few differences that currently exist among the agencies, including projects on recourse, netting, and hedging.

[3] In those cases where bank Call Report standards are different from GAAP, the regulatory reporting requirements are intended to be more conservative than GAAP.

Section One

Differences In Capital Standards Among Federal Banking and Thrift Supervisory Agencies

Leverage capital ratios

The three banking agencies employ a leverage standard based upon the common definition of Tier 1 capital contained in their risk-based capital guidelines. These standards, established in the second half of 1990 and in early 1991, require the most highly-rated institutions to meet a minimum Tier 1 capital ratio of 3 percent. For all other institutions, these standards generally require an additional cushion of at least 100 to 200 basis points, i.e., a minimum leverage ratio of at least 4 to 5 percent, depending upon an organization's financial condition.

As required by FIRREA, the OTS has established a 3 percent core capital ratio and a 1.5 percent tangible capital leverage requirement for thrift institutions. However, the OTS is in the process of finalizing a new leverage rule that will generally conform to the rules of the three banking agencies. The differences that will exist after the OTS has adopted its new standard pertain to the definition of core capital. While this definition generally conforms to Tier 1 bank capital, certainadjustments discussed below apply to the core capital definition used by savings associations. In addition, core capital as currently defined by the OTS includes qualifying supervisory goodwill. Such goodwill is to be phased out of thrift core capital by the end of 1994, after which time the treatment of goodwill for thrift institutions will be consistent with that of the banking agencies.

Risk-based capital ratios

The three banking agencies have adopted risk-based capital standards consistent with the Basle Accord. These standards, which were fully phased in at the end of 1992, require all commercial banking organizations to maintain a minimum ratio of total capital (Tier 1 plus Tier 2) to risk-weighted assets of 8 percent. Tier 1 capital comprises common stockholders' equity, qualifying perpetual preferred stock, and minority interests in consolidated subsidiaries, less goodwill. Tier 1 capital must comprise at least 50 percent of the total risk-based capital requirement. Tier 2 capital includes such components as general loan loss reserves, subordinated term debt, and certain other preferred stock and convertible debt capital instruments, subject to appropriate limitations and conditions. Risk-weighted assets are calculated by assigning risk weights of 0, 20, 50, and 100 percent to broad categories of assets and off-balance sheet items based upon their relative credit risks. The OTS has adopted a risk-based capital standard that in most respects is similar to the framework adopted by the banking agencies. Beginning with year-end 1992, the OTS standard requires a minimum risk-based capital ratio equal to 8 percent.

All the banking agencies view the risk-based capital standard as a minimum supervisory benchmark. In part, this is because the risk-based capital standard focuses primarily on credit risk; it does not take full or explicit account of certain other banking

risks, such as exposure to changes in interest rates. The full range of risks to which depository institutions are exposed are reviewed and evaluated carefully during on-site examinations. In view of these risks, most banking organizations are expected to operate with capital levels well above the minimum risk-based and leverage capital requirements.

The Federal Reserve has for some time been working with the other U.S. banking agencies and the regulatory authorities on the Basle Supervisors' Committee to develop possible methods to measure and address certain market and price risks. In April, 1993, the Basle Supervisors' Committee issued a consultative paper that addresses, among other items, proposals to include certain risks into the framework of the Basle Accord. These risks include exposures resulting from imbalances between the maturity of debt instruments held as assets and issued as liabilities and holdings of traded debt and equity securities. One important reason for addressing these risks on an international level is to develop supervisory approaches that do not undermine the competitiveness of U.S. banking organizations.

Notwithstanding this initial effort, the OTS capital standards for some time have taken into account interest rate risk and the FRB, OCC and FDIC sought public comment on a proposed framework for incorporating into their capital standards interest rate risk in August, 1992, as required under section 305 of FDICIA. In response to concerns raised and recommendations made by commenters, on September 14, 1993, the three banking agencies issued for public comment a substantially modified proposal on interest rate risk. The approach ultimately adopted by the banking agencies could differ from that already taken by the OTS.

Section 305 of FDICIA also requires the banking agencies to amend their risk-based capital rules to take account of concentrations of credit risk and nontraditional activities. During 1993 the staffs of the four agencies met regularly to draft proposals for public consideration. Final proposals are expected to be issued in the first part of 1994.

In addition to coordinating their efforts to implement section 305, the agencies also worked together to eliminate differences in their capital standards, as well as to revise their standards in response to legislative mandates, accounting changes, and industry concerns. In this regard, during 1993, the three banking agencies eliminated the principal difference in their capital standards when they issued final rules revising those standards with regard to the types of intangible assets that may be included in the Tier 1 capital calculation for risk-based and leverage capital purposes. Specifically, under these final rules, banking organizations may include in capital purchased mortgage servicing rights (PMSRs) and purchased credit card relationships (PCCRs), but are required to deduct from capital core deposit intangibles (CDIs) and other identifiable intangible assets. The final rule also included limits and discounts that are applicable to PMSRs and PCCRs in capital. The OTS draft final rule, which is consistent with the final rule issued by the other agencies, is currently under review.

Another difference the federal banking agencies worked to eliminate during 1993 was the risk-based capital treatment of multifamily housing loans. While the three banking agencies assign multifamily housing loans (5 units or more) to the 100 percent risk category, the OTS allows certain multifamily mortgage loans to qualify for the 50 percent risk category. This would apply, for example, to loans secured by buildings with 5-36 units (as described below). This effort was undertaken pursuant to section 618 of the Resolution Trust Corporation Refinancing, Restructuring, and Improvement Act of 1991 (RTCRRIA), which requires the agencies to lower the risk weight for multifamily housing loans meeting certain criteria from 100 to 50 percent. At the time of this report, final rules have not been issued by the agencies, although it is anticipated that they will be uniform and will be issued in the very near future.

Section 618 of the RTCRRIA also required the agencies to revise their risk-based capital guidelines to lower from 100 percent to 50 percent the risk category for certain construction loans for presold 1- to 4-family residential properties. During 1993, the four agencies issued similar final rules implementing this provision of section 618.

The staffs of the four agencies also have been coordinating the issuance of uniform proposals to include in Tier 1 capital the net unrealized changes in value of securities available for sale for purposes of calculating the risk-based and leverage capital ratios of banking organizations. This proposal effectively would result in the adoption, for regulatory capital purposes, of the Financial Accounting Standards Board (FASB) Statement of Financial Accountant Standards No. 115 (FASB 115), "Accounting for Certain Investments in Debt and Equity Securities." It is expected that the agencies will issue proposals for public comment in the very near term.

In response to industry recommendations, and in conjunction with the Basle Supervisors' Committee consultative paper issued in April, 1993, the staffs of the four agencies have been meeting to draft uniform rules which would amend their risk-based capital standards with regard to bilateral netting arrangements. Specifically, the proposals would seek public comment on whether to recognize for risk-based capital purposes bilateral netting arrangements associated with interest and foreign exchange rate contracts. Such netting arrangements would have to genuinely reduce credit risk and be enforceable in all relevant jurisdictions as evidenced by well-founded and reasoned legal opinions. It is anticipated that the agencies will issue proposals on this matter early in 1994.

Differences among the risk-based capital standards of the OTS and the three banking agencies are discussed below.

Certain collateralized transactions

On December 23, 1992, the Federal Reserve Board issued, after an appropriate public comment period, an amendment to its risk-based and leverage capital guidelines for state member banks and bank holding companies that lowers from 20 to 0 percent the risk category for collateralized transactions meeting certain criteria. This preferential treatment is only available for claims collateralized by cash on deposit in the bank or by securities issued or guaranteed by OECD central governments or U.S. government agencies. In addition, a positive margin of collateral must be maintained on a daily basis fully taking into account any change in the banking organization's exposure to the obligor or counterparty under a claim in relation to the market value of the collateral held in support of that claim.

The OCC, on August 18, 1993, issued a proposal for public comment that would also lower the risk weight for certain collateralized transactions. The FDIC and OTS are considering similar proposals.

Equity investments

In general, commercial banks that are members of the Federal Reserve System are not permitted to invest in equity securities, nor are they generally permitted to engage in real estate investment or development activities. To the extent that commercial banks are permitted to hold equity securities (for example, in connection with debts previously contracted), the three banking agencies generally assign such investments to the 100 percent risk category for risk-based capital purposes.

Under the three banking agencies' rules, the agencies may, on a case-by-case basis; deduct equity investments from the parent bank's capital or make other adjustments, if necessary, to assess an appropriate capital charge above the minimum requirement. The banking agencies' treatment of investments in subsidiaries is discussed below.

The OTS risk-based capital standards require that thrift institutions deduct certain equity investments from capital over a phase-in period, which ends on July 1, 1994, as explained more fully below in the section on subsidiaries.

FSLIC/FDIC - covered assets (assets subject to guarantee arrangements by the FSLIC or FDIC)

The three banking agencies generally place these assets in the 20 percent risk category, the same category to which claims on depository institutions and government-sponsored agencies are assigned.

The OTS places these assets in the zero percent risk category.

Limitation on subordinated debt and limited-life preferred stock

Consistent with the Basle Accord, the three banking agencies limit the amount of subordinated debt and limited-life preferred stock that may be included in Tier 2 capital. This limit, in effect, states that these components together may not exceed 50 percent of Tier 1 capital. In addition, maturing capital instruments must be discounted by 20 percent in each of the last five years prior to maturity.

Neither of these capital components is a permanent source of funds, and subordinate debt cannot absorb losses while the bank continues to operate as a going-concern. On the other hand, both components can provide a cushion of protection to the FDIC insurance fund. Thus, this limitation permits the inclusion of some subordinated debt in capital, while assuring that permanent stockholders' equity capital remains the predominant element in bank regulatory capital.

The OTS has no limitation on the total amount of limited-life preferred stock or maturing capital instruments that may be included within Tier 2 capital. In addition, the OTS allows thrifts the option of: (1) discounting maturing capital instruments, issued on or after November 7, 1989, by 20 percent a year over the last 5 years of their term -- the approach required by the banking agencies; or (2) including the full amount of such instruments provided that the amount maturing in any of the next seven years does not exceed 20 percent of the thrift's total capital.

Subsidiaries

Consistent with the Basle Accord and long-standing supervisory practices, the three banking agencies generally consolidate all significant majority-owned subsidiaries of the parent organization for capital purposes. This consolidation assures that the capital requirements are related to all of the risks to which the banking organization is exposed.

As with most other bank subsidiaries, banking and finance subsidiaries generally are consolidated for regulatory capital purposes. However, in cases where banking and finance subsidiaries are not consolidated, the Federal Reserve, consistent with the Basle Accord, generally deducts investments in such subsidiaries in determining the adequacy of the parent bank's capital.

The Federal Reserve's risk-based capital guidelines provide a degree of flexibility in the capital treatment of unconsolidated subsidiaries (other than banking and finance subsidiaries) and investments in joint ventures and associated companies. For example, the Federal Reserve may deduct investments in such subsidiaries from an organization's capital, may apply an appropriate risk-weighted capital charge against the proportionate share of the assets of the entity, may require a line-by-line consolidation of the entity, or otherwise may require that the parent organization maintain a level of capital above the minimum standard that is sufficient to compensate for any risks associated with the investment.

The guidelines also permit the deduction of investments in subsidiaries that, while consolidated for accounting purposes, are not consolidated for certain specified supervisory or regulatory purposes. For example, the Federal Reserve deducts investments in, and unsecured advances to, Section 20 securities subsidiaries from the parent bank holding company's capital. The FDIC accords similar treatment to securities subsidiaries of state nonmember banks established pursuant to Section 337.4 of the FDIC regulations.

Similarly, in accordance with Section 325.5(f) of the FDIC regulations, a state nonmember bank must deduct investments in, and extensions of credit to, certain mortgage banking subsidiaries in computing the parent bank's capital. (The Federal Reserve does not have a similar requirement with regard to mortgage banking subsidiaries. The OCC does not have requirements dealing specifically with the capital treatment of either mortgage banking or securities subsidiaries. The OCC, however, does reserve the right to require a national bank, on a case-by-case basis, to deduct from capital investments in, and extensions of credit to, any nonbanking subsidiary.)

The deduction of investments in subsidiaries from the parent's capital is designed to ensure that the capital supporting the subsidiary is not also used as the basis of further leveraging and risk-taking by the parent banking organization. In deducting investments in, and advances to, certain subsidiaries from the parent's capital, the Federal Reserve expects the parent banking organization to meet or exceed minimum regulatory capital standards without reliance on the capital invested in the particular subsidiary. In assessing the overall capital adequacy of banking organizations, the Federal Reserve may also consider the organization's fully consolidated capital position.

Under the OTS capital guidelines, a distinction, mandated by FIRREA, is drawn between subsidiaries that are engaged in activities that are permissible for national banks and subsidiaries that are engaged in "impermissible" activities for national banks. Subsidiaries of thrift institutions that engage only in permissible activities are consolidated on a line-by-line basis if majority-owned and on a pro rata basis if ownership is between 5 percent and 50 percent. As a general rule, investments, including loans, in subsidiaries that engage in impermissible activities are deducted in determining the capital adequacy of the parent. However, investments, including loans, outstanding as of April 12, 1989, to subsidiaries that were engaged in impermissible activities prior to that date are grandfathered and will be phased-out of capital over a transition period that expires on July 1, 1994. During this transition period, investments in subsidiaries engaged in impermissible activities that have not been phased-out of capital are to be consolidated on a pro rata basis.

Qualifying multifamily mortgage loans

The three banking agencies currently place multifamily mortgage loans (five units or more) in the 100 percent risk weight category. Historically, when compared to loans secured by mortgages on 1- to 4-family residences, which generally are assigned to the 50 percent risk category, the credit risk associated with multifamily mortgage loans, unless conservatively underwritten and seasoned, is more akin to that

experienced on commercial property loans, which are assigned to the 100 percent risk category. The OTS allows certain multifamily mortgage loans to qualify for the 50 percent risk category. This would apply, for example, to loans secured by buildings with 5-36 units, provided these loans have a maximum 80 percent loan-to-value ratio and an 80 percent occupancy rate.

Pursuant to Section 618(b) of the RTCRRIA, the three banking agencies and the OTS were directed to amend their risk-based capital guidelines to lower the risk weight of certain multifamily housing loans, and securities backed by such loans, from 100 percent to 50 percent. The section specifies several criteria that a multifamily housing loan must satisfy in order to qualify for a 50 percent risk weight. These criteria are:

(1) The loan is secured by a first lien;

(2) The ratio of the principal obligation to the appraised value of the property, that is, the loan-to-value ratio, does not exceed 80 percent (75 percent if the loan is based on a floating interest rate);

(3) The annual net operating income generated by the property (before debt service) is not less than 120 percent of the annual debt service on the loan (115 percent if the loan is based on a floating interest rate);

(4) The amortization of principal and interest occurs over a period of not more than 30 years and the minimum maturity for repayment of principal is not less than seven years; and

(5) All principal and interest payments have been made on time for a period of not less than one year.

In addition, Section 618(b) also provides that multifamily housing loans accorded a 50 percent risk weight must meet any underwriting characteristics that the appropriate Federal banking agency may establish, consistent with the purposes of the minimum acceptable capital requirements to maintain the safety and soundness of financial institutions.

The agencies have proposed revisions to their capital standards to meet the requirement of section 618(b). It is anticipated that final rules implementing section 618(b) will be issued by the respective agencies in the very near future.

Nonresidential construction and land loans

The three banking agencies assign loans for real estate development and construction purposes to the 100 percent risk category. Reserves or charge-offs are required, in accordance with examiner judgment, when weaknesses or losses develop in such loans. The banking agencies have no requirement for an automatic charge-off when the amount of a loan exceeds the fair value of the property pledged as collateral for the loan.

The OTS generally assigns these loans to the 100 percent risk category. However, if the amount of the loan exceeds 80 percent of the fair value of the property, that excess portion must be deducted from capital in accordance with a phase-in arrangement, which ends on July 1, 1994.

Mortgage-backed securities (MBS)

The three banking agencies, in general, place privately-issued MBSs in a risk category appropriate to the underlying assets but in no case to the zero percent risk category. In the case of privately-issued MBSs where the direct underlying assets are mortgages, this treatment generally results in a risk weight of 50 percent or 100 percent. Privately-issued MBSs that have government agency or government-sponsored agency securities as their direct underlying assets are generally assigned to the 20 percent risk category.

The OTS assigns privately-issued high quality mortgage-related securities to the 20 percent risk category. These are, generally, privately-issued MBSs with AA or better investment ratings.

At the same time, both the banking and thrift agencies automatically assign to the 100 percent risk weight category certain MBSs, including interest-only strips, residuals, and similar instruments that can absorb more than their pro rata share of loss. The Federal Reserve, in conjunction with the other banking agencies and the OTS, issued, on January 10, 1992, more specific guidance as to the types of "high risk" MBSs that will qualify for a 100 percent risk weight.

Assets sold with recourse

In general, recourse arrangements allow the purchaser of an asset to "put" the asset back to the originating institution under certain circumstances, for example if the asset ceases to perform satisfactorily. This, in turn, can expose the originating institution to any loss associated with the asset. As a general rule, the three banking agencies require that sales of assets involving any recourse to be reported as financings and that the assets be retained on the balance sheet. This effectively requires a full leverage and risk-based capital charge whenever assets are sold with recourse, including limited recourse. The Federal Reserve generally applies a capital charge to any off-balance sheet recourse arrangement that is the equivalent of a guarantee, regardless of the nature of the transaction that gives rise to the recourse obligation.

An exception to this general rule involves pools of 1- to 4-family residential mortgages and to certain farm mortgage loans. Certain recourse transactions involving these assets are reported in the bank Call Report as sales, thereby removing these transactions from leverage ratio calculations. These transactions, which are the equivalent of off-balance sheet guarantees, involve the type of credit risk that is addressed by bank risk-based capital requirements, although some questions in this regard have been raised because of the treatment afforded these transactions for leverage purposes. The Federal Reserve has clarified its risk-based capital guidelines to ensure that recourse sales involving residential mortgages are to be taken into account for determining compliance with risk-based capital requirements. The FDIC clarified its guidelines on this matter in 1993.

In general, the OTS also requires a full capital charge against assets sold with recourse. However, in the case of limited recourse, the OTS limits the capital charge to the lesser of the amount of recourse or the actual amount of capital that would otherwise be required against that asset, that is, the normal full capital charge.

Some securitized asset arrangements involve the issuance of senior and subordinated classes of securities against pools of assets. When a bank originates such a transaction by placing loans that it owns in a trust and retaining any portion of the subordinated securities, the banking agencies require that capital be maintained against the entire amount of the asset pool. When a bank acquires a subordinated security in a pool of assets that it did not originate, the banking agencies assign the investment in the subordinated piece to the 100 percent risk-weight category. The Federal Reserve carefully reviews these instruments to determine if additional reserves, asset write-downs, or capital are necessary to protect the bank.

The OTS requires that capital be maintained against the entire amount of the asset pool in both of the situations described in the preceding paragraph. Additionally, the OTS applies a capital charge to the full amount of assets being serviced when the servicer is required to absorb credit losses on the assets being serviced.

In 1990, the three banking agencies and the OTS, under the FFIEC, issued for public comment a fact finding paper pertaining to the wide range of issues relating to recourse arrangements. These issues include the definition of "recourse" and the appropriate reporting and capital treatments to be applied to recourse arrangements, as well as so-called recourse servicing arrangements and limited recourse. The objective of this effort was to develop a comprehensive and uniform approach to recourse arrangements for capital adequacy, reporting, and other regulatory purposes. The comments received were very extensive and generally illustrated the extreme complexity of the subject. In view of the project's significance and complexity, the FFIEC in December 1990 decided to narrow the scope of the initial phase of the recourse project to credit-related risks, including the appropriate treatment of credit-related recourse arrangements that involve limited recourse or that support a third party's assets.

A recourse working group, composed of representatives from the member agencies of the FFIEC, presented a report and recommendations to the FFIEC in August 1992 and were directed to carry out a study of the impact of their recommendations on depository institutions, financial markets, and other affected parties. The interagency group carried out this study in early 1993. As a result of that study, the working group has revised several of their recommendations to reflect market practice. Proposals for public comment are expected to be issued shortly.

Agricultural loan loss amortization

In the computation of regulatory capital, those banks accepted into the agricultural loan loss amortization program pursuant to Title VIII of the Competitive Equality Banking Act of 1987 are permitted to defer and amortize losses incurred on agricultural loans between January 1, 1984 and December 31, 1991. The program also applies to losses incurred between January 1, 1983 and December 31, 1991, as a result of reappraisals and sales of agricultural Other Real Estate Owned (OREO) and agricultural personal property. These loans must be fully amortized over a period not to exceed seven years and, in any case, must be fully amortized by year-end 1998. Thrifts are not eligible to participate in the agricultural loan loss amortization program established by this statute.

Treatment of junior liens on 1- to 4-family properties

In some cases, a banking organization may make two loans on a single residential property, one loan secured by a first lien, the other by a second lien. In such a situation, the Federal Reserve views these two transactions as a single loan, provided there are no intervening liens. This could result in assigning the total amount of these transactions to the 100 percent risk weight category, if, in the aggregate, the two loans exceeded a prudent loan-to-value ratio and, therefore, did not qualify for the 50 percent risk weight. This approach is intended to avoid possible circumvention of the capital requirements and capture the risks associated with the combined transactions.

The FDIC, OCC, and the OTS generally assign the loan secured by the first lien to the 50 percent risk-weight category and the loan secured by the second lien to the 100 percent risk-weight category.

Pledged deposits and nonwithdrawable accounts

The capital guidelines of OTS permit thrift institutions to include in capital certain pledged deposits and nonwithdrawable accounts that meet the criteria of the OTS. Income Capital Certificates and Mutual Capital Certificates held by the OTS may also be included in capital by thrift institutions. These instruments are not relevant to commercial banks, and, therefore, they are not addressed in the three banking agencies' capital guidelines.

Mutual Funds

The three banking agencies assign all of a bank's holdings in a mutual fund to the risk category appropriate to the highest risk asset that a particular mutual fund is permitted to hold under its operating rules. The purpose of this is to take into account the maximum degree of risk to which a bank may be exposed when investing in a mutual fund in view of the fact that the future composition and risk characteristics of the fund's holding cannot be known in advance.

The OTS applies a capital charge appropriate to the riskiest asset that a mutual fund is actually holding at a particular time. In addition, the OTS guidelines also permit, on a case-by-case basis, investments in mutual funds to be allocated on a pro rata basis in a manner consistent with the actual composition of the mutual fund.

Section Two

Differences In Accounting Standards Among Federal Banking and Thrift Supervisory Agencies

Under the auspices of the FFIEC, the three banking agencies have developed uniform reporting standards for commercial banks which are used in the preparation of the Call Report. The FDIC has also applied these uniform Call Report standards to savings banks under its supervision. The income statement and balance sheet accounts presented in the Call Report are used by the bank supervisory agencies for determining the capital adequacy of banks and for other regulatory, supervisory, surveillance, analytical, and general statistical purposes.

Section 121 of FDICIA requires accounting principles applicable to financial reports (including the Call Report) filed by federally insured depository institutions with a federal banking agency to be uniform and consistent with generally accepted accounting principles (GAAP). However, under Section 121, a federal banking agency *may* require institutions to use accounting principles "no less stringent than GAAP" when the agency determines that a specific accounting standard under GAAP does not meet these new accounting objectives. The banking agencies believe that GAAP generally satisfies the three accounting objectives included in FDICIA Section 121. The three accounting objectives in FDICIA Section 121 mandate that accounting principles should:

1. Result in financial statements and reports of condition that accurately reflect the institution's capital;

2. Facilitate effective supervision of depository institutions; and

3. Facilitate prompt corrective action at least cost to the insurance funds.

As indicated above, Section 121 of FDICIA requires the Federal Reserve and the other federal banking agencies to utilize accounting principles for regulatory reports that are consistent with GAAP or are no less stringent than GAAP. The reporting instructions for Call Reports that are required by the three banking agencies are substantially consistent, aside from a few limited exceptions, with GAAP as applied by commercial banks. As a matter of policy, the regulatory reporting instructions for Call Reports deviate from GAAP only in those instances where statutory requirements or overriding supervisory concerns warrant a departure from GAAP. Furthermore, in those cases where accounting principles applicable to bank Call Reports are different from GAAP, the regulatory accounting principles are intended to be more conservative than GAAP. Thus, the accounting principles that are followed for regulatory reporting purposes are consistent with the objectives and mandate of FDICIA Section 121.

The agencies have been working to limit the number of differences between

regulatory accounting principles and GAAP, however, in some circumstances differences will exist when there is a need to address supervisory concerns. In addition, the agencies have been working closely to coordinate any new accounting policies, to ensure consistency among the agencies and to reduce or eliminate differences with GAAP.

The OTS has developed and maintains a separate reporting system for the thrift institutions under its supervision. The TFR is based on GAAP as applied by thrifts, which differs in some respects from GAAP for banks.

A summary of the primary differences in accounting principles by the federal banking and thrift agencies for regulatory reporting purposes are set forth below, based on a study developed on an interagency basis:

Futures and forward contracts

The banking agencies, as a general rule, do not permit the deferral of gains or losses by banks on futures and forwards whether or not they are used for hedging purposes. All changes in market value of futures and forward contracts are reported in current period income. The banking agencies adopted this reporting standard as a supervisory policy prior to the adoption of FASB Statement No. 80, which allows hedge or deferral accounting, under certain circumstances. Contrary to this general rule, hedge accounting in accordance with FASB Statement No. 80 is permitted by the three banking agencies only for futures and forward contracts used in mortgage banking operations.

The OTS practice is to follow FASB Statement No. 80 for futures contracts. In accordance with this statement, when hedging criteria are satisfied, the accounting for the futures contract is related to the accounting for the hedged item. Changes in the market value of the futures contract are recognized in income when the effects of related changes in the price or interest rate of the hedged item are recognized. Such reporting can result in deferred gains or losses which would be reflected on the thrift's balance sheet in accordance with GAAP.

Excess servicing fees

As a general rule, the three banking agencies do not follow GAAP for excess servicing fees, but require a more conservative treatment. Excess servicing results when loans are sold with servicing retained and the stated servicing fee rate is greater than the normal servicing fee rate. With the exception of sales of pools of first lien one-to-four family residential mortgages for which the banking agencies' approach is consistent with FASB Statement No. 65, excess servicing fee income in banks must be reported as realized over the life of the transferred asset, not recognized up front as required by FASB Statement No. 65.

The OTS allows the present value of the future excess servicing fee to be treated as an adjustment to the sales price for purposes of recognizing gain or loss on the sale. This approach is consistent with FASB Statement No. 65.

In-substance defeasance of debt

The banking agencies do not permit banks to report defeasance of their debt obligations in accordance with FASB Statement No. 76. Defeasance involves a debtor irrevocably placing risk-free monetary assets in a trust solely for satisfying the debt. Under FASB Statement No. 76, the assets in the trust and the defeased debt are removed from the balance sheet and a gain or loss for the current period can be recognized. However, for Call Report purposes, banks may not remove assets or *defeased* liabilities from their balance sheets or recognize resulting gains or losses. The banking agencies have not adopted FASB Statement No. 76 because of uncertainty regarding the irrevocable trusts established for defeasance purposes. Furthermore, defeasance would not relieve the bank of its contractual obligation to pay depositors or other creditors.

OTS practice is to follow FASB Statement No. 76.

Sales of assets with recourse

In accordance with FASB Statement No. 77, a transfer of receivables with recourse is recognized as a sale if:

(1) The transferor surrenders control of the future economic benefits,

(2) The transferor's obligation under the recourse provisions can be reasonably estimated, and

(3) The transferee cannot require repurchase of the receivables except pursuant to the recourse provisions.

The practice of the three banking agencies is generally to permit commercial banks to report transfers of receivables with recourse as sales only when the transferring institution

(1) Retains no risk of loss from the assets transferred and

(2) Has no obligation for the payment of principal or interest on the assets transferred.

As a result, virtually no transfers of assets with recourse can be reported as sales. However, this rule does not apply to the transfer of first lien 1- to 4-family residential or agricultural mortgage loans under certain government-sponsored programs (including the Federal National Mortgage Association and the Federal Home Loan Mortgage Corporation). Transfers of mortgages under these programs are generally treated as sales for Call Report purposes.

Furthermore, private transfers of first lien 1- to four- family residential mortgages are also reported as sales if the transferring institution retains only an insignificant risk of loss on the assets transferred. However, the seller's obligation under recourse provisions related to sales of mortgage loans under the government programs is viewed as an off-balance sheet exposure. Thus, for risk-based capital purposes, capital is generally expected to be held for recourse obligations associated with such transactions.

The OTS policy is to follow FASB Statement No. 77. However, in the calculation of risk-based capital under the OTS guidelines, off-balance sheet recourse obligations generally are converted at 100 percent. This effectively negates the sale treatment recognized on a GAAP basis for risk-based capital purposes, but not for leverage capital purposes. Thus, by making this adjustment in the risk-based capital calculation, the differences between the OTS and the banking agencies for capital adequacy measurement purposes, are substantially reduced.

The FFIEC has a study under way involving the topic of transfers of assets with recourse (often referred to as the "recourse study"). As part of this study, the staff of the Federal Reserve is reviewing the reporting treatment for sales of assets with recourse and is exploring with the staffs of the other agencies the possibility of reducing or eliminating the differences between regulatory reporting requirements and GAAP in this area. A proposal addressing this issue is being finalized for issuance for public comment in the near future.

Push-Down Accounting

When a depository institution is acquired in a purchase transaction, but retains its separate corporate existence, the institution is required to revalue all of the assets and liabilities at fair value at the time of acquisition. When push-down accounting is applied, the same revaluation made by the parent holding company is made at the depository institution level.

The three banking agencies require push-down accounting when there is at least a 95 percent change in ownership. This approach is generally consistent with interpretations of the Securities and Exchange Commission.

The OTS requires push-down accounting when there is at least a 90 percent change in ownership.

Negative Goodwill

The three banking agencies require that negative goodwill be reported as a liability, and not be netted against goodwill assets. Such a policy ensures that all goodwill assets are deducted in regulatory capital calculations, consistent with the Basle Accord.

The OTS permits negative goodwill to offset goodwill assets reported in the financial statements.

Offsetting of Amounts Related to Certain Contracts

The three banking agencies are planning to adopt FASB Interpretation No. 39 (FIN 39) solely for on-balance sheet items arising from off-balance sheet derivative instruments, when FIN 39 becomes effective in 1994. FIN 39 allows institutions to offset assets and liabilities arising from traditional balance sheet items (e.g., loans, deposits, etc.) as well as netting assets and liabilities arising from off-balance sheet derivative instruments only when four conditions are met. The Call Report's existing guidance generally prohibits netting of assets and liabilities.

The OTS policy on netting of assets and liabilities is consistent with GAAP.

The Board staff intends to join the other agencies in a study of the possibility of adopting FIN 39 for traditional balance sheet items in the next year.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-648 Filed 1-10-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL SERVICES ADMINISTRATION

Interagency Committee for Medical Records (ICMR) Stocking Change and Revision of SF 523, Medical Record—Authorization for Autopsy and SF 523A—Medical Record—Disposition of Body

AGENCY: General Services Administration.

ACTION: Notice.

SUMMARY: The General Services Administration/ICMR is changing the stocking requirement of SF 523, Medical Record—Authorization for Autopsy and SF 523A, Medical Record—Dispotion of Body. These forms are now authorized for local reproduction. You can request camera copy of SF 523 and SF 523A from General Services Administration (CARM), Attn.: Barbara Williams, (202) 501-0581.

These forms also are revised to delete the Privacy Act statement from the back of the form. The following reasons reflect this change:

1. No personal identifying information is collected (prestamped on form).

2. Any information that would be included under the Privacy Act is covered by a blanket statement in the medical case record. This form is part of such record.

FOR FURTHER INFORMATION CONTACT: Mr. Ted Freed, GSA Standard and Optional Forms Liaison Officer, (202) 501-0492.

DATES: Effective January 11, 1994.

Dated: December 30, 1993.

Johnny T. Young,

Director, Reproduction Services Division.

[FR Doc. 94-603 Filed 1-10-94; 8:45 am]

BILLING CODE 6820-34-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act of 1980 (U.S.C. chapter 35), we are submitting to the Office of Management and Budget (OMB) a request for approval of a new information collection on Cuban and Haitian entrants to the United States. This information collection, sponsored by the Office of Refugee Resettlement (ORR) at the Administration for Children and Families (ACF), is entitled: "Entrant Information and Referral Form (Form ORR-5)." This information collection on Cuban and Haitian entrants to the United States will allow ACF and the Department of Justice to provide information and placement services to the entrants.

ADDRESSES: Copies of this request for OMB approval may be obtained from Stephen R. Smith of the Office of Information Systems Management, ACF, by calling (202) 401-6964.

Written comments and questions regarding this approval should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, 725 17th Street, NW., Washington, DC 20503, (202) 395-7316.

Information on the Document:

Title: Entrant Information and Referral Form ORR-5.

OMB No.:

Description: The Cuban/Haitian Entrant Program is authorized under Title V of the Refugee Education Assistance Act of 1980, Public Law 96-422. Section 501(a) of that Act directs the President to provide assistance and services to Cuban and Haitian entrants to the same extent as those available to refugees under title IV of the Immigration and Nationality Act (hereafter referred to as the "Act"). An entrant differs from a refugee in the manner of his or her entry into the U.S. Refugees are identified as such by overseas consular officials who arrange for their transportation to the U.S. and for reception and placement services at the community of resettlement. An extensive case file is compiled by the consular official and precedes the refugee to his final destination where he is met by a representative of a national voluntary refugee resettlement agency (volging). The volging schedules case management and social services as needed for the refugee. Each step in the refugee resettlement process is documented and data are collected and maintained on the refugee by the Department of State's Refugee Data Center (RDC).

The entrant usually arrives without prior contact with U.S. officials and therefore without documentation. The entrant's first contact with the U.S. government is with an officer of the Immigration and Naturalization Service (INS) who determines the entrant's immigration status and whether the entrant is to be detained or released. If the entrant is found eligible to remain in the U.S., reception and placement services are arranged through the Community Relations Service (CRS) of the Department of Justice.

Because advance preparation is not possible for entrants, ORR and other Federal agencies have maintained an office in the Miami area to provide information and referral services for the influx of Cubans and Haitian entrants who have been arriving in the U.S. since 1959. ORR and the Community Relations Service (CRS) of the Department of Justice which maintains strong ties to the local Cuban and Haitian communities coordinate employment and referral services with community groups, local providers, immigration authorities, volgags, State agencies, hospitals, schools and Federal social services agencies.

The Miami office maintains a data base on entrants from which data is made available to the State Department, INS, Department of Justice, and the Department of Health and Human

Services for statistical and management purposes.

Annual Number of Respondents: 4,000

Annual Frequency: 1

Average Burden Per Response: 15 min.

Total Burden Hours: 1,000

Dated:

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94-600 Filed 1-10-94; 8:45 am]

BILLING CODE 4184-01-M

Agency for Health Care Policy and Research

Meetings

In accordance with section 10(a) of the Federal Advisory Committee Act (title 5, U.S.C., appendix 2) announcement is made of the following advisory committees scheduled to meet during the month of February 1994:

Name: Health Services Developmental Grants Review Subcommittee.

Date and Time: February 9–11, 1994, 8 a.m.

Place: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Conference Room TBA, Rockville, Maryland 20852.

Open February 9, 8 a.m. to 9 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing experimental, analytical and theoretical research on costs, quality, access, effectiveness, and efficiency of the delivery of health services for the research grant program administered by Agency for Health Care Policy and Research (AHCPR).

Agenda: The open session of the meeting on February 9 from 8 a.m. to 9 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed session, the Subcommittee will be reviewing research and demonstration grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Elizabeth A. Breckinridge, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Care Technology Study Section.

Date and Time: February 14–16, 1994, 8:30 a.m.

Place: Holiday Inn Bethesda, 8120 Wisconsin Avenue, The Maryland Room, Bethesda, Maryland 20814.

Open February 14, 8:30 a.m. to 9:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with conducting the initial review of health services research grant applications concerned with medical decisionmaking, computers in health care delivery, and the utilization and effects of health care technologies and procedures.

Agenda: The open session on February 14 from 8:30 a.m. to 9:30 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. The closed sessions of the meeting will be devoted to a review of health services research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Alan E. Mayers, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Review Subcommittee.

Date and Time: February 17–18, 1994, 8 a.m.

Place: Embassy Suites Hotel, 4300 Military Road, NW., Tenley Town I, Washington, DC 20015.

Open February 17, 8 a.m. to 8:45 a.m.

Closed for remainder of meeting.

Purpose: The Subcommittee is charged with the initial review of grant applications proposing analytical and theoretical research on costs, quality, access, and efficiency of the delivery of health services for the research grant program administered by AHCPR.

Agenda: The open session of the meeting on February 17 from 8 a.m. to 8:45 a.m. will be devoted to a business meeting covering administrative matters and reports. There will also be a presentation by the Administrator, AHCPR. During the closed sessions, the Subcommittee will be reviewing analytical and theoretical research grant applications relating to the delivery, organization, and financing of health services. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Patricia G. Thompson, Ph.D., Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, Executive Office Center, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Name: Health Services Research Dissemination Study Section.

Date and Time: February 23–24, 1994, 8 a.m.

Place: Hyatt Regency Bethesda. One Bethesda Metro Center, Conference Room TBA, Bethesda, MD 20814.

Open February 24, 8 a.m. to 8:30 a.m.

Closed for remainder of meeting.

Purpose: The Study Section is charged with the review of and making recommendations on grant applications for Federal support of conferences, workshops, meetings, or projects related to dissemination and utilization of research findings, and AHCPR liaison with health care policy makers, providers, and consumers.

Agenda: The open session of the meeting on February 24 from 8 a.m. to 8:30 a.m. will be devoted to a presentation by the Administrator, AHCPR. During the closed portions of the meeting, the Study Section will be reviewing grant applications relating to the dissemination of research on the organization, costs, and efficiency of health care. In accordance with the Federal Advisory Committee Act, title 5, U.S.C., appendix 2 and title 5, U.S.C., 552b(c)(6), the Administrator, AHCPR, has made a formal determination that these latter sessions will be closed because the discussions are likely to reveal personal information concerning individuals associated with the grant applications. This information is exempt from mandatory disclosure.

Anyone wishing to obtain a roster of members, minutes of the meeting, or other relevant information should contact Mrs. Linda Blankenbaker, Scientific Review Administrator, Scientific Review Branch, Agency for Health Care Policy and Research, suite 602, 2101 East Jefferson Street, Rockville, Maryland 20852, Telephone (301) 594–1449.

Agenda items for all meetings are subject to change as priorities dictate.

Dated: December 29, 1993.

Risa J. Lavizzo-Mourey,

Acting Administrator.

[FR Doc. 94-542 Filed 1-10-94; 8:45 am]

BILLING CODE 4160-90-U

Centers for Disease Control and Prevention

[Program Announcement Number 409]

Grants for Injury Prevention Research for Violence Against Women; Availability of Funds for Fiscal Year 1994

Introduction

The Centers for Disease Control and Prevention (CDC) announces that applications are being accepted for Injury Prevention Research Grants for Violence Against Women. The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity, mortality and improve the quality of life. This announcement is related to the area of Violent and Abusive Behavior. (For ordering a copy of Healthy People 2000, see the Section Where To Obtain Additional Information.)

Authority

This program is authorized under sections 301 and 391 of the Public Health Service Act (42 U.S.C. 241 and 280b). Program regulations are set forth in title 42 of the CFR part 52.

Eligible Applicants

Eligible applicants include all non-profit and for-profit organizations. Thus state, tribal, and local health departments and other state, tribal, and local governmental agencies, universities, colleges, research institutions, and other public and private organizations, including small, minority and/or woman-owned businesses are eligible for these research grants. Current holders of CDC injury control research projects are eligible to apply.

Availability of Funds

Approximately $2.0 million is projected to be available in FY 1994 to fund approximately 5 to 9 grants. The amount of funding actually available may vary and is subject to change. New grant awards will not exceed $300,000 per year (including both direct and indirect costs). Research grant supplements will generally be no more than $75,000 (including both direct and indirect costs). Awards will be made for a 12-month budget period within a project period not to exceed 3 years. Continuation awards within the project period will be made on the basis of satisfactory progress demonstrated by investigators at work-in-progress monitoring workshops, the achievement of workplan milestones reflected in the continuation application, and the availability of Federal funds. In addition, continuation awards will be eligible for increased funding to offset inflationary costs depending upon the availability of funds.

Purpose

The purposes of this program are:

A. To build the scientific base for the prevention of injuries and deaths due to violence against women as delineated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge (supplement to the American Journal of Preventive Medicine, (Vol. 5, no. 3, 1989);

B. To identify effective strategies to prevent injuries and deaths due to violence against women;

C. To expand the development and evaluation of current and new intervention methods and strategies for the primary prevention of violence against women;

D. To encourage professionals from a wide spectrum of disciplines such as medicine, health care, public health, criminal justice, behavioral and social sciences, and others to undertake research to prevent and control injuries that result from violence against women.

Program Requirements

The following are applicant requirements:

A. A principal investigator who has conducted research, published the findings, and has specific authority and responsibility to carry out the proposed project.

B. Demonstrated experience in conducting, evaluating, and publishing injury control research on the applicant's project team.

C. Effective and well-defined working relationships within the performing organization and with outside entities which will ensure implementation of the proposed activities.

D. An explanation of how research findings could lead to the development of injury control interventions within 3–5 years of project start-up. Furthermore, how the research findings might be disseminated and implemented through organizations (such as public health agencies) or systems, both public and private.

E. The ability to carry out injury control research projects.

F. The overall match between the applicant's proposed theme and research objectives, and the program priorities as described under the heading "Programmatic Interest" and in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge.

Note: Grant funds will not be made available to support the provision of direct care services. Eligible applicants may enter into contracts, including consortia agreements (as set forth in the PHS Grants Policy Statement) as necessary to meet the requirements of the program and strengthen the overall application.

Programmatic Interests

The grants should concentrate on the need to prevent the morbidity, mortality, and disability which result from violence against women, in order to reduce the devastating social and economic impact on the nation. Applicants are encouraged to propose research which either: (1) Rigorously evaluates the outcomes of violence prevention strategies currently in use, or (2) identifies modifiable risk factors which can lead to the development of effective interventions. Examples of possible projects listed under the priority areas below are by no means exhaustive, and innovative approaches are encouraged. Because of time constraints, comments were not solicited from the general public regarding funding priorities and special considerations.

In prevention, there is specific interest in research that evaluates the effectiveness of interventions to prevent injuries and deaths due to violence against women, or reduce their impact. There is also interest in research that develops the basic sciences of injury control (i.e., social and behavioral sciences, and epidemiology). This research might evaluate one or more different approaches to implementing a specific intervention strategy. In addition, there is a need to examine intervention strategies for which evidence of effectiveness is either sparse or totally lacking. Interventions chosen for evaluation should have a significant potential for reducing morbidity, mortality, disability, or cost. Special consideration will be given to grants which target populations at high risk for violence-related injuries and their consequences, including adolescents, children, racial and ethnic minorities, urban residents, and people with low incomes.

Examples of strategies for preventing violence against women which need to be rigorously evaluated for impact on violent outcomes include:

• Establishing protocols for early identification and referral of abuse victims in health settings (e.g., Are women who are identified as being physically or sexually abused through victim identification and referral protocols in hospital emergency departments, substance abuse and mental health centers, STD clinics, or prenatal care clinics less likely than others to experience future abuse? Do home health visits reduce partner abuse in targeted families and, as a consequence, reduce the likelihood that children will witness such violence?);

• Batterer treatment programs;

• Alcohol and drug abuse treatment services for batterers and victims in tandem with batterer treatment programs;

• Public information and awareness campaigns to change attitudes and beliefs which perpetuate violence against women (e.g., Can well-designed and administered public awareness campaigns change knowledge and attitudes that perpetuate violence against women? Are hotlines that provide crisis intervention counseling an effective mechanism for increasing the use of available services and programs?)

In epidemiology, there is programmatic interest in analytic research that identifies mechanisms, causes, or risks of injury which might lead to new or more effective interventions for violence against women. Examples of potentially modifiable risk factors which should be examined for each area are listed below:

• Attitudes and beliefs which influence violent behavior against women (e.g., Are boys and men who hold attitudes conducive to violence against women more likely to be violent towards women? What role does culture play in perpetuating these attitudes?);

• The impact of early childhood experiences of violence (either as a witness or victim of violence) upon the tendency to develop violent behavior patterns in adulthood (e.g., What childhood experiences mitigate the harmful effects on children of witnessing violent acts against women? What role does past exposure to varying forms of violence play in repeated victimization?);

• The role of alcohol and other drugs among batterers and their victims;

• Factors in a dating relationship which precipitate violent behavior (e.g., Are young men who commit violent acts against a date likely to continue these behaviors?);

• Factors which precipitate battering during pregnancy.

Also of programmatic interest is epidemiologic research having as its focus the development of improved methods for and the evaluation of injury surveillance systems that accurately quantify the incidence and severity of injuries that result from violence against women (e.g., emergency department-based surveillance of injuries due to violence against women). Research is needed that more accurately defines the cost of violence against women, from a social, physical, and psychological perspective (e.g., How does violence against women affect productivity in the workplace? How does such violence affect the cost of health care in general?).

Cost analysis should be included in the plans, where appropriate, to evaluate an intervention(s) that addresses violence against women. A more complete discussion of methodologies for assessing cost analysis is presented in, A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR-3, pages 5–11). (To receive information on these reports see the section Where To Obtain Additional Information.)

Evaluation Criteria

Upon receipt, applications will be screened by CDC staff for completeness and responsiveness as outlined under the previous heading, Program Requirements (A–F). Incomplete applications and applications that are not responsive will be returned to the applicant without further consideration. Applications which are complete and responsive may be subjected to a preliminary evaluation by a peer review group to determine if the application is of sufficient technical and scientific merit to warrant further review; the CDC will withdraw from further consideration applications judged to be noncompetitive and promptly notify the principal investigator/program director and the official signing for the applicant organization. Those applications judged to be competitive will be further evaluated by a dual review process. The primary review will be a peer evaluation by the Injury Research Grants Review Committee (IRGRC) of the scientific and technical merit of the application. The final review will be conducted by the CDC Advisory Committee for Injury Prevention and Control (ACIPC), which will consider the results of the peer review together with program need and relevance. Funding decisions will be made by the Director, National Center for Injury Prevention and Control (NCIPC), based on merit and priority score ranking by the IRGRC, program review by the ACIPC, and the availability of funds.

A. The first review will be a peer review to be conducted on all applications. Factors to be considered will include:

1. The specific aims of the research project, i.e., the broad long-term objectives, the intended accomplishment of the specific research proposal, and the hypothesis to be tested;

2. The background of the proposal, i.e., the basis for the present proposal, the critical evaluation of existing knowledge, and specific identification of the injury control knowledge gaps which the proposal is intended to fill;

3. The significance and originality from a scientific or technical standpoint of the specific aims of the proposed research, including the adequacy of the theoretical and conceptual framework for the research;

4. For competitive renewal and supplemental applications, the progress made during the prior project period. For new applications, (optional) the progress of preliminary studies pertinent to the application.

5. The adequacy of the proposed research design, approaches, and methodology to carry out the research, including quality assurance procedures, plan for data management, and statistical analysis plan.

6. The extent to which the evaluation plan will allow for the measurement of progress toward the achievement of the stated objectives.

7. Qualifications, adequacy, and appropriateness of personnel to accomplish the proposed activities.

8. The degree of commitment and cooperation of other interested parties (as evidenced by letters detailing the nature and extent of the involvement).

9. The reasonableness of the proposed budget to the proposed research and demonstration program.

10. Adequacy of existing and proposed facilities and resources.

B. The second review will be conducted by the Advisory Committee for Injury Prevention and Control. The factors to be considered will include:

1. The results of the peer review.

2. The significance of the proposed activities in relation to the objectives stated in Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Healthy People 2000; Violence in America: A Public Health Approach; Understanding and Preventing Violence; and Injury Prevention: Meeting the Challenge.

3. National needs.

4. Overall distribution among:

• The major disciplines of violence-related injury prevention: social and behavioral sciences, and epidemiology;

• Populations addressed (e.g., adolescents, minorities, the elderly, urban, rural); and

5. Budgetary considerations (e.g., preference may be given to applicants who submit proposals requesting funding for research projects of one to two years).

C. Continued funding. Continuation awards made after FY 1994, but within the project period, will be made on the basis of the availability of funds and the following criteria:

1. The accomplishments reflected in the progress report of the continuation application indicate that the applicant is meeting previously stated objectives or milestones contained in the project's annual workplan and satisfactory progress demonstrated through monitoring presentations or work-in-progress workshops;

2. The objectives for the new budget period are realistic, specific, and measurable;

3. The methods described will clearly lead to achievement of these objectives;

4. The evaluation plan will allow management to monitor whether the methods are effective; and

5. The budget request is clearly explained, adequately justified, reasonable and consistent with the intended use of grant funds.

D. Supplementary funding. Competing Supplemental grant awards may be made when funds are available, to support research work or activities not previously approved by the Injury Research Grants Review Committee (IRGRC). Applications should be clearly labelled to denote their status as requesting supplemental funding support. These applications will be reviewed by the IRGRC and the secondary review group.

Executive Order 12372 Review

Applications are not subject to the review requirements of Executive Order 12372, entitled Intergovernmental Review of Federal Programs.

Public Health System Reporting Requirement

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number (CFDA)

The Catalog of Federal Domestic Assistance number is 93.136.

Application Submission and Deadline

A. Preapplication Letter of Intent

Although not a prerequisite of application, a non-binding letter of intent-to-apply is requested from potential applicants. The letter should be submitted to the Grants Management Officer (whose address is reflected in section B, "Applications"). It should be postmarked no later than one month prior to the planned submission deadline, (e.g., February 15 for March 15 submission). The letter should identify the specific program announcement number, indicate the intended submission deadline, and include the name of the principal investigator. The letter of intent does not influence review or funding decisions, but it will enable CDC to plan the review more efficiently, and will ensure that each applicant receives timely and relevant information prior to application submission.

B. Applications

Applicants should use Form PHS–398 and adhere to the ERRATA Instruction Sheet for Form PHS–398 contained in the Grant Application Kit. Please submit an original and five copies, on or before March 15, 1994 to: Henry S. Cassell, III, Grants Management Officer, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, Georgia 30305.

C. Deadlines

1. Applications shall be considered as meeting the deadline if they are either:

A. Received at the above address on or before the deadline date, or

B. Sent on or before the deadline date to the above address, and received in time for submission for the review process. Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or the U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailings.

2. Applications which do not meet the criteria in 1.A. or 1.B. above are considered late applications and will be returned to the applicant.

Where To Obtain Additional Information

To receive additional information, call (404) 332–4561. You will be asked to leave your name, address, and phone number and will need to refer to Announcement Number 409. You will receive a complete program description, information on application procedures, and application forms. If you have questions after reviewing the contents of all documents, business management technical assistance may be obtained from Lisa Tamaroff, Grants Management Specialist, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., room 300, Atlanta, GA 30305, (404) 842–6796. Programmatic technical assistance may be obtained from Ted Jones, Project Officer, Extramural Research Grants Branch, National Center for Injury Prevention and Control, Centers for Disease Control and Prevention (CDC), Mailstop K–58, 4770 Buford Highway, NE., Atlanta, Georgia 30341–3724, (404) 488–4824.

Potential applicants may obtain a copy of Healthy People 2000 (Full Report, Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report, Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238. Copies of Injury Control in the 1990s: A National Plan for Action. Atlanta: Centers for Disease Control and Prevention, 1993; Injury Prevention: Meeting the Challenge; and A Framework for Assessing the Effectiveness of Disease and Injury Prevention, (CDC, Morbidity and Mortality Weekly Report, March 27, 1992, Volume 41, Number RR–3, pages 5–11) may be obtained by calling (404) 488–4646. Also, information for obtaining Violence in America: A Public

Health Approach and Understanding and Preventing Violence can be received by calling the previously listed phone number (404/488–4646).

Dated: January 4, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–582 Filed 1–10–94; 8:45 am]

BILLING CODE 4160–18–P

Statement of Organization, Functions, and Delegations of Authority

Part H, Chapter HC (Centers for Disease Control and Prevention) of the Statement of Organization, Functions, and Delegations of Authority of the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 59052–59054, dated November 5, 1993) is amended to retitle the Personnel Management Office to the Human Resources Management Office within the Office of Program Support, Centers for Disease Control and Prevention (CDC).

Section HC–B, Organization and Functions, is hereby amended as follows:

Delete in their entirety the titles and functional statements for the *Personnel Management Office (HCA57)* and the *Office of the Director (HCA571)* and insert the following:

Human Resources Management Office (HCA57). (1) Provides service, support, advice, and assistance to CDC organizations, management, and employees in all areas of human resources management; (2) conducts and coordinates personnel management for CDC's civil service and Commissioned Corps personnel; (3) conducts CDC's fellowship programs; (4) develops and issues policies and procedures; conducts recruitment, special emphasis, staffing, position classification, position management, pay administration, performance management systems, employee training and development, and employee and labor relations programs; (5) maintains personnel records and reports, and processes personnel actions and documents; (6) administers the Federal life and health insurance programs; (7) administers the employee recognition, suggestion, and incentive awards programs; (8) furnishes advice and assistance in the processing of Office of Workers' Compensation Program claims; (9) coordinates committee management activities; (10) conducts CDC's personnel security and substance abuse programs; (11) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees; (12) maintains liaison with PHS, HHS, and the U.S. Office of Personnel Management in the area of human resources management.

Office of the Director (HCA571). (1) Provides leadership and technical guidance to CDC in planning, coordinating, and conducting an effective personnel program for civil service (including the Senior Biomedical Research Service and the Senior Executive Service), Commissioned Corps, and fellowship program personnel; (2) plans, directs, and evaluates the activities of the Human Resources Management Office (HRMO); (3) coordinates the Total Quality Management effort within HRMO; (4) develops, maintains, and supports information systems to conduct personnel activities and provide timely information and analyses on CDC personnel and staffing to CDC management and employees; (5) advises the Director, CDC, and other CDC management staff on all matters relating to human resources management.

Effective Date: Dec. 22, 1993.

David Satcher,

Director.

[FR Doc. 94–502 Filed 1–10–94; 8:45 am]

BILLING CODE 4160–18–M

National Institutes of Health

National Institute on Aging; Meeting of the National Advisory Council on Aging

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Council on Aging, National Institute on Aging, January 27–28, 1994, to be held at the National Institutes of Health, Building 31, Conference Room 10, Bethesda, Maryland. This meeting will be open to the public on Thursday, January 27, from 8:30 a.m. to 1:15 p.m. for a status report by the Director, NIA; a report on the Biology of Aging Program; a report on NIA Intramural Program; an report on the Working Group on Program; and a report on the Advisory Committee to Director, NIH, meeting.

The meeting will be open again on Friday, January 28, from 8:30 a.m. until adjournment for a report on the Behavioral and Social Research Program; a report on International Affairs; a report on the Inclusion of Women and Minorities in Research; a report on the Minority Task Force; and parting comments from retiring members. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the Council will be closed to the public on Thursday, January 27 from 2:15 p.m. to recess for the review, discussion and evaluation of grant applications. The applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June McCann, Committee Management Officer for the National Institute on Aging, National Institutes of Health, Gateway Building, 7201 Wisconsin Avenue, suite 2C218, Bethesda, Maryland 20892 (301/496–9322), will provide a summary of the meeting and a roster of committee members upon request.

Individuals who plan to attend and need special assistance, such as a sign language interpretation or other reasonable accommodations, should contact Ms. McCann at (301) 496–9322, in advance of the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.866, Aging Research, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–534 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the National Advisory Child Health and Human Development Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Child Health and Human Development Council, January 24–25, 1994. The meeting will be held in building 31, Conference Room 6, National Institute of Health, Bethesda, Maryland. The meeting of the Subcommittee on Planning will be held on January 24 in Building 31, room 2A03.

The Council meeting will be open to the public on January 24 from 9:30 a.m. until 5 p.m. The agenda includes a report by the Director, NICHD, IOM report on Clinical Applications of Mifepristone RU 486 and Other Antiprogestins, and a report by the Developmental Biology, Genetics and Teratology Branch, NICHD. The meeting will be open on January 25 upon completion of applications at approximately 12:30 p.m. to adjournment if any policy issues are raised which need further discussion. The Subcommittee meeting will be open on January 24 from 8 a.m. to 9:30 a.m. to discuss program plans and the agenda for the next Council meeting. Attendance by the public will be limited to space available.

In accordance with the provision set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting of the full Council will be closed to the public on January 25 from 8 a.m. to approximately 12:30 p.m. for the completion of the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Executive Secretary, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland 20892, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Council members as well as substantive program information. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer.

(Catalog of Federal Domestic Assistance Program Nos. 93.864, Population Research, and 93.865, Research for Mothers and Children, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–532 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Environmental Health Sciences; Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 24–25, 1994, at the Siena Hotel (Tuscany Room), 1505 E. Franklin Street, Chapel Hill, North Carolina 27514.

This meeting will be open to the public on January 24 from 9 a.m. to approximately 3:30 p.m. and from 8:30 a.m. to 9 a.m. on January 25 for the report of the Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, the meeting will be closed to the public on January 24 from approximately 3:30 p.m. to 5 p.m. and from 9 a.m. to adjournment on January 25, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy. Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. B1C02, NIH, Bethesda, Md. 20892 (301) 496–3511, will provide summaries of the meeting and rosters of council members. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Herrell in advance of the meeting. Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541–7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.113, Biological Response to Environmental Agents; 93.114, Applied Toxicological Research and Testing; 93.115, Biometry and Risk Estimation; 93.894, Resource and Manpower Development, National Institutes of Health)

Dated: January 4, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–533 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Ethylene Glycol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Ethylene Glycol, a major constituent of motor vehicle antifreeze-coolant fluids and also in other commercial products including hydraulic brake fluids, adhesives, printer's inks, and wood stains. It is also used in the manufacturer of polyester films and fibers, polyethylene terephthalate (PET) solid state resins, plasticizers, elastomers, cellophane, and other products.

Two year toxicology and carcinogenesis studies were conducted by administering ethylene glycol in the diet of 60 male mice (0, 6,200, 12,500, or 25,000 ppm) and 60 female mice (0, 12,500, 25,000, or 50,000 ppm) for up to 103 weeks. These concentrations correspond to daily doses of approximately 1,500, 3,000, or 6,000 mg/kg body weight for male mice and 3,000, 6,000, or 12,000 mg/kg for females.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] of ethylene glycol in male B6C3F1 mice receiving 6,250, 12,500, or 25,000 ppm, or in female B6C3F1 mice receiving 12,500, 25,000, or 50,000 ppm. Administration of ethylene glycol resulted in hepatocellular hyaline degeneration in male mice fed diets containing 12,500 or 25,000 ppm and in female mice fed diets containing 50,000 ppm. An increased incidence of medial hyperplasia of small pulmonary arteries and arterioles occurred in female mice fed diets containing 12,500, 25,000, or 50,000 ppm ethylene glycol.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Ethylene Glycol (Cas No. 107–21–1) in B6C3F1 Mice (Feed Studies) (TR–413) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–535 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Mercuric Chloride

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of Mercuric Chloride, an inorganic compound that has been used in agriculture as a fungicide, in medicine as a topical antiseptic and disinfectant, and in chemistry as an intermediate in the production of other mercury compounds.

Two-year toxicology and carcinogenicity studies were conducted by administering to groups of 60 rats of each sex 0, 2.5, or 5 mg mercuric chloride/kg body weight and to groups of 60 mice of each sex 0, 5, or 10 mg/kg in deionized water by gavage 5 days per week for 2 years.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity[1] of mercuric chloride in male F344 rats based on the increased incidence of squamous cell papillomas of the forestomach. Marginally increased incidences of thyroid follicular cell adenomas and carcinomas may have been related to mercuric chloride exposure. There was equivocal evidence of carcinogenic activity of mercuric chloride in female F344 rats based on two squamous cell papillomas of the forestomach. There was equivocal evidence of carcinogenic activity of mercuric chloride in male B6C3F1 mice based on the occurrences of two renal tubule adenomas and one renal tubule adenocarcinoma. There was no evidence of carcinogenic activity of mercuric chloride in female B6C3F1 mice receiving 5 or 10 mg/kg.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Mercuric Chloride (CAS No. 7487–94–7) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR–408) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–536 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of p-Nitrophenol

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of p-Nitrophenol used in the production of acetaminophen, methyl and ethyl parathion insecticides, fungicides, and dyestuffs.

Eighteen-month toxicology and carcinogenesis studies were conducted by applying p-Nitrophenol in acetone to the intrascapular skin of groups of 60 Swiss-Webster mice of each sex. Doses of 0, 40, 80, or 160 mg/kg p-Nitrophenol were administered to mice 3 days per week for 78 weeks.

Under the conditions of these 18-month dermal studies there was no evidence of carcinogenic activity[1] in male or female Swiss-Webster mice receiving 40, 80, or 160 mg/kg p-Nitrophenol.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of p-Nitrophenol (CAS No. 100–02–7) in Swiss-Webster Mice (Dermal Studies) (TR–417) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 3, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–537 Filed 1–10–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF INTERIOR

Bureau of Land Management

[AZ–024–94–4333–01]

Intent To Close to Public Entry Public Lands To Protect Endangered Species Until a Suitable Permit System Is Implemented

AGENCY: Bureau of Land Management; Interior.

ACTION: Notice of closure of public entry to public lands.

SUMMARY: Notice is hereby given that portions of the Public Lands along the Gila River below Coolidge Dam in Gila County, Arizona will be closed to all forms of boating and rafting. The Gila River in this area is jointly administered by the Bureau and the San Carlos Indian Reservation. This closure will not apply to emergency response agencies conducting official business. This use restriction covers the Gila River as it crosses Public Lands from T. 3 S., R. 18 E., Section 17, downstream to the confluence of Mescal Creek and the Gila River in T. 3 S., R. 17 E., Section 29, G & SR Meridian, Arizona.

EFFECTIVE DATES: This order is effective upon signature of the authorized officer. January 1, 1994 through July 1, 1994.

SUPPLEMENTARY INFORMATION: The purpose of this use restriction is to provide protection for nesting bald eagles *Haliaeetus leucocephalus*. In past years, the Gila River was not navigable in this area due to water hazards. Recent flooding has opened up the river channel and facilitated a proliferation of rafting and boating in the area. The bald eagle nest is low to the ground and immediately adjacent to the river channel making it susceptible to human disturbance. To comply with the Endangered Species Act of 1973, as amended, the Bureau must not allow actions that may result in "take" of an endangered species without being permitted according to Section 7 of the Act. Failure by the Bureau to control public access to this area may result in disturbance to the nesting bald eagles and a violation of the Act. The Bureau will consult with the U.S. Fish and Wildlife Service when a permit system is established jointly with the San Carlos Indian Reservation.

Order

Notice is hereby given that effective on the date of signature by the authorized officer of this notice, the following use restriction will be in effect on the Gila River Public Lands below Coolidge Dam until July 1, 1994, or until an opening notice is published.

1. No person may boat, raft or float on the Gila River on Public Lands described below. Emergency response agencies on official business will be exempt from this order.

Gila and Salt River Meridian, Arizona

T. 3 S., R. 18 E.,
Secs. 17, 18, 19, 29
T. 3 S., R. 17 E.,
Secs. 24, 25, 26, 27, 28, 29, 34

Authority for this use restriction may be found in 43 CFR 8364.1d. Violations of this closure are punishable by a fine not to exceed $100,000 and/or 12 months in jail.

FOR FURTHER INFORMATION CONTACT: Gail Acheson, Area Manager, Phoenix Resource Area, 2015 West Deer Valley Road, Phoenix, AZ 85027, (602) 780–8090.

Dated: January 3, 1994.

David J. Miller,

Acting District Manager.

[FR Doc. 94–602 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–02–M

Fish and Wildlife Service

Wild Bird Conservation Act (Act) of 1992; Possible Moratorium on Imports of Wild Birds From Indonesia and Sénégal Into the United States

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Extension of Comment Period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) published two notices in the **Federal Register** of November 5, 1993, announcing the receipt of petitions to impose a moratorium on the imports of wild birds from Indonesia and Sénégal into the United States, pursuant to the Wild Bird Conservation Act of 1992 (58 FR 59061 and 58 FR 59063). Through the issuance of this notice, the Service now extends the comment period on both of these petitions an additional 90 days, in order to receive as complete information as is possible concerning the status of wild bird species in Indonesia and Sénégal.

DATES: The Fish and Wildlife Service (Service) will consider comments and information received by April 11, 1994 in making a decision on this proposed action.

ADDRESSES: Comments and information should be sent to: Director, U.S. Fish and Wildlife Service, c/o Mr. Marshall P. Jones, Chief, Office of Management Authority, 4401 N. Fairfax Dr., room 420 C, Arlington, VA 22203.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, Office of Management Authority, at the above address, telephone (703) 358–2093

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service (Service) published two notices in the **Federal Register** of November 5, 1993, announcing the receipt of petitions to impose a moratorium on the imports of wild birds from Indonesia and Sénégal into the United States, pursuant to the Wild Bird Conservation Act of 1992 (58 FR 59061 and 58 FR 59063). The petitions were found to present sufficient information indicating that imposing a moratorium on the imports of wild birds from Indonesia and Sénégal may be warranted under the Act. The Service received requests in writing from the following to extend the comment period: Government of Indonesia, Government of Sénégal, Pet Industry Joint Advisory Council, and American Federation of Aviculture. In particular, the Governments of Indonesia and Sénégal requested additional time to fully review the petitions and prepare a response. Those written requests were received by the Service during the period of December 23–27, 1993. The Service considers these requests warranted, and through the issuance of this notice, extends the comment period on both of these petitions an additional 90 days, in order to receive as complete information as is possible concerning the status of wild bird species in both Indonesia and Sénégal.

Public Comments Solicited

The Service intends that any final decision resulting from these petitions will be as accurate and as effective as possible. Therefore, any comments or data from the public, other concerned governmental agencies, the scientific or conservation communities, trade organizations, or any other interested party concerning any aspect of the wild bird trade in Indonesia and Sénégal are hereby solicited.

Author: The author of this notice is Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority.

(Notice: Wild Bird Conservation Act (WBCA) of 1992; Extension of comment period on petitions requesting moratorium on imports of Wild Birds from Indonesia and Sénégal into the United States.)

Dated: January 4, 1994.

Richard N. Smith,

Acting Director.

[FR Doc. 94–554 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before December 31, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by January 26, 1994.

Carol D. Shull,

Chief of Registration, National Register

ALABAMA

Jefferson County

Pratt School, 306 Ave. U., Birmingham, 93001591

GEORGIA

Oconee County

Abe Jones House, 2411 Hog Mountain Rd., Watkinsville vicinity, 93001572

INDIANA

Marion County

Fort Benjamin Harrison Historic District, E. 56th St., Indianapolis, 93001581

IOWA

Johnson County

Schindhelm-Drews House, 410 N. Lucas St., Iowa City, 93001589

Scott County

Regina Coeli Monastery, 1401 Central Ave., Bettendorf, 93001590

KENTUCKY

Boyle County

St. Mildred's Court—West Lexington Avenue Historic District, 125–162 St. Mildred's Ct. and 797–852 W. Lexington Ave., Danville, 93001582

Clinton County

Huddleston, Judge Killis, House, Jct. of US 127 and KY 734, Albany vicinity, 93001583

Hardin County

Fort Duffield, E of US 31W off West Point Marina Rd., West Point vicinity, 93001584

Kenton County

The Hadsworth Electric Manufacturing Company, 20 W 11th St., Covington, 93001585

Russell County

Russell Lodge #284, Public Square, Jamestown, 93001586

Spencer County

Camp Branch Historic District (Spencer County, Kentucky MPS), SW side KY Rt. 55, .2 mi. NW of Co. Rd. 1392, Taylorsville vicinity, 93001594

Miller, Isaac, Farm (Spencer County, Kentucky MPS), N side KY Rt. 48, .9 mi. W of Fairfield, Fairfield vicinity, 93001596

Riverview School (Spencer County, Kentucky MPS), NE side KY Hwy, 31E, 1.2 mi. N of High Grove, High Grove vicinity, 93001595

MASSACHUSETTS

Berkshire County

Golden Hill Bridge, Golden Hill Rd, over the Housatonic R., Lee, 93001592

Middlesex County

Bowers, Jerathmell, House, 150 Wood St., Lowell, 93001588

Suffolk County

Eliot Congregational Church, 56 Dale St., corner 118–120 Walnut St., Boston, 93001587

House at 1 Bay Street, 1 Bay St., Boston, 93001573

PUERTO RICO

Dorado Municipality

S.S., Antonio Lopez, Shipwreck Site and Remains, Angelina Reef, N of Mameyal Beach, Dorado vicinity, 93001593

TENNESSEE

Sevier County

Avent, Mayna Treanor, Studio, Jake's Creek Trail, Elkmont vicinity, 93001575

UTAH

Cache County

Ewing, Samuel and Lana, House, 107 S. 100 East, Smithfield, 93001578

James, John P. and Sarah, House, 210 W. 9000 South. Paradise, 93001578

Washington County

Santa Clara Relief Society Hall, Approximately 3036 W. Santa Clara Dr., Santa Clara, 93001577

[FR Doc. 94–449 Filed 1–10–94; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–167 (Sub-No. 1133X)]

Consolidated Rail Corporation—Abandonment Exemption—in Somerset County, PA

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately a 1.5± mile line of railroad between milepost 0.0± and milepost 1.5±, in Windber, in Somerset County, PA.

Conrail has certified that: (1) no local or overhead traffic has moved over the line for at least 2 years; (2) no formal complaint filed by a user of rail service on the line (or by a state or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (3) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on February 10, 1994, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by January 21, 1994. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by January 31, 1994, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by January 14, 1994. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: January 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–610 Filed 1–10–94; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Docket Nos. AB–12 and AB–398; Sub-No. 149X and 1X]

Southern Pacific Transportation Company Abandonment Exemption in Fresno County, CA; San Joaquin Valley Railway Company Discontinuance of Service Exemption in Fresno County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the Southern Pacific Transportation Company's abandonment of and the San Joaquin Valley Railway Company's discontinuance of service over a 4.15-mile segment of the Clovis Branch rail line, from milepost 219.00 at or near the Glorietta rail station, to milepost 223.15, at or near the Cooper Avenue rail station in Fresno County, CA.[1]

DATES: The exemption will be effective on February 10, 1994, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[2] must be filed by January 21, 1994; petitions to stay must be filed by January 26, 1994; requests for public use condition must be filed by January 31, 1994; and petitions to reopen must be filed by February 7, 1994.

ADDRESSES: Send pleadings referring to Docket No. AB–12 (Sub-No. 149X) and Docket No. AB–398 (Sub-No. 1X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioners' respresentative: Louis E. Gitomer, 919 18th Street, NW., suite 210, Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5271.]

Decided: December 27, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–611 Filed 1–10–94; 8:45 am]

BILLING CODE 7035–01–P

[1] The Southern Pacific Transportation Company also will abandon a 4.71-mile spur track that connects to the Clovis Branch at milepost 220.9 at or near the Pinedale rail station. Under 49 U.S.C 10907(b)(1) the Commission has no jurisdiction over that action, because the segment is a spur track.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;

(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection.

(3) How often the form must be filled out or the information is collected;

(4) Who will be asked or required to respond, as well as a brief abstract;

(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;

(6) An estimate of the total public burden (in hours) associated with the collection; and,

(7) An indication as to whether section 3504(h) of Public Law 96–511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395–7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514–4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

New Collection

(1) Development of a Comprehensive Internal Offender Classification for State Prisons

(2) None. National Institute of Corrections

(3) One time collection

(4) State or local governments. The information collected in conjunction with this project will facilitate the development of a model internal objective offender classification process that can be used by prisons in state departments of corrections to make effective housing and program assignments.

(5) 54 annual respondents at 0.33 hours per response

(6) 18 annual burden hours

(7) Not applicable under section 3504(h)

Public comment on this item is encouraged.

Dated: January 5, 1994.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 94–572 Filed 1–10–94; 8:45 am]

BILLING CODE 4410–36–M

DEPARTMENT OF LABOR

Employment and Training Administration

Notice of Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–29,135; Trinity Industries, Inc., Plant #70, Chicago Heights, IL

TA–W–29,117; Midwest Body Corp., Paris, IL

TA–W–29,239; Aldo Oil and Gas, Oklahoma City, OK

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA–W–29,152; Unisys Corp., Customer Service Engineering, Houston, TX

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA–W–29,186; McDonnell Douglas Finance Corp., Long Beach, CA

The workers' firm does not produce an article as required for certification under Section 222 of the Trade Act of 1974.

TA-W-29,047; E.I. DuPont De Nemours & Co., DuPont Industries Imaging, Rochester, NY

U.S. imports of unexposed X-ray film and graphic arts film declined in the 12 month period September through August 1992–1993 compared with the same period in 1991–1992.

TA-W-29,148; Evan Picone, Inc., North Bergen, NJ

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,325; Ameripex International, Inc., Denver, CO

Predominant portion of services provided by the subject firm are international in nature. Any layoffs resulting from losses in revenues in the international market are not considered import impacted under the terms of the terms of the Trade Act of 1974.

TA-W-29,287; American Pipeline, American Processing L.P., Goldsmith, TX.

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat therefore, and the absolute decline in sales or production.

TA-W-29,176; Shell Pipe Line Corp., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,178; Pecten Chemical Co., Houston, TX

TA-W-29,179; Pecten International Co., Houston, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,196; Shell Chemical Co., Houston, TX

The investigation revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

TA-W-29,197; Shell Oil Products, Houston, TX

The investigations revealed that criterion (2) and criterion (3) have not been met. Sales or production did not decline during the relevant period for certification. Increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have not contributed importantly to the separations or threat thereof, and the absolute decline in sales or production.

Affirmative Determinations

TA-W-29,000; Pennsylvania Optical, Reading, PA

A certification was issued covering all workers separated on or after August 8, 1992.

TA-W-29,260; Reltoc Manufacturing Co., Inc., Plant E, Wynne, AR

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,155 & TA-W-29,155A; Reltoc Manufacturing Co., Plant C, Forest City, AR and Plant CC, Forrest City, AR

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,243 & 29,244; Cinderella Knitting Mills, Leesport, PA and Gastonia, NC

A certification was issued covering all workers separated on or after November 4, 1992.

TA-W-29,138; Pilgrim Too Sportswear, Inc., Summit Hill, PA

A certification was issued covering all workers separated on or after October 7, 1992.

TA-W-29,184; American Cyanamid Co., Bound Brook, NJ

A certification was issued covering all workers separated on or after October 21, 1992.

TA-W-29,309; Bausch & Lomb, Oakland, MD

A certification was issued covering all workers separated on or after November 24, 1992.

TA-W-29,112; Simpson Paper Co., Shasta Mill, Anderson, CA

A certification was issued covering all workers separated on or after September 27, 1992.

TA-W-29,123; Reltoc Manufacturing Co., Inc., Plant D, Florence, AL

TA-W-29,124; Reltoc Manufacturing Co., Inc., Plant A, Winfield, AL

TA-W-29,124A; Reltoc Manufacturing Co., Inc., Plant GB, Winfield, AL

TA-W-29,124B; Reltoc Manufacturing Co., Inc., Plant AA, Winfield, AL

TA-W-29,124C; Reltoc Manufacturing Co., Inc., Plant AAA, Winfield, AL

A certification was issued covering all workers separated on or after September 30, 1993.

TA-W-29,172; The Ohio Art Co., Bryan, OH

A certification was issued covering all workers separated on or after October 19, 1992.

TA-W-29,171; Borg-Warner Automotive, Muncie, IN

A certification was issued covering all workers engaged in the production of manual transmissions separated on or after October 14, 1992. Also, All workers engaged in the production of transfer cases and automatic locking hubs for four-wheel-drive vehicles are denied.

TA-W-29,200; Playtimer Industries Limited, Elizabethville, PA

A certification was issued covering all workers separated on or after October 26, 1992.

TA-W-29,153; Steingut Dress Co., Dupont, PA

A certification was issued covering all workers separated on or after October 14, 1992.

TA-W-29,189; Four Eleven Sportswear Corp., Madisonville, TN

A certification was issued covering all workers separated on or after October 21, 1992.

TA-W-29,173; Shell Oil Co., Administration—E&P/Set. Houston, TX & Operating at Various Locations in The following States:
A; AL, B; AK, C; CA, D; CT, E; Washington, DC, F; FL, G; GA, H; IL, I; IN, J; LA, K; MD, L; MI, M; MS, N; MO, O; NJ, P; NM, Q; NY, R; OH, S; OK, T; OR, U; PA, V; TX, W; UT, X; VA, Y; WA, Z; WV.

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,174; Shell Oil Co., Whell Western E & P, Inc., Houston, TX & Operating at Various Locations in the Following States:
A; AK, B; LA, C; MI, D; MS, E; MT, F; NM, G; TX

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,175; Shell Offshore, Inc., New Orleans, LA & Operating at Various Locations in the Following States:
A; AL, B; FL, C; LA, D; MS, E; TX

A certification was issued covering all workers separated on or after December 13, 1993.

TA-W-29,177; Shell Development Co., Houston, TX

A certification was issued covering all workers separated on or after December 13, 1993.

I hereby certify that the aforementioned determinations were issued during the month of December, 1993. Copies of these determinations are available for inspection in room C–4318, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: January 3, 1994.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 94–637 Filed 1–10–94; 8:45 am]

BILLING CODE 4510–30–M

Office of Workers' Compensation Programs

Report of Computer Matching Program Between Department of Labor and Department of Health and Human Services, Social Security Administration

Participating agencies: The participating agencies in this computer matching program are the Office of Workers' Compensation Programs, Department of Labor (DOL) and the Department of Health and Human Services, Social Security Administration (SSA). This Notice is published as required by the Computer Matching and Privacy Protection Act of 1988, as amended. A new written agreement for this long-standing computer matching program recently has been approved by both the Department of Labor and the Department of Health and Human Services Data Integrity Boards.

Purpose of match: DOL will conduct a computer matching program of DOL and SSA records of Black Lung benefit recipients in order to detect individuals who might improperly receive dual Black Lung benefits from SSA and DOL. When a verified match occurs, the case will be referred to the proper DOL office for development to assure the validity of the match and to make any required benefit adjustments. The SSA data will contain the date of death of SSA beneficiaries. This information will help to minimize those cases in which benefit payments are made to deceased beneficiaries, by identifying a DOL beneficiary who has died, but DOL has not been notified of the death. The SSA data also will assist DOL in properly referring inquiries and correspondence received at DOL regarding SSA-only Black Lung beneficiaries.

Authority for conducting the matching program: Title IV of the Federal Mine Safety and Health Act, 30 U.S.C. 901, et seq.

Categories of records and individuals covered: SSA, as the source agency, will provide DOL with its Black Lung Payment System, HHS/SSA/OSR 09–60–0045, (52 FR 9543, March 25, 1987), which will be matched with DOL's Office of Workers' Compensation Programs' Black Lung Benefit Payment records contained in DOL/ESA–30 (55 FR 7131, February 28, 1990). The individuals covered will be DOL and SSA Black Lung beneficiaries.

Inclusive dates of the matching program: The Matching program will begin either 30 days after the publication date of this Notice, or 30 days after a copy of the written agreement for this matching program is sent to the Chairman of the Committee on Government Affairs of the U.S. Senate, to the Chairman of the House Government Operations Committee, and to the Director of the Office of Management and Budget, whichever is later. The matching program will continue for 18 months from the beginning date and may be extended for an additional 12 months thereafter.

Address for receipt of public comment: Lawrence W. Rogers, Director, Office of Workers' Compensation Programs, 200 Constitution Avenue, NW., Washington, DC 20210. Telephone: (202) 219–7503.

Signed at Washington, DC, this 5th day of January 1994.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 94–640 Filed 1–10–94; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. New Warwick Mining Company

[Docket No. M–93–323–C]

New Warwick Mining Company, R.D. 1, Box 167A, Mount Morris, Pennsylvania 15349 has filed a petition to modify the application of 30 CFR 75.364(b)(1) (weekly examination) to its Warwick Mine (I.D. No. 36–02374) located in Greene County, Pennsylvania. Due to hazardous roof conditions, certain areas of the mine cannot be traveled safely. The petitioner proposes to establish evaluations points to monitor for methane and the quantity of air in the affected areas. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Costain Coal, Inc.

[Docket No. M–93–324–C]

Costain Coal, Inc., P.O. Box 289, Sturgis, Kentucky 42459–0289 has filed a petition to modify the application of 30 CFR 75.364(b) (weekly examination) to its Baker Mine (I.D. No. 15–14492) located in Webster County, Kentucky. The petitioner requests that the minimum volume of air reaching the inby monitoring point be 5,000 cubic feet per minute. In addition, the petitioner proposes to physically examine the affected areas weekly rather than daily because the mine wide atmospheric monitoring system, with a proposed additional sensor to measure air velocity, would provide the necessary monitoring. This petition modifies a Decision and Order on a previous petition, docket number M–92–94–C. The petitioner states that the proposed alternate method would not result in a diminution of safety to the miners.

3. Consolidation Coal Company

[Docket No. M–93–325–C]

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.343(b) (underground shops) to its Loveridge No. 22 Mine (I.D. No. 46–01433) located in Marion County, West Virginia. The petitioner proposes to ventilate the underground motor barn with intake air that is coursed through the affected air course directly into a return air course and that is not used to ventilate working places; and to establish check points to monitor for methane and the quantity of air in the affected area on a weekly basis. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

4. North Mountain Coal Company

[Docket No. M–93–326–C]

North Mountain Coal Company, R.D. #1, Box 32A, Dornsife, Pennsylvania 17823 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its West Side South Dip (I.D. No. 36–07681) located in Northumberland County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches

0.5 percent either during operation or a preshift examination.

5. McElroy Coal Company

[Docket No. M–93–327–C]

McElroy Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241–1421 has filed a petition to modify the application of 30 CFR 75.364(b)(2) (weekly examination) to its McElroy Mine (I.D. No. 46–01437) located in Marshall County, West Virginia. Due to deteriorating roof conditions, certain areas of the return air course cannot be traveled safely. The petitioner proposes to establish evaluation points at specific locations and to have a certified person monitor for methane and the quantity and quality of air at these evaluation points on a weekly basis and record the results in a book kept on the surface. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

6. Sonora Mining Corporation

[Docket No. M–93–13–M]

Sonora Mining Corporation, P.O. Box 1418, Jamestown, California 95327 has filed a petition to modify the application of 30 CFR 56.9300 (berms or guardrails) to its Jamestown Mine (I.D. No. 04–04695) located in Tuolumne County, California. The petitioner proposes to eliminate the use of berms during construction of the final lift on the tailings dam and place material on the dam in one-foot compact layers in order to comply with the California State Division of Dam Safety. The petitioner states that the height of the dam (200') has reached a point where the width on top will not allow enough room for scrapers to travel and dump their loads if berms are used. In addition, the petitioner states that to maintain a safe work environment, mobile equipment that would work on top would drive forward only.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before February 10, 1994. Copies of these petitions are available for inspection at that address.

Dated: January 5, 1994.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 94–638 Filed 1–10–94; 8:45 am]

BILLING CODE 4510–43–P

MERIT SYSTEMS PROTECTION BOARD

Privacy Act of 1974: Publication of Proposed Change to a System of Records

AGENCY: Merit Systems Protection Board.

ACTION: Notice: Proposed amendment to a record system.

SUMMARY: This notice proposes amendments to one system of record, MSPB/Internal–1, Pay, Leave and Travel.

EFFECTIVE DATE: The proposed action will be effective without further notice on December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Richard Dorr, Financial and Administrative Management Division, Office of Administration, (202) 653–7263.

SUPPLEMENTARY INFORMATION: Pub. L. 101–509, Title VI—General Provisions Section 629, 104 Stat. 1478 (1990) permits Federal agencies to participate in any program established by State or local government that encourages employees to use public transportation. The Merit Systems Protection Board is establishing a fare subsidy program for its employees. Employees who qualify will receive partial reimbursement for commuting expenses. Pursuant to the provisions of the Privacy Act, the following proposed amendments are necessary for information collection and maintenance of the fare subsidy program records. These changes to MSPB/Internal–1, Pay, Leave, and Travel records, are administrative in nature, and are not within the purview of the provisions of 5 U.S.C. 552 a(r). MSPB/Internal–1 was last published on April 27, 1990, 55 FR 17842. The specific changes to the notice being amended are set forth below.

Dated: January 5, 1994.

Robert E. Taylor,

Clerk of the Board.

1. Under MSPB/Internal–1, Categories of Records in the System: At the end of the paragraph, remove the last word "and" and add, "and fare subsidy program."

2. Under Authority for Maintenance of the System: At the end of the paragraph, remove the last word "and" and add, "Pub. L. 101–59."

[FR Doc. 94–548 Filed 1–10–94; 8:45 am]

BILLING CODE 7400–01–M

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: U.S. Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to the OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: "10 CFR Part 55: Operators' Licenses."

3. The form number if applicable: Not applicable.

4. How often the collection is required: As necessary in order for NRC to meet its responsibilities to determine the eligibility of applicants for operators' licenses and perform a review of applications and reports for simulation facilities submitted to the NRC.

5. Who will be required or asked to report: Holders of and applicants for facility (i.e., nuclear power, research, and test reactor) operating licenses and individual operators' licenses.

6. An estimate of the number of annual responses: 115.

7. An estimate of the total number of hours needed annually to complete the requirement or request: 3,536 (approximately 944 hours of reporting burden and approximately 2,592 hours of recordkeeping burden).

8. An indication of whether Section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: 10 CFR Part 55 of the NRC's regulations, "Operators' Licenses" specifies information and data to be provided by applicants and facility licensees so that the NRC may make determinations concerning the licensing of operators for nuclear power plants necessary to promote the health and safety of the public. The reporting and recordkeeping requirements contained in 10 CFR part 55 are mandatory for the licensees and applicants affected.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC 20555. Comments and questions should be directed to the OMB reviewer: Troy Hillier, Office of Information and Regulatory Affairs (3150–0018), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance officer is Brenda J. Shelton, (301) 492–8132.

Dated at Bethesda, Maryland, this 3rd day of January 1994.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 94–575 Filed 1–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–325 and 50–324]

Carolina Power & Light Company, Brunswick Steam Electric Plant, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an one-time exemption from the requirements of section III.A.5(b)(2) of appendix J to 10 CFR part 50 issued to the Carolina Power & Light Company (the licensee), for the Brunswick Steam Electric Plant (BSEP), Unit 1 and 2, located in Brunswick County, North Carolina.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a one-time partial exemption from the schedular requirement in section III.A.5(b)(2) of appendix J to 10 CFR part 50, which requires a Type A test to be performed at each plant shutdown for refueling until two consecutive Type A tests meet the acceptance criteria in section III.A.5(b). This exemption would allow the licensee to return the BSEP to a normal testing frequency. Presently, both BSEP units are in the accelerated testing condition of section III.A.5(b)(2) due to the as-found testing failures which were within L_a leakage limits but exceeded the 0.75 L_a limit. For Type A (containment integrate leak rate) tests conducted at peak pressure, the measured leakage rate, L_{am}, must be less than 75 percent of the maximum allowable leakage rate, L_a, measured at the calculated peak containment internal pressure, P_a. These terms are defined in section II of appendix J. In accordance with section III.A.6(b) of appendix J, if subsequently two consecutive Type A tests for a unit should fail to meet the acceptance criterion, the accelerated test frequency will be resumed. The next Unit 1 Type A test will be conducted during the Reload 9 outage, scheduled for March 1995, and the next Unit 2 Type A test will be conducted during the Reload 12 outage, scheduled for March 1997.

The proposed action is in accordance with 10 CFR 50.12, Specific Exemptions, and is based upon the information provided to the Commission in the licensee's request for exemption dated October 19, 1993.

The Need for the Proposed Action

The proposed exemption is needed to avoid outage extensions and the increased outage costs while the tests for the accelerated Type A containment leakage rate are being conducted. Granting of the exemption would return both BSEP units to a normal test frequency. The exemption would also minimize subjecting the drywell to additional structural stresses during the Type A tests.

Environmental Impacts of the Proposed Action

The Commission's staff has determined that (a) the granting of the proposed exemption would not significantly increase the probability or amount of expected containment leakage and (b) the integrity of the containment would be maintained. Consequently, the probability of accidents would not be increased, nor would the post-accident radiological releases be greater than previously determined. The proposed exemption would not otherwise affect radiological plant effluents. Therefore, the Commission's staff concludes that there are no significant radiological environmental impacts associated with the proposed exemption.

With regard to potential nonradiological impacts, the proposed exemption involves a change to surveillance testing schedular requirements. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed action, any alternatives would have either no or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce the environmental impacts attributed to this facility but could result in an increased frequency for Type A tests. This would result in the expenditure of resources without any compensating benefit.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Brunswick Steam Electric Plant, Units 1 and 2, dated January 1974.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for one-time partial exemption dated October 19, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW, Washington, DC 20555 and at the Local Public Document Room located at the University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403–3297.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

S. Singh Bajwa,

Acting Director, Project Directorate II–1, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94–577 Filed 1–10–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–285]

Omaha Public Power District; Fort Calhoun Station, Unit No. 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–40, issued to Omaha Public Power

District (OPPD/the licensee), for operation of Fort Calhoun Station, Unit No. 1, located in Washington County, Nebraska.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would consist of revisions to 10 CFR part 20 references to recognize the new section numbers, revise definitions to ensure consistency with 10 CFR part 20, and change administrative controls for reporting and recordkeeping to maintain compliance with the new part 20. The changes would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents and reflect the relocation of the prior 10 CFR 10.106 requirements to the new 10 CFR 20.1302. These changes are in response to the licensee's application for amendment dated May 21, 1993, as supplemented September 10, 1993, implementing the new 10 CFR part 20.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impacts of the Proposed Action

The proposed revision, in regards to the actual release rates as referenced in the Technical Specifications (TSs) as a dose rate to the maximally exposed member of the public, will not increase the types or amounts of effluents that may be released offsite, nor increase individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed amendment.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission concluded that there are no significant environmental impacts associated with the proposed amendment to the TSs, any alternative to the amendment will have either no significantly different environmental impact or will have greater environmental impact. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement (FES) related to the operation of the Fort Calhoun Station, Unit No. 1, dated August 1972.

Agencies and Persons Consulted

The Commission's staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

For further details with respect to this action, see the application for amendment dated May 21, 1993, as supplemented September 10, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room located at the W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

Paul W. O'Connor,

Acting Director, Project Directorate IV-1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-576 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket Nos. 50-280 and 50-281]

Virginia Electric and Power Company, Surry Power Station, Units 1 and 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. DPR-32 and DPR-37 issued to the Virginia Electric and Power Company (the licensee), for operation of the Surry Power Station, Units 1 and 2 located in Surry County, Virginia.

Environmental Assessment

Identification of Proposed Action

The proposed action would revise the limitations on concentrations of radioactive material released in liquid effluents and the limitations on the dose rate resulting from radioactive material released in gaseous effluents, and reflect the relocation of the prior 10 CFR 20.106 requirements to the new 10 CFR 20.1302. These changes are in response to the new 10 CFR Part 20. The review of an additional item, to revise the definition of "UNRESTRICTED AREA", was not completed and consequently is not included in the amendment. It will be addressed by separate correspondence.

The Need for the Proposed Action

The proposed action is needed in order to retain operational flexibility consistent with 10 CFR part 50, appendix I, concurrent with the implementation of the revised 10 CFR part 20.

Environmental Impact of the Proposed Action

The proposed revision does not change the actual release rates as referenced in the Technical Specifications (TS) as a dose rate to the maximally exposed number of the public. Therefore, there will be no increase in the types or amounts of effluents that may be released offsite, nor an increase in individual or cumulative occupational radiation exposures. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed changes.

With regard to potential nonradiological impacts, the proposed changes do not affect nonradiological effluents and have no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological impacts associated with the proposed changes.

Alternatives to the Proposed Action

Since the Commission's staff has concluded that there is no significant environmental impact associated with the proposed changes to the TS, any alternative to the amendments will have either no significantly different environmental impact or greater environmental impact. The principal alternative would be to deny the requested amendments. This would not reduce environmental impacts as a result of plant operation.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in connection with the Final Environmental Statement related to the operation of the Surry Power Station, Units 1 and 2, dated May and June 1972, respectively.

Agencies and Persons Consulted

The staff consulted with the State of Virginia regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed amendments.

Based on the above environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further information with respect to this action, see the application dated July 16, 1993, as supplemented November 15, 1993, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC, and at the Swem Library, College of William and Mary, Williamsburg, Virginia 23185.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II-2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 94-580 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

NUREG: Issuance, Availability

The Nuclear Regulatory Commission has issued NUREG-1435, Supplement 3, Status of Safety Issues at Licensed Power Plants, TMI Action Plan (TMI) Requirements, Unresolved Safety Issues (USIs), Generic Safety Issues (GSIs) and Other Multiplant Actions (MPAs). The document covers the status of implementation and verification of these issues at licensed operating plants.

This NUREG has been prepared to provide a comprehensive description of the implementation and verification status of all TMI, USI, GSI and other MPAs at licensed operating plants and to make this information available to other interested parties, including the public.

Copies of the Report have been placed in the NRC's Public Document Room, 2120 L Street, NW., Lower Level, Washington, DC 20555. Copies of the Report may be purchased from the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013-7082. GPO deposit account holders may charge their order by calling 202/275-2060. Copies are also available from the National Technical Information Service, Springfield, Virginia 22161.

Dated at Rockville, Maryland, this 20th day of December 1993.

For the Nuclear Regulatory Commission.

Frank P. Gillespie,

Director, Program Management, Policy Development and Analysis Staff, Office of Nuclear Reactor Regulation.

[FR Doc. 94-580 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-373]

Commonwealth Edison Company, Lasalle County Station, Unit 1; Consideration of Issuance of an Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing Correction

In notice document 93-31188 beginning on page 67873, in the issue of Wednesday, December 22, 1993, make the following correction:

On page 67874, in the first sentence of the sixth complete paragraph in the third column, the date "January 6, 1994" should be changed to read "January 21, 1994".

Dated at Rockville, Maryland, this 4th day of January 1994.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III-2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 94-578 Filed 1-10-94; 8:45 am]

BILLING CODE 7590-01-M

PHYSICIAN PAYMENT REVIEW COMMISSION

Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Thursday, January 20 and Friday, January 21, 1994 at the Embassy Suites Downtown Hotel, 1250 22nd Street NW., Washington, DC, in the Consulate Room. The meetings are tentatively scheduled to begin at 9 a.m. each day. Among the topics to be discussed are global budgeting and premium limits, risk adjustment, community rating, establishment of fee schedules under health system reform, graduate medical education, coverage decisions under health system reform, fee levels and access under Medicaid, access to health care for the underserved nonphysician practitioners, and the effects of health system reform on Medicare beneficiaries.

ADDRESSES: Please note that the Commission has a new address: 2120 L Street, NW/suite 200/Washington, DC 20037. The telephone number is 202/653-7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653-7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Friday, January 14, 1994 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionst at 202/653-7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 94-560 Filed 1-10-94; 8:45 am]

BILLING CODE 6820-SE-M

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Camco International, Inc.
Common Stock, $.01 Par Value (File No. 7-11774)
Centerpoint Properties Corp.
Common Stock, $.001 Par Value (File No. 7-11775)
G&L Realty Corp.
Common Stock, $.01 Par Value (File No. 7-11776)
Matlack Systems, Inc.
Common Stock, $1.00 Par Value (File No. 7-11777)
Sofamor Danek Group, Inc.
Common Stock, No Par Value (File No. 7-11778)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7-11779)
Grupo Televisa S.A.
Global Dep. Shs. (rep. 2 Ord. Participation Certificate) (File No. 7-11780)
UTI Energy Corp.

Common Stock, $.001 Par Value (File No. 7–11781)
Alexander Haagen Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11782)
AM International
Common Stock, $.01 Par Value (File No. 7–11783)
Columbus Realty Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11784)
GC Company
Warrants, No Par Value (File No. 7–11785)
Mascotech, Inc.
Common Stock, $1.00 Par Value (File No. 7–11786)
Oil Dri Corporation of America
Common Stock, $.10 Par Value (File No. 7–11787)
Compania Boliviana de Energia Electrica S.A./Bolivian Power Company Limited
Common Stock, No Par Value (File No. 7–11788)
First American Financial Corporation
Common Stock, $1.00 Par Value (File No. 7–11789)
M.I. Schottenstein Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11790)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–564 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Banco Frances Del Rio de La Plata, S.A.
Depositary Shares (rep. 3 Ord. shs Pesos 1.00 Par Value (File No. 7–11759)
Eastman Chemical Co.
Common Stock, $.01 Par Value (file No. 7–11760)
First American Financial Corp.
Common Stock, $1.00 Par Value (file No. 7–11761)
G & L Realty Corp.
Common Stock, $.01 Par Value (File No. 7–11762)
Grupo Financero Serfin, S.A. de C.V.
American Depositary Shares (rep. 4 Ser. L shs., without Par No) (File No. 7–11763)
Grupo Televisa S.A.
Global Depositary Shares (each representing 2 Ord. partic. Ctfs., each of which represents 1 Ser. A sh. 1 Ser. L sh. & 1 Div. Prem. sh.) (File No. 7–11764)
Irvine Apartment Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11765)
Korea Equity Fund
Common Stock, $.10 Par Value (File No. 7–11766)
National Westminster Bank Plc
Exch. Cap. Sec., Ser. A (File No. 7–11767)
PaineWebber Premier High Income Trust, Inc.
Common Stock, $.001 Par Value (File No. 7–11768)
Property Trust of America
Cum. Cv. Cl. A Pfd. Shares of Beneficial Interest, $1.00 Par Value (File No. 7–11769)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11770)
Valley National Bancorp
Common Stock, No Par Value (File No. 7–11771)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–565 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Pacific Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Brock Exploration Corporation
Common Stock, $.10 Par Value (File No. 7–11743)
Checkpoint Systems, Inc.
Common Stock, $.10 Par Value (File No. 7–11744)
Cheyenne Software, Inc.
Common Stock, $.01 Par Value (File No. 7–11745)
Golden Star Resources Ltd.
Common Stock, No Par Value (File No. 7–11746)
Levitz Furniture, Inc.
Common Stock, $.01 Par Value (File No. 7–11747)
Motor Coach Industries Int'l, Inc.
Common Stock, $.01 Par Value (File No. 7–11748)
NVR, L.P.
Warrants exp. September 30, 1996 (File No. 7–11749)
United States Cellular Corp.
Rights exp. November 15, 1993 (File No. 7–11750)
Alumax, Inc.
Common Stock, $.01 Par Value (File No. 7–11751)
Asia Pacific Fund, Inc.
Rights Expiring December 10, 1993 (File No. 7–11752)
Aviall, Inc.
Common Stock, $.01 Par Value (File No. 7–11753)
GC Companies, Inc.
Common Stock, $.01 Par Value (File No. 7–11754)
Hillhaven Corp.
Common Stock, $.75 Par Value (File No. 7–11755)
Singapore Fund, Inc.
Rights Expiring November 11, 1993 (File No. 7–11756)
Korea Equity Fund, Inc.
Common Stock, $.10 Par Value (File No. 7–11757)
Talbot's, Inc.
Common Stock, $.01 Par Value (File No. 7–11758)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–566 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Compania Boliviana de Energia Electric S.A./Bolivian Power Company Ltd.
Common Stock, No Par Value (File No. 7–11791)
M.I. Schottenstein Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11792)
First American Financial Corp.
Common Stock, $1.00 Par Value (File No. 7–11793)
Fletcher Challenge Limited
American Depositary Shares Forest Division (File No. 7–11794)
Fletcher Challenge Limited
American Depositary Shares Ordinary Shares (File No. 7–11795)
NFC Plc
American Depositary Shares (File No. 7–11796)
Georgia Power Company
Adjustable Rate Class A Pfd Stock, No Par Value (File No. 7–11797)
Buffton Corporation
Common Stock, $0.05 Par Value (File No. 7–11798)
Editek, Inc.
Common Stock, $0.01 Par Value (File No. 7–11799)
Benson Eyecare Corp.
Common Stock, $0.01 Par Value (File No. 7–11800)
Datametrics Corporation
Common Stock, $0.01 Par Value (File No. 7–11801)
Alexander Haagen Properties
Common Stock, $.01 Par Value (File No. 7–11802)
Oil Dri Corporation of America
Common Stock, $.01 Par Value (File No. 7–11803)
Simon Property Group, Inc.
Common Stock, $0.001 Par Value (File No. 7–11804)
New York State Electric & Gas Corp.
Adj. Rate Special Pfd Stock Series B Cum. $25 Par Value (File No. 7–11805)
Washington Homes, Inc.
Common Stock, $.01 Par Value (File No. 7–11806)
Sun Communities, Inc.
Common Stock, $.01 Par Value (File No. 7–11807)
Columbus Realty Trust
Beneficial Interest, $.01 Par Value (File No. 7–11808)
Grupo Mexicano de Desarrollo S.A.
American Depositary Shares each representing one Series B Share No Par Value (File No. 7–11809)
Grupo Mexicano de Desarrollo S.A.
American Depositary Shares each representing one Series L Share No Par Value (File No. 7–11810)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–567 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33425; File No. SR–CBOE–93–58]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Maintenance by Members of Certain Written Policies and Procedures

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend Rule 4.18 to provide that a member who is a lessor of a membership and who performs no other function in respect of the membership is not subject to the requirements of Rule 4.18 concerning the establishment, maintenance, and enforcement of written policies and procedures respecting misuse of non-public information. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of the basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to amend Rule 4.18 to provide that a member who is a lessor of a membership and who performs no other function in respect of the membership is not subject to the requirements of Rule 4.18 concerning the establishment,

maintenance, and enforcement of written policies and procedures respecting misuse of non-public information.

In its current form, Rule 4.18 requires all members to maintain and enforce written policies and procedures concerning non-public information. Lessor members who have no other activities, however, do not conduct any securities business in respect of their membership, and, according to the Exchange, are not required to register as broker-dealers under section 15 of the Securities Exchange Act of 1934. Under these circumstances, the Exchange believes there is no reason to subject these members to the written policy and procedure requirements of Rule 4.18, which by their terms are meaningful only to an ongoing securities business. Accordingly, Rule 4.18 is proposed to be amended to clarify that members who perform no function in respect of their membership except as lessors do not have to establish, maintain or enforce written policies and procedures precluding misuse of non-public information.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect the public interest by eliminating unnecessary costs and burdens without impairing CBOE's capacity to meet the requirements of the Act.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the Federal Register or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to that which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-58 and should be submitted by February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-561 Filed 1-10-94; 8:45 am]

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[Release No. 34-33427; File No. SR-CBOE-93-53]

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Designated Reporting Authority for Interest Rate Options

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to designate in its rules the entities that report to the Exchange the current values and the exercise settlement values of the interest rate measures underlying the interest rate options listed for trading on the Exchange. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposal is to specify the entities that the CBOE has designated to report the current values and the closing exercise settlement values of interest rate measures underlying CBOE's interest rate options. The CBOE believes that the proposed amendment also conforms the procedures currently employed for determining current values and closing exercise settlement values of its short-term interest rate options ("IRX")[1] with those procedures recently approved by the Commission for the listing and trading on the Exchange of options based on the yields of specified U.S. Treasury notes and bonds ("Long-Term Measures").[2]

As amended, new Interpretation .01 to Rule 23.1 lists Telerate Inc. as the designated reporting authority of current values used for intra-day options pricing purposes and the Federal Reserve Bank of New York ("FRBNY") as the designated reporting authority of spot yields used for calculating the exercise settlement values of interest rate options.[3] The Commission recently approved those designations in connection with the listing and trading of Long-Term Measures.[4] The proposal makes those designations applicable to all interest rate options traded on the Exchange.

In addition, the proposed amendment to Rule 23.1 specifies that the Exchange will use a backup polling procedure to establish applicable underlying values for exercise settlement purposes on those occasions on the last trading day prior to expiration of the interest rate option contracts that the FRBNY does not generate the required spot yields.[5] This polling procedure will be uniform for all interest rate options traded on the Exchange.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade, to enhance cooperation and coordination with persons engaged in facilitating transactions in securities, and to protect investors.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5).[6] Specifically, the Commission finds, as it did in approving these same pricing procedures for the Long-Term Measures, that the CBOE proposal has been adequately designed to guard against unreliable or manipulated quotas.[7] The CBOE has been obtaining quotes from Telerate for intra-day pricing of its interest rate options without generating any concern with respect to unreliable or manipulated quotes. In this regard, the proposal merely codifies the Exchange's intra-day pricing procedures currently in effect and which have previously been approved by the SEC for use with all of the Exchange's interest rate options.[8]

With respect to the CBOE's reliance on FRBNY spot yield quotes and the backup polling procedure when those quotes are unavailable, the Commission finds as it did in approving the Long-Term Measures, that these procedures are more reliable than the polling procedures currently employed for purposes of determining closing settlement values for the IRX and the LTX option contracts.[9] Therefore, the Commission believes it is appropriate to codify these procedures, making them applicable to all of the Exchange's interest rate options.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the Exchange to begin implementing these procedures with respect to the IRX contracts as soon as possible in order to minimize any investor confusion that could arise from having varying procedures for determining closing settlement values for different interest rate option contracts. Additionally, the Commission notes that no comments were received prior to approval when these procedures were published for comment in the **Federal Register** with respect to the Long-Term Measures. Accordingly, the Commission believes it is consistent with sections 6(b)(5) and 19(b)(2) of the Act to approve the proposed rule change on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commisasion's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR-CBOE-93-53 and should be submitted by February 1, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act[10] that the proposed rule change (SR-CBOE-93-53) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-623 Filed 1-10-94; 8:45 am]

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[1] 17 CFR 200.30-3(a)(12) (1993).

[1] The Exchange also currently lists and trades a long-term interest rate option which is based on composite yields of the most recently auctioned seven- and ten-year treasury notes and 30-year Treasury bonds ("LTX"). The Exchange has represented, however, that since the Treasury plans to cease issuing seven-year notes, the Exchange will not issue any new series of LTX contracts. *See* Securities Exchange Act Release No. 33106 (October 26, 1993), 58 FR 58358 (November 1, 1993) ("Exchange Act Release No. 33106").

[2] *Id.*

[3] The spot yield is determined each business day by reference to the price and interest rate of the underlying Treasury security. Customarily, each time the Treasury issues a new note or bond, the new note or bond will become the reference instrument within its issue type. Substitution of the new issue as the reference instrument takes effect on the day following the Treasury's new issue auction. Occasionally, the most recently auctioned issue will not be the longest maturity, and in that circumstance, no substitution will occur.

[4] See Exchange Act Release No. 33106, *supra* note 1.

[5] Under this polling procedure, the CBOE's computer will randomly draw the names of ten primary government bond dealers from a list of 16 dealers. Each of the ten dealers will be asked to provide a bid and ask quotation for each relevant Treasury security. A series of checks will be conducted on each set of quotes to ensure the integrity of the process. If a quote is rejected, another dealer will be randomly selected from CBOE's list of government bond dealers to provide the necessary quotations. Once ten acceptable quotes have been obtained, the midpoint of each bid-ask quotation is determined and the midpoints are then averaged to compute the closing yield for the issue. *Id.*

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] See Exchange Act Release No. 33106, *supra* note 1.

[8] See Exchange Act Release No. 33106, *supra* note 1; Securities Exchange Act Release No. 26938 (June 15, 1989), 54 FR 26285 (order approving the listing and trading of IRX and LTX option contracts).

[9] See Exchange Act Release No. 33106, *supra* note 1.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33428; File No. SR-CBOE-93-42]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to the Listing of Regular and Long-Term Options on the Nasdaq 100 Index

January 5, 1994.

I. Introduction

On September 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the Nasdaq 100 Index ("Nasdaq Index" or "Index").[3] The proposed rule change was published for comment in Securities Exchange Act Release No. 33166 (November 8, 1993), 58 FR 60710 (November 17, 1993). No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

II. Description of Proposal

A. General

The CBOE proposes to trade options on the Nasdaq Index, a stock index calculated and maintained by the Nasdaq Stock Market, Inc. ("Nasdaq"), a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"). The CBOE also proposes to list long-term options ("LEAPS") on the Index. Index LEAPS will trade independent of and in addition to regular Index options traded on the Exchange.

B. Composition of the Index

The Index contains one hundred of the largest non-financial securities issued by U.S. issuers and traded on the Nasdaq National Market. Nasdaq will use a capitalization-weighted method to calculate the Index.[4] As of January 3, 1994 the Index was at 398.28.

As of October 25, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $26.8 billion to a low of $437 million, with the mean and median being $2.54 billion and $1.3 billion, respectively. The market capitalization of all the stocks in the Index was $253.8 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 536 million shares to a low of 15.1 million shares. The average price per share of the stocks in the Index, for a six-month period between April 1, 1993 and September 1, 1993, ranged from a high of $103.29 to a low of $6.15. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 2.853 million shares per day to a low of 10,579 shares per day, with the mean and median being 631,631 and 407,639 shares, respectively. Lastly, no one stock comprised more than 10.54% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 33.27% of the Index's value. The percentage weighting of the lowest weighted stock was 0.17% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 1.12% of the Index's value.

C. Maintenance

The Index will be maintained by Nasdaq. Nasdaq has notified the CBOE that it recently updated the list of securities comprising the Index and will continue to make revisions to the Index on an annual basis. Nasdaq also, in its discretion, will make special adjustments to the securities comprising the Index to reflect such events as stock splits or reverse splits, spinoffs, stock dividends, reorganizations, recapitalizations, and similar events, upon their occurrence.

D. Calculation of the Index

The Index will be calculated using a capitalization-weighting methodology. The representation of each security in the Index will be proportional to the security's last sale price times the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The level of the Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 125$$

$$\text{Adjusted Base Period Market} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numerical value of the Index was established at 250 prior to the opening of the market on February 1, 1985. At the close of the market on December 31, 1993, the Index was at 796.56. Then, effective January 3, 1994, the Index value was halved, creating an Index level of 398.28 at the market opening on January 3, 1994. The Index is calculated and disseminated every fifteen seconds to market information vendors. Nasdaq will also calculate the exercise settlement value for each expiring series of Nasdaq Index options and make this value available to the CBOE for use by the Options Clearing Corporation in effecting settlement of exercises and assignments of the options.

The Index value, for purposes of setting outstanding Index options contracts upon expiration, will be calculated based upon the regular way opening sale prices for each of the Index's component stocks on the last trading day prior to expiration.[5] Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the last reported sale price of such security will be used in any case where that security does not trade on that day.[6]

E. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options.[7] Standard options trading hours (9:30 a.m. to 4:15 p.m. New York time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration.[8] The Exchange intends to list up to three near-term calendar months and three additional calendar months at three month intervals.[9] As described in more detail below, the Exchange also intends to list Index LEAPS that will expire twelve to thirty-six months from the date of their issuance.

Index options (including full-value and reduced-value Index LEAPS) will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).[10]

F. Listing of Long-Term Options on the Full-Value or Reduced-Value Nasdaq Index

The Exchange may list LEAPS that expire 12 to 36 months from date of issuance on the full-value Nasdaq Index or a reduced-value Nasdaq Index that will be computed on one-tenth the value of the full-value Index.[11] The current and closing Index value for reduced-value Nasdaq LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Index value of 185.46 would be 18.55 for the Index LEAPS and 185.43 would become 18.54. The reduced-value LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

The same Exchange rules which are applicable to the trading of full-value LEAPS will be applicable to the trading of reduced-value Index LEAPS. For example, both full-value and reduced-value Index LEAPS may expire from 12 to 36 months from the date of issuance, and there may be up to six expiration months beyond one year to expiration. Moreover, either full-value or reduced-value Index LEAPS may be issued at six month intervals and new strike prices will either be near or bracketing the current Index value. Strike price interval, bid/ask differential, and continuity rules will not apply to the trading of the full-value or reduced-value Index LEAPS until their time to expiration is less than 12 months. The strike price interval for reduced-value Index LEAPS will be no less than $2.50, instead of $5.00 for full-value Index LEAPS. Lastly, additional LEAPS series may be added when the value of the underlying Index increases or decreases by ten to fifteen percent.

G. Position and Exercise Limits, Margin Requirements, and Trading Halts

Position limits for the Index options Index LEAPS will be set at no more than 25,000 contracts on the same side of the market, provided that no more than 15,000 of such contracts are in series in the nearest expiration month.[12] Exercise limits will be set at the same level as position limits.[13] CBOE hedge exemption provisions will apply to Index options and Index LEAPS.[14] Also, for purposes of determining whether a given position in reduced-value Index options complies with applicable position and exercise limits, positions in reduced-value Index options will be aggregated with positions in the full-value Index options. For these purposes, ten reduced-value contracts will equal one full-value contract for purposes of aggregating these positions.

Exchange rules applicable to the Nasdaq Index options will be identical to the rules applicable to other broad-based index options for purposes of trading rotations, halts, and suspensions,[15] and margin treatment.[16]

H. Surveillance

The Exchange will use the same surveillance procedures currently utilized for each of the Exchange's other index options to monitor trading in Nasdaq Index options and Index LEAPS. These procedures include complete access to trading activity in the underlying securities.

I. Disclaimer

The CBOE has proposed placing in its Rules a disclaimer of liability made by Nasdaq and its affiliates that Nasdaq and such affiliates do not make any warranties as to the results obtained from the Nasdaq index, any opening, intra-day or closing value therefore, any related data, or any errors or delays in calculating or disseminating the Index, in connection with the trading of option contracts based on the Index. The disclaimer is similar to other disclaimers made on behalf of Standard & Poor's Frank Russell Company, and LIFFE Administration & Management, that are currently in the CBOE's Rules.[17]

III. Commission Findings and Conclusions

The Commission has reviewed the proposal to list and trade Nasdaq Index options and Index LEAPS. As discussed below, the Commission believes that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Index is broad-based, the proposed options are designed to reduce the potential for manipulation, and the proposal to list and trade Nasdaq Index options and Index LEAPS is consistent with the CBOE's obligation to promote investor protection.[18] The Commission finds that the trading of options on the Index, including full-value and reduced-value Index LEAPS, will permit investors to participate in the price movements of the 100 securities on which the Index is based. Further, trading of options on the Index will allow investors holding positions in some or all of the securities underlying the Index to hedge the risks associated with their portfolios. Accordingly, the Commission, believes the Nasdaq Index options will provide investors with an important trading and hedging mechanism that should reflect accurately the overall movement of 100 of the largest non-financial stocks listed on the Nasdaq National Market. By broadening the hedging and investment opportunities of investors, the Commission believes that the trading of

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] The CBOE amended the rule change proposal on October 27, 1993 to include an updated list of the securities comprising the Nasdaq 100 Index. This list of securities became the basis of calculations of the value of the Nasdaq 100 Index as of October 26, 1993. See letter from Robert B. Wilcox, Jr., Schiff Hardin & Waite to Michael A. Walinskas, Staff Attorney, Division of Market Regulation, SEC, dated October 27, 1993 ("Amendment No. 1").

[4] See *infra* Section D entitled "Calculation of the Index" for a description of this calculation method.

[5] See CBEO Rule 24.9(a)(4).

[6] *Id.*

[7] A European-style option can be exercised only during a specified period before the option expires.

[8] For a description of the strike price intervals for full-value and reduced-value Index LEAPS, *See*, Section F, *infra*.

[9] See CBOE Rule 24.9(a)(2).

[10] See notes 5 and 6, *supra*.

[11] See CBOE Rule 24.9(b).

[12] See CBOE 24.4.

[13] See CBOE Rule 24.5.

[14] See CBOE Rule 24.4(a) and Interpretation .01 to Rule 24.4.

[15] See CBOE Rule 24.7.

[16] See CBOE Rule 24.11.

[17] See CBOE Rule 24.14.

[18] The CBOE is a member of the Intermarket Surveillance Group ("ISG"), which was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The Commission understands that the ISG Agreement, as amended, covers investigations and inquiries regarding trading activity in Nasdaq Index options and component securities.

Nasdaq Index options will serve to protect investors, promote the public interest, and contribute to the maintenance of fair and orderly markets.[19]

The trading of options on the Nasdaq Index, including the trading of full-value and reduced-value Index LEAPS, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE has addressed these concerns adequately.

A. Index Design and Structure

The Commission finds that the Nasdaq Index and reduced-value Nasdaq Index are broad-based indices, and thus it is appropriate to permit Exchange rules applicable to the trading of broad-based index options to apply to the Index options, including Index LEAPS. Specifically, the Commission believes the Index is broad-based because it reflects a substantial segment of the U.S. equities market. In addition, the basic character of the reduced-value Nasdaq Index, which is comprised of the same component securities as the Nasdaq Index and calculated by dividing the Nasdaq Index by ten, is essentially identical to the Nasdaq Index.

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the Index represents and consists of the common stock values of 100 actively traded U.S. companies. Second, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 10.54% of the Index's total value and the percentage weighting of the five largest issues in the Index accounts for 33.27% of the Index's value. Third, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 631,631 and 407,639 shares, respectively. Fourth, the market capitalizations of the stocks in the Index are very large, ranging from a high of $26.8 billion to a low of $437 million as of October 25, 1993, with the mean and median being $2.54 billion and $1.3 billion, respectively. Fifth, the Index is comprised of stocks representing a diverse group of industries, the most heavily represented by Index weight including computer software products and service, semiconductors, telephone equipment and service, broadcasting, and retail. Sixth, 97 out of the 100 component stocks in the Index, comprising 98.82% of the weighting of the Index, currently are eligible for options trading.[20] Finally, the Commission believes that, as discussed below, existing mechanisms to monitor trading activity in those securities will help deter as well as detect illegal trading activity involving the index option.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Nasdaq Index options (including full-value and reduced-value LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Nasdaq Index options and Nasdaq Index LEAPS.

C. Surveillance

The Commission generally believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[21] In this regard, the NASD, which currently is the primary market for all of the Index's component securities, is a member of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[22]

D. Market Impact

The Commission believes that the listing and trading on the CBOE of Nasdaq Index options, including full-value and reduced-value Index LEAPS, will not adversely impact the underlying securities markets.[23] First, as described above, the Index is broad-based and comprised of 100 stocks with no one stock dominating the Index. Second, as noted above, the stocks contained in the Index have relatively large capitalizations and are relatively actively traded. Third, the 25,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States. Fifth, existing CBOE stock index options rules and surveillance procedures will apply to Nasdaq Index options.

Lastly, the Commission believes that settling expiring Nasdaq Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing expiring Index options for exercise settlement purposes based on opening prices rather than closing prices may help reduce adverse effects on the securities underlying options on the Index.[24]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[25] that the proposed rule change (SR–CBOE–93–42) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[26]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–622 Filed 1–10–93; 8:45 am]

BILLING CODE 8010–01–M

[19] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option or warrant proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Nasdaq Index will provide investors with a hedging vehicle that should reflect the overall movement of 100 of the largest non-financial stocks listed on the Nasdaq National Market. The Commission also believes that these options will provide investors with a means by which to make investment decisions in the utilities equity market, allowing them to establish positions or increase existing positions in utilities stocks in a cost effective manner.

[20] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. *See* CBOE Rule 5.3, Interpretation .01.

[21] See Securities Exchange Act Release No. 31243, 57 FR 45849 (October 5, 1992).

[22] See note 18, *supra*.

[23] In addition, the CBOE has represented that the CBOE and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. See letter from Charles J. Henry, President and Chief Operating Officer, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated January 4, 1993 and memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated January 4, 1993.

[24] Securities Exchange Act Release No. 30944, 57 FR 33376 (July 28, 1992).

[25] 15 U.S.C. 78s(b)(2) (1988).

[26] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33415; File No. SR–GSCC–93–06]

Self-Regulatory Organizations; Government Securities Clearing Corporation; Order Approving Proposed Rule Change Relating to the Disciplining of Members

January 4, 1994.

I. Introduction

On June 25, 1993, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the disciplining of members. Notice of the proposed rule change was published in the **Federal Register** on July 26, 1993.[2] No comments were received. This order approves the proposed rule change.

II. Description

Currently, GSCC's general disciplinary rule[3] authorizes GSCC to discipline members for violations of GSCC's rules and other actions that constitute an abuse or misuse of GSCC's processes and services or otherwise reflect "conduct detrimental to GSCC's operations." The proposed rule change amends the general disciplinary rule to provide language specific to GSCC's current operations and to allow it to fulfill better its responsibilities as a self-regulatory organization.

Under GSCC's proposal, the Membership and Standards Committee (of GSCC's Board of Directors ("Board")) ("Committee")[4] classifies rules violations or incidents of detrimental conduct as either major or minor offenses. Major offenses generally involve either misconduct involving the funds or securities obligations of a member or deliberate acts of fraud or misconduct by a member. Repeated offenses of a minor nature by a member, however, may cause the member to be deemed to have committed a major offense. A member committing a major offense is subject to disciplinary action, including termination of its membership in either or both the comparison and netting systems, having GSCC cease to act for it, the imposition of a higher minimum Clearing Fund requirement, and/or a fine of up to $5,000.[5] Disciplinary actions involving ceasing to act for or termination of membership in the comparison or netting system require Board approval.

After the Committee has determined that a member committed a major offense, a letter automatically is sent to senior management of the offending member requiring that the member explain to GSCC in writing why the offense occurred and the actions taken and/or to be taken to ensure that it will not reoccur. If appropriate under the circumstances, representatives of senior management of the member may be required to appear in person before the Committee to provide such explanation.

A member committing a minor offense is subject to a fine or other disciplinary action, not to include GSCC ceasing to act for it or termination of membership. While a minor offense may not result in the imposition of a fine or other disciplinary action, for each such offense, GSCC automatically will send a letter to the management of the member that commits the offense informing it of its commission of the offense.

If the Committee (with the Board's approval in certain cases) determines that any type of disciplinary action should be taken against a member, GSCC is obligated to notify the member of such determination. In this notification, GSCC will state the reasons for the disciplinary action and will inform the member of its right to a hearing to contest the action. After receiving this notice, a member has ten business days to file a written request for a hearing.

Hearings on disciplinary actions that, under GSCC's rules, require approval by the Board,[6] are before a panel of five directors selected by the Board. Hearings on all other disciplinary actions are before a panel of three Committee members selected by the Committee. Both panels must be composed of a majority of directors who are not also GSCC officers.

A member is able to appear before the panel in person (with its counsel, if it so chooses) to contest the planned disciplinary action. Alternatively, in lieu of a personal appearance, the member can submit to the panel documentary evidence in support of its claim that the planned disciplinary action is inappropriate. GSCC will inform the member of the panel's determination, as well as the member's right to appeal further to the full Board. If the panel's decision is adverse to the member, the sanction is effective immediately.

The Board will be presented with the record of any panel hearing at its next regularly scheduled meeting. Its determination ordinarily will be made based upon a review of that record. A member does not have the right to appear in person before the Board to contest the determination of the panel; however, the Board may permit such a personal appearance in its discretion. Any appeal of the Board decision will have to be made to the Commission.

III. Discussion

Section 17A(b)(3)(A) of the Act[7] requires a clearing agency to be organized so as to enable it to enforce compliance by its participants with its rules. Section 17A(b)(3)(G) and section 17A(b)(3)(H) of the Act[8] require the rules of a clearing agency to provide that is participants shall be appropriately disciplined for violations of any provision of those rules and to provide fair procedures, consistent with section 17A(b)(5) of the Act, for disciplining participants.[9] Section 17A(b)(5) of the Act[10] outlines the procedures to be followed by a clearing agency in

[1] 15 U.S.C. 78s(b) (1990).

[2] Securities Exchange Act Release No. 32644 (July 15, 1993), 58 FR 39842.

[3] GSCC Rule 48, Section 1.

[4] The Committee, which meets monthly (as necessary), acts as a disciplinary committee to address violations of the disciplinary rule. Management is responsible for presenting to the Committee rules violations and actions that, in Management's opinion, constitute detrimental conduct for the Committee's determination as to what, if any, disciplinary action is appropriate.

[5] The maximum fine amount of $5,000 is defined so as to exclude any amounts sought by GSCC to directly recompense it for costs and expenses incurred as the result of a member's misconduct. All fines must be paid within 90 days from notice of imposition of the fine.

[6] The imposition of any disciplinary action involving ceasing to act or termination of membership in either or both the comparison system or the netting system requires Board approval.

[7] 15 U.S.C. 78q–1(b)(3)(A) (1988).

[8] U.S.C. 78Q–1(b)(3)(G) & (H) (1988).

[9] See Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[10] 15 U.S.C. 78q–1(b)(5) (1988).

disciplining participants. A clearing agency must bring specific charges, notify the participant of the charges, provide the participant with an opportunity to defend against such charges, and keep a record. GSCC's proposal is consistent with the Act, and section 17A in particular, because it provides fair, efficient procedures for disciplining participants and enforcing its decisions as required by that section.

GSCC has specific rules governing the circumstances pursuant to which it may take certain disciplinary actions against a member, such as increasing a member's margin requirements, ceasing to act for a member, terminating a member's membership in either or both the comparison and netting systems, and/or liquidating a member's positions. Pursuant to recent changes in membership standards, GSCC also has rules governing the specific consequences of a failure of a member to maintain an applicable membership standard.[11]

By providing a more formal process, the proposed rule change allows GSCC to more effectively discipline its members. Prior to imposing a sanction, members will be informed of the Committee's determination that a major or minor offense has occurred. This procedure may prevent future violations by providing members with early notice of a violation. In the case of a major offense, members must provide GSCC with a written explanation. This explanation may give GSCC guidance in determining the appropriate sanction to be imposed. The members are, in turn, permitted a greater opportunity to participate in the internal disciplinary process. By allowing the members to provide input, GSCC may be able to resolve disputes prior to an appeal to the Commission.

The Commission believes that GSCC's proposal will enable it to discipline its members for rule violations, consistent with sections 17A(b)(3)(A) and 17A(b)(3)(G) of the Act. The Commission also believes that GSCC's proposed procedures are consistent with the fair disciplinary procedures requirement of section 17A(b)(3)(H), and with the mandatory procedures enumerated in section 17A(b)(5) of the Act. The proposal permits GSCC's Board to address rule violations fairly and efficiently. Members will be provided with notice of any disciplinary action to be taken by the Committee or the Board, including the reasons for the action. Members will be given two opportunities to have an internal hearing on the proposed sanction—before a panel of the Committee or Board, and before the full Board.

[11] See Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993 (order approving establishment of new categories of membership in the GSCC netting system).

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, and particularly with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–06) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–562 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33426; File No. SR–PSE–93–34]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Modifications of the Stock Price Maintenance Requirement for Equity Options

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to amend Commentary .04 to Rule 3.7 in order to make technical corrections involving cross-referencing. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

[1] The Exchange previously submitted this proposal on December 13, 1993, however, in response to Commission concerns, the PSE delayed effectiveness of the rule change pending amendment and resubmission to the Commission in its current form.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the PSE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

On November 30, 1993, the Commission approved an Exchange proposal to add new Commentaries to PSE Rule 3.7.[2] The Exchange is now proposing to amend one of those, Commentary .04, by changing two internal cross-references and adding the term "this" in two places. The exchange believes that the proposed changes are technical in nature and are consistent with the Commission's order approving File No. SR–PSE–91–19.[3]

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to remove impediments to and perfect the mechanism of a free and open market.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an exiting rule, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the

[2] See Exchange Act Release No. 33257 (November 30, 1993), 58 FR 64416 (December 7, 1993).

[3] *Id.*

proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commisslon, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–34 and should be submitted by February 1, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–624 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[4] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

January 4, 1994.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Greater China Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11772)
Jardine Fleming China Region Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11773)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before January 26, 1994, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–563 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Release No. 20000; 812–8592]

Equity Strategies Fund, Inc., et al.; Notice of Application January 5, 1994

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Equity Strategies Fund, Inc. ("Fund"), Nabors Industries, Inc. ("Nabors"), and Martin J. Whitman, on behalf of themselves and all "Affected Persons," as defined below.

RELEVANT ACT SECTIONS: Order requested under section 17(b) exempting applicants from section 17(a), and under rule 17d–1 to permit certain joint transactions otherwise prohibited by section 17(d) and rule 17d–1.

SUMMARY OF APPLICATION: Applicants seek an order that would permit Nabors to purchase substantially all of the assets of the Fund in exchange for Nabors common stock. The Fund would then liquidate and distribute the Nabors stock *pro rata* to its shareholders.

FILING DATE: The application was filed on September 20, 1993, and amended and restated on November 15, 1993, and January 3, 1994.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 31, 1994, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 767 Third Avenue, New York, NY 10017.

FOR FURTHER INFORMATION CONTACT: Barry A. Mendelson, Senior Attorney, at (202) 504–2284, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Fund, incorporated in 1981 under the laws of the state of Maryland, is an open-end, non-diversified management investment company registered under the Act. The Fund's investment adviser is EQSF Advisers, Inc. ("EQSF"). The Fund does not qualify to elect to be taxed as a regulated investment company under Subchapter M of the Internal Revenue Code, and thus pays taxes on its income in the same manner as a business corporation. As of October 31, 1993, approximately 92% of the Fund's assets consisted of the common stock of Nabors.

2. Nabors, a Delaware corporation incorporated in 1978, is principally engaged in the business of contract drilling and other oilfield services. It has one class of stock, voting common stock, which is traded on the American Stock Exchange (the "AMEX"). As of October 31, 1993, approximately 18% of Nabors' stock was held by the Fund.

3. Martin J. Whitman is Chairman, President, and Chief Executive Officer of the Fund. As of October 31, 1993, he owned approximately 7.8% of the outstanding stock of the Fund. Mr. Whitman serves as a director of Nabors and has a financial interest in Nabors

other than through the Fund by virtue of his direct and indirect ownership interests in various private partnerships that hold Nabors stock. (As of October 31, 1993, these partnerships owned in the aggregate approximately 3% of the outstanding stock of Nabors.) Mr. Whitman also controls 100% of the outstanding common stock of EQSF, the Fund's investment adviser.

4. Applicants seek relief on behalf of themselves and any individuals (other than Mr. Whitman) who require relief from section 17(a) and rule 17d–1 (collectively, "Affected Persons"). "Affected Persons" are officers, directors, or employees of Nabors, the Fund, and EQSF who own shares of the Fund.

5. Pursuant to an Agreement and Plan of Reorganization (the "Reorganization Agreement"), the Fund proposes to transfer to Nabors all of its assets, other than cash and cash equivalents equal to $1 million, but none of its liabilities. The $1 million retained by the Fund shall be placed in a "Reserve Fund" for payment of any contingent liabilities and obligations of the Fund. In exchange for the Fund's assets, Nabors will transfer to the Fund shares of Nabors stock, as described more fully in the next paragraph. The exchange of Fund assets for Nabors stock will occur on the "Closing Date." As soon as practicable after the Closing Date, the Fund will liquidate and dsitribute pro rata to its stockholders of record the shares of Nabors stock received by the Fund pursuant to the Reoganization Agreement.

6. Immediately prior to the reorganization, the Fund's assets will consist entirely of Nabors stock, cash, and cash equivalents. For purposes of the reoganization, shares of Nabors stock will be valued at the average of the closing prices of Nabors stock for the five trading days immediately preceding the Closing Date (the "Market Price of Nabors Stock").[1] Cash and cash equivalents held by the Fund will be valued in accordance with generally accepted accounting principles. The number of shares of Nabors stock to be issued to the Fund in the reorganization will be determined by dividing the aggregate value of the assets transferred from the Fund to Nabors by the Market Price of Nabors Stock.

7. The Reserve Fund is designed to satisfy any currently unknown contingent liabilities that may become actual after liquidation of the Fund. Potential contingent liabilities include the possibility that the IRS or a state tax authority would assert that the Fund has made inadequate provision for taxes on past transactions, or that the Fund's net asset value had been erroneously computed. Although the Fund currently is unaware of any such liabilities, the Reserve Fund will be established to protect Fund officers and directors, who otherwise would be personally liable for such liabilities. The Reserve Fund shall be administered by one or more of the Fund's disinterested directors. Any amounts remaining in the Reserve Fund upon its termination (which, under applicable Maryland law shall occur no earlier than three years from its inception) shall be distributed *pro rata* to the Fund's stockholders of record as of the Closing Date.

8. The Fund will bear all of the expenses associated with the reorganization, except that Nabors will bear all legal fees incurred by it related to the negotiation of the Reorganization Agreement. Applicants expect the total cost of the Reorganization to range from $400,000 to $450,000, of which the Fund will pay all but approximately $100,000.

9. The Reorganization Agreement has been approved by the Board of Directors of the Fund, including the disinterested directors thereof, and by the Board of Directors of Nabors, including the nonmanagement directors thereof. (The two boards have one common member, Mr. Whitman.) Consumation of the reorganization is subject to the Commission's issuance of the order requested by applicants and to the approval of Fund stockholders. The Reorganization Agreement will be submitted to the stockholders of the Fund for approval at a special meeting. Fund stockholders will receive a proxy statement/prospectus containing information about Nabors and describing the proposed reorganization and the reasons therefor.

10. In approving the Reorganization Agreement, the Fund Board considered a number of factors. First, and most important, the reorganization is tax-free. The Fund received an IRS ruling on May 20, 1993, to the effect that, for federal income tax purposes, the reorganization will be tax-free to the Fund, the Fund's stockholders, and Nabors. Alternatives to the reorganization, including a simple liquidation of the Fund, would result in a taxable event to both the Fund and its stockholders. In this regard, applicants note that alternatives to the reorganization would require the Fund to pay tax, estimated to be about $30.3 million (approximately 35% of the Fund's net asset value), on the capital gains attributable to the appreciation of Nabors stock held by the Fund. In addition, the Fund Board considered that (i) the reorganization will eliminate the management fee currently paid by Fund stockholders, because such individuals will own Nabors stock directly, rather than indirectly through the Fund; (ii) Fund shareholders will receive readily marketable securities, since Nabors stock is traded on the AMEX; and (iii) the costs to the Fund of engaging in the reorganization will not be significant in relation to the benefits conferred.

11. Fund stockholders who oppose the reorganization may redeem their shares at any time before the Closing Date. Redeeming stockholders, however, would forego the tax benefit of the reorganization because the elimination of the capital gains tax associated with the Nabors stock will inure only to the benefit of Fund stockholders who receive liquidating distributions.

Applicants' Legal Analysis

1. Because the Fund owns of record more than 5% of the outstanding shares of Nabors, Nabors is an "affiliated person" of the Fund within the meaning of section 2(a)(3) of the Act. Because Mr Whitman controls the Fund's investment adviser, is a director of the Fund and Nabors, and holds a substantial indirect interest in Nabors, Mr. Whitman is an affiliated person of the Fund and Nabors. The Affected Persons, by virtue of their official positions and/or employment relationships, are affiliated persons of the Fund or affiliated persons of such persons.

2. Section 17(a)d of the Act, in relevant part, makes it unlawful for any affiliated person of a registered investment company, or any affiliated person of such an affiliated person, acting as principal, to purchase from or sell to such registered company any security or other property. Section 17(b) of the Act authorizes the Commission to exempt a proposed transaction from section 17(a) if: (i) The terms of the proposed transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned; (ii) the proposed transaction is consistent with the policy of each registered investment company concerned, and (iii) the proposed transaction is consistent with the general purposes of the Act.

3. For the reasons discussed above, the Fund Board and the Nabors Board found that the reorganization is in the best interests of the Fund and Nabors, respectively, and will not dilute the interests of the existing stockholders of either company. In addition, each Board determined that the terms of the proposed reorganization and the consideration to be paid or received are fair and reasonable and do not involve overreaching by any person. Although the Fund has agreed to pay most of the costs associated with the reorganization, applicants aver that the benefits to the Fund, in particular the elimination of a $30 million deferred tax liability, substantially outweigh any such costs. Accordingly, applicants submit that the proposed reorganization satisfies the standards of section 17(b).

4. Section 17(d) and rule 17d–1, taken together, prohibit an affiliated person of a registered investment company or an affiliated person of such person, acting as principal, from participating in any joint enterprise or other joint arrangement in which such registered company is a participant, without prior receipt of a Commission order. Under rule 17d–1(b), the Commission will consider whether the participation of such registered company in such joint enterprise or arrangement on the basis proposed is consistent with the provisions, policies, and purposes of the Act, and the extent to which such participation is on a basis different from or less advantageous than that of other participants.

5. There are no employment contracts or other special benefits accorded to any affiliated person of the Fund or Nabors under the Reorganization Agreement. Indeed, the reorganization could be considered detrimental to Mr. Whitman and those Affected Persons who are employees of EQSF because it will eliminate the management fee currently payable to EQSF by the Fund. Accordingly, applicants submit that the proposed reorganization satisfies the standards for an order under rule 17d–1.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–625 Filed 1–10–94; 8:45 am]

BILLING CODE 8010–01–M

[1] The Boards of the Fund and Nabors believe that using a five-day average, rather than a single day's price, would decrease the possibility of manipulation of Nabors stock by third party market participants.

DEPARTMENT OF STATE

[Public Notice 1930]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT); Meeting Cancellation

The United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) published notices of meetings in the **Federal Register**, Vol. 58, No. 218, Monday, November 15, 1993 which included a scheduled meeting on January 11, 1994.

The CCITT meeting dealing with Preparations for the Kyoto Plenipotentiary scheduled for January 11, 1994 is hereby cancelled. Hereafter, these meetings will be held under the International Telecommunications Advisory Committee, which will incorporate the CCITT, upon completion of the steps necessary to establish and provide required notices in accordance with **Federal Register** rules and regulations. For further information, contact the Office of William Jahn (202) 647–2592.

Dated: December 27, 1993.

Earl S. Barbely,

Director, Telecommunicotions and Information Standards, Chairman U.S. CCITT.

[FR Doc. 94–594 Filed 1–10–94; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Proposed Advisory Circular 21–SCRAP; Disposition of Unsalvageable Aeronautical Parts and Materials

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of proposed Advisory Circular (AC) 21–SCRAP, Disposition of Unsalvageable Aeronautical Parts and Materials for review and comments. The proposed AC 21–SCRAP provides information and guidance concerning means to dispose of unairworthy aeronautical parts and materials in manners that would prevent the parts and materials from being used in aeronautical applications.

DATES: Comments submitted must identify the proposed AC 21–SCRAP File Number, PO–220–0373, and be received by March 14, 1994.

ADDRESSES: Copies of the proposed AC 21–SCRAP can be obtained from and comments sent to the following: Federal Aviation Administration, Production Certification Branch, AIR–220, Aircraft Manufacturing Division, Aircraft Certification Service, 800 Independence Avenue, SW., Washington, DC 20591 (202) 267–8361.

SUPPLEMENTARY INFORMATION:

Background

The proposed AC 21–SCRAP provides information and guidance to persons involved in the sale or maintenance of aeronautical parts on issues and practices related to the disposition of Unsalvageable aeronautical parts and materials.

Comments Invited

Interested persons are invited to comment on proposed AC 21–SCRAP listed in this notice by submitting such written data, views, and arguments as they desire to the aforementioned address. All communications received on or before the closing date for comments will be considered by the Director, Aircraft Certification Service, before issuing the final AC.

Comments received on the proposed AC 21–SCRAP may be examined before and after the comment closing date in Room 333, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m., Monday through Friday, except Federal Holidays.

Issued in Washington, DC on January 5, 1994.

Michael Gallagher,

Manager, Aircraft Manufacturing Division.

[FR Doc. 94–630 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Clarification of Major/Minor Repairs or Alterations Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Clarification of Major/Minor Repairs or Alterations Working Group.

SUMMARY: Notice is given of the establishment of the Clarification of Major/Minor Repairs or Alterations Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One are the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service.

Task

Specifically, ARAC tasked the working group as follows: Review Code of Federal Regulations (CFR) Title 14—Aeronautics and Space, Chapter I—Federal Aviation Administration, Department of Transportation, and supporting policy and guidance material for the purpose of determining the course of action to be taken for rulemaking and/or policy relative to the issue of acceptable and/or approved data. If ARAC determines rulemaking documents or advisory circulars are appropriate to resolve the major/minor problem, such documents should be developed by ARAC, along with proper justifications and any legal and economic analyses.

Reports

The working group will develop and present to ARAC for consideration any combination of the following as it deems appropriate:

1. A draft notice of proposed rulemaking proposing new requirements with regard to the issue of acceptable and/or approved date with supporting economic and other required analysis, and any other collateral documents the working group determines appropriate; or

2. If new or revised requirements standards or compliance methods are not recommended, a draft report stating the rationale for those recommendations.

The working group chair (or his designee) should:

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a status report on this task at each meeting of ARAC held to consider air carrier/general aviation maintenance issues; and

C. Give a detailed conceptual presentation to ARAC of the working group's recommendations before proceeding with drafting of documents described in paragraphs A and B above.

The Clarification of Major/Minor Repairs of Alterations Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the Clarification of Major/Minor Repairs or Alterations Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Clarification of Major/Minor Repairs or Alterations Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on January 5, 1994.

Frederick J. Leonelli,

Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–631 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Aircraft Certification Procedures Issues

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss aircraft certification procedures issues.

DATES: The meeting will be held on January 28, 1994, at 9 a.m. Arrange for oral presentations by January 18, 1994.

ADDRESSES: The meeting will be held at the General Aviation Manufactures Association, suite 801, 1400 K Street NW., Washington DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Ball, aircraft Certification Service (AIR–1), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8235.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking advisory committee to be held on January 28, 1994, at the General Aviation Manufactures Association, suite 801, 1400 K Street NW, Washington, DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Action Items
- Working Group Reports
  - ICPTF
  - ELT
  - Delegation System
  - Parts
  - Production Certification
- New Business

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 18, 1994, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director for Aircraft Certification Procedures or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 3, 1994.

William J. Sullivan,

Assistant Executive Director for Aircraft Certification Procedures, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–632 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on February 8, 1994, at 9 a.m. Arrange for oral presentations by January 25, 1994.

ADDRESSES: The meeting will be held at the American Psychiatric Association (APA), suite 800, 1400 K Street NW., Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Small Airplane Directorate (ACE–112), 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5688.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on February 8, 1994, at the American Psychiatric Association (APA), suite 800, 1400 K Street NW., Washington DC 20005. The agenda for the meeting will include:

- Opening Remarks
- Review of Issues
- Status Reports from the FAR/JAR Harmonizing Working Groups (Including acceptance of four NPRMs)

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by January 25, 1994, to present oral statements at the meeting. The public may present written statements to the committee, at any time, by providing 25 copies to the Assistant Executive Director, or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading **"FOR FURTHER INFORMATION CONTACT."**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on January 4, 1994.

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 94–633 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–13–M

Federal Railroad Administration

Petition for Waivers of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received from the Kentucky Railway Museum, Incorporated a request for waiver of compliance with certain requirements of Federal regulations. The petition is described below, including the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Kentucky Railway Museum, Incorporated (KRM) Waiver Petition, Docket Number SA–93–7

The KRM seeks a waiver of compliance from certain Sections of 49 CFR part 231, Railroad Safety Appliance Standards. The KRM is requesting that it be permitted to operate diesel locomotive number 32 which does not comply with 49 CFR 231.29 "road locomotives with corner stairways" in that the uncoupling mechanism cannot be operated from the bottom stairway opening and Section 231.30 "locomotives used in switching service" which requires switching steps and the removal of end foot boards.

Locomotive number 32 is an EMD, Model BL–2 locomotive built in 1948. The locomotive is equipped with end footboards and arranged with a step and handhold located on the side at each corner, front and rear, for access to the walkway and cab structure. The uncoupling mechanism is operated from ground level.

The KRM is a railroad museum which operates historical equipment for the education and enjoyment of the visiting public. The train is operated between New Haven and Boston, Kentucky, a distance of 25 miles round trip at a maximum speed of 25 mph.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number SA–93–7) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC. 20590. Communications received before February 22, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC, on January 4, 1994.

Philip Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–557 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–06–P

Petition for Exemption or Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received requests for exemptions from or waivers of compliance with a requirement of its safety standards. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, and the nature of the relief being requested.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number RSGM–93–16) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street SW., Washington, DC 20590. Communications received before February 22, 1994 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning

these proceedings are available for examination during regular business hours (9 a.m.—5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

The individual petitions seeking an exemption or waiver of compliance are as follows:

The Pecos Valley Southern Railway Company (PVS) Waiver Petition Docket Number RSGM–93–16

The PVS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The railroad operates 34 miles of track between Pecos and Saragosa, Texas. This is a sparsely populated area and the railroad states there have been no incidents of vandalism. The locomotive, an SW900 switcher, had been rebuilt and FRA Types I and II glazing installed in all locations except the two front windows over the engine. These were covered with steel plates. The PVS needed the additional visibility provided by these two windows and has installed laminated safety glass in them. The waiver would apply to these two windows. The PVS has been operating two locomotives and one caboose under waiver RSGM–80–10.

The Dow Chemical Company (ZDCU) Waiver Petition Docket Number RSGM 93–17

The ZDCU seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The locomotive is used primarily inside the Dow Chemical La Porte Site plant but must utilize 2600 feet of industrial main track owned by Southern Pacific Transportation Company to access another portion of their plant. The industrial track is surrounded by industry and has no road crossings. There has been no record of vandalism.

Santa Fe Southern Railway (SFS) Waiver Petition Docket Number RSGM–93–22

The SFS seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one passenger car. The SFS operates freight service between Santa Fe and Lamy, New Mexico, a distance of approximately 18 miles. The car, which was built in 1914 and recently rebuilt, is used in excursion service on their tri-weekly mixed train and in occasional charter service. The mixed train operates at 10 mph through open country and sparsely settled suburbs.

East Portland Traction Company (EPTC) Waiver Petition Docket Number RSGM 93–23

The EPTC seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for three locomotives. Operations are conducted on private right-of-way with very few grade crossings at Portland, Oregon. The three locomotives, which were built between 1948 and 1952, are shared with the EPTC's affiliate Molalla Western Railway.

Tulsa-Sapulpa Union Railway Company (TSU) Waiver Petition Docket Number RSGM 93–24

The TSU seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for four locomotives. The TSU operates between Tulsa and Sapulpa, Oklahoma, a distance of approximately 10 miles. The railroad states there have been no incidents involving glazing.

Nobles Rock Railroad (NRRX) Waiver Petition Docket Number RSGM 93–25

Rail Equipment and Transportation, Incorporated, on behalf of NRRX seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The NRRX operates 41.4 miles of track between Manly and Agate, Minnesota, and has trackage rights on 3.4 miles of Chicago and Northwestern Transportation Company track between Agate and Worthington, Minnesota. Maximum speed will be 10 mph with 1 or 2 daily trains.

Hartwell Railroad Company (HRT) Waiver Petition Docket Number RSGM 93–27

The HRT seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The HRT operates 10 miles of track in rural Hart County, Georgia, at a maximum speed of 10 mph. An average of two or three trains are operated per week. The railroad states there is no problem with vandalism.

Beaufort and Morehead Railway, Incorporated (BMH) Waiver Petition Docket Number RSGM 93–28

The BMH seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for one locomotive. The BMH operates five days per week in a confined area of approximately one mile at Morehead City, North Carolina.

Delaware-Lackawanna Railroad Company, Incorporated (DL) Waiver Petition Docket Number RSGM–93–29

The DL seeks a permanent waiver of compliance with certain provisions of the Safety Glazing Standards, 49 CFR part 223 for two locomotives. The railroad operates on 58 miles of track including trackage rights on the Delaware and Hudson Railroad and Consolidated Rail Corporation, all in the general vicinity of Scranton, Pennsylvania. The ALCO C–425 locomotives are equipped with FRA glazing in the front and rear windows on both sides. The waiver is requested for the side and center front windows. The previous operator, Lackawanna Valley Railroad Corporation, reported no incidents involving glazing.

Issued in Washington, DC on January 5, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94–558 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 79–17; Notice 40]

New Car Assessment Program; Technical Report; Correlation of NCAP Performance With Fatality Risk in Actual Head-On Collisions

AGENCY: National Highway Traffic Safety Administration (NHTSA). DOT.

ACTION: Request for comments.

SUMMARY: This notice announces the publication by NHTSA of a Technical Report concerning the New Car Assessment Program (NCAP). The report examines the Correlation of NCAP Performance with Fatality Risk in Actual Head-On Collisions. In NCAP, frontal crash tests of approximately 35 passenger vehicles are conducted each year and the test results are made available to the public, in response to the Motor Vehicle Information and Cost Savings Act of 1972. The Department of Transportation and Related Agencies Appropriations Act for Fiscal Year 1992 directed "NHTSA to provide a study to the House and Senate Committees on Appropriations comparing the results of New Car Assessment Program (NCAP) data from previous model years to determine the validity of these tests in predicting actual on-the-road injuries and fatalities over the lifetime of the models." In December 1993, NHTSA submitted a report to Congress, titled Response to the NCAP FY 1992 Congressional Requirements,

summarizing the agency's analyses of head-on collisions and other types of crashes. This Technical Report documents the agency's analysis of head-on collisions. The agency seeks public review and comment on the technical report. Comments received will be used to improve future analyses of the correlation of NCAP performance and fatality or injury risk.

DATES: Comments must be received no later than April 11, 1994.

ADDRESSES:

Report: Interested persons may obtain a copy of the report free of charge by sending a self-addressed mailing label to Ms. Glorious Harris (NAD–51), National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590.

Comments. All comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, Room 5109, Nassif Building 400 Seventh Street SW., Washington, DC 20590. (Docket hours, 9:30 a.m.–4 p.m., Monday through Friday.) It is requested but not required that 10 copies of comments be submitted.

Submissions containing information for which confidential treatment is requested should be submitted (3 copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW., Washington, DC 20590, and 7 copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Ephraim, Chief, Evaluation Division, Office of Strategic Planning and Evaluation, Plans and Policy, National Highway Traffic Safety Administration, room 5208, 400 Seventh Street SW., Washington, DC 20590 (202–366–1574).

SUPPLEMENTARY INFORMATION: The New Car Assessment Program (NCAP) has gauged the performance of vehicles in frontal impact tests since model year 1979. In response to Congressional direction, the National Highway Traffic Safety Administration studied the relationship between vehicle test scores in NCAP and the fatality risk in crashes of vehicles on the road. This study is based on head-on collisions, where the effect of crashworthiness can be separated from the effects of extraneous factors that influence fatality rates (drivers, roadways, mileage). Collisions between two 1979–91 passenger cars in which both drivers were wearing safety belts were selected from the Fatal Accident Reporting System. There were 396 collisions (792 cars) in which both cars were identical with or very similar to vehicles which had been tested in NCAP. In the analyses, adjustments were made for the relative weights of the cars, and for the age and sex of the drivers—factors which substantially affect fatality risk.

There are statistically significant correlations between NCAP scores for head injury, chest acceleration and femur loading and the actual fatality risk of belted drivers. A composite NCAP score, based on the test results for all three body regions, has excellent correlation with fatality risk: In a head-on collision between a car with good composite score and a car of equal weight with poor score, the driver of the car with the better NCAP score has, on average, a 20 to 25 percent lower risk of fatal injury. Slightly smaller, but still significant fatality reductions are obtained even when the NCAP scores for just one body region (just HIC, or chest g's, or femur load) are used to partition the fleet into "good" and "poor" performance groups. The borderline between good and poor NCAP scores that optimizes the differences in actual fatality risk is close to the criteria specified in Federal Motor Vehicle Safety Standard (FMVSS) 208 for each of the three body regions.

Cars built from 1979 through 1982 had, on the average, the poorest NCAP scores. Test performance improved substantially in 1983 through 1986 models, and continued to improve in 1987 through 1991 cars. In parallel, fatality risk for belted drivers in actual head-on collisions decreased by 20 to 25 percent in model years 1979–91, with the largest decreases just after 1982. The 35 mph test speed for NCAP is 5 mph higher than the test speed for FMVSS 208. By now, most passenger cars meet the FMVSS 208 criteria at the NCAP test speed. The study shows that achievement of this enhanced level of test performance has been accompanied by a significant reduction in actual fatality risk. However, being a statistical study, it does not address what portion of the fatality reduction was directly "caused" by NCAP. Also, these results do not guarantee that any individual make-model with low NCAP scores will necessarily have lower fatality risk than another make-model with higher NCAP scores.

NHTSA welcomes public review of the technical report and invites the reviewers to submit comments about the data and the statistical methods used in the report. The agency is interested in learning of any additional data that could be used to expand or improve the analyses, such as information about the curb weights of cars and light trucks.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose, in the envelope with their comments, a self—addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on: January 5, 1994.

Donald C. Bischoff,

Associate Administrator for Plans and Policy.

[FR Doc. 94–568 Filed 1–10–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Bureau of Alcohol, Tobacco and Firearms

OMB Number: 1512–0129.

Form Numbers: ATF F 4473, Part I (ATF F 5300.9).

Type of Review: Extension.

Title: Firearms Transaction Record, Part I—Over the Counter.

Description: Form is used to determine the eligibility (under the Gun Control Act) of a person to receive a firearm from a Federal firearms licensee. It is also used to establish the identity of the buyer. The form is used in law enforcement in investigations/inspections to trace firearms or to confirm criminal activity of persons violating the Gun Control Act (GCA).

Respondents: Individuals or households, Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/Recordkeepers: 8,000,000.

Estimated Burden Hours Per Respondent/Recordkeeping: 10 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting/Recordkeeping Burden: 1,316,750 hours.

Clearance Officer: Robert N. Hogarth, (202) 927–8930, Bureau of Alcohol, Tobacco and Firearms, room 3200, 650 Massachusetts Avenue, NW., Washington, DC 20226.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–596 Filed 1–10–94; 8:45 am]

BILLING CODE 4810–31–P

Public Information Collection Requirements Submitted to OMB for Review

January 4, 1994.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1210.
Form Number: IRS Form 8379.
Type of Review: Revision.
Title: Injured Spouse Claim and Allocation.
Description: A non-obligated spouse may file Form 8379 to request the non-obligated spouse's share of a joint income tax refund that would otherwise be applied to the past-due obligation owed to a state or Federal agency by the other spouse.
Respondents: Individuals or households.
Estimated Number of Respondents/Recordkeepers: 200,000.

Estimated Burden Hours Per Respondent/Recordkeeper

	Minutes
Recordkeeping	13
Learning about the law or the form	5
Preparing the form	58
Copying, assembling, and sending the form to the IRS	31

Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 356,000 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–597 Filed 1–10–94; 8:45 am]

BILLING CODE 4830–01–P

DEPARTMENT OF VETERANS AFFAIRS

Medical Care Reimbursement Rates for FY 94

AGENCY: Department of Veterans Affairs.

ACTION: Correction.

In notice document 93–29368 appearing on page 63439 in the issue of Wednesday, December 1, 1993, make the following correction: On page 63439, in the third column, the line "Outpatient* . . . $150" should read "Outpatient*. . . . $158."

Dated: January 5, 1994.

Patti Viers,

Acting Director, Records Management Service.

[FR Doc. 94–581 Filed 1–10–94; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 59, No. 7
Tuesday, January 11, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming special meeting of the Farm Credit Administration Board (Board) concerning the Farm Credit System Building Association.

DATE AND TIME: The special meeting of the Board concerning the Farm Credit System Building Association will be held at the offices of the Farm Credit Administration in McLean, Virginia, from 9:30 a.m. until 9:45 a.m. on January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: This meeting of the Board will be open to the public. The matters to be considered at the meeting are:

OPEN SESSION

A. Reports

1. FCSBA Quarterly Report

B. New Business

1. Contracting of Services Report—Jefferson Management Group, Inc.

Dated: January 6, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–695 Filed 1–7–94; 10:13 am]

BILLING CODE 6705–01–P

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting.

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the forthcoming regular meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The regular meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on January 13, 1994, from 9:45 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883-4003, TDD (703) 883-4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations (Final).

2. Other

a. Review of FCA Policy Statements.

Closed Session*

A. New Business

1. Enforcement Actions.

Dated: January 1, 1994.

Nan P. Mitchem,

Acting Secretary, Farm Credit Administration Board.

[FR Doc. 94–696 Filed 1–7–94; 10:30 am]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Tuesday, January 18, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–804 Filed 1–7–94; 3:54 pm]

BILLING CODE 6210–01–P

* Session closed to the public—exempt pursuant to 5 U.S.C. 552b(c)(8), (9) and (10).

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-94-01]

TIME AND DATE: January 14, 1994 at 10:30 a.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 731-TA-636-637 (Final) (Stainless Steel Wire Rod from Brazil and France)—briefing and vote.
5. Inv. No. 731-TA-641 (Final) (Ferrosilicon from Brazil)—briefing and vote.
6. Outstanding action jacket
   1. GC-93-133, APO breach in an investigation under section 337 of the Tariff Act of 1930.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205-2000.

Issued: January 5, 1994.

Donna R. Koehnke,

Secretary.

[FR Doc. 94–768 Filed 1–7–94; 2:41 pm]

BILLING CODE 7020–02–P

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Amendment to Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENTS: 58 FR 68460, December 27, 1993; 58 FR 65426, December 14, 1993.

PREVIOUSLY ANNOUNCED DATE OF MEETING: January 3, 1994.

CHANGE: Addition of the following item to the closed meeting agenda:

1. Consideration of Rate Case Filing.

CONTACT PERSON FOR MORE INFORMATION: David F. Harris, (202) 268–4800.

At its meeting on January 3, 1994, the Board of Governors of the United States Postal Service voted unanimously to add to the agenda "Consideration of Rate Case Filing," and that discussion on the item was closed to the public pursuant to section 552b(c) (3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations and that no earlier announcement was possible. In accordance with 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of Title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service certified that in her opinion discussion of this item could be properly closed to public observation.

David F. Harris,

Secretary.

[FR Doc. 94-713 Filed 1-7-94; 2:40 pm]

BILLING CODE 7710-12-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

Notice of Vote to Close Meeting

At its meeting on January 3, 1994, the Board of Governors of the United States Postal Service voted unanimously to close to public observation its meeting scheduled for February 7, 1994, in Sacramento, California. The members will discuss preparations for the rate case filing.

The meeting is expected to be attended by the following persons: Governors Alvarado, Daniels, del Junco, Dyhrkopp, Mackie, Pace, Setrakian and Winters; Postmaster General Runyon, Deputy Postmaster General Coughlin, Secretary to the Board Harris, and General Counsel Elcano.

The Board determined that pursuant to section 552b(c)(3) of Title 5, United States Code, and section 7.3(c) of Title 39, Code of Federal Regulations, this portion of the meeting is exempt from the open meeting requirement of the Government in the Sunshine Act [5 U.S.C. 552b(b)] because it is likely to disclose information in connection with proceedings under Chapter 36 of Title 39, United States Code (having to do with postal ratemaking, mail classification and changes in postal services), which is specifically exempted from disclosure by section 410(c)(4) of Title 39, United States code.

The Board has determined further that pursuant to section 552b(c)(10) of Title 5, United States Code, and section 7.3(j) of Title 39, Code of Federal Regulations, the discussion is exempt because it is likely to specifically concern participation of the Postal Service in a civil action or proceeding involving a determination on the record after opportunity for a hearing. The Board further determined that the public interest does not require that the Board's discussion of the matter be open to the public.

In accordance with section 552b(f)(1) of Title 5, United States Code, and section 7.6(a) of title 39, Code of Federal Regulations, the General Counsel of the United States Postal Service has certified that in her opinion the meeting may properly be closed to public observation pursuant to section 552b(c)(3) and (10) of Title 5, United States Code; section 410(c)(4) of Title 39, United States Code; and section 7.3 (c) and (j) of Title 39, Code of Federal Regulations.

Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

David F. Harris,

Secretary.

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Part II

Federal Trade Commission

16 CFR Part 453
Funeral Industry Practices; Final Amended Trade Regulation Rule

FEDERAL TRADE COMMISSION

16 CFR Part 453

Funeral Industry Practices Trade Regulation Rule

AGENCY: Federal Trade Commission.

ACTION: Final amended trade regulation rule.

SUMMARY: The Federal Trade Commission issues final amendments to the Funeral Industry Practices Trade Regulation Rule (hereafter "the Rule" or "the original Rule"), pursuant to the review mandated by § 453.10 of the Rule. That provision required that the Commission initiate a rulemaking amendment proceeding no later than four years after the effective date of the Rule to determine whether the rule should be amended or terminated.

EFFECTIVE DATE: The amended Rule will become effective on July 19, 1994.

ADDRESSES: Requests for copies of the amended Rule and the Statement of Basis and Purpose should be sent to Public Reference Branch, room 130, Federal Trade Commission, 6th Street and Pennsylvania Avenue, NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Matthew Daynard, Division of Service Industry Practices (202–326–3291), or Carol Jennings (202–326–3010) or Sally Forman Pitofsky (202–326–3318), Division of Marketing Practices, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: The amended Rule retains the Rule's primary itemization, price and other disclosure requirements, without major, substantive modification; expressly prohibits non-declinable fees (such as so-called "casket handling fees" or "basic facilities fees") charged in addition to the non-declinable fee for basic services of funeral director and staff; deletes the affirmative telephone disclosure requirement, but retains the obligation to give price and other information to consumers who request it over the telephone; and contains a series of changes to the original Rule in the nature of fine-tuning and technical revisions designed to make the Rule more effective and to facilitate compliance.[1]

[1] In this document, references made to material contained in the rulemaking record, and references to particular, oft-cited documents in the record, are made in the footnotes using the following abbreviations:

Tr.—The transcript of the public hearings (Vol. I–III).

HX—Exhibits presented and accepted into the record at the hearings.

R—Materials submitted by the Commission staff or interested parties, or placed on the record by the Presiding Officer. References to documents in this written ("R") portion of the rulemaking record show the category in which the document was placed, the document number, and the internal page number of the document on which the cited reference appears. The reference number for the rulemaking record itself is 215–66.

R–B–5—The Commission's official publication of the Rule and the SBP, referred to above.

R–N–1—Bureau of Consumer Protection, Federal Trade Commission, Funeral Industry Practices, Mandatory Review (16 CFR Part 453): *Finol Staff Report to the Federal Trade Commission With Proposed Amended Trade Regulation Rule*, June 1990 (hereafter cited as the "Staff Report" in text, "SR" in notes).

R–O–1—The Presiding Officer's July 1990 Report ("POR").

R–A–1—The Commission's Notice of Proposed Rulemaking ("NPR") initiating the review proceeding [53 FR 19864, May 31, 1988].

R–B–2—Market Facts, Inc., *Report on the Survey of Recent Funeral Arrangers* (1988) (the FTC-sponsored study of 1,004 consumers who arranged funerals between Dec. 1986 and June 1987, hereafter cited as the "Replication Study" in the text, or "RS" in notes).

R–B–3—Office of Impact Evaluation, Bureau of Consumer Protection, Federal Trade Commission, Market Facts—Washington, and Dr. J. Paul Peter, University of Wisconsin, *Baseline and Follow-up Studies for Evaluating the Effect of the Federal Trade Commission's Funeral Home Industry Trade Regulation Rule: Final Report*, July 1982 (The FTC-sponsored study and follow-up of 1,200 consumers who arranged funerals between Nov. 1980 and May 1981, hereafter cited as the "Baseline Study" in the text, or "BLS" in notes).

HX–122—February 1989, FTC Bureau of Economics staff report analyzing expenditure, selection and compliance data from the 1988 Replication Study (hereafter cited as the "BE Report").

HX–66—1988 study, sponsored by the American Association of Retired Persons and conducted by the Gallup Organization, of 675 consumers who arranged funerals between April 1987 and Oct. 1988 (hereafter cited as the "Gallup Study").

HX–108—Statement of Rebecca Ayers, National Research, Inc., presenting the results of a national study of 500 funeral directors.

R–B–6—1985 FTC Staff publication assisting funeral providers in Rule compliance (hereafter cited as the "Compliance Guidelines").

R–M–9—Proposed Findings of Fact, Conclusions of Law, and Recommended Decision jointly submitted by the National Funeral Directors Association and the National Selected Morticians.

R–M–11—Proposed Findings of Fact, Conclusions of Law, and Recommended Decision submitted by the American Association of Retired Persons.

[2] The Rule had two effective dates. Those portions of the Rule that prohibit certain oral or written representations became effective on January 1, 1984. 48 FR 45537 (Oct. 6, 1983). The remainder of the Rule—the portions imposing affirmative obligations on funeral providers—became effective on April 30, 1984. Id. The effective date of § 453.3(b)(1)(ii) of the Rule was changed from January 1, 1984 to April 30, 1984. 49 FR 564 (Jan. 5, 1984).

[3] 726 F.2d 993 (4th Cir. 1984), cert. denied, 469 U.S. 820 (1984). The Court held that the Funeral Rule did not, as alleged, exceed the Commission's authority under §§ 5 and 18 of the FTC Act and did not violate funeral directors' First Amendment rights of commercial free speech.

[4] The Rule permits providers to incorporate the information from the casket and outer burial container price lists in the general price list. This combined list also must be offered to persons who inquire in person about funeral arrangements or the prices of funeral goods and services.

STATEMENT OF BASIS AND PURPOSE

I. Introduction

A. Overview of the Original Rule

The Commission promulgated the original Rule on September 24, 1982, making it fully effective on April 30, 1984.[2] The Commission's decision to promulgate the Rule was appealed, and was subsequently affirmed in Harry & Bryant Co. v. *FTC*.[3] The Funeral Rule declares it an unfair or deceptive act or practice for funeral providers to: (1) fail to furnish price information to funeral consumers; (2) require consumers to purchase items they do not desire to buy; and (3) embalm deceased human remains for a fee without authorization. The Rule further declares it a deceptive practice for funeral providers to misrepresent: (1) the necessity for embalming, caskets for cremation, and grave vaults or grave liners; (2) legal and cemetery requirements; (3) preservation and protection capabilities of funeral goods and services; and (4) cash advance charges for items arranged for by the funeral provider on the consumer's behalf.

To prevent those practices and to correct consumers' misimpressions, the Rule contains several remedial requirements. The Rule requires that funeral providers: (1) Disclose written price information by means of a General Price List ("GPL"), Casket Price List ("CPL"), and an outer burial container price list ("OBC–PL") to persons who inquire in person about funeral arrangements or the prices of funeral goods and services (§§ 453.2(b)(2)-(4));[4] (2) Give purchasers a written statement, after they have selected funeral goods and services, containing the prices for each of the items selected, the total price for the funeral arrangements selected, price estimates or actual costs, if known, for cash advance items, and any legal, cemetery or crematory requirements that compel the purchase of any items or services for the particular funeral (§ 453.2(b)(5));

(3) Affirmatively disclose to telephone callers who inquire about funeral "terms, prices or conditions" that price information is available over the telephone (§ 453.2(b)(1)(i));

(4) Disclose specific price information over the telephone to persons who call and request it (§ 453.2(b)(1)(ii));

(5) Make truthful representations about legal and other requirements that compel the purchase of particular items or services (§ 453.3));

(6) Allow consumers to select and purchase only those goods and services they desire (rather than offering goods and services only in predetermined packages) (§ 453.4(b));

(7) Seek express approval before embalming the deceased for a fee (§ 453.5));

(8) Make truthful representations about the preservative and protective value of funeral goods and services (§ 453.3(e));

(9) Disclose that they charge a fee for obtaining cash advance items, if that is the case (§ 453.3(f)); and

(10) Make unfinished wood boxes or alternative containers available for direct cremation, if the provider offers direct cremation (§ 453.4(a)(2)).

The Commission in its 1982 Statement of Basis and Purpose stated that the essential purpose of the Rule is to lower barriers to price competition in the funeral market and facilitate informed consumer choice.[5] The Rule thus seeks to ensure that consumers have access to sufficient information to permit informed purchase decisions, that consumers are not required to purchase items they do not want and are not required by law to purchase, and that misrepresentations are not used to influence consumer purchase decisions.[6]

The staff on July 9, 1985 issued Final Compliance Guidelines to assist providers in their efforts to comply with the Rule.[7] Following an initial period where the Commission sought principally through educational efforts to encourage industry compliance, the Commission to date has obtained thirty-six consent orders and one litigated order in thirty-seven completed federal district court actions filed against individual providers regarding various violations of the Rule.[8]

[5] 47 FR 42260 (Sept. 24, 1982), R–B–5 (hereafter cited as "SBP").

[6] 47 FR 42260 (Sept. 24, 1982), R–B–5.

[7] R–B–6 (50 FR 28062).

[8] *U.S.* v. *Troy Suggs Funeral Home*, No. CA3–87–1258–G (N.D. Tex., May 20, 1987); *FTC* v. *Crane Rhoton Services Corporation*, No. CA–3–87–1545–T (N.D. Tex., June 13, 1988); *U.S.* v. *Ware Crest, Inc.*, No. CA4–88–437–K (N.D. Tex., July, 11, 1988); *U.S.* v. *Horton Co. Morticians*, No. 88–1828 (D.D.C., July 11, 1988); *U.S.* v. *Simon Funeral Chapel*, No. 88–874PA (D. Or., August 3, 1988); *U.S.* v. *Manning Funeral Chapel, Inc.*, No. 88–4085 (D. Idaho, August 26, 1988); *U.S.* v. *Funeral Corporation Texas*, No. CA4–8929 E (N.D. Tex., January 11, 1989); *FTC* v. *Niday Funeral Home, Inc.*, No. H–88–2808 (S.D. Tex., November 1, 1989); *U.S.* v. *Errington Memorial Chapel*, No. 89–0640M (D.N.M., August 16, 1989); *U.S.* v. *Turner Funeral Home, Inc.*, No. 89–5217 (E.D. Pa., July 21, 1989); *U.S.* v. *Eddy's Funeral Home*, No. 88–593 (D. Nev., September 14, 1989); *FTC* v. *Dudley M. Hughes Funeral Co.*, 710 F. Supp. 1524 (N.D. Tex. 1989), appeal dismissed, 891 F.2d 580 (5th Cir. 1990); *U.S.* v. *Vail-Holt Funeral Homes*, No. NA90–57–C (S.D. Ind., May 11, 1990); *U.S.* v. *J.D. & M. Investment, Inc.*, No. 90–C–476–J (D. Utah, May 30, 1990); *U.S.* v. *Allen Funeral Home, Inc.*, No. IP–90–1430–C (S.D. Ind., June 8, 1990); *U.S.* v. *Fitzhenry's Funeral Home*, No. CV–N–90–282–BRT (D. Nev., June 25, 1990); *U.S.* v. *Striffler Community Funeral Homes*, No. 90–1809 (W.D. Pa., November 5, 1990); *U.S.* v. *Moore Funeral Homes, Inc.*, No. 90–C–965–C (N.D. Okla., November 14, 1990); *U.S.* v. *Wetzel and Son, Inc.*, No. 91–2562 (E.D. Pa., April 24, 1991); *U.S.* v. *Peake Memorial Chapel, Inc.*, No. CV91–637–RE (D. Or., July 5, 1991); *FTC* v. *Perkins Funeral Home, Inc.*, No. 391–CV–00556–JAC (D. Conn., September 25, 1991); *U.S.* v. *McCann & Son Funeral Home*, No. 91–C–6517 (N.D. Ill., October 30, 1991); *U.S.* v. *Goble's Fortuna Mortuary*, No. C–91–3883–SC (N.D. Cal., November 26, 1991); *U.S.* v. *Wilhelm Funeral Home, Inc.*, No. S–91–3152 (D. Md., November 6, 1991); *U.S.* v. *Restland Funeral Home, Inc.*, No. 3–91CV–2576–G (N.D. Tex., filed December 3, 1991) (in litigation); *U.S.* v. *Scala Memorial Home, Inc.*, No. 91–5679 (D.N.J., December 30, 1991); *U.S.* v. *Montrose Valley Funeral Home, Inc.*, No. 92–Z–645 (D. Colo., April 6, 1992); *U.S.* v. *Douglass-Marsh, Inc.*, No. 92–30004–F (D. Mass., January 8, 1992); *U.S.* v. *Higgins Funeral Home, Inc.*, No. 92–10100S (D. Mass., February 19, 1992); *U.S.* v. *Elliston Funeral Home*, No. 92–C–4294 (N.D. Ill., July 8, 1992); *U.S.* v. *J.M. Posey and Sons, Inc.*, No. CA3: 92–2221–17 (D.S.C., August 17, 1992); *U.S.* v. *John Harold Davis*, No. 92–1046–CIV–ORL–22 (M.D. Fla., November 13, 1992); *U.S.* v. *Valley of the Temples Mortuaries, Ltd.*, No. 92–0073 (D. Haw., December 1, 1992); *U.S.* v. *Memorial Guardian Plans, Inc.*, No. 92–2967–MlBro (W.D. Tenn., November 25, 1992); *U.S.* v. *Macias Mortuary Services*, No. C93–0193 (N.D. Cal., January 26, 1993); *U.S.* v. *Meyer Funeral Home, Inc.*, No. 1–93–CV–10010 (S.D. Iowa, March 25, 1993); *U.S.* v. *C.A. Anderson Funeral Parlors, Inc.*, No. C93–1939–EFL (N.D. Cal., June 11, 1993); and *U.S.* v. *Ronald W. Brown d/b/a/ Comisky–Roche Funeral Home*, No. C93–2819–WHO (N.D. Cal., July 29, 1993).

B. The Amended Rule

The Commission, in promulgating the amended Rule, seeks to increase the Rule's potential benefits to consumers by clarifying its requirements and reducing actual or potential compliance burdens on the funeral industry. Such action should increase provider compliance with, and consumer understanding of, the Rule's disclosure and other obligations. Based on the record in this proceeding, the Commission has concluded that the low levels of industry compliance with, and consumer awareness of, the Rule do not permit a full cost-benefit analysis of its impact, because the analysis does not capture the full effects of the Rule had there been greater compliance. Despite this finding, the Commission has determined from the record evidence that the Rule is providing pro-competitive and informational benefits to consumers that outweigh its costs to providers, and that those benefits, but not costs, are likely to increase over time as Rule compliance and consumer awareness of their rights under the Rule increase. The Commission has further concluded that the record in this proceeding does not contain a sufficient basis to overturn the Rule's presumptive validity as a legally promulgated rule.

The Commission has concluded, however, that clarifying amendments to the price disclosure and "unbundling" provisions of the Rule are necessary to clarify that it shall be an unfair or deceptive practice to impose non-declinable fees in addition to the one for "basic services of funeral director and staff," permitted under § 453.2(b)(4)(iii)(C). These amendments effectively eliminate the imposition of so-called "casket handling fees" as separate non-declinable fees charged to consumers who purchase caskets from non-funeral home sources.[9] The Commission has determined that these fees serve to frustrate the Rule's basic "unbundling" requirement by penalizing consumers who decline caskets sold by the funeral home and instead purchase them from third party sellers. The emergence of third-party casket sellers, and consequently, those fees, have developed in the market since the Rule's promulgation.

The Commission further has concluded that repeal of the affirmative telephone disclosure requirement (§ 453.2(b)(1)(i)) is warranted because its costs outweigh its actual and potential benefits. The record evidence indicates that the affirmative telephone disclosure is an inartful and unnecessary signal to consumers about the availability of price information. The Commission has determined that the Rule's other price disclosure provisions are adequate, and that this provision is unlikely to provide substantial additional benefits to consumers. Record evidence indicates that the Rule is contributing now to increased consumer "price-sensitivity" that results in some consumer shopping for lower-cost providers and services. Consumers who call to first arrange a date and time for a funeral service, however, or who request the removal of remains, likely expect an empathetic response, and may be seriously offended by the uninvited offer to discuss prices. Some consumers in that circumstance are likely to interpret the affirmative disclosure as an indication of an unwarranted provider concern with the consumer's ability to afford services. The provision's likely inability to benefit consumers does not justify the imposition of such undue awkwardness and potential offense in what is otherwise an extremely delicate business, social and personal transaction. The Commission has concluded that the integrity of the

[9] To the extent that these fees include a charge for provider overhead that is not allocated to other items offered for sale, the amended Rule does not prohibit their inclusion in the non-declinable services fee permitted under § 453.2(b)(4)(iii)(C).

Rule's price disclosure requirements will be maintained by retention of the requirement to provide price and other readily-available information over the telephone on request.

The Commission further has adopted a variety of minor, "fine-tuning" amendments in light of the evidence on industry compliance. Those amendments are designed to clarify the Rule's requirements and reduce actual or potential compliance burdens in order to increase provider compliance with, and consumer understanding of, the Rule's disclosures. Those amendments, which do not alter providers' basic obligations or consumers' rights under the Rule, concern the timing of giving the general price list and other disclosure requirements, the casket and outer burial container price list disclosures, and the general "unbundling" provision.

Finally, the Commission has adopted several technical Rule amendments that are necessary to correct inconsistencies or unnecessary language in certain Rule provisions, or to complement other recommended amendments.[10]

C. Background of this Proceeding

1. The Commission's Findings in 1982

The Commission required this unique review to determine, at an early date: (1) Whether the Rule is operating as expected in reducing barriers to price competition and increasing informed consumer choice, or whether some modification is necessary to facilitate those benefits; and (2) whether there is a need to continue the Rule after it has had an opportunity to work in the marketplace; termination would be considered if increased competition has largely corrected the problems addressed by the Rule.[11]

The Commission determined, however, that the Rule's effects on the funeral market may be evidenced more slowly than in other industries due to factors it found unique to the funeral transaction.[12] One of those factors was that many consumers would not have exposure to the Rule-required price lists and other provisions for many years because purchases of funerals are infrequent. Unlike other situations, consumers also are unusually susceptible to influence from the funeral director's advice because of the unique combination of emotional stress, lack of experience and information, and tight time constraints. The Commission predicted as a result that the initial stimulus for price competition would likely come from existing or new providers that begin to advertise and otherwise compete on the basis of price. The Commission concluded that it could not say how quickly the Rule's competitive impact would begin to be felt in light of traditional industry constraints on price competition and barriers to entry.

The Commission nonetheless predicted that the Rule could provide economic benefits for consumers in various ways.[13] Should greater price competition emerge, for example, the Rule could reduce or hold stable actual prices and overall consumer expenditures for funerals. This would most likely result from increased consumer price-sensitivity, which might lead some consumers to shift from higher to lower-priced providers. Expenditures could also be reduced as consumers decline items previously required in packaged funerals, and as unfair or deceptive acts or practices that induced consumer purchases decline. Finally, the Commission determined that mandatory price itemization was warranted even if some consumers knowingly chose to buy more goods and services than they would have under package-only pricing. The purpose of the Rule is to enhance consumer choice.

The Commission finally determined that, while competition induced by the Rule could reduce price levels, mandatory itemization presented opportunities for providers to voluntarily raise prices.[14] Providers could choose to raise itemized prices or the price for the lowest-priced funeral, for example, in order to increase profits or account for increased consumer declinations of certain items. The Commission reasoned, however, that itemization does not require those results because it does not preclude traditional industry pricing methods, such as package pricing and "graduated recovery" of proportionately more overhead from higher-priced funerals. The Commission further concluded that providers may not be able to raise prices simply to recoup lost revenue or increase profits as price competition increases under the Rule.

2. The Mandatory Review Proceeding

The Commission on December 9, 1987 published an Advance Notice of Proposed Rulemaking (hereafter "ANPR") describing the planned review of the Funeral Rule.[15] The ANPR notified the public that the Commission intended to conduct the rulemaking, and solicited public comments on many of the key Rule-related issues. The ANPR contained 44 questions concerning consumer and funeral provider experiences, the scope of the Rule, compliance, various Rule provisions, regulatory flexibility and the paperwork burden imposed by the Rule. The majority of the commenters[16] recommended retention of the Rule. Funeral director trade groups recommended repeal or, in the alternative, substantial modification and expansion of the Rule to cover other sellers, such as cemeteries.

Following a review and assessment of the comments, the Commission on May 31, 1988 published a Notice of Proposed Rulemaking (hereafter "NPR") initiating this review proceeding.[17] The Commission in the NPR established a schedule for three public hearings to be held in Washington, Chicago, and San Francisco, and requested comment on a number of questions set out in the notice. In all, 189 individuals and groups submitted written comments, including two funeral directors, five cemetery/crematory/third-party casket seller groups or individuals, six funeral director trade associations, 147 consumers, 27 consumer/memorial society groups, one federal official and one state group.

During the public hearings,[18] testimony was received from sixteen

[10] Little, if any, systematic or otherwise reliable evidence in the record documents industry-wide deceptive or unfair practices concerning Rule-related issues by cemeteries, crematories that do not sell funeral goods, or other sellers of funeral goods or funeral services not presently subject to the Rule. Therefore, the Commission has declined to expend the Rule to cover such entities, as recommended by some rulemaking participants. See R–N–1 (SR) at 109–121 for a full discussion of the evidence on this issue.

[11] R–B–5 (Statement of Basis and Purpose) at 42261, 42299.

[12] Id. at 42299.

[13] Id. at 42297.

[14] Id. at 42296–42298.

[15] 52 FR 46706.

[16] Over 350 persons responded to the request for public comment, including 131 consumers, 134 funeral directors, 46 memorial societies, and approximately 20 trade associations and related industries.

[17] R–A–1 (53 FR 19864).

[18] Based on requests from interested parties who wished to question witnesses at the public hearings, the Presiding Officer designated four groups for that purpose: (1) The Consumer Interest Group, including the American Association of Retired Persons and the Continental Association of Funeral and Memorial Societies; (2) the Funeral Director Group, including the National Funeral Directors Association and the National Selected Morticians (that group also included William Pierson, the owner of the Hursen Funeral Home, the Illinois Funeral Directors Association, and the Conference of Funeral Service Examining Boards; (3) the Crematory and Prearrangement Group, including the Cremation Association of North America and the Pre-Arrangement Association of America; and (4) the Special Cemetery Group, including the American Cemetery Association. The Presiding Officer established the last group for the limited purpose of conducting examination on whether the Rule should be expanded to include cemeteries. See R–A–37.

funeral directors, five monument builders, one vault seller, sixteen cemeterians/cremationists, one individual who provides business and consulting services to industry members, seven state officials, twenty consumer advocates, nine consumers/clergy/counselors, and eight economists/survey experts or consultants (one economist testified twice).

In April 1989, Rebuttal Submissions were filed by the staff, the Cremation Association of North America ("CANA"), the Monument Builders of North America ("MBNA"), the National Funeral Directors Association ("NFDA") and National Selected Morticians ("NSM") (joint rebuttal), the American Cemetery Association ("ACA"), the American Association of Retired Persons ("AARP") and the Pre-Arrangement Association of America ("PAA"). In response to a request from the Presiding Officer, those groups other than the staff also filed Proposed Findings of Fact, Conclusions of Law and Recommended Decision in May 1989.

In addition to all of the testimonial and written information just described, the record contains three national surveys of actual funeral arrangers, conducted in 1981, 1987 and 1988. The 1981 Baseline Study (or "BLS")[19] was conceived as a benchmark for later comparison with the 1987 Replication Study (or "RS").[20] Conducted for the Commission, these studies examined: (1) Consumer purchasing behavior and expenditures for funerals; (2) consumer knowledge of the funeral market; and (3) industry practices and prices. By comparing the results of the two studies, inferences could be drawn about the Funeral Rule's impact on the funeral market. The Bureau of Economics Report of February 1989[21] contains that comparative analysis. The Gallup Organization conducted the third, and most recent, study of funeral arrangers for the AARP.[22] Viewed together, those three empirical surveys represent the most reliable and comprehensive systematic data available on consumer experiences under the Rule in shopping for and choosing funeral goods and services, and of industry Rule compliance.[23]

In addition to these empirical studies, statistical data and testimony presented by Mr. Wendell Hahn of the Federated Funeral Directors of America (hereafter "FFDA"), an independent firm that provides financial and business consulting services to some 1,500 independent funeral homes in 30 states, representing about 10% of all funerals per year, afforded evidence on changes in funeral home costs of operation and prices under the Rule. A 1988 national survey of 500 funeral directors presented by the AARP provided similar evidence.[24] A 1987 survey of state laws regulating the funeral transaction is also part of the record, as is the 1984 survey of NFDA members regarding changes in provider practices under the Rule. The record further contains two national opinion surveys concerning consumers' views about, and knowledge of, various Rule requirements, and five other surveys of cemeterians, cremationists, monument builders and memorial societies conducted by interested groups on specific, Rule-related issues.

The rulemaking staff and Presiding Officer published their respective Reports in June and July 1990, summarizing the record evidence and recommending, with minor differences, retention of the Rule, repeal of the affirmative telephone disclosure, prohibition of separate non-declinable fees, in addition to the non-declinable fee for basic services of funeral director and staff, such as so-called "casket handling fees," and the adoption of several "fine-tuning" amendments.[25] In response to the Presiding Officer's published invitation,[26] forty-nine groups and individuals submitted comments on those reports by November 1, 1990.[27]

On June 20, 1991, the Bureau of Consumer Protection forwarded its final recommendations to the Commission on this review proceeding. The rulemaking staff continued the major recommendations contained in its 1990 Report, and, together with the Bureau of Economics staff, jointly recommended a separate amendment concerning the disclosures that are necessary whenever the fee for "services of funeral director and staff" is incorporated in the price of caskets offered for sale.[28] The Bureau of Economics concurred with all of the rulemaking staff's recommendations concerning substantive Rule provisions.[29]

On November 21, 1991, representatives of the NFDA, NSM, AARP, CANA, ACA, MBNA and PAA made oral presentations to the Commission concerning this review proceeding. On January 28, 1993, after reviewing the rulemaking record as a whole, the Commission voted unanimously to retain and amend the Rule, incorporating all of the substantive changes recommended by the rulemaking staff and the Bureau of Economics.

II. Basis for the Amended Rule

A. The Legal Standard for Amending the Rule

Section 18(d)(2)(B) of the FTC Act states that "[a] substantive amendment to, or repeal of, a rule promulgated under subsection (a)(1)(B) shall be prescribed, and subject to judicial review, in the same manner as a rule prescribed under such subsection."[30] Thus, the standard of judicial review for amendment to, or repeal of, a section 18 rule is identical to that for any rule

[19] R–B–3, supra n. 1.

[20] R–B–2, supra n. 1.

[21] HX–122.

[22] The Gallup Study, HX–66, supra n. 1.

[23] With respect to the BLS, however, the 1982 rulemaking staff concluded from its review of a telephone validation study that the BLS data were subject to qualification and differing interpretation in four specific areas where the data appeared to conflict with evidence already on the original record—consumers' receipt of telephone price information, written itemized price information and itemized statements, and requests for permission to embalm. See R–B–70 (Memorandum from Funeral Rule Staff to Commission, "Impact Evaluation Survey, Funeral TRR," July 15, 1982). The Commission in its comparative analysis of the Baseline and Replication study data does not rely on the Baseline data in those four areas.

[24] Ayers, HX–108, supra n. 1.

[25] See R–N–1 (SR) and R–O–1 (POR).

[26] 55 FR 30925 (July 30, 1990).

[27] The commenters included 22 consumer organizations (19 local funeral and memorial societies, the CAFMS—two comments, the National Consumers League, and the AARP); three individual consumers; 12 funeral industry trade associations, including five state funeral director associations (California, Illinois, Michigan, North Carolina and South Carolina), the Funeral Director Services Association of Chicago, the ACA, the CANA, the PAA, the MBNA, the Casket Manufacturers Association, and the NFDA and NSM) (joint comment); five individual funeral directors; two casket manufacturers or distributors; one cemetery/third-party casket seller, one economist, and two funeral industry financial consultants, including the FFDA.

[28] BE also recommended a clarifying change to the definition of "services of funeral director and staff," in which the rulemaking staff concurred.

[29] The Office of the Director, Bureau of Consumer Protection, favored a limited review by the Bureau of the amended Rule to measure its impact, in particular the prohibition of "casket handling fees." See Memorandum from Gerald Caplan, Deputy Director, Bureau of Consumer Protection, to the Commission, June 20, 1991 at 5. The Bureau of Economics recommended the inclusion of a future and final mandatory review of the Rule under the rulemaking procedures of section 18 of the FTC Act. See Memorandum from Peter Vander Nat, Bureau of Economics, to the Commission, August 26, 1991 at 3. The Commission has not adopted either recommendation, but has scheduled the Funeral Rule for a mandatory "notice and comment" review in 1999, in accordance with its ten-year review schedule adopted for all Commission rules and guides. See 58 FR 11554 (Feb. 25, 1992).

[30] The Commission's rulemaking standards applicable to promulgation and amendments of a Section 18 rule require a preponderance of reliable evidence. See Statement of Basis and Purpose, Credit Practices TRR, 49 FR 7740 (March 1, 1984).

prescribed pursuant to section 18. Upon judicial review, a section 18 rule may be set aside if it is "arbitrary, capricious" or otherwise not in accordance with law upon any of the grounds set forth in the Administrative Procedure Act (APA) at 5 U.S.C. 706(2)(A)–(D), or if the factual determinations upon which the rule is based are not supported by "substantial evidence" in the rulemaking record as a whole.[31]

In their Proposed Findings, funeral director groups assert that the current rulemaking is subject to the same standards and procedures as a de novo rulemaking. Therefore, they appear to contend that the Commission must support any decision, including the retention of the Funeral Rule, on a new administrative record compiled afresh.[32]

This view is incorrect. A decision to retain any portion of the current Rule may be based upon evidence gathered during the original rulemaking and the Commission's subsequent enforcement experience, as well as evidence adduced during the current rulemaking. Indeed, to the extent that nothing supplements evidence from the initial rulemaking, there is a presumption that the existing rule should be retained.[33]

As discussed elsewhere in this Statement of Basis and Purpose, the Commission has evaluated the relative costs and benefits of the Rule, industry compliance, the Rule's effect on competition and consumer awareness, and a number of other factors, to determine whether to retain, amend, or repeal the Rule. In making that determination, the Commission has taken into account, among other things, the comments received in this rulemaking as well as the record established in the original rulemaking proceeding and the Commission's experience in enforcing the existing Rule. The Commission believes that its decision to retain certain provisions of the Rule while supplementing or amending others, as described in this Statement of Basis and Purpose, comports with the legal standards discussed earlier governing Section 18 rules.

B. Overall Costs and Benefits of the Rule

1. Repeal vs. Retention: Participants' Views

The vast majority of rulemaking participants supported the Rule's retention, or its expansion to cover other sellers. Of the 189 NPR commenters and 83 public hearing witnesses, only eight unequivocally advocated repeal of the Rule.[34] Two participants suggested repeal as an alternative, if the Commission declined to make various substantive amendments; two advocated repeal because, in their view, existing state laws were deemed adequate to protect consumers.[35]

The NFDA, the largest association of funeral industry firms, was the major proponent of repeal,[36] asserting that repeal is warranted because the Rule has imposed significant costs but failed to provide its promised benefits of increased competition and altered patterns of consumer behavior. According to the NFDA, the evidence shows that consumers in selecting funeral providers and types of funeral service still place a higher importance on social, moral and practical factors (such as provider reputation and quality of service) than they do on price.[37] The NFDA concluded that the evidence logically demonstrates that consumers under the Rule spend no less for funeral arrangements, comparison shop no more, and purchase no fewer items and no different types of service than they did before the Rule. The NFDA asserted that the Rule has imposed various monetary costs on providers that have been passed on to consumers in the form of higher prices, as well as non-monetary costs that interfere with providers' ability to give caring, quality service. The NFDA thus concluded that the Rule should be repealed in its entirety because its costs outweigh its benefits.[38]

In contrast to the NFDA's view, the AARP provided the most vigorous support for retention of the Rule.[39] The AARP advocated that a decision to repeal the Rule must be founded on substantial evidence demonstrating that: (1) The acts and practices addressed by the Rule are no longer prevalent; (2) the harm resulting from those practices has been removed; (3) repeal would not permit the return of that harm; and (4) the benefits of repeal exceed the costs of continuing the Rule. According to the AARP, those questions cannot be answered, and the Rule's full impact cannot be assessed, because the record evidence reveals unacceptably low levels of industry compliance and consumer awareness of the Rule's provisions. Because the Rule's full impact cannot be gauged, the AARP concluded, repeal is unwarranted. The AARP further asserted that the evidence indicates that the Rule has not increased funeral providers' costs, funeral prices, or consumer expenditures, but has begun to provide a variety of consumer benefits. The AARP thus further concluded that, although the Commission need not meet a specific evidentiary burden to retain the Rule, such evidence exists to support the conclusion that the Rule's benefits exceed its costs.[40]

2. Costs and Benefits Compared

The Commission has concluded, based on its review of the rulemaking record viewed as a whole, that the Rule warrants retention because its actual and potential benefits to consumers outweigh its costs to providers, and that those benefits are likely to increase over time as the Rule continues to operate. The Commission finds that, at the time of this review:

(1) The Rule has not been effective in the funeral market for a sufficient period to permit a full assessment of its benefits;

(2) The market is increasingly price-sensitive for the selection of funeral providers, types of service, and individual goods and services, particularly caskets, when price and options information is readily available during the selection process;

(3) Despite a documented, low overall compliance level, pro-competitive and informational benefits attributable in part to the Rule appear to be manifesting in the market and are likely to increase over time;

(4) The Rule overall imposes minimal compliance burdens on providers that do not significantly raise their business costs or prices, or reduce consumers' satisfaction with the funeral services they receive; and

(5) Most states have not adopted laws similar to the Rule in scope and coverage, and such action is not likely in the near future.

a. Levels of compliance/price competition/consumer Awareness. The evidence in the record indicates, at the time of this review, a low level of industry compliance with the Rule. Systematic, empirical data from two independent surveys—the Commission-sponsored, 1987 Replication Study and the 1988 Gallup Study conducted for the AARP—show that 36% of funeral providers simultaneously complied with the Rule's two key requirements to give consumers a general price list ("GPL") and an itemized final statement of goods and services selected.[41] Using the more comprehensive Replication Study results, that overall compliance level dropped to 31% when misrepresentation provisions about the necessity for embalming and caskets for cremation are added to the analysis,[42] and to 9% when the GPL timing requirement is viewed strictly and several other Rule provisions are considered.[43] Most rulemaking participants opined, when asked, that a 30% level of compliance would be insufficient to assess adequately the Rule's benefits.[44]

In addition to the relatively low level of overall industry Rule compliance, the rulemaking record demonstrates that funeral providers have not provided the initial stimulus for "increased competition" on the basis of price considered necessary by the Commission. The few funeral home entrants that aggressively compete on price, documented in the record, appear to be former, more traditional funeral directors who reentered the market as "discount" providers, and who are considered to be "mavericks" by the funeral industry as a whole. More traditional funeral homes, by industry representatives' own admission, generally do not price advertise or otherwise compete on the basis of price.[45] The record further indicates that funeral providers show little support for unfettered competition in the sale of pre-need funeral services,[46] and that many affirmatively attempt to discourage potential price competition from third-party cemeteries and other non-funeral home retailers who sell caskets on a pre-need basis, by imposing so-called "casket handling fees," averaging $300–$500 per funeral on consumers who patronize those sellers.[47]

Finally, the empirical data and record testimony documents that a majority of consumers exhibit low levels of awareness concerning their rights under the Rule[48] and funeral prices and service options,[49] as a result of a general

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[31] 15 U.S.C. 57a(e)(3); *Consumers Union of the United States, Inc. v. FTC*, 801 F.2d 417, 422 (D.C. Cir. 1986).

[32] R–M–9 (NFDA/NSM) at 213–214. The NFDA/NSM further suggest that any change in the Rule's requirements (other than repeal) must be based on new evidence that current practices are unfair or deceptive, in accordance with the Commission's regulatory authority. Id. at 220–221. The amended Rule, however, except as noted, covers no other new acts, practices, or sellers of funeral goods or services. Moreover, the Commission concludes that the NFDA/NSM position is inaccurate. The Commission when it promulgated the Rule determined that the covered practices were unfair or deceptive, as the Rule states. The Rule, however, also contains many "preventive requirements" designed to remedy those practices. Those preventive requirements may be modified without an entirely new record, as discussed in the accompanying text. As the Commission stated in mandating this review, one of its purposes was to determine whether the Rule is operating as expected in reducing barriers to price competition and increasing consumer choice, or whether some modification is necessary to facilitate those benefits. R–B–5 (SBP) at 42299.

[33] See *Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (1983).

[34] Those eight were: The NFDA (R–G–6, R–M–9); the Funeral Directors Service Association of Chicago (R–G–5)(repeal or sunset); Mr. Ninker, funeral director (R–G–1); the Conference of Funeral Service Examining Boards (R–J–1); the National Concrete Burial Vault Association (R–E–2); Mr. Hahn, FFDA, Tr. Vol. II, 674–675, 678 (because he believes the marketplace will not change significantly as a result, even though the Rule has made providers more aware of their cost components and those few consumers who are interested more aware of funeral prices); Mr. Yurs, funeral director, Tr. Vol. II, 554; and the Illinois Funeral Directors Association (R–G–2).

[35] Those four include: The NSM (R–G–3; R–M–9 at 224) (repeal unless major amendments are adopted as proposed and a "sunset" date is mandated); the NYS Funeral Directors Association (R–G–4) (Rule is redundant to New York law); Mr. Hocker, President, NFDA, Tr. Vol. III, 1399, 1400, 1444–1445 (NFDA advocates repeal, but his personal objections are limited to three areas—affirmative telephone disclosure, GPL timing and distribution, and prior permission to embalm; otherwise, the Rule has educated consumers about the funeral process and many providers say they are not overly burdened by the Rule); and Mr. Farrow, Exec. Dir, Texas Funeral Service Commission, Tr. Vol. III, 550–551, 573 (Rule is unnecessary in light of Texas funeral law, which is patterned after the Rule and benefits consumers).

[36] One issue raised during the proceedings was whether individual members of the NFDA or other trade groups agree that the Rule warrants repeal. Several surveys and other evidence introduced into the record indicated that many funeral directors may not wholly agree with the NFDA view. See, e.g., HX–32 (American Funeral Director magazine survey asked its funeral director readers "How would you recommend that the NFDA deal with the Funeral Rule during the forthcoming Review?" 70% responded that the Rule should be accepted as is or partially modified, 12% suggested substantial modification, and 20% repeal; 88% of firms represented by respondent funeral directors were NFDA members); See also, Hocker, President, NFDA, Tr. Vol. III, 1400 (many funeral directors say they are not overly burdened by the Rule); Hunter, President, NSM, Tr. Vol. I, 790–791 (majority of NSM members do not advocate repeal; parts of it have been very helpful); Ayers, HX–108 at 3 (68% of 500 funeral directors surveyed agreed that the Rule's required information was beneficial to consumers).

[37] However, the NFDA suggested that price plays a greater role in consumers' selections of individual items involved in the funeral, such as caskets and outer burial containers. R–M–9 at 20.

[38] See, e.g., R–G–6 (Comment on the NPR) at 5–7, 35, 114–121 and R–M–9 (Proposed Findings) at 216–220, 224.

[39] The other major participants in the rulemaking proceeding and consumer groups that addressed the issue all supported retention as well. These groups included the PAA, CANA, CAFMS, and Consumers Union.

[40] R–M–6 (Comment) at 10, 12–14 and R–M–11 (Proposed Findings) at 85–95, 144–145.

[41] HX–122 (BE Report) at 25–27; R–M–5 (Staff Rebuttal Statement) at 25, Table 7. Looking at these obligations individually, 23% of RS providers gave consumers the GPL—the key price disclosure document required by the Rule—at the outset of arrangements discussions as required, and 62% gave consumers who purchased a funeral on an item-by-item basis a properly itemized final statement. See HX–122 at Table VIII, p.20 and Table X, p.24.

[42] Id. at 26.

[43] R–M–5 (Staff Rebuttal) at 27, Table 8; R–B–2 (Replication Study/Market Facts Report) data tapes. In the BE analysis (HX–122), RS respondents were considered to have been the beneficiaries of "compliance" with respect to receipt of the GPL if they reported its receipt after discussions had begun but before selection of a casket or other container. BE staff, at the rulemaking staff's request, re-computed the compliance index using the Rule's definition of when a GPL must be given to consumers —"upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services." The result was that compliance with four of the Rule's provisions fell from 31% to 15% (timely receipt of the GPL and a properly-itemized statement, and no misrepresentations about the necessity for embalming and caskets for cremation). Overall, simultaneous compliance continued to drop from a "high" of 29% (using the most stringent BE compliance index, which added receipt of the GPL "in writing" to the four requirements stated above) to a "low" of 9% as other Rule provisions were added to the analysis.

[44] See R–N–1 (SR) at 51–56, notes 200–207.

[45] R–G–6 (NFDA/NSM Comment) at 5, 109–110, 113–114; R–M–9 (NFDA/NSM Proposed Findings) at 8–9, 31, 17–19, 199–200, 202–204; Krause, Tr. Vol. II, 12–13 (majority of Wisconsin providers do not compete); R–M–7 (PAA Rebuttal) at 21 (entry in the funeral market is virtually unheard of without a prior affiliation with a funeral home or cemetery, or the entrant is chain-related).

[46] The testimony of various funeral directors and cemeterians indicates that funeral providers as a group have supported state 100 percent pre-need "trusting" laws. The major impact of a "100 percent" trusting requirement—all moneys received from the consumer for a pre-need purchase must be placed in trust until the time of need—is to leave the pre-need seller without current funds to pay for the expenses associated with pre-need sales, such as an active sales force. See, e.g., Krause, Tr. Vol. II, 8, 13, 31, 34; Starks, Tr. Vol. II, 362–363, 367; Graf, Tr. Vol. II, 593, 649; Nelson, Tr. Vol. II, 180, and Barr, Kansas state representative/cemeterian, Tr. Vol. III, 1513.

[47] Record evidence concerning the widespread existence and effects of so-called "casket handling fees" is fully discussed in Section II.C.3, infra.

[48] Messer, trade embalmer, R–F–60 at 1; Carlson, author/lecturer, HX–22 at 7; Blake, Memorial Society of Door County, Wisconsin, Tr. Vol. II, 1119; Rouillard, Calif. Rural Legal Assistance Foundation ("CRLAF"), Tr. Vol. III, 1343–1344); Rev. Wasielewski, Inter-Faith Funeral Information Committee, Phoenix, Tr. Vol. III, 1619; Klein, consumer member, New York State Funeral Directing Advisory Board ("NYSFDAB"). Tr. Vol. II, 1060 (consumers don't expect a GPL at the beginning of arrangements or know that it's required); Botimer, Phoenix funeral director, Tr Vol. III, 1283; Barr, Kansas state representative, Tr. Vol. III, 1537; Klugman, President, California Fed'n of Funeral and Memorial Societies, Tr. Vol. III, 924, 931; Rev. Bell, Inter-Faith Ministries of Wichita, Tr. Vol. III, 232, 247–248; Clark, Ark. A.G., Tr. Vol. III, 38; Rev. Dr. Biddle, Tr. Vol. III, 312, 337 (even "informed" consumers are unaware); Elvig, California State Cemetery Board, Tr. Vol. III, 439; Dr. Reveley, former funeral director, Tr. Vol. III, 879; Showalter, Tr. Vol. II, 105; Neel, Pittsburgh funeral director/cemeterian, Tr. Vol. I, 631; and CAFMS, R–H–12 (Comment) at 2.

[49] Hennessy, FDSA, Tr. Vol. II, 994; Showalter, Tr. Vol. II, 105, 107, 126–127 (consumers do not have basic knowledge to discriminate between products and services or know what to ask, or that a funeral is an item that one can price-shop for); SW Florida Funeral and Memorial Society, R–F–64 at 6 (purchase/embalming options and availability of published price data); Neel, funeral director/cemeterian, R–E–1 at 1; Carlson, author, Tr. Vol. I, 516, 524 (consumers are dissatisfied when they learn that they had a choice); Nelson, PAA, Tr. Vol. II, 228, 233 (especially the less expensive options); Prof. Sommer, Center for Consumer Research, Tr. Vol. III, 617, 624, 628–629 (local or national prices because no published price data/prices); Schwartz,

Continued

lack of "visibility" of the Rule and of readily-available, comparative price information.[50] Other empirical evidence indicates that consumers' "experience" with funerals is low by any measure[51] and that, regardless of their level of experience, consumers are not "familiar" with the funeral transaction.[52] Most rulemaking participants concluded that the documented low levels of overall industry compliance and consumer knowledge, viewed together, indicate that the Rule has not been in place long enough to adequately assess its impact on the funeral market.[53]

b. Market price-sensitivity. Consumers' demand for funerals, of course, is price inelastic. Record evidence indicates, however, that consumers' selections of individual funeral providers, overall types of funeral service, and individual funeral goods and services are price-sensitive.

Consumers value available price information in selecting a funeral home and in making specific funeral arrangements, particularly when they receive the price information early in selecting funeral goods and services. With respect to the selection of a provider, 52% of NSM survey respondents in the years 1983–1988 said that they considered price "very important" in their funeral home selection, although other factors appeared to be more important; only 19% considered price unimportant.[54] Similarly, "low-cost" funeral homes, where they exist, have increased their business substantially in recent years as a direct result of their competitive pricing practices.[55] Regarding the selection of specific goods and services, many consumers are purchasing competitively-priced caskets from third-party sellers when they are available,[56] are increasingly choosing the significantly less-expensive cremation alternative,[57] are purchasing significantly fewer caskets and requesting embalming for cremation less frequently than in 1981,[58] and are declining items that used to be included in funeral "packages."[59] Replication Study consumers who received price information early in the transaction spent $252 less for their specific arrangements than those who did not get that timely information;[60] the earlier consumers received price information, the more likely they were to consider the information important to their choices in making funeral arrangements.[61]

c. Pro-competitive/informational benefits. Despite the 31% overall industry compliance level with four of the Rule's key requirements[62] and the

focus group, Tr. Vol. III, 460 (embalming option); Blake, memorial society, Tr. Vol. II, 1109, 1119, 1131 (cremation options/declination options); Wertheimer, NAEL, Tr. Vol. III, 964 (consumers blame their inexperience for lack of knowledge); Clark, Ark. A.G., Tr. Vol. III, 38; Buchanan, President, CAFMS, Tr. Vol. III, 1107; Dr. Biddle, Tr. Vol. III, 347; Klein, NYSFDAB, Tr. Vol. II, 1066, 1082 (don't' know what to ask over the phone/ memorial societies exist to increase consumers' awareness of funeral options); Graf, cemeterian, Tr. Vol. II, 625 (don't know they can move the remains if they wanted to); Snyder, CU, Tr. Vol. III, 1261; Botimer, funeral director, Tr. Vol. III, 1284, 1289, 1311 (price variance); Rev. Wasielewski, Tr. Vol. III, 1620, 1634–1635 (casket prices/price variance); Bejarno, funeral consumer, Tr. Vol. III, 1588, 1597 (price variance); and Dr. Reveley, former funeral director, Tr. Vol. III, 898 (cremation options). But see, Yurs, funeral director (for NFDA), Tr. Vol. II, 559 (consumers with prior experience will have some idea of funeral costs); and Hahn, Federated Funeral Directors of America ("FFDA"), Tr. Vol. II, 709 (consumers are no more aware of prices because they don't price shop).

[50] Although not uncontroverted by the rulemaking staff and funeral industry representatives, the results of two national, consumer opinion surveys indicated that: (1) When asked whether they were "familiar with the FTC's Funeral Rule and what it requires," 90 percent of the 782 respondents aged 45 and above surveyed in the first of these "Excel" surveys said "no" and 10 percent answered "yes;" and (2) when asked whether each of several declarative statements about funeral director obligations and funeral consumer rights was "required by federal law or not," a majority (54 percent-75 percent) of the 916 consumer-respondents aged 21 and over said that, to the best of their knowledge, federal law does not require the rights and obligations actually mandated by the Funeral Rule, or said that they do not know. See McFadden, HX–8 at 3 and Exhibit B, Table 001; Soules, HX–76 at 3. The "McFadden" survey results also provided evidence that older consumers aged 65 or over are significantly less likely to be aware of the Rule's protections than are younger consumers aged 18–34. HX–8 at Exhibit B, tables 002–004, 006–007.

[51] Thirty-six percent of the RS respondents reported that they had no prior experience arranging funerals; another 30 percent said that they had participated in planning arrangements once before, and the remaining third said they had done so twice before or more. R–B–2 at III–9, Table III–7. Because the RS surveyed recent funeral arrangers, however, and not the general public, the level of respondents' prior experience may not be representative of the population as a whole. The Commission found, for example, that, at the time it promulgated the Rule, about 50 percent of the adult population had never arranged a funeral and another quarter had done so only once. See R–B–5 (SBP) at 42265.

[52] The Bureau of Economics staff performed an analysis of the RS data to determine whether there was any link between respondents' degree of experience in making funeral arrangements (Question 10. of the study) and their level of knowledge about the funeral transaction (Question 55 asked whether embalming is required by law and whether a sealed casket/vault preserves remains indefinitely). BE staff divided respondents into two categories—those with arrangements experience prior to the one surveyed and those without such prior experience. BE staff then performed a statistical test to determine whether there was any relationship between those two categories and their answers to Question 55. BE staff found no relationship between the degree of respondents' reported prior experience and their level of knowledge. See R–N–1 (SR) at n. 124. In addition to BE's statistical test, the RS results show that 50 percent and 42 percent, respectively, of the RS respondents, all of whom had arranged a funeral at least once, reported incorrectly that embalming was always required as a public health measure and that a sealed casket/vault preserves remains for an indefinite time. R–B–2 at Table III–54, p. III–85.

[53] See R–N–1 (SR) at notes 115, 200–207; R–O–1 (POR) at 48–49, 223–224.

[54] The analysis is based on R–J–11, NSM Summary sheets, Question 1.f. See also, R–M–5 at 7–8. The NSM Survey results are remarkably similar to those of the RS concerning the importance of price. That data indicate that 56% of the survey respondents reported that the cost of funeral arrangements was "very" or "somewhat" important in their decision to select the funeral home they used; 15% reported that cost was somewhat or very unimportant. R–B–2 at Table III–28, p. III–39, and data tapes.

[55] Botimer, Tr. Vol. III, 1269, 1325 (based on the surveys his firm conducts, 85% of his clients choose his funeral home because of its low prices); Peebles, Tr. Vol III, 1551–1552 (the majority of his customers come to his funeral home because of its competitive prices); Heffner, HX–33 at 11 and Ex. T (annual funeral calls at the firm he recently purchased have increased 400% as a result of his discount price advertising); and Showalter, Tr. Vol. II, 130 (two discount funeral homes have captured 10% of the market in Phoenix, even though there are some 50 homes in that area, because they offer "traditional" funerals for less than $1,200).

[56] See R–N–1 (SR) at 124–127.

[57] The BE analysis showed that cremation selections increased from 11% in 1981 to 14% in 1987, and that the average cremation cost to 1987 respondents was about one-third of the cost of open-casket funerals ($1,054 vs. $2,818). HX–122 at Table II, p. 6, Table III, p. 7. BE staff noted that the close similarity of the survey results to cremation statistics provided by the CANA suggests that the BLS and RS are representetive of the national population. *Id.* at n. 9.

[58] Thirty-four percent of cremation buyers in 1981 also purchased caskets, and 35 percent bought embalming services; those selections dropped in 1987 to 19% (caskets) and 25% (embalming). R–B–3 (BLS) at Table 3, p. 23; R–B–2 (RS) at Table III–44, p. III–71 (caskets) and Table III–42, p. III–67 (embalming). Similarly, CANA member surveys indicate a reduction in the purchase of caskets for cremation from 22% to 17% between 1983 and 1987, a reduction which the CANA attributed to the Rule. See Kelsey, Tr. Vol. II, 310–312, Purdy, Tr. Vol. III, 158.

[59] Hahn, FFDA, Tr. Vol. II, 684–685.

[60] HX–122 (BE Report) at 37 and Teble XI, p. 38 (variable noted as "pinferly").

[61] Seventy-six percent of consumers who received price information "at the beginning" of arrangements discussions said that price information was very or somewhat important; 75% said so when they got price information "before casket selection;" 62% who reported that they received such information "when finalizing arrangements" said thet it was very or somewhat important at that time; 67% said so when they got the information "after decisions had been made;" and 53% said so when there was "no discussion of price." In the first three periods above, 41%, 31%, and 22% of respondents, respectively, said that price information was "very" important. The analysis is based on consumers' answers to RS questions 27 (when price information was first received) and 35(c)(5) (importance of price information in arranging the funeral). R–B–2 at APPENDIX: Questionnaire, and data tape. See also, R–M–5 (Staff Rebuttal) at 6–7.

[62] Those four requirements are: to give consumers a timely general price list (§ 453.2(b)(4)) and itemized statement of goods and services selected (§ 453.2(b)(5)), and to refrain from misrepresenting the necessity for embalming and caskets for cremation (§ 453.3(a) and 3(b), respectively).

lack of price competition among funeral homes, competitive and informational benefits that are at least partially attributable to the Rule have begun to manifest in the funeral market. Testimonial evidence establishes that the Rule's "unbundling" and price disclosure provisions have encouraged third-party casket sellers and low-cost funeral homes to enter the market and have helped them compete,[63] in part because the GPL and telephone disclosure requirements permit non-industry entities to gather and publish comparative price data.[64] Many consumers have used that data to select those lower-cost funeral providers and purchase caskets from third-party sellers where they exist.

Other testimonial evidence presented by the FFDA, which provides financial and accounting services to 1,500 independent funeral home clients in 30 states, indicates that the Rule—through the availability of the GPL—has raised the industry's "price consciousness," which may be partly responsible for the tempering of price increases in recent years.[65] Mandatory itemization may have helped retard the growth of funeral prices and consumer expenditures, a goal fully intended by the Commission.[66] Statistical data provided by the FFDA and the Replication Study, and analyzed by an economist for the AARP and the BE staff, also establish that, although overall prices and consumer expenditures for funerals increased since 1981 by more than the general price level (the "CPI–U"), which includes all goods and services, the increase was comparable to the increase in service prices (the "CPI–US," which excludes medical services); that is, compared to other service industries,[67] funeral prices and expenditures in the period 1981–1987 did not increase above the rate of inflation.[68] In 1988, expenditures and prices for funeral services increased by even less than the rate of inflation for the general economy (the "CPI–U").[69]

In addition to these benefits, record evidence discussed above suggests that the Rule has helped increase consumers' awareness of prices and service options as factors to consider in making funeral purchase decisions. Many consumers choose low-cost funeral homes and caskets competitively offered by third-party providers, and consumers who chose cremation in 1987 purchased fewer caskets and embalming than in 1981. Finally, that evidence indicated that consumers now decline items once included in packaged funerals, and increasingly choose less-expensive cremation alternatives.[70]

Other empirical evidence indicates that, since 1981, the proportion of consumers who receive price information early in the funeral transaction, and use that information to spend less for their arrangements, has increased by 7%.[71] Consumer purchases of "unneeded" caskets and embalming for cremation have decreased,[72] as have provider misrepresentations about casket requirements,[73] and the accuracy of consumers' knowledge regarding casket for cremation and embalming requirements and the preservative value of sealed caskets has increased slightly.[74] The great majority of rulemaking participants expressed the view that the actual and potential Rule benefits just enumerated will tend to increase over time, as compliance with, and consumer awareness of, the Rule increases.[75]

Although not directly related to pro-competitive and informational benefits, other empirical evidence based on the Replication Study data and BE staff's compliance indices indicates that the proportion of consumers reporting satisfaction with their arrangements steadily increases as simultaneous provider compliance with the Rule's provisions increases.[76] That evidence indicates that compliance with the Rule benefits consumers and funeral

[63] Radovich, PAA, Tr. Vol. III, 1026, 1029 (virtually no third-party casket sellers existed before the Rule; casket retailers owe their existence primarily to the enactment of the Funeral Rule, which effectively allows the consumer to use a casket from an outside source); Dronda, Tr. Vol. II, 894 ("Sale of caskets through cemeteries is a relatively recent innovation. Prior to the enactment of the Funeral Rule in 1984, we were hardly aware of any cemeteries that sold caskets on their own because of the difficulty in obtaining a funeral home which would accept them and provide funeral services").

[64] Memorial society members, journalists and others testified that collecting comperative funeral price data was, at best, a difficult task before the Rule. See, e.g., R–N–1 (SR) at 86–88.

[65] Hahn, FFDA, Tr. Vol. II, 678 (funeral homes refrained from increasing prices for professional services even more than they did because of the GPL).

[66] See R–B–5 (SBP) at 42297.

[67] The funeral home industry is classified by the U.S. Dept. of Commerce in the standard industrial classification scheme (SIC) as a "service" industry, because, like other service industries, it sells services as well as goods.

[68] See R–N–1 (SR) at 76, 79–80. Even if overall industry compliance were higher and consumer expenditures still remained unchanged, the level of expenditures is not the sole test of the Rule's benefits. As the BE staff stated in its report, expenditures may rise as a result of price increases related to funeral homes' fixed costs that are not associated with any costs of Rule compliance. The record evidence indicates, in fact, that Rule compliance has not significantly increased funeral providers' costs or prices, that consumer expenditures and funeral prices, when compared to other service industries, have not increased above inflation, and that an industry "price consciousness" induced by the availability of the GPL may have tempered price increases. If the Rule's only benefit were to increase informed consumer choice (without imposing substantial costs on industry), regardless of whether some chose to spend more for their arrangements than they would have without the Rule, that benefit would likely justify retention of the Rule because other consumers would have the right to choose to spend less. The Commission in its 1982 SBP for the Rule so stated the Rule's purpose. The record evidence in fact indicates that many consumers will purchase fewer funeral items or less-expensive services as a result of informed choice.

[69] See *Funeral Service Insider*, March 20, 1989, at 2.

[70] Although the record evidence supports the conclusion that the Rule facilitates consumers' choice of cremation, the degree to which the Rule has affected the cremation rate is unclear from the record evidence. The NFDA suggested that the Rule has not played an important role in the steadily increasing cremation rate, because the increase began in the early 1970s and is based primarily on changing social and moral values, as well as on the wishes of the deceased, and not on price concerns. The CANA and the AARP, in contrast, asserted that the Funeral Rule proceedings, which also began in the early 1970s, as well as the Rule itself, substantially increased publicity about the cremation alternative, and that many consumers do choose cremation based on price and other considerations. The CANA also provided evidence that the marketing of cremation options has dramatically increased since the Rule's inception. See R–N–1 (SR) at 68–71.

[71] HX–122 (BE Report) at 15 and Table VI, p. 14.

[72] That data show that, in 1981, 18% and 11% of "direct cremation" purchasers, respectively, appear to have bought embalming services and caskets that were unnecessary, because the body is not present during the service (making embalming unnecessary) and is not buried (making a casket unnecessary). In 1987, those figures declined to 9% (unneeded embalming) and 2% (unneeded caskets), respectively. See R–M–5 (Staff Rebuttal) at 9; R–B–2 (RS) and R–B–3 (BLS) data tapes. The decline in unneeded casket purchases is statistically significant.

Record data also indicate that those arguably "unneeded" casket purchases occurred in many cases as a result of funeral director misrepresentations. Those data show that in all but one case, in instances where cremation was selected, consumers purchased a casket when told that one was required—8 of 9 instances in 1981, and 2 of 2 in 1987. Id.

[73] Seven percent of those 1987 RS respondents who purchased cremations said that the providers they used represented that a casket was required, as opposed to 26% of 1981 cremation buyers. See R–B–2 at IV–8; R–N–1 (SR) at 39, n. 149. The 26% figure may be somewhat overstated, however, because, unlike the RS, the 1981 BLS question did not include a response category permitting the compliant statement that an unfinished wood box (an alternative container that is arguably a type of casket) was required. Eleven percent of the 1987 RS respondents answered the question that way.

[74] In 1981, 19% of BLS respondents thought that caskets were required for cremation (vs. 13% in 1987); 61% said that embalming was always required (vs. 50% in 1987); and 60% in 1981 believed that a sealed casket preserved remains for an indefinite time (vs. 42% in 1987). See R–B–3 (BLS Report) at Table 9, p. 32; R–B–2 (RS Report at Table III–54, p. III–85.

[75] See R–N–1 (SR) at notes 115, 200–207.

[76] See HX–125. The analysis demonstrated that, although "satisfaction" is over 80% even when consumers report no compliance with individual measures, the proportion of satisfied consumers increases steadily as compliance with the Rule increases.

providers by increasing consumer satisfaction with funeral service, and that the level of satisfaction might continue to increase if compliance with the Rule were greater.

d. Costs to providers. While the Rule has begun to provide benefits to consumers, empirical evidence demonstrates that its requirements have not been a significant contributing factor to increases in funeral home costs of doing business or funeral home prices, or to any reduction of overall consumer satisfaction with funeral services. Funeral provider groups, however, asserted that the Rule has imposed on providers a variety of increased costs, most notably for personnel as a result of a 23-minute average increase in the duration of the arrangements conference, and for business expenses such as printing, accounting and legal services. These costs, those groups said, have been passed on to consumers in the form of higher prices, particularly for professional services.[77]

Statistical business expense data for the years 1977–1987 presented by the FFDA,[78] and analyzed by an economist for the AARP, indicates that funeral home costs arguably most related to the Rule (such as legal, accounting and consulting costs) have increased at lower rates than other expenses (such as depreciation and casket cost),[79] and that overall cost increases have resulted more from a general increase in all business expenses than from a dramatic increase in any one expense category.[80] Mr. Hahn of the FFDA further testified that the Rule has played a very minor role in business expense and price increases,[81] which he and other witnesses attributed generally to inflation and individual funeral home business decisions.[82]

Further record analysis of the FFDA statistical data by BE staff indicates that funeral homes' personnel expenses appear to have increased very slightly since 1984, but that personnel expense as a proportion of overall business expense has not significantly changed in many years, including the period covered by the Rule. Similar analysis shows that salary expense as a proportion of personnel cost has likewise remained stable.[83] Mr. Hahn of the FFDA testified that significant changes in those areas should have occurred if the Rule were significantly increasing funeral homes' personnel costs.[84]

e. State Regulation of Funeral Providers. The rulemaking record finally documents that most individual states favor the continued existence and strong enforcement of the Funeral Rule to protect funeral consumers, rather than reliance on the states to adopt comprehensive, state-specific legislation. A 1987 staff survey of the states' funeral industry statutes, regulations and rules revealed that ten states have incorporated the Rule by reference into their laws or adopted provisions similar to six of the Rule's most salient requirements; six have enacted at least four of those provisions, and, overall, thirteen to twenty-five states have laws that include one or more provisions similar to the Rule.[85] No party presented evidence during the review that additional states have adopted relevant funeral laws or that existing laws have been significantly strengthened.

Testimonial evidence presented by state legislators and officials further indicates that, although the Rule has helped stimulate the enactment of similar funeral industry laws in several states, such reform is unlikely in their or other states because of industry opposition. Those witnesses expressed their views that the Funeral Rule needs to be retained as a result, and is beneficial to consumers, funeral providers, and state enforcement officials.[86]

C. Section-by-Section Analysis

1. Introduction

The Rule as amended contains two major changes—deletion of the affirmative telephone disclosure requirement and the prohibition of non-declinable fees (such as so-called "casket handling fees" and "basic facilities fees") charged in addition to the non-declinable fee for basic professional services of the funeral director and staff. These primary changes, and a number of "fine-tuning" amendments, are intended to increase the Rule's benefits and reduce its costs by facilitating funeral providers' compliance with, and consumer understanding of, the Rule's requirements, while preserving the integrity of the Rule's "unbundling" and price disclosure requirements. Finally, the Commission has made several technical amendments to the Rule that are necessary to correct inconsistencies or unnecessary language in certain Rule provisions, or to complement other amendments.

2. Affirmative Telephone Disclosure Repeal: Section 453.2(b)(1)(i)

Section 453.2(b)(1)(i) of the original Rule required funeral providers to affirmatively tell persons who call and ask about the "terms, conditions, or prices" at which funeral goods or funeral services are offered that price information is available over the telephone. The Commission has decided that the affirmative telephone disclosure provision should be deleted from the Rule because its costs outweigh its actual and potential benefits to consumers, and because the integrity of the Rule's price disclosure requirements will be maintained by retaining the requirement to provide price information over the telephone on request.

The Commission designed this provision to help consumers in two ways. First, it would alert them to the availability of price information over the telephone, and, second, it might diminish consumers' reluctance to seek such information. The Commission intended that affirmative disclosure

[77] See, e.g., R–M–9 (NFDA/NSM) at 62–76, 89–96 and McChesney, HX–126–A at 52–53, 86–89.

[78] Federated Funeral Directors of America (FFDA) processes records from 1,500 funeral home clients in 30 states that conduct about 181,000 funerals a year, representing just under 10% of all deaths. FFDA is the largest company of its type in the country. Hahn, Tr. II, 662–663.

[79] Dr. Barnow, speaking on behalf of the AARP, reported that his review of the FFDA data showed that accounting, consultants and legal costs were responsible for 2.6% of the real increase in overall funeral home costs since 1981, whereas depreciation and casket cost respectively accounted for 14.9% and 9.3% of the real increase in costs. See Dr. Barnow, HX–118 at 14 and Exhibit 2, pp.12–13. Dr. Barnow further stated that increased compliance would not substantially increase the Rule's costs, because there are no identifiable, major costs imposed by the Rule now on providers. Tr. Vol. I, 880, 883.

[80] HX–118 at 14. Dr. Berry, an economist and industry observer appearing on his own behalf, agreed that the Rule has not had a significant influence on funeral home costs. Tr. Vol. I, 151.

[81] Tr. Vol. II, 681, 683–85, 689–90.

[82] Id. at 678–80, 683, 688–689, 709; R–C–7 (*American Funeral Director* magazine interview with Mr. Hahn) at 3; Pierson, R–D–1 at 2; Ninker, R–G–1 at 3; Davis, Illinois FDA, R–G–2 at 1; Botimer, Tr. Vol. III, 1292; and FDSA of Chicago, R–G–5 at 25;; Krause, Tr. Vol. II, 24; and Longmire, R–D–2 at 5; see also, R–N–1 (SR) at 83, n. 402 and McChesney, HX–126–A at 53, which contains the following quote from *Business Trends Analysts:*

When first proposed, many believed the Funeral Rule would lower funeral and cremation service prices because lower-priced options would be made known to the consumer. However, when put into effect, the Funeral Rule caused funeral directors to examine their costs. In doing so, many realized that they had been "giving away" some services. In effect, funeral directors became more business-oriented as a result of the FTC rulings, and found that they could actually raise prices.

[83] See HX–50 (BE Personnel Expense Date Analysis).

[84] Tr. Vol. II, 688.

[85] See R–C–12 (staff survey); R–J–1 (Conference of Funeral Service Examining Boards survey) at 4–6.

[86] See the testimony cited in R–N–1 (SR) at 97–100.

provision to facilitate consumers' comparison shopping for a provider.[87]

Empirical evidence presented by the Replication Study, however, indicated that few consumers comparison shop before selecting a provider. The Commission in the NPR thus requested public comment on whether: (1) Consumers are aware of their right to seek price information over the telephone; (2) compliance with this provision is costly; and (3) it should retain the affirmative telephone disclosure provision in view of the study results.[88]

Empirical and testimonial evidence in the record provided insights into the delicate relationship between consumers and funeral providers that appear to affect the degree to which consumers seek price information directly from providers. Results from the Baseline, Replication and Gallup Studies indicated that consumers seldom seek price information or comparison shop by calling providers directly. In 1981, 7.2% of the Baseline Study respondents comparison shopped by contacting more than one funeral home;[89] 4.2% of the 1987 Replication Study respondents did so,[90] and 11% of the 1988 Gallup Study consumers contacted more than one provider.[91] Most 1987 Replication Study respondents knew which funeral provider they intended to use,[92] and those who had not decided on a funeral provider usually contacted only one at the time of need.[93] In the initial telephone contact, RS respondents asked about "prices, terms or conditions" only 9.2% of the time.[94]

Record evidence indicated that both consumers and providers are reluctant to initiate price discussions during funeral arrangements.[95] The evidence indicates that, unlike a visit to the funeral home, where the general price list facilitates the actual review of services and merchandise, the offer to discuss prices over the telephone is helpful only if the consumer is prepared to do so. The weight of the evidence demonstrates that the initial telephone contact is a tentative encounter in which the consumer is relying on the funeral provider to set the tone of the interaction. The funeral provider at that delicate time, however, reasonably wishes to avoid the appearance of insensitivity by raising price issues when the callers' typical concerns are whether and how to arrange the funeral with the particular provider.

Several provider witnesses[96] testified that the affirmative telephone disclosure has offended callers, who interpret the disclosure as an indication of the funeral provider's preoccupation with the consumer's ability to afford services.[97] For example, a state funeral board member observed that, whenever a client calls first to arrange a date and time for a funeral service, expecting an empathic response, the consumer is offended by the funeral director's uninvited statement that price information is available, and the funeral provider resentful about having to make such a statement at this early juncture.[98] Other providers distinguished between the accepted practice of giving price information that is requested, and the difficulty of telling the caller who has not requested it that the funeral provider is prepared to talk about prices.[99] Funeral director representatives concluded that providers' goodwill is harmed as a result of the offense generated by the unsolicited affirmative disclosure, which providers under the Rule must make during the initial telephone contact.[100]

The evidence further shows that providers experience difficulty in understanding their obligation under § 453.2 (b)(1)(i). Under that affirmative disclosure provision, a funeral provider must either tell every caller that price information is available, or determine whether an inquiry concerns a "term," "condition," or "price" of funeral goods or funeral services offered, thus triggering the disclosure. The original staff Compliance Guidelines illustrated that problem; the Guidelines told funeral providers that a call asking whether the provider will perform a funeral for a particular religion does not trigger the disclosure, whereas a call asking whether the provider will remove the deceased from a hospital does.[101] The difficulty of determining whether an inquiry concerns a "term" or "condition" thus places a clear burden on the provider, without a commensurate benefit to the caller.[102]

Other empirical data indicate that the disclosure does not affect consumers' expenditures for funeral arrangements. Economic analysis of the Replication Study data indicated that those consumers who called the provider and received the Rule-required affirmative disclosure spent no less for their arrangements than other respondents.[103]

Consumer group participants, however, suggested that the affirmative disclosure was meant to signal

[87] R–B–5 (SBP) at 42273.

[88] R–A–1 at 19869 (Question 7).

[89] HX–122 (BE Report) at 14, Table VI.

[90] Id. (42 of 991) Eighty-five percent of respondents had already decided on a funeral home before contacting any. R–B–2 at Table III–18, p. III–24. Eighty-two percent of those who had not decided on a particular funeral home contacted only one funeral home. Id. at III–25.

The study contractor, Market Facts, in its report stated that these results "must be viewed with extreme caution" because so few respondents (43) contacted multiple funeral homes and even fewer (35) contacted any by telephone. Id.

[91] Colasanto, HX–66 at Ex. B, p. 7 and Tabs. p. 19 (68 of 607).

[92] R–B–2 at Table III–18, p. III–24 (85% had already selected the provider).

[93] Id. at III–25 (95% of the respondents who had not decided on a funeral provider before contacting one still contacted only one).

[94] HX–122 (BE Report) at 16.

[95] See R–N–1 (SR) discussion at 61; Hocker, Tr. Vol. III, 1435; Johnson, Tr. Vol. I, 744; Starks, Tr. Vol. II, 402–403; and Hennessy, Tr. Vol. II, 1024.

[96] None of the systematic, empirical evidence in the record addressed the question whether the unsolicited disclosure during the initial telephone discussion that price information is available was offensive or confusing to consumers. The Gallup results indicated that most arrangers (83%) are not offended "when funeral directors give them information about the cost of funeral services when they first begin making arrangements." See Colasanto, HX–66 at Appendix B, Tabulations, p. 24. That question, however, refers more specifically to consumers' feelings about actual price information offered by providers during the arrangements conference, such as providers' offer of the GPL, and not to consumers' views about the affirmative telephone disclosure that price information is available.

[97] Hocker, Tr. Vol. III, 1400–1401 ("It's very difficult sometimes to tell people price information is available on the telephone when they don't ask for it and when it's the furthest thing from their mind. It creates a real awkwardness for us. There are many times people want to have an idea of when they can have the service, how long they can wait, Joey's in Germany in the service and he has to come back home, and to tell them that price information is available on the telephone is sometimes an intrusion when it's not called for."). See also, Nilsen, Tr. Vol. III, 1462; and Keith, Tr. Vol. III, 1459.

[98] J. Hunter, Tr. Vol. III, 603–604. See also, Nilsen, Tr. Vol. III, 1462 ("It just simply makes it look to callers that instead of caring individuals we're money-hungry professional or business people out there; that's what it does to the consumer at that point in time.").

[99] See Keith, Tr. Vol. II, 1459 ("We're objecting to the disclosure at that moment, that triggering event, not to the disclosure of the prices over the telephone upon request"); and Hocker, Tr. Vol. III, 1464, 1480 ("I would rather not have to make an affirmative statement unless people asked for price information, and then you know that they're interested in it, and so there's no problem.").

[100] See, e.g., Hennessy, HX–61 at 7–8; Farrow, HX–65 at 4; and Johnson, Tr. Vol. I, 748.

[101] R–B–6 at 28062, 28064 (Illustrations #2 and #6).

[102] The Commission, however, has not adopted the AARP-suggested modification that would resolve this compliance problem by requiring funeral providers to inform all callers that price information is available over the telephone. The record contains substantial evidence that some consumers would be offended unnecessarily by such unsolicited remarks, and that substantial harm to funeral providers' reputations could occur, without significant consumer benefit. These possibilities further may increase the likelihood of non-compliance, which the evidence suggests may be no greater than 50% at this time. On balance, ensuring that those callers who seek price information can obtain it would better assist consumers in making informed selections.

[103] HX–122 (BE Report) at 17.

consumers who are reluctant to raise price issues that it is acceptable to do so, and that providers can find ways to make that disclosure without offending consumers.[104] Although the empirical evidence is not conclusive on the issue, the preponderance of the reliable anecdotal evidence provided by many funeral directors who must make the disclosure to consumers supports the conclusion that the requirement's potential to overcome consumers' inhibitions and benefit additional consumers is unlikely, and does not justify the imposition of awkwardness and potential offense in a transaction already fraught with delicate business, social and personal issues.

In summary, the record evidence shows that consumers rarely price shop for a funeral home or seek price information directly from providers because of their reluctance to do so and their general lack of awareness about prices charged by providers, and not because of a conviction that price information cannot be requested over the telephone. The affirmative disclosure that price information is available thus does not appear to give consumers new information that is likely to increase their desire to ask about prices or to encourage price shopping.

The record evidence further indicates, however, that the Rule overall is contributing to increased consumer "price sensitivity" that leads some additional consumers to use the telephone to shop for lower-cost providers, or to seek comparative price information from non-industry sources. Consequently, consumers who want price information will affirmatively use the telephone to seek such information from providers who advertise prices, or to engage in alternative shopping methods, such as calling memorial societies, media price "hotlines," or state agencies that make comparative price information available.[105] The Commission has concluded that consumers will increasingly seek price information as their awareness, and the availability, of comparative price information increases.

The preponderance of the evidence in the rulemaking record indicates that the affirmative telephone disclosure is an inartful and unnecessary signal to consumers about the availability of price information that is unlikely, over time, to provide substantial benefits to consumers not afforded by the Rule's other price disclosure provisions.[106]

In light of this evidence, the Commission has determined to repeal the affirmative telephone disclosure provision because its potential to benefit additional consumers is unlikely, and does not warrant the intrusion of potential offense in what is otherwise an extremely delicate business, social and personal transaction. The Commission further concludes that the integrity of the Rule's price disclosure requirements will be maintained by retention of the general requirement to provide price and other readily-available information over the telephone on request (§ 453.2(b)(1)).

Funeral provider representatives, however, suggested that such action would concede what they consider the Rule's premise that increased comparison shopping was necessary to cure "supracompetitive" prices.[107] That suggestion, however, overstates the importance of the disclosure to achieve the goal of increasing comparison shopping, and fails to acknowledge record evidence indicating that the Rule overall already has contributed to increased price competition.[108]

The Commission in its Statement of Basis and Purpose for the Rule clearly expressed its view that the general telephone requirement to give price information on request, and the requirement to give the GPL to any person seeking in-person information about funeral arrangements, in addition to the affirmative telephone disclosure, would all contribute to increased comparison shopping.[109] Nevertheless, the Commission did not base the Rule's entire success in reducing barriers to price competition on the affirmative telephone disclosure or on comparison shopping, because it fully recognized that such behavior might always be infrequent.[110] As described above, the Rule's provisions already are providing pro-competitive benefits to consumers, including increased price sensitivity, despite the low overall levels of industry compliance, price competition and consumer knowledge demonstrated by the record. Those benefits are likely to increase over time as industry compliance with, and consumer awareness of, the Rule's other provisions increases.

3. "Casket Handling Fees:" Section 453.4(b)(1)(ii)

One benefit the Commission ascribed to the Rule in its 1982 Statement of Basis and Purpose was that "the greater availability of price information may encourage entry into the funeral market of new competitors seeking to attract business by offering lower prices."[111] That prospective benefit was important to the Rule's remedial intent, because the Commission found that the funeral industry had historically opposed price advertising.[112] The Commission concluded that, as a result of that reluctance to make price information readily available, consumers purchased unwanted items and paid higher than competitive prices for items they selected.[113]

The Commission further recognized that easy access to the market and a fair chance to compete were prerequisites to the entry of new retailers into the funeral market.[114] The Rule's general "unbundling" provision, § 453.4(b), afforded that opportunity to new entrants by removing the primary industry restraint on consumer choice—package-only pricing.[115] The Commission found that, by "bundling" all funeral goods and services in a package, funeral providers had effectively forced consumers to buy unwanted items as a condition of providing a necessity that only they can provide: disposition of the remains.[116] Section 453.4(b) of the Rule prohibits funeral providers from conditioning the furnishing of one funeral product or service upon the purchase of another product or service unless required by law, such as embalming for interstate

[104] P–39 (AARP) at 31–39; P–36 (National Consumers League) at 2.

[105] See, e.g., R–N–1 (SR) discussion at 58–59, 66–67.

[106] Nor does the evidence support a conclusion that industry compliance with the affirmative telephone provision is too low to permit a conclusion about its potential benefits. The evidence on compliance with § 453.2(b)(1)(i) is inconclusive. The RS data show that about half of all providers (49%) who were asked about funeral "prices, terms, or conditions" over the telephone made the required disclosure. However, an unusually large proportion of the respondents—29%–31%—could not recall whether they received the disclosure, and the study contractor warned that the results should be viewed with extreme caution because of the small cell size (93 respondents called and asked about "prices, terms, or conditions"). Excluding from the analysis those who could not recall increases the compliance level to about 72%. See R–B–2 (RS) at III–36, Table III–26; HX–122 (BE Report) at 16–17 (compliance results); R–B–2 at III–25, III–31 (Market Facts concern).

[107] P–37 (NFDA/NSM comment) at 23–24.

[108] See the evidence cited at notes 63–65, supra.

[109] R–B–5 at 42272–42273.

[110] Id. at 42273, n. 140.

[111] R–B–5 at 42293.

[112] Id. at 42266.

[113] Id. at 42269.

[114] R–B–5 at 42291.

[115] The Commission's major finding in the original proceeding was that funeral providers had denied consumers the privilege of freely choosing the goods and services they wanted by failing to disclose itemized price information and by "bundling" their funeral offerings together in predetermined packages; consumers' only choice was between packages. R–B–5 at 42260, 42279–42282.

[116] Id. at 42281.

shipping, or as a "practical necessity," such as embalming where the consumer wants a viewing of the remains for several days.

Some ANPR commenters asserted that funeral providers, in response to emerging competition in the sale of caskets from cemeteries and other third-parties, charge high "casket handling fees" for arrangements where consumers supply their own caskets purchased from those third parties.[117] The alleged purpose of these fees was to recoup overhead costs and profits built into casket prices but lost on the third-party casket sales. The Commission in the NPR thus sought comment on the existence and impact of so-called "casket handling fees," and on whether, and how, the Rule should address that practice.[118]

a. Existence and impact. Members of the third-party, casket seller industry[119] provided empirical and other evidence on the purpose, widespread existence and impact of these "casket handling fees." Casket seller representatives asserted that the emergence of third-party casket sellers is directly attributable to the Funeral Rule's "unbundling" provision; those sales were virtually non-existent before the Rule.[120] A PAA official who presented the results of a PAA membership survey (the "PAA Survey") on handling fee issues, Mr. Duke Radovich, estimated that there are between 100 and 200 casket retailers in the country.[121]

The PAA Survey provided empirical evidence on the widespread existence and amount of "casket handling fees," as reported by the respondent retailers. Eighty-six percent of the respondents said that at least 60% of the funeral homes in their market area assess handling fees, about two-thirds said that 80% to 100% charge the fees, and one-quarter reported that all of the homes impose the casket handling fee.[122] Mr. Radovich concluded that a substantial number of providers assess "casket handling fees" wherever third-party sellers exist.[123] Individual casket retailers agreed with that finding,[124] and further testified that funeral providers began imposing handling fees when third-party casket sellers entered the market.[125]

Concerning the amount of "casket handling fees" assessed, 81% of the PAA Survey respondents said that the average handling fee was over $300; 74% reported an average fee between $300 and $500.[126] Sixty-two percent of the PAA Survey respondents further reported that the highest fee charged was over $500; 35% said that the largest fee was over $700.[127] A "handling fee" of $500 was nearly equal to the average wholesale cost of a casket in 1988 ($517) and 60% of the average casket mark-up in that year ($821).[128] Wendell Hahn of the FFDA, which provides financial advising services to 1,500 providers in 30 states, testified that handling fees are assessed because providers, who typically charge professional service fees "hundreds of dollars" below their true operation cost, will try to recoup those costs that are lost by the third-party casket sale. Mr. Hahn concluded that handling fees are thus roughly equal to the amount that providers' non-declinable service fees are underpriced.[129]

Record evidence indicates that "casket handling fees" prevent potential price competition and reduce consumer choice. Ninety-two percent of the casket seller respondents to the PAA Survey reported that their casket sales have declined since the imposition of handling fees; about one-third said that they have reduced or eliminated their casket marketing efforts as a result of those fees.[130] One industry observer testified that "casket handling fees" have caused the exit from the casket market of five small businesses who thought that they could gain market share by offering third-party caskets at lower prices.[131] Several casket retailers and others also asserted that these so-called "handling fees" impede price competition by removing consumers' incentive to price-shop for less costly caskets, and penalize consumers who do shop.[132]

Finally, third-party sellers testified that market forces will not effectively regulate "casket handling fees," and that the elimination of those discriminatory fees would result in increased competition in the sale of caskets and reduced casket prices.[133] Mr. Royal Keith, a funeral provider appearing for the NFDA, when asked on cross-examination about the effect of market forces on handling fees, responded that he was not aware of any cases where market forces have successfully reduced

[117] See R–A–1 (Notice of Proposed Rulemaking) at 19867.

[118] Id. at 19870 (Question 14).

[119] Third-party casket sellers generally were represented during this review by the PAA.

[120] R–M–12 (PAA) at 18, 82. See also, Radovich, Tr. Vol. III, 1029 (Casket retailers owe their existence primarily to the enactment of the Funeral Rule, which allows the consumer to use a casket from an outside source); and Drozda, Tr. Vol. II, 894 (few casket retailers before the Rule because providers would not accept the outside casket and provide funeral service).

[121] Radovich, Tr. Vol. III, 1057 (31 of the 90 survey respondents were active third-party casket sellers at the time of the survey). He reported that these thirty-one active casket retailers are located in Florida, Illinois, Iowa, Maryland, Michigan, Mississippi, Nebraska, Ohio, Pennsylvania and Wisconsin; 74% of those sellers exist in Pennsylvania, Michigan, and Ohio. Id; HX–101 at Exhibit "A–3."

[122] Radovich, HX–101 at 17 and Ex. B, p. 5.

[123] Id. at 12, 17, 20.

[124] See Neel, HX–25 at 4 and Exhibit 2; Teck, HX–58 at 5–6 and Ex. B; and Heffner, HX–33 at 8 and Ex. J–1.

[125] Graf, Tr. Vol. II, 647; Neel, Tr. Vol. I, 582–584; and Teck, Tr. Vol. II, 861–862. See also, Showalter, Tr. Vol. II, 118. One funeral provider witness who did not charge handling fees stated on the record that, if he got competition from casket retailers, he would begin to assess fees. Hennessy, Tr. Vol. II, 997.

[126] Radovich, HX–101 at 18 and Ex. B, p. 6.

[127] Id.

[128] See Hahn, FFDA, HX–49 at 2. The average mark-up in 1988 was $1,338 (average retail casket price) minus $517 (average wholesale cost), or $821. By definition, a handling fee must be "high" if its purpose is to recoup overhead costs and profit lost on the casket sale.

[129] Tr. Vol. II, 692–693. Mr. Hahn further suggested that by failing to disclose the amount of overhead not included in the non-declinable professional services fee, providers may be engeged in deceptive pricing. Id. at 671.

Several local surveys conducted by individual casket retailers provided further evidence on the range of "casket handling fees" in given market areas. Those surveys found that handling fees ranged from $100 to $700 in Chicago; DeSoto, R–B–42; and Hennessy, HX–61 at 6; from $150 to $1000 in Greater Pittsburgh; Neel, HX–25, Exhibit 2 at 1; and from $100 to $800 in Detroit, Michigan; Teck, HX–58, Exhibit A. Wendell Hahn of the FFDA reported six instances among a sampling of funeral home records he reviewed for the month of August 1988 where handling fees ranging from $75 to $480 were disclosed on providers' GPLs. HX–49 at 5, Tr. Vol. II, 673, 719–720. Other witnesses, including two funeral directors, testified to the existence of handling fees renging from $425 to $2,500. See Showalter, Tr. Vol. II, 120; HX–36, at 17 (citing an open letter from Steve Shurden, President of the Oklahoma Funeral Directors Association, printed in *The Oklahoma Director*, Vol. XV, No. 9 (Sept. 1985) at 1) ($1,000–$2,500); Starks, Tr. Vol. II, 412 ($700); and Drozda, Tr. Vol. II, 896–897 ($425).

[130] Radovich, HX–101 at 20–22 and Ex. B, pp. 8–9 (sales decreased by 20% for 54% of respondents, by 40% for 29% of sellers, and by 80% for 13% of respondents; although other market factors could have contributed to the decreases, the PAA attributed them to handling fees).

[131] Showalter, Tr. Vol. II, 107–108.

[132] See, e.g., Teck, Tr. Vol. II, 867; Neel, Tr. Vol. I, 568, 572–573, 615; Drozda, Tr. Vol. II, 923, 944; Radovich, Tr. Vol. III, 1063; Showalter, Tr. Vol. II, 109, HX–36 at 16–17; and R–B–27 (CAFMS Comment) at 5.

Casket retailers and others provided evidence that many third-party sellers offer caskets at prices lower than those charged by funeral homes. About half of the seventeen PAA Survey respondents who answered the survey's price question said that their price for the "same or similar" casket was at least $250 less than funeral home prices in their market area. About one-quarter said that their prices were between $100 and $250 less, and another quarter said that their prices were comparable (within $100). See, Radovich, HX–101 at Ex. B, p. 10. One retailer who commented on the ANPR reported that a small casket manufacturer in Chicago was selling 90% of its retail caskets on an at-need basis, charging about half that of Chicago funeral homes—$250 for a cloth-covered casket and $650 for a sealed, metal casket. See, DeSoto, R–B–42.

[133] See, e.g., Teck, Tr. Vol. II, 872–873; Drozda, Tr. Vol. II, 944, 974.

the amount of handling fees charged in a particular area.[134]

b. Providers' basis for imposing "casket handling fees". Proponents of handling fees did not provide evidence to refute that offered by casket retailers and others on the purpose, prevalence and impact of "casket handling fees" on the casket market. Funeral provider representatives, for example, did not dispute that "casket handling fees" are used to recoup profits and overhead costs lost to third-party casket sales, but defended that purpose on several grounds.[135] Providers' responses to third-party casket sales arise, the trade groups asserted, due to the industry's long-standing tradition of recovering much of its overhead costs and profits through the casket mark-up, and not by increasing service fees; lower service fees allow funeral homes to provide full service funerals, including lower-priced caskets, to those who might not otherwise be able to afford them. Although providers in recent years have shifted some of that casket mark-up to service fees, the shift has been very gradual. The industry groups concluded that providers who lose casket sales to third parties must, as a result, still forego the recovery of much of their costs and profits that would have been included in the casket sale.

Those groups asserted that the imposition of "casket handling fees" is an isolated, non-discriminatory practice that fairly allocates providers' overhead costs and profits; the purpose of the fee is to obtain from consumers who buy third-party caskets consumers' proportionate share of providers' costs and profits for rendering the funeral service. Providers' only alternative to handling fees, the industry groups argued, would be to raise service fees charged to all consumers, which, in effect, would require regular clients who purchase providers' caskets to subsidize the funerals of consumers who purchase their caskets elsewhere—by paying the mark-up on the casket as well as the higher service fee that would result from other consumers supplying their own caskets.

Those groups further asserted that handling fees are not assessed for ship-ins, outer burial container sales traditionally lost to competing cemeteries, or for direct cremation/immediate burials where the consumer supplies the alternative container because, unlike the unexpected loss of a casket sale to a third-party seller, providers set prices for those services with the knowledge that they will not make a sale in those cases. Finally, the funeral groups concluded that the amount of "casket handling fees" is sufficiently regulated by the market, because providers that charge unreasonably high fees will offend consumers and lose market share.[136]

c. Commission's conclusion and amendment. The Commission has concluded that substantial "casket handling fees" are imposed on consumers by a significant proportion of providers wherever third-party casket sellers exist, and, as a result, frustrate the Rule's "unbundling" requirements and result in the reduction of potential competition in the sale of caskets fostered by the Funeral Rule.[137] Some providers are forced to impose handling fees because of their competitive reluctance to shift overhead costs and profit from the casket mark-up to professional service fees.[138] Others may use handling fees as a direct response to third-party competition. In either case, the issue to be determined in this proceeding was whether the Rule should allow providers to condition a consumer's right under the Rule to obtain a funeral service with a consumer-supplied casket upon the payment of a non-declinable fee, charged in addition to the basic professional services fee (already permitted under the Rule to be non-declinable), or whether the Rule should require providers to recoup costs and profits lost to third-party casket sales in ways that do not violate the intent of the Rule's "unbundling" provision. For example, providers under the Rule may recoup any unallocated costs or profits lost to third-party casket sales in the non-declinable professional services fee permitted by § 453.2(b)(4)(iii)(C). The Commission has determined that the latter course is warranted to affirm the Rule's intent to increase consumer choice and reduce barriers to price competition.

Section 453.4(b) of the Funeral Rule was intended to address all "bundling" arrangements imposed on consumers by funeral providers. Under that provision, consumers have the right to decline the purchase of any item, including a casket, from a funeral provider, and may elect to supply their own. That right, however, is illusory if funeral providers can condition consumers' choice on the payment of an additional, non-declinable fee. The fee, in any amount, penalizes consumers for exercising their choice afforded by the Rule.[139]

"Casket handling fees" require consumers to pay two substantial mark-ups, one on the casket they purchase from the third-party seller, and another on the casket they did not buy from the funeral provider. The evidence indicates that handling fees average between $300 and $500, and often are higher. That burden, the evidence shows, effectively removes consumers' economic incentive to purchase a casket from anyone but the funeral provider. Casket sales by third parties have declined as a result, and several retailers have curtailed their marketing efforts or withdrawn from the market. Handling fees thus frustrate the purpose of the Funeral Rule—to ensure informed consumer choice and foster a competitive funeral market. The Commission thus concludes that casket handling fees are unfair conditions on a consumer's right to decline unwanted items he or she may wish to purchase elsewhere, in violation of section 5 of the FTC Act, and the spirit of the Rule's "unbundling" provision (§ 453.4(b)).[140]

[134] Tr. Vol. III, 1422.

[135] Nor did the NFDA and NSM argue that "casket handling fees" are imposed for actual services rendered in "handling" consumer-supplied caskets. Many witnesses, including funeral directors, testified that providers incur no additional labor or insurance costs when third-party sellers provide a casket, and that the actual labor time spent handling any casket is minimal; the cost for that service is normally included in the non-declinable professional services fee. See R–M–9 (NFDA/NSM) at 182; Hahn, FFDA, Tr. Vol. II, 682–683; Bates, NSM Executive Director, Tr. Vol. I, 708–708; Simms, funeral director, R–J–9 (supplementing HX–42); Dr. Nelsen, AARP, Tr. Vol. I, 77–78; Showalter, industry analyst, Tr. Vol. II, 116–117, 120–122; Graf, Tr. Vol. II, 652; Hennessy, funeral director, Tr. Vol. II, 1009–1014; Radovich, funeral director/casket retailer, Tr. Vol. III, 1044–1045; Starks, funeral director, HX–41 at 11, Tr. Vol. II, 369; and Drozda, funeral director/casket retailer, Tr. Vol. II, 897.

[136] R–M–9 at 181–189; R–G–6 at 80–83. Individual providers agreed with the NFDA and NSM position. See Hocker, HX–111 at 13; Franzen, Tr. Vol. II, 819–820, Tr. Vol. III, 1408; Hennessy, Tr. Vol. II, 997–998; Keith, Tr. Vol. III, 1419; Yurs, Tr. Vol. II, 530, 563; and Nilsen, Tr. Vol. III, 1414–1415. See also, Hahn, FFDA, Tr. Vol. II, 682–684.

[137] Even if "casket handling fees" were not widespread, their coverage in the Rule would be necessary because they frustrate the original Rule's "unbundling" provision and impose substantial, unavoidable costs on consumers who make purchase decisions based on their rights under that provision.

[138] The Commission disagrees with arguments made by funeral provider groups during the proceeding that regulation of handling fees would amount to "price regulation." The primary issue is the propriety of the handling fee cost and profit adjustment, through the imposition of a separate, non-declinable fee charged in addition to the non-declinable fee for "services of funeral director and staff," and not the amount of the handling fee.

[139] Section 453.4(b)(2)(ii) of the Rule permits providers to refuse a request for goods and services that would be "impossible, impractical, or excessively burdensome" to provide. That provision, however, does not permit a funeral provider to refuse service to a consumer because the consumer supplied the casket. See, e.g., Staff Opinion Letter to George W. Lemke, Executive Director, Casket Manufacturers Association of America (March 18, 1985), FTC File No. 215–46, No. XXVIII–211.

[140] Conditioning the furnishing of any funeral good or service upon the payment of a so-called "casket handling fee," or any other non-declinable fee not otherwise permitted by the Rule, is an unfair practice for the same reasons articulated by the Commission in declaring "package-only" pricing unfair when it promulgated the Funeral Rule and its general "unbundling" section—453.4(b) (the practice is prevalent and imposes substantial and unavoidable injury on consumers). See R–B–5 (SBP) at 42269–71.

Section 453.4(b), however, does not specifically address the practice of conditioning the furnishing of any funeral goods or services on the payment of fees, such as "casket handling" fees, because those fees have developed since the Rule's implementation, and because they are not conditioned charges for "goods" or "services"—the conditioned products referred to in that provision. The Commission thus has concluded that so-called "casket handling" fees, and other non-declinable fees that are more aptly referred to as "recovery of overhead and profit" fees, need to be separately addressed in the Rule.[141]

The Commission recognizes the legitimate desire and expectation of funeral industry members to recover overhead costs and realize a profit. The Rule, however, permits consumers to select and buy only the items wanted unless state or local law require otherwise. The Funeral Rule is designed to permit funeral providers to have one non-declinable fee to recover general overhead costs—the fee for the basic services of funeral director and staff. Permitting funeral providers to have additional surcharges, whether they are called "casket handling fees," or something else, would frustrate the Rule's aim to promote full itemization and informed consumer choice.

To prevent that result and clarify the current requirements of the Rule, the Commission has added paragraph (b)(1)(ii) to § 453.4 of the Rule. That amendment prohibits as an unfair or deceptive act or practice the furnishing of funeral goods or services upon payment of any conditional "fees" not otherwise permitted by the Rule. The amendment, however, permits funeral providers to recover overhead in the two ways permitted by the original Rule—by marking up the items offered for sale to the public, and by having the non-declinable fee for basic services of funeral director and staff, permitted by §§ 453.2(b)(4)(iii)(C) and 453.4(b)(2)(i)(A) of the Rule.

The Commission also has amended § 453.2(b)(4)(iii)(C)(2) of the Rule to require, among other things, disclosure of: (1) The dollar amount charged for any non-declinable basic professional services when that charge is included in the price of the provider's caskets; and (2) the statement "This same fee shall be added to the total cost of your funeral arrangements if you provide the casket." These amendments are intended to have the same effect as the amendment to § 453.4(b) above—they prohibit funeral providers (who choose not to itemize the charge for basic professional services) from charging consumers who purchase caskets from third parties a non-declinable fee for recovery of overhead and profit in addition to the professional services fee charged to all customers.

These two amendments are not intended to impede funeral providers from recovering overhead costs and earning profits from their operations. Efficient providers can structure their prices charged to all consumers to recover the revenue lost to third-party casket (or other merchandise) sales. The evidence indicates that providers for many years have so adjusted their pricing structure to account for consumer-supplied caskets (in ship-in cases), outer burial containers, and alternative containers.[142]

Providers asserted that the impact of a ban on imposing separate, non-declinable casket handling fees, in addition to the non-declinable professional services fee, would be increased professional service fees to all consumers. The funeral provider industry made the same argument in the original proceeding regarding the effect of consumer declinations caused by Rule-required itemization.[143] As the Commission reasoned at that time, providers under the Rule can set or shift prices as they wish, but the long-term competitive impact of the Rule's price availability provisions might not permit providers to recover lost revenue from casket declinations simply by raising professional service fees. In the short-term, some consumers might spend more and some less than they would without the right to decline if providers actually raise service fees in order to recoup revenue lost to third-party casket sales. As discussed earlier, however, the evidence in this proceeding indicates that, although service fees generally are underpriced by roughly the average handling fee amount, providers are reluctant to raise service fees even under current competitive conditions. In any event, the evidence indicates that the impact of a ban on handling fees would more likely be increased competition in the sale of caskets, and, in turn, an overall reduction in casket prices over time.[144]

4. GPL Timing/Distribution Requirements. Section 453.2(b)(4) of the Rule required providers to give for retention a General Price List to persons who inquire in person about funeral arrangements or the prices of funeral goods and services. The GPL must contain, among other things, several disclosures about consumers' right to select only those items they desire and the retail prices for 17 specified items, if offered for sale. Providers under § 453.2(b)(4)(i) of the original Rule were required to offer the GPL "*upon beginning discussion either of funeral arrangements or of the selection of any funeral goods or funeral services.*" (Emphasis added.)

Many funeral providers, however, erroneously believe that the GPL must be given immediately upon initiation of preliminary arrangements discussions that do not involve price or specific goods or services. That misinterpretation leads them to offer the GPL at arguably inappropriate times, such as during preliminary discussions of death certificates or veterans benefits, or, in the case of an out-of-town death, the location of the deceased.[145]

To remedy their concerns, provider groups proposed repeal of the GPL timing and distribution requirements, or, in the alternative, amendments that would require providers to:

(1) "Make available" to consumers a GPL;

(2) Offer the GPL to consumers who inquire only about prices;

(3) Offer the GPL to consumers before "specific" funeral goods or funeral services are "selected" or prices discussed; and

(4) Give a GPL for retention only to those consumers who request to keep it.[146]

The Commission has determined, however, that the preponderance of the evidence does not warrant the sweeping amendments to, or repeal of,

[141] The Commission prohibits fees that are similar in purpose to "casket handling fees" in its Advertising of Ophthalmic Goods and Services Trade Regulation Rule, 16 CFR Part 456. That Rule requires eye doctors to give consumers a copy of their eyeglass prescription, so that consumers can shop for eyeglasses. Section 456.7(c) of that Rule further prohibits eye doctors from charging consumers a fee "as a condition for releasing the prescription," other than the examination fee. The section thus prevents eye doctors from charging a fee for goods and services not provided that, in effect, would penalize consumers who wish to comparison shop for ophthalmic goods. Like the non-declinable "casket handling fee," the conditional fee prohibited by this Ophthalmic Goods and Services Rule frustrates a consumer's right under the Rule to exercise free choice.

[142] See, e.g., the evidence cited at note 136, supra.

[143] See R-B–5 at 42298.

[144] See, e.g., the evidence discussed at notes 135–138, supra.

[145] See R–N–1 (SR) at 151–153.

[146] R–G–3 (NSM) at 43; R–G–6 (NFDA) at 66; R–M–9 (NFDA/NSM) at 277.

§ 453.2(b)(4)(i) as proposed by funeral provider groups. The Commission draws that conclusion particularly in light of the empirical evidence on the level of providers' compliance with the current GPL requirements (23% give the GPL at the outset of arrangements discussions), and the evidence that consumers want price and options information about funeral goods and services and value price information that they receive early in the funeral transaction.

The Commission is persuaded by that compliance evidence, however, that some fine-tuning is necessary to clarify the Rule and promote increased compliance, thereby enhancing the Rule's opportunity to provide benefits to consumers. The amendment discussed below thus is intended to remove any ambiguities and unnecessary rigidity in § 453.2(b)(4)(i) that appear to cause funeral directors to misinterpret their obligations under that provision.

Provider group proposals would have unacceptably narrowed the circumstances in which providers would be required to provide a GPL to consumers. First, the suggestion that providers "make available" a GPL might have been tantamount to effective repeal of the entire GPL requirement if such language means something other than physically giving the GPL to consumers.[147] Consumers might receive no GPL disclosures about funeral service prices or options, or concerning their rights in the funeral transaction under the Rule or other laws, unless they asked to see the GPL and providers voluntarily complied with their request. Such a change is not warranted, given record evidence on relatively low, overall levels of Rule compliance. Other evidence—that consumers are reluctant to raise price issues after the death of a loved one, that consumers, nonetheless, desire price and service options information, and that consumers benefit from price information they receive early in the funeral transaction—also supports this conclusion.

Second, the NFDA suggestion that providers need only give a GPL to persons who inquire in person about the "price" of funeral goods or services would eliminate the obligation to give a GPL to those who ask about prices or "funeral arrangements." In light of the evidence just mentioned, this proposed narrowing of the GPL distribution requirement is not supported by the record. Although one of the Rule's goals is to increase price competition, and, in turn, reduce overall consumer expenditures, the Commission also intended the provision of itemized price information to alert consumers to their various options and to permit them to select only those items they desire, whether or not expenses would be reduced as a result.[148] Lacking record evidence to support a change, consumers who inquire about providers' offerings, and not their prices, should thus be entitled to receive a GPL.

Third, the NFDA proposal that providers make the GPL available at the funeral arrangements conference before "specific" funeral goods and services are selected or prices discussed would remove the requirement that providers give the list at the beginning of arrangements discussions, wherever they take place. Record evidence shows that consumers benefit from price and service options information, including the GPL, that they receive early in selecting funeral goods and services, and that at least some funeral arrangements, short of a formal "arrangements conference," often can and do occur away from the funeral home premises.[149] Other evidence discussed earlier demonstrated that consumers' knowledge generally about the funeral transaction, although somewhat improved, is still relatively low. As a result of adopting the NFDA suggestion, consumers' opinions about the overall type of funeral service or individual items could thus be formed, or actual selections made, without the benefit of the GPL disclosures concerning prices, options and consumer rights under the Rule. In that event, the preponderance of the record evidence supports the conclusion that the GPL's purpose to provide ready price and service options information for consultation while consumers are considering what goods to purchase, before they make selections, would be unnecessarily defeated.

Finally, the NFDA-NSM proposal that the GPL's "give for retention" requirement be changed so that only consumers who request to keep the GPL may do so is not supported by the record. The evidence indicates that most consumers value the GPL enough to keep it when it is offered for retention.[150] The Commission might not disagree with the NFDA suggestion if there were evidence that consumers are aware of their right under the Rule to retain the GPL. The record does not contain that evidence, however, and instead shows that consumers generally are unaware of their rights under the Rule.[151] There is no record basis from which to conclude, therefore, that consumers would think to ask to retain the GPL. Consumers, as a result, would be denied the opportunity to use the GPL to comparison shop in at-need or pre-need situations,[152] or to compare authorized selections with final funeral home charges.

The Commission has amended § 453.2(b)(4)(i) to effect two changes to its original, preventive requirements. This amendment remedies providers' stated concerns about the timing of the GPL without limiting consumers' ability to use the information provided by GPL disclosures effectively. First, the amendment clarifies the GPL "timing" requirements by breaking down the triggering term "funeral arrangements" into its component parts, namely, discussions of prices, the overall type of funeral service or disposition, or specific funeral goods or services. This change should eliminate the apparent provider misinterpretation that the GPL must be given immediately upon initiation of preliminary arrangements discussions that do not involve price or specific goods or services. It clarifies, however, that discussions about the overall type of service trigger the GPL requirement, and that providers must give the GPL at the beginning of any discussion involving prices, the overall type of funeral service or disposition, or specific funeral goods or services.[153]

Second, the amendment clarifies the GPL "distribution" requirement contained in an original compliance guidelines interpretation that requires that providers must give consumers the GPL whether discussions occur in the funeral home "or elsewhere." Record evidence shows that arrangements may occur away from the funeral home premises. However, the amendment exempts from the GPL requirement in-person provider requests for prior embalming authorization if the provider makes essentially the same GPL disclosure required by § 453.3(a)(1)(ii) of the Rule concerning the legal necessity for embalming.[154]

Record evidence indicates that providers often may be placed in the uncomfortable position of responding to consumers' requests to discuss selections during removal of remains. If providers are willing to commit consumers to financial obligations at that time by making arrangements, record evidence supports consumers' right to receive a GPL. Record evidence also shows, however, that giving the GPL during removal may be awkward, offensive, and unnecessary if no other arrangements discussions occur at that time. Such evidence further indicates that a provider's request for prior embalming authorization, by itself, may be the most potentially offensive situation for both consumers and funeral directors, because it is a request to perform an intrusive procedure so soon after the survivors' loss.[155]

The original and amended Rule resolve this issue for embalming requests made over the telephone by not requiring any disclosure in that case. But the original Rule required that the GPL must be given if the request is made in person.[156] If no other selections are made when the provider seeks prior permission, arguably the most important information consumers need to make an informed response at that time concerns whether embalming is necessary. The required disclosure that embalming is not required by law except in certain special cases should trigger that discussion if the consumer so desires. The Rule's embalming provisions are predicated on that basis. The amendment simply substitutes the disclosure of that information for the provision of the entire GPL, to reduce the burden on providers and consumers and to promote compliance with the Rule. Under the amendment, providers would be in compliance if they either provided a GPL when seeking prior permission, or made the required embalming disclosure.

5. Fees for Basic (Non-declinable) vs. Other Services

Section 453.4(b) of the Rule imposes the general legal requirement that consumers' selection of funeral goods and services be permitted on an itemized basis. However, § 453.4(b)(2)(i)(A) permits an exception to that general right to select. Under that provision, consumers may not decline the basic services of the funeral provider if the provider so requires. The provision in that event further requires that providers place on the GPL the following statement: "However, any funeral arrangements you select will include a charge for our services." Providers under § 453.2(b)(4)(iii)(C) must also place the following disclosure on the GPL in conjunction with the price for the services of funeral director and staff, if the fee cannot be declined: "This fee for our services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charge for direct cremations, immediate burials, and forwarding or receiving remains.)"

The Commission, in promulgating that exception, reasoned that the process of selection itself involves use of the provider's services, irrespective of the actual goods and services chosen by consumers. The Commission thus permitted providers to make the services of the funeral provider non-declinable.[157]

The Commission also intended that the non-declinable fee for professional services would include only the charge for providers' basic services in arranging and planning the funeral, and not charges for services associated with providing any of the other sixteen items for which itemization is required on the GPL.[158] The Commission, for example, specifically used the term "basic services" in referring to those services that consumers could not decline under § 453.2(b)(4)(iii)(C) (the GPL service fee disclosure requirement).[159] The definition in the original Rule itself stated that the services of funeral director and staff "are the services, not included in prices of other categories in § 453.2(b)(4) which may be furnished by a funeral provider in arranging and supervising a funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits and placing obituary notices."[160]

The Commission, however, did not codify in the Rule its intent regarding basic services other than in the definition. No substantive Rule provision thus clarifies that providers in disclosing itemized fees on the GPL must separate "basic," non-declinable services from services associated with providing the other, declinable GPL goods and services, including such items as "use of facilities for viewing," and "use of facilities for funeral ceremony." The original staff compliance guidelines for the Rule, as a result, contained lengthy interpretations of the Rule on that issue, concluding that the non-declinable fee for "services of funeral director and staff" may not include a charge for those services involved in providing any of the other items required to be separately listed on the GPL. Charges for those services, the Guidelines stated, must be included in the price for each of those items. The Guidelines further concluded that the non-declinable fee for services may include the services listed in the Rule's

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[147] The proponents of this change did not specifically explain or define the term "make available," or how this and other suggested amendments would change the current requirements of § 453.2(b)(4)(i).

[148] R–B–5 at 42297.

Virtually every funeral director who advocated a change in the GPL timing requirements expressed concern about when in the arrangements discussions might be the sensitively correct time to discuss "price" with consumers. None spoke of the correct time to provide or discuss information about funeral service "options" and their relative cost. The record evidence, however, suggested that because price issues may not specifically arise early in the transaction, due to mutual provider and consumer reluctance, consumers may choose particular types of arrangements, or specific items, without the benefit of information about the available alternatives unless they receive a timely GPL.

[149] See, e.g., Hennessy, funeral director, Tr. Vol. II, 1026–1027 (timing of visitation and service often likely to be among first topics of concern to a family during removal); Hunter, Tx. Funeral Service Comm'n, Tr. Vol. III, 602–603 (discussing funeral arrangements away from the funeral home is a very common practice); Johnson, NSM, Tr. Vol. I, 744 (conversations away from the funeral home border on making funeral arrangements); Simms, NFDA, Tr. Vol. II, 452, 470–471, 473 (various arrangements discussions during removal have occurred); Hocker, NFDA, Tr. Vol. III, 1402, 1479 (problem during removal when the family says something like "can we have the funeral on Wednesday" that triggers presentation of the GPL); Dr. Nelson, AARP, Tr. Vol. I, 91 (preliminary arrangements can occur in consumers' homes where their concept of the funeral may be discussed and formed); and Klein, NYSFDAB, Tr. Vol. II, 1067 (not all arrangements are made in the funeral home).

Empirical evidence from the Replication Study on that issue indicated that 14% of consumers said that in-person arrangements discussions took place at a hospital or nursing home, or at the home of the respondent, the deceased, or a relative. See R–B–2 at Table III–24, p. III–33. The extent to which some of those respondents may also have participated in discussions at the funeral home is not clear from the data.

[150] Eighty-seven percent of RS respondents and 82% of Gallup respondents who were offered a GPL to keep said that they took it with them. See R-B-2 at Table III–32, p. III–46, and HX–66, Ex. B, p. 7 and Tabulations, p. 29.

[151] A majority of consumer respondents to the AARP's "Excel" Study were unaware that providers are required to give consumers written price lists when they come in to make arrangements. See Soulas, HX–76 at 3.

[152] Record evidence indicates that consumers may increase their comparison shopping before selecting a funeral provider as the marketing of pre-need funeral services increases, because the time constraints surrounding at-need arrangements are not present to the same degree. See, e.g., Neal, R–E–1 at 3.

[153] Record evidence indicates that some providers have construed the term "selection" in the original provision to mean choosing individual items, such as the casket or vault. See, e.g., F. Hunter, Tr. Vol. I, 801 ("as long as before they sign the contract, before they look at the caskets and select the vault and the exact kind of funeral"); J. Hunter, Tr. Vol. III, 604–605 ("after we have discussed some basic funeral plans, when the arranger has determined a feel for the families' wishes and desires, and prior to the selection of any services and/or goods"); Pierson, R-G–1 at 2–3; Starks, Tr. Vol. II, 402; Franzen, Tr. Vol. II, 618). Other providers are reluctant to discuss the GPL until price issues are raised. See, e.g., Hocker, Tr. Vol. III, 1435; Johnson, Tr. Vol. I, 744; Starks, Tr. Vol. II, 402–403; and Hennessy, Tr. Vol. II, 1024.

[154] Any other discussion during that time about price or the selection of funeral goods or services would trigger the requirement that providers give consumers the GPL.

[155] See R-N–1 (SR) at 207–218 for a full discussion of prior embalming approval issues raised during the proceeding.

[156] See R-B–6 at 28078 (Illustration #6).

[157] See R-B–5 at 42282.

[158] Under § 453.2(b)(4)(iii)(C), the non-declinable professional services fee also may include charges for unallocated provider overhead.

[159] Id; see also, R-B–5 at 42285.

[160] Section 453.1(o).

definition of "services of funeral director and staff."[161]

The only fee permitted by the Rule to be non-declinable at the outset of the funeral transaction is the charge for "services of funeral director and staff" and items that are required by law.[162] Several public hearing witnesses expressed their view, however, that the original disclosure requirement for the non-declinable services fee permitted the inclusion of service items that all consumers do not receive with their arrangements, so that consumers may be paying for services not received,[163] or that the services fee should be broken down to separate fees for arranging all funerals and fees for optional services.[164] These and other witnesses further suggested that consumers are unaware of that potential overpayment problem.[165]

Still other witnesses identified another problem with the original services fee disclosure. Those participants testified that, although consumers who "shop" among providers rely on quotes for service fees as a basis for comparison, providers in fact appear to include different items in their service fee charges. Price comparison among funeral homes is difficult as a result.[166] The record contains no evidence or views specifically controverting this.

In addition to these services fee difficulties, funeral provider groups asserted that the exclusion of a separate, non-declinable "basic facilities fee" from the required GPL listing misinforms consumers about the cost of funeral services.[167]

Four witnesses expressed views on the facilities fee issue presented by the NFDA. The then-President of the NSM testified that a non-declinable facilities fee is a legitimate charge to inform consumers that they are purchasing the use of a facility to shelter and care for the remains.[168] Similarly, Wendell Hahn of the FFDA asserted that providers' inclusion of the cost of providing a special-purpose facility in other charges, rather than showing it separately, violates proper accounting practice and may be deceptive pricing. Mr. Hahn concluded that the Rule should permit a separate basic facility charge that is non-declinable.[169] Some funeral providers, in fact, currently include items on their GPLs that could be viewed as non-declinable facility fees, such as fees for "parking lot use."[170]

The Commission agrees that the original requirements for the disclosure of the non-declinable and other service charges likely are causing compliance difficulties for some providers and informational problems for consumers.

The evidence indicates that some providers on their GPLs may not be fully separating non-declinable services from services associated with providing other items on the GPL. To the extent that is occurring, consumers who decline other items may be purchasing more services than they actually receive. Other consumers may be "double charged" for some services if providers, confused about which services are declinable and which are not, include some portion of the services associated with declinable items, such as "use of facilities for viewing," in that charge, as well as the non-declinable services fee. Still other consumers (or groups such as memorial societies that obtain and publish comparative price data) who attempt to comparison shop may not readily be able to do so.

The Commission has concluded that the service disclosure requirements need to be clarified to implement fully the Commission's intent in permitting a non-declinable services fee. Amendment of the Rule, however, to permit a non-declinable "basic facilities fee" charge is not warranted by the evidence or the original Rule requirements. The Rule's core purpose is to permit itemization so that consumers may select only the funeral items they desire, and decline unwanted items. The Rule allows providers to recover overhead for facilities by allocating a portion of those costs to each item offered or by including them in the non-declinable services fee. A second, non-declinable fee would signal a return to package pricing, where all consumers would pay for the use of all facilities (and, presumably, other overhead costs) irrespective of the degree to which consumers choose to use them. Itemization permits consumers to decline the use of various provider facilities. The testimony of at least one funeral director suggested, however, that some providers currently may be imposing in some form a "non-declinable" facilities fee on consumers, in apparent violation of the Rule.

Accordingly, the Commission has adopted the following amendments to clarify the Rule's intent and requirements with respect to service fees and non-declinable charges:

(1) Revision of the "services of funeral director and staff" definition in § 453.1(o) to clarify that these are the basic services that cannot be included in prices of other, declinable GPL categories, and that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices;

(2) Addition of the term "basic" before the word "services" where the latter term appears in §§ 453.2(b)(4)(iii)(C) (1) and (2) and 453.4(b)(2)(i)(A), so that all GPL disclosures regarding the non-declinable services fee refer to "basic services" rather than simply "services";

(3) Addition of the phrase "and staff" after the phrase "use of facilities" to §§ 453.2(b)(4) (H) and (I), to clarify that providers are required to disclose the prices for use of facilities and the services of staff associated with viewing and a funeral ceremony;

(4) Replacement of the "other use of facilities" price disclosure requirement, § 453.2(b)(4)(J), with the more specific disclosures "use of facilities and staff for memorial service" and "use of equipment and staff for graveside service";

(5) Addition to § 453.1 of the definitions of a "memorial service" and a "funeral ceremony" to distinguish those services for purposes of listing them separately on the GPL;

(6) Addition of the express requirement to the disclosure requirements of §§ 453.2(b)(4)(iii)(C) (1) and (2) that, if the services fee cannot be declined, it must include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure (and in the GPL disclosure required by 453.4(b)(2)(i)(A)) the phrase "and overhead" after the word "services," so that disclosures regarding non-declinable services fees refer to "basic services," and to "basic services and overhead," if providers wish; and

(7) Addition of paragraph (b)(4)(iv) to § 453.2 to make clear that the Rule permits only one non-declinable fee for services, facilities or unallocated overhead, unless otherwise required by law.

These amendments clarify the Commission's intent and providers' obligations in distinguishing non-declinable service fees from other service charges associated with providing separately listed, declinable goods and services. The changes are designed to promote industry compliance and consumer understanding of the services they must purchase and those they may decline, without substantially altering providers' obligations. The amendment permitting providers to add the phrase "and overhead" to the non-declinable service fee disclosure responds to industry's stated concern that consumers may be deceived by service fee price disclosures that fail to disclose a charge for overhead,[171] and clarifies for providers that the non-declinable fee can include overhead not allocated to other charges.

The Commission further has determined, to reduce stated and potential GPL compliance burdens, to: (1) remove "other automotive equipment" (flower car/family car)[172] and "acknowledgment cards"[173] from the required GPL listing; (2) delete as unnecessary the required GPL disclosure that the GPL does not include cash advance items, § 453.2(b)(4)(i)(D), and move from the GPL to the statement of goods and services selected the cash advance mark-up disclosure required by § 453.3(f)(2);[174] (3) decline to adopt the required use of a "standardized general price list," which the Commission finds is unnecessary in light of the relatively standardized GPL the Rule now requires, and the amendment, discussed below, prohibiting any language in any of the Rule-required price lists that alters or contradicts the information provided therein.[175]

6. Misrepresentation/Disclosure Provisions

Section 453.3 of the Rule currently requires funeral providers to make specific written disclosures on the price lists and the itemized statement of goods and services selected. The Commission in its 1982 Statement of Basis and Purpose determined that, due to funeral providers' false claims or failure to disclose accurate information, many consumers erroneously believed that certain procedures (such as embalming) or particular goods (such as caskets for cremation and outer burial containers) were required purchases not subject to individual choice, and that goods and services had certain protective and preservative qualities when such was not the case.[176]

Section 453.3 thus declares that it is a deceptive act or practice for funeral providers to misrepresent: embalming requirements, casket for cremation requirements,[177] outer burial container requirements, legal and cemetery requirements, preservative and protective value of funeral goods and services, and cash advance charges. The provisions of § 453.3 were designed to prevent those deceptive practices and to correct consumers' misconceptions by requiring written disclosures on both the price lists and the itemized statement.

Funeral provider groups recommended that the twelve affirmative disclosure requirements be deleted, or, in the alternative, that the Rule permit providers to use their own disclosure language.[178] The Commission has determined, however, that the record does not provide a substantial basis to repeal the twelve affirmative disclosures. Although the empirical data indicate that consumers' knowledge has increased somewhat under the Rule, and that some misrepresentations have declined, the data also show that misrepresentations are still occurring, particularly in areas where consumer knowledge is still low, such as embalming. The evidence further demonstrates that consumer knowledge of funeral requirements and products is still at a minimal level. Viewed together, those facts warrant the retention of the disclosure provisions.[179] Nor is there sufficient evidence to warrant an amendment allowing funeral providers to use their own disclosure language. That change would make it more difficult to monitor compliance, whereas the required, standardized language ensures that all consumers are receiving identical information.

The Commission agrees, however, that the language of several of the disclosures has created some potential compliance problems for funeral providers. The Commission therefore has adopted the following changes to the embalming, casket for cremation, outer burial container, and cash advance disclosure provisions in order to clarify the Rule's scope and requirements, and to reduce potential disclosure burdens:

(1) Deletion of the portion of § 453.3(a)(2)(i) that prohibits representations that embalming is required for a funeral using a sealed casket; substantial evidence indicates that, because sealed (i.e., "gasketed") caskets cannot prevent the escape of gases any more than other caskets, embalming may be necessary for a

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[161] R-B-6 at 28068–28069, 28076, and 28087.

[162] Id. at 28077 (Illus. # 12). Cemetery or crematory requirements, embalming as a "practical necessity," and requests that are "impossible, impractical or excessively burdensome" to provide may result in "non-declinable" charges under certain conditions. Generally, however, those items are not considered "non-declinable" in the sense that consumers, at the outset of planning arrangements, have no choice but to purchase them.

[163] Morrison, Tr. Vol. II, 771, 778; Karklin, consumer, Tr. Vol. I, 553; Carlson, Tr. Vol. I, 501–502; Snyder, Tr. Vol. III, 1252; Perguson, Tr. Vol. III, 1180; and Showalter, journalist/hospice counselor, Tr. Vol. II, 121, 148.

[164] Klein, New York State Funeral Directing Advisory Board, Tr. Vol. II, 1040, 1062; Morrison, industry observer, Tr. Vol. II, 771, 778; Carlson, author, Tr. Vol. I, 500–502; Snyder, West Coast Director, Consumers Union, Tr. Vol. III, 1252–1253; Perguson, Seattle memorial society, Tr. Vol. III, 1219; and Blake, Wisconsin memorial society, Tr. Vol. II, 1121.

[165] See, e.g., Bennett, Tr. Vol. I, 355; Carlson, Tr. Vol. I, 500–501; and Snyder, Tr. Vol. III, 1252.

[166] Simms, funeral director, Tr. Vol. II, 495 (consumers rely on professional service price); Johnson, funeral director, Tr. Vol. I, 755–756; Botimer, funeral director, Tr. Vol. III, 1287; Starks, funeral director, Tr. Vol. II, 423–424); and Perguson, Seattle memorial society, Tr. Vol. III, 1177, 1180, 1219 (1987 Seattle survey for publication showed "services" vaguely and variously described).

[167] R-M-9 (NFDA/NSM) at 128.

[168] R. Johnson, Tr. Vol. I, 745–746, 759.

[169] Tr. Vol. II, 671.

[170] Starks, Tr. Vol. II, 424.

[171] Funeral provider groups asserted during the proceeding that consumers should be informed that providers' non-declinable fees include a charge for overhead. Providers may do so under this amendment. See, e.g., P–37 (NFDA/NSM) at 240–242; P–30 (FFDA) at 2.

[172] These items are not as frequently chosen by consumers in today's market as are a hearse or limousine, and providers, of course, may include the flower/family car on the list if they so desire.

[173] To the extent that the Rule's listing provision has caused providers to charge for acknowledgment cards that were previously provided free of charge, as funeral provider groups suggested, the Rule may have had the unintended result of contributing, at least in some small sense, to increased consumer costs. To the extent that the costs are recouped elsewhere, those costs appear to be so incidental as to be tangential to the Rule's primary purpose. In either case, the benefits of requiring acknowledgment cards on the GPL appear to be outweighed by the harm to funeral providers' reputations and consumer satisfaction. The Commission thus has concluded that the better course is to remove the provision from the Rule.

There is no record evidence to support, however, a general right for the provider to list any of the other items now required to be on the GPL as "no charge" items, as industry groups suggested. The Commission is concerned, for example, that if the Rule were to permit the listing of embalming or transportation as "no charge" items, their costs, which can amount to several hundreds of dollars, would be recovered in the prices of other items. As a result, consumers would, in effect, not have the opportunity to decline the costs associated with important items. Such a change could thus result in the diminution of itemization and the return of package-only pricing, which the Rule was primarily designed to prevent. See the discussion at R–N–1 (SR), 172–173.

[174] See R–N–1 (SR) at 201. These amendments appropriately shorten the GPL and give consumers adequate notice of mark-ups.

[175] The AARP and others recommended the adoption of a required format and disclosure language for the GPL more detailed than that required by the original Rule, because of potential provider non-compliance and consumer confusion. See R–N–1 (SR) at 169–172 for a full discussion of the standardized price list issue.

[176] R-B-5 at 42274–42278. Although the record did not contain evidence that certain misrepresentations (such as the protective and preservative claims of goods and the requirement of a casket for cremation) were widespread, the Commission determined that their inclusion in the Rule was necessary because of their pernicious nature, or because of the substantial, potential cost that could be incurred by consumers who make purchase decisions based upon incorrect assumptions of material facts. Id. at 42278–42278.

[177] The companion § 453.4(a)(2) required providers who arrange direct cremations to "make available" unfinished wood boxes or alternative containers so that consumers will not have to buy a casket for that purpose.

[178] R-M-9 (NFDA/NSM) at 225; R-G-8 (NFDA) at 78–79; and R-G-9 (NSM) at 45.

[179] See the discussion and evidence cited at R-N-1 (SR), 180–181.

funeral service using a sealed casket where refrigeration is not available;[180]

(2) Amendment of the deceptive acts or practices definition concerning the necessity for embalming, § 453.3(a)(1)(ii), to include the modifying phrase "if any" after the phrase "except in certain special cases," and amendment of the GPL disclosure required by § 453.3(a)(2)(ii) to permit providers to delete from the disclosure that embalming is not required by law the phrase "except in certain special cases," if state or local law in the areas where the provider does business does not require embalming under any circumstances. These changes are appropriate to reduce compliance burdens and accommodate the situation where state laws do not require embalming under any conditions;[181]

(3) Amendment of the GPL alternative container disclosure required by § 453.3(b)(2) to: (a) Delete the required references to: (i) An "unfinished wood box," in addition to references to an "alternative container," because the former in today's market is considered a type of alternative container, and (ii) "pouches of canvas," which is not a type of container generally available and accepted by crematories; (b) include the phrase "encase the body" after "Alternative containers;" (c) include the statement "The containers we provide are (specify containers)."; and (d) substitute "fiberboard" for "heavy cardboard" to conform to market terminology.

These amendments[182] more accurately describe the purpose of alternative containers and reduce any potential for confusion and misrepresentation concerning the types of containers that are available for use in cremations;[183]

(4) Amendment of the OBC–PL disclosure required by § 453.3(c)(2) to permit providers in disclosing that grave liners or vaults are not required by law to delete the phrase "in most areas of the country," to accommodate situations where state and local laws do not require outer burial containers;[184] and

(5) Amendment of the substance of the cash advance mark-up disclosure, required by § 453.3(f)(2), to require only that providers specify those cash advance items for which the provider charges a mark-up. The Commission has determined that the original disclosure may have caused the misimpression that providers markup all cash advance items, because it broadly referred to all cash advance items, when that is not the case.[185]

7. Other Minor/Technical Amendments

The Commission has made a slight modification to § 453.4(b)(2)(i)(B), a provision designed to enforce the Rule's unbundling provisions. The purpose for this provision was to inform consumers, before they sign the funeral contract, that they may only be charged for those items selected or for items that are required by law. If purchases are required by law or otherwise, this provision further provides consumers with an explanation in writing, together with the reason the requirement applies to their selections. The provision was intended to provide consumers with a final reminder that they need only pay for items that they have selected.[186]

The Commission has amended the required language in order to clarify for consumers the original purpose of the provision. It alerts consumers that they may only be charged for the goods and services that they choose, or that are required by law or by a cemetery or crematory (such as an outer burial container or a certain type of alternative container).[187]

The Commission further adopts a technical change to § 453.6 concerning providers' retention of documents, to clarify its requirements. The original section required the funeral provider to retain a copy of the "signed" statement of goods and services selected. The Rule, however, does not contain any express requirement that the final statement be signed, either by the consumer or the provider. The Commission in its 1982 Statement of Basis and Purpose made no mention of the signature requirement. Earlier drafts of the Rule included a requirement that the funeral provider ask the consumer to sign the itemized statement, but it was not adopted in the final version. The "signed" language of § 453.6 was apparently inserted to complement the earlier draft of the Rule that contained the itemized statement requirement; however, when the signature requirement was deleted, the language of § 453.6 was inadvertently left intact. This language, however, is susceptible to different interpretations, and may lead some funeral providers to believe that they must obtain the signature of the consumer on the statement.

The Commission therefore has amended the language of § 453.6 by deleting the phrase "on which the statement was signed," and substituting the phrase "of the arrangements conference," so that the provision now requires providers to maintain a copy of each statement of funeral goods and services selected "for at least one year from the date of the arrangements conference."[188]

The Commission, in addition, has added clarifying language to the required "clear and conspicuous" disclosure standard contained in § 453.7 of the Rule. That language clarifies that providers may not add statements or information to the Rule-required price lists that alter or contradict the information required to be included in those lists.

This specific prohibition is necessary to prevent violations of the "clear and conspicuous" standard that relate to provider detraction and potential consumer confusion problems demonstrated in the record.[189]

Finally, the Commission has:

(1) Deleted the definition of "Accounting year" (§ 453.1(a)), because that phrase does not appear elsewhere in the Rule;

(2) amended the definition of a "casket" (§ 453.1(d)), to include those constructed of "fiberglass" and "plastic", because those types of caskets represent a significant portion of caskets produced in today's market;[190] and

(3) made a slight grammatical change to the definition of "Funeral services" (§ 453.1(j)), to make it clear that the Rule only covers services that involve both the preparation of remains and the supervision of disposition.

III. Other Matters

A. Final Regulatory and Regulatory Flexibility Analyses

The Commission has determined that these amendments to the Funeral Rule will not have an annual effect on the national economy of $100 million or more, or otherwise have a significant economic impact on a substantial number of small business. The preponderance of the evidence in the record indicates that the Rule overall has not significantly increased funeral providers' costs of doing business, and that the amendments will reduce any costs to providers imposed by the Rule's requirements, by making it easier for them to comply. Therefore, pursuant to the exception for Rule amendments contained in section 22(a)(1)(A) of the FTC Act, and the provisions of the Regulatory Flexibility Act, 5 U.S.C. 604, 605, section 22 of the Act requiring that the Commission issue a final regulatory analysis with the promulgation of a final rule does not apply to this amended Rule.

[180] See the discussion and evidence cited at R-O-1 (POR), 204–206.

[181] See R-N-1 (SR) at 187.

[182] These changes require complementary ones to conform related Rule sections—references to an "unfinished wood box" in §§ 453.1(p) (definition), 453.3(b), and 453.4(a) also are deleted, as is the reference to "pouches of canvas" in the definitional section, and "unfinished wood box" is added to the definition of an "alternative container" (§ 453.1(b)).

[183] See R-N-1 (SR) at 188–195 for a full discussion of the evidence on these amendments.

[184] See R-N-1 (SR) at 198.

[185] See R-N-1 (SR) at 200–202.

[186] R-B-5 at 42292 ("Section 453.4(b), the 'optional purchase' provision, ensures that consumers can make use of such price information by making a decision to decline items which they do not wish to purchase.").

[187] See R-N-1 (SR) at 205.

[188] See the discussion at R-N-1 (SR), 218–219.

[189] See R-N-1 (SR) at 219–220 for a full discussion of the evidence, and Commission precedents, relating to consumers' comprehension of Rule-required disclosures.

[190] See R-N-1 (SR) at 223; R-O-1 (POR) at 207.

List of Subjects in 16 CFR Part 453

Funeral homes, Price disclosure, Trade practices.

Accordingly, title 16, part 453 of the Code of Federal Regulations is revised to read as follows:

PART 453—FUNERAL INDUSTRY PRACTICES

Sec.

453.1 Definitions.
453.2 Price disclosures.
453.3 Misrepresentations.
453.4 Required purchase of funeral goods or funeral services.
453.5 Services provided without prior approval.
453.6 Retention of documents.
453.7 Comprehension of disclosures.
453.8 Declaration of intent.
453.9 State exemptions.

Authority: 15 U.S.C. 57a(a); 15 U.S.C. 46(g); 5 U.S.C. 552.

§ 453.1 Definitions.

(a) *Alternative container.* An "alternative container" is an unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(b) *Cash advance item.* A "cash advance item" is any item of service or merchandise described to a purchaser as a "cash advance," "accommodation," "cash disbursement," or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(c) *Casket.* A "casket" is a rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(d) *Commission.* "Commission" refers to the Federal Trade Commission.

(e) *Cremation.* "Cremation" is a heating process which incinerates human remains.

(f) *Crematory.* A "crematory" is any person, partnership or corporation that performs cremation and sells funeral goods.

(g) *Direct cremation.* A "direct cremation" is a disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(h) *Funeral goods.* "Funeral goods" are the goods which are sold or offered for sale directly to the public for use in connection with funeral services.

(i) *Funeral provider.* A "funeral provider" is any person, partnership or corporation that sells or offers to sell funeral goods and funeral services to the public.

(j) *Funeral services.* "Funeral services" are any services which may be used to:

(1) Care for and prepare deceased human bodies for burial, cremation or other final disposition; and

(2) arrange, supervise or conduct the funeral ceremony or the final disposition of deceased human bodies.

(k) *Immediate burial.* An "immediate burial" is a disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.

(l) *Memorial service.* A "memorial service" is a ceremony commemorating the deceased without the body present.

(m) *Funeral ceremony.* A "funeral ceremony" is a service commemorating the deceased with the body present.

(n) *Outer burial container.* An "outer burial container" is any container which is designed for placement in the grave around the casket including, but not limited to, containers commonly known as burial vaults, grave boxes, and grave liners.

(o) *Person.* A "person" is any individual, partnership, corporation, association, government or governmental subdivision or agency, or other entity.

(p) *Services of funeral director and staff.* The "services of funeral director and staff" are the basic services, not to be included in prices of other categories in § 453.2(b)(4), that are furnished by a funeral provider in arranging any funeral, such as conducting the arrangements conference, planning the funeral, obtaining necessary permits, and placing obituary notices.

§ 453.2 Price Disclosures.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies, including at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, immediate burials, or direct cremations, to persons inquiring about the purchase of funerals. Any funeral provider who complies with the preventive requirements in paragraph (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) *Preventive requirements.* To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(b)(1), funeral providers must:

(1) *Telephone price disclosure.* Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (b)(2) through (4) of this section and any other readily available information that reasonably answers the question.

(2) *Casket price list.* (i) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. The list must contain at least the retail prices of all caskets and alternative containers offered which do not require special ordering, enough information to identify each, and the effective date for the price list. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) *Outer burial container price list.* (i) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (b)(4) of this section, the information required by this paragraph.

(ii) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as an "outer burial container price list."

(4) *General price list.* (i)(A) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(1) The prices of funeral goods or funeral services;

(2) The overall type of funeral service or disposition; or

(3) Specific funeral goods or funeral services offered by the funeral provider.

(B) The requirement in paragraph (b)(4)(i)(A) of this section applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by § 453.5(a)(2), does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under paragraph (b)(4)(i)(A) of this section to give consumers a general price list.

(C) The list required in paragraph (b)(4)(i)(A) of this section must contain at least the following information:

(1) The name, address, and telephone number of the funeral provider's place of business;

(2) A caption describing the list as a "general price list"; and

(3) The effective date for the price list;

(ii) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

(A) Forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;

(B) Receiving remains from another funeral home, together with a list of the services provided for any quoted price;

(C) The price range for the direct cremations offered by the funeral provider, together with:

(1) A separate price for a direct cremation where the purchaser provides the container;

(2) Separate prices for each direct cremation offered including an alternative container; and

(3) A description of the services and container (where applicable), included in each price;

(D) The price range for the immediate burials offered by the funeral provider, together with:

(1) A separate price for an immediate burial where the purchaser provides the casket;

(2) Separate prices for each immediate burial offered including a casket or alternative container; and

(3) A description of the services and container (where applicable) included in that price;

(E) Transfer of remains to funeral home;

(F) Embalming;

(G) Other preparation of the body;

(H) Use of facilities and staff for viewing;

(I) Use of facilities and staff for funeral ceremony;

(J) Use of facilities and staff for memorial service;

(K) Use of equipment and staff for graveside service;

(L) Hearse; and

(M) Limousine.

(iii) Include on the price list, in any order, the following information:

(A) Either of the following:

(1) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual caskets, disclosed in the manner specified by paragraph (b)(2)(i) of this section; and

(B) Either of the following:

(1) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or

(2) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (b)(3)(i) of this section; and

(C) Either of the following:

(1) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)". If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or

(2) The following statement: "Please note that a fee of (*specify dollar amount*) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by paragraph (b)(4)(iii)(A)*(1)* of this section, or together with the prices of individual caskets, required by (b)(4)(iii)(A)*(2)* of this section.

(iv) The services fee permitted by § 453.2(b)(4)(iii)(C)*(1)* or (C)*(2)* is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(5) *Statement of funeral goods and services selected.* (i) Give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The statement must list at least the following information:

(A) The funeral goods and funeral services selected by that person and the prices to be paid for each of them;

(B) Specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.); and

(C) The total cost of the goods and services selected.

(ii) The information required by this paragraph (b)(5) may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(6) *Other pricing methods.* Funeral providers may give persons any other price information, in any other format, in addition to that required by § 453.2(b)(2), (3), and (4) so long as the statement required by § 453.2(b)(5) is given when required by the rule.

§ 453.3 Misrepresentations.

(a) *Embalming provisions.*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires that a deceased person be embalmed when such is not the case;

(ii) Fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §§ 453.4(b)(1) and 453.5(2), funeral providers must:

(i) Not represent that a deceased person is required to be embalmed for:

(A) Direct cremation;

(B) Immediate burial; or

(C) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(ii) Place the following disclosure on the general price list, required by § 453.2(b)(4), in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) *Casket for cremation provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local law requires a casket for direct cremations;

(ii) Represent that a casket is required for direct cremations.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in § 453.4(a)(1), funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) *Outer burial container provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case;

(ii) Fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) *Preventive requirement.* To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by § 453.2(b)(3)(i), or, if the prices of outer burial containers are listed on the general price list, required by § 453.2(b)(4), in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) *General provisions on legal and cemetery requirements*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in §§ 453.3(a)(1), 453.3(b)(1), and 453.3(c)(1), funeral providers must identify and briefly describe in writing on the statement of funeral goods and services selected (required by § 453.2(b)(5)) any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) *Provisions on preservative and protective value claims.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) Represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time;

(2) Represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) *Cash advance provisions*—(1) *Deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(i) Represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case;

(ii) Fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) *Preventive requirements.* To prevent these deceptive acts or practices, funeral providers must place the following sentence in the itemized statement of funeral goods and services selected, in immediate conjunction with the list of itemized cash advance items required by § 453.2(b)(5)(i)(B): "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

§ 453.4 Required purchase of funeral goods or funeral services.

(a) *Casket for cremation provisions*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral

goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) *Preventive requirement.* To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) *Other required purchases of funeral goods or funeral services*—(1) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(i) Condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part;

(ii) Charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for: (1) Services of funeral director and staff, permitted by § 453.2(b)(4)(iii)(C); (2) other funeral services and funeral goods selected by the purchaser; and (3) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with § 453.3(d)(2).

(2) *Preventive requirements.* (i) To prevent these unfair or deceptive acts or practices, funeral providers must:

(A) Place the following disclosure in the general price list, immediately above the prices required by § 453.2(b)(4) (ii) and (iii): "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(B) Place the following disclosure in the statement of funeral goods and services selected, required by § 453.2(b)(5)(i): "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(ii) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

§ 453.5 Services provided without prior approval.

(a) *Unfair or deceptive acts or practices.* In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) State or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make; or

(2) Prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) The funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) *Preventive requirement.* To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized statement of funeral goods and services selected, required by § 453.2(b)(5), the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

§ 453.6 Retention of documents.

To prevent the unfair or deceptive acts or practices specified in § 453.2 and § 453.3 of this rule, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§ 453.2(b) (2) through (4), as applicable, for at least one year after the date of their last distribution to customers, and a copy of each statement of funeral goods and services selected, as required by § 453.2(b)(5), for at least one year from the date of the arrangements conference.

§ 453.7 Comprehension of disclosures.

To prevent the unfair or deceptive acts or practices specified in § 453.2 through § 453.5, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, and general price lists, required by §§ 453.2(b)(2)–(4), any statement or information that alters or contradicts the information required by this Part to be included in those lists.

§ 453.8 Declaration of intent.

(a) Except as otherwise provided in § 453.2(a), it is a violation of this rule to engage in any unfair or deceptive acts or practices specified in this rule, or to fail to comply with any of the preventive requirements specified in this rule;

(b) The provisions of this rule are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

(c) This rule shall not apply to the business of insurance or to acts in the conduct thereof.

§ 453.9 State exemptions.

If, upon application to the Commission by an appropriate state agency, the Commission determines that:

(a) There is a state requirement in effect which applies to any transaction to which this rule applies; and

(b) That state requirement affords an overall level of protection to consumers which is as great as, or greater than, the protection afforded by this rule; then the Commission's rule will not be in effect in that state to the extent specified by the Commission in its determination, for as long as the State administers and enforces effectively the state requirement.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–393 Filed 1–10–94; 8:45 am]

BILLING CODE 6750–01–P

federal register

Tuesday
January 11, 1994

Part III

Department of Education

Office of Postsecondary Education

Availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools; Notice

DEPARTMENT OF EDUCATION

Office of Postsecondary Education

Availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools

AGENCY: Department of Education.

ACTION: Notice of availability of the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools.

SUMMARY: The Secretary announces that the 1993–94 National Direct and Federal Perkins Loan Programs Directory of Designated Low-Income Schools (Directory) is now available. Under the National Direct and Federal Perkins Loan programs, a borrower may have repayment of his or her loan deferred and a portion of his or her loan cancelled if the borrower teaches full-time for a complete academic year in a selected elementary or secondary school having a high concentration of students from low-income families. In the 1993–94 Directory, the Secretary lists, on a State-by-State and Territory-by-Territory basis, the schools in which a borrower may teach during the 1993–94 school year to qualify for deferment and cancellation benefits.

DATES: The Directory is currently available.

ADDRESSES: Information concerning specific schools listed in the Directory may be obtained from Ronald W. Allen, Systems Administration Branch, Campus-Based Programs Systems Division, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue SW., (Room 4621, ROB–3), Washington, DC 20202–5453, Telephone (202) 708–6730. Information concerning deferment and cancellation of a National Direct or Federal Perkins loan may be obtained from Susan M. Morgan, Section Chief, Campus-Based Loan Programs Section, Loans Branch, Division of Policy Development, Office of Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW., (Room 4018, ROB–3), Washington, DC 20202–5453, Telephone (202) 708–8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Directories are available at (1) each institution of higher education participating in the Federal Perkins Loan Program; (2) each of the fifty-seven (57) State and Territory Departments of Education; (3) each of the major Federal Perkins Loan billing services, and (4) the U.S. Department of Education.

SUPPLEMENTARY INFORMATION: The Secretary selects the schools that qualify the borrower for deferment and cancellation benefits under the procedures set forth in 34 CFR 674.53 and 674.54 of the Federal Perkins Loan Program regulations.

The Secretary has determined that, for the 1993–94 academic year, full-time teaching in the schools set forth in the 1993–94 Directory qualifies a borrower for deferment and cancellation benefits.

The Secretary is providing the Directory to each institution participating in the Federal Perkins Loan Program. Borrowers and other interested parties may check with their lending institution, the appropriate State or Territory Department of Education, regional offices of the Department of Education, or the Office of Postsecondary Education of the Department of Education concerning the identity of qualifying schools for the 1993–94 academic year. The Office of Postsecondary Education retains, on a permanent basis, copies of past Directories.

(Catalog of Federal Domestic Assistance Number 84.037; National Direct, and Federal Perkins Loan Cancellations.)

Dated: January 5, 1994.

David Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–559 Filed 1–10–94; 8:45 am]

BILLING CODE 4000–01–P

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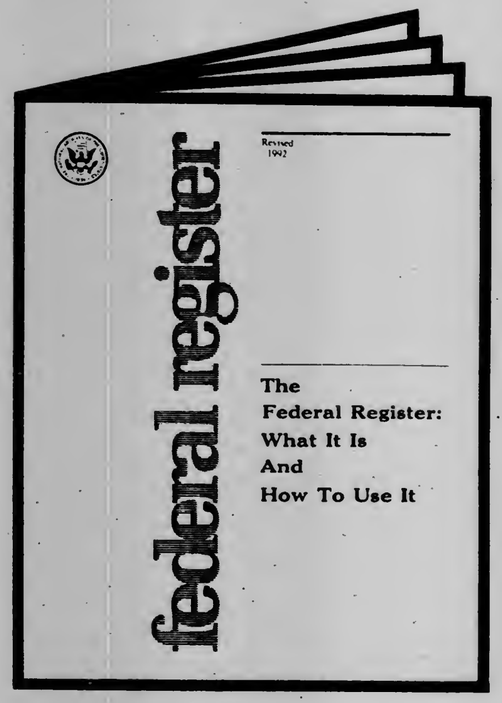
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A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.



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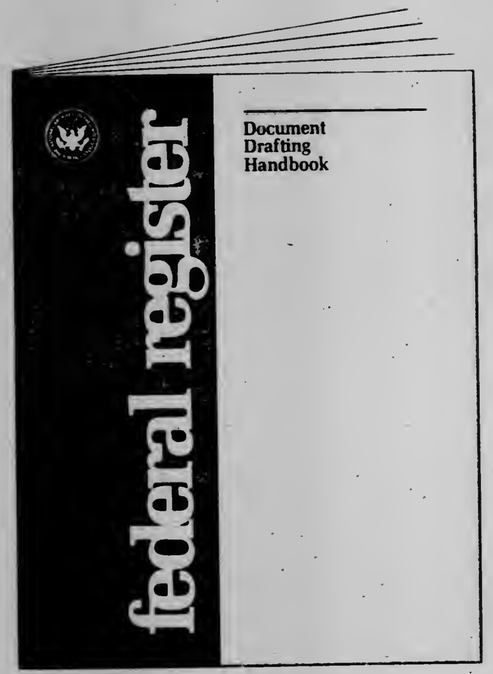
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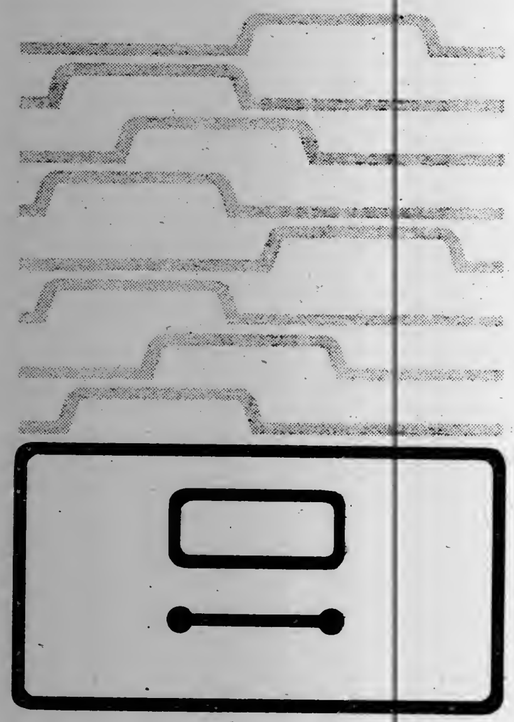
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Rules and Regulations

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 238

[INS No. 1640–93]

RIN 1115–AC24

Contracts With Transportation Lines; Signatory Authority

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Final rule.

SUMMARY: This final rule amends agency regulations by adding the names of airlines who have entered into agreements with the Immigration and Naturalization Service (Service) under the purview of the Immigration and Nationality Act (the Act). This rule is necessary so that air carriers who become signatory to preinspection or transit without visa (TWOV) agreements with the Services are listed in agency regulations. This rule also adds Aruba and Paradise Island, Bahamas to the list of preinspection stations.

EFFECTIVE DATE: This rule is effective January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Una Brien, Assistant Chief Inspector, Inspections Division, Immigration and Naturalization Service, 425 I Street, NW., room 7228, Washington, DC 20536, telephone (202) 514–2681.

SUPPLEMENTARY INFORMATION: Under the current regulations, air carriers are required to enter into contracts with the Service in order to participate in the preinspection and Transit Without Visa (TWOV) programs. Contracts have been signed using Forms I–425 (Agreement for Preinspection) and I–426 (Immediate and Continuous Transit Agreement) under the purview of section 238 of the Immigration and Nationality Act. Accordingly, §§ 238.3 and 238.4 of title 8 of the Code of Federal Regulations are being amended to include these carriers.

The Service's implementation of this rule as a final rule is based upon the "good cause" exception found at 5 U.S.C. 553(b)(B) and (d)(3). The reasons for immediate implementation of this final rule are as follows: A notice and comment period for a proposed rule is unnecessary because this regulation merely updates the listing of carriers and preinspection stations signatory with the agency. Moreover, it imposes a benefit rather than a burden or penalty of any kind to applicable persons.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. It is anticipated that this rule will not have a significant adverse economic impact since this rule merely amends agency regulations by adding to the list of airline carriers and preinspection stations. This rule is not significant within the meaning of section 3(f) of Executive Order 12866, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with Executive Order 12612.

List of Subjects in 8 CFR Part 238

Administrative practice and procedures, Air carriers, Aliens, Government contracts, Travel.

Accordingly, part 238 of chapter I of title 8 of the Code of Federal Regulations is amended as follows:

PART 238—CONTRACTS WITH TRANSPORTATION LINES

1. The authority citation for part 238 continues to read as follows:

Authority: 8 U.S.C. 1103, 1228; 8 CFR part 2.

2. In § 238.3, paragraph (a) is revised to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

(a) *Form I–426 agreements.* A transportation line bringing aliens to the United States pursuant to § 212.1(f)(1) of this chapter shall enter into an agreement on Form I–426. Such an agreement shall be negotiated directly by the Service's Headquarters Inspections Office and the head offices of the transportation lines.

* * * * * *

3. In § 238.3, paragraph (b) is amended by adding the following airline carriers, in alphabetical sequence, to the list of signatory lines to read as follows:

§ 238.3 Aliens in immediate and continuous transit.

* * * * * *

(b) * * *

* * * * * *

Aerolineas Centrales De Colombia (ACES).

* * *

Aeroposta, S.A.

* * *

Air Aruba.

* * *

AirBC Limited.

* * *

Air Belgium.

* * *

Air Columbus.

* * *

Air Gambia Limited.

* * *

Alliance Air.

* * *

Asiana Air.

* * *

Atlantic Air BVI.

* * *

Aviateca, S.A.

* * *

Balkan Bulgarian.

* * *

Dominair.

* * *

Eva Air.

* * *

Florida Air, Inc.

* * *

J. D. Valenciana De Aviacion.

* * *

KIWI International Airlines.

* * *

Leisure International Airways.

* * *

Miami Air.

* * *

Nicaraguense De Aviacion S.A. (NICA).

* * *

Polynesian Airlines.

* * *

SAETA.

* * *

Transbrasil Airlines.

* * *

Translift Airways.

* * *

Transworld Express.

* * *

Turkish Airlines.

* * *

VASP Brazilian (Viacao Aerea Sao Paulo S.A.).

* * * * *

§ 238.3 [Amended]

4. In § 238.3, paragraph (b) is amended by removing "Aerovias Venezolanas, S.A. (AVENSA)" and "Avensa Airlines" from the list of carriers.

5. Section 238.4 is amended by adding the following preinspection stations and airline carriers in alphabetical sequence within each location, to read as follows:

§ 238.4 Preinspection outside the United States.

* * * * *

At Aruba

Air Aruba.
Airmark Aviation, Inc.
ALM Antillean Airlines.
American Airlines, Inc.
Jet Fleet Corporation.
Miami Air International, Inc.
Rich International Airways, Inc.
Servicious Avensa S.A. (SERVIVENSA).

At Bermuda

* * * * *

Miami Air International, Inc.

* * * * *

Northwest Airlines, Inc.

* * * * *

At Calgary

* * * * *

Miami Air International, Inc.

* * * * *

At Edmonton

* * * * *

Miami Air International, Inc.

* * * * *

At Freeport

* * * * *

Miami Air International, Inc.

* * * * *

Trinity Air Bahamas

* * * * *

At Montreal

* * * * *

Comair, Inc.

* * * * *

Miami Air International, Inc.

* * * * *

At Nassau

* * * * *

Miami Air International, Inc.

* * * * *

Trinity Air Bahamas

* * * * *

At Paradise Island

Paradise Island Airlines, Inc.

At Toronto

* * * * *

Atlantic Coast Airlines dba United Express

* * * * *

Conifair Aviation Inc. dba Royal Airlines

* * * * *

Miami Air International, Inc.

* * * * *

At Shannon

Aeroflot

* * * * *

Translift Airways Limited

At Vancouver

* * * * *

Miami Air International, Inc.

* * * * *

At Victoria

* * * * *

Miami Air International, Inc.

* * * * *

At Winnipeg

* * * * *

Miami Air International, Inc.

* * * * *

Dated: January 6, 1994.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 94–754 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–10–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 30, 40, 50, 70, 72

RIN 3150–AE16

Self-Guarantee as an Additional Financial Assurance Mechanism; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule, correction.

SUMMARY: This document corrects a final rule that appeared in the **Federal Register** on December 29, 1993 (58 FR 68726), that amended NRC regulations for decommissioning licensed facilities to allow certain non-electric utility licensees to use self-guarantee as a means of financial assurance. This action is necessary to correct the designation of an appendix in the final rule.

EFFECTIVE DATE: January 28, 1994.

FOR FURTHER INFORMATION CONTACT: Clark Prichard, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington DC 20555, telephone (301) 492–3734.

SUPPLEMENTARY INFORMATION:

PART 30—[AMENDED]

1. On page 68730, in the first column, in the last line of § 30.8(b) the reference to "appendix A and B" should be changed to read "appendix A and C".

2. On page 68730, in the first column, in the 20th line of § 30.35(f)(2), the reference to "appendix B" should be changed to read "appendix C".

3. On page 68730, in amendatory instruction number 4, the reference to "appendix B" should be changed to read "appendix C".

4. On page 68730, in the first line of the second column, "Appendix B" should be changed to read "Appendix C".

PART 40—[AMENDED]

5. On page 68731, in the first column, in the 20th line of § 40.36(e)(2), the reference to "appendix B" should be changed to read "appendix C".

PART 50—[AMENDED]

6. On page 68731, in § 50.75(e)(2)(iii), in the third column, in the sixth line, the reference to "appendix B" should be changed to read "appendix C".

PART 70—[AMENDED]

7. On page 68731, in § 70.25(f)(2), in the last line of the third column, the reference to "appendix B" should be changed to read "appendix C".

PART 72—[AMENDED]

8. On page 68732, in § 72.30(c)(2), in the second column, in the 12th line, the reference to "appendix B" should be changed to read "appendix C".

Dated at Bethesda, Maryland, this 6th day of January 1994.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–702 Filed 1–11–94; 8:45 am]

BILLING CODE 7590–01–P–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ANM–20]

Alteration of Jet Route J–171; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes a portion of Jet Route J–171 from Hugo, CO, to Kiowa, CO, because the Kiowa, CO, Very High Frequency Omnidirectional Range/Tactical Navigation (VORTAC) facility will be decommissioned after the new Denver International Airport becomes operational. This action supports the new Denver International Airport airspace realignment.

EFFECTIVE DATE: 0901 U.T.C., March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

History

On August 6, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to remove that portion of Jet Route J–171 from Hugo, CO, to Kiowa, CO (58 FR 42038).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Except for editorial changes, this amendment is the same as that proposed in the notice. Jet routes are published in paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes a portion of Jet Route J–171 from Hugo, CO, to Kiowa, CO. The Kiowa, CO, VORTAC will be decommissioned after the new Denver International Airport becomes operational. This accommodates the new Denver International Airport airspace realignment.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore; (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–171 [Revised]

From Tobe, CO, to Hugo, CO.

* * * * *

Issued in Washington, DC, on January 3, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–783 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASO–11]

Designation of Class E Airspace, Dunnellon, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace at Dunnellon, Florida. A Standard Instrument Approach Procedure (SIAP) for Runway 23 at the Dunnellon Airport has been developed and controlled airspace extending upward from 700 feet above the surface of the earth is needed to contain instrument flight rules (IFR) operations when using this SIAP.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Armando Castro, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5588.

SUPPLEMENTARY INFORMATION:

History

On June 23, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Dunnellon, Florida, to accommodate a Runway 23 instrument approach procedure to the Dunnellon Airport, Dunnellon, Florida (58 FR 41211). The proposal was to add controlled airspace extending upward from 700 feet above the surface to contain IFR operations in controlled airspace during portions of the terminal operation, while transiting between the en route and terminal environments, and to change the operating status of the airport from visual flight rules (VFR) operations to include IFR operations concurrent with publication of the SIAP. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace Reclassificaiton, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace" for airspace extending upward from 700 feet above the surface. The coorindates for this airspace docket are based on North American Datum 83. Designation for Class E airspace extending upward from 700 feet or more above the surface of the earth are published in paragraph 6005 of

FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Dunnellon, Florida, to accommodate a Runway 23 SIAP based on the Ocala Very High Frequency Omnidirectional Range/ Tactical Air Navigation facility (VORTAC) to the Dunnellon Airport. Controlled airspace extending upward from 700 feet above the surface is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable VFR requirements.

In addition, the operating status of the Dunnellon Airport is changed from VFR operations to include IFR operations concurrent with the publication of the SIAP.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporated by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963, Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASO FL E5 Dunnellon, FL [New]

Dunnellon Airport, FL
(lat. 29°03'45" N., long. 82°22'38" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Dunnellon Airport, excluding that portion that coincides with the Ocala, FL. Class E airspace.

* * * * *

Issued in College Park, Georgia, on December 28, 1993.

Stephen P. Alogna,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–777 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–21]

Amendment of Class E Airspace; Blanding, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Blanding, Utah, Class E airspace. Controlled airspace extending from 700 feet above ground level (AGL) is necessary for a new instrument approach procedure and missed approach holding pattern at Blanding Municipal Airport, Blanding, Utah. Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The airspace will be depicted on aeronautical charts for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., February 15, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–21, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Blanding, Utah, Class E Airspace (58 FR 51256). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Airspace reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above the surface of the earth is now Class E airspace. Class E airspace designations for airspace areas extending 700 feet or more above the surface of the earth are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E airspace at Blanding, Utah, to provide controlled airspace for aircraft executing a new instrument approach procedure and missed approach holding pattern at Blanding Municipal Airport, Blanding, Utah.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Blanding, UT [Revised]

Blanding Municipal Airport, UT
(lat. 37°34'59" N., long. 109°29'00" W.)
Blanding NDB
(lat. 37°31'03" N., long. 109°29'34" W.)
Dove Creek VORTAC
(lat. 37°48'32" N., long. 108°55'53" W.)

That airspace extending upward from 700 feet above the surface within a 5.3-mile radius of the Blanding Municipal Airport, and within 5 miles east and 3.1 miles west of the 188 degree bearing from the Blanding NDB extending from the 5.3-mile radius to 10.1 miles south of the NDB; that airspace extending upward from 1,200 feet above the surface within 8.3 miles east and 5 miles west of the 188 and 008 degree bearings from the Blanding NDB extending from 16.1 miles south to 6.1 miles north of the NDB, and within 4.3 miles each side of a direct line between the Blanding NDB and the Dove Creek VORTAC.

* * * * *

Issued in Seattle, Washington, on December 16, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–781 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–29]

Amendment of Class E Airspace; Moab, UT

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the Moab, Utah, Class E airspace. Controlled airspace extending from 700 feet above ground level (AGL) is necessary for a new instrument approach procedure at Canyonlands Field Airport, Moab, Utah. The airspace will be depicted on aeronautical chats for pilot reference.

EFFECTIVE DATE: 0901 u.t.c., February 15, 1994.

FOR FURTHER INFORMATION CONTACT: James E. Riley, ANM–537, Federal Aviation Administration, Docket No. 93–ANM–29, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

History

On October 1, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) by amending the Moab, Utah, Class E airspace (58 FR 51257). Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received.

Class E airspace designations for airspace areas extending 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class E airspace at Moab, Utah, to provide controlled airspace for aircraft executing a new instrument approach procedure at Canyonlands Field Airport, Moab, Utah.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only effect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM UT E5 Moab, UT [Revised]

Canyonlands Field Airport, UT
(lat. 38°45'18" N., long. 109°45'17" W.)
Moab VOR/DME
(lat. 38°45'22" N., long. 109°44'58" W.)

That airspace extending upward from 700 feet above the surface within an 8.7-mile radius of the Canyonlands Field Airport, and within 6.1 miles northeast and 8.7 miles southwest of the Moab VOR/DME 301° radial extending from the 8.7-mile radius to 16.1 miles northwest of the airport and within 2 miles each side of the 040° bearing from Canyonlands Field Airport extending from the 8.7-mile radius to 10 miles northeast of the airport; that airspace extending upward from 1,200 feet above the surface bounded on the north by V–134, on the east by V–391, on the south by V–244, and on the west by V–208, excluding the Price Carbon County Airport, Utah, and the Grand Junction, Walker Field, Co. Class E Airspace Areas and all Federal Airways.

* * * * *

Issued in Seattle, Washington, on December 16, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–780 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–10]

Modification of Class D Airspace; Seattle, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This rule amends the Class D airspace for Seattle-Tacoma

International Airport, Boeing Field Airport, and Renton Municipal Airport. These changes are necessary to reflect the actual airspace delegated to each airport traffic control tower and show this airspace on appropriate aeronautical charts for pilots' use.

EFFECTIVE DATE: 0901 UTC, March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Robert L. Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–10, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

History

On August 17, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the Class D airspace for Seattle-Tacoma International Airport, Boeing Field Airport, and Renton Municipal Airport, Washington (58 FR 43573).

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. This amendment is the same as that proposed in the notice, except some coordinates of the airspace descriptions have been changed slightly to delete a small amount of Class D airspace south of Boeing Field which was found to be unnecessary. The coordinates in the proposal were North American Datum 27; however, these coordinates have been updated to North American Datum 83. Class D airspace areas are published in paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations amends the Class D airspace for Seattle-Tacoma International Airport, Boeing Field Airport, and Renton Municipal Airport, Washington. These changes are necessary to reflect the actual airspace delegated to each airport traffic control tower and to show this airspace on appropriate aeronautical charts for pilots' use.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000—General

* * * * *

ANM WA D Seattle-Tacoma International Airport, WA [Revised]

Seattle—Tacoma International Airport, WA
(lat. 47°26'56" N, Long. 122°18'34" W)
Seattle, Boeing Field/King County International Airport, WA
(lat. 47°31'48" N, long. 122°18'07" W)

That airspace extending upward from the surface to but not including 3,000 feet MSL beginning at lat. 47°22'37" N., long. 122°14'53" W., clockwise along the 5-mile radius of the Seattle-Tacoma International Airport to lat. 47°29'38" N., long. 122°24'46" W., thence clockwise along the 5-mile radius of Boeing Field/King County International Airport to lat. 47°30'00" N., long. 122°25'00" W., thence east along a line to lat. 47°30'00" N., long. 122°18'00" W., thence southeast along a line to lat. 47°26'00" N., long. 122°14'51" W., thence south along a line to lat. 47°25'49" N., long. 122°14'54" W., thence south along a line to the point of beginning excluding that airspace within the Seattle, Washington, Class B airspace area.

* * * * *

ANM WA D Seattle, Boeing Field/King County International Airport, WA [Revised]

Seattle, Boeing Field/King County International Airport, WA
(lat. 47°31'48" N., long. 122°18'07" W)
Seattle VORTAC
(lat. 47°26'07" N., long. 122°18'35" W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at lat. 47°30'00" N., long. 122°25'00" W., clockwise along the 5-mile radius of Boeing Field/King County International Airport to lat. 47°34'32" N., long. 122°11'57" W., thence southwest along a line to lat. 47°33'41" N., long. 122°14'03" W., thence southwest along a line to lat. 47°31'13" N., long. 122°15'32" W., thence southeast along a line to lat. 47°30'00" N., long. 122°13'33" W., thence south along a line to lat. 47°28'09" N., long. 122°13'33" W., thence southeast along a line to lat. 47°27'45" N., long. 122°12'58" W., thence south along a line to the intersection with a Seattle VORTAC 097 bearing at lat. 47°25'36" N., long. 122°12'19" W., thence west along the Seattle VORTAC 097 bearing to lat. 47°25'49" N., long. 122°14'54" W., thence north along a line to lat. 47°26'00" N., long. 122°14'51" W., thence northwest along a line to lat. 47°30'00" N., long. 122°18'00" W., thence west along a line to the point of beginning excluding that airspace within the Seattle, Washington, Class B airspace area.

* * * * *

ANM WA D Renton, WA [Revised]

(lat. 47°29'35" N., long. 122°12'57" W)
Seattle, Boeing Field/King County International Airport, WA
(lat. 47°31'48" N., long. 122°18'07" W)
Seattle VORTAC
(lat. 47°26'07" N., long. 122°18'35" W)

That airspace extending upward from the surface to and including 2,500 feet MSL beginning at the intersection of a 5-mile radius of Boeing Field/King County International Airport and a 5-mile radius of Renton Municipal Airport at lat. 47°34'32" N., long. 122°11'57" W., thence clockwise along the 5-mile radius of Renton Municipal Airport to the intersection with a Seattle VORTAC 097 bearing at lat. 47°25'20" N., long. 122°09'05" W., thence west along the Seattle VORTAC 097 bearing to lat. 47°25'36" N., long. 122°12'19" W., thence north along a line to lat. 47°27'45" N., long. 122°12'58" W., thence northwest along a line to lat. 47°28'09" N., long. 122°13'33" W., thence north along a line to lat. 47°30'00" N., long. 122°13'33" W., thence northwest along a line to lat. 47°31'13" N., long. 122°15'32" W., thence northeast along a line to lat. 47°33'41" N., long. 122°14'03" W., thence northeast along a line to the point of beginning.

* * * * *

Issued in Seattle, Washington, on December 14, 1993.

Helen M. Parke,

Assistant Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–785 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ANM–40]

Revocation of Jet Route J–201

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes Jet Route J–201 located between the Myton, UT, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility and the Scottsbluff, NE, VORTAC. This jet route failed to meet the necessary criteria required for extended service volume protection during the latest flight check. The FAA has issued several notices to airmen (NOTAM) stating that J–201 is canceled and flight is not authorized. These NOTAM's will be canceled once this final rule becomes effective on March 3, 1994.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes J–201 between the Myton, UT, VORTAC and the Scottsbluff, NE, VORTAC. During the latest flight check, this jet route failed to meet the necessary criteria required for extended service volume protection. The FAA has issued several NOTAM's stating that J–201 is canceled and flight is not authorized. These NOTAM's will be canceled once this final rule becomes effective on March 3, 1994. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this is a minor technical amendment in which the public is not particularly interested. Jet routes are published in Paragraph 2004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The jet route listed in this document will be removed subsequently from the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–201 [Removed]

* * * * *

Issued in Washington, DC, on January 5, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–790 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27567; Amdt. No. 1580]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 91 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form

8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAP's, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the compete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a significant regulatory action under Executive Order 12866, is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on December 30, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR, part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR OR TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; AND § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
12/12/93	FL	Jacksonville	Craig Muni	3/6787	ILS RWY 32 AMDT 2A...
12/14/93	AR	Fort Smith	Fort Smith Regional	3/6660	VOR OR TACAN RWY 25 AMDT 20...
12/17/93	LA	New Orleans	New Orleans Intl/Moisant Fld	3/6685	ILS RWY 10 AMDT 1...
12/17/93	PA	Cortland	Cortland County-Chase Fld. Cortland.	3/6674	VOR A ORIG...
12/21/93	CA	Redding	Redding Muni	3/6728	VOR RWY 34 AMDT 10A...
12/21/93	ND	Bowman	Bowman Muni	3/6709	NDB RWY 29 AMDT 2...
12/21/93	WA	Lawrenceburg	Lawrenceburg Muni	3/6768	NDB RWY 17 AMDT 3...
12/23/93	WA	Friday Harbor	Friday Harbor	3/6718	RADAR–1 AMDT 1...
12/22/93	PA	Allentown	Allentown-Bethlehem-Easton	3/6749	ILS RWY 13 AMDT 5...
12/22/93	PA	Hazleton	Hazleton Muni	3/6755	VOR RWY 28 AMDT 8...
12/22/93	PA	Johnstown	Johnstown-Cambria Co	3/6680	ILS RWY 33 AMDT 2A...
12/22/93	PA	St Marys	St Marys Muni	3/6741	RNAV RWY 10 AMDT 5...
12/23/93	FL	Jacksonville	Jacksonville Intl	3/6785	LOC BC RWY 31 AMDT 8A...
12/23/93	MS	Philadelphia	Philadelphia Muni	3/6765	NDB RWY 18 AMDT ORIG...
12/23/93	MS	Ripley	Ripley	3/6766	VOR/DME–A AMDT 1...

Effective	State	City	Airport	FDC No.	SIAP
12/23/93	NC	Asheville	Asheville Regional	3/6791	ILS RWY 34 AMDT 23...
12/23/93	NC	Edenton	Edenton Muni	3/6772	NDB RWY 5 AMDT 4...
12/23/93	NC	Edenton	Edenton Muni	3/6773	NDB RWY 19 AMDT 5...
12/23/93	NC	Mt Airy	Surry County	3/6790	NDB–A AMDT 2...
12/23/93	NC	New Bern	Craven County Regional	3/6770	VOR RWY 22, AMDT 1A...
12/23/93	NC	Oxford	Henderson-Oxford	3/6771	NDB RWY 6 AMDT 1...
12/23/93	PA	Coatesville	Chester Co G. O. Carlson	3/6756	VOR RWY 29 AMDT 5...
12/23/93	PA	Easton	Easton	3/6776	VOR/DME–D ORIG
12/23/93	PA	Latrobe	Westmoreland County	3/6762	RNAV RWY 5 AMDT 1...
12/23/93	TN	Philadelphia	Northeast Philadelphia	3/6778	LOC BC RWY 6 AMDT 6...

[FR Doc. 94–778 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27566; Amdt. No. 1579]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the Federal Register expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPs criteria were applied to the conditions existing or anticipated at the affective airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant

economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on December 30, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33 and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective March 3, 1994*

Bunnell, Fl, Flager County, VOR–A, Orig.
Bunnell, Fl, Flager County, VOR/DME–A, Amdt. 1, CANCELLED

* * * *Effective February 3, 1994*

Fullerton, CA, Fullerton Muni, VOR–A, Amdt. 6
San Francisco, CA, San Francisco Intl, LDA/DME RWY 28R, Amdt. 3
San Francisco, CA, San Francisco Intl, ILS RWY 28L, Amdt. 20
San Francisco, CA, San Francisco Intl, BAY ILS/DME RWY 28L, Orig.
Point Lookout, MO, M. Graham Clark, NDB RWY 29, Amdt. 7
Point Lookout, MO, M. Graham Clark, VOR/DME RNAV RWY 29, Amdt. 2
Circleville, OH, Pickaway County Memorial, NDB RWY 19, Orig.
Pittsburgh, PA, Pittsburgh International, Converging ILS RWY 28R, Amdt. 1
Pittsburgh, PA, Pittsburgh International, ILS RWY 28L, Amdt. 5
Pittsburgh, PA, Pittsburgh International, ILS RWY 28R, Amdt. 6

* * * *Effective December 23, 1993*

Fort Huachuca-Sierra Vista, AZ, AAF/Sierra Vista Muni, VOR RWY 26, Amdt. 2
Fort Huachuca-Sierra Vista, AZ, AAF/Sierra Vista Muni, NDB RWY 26, Amdt. 2
Fort Huachuca/Sierra Vista, AZ, Libby AAF/Sierra Vista Muni, ILS RWY 26, Amdt. 1
Fort Huchauca/Sierra Vista, AZ, Libby AAF/Sierra Vista Muni, RADAR–1, Amdt. 4

[FR Doc. 94–779 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

FEDERAL TRADE COMMISSION

16 CFR Part 305

RIN 3084–AA26

Rule Concerning Disclosures of Energy Consumption and Water Use Information About Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: Under the Energy and Water Use Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule, must be used on labels on refrigerators, refrigerator-freezers, and freezers manufactured on and after April 12, 1994, and in advertising of refrigerators, refrigerator-freezers, and freezers in catalogs printed after April 12, 1994. Properly labeled refrigerators, refrigerator-freezers, and freezers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: On November 19, 1979, the Commission issued a final rule,[1] pursuant to section 324 of the Energy Policy and Conservation Act of 1975,[2] covering certain appliance categories, including refrigerators, refrigerator-freezers, and freezers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all refrigerators, refrigerator-freezers and freezers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a refrigerator, refrigerator-freezer or freezer is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then the range of estimated annual energy costs for the product must be included on each page of the catalog that lists the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be based on the results of test procedures developed by the Department of Energy, which are referenced in the rule.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report estimated annual operating cost or energy efficiency annually by specified dates for each product type.[3] Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing.

To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for refrigerators, refrigerator-freezers, and

[1] 44 FR 66466. On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps. On October 25, 1993 (58 FR 54955), the Commission extended the Rule's coverage to include certain plumbing products (showerheads, faucets, water closets and urinals).

[2] 42 U.S.C. 6294.

[3] Reports for refrigerators, refrigerator-freezers and freezers are due by August 1.

freezers, which were calculated using the 1993 representative average energy cost for electricity (8.30 cents per kilowatt-hour) published by DOE on January 5, 1993,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends Appendices A–1, A–2 and B of its of its Energy and Water Use Rule as follows effective beginning April 12, 1994.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In appendices A1, A2 and B, Paragraph 1 of each and the introductory text in Paragraph 2 of each are revised to read as follows:

Appendix A1 to Part 305—Refrigerators

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 2.5	$21	$30
2.5 to 4.4	5	35
4.5 to 6.4	22	34
6.5 to 8.4	31	35
8.5 to 10.4	9	37
10.5 to 12.4	38	43
12.5 to 14.4	41	46
14.5 to 16.4	19	19
16.5 and over	37	38

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 8.30¢ per kilowatt hour.

* * * * *

Appendix A2 to Part 305—Refrigerator-Freezers

1. Range Information:

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 10.5	$17	58
10.5 to 12.4	43	65
12.5 to 14.4	25	71
14.5 to 16.4	31	73
16.5 to 18.4	47	87
18.5 to 20.4	50	108
20.5 to 22.4	52	106
22.5 to 24.4	60	122
24.5 to 26.4	61	116
26.5 to 28.4	71	129
28.5 and over	73	122

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 8.30¢ per kilowatt hour.

* * * * *

Appendix B to Part 305—Freezers

1. Range Information

Manufacturer's rated total refrigerated volume in cubic feet	Ranges of estimated yearly energy costs	
	Low	High
Less than 5.5	$14	$42
5.5 to 7.4	23	34
7.5 to 9.4	25	46
9.5 to 11.4	29	52
11.5 to 13.4	32	80
13.5 to 15.4	35	83
15.5 to 17.4	44	72
17.5 to 19.4	39	92
19.5 to 21.4	42	74
21.5 to 23.4	45	46
23.5 to 25.4	47	47
25.5 to 27.4	(1)	(1)
27.5 to 29.4	(1)	(1)
29.5 and over	140	223

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scale are based on a national average electric rate of 8.30¢ per kilowatt hour.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–747 Filed 1–11–94; 8:45 am]

BILLING CODE 6750–01–M

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16 CFR Part 305

RIN 3084–AA26

Rule Concerning Disclosures of Energy Consumption and Water Use Information About Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: Under the Energy and Water Use Rule, each required label on a covered appliance must show a range, or scale, indicating the range of energy costs or efficiencies for all models of a size or capacity comparable to the labeled model. This notice publishes the new range figures, which, under §§ 305.10, 305.11 and 305.14 of the rule must be used on labels on dishwashers manufactured on and after April 12, 1994, and in advertising of dishwashers beginning April 12, 1994. Properly labeled dishwashers manufactured prior to the effective date need not be relabeled. Catalogs printed prior to the effective date in accordance with 16 CFR 305.14 need not be revised.

EFFECTIVE DATE: April 12, 1994.

FOR FURTHER INFORMATION CONTACT: James Mills, Attorney, 202–326–3035, Division of Enforcement, Federal Trade Commission, Washington, DC 20580.

SUPPLEMENTARY INFORMATION: Section 324 of the Energy Policy and Conservation Act of 1975 (EPCA)[1] requires the Federal Trade Commission to consider labeling rules for the disclosure of estimated annual energy cost or alternative energy consumption information for at least thirteen categories of appliances. Dishwashers are included as one of the categories. Before these labeling requirements may be prescribed, the statute requires the Department of Energy ("DOE") to develop test procedures that measure how much energy the appliances use. In addition, DOE is required to determine the representative average cost a customer pays for the different types of energy available.

On November 19, 1979, the Commission issued a final rule[2] covering seven of the thirteen appliance categories, including dishwashers. The rule requires that energy costs and related information be disclosed on labels and in retail sales catalogs for all dishwashers presently manufactured. Certain point-of-sale promotional materials must disclose the availability of energy usage information. If a dishwasher is advertised in a catalog from which it may be purchased by cash, charge account or credit terms, then on each page of the catalog that lists the product shall be included the range of estimated annual energy costs for the product. The required disclosures and all claims concerning energy consumption made in writing or in broadcast advertisements must be

[1] 42 U.S.C. 6294.

[2] 44 FR 66466. On December 10, 1987 (52 FR 46888), the Commission amended the Appliance Labeling Rule by extending coverage to include central air conditioners and heat pumps. On October 25, 1993 (58 FR 54955), the Commission extended the Rule's coverage to include certain plumbing products (showerheads, faucets, water closets and urinals).

[4] 58 FR 345. The Commission published these figures on January 25, 1993, at 58 FR 5825. The cost for electricity was published as 8.30 cents per kilowatt-hour; for natural gas: 59.46 cents per therm; for propane: 73 cents per gallon; for No. 2 heating oil: $1.00 per gallon.

based on the results of the DOE test procedures.

Section 305.8(b) of the rule requires manufacturers, after filing an initial report, to report annually by specified dates for each product type.[3] The data submitted by manufacturers are based, in part, on the representative average unit cost of the type of energy used to run the appliances tested. According to § 305.9 of the rule, these average energy costs, which are provided by DOE, will be periodically revised by the Commission, but not more often than annually. Because the costs for the various types of energy change yearly, and because manufacturers regularly add new models to their lines, improve existing models and drop others, the data base from which the ranges of comparability are calculated is constantly changing. To keep the required information in line with these changes, the Commission is empowered, under § 305.10 of the rule, to publish new ranges (but not more often than annually) if an analysis of the new data indicates that the upper or lower limits of the ranges have changed by more than 15%.

The new figures for the estimated annual costs of operation for dishwashers, which were calculated using the 1993 representative average energy costs published by DOE on January 5, 1993,[4] have been submitted and have been analyzed by the Commission. New ranges based upon them are herewith published.

In consideration of the foregoing, the Commission amends appendix C of its Energy and Water Use Rule by publishing the following ranges of comparability for use in the labeling and advertising of dishwashers beginning April 12, 1994.

List of Subjects in 16 CFR Part 305

Advertising, Energy conservation, Household appliances, Labeling, Reporting and recordkeeping requirements.

Accordingly, 16 CFR part 305 is amended as follows:

PART 305—[AMENDED]

1. The authority citation for part 305 continues to read as follows:

Authority: 42 U.S.C. 6294.

2. In appendix C, Paragraph 1 and the introductory text in Paragraph 2 are revised to read as follows:

Appendices to Part 305

* * * * *

Appendix C to Part 305—Dishwashers

1. Range Information: "Compact" includes countertop dishwasher models with a capacity of fewer than eight (8) place settings. "Standard" includes portable or built-in dishwasher models with a capacity of eight (8) or more place settings.

Place settings shall conform to AHAM Specification DW–1 for chinaware, flatware and serving pieces. Load patterns shall conform to the operating normal for the model being tested.

Ranges of comparability	Ranges of estimated yearly energy costs			
	Electrically heated water		Natural gas heated water	
	Low	High	Low	High
Compact	(1)	(1)	(1)	(1)
Standard	$39.00	$89.00	$21.00	$47.00

[1] No data submitted.

2. Yearly Cost Information: Estimates on the scales are based on national average electric rate of 8.30¢ per kilowatt hour, a national average natural gas rate of 59.46¢ per therm, and 6.2 loads of dishes per week.

* * * * *

Donald S. Clark,

Secretary.

[FR Doc. 94–748 Filed 1–11–94; 8:45 am]

BILLING CODE 6750–01–M

[3] Reports for dishwashers are due by June 1.

[4] 58 FR 345. The Commission published these figures on January 25, 1993, at 58 FR 5925. The cost for electricity was published as 8.30 cents per kilowatt-hour; for natural gas: 59.46 cents per therm; for propane: 73 cents per gallon; for No. 2 heating oil: $1.00 per gallon.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 385

[Docket No. RM94–8–000]

Revision of the Regulations Governing Commission Review of Department of Energy Remedial Orders

Issued January 4, 1994.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is revising its regulations governing Commission review of contested Department of Energy remedial orders. The Commission is removing as not necessary the requirement that the presiding officer submit a revised proposed order to the Commission at the same time as he or she certifies and files with the Secretary the record in the proceeding and copies of written comments by the parties.

EFFECTIVE DATE: The final rule is effective on January 4, 1994.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

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I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations in part 385 governing Commission review of contested Department of Energy (DOE) remedial orders. The Commission is removing the requirement that the presiding officer submit a revised proposed order to the Commission at the same time as he or she certifies and files with the Secretary the record in the proceeding and copies of written comments by the parties.

II. Background and Discussion

The Commission reviews contested DOE remedial orders pursuant to section 503(c) of the Department of Energy Organization Act (DOE Act).[1] Under the current Rules of Practice and Procedure, the Commission Administrative Law Judge (ALJ) who presides over a remedial order proceeding issues a public decision and proposed order following the hearing in the matter. The parties then have an opportunity to file comments and reply comments. The ALJ receives the comments and certifies the record to the Commission. In addition, the Judge also submits to the Commission a nonpublic "revised proposed order." The revised proposed order is not part of the record of the proceeding.

The Commission is eliminating the requirement in § 385.913(d) of the Commission's regulations that ALJs submit a revised proposed order. This action will expedite the appeal process by removing an unnecessary, duplicative step in remedial order proceedings. Since the Commission now finds that revised proposed orders are not necessary, draft orders that have already been submitted by ALJs to the Commission in pending and recently completed remedial order cases will be placed in the public docket of each proceeding. Parties do not have any additional procedural rights or opportunities by virtue of the inclusion of these draft orders in the public docket. Under the Commission's Rules of Practice and Procedure in remedial order cases, the parties already enjoy ample opportunities to present their positions fully before the Commission.[2]

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[3] generally requires a description and analysis of final rules that will have a significant economic impact on a substantial number of small entities.[4] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Issuance of this rule will not represent a major federal action having a significant adverse effect on the human environment under the Commission's regulations implementing the National Environmental Policy Act.[5] This rule is procedural and falls within the categorical exemptions provided in the Commission's regulations. Neither an environmental impact statement nor an environmental assessment is required.[6]

V. Information Collection Statement

Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[7] This rule contains no information collection requirements and is not subject to OMB approval.

VI. Administrative Findings and Effective Date

This final rule is a rule of agency organization and procedure that does not alter any substantive rights or interests, but merely deletes a nonpublic, revised proposed order in remedial order proceedings that is unnecessary and duplicative in Commission deliberations. Prior notice and comment under section 4 of the Administrative Procedure Act are therefore unnecessary.[8] The Commission finds good cause to make this rule effective immediately upon issuance. This rule, therefore, is effective January 4, 1994.

List of Subjects in 18 CFR Part 385

Administrative practice and procedure, Electric power, Penalties, Pipelines, Reporting and recordkeeping requirements.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission is amending part 385, chapter I, title 18, Code of Federal Regulations, as set forth below:

PART 385—RULES OF PRACTICE AND PROCEDURE

1. The authority citation for part 385 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 1–27.

2. In § 385.913, paragraph (d) is revised to read as follows:

§ 385.913 Proposed order (Rule 913).

* * * * *

(d) The presiding officer will certify and file with the Secretary of the Commission a copy of the record in the proceedings and copies of the written and reply comments filed pursuant to paragraphs (b) and (c) of this section.

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[FR Doc. 94–681 Filed 1–11–94; 8:45 am]

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[1] See 42 U.S.C. 7193(c).

[2] Apart from the procedural opportunities available to parties before DOE, once a matter is appealed to the Commission, the petitioner files a detailed answer to the RO; the petitioner, DOE and intervenors may seek discovery and permission to raise new facts or issues not raised before DOE. The parties then have an opportunity to file briefs (Rule 906); to obtain a hearing including an opportunity for the submission of oral or documentary evidence and oral argument (and to ask the ALJ's permission for cross-examination) (Rule 909); and to file with the ALJ proposed findings of fact and conclusions of law and replies to these pleadings. Finally, after the ALJ has issued a decision and proposed order, the parties may file written comments and reply comments on the ALJ's decision. (Rule 913)

[3] 5 U.S.C. 601–602.

[4] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[5] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990, ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[6] See 18 CFR 380.4(a)(1).

[7] 5 CFR part 1320.

[8] 5 U.S.C. 553(b).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Parts 404 and 416

RIN 0960–AC88

Federal Old-Age, Survivors, and Disability Insurance and Supplemental Security Income for the Aged, Blind, and Disabled; Standards Applicable in Certain Determinations of Good Cause, Fault, and Good Faith

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: These final regulations amend the existing regulations to reflect the provisions of section 10305 of the

Omnibus Budget Reconciliation Act of 1989 (OBRA 1989).

Section 10305 requires that the Secretary of Health and Human Services (the Secretary), in making certain determinations of good cause, without fault, and good faith under title II of the Social Security Act (the Act), take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.

In addition, section 10305 amended title XVI of the Act to require that the Secretary take these limitations into account in determining with respect to an individual's eligibility for title XVI benefits, whether the individual acted in good faith or was without fault, and in determining fraud, deception, or intent.

EFFECTIVE DATE: These final regulations are effective January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Philip Berge, Legal Assistant, 3–B–1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235 (410) 965–1769.

SUPPLEMENTARY INFORMATION: On October 30, 1991, we published a notice of proposed rulemaking (NPRM) at 56 FR 55848. We received comments from a nonprofit public interest law center and a national nonprofit organization. Both organizations represent people who are hearing impaired and both strongly supported the proposed rule and urged its adoption. The final rule, with the exception of several technical changes we have made and which we discuss below, is the same as the NPRM.

Sections 10305 (a), (b), (c), and (d) of OBRA 1989 amended sections 203(l), 204(b), 223(f), and 223(g)(2)(B) of title II of the Act, respectively, to require that the Secretary, in making certain determinations and decisions of good cause, fault, and good faith under the respective sections of the Act, take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. In addition, section 10305(e) of OBRA 1989 amended section 1631(c)(1) of title XVI of the Act to require that the Secretary take these limitations into account in determining with respect to the eligibility of an individual for benefits under title XVI, whether the individual acted in good faith or was without fault, and in determining fraud, deception, or intent. The Conference Committee Report on OBRA 1989 indicates that the Congress intended that the amendment to section 1631(c)(1) of the Act would apply to provisions of title XVI that are similar to the title II provisions amended by sections 10305 (a) through (d). (H.R. Rep. No. 386, 101st Cong., 1st Sess. 708 (1989).) The amendments made by section 10305 are effective for determinations or decisions made after June 30, 1990.

Generally, it has been our policy to take into account the limitations described in section 10305 in making determinations or decisions of good cause, without fault, or good faith (or determinations or decisions concerning fraudulent or similar intent) with respect to the rights and duties of applicants and beneficiaries under the title II and title XVI programs. However, our existing regulations were not explicit in this respect. Therefore, we are revising our regulations under the title II and title XVI programs to reflect explicitly the amendments to the Act made by section 10305 of OBRA 1989. The changes to the regulations make it clear that we will take into account any physical, mental, educational, or linguistic limitations of an individual (including any lack of facility with the English language) in making a determination of good cause, without fault, or good faith, as appropriate, under section 203(l), 204(b), 223(f), or 223(g)(2)(B) of the Act (as required by the amendments made by sections 10305 (a) through (d)), and in determining with respect to an individual's eligibility for benefits under title XVI of the Act, whether such individual acted in good faith or was without fault, and in determining fraud, deception, or intent (as required under the amendment made to section 1631(c)(1) of the Act by section 10305(e)). Also, in keeping with the intent of Congress and in the interest of consistency, we are amending certain provisions of the title II regulations to provide expressly for the consideration of the limitations described in section 10305 in making certain determinations and decisions under the title II program which relate to good cause or fraudulent intent and which are not covered expressly by the amendments under sections 10305 (a) through (d) of OBRA 1989. The changes we are making are discussed below.

• Good Cause for Failure to Make Timely Reports

Generally, in certain cases described in section 203 of the Act, a title II beneficiary who (1) Works for more than 45 hours during a month in noncovered employment outside the United States, (2) ceases to have a child in his or her care, or (3) has earnings in excess of the annual exempt amount under the earnings test, is subject to a penalty (in the form of benefit deductions) if he or she fails to report these facts to us within a specified time. However, under section 203(l) of the Act, a penalty does not apply if the individual can demonstrate to the satisfaction of the Secretary that he or she has good cause for failing to make a timely report.

Section 10305(a) of OBRA 1989 amended section 203(l) to provide that the Secretary, in making determinations and decisions of good cause, must take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.

Section 404.454 is the regulation which implements section 203(l). Accordingly, we are amending § 404.454(a) to provide that in making determinations and decisions of good cause for failure to make timely reports, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. In addition, we are adding a new paragraph, (a)(9), to § 404.454 to illustrate that good cause may be found where failure to file a timely report was due, for example, to a failure on the part of the individual to understand reporting responsibilities due to his or her physical, mental, educational, or linguistic limitation(s).

Under section 1631(e)(2) of the Act, an individual who is required under rules prescribed by the Secretary to make a timely report of circumstances affecting eligibility for, or the amount of, title XVI benefits is subject to a penalty (in the form of benefit deductions) if the individual fails to make the required report on time. However, the penalty under section 1631(e)(2) does not apply if the individual is without fault or has good cause for not reporting timely.

Section 416.732 of our current regulations explains how we determine whether an individual has good cause for failure to make a timely report for purposes of section 1631(e)(2). We are adding a new paragraph to § 416.732 to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has in making determinations and decisions of good cause for failure to make timely reports.

• Fraudulent Behavior or Failure To Cooperate or To Take Any Required Action in Disability Determinations

Under sections 223(f) and 1614(a)(4) of the Act, title II or title XVI disability benefits may be terminated if a prior favorable determination of disability was fraudulently obtained or if the beneficiary fails, without good cause, to cooperate with the Secretary in reviewing his or her entitlement or to follow prescribed treatment which is expected to restore his or her ability to work.

Section 10305(c) of OBRA 1989 amended section 223(f) of the Act to provide that in making, for purposes of section 223(f), any determination or decision relating to fraudulent behavior by any individual or failure by any individual without good cause to cooperate or to take any required action, the Secretary shall take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have. In addition, with respect to making similar determinations and decisions for purposes of section 1614(a)(4) of the Act, section 1631(c)(1) of title XVI of the Act, as amended by OBRA 1989, requires the Secretary to take these limitations into account in determining whether an individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

Sections 404.1518, 404.1530, 404.1579, 404.1594, 416.918, 416.930, 416.994 and 416.994a reflect the pertinent provisions of sections 223(f) and 1614(a)(4) of the Act. We are making the following changes in these regulations:

• Amend §§ 404.1518 and 416.918 to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has when determining if the individual has a good reason for failing to attend a consultative examination which we have arranged for the individual. These specific amendments were not included in the NPRM. Current §§ 404.1518 and 416.918 provide that we may determine that an individual who is applying for benefits based on disability or blindness is not disabled or blind, or that an individual who is entitled to or eligible for benefits based on disability or blindness is no longer disabled or blind, if we find that the individual failed or refused to attend a consultative examination without a good reason. While §§ 404.1518 and 416.918 provide rules for determining whether an individual has a good reason for such failure or refusal and, thus, are within the scope of the amendments to sections 223(f) and 1631(c)(1) of the Act, we inadvertently failed to include these regulations when we developed the proposed regulations to implement section 10305 of OBRA 1989. We are amending §§ 404.1518(a) and 416.918(a) in the final rule to make it clear that we will consider an individual's physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) in determining whether the individual has a good reason for failing to attend a consultative examination. In connection with this change, we also are making related changes, which were not in the NPRM, to §§ 404.1579(e)(2), 404.1586(d), 404.1594(e)(2), 416.986(c), 416.994(b)(4)(ii) and 416.994a(g)(2) to include in these sections a cross-reference to § 404.1518 or § 416.918, as appropriate, to clarify that §§ 404.1518 and 416.918 provide the rules for determining whether an individual has a good reason for not attending a consultative examination. Current § 416.994a(g)(2) already contains such a cross-reference.

• Amend §§ 404.1530(c) and 416.930(c) to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has when deciding if the individual has acceptable reasons for failure to follow prescribed treatment.

• Amend §§ 404.1579 (e)(1) and (e)(2), 404.1594 (e)(1) and (e)(2), 416.994 (b)(4)(i) and (b)(4)(ii) and 416.994a (g)(1) and (g)(2) to indicate that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has in determining whether a prior favorable determination or decision was fraudulently obtained or in determining whether an individual has good cause for failure to supply evidence we ask for or to go for a physical or mental examination. The amendments to these sections of the regulations include certain technical changes that were not reflected in the NPRM. For the final rule, we are adding the phrase "or decision" to §§ 404.1579(e)(1), 404.1594(e)(1), 416.994(b)(4)(i) and 416.994a(g)(1) to clarify that these provisions apply not only to determinations we make, but also to decisions we make. Section 416.994a(g)(1) already contains this language. Also, as discussed above, §§ 404.1579(e)(2), 404.1586(d), 404.1594(e)(2), 416.986(c), 416.994(b)(4)(ii) and 416.994a(g)(2) of the final rule include a cross-reference to § 404.1518 or § 416.918, as appropriate, which provides rules for determining whether an individual has good cause for failing to attend a consultative examination.

Consistent with the NPRM, the final changes to §§ 404.1579(e)(2), 404.1594(e)(2), 416.994(b)(4)(ii) and 416.994a(g)(2) also explain that we will consider the factors described in §§ 404.911 and 416.1411 for purposes of determining generally whether an individual has good cause for failure to cooperate in a review of his or her entitlement to benefits based on disability. (Current §§ 404.911 and 416.1411 explain the factors we consider in determining whether an individual has good cause for missing a deadline to request review of a determination or decision under our administrative review process. As explained later in this preamble, we are amending §§ 404.911 and 416.1411, which apply to title II and title XVI cases, respectively, to provide explicitly for the consideration of the limitations described in section 10305 of OBRA 1989 in determining whether an individual has good cause for missing a deadline to request review.) We are also revising §§ 404.1586(d) and 416.986(c) to clarify that we will consider the factors described in §§ 404.911 and 416.1411, respectively, for purposes of determining generally whether an individual has good cause for failure to cooperate in a review of his or her continuing entitlement to title II benefits, or continuing eligibility for title XVI benefits, based on blindness.

• Without Fault—Waiver of Adjustment or Recovery of Overpayments

Under sections 204(b) and 1631(b)(1)(B) of the Act, recovery or adjustment of overpayments to a title II or title XVI beneficiary may be waived in situations where the individual is without fault in connection with the overpayment and recovery or adjustment would defeat the purposes of the program or would be against equity and good conscience or, with respect to the title XVI program, would impede efficient or effective administration of title XVI because of the small amount involved. Our existing regulations explain that in determining whether an individual was without fault, all pertinent factors surrounding the overpayment will be considered, including the individual's age, intelligence, education, and physical and mental capabilities.

Section 10305(b) of OBRA 1989 amended section 204(b) of the Act to provide that the Secretary, in making determinations or decisions of "without fault" for purposes of section 204(b), must take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. In addition, the

amendment to section 1631(c)(1) of the Act made by section 10305(e) of OBRA 1989 provides that, for the purposes of the title XVI program, the Secretary must take these same limitations into account in determining, among other things, whether an individual is without fault.

We are making the following changes in our regulations which implement sections 204(b) and 1631(b)(1)(B) of the Act to reflect the pertinent amendments made by section 10305.

- Amend § 404.507 to provide that in making determinations of without fault with respect to title II overpayments, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.
- Amend § 404.510 to provide that in determining whether an individual is without fault with respect to a title II deduction overpayment, we will consider all pertinent circumstances, including an individual's age and intelligence and any physical, mental, educational, or linguistic limitations of the individual (including any lack of facility with the English language). In addition, to eliminate any ambiguity with respect to the application of the amendment to section 204(b) of the Act made by section 10305(b) of OBRA 1989 in cases involving title II deduction overpayments, the changes to § 404.510 will: (1) clarify that the situations described in § 404.510 in which an individual will be considered without fault in connection with a deduction overpayment are not all-inclusive; and (2) eliminate the provision in paragraph (n) of § 404.510 which requires that for an individual to be considered without fault with respect to a deduction overpayment in certain circumstances described in paragraph (n), such individual must have made a bona fide attempt to restrict his or her annual earnings or otherwise comply with the deduction provisions of the Act.
- Amend § 404.511(b) to show that the Social Security Administration generally will not find an individual to be without fault when, after having been exonerated for a title II "deduction overpayment" and after having been advised of the correct interpretation of the deduction provision, the individual incurs another "deduction overpayment" under the same circumstances as the first overpayment. The change to § 404.511(b) also explains that in determining "without fault" under such circumstances, however, any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has will be taken into consideration.
- Amend § 416.552 to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has in determining whether the individual is without fault for purposes of the waiver of adjustment or recovery of a title XVI overpayment.

In general, under section 1631(b)(4) of the Act and the implementing regulation, § 416.556, if any title XVI overpayment is attributable solely to the ownership or possession by an individual (or by an individual and his or her spouse, if any) of countable resources having a value which exceeds, by $50 or less, the applicable limitation on resources specified in the Act and regulations, such individual (and spouse if any) will be deemed to have been without fault in connection with the overpayment, and waiver of adjustment or recovery will be made, unless the failure to report the value of the excess resources correctly and in a timely manner was willful and knowing. Based on the amendment to section 1631(c)(1) of the Act made by section 10305(e) of OBRA of 1989, we are amending § 416.556(b) to provide that in determining whether failure to report the excess resources correctly and in a timely manner was willful and knowing, and, thus, whether the individual was at fault, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.

- **Good Faith—Waiver of Recovery of Overpayments—Continuation of Disability Benefits Pending Appeal**

Under sections 223(g) and 1631(a)(7) of the Act and the implementing regulations at §§ 404.1597a and 416.996, a title II or title XVI beneficiary receiving benefits based on disability whom the Secretary determines is no longer disabled based on medical factors has the option of having his or her benefits continued through a hearing before an administrative law judge (ALJ). Benefits paid during this period are considered overpayments if the beneficiary loses the appeal. However, if the beneficiary acted in good faith in pursuing the appeal, repayment can be waived (sections 223(g)(2)(B) and 1631(a)(7)(B)(ii) of the Act and 404.1597a(j) and 416.996(g) of our regulations). Our regulations establish a presumption that appeals are made in good faith unless the beneficiary fails, without good cause, to cooperate during the appeal.

Section 10305(d) of OBRA 1989 amended section 223(g)(2)(B) of the Act to require that the Secretary take into account any physical, mental, educational, or linguistic limitations an individual may have (including any lack of facility with the English language) in determining whether an individual's appeal is made in good faith.

Based on this amendment and the amendment to title XVI of the Act made by section 10305(e) of OBRA 1989, we are amending §§ 404.1597a(j)(3) and 416.996(g)(2) to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has in determining whether the individual acted in good faith in pursuing the appeal.

- **Determinations of Good Cause or of Fraud or Similar Fault in Connection With the Administrative Review Process**

Section 10305(e) amended section 1631(c)(1) of the Act to provide that the Secretary shall specifically take into account any physical, mental, educational, or linguistic limitations of an individual (including any lack of facility with the English language) in determining, with respect to the eligibility of the individual for benefits under title XVI, whether the individual acted in good faith or was at fault, and in determining fraud, deception, or intent.

The changes we are making in part 416 of the regulations in connection with the administrative review process are based on the amendment to section 1631(c)(1). We are making comparable changes in part 404 in the interest of consistency.

Our current regulations provide that a determination or decision which we make about an individual's rights under title II or title XVI of the Act is generally final and binding unless the individual files a request for review of the determination or decision within a specified time period. However, the time period to request review will be extended if good cause can be established for missing the deadline to request review (§§ 404.911 and 416.1411). Also, under our regulations, we may reopen a determination or decision at any time if it was obtained by fraud or similar fault (§§ 404.988(c)(1) and 416.1488(c)), or, in title II cases, if certain other circumstances exist (§ 404.988(c)).

Under our regulations, a request for a hearing before an ALJ may be dismissed if neither the person requesting the hearing nor his or her designated representative appears at the time and place set for the hearing. However, if good cause for failure to appear can be established, the hearing request will not be dismissed (§§ 404.957(b) and 416.1457(b)).

We are making the following changes to §§ 404.911, 404.936, 404.957, 404.988, 416.1411, 416.1436, 416.1457, and 416.1488 to reflect the consideration of the factors described in section 10305 of OBRA 1989.

- Amend §§ 404.911(a) and (b)(9) and 416.1411(a) and (b)(9) to provide that in determining whether an individual had good cause for missing a deadline to request review, we will take into account any physical, mental, educational, or linguistic limitations of the individual (including any lack of facility with the English language) which may have prevented the individual from filing a timely request or from understanding or knowing about the need to file a timely request for review.
- Amend §§ 404.936 and 416.1436 to further describe circumstances which an individual, who will not be represented at a hearing before an ALJ, may give for requesting a change in the time or place of the hearing.
- Amend §§ 404.957(b) and 416.1457(b) to require that in making determinations of whether an individual had good cause for failure to appear for a hearing before an ALJ, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.
- Amend §§ 404.988(c)(1) and 416.1488(c) to indicate that in determining whether a determination or decision was obtained by fraud or similar fault for the purposes of reopening, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has.

Good Cause for Refusal To Accept Rehabilitation Services

Under sections 222(b) and 1615(c) of the Act and the implementing regulations at §§ 404.422 and 416.1328, deductions may be imposed against title II benefits, or title XVI benefits may be suspended, if a disabled or blind beneficiary refuses without good cause to accept certain rehabilitation services. If good cause can be established for the refusal, benefits will not be affected. The final regulations amend the pertinent regulations relating to good cause for refusal of rehabilitation services.

The change we are making in part 416 of the regulations is based on the amendment to section 1631(c)(1) of the Act. We are making a comparable change in part 404 in the interest of consistency.

Sections 404.422 and 416.1715 of our regulations discuss how we determine whether an individual has good cause for refusing rehabilitation services. We are amending §§ 404.422(e) and 416.1715(a) to provide that in making good cause determinations concerning the refusal of rehabilitation services, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. We are also making a technical correction in a cross-reference contained in § 416.2203 to indicate that "good cause" for refusal of vocational rehabilitation services is defined in § 416.1715.

Good Reason for Not Applying for Other Benefits

Section 1611(e)(2) of the Act requires that SSI applicants and beneficiaries apply for other benefits for which they may be eligible within 30 days from the date the individual receives our notice about any other benefits for which the individual is likely to be eligible. Our existing regulations §§ 416.210(e) and 416.1330(a) provide that individuals are not eligible for SSI benefits if they do not apply for the other benefits when told to do so. However, both §§ 416.210(e) and 416.1330(a) provide that the individual will not be found ineligible for SSI benefits if the individual had good reason (§ 416.210(e)) or good cause (§ 416.1330(a)) for not applying for the other benefits within the 30-day period or taking other necessary steps to obtain them.

We are amending § 416.210(e)(2) to provide that we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has in determining good reason or good cause for not filing for other benefits. Since § 416.1330(a) refers to § 416.210(e), we are not amending § 416.1330(a).

Regulatory Procedures

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because these rules will affect only individuals and States.

Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

These regulations impose no new reporting or recordkeeping requirements requiring Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 through 93.805 Social Security; and 93.807 Supplemental Security Income)

List of Subjects

20 CFR Part 404

Administrative practice and procedure; Death benefits; Disability benefits; Old-age, Survivors, and Disability insurance; Reporting and recordkeeping requirements.

20 CFR Part 416

Administrative practice and procedure; Aged; Blind; Disability benefits; Public assistance programs; Reporting and recordkeeping requirements; Supplemental Security Income (SSI).

Dated: November 3, 1993.

Shirley Chater,

Commissioner of Social Security.

Approved: January 3, 1994.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, subparts E, F, J, and P of part 404 and subparts B, E, G, I, N, Q and V of part 416 of 20 CFR chapter III are amended as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950–)

1. The authority citation for subpart E continues to read as follows:

Authority: Secs. 202, 203, 204 (a) and (e), 205(a), 222(b), 223(e), 224, 227, and 1102 of the Social Security Act; 42 U.S.C. 402, 403, 404 (a) and (e), 405(a), 422(b), 423(e), 424, 427, and 1302.

2. Section 404.422 is amended by adding two new sentences immediately before the second sentence of the introductory text of paragraph (e) to read as follows:

§ 404.422 Deductions because of refusal to accept rehabilitation services.

* * * * *

(e) * * * In determining whether an individual has good cause for refusing rehabilitation services, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have which may have caused the

individual to refuse such services. We also consider other factors that may have caused an individual to refuse such services. * * *

* * * * *

3. Section 404.454 is amended by revising the third and fourth sentences of the introductory text of paragraph (a), by removing the word "or" that follows the semicolon at the end of paragraph (a)(7), by removing the period at the end of paragraph (a)(8) and replacing it with "; or", and by adding a new paragraph (a)(9) to read as follows:

§ 404.454 Good cause for failure to make required reports.

(a) *General.* * * * The failure of the individual to submit evidence to establish good cause within a specified time may be considered a sufficient basis for a finding that good cause does not exist (see § 404.705). In determining whether good cause for failure to report timely has been established by the individual, consideration is given to whether the failure to report within the proper time limit was the result of untoward circumstances, misleading action of the Social Security Administration, confusion as to the requirements of the Act resulting from amendments to the Act or other legislation, or any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have. * * *

* * * * *

(9) Failure of the individual to understand reporting responsibilities due to his or her physical, mental, educational, or linguistic limitation(s).

* * * * *

4. The authority citation for subpart F continues to read as follows:

Authority: Secs. 204(a)–(d), 205(a), and 1102 of the Social Security Act; 42 U.S.C. 404(a)–(d), 405(a), and 1302.

5. Section 404.507 is amended by revising the third sentence of the introductory text to read as follows:

§ 404.507 Fault.

* * * In determining whether an individual is at fault, the Social Security Administration will consider all pertinent circumstances, including the individual's age and intelligence, and any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. * * *

* * * * *

6. Section 404.510 is amended by revising the section heading, by removing the last sentence of paragraph (n) and by revising the introductory text of § 404.510 to read as follows:

§ 404.510 When an individual is "without fault" in a deduction overpayment.

In determining whether an individual is "without fault" with respect to a deduction overpayment, the Social Security Administration will consider all pertinent circumstances, including the individual's age and intelligence, and any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual has. Except as provided in § 404.511 or elsewhere in this subpart F, situations in which an individual will be considered to be "without fault" with respect to a deduction overpayment include, but are not limited to, those that are described in this section. An individual will be considered "without fault" in accepting a payment which is incorrect because he/she failed to report an event specified in sections 203 (b) and (c) of the Act, or an event specified in section 203(d) of the Act as in effect for monthly benefits for months after December 1960, or because a deduction is required under section 203 (b), (c), (d), or section 222(b) of the Act, or payments were not withheld as required by section 202(t) or section 228 of the Act, if it is shown that such failure to report or acceptance of the overpayment was due to one of the following circumstances:

* * * * *

7. Section 404.511 is amended by revising the section heading and by revising paragraph (b) to read as follows:

§ 404.511 When an individual is at "fault" in a deduction overpayment.

* * * * *

(b) *Subsequent deduction overpayments.* The Social Security Administration generally will not find an individual to be without fault where, after having been exonerated for a "deduction overpayment" and after having been advised of the correct interpretation of the deduction provision, the individual incurs another "deduction overpayment" under the same circumstances as the first overpayment. However, in determining whether the individual is without fault, the Social Security Administration will consider all of the pertinent circumstances surrounding the prior and subsequent "deduction overpayments," including any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which the individual may have.

8. The authority citation for subpart J of part 404 is revised to read as follows:

Authority: Secs. 201(j), 205 (a), (b) and (d)–(h), 221(d), and 1102 of the Social Security Act; 31 U.S.C. 3720A; 42 U.S.C. 401(j), 405 (a), (b), and (d)–(h), 421(d), and 1302, sec. 5 of Pub. L. 97–455, 96 Stat. 2500; sec. 6 of Pub. L. 98–460, 98 Stat. 1802.

9. Section 404.911 is amended by removing the period after paragraph (a)(3) and replacing it with "; and", by adding a new paragraph (a)(4) after paragraph (a)(3), and by revising paragraph (b)(9) to read as follows:

§ 404.911 Good cause for missing the deadline to request review.

(a) * * *

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review

(b) * * *

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

10. Section 404.936 is amended by revising paragraph (d)(7) to read as follows:

§ 404.936 Time and place for a hearing before an administrative law judge.

* * * * *

(d) * * *

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

11. Section 404.957 is amended by redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii) and by adding a new paragraph (b)(2) to read as follows:

§ 404.957 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(b) * * *

(2) In determining good cause or good reason under this paragraph, we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

12. Section 404.988 is amended by revising paragraph (c)(1) to read as follows:

§ 404.988 Conditions for reopening.

* * * * *

(c) * * *

(1) It was obtained by fraud or similar fault (see § 416.1488(c) of this chapter for factors which we take into account in determining fraud or similar fault);

* * * * *

13. The authority citation for subpart P is revised to read as follows:

Authority: Secs. 202, 205(a), (b), and (d)–(h), 216(i), 221(a) and (i), 222(c), 223, 225, and 1102 of the Social Security Act; 42 U.S.C. 402, 405(a), (b), and (d)–(h), 416(i), 421(a) and (i), 422(c), 423, 425, and 1302, sec. 505(a) of Pub. L. 96–265, 94 Stat. 473; secs. 2(d)(2),5,6, and 15 of Pub L. 98–460, 96 Stat. 1797, 1801, 1802, and 1808; sec. 10103 of Pub. L. 101–239, 103 Stat. 2472.

14. Section 404.1518 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 404.1518 If you do not appear at a consultative examination.

(a) * * * We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have a good reason for failing to attend a consultative examination.

* * * * *

15. Section 404.1530 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 404.1530 Need to follow prescribed treatment.

* * * * *

(c) *Acceptable reasons for failure to follow prescribed treatment.* We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:

* * * * *

16. Section 404.1579 is amended by revising the section heading and by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 404.1579 How we will determine whether your disability continues or ends.

* * * * *

(e) * * *

(1) *A prior determination or decision was fraudulently obtained.* If we find that any prior favorable determination or decision was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988. In determining whether a prior favorable determination or decision was fraudulently obtained, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail, without good cause, to do what we ask. Section 404.911 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 404.1518 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your disability ends will be the first month in which you failed to do what we asked.

* * * * *

17. Section 404.1586 is amended by revising paragraph (d) to read as follows:

§ 404.1586 Why and when we will stop your cash benefits.

* * * * *

(d) *If you do not cooperate with us.* If we ask you to give us medical or other evidence or to go for a medical examination by a certain date, we will find that your disability has ended if you fail, without good cause, to do what we ask. Section 404.911 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 404.1518 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your disability will be found to have ended will be the month in which you failed to do what we asked.

* * * * *

18. Section 404.1594 is amended by revising the section heading and by revising paragraphs (e)(1) and (e)(2) to read as follows:

§ 404.1594 How we will determine whether your disability continues or ends.

* * * * *

(e) * * *

(1) *A prior determination or decision was fraudulently obtained.* If we find that any prior favorable determination or decision was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 404.988. In determining whether a prior favorable determination or decision was fraudulently obtained, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail, without good cause, to do what we ask. Section 404.911 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 404.1518 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your disability ends will be the first month in which you failed to do what we asked.

* * * * *

19. Section 404.1597a is amended by adding a new sentence at the end of paragraph (j)(3) to read as follows:

§ 404.1597a Continued benefits pending appeal of a medical cessation determination.

* * * * *

(j) * * *

(3) * * * In determining whether an individual has good cause for failure to cooperate and, thus, whether an appeal was made in good faith, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have which may have caused the individual's failure to cooperate.

PART 416—SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED

1. The authority citation for subpart B continues to read as follows:

Authority: Secs. 1102, 1110(b), 1602, 1611, 1614, 1615(c), 1619(a), 1631, and 1634, of the Social Security Act; 42 U.S.C. 1302, 1310(b), 1381a, 1382, 1382c, 1382d(c), 1382h(a), 1383, and 1383c; secs. 211 and 212 of Pub. L. 93–66, 87 Stat. 154 and 155; sec. 502(a) of Pub. L. 94–241, 90 Stat. 268; and sec. 2 of Pub. L. 99–643, 100 Stat. 3574.

2. Section 416.210 is amended by revising the introductory text of paragraph (e)(2) to read as follows:

§ 416.210 You do not apply for other benefits.

* * * * *

(e) * * *

(2) We will not find you ineligible for SSI benefits if you have a good reason for not applying for the other benefits within the 30-day period or taking other necessary steps to obtain them. In

determining whether a good reason exists, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which may have caused you to fail to apply for other benefits. You may have a good reason if, for example—

* * * * *

3. The authority citation for subpart E is revised to read as follows:

Authority: Secs. 1102, 1601, 1602, 1611(c), and 1631(a)–(d) and (g) of the Social Security Act; 42 U.S.C. 1302, 1381, 1381a, 1382(c), and 1383(a)–(d) and (g).

4. Section 416.552 is amended by adding after the fifth sentence of the introductory text a new sentence to read as follows:

§ 416.552 Waiver of adjustment or recovery—without fault.

* * * In determining whether an individual is without fault based on a consideration of these factors, the Social Security Administration will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) the individual may have. * * *

* * * * *

5. Section 416.556 is amended by revising paragraph (b) to read as follows:

§ 416.556 Waiver of adjustment or recovery—countable resources in excess of the limits prescribed in § 416.1205 by $50 or less.

* * * * *

(b) Failure to report the excess resources correctly and in a timely manner will be considered to be willful and knowing and the individual will be found to be at fault when the evidence clearly shows the individual (and spouse if any) was fully aware of the requirements of the law and of the excess resources and chose to conceal these resources. When an individual incurred a similar overpayment in the past and received an explanation and instructions at the time of the previous overpayment, we will generally find the individual to be at fault. However, in determining whether the individual is at fault, we will consider all aspects of the current and prior overpayment situations, and where we determine the individual is not at fault, we will waive adjustment or recovery of the subsequent overpayment. In making any determination or decision under this section concerning whether an individual is at fault, including a determination or decision of whether the failure to report the excess resources correctly and in a timely manner was willful and knowing, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) of the individual (and spouse if any).

6. The authority citation for subpart G of part 416 continues to read as follows:

Authority: Secs. 1102, 1611, 1612, 1613, 1614, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382, 1382a, 1382b, 1382c, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

7. Section 416.732 is revised to read as follows:

§ 416.732 No penalty deduction if you have good cause for failure to report timely.

(a) We will find that you have good cause for failure to report timely and we will not impose a penalty deduction, if—

(1) You are "without fault" as defined in § 416.552; or

(2) Your failure or delay in reporting is not willful. "Not willful" means that—

(i) You did not have full knowledge of the existence of your obligation to make a required report; or

(ii) You did not intentionally, knowingly, and purposely fail to make a required report.

However, in either case we may require that you refund an overpayment caused by your failure to report. See subpart E of this part for waiver of recovery of overpayments.

(b) In determining whether you have good cause for failure to report timely, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) you may have.

8. The authority citation for subpart I of part 416 is revised to read as follows:

Authority: Secs. 1102, 1614(a), 1619, 1631 (a), (c) and (d)(1), and 1633 of the Social Security Act; 42 U.S.C. 1302, 1382c(a), 1382h, 1383 (a), (c) and (d)(1), and 1383b; secs. 2, 5, 6, and 15 of Pub. L. 98–460, 98 Stat. 1794, 1801, 1802, and 1808.

9. Section 416.918 is amended by adding a new sentence at the end of paragraph (a) to read as follows:

§ 416.918 If you do not appear at a consultative examination.

(a) * * * We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have a good reason for failing to attend a consultative examination.

* * * * *

10. Section 416.930 is amended by revising the introductory text of paragraph (c) to read as follows:

§ 416.930 Need to follow prescribed treatment.

* * * * *

(c) *Acceptable reasons for failure to follow prescribed treatment.* We will consider your physical, mental, educational, and linguistic limitations (including any lack of facility with the English language) when determining if you have an acceptable reason for failure to follow prescribed treatment. The following are examples of a good reason for not following treatment:

* * * * *

11. Section 416.986 is amended by revising paragraph (c) to read as follows:

§ 416.986 Why and when we will find that you are no longer entitled to benefits based on statutory blindness.

* * * * *

(c) *If you do not cooperate with us.* If you are asked to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your blindness ended if you fail, without good cause, to do what we ask. Section 416.1411 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 416.918 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your blindness ends will be the month in which you fail to do what we asked.

* * * * *

12. Section 416.994 is amended by revising the section heading and by revising paragraphs (b)(4)(i) and (b)(4)(ii) to read as follows:

§ 416.994 How we will determine whether your disability continues or ends.

* * * * *

(b) * * *

(4) * * *

(i) *A prior determination or decision was fraudulently obtained.* If we find that any prior favorable determination or decision was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.1488. In determining whether a prior favorable determination or decision was fraudulently obtained, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

(ii) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail, without good cause, to do what we ask. Section 416.1411 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 416.918 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your disability ends will be the first month in which you failed to do what we asked.

* * * * *

13. Section 416.994a is amended by revising the section heading and by revising paragraphs (g)(1) and (g)(2) to read as follows:

§ 416.994a How we will determine whether your disability continues or ends, disabled children.

* * * * *

(g) * * *

(1) *A prior determination or decision was fraudulently obtained.* If we find that any prior favorable determination or decision was obtained by fraud, we may find that you are not disabled. In addition, we may reopen your claim under the rules in § 416.1488. In determining whether a prior favorable determination or decision was fraudulently obtained, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

(2) *You do not cooperate with us.* If there is a question about whether you continue to be disabled and we ask you to give us medical or other evidence or to go for a physical or mental examination by a certain date, we will find that your disability has ended if you fail, without good cause, to do what we ask. Section 416.1411 explains the factors we consider and how we will determine generally whether you have good cause for failure to cooperate. In addition, § 416.918 discusses how we determine whether you have good cause for failing to attend a consultative examination. The month in which your disability ends will be the first month in which you failed to do what we asked.

* * * * *

14. Section 416.996 is amended by adding a new sentence at the end of paragraph (g)(2) to read as follows:

§ 416.996 Continued disability or blindness benefits pending appeal of a medical cessation determination.

* * * * *

(g) * * *

(2) * * * In determining whether you have good cause for failure to cooperate and, thus, whether an appeal was made in good faith, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) you may have which may have caused your failure to cooperate.

15. The authority citation for subpart N of part 416 continues to read as follows:

Authority: Secs. 1102, 1631, and 1633 of the Social Security Act; 42 U.S.C. 1302, 1383, and 1383b; section 6 of Pub. L. 98–460, 98 Stat. 1802.

16. Section 416.1411 is amended by removing the word "and" which follows the semicolon at the end of paragraph (a)(2), by removing the period after paragraph (a)(3) and replacing it with "; and", by adding a new paragraph (a)(4), and by revising paragraph (b)(9) to read as follows:

§ 416.1411 Good cause for missing the deadline to request review.

(a) * * *

(4) Whether you had any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which prevented you from filing a timely request or from understanding or knowing about the need to file a timely request for review.

(b) * * *

(9) Unusual or unavoidable circumstances exist, including the circumstances described in paragraph (a)(4) of this section, which show that you could not have known of the need to file timely, or which prevented you from filing timely.

17. Section 416.1436 is amended by revising paragraph (d)(7) to read as follows:

§ 416.1436 Time and place for a hearing before an administrative law judge.

* * * * *

(d) * * *

(7) You are unrepresented, and you are unable to respond to the notice of hearing because of a physical, mental, educational, or linguistic limitation (including any lack of facility with the English language) which you may have.

18. Section 416.1457 is amended by redesignating paragraphs (b)(1) and (b)(2) as paragraphs (b)(1)(i) and (b)(1)(ii) and by adding a new paragraph (b)(2) to read as follows:

§ 416.1457 Dismissal of a request for a hearing before an administrative law judge.

* * * * *

(b) * * *

(2) In determining good cause or good reason under this paragraph, we will consider any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have.

* * * * *

19. Section 416.1488 is amended by revising paragraph (c) to read as follows:

§ 416.1488 Conditions for reopening.

* * * * *

(c) At any time if it was obtained by fraud or similar fault. In determining whether a determination or decision was obtained by fraud or similar fault, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which you may have had at the time.

20. The authority citation for subpart Q continues to read as follows:

Authority: Secs. 1102, 1611(e)(3)(A), 1615, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1382(e)(3)(A), 1382d, and 1383.

21. Section 416.1715 is amended by revising paragraph (a) to read as follows:

§ 416.1715 Effect of your rejecting vocational rehabilitation services.

(a) *Ineligible for benefits if you do not have good cause.* If we refer you to the State agency providing vocational rehabilitation services, you are not eligible for SSI benefits for any month that you refuse, without good cause, to accept services available to you (see § 416.1328(a) on suspension because of a refusal). In determining whether you have good cause for refusing vocational rehabilitation services, we will take into account any physical, mental, educational, or linguistic limitations (including any lack of facility with the English language) which may have caused you to refuse such services. If you believe good cause exists to refuse these services, you will be asked to submit proof showing this.

* * * * *

22. The authority citation for subpart V continues to read as follows:

Authority: Secs. 1102, 1615, and 1631(d)(1) and (e) of the Social Security Act; 42 U.S.C. 1302, 1382d, and 1383(d)(1) and (e); sec. 2344 of Pub. L. 97–35, 95 Stat. 867.

§ 416.2203 [Amended]

23. In § 416.2203, the eighth paragraph, definition of *good cause*, is amended by changing the cross-reference following the parenthetical phrase from "§ 416.1715(b)" to "§ 416.1715."

[FR Doc. 94–711 Filed 1–11–94; 8:45 am]
BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Part 109

[Docket No. 89N–0014]

RIN 0905–AC91

Requirements for Decorative Ceramicware To Be Deemed not for Food Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending its regulations to require that decorative ceramicware bear a conspicuous stick-on label on a surface that is clearly visible to consumers and a permanent statement on the exterior surface of the base of the ceramicware stating that the piece is not for food use, and that it may poison food. Alternatively, the regulation provides that a hole may be bored through the possible food-contact surface of the piece. This final rule is intended to ensure that decorative ceramicware is not mistakenly used to hold food.

DATES: Effective July 13, 1994, for all affected products initially introduced or initially delivered for introduction into interstate commerce on or after this date.

FOR FURTHER INFORMATION CONTACT: Cora E. Weeks, Center for Food Safety and Applied Nutrition (HFS–306), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4681.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of June 1, 1989 (54 FR 23485), FDA issued a proposed rule: (1) To establish a regulatory limit on the amount of lead that may leach from glazes and decorations on the food-contact surface of ceramic food service pitchers, excluding creamers; and (2) to provide that all decorative or ornamental ceramicware that appears to be suitable for food use will be considered to be for food use, and will be regulated as such, unless it bears a conspicuous, permanent statement molded or fired onto the exterior surface of the base of the ceramic piece. The agency proposed to require that this statement say, "Not for Food Use—May Poison Food," in letters at least 3.2 millimeters (mm) (0.125 inch (in)) in height, or that a hole be bored through the potential food-contact surface to make it unsuitable for food use.

The proposal requested comments on various concerns regarding ceramic foodware and on the impact of the proposed requirements on decorative ceramicware that resembles foodware and that contains leachable lead.

FDA received requests to extend the comment period on the proposed rule from representatives of domestic and foreign ceramicware manufacturers, 3suppliers of glazes and decorations containing lead for the ceramics industry and related trade associations, the European Economic Community, and the Italian Embassy. The requests stated that additional time was needed to address the issues raised and to provide information solicited by FDA in the proposal. FDA responded in a notice published in the **Federal Register** of September 1, 1989 (54 FR 36324), that reopened and extended the comment period until November 30, 1989.

In the **Federal Register** of July 6, 1992 (57 FR 29734), the agency announced the availability of revised Compliance Policy Guide (CPG) 7117.07 "Pottery (Ceramics); Imported and Domestic—Lead Contamination." This revision lowered the guidelines on lead release from all ceramic foodware. This revision was based, among other things, on the agency's review of data submitted pursuant to its proposal of June 1, 1989 (54 FR 23485), and the agency's concerns about the need to reduce human exposure to lead.

The lead release levels in CPG 7117.07 are guides that the agency uses in evaluating ceramic foodware for possible adulteration within the meaning of section 402(a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(C)). In this final rule, the agency is not acting on its proposal regarding a legally binding regulatory limit on the amount of lead that may leach from the food-contact surfaces of ceramic food service pitchers. The agency is continuing to review whether the CPG provides adequate protection for the public health, which would mean that the agency could withdraw its proposal to establish a regulatory limit, or whether further rulemaking is necessary.

This final rule pertains only to ornamental and decorative ceramicware. In the June 1, 1989 (54 FR 23485), proposal, the agency stated that the then existing policy guidance concerning decorative and ornamental ceramicware in CPG 7117.07 was too general and vague, subject to misinterpretation, and not sufficient to ensure that decorative articles will be distinguishable from food-service articles. Therefore, the agency's purpose in adopting this final rule is to ensure that such ware, which may leach hazardous amounts of lead into food, bear adequate indications to distinguish it from ceramic foodware (i.e., ceramicware intended for holding, storing, or serving food). The agency has made revisions in the language of § 109.16(a) and (b) (21 CFR 109.16(a) and (b)) to make clear that this regulation pertains only to ornamental and decorative ceramicware and not to any ceramicware intended to hold or store food, e.g., ceramic pitchers.

FDA also notes that the provisions of this final rule are not applicable to items such as children's ceramic tea sets. Such items are usually small copies of articles intended for food use. They are designed for use only by children in play activities that may involve eating or drinking foods placed in or on these products (see *HHS News*, April 20, 1993.) Lead in these products could leach into food. Those that leach excessive amounts of lead will be subject to regulatory action, and such ware may not obtain status as a nonfood item by virtue of its bearing any statement that it is not for food use.

On the effective date of this final rule, all ornamental or decorative ceramicware that appears to be suitable for food use upon initial introduction or initial delivery for introduction into interstate commerce will be considered to be foodware and will be evaluated for lead release by the agency as foodware. Ware that meets the requirements of this final rule will not be considered to be for food use.

The agency is also providing notice that it is deleting the exemption for nonfood service plates from CPG 7117.07. These articles will be subject to the provisions of this final rule.

II. Summary of and Response to Comments

A. Summary of Comments

Seven letters, containing one or more comments, were received in response to the proposal on the requirements for decorative ceramicware that resembles foodware. The comments were submitted by consumer and environmental advocacy organizations, ceramicware manufacturers and their suppliers, and individuals.

B. Responses to Comments

1. Several comments requested that FDA allow more flexibility regarding the exact wording of the permanent statement of unsuitability for food use and suggested statements for inclusion in the final rule as alternatives to the proposed statement. These comments expressed concern that the word "poison" would alarm potential purchasers and could lead them to believe that handling the product is hazardous. The following alternative statements were suggested: (a) "Decorative—Not for Food Use. Pigments are Potentially Toxi66c if Ingested," (b) "Not for Food Use—Metallic Pigments Fired into Surface are Potentially Toxic. For Decorative Purposes Only," or (c) "Warning. Glaze Contains Soluble Lead. Not for Food Use."

The agency accepts the recommendation to allow for alternative statements of unsuitability for food use. FDA agrees that some number of alternative statements can convey the same basic concept as the proposed statement while providing flexibility in the wording of the message. However, to adequately denote that the ceramicware is unsuitable for food use, the permanent statement must clearly advise the purchaser or potential user that if the article is used to hold food, a toxic substance may be added to the food as a result. Alternative (c) does not do so. The alternative statements (a) and (b) suggested by the comments state that the surface of the ceramic piece itself contains a toxic substance, but they do not make clear that if the ceramicware is used for food purposes, such use may result in the addition of a toxic substance to the food. Therefore, the agency is not accepting the statements suggested in the comments as acceptable alternatives.

In § 109.16(b)(1)(i), FDA is providing three alternative statements of unsuitability that meet the criterion of informing the purchaser that if the article is used for food, a toxic substance may be added to the food as a result. The alternative statements are, "Not for Food Use. May Poison Food," "Not for Food Use. Glaze contains lead. Food Use May Result in Lead Poisoning," and "Not for Food Use—Food Consumed from this Vessel May be Harmful."

The agency concludes that these three alternative statements of unsuitability provide the industry with a choice without providing so many different statements as to confuse consumers. Limiting the number of variations in the statement is necessary to ensure that consumers understand that a consistent message is being presented by the statements that they find on decorative ceramicware.

As an additional matter, the agency believes that statements that the ware is intended to be decorative may provide useful information to the consumer about the intended use of the ware.



The agency agrees that the symbol may communicate to individuals, to whom a written statement may not be readily meaningful, that an article is not foodware. However, because the agency does not have any information concerning the extent to which the symbol is understood or recognized by consumers, it is not requiring use of the symbol but is making its use optional in § 109.16(c)(2), as an additional cautionary statement to those required in § 109.16(b).

3. Some comments expressed concern that a statement placed on the exterior surface of the base of a piece, in letters that are only 3.2 mm (0.125 inch) in height, may not be seen by many people. Some comments requested that the agency require that the statement be placed on the side of the ceramicware, and that the required size of letters in the statement be related to the size of the ceramicware on which it is placed.

FDA agrees that a statement on the side of a piece is more conspicuous than one placed on the exterior surface of the base. However, a permanent statement on the side would likely render the piece useless for ornamental or decorative purposes. To respond to the concern of the comments, and to better protect the public, FDA is requiring in § 109.16(b)(1)(i) that a stick-on temporary label bearing one of the alternative statements, in letters at least 3.2 mm (0.125 in) in height, be placed on a surface of the piece that is clearly visible to the consumer. The temporary label will advise the consumer that the piece is not for food use and of the reason why it is not for food use. The determination as to the appropriate surface for the temporary label will depend on the shape of the piece. For example, the appropriate place on a plate for the temporary label would be the potential food-contact surface, while on a pitcher a temporary label on the exterior of the side would be suitable.

The requirement for a temporary label is in addition to the requirement of a permanent label that the agency proposed (54 FR 23485). The purpose of the proposal was to ensure that decorative ceramicware would not be used in a manner that is unsafe. The comments have convinced the agency that the additional requirement for a temporary label placed on a conspicuous surface is necessary to ensure that the purposes of this final rule are realized. Without this requirement, as the comments suggested, there is a significant chance that a consumer will miss the warning on the base of the ceramicware.

The agency does not agree that the size of the letters in the permanent statement must be directly related to the dimensions of the ornamental or decorative ceramicware piece to be seen. If the statement meets the minimum letter height requirements of § 109.16(b)(1)(ii) and is adequately contrasted or otherwise differentiated or set out from the background of the piece, the statement will fully serve its Therefore, FDA is providing in § 109.16(c)(1) for the use of additional optional statements such as "Decorative" or "For Decorative Purposes Only" when such statements are placed after the required statement.

2. Some comments expressed concern that statements that ornamental or de2corative ceramicware is unfit for food use will not protect very young, illiterate, or non-English speaking people. One of the comments suggested that FDA permit the use of a symbol to designate ceramicware that is not suitable for food use. The comments stated that the symbol should accompany the statement that the ceramicware is unfit for food use. One comment maintained that the symbol is responsive to concerns regarding understanding by illiterate persons, non-English speaking people, and children. The comment suggested that the following symbol, which includes a goblet and a fork, symbols used in the United Kingdom to indicate materials and articles that are intended to come into contact with food, be enclosed within a circle with a bar running diagonally across the design to indicate that food use is prohibited.

function. The agency notes that the requirement for conspicuousness in declarations of net quantity of contents on food labels (§ 101.105(i)) includes the specification that the letter height is not less than one-eighth inch (or 3.2 mm (0.125 in)) if the declaration is blown, embossed, or molded on a surface. Using this precedent, the agency believes that the minimal letter height of the statement of nonfood use should generally be not less than 3.2 mm (or one-eighth in) because letters that are less than 3.2 mm (0.125 in) in height may not be conspicuous enough to be readily seen.

However, the agency recognizes that there may be some ceramicware articles that appear to be suitable for food use that have bases with surface areas that are too small to fit the required statement if it were to be in letters that are 3.2 mm (0.125 inch) in height. For such articles, the agency is providing in § 109.16(b)(1)(ii) that the statement be written in the largest letters possible, provided the letters are at least 1.6 mm (0.062 inch) high.

4. One comment stated that the agency should not impose a minimum letter size for the permanent statement because of the limited space available on some articles.

The agency believes that ceramicware pieces that could be mistaken as being intended for holding, storing, or serving food would have a size and configuration similar to food-use ware and would have bases sufficiently large for88 the required statement. The agency has accommodated size problems in § 109.16(b)(1)(ii). Therefore, the agency rejects this comment.

5. One comment expressed concern that, in the past, it has been difficult, if not impossible, to keep decorative or ornamental ceramicware from being used to hold food. Therefore, the comment argued that FDA should not rely on statements to distinguish ceramicware used for food storage from decorative or ornamental ceramicware. The comment suggested that FDA consider only ceramicware that has holes bored in the food-contact surface to be decorative or ornamental.

The agency disagrees with this suggestion. A hole bored through some decorative or ornamental ceramicware articles would render them useless for their intended purpose, e.g., pieces in the shape of pitchers intended for use as vases for fresh flowers, and would damage the decorative value of others, e.g., commemorative plates. The intent of this regulation is to distinguish decorative ceramicware from food-service articles by using specified statements and an optional symbol in a manner that ensures that those statements will be readily seen and understood by the consumer. FDA concludes, based on the available information, that the measures required under this final rule are appropriate for this purpose.

6. One comment suggested that FDA also require that decorative ceramicware (when first sold) be accompanied by a booklet in which the permanent statement is printed in large type. The comment stated that the booklet should include a paragraph stating that the object is not to be used to hold, serve, or store food and provide a brief explanation of the dangers of lead to pregnant women, infants, and children. The comment further suggested that FDA set out the exact wording of the text of the suggested booklet in the final rule.

FDA does not have information and data that demonstrate that such a booklet is necessary to protect consumers from the use with food of decorative ceramicware. Accordingly, FDA is not requiring manufacturers to provide such a booklet, although FDA believes that a booklet describing the potential hazards of misusing decorative ceramicware may be useful in helping to make consumers aware of the adverse effects of lead. Therefore, the agency has no objection to the manufacturers providing such a booklet on their own initiative.

The requirement for a temporary label will respond to the comment's objective of ensuring that consumers are informed about the intended use of the ware. In addition, FDA uses consumer education vehicles such as the *FDA Consumer* magazine to inform the public about issues concerning misuse of ornamental ceramicware to avoid lead exposure from this source. The agency, in "Lead Threat Lessens, But Mugs Pose Problem" in the *FDA Consumer* of April 1993, and in "Reducing Exposure to Lead from Ceramic Ware," an *FDA Backgrounder* of November 1991, advised consumers to follow label directions on any ornamental product with a warning that the article is not for food use.

7. One comment stated that the requirement that ornamental or decorative pieces either bear a permanent statement on the base or have a hole bored into the food-contact surface is not appropriate for antique or secondhand articles of value.

The agency advises that this final rule applies to new ornamental or decorative articles initially introduced, or initially delivered for introduction, into interstate commerce after the effective date of the rule and would not apply to antique or secondhand articles of value.

The agency considers the safe use of antique or secondhand ceramicware to be a subject for consumer education. The agency, in "Pretty Poison: Lead and Ceramicware" in the *FDA Consumer* of July/August 1987, and in "Reducing Exposure to Lead from Ceramic Ware" in the *FDA Backgrounder* of November 1991, recommended limiting food use of ceramicware manufactured before Federal standards were imposed. Dealers and merchants can help inform consumers about the risk posed by such ware by affixing stick-on labels or decals to articles of questionable origin or safety. The labels or decals should state that the articles are to be used only for decorative or ornamental purposes. The agency intends to continue to caution consumers that substantial amounts of lead may leach from antique and other ceramic collectibles into food.

8. One comment stated that certain types of hand-painted and hand-carved decorative ceramicware, such as "coromandel porcelain," are not subject to kiln firing as part of or after the decoration and painting processes. Thus, the required statement cannot be fired onto the base of such articles. The comment requested that FDA permit the statement to be painted on the base of the decorative ceramicware with a permanent paint. The comment further stated that this is the only commercially practical and feasible method of applying a conspicuous and permanent statement to this type of ceramicware.

FDA agrees that there is a need to provide for the application of the permanent statement to decorative or ornamental ceramicware that are not fired after decoration. Accordingly, the agency is providing in § 109.16(b)(1)(ii) that the statement may be painted onto ceramicware using permanent paint when the ceramicware is not fired after decoration.

9. Ceramic product manufacturers commented that if FDA requires the use of the symbol in the final rule, 6 months is not sufficient time to have molds or decals available. These manufacturers requested that the effective date of the final rule be delayed in order to have time to phase in use of the symbol.

Because FDA is making the use of the symbol optional, manufacturers who decide to use it are not subject to an FDA-imposed time constraint in phasing in its use. Therefore, the agency is not extending the effective date.

III. Conclusions

After review and consideration of comments received in response to the portion of its June 1, 1989, proposal that relates to ornamental and decorative ceramicware (54 FR 23485), the agency is adopting that portion of the proposal as a final rule. The purpose of the regulation that FDA is adopting is to distinguish ornamental or decorative ceramicware that may leach excessive amounts of lead into food from ceramic foodware (i.e., ceramicware intended for holding, storing, or serving food). Section 109.16 provides that FDA will consider all decorative or ornamental ceramicware that appears to be suitable for food use to be for food use and will regulate it as such, unless a stick-on label bearing one of three specified statements in letters that are at least 3.2 mm (0.125 in) in height is placed on a readily visible surface of the ceramicware, and one of the three specified statements in letters that are at least 3.2 mm (0.125 in) in height is permanently affixed to the exterior surface of the base of the ceramicware. However, if insufficient space exists for the permanent statement to be presented in letters of such height, the statement shall be in the largest letters that will allow it to fit on the base of the piece, provided that the letters are at least 1.6 mm (0.062 in) in height. In the alternative, the manufacturer may bore a hole through the potential food-contact surface of the decorative ceramicware to make it unsuitable for food use. The final rule also provides that the required statement can be painted onto the exterior surface of the base if the piece is not fired after decoration. Further, the final rule provides that a symbol may be used, in addition to the statement or hole bored through the ware, to advise the consumer that the article is not for food use.

IV. Economic Impact

FDA has examined the economic implications of this final rule to amend 21 CFR part 109 as required by Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). Executive Order 12866 compels agencies to use a cost-benefit analysis as a component of decisionmaking. The Regulatory Flexibility Act requires regulatory relief for small businesses where feasible. FDA has received no new information or comments that would alter its tentative finding in the proposal that there is no substantive economic issue, and that this rule is not a major rule as defined by either Executive Order 12866 or the Regulatory Flexibility Act.

V. Environmental Impact

The agency considered the environmental effects of this action in the context of the proposed rule (54 FR 23485). At that time, the agency prepared an environmental assessment (EA) and concluded that the proposed action would not have a significant impact on the human environment and that an environmental impact statement (EIS) was not required.

One comment received by the agency on the proposed rule stated that the continued use of lead in consumer products has a major environmental impact when these products are disposed of, and that FDA had failed to consider fully the environmental impact of its proposal. As explained above, the aspect of the proposed rule concerned with the reduction in limits on the levels of lead leaching from ceramic foodware has been addressed by a compliance policy guide (CPG) that was announced in the **Federal Register** of July 6, 1992 (57 FR 29734). At that time the agency prepared an EA for the issuance of this CPG in which, among other things, it addressed the above comment. The conclusion of that EA was that the agency's action to reduce the limits on the levels of lead leaching from ceramic foodware may also reduce the amount of lead that could potentially enter the environment from landfill leachate. This EA is on public display at the Dockets Management Branch (address above).

The other part of the proposed rule is covered by this final rule, i.e., the establishment of labeling requirements for decorative ceramicware that appears to be suitable for food use. FDA actions that establish regulations for labeling requirements normally do not require the preparation of an EA or an EIS under § 25.24(a)(11) (21 CFR 25.24(a)(11)) because such actions meet specific criteria that are intended to ensure that they will not cause significant environmental effects. These criteria are that there will be no increase in the existing levels of use or change in the intended uses of the product or its substitutes. Because the intent of this final rule is to prevent decorative ceramicware from being used for food service, we conclude that these criteria are met, and that the categorical exclusion in § 25.24(a)(11) applies to the action in this final rule. Therefore, the comment cited above does not provide a basis to change the agency's previous determination that there is no significant impact on the human environment from this action, and that an EIS is not required.

List of Subjects in 21 CFR Part 109

Food labeling, Food packaging, Foods, Polychlorinated biphenyls (PCB's).

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 109 is amended to read as follows:

PART 109—UNAVOIDABLE CONTAMINANTS IN FOOD FOR HUMAN CONSUMPTION AND FOOD-PACKAGING MATERIALS

1. The authority citation for 21 CFR part 109 is revised to read as follows:

Authority: Secs. 201, 306, 402, 406, 408, 409, 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 336, 342, 346, 346a, 348, 371).

2. New § 109.16 is added to subpart A to read as follows:

§ 109.16 Ornamental and decorative ceramicware.

(a) Lead is a toxic metal that is used as a component of glazes and decorative decals on ceramics, including some ornamental and decorative ceramicware. The use of ornamental or decorative ceramicware to prepare, serve, or hold food may result in the leaching of lead from the glaze or decoration into the food. The provisions of paragraph (b) of this section are necessary to ensure that ornamental or decorative ceramicware bear adequate indications that they are not to be used for food-handling purposes.

(b) Ornamental or decorative ceramicware initially introduced or initially delivered for introduction into interstate commerce on or after July 13, 1994 appears to be suitable for food use will be considered to be for food use unless:

(1) It bears:

(i) A conspicuous stick-on label on a surface clearly visible to consumers that states in legible script in letters at least 3.2 millimeters (0.125 inch) in height one of the following messages: "Not for Food Use. May Poison Food," "Not for Food Use. Glaze contains lead. Food Use May Result in Lead Poisoning," and "Not for Food Use—Food Consumed from this Vessel May be Harmful," and

(ii) A conspicuous and legible permanent statement of the message selected from paragraph (b)(1)(i) of this section molded or fired onto the exterior surface of the base or, when the ceramicware is not fired after decoration, permanently painted onto the exterior surface of the base. This permanent statement shall be in letters at least 3.2 millimeters (0.125 inch) in height, except that if insufficient space exists for the permanent statement in letters of such height, the statement shall be in the largest letters that will allow it to fit on the base of the piece.

provided that the letters are at least 1.6 millimeters (0.062 inch) in height; or

(2) A hole is bored through the potential food-contact surface.

(c) In addition to steps required under paragraphs (b)(1) and (b)(2) of this section, the following optional information may be provided on the ware:

(1) A further explanatory statement concerning the decorative nature of the piece, such as "Decorative" or "For Decorative Purposes Only," may be used; however, such additional statement shall be placed after the required statement.

(2) A symbol may be used to advise that a piece of ornamental or decorative ceramicware is not to be used with food as illustrated below.



The circle of the above symbol should be at least 2.54 centimeters (1 inch) in diameter. The symbol may be used on the temporary label or applied to the base of the piece in the same manner as the permanent statement.

Dated: January 5, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–706 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

24 CFR Part 104

[Docket No. R–93–1699; FR–3485–F–01]

Administrative Proceedings Under Section 812 of the Fair Housing Act

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Final rule.

SUMMARY: This final rule revises the regulations involving discovery procedures in HUD administrative proceedings. The revision more clearly sets a standard whereby a party or a person in the custody or under the legal control of a party will not be required to submit to a physical or mental examination, except upon order of the presiding administrative law judge pursuant to a motion by the party requesting the examination and a showing by the moving party that the physical or mental condition of the person who is the subject of the request is in controversy and that good cause exists for the requested examination.

EFFECTIVE DATE: February 11, 1994.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel for Fair Housing, Office of the General Counsel, Department of Housing and Urban Development, room 9238, 451 Seventh Street, SW., Washington, DC 20410–0500, telephone: (202) 708–0570. (This is not a toll-free number.) A telecommunications device for hearing impaired persons (TDD) is available at 1–800–543–8294.

SUPPLEMENTARY INFORMATION:

Background

Part 104 of Title 24 of the Code of Federal Regulations contains HUD's regulations governing administrative proceedings under section 812 of the Fair Housing Act. Under 24 CFR 104.500 and 104.540, any party may serve on any other party a request to submit to a physical or mental examination by a physician, specifying the time, place, manner, conditions, and scope of the physical or mental examination, and the person or persons who will make the examination. Relevancy is the only explicit requirement regarding all methods of discovery provided in the Fair Housing Act's implementing regulations, 24 CFR 104.500(b) (1992).

The Department is revising 24 CFR 104.500 and 104.540 to conform more closely to Rule 35 of the Federal Rules of Civil Procedure, as interpreted in certain Federal court precedents. This regulatory revision is designed to further the already developed practice of Federal administrative law judges looking to Federal Rules of Civil Procedure in instances in which they construe HUD's regulations governing administrative filings and hearings. See, *e.g., HUD* v. *Jerrard*, Fair Housing-Fair Lending (P–H) para. 25,081 at 25,086 (HUDALJ Sept. 28, 1990) (Accepting analogy to Rules 41(b) and 8(c), Fed. R. Civ. P.); *HUD* v. *Downs*, HUDALJ 02–89–0322, Order at 2 (June 21, 1991) (Reliance on Rules 28(a), 30(b)(7), and 32(d)(3)(B), Fed. R. Civ. P., to reject respondents' claim that deposition was technically defective); and *Downs*, Memorandum Opinion at 2 (Nov. 22, 1991) (Finding Rule 24(a), Fed. R. Civ. P., to provide guidance for resolution of motion to intervene).

1. Rule 35 Standard

Under Federal Rule of Civil Procedure 35, relevancy is not a sufficient basis for a court to order a physical or mental examination. *Schlagenhauf* v. *Holder*, 379 U.S. 104, 118 (1964). Rather, because such examinations are a more intrusive form of discovery than other available discovery methods, Rule 35 requires stringent standards for their use in Federal court litigation. Such examinations are only provided for by leave of court and in limited circumstances.

Rule 35 provides:

> When the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the court in which the action is pending may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made.

As stated in *Guilford National Bank* v. *Southern R. Co.*, 297 F.2d 921, 924 (4th Cir. 1962), "Under Rule 35, the invasion of the individual's privacy by a physical or mental examination is so serious that a strict standard of good cause, supervised by the district courts, is manifestly appropriate." The Supreme Court, in *Schlagenhauf, supra,* emphasized the limited circumstances under which a court may order mental or physical examinations under Rule 35:

> Sweeping examinations of a party who has not affirmatively put into issue his own mental or physical condition are not to be automatically ordered * * * Mental and physical examinations are only to be ordered upon a discriminating application by the district judge of the limitations prescribed by the Rule. To hold otherwise would mean that such examinations could be ordered routinely * * * The plain language of Rule 35 precludes such an untoward result.

Schlagenhauf, 379 U.S. at 121–22. See also *In re Mitchell*, 563 F.2d 143 (5th Cir. 1977) (Rule 35 order requires greater showing than general discovery under Rule 26).

The requirements under Rule 35 differ from those imposed by other discovery provisions in the Federal Rules of Civil Procedure, such as the taking of oral and written depositions (Rules 26–32), interrogatories to parties (Rule 33), and the production of documents (Rule 34). None of these other discovery methods require that a matter be "in controversy" and only Rule 34 imposes a requirement that the moving party affirmatively demonstrate "good cause." See *Schlagenhauf*, 379 U.S. at 117. In general, other discovery devices under the Federal Rules of Civil Procedure do not require leave of court.

Rule 35 requires that the party requesting a physical or mental examination make a motion and meet notice requirements. For such a motion to be granted, the following standard must be met:

1. The physical or mental condition of the person to be examined must be in controversy; and

2. There must be a showing of good cause.

These requirements are not met by "mere conclusory allegations of the pleadings—nor by mere relevance to the case—but require an affirmative showing * * * that each condition as to which the examination is sought is really and genuinely in controversy and that good cause exists for ordering each particular examination." *Schlagenhauf*, 379 U.S. at 118. Precedent establishes that it is the moving party which has the burden of demonstrating that this standard is met. *Id.*

a. "In Controversy" Requirement

Federal precedents have varied in their interpretation of the "in controversy" requirement. In negligence cases, courts generally have been receptive to defendants' requests for such examinations where physical or mental injury is claimed. See *Brandenberg* v. *El Al Israel Airlines*, 79 F.R.D. 543 (1978) (ordering psychiatric examination of plaintiff alleging negligent, careless and reckless treatment caused her "physical, emotional, mental stress, and mental and psychiatric injuries"); *Martin* v. *Tindell*, 98 So.2d 473, *cert. denied*, 355 U.S. 959 (negligence case indicating physical exams are granted as a matter of course in such cases). Even in negligence cases, however, examinations may not be ordered where damages only for past injury are alleged, rather than damages for present suffering. *Winters* v. *Trevio*, 495 F.2d 839 (2d Cir. 1974); *Coca-Cola Bottling Co.* v. *Torres*, 255 F.2d 149 (1st Cir. 1958).

In the civil rights cases, however, courts have demonstrated greater reluctance to order such examinations. In *Cody* v. *Marriot Corporation*, 103 F.R.D. 421, 422–23 (D. Mass. 1984), the court indicated that the standard for ordering such examinations in discrimination cases is more stringent than in tort cases involving negligence.

The reported civil rights cases interpreting Rule 35 have generally involved requests by defendants for mental examinations of plaintiffs. A review of employment discrimination cases interpreting Rule 35 demonstrates that mental examinations of plaintiffs are not routinely ordered in such cases simply because plaintiffs may claim damages for emotional distress. Furthermore, a claim of emotional distress is not considered to place automatically a plaintiff's mental condition in controversy.

Cody, referred to, *supra*, was one important employment discrimination case involving the application of Rule 35. Citing *Schlagenhauf*, Cody refused to order a mental examination of a plaintiff who claimed emotional distress as a result of employment discrimination. *Cody* indicated that the outcome might have been different had the plaintiff not merely "made a claim of emotional distress" but instead had made "a claim of a psychiatric disorder requiring psychiatric or psychological counseling." *Cody*, 103 F.R.D. at 423. This distinction, based on the severity of the injury alleged, has also been applied in other tort contexts. See, *e.g., Anson* v. *Fickel*, 110 F.R.D. 184, 186 (N.D. Ind. 1986) (traffic accident case citing *Cody* and making same distinction).

Cody also noted that the moving party had shown no authority for the proposition that "emotional distress" is synonymous with "mental condition," as that term is used in Rule 35. *Cody*, 103 F.R.D. at 422 n.2. *Cody* indicated that if, in contrast, the plaintiff were to use the services of a psychiatrist or psychologist at a later date for use at trial, the court would consider allowing the defendants to conduct the Rule 35(a) examination. *Cody*, 103 F.R.D. at 423.

Thus, *Cody* suggested two factors that differentiate the circumstances in which the "in controversy" requirement would or would not be met.

b. "Good Cause" Requirement

In addition to the "in controversy" requirement, an examination may only be ordered if "good cause" is also shown. The good-cause requirement is not a "mere formality," but is a "plainly expressed limitation on [Rule 35's] use * * *." *Schlagenhauf*, 379 U.S. at 118.

Schlagenhauf noted with approval the discussion of the "good cause" requirement in *Guilford National Bank* v. *Southern R. Co.*, 297 F.2d 921, 924 (4th Cir. 1962). In *Guilford*, the court stated that "the Rules indicate that there must be a greater showing of need under Rules 34 and 35 than under the other discovery rules," and that the requirement would be "meaningless" if it could be established by "merely" showing that the information sought is relevant. *Guilford*, 297 F.2d at 924. Although the *Guilford* court discussed the "good cause" requirement in the context of the plaintiff's Rule 34 request for production of documents (which the court denied), it stated the policy reason for imposing the "good cause" requirement of Rule 35: "the invasion of an individual's privacy by a physical or mental examination is so serious that a strict standard of good cause, supervised by the district courts, is manifestly appropriate." *Id.* The court further stated, "[R]elevancy is not the equivalent of good cause * * *." *Guilford*, 297 F.2d at 925.

Other precedents establish that "The ability of the movant to obtain the desired information by other means is also relevant" to the determination of whether good cause is shown. *Schlagenhauf*, 379 U.S. at 118. This principle has been applied in several subsequent reported decisions. In *Anson*, 110 F.R.D. at 186, a traffic accident case, the court considered the fact that the defendants had utilized other discovery procedures before seeking a mental examination of the plaintiff. In ordering a mental examination of the plaintiff, *Anson* considered the defendant's attempts first to obtain information through alternative means such as submitting the plaintiff's medical records to the defendants' own expert for analysis. Other tort cases have recognized that where medical reports are provided, good cause may no longer exist for ordering a mental examination. See *Hughes* v. *Groves*, 47 F.R.D. 52, 57

(1969); *Petition of Trinidad Corp.*, 238 F. Supp. 928, 935 (1965).

This principle has been applied as well in cases where the plaintiff seeks a mental examination of the defendant. For example, in *Marroni* v. *Matey*, 82 F.R.D. 371 (1979), a tort case involving a child injured in a boating accident, the plaintiff requested a psychological exam of the defendant boat operator to show that he was incapable of properly operating it and understanding safety rules. The court denied the request holding that the plaintiff first had to utilize less intrusive methods of discovery to attempt to obtain the desired information. *Marroni*, 82 F.R.D. at 372.

2. Application of Rule 35 Standard to Fair Housing Cases

Two recent Federal Administrative decisions, *HUD* v. *Ocean Sands, Inc.*, HUDALJ 04–90–0231–1, Order (April 20, 1993); *HUD* v. *Ocean Parks Jupiter Condominium Association, Inc.*, HUDALJ 04–90–0589–1 and 04–90–0604–1, Order Denying Motion for Protective Order (December 8, 1992), appear to set a standard under which a defendant may obtain a mental examination of an aggrieved person simply because damages for emotional distress are being sought.

The Secretary believes such a standard is inappropriate in fair housing cases. Rather, as provided for in this revised rule, fair housing cases are governed by a more restrictive standard, consistent with the standards that have been applied in other civil rights contexts. The Department, following the lead of courts, has commonly relied on civil rights cases in other contexts, especially employment discrimination precedents, for guidance in housing discrimination cases under the Fair Housing Act. See, *e.g.*, *Huntington Branch, N.A.A.C.P.* v. *Town of Huntington*, 844 F.2d 926, 935 (2d Cir.), aff'd, 488 U.S. 15 (1988); *HUD* v. *Blackwell*, Fair Housing-Fair Lending (P–H) para. 25,001 at 25,005 (1989). This rule furthers that practice by looking to Federal court precedents construing Rule 35 to allow such examinations only in limited circumstances.

Under the revised standard, the fact that the Secretary, on behalf of an aggrieved person, or an intervening aggrieved person, may request a large amount of monetary relief and/or significant relief for emotional distress, would not support an order requiring the aggrieved person to submit to a mental examination. Rather, the Department adopts a standard consistent with Rule 35 which requires that the moving party demonstrate that the aggrieved person's mental condition is "in controversy" and that "good cause" exists.

a. Application of "In Controversy" Requirement

The Department believes that a claim of emotional distress is different from putting mental condition "in controversy." See *Cody*, 103 F.R.D. at 422 n.2. Rather, the Department adopts the two factors cited in *Cody*, to distinguish circumstances in which the "in controversy" requirement is met from those in which the requirement is not met, where the respondent is seeking a mental examination of an aggrieved person. In general, unless one or more of these factors is met, an aggrieved person should not be ordered to undergo a mental examination.

The first factor that the Department will apply is whether the plaintiff has made "a claim of a psychiatric disorder requiring psychiatric or psychological counseling" or "a claim of emotional distress." See *Cody*, 103 F.R.D. at 423. Generally, in the former circumstance, the "in controversy" requirement would be met, while in the latter circumstance it would not be met.

The second factor that the Department will apply under the revised standard is whether the aggrieved person intends to introduce at hearing the expert testimony of a psychiatrist or psychologist to support a claim of mental or emotional injury. See *Cody*, 103 F.R.D. at 423. In general, if so, the "in controversy" requirement will be met but if not, the "in controversy" requirement will not be met.

b. Application of "Good Cause" Requirement

In determining whether the second requirement, "good cause" is met, the Department will require more than mere relevancy. Instead, where there is a claim of mental or emotional distress, the Department will consider whether the respondents have had and exercised the opportunity to obtain and present information about an aggrieved person's mental or emotional state through other less intrusive means. These alternatives may, in appropriate circumstances, include deposing the aggrieved person in advance of trial as to his or her injuries, using direct or cross examination of the aggrieved person at hearing as to such injuries, interrogatories, requests for production of documents, and, where aggrieved persons have consulted psychiatrists or psychologists, evaluation of those records by respondents' own experts. See *Schlagenhauf*, 379 U.S. at 118; *Hughes*, *supra*; *Petition of Trinidad Corp.*, *supra*; *Anson*, 103 F.R.D. at 186. Where a mental examination is requested, the burden shall be on the moving party to establish why these alternative methods have not been used, or where used, why these alternative methods have proven insufficient.

The Department believes that the same policy reason for applying strict standards in federal court litigation in civil rights cases applies equally to the administrative process, where litigants should not be forced to abandon their right to privacy by choosing the administrative forum rather than electing, pursuant to 42 U.S.C. 3612, to have the matter tried in Federal district court. The current administrative standard has been interpreted in a manner that may make it easier for respondents to obtain orders requiring aggrieved persons to submit to physical or mental examinations than would be the case in Federal court litigation. Such a situation, if allowed to continue, could lead HUD complainants to elect to have their matter heard in federal court, rather than in the administrative forum, since the differing standards would make federal courts better protectors of their privacy rights. This regulatory revision is intended to ensure that aggrieved persons who have been victims of alleged discrimination will not be victimized again by being made to undergo unjustified probing into their physical or mental condition by respondents while the Government endeavors to protect their civil rights. The regulation, however, still allows for examinations in those limited circumstances where such examinations are shown to be necessary.

A further negative consequence of recent administrative rulings on this issue is less expeditious and more expensive discovery and hearings contrary to the dictates of 42 U.S.C. 3612(d)(1) and (2); 24 CFR 104.500(b) (1992). See *HUD* v. *Downs*, 2 Fair Housing-Fair Lending (P-H) para. 25,234 at 25,235 n.1 (Nov. 22, 1991). The cost of expert psychiatric or psychological testimony is prohibitive in many administrative hearings. While expert testimony for both sides in Fair Housing Act cases might be necessary to the trier of fact in limited circumstances, in general the time and expense involved in their use would clash directly with Congress's mandate that discovery and hearings be conducted "as expeditiously and inexpensively as possible". 42 U.S.C. 3612(d)(1) and (2). See also 24 CFR 104.500(b); *HUD* v. *Downs*, 2 Fair Housing-Fair Lending at 25,235 n.1. Recent interpretations of the current regulation, which appear to order examinations without the need for the moving party to meet strict "in controversy" and "good cause" requirements, could lead to more time-consuming and expensive administrative litigation.

3. Examination by Non-Physicians

This final rule is revised to conform to Rule 35 in another respect as well. Federal Rule of Civil Procedure 35 was revised effective December 1, 1991, subsequent to the Department's promulgation of 24 CFR 104.540 at 54 FR 3232 (Jan. 23, 1989). That revision authorized courts to require physical or mental examinations conducted by any person who is suitably licensed or certified, rather than limiting such examinations to those conducted by a physician, as under the literal language of HUD's current regulation.

The Advisory Committee Notes to the 1991 Amendment to Rule 35 are particularly useful in understanding how this change to the revised rule shall operate. The Advisory Committee Note states:

> The rule was revised in 1988 by Congressional enactment to authorize mental examinations by licensed clinical psychologists. This revision extends that amendment to include other certified or licensed professionals, such as dentists or occupational therapists, who are not physicians or clinical psychologists, but who may be well-qualified to give valuable testimony about the physical or mental condition that is the subject of dispute.
>
> The requirement that the examiner be suitably licensed or certified is a new requirement. The court is thus expressly authorized to assess the credentials of the examiner to assure that no person is subjected to a court-ordered examination by an examiner whose testimony would be of such limited value that it would be unjust to require the person to undergo the invasion of privacy associated with the examination. This authority is not wholly new, for under the former rule, the court retained discretion to refuse to order an examination, or to restrict an examination. 8 Wright & Miller, Federal Practice & Procedure section 2234 (1986 Supp.). The revision is intended to encourage the exercise of this discretion, especially with respect to examinations by persons having narrow qualifications.
>
> The court's responsibility to determine the suitability of the examiner's qualifications applies even to a proposed examination by a physician. If the proposed examination and testimony calls for an expertise that the proposed examiner does not have, it should not be ordered, even if the proposed examiner is a physician. The rule does not, however, require that the license or certificate be conferred by the jurisdiction in which the examination is conducted.

The Department is publishing this rule as a final rule without prior public notice and opportunity to comment because the rule's content is technical in nature and limited to the practices and procedures associated with administrative proceedings.

Other Matters

An environmental finding under the National Environmental Policy Act (42 U.S.C. 4321–4347) is unnecessary because this rule relates to agency administrative procedures governing discovery of evidence.

This final rule was determined to be non-significant and therefore was not reviewed by the Office of Management and Budget under Executive Order 12866, Regulatory Planning and Review, which was signed by the President on September 30, 1993.

The Secretary, in approving the publication of this rule, certifies in accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), that this rule does not have a significant economic impact on a substantial number of small entities. The rule is a technical, procedural change which only affects operations within HUD. The rule does not affect substantive rights.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule would have no significant impact on family formation, maintenance, and general well-being.

The General Counsel, as the Designated official under section 6(a) of Executive Order 12612, Federalism, has determined that this rule, if implemented, would have no significant impact on federalism.

This rule was listed as item 1623 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56408, 56445) under Executive Order 12866 and the Regulatory Flexibility Act.

(The catalog of Federal Domestic Assistance program number and title is 14.400, Equal Opportunity in Housing.)

List of Subjects in 24 CFR Part 104

Administrative practice and procedure, Aged, Fair Housing, Individuals with disabilities, Mortgages, Penalties.

Accordingly 24 CFR part 104 is amended as follows:

PART 104—ADMINISTRATIVE PROCEEDINGS UNDER SECTION 812 OF THE FAIR HOUSING ACT

1. The authority citation for part 104 is revised to read as follows:

Authority: 42 U.S.C. 3535(d) and 3600–3620.

2. Section 104.500 is amended by revising paragraph (c)(3) and by adding paragraph (c)(5) to read as follows:

§ 104.500 Discovery.

* * * * *

(c) * * *

(3) Requests for the production of documents or other evidence, for inspection and other purposes.

* * * * *

(5) Upon motion of a party, the presiding administrative law judge may issue an order requiring a physical or mental examination of a party or of a person in the custody or under the legal control of a party.

* * * * *

3. Section 104.540 is amended by revising the section heading, by removing paragraphs (a)(3) and (b)(4), and by adding paragraph (d) to read as follows:

§ 104.540 Physical and mental examinations.

* * * * *

(d) Upon motion of any party, when the mental or physical condition (including the blood group) of a party or of a person in the custody or under the legal control of a party, is in controversy, the presiding administrative law judge may order the party to submit to a physical or mental examination by a suitably licensed or certified examiner or to produce for examination the person in the party's custody or legal control. The order may be made only on motion for good cause shown and upon notice to the person to be examined and to all parties and shall specify the time, place, manner, conditions, and scope of the examination and the person or persons by whom it is to be made. A report of the examiner shall be made in accordance with Rule 35(b) of the Federal Rules of Civil Procedure.

Dated: December 17, 1993.

Roberta Achtenberg,

Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–691 Filed 1–11–94, 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 40a

Defense Contracting; Reporting Procedures on Defense-Related Employment

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This rule is the fiscal year 1993 revision of the section listing DoD contractors receiving contract awards of $10 million or more. This part is published to comply with the provisions of section 1, Public Law 97–295, October 12, 1982; 10 U.S.C. 2397.

EFFECTIVE DATE: September 30, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. R.S. Drake, Acting Director, Directorate for Information Operations and Reports, Washington Headquarters Services, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302; Telephone (703) 746–0334.

List of Subjects in 32 CFR Part 40a

Armed forces, Conflicts of interest, Government employees, Government procurement, Reporting and recordkeeping requirements.

Accordingly, 32 CFR part 40a is revised to read as follows:

PART 40a—DEFENSE CONTRACTING: REPORTING PROCEDURES ON DEFENSE-RELATED EMPLOYMENT

Authority: 10 U.S.C. 2397.

§ 40a.1 Department of Defense contractors receiving awards of $10 million or more.

Fiscal Year 1993

A&E Industries, Inc.
AAI Corp.
AAR Corp.
ABB Flakt Inc.
Abu Dhabi National Oil Co.
ACS Construction Co. of Miss.
AEL Defense Corp.
AIL Systems, Inc.
AM General Corp.
AT&T Communications, Inc.
AU's Plumbing & Metal Work
AWD Technologies, Inc.
Abacus Technology Corp.
Abbott Laboratories
Access Energy Corp.
Accudyne Corp.
Actus Corp. & Sundt Corp. JV
Advance, Inc.
Advanced Electronics Co.
Advanced Marine Enterprises
Aepco, Inc.
Aerojet
Aerospace Corp., The
Afram Lines, Ltd., USA
Agip Petroli SPA
Agusta Aerospace Services—AA
Air BP
Air Treads, Inc.
Airfoil Textron, Inc.
Aksarben Foods, Inc.
Al Rashid Abdullah Abu Nayyan
Al-Abdulkader Trade & Contract
Alberici Corp.
Alisud Handling SPA
All Star Maintenance, Inc.
Alliant Techsystems, Inc.
Alliant Petro, Inc.
Allied Signal Aerospace Co.
Allied Signal, Inc.
Alpha Marine Services, Inc.
Altama Delta Corp.
Amerada Hess Corp.
American Engineer Corp.
American Fuel Cell & Coated Fabrics
American Management Systems, Inc.
American Overseas Maine Corp.
American Systems Corp.
American Systems Engineering Corp.
American Telephone & Telegraph Co.
American Trans Air, Inc.
Amerind, Inc.
Ametek, Inc.
Amherst Systems, Inc.
Amoco Oil Corp.
Amtec Corp.
Analysis & Technology, Inc.
Analytic Services, Inc.
Anderson De Bartolo Pan, Inc.
Andrulis Research Corp.
Angelo H. & Co., Inc.
Applied Data Technology, Inc.
Applied Research Associates, Inc.
Applied Technology Associates, Inc.
Aral AG
Arctic Slope Regional Corp.
Arinc, Inc.
Arinc Research Corp.
Artco Contracting, Inc.
Association Momentanee Entre
Assurance Technology Corp.
Astro Space Div., GE
Astronautics Corp. of America
Atherton Construction, Inc.
Atlantic Coastal, Inc.
Atlantic Marine Holding Co.
Atlantic Research Corp.
Atlantic Richfield Co.
Atlas Processing Co.
Autec Range Services
Automated Sciences Group, Inc.
Avco Corp.
Avco Research Labs
Avondale Industries, Inc.
B&S Transport
BAMSI, Inc.
BDM International, Inc.
BDM Management Services Co.
BEI Electronics, Inc.
BJS International Associates
BP Exploration & Oil Inc.
BP Oil Co.
Babcock & Wilcox Co., The
Baker Michael Corp.
Balfour Beatty Const., Inc.
Balfour Beatty, Inc.
Balimoy Mfg. Co. of Venice
Ball Corp.
Baltimore Gas & Electric Co.
Bangor Support Project
Barrett Refining Corp.
Bath Iron Works Corp.
Battelle Memorial Institute
Bay Ship Management, Inc.
Bay Tankers, Inc.
Bean C.F. Corp.
Bear Stearns Co., Inc.
Bechtel National, Inc.
Beech Aerospace Services, Inc.
Beech Aircraft Corp.
Bell Atlantic Network Svcs., Inc.
Bell BCI Co.
Bell Boeing JV
Bell Helicopter Services Inc.
Bell Helicopter Textron, Inc.
Bellemead Development Corp.
Belleville Shoe Mfg. Co.
Bender, Allen L., Inc.
Bender Shipbuilding & Repair Co.
Bendix Field Engineering Corp.
Beneco Enterprises, Inc.
Benham Companies, Inc.
Betac Corp.
Bethlehem Steel Corp.
Bionetics Corp.
Black & Decker Corp.
Black & Veatch
Black & Veatch Holding Co.
Black Construction Corp.
Blake Construction Co., Inc.
Blue Cross & Blue Shield of South Carolina
Boeing Aerospace Operations
Boeing Co. & Sikorsky Aircraft JV
Boeing Co., The
Boeing Sikorsky Comanche Team JV
Boland, David, Inc.
Bollinger Machine Shop & Shipyard
Bolt Beranek & Newman, Inc.
Bombardier, Inc.
Booz Allen & Hamilton, Inc.
Bozell Jacobs Kenyon Eckhardt
Brimhall-Palmer Construction
Brown & Root Services Corp.
Brown, Dayton T., Inc.
Brunswick Corp.
Bundesamt Fuer Wehrtechnik
Burch R.A. Construction Co.
Burle Industries, Inc.
Burns & Roe Enterprises, Inc.
Burnside Ott Aviation Training Center
C3, Inc.
C Construction Co., Inc.
C-Cubed Corp.
CACI International, Inc.
CAE Industries, Ltd.
CAE Link Holdings Co.
CAS, Inc.
CBPO of America, Inc.
CFM International, Inc.
CH2M Hill Companies, Ltd.
CIA Espanola De Petroleos SA
CRS Sirrine Metcalf & Eddy JV
CRSS, Inc.
CTA, Inc.
Caddell Construction Co., Inc.
Cadillac Gage Textron, Inc.
California Microwave, Inc.
Calore Enterprises, Inc.
Calspan Corp.
Camel Manufacturing Co.
Campbell Soup Co.
Canadian Commercial Corp.
Canadian National Railways

Cargill, Inc.
Carnegie Mellon University
Carnes Construction, Inc.
Carolina Power & Light Co.,
Cartwright Electronics, Inc.
Caterpillar, Inc.
Celsiustech Electronics AB
Center For Naval Analyses
Central Coast Water Authority
Central Gulf Lines, Inc.
Century Concrete Services, Inc.
Century Technologies, Inc.
Ceridian Corp.
Certified Slings, Inc.
Chamberlain Manufacturing Corp.
Chem-Nuclear Systems, Inc.
Chesapeake & Potomac Telephone Co. of Virginia
Chevron USA, Inc.
Childers Construction Co.
Chromalloy Gas Turbine Corp.
Chrysler Technologies Airborne Systems
Cincinnati Bell, Inc.
Cincinnati Electronics Corp.
Cinpac, Inc.
Coastal Eagle Point Oil Co.
Coastal Healthcare Group, Inc.
Coastal Oil New England, Inc.
Coastal Refining & Marketing
Coastal States Trading, Inc.
Cocke Bartlett Jr. Construction Co.
Codar Technology, Inc.
Codex Corp.
Colejon Mechanical Corp.
Coleman Research Corp.
Colsa, Inc.
Coltec Industries, Inc.
Columbia Research Corp.
Comarco, Inc.
Comcon, Inc.
Commonwealth of Australia
Communications Satellite Corp.
Compania De Petroleos De Chile
Compliance Corp.
Comprehensive Technologies International
Comptek Research, Inc.
Computer Associates International
Computer Dynamics, Inc.
Computer Engineering Association
Computer Sciences Corp.
Computer Sciences Raytheon JV
Computer Systems Development
Conagra, Inc.
Conax Corp.
Concord Hill Group, Inc.
Concurrent Computer Corp.
Conner Brothers Construction Co.
Consolidated Services, Inc.
Contel Corp.
Conti Environmental, Inc.
Continental Maritime of San Diego
Contrack International, Inc.
Contraves, Inc.
Coors Porcelain Co.
Cosmo Oil Co., Ltd.
Cray Research, Inc.
Crowley American Transport, Inc.
Crysen Corp.
Cubic Corp.
Cummins Engine Co., Inc.
DBA Systems, Inc.
DCS Corp.
DKH Healthcare Corp.
DME Corp.
DTH Contract Services, Inc.
Dakota Tribal Industries, Inc.
Dames & Moore
Danis Companies, The
Data General Corp.
Day & Zimmerman, Inc.
Day & Zimmerman/Basil Corp. JV
Decisions Systems Technology
Deere & Company
Del Jen, Inc.
Delta Air Lines, Inc.
Delta Dental Plan of California
Den Norske Stats Oljeselskap AG
Deutsche Bundesbahn
Deutsche Texaco AG
Deval Corp.
Development Sciences Corp.
Devtec Corp.
Diagnostic Retrieval Systems
Diamond Shamrock Refining
Dick, P.J. Contracting, Inc.
Digital Equipment Corp.
Digital Systems Research, Inc.
Diversified Services
Donohue & Associates, Inc.
Drake, Donald M. Co.
Draper, Charles Stark Laboratories, Inc.
Dreadnought Marine, Inc.
Drexel Industries, Inc.
Du Pont, E.I. de Nemours & Co.
Dual, Inc.
Duchossois Enterprises, Inc.
Dynamics Research Corp.
Dyncorp
Dynetics, Inc.
E-Systems, Inc.
EA Engineering & Science Technology
EC III JV
ECC International Corp.
EDO Corp.
EDP Enterprises, Inc.
EER Systems Corp.
EG&G, Inc.
EG&G Management Systems
EG&G Riticon
EG&G Washington Analytical Services Center
ESL, Inc.
ETA Technologies Corp.
Eagan McAllister Associates
Eagle Technology, Inc.
Earl Industries, Inc.
Earth Technology Corp.
East Penn Manufacturing Co.
Eastman Kodak Co.
Eaton Corp.
Ebasco Constructors, Inc.
Ebasco Services, Inc.
Ecology & Environment, Inc.
Edge Systems, Inc.
Eldyne, Inc.
Electro Methods, Inc.
Electronic Component Sales
Electronic Data Systems Corp.
Electronic Warfare Associates
Electronics & Space Corp.
Electrospace Systems, Inc.
Elf France
Elometa Corp.
Emergency Medical Services Associates
Empresa Nacional De Energia El
Endevco, Inc.
Engineered Support Systems
Engineering Research Assoc.
Engineering Science, Inc.
Enginetics Corp.
Ensafe/Allen & Hoshall
Ensco, Inc.
Entek, Inc.
Entwistle Co., The
Environmental Research Institute of Michigan
Environmental Science & Engineering
Environmental Technologies Group
Exide Electronics Corp.
Exodyne, Inc.
Exxon Co., USA
Exxon International Services
FEL Corp.
FKW, Inc.
FMC Corp.
FMS Corp.
FN Manufacturing, Inc.
Fairchild Aircraft, Inc.
Fairchild Industries, Inc.
Fairchild Space & Defense Corp.
Falcon Microsystems, Inc.
Farrell Lines, Inc.
Federal Data Corp.
Federal Express
Federal Express, Northwest Airlines, PanAm World Airways, Tower Air & United Parcel Service JV
Federal Prison Industries
Federal Republic of Germany
Federal Sector Services
Federal Hoffman, Inc.
Ferguson Williams, Inc.
Fidelity Technologies Corp.
Firth Construction Co., Inc.
Flightsafety International, Inc.
Flightsafety Service Corp.
Florida Power & Light Co.
Fluor Corp.
Fluor Daniel, Inc.
Ford, H.J. Associates, Inc.
Foundation Health Corp.
Freedon Forge Corp.
Frito Lay, Inc.
Frontier Engineering, Inc.
G&C Enterprises, Inc.
GDE Holdings Co. (DE)
GDE Systems, Inc.
GEC Avionics, Ltd.
GEC Marconi Co., Ltd.
GM Hughes Electronics Corp.
GTE Corp.
GTE Government Systems Corp.
GTE Hawaiian Telephone Co., Inc.
GTE Products Corp.
GTE Service

GTE Sylvania Products
Gaeco International Corp.
Galaxy Builders, Inc.
Garcia, Luis E., Inc.
Gary-Williams Co.
General Atomics
General Directorate of PTT
General Dynamics Corp.
General Electric Co.
General Mills, Inc.
General Motors Corp.
General Research Corp.
General Ship Corp.
Gentex Corp.
Geo Centers, Inc.
Geo Marine, Inc.
Georgia Power Co.
Georgia Tech Research Corp.
Geronimo Service Co.
Geste Holdings USA, Inc.
Giant Industries, Inc.
Gibraltar, P.R., Inc.
Gold Line Refining, Ltd.
Golden Manufacturing Co., Inc.
Gonzales, Al
Goodrich, B.F. Co., The
Goodyear Tire & Rubber Co., The
Government Micro Resources
Government of Canada
Government Systems, Inc.
Government Technology Services
Great Lakes Dredge & Dock Co.
Greenland Contractors
Grimberg, John C. Co., Inc.
Groundwater Tech Govt Ser., Inc.
Group Financial Partners, Inc.
Grumman Aerospace Corp.
Grumman Corp.
Grumman Data Systems Corp.
Gulf Coast Trailing Co.
Gulfstream Delaware Corp.
Gunver Manufacturing Co., Inc.
Guyco Engineering Co.
HCC Acquisition Co., Inc.
HFSI, Inc.
HRI, Inc.
HSQ Technology, Inc.
Halifax Engineering, Inc.
Halliburton Nus Envmtl Corp.
Halter Marine, Inc.
Harbert Corp.
Habor Construction Co., Inc.
Harcon, Inc.
Hardaway Co., Inc., The
Hardie-Tynes Manufacturing Co.
Harding Associates, Inc.
Harnischfeger Industries, Inc.
Harris Corp.
Harris Magnavox Systems Co. JV
Harsco Corp.
Hartford Steam Boiler Inspection Co.
Hawaiian Electric Industries
Hawaiian Independent Refinery
Haworth International, Ltd.
Hazeltine Corp.
Henderson, H.F. Industries
Hensel Phelps Construction Co.
Hercules, Inc.
Hermes Consolidated, Inc.
Heroux, Inc.
Hess Oil Virgin Islands Corp.
Hewlett Packard Co.
Hilton Systems, Inc.
Hoffmann La Roche, Inc.
Holly Corp.
Holmes & Narver, Inc.
Holston Defense Corp.
Honam Oil Refinery Co., Ltd.
Honeywell, Inc.
Hooks, Mike, Inc.
Horizons Technology, Inc.
Houston Executive Air Service
Howden Group America, Inc.
Howmet Corp.
Hughes Aircraft Co.
Hughes Danbury Optical Systems
Hughes Data Systems & BTG, Inc. JV
Hughes Missile Systems Co.
Hughes Training Systems, Inc.
Hunt Building Corp.
Hyman, George Construction Co.
Hyster-Yale Materials Handling
I-Net, Inc.
ICF Technology, Inc.
ICI Americas, Inc.
IIT Research Institute
ILC Industries, Inc.
IPAC
IRISS Co.
IT Corp.
ITT Corp.
ITT Federal Services Corp.
Iber C. & Sons, Inc.
Iceland Prime Contractors
Illinois Glove Co.
Incore, Inc.
Indstrial Data Link Corp.
Information Handling Services Group
Information Spectrum, Inc.
Information Systems Networks Corp.
Information Tech Solutions
Infotec Development, Inc.
Ingalls Shipbuilding, Inc.
Institute for Defense Analyses
Intel Corp.
Intelcom Support Services, Inc.
Intercontinental Manufacturing Co., Inc.
Intergraph Corp.
Intermarine, USA
Intermetrics, Inc.
International Business Machines Corp.
International Marine
International Technology Corp.
Interstate Electronics Corp.
Israel Aircraft Industries, Ltd.
Israeli Military Industries
Isratex, Inc.
J&J Maintenance, Inc.
JJMA Holdings, Inc.
JWK International Corp.
Jacobs Engineering Group, Inc.
James, T.L. & Co., Inc.
Jaycor
Jered Brown Brothers, Inc.
Jersey Central Power & Light Co.
Johns Hopkins University
Johnson, Al Construction Co.
Johnson Controls World Service
Johnson, Matthey, Inc.
Jonathan Corp., The
Jones Group, Inc., The
Jones, John T. Construction Co.
Jowett, Inc.
K&F Industries Inc.
K&M Maintenance Services
KDI Precision Products, Inc.
KPMG Peat Marwick
Kaiser Aerospace & Electronics Corp.
Kaman Aerospace Corp.
Kaman Instrumentation Corp.
Kaman Sciences Corp.
Kato Corp.
Kay & Associates, Inc.
Kaysam Worldwide, Inc.
Kearfoot Guidance & Navigation Corp.
Keco Industries, Inc.
Keflavik Contractors
Kellogg Co.
Kestrel Shipholding Corp.
Kiewit Construction Group, Inc.
Kiewit & Johnson, Al JV
Kilgallon Construction Co.
Knoll Group, The
Kohlberg, Kravis Roberts & Co.
Kollmorgen Corp.
Korea Electric Power Corp.
Korean Air Lines Co., Ltd.
Kovatch Mobile Equipment Corp.
Kraemer Edward & Sons, Inc.
Kraft General Foods, Inc.
Krug International Corp.
Kuwait National Petroleum Co.
Kyung In Energy Co., Ltd.
LAS Energy Corp.
LATA Curls
LAU Acquisition Corp.
LG&E Energy Corp.
LTV Corp.
Laidlaw Environmental Services
Laketon Refining, Inc.
Lane Industries, Inc.
Lanthier, Robert J. Co., Inc.
Law Companies, Inc., The
Lawrence Associates, Inc.
Lear Astronics Corp.
Lear Siegler Holdings Corp.
Leland Electrosystems, Inc.
Lewis, Lee Construction, Inc.
Life Cycle Engineering, Inc.
Light Helicopter Turbine Engine Co.
Lilly, David B. Co., Inc.
Litton Industries, Inc.
Litton Systems, Inc.
Lobar, Inc.
Lockheed Aeromod Center, Inc.
Lockheed Aeronautical Systems Co.
Lockheed Air Terminal, Inc.
Lockheed Corp.
Lockheed Engineering & Science
Lockheed Fort Worth Co.
Lockheed Missiles & Space Co.
Lockheed Sanders, Inc.
Lockheed Western Export Co.
Locus, Inc.
Loggins Meat Co., Inc.
Logicon, Inc.
Logicon R & D Associates

Logistic Services International
Logistics Management Institute
Loral Aerospace Corp.
Loral Corp.
Loral Corp., Rolm Mil-Spec Computers Division
Loral Vought Systems
Louis Dreyfus Energy Corp.
Lucas Aerospace
Luhr Brothers, Inc.
Lykes Brothers Steamship Co., Inc.
MCC Construction Corp.
MCI Telecommunications Corp.
MDP Construction Inc.
MDT Advisers, Inc.
MEI Technology Corp.
MK Ferguson of Idaho
MacGregor-Navire USA, Inc.
Maden Tech Consulting, Inc.
Maersk Line, Ltd.
Magnavox Government & Industrial Electronics Co.
Management Systems Application
Manson Construction & Engineering Co.
Mansour General Dynamics, Ltd.
Mantech International Corp.
Manufacturing Technology, Inc.
Mapco Alaska Petroleum, Inc.
Mar, Inc.
Marconi Radar & Control System
Marconi Underwater Systems, Ltd.
Marine Hydraulics International
Marine Transport Service Sea Barge GP
Mars, Inc.
Martech USA, Inc.
Martin Baker Aircraft Co., Ltd.
Martin Electronics, Inc.
Martin Marietta Corp.
Martin Marietta, Diehl Co's., Thorn & Thompson JV
Martin Marietta Missile System
Martin Marietta Corp. & Westinghouse Electric Co. JV
Mason Hanger Silas Mason Co.
Mason Technologies, Inc.
Massachusetts Institute of Technology
Maxwell Laboratories, Inc.
Mayer, Oscar Foods Corp.
McBride & Associates, Inc.
McRae Industries, Inc.
McDonnell Aircraft Co.
McDonnell Douglas Corp.
McDonnell Douglas Helicopter Co.
McDonnell Douglas Missile & Systems Co.
McDonnell Douglas Space Systems Co.
McDonnell Douglas Training Systems, Inc.
McLaughlin Research Corp.
McMaster Construction, Inc.
Merchants National Corp.
Merck Sharp Dhme Federal Credit Union
Metallgesellschaft Corp.
Metcalf & Eddy, Inc.
Metric Construction Co., Inc.
Metro Machine Corp.
Metters Industries, Inc.
Mevatec Corp.
Michelin Tire Corp.
Mid Continent Systems Corp.
Mid Eastern Builders
Milcom Systems Corp.
Miles, Inc.
Miller Herman, Inc.
Miltope Group, Inc.
Mine Safety Appliances Co.
Ministry of Defense, UK
Mip Instandsetzungsbetriebe
Mission Research Corp.
Mitre Corp.
Mobil Corp.
Modern Technologies Corp.
Monfort Food Distributing Co.
Montana Refining Co.
Montgomery, J.M., Consulting Engineers
Montgomery Watson Americas
Morgan Stanley Group, Inc.
Morgen & Oswood Construction Co.
Morrell, John & Co., Inc.
Mortenson, M.A. Co.
Motor Oils Hellas Corinth Refinery
Motorola Communications & Electronics
Motorola, Inc.
Multi-Electric Manufacturing, Inc.
Murdock, Inc.
NASP National Contractor
NC Dept of Human Resources
NCI Information Systems, Inc.
NCR Corp.
NI Industries, Inc.
Natco LP
Nation, Inc.
National Academy of Sciences
National Apparel, Inc.
National Beef Packing Co.
National Emergency Service
National Forge Co.
National Industries for the Blind
National Maintenance, Inc.
National Patent Development Corp.
National Program Office
National Steel & Shipbuilding Co.
National Systems & Research Co.
National Technologies
Navcom Defense Electronics, Inc.
Navcom Systems, Inc.
Netherlands Ministry of Defense
Network Equipment Technologies, Inc.
New Mexico State University
Newport News Shipbuilding & Dry Dock Co.
Nichols Research Corp.
Nicholson & Associates, Inc.
Nielsons, Inc.
Norden Systems, Inc.
Norfolk Dredging Co., Inc.
Norfolk Shipbuilding & Dry Dock Corp.
Norse, Inc.
Nortel Federal Systems, Inc.
North American Mechanical Services
North Atlantic Industries, Inc.
North Florida Shipyards, Inc.
Northern Telecom, Inc., Del.
Northern Telecom, Ltd.
Northrop Corp.
Northrop Worldwide Aircraft Services
Northwest Environmental Service, Inc.
Norton Co.
Nova Group, Inc.
Novelly/Goldstein Partnership
Nuclear Research Corp.
O'Brian & Gere, Ltd.
OEA, Inc.
OHM Remediation Services Corp.
OMNI Construction, Inc.
Occidental Petroleum Corp.
Ocean Shipholdings, Inc.
Ogden Corp.
Ogden Environmental & Energy Service Co.
Ogden Government Services Corp.
Ogden Services Corp.
Oil Refineries, Ltd.
Okinawa City Water Works
Okinawa Electric Power Co., Inc.
Oldenburg Group, Inc.
Olin Corp.
Olin Ordnance
Olin Winchester
Omega Group, Inc.
Operational Technologies Corp.
Oracle System Corp.
Orange Shipbuilding Co., Inc.
Orbital Sciences Corp.
Orincon Corp.
Orion International Technologies, Inc.
Osborne Construction Co.
Oshkosh Truck Corp.
Outdoor Venture Corp.
Owl International, Inc.
P&Z Construction Co., Inc.
PCL Construction Associates, Inc.
PHH Holdings, Inc.
PHP Healthcare Corp.
PMB Engineering, Inc.
PRC Engineering Systems, Inc.
PRC Environmental Management
PRC, Inc.
PSG International Language
Pacer Systems, Inc.
Pacific Architects & Engineers, Inc.
Pacific Ship Repair & Fabrication
Pacific Telecom, Inc.
Pacifica Services, Inc.
Pacificorp Capital, Inc.
Paramax Systems Corp.
Parker Hannifin Corp.
Parsons Corp.
Patrol Ofisi A S Genel Mud
Pearse, Jack F.
Peerless Petrochemicals, Inc.
Pemco Aeroplex, Inc.
Pence, Howard W., Inc.
Pennsylvania State University
Penske Transportation, Inc.
Pentastar Eletronics, Inc.
Pepper, Harry & Associates
Pepsico, Inc.
Per Udsen Aircraft Co.
Perini Corp.
Peterson Builders, Inc.
Petroleum Traders Corp.
Philip Morris, Inc.
Phillips & Jordan, Inc.
Phoenix Air Group, Inc.
Phototronics Corp.

Physics International Co.
Pine Bluff Sand & Gravel Co.
Pioneer U. A. V., Inc.
Piquniq Management Corp.
Pizzagalli Construction Co.
Placid Oil Co.
Planning Systems, Inc.
Pneumo Abex Corp.
Potomac Electric Power Co.
Potomac Systems Engineering
Praoil Aromatici E. Raffinazion
Pratt & Whitney
Pride Companies LP
Pride Industries, Inc.
Proctor & Gamble Co., The
Pueblo Laguna Tribe
Puerto Rico Sun Oil Co., Inc.
Pulau Electronics Corp.
Purdy Corp.
Quaker Oats Co., The
Questech, Inc.
Quintron Corp.
RJO Enterprises, Inc.
RMS Technologies, Inc.
Racal Communications, Inc.
Radian Corp.
Rafael Armaments Development
Rail Co.
Ran-Paige Co., Inc.
Rand Corp., The
Raven Industries, Inc.
Raytheon Co.
Raytheon Middle East Systems Co.
Raytheon Service Co.
Raytheon Support Services Co.
Red Samm Construction, Inc.
Refinery Associates, Inc.
Reflectone Training Systems
Relm Communications, Inc.
Research & Development Labs
Research Analysis & Maintenance
Resource Consultants, Inc.
Robbins Gioia, Inc.
Rockwell International Corp.
Rockwell Power Systems
Rolls-Royce & Associates, Ltd.
Roofing Constructors, Inc.
Rose Companies, Inc.
Rosenblatt, M. & Son, Inc.
Rust International Corp.
Ryan Co., Inc.
Ryan, Inc., Eastern
SAIC Engineering, Inc.
SCI Systems, Inc.
SD-Scicon PLC
SFA, Inc.
SKF USA, Inc.
SRA Technologies, Inc.
SRI International
SRS Technologies
SSI Services, Inc.
Sabreliner Corp.
Saco Defense, Inc.
Sacramento Municipal Utility
Saft America, Inc.
Samson Tug & Barge Co.
Saudi Oger, Ltd.
Saudi Operations & Maintenance Co.
Saudi Services & Operating Co.
Sauer, Inc.
Schafer, W.J. Associates, Inc.
Schlosser, W.M., Co., Inc.
Science & Technology, Inc.
Science Applications International Corp.
Scientific Ecology Group, Inc.
Scientific Atlanta, Inc.
Scientific Research Corp.
Sea Land Service, Inc.
Seacor Services, Inc.
Sears Roebuck & Co.
Semcor, Inc.
Sentel Corp.
Sequa Corp.
Serv Air, Inc.
Service Engineering Co., Inc.
Severson Environmental Services
Sharp, George G., Inc.
Shell Oil Co.
Sherikon, Inc.
Shin Cheon Co., Ltd.
Short Brothers PLC
Showa Shell Sekiyu KK
Siemens Corp.
Sierra Nevada Corp.
Sierra Technologies Corp.
Silicon Graphics, Inc.
Simplex Wire & Cable Co.
Simtec, Inc.
Simula, Inc.
Skipton, James K., III, Inc.
Sletten, Inc.
Slingsby Aviation, Ltd.
Smith, Johnny F., Truck Dragline Svc.
Smithkline Beecham Corp.
Smiths Industries, Inc., USA
Softech, Inc.
Sonalysts, Inc.
Sony Corp. of America
South Carolina Wldlf Mrn Res
Southeastern Public Service Authority
Southern Air Transport, Inc.
Southern Co., Inc.
Southfork Systems, Inc.
Southwest Marine, Inc.
Southwest Mobile Systems Corp.
Southwest Research Institute
Southwestern Bell Corp.
Space & Sensors Associates
Space Applications Corp.
Space Data Corp.
Spacesaver Corp.
Sparta, Inc.
Sparton Corp.
Spaw-Glass, Inc.
Spectrum Astro, Inc.
Speegle Construction, Inc.
Sprint Communications Co. LP
Ssangyong Oil Refining Co., Ltd.
Standard Technology, Inc.
Stanford Telecommunications
Stanford University
Statistica, Inc.
Steelcase, Inc.
Sterling Medical Associates
Sterling Software, Inc.
Stewart & Stevenson Services, Inc.
Storage Technology Corp.
Strand, Inc.
Sumaria Systems, Inc.
Sumitomo Electric Fiber Optics
Sumitomo Heavy Industries, Ltd.
Summa Technology, Inc.
Sun Eagle Corp.
Sun Microsystems, Inc.
Sun Refining & Marketing Co.
Sundstrand Corp.
Sundt Corp.
Sunkyong, Ltd.
Support Systems Associates
Supreme Beef Processors, Inc.
Sverdrup Corp.
Symetrics Industries, Inc.
Synetics Corp.
Synoptic Systems Corp.
Syscon Corp.
System Planning Corp.
System Resources Corp.
Systems & Electronics, Inc.
Systems Engineering & Management Co.
Systems Engineering Solutions
Systems Engineering Energy Management Association
Systems Research Laboratories
TASC
TCOM, LP
TDS, Inc.
TRW, Inc.
Talley Defense Systems, Inc.
Tampa Shipyards, Inc.
Tape Tech, Inc.
Target Sportswear, Inc.
Taylor Ball, Inc.
Tec-Masters, Inc.
Tech-Sym Corp.
Techmatics, Inc.
Technical & Management Services Corp.
Technology Applications Service Co.
Technology Management & Analisys Corp.
Tecolote Research, Inc.
Tecom, Inc.
Tektronix, Inc.
Teledyne, Inc.
Teledyne Industries, Inc.
Teleflex, Inc.
Telephonics Corp.
Telex Communications, Inc.
Tennessee Valley Authority
Tesco
Tesoro Petroleum Corp.
Tetra Tech, Inc.
Texaco Caribbean, Inc.
Texas-Capital Contractor, Inc.
Texas Instruments & Martin Marietta JV
Texas Instruments, Inc.
Texcom, Inc.
Texstar, Inc.
Textron, Inc.
Therm, Inc.
Thermo Electron Corp.
Thermodyn Mechanical Contrs.
Thinking Machines Corp.
Thiokol Corp.
Tiburon Systems, Inc.
Timken Co., The
Titan Corp.

Tohoku Denryoku KK
Tokyo Denryoku KK
Totem Resources Corp.
Tracor Aerospace, Inc.
Tracor Applied Sciences, Inc.
Tracor, Inc.
Trans World Airlines, Inc.
Trans-Tec Services
Transworld Oil USA, Inc.
Tri Ex Tower Corp.
Tri State Design, Inc.
Trident Data Systems, Inc.
Triton Group, Ltd.
Triton Marine Construction
Turtle Mountain Manufacturing Co.
Tutor Saliba Corp.
UNC, Inc.
URS Corp.
Unidyne Corp.
Unified Industries, Inc.
Uniformed Services Benefit Plans
Unisys Corp.
United Engineers & Constructors
United International Engineers
United Parcel Service, Inc., Ohio
United States Department of Commerce
United States Department of Energy
United Technologies Corp.
United Technologies Optical Systems
Universal Propulsion Co., Inc.
University of California
University of Dayton
University of Pittsburgh
University of Southern California
University of Texas
University of Washington
User Technology Associates
Utah State University
VSE Corp.
Van Ommeren Shipping (USA)
Vanee Foods Co.
Varian Associates, Inc.
Varo, Inc.
Vector Research, Inc.
Vectura Group, Inc.
Veda, Inc.
Verac, Inc.
Vickers, Inc.
Vinnell Corp.
Vinnell Corp., Brown & Root JV
Vion Corp.
Virtexco Corp.
Vitro Corp.
Vitronics, Inc.
Vought Aircraft
Vredenburg, R. M. & Co.
Wallace Oconner International, Ltd.
Wang Laboratories, Inc.
Warehouses Services, Inc.
Washington Agricultural Dev.
Waste Management, Inc.
Waterman Steamship Corp.
Watkins Johnson Co.
Watterson Construction Co.
Weeks Marine, Inc.
Wellco Enterprises, Inc.
Western Petroleum Co.
Western Union Corp.
Westinghouse Electric Corp.
Westmont, Inc.
Weston, Roy F., Inc.
Whitesell Green, Inc.
Whittaker Corp.
Wichita Ponca Canvas Products
Willard Marine, Inc.
Willbros USA, Inc.
Williams International Corp.
Wisconsin Physicians Service Insurance
Woodward, Clyde Consultants
World Auxiliary Power Co.
World Rosen Key Amer Etal JV
Worldcorp, Inc.
Wornick Co., Inc.
Wyle Laboratories
Wylie, C.E. Construction Co.
Xerox Corp.
Xontech, Inc.
Yeager, E.L. Construction Co.
You One Construction Co., Ltd
Young & Rubicam, Inc.
Zachry, H.B. Co.
Zenith Electronics Corp.

Dated January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-674 Filed 1-11-94; 8:45 am]

BILLING CODE 5000-04-M

DEPARTMENT OF EDUCATION

34 CFR Parts 319, 429, 674, and 682

Miscellaneous Department of Education Regulations; Corrections

AGENCY: Department of Education.

ACTION: Final rules; correcting amendments.

SUMMARY: This document corrects certain final regulations published in the **Federal Register** on July 21, 1992 (57 FR 32342) (Part 674—Federal Perkins Loan Program); August 14, 1992 (57 FR 36720) (Part 429—Bilingual Vocational Materials, Methods, and Techniques Program); December 18, 1992 (57 FR 60280) (Part 682—Federal Family Education Loan Programs); and December 29, 1992 (57 FR 62094) (Part 319—Training Personnel for the Education of Individuals with Disabilities—Grants to State Educational Agencies and Institutions of Higher Education).

EFFECTIVE DATE: The correction to 34 CFR part 674 is effective September 18, 1992. The correction to 34 CFR part 429 is effective September 28, 1992. The correction to 34 CFR part 682 is effective February 1, 1993. The correction to 34 CFR part 319 is effective February 25, 1993.

FOR FURTHER INFORMATION CONTACT: Kenneth C. Depew, Division of Regulations Management, U.S. Department of Education, 400 Maryland Avenue, SW., room 5125, FOB-6, Washington, DC 20202-2241. Telephone: (202) 401-2884. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

List of Subjects

34 CFR Part 319

Education of individuals with disabilities, Education—training, Grant programs—education, Student aid, Teachers.

34 CFR Part 429

Grant programs-education, Vocational education.

34 CFR Part 674

Loan programs—education, Student aid.

34 CFR Part 682

Loan programs—education, Student aid, Vocational education.

Dated: January 3, 1994.

Judith A. Winston,

General Counsel.

(Catalog of Federal Domestic Assistance Numbers: 84.029 Training Personnel for the Education of Individuals with Disabilities; 84.038 Perkins Loan Program; 84.077 Bilingual Vocational Training Program; 84.032 Stafford Loan Program and PLUS Program)

Parts 319, 429, 674, and 682 of title 34 of the Code of Federal Regulations are corrected by making the following amendments:

PART 319—TRAINING PERSONNEL FOR THE EDUCATION OF INDIVIDUALS WITH DISABILITIES—GRANTS TO STATE EDUCATIONAL AGENCIES AND INSTITUTIONS OF HIGHER EDUCATION

1. The authority citation for part 319 continues to read as follows:

Authority: 20 U.S.C. 1432, unless otherwise noted.

§ 319.3 [Corrected]

2. In § 319.3 the third word of the undesignated introductory text is revised to read "funds".

PART 429—BILINGUAL VOCATIONAL MATERIALS, METHODS, AND TECHNIQUES PROGRAM

3. The authority citation for part 429 continues to read as follows:

Authority: Sec. 441(c) of the Carl D. Perkins Vocational Education Act, 20 U.S.C. 2441(c), as enacted by Pub. L. 98–524, unless otherwise noted.

§§ 429.11, 429.30 [Corrected]

4. In § 429.11(a) the cross-reference to "§ 409.10" is revised to read "§ 429.10"; and in § 429.30(a), (b), and (d) the cross-references to "§ 409.31" are revised to read "§ 429.31".

PART 674—FEDERAL PERKINS LOAN PROGRAM

5. The authority citation for part 674 continues to read as follows:

Authority: 20 U.S.C. 1087aa—1087hh and 20 U.S.C. 421–429, unless otherwise noted.

6. Section 674.34 is corrected by adding paragraphs (b)(1)(i) and (ii) and (c)(5)(i) through (v) to read as follows:

§ 674.34 Deferment of repayment—Perkins loans.

* * * * *

(b)(1) * * *

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

* * * * *

(c) * * *

(5) * * *

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating poverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

* * * * *

7. Section 674.35 is corrected by adding paragraphs (b)(1)(i) and (ii) and (c)(4)(i) through (v) to read as follows:

§ 674.35 Deferment of repayment—Direct loans made on or after October 1, 1980.

* * * * *

(b)(1) * * *

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

* * * * *

(c) * * *

(4) * * *

(i) The borrower serves in an organization that is exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954.

(ii) The borrower provides service to low-income persons and their communities to assist them in eliminating proverty and poverty-related human, social, and environmental conditions.

(iii) The borrower's compensation does not exceed the compensation received by a full-time volunteer in the Peace Corps or in a program administered by the ACTION agency. Compensation includes an allowance for subsistence, necessary travel expenses, and stipends.

(iv) The borrower, as part of his or her duties, does not give religious instruction, conduct worship service, engage in religious proselytizing, or engage in fundraising to support religious activities.

(v) The borrower has agreed to serve on a full-time basis for a term of at least one year.

* * * * *

8. Section 674.36 is corrected by adding paragraphs (b)(1)(i) and (ii) to read as follows:

§ 674.36 Deferment of repayment—Direct loans made before October 1, 1980 and Defense loans.

* * * * *

(b)(1) * * *

(i) An institution of higher education; or

(ii) A comparable institution outside the U.S. approved by the Secretary for this purpose.

* * * * *

9. Section 674.49 is corrected by adding paragraphs (e)(4)(i)(A) and (B) and (f)(2)(i) and (ii) to read as follows:

§ 674.49 Bankruptcy of borrower.

* * * * *

(e) * * *

(4)(i) * * *

(A) Whether grounds exist under 11 U.S.C. 1307 to convert or dismiss the case; and

(B) Whether the borrower has demonstrated entitlement to the "hardship discharge" by meeting the requirements of 11 U.S.C. 1328(b).

* * * * *

(f) * * *

(2) * * *

(i) The court has found that repayment of the loan would impose an undue hardship on the borrower and the dependents of the borrower; or

(ii)(A) The loan entered the repayment period more than seven years, excluding periods of deferment, before the filing of the petition; and

(B) The loan is not excepted from discharge under other applicable provisions of the Code; or

* * * * *

PART 682—FEDERAL FAMILY EDUCATION LOAN (FFEL) PROGRAM

10. The authority citation for Part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

§ 682.801 [Corrected]

11. Section 682.801 is amended by removing "; and" at the end of paragraph (e) and adding, in its place, a period.

[FR Doc. 94–440 Filed 1–11–94; 8:45 am]

BILLING CODE 4000–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300299A; FRL–4746–5]

RIN No. 2070–AB78

Diallate; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the tolerances for residues of the pesticide diallate *S*-(2,3-dichloroallyl) diisopropylthiocarbamate, also known as AVADEX®, in or on all raw agricultural commodities. EPA is taking this action because all registered uses of diallate on these commodities have been cancelled. Therefore, there is no need for maintaining the tolerances once all commodities treated with diallate have cleared the channels of trade.

EFFECTIVE DATE: This regulation becomes effective February 11, 1994.

ADDRESSES: Written objections, identified by document control number [OPP–300299A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Philip Poli, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8038.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 30, 1993 (58 FR 51031), EPA issued a proposed rule to revoke the diallate tolerances for all agricultural commodities under 40 CFR 180.277 pursuant to section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) by amending those tolerances to include an expiration date of August 30, 1996. A 30-day period was provided to allow for public comment.

On January 22, 1991, the last EPA registration for a pesticide product containing diallate was cancelled under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), for nonpayment of the annual registration maintenance fee. Because diallate is no longer registered in the United States for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical which is not registered for a particular food use, EPA is announcing that it is revoking the tolerances of the pesticide diallate by amending the tolerances to include an expiration date of August 30, 1996. The delayed revocation date will eliminate concern for a residue problem due to environmental contamination. Consequently, no action levels will replace the tolerances upon their revocation.

No comments or requests for referral to an advisory committee were received in response to the proposed rule.

Hearing Procedures

Any person adversely affected by this regulation revoking the tolerances for diallate in or on all raw agricultural commodities may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the Office of Pesticide Programs (OPP) docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds of the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requester's contentions on each such issue and a summary of any evidence relied upon by the objector (40 CFR 178.27).

A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: there is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requester would, if established, resolve one or more of such issues in favor of the requester, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requester would be adequate to justify the action requested.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order, i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that the rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

This final rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this final rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This final regulatory action does not contain information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 20, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By revising § 180.277, to read as follows:

§ 180.277 *S*-2,3-Dichloroallyl diisopropylthiocarbamate; tolerances for residues.

Tolerances, set to expire on August 30, 1996, are established for negligible residues of the herbicide *S*-2,3-dichloroallyl diisopropylthiocarbamate in or on the raw agricultural commodities alfalfa (fresh and hay), barley (grain, forage, and straw), clover (fresh and hay), field corn grain, fodder and forage, flaxseed, lentils, peas, pea forage and hay, potatoes, safflower seed, soybeans, soybean forage and hay, and sugar beet roots and tops at 0.05 part per million.

[FR Doc. 94–763 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 412 and 413

[BPD-731-IFC]

RIN 0938-AG00

Medicare Program; Payment for Preadmission Services

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Interim final rule with comment period.

SUMMARY: This interim final rule specifies that inpatient hospital operating costs include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days before the date of the patient's admission to that hospital. These provisions implement amendments made to section 1886(a)(4) of the Social Security Act by section 4003 of the Omnibus Budget Reconciliation Act of 1990.

DATES: *Effective Date:* This interim final rule with comment period is effective on January 12, 1994. We refer the reader to section V.A. of this preamble for a discussion of specific provisions that apply to specific periods.

Comment Period: Comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on March 14, 1994.

ADDRESSES: Mail written comments (an original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD-731-IFC, P.O. Box 7517, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (an original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD-731-IFC. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309-G of the Department's offices at 200 Independence Avenue, SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-690-7890).

Copies: To order copies of the Federal Register containing this document, send your request to: New Orders, Superintendent of Documents, P.O. Box 371954, Pittsburgh, PA 15250-7954. Specify the date of the issue requested and enclose a check or money order payable to the Superintendent of Documents, or enclose your Visa or Master Card number and expiration date. Credit card orders can also be placed by calling the order desk at (202) 783-3238 or by faxing to (202) 275-6802. The cost for each copy is $4.50. As an alternative, you can view and photocopy the Federal Register document at most libraries designated as Federal Depository Libraries and at many other public and academic libraries throughout the country that receive the Federal Register.

FOR FURTHER INFORMATION CONTACT: Thomas Hoyer, (410) 966-4607.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1886(a) of the Social Security Act (the Act) establishes a ceiling on the allowable rate of the increase for Medicare hospital inpatient operating costs. Prior to the Omnibus Budget Reconciliation Act of 1990 (Pub. L. 101-508), section 1886(a)(4) of the Act defined the "operating costs of inpatient hospital services" to include "all routine operating costs, ancillary service operating costs, and special care unit operating costs with respect to inpatient hospital services as such costs are determined on an average per admission or per discharge basis * * *."

Section 3610.3 (formerly section 3608) of the Medicare Intermediary Manual, Part 3 (HCFA Pub. 13-3) and section 415.6 of the Medicare Hospital Manual (HCFA Pub. 10) provides that, if a beneficiary with Part A coverage is furnished outpatient hospital services and is thereafter admitted as an inpatient of the same hospital before midnight of the next day, the outpatient hospital services furnished to the beneficiary are treated as inpatient services and are included in the hospital's Part A payment. This administrative policy has been in effect since June 1966. It was adopted in response to a recommendation by the Health Insurance Benefits Advisory Council (HIBAC), which believed it would shorten inpatient stays by encouraging hospitals to perform some services connected with the stay prior to the actual inpatient admission.

On October 1, 1983, the prospective payment system (PPS) was implemented. PPS is a system of payment for acute inpatient hospital stays under Medicare Part A (Hospital Insurance) based on prospectively-set rates. Under this system, Medicare payment is made at a predetermined, specific rate for each hospital discharge. All discharges are classified according to a list of diagnosis-related groups (DRGs). When PPS was introduced, the costs related to the longstanding policy concerning the payment for preadmission outpatient services as inpatient services were included in the base year costs used to calculate the PPS standardized payment amount and the DRG weighting factors (see 49 FR 250, January 3, 1984). Those hospitals excluded from payment under PPS continue to be paid for inpatient hospital services they furnish, as well as for the preadmission services described above, on the basis of reasonable cost up to the ceiling specified in section 1886(a) of the Act. Therefore, for both PPS and non-PPS hospitals, these preadmission services may not be billed separately from the covered inpatient admission that follows, since payment for them is included in the payment made under Part A for the inpatient stay.

II. Statutory Provisions

Section 4003(a) of Public Law 101-508 amended the definition of "operating costs of inpatient hospital services" contained in section 1886(a)(4) of the Act to include the costs of certain services furnished prior to admission. These preadmission services are to be included in the Part A payment for the subsequent inpatient stay. For purposes of this interim final rule with comment period, we will refer to the provision as the "3-Day Payment Window."

As amended, section 1886(a)(4) of the Act defines the operating costs of inpatient hospital services to include certain preadmission services furnished by the hospital (or by an entity that is wholly owned or operated by the hospital) to the patient up to 3 days prior to the date of the patient's admission. The inpatient operating costs definition contained in section 1886(a)(4) of the Act applies to both PPS and non-PPS hospitals. As an amendment to that definition, the 3-Day Payment Window provision applies to both types of hospitals as well. Further, this provision's placement in section 1886(a)(4) of the Act rather than in sections 1862(a)(14) or 1866(a)(1)(H) of the Act (each of which deals with rebundling—the practice of covering as

hospital services those nonphysician services furnished to hospital patients by an outside supplier) indicates that the 3-Day Payment Window provision is separate and distinct from the rebundling requirement and, as such, may not be subject to the civil monetary penalties that apply to violations of the latter requirement.

Section 4003(b) of Public Law 101-508 provides for implementation of the 3-Day Payment Window provision in the following three phases:

- The first phase, effective from November 5, 1990 (the enactment date of Pub. L. 101-508) through September 30, 1991, includes any services furnished during the day before the date of admission regardless of whether the services are related to the admission. The Conference Report accompanying Public Law 101-508 indicates that this phase simply represents a statutory reiteration of the existing administrative policy. For this reason, the conferees did not expect that there was a need for any further administrative action by HCFA to implement this phase (H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 701 (1990)).
- The second phase, effective January 1, 1991, involves diagnostic services (including clinical diagnostic laboratory tests) that are furnished during the 3 days immediately preceding the date of admission.
- The third phase, effective October 1, 1991, includes other services related to the admission that are furnished during the 3 days immediately preceding the date of admission.

With respect to adjustments to the DRG relative weights, the Conference Report states that, "[n]othing in this provision requires the Secretary to take special action to adjust the DRG relative weights to reflect the additional services that would be covered by the DRG payment under this provision. The conferees expect that no adjustment will be made before [fiscal year] FY 1993 when Part a [A] billing data that would include the additional services would become available to recalibrate the relative weights." (H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 701 (1990).)

Section 4003(c) of Public Law 101-508 specifically authorizes the Secretary to implement the 3-Day Payment Window provision through the issuance of interim final regulations.

III. Provisions of the Rule

In this interim final rule with comment period, we are amending the Medicare regulations by adding new material to incorporate the provisions of section 4003(a) of Public Law 101-508 that amend section 1886(a)(4) of the Act and to apply the effective dates to these provisions as required under section 4003(b) of Public Law 101-508.

As indicated in section II of this preamble, the 3-Day Payment Window provision will be implemented in three phases. Phase one is intended simply to serve as a statutory reiteration of our existing policy as indicated by both section 4003(b)(1) of Public Law 101-508 and the Conference Report (H.R. Conf. Rep. No. 964, 101st Cong., 2d Sess. 701 (1990)). Phase two, effective January 1, 1991, specifies that payment for inpatient hospital operating costs includes diagnostic services that are furnished during the 3 days immediately preceding the date of admission. Phase three specifies that payment for inpatient hospital operating costs includes other (that is, non-diagnostic) services that are related to the admission and are furnished during the 3 days immediately preceding the date of admission. Under phase three of the new law, we needed to choose between two possible approaches to the treatment of non-diagnostic services furnished within 3 days before admission. (Phase two deals only with diagnostic services and, thus, is not relevant to this issue). Phase one of the 3-Day Payment Window provision and our existing policy for services furnished on the day before admission are both somewhat broader than phase three, in that they bundle all preadmission services into the inpatient payment, regardless of whether they are related to the admission. Thus, for the phase one period, we believe it is appropriate to follow the broader administrative policy, which is already in place. However, for the implementation of phase three (section 4003(b)(3) of Pub. L. 101-508) beginning October 1, 1991, we considered whether to apply this broader policy or impose a policy that follows the narrower wording of the new law, that is, include non-diagnostic preadmission services only to the extent that they are related to the admission.

We considered that the Conference Report language (which characterizes the first phase of implementation as embodying the existing policy) could justify continuing the current, all-inclusive policy for the day before admission, or even expanding it to apply to the second and third day before admission as well. This approach would not require identifying any services as being related to the admission and would not require separating out from the inpatient payment any of the services not related to the admission that are furnished on the day before admission (all services—regardless of whether the services are related to the admission—are currently included in the inpatient payment under the existing policy). This approach would also enhance the program savings to be realized from the 3-Day Payment Window provision, since it folds into the inpatient payment a greater range of preadmission services that, as a consequence, would not receive a separate payment under Part B. Finally, by maximizing the services to be included in the Part A payment for the subsequent admission, this approach would clearly be advantageous to beneficiaries who are eligible only for Part A; further, even beneficiaries who are eligible for both Parts A and B would be able to avoid incurring the Part B deductible and coinsurance charges to the maximum extent possible.

However, we note that adopting such an all-inclusive approach for the second and third days before admission is contrary to the clear language of the new law, which is worded specifically in terms of "other services related to the admission." Furthermore, we have determined that continuing this approach indefinitely even for the day before admission only would appear to be inconsistent with the new law's implementation provisions; unlike phases two and three, phase one contains both a starting date and an ending date. We believe this indicates that Congress intended for the existing, all-inclusive policy to remain in effect, but only during the finite period between those two dates.

After considering these various factors, we have determined that services (other than diagnostic services) furnished on the second and third days before admission must be related to the admission in order to come under the 3-Day Payment Window provision. Further, we have determined that effective with services furnished on or after October 1, 1991 (upon the expiration of the first phase of implementation), this qualification will become applicable to non-diagnostic services furnished on the day before admission as well. We believe that this approach most accurately reflects the intent of the statutory language of the new provision. We realize that, under this approach, the payment made under Part A, which currently includes the cost of all non-diagnostic services furnished on the day before admission, will no longer include non-diagnostic services unless they are related to the admission. However, consistent with the Conference Report language set out above, we have to date made no DRG payment adjustments to reflect the

effects of the 3-Day Payment Window provision.

For purposes of this provision, we are defining "other services related to the admission" as those non-diagnostic services furnished in connection with the diagnosis (that is, the principal diagnosis) that requires the beneficiary to be admitted as an inpatient. We considered defining this term more broadly to include services furnished in connection with secondary diagnoses as well; however, secondary diagnoses can sometimes include complicating events that do not occur until after admission. Since the law specifies that this provision is to apply to services related to the inpatient "admission" (as opposed to the ensuing inpatient stay), we believe that it is more accurate to use only the principal diagnosis, as identifying those preadmission services that are related to the actual cause of admission.

Further, the statutory language charges the Secretary with defining those non-diagnostic services that are regarded as "related to the admission" and, thus, are subject to the payment window. In effect, this gives the Secretary the authority to determine the scope of the payment window's applicability to non-diagnostic services. In this context, we have determined that ambulance services are not subject to the payment window, even when furnished during the preadmission period by the admitting hospital or by an entity that it wholly owns or operates. The House Budget Committee Report accompanying the payment window legislation explained that the underlying objective of this provision is "* * * to curb further unbundling which has occurred since the introduction of the DRG payment system * * *" (H.R. Budget Comm. Rep. No. 881, 101st Cong., 2d Sess. 250 (1990).) As a Part B benefit, ambulance services (unlike patient transportation services furnished to inpatients) are not bundled with inpatient services and, thus, have not been subject to the actions taken to maximize payment under PPS, which prompted Congress's concern. Thus, we believe that ambulance services are distinct from the type of hospital services that Congress designed the payment window provision to address. Many hospitals that operate ambulance services do so at a loss. The hospitals continue to furnish the ambulance services primarily as a means of assuring access to hospital care for individuals who otherwise would be unable to reach hospitals. Subjecting hospitals that operate ambulance services to still greater fiscal constraints under the payment window provision could have a major adverse impact on their availability, particularly in remote rural areas. Therefore, in this rule, we are defining the preadmission services that are subject to the payment window provision as not including ambulance services.

Based on our interpretation of the law, we will implement phases two and three of the 3-Day Payment Window provision set forth in section 1886(a)(4) of the Act and section 4003(b) of Public Law 101–508 by revising regulations concerning payment to PPS hospitals (§ 412.2) and non-PPS hospitals (§ 413.40) for inpatient hospital services furnished to Medicare beneficiaries. (We are not amending the regulations with respect to phase one since, as discussed previously, the Conference Report language indicates that this phase simply embodies our existing policy and requires no further administrative action to implement.) Specifically, we are adding paragraph (c)(5) to § 412.2 and revising § 413.40(c). We will specify that payment for inpatient operating costs for both PPS and non-PPS hospitals will include certain preadmission services furnished by the hospital or by an entity wholly owned or operated by the hospital to the patient during the 3 days immediately preceding the date of the patient's admission. We are interpreting the phrase "wholly" owned or operated to include any entity for which the hospital itself is the sole owner; for purposes of consistency, we are also including in this term any entity for which the hospital is the sole operator. We note that a hospital need not exercise administrative control over a facility in order to operate it. An operator implements facility policies, but does not necessarily make the policies; operating a facility simply involves conducting the facility's day-to-day activities, as opposed to "control," which involves the power to direct the facility's operations toward specific objectives.

Thus, §§ 412.2 and 413.40 will specify that payment for inpatient operating costs for both PPS and non-PPS hospitals will include the following services (other than ambulance services):

- Diagnostic services (including clinical diagnostic laboratory tests) furnished on or after January 1, 1991.
- Other services related to the admission furnished on or after October 1, 1991.

We will define other services related to the admission to include those non-diagnostic services furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient. We invite comments on our use of this definition to identify admission-related services. We also invite comments on the feasibility of prescribing more detailed operational procedures in the regulations. For example, one possible approach might be simply to presume that certain specific types of preadmission services (such as chronic maintenance dialysis) are never related to the subsequent admission, or to presume that all preadmission services (other than certain specified exceptions) are admission-related. Another alternative might be to develop an inclusive list of procedures which are medically related, against which all claims could be electronically screened. Still another approach could be to define as related to the principal diagnosis any services that fall within the same major diagnostic category (MDC) as used under PPS. In establishing a degree of medical relatedness, the MDC approach would have the advantage of administrative simplicity for hospitals, contractors, and the government, as it would use a patient classification system that is already in place for hospital services under PPS. We invite comments on the feasibility of prescribing these or other implementation procedures in the regulations, as well as the relative administrative burden that each type of approach would impose on the program to develop and implement and on the facilities to comply.

In response to the changes made by section 4003 of Public Law 101–508, instructions were published in the Medicare Intermediary Manual, Part 3 (HCFA Pub. 13–3), "Claims Process" in March 1992 (Transmittal No. 1565) and in the Medicare Hospital Manual (HCFA Pub. 10), in March 1992 (Transmittal No. 633).

We note that we are making some conforming technical changes to §§ 412.2 (c)(3) and (c)(4), 412.73(c)(1), 412.98(b), and 413.40 (a)(3) and (i)(3).

IV. Other Required Information

A. Effective Dates

The effective date of this interim final rule with comment period is January 12, 1994. As discussed previously, the Conference Report language indicates that the changes made by section 4003(b)(1) of Public Law 101–508 (which are effective from November 5, 1990, through September 30, 1991) simply embody our existing policy and require no further administrative action to implement; thus, we are not amending the regulations with respect to this aspect of the provision. Changes made by section 4003(b)(2) of Public Law 101–508 that include as inpatient hospital services those diagnostic services that are furnished during the 3 days immediately preceding the date of admission are applicable for services furnished on or after January 1, 1991. Changes made by section 4003(b)(3) of Public Law 101–508 that include as inpatient hospital services any other services related to the admission furnished during the 3 days immediately preceding the date of admission are applicable for services furnished on or after October 1, 1991.

B. Waiver of Notice of Proposed Rulemaking and 30–Day Delay in the Effective Date

We ordinarily publish a notice of proposed rulemaking for a regulation to provide a period for public comment. However we may waive that procedure if we find good cause that prior notice and comment are impracticable, unnecessary, or contrary to public interest. In addition, section 1871(b)(2)(A) of the Act provides that the notice of proposed rulemaking is not required if a statute specifically permits a regulation to be issued in interim final form. Section 4003(c) of Public Law 101–508 permits the Secretary to publish the regulations, which will implement the 3-Day Payment Window provision, on an interim final basis. Therefore, we are implementing this interim final rule with comment period without first issuing a notice of proposed rulemaking. Nonetheless, we are providing a 60-day period for public comment, as indicated at the beginning of this interim final rule.

In addition, we normally provide a delay of 30 days in the effective date for documents such as this. However, we may waive the delay in the effective date if we find good cause that adherence to this procedure would be impracticable, unnecessary, or contrary to public interest. We believe that it is unnecessary to provide a 30-day delay in the effective date since the Conference Report language, as discussed previously, indicates that no further administrative action is necessary to effect the first phase of implementation, and section 4003(b) of Public Law 101–508 prescribes specific effective dates for the remaining two phases. The regulations in this interim final rule with comment period merely conform to the effective date requirements set forth in section 4003(b) of Public Law 101–508. Therefore, we find good cause to waive the usual 30-day delay

C. Collection of Information Requirements

This document does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Response to Comments

Because of the large number of items of correspondence we normally receive on FR documents published for comment, we are not able to acknowledge or respond to them individually. We will consider all comments we receive by the date and time specified in the **DATES** section of this preamble, and, if we proceed with a subsequent document, we will respond to the comments in the preamble to that document.

VI. Regulatory Impact Analysis

A. Executive Order 12291

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any interim final rule with comment period that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This interim final rule with comment period is considered a major rule under E.O. 12291 criteria based on our cost projections for the next 5 Federal fiscal years (FYs). The following discussion constitutes a regulatory impact analysis.

This interim final rule with comment period implements section 4003 of Public Law 101–508, which contains a provision that expands the timeframe for folding preadmission services into the Part A payment for the subsequent inpatient stay. The first sentence of section 1886(a)(4) of the Act is amended to include certain preadmission services, furnished by the hospital, or by an entity that is wholly owned or operated by the hospital, up to 3 days before the date of the patient's admission. This provision becomes effective in three phases.

The first phase, effective November 5, 1990 through September 30, 1991, included services furnished the day before admission. This phase merely represented a statutory reiteration of the existing policy. The second phase, effective January 1, 1991, included diagnostic services that are furnished during the 3 days immediately preceding the date of admission. The third phase, effective October 1, 1991, includes other services related to the admission that are furnished during the 3 days immediately preceding the date of admission.

This regulation will result in program savings from discontinuing separate payment under Part B for services performed up to 3 days before the date of admission instead of 1 day, without an immediate, corresponding increase in the DRG payments under Part A. The estimated savings will be reduced if physicians elect to have preadmission services performed at a non-hospital site or more than 3 days before admission.

There will be some savings to beneficiaries as a result of shifting payment for services from Part B outpatient to Part A inpatient rates. Beneficiaries are responsible for 20 percent copayment for non-diagnostic outpatient services. Beneficiaries will not be responsible for copayment if the same services are performed up to 3 days before the date of a hospital admission and are folded into the hospital's inpatient payment. However, because we do not have a breakdown of the cost or type of services that will be included in the inpatient payment, we are not able to estimate the annual savings that will be realized by beneficiaries.

The following table reflects estimated program savings solely as a result of discontinuing separate Part B payment for services performed up to 3 days before the date of admission instead of 1 day, without a corresponding DRG relative weight adjustment for the inpatient stay.

ESTIMATED MEDICARE PART B SAVINGS

[In millions] [1]

FY 1993	FY 1994	FY 1995	FY 1996	FY 1997
$40	$70	$80	$90	$100

[1] Rounded to the nearest $10 million.

As indicated above, we do not anticipate that this new provision will cause a significant change in the timing of services that, until now, have been furnished during the preadmission period.

We are limiting the inclusion of non-diagnostic services, even when furnished on the day before admission, to those that are related to the admission. We believe this interpretation more accurately implements the provisions of the statute. This means that services furnished on the day before admission which are neither diagnostic nor admission-related will no longer be rebundled into the inpatient payment. Further, since the law permits the Secretary to define the types of admission-related services to be included in the payment window, we have determined that it should not include ambulance services, to which special conditions apply. As a Part B benefit, ambulance services (unlike patient transportation services furnished to inpatients) are not bundled with inpatient services, and thus, have not been subject to the attempts to maximize PPS payment through unbundling which prompted Congress to enact the payment window legislation. The unbundling provision may generate a small amount of additional Part B costs; however, as indicated above, we anticipate that the overall degree of change that this provision will produce in existing patterns of service delivery will be minimal.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that an interim final rule with comment period will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we consider all hospitals to be small entities.

This interim final rule with comment period will affect all hospitals that are paid under the prospective payment system, dependent upon the number of additional services that will have to be included in the DRG payment rate. Since the estimated savings represent less than one-half of one percent of total Medicare funding to hospitals, we have determined, and the Secretary certifies, that this interim final rule with comment period will not have a substantial impact on a substantial number of small entities, and we have, therefore, not prepared a regulatory flexibility analysis.

C. Small Rural Hospitals

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if an interim final rule with comment period may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We believe the 3-Day Payment Window provision will affect small rural hospitals to a lesser degree than larger facilities where complex procedures are performed and specialized medical conditions are treated, requiring additional preadmission testing. Therefore, we have determined, and the Secretary certifies, that this interim final rule with comment period will not have a significant economic impact on the operations of a substantial number of small rural hospitals. Consequently, we are not preparing an analysis for section 1102(b) of the Act.

List of Subjects

42 CFR Part 412

Administrative practice and procedure, Health facilities, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR Part 413

Health facilities, Kidney diseases, Medicare, Puerto Rico, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as set forth below:

A. Part 412 is amended as follows:

PART 412—PROSPECTIVE PAYMENT SYSTEMS FOR INPATIENT HOSPITAL SERVICES

1. The authority citation for part 412 continues to read as follows:

Authority: Secs. 1102, 1815(e), 1871, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395g(e), 1395hh, and 1395ww).

Subpart A—General Provisions

2. In § 412.2, the introductory language in paragraph (c) is republished, paragraphs (c)(3) and (4) are revised, and paragraph (c)(5) is added to read as follows:

§ 412.2 Basis of payment.

* * * * *

(c) *Inpatient operating costs.* The prospective payment system provides a payment amount for inpatient operating costs, including—

* * * * *

(3) Special care unit operating costs (intensive care type unit services, as described in § 413.53(b) of this chapter);

(4) Malpractice insurance costs related to services furnished to inpatients; and

(5) Certain preadmission services furnished by the hospital or by an entity wholly owned or operated by the hospital (that is, any entity for which the hospital itself is the sole owner or operator) to the patient during the 3 days immediately preceding the date of the patient's admission to the hospital. A hospital is considered the sole operator of an entity if the hospital has exclusive responsibility for conducting or overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity. The specific preadmission services (other than ambulance services) included in the inpatient hospital operating costs are the following:

(i) Diagnostic services (including clinical diagnostic laboratory tests) furnished on or after January 1, 1991.

(ii) Other services related to the admission furnished on or after October 1, 1991. Other services related to the admission means services (other than diagnostic services) that are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient.

* * * * *

Subpart E—Determination of Transition Period Payment Rates for Inpatient Operating Costs

§ 412.73 [Amended]

3. In § 412.73(c)(1), the phrase "the rate-of-increase percentage determined under § 413.40(c)(2) of this chapter," is revised to read "the rate-of-increase percentage determined under § 413.40(c)(3) of this chapter,".

Subpart G—Special Treatment of Certain Facilities Under the Prospective Payment System for Inpatient Operating Costs

§ 412.98 [Amended]

4. In § 412.98(b), in the first sentence, the phrase "under § 413.40(c)(3) of this chapter" is revised to read "under § 413.40(c)(4) of this chapter".

B. Part 413 is amended as follows:

PART 413—PRINCIPLES OF REASONABLE COST REIMBURSEMENT; PAYMENT FOR END-STAGE RENAL DISEASE SERVICES

1. The authority citation for part 413 continues to read as follows:

Authority: Secs. 1102, 1814(b), 1815, 1833 (a), (i), and (n), 1861(v), 1871, 1881, 1883, and 1886 of the Social Security Act (42 U.S.C. 1302, 1395f(b), 1395g, 1395l(a), (i), and (n), 1395x(v), 1395hh, 1395rr, 1395tt, and 1395ww); sec. 104(c) of Pub. L. 100-360 as amended by sec. 608(d)(3) of Pub. L. 100-485 (42 U.S.C. 1395ww (note)); and sec. 101(c) of Pub. L. 101-234 (42 U.S.C. 1395ww (note)).

Subpart C—Limits on Cost Reimbursement

§ 413.40 [Amended]

2. Section 413.40 is amended as follows:

a. In paragraph (a)(3), in the definition for "net inpatient operating costs", the first sentence is revised.

b. Paragraphs (c)(2) through (c)(4) are redesignated as paragraphs (c)(3) through (c)(5), and a new paragraph (c)(2) is added.

c. In redesignated paragraph (c)(4)(ii), the phrase "unless the provisions of paragraph (c)(4)(ii) of this section apply." is revised to read "unless the provisions of paragraph (c)(5)(ii) of this section apply."

d. In paragraph (i)(3), the phrase "the applicable rate-of-increase percentages (update factors) described in paragraph (c)(2) of this section." is revised to read "the applicable rate-of-increase percentages (update factors) described in paragraph (c)(3) of this section."

The revision and addition are to read as follows:

§ 413.40 Ceiling on the rate of increase in hospital inpatient costs.

(a) * * *

(3) * * *

Net inpatient operating costs include the costs of certain preadmission services as specified in § 413.40(c)(2), the costs of routine services, ancillary services, and intensive care services (as defined in § 413.53(b)) incurred by a hospital in furnishing covered inpatient services to Medicare beneficiaries.

* * *

* * * * *

(c) * * *

(2) *Preadmission services.* Net inpatient operating costs include certain preadmission services furnished by the hospital or by an entity wholly owned or operated by the hospital (that is, any entity for which the hospital itself is the sole owner or operator) to the patient during the 3 days immediately preceding the date of the patient's admission to the hospital. A hospital is considered the sole operator of an entity if the hospital has exclusive responsibility for conducting or overseeing the entity's routine operations, regardless of whether the hospital also has policymaking authority over the entity. The specific preadmission services (other than ambulance services) included in the net inpatient hospital operating costs are the following:

(i) Diagnostic services (including clinical diagnostic laboratory tests) furnished on or after January 1, 1991.

(ii) Other services related to the admission furnished on or after October 1, 1991. Other services related to the admission means services (other than diagnostic services) that are furnished in connection with the principal diagnosis that requires the beneficiary to be admitted as an inpatient.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94-546 Filed 1-11-94; 8:45 am]

BILLING CODE 4120-01-P

42 CFR Parts 435 and 436

[MB-020-FC]

RIN 0938-AB07

Medicaid Program; Deduction of Incurred Medical Expenses (Spenddown)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule with comment period.

SUMMARY: This final rule with comment period permits States flexibility to revise the process by which incurred medical expenses are considered to reduce an individual's or family's income to become Medicaid eligible. This process is commonly referred to as "spenddown." Only States which cover the medically needy, and States which use more restrictive criteria to determine eligibility of the aged, blind, and disabled, than the criteria used to determine eligibility for Supplemental Security Income (SSI) benefits (section 1902(f) States) have a spenddown.

These revisions permit States to: Consider as incurred medical expenses projected institutional expenses at the Medicaid reimbursement rate, and deduct those projected expenses from income in determining eligibility; combine the retroactive and prospective medically needy budget periods; either include or exclude medical expenses incurred earlier than the third month before the month of application (States must, however, deduct current payments on old bills not previously deducted in any budget period); and deduct incurred medical expenses from income in the order in which the services were provided, in the order each bill is submitted to the agency, or by type of service.

All States with medically needy programs using the criteria of the SSI program may implement any of the provisions. States using more restrictive criteria than the SSI program under section 1902(f) of the Social Security Act may implement all of these provisions except for the option to exclude medical expenses incurred earlier than the third month before the month of application.

DATES: These regulations are effective March 14, 1994.

To ensure that comments will be considered, we must receive them at the appropriate address, as provided below, no later than 5 p.m. on March 14, 1994.

ADDRESSES: Mail written comments (original and 3 copies) to the following address: Health Care Financing Administration, U.S. Department of Health and Human Services, Attention: MB-020-FC, P.O. Box 26676, Baltimore, MD 21207.

If you prefer, you may deliver your written comments (original and 3 copies) to one of the following addresses:

Room 309-G, Hubert H. Humphrey Building, 200 Independence Ave., SW., Washington, DC, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission.

In commenting, please refer to file code MB-020-FC. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309-G of the Department's offices at 200 Independence Ave., SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202-690-7890).

FOR FURTHER INFORMATION, CONTACT: Richard Coyne, (410) 966-4458.

SUPPLEMENTARY INFORMATION:

I. Background

States must provide Medicaid to categorical groups of individuals who are eligible to receive cash payments under one of the existing cash assistance programs established under the Social

Security Act (the Act). In addition, States may provide Medicaid to the medically needy; that is, to those individuals who meet the categorical group requirements, have sufficient income to meet basic living expenses and, thus, are ineligible for a cash assistance program but who have insufficient income to pay for medical expenses. Sections 1902(a)(17) and 1903(f)(2) of the Act provide that, for individuals applying as medically needy, certain incurred medical expenses must be deducted from income if income exceeds the eligibility standard established by the State. The process is commonly referred to as "spenddown."

In the medically needy program, the spenddown process currently operates as follows: The State selects one or more medically needy budget periods between 1 and 6 months and a medically needy income level, against which countable income is measured. If countable income, after certain deductions are taken, is equal to or less than the income standard (medically needy income level), the individual (or family) is eligible for Medicaid. If the income is higher than this standard, the individual nevertheless may be eligible for Medicaid if, by deducting incurred medical expenses (i.e., spending down the "excess" income), the income equals or falls below the standard.

Section 1902(f) of the Act contains a similar provision for deduction of incurred medical expenses from income. This spenddown applies to categorically needy and medically needy aged, blind, and disabled individuals in States using more restrictive eligibility criteria than those of the Supplemental Security Income (SSI) program. These States are known as section 1902(f) States. In those States, section 1902(f) of the Act requires that, in determining how much income is to be counted when determining eligibility, the Medicaid agency must deduct from income: (1) any SSI benefit received; and (2) any additional benefit paid by the State. If, after these deductions are taken, income is equal to or less than the State established income standard, the individual is eligible for Medicaid. If income is higher than the standard, the agency must deduct incurred medical expenses from the individual's countable income to determine whether or not he or she is eligible.

States using section 1902(f) criteria may elect to have medically needy programs. Individuals who become eligible for Medicaid by meeting the section 1902(f) spenddown are categorically needy unless the section 1902(f) State has a medically needy program. In section 1902(f) States with medically needy programs, an individual who spends down in order to meet the income test will be either medically needy or categorically needy. If he or she is an SSI or State supplement recipient, or meets the income test for SSI or a State supplement, he or she will be categorically needy. Otherwise, when the individual spends down, he or she will be medically needy. Once a section 1902(f) State elects to use more restrictive standards than those which the State is otherwise obligated to use under title XIX for those who will qualify as medically needy, its spenddown rules are governed by section 1902(f).

The statutory authority behind the general medically needy and section 1902(f) spenddowns is different. Under the general medically needy spenddown in section 1902(a)(17), States must take into account, except to the extent prescribed by the Secretary, the costs incurred for medical care or any other type of remedial care recognized under State law. Under section 1902(f), the spenddown language is broader. That is, the Secretary has not been granted the same authority to impose a limit: States must deduct from an individual's countable income incurred expenses for medical care as recognized under State law. However, section 1902(f) allows States to limit the deductible amount of expenses by recognizing only the limited amount under State law.

All States are currently required by section 1902(a)(34) of the Act to provide Medicaid benefits 3 months prior to the month in which an application is filed, subject to certain conditions. These conditions are that the individual (a) received covered services under the State plan at any time during that 3-month period, and (b) would have been eligible for Medicaid at the time services were received if he or she had applied.

II. Provisions of the Proposed Rule

Summary of Provisions

On September 2, 1983, we published in the **Federal Register** (48 FR 39959) a proposed rule (NPRM) to solicit comments on five sets of proposed changes to spenddown procedures (Provisions A through E, as described below). Our proposals are summarized below.

We proposed that all States with medically needy programs, including those using more restrictive eligibility criteria than SSI under section 1902(f) of the Act, be permitted to choose option A. In the NPRM we specified that a literal interpretation of section 1902(f) of the Act would prevent these States from implementing the remaining options (Provisions B through E).

Provision A—Allow States to Consider Projected Institutional Expenses at the Medicaid Rate as Incurred Medical Expenses

We proposed that all States, including those using more restrictive eligibility criteria than SSI, be permitted to count as incurred medical expenses in calculating whether spenddown requirements are met, projected institutional expenses (not subject to payment by a third party) at the Medicaid reimbursement rate instead of using only the private patient rate, as is currently required.

Provision B—Allow States To Combine Retroactive and Prospective Medically Needy Budget Periods

For those States that choose to have a medically needy program, we proposed the use of more flexible budget periods. These are periods over which an individual's income and medical expenses are compared to the State's medically needy income level to determine whether or not the individual is eligible. Specifically, States would be able to choose a medically needy budget period of up to 6 months that could include all or part of the 3-month period before an application for Medicaid (the retroactive period). Under current regulations, the 3-month retroactive period must be treated separately from whatever prospective budget period is chosen by the State.

Provision C—Permit States To Exclude from Incurred Medical Expenses Those Bills for Services Furnished More Than 3 Months Before a Medicaid Application

Except for current payments on older bills not previously applied in the spenddown process, we proposed that States be permitted to exclude from incurred medical expenses those bills for services furnished more than 3 months before the month of application or redetermination. Current regulations and policy require that States deduct all incurred expenses that an individual incurs before application, regardless of the date of the service, if they have not already been used in another budget period, if the individual is still liable for them, or if the individual has paid for them in the current budget period.

Provision D—Permit States to Apply Incurred Medical Expenses to the Spenddown Process in Chronological Order.

We proposed that States with a medically needy program may deduct incurred medical expenses from income in chronological order, rather than in the order specified in current regulations, which is by type of expenditure. The chronological order the State chooses can be either the order in which the services are furnished, or the order in which the bills are presented to the agency.

Provision E—Allow States To Limit Deductible Medical Expenses to Services Covered Under the State Plan

We proposed to allow States to exclude services that are not covered in their State plan from incurred medical expenses, except for Medicare and health insurance premiums, Medicaid deductibles, copayments or similar cost-sharing charges imposed by health insurance. Current regulations require that States deduct all incurred medical expenses recognized under State law that are not subject to payment by a third party.

Revision of NPRM Scope

We have decided to withdraw Provision E from all States. We explain our reasons under the analysis and response to public comments section of this preamble.

III. Analysis and Response to Public Comments

In response to our request for comments on the September 2, 1983, NPRM, we received 107 letters, 32 from client advocacy groups, 26 from individuals, 18 from providers or provider organizations, 15 from State governmental agencies, 13 from legal advocacy groups, and 3 from religious affiliated groups. The specific comments are grouped according to the five provisions identified in the NPRM.

Comments on Specific Provisions of the NPRM

Provision A—Allow States to Consider Projected Institutional Expenses at the Medicaid Rate as Incurred Medical Expenses

It should also be noted that Provision A does not govern implementation of section 1929(b)(3) of the Act, which permits States to project medical expenses in determining eligibility for medical assistance for home and community care under section 1929. Regulations governing section 1929 will be published separately.

Comment: Several commenters objected to Provision A, believing that allowing States to project institutional expenses at the Medicaid rate contravenes the law. They believe that since the law requires accounting for "incurred" expenses and since expenses are incurred at the private patient payment rate, a projection of expenses, as a part of accounting for incurred expenses, should only be at the private patient payment rate.

Response: We do not agree with the commenters. In the preamble to the NPRM, we noted that "[i]t is currently permissible for States to project anticipated institutional expenses at the private patient rate" but that we were proposing to revise regulations to also "provide that States may count institutional expenses (not subject to payment by a third party) at the Medicaid reimbursement rate instead of the private payment rate in calculating spenddown." (48 FR 39960). As discussed in more detail below, we have analyzed the issue further and have concluded that it is inappropriate to project expenses at the private patient payment rate.

First, the spenddown rules in sections 1902(a)(17) and 1902(f) of the Act provide for reducing income by "incurred" expenses (i.e., expenses for which the individual is liable). Under these provisions, the Secretary does not have to allow States to project any expenses since projection involves treating an expense as incurred before the liability arises. However, States are permitted to project expenses under the Secretary's general rulemaking authority in sections 1102 and 1902(a)(4) of the Act because projection may be necessary for the efficient operation of the Medicaid program.

The assumption underlying the projection of expenses is that liability for the expenses will subsequently arise since only the amounts for which the individual is ultimately liable can be used to reduce income. However, when the private patient payment rate is higher than the Medicaid rate and expenses are projected at the private payment rate, liability for the projected expenses may not actually arise. That is, once expenses are projected and spenddown liability is met, the provider may charge expenses only at the Medicaid rate as specified in § 447.15. Thus, expenses projected at the private payment rate will actually be incurred at the Medicaid rate, and the State will need to reconcile the amounts accordingly. This reconciliation would make the projection at the private payment rate less efficient than if the projection were done initially at the Medicaid rate. Further, when expenses ultimately incurred at the Medicaid rate are insufficient to meet the person's spenddown liability, the determination of eligibility would have been in error. Only using the Medicaid rate to project expenses avoids these problems. Therefore, we are allowing projections only at the Medicaid reimbursement rate.

Comment: A number of commenters argued that the use of the Medicaid reimbursement rate is arbitrary and generally less than the private rate.

Response: States are required by section 1902(a)(13)(A) of the Act to pay for long-term care services using rates that are reasonable and adequate to meet the costs that efficiently and economically operated facilities must incur to provide care that conforms to applicable State and Federal laws, regulations, and quality and safety standards. We are clarifying in these final regulations at §§ 435.831(g)(1), 435.831(i), 436.831(g)(1), and 436.831(i) that States may project institutional expenses only at the Medicaid rate.

Comment: Many commenters were concerned that if a State uses the Medicaid rate rather than the private rate in the spenddown process, it could take longer to reduce excess income using the usually lower Medicaid rate. Thus, it would delay eligibility. A number of commenters were concerned that certain individuals may have insufficient income to pay the private institutional rate, yet have income in excess of the Medicaid reimbursement rate.

Response: As we proposed, an individual is eligible whenever incurred medical expenses, including projected institutional expenses, equal or exceed the individual's excess income over the State's income standard. (The amount of income exceeding the State's income standard is referred to as an individual's spenddown liability.) In some instances the amount of projected institutional expenses at the Medicaid rate may not be enough to meet the individual's spenddown liability. In that case, the individual remains ineligible. However, the individual will become eligible when actually incurred institutional expenses at the private rate reduce income enough to establish eligibility.

As indicated in response to an earlier comment, the State Medicaid rate is the appropriate amount to use in projecting expenses because it reduces the need to reconcile projected and actually incurred expenses and helps to avoid erroneous determinations of eligibility. If an individual is not eligible because his or her spenddown liability exceeds institutional expenses projected over the

budget period at the Medicaid rate, the State must determine eligibility based on deducting actually incurred institutional expenses or based on a combination of expenses actually incurred at the private payment rate and remaining expenses projected at the Medicaid rate. (If eligibility results and eligibility is retroactive to the first day of the month because the State provides coverage in whole months, expenses incurred at the private payment rate prior to the determination of eligibility remain valid. Ordinarily, a participating provider may charge an eligible individual no more than the Medicaid rate. However, these charges need not be adjusted since the charges were incurred at the private payment rate and since the charges were part of expenses needed to qualify the individual for Medicaid under the spenddown. Otherwise, the adjustment could result in the individual no longer being eligible for Medicaid during the month. Furthermore, unless required under State law or the terms of the State's provider agreement, Medicaid providers need not accept all Medicaid eligible individuals as Medicaid patients. Thus, during the period prior to the determination of Medicaid eligibility, the provider could be viewed as only accepting the patient as a private payment patient. Charges incurred after the determination of eligibility may not exceed the Medicaid rate.)

Example: The individual is in the institution as of the first day of the month. The monthly spenddown liability is $1,500. The projected Medicaid rate for the month is $1,200 ($40 per day). The private rate is $1,800 per month ($60 per day). Since projected monthly expenses at the Medicaid rate ($1,200) are not sufficient to meet the spenddown liability ($1,500), the individual is not eligible. However, after remaining in the institution for 15 days the individual has actually incurred expenses of $900 at the private rate ($60 × 15 days). The projected institutional expenses at the Medicaid rate for the remaining days in the month are $600 ($40 × 15 days). Thus, as of the 15th day of the month the combination of actually incurred bills ($900) plus projected expenses at the Medicaid rate ($600) equal the spenddown liability ($1,500) and the individual is eligible.

Comment: Several commenters expressed concern that institutional providers that admit individuals at the private rate will be paid only at the usually lower Medicaid rate. This payment differential may have negative effects, both on providers and beneficiaries. Providers will receive less compensation under the proposal, and it may cause providers to admit fewer potential Medicaid patients.

Response: It is not clear why the commenters believe that institutional providers will be paid less as a direct result of the policy to require States to project expenses at the Medicaid payment rate. Providers can charge patients at the private payment rate for expenses incurred prior to the determination of Medicaid eligibility when spenddown liability was unmet. The individual is responsible for the full amount of those charges. Providers do not have to accept the Medicaid rate until after the individual becomes eligible. Therefore, by using the lower Medicaid rate, there may be a delay in meeting spenddown. This delayed eligibility could actually entitle providers to the higher rate for a longer period.

Comment: Some commenters objected to the exclusion of expenses incurred in an acute care facility when considering projection of institutional expenses in spenddown.

Response: As noted in the NPRM, we excluded projection of expenses in acute care facilities because these expenses are not as recurring and predictable as are expenses in long-term care facilities. We believe that it is not as easy to anticipate the cost of a stay in a hospital or to predict when it may occur as it is to anticipate long-term care costs. While acute care facility expenses may not be projected, they are valid medical expenses and may be deducted from excess income in spenddown when they actually occur.

Comment: A number of commenters suggested that the regulations be revised to include actually incurred institutional expenses in addition to projected institutional expenses.

Response: There was no intention on our part to exclude actually incurred institutional or other medical expenses from spenddown. Actually incurred (past) institutional expenses may be deducted along with projected (future) additional institutional expenses. In view of the comments indicating confusion on this point, we are revising paragraph (i) in both §§ 435.831 and 436.831 of the final regulations to clarify this.

Comment: Several commenters pointed out that eligibility begins not on the first day of institutionalization as indicated in the NPRM, but on the day on which an individual incurs medical expenses (including projected institutional expenses) equal to or exceeding the spenddown liability.

Response: We generally agree with these comments. In States that elect partial month coverage, the first day of eligibility is the day that deduction of incurred medical expenses reduces income to the income standard. In States with full month coverage, eligibility begins on the first day of the month in which spenddown liability is met. However, a State may not begin eligibility later than the beginning of the budget (spenddown) period if the individual is subject to the post-eligibility process and, under the post-eligibility process, would owe the provider more than the individual has in contributable income. This issue can occur when the State uses either a monthly budget period or a multi-month budget period. We are revising paragraph (i) (paragraph (e) in the NPRM) in both §§ 435.831 and 436.831 of the regulations to reflect these points. (It should be noted that regardless of when eligibility begins in a budget period, expenses used to meet spenddown liability are not reimbursable under Medicaid. Since these expenses may be deductible from income in the post-eligibility process under the requirements of section 1902(r)(2) of the Act, States may need to reduce the otherwise reimbursable amount of provider charges by spenddown expenses to prevent the transfer of spenddown liabilities to the Medicaid program. The three examples in the response to the fifth comment below show in detail how the spenddown and post-eligibility policies interact in these cases.)

We considered beginning eligibility in all cases on the first day of the budget period in which spenddown liability is met. However, this option could increase State administrative burdens without advantaging recipients in cases not covered by the exception in §§ 435.831(i)(3) and 436.831(i)(3). Many States use eligibility and claims payment systems that are automated to pay claims beginning with the date of eligibility. These States would have to weed out bills from the first day of the budget period (up to 6 months before) that were used to meet spenddown liability to ensure that their automated systems do not pay those bills. Under these rules, no such weeding is required in States that begin eligibility with the day spenddown is met. (Note that these States would have to begin eligibility on the first day of the budget period in cases where the individual, in the post-eligibility process, would otherwise owe the provider more than he or she has in contributable income.) In States that provide coverage in whole months, weeding is required only from the first day of the month in which spenddown is met to the day spenddown is met. The failure of the individual to identify all of his or her incurred expenses before the spenddown determination is made can have an adverse effect on the date of the individual's eligibility. In these cases, States may, but are not required to reopen the spenddown determination and take the additional expenses into account. (For individuals in partial-month coverage States who are subject to the post-eligibility process for the partial month, income and income deductions (e.g., the personal needs allowance) should be prorated in the post-eligibility process to reflect the number of days of eligibility.)

Comment: Some commenters advocated permitting States to project copayments, deductibles, and insurance premiums in addition to projecting institutional expenses. Other commenters argued that States should be permitted to deduct any projected medical expense that is predictable.

Response: This provision is intended to cover only projection of long-term care institutional expenses, at the Medicaid reimbursement rate, as they are constant and predictable.

We believe expenses mentioned in the comment such as deductibles or coinsurance, which are generally associated with the utilization and varying costs of other medical services, are difficult to predict. Because of the difficulty in determining what kinds of care, and what amounts, are predictable, we have limited the application of this provision to long-term care institutional expenses. Regardless of whether States implement this provision, they are still required to deduct actually incurred copayments, deductibles and insurance premiums in spenddown. We further discuss State flexibility concerning copayments and deductibles under the comments and responses on Provision E.

Comment: Several commenters asked how a State would apply the projection of institutional expenses option if it also chooses to combine the retroactive and prospective budget periods under Provision B.

Response: If the budget period includes part or all of the 3-month retroactive period, institutional and other medical expenses actually incurred during that portion of the retroactive period would be added to projected institutional expenses in the prospective period. An individual is eligible if the combined total of actually incurred plus projected medical expenses equals or exceeds his or her spenddown liability for the budget period.

Comment: Commenters suggested that we revise the regulations to clarify that States may continue to use a 1-month budget period for institutional cases.

Response: We agree that a clarification to the proposed regulations is needed on this point. In regard to medically needy eligibility, the proposed regulations at §§ 435.831 and 436.831 specify that, "[t]he agency must use a budget period of not more than 6 months to compute income." It is clear that any budget period between 1 and 6 months may be used. However, it was not clear in the proposed rule that a State may use more than one budget period.

For example, under the proposed rule, a State may use a 6-month budget period for all medically needy individuals. Or, the State may use one budget period for institutionalized individuals in long-term care facilities (e.g., 1 month), and another for noninstitutionalized individuals. A third option would be for a State to use different budget periods for different groups of institutionalized individuals or use different budget periods for different groups of noninstitutionalized individuals.

We believe States should have the flexibility to prescribe different spenddown periods to simplify the administration of their Medicaid programs. For example, for effective and efficient administration in cases where the individual is institutionalized, the State may wish to use the same time period for determining spenddown liability that the State uses to determine the Medicaid contribution toward the cost of care. Allowing States to prescribe the spenddown period in these cases permits States to align the budget period used for spenddown purposes with the budget period used in the post-eligibility process. Thus, a State that uses a 6-month period for determining medically needy spenddown liability for noninstitutionalized individuals and a 1-month period for determining contributions toward the costs of care for the institutionalized may wish to begin new 1-month spenddown periods for medically needy recipients who become institutionalized. Alternatively, the State may wish to determine contributions toward the costs of care in 6-month periods to coincide with the 6-month medically needy spenddown period used. In either situation, administrative simplification could be achieved in some cases by using the same income calculation for both the determination of spenddown liability and the determination of the contribution toward the costs of care. However, if a State imposes different spenddown budget periods in different situations, the variations should have general application and not be applied on an individual-by-individual basis, and the variations should be based on reasonable standards. We are clarifying this point in the regulations by revising §§ 435.831(a) and 436.831(a) to specify that States are not limited to the use of a single budget period, but must use budget periods of not more than 6 months to compute income.

Comment: Several commenters asked for clarification on how projection at the Medicaid reimbursement rate will be used by a State when an individual enters an institution during the month rather than on the first day of the month.

Response: As noted in the response to an earlier comment, actually incurred institutional and other medical expenses are added to projected institutional expenses during a budget period. If the combined total of these expenses exceeds an individual's spenddown liability, the individual is eligible on the day that liability is met (or on the first day of the month in full-month coverage States or, if the exception in §§ 435.831(i)(3) and 436.831(i)(3) applies, on the first day of the budget period whether the State uses a monthly budget period or a multi-month budget period). Thus, depending on individual circumstances, an individual could be eligible on the first day of the budget period, on the first day of institutionalization occurring on or after the first day of the budget period, or at some other time during the budget period, as illustrated by the following examples.

Example 1. The individual enters the institution on the 16th of the month. The monthly spenddown liability is $500. The projected institutional expenses at the Medicaid rate to the end of the month are $800 ($1,600 monthly rate). The individual has also incurred $600 in other medical expenses before the month of application, which remain the individual's current liability. Because the individual has $600 of other medical expenses, the spenddown is met on the first day of the monthly budget period (before the first day of institutionalization).

Example 2. The facts are the same as in Example 1 except that the individual has no previously incurred medical expenses, only institutional expenses. In this case based on projection of expenses at the Medicaid rate, the individual may become eligible on the first day of institutionalization (the 16th of the month). (Although the State may be a full-month coverage State, retroactivity to the first day of the month would have no effect because the individual has no previously incurred medical expenses.)

Example 3. The individual enters the institution on the 16th of the month. The monthly spenddown liability is $900. The projected institutional expenses at the Medicaid rate to the end of the month are $800 (one-half of the $1,600 monthly rate).

The individual has no other expenses at this time. Based on projection of institutional expenses at the Medicaid rate, the individual does not meet spenddown. Thus, the individual will not be eligible on the 16th of the month. The individual may become eligible at a later time during the month should the amount of actually incurred and any remaining projected expenses (e.g., the amount after application of any reasonable limits established by the State) equal or exceed the spenddown liability. In such a case, eligibility would still be retroactive to the first day of the month in full-month coverage States. (When a combination of incurred and projected expenses is used, "remaining projected expenses" does not include any expenses that have already been incurred. Further, any expense used to meet spenddown liability is not reimbursable under Medicaid.)

Comment: Commenters asked how income would be applied to the cost of care after an individual is determined eligible when the Medicaid rate is used instead of the private payment rate.

Response: There is no change in the treatment of income once an individual is eligible for Medicaid. Regulations at 42 CFR 435.725, 435.733, 435.832 and 436.832 specify how an eligible individual's income is to be applied to the cost of institutional care. For clarification, we provide some examples.

Example 1: An individual's monthly income for post-eligibility purposes is $925. The monthly Medicaid rate is $1,000. The monthly spenddown liability is $600. The individual is in the institution as of the first day of the month. Since the projected monthly Medicaid rate ($1,000) exceeds the monthly spenddown liability ($600), the individual is considered eligible on the first of the month. Thus, the posi-eligibility treatment of income rules apply. First, to account for the individual's responsibility for $600 in spenddown liability, the State should consider as a starting point for the amount it will pay to the institution only $400 of the $1,000 in institutional charges. However, from the individual's $925 in income, the State would deduct $630 ($30 protected for personal needs and $600 in unreimbursable medical expenses reflecting the individual's spenddown liability). (Income also would be protected for the maintenance of the individual's spouse and family under specified circumstances and, at the option of the State, for the maintenance of the individual's community home.) This leaves $295 in income that can be contributed toward the $400 in institutional charges taken into account in the post-eligibility process. Thus, of the original $1,000 bill, the Medicaid program would contribute $105 ($400—$295) and the individual would contribute $695 ($600 in spenddown liability plus $295 determined in the post-eligibility process).

Example 2: The State uses a 3-month budget period. Eligibility is being determined for the last quarter of the year. The individual's monthly income for post-eligibility purposes is $910 ($2,730 for the quarter). The 3-month Medicaid rate is $3,720 ($40 per day × 31 days per month × 3 months). The 3-month spenddown liability is $2,250 ($750 per month). The individual is in the institution as of the first day of the quarter (October 1). Since the projected Medicaid rate for the quarter ($3,720) exceeds the spenddown liability for the quarter ($2,250), the individual is eligible on the first day of the quarter. Thus, the post-eligibility treatment of income rules apply.

First, the State would begin eligibility with, and apply the post-eligibility rules for, the same 3-month period used in the spenddown calculations. (The State may begin eligibility with the month or day spenddown liability is met, if later, and apply the post-eligibility rules for the shorter period only if the later date does not cause the individual's share of the institutional charges for the spenddown period to exceed the individual's contributable income for the period.) To account for the individual's responsibility for $2,250 in spenddown liability, the State would consider as a starting point only $1,470 of the $3,720 in institutional charges. However, from the individual's $2,730 in income, the State would deduct $2,340 ($90 protected for personal needs for the quarter and $2,250 in unreimbursable medical expenses reflecting the individual's spenddown liability). (Income also would be protected for any other allowable deductions.) This leaves $390 in income that can be contributed toward the $1,470 in institutional charges taken into account in the post-eligibility process. Thus, of the original $3,720 in charges, the Medicaid program would contribute $1,080 ($1,470 − $390) and the individual would contribute $2640 ($2,250 in spenddown liability plus $390 determined in the post-eligibility process).

Example 3: An individual's monthly income for post-eligibility purposes is $1,820. The monthly Medicaid rate is $1,200 ($40 per day), and the private rate is $1,800 ($60 per day). The monthly spenddown liability is $1,500. The individual is in the institution as of the first day of the month and the State projects institutional expenses at the Medicaid rate.

Since projected monthly expenses as of the first day of the month at the Medicaid rate ($1,200) are not sufficient to meet the spenddown liability ($1,500), the individual is not eligible. However, after remaining in the institution for 15 days the individual has actually incurred expenses of $900 at the private rate ($60 × 15 days). The projected institutional expenses at the Medicaid rate for the remaining days in the month are $600 ($40 × 15 days). Thus, as of the 15th day of the month, the individual is eligible and the rules on post-eligibility treatment of income apply.

The same post-eligibility procedure described in Examples 1 and 2 apply to Example 3. Since the individual has $900 in actually incurred expenses and another $600 in projected expenses, the individual has met the spenddown liability of $1,500. However, because the individual remains liable for the $1,500 in institutional charges, reimbursable institutional expenses are reduced to zero. Therefore, no additional steps apply in the post-eligibility process. The individual would be expected to use $1,500 of his or her $1,820 in income to cover institutional charges, leaving the individual with $30 earmarked for personal needs and $290 for discretionary use.

It should be noted that if the individual were to incur additional noninstitutional health care expenses during the period of Medicaid eligibility, the State, at its option, can have the individual contribute more of his or her discretionary income toward total health care costs included in the State plan This can be done by substituting the noninstitutional expenses (for which the State would otherwise pay) for a corresponding amount of projected institutional costs in the spenddown calculation. The individual becomes liable for the noninstitutional expenses as part of his or her spenddown liability and has to contribute remaining discretionary income toward the replaced institutional costs under the post-eligibility calculation.

For example, assume that the individual in this example incurs $200 in noninstitutional physical therapy expenses included in the State plan and the State substitutes those expenses for $200 of the $600 in projected institutional charges. The individual's spenddown liability of $1,500 is now composed of $900 in actual institutional charges, $400 in projected institutional charges, and $200 in physical therapy expenses. The otherwise reimbursable institutional charges of $1,500 are then reduced to $200 to offset the $1,300 in institutional charges that are deductible from income. Under the post-eligibility procedures, the individual would have $290 that can be contributed toward the cost of care ($1,820 total income, less $1,500 in unreimbursable health care expenses, less $30 projected for personal needs) and, thus, would be responsible for the $200 in reimbursable institutional charges. The individual is now responsible for $1,700 (instead of $1,500) in health care costs ($1,300 in institutional charges used to meet spenddown liability, $200 in noninstitutional physical therapy expenses used to meet the spenddown liability, and $200 in institutional charges under the post-eligibility process). This leaves the individual with $90 in discretionary income instead of $290, with Medicaid paying $200 less.

Comment: Commenters requested clarification on how to apply the projection option when an individual leaves the institution before the end of the budget period: if eligibility is based on projected institutional expenses that are, in part, not actually incurred, how would a State handle this?

Response: This would be treated by a State as a change of circumstances. Whenever a change of circumstances occurs during a budget period, a State is required by regulations at § 435.916 to make a redetermination. The State should be alert for other changes in circumstances (e.g., changes in levels of

institutional care) that could affect the projected amount of expenses and make any necessary redeterminations.

Comment: Commenters asked that we clarify how projection of institutional expenses would operate when a third party is responsible for payment of a portion of an individual's institutional care. For example, if the first 60 days of institutionalization are paid by a third party, could those expenses be counted as a deduction from an individual's income under the spenddown process?

Response: Except for the legislative change discussed in the note below, we have made no changes to the policy on treatment of expenses for which there is third party liability. Thus, in these final rules, as proposed (§§ 435.831(d) and 436.831(d)), we continue existing policy that only incurred medical expenses that are not subject to payment by a third party may be deducted from income. In the above comment's example, expenses for the first 60 days of institutionalization, for which a third party is liable, are not allowable deductions under this provision or under existing regulations.

Note: Under 1987 legislation, States are required to deduct health care expenses reimbursed under another State or local public program. This amendment will be dealt with more fully in separate regulations.

Comment: Several commenters thought that the provision for projection of institutional expenses at the Medicaid rate would be difficult to administer. They added that if there are many changes in the Medicaid rate, States would be required to reassess eligibility.

Response: As discussed in response to an earlier comment, we have concluded that the Medicaid rate is the only appropriate rate to use for projecting institutional expenses. If a State finds projecting at the Medicaid rate undesirable, the State may discontinue the practice of projecting expenses and instead, use expenses as they are actually incurred.

Comment: Several commenters expressed the opinion that the potential economic impact was greater than what we estimated in the NPRM and the commenters believe that we should develop regulatory impact and/or regulatory flexibility analyses.

Response: We reviewed our estimates in light of the commenters' criticisms and concluded that the impacts of the provision are not such as to require regulatory impact or regulatory flexibility analyses. We acknowledge that these provisions will result in some economic effects. However, we do not believe that the impacts will approach the amounts (e.g., $195 million for provision "A" alone) that some of the commenters estimated. Further discussion about our estimate is included in section V (Regulatory Impact Statement) of the preamble.

Provision B—Allow States To Combine Retroactive and Prospective Medically Needy Budget Periods

Comment: Some commenters questioned the statutory basis for this revision. They asked whether the statute gives us the authority to make this option available to States.

Response: We base our revisions to the medically needy budget period on section 1102 of the Act, which gives the Secretary general authority to adopt rules necessary for the efficient operation of the Medicaid program, and section 1902(a)(17) of the Act, which authorizes us to prescribe standards for determining eligibility for Medicaid consistent with the objectives of the program and is also the authority for the medically needy spenddown program. We also base our revisions on section 1902(a)(34) of the Act, which mandates and describes the 3-month retroactive period for an individual who was (or upon application would have been) eligible for such medical assistance at the time care and service were furnished in the retroactive period. If a State uses a 6-month budget period, when it looks at the eligibility of an individual had he or she applied at a particular time, it would look at 6 months' worth of income. The regulation permits States to view section 1902(a)(34) of the Act in this manner, rather than considering the retroactive period as a special and discrete period.

Comment: Some commenters opposed this provision because, in their view, combining the retroactive and prospective eligibility periods violates comparability requirements between the medically needy and categorically needy in section 1902(a)(17) of the Act, since the combined eligibility period affects only the medically needy.

Response: We disagree with the commenters' views. We believe that comparability requirements are not violated because the Act contains different requirements for categorically and medically needy groups. This position was upheld by the Supreme Court in the *Atkins* v. *Rivera* decision (477 U.S. 154 (1986)). The Court found that the length of the medically needy budget period (or spenddown period) was not required by comparability to be the same as the budget period used for the categorically needy.

Comment: Some commenters argued that combining the retroactive period with the prospective period results in a potentially longer budget period, which means that individuals must incur medical expenses over a longer period of time. Few providers are willing to extend credit over, for example, a 6-month period.

Response: The proposed combined budget period can be no longer than the prospective period allowed under the existing requirements specified in §§ 435.831 and 436.831. Presently, the prospective period may be no more than 6 months in length. The proposal, depending on State choices, may result in a combined budget period of 2 to 6 months. Thus, the combined budget period can be no longer than the maximum (6 month) period permitted under existing regulations.

Comment: Several commenters asked how States would apply this provision when a prospective budget period would not apply. For instance, if an individual dies after filing an application for Medicaid, and has unpaid medical bills in the 3-month period before the application was filed, there is no prospective period.

Response: When there is no prospective period because the individual dies before the prospective period could begin, eligibility would be determined for the three month retroactive period only. This is consistent with our policy for terminating a wholly prospective budget period when a recipient dies. In cases where an individual dies after the prospective period has begun and the State has elected to combine the retroactive and prospective period, the combined period would terminate with the death of the recipient. In still other cases where the individual, though alive, seeks eligibility only for the retroactive period in a State that has elected to combine the retroactive and prospective period, the combined period would still be used to determine eligibility. States, under policies of general applicability, may treat the entire retroactive period as one budget period or divide the retroactive period into monthly budget periods. Any portion of the retroactive period may be added to the first prospective period for a combined period not to exceed 6 months.

Comment: Some commenters suggested that we revise the regulations by clarifying that the combined budget period would not automatically include the entire 3-month retroactive period if the individual has no medical expenses in that period.

Response: The commenter is correct that an individual may be determined eligible for Medicaid in the 3-month

period before the month of application only if an individual received covered services under the State plan at any time during that period and would have been Medicaid eligible at the time services were received if he or she had applied. This is based on section 1902(a)(34) of the Act and regulations at § 435.914. This principle is very clearly specified in § 435.914. However, we have revised §§ 435.831(a) and 436.831(a) to clarify that the retroactive budget period begins no earlier than the first month in the 3-month retroactive period in which the individual received covered services.

Comment: Many commenters opposed the revision to permit States to combine the retroactive period with the prospective period because States are permitted to consider an individual's income over a longer period, potentially 6 months, rather than just the 3 months of the retroactive period. Under the existing rule, an individual who was, for example, hospitalized and out of work for a 3-month period could apply for Medicaid after he or she had returned to work and have eligibility determined solely on the 3-month period before application when no income was received. If the individual met other eligibility requirements, that individual could have been eligible. Under the proposal, and these final rules, States have the option to consider income over an additional 3-month period extending from the date of application. When a longer budget period is used, greater income is available to the individual and, when measured against the State's income standard, that same individual might not be eligible for Medicaid.

Response: Individuals may apply for Medicaid to cover high medical expenses that are incurred during a very short period of time, as in the above example, in the 3-month period before an application, or they may wish to cover expenses incurred over a longer period. We believe that it is appropriate to consider available income over a longer period than just a period when acute illness may affect a person's employment or other income. Therefore, we believe the option for States to select the use of a combined budget period is appropriate.

Comment: Several commenters asked why we are making these revisions when they know of no evidence that individuals abuse the current system by manipulating the timing of an application for Medicaid to suit their needs.

Response: We agree that it is difficult to document the extent to which individuals may be abusing the existing system. The potential for abuse exists, however, and we believe States should have the flexibility to control it if it occurs.

Comment: A number of commenters advocated giving individuals the option to choose the start of the budget period, rather than giving the State that option. The commenters were concerned that a State might begin the budget period in the retroactive period, counting income received in such period, when the individual may have had no covered expenses in the period. The commenters believe that the individual should have the option of restricting the budget period to the first month in the retroactive period in which covered services were received.

Response: As discussed in response to an earlier comment, we have revised §§ 435.831(a) and 436.831(a) to clarify that the retroactive period begins no earlier than the first month in the period in which covered services were received. Therefore, there is no need for the individual to elect such a restriction.

Comment: Some commenters believed that the current method of separating the retroactive period from the prospective period is easier to administer than the proposed method of combining the two periods.

Response: Since this provision is optional, States may select whichever method is easier for them to administer.

Comment: Some commenters suggested that we require the use of a monthly budget period instead of a flexible period from 1 to 6 months.

Response: Existing regulations, §§ 435.831 and 436.831, permit States to select a prospective budget period extending from 1 to 6 months. Administrative flexibility for States was a major consideration in proposing revisions to the budget period. It is our view that requiring the use of a monthly budget period not only restricts State flexibility from that currently existing, but requires that a State spend more time evaluating eligibility. Of course, States that prefer the use of a 1-month period may continue to use it. Therefore, we have decided to retain the flexible budget period as proposed.

Provision C—Permit States To Exclude From Incurred Medical Expenses Those Bills for Services Furnished More Than Three Months Before a Medicaid Application

Comment: Several commenters noted that the Act does not place a limit on the age of bills for medical expenses to be deducted from income in the spenddown process, nor does it authorize us to place limits on the age of bills.

Response: We agree with the commenters with respect to States that elect to use the eligibility criteria prescribed in section 1902(f) of the Act. Under that provision, States are required to deduct incurred expenses without regard to when the expenses were incurred. However, as noted in the NPRM, section 1902(a)(17) of the Act gives us the authority to prescribe the extent to which costs of medical care may be deducted from income when determining Medicaid eligibility. We believe this authority permits us to place limits on the age of medical bills to be applied to the spenddown process in States that do not elect to use the more restrictive eligibility criteria permitted under section 1902(f) of the Act. We have decided to use the authority to set limits on the bills which must be taken into account by authorizing States to adopt certain limits on which bills will be taken into account.

Comment: A few commenters opposed this provision because it appears to penalize individuals when providers do not promptly furnish bills. These commenters suggested that expenses cannot be deducted from income until the provider's bill is received. One commenter suggested that we revise the regulations to specify that the age of the expense is measured by the billing date rather than the date the service was furnished.

Response: We believe that it would be reasonable for States to use the date the service was furnished if the individual incurred (that is, became liable for) the expense at that time. We do not believe that individuals will be penalized for delays in billing by providers because other documentation could be furnished to verify that expenses were incurred. For example, a State could verify an expense by telephoning the provider. A State may presume that liability arises when services are rendered unless evidence is presented to the contrary. In such a case, the State should determine when the liability arose and use the resulting date.

We are persuaded, however, by numerous comments on this issue that a rigid 3-month limit on deductible medical bills would restrict rather than enhance State flexibility. Note that the existing regulations and interpretations specify that States must deduct all medical expenses incurred before application, no matter how far back in time the expenses are incurred if they have not already been used in another budget period, if the individual is still liable for them, or if the individual has paid for them in the current budget period. We are modifying §§ 435.831(d)(5) and 436.831(d)(5) of the proposed regulations, redesignated in these final regulations as §§ 435.831(g)(2) and 436.831(g)(2), to specify that in determining deductible incurred medical expenses, States have the option to include (or exclude) expenses incurred earlier than the third month before the month of application. The period chosen by the State must be specified in the State plan. We are also clarifying in new §§ 435.831 (f)(2) and (f)(4) and 436.831 (f)(2) and (f)(4) that expenses must be deducted in any spenddown calculation for the retroactive eligibility period if the expenses were incurred in the retroactive period, were a current liability of the individual in the period for which the spenddown calculation is made, and had not been previously deducted from income in establishing Medicaid eligibility.

Comment: Some commenters objected to this provision on the basis that it is not any easier for States to administer than the existing provisions. Under the proposal, States must continue to assure that bills are applied no more than once in meeting the spenddown liability, and that a bill remains the current liability of an individual.

Response: As we mentioned before, since this revision is optional, States may choose either to use it or retain the existing method. There are certain advantages, however, to applying a limit to the age of medical bills. Limiting bills to expenses incurred no more than 3 months before the month of application (or the age established by the State, as discussed earlier) reduces the burden on the State of proving that a bill is no longer an individual's current liability. Bills older than the State set age limit would not generally be applied in spenddown whether or not an individual remains liable for the bill.

Comment: Commenters pointed out that States often find that it takes more than 3 months to determine the extent of liability when a third party is responsible for a medical bill. The commenters suggested that these bills be dated from the point at which liability is determined.

Response: We acknowledge that there may be a delay in determining the extent of the individual's liability when a third party may be liable for some or all of the expenses. However, we do not agree that the State should change how it determines the age of a bill as a result. As we explained in response to an earlier comment, the age of a bill is measured from the date the expense is incurred—that is, the date the liability arises. (We have clarified in new §§ 435.831(d) and 436.831(d) that an expense is incurred on the date liability for the expense arises.) The date of the determination of the extent of the individual's liability is treated as the date the individual's liability begins. That is the date from which the age of the individual's expenses is measured. We see no reason why the State should use any other date.

When a third party may be liable for part or all of an expense, any portion of the expense that can be attributed to the individual with reasonable certainty should be treated as the individual's liability and included in the spenddown calculation pending the final determination of third party liability. When there is a reasonable question of the extent of the third party's liability, the State may, but is not required to, include the questionable portion in the spenddown calculation on an interim basis pending the final determination of liability. In either case, the date the individual incurs the expense in question is the date of the determination that there is no third party liability for the expense or, if earlier, the date that the State elects to include the questionable amount in the spenddown calculation pending the determination of third party liability. When there is a determination of third party liability for the expense, the amount in question is excluded (retroactively, if necessary) in spenddown calculations.

Comment: Commenters suggested that we use the phrase, "3 months before the month of application", rather than "3 months before the date of application".

Response: We agree with the commenters as this is a more flexible approach. Therefore, we are revising proposed §§ 435.831(d)(5) and 436.831(d)(5), designated as §§ 435.831(g)(2) and 436.831(g)(2) in the final rule, to specify that States may include bills incurred earlier than 3 months before the month of application.

Comment: Some commenters thought that the use of a 3-month period is arbitrary.

Response: Under section 1902(a)(17) of the Act, we have authority to prescribe the extent to which costs of medical care may be deducted from income. We believe that permitting States to limit the applicability of medical expenses to the 3-month period before the month in which a Medicaid application is filed or to include earlier expenses is reasonable in that it affords States some administrative relief, while recognizing that individuals may be liable for old bills. It also corresponds to the 3-month period in section 1902(a)(34) of the Act and, therefore, is not arbitrary. We believe that Congress' decision to restrict the retroactivity of eligibility to 3 months provides a suitable guideline for determining how far back States should be required to look in accounting for incurred health care expenses since both cases reflect efforts to provide a measure of coverage for services received before application is made for medical assistance.

Comment: Commenters were concerned that this provision penalizes individuals who, in trying to pay their own medical bills, may not apply for Medicaid until they are far behind in payments, often more than 3 months after the bills were incurred. Commenters suggested that we revise the regulations so that an individual may deduct an entire bill older than 3 months if the individual verifies that he or she is still liable for the bill.

Response: By permitting an individual who actually makes payment on old bills to deduct the amount paid toward the spenddown, the regulation addresses an objective of section 1902(a)(17) of the Act for the medically needy. That objective is that an individual's income for purposes of Medicaid eligibility should be reduced to cover the costs of his or her uncovered medical care since if the individual spends this income on medical care, he or she will not have that income available for maintenance needs. However, if the individual does not pay the old bills, the individual's income need not be reduced by the amount of a liability which the individual may never satisfy. To give an individual a one shot lifetime opportunity to reduce income for each unpaid bill encourages individuals to forgo making payment on their liability for medical care. The regulation permits States to minimize this disincentive to paying old bills.

Comment: Some commenters (State agencies) proposed that medical expenses which may be used to meet the spenddown be limited to those expenses that are incurred within the current budget period.

Response: It would be unnecessarily harsh to limit income deductions to newly incurred expenses, especially when an expense is incurred shortly before the current budget period. We believe the requirement to deduct income for expenses incurred in the retroactive eligibility period is a reasonable compromise between deducting income for all old expenses and deducting income only for newly incurred expenses. Therefore, we did not adopt the commenter's suggestion.

Comment: Commenters questioned our rationale for the revisions, stating that they knew of no evidence that individuals abuse the present system.

Response: Concern about abuse of the existing spenddown methods was not

the motivation behind these proposals. The primary objectives of these revisions were to give States greater flexibility to reasonably administer their Medicaid programs and to ensure that eligibility was appropriately based on need. In our communications with States, we were convinced that certain spenddown requirements, although originally well intended, had unintended results. Deduction of older medical bills, for example, was difficult for States to administer, as noted in the NPRM, because we required that States verify whether an individual remained liable for an old bill. In addition, because bills incurred before the eligibility period were deductible only if they were unpaid, as specified under prior policy, an incentive was created for individuals not to pay their bills. The revisions, therefore, are intended to alleviate administrative problems for States and, by only requiring the deduction of payments on older bills, create an incentive for individuals to pay older bills.

Comment: Commenters suggested that any incurred medical expenses not deducted from income during a budget period should be carried over to the next budget period. They suggested that the expenses be carried forward whether the spenddown liability was met (that is, an individual became eligible) or not met (that is, expenses were insufficient to meet the spenddown requirement) during the first budget period.

Response: We agree, in part, with the commenters. When an individual's incurred expenses exceed his or her spenddown liability (that is, the person becomes eligible without deducting all of the expenses) and when the excess expenses are unpaid, the excess expenses are deductible from excess income in subsequent budget periods, but only under certain conditions. HCFA requires the carryover of excess (that is, unused) expenses to account more fully for incurred unreimbursable expenses in determining whether the Medicaid income standard is met. If States were not required to carry over excess expenses, the spenddown provision would be practically meaningless when an individual with a small monthly amount of excess income incurs a large medical expense. In such a case, the individual could only apply the small amount of excess income in 1 month based on that expense. We have concluded that such a result would not be in keeping with the objective of the spenddown provision to account for unreimbursable expenses incurred for necessary care recognized under State law. Therefore, this final rule provides that medical expenses not deducted from income during one budget period must be carried over and deducted in the succeeding budget periods under the conditions described below.

Proposed §§ 435.831(d)(6) and 436.831(d)(6) (designated as §§ 435.831(f)(3) and 436.831(f)(3) in the final rule) provide that medical expenses not deducted from income during one budget period must be carried over and deducted in the next budget period. These proposed rules were applicable, however, only when the individual was eligible in the first budget period after meeting the spenddown liability. We are revising what are now §§ 435.831(f)(3) and 436.831(f)(3) to clarify when excess, unpaid expenses are deductible in subsequent budget periods. In order for excess expenses to be carried over under this provision, eligibility must be established for the budget period in which the excess expenses were unused and in each subsequent budget period in which any part of the excess remains unused; in addition, the spenddown provision must apply in each such subsequent period. (To relieve States of the burden of carrying over such excess expenses indefinitely, specific excess amounts need not be carried over beyond the first subsequent period in which there is no eligibility or no excess income.)

It should be noted that the "carryover" concept is used in these regulations to describe the ongoing deduction of unused and unpaid expenses, as contrasted to the deduction of expenses based on their being incurred in the retroactive eligibility period or, at State option, earlier. We make a distinction between the two kinds of expenses because of the option for States to disregard old expenses (i.e., expenses incurred prior to the retroactive eligibility period). One of the reasons for allowing old expenses to be disregarded is the administrative difficulty States may encounter in verifying and documenting whether liability for the expense continues. Once an old, or current, expense is initially verified and documented, it should not be unduly difficult to determine the extent of continuing liability from one budget period to another as long as the agency is maintaining contact with the individual. For this reason, we require that the unused, unpaid portion of such expenses be carried over from one budget period to the next, but only for as long as the individual is eligible in each such period (ensuring continuing contact with the agency). On this basis, we are providing that deductible expenses incurred before the month of application may become carryover expenses if they remain unused and unpaid after eligibility is established. The limit a State may place on the deductibility of expenses incurred before the retroactive eligibility period does not affect how long expenses remain deductible under the carryover provision. The age limit that can be placed on old expenses relates to how long before the retroactive eligibility period expenses can be incurred and be deductible rather than to how long they remain deductible thereafter.

Comment: Commenters suggested that we revise the regulations so that both paid and unpaid bills may be carried over from one budget period to the next.

Response: We do not agree with the views of the commenters on this point. The spenddown process is based on the principle that an individual's actual income is reduced by incurred medical expenses (that is, expenses for which he or she is liable) to the point at which his or her income is equal to or below the State's medically needy income standard. Once the individual is determined eligible for Medicaid, the State Medicaid program pays medical expenses covered under its State plan that were not used to satisfy the spenddown. The individual remains liable for payment of incurred bills that he or she deducted in the spenddown process.

When an individual pays a bill, his or her income (or resources) is reduced, thus reducing the countable amount of remaining income (or resources) in determining whether the individual is eligible (or remains eligible) for medical assistance. Therefore, there is less justification for deducting the payment in a later spenddown calculation. In contrast, an enforceable unpaid bill remains a current claim on the individual's income or resources that should be taken into account when the payment is made.

Comment: Commenters suggested that individuals should be able to carry over not only noncovered medical expenses from one budget period to the next, as we proposed in §§ 435.831(d)(6) and 436.831(d)(6), but also expenses covered under the State plan.

Response: When an individual is determined eligible, with the exception of bills deducted in spenddown, medically necessary expenses covered under the State plan are normally paid by Medicaid. Hence, there would be no covered expenses to carry over. In a State that places payment limits on the amount, duration or scope of services included in the State plan, however, bills for services that exceed the State's limits are not paid by Medicaid, even though the services are included in the State plan. In this situation, there would be unreimbursed noncovered expenses. Expenses exceeding amount, duration or scope limits (like unpaid, unused old bills the State elects to deduct) must be carried over and deducted from income in the next budget period when an individual is eligible in the immediately preceding budget period (or periods).

Comment: Some commenters suggested that we define current payments on old bills to include only those bills being repaid on a negotiated payment schedule.

Response: We have defined "current payments" in §§ 435.831(f)(5) and 436.831(f)(5) to mean only those payments made in the current budget period. Our intent in proposing that current payments on old bills be counted as deductions from income was to provide an incentive for individuals to pay those old bills, no matter how small the payments might be. We believe that to count only payments made on a negotiated payment schedule would act as a disincentive for individuals to repay the old bills not subject to a payment schedule.

Comment: Some commenters objected to this provision on the basis that placing limits on the age of bills which can be deducted in spenddown acts as a disincentive for individuals to pay old bills.

Response: We do not believe there is a greater disincentive for individuals to pay old bills under the proposal than under the policy in existence at the time of the proposed rule or under the existing method. In fact, the policy in existence at the time of the proposed rule specified that bills incurred before the eligibility period could be deducted from income only if they were unpaid. Current policy allows current payments and unpaid bills to be deducted. This appears to be a direct incentive for individuals not to pay old bills. Therefore, we believe no revisions are necessary with regard to this comment.

Provision D—Permit States To Apply Incurred Medical Expenses to the Spenddown Period in Chronological Order

Comment: Commenters argued that the Act does not authorize us to revise regulations to permit States to deduct medical expenses in chronological order.

Response: As noted earlier, we have authority under section 1902(a)(17) of the Act to prescribe the extent to which medical costs may be deducted from income for the medically needy. This covers the order in which incurred medical expenses will be counted.

Comment: Some commenters proposed that this provision be extended to States using more restrictive eligibility criteria than SSI, under section 1902(f) of the Act.

Response: We believe it is useful to clarify our earlier, and perhaps overly broad, statement in the NPRM that this provision cannot be applied to the eligibility process as specified in section 1902(f) of the Act.

Section 1902(f) provides for the deduction of "incurred expenses for medical care as recognized under State law" in determining eligibility of certain individuals. As a consequence, that deduction process must allow for consideration of expenses recognized under State law. Section 1902(a)(17), on which these medically needy regulations are largely based, provides for taking into account "except to the extent prescribed by the Secretary, the costs * * * incurred for medical care or for any type of remedial care recognized under State law" (emphasis supplied). Thus, while eligibility of the medically needy generally can be determined using the provisions of these regulations, the eligibility of those medically needy in the States that use the more restrictive eligibility criteria permitted by section 1902(f) must be determined using expenses for medical care recognized under State law (including any limitations enacted under State law on the deductible amount of such expenses from income). However, there is nothing in section 1902(f) that precludes consideration of medical costs in chronological order for purposes of the spenddown specified in section 1902(f). Therefore, we are extending this option to States that determine eligibility under the criteria in section 1902(f).

Comment: Some commenters objected to this provision because insurance premiums, copayments, and deductibles and other cost sharing amounts deducted in chronological order may not count toward spenddown if there are a large number of other medical bills incurred early in the budget period. The commenters believe that these items should be deducted no matter when they are incurred.

Response: Many States find it administratively difficult to deduct incurred expenses out of the sequence in which the expenses are submitted to the agency or the sequence in which the services are provided. Because one of the objectives of the Medicaid program is the use of efficient methods of administration and since the sequential deduction of incurred expenses is one such method, we consider it appropriate to permit States to deduct expenses from income in chronological order.

Comment: Some commenters suggested that the proposal is inequitable because individuals with identical medical bills during a budget period, when deducted in chronological order, can have different eligibility determinations.

Response: First, we point out that two individuals in truly identical situations, meaning that the individuals have the same medical bills incurred in the same order, would be treated identically under the rule. In other cases, the individuals are not identical. They may have the same amount of medical expenses but the bills are not identical. In these cases, assuming other eligibility factors are met and the bills are sufficient to meet spenddown liability, both individuals will be eligible for Medicaid under this provision. The difference is in which bills are paid once eligibility begins. For example, if one individual incurs mostly covered services early in the spenddown period, any remaining bills for noncovered services left over after the spenddown liability is met would not be paid by the State because they are not covered in the State plan. Conversely, if a second individual incurring mostly noncovered medical expenses early in the spenddown period is determined eligible, any bills for covered services remaining after meeting the spenddown liability would be paid by the State. We acknowledge that this result may disadvantage the first individual. However, we believe that in the interest of efficient operation of the programs, States should be allowed to deduct expenses in chronological order if they wish to do so.

Comment: Some commenters were concerned that under this proposal an individual's eligibility or ineligibility depends on when a doctor mails the bills or on the arbitrary order in which an eligibility worker itemizes medical bills.

Response: Eligibility does not depend on when a doctor mails bills but on the date the service was furnished; an individual can document this date without a bill. In addition, eligibility workers are not allowed to choose an arbitrary order but must itemize bills in the manner prescribed by regulations.

Comment: Commenters suggested that the result of this proposed provision may be that individuals will defer medical care for services covered under the State plan if they know that the State will pay for those expenses once they are eligible for Medicaid.

Response: We have no evidence that indicates that individuals will

manipulate the proposed system as suggested by the commenters. On the contrary, we believe that medical needs will continue to determine utilization of medical services.

Comment: Commenters requested that we clarify the proposed regulations by specifying that there is no change in the existing policy that medical expenses which will satisfy the spenddown include those expenses incurred by the individual, the family or financially responsible relatives.

Response: This regulation does not change the existing regulations requiring the use of family members' medical expenses in the spenddown (except by recodifying at §§ 435.831(e) and 436.831(e) in the final rule, to take into account other changes made by this regulation). By making these changes, we do not mean to reaffirm the validity of this facet of the existing regulations in cases where the courts have set it aside. Numerous Courts of Appeals decisions have not upheld the underlying assumption of the existing regulations in the context of the standard filing unit cases. These courts' interpretation of section 1902(a)(17)(D) preclude States from counting medical expenses of family members (other than a spouse for a spouse and parents for their minor children). Nevertheless, the United States District Court for the Northern District of California has held that States in the Ninth Circuit must continue to deduct the medical expenses of family members in determining the spenddown, as long as the present regulations remain extant. States outside of the Ninth Circuit should assess the continuing validity of the existing regulations for spenddown purposes in light of any applicable court order invalidating the use of the AFDC standard filing unit rule for purposes of Medicaid eligibility. The existing regulations would continue to apply to the extent that they do not explicitly conflict with the court order.

Comment: We received a suggestion that States establish a limit on deduction of projected medical expenses incurred by ineligible family members that are not covered under the State plan. If actual bills exceed this limit, the State could credit the excess amount in the current or the next spenddown period.

Response: This suggestion goes beyond the scope of the proposal.

Provision E—Allow States to Limit Deductible Medical Expenses to Services Covered Under the State Plan

Comment: Commenters questioned our legal authority for making this proposal. They believe that the Act does not authorize us to permit States to exclude bills for services that are not paid for under the State plan.

A large number of commenters were not in favor of this proposal because, in their view, it might have a negative impact on individuals, since many individuals require noncovered services. A variety of concerns were expressed. Some commenters were concerned that this proposal would delay eligibility for some individuals if noncovered medical expenses could not be deducted. Other commenters predicted that the proposal would cause individuals to pay a greater share of their medical bills.

Response: Except in States that determine eligibility under section 1902(f) of the Act, we believe adequate legal authority exists in section 1902(a)(17) of the Act, which delegates to the Secretary of HHS the authority to prescribe the extent to which incurred expenses will be taken into account in determining eligibility for Medicaid under the medically needy option. However, we have decided to withdraw the option and continue the current policy (with respect to expenses incurred in the current budget period and the 3-month retroactive eligibility period) because the option would have a potentially severe negative impact on applicants and recipients. We now believe that offering States this administrative option would reduce a person's Medicaid eligibility or the amount of medical assistance provided. Further, Congress passed legislation in 1988 amending the Social Security Act (section 1902(r)(1)) to override a similar option we provided States in the post-eligibility process. We believe it would be inconsistent with the direction taken by Congress in the post-eligibility process to allow a similar limitation in the spenddown process.

Comment: Some commenters predicted that this proposed provision would result in increased Medicaid expenditures because individuals will choose to obtain more costly services known to be covered under the Medicaid plan, rather than less costly, possibly noncovered services. Further, they predict that individuals will wait to seek medical treatment if those expenses are not deductible in the spenddown process instead of getting early treatment for a medical condition.

Response: While we have withdrawn this option, studies of the effects of cost-sharing on utilization and health status have been inconclusive. Therefore, it is not clear that patterns of utilization of medical care would have been significantly altered if we had adopted this option and States had implemented it.

Comment: Some commenters questioned why the NPRM did not offer this option to States using more restrictive eligibility criteria than SSI, under section 1902(f) of the Act.

Response: As discussed earlier, this option has been dropped altogether.

Comment: A commenter suggested that, for purposes of the spenddown provision, we define the term "medical expenses included in the plan" as all services provided to categorically needy individuals.

Response: We have withdrawn the option for States to limit deductible medical expenses to those for services included in the State plan. Therefore, we have not considered the commenter's suggestion in the context of that option. (States are required to continue deducting nonreimbursable expenses for premiums, deductibles, and coinsurance and for necessary care that is recognized under State law, whether or not such expenses are included in the State plan.)

However, while States are required to deduct expenses for services not included in the State plan, States may continue to place reasonable limits on the deductible amount. Therefore, we considered the commenter's suggestion in this context, and we disagree with the suggestion. (This issue does not arise in States that determine eligibility under section 1902(f) of the Act because the inclusion or exclusion of services under State plans is not a factor in the spenddown process in these States.) States may provide a different range of services for the categorically needy than they do for the medically needy population. The spenddown procedures in Provisions A through D apply to medically needy individuals and apply both for AFDC-related cases and for the aged, blind, and disabled. Individuals eligible as medically needy are eligible for only those specific services that a State has chosen to provide to its medically needy population. If "included in the State plan" referred to services for the categorically needy, as the commenter suggested, the State would be unable to place reasonable limits on the deductible amount of expenses in the spenddown process, which only applies to the medically needy in States that are not determining eligibility under section 1902(f). We find no compelling program reason for such a restriction. Therefore, we believe that it is appropriate to allow each State to define "included services" for purposes of applying "reasonable limits" to mean services a State provides to medically needy individuals (rather than only to categorically needy individuals). In this way, the State may place reasonable limits on the deductible amounts of expenses for the medically needy except those included in the State plan. (It should be noted that "reasonable limits" refers to the amount, rather than the type, of expense that is deductible. For example, States may limit the amount, but not the type, of health insurance premiums that are deductible.)

Comment: Commenters predicted that this provision will be error prone in practice, as eligibility workers and providers will need to distinguish correctly between covered and noncovered services to deduct only covered services during spenddown accurately.

Response: We withdrew the option because of its negative impact on applicants and recipients.

Comment: Several States disagreed with our proposal that States may not place amount, duration or scope limits on covered services in the spenddown process, even though the State applies those limits when paying for services furnished to Medicaid-eligible individuals. These commenters contended that their authority to place amount, duration and scope limits on services they pay for under Medicaid is an extension of their authority to decide which services they will cover under the State plan. They believe that this is an unnecessary restriction on the right to control their Medicaid program.

Response: We do not agree with the commenters on this point. Under existing regulations, which have not been revised, States may place reasonable limits on the deductible amount of expenses not included in the State plan but may not limit the deduction of expenses included in the State plan. (Expenses "included" in the State plan are those for services which are listed in the State plan, whether or not Medicaid will pay for them. By contrast, "covered" expenses are a subset of "included" expenses. Covered expenses are expenses for services for which Medicaid will pay if furnished to the individual by a Medicaid provider. Expenses incurred for services which are for care which exceed State plan limits on amount, duration, and scope are not considered to be covered expenses.) The basic requirement in section 1902(a)(17) is that incurred expenses recognized under State law be taken into account in the spenddown process. We believe that this is in keeping with the thrust of this requirement to require the deduction from income of expenses recognized under State law when the State has also included the expenses in the State plan, even though the State limits the amount of such expenses it pays for. We, therefore, allow States to limit the deductions only for incurred expenses recognized under State law that are not included in the State plan.

As we explained in response to a comment under Provision A concerning projecting institutional expenses, we find adequate authority for this policy in existing sections of the Act. The Secretary has authority under section 1902(a)(17) of the Act to prescribe the extent to which costs of medical care may be deducted from income in medically needy programs.

Comment: One State pointed out that it is reasonable to require that States deduct insurance premiums, as this encourages individuals to continue insurance coverage. The commenter argued that it is not logical, however, for us to require that States deduct coinsurance and deductibles on services that are not covered under the plan. An individual still benefits from the insurance coverage because he or she must pay only the deductible or coinsurance rather than 100 percent of the charge.

Response: As we explained in the response to the first comment in this section, Congress passed legislation on the post-eligibility process requiring the deduction of expenses for deductibles and coinsurance in the post-eligibility process. It would be inconsistent with the direction taken by Congress to allow States to exclude these expenses in the spenddown process altogether. Therefore, States are required to deduct a reasonable amount of these expenses from income. We rely on the authority in section 1902(a)(17) of the Act to allow States to place reasonable limits on the deductible amounts of these cost-sharing expenses even though no such limits are allowable in the post eligibility process.

IV. Summary of Changes to the Regulations

In this final rule, we are making the revisions proposed in the NPRM with the following modifications based on our review and analysis of public comments.

1. We are revising proposed §§ 435.831(e)(1) (designated as § 435.831(g)(1) in this final rule) and § 436.831(e)(1) (designated as § 436.831(g)(1) in this final rule) to clarify that incurred medical expenses may include projected institutional expenses at the Medicaid reimbursement rate. We are not revising § 435.732(c)(3) (redesignated as § 435.121(f)(1)(iii)) to make the same clarification since that section applies to States with more restrictive criteria than SSI.

2. We are also clarifying in §§ 435.831(i) and 436.831(i) (proposed §§ 435.831(e)(1) and 436.831(e)(1)) that an institutionalized individual is eligible when incurred medical expenses, including projected institutional expenses, reduce an individual's income to the income standard, rather than on the first day of institutionalization as indicated in the NPRM.

3. We are revising §§ 435.831(a) and 436.831(a) to clarify that an agency is not limited to the use of a single budget period to compute income. However, an agency must use budget periods of not more than 6 months to compute income.

4. In addition to other changes noted, we are revising paragraph (d) as proposed in §§ 435.831 and 436.831 by transferring most of its contents to new paragraphs (e), (f) and (g) and cross-referring to those sections.

a. New paragraph (e) in both sections includes the contents of paragraph (d)(1)(ii)(A), (B), and (C) as paragraphs (e)(1), (2), and (3) respectively.

b. New paragraph (f)(3) in both sections consists of the contents of proposed paragraph (d)(6).

c. New paragraph (h) in both sections consists of the contents of paragraph (d)(1)(i), (ii), and (iii) as paragraphs (h)(2), (1), and (3), respectively.

d. New paragraphs (g)(1), (2) and (3) in both sections contain the contents of paragraphs (d)(4), (5), and (3), respectively.

5. We are revising §§ 435.831(d)(5) and 436.831(d)(5) (redesignated as §§ 435.831(g)(2) and 436.831(g)(2)) to specify that an agency is not required to deduct expenses incurred earlier than 3 months before the month of application for Medicaid, clarifying that the 3-month period is measured from the month of application, rather than from the date of application as specified in the NPRM.

6. We are clarifying in §§ 435.831(e)(3) and 436.831(e)(3) (§§ 435.831(d)(1)(ii)(C) and 436.831(d)(1)(ii)(C) in the proposed rule) that a State must deduct expenses for necessary medical and remedial services included in the State plan even when those services exceed agency limitations on amount, duration or scope.

7. We are adding a new paragraph (f)(1) to §§ 435.831 and 436.831 to show that the State must deduct expenses incurred during the month of application and any of the preceding 3 months to the extent the individual's liability arose in that period and the

expenses have not been deducted previously. We are also adding a new paragraph (f)(2) to show the State must deduct current payments on old bills not previously deducted.

V. Request for Additional Public Comments

We invite comments on the bases for and the consequences of extending additional flexibility to States using the more restrictive eligibility criteria of section 1902(f) of the Act to implement any of the provisions in this rule. Because of the large number of comments we receive, we cannot acknowledge or respond to them individually. If appropriate, we will respond to public comments received on this issue in a future **Federal Register** publication.

VI. Regulatory Impact Statement

Executive Order 12291 requires us to prepare and publish a regulatory impact analysis for regulations that are likely to have an annual effect on the economy of $100 million or more, cause a major increase in costs or prices, or meet other threshold criteria that are specified in the Executive Order. Consistent with the Regulatory Flexibility Act, 5 U.S.C. 601–612, we prepare and publish a regulatory flexibility analysis for regulations unless the Secretary certifies that the regulations will not have a significant economic impact on a substantial number of small entities. (For purposes of the Regulatory Flexibility Act, small entities include all nonprofit and most for-profit providers.) Under both the Executive Order and the Regulatory Flexibility Act, such analyses must, when prepared, show that the agency issuing the regulations has examined alternatives that might minimize an unnecessary burden or otherwise ensure that the regulations are cost-effective.

In the NPRM published on September 2, 1983 (48 FR 39959), we examined the five separate provisions contained in these regulations for the significance of their annual economic impact. In four of the five proposed provisions (B, C, D and E), we could not quantify estimates, but we were confident that any impacts would not meet the threshold criteria of the Executive Order or the Regulatory Flexibility Act. However, for provision A (Consideration of Projected Institutional Expenses at the Medicaid Rate as Incurred Medical Expenses), we estimated total Federal and State savings of $18 million.

In light of the public comments received regarding Provision A and because of the need to analyze the effects of these final regulations, we reviewed the analysis noted in the NPRM. After reviewing our data and assumptions, we have concluded that the current impact of Provision A will increase from the original estimate of $18 million to $65 million. This increase is a reflection of Medicaid program growth through 1993.

Savings will occur in the few cases in which an institutionalized individual will not become eligible or will be found eligible later in time because his or her income significantly exceeded the medically needy income level and the State Medicaid payment rate was used in the eligibility calculation rather than whatever rate the institution chose to charge. Delay or denial of an individual's eligibility will reduce State expenditures and Federal contributions, resulting in negligible savings. Some individuals whose eligibility is delayed and who are spending down at the private payment rate, rather than the lower Medicaid rate during that period, will spend down to the income standard quicker and become eligible for Medicaid sooner. Further, this provision is optional and it is an option only for States with medically needy programs that are not section 1902(f) States. At this time, we do not expect that it will be adopted by all or most States. In addition, some States have already adopted interpretations of the existing regulations on the spenddown process that are very close to our final rule. For all these reasons, we now believe that this provision will have a negligible net impact.

For these reasons, we have found that the effect of the provisions of this final rule will not meet the threshold criteria of Executive Order 12291. Further, we have determined, and the Secretary certifies, that this final rule will not result in an annual economic impact that will affect significantly a substantial number of small entities. Therefore, we conclude that neither a regulatory impact nor a regulatory flexibility analysis is required.

VII. Paperwork Reduction Act

These changes do not impose information collection requirements; consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

List of Subjects

42 CFR Part 435

Aid to families with dependent children, Aliens, Categorically needy, Contracts (agreements—state plan), Eligibility, Grant-in-aid program—health, Health facilities, Medicaid, Medically needy, Reporting requirements, Spend-down, Supplemental security income (SSI).

42 CFR Part 436

Aid to Families with Dependent Children, Aliens, Contracts (Agreements), Eligibility, Grant-in-Aid program—health, Guam, Health facilities, Medicaid, Puerto Rico, Supplemental security income (SSI), Virgin Islands.

A. 42 CFR part 435 is amended as set forth below:

PART 435—ELIGIBILITY IN THE STATES, DISTRICT OF COLUMBIA, THE NORTHERN MARIANA ISLANDS, AND AMERICAN SAMOA

1. The authority citation for part 435 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act, (42 U.S.C. 1302), unless otherwise noted.

2. Section 435.831 is revised to read as follows:

§ 435.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section.

(e) *Budget periods.* (1) The agency must use budget periods of not more than 6 months to compute income. The agency may use more than one budget period.

(2) The agency may include in the budget period in which income is computed all or part of the 3-month retroactive period specified in § 435.914. The budget period can begin no earlier than the first month in the retroactive period in which the individual received covered services. This provision applies to all medically needy individuals except in groups for whom criteria more restrictive than that used in the SSI program apply.

(3) If the agency elects to begin the first budget period for the medically needy in any month of the 3-month period prior to the date of the application in which the applicant received covered services, this election applies to all medically needy groups.

(b) *Determining countable income.* The agency must deduct the following amounts from income to determine the individual's countable income.

(1) For individuals under age 21 and caretaker relatives, the agency must deduct amounts that would be deducted in determining eligibility under the State's AFDC plan.

(2) For aged, blind, or disabled individuals in States covering all SSI recipients, the agency must deduct amounts that would be deducted in determining eligibility under SSI. However, the agency must also deduct the highest amounts from income that would be deducted in determining eligibility for optional State supplements if these supplements are paid to all individuals who are receiving SSI or would be eligible for SSI except for their income.

(3) For aged, blind, or disabled individuals in States using income requirements more restrictive than SSI, the agency must deduct amounts that are no more restrictive than those used under the Medicaid plan on January 1, 1972 and no more liberal than those used in determining eligibility under SSI or an optional State supplement. However, the amounts must be at least the same as those that would be deducted in determining eligibility, under § 435.121, of the categorically needy.

(c) *Eligibility based on countable income.* If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under § 435.814, the individual or family is eligible for Medicaid.

(d) *Deduction of incurred medical expenses.* If countable income exceeds the income standard, the agency must deduct from income medical expenses incurred by the individual or family or financially responsible relatives that are not subject to payment by a third party. An expense is incurred on the date liability for the expense arises. The agency must determine deductible incurred expenses in accordance with paragraphs (e), (f), and (g) of this section and deduct those expenses in accordance with paragraph (h) of this section.

(e) *Determination of deductible incurred expenses: Required deductions based on kinds of services.* Subject to the provisions of paragraph (g), in determining incurred medical expenses to be deducted from income, the agency must include the following:

(1) Expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, including enrollment fees, copayments, or deductibles imposed under § 447.51 or § 447.53 of this subchapter;

(2) Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not included in the plan;

(3) Expenses incurred by the individual or family or by financially responsible relatives for necessary medical and remedial services that are included in the plan, including those that exceed agency limitations on amount, duration, or scope of services.

(f) *Determination of deductible incurred expenses: Required deductions based on the age of bills.* Subject to the provisions of paragraph (g), in determining incurred medical expenses to be deducted from income, the agency must include the following:

(1) For the first budget period or periods that include only months before the month of application for medical assistance, expenses incurred during such period or periods, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(2) For the first prospective budget period that also includes any of the 3 months before the month of application for medical assistance, expenses incurred during such budget period, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(3) For the first prospective budget period that includes none of the months preceding the month of application, expenses incurred during such budget period and any of the 3 preceding months, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(4) For any of the 3 months preceding the month of application that are not includable under paragraph (f)(2) of this section, expenses incurred in the 3-month period that were a current liability of the individual in any such month for which a spenddown calculation is made and that had not been previously deducted from income in establishing eligibility for medical assistance;

(5) Current payments (that is, payments made in the current budget period) on other expenses incurred before the current budget period and not previously deducted from income in any budget period in establishing eligibility for such period; and

(6) If the individual's eligibility for medical assistance was established in each such preceding period, expenses incurred before the current budget period but not previously deducted from income in establishing eligibility, to the extent that such expenses are unpaid and are:

(i) Described in paragraphs (e)(1) through (e)(3) of this section; and

(ii) Carried over from the preceding budget period or periods because the individual had a spenddown liability in each such preceding period that was met without deducting all such incurred, unpaid expenses.

(g) *Determination of deductible incurred medical expenses: Optional deductions.* In determining incurred medical expenses to be deducted from income, the agency—

(1) May include medical institutional expenses (other than expenses in acute care facilities) projected to the end of the budget period at the Medicaid reimbursement rate;

(2) May, to the extent determined by the State and specified in its approved plan, include expenses incurred earlier than the third month before the month of application (except States using more restrictive eligibility criteria under the option in section 1902(f) of the Act must deduct incurred expenses regardless of when the expenses were incurred); and

(3) May set reasonable limits on the amount to be deducted for expenses specified in paragraphs (e)(1), (e)(2), and (g)(2) of this section.

(h) *Order of deduction.* The agency must deduct incurred medical expenses that are deductible under paragraphs (e), (f), and (g) of this section in the order prescribed under one of the following three options:

(1) *Type of service.* Under this option, the agency deducts expenses in the following order based on type of expense or service:

(i) Cost-sharing expenses as specified in paragraph (e)(1) of this section.

(ii) Services not included in the State plan as specified in paragraph (e)(2) of this section.

(iii) Services included in the State plan as specified in paragraph (e)(3) of this section but that exceed limitations on amounts, duration, or scope of services.

(iv) Services included in the State plan as specified in paragraph (e)(3) of this section but that are within agency limitations on amount, duration, or scope of services.

(2) *Chronological order by service date.* Under this option, the agency deducts expenses in chronological order by the date each service is furnished, or in the case of insurance premiums, coinsurance or deductible charges, the date such amounts are due. Expenses for services furnished on the same day may be deducted in any reasonable order established by the State.

(3) *Chronological order by bill submission date.* Under this option, the agency deducts expenses in chronological order by the date each bill is submitted to the agency by the individual. If more than one bill is submitted at one time, the agency must deduct the bills from income in the

order prescribed in either paragraph (h)(1) or (h)(2) of this section.

(i) *Eligibility based on incurred medical expenses.*

(1) Whether a State elects partial or full month coverage, an individual who is expected to contribute a portion of his or her income toward the costs of institutional care or home and community-based services under §§ 435.725, 435.726, 435.733, 435.735 or 435.832 is eligible on the first day of the applicable budget (spenddown) period—

(i) If his or her spenddown liability is met after the first day of the budget period; and

(ii) If beginning eligibility after the first day of the budget period makes the individual's share of health care expenses under §§ 435.725, 435.726, 435.733, 435.735 or 435.832 greater than the individual's contributable income determined under these sections.

(2) At the end of the prospective period specified in paragraphs (f)(2) and (f)(3) of this section, and any subsequent prospective period or, if earlier, when any significant change occurs, the agency must reconcile the projected amounts with the actual amounts incurred, or with changes in circumstances, to determine if the adjusted deduction of incurred expenses reduces income to the income standard.

(3) Except as provided in paragraph (i)(1) of this section, in States that elect partial month coverage, an individual is eligible for Medicaid on the day that the deduction of incurred health care expenses (and of projected institutional expenses if the agency elects the option under paragraph (g)(1) of this section) reduces income to the income standard.

(4) Except as provided in paragraph (i)(1) of this section, in States that elect full month coverage, an individual is eligible on the first day of the month in which spenddown liability is met.

(5) Expenses used to meet spenddown liability are not reimbursable under Medicaid. To the extent necessary to prevent the transfer of an individual's spenddown liability to the Medicaid program, States must reduce the amount of provider charges that would otherwise be reimbursable under Medicaid.

B. 42 CFR part 436 is amended as set forth below:

PART 436—ELIGIBILITY IN GUAM, PUERTO RICO, AND THE VIRGIN ISLANDS

1. The authority citation for part 436 continues to read as follows:

Authority: Sec. 1102 of the Social Security Act (42 U.S.C. 1302), unless otherwise noted.

2. Section 436.831 is revised to read as follows:

§ 436.831 Income eligibility.

The agency must determine income eligibility of medically needy individuals in accordance with this section.

(a) *Budget periods.* (1) The agency must use budget periods of not more than 6 months to compute income. The agency may use more than one budget period.

(2) The agency must include in the budget period in which income is computed all or part of the 3-month retroactive period specified in § 435.914. The budget period can begin no earlier then the first month in the retroactive period in which the individual received covered services.

(3) If the agency elects to begin the first budget period for the medically needy in any month of the 3-month period prior to the date of application in which the applicant received covered services, this election applies to all medically needy groups.

(b) *Determining countable income.* The agency must, to determine countable income, deduct amounts that would be deducted in determining eligibility under the State's approved plan for OAA, AFDC, AB, APTD, or AABD.

(c) *Eligibility based on countable income.* If countable income determined under paragraph (b) of this section is equal to or less than the applicable income standard under § 436.814, the individual is eligible for Medicaid.

(d) *Deduction of incurred medical expenses.* If countable income exceeds the income standard, the agency must deduct from income medical expenses incurred by the individual or family or financially responsible relatives that are not subject to payment by a third party. An expense is incurred on the date liability for the expense arises. The agency must determine deductible incurred expenses in accordance with paragraphs (e), (f) and (g) of this section and deduct those expenses in accordance with paragraph (h) of this section.

(e) *Determination of deductible incurred expenses: Required deductions based on kinds of services.* Subject to the provisions of paragraph (g) of this section, in determining incurred medical expenses to be deducted from income, the agency must include the following: (1) Expenses for Medicare and other health insurance premiums, and deductibles or coinsurance charges, including enrollment fees, copayments, or deductibles imposed under § 447.51 or § 447.53 of this chapter;

(2) Expenses incurred by the individual or family or financially responsible relatives for necessary medical and remedial services that are recognized under State law but not included in the plan;

(3) Expenses incurred by the individual or family or by financially responsible relatives for necessary medical and remedial services that are included in the plan, including those that exceed agency limitations on amount, duration or scope of services;

(f) *Determination of deductible incurred expenses: Required deductions based on the age of bills.* Subject to the provisions of paragraph (g) of this section, in determining incurred medical expenses to be deducted from income, the agency must include the following:

(1) For the first budget period or periods that include only months before the month of application for medical assistance, expenses incurred during such period or periods, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(2) For the first prospective budget period that also includes any of the 3 months before the month of application for medical assistance, expenses incurred during such budget period, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(3) For the first prospective budget period that includes none of the months preceding the month of application, expenses incurred during such budget period and any of the 3 preceding months, whether paid or unpaid, to the extent that the expenses have not been deducted previously in establishing eligibility;

(4) For any of the 3 months preceding the month of application that are not includable under paragraph (f)(2) of this section, expenses incurred in the 3-month period that were a current liability of the individual in any such month for which a spenddown calculation is made and that had not been previously deducted from income in establishing eligibility for medical assistance;

(5) Current payments (that is, payments made in the current budget period) on other expenses incurred before the current budget period and not previously deducted from income in any budget period in establishing eligibility for such period; and

(6) If the individual's eligibility for medical assistance was established in each such preceding period, expenses incurred before the current budget period but not previously deducted from income, to the extent that such expenses are unpaid and are:

(i) Described in paragraphs (e)(1) through (e)(3) of this section; and

(ii) Are carried over from the preceding budget period or periods because the individual had a spenddown liability in each such preceding period that was met without deducting all such incurred, unpaid expenses.

(g) *Determination of deductible incurred medical expenses: Optional deductions.* In determining incurred medical expenses to be deducted from income, the agency—

(1) May include medical institutional expenses (other than expenses in acute care facilities) projected to the end of the budget period at the Medicaid reimbursement rate;

(2) May, to the extent determined by the agency and specified in its approved plan, include expenses incurred earlier than the third month before the month of application; and

(3) May set reasonable limits on the amount to be deducted for expenses specified in paragraphs (e)(1), (e)(2), and (g)(2) of this section.

(h) *Order of deduction.* The agency must deduct incurred medical expenses that are deductible under paragraphs (e), (f), and (g) of this section, in the order prescribed under one of the following three options:

(1) *Type of service.* Under this option, the agency deducts expenses in the following order based on type of service:

(i) Cost-sharing expenses as specified in paragraph (e)(1) of this section.

(ii) Services not included in the State plan as specified in paragraph (e)(2) of this section.

(iii) Services included in the State plan as specified in paragraph (e)(3) of this section but that exceed agency limitations on amount, duration, or scope of services.

(iv) Services included in the State plan as specified in paragraph (e)(3) of this section but that are within agency limitations on amount, duration, or scope of services.

(2) *Chronological order by service date.* Under this option, the agency deducts expenses in chronological order by the date each service is furnished, or in the case of insurance premiums, coinsurance, or deductibles charges the date such amounts are due. Expenses for services furnished on the same day may be deducted in any reasonable order established by the State.

(3) *Chronological order by bill submission date.* Under this option, the agency deducts expenses in chronological order by the date each bill is submitted to the agency by the individual. If more than one bill is submitted at one time, the agency must deduct the bills from income in the order prescribed in either paragraph (h)(1) or (h)(2) of this section.

(i) *Eligibility based on incurred medical expenses.*

(1) Whether a State elects partial or full month coverage, an individual who is expected to contribute a portion of his or her income toward the costs of institutional care or home and community-based services under § 436.832 is eligible on the first day of the applicable budget (spenddown) period—

(i) If his or her spenddown liability is met after the first day of the budget period; and

(ii) If beginning eligibility after the first day of the budget period makes the individual's share of health care expenses under § 436.832 greater than the individual's contributable income determined under this section.

(2) At the end of the prospective period specified in paragraph (f)(2) or (f)(3) of this section and any subsequent prospective period or, if earlier, when any significant change occurs, the agency must reconcile the projected amounts with the actual amounts incurred, or with changes in circumstances, to determine if the adjusted deduction of incurred expenses reduces income to the income standard.

(3) Except as provided in paragraph (i)(1) of this section, if agencies elect partial month coverage, an individual is eligible for Medicaid on the day that the deduction of incurred health care expenses (and of projected institutional expenses if the agency elects the option under paragraph (g)(1) of this section) reduces income to the income standard.

(4) Except as provided in paragraph (i)(1) of this section, if agencies elect full month coverage, an individual is eligible on the first day of the month in which spenddown liability is met.

(5) Expenses used to meet spenddown liability are not reimbursable under Medicaid. Therefore, to the extent necessary to prevent the transfer of an individual's spenddown liability to the Medicaid program, States must reduce the amount of provider charges that would otherwise be reimbursable under Medicaid.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 12, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: October 4, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 94–547 Filed 1–11–94; 8:45 am]

BILLING CODE 4120–01–P

Proposed Rules

Federal Register

Vol. 59, No. 8

Wednesday, January 12, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–58–AD]

Airworthiness Directives: Piper Aircraft Corporation Models PA34–200, PA34–200T, PA34–220T, PA44–180, and PA44–180T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to adopt a new airworthiness directive (AD) that would apply to certain Piper Aircraft Corporation (Piper) Models PA34–200, PA34–200T, PA34–220T, PA44–180, and PA44–180T airplanes. The proposed action would require repetitively inspecting the main landing gear trunnions for cracks, replacing any trunnions found cracked, and eventually replacing the landing gear trunnions with parts of improved design as terminating action for the repetitive inspection requirement. Several reports of the main landing gear trunnions cracking on the affected airplanes prompted the proposed action. The actions specified by the proposed AD are intended to prevent collapse of the main landing gear caused by cracked trunnions, which could result in airplane damage.

DATES: Comments must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Piper Aircraft Corporation, Customer Services, 2926 Piper Drive, Vero Beach, Florida 32960. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Christina Marsh, Aerospace Engineer, FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, suite 210C, Atlanta, Georgia 30349; telephone (404) 991–2910; facsimile (404) 991–3606.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–58–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–58–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

Service history of certain Piper Models PA34–200, PA34–200T, PA34–220T, PA44–180, and PA44–180T airplanes reveals several occurrences of cracked main landing gear (MLG) trunnions. Five of these occurrences resulted when the left MLG trunnion, part number (P/N) 67926–12, separated from Piper Model PA34–200T airplanes during the landing roll. Further investigation revealed that the left MLG collapsed because of a transverse fracture in the trunnion at the rear web lower end fillet. Metallurgical examination of four of these MLG trunnions further disclosed that the fractures originated from very shallow fatigue cracks originating from several areas along the rear surface at the lower end of the fillet web. The length of these fatigue cracks ranged from .20 to .40 inches.

Piper has issued Service Bulletin (SB) 787B, dated August 25, 1993, which specifies procedures for inspecting the MLG trunnions on certain Piper Models PA34–200, PA34–200T, PA34–220T, PA44–180, and PA44–180T airplanes, and references replacing MLG trunnions with parts of improved design.

After examining the circumstances and reviewing all available information related to the incidents described above including the referenced service information, the FAA has determined that AD action should be taken to prevent collapse of the main landing gear caused by cracked trunnions, which could result in airplane damage.

Since an unsafe condition has been identified that is likely to exist or develop in other Piper Models PA34–200, PA34–200T, PA34–220T, PA44–180, and PA44–180T airplanes of the same type design, the proposed AD would require repetitively inspecting the main landing gear trunnions for cracks, replacing any trunnions found cracked, and eventually replacing the landing gear trunnions with parts of improved design as terminating action for the repetitive inspection requirement. The proposed inspections would be accomplished in accordance with Piper SB No. 787B, dated August 25, 1993. The proposed replacement would be accomplished in accordance with the applicable maintenance manual.

The FAA estimates that 2,265 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed initial inspection and replacement, and that the average labor rate is approximately $55 an hour. Parts cost approximately $1,100 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $4,484,700. This cost figure is based on the assumption that none of the affected airplane owners/operators have accomplished the proposed actions. The FAA believes that some airplane owners/operators have already incorporated the inspection terminating MLG trunnion replacements. With this in mind, the FAA anticipates that the cost of the proposed AD would be much lower than the figure referenced above.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

Piper Aircraft Corporation: Docket 93–CE–58–AD.

Applicability: The following model and serial number airplanes that are not equipped with main landing gear (MLG) trunnions (both left and right side) that have either part number (P/N) 67926–30, 67926–31, 67926–32, 67926–33, 39486–14, or 39486–15, as applicable, certificated in any category:

Models	Serial Numbers
PA34–200	34–7250001 through 34–7450220
PA34–200T	34–7570001 through 34–8170092
PA34–220T	34–8133001 through 34–8233088
PA44–180	44–7995001 through 44–8195026, and 4495001 through 4495013
PA44–180T	44–8107001 through 44–8207020

Compliance: Required as indicated, unless already accomplished.

To prevent collapse of the main landing gear caused by cracked trunnions, which could result in airplane damage, accomplish the following:

Note 1: The paragraph structure of this AD is as follows:

Level 1: (a), (b), (c), etc.
Level 2: (1), (2), (3), etc.
Level 3: (i), (ii), (iii), etc.

Level 2 and Level 3 structures are designations of the Level 1 paragraph they immediately follow.

(a) Upon the accumulation of 500 hours time-in-service (TIS) on a MLG trunnion, dye-penetrant inspect the MLG trunnion for cracks in accordance with the INSTRUCTIONS section of Piper Service Bulletin (SB) 787B, dated August 25, 1993.

Note 2: If hours TIS on the MLG trunnion are unknown, hours TIS accumulated on the airplane may be substituted.

(1) For MLG trunnions found cracked, prior to further flight, replace the cracked MLG trunnion with a part of improved design, P/N 67926–30, 67926–31, 67926–32, 67926–33, 39486–14, or 39486–15, as applicable, in accordance with the applicable maintenance manual.

(2) For MLG trunnions not found cracked, reinspect at intervals not to exceed 100 hours TIS until the replacement specified in paragraph (b) of this AD is accomplished.

(3) If one trunnion is found cracked and is replaced as specified in paragraph (a)(1) of this AD, the other trunnion must still be reinspected as specified in paragraph (a)(2) of this AD until it also is replaced.

(b) Upon the accumulation of 2,000 hours TIS on a MLG trunnion, unless already accomplished as specified in paragraph (a)(1) of this AD, replace this MLG trunnion with a part of improved design, P/N 67926–30, 67926–31, 67926–32, 67926–33, 39486–14, or 39486–15, as applicable, in accordance with the applicable maintenance manual.

(1) If parts for any MLG replacement have been ordered from the manufacturer but are not available, prior to further flight and thereafter at intervals not to exceed 100 hour TIS, dye-penetrant inspect the MLG trunnion for cracks in accordance with the INSTRUCTIONS section of Piper Service Bulletin (SB) 787B, dated August 25, 1993. If any one of the following occurs, prior to further flight, terminate the above repetitive inspections and replace the trunnion as specified in paragraph (b) of this AD:

(i) Parts become available;

(ii) A trunnion is found cracked; or

(iii) 2,500 hours TIS are accumulated on the trunnion.

(2) Replacing both the left and right MLG trunnion with P/N 67926–30, 67926–31, 67926–32, 67926–33, 39486–14, or 39486–15, as applicable, eliminates the inspection requirement of this AD.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Atlanta Aircraft Certification Office (ACO),1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(e) All persons affected by this directive may obtain copies of the document referred to herein upon request to the Piper Aircraft Corporation, 2926 Piper Drive, Vero Beach, Florida 32960; or may examine this document at the FAA, Central Region, Office of the Assistant Chief Counsel, Room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Issued in Kansas City, Missouri, on January 5, 1994.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–700 Filed 01–11–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 71

[Airspace Docket No. 93–ASO–14]

Proposed Establishment of Class D Airspace: Eglin AFB, FL; Eglin AF Aux No. 3 Duke Field, FL; Proposed Amendment of Class D Airspace: Eglin Hurlburt Field, FL; Proposed Amendment of Class E Airspace: Crestview, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace located at Eglin Air Force Base, FL, and Eglin AF Aux No 3 Duke Field, FL. The notice also proposes to amend Class D airspace located at Eglin Hurlburt Field, FL, and Class E airspace at Crestview, FL. As part of the Terminal Airspace Reclassification, the Valparaiso, Florida Terminal Area was to be changed from Part 93 Airspace to Class D Airspace. The change included the revocation of the Eglin AFB, Florida Class D airspace and Eglin AF Aux No. 3 Duke Field, Florida Class D airspace; the modification of the Hurlburt Field, Florida Class D airspace and Crestview, Florida Class E airspace. The Valparaiso, Florida Terminal Area will remain as Part 93 Airspace and this notice proposes to return the affected Class D and Class E airspace areas as they were prior to Docket No. 26968, Amendment No. 71–19 published in the Federal Register on March 2, 1993.

DATES: Comments must be received on or before: March 1, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Docket No. 93–ASO–14, Manager, System Management Branch, ASO–530, P.O. Box 20636, Atlanta, Georgia 30320.

The official docket may be examined in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337; telephone (404) 305–5200.

FOR FURTHER INFORMATION CONTACT: Kenneth R. Patterson, Airspace Section, System Management Branch, Air Traffic Division, Federal Aviation Administration, P.O. Box 20636, Atlanta, Georgia 30320; telephone (404) 305–5590.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ASO–14." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel for Southern Region, room 530, 1701 Columbia Avenue, College Park, Georgia 30337, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Manager, System Management Branch (ASO–530), Air Traffic Division, P.O. Box 20636, Atlanta, Georgia 30320. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Eglin AFB, Florida; establish Class D airspace at Eglin AF Aux No 3 Duke Field; amend Class D airspace at Eglin Hurlburt Field, Florida, and amend Class E airspace at Crestview, Florida. The intended effect of this proposal is to reverse the action of Docket No. 26968, Amendment No. 71–19 (58 FR 12128, March 2, 1993) to provide adequate airspace to contain Instrument Flight Rule operations at these four locations. The coordinates for this airspace docket are based on North American Datum 83. Class D and Class E airspace areas are respectively published in Para 5000 and Para 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1. The Class D and E airspace listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Aviation safety, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Para. 5000 Class D Airspace

* * * * *

ASO FL D Eglin AFB, FL [New]

Eglin AFB, FL
(lat. 30°29'13" N, long. 86°31'34" W)
Destin-Fort Walton Beach Airport
(lat. 30°24'01" N, long. 86°28'18" W)
Duke Field
(lat. 30°39'07" N, long. 86°31'23" W)

That airspace extending upward from the surface to and including 2,600 feet MSL within a 5.5-mile radius of Eglin AFB and within a 4-mile radius of Destin-Fort Walton Beach Airport; excluding the portion north of a line connecting the 2 points of intersection within a 5.2-mile radius circle centered on Duke Field, and excluding that airspace east of a line beginning at lat. 30°30'43" N, long. 86°26'21" W extending north to the 5.2-mile radius and north of a line beginning at lat. 30°30'43" N, long. 86°26'21" W extending east to the 5.2-mile radius.

* * * * *

ASO FL D Eglin AF Aux No 3 Duke Field, FL [New]

Eglin AF, Aux No. 3 Duke Field, FL
(lat. 30°39'07" N, long. 86°31'23" W)
Bob Sikes Airport
(lat. 30°46'44" N, long. 86°31'20" W)
Eglin AFB
(lat. 30°29'13" N, long. 86°31'34" W)

That airspace extending upward from the surface to and including 2,700 feet MSL within a 5.2-mile radius of Eglin AF Aux No. 3 Duke Field; excluding the portion north of a line connecting the 2 points of intersection with a 4.2-mile radius circle centered on Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection within a 5.5-mile radius circle centered on Eglin AFB. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASO FL D Eglin Hurlburt Field, FL [Amended]

Eglin, Hurlburt Field, FL
(lat, 30°25'44"N, long. 86°41'20"W)
Eglin AFB (lat. 30°29'13"N, long. 86°31'34"W)

That airspace extending upward from the surface to and including 2,500 feet MSL within a 5.3-mile radius of Hurlburt Field; excluding the portion within the Eglin AFB, FL, Class D airspace area. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Para. 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASO FL E2 Crestview, FL [Amended]

Crestview, Bob Sikes Airport, FL
(lat. 30°46'44" N, long. 86°31'20" W)
Duke Field
(lat. 30°39'07" N, long. 86°31'23" W)

Within a 4.2-mile radius of Bob Sikes Airport; excluding the portion south of a line connecting the 2 points of intersection with a 5.2-mile radius circle centered on Duke Field. This Class D airspace is effective during the specific days and times established in advance by a Notice to Airmen. The effective days and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in College Park, Georgia, on December 19, 1993.

Michael J. Powderly,

Acting Manager, Air Traffic Division, Southern Region.

[FR Doc. 94–628 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–55]

Proposed Modification of Class D Airspace; Hood Army Airfield and Robert Gray Army Airfield, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the current Class D airspace at Hood Army Airfield (AAF) and Robert Gray AAF, and to establish Class E airspace at Killeen Municipal Airport, Killeen, TX. The current Class D airspace encompasses Killeen Municipal Airport and with airspace reclassification, aircraft operators at Killeen Municipal Airport are now required to establish two-way radio communication with Hood AAF Air Traffic Airport Traffic Control Tower (ATCT) or when Hood AAF ATCT is closed, Robert Gray AAF ATCT. This notice proposes to remove the airspace surrounding Killeen Municipal Airport from Hood AAF's Class D airspace and to establish Class E airspace around Killeen Municipal Airport. The intended effect of this proposal is to maintain adequate Class D airspace and two-way radio communications at Hood AAF and Robert Gray AAF, to remove Killeen Municipal Airport, TX, from the current Class D airspace, and to establish Class E airspace around Killeen Municipal Airport, Killeen, TX.

DATES: Comments must be received on or before February 11, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–55, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5595.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–55." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, at 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D airspace at Hood AAF and Robert Gray AAF, TX, and to establish Class E airspace at Killeen Municipal Airport, Killeen, TX. This modification has been requested by both

the operators of Hood AAF and the operators of Killeen Municipal Airport. The proposal would remove that portion of current Class D airspace which surrounds Killeen Municipal Airport and would establish Class E airspace around Killeen Municipal Airport. The intended effect of this proposal is to maintain adequate Class D airspace and two-way radio communications to contain instrument flight rule (IFR) operations at Hood AAF and Robert Gray AAF, TX, to remove Killeen Municipal Airport from the Class D airspace, and to establish Class E airspace at Killeen Municipal Airport, Killeen, Texas.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace areas designated as surface areas for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ASW TX D Hood Army Airfield (AAF), TX (Modify)

Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Robert Gray Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 3.8-mile radius of the Hood AAF excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

ASW TX D Robert Gray Army Airfield (AAF), TX [Modify]

Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)

That airspace extending upward from the surface to and including 3,500 feet within a 4.7-mile radius of Robert Gray AAF and within a 3.8-mile radius of Hood AAF, excluding that airspace southeast of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF, and excluding that airspace within the Hood AAF, TX, Class D surface area when it is effective.

* * * * *

Paragraph 6002 Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASW TX E2 Killeen, TX (New)

Killeen Municipal Airport, TX
(lat. 31°05'08" N., long. 97°41'12" W.)
Hood Army Airfield (AAF), TX
(lat. 31°08'16" N., long. 97°42'51" W.)
Robert Gray Army Airfield (AAF), TX
(lat. 31°03'54" N., long. 97°49'40" W.)

That airspace extending upward from the surface within a 4-mile radius of Killeen Municipal Airport excluding that airspace within the Robert Gray AAF, TX, Class D surface area and excluding that airspace northwest of a direct line between latitude 31°04'39" N., longitude 97°44'16" W., and the northeast intersection of the 4.0-mile radius of Killeen Municipal Airport and the 3.8-mile radius of Hood AAF.

* * * * *

Larry L. Craig,
Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–629 Filed 1–11–94; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–35]

Proposed Establishment of Class D Airspace; Hailey, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class D airspace at Friedman Memorial Airport, Hailey, Idaho. Midwest ATC Service, Inc., operates a control tower at Friedman Memorial Airport with an associated airport traffic area. Airspace Reclassification, which became effective September 16, 1993, discontinued the use of the term "airport traffic area" and eliminated those ATA's not already designated to become Class D airspace. As a result, the requirement for two-way radio communication with the control tower at Friedman Memorial Airport lapsed. The intended effect of this proposal is to provide adequate Class D airspace to contain instrument flight rules (IFR) operations and continue the two-way radio communication requirement at Friedman Memorial Airport.

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–35, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Telephone: (206) 227–2530.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, Airspace and Procedures Specialist, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–35, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Telephone: (206) 227–2536.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–35." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Cummunications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class D airspace at Friedman Memorial Airport, Hailey, Idaho. Midwest ATC Service, Inc., operates a control tower at Friedman Memorial Airport with an associated airport traffic area (ATA). Airspace reclassification, which became effective September 16, 1993, discontinued the use of the term "airport traffic area" and, for control zones with operating control towers, replaced it with the designation "Class D airspace." Only ATA's already designated to become Class D airspace continued to exist; Friedman Memorial Airport was not so designated. As a result, the requirement for two-way radio communication with the control tower at Friedman Memorial Airport lapsed. The intended effect of this proposal is to provide adequate Class D airspace to contain IFR operations and continue the two-way communication requirement at Friedman Memorial Airport. The coordinates for this airspace docket are based on North American Datum 83. Class D airspace is published in paragraph 5000 of FAA Order 7400.9A, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36398; July 6, 1993). The Class D airspace listed in the document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects In 14 CFR Part 71

Aviation, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A.

Paragraph 5000—General

* * * * *

ANM ID D Hailey, Idaho [New]

Friedman Memorial Airport, Hailey, ID
(lat. 43°30'17" N, long. 114°17'48" W)

That airspace extending upward from the surface to and including 7800 feet MSL within a 4.1-mile radius of the Friedman Memorial Airport. This Class D airspace area is effective during the specified dates and times established in advance by a Notice to Airman. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on December 27, 1993.

Temple H. Johnson, Jr.,
Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–776 Filed 1–11–94; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–39]

Proposed Amendment of Class E Airspace; Lakeview, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to amend the Lakeview, Oregon Class E airspace. This action is necessary to accommodate a new instrument approach procedure at the Lake County Airport. The airspace would be depicted on aeronautical charts for pilot reference

DATES: Comments must be received on or before February 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–39, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2530.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Robert Brown, ANM–535, Federal Aviation Administration, Docket No. 92–ANM–39, 1601 Lind Avenue SW., Renton, Washington 98055–4056, Telephone: (206) 227–2535.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments, as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy aspects of the proposal. Communications should identify the airspace docket and be submitted to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–39." The postcard will be date/time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend the class E airspace at Lakeview, Oregon, to accommodate a new instrument approach procedure at the Lake County, Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas extending upward from 700 feet or more above the surface of the earth are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ANM OR E5 Lakeview, OR [Amended]

Lake County Airport, OR
(lat. 42°09'49" N., long. 120°23'57" W.)
Goose NDB, OR
(lat. 42°09'11" N., long. 120°24'18" W.)

That airspace extending upward from 700 feet above the surface within a 4.3-mile radius of the Lake County Airport, and within 1.8 miles each side of the 180° bearing from the Goose NDB extending from the NDB to 7 miles south of the NDB; that airspace extending upward from 1,200 feet above the surface bounded by a line beginning at lat. 42°22'00" N., long. 120°41'04" W.; to lat. 42°22'00" N., long. 120°12'04" W.; to lat. 41°41'00" N., long. 120°12'04" W.; to lat. 41°41'00" N., long. 120°41'04" W., to the point of beginning.

* * * * *

Issued in Seattle, Washington, on December 27, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc. 94–786 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–14]

Proposed Amendment to Class E Airspace; Medford, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Medford, Oregon, Class E Airspace. This action is necessary to accomodate an amended instrument approach procedure and missed approach holding pattern at Medford-Jackson County Airport, Medford, Oregon. The area would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before February 15, 1994.

ADDRESSES Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–14, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–14." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Medford, Oregon to accommodate an amended instrument approach procedure and missed approach holding pattern at Medford-Jackson County Airport. The area would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas are published in paragraphs 6004 and 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993 (58 FR 36298; July 6, 1993). The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6004—Class E Airspace Areas Designated as on Extension to a Class D Surface Area

* * * * *

ANM OR E5 Medford, OR [Revised]

Medford-Jackson County Airport, OR
(lat. 42°22'20" N, long. 122°52'21" W)
Rogue Valley VORTAC
(lat. 42°28'46" N, long. 122°54'47" W)
Pumie LOM
(lat. 42°27'03" N, long. 122°54'48" W)

That airspace extending upward from the surface within 1.8 miles west and 2.7 miles east of the Medford ILS localizer north course extending from the 4.1-mile radius to 2.7 north of Pumie LOM and within 2.7 miles each side of the Rogue Valley VORTAC 352° radial extending from the Rogue Valley VORTAC to 11 miles north of the VORTAC, and within 4 miles each side of the Rogue Valley VORTAC 164° radial extending from the 4.1-mile radius to 19.3 miles south of the Medford-Jackson County Airport.

Paragraph 6005—Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of The Earth

* * * * *

ANM OR E4 Medford, OR

Medford-Jackson County Airport, OR
(lat. 42°22'20" N, long. 122°52'21" W)
Rogue Valley VORTAC
(lat. 42°28'46" N, long. 122°54'47" W)
Pumie LOM
(lat. 42°27'03" N, long. 122°54'48" W)
Klamath Falls VORTAC
(lat. 42°09'12" N, long. 121°43'39" W)
Fort Jones VORTAC
(lat. 41°26'59" N, long. 122°48'23" W)

That airspace extending upward from 700 feet above the surface within a line from lat. 42°45'00" N, long. 123°10'54" W, to lat. 42°48'54" N, long. 122°57'06" W; to lat. 42°44'00" N, long. 122°44'36" W; lat. 42°18'00" N, long. 122°58'30" W; to lat. 42°28' N, long. 123°01'30" W; to point of beginning; that airspace extending upward from 1,200 feet above the surface bounded on the east by V–452, on the southeast by the 34.8-mile radius of the Klamath Falls VORTAC, on the south by V–122, on the west by V–23, and that airspace southeast of Medford bounded on the north by the south edge of V–122, on the east by the 34.8-mile radius of the Klamath Falls VORTAC, on the southeast by a line 4.3 miles southeast and parallel to the Fort Jones VORTAC 041° radial, on the west by the east edge of V–23, and that airspace west of the Rogue Valley VORTAC bounded on the north by the south edge of V–287, on the west by the east edge of V–27, and on the south by the north edge of V–122.

* * * * *

Issued in Seattle, Washington, on December 27, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–787 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–17]

Proposed Amendment to Class E–2 Airspace; Oak Harbor, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Oak Harbor, Washington, Class E–2 airspace. This action is necessary to correct an error in the airspace description inadvertently committed during the airspace reclassification process. This action would reduce the size of the Oak Harbor, Washington, Class E–2 airspace. The area would be depicted on aeronautical charts for pilot reference.

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–17, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–17, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone number: (206) 227–2537.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–17." The postcard will be date/time stamped and returned to the Commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E–2 airspace at Oak Harbor, WA, to correct an error in the Class E–2 airspace description. During the airspace reclassification process the Class E–2 airspace for Oak Harbor Airpark was miscalculated resulting in the designation of more controlled airspace than necessary. This action would correct that error. The coordinates for this airspace docket are based on North American Datum 83. Class E–2 airspace areas are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E–2 airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002 Airspace areas designated as a surface area for an airport.

* * * * *

ANM WA E–2 Oak Harbor, WA [Revised]

Oak Harbor Airpark, WA
(Lat. 48°15'05" N, long. 122°40'25" W)

Within a 2.6 mile radius of Oak Harbor Airpark, WA, excluding the portion within the Whidbey Island NAS, WA, Class C airspace area; within 2.2 mile each side of the 091° bearing from the airport extending from the 2.6 mile radius to 4.4 miles east of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Seattle, Washington, on December 22, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division, Northwest Mountain Region.

[FR Doc. 94–788 Filed 1–11–94; 8.45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANM–9]

Proposed Amendment to Class E Airspace; Coeur d'Alene, Idaho and Spokane, WA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would amend the Coeur d'Alene, Idaho and Spokane, Washington, Class E airspace areas. This action is necessary to accommodate a new instrument approach procedure and missed approach holding pattern at Coeur d'Alene Air Terminal, Coeur d'Alene, Idaho. The areas would be depicted on aeronautical charts to provide reference for pilots.

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, System Management Branch, ANM–530, Federal Aviation Administration, Docket No. 93–ANM–9, 1601 Lind Avenue SW. Renton, Washington, 98055–4056.

The official docket may be examined at the same address.

An informal docket may also be examined during normal business hours at the address listed above.

FOR FURTHER INFORMATION CONTACT: Bob Brown, ANM–535, Federal Aviation Administration, Docket No. 93–ANM–9, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANM–9." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination at the address listed above both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, ANM–530, 1601 Lind Avenue SW., Renton, Washington 98055–4056. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to amend Class E airspace at Coeur d'Alene, Idaho, and Spokane, Washington, to accommodate a new instrument approach procedure and missed approach holding pattern at Coeur d'Alene Air Terminal. The areas would be depicted on aeronautical charts for pilot reference. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations for airspace areas are published in Paragraphs 6004 and 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 as of September 16, 1993, (58 FR 36298; July 6, 1993). The Class E designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore, (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71, in effect as of September 16, 1993, as follows:

PART 71—[AMENDED]

1. The authority citation of 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6004 Class E airspace areas designated as an extension to a Class D surface area.

* * * * *

ANM ID E–4 Coeur d'Alene, ID [Revised]

Coeur d'Alene Air Terminal, ID
(Lat. 47°46'28" N, long. 116°49'11" W)
Coeur d'Alene VOR/DME
(Lat. 47°46'25" N, long. 116°49'14" W)

That airspace extending upward from the surface within 3.5 miles each side of the Coeur d'Alene VOR/DME 251° radial extending from the 4.4-mile radius zone to 6 miles southwest of the airport; and that airspace extending upward from the surface within 1.8 miles each side of the Coeur d'Alene VOR/DME 183° radial extending from the 4.4-mile radius zone to 8 miles south of the airport.

* * * * *

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ANM WA E5 Spokane, WA [Revised]

Spokane International Airport, WA
(Lat. 47°37'12" N, long. 117°32'02" W)
Fairchild AFB, WA
(Lat. 47°36'54" N, long. 117°39'29" W)
Spokane VORTAC
(Lat. 47°33'54" N, long. 117°37'37" W)
Mullan Pass VOR/DME
(Lat. 47°27'25" N, long. 115°38'46" W)

That airspace extending upward from 700 feet above the surface bounded on the north by a line beginning at lat. 47°50'00" N, long. 118°00'04" W, extending to lat. 47°50'00" N, long. 117°30'04" W, to lat. 47°58'00" N, long. 117°16'04" W, to lat. 47°51'00" N, long. 117°08'04" W, to lat. 47°56'00" N, long. 116°47'04" W, to lat. 47°44'00" N, long. 116°41'04" W, to lat. 47°31'10" N, long.

116°44'50" W, to lat. 47°31'50" N, long. 116°56'50" W, to lat. 47°40'40" N, long. 116°56'50" W, to lat. 47°37'00" N, long. 117°12'50" W, to lat. 47°28'00" N, long. 117°16'04" W, to lat. 47°17'00" N, long. 117°47'04" W, to lat. 47°26'00" N, long. 118°00'04" W, thence to the point of beginning; that airspace extending upward from 1,200 feet above the surface within 45.3 mile radius of Fairchild AFB, excluding that portion southeast of Spokane bounded on the north by the 33.1-mile radius of the Fairchild AFB, on the northeast by a line 4 miles south of and parallel to the Spokane VORTAC 107° radial on the southeast by the 45.3-mile radius of the Fairchild AFB, on the southwest by a line parallel to and 8.7 miles northeast of V–253, that airspace south of Spokane extending from the 45.3-mile radius bounded on the east by a line parallel to and 8.7 miles east of V–253 on the south by V–536, on the west by the east edge of V–444; that airspace southeast of Spokane extending upward from 6,000 feet MSL, bounded on the north by the 33.1-mile radius of Fairchild AFB, on the northeast by a line 4 miles south of and parallel to the Spokane VORTAC 107° radial, on the southeast by the 45.3-mile radius of the Fairchild AFB, on the southwest by a line parallel to and 8.7 miles northeast of V–253; The airspace southeast of Spokane extending upward from 7,000 feet MSL bounded on the northwest by the 45.3-mile radius, on the north by a line 4 miles south of and parallel to the Mullan Pass VOR/DME 260° radial, on the southeast by the north edge of V–536 and on the southwest by a line parallel to and 8.7 miles northeast of V–253; excluding the Pullman WA, Class E airspace area.

* * * * *

Issued in Seattle, Washington, on December 22, 1993.

Temple H. Johnson, Jr.,

Manager, Air Traffic Division.

[FR Doc 94–789 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ANE–34]

Proposed Alteration of VOR Federal Airways; Maine

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would notify Federal Airways V–93 and V–451 located in Maine. Modifying V–93 and V–451 is necessary because a section of both airways is defined by radials from the Navy Brunswick, ME, Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility. Navy Brunswick VORTAC is scheduled to be decommissioned on April 28, 1994, and the effective date of the final rule, if issued would coincide with that date.

DATES: Comments must be received on or before March 3, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, ANE–500, Docket No. 93–ANE–34, Federal Aviation Administration, 12 New England Executive Park, Burlington, MA 01803.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93–ANE–34." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267–3485. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify V–93 and V–451. A section of both airways is defined by radials from the Navy Brunswick, ME (HNZ) VORTAC which is scheduled to be decommissioned on April 28, 1994. This action would ensure that the airways are usable after the navigational aid has been decommissioned. This proposed action would be come effective concurrent with the decommissioning of the Navy Brunswick VORTAC. Domestic VOR Federal airways are published in paragraph 6010(a) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The airways listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6010(a)—Domestic VOR Federal Airways.

* * * * *

V–93 [Revised]

From Patuxent River, MD, INT Patuxent 013° and Baltimore, MD, 122° radials; Baltimore; INT Baltimore 004° and Lancaster, PA, 214° radials; Lancaster; Wilkes-Barre, PA; Lake Henry, PA; INT Lake Henry 078° and Kingston, NY, 270° radials; Kingston; Pawling, NY; Chester, MA, 12 miles 7 miles wide (4 miles E and 3 miles W of centerline); Keene, NH; Concord, NH; Kennebunk, ME; INT Kennebunk 045°T(062°M) and Bangor, ME, 220°T(239°M) radials; Bangor; Princeton, ME; INT Princeton 057° radial and the United States/Canadian border.

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V–451 [Revised]

From LaGuardia, NY; INT LaGuardia 063° and Hampton, NY, 289° radials; INT Hampton 289° and Calverton, RI, 044° radials; INT Calverton 044° and Groton, CT, 243° radials; Groton; INT Groton 064° and Sandy Point, RI; 031° radials; INT Sandy Point 031° and Kennebunk, ME, 180° radials; INT Kennebunk 180°T(197°M) and Pease, NH, 093°T(109°M) radials.

* * * * *

Issued in Washington, DC, on January 3, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–784 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AGL–2]

Proposed Alteration VOR Federal Airways

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Proposed rule; withdrawal.

SUMMARY: This action withdraws the Notice of Proposed Rulemaking (NPRM) published in the **Federal Register** on October 15, 1993. The NPRM proposed to alter the descriptions of VOR Federal Airways V–7, V–51, V–97, and V–399, respectively, by reducing the standard width of these airways. The FAA has determined that withdrawal of the proposal at this time is warranted because a change in air traffic control (ATC) procedures would alleviate the need to alter these airways.

DATES: This withdrawal is effective January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9255.

SUPPLEMENTARY INFORMATION: On October 15, 1993, a Notice of Proposed Rulemaking was published in the **Federal Register** to amend 14 CFR part 71 of the Federal Aviation Regulations to alter the descriptions of V–7, V–51, V–97, and V–399, respectively, by reducing the standard width of these airways located in the states of Indiana and Illinois (58 FR 53459). This action was proposed to redefine the lateral boundaries of the airways to provide for more efficient utilization of the airspace. No comments were received on the proposal.

The FAA has decided to withdraw the proposal at this time to provide an opportunity to reexamine the operations effecting these airways in the Lafayette Air Traffic Control Tower (ATCT) and Chicago Air Route Traffic Control Center (ARTCC) areas. This proposal was initiated to simplify air traffic operations and to provide for more efficient utilization of that airspace. The FAA has determined that changing the ATC procedures and delegating to Chicago ARTCC the control responsibility previously handled by Lafayette ATCT would alleviate the need to alter these airways.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Withdrawal

In consideration of the foregoing, the Notice of Proposed Rulemaking, Airspace Docket No. 93–AGL–2, as published in the **Federal Register** on October 15, 1993 (58 FR 53459), is hereby withdrawn.

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

Issued in Washington, DC, on January 5, 1994.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 94–782 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141, 375 and 385

[Docket No. RM93–20–000]

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant; Intent To Act and Response to Comments

Issued December 30, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of proposed rulemaking; notice of intent to act and response to comments.

SUMMARY: The Federal Energy Regulatory Commission has received comments on its proposal to amend its regulations to provide for the electronic filing of FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others". The Commission intends to issue a final rule pending the development and testing of the necessary software, and anticipates that this will be completed for reporting year 1994. The Commission, in this document, is also providing comments on certain suggestions and recommendations made by interested parties concerning features they believe should be incorporated in the software.

DATES: Form 1 is due on or before April 30, 1994, but no electronic filings. The Commission anticipates it will complete its final rule in 1994 in order to provide for the electronic filing of Form 1 for the reporting year 1994, due on or before April 30, 1995.

FOR FURTHER INFORMATION CONTACT:
Richard Mattingly (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 208–2070
James G. Baird (Technical Information), Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426, (202) 219–2613

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the Final Rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

I. Introduction

On July 23, 1993, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR)[1] in which the Commission proposed to amend 18 CFR Parts 141 and 385 to provide for the electronic filing of FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others" (Form 1). Under the proposed rule, in addition to paper copies, future Form 1 filings would also be made by means of a computer diskette incorporating software programming developed by the Commission. Electronic reporting of Form 1 was proposed to commence with reporting year 1993, due on or before April 30, 1994. No change was proposed in Form 1 itself.

The Commission also proposed to amend 18 CFR part 375 to delegate to the Chief Accountant or his designee the authority to act on requests for waiver of the Form 1 and Form 1–F[2] filing requirements.[3]

Interested parties were requested to submit written comments. Comments were received from 22 electric utilities,[4] three industry associations[5] and the Energy Information Administration of the U.S. Department of Energy.

Having considered these comments, the Commission is deferring issuance of a final rule at this time pending development and testing of the necessary software. Once that process is complete the Commission intends to issue a final rule providing for the electronic filing of Form 1. The Commission presently anticipates that that process will be complete in time for the electronic filing of Form 1 for reporting year 1994, due on or before April 30, 1995. However, there will be no electronic reporting of Form 1 for reporting year 1993.

In the meantime, the Commission believes it useful to comment on certain suggestions and recommendations made by interested parties concerning features they believe should be incorporated in the software.

II. Summary of Proposal

The Commission is presently developing a personal computer (PC) based software package for Form 1 reporting.[6] The software will be available on standard computer diskettes with instructions and documentation, and will be sent to each Form 1 respondent without charge. This package will display the Form 1, schedule by schedule, on a respondent's PC. The required data may then be manually key-entered on the respondent's PC. The program will also permit the respondent to "import" the required data from its PC or mainframe computer directly into the software package, thus avoiding the manual data-entry process. When the data entry process is completed, the respondent, using the software, will produce a data diskette that will be submitted to the Commission, along with the required paper copies.[7] The data contained on the data diskette will be in a data base format for use by the Commission.

The Commission has already initiated the process of procuring the necessary software package for automating Form 1 reporting. The Commission intends to test all aspects of the system, including data input, data output, and print capability. The Commission also intends to conduct a field test of the software package with volunteer Form 1 respondents.

In the NOPR, the Commission stated that it expected the program to be complete and to have diskettes ready for distribution to each Form 1 respondent in time to allow reporting for reporting year 1993 by the April 30, 1994 filing deadline; that time frame is being delayed pending development and testing of the necessary software. Thus, there will be no electronic reporting of Form 1 for reporting year 1993.

III. Discussion of Comments

The commenters generally expressed support for the objectives set forth in the NOPR, although virtually all suggested a delay in implementation until at least reporting year 1994.

The commenters also made numerous suggestions and recommendations concerning development and implementation of the proposal. It was the Commission's intention in initiating this proposal that the software would be developed by the Commission's staff and that modifications or revisions would be made as necessary based on the results of staff and field tests.

Nevertheless, a number of commenters have offered specific suggestions as to features which they believe should be incorporated in the software, and the Commission has reviewed these various suggestions and is prepared to state its views on most of these suggestions. Additionally, the Commission's staff will continue to evaluate suggestions as the software is developed and the field test is undertaken.

[1] 58 FR 40006 (July 29, 1993); IV FERC Stats. & Regs. ¶ 32,498 (1993).

[2] FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees."

[3] No party objected to the proposal to delegate authority to rule on requests for waiver of the Form 1 and Form 1–F filing requirements. The proposal is being implemented by a separate order issued concurrently with this notice.

[4] American Electric Power System, Arizona Public Service Company, Carolina Power & Light Company, Cincinnati Gas & Electric Company, Commonwealth Edison Company, Commonwealth Energy System, Delmarva Power & Light Company, Duke Power Company, Florida Power & Light Company, Florida Power Corporation, Idaho Power Company, Iowa Illinois Gas & Electric Company, Kansas City Power & Light Company, Kentucky Utilities Company, Nantahala Power and Light Company, New England Power Service Company, Ohio Edison Company, PSI Energy, Inc., Pennsylvania Power & Light Company, Southern Company Services, Inc., UtiliCorp United, Inc., Wisconsin Public Service Corporation.

[5] American Public Power Association, Edison Electric Institute, Wisconsin Utilities Association, Inc.

[6] An IBM compatible, DOS-based system.

[7] The software package will also enable respondents to print paper copies of the form.

A. Effective Date of Electronic Reporting Requirement and Response to Comments on Software

A majority of the commenters suggested that implementation be delayed from reporting year 1993; they variously suggest delays until, for example, reporting year 1994, or voluntary filing in 1994 and mandatory filing in 1995, or until one year after the software package has been fully tested.

Based on the comments received, the Commission agrees that the electronic reporting requirement should not be implemented for the 1993 reporting year. Rather, we believe that the electronic reporting requirement should be delayed pending development and testing of the required software.

As stated both in the NOPR and above, the Commission intends to conduct a field test of the Form 1 software with volunteer respondents and, to the extent needed, modifications will be made. This field testing will be in addition to testing by the Commission's staff. In order to allow sufficient time for development and testing, the Commission concludes that the most prudent course at the present time is to defer implementation.

As noted above, the NOPR only addressed the adoption of an electronic filing requirement and the effective date for that requirement (and a delegation of authority). It did not address the specifics of the electronic filing, its development and implementation. The Commission believes that the details of such development and implementation are best done at the staff level in the first instance.

Although not specifically solicited in the NOPR, many of the commenters nevertheless made recommendations on features they would like to see included in the software, or that they felt needed to be included in the software. We anticipate that many of the recommendations will, in fact, be included in the initial version of the software. There are others which appear to be worthwhile features which are not contemplated for the initial version software, although they may be considered and included in future updates. We believe that other recommendations are without merit in that they are at odds with the intent of the Form 1 as a whole (i.e., uniform reporting), or the purpose of electronic filing.

It is presently anticipated that the following features suggested by commenters will be incorporated in the initial software program:

1. Edit checking within pages and across pages.
2. Supplemental or continuation page feature.
3. Use of data base structure in ASCII format.
4. Compatibility with different types of printers, including laser printers.
5. Footnote references on schedules by line items and written columns, including headings.
6. View screen option.
7. Menu driven screens, including a help function.
8. Support function to provide assistance to users when implementing the new software.
9. LAN compatibility.

Certain additional features suggested by commenters are not considered feasible for incorporation in the initial software, but may merit consideration in future software updates. These features include the following:

1. Submission by modem rather than diskette.
2. Electronic dissemination capability to others.
3. Incorporation of filings on a "bulletin board" accessible to the public.
4. Providing a diskette to update Form 1 schedules without reissue of the entire software package each year.
5. Providing a capability to carry over data from year to year in instances where there is no change in the data to be reported.
6. Providing a capability to extract portions of the program onto diskettes for distribution to various individual departments.

Certain additional proposed features have been determined to be inconsistent with the basic Form 1 objective of uniform reporting by the electric utility industry, and are therefore rejected. These features include the following:

1. Providing a capability to insert user defined rows.
2. Allowing for center, left and right justification of data within columns.
3. Elimination of General Instruction II (use of whole numbers, dollars or MWH).
4. Providing compatibility of the software with Lotus 1–2–3 spreadsheet or Windows.[8]

American Electric Power System (AEP) and Utilicorp United, Inc. suggest that the Form 1 software should be made compatible with the Securities and Exchange Commission's Electric Data Gathering Analysis and Retrieval (EDGAR) system, or that a system should be adopted based on EDGAR. The Commission declines to adopt this suggestion. In developing requirements for the electronic filing of Form 1, a number of approaches were considered initially, including the EDGAR system. The approach chosen was based on the Commission's information needs, as well as the estimated costs of development and implementation. It was concluded that the software program should be consistent with the current information and data formats of Form 1. Consequently the EDGAR approach was not, and is not, adopted.

Delmarva Power & Light Company and Edison Electric Institute (EEI) suggest that the software program be based on (or similar to) EEI's electronic Uniform Statistical Report (USR). The Commission declines to adopt this recommendation. Form 1 reporting is more extensive than that for the USR. Because of the unique information requirements of Form 1, compatibility with the USR program would be difficult to develop and maintain and would not be cost effective.

CG&E suggests that, for combination gas and electric utilities, Form 1 reporting under the Federal Power Act should be compatible with Form 2 reporting under the Natural Gas Act. At this time, there are no plans to attempt to make Form 1 and Form 2 reporting electronically compatible.

Florida Power & Light Company (FP&L), Florida Power Corporation, and EEI argue that, because of the emergence of competition in the industry, sensitive competitive data should no longer be required or publicly disclosed, citing as an example electric generating plant operating statistics. This issue is beyond the scope of this proceeding and the Commission will therefore not address it.

FP&L argues that, before continuing with the electronic filing project, the Commission should review the actual data required to be reported on Form 1, and should eliminate obsolete or unnecessary information. The subject matter of this proceeding is the electronic filing of Form 1. It was not intended as, and is not, a forum for evaluation of the need for the data presently required to be reported. Accordingly, as the issue is beyond the scope of this proceeding, the Commission will not address it.

Utilicorp United, Inc. argues that the existing systems used by the many Form 1 respondents are incompatible and that no product or program exists to convert them to a usable computer format. The Commission agrees that no comprehensive program exists to convert the various systems in use to the Commission's electronic software. The

[8] However, the Commission's software will allow a user to export data files to ASCII, which can then be read by spreadsheets or other software; also, the Commission's software can be run in a DOS session within windows.

Commission anticipates, however, that the Form 1 software program will allow the respondents to develop and use such a conversion program.

IV. Conclusion

Accordingly, in light of the foregoing, the Commission hereby gives notice of its intent to defer issuance of a final rule prescribing the electronic filing of Form 1 at this time.

The Commission expects that it will issue a final rule in 1994 to provide for the electronic filing of Form 1 for reporting year 1994, due on or before April 30, 1995.

By direction of the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–682 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

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18 CFR Parts 141 and 388

[Docket No. RM94–5–000]

Treatment of Responses to FERC Form No. 580 Interrogatories; Notice of Extension of Time for Comments

December 30, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of proposed rulemaking; extension of time for comments.

SUMMARY: On November 24, 1993, the Commission issued a notice of proposed rulemaking that proposes to amend its regulations to codify an existing requirement for each public utility with a steam-electric generating station of 50 megawatts or more to file responses to FERC Form 580 interrogatories (58 FR 63312, December 1, 1993). The date for filing comments is being extended at the request of various interested commenters.

DATES: The date for filing comments is extended to and including March 4, 1994.

ADDRESSES: Office of the Secretary, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 94–684 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[INTL–0068–92]

RIN 1545–AR18

Computation of Combined Taxable Income Under the Profit Split Method When the Possession Product is a Component Product or an End-Product Form

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed Income Tax Regulations relating to the determination of combined taxable income under the profit split method. These regulations would amend the current regulations and provide revised rules in order for taxpayers to compute the combined taxable income under profit split when the possession product chosen for purposes of section 936(h)(5) of the Internal Revenue Code is a component product or an end-product form. These regulations are necessary to provide guidance to taxpayers electing the profit split method of computing taxable income under section 936(h)(5).

DATES: Written comments and requests for a public hearing must be received by March 14, 1994.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attention: CC:CORP:T:R (INTL–0068–92), room 5228, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (INTL–0068–92), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Jacob Feldman or Mary Gillmarten of the Office of Associate Chief Counsel (International), Internal Revenue Service, at 202–622–3870 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 1) under section 936 of the Internal Revenue Code of 1986. These amendments to the regulations are proposed to provide simplified rules for computing combined taxable income under the profit split method for a taxpayer that has chosen a component product or an end-product form as its possession product.

Explanation of Provisions

The proposed regulations would amend § 1.936–6(b)(1), *Q & A. 12*, with conforming changes made to *Q & A. 10, A. 11, and A. 13*. Under the proposed revision, where the possession product is a component product or an end-product form, the combined taxable income attributable to the possession product will be determined by multiplying the combined taxable income of the possession corporation and affiliated groups derived from covered sales of integrated products (which includes the possession product) by a production cost ratio. In the case of a component product, the combined taxable income of the integrated product would be multiplied by a ratio, the numerator of which equals the production costs of the component product and the denominator of which equals the production costs of the integrated product. The combined taxable income of an end-product form is determined in a similar manner using the production costs of the end-product form.

The proposed change is intended to simplify the computation of combined taxable income under *Q & A. 12* and to eliminate the need to apply section 482 in cases in which a possession product is a component product or an end-product form. No inference is intended as to the interpretation or scope of current regulations by the revisions proposed herein.

The example under § 1.936–6(b)(1), *Q & A. 12* is modified to reflect the revised rule.

Proposed Effective Date

The changes made in this document are proposed to be effective for taxable years beginning after December 31, 1993.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, a copy of this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Request for Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these proposed regulations is Mary Gillmarten of the Office of Associate Chief Counsel (International), Internal Revenue Service. Other personnel from the Internal Revenue Service and Treasury Department participated in developing the regulations.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. The heading of § 1.936–6 is amended by removing the colon after the word "make" and by adding in its place a semicolon.

Par. 3. Section 1.936–6, paragraph (b)(1) is amended by:

1. Revising *Q & A. 10.*
2. Designating the first sentence of *A. 11* as paragraph (i) and revising it.
3. Designating the flush text and example following newly designated *A. 11* (i) as paragraph (ii).
4. Revising *Q & A. 12.*
5. Revising *A. 13.*
6. The revisions read as follows:

§ 1.936–6 Intangible property income when an election out is made; cost sharing and profit split options; covered intangibles.

* * * * *

(b) * * * (1) * * *

Q. 10: If the possessions corporation is entitled to use the profit split method in the situation described in *Q. 9* (leasing units of the possession product or use of such units in the taxpayer's own trade or business), how should it compute combined taxable income with respect to such units?

A. 10: In the case of an integrated product, combined taxable income shall be computed as if the U.S. affiliate had sold the units to an unrelated person (or to a foreign affiliate) at the time the units were first leased or otherwise placed in service by the U.S. affiliate. The sales price shall be equal to the sales price from comparable uncontrolled transactions determined in accordance with § 1.482–2(e)(2). If a sales price from comparable uncontrolled transactions cannot be determined in accordance with § 1.482–2(e)(2), then the taxpayer shall not be treated as having possession sales with respect to such leasing transaction. If the possession product is a component product or an end-product form, and there is a comparable uncontrolled price for the integrated product which includes the possession product, the combined taxable income with respect to the possession product shall be determined under *Q & A. 12* of this paragraph (b)(1). For purposes of determining the basis of a component product or an end-product form, the deemed sales price of such product must be determined. The deemed sales price of the component product shall be determined by multiplying the deemed sales price of the integrated product by a ratio, the numerator of which is the production costs of the component product and the denominator of which is the production costs of the integrated product. The deemed sales price of an end-product form shall be determined by multiplying the deemed sales price of the integrated product by a ratio, the numerator of which is the production costs of the end-product form and the denominator of which is the production costs of the integrated product. The definition of production costs with respect to the component product or end-product form shall be determined under the rules of *Q & A. 12* of this paragraph (b)(1). The full amount of income received under the lease shall be treated as income of (and taxed to) the U.S. affiliate and not the possessions corporation.

* * * * *

A. 11: (i) The U.S. affiliate shall be treated, for purposes of computing its basis in such units, as if it had repurchased such units immediately following the deemed sale and at the deemed sales price as provided in *Q & A. 10* of this paragraph (b)(1).

(ii) * * *

Q. 12: If the possession product is a component product or an end-product form, how is the combined taxable income for such product to be determined?

A. 12: (i) Combined taxable income for a component product or an end-product form is computed under the production cost ratio (PCR) method.

(ii) Under the PCR method, the combined taxable income for a component product will be the same proportion of the combined taxable income for the integrated product which the production costs attributable to the component product bear to the total production costs for the integrated product. Production costs will be the sum of the direct and indirect production costs as defined for inventory accounting purposes under § 1.471–11 (b), (c) or (d), except that the costs will not include the costs of materials.

(iii) Under the PCR method the combined taxable income for an end-product form will be the same proportion of the combined taxable income for the integrated product which the production costs attributable to the end-product form bear to the total production costs for the integrated product. Production costs will be the sum of the direct and indirect production costs as defined for inventory accounting purposes under § 1.471–11 (b), (c) or (d), except that the costs will not include the costs of materials.

(iv) *Example.* The following example illustrates a possessions corporation, S, engaged in the manufacture of microprocessors. S obtains a component from a U.S. affiliate, O. S sells its production to another U.S. affiliate, P, which incorporates the microprocessors into central processing units (CPUs). P transfers the CPUs to a U.S. affiliate, Q, which incorporates the CPUs into computers for sale to unrelated persons. S chooses to define the possession product as the CPUs. The combined taxable income for the sale of the possession product on the basis of the given production, sales, and cost data is computed below:

Production costs (excluding costs of materials):

1. O's costs for the component	100
2. S's costs for the microprocessors	500
3. P's costs for the CPU's (the possession product)	200
4. Q's costs for the computers	400

5. Total production costs for the computer (Add lines 1 through 4)	1,200
6. Combined production costs for the CPU (the possession product) (Add lines 1 through 3)	800
7. Ratio of production costs for the CPUs (the possession product) to the production costs for the computer (the integrated product)	0.667
Determination of combined taxable income for computers—Sales:	
8. Total possession sales of computers to unrelated customers and foreign affiliates	7,500
Total costs of O, S, P, and Q incurred in production of a computer:	
9. Production costs (enter from line 5)	1,200
10. Material costs	100
11. Total costs (line 9 plus line 10)	1,300
12. Combined gross income from sale of computers (line 8 minus line 11)	6,200
Expenses of the affiliated group (other than foreign affiliates) allocable and apportionable to the computers or any component thereof under the rules of §§ 1.861–8 through 1.861–14T and 1.936–6(b)(1), Question and Answer 1:	
13. Expenses (other than research expenses)	980
Research expenses of the affiliated group allocable and apportionable to the computers:	
14. Total sales in the 3-digit SIC Code	12,500
15. Possession sales (enter from line 8)	7,500
16. Cost sharing fraction (divide line 15 by line 14)	0.6
17. Research expenses incurred by the affiliated group in 3-digit SIC Code multiplied by 120 percent	700
18. Cost sharing amount (multiply line 16 by line 17)	420
19. Research of the affiliated group (other than foreign affiliates) allocable and apportionable under §§ 1.861–8(e)(3) and 1.861–14T(e)(2) to the computers (the integrated product)	300
20. Enter the greater of line 18 or line 19	420
Computation of combined taxable income of the computer and the CPU:	
21. Combined taxable income attributable to the computer (line 12 minus line 13 and line 20)	4,800
22. Combined taxable income attributable to CPUs (multiply line 21 by line 7) (production cost ratio)	3,200
23. Share of combined taxable income apportioned to S (50 percent of line 22)	1,600
Share of combined taxable income apportioned to U.S. affiliate(s) of S:	
24. Adjustments for research expenses (line 18 minus line 19 multiplied by line 7)	80
25. Adjusted combined taxable income (line 22 plus line 24)	3,280
26. Share of combined taxable income apportioned to affiliates of S (line 25 minus line 23)	1,680

* * * * *

A. 13: (i) The income shall be allocated to U.S. affiliates as follows—

(A) First, to U.S. affiliates (other than tax-exempt affiliates) within the group (as determined under section 482) which derive income with respect to the product produced in whole or in part in the possession;

(B) Second, to U.S. affiliates (other than tax-exempt affiliates) which derive income from the active conduct of a trade or business in the same product area as the possession product;

(C) Third, to other U.S. affiliates (other than tax-exempt affiliates);

(D) Fourth, to foreign affiliates which derive income from the active conduct of a U.S. trade or business in the same product area as the possession product (or, if the foreign members are resident in a country with which the U.S. has an income tax convention, then to those foreign members that have a permanent establishment in the United States which derives income in the same product area as the possession product); and

(E) Fifth, to all other affiliates.

(ii) The allocations made under paragraph (i)(A) of this *A. 13* shall be made on the basis of the relative gross income derived by each such affiliate with respect to the product produced in whole or in part in the possession. Where the product is a component product, the relative gross income with respect to the component product shall be determined by multiplying the relative gross income of the integrated product by a ratio, the numerator of which is the production costs of the component product and the denominator of which is the production costs of the integrated product. Where the product is an end-product form, the relative gross income of an end-product form shall be determined by multiplying the gross income of the integrated product by a ratio, the numerator of which is the production costs of the end-product form and the denominator of which is the production costs of the integrated product.

(iii) The allocations made under paragraphs (i)(B) and (i)(D) of this *A. 13* shall be made on the basis of the relative gross income derived by each such affiliate from the active conduct of the trade or business in the same product area.

(iv) The allocations made under paragraphs (i)(C) and (i)(E) of this *A. 13* shall be made on the basis of the relative total gross income of each such affiliate before allocating income under this section.

(v) Income allocated to affiliates shall be treated as U.S. source and section 863(b) does not apply for this purpose. For purposes of determining an affiliate's estimated tax liability with respect to income thus allocated, the income shall be deemed to be received on the last day of the taxable year of each such affiliate in which or with which the taxable year of the possessions corporation ends.

* * * * *

Margaret Milner Richardson,
Commissioner of Internal Revenue.
[FR Doc. 94–668 Filed 1–11–94; 8:45 am]
BILLING CODE 4830–01–U

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

29 CFR Part 2530

Qualified Domestic Relations Orders

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Reopening and extension of comment period.

SUMMARY: This document reopens and extends the comment period regarding a request for information by the Department of Labor (the Department) to assist it in assessing the need for a regulation clarifying certain statutory requirements set forth in title I of the Employee Retirement Income Security Act (ERISA) and the Internal Revenue Code (the Code) with regard to qualified domestic relations orders (QDROs). The request for information was published in the **Federal Register** on October 21, 1993 (58 FR 54444).

The Department has received a number of requests from members of the public for additional time to prepare comments.

DATES: The comment period is reopened and extended through February 18, 1994.

ADDRESSES: Comments (preferably at least six copies) should be addressed to the Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, room N–5669, U.S. Department of Labor, Washington, DC 20210. Attention: QDRO RFI. All comments received will be available for public inspection at the Public Disclosure Room, Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Ave., NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Deborah Hobbs, Office of Regulations and Interpretations, Pension and Welfare Benefits Administration, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–7901; or Susan Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, Washington, DC 20210, telephone (202) 219–9141. These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: On October 21, 1993, the Department published a request for information in the **Federal Register** (58 FR 54444) to assist it in assessing the need for a regulation clarifying certain statutory requirements set forth in title I of ERISA and in the Code with regard to qualified domestic relations orders. In that notice, the Department invited all interested persons to submit written comments concerning the request for information on or before December 20, 1993.

The Department has received a number of requests from members of the public for additional time to prepare comments. In order to provide the public with an additional opportunity to submit comments, the Department believes that it is appropriate to reopen and extend the comment period. Accordingly, this notice reopens and extends the period during which comments on the request for information will be received through Friday, February 18, 1994.

Notice of Reopening and Extension of Comment Period

Notice is hereby given that the period of time for submission of public comments in response to the request for information concerning qualified domestic relations orders, published in the **Federal Register** on October 21, 1993, is reopened and extended through February 18, 1994.

Signed at Washington, DC, this 30th day of December, 1993.

Olena Berg,
Assistant Secretary for Pension and Welfare Benefits, U.S. Department of Labor.

[FR Doc. 94–639 Filed 1–11–94; 8:45 am]
BILLING CODE 4510–29–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[DE15–1–6000; A–1–FRL–4825–6]

Approval and Promulgation of Air Quality Implementation Plans; Delaware–Small Business Stationary Source Technical and Environmental Compliance Assistance Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a State Implementation Plan (SIP) revision submitted by the State of Delaware for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (SBTCP). This SIP revision was submitted by Delaware to satisfy the Federal mandate of the Clean Air Act (CAA) to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rational for approving is set forth in this notice; additional information is available at the address indicated below. This action is being taken in accordance with the provisions of the Clean Air Act.

DATES: Comments must be received on or before February 11, 1994.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Delaware Department of Natural Resources and Environmental Control, P.O. Box 1401, Dover Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Lisa M. Donahue, (215) 597–9781.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions the CAA will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that states adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program, and submit this Program as a revision to the federally approved SIP. In addition, the CAA directs EPA to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a Program are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and state roles in meeting the new statutory provisions and as a tool to provide further guidance to the states on submitting acceptable SIP revisions.

On January 11, 1993, the State of Delaware submitted a formal revision to its SIP. The SIP revision consists of a plan for establishing an SBTCP. In order to gain full approval, the state submittal must provide for each of the following program elements: (1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses; (2) the establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and (3) the creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP. The plan must also determine the eligibility of small business stationary sources for assistance in the program. The plan includes the duties, funding, and schedule of implementation for the three program components.

Delaware Department of Natural Resources and Environmental Control (DE DNREC) is authorized to create and administer the SBTCP. Delaware DNREC can create and administer the SBAP, and create the Office of the Ombudsman. Through an executive order, the Governor of the State of Delaware will establish the Compliance Advisory Panel.

II. Summary and Analysis of SIP Revision

Section 507(a) of the CAA sets forth seven requirements that Delaware must meet to have an approvable SBAP. Three requirements will be discussed in the first section, and the remaining four requirements, including the establishment of an Ombudsman, in the second section.

1. Small Business Assistance Program

The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the CAA. Delaware has met this requirement by establishing a SBAP, with the responsibility of serving as a clearinghouse for information related to compliance methods and control technologies.

Small businesses will be referred to state technical experts specifically trained to handle questions relevant to achieving compliance with the CAA. The SBAP will be coordinated through the Air Quality Management Section and will respond to inquiries from small businesses received through the ombudsman's toll-free hotline. Information workshops, industry-specific compliance publications, and roundtable groups are examples of planned outreach activities. A list of potentially affected parties will be developed in conjunction with the State of Delaware Department of Labor.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. Delaware DNREC established a Pollution Prevention Program in 1990 which provides education, technical assistance, and financial incentives to improve environmental quality. Small businesses have access to Delaware's Waste Minimization/Pollution Prevention Information Clearinghouse. In addition to distributing pollution prevention guides, DE DNREC has established a Pollution Prevention Industry Roundtable to facilitate technology transfer between large and small businesses.

To address accidental release detection and prevention, the Air Quality Management Section has been administering Delaware's "*Regulation for the Management of Extremely Hazardous Substances*" through the Industrial Disaster Prevention Group (IDPG). Facility visits and compliance discussions are a part of this program, as is the distribution of generic procedures to assist with compliance with the regulation.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the CAA in a timely and efficient manner. Delaware has met this requirement through the Engineering and Compliance Branch (ECB) of the Air Quality Management Section. The ECB will identify applicable rules, determine whether a permit is needed, identify compliance alternatives, and explain the fees, application process, violations, and appeals, as needed.

2. Ombudsman Office

The fourth requirement of section 507(a)(3) is the designation of a state office to serve as the Ombudsman for small business stationary sources. Delaware's Secretary of DE DNREC is authorized to create the ombudsman's office within DNREC. The ombudsman will be appointed by the Secretary of DE DNREC and will report directly to him or her. The Delaware Office of the Ombudsman (Delaware Ombudsman) will be independent of the Division of Air and Waste Management and the Air Quality Management Section.

The fifth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the CAA. The Delaware Ombudsman will ensure that small businesses receive notice of their rights in sufficient time to evaluate compliance. Information delineating legal rights will be disseminated with the technical and compliance information by the SBAP. In addition, field inspectors will be trained to properly inform small businesses of their rights during site visits.

The sixth requirement of CAA section 507(a) is to develop adequate mechanisms for informing small business stationary sources of their obligations under the CAA, including mechanisms for referring such sources to qualified auditors or, at the option of the state, for providing audits of the operations of such sources to determine compliance with the CAA. The Delaware Ombudsman will develop procedures for referring sources to qualified auditors. A list of qualified environmental consulting firms who could conduct audits will be provided by the Delaware Ombudsman to small businesses. The Delaware Ombudsman, ECB, IDPG and Pollution Prevention Program may elect to provide qualified auditors, if available.

The seventh requirement of CAA section 507(a) is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practices or compliance methods. Delaware's Office of the Ombudsman will receive written requests from a small businesses for modification of work practices.

3. Compliance Advisory Panel

Section 507(e) of the CAA requires Delaware to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the state legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. Members of the Delaware CAP will be selected in the following manner for the first term, after which all will serve four year terms: (1) The majority leader of the Senate shall appoint one member for 4 years; (2) the minority leader of the Senate shall appoint one member for 2 years; (3) the majority leader of the House of Representatives will appoint one member for three years; (4) the minority leader of the House of Representatives shall appoint one member for one year; (5) the Governor will select two members for four years; and (6) the Air Quality Management Program Administrator will select one member for four years. The makeup of Delaware's CAP is prescribed as is required by section 507(e).

The Delaware CAP will meet at least once per quarter. Any member absent from three consecutive meetings will be replaced. Administrative and logistical support for the Delaware CAP will be funded through the Delaware Ombudsman's office. The Delaware Ombudsman will also serve a

Secretariat for the development and dissemination of CAP reports.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (A) to render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (B) to review and assure that information for small business stationary sources is easily understandable; (C) to develop and disseminate the reports and advisory opinions made through the SBAP; and (D) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act. (Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three statutes. However, since state agencies are not required to comply with them, EPA believes that the state Program must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.) The duties and responsibilities described in Delaware's submittal indicate that the Delaware CAP will be responsible for all four of the activities listed above, except that the Delaware Ombudsman will disseminate reports.

4. Source Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

Delaware's submittal duplicates the language of CAA section 507(c)(1) in defining eligible stationary sources. It also provides for the state, after consultation with the Administrator and the Administrator of the Small Business Administration and notice and opportunity for public comment, to include or exclude a category or subcategory of sources.

III. Summary of SIP Revision

Delaware has submitted a SIP revision requiring implementation of each of the program elements required by CAA section 507. As previously stated, the authority to implement the SBAP has been delegated to the Department of Natural Resources and Environmental Control, Air Quality Management Section. Program implementation will begin no later than January 1, 1994. The Secretary of DE DNREC will appoint the Ombudsman by July 1, 1993 and hire the staff dedicated to implementing the program. An Executive Order establishing the Compliance Advisory Panel will be executed by the Governor of the State of Delaware by March 1, 1993. In this action, EPA is approving the SIP revision submittal by the State of Delaware. Accordingly, § 52.460 is added to 40 CFR part 52, subpart I–Delaware to reflect EPA's approval action and the fact that it is considered part of the Delaware's SIP.

EPA is proposing to approve the Delaware SIP revision for establishing a Small Business Stationary Source Technical and Environemental Compliance Assistance Program, which was submitted on January 11, 1993. EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the Addresses section of this document.

Proposed Action

EPA is proposing to approve Delaware's plan for the establishment of a Small Business Stationary Source Technical and Environmental Compliance Assistance Program.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

In this action, EPA is approving a state program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have asignificant economic impact on any small entities affected.

This action has been classified as a Table 2 action for signature by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225), as revised by an October 4, 1993 memorandum from Michael H. Shapiro, Acting Assistance Administrator for Air and Radiation. On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request is still applicable under Executive Order 12866, which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 22, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 94–759 Filed 1–11–94; 8:45 am]

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40 CFR Part 52

[MA–20–01–5783; A–1–FRL–4825–5]

Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for Massachusetts

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA proposes to conditionally approve the State Implementation Plan (SIP) revision submitted by the Commonwealth of Massachusetts for the purpose of establishing a small business stationary source technical and environmental compliance assistance program. The SIP revision was submitted by the State to satisfy the Federal mandate to ensure that small businesses have access to the

technical assistance and regulatory information necessary to comply with the Clean Air Act (CAA). The rationale for the conditional approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments must be received on or before February 11, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203. Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and Department of Environmental Protection, One Winter Street, 8th Floor, Boston, MA 02108.

FOR FURTHER INFORMATION CONTACT: Emanuel Souza, Jr., (617) 565-3248.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act Amendments of 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a small business stationary source technical and environmental compliance assistance program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in section 507 of title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The Commonwealth of Massachusetts has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a small business assistance program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a State small business ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

1. Small Business Assistance Program

Massachusetts' SIP revision delegates the responsibility for implementation of the SBAP to various functional units within the Executive Office of Environmental Affairs (EOEA) and the Department of Environmental Protection (DEP). SBAP staff will be located in the Office of Technical Assistance. Primary responsibility for program oversight, development, and coordination will lie with the small business ombudsman and the SBAP staff.

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The first requirement is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by offering a proactive and reactive approach to gathering and disseminating information on compliance issues and control technologies. This approach includes: an information clearinghouse, workshops, and an audit program.

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by stating that the Massachusetts Office of Technical Assistance (OTA) will provide help in identifying pollution prevention opportunities. These services are provided at no charge. Additionally, the SBAP staff will provide small business stationary sources with information and referral to appropriate sources regarding requirements related to accidental release detection and prevention.

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement. As stated earlier, responsibility for the implementation of the small business assistance program will involve various units within the EOEA and the DEP, with primary responsibility for program oversight, development, and coordination lying with the small business ombudsman and SBAP staff in EOEA, Office of Technical Assistance. The air quality staff at each DEP Regional Office will provide assistance to small business stationary sources in the following: identifying applicable rules, determining their need for permits, explanation of the permitting procedures, providing the necessary forms and applications, and assisting them in preparing the required documents.

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulations or standards issued under the Act. The State has met this requirement by providing that the DEP's Division of Air Quality Control (DAQC) will be responsible for the development of policies and regulations for implementing the provisions of the CAA. The staff in that office will provide assistance in identifying applicable rules. Additionally, that office will provide the necessary information regarding rules and procedures for complying with Federal and state laws and regulations. Furthermore, it will be the DAQC's responsibility to inform businesses of their rights through brochures and workshops.

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The SIP revision provides that the DAQC is responsible for the development of policies and regulations for implementing the provisions of the CAA. The SBAP staff will also be responsible for providing audits. These include on-site assessments by the OTA and through audit referrals. On-site assessments will be arranged in conjunction with technical staff from the OTA. Audit referrals will be arranged by having the staff provide a list of qualified private sector auditors or consultants to small business stationary sources.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The SIP revision provides that specific regulations for modifications of work practices or technological methods of compliance will be submitted in November 1993. These regulations will include: (1) Procedures for receiving requests from small businesses to modify the provisions of State-adopted regulations; (2) format for such requests; (3) procedures for how requests will be reviewed and acted upon; and (4) requirements to ensure that no such modification may be granted unless it is in compliance with the applicable requirements of the CAA, the SIP and the applicable Federal regulations.

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the ombudsman for small business stationary sources. The State has met this requirement by designating the small business ombudsman within the EOEA. The EOEA is a secretariat answering directly to the Governor. The designation of a small business ombudsman within the Commonwealth's environmental secretariat but outside of the secretariat's regulatory agency will:

(1) Enhance impartiality in resolving disputes involving compliance and enforcement;

(2) Reduce potential for conflicts of interest;

(3) Improve utilization by the business community;

(4) Allow for a high level of independence, authority, and communication;

(5) Allow the small business ombudsman to build upon established contacts with the business community and other government offices and agencies; and

(6) Strengthen the ombudsman's ability to provide program oversight and evaluation.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has not fully met this requirement due to the lack of adequate statutory authority to establish the CAP. However, EPA expects Massachusetts to submit a legislative resolve to EPA when it is finally approved. The SIP revision provides that legislative approval and selection of CAP members will be completed by January 30, 1994.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities for it: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements in the SIP revision by authorizing the panel to: render advisory opinions on the effectiveness of the small business assistance program; prepare periodic reports to EPA on the status of the SBAP with regard to the Paper Work Reduction Act, the Regulatory Flexibility Act, and the Equal Access to Justice Act; and review information for small business stationary sources to assure such information is understandable by the layperson. Additionally, the SIP revisions provide the small business ombudsman with the authority to oversee all aspects of the SBAP and allows for the ombudsman to act as secretariat to the panel.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals,

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant; and

(E) Emits less than 75 tpy of all regulated pollutants.

The SIP revision states that it is the general policy of the EOEA and the DEP to assist all businesses in identifying applicable regulations and in meeting their obligations under the requirements of the CAA. However, recognizing the special needs of the small business stationary sources, EOEA and DEP shall, wherever resources become a limiting factor in providing such assistance, give priority to businesses which meet the definition of small business stationary source under title V, section 507(c)(1) of the Clean Air Act. Additionally, the Commonwealth of Massachusetts allows businesses that do not meet the provisions of sections 507(c)(1)(C)-(E) to petition the SBAP for assistance in accordance with the procedures established in section 507(c)(2) of the CAA.

The SBAP staff, with the advice of the ombudsman and the CAP, may consider the development of provisions for excluding any category or subcategory of sources with sufficient financial and technical resources, from receiving assistance under the SBAP in accordance with the provisions of the Act.

III. Proposed Action

The Commonwealth of Massachusetts has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The State expects all the elements of the PROGRAM to be fully operational by November 14, 1994.

The State needs full adequate legal authority to implement the PROGRAM before EPA can fully approve this SIP revision. Therefore, EPA is proposing to conditionally approve the Massachusetts SIP revision for the small business stationary source technical and

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

environmental compliance assistance program, which was submitted on November 13, 1993 upon the condition that Massachusetts submits the additional legal authority necessary to fully implement the PROGRAM.

EPA is soliciting public comments on the issues discussed in this proposal or on other relevant matters. These comments will be considered before EPA takes final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **Addresses** section of this action.

Proposed Action

EPA is proposing to conditionally approve the small business stationary source technical and environmental compliance assistance program submitted on November 13, 1992 and July 22, 1993. The one outstanding issue with this SIP revision concerns Massachusetts' lack of adequate legal authority to establish and implement a compliance advisory panel. The State plans to address this issue in a legislative resolve which it will forward to EPA by November 14, 1994. For this reason EPA is proposing to conditionally approve this SIP revision on the condition that the State meet its commitment to submit a legislative resolve allowing a compliance panel to be established and implemented, incorporating all the elements listed in section 507(e) of the Clean Air Act and have the program fully operational by November 14, 1994. Under section 110(k)(4) of the Act, EPA may conditionally approve a plan based on a commitment from the State to adopt specific enforceable measures by a date certain, but not later than 1 year from the date of approval. If EPA takes final conditional approval on the commitment, the State must meet its commitment to have the program fully operational by November 14, 1994. If the State fails to do so, this approval will become a disapproval on that date. EPA will notify the State by letter that this action has occurred. At that time, this commitment will no longer be a part of the approved Massachusetts SIP. EPA subsequently will publish a notice in the notice section of the **Federal Register** notifying the public that the conditional approval automatically converted to a disapproval. If the State meets its commitment, within the applicable time frame, the conditionally approved submission will remain a part of the SIP until EPA takes final action approving or disapproving the new legislative authority. If EPA disapproves the new submittal, the conditionally approved small business program will also be disapproved at that time. If EPA approves the submittal, the small business program will be fully approved in its entirety and replace the conditionally approved program in the SIP.

If EPA determines that it cannot issue a final conditional approval or if the conditional approval is converted to a disapproval, such action will trigger EPA's authority to impose sanctions under section 110(m) of the CAA at the time EPA issues the final disapproval or on the date the State fails to meet its commitment. In the latter case, EPA will notify the State by letter that the conditional approval has been converted to a disapproval and that EPA's sanctions authority has been triggered. In addition, the final disapproval triggers the Federal implementation plan (FIP) requirement under section 110(c). Pursuant to section 507(b)(3), EPA will provide for implementation of the program provisions required under section 507(a)(4) in any State that fails to submit such a program under that subsection. Therefore, EPA would have to provide for a compliance assistance program which assists small business stationary sources in determining applicable requirements and in receiving permits under the CAA.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225) as revised by an October 4, 1993, memorandum from Michael H. Shapiro, Acting Assistant Administer for Air and Radiation. On January 6, 1989 the Office of Management and Budget (OMB) waived Table 2 and 3 SIP revisions (54 FR 2222) from the requirement of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

By today's action, EPA is conditionally approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being proposed for conditional approval today does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the state. Therefore, because the EPA's conditional approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3) of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 21, 1993.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 94–760 Filed 1–11–94; 8:45 am]

BILLING CODE 6560-60-F

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40 CFR Part 52

[CA–46–3–6054; FRL–4825–7]

Approval and Promulgation of Implementation Plans; California State Implementation Plan Revision; Sacramento Metropolitan Air Quality Management District; Santa Barbara County Air Pollution Control District

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: EPA is proposing to approve revisions to the California State Implementation Plan (SIP) adopted by the Sacramento Metropolitan Air Quality Management District (SMAQMD) on February 23, 1993, and by the Santa Barbara County Air Pollution Control District (SBCAPCD) on December 10, 1991. The California Air Resources Board (CARB) submitted these revisions to EPA on April 6, 1993, and June 19, 1992, respectively. The revisions concern SMAQMD's Rule 454, Degreasing Operations, and SBCAPCD's Rule 331, Fugitive Emissions Inspection and Maintenance. SMAQMD's Rule 454 controls volatile organic compound (VOC) emissions from metal parts cleaning procedures, while SBCAPCD's Rule 331 controls VOC emissions from equipment leaks at sources such as petroleum refineries. The intended effect of proposing approval of these rules is to regulate emissions of VOCs in accordance with therequirements of the Clean Air Act, as amended in 1990 (CAA or the Act). EPA's final action on this notice of proposed rulemaking (NPR) will incorporate these rules into the federally approved SIP. EPA has evaluated each of these rules and is proposing to approve them under provisions of the CAA regarding EPA action on SIP submittals, SIPs for national primary and secondary ambient air quality standards and plan requirements for nonattainment areas.

DATES: Comments must be received on or before February 11, 1994.

ADDRESSES: Comments may be mailed to: Daniel A. Meer, Chief, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105.

Copies of the rule revisions and EPA's evaluation report of each rule are available for public inspection at EPA's Region 9 office during normal business hours. Copies of the submitted rule revisions are also available for inspection at the following locations:

California Air Resources Board, Stationary Source Division, 2020 L. Street, Sacramento, CA 95814.

Sacramento Metropolitan Air Quality Management District, 8411 Jackson Road, Sacramento, CA 95826.

Santa Barbara County Air Pollution Control District, 26 Castilian Drive, B–23, Goleta, CA 93117.

FOR FURTHER INFORMATION CONTACT: William Davis, Rulemaking Section (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region 9, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1183.

SUPPLEMENTARY INFORMATION:

Background

On March 3, 1978, EPA promulgated a list of ozone nonattainment areas under the provisions of the Clean Air Act, as amended in 1977 (1977 CAA or pre-amended Act), that included the Sacramento Metro Area and Santa Barbara County. 43 FR 8964, 40 CFR 81.305. Because these areas were unable to meet the statutory attainment date of December 31, 1982, California requested under section 172(a)(2), and EPA approved, an extension of the attainment date to December 31, 1987. 40 CFR 52.238. On May 26, 1988, EPA notified the Governor of California, pursuant to section 110(a)(2)(H) of the pre-amended Act, that the above districts' portions of the California SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, the Clean Air Act Amendments of 1990 were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that nonattainment areas fix their deficient reasonably available control technology (RACT) rules for ozone and established a deadline of May 15, 1991 for states to submit corrections of those deficiencies.

Section 182(a)(2)(A) applies to areas designated as nonattainment prior to enactment of the amendments and classified as marginal or above as of the date of enactment. It requires such areas to adopt and correct RACT rules pursuant to pre amended section 172(b) as interpreted in pre-amendmentguidance. [1] EPA's SIP-Call used that guidance to indicate the necessary corrections for specific nonattainment areas. The Sacramento Metro Area is classified as serious and Santa Barbara County is classified as moderate [2]; therefore, these areas were subject to the RACT fix-up requirement and the May 15, 1991 deadline.

On June 22, 1991, EPA, Region 9, notified the State of California that EPA had not received by the May 15, 1991 deadline all required VOC rule corrections under section 182(a)(2)(A) of the CAA. The finding letter identified six districts in California, including SMAQMD and SBCAPCD, that had failed to submit required rule corrections. The official finding notice was published in the **Federal Register** on October 22, 1991 (56 FR 54554). SMAQMD's Rule 454 and SBCAPCD's Rule 331 were listed in that finding notice. As a result, both SMAQMD and SBCAPCD had 18 months to submit the rules to EPA before a sanction under section 179(a) of the Act would be imposed.

The State of California submitted many revised RACT rules for incorporation into its SIP on April 6, 1993 and June 19, 1992, including the rules being acted on in this document. This document addresses EPA's proposed action for SMAQMD's Rule 454, Degreasing Operations, and SBCAPCD's Rule 331, Fugitive Emissions Inspection and Maintenance. SMAQMD's submitted Rule 454 and SBCAPCD's Rule 331 were found to be complete on April 28, 1993 and August 27, 1992, respectively, pursuant to EPA's completeness criteria that are set forth in 40 CFR part 51, appendix V [3], and both rules are being proposed for approval into the SIP. The State's complete submittal of SMAQMD's Rule 454 and SBCAPCD's Rule 331 satisfies the deficiency for which the finding of nonsubmittal, dated October 22, 1991, was made and stopped the sanction clock.

SMAQMD's Rule 454 controls VOC emissions from equipment used to clean (degrease) metal parts, while SBCAPCD's Rule 331 controls leaks of VOCs from equipment used in petroleum refining and associated operations. VOCs contribute to the production of ground level ozone and smog. The rules were adopted as part of each district's efforts to achieve the National Ambient Air Quality Standard (NAAQS) for ozone and in response to EPA's SIP-Call and the section 182(a)(2)(A) CAA requirement. The following is EPA's evaluation and proposed action for these rules.

EPA Evaluation and Proposed Action

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the CAA and EPA regulations, as found in section 110 and part D of the CAA and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA's interpretation of these requirements, which forms the basis for today's action, appears in the various EPA policy guidance documents listed in footnote 1. Among those provisions is the requirement that a VOC rule must, at a minimum, provide for the implementation of RACT for stationary

[1] Among other things, the pre-amendment guidance consists of those portions of the proposed post-1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987); "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 Federal Register Notice" (Blue Book) (notice of availability was published in the Federal Register on May 25, 1988); and the existing control technique guidelines (CTGs).

[2] The Sacramento Metro Area and Santa Barbara County retained their designations of nonattainment and were classified by operation of law pursuant to sections 107(d) and 181(a) upon the date of enactment of the CAA. See 55 FR 56694 (November 8, 1991).

[3] EPA adopted the completeness criteria on February 16, 1990 (55 FR 5830) and, pursuant to section 110(k)(1)(A) of the CAA, revised the criteria on August 26, 1991 (56 FR 42216).

sources of VOC emissions. This requirement was carried forth from the pre-amended Act.

For the purpose of assisting state and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guideline (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for what is RACT for specific source categories. Under the CAA, Congress ratified EPA's use of these documents, as well as other Agency policy, for requiring States to "fix-up" their RACT rules. See section 182(a)(2)(A). The CTG applicable to SMAQMD's Rule 454 is entitled, "Control of Volatile Organic Emissions from Solvent Metal Cleaning," EPA–450/2–77–022. The CTG applicable to SBCAPCD's Rule 331 is entitled, "Control of Volatile Organic Compound Leaks from Petroleum Refinery Equipment," EPA–450/2–78–036. Further interpretations of EPA policy are found in the Blue Book, referred to in footnote 1. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

SMAQMD's submitted Rule 454, Degreasing Operations, includes the following significant changes from the current SIP:

1. The definition section has been expanded by 13 terms, which helps to clarify the rule and makes it easier to enforce.
2. The applicability of the rule to solvents is now based on the initial boiling point rather than on solvent vapor pressure.
3. Control Officer discretion for the use of unspecified control equipment has been deleted.
4. The overall (capture and control) efficiency of control equipment has been set at not less than 85%.
5. Records for solvent usage amounts and for maintenance are now required, making the rule more enforceable.
6. Test methods for determining compliance, not identified in the existing SIP rule, are now specified.

SBCAPCD's submitted Rule 331, Fugitive Emissions Inspection and Maintenance, includes the following significant changes from the current SIP:

1. The definition section has been expanded by 28 terms, which helps to clarify the rule and makes it easier to enforce.
2. The rule now requires replacement of components that require five or more repairs in one year.
3. The rule now specifies that major leaks (as defined in the rule) be fixed within 5 calendar days, minor leaks within 15 days, and liquid leaks within 24 hours. Also, the leaking component must be tightened (minimized) within one hour of discovery of the leak.
4. Recordkeeping requirements have been expanded to include not only tags on equipment, but diagrams of component location, inspection logs, and maintenance records.
5. The rule has been significantly strengthened by the identification of test methods to use to determine compliance.

EPA has evaluated the submitted rules and has determined that they are consistent with the CAA, EPA regulations, and EPA policy. Therefore, SMAQMD's Rule 454, Degreasing Operations, and SBCAPCD's Rule 331, Fugitive Emissions Inspection and Maintenance, are being proposed for approval under section 110(k)(3) of the CAA as meeting the requirements of section 110(a) and part D.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions (54 FR 2222) from the requirements of section 3 of Executive Order 12291 for a period of two years. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. OMB has agreed to continue the waiver until such time as it rules on EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: December 30, 1993.

Felicia Marcus,

Regional Administrator.

[FR Doc. 94–761 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 180

[OPP–300319; FRL–4751–8]

RIN No. 2070–AC18

Alkyl (C_{12}–C_{20}) Methacrylate-Methacrylic Acid Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of alkyl (C_{12}-C_{20}) methacrylate-methacrylic acid copolymer when used as an inert ingredient (stabilizer; component of spray drift retardant) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Allied Colloids, Inc.

DATES: Written comments, identified by the document control number [OPP-300319], must be received on or before February 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Division (7505W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Allied Colloids, Inc., P.O. Box 820, Suffolk, VA 23434, has submitted pesticide petition (PP) 4E4277 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of alkyl (C_{12}-C_{20}) methacrylate-methacrylic acid copolymer when used as a stabilizer or component of spray drift retardant in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency does not need some or all of the listed studies to rule on the proposed tolerance or exemption for an inert ingredient. The Agency has decided that any data, in addition to that described below, normally required to support the proposed tolerance exemption for alkyl (C_{12}-C_{20}) methacrylate-methacrylic acid copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Alkyl (C_{12}-C_{20}) methacrylate-methacrylic acid copolymer conforms to the definition of polymers given in 40 CFR 723.250(b)(11) and meets the following criteria that are used to identify low-risk polymers:

1. The minimum number average molecular weight of alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer is 11,900. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.
2. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.
3. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.
4. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.
5. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).
6. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.
7. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.
8. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.
9. Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of the ingredients listed herein may request within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300319]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat 1164, 5 U.S.C. 601-612), the Administrator has determined that

regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 23, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, by amending paragraph (d) in the table therein by adding and alphabetically inserting the following inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
Alkyl (C_{12} - C_{20}) methacrylate-methacrylic acid copolymer; minimum molecular weight 11,900.	.....	Stabilizer; component of spray drift retardant.

* * * * *

[FR Doc. 94–765 Filed 1–11–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300318; FRL–4751–7]

RIN No. 2070–AC18

Maleic Acid Monoethyl Ester-Vinyl Methyl Ether Copolymer, Maleic Acid Monoisopropyl Ester-Vinyl Methyl Ether Copolymer, Maleic Acid Monobutyl Ester-Vinyl Methyl Ether Copolymer; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes exemptions from the requirement of a tolerance be established for residues of maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monoisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer when used as inert ingredients (seed-coating adhesives, gels, and antitranspirants) in pesticide formulations applied to growing crops, raw agricultural commodities after harvest, and animals. This proposed regulation was requested by International Specialty Products.

DATES: Written comments, identified by the document control number [OPP-300318], must be received on or before February 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Division (7505C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: International Specialty Products, 1361 Alps Rd., Wayne, NJ 07470, has submitted to EPA the following pesticide petitions (PPs): (1) 3E4243, maleic acid monoethyl ester-vinyl methyl ether copolymer; (2) 3E4248, maleic acid monisopropyl ester-vinyl methyl ether copolymer; and (3) 3E4247, maleic acid monobutyl ester-vinyl methyl ether copolymer requesting that the Administrator pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(c) and (e) by establishing an exemption from the requirement of a tolerance for residues of these copolymers when used as inert ingredients (seed-coating adhesives, gels, and antitranspirants) in pesticide formulations applied to growing crops or to raw agricultural commodities after harvest, and to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency does not need some or all of the listed studies to rule on the proposed tolerance or exemption for an inert ingredient. The Agency has decided that any data, in addition to that described below, normally required to support the proposed tolerance exemption for maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances that are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monoisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer conform to the definition of polymers given in 40 CFR 723.250(b)(11) and meet the following criteria that are used to identify low-risk polymers:

1. The minimum number average molecular weight of the copolymers mentioned above is 46,000. Substances with molecular weights greater than 400 generally are not absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through skin or GI tract generally are incapable of eliciting a toxic response.

2. Maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monoisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer are not cationic polymers, nor are they reasonably anticipated to become cationic polymers in a natural aquatic environment.

3. The above-mentioned copolymers do not contain less than 32.0 percent by weight of the atomic element carbon.

4. Maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer contain as integral parts of their composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymers do not contain as integral parts of their composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. Maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monisopropyl ester-vinyl methyl ether copolymer; and maleic acid monobutyl ester-vinyl methyl ether copolymer are not biopolymers, synthetic equivalents of biopolymers, or derivatives or modifications of biopolymers that are substantially intact.

7. The above-mentioned copolymers are not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. Maleic acid monoethyl ester-vinyl methyl ether copolymer, maleic acid monisopropyl ester-vinyl methyl ether copolymer, and maleic acid monobutyl ester-vinyl methyl ether copolymer do not contain reactive functional groups that are intended or reasonably anticipated to undergo futher reaction.

9. The above-mentioned copolymers are not designed, nor are they reasonable expected, to substantially degrade, decompose, or depolymerize.

Based on the information above and review of its use, EPA has found that, when used in accordance with good agricultural practice, these ingredients are useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemptions from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide under the Federal Insecticide, Fungicide, and Rodenticide Act, as amended, which contains any of these three chemicals may request, within 30 days after publication of this document in the **Federal Register**, that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300318]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have an economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 23, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.1001, by amending paragraphs (c) and (e) in the tables therein by adding and alphabetically inserting the following inert ingredients, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(c) * * *

Inert ingredients	Limits	Uses
• •	• • •	• •
Maleic acid monoethyl ester-vinyl methyl ether copolymer, CAS No. 25087-06-3, minimum average molecular weight 46,000	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monisopropyl ester-vinyl methyl ether copolmer, CAS No. 31307-95-6, minimum average molecular weight 49,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monobutyl ester-vinyl methyl ether copolymer, CAS No. 25119-68-0, minimum average molecular weight 52,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
• •	• • •	• •

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
• •	• • •	• •
Maleic acid monoethyl ester-vinyl methyl ether copolymer, CAS No. 25087-06-3, minimum average molecular weight 46,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
Maleic acid monisopropyl ester-vinyl methyl ether copolmer, CAS No. 31307-95-6, minimum average molecular weight 49,000.	.....	Seed coating adhesive, gel, and antitranspirant.
Maleic acid monobutyl ester-vinyl methyl ether copolymer, CAS No. 25119-68-0, minimum average molecular weight 52,000.	.....	Seed-coating adhesive, gel, and antitranspirant.
• •	• • •	• •

[FR Doc. 94–762 Filed 1–11–94; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300317; FRL–4749–1]

RIN No. 2070–AC18

Cross-linked Polyurea-Type Encapsulating Polymer Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations for application to animals. This proposed regulation was requested by Zeneca Ag Products.

DATES: Comments, identified by the document control number [OPP-300317], must be received on or before February 11, 1994.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI).

Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch; Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, 6th Floor, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Zeneca Ag Products, P.O. Box 751, Wilmington, DE 19897, has submitted pesticide petition (PP) 3E4269 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for residues of cross-linked polyurea-type encapsulating polymer when used as an inert ingredient (encapsulating agent) in pesticide formulations for application to animals.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in support of the current exemption and also the data submitted in this petition have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency set forth a list of studies which would generally be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Where it can be determined that the inert ingredient will present minimal or no risk, the Agency generally does not need some or all of the listed studies to rule on the proposed tolerance or exemption for an inert ingredient. The Agency has decided that any data, in addition to that described below, normally required to support cross-linked polyurea-type encapsulating polymer will not need to be submitted. The rationale for this decision is described below.

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Cross-linked polyurea-type encapsulating polymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low risk polymers:

1. The minimum average molecular weight of the above-mentioned polymer is 5 X 10^{13}. Substances with molecular weights greater than 400 generally are not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 generally are not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract generally are incapable of eliciting a toxic response.

2. The above-mentioned polymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned polymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned polymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned polymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned polymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned polymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned polymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned polymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300137]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291. Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: December 23, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
• •	• • •	• •
Cross-linked polyurea-type encapsulating polymer	.....	Encapsulating agent
• •	• • •	• •

[FR Doc. 94–764 Filed 1–11–94; 8:45 am]
BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 93–290; DA 94–2]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of time.

SUMMARY: The Commission extends the time for filing reply comments in its proceeding 58 FR 62085, 11/24/93, proposing to amend the Commission's rules regarding major cable television markets from January 4, 1994 to January 18, 1994. This action is being taken to allow parties additional time to analyze and address numerous issues concerning adjustments to particularly large and complex television markets.

DATES: Reply comments are now due on or before January 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

In the Matter of Amendment of section 76.51 of the Commission's rules to include Newton, New Jersey, and Riverhead, New York, in the New York, New York-Linden-Paterson-Newark, New Jersey, Television Market.

ORDER

Adopted: January 3, 1994.
Released: January 4, 1994.
Reply Comment Date: January 18, 1994.

By the Chief, Mass Media Bureau:

1. We now consider a Motion for Extension of Time for the filing of reply comments in the above-captioned proceeding filed on December 22, 1993, by WLIG–TV, Inc. ("WLIG"), licensee of Television Station WLIG–TV, Riverhead, New York, and proponent of the amendment of section 76.51 of the rules to include Riverhead in the subject market. The deadline for filing comments in this proceeding was December 20, 1993, and reply comments are due January 4, 1994.

2. WLIG states that although comments were all filed on December 20, 1993, copies were not received by counsel until December 21 and 22. Seven sets of comments were filed. WLIG contends that the comments respond to a number of issues raised in the *Notice of Proposed Rule Making*[1] which must be studied and addressed. Although WLIG has begun the process, it requests, noting the intervention of two Federal holidays, the press of other year-end responsibilities, and pre-exiting vacation schedules, an additional nine business days, until January 18, 1994, to file its reply comments. Inasmuch as this proceeding was initiated in part, by WLIG, it urges that the additional time will foster the paramount public interest in the development of a full public record for the Commission's decision.[2]

3. As set forth in section 1.46 of the Commission's rules, 47 CFR 1.46, it is our policy that extensions of time for filing comments in rule making proceedings shall not be routinely granted. However, we note that the Notice of Proposed Rule Making raises numerous issues concerning adjustments to particularly large and complex television markets, and therein we specifically state our desire for additional information to develop a comprehensive record before deciding these matters. Thus, it appears reasonable to provide the commenting parties additional time to analyze and address these issues. Therefore, we will extend the deadline for filing reply comments in this proceeding to January 18, 1994.

4. Accordingly, *It is Ordered*, that the Motion for Extension of Time filed by WLIG–TV, Inc. IS GRANTED, and the time for filing reply comments in this proceeding Is Extended to January 18, 1994.

5. This action is taken pursuant to authority found in section 4(i) and 303(r) of the Communications Act of 1934, as amended, and section 0.204(b), 0.283, and 1.45 of the Commission's rules.

Federal Communications Commission
Roy J. Stewart,
Chief, Mass Media Bureau.
[FR Doc. 94–659 Filed 1–11–94; 8:45 am]
BILLING CODE 6712–01–M

[1] 8 FCC Rcd 8136 (1993).

[2] WLIG states that counsel for Mountain Broadcasting Corporation, the other original petitioner in this proceeding, has indicated no objection to the requested extension. Further, counsel for those filing comments in this proceeding have indicated no objection to WLIG's request.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Part 393

[FHWA Docket No. MC–93–34]

RIN 2125–AD25

Parts and Accessories Necessary for Safe Operation; Sleeper Berths on Motorcoaches

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Advance notice of proposed rulemaking (ANPRM).

SUMMARY: The FHWA requests public comment on the use and design of driver sleeper berths in the motorcoach industry. Existing sleeper berth regulations were written with commercial trucks and truck-tractors in mind. The agency seeks comments on the suitability of these regulations for motorcoaches and the possibility of amending them to account for design differences between trucks and motorcoaches. This action is being taken in response to comments received at the motorcoach industry Zero-Base Review hearing held in Miami, Florida, on January 20, 1993, and written requests from the motorcoach industry.

DATES: Comments must be received on or before March 14, 1994.

ADDRESSES: All signed, written comments should refer to the docket number that appears at the top of this document and must be submitted to HCC–10, room 4232, Office of the Chief Counsel, Federal Highway Administration, 400 Seventh Street, SW., Washington DC 20590. All comments received will be available for examination at the above address from 8:30 a.m. to 3:30 p.m., e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed stamped postcard or envelope.

FOR FURTHER INFORMATION CONTACT: Mr. Bryan L. Price, Office of Motor Carrier Standards, (202) 366–5720, or Mr. Charles Medalen, Office of the Chief counsel, (202) 366–1354, Federal Highway Administration, Department of Transportation, 400 Seventh Street SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: On January 20, 1993, the FHWA held a public hearing in Miami, FL, as part of our Zero-Base Review of the Federal Motor Carrier Safety Regulations (FMCSRs) to obtain information, views, and opinions from representatives of the motorcoach industry (see 57 FR 60784). Four out of ten industry representatives who testified at the hearing voiced concerns about the suitability of existing sleeper berth regulations for motorcoaches. A common theme among those who testified on this subject was that the current sleeper berth regulations were written specifically for trucks and truck-tractors without considering the unique design characteristics of motorcoaches. A complete transcript of this hearing is on file and available for review in the FHWA docket room under FHWA Docket No. MC–92–33–182.

Both the American Bus Association and the United Bus Owners of America have also indicated to the FHWA that the suitability of existing sleeper berth regulations for motorcoaches is a concern of their members.

The FHWA has also received written requests from the motorcoach industry to revise the current sleeper berth regulations to account for design differences between motorcoaches and trucks. (Copies of these letters are included in FHWA Docket No. MC–93–34.)

In response to these concerns and as part of the FHWA's efforts to eliminate unnecessarily design-restrictive regulations, a review of the rulemaking history of the current sleeper berth requirements was completed. The review indicated that sleeper berths on motorcoaches may not have been considered when the existing sleeper berth regulations were promulgated.

In a final rule published on May 15, 1952 (17 FR 4422), the Interstate Commerce Commission (ICC) revised most of the existing Federal Motor Carrier Safety Regulations (FMCSRs) and created a number of new regulations. One new regulation set forth detailed specifications for sleeper berths. The rule required that every sleeper berth installed in or on a truck or truck-tractor after December 31, 1952, be located within or immediately adjacent to the cab, or within the cargo space of a truck, and be provided with a direct and ready means of exit into the driver's compartment (17 FR 4443). These requirements are now codified at 49 CFR 393.76(b)(2) and 393.76(c)(1), respectively.

In addition, the regulations also required that any sleeper berth which could not meet this standard, in essence those installed on trucks or truck-tractors before December 31, 1952, be provided with means of communication between the occupant of the berth and the driver. The berth also had to be designed, constructed, and maintained to provide the occupant, without the assistance of other persons, at least two means of ready exit from the motor vehicle. These requirements are now codified at 49 CFR 393.76(d) and 393.76(c)(2)(ii), respectively.

Because motorcoach operators rarely used sleeper berths forty years ago, the ICC drafted a rule for trucks and truck-tractors. Practices in the motorcoach industry have changed, however, and some operators would like to use sleeper berths to reduce driver fatigue and to help comply with driver's hours of service regulations. The 1952 regulations did not address sleeper berths on motorcoaches, nor have any subsequent rulemakings done so.

On July 3, 1970, the FHWA published a final rule relating to seat belts and restraint of sleeper berth occupants (35 FR 10859). That rule differentiated between trucks and buses with regard to seats, seat belt assemblies, and seat belt assembly anchorage requirements, but not with regard to sleeper berth restraint requirements.

Another rule on sleeper berth specifications was published on April 26, 1974 (39 FR 14710). It amended § 393.76 by increasing the minimum interior dimensions required for sleeper berths. The rule omitted specific references to trucks and truck-tractors but made no substantive changes to adapt the regulation to the different design configurations of motorcoaches.

Available information indicates that many sleeper berths installed on motorcoaches today are located in the baggage area. This area is modified to allow the doors to be opened from inside the compartment, and by adding a mattress, air conditioning, heat, and a means of communication with the driver. In order to meet the current requirement of § 393.76(c)(1) for direct and ready means of exit from the sleeper berth into the driver's seat or compartment, an aperture that meets the exit dimensional requirements must be cut into the floor of the motorcoach. This reduces the seating capacity of the motorcoach. The FHWA would like to know about other motorcoach sleeper berth designs which may or may not meet the current requirements of § 393.76.

The FHWA is requesting public comment on the question of whether, and if so how, existing sleeper berth regulations should be amended to address design differences between motorcoaches and commercial trucks.

Questions

The FHWA would appreciate comments on the following questions. Commenters are also encouraged to discuss any other matters related to sleeper berths on motorcoaches which they believe the FHWA should address.

1. Should existing sleeper berth regulations be amended to account for design differences between motorcoaches and trucks? If so, what changes should be made and why?

2. What is the current extent of sleeper berth usage within the motorcoach industry?

3. How many motorcoaches have been manufactured with sleeper berths as part of their original equipment? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

4. How many motorcoaches have been retrofitted with sleeper berths? How and where are these sleeper berths installed? How many comply with § 393.76? How many do not?

5. Do after-market changes, such as cutting holes in the floor or modifying the cargo compartment, affect the structural integrity of the motorcoach?

6. The FHWA notes that if a driver sleeper berth is located within the baggage area and occupied while the motorcoach is in operation, the occupant could be vulnerable to a side impact collision. Are special requirements needed to ensure the occupants' safety?

7. If a driver sleeper berth is located in the baggage area of a motorcoach, should its location be restricted (e.g., only the forward-most portion of the baggage area)? If the sleeper berth is used while the vehicle is in operation, would having the sleeper berth near the rear of the motorcoach subject persons occupying the berth to excessive heat, noise, or exhaust?

8. The current requirements of § 393.76 for a direct and ready means of exit from the sleeper berth into the driver's seat or compartment may be design-restrictive for motorcoaches. Should the exit requirements allow a ready means of exit into the passenger compartment of the motorcoach instead of the driver's seat or compartment?

9. Would separate motorcoach sleeper berth regulations enhance motorcoach safety or benefit the motorcoach industry? If yes, how?

Rulemaking Analyses and Notices

All comments received before the close of business on the comment closing date indicated above will be considered and will be available for examination in the docket at the above address. Comments received after the comment closing date will be filed in the docket and will be considered to the extent practical. In addition to late comments, the FHWA will also continue to file relevant information in the docket as it becomes available after the comment closing date, and interested persons should continue to examine the docket for new material.

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA has determined that this document does not contain a "significant regulatory action" under Executive Order 12866 or a "significant" regulation under the regulatory policies and procedures of

the DOT. Due to the preliminary nature of this document and lack of necessary information on costs, however, the FHWA is unable to evaluate the economic impact of potential changes to regulatory requirements concerning the use and design of driver sleeper berths in the motorcoach industry. Based on the information received in response to this notice, the FHWA intends to carefully consider the costs and benefits associated with possible amendments to the regulations. Comments, information, and data are solicited on the economic impact of the potential changes.

Regulatory Flexibility Act

Due to the preliminary nature of this document and lack of necessary information on costs, the FHWA is unable to evaluate the effects of the potential regulatory changes on small entities. Based on the information received in response to this notice, the FHWA intends, in compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), to carefully consider the economic impacts of these potential changes on small entities. The FHWA solicits comments, information, and data on these impacts.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this action does not have sufficient federalism implications to warrant the preparation of a federalism assessment.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Number 20.217, Motor Carrier Safety. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.

Paperwork Reduction Act

This action does not contain a collection of information requirement for purposes of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*)

National Environmental Policy Act

This agency has analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and has determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulatory identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects in 49 CFR Part 393

Freight transportation, Highway safety, Highways and roads, Motor carriers, Motor vehicle safety.

Authority: 49 U.S.C. app. 2505; 49 U.S.C. 3102; 49 CFR 1.48.

Issued on January 5, 1994.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 94–738 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–22–P

Notices

Federal Register

Vol. 59, No. 8

Wednesday, January 12, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93–162–1]

Availability of Environmental Assessments and Findings of No Significant Impact

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that two environmental assessments and findings of no significant impact have been prepared by the Animal and Plant Health Inspection Service relative to the issuance of permits to allow the field testing of genetically engineered organisms. The environmental assessments provide a basis for our conclusion that the field testing of these genetically engineered organisms will not present a risk of introducing or disseminating a plant pest and will not have a significant impact on the quality of the human environment. Based on its findings of no significant impact, the Animal and Plant Health Inspection Service has determined that environmental impact statements need not be prepared.

ADDRESSES: Copies of the environmental assessments and findings of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect those documents are encouraged to call ahead on (202) 690–2817 to facilitate entry into the reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7612. For copies of the environmental assessments and findings of no significant impact, write to Mr. Clayton Givens at the same address. Please refer to the permit numbers listed below when ordering documents.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340 (referred to below as the regulations) regulate the introduction (importation, interstate movement, and release into the environment) of genetically engineered organisms and products that are plant pests or that there is reason to believe are plant pests (regulated articles). A permit must be obtained before a regulated article may be introduced into the United States. The regulations set forth the procedures for obtaining a limited permit for the importation or interstate movement of a regulated article and for obtaining a permit for the release into the environment of a regulated article. The Animal and Plant Health Inspection Service (APHIS) has stated that it would prepare an environmental assessment and, when necessary, an environmental impact statement before issuing a permit for the release into the environment of a regulated article (see 52 FR 22906).

In the course of reviewing each permit application, APHIS assessed the impact on the environment that releasing the organisms under the conditions described in the permit application would have. APHIS has issued permits for the field testing of the organisms listed below after concluding that the organisms will not present a risk of plant pest introduction or dissemination and will not have a significant impact on the quality of the human environment. The environmental assessments and findings of no significant impact, which are based on data submitted by the applicants and on a review of other relevant literature, provide the public with documentation of APHIS' review and analysis of the environmental impacts associated with conducting the field tests.

Environmental assessments and findings of no significant impact have been prepared by APHIS relative to the issuance of permits to allow the field testing of the following genetically engineered organisms:

Permit No.	Permittee	Date issued	Organisms	Field test location
93–252–01	Monsanto Agricultural Company.	11–17–93	Potato plants genetically engineered to express resistance to potato leaf roll virus.	Florida.
93–281–01, renewal of permit 92–174–02, issued on 11–03–92.	Pioneer Hi-Bred International, Incorporated.	11–17–93	Corn plants genetically engineered to express resistance to maize dwarf mosaic virus strain A, maize chlorotic mottle virus, or maize chlorotic dwarf virus.	Hawaii, Puerto Rico.

The environmental assessments and findings of no significant impact have been prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 6th day of January 1994.

Lonnie J. King,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94–672 Filed 1–11–94; 8:45 am]

BILLING CODE 3410–34–P

[Docket No. 93-161-1]

Receipt of Permit Applications for Release Into the Environment of Genetically Engineered Organisms

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that four applications for permits to release genetically engineered organisms into the environment are being reviewed by the Animal and Plant Health Inspection Service. The applications have been submitted in accordance with 7 CFR part 340, which regulates the introduction of certain genetically engineered organisms and products.

ADDRESSES: Copies of the applications referenced in this notice, with any confidential business information deleted, are available for public inspection in room 1141, South Building, U.S. Department of Agriculture, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect an application are encouraged to call ahead on (202) 690-2817 to facilitate entry into the reading room. You may obtain copies of the documents by writing to the person listed under **FOR FURTHER INFORMATION CONTACT.**

FOR FURTHER INFORMATION CONTACT: Dr. Arnold Foudin, Deputy Director, Biotechnology Permits, Biotechnology, Biologics, and Environmental Protection, APHIS, USDA, room 850, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7612.

SUPPLEMENTARY INFORMATION: The regulations in 7 CFR part 340, "Introduction of Organisms and Products Altered or Produced Through Genetic Engineering Which Are Plant Pests or Which There Is Reason to Believe Are Plant Pests," require a person to obtain a permit before introducing (importing, moving interstate, or releasing into the environment) into the United States certain genetically engineered organisms and products that are considered "regulated articles." The regulations set forth procedures for obtaining a permit for the release into the environment of a regulated article, and for obtaining a limited permit for the importation or interstate movement of a regulated article.

Pursuant to these regulations, the Animal and Plant Health Inspection Service has received and is reviewing the following applications for permits to release genetically engineered organisms into the environment:

Application No.	Applicant	Date received	Organisms	Field test location
93-320-01	U.S. Department of Agriculture, Agricultural Research Service.	11-16-93	Barley plants genetically engineered to express resistance to barley yellow dwarf virus.	California, Idaho, Illinois.
93-340-01, renewal of permit 93-214-01, issued on 09-10-93.	PanAmerican Seed	12-06-93	Carrot plants genetically engineered to express modified nutritional value.	Illinois.
93-340-02	PetoSeed Company Incorporated.	12-06-93	Carrot plants genetically engineered to express modified nutritional value.	Idaho.
93-341-01	University of California, Berkeley.	12-07-93	A strain of the bacterium *Erwinia herbicola* genetically engineered to inhibit production of 3-indole acetic acid.	California.

Done in Washington, DC, this 6th day of January 1994.

Lonnie J. King,

Actng Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 94-673 Filed 1-11-94; 8:45 am]

BILLING CODE 3410-34-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Issuance of permit modifications.

SUMMARY: Notice is hereby given that pursuant to the provisions of §§ 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), nine public display permits are modified to extend the authority to take Atlantic bottlenose dolphins (*Tursiops truncatus*) for public display purposes until December 31, 1994.

EFFECTIVE DATE: These modifications are effective January 1, 1994.

ADDRESSES: The permits, as modified, are available for review by appointment in the Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, Maryland 20910, (301) 713-2289.

SUPPLEMENTARY INFORMATION: The following public display permits have been extended: Public Display Permit No. 558, issued to Loro Parque, S.A., 38400 Puerto de la Cruz, Tenerife, Spain; Public Display Permit No. 588, issued to Mystic Marinelife Aquarium, 55 Coogan Boulevard, Mystic, Connecticut 06355-1997; Public Display Permit No. 608, issued to Aquarium of Niagara Falls, 701 Whirlpool Street, Niagara Falls, New York 14301-1094; Public Display Permit No. 627, issued to Horizons West, Ltd., dba Marine Life Aquarium, 6001 South Highway 16, Rapid, City, South Dakota 57701; Public Display Permit No. 628, issued to the Indianapolis Zoological Society, Inc., 1200 West Washington Street, Indianapolis, Indiana 46222; Public Display Permit No. 632, issued to Marine World Foundation, Marine World Parkway, Vallejo, California 94589; Public Display Permit No. 647, issued to Gulf World, Inc., 15412 Front Beach Road, Panama City Beach, Florida 32407; Public Display Permit No. 649 issued to Marine Animal Productions, Inc., Gulfport, Mississippi 39502-4078; Public Display Permit No. 656 issued to the National Aquarium in Baltimore, Pier 3, 501 East Pratt Street, Baltimore, Maryland 21202. All conditions of the original permits and subsequent modifications shall remain in effect.

A voluntary moratorium has been in effect on the removal of dolphins from the Gulf of Mexico since February 1990. During that time, NMFS has extended the public display permits of permit holders, who had previously been authorized to capture Atlantic bottlenose dolphins, but deferred collecting the animals as a result of the moratorium. The permit holders listed above have requested that their permits authorizing the collection of dolphins be extended through 1994. NMFS has granted their requests. However, in light of questions about the status and health of wild populations of Atlantic bottlenose dolphins and the availability of dolphins from sources other than the wild, NMFS is continuing to ask collectors to participate in a voluntary moratorium on dolphin collection. NMFS will consider requests to collect only if there is reasonable indication that dolphins from the wild are necessary to maintain a public display collection.

Dated: January 5, 1994.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 94-697 Filed 1-11-94; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title: DoD FAR Supplement (DFARS), Part 225, International Acquisition, and Subpart 252.2, Texts of Provisions and Clauses.

Type of request: Emergency Processing—Approval date requested: December 31, 1993.

Number of respondents: 3,465.

Responses per respondent: 4.7.

Annual responses: 16,333.

Average burden per response: .25 Hours.

Annual burden hours: 4,083.

Needs and uses: The provisions at DFARS 252.225-7006, Buy American Act—Trade Agreements Act—Balance of Payment Program Certificate, and 252.227-7035, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program Certificate, require offerors to identify end products that are not domestic. This information is necessary to evaluate offerors under policy providing a preference for certain products. Under trade agreements, including the North American Free Trade Agreement Implementation Act, unless specifically exempted by statute or regulation, agencies are required to evaluate offers (over certain dollar limitations), without regard to restrictions of the Buy American Act or the Balance of Payments program. Offerors identify excluded end products in these two provisions.

Affected public: Businesses of other for-profit; non-profit institutions; and small businesses or organizations.

Frequency: On occasion.

Respondent's obligation: Required to obtain or retain a benefit.

OMB desk officer: Mr. Peter N. Weiss. Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-675 Filed 1-11-94; 8:45 am]

BILLING CODE 5000-04-M

Office of the Secretary

Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee; Meeting

AGENCY: National Communications System, DoD.

ACTION: Notice of meeting.

A meeting of the Industry Executive Subcommittee of the National Security Telecommunications Advisory Committee will be held on Monday, January 31, 1994 from 9 a.m. to 3 p.m. at the Mitre-Hayes Building, 7525 Colshire Drive, McLean, VA 27006. The agenda is as follows:

—Call to Order
—NSTAC XVI Planning and Status of NSTAC XV Recommendations
—IES-OMNCS-COP Issues Ad Hoc Group
—Common Channel Signaling Task Force
—Wireless Services Task Force
—National Information Infrastructure Task Force
—Network Security Steering Committee
—Global Games
—New Business
—Adjournment.

Due to the requirement to discuss classified information, in conjunction with the issues listed above, the meeting will be closed to the public in the interest of National Defense. Any person desiring information about the meeting may telephone (703) 692-9274 or write the Manager, National Communications System, 701 S. Court House Road, Arlington, VA 22204-2198.

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-676 Filed 1-11-94; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Defense Acquisition Reform (Phase II); Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Defense Acquisition Reform (Phase II) will meet in closed session on February 9, 1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition and Technology on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will further define the elements of pilot industry initiatives for jet engines and a segment of electronics, further define the elements of pilot initiatives for two unified commands, and assess the DoD review comments on our Phase I report and recommend changes in approach if appropriate.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92-463, as amended (5 U.S.C. App. II, (1988)), it has been determined that this DSB Task Force meeting, concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94-678 Filed 1-11-94; 8:45 am]

BILLING CODE 5000-04-M

Defense Science Board Task Force on Chemical Weapons; Meeting

ACTION: Notice of advisory committee meetings.

SUMMARY: The Defense Science Board Task Force on Chemical Weapons will meet in closed session on March 24-25,

1994 at the Pentagon, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense through the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting the Task Force will review all available intelligence and reports of detection of chemical agents and toxins during Desert Shield, Desert Storm, and the post war period. Also, review scientific and medical evidence relating exposure to nerve agents at low levels and long term health effects.

In accordance with section 10(d) of the Federal Advisory Committee Act, Public Law 92–463, as amended (5 U.S.C. App. II (1988)), it has been determined that this DSB Task Force meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly this meeting will be closed to the public.

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–679 Filed 1–11–94; 8:45 am]

BILLING CODE 5000–04–M

Strategic Environmental Research and Development Program, Scientific Advisory Board; Meeting

ACTION: Notice.

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee meeting:

Date of Meeting: Wednesday, January 26, 1994 thru Friday, January 28, 1994. 0800 to approximately 1700.

Place: Los Alamos National Laboratory, J. Robert Oppenheimer Study Center, Los Alamos, New Mexico.

Matters To Be Considered: Research and Development proposals requesting SERDP funds in excess of $1M will be reviewed.

This meeting is open to the public. Any interested person may attend, appear before, or file statements with the Scientific Advisory Board at the time and in the manner permitted by the Board.

For Further Information Contact: Ms. Ann Maxwell or Mr. John Rupnik, 2200 Clarendon, suite 900, Arlington, VA 22201, 703–525–9400.

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–677 Filed 1–11–94; 8:45 am]

BILLING CODE 5000–04–M

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee, DoD.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem Bulletin Number 174. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possession of the United States. Bulletin Number 174 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: January 1, 1994.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 3710–08–M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA:					
ADAK 5/	$ 10		$ 34	$ 44	10-01-91
ANAKTUVUK PASS	83		57	140	12-01-90
ANCHORAGE					
06-01--09-15	174		67	241	06-01-94
09-16--05-31	82		58	140	01-01-94
ANIAK	73		36	109	07-01-91
ATQASUK	129		86	215	12-01-90
BARROW	105		83	188	11-01-93
BETHEL	82		69	151	10-01-93
BETTLES	65		45	110	12-01-90
COLD BAY	110		54	164	07-01-93
COLDFOOT	95		59	154	10-01-92
CORDOVA	60		81	141	01-01-94
CRAIG	67		35	102	07-01-91
DILLINGHAM	85		64	149	11-01-93
DUTCH HARBOR-UNALASKA	113		67	180	05-01-92
EIELSON AFB					
05-15--09-15	106		59	165	05-15-94
09-16--05-14	68		55	123	01-01-94
ELMENDORF AFB					
06-01--09-15	174		67	241	06-01-94
09-16--05-31	82		58	140	01-01-94
EMMONAK	62		61	123	10-01-93
FAIRBANKS					
05-15--09-15	106		59	165	05-15-94
09-16--05-14	68		55	123	01-01-94
FALSE PASS	80		37	117	06-01-91
FT. RICHARDSON					
06-01--09-15	174		67	241	06-01-94
09-16--05-31	82		58	140	01-01-94
FT. WAINWRIGHT					
05-15--09-15	106		59	165	05-15-94
09-16--05-14	68		55	123	01-01-94
HOMER					
05-01--09-30	71		60	131	05-01-93
10-01--04-30	53		62	115	12-01-92
JUNEAU					
04-30--09-14	92		74	166	04-30-94
09-15--04-29	78		73	151	01-01-94
KATMAI NATIONAL PARK	89		59	148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	$104	$ 74	$178	04-02-94
10-01--04-01	67	71	138	01-01-94
KETCHIKAN				
04-01--09-30	82	68	150	04-01-94
10-01--03-31	69	70	139	01-01-94
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	74	65	139	01-01-94
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	106	59	165	05-15-94
09-16--05-14	68	55	123	01-01-94
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	90	65	155	05-01-94
10-01--04-30	52	62	114	01-01-94
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	79	71	150	01-01-94
SKAGWAY				
04-01--09-30	82	68	150	04-01-94
10-01--03-31	69	70	139	01-01-94
SPRUCE CAPE	74	65	139	01-01-94
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
05-02--09-30	60	58	118	05-02-94
10-01--05-01	51	57	108	01-01-94

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
UMIAT	$ 97	$ 63	$160	12-01-90
VALDEZ				
05-01--09-14	95	61	156	05-01-94
09-15--04-30	79	59	138	01-01-94
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
04-01--09-30	82	68	150	04-01-94
10-01--03-31	69	70	139	01-01-94
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	21	20	41	10-01-93
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	68	55	123	01-01-93
SAIPAN	100	69	169	01-01-93
TINIAN	50	55	105	01-01-93
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B) =	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	$ 65	$ 52	$117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

FOOTNOTES

1/ Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

2/ Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

3/ On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $19.65 is prescribed to cover meals and

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

4/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

5/ On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

6/ The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily Rate
DOD Personnel	$13
Non-DOD Personnel	$30

BILLING CODE 3710-08-C

Dated: January 6, 1994.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–680 Filed 1–11–94; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 3 & 4 February 1994.

Time of Meeting: 0830–1700.

Place: Washington, DC, Pentagon.

Agenda: The Army Science Board's C3I Issue Group study team will meet on 3 February 1994 in conference room 3E384 and 4 February 1994 in conference room 2E465 to finalize their study on "Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System." This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 94–791 Filed 1–11–94; 8:45 am]

BILLING CODE 3710–08–M

Military Personal Property and Claims Symposium—Open Meeting

AGENCY: Military Traffic Management Command, DOD.

ACTION: Notice of open meeting.

In accordance with Section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting.

Name of Committee: Military Personal Property and Claims Symposium.

Date of the Meeting: Thursday, 27 January 1994.

Place: Best Western Old Colony Inn, Alexandria, VA.

Time: 0830–1600.

Agenda: The purpose of the symposium is to provide an open discussion and the free exchange of ideas with the public on procedural changes to the Personal Property Traffic Management Regulation, DOD 4500.34R. and the handling of other matters of mutual interest concerning the Department of Defense Personal Property Shipment and Storage Program.

All interested persons desiring to submit topics to be discussed should contact the Commander, Military Traffic Management Command, ATTN: MTOP–QSS, (703) 756–0754, Between 0800–1630 hours. Topics to be discussed should be received on or before 7 January 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–792 Filed 1–11–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER93–712–000, et al.]

PSI Energy, Inc., et al.; Electric Rate and Corporate Regulation Filings

January 5, 1994.

Take notice that the following filings have been made with the Commission:

1. PSI Energy, Inc.

[Docket No. ER93–712–000]

Take notice that PSI Energy, Inc. (PSI) and the City of Logansport, Indiana on December 17, 1993, tendered for filing additional supporting information to the FERC Filing in Docket No. ER93–712–000 to comply with a FERC staff request.

Copies of the filing were served on the City of Logansport Indiana and the Indiana Utility Regulatory Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Madison Gas Electric Co.

[Docket No. ER94–66–000]

Take notice that on December 17, 1994, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission revised pages from the Interchange Agreements it and Heartland Energy Services, Inc. (HES). The revision caps the price of the daily rate for Negotiated Capacity and General Purpose Energy at the rate for weekly service. MGE and HES respectfully request an effective date of December 31, 1993.

MGE states that a copy of the filing has been provided to HES and the Public Service Commission of Wisconsin.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Florida Power Corp.

[Docket No. ER94–275–000]

Take notice that on December 16, 1993, Florida Power Corporation (Florida Power) requested the Commission to disclaim jurisdiction over agreements under which Florida Power rents distribution facilities to the City of Mount Dora, Florida, and Reedy Creek Utilities Company, respectively, or, if the Commission asserts jurisdiction, to accept the agreements for filing to become effective September 1, 1988 and June 5, 1978, respectively.

Comment date: January 20, 1994, in accordance with Standard Paragraph E et the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER94–276–000]

Take notice that on December 16, 1993, Arizona Public Service Company (APS) tendered for filing the Interconnection Agreement (Agreement) between The United States of America on Behalf of The Colorado River Indian Irrigation Project (CRIP) and APS and Service Schedules A and B to the Agreement.

The Agreement provides a means by which the Parties will develop and operate their respective electric systems in a coordinated manner. The Service Schedules allow for various reciprocal transmission related services.

Copies of this filing have been served upon CRIP and the Arizona Corporation Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. PacifiCorp

[Docket No. ER94–283–000]

Take notice that PacifiCorp, on December 17, 1993, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–002, (Final Order) the Western Systems Coordinating Council (WSCC) Agreement, as amended, dated August 4, 1967 and the Western Systems Coordinating Council Agreement, dated November 18, 1993.

Copies of this filing were supplied to all parties to the WSCC Agreement, the Public Utility Commission of Oregon and the Utah Public Service Commission.

PacifiCorp requests that the Commission disclaim jurisdiction of the WSCC Agreements or if the Commission does assert jurisdiction PacifiCorp requests in accordance with the Final Order and 18 CFR 35.11 of the Commission's Rules and Regulations and that a waiver of prior notice requirements be granted.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corp.

[Docket No. ER94–284–000]

Take notice that on December 17, 1993, Wisconsin Public Service Corporation (WPSC) tendered for filing an executed Transmission Service Agreement between WPS and Heartland Energy Services Inc. The Agreement provides for transmission service under the T–1 Transmission Tariff, FERC Original Volume No. 4.

WPS asks that the agreement become effective January 1, 1994.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER94–286–000]

Take notice that on December 20, 1993, New England Power Company (NEP) submitted for filing executed Amendments to its Service Agreements with Granite State Electric Company, New Hampshire Electric Cooperative, and the Town of Littleton, New Hampshire (hereinafter Customers) under NEP's FERC Electric Tariff, Original Volume No. 1.

NEP states that the proposed Amendments provide a monthly credit to its New Hampshire Customers based on a portion of the savings received by NEP through the issuance of tax-exempt financing authorized by the State of New Hampshire.

NEP requests waiver of the Commission's notice requirements so that the Amendments may become effective on January 1, 1994.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Green Mountain Power Corp.

[Docket No. ER94–287–000]

Take notice that on December 20, 1993, Green Mountain Power Corporation (GMP) tendered for filing a Service Agreement and Certificate of Concurrence for Montaup Electric Company under FERC Electric Tariff No. 2, known as GMP's Opportunity Transaction Tariff (Tariff). The Service Agreement is intended to supersede the unexecuted Service Agreement for Eastern Utilities Associates. The Service Agreement and Certificate of Concurrence will allow Montaup to enter into transactions, including exchange unit transactions, in accordance with the Tariff. No terms or conditions of the Tariff are affected by the form of Service Agreement.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Midwest Power Systems Inc.

[Docket No. ER94–288–000]

Take notice that on December 20, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing a "Construction and Financing Agreement" (Financing Agreement) dated March 5, 1990, and a "First Amendment to Financing Agreement" (Amendment) dated December 10, 1992, between Associated Electric Cooperative, Inc. (AEC) and Iowa Power Inc., n/k/a MPSI. The Financing Agreement and the Amendment provide for the financing of MPSI's portion of certain MINT Line project facilities by AEC. MPSI received no financial gain from the Financing Agreement and the Amendment.

On July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirement", clarifying that agreements for joint ownership of transmission facilities must be filed. The Final Order also established an amnesty period during which such filings can be brought up to date. This filing falls within the provisions of the amnesty period.

MPSI requests a waiver of the Commission's rules so that the Financing Agreement may be approved retroactive to March 5, 1990, and the Amendment may be approved retroactive to October 1, 1992.

MPSI states that copies of this filing were served on Associated Electric and the Iowa Utilities Board.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. Midwest Power Systems Inc.

[Docket No. ER94–289–000]

Take notice that on December 20, 1993, Midwest Power Systems, Inc. (MPSI) tendered for filing a Peaking Capacity Sales Agreement (Agreement) dated June 6, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Public Service Company, n/k/a MPSI. This Agreement's principle purpose is to establish terms for MPSI to purchase capacity and energy from Corn Belt from June 1, 1994, through September 30, 2000. Paragraph 12 of the Agreement allows for MPSI to sell capacity and energy to Corn Belt, at Corn Belt's sole option, in the months of October and November of each respective year.

On July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirements", clarifying that agreements for "the sale of electric power and energy to any person" must be filed. The Final Order also established an amnesty period during which such filings can be brought up to date. This filing falls within the provisions of the amnesty period.

MPSI requests that the Peaking Capacity Sales Agreement be approved effective June 1, 1994.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Midwest Power Systems Inc.

[Docket No. ER94–290–000]

Take notice that on December 20, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing a Transmission Line Terminal Facilities Agreement (Facilities Agreement) dated March 5, 1990, between Nebraska Public Power District (NPPD); Omaha Public Power District (OPPD), City of Lincoln, Nebraska (Lincoln); and Iowa Power Inc., n/k/a MPSI. The primary purpose of the Facilities Agreement is to provide for the construction, finance, maintenance, and ownership responsibilities of the Cooper Terminal Facilities. MPSI, OPPD, and Lincoln shall make payments to NPPD for the right to use the Cooper Substation, including the Cooper Terminal Facilities, for the purpose of scheduling power and energy transactions pursuant to the MINT Line Coordinating Agreement.

On July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirements", clarifying that agreements for the joint ownership of transmission facilities must be filed. The Final Order also established an amnesty period during which such filings can be brought up to date. This filing falls within the provisions of the amnesty period.

MPSI respectfully requests a waiver of the Commission's rules so that the Transmission Line Facilities Agreement may be approved retroactive to March 5, 1990.

MPSI states that copies of this filing were served on NPPD, OPPD, and Lincoln and the Iowa Utilities Board.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. Northeast Utilities Service Co.

[Docket No. ER94–291–000]

Take notice that on December 20, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a Service Agreement to provide non-firm transmission service to Massachusetts Municipal Wholesale Electric Company (MMWEC) under the NU System Companies' Transmission Service Tariff No. 2. NUSCO states that a copy of this information has been mailed to MMWEC.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. PacifiCorp

[Docket No. ER94–292–000]

Take notice that PacifiCorp, on December 20, 1993, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–002, agreements which contain provisions involving a return of energy losses associated with the purchase of Formula Power Transmission service from the Bonneville Power Administration (Bonneville).

Copies of this filing were supplied to Bonneville, the Public Utility Commission of Oregon and the Utah Public Service Commission. PacifiCorp requests in accordance with 18 CFR 35.11 of the Commission's Rules and Regulations and that a waiver of prior notice requirements be granted and that the filed agreements be accepted for filing effective as indicated for each of the agreements.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

14. PacifiCorp

[Docket No. ER94–293–000]

Take notice that PacifiCorp, on December 20, 1993, tendered for filing a Draft Harrison Interconnection and Transmission Facilities Conveyance Agreements between PacifiCorp and Portland General Electric Company (Portland General), dated September 9, 1993 which provide for an interconnection between PacifiCorp's and Portland's systems at PacifiCorp's Harrison Substation.

PacifiCorp requests that a waiver of prior notice be granted pursuant to the Commission's Final Order in Docket No. PL93–2–002 and that an effective date of October 31, 1990 be assigned to the filed agreement.

Copies of this filing were supplied to Portland and the Public Utility Commission of Oregon.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

15. PacifiCorp

[Docket No. ER94–294–000]

Take notice that on December 20, 1993, PacifiCorp tendered for filing, Amendment No. 2 to Contract No. 14–06–100–1152, Contract Between The United States of America and PacifiCorp For Use of Facilities For The Transmission of Electrical Power and Energy whereby PacifiCorp provides transfers to the Bureau of Reclamation (BuRec) Burbank Pumping Plants No. 2 and No. 3.

PacifiCorp requests a waiver of the Commission's prior notice requirements.

Copies of this filing have been supplied to BuRec, the South Columbia Basin Irrigation District, the Washington Utilities and Transportation Commission, the Public Utility Commission of Oregon and the Utah Public Service Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

16. PacifiCorp

[Docket No. ER94–295–000]

Take notice that PacifiCorp on December 20, 1993, tendered for filing a Letter Agreement between PacifiCorp and the City of Idaho Falls, Idaho (Idaho Falls), dated January 16, 1989 for reciprocal emergency backup electrical service.

PacifiCorp requests a waiver of prior notice be granted and that an effective date of February 28, 1989 be assigned to the Letter Agreement. This date is the date Idaho Falls executed the Letter Agreement.

Copies of this filing were supplied to Idaho Falls and the Bonneville Power Administration.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

17. Wisconsin Power and Light Co.

[Docket No. ER94–296–000]

Take notice that on December 17, 1993, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission four Letter Agreements between Wisconsin Power and Light Company (WP&L) and Manitowoc Public Utilities (MPU). Under the Negotiated Capacity Agreement, WP&L will make capacity and associated energy available to MPU and negotiated degrees of firmness, variable capacity charges, and variable time duration. Under the General Purpose Energy Agreement, WP&L will make non-firm energy available to MPU, with terms and quantities to be arranged by mutual agreement. Under the Emergency Energy Agreement, WP&L will make non-firm emergency energy available to MPU in quantities that, in WP&L's sole judgement, it can supply. Under the Negotiated Capacity Sub-Agreement, WP&L will supply MPU with 10 MW of firm power and energy from June 1, 1994 through May 31, 1995.

Wisconsin Power and Light respectfully requests an effective date sixty (60) days from the date of filing.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

18. Commonwealth Edison Co.

[Docket No. ER94–297–000]

Take notice that on December 20, 1993, Commonwealth Edison Company (Edison) submitted a Service Agreement, dated November 16, 1993, establishing PSI Energy, Inc. (PSI) as a customer under the terms of Edison's Power Sales Tariff PS–1 (PS–1 Tariff). The Commission has previously designated the PS–1 Tariff as FERC Electric Tariff, Original Volume No. 2.

Edison requests an effective date of December 1, 1993, and accordingly seeks waiver of the Commission's notice requirements. Copies of this filing were served upon PSI and the Illinois Commerce Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

19. Jersey Central Power & Light Co., et al.

[Docket No. ER94–298–000]

Take notice that on December 20, 1993, Jersey Central Power & Light Company, Metropolitan Edison Company, Pennsylvania Electric Company and GPU Nuclear Corporation, (the GPU Companies) tendered for filing rate schedules relating to the provision of operating and maintenance services for five generating stations located in New Jersey and Pennsylvania, namely, the Yards Creek and Kinzua (Seneca) pumped storage hydroelectric stations, the Homer City coal-fired generating station, and the Three Mile Island Oyster Creek nuclear generating stations. The subject rate schedules

were filed in response to the Orders of the Federal Energy Regulatory Commission issued July 30, 1993 and October 19, 1993.

Copies of the filing have been furnished to the Pennsylvania Public Utility Commission of New Jersey Board of Regulatory Commissioners.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

20. Jersey Central Power & Light Co.

[Docket No. ER94–299–000]

Take notice that on December 20, 1993, in response to the Orders of the Commission, dated July 30, 1993 and October 19, 1993, relating to the Prior Notice and Filing Requirements of the Federal Power Act in FERC Docket No. PL93–2, Jersey Central Power & Light Company (JCP&L) tendered for filing a proposed rate schedule supplement showing JCP&L's charges to Atlantic City Electric Company (ACE) to defray JCP&L's cost of operation and maintenance of certain interconnection facilities during the years 1982–1993 and proposed for 1994 relating to JCP&L's Interconnection Agreement with Atlantic City Electric Company (ACE) dated as of March 1, 1978.

Copies of the filing have been furnished to the New Jersey Board of Regulatory Commissioners.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

21. Central Vermont Public Service Corp.

[Docket No. ER94–300–000]

Take notice that Central Vermont Public Service Corporation (CVPS) on December 20, 1993, tendered for filing Borderline Agreement between New York State Electric & Gas Corporation and CVPS.

CVPS requests the Commission to waive its notice of filing requirements to permit the original contracts to become effective according to their respective terms.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

22. Central Hudson Gas & Electric Corp.

[Docket No. ER94–302–000]

Take notice that on December 20, 1993, Central Hudson Gas and Electric Corporation (CHG&E) tendered for filing an amendment to FERC Docket No. ER85–648–000 dated May 4, 1990 between CHG&E and New York Power Authority (NYPA). The amended agreement expands the firm transmission service provided by CHG&E for NYPA to include service on behalf of Economic Development Customers located in Orange & Rockland Utilities, Inc. service territory. In addition, the point of delivery of NYPA power and energy to CHG&E will be changed to CHG&E's Rock Tavern substation.

All other provisions of Docket ER85–648–000 shall remain in effect. CHG&E states that copies of the subject filing were served upon NYPA.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

23. Central Hudson Gas & Electric Corp.

[Docket No. ER94–303–000]

Take notice that on December 20, 1993, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing an amendment to FERC Contract No. 73 dated March 11, 1991 between CHG&E and Orange & Rockland Utilities, Inc. (O&R). The amended contract expands the transmission wheeling service provided by CHG&E to O&R to include the purchase of capacity and energy from the various sources of the New York Power Authority.

All other provisions including the rate that will be charged, of the existing contract remain in effect. CHG&E states that copies of the subject filing were served upon O&R.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

24. Central Hudson Gas & Electric Corp.

[Docket No. ER94–304–000]

Take notice that on December 20, 1993, Central Hudson Gas & Electric Corporation (CHG&E) tendered for filing an amendment to FERC Contract No. 26 dated August 26, 1993 between CHG&E and New York State Electric and Gas Corporation (NYSEG). The amended contract provides for an increase in the facilities charge associated with investment at the Smithfield Substation due to the replacement of a motor-operated manually controlled air break switch with a supervisory controlled circuit breaker.

The facilities charge increases from $57.00 per month to $2,415.00 per month and is retroactive to August 18, 1991 the date on which the circuit breaker was placed in service.

All other provisions of FERC Contract No. 26 shall remain in effect. CHG&E states that copies of the subject filing were served upon NYSEG.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

25. Nevada Power Co.

[Docket No. ER94–305–000]

Take notice that on December 20, 1993, Nevada Power Company (NPC), tendered for filing the Participation Agreement Reid Gardner Unit 4 (Agreement) between NPC and the California Department of Water Resources (CDWR) and subsequent changes to the transmission rate included in this Agreement. This Agreement provides for the Terms and Conditions for participation in the operation of the Reid Gardner Unit 4, a coal-fired steam generation unit of approximately 250 MW located at NPC's Reid Gardner generating station site in Clark County, Nevada.

Pursuant to 18 CFR 35.11, NPC requests waiver of the Commission's notice requirements, 18 CFR 35.3, to allow for an effective date of May 10, 1983. Additionally, pursuant to the Commission's findings in FERC docket No. PL93–2–002, NPC requests that all amnesty provisions be allowed.

Copies of this filing were served on CDWR and the Nevada Public Service Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

26. Keystone Energy Service Co.

[Docket No. ER94–306–000]

Take notice that on December 20, 1993, Keystone Energy Service Company, L.P. (Keystone) tendered for filing, pursuant to Section 205 of the Federal Power Act and Rule 207 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (the "Commission") a "Petition for Acceptance of Initial Rate Schedule and Waiver of Certain Commission Regulations" and an Initial Rate Schedule requesting the Commission approve, on a market basis, an Agreement for the Purchase of Electric Power between Keystone and Atlantic City Electric Company (ACE), as amended for the sale of capacity and associated from Keystone's cogeneration facility located in Logan Township, New Jersey. Keystone has requested a waiver of the notice requirements to permit filing of the Initial Rate Schedule more than 120 days prior to the proposed effective date.

Keystone has served a copy of the Petition on ACE.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

27. Central Vermont Public Service Corp.

[Docket No. ER94–307–000]

Take notice that on December 20, 1993, Central Vermont Public Service Corporation Inc. (CVPS), tendered for filing six Interconnections Agreements with the following Vermont facilities: Comtu Falls Corporation, Hydro Energies Corporation, Emerson Falls Hydro, Inc., Killington Hydroelectric Inc., Martinsville Hydro Corporation, and Springfield Hydroelectric Company as provided for pursuant to PL93–2–002.

CVPS requests the Commission to waive its notice of filing requirements to permit the original contracts to become effective according to their respective terms.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

28. Illinois Power Co.

[Docket No. ER94–311–000]

Take notice that on December 20, 1993, Illinois Power Company (IP) tendered for filing changes to Appendix A to the Interconnection Agreement between Central Illinois Power Service Company (CIPS), Illinois Power Company (IP), and Union Electric Company (UE). The changes provide for an additional point of interconnection between CIPS and IP, CIPS-IP Connection 39 - Sidney - West Kansas. IP proposes an effective date of October 1, 1983, and therefore, requests waiver of the Commission's notice requirements. The other changes to Appendix A include minor revisions to existing connection point working and the deletion of four connection points.

IP also tenders for filing a Reserve and Emergency Interchange Agreement and appendices "G", "H", "I", and "J" dated December 15, 1993.

Finally, IP tenders for filing a revised Appendix "Q" to the Facility Use Agreement between IP and CIPS dated January 17, 1956.

Copies of the filing have been served on CIPS, UE, and the Illinois Commerce Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

29. PacifiCorp

[Docket No. ER94–312–000]

Take notice that on December 20, 1993, PacifiCorp, tendered for filing in accordance with the Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–003 (Final Order). Agreement Limiting Liability Among Western Interconnection Systems and related materials entitled Western Interconnected Electric Systems Blackout/Brownout Insurance Program (Related Materials).

Copies of this filing were supplied to all parties to WIES, the Public Utility Commission of Oregon and the Utah Public Service Commission.

PacifiCorp requests that the Commission disclaim jurisdiction of the Agreement Limiting Liability Among Western Interconnected Systems and/or Related Materials or, in the alternative, grant a waiver of prior notice pursuant to 18 CFR 35.11 of the Commission's Rules and Regulations to allow the Agreement to become effective as of the date that each jurisdictional party executed the Agreement.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

30. San Diego Gas & Electric Co.

[Docket No. ER94–317–000]

Take notice that on December 21, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, an Interchange Agreement (Agreement) between SDG&E and the City of Riverside (Riverside).

SDG&E requests that the Commission allow the Agreement to become effective on the 1st of March, 1994 or at the earliest possible date.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Riverside.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

31. Tucson Electric Power Co.

[Docket No. ER94–322–000]

Take notice that on December 21, 1993, Tucson Electric Power Company (Tucson) tendered for filing an Amendment No. 1 to an Economy Energy Agreement between Tucson and Arizona Power Authority (APA). The Amendment was executed in response to a Staff request for more specific definition of certain terms contained in the Agreement.

The parties request an effective date of November 22, 1993, and therefore request waiver of the Commission's regulations with respect to notice of filing.

Copies of this filing have been served upon all parties affected by this proceeding.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

32. Montaup Electric Co.

[Docket No. ER94–324–000]

Take notice that on December 21, 1993, Montaup Electric Company filed an Exhibit A designated Series No. 11, Newport No. 5, specifying electric power to be transmitted under the Service Agreement No. 6 with Newport Electric Corporation dated September 30, 1989 on file with the Commission under Docket No. ER85–391–000. Under the Amnesty Order issued July 30, 1993 in Docket No. PL93–2–002, Montaup requests waiver of the 60-day notice requirement to permit the service to become effective on March 1, 1985.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

33. New England Power Co. and Granite State Electric Co.

[Docket No. ER94–326–000]

Take notice that on December 21, 1993, New England Power Company (NEP) and Granite State Electric Company, tendered for filing a Property Sharing Agreement.

Pursuant to the Commission's Final Order in Docket No. PL93–2–000, dated July 31, 1993, the two companies request waiver of the Commission's notice requirements so that the Agreement may be made effective November 2, 1993.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

34. Niagara Mohawk Power Corp.

[Docket No. ER94–328–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and the New York Power Authority (NYPA) dated December 13, 1993 providing for the terms and conditions of loss compensation for control area transactions.

The effective date of January 1, 1988 is requested by Niagara Mohawk.

Copies of this filing were served upon NYPA and the New York State Public Service Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

35. Niagara Mohawk Power Corp.

[Docket No. ER94–329–000]

Take notice that on December 21, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk), tendered for filing an agreement between Niagara Mohawk and Lockport Energy Associates, L.P. (Lockport) dated April 24, 1992 providing for the terms and conditions of an interconnect between Lockport's cogeneration facility and Niagara Mohawk's transmission system.

The effective date of April 24, 1992 is requested by Niagara Mohawk.

Copies of this filing were served upon Lockport and the New York State Public Service Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell.

Secretary.

[FR Doc. 94–685 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2354–018]

Georgia Power Co.; Notice of Intent To Prepare an Environmental Assessment

January 6, 1994.

The Federal Energy Regulatory Commission (FERC) has received an application for relicensing of the existing North Georgia Hydroelectric Project (project). The project is located on the Tallulah, Tugalo, and Chattooga Rivers in Northeast Georgia and Northwest South Carolina. The project consists of six hydroelectric developments and is within the Savannah River Basin.

The FERC staff intends to prepare an Environmental Assessment (EA) on the hydroelectric project in accordance with the National Environmental Policy Act.

The EA will objectively consider both site-specific and cumulative environmental impacts of the project and reasonable alternatives, and will include economic and engineering analyses.

A draft EA will be issued and circulated for review by all interested parties. All comments filed on the draft EA will be analyzed by the staff and considered in the final EA. The staff's conclusions and recommendations will then be presented for the consideration of the Commission in reaching its final licensing decision.

The purpose of this notice and the scoping document, which is being sent to interested individuals, organizations, and agencies with environmental expertise and concerns, is to solicit from those entities comments that will assist the staff in identifying the scope of environmental issues that should be analyzed in the EA.

The scoping document will: (1) Identify preliminary environmental issues related to the proposed project, (2) identify preliminary resource issues that are not important and do not require detailed analysis, (3) identify reasonable alternatives to be addressed in the EA, and (4) solicit all available information, especially quantified data, on the resource issues, including points of view in opposition to, or in support of, the staff's preliminary views.

Written comments must be filed no later than March 3, 1994 with: Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

All written correspondence should clearly show the following caption on the first page:

North Georgia Hydroelectric Project, (FERC Project No. 2354–018)

Intervenors, those on the Commission's service list for this proceeding (parties), are reminded of the Commission's Rules of Practice and Procedure, requiring parties filing documents with the Commission, to serve a copy of the document on each person whose name appears on the official service list. Further, if a party or interceder files comments or documents with the Commission relating to the merits of an issue that may affect the responsibilities of a particular resource agency, they must also serve a copy of the document on that resource agency.

A two-day site visit to the project is planned for January 31 and February 1, 1994. Those who wish to attend should contact Ms. JoLee Gardner, Georgia Power Company, at (404) 526–3576, by January 20, 1994, for details.

Any questions regarding this notice may be directed to Joe Davis, Environmental Coordinator, at (202) 219–2865.

Lois D. Cashell,

Secretary.

[FR Doc. 94–717 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01916T Oklahoma–63]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 6, 1994.

Take notice that on December 29, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Red Oak common source of supply underlying portions of Pittsburgh and Latimer Counties, Oklahoma, qualifies as a tight formation under section 107(c)(5) of the Natural Gas Policy Act of 1978. The recommended area is described as:

Pittsburgh County
Sections 35 and 36, T7N, R18E
Latimer County
Sections 31 through 33, T7N, R19E
Sections 1, 2, 10, 11, and 12, T6N, R18E
Sections 4 through 9, T6N, R19E

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–718 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–01918T Oklahoma–65]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 6, 1994.

Take notice that on December 29, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's

regulations, that the Douglas (Tonkawa) Formation, underlying portions of Roger Mills and Ellis Counties, Oklahoma, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The recommended area is described as all of Sections 9, 10, 15–22, and 28–30, in Township 17 North, Range 24 West, and Sections 24 and 25, in Township 17 North, Range 25 West.

The notice of determination also contains Oklahoma's findings that the referenced formation meets the requirements of the Commission's regulations set forth in 18 CFR Part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–719 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–166–000, et al.]

Viosca Knoll Gathering System, et al.; Natural Gas Certificate Filings

January 4, 1994.

Take notice that the following filings have been made with the Commission:

1. Viosca Knoll Gathering System

[Docket No. CP94–166–000]

Take notice that on December 29, 1993, Viosca Knoll Gathering System (Viosca Knoll), 600 Travis, 7200 Texas Commerce Tower, Houston, Texas 77002, filed a petition for declaratory order in Docket No. CP94–116–000, requesting that the Commission declare that certain facilities Viosca Knoll proposes to construct along the edge of the Outer Continental Shelf (OCS) would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act (NGA), all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Viosca Knoll states that if proposes to construct approximately 95 miles of 20-inch O.D. pipeline extending from a platform owned and operated by Shell Offshore, Inc. in Main Pass Block 252 in a generally southwesterly direction to a terminating interconnection with the facilities of Tennessee Gas Pipeline Company (Tennessee) in South Pass Block 55 Offshore Louisiana. It is stated that Viosca Knoll's facilities would also include, in their initial configuration, a junction platform and six miles of 16-inch O.D. lateral interconnect with facilities owned by Southern Natural Gas Company (Southern) in Main Pass Block 289. It is also stated that Viosca Knoll's facilities would interconnect with production platforms and flow lines from production platforms at numerous locations along its entire length. Viosca Knoll indicates that its facilities would not include compression, would be operated at pressures ranging from 900 to 1,350 psig, and would be configured to gather natural gas from both the shallow and deepwater OCS and redeliver it to the nearest pipeline interconnections having adequate take-away capacity consistent with Viosca Knoll's objective of providing gas gathering infrastructure along the edge of the OCS. Viosca Knoll states that it is a partnership composed of Leviathan Gas Pipeline Partners, L.P. (Leviathan), and Tenneco Gas Gathering Co. (Tenneco Gathering) with each partner holding equal ownership shares. Viosca Knoll further states that Leviathan would be the administrative operator and that the system would not interconnect with any interstate pipeline affiliated with Leviathan. It is stated that Tenneco Gathering would physically operate and maintain the facilities.

Viosca Knoll seeks a declaratory order holding that its proposed facilities would have the primary function of gathering natural gas and would thereby be exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act. Viosca Knoll requests that an expedited decision be issued permitting the facilities to be placed into service by November 1994.

Comment date: January 25, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Florida Gas Transmission Co.

[Docket No. CP94–155–000]

Take notice that on December 22, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–155–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon and transfer by sale to Onyx Pipeline Company, L.C. (Onyx), three compressor units, 15.7 miles of the Encinal Channel Lateral, the Phillips East White Point Lateral, the Shell East White Point Lateral, the Nueces Bay Lateral and related metering and appurtenant facilities, including permission to transfer by sale to Onxy the Phillips Spradley Lateral, all as more fully set forth in the application on file with the Commission and open to public inspection.

FGT states that the facilities it has agreed to sell to Onyx are located primarily in San Patricio County, Texas. FGT further states that the abandonment and sale proposed herein would not impair any current services nor would it disadvantage any FGT customer. FGT says that the proposed abandonment and sale of the subject facilities would save FGT approximately $10,500 per year in operating and maintenance costs.

Comment date: January 25, 1994, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–686 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11356–001 Utah]

Long Park Hydro Associates, dba Current Power Technologies; Surrender of Preliminary Permit

January 6, 1994.

Take notice that Long Park Hydro Associates, Permittee for the Long Park Project No. 11356, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11356 was issued April 20, 1993, and would have expired March 31, 1996. The project would have been located on Sheep Creek in Daggett County, Utah.

The Permittee filed the request on December 17, 1993, and the preliminary permit for Project No. 11356 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–720 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 11357–001 Utah]

Moon Lake Hydro Associates, dba Current Power Technologies; Surrender of Preliminary Permit

January 6, 1994.

Take notice that Moon Lake Hydro Associates, Permittee for the Moon Lake Project No. 11357, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 11357 was issued April 23, 1993, and would have expired March 31, 1996. The project would have been located on the West Fork of the Lake Fork River in Duchesne County, Utah.

The Permittee filed the request on December 17, 1993, and the preliminary permit for Project No. 11357 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 94–721 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. RP94–37–001 and RP94–90–000]

Alabama-Tennessee Natural Gas Co.; Proposed Change in FERC Gas Tariff

January 6, 1994.

Take notice that Alabama-Tennessee Natural Gas Company (Alabama-Tennessee), on December 23, 1993, tendered for filing the following revisions to its FERC Gas Tariff, Second revised Volume No. 1, to be made effective November 1, 1993:

Second Revised Sheet No. 4B
Second Revised Sheet No. 140

According to Alabama-Tennessee, this filing is being made to comply with the order issued by the Commission on November 26, 1993 in Alabama-Tennessee Natural Gas Co., 65 FERC ¶61, 262 (1993). Alabama-Tennessee states that the first of these revised tariff sheets reflects certain minor changes to its proposed treatment of the Account No. 191 credit balance amounts contained in its original filing in this docket which it submitted on October 29, 1993. Second Revised Sheet No. 140 provides additional clarifying language that Alabama-Tennessee will flowthrough any purchased gas adjustment refunds regardless of when it receives such refunds. In addition, in connection with its filing, Alabama-Tennessee has submitted various working papers in connection with its proposed treatment of the Account No. 191 credit balance.

Alabama-Tennessee has requested such waiver of the Commission's regulations as may be necessary to accept and approve its filing as proposed.

Alabama-Tennessee states that copies of its filing were served upon the Company's customers and affected state commissions as well as all the parties shown on the Commission's official service list established in this proceeding.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–722 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–161–004, RP94–1–004 and RP94–108–000]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on January 3, 1994, Columbia Gas Transmission Corporation (Columbia), entered for filing as part of its FERC Gas Tariff, Second Revised Sheet No. 31 and Original Sheet No. 31A, to be made effective January 1, 1994.

Columbia states that this filing is being made in order to allow those customers that do not contest the settlement submitted on January 3, 1994, by Columbia and Supporting Intervenors in these proceedings to receive the immediate benefits of a reduction in Columbia's Weighted Cost of Gas (WACOG) surcharge filing in Docket No. RP94–1 from 7.22¢ per Dth to 3.8¢ per Dth, effective January 1, 1994, as provided for under the settlement. This surcharge applies to all City Gate deliveries under firm Rate Schedules FTS, SST and FTS for Columbia's current and former wholesale customers, including replacement shippers for capacity released by such customers. Parties will be eligible for such reduced WACOG surcharge if they do not advise Columbia or the Commission prior to January 24, 1994 that they contest the settlement or seek modifications or conditions to the settlement which are unacceptable to Columbia and the Supporting Intervenors. Contesting parties will continue to pay the currently effective 7.22¢ per Dth WACOG surcharge, subject to refund.

Columbia states that the parties are on notice that Columbia has the right to reimplement the 7.22¢ per Dth surcharge, effective January 1, 1994, in the event that the Commission rejects the settlement or provides modifications or conditions to the settlement which

are unacceptable to Columbia or the Supporting Intervenors.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–723 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–92–000, TQ94–3–23–000 and TM94–5–23–000]

Eastern Shore Natural Gas Co., Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that Eastern Shore Natural Gas Company (Eastern Shore) tendered for filing on December 30, 1993 certain revised tariff sheets included in Appendix A to the filing (to be in effect for November and December, 1993 and January, 1994) and also submitted for filing are tariff sheets in Appendix B (regular scheduled quarterly PGA filing) proposed to be effective February 1, 1994.

Eastern Shore states that the purpose of the instant filing is threefold: (1) To further modify the tracking provisions contained in Section 24 of the General Terms and Conditions of Eastern Shore's FERC Gas Tariff with respect to its CWS and CFSS rate schedules; (2) to track changes in Eastern Shore's pipeline suppliers' storage service rates; and (3) te reflect changes in Eastern Shore's commodity and demand sales rates.

Eastern Shore states that it seeks to reduce its CD commodity and increase its demand sales rates by $0.1559 and $0.1129 per dt, respectively, as compared to those sales rates filed in Eastern Shore's Out-Of-Cycle filing in Docket Nos. TQ94–2–23–000 and TM94–4–23–000. Such reduction in the CD commodity sales rate and increase in the demand sales rate are due to (1) lower prices being paid to Eastern Shore's suppliers under its market responsive gas supply contracts and (2) an increase in demand-related costs from upstream suppliers due to a revision in their Gas Research Institute (GRI) Charge effective January 1, 1994.

Eastern Shore states that copies of the filing have been served upon its jurisdictional customers and interested State Commissions. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests shall be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–724 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–91–000]

Granite State Gas Transmission, Inc.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on December 28, 1993, Granite State Gas Transmission, Inc. (Granite State) tendered for filing the tariff sheets listed below in its FERC Gas Tariff, Third Revised Volume No. 1, containing changes in rates for effectiveness on December 28, 1993:

Original Sheet No. 32
Original Sheet No. 33
Original Sheet No. 34

According to Granite State, three additional tariff sheets, having no rate effect, are also submitted for editorial purposes in the tariff:

First Revised Sheet No. 20—Revised Index
Original Sheet Nos. 27–30 and 35–99—Reservations for Future Use

Granite State further states that the rate changes on Original Sheet Nos. 32 through 34 are submitted as a limited Section 4 filing to pass through to its customers, Bay State Gas Company and Northern Utilities, Inc., transitional costs pursuant to Order Nos. 636, et al., that have been directly billed to Granite State by upstream pipeline suppliers following the effectiveness of their restructuring proceedings. According to Granite State, it has been directly billed transitional costs by Algonquin Gas Transmission Company, Tennessee Gas Pipeline Company and National Fuel Gas Supply Corporation and its filing allocates such directly billed costs to its customers.

Granite State further states that it commenced its restructured operations on November 1, 1993, pursuant to a compliance plan approved by the Commission in Docket No. RS93–1–000. It is further said that Granite State previously filed tariff sheets with the Commission to recover certain of the upstream supplier transitional costs and the filing was rejected in a Letter Order issued July 28, 1993 advising that Granite State could file to recover such costs in a limited Section 4 filing when it had completed its restructuring process. (Docket Nos. TM93–14–4–000, et al.)

Granite State states that copies of its filing have been served on its customers, Bay State Gas Company and Northern Utilities, Inc., and the regulatory commissions of the States of Maine, Massachusetts and New Hampshire.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 211 and 214 of the Commission's Rules of Practice and Procedures (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–725 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–117–000]

K N Wattenberg Transmission Limited Liability Co.; Tariff Filing

January 6, 1994.

On December 22, 1993, K N Wattenberg Transmission Limited Liability Company ("K N Wattenberg") tendered for filing the following revised tariff sheet:

Original Volume No. 1

First Revised Sheet No. 6

K N Wattenberg states that this tariff sheet reflects the Commission's revised Annual Charge Adjustment (ACA) unit charge and requests that the tariff sheet be made effective on October 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–726 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–2–117–000]

K N Wattenberg Transmission Limited Liability Co.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that K N Wattenberg Transmission Limited Liability Company, (K N Wattenberg) on December 22, 1993, tendered for filing proposed changes in its FERC Gas Tariff. Such adjustment is to track the revised GRI funding mechanism, effective January 1, 1994 per Commission Opinion No. 384 dated October 5, 1993, in Docket No. RP93–140–000. Copies of this filing were served upon the company's jurisdictional customers, and interested public bodies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–727 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–107–000]

Northwest Pipeline Corp.; Compliance Filing

January 6, 1994.

Take notice that on December 30, 1993, Northwest Pipeline Corporation (Northwest) tendered for filing and acceptance reconciling PGA workpapers.

Northwest states that the purpose of this filing is to comply with part 154 of the regulations of the Federal Energy Regulatory Commission (Commission) and with Order No. 636 and other orders issued by the Commission that required Northwest to file an estimate of its Account No. 191 balance as of October 31, 1993, and to file an estimated reconciliation of its Account No. 191 activity from its last filed annual PGA until October 31, 1993.

Northwest states that a copy of this filing has been served upon each of Northwest's affected sales customers, all intervenors in Docket No. RS92–69, consolidated with the official service list in all dockets to which the order pertained, and upon affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene of protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–728 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–104–000]

Overthrust Pipeline Co.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on January 3, 1994, Overthrust Pipeline Company (Overthrust), tendered for filing and acceptance tariff sheets to Original Volume No. 1 and First Revised Volume No. 1–A of its FERC Gas Tariff to implement revised base rates, to become effective February 1, 1994. This filing is a general rate case submitted principally to comply with the terms of Overthrust's last settlement at Docket No. RP85–60. Overthrust tendered for filing and acceptance the following tariff sheets to is FERC Gas Tariff:

Original Volume No. 1

Sixteenth Revised Sheet No. 6
Second Revised Sheet No. 8
Second Revised Sheet No. 40
Second Revised Sheet No. 41

First Revised Volume No. 1–A

First Revised Sheet No. 4
First Revised Sheet No. 5
First Revised Sheet No. 12
First Revised Sheet No. 21
First Revised Sheet No. 70
First Revised Sheet No. 76
First Revised Sheet No. 77

Overthrust requests an effective date of February 1, 1994, for the tendered tariff sheets.

Overthrust states that the rates that it has proposed are based on the overall cost of service for the test period consisting of the twelve months ended October 31, 1993, adjusted to include the annual effect of: (a) Those costs which began to be incurred during the twelve month period but were not in effect for the full period; (b) those costs which have been incurred, increased or decreased since October 31, 1993; and (c) those added costs which are known and measurable with reasonable accuracy and which will become effective within nine months after October 31, 1993. Further, Overthrust states that the proposed rates would increase annual transportation revenues by approximately $3.1 million based on the 12-month period ended October 31, 1993.

Overthrust further states that it has included the Commission's Annual Adjustment Charge (ACA) as a direct cost in the rate case and proposes to eliminate the ACA provision from its FERC Gas Tariffs.

Overthrust states that copies of this filing were served upon Overthrust's jurisdictional customers, the Public Service Commission of The State of New York and the Public Service Commission of Wyoming.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–729 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–105–000]

Ozark Gas Transmission System; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on January 3, 1994 Ozark Gas Transmission System (Ozark) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1 the following tariff sheet, with a proposed effective date of February 2, 1994:

Seventh Revised Tariff Sheet No. 4.

Ozark states that the filing is a general rate case submitted principally to comply with the terms of Ozark's settlement in Docket No. RP84–53. The filing reflects a base period encompassing the twelve months ending October 31, 1993, adjusted for known and measurable changes through the nine month period ending July 31, 1994. Ozark states that the filing utilizes straight fixed-variable rate design, the Ozark method of calculating an equity only rate base, and projected ITS throughput of 10,000 Dth. The proposed changes would decrease Ozark's cost of service by approximately $65,856 compared to the cost of service approved by the Commission in Docket No. RS92–72.

Ozark states that copies of the filing were served upon Ozark's jurisdictional customers and interested state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions and protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–730 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–106–000]

Pacific Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on January 3, 1994 Pacific Gas Transmission Company (PGT) tendered for filing Original Sheet No. 8B to its FERC Gas Tariff, First Revised Volume No. 1–A, to set forth the amount to be refunded as a result of the closeout of its Account No. 191.

PGT states that in conjunction with the implementation of restructured services on its system on November 1, 1993, sales to its sales customer, Pacific Gas and Electric Company (PG&E), as well as its Purchased Gas Adjustment mechanism terminated. Paragraph 31 of PGT's Transportation General Terms and Conditions governs the disposition of the balance of PGT's Account No. 191 as is existed on the day before the implementation of restructured service. As of October 1, 1993, the balance of its Account No. 191 was a credit balance of $2,158,042.

PGT states that Paragraph 31.5(f) requires it to refund to PG&E the credit balance of its Account No. 191 and to submit an accounting of the costs involved in support of this refund within 60 days of the implementation of restructured service. PGT states that it will refund the credit balance on December 30, 1993 and is submitting the required accounting as part of the instant filing in support of this refund.

PGT further states that a copy of its filing is being serviced on the affected customer and interested state regulatory agencies.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–731 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–173–001, TM94–2–66–001, TM94–2–66–002 & RP94–88–001]

Pacific Gas Transmission Co.; Change in FERC Gas Tariff

January 6, 1994.

Take notice that on December 28, 1993, Pacific Gas Transmission Company (PGT) tendered for filing and acceptance proposed tariff sheets to be a part of its FERC Gas Tariffs, First Revised Volume No. 1–A and Second Revised Volume No. 1. The purpose of this filing is to correct minor technical and pagination errors made in previous filings.

Take notice that on December 29, 1993, Pacific Gas Transmission Company (PGT) tendered for filing a correction to the Substitute Seventh Revised Sheet No. 5 to its FERC Gas Tariff, Second Revised Volume No. 1.

A copy of these filings have been served on interested state commissions and the parties of record.

Any person desiring to be heard or protest said filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are

available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–732 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–204–002]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern), submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Sub First Revised Sheet No. 165
Sub First Revised Sheet No. 166
Sub First Revised Sheet No. 167

The proposed effective date of the filing is October 31, 1993.

Texas Eastern states that this filing is in compliance with ordering paragraph (C) of the Commission's October 29, 1993 Order in Docket No. RP93–204–000 (October 29 Order) and with the Commission's December 17, 1993 Order in Docket Nos. RS92–11–000, et al. (December 17 Order).

Texas Eastern states that the October 29 Order accepted tariff sheets filed on September 30, 1993 by Texas Eastern to recover Stranded Costs which allocated such costs on the basis of MDQs for customers under Rate Schedules CDS, FT–1, and SCT with an adjustment to reflect Peak Day or MDQ billing determinants for Rate Schedule SCT. Ordering paragraph (C) of the October 29 Order directed Texas Eastern, "to conform the subject filing to the Commission's action on Municipal Defense Group's small customer mitigation alternative methodology in Docket No. RS92–11–017 within 15 days of the date of the date of a Commission order therein." The Commission issued such an order on December 17, 1993. The tariff sheets submitted herewith are being filed in compliance with the October 29 Order to recover Stranded Costs using the allocation methodology accepted by the Commission in the December 17 Order.

Texas Eastern states that the October 29 Order authorized Texas Eastern to recover Stranded Costs totalling $3,696,950.41, including carrying charges, incurred from June 1, 1993 through August 31, 1993.

Texas Eastern states that the customer detail on the tariff sheets and on Attachment B of the filing includes the correction of a customer name from Equitrans, Inc. to Equitable Gas Company.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–733 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–204–003]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on December 30, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets:

Second Revised Sheet No. 165
Second Revised Sheet No. 166
Second Revised Sheet No. 167

The proposed effective date of the tariff sheets is October 31, 1993.

Texas Eastern states that this filing is submitted pursuant to Section 15.2(D) of the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that it filed tariff sheets on September 30, 1993 to recover Stranded Costs totalling $3,696,950.41. In an order issued October 29, 1993, the Commission accepted the tariff sheets filed on September 30. Concurrent with the filing being made herewith, and in compliance with the October 29 Order, Texas Eastern is filing substitute tariff sheets to the September 30 filing which revise the allocation methodology for customers under Rate Schedule SCT. On October 25, 1993, Texas Eastern received a rate refund from Columbia Gulf Docket Nos. RP91–160 and RP91–161, et al., related to June, July, and August 1993 activity, for $72,662.08, including carrying charges. Section 15.2(D) of the General Terms and Conditions states, "Any refunds received by Pipeline of amounts direct billed hereunder shall be flowed through to Customers in the proportion of each Customer's payment of such amounts, including carrying charges calculated in accordance with § 154.305 of the Commission's Regulations from the date of payment by the Customer to the refund date." The tariff sheets being filed herewith reflect a credit to the customers for the Columbia Gulf refund and uses the allocation methodology in the compliance filing being made concurrently.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–734 Filed 1–11–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–00146; FRL–4754–7]

Guidance on Determining Environmentally Preferable Products and Services; Notice of Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: EPA is announcing a public meeting to solicit input from all interested parties on developing guidance that Executive agencies can use in determining the preference and purchase of environmentally preferable products and services. This meeting is part of a process that EPA has established to obtain public input. The draft guidance is being developed to implement section 503 of Executive Order on Federal Acquisition, Recycling and Waste Prevention (Executive Order 12873).

DATES: The meeting will take place on February 7 and 8, 1994, starting at 9:30

a.m. on February 7, and 12:30 p.m. on February 8, and ending each day at 5 p.m. unless concluded earlier. Registration will occur one half hour before the meeting is scheduled to begin on both days. The second day will only proceed if there are more confirmed presenters than can be accommodated on the first day.

Requests to present oral testimony must be received on or before February 1, 1994, and will be scheduled on a first-come, first-served basis. Written comments must be received on or before March 10, 1994.

ADDRESSES: The meeting will be held at: EPA Headquarters, Auditorium, 401 M St., SW., Washington, DC.

Written comments on the concept paper, discussed in Unit II. of this document, and other aspects of implementation of section 503 should be sent to Eun-Sook Goidel (7409), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Claudia O'Brien (7406), Office of Pollution Prevention and Toxics, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; Telephone (202) 260–0688; Fax (202) 260–0981.

SUPPLEMENTARY INFORMATION:

I. Background

On October 20, 1993, President Clinton signed Executive Order 12873, entitled "Federal Acquisition, Recycling and Waste Prevention," (58 FR 5411, October 22, 1993). Section 503 of Executive Order 12873 requires EPA to "issue guidance that recommends principles that Executive agencies should use in making determinations for the preference and purchase of environmentally preferable products." Draft guidance for implementing this provision is to be published in the **Federal Register** by EPA within 180 days from the effective date of the Executive Order (April 18, 1994). The Executive Order also allows the Agency to issue additional guidance for public comment on how the principles can be applied to specific product categories.

II. Process

To implement section 503 of Executive Order 12873, the Agency is establishing a process whereby public input is solicited from all interested persons and organizations. This process will include public meetings and discussions with stakeholders where interested parties will be given an opportunity to comment on a concept paper. This concept paper will be available in late January and will describe the Agency's preliminary proposal on guiding principles that Federal agencies should use when making determinations for the preference and purchase of environmentally preferable products.

To schedule oral testimony at the public meeting and to obtain a copy of the concept paper, contact EPA's Public Hearing Hotline, 110 Hartwell Avenue, Lexington, MA 02173–3198; telephone (617) 674–7374. Callers will receive mail confirmation of their scheduled testimony and logistical information. Persons who wish to make oral presentations must restrict testimony to 7 minutes and are also expected to provide three written copies of their completed comments for inclusion in the official record. If interested parties are unable to attend the public meetings, they are invited to submit written comments to the Agency.

Finally, the Agency plans to hold a series of stakeholder meetings beginning in February, as time allows, at EPA Headquarters. The Agency will accept requests for participation in stakeholder meetings on a first-come, first-served basis. Persons or organizations wishing to sign up for stakeholder meetings with Agency representatives should contact Claudia O'Brien at the telephone number listed under FOR FURTHER INFORMATION CONTACT. Due to the limited amount of time available to develop the draft guidance, the Agency requests that organizations and companies with similar interests arrange to meet with Agency representatives during the same time period. The Agency may also hold a limited number of audio or video conferences for persons or organizations lacking travel funding. Interested persons should contact Claudia O'Brien at the telephone number listed under FOR FURTHER INFORMATION CONTACT.

III. Approach

The Agency has been directed by Executive Order 12873 to develop an approach for Federal acquisition of environmentally preferable products that not only minimizes environmental burden, but also provides incentives to industry to continuously improve the environmental performance of products and services to the Federal government. Ideally, the approach would guide Federal agencies in comparing environmental performance among competing products and services, so that the environmental impact becomes a criterion like cost or performance against which Federal agencies may select products or services.

As currently envisioned, the Agency's guidance on acquisition of environmentally preferable products would include three components: (1) General principles and procedures that apply across product categories and that Federal agencies can use when implementing acquisition programs for the purchase of environmentally preferable products; (2) guidance for applying these principles to specific products or product categories (to be developed as appropriate at a later date); and (3) a code of practice that Federal agencies could use when judging the credibility of non-governmental environmental certification or eco-labeling programs.

Dated: January 7, 1994.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 94–858 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–60–F

[FRL–4825–1]

Prevention of Significant Deterioration; Delegation of Authority; Maricopa County, AZ

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Delegation of authority.

SUMMARY: The Regional Administrator for EPA Region 9, San Francisco, has delegated full authority to Maricopa County to implement and enforce the federal Prevention of Significant Deterioration (PSD) program.

DATES: The effective date of the delegation agreement is November 22, 1993.

ADDRESSES: Environmental Management and Transportation Agency, Maricopa County Division of Air Pollution Control, 2406 South 24th Street, suite E–214, Phoenix, AZ 85034.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street (A–5–1), San Francisco, CA 94105, (415) 744–1256.

SUPPLEMENTARY INFORMATION: The U.S. Environmental Protection Agency has delegated, under the provisions which are found in 40 CFR 52.21(u), to Maricopa County: (a) The authority for all sources in that County subject to review for the prevention of significant deterioration (PSD) of air quality, pursuant to Part C of Title I of the Clean Air Act, as amended August 7, 1977, and the requirements promulgated in the July 1, 1992, edition of 40 CFR 52.21, as amended August 7, 1980, under authority of sections 101, 110, and 160–169 of the Clean Air Act: and (b) the authority to review, administer, and enforce throughout the County the PSD requirements imposed by the Clean Air Act sections 101, 110, and 160–169, and 40 CFR 52.21, as amended August 7, 1980.

The following letter and attached agreement represent the terms and conditions of the amended delegation.

The PSD Delegation of Authority is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by March 14, 1994.

Dated: December 13, 1993.

David P. Howekamp,

Director, Air and Toxics Division, Region IX.

United States Environmental Protection Agency

Region IX—75 Hawthorne Street, San Francisco, CA 94105–3901

December 16, 1993.

Karen J. Heidel, Ph.D., Environmental Management & Transportation Agency, 2406 South 24th Street, Suite E–214, Phoenix, AZ 85034.

Re: PSD Delegation Agreement for Maricopa County

Dear Dr. Heidel: I am pleased to transmit to you two signed originals of the delegation agreement for the Prevention of Significant Deterioration program. Please note that the delegation is effective on the date of the Regional Administrator's signature. EPA will shortly publish a notice in the **Federal Register** announcing the delegation.

EPA will continue to provide any guidance or technical assistance that may be needed for Maricopa County's implementation of this agreement. EPA is committed to including the Division of Air Pollution Control in decisions relating to determinations of noncompliance with permits issued under this agreement, intended PSD enforcement actions, and in any intended revocation proceedings related to this agreement. We are also committed to maintaining, as I know you are, unobstructed channels of communication between our agencies. We look forward to a continuing partnership in the permitting program.

Sincerely,

David P. Howekamp,

Director, Air and Toxics Division.

Agreement for Delegation of Authority of the Regulations for Prevention of Significant Deterioration of Air Quality (40 CFR 52.21) Between U.S. EPA and MC

The undersigned, on behalf of the Maricopa County (MC) and the United States Environmental Protection Agency (U.S. EPA), hereby agree to the delegation of authority for the administrative, technical and enforcement elements of the source review provisions of 40 CFR 52.21, Prevention of Significant Deterioration (PSD), as they may be amended and in accordance with the permit review requirements in 40 CFR part 124 subparts A and C, from U.S. EPA to MC, subject to the terms and conditions below. This delegation is executed pursuant to 40 CFR 52.21(u), Delegation of Authority.

I. General Delegation Conditions

A. Authority is delegated for all sources under the jurisdiction of MC that are subject to review for PSD. This includes all source categories listed in 40 CFR 52.21 for each pollutant regulated by the Clean Air Act.

B. This delegation may be amended at any time by the formal written agreement of both MC and U.S. EPA, including amendments to add, change, or remove conditions or terms of this Agreement.

C. If the Regional Administrator determines that the County is not implementing or enforcing the PSD program in accordance with the terms and conditions of this delegation, the requirements of 40 CFR 52.21, 40 CFR 124, or the Clean Air Act, this delegation, after consultation with MC, may be revoked in whole or in part. Any such revocation shall be effective as of the date specified in a Notice of Revocation to the County. Nothing in this paragraph shall preclude U.S. EPA from exercising its enforcement authority, as provided in paragraph V.B. below.

D. The permit appeal provisions of 40 CFR 124.19 shall apply to all appeals to the Administrator on permits issued by MC under this delegation. For purposes of implementing the federal permit appeal provisions under this delegation, if there is a public comment requesting a change in a draft preliminary determination or draft permit conditions, the final permit issued by MC is required to contain statements which indicate that for Federal PSD purposes and in accordance with 40 CFR 124.15 and 124.19, (1) the effective date of the permit is 30 days after the final decision to issue, modify, revoke and reissue the permit; and (2) if an appeal is made to the Administrator, the effective date of the permit is suspended until such time as the appeal is resolved. MC shall inform U.S. EPA (Region IX) in accordance with conditions of this delegation when there is public comment requesting a change in the preliminary determination or in a draft permit condition. Failure by MC to comply with the terms of this paragraph shall render the subject permit invalid for Federal PSD purposes.

E. By this agreement, MC assumes authority for enforcement and permit modification/amendment for EPA issued NSR/PSD permits.

F. This delegation of authority becomes effective upon the date that both parties have signed the Agreement.

II. Communications Between U.S. EPA and MC

MC and U.S. EPA will use the following communication procedures:

A. MC shall report to U.S. EPA on a quarterly basis the compliance status of the sources that have received a PSD permit from either MC or U.S. EPA. The Aerometric Information Retrieval System (AIRS) will be used for this purpose. Compliance determinations will be made with respect to the conditions established in the PSD permits.

B. MC shall forward to U.S. EPA, at the beginning of the public comment period for each PSD permit, a summary of (1) the findings related to each PSD application, (2) the justification for MC's preliminary determination, and (3) a copy of the draft permit. Should there be any comments or concerns about the pending PSD permit, U.S. EPA shall communicate these comments and concerns to MC as soon as possible prior to the close of the public comment period.

C. MC shall forward to EPA Region IX (attn: A–5–1) copies of the final action on the PSD permit applications at the time of issuance, as well as copies of substantive public comments. MC must address any public comments not incorporated into the permit, and shall provide a summary of the responses.

D. MC shall send U.S. EPA copies of preliminary determinations on PSD permit modifications and amendments at or prior to the beginning of the public comment period. U.S. EPA will provide comments to MC prior to the close of the public comment period.

E. MC shall send to EPA a copy of all applicability determinations and justifications made that would involve PSD exemptions due to offsetting or netting (40 CFR 52.21(b)(3) and 52.21(b)(21).

III. Revisions to Title 40 CFR 52.21

A. This delegation covers any revisions that are promulgated for 40 CFR 52.21 and 40 CFR 124. The terms "40 CFR 52.21" and "40 CFR 124" as used in the delegation request and throughout this Agreement, include such regulations as are in effect on the date this Agreement is executed and any

revisions that are promulgated after that date.

B. In addition, the following U.S. EPA policies shall apply to PSD review:

1. U.S. EPA is responsible for the issuance of PSD permits on Indian Lands, under sections 110(c) and 301 of the Clean Air Act. States (or their delegates) have no authority to establish air pollution control requirements on Indian Reservations, unless requested to by the Tribal Governing Body.

2. According to U.S. EPA guidance published on September 22, 1987 and supplemental guidance published on July 28, 1988, all delegated agencies must now consider pollutants not subject to the Clean Air Act in their Best Available Control Technology (BACT) determinations. The BACT determinations must include a review of the toxic effects of unregulated pollutants and the impact of the proposed BACT on the emissions of these pollutants.

3. MC shall consult with the appropriate Federal, State, and local land use agencies prior to issuance of preliminary determinations on PSD permits. In particular, U.S. EPA requires that MC shall:

(a) Notify the Fish and Wildlife Service (FWS) and U.S. EPA when a PSD permit application has been received, in order to assist U.S. EPA in carrying out its non-delegable responsibilities under section 7 of the Endangered Species Act (PL 97–304).

(b) Notify potential applicants of the potential need for consultation between U.S. EPA and the FWS if an endangered species may be affected by the project. U.S. EPA's data sheet may be used for this process (copy enclosed).

(c) Refrain from issuing a final PSD permit unless the FWS has determined that the proposed project will not adversely affect any endangered species.

4. MC shall consider a dry scrubber for sulfur dioxide control, a baghouse or electrostatic precipitator for particulate control, and efficient combustion techniques for carbon monoxide control in their BACT determinations for municipal waste combustors pursuant to U.S. EPA guidance published on June 28, 1987.

5. MC shall begin any BACT determination with the most stringent control options available for that category, pursuant to additional BACT guidance issued on December 1, 1987. U.S. EPA will consider as deficient any BACT determination not complying with this "top-down" requirement.

6. Upon notification from EPA, MC shall implement such new regulations or directives pending revision of this Agreement.

IV. Permits

A. In any matter involving interpretation of sections 160–169 of the Clean Air Act, or 40 CFR 52.21, and of 40 CFR 124 where guidance on the implementation, review, administration, or enforcement of these sections has not been sent to MC, U.S. EPA will be contacted and requested to provide the appropriate guidance.

B. MC shall at no time grant any waiver to the PSD permit requirements.

C. Permits issued under this delegation shall contain language certifying that the Federal PSD requirements have been satisfied.

D. Authorities to Construct must include appropriate provisions, as specified in Attachment A, to ensure permit enforceability. Permit conditions shall, at a minimum, contain reporting requirements on initiation of construction, startup, and where applicable, source testing and continuous emissions monitoring systems (CEMS). In all cases where tests are required, the tests methods shall be specified. All cases where CEMS are required, appropriate testing and reporting requirements shall be included. Upset/breakdown and malfunction conditions shall be included in all permits.

E. U.S. EPA will assist MC in the BACT determination for all PSD permit applications filed with MC, such that U.S. EPA and MC jointly concur on each BACT determination. The signatures of U.S. EPA and MC on the final permit shall constitute concurrence on the BACT determinations

F. All modeling analyses for determination of increment consumption and compliance with the NAAQS will require the joint concurrence of U.S. EPA and MC. The signatures of U.S. EPA and MC on the final permit shall constitute concurrence on the modeling analyses.

G. Separate from conditions E and F and for a given time as specified in this subpart, U.S. EPA and MC shall jointly concur on the entire analysis and permit conditions for each PSD permit issued. This requirement for dual concurrence shall be waived beginning with the first application submitted and deemed complete two (2) years after the date of this agreement, or after U.S. EPA concurs with MC on ten (10) final permits issued pursuant to this delegation agreement, whichever occurs later. In any event, U.S. EPA shall provide written notice to MC when the requirement for dual concurrence no longer applies.

H. MC shall conduct an annual review of the NO_2 increment status for each Section 107 area designated as attainment over which it has jurisdiction and shall prepare a summary report of the review. Such review shall be made in accordance with current U.S. EPA guidance as provided to MC. Emissions from the following sources consume NO_2 increment: (1) any new major stationary source or modification of a major stationary source on which construction begins after February 8, 1988; and (2) minor, area, and mobile sources, after the minor source baseline date, as it is defined by 40 CFR 52.21. The initial review of the NO_2 increment status shall address the consumption of NO_2 increment between February 8, 1988, and the effective date of this agreement.

I. MC shall conduct an annual review, similar to the one in preceeding subpart H, on the status of the PM_{10} increment. For that part of Maricopa County designated nonattainment for TSP, the requirement for tracking PM_{10} increment consumption becomes effective on the date of receipt of the first major source application deemed complete after the June 3, 1994, implementation date for PM_{10} increments. For all other areas within Maricopa County, the minor source baseline date established for TSP remains in effect, but PM_{10} increments replace TSP increments as the particulate matter indicator.

J. U.S. EPA shall retain the responsibility of issuing the PSD permit for Palo Verde Steel, but enforcement of the final permit terms and conditions on the source shall be under local authority.

V. Permit Enforcement

A. The primary responsibility for enforcement of the PSD regulations as found in 40 CFR part 52 in Maricopa County will rest with MC, except where responsibility is vested in the State of Arizona. Pursuant to A.R.S. 49–402, the State of Arizona has original jurisdiction over the following sources in Maricopa County:

1. Smelting of metal ore.
2. Petroleum refineries.
3. Coal fired electrical generating stations.
4. Portland cement plants.
5. Air pollution generated by portable sources unless delegated to MC.
6. Air pollution by mobile sources for the purpose of regulating those sources as prescribed by A.R.S. Title 49, Chapter 3, Articles 4 & 5.

MC will enforce the provisions that pertain to the PSD program, except in those cases where the rules or policy of MC are more stringent. In such cases, MC may elect to implement the more stringent requirements.

B. Nothing in this delegation agreement shall prohibit EPA from enforcing the PSD provisions of the Clean Air Act, the PSD regulations or any PSD permit issued by MC pursuant to this Agreement.

C. In the event that MC is unwilling or unable to enforce a provision of this delegation with respect to a source subject to the PSD regulations, MC will immediately notify the Regional Administrator. Failure to notify the Regional Administrator does not preclude U.S. EPA from exercising its enforcement authority.

Dated: November 9, 1993.

James D. Bruner,

Chairman, Maricopa County Board of Supervisors.

Dated: November 22, 1993.

John Wise,

Acting for

Felicia A. Marcus,

Regional Administrator, U.S. EPA Region IX.

Attachment A

All Authorities to Construct, where applicable, shall contain:

1. Identification of all points of emission, both stack and fugitive.

2. Specification of a numerical emission limitation for each point of emission in terms of mass rate and/or concentration limitations. If emission testing based on a numerical emission limitation is infeasible, the permit may instead prescribe a design, operational, or equipment standard. Any permits issued without numerical emission limitations must contain conditions which assure that the design characteristics or equipment will be properly maintained or that the operational conditions will be properly performed so as to continuously achieve the assumed degree of control.

3. Limitations or factors which were the basis for the air quality impact analysis must be specified (e.g. hours of operation, stack height, materials processed which affect emissions).

4. Methods and frequency of determining continued compliance for each point of emission (such as from the SIP or if the source is subject to New Source Performance Standards [NSPS] or National Emission Standards for Hazardous Air Pollutants [NESHAP] or explicitly identified if a reference method is not used.

5. Recordkeeping requirements which enable the agency to ascertain continued compliance, especially where factors such as hours of operation, throughput of materials, sulfur content of fuels, fuel usage, and type or quantity of materials processed are conditions of the permit.

6. A condition that the permit such that it will expire if construction is not commenced within eighteen (18) months or a shorter period.

7. A condition that the source is responsible for providing sampling and testing facilities at its own expense.

8. A condition that continuous emission monitoring systems (CEMS) will be used for enforcement purposes.

9. Reporting requirements which enable the agency to monitor the following:

(a) Progress of source construction including the date by which construction is completed; and

(b) Compliance with (1) emission limitations, (2) operational limitations, (3) and work practice standards; the reporting requirements should include excess emissions reports and source test results.

10. Permits issued under this delegation should contain language certifying that the federal PSD requirements have been satisfied.

11. As a courtesy to sources exempted from PSD review due to federally enforceable operational or process restrictions, or the use of controls more stringent than required by applicable SIP limits, the source shall be advised that any relaxation of those limits may subject the entire source to full PSD review as if construction had not yet begun. Suggested language is as follows:

This source is exempt from PSD review because of * * * (state reason, for example, "the requirement that limits operation to eight hours per day"). Any relaxation in this limit which increases your potential to emit above the applicable PSD threshold will require a full PSD review of the affected source as if construction had not yet commenced.

[FR Doc. 94–802 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4825–2]

Prevention of Significant Deterioration; Rescission of Authority; Fresno County, CA

AGENCY: U.S. Environmental Protection Agency (USEPA).

ACTION: Rescission of local PSD permitting authority.

SUMMARY: The Director, Air & Toxics Division, for EPA Region IX, San Francisco has rescinded local Prevention of Significant Deterioration (PSD) permitting authority in Fresno County, California.

DATES: Rescission of local PSD permitting authority is effective April 9, 1993.

ADDRESSES: David L. Crow, Executive Director/APCO, San Joaquin Valley Unified Air Pollution Control District, 1999 Tuolumne Street, suite 200, Fresno, CA 93721.

FOR FURTHER INFORMATION CONTACT: Jessica Gaylord, Air and Toxics Division, U.S. Environmental Protection Agency, 75 Hawthorne Street (A–5–1), San Francisco, CA 94105, (415) 744–1256.

SUPPLEMENTARY INFORMATION: In September 1991, the State of California passed legislation that effectively required the eight separate counties of the San Joaquin Valley Air Basin to form a single air pollution control district (APCD). EPA had delegated PSD authority to Fresno County APCD by an agreement dated December 23, 1985. Because the San Joaquin Valley Unified APCD has chosen to defer to EPA the regulation of sources subject to PSD rules at 40 CFR 52.21, EPA is responding to their request to rescind PSD authority previously delegated to Fresno County APCD. The following letter represents the terms and conditions of the rescission.

The PSD Delegation of Authority is reviewable under section 307(b)(1) of the Clean Air Act only in the Ninth Circuit Court of Appeals. A petition for review must be filed by March 14, 1994.

Dated: December 10, 1993.

David P. Howekamp,

Director, Air and Toxics Division, Region IX.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

April 9, 1993.

David L. Crow,

Executive Director/APCO, San Joaquin Valley, Unified Air Pollution Control District, 1999 Tuolumne Street, Suite 200, Fresno, CA 93721.

Dear Mr. Crow: This letter responds to your request to EPA to rescind Prevention of Significant Deterioration (PSD) permitting authority in Fresno and Kern counties. We recognize that the request, dated March 16, 1993, and received by this office on March 19, 1993, is consistent with ongoing efforts to attain a more coordinated approach to air quality management in the San Joaquin Valley.

In September 1991, the State of California passed legislation that effectively required the formation of a single air pollution control district in the Valley Air Basin. To that end, eight counties joined efforts in March 1992 to form the San Joaquin Valley Unified Air Pollution Control District. The District comprises the counties of Fresno, Kings, Madera, Merced, San Joaquin, Stanislaus, and Tulare counties, as well as that part of Kern County located in the Valley Air Basin.

By August 1992, the California Air Resources Board certified that the District met the requirements stated in SB 124.

EPA had specifically transferred PSD authority to Fresno County APCD by a delegation agreement, dated December 23, 1985. As mentioned in your letter, the District has chosen to defer to EPA the regulation of sources subject to PSD rules at 40 CFR 52.21. Therefore, EPA hereby rescinds authority delegated to Fresno County APCD to regulate sources subject to the federal PSD rules. Please note that no such agreement was made between EPA and Kern County, so that your request to rescind PSD authority in that county requires no further action.

Pursuant to grant conditions under § 105 (Program Objective 5), the District shall continue to provide to EPA notification, as soon as possible and prior to deeming the application complete, of all new major stationary sources and major modifications that may be subject to the federal PSD regulation. Specifically, this affects major stationary sources and major modifications to existing sources, as defined under part 52.21(b), that are located in areas designated as attainment within the San Joaquin Valley Unified APCD. The District should also provide notification to sources potentially affected by the federal PSD requirements. These sources must submit PSD permit applications to EPA and may be subject to enforcement action if construction commences before EPA issues a final PSD permit.

We look forward to continued cooperation with you and your staff, so that permits may be issued in a timely and effective manner. If you have further questions regarding this matter, please contact Jessica Gaylord of my staff at (415) 744–1256.

Sincerely,

Carl C. Kohnert, Jr.,

Acting for David P. Howekamp, Director, Air & Toxic Division.

[FR Doc. 94–803 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–P

[OPP–42024H; FRL–4743–5]

Notice of Approval of Amendment to Texas Plan for Certification of Applicators of Compound 1080 Livestock Protection Collars

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of approval of amended certification plan.

SUMMARY: On August 13, 1993, EPA announced its intention to approve an amendment to the Texas Plan for Certification of Applicators of Compound 1080 Livestock Protection Collars (LPC's). Public comments were solicited on this amended plan. The amended plan permits pooling of LPC's among certified LPC applicators. No comments were received and EPA therefore approves the amended plan.

FOR FURTHER INFORMATION CONTACT: Jerry Oglesby, Pesticides and Toxic Substances Branch, Region VI, Environmental Protection Agency, 1445 Ross Ave., Dallas, TX 75202–2733, Telephone: 214–655–7563.

SUPPLEMENTARY INFORMATION: In accordance with the provision of section 11(a)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and 40 CFR part 171, the Texas Department of Agriculture submitted to EPA for approval, revisions to its current plan for certification of LPC applicators. The amendment to the Texas LPC certification plan permits the designation of collar pool agents. Certified LPC applicators are permitted to participate in a collar pool administered by a collar pool agent. The purpose of the collar pool is to reduce the number of LPC's in circulation by a pooling of LPC's. Certified LPC applicators will check out the LPC's from the collar pool agent immediately prior to use. When no longer needed, a LPC will be returned to the collar pool agent for distribution to another certified LPC applicator. All collar pool agents are considered agents of the registrant and are required to keep the same records. Further, the collar pool system will not affect the recordkeeping or reporting requirements of LPC users. EPA announced its intention to approve the amended plan in the **Federal Register** of August 13, 1993 (58 FR 43115), and solicited comments. No comments were received and EPA therefore approves the amended plan.

Copies of the amended plan are available for review at the following locations during normal business hours:

1. Texas Department of Agriculture, Stephen F. Austin Building, Rm. 1034F, 17th St. and Congress Ave., Austin, TX 78711, Telephone 512–463–0013.

2. Environmental Protection Agency, Region VI, 1445 Ross Ave., 12th Floor, Suite 1200, Dallas, TX 75202, Telephone: 214–655–7239.

Dated: December 6, 1993.

Allyn M. Davis,

Acting Regional Administrator, Region VI.

[FR Doc. 94–497 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34050; FRL 4748–6]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on April 12, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register.** Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the 13 pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before April 12, 1994 to discuss withdrawal of the applications for amendment. This 90-day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Registration No.	Product Name	Delete From Label
000769–00221	Suregard Grain Protectant Dust	Rice, grain sorghum and field or garden seed
000769–00921	Science Benomyl 50W	Roses (field & greenhouse), flowers, ornamentals (field & greenhouse)
000802–00460	Miller's Malathion 5E	Apples, pears, plums, prunes, interior buildings, meat processing establishments, stored grain, stored field and garden seeds
005481–00218	1-Naphthaleneacetic Acid Sodium Salt	Ornamentals, cherries (sweet), citrus (oranges, tangelos, tangerines/mandarins, tangors), olives, quince
005481–00219	1-Naphthaleneacetic Acid	Apples, cherries (sweet), pears, olives, quinces, citrus (oranges, tangelos, tangerines/mandarins, tangors)
005481–00430	Technical Naphthaleneacetic Acid	Apples, pears
005481–00431	Technical 1-Naphthaleneacetamide	Olives
005481–00432	Technical 1-Naphthaleneacetic Acid Sodium salt	Olives
005481–00433	Technical 1-Naphthaleneacetic Acid Ethyl Ester	Olives
005905–00112	Cythion ULV Concentrate Insecticide	Safflower, soybeans, tomatoes, sugar beets
005905–00293	Cythion 25 WP	Cranberries, livestock, plums, apples, pears, alfalfa, clover, vetch, apricots, beans, broccoli, brussel sprouts, cauliflower, cabbage, kale, mustard greens, turnips, celery, lettuce, spinach, cherries, citrus, cucumbers, melons, eggplant, grapes, peaches, peas, peppers, potatoes, tomatoes, walnuts, prunes
008590–00228	Agway Malathion Insect Spray	Asparagus, dog & cat, quarters, melons, pumpkins, watermelons
051036–00033	Malathion 25W	Eggplant, broccoli, turnips, endive, carrots, radishes, cabbage, collards, cauliflower, mustard, tomatoes, strawberries, peppers, okra, beans, lettuce, cucumbers, citrus (oranges, limes, tangelos, lemons kumquats & tangerines), peaches, peanuts, warehouse peanut spray

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Company No.	Company Name and Address
000769	Sureco, Inc., P.O. Box 938, Fort Valley, GA 31030.
000802	The Chas. H. Lilly Co., 7737 NE Killingsworth, Portland, OR 97218.
005481	Amvac Chemical Corp., 4100 E. Washington Blvd., Los Angeles, CA 90023.
005905	Helena Chemical Co., 6075 Poplar Ave., Suite 500, Memphis, TN 38119.
008590	Agway, Inc., c/o Universal Cooperatives, Inc., P.O. Box 460, Minneapolis, MN 55440.
051036	Micro Flo Co., P.O. Box 5498, Lakeland, FL 33807.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: December 21, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 94–378 Filed 1–11–94; 8:45 am]

BILLING CODE 6560–50–F

[PP 1G3998/T653; FRL 4748–7]

Iprodione; Establishment of a Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the fungicide Iprodione, its isomer and its metabolite in or on the raw agricultural commodity cotton seed.

DATES: This temporary tolerance expires January 1, 1996.

FOR FURTHER INFORMATION CONTACT: By mail: Sidney C. Jackson, Acting, Product Manager (PM) 21, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 227, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–6900.

SUPPLEMENTARY INFORMATION: Rhone-Poulenc AG Company, P.O. Box 12014, 2 T.W. Alexander Drive, Research Triangle Park, NC 27709, has requested in pesticide petition (PP) 1G3998, the establishment of a temporary tolerance for the combined residues of the fungicide Iprodione [3-(3,5-dichlorophenyl)-*N*-(methylethyl)-2,4-dioxo-1-imidazolidinecarboximide], its isomer [3-(1-methylethyl)-*N*-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide], and its

metabolite [3-(3,5-dichlorophenyl)-2,4-dioxo-1-imidazolidinecarboximide] in or on the raw agricultural commodity cotton seed at 0.10 parts per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 264-EUP-91, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc AG Co., must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires January 1, 1996. Residues not in excess of this amounts remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–376 Filed 1–11–94; 8:45 am]

BILLING CODE 6560-50-F

[PP 1G3997/T654; FRL 4748–8]

Rhone-Poulenc AG Company; Extension of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has extended a temporary tolerance for residues of the fungicide fosetyl-Al, aluminum tris (*O*-ethylphosphonate) in or on the raw agricultural commodity cotton at 0.20 parts per million (ppm).

DATES: This temporary tolerance expires January 1, 1996.

FOR FURTHER INFORMATION CONTACT By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5540.

SUPPLEMENTARY INFORMATION: EPA issued a notice, which was published in the **Federal Register** of May 6, 1992 (57 FR 19428), announcing the establishment of temporary tolerance for residues of the fungicide fosetyl-Al, aluminum tris (*O*-ethylphosphonate) in or on the raw agricultural commodity cotton at 0.20 parts per million (ppm). This tolerance was issued in response to pesticide petition (PP) 1G3997, submitted by Rhone-Poulenc AG Company, P.O. Box 12014, Research Triangle Park, NC 27709.

This temporary tolerance has been extended to permit the continued marketing of the raw agricultural commodity named above when treated in accordance with the provisions of experimental use permit 264-EUP-91, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant material were evaluated, and it was determined that the extension of this temporary tolerance will protect the public health. Therefore, the temporary tolerance has been extended on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active fungicide to be used must not exceed the quantity authorized by the experimental use permit.

2. Rhone-Poulenc AG Company must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires January 1, 1996. Residues not in excess of this amount remaining in or on the raw agricultural commodity after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: December 21, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 94–377 Filed 1–11–94; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice that the following agreement(s) has been filed with the Commission pursuant to section 15 of the Shipping Act, 1916, and section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit protests or comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments and protests are found in § 560.602 and/or § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Any person filing a comment or protest with the Commission shall, at the same time, deliver a copy of that document to the person filing the agreement at the address shown below.

Agreement No.: 224–200818.

Title: Port of Houston Authority/ Schroder Marine Services, Inc. Guarantee Assignment for Manchester No. 2 Terminal Agreement.

Parties: Port of Houston Authority ("Port"), Schroder Marine Services, Inc. ("Schroder").

Filing Agent: Martha T. Williams, Port of Houston Authority, P.O. Box 2562, Houston, TX 77252–2562.

Synopsis: The proposed Agreement would permit Schroder to perform freight handling services at the Port during the one year term of the Agreement.

By Order of the Federal Maritime Commission.

Dated: January 6, 1994.

Joseph C. Polking,

Secretary.

[FR Doc. 94–663 Filed 1–11–94; 8:45 am]

BILLING CODE 6730-01-M

[Docket No. 93–19]

Cancellation of Tariffs for Failure To Comply With Automated Tariff Filing and Information System ("ATFI") Filing Requirements

By Order published in the **Federal Register** (58 FR 50550) on September 28, 1993 ("September Order"), the Commission directed 103 carriers with tariffs on file in the Worldwide, Asian and South Pacific trade areas to show cause by November 12, 1993, why their paper tariffs should not be cancelled for failure to register and file a tariff in ATFI by the required date (i.e., June 4, 1993). This action was taken pursuant to section 8 of the Shipping Act of 1984 (U.S.C. app. 1707), the Commission's regulations implementing ATFI at 46 CFR part 514 and Supplemental Report Nos. 2, 3 and 4[1] issued in Docket No. 90–23, Notice of Inquiry on Ocean Freight Tariffs in Foreign and Domestic Offshore Commerce (Automated Tariff Filing and Information System).

World Tariff Services, Inc. ("WTS"), filed the only formal response to the September Order. It did so on behalf of 26 carriers named in the Order.[2] Other carriers contacted the Commission informally by letter or telephone or filed their tariff in ATFI. The Commission did not receive any response whatsoever from 42 of the respondents.

WTS states that 14 of the carriers named in its response have satisfied the Commission's requirements and filed an ATFI tariff, that three carriers have ceased doing business and have voluntarily cancelled their tariffs, and that nine other carriers either have completed the ATFI registration process, are in the process of doing so, or recently submitted the necessary information to WTS so that it may initiate ATFI registration. Two of those carriers have in fact completed the registration process and filed an ATFI tariff.

The 42 carriers that did not respond to the September Order and have not registered in ATFI or filed an ATFI tariff will have their tariffs or portions of tariffs currently on file with the Commission with Worldwide, Asian or South Pacific scopes cancelled. Twenty-five carriers responded and/or registered for ATFI, but did not file the required tariff. These carriers, which include seven of WTS's clients, have not provided sufficient grounds to justify their failure to file. Accordingly, these carriers also will have their tariffs or applicable portions of their tariffs cancelled. Carriers who have filed their tariffs in ATFI will be dismissed from the proceeding.

Therefore, it is ordered, That the tariffs or portions of tariffs currently on file with the Commission with Worldwide, Asian or South Pacific scope of the carriers identified in Appendix A to this Order are cancelled effective upon publication of the Order in the **Federal Register**.

It is further ordered, That the parties listed in Appendix B to this Order are dismissed from this proceeding.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix A

Air Sea Shipping, Inc.
Air-Mar Shipping, Inc.
Amadeus Transport, Inc.
America Niugini Shipping Co., Inc.
American Consolidated Container Line, Inc.
American Freight Lines, Ltd.
Americargo Lines, Inc.
Astro Air Express, Inc.
Aust-Asia Worldwide Shipping Pty. Ltd.
Australian Freight Services Ltd.[1]
Blue Horizon
Cargamericas Forwarding Services, Inc.
Cheung, Daniel H.
Clipper Shipping Lines Ltd.
CMB Transport NV
Compass International Forwarding, Inc.
Costa Rica Shipping Co. Inc.
Crusader Swire Container Service Limited
Crystal Freight Services (HK) Ltd.
Daher M.T.S. Multimodal Transport System
El Caribe Moving Van, Inc.
Fargo Shipping Co. Ltd.
Four Points Shipping & Trading, Inc.
Freight Management Pte Ltd.
Hudson Container Line Ltd.
Interport Freight Systems, Inc.
Jetstream Freight Services International, Inc.
Jumbo Protectors Ltd.
Laser Freight Systems, Inc.
LCI Shipholdings, Inc.

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[1] Supplemental Report No. 2, served August 4, 1992. Supplemental Report No. 3 (57 FR 59999) and Supplemental Report No. 4 (58 FR 31522) advised the public that failure to convert tariffs to ATFI format by scheduled filing dates would subject entities to show cause proceedings for cancellation of tariffs.

Sec. 502(b)(1) of Public Law 102–582 ("Pub. L. 102–582") requires all tariffs and essential terms of service contracts filed with the Commission to be in electronic format.

[2] ACB Ocean Line, Inc.; Alcar International Inc.; Aston International, Inc.; Breakbulk & Consolidation Services Pte Ltd.; Combitainer Ltd.; Enko International Ltd.; Fashion Distribution Services, Inc.; Firstair, Inc.; Freight International Services, Ltd.; International Cargo Express, Ltd.; Master Air Cargo, Inc.; United Cargo Link Italia Srl; Vantage International Forwarding Ltd.; W S A Lines Ltd.; American Freight Lines Ltd.; Amership, Inc.; LEP Freightways International Limited; Polar Steamship and Commerce Company Inc.; Pro-Service Forwarding, Co., Inc.; Sea Lanes Line Inc.; Americargo Lines, Inc.; Crystal Freight Services (HK) Ltd.; POL-Express, Inc.; DJ International Freight Services, Inc.; Tigris International Corp.; and United Transport Associates Inc.

[1] This firm changed its name from McIlwraith McEacharn Operations Limited.

LEP Freightways International Limited
Marimed Shipping Company Limited
Martin Bencher (U.K.) Ltd.
Myanmar Container Line
N.V. Sealift S.A.
Nichiro Corp.
Oceanbridge Shipping Ltd.
Overseas International Corporation
PBX Overseas Transport
Pearcy Marine, Inc.
Pearl Delta Shipping Co., Ltd.
Pentrans, Inc.
Polar Steamship and Commerce Company Inc.
Polish Travel Center[2]
Pro-Service Forwarding Co., Inc.
R.C.T. Cargo Transport, Inc.
Rainbow Navigation, Inc.
Red Oak Industries, Inc.
Ren International Services, Inc.
Right-O-Way Ocean Transport International, Inc.
Rokuchu Marine Corporation
S.A. LD Seals N.V.
S.A. Louis Dreyfus Et Cie
Sanwa Sempaku Kabushiki Kaisha
Seaboard Trading and Shipping
Seacor Ocean Lines Inc.
Seafreight Container Line, Inc.
Sealift Services International Inc.
Shenk, David W.
Teeters Brothers Contracting Co.
Totalocean Line, Inc.
U.S. Trans-Link Inc.
UCB Freight Services (USA) Inc.
Van-Pax Global Consolidators, Inc.
Westwind Africa Line Limited
World Bridge Project Carriers, Ltd.
World Commerce Forwarding, Inc.

Appendix B

ACB Ocean Line, Inc.
Airport Brokers Corporation
Alcar International Inc.
Alliance Maritime Line, Inc.
Amership, Inc.
Aston International, Inc.
Breakbulk & Consolidation Services PTE Ltd.
China Navigation Co., Ltd., The
Combitainer Ltd.
Diamond Shipping Company
DJ International Freight Services Inc.
Eastar U.S.A. Inc.
ENKO International Ltd.
Fashion Distribution Services, Inc.
Firstair, Inc.
Freight International Services, Ltd.
International Cargo Express, Ltd.
Irish Warehousing & Transport Company, Ltd.
Master Air Cargo, Inc.
Multiforwarding Belgium N.V.
Rex Air & Ocean Freight, Inc.
Scan-Shipping, Inc.
Sea Lanes Line Inc.
Sealift Inc.
Simtex Ocean Services, Inc.
Skyway Systems
Societe Nationale Malgache De Transports Maritimes
Stalwart Shipping. Inc.
Tigris International Corp.
Trans America International Services, Inc.
Transport Systems Worldwide, Inc.
U.S. Express Inc.
United Cargo Link Italia SRL
United Transport Associates, Inc.
Vantage International Forwarding Ltd.
W S A Lines Ltd.

[2] This firm changed its name from Pol-Express, Inc.

[FR Doc. 94-664 Filed 1-11-94; 8:45 am]
BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Bren-Mar Properties, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 4, 1994.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Bren-Mar Properties, Inc., Columbia, Missouri; to acquire Jack's Fork Bancorporation, Inc., Columbia, Missouri, and thereby indirectly acquire Texas County Bank, Houston, Missouri; Bank of Mountain View, Mountain View, Missouri; and Summersville State Bank, Summersville, Missouri; and to acquire First Missouri Bancorporation, Inc., Columbia, Missouri, and thereby indirectly acquire First National Bank and Trust Company, Columbia, Missouri; and First Heritage National Bank, Davis, Oklahoma.

2. Community First Financial Group, Inc., English, Indiana; to acquire at least 30.95 percent of the voting shares of Peoples Trust Bank Company, Corydon, Indiana, a *de novo* bank.

3. First United Bancshares, Inc., El Dorado, Arkansas; to merge with InvestArk Bankshares, Inc., Stuttgart, Arkansas, and thereby indirectly acquire The Bank of North Arkansas, Melbourne, Arkansas, and First Stuttgart Bank & Trust Company, Stuttgart, Arkansas.

4. Murphy-Wall Bancorp, Pinckneyville, Illinois; to become a bank holding company by acquiring 100 percent of the voting shares of Murphy-Wall State Bank and Trust Company, Pinckneyville, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Aumanchester, Inc., Rochester, Minnesota; to acquire 100 percent of the voting shares of Security State Bank of Hammond, Hammond, Minnesota. In connection with this application, Rochester Bank and Trust Company, Rochester, Minnesota; has applied to become a bank holding company by acquiring 100 percent of the voting shares of Security State Bank of Hammond, Hammond, Minnesota, which will be merged into Rochester Bank and Trust Company.

2. Brill Bancshares, Inc., Owen, Wisconsin; to become a bank holding company by acquiring 89.9 percent of the voting shares of Brill State Bank, Brill, Wisconsin.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Limestone Bancshares, Inc., Mexia, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First National Bank of Mexia, Mexia, Texas.

2. Western Commerce Bancshares of Carlsbad, Inc., Carlsbad, New Mexico; to merge with Western Bancshares of Clovis, Inc., Carlsbad, New Mexico, and thereby indirectly acquire Western Bank of Clovis, Clovis, New Mexico.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-649 Filed 1-11-94; 8:45 am]
BILLING CODE 6210-01-F

Crestar Financial Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Crestar Financial Corporation, Richmond, Virginia; to acquire Annapolis Bancorp, Inc., Annapolis, Maryland, and its wholly-owned subsidiary, Annapolis Federal Savings Bank, Annapolis, Maryland, and thereby engage in owning and operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-650 Filed 1-11-94; 8:45 am]
BILLING CODE 6210-01-F

First National Sylacauga Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 31, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. First National Sylacauga Corporation, Sylacauga, Alabama; to engage *de novo* through its subsidiary, Frontier Financial Services, Inc., Sylacauga, Alabama, in making, acquiring, or servicing loans or other extensions of credit pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to engage *de novo* in data processing and data transmission services through the ownership, installation, operation, and maintenance of automatic teller machines at various retail store locations pursuant to § 225.25(b)(7) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-651 Filed 1-11-94; 8:45 am]
BILLING CODE 6210-01-F

Firstbank of Illinois Co., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the

reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 4, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Firstbank of Illinois Co., Springfield, Illinois; to acquire 100 percent of the voting shares of Colonial Bancshares, Inc., Des Peres, Missouri, and thereby indirectly acquire The Colonial Bank, Des Peres, Missouri, and The Village Bank of St. Louis County, Ballwin, Missouri.

In connection with this application, Applicant also proposes to acquire Guido Insurance Agency, Des Peres, Missouri, and thereby engage in the sale of credit-related insurance pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–652 Filed 1–11–94; 8:45 am]

BILLING CODE 6210–01–F

Charles William Gerlach, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 31, 1994.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Charles William Gerlach, Palm Beach, Florida; to acquire 69.2 percent of the voting shares of White Eagle Financial Group, Inc., Boca Raton, Florida, and thereby indirectly acquire Admiralty Bank, Palm Beach Gardens, Florida.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Reuben A. Ellingson and Eunice R. Ellingson Family Revocable Trust, Bottineau, North Dakota; to acquire 16.53 percent of the voting shares of State Bank of Bottineau Holding Company, Bottineau, North Dakota, and thereby indirectly acquire State Bank of Bottineau, Bottineau, North Dakota.

2. Kathleen A. Nesvig, to acquire 17.22 percent of the voting shares of Omega City Holding Company, La Moure, North Dakota, and thereby indirectly acquire The First State Bank of La Moure, La Moure, North Dakota.

C. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Don Bodard, Shawnee, Oklahoma; to acquire 100 percent of the voting shares of First Medicine Lodge Bancshares, Inc., Medicine Lodge, Kansas, and thereby indirectly acquire The First National Bank of Medicine Lodge, Medicine Lodge, Kansas.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–653 Filed 1–11–94; 8:45 am]

BILLING CODE 6210–01–F

Home Credit Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than February 1, 1994.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. Home Credit Corporation, Salt Lake City, Utah; to engage *de novo* in lending activities, which include, but are not limited to loan participations with Home Credit Bank, pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–708 Filed 1–11–94; 8:45 am]

BILLING CODE 6210–01–F

Wachovia Corporation, et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 25, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. Wachovia Corporation, Winston-Salem, North Carolina; to acquire shares of Southeast Switch, Inc., Maitland, Florida, and thereby engage in providing data processing and transmission services to federally insured depository institutions who participate in Company's neutral shared electronic funds transfer (EFT) network and providing related services, including the administration and promotion of the network; providing data processing transmission and related services to other EFT networks; and providing bank management consulting advice to depository institutions pursuant to §§ 225.25(b)(7) and (b)(11) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–654 Filed 1–11–94; 8:45 am]

BILLING CODE 6210–01–F

Ronald L. Wohlwend, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than February 1, 1994.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Ronald L. Wohlwend, to acquire 25.03 percent of the voting shares of Illinois Valley Bancorp, Inc., Morris, Illinois, and thereby indirectly acquire Grundy County National Bank, Morris, Illinois.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Wishek Grandchildren Voting Trust Agreement, Ashley, North Dakota; to acquire an additional 0.31 percent of the voting shares of McIntosh County Bank Holding Company, Inc., Ashley, North Dakota, for a total of 44.97 percent, and thereby indirectly acquire McIntosh County Bank, Ashley, North Dakota.

Board of Governors of the Federal Reserve System, January 6, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94–709 Filed 1–11–94; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by Title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the application waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/13/93 AND 12/23/93

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
American Oil and Gas Corporation, American Central Gas Companies, Inc., American Central Gas Companies, Inc	94–0302	12/13/93
Westfield Holdings Limited, The Prudential Insurance Company of America, CenterMark Properties, Inc	94–0354	12/13/93
Grupo Iusacell S.A. de S.V., BellSouth Corporation, Mexican Cellular Investments, Inc	94–0374	12/13/93
Ramsay-HMO, Inc., Dr. Luis Cruz, Miami Dade Health Plan, Inc., Miami Dade Medical Center	94–0382	12/13/93
MLP Holdings L.P., Ralph J. Roberts, Comcast Sound Communications, Inc., et al.—see attached	94–0386	12/13/93
Whitehall Street Real Estate Limited Partnership III, The Prudential Insurance Company of America, CenterMark Properties, Inc	94–0390	12/13/93
AGCO Corporation, AGCO Corporation, AGCO Acceptance Company	94–0393	12/13/93
Norwest Corporation, APV plc, APV Douglas Machine Corporation	94–0396	12/13/93
AGCO Corporation, Varity Corporation, Agricredit Acceptance Company	94–0398	12/13/93
Kawasaki Heavy Industries, Ltd., International Business Machines Corporation, Altium	94–0401	12/13/93
Continental Bank Corporation, Custom Industries, Inc., Custom Industries, Inc	94–0402	12/13/93
Heidelberger Zement AG, J. Thomas Holton, Sherman International Corp	94–0403	12/13/93

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN: 12/13/93 AND 12/23/93—Continued

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
DM Holdings, Inc., Fingerhut Companies, Inc., FDC, Inc	94-0410	12/13/93
Whitehall Street Real Estate, Pacific Mutual Life Insurance Company, Pacific Mutual Life Insurance Company	94-0411	12/13/93
Nova University, Inc., Southeastern University of the Health Sciences, Inc., Southeastern University of the Health Sciences, Inc	94-0414	12/13/93
Weiner Staedtische Wechselseitige VV, Folksam General Mutual Insurance, Folksamerica Holding Company, Inc	94-0417	12/13/93
Societe Centrale Union des Assurances de Paris, Compagnie de Suez, Vinci BV	94-0418	12/13/93
Kvaerner a.s., Armco Inc., National-Oilwell	94-0422	12/13/93
Neil M. Chur, Beverly Enterprises, Inc., Beverly Enterprises—Texas, Inc	94-0423	12/13/93
Kvaerner a.s., USX Corporation, National-Oilwell	94-0424	12/13/93
Transit Communications Atlanta L.P., Hancock Venture Partners III L.P., Transit Communications Investors, Inc	94-0431	12/13/93
U S West, Inc., Russian Telecommunications Development Corporation, Russian Telecommunications Development Corporation	94-0445	12/13/93
Raymond J. Noorda and Lewena Noorda, Systems Industries, Inc., Systems Industries, Inc	94-0451	12/13/93
First Financial Management Corporation, Wilson T. Gildee, VIPS, Inc	94-0368	12/14/93
SCEcorp, Muskegon Development Company, M3 Limited Partnership	94-0370	12/14/93
Fuji Photo Film Co., Ltd., BASF AG, B&F Microdisks Partnership	94-0394	12/14/93
Fuji Photo Film Co., Ltd., Fuji Photo Film Co., Ltd., B&F Microdisks Partnership	94-0413	12/14/93
Gebr. Otto KG, Browning-Ferris Industries, Inc., Browning-Ferris Industries, Inc	94-0432	12/14/93
H Group Holding, Inc., PS Group, Inc., USTravel Systems, Inc., USTS Northeast, Inc	94-0435	12/14/93
Madison Dearborn Capital Partners, L.P., Eli Jacobs, Milnot Company	94-0443	12/14/93
First Tennessee National Corporation, SNMC Management Corporation, SNMC Management Corporation	94-0373	12/15/93
Whitman Corporation, PepsiCo, Inc., MBA Waterloo	94-0433	12/15/93
Motorola, Inc., Western Digital Corporation, Western Digital Corporation	94-0307	12/17/93
National Medical Enterprises, Inc., Doctors Hospital of Jefferson, Inc., Doctors Hospital of Jefferson, Inc	94-0337	12/17/93
Williams Holdings plc, The Black & Decker Corporation, Corbin & Russwin Division of Emhart Industries, Inc	94-0356	12/17/93
Cardinal Distribution, Inc., Frederick L. Erlich, PRN Services, Inc	94-0365	12/17/93
Cardinal Distribution, Inc., Fredrick Kamienny, PRN Services, Inc	94-0366	12/17/93
New Heritage USA Corporation, Forte plc, Forte Hotels, Inc. and Travel Beverages, Inc	94-0421	12/17/93
Adler Properties Limited Partnership, The Metropolitan Life Insurance Company, MICC Venture	94-0425	12/17/93
Adler Properties Limited Partnership, Adler Properties Limited Partnership, MICC Venture	94-0426	12/17/93
Forest Oil Corporation, Jack E. Brown, Wagner & Brown, Ltd	94-0429	12/17/93
Forest Oil Corporation, Cyril Wagner, Jr., Wagner & Brown, Ltd	94-0430	12/17/93
Kidd Kamm Equity Partners, L.P., New Action Corp. (joint venture), New Action Corp	94-0437	12/17/93
GFC Financial Corporation, Fleet Financial Group, Inc., Fleet Factors Corp	94-0440	12/17/93
The Western Company of North America, Simon Engineering plc, Unichem International Incorporated	94-0442	12/17/93
Caisse Centrale des Mutuelles Agricoles, La Mutuelle du Mans Assurances, I.a.r.d., LeMans Reinsurance Company, U.S.A	94-0456	12/17/93
Code, Hennessy & Simmons Limited Partnership, Mr. Frank J. St. Romain, South Central Pool Supply, Inc	94-0460	12/17/93
The St. Paul Companies, Inc., SCEcorp, Mission—CCH I, L.P	94-0461	12/17/93
Norcen Energy Resources Limited, Torchmark Corporation, 1993 Offshore Limited Partnership	94-0478	12/17/93
Horace Mann Educators Corporation, CIGNA Corporation, Allegiance Insurance Company	94-0395	12/20/93
Jefferson-Pilot Corporation, Randall T. Odeneal, IntraCoastal Broadcasting, Inc	94-0405	12/20/93
Jefferson-Pilot Corporation, Scott R. McQueen, IntraCoastal Broadcasting, Inc	94-0406	12/20/93
Associated Insurance Companies, Inc., Kemper Corporation, Federal Kemper Insurance Company	94-0408	12/20/93
Compagnie Generale des Communications (France Telecom), Infonet Services Corporation, Infonet Services Corporation	94-0438	12/20/93
MCI Communications Corporation, British Telecommunications plc, Transco	94-0452	12/20/93
V. Prem Watsa, D.T. Chase Enterprises, Inc., Ranger Insurance Company	94-0458	12/20/93
J.R. Simplot Company, Metropolitan Life Insurance Company, Metropolitan Life Insurance Company	94-0468	12/20/93
BTR plc, Rexnord Corporation, Rexnord Corporation	94-0441	12/21/93
Gary Joseph Chouest, Royal Dutch Petroleum Company, Shell Offshore Inc	94-0450	12/21/93
Stephens Group, Inc., SD Investments, Inc., SD Investments, Inc	94-0475	12/21/93
Blue Cross of California, UniCARE Financial Corp., UniCARE Financial Corp	94-0481	12/21/93
John W. Kluge, c/o Metromedia Company, Steven E. Pearson, Beef Specialists of Iowa, Inc	94-0381	12/22/93
Don Tyson, Matt F. Gorges, Gorges Foodservice, Inc	94-0434	12/22/93
Dr. Rajendra Singh, Telcom Ventures, L.L.C., Telcom Ventures, L.L.C	94-0470	12/23/93

FOR FORTHER INFORMATION CONTACT: Sandra M. Peay, or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office; Bureau of Competition, room 303, Washington, DC 20580, (202) 326–3100.

By Direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 94–749 Filed 1–11–94; 8:45 am]

BILLING CODE 6750-01-M

[Docket C–2858]

California and Hawaiian Sugar Co.

AGENCY: Federal Trade Commission.

ACTION: Notice of period for public comment on petition to modify or vacate consent order.

SUMMARY: California and Hawaiian Sugar Company ("C&H"), a respondent in Docket No. C–2858, is subject to an order prohibiting it from representing that its granulated sugar is different or superior unless (a) such difference or superiority relates to a consumer use of such sugar which is specified in the advertisement; (b) such difference or superiority is substantiated; and (c) such substantiation includes competent and reliable evidence that the difference or superiority is discernible to or of benefit to the class of consumers to whom the representation is directed. C&H filed a petition on December 16, 1993, requesting that the Commission reopen and modify the order to allow C&H to advertise all truthful, nondeceptive differences between its sugar and competing sugar that are substantiated by competent and reliable evidence. In the alternative, C&H requests that the Commission vacate the order.

This document announces the public comment period on this petition.

DATES: The deadline for filing comments in this matter is January 24, 1994.

ADDRESSES: Comments should be sent to the Office of the Secretary, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580. Requests for copies of the petition should be sent to Public Reference Branch, room 130.

FOR FURTHER INFORMATION CONTACT: Robert M. Frisby, Enforcement Division, Bureau of Consumer Protection, Federal Trade Commission, Washington, DC 20580, (202) 326–2098.

SUPPLEMENTARY INFORMATION: The order in Docket No. C–2858 was published at 42 FR 6800 on February 4, 1977, reported at 89 F.T.C. 15. C&H argues that significant changes in constitutional law and Commission policy since 1976 justify reopening the docket and modifying the order. C&H maintains that the U.S. Supreme Court has extended First Amendment protection to purely commercial speech and views as particularly suspect prohibitions on expression such as those in the order. C&H also contends that the burden of proof in restricting commercial speech lies with the party seeking to restrict it and that the Commission has provided no evidence that the order directly advances its interests in a reasonable manner. In addition, C&H argues that since 1976 the Commission altered its position concerning truthful comparative advertising and now actively encourages such advertising. C&H notes that since 1976 the Commission has adopted a "reasonable consumer" standard. C&H also contends that the public interest justifies reopening and setting aside the order because consumers have a constitutional right to receive uncensored distribution of truthful information. Furthermore, C&H maintains that market efficiency requires that consumers be given access to truthful information and that the order improperly discriminates among competitors. The petition was placed on the public record on December 23, 1993.

Donald S. Clark,

Secretary.

[FR Doc. 94–751 Filed 1–11–94; 8:45 am]

BILLING CODE 6750-01-M

[Dkt. C–3473]

Imperial Chemical Industries PLC, et al.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order allows, among other things, the respondents to proceed with the proposed acquisition of certain DuPont assets, but it requires the respondents to divest, within 15 months, a predetermined acrylic-plastic manufacturing capacity by selling one of their U.S. plants to a Commission-approved purchaser, and to provide the buyer with technical assistance for 18 months, if necessary. In addition, if the divestiture is not accomplished in the specified time-frame, the respondents agree to a Commission-appointed trustee to complete the transaction.

DATES: Complaint and Order issued November 29, 1993.[1]

FOR FURTHER INFORMATION CONTACT: Rhett Krulla, FTC/S–3302, Washington, DC 20580, (202) 326–2608.

SUPPLEMENTARY INFORMATION: On Wednesday, July 14, 1993, there was published in the **Federal Register**, 58 FR 37944, a proposed consent agreement with analysis In the Matter of Imperial Chemical Industrial PLC, et al., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

Comments were filed and considered by the Commission. The Commission has ordered the issuance of the complaint, made its jurisdictional findings and entered an order to divest, in disposition of this proceeding.

[1] Copies of the Complaint, the Decision and Order, and Commissioner Owen's statement are available from the Commission's Public Reference Branch, H–130, 6th Street & Pennsylvania Avenue NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 94–750 Filed 1–11–94; 8:45 am]

BILLING CODE 6750-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

National Committee on Vital and Health Statistics (NCVHS): Meetings

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meetings.

Name: NCVHS Subcommittee on Medical Classification Systems.

Time and Date: 9 a.m.–12 noon, February 2, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will discuss follow on activities from its subcommittee report recommending a single procedure classification system and will review its workplan for 1994.

Name: Joint meeting of NCVHS Subcommittees on Ambulatory and Hospital Care Statistics and Medical Classification Systems.

Time and Date: 1 p.m.–5 p.m., February 2, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittees will receive briefings on the International Classification of Primary Care (ICPC) and Systematized Nomenclature of Medicine (SNOMED).

Name: NCVHS Subcommittee on Ambulatory and Hospital Care Statistics.

Time and Date: 9 a.m.–5 p.m., February 3, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will receive testimony and review comments regarding a uniform core data set that will meet current and future needs for information on ambulatory care encounters.

Contact Person for More Information: Substantive program information as well as summaries of the meetings and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: January 6, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–698 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–18–M

National Committee on Vital and Health Statistics (NCVHS); Meetings

Pursuant to Public Law 92–463, the National Center for Health Statistics (NCHS), Centers for Disease Control and Prevention (CDC), announces the following meetings.

Name: NCVHS Subcommittee on Long-Term Care Statistics.

Time and Date: 9 a.m.–2 p.m., February 8, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington DC 20201.

Status: Open.

Purpose: The subcommittee will work on its report and revise its charge. Afterward, members will receive a briefing on disability-related risk adjusters and long-term care data needs for health care reform.

Name: Joint meeting of NCVHS Subcommittees on State and Community Health Statistics and Long-Term Care Statistics.

Time and Date: 2 p.m.–5 p.m., February 8, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittees will meet jointly to discuss issues related to State and local long-term care data.

Name: NCVHS Subcommittee on State and Community Health Statistics.

Time and Date: 9 a.m.–5 p.m., February 9, 1994.

Place: Room 703A, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201.

Status: Open.

Purpose: The subcommittee will meet to discuss issues related to State and community health statistics and to develop a work plan for the coming year.

Contact Person for More Information: Substantive program information as well as summaries of the meetings and a roster of committee members may be obtained from Gail F. Fisher, Ph.D., Executive Secretary, NCVHS, NCHS, room 1100, Presidential Building, 6525 Belcrest Road, Hyattsville, Maryland 20782, telephone 301/436–7050.

Dated: January 5, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–699 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–18–M

Administration for Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), the Administration for Children and Families (ACF) has submitted to the Office of Management and Budget (OMB) a request for the reinstatement of a previously approved information collection titled: "State Plan for Child Support Collection and Establishment of Paternity under Title IV–D of the Social Security Act, Form OCSE–100." The previously approved information collection was approved for use through November 1993 under OMB Control Number 0970–0017.

ADDRESSES: Copies of this information collection request may be obtained from Stephen R. Smith of the Office of Information Systems Management, ACF, by calling 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Office for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725–17th Street NW., Washington, DC 20503, (202) 395–7316.

Information of Document

Title: State Plan for Child Support Collection and Establishment of Paternity under Title IV–D of the Social Security Act, Form OCSE–100.

OMB No.: 0970–0017.

Description: This information collection is required by Title IV–D of the Social Security Act, Federal regulations and issuances made by the Secretary of the Department of Health and Human Service for the purpose of enforcing the support obligations owed by absent parents to their children and the spouse (or former spouse) with whom such children are living, locating absent parents, establishing paternity, obtaining child and spousal support, and assuring that assistance in obtaining support will be available to all children.

The Secretary of the Department of Health and Human Services has designated the Director of the Office of Child Support Enforcement at the Administration for Children and Families, among other things, to establish such standards for State programs for locating absent parents, establishing paternity, and obtaining child support and support for the spouse (or former spouse), and to review and approve State plans for such programs. A State must submit a State plan for a program of support collection and establishment of paternity under Title IV–D of the Social Security Act. The information obtained on the State plan preprint will serve as a contract between the Office of Child Support Enforcement (OCSE) and any State specifying activities the State must perform as required by law and other Federal requirements as a condition for Federal financial participation.

Annual Number of Respondents	54
Frequency	9
Average Burden Hours Per Response	43
Total Burden Hours	348.3

Dated: January 6, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Management.

[FR Doc. 94–793 Filed 1–11–94; 8:45 am]

BILLING CODE 4184–01–M

Health Resources and Services Administration

Program Announcement for the Disadvantaged Health Professions Faculty Loan Repayment Program

The Health Resources and Services Administration (HRSA) announces that applications for fiscal year (FY) 1994, for the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) are now being accepted under section 738 (a) of the Public Health Service Act (The Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992.

In FY 1994, approximately $800,000 is available for competing applications for the Disadvantaged Health Professions Faculty Loan Repayment Program. It is expected that 26 awards averaging $30,000 ($15,000 per year for two years) will be supported with these funds.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal years 1991, 1992 and 1993, a total of 91 awards, averaging $24,000 ($12,000 per year for 2 years) were made.

Purpose

The purpose of the Disadvantaged Health Professions Faculty Loan Repayment Program (FLRP) is to attract disadvantaged health professions faculty members for accredited health professions schools. The program provides a financial incentive for degree-trained health professions personnel from disadvantaged backgrounds who will serve as members of the faculties of those schools. The FLRP is directed at those individuals available to serve immediately or within a short time as "new" full-time faculty members. Loan repayment may be provided only for an individual who has *not* been a member of the faculty of any school at any time during the 18-month period preceding the date on which the Secretary receives the request of the individual for a repayment contract (i.e., "new" faculty).

Section 738(b) makes available grants and contracts with schools of medicine, osteopathic medicine, dentistry, veterinary medicine, optometry, podiatric medicine, pharmacy, public health, health administration, clinical psychology and other public or private nonprofit health or educational entities to assist in increasing the number of underrepresented minority faculty. Section 738(b) will be implemented as a separate program.

Eligible Individuals

Individuals from disadvantaged backgrounds are eligible to compete for participation in the FLRP if they:

1. Have a degree in medicine, osteopathic medicine, dentistry, nursing, pharmacy, podiatric medicine, optometry, veterinary medicine, public health or clinical psychology; or
2. Are enrolled in an approved graduate training program in one of the health professions listed above; or
3. Are enrolled as a full-time student in the final year of health professions training, leading to a degree from an eligible school.

Established faculty members are not eligible to apply for funds under the FLRP. Only individuals that have not taught in the last 18 (eighteen) months prior to application to the program will be considered.

Statutory Requirements

Prior to submitting an application, eligible individuals must sign a contract, as prescribed by the Secretary, setting forth the terms and conditions of the FLRP. This contract requires the individual to have entered into a contract with an eligible school to serve as a full-time member of the faculty, as determined by the school, for not less than 2 years, whereby the school agrees to pay, for each year, a sum (in addition to faculty salary) equal to that paid by the Secretary towards the repayment of principal due on the applicant's health professions educational loans. Additionally, the individual involved may not have been a member of the faculty of any school at any time during the last 18 months prior to application to the program.

Eligible Schools

Eligible health professions schools are public or nonprofit private accredited schools of medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine or public health, or schools that offer graduate programs in clinical psychology and which are located in States as provided in section 799 of the Act. Schools of nursing are also eligible, as defined in section 853 of the Act.

Provisions of the Loan Repayment Program

Section 738 (a) authorizes repayment, for any year for which repayments are made, not to exceed 20 percent of the outstanding principal and interest on the individual's educational loans. Of the repayment, the Secretary pays half, up to $20,000. The school pays an equal amount, unless the Secretary determines that the repayment will impose an undue financial hardship on the school in which case, the Secretary may pay up to the entire 20 percent.

The school is required, for each such year, to make payments of principal and interest in an amount equal to the amount of payment made by the Secretary for that year. These payments must be in addition to the faculty salary the participant otherwise would receive.

Allowable educational loan repayment expenses include the following:

1. Tuition expenses;
2. All other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant;
3. Reasonable living expenses, as determined by the Secretary; and
4. Partial payments of the increased Federal income tax liability caused by the FLRP's payments and considered to be "other income," if the recipient requests such assistance.

Prior to entering into an agreement for repayment of loans, the Secretary requires satisfactory evidence of the existence and reasonableness of the individual's educational loans, including a copy of the original written loan agreement establishing the outstanding educational loan.

Waiver Provision

In the event of undue financial hardship to a school, the school may obtain from the Secretary a waiver of its share of payments while the participant is serving under the terms of the contract. For purposes of this program, "undue financial hardship", as seen by the Secretary, is based on a school's particular financial status as influenced by such circumstances as budget cutbacks. Decisions will be made on a case-by-case basis, and may be supported by the school's documentation of comparative yearly financial allocation of funds; or the most current certified public accounting audit, including the Balance Sheet and Statement of Income and Expenses for the past several years.

If the Secretary waives the school's payment requirement, the amount of the Federal loan repayment may be up to the full 20 percent described above (regardless of the "equal amount" provision described above), but cannot exceed the $20,000 repayment limit. The participant must pay that portion of loan payment due which is not covered.

The following Definitions, Program Requirements, Review Criteria and Funding Preference were established in FY 1991 after public comment dated October 2, 1991, at 56 FR 49896, and the Secretary is extending them in FY 1994.

Definitions

For purposes of the FLRP in FY 1994, an "Individual from a Disadvantaged Background" is defined as in 42 CFR 57.1804, as one who:

1. Comes from an environment that has inhibited the individual from obtaining the knowledge, skill, and abilities required to enroll in and graduate from a health professions school, or from a program providing education or training in an allied health profession; or
2. Comes from a family with an annual income below a level based on low income thresholds according to a family size published by the U.S. Bureau of the Census, adjusted annually for changes in the Consumer Price Index, and adjusted by the Secretary for use in health professions and nursing programs. The Secretary will periodically publish these income levels in the **Federal Register**. The following income figures determine what constitutes a low income family for purposes of the Faculty Loan Repayment Program for FY 1994.

Size of parents' family [1]	Income level [2]
1	$9,419
2	12,202
3	14,523
4	18,596
5	21,930

Size of parents' family [1]	Income level [2]
6 or more	24,648

[1] Includes only dependents listed on Federal income tax forms.
[2] Adjusted gross income for calendar year 1993 rounded to $100.

The term "Living expenses" means the costs of room and board, transportation and commuting costs, and other costs incurred during an individual's attendance at a health professions school, as estimated each year by the school as part of the school's standard student budget. (National Health Service Corps Loan Repayment Program, 42 CFR 62.22)

The term "Reasonable educational expenses and living expenses" means the costs of those educational and living expenses which are equal to or less than the sum of the school's estimated standard student budgets for educational and living expenses for the degree program and for the year(s) during which the Program participant is/was enrolled in the school. (National Health Service Corps Loan Repayment Program, 42 CFR 62.22)

The term "Unserved Obligation Penalty" means the amount equal to the number of months of obligated service that were not completed by an individual, multiplied by $1,000, except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000. (Section 338E of the Act) See "Breach of Contract" section below.

Program Requirements

The following requirements will be applied to the applicant and to the school.

The Applicant

The applicant will be required to do the following:

1. Submit a completed application, including the applicant's contract with an eligible school to serve as a full-time faculty member for not less than 2 years;
2. Provide evidence that the applicant has completely satisfied any other obligation for health professional service which is owed under an agreement with the Federal Government, State Government, or other entity prior to beginning the period of service under this program;
3. Certify that the applicant is not delinquent on any amounts which are owed to the Federal Government; and
4. Provide documentation to evidence the educational loans and to verify their status.

The School

The participating school will be required to do the following:

1. Enter into a contractual agreement with the applicant whereby the school is required, for each year for which the participant serves as a faculty member, to make payments of principal and interest in an amount equal to the amount of such quarterly payments made by the Secretary. These payments must be in addition to the faculty salary the participant otherwise would receive.
2. Verify the participant's continuous employment at intervals as prescribed by the Secretary.

If the school is unable to meet the requirement of the FLRP for payment of principal and interest due because the requirement would impose undue financial hardship on the school, the school may request a waiver of this obligation from the Secretary. If the school's proportionate share of loan repayment amounts is waived, the Federal Government agrees to make payments of not more than $20,000 of principal and interest for a year, which includes the amount granted as a waiver to the school.

The Secretary will pay participants in equal quarterly payments during the period of service.

Effective Date of Contract

After an applicant has been approved for participation in the FLRP, the Director, Division of Disadvantaged Assistance (DDA), will send the applicant a contract with the Secretary. The effective date is either the date work begins at the school as a faculty member or the date the Director, DDA, signs the FLRP contract, whichever is later. Service should begin no later than September 30, 1994.

Breach of Contract

The following areas under Breach of Contract are addressed in the appended contract:

1. If the participant fails to serve his or her period of obligated faculty service (minimum of 2 years) as contracted with the school, he/she is then in breach of contract, and neither the Secretary nor the school is obligated to continue loan repayments as stated in the contract. The participant must then reimburse the Secretary and the participating school for all sums of principal and interest paid on his/her behalf as stated in the contract in addition to any income tax assistance he/she may have received.
2. Regardless of the length of the agreed period of obligated service (2, 3, or more years), a participant who serves less than the time period specified in his/her contract is liable for monetary damages to the United States amounting to the sum of the total of the amounts the Program paid him/her, plus an "unserved obligation penalty" of $1,000 for each month unserved.
3. Any amount which the United States is entitled to recover because of a breach of the FLRP contract must be paid within 1 year from the day the Secretary determines that the participant is in breach of contract. If payment is not received by the payment date, additional interest, penalties and administrative charges will be assessed in accordance with Federal Law (45 CFR 30.13).

Review Criteria

The HRSA will review fiscal year 1994 applications taking into consideration the following criteria:

1. The extent to which the applicant meets the requirements of section 738 of the Act;
2. The completeness, accuracy, and validity of the applicant's responses to application requirements;
3. The submission of the signed contract with the school;
4. An applicant's earliest available date to begin service as a faculty member provided funding is available for that year; and
5. An applicant's availability to enter into a service contract for a longer period than the mandatory 2-year minimum.

Factors to assure equitable distribution (e.g. geographic, discipline) will be considered in determining the funding of completed applications.

National Health Objectives for the Year 2000

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Disadvantaged Health Professions Faculty Loan Repayment Program is related to the priority area of Educational and Community-Based Programs. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, D.C. 20402–9325 (Telephone (202) 783–3238).

Application Requests

Requests for application materials and questions regarding program information and business should be directed to: Norman Roskos, Chief, Analysis and Evaluation Branch, Division of Disadvantaged Assistance, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Lane, Room 8A–09, Rockville, Maryland 20857, Telephone: (301) 443–3680, FAX: (301) 443–5242.

Completed applications should be returned to the address listed above. The application deadline date is June 30, 1994. Applications shall be considered to be "on time" if they are either:

(1) Received on or before the established deadline date, or

(2) Sent on or before the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The application form and instructions for this program have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act. The OMB clearance number is 0915–0150.

The Disadvantaged Health Professions Faculty Loan Repayment Program is listed at 93.923 in the Catalog of Federal Domestic Assistance. It is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: December 9, 1993.

John H. Kelso,

Acting Administrator.

Contract for the Disadvantaged Health Professions Faculty Loan Repayment Program With U.S. Department of Health and Human Services, Public Health Service, Health Resources and Services Administration, and Bureau of Health Professions

Section 738 of the Public Health Service Act ("Act") [42 United States Code 293 et seq.], as added by Pub. L. 102–408, authorizes the Secretary of Health and Human Services ("Secretary") to repay the educational loans of applicants from disadvantaged backgrounds selected to be participants in the Loan Repayment Program Regarding Service on Faculties of Certain Health Professions Schools ("Faculty Loan Repayment Program").

In return for these loan repayments, applicants must agree to provide teaching faculty services at an approved accredited health professions school determined by the Secretary for a designated period of obligated service pursuant to section 738 of the Act.

Sections 738(a) (5) and (7) of the Act require applicants to submit with their applications a signed contract with an accredited health professions school and a signed contract which states the terms and conditions of participation in the Faculty Loan Repayment Program. The Secretary shall sign only those contracts submitted by applicants who are selected for participation.

The terms and conditions of participating in the Faculty Loan Repayment Program are set forth below:

Section A—Obligations of the Secretary

Subject to the availability of funds appropriated by the Congress of the United States for the Faculty Loan Repayment Program, the Secretary agrees to:

1. Pay, in the amount provided in paragraph 2 of this section, the undersigned applicant's qualifying educational loans. Qualifying educational loans consist of the principal and interest on educational loans received by the applicant for the following expenses of enrollment:
   a. tuition expenses;
   b. all other reasonable educational expenses such as fees, books, supplies, educational equipment and materials required by the school, and incurred by the applicant; or
   c. reasonable living expenses as determined by the Secretary.
2. If the applicant agrees to serve 2 or more years:
   a. Except as provided in subparagraph b. of this paragraph, pay up to $20,000 of the outstanding principal and interest of a participant's nondelinquent educational loans, but not more than half of the 20 percent of the qualified outstanding educational loans for such year for each year of eligible faculty service; or
   b. The Secretary's liability will not exceed a cap of $20,000 of principal and interest annually. This would include the 10 percent waived under Sec. 738(a) of the Act for the school's proportionate share of the loan repayment amounts. The applicant must pay that portion not covered.
3. Make loan repayments for a year of obligated service no later than the end of the fiscal year in which the applicant completes such year of service.
4. The effective date of the Contract will be the date it is signed by the Director, Division of Disadvantaged Assistance or the date employment begins as a faculty member at the contracting school whichever is later.

Section B—Obligations of the Participant

1. The applicant agrees to:
   a. Continue loan repayments to lenders for the first quarter after which the Secretary will make delayed quarterly payments to applicant for the years stated in paragraph c. of this section. Applicant must pay lender(s) these payments.
   b. Serve his or her period of obligated faculty service as contracted with the school and as determined by the Secretary to be acceptable.
   c. Serve in accordance with paragraph b. of this section for _____ years at _____. The applicant must serve a minimum of two years.
2. If the applicant's eligibility to participate in the Faculty Loan Repayment Program is based on section 738(a)(2) of the Act (i.e. based on his or her enrollment in an accredited health professions school), he or she also agrees to:
   a. Maintain full-time enrollment, (as determined by the School), in good academic standing as determined by the School, in the final year of the course of study leading to a degree in medicine, osteopathic medicine, dentistry, pharmacy, podiatric medicine, optometry, veterinary medicine, nursing, or public health, or schools offering graduate programs in clinical psychology in which the applicant is currently enrolled, until completion of such course of study;
   b. Enter into a contract with an accredited school described in subsection (a) of Section 738 to serve as a "new" member of the faculty of the school for not less than 2 years according to the requirements described in subsection (a)(5) of section 738.
   c. Begin service obligations as contracted.

Section C—Breach of Written Loan Repayment Contract

1. If the participant fails to comply with section B.1.c. of this contract or is dismissed for disciplinary reasons or voluntarily terminates the contracts, neither the Secretary nor the School is obligated to continue loan repayments as stated in Sec. A of this Contract. The participant shall be liable to the United States and the School for the amounts specified in paragraph 2 of this section.
2. If the applicant agrees to serve as a full-time faculty member for two years or more and fails to serve the 2-year minimum requirement, he or she is liable to pay monetary damages to the

United States amounting to the sum of (a) the total amounts specified in Section A.2 of this contract plus (b) an "unserved obligation penalty" of $1,000 for each month unserved as set forth in paragraph 3 of this section plus (c) any tax assistance paid plus (d) interest, penalties and administrative charges for past due payments.

3. The "Unserved Obligation Penalty" means the amount equal to the number of months of obligated services that were not completed by an individual, multiplied by $1,000 except that in any case in which the individual fails to serve 1 year, the unserved obligation penalty shall be equal to the full period of obligated service multiplied by $1,000.

4. If the applicant agrees to serve more than the 2-year minimum service obligations and has completed the 2-year minimum he or she will be liable for such sums paid for any months that are not a full year beyond the 2-year minimum requirement as agreed to in Section B.1.c of this contract, plus an "unserved obligation penalty" of $1,000 for each month unserved.

5. Any amount the United States is entitled to recover shall be paid within one year of the date the Secretary determines that the applicant is in breach of this written contract. Failure to pay by the due date will incur delinquent charges provided by Federal Law. (45 CFR 30.13).

Section D—Cancellation, Suspension, & Waiver of Obligation

Any service or payment obligation may be canceled, suspended, or waived under certain circumstances described below: (1) In the event of death or permanent and total disability, the Secretary will cancel obligations under this contract. To receive cancellation in the event of death, the executor of the estate must submit an official death certificate to the Secretary. To receive cancellation for permanent and total disability, applicant or his/her representative must apply to the Secretary, submitting medical evidence of my condition, and the Secretary may cancel this obligation in accordance with applicable Federal statutes and regulations; (2) Upon receipt of supporting documentation the Secretary may waive or suspend service or payment obligation under this contract if the Secretary determines that: (a) meeting the terms and conditions of the contract is impossible or would involve extreme hardship; and (b) enforcement of the obligations would be unconscionable. (3) Deferment will be granted in the event of long term illness. Supporting documentation should be sent to: Division of Disadvantaged Assistance, Room 8A–09 Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857.

The Secretary or his/her authorized representative must sign this contract before it becomes effective.

Applicant Name (Please Print)_____

Applicant Signature*_____

Date_____

Secretary of Health and Human Services or Designee_____

Date_____

[FR Doc. 94–669 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of February 1994:

Name: Council on Graduate Medical Education.

Time: February 2–3, 1994, 8:30 a.m.

Place: Conference Rooms G & H on 2/2 and Rooms D & E on 2/3, Parklawn Building, 5600 Fishers Lane, Rockville, MD 20857. Open for entire meeting.

Purpose: Provides advice and recommendations to the Secretary and to the Committees on Labor and Human Resources, and Finance of the Senate and the Committees on Energy and Commerce and Ways and Means of the House of Representatives, with respect to (A) the supply and distribution of physicians in the United States; (B) current and future shortages of physicians in medical and surgical specialties and subspecialties; (C) issues relating to foreign medical graduates; (D) appropriate Federal policies regarding (A), (B), and (C) above; (E) appropriate efforts to be carried out by medical and osteopathic schools, public and private hospitals and accrediting bodies regarding matters in (A), (B), and (C) above; (F) deficiencies in the needs for improvements in, existing data bases concerning supply and distribution of, and training programs for physicians in the United States.

Agenda: There will be presentations and discussions regarding Recommendations from COGME Work Groups, Assessing the Impact of Physician Assistants on Physician Workforce Requirements; Implications of Managed Care for Workforce Requirements and the Training Environment; and Women in Medicine. A presentation on Communication from the National Advisory Council on Nurse Education and Practice: Update on Nurse Practitioner/Certified Nurse Midwife Work Group.

Anyone requiring information regarding the subject Council should contact Marc L. Rivo, M.D., M.P.H., Executive Secretary, telephone (301) 443–6190; or F. Lawrence Clare, M.D., M.P.H., Deputy Executive Secretary, telephone (301) 443–6326, Council on Graduate Medical Education, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, room 4C–25, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857.

Name: National Advisory Committee on Rural Health.

Date and Time: February 7–9, 1994; 8:30 a.m.

Place: Washington Marriott, 22nd and M Streets, NW., Washington, DC 20037, (202) 872–1500. The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary with respect to the delivery, financing, research, development and administration of health care services in rural areas.

Agenda: Plenary session on Monday, February 7, will be devoted to the theme: "The Health Security Act and Health Care Reform in Rural Areas." The theme will include discussions and presentations on the changes which have occurred since the last meeting regarding general infrastructure development, network development, and implications for states. In addition, a presentation regarding the difficulties of obtaining public health services in minority rural communities will be provided.

Monday afternoon and all day Tuesday, the Health Care Financing Work Group and the Education and Health Services Work Group will continue to study specific areas of the Health Security Act and its effect on services and financing in rural health delivery systems.

The meeting will end on Wednesday, February 9, with reports from the two Work Groups. The entire meeting is open to the public.

Anyone requiring information regarding the subject Council should contact Jeffery Human, Executive Secretary, National Advisory Committee on Rural Health, Health Resources and Services Administration, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–0835, FAX (301) 443–2803.

Persons interested in attending any portion of the meeting should contact Ms. Arlene Granderson, Director of Operations, Office of Rural Health Policy, Health Resources and Services Administration, Telephone (301) 443–0835.

Agenda items are subject to change as priorities dictate.

Dated: January 6, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–707 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–15–P

* Before signing, be sure you have completed section B.1.c on page 1 of this contract indicating the number of years of service you agree to perform.

Public Health Service

Centers for Disease Control and Prevention; Statement of Organization, Functions, and Delegations of Authority

Part H, Public Health Service (PHS), Chapter HC (Centers for Disease Control and Prevention), of the Statement of Organization, Functions, and Delegations of Authority for the Department of Health and Human Services (45 FR 67772–67776, dated October 14, 1980, and corrected at 45 FR 69296, October 20, 1980, as amended most recently at 58 FR 59052–59054, November 5, 1993) is amended to reflect the following organizational changes within the National Center for Health Statistics: (1) Modify the functional statement for the Office of Planning and Extramural Programs, and (2) retitle the Office of Analysis and Epidemiology and modify the functional statement.

Following the title Office of Planning and Extramural Programs (HCS14), delete the functional statement in its entirety and insert the following: (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) develops proposed policies for the coordination of NCHS programs with external agencies, both public and private; (3) serves as the focal point for coordination of health statistical activities within NCHS and for developing and coordinating the collaborative statistical activities of NCHS with other organizations and agencies; (4) provides a focus within NCHS for statistical program planning, evaluation, and legislative affairs; (5) evaluates or arranges for the evaluation of the adequacy, completeness, and responsiveness of Center programs both nationally and internationally to the NCHS mission and user needs for data; (6) directs the definition, development, and coordination of cooperative programs in health statistics, working with Regional Offices, State and local governments, and other organizations including the private and academic sectors in the development and strengthening of subnational statistical systems; (7) conducts research, analyses, and demonstrations related to the subnational systems; (8) develops, pilots, and implements new programs through direct activities and through grants and contracts; (9) provides Executive Secretariat and related services to the National Committee on Vital and Health Statistics; (10) provides program leadership and coordination for the NCHS Reimbursable Work Program; (11) provides guidance and staff support for major Center conferences and committee meetings; (12) provides advice and assistance to outside agencies and organizations in the conduct of statistical training activities; (13) participates with appropriate agencies and organizations to improve the quality, comparability, and timeliness of standard health data sets and to promote and disseminate their use; maintains current information concerning Federal and non-Federal health statistics systems; (14) serves as principal advisor in areas of financial management activities and manages a system of budgetary and expenditure controls; (15) coordinates required clearances of Reimbursable Work Program and Human Subjects Review projects.

Delete in its entirety the title and functional statement for the Office of Analysis and Epidemiology (HCS4) and insert the following:

Office of Analysis, Epidemiology, and Health Promotion (HCS4). (1) Participates in the development of policy, long-range plans, and programs of the Center; (2) plans, directs, and coordinates the Analysis, Epidemiology, and Health Promotion Program of the Center; (3) develops policy for the Analysis, Epidemiology, and Health Promotion Program of the Center; (4) provides operating liaison with other programs of the Center and other public and private health agencies on activities related to analysis, epidemiology and health promotion; (5) provides consultation and technical assistance to Federal agencies, States, and other public and private sector institutions in epidemiologic investigations, in the analysis and interpretation of national health statistics, and in health promotion activities; (6) conducts developmental and evaluation research and analysis in the fields of epidemiology, health status, health services utilization, health promotion, and health economics; (7) augments the policy analysis activities of CDC; (8) coordinates NCHS health statistics activities with CDC, PHS, and other Federal agencies in the areas of environmental health, injury, minority health, and HIV; (9) conducts environmental health research using national statistical data and evaluates the utility of environmental health statistics for health program planning, policy analysis, and program direction; (10) coordinates CDC activities to sustain and enhance State and local statistical capacity; (11) collects and disseminates sources of current information on the conceptualization and measurement of health status, including maintenance of a Clearinghouse on Health Indexes.

Dated: December 17, 1993.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention.

[FR Doc. 94–746 Filed 1–11–94; 8:45 am]

BILLING CODE 4160–18–M

Social Security Administration

Social Security Ruling SSR 94–1c; Supplemental Security Income—Disability—Illegal Activity as Substantial Gainful Activity

AGENCY: Social Security Administration, HHS.

ACTION: Notice of Social Security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–1c. This Ruling is based on the decision of the U.S. Court of Appeals for the Seventh Circuit in *Dotson* v. *Shalala*, which affirmed the U.S. district court decision upholding the decision of the Secretary of Health and Human Services denying the claimant's application for disability benefits under the supplemental security income program. Among other things, the court of appeals determined that the decision of the Secretary that the illegal activity in which the claimant engaged to support a drug addiction constituted substantial gainful activity (SGA) was consistent with the Social Security Act and the Secretary's regulations and supported by substantial evidence, and that in determining whether such activity was SGA, the cost of the claimant's narcotics could not be deducted from the claimant's income as an impairment-related work expense.

EFFECTIVE DATE: January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552(a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the

General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Program No. 93.807 Supplemental Security Income)

Dated: December 21, 1993.

Shirley S. Chater,

Commissioner of Social Security.

Sections 1611 and 1614(a) of the Social Security Act (42 U.S.C. 1382 and 1382c(a)) Supplemental Security Income—Disability—Illegal Activity as Substantial Gainful Activity

20 CFR 416.910, 416.920(a)–(b), 416.971, 416.972(a)–(c), 416.973(a)–(b), 416.974 (a)(1), (b)(2)(vii) and (b)(3)(vii), and 416.976

Dotson v. *Shalala*, 1 F.3d 571 (7th Cir. 1993)

The claimant applied for disability benefits under the supplemental security income program, alleging that he was disabled due to asthma, multiple allergies, and past drug abuse. His application was denied initially and upon reconsideration and he requested a hearing before an administrative law judge (ALJ). At the hearing, the claimant testified that he currently used $200–$300 worth of narcotics each day and that he supported his drug habit through stealing and panhandling. Based on the claimant's testimony, the ALJ concluded that the claimant's stealing and panhandling constituted substantial gainful activity (SGA) worth an average of approximately $5,600 per month. Specifically, the ALJ found that due to the poor area in which the claimant panhandled, the bulk of his income must be derived from stealing, which the ALJ determined involved significant physical and mental activities. The ALJ concluded that because the claimant was engaging in SGA, he was not disabled and, therefore, not eligible for disability benefits. The Appeals Council declined to review the ALJ's decision which became the final decision of the Secretary. The claimant sought judicial review in Federal district court. The district court upheld the Secretary's decision and the claimant appealed to the Court of Appeals for the Seventh Circuit.

On appeal, the claimant argued that illegal activity undertaken to support a drug addiction cannot constitute SGA; that assuming such activity can constitute SGA, the Secretary's finding of SGA in his case was unsupported by substantial evidence; and that if illegal activity to support a drug habit can be considered SGA, then the Secretary, in determining SGA, was required to deduct the cost of the narcotics from the claimant's income as an impairment-related work expense. Additionally, the claimant contended that using illegal activity as a basis for finding SGA denied him due process and equal protection of the law.

The court of appeals found nothing in the Social Security Act (the Act) or the Secretary's implementing regulations which requires SGA to be lawful. The court noted that under the regulations, work activity is substantial if it "involves doing significant physical or mental activity" and is gainful if it is "the kind of work usually done for pay or profit, whether or not a profit is realized." The court stated that these considerations "apply with almost equal ease irrespective of the legality of the activities involved," and that, therefore, "[w]hether legally or illegally employed, the regulations direct an ALJ to focus on whether the claimant is performing significant physical or mental activities, and doing so with the intent of earning money or making a profit." Finding that neither the Act nor the regulations recognizes a distinction between lawful and unlawful activity for purposes of determining SGA, the court of appeals concluded that illegal activity can constitute SGA.

The court also determined that the claimant's uncontradicted testimony regarding the thievery in which he engaged to support his $200–$300 per day drug habit provided substantial evidence to support the ALJ's finding that the claimant was engaged in SGA. The court rejected the claimant's contention that the cost of narcotics must be deducted from his income as an impairment-related work expense. The court noted that to be considered an impairment-related work expense under the Secretary's regulations, a drug must "reduce or eliminate" the symptoms of a claimant's impairment, or "slow down its progression." Contrary to these criteria, the court found that in this case the claimant's use of drugs was the basis of his alleged disability, and that his continued usage of drugs only exacerbated his medical condition. The court also found the claimant's due process and equal protection arguments to be without merit. Accordingly, the court of appeals affirmed the decision of the district court upholding the Secretary's decision denying the claimant's application for disability benefits.

Engel, Senior Circuit Judge*

Harold Wayne Dotson, a Supplemental Security Income claimant, appeals the district court's grant of summary judgment in favor of Donna E. Shalala, Secretary of the Department of Health and Human Services. In granting summary judgment, the district court upheld an administrative law judge's finding that Dotson was engaging in substantial gainful activity by supporting a $200- to $300-per-day heroin and cocaine habit through illegal means. See *Dotson* v. *Sullivan*, 813 F. Supp. 651 (C.D. Ill. 1992). Because we agree that illegal activity can constitute substantial gainful activity, we affirm.

I. Background

Dotson applied for Supplemental Security Income benefits on September 25, 1989, alleging disability since 1968 due to asthma, multiple allergies, and past drug abuse. The Social Security Administration denied his application on January 10, 1990, and again upon reconsideration on May 21, 1990. Dotson then requested and received a hearing before an administrative law judge ("ALJ"). At the administrative hearing, Dotson testified that he uses $200 to $300 worth of heroin and cocaine each day. Additionally, he testified that he supports his drug habit by hustling. When asked to define hustling, Dotson replied: "steal, beg, whatever, you know."

With regard to his begging, Dotson stated that he usually panhandles at the Warner Homes, which are located in a poor neighborhood in Peoria, Illinois. As to Dotson's thievery, the following colloquy occurred during the administrative hearing:

Q. [By ALJ] Where do you steal at?

A. [By Dotson] You can do that anywhere. Wherever we can find a place to.

Q. Give me an idea. Give me some examples.

A. The mall, downtown, wherever. You just ride and look and, you know.

Q. How long do you spend riding and looking until you find a place to steal?

A. As long as you have to.

Q. Like how long?

A. Sometime—

Q. All day long?

A. Sometimes it takes all day.

Q. What kinds of things have you stolen this month?

A. This month?

Q. Uh huh.

A. I, well, I like to, I try to concentrate on saws.

Q. On what?

A. Saws.

Q. Saws?

A. You know, the chainsaws, the little bitty chainsaws?

Q. Where do you find those at?

A. Everywhere, everywhere.

Q. And once you get them, what do you do with them?

A. You sell them.

Q. To who?

A. A lot of people buy.

Q. Well, where do you find—I wouldn't imagine there would be a lot of demand for them in Warner homes.

A. No.

Q. Where do you go to sell the chainsaws?

A. Different businesses.

Q. Like what?

A. Small businesses.

Q. Give me some examples.

A. Like small stores or cleaners, different places like that.

Q. Do you have to travel around to these places? How long does it take you to find somebody to buy a saw?

A. Usually, they already, you have been—you kind of already know they probably want one.

Q. So you have already canvassed these places earlier? You have gone out and—

A. No, you have probably sold them stuff and they can give you kind of an idea about what else they might like, you know.

Based on Dotson's testimony, the ALJ found that Dotson's stealing and panhandling constituted substantial gainful activity ("SGA") worth an average of approximately $5,600 per month and, accordingly, denied his claim for SSI benefits. Specifically, the ALJ found that, due to the poor area in which Dotson panhandles, the bulk of his income must come from illegal means. As to the nature of Dotson's criminal endeavors, the ALJ concluded:

> In order to steal he must "case" the area in which he has determined to steal the property. He must then plan on how he is going to steal the property and then actually steal it. During the month in which the hearing was held the claimant was stealing chainsaws. Lifting and carrying the chainsaws would also be significant *physical* activity. The planning and execution of the larceny entails significant *mental* activity. From these activities the claimant earns enough money to support his cocaine habit and provide him with other money in substantial amounts exceeding $200 to $300 a day. [Emphasis in original.]

On July 9, 1991, the Appeals Council declined to review the ALJ's decision. Dotson then filed the instant action against the Secretary of the Department of Health and Human Services ("Secretary") in federal court. On July 1, 1992, with cross-motions for summary judgment before it, the district court granted the Secretary's motion for summary affirmance and entered a separate judgment against Dotson and in favor of the Secretary. See *Dotson* v. *Sullivan*, 813 F. Supp. 651 (C.D. Ill. 1992). This appeal followed.

II. Discussion

Dotson essentially raises four arguments. First, he believes that illegal activities undertaken solely to satisfy a drug addiction cannot constitute SGA. Second, assuming that illegal activity can constitute SGA, Dotson claims that the ALJ's finding of SGA in his case is unsupported by substantial evidence. Third, Dotson contends that if illegal activity undertaken to support a drug habit can constitute SGA, then the Secretary is required to deduct the cost of the narcotics from the claimant's income as an impairment-related work expense. Fourth and finally, Dotson believes that using illegal activities to furnish the basis for finding SGA denies him due process and equal protection of the laws under the United States Constitution.

A. Overview

The Social Security Act ("Act"), as amended, 42 U.S.C. 301 *et seq.*, provides for the payment of benefits to disabled persons. Title II of the Act governs the payment of Old-Age, Survivors, and Disability Insurance ("OASDI") benefits to disabled persons who have contributed to the Social Security program. 42 U.S.C. 401 *et seq.* Title XVI of the Act, the title under which Dotson filed his application for benefits, provides for the payment of Supplemental Security Income ("SSI") benefits to disabled persons who are indigent. 42 U.S.C. 1382 *et seq.*; see generally *Bowen* v. *Yuckert*, 482 U.S. 137, 140 (1987). Both Titles II and XVI define disability as an "inability to engage in any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than twelve months * * *." 42 U.S.C. 423(d)(1)(A), 1382c(a)(3)(A).

Pursuant to statutory authority, the Secretary has promulgated regulations establishing a five-step sequential analysis for determining whether an SSI claimant is disabled. See 20 CFR 416.920; *Sullivan* v. *Zebley*, 493 U.S. 521, 525 (1990).[1] The first step of the process, and the only one relevant for purposes of this appeal, requires the Secretary to determine whether the claimant is engaging in SGA. See 20 CFR 416.920(a). A finding of SGA means that the claimant is ineligible for SSI benefits. *Id.* at § 416.920(b); *Yuckert*, 482 U.S. at 140. In this case, because the ALJ found that Dotson's stealing and panhandling constituted SGA, he denied Dotson's claim for benefits without moving to the next step in the sequential analysis.[2]

B. Illegal Activity as SGA

Our research reveals that we are the first appellate court to address the issue of whether illegal activity can support a finding of SGA. The handful of federal trial courts faced with this question, including the district court below, have answered unanimously in the affirmative.[3] Because the ALJ and district court's determination that illegal activity can constitute SGA is a construction of the Secretary's regulations, we review this decision of law *de novo*. See *Johnson* v. *Sullivan*, 922 F.2d 346, 356 (7th Cir. 1990).

As the definition of disability quoted above indicates, the inability to engage in SGA is a statutory prerequisite to obtaining either SSI or OASDI benefits. Nonetheless, Congress delegated to the Secretary the responsibility for defining SGA. 42 U.S.C. 1382c(a)(3)(D) (Title XVI). In response to the Act's mandate, and as the components of the term suggest, the Secretary has defined SGA as "work activity that is both substantial

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* Sitting by designation.

[1] For other, more generalized, SSI eligibility requirements, see 20 CFR 416.202.

[2] The parties have devoted some attention to the issue of whether panhandling, or the income therefrom, can cause a person to become ineligible for SSI benefits. We decline to reach this issue. As noted above, the ALJ determined that, due to the poor area in which Dotson panhandles, the bulk of his income comes from illegal activities. We believe the ALJ's finding to be supported by substantial evidence and, therefore, leave the panhandling issue to a court with the question properly before it.

[3] See *Bell* v. *Sullivan*, 817 F. Supp. 719 (N.D. Ill. 1993) (Marovich, J.); *Jones* v. *Sullivan*, 804 F. Supp. 1045 (N.D. Ill. 1992) (Holderman, J.); *Curtis* v. *Sullivan*, 764 F. Supp. 119 (N.D. Ill. 1991) (Bua, J.); *Moore* v. *Sullivan*, No. 91 C 20369, 1992 WL 199257 (N.D. Ill. Aug. 4, 1992) (Reinhard, J.; unpublished); *Love* v. *Sullivan*, No. 91 C 7863, 1992 WL 66193 (N.D. Ill. Apr. 22, 1992) (Conlon, J.; unpublished); *Dugan* v. *Bowen*, No. 87–3713, 1989 WL 281911 (S.D. Ill. Nov. 8, 1989) (unpublished), *rev'd on other grounds sub nom. Dugan* v. *Sullivan*, 957 F.2d 1384 (7th Cir. 1992); *Hart* v. *Sullivan*, ____ F. Supp. ____, No. C–92–1172 SBA, 1992 WL 496646 (N.D Cal. Dec. 30, 1992). *Cf. Hammonds* v. *Celebrezze*, 260 F. Supp. 992 (N.D. Ala. 1965) (claimant's illegal manufacture of whiskey not conclusive evidence of SGA absent evidence of earnings).

and gainful." See 20 CFR 416.972. Work activity is substantial if it "involves doing significant physical or mental activities." *Id.* at § 416.972(a). Work activity is gainful if it is "the kind of work usually done for pay or profit, whether or not a profit is realized." *Id.* at § 416.972(b); see generally *Callaghan* v. *Shalala*, 992 F.2d 692 (7th Cir. 1993) (discussing elements of SGA).[4] Activities such as taking care of one's self, performing household tasks, engaging in hobbies or therapy, and attending school, clubs, or social programs generally do not constitute SGA. 20 CFR 416.972(c).

The foregoing framework underscores the dual nature of an ALJ's inquiry into whether a claimant is engaging in SGA. Under the substantiality prong of the analysis, an ALJ considers the nature of the undertakings comprising the claimant's work activity. Thus, the degree to which a claimant's work requires the use of "expertise, skills, supervision and responsibilities" becomes relevant in determining whether that work constitutes SGA. See 20 CFR 416.973(a). Additionally, an ALJ will consider how well a claimant performs his or her work activities:

> If you do your work satisfactorily, this may show that you are working at the substantial gainful activity level. If you are unable, because of your impairments, to do ordinary or simple tasks satisfactorily without more supervision or assistance than is usually given other people doing similar work, this may show that you are not working at the substantial gainful activity level. If you are doing work that involves minimal duties that make little or no demands on you and that are of little or no use to your employer, or to the operation of a business if you are self-employed, this does not show that you are working at the substantial gainful activity level.

Id. at § 416.973(b).

In evaluating the gainfulness of a claimant's work, an ALJ's inquiry is more circumscribed. Here, as noted above, the claimant's undertakings need be only of the type that normally result in pay or profit. In other words, a claimant can be found to be engaging in SGA without earning any income. See *Callaghan*, 992 F.2d at 695–96 (unprofitable business owner was engaging in SGA).[5] This is not to say that a claimant's earnings are irrelevant for purposes of determining whether he or she is engaging in SGA. See, e.g., 20 CFR 416.974(a)(1). To the contrary, a claimant who earns on average less than $300 per month is presumed not to be engaging in SGA, while a claimant who makes more than an average of $500 per month is presumptively ineligible for SSI benefits. *Id.* at §§ 416.974(b)(3)(vii), (b)(2)(vii).[6] As with most legal presumptions, however, these income guidelines are rebuttable and "do not relieve an ALJ of the duty to develop the record fully and fairly." *Dugan* v. *Sullivan*, 957 F.2d 1384, 1390 (7th Cir. 1992) (citations and internal quotations omitted).

Against this background, Dotson concedes—as he must—that in at least some instances illegal activity can be substantial gainful activity. Dotson continues, however, that the context in which his thievery occurs precludes its use in determining whether he has been engaging in SGA. In his own words:

> A drastic distinction exists between a person who is engaged in illegal activity for effectively the equivalent of a legal career such as being a drug dealer, illegal drug importer or other illegal activity which has counterparts in lawful activities such as business managers, business owners and the like, and a thief who steals merely to feed the cravings of unquenchable drug addiction.

Aplnt's. Br. at 18. Considering Dotson's claim under the scheme set forth above, we conclude that he forwards a distinction without a difference.

Admittedly, even a cursory examination of the regulations reveals that the Secretary envisioned their application within a traditional employment context. Importantly, however, nothing in the Act or its regulations specifically requires SGA to be lawful. This silence, we believe, suggests that illegal activities can constitute SGA. The inference is strengthened, moreover, when considering that the relevant considerations noted above apply with almost equal ease irrespective of the legality of the activities involved. Thus, one can envision a number of illegal activities that might not rise to the level of SGA.[7] Whether legally or illegally employed, the regulations direct an ALJ to focus on whether the claimant is performing significant physical or mental activities, and doing so with the intent of earning money or making a profit.

Moreover, it must be remembered that an ALJ performs the SGA analysis as one of five steps used to determine whether a person is disabled and, consequently, unable to function within our economy. A claimant who can manage through illegal means is just as undeserving of benefits as a claimant who can survive without violating the law. For this reason, there is no difference between the addict who spends all of his lawfully derived earnings on narcotics and the one who illegally obtains, and then exhausts, her income. Both are fueled, to quote Dotson, by the "cravings of unquenchable drug addiction." The only real distinction between the two—the lawfulness of their income—finds no cognizance under the Act and its interpretive regulations.[8]

Finally, our conclusion that illegal activity can constitute SGA derives substantial support from the well-established tax principle that unlawful earnings come within the meaning of the term "gross income" and are thus taxable. See, *e.g.*, *James* v. *United States*, 366 U.S. 213, 218 (1961) (plurality opinion of Warren, C.J.), *overruling Commissioner* v. *Wilcox*, 327 U.S. 404 (1946); *United States* v. *Sullivan*, 274 U.S. 259, 263 (1927). Notably, the Act has adopted the tax code's definition of gross income for purposes of determining whether a SSI claimant's income is sufficiently high so as to render him or her ineligible for benefits. 42 U.S.C. 1382(d); see also 20 CFR 416.1110(b).[9] Indeed, one of the concerns motivating the plurality in *James*, "to remove the incongruity of having the gains of the honest laborer taxed and the gains of the dishonest immune," 366 U.S. at 218, provides the crux of our reasoning in this case.

[4] For a reconstituted formulation of the above definition, see 20 CFR 416.910, which provides: "Substantial gainful activity means work that—(a) Involves doing significant and productive physical or mental duties; and (b) Is done (or intended) for pay or profit."

[5] Accordingly, substantial but non-remunerative volunteer work would fall short of SGA because people normally do not volunteer their services for pay or profit. See Social Security Law and Practice § 37:4 at 8 (Timothy E. Travers et al. eds., 1987). Evidence of such volunteer work, however, could be used to deny a claimant benefits at a later stage in the sequential evaluation process. See 20 CFR 416.971.

[6] In contrast to the OASDI provisions of the Act, the SSI program is particularly concerned with a claimant's financial situation: The basic purpose underlying the supplemental security income program is to assure a minimum level of income for people who are age 65 or over, or who are blind or disabled and who do not have sufficient income and resources to maintain a standard of living at the established Federal minimum income level.

20 CFR 416.110 (emphasis added); see also *id.* at § 416.1100 ("the amount of income you have is a major factor in deciding whether you are eligible for SSI benefits"). Thus, a claimant not engaging in SGA and otherwise eligible for the SSI program will be denied benefits if he or she has too much income or too many resources. See 42 U.S.C. 1382(a); generally 20 CFR subpts. K, § 416.1100 *et seq.* (income) and L, § 416.1201 *et seq.* (resources).

[7] For example, acting as a lookout at a drug house might constitute a gainful yet insubstantial activity, whereas someone who chronically engages in acts of vandalism may be substantially, but not gainfully, occupied.

[8] Indeed, were we to hold otherwise, the court would be creating the perverse incentive—although admittedly only at the margins—for both SSI claimants and recipients to engage in illegal activity because the income therefrom would be ignored.

[9] Again, however, the resources and income analysis implicated here and discussed at note 6, *supra*, is different from the ALJ's responsibility to determine whether a claimant is engaging in SGA.

C. Sufficiency of the Evidence

Having concluded that illegal activity can constitute SGA, we must next determine whether the ALJ properly applied the legal standard in Dotson's case. Our inquiry is a limited one. We will not decide facts anew, reweigh evidence, or substitute our judgment for the Secretary's. *Schroeter* v. *Sullivan*, 977 F.2d 391, 394 (7th Cir. 1992). Rather, we look to see whether "substantial evidence" supports the ALJ's findings. See 42 U.S.C. 1383(c)(3) (citing 42 U.S.C. 405(g)). Substantial evidence is "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." *Richardson* v. *Perales*, 402 U.S. 389, 402 (1977).

Dotson first contends that the ALJ had before him no evidence of specific illegal acts which could support a finding of SGA. Secondly, he believes the ALJ erroneously assumed that he paid full street-value for the narcotics he used and, thus, overestimated the amount of income needed to support his drug habit. We address each claim in order.[10]

Dotson's first claim, that the record lacks any evidence of illegal activities, is belied by his own testimony and by the reasonable inferences drawn therefrom by the ALJ. For example, when the ALJ asked Dotson to describe what types of items he had stolen in the month during which the administrative hearing was held, Dotson replied: "I try to concentrate on saws. • • • You know, the chainsaws, the little bitty chainsaws." Dotson then went on to explain, in some detail, how he would sell the stolen items. Additionally, the ALJ made at least one specific inquiry into the substantiality of Dotson's activities, asking him how long it takes him to find a place to steal.

We grant to Dotson his point that the record contains no evidence concerning any specific act of thievery. Also, we agree with him that the ALJ could have more fully developed the record as to the nature of his criminal undertakings. Nevertheless, we cannot say that the record before us contains less than substantial evidence that Dotson's thievery required the significant use of his physical and mental skills, and that those skills were applied within a context designed to produce pay or profit. See 20 CFR 416.972 (a), (b). In short, Dotson's testimony allowed the ALJ to reasonably conclude that the effort required to steal the chainsaws with regularity constituted SGA, and we therefore uphold this aspect of the ALJ's decision. A more exacting inquiry, while desirable, was not required.

Dotson's second argument, that the ALJ overestimated the cost of the narcotics, is also unpersuasive. As an initial matter, this claim suffers from the same weakness that proved fatal to his first argument, that is, Dotson testified without contradiction to using $200 to $300 worth of heroin and cocaine daily.[11] If Dotson actually paid less for his narcotics, one would have expected him to testify accordingly. Furthermore, this case is unlike *Curtis* v. *Sullivan*, 764 F. Supp. 119 (N.D. Ill. 1991), where the ALJ simply imputed to the claimant an income sufficient to satisfy his addiction. In that case, the ALJ concluded, in the absence of evidence as to legal or illegal employment, that the claimant had to be engaging in SGA in order to support his expensive drug habit. Here, on the other hand, Dotson's testimony as to his thievery filled the gap. From this, the ALJ was justified in finding that Dotson's earnings surpassed $500 per month, thereby rendering him presumptively ineligible for SSI benefits. See 20 CFR 416.974(b)(2)(vii).

We agree with the court in *Curtis* that simply because a claimant has a severe and expensive drug habit does not mean that the person is engaging in SGA to support it. 764 F. Supp. at 120–21. The record must contain substantial evidence, of the type outlined in Section II(B), *supra*, that the claimant is engaging in legal or illegal activities that are substantial and gainful. Because we have held that the ALJ's decision in this case comports with those requirements, we reject Dotson's challenge to the evidence supporting the Secretary's decision.

D. Narcotics as an Impairment-Related Work Expense

Dotson next raises the interesting yet ultimately unavailing argument that, if illegal activities undertaken to maintain a drug habit can constitute SGA, then the cost of the narcotics must be deducted from income as an impairment-related work expense ("IRWE") under 42 U.S.C. 1382a(b)(4)(B)(ii) and its interpretive regulations, 20 CFR 416.976. As we discuss below, Dotson misapprehends the nature of IRWEs.

42 U.S.C. 1382a(b)(4)(B)(ii), enacted as part of the Social Security Disability Amendments of 1980, Public Law No. 96–265, 94 Stat. 441 (1980), provides:

> In determining the income of an individual (and his eligible spouse) there shall be excluded • • • if such individual (or such spouse) is disabled but not blind (and has not attained age 65, or received benefits under this subchapter (or aid under a State plan approved under section 1352 or 1382 of this title) for the month before the month in which he attained age 65) • • • such additional amounts of earned income of such individual, if such individual's disability is sufficiently severe to result in a functional limitation requiring assistance in order for him to work, as may be necessary to pay the costs (to such individual) of attendant care services, medical devices, equipment, prostheses, and similar items and services (not including routine drugs or routine medical services unless such drugs or services are necessary for the control of the disabling condition) which are necessary (as determined by the Secretary in regulations) for that purpose, whether or not such assistance is also needed to enable him to carry out his normal daily functions, except that the amounts to be excluded shall be subject to such reasonable limits as the Secretary may prescribe.

See also 42 U.S.C. 1382c(a)(3)(D) (restating same). In 1983, the Department of Health and Human Services promulgated 20 CFR 416.976. See 48 FR 21940 (1983). These regulations established a five-part test for determining the deductibility of an IRWE:

> We will deduct impairment-related work expenses if—
> (1) You are otherwise disabled • • •;
> (2) The severity of your impairment(s) requires you to purchase (or rent) certain items and services in order to work;
> (3) You pay the cost of the item or service • • •;
> (4) You pay for the item or service in accordance with paragraph (d) of this section; and
> (5) Your payment is in cash (including checks and other forms of money). Payment in kind is not deductible.

20 CFR 416.976(b). With respect to the deductibility of drugs as an IRWE, the regulations provide:

> If you must use drugs • • • to control your impairment(s), the payments you make for them may be deducted. The drugs or services must be prescribed (or utilized) to reduce or eliminate the symptoms of your

[10] Dotson also argues that the ALJ erred by underestimating the amount of money he earned through panhandling. As we discussed at note 2, *supra*, the ALJ's decision to discount Dotson's panhandling income—because of the poor area in which he begs—is supported by substantial evidence.

[11] Moreover, this is not an instance where the claimant's testimony was of such dubious veracity that the ALJ should have discredited it. Dotson's claim to spending $200 to $300 per day on heroin and cocaine, while on the high side, is certainly within the realm of possibility. See, *e.g.*, *Hart* v. *Sullivan*, ____ F. Supp. ____, No. C–92–1172 SBA; 1992 WL 496646 (N.D. Cal. Dec. 30, 1992) (claimant "presently consumes seven or eight twenty-dollar bags of heroin daily • • •, uses crack every night • • •, and drinks approximately eight half-pints of hard liquor daily").

impairment(s) or to slow down its progression.

* * * * *

Examples of deductible drugs * * * are anticonvulsant drugs to control epilepsy * * *; antidepressant medication for mental disorders; medication used to allay the side effects of certain treatments;* * * and immunosuppressive medications that kidney transplant patients regularly take to protect against graft rejection.

20 CFR 416.976(c)(5)(i), (ii). Consistent with the Act's objective, use of the drugs must be necessary to allow the person to perform work. See Soc. Sec. R. 84–26 at 18 (1984) ("Routine drugs * * * are 'needed' when they are required to control the disabling condition, thereby enabling the individual to function at work.").

Dotson argues that, due to the severity of his drug addiction, he needs the cocaine and heroin in order for him to steal and panhandle. (Of course, he steals and panhandles so that he can purchase more cocaine and heroin, so that he can continue to steal and panhandle—and thus the cycle of addiction continues.) Because he needs the narcotics in order to engage in SGA, Dotson continues, he believes that the cost of the cocaine and heroin should be deducted from his earnings as an IRWE.

Sadly, we have no reason to disbelieve Dotson's self-characterization. Unfortunately for him, however, the regulations comprehend more than mere addiction to a substance before the cost of that substance will be considered an IRWE. As the statute and regulations reveal, a number of obstacles lie in the path of Dotson's argument. We content ourselves, however, to focus upon the requirement that in order to be an IRWE a drug must "reduce or eliminate" the symptoms of a claimant's impairment, or "slow down its progression." 20 CFR 416.976(c)(5)(i). In the face of Dotson's claim that his disability stems from drug abuse, he cannot hope to maintain the argument that his continued use of heroin and cocaine reduces or eliminates the symptoms of his impairment. Rather, Dotson's use of drugs serves as the basis of his alleged disability. And far from slowing Dotson's dependency upon narcotics, his continued use of heroin and cocaine only exacerbates his disability. With these considerations in mind, we must reject Dotson's claim for an IRWE.

E. The Constitutional Claims

Dotson lastly argues that using illegal activity to constitute SGA violates his rights to due process and equal protection of the laws under the United States Constitution, although he has encountered some difficulty in articulating the precise nature of his constitutional complaints. It would seem that his due process argument—one which might be more properly construed as an administrative challenge to the regulations—reduces to the theory that the ALJ's decision in this case attempts to override Congress' intent to provide SSI benefits to substance abusers and, therefore, is void for want of a rational basis. His equal protection claim, on the other hand, appears based on the assertion that, under the Secretary's position, rich drug addicts will be treated preferentially to the disadvantage of poor ones. We briefly address each of his arguments.

1. Due Process

To establish a due process violation, Dotson faces the well-settled and formidable burden of proving that the Secretary's regulations, as we have interpreted them, lack a rational basis. See, *e.g., Weinberger* v. *Salfi*, 422 U.S. 749, 768 (1975) ("the Due Process Clause can be thought to interpose a bar only if the statute [or, as here, a regulation] manifests a patently arbitrary classification, utterly lacking in rational justification [citation omitted]"). Moreover, that rational basis need not be expressed explicitly by Congress or the administrative agency; "any state of facts reasonably may be conceived to justify it." *Dandridge* v. *Williams*, 397 U.S. 471, 485 (1970) (citation omitted).

Initially, we note that interpreting the Secretary's regulations as allowing illegal activity to constitute SGA does not interfere with Congress' intent, assuming there is one, to provide disability benefits to substance abusers.[12] Rather, such an interpretation prevents only those substance abusers who are engaging in SGA, whether legally or illegally employed, from receiving SSI benefits reserved for disabled persons who are also poor. See *Bowen* v. *Yuckert*, 482 U.S. 137, 140 (1987) ("Title XVI of the Act provides for the payment of disability benefits to indigent persons * * *." [Emphasis added.]) Thus, the Secretary's regulations coincide with the SSI program's underlying purpose.

Moving to the next level, Dotson's myopic view of Congress' intent in the statutory context serves to highlight the flaw in his constitutional argument. Simply put, we cannot say that regulations which preclude the disbursement of federal disability benefits to persons who are engaging in substantial and gainful activity, regardless of the activity's legality, constitutes a "patently arbitrary classification" warranting judicial intervention. To the contrary, working within a system where the limited supply of federal funds will never satisfy the deserving demand, we are hard pressed to think of a better dividing line than the one drawn by the Secretary. Having said this much, we must reject Dotson's due process claim.

2. Equal Protection

Dotson faces an equally difficult burden when arguing to this court that the Secretary's regulations violate the equal protection component of the Fifth Amendment. Because a statute's or regulation's differential impact upon the poor versus the wealthy, by itself, does not subject that distinction to strict judicial scrutiny, see, *e.g., Kadrmas* v. *Dickinson Public Schools*, 487 U.S. 450, 458 (1988), Dotson must prove that the classification drawn by the Secretary's regulations fails to rationally further a legitimate interest, *Zobel* v. *Williams*, 457 U.S. 55, 60 (1982). Under such a standard, Dotson's constitutional claim again must fail.

Dotson argues that the Secretary's position, if implemented, will hurt only poor drug abusers because rich ones, who presumably will have paid into the Social Security system, will be eligible to receive OASDI benefits under Title II of the Act. This argument misses the mark for the simple reason that OASDI claimants, just like SSI claimants, must navigate the same five-step administrative process, the first of which requires that the claimant not be engaging in SGA. Compare 42 U.S.C. 423(d)(1)(A) and 20 CFR § 404.1520(a) (Title II) with 42 U.S.C. 1382c(a)(3)(A) and 20 CFR § 416.920(a) (title XVI).[13]

[12] We are inclined to agree with Dotson that Congress has envisioned the application of the Act to substance abusers. See, *e.g.*, 42 U.S.C. 1382(e)(3)(A) (requiring SSI recipients who are alcoholics or drug addicts to undergo treatment as a condition of receiving disability benefits); 42 U.S.C. 1383(a)(2)(A)(ii) (providing for payment of SSI benefits to alcoholics and drug addicts through representative payees).

[13] Dotson's argument would become relevant in two situations, the first of which is beyond the court's powers generally and the second of which is not implicated in this appeal. The first scenario involves a wealthy addict who is able to satisfy his or her addiction without resort to the welfare system. Such a person, of course, is better off than Dotson, but this disparity yields him no cause of action. In the second scenario, a wealthy addict who is not engaging in SGA, but who has paid into the Social Security system, applies for and receives OASDI benefits. This person, again undoubtedly better off than Dotson, presumably would be ineligible for SSI benefits due to an excess of resources and income. See generally note 8, *supra*. Importantly, however, Dotson is not in a position to make this argument because the ALJ below did not deny him benefits based on his income or resources, but rather based on the fact that Dotson was engaging in SGA.

Even if Dotson could maintain such an argument, we would be inclined to reject it because the Secretary's classification seems rationally to further the legitimate interest of rewarding those persons with a prior attachment to the work force who have contributed to the Social Security system.

The judgment of the district court is affirmed.

[FR Doc. 94–657 Filed 1–11–94; 8:45 am]
BILLING CODE 4190–29–P

Agreement on Social Security Between the United States and Luxembourg; Entry Into Force

The Commissioner of Social Security gives notice that an agreement coordinating the United States (U.S.) and Luxembourg social security systems entered into force on November 1, 1993. The agreement with Luxembourg, which was signed on February 12, 1992, is similar to U.S. social security agreements already in force with fifteen other countries—Austria, Belgium, Canada, Finland, France, Germany, Ireland, Italy, the Netherlands, Norway, Portugal, Spain, Sweden, Switzerland, and the United Kingdom. Agreements of this type are authorized by section 233 of the Social Security Act.

Like the other agreements, the U.S.-Luxembourg agreement eliminates dual social security coverage—the situation that occurs when a person from one country works in the other country and is required, along with his employer, to pay social security taxes to both countries on the same earnings. Under the U.S.-Luxembourg agreement, a worker who is sent by an employer in the U.S. to work in Luxembourg for 5 years or less remains covered only by the U.S. system. The agreement includes additional rules that eliminate dual U.S. and Luxembourg coverage in other work situations.

The agreement also helps eliminate situations where workers suffer a loss of benefit rights because they have divided their careers between the two countries. Under the agreement, workers may qualify for partial U.S. or Luxembourg benefits based on combined (totalized) work credits from both countries.

Individuals who wish to obtain copies of the agreement or want more information about its provisions may write to the Social Security Administration, Office of International Policy, Post Office Box 17741, Baltimore, Maryland 21235.

Dated: January 25, 1994.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 94–735 Filed 1–11–94; 8:45 am]
BILLING CODE 4190–29–P

Social Security Ruling SSR 94–2p; Title XVI: Workers' Compensation (WC) Payments

AGENCY: Social Security Administration, HHS.

ACTION: Notice of social security ruling.

SUMMARY: In accordance with 20 CFR 422.406(b)(1), the Commissioner of Social Security gives notice of Social Security Ruling 94–2p. This Policy Interpretation Ruling clarifies the Social Security Administration's (SSA) longstanding policy that, under the supplemental security income program, any portion of a workers' compensation (WC) payment designated by the authorizing or paying agency for medical expenses, or for legal or other expenses attributable to obtaining the WC award is not income. These expenses may be past, current, or future.

EFFECTIVE DATE: January 12, 1994.

FOR FURTHER INFORMATION CONTACT: Joanne K. Castello, Office of Regulations, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965–1711.

SUPPLEMENTARY INFORMATION: Although we are not required to do so pursuant to 5 U.S.C. 552 (a)(1) and (a)(2), we are publishing this Social Security Ruling in accordance with 20 CFR 422.406(b)(1).

Social Security Rulings make available to the public precedential decisions relating to the Federal old-age, survivors, disability, supplemental security income, and black lung benefits programs. Social Security Rulings may be based on case decisions made at all administrative levels of adjudication, Federal court decisions, Commissioner's decisions, opinions of the Office of the General Counsel, and other policy interpretations of the law and regulations.

Although Social Security Rulings do not have the force and effect of the law or regulations, they are binding on all components of the Social Security Administration, in accordance with 20 CFR 422.406(b)(1), and are to be relied upon as precedents in adjudicating other cases.

If this Social Security Ruling is later superseded, modified, or rescinded, we will publish a notice in the **Federal Register** to that effect.

(Catalog of Federal Domestic Assistance Program No. 93.807 Supplemental Security Income)

Dated: January 3, 1994.

Shirley S. Chater,

Commissioner of Social Security.

Policy Interpretation Ruling

Title XVI: Workers' Compensation (WC) Payments

Purpose: To clarify that, under the supplemental security income (SSI) program, any portion of a WC payment designated for medical expenses, or for legal or other expenses attributable to obtaining the WC award is not income.

Citations (Authority): Section 1612(a)(2)(B) of the Social Security Act (SSACT), as amended; Regulations No. 16, sections 416.1103(a), 416.1121(a), and 416.1123(b)(3)

Pertinent History: WC is awarded to an injured employee or to the survivor(s) of an employee under Federal and State WC programs and the Longshoremen and Harbor Workers' Act. It may be paid by a Federal or State agency, an insurance company, or an employer. Payments may include amounts for medical expenses, or for legal or other expenses attributable to obtaining the WC award. These expenses may be past, current, or future and may be lump-sum or periodic in nature.

The SSACT at section 1612(a)(2)(B), and regulations at 20 CFR 416.1121(a) provide that WC is unearned income for SSI purposes. Regulations at 20 CFR 416.1123(b)(3) provide for counting less than the amount actually received when part of the amount received is for an expense of obtaining the income. Regulations at 20 CFR 416.1103(a) provide that reimbursement for certain medical expenses is not income.

Policy Interpretation: If the Federal or State agency, insurance company, or employer that authorizes or makes a WC payment designates any portion of it for medical expenses, or for legal or other expenses attributable to obtaining the WC award, such portion is not income for SSI purposes. The expenses may be past, current, or future. Any portion of a WC award or payment not designated for such expenses is unearned income.

Effective Date: This Ruling merely clarifies longstanding SSI policy on the treatment of WC payments designated for certain types of expenses. If a case comes to SSA's attention where SSA did not apply this policy, SSA will reopen and revise the earliest determination possible under the rules of administrative finality. SSA will use the 2-year reopening rule, treating the

determination as an error on the face of the evidence.

Cross-Reference: Program Operations Manual System, Part 5, Chapter 008, Subchapter 30, Section SI 00830.235.

[FR Doc. 94–658 Filed 1–11–94; 8:45 am]
BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–93–3699]

Notice of Submission of Proposed Information Collection to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notice.

SUMMARY: The proposed information collection requirement described below has been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comments on the subject proposal.

ADDRESSES: Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposal for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notice lists the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 14, 1993.

Kay Weaver,

Acting Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Notice of Fund Availability for HOPE for Public and Indian Housing Homeownership Program (HOPE 1) (FR–3501).

Office: Public and Indian Housing.

Description of the need for the information and its proposed use: The purpose of this information collection is to provide grants to Resident Councils, Resident Management Corporations, Public Housing Authorities, and Indian Housing Agencies. They will use the grants to plan and implement the conversion of public housing to public housing resident and low income homeownership.

Form number: None.

Respondents: State or local Governments, businesses or other for-profit, and non-profit institutions.

Frequency of submission: Semi-annually and recordkeeping.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	100		1		91		9,100
Recordkeeping	100		1		40		4,000

Total estimated burden hours: 13,100.

Status: Reinstatement.

Contact: Gary Van Buskirk, HUD, (202) 708–4233; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 14, 1993.

[FR Doc. 94–689 Filed 1–11–94; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–93–3700]

Notices of Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Joseph F. Lackey, Jr., OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: Kay F. Weaver, Reports Management Office, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork, Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; Section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: December 27, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Technical Suitability of Products Program, Section 521 of the National Housing Act.

Office: Housing.

Description of the need for the information and its proposed use: This information is needed under HUD's Technical Suitability of Products Program to determine the acceptance of materials and products to be used in structures approved for mortgages insured under the National Housing Act.

Form number: None.

Respondents: Businesses or other for-profit.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	50		1		41		2,050
Recordkeeping	50		1		3		150

Total estimated burden hours: 2,200.

Status: Extension.

Contact: Donald R. Fairman, HUD, (202) 708–7440; Joseph F. Lackey, Jr., OMB, (202) 395–6880.

Dated: December 14, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Cooperative Membership Exhibit.

Office: Housing.

Description of the need for the information and its proposed use: The form is used to provide HUD with a listing of prospective cooperative members totaling not less than the percentage of cooperative subscribers necessary to validate the presale requirement.

Form number: HUD–93203.

Respondents: Individuals or households.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–93203	300		1		.5		150

Total estimated burden hours: 150.

Status: Extension.

Contact: Kerry J. Mulholland, HUD, (202) 708–0283 Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 27, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Application for HUD/FHA Insured Mortgage.

Office: Housing.

Description of the need for the information and its proposed use: Form HUD–92900A and the related documents will determine the eligibility of the borrower and the proposed request for HUD/FHA mortgage insurance.

Form number: HUD–92900A, 92561, 92544, and 92900–WS.

Respondents: Individuals or households and businesses or other for-profit.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92900A and Related Exhibits	1,000,000		1		.210		210,000
Computations of Buydowns	20,000		1		.250		5,000
Mortgagor Notice of Intent to Satisfy Occupancy	5,000		1		.005		25

Total estimated burden hours: 215,025.

Status: Extension.

Contact: Susan Hoyer, HUD, (202) 708–2700; Joseph F. Lackey, Jr., OMB, (202) 395–6880.

Dated: December 8, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Mortgagor's Certificate of Actual Cost.

Office: Housing.

Description of the need for the information and its proposed use: The mortgagor submits this report certifying actual development cost so that HUD can make a determination of mortgage insurance acceptability and prevent windfall profits. It is also used to provide a base for evaluating housing programs, labor costs, and physical improvements in connection with construction of multifamily housing.

Form number: HUD–92330.

Respondents: Businesses or other for-profit and non-profit institutions.

Frequency of submission: On occasion.

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–92330	500		1		8		4,000

Total estimated burden hours: 4,000.
Status: Reinstatement.
Contact: Genevieve A. Tucker, HUD, (202) 708–0283; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 22, 1993.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Tenant/Homebuyer Data Summary.

Office: Public and Indian Housing.
Description of the need for the information and its proposed use: The consolidated form HUD–50058, Tenant/Homebuyer Data Summary, reflects an effort to upgrade and expand the quality of data received from PHAs, IHAs, and organizations administering the Section 8 Certificate, Voucher and Moderate Rehabilitation Programs. Based on experience in obtaining tenant data summary information, the form has been reformatted and data elements significantly modified to more accurately assess the demographic, ethnic and economic character of assisted housing residents.
Form number: HUD–50058.
Respondents: State or local Governments.
Frequency of submission: Monthly.
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Form HUD–50058	4,500		916.5		1		4,124,250

Total estimated burden hours: 4,124,250.
Status: Revision.
Contact: Earl Simons, HUD, (202) 708–0744; Joseph F. Lackey, Jr., OMB, (202) 395–7316.

Dated: December 21, 1993.

[FR Doc. 94–690 Filed 1–11–94; 8:45 am]
BILLING CODE 4210–01–M

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3691; FR–3348–N–07]

State and Local Fair Housing Laws: Initial Determination Concerning Substantial Equivalency of Fair Housing Law of the State of Arizona

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice and request for comments.

SUMMARY: In accordance with 24 CFR 115.6(c) of the Department's regulations, this notice announces the Department's determination that the fair housing law of the State of Arizona is substantially equivalent, on its face, to the Fair Housing Act. This notice solicits comments from the public on this determination, and on the proposed determination that the present practices and past performance of the agency enforcing the fair housing law of the State of Arizona demonstrate that, in operation, the law provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

DATES: Comment Due Date: February 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this notice to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5234, Washington, DC 20410, telephone (202) 708–0455. (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. (Title VIII of the Civil Rights Act of 1968 as amended by the Fair Housing Amendments Act of 1988 is cited as the "Fair Housing Act.") Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing standards, as determined and certified by the Department. The standards and procedures for certifying State and local fair housing laws that provide substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act are set forth in 24 CFR part 115.

On July 23, 1993 (58 FR 39561), the Department published the annual notice required by 24 CFR 115.6, which announced, among other things, the updated, consolidated list of all certified agencies, and a list of agencies with which an agreement for interim referrals or other utilization of services had been entered into under 24 CFR 115.11. In the July 23, 1993 notice, the Department listed thirty-four jurisdictions, of which the State of Arizona was one, which had entered into an agreement with the Department, subsequent to September 12, 1988, for interim referrals, and were considered to have interim certification in accordance with section 810(f)(4) of the Fair Housing Amendments Act of 1988 (hereafter "Act"). (The Fair Housing Amendments Act of 1988 was enacted on September 13, 1988.)

Notice Announcements and Solicitation of Comments

In accordance with 24 CFR 115.6(c)(1), this notice announces that the fair housing law of the State of Arizona has been determined by the Assistant Secretary of Fair Housing and Equal Opportunity to be substantially equivalent, on its face, to the Fair Housing Act. The Assistant Secretary has determined, after application of the criteria set forth in 24 CFR 115.3 and 115.4, that the fair housing law of the State of Arizona provides, on its face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

Following a review of performance standards and other materials pertaining to the fair housing law of the State of Arizona, and its enforcement by the State of Arizona, the Department expects to make a final determination that the law, in operation, provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act. The Department intends to execute a Memorandum of Understanding with the agency charged with enforcement of the fair housing law of the State of Arizona in accordance with § 115.6(c).

In accordance with 24 CFR 115.6(b), the public is invited to submit written comments on this notice. Specifically, the Department requests written comments on the proposed determination that the current practices and past performance of the agency of the State of Arizona charged with administration and enforcement of the State's fair housing law demonstrate that, in operation, the State law provides substantive rights and remedies that are substantially equivalent to the Fair Housing Act. This notice also invites comments from the public on the Department's determination that the fair housing law of the State of Arizona is substantially equivalent, on its face, to the Fair Housing Act.

Dated: December 23, 1993.

Roberta Achtenberg,
Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 94–692 Filed 1–11–94; 8:45 am]
BILLING CODE 4210–28–P

Office of the Secretary—Office of Lead-Based Paint Abatement and Poisoning Prevention

[Docket No. N–93–3701; FR–3633–N–01]

Task Force on Lead-Based Paint Hazard Reduction and Financing; Open Meeting

AGENCY: Office of Lead-Based Paint Abatement and Poisoning Prevention, HUD.

ACTION: Notice of open meetings.

SUMMARY: The Task Force was established by the Secretary pursuant to section 1015 of the Residential Lead-Based Paint Hazard Reduction Act of 1992. The charter of the Task Force was approved July 14, 1993.

The Task Force includes individuals representing the Department of Housing and Urban Development; the Farmers Home Administration; the Department of Veterans Affairs; the Federal Home Loan Mortgage Corporation; the Federal National Mortgage Association; the Environmental Protection Agency; employee organizations in the building and construction trades industry; landlords; tenants; primary lending institutions; private mortgage insurers; single-family and multifamily real estate interests; nonprofit housing developers; property liability insurers; public housing agencies; low-income housing advocacy organizations; national, State, and local lead-poisoning prevention advocates and experts; and community-based organizations located in areas with substantial rental housing. These members were selected on the basis of personal experience and expert knowledge.

DATES: The meetings will be held on February 9, 1994 (9 to 5:30), and February 10th, 1994 (9 to 1), (EST), at the Holiday Inn Capitol, 550 "C" St, SW. (corner of 6th & C Streets), Washington, DC 20024.

ADDRESSES: Members of the public are invited to provide written material to: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Ruth Wright, Task Force Staff Director, Department of Housing and Urban Development, 451 7th Street SW., room B–133, Washington, DC 20410; telephone (202) 755–1805. The TTD numbers are (202) 708–9300 or 1–800–877–8339. (Except for the "800" number, these are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The first meeting of the Task Force was on November 8, 1993, in Washington, DC. An announcement will be published in the **Federal Register** at least 15 days before each meeting. All meetings will be open to the public, with limited seating available on a first-come, first-served basis.

The mandate of the Task Force is to make recommendations to the Secretary of HUD and the Administrator of the Environmental Protection Agency (EPA) concerning:

(1) Incorporating the need to finance lead-based paint hazard reduction into underwriting standards;

(2) Developing new loan products and procedures for financing lead-based paint hazard evaluation and reduction activities;

(3) Adjusting appraisal guidelines to address lead safety;

(4) Incorporating risk assessments or inspections for lead-based paint as a routine procedure in the origination of new residential mortgages;

(5) Revising guidelines, regulations, and educational pamphlets issued by the Department of Housing and Urban Development and other Federal agencies relating to lead-based paint poisoning prevention;

(6) Reducing the current uncertainties of liability related to lead-based paint in rental housing, by clarifying standards of care for landlords and lenders and by exploring the "safe harbor" concept;

(7) Increasing the availability of liability insurance for owners of rental housing and certified contractors and establishing alternative systems to compensate victims of lead-based paint poisoning; and

(8) Evaluating the utility and appropriateness of requiring both risk assessments or inspections and notification to prospective lessees of rental housing.

Authority: 42 U.S.C. 4852a, 4852b.

Dated: December 20, 1993.

Arthur S. Newburg,
Director, Office of Lead-Based Paint Abatement and Poisoning Prevention.

[FR Doc. 94–694 Filed 1–11–94; 8:45 am]
BILLING CODE 4210–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–920–94–4120–03; COC 55135]

Colorado; Notice of Invitation for Coal Exploration License Application, Basin Resources, Inc.

Pursuant to the Mineral Leasing Act of February 25, 1920, as amended, and to Title 43, Code of Federal Regulations, Subpart 3410, members of the public are hereby invited to participate with Basin Resources, Inc., in a program for the exploration of unleased coal deposits owned by the United States of America in the following described lands located in Las Animas County, Colorado:

T. 32 S., R. 67 W., 6th P.M.
Sec. 31, E½SE¼;
Sec. 32, SW¼.
T. 33 S., R. 67 W., 6th P.M.
Sec. 6, lots 2 to 7, inclusive, E½SW¼;
Sec. 7, lot 2.
T. 33 S., R. 68 W., 6th P.M.
Sec. 1, lots 1, 2, S½NE¼, and E½SE¼;
Sec. 2, S½NE¼;
Sec. 12, E½NE¼.

The area described contains approximately 975.75 acres.

The application for coal exploration license is available for public inspection during normal business hours under serial number COC 55135 at the Bureau of Land Management (BLM) Colorado State Office, 2850 Youngfield Street, Lakewood, Colorado 80215, and at the Canon City District Office, 3170 East Main Street, Canon City, Colorado 81212.

Written Notice of Intent to Participate should be addressed to the attention of the following persons and must be received by them within 30 days after publication of the Notice of Invitation in the **Federal Register:**

Richard D. Tate, Chief, Mining Law and Solid Minerals Adjudication Section, Colorado State Office, Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215

and

Ronald G. Thompson, Senior Mine Engineer, Basin Resources, Inc., 14300 Highway 12, Weston, Colorado 81091.

Any party electing to participate in this program must share all costs on a pro rata basis with the applicant and with any other party or parties who elect to participate.

Dated: January 3, 1994.

Richard D. Tate,

Chief, Mining Law and Solid Minerals Adjudication Section.

[FR Doc. 94–794 Filed 1–11–94; 8:45 am]

BILLING CODE 4310–JB–M

[UT–040–04–4320–01; 4–00152]

Availability of Environmental Assessment for Animal Damage Control Activities

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability of Environmental Assessment.

SUMMARY: Notice is hereby given that the Cedar City District, Bureau of Land Management has prepared an environmental assessment and decision for authorization of animal damage control activities by the Animal Plant Health and Inspection Service (APHIS) in the Cedar City District. Within 30 days of the printing of this notice, the public has the right of appeal to the Interior Board of Land Appeals, Office of the Secretary, in accordance with the regulations at 43 CFR 4.4.

FOR FURTHER INFORMATION CONTACT: District Manager Gordon R. Staker, Cedar City District Office, 176 East D.L. Sargent Drive, Cedar City, Utah 84720. Telephone: 801-586-2401.

Dated: January 3, 1994.

Gordon R. Staker,

District Manager.

[FR Doc. 94–795 Filed 1–11–94; 8:45 am]

BILLING CODE 4310–DQ–M

[CO–920–04–4110–03; COC25040]

Colorado; Proposed Reinstatement of Terminated Oil and Gas Lease

Under the provisions of Public Law 97–451, a petition for reinstatement of oil and gas lease COC25040, Mesa County, Colorado, was timely filed and was accompanied by all required rentals and royalties accruing from April 1, 1993, the date of termination.

No valid lease has been issued affecting the lands. The lessees have agreed to new lease terms for rentals and royalties at rates of $5 per acre and 16⅔ percent, respectively. The lessees have paid the required $500 administrative fee for the lease and have reimbursed the Bureau of Land Management for the cost of this **Federal Register** notice.

Having met all the requirements for reinstatement of the lease as set out in sections 31 (d) and (e) of the Mineral Leasing Act of 1920, as amended, (30 U.S.C. 188 (d) and (e)), the Bureau of Land Management is proposing to reinstate the lease effective April 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Questions concerning this notice may be directed to Bill Norton of the Colorado State Office at (303) 239–3779.

Dated: January 3, 1994.

Janet M. Budzilek,

Chief, Fluid Minerals Adjudication Section.

[FR Doc. 94–796 Filed 1–11–94; 8:45 a.m.]

BILLING CODE 4310–JB–M

[CACA 33632]

Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 20 acres of National Forest System land for protection of the historic Harlow Cabin and the surrounding lands. This site is on the National Register of Historic Places. This notice closes the land for up to 2 years from location and entry under the United States mining laws. The land will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before April 12, 1994.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Marcia Sieckman, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On November 19, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System land from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Rogue River National Forest

T. 48 N., R. 11 W.,
Sec. 14, Tract 49.

The area described contains 20 acres in Siskiyou County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place with be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which will be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

Dated: December 21, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 94–716 Filed 1–11–94; 8:45 am]

BILLING CODE 3410–11–M

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Risk Identification and Assessment Committee Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Risk Identification and Assessment Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. The Committee meeting will focus on evaluating potential pathways of nonindigenous species introduction using the pathway evaluation process developed at the previous meeting.

DATES: The Risk Identification and Assessment Committee will meet from 9 a.m. to 3 p.m. on Wednesday, January 26, 1994.

ADDRESSES: The Risk Identification and Assessment Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 500, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Richard Orr, Risk Identification and Assessment Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD (301) 436–8939.

SUPPLEMENTARY INFORMATION: Pursuant to Section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Identification and Assessment Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Identification and Assessment Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: 5 January 1994.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force Assistant Director—Fisheries.

[FR Doc. 94–656 Filed 1–11–94; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Cape Cod National Seashore, South Wellfleet, MA; Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, January 28, 1994.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The Commission members will meet at 1 p.m. at Park Headquarters, Marconi Station, for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda
2. Approval of Minutes of Previous Meeting
3. Reports of Officers
4. Old Business
5. Superintendent's Report
6. Mission and Vision Statements
7. Nauset Light Relocation
8. Transportation Issues
9. New Business
10. Agenda for next meeting
11. Date for next meeting
12. Communications/Public Comment
13. Adjournment

The meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: December 29, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–756 Filed 1–11–94; 8:45 am]

BILLING CODE 4310–70–P

Sudbury, Assabet and Concord Rivers Wild and Scenic Study, MA; Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. app. 1 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, January 27, 1994.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in Section 5 (a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m., Thursday, January 27, 1994, at the Bedford Town Hall, Mudge Way, Bedford, MA. Directions: Bedford Town Hall is located on the left, along Mudge Way, off the south side of Great Road (where Rtes. 4/225 and 62 converge) in Bedford Center. From Rte. 128, take exit for Rtes. 4/225 West and travel approx. 2.3 miles. Turn left on Mudge Way. From west, travel approx. 0.3 miles from the intersection of Rtes. 4/225 and 62. Turn right at Mudge Way.

The agenda is as follows:

I. Welcome and introductions, approval of minutes from 12/2/93 meeting.

II. Brief questions and comments from public

III. Subcommittee Reports—Subcommittee Chairs

A. Water Resources Subcommittee: Water Resources Study and Recreation Task Force

B. River Conservation Planning Subcommittee

C. Public Participation Subcommittee

V. Issues of Local Concern

VI. Opportunity for public questions and comments

VII. Other Business

A. Next meeting dates and locations

Dated: December 29, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 94–755 Filed 1–11–94; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332-351]

Monitoring of U.S. Imports of Peppers

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation.

EFFECTIVE DATE: December 30, 1993.

SUMMARY: The North American Free Trade Agreement Implementation Act, P.L. 103-182, directs the Commission to monitor imports of fresh or chilled peppers, other than chili peppers (HTS subheading 0709.60.00), until January 1, 2009, as if a proper request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. As a result, the Commission instituted investigation No. 332-351, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of monitoring imports of fresh or chilled peppers.

In the course of the investigation, the Commission will monitor U.S. imports of fresh or chilled peppers from all foreign suppliers. In addition, the Commission will investigate and gather data, to the extent possible, on U.S. growers in such areas as shipments, prices, market share, employment levels, profit-or-loss, and efforts to compete. Wherever possible, the Commission will rely on existing data from other government agencies.

Although section 316 does not require that the Commission publish reports summarizing the information obtained as a result of such monitoring, the Commission plans to publish statistical annual reports of certain trade data through the year 2008.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202-205-3324) or Lowell Grant (202-205-3312), Agriculture Division, Office of Industries, or William Gearhart (202-205-3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN SUBMISSIONS: Interested persons are invited to submit written statements at any time during the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of section 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submission should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: January 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-770 Filed 1-11-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigations Nos. 731-TA-675 and 676 (Preliminary)]

Saccharin From China and Korea

Determinations

On the basis of the record [1] developed in the subject investigations, the Commission unanimously determines, pursuant to section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)), that there is a reasonable indication that an industry in the United States is materially injured by reason of imports from China and Korea of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value (LTFV).

Background

On November 18, 1993, a petition was filed with the Commission and the Department of Commerce by PMC Specialties Group, Cincinnati, OH, alleging that an industry in the United States is materially injured by reason of LTFV imports of saccharin from China and Korea. Accordingly, effective November 18, 1993, the Commission instituted antidumping investigations Nos. 731-TA-675 and 676 (Preliminary).

Notice of the institution of the Commission's investigations and of a public conference to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the **Federal Register** of November 29, 1993 (58 FR 62682). The conference was held in Washington, DC, on December 9, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determinations in these investigations to the Secretary of Commerce on January 3, 1994. The views of the Commission are contained in USITC Publication 2716 (January 1994), entitled "Saccharin from China and Korea: Investigations Nos. 675 and 676 (Preliminary)."

Issued: January 3, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-772 Filed 1-11-94; 8:45 am]

BILLING CODE 7020-02-P

[1] The record is defined in sec. 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[Investigation No. 337-TA-354]

Certain Tape Dispensers; Decision Not To Review an Initial Determination Granting Motion To Amend Notice of Investigation To Clarify Identity of One Respondent and To Delete Another Respondent

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting complainant Minnesota Mining and Manufacturing, Inc.'s ("3M") motion to amend the notice of investigation to correct the identification of one respondent and to delete another respondent.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205-3094.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain tape dispensers, on July 15, 1993. Complainant 3M alleges infringement of U.S. Letters Patent Des. 289,180.

On November 29, 1993, complainant filed a second motion to amend the notice of investigation to clarify the identity of the named respondents. Complainant moved to delete one respondent, Shiang Shin Trading Co., and to change the identification of another respondent, Safina Office Products, to Shiang Shin International, Inc., d/b/a Safina Office Products. In requesting this action, 3M stated that an affidavit received from one of the respondents had revealed that Safina Office Products is merely the assumed name for Shiang Shin International, Inc. and that Shiang Shin Trading Co. is an unrelated company that is not involved in the importation or sale of the subject tape dispensers. The Commission investigative attorney supported the motion. On December 13, 1993, the ALJ issued an ID (Order No. 4) granting complainant's motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205-1810.

Issued: January 7, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-773 Filed 1-11-94; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 332-350]

Monitoring of U.S. Imports of Tomatoes

AGENCY: United States International Trade Commission.

ACTION: Notice of institution of investigation.

EFFECTIVE DATE: December 30, 1993.

SUMMARY: The North American Free Trade Agreement Implementation Act, Public Law 103-182, directs the Commission to monitor imports of fresh or chilled tomatoes (HTS heading 0702.00), until January 1, 2009, as if a proper request for such monitoring had been made under section 202(d) of the Trade Act of 1974 (19 U.S.C. 2252(d)), for purposes of expediting an investigation concerning provisional relief under section 202 of the Trade Act of 1974. As a result, the Commission instituted investigation No. 332-350, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)), for the purpose of monitoring imports of fresh or chilled tomatoes.

In the course of the investigation, the Commission will monitor U.S. imports of fresh or chilled tomatoes from all foreign suppliers. In addition, the Commission will investigate and gather data, to the extent possible, on U.S. growers in such areas as shipments, prices, market share, employment levels, profit-or-loss, and efforts to compete. Wherever possible, the Commission will rely on existing data from other government agencies.

Although section 316 does not require that the Commission publish reports summarizing the information obtained as a result of such monitoring, the Commission plans to publish annual statistical reports of certain trade data through the year 2008.

FOR FURTHER INFORMATION CONTACT: Timothy McCarty (202-205-3324) or Lowell Grant (202-205-3312), Agriculture Division, Office of Industries, or William Gearhart (202-205-3091), Office of the General Counsel, U.S. International Trade Commission. Hearing impaired persons can obtain information on this study by contacting the Commission's TDD terminal on (202) 205-1810.

WRITTEN SUBMISSION: Interested persons are invited to submit written statements at any time during the investigation. Commercial or financial information which a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirement of section 210.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons. All submission should be addressed to the Secretary at the Commission's office in Washington, DC.

Issued: January 4, 1994.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 94-771 Filed 1-11-94; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927-6212 or (202) 927-6245.

Comments on the following assessment are due 15 days after the date of availability:

AB-167 (SUB-NO. 1132X), Consolidated Rail Corporation Abandonment Exemption—In Washington County, Pa and Brooke County, WV. EA available 1/4/94.

AB-52 (SUB-NO. 76X), The Atchison Topeka and Santa Fe Railway Company Exempt Abandonment of 1.84 miles of right-of-way at or near Harper, Harper County, Kansas. EA available 1/7/94.

AB-32 (SUB-NO. 58X) and AB-355 (SUB-NO. 10X), Boston and Maine Corp. and Springfield Terminal Railway Co.—abandonment and discontinuance of service—Waterbury Industrial Track, in New Haven County, Ct. EA available 1/7/94.

AB-32 (SUB-NO. 61X) and AB-355 (SUB-NO. 13X), Boston and Maine Corp. and Springfield Terminal Railway Co.—abandonment and discontinuance of service—Dublin Street Track, in New Haven County, Ct. EA available 1/7/94.

Comments on the following assessment are due 30 days after the date of availability: None.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94-766 Filed 1-11-94; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32427]

City of Los Angeles and City of Long Beach—Acquisition Exemption—Rail Lines of the Atchison, Topeka and Santa Fe Railway Co., Southern Pacific Transportation Co., and Union Pacific Railroad Co.; Notice of Exemption

The City of Los Angeles, acting by and through the Board of Harbor Commissioners of the Port of Los Angeles, and the City of Long Beach, acting by and through its Board of Harbor Commissioners (collectively referred to as the Cities), have jointly filed a notice of exemption to acquire from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe), Southern Pacific Transportation Company (SPT), and Union Pacific Railroad Company (UP) certain interest in property described below to construct

a railroad corridor that will permit consolidation of Santa Fe's, SPT's, and UP's overhead rail service to and from the ports to a point in central Los Angeles. The exemption became effective on December 24, 1993.

The lines being acquired, by subdivision, include the following: (a) Santa Fe's line on the Los Angeles Harbor Subdivision between milepost 27.6 and milepost 28.3 in the County of Los Angeles; and the connection track between SPT's San Pedro Branch and Santa Fe's Watson Yard; (b) SPT's line from the connection with UP switch at the east side of Santa Fe Avenue easterly of "J" Yard, milepost BG 486.17 (San Pedro Branch) southeasterly through "J" Yard and a portion of the SPT's Santa Monica Branch to a point of connection with the San Pedro Branch milepost BBM 484.99 (Wilmington Branch) then southerly paralleling Alameda Street to a crossing of the Wilmington Branch at Dominguez Junction milepost BG 498.50 (San Pedro Branch) crossing over to the Wilmington Branch southerly to a point southerly of Sepulveda Boulevard and merging into the San Pedro Branch with the Wilmington Branch terminating at the Santa Fe's Harbor Subdivision Thernard Crossing milepost BBM 501.20 (Wilmington Branch) and milepost BG 501.4 (San Pedro Branch) and the San Pedro Branch continuing southerly and southeasterly through the Port of Los Angeles to approximately 22nd Street in San Pedro and also including to the legs of the West Wye and the Long Beach Branch from the San Pedro Branch into the Port of Long Beach and terminating south of the 8th Street Yard milepost BH 503.73 (Long Beach Branch); and (c) UP's line from a connection with SPT's "J" Yard at the east side of Santa Fe Avenue in Los Angeles milepost 1.8 via Redondo Jct. and Bridge Jct. to a connection with the East Bank main line at Ninth St. Jct. milepost 0.97; from Bridge Jct. on the aforesaid line milepost 1.30 to Soto St. Jct. milepost 2.08 (a distance of approximately 500 feet); from Soto St. Jct. milepost 2.08 to Downey Road milepost 2.88; and from milepost 2.84 near Downey Road to Hobart Junction milepost 3.08 on the San Pedro Branch north of Santa Fe's at-grade crossing; and the San Pedro Branch from milepost 21.71 to milepost 23.73 in the County of Los Angeles.

Santa Fe, SPT, and UP are to retain trackage rights and/or permanent easements over those portions of property on which they currently conduct rail operations so as to continue rail freight service.

According to the Cities, their acquisition of the described property interests from Santa Fe, SPT, and UP will not confer common carrier status on the Cities, and the Cities reserve their right to file a motion to dismiss this notice or subsequently to seek revocation of the exemption. If we subsequently find that we lack jurisdiction over these transactions, we will enter a supplemental order vacating this exemption.

Any comments must be filed with the Commission and served on: Samuel M. Sipe, Jr., Steptoe & Johnson, 1330 Connecticut Ave., NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 5, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–769 Filed 1–11–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decrees

In accordance with 42 U.S.C. 9622(d)(2) and 28 CFR 50.7, notice is hereby given that two proposed consent decrees in *United States* v. *DiBiase Salem Realty Trust, et al.*, Civil Action No. 91–11028–MA, were lodged on December 30, 1993 with the United States District Court of Massachusetts. The Consent Decrees resolve certain claims of the United States against defendant South Essex Sewerage District ("SESD") and Massachusetts Electric Company ("Massachusetts Electric") under Sections 106 and 107 of the Comprehensive Environmental Response, Compensation, and Liability Act, 42 U.S.C. 9606, 9607, in connection with the Salem Acres Superfund Site, a 234.5-acre parcel located approximately one quarter mile west of Route 107 in Salem, Massachusetts. Under the settlement reflected in the Consent Decree with SESD, SESD will pay the United States $460,948 in remedial costs incurred prior to March 31, 1993, and will perform the remedial cleanup of the sludge lagoons and certain other areas of the Site. Through the second Consent Decree, Massachusetts Electric will pay the United States $93,237 in remedial costs incurred prior to March 31, 1993, and will perform the remedial cleanup of the flyash pile on the Site. Both SESD and Massachusetts Electric agree through the settlements to pay certain future remedial costs incurred by the United States that are not inconsistent with the NCP.

The Department of Justice will receive comments relating to the proposed Consent Decree for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *DiBiase Salem Reality Trust, et al.*, D.J. Ref. No. 90–11–3–744. The proposed Consent Decrees may be examined at the Office of the United States Attorney for the District of Massachusetts, 1107 John W. McCormack Federal Bldg., U.S. P.O. & Courthouse, Boston, Massachusetts 02109, the Region I Office of the United States Environmental Protection Agency, Office of Regional Counsel, 1 Congress Street, 10th Floor, Boston, Massachusetts and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decrees may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $23.50 for each Consent Decree (25 cents per page for reproduction costs, exclusive of the costs of the appendices), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–797 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree; Salt Pond Associates

In keeping with Departmental policy, 28 CFR 50.7, notice is hereby given that a consent decree in *Salt Pond Associates* v. *United States Army Corps of Engineers, et al.*, Civ. No. 92–597–LON (D. Del.), was lodged with the United States District Court for the District of Delaware on or about January 10, 1994. This consent decree concerns counterclaims filed in the above-entitled action by the United States pursuant to the Clean Water Act and the Rivers and Harbors Act of 1899. The counterclaims seek a permanent injunction and civil penalties for plaintiff Salt Pond Associates' alleged violations of section 301(a) of the Clean Water Act, 33 U.S.C 1311(a), and section 10 of the Rivers and Harbors Act of 1899, 33 U.S.C. 403. The consent decree allows certain work conducted in wetlands and other waters of the United States to remain in place subject to Salt Pond Associates' compliance with restoration and mitigation requirements, and imposes a civil penalty of two hundred thousand dollars ($200,000) on Salt Pond Associates.

Pursuant to 28 CFR 50.7, the Department of Justice will accept written comments on the consent decree for a period of thirty (30) days after the date of publication of this Notice in the Federal Register. Comments should be addressed as follows: Assistant Attorney General/Environment and Natural Resources Division/United States Department of Justice/Attention: Timothy Burns/Environmental Defense Section/P.O. Box 23986/Washington, DC 20026–3986. Comments should reference *Salt Pond Associates* v. *United States Army Corps of Engineers, et al.*, No. 90–5–1–6–498.

The consent decree may be examined at the Clerk's Office/United States District Court/District of Delaware/844 King Street/Wilmington, Delaware (contact the Clerk at (302) 573–6170). It may also be examined at the United States Department of Justice/Environmental Defense Section/10th Street and Pennsylvania Avenue, NW./Washington, DC (contact Kevin Christof at (202) 514–0985).

Timothy Burns,

Trial Attorney, Environmental Defense Section, Environment & Natural Resources Division, United States Department of Justice.

[FR Doc. 94–655 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to Clean Air Act

In accordance with Department policy, 28 CFR 50.7, notice is hereby given that on December 28, 1993, a proposed Consent Decree in *United States* v. *Superior Contract Maintenance, Inc.*, Civil Action No. 1:93CV2754, was lodged in the United States District Court for the Northern District of Ohio. The Complaint filed by the United States alleged violations of the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants (NESHAP) for Asbestos, 40 CFR part 61, subpart M, by Superior Contract Maintenance, Inc. (SCM), Superior Demolition and Excavating, Inc. (SDE), and Market Plaza Properties Limited Partnership. The Consent Decree requires the defendants to pay a total civil penalty of $27,500 in full settlement of the claims set forth in the Complaint filed by the United States. The Consent Decree also requires the defendants to ensure that their employees have the required inspector and asbestos abatement worker training before those employees can inspect or work in facilities where asbestos containing material (ACM) or suspect ACM would be removed. Additionally, the compliance section requires SCM, SDE, and Market Plaza to provide written instructions to their employees not to handle, move, or otherwise disturb ACM or suspect ACM unless specially trained, licensed or authorized to do so, to comply with the asbestos NESHAP, and to provide EPA with notice before removing any asbestos in the future.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments concerning the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Superior Contract Maintenance, Inc.*, D.J. Ref. No. 90–5–2–1–1739.

The proposed Consent Decree may be examined at any of the following offices: (1) The United States Attorney for the Northern District of Ohio, United States Courthouse, Room 208, 2 South Main Street, Akron, Ohio 44308 (contact Assistant United States Attorney James L. Bickett); (2) the U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604–3590 (contact Assistant Regional Counsel Padmavati G. Klejwa); and (3) the Environmental Enforcement Section, Environment and Natural Resources Division, U.S. Department of Justice, Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. For a copy of the Consent Decree please enclose a check in the amount of $5.50 (25 cents per page for reproduction costs, exclusive of the costs of the appendices), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–798 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Tropicana Energy Company, et al.*, Civil Action No. 3:92–CV–0668–P, was lodged on December 21, 1993 with the United States District Court for the Northern District of Texas. The Consent Decree resolves an action for civil penalties and injunctive relief brought under section 211(c) of the Clean Air Act, 42 U.S.C. 7545(c), and the regulations promulgated thereunder at 40 CFR part 80, for violations of the applicable gasoline volatility standards, which occurred in the States of Texas, Illinois, and Tennessee. Under the Consent Decree, defendant Tropicana Energy Company has agreed to pay a civil penalty in the amount of $1,000,000 to the United States. In addition, defendants Tropicana Investments Partnership, Linda Pescosolido (as personal representative of the estate of Carl A. Pescosolido, Jr.), and J. Kent Burt have agreed to pay a combined civil penalty in the amount of $100,000 to the United States. The Consent Decree also enjoins defendant J. Kent Burt and any corporation, partnership or association that he has an ownership interest in or substantially supervises or controls from violating section 211(c) of the Clean Air Act and its implementing regulations set forth at 40 CFR part 80.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Tropicana Energy Company, et al.*, DOJ Ref. #90–5–2–1–1214A.

The proposed consent decree may be examined at the office of the United States Attorney, U.S. Federal Building and Courthouse, 1100 Commerce Street, room 16G28, Dallas, Texas 75242; the Office of Air and Radiation, United States Environmental Protection Agency 401 M Street, SW., Washington, DC 20460; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $4.00 (25 cents

per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environment and Natural Resources Division.

[FR Doc. 94–799 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree

Notice is hereby given that a proposed Consent Decree and Insurance Agreement in *United States* v. *Uniroyal, Inc.*, No. 3:93CV0883RM (N.D. Ind.) entered into by the United States, the States of Indiana and Wisconsin, Uniroyal, Inc., CDU Holding, Inc., Uniroyal Holding Inc., CDU Holding, Inc. Liquidating Trust, and Uniroyal Technology Corporation (which is a signatory to the Insurance Agreement only) were lodged on December 27, 1993 with the United States District Court for the Northern District of Indiana. The proposed Consent Decree and Insurance Agreement resolve certain claims of the United States and the States of Indiana and Wisconsin under Sections 106 and 107 of the Comprehensive Environmental Response Compensation and Liability Act ("CERCLA"), 42 U.S.C. 9606, 9607, Section 7003 of the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. 6973, and certain state environmental statutes with respect to the following seventeen CERCLA sites: The Alburn Incinerator/ American Chemical Services Site in Chicago, Illinois; the American Chemical Service Site in Griffith, Indiana; the Calumet Container Site in Hammond, Indiana; the Cam-Or/ Westville Oil Site in Westville, Indiana; the Douglass Road Landfill Site in Mishawaka, Indiana; the Dunn Landfill/ City Disposal Sanitary Landfill Site in Dunn, Wisconsin; the Envirochem Site in Zionsville, Indiana; the Hagen Farm Site in Stoughton, Wisconsin; the I. Jones Site in Ft. Wayne, Indiana; the Midco I and Midco II Sites in Gary, Indiana; the Ninth Avenue Site in Gary, Indiana; the Northside Sanitary Landfill Site in Zionsville, Indiana; the Stoughton City Landfill Site in Stoughton, Wisconsin; the Thermo-Chem Site in Muskegon, Michigan; the Verona Wellfield/Thomas Solvent Site in Battle Creek, Michigan; and the Wayne Waste Oil/Wayne Reclamation Site in Columbia City, Indiana. Under the Consent Decree, Uniroyal, Inc. and the other parties will pay the United States, the States of Indiana and Wisconsin, and certain potentially responsible parties implementing remedial action $4,075,286. The Insurance Agreement also provides for some additional recovery from insurance proceeds under policies issued to Uniroyal, Inc. and United States Rubber Company.

The Department of Justice will receive comments relating to the proposed Consent Decree and Insurance Agreement for 30 days following the publication of this Notice. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20503, and should refer to *United States* v. *Uniroyal, Inc.*, D.J. Ref. No. 90–11–2–784B. The proposed Consent Decree and Insurance Agreement may be examined at the Office of the United States Attorney for the Northern District of Indiana, MO–1 Federal Bldg., 204 S. Main St., South Bend, Indiana 46601; the Region V Office of the United States Environmental Protection Agency, 77 West Jackson Street, Chicago, Illinois 60604; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005 (202–624–0892). A copy of the proposed Consent Decree and Insurance Agreement may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $22.00 (25 cents per page for reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–800 Filed 1–11–94; 8:45 am]

BILLING CODE 4410–01–M

NATIONAL SCIENCE FOUNDATION

Antarctic Conservation Act of 1978; Notice of Permit Modification

AGENCY: National Science Foundation.

SUMMARY: The Foundation modified a permit to conduct activities regulated under the Antarctic Conservation Act of 1978 (Pub. L. 95–541; Code of Federal Regulations title 45, part 670).

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge, (703) 306–1031. Permit Office, Office of Polar Programs, room 755, National Science Foundation, Arlington, Virginia 22230.

APPLICANT: John L. Bengtson, National Marine Mammal Laboratory, National Oceanic and Atmospheric Administration, Seattle, Washington 98115.

DESCRIPTION OF PERMIT AND MODIFICATION: The Foundation issued a permit to Dr. Bengtson, a marine mammals specialist, on 25 November 1992 after posting a notice in the 26 October 1992 **Federal Register**. Public comments were not received. The permit allows capture, handling, and release of six species of antarctic seals as part of a study, supported by NSF and NOAA, of the ecology, abundance, and distribution of pack ice seals.

The modification, issued on 30 December 1993 and good until the permit expires on 31 December 1994, allows Dr. Bengtson's project to inject stable isotopes before taking blood samples (a procedure that enables estimates of body composition); to collect tissue biopsies for study of genetics, contaminants, and diet; and to fly as low as 200 feet for aerial surveys when called for by conditions of survey design or human safety.

NSF review supports the applicant's statement that the requested modifications will not increase jeopardy to seals or other wildlife and that the information obtained will be valuable in determining the role of seals in the marine ecosystem.

LOCATION: Antarctic waters.

DATES: January 1, 1993–December 31, 1994.

Guy G. Guthridge,

Permit Office, Office of Polar Programs.

[FR Doc. 94–662 Filed 1–11–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Third Meeting of the CONTAIN Peer Review Committee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The CONTAIN Peer Review Committee will meet to review the technical adequacy of the CONTAIN code.

DATES: January 19–21, 1994.

TIME: 8:30 am each day.

ADDRESSES: Energy Research, Inc. 6290 Montrose Road, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: A. Notafrancesco, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone (301) 492–3537.

SUPPLEMENTARY INFORMATION: The objective of this effort is to organize and conduct a peer review of the CONTAIN code, light water reactor version. The peer review is to provide an independent assessment of the modeling capabilities and limitations, and adequacy of the CONTAIN code. The results of the peer review are to be documented in a summary report that describes the results of the independent assessment by the peer review participants and the technical acceptability of the code.

A peer review committee has been organized using recognized experts from the national laboratories, universities, CONTAIN user community and independent contractors. Meetings are held to discuss and evaluate the applicability and state of validation of the various CONTAIN phenomenological models. The meeting scheduled for January 19–21, 1994, is the third meeting of the CONTAIN Peer Review Committee. The Committee will (1) present preliminary review findings, (2) review code sensitivity studies, and (3) receive briefings from the code development staff about the integrated code and the detailed models in the code.

Dated at Rockville, Maryland, this 3rd day of January, 1994.

For the U.S. Nuclear Regulatory Commission.

Farouk Eltawila,

Chief, Accident Evaluation Branch, Division of Systems Research, Office of Nuclear Regulatory Research.

[FR Doc. 94–703 Filed 1–11–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 72–4]

Duke Power Co.; Issuance of Amendment to Materials License SNM–2503

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 4 to Material License No. SNM–2503 held by Duke Power Company for the receipt and storage of spent fuel at the Oconee Independent Spent Fuel Storage Installation (ISFSI), located on the Oconee Nuclear Station site, Oconee County, South Carolina. This amendment is effective as of the date of issuance.

The amendment revises section 5.4.1 of the Technical Specification regarding the concrete density of Horizontal Storage Module (HSM) from "a minimum of 145 pounds per cubic foot" to "a minimum of 140 pounds per cubic foot." This amendment does not affect fuel receipt, handling, and storage safety.

The application for this amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment. Prior public notice of the amendment was not required since the amendment does not involve a significant hazards consideration.

The Commission has determined that the issuance of the amendment will not result in any significant environmental impact and that, pursuant to 10 CFR 51.22(c)(11), an environmental assessment need not be prepared in connection with issuance of the amendment.

For further details with respect to this action, see (1) the application for amendment dated March 9, 1993, as supplemented by letter dated November 16, 1993; (2) Amendment No. 4 to Materials license No. SNM–2503; and (3) the Commission's letter to the licensee dated January 5, 1994. All of these items are available for public inspection at the Commission's Public Document Room, The Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC, and the Oconee County Library, 501 W. South Broad Street, Walhalla, SC 29691.

Dated at Rockville, Maryland, this 5th day of January 1994.

For the U.S. Nuclear Regulatory Commission.

Charles J. Haughney,

Chief, Storage and Transport Systems Branch, Division of Industrial and Medical Nuclear Safety, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 94–705 Filed 1–11–94; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

Procurement Regulatory Activity Report, No. 9; Availability

AGENCY: Office of Management and Budget, Office of Federal Procurement Policy.

ACTION: Notice of availability of the Procurement Regulatory Activity Report, Number 9.

SUMMARY: Subsections 25(g) (1) and (2) of the Office of Federal Procurement Policy (OFPP) Act, as amended by Public Law 100–679, codified at 41 U.S.C. 421(g), require the Administrator for Federal Procurement Policy to publish a report within six months after the date of enactment and every six months thereafter relating to the development of procurement regulations.

Accordingly, OFPP has prepared the ninth Procurement Regulatory Activity Report. This report is designed to satisfy all aspects of subsections 25(g) (1) and (2) of the OFPP Act, and includes information on the status of each regulation; a description of those regulations required by statute; a description of the methods by which public comment was sought; regulations, policies, procedures, and forms under review by the OFPP; whether the regulations have paperwork requirements; the progress made in promulgating and implementing the Federal Acquisition Regulation; and such other matters as the Administrator determines to be useful.

ADDRESSES: Those persons interested in obtaining a copy of the Procurement Regulatory Activity Report may contact the Executive Office of the President Publications Service, room 2200, 725 17th Street, NW., Washington, DC 20503, or phone (202) 395–7332.

FOR ADDITIONAL INFORMATION CONTACT: For additional information write or call the Office of Federal Procurement Policy, 725 17 St., NW., Washington, DC 20503, (202) 395–6803.

Dated: January 6, 1994.

Steven Kelman,

Administrator.

[FR Doc. 94–745 Filed 1–11–94; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33413; File No. SR–DGOC–91–01]

Self-Regulatory Organizations; Delta Government Options Corp.; Order Approving a Proposed Rule Change Relating to Permissible Forms of Margin Deposits

January 4, 1994.

On February 12, 1991, Delta Government Options Corp. ("Delta") filed with the Securities and Exchange Commission ("Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] relating to the acceptance of U.S. Treasury bills, notes, and bonds as margin. On March 23, 1991, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments

[1] 15 U.S.C. 78s(b)(1) (1988).

from interested persons.[2] One comment letter was received in response to which Delta amended its proposal on April 25, 1991.[3] On September 8, 1993, Delta submitted a second amendment concerning the participation of registered investment companies.[4] As discussed below, the Commission is approving Delta's proposal as amended.

I. Description

Delta's proposal expands the permissible forms of margin by permitting participants to deposit not only Fed Funds[5] but also U.S. Treasury bills with a remaining term to maturity of 365 days or less and Treasury securities which would be deliverable by a participant if an option contract written by the participant was exercised and assigned to the participant (i.e., "cover").[6] Treasury bills deposited as margin will be valued for purposes of determining the amount of margin on deposit with Delta as 100% of the lesser of their par value or their market value. Deposits of Treasury bills as margin must be made in principal amounts of $50,000 and integral multiples thereof.

In the event that Treasury bills deposited as margin mature while on deposit with Delta, Delta will hold the cash proceeds as margin and will invest them in accordance with its rules governing the investment of cash margin deposits.[7] If a participant that is an employee benefit plan (i.e., pension plan) subject to the Employee Retirement Income Security Act of 1974 ("ERISA")[8] deposits Treasury bills as margin, Delta will monitor the maturity date of such Treasury bills and will require the pension plan to substitute collateral prior to the maturity of the Treasury bills.[9]

II. Discussion

The Commission believes Delta's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[10] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible.

Delta's proposal will provide flexibility to its participants by expanding the types of assets eligible to be deposited as margin without exposing Delta to undue credit risk, market risk, or liquidation risk.[11] Because Treasury securities are backed by the full faith and credit of the United States, Delta is not subject to the credit risk of the obligor.[12] To reduce its exposure to market risk and liquidation risk, Delta will mark Treasury bills to market on a daily basis and will value them at the lower of par or fair market value. Furthermore, because the market for Treasury bills is extremely large and relatively liquid, Delta's liquidation risk is minimal.

The Commission also believes that Delta's proposal to accept cover as margin for short call option positions is appropriate. As an initial matter, the Commission notes that The Options Clearing Corporation ("OCC"), another registered clearing agency, accepts deposits of the security underlying a call option written by a participant in lieu of margin.[13] The deposit of cover protects Delta to the maximum extent possible by fully collateralizing a participant's obligations to Delta and by eliminating Delta's credit risk with respect to the depositing participant's short position. Accordingly, the Commission believes that Delta's proposal to accept Treasury bills and cover as margin is consistent with its obligation to safeguard the securities and funds for which it is responsible.

The Commission also believes that the special procedures for handling margin deposited by ERISA pension plan participants is both necessary and appropriate. Until now, Delta's procedures for investing margin deposits and certain aspects of ERISA have made participation in Delta impracticable for such plans. Under Delta's rules, Delta may invest the cash margin received from participants in overnight repurchase agreements and pass the profits earned on such investments back to participants.[14] Under section 1002(21) of ERISA, a person could be deemed to be a plan fiduciary to the extent that such person exercises discretionary authority over the assets of a plan.[15] Accordingly, if Delta were to follow its usual investment procedures with respect to pension plan assets, Delta might be deemed to be a plan fiduciary under ERISA. In light of these provisions, Delta has not permitted pension plans to participate in its system.[16]

On March 15, 1991, the Pension and Welfare Benefits Administration of the Department of Labor ("DOL") granted an exemption that permits ERISA pension plans to participate in Delta without Delta becoming a plan fiduciary provided neither Delta nor any of its affiliates exercise discretionary authority or control with respect to the investment of plan assets.[17] To comply with the DOL exemption, Delta is implementing a procedure whereby pension plans will deposit substitute collateral upon the maturity of Treasury bills deposited as margin in order that Delta is not viewed as exercising discretionary authority or control with respect to the investment of any funds that are deemed to be plan assets.[18] Delta's proposal appears to provide a reasonable method of permitting employee benefit plans that are subject to ERISA to participate in Delta's system and thereby promotes the prompt and accurate clearance and settlement of securities transactions without exposing Delta to potential ERISA liability.

The Commission notes that under the DOL exemption, Delta is permitted to liquidate certain assets of a defaulting plan without being deemed to be exercising discretionary authority.[19] Delta's risk exposure is reduced to the extent that it has the authority to liquidate such assets free of ERISA constraints.

III. Conclusion

For the reasons stated above, the Commission finds that the proposed rule change (File No. SR–DGOC–91–01) is consistent with section 17A of the Act.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the proposed rule change (SR–DGOC–91–01) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[20]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–739 Filed 1–11–94; 8:45 am]

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[2] Securities Exchange Act Release No. 28983 (March 18, 1991), 56 FR 12572.

[3] The one comment letter, submitted by The First Boston Corporation ("First Boston"), generally supported Delta's proposal because it believed the acceptance of Treasury bills as margin would increase the competitiveness and usefulness of Delta and would not infuse any additional credit risk into the settlement system. First Boston noted, however, that pursuant to Delta's original proposal (1) deposits of Treasury bills as margin would have to be made in principal amounts of $500,000 and integral multiples thereof and (2) where the margin was deposited in the form of Treasury bills, excess margin of less than $500,000 would not be automatically returned to participants. First Boston stated that these $500,000 minimums were unreasonably high and would reduce needlessly the utility of using Treasury bills as margin. Letter from Scott H. Rockoff, Vice President, Regulatory Reporting and Analysis, First Boston, to Jonathan G. Katz, Secretary, Commission (April 15, 1991). In response, Delta amended its proposal so that the deposit and automatic return minimums are $50,000. Delta also added a provision to the proposal whereby participants can waive their rights to receive on a daily basis excess margin. Participants have an unqualified right to withdraw such a waiver at any time during business hours. Letter from Robert C. Mendelson, Morgan, Lewis and Bockius (Counsel for Delta), to Ross Pazzol, Esq., Division of Market Regulation ("Division"), Commission (April 24, 1991) and letter from David J. Maloy, President, Delta, to Sonia Burnett, Esq., Division, Commission (December 3, 1993).

[4] When Delta filed the original proposal, its rules permitted investment companies registered under the Investment Company Act of 1940 ("1940 Act"), 15 U.S.C. 80a (1990), to be participants. Accordingly, the original proposal would have allowed investment companies to deposit with their custodian banks that hold margin for the benefit of Delta Treasury bills, notes, and bonds as margin. Staff of the Commission's Division of Investment Management ("IM") raised concerns relating to Delta's custody and control of investment companies' securities deposited as margin. In response, Delta amended the proposal to prohibit participation in Delta by registered investment companies. Delta intends to remove the participation prohibition at such time as Delta and Commission staff determine the conditions under which investment companies may become participants. Letter from David J. Maloy, President, Delta, to Julia Ulstrup, Senior Counsel, IM, Commission (September 8, 1993).

[5] Under Delta's previous rules, Delta accepted as margin only "Fed Funds." Fed Funds is now defined in Delta's rules as cash balances available for immediate withdrawal in accounts maintained at banks that are members of the Federal Reserve System.

[6] Delta issues and clears put and call options on Treasury bills, notes, and bonds written or purchased by participants; therefore, cover can consist of Treasury bills, notes, or bonds.

[7] Letter from Robert C. Mendelson, Morgan, Lewis & Bockius (Counsel for Delta), to Ross Pazzol, Esq., Division, Commission (April 24, 1991).

Pursuant to Delta's procedures, margin deposited in the form of Fed Funds (i.e., cash) can be invested in overnight repurchase agreements that require as collateral the delivery of Treasury bills with maturities not to exceed 180 days from the date of the repurchase agreement. Delta Procedures, Article VI, Section 601.

[8] Public Law 93–406, 88 Stat. 829 (1974) (codified at 29 U.S.C. 1001–1461).

[9] Letter from Robert C. Mendelson, Esq., Morgan, Lewis & Bockius (Counsel for Delta), to Ross Pazzol, Esq., Division, Commission (April 24, 1991). Under section 1002(21) of ERISA, a person that exercises discretionary authority or control over the assets of an employee benefit plan is deemed to be a plan fiduciary and is required to act solely in the interest of the plan's participants and beneficiaries and exclusively to provide benefits to these participants and beneficiaries. Because such fiduciary responsibilities may interfere and potentially conflict with Delta's obligations to its participants as a registered clearing agency, Delta is implementing a special procedure for handling margin deposited by pension plans to avoid this potential ERISA problem. Furthermore, as explained in greater detail in Section II of this order, the Pension and Welfare Benefits Administration of the Department of Labor has granted an exemption for certain transactions involving Delta that facilitates the participation of employee benefit plans in Delta.

[10] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[11] Credit risk is the risk that the counterparty to a transaction will not fulfill its obligation. Market risk is the risk associated with adverse changes in the market price of a security. Liquidation risk is the risk that the full value of collateral will not be realized upon liquidation of such collateral.

[12] Of course, Delta remains subject to the credit risk of its participants.

[13] OCC Rule 810.

[14] Delta Procedures, Article VI, Rule 601.

[15] See *supra* note 10.

[16] Section 17A of the Act enumerates the types of entities that may participate in registered clearing agencies. That section neither expressly permits nor precludes participation in a registered clearing agency by pension plans. Section 17A provides that the rules of a clearing agency must permit any (1) registered broker-dealer, (2) bank, (3) insurance company, (4) registered clearing agency, or (5) registered investment company to become a participant in a registered clearing agency. 15 U.S.C. 78q–1(b)(3)(B).

[17] DOL, Prohibited Transaction Exemption 91–19, Exemption Application No. D–8492, 56 FR 12396 (March 25, 1991) ("DOL Exemption").

[18] Because the plan will have no right to the Treasury bills it deposits with Delta as margin (unless the market has moved in its favor or it has closed out its positions), such Treasury bills will not be "plan assets" under ERISA.

[19] Specifically, Delta may draw on a letter of credit or a surety bond that has been issued to Delta on behalf of such participant. DOL Exemption, *supra* note 17 at 12397.

[20] 17 CFR 200.30–3(a)(12) (1990).

[Release No. 34–33412; File No. SR–DTC–93–9]

Self-Regulatory Organizations; The Depository Trust Co.; Order Approving a Proposed Rule Change Relating to Implementation of a Deposit Automated Management Service

January 4, 1994.

On August 16, 1993, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change (File No. SR–DTC–93–9) to implement its Deposit Automated Management ("DAM") service. The Commission published notice of this proposed rule change in the **Federal Register** on October 1, 1993.[2] No public comments were received. For the reasons discussed below, the Commission is approving the proposed rule change.

I. Description

The proposed rule change establishes procedures for implementation of DTC's DAM service.[3] DAM is an enhanced automated deposit service that enables DTC participants to send details of deposits to DTC in advance of forwarding physical certificates.

Using DAM, a DTC participant will send to DTC advance Computer-to-Computer Facility (CCF/CCF II) or PTS transmissions with details regarding securities that the participant plans to deposit. DTC then will determine whether the proposed deposit is acceptable by reviewing for such things as ineligible issues, chilled issues, and incorrect CUSIPs. At this point, DTC will send to the participant a PTS transmission which will flag rejected items (i.e., securities which are unacceptable for deposit), items with record dates that affect DTC's processing,[4] and other special processing items. The participant then will direct the printing of a special bar-coded deposit ticket for all accepted items on a thermal bar-code printer.[5] One bar-coded ticket will be printed for each CUSIP.[6] Each bar-coded ticket will contain information such as the identity of the transfer agent, the nature of the deposit (e.g., whether the deposit is made pursuant to a special corporate event or whether the shares are those of a limited partnership), and other information that is required for DTC's internal processing of the deposit. After the participant presents the physical certificates and the bar-coded deposit ticket to DTC, DTC will scan the bar-coded deposit ticket, and the information contained therein immediately will update DTC's mainframe computer. This process eliminates the need to enter data by keystroke.

Among other benefits, DAM will provide an opportunity for participants to consolidate deposits in the same issue (whether or not the advanced deposit notifications are transmitted to DTC together) and will enable DTC to produce a single deposit ticket for the total quantity of an issue deposited on a particular day.[7] By providing a unique

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 32957 (September 24, 1993), 58 FR 51385.

[3] The proposal will neither add new rules to nor amend any existing rules in DTC's Rules Manual. Telephone conversation between Jack R. Wiener, Associate Counsel, and Cheryl Lambert, Group Director, DTC, and Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (September 7, 1993).

[4] DTC will not flag the record date of every corporate event. Letter from Jack R. Wiener, Associate Counsel, DTC, to Richard C. Strasser, Attorney, Division, Commission (September 29, 1993). For instance, DTC will not notate the record date of corporate events such as holiday parties.

[5] If a participant chooses not to acquire a bar-coded printer (which costs between $2,000 and $8,000 depending on printer speed), the participant will print a deposit ticket that does not have a bar-code using the information and deposit control number received from DTC. When the participant presents the securities and the deposit tickets without bar-codes to DTC, DTC will use the deposit control numbers on the deposit tickets to print bar-coded deposit tickets on a printer located at DTC.

[6] If a CUSIP is eligible for deposit, the ticket will so signify. If a CUSIP is ineligible for deposit, the ticket will state "reject" and will give the reason for the rejection. Telephone conversation between Cheryl Lambert, Group Director, DTC, and Jerry W. Carpenter, Branch Chief, Division, Commission (December 17, 1993).

[7] Participants can realize cost savings by avoiding separate fees for multiple deposits made in the same issue on the same day. For instance, throughout a given day a participant repeatedly may notify DTC that it plans to deposit a certain number of shares of IBM common stock. Assume a participant announces in its first transmission that

Continued

deposit control number that will be printed on the deposit ticket for each deposit, the service will speed research, when needed, on the deposited item. DAM also will permit participants to suspend deposits for up to ten business days in the event of an emergency, transportation delay, or error.

Participants that have a low volume of deposits and that do not want to purchase a bar-coded printer will be able to use the PTS Deposit Automation Management Participant ("DAMP") function to enter details of their intended deposits.[8] The PTS DAMP function also can be used by CCF users to modify or delete deposit data already transmitted to DTC as well as to enter additional deposit data.

By year-end 1993, DTC expects to have processed more than 4.5 million deposits comprised of approximately 17.5 million certificates. The automation features of DAM will reduce DTC's costs and enhance DTC's efficiency in handling these deposits. DTC will pass the savings that it will realize from DAM directly to participants by lowering deposit fees as follows: (a) For deposits made under DAM, DTC will reduce the deposit charge by 40¢ (29¢ for legal deposits) from the applicable zone deposit charge for participants that print bar-coded tickets in their office and (b) by 29¢ (for deposits other than legal deposits) from the applicable zone deposit charge for participants that ask DTC to print the bar-coded tickets. In addition, because DTC will prescreen the issues of securities that participants intend to deposit, the new service will help participants save money by minimizing costly deposit rejects.

II. Discussion

The Commission believes that DTC's proposal is consistent with the Act and in particular with sections 17A (a)(1)(C) and (b)(3)(F) thereunder.[9] In section 17A(a)(1)(C) of the Act, Congress expressed its finding that new communications and data processing techniques create the opportunity for more efficient, effective, and safe procedures for clearance and settlement. In this regard, the Commission believes that DTC's DAM service facilitates the efficient, effective, and safe procedures for the clearance and settlement of securities transactions by employing the electronic communication of information between DTC and its participants.

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to ensure the safeguarding of securities and funds that are in the clearing agency's custody or control or for which it is responsible. The Commission believes that by enabling DTC to review proposed deposits before securities are delivered, the DAM service helps to promote the prompt and accurate clearance and settlement of securities transactions in accordance with DTC's requirements under the Act.

Moreover, DTC's current safeguards will remain in place with the implementation of the DAM service. These safeguards require DTC participants to take steps necessary to assure that the certificates presented to DTC are in good deliverable and transferable form. As with current procedures, after the certificates are presented to DTC, DTC will send them to the transfer agent who will reregister them in DTC's nominee name, Cede & Co. The certificates typically then will be returned to DTC for safekeeping in its vault. On occasion, however, the transfer agent will reject a certificate for reregistration.[10] If a certificate is rejected, DTC will debit the depositing participant's securities account to the extent it was credited when the securities were delivered to DTC. If the debit results in a short position, DTC will impose a charge of 130% of market value until the short position is resolved.[11] These safeguards, as they have in the past, will help to ensure that suspect securities or those with transfer restrictions are excluded from DTC's system. Because the implementation of the DAM service will incorporate DTC's current safeguards, the Commission believes the proposal is consistent with DTC's requirements under the Act.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act and in particular with section 17A thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (File No. SR–DTC–93–9) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–740 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

it will deliver 100 shares of IBM common stock, in its second transmission that it will deliver 200 more shares of IBM, and in its third transmission that it will deposit yet another 300 shares of IBM for a total of 600 shares for the day. DTC will sum the three deposits for the day, and the bar-coded deposit ticket will reflect an intended deposit of 600 shares of IBM common stock.

[8] The DAMP function is part of the DAM service that allows participants to enter data, to correct data previously entered, to make inquiries, or to print bar-code tickets. Telephone conversation between Cheryl Lambert, Group Director, DTC, and Richard C. Strasser, Attorney, Division, Commission (December 22, 1993). For instance, if a participant had notified DTC that it planned to deliver 1,000 shares of stock in ABC Corporation when in fact the participant intended to deliver 1,100 shares, the participant could use the DAMP function to make the necessary correction in the number of shares it intended to deliver.

[9] 15 U.S.C. 78q–1 (a)(1)(C) and (b)(3)(F) (1988).

[10] Transfer agents may reject a certificate for a number of reasons including improper or missing endorsements, missing stock or bond powers, stops, called bonds, certificates reported as lost or stolen, or restrictions on the transfer of the security.

[11] Letter from Richard B. Nesson, Executive Vice President and General Counsel, DTC, to Judith Poppalardo, Assistant Director, Division, Commission (December 3, 1993).

[12] 15 U.S.C. 78s(b)(2) (1988).

[13] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33414; File No. SR–MCC–92–06]

Self-Regulatory Organizations; Midwest Clearing Corp.; Order Approving Proposed Rule Change to Reduce the Time Frames for Processing Dividend Settlement Service Claims

January 4, 1994.

On June 15, 1992, the Midwest Clearing Corporation ("MCC") submitted a proposed rule change (File No. SR–MCC–92–06) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on September 17, 1992, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The purpose of the rule change is to expedite the settlement of claims for dividends or for registered bond interest by shortening the time frames during which MCC requires delivery of Claim Forms by participants who are filing claims against other participants. Under MCC's Dividend Settlement Service ("DSS"), MCC processes participants' claims for dividends and registered bond interest. DDS procedures require that before a participant can submit a claim against another participant, it must deliver to MCC a Notice of Intent. The Notice of Intent must include either documents which establish the basis for the claim or a written explanation of the basis for the claim.

MCC rules require the claiming participant to deliver two copies of a Claim Form to the participant against whom the claim is made. The Claim Form must now be delivered within five business days, previously within ten business days, after delivering the Notice of Intent to MCC.[3] Where the Notice of Intent is delivered six months or more after the record date of the dividend or interest claimed, the Claim Form must now be delivered within ten business days, previously within twenty business days, after the delivery of the Notice of Intent to MCC.[4] Both the Notice of Intent and Claim Form must be delivered through the facilities of MCC.[5] Once MCC receives the Notice of Intent and Claim Form, MCC distributes them to the participant against whom the claim is made on the same day the Claim Form is received.

MCC's rules require the participant receiving the Claim Form to respond by the Charge Date, which appears on the Claim Form. A participant who receives a Claim Form may honor it, may file an Intent Rejection with MCC, or may take no action. If an Intent Rejection is filed, the participants may settle the matter themselves or may submit the matter to arbitration. If the participant receiving the Claim Form honors the claim or fails to respond, MCC will debit that participant's account and will credit the account of the claiming participant.

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with section 17A of the Act.[6] Section 17A(b)(3)(F) of the Act requires that the rules of clearing agencies be designed to promote the prompt and accurate clearance and settlement of securities transactions.[7] Moreover, in section 17A(a)(1) of the Act,[8] Congress encourages the use of efficient and effective safe procedures for securities clearance and settlement.

The Commission believes that shortening the time frames for filing claim forms, from ten business days to five business days and from twenty business days to ten business days, should result in more efficient and effective claim processing at MCC. Shortening the time frames also should encourage participants to settle their claims and disputes involving dividends and interest in a more prompt manner.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the above-mentioned proposed rule change (File No. SR–MCC–92–06) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–741 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

[1] 15 U.S.C. 78s(b)(2) (1988).

[2] Securities Exchange Act Release No 31170 (September 10, 1992), 57 FR 43040.

[3] MCC Rules, Art. V, R. 7, Section 4.

[4] *Id.*

[5] MCC Rules, Art. V, R. 7, Sections 3 and 4.

[6] 15 U.S.C. 78q–1 (1988).

[7] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[8] 15 U.S.C. 78q–1(a)(1) (1988).

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33440; File No. SR–NASD–93–52]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Pricing of Open Orders

January 6, 1994.

On September 23, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission")[1] a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[2] and Rule 19b–4 thereunder.[3] The proposal amends the NASD Rules of Fair Practice by requiring members holding open orders of securities quoted ex-dividend, ex-rights, ex-distribution or ex-interest to adjust the price and, if necessary, the size of the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest.

Notice of the proposed rule change, together with the substance of the proposal, was provided by issuance of a Commission release (Securities Exchange Act Release No. 33000, October 1, 1993) and by publication in the **Federal Register** (58 FR 53600, October 15, 1993). No comment letters were received. This order approves the proposed rule change.

The rule change approved herein amends Article III of the Rules of Fair Practice to require members holding open orders of securities quoted ex-dividend, ex-rights, ex-distribution or ex-interest to adjust the price and, if necessary, the size of the order by the amount of any dividend, payment or distribution on the day that the security is quoted ex-dividend, ex-rights, ex-distribution or ex-interest. The rule change exempts from its scope: (1) Open orders subject to the rules of a registered national securities exchange, (2) open stop orders to buy, and (3) open sell orders, as well as orders marked "do not reduce" or "do not increase."

The NASD does not currently require its members to adjust open orders of securities quoted ex-dividend, ex-rights, ex-distribution or ex-interest. An open order is an order to buy or sell which remains in effect until it is executed or cancelled, or expires. Such orders are also known as "good 'til cancelled," "limit," or "stop limit."[4] The NASD believes it is important to adopt a standard for business practices and ethics in dealing with customer open orders. Because there is currently no NASD rule governing open orders, members adjust them according to their own procedures unless the rules of another self-regulatory organization apply to the transaction (*e.g.*, New York Stock Exchange Rule 118). These procedures can vary from automatic adjustment, automatic withdrawal, reconfirmation of the order with the customer, or no action. Further, the procedures may vary among orders entered at the same firm because the orders are routed to different firms for execution. As a result, investors may find that their open orders are executed without adjustment after the ex-date at a higher cost per share than they intended based on their valuation of the security. For example, an investor entering a limit order for a security at $10 per share prior to the dividend date may have based his pricing judgment on the impending dividend declaration. If his order remains open after the ex-

[1] On November 24, 1993, the NASD filed Amendment No. 1 with the Commission. Amendment No. 1 reports the result of an NASD member vote on the proposed rule change, which was published for member vote in NASD Notice to Members 93–61 (September 1993). The results of the member vote are as follows: 1,682 voting in favor, 232 opposed, and 11 not voting, out of 1,925 ballots received.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

[4] A "good 'til cancelled" order is an order to buy which remains in effect until it is either executed or cancelled. A "limit order" is an order to buy a stated amount of a security at a specified price, or at a better price, if obtainable after the order is given. A "stop limit" order to buy becomes a limit order executable at the limit price, or at a better price, if obtainable, when a transaction in the security occurs at or above the stop price after the order is given.

dividend date, he may find his order in the money and executed at the dividend-assuming price even though he would not be entitled to the dividend.

Moreover, the NASD believes the fact that some members adjust open orders on ex-dates while others do not, creates confusion for customers. The NASD believes that the rule change sets forth a uniform and predictable method for adjusting open orders, eliminates the potential unfairness associated with the failure to adjust these orders, and provides consistency in the adjustment of open orders for NASD members that are also members of the New York Stock Exchange and American Stock Exchange.

Subsection (a) of the new Rule of Fair Practice requires a member holding an open order from a customer or broker-dealer, prior to executing or permitting the order to be executed, to adjust the price of the order by the amount of any dividend, payment or other distribution on the ex-date.

Subsection (b) requires the member to reconfirm an open order prior to execution if the value of the distribution cannot be determined. Subsection (c) requires open orders to be cancelled where the security is the subject of a reverse split. Subsection (d) defines the term "open order" as an order to buy which remains in effect for a definite or indefinite period of time until it is either executed, cancelled, or expires, including, but not limited to, orders marked "good 'til cancelled," "limit" or "stop limit."

Finally, subsection (e) exempts: (1) Open orders subject to the rules of a registered national securities exchange, (2) open stop orders to buy, and (3) open sell orders, as well as orders marked "do not reduce" or "do not increase." Open stop orders to buy and open sell orders are exempted because the assumptions underlying such an order may not include the value of an upcoming dividend; the combination of stop and limit prices in such an order makes the effect of repricing unpredictable. Orders marked "do not reduce" or "do not increase" are the method for the customer to state that he is aware of the implications of not adjusting the order on the ex-date.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[5] Section 15A(b)(6) requires, *inter alia*, that the NASD's rules be designed to prevent fraudulent and manipulative acts, promote just and equitable principles of trade, and protect investors and the public interest. The Commission believes that the creation of a single method of handling the adjustment of open orders after the ex-date will serve the interest of investor protection. For this reason, and for the reasons stated above, the Commission believes that the proposed rule change satisfies the requirements of section 15A(b)(6) of the Act.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the instant rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–688 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

[5] 15 U.S.C. § 78o–3.

[Release No. 34–33433; File No. SR–NASD–93–56]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Codification of Basic Requirements Respecting Access to and Use of the OTC Bulletin Board Service

January 5, 1994.

On October 12, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder.[2] The proposal codifies the existing requirements respecting access to and use of the OTC Bulletin Board Service ("OTCBB").

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on October 21, 1993.[3] No comments were received on the proposal. This order approves the rule change.

I. Description

The proposal codifies, without substantive change, various requirements that the NASD has implemented, pursuant to Commission approval, since the OTCBB was launched as a pilot program on June 1, 1990. Specifically, these requirements are included in the following Rule 19b–4 NASD filings approved by the Commission: (1) File No. SR–NASD–88–19 (as amended), detailing the basic operational requirements for the OTCBB;[4] (2) File No. SR–NASD–90–37, expanding by one-half hour the quotation-update period applicable to market makers in foreign/ADR issues;[5] (3) File No. SR–NASD–91–12, establishing a firm quote requirement for all priced bids/offers in domestic equity securities; and (4) File No. SR–NASD–91–38, establishing the parameters for an inside bid-ask calculation.[6] Additionally, the codification references two recently approved regulatory initiatives affecting the OTCBB and participating member firms: (1) File No. SR–NASD–92–48, concerning real-time trade reporting requirements for OTC equity securities;[7] and (2) File No. SR–NASD–93–17, revising the minimum quotation size requirements for OTCBB market makers.[8] The present proposal provides that these initiatives will be published, respectively, in Part XIII of Schedule D to the NASD By-Laws and Section 5 of Schedule H to the NASD By-Laws.

II. Discussion

The Commission believes that the proposed rule change is consistent with sections 15A(b) (6) and (11) of the Act. Section 15A(b)(6) requires, in pertinent part, that NASD rules be designed to promote just and equitable principles of trade, to foster

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] Securities Exchange Act Release No. 33052 (October 15, 1993), 58 FR 54389 (October 21, 1993).

[4] Securities Exchange Act Release No. 27975 (May 30, 1990), 55 FR 23161 (June 6, 1990).

[5] Securities Exchange Act Release No. 28404 (August 31, 1990), 55 FR 37791 (September 3, 1990). The codification provides that, with respect to a priced bid and/or offer entered into OTCBB for a foreign equity security or an ADR, a market maker may update quotation entries twice daily (once between 8:30 a.m. and 9:30 a.m. ET, and once between noon and 21:30 p.m. ET).

[6] For any equity security quoted in the OTCBB, an inside bid-ask calculation (i.e., the highest bid and lowest offer being displayed by market makers registered in a particular security) is available only if the security has at least two registered market makers, each displaying a priced bid and offer. If additional market makers are displaying either one or two-sided quotations, those entries also are factored into the inside calculation. On the other hand, if the basic requirement of two market makers is not satisfied, an indication is generated denoting that no inside calculation is available.

[7] Securities Exchange Act Release No. 32647 (July 16, 1993), 58 FR 39262 (July 22, 1993). The NASD has announced that real-time trade reporting requirements for OTC equity securities would begin on December 20, 1993.

[8] Securities Exchange Act Release No. 32570 (July 1, 1993), 58 FR 36725 (July 8, 1993). File No. SR–NASD–93–17, approved by the Commission, replaced the previous 100-share minimum quote size requirement for OTCBB with a tiered structure for mandatory minimum quote size based on the price of the bid or offer.

cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and in general to protect investors and the public interest. Section 15A(b)(11) requires that the rules of the NASD include provisions governing the form and content of quotations relating to securities sold otherwise than on a national securities exchange and that those rules, among other things, be designed to promote orderly procedures for collecting, distributing, and publishing quotations.

The Commission believes that, because the proposal embodies existing operational requirements that have been in place but, until now, have not been codified as NASD rules, the proposal should facilitate NASD members' efforts to research pertinent requirements by referencing a discrete section of the NASD Manual. Thus, the codification should facilitate members' ability to comply with the requirements since they will be in a readily accessible form. Moreover, the codification should promote orderly procedures for collecting, distributing, and publishing OTCBB quotations since those procedures now will be found in the NASD Manual. In sum, the Commission believes the proposed codification should facilitate the NASD's administration of and member firms' compliance with the operational requirements that are unique to the OTCBB, thereby furthering the purposes of sections 15A(b) (6) and (11) and the Act in general.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[9] that the proposed rule change (SR–NASD–93–56) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[10]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–742 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

[9] 15 U.S.C. 78s(b)(2) (1988).

[10] 17 CFR 200.30–3(a)(12) (1991).

[Release No. 34–33437; File No. SR–NYSE–93–37]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to Amendments to Rules 450 ("Restrictions on Giving of Proxies"), 451 ("Transmission of Proxy Material"), 452 ("Giving of Proxies by Member Organizations") and 465 ("Transmission of Interim Reports and Other Material")

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE is herewith filing proposed amendments to NYSE Rules 450, 451, 452 and 465 which will allow designated registered investment advisers to vote proxies and receive proxy and related issuer material in lieu of beneficial owners. The text of these rules follows:

Italics reflect additions

Proxies

(Rules and Policies Administered by Marketing Division.)

Applicability of proxy rules—Rules 450 to 460 [¶ 2450–2460], inclusive, apply to both listed and unlisted securities, unless the context otherwise limits application.

The term "unregistered company" as used in Rule 456 to 459 [¶ 2456–2459] means a company not required to conform to the proxy rules of the Securities and Exchange Commission in the solicitation of proxies with respect to its securities.

The term "member" as used in connection with Rules 456 to 459 [¶ 2456–2459] includes a member, allied member, member firm, member corporation and employee thereof.

The term "investment adviser" as used in Rules 450, 451, 452 and 465 [¶ 2450, 2451, 2452, 2465] may include a registered broker-dealer.

Restriction on Giving of Proxies

Rule 450. No member organization shall give or authorize the giving of a proxy to vote stock registered in its name, or in the name of its nominee, except as required or permitted under the provisions of Rule 452 [¶ 2452], unless such member organization is the beneficial owner of such stock. Notwithstanding the foregoing,

(1) Any member organization designated by a named fiduciary as the investment manager of stock held as assets of an ERISA Plan that expressly grants discretion to the investment manager to manage, acquire, or dispose of any plan asset and which has not expressly reserved the proxy voting right for the named fiduciary may vote the proxies in accordance with its ERISA Plan fiduciary responsibilities; *and*

(2) any person registered as an investment adviser under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner to vote the proxies for stock which is in the possession or control of the member organization, may vote such proxies.

Transmission of Proxy Material

Rule 451.(a) Whenever a person soliciting proxies shall furnish a member organization:

(1) copies of all soliciting material which such person is sending to registered holders and

(2) satisfactory assurance that he will reimburse such member organization for all out-of-pocket expenses, including reasonable clerical expenses, incurred by such member organization in connection with such solicitation,

Such member organization shall transmit to each beneficial owner of stock which is in its possession or control or *to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock to receive soliciting material in lieu of the beneficial owner,* the material furnished; and

(b) such member organization shall transmit with such material either:

(1) a request for voting instructions and, as to matters which may be voted without instructions under Rule 452 [¶ 2452], a statement to the effect that, if such instructions are not received by the tenth day before the meeting, the proxy may be given at discretion by the owner of record of the stock; provided, however, that such statement may be made only when the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner,* at least fifteen days before the meeting. When the proxy soliciting material is transmitted to the beneficial owner of the stock *or to the beneficial owner's designated investment adviser registered under the Investment Advisers Act of 1940* twenty-five days or more before the meeting, the statement accompanying such material shall be to the effect that the proxy may be given fifteen days before the meeting at the discretion of the owner of record of the stock; or

(2) a signed proxy indicating the number of shares held for such beneficial owner and

bearing a symbol identifying the proxy records of such member organization, and also a letter informing the beneficial owner *or the beneficial owner's designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner,* of the necessity for completing the proxy form and forwarding it to the person soliciting proxies in order that the shares may be represented at the meeting.

This rule shall not apply to beneficial owners outside the United States.

. . . Supplementary Material:

.10 Annual reports to be transmitted.—The annual report shall be transmitted to beneficial owners *or to beneficial owners' designated investment advisers registered under the Investment Advisers Act of 1940 who exercise investment discretion pursuant to an advisory contract for such beneficial owners* under the same conditions as those applying to proxy soliciting material under Rule 451 even though it is not proxy-soliciting material under the proxy rules of the Securities and Exchange Commission.

.60 Duty to transmit even when requested not to.—The proxy material must be sent to a beneficial owner even though such owner has instructed the member organization not to do so, *unless the beneficial owner has instructed the member organization in writing to send such material to a designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner.*

Rule 452 Giving Proxies by Member Organization

Voting procedure without instructions

A member organization which has transmitted proxy soliciting material to the beneficial owner of stock *or to an investment adviser registered under the Investment Adviser Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated in writing by the beneficial owner of such stock to receive soliciting material in lieu of the beneficial owner* and solicited voting instructions in accordance with the provisions of Rule 451 [¶ 2451], and which has not received instructions from the beneficial owner or *from such designated registered investment adviser* by the date specified in the statement accompanying such material, may give or authorize the giving of a proxy to vote such stock, provided the person in the member organization giving or authorizing the giving of the proxy has no knowledge of any contest as to the action to be taken at the meeting and provided such action is adequately disclosed to stockholders and does not include authorization for a merger, consolidation or any other matter which may affect substantially the rights or privileges of such stock.

. . . Supplementary Material:

Giving a Proxy To Vote Stock

.10 When member organization may vote without customer instructions.—Rule 452, above, provides that a member organization may give a proxy to vote stock provided that:

(1) It has transmitted proxy soliciting material to the beneficial owner of stock *or to an investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for the beneficial owner and has been designated by the beneficial owner to receive such material* in accordance with Rule 451 [¶ 2451], and

(2) it has not received voting instructions from the beneficial owner *or from the beneficial owner's designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner,* by the date specified in the statement accompanying such material, and

(3) [No change in text]

Transmission of Interim Reports and Other Material

Rule 465. A member organization, when so requested by a company, and upon being furnished with:

(1) copies of interim reports of earnings or other material being sent to stockholders, and

(2) satisfactory assurance that it will be reimbursed by such company for all out-of-pocket expenses, including reasonable clerical expenses, shall transmit such reports or material to each beneficial owner of stock of such company held by such member organization and registered in the name other than the name of the beneficial owner *unless the beneficial owner has instructed the member organization in writing to transmit such reports or material to a designated investment adviser registered under the Investment Advisers Act of 1940 who exercises investment discretion pursuant to an advisory contract for such beneficial owner.*

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule amendments is to provide beneficial owners of stock with the ability to have investment advisers registered under the Investment Advisers Act of 1940 who exercise investment discretion for their account(s) pursuant to an advisory contract and who have been designated in writing by the beneficial owners to receive proxy materials and to vote proxies on behalf of such beneficial owners. The proposed rule amendments will also allow the designated registered investment advisers to receive annual reports and other related material. This would include both member organizations of the NYSE and other entities registered as investment advisers.

Currently, Exchange rules prohibit a member organization from voting proxies, on a discretionary basis, on securities held in its custody unless the securities are beneficially owned by the member organization, the beneficial owner has failed to provide the member organization with voting instructions and the subject of the vote is nonsubstantive, or the member organization is the investment manager for an ERISA account.

Further, Exchange rules require transmission of proxy and related issuer materials, as well as proxy voting instructions, to each beneficial owner of stock held in the member organization's possession and control. Rule 451.60 explicitly requires that proxy material be sent to a beneficial owner even though such owner has instructed the member organization not to do so.

A number of member organizations and the Investment Adviser Committee of the Securities Industry Association ("SIA") represented to the Exchange that many of their customers who have their accounts managed by investment advisers do not want to receive proxy related information and annual reports or vote the proxy. These member organizations have indicated that their customers would rather have the professionals, whom they pay to manage their accounts, represent their interests relative to the companies in which they own stock because the professionals are better qualified.

Also, banks, investment advisers and broker/dealers who are not subject to Exchange rules may receive proxy material and vote proxies on behalf of their customers in accordance with fiduciary obligations set forth by contractual arrangement.

The amendments to Exchange Rules 450, 451, 452 and 465 will permit investment advisers who exercise investment discretion pursuant to an advisory contract and who have been designated in writing by the beneficial owner, to receive proxy soliciting materials, annual reports and other related material and to vote proxies in lieu of the beneficial owners of securities. The term investment adviser is defiend to include a registered broker-dealer (*e.g.*, a member organization).

The proposed rule change will not diminish a beneficial owner's rights to receive proxy related materials and to vote proxies. Rather, it will give beneficial owners the option to designate their investment adviser as the person to receive such materials and to vote proxies. In addition, it will enable member organizations to comply with customer desires concerning transmission of proxy materials and voting proxies.

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(5) of the Securities Exchange Act of 1934 which requires that the rules of the Exchange be designed to prevent fraudulent and manipulative acts, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and; in general, to protect the investing public, in that it establishes standards for investment advisers to receive proxy and related material and to vote proxies, thereby meeting customer needs while providing appropriate regulatory safeguards.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited, and does not intend to solicit, comments regarding this proposed rule change. The Exchange has not received any unsolicited written comments from members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) by order approve the proposed rule change, or

(B) institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–37 and should be submitted by February 2, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–687 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33411; International Series Release No. 627; File No. SR–OCC–92–29]

Self–Regulatory Organizations; the Options Clearing Corp.; Order Approving a Proposed Rule Change Relating to Delivery-Versus-Payment Settlement Procedures

January 4, 1994.

On September 17, 1992, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–92–29) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] concerning delivery-versus-payment ("DVP") settlement procedures. Notice of the proposal appeared in the **Federal Register** on December 14, 1992, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

OCC is amending its Rule 1606A to modify its DVP settlement procedures. First, the proposal clarifies that a clearing member that elects to settle using DVP procedures in Rule 1606A is not discherged from its obligation to U.S. dollars or to deliver foreign currency in settlement of the exercise of foreign currency options until the earlier of the time when (i) the clearing member's agent bank irrevocably pays U.S. dollars or delivers foreign currency to OCC's correspondent bank on behalf of the clearing member of (ii) OCC's correspondent bank irrevocably credits OCC's account with the U.S. dollars or the foreign currency deliverable by the clearing member's agent bank whether or not the clearing member's agent bank has paid U.S. dollars or delivered foreign currency to OCC's correspondent bank. Second, the proposal emphasizes the conditional nature of OCC's obligation in the DVP settlement process. OCC is obligated to cause its correspondent bank to deliver the quantity of U.S. dollars or foreign currency payable by OCC only against receipt from the agent bank of the quantity of U.S. dollars or foreign currency payable to OCC. Finally, the proposal clarifies that OCC's delivery obligation is to the party designated in the DVP authorization, which may or may not be the clearing member's agent bank.

II Discussion

The Commission believes that the proposal is consistent with the Act and in particular section 17A of the Act.[3] Sections 17A(b)(3) (A) and (F) of the Act[4] require that a clearing agency be organized and its rules designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible.

The proposal clarifies certain DVP settlement procedures and describes with more precision when a clearing member is discharged from its delivery and payment obligations in foreign currency options. It also clarifies OCC's payment and delivery obligations in connection with DVP settlement. In particular, the proposal clarifies that OCC's obligation arises only after the clearing member's agent bank fulfills its obligation to OCC's correspondent bank.

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[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31566 (December 4, 1992), 57 FR 59190.

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

The Commission believes that this effort by OCC to clarify the terms of DVP settlement should add certainty to the settlement process and should provide an added measure of protection for OCC. Because the rule change should further enable OCC to comply with its statutory obligations to provide prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds, the Commission believes that approval of the rule change is warranted.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly with section 17A of the Act,[5] and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the above-mentioned proposed rule change (File No. SR–OCC–92–29) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–743 Filed 1–11–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Research, Engineering and Development Advisory Committee Flight Service Technology Subcommittee Notice of Meeting; Correction

AGENCY: Federal Aviation Administration, USDOT.

ACTION: Correction.

SUMMARY: On page 59 FR 646 in the issue of Wednesday, January 5, 1994, make the following correction: The time published for the January 28 Research, Engineering and Development Advisory Committee, Flight Service Technology Subcommittee meeting was 10 a.m. This should be changed to read 9:30 a.m.

Dated: January 7, 1994.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–774 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

Research, Engineering and Development Advisory Committee

Pursuant to section 10(A)(2) of the Federal Advisory Committee Act (Pub. L. 92–362; 5 U.S.C. app. I), notice is hereby given of a meeting of the Federal Aviation Administration (FAA) Research, Engineering and Development (R,E&D) Advisory Committee to be held Friday, February 4, 1994, at 10 a.m. The meeting will take place at the Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC, in the Round Room on the tenth floor.

The agenda for this meeting will include subcommittee reports on: Global Navigation Satellite System Technology; Open Systems Architecture; Synthetic Vision; and Security R&D. Time permitting, brief updates on subgroup activities concerning Flight Service Technology, Airport Investment Criteria, Compatible Land Use, and Aircraft Safety will also be provided.

Attendance is open to the interested public but limited to space available. With the approval of the Committee Chairman, members of the public may present oral statements at the meeting. Persons wishing to present oral statements, obtain information, or plan to access the building to attend the meeting should contact Ms. Jan Peters, ASE–3, at (202) 287–8543, in the Office of the Associate Administrator for System Engineering and Development, 800 Independence Avenue, SW., Washington, DC 20591. Members of the public may present a written statement to the Committee at any time.

Issued in Washington, DC, on January 6, 1994.

Martin T. Pozesky,

Executive Director, Research, Engineering and Development Advisory Committee.

[FR Doc. 94–775 Filed 1–11–94; 8:45 am]

BILLING CODE 4910–13–M

UNITED STATES INFORMATION AGENCY

U.S. Advisory Commission on Public Diplomacy Meeting

AGENCY: United States Information Agency.

ACTION: Notice.

SUMMARY: A meeting of the U.S. Advisory Commission on Public Diplomacy will be held on January 12 in room 600, 301 4th Street SW., Washington, DC from 10:30 a.m. to 12 p.m.

At 10:30 a.m. the Commission will meet with Mr. Stanley Silverman, Comptroller, USIA, to discuss the Agency's budget. At 11:15 a.m. the Commission will meet with Mr. Robert Powers, Acting Associate Director, Bureau of Policy and Programs, to discuss proposals to create a new Bureau of Information within USIA.

FOR FURTHER INFORMATION CONTACT: Please call Gloria Kalamets, (202) 619–4468, if you are interested in attending the meeting. Space is limited and entrance to the building is controlled.

Dated: January 6, 1994.

Rose Royal,

Management Analyst, Federal Register Liaison.

[FR Doc. 94–693 Filed 1–11–94; 8:45 am]

BILLING CODE 8230–01–M

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[5] 15 U.S.C. 78q–1 (1988).

[6] 15 U.S.C. 78s(b)(2) (1988).

[7] 17 CFR 200.30–3(a)(12) (1991).

Sunshine Act Meetings

Federal Register

Vol. 59, No. 8

Wednesday, January 12, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Wednesday, January 5, 1994.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Consolidation Coal Co.*, Docket No. WEVA 92–922. (Issues include whether the judge erred in finding that Consolidation violated 30 U.S.C. § 813(f) because it refused to allow a miners' walkaround representative to enter an area of its mine which it believed was too dangerous to be inspected.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2706.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: December 23, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 94–914 Filed 1–10–94; 3:55 pm]

BILLING CODE 6735–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Wednesday, January 19, 1994.

PLACE: The Board Room, 5th floor, 490 L'Enfant Plaza, SW., Washington, DC. 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

6241 Safety Study: A Review of Flightcrew-Involved Major U.S. Air Carriers Accidents

6249 Aviation Accident Summary Report: GP Express Airlines, Inc., Beech C–99, N115GP, Shelton, Nebraska, April 28, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382–0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382–6525.

Dated: January 7, 1994.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 94–852 Filed 1–10–94; 11:21 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of January 10, 17, 24, and 31, 1994.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of January 10

Monday, January 10

10:30 a.m.
Briefing on Status of NRC's Agreement States Program (Public Meeting)
(Contact: Richard Bangart, 301–504–3340)

2:00 p.m.
Briefing on NRC Research Program on Low Level Waste (Public Meeting)
(Contact: Nick Costanzi, 301–492–3760)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of January 17—Tentative

Wednesday, January 19

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Amendments to 10 CFR Part 55 on Renewal of Licenses and Requalification Requirements for Licensed Operators (Tentative)
(Contact: Anthony DiPalo, 301–492–3784 or Frank Collins, 301–504–3173)

Week of January 24—Tentative

Monday, January 24

9:30 a.m.
Briefing on Final Report of Regulatory Review Task Force: (Public Meeting)
(Contact: Frank Gillespie, 301–504–1275)

2:00 p.m.
Briefing on Options for Agreement States Compatibility Policy (Public Meeting)
(Contact: Cardelia Maupin, 301–504–2312)

Tuesday, January 25

10:00 a.m.
Briefing on Status of TVA Nuclear Programs (Public Meeting)

1:30 p.m.
Briefing on Activities of the Center for Nuclear Waste Regulatory Analyses (CNWRA) (Public Meeting)
(Contact: Malcolm Knapp, 301–504–3324)

Wednesday, January 26

10:00 a.m.
Briefing by GE on Status of ABWR Application for Design Certification (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by NARUC Nuclear Waste Program Office (Public Meeting)

Thursday, January 27

1:30 p.m.
Periodic Briefing on Operating Reactors and Fuel Facilities (Public Meeting)
(Contact: Bill Bateman, 301–504–1711)

Friday, January 28

10:00 a.m.
Briefing on Progress of Design Certification Review and Implementation (Public Meeting)
(Contact: Dennis Crutchfield, 301–504–1199 or Richard Borchardt, 301–504–1118)

Week of January 31—Tentative

Monday, January 31

10:00 a.m.
Briefing on Plan for Implementation of PRA Working Group Report (Public Meeting)
(Contact: Joe Murphy, 301–492–3980)

3:30 p.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: January 7, 1994.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 94–810 Filed 1–7–94; 4:43 pm]

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Wednesday
January 12, 1994

Part II

Department of Transportation

Federal Aviation Administration

14 CFR Part 121, et al.
Removal of Burn Compound From First-Aid Kits; Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 121, 125, 135

[Docket No. 25154; Amendment No. 121–236; 125–19; 135–47]

Removal of Burn Compound From First-Aid Kits

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comment.

SUMMARY: This amendment revises the regulations concerning first aid kits required on board air carrier, air taxi, and commercial aircraft to remove the burn compound from the list of items required for the kits. This amendment responds to a petition from Air Transport Association, supported by the American Red Cross, that the burn compound be removed from the kits since the use of ice or cold water is the preferred treatment for minor burns. This amendment will relieve affected operators from the expense of having to periodically replace an item in the first aid kits that is not needed.

DATES: Effective date: January 12, 1994. Comments must be received on or before March 14, 1994.

ADDRESSES: Send or deliver comments on the rule in duplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–204), room 916, 800 Independence Avenue, SW., Washington, DC 20591. Comments may be examined in the Rules Docket weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

FOR FURTHER INFORMATION CONTACT: Gary Davis, Regulatory Branch, Air Transportation Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: (202) 267–8096.

SUPPLEMENTARY INFORMATION:

Background

On December 5, 1986, the Air Transport Association (ATA) submitted a petition to delete burn compound (burn ointment) from the first-aid kits required to be carried on each aircraft operated under part 121 of the Federal Aviation Regulations. In the petition ATA noted that the application of ice or cold water is the preferred treatment for minor burns. As part of its supporting data, the petition included a request from Western Airlines to delete burn ointment from their first aid kits. Also included in the petition were copies of instructions from flight manuals for several other airlines in which flight attendants were advised to use ice compresses for the treatment of burns and not to use the burn ointment unless it is requested by the passenger. In addition, ATA stated that burn ointment normally has an expiration date, which requires replacement, inspection, and record-keeping.

On January 21, 1987, ATA submitted a second letter to the docket that transmitted an American Red Cross statement confirming their position that burn ointment retains heat within the wound, causing the wound to actually worsen in some cases. In addition, information provided by the Red Cross indicated that burn ointment must be removed before any other treatment can be applied.

ATA submitted additional information on April 9, 1987, in which it cited the March 1987 ATA Cabin Safety Panel meeting where the subject of first-aid for minor burns was discussed. At that meeting, each panel member present stated that their flight attendants were trained to use cold water or ice rather than burn ointment, unless burn ointment was specifically requested by the passenger. Representatives of most of the major airlines were included in this group, constituting over 80 percent of all the seat miles flown by the major airlines.

By letter dated July 6, 1987, ATA submitted a comment from the School of Nursing at the University of Miami as an additional medical opinion. That letter, from an associate professor, stated that emergency care for burns should begin with stopping the burning process by applying cool water to stop the pain and slow the process of heat damage. This medical opinion also noted that application of ointments, oils, etc., should be avoided.

The petition of ATA was published in the **Federal Register** on February 20, 1987 (52 FR 5309). The comment period closed April 20, 1987. The only comments received on the petition are those cited above.

By letter dated July 6, 1993, ATA petitioned on behalf of its member airlines and similarly situated operators for an exemption from the requirement to carry burn ointment in first aid kits as required by appendix A to part 121. A summary of that petition was published in the **Federal Register** on August 11, 1993, and the comment period closed August 31, 1993 (58FR42752). Two comments were received. The Air Line Pilots Association supports the removal of the ointment from first aid kits and notes that this removal would facilitate maintenance by eliminating the need for purchasing, stocking, record keeping, replacing, and disposing of the ointment. The Association of Flight Attendants (AFA) agrees that the removal of the ointment from first aid kits is an appropriate action; however, the AFA also suggests that the FAA should require an equivalent amount of an antibiotic ointment in its place. AFA adds that more recent information from the American Red Cross suggests that cool water or wet cloths is the first step in treatment, but that ice is not recommended except for minor burns.

The FAA's Analysis of the Petition

The FAA agrees with industry practice. Serious burns can be properly treated only by professionals in a medical facility. Neither burn ointment nor cold water is, by itself, an adequate response to a major burn injury. The intent of the burn ointment requirement has always been to provide relief from minor burns caused by cigarettes or hot beverages.

In the limited situation of treating minor burns aboard an aircraft, cold water is the preferred treatment. This treatment avoids the heat retentive properties of burn ointment. Moreover, if the wound requires further medical treatment, the use of ice or cold water eliminates the need to scrape the wound to remove burn ointment.

Therefore, the FAA has determined that burn ointment should be deleted from the list of items required for first aid kits in parts 121, 125, and 135. Ice or cold water is carried on aircraft operated under part 121 and on aircraft with 20 or more passenger seats operated under parts 125 and 135 to which aircraft the burn ointment requirement applies. This will spare air carriers the unnecessary expense of having to maintain an unneeded item.

Good Cause Justification

In consideration of the fact that burn ointment is not the preferred treatment for minor burns, the requirement to carry burn ointment aboard aircraft is inappropriate. Most types of burn ointment have expiration dates, thus new ointment must be purchased, kits must be opened, the ointment replaced, kit resealed and re-installed, and a record of the action must be made. The cost of this process, with labor being far more expensive than the ointment itself, represents a significant nuisance burden for air carriers and commercial operators. ATA carriers are required to maintain over 10,000 kits. This is an unnecessary cost to the industry for which the consumer derives no benefit. It is clearly in the public interest to delete the requirement.

Since this is a minor amendment in which there is not expected to be any public comment or disagreement from the medical community, the FAA finds that public notice and comment on this amendment is unnecessary. Moreover, because this amendment relieves a requirement, it should be made effective upon publication in the **Federal Register.** Interested persons, however, are invited to submit such comments as they may desire regarding this amendment. Correspondence should identify the docket number and be submitted in duplicate to the address provided above. All communications received on or before the close of the comment period will be considered by the Administrator, and this amendment may be changed in light of comments received. All comments will be available for public review, both before and after the closing date for comments, in the rules docket.

Trade Impact Statement

The FAA finds that this amendment will have no impact on international trade.

Economic Assessment

Because the amendment imposes no cost to operators, the only impact of this amendment is expected to be that carriers will experience some cost savings. Accordingly, the FAA has determined that the impact of this amendment is so minimal that a full regulatory evaluation is not warranted.

Federalism Implications

The regulation adopted herein would not have substantial direct effects on the states, on the relationship between the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this regulation would not have sufficient federalism implications to warrant the preparation of the Federalism Assessment.

Paperwork Reduction

This final rule is expected to produce a minor reduction in the record keeping requirements under parts 121, 125, and 135. The paperwork estimation for those parts will be revised accordingly.

Conclusion

To the extent that this amendment will have an economic effect on the airlines and the general public, it will only be a minor, positive one. Therefore, the FAA has determined that this amendment involves a regulation that is not a significant regulatory action under Executive Order 12866 or significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11034; February 26, 1979). Since no small entities would be affected by the rule, the FAA has determined, and it is certified that under the criteria of the Regulatory Flexibility Act, the rule will not have a significant economic impact, positive or negative, on a substantial number of small entities. The economic impact is so minimal that it does not warrant a full regulatory evaluation.

List of Subjects in 14 CFR Parts 121, 125, 135

Air safety, Air transportation, Aviation safety, Safety, Transportation, Cabin safety, First-aid kits.

The Amendment

Accordingly, parts 121, 125, and 135 of the Federal Aviation Regulations (14 CFR part 121) are amended as follows:

PART 121—CERTIFICATION AND OPERATIONS: DOMESTIC, FLAG, AND SUPPLEMENTAL AIR CARRIERS AND COMMERCIAL OPERATORS OF LARGE AIRCRAFT

1. The authority citation for part 121 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355, 1356, 1357, 1401, 1421–1430, 1472, 1485, and 1502; 49 U.S.C. 106(g) (revised, Pub. L. 97–449, January 12, 1983).

2. In Appendix A to part 121, paragraph (5) is amended by removing the item "Burn compound, ⅛ ounce or an equivalent of other burn remedy, quantity 6" and by moving the remaining six items in the list to the end of the list in paragraph (4).

PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE

3. The authority citation for part 125 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 through 1430, and 1502; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983.)

§ 125.207 [Amended]

4. Section 125.207(a)(1)(iii) is amended by removing the item: Burn compound, ⅛ oz or an equivalent of other burn remedy, quantity 6.

PART 135—AIR TAXI OPERATORS AND COMMERCIAL OPERATORS

5. The authority citation for part 135 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1355(a), 1421 through 1431, and 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983).

§ 135.177 [Amended]

6. Section 135.177(a)(1)(iii) is amended by removing the item: Burn compound, ⅛ oz or an equivalent of other burn remedy, quantity 6.

Issued in Washington, DC on January 5, 1994.

David R. Hinson,

Administrator.

[FR Doc. 94–626 Filed 1–11–94; 8:45 am]

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Wednesday
January 12, 1994

Part III

Department of Transportation

Research and Special Programs Administration

49 CFR Part 173, et al.
Construction of Cargo Tank Motor Vehicles; Final Rule

DEPARTMENT OF TRANSPORTATION

Research And Special Programs Administration

49 CFR Parts 173 and 180

[Docket No. HM–183; Amdt No. 173–212 and 180–2]

RIN 2137–AC37

Construction of Cargo Tank Motor Vehicles; Extension of Compliance Date

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Final rule; extension of compliance date and announcement of a public meeting.

SUMMARY: RSPA is granting an extension for the continued construction of cargo tank motor vehicles to the MC 306, MC 307, MC 312, MC 331, and MC 338 specifications. The date is extended from April 21, 1994 to August 31, 1995. This extension is based on comments received from the Truck Trailer Manufacturers Association, the Heil Co., and members of the Compressed Gas Association. This final rule allows cargo tank manufacturers additional time to implement engineering procedures required for manufacture of cargo tank motor vehicles to the new DOT 406, DOT 407 and DOT 412 specifications and to implement design modifications as a result of changes to the structural integrity calculations in the MC 331 and MC 338 specifications.

DATES: *Effective:* This final rule will become effective on March 14, 1994, unless RSPA receives, by February 11, 1994, comments that illustrate that extension of the compliance date is not in the public interest. Upon receipt of such comments, RSPA will publish a document in the **Federal Register** withdrawing this final rule.

Public meeting: A public meeting will be held on February 7 and 8, 1994. It will begin at 9 a.m. on February 7, 1994.

ADDRESSES: *Written comments:* Comments may be mailed or hand-delivered to the Dockets Unit (DHM–30), Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh St., SW., Washington, DC 20590–0001. Comments should identify the docket and notice number and be submitted in five copies. Persons wishing to receive confirmation of receipt of their comments should include a self-addressed stamped postcard. The Dockets Unit is located in room 8421 of the Nassif Building, 400 Seventh Street, SW., Washington, DC 20590–0001. Telephone: (202) 366–5046. Public dockets may be reviewed between the hours of 8:30 a.m. and 5 p.m., Monday through Friday except Federal holidays.

Public meeting: The public meeting will be held at the U.S. Department of Transportation (Meeting room 2230, Nassif Building), 400 Seventh Street SW., Washington, DC, 20590–0001.

FOR FURTHER INFORMATION CONTACT: Ronald Kirkpatrick, telephone (202) 366–4545, Office of Hazardous Materials Technology, or Jennifer Karim, (202) 366–4488, Office of Hazardous Materials Standards, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001.

SUPPLEMENTARY INFORMATION:

A. Background

RSPA published final rules under Docket Nos. HM–183/HM–183A establishing three new cargo tank specifications designated as DOT 406, DOT 407 and DOT 412 (June 12, 1989, 54 FR 24982; May 22, 1990, 55 FR 21035; September 7, 1990, 55 FR 37028; June 17, 1991, 56 FR 27872). The rules also made changes to the structural integrity calculations for the MC 331 and MC 338 cargo tanks.

To allow manufacturers sufficient time to implement changes in their manufacturing operations, RSPA provided for the continued manufacture of cargo tanks to the MC 306, MC 307 and MC 312 specifications until August 31, 1993. However, as manufacturers began implementing the new requirements, certain technical issues were brought to RSPA's attention. To allow time for resolving these issues, RSPA extended the date that cargo tanks may no longer be constructed to the MC 306, MC 307, MC 312, MC 331 and MC 338 specifications from August 31, 1993 to April 21, 1994 (March 8, 1993, 58 FR 12904).

On March 3, 1993, RSPA published a notice of proposed rulemaking (NPRM) proposing to amend certain requirements for the manufacture, qualification and maintenance of cargo tank motor vehicles (March 3, 1993, 58 FR 12316). The NPRM was in response to petitions for rulemaking received after publication of the final rules. The NPRM addressed certain technical requirements for the construction of the DOT–400 series specfications and the structural integrity calculations in the MC 331 and MC 338 specifications. The comment period for the NPRM closed on June 15, 1993.

A public meeting to address issues raised in the NPRM was held in Chicago on March 24 and 25, 1993. At the meeting, several significantly different views of design engineers and cargo tank manufacturers were identified. Additionally, preliminary results were presented at the public meeting of an advanced structural evaluation (using finite element analysis) of the MC 331 cargo tank which raised questions in regard to stress levels in areas of concentrated loadings.

In response to the NPRM and to issues raised at the public meeting, commenters requested that RSPA provide a one-year continuation for construction of cargo tanks to the MC 306, MC 307, MC 312, MC 331 and MC 338 specifications. The commenters stated that they need time to finalize their engineering designs, develop written specifications, order raw materials, and establish new training requirements. Because of the complexity and impact of issues that will be addressed in the final rule and new concerns raised by the commenters, RSPA is extending the compliance date to August 31, 1995. However, because industry did not request an extension of the provisions specified in § 178.337–6, pertaining to inspection opening or manhole requirements for certain smaller cargo tanks, RSPA is not extending the April 21, 1994 compliance date specified in that section.

RSPA is issuing this extension of the compliance date because we view this as a noncontroversial amendment and do not anticipate any adverse comments. This final rule will be effective March 14, 1994, unless by February 11, 1994, RSPA receives comments that illustrate that extension of the compliance date is not in the public interest. Upon receipt of such comments, RSPA will withdraw this final rule before the effective date by simultaneously publishing two subsequent documents. One document will withdraw this final rule and another will begin a new rulemaking by announcing a proposal to extend the compliance date and establishing a comment period. If no such comments are received, RSPA will publish a document in the **Federal Register** confirming that this final rule will be effective on March 14, 1994.

B. Public Meeting

The process of developing the DOT–400 series cargo tank motor vehicle specifications and of updating the MC 331 and MC 338 cargo tank motor vehicle specifications has extended over more than ten years. During this time, the process has been conducted in accordance with the Administrative Procedure Act, with the attendant advantage of offering ample time for manufacturers and users to comment on proposed changes and to provide alternative means of achieving enhanced safety of cargo tank motor vehicles in hazardous materials service. Some major issues, however, remain unresolved. These issues pertain to structural integrity, accident damage protection, use of dual function pressure relief devices, and ASME certification of low pressure cargo tank motor vehicle manufacturers. Changes endorsed several years ago are now being questioned by some industry members. In addition, RSPA received several petitions for rulemaking raising certain issues not previously addressed.

RSPA will conduct a public meeting, in an effort to resolve these issues. The following issues will be discussed at the times noted:

Date: February 7, 1994 9 a.m. until 12 p.m.

MC 331 and MC 338 Specifications

Structural integrity. Several commenters have expressed concern over the application and combination of loadings used to determine the effective stress at any given point on a cargo tank motor vehicle. Based on industry's experience in design, operation, maintenance and repair of high pressure cargo tank motor vehicles, RSPA solicits information on loading combinations that may be encountered during the operation of these tanks.

DATE: February 7, 1994, 1 p.m. until 5 p.m. and February 8, 1994, 8 a.m. until 5 p.m.

DOT 406, DOT 407 and DOT 412 Specifications

1. *Structural integrity.* Several commenters have expressed concern over the application and combination of loadings used to determine the effective stress at any given point on a cargo tank motor vehicle. Based on industry's experience in design, operation, maintenance and repair of cargo tank motor vehicles, RSPA solicits information on loading combinations that may be encountered during the operation of these tanks.

2. *Accident damage protection.* Several commenters have stated that it is not possible to meet the prescribed accident damage protection requirements. RSPA solicits information on alternative means to provide cargo tank motor vehicles with adequate bottom, rollover, and rear-end protection.

3. *Dual function pressure relief devices.* Several commenters have stated that it is not possible to design dual function pressure relief devices. However, advertisements in trade magazines indicate that such vents are available. RSPA solicits data on the development and availability of dual function pressure relief devices.

4. *ASME certification of low pressure cargo tank motor vehicle manufacturers.* The Cargo Tank Manufacturers Association (CTMA) submitted for RSPA's consideration a quality control program for manufacturers of low pressure DOT 406 cargo tank motor vehicles as an alternative to requiring each manufacturing facility to have ASME Certification. Copies of the CTMA proposal are available in RSPA's Docket Unit. RSPA solicits specific comments on the adequacy of the CTMA proposal; particularly in the areas of manufacturing quality control and independent inspection.

Information received at the public meeting and in response to the NPRM will be used in the development of the final rule under Docket HM–183C. However, RSPA may make certain issues subject to a separate rulemaking action.

C. Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

This rulemaking is exempt from review by the Office of Management and Budget under Executive Order 12866. Although the June 12, 1989 final rule was significant under the regulatory procedures of the Department of Transportation (44 FR 11034), this document is not significant because it does not impose additional requirements and has the effect of extending a compliance date. This rule, in fact, provides regulatory and economic relief in some areas. The original regulatory evaluation of the final rule was not modified because this final rule does not impose additional requirements and does not make substantive changes to the final rule.

Executive Order 12612

This final rule has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 ("Federalism"). The Hazardous Materials Transportation Act contains an express preemption provision (49 App. U.S.C. 1804(a)(4)) that preempts State, local, and Indian tribe requirements on certain covered subjects. Covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; or

(v) The design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

This final rule concerns the manufacturing requirements for packagings represented as qualified for use in the transportation of hazardous materials.

This final rule preempts State, local, or Indian tribe requirements in accordance with the standards set forth above. The HMTA (49 App. U.S.C. 1804(a)(5)) provides that if DOT issues a regulation concerning any of the covered subjects after November 16, 1990, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. That effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. RSPA has determined that the effective date of Federal preemption for these requirements will be 90 days after publication in the **Federal Register**.

Thus, RSPA lacks discretion in this area, and preparation of a federalism assessment is not warranted.

Regulatory Flexibility Act

I certify that this final rule will not have a significant economic impact on a substantial number of small entities. This rule applies to manufacturers of DOT specification cargo tank motor vehicles.

Paperwork Reduction Act

This amendment imposes no changes to the information collection and recordkeeping requirements contained in the June 12, 1989 final rule, which was approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. chapter 35 and assigned control number 2137–0014.

Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN number contained in the heading of this document can be used

to cross-reference this action with the Unified Agenda.

List of Subjects

49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

49 CFR Part 180

Hazardous materials transportation, Motor carriers, Motor vehicle safety, Packaging and containers, Reporting and recordkeeping requirements.

In consideration of the foregoing, title 49, chapter I of the Code of Federal Regulations, is amended as set forth below.

PART 173—SHIPPERS–GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS

1. The authority citation for part 173 continues to read as follows:

Authority: 49 App. U.S.C. 1803, 1804, 1805, 1806, 1807, 1808, 1817; 49 CFR part 1, unless otherwise noted.

§ 173.33 [Amended]

2. In § 173.33, the following changes are made:

a. In paragraph (c)(4), the date "April 21, 1994" is revised to read "August 31, 1995".

b. In paragraph (d)(1), the date "April 21, 1994" is revised to read "August 31, 1995".

PART 180—CONTINUING QUALIFICATION AND MAINTENANCE OF PACKAGINGS

3. The authority citation for part 180 continues to read as follows:

Authority: 49 App. U.S.C. 1803; 49 CFR part 1.

§ 180.405 [Amended]

4. In § 180.405, the following changes are made:

a. In paragraph (b), the date "April 21, 1994" is revised to read "August 31, 1995".

b. In paragraph (c)(1) table, under column 2, the date "April 22, 1994" is revised to read "September 1, 1995."

§ 180.413 [Amended]

5. In § 180.413, in paragraphs (d)(1)(i), (ii) and (iii), the date "April 21, 1994" is revised to read "August 31, 1995".

§ 180.417 [Amended]

6. In § 180.417, in the heading of paragraph (e)(3), the date "April 22, 1994" is revised to read "September 1, 1995".

Issued in Washington, DC on January 6, 1994 under authority delegated in 49 CFR Part 1.

Rose A. McMurray,

Acting Administrator, Research and Special Programs Administration.

[FR Doc. 94–636 Filed 1–11–94; 8:45 am]

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federal register

Wednesday
January 12, 1994

Part IV

Environmental Protection Agency

40 CFR Part 372
Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400082; FRL–4645–6]

RIN 2070–AC47

Addition of Certain Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to add 313 chemicals and chemical categories to the list of toxic chemicals required to be reported on under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 and section 6607 of the Pollution Prevention Act of 1990. The proposed addition of these chemicals and chemical categories is based on their acute human health effects, carcinogenicity or other chronic human health effects, and/or their environmental effects. EPA believes that these chemicals and chemical categories meet the EPCRA section 313(d)(2) criteria for addition to the list of toxic chemicals.

DATES: Written comment on this proposed rule must be received on or before April 12, 1994. The public meeting will take place on March 2, 1994, at 1 p.m. and adjourn by 5 p.m.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Docket Clerk, TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments containing information claimed as confidential must be clearly marked as confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number for this proposal, OPPTS–400082. Unit VI. of this preamble contains additional information on submitting comments containing information claimed as CBI.

The public meeting will be held at the: Environmental Protection Agency, Auditorium, Education Center, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 5101, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202 or Toll free TDD: 800–553–7672, Attention: Docket Number OPPTS–400082.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This proposed rule is issued under sections 313(d) and (e)(1) of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA), 42 U.S.C. 11023. EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using listed toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act, 42 U.S.C. 13106. When enacted, section 313 established an initial list of toxic chemicals that was comprised of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add chemicals to or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA has added to and deleted chemicals from the original statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for submitting petitions. EPA must respond to petitions within 180 days either by initiating a rulemaking or by publishing an explanation of why the petition is denied. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Explanation for Expansion of the EPCRA Section 313 Chemical List

A. General Rationale

The Toxics Release Inventory (TRI), through the public access provisions of EPCRA, has proven to be one of the most powerful forces in empowering the Federal government, State governments, industry, environmental groups, and the general public, to fully participate in an informed dialogue about the environmental impacts of toxic chemicals in the United States.

A major section of EPCRA, which Congress passed in 1986, resulted in the creation of the Toxics Release Inventory. TRI is a publicly available data base that provides quantitative information on toxic chemical releases, transfers, recycling, and disposal. With the collection of this information for the first time in 1987, came the ability for the public, government, and the regulated community to understand the magnitude of chemical emissions in the United States; to compare chemical releases and transfers of chemical wastes among States, industries, facilities, and environmental media; and perhaps most importantly, to assess the need to reduce and where possible, eliminate these releases and transfers. TRI enables all interested in environmental progress to establish credible baselines, to set realistic goals, and to measure progress over time, in meeting those goals. The TRI system has become a neutral yardstick by which progress can be measured by all interested parties.

The original list of chemicals for which reporting was required consisted of 320 chemicals and chemical categories. The list was a combination of the Maryland Chemical Inventory Report List of Toxic or Hazardous Substances and the New Jersey Environmental Hazardous Substance List. The combination of these two lists provided a sound and logical starting point for the national TRI program. Recognizing however that the list would need to be a dynamic one, EPCRA specifically authorizes additions to and deletions from the list. To date, EPA has added 16 chemicals to the list and has deleted 12 chemicals from the list.

With 5 years experience behind the program, EPA, other federal agencies, Congress, and the public have recognized the need to expand the TRI list beyond the original chemicals and chemical categories and beyond the relatively limited reporting universe. (Currently reporting is only required from facilities that fall within the manufacturing Standard Industrial Classification (SIC) codes 20 through 39 that meet certain thresholds).

While the data on the chemicals that are covered have allowed the public and private sectors to be informed and involved in environmental decisionmaking as they never were before, it has become increasingly evident to those same constituents that they have access to information on a relatively small number of important chemicals. Congress has echoed this recognition in the Right-to-Know More bills that were put forward in the 102nd Congress. EPA and State regulatory agencies have integrated TRI information as a critical component in their environmental decisionmaking and in many cases are constrained by the lack of similar information on chemicals of concern not covered by the TRI. While the TRI has been successful in focusing attention on the initial list of chemicals and in many cases fostering emissions reductions and prevention activities, that same focus has highlighted the need to expand beyond that initial list and to include additional chemicals that exhibit similar toxicity characteristics. This proposal is one of the first in a series of actions that EPA plans to use to expand the coverage of the TRI. This first phase will focus on adding chemicals, followed by a second phase that will identify additional facilities for inclusion. EPA is considering a third phase, which would look at modification of the data elements currently required by TRI.

In conjunction with these expansion activities EPA has been considering whether other adjustments are needed in the scope of the TRI program. EPA received petitions from the Small Business Administration and the American Feed Industry Association seeking an exemption for "small sources" (i.e, those facilities that file TRI forms with zero or small release estimates). EPA previously put those petitions out for public comment and, on review, believes there is substantial merit to the general concerns raised in the petitions.

The Agency's plan for proceeding on the small source issue would include the following steps. EPA is examining four options for establishing a small release exemption from the TRI reporting obligation: Cutoffs at zero, 500 pounds, 1,000 pounds, and 5,000 pounds. EPA will provide the public with a report on these four options by the end of January. This analysis will consider what data might not be available at both the national and community level, and the cost savings to the government and to industry of the four exemption levels. EPA plans to hold a public meeting in February for discussion of the report. Based on this feedback, EPA will then design a regulatory strategy that will align the small source issue with final action on today's proposal. The Agency's objective will be to minimize unnecessary data collection and reporting by facilities, including for the chemicals identified in today's proposal.

B. Development of the Chemical Addition Candidates

As a starting point for screening candidates for addition to the toxic chemical list under EPCRA section 313, EPA chose to examine the lists of chemicals regulated or identified, as of concern, under various environmental statutes including: (1) Section 112(b) of the Clean Air Act (CAA) as amended in 1990 (Hazardous Air Pollutants); (2) section 602(b) of the CAA (Class II ozone depleting substances); (3) section 307(a) of the Clean Water Act (CWA) (Priority Pollutant List); (4) Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) Active Ingredients, including Special Review, Canceled/ Denied or Suspended, and Restricted Use Pesticides; (5) section 302 of EPCRA (Extremely Hazardous Substances); (6) section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA); (7) section 3001 of the Resource Conservation and Recovery Act (RCRA) and chemicals listed at 40 CFR 261.33(e) and (f) and Appendix VIII; (8) section 1412 of the Safe Drinking Water Act as amended; (9) certain chemicals subject to the Toxics Substance Control Act (Existing Chemicals); and (10) the State of California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) (List of Chemicals Known to the State to Cause Reproductive Toxicity).

In addition, EPA considered chemicals designated as possible, probable, or known carcinogens in the Monographs of the International Agency for Research on Cancer (IARC) and the 6th Annual Report on Carcinogens of the National Toxicology Program (NTP), U.S. Department of Health and Human Services (DHHS).

From this initial group of substances, EPA excluded chemicals that are already listed on section 313 or are already reportable under one of the EPCRA section 313 categories. For example, "cyanide, total" is listed under section 307(a) of the CWA. This listing is considered to be a subset of the EPCRA section 313 cyanide compounds category and the hydrogen cyanide listing. EPA decided not to propose listing these types of chemicals separately because they are already reportable under one of the existing section 313 categories. To prioritize chemicals for possible addition to EPCRA section 313, EPA applied a human health and ecotoxicity screen and a production volume screen, which are described below. The results of the toxicity screen for a subset of these chemicals were presented at a public meeting on May 29, 1992 (Ref. 4).

Other chemicals were also removed from consideration for this rulemaking because they are the subjects of two recently published EPCRA petition responses. On March 4, 1992, EPA received a petition from Governor Mario M. Cuomo of New York and the Natural Resources Defense Council (NRDC) to add 80 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of EPCRA. All of these chemicals and chemical categories appear on the RCRA list of hazardous wastes under 40 CFR 261.33(f) and as such are a subset of the chemicals screened by EPA. EPA responded to the petition in a proposed rulemaking on September 8, 1992 (57 FR 41020) and in a final rule adding 22 chemicals on November 30, 1993 (58 FR 63500).

On December 3, 1991, EPA received a petition from the NRDC, Friends of the Earth, and the Environmental Defense Fund to add hydrochlorofluorocarbons (HCFCs) to the list of toxic chemicals under section 313 of EPCRA. The HCFCs are listed under section 602(b) of the CAA as Class II ozone depleting substances and as such are a subset of the chemicals screened by EPA. EPA responded to the petition in a proposed rulemaking on June 24, 1992 (57 FR 28159) and in a final rule adding 11 HCFCs on November 30, 1993 (58 FR 63496). An additional 16 HCFCs not added to the TRI list by the November 30, 1993 final rule are proposed for addition in this rulemaking (See Unit IV.B.135. of this preamble).

1. *Toxicity screen.* A toxicity screen is a limited review of readily available toxicity data (e.g., information in data bases and other secondary sources) that is used for a preliminary categorization of a chemical during the process of selecting candidates for possible listing under EPCRA section 313. The toxicity screen is used to identify chemicals for further consideration and does not reflect a final determination for listing a chemical under EPCRA section 313. Such a determination can only be made after a hazard assessment is conducted (See Unit II.B.3. of this preamble). The chemicals identified above were screened for four general effect categories: Acute human health effects, cancer, other chronic human health effects, and ecological effects.

The screening criteria associated with each of the effect areas used in the toxicity screen are discussed in detail in the *Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory (Draft Hazard Assessment Guidelines)*, (Ref. 6). The numerical screening values reflected in

the *Draft Hazard Assessment Guidelines* were developed to capture, in the "sufficient for listing" screening category, the majority of chemicals already listed on various CERCLA and EPCRA lists, and thus known or suspected to be toxic and/or hazardous. These *Draft Hazard Assessment Guidelines* contain guidance for both the screening and hazard assessments of chemicals and are available for review in the docket associated with this rulemaking. This draft document was distributed at a public meeting on May 29, 1992. A final version of these guidelines has not yet been developed. Requests for further information about these draft guidelines should be addressed to the person identified under "FOR FURTHER INFORMATION CONTACT."

Based on the results of this screen, the chemicals were preliminarily placed in one of three screening categories defined in the *Draft Hazard Assessment Guidelines*: "sufficient;" "may be sufficient;" or "insufficient." EPA received comment in response to the *Draft Hazard Assessment Guidelines* that objected to the Agency's use of the terms "sufficient," "may be sufficient," and "insufficient" as titles for the toxicity screening categories. The commenter claimed that these terms are appropriate only for the results of a hazard assessment. The commenter stated that these terms should not be used for screening categories because the toxicity screen only identifies chemicals for further consideration. EPA agrees that the screening categories only reflect a preliminary determination on each chemical, and therefore, to avoid further confusion, will refer to the screening categories as "high priority," "medium priority," and "low priority" to reflect the difference between a toxicity screen and a hazard assessment. These terms will be used throughout this document in reference to the toxicity screening categories. Chemicals that were categorized as "low priority" during the screening process were not considered further as candidates for addition to the EPCRA section 313 list in this rulemaking.

2. *Production volume screen.* EPCRA section 313(f) establishes reporting thresholds related to the amount of a chemical that is manufactured, processed, or otherwise used. The EPCRA section 313 manufacture (includes import) and processing thresholds are 25,000 pounds per facility per year. The otherwise use threshold is 10,000 pounds per facility per year). EPA anticipates that the addition of chemicals manufactured, imported, processed, or used in quantities less than the EPCRA section 313 volume thresholds would not result in the submission of TRI reports. Thus, EPA elected to initially focus its attention on chemicals likely to yield reports. Accordingly, EPA also screened potential candidates for the likelihood of meeting the EPCRA section 313 volume thresholds. Chemicals for which there were no data to indicate that the chemical is likely to meet or exceed the EPCRA section 313 volume thresholds were not considered further as possible candidates for addition to the section 313 list at this time.

Production volume data on each of the chemicals were gathered primarily from two sources: (1) The TSCA Chemical Update System (1990); and (2) the FIFRA Section 7 Tracking System. On June 12, 1986 (51 FR 21438), EPA promulgated a rule pursuant to section 8(a) of TSCA which required manufacturers and importers to report every 4 years, subject to certain threshold production quantities and other exclusions, the quantities of chemicals they produced (40 CFR part 710). Among the exceptions to the inventory update rule (IUR) reporting were polymers, biological products, inorganic substances, and chemicals produced at less than 10,000 pounds, all with certain limitations. Data from the IUR is maintained in EPA's TSCA Chemical Update System (CUS).

Section 7 of FIFRA provides the Agency with annual production information on registered pesticides. EPA regulations implementing FIFRA section 7 (40 CFR part 167) require all manufacturers of pesticidal products (which includes formulated pesticides, active ingredients, and devices) to submit an annual report detailing the amount of each type of pesticidal product manufactured, sold and distributed during the past year, and estimated to be manufactured, imported, and processed during the current year (40 CFR 167.85).

For industrial inorganic compounds not subject to FIFRA or available on CUS, information from the public literature was used, supplemented with information from companies.

3. *Hazard evaluation.* EPA conducted a hazard evaluation for each of the addition candidates that resulted from the above analyses and determined based on the weight-of-the evidence if there was sufficient evidence to establish that the candidate chemical met the statutory criteria for addition to EPCRA section 313. To make this determination, EPA senior scientists reviewed readily available toxicity information on each chemical for each of the following effect areas: acute human health effects; cancer; other chronic human effects; and environmental effects. In addition, EPA reviewed, where appropriate, information on the environmental fate of the chemical.

The hazard assessment was conducted in accordance with relevant EPA guidelines for each adverse human health or environmental effect (e.g., the appropriate guidelines for hazard evaluation of chemical carcinogens and for the type of evidence required to substantiate a determination of carcinogenicity are the *Guidelines for Carcinogen Risk Assessment* (Ref. 2)). The guidelines that were used for each effect are Agency guidelines that are identified in the *Draft Hazard Assessment Guidelines* (Ref. 6). During this assessment the severity and significance of the effects induced by the chemical, the dose level causing the effect, and the quality and quantity of the available data, including the nature of the data (e.g., human epidemiological, laboratory animal, field or workplace studies) and confidence level in the existing data base, were all considered. Where a careful review of the scientific data for a particular chemical results in a high level of confidence that the chemical causes an adverse effect at relatively low dose levels, EPA believes that this evidence is sufficient for listing the chemical under section 313. On the other hand, where a review of the scientific data indicates that the chemical will cause various adverse effects at moderate dose levels, EPA believes, based on the total weight-of-the-evidence, that there is sufficient evidence for listing the chemical under EPCRA section 313.

EPA also conducted an analysis of exposure for each chemical or chemical category proposed for listing under EPCRA section 313(d)(2)(A) (i.e., based on adverse acute human health effects), and, where appropriate, under section 313(d)(2)(C) (i.e., based on adverse ecological effects). For chemicals listed under EPCRA section 313(d)(2)(A), this analysis included estimated concentrations of the chemical at or beyond the facility site boundary through the use of estimated releases and modelling techniques. EPA requests comment on its approach in considering exposure as a part of its evaluation of these chemicals under sections 313(d)(2)(A) and (C).

Based on this analysis for each of the chemicals proposed for listing, EPA determined that one or more of the statutory criteria were met. A discussion of EPA's interpretation of the EPCRA section 313 criteria is given in Unit III.

of this preamble. A discussion of the evidence supporting EPA's proposal to add each of the chemicals to EPCRA section 313 is presented in Unit IV. of this preamble and in the record supporting this proposed rule.

4. *Other considerations.* EPA excluded certain chemicals and chemical categories from consideration for proposed listing under EPCRA section 313 in this rulemaking for a number of reasons. Some chemicals were identified only as environmental degradation products rather than chemicals that are manufactured, processed, or otherwise used by a facility. These chemicals will only be present in the environment as a result of the release into the environment of precursor chemicals. If the degradation product meets the toxicity criteria of EPCRA section 313, the precursor chemical may be considered for listing on EPCRA section 313. The degradation product would not be considered for listing on EPCRA section 313 because a facility subject to EPCRA section 313 is only required to file a TRI report for a chemical that it manufactures, processes, or otherwise uses, within the facility boundaries. Therefore, EPA does not believe that it is appropriate to consider listing such chemicals at this time.

Some of the lists reviewed by EPA included listings that represented waste streams from particular processes. These waste streams, such as coke oven emissions, are not discrete chemicals or chemical categories, but contain a wide range of chemicals, many of which are currently listed individually on EPCRA section 313. The focus of this rulemaking is on the addition of specific chemicals and chemical categories and, as such, EPA believes that these waste streams are inappropriate for listing under EPCRA section 313 at this time.

EPA also excluded chemicals whose only identified toxicity concern was a result of their status as a volatile organic compound (VOC). VOCs contribute to the formation of tropospheric ozone which causes a number of health-related and environmental problems. EPA continues to believe that VOCs meet the listing criteria of EPCRA section 313. However, EPA intends to address the issue of how VOCs should be listed on EPCRA section 313 separately. Therefore, chemicals whose only identified toxicity concern is due to their status as VOCs were excluded from consideration at this time.

EPA also identified chemicals that are routinely manufactured, processed, or otherwise used at levels far below the reporting thresholds of EPCRA section 313. These chemicals are not expected to ever be manufactured, processed, or otherwise used in quantities at or above these reporting thresholds. In this proposed rulemaking, EPA is attempting to add chemicals to EPCRA section 313 that are manufactured, processed, or otherwise used in quantities greater than the EPCRA section 313 volume thresholds and thus would result in the submission of TRI reports. Consequently, chemicals that are manufactured, processed, or otherwise used in quantities less than the EPCRA section 313 volume thresholds were excluded from further consideration at this time, because no reports would be filed under EPCRA section 313 for such chemicals.

Some of the chemicals that are manufactured, processed, or otherwise used below the EPCRA section 313 activity thresholds, particularly those chemicals that are manufactured in trace amounts in waste streams, are highly toxic at very low dose levels and have physical, chemical, or biological properties that make the chemicals persist for extended periods in the environment, and bioaccumulate through the food chain. Persistent bioaccumulative toxic chemicals, such as dioxins, are of particular concern in ecosystems such as the Great Lakes Basin due to the long retention time of the individual lakes and the cycling of the chemical from one component of the ecosystem to another. EPA may reconsider in the future the issue of listing such chemicals in a manner which would result in the submission of TRI reports. EPA requests comment on the following: Is it appropriate to list such chemicals on EPCRA section 313? If EPA were to add this type of chemical to EPCRA section 313, what modifications to EPCRA section 313, such as lowering the reporting thresholds and modifying the *de minimis* in mixture exemptions (40 CFR part 372.38), would be required to insure that release and transfer information would be collected?

III. EPCRA Section 313 Statutory Criteria

EPCRA section 313(d)(2) sets out criteria for adding chemicals to the list of chemicals subject to reporting under section 313(a). For a chemical (or category of chemicals) to be added to the EPCRA section 313(c) list of toxic chemicals, the Administrator must determine whether, in her judgement, there is sufficient evidence to establish any one of the following:

(A) The chemical is known to cause or can reasonably be anticipated to cause significant adverse acute human health effects at concentration levels that are reasonably likely to exist beyond facility site boundaries as a result of continuous, or frequently recurring, releases.

(B) The chemical is known to cause or can reasonably be anticipated to cause in humans--

(i) cancer or teratogenic effects, or

(ii) serious or irreversible--

(I) reproductive dysfunctions,

(II) neurological disorders,

(III) heritable genetic mutations, or

(IV) other chronic health effects.

(C) The chemical is known to cause or can reasonably be anticipated to cause, because of--

(i) its toxicity,

(ii) its toxicity and persistence in the environment, or

(iii) its toxicity and tendency to bioaccumulate in the environment, a significant adverse effect on the environment of sufficient seriousness, in the judgement of the Administrator, to warrant reporting under this section.

To remove a chemical from the section 313(c) list, the Administrator must determine that there is not sufficient evidence to establish any of the criteria described above as required by EPCRA section 313(d)(3). Thus, the criteria for listing or delisting a chemical are identical. However, whereas EPA can add a chemical if only one of the criteria is met, it can only delete a chemical if none of the criteria are met.

To ascertain whether there is sufficient or insufficient evidence to determine that the statutory criteria are met for listing a chemical, EPA conducts a hazard assessment on the chemical and determines based on the weight-of-the-evidence, whether the chemical can reasonably be anticipated to cause any of the adverse effects specified in EPCRA section 313(d)(2). The hazard analysis is described above in Unit II.B.3. of this preamble. EPA's interpretation of the specific statutory criteria follows.

1. *Section 313(d)(2)(A) (acute human health effects).* To determine whether the section 313(d)(2)(A) "acute human health effects" criterion is met, EPA must examine the adverse effects associated with the chemical, the "concentration levels" which would cause acute human health effects, and the likelihood of such levels existing "beyond facility site boundaries as a result of continuous, or frequently recurring, releases." Such a determination may include, among other factors, consideration of production processes, workplace procedures, pollution controls, and the volume and pattern of production, use, and release, as well as other chemical-

specific factors. EPA believes that to make the section 313(d)(2)(A) determination it must demonstrate that a chemical can reasonably be anticipated to be released in quantities that result in concentration levels, or within a reasonable margin of exposure of the concentration levels, that would be expected to cause acute human health effects beyond the facility site boundary. The margin of exposure applied is dependent upon the type of hazard data (e.g., data in animals versus human) and the confidence in this hazard data base for acute effects (e.g., sufficiency of the hazard data). However, EPA is not required to make a facility-specific finding, nor is it necessary for EPA to demonstrate that these concentration levels or effects occur at or near any particular facility (Ref. 1). Furthermore, "EPA may, but is not required to, conduct new studies or risk assessments or perform site-specific analyses to establish actual ambient concentrations or to document adverse effects at any particular location" (Ref. 1). Nor is EPA limited to considering concentration levels and potential acute human health effects at the "fenceline." Rather, the phrase "beyond facility site boundaries" reflects Congress' recognition that the "highest concentration to which persons outside the site boundary may be exposed" could occur at "any point outside the boundaries of the site on which the facility is located," including, for example, where an air emissions plume cools and settles to the ground (Ref. 1). Therefore, EPA believes that to make a finding under EPCRA section 313(d)(2)(A), the Agency may estimate concentrations at or beyond the facility site boundary through the use of estimated releases and modelling techniques. The term "continuous or frequently recurring releases" is included only to distinguish routine releases that are a normal consequence of the operation of a facility from the episodic and accidental releases that are subject to EPCRA section 304 (Ref. 1). As such, EPA believes that episodic and accidental releases are not pertinent in a determination that a chemical meets the section 313(d)(2)(A) criterion.

2. *Section 313(d)(2)(B) (chronic human health effects).* In contrast to the section 313(d)(2)(A) criterion, section 313(d)(2)(B) does not require consideration of either the nature and frequency of releases or concentration levels at facility site boundaries. Rather, section 313(d)(2)(B) is focused solely on whether the chemical is known or can reasonably be anticipated to cause cancer, teratogenicity, or other serious or irreversible chronic human health effects. Consequently, EPA believes that it is sufficient to consider only the toxicity of the subject chemical to make the section 313(d)(2)(B) determination.

3. *Section 313(d)(2)(C) (environmental effects).* The section 313(d)(2)(C) criterion requires EPA to consider a chemical's potential to cause significant adverse effects on the environment. The statute directs EPA to base its determination on a consideration of the toxicity of the chemical, either alone or in combination with the persistence of the chemical or the potential for the chemical to bioaccumulate. Congress intended that EPA consider a broad range of environmental effects when making a determination under section 313(d)(2)(C).

> In determining what constitutes a significant adverse effect on the environment...the Administrator should consider the extent to which the toxic chemical causes or can reasonably be anticipated to cause any of the following adverse reactions, even if restricted to the immediate vicinity adjacent to the site: (1) Gradual or sudden changes in the composition of animal life or plant life, including fungal or microbial organisms in an area. (2) Abnormal number of deaths of organisms (e.g. fish kills). (3) Reduction of the reproductive success or the vigor of a species. (4) Reduction in agricultural productivity, whether crops or livestock. (5) Alterations in the behavior or distribution of a species. (6) Long lasting or irreversible contamination of components of the physical environment, especially in the case of groundwater, and surface water and soil resources that have limited self-cleansing capability (Ref. 1).

EPA believes that the environmental effects criterion inherently contains a limited exposure component because of the statutory requirement for EPA to find a "significant adverse effect on the environment of sufficient seriousness, in the judgment of the Administrator, to warrant reporting" under EPCRA section 313. Unlike section 313(d)(2)(B), where EPA only has to determine whether certain kinds of effects are "known or reasonably anticipated" to occur, section 313(d)(2)(C) requires EPA to find the effect to be of sufficient seriousness to warrant reporting, which implies the possibility that under certain circumstances, a chemical that could theoretically cause a significant adverse effect on the environment is unlikely to cause one of a magnitude to warrant listing.

The extent to which exposure is factored into EPA's determination depends upon the inherent toxicity of a chemical, and a variety of other chemical-specific characteristics. EPA believes that when a chemical is inherently extremely toxic, that is, it is toxic at very low dose levels, an exposure assessment is not necessary because even minimal releases of such a chemical may reasonably be anticipated to result in significant adverse environmental effects. In such cases, EPA could rely on toxicity alone under section 313(d)(2)(C)(i) as a basis for listing.

However, for chemicals that exhibit adverse effects upon the environment solely based on toxicity at moderately low doses, EPA believes that consideration of potential exposure is warranted because minimal releases may not result in significant adverse effects upon the environment. These exposure considerations may include, among other factors, pollution controls, the volume and pattern of production, use, and release, environmental fate, as well as other chemical-specific factors, and the use of estimated releases and modelling techniques.

EPCRA sections 313(d)(2)(C)(ii) and (iii) allow EPA to consider the impacts of other characteristics of a chemical. Where a chemical exhibits significant adverse effects in the environment based on toxicity and persistence or toxicity and bioaccumulation at very low to moderately low dose levels, EPA believes that exposure considerations are not required in addition to those considerations implicit in evaluation of the chemical's potential for persistence and bioaccumulation. This is because even minimal releases of the chemical may result in elevated concentrations in the environment or in an organism that can reasonably be anticipated to result in significant adverse effects. This reflects the increased likelihood that there will be exposure to a chemical that persists due to its longer residence time in the environment. Repeated minimal releases of a persistent chemical may result in elevated concentrations in the environment. For a chemical that bioaccumulates, even low levels of the chemical in the environment may result in increased concentrations in an organism. Therefore, evaluation of a chemical's persistence or bioaccumulation potential may be considered the functional equivalent of an exposure analysis.

In addition, for chemicals which induce well-established adverse effects, e.g. chlorofluorocarbons, which cause stratospheric ozone depletion, EPA believes that an exposure assessment is unnecessary. EPA believes that these chemicals typically do not affect solely one or two species but rather affect changes across a whole ecosystem. EPA believes that these effects are of sufficient seriousness that additional exposure considerations are not warranted because of the scope of their impact and the well-documented evidence supporting the adverse effects. EPA requests comment on its approach for considering exposure as a part of its evaluation for listing of these chemicals under section 313(d)(2)(C).

In Unit IV.B. of this preamble, EPA identifies each of the chemicals proposed for addition to EPCRA section 313 and the specific statutory criteria upon which the proposed addition is based.

IV. EPA's Technical Review

A. Introduction

Data on the chemicals and chemical categories were reviewed for evidence indicating adverse acute and chronic toxicity, carcinogenicity, mutagenicity, developmental and reproductive effects, neurotoxicity, and environmental effects. Information on the environmental fate was also reviewed.

For each chemical proposed for addition to EPCRA section 313 in this rulemaking, EPA conducted an extensive hazard assessment, and, where appropriate, an analysis of exposure, to determine whether the chemical met one or more of the EPCRA section 313(d)(2) listing criteria. This hazard assessment is discussed in detail in Unit II.B.3 of this preamble. Only after this careful review was a final determination made as to whether one of the EPCRA section 313(d)(2) listing criteria was met for each individual chemical or chemical category proposed for listing below. EPA need only show that one of the listing criteria is met in order to list a chemical or chemical category under EPCRA section 313. The information summarized below for each chemical or chemical category represents the key data elements that lead EPA to believe that there is sufficient evidence to establish that one of the section 313(d)(2) listing criteria is met. A more extensive review of the existing data base for each chemical or chemical category proposed for listing, which reflects the entire weight-of-the-evidence considered by EPA, is contained in following support documents: *Support Document for the Addition of Chemicals from Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) Active Ingredients to EPCRA Section 313* (Ref 3); *Physical Properties and Environmental Fate of Some TRI Expansion Chemicals* (Ref. 5); *Support Document for the Addition of Chemicals from Section 112(b) of the Clean Air Act Amendments and Chlorinated Paraffins to EPCRA Section 313* (Ref. 7); and *Support Document for the Health and Ecological Toxicity Review of TRI Expansion Chemicals* (Ref. 8). These support documents contain a complete list of the references (which can be found in the public record for this proposed rulemaking) that were used in support of these proposed additions.

A list of the 313 chemicals and chemical categories and their Chemical Abstract Service (CAS) number, where appropriate, follows.

1. Abamectin (Avermectin B1) (CAS No. 071751-41-2)
2. Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester) (CAS No. 030560-19-1)
3. Acifluorfen sodium salt (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt) (CAS No. 062476-59-9)
4. Alachlor (CAS No. 015972-60-8)
5. Aldicarb (CAS No. 000116-06-3)
6. d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone] (CAS No. 028057-48-9)
7. Allylamine (CAS No. 000107-11-9)
8. Aluminum phosphide (CAS No. 020859-73-8)
9. Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,triazine- 2,4 diamine) (CAS No. 000834-12-8)
10. Amitraz (CAS No. 033089-61-1)
11. Anilazine (4,6-Dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine) (CAS No. 000101-05-3)
12. Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,triazine-2,4-diamine) (CAS No. 001912-24-9)
13. Bendiocarb (2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate) (CAS No. 022781-23-3)
14. Benfluralin (N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl) benzenamine) (CAS No. 001861-40-1)
15. Benomyl (CAS No. 017804-35-2)
16. o-Benzyl-p-chlorophenol (CAS No. 000120-32-1)
17. Bifenthrin (CAS No. 082657-04-3)
18. Bis(tributyltin) oxide (CAS No. 000056-35-9)
19. Boron trichloride (CAS No. 010294-34-5)
20. Boron trifluoride (CAS No. 007637-07-2)
21. Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)- pyrimidinedione) (CAS No. 000314-40-9)
22. Bromacil lithium salt (2,4-(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3-(1-methylpropyl), lithium salt) (CAS No. 053404-19-6)
23. Bromine (CAS No. 007726-95-6)
24. 1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile (CAS No. 035691-65-7)
25. 2-Bromo-2-nitropropane-1,3-diol (Bronopol) (CAS No. 000052-51-7)
26. Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile) (CAS No. 001689-84-5)
27. Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester) (CAS No. 001689-99-2)
28. Brucine (CAS No. 000357-57-3)
29. Butylate (Bis-2-methylpropyl)carbamothioic acid S-ethyl ester) (CAS No. 002008-41-5)
30. Butylated hydroxyanisole (CAS No. 025013-16-5)
31. C.I. Acid Red 114 (CAS No. 006459-94-5)
32. C.I. Direct Blue 218 (CAS No. 028407-37-6)
33. Calcium hypochlorite (CAS No. 007778-54-3)
34. Caprolactam (CAS No. 000105-60-2)
35. Carbofuran (CAS No. 001563-66-2)
36. Carbon monoxide (CAS No. 000630-08-0)
37. Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide) (CAS No. 005234-68-4)
38. Chinomethionat (6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one) (CAS No. 002439-01-2)
39. Chlorendic acid (CAS No. 000115-28-6)
40. Chlorimuron ethyl (Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate) (CAS No. 090982-32-4)
41. Chlorinated paraffins
42. 1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride (CAS No. 004080-31-3)
43. p-Chloroaniline (CAS No. 000106-47-8)
44. 5-Chloro-2-(2,4-dichlorophenoxy)phenol (CAS No. 003380-34-5)
45. 3-Chloro-2-methyl-1-propene (CAS No. 000563-47-3)
46. p-Chlorophenyl isocyanate (CAS No. 000104-12-1)
47. Chloropicrin (CAS No. 000076-06-2)
48. 3-Chloropropionitrile (CAS No. 000542-76-7)
49. p-Chloro-o-toluidine (CAS No. 000095-69-2)
50. Chlorotrifluoromethane (CFC-13) (CAS No. 000075-72-9)
51. Chlorpyrifos methyl (O,O-Dimethyl-O-(3,5,6-trichloro-2- pyridyl)phosphorothioate) (CAS No. 005598-13-0)
52. Chlorsulfuron (2-Chloro-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide) (CAS No. 064902-72-3)
53. Clomazone (2-[(2-Chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone) (CAS No. 081777-89-1)
54. Crotonaldehyde (CAS No. 004170-30-3)
55. Cyanazine (CAS No. 021725-46-2)
56. Cycloate (CAS No. 001134-23-2)
57. Cyclohexanol (CAS No. 000108-93-0)
58. Cyfluthrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester) (CAS No. 068359-37-5)
59. Cyhalothrin (3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester) (CAS No. 068085-85-8)
60. Cyromazine (N-Cyclopropyl-1,3,5-triazine-2,4,6-triamine) (CAS No. 066215-27-8)
61. Dazomet (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione) (CAS No. 000533-74-4)
62. Dazomet, sodium salt (2H-1,3,5-Thiadiazine-2-thione, tetrahydro-3,5-dimethyl-, ion(1-), sodium) (CAS No. 053404-60-7)
63. 2,4-DB (CAS No. 000094-82-6)
64. 2,4-D butoxyethyl ester (CAS No. 001929-73-3)

65. 2,4-D butyl ester (CAS No. 000094-80-4)
66. 2,4-D chlorocrotyl ester (CAS No. 002971-38-2)
67. Desmedipham (CAS No. 013684-56-5)
68. 2,4-D 2-ethylhexyl ester (CAS No. 001928-43-4)
69. 2,4-D 2-ethyl-4-methylpentyl ester (CAS No. 053404-37-8)
70. Diazinon (CAS No. 000333-41-5)
71. 2,2-Dibromo-3-nitrilopropionamide (CAS No. 010222-01-2)
72. Dicamba (3,6-Dichloro-2-methyoxybenzoic acid) (CAS No. 001918-00-9)
73. Dichloran (2,6-Dichloro-4-nitroaniline) (CAS No. 000099-30-9)
74. 3,3'-Dichlorobenzidine dihydrochloride (CAS No. 000612-83-9)
75. 3,3'-Dichlorobenzidine sulfate (CAS No. 064969-34-2)
76. trans-1,4-Dichloro-2-butene (CAS No. 000110-57-6)
77. Dichloromethylphenylsilane (CAS No. 000149-74-6)
78. Dichlorophene (2,2'-Methylenebis(4-chlorophenol) (CAS No. 000097-23-4)
79. trans-1,3-Dichloropropene (CAS No. 010061-02-6)
80. Diclofop methyl (2-[4-(2,4-Dichlorophenoxy) phenoxy]propanoic acid, methyl ester) (CAS No. 051338-27-3)
81. Dicyclopentadiene (CAS No. 000077-73-6)
82. Diethatyl ethyl (CAS No. 038727-55-8)
83. Diflubenzuron (CAS No. 035367-38-5)
84. Diglycidyl resorcinol ether (CAS No. 000101-90-6)
85. Dimethipin (2,3,-Dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide) (CAS No. 055290-64-7)
86. Dimethoate (CAS No. 000060-51-5)
87. 3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride) (CAS No. 020325-40-0)
88. 3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride) (CAS No. 111984-09-9)
89. Dimethylamine (CAS No. 000124-40-3)
90. Dimethylamine dicamba (CAS No. 002300-66-5)
91. 3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride) (CAS No. 000612-82-8)
92. 3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride) (CAS No. 041766-75-0)
93. Dimethyl chlorothiophosphate (CAS. No. 002524-03-0)
94. Dimethyldichlorosilane (CAS No. 000075-78-5)
95. N,N-Dimethylformamide (CAS No. 000068-12-2)
96. 2,6-Dimethylphenol (CAS No. 000576-26-1)
97. Dinocap (CAS No. 039300-45-3)
98. Dinoseb (CAS No. 000088-85-7)
99. Diphenamid (CAS No. 000957-51-7)
100. Diphenylamine (CAS No. 000122-39-4)
101. Dipotassium endothall (7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt) (CAS No. 002164-07-0)
102. Dipropyl isocinchomeronate (CAS No. 000136-45-8)
103. Disodium cyanodithioimidocarbonate (CAS No. 000138-93-2)
104. 2,4-D isopropyl ester (CAS No. 000094-11-1)
105. 2,4-Dithiobiuret (CAS No. 000541-53-7)
106. Dithiopyr (2-(Difluoromethyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-3,5-pyridinedicarbothioic acid S,S-dimethyl ester) (CAS No. 097886-45-8)
107. Diuron (CAS No. 000330-54-1)
108. 2,4-D 2-octyl ester (CAS No. 001917-97-1)
109. Dodine (Dodecylguanidine monoacetate) (CAS No. 002439-10-3)
110. 2,4-DP (Dichlorprop) (CAS No. 000120-36-5)
111. 2,4-D propylene glycol butyl ether ester (CAS No. 001320-18-9)
112. 2,4-D sodium salt (CAS No. 002702-72-9)
113. Ethoprop (Phosphorodithioic acid O-ethyl S,S-dipropyl ester) (CAS No. 013194-48-4)
114. Ethyl dipropylthiocarbamate (EPTC) (CAS No. 000759-94-4)
115. Famphur (CAS No. 000052-85-7)
116. Fenarimol (.alpha.-(2-Chlorophenyl)-.alpha.-(4-chlorophenyl)-5-pyrimidinemethanol) (CAS No. 060168-88-9)
117. Fenbutatin oxide (hexakis(2-methyl-2-phenylpropyl)distannoxane) (CAS No. 013356-08-6)
118. Fenoxaprop ethyl (2-(4-((6-Chloro-2 benzoxazolylen)oxy)phenoxy)propanoic acid, ethyl ester) (CAS No. 066441-23-4)
119. Fenoxycarb (2-(4-Phenoxyphenoxy)ethyl[carbamic acid ethyl ester) (CAS No. 072490-01-8)
120. Fenpropathrin (2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester) (CAS No. 039515-41-8)
121. Fenthion (O,O-Dimethyl O-[3-methyl-4-(methylthio) phenyl] ester, phosphorothioic acid) (CAS No. 000055-38-9)
122. Fenvalerate (4-Chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester) (CAS No. 051630-58-1)
123. Ferbam (Tris(dimethylcarbamodithioato-S,S')iron) (CAS No. 014484-64-1)
124. Fluazifop butyl (2-(4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester) (CAS No. 069806-50-4)
125. Flumetralin (2-Chloro-N-(2,6-dinitro-4-(trifluoromethyl)phenyl)-N-ethyl-6-fluorobenzenemethanamine) (CAS No. 062924-70-3)
126. Fluorine (CAS No. 007782-41-4)
127. Fluorouracil (5-Fluorouracil) (CAS No. 000051-21-8)
128. Fluvalinate (N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)- cyano (3-phenoxyphenyl)methyl ester) (CAS No. 069409-94-5)
129. Folpet (CAS No. 000133-07-3)
130. Fomesafen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N methylsulfonyl)-2-nitrobenzamide) (CAS No. 072178-02-0)
131. alpha-Hexachlorocyclohexane (CAS NO. 000319-84-6)
132. Hexamethylene-1,6-diisocyanate (CAS No. 000822-60-0)
133. n-Hexane (CAS No. 000110-54-3)
134. Hexazinone (CAS No. 051235-04-2)
135. Hydramethylnon (Tetrahydro-5,5-dimethyl-2(1H)pyrimidinone[3-[4-(trifluoromethyl)phenyl]-1-[2-[4(trifluoromethyl) phenyl]ethenyl]-2 propenylidene]hydrazone) (CAS No. 067485-29-4)
136—151. Hydrochlorofluorocarbons, specifically:
136. Dichloropentafluoropropane (CAS No. 127564-92-5)
137. 1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea) (CAS No. 136013-79-1)
138. 2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa) (CAS No. 128903-21-9)
139. 1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb) (CAS No. 111512-56-2)
140. 1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc) (CAS No. 13474-88-9)
141. 1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) (CAS No. 000507-55-1)
142. 1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da) (CAS No. 000431-86-7)
143. 3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca) (CAS No. 000422-56-0)
144. 2,3-Dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba) (CAS No. 000422-48-0)
145. 1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb) (CAS No. 000422-44-6)
146. Dichlorofluoromethane (HCFC-21) (CAS No. 000075-43-4)
147. 1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a) (CAS No. 000354-11-0)
148. 1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121) (CAS No. 000354-14- 3)
149. 1,2-Dichloro-1,1-difluoroethane (HCFC-132b) (CAS No. 001649-08-7)
150. 2-Chloro-1,1,1-trifluoroethane (HCFC-133a) (CAS No. 000075-88-7)
151. 3-Chloro-1,1,1-trifluoropropane (HCFC-253fb) (CAS No. 000460-35-5)
152. Imazalil (1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]1H-imidazole) (CAS No. 035554-44-0)
153. 3-Iodo-2-propynyl butylcarbamate (CAS No. 055406-53-6)
154. Iprodione (3-(3,5-Dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide) (CAS No. 036734-19-7)
155. Iron pentacarbonyl (CAS No. 013463-40-6)
156. Isodrin (CAS No. 000465-73-6)
157. Isofenphos (2-[[Ethoxy][(1-methylethyl) amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester) (CAS No. 025311-71-1)
158. Isophorone (CAS No. 000078-59-1)
159. Isophorone diisocyanate (CAS No. 004098-71-9)
160. Lactofen (5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester) (CAS No. 077501-63-4)
161. Linuron (CAS No. 000330-55-2)
162. Lithium carbonate (CAS No. 000554-13-2)

163. Malathion (CAS No. 000121-75-5)
164. Man-made mineral fibers
165. Mecoprop (CAS No. 000093-65-2)
166. 2-Mercaptobenzothiazole (MBT) (CAS No. 000149-30-4)
167. Merphos (CAS No. 000150-50-5)
168. Metham sodium (Sodium methyldithiocarbamate) (CAS No. 000137-42-8)
169. Methazole (2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione) (CAS No. 020354-26-1)
170. Methiocarb (CAS No. 002032-65-7)
171. Methoxone ((4-Chloro-2-methylphenoxy) acetic acid) (MCPA) (CAS No. 000094-74-6)
172. Methoxone sodium salt ((4-Chloro-2-methylphenoxy) acetate sodium salt) (CAS No. 003653-48-3)
173. 1,1-Methylene bis(4-isocyanatocyclohexane) (CAS No. 005124-30-1)
174. Methylene bis(thiocyanete) (CAS No. 006317-18-6)
175. Methyl isothiocyanate (CAS No. 00556-61-6)
176. 2-Methyllactonitrile (CAS No. 000075-86-5)
177. N-Methylolacrylamide (CAS No. 000924-42-5)
178. Methyl parathion (CAS No. 000298-00-0)
179. N-Methyl-2-pyrrolidone (CAS No. 000872-50-4)
180. Methyltrichlorosilane (CAS No. 000075-79-6)
181. Metiram (CAS No. 009006-42-2)
182. Metribuzin (CAS No. 021087-64-5)
183. Mevinphos (CAS No. 007786-34-7)
184. Molinate (1H-Azepine-1-carbothioic acid, hexahydro-S-ethyl ester) (CAS No. 002212-67-1)
185. Monuron (CAS No. 000150-68-5)
186. Myclobutanil (.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile) (CAS No. 088671-89-0)
187. Nabam (CAS No. 000142-59-6)
188. Naled (CAS No. 000300-76-5)
189. Nicotine and salts
190. Nitrapyrin (2-Chloro-6-(trichloromethyl) pyridine) (CAS No. 001929-82-4)
191. Nitrate ion (CAS No. 014797-55-8)
192. Nitric oxide (CAS No. 010102-43-9)
193. p-Nitroaniline (CAS No. 000100-01-6)
194. Nitrogen dioxide (CAS No. 010102-44-0)
195. Norflurazon (4-Chloro-5-(methylamino)-2-[3(trifluoromethyl)phenyl]-3(2H)-pyridazinone) (CAS No. 027314-13-2)
196. Oryzalin (4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide) (CAS No. 019044-88-3)
197. Oxydemeton methyl (S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl ester phosphorothioic acid) (CAS No. 000301-12-2)
198. Oxydiazon (3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one) (CAS No. 019666-30-9)
199. Oxyfluorfen (CAS No. 042874-03-3)
200. Ozone (CAS No. 010028-15-6)
201. Paraquat dichloride (CAS No. 001910-42-5)
202. Pebulate (Butylethylcarbamothioic acid S-propyl ester) (CAS No. 001114-71-2)
203. Pendimethalin (N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine) (CAS No. 040487-42-1)
204. Pentoborbital sodium (CAS No. 000057-33-0)
205. Perchloromethyl mercaptan (CAS No. 000594-42-3)
206. Permethrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester) (CAS No. 052645-53-1)
207. Phenanthrene (CAS No. 000085-01-8)
208. Phenothrin (2,2-Dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester) (CAS No. 026002-80-2)
209. 1,2-Phenylenediamine (CAS No. 000095-54-5)
210. 1,3-Phenylenediamine (CAS No. 000108-45-2)
211. 1,2-Phenylenediamine dihydrochloride (CAS No. 000615-28-1)
212. 1,4-Phenylenediamine dihydrochloride (CAS No. 000624-18-0)
213. Phenytoin (CAS No. 000057-41-0)
214. Phosphine (CAS No. 007803-51-2)
215. Phosphorus oxychloride (CAS No. 010025-87-3)
216. Phosphorus pentachloride (CAS No. 010026-13-8)
217. Phosphorus pentasulfide (CAS No. 001314-80-3)
218. Phosphorus pentoxide (CAS No. 001314-56-3)
219. Picloram (CAS No. 001918-02-1)
220. Piperonyl butoxide (CAS No. 000051-03-6)
221. Pirimiphos methyl (O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate) (CAS No. 029232-93-7)
222— 249. Polycyclic aromatic compounds (PACs) including:
222. Benz(a)anthracene (CAS No. 000056-55-3)
223. Benzo(a)phenanthrene (CAS No. 000218-01-9)
224. Benzo(e)pyrene (CAS No. 000050-32-8)
225. Benzo(b)fluoranthene (CAS No. 000205-99-2)
226. Benzo(j)fluoranthene (CAS No. 000205-82-3)
227. Benzo(k)fluoranthene (CAS No. 000207-08-9)
228. Benzo(rst)pentaphene (CAS No. 000189-55-9)
229. Carbazole (CAS No. 000086-74-8)
230. Cyclopenta(cd)pyrene (CAS No. 027208-37-3)
231. Dibenz(a,h)acridine (CAS No. 000226-36-8)
232. Dibenz(a,j)acridine (CAS No. 000224-42-0)
233. Dibenz(a,c)anthracene (CAS No. 000215-58-7)
234. Dibenz(a,j)anthracene (CAS No. 000224-41-9)
235. Dibenzo(a,h)anthracene (CAS No. 000053-70-3)
236. Dibenzo(a,e)fluoranthene (CAS No. 005385-75-1)
237. Dibenzo(a,e)pyrene (CAS No. 000192-65-4)
238. Dibenzo(a,h)pyrene (CAS No. 000189-64-0)
239. Dibenzo(a,l)pyrene (CAS No. 000191-30-0)
240. 7H-Dibenzo(c,g)carbazole (CAS No. 000194-59-2)
241. 7,12-Dimethylbenz(a)anthracene (CAS No. 000057-976)
242. Indeno[1,2,3-cd]pyrene (CAS No. 000193-39-5)
243. 2-Methylchrysene (CAS No. 003351-32-4)
244. 3-Methylchrysene (CAS No. 003351-31-3)
245. 4-Methylchrysene (CAS No. 003351-30-2)
246. 5-Methylchrysene (CAS No. 003697-24-3)
247. 6-Methylchrysene (CAS No. 001705-85-7)
248. 2-Methylfluoranthene (CAS No. 033543-31-6)
249. 1-Nitropyrene (CAS No. 005522-43-0)
250. Potassium bromate (CAS No. 007758-01-2)
251. Potassium dimethyldithiocarbamate (CAS No. 000128-03-0)
252. Potassium N-methyldithiocarbamate (CAS No. 000137-41-7)
253. Primisulfuron (Methyl 2-[[[[(4,6-bis(difluoromethoxy)-2pyrimidinyl]-amino)carbonyl]amino]sulfonyl]benzoate) (CAS No. 086209-51-0)
254. Profenofos (O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate) (CAS No. 041198-08-7)
255. Prometryn (N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine) (CAS No. 007287-19-6)
256. Propachlor (2-Chloro-N-(1-methylethyl)-N-phenylacetamide) (CAS No. 001918-16-7)
257. Propanil (N-(3,4-Dichlorophenyl)propanamide) (CAS No. 000709-98-8)
258. Propargite (CAS No. 002312-35-8)
259. Propargyl alcohol (CAS No. 000107-19-7)
260. Propetamphos (3-[(Ethylamino)methoxyphosphinothioyl]oxy]-2-butenoic acid, 1-methylethyl ester) (CAS No. 031218-83-4)
261. Propiconazole (1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-methyl-1H-1,2,4,-triazole) (CAS No. 060207-90-1)
262. Quizalofop-ethyl (2-[4-[(6-Chloro-2-quinoxalinyl) oxy]phenoxy) propanoic acid ethyl ester) (CAS No. 076578-14-8)
263. Resmethrin ([5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylate]) (CAS No. 010453-86-8)
264. Sethoxydim (2-[1-(Ethoxyimino)butyl]-5-[2(ethylthio)propyl]-3-hydroxyl-2-cyclohexen-1-one) (CAS No.074051-80-2)
265. Simazine (CAS No. 000122-34-9)
266. Sodium azide (CAS No. 026628-22-8)
267. Sodium chlorite (CAS No. 007758-19-2)
268. Sodium dicamba (3,6-Dichloro-2-methoxybenzoic acid, sodium salt) (CAS No. 001982-69-0)
269. Sodium dimethyldithiocarbamate (CAS No. 000128-04-1)
270. Sodium fluoroacetate (CAS. No. 000062-74-8)

271. Sodium hypochlorite (CAS No. 007681-52-9)
272. Sodium nitrite (CAS No. 007632-00-0)
273. Sodium pentachlorophenate (CAS No. 000131-52-2)
274. Sodium o-phenylphenoxide (CAS No. 000132-27-4)
275. Sodium 2-pyridinethiol-1-oxide (CAS No. 015922-78-8)
276. Strychnine and salts
277. Sulfur dioxide (CAS No. 007446-09-5)
278. Sulfur trioxide (CAS No. 007446-11-9)
279. Sulfuryl fluoride (Vikane) (CAS No. 002699-79-8)
280. Sulprofos (O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S- propyl ester) (CAS No. 035400-43-2)
281. Tebuthiuron (N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl]- N,N'-dimethylurea) (CAS No. 034014-18-1)
282. Tefluthrin (CAS No. 079538-32-2)
283. Temephos (CAS No. 003383-96-8)
284. Terbacil (5-Chloro-3-(1,1-dimethylethyl)-6-methyl- 2,4-(1H,3H)-pyrimidinedione) (CAS No. 005902-51-2)
285. Tetracycline hydrochloride (CAS No. 000064-75-5)
286. Tetramethrin (2,2-Dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester) (CAS No. 007696-12-0)
287. Tetrasodium ethylenediaminetetraacetate (CAS No. 000064-02-8)
288. Thiabendazole (2-[4-Thiazolyl]-1H-benzimidazole) (CAS No. 000148-79-8)
289. Thiabendazole, hypophosphite salt (2-(4-Thiazolyl) benzimidazole, hypophosphite salt) (CAS No. 028558-32-9)
290. Thiobencarb (Carbamic acid, diethylthio-, S-(p-chlorobenzyl)) (CAS No. 028249-77-6)
291. Thiodicarb (CAS No. 059669-26-0)
292. Thiophanate ethyl ([1,2-Phenylenebis (iminocarbonothioyl)] biscarbamic acid diethyl ester) (CAS No. 023564-06-9)
293. Thiophanate-methyl (CAS No. 023564-05-8)
294. Thiosemicarbazide (CAS No. 000079-19-6)
295. Triadimefon (1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone) (CAS No. 043121-43-3)
296. Triallate (CAS No. 002303-17-5)
297. Tribenuron methyl (2-(((((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino)carbonyl)amino)sulfonyl)-, methyl ester) (CAS No. 101200-48-0)
298. Tributyltin fluoride (CAS No. 001983-10-4)
299. Tributyltin methacrylate (CAS No. 002155-70-6)
300. S,S,S-Tributyltrithiophosphate (DEF) (CAS No. 000078-48-8)
301. Trichloroacetyl chloride (CAS No. 000076-02-8)
302. Trichloroethylsilane (CAS No. 000115-21-9)
303. Trichlorophenylsilane (CAS No. 000098-13-5)
304. 1,2,3-Trichloropropane (CAS No. 000096-18-4)
305. Triclopyr triethylammonium salt (CAS No. 057213-69-1)
306. Triethylamine (CAS No. 000121-44-8)
307. Triforine (N,N'-[1,4-Piperazinediylbis(2,2,2-trichloroethylidene)] bisformamide) (CAS No. 026644-46-2)
308. Trimethylchlorosilane (CAS No. 000075-77-4)
309. 2,3,5-Trimethylphenyl methylcarbamate (CAS No. 002655-15-4)
310. Triphenyltin chloride (CAS No. 000639-58-7)
311. Triphenyltin hydroxide (CAS No. 000076-87-9)
312. Vanadium pentoxide (CAS No. 001314-62-1)
313. Vinclozolin (3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione) (CAS No. 050471-44-8)

A limited discussion of the health and environmental effects associated with each of the 313 chemicals and chemical categories is provided below in Unit IV.B. of this preamble. Each chemical is identified by chemical name, CAS No., and the list(s) from which the chemical originated. These lists are designated as follows:

CAA HAP: Clean Air Act section 112(b) "Hazardous Air Pollutants."
CAA OD: Clean Air Act section 602(b) Class II ozone depleters.
CAL: State of California Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65) "List of Chemicals Known to the State to Cause Reproductive Toxicity."
CERCLA: Comprehensive Environmental Response, Compensation, and Liability Act section 102.
CWA PPL: Clean Water Act section 307(a) "Priority Pollutant List."
EPCRA EHS: EPCRA section 302 "Extremely Hazardous Substances."
FIFRA AI: Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) "Active Ingredients."
FIFRA SR: FIFRA "Special Review, Canceled/Denied or Suspended, and Restricted Use Pesticides."
IARC: Monographs of the International Agency for Research on Cancer.
NTP: The 6th Annual Report on Carcinogens of the National Toxicology Program.
RCRA APP8: Resource Conservation and Recovery Act (RCRA) Chemicals listed at 40 CFR part 261 Appendix VIII.
RCRA P: RCRA Chemicals listed at 40 CFR part 261.33(e).
SDWA: Safe Drinking Water Act section 1412.
TSCA: Toxic Substances Control Act "Existing Chemicals."

EPA requests comment on the sufficiency of the evidence for each of the chemicals proposed for addition. In addition, EPA requests comment on any issues that may be specific to any of the individual chemicals or chemical categories. For example, should chemicals be listed on EPCRA section 313 that meet the EPCRA section 313 criteria but whose only use is as a drug product.

B. Chemicals Proposed for Addition to EPCRA Section 313

1. *Abamectin (avermectin B1)* (CAS No. 071751-41-2) (FIFRA AI) (Ref. 3). This compound induces developmental toxicity in several species with the mouse being the most sensitive species. Increased retinal folds in weanlings, decreased viability and lactation indices, and decreased body weight were noted in a two-generation rat reproduction study. The lowest-observed-effect level (LOEL) was 0.4 milligram per kilogram per day (mg/kg/day) and the no-observed-effect level (NOEL) was 0.12 mg/kg/day. Based on the NOEL, EPA derived a reference dose (RfD) of 0.0004 mg/kg/day. EPA believes that there is sufficient evidence for listing abamectin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data.

Aquatic acute toxicity values for abamectin include a bluegill 96–hour LC_{50} of 9.6 parts per billion (ppb), a rainbow trout 96–hour LC_{50} of 3.6 ppb, and a daphnid 48–hour LC_{50} of 0.34 ppb. EPA believes that there is sufficient evidence for listing abamectin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

2. *Acephate (acetylphosphoramidothioic acid O,S-dimethyl ester)* (CAS No. 030560-19-1) (FIFRA AI) (Ref. 3). In a 28–month feeding study in rats, inhibition of brain, plasma, and red blood cell cholinesterase activities was observed at 50 parts per million (ppm) (2.5 mg/kg/day). The NOEL for this study was 5 ppm (0.25 mg/kg/day). Similar findings were noted in a 2–year feeding study in dogs. The LOEL for this study was 100 ppm (2.5 mg/kg/day) and the NOEL was 30 ppm (0.75 mg/kg/day). EPA believes that there is sufficient evidence for listing acephate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

3. *Acifluorfen sodium salt (5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt)* (CAS No. 062476-59-9) (FIFRA AI) (Ref. 3). Acifluorfen is classified as a Group B2 compound, i.e., the chemical is a probable human carcinogen. Acifluorfen produced an increased incidence of combined malignant and benign liver tumors in two different strains of mice. The compound also displayed positive mutagenic activity in several non-mammalian test systems, and is structurally similar to four other diphenyl ether herbicide compounds which caused increased incidences of liver tumors in two different strains of mice. EPA believes that there is sufficient evidence for listing acifluorfen sodium salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data.

4. *Alachlor* (CAS No. 015972-60-8) (FIFRA SR) (Ref. 8). Alachlor is an aniline-type herbicide. Dose-related hemolytic anemia with reductions in red blood cell counts, hematocrit and hemoglobin, as well as hemosiderosis in the liver, spleen and kidney occurred in male dogs orally exposed to alachlor for 1–year. The LOEL based on these effects was 3.0 mg/kg/day, and the NOEL was 1.0 mg/kg/day. Effects in female dogs in the same study were not demonstrated as clearly as in males but were considered suggestive of anemia. EPA derived an oral RfD of 0.01 mg/kg/day from this study.

In a three-generation reproduction study in rats, chronic nephritis and increased relative and absolute kidney weights were reported in F_2 adult males and F_3 pups. The LOEL was 10 mg/kg/day, and the NOEL was 3 mg/kg/day. Rabbits (Dutch Belted strain) that received alachlor via oral gavage during gestation days 6 to 27 had an increased rate of preimplantation loss (49 percent) and offspring with increased incidences of developmental malformations including major vessel variations, presacral vertebrae, and rudimentary and full 13th ribs. The increased incidence of rudimentary and full 13th ribs was dose-related, and a lowest-observed-adverse-effect level (LOAEL) of 10 mg/kg/day was determined based on this effect. The no-observed-adverse effect level (NOAEL) was not determined.

EPA has classified alachlor as a category Group B2 compound, i.e., the chemical is a probable human carcinogen. In a 2–year rat feeding study with Long-Evans rats, there were increased incidences of nasal turbinate tumors, malignant stomach tumors and thyroid follicular adenomas and carcinomas in both sexes at doses greater than or equal to 42 mg/kg/day. In an 18–month study in female CD-1 mice, bronchiolar tumors occurred at an increased incidence at 200 mg/kg/day.

EPA believes that there is sufficient evidence for listing alachlor on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity and carcinogenicity data for this chemical.

5. *Aldicarb* (CAS No. 000116-06-3) (CERCLA; EPCRA EHS; FIFRA SR; RCRA APP8; RCRA P) (Ref. 8). Aquatic acute toxicity test data for aldicarb include a measured 96–hour LC_{50} of 50 ppb for bluegill and a measured 48–hour LC_{50} of 70 ppb for daphnid. In addition, the measured 48–hour EC_{50} for daphnid is 51 ppb. Measured terrestrial acute toxicity data for wildlife include an oral LD_{50} for female mallard ducks of 3.4 milligram per kilogram (mg/kg) and an oral LD_{50} for California quail of 2.58 mg/kg in males and 4.67 mg/kg in females. EPA believes that there is sufficient evidence for listing aldicarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

6. *d-trans-Allethrin [d-trans-Chrysanthemic acid of dallethrone]* (CAS No. 028057-48-9) (FIFRA AI) (Ref. 3). Centrilobular hydropic degeneration of the liver (LOEL was 1,000 ppm or 25 mg/kg/day; the NOEL was 200 ppm or 5 mg/kg/day) was seen in dogs fed allethrin for 3 months. Increases in serum liver enzymes in female rats and increased liver weights in male and female rats (the LOEL was 250 mg/kg/day; the NOEL was 1,500 ppm or 75 mg/kg/day) were observed in rats fed allethrin for 3 months. Histopathology data were not presented in this study. Taken together, the results of these studies indicate hepatotoxic potential for d-trans-allethrin. EPA believes that there is sufficient evidence for listing d-trans-allethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

7. *Allylamine* (CAS No. 000107-11-9) (EPCRA EHS) (Ref. 8). Repeated inhalation exposure to 5 ppm (0.011 mg/L) allylamine for 50 exposures of 7 hours caused liver and renal damage and myocarditis in rats. Congestion of the liver and kidney was observed in rats, rabbits, and dogs exposed to 5 or 20 ppm (0.011 or 0.044 milligram per liter (mg/L)) allylamine for 8 hours/day, 5 days/week, for 1–year. EPA believes that there is sufficient evidence for listing allylamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatotoxicity and nephrotoxicity data for this chemical.

8. *Aluminum phosphide* (CAS No. 020859-73-8) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). The median lethal dose of aluminum phosphide in humans is 20 mg/kg. The acute inhalation toxicity of aluminum phosphide is attributed to phosphine gas resulting from decomposition of aluminum phosphide on contact with moisture in the air. Symptoms of phosphine poisoning include restlessness, headache, dizziness, fatigue, chest tightness, nausea, vomiting, lethargy, stupor, coma, convulsions, lowered blood pressure, pulmonary edema and respiratory failure; disorders of the kidney, liver, heart and brain can also occur. In female CFT-Wistar rats exposed to phosphine gas generated from aluminum phosphide pellets in distilled water, 100 percent mortality was observed after a 6–hour exposure to 40 ppm (0.1 mg/L), and exposure to 20 to 40 ppm (0.05 to 0.1 mg/L) for 6 hours resulted in 33 percent mortality. Symptoms of toxicity reported in these animals included dyspnea, loss of muscular coordination, polyuria, and paralysis.

EPA's exposure analysis indicates that aluminum phosphide concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing aluminum phosphide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

9. *Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)1,3,5,-triazine- 2,4-diamine)* (CAS No. 000834-12-8) (FIFRA AI) (Ref. 3). Fatty degeneration of the liver was observed in rats administered 100 mg/kg/day ametryn by gavage, 6 days per week for 13 weeks. The NOEL was 10 mg/kg/day (8.6 mg/kg/day adjusted for duration). In another study, hepatic effects (severe vascular congestion, centrilobular liver necrosis and fatty degeneration of individual liver cells) were observed in rats that died following gavage administration of 500 mg/kg/day ametryn for 6 days per week for 28 days. The NOEL was 250 mg/kg/day. EPA believes that there is sufficient evidence for listing ametryn on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity data for this chemical.

The 72-hour EC_{50} for green algae is 14 ppb. Ametryn is a herbicide and may be expected to affect nontarget plants such as algae. EPA believes that there is sufficient evidence for listing ametryn on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

10. *Amitraz* (CAS No. 033089-61-1) (FIFRA SR) (Ref. 8). Amitraz is an aniline-type insecticide. In a 2–year beagle dog feeding study, effects noted at the LOAEL dose (1.0 mg/kg/day) at various times during the study included significantly increased mean blood glucose concentration, slight hypothermia, and slight central nervous system depression (the latter effect occurred immediately after dosing on

days 1 and 2). The NOAEL in this study was 0.25 mg/kg/day and the oral RfD derived from the NOAEL was 0.0025 mg/kg/day. These findings were supported by similar results obtained in a 90–day feeding study in dogs. In studies with rats or mice exposed to amitraz from 90 days to 2 years, LOAELs less than or equal to 12 mg/kg/day were derived based on effects that included decreased body weight gain and changes in organ (brain or heart) weight (the NOELs were less than or equal to 3 mg/kg/day).

A three-generation reproduction study in rats demonstrated decreased litter size and increased mortality during suckling. The fetotoxic LOAEL in this study was 5 mg/kg/day and the NOAEL was 1.6 mg/kg/day. In a teratology study in rabbits, a fetotoxicity LOAEL of 5 mg/kg/day and NOAEL of 1 mg/kg/day were based on the incidences of cleft palate and meningocoele associated with small ears and displaced toes.

EPA believes that there is sufficient evidence for listing amitraz on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity and developmental toxicity data for this chemical.

11. *Anilazine (4,6-dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine)* (CAS No. 000101-05-3) (FIFRA AI) (Ref. 3). When anilazine was administered to rats, maternal reproductive parameters were not affected. The systemic maternal NOEL was 150 mg/kg and the LOEL was 500 mg/kg, based on decreased body weight gain. The developmental NOEL was 1,500 mg/kg, which was the highest dose tested. In rabbits, the maternal toxicity NOEL was 15 mg/kg and the LOEL was 40 mg/kg, based on increased mortalities and decreased body weight gain (also decreased percentage of pregnant does at 75 mg/kg). The developmental NOEL was 40 mg/kg and the LOEL was 75 mg/kg, based on increased fetal mortality, decreased fetal weight, and increased postimplantation loss and inhibited ossification (phalanges). EPA believes that there is sufficient evidence for listing anilazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data.

Aquatic acute toxicity values for anilazine include a scud (Gammarus) 96–hour LC_{50} of 0.27 ppb and an oyster 96–hour EC_{50} (growth) of 46 ppb. EPA believes that there is sufficient evidence for listing anilazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

12. *Atrazine (6-chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)* (CAS No. 001912-24-9) (FIFRA AI) (Ref. 3). Based on sufficient evidence of carcinogenicity in animals, the International Agency for Research on Cancer (IARC) has classified atrazine as a Group 2B compound; i.e., the chemical is possibly carcinogenic to humans. Administration of atrazine to Sprague Dawley rats was associated with an increased incidence of mammary gland fibroadenomas and adenocarcinomas in female rats. A hormonal mechanism may be involved in the induction of mammary tumors by atrazine. Therefore there is sufficient evidence for listing atrazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

13. *Bendiocarb (2,2-dimethyl-1,3-benzodioxol-4-ol methylcarbamate)* (CAS No. 022781-23-3) (FIFRA AI) (Ref. 3). Depressed blood cholinesterase levels were reported in numerous species. In a developmental toxicity study in rats, cholinergic signs were observed in maternal animals at 4 mg/kg/day (LOEL). The maternal NOEL was 1 mg/kg/day; no adverse effects were observed in fetuses. A LOEL of 2.5 mg/kg/day for cholinesterase inhibition was reported in dogs in a 4–month dietary study. The NOEL was 0.5 mg/kg/day. Decreases in cholinesterase activity were observed in female rats fed 20, 30, or 40 mg/kg/day for 28 days. No NOEL was established in this study. However, no details regarding clinical signs or histopathological changes in neural tissue were reported. EPA believes that there is sufficient evidence for listing bendiocarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

Aquatic acute toxicity values for bendiocarb include a mysid 96–hour EC_{50} of 6.7 ppb and a daphnid 48–hour EC_{50} of 29.2 ppb. Avian acute toxicity values include a mallard duck LD_{50} of 3.1 mg/kg. EPA believes that there is sufficient evidence for listing bendiocarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

14. *Benfluralin (N-butyl-N-ethyl-2,6-dinitro-4(trifluoromethyl) benzenamine)* (CAS No. 001861-40-1) (FIFRA AI) (Ref. 3). Increased relative liver weights, decreased red blood cell counts and decreased hematocrit and hemoglobin levels were observed in dogs orally administered benfluralin at a dose of 125 mg/kg/day for 2 years. The NOAEL was 25 mg/kg/day. Based on the NOAEL, EPA has established an oral RfD of 0.003 mg/kg/day. EPA believes that there is sufficient evidence for listing benfluralin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data for this chemical.

15. *Benomyl* (CAS No. 017804-35-2) (CAL; FIFRA SR) (Ref. 8). In a three-generation study in rats, a dietary level of 25 mg/kg/day of benomyl resulted in decreased weanling weights. The no-effect level was 5 mg/kg/day. Microphthalmia (the LOEL was 62.5 mg/kg/day; the NOEL was 30 mg/kg/day) was reported in a rat developmental toxicity study. Decreased fetal weight (the LOEL was 62.5 mg/kg/day; the NOEL was 30 mg/kg/day) was observed in another rat developmental toxicity study. The developmental effects were observed at doses that were not toxic to the maternal animal. Anomalies consisting of supra occipital scars, subnormal vertebral centrum, supernumary ribs, and cleft palate were reported in an oral developmental toxicity study in mice (the LOEL was 100 mg/kg/day; the NOEL was 50 mg/kg/day). An increase in the incidence of anomalies including encephalocele, hydrocephalus, microphthalmia, and anophthalmia was noted following administration of benomyl to rats by intubation during the first 20 days of pregnancy at doses of 125, 250, and 500 mg/kg. The developmental effects were always associated with death and were considered to be the cause of death. EPA believes that there is sufficient evidence for listing benomyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for this chemical.

16. *o-Benzyl-p-chlorophenol* (CAS No. 000120-32-1) (FIFRA AI) (Ref. 3). In a 16–day oral rat study, dose-related increases in liver and kidney weights (absolute and relative) and nephrosis were observed at a dose level of greater than or equal to 62.5 mg/kg/day. A NOEL was not established. When the compound was administered by gavage for 13 weeks, rats developed multifocal dilation of renal tubules and increased liver weights (16 percent) at 240 mg/kg/day. The NOEL was 120 mg/kg/day. In a 90–day oral study, mice receiving 30 mg/kg/day developed kidney lesions. Increased liver weights were also noted. No NOEL was established in this study. EPA believes that there is sufficient evidence for listing o-benzyl-p-chlorophenol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data for this chemical.

17. *Bifenthrin* (CAS No. 082657-04-3) (FIFRA AI) (Ref. 3). Tremors or head and forelimb twitching were noted in dogs, rats and rabbits exposed to various doses. NOEL values based on the appearance of tremors (often transient) ranged from 1 to 2.67 mg/kg/day. The oral RfD for bifenthrin was based on a 1year beagle dog feeding study, in which the LOEL, based on tremors observed during weeks 15 to 29, was 3.0 mg/kg/day and the NOEL was 1.5 mg/kg/day. The RfD based on this NOEL was 0.015 mg/kg/day.

In a rat teratology study, an increased incidence of hydroureter (without hydronephrosis) was noted in fetuses at 2 mg/kg/day (LOEL). The NOEL was 1 mg/kg/day.

EPA believes that there is sufficient evidence for listing bifenthrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and developmental toxicity data.

Aquatic acute toxicity values for bifenthrin include a bluegill 96–hour LC_{50} of 0.35 ppb, a rainbow trout 96–hour LC_{50} of 0.15 ppb, a sheepshead minnow LC_{50} of 17.5 ppb, and a daphnid 48–hour EC_{50} of 1.6 ppb. EPA believes that there is sufficient evidence for listing bifenthrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

18. *Bis(tributyltin) oxide* (CAS No. 000056-35-9) (FIFRA AI) (Ref. 3). Adverse effects on the immune system were reported in rats exposed to various doses of bis(tributyltin) oxide for a duration as short as 4 weeks. SPF-derived Wistar rats were fed the compound for 17 months. In this study, a LOEL of 0.25 mg/kg/day and a NOEL of 0.025 mg/kg/day were based on immunotoxicity manifested as decreased resistance to *Trichinella spiralis*, reduced natural killer (NK) cell activity in the spleen and reduced macrophage function. The RfD derived from this NOEL was 0.00003 mg/kg/day. Similar immunological effects were reported in 4- and 6-week rat feeding studies with 20 and 80 ppm (1 and 4 mg/kg/day; the LOEL was 1 mg/kg/day).

In rats that received dietary levels (of a range of doses that included 50 mg/kg/day) for 106 weeks, kidney function was decreased and serum levels of alanine aminotransferase, aspartate aminotransferase and alkaline phosphatase were increased. At the end of the 2–year study, nephrosis and vacuolization and pigmentation of the proximal tubular epithelium were reported in animals administered 50 mg/kg/day. On the basis of marginal effects at 5 mg/kg/day (LOEL), a NOEL of 0.5 mg/kg/day was established.

EPA believes that there is sufficient evidence for listing bis(tributyltin) oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available immunological and renal toxicity data.

Aquatic acute toxicity values for bis(tributyltin) oxide include a bluegill 96–hour LC_{50} of 7.6 ppb, a rainbow trout 96–hour LC_{50} 6.9 ppb, a measured fathead minnow 96–hour LC_{50} of 2.7 ppb, and a daphnid 48–hour LC_{50} of 1.67 ppb. EPA believes that there is sufficient evidence for listing bis(tributyltin) oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

19. *Boron trichloride* (CAS No. 010294-34-5) (EPCRA EHS) (Ref. 8). Boron trichloride is corrosive to the skin and mucosal tissue due to its rapid hydrolysis to hydrochloric acid and boric acid, the former acid being the corrosive species. Single, relatively large doses of boron administered through any route affects the central nervous system causing depressed circulation, diarrhea, vomiting, shock, and coma. The kidneys are the most severely affected organ. Symptoms of acute irritation of the upper airways were observed in humans at exposure levels of greater than or equal to 0.004 mg/L. Inhalation of 0.48 mg/L of boron trichloride proved fatal to certain laboratory animals. Inhalation of 0.096 mg/L of boron trichloride for 7 hours produced adverse effects on the respiratory tract, and weight loss.

EPA's exposure analysis indicates that boron trichloride concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing boron trichloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

20. *Boron trifluoride* (CAS No. 007637-07-2) (EPCRA EHS) (Ref. 8). Boron trifluoride is a colorless gas that is corrosive to tissues due to its rapid hydrolysis to hydrofluoric acid and boric acid. The principal acute effect in animals is irritation of the mucous membranes of the respiratory tract and eyes; post mortem examination also revealed pneumonia and degenerative changes in renal tubules. The kidneys are most severely affected because boric acid concentrates in this organ. Exposure of six animal species to 0.28 mg/L of boron trifluoride for 4 to 7 hours a day, 5 days a week killed all animals within 30 days. Rats, rabbits, and guinea pigs were exposed to boron trifluoride via inhalation. Guinea pigs died of respiratory failure after being exposed to 0.036 mg/L for 19 days; rats experienced fluorosis of the teeth at this concentration. All three species were minimally affected at 0.004 mg/L. In a 2-week rat inhalation study, all animals died after 6 daily exposures to 0.18 mg/L. Rats exposed to 0.024 mg/L showed signs of respiratory irritation, increased lung weights, and depressed liver weights. Rats exposed to 0.17 mg/L of boron trifluoride 6 hours/day, 5 days a week for 13 weeks developed necrosis of the proximal tubular epithelium of the kidneys. Guinea pigs exposed to 0.035 mg/L, 7 hours/day, 5 days a week for 3 months developed severe pneumonitis and pulmonary changes indicating chemical irritation.

EPA believes that there is sufficient evidence for listing boron trifluoride on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the available chronic toxicity data for this chemical.

21. *Bromacil (5-bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)* (CAS No. 000314-40-9) (FIFRA AI) (Ref. 3). Increased thyroid activity was seen in male and female rats fed 5,000 ppm (250 mg/kg/day) bromacil for 90 days. In a 2–year dietary study, thyroid hyperplasia was seen in female rats fed 1,250 ppm (62.5 mg/kg/day). Thyroid follicular adenoma was observed in one female. EPA believes that there is sufficient evidence for listing bromacil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available thyroid toxicity data for this chemical.

22. *Bromacil lithium salt (2,4-(1H,3H)-pyrimidinedione, 5-bromo-6-methyl-3-(1-methylpropyl), lithium salt)* (CAS No. 05340419-6) (FIFRA AI) (Ref. 3). Bromacil lithium salt will dissociate into bromacil, which is soluble in aqueous systems and lithium ion. Defects of the palate, eye, and external ear were reported in the offspring of rats administered 50 mg lithium chloride intraperitoneally on gestation days 1, 4, 7, and 9 followed by 20 mg/day until day 17. Cleft palates were also observed in mouse fetuses when mothers were gavaged with 300 to 465 mg/kg/day lithium carbonate on gestation day 6 to 15. An increase in Ebstein's anomaly was reported among offspring of women taking lithium; cardiovascular defects were found in 212 offspring exposed in utero to lithium therapy.

Increased thyroid activity was seen in male and female rats fed 5,000 ppm (250 mg/kg/day) bromacil for 90 days. In a 2-year dietary study, thyroid hyperplasia was seen in female rats fed 1,250 ppm (62.5 mg/kg/day). Thyroid follicular adenoma was observed in one female.

EPA believes that there is sufficient evidence for listing bromacil lithium salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and thyroid toxicity data.

23. *Bromine* (CAS No. 007726-95-6) (EPCRA EHS) (Ref. 8). Rats fed bromine at a dose of 0.01 mg/kg/day for 6 months experienced changes in their reflexes and blood indexes. Rats, mice, and rabbits inhaling 0.001 mg/kg/day for 4 months developed functional abnormalities of the respiratory, nervous, and endocrine systems. Data on the acute and chronic effects of bromine in humans are limited. Bromine is very corrosive to the eyes, skin, and mucous membranes in either the liquid or vapor form. A concentration of 10 ppm of bromine in air is intolerable in humans, and can cause severe irritation of the upper respiratory tract. Other clinical symptoms include neurologic, dermatologic, and gastrointestinal effects. The maximum concentration allowable in humans for a 0.5 to 1-hour exposure to bromine is 4 ppm. Bromine can cause lacrimation at concentrations less than 1 ppm. Chronic exposure to bromine (estimated concentration at 0.6 ppm) can result in eye irritation, upper respiratory irritation, coughing, and headache. Neurological symptoms have also been reported following chronic exposure to bromine.

EPA believes that there is sufficient evidence for listing bromine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical.

24. *1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile* (CAS No. 035691-65-7) (FIFRA AI) (Ref. 3). In a 3–month dietary study where rats were administered 83.5, 500, and 3,000 ppm (4, 25, and 150 mg/kg/day) 1-bromo-1-(bromomethyl)-1,3-propanedicarbonitrile, a NOEL of 83.5 ppm (4 mg/kg/day) and a LOEL of 500 ppm (25 mg/kg/day) were established (based on neonatal splenic hematopoiesis, decreased parental body weight and food consumption, increased male urinary epithelial cells, amorphous casts, and crystals). At 3,000 ppm (150 mg/kg/day) there was decreased lactase dehydrogenase, increased total cholesterol, total protein, and albumin, elevated female organ-to-body weight ratio for thyroid, liver, spleen, ovaries, and pituitary. In a 13-week dietary study in beagle dogs (administered 167, 1,000, and 4,000 ppm; 4, 25, and 100 mg/kg/day) the LOEL was greater than 167 ppm (4 mg/kg/day) (increased male thyroid and female ovary organ to body weight ratio). At 1,000 ppm (25 mg/kg/day), the same signs were seen as at 167 ppm (4 mg/kg/day), plus diarrhea and increased organ to body weight ratio of thyroid, heart, liver, and adrenals. At 4,000 ppm (100 mg/kg/day), emesis and ataxia in males, decreased body weight gain/food consumption, decreased hematocrit, hemoglobin, immature red blood cells, and alkaline phosphatase, extramedullary hematopoiesis in the liver and spleen, thyroid enlargement with follicular cell hyperplasia, increased organ to body weight ratios for thyroid, adrenals, liver and spleen were seen. In a 13–week dietary study where beagle dogs were administered 167 ppm (4 mg/kg/day), thyroid stimulating hormone (TSH)-stimulated T3 and T4 increased in both sexes. Thyroids were enlarged (both sexes) with absolute weights and organ to body weight ratios increased in females.

EPA believes that there is sufficient evidence for listing 1-bromo-1-(bromomethyl)-1,3-propanedicarbonitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data for this chemical.

25. *2-Bromo-2-nitropropane-1,3-diol (bronopol)* (CAS No. 000052-51-7) (FIFRA AI) (Ref. 3). Severe irritation was reported in the gastrointestinal tracts of rats, mice or dogs administered single or multiple oral doses of 2-bromo-2-nitropropane-1,3-diol. In an acute oral study in mice, the LD_{50} of 374 mg/kg resulted in ulceration of the stomach and duodenum, thickening of the intestinal wall, and edhesions of the stomach to the liver. Severe gastric irritation was reported in dogs administered a single oral dose of 250 mg/kg. The NOEL was 100 mg/kg. Superficial ulceration with epithelial hyperplasia and hyperkeratosis, and congested vessels in the gastrointestinal mucosa, was observed in rats fed 80 mg/kg/day (LOEL) in their diet for 13 weeks. The NOEL was 20 mg/kg/day. Vomiting was noted in dogs fed 20 mg/kg/day in their diet for 13 weeks. The NOEL in this study was 8 mg/kg/day. In addition, blood was noted in the urine of these dogs. Mortality, irritation of the gastrointestinal tract, ulceration and stomach lesions were reported in a 2–year dietary study in rats fed 40 mg/kg/day. The NOEL was 10 mg/kg/day. EPA believes that there is sufficient evidence for listing 2-bromo-2-nitropropane-1,3-diol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data.

26. *Bromoxynil (3,5-dibromo-4-hydroxybenzonitrile)* (CAS No. 001689-84-5) (FIFRA AI) (Ref. 3). Developmental effects (hydrocephalus, microphthalmia, anophthalmia and severe defects in ossification of the skull) were observed in rabbits administered 60 mg/kg/day bromoxynil by gavage. The NOEL was 30 mg/kg/day. Developmental toxicity (increases in all forms of supernumerary ribs) was also observed in rats at 5 mg/kg/day. The NOEL was 1.5 mg/kg/day. The maternal LOEL (based on body weight loss) was 30 mg/kg/day. Several other developmental studies indicate potential developmental toxicity of bromoxynil. EPA believes that there is sufficient evidence for listing bromoxynil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

27. *Bromoxynil octonoate (octanoic acid, 2,6-dibromo-4-cyanophenyl ester)* (CAS No. 001689-99-2) (FIFRA AI) (Ref. 3). Bromoxynil octanoate hydrolyzes to yield bromoxynil and octanol. In a dermal developmental toxicity study, bromoxynil octanoate was developmentally toxic to rat fetuses (increased incidences of supernumerary ribs) at 15 mg/kg/day (LOEL). The NOEL was 10 mg/kg/day. The maternal LOEL for decreased body weight gain was 20 mg/kg/day. The NOEL was 15 mg/kg/day. Developmental effects (hydrocephalus, microphthalmia, anophthalmia and severe defects in ossification of the skull) were observed in rabbits administered 60 mg/kg/day bromoxynil by gavage. The NOEL was 30 mg/kg/day. Developmental toxicity (increases in all forms of supernumerary ribs) was also observed in rats at 5 mg/kg/day. The NOEL was 1.5 mg/kg/day. The maternal LOEL (based on body weight loss) was 30 mg/kg/day. EPA believes that there is sufficient evidence for listing bromoxynil octanoate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for bromoxynil and bromoxynil octanoate.

28. *Brucine* (CAS No. 000357-57-3) (CERCLA; RCRA APP8; RCRA P) (Ref. 8). Brucine is an alkaloid similar in structure to strychnine. It is capable of causing death or permanent injury due to exposures in normal use. In humans, brucine can cause central and peripheral paralysis, convulsions, and respiratory failure. A potentially lethal oral dose in small children is 5 to 10 mg. The lethal oral dose for an adult may be as low as 30 mg. The acute oral LD_{50} in rabbits is 4 mg/kg.

EPA's exposure analysis indicates that brucine concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing brucine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

29. *Butylate (Bis-2-methylpropyl)carbamothioic ocid S-ethyl ester)* (CAS No. 002008-41-5) (FIFRA AI) (Ref. 3). In a 2–year feeding study in mice, hepatic (cellular infiltrates, focal necrosis) and renal effects (amyloidosis, chronic nephritis, lymphocytic foci) were observed at 80 mg/kg/day. The NOEL was 20 mg/kg/day. In a separate study, liver pericholangitis was observed in rats fed 180 mg/kg/day for 56 weeks. The NOEL was 30 mg/kg/day. An increased relative liver weight was observed in male dogs fed 25 mg/kg/day for 1–year. The NOEL was 5 mg/kg/day. Based on the NOEL, EPA has established a chronic oral RfD of 0.05 mg/kg/day. EPA believes that there is sufficient evidence for listing butylate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data for this chemical.

30. *Butylated hydroxyanisole* (CAS No. 025013-16-5) (CAL; IARC; NTP) (Ref. 8). Butylated hydroxyanisole is classified by IARC as a Group 2B compound; i.e., the chemical is possibly carcinogenic to humans. Butylated hydroxyanisole has been shown to induce gastrointestinal tumors in rats and hamsters. EPA believes that there is sufficient evidence for listing butylated hydroxyanisole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

31. *C.I. Acid Red 114* (CAS No. 006459-94-5) (TSCA) (Ref. 8). In a 2–year bioassay conducted by the National Toxicology Program (NTP) in which F344 rats were exposed to C.I. Acid Red 114 via drinking water, hepatocellular carcinomas of the liver, tumors of the skin, and adenomas or carcinomas in the Zymbal's gland of both sexes were observed. In the same study, female rats also had increased incidences of adenoma or carcinoma in the clitoral gland, and squamous cell papilloma or carcinoma in the oral cavity. The exposure concentrations in this study ranged from 70 to 300 ppm (9.8 to 42 mg/kg/day) for males and from 150 to 600 ppm (21 to 84 mg/kg/day) for females. EPA believes that there is sufficient evidence for listing C.I. Acid Red 114 on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

32. *C.I. Direct Blue 218* (CAS No. 028407-37-6) (NTP) (Ref. 8). In an NTP bioassay, there was clear evidence of carcinogenicity of C.I. Direct Blue 218 in male and female B6C3F1 mice based on significantly increased incidence of hepatocellular adenomas and carcinomas. In a 2–year NTP feeding study in rats, there was some evidence of carcinogenicity in male F344 rats based on a significant increase in the incidence of squamous cell papillomas of the pharynx in the high dose group (500 mg/kg/day). EPA believes that there is sufficient evidence for listing C.I. Direct Blue 218 on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

33. *Calcium hypochlorite* (CAS No. 007778-54-3) (CERCLA) (Ref. 8). Aquatic acute toxicity data for calcium hypochlorite include a 96–hour measured LC_{50} for rainbow trout of 60 ppb and a 96–hour measured LC_{50} for the Atlantic silverside of 37 ppb. EPA believes that there is sufficient evidence for listing calcium hypochlorite on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical.

34. *Caprolactam* (CAS No. 000105-60-2) (CAA HAP) (Ref. 7). Rats were administered caprolactam by oral gavage at doses of 0, 100, 500, and 1,000 mg/kg/day on gestation days 8 through 20. This resulted in a LOAEL of 1,000 mg/kg/day and a NOAEL of 500 mg/kg/day for fetal resorption. Rabbits were administered caprolactam by oral gavage at doses of 0, 50, 150, and 250 mg/kg/day on gestation days 6 through 28. This resulted in a LOAEL of 150 mg/kg/day for maternal and fetal body weight depression. In addition, a slight increase in the severity of spontaneous nephropathy (10,000 ppm) was observed in male rats of the first parental generation fed 10,000 ppm of caprolactam in a three-generation reproductive study, resulting in a NOAEL of 1,000 ppm (50 mg/kg/day). Mean body weights and food consumption were reduced in both parental generations at 5,000 and 10,000 ppm. Body weights of offspring were also reduced at these dietary concentrations (the LOAEL was 250 mg/kg/day). EPA believes that there is sufficient evidence for listing caprolactam on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

35. *Carbofuran* (CAS No. 001563-66-2) (CERCLA; EPCRA EHS; FIFRA SR) (Ref. 8). Aquatic acute toxicity test data for carbofuran include a measured 96–hour LC_{50} for bluegill of 80 ppb. In addition, the measured 48–hour EC_{50} for daphnids is 35 ppb. Measured terrestrial acute toxicity data for wildlife include an oral LD_{50} for mallard ducks of 0.397 mg/kg for females and 0.480 mg/kg for males and an oral LD_{50} for female ring-necked pheasants of 4.15 mg/kg. EPA believes that there is sufficient evidence for listing carbofuran on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

36. *Carbon monoxide* (CAS No. 000630-08-0) (CAL) (Ref. 8). Cardiovascular (e.g., electrocardiograph changes, atrial fibrillation, ventricular arrhythmias) and neurological (e.g., headache, dizziness, convulsions, and coma) effects were reported in humans exposed to carbon monoxide. In humans, histological effects in the brain include extensive demyelination of white matter, and necrosis. Neuropsychiatric disorders have also been reported. Persistant electrocardiograph changes, and degeneration of myocardial muscle fibers, hemorrhage and necrosis were observed following inhalation exposure of dogs to 100 ppm (0.11 mg/L) carbon monoxide, 5.5 hours/day, 6 days/week, for 11 weeks. Some of the dogs showed disturbances in gait and in postural and position reflexes. The toxicity of carbon monoxide results from its combination with hemoglobin in the blood to form carboxyhemoglobin which is a poor oxygen carrier. Thus, oxygen delivery by the blood is severely compromised, which leads to tissue hypoxia and possibly tissue poisoning, resulting in the toxic effects (including death) known for this substance.

Infants born to women who survive acute exposure to high concentrations of carbon monoxide during pregnancy often display neurological sequelae and gross brain damage. Exposure of pregnant rats to 150 ppm (0.17 mg/L) carbon monoxide caused reduced pup growth rate, and altered behavior (poor performance on negative geotaxis and homing tests) in pups.

EPA believes that there is sufficient evidence for listing carbon monoxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic neurological, myocardial, and developmental toxicity data for this chemical.

Carbon monoxide is regulated under Title I of the CAA (Provisions for Attainment and Maintenance of National Ambient Air Quality Standards). In addition to this proposal to add carbon monoxide to EPCRA section 313, in Units IV.B.179. and 235, EPA is proposing to add two other

chemicals, nitrogen dioxide and sulfur dioxide, that are regulated under Title I of the CAA. Sulfur dioxide is also regulated under Title IV of the CAA (Acid Deposition Control). Extensive data, which are highly technical, are collected on these chemicals as required by the CAA. EPA requests comment on the following: (1) Is the information collected under the CAA sufficient for public right-to-know purposes; and (2) suggestions on how the data collected on these chemicals pursuant to CAA Titles I and IV could be used to meet the purposes of EPCRA section 313.

37. *Carboxin (5,6-dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)* (CAS No. 005234-68-4) (FIFRA AI) (Ref. 3). Decreased body weight gain and food consumption, increased mortality, and reduced kidney, heart and spleen weights were observed in rats fed 600 ppm (30 mg/kg/day) carboxin for 2 years. The NOEL is 200 ppm (10 mg/kg/day). A similar NOEL was established in a three-generation rat reproduction study. Based on the NOEL, EPA established an oral RfD of 0.01 mg/kg/day. In a 90–day feeding study in rats, degeneration of the kidneys was seen at 600 ppm (30 mg/kg/day). The NOEL was 10 mg/kg/day. EPA believes that there is sufficient evidence for listing carboxin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available renal toxicity data for this chemical.

38. *Chinomethionat (6-methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one)* (CAS No. 002439-01-2) (FIFRA AI) (Ref. 3). Increases in liver weight, liver protein, and both total liver and microsomal RNA levels, as well as inhibition of mixed-function oxidase enzymes (e.g., N-demethylase, cytochrome P-450) were noted in rats administered 75 mg/kg/day by oral gavage for 4 days or in female rats administered 75 mg/kg/day in their diet for 21 days. Liver enlargement was reported in rats fed 10 mg/kg/day in their diet for 35 days. The increase in liver size was attributed to increased cellular protein and an increase in water content. Rats exposed orally to 2,700 mg/kg for 90 days (30 mg/kg/day) had changes in liver weight and effects on the hepatic microsomal oxidases as well as weight loss or decreased body weight gain. In a 1-year dog study, the NOEL was established at 0.6 mg/kg/day for the test material in the diet. The LOEL was 1.9 mg/kg/day as indicated by extra medullary hematopoietic nodules in the liver.

In a developmental toxicity study in rats, increased resorption and decreased fetal weight were reported at 37.5 mg/kg/day (the highest dose tested). The NOEL was 12.5 mg/kg/day. In another developmental study in rats given 30 mg/kg/day in carboxy methyl cellulose by gavage from gestation day 6 to 20, cleft palate, anasarca and micrognathia was observed.

EPA believes that there is sufficient evidence for listing chinomethionat on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data.

39. *Chlorendic acid* (CAS No. 000115-28-6) (NTP) (Ref. 8). Based on sufficient evidence of carcinogenicity in animals IARC classified chlorendic acid as a Group 2B compound; i.e., it is possibly carcinogenic in humans. In an NTP bioassay, there was clear evidence of liver carcinogenicity in both rats and mice. EPA believes that there is sufficient evidence for listing chlorendic acid on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

40. *Chlorimuron ethyl (ethyl-2-[[[(4-chloro-6-methoxypirimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate)* (CAS No. 090982-32-4) (FIFRA AI) (Ref. 3). In a 1–year dog study, dietary administration of 37.5 mg/kg/day (LOEL) produced an increase in white blood cells in both sexes, a decrease in red blood cells, hematocrit, and hemoglobin in females, and an increase in alkaline phosphatase in males. The NOEL was 6.25 mg/kg/day. Based on the NOEL, an oral RfD of 0.02 mg/kg/day was derived. This study was given a high confidence rating. In a 2–year rat feeding study, changes in hematology parameters were observed at the LOEL of 125 mg/kg/day. The NOEL was 12.5 mg/kg/day. In an 18–month mouse feeding study, centrilobular hepatocellular hypertrophy was observed at 90 days at 187.5 mg/kg/day (LOEL). The NOEL was 18.75 mg/kg/day. EPA believes that there is sufficient evidence for listing chlorimuron ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data.

41. *Chlorinated paraffins category* (CAA HAP) (Ref. 7). Chlorinated paraffins are defined as mixtures of linear saturated chlorinated hydrocarbons obtained through the partial chlorination of paraffin, olefin, or acetylene feedstocks which have an average chain length of 10 to 30 carbon atoms and contain average chlorine levels ranging from 40 to 70 percent by weight. Chlorinated paraffins can be described by the general formula: $C_xH_{2x-y+2}Cl_y$ where x ranges from 10 to 30 and y ranges from 3 to 26. Both 58 percent-chlorinated, short-chain (10 to 12 carbons) and 43 percent-chlorinated, long-chain (22 to 26 carbons) chlorinated paraffins were tested in rats and mice by gavage in a 2–year bioassay. The 58 percent-chlorinated, short-chain (10 to 12 carbons) chlorinated paraffins were carcinogenic in rats and mice: dosed male and female mice showed increased incidences of liver tumors, dosed male rats had increased incidences of kidney tubular cell hyperplasia and adenomas or adenocarcinomas (combined), and dosed female rats and mice showed increased thyroid gland follicular cell neoplasms, indicating an EPA Group B2 classification, i.e., a probable human carcinogen. The 43 percent-chlorinated, long-chain (22 to 26 carbons) chlorinated paraffins were carcinogenic in male mice showing an increased incidence of malignant lymphomas, and marginal increase in hepatocellular neoplasms in female mice and adrenal gland pheochromocytomas in female rats, indicating an EPA Group B2 category classification, i.e., the chemical is a probable human carcinogen. EPA believes that there is sufficient evidence for listing chlorinated paraffins on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for these chemicals.

The following ecotoxicity data (LC_{50}s followed by experiment duration in parenthesis) have been reported for short chain (10 to 13 carbons) and intermediate chlorination (59 percent chlorine) chlorinated paraffins: daphnid, 46 ppb (48–hour); mysid shrimp, 14 ppb (96–hour); marine algae, 42 ppb (96–hour); daphnid, 2 ppb and 9 ppb (21–day chronic study); and midge, 78 ppb (49–day chronic study). Ranges of chronic toxicity values are as follow: Freshwater invertebrates, 2 to 162 ppb; freshwater fish, 3 to 17.2 ppb; marine invertebrates, 2.4 to 24 ppb; and marine fish, 2.4 ppb to 620.5 ppm. Chlorinated paraffins are persistent with a half-life of greater than 30 days in the environment. EPA believes that there is sufficient evidence for listing the category chlorinated paraffins on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for these chemicals and their persistence in the environment.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories the releases are determined in the same manner as the thresholds. One report if filed for the category and all releases are reported on this form.

42. *1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride* (CAS No. 004080-31-3) (FIFRA AI) (Ref. 3). Decrease in heart weight, obliterative vasculitis, and perivasculitis of the hepatic blood vessels were observed in dogs orally administered 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane for 90 days. The NOEL was 7.5 mg/kg/day; the LOEL was 15 mg/kg/day. EPA believes that there is sufficient evidence for listing 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for 1-(3-chloroallyl)-3,5,7-triaza-1-azoniaadamantane.

43. *p-Chloroaniline* (CAS No. 000106-47-8) (CERCLA; RCRA APP8; RCRA P) (Ref. 8). In a 78–week study in which rats were fed p-chloroaniline, non-neoplastic proliferative lesions of the splenic capsule (focal fibrosis with subcapsular mesenchymal proliferation) were observed. The LOAEL was 12.5 mg/kg/day (the lowest dose tested) and the RfD derived from this data is 0.004 mg/kg/day. EPA believes that there is sufficient evidence for listing p-chloroaniline on EPCRA section 313 pursuant to section 313(d) (2)(B) based on the chronic toxicity data for this chemical.

44. *5-Chloro-2-(2,4-dichlorophenoxy)phenol* (CAS No. 003380-34-5) (FIFRA AI) (Ref. 3). In a 3–month dog feeding study, decreased red blood cell and hemoglobin values, increased serum alkaline phosphatase, jaundice, and increased liver weight were observed at 25 mg/kg/day (LOEL). No NOEL could be established. In another 3–month dog feeding study, the LOEL of 25 mg/kg/day produced morphologic changes in the liver (focal acidophilic granular degeneration of cytoplasm). The NOEL was 12.5 mg/kg/day. In a 3–month rat feeding study, 125 mg/kg/day (LOEL) produced increased liver weights in males. The NOEL was 50 mg/kg/day. At 150 mg/kg/day (LOEL), decrease in triglycerides, increase in creatinine, decrease in red blood cells, increase in spleen and heart weight, and cytomegaly were observed in another 3–month rat feeding study (NOEL was 50 mg/kg/day). In a 2–year study, dietary administration of 15 mg/kg/day produced decreases in red blood cells, hemoglobin concentration, and hematocrit as well as hepatic necrosis in males. At 50 mg/kg/day, there were decreases in red blood cells in females. EPA believes that there is sufficient evidence for listing 5-chloro-2-(2,4-dichlorophenoxy)phenol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data for this chemical.

45. *3-Chloro-2-methyl-1-propene* (CAS No. 000563-47-3) (NTP) (Ref. 8). In an NTP gavage bioassay there was clear evidence of carcinogenicity from 3-chloro-2-methyl-1-propene in rats and mice. The substance induced adrenal cortex, testicular and gastrointestinal tumors in rats and adrenal cortex and gastrointestinal tumors in mice. EPA believes that there is sufficient evidence for listing 3-chloro-2-methyl-1-propene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

46. *p-Chlorophenyl isocyanate* (CAS No. 000104-12-1) (TSCA) (Ref. 8). p-Chlorophenyl isocyanate is very lethal following inhalation. The 4–hour mouse inhalation LC_{50} value is 0.053 mg/L. In addition, isocyanates as a class are generally severe skin, eye, and respiratory irritants following acute exposure.

EPA's exposure analysis indicates that p-chlorophenyl isocyanate concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing p-chlorophenyl isocyanate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

47. *Chloropicrin* (CAS No. 000076-06-2) (FIFRA AI) (Ref. 3). Measured aquatic acute toxicity data for chloropicrin include a rainbow trout 96–hour LC_{50} of 16.5 ppb, a bluegill 96–hour LC_{50} of 105 ppb, and a 48–hour EC_{50} of 80 ppb. EPA believes that there is sufficient evidence for listing chloropicrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

48. *3-Chloropropionitrile* (CAS No. 000542-76-7) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). 3-Chloropropionitrile is metabolized by hepatic cytochrome P450 enzymes to release cyanide. The substance is readily absorbed both dermally and orally. The mouse oral LD_{50} is 51.3 mg/kg.

EPA's exposure analysis indicates that 3-chloropropionitrile concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing 3-chloropropionitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

49. *p-Chloro-o-toluidine* (CAS No. 000095-69-2) (IARC; NTP) (Ref. 8). p-Chloro-o-toluidine is classified as a Group B2 carcinogen by EPA; i.e., the compound is a probable human carcinogen. It is classified as a Group 2B carcinogen by IARC; i.e., a possible human carcinogen. Epidemiology studies are inadequate in evaluating the carcinogenic potential of 4-chloro-o-toluidine hydrochloride in humans. In a long-term feeding study by NCI, p-chloro-o-toluidine hydrochloride induced hemangiomas, hemangiosarcomas, and vascular tumors in mice. An increase in the incidence of pituitary chromophobe adenomas was observed in female rats following dietary administration. EPA believes that there is sufficient evidence for listing p-chloro-o-toluidine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

50. *Chlorotrifluoromethane (CFC-13)* (CAS No. 000075-72-9) (CAA OD) (Ref. 8). Chlorofluorocarbons, including chlorotrifluoromethane (CFC-13) are known to release chlorine radicals into the stratosphere. Chlorine radicals act as catalysts to reduce the net amount of stratospheric ozone.

Stratospheric ozone shields the earth from ultraviolet-B (UV-B) radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone will increase the percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface.

Exposure to UV-B radiation has been implicated by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies predict that for every 1 percent increase in UV-B radiation, nonmelanoma skin cancer cases would increase by about 1 to 3 percent.

Recent epidemiological studies, including large case control studies, suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer. Recent studies predict that for each 1 percent change in UV-B intensity, the incidence of

melanoma could increase from 0.5 to 1 percent.

Studies have demonstrated that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans. Increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina.

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit.

Increased UV-B penetration has been shown to result in adverse impacts on plants. Field studies on soybeans suggest that yield reductions could occur in some cultivars of soybeans, while evidence from laboratory studies suggest that two out of three cultivars are sensitive to UV-B. Because this increased UV-B radiation can be reasonably anticipated to lead to cancer and other chronic human health effects and significant adverse environmental effects, there is sufficient evidence for listing chlorotrifluoromethane (CFC-13) on EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C).

51. *Chlorpyrifos methyl (O,O-dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate)* (CAS No. 005598-13-0) (FIFRA AI) (Ref. 3). Humans experienced a 10 percent reduction in plasma cholinesterase activity after 10 dermal exposures to 10 mg/kg/day and a 47 percent reduction after 4 dermal exposures to 25 mg/kg/day (exposures were for 12 hours per day). Rabbits experienced a 97 to 100 percent reduction in plasma cholinesterase activity after 5 dermal exposures to 10 mg/kg/day for 12 hours a day or 2 dermal exposures to 25 mg/kg/day for 12 hours a day. In a 2–year rat feeding study, red blood cell and plasma cholinesterase inhibition were observed at 1 mg/kg/day (LOEL). The NOEL was 0.1 mg/kg/day. In a 2–year dog feeding study, plasma cholinesterase inhibition was observed at 1 mg/kg/day (LOEL). The NOEL was 0.1 mg/kg/day. The oral rat LD_{50} is between 1,159 mg/kg and 3,833 mg/kg. Lethargy, ataxia, diarrhea, salivation, and tremors were observed in these studies. EPA believes that there is sufficient evidence for listing chlorpyrifos methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

Aquatic acute toxicity values for chlorpyrifos methyl include a daphnid 48–hour LC_{50} of 1.11 ppb and a rainbow trout 96–hour LC_{50} of 12.6 ppb. EPA believes that there is sufficient evidence for listing chlorpyrifos methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

52. *Chlorsulfuron (2-chloro-N-[[(4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide)* (CAS No. 064902-72-3) (FIFRA AI) (Ref. 3). In a rabbit developmental study, an increased incidence of fetal resorptions was observed at the LOEL of 75 mg/kg/day. The NOEL was 25 mg/kg/day.

In a 3-generation rat reproduction study, a decrease in fertility index was observed at 125 mg/kg/day (LOEL). The NOEL was 25 mg/kg/day. EPA believes that there is sufficient evidence for listing chlorsulfuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data for this chemical.

53. *Clomazone (2-[(2-chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone)* (CAS No. 081777-89-1) (FIFRA AI) (Ref. 3). In a 90–day dog feeding study, increased cholesterol and increased absolute and relative liver weights were observed at 62.5 mg/kg/day (LOEL). The NOEL was 12.5 mg/kg/day. Dietary administration of 62.5 mg/kg/day (LOEL) to dogs for 1–year also produced increased cholesterol and increased liver weights. The NOEL was 12.5 mg/kg/day. In a 90–day mouse feeding study, megalocytosis of the liver cells was seen at 2.6 mg/kg/day (LOEL). No NOEL was established. In a 2–year rat feeding study, elevated cholesterol levels and liver-to-body weight ratios were observed at 21.5 mg/kg/day (LOEL). The NOEL was 4.3 mg/kg/day. Dietary administration of 62.5 mg/kg/day (LOEL) to dogs for 1–year increased cholesterol and liver weights. The NOEL was 12.5 mg/kg/day.

In a two-generation reproduction study, decreased pup viability, reduced survival, decreased body weight, and nonfunctional limbs were observed in the offspring of rats that were orally administered 50 mg/kg/day (LOEL). The NOEL was 5 mg/kg/day.

EPA believes that there is sufficient evidence for listing clomazone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data.

54. *Crotonaldehyde* (CAS No. 004170-30-3) (RCRA APP8) (Ref. 8). Crotonaldehyde has been tested for carcinogenicity in one animal study. When crotonaldehyde was administered to male F344 rats at 0, 42, or 421 mg/L for 113 weeks, there was a statistically significant increase in the incidence of hepatocellular neoplasms (benign and malignant combined) in the low dose group. The lack of tumorigenic effects at the high-dose group is believed to be due to the hepatotoxicity observed in this group. At high dose, crotonaldehyde is cytotoxic; cells died before neoplasms are manifested. Crotonaldehyde and other alpha, beta-unsaturated carbonyls are chemically reactive compounds which can readily react with cellular macromolecules such as DNA and proteins. Mutagenicity studies in a slightly modified preincubation Ames test have clearly shown that crotonaldehyde is mutagenic. EPA believes that there is sufficient evidence for listing crotonaldehyde on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity and mutagenicity data for this chemical.

55. *Cyanazine* (CAS No. 021725-46-2) (CAL; FIFRA SR) (Ref. 8). Cyanazine is a triazine-type herbicide. In a three-generation reproduction study in Long-Evans rats, F_3b female weanlings had increased relative brain weights and decreased relative kidney weights. The LOAEL was 4.05 mg/kg/day and the NOAEL was 1.35 mg/kg/day. In rabbits that received cyanazine in gelatin capsules during gestation days 6 to 18, there was increased postimplantation loss, decreased litter size, and alterations in ossification. In addition, there were increased malformations in the offspring, including anophthalmia/microphthalmia, dilated brain ventricles, dome cranium and thoracoschisis (the LOAEL was 2 mg/kg/day; the NOAEL was 1 mg/kg/day). Similar developmental effects were reported in Fischer 344 rats administered cyanazine during gestation days 6 to 15 (the LOAEL was 25 mg/kg/day; the NOAEL 5 was mg/kg/day). EPA believes that there is sufficient evidence for listing cyanazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for this chemical.

56. *Cycloate* (CAS No. 001134-23-2) (FIFRA AI) (Ref. 3). Cycloate, a carbamate pesticide, is a cholinesterase inhibitor. Symptoms of poisoning include salivation, lacrimation, convulsions, and death. Depressed plasma cholinesterase was observed in a 9–week rat inhalation study at 0.0025 mg/L. The NOEL was less than 0.0025 mg/L. Decreased serum cholinesterase (in males and females) and Wallerian degeneration of nerve fibers in spinal cord and sciatic nerve (females) were observed at 0.12 mg/L in a 10-week rat inhalation study (cholinesterase NOEL is 0.012 mg/L). In both inhalation studies, animals were exposed for 6 hours/day, 5 days/week. Plasma, red blood cell, and brain cholinesterase inhibition was reported in rats fed 8 mg/kg/day for 2 years. The NOEL was less than 8 mg/kg/day. Dose-related neuropathy and muscle myopathy were observed. In a 2–year rat feeding study, distended myelin sheath demyelination and nerve fiber loss occurred at 3 mg/kg/day (LOEL). The NOEL was 0.5 mg/kg/day.

Decreased weight and survival were observed in the offspring of rats orally administered 24 mg/kg/day (LOEL) and 72 mg/kg/day of cycloate, respectively (duration and frequency of dosing not reported). The reproductive NOEL was 8 mg/kg/day. Decreased pup weight was observed at 20 mg/kg/day and decreased pup survival was observed at 50 mg/kg/day in a 2-generation rat reproduction study. The NOEL values for these endpoints were 2.5 mg/kg/day and 20 mg/kg/day, respectively.

EPA believes that there is sufficient evidence for listing cycloate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and developmental toxicity data.

57. *Cyclohexanol* (CAS No. 000108-93-0) (TSCA) (Ref. 8). Four rabbits exposed to 997 ppm (4 mg/L) for 11 days (6 hours/day, 5 days/week) and a rabbit receiving dermal applications of approximately 2,500 mg/kg/day for 10 days (1 hour/day) developed tremors, central nervous system depression, lethargy or hypothermia.

Microscopic or degenerative changes were observed in the livers and kidneys of rabbits inhaling 145 ppm (0.59 mg/L) of cyclohexanol for 50 days (6 hours/day, 5 days/week), or repeated doses at 272 ppm (1.1 mg/L). In addition, degenerative myocardial effects were observed at this exposure level. Repeated inhalation exposure to higher doses (997 to 1,229 ppm; 4 to 5 mg/L) in rabbits resulted in degenerative changes in the brain and heart as well as liver and kidneys.

Reproductive effects including testicular atrophy, loss of Type A spermatogonia, spermatocytes and spermatozoa, "shrinkage" of seminiferous tubules and Leydig cells, reductions in RNA protein, sialic acid, and glycogen in testes, epididymis and seminal vesicles and increased testicular cholesterol and alkaline phosphatase were observed in male rats or gerbils exposed to 15 mg/kg of cyclohexanol for 21 to 37 days. These changes were accompanied with decreased fertility, and occurred at exposure levels which had no effect on the liver or kidney.

EPA believes that there is sufficient evidence for listing cyclohexanol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurological, hepatic, renal, myocardial, and reproductive toxicity data for this chemical.

58. *Cyfluthrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester)* (CAS No. 068359-37-5) (FIFRA AI) (Ref. 3). In a 14–day rat study, oral administration of 60 mg/kg/day produced tremors, uncoordinated gait, salivation, slight brain hemorrhages, necrosis of the skeletal muscle fibers, and death. The NOEL was not defined. In another study, salivation, straddled gait, axonal degeneration of sciatic nerve, microtubular dilation, and mitochondria degeneration in the sciatic and femoral nerves were observed in rats administered 80 mg/kg/day orally for 5 days and 40 mg/kg/day for the following 9 days. No NOEL was established.

Liver and adrenal weight increases were observed in rats orally administered 40 to 80 mg/kg/day for 28 days. The highest dose of 80 mg/kg/day was reduced to 40 mg/kg/day. The NOEL was 20 mg/kg/day. Liver weight changes and urobilinogen and ketone bodies in the urine were observed in rats fed 15 mg/kg/day for 28 days. No NOEL was established. In a 28–day mouse feeding study, increased liver weight was observed at 50 mg/kg/day (LOEL). The NOEL was 15 mg/kg/day. Inflammatory foci in the kidneys of females were observed at 7.5 mg/kg/day in a 2–year rat feeding study. The NOEL was 2.5 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.025 mg/kg/day was determined. Increased alkaline phosphatase activity was observed in males at 7.5 mg/kg/day in a 23–month mouse feeding study.

EPA believes that there is sufficient evidence for listing cyfluthrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological, hepatic, and renal toxicity data.

Aquatic acute toxicity values for cyfluthrin include a rainbow trout 96–hour LC_{50} of 0.68 ppb, a bluegill 96–hour LC_{50} of 1.5 ppb, and a daphnid 48–hour EC_{50} of 0.14 ppb. EPA believes that there is sufficient evidence for listing cyfluthrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

59. *Cyhalothrin (3-(2-chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester)* (CAS No. 068085-85-8) (FIFRA AI) (Ref. 3). Cyhalothrin administered orally (in capsules) to dogs at 10 mg/kg/day for 26 weeks produced occasional disturbances of the nervous system (unsteadiness and/or muscular trembling). The NOEL for these effects was not defined. In a 1–year dog study, ataxia, muscle tremors, and convulsions were observed following oral administration at 3.5 mg/kg/day. Abnormal gait and convulsions were observed at 0.5 mg/kg/day. The LOEL of the study was 0.5 mg/kg/day and the NOEL was 0.1 mg/kg/day. EPA believes that there is sufficient evidence for listing cyhalothrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

60. *Cyromazine (N-cyclopropyl-1,3,5-triazine-2,4,6-triamine)* (CAS No. 066215-27-8) (FIFRA AI) (Ref. 3). In a 6–month dog feeding study, 7.5 mg/kg/day (LOEL) produced changes in hematocrit and hemoglobin levels. The NOEL was 0.75 mg/kg/day. Based on the NOEL, an oral RfD of 0.0075 mg/kg/day was derived. In a 90–day dog feeding study, the LOEL of 25 mg/kg/day produced an increase in relative liver weights in males. The NOEL was 7.5 mg/kg/day. In a 90–day rat feeding study, the LOEL of 15 mg/kg/day produced a decrease in relative liver weights in males. The NOEL was 1.5 mg/kg/day. EPA believes that there is sufficient evidence for listing cyromazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data.

61. *Dazomet (tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)* (CAS No. 000533-74-4) (FIFRA AI) (Ref. 3). Animals fed dazomet at a dietary dose of 40 ppm for 2 years showed focal necrosis and fatty metamorphosis of the liver. Rats fed 30.3 mg/kg/day experienced decreased weight gain and changes in liver weight. Renal focal tubular necrosis was seen in rats fed 10 ppm (0.5 mg/kg/day) for 2 years. EPA believes that there is sufficient evidence for listing dazomet on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data for this chemical.

62. *Dazomet sodium salt (tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium)* (CAS No. 053404-60-7) (FIFRA AI) (Ref. 3). The available toxicity data is on dazomet. Rats fed 80 ppm for 2 years (4 mg/kg/day) showed focal necrosis and fatty metamorphosis of the liver. Rats fed 30.3 mg/kg/day experienced decreased weight gain and changes in liver weight. Renal focal tubular necrosis was seen in

rats fed 10 ppm (0.5 mg/kg/day) for 2 years. EPA believes that there is sufficient evidence for listing dazomet sodium on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available renal toxicity data for its free acid, dazomet.

63. *2,4-DB* (CAS No. 000094-82-6) (FIFRA SR) (Ref. 8). 2,4-DB (4-(2,4-dichlorophenoxy)butanoic acid) is a 2,4-dichlorophenoxy-type herbicide. In a study involving beagle dogs fed a diet containing 2,4-DB for 90 days, a LOAEL of 25 mg/kg/day was determined, based on internal hemorrhaging and mortality observed during the first 3 to 9 weeks of treatment. The NOAEL in this study was 8 mg/kg/day. At this dose level, slight increases in liver weights were observed, but unaccompanied by any gross or histopathologic lesions. EPA has derived an oral RfD of 0.008 mg/kg/day from the LOAEL. In a subchronic rat feeding study, the LOAEL and NOAEL values determined were higher (the LOAEL was approximately 80 to 100 mg/kg/day; the NOAEL was approximately 25 to 30 mg/kg/day), and were based on severe liver and kidney damage.

In the above-mentioned subchronic (90–day) dog feeding study, it was observed that the animals exposed to doses of 2,4-DB at 25 mg/kg/day (the LOAEL) and higher exhibited aspermatogenesis within the first 3 to 9 weeks of treatment. The offspring of rats orally exposed to 17 mg/kg of 2,4-DB during days 1 to 7 of gestation developed abnormalities. There was also an increase in stillbirths at this dose level. In a separate study, offspring of rats orally exposed to 416 mg/kg on days 5 or 9 of gestation exhibited increased preimplantation loss and/or developmental toxicity.

EPA believes that there is sufficient evidence for listing 2,4-DB on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatic, reproductive, and developmental toxicity data for this chemical.

64. *2,4-D butoxyethyl ester* (CAS No. 001929-73-3) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D butoxyethyl ester is a 2,4-dichlorophenoxy-type herbicide. In mammals, the butoxyethyl ester of 2,4-D is hydrolyzed to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D butoxyethyl ester is expected to be similar to that of 2,4-D, in which the kidney, liver, and nervous system are the primary targets of injury. EPA believes that there is sufficient evidence for listing 2,4-D butoxyethyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the known chronic effects of its metabolite 2,4-D.

65. *2,4-D butyl ester* (CAS No. 000094-80-4) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D butyl ester is a 2,4-dichlorophenoxytype herbicide. In mammals, the butyl ester of 2,4-D is hydrolyzed to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D butyl ester is expected to be similar to that of 2,4-D, in which the kidney, liver, and nervous system are the primary targets of injury. EPA believes that there is sufficient evidence for listing 2,4-D butyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the known toxic effects of its metabolite 2,4-D.

66. *2,4-D chlorocrotyl ester* (CAS No. 002971-38-2) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D chlorocrotyl ester is a 2,4-dichlorophenoxy-type herbicide. In mammals, the chlorocrotyl ester of 2,4-D is hydrolyzed to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D chlorocrotyl ester is expected to be similar to that of 2,4-D, in which the kidney, liver and nervous system are the primary targets of injury. EPA believes that there is sufficient evidence for listing 2,4-D chlorocrotyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the known toxic effects of its metabolite 2,4-D.

67. *Desmedipham* (CAS No. 013684-56-5) (FIFRA AI) (Ref. 3). In a 90–day dog study, groups of four beagles/sex were fed diets containing 0 to 5.24 mg/kg/day. This caused increased methemoglobin at 5.24 mg/kg/day (LOEL). EPA believes that there is sufficient evidence for listing desmedipham on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data.

68. *2,4-D 2-ethylhexyl ester* (CAS No. 001928-43-4) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D 2-ethylhexyl ester is a 2,4-dichlorophenoxy-type herbicide. The 2-ethylhexyl moiety contains eight carbons and, therefore, is an isooctyl group. Developmental toxicity following maternal exposure to 2,4-D isooctyl esters has been demonstrated in the rat and mouse. Fetotoxicity occurred in offspring of rats exposed to 528 mg/kg during gestation days 8 through 11. Rats orally exposed to doses as low as 302 mg/kg during gestation days 9 through 12 had musculoskeletal abnormalities. Exposure to a lower dose (188 mg/kg) for a longer period during gestation (days 6 through 15) caused developmental effects on homeostasis and effects on newborn growth statistics. In mice, 438 mg/kg administered orally during gestation days 8 to 12 also caused effects on newborn growth statistics.

EPA believes that there is sufficient evidence for listing 2,4-D 2-ethylhexyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for 2,4-D isooctyl esters, and on the toxic effects of its metabolite 2,4-D.

The aquatic acute toxicity data for 2,4-D isooctyl esters include a measured 48–hour LC_{50} of 8.8 ppm for bluegill. In addition, 2,4-D isooctyl esters are expected to bioaccumulate based on the estimated log K_{ow} of 6.6. EPA believes that there is sufficient evidence for listing 2,4-D 2-ethylhexyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data and the potential for bioaccumulation.

69. *2,4-D 2-ethyl-4-methylpentyl ester* (CAS No. 053404-37-8) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D 2-ethyl-4-methylpentyl ester is a 2,4-dichlorophenoxy-type herbicide. The 2-ethyl-4-methylpentyl ester moiety contains eight carbons and, therefore, is an isooctyl group. Developmental toxicity following maternal exposure to 2,4-D isooctyl esters has been demonstrated in the rat and mouse. Fetotoxicity occurred in offspring of rats exposed to 528 mg/kg during gestation days 8 through 11. Rats orally exposed to doses as low as 302 mg/kg during gestation days 9 through 12 had musculoskeletal abnormalities. Exposure to a lower dose (188 mg/kg) for a longer period during gestation (days 6 through 15) caused developmental effects on homeostasis and effects on newborn growth statistics. In mice, 438 mg/kg administered orally during gestation days 8 through 12 also caused effects on newborn growth statistics.

EPA believes that there is sufficient evidence for listing 2,4-D 2-ethyl-4-methylpentyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for 2,4-D isooctyl esters, the toxic effects of its metabolite 2,4-D. The aquatic acute toxicity data for 2,4-D isooctyl esters include a measured 48–hour LC_{50} of 8.8 ppm for bluegill. In addition, 2,4-D isooctyl esters are expected to bioaccumulate based on the estimated log K_{ow} of 6.6. EPA believes that there is sufficient evidence for listing 2,4-D 2-ethyl-4-methylpentyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data and the potential for bioaccumulation.

70. *Diazinon* (CAS No. 000333-41-5) (CERCLA; FIFRA SR) (Ref. 8). Diazinon, an organophosphate insecticide, causes plasma cholinesterase inhibition and central nervous system depression. Significant inhibition of plasma cholinesterase was observed in two men administered five doses of 0.025 mg/kg/day. Diazinon administered to men at doses of 0.05 mg/kg/day for 28 days caused a 35 to 40 percent reduction in plasma cholinesterase. A NOEL for cholinesterase inhibition of 0.02 mg/kg/day was identified from several controlled studies in humans. Clinical symptoms of diazinon poisoning include headache, nausea, sweating, vomiting, and diarrhea all of which are indicative of neurotoxicity. Plasma cholinesterase inhibition (93 percent) and red blood cell inhibition (90 percent) occurred in monkeys orally exposed to diazinon in doses of 5 mg/kg/day for 52 weeks. The NOEL for inhibition of cholinesterase in this study was 0.05 mg/kg/day and the LOEL was 0.5 mg/kg/day.

Urogenital defects in the offspring of female rats orally administered diazinon at doses of 26.4 mg/kg on days 12 to 15 of gestation has been reported. Diazinon also induced musculoskeletal abnormalities in offspring when administered orally to mothers at doses of 45 mg/kg on days 8 to 12 of gestation. Post-implantation mortality was increased in female rats administered 63.5 mg/kg on day 10 of gestation. Similar reproductive and developmental effects were observed in mice. Oral administration of 3.96 mg/kg of diazinon (days 1 to 22 of gestation) caused decreased litter size and delayed behavioral effects in the newborn. Doses of 0.210 mg/kg and 3.78 mg/kg administered orally on days 1 to 21 of gestation caused abnormalities in the immune and reticuloendothelial system and biochemical and metabolic abnormalities of the offspring, respectively.

EPA believes that there is sufficient evidence for listing diazinon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental and chronic neurotoxicity data for this chemical.

Measured aquatic acute toxicity data for diazinon include a 96–hour LC_{50} for rainbow trout of 90 ppb and a daphnid 96–hour LC_{50} of 0.90 ppb. In addition, measured terrestrial wildlife acute toxicity data for diazinon include an oral LD_{50} for male mallard ducks of 3.54 mg/kg and an oral LD_{50} for male pheasants of 4.33 mg/kg. EPA believes that there is sufficient evidence for listing diazinon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

71. *2,2-Dibromo-3-nitrilopropionamide* (CAS No. 010222-01-2) (FIFRA AI) (Ref. 3). Oral administration of 50 mg/kg/day (LOEL) to rats for 4 weeks produced dyspnea and weight loss. The NOEL was 25 mg/kg/day. Oral administration of 30 mg/kg/day to rats for 13 weeks produced dyspnea. The NOEL was 13 mg/kg/day. These data may be indicative of direct effects of the compound on the respiratory system. EPA believes that there is sufficient evidence for listing 2,2-dibromo-3-nitrilopropionamide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic respiratory data.

72. *Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)* (CAS No. 001918-00-9) (FIFRA AI) (Ref. 3). Decreased fetal body weights and increased post-implantation loss was observed in the offspring of rabbits receiving 10 mg/kg/day of dicamba on days 6 through 18 of gestation. The LOEL was 10 mg/kg/day and NOEL was 3 mg/kg/day. Based on the NOEL, EPA derived an oral RfD value of 0.03 mg/kg/day. In a separate study, disorders of oxidative phosphorylation and focal necrosis in the heart were observed in newborn rats following transplacental exposure to dicamba. In a developmental toxicity study, an increase in skeletal malformations was seen in the offspring of rats orally administered 64 mg/kg/day on days 6 through 19 of gestation. EPA believes that there is sufficient evidence for listing dicamba on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

73. *Dichloran (2,6-Dichloro-4-nitroaniline)* (CAS No. 000099-30-9) (FIFRA AI) (Ref. 3). Dichloran, an aniline, is a potential inducer of methemoglobinemia. Either single or repeated oral doses of dichloran produced enlarged livers and induction of microsomal enzymes in the rat. Dogs fed 21 mg/kg/day had increases in serum transaminases. In Rhesus monkeys, where dichloran does not induce hepatic enzymes, 160 mg/kg/day for 3 months caused hepatic centrilobular fatty infiltration and death. Inhalation exposure to 0.17 mg/L produced elevated cholesterol levels and increased liver weight in a 3–month rabbit study and increased liver weight in a 21–day rat study. In a 2–year mouse study, dietary administration of 102.7 mg/kg/day (LOEL) produced centrilobular hepatocyte enlargement, focal necrosis, acute inflammatory cell infiltration, vacuolization of centrilobular hepatocytes, increased weight of the liver and increased incidence of erythropoiesis in males. The NOEL was 30 mg/kg/day. EPA believes that there is sufficient evidence for listing dichloran on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

74. *3,3'-Dichlorobenzidine dihydrochloride* (CAS No. 000612-83-9) (TSCA) (Ref. 8). IARC has classified 3,3'dichlorobenzidine (o-dichlorobenzidine) as a group 2B compound, i.e. this chemical is possibly carcinogenic in humans. IARC uses the generic name 3,3'-dichlorobenzidine interchangeably with 3,3'-dichlorobenzidine dihydrochloride. The dihydrochloride salt of 3,3'-dichlorobenzidine is expected to be equally as toxic as the free base (3,3'-dichlorobenzidine). EPA believes that there is sufficient evidence for listing 3,3'-dichlorobenzidine dihydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans.

75. *3,3'-Dichlorobenzidine sulfate* (CAS No. 064969-34-2) (TSCA) (Ref. 8). IARC has classified 3,3'-dichlorobenzidine (o-dichlorobenzidine) as a group 2B compound, i.e. this chemical is possibly carcinogenic in humans. The sulfate salt of 3,3'dichlorobenzidine is expected to be equally as toxic as the free base (3,3'-dichlorobenzidine). EPA believes that there is sufficient evidence for listing 3,3'-dichlorobenzidine sulfate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans.

76. *trans-1,4-Dichloro-2-butene* (CAS No. 000110-57-6) (EPCRA EHS) (Ref. 8). Mortality in two of six rats was observed following inhalational exposure to 62 ppm (0.34 mg/L) for 4 hours. An acute inhalation LC_{50} in rats was 86 ppm (0.44 mg/L). EPA's exposure analysis indicates that trans-1,4-dichloro-2-butene concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing trans-1,4-dichloro-2-butene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

77. *Dichloromethylphenylsilane* (CAS No. 000149-74-6) (EPCRA EHS) (Ref. 8). As a class, chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. The 2–hour mouse inhalation LC_{50} value for dichloromethylphenylsilane is 0.17 mg/L: EPA's exposure analysis indicates

that dichloromethylphenylsilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing dichloromethylphenylsilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

78. *Dichlorophene (2,2'-methylenebis(4-chlorophenol)* (CAS No. 000097-23-4) (FIFRA AI) (Ref. 3). Increased incidence of microphthalmia was observed in the offspring of rats administered 25 mg/kg/day (teratogenic LOEL). The NOEL was 5.0 mg/kg/day. A dose of 75 mg/kg/day (fetotoxic LOEL) produced delayed ossification of vertebral centra and sternaebrae, reduced body weight and length, and increased resorptions in rat fetuses. The fetotoxic NOEL was 5.0 mg/kg/day. No other developmental studies were available. EPA believes that there is sufficient evidence for listing dichlorophene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data.

Aquatic acute toxicity values for dichlorophene include a measured 48–hour LC_{50} of 50 ppb for Spicodioptomus (calanoid copipod). EPA believes that there is sufficient evidence for listing dichlorophene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

79. *trans-1,3-Dichloropropene* (CAS No. 010061-02-6) (CERCLA; CWA PPL) (Ref. 8). Clinical reports have documented the occurrence of histiocytic lymphoma in two firemen and acute myelomonocytic leukemia in a farmer exposed accidently to 1,3-dichloropropene. Information on the isomer or isomer mixture (i.e., trans/cis isomers) was not specified. The lymphoma and leukemia were refractory to treatment, and all three men died. There is evidence that 1,3-dichloropropene may cause cancer in rats and mice after oral exposure. In a 2–year gavage study, rats treated with 25 or 50 mg/kg/day 1,3-dichloropropene (53 percent cis isomer, 45 percent trans isomer, 1 percent epichlorhydrin) developed squamous cell papillomas and carcinomas of the forestomach. Male rats also developed neoplastic nodules of the liver. Female mice that received 50 or 100 mg/kg/day developed squamous cell papillomas and carcinomas of the forestomach, transitional cell carcinomas of the urinary bladder, and an increased incidence of alveolar/bronchiolar adenomas. A statistically significant increase in bronchioalveolar adenomas was noted in male mice exposed to 60 ppm (272 mg/L) 1,3-dichloropropene vapors (50 percent cis isomer, 43 percent trans isomer). This benign lung tumor was not seen in female mice or in male or female rats. IARC assigned 1,3-dichloropropene to Group 2B, i.e., possibly carcinogenic in humans. EPA believes that there is sufficient evidence for listing trans-1,3-dichloropropene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for 1,3-dichloropropene (unspecified isomer).

80. *Diclofop methyl (2-[4-(2,4-dichlorophenoxy) phenoxy]propanoic acid, methyl ester)* (CAS No. 051338-27-3) (FIFRA AI) (Ref. 3). In a rat teratology study, increased resorptions, reduced body weights, and dilation of the renal pelvis or distension of the ureter in offspring were reported in rats fed 1.6 mg/kg/day (LOEL). The NOEL was 0.5 mg/kg/day. Increased pup mortality was observed at 5 mg/kg/day (LOEL) in a 3-generation rat reproduction study. The NOEL was 1.5 mg/kg/day.

In a 30–day rat feeding study, increased relative heart, liver, and kidney weights were observed at the LOEL of 4 mg/kg/day. No NOEL was established. Jaundice, increased bilirubin, increased serum glutamic-pyruvic transaminase and serum glutamic-oxaloacetic transaminase, and increased liver and kidney weights were observed in a 30–day dog feeding study at 50 mg/kg/day. The NOEL was 12.5 mg/kg/day. In a 90–day rat feeding study, elevated liver weights and centrilobular enlargement of hepatic cells were observed at 4 mg/kg/day. The NOEL was 1.6 mg/kg/day. Dogs fed 6.25 mg/kg/day for 90 days had increased lipid content and focal changes in the renal cortex. The NOEL was 2 mg/kg/day. EPA believes that there is sufficient evidence for listing diclofop methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, hepatic, and renal toxicity data.

81. *Dicyclopentadiene* (CAS No. 000077-73-6) (TSCA) (Ref. 8). Convulsions were reported in rats or mice following inhalation of dicyclopentadiene at dosage levels of 332 or 145 ppm (1.8 or 0.78 mg/L), respectively, for 1 or 2 days. The reported acute oral LD_{50} in rats is 353 mg/kg. Animals at this dose level had convulsions and muscle weakness. In a 90–day inhalation study in dogs, neurotoxic symptoms observed included diarrhea, excessive salivation and lack of control of hind quarters. The NOAEL in this study was 8.9 ppm (0.048 mg/L); no LOEL was reported. EPA believes that there is sufficient evidence for listing dicyclopentadiene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity data for this chemical.

82. *Diethatyl ethyl* (CAS No. 038727-55-8) (FIFRA AI) (Ref. 3). In a 2–year study, groups of six beagles/sex were given doses orally from 0 to 31.25 mg/kg/day. The lowest dose (0.25 mg/kg/day) produced a positive Coombs test. EPA believes that there is sufficient evidence for listing diethatyl ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data for this chemical.

83. *Diflubenzuron* (CAS No. 035367-38-5) (FIFRA SR) (Ref. 8). In a 2–year study in which beagle dogs received diflubenzuron daily in gelatin capsules, the LOAEL for increases in sulfhemoglobin and methemoglobin was 10 mg/kg/day and the NOAEL was 2 mg/kg/day. EPA has derived an oral RfD of 0.02 mg/kg/day for this chemical from this study. Similar effects were noted in two separate 2–year rat feeding studies (the LOAEL was 7.8 to 8 mg/kg/day; the NOAEL was 2 mg/kg/day), and in a lifetime oral study in mice (the LOAEL was 12 mg/kg/day; the NOAEL was 2.4 mg/kg/day). EPA believes that there is sufficient evidence for listing diflubenzuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data.

Measured aquatic acute toxicity data for diflubenzuron include a 48–hour LC_{50} of 4.55 ppb for daphnids. EPA believes that there is sufficient evidence for listing diflubenzuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

84. *Diglycidyl resorcinol ether* (CAS No. 000101-90-6) (IARC; NTP) (Ref. 8). Diglycidyl resorcinol ether is classified by IARC as a Group 2B compound, i.e., it is possibly carcinogenic in humans. In an NTP bioassay, rats orally administered 12 mg/kg of diglycidyl resorcinol ether 5 days a week for 103 weeks developed squamous cell papillomas and squamous cell carcinomas of the stomach. Mice orally administered 50 mg/kg 5 days a week for 103 weeks developed squamous cell carcinomas and squamous cell papillomas of the stomach. Mice orally administered 70.5 mg/kg/day of diglycidyl resorcinol ether for 2 years developed blood lymphomas and Hodgkin's disease. Mice receiving

dermal applications of diglycidyl resorcinol ether for 1–year developed skin tumors. EPA believes that there is sufficient evidence for listing diglycidyl resorcinol ether on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

85. *Dimethipin (2,3,-Dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide)* (CAS No. 055290-64-7) (FIFRA AI) (Ref. 3). In a 1–year dog feeding study, decreased erythrocyte, hemoglobin, and hematocrit levels as well as increased platelet levels were observed at 75 mg/kg/day. The LOEL for systemic toxicity based on decreased body weight was 7.5 mg/kg/day. No NOEL could be established. In a 2–year rat feeding study, increased absolute and relative liver weights were observed at 10 mg/kg/day (LOEL). The NOEL was 2 mg/kg/day. Based on the NOEL in the study, EPA established an oral RfD of 0.02 mg/kg/day. EPA believes that there is sufficient evidence for listing dimethipin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological and hepatic toxicity data.

86. *Dimethoate* (CAS No. 000060-51-5) (CERCLA; EPCRA EHS; FIFRA SR; RCRA APP8; RCRA P) (Ref. 8). Dimethoate is an organophospbate insecticide. In humans, dimethoate causes typical symptoms of cholinesterase inhibition (sweating, diarrhea, salivation, headache, difficulty in breathing, etc.). In a controlled human study, subjects were administered dimethoate for 57 days. Whole blood and erythrocyte cholinesterase inhibition was observed from day 20 on. The NOEL was 0.202 mg/kg/day, and the LOEL was 0.434 mg/kg/day. In another study in which humans were administered dimethoate for 57 days, the NOEL for cholinesterase inhibition was 15 mg/day (0.2 mg/kg based on a 70 kg person). The LOEL was not specified. Cholinergic symptoms reflective of cholinesterase inhibition following dimethoate administration have also been observed in laboratory animals. A 2–year feeding study in rats determined the NOEL and LOEL for plasma and brain cholinesterase inhibition to be 0.05 and 0.5 mg/kg/day, respectively.

Dimethoate was tested for developmental effects in Wistar rats. Cygon 4E (47.3 percent dimethoate, 52.7 percent unspecified constituents) was administered to pregnant females on days 6 to 15 of gestation. The NOEL for developmental effects was 6 mg/kg/day. At a LOEL of 12 mg/kg/day, an increase in the incidence of wavy ribs was observed in the fetuses. An increase in offspring mortality occurred in a five-generation chronic feeding study (actual doses were 9.5 to 10.5 mg/kg/day) in male and female CD-1 mice. At 12 mg/kg/day (120 mg/kg, gestation days 6 to 15), musculoskeletal abnormalities were observed in the rat offspring. EPA believes that there is sufficient evidence for listing dimethoate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and neurotoxicity data for this chemical.

87. *3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride)* (CAS No. 020325-40-0) (TSCA) (Ref. 8). IARC has classified 3,3'-dimethoxybenzidine (o-dianisidine) as a Group 2B compound, i.e., this chemical is possibly carcinogenic. In an NTP carcinogenicity bioassay, increases in neoplasms of the skin, oral cavity, large intestine, liver, uterus, and cervix were noted in rats administered this chemical in drinking water at dose levels of 6, 12, or 21 mg/kg/day in males and 7, 14, or 23 mg/kg/day in females. The dihydrochloride salt of o-dianisidine is expected to be equally as toxic as the free base (o-dianisidine). EPA believes that there is sufficient evidence for listing 3,3'-dimethoxybenzidine dihydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans.

88. *3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride)* (CAS No. 111984-09-9) (TSCA) (Ref. 8). IARC has classified 3,3'-dimethoxybenzidine (o-dianisidine) as a Group 2B compound, i.e., this chemical is possibly carcinogenic. In an NTP carcinogenicity bioassay, increases in neoplasms of the skin, oral cavity, large intestine, liver, uterus and cervix were noted in rats administered this chemical in drinking water at dose levels of 6, 12, or 21 mg/kg/day in males and 7, 14, or 23 mg/kg/day in females. The hydrochloride salt of o-dianisidine is expected to be equally as toxic as the free base (o-dianisidine). EPA believes that there is sufficient evidence for listing 3,3'dimethoxybenzidine hydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans.

89. *Dimethylamine* (CAS No. 000124-40-3) (TSCA) (Ref. 8). Dimethylamine is corrosive to the mucous membranes, respiratory tract and eyes of treated animals. B6C3F1 mice and F344 rats exposed to 10 to 175 ppm (0.018 to 0.32 mg/L) dimethylamine via inhalation for 6 to 12 months developed dose-related lesions in the respiratory and olfactory epithelium. Significant decreases in body weight occurred in high-dose (175 ppm; 0.32 mg/L) animals of both species, and some of the high-dose mice died following exposure.

Centrilobular fatty degeneration and necrosis of parenchymal cells were reported in mice, rats, rabbits or guinea pigs administered 97 or 183 ppm (0.18 or 0.34 mg/L) dimethylamine via inhalation for 18 to 20 weeks. Increased liver weight without any histopathological changes were reported following 8–month oral exposure of rats to 0.35 mg/kg/day and guinea pigs exposed to 3.5 mg/kg/day.

Rats administered oral doses of dimethylamine as low as 0.035 mg/kg for 8 months exhibited changes in conditional reflexes including marked attenuation of the excitation process and speedier extinction of the positive reflex.

EPA believes that there is sufficient evidence for listing dimethylamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic respiratory, hepatic, and neurological toxicity of this chemical.

90. *Dimethylamine dicamba* (CAS No. 002300-66-5) (FIFRA AI) (Ref. 3). In a pilot rabbit developmental toxicity study, an increase in early and late fetal resorptions was observed in animals receiving the LOEL of 1.0 mg/kg/day. The NOEL was 0.5 mg/kg/day (oral doses, days 6 to 18 of gestation). In another study, increased post-implantation loss was observed in rabbits receiving the LOEL of 10 mg/kg/day (oral doses, days 6 to 18 of gestation). Developmental toxicity was also observed at doses of 10 mg/kg/day in studies with dicamba. EPA believes that there is sufficient evidence for listing dimethylamine dicamba on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

91. *3,3'-Dimethylbenzidine dihydrochloride* (o-Tolidine dihydrochloride) (CAS No. 000612-82-8) (TSCA) (Ref. 8). In a bioassay conducted by NTP, 3,3'-dimethylbenzidine dihydrochloride was found to be carcinogenic in both mice and rats. Male and female mice exposed to concentrations of 5 to 140 ppm (0.95 to 26.6 mg/kg/day) in drinking water for 112 weeks developed lung alveolar cell adenoma and adenocarcinoma. Male and female F344 rats exposed to concentrations of 30 to 150 ppm (4.2 to 21 mg/kg/day) in drinking water for 60 to 61 weeks developed tumors in the gastrointestinal tract, liver, lung and oral cavity. Tumors in the skin, Zymbal's gland, preputial gland in males, clitoral gland and mammary

gland in females, and leukemia in females were also noted in this study. EPA believes that there is sufficient evidence for listing 3,3'-dimethylbenzidine dihydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans.

92. *3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride)* (CAS No. 041766-75-0) (TSCA) (Ref. 8). Neither IARC or EPA has classified 3,3'-dimethylbenzidine dihydrofluoride with respect to carcinogenicity. In a bioassay conducted by NTP, however, 3,3'-dimethylbenzidine dihydrochloride was found to be carcinogenic in both mice and rats. Male and female mice exposed to concentrations of 5 to 140 ppm (0.952 to 6.6 mg/kg/day) in drinking water for 112 weeks developed lung alveolar cell adenoma and adenocarcinoma. Male and female F344 rats exposed to concentrations of 30 to 150 ppm (4.2 to 21 mg/kg/day) in drinking water for 60 to 61 weeks developed tumors in the gastrointestinal tract, liver, lung, and oral cavity. Tumors in the skin, Zymbal's gland, preputial gland in males, clitoral gland and mammary gland in females, and leukemia in females were also noted in this study. EPA believes that there is sufficient evidence for listing 3,3'-dimethylbenzidine dihydrofluoride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer in humans and on the carcinogenicity data for 3,3'-dimethylbenzidine dihydrochloride.

93. *Dimethyl chlorothiophosphate* (CAS. No. 002524-03-0) (EPCRA EHS) (Ref. 8). In a dominant lethal study, male rats were administered dimethyl chlorothiophosphate by gavage for 5 consecutive days and mated to untreated females. The LOEL of 7.5 mg/kg/day was determined based on an increase in preimplantation losses and dead implants. No NOEL for dimethyl chlorothiophosphate was determined from this study. EPA believes that there is sufficient evidence for listing dimethyl chlorothiophosphate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for this chemical.

94. *Dimethyldichlorosilane* (CAS No. 000075-78-5) (CERCLA; EPCRA EHS) (Ref. 8). As a class, however, chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. Dimethyldichlorosilane causes severe burns and the vapor is harmful to humans. The 2–hour mouse inhalation LC_{50} value is 0.30 mg/L. EPA's exposure analysis indicates that dimethyldichlorosilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing dimethyldichlorosilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

95. *N,N-Dimethylformamide* (CAS No. 000068-12-2) (CAA HAP) (Ref. 7). In humans, N,N-dimethylformamide (DMF) produced an increase in subjective symptoms suggestive of mild liver dysfunction in workers and changes in objective measurements of liver damage (serum enzymes and liver enlargement) via inhalation exposure, resulting in a LOAEL of 22 mg/m3 (adjusted LOAEL of 7.9 mg/m3)). Although there are several additional studies which are generally inadequate when considered individually, taken together, these studies demonstrate that DMF exposure is associated with hepatic toxicity in humans. Several animal inhalation studies further support the hepatotoxic effects of DMF. EPA believes that there is sufficient evidence for listing N,N-dimethylformamide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available hepatotoxicity data for this chemical.

96. *2,6-Dimethylphenol* (000576-26-1) (TSCA) (Ref. 8). Oral administration of 2,6-dimethylphenol to rats for 8 months produced histologic lesions (the LOEL was 6.0 mg/kg/day; the NOEL was 0.6 mg/kg/day) in the liver, kidneys, and spleen. Another supporting oral study in rats that also reported histological lesions in the liver and kidneys (the LOEL was 6.0 mg/kg/day; the NOEL was 0.06 mg/kg/day) of rats following subchronic oral administration of 2,6-dimethylphenol. EPA believes that there is sufficient evidence for listing 2,6-dimethylphenol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatotoxicity and nephrotoxicity data for this chemical.

97. *Dinocap* (CAS No. 039300-45-3) (CAL; FIFRA SR) (Ref. 8). Dinocap is a dinitrophenyl-type fungicide. In mice, oral administration of 25 mg/kg/day of dinocap on days 7 to 16 of gestation has been shown to increase post-implantation mortality and reduce newborn viability. Oral administration of 5.0 mg/kg/day to pregnant mice produced developmental toxicity in the offspring (administration of 10 mg/kg/day resulted in abnormalities of the musculoskeletal and hepatobiliary system in the offspring). In the same study, oral administration of 20 mg/kg/day on days 7 to 16 of gestation produced craniofacial abnormalities in offspring. In the same study, behavioral abnormalities and delayed growth were observed in offspring of mice receiving 12 mg/kg/day on days 7 to 16 of gestation. EPA believes that there is sufficient evidence for listing dinocap on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for this chemical.

Measured aquatic acute toxicity data for dinocap indicate that the LC_{50} for rainbow trout is 15 ppb and the LC_{50} for bluegill is 20 ppb. EPA believes that there is sufficient evidence for listing dinocap on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

98. *Dinoseb* (CAS No. 000088-85-7) (CAL; EPCRA EHS; FIFRA SR; RCRA APP8; RCRA P; SDWA) (Ref. 8). Dinoseb is a dinitrophenyl-type herbicide and insecticide. In a three generation reproduction study dinoseb produced decreased pup weights (the LOEL was 1 mg/kg/day; the NOEL was not determined) in the F_{1b}, F_{2a}, and F_{3a} pups. The F_{1b} pup weights diminished (combined sexes) by day 21 at dose levels greater than 1 mg/kg/day. Other studies have shown biologically and statistically significant increases in developmental malformations and/or anomalies (the LOEL was 10 mg/kg/day; the NOEL was 3 mg/kg/day), and an increased incidence of an absence of ossification for a number of skeletal sites and supernumerary ribs (the LOEL was not specified; the NOEL was 3 mg/kg/day). Dinoseb administered by gavage to rabbits from days 6 to 18 of gestation produced neural tube defects (the LOEL was 10 mg/kg/day; the NOEL was 3 mg/kg/day).

The fertility index in male rats was reduced in a reproductive study in animals fed dinoseb at dose levels of 15.6 mg/kg/day or 22.2 mg/kg/day over an 11–week period. Decreased seminal vesicle weight, decreased sperm count and increased incidence of abnormal sperm were noted at dose levels of 9.1 mg/kg/day and higher. The NOEL was 3.8 mg/kg/day.

EPA believes that there is sufficient evidence for listing dinoseb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental and reproductive toxicity data for this chemical.

Aquatic acute toxicity data for dinoseb include a measured fat-head minnow 96–hour LC_{50} of 88 ppb. EPA believes that there is sufficient evidence for listing dinoseb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

99. *Diphenamid* (CAS No. 000957-51-7) (FIFRA SR) (Ref. 8). Diphenamid is a diphenylacetamide-type herbicide. In a 2–year study in dogs fed diphenamid, an increase in liver weight and an increase in portal macrophages and fibroblasts were seen at the LOEL of 10 mg/kg/day. The NOEL was 3 mg/kg/day. Based on the NOEL, an RfD of 0.03 mg/kg/day was derived. In a 2–year study in rats fed diphenamid, an increase in liver weight was seen at the LOEL of 30 mg/kg/day; the NOEL was 10 mg/kg/day. Although, no histopathological changes were reported in these studies, biochemical changes accompanied by histo-pathological changes were observed in a 2–generation study in rat pups. EPA believes that there is sufficient evidence for listing diphenamid on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity data for this chemical.

100. *Diphenylamine* (CAS No. 000122-39-4) (RCRA APP8) (Ref. 8). Increased liver and kidney weights were noted in dogs that received 25 mg/kg/day (the LOAEL) of diphenylamine in their feed for 2 years. The NOAEL in this study was 2.5 mg/kg/day and the oral RfD was 0.025 mg/kg/day. Pronounced anemia and decreased body weight gain were also noted in these animals. The hepatotoxicity induced by diphenylamine is manifested by peripherolobular fat changes and increased lipids. Vacuolar degeneration and hepatocyte necrosis were reported in rats or guinea pigs that received 2 or 4 percent (i.e., 1,000 or 2,000 mg/kg/day for rats and 800 to 1,600 mg/kg/day for guinea pigs) of diphenylamine in the diet for 6 months. In another 2–year rat study, changes reported in the kidney in diphenylamine-fed animals included epithelial necrosis in the proximal tubule, cystic dilatation of tubules, and interstitial inflammation.

EPA believes that there is sufficient evidence for listing diphenylamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic hepatic and renal toxicity data for this chemical.

101. *Dipotassium endothall (7-oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt)* (CAS No. 002164-07-0) (FIFRA AI) (Ref. 3). In a 2–year dog feeding study, increased absolute and relative weight of the stomach and small intestine was observed at 6 mg/kg/day (LOEL). The NOEL was 2 mg/kg/day. An oral RfD of 0.02 mg/kg/day was derived based on the NOEL. EPA believes that there is sufficient evidence for listing dipossium endothall on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical.

102. *Dipropyl isocinchomeronate* (CAS No. 000136-45-8) (FIFRA AI) (Ref. 3). Dipropyl isocinchomeronate has been classified by EPA as a Group B2 compound, i.e., a probable human carcinogen. This classification is based on the findings of multiple malignant and benign tumors in the rat (liver adenomas and carcinomas in both sexes, kidney carcinomas in both sexes, benign testes tumors in males and uterine tumors in females), and multiple malignant tumors in the mouse (liver adenomas and carcinomas in both sexes and lung/bronchiolar adenomas and carcinomas in males). EPA believes that there is sufficient evidence for listing dipropyl isocinchomeronate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity toxicity data.

103. *Disodium cyanodithioimidocarbonate* (CAS No. 000138-93-2) (FIFRA AI) (Ref. 3). Rats administered disodium cyanodithioimidocarbonate by gavage on gestation days 6 to 15 demonstrated increased skeletal variations in offspring. The NOEL is 6 mg/kg, and the LOEL is 18 mg/kg. In a rabbit teratology study, increased resorptions were observed in rabbits administered the compound by gavage on gestation days 6 to 18. The NOEL is 3 mg/kg, and the LOEL is 10 mg/kg. EPA believes that there is sufficient evidence for listing disodium cyanodithioimidocarbonate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data.

104. *2,4-D isopropyl ester* (CAS No. 000094-11-1) (CERCLA; FIFRA AI: IARC) (Ref. 8). 2,4-D isopropyl ester is a 2,4-dichlorophenoxy-type herbicide. In mammals, the isopropyl ester of 2,4-D is hydrolyzed to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D isopropyl ester is expected to be similar to that of 2,4-D, in which the kidney, liver, and nervous system are the primary targets of injury. 2,4-D is presently included in the EPCRA section 313 list of toxic chemicals. EPA believes that there is sufficient evidence for listing 2,4-D isopropyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the known toxic effects of its metabolite 2,4-D.

105. *2,4-Dithiobiuret* (CAS No. 000541-53-7) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). In experimental animals, 2,4-dithiobiuret is a highly toxic substance that causes death through respiratory depression and respiratory failure. Rats receiving 1 mg/kg/day for 6 days suffered from delayed onset of neuromuscular depression. Rats given 2,4-dithiobiuret for 52 days showed signs of muscle weakness after a latency period of 3 to 4 days. The NOEL was determined to be 0.125 mg/kg/day. The LOEL was 0.25 mg/kg/day. The cause of the muscle weakness was depressed neuromuscular transmission. EPA believes that there is sufficient evidence for listing 2,4-dithiobiuret on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity data for this chemical.

106. *Dithiopyr (2-(difluoromethyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-3,5-pyridinedicarbothioic acid S,S-dimethyl ester)* (CAS No. 097886-45-8) (FIFRA AI) (Ref. 3). In a 2-generation rat reproduction study, decreased body weight, diffuse hepatocellular swelling, and "white spots" on the livers were observed in the offspring of rats administered greater than or equal to 16.4 mg/kg/day. The NOEL values were 1.7 mg/kg/day. In a 13–week rat feeding study, the LOEL of 6.62 mg/kg/day produced diffuse hepatocellular swelling. The NOEL was 0.662 mg/kg/day. In a 13-week dog feeding study, increased alkaline phosphatase, discolored livers, and cholestasis was observed at 10 mg/kg/day (LOEL). The NOEL was 1 mg/kg/day. In addition, at 30 mg/kg/day, increased serum glutamic-pyruvic transaminase and serum glutamic oxaloacetic transaminase, increased liver and kidney weights, and decreased cholesterol and albumin were observed. EPA believes that there is sufficient evidence for listing dithiopyr on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data.

107. *Diuron* (CAS No. 000330-54-1) (CERCLA) (Ref. 8). In a 2–year study in dogs administered diuron, sulfhemoglobin (an abnormal blood pigment) was detected following doses as low as 3.125 mg/kg/day (LOAEL). The NOAEL was 0.625 mg/kg/day. Higher doses (6.25 and 31.25 mg/kg/day) caused decreased red blood cell, hemoglobin, and hematocrit values. The highest dose tested (31.25 mg/kg/day) also caused an increase in erythrogenic activity in the bone marrow, hemosiderosis in the spleen, increased liver weight, and body weight loss. EPA has derived an oral RfD of 0.002 mg/kg/day for this chemical from this study. Similar effects (anemia, increased erythrogenic activity in the bone

marrow, and abnormal pigments in the blood) were also observed in rats exposed orally to doses as low as 6.25 mg/kg/day for 2 years, or to 250 mg/kg/day for 90 days. In a 7–week study, rats receiving diuron doses of greater than or equal to 10 mg/kg/day had decreased red blood cells and significantly increased methemoglobinemia.

Offspring of Wistar rats fed diuron during days 6 to 15 of gestation showed developmental toxicity, that included malformed ribs, extra ribs, and delayed ossification. The developmental LOAEL in this study was 100 mg/kg/day. No NOAEL was determined. Maternal and fetal body weights decreased at 400 mg/kg/day. In a three-generation reproduction study in rats fed diuron at 6.25 mg/kg/day, decreased body weights were reported in the F_{2b} and F_{3a} litters.

EPA believes that there is sufficient evidence for listing diuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological and developmental toxicity data for this chemical.

The measured aquatic toxicity data for diuron includes a 1.5–hour EC_{50} of 0.010 ppm (10 ppb) for marine green algae. EPA believes that there is sufficient evidence for listing diuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

108. *2,4-D 2-octyl ester* (CAS No. 001917-97-1) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D 2-octyl ester is a 2,4-dichlorophenoxy-type herbicide. The 2-octyl moiety contains eight carbons and, therefore, is an isooctyl group.

Developmental toxicity following maternal exposure to 2,4-D isooctyl esters has been demonstrated in the rat and mouse. Fetotoxicity occurred in offspring of rats exposed to 528 mg/kg during gestation days 8 to 11. Rats orally exposed to doses as low as 302 mg/kg during gestation days 9 through 12 had musculoskeletal abnormalities. Exposure to a lower dose (188 mg/kg) for a longer period during gestation (days 6 through 15) caused developmental effects on homeostasis and effects on newborn growth statistics. In mice, 438 mg/kg administered orally during gestation days 8 through 12 also caused effects on newborn growth statistics.

EPA believes that there is sufficient evidence for listing 2,4-D 2-octyl ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for 2,4-D isooctyl esters, and the toxic effects of its metabolite 2,4-D.

The aquatic acute toxicity data for 2,4-D isooctyl esters include a measured 48–hour LC_{50} of 8.8 ppm for bluegill. In addition, 2,4-D isooctyl esters are expected to bioaccumulate based on the estimated log K_{ow} of 6.6. EPA believes that there is sufficient evidence for listing 2,4-D isooctyl esters on EPCRA section 313 pursuant to section EPCRA 313(d)(2)(C) based on the available environmental toxicity data and the potential for bioaccumulation.

109. *Dodine (dodecylguanidine monoacetate)* (CAS No. 002439-10-3) (FIFRA AI) (Ref. 3). Aquatic acute toxicity values for dodine include a daphnid 48–hour EC_{50} of 17.8 ppb. EPA believes that there is sufficient evidence for listing dodine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

110. *2,4-DP (dichlorprop)* (CAS No. 000120-36-5) (FIFRA SR; IARC) (Ref. 8). 2,4-DP (2-(2,4-dichlorophenoxy)propionic acid) is a 2,4-dichlorophenoxy-type herbicide. Developmental toxicity has been reported in rats and mice administered oral doses of 2,4-DP as low as 20 mg/kg during gestation days 4 through 18. Behavioral changes and physical effects were observed in newborn rats, while increased post-implantation loss was observed in the mothers. Exposure of mice to much higher doses (3,000 and 4,000 mg/kg) for shorter durations (i.e., gestation days 6 through 15) caused musculoskeletal abnormalities and fetotoxicity.

EPA believes that there is sufficient evidence for listing 2,4-DP on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

111. *2,4-D propylene glycol butyl ether ester* (CAS No. 001320-18-9) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D propylene glycol butyl ether ester is a 2,4-dichlorophenoxy-type herbicide. In mammals, the propylene glycol butyl ether ester is expected to hydrolyze to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D propylene glycol butyl ether ester is expected to be similar to that of 2,4-D, in which the kidney, liver, and nervous system are the primary targets of injury. EPA believes that there is sufficient evidence for listing 2,4-D propylene glycol butyl ether ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity data for this chemical.

112. *2,4-D sodium salt* (CAS No. 002702-72-9) (CERCLA; FIFRA AI; IARC) (Ref. 8). 2,4-D sodium salt is a 2,4-dichlorophenoxy-type herbicide. In mammals, the sodium salt is expected to hydrolyze to yield the free acid, 2,4-D. Therefore, the toxicity of 2,4-D sodium salt is expected to be similar to that of 2,4-D, in which the kidney, liver, and nervous system are the primary targets of injury. 2,4-D is presently included in the EPCRA section 313 list of toxic chemicals. EPA believes that there is sufficient evidence for listing 2,4-D sodium salt ester on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the systemic toxicity data for this chemical.

113. *Ethoprop (phosphorodithioic acid O-ethyl S,S-dipropyl ester)* (CAS No. 013194-48-4) (FIFRA AI) (Ref. 3). Ethoprop is acutely toxic to animals. The acute oral LD_{50} in rats is 5.62 mg/kg/day. Clinical signs of toxicity observed in animals at this dose level included depression, salivation, inactivity, convulsions and prostration. Similar signs were reported at the 4–hour inhalation LC_{50} of 0.12 mg/L in rats. In a 2–year rat chronic feeding study, plasma, red blood cell, and brain cholinesterase inhibition were observed in both sexes at 0.5 mg/kg/day. The NOEL was 0.05 mg/kg/day. Similar results were reported in a chronic dietary study in mice at 0.1 mg/kg/day. The NOEL was 0.01 mg/kg/day. The two chronic studies together with the results of acute studies indicate the potential neurotoxicity of ethoprop. EPA believes that there is sufficient evidence for listing ethoprop on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

Aquatic acute toxicity values for ethoprop include a mysid 96–hour LC_{50} of 7.5 ppb, a shrimp 96–hour LC_{50} of 13 ppb, and a daphnid 48–hour EC_{50} of 93 ppb. Avian acute and dietary toxicity data include a ring-necked pheasant 14–day LD_{50} of 4.2 mg/kg and a mallard duck 14–day LD_{50} of 12.6 mg/kg. EPA believes that there is sufficient evidence for listing ethoprop on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

114. *Ethyl dipropylthiocarbamate (EPTC)* (CAS No. 000759-94-4) (FIFRA AI) (Ref. 3). EPTC is a cholinesterase inhibitor. Workers exposed to EPTC complained of headache, malaise, nausea, and impaired working ability. Poisoned animals exhibited salivation, lacrimation, blepharospasm, and depression. Neuropathy was observed in rats orally administered 25 mg/kg/day for 2 years. The LOEL was 25 mg/kg/day and the NOEL was 5 mg/kg/day. Decreased brain cholinesterase activity was observed in female rats orally administered 15 mg/kg/day (LOEL). The

NOEL was 3 mg/kg/day. The 4-hour inhalation rat and cat lowest-lethal-concentration values are 0.2 mg/L and 0.4 mg/L, respectively. Somnolence and salivation were observed in exposed animals. The dermal rabbit LD_{50} is 10,000 mg/kg. Depressed righting reflexes, prostration, and clonic convulsions were observed.

In a 2–year dietary rat study, degenerative cardiomyopathy was observed in males receiving 9 mg/kg/day of EPTC. No NOEL was established. This effect was observed in females at 36 mg/kg/day. The NOEL was 18 mg/kg/day. In a 2-generation rat reproduction study, parental toxicity included cardiomyopathy observed in rats orally administered 10 mg/kg/day. Based on the NOEL of 2.5 mg/kg/day, EPA derived an oral RfD of 0.025 mg/kg/day. In a 2–year dietary rat study, chronic myocarditis was observed at the LOEL of 125 mg/kg/day. The NOEL was 25 mg/kg/day.

An increased incidence of fetal resorptions, increased incidence of fetal retardations, and decreased fetal body weights were observed in rats receiving 300 mg/kg/day of EPTC on days 6 to 15 of gestation. The LOEL was 300 mg/kg/day and the NOEL was 100 mg/kg/day. The NOEL was 10 mg/kg/day. In a 2-generation rat reproduction study, decreased pup weight was observed in both generations at 40 mg/kg/day. The NOEL was 10 mg/kg/day.

EPA believes that there is sufficient evidence for listing EPTC on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological, cardiovascular, and reproductive toxicity data for this chemical.

115. *Famphur* (CAS No. 000052-85-7) (CERCLA; FIFRA AI; RCRA APP8; RCRA P) (Ref. 8). Famphur is a thiophosphate-type cholinesterase inhibitor. In a 90–day feeding study, rats given diets supplemented with famphur showed decreased plasma and brain cholinesterase activity at 1.25 mg/kg/day, and decreased whole blood cholinesterase activity at 0.15 mg/kg/day. A bull was treated with famphur for 43 days before signs of neurotoxicity appeared. The symptoms, including paresis of all four limbs, were attributed to focal cervical or diffuse spinal cord lesions. Calves receiving 60.75 mg/kg showed marked inhibition of whole blood cholinesterase. EPA believes that there is sufficient evidence for listing famphur on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity known for this chemical.

Measured terrestrial wildlife acute toxicity data for famphur indicate that the oral LD_{50} values for the redwinged blackbird and the starling are 1.78 mg/kg and 4.22 mg/kg, respectively. In addition, the measured oral LD_{50} for mallard ducks is 3.45 mg/kg (based on 35 percent active ingredient). EPA believes that there is sufficient evidence for listing famphur on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

116. *Fenarimol (.alpha.-(2-chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidinemethanol)* (CAS No. 060168-88-9) (FIFRA AI) (Ref. 3). In a 3–month mouse feeding study, liver weights were increased in males at levels greater than or equal to 620 ppm (80.6 mg/kg/day) and in females at levels greater than 1,100 ppm (143 mg/kg/day). At higher doses (143 to 260 mg/kg/day), decreased total bilirubin, hepatomegaly, and/or periportal fatty liver changes were observed. Mice exposed to dietary levels of 78 mg/kg/day for 1–year had increased liver weight and slight fatty changes. One year feeding studies in Wistar rats also resulted in increased liver weights (the LOEL was 17.5 mg/kg/day; the NOEL was 6.5 mg/kg/day). In a 2–year feeding study with Wistar rats, fatty changes in the liver were observed at 17.5 mg/kg/day (LOEL). The NOEL was 6.5 mg/kg/day. A 2–year feeding study in mice resulted in fatty liver changes. The LOEL was 78 mg/kg/day and the NOEL was 22.1 mg/kg/day. EPA believes that there is sufficient evidence for listing fenarimol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

117. *Fenbutatin oxide (hexakis(2-methyl-2-phenylpropyl)distannoxane)* (CAS No. 013356-08-6) (FIFRA AI) (Ref. 3). In a rat teratology study, the LOEL for developmental toxicity (toxic to zygote) was 60 mg/kg/day and the NOEL was 30 mg/kg/day. In a rabbit teratology study, oral administration of 5 mg/kg/day produced intrauterine lethality and was also toxic to maternal animals. The NOEL was 1 mg/kg/day. In a 3-generation rat reproduction study, administration of 15 mg/kg/day (LOEL) produced decreased viability index. The NOEL was 5 mg/kg/day. EPA believes that there is sufficient evidence for listing fenbutatin oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

Aquatic acute toxicity values for fenbutatin oxide include a rainbow trout 96–hour LC_{50} of 1.7 ppb, a fathead minnow 96–hour LC_{50} of 1.9 ppb, a daphnid 48–hour EC_{50} of 3.1 ppb, a bluegill sunfish 96–hour of LC_{50} of 4.8 ppb, and a sheepshead minnow 96–hour LC_{50} of 20.8 ppb. Avian acute toxicity values include a quail oral LD_{50} of 0.007 mg/kg. EPA believes that there is sufficient evidence for listing fenbutatin oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

118. *Fenoxaprop ethyl (2-(4-((6-chloro-2-benzoxazolylen)oxy)phenoxy)propanoic acid,ethyl ester)* (CAS No. 066441-23-4) (FIFRA AI) (Ref. 3). In a 30–day mouse feeding study, liver weight increases were observed (LOEL 20 ppm or 2.6 mg/kg/day and NOEL 10 ppm or 1.3 mg/kg/day). In a 32–day rat feeding study, changes in the liver and kidney as well as altered lipid metabolism and decreased cholesterol were observed. The LOEL in the rat study was 80 ppm (4 mg/kg/day). The NOEL was 20 ppm (1 mg/kg/day). Inflammatory changes in the kidney (chronic interstitial nephritis) were reported in dogs that received a 3–month feeding of 80 ppm (2 mg/kg/day, the LOEL). The NOEL was 16 ppm or 0.4 mg/kg/day. Decreased serum lipids and cholesterol were reported in rats exposed for 2 years to dietary levels greater than or equal to 180 ppm (9 mg/kg/day, the LOEL). The NOEL in this study was 30 ppm (1.5 mg/kg/day).

In a developmental toxicity study, fetotoxic effects (slightly impaired growth and delayed ossification) were reported at 100 mg/kg/day. The NOEL was 32 mg/kg/day. These effects were observed at doses that were also toxic to maternal animals. In a 2–generation reproductive toxicity feeding study in rats, decreased survival, decreased body weight at study termination, and significant changes in kidney and liver weights were reported in the F_{2a} and F_{2b} litters. The fetotoxic LOEL in this study was 5 ppm (0.25 mg/kg/day, the lowest dose tested). The LOEL and NOEL for maternal toxicity (increased kidney and liver weights) were 80 ppm (4 mg/kg/day) and 30 ppm (1.5 mg/kg/day), respectively. Thus, the fetotoxic effects were observed at doses lower than those that produced maternal toxicity.

EPA believes that there is sufficient evidence for listing fenoxaprop ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available renal and developmental toxicity data for this chemical.

Aquatic acute toxicity values for fenoxaprop ethyl include a mysid 96–hour EC_{50} of 98 ppb. EPA believes that there is sufficient evidence for listing fenoxaprop ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C)

based on the available environmental toxicity data.

119. *Fenoxycarb (2-(4-phenoxyphenoxy)ethyl)carbamic acid ethyl ester)* (CAS No. 072490-01-8) (FIFRA AI) (Ref. 3). Liver changes (including fatty changes, glycogen depletion, hepatocyte hypertrophy and multinucleated hepatocytes) were reported in mice (the LOEL was 80 mg/kg/day; the NOEL was not determined) and rats (the LOEL was 300 mg/kg/day; the NOEL was 100 mg/kg/day) following 3–month dietary exposures. Dose-related changes in the liver of male rats, including increased relative liver weight, focal necrosis, centrilobular hypertrophy and pigmented histiocytes, were reported after the first year of a 2–year oncogenicity study. The LOEL for these effects was 600 ppm (30 mg/kg/day) and the NOEL was 200 ppm (10 mg/kg/day). Male and female rats exposed to a higher dose (1,800 ppm or 90 mg/kg/day) in this study had increased alkaline phosphatase and reduced platelets and white blood cells, and fibrosis was present in the hepatic lesions in the males.

In a reproduction study in rats, delays in pinna unfolding and eye opening were reported at 10 mg/kg/day.

EPA believes that there is sufficient evidence for listing fenoxycarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data for this chemical.

120. *Fenpropathrin (2,2,3,3-tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester)* (CAS No. 039515-41-8) (FIFRA AI) (Ref. 3). In a 1–year feeding study, tremors were noted in dogs exposed to 6.25 mg/kg/day. The NOEL was 2.5 mg/kg/day. In a developmental toxicity study in rats, signs of neurotoxicity reported in the pregnant dams included ataxia, tremors, convulsions, lacrimation, prostration of death. The LOEL for maternal toxicity was 10 mg/kg/day and the NOEL was 6 mg/kg/day. In 2–year dietary studies in rats and mice, body tremors and increased mortality were observed in male rats (the LOEL was 30 mg/kg/day; the NOEL was 22.5 mg/kg/day), whereas only marginally increased hyperactivity was noted in female mice (the LOEL was 65.2 mg/kg/day; the NOEL was 16.2 mg/kg/day). EPA believes that there is sufficient evidence for listing fenpropathrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

Aquatic acute toxicity values for fenpropathrin include a rainbow trout 96–hour LC_{50} of 2.3 ppb, a bluegill 96–hour LC_{50} of 2.2 ppb, a sheepshead minnow 96–hour LC_{50} of 3.1 ppb, and a daphnid 48–hour EC_{50} of 0.53 ppb. EPA believes that there is sufficient evidence for listing fenpropathrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

121. *Fenthion (O,O-dimethyl O-[3-methyl-4-(methylthio) phenyl] ester, phosphorothioic acid)* (CAS No. 000055-38-9) (FIFRA AI) (Ref. 3). In cases of human poisonings from fenthion exposure, reported cholinergic manifestations included the following: A man who ingested 257 mg/kg had an increased pulse rate (no effect on blood pressure) and gastrointestinal symptoms including diarrhea and nausea or vomiting; a woman that ingested 525 mg/kg experienced muscle contraction or spasticity, respiratory depression, and miosis; a woman that ingested an unspecified amount of fenthion did not exhibit the initial cholinergic crisis until 5 days postexposure, and symptoms (primarily psychosis) recurred 24 days later. Similar signs of toxicity, characteristic of organophosphate poisoning, were observed in rats that were fed 300 ppm (15 mg/kg/day). Symptoms reported in these rats included spasms, nervousness, salivation and diarrhea as well as ophthalmological symptoms such as eyeball protrusion and corneal turbidity. LOEL and NOEL values for cholinesterase inhibition from animal studies of various durations include the following: In a 28–day feeding study in rats, the LOEL was 10 ppm (0.5 mg/kg/day) and the NOEL was 5 ppm (0.65 mg/kg/day) for brain cholinesterase inhibition; in another 28–day rat feeding study, plasma and erythrocyte cholinesterase recovered 2 weeks postexposure. The LOEL for cholinesterase inhibition in a 30–day inhalation study in rats was 0.163 mg/L. In a 63–day rat feeding study, significant cholinesterase inhibition occurred by day 3 at 25 mg/kg/day. In a 16–week feeding study in rats, the LOEL for cholinesterase inhibition was 5 ppm in females (0.65 mg/kg/day) and the NOEL was 3 ppm (0.15 mg/kg/day). EPA believes that there is sufficient evidence for listing fenthion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

Aquatic acute toxicity values for fenthion include a daphnid 48–hour LC_{50} of 0.62 ppb for immobilization. Acute toxicity values for other non-standard aquatic invertebrates range from a 48–hour EC_{50} of 0.024 ppb for brown shrimp to a 96–hour EC_{50} of 110 ppb for scud. Avian acute toxicity values include a male mallard duck oral LD_{50} of 5.94 mg/kg, a male bobwhite quail LD_{50} of 4 mg/kg, and a mourning dove oral LD_{50} of 4.63 mg/kg. EPA believes that there is sufficient evidence for listing fenthion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

122. *Fenvalerate (4-chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester)* (CAS No. 051630-58-1) (FIFRA AI) (Ref. 3). Excitement and ataxia were observed in rats administered fenvalerate at the oral LD_{50} dose of 70.2 mg/kg. The oral mouse LD_{50} for fenvalerate is 185 mg/kg. Tremor, convulsions, and ataxia were observed in this study. Neurological dysfunctions consisting of jerky leg movements, exaggerated flexion of the hind limb, and unsteady gait were observed in rats fed 7.5 mg/kg/day (LOEL) of fenvalerate for 13 weeks. The NOEL was 2.5 mg/kg/day. Based on the NOEL of the study, EPA derived an oral RfD of 0.0025 mg/kg/day. Peripheral nerve and spinal cord lesions were observed in rats orally administered 360 mg/kg.

In a 6–month dog feeding study, normocytic anemia, increased serum cholesterol levels, and hepatic microgranulomatosis were observed in animals administered fenvalerate at 6.25 mg/kg/day (LOEL). No NOEL was defined. In a 2–year mouse feeding study, multifocal granulomata in the liver was observed in males and females fed fenvalerate at 7.5 and 37.5 mg/kg/day, respectively. The male NOEL was 1.5 mg/kg/day and the female NOEL was 7.5 mg/kg/day. In a 20–month mouse feeding study, decreased erythrocyte count, increased mean cell volume of the blood, and granulomatous changes in the liver were observed at 15 mg/kg/day (LOEL). The NOEL was 4.5 mg/kg/day.

EPA believes that there is sufficient evidence for listing fenvalerate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological, hepatic, and hematological toxicity data for this chemical.

Measured aquatic acute toxicity data for fenvalerate include a bluegill 96–hour LC_{50} of 0.26 ppb, a fathead minnow 96–hour LC_{50} of 0.33 ppb, a rainbow trout 96–hour LC_{50} of 1.2 ppb, an Atlantic salmon 96–hour LC_{50} of 1.2 ppb, and a sheepshead minnow 96–hour LC_{50} of 4.4 ppb. In addition, the 48–hour LC_{50} for daphnids is 0.05 ppb. EPA believes that there is sufficient evidence for listing fenvalerate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

123. *Ferbam (tris(dimethylcarbamodithioato-S,S')iron)* (CAS No. 014484-64-1) (FIFRA AI) (Ref. 3). In an 80–week feeding study in rats, females fed 96 mg/kg/day had ataxia that progressed to hind limb paralysis. The NOEL was not determined. Symptoms of neurotoxicity reported in mice following acute oral exposure included somnolence, excitement and ataxia, although the doses at which these signs occurred were much higher (the LD_{50} in this study was 3,400 mg/kg). EPA believes that there is sufficient evidence for listing ferbam on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

Aquatic acute toxicity values for ferbam include a daphnid 48–hour LC_{50} of 90 ppb, a 96–hour LC_{50} of 52 ppb for the eastern oyster, and a guppy 96–hour LC_{50} of 90 ppb. EPA believes that there is sufficient evidence for listing ferbam on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

124. *Fluazifop butyl (2-[4-[(5-(trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester)* (CAS No. 069806-50-4) (FIFRA AI) (Ref. 3). A 3–month rat feeding study demonstrated hepatocyte hypertrophy in males (the LOEL was 5 mg/kg/day; the NOEL was 0.5 mg/kg/day). In a 1–year feeding study, dogs had changes in serum alkaline phosphatase and alanine aminotransferase and/or alanine sulfatransferase (the LOEL was 25 mg/kg/day; the NOEL was 5 mg/kg/day). Similar changes were also reported in dogs following 3 months exposure in their diet (the LOEL was 125 mg/kg/day). In a carcinogenicity study, male mice fed 20 ppm (2.6 mg/kg/day, the LOEL) had an increased incidence of hepatocyte hypertrophy. The NOEL was 5 ppm or 0.65 mg/kg/day. Male and female mice exposed to a higher dose of 80 ppm (10.4 mg/kg/day) had increased liver weight (relative and absolute) and hypertrophy of periacinal hepatocytes. Males in this dose group also had increased pigmentation in hepatocytes and Kupffer cells.

In a teratogenicity study in Sprague-Dawley rats exposed via oral gavage, delayed ossification and an increased incidence of hydroureter were observed in fetuses (the fetotoxic LOEL was 5 mg/kg/day; the NOEL 1 mg/kg/day) and a teratogenic LOEL of 200 mg/kg/day (the NOEL was 10 mg/kg/day) was determined based on the incidence of diephragmatic hernia. Maternal toxicity was observed in this study at doses higher than those causing fetotoxicity and included reduced body weight gain and decreased gravid uterus (the maternal LOEL was 200 mg/kg/day; the NOEL was 10 mg/kg/day). In a 2-generation reproductive toxicity dietary study in Wistar rats, the reproductive LOEL of 250 ppm (12.5 mg/kg/day; the NOEL was 80 ppm or 4 mg/kg/day) was based on reduced litter sizes, reduced viability, reduced testis and epididymis weights and tubular atrophy in offspring. Fetotoxicity (delayed ossification and eye opacities) was also demonstrated in New Zealand White rabbits (the LOEL was 30 mg/kg/day; the NOEL was 10 mg/kg/day). EPA believes that there is sufficient evidence for listing fluazifop butyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data for this chemical.

125. *Flumetralin (2-chloro-N-(2,6-dinitro-4-(trifluoromethyl)- phenyl)-N-ethyl-6-fluorobenzenemethanamine)* (CAS No. 062924-70-3) (FIFRA AI) (Ref. 3). Aquatic acute toxicity values for flumetralin include a daphnid 48–hour EC_{50} of greater than 2.8 ppb, a bluegill sunfish 96–hour LC_{50} of greater than 3.2 ppb, and a rainbow trout 96–hour LC_{50} of greater than 3.2 ppb. EPA believes that there is sufficient evidence for listing flumetralin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

126. *Fluorine* (CAS No. 007782-41-4) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). Inhalation of fluorine causes initial coughing, choking and chills, which is followed 1 or 2 days later with pulmonary edema. Fluorine has a strong caustic action on mucous membranes, eyes and skin. In human volunteers exposed to 100 ppm (0.16 mg/L) for 30 seconds, much irritation to the nose and eyes was reported. In acute inhalation studies in animals, lethality occurs at a fairly uniform level and is the result of pulmonary edema. Following 1 hour exposures in mice, rats or guinea pigs, the inhalation LC_{50} values ranged from 150 to 185 ppm (0.23 to 0.29 mg/L). The LC_{50} for rabbits following a 30-minute exposure was 270 ppm (0.42 mg/L). EPA's exposure analysis indicates that fluorine concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing fluorine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

127. *Fluorouracil (5-Fluorouracil)* (CAS No. 000051-21-8) (CAL; EPCRA EHS) (Ref. 8). A major use of fluorouracil is in the palliative treatment of carcinoma of the colon, rectum, breast, stomach, and pancreas that is not amenable to surgery or irradiation. The major toxic effects of fluorouracil are on the normal, rapidly proliferating tissues particularly of the bone marrow and lining of the gastrointestinal tract. Leukopenia, predominantly of the granulocytopenic type, thrombocytopenia, and anemia occur commonly with intravenous fluorouracil therapy at doses ranging from 6 to 12 mg/kg. Pancytopenia and agranulocytosis also have occurred.

Developmental abnormalities or other effects on newborns were reported in offspring of women receiving 150 or 240 mg/kg fluorouracil intravenously during weeks 11 to 14 or 20 to 31 of pregnancy. In addition, maternal toxicity to the reproductive organs, toxicity to the fetus, and developmental abnormalities have been reported in mice, rats, and hamsters receiving oral, intraperitoneal, or intramuscular doses of fluorouracil ranging from 10 to 700 mg/kg.

Chronic neurotoxic effects were noted in dogs fed fluorouracil at a dietary dose of 2 mg/kg/day for 6 months. In this study, animals were examined at the end of 3 months and 6 months. At the end of the experiment, or at death, the brain was removed and examined (only one dog survived the entire 6–month period). Histological sections of the brain showed the presence large multiple monolocular vacuoles in the wall of the fornix of the third ventricle.

EPA believes that there is sufficient evidence for listing fluorouracil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the toxicity of this substance to bone marrow, and on the developmental and chronic neurotoxicity data for this chemical.

128. *Fluvalinate (N-[2-chloro-4-(trifluoromethyl)phenyl]DL-valine(+)-cyano (3-phenoxyphenyl)methyl ester)* (CAS No. 069409-94-5) (FIFRA AI) (Ref. 3). Delayed ossification and decreased weight and length of fetuses were observed in offspring of rats orally administered 50 mg/kg/day (LOEL) on days 6 to 15 of gestation. The NOEL was 10 mg/kg/day. These effects were observed at doses that produced maternal toxicity. Curved tibia and fibula were observed in the offspring of

rabbits orally administered 125 mg/kg/day (LOEL). The NOEL was 25 mg/kg/day. In a 2–generation reproduction study, a decrease in pup weight and growth were observed in offspring of rats orally administered 5 mg/kg/day (LOEL). The NOEL was 1 mg/kg/day. Significantly decreased weight and survival were observed in offspring of rats orally administered 25 mg/kg/day.

In a range finding study, dietary administration of 50 mg/kg/day for 30 days produced skin lesions in rats. The NOEL was not determined. A 2–year rat feeding study was terminated at 64 weeks due to dermal lesions produced in animals at 15 mg/kg/day. The NOEL was 2 mg/kg/day. Dietary administration of 10 mg/kg/day (LOEL for effect) to mice for 2 years produced scabbing and dermal abrasion. No NOEL for these effects was established. An increase in plantar ulcers was observed in rats fed 2.5 mg/kg/day (LOEL) for 2 years. The NOEL was 1 mg/kg/day. Decreases in body weight gain were also observed in this study. Based on the NOEL of the study, an oral RfD of 0.01 mg/kg/day was derived. In a 2–generation rat reproduction study, dietary administration of 5 mg/kg/day produced decreased body weight gain and skin lesions in parents and offspring.

Dietary administration of 2.5 mg/kg/day to rats for 13 weeks produced anemia in blood parameters (decreased hematocrit, hemaglobin, and red blood cells). The NOEL was 1.0 mg/kg/day. Dietary administration of 30 mg/kg/day (LOEL) to rats for 3 months produced decreased hemoglobin, hematocrit, and red blood cell count in rats. The NOEL was 3 mg/kg/day.

EPA believes that there is sufficient evidence for listing fluvinate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, dermal, and hematological toxicity data for this chemical.

Aquatic acute toxicity values for fluvalinate include a daphnid 48–hour EC_{50} of 0.40 ppb, a bluegill sunfish 96–hour LC_{50} of 0.9 ppb, a rainbow trout 96–hour LC_{50} of 2.9 ppb, and a sheepshead minnow 96–hour LC_{50} of 10.8 ppb. EPA believes that there is sufficient evidence for listing fluvinate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

129. *Folpet* (CAS No. 000133-07-3) (CAL) (Ref. 8). Folpet is classified as a Group B2 compound by EPA; i.e., the substance is a probable human carcinogen. Folpet has been shown to induce carcinoma and adenoma of the duodenum in both sexes of CD-1 and B6C3F1 mice. EPA believes that there is sufficient evidence for listing folpet on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

Aquatic acute toxicity test data for folpet include a measured 96–hour LC_{50} of 39 ppb for rainbow trout, and a measured 96–hour LC_{50} of 72 ppb (0.072 ppm) for bluegill. EPA believes that there is sufficient evidence for listing folpet on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

130. *Fomesafen (5-(2-chloro-4-(trifluoromethyl)phenoxy)-N methylsulfonyl)-2-nitrobenzamide)* (CAS No. 072178-02-0) (FIFRA AI) (Ref. 3). Decreased plasma cholesterol and triglycerides and increased liver weights (reversible at 7 days post-treatment) were observed at 50 mg/kg/day (only dose tested) when administered in the diet of rats for 4 weeks. In a 90–day rat study, dietary administration of 5 mg/kg/day (LOEL) produced alterations in lipid metabolism and increases in liver weight. The NOEL was 0.25 mg/kg/day. In a 26-week dog study, dietary administration of 25 mg/kg/day (LOEL) produced alterations in lipid metabolism and liver changes (changes not defined). The NOEL was 1 mg/kg/day. Liver toxicity (increased liver masses, discolored hepatocytes, and pigmented Kupffer cells) was observed in a 2–year rat feeding study at 50 mg/kg/day (LOEL). The NOEL was 5 mg/kg/day. Metabolism studies have shown that fomesafen accumulates in the liver. EPA believes that there is sufficient evidence for listing fomesafen on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data for this chemical.

131. *alpha-Hexachlorocyclohexane* (CAS No. 000319-84-6) (CERCLA; CWA PPL; FIFRA SR) (Ref. 8). alpha-Hexachlorocyclohexane is classified by EPA as a Group B2 compound; i.e., the substance is a probable human carcinogen. Although human data are limited, there is a case report of acute leukemia in a Japanese sanitation employee following occupational exposure to alpha-hexachlorocyclohexane and DDT. alpha-Hexachlorocyclohexane has been shown in dietary studies to cause an increase in the incidence of liver tumors in five mouse strains and in Wistar rats. EPA believes that there is sufficient evidence for listing alpha-hexachlorocyclohexane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

Measured aquatic acute toxicity test data for alpha-hexachlorocyclohexane include a 48–hour EC_{50} of 800 ppb for daphnids. This chemical is expected to bioaccumulate in aquatic systems because the measured bioconcentration factor (BCF) for rainbow trout is 1950. EPA believes that there is sufficient evidence for listing alpha-hexachlorocyclohexane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical and its potential for bioaccumulation.

132. *Hexamethylene-1,6-diisocyanate or Diisocyanates category* (CAS No. 000822-60-0) (CAA HAP) (Ref. 7). Hexamethylene-1,6-diisocyanate (HDI) is extremely toxic via the inhalation route. The rat LC_{50} for HDI ranges from 56 (385 mg/m³) to 45 ppm (310 mg/m³). The mouse LC_{50} for HDI is 4 ppm (30 mg/m³). HDI also induces irritation of the upper respiratory tract in mice after acute exposure. The mouse LOAEL was 0.062 ppm (0.43 mg/m³) for a 3–hour exposure. A NOAEL was not established. Acute exposures to HDI vapors may induce pulmonary irritation in the rat at 60 mg/m³, but data were insufficient to generate a LOAEL or NOAEL for this effect.

Although the data are insufficient to evaluate the potential for HDI to produce pulmonary hypersensitivity, indirect evidence suggests that inhalation of monomeric HDI may cause pulmonary sensitivity. In addition, data are insufficient to evaluate the potential for HDI to elicit an allergic reaction in previously sensitized animals or people; however, indirect evidence suggests that inhalation of monomeric HDI may elicit allergic responses (i.e., asthma, alveolitis) in isocyanate-sensitized individuals.

EPA's exposure analysis indicates that HDI concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing hexamethylene-1,6-diisocyanate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

EPA is proposing to list HDI as an individual chemical on EPCRA section 313. In addition, in Units IV.B.144. and 158. of this preamble, EPA is proposing to individually list isophorone diisocyanate and 1,1-methylene bis(4-isocyanatocyclohexane) on EPCRA section 313. As an alternative proposal to the individual listing of HDI, isophorone diisocyanate, and 1,1-methylene bis(4-isocyanatocyclohexane), EPA is proposing to create a diisocyanates category that includes HDI, isophorone diisocyanate, 1,1-methylene bis(4-isocyanatocyclohexane), and 16 other diisocyanates.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories, the releases are determined in the same manner as the thresholds. One report is filed for the category and all releases are reported on this form.

The chemicals selected for this proposed category are members of the diisocyanates category under review by EPA's Office of Pollution Prevention and Toxics. This category has been defined as monomeric diisocyanates of molecular weight less than or equal to 300, plus polymeric diphenylmethane diisocyanate (which is only 40 to 60 percent polymerized). Chemicals were included in this category based on similar chronic and acute adverse respiratory effects. The following chemicals are the proposed members of the EPCRA section 313 diisocyanates category:

1,3-Bis(methylisocyanate)cyclohexane (CAS No. 038661-72-2)
1,4-Bis(methylisocyanate)cyclohexane (CAS No. 010347-54-3)
1,4-Cyclohexane diisocyanate (CAS No. 002556-36-7)
Diethyldiisocyanatobenzene (CAS No. 134190-37-7)
4,4'-Diisocyanatodiphenyl ether (CAS No. 004128-73-8)
2,4'-Diisocyanatodiphenyl sulfide (CAS No. 075790-87-3)
3,3'-Dimethoxybenzidine-4,4'-diisocyanate (CAS No. 000091-93-0)
3,3'-Dimethyl-4,4'-diphenylene diisocyanate (CAS No. 000091-97-4)
3,3'-Dimethyldiphenylmethane-4,4'-diisocyanate (CAS No. 000139-25-3)
Hexamethylene-1,6-diisocyanate (CAS No. 000822-06-0)
Isophorone diisocyanate (CAS No. 004098-71-0)
4-Methyldiphenylmethane-3,4-diisocyanate (CAS No. 075790-84-0)
1,1-Methylene bis(4-isocyanatocyclohexane) (CAS No. 005124-30-1)
1,5-Naphthalene diisocyanate (CAS No. 003173-72-6)
1,3-Phenylene diisocyanate (CAS No. 000123-61-5)
1,4-Phenylene diisocyanate (CAS No. 000104-49-4)
Polymeric diphenylmethane diisocyanate (CAS No. 009016-87-9)
2,2,4-Trimethylhexamethylene diisocyanate (CAS No. 016938-22-0)
2,4,4-Trimethylhexamethylene diisocyanate (CAS No. 015646-96-5)

These diisocyanates represent a category of chemicals that may effect many organ systems. However, the primary toxicity target for diisocyanates is the upper and lower respiratory tract resulting in chronic pulmonary irritation. Diisocyanates are also known respiratory and dermal sensitizing agents. Both acute and chronic effects may result from acute or chronic exposures. These effects may be immune- or non-immune mediated. EPA believes that diisocyanates should be listed as a category because it is the isocyanate functionality that is responsible for the observed chronic pulmonary irritation associated with exposures to members of this category. The other part of the molecule does not mitigate to any large degree the observed toxic effects. EPA believes that there is sufficient evidence for listing diisocyanates as a category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data for members of the category.

Currently there are four other diisocyanates listed on EPCRA section 313, these are:

Toluene-2,4-diisocyanate (CAS No. 000584-84-9)
Toluene-2,6-diisocyanate (CAS No. 000091-08-7)
Toluenediisocyanate (mixed isomers) (CAS No. 026471-62-5)
Methylenebis(phenylisocyanate) (CAS No. 000101-68-8)

EPA intends to maintain the individual listings for the three toluene diisocyanate compounds. In addition to the effects discussed above, these compounds have been classified as probable carcinogens. EPA intends to continue to individually list diisocyanates that are possible of probable carcinogens. Methylenebis(phenylisocyanate) has not been shown to be a carcinogen and EPA is proposing to remove it as an individually listed chemical, and add it to the diisocyanates category if the alternative proposal for creation of the category is finalized.

EPA requests comment on the alternative proposal to create a diisocyanates category and what other diisocyanates should be included in such a category.

133. *n-Hexane* (CAS No. 000110-54-3) (CAA HAP) (Ref. 7). In an epidemiology study, no neurological abnormalities were noted in workers. However, neurophysiological tests showed that the mean motor nerve conduction velocities of the exposed group was significantly decreased over the values for the control group. Also, the residual latency of motor nerve conduction of the posterior tibial nerve in the exposed group was significantly slowed when compared with the nonexposed group. A LOAEL of 204 mg/m³ (58 ppm, LOAEL(ADJ) of 73 mg/m³) was established for these electrophysiological alterations in humans. The alterations observed are consistent with n-hexane-induced peripheral neuropathy observed in other studies in humans and in animals. EPA believes that there is sufficient evidence for listing n-hexane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based upon the available neurotoxicity data for this chemical.

134. *Hexazinone* (CAS No. 051235-04-2) (FIFRA AI) (Ref. 3). In a 2–year mouse feeding study, liver hypertrophy, hyperplastic nodules and focal necrosis were observed at 375 mg/kg/day (LOEL). The NOEL was 30 mg/kg/day. In a 90–day feeding study in dogs, decreased body weight, increased alkaline phosphatase activity, decreased albumin/globulin ratio and increased absolute and relative liver weights were noted in both sexes at 5,000 ppm (125 mg/kg/day; LOEL). The NOEL was 1,000 ppm (25 mg/kg/day). EPA believes that there is sufficient evidence for listing hexazinone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data for this chemical.

Measured aquatic acute toxicity test data for hexazinone include an EC_{50} of 7 ppb for *S. capricornutum*. EPA believes that there is sufficient evidence for listing hexazinone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

135. *Hydramethylnon (tetrahydro-5,5 dimethyl-2(1H)-pyrimidinone[3-[4-(trifluoromethyl)phenyl]-1-[2-[4(trifluoromethyl) phenyl]ethenyl]-2-propenylidene]hydrazone)* (CAS No. 067485-29-4) (FIFRA AI) (Ref. 3). In a 90–day dog feeding study, testicular atrophy was observed at 6 mg/kg/day (LOEL). The NOEL was 3 mg/kg/day. In a 90–day rat study, dietary administration of 5 mg/kg/day (LOEL) produced testicular atrophy. The NOEL was 2.5 mg/kg/day. Dietary

administration of 6.5 mg/kg/day for 18 months produced testicular lesions in mice. The NOEL was 2.75 mg/kg/day. In a 2–year rat study, dietary administration of 5 mg/kg/day produced decreased testicular weight and testicular atrophy. The NOEL was 2.5 mg/kg/day. In a 3-generation rat reproduction study, oral administration of 5 mg/kg/day produced male infertility. The NOEL was 2.5 mg/kg/day.

Decreased fetal weight was observed in the offspring of rats administered 30 mg/kg/day (LOEL). The NOEL was 10 mg/kg/day. Increased post implantation loss and decreased fetal viability were observed in the offspring of rabbits administered 15 mg/kg/day (LOEL). The NOEL was 5 mg/kg/day. Vertebral anomalies were seen in the offspring of rabbits administered 10 mg/kg/day (LOEL). The NOEL was 5 mg/kg/day.

Dietary administration of 1 mg/kg/day (LOEL) for 6 months to dogs produced increased absolute and relative liver weights. The NOEL was 0.33 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.0003 mg/kg/day was derived.

EPA believes that there is sufficient evidence for listing hydramethylnon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available reproductive, developmental, and hepatic toxicity data for this chemical.

The 96–hour LC_{50} in the Chanel Catfish was 90 ppb. Bioaccumulation factors in bluegill sunfish are 1300 for the whole fish, 780 for the fillet, and 1900 for viscera. EPA believes that there is sufficient evidence for listing hydramethylon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data and the potential for bioaccumulation.

136. *Hydrochlorofluorocarbons* (CAA OD) (Ref. 8). Hydrochlorofluorocarbons are known to release chlorine radicals into the stratosphere. Chlorine radicals act as catalysts to reduce the net amount of stratospheric ozone.

Stratospheric ozone shields the earth from ultraviolet-B (UV-B) radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone will increase the percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface.

Exposure to UV-B radiation has been implicated by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies predict that for every 1 percent increase in UV-B radiation, nonmelanoma skin cancer cases would increase by about 1 to 3 percent.

Recent epidemiological studies, including large case control studies, suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer. Recent studies predict that for each 1 percent change in UV-B intensity, the incidence of melanoma could increase from 0.5 to 1 percent.

Studies have demonstrated that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans. Increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina.

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit.

Increased UV-B penetration has been shown to result in adverse impacts on plants. Field studies on soybeans suggest that yield reductions could occur in some cultivars of soybeans, while evidence from laboratory studies suggest that two out of three cultivars are sensitive to UV-B.

Because this increased UV-B radiation can be reasonably anticipated to lead to cancer and other chronic human health effects and significant adverse environmental effects, EPA believes there is sufficient evidence for listing the following HCFCs that are commercially viable on EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C). EPA is proposing that the following HCFCs be added individually to EPCRA section 313:

Dichloropentafluoropropane (CAS No. 127564-92-5)

1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea) (CAS No. 136013-79-1)

2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa) (CAS No. 128903-21-9)

1,1-Dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb) (CAS No. 111512-56-2)

1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc) (CAS No. 13474-88-9)

1,3-Dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb) (CAS No. 000507-55-1)

1,2-Dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da) (CAS No. 000431-86-7)

3,3-Dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca) (CAS No. 000422-56-0)

2,3-Dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba) (CAS No. 000422-48-0)

1,2-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb) (CAS No. 000422-44-6)

Dichlorofluoromethane (HCFC-21) (CAS No. 000075-43-4)

1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a) (CAS No. 000354-11-0)

1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121) (CAS No. 000354-14-3)

1,2-Dichloro-1,1-difluoroethane (HCFC-132b) (CAS No. 001649-08-7)

2-Chloro-1,1,1-trifluoroethane (HCFC-133a) (CAS No. 000075-88-7)

3-Chloro-1,1,1-trifluoropropane (HCFC-253fb) (CAS No. 000460-35-5).

137. *Imazalil (1-[2-(2,4-dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidozole)* (CAS No. 035554-44-0) (FIFRA AI) (Ref. 3). In a rat teratology study, increased maternal mortality, decreased litter size, and increased number of dead fetuses were observed in animals administered 40 mg/kg/day (LOEL). The NOEL was 10 mg/kg/day. Stillbirths and altered live birth index were observed in rats orally administered 80 mg/kg/day days 16 through 22 of gestation and 21 days post gestation. Altered lactation index was observed in rats orally administered 20 mg/kg/day on days 16 through 22 of gestation and 21 days post gestation. Post-implantation loss was observed in rabbits orally administered 0.63 mg/kg/day on days 6 through 18 of gestation. Altered viability index was observed in rabbits orally administered 2.5 mg/kg/day on days 6 through 18 of gestation. EPA believes that there is sufficient evidence for listing imazalil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

138. *3-Iodo-2-propynyl butylcarbamate* (CAS No. 055406-53-6) (FIFRA AI) (Ref. 3). In a 90–day rat study, oral administration of 50 mg/kg/day (LOEL) produced increased liver-to-body-weight ratios. The NOEL was 20 mg/kg/day. In a 2–year rat study, dietary administration of 40 and 80 mg/kg/day produced significant non-neoplastic pathological changes in the stomach. No NOEL was established; the LOEL was 20 mg/kg/day. Based on this study, EPA derived an oral RfD of 0.07 mg/kg/day. EPA believes that there is sufficient evidence for listing 3-Iodo-2-propynyl butylcarbamate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for this chemical.

139. *Iprodione (3-(3,5-dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide)* (CAS No. 036734-19-7) (FIFRA AI) (Ref. 3). Increased red blood cell Heinz bodies and decreased prostate weight (the LOEL was 15 mg/kg/day; the NOEL was 4.2 mg/kg/day) were observed in dogs fed iprodione for 1–year. Increased Heinz bodies were also seen in females at 15 mg/kg/day. At 90 mg/kg/day, increased liver weight was noted in male and female dogs. Based on the NOEL, an oral RfD of 0.04 mg/kg/day was derived. In another 1–year feeding study in dogs, decreased red blood cell counts and hemoglobin and hematocrit levels (the LOEL was 600 ppm or 15 mg/kg/day; the NOEL was 100 ppm or 2.5 mg/kg/day) were observed. At 3,600 ppm (90 mg/kg/day), increased absolute and relative liver weights and increase liver alkaline phosphatase, serum glutamic-pyruvic transaminase, serum glutamic-oxaloacetic transaminase, and lactate dehydrogenase activities were noted. Decreased red blood cell count and decreased hemoglobin and hematocrit levels (the LOEL was 24.6 mg/kg/day in males, 26.4 mg/kg/day in females; the NOEL was 17.5 mg/kg/day in males, 18.4 mg/kg/day in females). EPA believes that there is sufficient evidence for listing iprodione on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological and hepatic toxicity data for this chemical.

Acute aquatic toxicity data include a green algae 120–hour EC_{50} of 21 ppb. EPA believes that there is sufficient evidence for listing iprodione on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

140. *Iron pentacarbonyl* (CAS No. 013463-40-6) (EPCRA EHS) (Ref. 8). Humans exposed to high concentrations of iron pentacarbonyl immediately experience headache and dizziness. These effects are followed 12 to 36 hours after exposure by symptoms such as fever, cyanosis, cough, and shortness of breath. In humans, iron pentacarbonyl has also been known to cause adverse effects on the respiratory and central nervous system, liver, and kidney. The rat oral LD_{50} is 25 mg/kg and the rat inhalation LC_{50} value is 0.044 mg/L. The 4–hour inhalation LC_{100} in mice is 0.007 mg/L. The rabbit oral LD_{50} is 12 mg/kg. EPA's exposure analysis indicates that iron pentacarbonyl concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing iron pentacarbonyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

141. *Isodrin* (CAS No. 000465-73-6) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). Measured aquatic acute toxicity data for isodrin include a 24–hour LC_{50} of 12 ppb for bluegills and a 24–hour LC_{50} of 6 ppb for minnows. EPA believes that there is sufficient evidence for listing isodrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

142. *Isofenphos [2-[[ethoxyl[(1-methylethyl) amino] phosphinothioyl] oxy] benzoic acid 1-methylethyl ester)* (CAS No. 025311-71-1) (FIFRA AI) (Ref. 3). In a 108–week feeding study in mice, inhibition of brain cholinesterase (the LOEL was 100 ppm or 13 mg/kg/day; the NOEL was 10 ppm or 1.3 mg/kg/day) and plasma cholinesterase (the LOEL was 10 ppm or 1.3 mg/kg/day; the NOEL was 0.13 mg/kg/day) was observed. Inhibition of red blood cell cholinesterase (the LOEL was 10 ppm or 0.5 mg/kg/day; the NOEL was 1 ppm or 0.05 mg/kg/day) was seen in a 2–year feeding study in rats. Other studies (14– and 90–day feeding studies in dogs, 30– and 90–day studies in rats, and a 3–week inhalation study in rats) also demonstrate cholinesterase (plasma, red blood cell or brain) inhibition in rats and dogs. EPA believes that there is sufficient evidence for listing isophenphos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

Aquatic acute toxicity values for isofenphos include a daphnid 48–hour EC_{50} of 1.6 ppb and a mysid 96–hour EC_{50} of 1.7 ppb. EPA believes that there is sufficient evidence for listing isofenphos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

143. *Isophorone* (CAS No. 000078-59-1) (CAA HAP) (Ref. 7). Isophorone has been shown to cause neurotoxic effects in humans exposed to atmospheric concentrations of 5 to 8 ppm. After being exposed for 1 month, workers complained of fatigue and malaise. Neurotoxicity was also observed in humans following acute exposure. At 40 to 85 ppm, effects included nausea, headache, dizziness, faintness, inebriation, and a feeling of suffocation. Increasing exposure concentrations resulted in increasing severity of symptoms. Irritation and central nervous system (CNS) depression were observed at concentrations of 200 to 400 ppm. EPA believes that there is sufficient evidence for listing isophorone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurotoxicity data for this chemical.

144. *Isophorone diisocyanate* (CAS No. 004098-71-9) (TSCA) (Ref. 8). The 4–hour inhalation LC_{50} value of isophorone diisocyanate in rats is 0.123 mg/L. The rat and mouse 3–hour inhalation RD_{50} (50 percent reduction in respiratory rate) values are 0.0046 mg/L and 0.0019 mg/L, respectively. A 50–year old man developed severe asthma after exposure to an unspecified amount of paint containing isophorone diisocyanate. A 1–hour exposure to an unspecified amount of the compound caused eczema in three out of four workers. In addition, isocyanates as a class are generally severe skin, eye and respiratory irritants. EPA's exposure analysis indicates that isophorone diisocyanate concentrations are likely to exist beyond facility-site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing isophorone diisocyanate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

As detailed in Unit IV.B.132. of this preamble, as an alternative proposal to the individual listing of HDI, isophorone diisocyanate, and 1,1-methylene bis(4-isocyanatocyclohexane), EPA is proposing to create a diisocyanates category that includes HDI, isophorone diisocyanate, 1,1-methylene bis(4-isocyanatocyclohexane), and 16 other diisocyanates.

145. *Lactofen (5-(2-chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester)* (CAS No. 077501-63-4) (FIFRA AI) (Ref. 3). Lactofen meets the criteria of an EPA Group B2 compound, i.e., a probable human carcinogen. This conclusion was based on an increased incidence of hepatocellular carcinomas in males and combined incidence of hepatocellular adenomas and carcinomas in both sexes of CD-1 mice following dietary administration of lactofen. In CD rats, there was increased incidence of liver neoplastic nodules in both sexes. Four structurally similar chemicals, acifluorfen, nitrofen, oxyfluorfen, and fomesafen, all produced hepatocellular tumors in rodents.

Results of several subchronic and chronic studies indicated the liver and kidney as target organs for lactofen.

Increased absolute and relative liver weight and hepatocytomegaly (the LOEL was 1.5 mg/kg/day; the NOEL was not determined) were observed in male mice fed lactofen for 78 weeks. At 37.5 mg/kg/day, there was also an increased incidence of cataracts and renal pigmentation. Based on the LOEL, an oral RfD of 0.002 mg/kg/day was derived. Renal dysfunction and decreased hemoglobin and hematocrit levels and red blood cell counts (the LOEL was 25/75 mg/kg/day; the NOEL was 5 mg/kg/day) were observed in a 1–year feeding study in dogs. Increased renal and hepatic pigmentation (the LOEL was 50 mg/kg/day; the NOEL was 25 mg/kg/day) were noted in a 2–year feeding study in rats. In a 90–day mouse study, increased alkaline phosphatase, serum glutamate oxaloacetate transaminase (SGOT), and serum gleutanic pyruvic transaminase (SGPT) activities, increased liver weight, hepatic necrosis, biliary hyperplasia, decreased hematocrit and hemoglobin levels and red blood cell counts, extramedullary hematopoiesis, and kidney nephrosis and fibrosis (the LOEL was 26 mg/kg/day; the NOEL was not determined) were seen. Decreased hemoglobin and hematocrit levels, decreased red blood cell counts, and brown pigment in the kidney and liver (the LOEL was 50 mg/kg/day) were noted in a 90–day feeding study in rats.

EPA believes that there is sufficient evidence for listing lactofen on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data and hepatic, renal, and hematological toxicity data for this chemical.

146. *Linuron* (CAS No. 000330-55-2) (FIFRA SR) (Ref. 8). The appearance of sulfhemoglobin in the blood of dogs, rats, or mice exposed to linuron has been reported. In fact, available animal data from feeding studies of various durations (30 days to 2 years) with linuron as well as from studies with structurally similar urea-based herbicides indicate that the presence of sulfhemoglobin (abnormal blood pigment) and morphological changes in red blood cells provide the most sensitive indicator of exposure to linuron. In a 2–year feeding study with beagle dogs, the LOAEL, based on the presence of the sulfhemoglobin, was 0.625 mg/kg/day. This was the lowest dose tested. Red blood cell counts were decreased in dogs exposed to higher doses of linuron. EPA has derived an oral RfD of 0.002 mg/kg/day for linuron from this study. Similar findings were reported in two separate 2–year rat feeding studies. In one of these studies, the LOAEL was 31.25 mg/kg/day and the NOAEL was 6.25 mg/kg/day. These values were based on spleen and bone marrow changes indicative of hemolysis, and an increase in mortality and growth retardation. In the other 2–year rat study, a LOAEL of 2.5 mg/kg/day (the lowest dose tested) was based on decreased red blood cell counts and reticulocytosis. Elevated sulfhemoglobin levels were reported in rats exposed for as little as 30 days to 150 mg/kg/day. This exposure level also caused severe growth retardation and increased mortality. The LOAEL for decreased body weight gain was 15 mg/kg/day and the NOAEL was 3 mg/kg/day. Chronic administration of linuron at 4 mg/kg/day to rats caused hypochromic anemia, decreased cholinesterase and peroxidase activities in the blood.

A LOAEL of 31.25 mg/kg/day was established in a 3–generation reproductive toxicity study in which linuron (in the diet) caused reduced weanling weights, reduced liver and kidney weights, liver atrophy, and reduced pup survival. In a separate developmental toxicity study in rats administered linuron orally, a LOAEL of 31.25 mg/kg/day was based on an increased incidence of fetal resorptions. The LOAEL for maternal toxicity in this study was 6.25 mg/kg/dey (NOAEL 2.50 mg/kg/day), and was based on decreased food consumption and decreased body weight gain. An oral teratology study in rabbits indicated a LOAEL of 5 mg/kg/day (lowest dose tested) based on decreased fetal body weight, decreased litter size and an increase in skull malformations.

EPA believes that there is sufficient evidence for listing linuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hematological and developmental toxicity data for this chemical.

147. *Lithium carbonate* (CAS No. 000554-13-2) (CAL) (Ref. 8). A major use of lithium carbonate is in the treatment of manic episodes of manic-depressive illness. Decreases in the number of implantations, number of live fetuses and fetal body weight, and increases in resorptions and various limb/skeletal anomalies were reported in the offspring of Wistar rats that received 100 mg/kg (the fetotoxic LOEL; the fetotoxic NOEL was 50 mg/kg) during gestation days 6 through 15. Offspring of mice that received 465 mg/kg/day during gestation days 6 through 15 had increased craniofacial abnormalities. Fetal death and reductions in litter size were also noted. EPA believes that there is sufficient evidence for listing lithium carbonate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

148. *Malathion* (CAS No. 000121-75-5) (CERCLA) (Ref. 8). Malathion is a phosphorothioate insecticide. Its insecticidal properties are due to cholinesterase inhibition. A 42–year old woman ingested a minimum of 120 ml of a 50 percent solution (approximately 850 mg/kg). She quickly became comatose, cyanotic, flaccid, devoid of tendon reflexes, and miotic. Her serum cholinesterase activity was 22 percent of normal for 9 days and her red blood cell cholinesterase activity was 10 to 25 percent of normal for 45 days. Thirty-five cases of poisoning by ingestion were reported in India. The symptoms observed were cyanosis, excess salivation, pinpoint pupils, pulmonary edema, and electrocardiographic abnormalities; all of which are indicative of cholinesterase inhibition. Autopsy of the fatalities indicated damage to the myocardium. In a 56–day study in which men were orally administered malathion, the NOEL for neurotoxic effects was 0.23 mg/kg/day and the LOEL was 0.34 mg/kg/day. Plasma and red blood cell cholinesterase inhibition was observed at 0.34 mg/kg/day; however, no clinical signs of overt toxicity were noted at this dose. Based on the NOEL, EPA has derived an oral RfD of 0.02 mg/kg/day for this chemical. Cholinesterase inhibition symptoms have also been observed in experimental animals exposed to malathion. EPA believes that there is sufficient evidence for listing malathion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity data for this chemical.

Measured aquatic acute toxicity data for malathion include a 96–hour LC_{50} of 68 ppb for rainbow trout, a 96–hour LC_{50} of 51 ppb for sheepshead minnow, and a 96–hour LC_{50} of 76 ppb for lake trout. In addition, the measured 48–hour EC_{50} for daphnids is 0.9 ppb. EPA believes that there is sufficient evidence for listing malathion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

149. *Man-made mineral fibers category* (CAA HAP) (Ref. 7). Man-made mineral fibers are synthetic, amorphous (noncrystalline) fibers which consist of three major groups: Glass fibers; mineral wool fibers (which includes mainly rock wool and slag wool); and refractory ceramic fibers. Health concerns for these fibers are based on the morphological and toxicologic similarities with asbestos, a known human carcinogen, causing lung cancer and mesotheliomas in humans and non-malignant respiratory diseases (e.g. lung fibrosis). Injection studies, in which glass wool and glass microfibers were directly placed into the respiratory airways, the pleural or abdominal cavities of laboratory animals, have shown consistent evidence of carcinogenesis. Experimental studies have shown evidence of carcinogenesis by injection of rock wool and slag wool. IARC has classified glass wool, rock wool, and slag wool fibers as Group 2B compounds, i.e., possible human carcinogens. EPA has classified refractory ceramic fibers as Group B2 compounds, i.e., probable human carcinogen. EPA believes that there is sufficient evidence for listing man-made mineral fibers as a category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for these fibers.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories, the releases are determined in the same manner as the thresholds. One report is filed for the category and all releases are reported on this form.

EPA considered a number of options for listing man-made mineral fibers on EPCRA section 313. In 1977, the National Institute for Occupational Safety and Health (NIOSH) recommended that exposures to fibers be limited to 3 fibers per cubic centimeters (f/cc) for fibers that are less than 3.5 micrometers in diameter and longer than 10 micrometers in length. NIOSH has since commented that in order to protect workers from lung cancer it will be necessary to lower the exposure to 0.2 f/cc for fibrous glass. In 1992, the Occupational Safety and Health Administration (OSHA) proposed a 1 f/cc 8–hour time-weighted average (TWA) limit for respirable fibers of fibrous glass, including refractory ceramic fibers. Respirable fibers are generally defined as fibers with a diameter of less than 3.5 micrometers whose length is at least 3 times the diameter (i.e., an aspect ratio (fiber length divided by fiber diameter) of 3 or greater). In order to ease the burden of reporting, EPA considered listing fibers based on an aspect ratio that simply discriminates between particles and fibers. This, however, seemed to be overly inclusive in that it would cover nonrespirable as well as respirable fibers. EPA also considered using a diameter criteria without an aspect ratio but this option also appears to be too inclusive since it may include particles as well as fibers. EPA is proposing to list man-made mineral fibers as a category that includes glass microfibers, glass wool fibers, rock wool fibers, slag wool fibers, and refractory ceramic fibers that have a diameter less than 3.5 micrometers and an aspect ratio greater than 3. This definition is consistent with both the NIOSH and OSHA recommendations and is limited to fibers that are respirable. EPA requests comment on this definition of man-made mineral fibers and any other options for defining a fibers category.

150. *Mecoprop* (CAS No. 000093-65-2) (IARC) (Ref. 8). Mecoprop is a mono-chloro, mono-methylphenoxy isopropanoic acid type herbicide. IARC has assigned mecoprop to Group 2B, i.e., it is possibly carcinogenic to humans.

In several animal studies, changes in liver or kidney weights were the most sensitive indicators of mecoprop toxicity. In a 90–day rat feeding study, the LOAEL was 9 mg/kg/day and the NOAEL was 3 mg/kg/day. At 26 mg/kg/day, the changes in organ weights were accompanied by decreased glucose levels in males and increased creatinine levels in females. EPA has derived an oral RfD of 0.001 mg/kg/day from this study.

EPA believes that there is sufficient evidence for listing mecoprop on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatic and renal toxicity data for this chemical.

151. *2-Mercaptobenzothiazole (MBT)* (CAS No. 000149-30-4) (TSCA) (Ref. 8). The 21–day maximum acceptable toxicant concentration (MATC) for daphnids range from 240 to 470 ppb. The 60-day MATC for rainbow trout range from 41 to 78 ppb. EPA's exposure analysis indicates that releases of 2-mercaptobenzothiazole will result in concentration levels that can reasonably be anticipated to cause significant adverse environmental effects. EPA believes that there is sufficient evidence for listing 2-mercaptobenzothiazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data and exposure data for this chemical.

152. *Merphos* (CAS No. 000150-50-5) (FIFRA SR) (Ref. 8). Merphos is a thiophosphate-type cholinesterase inhibitor. Delayed neurotoxic effects have been reported in a 28-year old man following accidental exposure to the chemical over a period of 3 days. Fourteen days later, he developed complete facial diplegia and decreased conduction velocity in his nerve fibers. He recovered completely. Both immediate and delayed neurotoxic effects following exposure to merphos have been reported in experimental animals. In a 3–month hen feeding study the NOEL for neurotoxic effects was 0.1 mg/kg/day and the LOEL was 0.5 mg/kg/day. At 0.5 mg/kg, hens showed delayed neurotoxicity, ataxia, and equivocal changes in the spinal cord and peripheral nerves. Based on the NOEL, EPA derived an oral RfD of 0.00003 mg/kg/day for this chemical. In a 112-day rat feeding study, females showed red blood cell cholinesterase inhibition at the LOEL of 0.25 mg/kg/day. The NOEL was 0.1 mg/kg/day. In a 90–day rat feeding study, animals showed reduced brain cholinesterase activity at the LOEL of 3.8 mg/kg/day. The NOEL was 1.8 mg/kg/day. In a 90–day dog feeding study, plasma cholinesterase inhibition was observed at the LOEL of 2.5 mg/kg/day. The NOEL was 0.75 mg/kg/day. Fourteen cattle and 20 sheep administered single doses of merphos (25 to 200 mg/kg) or 10 daily doses of merphos (2.5 mg/kg/day) showed emaciation, diarrhea, and depression of blood cholinesterase. Ingested merphos is rapidly metabolized to n-butyl mercaptan within the gastrointestinal tract. n-Butyl mercaptan has been shown to be responsible for the acute neurotoxic effects of merphos. Thus, oral exposure to merphos is expected to cause acute neurotoxic symptoms while dermal exposure to merphos is expected to cause delayed neurotoxic symptoms. EPA believes that there is sufficient evidence for listing merphos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity data for this chemical.

153. *Metham sodium (sodium methyldithiocarbomate)* (CAS No. 000137-42-8) (FIFRA AI) (Ref. 3). Postimplanatation loss was observed in rabbits administered metham sodium at 30 mg/kg/day (LOEL) on days 6 to 18 of gestation. The NOEL was 10 mg/kg/day (4.2 mg/kg/day based on active ingredient). In rats fed metham sodium, increased variations, retardations, and anomalies were reported at doses of 10 mg/kg/day (LOEL) administered on days 6 to 15. The NOEL was less than or equal to 10 mg/kg/day (less than or equal to 4.2 mg/kg/day based on active ingredient). Although neither study was considered to be fully adequate due to study design and reporting deficiencies, the weight of evidence indicates that metham sodium induces developmental

toxicity. In addition, metham sodium is metabolized to carbon disulfide, a potent developmental toxicant. EPA believes that there is sufficient evidence for listing metham sodium on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical and its metabolite, carbon disulfide.

154. *Methazole (2-(3,4-dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione)* (CAS No. 020354-26-1) (FIFRA AI) (Ref. 3). Rabbits receiving 30 or 60 mg/kg/day by gavage on days 6 to 18 of gestation exhibited increased embryolethality. The NOEL was 10 mg/kg/day. EPA believes that there is sufficient evidence for listing methazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

155. *Methiocarb* (CAS No. 002032-65-7) (CERCLA; EPCRA EHS) (Ref. 8). Measured terrestrial acute toxicity data for wildlife include an oral LD_{50} of 4.6 mg/kg for red-winged blackbirds. EPA believes that there is sufficient evidence for listing methiocarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

156. *Methoxone ((4-Chloro-2-methylphenoxy) acetic acid) (MCPA)* (CAS No. 000094-74-6) (FIFRA SR; IARC) (Ref. 8). Methoxone is a chlorophenoxy-type herbicide. Animal studies indicate that the kidney and liver are the primary target organs of methoxone toxicity. Beagle dogs fed diets containing methoxone for 1–year developed liver toxicity, which was demonstrated by increased liver weights associated with alterations in serum glutamate-pyruvate transaminase, serum glutamate-oxaloacetate transaminase, bilirubin, triglyceride and cholesterol levels. These effects occurred at doses of 0.75 mg/kg/day (LOAEL) and higher. The NOAEL was 0.15 mg/kg/day. Kidney changes in the treated animals included deposition of kidney pigment in the proximal tubular epithelium (the LOAEL was 0.75 mg/kg/day; the NOAEL was 0.15 mg/kg/day), and was accompanied by alterations in creatinine, urea, and potassium levels. EPA derived an oral RfD of 0.0005 mg/kg/day from this study. Similar changes suggesting liver and kidney toxicity were reported in another 90–day dog feeding study (the LOAEL was 3 mg/kg/day; the NOAEL was 1 mg/kg/day) and in rats in a 90–day feeding study (the LOAEL was 7.5 mg/kg/day; the NOAEL was 2.5 mg/kg/day).

EPA believes that there is sufficient evidence for listing methoxone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data for this chemical.

157. *Methoxone sodium salt ((4-chloro-2-methylphenoxy) acetate sodium salt)* (CAS No. 003653-48-3) (FIFRA SR; IARC) (Ref. 8). Methoxone sodium salt is a chlorophenoxy-type herbicide. Animal studies indicate that the kidney and liver are the primary target organs of methoxone toxicity. Beagle dogs fed diets containing methoxone for 1–year developed liver toxicity, which was demonstrated by increased liver weights associated with alterations in serum glutamate-pyruvate transaminase, serum glutamate-oxaloacetate transaminase, bilirubin, triglyceride and cholesterol levels. These effects occurred at doses of 0.75 mg/kg/day (LOAEL) and higher. The NOAEL was 0.15 mg/kg/day. Kidney changes in the treated animals included deposition of kidney pigment in the proximal tubular epithelium (the LOAEL was 0.75 mg/kg/day; the NOAEL was 0.15 mg/kg/day), and was accompanied by alterations in creatinine, urea, and potassium levels. EPA derived an oral RfD of 0.0005 mg/kg/day from this study. Similar changes suggesting liver and kidney toxicity were reported in another 90–day dog feeding study (the LOAEL was 3 mg/kg/day; the NOAEL was 1 mg/kg/day) and in rats in a 90–day feeding study (the LOAEL was 7.5 mg/kg/day; the NOAEL was 2.5 mg/kg/day).

EPA believes that there is sufficient evidence for listing methoxone sodium salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on its potential to cause cancer and on the available hepatic and renal toxicity data for this chemical.

158. *1,1-Methylene bis(4-isocyanatocyclohexane)* (CAS No. 005124-30-1) (TSCA) (Ref. 8). The 5–hour rat inhalation LC_{50} value for 1,1-methylenebis(4-isocyanatocyclohexane) is 0.21 mg/L. The 3–hour mouse inhalation RD_{50} (50 percent reduction in respiratory rate) value is 0.027 mg/L. In addition, isocyanates as a class are generally severe skin, eye, and respiratory irritants. EPA's exposure analysis indicates that 1,1-methylenebis(4-isocyanatocyclohexane) concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing 1,1-methylenebis(4-isocyanatocyclohexane) on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

As detailed in Unit IV.B.132. of this preamble, as an alternative proposal to the individual listing of HDI, isophorone diisocyanate, and 1,1-methylene bis(4-isocyanatocyclohexane), EPA is proposing to create a diisocyanates category that includes HDI, isophorone diisocyanate, 1,1-methylene bis(4-isocyanatocyclohexane), and 16 other diisocyanates.

159. *Methylene bis(thiocyanate)* (CAS No. 006317-18-6) (FIFRA AI) (Ref. 3). The minimal human lethal dose for methylene bis(thiocyanate) is 15 to 30 g (214 to 429 mg/kg), although fatalities have been reported at 300 mg (4.3 mg/kg). Clinical effects may include decreased blood pressure, apnea, cerebral excitation, convulsions, coma, vomiting, diarrhea, abdominal cramping, albuminuria, skin rashes, exfoliative dermatitis, muscle weakness, goiter, and toxic psychosis. The intravenous mouse LD_{50} is 3.8 mg/kg. The subcutaneous rabbit DLo is 20 mg/kg; convulsions and lowered blood pressure were observed in this study. EPA believes that there is sufficient evidence for listing methylene bis(thiocyanate) on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

160. *Methyl isothiocyanate* (CAS No. 00556-61-6) (FIFRA AI) (Ref. 3). Aquatic acute toxicity values for methyl isothiocyanate include a fish 96–hour LC_{50} of 94 ppb, a 96–hour LC_{50} of 130 ppb for bluegills, and a daphnid 48–hour LC_{50} of 55 ppb. EPA believes that there is sufficient evidence for listing methyl isothiocyanate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

161. *2-Methyllactonitrile* (CAS No. 000075-86-5) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). 2-Methyllactonitrile belongs to a class of substances known as the cyanohydrins. Cyanohydrins are generally quite toxic because they can release hydrogen cyanide. An oral dose of 5 mg/rat (approximately 14 mg/kg) of 2-methyllactonitrile administered twice weekly for 3 to 8 months produced liver and kidney lesions. Inhalation of 10.2 mg/L twice weekly for 3 to 8 months (duration of each individual exposure not reported) produced kidney lesions, desquamation of the bronchial epithelium, and bronchial ulcerations. EPA believes that there is sufficient evidence for listing 2-methyllactonitrile on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxic effects to the liver, kidney, and bronchi caused by this chemical.

162. *N-Methylolacrylamide* (CAS No. 000924-42-5) (CAL) (Ref. 8). There was clear evidence of carcinogenicity from N-methylolacrylamide in a 2–year study using B6C3F1 mice administered the substance by oral gavage. In both sexes, there were increased incidences of Harderian gland adenomas or carcinomas, hepatocellular adenomas or carcinomas, and alveolar or bronchiolar adenomas and carcinomas. There was also an increase in ovarian granulosa cell tumors. EPA believes that there is sufficient evidence for listing N-methylolacrylamide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

163. *Methyl parathion* (CAS No. 000298-00-0) (CERCLA; FIFRA SR; RCRA APP8; RCRA P) (Ref. 8). Methyl parathion is a thiophosphate-type cholinesterase inhibitor. Methyl parathion is highly toxic when administered to experimental animals at low doses. The rat and mouse oral LD_{50} values are reported to be 6.01 mg/kg and 18 mg/kg, respectively. The rat and mouse 4-hour inhalation LC_{50} values are reported to be 0.034 mg/L and 0.12 mg/L, respectively, at which symptoms of cholinesterase inhibition were observed.

Human volunteers showed a 37 percent decrease in red blood cell cholinesterase activity following oral administration of 0.43 mg/kg/day of methyl parathion for 10 days. The LOEL was 0.43 mg/kg/day and the NOEL was 0.31 mg/kg/day. In a 90–day dog feeding study, brain, red blood cell, and plasma cholinesterase inhibition was observed at the LOEL of 1.0 mg/kg/day. The NOEL was 0.3 mg/kg/day. In a chronic rat feeding study, plasma and erythrocyte cholinesterase were inhibited throughout the study and brain cholinesterase was depressed at the termination of the study at 2.5 mg/kg/day. The NOEL for systemic toxicity was 0.025 mg/kg/day. An adequate NOEL for neurologic changes was not defined. Overt signs of cholinergic toxicity (tremors, abnormal gait, alopecia) were observed in the animals at a dose of 2.5 mg/kg/day. Histologic examination revealed evidence of peripheral neuropathy in animals administered this dose. EPA has derived an oral RfD of 0.00025 mg/kg/day based on the systemic NOEL for this chemical.

Hepatocellular swelling, degeneration, and fatty change have been observed in humans acutely intoxicated with methyl parathion. Hepatocellular changes were observed in patients that survived for 28 hours to 9 days after intoxication. Methyl parathion was orally administered to rats in increasing doses for 36 days (starting with 0.37 mg/kg/day and increasing by a factor of 1.5 on every 4th day). Weight loss, hyperglycemia, and macrocytic anemia, all secondary to hepatotoxicity, were observed.

EPA believes that there is sufficient evidence for listing methyl parathion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity and hepatic toxicity data for this chemical.

Measured aquatic acute toxicity data for methyl parathion include a 48–hour EC_{50} of 0.14 ppb for daphnids and a 96–hour LC_{50} of 15 ppb for crayfish. EPA believes that there is sufficient evidence for listing methyl parathion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

164. *N-Methyl-2-pyrrolidone* (CAS No. 000872-50-4) (TSCA) (Ref. 8). In a 2–generation reproductive study, there was evidence of reproductive toxicity in the F_1 generation after exposure to 50 mg/kg/day (LOAEL; no NOAEL was established). Exposure to 50 mg/kg/day or more resulted in significant reductions in the male fertility index and in the female fecundity index. In addition, exposure to 500 mg/kg/day resulted in an increased incidence of dams with decreased corpora lutea. There was also evidence of developmental toxicity in both generations after exposure to 500 mg/kg/day as demonstrated by reduced litter size, reduced postnatal survival, and reduced pup weight.

Maternal toxicity (significant reduction in mean body weight gain) was observed in rabbits receiving 175 mg/kg by gavage on days 6 through 18 of gestation (The NOAEL was 55 mg/kg/day). Exposure to 540 mg/kg/day (LOAEL) resulted in developmental toxicity as demonstrated by a significant increase in resorptions, and malformations (misshapen skull bone and cardiovascular malformations). The NOAEL for developmental toxicity was 175 mg/kg/day.

EPA believes that there is sufficient evidence for listing N-methylpyrrolidone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental and reproductive toxicity data for this chemical.

165. *Methyltrichlorosilane* (CAS No. 000075-79-6) (EPCRA EHS) (Ref. 8). As a class, chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. Methyltrichlorosilane causes severe burns and the vapor is harmful to humans. The 2–hour mouse inhalation LC_{50} value is 0.180 mg/L. EPA's exposure analysis indicates that methyltrichlorosilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing methyltrichlorosilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

166. *Metiram* (CAS No. 009006-42-2) (FIFRA SR) (Ref. 8). Metiram is an ethylene bisdithiocarbamate (EBDC) fungicide. Evidence suggests that ethylene bisthiocarbamate fungicides and ethylenethiourea (a common contaminant, metabolite, and degradation product of these fungicides) cause cancer and adverse developmental effects in experimental animals. In a 2–year diet study, ethylenethiourea caused liver adenomas and carcinomas in mice, and thyroid follicular cell adenomas and carcinomas in mice and rats. A NOAEL of less than or equal to 5 mg/kg has been reported for ethylenethiourea, based on a rat developmental toxicity study. Ethylenethiourea caused delayed ossification or hardening of the parietal bone in pups. EPA believes that there is sufficient evidence for listing metiram on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity and developmental toxicity data for ethylenethiourea, a metabolite and degradation product of metiram.

In Unit IV.B.172. of this preamble, EPA is proposing to add another ethylene bisdithiocarbamate (EBDC), nabam. An additional two EBDCs, zineb and maneb, are currently individually listed on the EPCRA section 313 list of toxic chemicals. The category of EBDCs has recently been added to EPCRA section 313 (December 1, 1993, 58 FR 63500). EPA requests comment on the following: (1) Should the individual EBDCs, metiram and nabam, be added individually to EPCRA section 313 even though they are members of the EBDC category, which is listed on EPCRA section 313; and (2) should the individual listings for two EBDCs, zineb and maneb, be deleted and added as members of the newly created EBDC category.

167. *Metribuzin* (CAS No. 021087-64-5) (FIFRA AI) (Ref. 3). In a rabbit teratology study, the NOEL for maternal and fetotoxicity was 15 mg/kg/day, and the LOEL was 45 mg/kg/day. Developmental effects including irregular spinus process and decreased pup body weight were observed in rats treated with metribuzin (Sencor) during gestation day 7 to 19 at 85 mg/kg/day (LOEL). The NOEL for developmental toxicity was 30 mg/kg/day. The LOEL and NOEL for maternal toxicity were 30 and 10 mg/kg/day, respectively.

In a 2–year dog feeding study, adverse effects observed at 1,500 ppm (37.5 mg/kg/day; LOEL) included weight reduction, increased mortality, hematologic changes, and liver/kidney damage. The systemic NOEL was 100 ppm (2.5 mg/kg/day). In a 2–year rat feeding study, decreased weight gain, mortality, and pathological changes in the liver and kidney were observed at 300 ppm (15 mg/kg/day). The NOEL was 100 ppm (5 mg/kg/day).

EPA believes that there is sufficient evidence for listing metribuzin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, renal, and developmental toxicity data for this chemical.

168. *Mevinphos* (CAS No. 007786-34-7) (CERCLA; EPCRA EHS) (Ref. 8). Measured aquatic acute toxicity values for mevinphos include a 96–hour LC_{50} of 70 ppb for bluegills, and a 96–hour LC_{50} of 0.16 ppb for daphnids. Measured acute avian toxicity data include a pheasant oral LD_{50} of 1.37 mg/kg, a mallard duck oral LD_{50} of 4.63 mg/kg, and a sharp-tailed grouse oral LD_{50} of 1.34 mg/kg. EPA believes that there is sufficient evidence for listing mevinphos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

169. *Molinate (1H-azepine-1-carbothioic acid, hexahydro-S-ethyl ester)* (CAS No. 002212-67-1) (FIFRA AI) (Ref 3). In a rat developmental toxicity study, adverse effects observed following administration of molinate at 35 mg/kg/day (LOEL) included increased post-implantation loss, lower fetal body weight, increased incidence of runts, and external/soft tissue/skeletal variants; the NOEL was 2.2 mg/kg. In a rabbit developmental study, adverse effects such as an increase in the number of abortions, and a decrease in the number of females with live fetuses were noted at 200 mg/kg/day. The NOEL was 20 mg/kg/day. The developmental effects were observed at levels which were toxic to maternal animals.

In a rat fertility test, reductions in fertility, dose-related altered sperm morphology, and a reduction in the number of viable fetuses were observed following administration of molinate. The NOEL was 0.2 mg/kg/day and the LOEL was 4 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.002 mg/kg/day was derived. In a 90–day study in male rats, the lowest toxic oral dose of 324 mg/kg produced adverse effects on spermatogenesis, male fertility, and viability index. The 20–day inhalation male rat lowest-toxic contentration (TCLo) is 0.0006 mg/L. At this exposure level adverse effects on spermatogenesis and male fertility index were reported. In a 2-generation rat reproduction study, the reproductive NOEL was 0.3 mg/kg/day, and the LOEL was 2.5 mg/kg/day based on reduced fecundity and increased incidence of ovarian vacuolation/hypertrophy. In a 3–month rat inhalation study, testicular degeneration and abnormal spermatozoa were observed at 0.002 mg/L (LOEL). No NOEL was determined.

In a 2–year study in rats fed molinate, adverse effects seen at 0.35 mg/kg/day included degeneration and demyelination of the sciatic nerve and skeletal muscle atrophy/reserve cell hyperplasia; no NOEL was determined. In a 1–year study in dogs administered molinate orally, adverse effects observed at 50 mg/kg/day included anemia, loss of ability to bark, ataxia, splayed hind limbs, vacuolation of the medulla, demyelination of the pons and spinal cord, tremors, and eosinophilic bodies in the nervous system.

EPA believes that there is sufficient evidence for listing molinate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, reproductive, and neurological toxicity data for this chemical.

170. *Monuron* (CAS No. 000150-68-5) (FIFRA SR) (Ref. 8). The measured aquatic toxicity data for monuron include a 1.5-hour EC_{50} of 90 ppb and a 10-day EC_{50} of 100 ppb for marine algae. EPA believes that there is sufficient evidence for listing monuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

171. *Myclobutanil (alpha-butyl-alpha-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile)* (CAS No. 088671-89-0) (FIFRA AI) (Ref. 3). Hepatocellular hypertrophy (the LOEL was 5.9 mg/kg/day; the NOEL was 0.3 mg/kg/day) was seen in a 90–day feeding study in dogs. In another 90–day feeding study, hepatocellular necrosis and hypertrophy (the LOEL was 147.2 mg/kg/day; the NOEL was 49.1 mg/kg/day) were observed in rats. Hepatocellular hypertrophy (the LOEL was 14.3 mg/kg/day in males and 15.7 mg/kg/day in females; the NOEL was 3.1 mg/kg/day in males and 3.83 mg/kg/day in females) was noted in a 1–year feeding study in dogs. Hepatic effects (centrilobular hepatocytic hypertrophy, kupffer cell pigmentation, periportal vacuolation and altered foci) were observed in mice fed 75 mg/kg/day myclobutanil for 2 years. At 15 mg/kg/day, increased liver mixed function oxidase (the NOEL was 3 mg/kg/day) was also seen.

Testicular atrophy (the LOEL was 9.84 mg/kg/day; the NOEL was 2.49 mg/kg/day) was observed in a 2–year chronic feeding study in rats. The seminiferous tubules were frequently devold of spermatid formation and germinal epithelial cells. Based on the NOEL, an oral RfD of 0.025 mg/kg/day was derived. Testicular atrophy (the LOEL was 46.4 mg/kg/day; the NOEL was 9.28 mg/kg/day) was also noted in a 2-generation reproduction study.

In a developmental toxicity study in rats, increased resorption and decreased viability were observed at 93.8 mg/kg/day (LOEL). The NOEL was 31.3 mg/kg/day. In a developmental toxicity study in rabbits, an increased number of resorptions per litter, reduced viability index, and reduced litter size were observed at 200 mg/kg/day (LOEL). The NOEL was 60 mg/kg/day.

EPA believes that there is sufficient evidence for listing myclobutanil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, reproductive, and developmental toxicity data for this chemical.

172. *Nabam* (CAS No. 000142-59-6) (FIFRA SR) (Ref. 8). Nabam is an ethylene bisthiocarbamate fungicide. Evidence suggests that ethylene bisthiocarbamate fungicides and ethylenethiourea (a common contaminant, metabolite, and degradation product of these fungicides) cause cancer and adverse developmental effects in experimental animals. In a 2–year diet study ethylenethiourea caused liver adenomas and carcinomas in mice, and thyroid follicular cell adenomas and carcinomas in mice and rats. A NOAEL of less than or equal to 5 mg/kg has been reported for ethylenethiourea, based on a rat developmental toxicity study. Ethylenethiourea caused delayed ossification or hardening of the parietal bone in pups. EPA believes that there is sufficient evidence for listing nabam on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity and developmental toxicity data for ethylenethiourea, a metabolite and degradation product of nabam.

173. *Naled* (CAS No. 000300-76-5) (CERCLA; FIFRA SR) (Ref. 8). Naled is an organophosphate-type cholinesterase inhibitor. In a human acute poisoning case, toxic symptoms included abdominal cramps, hypersecretion, emesis, perspiration, anxiety, vertigo and horizontal nystagmus, and persisted for 4 months. In a 2–year rat feeding study the NOEL for neurotoxic effects was 0.2 mg/kg/day and the LOEL was 2.0 mg/kg/day. It was observed in this study that, at 2.0 mg/kg/day, brain cholinesterase activity was inhibited by approximately 24 percent. At 10.0 mg/kg/day, brain cholinesterase activity was inhibited by approximately 60 percent, and both plasma and red blood cell cholinesterase were also inhibited. Based on the NOEL, EPA has an oral RfD of 0.002 mg/kg/day for this chemical. In a 1-year feeding study using dogs as the test species, plasma and red blood cell cholinesterase activity were inhibited at 2.0 mg/kg/day. The NOEL was 0.2 mg/kg/day and the LOEL was 2.0 mg/kg/day.

In a 2-generation reproduction study of naled in rats, the NOEL was 6 mg/kg/day. At 18 mg/kg/day, decreased litter size, survival, and pup body weight were observed.

EPA believes that there is sufficient evidence for listing naled on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity and reproductive toxicity data for this chemical.

Measured aquatic acute toxicity values for naled include a 48–hour EC_{50} of 0.35 ppb for daphnids and a 96–hour LC_{50} of 87 ppb for lake trout. EPA believes that there is sufficient evidence for listing naled on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

174. *Nicotine and salts* (CAL; CERCLA; EPCRA EHS; FIFRA AI; RCRA APP8; RCRA P) (Ref. 8). Nicotine salts will dissociate in aqueous solutions to yield soluble nicotine. Nicotine is highly toxic in humans. The estimated lethal oral dose in adults is approximately 40 to 60 mg. The onset of toxicity is rapid. Symptoms include nausea, salivation, abdominal pain, vomiting, diarrhea, headache, weakness, sweating, and confusion. Nicotine markedly stimulates the central nervous system, causing tremors and convulsions. The stimulation is followed by depression, and death resulting from paralysis of respiratory muscles. Nicotine can also activate parasympathetic ganglia and cholinergic nerve endings resulting in gastrointestinal hyperactivity.

Skeletal defects and occasional cleft palates were observed in mice injected with 25 mg/kg nicotine on gestation days 9 to 11. Reduced size in the newborn of rats and limb deformities in the offspring of swine were reported in swine and rats following oral exposure to 1,058 ppm nicotine (approximately 53 mg/kg/day). Deformities were found in some rabbit fetuses when dams were administered nicotine at a dose of 20 mg/kg 5 times during pregnancy. Pregnant swine fed aqueous leaf extracts of tobacco at the rate of 16 and 32 mg/kg nicotine produced arthrogrypotic newborn pigs.

EPA believes that there is sufficient evidence for listing nicotine and its salts as a category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for these substances.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories, the releases are determined in the same manner as the thresholds. One report if filed for the category and all releases are reported on this form.

175. *Nitrapyrin (2-chloro-6-(trichloromethyl) pyridine)* (CAS No. 001929-82-4) (FIFRA AI) (Ref. 3). In a 1–year study in dogs fed nitrapyrin adverse effects noted included increased cholesterol and alkaline phosphatase, increased absolute and relative liver weight and panlobular/centrilobular hepatocellular hypertrophy. The NOEL was 3 mg/kg/day and the LOEL was 15 mg/kg/day. In a 10–week reproductive rat study, adverse effects observed included increased incidence of fetal liver hypertrophy and vacuolization at 75 mg/kg/day (LOEL). The NOEL was 20 mg/kg/day. In a 90–day rat feeding study, hepatocellular fatty change and necrosis, renal tubule epithelial cell swelling and increasingly severe interstitial nephritis were observed at 50 mg/kg/day. The NOEL was 15 mg/kg/day. In a 2–year rat feeding study, an increase in glomerulonephropathy was observed in males dosed with 60 mg/kg/day and an increase in hepatic hypertrophy and vacuolization was observed in males and females dosed with 60 mg/kg/day. The NOEL was 20 mg/kg/day.

Increased incidence of crooked hyoid bone and craniofacial abnormalities were observed in the offspring of rabbits orally administered nitrapyrin at 30 mg/kg/day (LOEL) on days 6 through 18 of gestation. The NOEL was 10 mg/kg/day. Decreased weight and hypertrophy and vacuolization of the liver were observed in offspring of rats dosed with 75 mg/kg/day (LOEL) for 10 weeks prior to mating. The NOEL was 20 mg/kg/day. EPA believes that there is sufficient evidence for listing nitrapyrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available renal, hepatic, and developmental toxicity data for this chemical.

176. *Nitrate ion* (CAS No. 014797-55-8) (SDWA) (Ref. 8). Nitrate refers to the nitrate ion (NO_3-). Infantile methemoglobinemia occurs in human infants exposed to aqueous solutions of nitrate ion and can progress to cyanosis and death. Based on numerous epidemiological and clinical studies, EPA has determined a LOAEL of 1.8 to 3.2 mg/kg/day and a NOAEL and RfD of 1.6 mg/kg/day, corresponding to 10 mg/L nitrate-nitrogen or 44 mg/L nitrate ion in drinking water. Infants weighing an average of 4 kg (0 to 3 months of age) are the most sensitive population to nitrate-induced methemoglobinemia. This is primarily due to their higher stomach pH which favors the growth of nitrate-reducing bacteria, the immaturity of their metabolic enzyme systems, and reduced capacity of their erythrocytes to reduce methemoglobin to hemoglobin. EPA believes that there is sufficient evidence for listing nitrate ion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data for this chemical.

In nitrogen-limited waters, nitrates have the potential to cause increased algal growth leading to eutrophication in the aquatic environment. (Nitrate-nitrogen is the form of nitrogen most available to plants.) Studies of estuarine water at several locations along the eastern coast of the United States have indicated that low concentrations of dissolved nitrogen (e.g., nitrate) limit primary production of plants.

Additions of nitrate to such estuarine systems stimulate primary production of plants and can produce changes in the dominant species of plants, leading to cultural eutrophication and ultimately to deterioration of water quality, including algal blooms.

It has been determined that lakes with a spring maximum concentration of more than 300 ug/L of inorganic nitrogen (e.g., nitrates) could be

expected to have algal nuisances in the summer.

Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae.

EPA believes that there is sufficient evidence for listing nitrate ion on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

177. *Nitric oxide* (CAS No. 010102-43-9) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). The acute toxicity of nitric oxide has been rated high. Nitric oxide causes death or permanent injury after very short exposure to small quantities. Exposure to nitric oxide can result in acute and chronic changes of the pulmonary system including pulmonary edema, pneumonitis, bronchitis, bronchiolitis, emphysema, and methemoglobinemia. Neurologic effects (fatigue, restlessness, anxiety, mental confusion, lethargy, loss of consciousness) have also been reported. The effects of nitric oxide may be related to the formation of methemoglobin. EPA believes that there is sufficient evidence for listing nitric oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and hematological toxicity data for this chemical.

178. *p-Nitroaniline* (CAS No. 000100-01-6) (CERCLA; RCRA APP8; RCRA P) (Ref. 8). In a 14–day study in mice fed p-nitroaniline in doses as low as 10 mg/kg, 5 days per week, methemoglobin concentrations were found to be significantly higher than those in control animals. In the same study, hematocrit values in mice that received 300 mg/kg, and total erythrocyte counts in mice that received 100 or 300 mg/kg, were significantly lower than those of control animals. Similar effects were observed in 13–week and 2–year mouse studies. In the 2–year study, lesions related to the administration of p-nitroaniline occurred in the spleen, liver, and bone marrow (primarily in mice receiving 30 or 100 mg/kg) and were observed at 9 and 15 months. In addition, increases in the incidence or severity of splenic congestion, hematopoiesis, pigment (hemosiderin) accumulation, Kupffer cell pigmentation in the liver, and bone marrow hypercellularity (hyperplasia). EPA believes that there is sufficient evidence for listing p-nitroaniline on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity data for this chemical.

179. *Nitrogen dioxide* (CAS No. 010102-44-0) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). Acid precipitation occurs in large regions of the Eastern United States and Canada, Europe, and Japan. This widespread occurrence of acid precipitation and dry deposition results in large part from man-made emissions of oxides of sulfur and nitrogen (e.g., nitrogen dioxide). These substances are transformed in the atmosphere into sulfuric acid and nitric acid, transported over great distances and deposited on vegetation, soils, surface waters, and materials. These substances are transferred from the atmosphere into ecosystems by the absorption of gases, the impaction and gravitational settling of fine aerosols and coarse particles, and precipitation.

Acids contained in polluted snow are released as contaminated meltwater. The resulting release of pollutants can cause major or rapid changes in the acidity of streams and lake waters. Interference with normal reproduction in fish populations is induced by acidity of lake and stream waters. Reproduction of frogs and salamanders is also inhibited by atmospheric acidification of surface waters.

Atmospheric deposition of sulfuric acid and nitric acid can cause serious damage to crops and forests. Biological effects include induction of necrotic lesions, loss of nutrients due to leaching from foliar organs, accelerated erosion of waxes and leaf surfaces, and interference with normal reproductive processes. Acidification also decreases the rate of many soil processes such as nitrogen fixation and the breakdown of organic matter.

EPA believes that there is sufficient evidence for listing nitrogen dioxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

Nitrogen dioxide is regulated under Title I of the CAA (Provisions for Attainment and Maintenance of National Ambient Air Quality Standards). In addition to this proposal to add nitrogen dioxide to EPCRA section 313, in Units IV.B.36. and 235, EPA is proposing to add two other chemicals, carbon monoxide and sulfur dioxide, that are regulated by Title I of the CAA. Sulfur dioxide is also regulated by Title IV of the CAA (Acid Deposition Control). Extensive data, which are highly technical, are collected on these chemicals as required by the CAA. EPA requests comment on the following: (1) Is the information collected under the CAA sufficient for public right-to-know purposes; and (2) suggestions on how the data collected on these chemicals pursuant to CAA Titles I and IV could be used to meet the purposes of EPCRA section 313.

180. *Norflurazon (4-Chloro-5-(methylamino)-2-[3(trifluoromethyl)phenyl]-3(2H)-pyridazinone)* (CAS No. 027314-13-2) (FIFRA AI) (Ref. 3). Congestion of the liver, hepatocyte swelling and increased liver weights, and increase in colloid vacuole in the thyroid were observed in dogs fed 450 ppm (10.25 mg/kg/day) norflurazon for 6 months. The NOEL was 150 ppm (3.75 mg/kg/day). An oral RfD of 0.04 mg/kg/day has been determined. Increased relative liver weight and hypertrophy of the thyroid with depletion of colloid were seen in rats fed 2,500 ppm (125 mg/kg/day) norflurazon for 90 days. The NOEL was 500 ppm (25 mg/kg/day). Hepatic hyperplasia and hypertrophy and increased relative liver weight were noted in a 28–day feeding study in rats. The LOEL was 1,000 ppm (50 mg/kg/day) and the NOEL was 500 ppm (25 mg/kg/day). Increased relative liver weight and diffuse and smooth granular livers were seen in a 28–day feeding study in mice. The LOEL was 2,520 ppm (328 mg/kg/day) and the NOEL was 420 ppm (55 mg/kg/day). EPA believes that there is sufficient evidence for listing norflurazon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and thyroid toxicity data.

181. *Oryzalin (4-(Dipropylamino)-3,5-dinitrobenzene sulfonamide)* (CAS No. 019044-88-3) (FIFRA AI) (Ref. 3). Reduced hemoglobin and hematocrit levels, decreased red blood cell count, increased blood urea nitrogen (BUN) and alkaline phosphatase and SGPT, anemia; hepatic changes, splenic hematopoiesis and hyperplastic bone marrow were observed in dogs fed 56.25 mg/kg/day (the NOEL was 18.75 mg/kg/day) for 3 months. Increases in serum cholesterol levels, alkaline phosphatase activity, and relative liver and kidney weights and decreases in alanine transaminase (the LOEL was 50 mg/kg/day; the NOEL was 5 mg/kg/day) were observed in dogs fed oryzalin for 1–year. Decreased red blood cell count and hematocrit and hemoglobin levels (LOEL was 45 mg/kg/day; NOEL was 15 mg/kg/day) were noted in a 1-year feeding study in rats. In a 2–year feeding study in rats, decreased red blood cell count and hematocrit and hemoglobin levels, and increased BUN and liver and kidney weights (the LOEL was 45 mg/kg/day; the NOEL was 15 mg/kg/day) were observed. EPA believes that there is sufficient evidence for listing oryzalin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and hematological toxicity data for this chemical.

182. *Oxydemeton methyl (S-(2-(Ethylsulfinyl)ethyl) O,O-dimethyl ester phosphorothioic acid)* (CAS No. 000301-12-2) (FIFRA AI) (Ref. 3). Two multigeneration reproduction studies indicate a variety of reproductive effects at 2.1 to 2.5 mg/kg/day. These effects include decreased litter size and viability, decreased weight of the testes and ovaries, and increased epididymal vacuolation. The NOELs were 0.38 and 0.5 mg/kg/day. A NOEL of 0.9 mg/kg/day was determined in a 5–day study in the rat. The LOEL for decreased fertility and epididymal sperm motility was 5 mg/kg/day.

Oxydemeton methyl can cause inhibition of brain, plasma, and red blood cell cholinesterase. In a 2-generation reproduction study, statistically significant inhibition of red blood cell and brain cholinesterase activity (the NOEL was less than 0.043 mg/kg/day) was observed in adult males and females of the F^0 and F^1 generations. In a 5–day feeding (dominant lethal plus) study, inhibition of plasma cholinesterase activity (the LOEL was 1.5 mg/kg/day; the NOEL was 0.45 mg/kg/day) was observed. EPA believes that there is sufficient evidence for listing oxydemeton methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available reproductive and neurological toxicity data for this chemical.

183. *Oxydiazon (3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]5- (1,1-dimethylethyl)-1,3,4-oxodiazol-2(3H)-one)* (CAS No. 019666-30-9) (FIFRA AI) (Ref. 3). Rats given 40 mg/kg/day by gavage on days 6 to 15 of gestation exhibited increased fetal resorptions. The NOEL was 12 mg/kg/day.

Increased liver and kidney weight (associated with no pathology) and increased alkaline phosphatase activity were observed in rats fed 100 mg/kg/day (the NOEL was 25 mg/kg/day) for 90 days. Increased levels of SGPT and alkaline phosphatase activities and increased liver weight (the LOEL was 5 mg/kg/day; the NOEL was 0.5 mg/kg/day) were observed in a 2–year feeding study in rats. Effects noted at 150 mg/kg/day included liver pathology, hemolytic anemia, increased kidney weight, and pigment nephrosis. Based on the NOEL, an oral RfD of 0.005 mg/kg/day was derived. EPA believes that there is sufficient evidence for listing oxydiazon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, hepatic, and renal toxicity data for this chemical.

184. *Oxyfluorfen* (CAS No. 042874-03-3) (FIFRA SR) (Ref. 8). Oxyfluorfen is a phenoxyphenyl-type herbicide. Several chronic oral toxicity studies suggest that oxyfluorfen may be hepatotoxic. Hepatic effects (e.g. increased absolute liver weight, necrosis, regeneration, and hyperplastic nodules) were observed in mice fed diets containing greater than 3 mg/kg/day oxyfluorfen for 20 months (the NOEL was 0.3 mg/kg/day). Based on these findings, an oral RfD value of 0.003 mg/kg/day was derived. This study was supported by other chronic feeding studies that demonstrated increases in liver weight, alkaline phosphatase activity, and bile pigmented hepatocytes (the LOEL was 15 mg/kg/day; the NOEL was 2.5 mg/kg/day) in dogs, and minimal hypertrophy of centrilobular hepatocytes (the LOEL was 40 mg/kg/day; the NOEL was 2 mg/kg/day) in rats. EPA believes that there is sufficient evidence for listing oxyfluorfen on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatotoxic effects of this chemical.

The estimated chronic MATC values for fish and daphnids are 9 ppb and 20 ppb oxyfluorfen, respectively. The estimated log K_{ow} is 6.1. EPA believes that there is sufficient evidence for listing oxyfluorfen on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data and potential for bioaccumulation for this chemical.

185. *Ozone* (CAS No. 010028-15-6) (EPCRA EHS) (Ref. 8). Information from a large number of studies of both humans and animals indicate that ozone can affect structure, function, metabolism, pulmonary defense against bacterial infection, and extrapulmonary effects. Among these extrapulmonary effects are: (1) Cardiovascular effects; (2) reproductive and teratological effects; (3) central nervous system effects; (4) alterations in red blood cell morphology; (5) enzymatic activity; and (6) cytogenetic effects on circulating lymphocytes. EPA believes that there is sufficient evidence for listing ozone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available toxicity data for this chemical.

Effects of ozone on green plants include injury to foliage, reductions in growth, losses in yield, alterations in reproductive capacity, and alterations in susceptibility to pests and pathogens. Based on the known interrelationships of different components of ecosystems, such effects, if of sufficient magnitude, may potentially lead to irreversible changes of sweeping nature to ecosystems.

Measured aquatic acute toxicity values for ozone include a 96–hour LC_{50} of 80 ppb for striped bass, a 96–hour LC_{50} of 30 ppb for channel catfish, and a 96–hour LC_{50} of 9.3 ppb for rainbow trout. EPA believes that there is sufficient evidence for listing ozone on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical.

186. *Paraquat dichloride* (CAS No. 001910-42-5) (EPCRA EHS; FIFRA SR) (Ref. 8). Paraquat can cause death in humans as a consequence of severe injury to the lungs, or as a result of kidney, liver, or heart failure. Following exposure, death may occur in 24 hours or less. The acute oral LD_{50} values for paraquat are reported as 57, 120, 25, 50 and 35 mg/kg in the rat, mouse, dog, monkey, and cat, respectively. Chronic pneumonitis (the LOEL was 0.93 mg/kg/day; the NOEL was 0.45 mg/kg/day) was reported in dogs fed diets containing paraquat dichloride for 52 weeks. These results are supported by the results of a 2–year feeding study in rats (the LOEL was 3.75 mg/kg/day based on nonneoplastic lung lesions; the NOEL was 1.25 mg/kg/day) and a 90–day feeding study in dogs (the LOEL was 1.5 mg/kg/day based on increased lung weight, alveolitis, and alveolar collapse; the NOEL was 0.5 mg/kg/day).

EPA believes that there is sufficient evidence for listing paraquat dichloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic toxicity data for this chemical.

187. *Pebulate (Butylethylcarbamothioic acid S-propyl ester)* (CAS No. 001114-71-2) (FIFRA AI) (Ref. 3). In a 1-year dog feeding study, a NOEL of greater than 5 mg/kg/day was established due to abnormal behavior, ataxia, convulsions, and neurological effects in the brain and spinal cord at 100 mg/kg/day. EPA believes that there is sufficient evidence for listing pebulate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

188. *Pendimethalin (N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine)* (CAS No. 040487-42-1) (FIFRA AI) (Ref. 3). Increased liver weights and alkaline phosphatase activity and hepatic lesions (the LOEL was 50 mg/kg/day; the NOEL was 12.5 mg/kg/day) were observed in dogs fed pendimethalin for 2 years. EPA derived an oral RfD of 0.04 mg/kg/day. Hypertrophy of the liver and increased liver weights were observed in rats fed 5,000 ppm (250 mg/kg/day) for 3 months. The NOEL was 25 mg/kg/day.

EPA believes that there is sufficient evidence for listing pendimethalin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

189. *Pentobarbital sodium* (CAS No. 000057-33-0) (CAL) (Ref. 8). Pentobarbital sodium is commonly used as a sedative hypnotic. The average adult sedative dose is 20 to 40 mg orally. The average adult hypnotic dose is 100 to 200 mg orally. Pentobarbital is also used parenterally or rectally to provide basal hypnosis for general, spinal, or regional anesthesia. Like other barbiturates, a common adverse effect to using pentobabital sodium is central nervous system depression. Chronic exposure to pentobarbital sodium may lead to psychological and physical dependence.

Intraperitoneal injection of 20 mg/kg on day 1 of pregnancy produced adverse effects on fertility in rats. Intraperitoneal injections of 80 mg/kg to rats on day 1 of pregnancy caused preimplantation loss. Intraperitoneal injection of 94.5 mg/kg on day 2 of pregnancy decreased fertility and caused fetal death in rats. Intraperitoneal injection of 22 mg/kg on day 10 of pregnancy caused adverse effects in rat fetuses (details of study not reported). Subcutaneous injection of 520 mg/kg of pentobarbital sodium on days 9 to 21, or administration of 30 mg/kg on day 19 of pregnancy produced abnormal behavioral effects in rat offspring. Exposure to pentobarbital sodium during pregnancy can cause fetal addiction to the substance.

EPA believes that there is sufficient evidence for listing pentobarbital sodium on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental, reproductive, and chronic neurological toxicity data for this chemical.

190. *Perchloromethyl mercapton* (CAS No. 000594-42-3) (CERCLA; EPCRA EHS) (Ref. 8). The rat oral LD_{50} and 4–hour rat inhalation LC_{50} values for perchloromethyl mercaptan are 8.26 mg/kg and 0.26 mg/L, respectively. The 2–hour mouse inhalation LC_{50} value is reported to be 0.296 mg/L. In an eye irritation test, 50 micrograms (µg) (0.13 mg/kg/day) placed in a rabbit's eye for 24 hours produced a severe reaction. EPA's exposure analysis indicates that perchloromethyl mercaptan concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing perchloromethyl mercaptan on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

191. *Permethrin (3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester)* (CAS No. 052645-53-1) (FIFRA AI) (Ref. 3). Increased liver weights (the LOEL was 500 ppm or 25 mg/kg/day; the NOEL was 100 ppm or 5 mg/kg/day) were observed in rats fed permethrin for 2 years. Based on the NOEL, EPA derived an oral RfD of 0.05 mg/kg/day. Decreased alkaline phosphatase activity, hepatocellular swelling, and increased liver weight (the LOEL was 100 mg/kg/day; the NOEL was 5 mg/kg/day) were observed in dogs orally administered (in capsules) permethrin for 1–year. Tremors, excessive salivation, convulsions, and incoordination were noted at 1,000 mg/kg/day. EPA believes that there is sufficient evidence for listing permethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

Aquatic acute toxicity values for permethrin include a fathead minnow 96–hour LC_{50} of 3.5 ppb, a rainbow trout 96–hour measured LC_{50} of 0.62 ppb, a bluegill 96–hour LC_{50} of 2.52 ppb, an Atlantic silverside 96–hour measured LC_{50} 2.2 ppb, and a daphnid 48–hour LC_{50} of 0.32 ppb. EPA believes that there is sufficient evidence for listing permethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

192. *Phenanthrene* (CAS No. 000085-01-8) (CERCLA; CWA PP) (Ref. 8). Measured aquatic acute toxicity data for phenanthrene include a 48–hour LC_{50} of 700 ppb for daphnids. The measured 28–day LC_{50} for rainbow trout is 40 ppb, and teratogenetic effects were noted. The measured bioconcentration factor (BCF) values include a fathead minnow 28–day BCF of 5,100 and a daphnid 24–hour BCF of 1,165. EPA believes that there is sufficient evidence for listing phenanthrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical and its potential to bioaccumulate.

193. *Phenothrin (2,2-dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester)* (CAS No. 026002-80-2) (FIFRA AI) (Ref. 3). Hepatocellular enlargement and increased absolute and relative liver weights were observed in a chronic feeding study in dogs. The LOEL was 27.7 mg/kg/day in males and 26.8 mg/kg/day in females. The NOEL was 8.2 mg/kg/day in males and 7.1 mg/kg/day in females. Hepatocellular hypertrophy and increased relative liver weight (the LOEL was 150 mg/kg/day; the NOEL was 50 mg/kg/day) were observed in a chronic oncogenicity study in rats. Increased liver weight (the LOEL was 150 mg/kg/day, the NOEL was 45 mg/kg/day) was noted in another chronic oncogenicity feeding study in mice. EPA believes that there is sufficient evidence for listing phenothrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data for this chemical.

Aquatic acute toxicity values for phenothrin include a rainbow trout 96–hour LC_{50} of 16.7 ppb and a goldfish 48–hour LC_{50} of 100 ppb. EPA believes that there is sufficient evidence for listing phenothrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

194. *1,2-Phenylenediamine* (CAS No. 000095-54-5) (RCRA APP8) (Ref. 8). EPA has classified 1,2-phenylenediamine as a Group B2 compound, i.e., a probable human carcinogen. 1,2–Phenylenediamine dihydrochloride appeared to be carcinogenic in both rats and mice, as evidenced by an increased incidence of hepatocellular carcinomas in both species. A significantly increased incidence of hepatocellular carcinomas was observed in high dose group male rats and mice, and female mice of both treated groups. EPA believes that there is sufficient evidence for listing 1,2-phenylenediamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for 1,2–phenylenediamine dihydrochloride.

195. *1,3-Phenylenediamine* (CAS No. 000108-45-2) (RCRA APP8) (Ref. 8). Increased absolute and relative liver weights and degenerative liver lesions (the LOEL was 18 mg/kg/day; the NOEL was 6.0 mg/kg/day) were noted in a 90–day oral study in rats exposed to 1,3-phenylenediamine. EPA believes that there is sufficient evidence for listing 1,3-phenylenediamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatotoxicity data for this chemical.

196. *1,2-Phenylenediamine dihydrochloride* (CAS No. 000615-28-1) (RCRA APP8) (Ref. 8). EPA has classified 1,2–phenylenediamine as a Group B2 compound, i.e., a probable human carcinogen. 1,2-Phenylenediamine dihydrochloride appeared to be carcinogenic in both rats and mice, as evidenced by an increased incidence of hepatocellular carcinomas in both species. A significantly increased incidence of hepatocellular carcinomas was observed in high dose group male rats and mice, and female mice of both treated groups. EPA believes that there is sufficient evidence for listing 1,2-phenylenediamine dihydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

197. *1,4-Phenylenediamine dihydrochloride* (CAS No. 000624-18-0) (RCRA APP8) (Ref. 8). Measured aquatic acute toxicity for 1,4-phenylenediamine include a fish 96–hour LC_{50} of 60 ppb. EPA believes that there is sufficient evidence for listing 1,4-phenylenediamine dihydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for 1,4-phenylenediamine.

198. *Phenytoin* (CAS No. 000057-41-0) (CAL; IARC; NTP) (Ref. 8). Phenytoin is a hydantoin-type anticonvulsant, and is used mainly in the prophylactic management of tonic-clonic (grand mal) seizures and partial seizures with complex symptomatology. In doses used to treat seizure disorders (i.e., 300 mg/day in adults, 5 mg/kg/day in children) phenytoin can cause adverse effects such as constipation, dysphagia, nausea, vomiting, anorexia and weight loss. Ingestion of 4.5 g (64 mg/kg/day) by adults and 0.6 g (60 mg/kg/day) by children has produced transient coma with motor restlessness. Ingestion of 11 mg/kg/day produced changes in motor activity in a child (duration of study not reported). Oral administration of 7.8 mg/kg/day for 4 days produced encephalitis, hallucinations, and irritability in a man. Ingestion of 7.6 mg/kg/day for 2 weeks caused encephalitis, hallucinations, and ataxia in a woman.

Phenytoin is classified as a Group 2B compound by IARC; i.e., possible human carcinogen. Ingestion of 16.5 mg/kg/day for 1–year produced lymphoma including Hodgkin's disease and skin tumors in a child. Oral exposure to phenytoin produced lymphoma in mice (doses and duration of study not reported).

Oral administration of 5.9 mg/kg/day to a woman for the first 39 weeks of pregnancy induced kidney tumors in the offspring. In another study, oral administration of 5.9 mg/kg/day to a woman for the first 39 weeks of pregnancy induced brain tumors in the offspring. Oral administration of 2 mg/kg/day to a woman for 1–year produced lymphoma including Hodgkin's disease. Congenital malformation was reported in 6.12 percent of births to 98 epileptic mothers receiving phenytoin regularly during the first 4 months of pregnancy. Hypothrombinemia and hemorrhage has occurred in newborns of mothers who received phenytoin during pregnancy. Oral doses of 4.0 to 5.9 mg/kg/day administered to women for the first 39 weeks of pregnancy produced craniofacial abnormalities, nervous system disorders, and delayed physical effects in their children. Doses of 2.0 mg/kg/day given to a woman for the first 39 weeks of pregnancy produced abnormalities of skin, appendages, and musculoskeletal system in her child as well as other developmental abnormalities. Oral doses of 5.0 mg/kg/day produced biochemical and metabolic abnormalities in the offspring. Higher doses of phenytoin (130 mg/kg/day) orally administered to rats produced behavioral, growth, musculoskeletal, and nervous system abnormalities in the offspring.

EPA believes that there is sufficient evidence for listing phenytoin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurological and developmental toxicity data and on the carcinogenicity data for this chemical.

199. *Phosphine* (CAS No. 007803-51-2) (CAA HAP) (Ref. 7). Available data on phosphine indicate that its inhalation LC_{50} for rats is between 4 and 40 ppm (the exposure time was 4 hours). Phosphine is a highly-toxic gas with a probable oral lethal dose of 5 mg/kg. An air concentration of 3 ppm is safe for long-term exposure, 500 ppm is lethal in 30 minutes, and a concentration of 1,000 ppm is lethal after a few breaths.

EPA's exposure analysis indicates that phosphine concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing phosphine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

200. *Phosphorus oxychloride* (CAS No. 010025-87-3) (CERCLA; EPCRA EHS) (Refs. 5 and 8). Phosphorus oxychloride reacts with water to yield phosphoric acid and hydrochloric acid.

Phosphoric acid, as well as other phosphates, have the potential to cause increased algal growth leading to eutrophication in the aquatic environment.

Eutrophication may result when nutrients, especially phosphates, enter into an aquatic ecosystem in the presence of sunlight and nitrogen. The phosphate ion is a plant nutrient, which can be a major limiting factor for plant growth in freshwater environments. In excess, phosphates can cause algal blooms. Toxic effects result from oxygen depletion as the algae die and decay. Toxic effects have also been related to the release of decay products or direct excretion of toxic substances from sources such as blue-green algae.

Laboratory studies indicate that eutrophication may occur at phosphate concentrations as low as 50 ppb in lakes. The resulting oxygen depletion and toxic decay products (e.g., hydrogen sulfide) kill many invertebrates and fish.

Although green algae are more sensitive to growth stimulation by phosphates in fresh water, blue-green algal blooms may cause greater damage. At least three species of blue-green algae are known to excrete toxins. Secretion by cyanobacteria of dyalyzable metabolites have inhibited the growth of other species of algae and may result in algal monoculture. When algal blooms of these toxic species occur in a reservoir, lake, slough, or pond, the cells and toxins can become sufficiently concentrated to cause illness or death in invertebrates and vertebrates. Major losses have been reported for cattle, sheep, hogs, birds (domestic or wild) and fishes, minor losses for dogs, horses, small wild animals, amphibians, and invertebrates.

Eutrophication may occur in slow moving rivers, but is less likely in swift rivers where rapid mixing occurs. Light is the most important limiting factor because rivers are murkier than lakes thus, the chances of eutrophication in swift rivers are slight. However, lakes and reservoirs collect phosphates from influent streams and store a fraction of them within consolidated sediments, thus serving as a phosphate sink.

The available information derived from animal and controlled human studies clearly indicates that exposure to acid aerosols can produce health effects of concern, particularly in sensitive subgroups of the population and after chronic exposure. The bulk of these studies, however, have examined sulfuric acid exposures. Data for other acid species and mixtures are extremely limited. However, as the effects appear to be due to the acidity of the species, this data should pertain to acid aerosols consisting of other mineral acids, such as hydrochloric acid. The effects seen range from mild and transient changes, such as small, reversible functional effects in exercising asthmatics, to more substantial effects that may have acute or chronic health consequences, such as persistently altered clearance and structural changes that may be suggestive of chronic lung disease. In addition, there are some notable consistencies in the health effects

information across various studies and disciplines.

EPA believes that there is sufficient evidence for listing phosphorous oxychloride on EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C) based on the available chronic human and environmental toxicity data for its degradation products phoshoric acid and hydrochloric acid.

201. *Phosphorus pentachloride* (CAS No. 010026-13-8) (EPCRA EHS) (Refs. 5 and 8). Phosphorus pentachloride reacts with water to yield phosphoric acid and hydrochloric acid. As described in Unit IV.B.200. of this preamble, phosphates, including phosphoric acid, have the potential to cause increased algal growth leading to eutrophication and fish kills in the aquatic environment.

The available information derived from animal and controlled human studies clearly indicates that exposure to acid aerosols can produce health effects of concern, particularly in sensitive subgroups of the population and after chronic exposure. The bulk of these studies, however, have examined sulfuric acid exposures. Data for other acid species and mixtures are extremely limited. However, as the effects appear to be due to the acidity of the species, this data should pertain to acid aerosols consisting of other mineral acids, such as hydrochloric acid. The effects seen range from mild and transient changes, such as small, reversible functional effects in exercising asthmatics, to more substantial effects that may have acute or chronic health consequences, such as persistently altered clearance and structural changes that may be suggestive of chronic lung disease. In addition, there are some notable consistencies in the health effects information across various studies and disciplines.

EPA believes that there is sufficient evidence for listing phosphorus pentachloride on EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C) based on the available chronic human and environmental toxicity data for its degradation products phoshoric acid and hydrochloric acid.

202. *Phosphorus pentasulfide* (CAS No. 001314-80-3) (CERCLA) (Refs. 5 and 8). Phosphorus pentasulfide reacts in water to yield phosphoric acid and hydrogen sulfide.

As described in Unit IV.B.200. of this preamble, phosphates, including phosphoric acid, have the potential to cause increased algal growth leading to eutrophication and fish kills in the aquatic environment.

Acute exposures to large amounts of hydrogen sulfide (approximately 250 ppm or more) have produced pulmonary edema, unconsciousness, respiratory paralysis, asphyxiation, and/or death in some individuals. Similar effects are also noted in animals. In a subchronic study, inflammation of the nasal mucosa occurred in mice following 90–day inhalation of hydrogen sulfide, resulting in a NOAEL of 42.5 mg/m^3 (30.5 ppm; Human Equivalent Concentration (HEC) is 0.93 mg/m^3) and a LOAEL of 110 mg/m^3 (80 ppm; HEC is 2.4 mg/m^3). Other respiratory effects, such as alveolar edema, infiltrates in the bronchioles, cellular necrosis, hyperplasia, and exfoliation in various respiratory tissues, have been reported in rats.

Aquatic toxicity test data for hydrogen sulfide show that measured fish 96–hour LC_{50} values range from 7 to 776 ppb.

EPA believes that there is sufficient evidence for listing phosphorus pentasulfide on EPCRA section 313 pursuant to EPCRA sections 313(d)(2)(B) and (C) based on the available chronic human and environmental toxicity data for its degradation products, phosphoric acid and hydrogen sulfide.

203. *Phosphorus pentoxide* (CAS No. 001314-56-3) (EPCRA EHS) (Refs. 5 and 8). Phosphorus pentoxide rapidly hydrolyzes in the presence of water to yield phosphoric acid.

As described in Unit IV.B.200. of this preamble, phosphates, including phosphoric acid, have the potential to cause increased algal growth leading to eutrophication and fish kills in the aquatic environment. EPA believes that there is sufficient evidence for listing phosphorous pentoxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for its degradation product phosphoric acid.

204. *Picloram* (CAS No. 001918-02-1) (FIFRA AI; SDWA) (Ref. 8). Animal studies in dogs, rats, or mice for various durations (2 weeks to 2 years) have indicated the liver as the primary target of picloram toxicity. In a 6–month feeding study in beagle dogs, a LOAEL of 35 mg/kg/day and a NOAEL of 7 mg/kg/day were determined for increased liver weights (relative and absolute). At a higher dose (175 mg/kg/day), there were increases in serum alkaline phosphatase concomitant with the increases in liver weight. Other toxic effects in the higher dosed animals included reduced food consumption and body weight. EPA has derived an oral RfD of 0.07 mg/kg/day for this chemical based on the findings of this study. Hepatotoxicity has also been reported in a 2–year rat feeding study. The LOAEL was 60 mg/kg/day based on changes in liver histopathology. The NOAEL was 20 mg/kg/day. Hepatotoxicity was also observed in a 90–day rat feeding study. The LOAEL was 150 mg/kg/day based on changes in liver histopathology, necrosis, and bile duct proliferation. The NOAEL was 50 mg/kg/day. Increased liver weights were also reported in mice following dietary exposure to picloram for 13 weeks. The LOAEL was 1,000 mg/kg/day. Liver swelling was reported in rats administered picloram in feed for 13 weeks. The LOAEL was 150 mg/kg/day. EPA believes that there is sufficient evidence for listing picloram on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatotoxicity data for this chemical.

205. *Piperonyl butoxide* (CAS No. 000051-03-6) (FIFRA SR) (Ref. 8). Measured aquatic acute toxicity data for piperonyl butoxide include a 96–hour LC_{50} of 3.4 ppb for rainbow trout and a 96–hour LC_{50} of 4.2 ppb for bluegill. EPA believes that there is sufficient evidence for listing piperonyl butoxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

206. *Pirimiphos methyl (O-(2-(diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate)* (CAS No. 029232-93-7) (FIFRA AI) (Ref. 3). Pirimiphos methyl is a cholinesterase inhibitor in humans and other mammalian species. A mild and transient decrease in plasma cholinesterase activity was observed in 2 of 4 female humans given pirimiphos methyl daily in a capsule at dose levels of 0.25 mg/kg/day for 56 days. This effect was not seen in 3 of 3 males. The dose level of 0.25 mg/kg/day was considered a NOEL for plasma cholinesterase inhibition. Based on the NOEL, an oral RfD of 0.01 mg/kg/day was derived. The findings of the 56–day study were corroborated by the 28–day feeding study (capsule) with 5 male human volunteers where 1 individual showed borderline cholinesterase depression. Inhibition of brain cholinesterase (LOEL was 0.5 mg/kg/day, the NOEL for cholinesterase inhibition was not determined) was observed in a 2–year feeding study in dogs. Inhibition of plasma cholinesterase activity (the LOEL was 2.5 mg/kg/day; the NOEL was 0.5 mg/kg/day) was seen in a 2–year feeding study in rats. No clinical signs were reported for the above studies. EPA believes that there is sufficient evidence for listing pirimiphos methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

207. *Polycyclic aromatic compounds (PACs)* (CAS No. NA) (CAA HAP) (Ref. 7). Polycyclic aromatic compounds are a class of chemicals that include polycyclic aromatic hydrocarbons, azapolycyclic aromatic hydrocarbons, thio-polycyclic aromatic hydrocarbons, nitroarenes, and others. PACs can be formed in any combustion process that involves the burning of fuels or, more generally, materials containing carbon and hydrogen. Some industrial sources include coke ovens, catalytic cracking of crude oil, carbon black production, and iron and steel processes.

Materials containing mixtures of PACs have been shown to be carcinogenic. Several epidemiology studies have shown increased mortality due to lung cancer in humans exposed to coke-oven emissions, roofing-tar emissions, and cigarette smoke. Each of these mixtures contains benzo(a)pyrene, benzo(a)anthracene, benzo(b)fluoranthene, benzo(a)phenanthrene, and dibenzo(a,h)anthracene as well as other potentially carcinogenic PACs and other carcinogenic and potentially carcinogenic chemicals, tumor promotors, initiators, and co-carcinogens such as nitrosoamines, coal tar pitch, and creosote. Although it is impossible to evaluate the contribution of any individual PAC to the total carcinogenicity of these mixtures to humans, reports of this nature provide qualitative evidence of the potential for mixtures containing PACs to cause cancer in humans. In addition, several PACs caused cancer in animals when orally (e.g., benz(a)anthracene, benzo(a)pyrene, dibenz(a,h)anthracene), dermally (e.g., benz(a)anthracene, benzo(a)phenanthrene, benzo(b)fluoranthene, benzo(a)pyrene, dibenz(a,h)anthracene, and indeno (1,2,3-cd)pyrene) or inhalationally (e.g., benzo(a)pyrene) exposed. EPA believes that there is sufficient evidence for listing these PACs on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for these chemicals. EPA is proposing to create a delimited category for PACs that includes the chemicals discussed below.

a. *Benzo(b)fluoranthene* (CAS No. 000205-99-2). Benzo(b)fluoranthene is classified as a Group B2 compound by EPA, i.e., the compound is a probable human carcinogen. It is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Benzo(b)fluoranthene produced tumors in mice after lung implantation, intraperitoneal or subcutaneous injection and skin painting. EPA believes that there is sufficient evidence for listing benzo(b)fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

b. *Benzo(j)fluoranthene* (CAS No. 000205-82-3). Benzo(j)fluoranthene is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. In multiple skin painting assays and in a mouse-skin initiation-promotion assay, benzo(j)fluoranthene produced tumors in female mice. EPA believes that there is sufficient evidence for listing benzo(j)fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

c. *Benzo(k)fluoranthene* (CAS No. 000207-08-9). Benzo(k)fluoranthene is classified as a Group B2 compound by EPA, i.e., the compound is a probable human carcinogen. It is also classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Benzo(k)fluoranthene produced tumors after lung implantation in mice and when administered with a promoting agent in skin painting studies. Equivocal results have been found in a lung adenoma assay in mice. Benzo(k)fluoranthene is mutagenic in bacteria. EPA believes that there is sufficient evidence for listing benzo(k)fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

d. *Carbazole* (CAS No. 000086-74-8). Mice fed a basal diet containing carbazole showed a dose-related increase in liver nodules and hepatocellular carcinomas after oral administration. EPA believes that there is sufficient evidence for listing carbazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

e. *Cyclopenta(cd)pyrene* (CAS No. 027208-37-3). In a skin painting assay and in several mouse-skin initiation-promotion assays, cyclopenta(cd)pyrene produced tumors in female mice. Cyclopenta(cd)pyrene is also mutagenic to Salmonella and mammalian cells in vitro and induces morphologic transformation in C3H10T1/2 cells in vitro. EPA believes that there is sufficient evidence for listing cyclopenta(cd)pyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

f. *Dibenz(a,c)anthracene (CAS No. 000215-58-7).* In a skin painting assay and in several mouse-skin initiation-promotion assays, dibenz(a,c)anthracene produced tumors in female mice. EPA believes that there is sufficient evidence for listing dibenz(a,c)-anthracene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

g. *Dibenz(a,h)acridine* (CAS No. 000226-36-8). Dibenz(a,h)acridine is classified as a Group 2A compound by IARC, i.e., the compound is a probable human carcinogen. Dibenz(a,h)acridine has been shown to be carcinogenic in animals. EPA believes that there is sufficient evidence for listing dibenz(a,h)acridine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

h. *Dibenz(a,j)acridine* (CAS No. 000224-42-0). Dibenz(a,j)acridine is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Dibenz(a,j)acridine has been shown to be carcinogenic in animals. EPA believes that there is sufficient evidence for listing dibenz(a,j)acridine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

i. *Dibenz(a,j)anthracene* (CAS No. 000224-41-9). Dibenz(a,j)anthracene produced tumors after subcutaneous injection and after skin painting in female mice. EPA believes that there is sufficient evidence for listing dibenz(a,j)anthracene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

j. *Dibenzo(a,e)fluoranthene* (CAS No. 005385-75-1). Dibenzo(a,e)fluoranthene produced tumors in female mice after mouse-skin initiation-promotion assay and skin painting. Dibenzo(a,e)fluoranthene also produced tumors in both male and female mice after subcutaneous injection. EPA believes that there is sufficient evidence for listing dibenzo(a,e)fluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

k. *Dibenzo(a,e)pyrene* (CAS No. 000192-65-4). Dibenzo(a,e)pyrene is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Dibenzo(a,e)pyrene has been shown to be carcinogenic in animals. EPA believes that there is sufficient evidence for listing dibenzo(a,e)pyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

l. *Dibenzo(a,h)pyrene* (CAS No. 000189-64-0). Dibenzo(a,h)pyrene is

classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Dibenzo(a,h)pyrene has been shown to be carcinogenic in animals. EPA believes that there is sufficient evidence for listing dibenzo(a,h)pyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

m. *Dibenzo(a,l)pyrene* (CAS No. 000191-30-0). Dibenzo(a,l)pyrene is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. Dibenzo(a,l)pyrene produced tumors in both male and female mice after subcutaneous (s.c.) injection and tumors in female mice after skin painting. EPA believes that there is sufficient evidence for listing dibenzo-(a,l)pyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

n. *7H-Dibenzo(c,g)carbazole* (CAS No. 000194-59-2). 7H-Dibenzo(c,g)carbazole is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. 7H-Dibenzo(c,g)carbazole has been shown to be carcinogenic in animals. EPA believes that there is sufficient evidence for listing 7H-dibenzo(c,g)carbazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

o. *2-Methylchrysene* (CAS No. 003351-32-4). In a skin painting assay and in a mouse-skin initiation-promotion assay, 2-methylchrysene produced tumors in female mice. EPA believes that there is sufficient evidence for listing 2-methylchrysene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

p. *3-Methylchrysene* (CAS No. 003351-31-3). In a skin painting assay and in a mouse-skin initiation-promotion assay, 3-methylchrysene produced tumors in female mice. EPA believes that there is sufficient evidence for listing 3-methylchrysene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

q. *4-Methylchrysene* (CAS No. 003351-30-2). In a skin painting assay and in a mouse-skin initiation-promotion assay, 4-methylchrysene produced tumors in female mice. EPA believes that there is sufficient evidence for listing 4-methylchrysene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

r. *5-Methylchrysene* (CAS No. 003697-24-3). 5-Methylchrysene is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. In a skin-painting assay and in a mouse-skin initiation-promotion assay, 5-methylchrysene produced tumors in female mice. EPA believes that there is sufficient evidence for listing 5-methylchrysene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

s. *6-Methylchrysene* (CAS No. 001705-85-7). In a skin painting assay and in a mouse-skin initiation-promotion assay, 6-methylchrysene produced tumors in female mice. EPA believes that there is sufficient evidence for listing 6-methylchrysene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

t. *2-Methylfluoranthene* (CAS No. 033543-31-6). In a skin painting assay, 2-methylfluoranthene produced benign and malignant skin tumors in female mice. In a female mouse-skin initiation-promotion assay, 2-methylfluoranthene produced skin papillomas. EPA believes that there is sufficient evidence for listing 2-methylfluoranthene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

u. *1-Nitropyrene* (CAS No. 005522-43-0). 1-Nitropyrene is classified as a Group 2B compound by IARC, i.e., the compound is a possible human carcinogen. 1-Nitropyrene produced mammary adenocarcinomas and squamous-cell carcinomas in a dose-dependent manner by oral administration in rats, papillomas (not statistically significant) by skin application in mice, and lung adenomas by intratracheal instillation in hamsters. In a s.c. injection study, 1-nitropyrene produced tumors (i.e., one extraskeletal osteosarcoma and seven malignant fibrous histiocytomas) at the injection site in male Fisher rats. In another s.c. injection study, 1-nitropyrene produced tumors at the injection site in both male and female CD rats and mammary tumors in females. EPA believes that there is sufficient evidence for listing 1-nitropyrene on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

In addition to the above compounds, EPA proposes that the PAC category also include the following seven PACs:

Benz(a)anthracene (CAS No. 000056-55-3)

Benzo(a)phenanthrene (CAS No. 000218-01-9)

Benzo(a)pyrene (CAS No. 000050-32-8)

Benzo(rst)pentaphene (CAS No. 000189-55-9)

Dibenzo(a,h)anthracene (CAS No. 000053-70-3)

7,12-Dimethylbenz(a)anthracene (CAS No. 000057-97-6)

Indeno[1,2,3-cd]pyrene (CAS No. 000193-39-5)

These PACs were proposed for listing individually in EPA's response to a petition to add certain chemicals that appear on the RCRA list of toxic wastes under 40 CFR 261.33(f) to EPCRA section 313 (57 FR 41020, September 8, 1992). These chemicals were proposed for addition based on the available carcinogenicity data. Due to the similarities of these seven PACs to the chemicals listed in Unit IV.B.207.a. through IV.B.207.u. of this preamble, EPA believes that these chemicals should be added to EPCRA section 313 as part of the delineated PAC category rather than listed individually.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories the releases are determined in the same manner as the thresholds. One report is filed for the category and all releases are reported on this form. In the case of the delimited PAC category, only the 28 chemicals listed above would be included for purposes of making the threshold determinations and in filing reports on releases.

The Clean Air Act Amendments section 112(b) Hazardous Air Pollutants list includes a listing for polycyclic organic matter (POM) that includes PACs. The definition given for the POM category is broad and chemically non-specific and may be delineated by test method. For the purpose of listing under EPCRA section 313, EPA considered the following more chemically-specific definition for a PAC category: "includes all chemical species from the polycyclic aromatic hydrocarbon, aza-polycyclic, thio-polycyclic, or nitroarene families where polycyclic means three or more fused rings. More specifically, it means any combination of three or more fused six or five membered hydrocarbon rings with at least two or more rings being aromatic. The structure may contain fused non-aromatic five-membered rings, a ring nitrogen, a ring sulfur, one or more attached nitro groups, or one or more attached alkyl groups." As an alternative to the delimited category, EPA is proposing to add a PAC category based on this broad definition. Although this definition may include chemicals of low or no concern, it may be less of a burden for facilities to report their total PACs rather than trying to determine which and how much of the specific PACs covered by the delimited category they are producing and releasing. EPA requests comment on the addition of the delimited PACs category versus the alternative PAC category based on the broader definition.

208. *Potassium bromate* (CAS No. 007758-01-2) (IARC) (Ref. 8). IARC has assigned potassium bromate to Group 2B, i.e., it is possibly carcinogenic to humans. Male and female rats orally exposed to 250 or 500 ppm (35 to 70 mg/kg/day) potassium bromate in drinking water for 110 weeks had an increased incidence of renal cell adenomas and adenocarcinomas and, in males, there was also an increased incidence of mesothelioma in the peritoneal cavity. EPA believes that there is sufficient evidence for listing potassium bromate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for this chemical.

209. *Potassium dimethyldithiocarbamate* (CAS No. 000128-03-0) (FIFRA AI) (Ref. 3). New Zealand White rabbits given 38 mg/kg/day by gavage on days 6 to 18 of gestation exhibited malalignment of sternebrae, total postimplantation loss, and fetal weight decrement. Also at this dose level, various malformations including adactyly, gastroschisis, short tail, anal atresia, spina bifida, atelectasis, costal cartilage anomaly, vertebral anomaly with/without rib, caudal vertebrea anomaly, and severe sternebrae malalignment were observed in 6 of 52 fetuses from 5 of 11 litters. At the 77 mg/kg/day dose level, there was severe fetal/embryo lethality. The NOEL was 12.8 mg/kg/day. EPA believes that there is sufficient evidence for listing potassium dimethyldithiocarbamate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

210. *Potassium N-methyldithiocarbamate* (CAS No. 000137-41-7) (FIFRA AI) (Ref. 3). By analogy to the analogue, potassium dimethyldithiocarbamate, potassium N-methyldithiocarbamate can reasonably be anticipated to cause fetotoxicity, postimplantation loss and malformations. Data on potassium dimethyldithiocarbamate follows. New Zealand White rabbits given 38 mg/kg/day by gavage on days 6 to 18 of gestation exhibited malalignment of sternebrae, total postimplantation loss, and fetal weight decrement. Also at this dose level various possible malformations including adactyly, gastroschisis, short tail, anal atresia, spina bifida, atelectasis, costal cartilage anomaly, vertebral anomaly with/without rib, caudal vertebrea anomaly, and severe sternebrae malalignment in 6 of 52 fetuses from 5 of 11 litters. At the 77 mg/kg/day dose level, there was severe fetal/embryo lethality. The NOEL was 12.8 mg/kg/day. EPA believes that there is sufficient evidence for listing potassium N-methyldithiocarbamate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for potassium dimethyldithiocarbamate.

211. *Primisulfuron [methyl 2-[[[[4,6-bis(difluoromethoxy)2-pyrimidinyl]-amino] carbonyl] amino]sulfonyl] benzoate)* (CAS No. 086209-51-0) (FIFRA AI) (Ref. 3). In a 90–day dog feeding study, reduced thyroid weights accompanied by colloid depletion and parafollicular hyperplasia and anemia were observed at the LOEL of 25 mg/kg/day. The NOEL was 0.825 mg/kg/day. In a 1-year dog study, dietary administration of 250/125 mg/kg/day (LOEL: the dose was changed after week 10 in the study) produced thyroid hyperplasia, anemia, increased platelet levels, vacuolar changes, and increased absolute and relative liver weights. The NOEL was 25 mg/kg/day. In an 18–month study in mice, dietary administration of 1.7 mg/kg/day produced increased absolute and relative liver weights in females. No NOEL was established. Based on this study, an oral RfD of 0.006 mg/kg/day was derived. In a 2–year mouse study, increases in absolute and relative liver weights were observed at 408 mg/kg/day in males and 1.7 mg/kg/day in females. The systemic LOEL and NOEL in males was 408 mg/kg/day and 40.2 mg/kg/day, respectively. The systemic LOEL in females was 1.7 mg/kg/day and a NOEL could not be established. EPA believes that there is sufficient evidence for listing primisulfuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available thyroid and liver toxicity data for this chemical.

Plant toxicity values include a duckweed 14–day EC_{50} of 0.27 ppb and an algae 7–day EC_{50} of 24 ppb. EPA believes that there is sufficient evidence for listing primisulfuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

212. *Profenofos (O-(4-bromo-2-chlorophenyl)-O-ethyl-Spropyl phosphorothioate)* (CAS No. 041198-08-7) (FIFRA AI) (Ref. 3). In a 6–month feeding study in dogs, inhibition of plasma and red blood cell cholinesterase activities were observed at 2 ppm (0.05 mg/kg/day). The NOEL was 0.2 ppm (0.005 mg/kg/day). Based on the NOEL, EPA derived an oral RfD of 0.00005 mg/kg/day. Other studies (21, 28, and 90–day studies in rat, rabbit and dog) also demonstrate cholinesterase (plasma, red blood cell or brain) inhibition in rats and mice. EPA believes that there is sufficient evidence for listing profenofos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

213. *Prometryn (N,N'-bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine)* (CAS No. 007287-19-6) (FIFRA AI) (Ref. 3). Degenerative changes in the liver and kidney, and bone marrow atrophy (the LOEL was 37.5 mg/kg/day; the NOEL was 3.75 mg/kg/day) were observed in dogs fed prometryn for 2 years. Based on the NOEL, EPA derived an oral RfD of 0.004 mg/kg/day. Fatty liver degeneration (the LOEL was 500 mg/kg; the NOEL was 250 mg/kg) was observed in rats fed prometryn for 28 days.

In a teratology study in rabbits, test material was administered by gavage from gestation day 7 to 19. Increased abortions and late resorptions occurred at 72 mg/kg/day. The NOEL was 12 mg/kg/day.

EPA believes that there is sufficient evidence for listing prometryn on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, renal, bone marrow, and developmental toxicity data.

214. *Propachlor (2-chloro-N-(1-methylethyl)-N-phenylacetamide)* (CAS No. 001918-16-7) (FIFRA AI) (Ref. 3). No evidence of maternal toxicity was seen in rabbits administered propachlor by gavage at 0, 5, 15, or 50 mg/kg/day on days 7 to 19 of gestation. Statistically significant increases in mean resorptions/postimplantation loss with corresponding decreases in the mean number of viable fetuses were reported at 15 and 50 mg/kg/day when compared to controls. EPA believes that there is sufficient evidence for listing propachlor on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data.

215. *Propanil (N-(3,4-dichlorophenyl)propanamide)* (CAS No. 000709-98-8) (FIFRA AI) (Ref. 3). Results of several subchronic and chronic toxicity studies indicated the

liver and spleen as the target organs for propanil. Increased relative spleen weight (the LOEL was 20 mg/kg/day; the NOEL was 5 mg/kg/day) was noted in female rats fed propanil for 2 years. Based on the NOEL, EPA derived an oral RfD of 0.005 mg/kg/day. Histopathological changes (the LOEL was 30 mg/kg/day; the NOEL was 25 mg/kg/day) in the liver and spleen were observed in mice orally administered propanil for 90 days. At higher dose levels (i.e., 240 and 1,920 mg/kg/day) cyanosis, methemoglobinemia, and increased liver and spleen weight were noted. In a 90–day rat study, increased spleen weight (the LOEL was 50 mg/kg/day; the NOEL was 16.5 mg/kg/day) was seen in females. Decreased hemoglobin levels was seen in males. Increased SGOT and SAP activities (the LOEL was 100 mg/kg/day; the NOEL was 15 mg/kg/day) were observed in dogs orally administered propanil for 2 years. EPA believes that there is sufficient evidence for listing propanil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic toxicity data.

216. *Propargite* (CAS No. 002312-35-8) (CERCLA) (Ref. 8). In a developmental toxicity study in which rabbits were exposed via oral gavage to doses greater than or equal to 6 mg/kg/day (fetotoxic LOAEL) of propargite during gestation days 6 to 18, delayed ossification, increased fetal resorption, decreased fetal viability and reductions in fetal body weight were noted. The maternal LOAEL in this study was also 6 mg/kg/day and was based on body weight reductions. The NOEL for maternal and fetal toxicity was 2 mg/kg/day. Developmental effects (increased incidence of missing sternebrae) were also reported in offspring of rats exposed orally during gestation days 6 to 15. The fetotoxicity LOAEL was 25 mg/kg/day and the NOAEL was 6 mg/kg/day. EPA believes that there is sufficient evidence for listing propargite on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the developmental toxicity data for this chemical.

Measured aquatic acute toxicity data for propargite include a bluegill sunfish LC_{50} of 31 ppb. EPA believes that there is sufficient evidence for listing propargite on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

217. *Propargyl alcohol* (CAS No. 000107-19-7) (CERCLA; RCRA APP8; RCRA P) (Ref. 8). Histopathological changes in the liver and kidney were reported in a subchronic rat feeding study following exposure to propargyl alcohol in the diet for as little as 4 weeks. The liver changes included increased organ weight, hepatocytic megalocytosis with proliferation of bile ducts and cytoplasmic vacuolization of hepatocytes, as well as hematological and serum enzyme changes indicative of liver damage. The kidney weights were increased in females only, and both sexes had karyomegaly of the renal tubular epithelial cells. The LOAEL for these changes was 15 mg/kg/day and the NOAEL was 5 mg/kg/day. EPA derived an oral RfD of 0.002 mg/kg/day from this study. EPA believes that there is sufficient evidence for listing propargyl alcohol on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatotoxicity and nephrotoxicity data for this chemical.

218. *Propetamphos (3-[[(Ethylamino)methoxyphosphinothioyl] oxy]-2-butenoic acid, 1-methylethyl ester)* (CAS No. 031218-83-4) (FIFRA AI) (Ref. 3). Purebred beagle dogs were given propetamphos for 52 weeks in feed. A dose of 2.5 mg/kg/day caused increased relative liver weight and increased liver enzymes. Dogs given 12.5 mg/kg/day developed hepatocellular necrosis. The NOEL was 0.5 mg/kg/day.

Red blood cell and plasma cholinesterase inhibition were seen in a 2-week rat inhalation study at 1 mg/kg/day (LOEL). No NOEL could be established. Cholinesterase inhibition was observed at 0.4 mg/kg/day in a 13–week rat dietary study. The NOEL was 0.2 mg/kg/day. Cholinesterase inhibition was also observed at 0.1 mg/kg/day (LOEL) in a 6–month dog dietary study. The NOEL was 0.05 mg/kg/day. In a 92–week mouse feeding study, red blood cell, brain, and plasma cholinesterase were inhibited at 1.0 mg/kg/day (LOEL). The NOEL was 0.5 mg/kg/day. Based on this study, an oral RfD of 0.005 mg/kg/day was derived. In a 2–year dietary rat study, plasma cholinesterase depression was observed at 0.6 mg/kg/day (LOEL). The cholinesterase NOEL was 0.3 mg/kg/day. Alopecia and hyperflexia were observed at 6 mg/kg/day (systemic LOEL). The systemic NOEL was 0.6 mg/kg/day. In a lifetime mouse study, dietary administration of 1 mg/kg/day produced plasma, red blood cell, liver, and brain cholinesterase depression. The NOEL was 0.05 mg/kg/day.

EPA believes that there is sufficient evidence for listing propetamphos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and neurological toxicity data for this chemical.

219. *Propiconazole (1-[2-(2,4-dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]- methyl-1H-1,2,4,-triazole)* (CAS No. 060207-90-1) (FIFRA AI) (Ref. 3). In a 2-generation rat reproduction study, dietary administration of 25 mg/kg/day produced an increased incidence of hepatic clear cell change in parental animals and administration of 125 mg/kg/day produced an increased incidence of hepatic lesions in offspring. The parental NOEL was 5 mg/kg/day and the developmental NOEL was 25 mg/kg/day. In a 2–year mouse study, dietary administration of 65 mg/kg/day (LOEL) produced increased liver lesions and liver weight in males, whereas, administration of 325 mg/kg/day produced increased liver tumors, increased SGPT and SGOT levels, increased liver weight, hepatocyte enlargement, and vacuolation and fat deposition in the liver of both sexes. The NOEL was 13 mg/kg/day.

In a 3–month dog dietary study, lymphoid follicles were observed in the mucous membranes of the pyloric part of the stomach at 6.25 mg/kg/day. The NOEL was 1.25 mg/kg/day. In a 1–year dog study, dietary administration of 6.25 mg/kg/day produced mild gastric mucosal irritation. The NOEL was 1.25 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.013 mg/kg/day was derived.

EPA believes that there is sufficient evidence for listing propiconazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and gastrointestinal toxicity data for this chemical.

220. *Quizalofop-ethyl (2-[4-[(6-chloro-2-quinoxalinyl) oxy]phenoxy] propanoic acid ethyl ester)* (CAS No. 076578-14-8) (FIFRA AI) (Ref. 3). In a 3–month rat study, dietary administration of 6.4 mg/kg/day produced changes in liver weight and liver lesions. The NOEL was 2 mg/kg/day. In a 6–month dietary dog study, 10 mg/kg/day produced testicular atrophy in males. The NOEL was 2.5 mg/kg/day. Liver cell enlargement was observed at 3.7 mg/kg/day in males and 4.6 mg/kg/day in females (LOELs) in a 2–year rat dietary study. The NOELs for males and females were 0.9 mg/kg/day and 1.1 mg/kg/day, respectively. Based on the study, an oral RfD of 0.009 mg/kg/day was derived. Increased liver weights were observed in pregnant rats in a teratology study. The maternal LOEL was 100 mg/kg/day and the NOEL was 30 mg/kg/day. No teratogenic NOEL could be established. In a 2-generation rat reproduction study, increased liver weights and increased incidence of eosinophilic changes in the liver were observed in the offspring at 5 mg/kg/day (LOEL). The NOEL was 1.25 mg/kg/day.

EPA believes that there is sufficient evidence for listing quizalofop-ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available reproductive and hepatic toxicity data for this chemical.

221. *Resmethrin ([5-(phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylate))* (CAS No. 010453-86-8) (FIFRA AI) (Ref. 3). Oral administration of 30 mg/kg/day (LOEL) in capsules for 6 months produced increases in liver weights in female dogs. The NOEL was 10 mg/kg/day. In a 2–year rat study, dietary administration of 125 mg/kg/day produced increases in liver weight and pathological lesions. The NOEL was 25 mg/kg/day.

In a one-generation reproduction rat study, administration of 25 mg/kg/day (LOEL) in the diet produced an increase in dead pups and lower pup weight among survivors. No NOEL could be established. In a 3-generation reproduction rat study, dietary administration of 25 mg/kg/day (LOEL) produced an increase in pups cast dead and lower pup weight among survivors. No NOEL could be established. Based on the NOEL of the study, an oral RfD of 0.03 mg/kg/day was derived.

Signs of neurotoxicity, including piloerection, ataxia, sensory changes in peripheral nerves, changes in locomotor activity, salivation, tremors, and convulsions were observed in rats, dogs, mice, and rabbits given acute oral, intravenous or intraperitoneal injections greater than or equal to 160 mg/kg. In a 3–month rat inhalation study, 0.1 mg/L (LOEL) produced behavioral effects and 1 mg/L produced decreased locomotor activity, tremors, and other behavioral changes. No NOEL could be established.

EPA believes that there is sufficient evidence for listing resmethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, reproductive, and neurological toxicity data for this chemical.

Aquatic acute toxicity values for resmethrin include a rainbow trout 96–hour LC_{50} of 0.275 ppb (89 percent a.i.), a bluegill sunfish 96–hour LC_{50} of 0.750 ppb (89 percent a.i.), a lake trout 96–hour LC_{50} of 1.7 ppb (84.5 percent a.i.), and a fathead minnow 96–hour LC_{50} of 3.0 ppb. EPA believes that there is sufficient evidence for listing resmethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

222. *Sethoxydim (2-[1-(ethoxyimino)butyl]-5-[2(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one)* (CAS No. 074051-80-2) (FIFRA AI) (Ref. 3). Mild anemia (the LOEL was 17.5 mg/kg/day; the NOEL was 8.9 mg/kg/day) was observed in male dogs fed sethoxydim for 1–year. Based on the NOEL, EPA derived an oral RfD of 0.09 mg/kg/day. Swollen liver cells (the LOEL was 117 mg/kg/day; the NOEL was 45 mg/kg/day) were seen in mice fed sethoxydim for 14 weeks. Pathological effects in the liver (the LOEL was 45 mg/kg/day; the NOEL was 15 mg/kg/day) were noted in rats fed sethoxydim for 14 weeks. Nonneoplastic liver lesions (the LOEL was 54 mg/kg/day; the NOEL was 18 mg/kg/day) were observed in mice fed sethoxydim for 2 years. Decreased phenosulfophthalein (PSP) clearance (the NOEL was greater than 3 mg/kg/day; the LOEL not determined) was noted in dogs given sethoxydim in the diet for 26 weeks. Decreased PSP clearance (the LOEL was 20 mg/kg/day; the NOEL was 2 mg/kg/day) was also noted in a 6–month feeding study in dogs. EPA believes that there is sufficient evidence for listing sethoxydim on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological, hepatic, and renal toxicity data.

223. *Simazine* (CAS No. 000122-34-9) (FIFRA SR; SDWA) (Ref. 8). Simazine is a triazine-type herbicide. Chronic exposure of sheep to low doses (approximately 1.4 to 6 mg/kg/day) of simazine caused fatty and granular degeneration in the liver, and increased SGOT and alkaline phosphatase. Neuronophagia, diffuse kidney degeneration, diffuse glial proliferation and degeneration of ganglion cells in the cerebrum and medulla were also reported in these animals. Dogs that received 1,500 ppm (37.5 mg/kg/day) simazine in a 2–year feeding study also had slight increases in serum alkaline phosphatase and SGOT, indicative of liver damage.

Sheep that received 1.4 mg/kg/day simazine for 37 to 111 days had necrotic changes in the germinal epithelium of the testis and disturbances in spermatogenesis.

EPA believes that there is sufficient evidence for listing simazine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hepatic, renal, neurological, and reproductive toxicity of this chemical.

224. *Sodium azide* (CAS No. 026628-22-8) (CERCLA; EPCRA EHS; RCRA P) (Ref. 8). Although not used clinically, sodium azide is a direct acting vasodilator. A reduction in blood pressure was noted in hypertensive patients orally exposed to sodium azide during an investigation of the substance in treating cancer. Reductions in blood pressure were also reported in animals following acute exposure. The minimal hypotensive dose in humans has been estimated to be approximately 0.2 to 0.4 µg/kg (0.0002 to 0.0004 mg/kg). EPA believes that there is sufficient evidence for listing sodium azide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the ability of this substance to lower blood pressure.

225. *Sodium chlorite* (CAS No. 007758-19-2) (FIFRA AI) (Ref. 3). A decrease in erythrocyte half-life (the LOEL was 100 ppm or 7.3 mg/kg/day; the NOEL was 50 ppm or 3.65 mg/kg/day) was observed in cats administered sodium chlorite in the drinking water for 90 days. Increase in glucose-6-phosphatase dehydrogenase activity, mean corpuscular volume (MCV), osmotic fragility, and acanthocytes were observed in mice administered 100 ppm (19 mg/kg/day) in the drinking water for 30 days. In another 30–day drinking water study, increased glucose-6-phosphatase dehydrogenase activity, MCV, and osmotic fragility were noted in mice administered 100 ppm (19 mg/kg/day). The NOEL was 1.9 mg/kg/day. The results of in vitro studies show that sodium chlorite can result in oxidative damage to erythrocytes. EPA believes that there is sufficient evidence for listing sodium chlorite on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological toxicity data.

226. *Sodium dicamba (3,6-Dichloro-2-methoxybenzoic acid, sodium salt)* (CAS No. 001982-69-0) (FIFRA AI) (Ref. 3). No toxicity data are available for sodium dicamba. However, data are available on dicamba as discussed below. In solution, sodium dicamba will dissociate into sodium ion and the dicamba anion. Decreased fetal body weights and increased postimplantation loss were observed in the offspring of rabbits receiving 10 mg/kg/day on days 6 through 18 of gestation. The LOEL was 10 mg/kg/day and NOEL was 3 mg/kg/day. Based on the NOEL, EPA derived an oral RfD value of 0.03 mg/kg/day. In a separate study, disorders of oxidative phosphorylation and focal necrosis in the heart were observed in newborn rats following transplacental exposure to dicamba. In a developmental toxicity study, an increase in skeletal malformations was seen in the offspring of rats orally administered 64 mg/kg/day on days 6 through 19 of gestation. EPA believes that there is sufficient evidence for listing sodium dicamba on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for dicamba.

227. *Sodium dimethyldithiocarbamate* (CAS No. 000128-04-1) (FIFRA AI) (Ref. 3). By analogy to potassium dimethyldithiocarbamate, sodium dimethyldithiocarbamate can reasonably be anticipated to cause fetotoxicity, postimplantation loss and malformations. Data on potassium dimethyldithiocarbamate follows. New Zealand white rabbits given 38 mg/kg/day by gavage on days 6 to 18 of gestation exhibited malalignment of sternebrae, total postimplantation loss, and fetal weight decrement. Also at this dose level, various possible malformations including adactyly, gastroschisis, short tail, anal atresia, spina bifida, atelectasis, costal cartilage anomaly, vertebral anomaly with/without rib, caudal vertebrea anomaly, and severe sternebrae malalignment in 6 of 52 fetuses from 5 of 11 litters. At the 77 mg/kg/day dose level, there was severe fetal/embryo lethality. The NOEL was 12.8 mg/kg/day. EPA believes that there is sufficient evidence for listing sodium dimethyldithiocarbamate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for the analogue potassium dimethyldithiocarbamate.

228. *Sodium fluoroacetate* (CAS. No. 000062-74-8) (CERCLA; EPCRA EHS; FIFRA SR; RCRA APP8; RCRA P) (Ref. 8). In a 13–week oral study in rats, gavage administration of sodium fluoroacetate (0.02 mg/kg/day) resulted in decreased testis weight and altered spermatogenesis in males (the NOAEL was 0.05 mg/kg/day). In addition, increased heart weight was noted in females and males administered 0.20 mg/kg/day of sodium fluoroacetate. The increase in heart weight, however, was only accompanied by subacute, minimal inflammation (not dose-related). Also, fluorocitrate levels were significantly increased after 4 weeks in males administered 0.50 mg/kg/day and after 13 weeks in both male and female rats administered 0.20 or 0.50 mg/kg/day. The testicular and cardiac effects were reported to be consistent with those noted in the literature.

A case study reported a deliberate ingestion of an unspecified dose of sodium fluroacetate by a healthy female. The woman experienced nausea, vomiting, and abdominal pain 30 minutes after ingestion, with subsequent seizures occurring 60 minutes after the initial onset of symptoms. Neurological examination after 2 weeks revealed severe cerebellar dysfunction. By 18 months, memory disturbances and depressive behavior persisted. Inhalation exposure to unspecified levels of sodium fluoroacetate caused salivation, loss of speech, violent convulsions, and coma in a male worker. The patient ultimately recovered. Neurological effects have also been reported in rats in a 13–week oral study. Four of 20 female rats treated with 0.50 mg/kg/day (the highest dose tested) exhibited convulsions at day 79, with no recurrences for the remainder of the study. An estimated lethal dose of sodium fluoroacetate in humans ranges from 5 to 10 mg/kg.

EPA believes that there is sufficient evidence for listing sodium fluoroacetate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the neurologic, reproductive, and myocardial toxicity data for this chemical.

Measured oral LD_{50} values of fluoroacetate in the house sparrow, redwinged blackbird, starling and golden eagle are 3.0, 4.22, 2.37, and 1.25 to 5 mg/kg, respectively. In addition, measured acute toxicity data for mammalian wildlife include an oral LD_{50} of 0.22 to 0.44 mg/kg for mule deer, an oral LD_{50} of 1.41 mg/kg for male ferrets, and an oral LD_{50} of 0.5 to 1.0 mg/kg for bears. EPA believes that there is sufficient evidence for listing sodium fluoroacetate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

229. *Sodium hypochlorite* (CAS No. 007681-52-9) (CERCLA) (Ref. 8). Aquatic acute toxicity data for sodium hypochlorite include a 96–hour measured LC_{50} of 100 ppb for bluegill and a 96–hour measured LC_{50} of 80 ppb for fathead minnow. In addition, the 96–hour measured LC_{50} values for non-standard test species range from 32 ppb for coho salmon to 82 ppb for Pacific sand lance. EPA believes that there is sufficient evidence for listing sodium hypochlorite on EPCRA section 313(d)(2)(C) based on the available ecotoxicity data for this chemical.

230. *Sodium nitrite* (CAS No. 007632-00-0) (CERCLA) (Ref. 8). Sodium nitrite causes conversion (oxidation) of hemoglobin to methemoglobin. Methemoglobin cannot combine reversibly with oxygen and its formation can cause anemic hypoxia which may lead to intense cyanosis. Infants are particularly susceptible to this effect because of their higher stomach pH, immature enzyme systems, the reduced capacity of newborn erythrocytes to reduce methemoglobin to hemoglobin, and the increased rate of nitrite-induced oxidation of fetal hemoglobin to methemoglobin (approximately twice the rate of adult hemoglobin oxidation). Coma and methemoglobinemia/carboxyhemoglobinemia were reported in a human that received sodium nitrite (71 mg/kg) orally. In animal studies, methemoglobinemia was reported in dogs that received an intravenous dose of 30 mg/kg sodium nitrite and in rats administered a 10 mg/kg dose of sodium nitrite subcutaneously.

Fetotoxicity (fetal death) was reported following oral exposure of pregnant rats to sodium nitrite (30 mg/kg/day) during gestation days 1 through 22. In mice exposed orally to 80 mg/kg/day during gestation days 6 to 15 there was increased preimplantation loss and fetal death, and in mice exposed to a lower dose (20 mg/kg/day) during gestation days 1 to 14, abnormalities of the blood or lymphatic system were reported in offspring. In offspring of rats orally exposed to 26 to 256 mg/kg/day during pregnancy (gestation days 1 through 22) and/or during lactation (20 to 21 days after birth), effects on growth including biochemical and/or metabolic changes were noted.

EPA believes that there is sufficient evidence for listing sodium nitrite on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic hematological and developmental toxicity data for this chemical.

231. *Sodium pentachlorophenate* (CAS No. 000131-52-2) (FIFRA AI) (Ref. 3). Pentachlorophenol has been classified by EPA as a Group B2 compound, i.e., a probable human carcinogen. This was based on occurrence of increased combined incidence of hemangiosarcomas, liver tumors, and pheochromocytomas in female mice. EPA believes that there is sufficient evidence for listing sodium pentachlorophenate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available carcinogenicity data for its parent compound, pentachlorophenol.

Aquatic acute toxicity values for sodium pentachlorophenate include a rainbow trout 96–hour LC_{50} of 55 ppb, a bluegill 96–hour LC_{50} of 44 ppb, a fathead minnow 96–hour LC_{50} of 20 ppb, and a shrimp 96–hour LC_{50} of 84 ppb. EPA believes that there is sufficient evidence for listing sodium pentachlorophenate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

232. *Sodium o-phenylphenoxide* (CAS No. 000132-27-4) (CERCLA; IARC) (Ref. 8). Sodium o-phenylphenoxide has been classified by IARC as a Group 2B compound; i.e., the substance is possibly carcinogenic in humans. EPA believes that there is sufficient evidence for listing sodium o-phenylphenoxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

233. *Sodium 2-pyridinethiol-1-oxide* (CAS No. 015922-78-8) (FIFRA AI) (Ref. 3). New Zealand white rabbits were tested with test material dermally on days 6 to 18 of gestation. At 0.5 mg/kg/day, pups exhibited missing or defective vertebrae, ribs and sternebrae. No NOEL was established. EPA believes that there is sufficient evidence for listing sodium 2-pyridinethiol-1-oxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

234. *Strychnine and salts* (CERCLA; EPCRA EHS; FIFRA SR; RCRA APP8; RCRA P) (Ref. 8). Strychnine salts will dissociate in aqueous solutions to yield soluble strychnine. Strychnine, an alkaloid, can cause violent convulsions in humans. Other effects include agitation, hypertonicity of muscles, and painful muscle spasms. Renal failure and respiratory paralysis generally ensues, from severe or prolonged convulsions. A potentially lethal oral dose in a small child is 5 to 10 mg. The lethal oral dose for an adult may be as low as 30 mg. Similar effects have also been reported in animals exposed at lethal doses ranging from 0.25 to 2.35 mg/kg via oral and parenteral routes of exposure. EPA's exposure analysis indicates that strychnine and strychnine salts concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing strychnine and salts as a category on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

EPCRA section 313 requires threshold determinations for chemical categories to be based on the total of all chemicals in the category manufactured, processed, or otherwise used. For example, a facility that manufactures three members of a chemical category would count the total amount of all three chemicals manufactured towards the manufacturing threshold for that category. When filing reports for chemical categories, the releases are determined in the same manner as the thresholds. One report if filed for the category and all releases are reported on this form.

235. *Sulfur dioxide* (CAS No. 007446-09-5) (CERCLA; EPCRA EHS) (Ref. 8). Acid precipitation occurs in large regions of the Eastern United States and Canada, Europe, and Japan. This widespread occurrence of acid precipitation and dry deposition results in large part from man-made emissions of oxides of sulfur (e.g., sulfur dioxide) and oxides of nitrogen. These substances are transformed in the atmosphere into sulfuric acid and nitric acid, transported over great distances and deposited on vegetation, soils, surface waters, and materials. These substances are transferred from the atmosphere into ecosystems by the absorption of gases, the impaction and gravitational settling of fine aerosols and coarse particles and, precipitation.

Acids contained in polluted snow are released as contaminated meltwater. The resulting release of pollutants can cause major or rapid changes in the acidity of streams and lake waters. Interference with normal reproduction in fish populations is induced by acidity of lake and stream waters. Reproduction of frogs and salamanders is also inhibited by atmospheric acidification of surface waters.

Atmospheric deposition of sulfuric acid and nitric acid can cause serious damage to crops and forests. Biological effects include induction of necrotic lesions, loss of nutrients due to leaching from foliar organs, accelerated erosion of waxes and leaf surfaces, and interference with normal reproductive processes. Acidification decreases the rate of many soil processes such as nitrogen fixation and the breakdown of organic matter.

EPA believes that there is sufficient evidence for listing sulfur dioxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

Limited data on long-term human exposure to sulfuric acid with respect to occupational settings are available. Recent studies suggest that sulfuric acid aerosols at levels as low as 0.02 to 0.04 mg/m^3 may cause significant effects on lung function in humans. Effects noted include increased risk of chronic bronchitis in smokers and reduced tracheobronchial clearance rate. Other studies suggest that sulfuric acid at concentrations as low as 0.04 mg/m^3 may act synergistically with copollutants such as ozone, NO_2, and metal particulates in causing decreased pulmonary diffusing capacity and bronchial hypersensitivity. These effects are presumably attributable to the acidic and oxidative properties of sulfuric acid, and are therefore pH and concentration dependent. EPA believes that there is sufficient evidence for listing sulfur dioxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for sulfuric acid, the hydrolysis product of sulfur dioxide.

Sulfur dioxide is regulated under Title I of the CAA (Provisions for Attainment and Maintenance of National Ambient Air Quality Standards) and Title IV of the CAA (Acid Deposition Control). In addition to this proposal to add sulfur dioxide to EPCRA section 313, in Units IV.B.36. and 179, EPA is proposing to add two other chemicals, carbon monoxide and nitrogen dioxide, that are regulated under Title I of the CAA. Extensive data, which are highly technical, are collected on these chemicals as required by the CAA. EPA requests comment on the following: (1) Is the information collected under the CAA sufficient for public right-to-know purposes; and (2) suggestions on how the data collected on these chemicals pursuant to CAA Titles I and IV could be used to meet the purposes of EPCRA section 313.

236. *Sulfur trioxide* (CAS No. 007446-11-9) (EPCRA EHS) (Ref. 8). IARC has classified sulfur trioxide in Group 1, i.e., the chemical is carcinogenic to humans based on sufficient evidence of carcinogenicity in humans. EPA believes that there is sufficient evidence for listing sulfur trioxide on EPCRA section 313 pursuant to section 313(d)(2)(B) based on the carcinogenicity data for this chemical.

Acid precipitation occurs in large regions of the Eastern United States and Canada, Europe, and Japan. This widespread occurrence of acid precipitation and dry deposition results in large part from man-made emissions of oxides of sulfur (e.g., sulfur trioxide) and oxides of nitrogen. These substances are transformed in the atmosphere into sulfuric acid and nitric acid, transported over great distances and deposited on vegetation, soils, surface water, and materials. These substances are transferred from the atmosphere into ecosystems by the absorption of gases, the impaction and gravitational settling of fine aerosols and coarse particles and, precipitation.

Acids contained in polluted snow are released as contaminated meltwater. The resulting release of pollutants can cause major or rapid changes in the acidity of streams and lake waters. Interference with normal reproduction in fish populations is induced by acidity of lake and stream waters. Reproduction of frogs and salamanders is also inhibited by atmospheric acidification of surface waters.

Atmospheric deposition of sulfuric acid and nitric acid can cause serious damage to crops and forests. Biological effects include induction of necrotic lesions, loss of nutrients due to leaching from foliar organs, accelerated erosion of waxes and leaf surfaces, and interference with normal reproductive processes. Acidification decreases the rate of many soil processes such as nitrogen fixation and the breakdown of organic matter.

EPA believes that there is sufficient evidence for listing sulfur trioxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

Limited data on long-term human exposure to sulfuric acid with respect to occupational settings are available. Recent studies suggest that sulfuric acid aerosols at levels as low as 0.02 to 0.04 mg/m^3 may cause significant effects on lung function in humans. Effects noted include increased risk of chronic bronchitis in smokers and reduced tracheobronchial clearance rate. Other studies suggest that sulfuric acid at concentrations as low as 0.04 mg/m^3 may act synergistically with copollutants such as ozone, NO_2, and metal particulates in causing decreased pulmonary diffusing capacity and bronchial hypersensitivity. These effects are presumably attributable to the acidic and oxidative properties of sulfuric acid, and are therefore pH and concentration dependent. EPA believes that there is sufficient evidence for listing sulfur trioxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic toxicity data for sulfuric acid, the hydrolysis product of sulfur trioxide.

237. *Sulfuryl fluoride (Vikane)* (CAS No. 002699-79-8) (FIFRA AI) (Ref. 3). The primary effects of sulfuryl fluoride in humans are respiratory irritation and central nervous system depression, followed by excitation and possibly convulsions. Rabbits exposed via inhalation (6 hours/day, 5 days/week, for 2 weeks) to sulfuryl fluoride showed hyperactivity, convulsions and vacuolation of the cerebrum at 600 ppm (2.5 mg/L). Renal lesions were present in all rats exposed by inhalation (6 hours/day, 5 days/week, for 2 weeks) to 600 ppm (2.5 mg/L) sulfuryl fluoride. Minimal renal changes were noted in rats exposed to 300 ppm (1252 mg/L), whereas no effects occurred at 100 ppm (4.2 mg/L). Convulsions at near lethal concentrations were reported in rabbits, mice, and rats. In a 30-day inhalation study, loss of control, tremors of the hind quarters, and histopathological changes in the lung, liver, and kidney were reported in rabbits exposed to 400 ppm (1.6 mg/L) for 7 hours/day, 5 days/week for 5 weeks. The NOEL was 200 ppm (0.83 mg/L). Cerebral vacuolation and/or malacia and inflammation of nasal tissues were observed in rabbits exposed by inhalation to 100 or 300 ppm (0.4 or 1.25 mg/L) for 13 weeks. The NOEL was 30 ppm (0.125 mg/L). Rats exposed by inhalation to 100 to 600 ppm (0.4 to 0.25 mg/L) sulfuryl fluoride for 13 weeks developed mottled teeth (indicative of fluoride toxicity), renal and respiratory effects, and cerebral vacuolation. EPA believes that there is sufficient evidence for listing sulfuryl fluoride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological, renal, and respiratory toxicity data for this chemical.

238. *Sulprofos (O-Ethyl O-[4-(methylthio)phenyl] phosphorodithioic acid S-propyl ester)* (CAS No. 035400-43-2) (FIFRA AI) (Ref. 3). The acute dermal rabbit LD_{50} is between 745 mg/kg and 994 mg/kg. Ataxia, tremors, and diarrhea were observed. In a 28–day dietary study, administration of 1 mg/kg/day produced decreased red blood cell and brain cholinesterase activity. The NOEL was 0.1 mg/kg. Dietary administration of 15 mg/kg/day for 3 months produced hyperactivity in female rats. The NOEL was 5 mg/kg/day. In the same study, 5 mg/kg/day produced red blood cell and brain cholinesterase inhibition in both sexes. The cholinesterase NOEL was 1.5 mg/kg/day. Red blood cell and brain cholinesterase inhibition, diarrhea, vomiting, and some hind limb paralysis were seen in dogs orally administered 5 mg/kg/day (LOEL) for 3 months. The NOEL was 0.5 mg/kg/day. In a 22–month dietary mouse study, plasma and red blood cell cholinesterase were inhibited at 3.25 mg/kg/day. The NOEL was 0.325 mg/kg/day. Plasma, red blood cell, and brain cholinesterase inhibition were seen at a dietary administration of 2.5 mg/kg/day (LOEL) in a 2–year dog study. The NOEL was 0.25 mg/kg/day. Based on this study, an oral RfD of 0.003 mg/kg/day was derived. Dietary administration of 3 mg/kg/day (LOEL) produced plasma and red blood cell cholinesterase depression in a 2–year rat study. The NOEL was 0.3 mg/kg/day.

Increased unossified sternebrae were observed in the offspring of rats given 10 mg/kg/day (LOEL) by gavage during days 6 to 15 of gestation. No NOEL was established.

EPA believes that there is sufficient evidence for listing sulprofos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and developmental toxicity data for this chemical.

The aquatic acute values for sulprofos include bluegill 96–hour LC_{50} value of 1.03 ppm and 11 ppm (technical product). The channel catfish bioconcentration factor for whole fish is 704 to 1006. EPA believes that there is sufficient evidence for listing sulprofos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data and the potential for bioconcentration.

239. *Tebuthiuron (N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'-dimethylurea)* (CAS No. 034014-18-1) (FIFRA AI) (Ref. 3). Administration of 25 mg/kg/day (LOEL) on days 6 through 18 of gestation produced reduced body weights in offspring of rabbits. The NOEL was 10 mg/kg/day. In a 3–month rat study, dietary administration of 125 mg/kg/day (LOEL) produced growth suppression and pancreatic lesions. The NOEL was 50 mg/kg/day. In a 2-generation rat reproduction study, depressed body weight gain was observed in the female parental generation at 14 mg/kg/day. The NOEL was 7 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.07 mg/kg/day was derived. In a 3-generation rat reproduction study, decreased body weight was observed in the offspring of animals administered 20 mg/kg/day (LOEL). No NOEL was established. Dietary administration of 40 mg/kg/day to rats for 2 years produced growth suppression. The NOEL was 20 mg/kg/day. EPA believes that there is sufficient evidence for listing tebuthiuron on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

240. *Tefluthrin* (CAS No. 079538-32-2) (FIFRA AI) (Ref. 3). Delayed ossification was seen in the offspring of rats administered 5 mg/kg/day (LOEL) orally on days 7 through 16 of gestation. The NOEL was 3 mg/kg/day.

In a 3–month rat study, dietary administration of 10 mg/kg/day produced plasma, red blood cell, and brain cholinesterase inhibition. The NOEL was 5 mg/kg/day. In a 6–month dog study, dietary administration of 10 mg/kg/day (LOEL) produced plasma cholinesterase inhibition. The NOEL was 1 mg/kg/day.

In a 21-day rat dietary study, administration of 20 mg/kg/day (LOEL for females) produced decreased platelet counts, increased white blood cell, lymphocyte, and neutrophil counts in males and females. The NOEL for females was 5 mg/kg/day. Increased absolute and relative liver weights were observed at 5 mg/kg/day in males, thus no NOEL could be established for males. Dietary administration of 10 mg/kg/day (LOEL) for 3 months to rats produced increased absolute liver weights, decreased bilirubin levels, and hepatocellular hypertrophy. The NOEL was 5 mg/kg/day. In a 6–month dog study, dietary administration of 10 mg/kg/day (LOEL) produced hepatotoxicity (effects not reported). The NOEL was 1 mg/kg/day. In a 2–year mouse study, dietary administration of 13.5 mg/kg/day produced liver necrosis. The NOEL was 3.4 mg/kg/day.

EPA believes that there is sufficient evidence for listing tefluthrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental, neurological, hepatic, and hematological toxicity data for this chemical.

Aquatic acute toxicity values for tefluthrin include a rainbow trout 96–hour LC_{50} of 0.06 ppb, a bluegill 96–hour LC_{50} of 0.13 ppb, a sheepshead minnow 96–hour LC_{50} of 0.13 ppb, a daphnid 48–hour EC_{50} of 0.07 ppb, and a mysid 96–hour EC_{50} of 0.053 ppb. EPA believes that there is sufficient evidence for listing teflurin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

241. *Temephos* (CAS No. 003383-96-8) (FIFRA AI) (Ref. 3). Temephos is a cholinesterase inhibitor in many mammalian species. The LOELs at which the cholinesterase inhibition was observed ranged from 0.3 to 10 mg/kg/day. However, human subjects that ingested 256 mg/day for 5 days or 64 mg/day for 4 weeks showed no clinical signs or effects on plasma or red blood cell cholinesterase activities. Dietary exposure of rats to 350 mg/kg/day for 90 days resulted in cholinesterase inhibition only; no clinical signs were reported. Rabbits and guinea pigs tolerated 10 mg/kg/day for extended periods without clinical effects, and dogs tolerated 3 to 4 mg/kg/day, the highest dose tested. EPA believes that there is sufficient evidence for listing temephos on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data.

242. *Terbacil (5-chloro-3-(1,1-dimethylethyl)-6-methyl- 2,4-(1H,3H)-pyrimidinedione)* (CAS No. 005902-51-2) (FIFRA AI) (Ref. 3). Decreases in the number of implantations and live fetuses, were observed in rats administered 62.5 mg/kg/day (LOEL) orally for days 6 to 15. The NOEL was 12.5 mg/kg/day. Significantly reduced body weights were observed in the offspring of rabbits orally administered 600 mg/kg/day (LOEL) orally on days 6 to 18 of gestation. The NOEL was 200 mg/kg/day.

In a 2–week rat dietary study, administration of 1,000 mg/kg/day produced increased absolute and relative liver weights. In a 3–month rat dietary study, administration of 25 mg/kg/day (LOEL) produced increased liver weights and vacuolization and hypertophy of hepatocytes. The NOEL was 5 mg/kg/day. In a 1-year dog study, dietary administration of 48 mg/kg/day to males and 12 (LOEL) and 48 mg/kg/day to females produced increased alkaline phosphatase and alanine transaminase levels. The NOEL was 3 mg/kg/day. In a 2–year dog study, dietary administration of 6.25 mg/kg/day (LOEL) produced slight increases in liver weights, elevated alkaline phosphatase levels, and increased thyroid-to-body-weight ratios. The NOEL was 1.25 mg/kg/day. Based on the NOEL, an oral RfD of 0.013 mg/kg/day was established. Hypertrophy of centrilobular hepatocytes was observed in male mice administered 162.5 mg/kg/day (LOEL) in the diet. The NOEL was 6.5 mg/kg/day.

EPA believes that there is sufficient evidence for listing terbacil on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and developmental toxicity data for this chemical.

243. *Tetracycline hydrochloride* (CAS No. 000064-75-5) (CAL) (Ref. 8). Tetracycline hydrochloride is widely used as an antibiotic for the treatment of many common infections. The average oral adult dose for most infections is 1 to 2 grams per day in equally divided doses. The most frequent adverse reactions to orally administered tetracycline hydrochloride are gastrointestinal effects including nausea, vomiting, diarrhea, bulky loose stools, and abdominal discomfort. Photosensitivity, manifested as an exaggerated sunburn reaction on sun-exposed areas of the body has occurred following oral therapy with tetracycline hydrochloride. Photosensitivity reactions of this type generally develop within a few minutes to several hours after sun exposure and usually persist 1 to 2 days after discontinuance of tetracycline hydrochloride.

Manufacturers of tetracycline hydrochloride state that this substance should not be used in women during the last half of pregnancy or in children younger than 8 years of age unless other appropriate drugs are ineffective or contraindicated. The American Academy of Pediatrics recommends that tetracycline hydrochloride be used only in children who are 9 years of age or older, except under unusual circumstances. Use of tetracycline hydrochloride in pregnant women or infants has resulted in retardation of skeletal development and bone growth in the fetus or child. Because tetracycline hydrochloride localizes in the dentin and enamel of developing teeth, use of this substance during tooth development may cause enamel hypoplasia and permanent yellow-gray to brown discoloration of the teeth. Use of tetracycline hydrochloride may result in discoloration of the deciduous teeth of children if the substance is used during pregnancy or in children up to 4 to 6 months of age. These effects are most common following long-term use of tetracycline hydrochloride but have occured following repeated short-term use. Premature infants treated with tetracycline have demonstrated a 40 percent depression of bone growth. This effect is readily reversible if exposure to the substance is short.

Intraperitoneal injection of 85 mg/kg/day on days 14 to 18 of gestation has resulted in abortion and extra embryonic structures in rat offspring. Subcutaneous injection of 48 mg/kg/day on days 16 through 20 of gestation and intramuscular injection of 40 mg/kg/day to rats on days 10 through 15 of gestation resulted in embryo/fetotoxicity. Exposure to 50 mg/kg/day on days 7 to 15 of pregnancy resulted in postimplantation loss and fetotoxicity in rats. Exposure to 85 mg/kg/day on days 7 to 15 of pregnancy resulted in abortion in rats. Fetotoxicity was observed in mice receiving 86 mg/kg/day of tetracycline hydrochloride on days 8 to 13 of gestation.

EPA believes that there is sufficient evidence for listing tetracycline hydrochloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data and other chronic toxicity data for this chemical.

244. *Tetramethrin (2,2-Dimethyl-3-(2-methyl-1-propenyl) cyclopropanecarboxylic ocid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2-H-isoindol-2-yl)methyl ester* (CAS No. 007696-12-0) (FIFRA AI) (Ref. 3). Depression, salivation, ataxia, lethargy, and convulsions were observed in acute rat studies in which the oral LD_{50} values were greater than or equal to 4,400 mg/kg. Tremors, excitement, and increased urine volume were observed in an acute dermal rat study in which the LD_{50} was greater than 2,500 mg/kg. Tremors, ataxia, dyspnea, gastointestinal hypermotility, and diarrhea were observed in rats and mice administered tetramethrin subcutaneously or

intraperitonealy. The LD_{50} was greater than 500 mg/kg. In a 6–month dog dietary study, administration of 62.5 mg/kg/day produced nervouseness and tremors. The NOEL was 31.25 mg/kg/day.

EPA believes that there is sufficient evidence for listing tetramethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

Aquatic acute toxicity values for tetramethrin include a bluegill 96–hour LC_{50} of 21 ppb (mixed isomers, technical product) and 69 ppb. EPA believes that there is sufficient evidence for listing tetramethrin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

245. *Tetrasodium ethylenediaminetetraacetate* (CAS No. 000064-02-8) (FIFRA AI) (Ref. 3). Increased occurrence of 13th rudimentary ribs was observed in the offspring of rats orally administered 5 mg/kg/day (LOEL). No NOEL was established and the dosing duration was not reported. EPA believes that there is sufficient evidence for listing tetrasodium ethylenediaminetetraacetate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

246. *Thiabendazole (2-(4-Thiazolyl)-1H-benzimidazole)* (CAS No. 000148-79-8) (FIFRA AI) (Ref. 3). Oral administration of 600 mg/kg/day (LOEL) to rats on days 6 through 15 of gestation produced cleft palate and open eyes. Musculoskeletal abnormalities were observed in the offspring of mice orally administered 240 mg/kg on day 9 of gestation. Musculoskeletal abnormalities were also observed in the offspring of rats orally administered 296 mg/kg/day on days 8 through 15 of gestation. Decreased litter size, and skin abnormalities were observed in the offspring of rats orally administered 667 mg/kg/day on days 8 through 15 of gestation. Oral administration of 1,300 mg/kg/day produced musculoskeletal abnormalities and fetal death in the offspring of mice. Oral administration of 2,400 mg/kg/day on day 11 of gestation produced craniofacial abnormalities in the offspring of mice. EPA believes there is sufficient evidence for listing thiabendazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

Aquatic acute toxicity values for thiabendazole include a rainbow trout 96–hour LC_{50} of 560 ppb, a daphnid 48–hour EC_{50} of 0.31 ppb, and a mysid 96–hour LC_{50} of 340 ppb. EPA believes that there is sufficient evidence for listing thiabendazole on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available environmental toxicity data.

247. *Thiabendazole, hypophosphite salt (2-(4-thiazolyl) benzimidazole, hypophosphite salt)* (CAS No. 028558-32-9) (FIFRA AI) (Ref. 3). Few toxicity data are available on thiabendazole, hypophosphite salt. However, data are available on the parent compound, thiabendazole, as discussed below.

Oral administration of 600 mg/kg/day (LOEL) to rats on days 6 through 15 of gestation produced cleft palate and open eyes. Musculoskeletal abnormalities were observed in the offspring of mice orally administered 240 mg/kg on day 9 of gestation. Musculoskeletal abnormalities were also observed in the offspring of rats orally administered 296 mg/kg/day on days 8 through 15 of gestation. Decreased litter size and skin abnormalities were observed in the offspring of rats orally administered 667 mg/kg/day on days 8 through 15 of gestation. Oral administration of 1,300 mg/kg/day produced musculoskeletal abnormalities and fetal death in the offspring of mice. Oral administration of 2,400 mg/kg/day on day 11 of gestation produced craniofacial abnormalities in the offspring of mice. EPA believes that there is sufficient evidence for listing thiabendazole hypophosphite salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

No laboratory data are available for thiabendazole hypophosphite salt. Ecotoxicity data are available for the parent compound thiabendazole. Aquatic acute toxicity values for thiabendazole include a rainbow trout 96–hour LC_{50} of 560 ppb, a daphnid 48–hour EC_{50} of 0.31 ppb, and a mysid 96–hour LC_{50} of 340 ppb. EPA believes that there is sufficient evidence for listing thiabendazole hypophosphite salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data for this chemical.

248. *Thiobencarb (carbamic acid, diethylthio-, s-(p-chlorobenzyl))* (CAS No. 028249-77-6) (FIFRA AI) (Ref. 3). Measured aquatic acute toxicity values for thiobencarb include a chinook salmon 96–hour LC_{50} of 760 ppb, a striped bass 96–hour LC_{50} of 760 ppb, a rainbow trout 96–hour LC_{50} of 790 ppb, and a green algae 72–hour EC_{50} of 30 ppb (population reduction). EPA believes that there is sufficient evidence for listing thiobencarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

249. *Thiodicarb* (CAS No. 059669-26-0) (FIFRA AI) (Ref. 3). Thiodicarb is a cholinesterase inhibitor in mammalian species. In addition, hematological effects have been observed in various species. Tremors and pinpoint pupils (the NOEL was less than 0.043 mg/L) were noted in rats exposed by inhalation to thiodicarb for 9 days. Macrocytic anemia (the LOEL was 2 g/kg; the NOEL was 1 g/kg) was observed in a 21–day dermal study in rabbits. In another 21–day dermal study, decreased red blood cell counts and decreased hemoglobin levels (the LOEL was 4 g/kg/day; the NOEL was 1 g/kg/day) were reported. Decreased plasma and red blood cell cholinesterase activities (the LOEL was 30 mg/kg/day; the NOEL was 10 mg/kg/day) were observed in rats fed thiodicarb for 28 days. Decreased red blood cell cholinesterase activity and decreased hemoglobin levels (the LOEL was 10 mg/kg/day; the NOEL was 3 mg/kg/day) were seen in a 13–week feeding study in rats. Inhibition of plasma and red blood cell cholinesterase activities (the LOEL was 45 mg/kg/day; the NOEL was 15 mg/kg/day) was noted in dogs fed thiodicarb for 6 months. Significant hematological and clinical chemistry values were also seen at 45 mg/kg/day (the NOEL was 15 mg/kg/day). Reductions in red blood cell cholinesterase activity (the LOEL was 12.8 mg/kg/day; the NOEL was 4.5 mg/kg/day) were also seen in a 1-year feeding study in dogs. In addition, decreased red blood cell and decreased hemoglobin and hematocrit levels, and increased relative spleen and liver weights (the LOEL was 38.3 mg/kg/day; the NOEL was 12.8 mg/kg/day) were reported. EPA believes that there is sufficient evidence for listing thiodicarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological and hematological toxicity data.

Aquatic acute toxicity values for thiodicarb include a bluegill 96–hour LC_{50} of 1.47 ppm , a rainbow trout 96–hour LC_{50} of 2.65 ppm, a sheepshead minnow 96–hour LC_{50} of 530 ppb, a daphnid 48–hour EC_{50} of 27 ppb, a mysid 96–hour LC_{50} of 29.3 ppb, an eastern oyster 96–hour LC_{50} of 1.0 ppb, and an algae 96–hour EC_{50} of 450 ppb. EPA believes that there is sufficient evidence for listing thiodicarb on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

250. *Thiophanate ethyl ([1,2-phenylenebis (iminocarbonothioyl)] biscarbamic acid diethyl ester)* (CAS No. 023564-06-9) (FIFRA AI) (Ref. 3). In a 6–month dog study, dietary administration of 500 mg/kg/day (LOEL) produced thyroid changes. The NOEL was 50 mg/kg/day. Thyroid follicular hypertrophy was observed at 50 mg/kg/day (LOEL) in a rat 2–year dietary study. The NOEL was 10 mg/kg/day. EPA believes that there is sufficient evidence for listing thiophanate ethyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available thyroid toxicity data for this chemical.

251. *Thiophanate-methyl* (CAS No. 023564-05-8) (FIFRA SR) (Ref. 8). Decreased spermatogenesis was observed in male rats fed 32 mg/kg/day thiophanate-methyl. The NOEL was 8 mg/kg/day. Other effects noted at the 32 mg/kg/day dose level included decreased body weight and histological evidence of hyperthyroidism.

In a 3-generation reproductive study in rats, reduced litter weights were seen at a daily dietary dose of 32 mg/kg thiophanate-methyl. The NOEL was 8 mg/kg/day. A decrease in the number of implantations was observed in mice administered a limit dose of 1,000 mg/kg/day.

EPA believes that there is sufficient evidence for listing thiophanate-methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the reproductive toxicity data for this chemical.

252. *Thiosemicarbazide* (CAS No. 000079-19-6) (CERCLA; EPCRA EHS; RCRA APP8; RCRA P) (Ref. 8). The oral LD_{50}s for thiosemicarbazide in rats and dogs are 9.16 and 10 mg/kg, respectively. The LDLo in the mouse is 94 mg/kg. Cats orally administered thiosemicarbazide experienced convulsions, salivation, and vomiting; the LD_{50} was 20 mg/kg. Intraperitoneal injection of 2.5 mg/kg of thiosemicarbazide produced restlessness, running fits, and convulsions in rabbits. EPA's exposure analysis indicates that thiosemicarbazide concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing thiosemicarbazide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

253. *Triadimefon (1-(4-chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone)* (CAS No. 043121-43-3) (FIFRA AI) (Ref. 3). Decreased hematocrit, red blood cell count, and hemoglobin volume were observed in dogs orally administered 60 mg/kg/day (LOEL) for 13 weeks. No NOEL was established. In a 2–year dietary rat study, decreased hemoglobin and erythrocyte counts were observed at 25 mg/kg/day (LOEL). The NOEL was 2.5 mg/kg/day. Based on the NOEL of the study, an oral RfD of 0.03 mg/kg/day was derived. Dietary administration of 25 mg/kg/day (LOEL) for 2 years to dogs produced increased serum alkaline phosphatase and N-demethylase activity and increased liver weight. The NOEL was 2.5 mg/kg/day. Increased erythrocyte count, thrombocyte count, hemoglobin, and hematocrit levels in females and increased serum alkaline phosphatase, serum glutamic-pyruvic transaminase, serum glutamic-oxaloacetic transaminase, liver weights, and hyperplastic nodules in both sexes were observed at 234 mg/kg/day in a 2–year mouse dietary study. The NOEL was 6.5 mg/kg/day and the LOEL was 39 mg/kg/day. In another 2–year mouse dietary study, administration of 234 mg/kg/day produced hepatocellular adenomas. Doses of 39 mg/kg/day in males (LOEL) and 6.5 mg/kg/day in females (LOEL) produced nonneoplastic and preneoplastic changes in the liver, increased liver weights with correlating effects on serum enzymes, and hepatocellular hypertrophy. The NOEL in males was 6.5 mg/kg/day and no NOEL in females could be established.

Cleft palates were observed in the offspring of rats orally administered 75 mg/kg/day (LOEL). The NOEL was 30 mg/kg/day. Increased incidence of abnormal ribs, extra ribs, and distended urinary bladders were observed in the offspring of rats orally administered 90 mg/kg/day (LOEL). The NOEL was 30 mg/kg/day. Increases in fetal resorptions were observed in rabbits given 100 mg/kg/day by gavage (LOEL). The NOEL was 30 mg/kg/day. Increased incidences of incomplete ossification of pelvic pubes and phalanges, and irregular spinous processes were observed in the offspring of rabbits orally administered 50 mg/kg/day (LOEL) on days 6 through 18 of gestation. The NOEL was 20 mg/kg/day.

In a 3-generation rat reproduction study, decreased fertility and decreased litter size were observed at 90 mg/kg/day (LOEL). The NOEL was 15 mg/kg/day. In a 2-generation reproduction study in rats, decreased pup weights, decreased litter size, and decreased pup viability were observed at 90 mg/kg/day (LOEL). The NOEL was 2.5 mg/kg/day.

EPA believes that there is sufficient evidence for listing triadimefon on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic, hematological, developmental, and reproductive toxicity data for this chemical.

254. *Triallate* (CAS No. 002303-17-5) (FIFRA SR) (Ref. 8). Triallate, a dithiocarbamate insecticide, is a cholinesterase inhibitor. When triallate was administered to rats at a dose of 147.1 mg/kg/day orally and to cats at a dose of 0.028 mg/L/day (via aerosol) for 2 months, the animals developed fatal morphological changes in neurons of the cerebral cortex, subcortical area, cerebellum, and spinal cord. Doses of 30 mg/kg/day caused head bobbing and circling in pregnant rats. The NOEL was 7.5 mg/kg/day. The LOEL and NOEL for liver effects in a 2–year study in dogs fed diets containing triallate were 4.25 mg/kg/day and 1.28 mg/kg/day, respectively. At 4.25 mg/kg/day an increase in hemosiderin deposition and serum alkaline phosphatase was observed in both sexes, and an increase in liver weight was observed in females. Based on the NOEL, an oral RfD of 0.013 mg/kg/day was derived. In a hamster chronic feeding study, decreased triglycerides were seen in males at the LOEL of 30 mg/kg/day. The NOEL was 5 mg/kg/day. Ninety-day feeding studies in rats (10 mg/kg/day) and dogs (5 mg/kg/day) showed no treatment related adverse effects except for increased liver-to-body-weight ratios in the dogs. EPA believes that there is sufficient evidence for listing triallate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurological and hepatic toxicity data for this chemical.

255. *Tribenuron methyl (2-((((4-methoxy-6-methyl-1,3,5-triazin-2-yl)-methylamino)carbonyl)amino)sulfonyl)-, methyl ester)* (CAS No. 101200-48-0) (FIFRA AI) (Ref. 3). In a 1-year feeding study in dogs, elevated serum bilirubin and aspartate aminotransferase (AST) levels and increased urinary volume were reported in males receiving 8.16 mg/kg/day (LOEL). The NOEL for males was 0.79 mg/kg/day. The LOEL for females was 52.02 mg/kg/day (the highest dose tested) and was based on increased serum creatinine and transient increases in AST, globulin, and serum bilirubin. These females had an 18.2 percent decrease in body weight gain. The NOEL for females was 8.18 mg/kg/day. The highest dose in males (51.46 mg/kg/day) caused increases in serum creatinine and a 20 percent decrease in body weight gain. The oral RfD, derived from the NOEL for males, was 0.008 mg/kg/day. In a 90–day feeding study, decreased absolute and relative liver and kidney weights, serum glucose, globulin and cholesterol levels

were observed in rats at 87.5 mg/kg/day (LOEL). The NOEL was 5 mg/kg/day. EPA believes that there is sufficient evidence for listing tribenuron methyl on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hepatic and renal toxicity data for this chemical.

256. *Tributyltin fluoride* (CAS No. 001983-10-4) (FIFRA AI) (Ref. 3). Aquatic acute toxicity values for tributyltin fluoride include a bleak fish 96–hour LC_{50} of 2.3 ppb, an algae 72–hour EC_{50} of 9.3 ppb, and a Harpacticoid copepod 96–hour LC_{50} of 0.8 ppb. EPA believes that there is sufficient evidence for listing tributyltin fluoride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the available environmental toxicity data.

257. *Tributyltin methacrylate* (CAS No. 002155-70-6) (FIFRA AI) (Ref. 3). Pregnant rats were given tributyltin methacrylate by gavage on days 6 to 19 of gestation. Mean fetal weight and maternal body weight gain were decreased at 18 mg/kg/day. Fetal resorptions were also significantly increased. The fetotoxic NOEL for this study was 9 mg/kg/day. EPA believes that there is sufficient evidence for listing tributyltin methacrylate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available developmental toxicity data for this chemical.

258. *S,S,S-Tributyltrithiophosphate (DEF)* (CAS No. 000078-48-8) (FIFRA AI) (Ref. 8). S,S,S-Tributyltrithiophosphate (DEF) is a cholinesterase inhibitor. Both immediate and delayed neurotoxic effects have been reported in humans following exposure to DEF. The exposure levels at which these effects occurred, however, were not reported. In a 3–month hen feeding study, the NOEL for neurotoxic effects was 0.1 mg/kg/day and the LOEL was 0.5 mg/kg/day. At 0.5 mg/kg day, hens showed delayed neurotoxicity, ataxia, and equivocal changes in the spinal cord and peripheral nerves. Based on the NOEL, EPA has derived an oral RfD of 0.00003 mg/kg/day for this chemical. In a 12–week dog feeding study, animals showed over sensitivity to stimuli at 0.62 mg/kg/day; the NOEL was 0.12 mg/kg/day. In the same study, the LOEL for cholinesterase inhibition was 0.12 mg/kg/day and a NOEL was not established. Brain cholinesterase inhibition was observed in a chronic rat feeding study at 1.25 mg/kg/day. The NOEL was 0.25 mg/kg/day. EPA believes that there is sufficient evidence for listing S,S,S-tributyltrithiophosphate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the chronic neurotoxicity data for this chemical.

Measured acute aquatic toxicity data for S,S,S–tributyltrithiophosphate include a rainbow trout 96–hour LC_{50} of 660 ppb (0.660 ppm) and a bluegill 96–hour LC_{50} of 620 ppb (0.620 ppm). The measured log K_{ow} is 5.7. EPA believes that there is sufficient evidence for listing S,S,S-tributyltrithiophosphate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical and its potential for bioaccumulation.

259. *Trichloroacetyl chloride* (CAS No. 000076-02-8) (EPCRA EHS) (Ref. 8). Trichloroacetyl chloride is highly toxic in humans by the oral and inhalation routes of exposure. Numerous cases of strong irritation of the eyes, skin, and respiratory tract and fever, nausea, and vomiting following exposure to trichloroacetyl chloride have been reported. The acute inhalation LC_{50} values for mice and rats are 0.445 mg/L and 0.475 mg/L, respectively, indicating that trichloroacetyl chloride is highly toxic by inhalation in these species. EPA's exposure analysis indicates that trichloroacetyl chloride concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing trichloroacetyl chloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

260. *Trichloroethylsilane* (CAS No. 000115-21-9) (EPCRA EHS) (Ref. 8). Chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. Trichloroethylsilane causes severe burns and the vapor is harmful to humans. The mouse 2–hour inhalation LC_{50} value is 0.30 mg/L. EPA's exposure analysis indicates that trichloroethylsilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing trichloroethylsilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

261. *Trichlorophenylsilane* (CAS No. 000098-13-5) (EPCRA EHS) (Ref. 8). Chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. Trichlorophenylsilane causes severe burns and the vapor is harmful to humans (concentration not specified). The 2–hour mouse inhalation LC_{50} value is 0.33 mg/L. EPA's exposure analysis indicates that trichlorophenylsilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing trichlorophenylsilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

262. *1,2,3-Trichloropropone* (CAS No. 000096-18-4) (RCRA APP8) (Ref. 8). Results of a subchronic oral toxicity study in rats and mice reveal that the primary target organs for 1,2,3-trichloropropane are the liver and kidney. Renal and hepatic necrosis were observed in rats administered 1,2,3-trichloropropane by gavage for 17 weeks. The LOAEL was 16 mg/kg/day and the NOAEL was 8 mg/kg/day for hepatic effects. The LOAEL was 32 mg/kg/day and the NOAEL was 16 mg/kg/day for renal effects. Hepatic necrosis in mice occurred at 125 mg/kg/day. The NOAEL was 63 mg/kg/day. Less severe renal necrotic changes were seen at 250 mg/kg/day. The NOAEL was 125 mg/kg/day. The renal and hepatic lesions were accompanied by increases in organ weights and alterations in serum enzymes that were indicative of hepatic and renal toxicity. At lower dose levels (the LOAEL was 16 mg/kg/day), nonregenerative anemia (decreased hematocrit, hemoglobin, and erythrocyte count) was observed in rats. The NOAEL was 8 mg/kg/day. Nonregenerative anemia is considered to be one of the most sensitive effects of 1,2,3-trichloropropane.

The respiratory tract is a principal target of inhaled 1,2,3-trichloropropane in humans and animals. Irritation of the eyes and throat has been reported in humans acutely exposed (15 minutes) to 100 ppm (0.602 mg/L) of 1,2,3-trichloropropane via inhalation. Irritative effects on the olfactory epithelium have been observed in rats exposed by inhalation to 3 ppm (the LOAEL was 0.018 mg/L; the NOAEL was 0.006 mg/L) of 1,2,3-trichloropropane for 11 days. Histological effects have also been seen in the nasal cavity (the LOEL was 125 mg/kg/day; the NOAEL was 63 mg/kg/day) in rats and in the bronchiolar epithelium (the LOEL was 63 mg/kg/day; the NOAEL was 32 mg/kg/day) in mice that were exposed to 1,2,3-trichloropropane by oral intubation for 17 weeks.

EPA believes that there is sufficient evidence for listing 1,2,3-trichloropropane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the hematological, respiratory, hepatic, and renal toxicity data for this chemical.

263. *Triclopyr triethylammonium salt* (CAS No. 057213-69-1) (FIFRA AI) (Ref. 3). Degeneration of proximal tubules (the LOEL was 20 mg/kg/day; the NOEL was 5 mg/kg/day) was noted in male and female rats fed triclopyr for 3 months. A LOEL of 2.5 mg/kg/day, based on phenosulfophthalein (PSP) excretion, was reported in dogs fed triclopyr for 6 months. A similar effect was also noted at the LOEL of 5 mg/kg/day, determined in dogs fed triclopyr for 8 months. The NOEL was greater than 5 mg/kg/day. Significant increases in absolute and relative kidney weights were observed in rats fed 36 mg/kg/day for 2 years. The NOEL was 12 mg/kg/day. In a pharmacokinetic study, reduced PSP excretion was seen in dogs administered 5 mg/kg/day, whereas no effect on PSP excretion was seen in monkeys administered 20 mg/kg/day. No details on the route and length of exposure were provided. EPA believes that there is sufficient evidence for listing triclopyr triethylammonium salt on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available renal toxicity data.

264. *Triethylamine* (CAS No. 000121-44-8) (CAA HAP) (Ref. 7). Triethylamine is an acute irritant which causes eye and nasal irritation and pulmonary toxicity in mice and rats and is an acute eye toxicant in man.

In a survey of workers exposed to triethylamine, none of the workers reported effects at 5 ppm. Slight to mild effects were noted at concentrations between 5 and 10 ppm and above 10 ppm workers reported visual disturbances which included halo vision and irritation of the eyes, nose, and throat. In a separate report, eye irritation and visual disturbances consisting of foggy vision, blue haze or halo vision (halo around lights) was reported in 19 workers exposed to triethylamine. Exact exposure levels were not determined. The TWA in the work place of those individuals who complained of "blue haze" was 11 mg/m³ with a range of 4 to 24 mg/m³. The American Council of Government and Industrial Hygienists (ACGIH) has set a threshold limit value-time weighted average (TLV-TWA) of 10 ppm and a threshold limit value-short-term exposure limit (TLV-STEL) of 15 ppm based upon inhaletion toxicity in guinea pigs and rats and skin irritation and eye injury in rabbits.

EPA's exposure analysis indicates that triethylamine concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing triethylamine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

265. *Triforine (N,N'-[1,4-piperazinediylbis(2,2,2-trichloroethylidene)] bisformamide)* (CAS No. 026644-46-2) (FIFRA AI) (Ref. 3). In a 2–year feeding study in rats, anemia was reported. The LOEL, based on this effect, was 3,125 ppm (156 mg/kg/day) and the NOEL was 625 ppm (31.25 mg/kg/day). Siderosis of Kupffer cells and bone marrow cells was reported in dogs exposed to triforine in their diet for 2 years. The LOEL in this study was 1,000 ppm (25 mg/kg/day) and the NOEL was 100 ppm (2.5 mg/kg/day). Effects on red blood cells, hematocrit or hemoglobin were also noted in dogs or rats in several 13–week feeding studies. For example, dogs exposed to a 20.6-percent a.i. formulation of the compound for 13 weeks at dose levels that included 600 ppm (the LOEL, equivalent to 15 mg/kg/day or 3.1 mg a.i./kg/day) and 100 ppm (the NOEL, equivalent to 2.5 mg/kg/day or 0.5 mg a.i./kg/day) had siderosis in the liver, spleen, and bone marrow.

A decrease in mean relative weight of offspring was observed in rabbits exposed to 25 mg/kg triforine (the fetotoxicity LOEL). The fetotoxicity NOEL was 5 mg/kg. The LOEL and NOEL for maternal toxicity in this developmental toxicity study were also 25 mg/kg and 5 mg/kg, respectively, and were based on reduced food intake and body weight loss. Fetotoxicity (decreased number of fetuses and increased resorptions) was also reported in the offspring of rats fed 1,600 mg/kg (the fetotoxicity LOEL) for an unspecified duration. The fetotoxicity NOEL was 800 mg/kg.

EPA believes that there is sufficient evidence for listing triforine on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available hematological and developmental toxicity data for this chemical.

266. *Trimethylchlorosilane* (CAS No. 000075-77-4) (EPCRA EHS) (Ref. 8). Chlorinated silanes are very corrosive to the skin and mucous membranes and liberate hydrochloric acid in the presence of water. Trimethylchlorosilane causes severe burns and the vapor is harmful to humans. The mouse inhalation LCLo value is 0.10 mg/L. EPA's exposure analysis indicates that trimethylchlorosilane concentrations are likely to exist beyond facility site boundaries, as a result of continuous, or frequently recurring releases, at levels that can reasonably be anticipated to cause significant adverse acute human health effects. EPA believes that there is sufficient evidence for listing trimethylchlorosilane on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(A) based on the available acute toxicity and exposure data for this chemical.

267. *2,3,5-Trimethylphenyl methylcarbamate* (CAS No. 002655-15-4) (FIFRA AI) (Ref. 3). Cholinesterase inhibition was reported in a series of studies for this carbamate pesticide. In dogs that received 2,000 ppm (50 mg/kg/day) 2,3,5-trimethylphenyl methylcarbamate in their diet for 14 days, there was inhibition of plasma and red blood cell cholinesterases and also weight loss. Brain cholinesterase was slightly decreased in rats in a 2–year feeding study at 200 ppm (10 mg/kg/day). At 800 ppm (40 mg/kg/day), there were fatty changes in the liver which disappeared after 7.5 months. EPA believes that there is sufficient evidence for listing 2,3,5-trimethylphenyl methylcarbamate on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available neurological toxicity data for this chemical.

268. *Triphenyltin chloride* (CAS No. 000639-58-7) (EPCRA EHS) (Ref. 8). Oral exposure of male rats to 380 mg/kg triphenyltin chloride over 19 days caused adverse effects on the testes, epididymis, sperm duct, prostate gland, seminal vesicle, Cowper's gland, and accessory glands. EPA believes that there is sufficient evidence for listing triphenyltin chloride on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the reproductive toxicity data for this chemical.

Measured aquatic acute toxicity data for triphenyltin chloride include a 48–hour LC_{50} for carp of 55 ppb and a 72–hour EC_{50} (growth) for marine green algae of 0.92 ppb. In addition, the measured aquatic toxicity information indicates a freshwater green algae 8–day EC_{50} (growth) of 2 ppb. EPA believes that there is sufficient evidence for listing triphenyltin chloride on EPCRA section 313 pursuant to EPCRA section

313(d)(2)(C) based on the environmental toxicity data for this chemical.

269. *Triphenyltin hydroxide* (CAS No. 000076-87-9) (FIFRA SR) (Ref. 8). Triphenyltin hydroxide has been classified by EPA as a Group B2 compound, i.e., a probable carcinogen. This was based on the significant increases in fetal pituitary gland adenomas in female Wistar rats and Leydig cell tumors in male Wistar rats fed 1 or 4 mg/kg/day triphenyltin hydroxide for 2 years. There were significant increases of hepatocellular adenomas and combined hepatocellular (adenoma and/or carcinoma) tumars in male and female NMRI mice fed 0.65, 2.6, or 10.4 mg/kg/day for 80 weeks.

In a developmental toxicity study in rats, oral doses of 15 mg/kg of triphenyltin hydroxide during gestation days 1 to 7 prevented implantation. When administered from day 8 and onwards, the compound was fetolethal.

EPA believes that there is sufficient evidence for listing triphenyltin hydroxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the carcinogenicity data and the developmental toxicity data for this chemical.

Measured aquatic acute toxicity data for triphenyltin hydroxide include a fathead minnow 96–hour LC_{50} of 5.4 ppb, a bluegill 96–hour LC_{50} of 23 ppb, a rainbow trout 96–hour LC_{50} of 15 ppb, and a marine green algae 72–hour LC_{50} of 13.9 ppb. EPA believes that there is sufficient evidence for listing triphenyltin hydroxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(C) based on the environmental toxicity data for this chemical.

270. *Vanadium pentoxide* (CAS No. 001314-62-1) (CERCLA; EPCRA EHS; RCRA APP8) (Ref. 8). Eighteen workers exposed to vanadium pentoxide dusts at concentration in excess of 0.5 mg/m³ (0.0005 mg/L) for a period of up to 2 weeks developed respiratory symptoms that persisted for nearly 2 weeks after removal from exposure. Inhalation of unspecified levels of vanadium pentoxide for 1 to 5 years produced asthma in 3 of 20 workers. Mice and rats exposed to 1 to 3 mg/m³ (0.001 to 0.003 mg/L) vanadium pentoxide 6 hours/day for 3 months developed histopathologic changes in their lungs and had a decrease in growth rate. EPA believes that there is sufficient evidence for listing vanadium pentoxide on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available chronic respiratory toxicity data for this chemical.

271. *Vinclozolin (3-(3,5-dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione)* (CAS No. 050471-44-8) (FIFRA AI) (Ref. 3). The results of a 3–month feeding study in Wistar rats administered 4,500 ppm (225 mg/kg/day; the only dose tested) indicate that vinclozolin interacts with numerous steroid hormones in male and female animals. A broad spectrum of steroid hormones were affected in these animals, including increases in adrenocorticotropic hormone, lutenizing hormone, follicle stimulating hormone, testosterone, corticosterone, aldosterone, and dehydroepiandrosterone and slight decreases in estradiol levels in males. Female rats had elevated adrenocorticotropic hormone and luteinizing levels and depressed corticosterone and aldosterone levels, while follicle stimulating hormone, testosterone, dehydroepiandrosterone and estradiol levels were comparable to controls. After a 2–month recovery period postdosing, all male hormone levels were normal except for a slight elevation in FSH, and all female hormone levels were normal except for a slight elevation in estradiol. The endocrine changes also were reported in developmental, subchronic, and chronic toxicity studies.

A broad spectrum of organ changes occurred in dogs exposed to vinclozolin in a 1-year feeding study. Males administered 4.8 mg/kg/day (the LOEL for males) had increases in testes weights, increased bilirubin, and prostate atrophy. The NOEL in males was 2.4 mg/kg/day. Females in this study had increased adrenal weights, lipid accumulation in the adrenal glands, and marginally increased hemosiderin in the liver at 5.1 mg/kg/day (the LOEL for females). The NOEL for females was 2.5 mg/kg/day. At higher doses (47 mg/kg/day in males and 53 mg/kg/day in females), there were increases in weights of the liver, spleen, testes, adrenal, and thyroid. Other effects included increased diffuse hyperplasia of the Leydig cells, lipid accumulation in the adrenal cortex, and increased platelets in males, and in females, slight increases in mean corpuscular volume and mean corpuscular hemoglobin concentration. The oral RfD for this compound, 0.025 mg/kg/day, was based on the findings of a 6–month feeding study with beagle dogs, in which adrenal weights (absolute and relative) were significantly increased at 7.5 mg/kg/day (the LOEL). The NOEL was 2.5 mg/kg/day. Both males and females exposed to higher doses (600 and 2,000 ppm, or 15 and 50 mg/kg/day) had histological changes in the adrenal glands, including vacuolation of the zona fasciculata. In addition to effects on the adrenal gland, males exposed to the LOEL dose and higher had decreased absolute kidney weights, and at 600 ppm, fat droplets in the distal tubule were observed.

Pseudohermaphroditism (a decrease in anal-genital distance) occurred in male offspring of rats administered doses of 50 mg/kg (the LOEL) and higher by gavage. The developmental NOEL was 15 mg/kg. The same effect was noted in the offspring of rats that received dermal applications of 180 mg/kg/day (LOEL; the developmental NOEL was 60 mg/kg/day) during gestation, and also in a 2-generation reproduction study in rats (the LOEL was 86 mg/kg/day, the NOEL was 25 mg/kg/day). Other developmental effects observed in the latter study included developmental delays, reduced male and female pup weight, increased stillbirths and increased pup mortality throughout lactation.

EPA believes that there is sufficient evidence for listing vinclozolin on EPCRA section 313 pursuant to EPCRA section 313(d)(2)(B) based on the available endocrine, adrenal, renal, hepatic, and developmental toxicity data.

V. Rationale for Listing

EPA is proposing to add the chemical substances identified in Unit IV.B. of this preamble because EPA believes that these chemicals meet the statutory criteria for listing under section 313(d)(2) of EPCRA. The bases for these determinations and the specific toxic effects are summarized in Unit IV.B. of this preamble and set forth in more detail in the rulemaking record.

EPA intends to evaluate public comment on this proposed rule and issue a final rule by November 30, 1994. Reporting for the chemicals identified in the final rule would be required for activities during the 1995 calendar year. Such reports would have to be submitted to EPA and States by July 1, 1996.

VI. Rulemaking Record

The record supporting this proposed rule is contained in docket number OPPTS–400082. Nonconfidential documents, including an index of the docket, are available to the public in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA Public Docket Office is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

Any person who submits comments claimed as CBI must mark the comments as "confidential," "CBI," or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version of the comments in triplicate that EPA can place in the public file.

VII. Request for Public Comment

EPA requests comment on any aspect of this proposal. EPA requests specific comment as detailed in the following paragraphs.

EPA requests comment on the sufficiency of the evidence for each of the chemicals proposed for addition in Unit IV.B. of this preamble. In addition, EPA requests comment on any issues that may be specific to any of the individual chemicals or chemical categories.

EPA requests comment on whether it would be appropriate to list persistent bioaccumulative toxic chemicals that are manufactured, processed, or otherwise used below the current reporting thresholds on EPCRA section 313. If EPA were to add this type of chemical to EPCRA section 313, what modifications to EPCRA section 313, such as lowering the reporting thresholds and modifying the *de minimis* in mixture exemptions, would be required to insure that release and transfer information would be collected?

In Units IV.B.132., IV.B.144., and IV.B.158., of this preamble, EPA is proposing to add individually three diisocyanates: hexamethylene-1,6-diisocyante; isophorone diisocyanate; and 1,1-methylene bis(4-isocyanatocyclohexane). EPA requests comment on its alternative proposal in Unit IV.B.132. of this preamble to create a diisocyanates category rather than adding diisocyanates individually to EPCRA section 313. EPA also requests comment on what diisocyanates, other than those listed in IV.B.132. of this preamble, should be included in such a category.

EPA requests comment on its proposed definition of man-made mineral fibers, given in Unit IV.B.149. of this preamble, and any other options for defining a fibers category.

In Unit IV.B.166. and 172. of this preamble, EPA is proposing to add two ethylene bisdithiocarbamates (EBDCs): metiram; and nabam. An additional two EBDCs, zineb and maneb, are currently listed on the EPCRA section 313 list of toxic chemicals. The category of EBDCs has recently been added to EPCRA section 313 (December 1, 1993; 58 FR 63500). EPA requests comment on the following: (1) Should the individual EBDCs, metiram and nabam, be added individually to EPCRA section 313 even though they are members of the EBDC category, which is listed on EPCRA section 313; and (2) should the individual listings for two EBDCs, zineb and maneb, be deleted and added as members of the newly created EBDC category?

EPA requests comment on whether polycyclic aromatic compounds (PACs) should be added as a delineated category consisting of the PACs listed in Unit IV.B.207. of this preamble or as a category with the definition given in Unit IV.B.207. of this preamble.

EPA requests comment on its approach in considering exposure as a part of its evaluation of certain chemicals under sections 313(d)(2)(A) and (C).

In Units IV.B.38, 179., and 235. of this preamble, EPA is proposing to add three chemicals (sulfur dioxide, nitrogen dioxide, and carbon monoxide) that are regulated by Title I of the CAA (Provisions for Attainment and Maintenance of National Ambient Air Quality Standards). In addition, sulfur dioxide is regulated under Title IV of the CAA (Acid Deposition Control). Extensive data, which are highly technical, are collected on these chemicals as required by the CAA. EPA requests comment on the following: (1) Is the information collected under the CAA sufficient for public right-to-know purposes; and (2) suggestions on how the data collected on these chemicals pursuant to CAA Titles I and IV could be used to meet the purposes of EPCRA section 313.

Comments should be submitted to the address listed under the ADDRESSES unit. All comments must be received on or before April 12, 1994.

VIII. Public Meeting

EPA will hold a 1–day public meeting to discuss the issues presented above. The tentative agenda for this public meeting will include a discussion of the issues presented in Unit VII. of this preamable.

Scheduling of oral statements will be on a first come first served basis by calling the telephone number listed under FOR FURTHER INFORMATION CONTACT. All statements will be made part of the public record and will be considered in the development of the final rule.

IX. References

(1) U.S. Congress, House of Representatives. "Conference Report No. 962," 99th Cong., 2nd Session. 294 (1986).

(2) USEPA/OHEA. *Risk Assessment Guidelines for Carcinogen Risk.* U.S. Environmental Protection Agency, Cincinnati, OH. (1987).

(3) USEPA/OPP. *Support Document for the Addition of Chemicals from Federal Insecticide, Fungicide, Rodenticide Act (FIFRA) Active Ingredients to EPCRA Section 313.* U. S. Environmental Protection Agency, Washington, DC (1993).

(4) USEPA/OPPT. *Issue Paper Prepared for the Public Meeting on Expansion of the Toxic Release Inventory.* U. S. Environmental Protection Agency, Washington, DC (1993).

(5) USEPA/OPPT. *Physical Properties and Environmental Fote of Some TRI Expansion Chemicals.* U. S. Environmental Protection Agency, Washington, DC (1993).

(6) USEPA/OPPT. *Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory.* U. S. Environmental Protection Agency, Washington, DC (1992).

(7) USEPA/OPPT. *Support Document for the Addition of Chemicals from Section 112(b) of the Clean Air Act Amendments and Chlorinated Paraffins to EPCRA Section 313.* U. S. Environmental Protection Agency, Washington, D.C. (1993).

(8) USEPA/OPPT. *Support Document for the Health and Ecological Toxicity Review of TRI Expansion Chemicals.* U. S. Environmental Protection Agency, Washington, DC (1993).

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to the Office of Management and Budget (OMB) and the requirements of the Executive Order. Under section 3(f), the order defines a "significant regulatory action" as an action likely to result in a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also referred to as "economically significant"); (2) creating serious inconsistency or otherwise

interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, it has been determined that this proposed rule is a "significant regulatory action." As such, this action was submitted to OMB for review, and any comments or changes made in response to OMB suggestions or recommendations have been documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." The analysis supporting this proposed rule estimated the maximum cost that a small business might incur, and calculated the cost impact percentage (reporting costs divided by average value of shipments) for each employee size, class, and SIC code.

Reporting costs are estimated at less than one percent of the average value of shipments per report in the first year, and less than one-half of one percent of the value of shipments per report in subsequent years. The precise impacts depend on how many reports an individual small business submits. However, experience with current reporters indicates that small businesses generally submit fewer reports per facility than larger ones. Most of the reports are anticipated to be submitted from industries with the lowest impacts. Because of this, no segment of the manufacturing sector is likely to suffer significant adverse effects due to this rule. Therefore, EPA certifies that this proposed rule will not have a significant impact on a substantial number of small entities.

C. Paperwork Reduction Act

The collection of information and other requirements under section 313 of EPCRA and section 6607 of the PPA are covered under OMB approval number 2070–0093, which was issued on May 14, 1992. While this approval normally would have expired on November 30, 1992, it remains in effect pursuant to the 1993 Department of Veteran Affairs and Housing and Urban Development and Independent Agencies Appropriations Act, Pub. L. 102–389, signed October 6, 1992, which states that:

Notwithstanding the Paperwork Reduction Act of 1980 or any requirements thereunder the Environmental Protection Agency Toxic Chemical Release Inventory Form R and Instructions, revised 1991 version issued May 19, 1992, and related requirements (OMB No. 2070–0093), shall be effective for reporting under section 6607 of the Pollution Prevention Act of 1990 (Public Law 101508) and section 313 of the Superfund Amendments and Reauthorization Act of 1986 (Public Law 99-499) until such time as revisions are promulgated pursuant to law.

This proposed rule adds chemicals to the list of toxic chemicals subject to reporting under section 313 of EPCRA and section 6607 of the PPA and does not change the elements of the TRI reporting form, its instructions, or related requirements. Accordingly, the Form R and Instructions and related requirements remain in effect, as provided by Pub. L. 102-389.

The industry reporting burden for collecting this information is estimated to average 53 hours per respondent annually, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The actual burden to a specific facility may deviate from this estimate depending on the complexity of the facility's operations and the profile of the release.

Send comments regarding this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on this collection of information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals

Dated: January 6, 1994.

Carol M. Browner,

Administrator.

Therefore it is proposed that 40 CFR part 372 be amended to read as follows:

Part 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically, to paragraph (b) by CAS no. sequence, and to paragraph (c) by alphabetically adding four categories to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective Date
Abamectin [Avermectin B1]	71751-41-2	1/1/95
Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	30560-19-1	1/1/95
Acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt]	62476-59-9	1/1/95
Alachlor	15972-60-8	1/1/95
Aldicarb	116-06-3	1/1/95
d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone]	28057-48-9	1/1/95
Allylamine	107-11-9	1/1/95
Aluminum phosphide	20859-73-8	1/1/95
Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine-2,4-diamine)	834-12-8	1/1/95
Amitraz	33089-61-1	1/1/95

Chemical Name	CAS No.	Effective Date
Anilazine [4,6-dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine]	101-05-3	1/1/95
Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)	1912-24-9	1/1/95
Bendiocarb [2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate]	22781-23-3	1/1/95
Benfluralin (N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine)	1861-40-1	1/1/95
Benomyl	17804-35-2	1/1/95
o-Benzyl-p-chlorophenol	120-32-1	1/1/95
Bifenthrin	82657-04-3	1/1/95
Bis(tributylin) oxide	56-35-9	1/1/95
Boron trichloride	10294-34-5	1/1/95
Boron trifluoride	7637-07-2	1/1/95
Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)	314-40-9	1/1/95
Bromacil, lithium salt [2,4-(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3-(1-methylpropyl), lithium salt]	53404-19-6	1/1/95
Bromine	7726-95-6	1/1/95
1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	35691-65-7	1/1/95
2-Bromo-2-nitropropane-1,3-diol (Bronopol)	52-51-7	1/1/95
Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	1689-84-5	1/1/95
Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester)	1689-99-2	1/1/95
Brucine	357-57-3	1/1/95
Butylate (Bis-2-methylpropyl)carbamothioic acid S-ethyl ester)	2008-41-5	1/1/95
Butylated hydroxyanisole	25013-16-5	1/1/95
C.I. Acid Red 114	6459-94-5	1/1/95
C.I. Direct Blue 218	28407-37-6	1/1/95
Calcium hypochlorite	7778-54-3	1/1/95
Caprolactam	105-60-2	1/1/95
Carbofuran	1563-66-2	1/1/95
Carbon monoxide	630-08-0	1/1/95
Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	5234-68-4	1/1/95
Chinomethionat [6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one]	2439-01-2	1/1/95
Chlorendic acid	115-28-6	1/1/95
Chlorimuron ethyl [Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate]	90982-32-4	1/1/95
1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	4080-31-3	1/1/95
p-Chloroaniline	106-47-8	1/1/95
5-Chloro-2-(2,4-dichlorophenoxy)phenol	3380-34-5	1/1/95
3-Chloro-2-methyl-1-propene	563-47-3	1/1/95
p-Chlorophenyl isocyanate	104-12-1	1/1/95
Chloropicrin	76-06-2	1/1/95
3-Chloropropionitrile	542-76-7	1/1/95
p-Chloro-o-toluidine	95-69-2	1/1/95

Chemical Name	CAS No.	Effective Date
2-Chloro-1,1,1-trifluoro-ethane (HCFC-133a)	75-88-7	1/1/95
Chlorotrifluoromethane (CFC-13)	75-72-9	1/1/95
3-Chloro-1,1,1-trifluoro-propene (HCFC-253fb)	460-35-5	1/1/95
Chlorpyrifos methyl [O,O-dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate	5598-13-0	1/1/95
Chlorsulfuron [2-chloro-N-[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino]carbonyl]benzenesulfonamide]	64902-72-3	1/1/95
Clomazone [2-[(2-Chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone]	81777-89-1	1/1/95
Crotonaldehyde	4170-30-3	1/1/95
Cyanazine	21725-46-2	1/1/95
Cycloate	1134-23-2	1/1/95
Cyclohexanol	108-93-0	1/1/95
Cyfluthrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester]	68359-37-5	1/1/95
Cyhalothrin [3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2-dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester]	68085-85-8	1/1/95
Cyromazine [N-Cyclopropyl-1,3,5-triazine-2,4,6-triamine]	66215-27-8	1/1/95
Dazomet(Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	533-74-4	1/1/95
Dazomet, sodium salt [Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium]	53404-60-7	1/1/95
2,4,-DB	94-82-6	1/1/95
2,4-D butoxyethyl ester	1929-73-3	1/1/95
2,4-D butyl ester	94-80-4	1/1/95
2,4-D chlorocrotyl ester	2971-38-2	1/1/95
Desmedipham	13684-56-5	1/1/95
2,4-D 2-ethylhexyl ester	1928-43-4	1/1/95
2,4-D 2-ethyl-4-methylpentyl ester	53404-37-8	1/1/95
Diazinon	333-41-5	1/1/95
2,2-Dibromo-3-nitrilopropionamide	10222-01-2	1/1/95
Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)	1918-00-9	1/1/95
Dichloran [2,6-Dichloro-4-nitroaniline]	99-30-9	1/1/95
3,3'-Dichlorobenzidine dihydrochloride	612-83-9	1/1/95
3,3'-Dichlorobenzidine sulfate	64969-34-2	1/1/95
trans-1,4-Dichloro-2-butene	110-57-6	1/1/95
1,2-Dichloro-1,1-difluoroethane (HCFC-132b)	1649-08-7	1/1/95
Dichlorofluoromethane (HCFC-21)	75-43-4	1/1/95
Dichloromethylphenylsilane	149-74-6	1/1/95
Dichloropentafluoropropane	127564-92-5	1/1/95
1,1-dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	13474-88-9	1/1/95
1,1-dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	111512-56-2	1/1/95
1,2-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	422-44-6	1/1/95
1,2-dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	431-86-7	1/1/95
1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	507-55-1	1/1/95
1,3-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	136013-79-1	1/1/95
2,2-dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	128903-21-9	1/1/95
2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	422-48-0	1/1/95
3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	422-56-0	1/1/95
Dichlorophene [2,2'-Methylene-bis(4-chlorophenol)]	97-23-4	1/1/95
trans-1,3-Dichloropropene	10061-02-6	1/1/95
Diclofop methyl [2-[4-(2,4-Dichlorophenoxy)phenoxy]propanoic acid, methyl ester]	51338-27-3	1/1/95
Dicyclopentadiene	77-73-6	1/1/95
Diethatyl ethyl	38727-55-8	1/1/95

Chemical Name	CAS No.	Effective Date
Diflubenzuron	35367-38-5	1/1/95
Diglycidyl resorcinol ether	101-90-6	1/1/95
Dimethipin [2,3,-Dihydro-5,6-dimethyl-1,4-dithiin-1,1,4,4-tetraoxide]	55290-64-7	1/1/95
Dimethoate	60-51-5	1/1/95
3,3'-Dimethoxybenzidine dihydrochloride (o-Dianisidine dihydrochloride)	20325-40-0	1/1/95
3,3'-Dimethoxybenzidine hydrochloride (o-Dianisidine hydrochloride)	111984-09-9	1/1/95
Dimethylamine	124-40-3	1/1/95
Dimethylamine dicamba	2300-66-5	1/1/95
3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	612-82-8	1/1/95
3,3'-Dimethylbenzidine dihydrofluoride (o-Tolidine dihydrofluoride)	41766-75-0	1/1/95
Dimethyl chlorothiophosphate	2524-03-0	1/1/95
Dimethyldichlorosilane	75-78-5	1/1/95
N,N-Dimethylformamide	68-12-2	1/1/95
2,6-Dimethylphenol	576-26-1	1/1/95
Dinocap	39300-45-3	1/1/95
Dinoseb	88-85-7	1/1/95
Diphenamid	957-51-7	1/1/95
Diphenylamine	122-39-4	1/1/95
Dipotassium endothall [7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt]	2164-07-0	1/1/95
Dipropyl isocinchomeronate	136-45-8	1/1/95
Disodium cyanodithioimidocarbonate	138-93-2	1/1/95
2,4-D isopropyl ester	94-11-1	1/1/95
2,4-Dithiobiuret	541-53-7	1/1/95
Dithiopyr [2-(Difluoromethyl)-4-(2-methylpropyl)-6-(trifluoromethyl)-3,5-pyridinedicarbothioic acid S,S-di-methyl ester]	97886-45-8	1/1/95
Diuron	330-54-1	1/1/95
2,4-D 2-octyl ester	1917-97-1	1/1/95
Dodine [Dodecylguanidine monoacetate]	2439-10-3	1/1/95
2,4,-DP	120-36-5	1/1/95
2,4-D propylene glycol butyl ether ester	1320-18-9	1/1/95
2,4-D sodium salt	2702-72-9	1/1/95
Ethoprop [Phosphorodithioic acid O-ethyl S,S-dipropyl ester]	13194-48-4	1/1/95
Ethyl dipropylthiocarbamate [EPTC]	759-94-4	1/1/95
Famphur	52-85-7	1/1/95
Fenarimol [.alpha.-(2-Chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidinemethanol]	60168-88-9	1/1/95
Fenbutatin oxide (Hexakis(2-methyl-2-phenyl-propyl)distannoxane)	13356-08-6	1/1/95
Fenoxaprop ethyl [2-(4-((6-Chloro-2-benzoxazolylen)oxy)phenoxy)propanoic acid,ethyl ester]	66441-23-4	1/1/95
Fenoxycarb [2-(4-Phenoxyphenoxy)ethyl]carbamic acid ethyl ester]	72490-01-8	1/1/95
Fenpropathrin [2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxy-phenyl)methyl ester]	39515-41-8	1/1/95
Fenthion [O,O-Dimethyl O-[3-methyl-4-(methylthio)phenyl]ester, phosphorothioic acid]	55-38-9	1/1/95
Fenvalerate [4-Chloro-alpha-(1-methylethyl)benzeneacetic acid cyano(3-phenoxyphenyl)methyl ester]	51630-58-1	1/1/95
Ferbam [Tris(dimethylcarbamo-dithioato-S,S')iron]	14484-64-1	1/1/95
Fluazifop-butyl [2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester]	69806-50-4	1/1/95
Flumetralin [2-Chloro-N-(2,6-dinitro-4-(trifluoromethyl)phenyl)-N-ethyl-6-fluorobenzenemethanamine]	62924-70-3	1/1/95
Fluorine	7782-41-4	1/1/95
Fluorouracil (5-Fluorouracil)	51-21-8	1/1/95
Fluvalinate [N-[2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano (3-phenoxyphenyl)methyl ester]	69409-94-5	1/1/95
Folpet	133-07-3	1/1/95
Fomesafen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N-methylsulfonyl)-2-nitrobenzamide]	72178-02-0	1/1/95
alpha-Hexachlorocyclohexane	319-84-6	1/1/95
Hexamethylene-1,6-diisocyanate	822-60-0	1/1/95
n-Hexane	110-54-3	1/1/95
Hexazinone	51235-04-2	1/1/95

Chemical Name	CAS No.	Effective Date
Hydramethylnon [Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone[3-[4-(trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2-propenylidene]hydrazone]	67485-29-4	1/1/95
Imazalil [1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole]	35554-44-0	1/1/95
3-Iodo-2-propynyl butylcarbamate	55406-53-6	1/1/95
Iprodione [3-(3,5-Dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidinecarboxamide]	36734-19-7	1/1/95
Iron pentacarbonyl	13463-40-6	1/1/95
Isodrin	465-73-6	1/1/95
Isofenphos [2-[[Ethoxyl[(1-methylethyl)amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester]	25311-71-1	1/1/95
Isophorone	78-59-1	1/1/95
Isophorone diisocyanate	4098-71-9	1/1/95
Lactofen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1- methyl-2-oxoethyl ester]	77501-63-4	1/1/95
Linuron	330-55-2	1/1/95
Lithium carbonate	554-13-2	1/1/95
Malathion	121-75-5	1/1/95
Mecoprop	93-65-2	1/1/95
2-Mercaptobenzothiazole (MBT)	149-30-4	1/1/95
Merphos	150-50-5	1/1/95
Metham sodium (Sodium methyldithiocarbamate)	137-42-8	1/1/95
Methazole [2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione]	20354-26-1	1/1/95
Methiocarb	2032-65-7	1/1/95
Methoxone (4-Chloro-2-methylphenoxy) acetic acid (MCPA))	94-74-6	1/1/95
Methoxone-sodium salt ((4-chloro-2-methylphenoxy) acetate sodium salt)	3653-48-3	1/1/95
1,1'-Methylene bis(4-isocyanatocyclohexane)	5124-30-1	1/1/95
Methylene bis(thiocyanate)	6317-18-6	1/1/95
Methyl isothiocyanate [Isothiocyanatomethane]	556-61-6	1/1/95
2-Methyllactonitrile	75-86-5	1/1/95
N-Methylolacrylamide	924-42-5	1/1/95
Methyl parathion	298-00-0	1/1/95
N-Methyl-2-pyrrolidone	872-50-4	1/1/95
Methyltrichlorosilane	75-79-6	1/1/95
Metiram	9006-42-2	1/1/95
Metribuzin	21087-64-5	1/1/95
Mevinphos	7786-34-7	1/1/95
Molinate (1H-Azepine-1-carbothioic acid, hexahydro-S-ethyl ester)	2212-67-1	1/1/95
Monuron	150-68-5	1/1/95
Myclobutanil [.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole-1-propanenitrile]	88671-89-0	1/1/95
Nabam	142-59-6	1/1/95
Naled	300-76-5	1/1/95
Nitrapyrin (2-Chloro-6-(trichloromethyl) pyridine)	1929-82-4	1/1/95
Nitrate ion	14797-55-8	1/1/95
Nitric oxide	10102-43-9	1/1/95
p-Nitroaniline	100-01-6	1/1/95
Nitrogen dioxide	10102-44-0	1/1/95
Norflurazon [4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]-3(2H)-pyridazinone]	27314-13-2	1/1/95

Chemical Name	CAS No.	Effective Date
Oryzalin [4-(Dipropylamino)-3,5-dinitrobenzenesulfonamide]	19044-88-3	1/1/95
Oxydemeton methyl [S-(2-(ethylsulfinyl)ethyl) o,o-dimethyl ester phosphorothioic acid]	301-12-2	1/1/95
Oxydiazon [3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one]	19666-30-9	1/1/95
Oxyfluorfen	42874-03-3	1/1/95
Ozone	10028-15-6	1/1/95
Paraquat dichloride	1910-42-5	1/1/95
Pebulate [Butylethylcarbamothioic acid S-propyl ester]	1114-71-2	1/1/95
Pendimethalin [N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzenamine]	40487-42-1	1/1/95
Pentobarbital sodium	57-33-0	1/1/95
Perchloromethyl mercaptan	594-42-3	1/1/95
Permethrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester]	52645-53-1	1/1/95
Phenanthrene	85-01-8	1/1/95
Phenothrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester]	26002-80-2	1/1/95
1,2-Phenylenediamine	95-54-5	1/1/95
1,3-Phenylenediamine	108-45-2	1/1/95
1,2-Phenylenediamine dihydrochloride	615-28-1	1/1/95
1,4-Phenylenediamine dihydrochloride	624-18-0	1/1/95
Phenytoin	57-41-0	1/1/95
Phosphine	7803-51-2	1/1/95
Phosphorous oxychloride	10025-87-3	1/1/95
Phosphorous pentachloride	10026-13-8	1/1/95
Phosphorous pentasulfide	1314-80-3	1/1/95
Phosphorous pentoxide	1314-56-3	1/1/95
Picloram	1918-02-1	1/1/95
Piperonyl butoxide	51-03-6	1/1/95
Pirimiphos methyl [O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethylphosphorothioate]	29232-93-7	1/1/95
Potassium bromate	7758-01-2	1/1/95
Potassium dimethyldithiocarbamate	128-03-0	1/1/95
Potassium N-methyldithiocarbamate	137-41-7	1/1/95
Primisulfuron [Methyl 2-[[[[4,6-bis(difluoromethoxy)-2-pyrimidinyl]- amino]carbonyl]amino]sulfonyl]benzoate]	86209-51-0	1/1/95
Profenofos [O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate]	41198-08-7	1/1/95
Prometryn [N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4- diamine]	7287-19-6	1/1/95
Propachlor [2-Chloro-N-(1-methylethyl)-N-phenylacetamide]	1918-16-7	1/1/95
Propanil [N-(3,4-Dichlorophenyl)propanamide]	709-98-8	1/1/95
Propargite	2312-35-8	1/1/95
Propargyl alcohol	107-19-7	1/1/95
Propetamphos [3-[[(Ethylamino)methoxyphosphinothioyl]oxy]-2-butenoic acid, 1-methylethyl ester]	31218-83-4	1/1/95
Propiconazole [1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]- methyl-1H-1,2,4,-triazole]	60207-90-1	1/1/95
Quizalofop-ethyl [2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy]propanoic acid ethyl ester]	76578-14-8	1/1/95
Resmethrin [[5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate]]	10453-86-8	1/1/95
Sethoxydim [2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one]	74051-80-2	1/1/95
Simazine	122-34-9	1/1/95
Sodium azide	26628-22-8	1/1/95
Sodium chlorite	7758-19-2	1/1/95
Sodium dicamba [3,6-Dichloro-2-methoxybenzoic acid, sodium salt]	1982-69-0	1/1/95
Sodium dimethyldithiocarbamate	128-04-1	1/1/95
Sodium fluoroacetate	62-74-8	1/1/95

Chemical Name	CAS No.	Effective Date
Sodium hypochlorite	7681-52-9	1/1/95
Sodium nitrite	7632-00-0	1/1/95
Sodium pentachlorophenate	131-52-2	
Sodium o-phenylphenoxide	132-27-4	1/1/95
Sodium 2-pyridinethiol-1-oxide	15922-78-8	1/1/95
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Sulfur dioxide	7446-09-5	1/1/95
• • • • • • • •		
Sulfur trioxide	7446-11-9	1/1/95
Sulfuryl fluoride [Vikane]	2699-79-8	1/1/95
Sulprofos [O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S-propyl ester]	35400-43-2	1/1/95
Tebuthiuron [N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'-dimethylurea]	34014-18-1	1/1/95
Tefluthrin	79538-32-2	1/1/95
Temephos	3383-96-8	1/1/95
Terbacil [5-Chloro-3-(1,1-dimethylethyl)-6-methyl-2,4(1H,3H)-pyrimidinedione]	5902-51-2	1/1/95
• • • • • • • •		
1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	354-11-0	1/1/95
1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	354-14-3	1/1/95
• • • • • • • •		
Tetracycline hydrochloride	64-75-5	1/1/95
Tetramethrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester]	7696-12-0	1/1/95
Tetrasodium ethylenediaminetetraacetate	64-02-8	1/1/95
• • • • • • • •		
Thiabendazole [2-(4-Thiazolyl)-1H-benzimidazole]	148-79-8	1/1/95
Thiabendazole, hypophosphite salt [2-(4-Thiazolyl)benzimidazole, hypophosphite salt]	28558-32-9	1/1/95
• • • • • • • •		
Thiobencarb [Carbamic acid, diethylthio-, s-(p-chlorobenzyl)]	28249-77-6	1/1/95
• • • • • • • •		
Thiodicarb	59669-26-0	1/1/95
Thiophanate ethyl [[1,2-Phenylenebis(iminocarbonothioyl)]biscarbamic acid diethyl ester]	23564-06-9	1/1/95
Thiophanate-methyl	23564-05-8	1/1/95
Thiosemicarbazide	79-19-6	1/1/95
• • • • • • • •		
Triadimefon [1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone]	43121-43-3	1/1/95
Triallate	2303-17-5	1/1/95
• • • • • • • •		
Tribenuron methyl [2-(((((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)- methylamino)carbonyl)amino)sulfonyl)-, methyl ester]	101200-48-0	1/1/95
Tributyltin fluoride	1983-10-4	1/1/95
Tributyltin methacrylate	2155-70-6	1/1/95
S,S,S-Tributyltrithiophosphate (DEF)	78-48-8	1/1/95
• • • • • • • •		
Trichloroacetyl chloride	76-02-8	1/1/95
• • • • • • • •		
Trichloroethylsilane	115-21-9	1/1/95
• • • • • • • •		
Trichlorophenylsilane	98-13-5	
1,2,3-Trichloropropane	96-18-4	1/1/95
Triclopyr, triethylammonium salt	57213-69-1	1/1/95
Triethylamine	121-44-8	1/1/95
Triforine [N,N'-[1,4-Piperazinediyl-bis(2,2,2-trichloroethylidene)] bisformamide]	26644-46-2	1/1/95
• • • • • • • •		
Trimethylchlorosilane	75-77-4	1/1/95
2,3,5-Trimethylphenyl methylcarbamate	2655-15-4	1/1/95
Triphenyltin chloride	639-58-7	1/1/95
Triphenyltin hydroxide	76-87-9	1/1/95
• • • • • • • •		
Vanadium pentoxide	1314-62-1	1/1/95
Vinclozolin [3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4-oxazolidinedione]	50471-44-8	1/1/95
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(b) • • •

CAS No.	Chemical Name	Effective Date
• • • • • • • •		
51-03-6	Piperonyl butoxide	1/1/95
51-21-8	Fluorouracil (5-Fluorouracil)	1/1/95
• • • • • • • •		
52-51-7	2-Bromo-2-nitropropane-1,3-diol (Bronopol)	1/1/95
• • • • • • • •		
52-85-7	Famphur	1/1/95
• • • • • • • •		
55-38-9	Fenthion [O,O-Dimethyl O-[3-methyl-4-(methylthio)phenyl] ester, phosphorothioic acid]	1/1/95
• • • • • • • •		
56-35-9	Bis(tributyltin) oxide	1/1/95
• • • • • • • •		
57-33-0	Pentobarbital sodium	1/1/95
57-41-0	Phenytoin	1/1/95
• • • • • • • •		
60-51-5	Dimethoate	1/1/95
• • • • • • • •		
62-74-8	Sodium fluoroacetate	1/1/95
• • • • • • • •		
64-02-8	Tetrasodium ethylenediaminetetraacetate	1/1/95
• • • • • • • •		
64-75-5	Tetracycline hydrochloride	1/1/95
• • • • • • • •		
68-12-2	N,N-Dimethylformamide	1/1/95
• • • • • • • •		
75-43-4	Dichlorofluoromethane (HCFC-21)	1/1/95
• • • • • • • •		
75-72-9	Chlorotrifluoromethane (CFC-13)	1/1/95
75-77-4	Trimethylchlorosilane	1/1/95
75-78-5	Dimethyldichlorosilane	1/1/95
75-79-6	Methyltrichlorosilane	1/1/95
75-86-5	2-Methyllactonitrile	1/1/95
75-88-7	2-Chloro-1,1,1-trifluoroethane (HCFC-133a)	1/1/95
76-02-8	Trichloroacetyl chloride	1/1/95
76-06-2	Chloropicrin	1/1/95
• • • • • • • •		
76-87-9	Triphenyltin hydroxide	1/1/95
• • • • • • • •		
77-73-6	Dicyclopentadiene	1/1/95
• • • • • • • •		
78-48-8	S,S,S-Tributyltrithiophosphate (DEF)	1/1/95
78-59-1	Isophorone	1/1/95
• • • • • • • •		
79-19-6	Thiosemicarbazide	1/1/95
• • • • • • • •		
85-01-8	Phenanthrene	1/1/95
• • • • • • • •		
88-85-7	Dinoseb	1/1/95
• • • • • • • •		
93-65-2	Mecoprop	1/1/95
94-11-1	2,4-D isopropyl ester	1/1/95
• • • • • • • •		
94-74-8	Methoxone (4-Chloro-2-methylphenoxy) acetic acid (MCPA)	1/1/95
• • • • • • • •		
94-80-4	2,4-D butyl ester	1/1/95
94-82-6	2,4-DB	1/1/95
• • • • • • • •		
95-54-5	1,2-Phenylenediamine	1/1/95

CAS No.	Chemical Name	Effective Date
95-69-2	p-Chloro-o-toluidine	1/1/95
96-18-4	1,2,3-Trichloropropane	1/1/95
97-23-4	Dichlorophene [2,2'-Methylene-bis(4-chlorophenol)]	1/1/95
98-13-5	Trichlorophenylsilane	1/1/95
99-30-9	Dichloran [2,6-Dichloro-4-nitroaniline]	1/1/95
100-01-6	p-Nitroaniline	1/1/95
101-05-3	Anilazine [4,6-dichloro-N-(2-chlorophenyl)-1,3,5-triazin-2-amine]	1/1/95
101-90-6	Diglycidyl resorcinol ether	1/1/95
104-12-1	p-Chlorophenyl isocyanate	1/1/95
105-60-2	Caprolactam	1/1/95
106-47-8	p-Chloroaniline	1/1/95
107-11-9	Allylamine	1/1/95
107-19-7	Propargyl alcohol	1/1/95
108-45-2	1,3-Phenylenediamine	1/1/95
108-93-0	Cyclohexanol	1/1/95
110-54-3	n-Hexane	1/1/95
110-57-6	trans-1,4-Dichloro-2-butene	1/1/95
115-21-9	Trichloroethylsilane	1/1/95
115-28-6	Chlorendic acid	1/1/95
116-06-3	Aldicarb	1/1/95
120-32-1	o-Benzyl-p-chlorophenol	1/1/95
120-36-5	2,4-DP	1/1/95
121-44-8	Triethylamine	1/1/95
121-75-5	Malathion	1/1/95
122-34-9	Simazine	1/1/95
122-39-4	Diphenylamine	1/1/95
124-40-3	Dimethylamine	1/1/95
128-03-0	Potassium dimethyldithiocarbamate	1/1/95
128-04-1	Sodium dimethyldithiocarbamate	1/1/95
131-52-2	Sodium pentachlorophenate	1/1/95
132-27-4	Sodium o-phenylphenoxide	1/1/95
133-07-3	Folpet	1/1/95

CAS No.	Chemical Name	Effective Date
136-45-8	Dipropyl isocinchomeronate	1/1/95
137-41-7	Potassium n-methyldithiocarbamate	1/1/95
137-42-8	Metham Sodium	1/1/95
138-93-2	Disodium cyanodithioimidocarbonate	1/1/95
142-59-6	Nabam	1/1/95
148-79-8	Thiabendazole [2-(4-Thiazolyl)-1H-benzimidazole]	1/1/95
149-30-4	2-Mercaptobenzothiazole	1/1/95
149-74-6	Dichloromethylphenylsilane	1/1/95
150-50-5	Merphos	1/1/95
150-68-5	Monuron	1/1/95
298-00-0	Methyl parathion	1/1/95
300-76-5	Naled	1/1/95
301-12-2	Oxydemeton methyl [s-(2-(Ethylsulfinyl)ethyl)o,o-dimethyl ester phosphorothioic acid]	1/1/95
314-40-9	Bromacil (5-Bromo-6-methyl-3-(1-methylpropyl)-2,4-(1H,3H)-pyrimidinedione)	1/1/95
319-84-6	alpha-Hexachlorocyclohexane	1/1/95
330-54-1	Diuron	1/1/95
330-55-2	Linuron	1/1/95
333-41-5	Diazinon	1/1/95
354-11-0	1,1,1,2-Tetrachloro-2-fluoroethane (HCFC-121a)	1/1/95
354-14-3	1,1,2,2-Tetrachloro-1-fluoroethane (HCFC-121)	1/1/95
357-57-3	Brucine	1/1/95
422-44-6	1,2-dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225bb)	1/1/95
422-48-0	2,3-dichloro-1,1,1,2,3-pentafluoropropane (HCFC-225ba)	1/1/95
422-56-0	3,3-dichloro-1,1,1,2,2-pentafluoropropane (HCFC-225ca)	1/1/95
431-86-7	1,2-dichloro-1,1,3,3,3-pentafluoropropane (HCFC-225da)	1/1/95
460-35-5	3-chloro-1,1,1-trifluoropropane (HCFC-253fb)	1/1/95
465-73-6	Isodrin	1/1/95
507-55-1	1,3-dichloro-1,1,2,2,3-pentafluoropropane (HCFC-225cb)	1/1/95
533-74-4	Dazomet (Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione)	1/1/95
541-53-7	2,4-Dithiobiuret	1/1/95
542-76-7	3-Chloropropionitrile	1/1/95
554-13-2	Lithium carbonate	1/1/95
556-61-6	Methyl isothiocyanate [Isothiocyanatomethane]	1/1/95
563-47-3	3-Chloro-2-methyl-1-propene	1/1/95
576-26-1	2,6-Dimethylphenol	1/1/95
594-42-3	Perchloromethyl mercaptan	1/1/95
612-82-8	3,3'-Dimethylbenzidine dihydrochloride (o-Tolidine dihydrochloride)	1/1/95
612-83-9	3,3'-Dichlorobenzidine dihydrochloride	1/1/95
615-28-1	1,2-Phenylenediamine dihydrochloride	1/1/95
624-18-0	1,4-Phenylenediamine dihydrochloride	1/1/95
630-08-0	Carbon monoxide	1/1/95
639-58-7	Triphenyltin chloride	1/1/95
709-98-8	Propanil [N-(3,4-Dichlorophenyl)propanamide]	1/1/95
759-94-4	Ethyl dipropylthiocarbamate (EPTC)	1/1/95

CAS No.	Chemical Name	Effective Date
822-60-0	Hexamethylene-1,6-diisocyanate	1/1/95
834-12-8	Ametryn (N-Ethyl-N'-(1-methylethyl)-6-(methylthio)-1,3,5,-triazine-2,4-diamine)	1/1/95
872-50-4	N-Methyl-2-pyrrolidone	1/1/95
924-42-5	N-Methylolacrylamide	1/1/95
957-51-7	Diphenamid	1/1/95
1114-71-2	Pebulate [Butylethylcarbamo-thioic acid S-propyl ester]	1/1/95
1134-23-2	Cycloate	1/1/95
1314-56-3	Phosphorous pentoxide	1/1/95
1314-62-1	Vanadium pentoxide	1/1/95
1314-80-3	Phosphorous pentasulfide	1/1/95
1320-18-9	2,4-D propylene glycol butyl ether ester	1/1/95
1563-66-2	Carbofuran	1/1/95
1649-08-7	1,2-dichloro-1,1-difluoroethane (HCFC-132b)	1/1/95
1689-84-5	Bromoxynil (3,5-Dibromo-4-hydroxybenzonitrile)	1/1/95
1689-99-2	Bromoxynil octanoate (Octanoic acid, 2,6-dibromo-4-cyanophenyl ester)	1/1/95
1861-40-1	Benfluralin(N-Butyl-N-ethyl-2,6-dinitro-4-(trifluoromethyl)benzenamine)	1/1/95
1910-42-5	Paraquat dichloride	1/1/95
1912-24-9	Atrazine (6-Chloro-N-ethyl-N'-(1-methylethyl)-1,3,5,-triazine-2,4-diamine)	1/1/95
1917-97-1	2,4-D 2-octyl ester	1/1/95
1918-00-9	Dicamba (3,6-Dichloro-2-methyoxybenzoic acid)	1/1/95
1918-02-1	Picloram	1/1/95
1918-16-7	Propachlor [2-Chloro-N-(1-methylethyl)-N-phenylacetamide]	1/1/95
1928-43-4	2,4-D 2-ethylhexyl ester	1/1/95
1929-73-3	2,4-D butoxyethyl ester	1/1/95
1929-82-4	Nitrapyrin (2-Chloro-6-(trichloromethyl)pyridine)	1/1/95
1962-69-0	Sodium dicamba [3,6-Dichloro-2-methoxybenzoic acid, sodium salt]	1/1/95
1983-10-4	Tributyltin fluoride	1/1/95
2008-41-5	Butylate (Bis-2-methylpropyl) carbamothioic acid S-ethyl ester)	1/1/95
2032-65-7	Methiocarb	1/1/95
2155-70-6	Tributyltin methacrylate	1/1/95
2164-07-0	Dipotassium endothall [7-Oxabicyclo(2.2.1)heptane-2,3-dicarboxylic acid, dipotassium salt]	1/1/95
2212-67-1	Molinate (1H-Azepine-1-carbothioic acid, hexahydro-S-ethyl ester)	1/1/95
2300-66-5	Dimethylamine dicamba	1/1/95
2303-17-5	Triallate	1/1/95
2312-35-8	Propargite	1/1/95
2439-01-2	Chinomethionat (6-Methyl-1,3-dithiolo[4,5-b]quinoxalin-2-one]	1/1/95
2439-10-3	Dodine [Dodecylguanidine monoacetate]	1/1/95
2524-03-0	Dimethyl chlorothiophosphate	1/1/95
2655-15-4	2,3,5-Trimethylphenyl methylcarbamate	1/1/95
2699-79-8	Sulfuryl Fluoride [Vikane]	1/1/95
2702-72-9	2,4-D sodium salt	1/1/95
2971-38-2	2,4-D chlorocrotyl ester	1/1/95
3380-34-5	5-Chloro-2-(2,4-dichlorophenoxy)phenol	1/1/95
3383-96-8	Temephos	1/1/95
3653-48-3	Methoxone - sodium salt (4-Chloro-2-methylphenoxy acetate sodium salt)	1/1/95
4080-31-3	1-(3-Chloroallyl)-3,5,7-triaza-1-azoniaadamantane chloride	1/1/95
4098-71-9	Isophorone diisocyanate	1/1/95
4170-30-3	Crotonaldehyde	1/1/95
5124-30-1	1,1'-Methylene bis(4-isocyanatocyclohexane)	1/1/95

CAS No.	Chemical Name	Effective Date
5234-68-4	Carboxin (5,6-Dihydro-2-methyl-N-phenyl-1,4-oxathiin-3-carboxamide)	1/1/95
5598-13-0	Chlorpyrifos methyl [O,O-dimethyl-O-(3,5,6-trichloro-2-pyridyl)phosphorothioate]	1/1/95
5902-51-2	Terbacil [5-Chloro-3-(1,1-dimethylethyl)-6-methyl-2,4-(1H,3H)-pyrimidinedione]	1/1/95
6317-18-6	Methylene bis(thiocyanate)	1/1/95
6459-94-5	C.I. Acid Red 114	1/1/95
7287-19-6	Prometryn [N,N'-Bis(1-methylethyl)-6-methylthio-1,3,5-triazine-2,4-diamine]	1/1/95
7446-09-5	Sulfur dioxide	1/1/95
7446-11-9	Sulfur trioxide	1/1/95
7632-00-0	Sodium nitrite	1/1/95
7637-07-2	Boron trifluoride	1/1/95
7681-52-9	Sodium hypochlorite	1/1/95
7696-12-0	Tetramethrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropane-carboxylic acid (1,3,4,5,6,7-hexahydro-1,3-dioxo-2H-isoindol-2-yl)methyl ester]	1/1/95
7726-95-6	Bromine	1/1/95
7758-01-2	Potassium bromate	1/1/95
7758-19-2	Sodium chlorite	1/1/95
7778-54-3	Calcium hypochlorite	1/1/95
7782-41-4	Fluorine	1/1/95
7786-34-7	Mevinphos	1/1/95
7803-51-2	Phosphine	1/1/95
9006-42-2	Metiram	1/1/95
10025-87-3	Phosphorous oxychloride	1/1/95
10026-13-8	Phosphorous pentachloride	1/1/95
10028-15-6	Ozone	1/1/95
10061-02-6	trans-1,3-Dichloropropene	1/1/95
10222-01-2	2,2-Dibromo-3-nitrilopropionamide	1/1/95
10102-43-9	Nitric oxide	1/1/95
10102-44-0	Nitrogen dioxide	1/1/95
10294-34-5	Boron trichloride	1/1/95
10453-86-8	Resmethrin [[5-(Phenylmethyl)-3-furanyl]methyl 2,2-dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylate]]	1/1/95
13194-48-4	Ethoprop [Phosphorodithioic acid O-ethyl S,S-dipropyl ester]	1/1/95
13356-08-6	Fenbutatin oxide (hexakis(2-methyl-2-phenylpropyl)distannoxane)	1/1/95
13463-40-6	Iron pentacarbonyl	1/1/95
13474-88-9	1,1-Dichloro-1,2,2,3,3-pentafluoropropane (HCFC-225cc)	1/1/95
13684-56-5	Desmedipham	1/1/95
14484-64-1	Ferbam [Tris(dimethylcarbamo-dithioato-S,S')iron]	1/1/95
14797-55-8	Nitrate ion	1/1/95
15922-78-8	Sodium 2-pyridinethiol-1-oxide	1/1/95
15972-60-8	Alachlor	1/1/95
17804-35-2	Benomyl	1/1/95
19044-88-3	Oryzalin [4-(Dipropylamino)-3,5-dinitrobenzene-sulfonamide]	1/1/95
19666-30-9	Oxydiazon [3-[2,4-Dichloro-5-(1-methylethoxy)phenyl]-5-(1,1-dimethylethyl)-1,3,4-oxadiazol-2(3H)-one]	1/1/95
20325-40-0	3,3'-Dimethoxybenzidine dihydrochloride (Dianisidine dihydrochloride)	1/1/95
20354-26-1	Methazole [2-(3,4-Dichlorophenyl)-4-methyl-1,2,4-oxadiazolidine-3,5-dione]	1/1/95
20859-73-8	Aluminum phosphide	1/1/95
21087-64-9	Metribuzin	1/1/95
21725-46-2	Cyanazine	1/1/95
22781-23-3	Bendiocarb [2,2-Dimethyl-1,3-benzodioxol-4-ol methylcarbamate]	1/1/95
23564-05-8	Thiophanate methyl	1/1/95
23564-06-9	Thiophanate ethyl [[1,2-Phenylenebis(iminocarbonothioyl)]biscarbamic acid diethyl ester]	1/1/95
25013-16-5	Butylated hydroxyanisole	1/1/95
25311-71-1	Isofenphos [2-[[Ethoxy[(1-methylethyl)amino]phosphinothioyl]oxy]benzoic acid 1-methylethyl ester]	1/1/95
26002-80-2	Phenothrin [2,2-Dimethyl-3-(2-methyl-1-propenyl)cyclopropanecarboxylic acid (3-phenoxyphenyl)methyl ester]	1/1/95
26628-22-8	Sodium azide	1/1/95
26644-46-2	Triforine [N,N'-[1,4-Piperazinediylbis(2,2,2-trichloroethylidene)] bisformamide]	1/1/95
27314-13-2	Norflurazon [4-Chloro-5-(methylamino)-2-[3-(trifluoromethyl)phenyl]- 3(2H)-pyridazinone]	1/1/95

CAS No.	Chemical Name	Effective Date
28057-48-9	d-trans-Allethrin [d-trans-Chrysanthemic acid of d-allethrone]	1/1/95
28249-77-6	Thiobencarb [Carbamic acid, diethylthio-, s-(p-chlorobenzyl)]	1/1/95
28407-37-6	C.I. Direct Blue 218	1/1/95
28558-32-9	Thiabendazole, hypophosphite salt [2-(4-Thiazolyl)benzimidazole, hypophosphite salt]	1/1/95
29232-93-7	Pirimiphos methyl [O-(2-(Diethylamino)-6-methyl-4-pyrimidinyl)-O,O-dimethyl phosphorothioate]	1/1/95
30560-19-1	Acephate (Acetylphosphoramidothioic acid O,S-dimethyl ester)	1/1/95
31218-83-4	Propetamphos [3-[[(Ethylamino)methoxyphosphino-thioyl]oxy]-2-butenoic acid, 1-methylethyl ester]	1/1/95
33089-61-1	Amitraz	1/1/95
34014-18-1	Terbuthiuron [N-[5-(1,1-Dimethylethyl)-1,3,4-thiadiazol-2-yl)-N,N'- dimethylurea]	1/1/95
35367-38-5	Diflubenzuron	1/1/95
35400-43-2	Sulprofos [O-Ethyl O-[4-(methylthio)phenyl]phosphorodithioic acid S-propyl ester]	1/1/95
35554-44-0	Imazalil [1-[2-(2,4-Dichlorophenyl)-2-(2-propenyloxy)ethyl]-1H-imidazole]	1/1/95
35691-65-7	1-Bromo-1-(bromomethyl)-1,3-propanedicarbonitrile	1/1/95
36734-19-7	Iprodione [3-(3,5-Dichlorophenyl)-N-(1-methylethyl)-2,4-dioxo-1-imidazolidine-carboxamide]	1/1/95
38727-55-8	Diethatyl ethyl	1/1/95
	. . . . .	
39300-45-3	Dinocap	1/1/95
39515-41-8	Fenpropathrin [2,2,3,3-Tetramethylcyclopropane carboxylic acid cyano(3-phenoxyphenyl)methyl ester]	1/1/95
40487-42-1	Pendimethalin [N-(1-Ethylpropyl)-3,4-dimethyl-2,6-dinitrobenzen-amine]	1/1/95
41198-08-7	Profenofos [O-(4-Bromo-2-chlorophenyl)-O-ethyl-S-propyl phosphorothioate]	1/1/95
41766-75-0	3,3'-Dimethylbenzidine dihydrofluoride (ortho-Tolidine dihydrofluoride)	1/1/95
42874-03-3	Oxyfluorfen	1/1/95
43121-43-3	Triadimefon [1-(4-Chlorophenoxy)-3,3-dimethyl-1-(1H-1,2,4-triazol-1-yl)-2-butanone]	1/1/95
50471-44-8	Vinclozolin [3-(3,5-Dichlorophenyl)-5-ethenyl-5-methyl-2,4- oxazolidinedione]	1/1/95
51235-04-2	Hexazinone	1/1/95
51338-27-3	Diclofop methyl [2-[4-(2,4-Dichlorophenoxy)phenoxy]propanoic acid, methyl ester]	1/1/95
51630-58-1	Fenvalerate	1/1/95
52645-53-1	Permethrin [3-(2,2-Dichloroethenyl)-2,2-dimethylcyclopropanecarboxylic acid, (3-phenoxyphenyl)methyl ester]	1/1/95
53404-19-6	Bromacil, lithium salt [2,4-(1H,3H)-Pyrimidinedione, 5-bromo-6-methyl-3- (1-methylpropyl), lithium salt]	1/1/95
53404-37-8	2,4-D 2-ethyl-4-methylpentyl ester	1/1/95
53404-60-7	Dazomet, sodium salt [Tetrahydro-3,5-dimethyl-2H-1,3,5-thiadiazine-2-thione, ion(1-), sodium]	1/1/95
55290-64-7	Dimethipin [2,3,-Dihydro-5,6-dimethyl-1,4-dithiin 1,1,4,4-tetraoxide]	1/1/95
55406-53-6	3-Iodo-2-propynyl butylcarbamate	1/1/95
57213-69-1	Triclopyr, triethylammonium salt	1/1/95
59669-26-0	Thiodicarb	1/1/95
60168-88-9	Fenarimol [.alpha.-(2-Chlorophenyl)-.alpha.-4-chlorophenyl)-5-pyrimidine- methanol]	1/1/95
60207-90-1	Propiconazole [1-[2-(2,4-Dichlorophenyl)-4-propyl-1,3-dioxolan-2-yl]-methyl-1H-1,2,4,-triazole]	1/1/95
62476-59-9	Acifluorfen, sodium salt [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-benzoic acid, sodium salt]	1/1/95
62924-70-3	Flumetralin [2-Chloro-N-(2,6-dinitro-4-(trifluoromethyl)-phenyl)-N-ethyl-6-fluorobenzenemethanamine]	1/1/95
64902-72-3	Chlorsulfuron [2-chloro-N-[[4-methoxy-6-methyl-1,3,5-triazin-2-yl)amino] carbonyl]benzenesulfonamide]	1/1/95
64969-34-2	3,3'-Dichlorobenzidine.sulfate	1/1/95
66215-27-8	Cyromazine [N-Cyclopropyl-1,3,5-triazine-2,4,6-triamine]	1/1/95
66441-23-4	Fenoxaprop ethyl [2-(4-((6-Chloro-2-benzoxazolylen)oxy)phenoxy) propanoic acid, ethyl ester]	1/1/95
67485-29-4	Hydramethylnon [Tetrahydro-5,5-dimethyl-2(1H)-pyrimidinone[3-[4- (trifluoromethyl)phenyl]-1-[2-[4-(trifluoromethyl)phenyl]ethenyl]-2- propenylidene]hydrazone]	1/1/95
68085-85-8	Cyhalothrin [3-(2-Chloro-3,3,3-trifluoro-1-propenyl)-2,2- dimethylcyclopropanecarboxylic acid cyano(3-phenoxyphenyl)methyl ester]	1/1/95
68359-37-6	Cyfluthrin [3-(2,2-Dichloro-ethenyl)-2,2-dimethylcyclo-propanecarboxylic acid, cyano(4-fluoro-3-phenoxyphenyl)methyl ester]	1/1/95
69409-94-5	Fluvalinate [N-(2-Chloro-4-(trifluoromethyl)phenyl]-DL-valine(+)-cyano(3-phenoxyphenyl)methylester]	1/1/95
69806-50-4	Fluazifop-butyl [2-[4-[[5-(Trifluoromethyl)-2-pyridinyl]oxy]-phenoxy]propanoic acid, butyl ester]	1/1/95
71751-41-2	Abamectin [Avermectin B1]	1/1/95
72178-02-0	Fomesafen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-N-methylsulfonyl)-2- nitrobenzamide]	1/1/95
72490-01-8	Fenoxycarb [2-(4-Phenoxyphenoxy)ethyl]carbamic acid ethyl ester]	1/1/95
74051-80-2	Sethoxydim [2-[1-(Ethoxyimino)butyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one]	1/1/95
76578-14-8	Quizalofop-ethyl [2-[4-[(6-Chloro-2-quinoxalinyl)oxy]phenoxy] propanoic acid ethyl ester]	1/1/95
77501-63-4	Lactofen [5-(2-Chloro-4-(trifluoromethyl)phenoxy)-2-nitro-2-ethoxy-1-methyl-2-oxoethyl ester]	1/1/95
79538-32-2	Tefluthrin	
81777-89-1	Clomazone [2-[(2-Chlorophenyl)methyl]-4,4-dimethyl-3-isoxazolidinone]	1/1/95
82657-04-3	Bifenthrin	1/1/95
86209-51-0	Primisulfuron [Methyl 2-[[[[4,6-bis(difluoromethoxy)-2-pyrimidinyl]- amino]carbonyl]amino]sulfonyl]benzoate]	1/1/95
88671-89-0	Myclobutanil [.alpha.-Butyl-.alpha.-(4-chlorophenyl)-1H-1,2,4-triazole- 1-propanenitrile]	1/1/95
90982-32-4	Chlorimuron ethyl [Ethyl-2-[[[(4-chloro-6-methoxyprimidin-2-yl)-carbonyl]-amino]sulfonyl]benzoate]	1/1/95
97886-45-8	Dithiopyr [2-(Difluoromethyl)-4-(2-methylpropyl)-6-(trifluoro-methyl)-3,5-pyridinedicarbothioic acid S,S-dimethyl ester]	1/1/95
101200-48-0	Tribenuron methyl [2-(((((4-Methoxy-6-methyl-1,3,5-triazin-2-yl)- methylamino)carbonyl)amino)sulfonyl)-, methyl ester]	1/1/95
111512-56-2	1,1-dichloro-1,2,3,3,3-pentafluoropropane (HCFC-225eb)	1/1/95
111984-09-9	3,3'-Dimethoxybenzidine hydrochloride (Dianisidine dihydrochloride)	1/1/95
127564-92-5	Dichloropentafluoropropane	1/1/95
128903-21-9	2,2-Dichloro-1,1,1,3,3-pentafluoropropane (HCFC-225aa)	1/1/95
136013-79-1	1,3-Dichloro-1,1,2,3,3-pentafluoropropane (HCFC-225ea)	1/1/95

(c) * * *

Category Name	Effective Date
. . . . .	
Chlorinated paraffins: Includes those chemicals defined by the following formula: CxH2x-y+2Cly where x = 10 to 30 and y = 3 to 26	1/1/95
. . . . .	
Man-made mineral fibers: Includes glass microfibers, glass wool fibers, rock wool fibers, slag wool fibers, and refractory ceramic fibers that have a diameter less than 3.5 micrometers and an aspect ratio greater than 3.	1/1/95
. . . . .	
Nicotine and salts	1/1/95
. . . . .	
Polycyclic Aromatic Compounds (PACs): (This category includes only those chemicals listed below)	1/1/95
00056-55-3 Benz(a)anthracene	
00218-01-9 Benzo(a)phenanthrene	
00050-32-8 Benzo(a)pyrene	
00205-99-2 Benzo(b)fluoranthene	
00205-82-3 Benzo(j)fluoranthene	
00207-08-9 Benzo(k)fluoranthene	
00189-55-9 Benzo(rst)pentaphene	
00086-74-8 Carbazole	
27208-37-3 Cyclopenta(cd)pyrene	
00226-36-8 Dibenz(a,h)acridine	
00224-42-0 Dibenz(a,j)acridine	
00215-58-7 Dibenz(a,c)anthracene	
00224-41-9 Dibenz(a,j)anthracene	
00053-70-3 Dibenzo(a,h)anthracene	
05385-75-1 Dibenzo(a,e)fluoranthene	
00192-65-4 Dibenzo(a,e)pyrene	
00189-64-0 Dibenzo(a,h)pyrene	
00191-30-0 Dibenzo(a,l)pyrene	
00194-59-2 7H-Dibenzo(c,g)carbazole	
00057-97-6 7,12-Dimethylbenz(a)anthracene	
00193-39-5 Indeno[1,2,3-cd]pyrene	
03351-32-4 2-Methylchrysene	
03351-31-3 3-Methylchrysene	
03351-30-2 4-Methylchrysene	
03697-24-3 5-Methylchrysene	
01705-85-7 6-Methylchrysene	
33543-31-8 2-Methylfluoranthene	
05522-43-0 1-Nitropyrene	
. . . . .	
Strychnine and salts	1/1/95
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Wednesday
January 12, 1994

Part V

Federal Trade Commission

16 CFR Part 500
Regulations Under Section 4 of the Fair Packaging and Labeling Act; Final Rule

FEDERAL TRADE COMMISSION

16 CFR Part 500

Regulations Under Section 4 of the Fair Packaging and Labeling Act

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Federal Trade Commission (the "Commission" or "FTC") amends its regulations issued under section 4 of the Fair Packaging and Labeling Act (FPLA) to require the use of the units of both the customary inch/pound measurement system and the metric measurement system in the net quantity statement for certain consumer commodities. This action is being taken to implement 1992 amendments to the FPLA, which require such dual measurement system disclosure.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Robert E. Easton, Special Assistant—Enforcement, Federal Trade Commission, Washington, DC 20580, (202) 326–3029 or Bret S. Smart, Consumer Protection Specialist, Los Angeles Regional Office, Federal Trade Commission, 11000 Wilshire Blvd., suite 13209, Los Angeles, CA 90024, (310) 575–7890.

SUPPLEMENTARY INFORMATION:

Statement of Basis and Purpose

I. Introduction

In 1967, Congress enacted the Fair Packaging and Labeling Act (15 U.S.C. 1451 *et seq.*) (FPLA). Congress declared that packages and their labels should be marked to enable consumers to obtain accurate information as to the quantity of the contents and to facilitate value comparisons.

To effectuate its policy of providing consumers accurate quantity information on commodity labels, Congress in the FPLA set out general disclosure requirements and delegated to various agencies, including the FTC, the duty of promulgating regulations. The FTC in 1968 published regulations that provided detailed guidance to industry on what to include in statements of identity of products; in the identification of manufacturers, packers, or distributors; and in declarations of net quantities (33 FR 4718, March 19, 1968; 16 CFR part 500).

The 1967 FPLA specified that the quantity disclosures be made in the customary American inch/pound system of measurement. The FTC's implementing regulations thus required use of the inch/pound system of measurement. The FTC regulations, however, also permitted the use of the metric system of measurement as an additional net quantity disclosure (16 CFR 500.21).

In 1992, Congress amended the FPLA to require that the quantity disclosure on labels of consumer commodities be in both the SI metric system and the customary inch/pound system of measurement. This amendment is consistent with the overall policy that the metric system is the preferred system of weights and measures for commerce in the United States (Omnibus Trade and Competitiveness Act, Public Law 100–418, 15 U.S.C. 205b). Because of the metric amendments to the FPLA, the FTC has conducted this rulemaking to amend its regulations to reflect the requirement for dual disclosure.

This rulemaking has been conducted pursuant to the Commission Rules prescribing special procedures for the promulgation and amendment of FPLA regulations. (16 CFR part 1, subpart C.) Pursuant to these procedures, interested parties were afforded the opportunity to participate in the proceeding through the submission of written data, views, or arguments. On August 17, 1993, the Commission published a Notice of Proposed Rulemaking (NPR) in the **Federal Register** that sought comment on the proposed dual disclosure amendments to the Commission's FPLA regulations.[1] The Commission also sought comments on its consideration of certain statutory and regulatory requirements relating to this rulemaking, such as the National Environmental Policy Act of 1969 (42 U.S.C. 4321). In the NPR, the Commission tentatively concluded that the proposed amendments were not "major" rule amendments within the meaning of that statute; were not rules requiring the "collection of information" within the meaning of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*); and were in compliance with the metric usage requirements of the Metric Conversion Act (15 U.S.C. 205b). Further, as part of its ongoing regulatory review of existing and proposed regulations, the Commission sought comment about the overall costs and benefits of the regulations promulgated under the FPLA. Lastly, the Commission, based upon information currently available, stated its belief that it is unlikely that the proposed amendments would have a significant economic impact on a substantial number of small firms. However, given the uncertainty on the question, the Commission published an initial regulatory analysis under the Regulatory Flexibility Act (5 U.S.C. 603–604) and requested public comment on the potential costs of the amendments.

The Commission received 20 timely written comments, which are summarized in part III of this notice. The amendments that the Commission is adopting today are also discussed in part III. The text of the amendments appears at the end of this notice.

II. Background

A. The Fair Packaging and Labeling Act

The Fair Packaging and Labeling Act is designed to prevent the use of unfair or deceptive methods of packaging and labeling of consumer commodities. The FPLA states that it shall be unlawful for persons to sell or distribute commodities whose labels do not conform "to the provisions of this Act and of regulations promulgated under the authority of this Act." (15 U.S.C. 1452.) The main requirements of the FPLA are that the label on a package disclose the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor of the commodity; and the net quantity of contents in terms of weight, measure, or numerical count. (15 U.S.C. 1453.)

1. Shared Enforcement and Implementation Authority

In the FPLA, Congress has established a system of divided authority for implementation and enforcement. The authority to promulgate and enforce regulations with regard to foods, drugs, devices, or cosmetics is vested in the United States Food and Drug Administration. (15 U.S.C. 1453(a), 15 U.S.C. 1456(a).) With respect to any other consumer commodity, authority is vested in the FTC (15 U.S.C. 1454(a), 15 U.S.C. 1456(b)). With regard to imports of consumer commodities into the United States, the Secretary of the Treasury enforces FPLA. (15 U.S.C. 1456(c).) Additionally, several other agencies have adopted parallel disclosure schemes on their own initiative.[2]

[1] 58 FR 43726.

[2] In developing the proposed amendments that were published in the NPR, the Commission's staff consulted with the staffs of other relevant agencies to harmonize requirements. The amendments the Commission adopts today are consistent with the proposed metric amendments to food labeling rules contained in a Notice of Proposed Rulemaking issued by the FDA on May 21, 1993 (58 FR 29719). As of the date of this FTC Statement of Basis and Purpose, the FDA has issued no final rules for any of the products it regulates under the FPLA.

2. Consumer Commodities

The FPLA defines consumer commodities as being any food, drug, device, or cosmetic and any other article, product or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use.[3]

The FPLA grants the FTC authority to exempt commodities it regulates under the Act.[4] Acting under this authority, the FTC has exempted the following products from certain FPLA requirements—camera film; Christmas tree ornaments; replacement bags for vacuum cleaners; chamois; paper table covers; certain cellulose sponges; candles; and solder. (16 CFR part 501.)

In a similar vein, the FTC has interpreted the meaning of "consumer commodity" as used in FPLA as not including 52 commodities or classes of commodities. These include such items as antifreeze and automotive accessories, garden tools and hardware, toys, typewriter ribbons, and woodenware. (16 CFR part 503.)

3. Procedures for Promulgating Regulations Under FPLA

The FPLA sets out the procedures to be followed by the FTC in promulgating regulations. The FPLA states that regulations promulgated by the Commission under section 4 or section 5 shall be promulgated, and shall be subject to judicial review, by proceedings taken in conformity with the provisions of subsections (e), (f), and (g) of section 701 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 371 (e), (f), and (g)) ("FDC Act").[5]

The FTC has implemented this statutory requirement to use the rulemaking procedures of section 371 of the FDC Act by adopting 16 CFR part 1 subpart C, which sets forth the procedures for the promulgation of rules under authority other than section 18(a)(1)(B) of the FTC Act.

Subpart C provides that the effective date of any regulations issued under the FPLA shall not be prior to 30 days after publication in the **Federal Register**.

[3] 15 U.S.C. 1459(a).

[4] 15 U.S.C. 1454(c).

[5] 15 U.S.C. 1455(b).

B. Original FTC Regulations Issued Under the FPLA

In 1968, the FTC issued the original regulations implementing the FPLA. (33 FR 4718, March 19, 1968.) There are twenty-seven regulations, of which twenty-two relate to the net quantity of contents declaration. Several of the regulations relate to the measurement system to be used in the net quantity declaration. For example, § 500.8 prescribes the units of weight and measures to be used; §§ 500.9 through 500.14 set out how weight, fluid measure, length, width, area, and cubic measure should be expressed; and § 500.16 states how fractions should be treated.

Each of the original regulations mandating measurement disclosure requires the use of customary inch/pound units. This is because Section 4 of the original FPLA (15 U.S.C. 1453) states that required net quantity disclosure be in pounds, inches, feet, yards, pints, quarts, gallons, etc.

One of the FTC regulations issued under the FPLA allows the optional use of metric units in addition to the mandated inch/pound units. Section 500.21 (16 CFR 500.21) states:

> A separate statement of the net quantity of contents in terms of the metric system is not regarded as a supplemental net quantity statement and an accurate statement of the net quantity of contents in terms of the metric system of weight or measure may also appear on the principal display panel or on other panels. Standard metric abbreviations may be used.

Thus, under the original regulations, manufacturers, packers, and distributors of consumer commodities subject to FTC regulations were required to make net quantity of contents disclosure using inch/pound units but had the option of making additional disclosure in metric units.

C. The 1992 Metric Amendments to the FPLA

In 1992, the FPLA was amended to require that the International System of Units ("SI metric system") as well as the customary inch/pound system of measure be used in the label declaration of net quantity of contents of consumer commodities. (Pub. L. 102–329, August 3, 1992.) It is these statutory changes which the FTC is implementing in adopting the regulations set out in this notice.

The 1992 substantive amendments to the FPLA relate to metric. The basic change that the amendments make is that all labels for consumer commodities printed after February 14, 1994, must state the net quantity of contents in both the customary inch/pound system of measure and the SI metric system. Apart from the changes made to section 4 (15 U.S.C. 1453), section 5 (15 U.S.C. 1454), and section 13 (15 U.S.C. 1461), the FPLA remains the same. Specifically, the statutory amendments are as follows.

Section 4 of FPLA requires that a consumer commodity bear a label which specifies the identity of the commodity, the name and place of business of the manufacturer, packer, or distributor, and the net quantity of contents. The amendments to Section 4 require that the contents label be in both the customary inch/pound and metric systems of measurement.

Subsection (a)(2) has been amended to mandate the disclosure of contents in terms of mass as well as weight. The original FPLA only required weight, a unit of the customary system of measure. Mass (measured in kilograms and multiples and submultiples) is the metric term for the quantity of matter in an object.

Subsection (a)(2) specifies that the metric disclosure shall use the "SI metric system." The "SI" system is the International System of Units (Le Systeme International d'Unites) as interpreted or modified for use in the United States by the Secretary of Commerce. (55 FR 52242, Dec. 20, 1990.) There are several government publications giving guidance on use of the SI.[6]

Subsection (a)(3)(A)(ii) states that decimal fractions of the pound and decimal fractions of the SI metric system units shall be carried out to no more than three places on random packages, which are packages with varying weight or mass from a lot of the same consumer commodity. The original FPLA required that decimal fractions of the pound be carried out to no more than two places.

Subsection (a)(6) states that content labels containing SI metric disclosure are not required for foods that are packaged at the retail store level. This amendment affects FDA, rather than FTC, regulations.

Section 13 of the amended FPLA states that the effective date for the changes to sections 4 and 5 is February 14, 1994. However, it also provides that, "The amendments * * * have no effect

[6] See, "The International System of Units (SI)," NIST Special Publication 330, U.S. Department of Commerce, August, 1991; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, September, 1991; and "Preferred Metric Units for General Use by the Federal Government," Federal Standards 376B (Preprint Copy), General Services Administration, January 27, 1993.

on the sale or distribution of products whose labels have been printed before such effective date." Thus, companies with labels on hand that were printed before the effective date may continue to use the supply until exhausted.

D. Identification of Comments Received

Below is an alphabetical list of the comments submitted in response to the NPR. The list includes the document number assigned to the comment on the public record and a general description of the commenter (for those comments that included a description or where the commenter is a publicly recognized company).[7]

1. Amway Corporation ("Am")—14. Amway sells products subject to the Commission's FPLA regulations.
2. Mr. Jeffrey S. Berke ("Berk")—1.
3. Mr. J. D. Buchanan ("Buch")—11. Mr. Buchanan is a Canadian resident who had responsibility for metric conversion in Canada.
4. Borden, Inc. ("Bord")—9 and 20. Borden sells products subject to the Commission's FPLA regulations.
5. Cramer Products, Inc. ("Cram")—18. Cramer is a small, employee-owned manufacturer of products for athletics and physical education.
6. First Brands Corporation ("Frst")—15. First sells products subject to the Commission's FPLA regulations.
7. Maryland State Department of Agriculture, Weights and Measures Section ("Md Ag")—5.
8. Mr. Eugene A. Mechtly ("Mech")—7.
9. Michigan State Department of Agriculture ("Mich Ag")—6.
10. Micro Motion, Inc. ("Micr")—4.
11. Congresswoman Jan Meyers ("Cong. Meyers")—17. Congresswoman Meyers is the Ranking Minority Member of the House Committee on Small Business.
12. The National Conference on Weights and Measures ("NCWM")—19. NCWM is a voluntary standards-writing body whose members are State and local weights and measures officials, as well as Federal Government, business, industry, and consumer representatives.
13. The National Institute of Standards and Technology—Metric Program ("NIST")—12. NIST, a unit of the Department of Commerce, has responsibility for guiding the Federal Government's conversion to usage of the metric system of measurement.
14. Pier 1 Imports ("Pier")—2. Pier sells products subject to the Commission's regulations issued under FPLA.
15. The Procter & Gamble Company ("PG")—10. PG sells products subject to the Commission's regulations issued under FPLA.
16. Mr. Louis F. Sokol ("Soko")—8.
17. Mr. Larry Stempnik ("Stem")—13.
18. Standards and Metric Practices Subcommittee of the Metric Operating Committee of the Interagency Council on Metric Policy ("SMPS")—16. SMPS was responsible for writing Federal Standard 376B, "Preferred Metric Units for General Use by the Federal Government."
19. Mr. John H. Woelflein ("Woel")—3. Mr. Woelflein is a member of the U.S. Metric Association, Inc., the National Conference on Weights and Measures, and the New Hampshire Metric Advisory Council.

E. Comment Suggestions Beyond Commission's Authority Under FPLA

Two comments suggested that the Commission amend the regulations issued under the FPLA in ways that are beyond the Commission's authority and that would conflict with the 1992 metric amendments to the FPLA. Specifically, NCWM suggested that packages that are "rational" metric sizes, e.g., 250 mL, 500 mL, 1,2,3, and 4 liter, not be required to have inch/pound content declarations;[8] and Mr. Berke questioned the value of having metric equivalents on consumer packages and objected to the mandatory use of metric labeling.[9]

As discussed above,[10] the 1992 amendments to section 4(a)(2) of the FPLA provide that the net quantity of contents shall be stated "using the most appropriate units of *both* the customary inch/pound system * * * and, * * * the SI metric system" (*emphasis supplied*). Thus, Congress has required by statute that both customary inch/pound and SI metric units are to be used for content disclosure. The Commission cannot issue regulations that contravene the statutory requirement.

III. Discussion of Rule Amendments Being Adopted

Each amendment the Commission is adopting today is identified below. The substantive revisions are described in detail. Minor, self-explanatory changes are merely noted. Comments about a proposed amendment are discussed with that amendment. If none of the comments addressed a proposed amendment, the Commission adopts the amendment without discussion.

A. Section 500.2 Terms Defined

The Commission is making both significant and minor technical changes to this section. The Commission amends subsection (a) to include a reference to the 1992 statute amending FPLA and subsection (c) to reflect that the Administrator of the Environmental Protection Agency rather than the Secretary of Agriculture enforces the Federal Insecticide, Fungicide and Rodenticide Act. Subsection (d) deletes references to repealed statutes. In addition, throughout these proposed amendments, a few non-substantive, technical changes have been made. In subsection (h), as in other proposed amendments, the metric equivalent for an existing inch/pound reference is added. The use of both systems in the regulations is called for by the FPLA and is consistent with the requirements of the Omnibus Trade and Competitiveness Act of 1988 (Public Law 100, 15 U.S.C. 205b).

Subsection (j) is new and defines the term "SI metric," a term used throughout the proposed amendments to the regulations. The definition is derived from official Federal Government publications relating to metric terminology.[11] The definition makes reference to the statutory authority granted to the Secretary of Commerce to interpret and modify the International System of Units (SI) for the United States.

Two comments addressed the use of the term "SI metric" in the regulations. NIST wrote that it is confusing and redundant: a) to use the term "SI metric" system because it implies that there are metric systems other than the International System of Units (SI), and b) to use "SI metric" to modify a metric unit name.[12] (An example of the latter would be the reference to "SI metric kilograms" in § 500.8(d) of the new rules). NIST recommended using either "SI" or "metric." NCWM recommended that "you consider eliminating use of the terms 'SI metric' in association with the metric units * * * because the terms stand by themselves as metric units."[13]

The Commission has decided not to accept these suggestions. The substantive 1992 amendments to section 4 of the FPLA repeatedly make reference to "the SI metric system," and the Commission in its amendments is merely adopting the statutory language. While the comments offer other acceptable means of expressing metric terms, the Commission believes its amendments must be consistent with the statutory language. The rules do not require that labels use the term "SI metric" or any other name for the measurement system. The rules only require the disclosure of the contents using the units of the SI metric system and the customary inch/pound system.

Subsection (k) is new and defines the term "customary inch/pound," which is used in the 1992 metric amendments to section 4(a)(2) of FPLA (15 U.S.C. 1453) and throughout the proposed amendments to the regulations. One comment addressed this matter. NIST wrote: "the term 'customary inch/pound' should not be used as a compound adjective (e.g., customary inch/pound system or customary inch/pound statement). Both terms are independent descriptors for the collection of measurement units we currently use in the United States and their use together is confusing."[14] The Commission has decided not to accept this suggestion. Congress in amending the FPLA in 1992 used the term "the customary inch/pound system of measure." The Commission intends to be consistent with the statutory terminology.

Subsection (l) is new and defines the term "'e' mark." This is a certification mark used in the European Community (EC) to establish that the package is appropriately filled in accordance with EC standards. The term is defined because the amendments to section 500.6 (Net Quantity of Contents) allow the term to be used in addition to the mandated content quantity disclosure. Failure to allow the use of the mark could be an impediment to American companies selling in the EC.

B. Section 500.6 Net Quantity of Contents Declaration, Location

This section relates to the technical requirements to be followed in the presentation of the declaration of contents. There are several amendments to subsection (b). First, the words "or mass" are added after the word "weight." This addition is made necessary by the metric amendments to section 4(a)(2) of the FPLA, which state that the quantity of contents shall be "in terms of weight or mass, measure or numerical count."[15] The same addition is made in each of the regulations that refer to weight so that they uniformly read "weight or mass."

An example of an improper metric qualifier, i.e., "giant liter," has been added to the existing examples of improper inch/pound qualifiers. This example should aid in the preparation of labels. Further, the amendment includes a parenthetical metric size descriptor in addition to the existing inch/pound size reference.

The amendment to this section allows the use of the "e" mark as part of the statement of the net quantity of contents. Without the change, the "e" mark could be considered an improper qualifier and its use violative of the regulations.

The Commission received two comments relating to the use of the "e" mark. The Michigan State Department of Agriculture commented that the use of the "e" mark as part of the statement of quantity of contents is appropriate.[16] NCWM commented on the placement of the "e" mark.[17] The amendment proposed by the Commission reads:

> When used, the "e" mark shall be at least 3 millimeters (0.118 inches) in height and shall appear immediately after the metric portion of the net quantity of contents statement.

NCWM suggests the following alternative:

> When used, the "e" mark shall be at least 3 millimeters in height and shall be placed in the same field of vision as the quantity of contents statement.

NCWM states that the reason for its suggested change is consistency with the law in the European Community and to avoid having the FTC impose specific placement requirements on the "e" mark.

The Commission agrees that the Commission rules should be flexible enough to allow companies to meet both the Commission requirements and other reasonable variations, and that specific placement requirements prevent flexibility. However, the Commission is not persuaded that use of the phrase "in the same field of vision" is appropriate. While this terminology may be a term of art in the European Community, it is doubtful that many American companies, especially small businesses, would understand its meaning. Accordingly, the amendments refrain from using the phrase "in the same field of vision" and avoid requiring a precise placement of the "e" mark, although they permit the use of the "e" mark as part of the statement of the net quantity of contents. The Commission has amended the subject sentence in Subsection (b) to read:

When used, the "e" mark shall be at least 3 millimeters (approx. 1/8 inch) in height.[18]

C. Section 500.7 Net Quantity of Contents, Method of Expression

The only change to this section is the addition of "or mass" each time the term "weight" is used.

D. Section 500.8 Units of Weight or Mass and Measure

This section specifies the measurement units which must be used in making the content disclosure statements. The amendments to this section implement the 1992 metric amendments to FPLA by specifying the SI metric units which must be used in dual declaration statements. Neither the amendments to the FPLA nor the Commission's regulations require that the measurement systems be used in a particular order.[19] Thus, manufacturers have discretion to put SI metric units first or customary inch/pound units first as they so choose.

The examples of disclosures set out in this section and others are intended to assist manufacturers and distributors in designing labels which comply with the amendments to the regulations. The examples are not mandatory and set out different options. For instance, in the only reference to fractions of measurement units, the amendments to the FPLA state that decimal fractions of pounds and metric mass units may be "carried out to not more than three decimal places." (15 U.S.C. 1453) This is a change from the original FPLA, which restricted decimal fractions to two places. The examples in the Commission's amended regulations use different decimal places to show that the manufacturer or distributor can choose which to use. As another instance of options presented to manufacturers or distributors, some of

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[7] All public comments are filed in the Commission's Rulemaking Record P938902. In this notice, comments are cited by an identification of the commenter, the comment number assigned by the Secretary of the Commission, and the relevant page number(s), e.g., "NCWM, 19, 3."

[8] NCWM, 19, 5.

[9] Berk, 1, 1–2.

[10] Section II 3 C, *supra*.

[11] "Preferred Metric Units for General Use by the Federal Government," Federal Standard 376B, General Services Administration, January 27, 1993; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, September, 1991; and "The International System of Units (SI)," NIST Special Publication 330, U.S. Department of Commerce, August 1991.

[12] NIST, 12, 1.

[13] NCWM, 19, 4.

[14] NIST, 12, 1.

[15] The emphasized words were added by the 1992 amendments.

[16] Mich Ag. 6, 1.

[17] NCWM, 19, 1.

[18] NIST commented that the use of an inch declaration to three decimal places (the .118 inches used in the proposed amendment) was "superfluous." NIST, 12, 3. The Commission adopts NIST's suggestion to use "approx. 1/8 in." in the sentence.

[19] Section 4(a)(2) of the 1992 amendments to the FPLA states that the quantity of contents shall be stated using units "* * * of both the customary inch/pound system * * * and * * * the SI metric system." While the inch/pound system precedes the term SI metric in this phrase, there is little reason to infer a Congressional intent that this also be the order in which quantities are disclosed. The amended rules therefore leave this choice to manufacturers and distributors.

the examples used in the amended regulations state the SI metric measurement first while others put customary inch/pound units first.

The high degree of precision used in the examples contained in the proposed amendments generated thirteen comments.[20] But for one,[21] the comments uniformly stated that the examples use too precise measurements for commercial purposes. The comments suggest that in most instances three digits, including both whole number and decimals, should be used while in certain situations two digits should be allowed. As a result of the comments, the Commission has changed the examples throughout the regulations to use three and two digits as suggested and has added an amendment to § 500.19 (see part III.O. below) embodying such usage.[22]

The only description of measurement precision in the 1992 amendments to the FPLA is in section 4(a)(3)(A), which states that for certain packages decimal fractions may be carried out to no more than three places. Based upon this statutory language, the illustrative examples used in the proposed amendments contained up to three decimal places. Sometimes this resulted in examples using as many as six total digits, including whole numbers and decimal places. The comments generally stated that such precision implies a greater measuring accuracy than is likely to be possible.[23] The comment from Mr. John Buchanan is illustrative:

> I suggest that the regulatory requirement for net quantity be limited to three significant digits, which would still be consistent with the FPLA specification but would lead to less cluttered labels, greater truth in labeling by removing the spurious accuracy, and a more rapid conception of the metric system by consumers. * * * Conversions such as 1 lb. (453.59 g) look very intimidating to the average citizen. Some of the implied accuracies are bordering on the ludicrous, for example, in 500.27 you are suggesting that the linear dimensions of facial tissue can be measured to one-hundredth of a millimetre, which is less than the diameter of a single fiber! Or, in 500.16, where the capacity of a 6 fl. oz. cup is expressed to an accuracy of one-hundredth of a millilitre—far less than one drop.[24]

Based upon its consideration of the comments, the Commission has changed the examples used in the final amendments. The changes require the use of three digits for the quantity declaration (e.g., "453g (1 lb)" (§ 500.9(a)) except where the quantity is below 100 grams, milliliters, centimeters, square centimeters or cubic centimeters where the quantity declaration can be shown in two figures (e.g. "17 in. x 4 in. x 20 in. (43 x 10 x 50 cm)" (500.16(a)(1)(ii)). These changes bring the amended regulations into conformity with the Uniform Packaging and Labeling Regulation adopted by the National Conference on Weights and Measures and the packaging and labeling regulations of the Canadian Legal Metrology Branch.[25]

Aside from the above changes, subsection (a) requires the use of grams, milligrams, and kilograms as well as pounds and ounces in weight or mass declarations. Examples of dual declarations are included.

Subsection (b) requires the use of liters and milliliters as well as gallons, quarts, and pints in fluid measure disclosure. The term "Celsius" replaces "Centigrade" because Centigrade is obsolete for temperature measurement.

Subsection (c) states that meters, centimeters, and millimeters must be used as well as inches in linear measure.

Subsection (d) requires that area measurement use square meters, square decimeters, square centimeters, and square millimeters as well as square yards, square feet, and square inches.

Subsection (e) states that dry measure statements shall use liters and milliliters as well as bushels, pecks, dry quarts, and pints.

Subsection (f) requires, in cubic measure disclosures, the use of cubic meters, cubic centimeters, and, cubic centimeters as well as cubic yards, cubic feet, and cubic inches.

E. Section 500.9 Units of Weight and Mass, How Expressed

The Commission amends this section to include the requirement for the use of mass as well as weight and continues to describe the appropriate customary inch/pound units to be used on packages of various weights.

Subsection (a) includes the "net mass" disclosure and has several metric examples added. The amended subsection allows the term "net mass" as an alternative to "net weight" in stating the net quantity of contents.

The comments state that the requirement to use the terms "net weight" or "net mass" is unnecessary and "* * * creates clutter on a label that is much better left with free space.* * *"[26] Declaring contents without "net weight" or "net mass" is "already the successful practice in Canada" and has been adopted by the National Conference on Weights and Measures.[27] Further, the proposed Food and Drug Administration regulations for metric labeling of food products under the FPLA also make the use of "net weight" or "net mass" optional.

Based upon the reasoning contained in the ten comments on this issue,[28] the Commission has determined to make optional the use of the terms "net weight" and "net mass." Thus, under the amendment, a manufacturer or distributor need only state the weight or mass of the contents without using the qualifying terms "net weight" or "net mass" (*e.g.* "453g (1 lb)." However, the amendment to subsection (a) makes it clear that even where the terms are not used, the quantity of contents declaration shall always declare the net quantity of contents.[29]

Subsection (b)(2) reflects the amendment to the FPLA which deletes the former avoirdupois (the system of weight based upon the pound of 16 ounces) requirement that packages weighing one pound or more but less than four pounds disclose both the total number of ounces and the number of pounds, with any remainder in ounces or common or decimal fractions of the pound. Thus, under the old law, if a package weighed 3 and one-half pounds it would properly be labeled "56 oz. (3 lbs. 8 oz.)." The new law requires only the expression of pounds and remainder of ounces, so that in the prior example "3 lbs. 8 oz." would be sufficient. For weights greater than 1 pound but less than 4 pounds manufacturers will have the option to include an additional statement of weight in ounces "immediately adjacent" to the required expression in pounds, as subsection (b)(2) has been amended to allow this discretionary second expression of weight. Subsection (b)(1) retains the requirement that disclosure be given exclusively in ounces for packages containing less than one pound.

Proposed subsection (b)(3) as it appeared in the NPR retained the current requirement that for weights of 4 pounds or more disclosure be given exclusively in whole pounds, with any remainder in ounces or fractions of the pound. The Commission received two comments on this issue, each of which argued that the use of ounces be permitted as an optional additional disclosure on products weighing 4 pounds or more. Procter & Gamble wrote:

> We believe manufacturers should be allowed to voluntarily include net contents in units of ounces or fluid ounces for products containing more than four pounds or more than one gallon. This provision would again promote fair value comparisons between the largest 1 or 2 sizes of a consumer product such as laundry detergent with the smaller sizes of the same brand or alternate brands. Comparison between two sizes such as 50 oz (3 lb 2 oz) and 85 oz (5.31 lb) is accomplished much more easily by comparing ounces. Comparison between two sizes such as 48 fl oz (1 quart 1 pint) and 144 fl oz (1 gallon 1 pint) similarly is accomplished much more easily by comparing fluid ounces. We see important consumer benefits and no risks in extending voluntary use of ounces or fluid ounces to larger sizes.[30]

The National Conference on Weights and Measures similarly urges the Commission to allow the voluntary use of ounces and fluid ounces to larger size packages. NCWM states:

> The (Laws and Regulations) Committee believes that allowing manufacturers to voluntarily include dual-quantity declarations would (1) reduce the cost of implementing the metric amendments; (2) facilitate value comparison by consumers; (3) minimize change for some manufacturers; (4) not increase label clutter.[31]

The Commission is persuaded that permitting the voluntary use of ounces on packages of four pounds or more is in the public interest and has so amended subsection b(3). The Commission believes that allowing the use of ounces on large size packages will facilitate price comparisons without any negative consequences.

Subsection (c) states that for random packages, i.e., packages with varying weights from a lot of the same commodity, the decimal fractions of the pound should not be carried out to more than three places. Further, this subsection is changed to reflect the amendment to FPLA that random packages, unlike other packages, are not required to, but may, include a metric statement of mass.

F. Section 500.10 Units of Fluid Measure, How Expressed

This section continues to describe how the inch/pound fluid measure statement must be expressed. Under the amended FPLA, there is no requirement that the disclosure in fluid ounces be made when the amount is greater than a pint. Accordingly, subsection (b)(2) deletes the prior requirement that both the total number of fluid ounces and the largest whole unit (quarts, quarts and pints, or pints) plus remainder be used for items of at least 1 pint but less than 1 gallon. For quantities of at least 1 pint but less than 1 gallon, manufacturers will have the option to include an additional statement of net quantity in fluid ounces "immediately adjacent" to the required expression of largest whole unit, as proposed subsection (b)(2) allows this discretionary second expression of fluid measure. Subsection (b)(1) retains the requirement that disclosure be given exclusively in fluid ounces for quantities less than one pint.

Proposed subsection (b)(3) as it appeared in the NPR retained the requirement for quantities of one gallon or more that disclosure be given exclusively in largest whole unit, with any remainder in terms of fluid ounces or fractions of the pint or quart. The Commission received two comments on this subsection arguing in favor of permitting the optional use of fluid ounces for products above one gallon.[32] For the reasons discussed in part III.E. above, the Commission has determined that it is in the public interest to permit the voluntary additional disclosure of fluid ounces for products above one gallon. Subsection (b)(3) has been amended to reflect the Commission's determination.

G. Section 500.11 Measurement of Commodity Length, How Expressed

This section describes how to express linear measure in terms of yards, feet, and inches. The amendments reflect the determination by Congress not to continue to require the disclosure of the total number of inches for items one foot or more in length. For those items one foot or more in length, disclosure should be made in the largest whole unit with the remainder in inches or common or decimal fractions of the foot or yard.

H. Section 500.12 Measurement of Commodities by Length and Width, How Expressed

This section describes how to express the net quantity for bidimensional commodities which are measured by length and width, such as roll type goods like foils and tapes. The amendments add metric parentheticals to the inch/pound statements and examples.

The Commission amends subsection (a)(1) by deleting the requirement that length and width be expressed in "linear inches and fractions thereof." This requirement is inconsistent with amendments to subsection 500.8(c), which provide that "statements of linear measure shall be in terms of both yards, feet, and inches and SI metric meters, centimeters, or millimeters." Consequently, the Commission amends subsection (a)(1) to read that length and width are to be expressed "in linear measure" and that the "customary inch/pound statement is to be expressed in inches and fractions thereof."

Subsection (a)(2) has been made consistent with amended subsection 500.8(d), which provides that "statements of measure of area shall be in terms of both square yards, square feet, and square inches and SI metric square meters, square centimeters, and square millimeters." The Commission amends the subsection (a)(2) requirement that disclosure "be expressed in terms of square inches, followed in parentheses by the length and width in the largest whole unit (yard or foot)," to read that net quantity is to "be expressed in terms of area, followed by length and width" and that the "customary inch/pound statement of area is to be expressed in square inches with length and width expressed in the largest whole unit (yard or foot)."

For the same reasons described above, the Commission modifies two other existing subsections in § 500.12. Subsection (a)(3) is rewritten to reconcile it with amendments to the disclosure provisions of subsection 500.8(d), and subsection (b) is amended to reconcile it with the linear measure disclosure provisions of subsection 500.8(c).

I. Section 500.13 Measurement of Commodities by Area Measure Only, How Expressed

This section describes how to express the net quantity in the inch/pound system for commodities that are measured in area only. The amendments add metric parentheticals to the inch/pound statements. The amendments reflect the determination by Congress not to continue to require the disclosure of square inches for areas one square foot or greater.

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[20] Buch, 11, 1; Md Ag, 15, 1; Mech, 7, 2; Mich Ag, 6, 2; Micr, 4, 2; Cong. Myers, 17, 3; NCWM, 19, 2; NIST, 12, 1; Pier, 2, 1; Soko, 8, 1; Stem, 13, 2; SMPS, 16, 1; and Woel, 3, 2.

[21] Micro Motion, Inc. (Micr, 4, 2) objected to the imposition of a maximum number of digits that could be used.

[22] Thus, § 500.19(b) states "(Examples: '1 lb (453 g)' not '1 lb (453.592 g)' or 'Net Wt. 2 oz (56 g)' or 'Net Wt. 2 oz (56.6 g)' not 'Net Wt. 2 oz (56.69 g)'.)"

[23] See, NIST, 12, 1.

[24] Buch, 11, 2.

[25] NCWM, 19, 2.

[26] Mich Ag, 6, 2.

[27] Mech, 7, 1.

[28] Am, 14, 1; Bord, 9, 1; Md Ag, 5, 1; Mech, 7, 1; Mich Ag, 6, 2; Micr, 4, 1; NCWM, 19, 2; Pier, 2, 1; Soko, 8, 1; and Woel, 3, 1.

[29] Section 500.6(a) also requires that the label on a consumer commodity bear the declaration of the net quantity of contents. The Commission felt it appropriate to restate the point at § 500.9(a) to avoid any confusion.

[30] PG, 10, 2.

[31] NCWM, 19, 4.

[32] NCWM, 19, 4; and PG, 10, 2.

J. Section 500.14 Statements of Cubic Measure and Dry Measure

The amendment to this section deletes a superfluous reference to dual declarations of net quantity of contents.

K. Section 500.15 Units of Count, More Than One Ply

The amendment to this section includes metric in the example.

L. Section 500.16 Measurement of Container Type Commodities, How Expressed

Formerly § 500.15a, the Commission renumbers this section and adds metric parentheticals to the inch/pound statements and examples.

Further, subsections 500.16(b)(1) and (b)(2) are brought into conformity with other sections of the amendments by specifying the customary inch/pound units of liquid and dry measurement which should be used.

M. Section 500.17 Fractions

Formerly § 500.16, the Commission renumbers this section and adds the requirement that SI metric declarations contain only decimal fractions. This prohibition against using common fractions with metric units is consistent with staff interpretations dating from 1984 and with proper metric usage. In accordance with the amendments to FPLA, the amendment to this section states that decimal fractions shall not be carried out to more than three decimal places, rather than the previous two decimal places.

N. Section 500.18 SI Metric Prefixes

This is a new section and presents the metric prefixes to be used on labels. Unlike scientific metric prefix charts which have prefixes for huge amounts, e.g. "exa-" for units with eighteen trailing digits (1,000,000,000,000,000,000) and for minuscule amounts, e.g. "atto-" for units with eighteen preceding digits (.000 000 000 000 000 001), the chart is restricted to prefixes usable in the size range of consumer commodities. The chart contained in the proposed regulation referred to "kilo-", "hecto-", "deca-", "deci-", "centi-", and "milli-". However, based on comments received, the Commission is adding the prefix "micro-" and its appropriate symbol, the Greek letter "mu" (μ) and deleting the "hecto-." As stated by one commenter, the micrometer "* * *" is used for thickness of plastic and other material thicknesses * * *."[33] Since the Commission's FPLA regulations govern products such as garbage bags, foil and other household wrapping products the Commission has determined that it is appropriate to add the prefix for the SI metric unit used to describe their thickness. The comments stated that the prefix "hecto" was not used on consumer products.[34]

O. Section 500.19 Conversion of SI Metric Quantities to Inch/Pound and Inch/Pound Quantities to SI metric Quantities

This is a new section. Subsection (a) sets out the conversion factors for converting from metric to inch/pound and from inch/pound to metric quantities. The chart facilitates compliance with the 1992 amendments to the FPLA requiring dual inch/pound and metric disclosure by giving manufacturers the technical information they need to convert one measurement system to the other. The factors used in this chart are consistent with those published in the "Guide for the Use of the International System of Units," NIST Special Publication 811, Department of Commerce, September, 1991, and "Preferred Metric Units For General Use by the Federal Government," Federal Standard 376B, General Services Administration, January 27, 1993. Because many of the products governed by the Commission's regulations issued under the FPLA are measured in the customary inch/pound unit "mil" (1/1000 of an inch), the Commission has added a factor for converting mils into the SI metric unit micrometer.

Subsection (b), relating to the number of digits to be used in making the required content disclosures, was not in the proposed regulation but has been added as the result of the comments received. As discussed in section III.D. above, the issue of the degree of precision needed in making the disclosures generated 12 comments[35], 11 of which argued for avoiding unneeded degrees of accuracy. Based on the logic contained in the comments, the Commission has determined that for most declarations of content the use of three significant digits will suffice to give consumers adequate information. In certain situations, i.e., where the quantity involved is below 100 grams, milliliters, centimeters, square centimeters or cubic centimeters, the manufacturer or distributor has the option of using two digits. The prescribed use of three and two digits is consistent with the Uniform Packaging and Labeling Act adopted by the National Conference on Weights and Measures and the packaging and labeling regulations of the Canadian Legal Metrology Branch.[36]

P. Section 500.20 Conspicuousness

Formerly § 500.17, the Commission renumbers this section.

Q. Section 500.21 Type Size in Relationship to the Area of the Principal Display Panel

Formerly § 500.18, the Commission renumbers this section and amends it to add metric parentheticals. Subsection (g) is new and relates to the size requirements of the "'e' mark."[37]

Four comments raised the issue of letter and print size requirements when the metric symbols, especially the "mL" symbol, are used.[38] The comments express concern that the requirement for lower case type for metric symbols may increase the height requirements for net content declarations in instances where other provisions in § 500.21 impose minimum type sizes on lower case letters.[39] As a result, the commenters believe that the size of the area taken up by the net contents declaration would increase. To alleviate this result, the commenters propose amendments to § 500.21.

First Brands Corporation suggests that "* * * the minimum height requirement for the 'm' in the abbreviation 'mL' for milliliter be no less than one-half of the minimum height standards prescribed in * * *" other parts of § 500.21.[40]

The NCWM offers the following proposal for consideration:

Add a new paragraph to § 500.21—(h) When upper and lower case, or all lowercase letters are used in SI (metric) symbols, it is the uppercase "L," lowercase "d," or their equivalent in the print or type used that shall meet the minimum height requirement. Other letters and exponents must be presented in the same type style and in proportion to the type size used. However, no letter shall be less than 1.6mm (1/16 inch) in height.[41]

Mr. Stempnik suggests that the following sentence be added:

The height of the SI declaration shall be equal or greater than the inch pound declaration height.[42]

Borden suggests that "when upper and lower case letters are used, it is the upper case letter 'o' or its equivalent that shall meet the minimum height standards."[43]

Based upon the comments, the Commission believes that it is necessary to address the issue of type size changes resulting from the metric amendments to the FPLA. The Commission adopts the proposal made by the National Conference on Weights and Measures because it presents a standard which is precise, yet not complex or burdensome for industry to follow. Establishing minimum height and size requirements for type and print of letters should assure adequate disclosure to consumers without burdening industry by necessitating an increase in the minimum height for the content declaration. Therefore, the Commission amends section 500.21 by adding a subpart (h) setting out these requirements.

R. Section 500.22 Abbreviations

Formerly § 500.19, the Commission renumbers this section.

S. Section 500.23 Expression of Net Quantity of Contents in SI Metric Units

This is a new section. Subsection (a) sets out the "rule of 1000" which states that, with exceptions, metric disclosure should be in units ranging in value from 1 to 1000. Thus, the declaration would be "750 mL" rather than "0.75L." The "rule of 1000" has been used by industry and FTC staff since 1984 and has the effect of simplifying and unifying label disclosure.

Subsection (b) sets out the symbols to be used for SI metric units. These symbols are consistent with those preferred for government usage.[44]

Based on the eight comments received,[45] the Commission has added the lowercase "l" as an alternative to the uppercase "L" as the symbol for the SI metric liter and milliliter. The comments point out that while the uppercase "L" is the preferred symbol, there is no international agreement on requiring only the uppercase "L." Indeed, international law may require permitting the use of the lowercase "l." As Mr. John H. Woelflein commented:

Because the BIPM SI brochure as well as ISO 1000 give the symbol for liter as "l,L", the US is obligated as a Meter Convention signatory to permit the use of either symbol. Otherwise, imported products which use the lower case "l" could be excluded by Customs authorities. Of course, the capital "L" is preferred for USA use.[46]

Further, companies that export products often prefer to use the lowercase "l" "as being more acceptable in some countries."[47]

Section 500.24 Supplemental Statements
Section 500.25 Net Quantity, Average Quantity, Permitted Variations
Section 500.26 Representations of Servings, Uses, Applications
Section 500.27 Multiunit Packages
Section 500.28 Variety Packages
Section 500.29 Combination Packages.

The amendments to these six sections renumber them, add metric examples and parentheticals, and make reference to "mass" as well as weight where appropriate. In the amendment to § 500.26 the reference to the National Bureau of Standards has been changed to read "National Institute of Standards and Technology."

IV. Other Statutory and Regulatory Considerations

In promulgating the amendments to the FPLA regulations, the Commission has considered certain statutory and regulatory requirements. These requirements arise under the National Environmental Policy Act of 1969 (42 U.S.C. 4321); the Paperwork Reduction Act (44 U.S.C. 3501); the Metric Conversion Act (15 U.S.C. 205b); the Commission's Regulatory Review Program; and the Regulatory Flexibility Act (5 U.S.C. 603).

A. National Environmental Policy Act

Under the Commission's rules (16 CFR subpart I, section 1.81 *et seq.*) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321), no "major" rule amendment "significantly affecting the quality of the human environment" will be proposed unless an environmental assessment or impact statement has been prepared (16 CFR 1.82). For the following reasons, it is not appropriate to have an environmental assessment or statement for the amendments to regulations issued implementing the metric amendments to FPLA.

First, the amendments do not "significantly affect the quality of the human environment" because they do not independently create significant new duties. Moreover, any environmental consequences that may come from metric measurement translation and disclosure are not the result of the amendments to the regulations, but instead are consequences of the amendments to FPLA by Congress. Second, the environmental effects, if any, of the amendments are so uncertain that any environmental analysis would be based on speculation. (See, 16 CFR 1.83(a).) Third, under section 13 of the amended FPLA, labels printed prior to February 14, 1994 may continue to be used until the supply is exhausted. Thus, companies will not have to discard unused labels into the waste stream and, by so doing, cause damage to the environment. Therefore, the amendments to the FPLA regulations are unlikely to cause any significant impact on the environment.

B. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Commission, before promulgating a rule that requires the "collection of information," must obtain approval from the Office of Management and Budget. The amendments only require that certain information be disclosed to consumers. In 1990, the Supreme Court ruled that the authority of the Office of Management and Budget to approve "collection of information" by Federal agencies does not include authority to review agency rules requiring companies to disclose information to third parties. *Dole* v. *Steelworkers*, 494 U.S. 26, 35 (1990). Under this case, the metric labeling requirements would not be considered collection of information. Thus, the Commission need not seek approval from the Office of Management and Budget.

C. The Metric Conversion Act

Section 205b of the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, expresses Congressional policy regarding measurement systems. This Act states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires federal agencies to use the metric system of measurement in all procurement, grants, and other business-related activities (which include rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

The amendments adopted today by the Commission fully comply with the requirements of the Metric Conversion Act. Each of the amended regulations providing for quantity disclosure requires a statement of net quantity of contents in metric units as well as in customary inch/pound units. The

[33] Stem, 13, 3.

[34] NCWN, 19, 5; and NIST, 12, 4.

[35] See footnote 20, supra.

[36] NCWM, 19, 2.

[37] See the discussion of the "e" mark at part III.A. and part III.B. above.

[38] Bord, 9, 3; Frst, 15, 1; NCWM, 19, 3; and Stem, 13, 6.

[39] Section 500.21 imposes various requirements regarding type size in relation to the area of the principal display panel.

[40] Firs, 15, 2.

[41] NCWM, 19, 3.

[42] Stem, 13, 6.

[43] Bord, 9, 3.

[44] "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, September, 1991; and "Preferred Metric Units for General Use by the Federal Government," Federal Standards 376B (Preprint Copy), General Services Administration, January 27, 1993.

[45] Md Ag, 5, 1; Mech, 7, 2; Mich Ag, 6, 2; Micr, 4, 1; NCWM, 19, 3; Pier, 2, 1; Soko, 8, 2; and Woel, 3, 2.

[46] Woel, 3, 2.

[47] Soko, 8, 2.

amendments add metric examples and parenthetical metric equivalents to the existing regulations. Further, the amendments explicitly present conversion factors from inch/pound to metric and vice versa and fully describe metric units and prefixes.

D. The Commission's Regulatory Review Program

As part of the Commission's ten-year regulatory-review plan for existing rules and guides, the Commission specifically sought comments in the NPR on the costs and benefits of the existing and amended regulations under the FPLA and their regulatory and economic impact. There were two comments that related to the economic impact on small business of the metric amendments.[48] There were no comments relating to the economic impact of the regulations on larger businesses.

Cramer Products stated a concern not with the intent or scope of the regulations, but with the proposed timetable for compliance. Cramer contends that there would be an average cost of $200 to change the labels for each of the 500 products it sells for a total of $100,000.[49] To alleviate these costs, Cramer proposes changing the effective date from February 14, 1994 to February 14, 1996. This extension of time would "allow companies like Cramer to more gradually phase-in the changes, spreading the cost and personnel requirements over the next 2 years."[50]

Congresswoman Meyers, while not supplying any compliance cost data, also stated a concern that small businesses be given adequate time within which to come into compliance. While acknowledging that the amendments to the FPLA allow any supply of labels printed before February 14, 1994 to be used until exhausted, she states "the fact remains that most small businesses don't have the resources to stockpile labels like big enterprises do."[51]

A decision by the Commission to adopt a later effective date for its rules would not grant significant relief to small businesses. By terms of the FPLA statute, all businesses must conform to the new dual disclosure requirements therein by February 14, 1994, whatever the effective date of the Commission's implementing rules. Thus, businesses would have to incur the cost of label changes in any event once their existing supply runs out.

The Commission shares the commenters' concern that there be no undue hardship on businesses that are required to make the transition to the dual disclosures specified in these rules. However, the comments do not provide factual data quantifying such costs sufficient for the Commission to conclude that there is a significant economic impact on small businesses as a class.[52]

Furthermore, while section 5(b) of the FPLA permits the Commission to grant exemptions from statutory requirements where it is demonstrated that compliance with the new requirements of section 4 is impracticable or not necessary for adequate protection of consumers, such exemptions are intended to be granted only in exceptional circumstances. (138 Congressional Record H5345 (daily ed. June 29, 1992).) The rulemaking record in this matter does not allow the Commission to conclude that exceptional circumstances exist for small firms that would make compliance with the requirements of the amendments adopted today impracticable or unnecessary adequately to protect consumers.

As discussed in Part II above, the amended regulations issued today as well as the unamended regulations which continue in effect are mandated by the FPLA. While there are costs associated with compliance, the Commission has designed the regulations to minimize the economic burden on businesses, both large and small.[53]

E. Regulatory Flexibility Act

This Statement of Basis and Purpose contains a final regulatory flexibility analysis under the Regulatory Flexibility Act, 5 U.S.C. 603–604. A final regulatory flexibility analysis must be conducted unless the head of the agency "certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." (5 U.S.C. 605(b).) Based upon information in the public record, the Commission believes that it is unlikely that the amendments being adopted today will have a significant economic impact on a substantial number of small firms. However, given the existing uncertainty on this question, the Commission has decided to publish this final regulatory analysis.

The Commission complied with the requirements of section 603 of the Regulatory Flexibility Act by including in the Notice of Proposed Rulemaking (58 FR 43726, August 17, 1993) certain information for the initial regulatory flexibility analysis. Specifically, the Commission explained that the reasons for the amendments and their objective are to implement the explicit directives of Congress in the FPLA. Similarly, the Commission stated that the legal basis is provided by the FPLA. (5 U.S.C. 603(b)(1)-(2).) Further, the Commission explained that there are no recordkeeping or reporting requirements in the amendments, and that the compliance requirements are essentially measurement and labeling tasks described. (5 U.S.C. 603(b)(4).) The Commission stated that there also are no relevant Federal rules which may duplicate, overlap, or conflict with the proposed rules, inasmuch as the Commission, the FDA, and other agencies with authority to implement the FPLA are given exclusive jurisdiction over various classes of consumer commodities. (5 U.S.C. 603(b)(5).) The Commission specifically requested comments on whether the amendments may have a significant impact on small business.

The Commission received one comment specifically responding to the request for information on the Regulatory Flexibility Act[54] and two comments that otherwise included certain economic material relating to small business costs of compliance.[55]

Mr. Stempnik responded to the regulatory flexibility questions by stating:

Exclusions should be only what is required by the revised FPLA and no more. * * * I do not support exemptions because labels are changed frequently for marketing reasons and companies can stockpile unlimited quantities of old labels before the deadline and continue to use them until they are used up.[56]

Cramer Products commented, without substantiating information, that there would be an average cost per product of $200 to change its labels to bring them into compliance, and Congresswoman Meyers was concerned that the deadline for compliance of February 14, 1994 would cause harm to small business.[57]

The amended regulations that the Commission adopts today cover every company in the economy that produces consumer commodities other than those commodities falling within the authority of other agencies or otherwise exempted from the statute's coverage. Based on the information now available on the public record, it is not feasible for the Commission to estimate the number of entities within this class of industry that also are small companies within the meaning of the Regulatory Flexibility Act. (5 U.S.C. 601(3).) Nevertheless, the information in hand suggests that the overall economic impact of the metric amendments to the regulations issued under FPLA may not be significant. In essence, all the amendments require is that companies make simple mathematical conversions from the inch/pound measurement system into the metric measurement system and include the metric equivalents on already mandated label disclosure of contents of consumer commodities.[58] The FPLA states that non-complying labels printed prior to February 14, 1994 may continue to be used until the supply is exhausted.

Similarly, the direct costs imposed on consumers as a result of the amendments appear to be minimal since consumers will still obtain disclosures in the customary inch/pound system. There are, however, likely to be some indirect costs associated with the amendments as firms incur costs associated with complying with the amendments. There are basically three types of costs that firms incur as a result of labeling regulations. These costs are inventory disposal costs, administrative costs, and printing costs. Inventory disposal costs consist of the value of inventory that must be disposed of in order to comply with the proposed regulation. These costs will be zero since the amendments do not apply to labels that were printed before the effective date of the regulation.

Administrative costs represent the additional costs incurred at an administrative level in order to comply with the regulation. Administrative costs include determining which products fall within the scope of the regulation; establishing a corporate position on the policy; devising a compliance strategy; and overseeing the compliance strategy. These costs are likely to be relatively low for the proposed change to the FPLA. Most products that are already covered by the FPLA will be subject to the amendments adopted today and the amendments appear to clearly state what products would be excluded. In addition, firms would not need to undertake potentially costly analytic or market testing to comply with the changes. Thus, it appears that administrative costs per firm would be low.

Printing costs consist of the additional printing costs incurred due to the changes in the regulations adopted today. These costs will vary among firms depending on various factors including, but not necessarily limited to the following: (1) How frequently the firm typically changes its label; (2) the average inventory of labels; and (3) the printing process utilized by the firm. For example, if the firm updates its labels on a yearly basis, it may delay its normal label update to coincide with changes it will have to make in response to the changes in the FPLA. If so, the additional printing costs caused by the change would be minimal. If, however, the firm normally updates its labels only once every ten years and if it has recently updated its labels, then its costs will be higher.

Incremental printing costs will also depend, to some extent, on the average inventory. The greater the time period between reordering labels, the more likely it is that the label change due to the regulation can be planned to coincide with a planned label change, all else being equal. The type of printing process utilized by the firm also affects the incremental printing costs. While firms may be able to simply engrave the new information on existing plates if flexography or lithography printing methods are used and space permits, new cylinders would be required if gravure printing is utilized.

Given the relative simplicity of the label change required by the proposed amendment, the fact that many firms already disclose information in metric, and the fact that many firms are likely to have been aware since late 1992 that the amendments were scheduled to take effect on February 14, 1994, printing costs per firm associated with the amendments are likely to be low. Thus, the amendments adopted today, may not have a significant impact on a substantial number of small entities.[59]

Section 604 of the Regulatory Flexibility Act sets out three subjects which must be addressed in the final regulatory flexibility analysis. Section 605 of the Act (Avoidance of duplicative or unnecessary analysis) states that the analysis required by section 604 may be done in conjunction with other analysis.

A succinct statement of the need for and the objectives of the rule are set out in Part II above. (5 U.S.C. 604(a)(1).) A summary of the issues raised by the public comment in response to the initial regulatory flexibility analysis and the Commission's assessment thereof are discussed above in this section and in Part IV.D., regarding the Commission's Regulatory Review Program. (5 U.S.C. 604(a)(2).)

There are no significant alternatives to the amended regulations adopted today which will accomplish the stated objectives of the applicable statutes and which minimize any significant economic impact on small entities. (5 U.S.C. 604(a)(3).) For example, it would be difficult to devise different or simplified labeling requirements for small entities that would still implement dual disclosure requirements and yet avoid the principal cost to such businesses, *i.e.*, redesigning labels. For the same reason, the use of general performance standards rather than explicit requirements likely would not result in substantial cost savings. Moreover, the FPLA is quite specific in directing the use of particular modes of disclosure in most instances. Further, as discussed in Part III.D. regarding the Commission's Regulatory Review Program, the amendments adopted today have been designed to minimize the economic impact on small business.

In addition, the Commission has taken further action to reduce any costs of transition for firms which may have been unaware of the pending metric disclosure requirements of the amended FPLA. As discussed in section V. *infra*, the Commission, in order to harmonize with state enforcement policy adopted by NCWM, has stated it will avoid taking law enforcement action under the

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[48] Cram, 16, 1; and Cong. Meyers, 17, 2.

[49] Cramer does not explain the basis for its cost estimates.

[50] Cram, 16, 1.

[51] Cong. Meyers, 17, 2.

[52] However, in an effort "to allow ample time for industry to become aware of the metric labeling requirements, and to reduce the burden on industry and thus the cost of updating package labels," the Commission has determined not to take law enforcement actions against non-complying companies until November 8, 1994. See Part V., Enforcement Policy.

[53] For instance, the regulations contain numerous examples of disclosures intended to assist manufacturers and distributors in designing labels. (See Part III.D., above.) Further, the regulations set out the measurement terms which should be used in making the quantity disclosures and contain a table which demonstrates how to convert from customary inch/pound units to SI metric units and vice versa. (See, Part III.M. and N.) Additionally, to reduce compliance costs, to reduce label clutter and to assist consumer understanding, the Commission in the amendments adopted today has reduced the degree of precision needed in making the SI metric content disclosure to three significant digits in most cases and two digits in others. (See Part III.N.)

[54] Stem, 13, 3.

[55] Cram, 16, 1; and Cong. Meyers.

[56] Stem, 13, 3.

[57] These comments are discussed in connection with Part IV.D. The Commission's Regulatory Review Program, above.

[58] Further, whatever economic impact on small business, if any, that may come from metric measurement translation and disclosure is not the result of the proposed amendments to the regulations but is the consequence of the amendments to FPLA by Congress.

[59] The FDA, based on studies it conducted to determine the economic impact of its nutritional labeling rules, stated that the metric amendments to its food labeling rules "* * * may have a significant economic impact on small businesses * * *" in the food industry (58 FR 29719, May 21, 1993). The FTC does not have equivalent economic information on the myriad industries covered by the FTC regulations issued under the FPLA, although it sought such economic information in the NPR.

new metric amendments to the FPLA rules until November 8, 1994.

V. Enforcement Policy Statement

The effective date of these regulations is February 14, 1994. In crafting the FPLA statute, Congress acknowledged the need for businesses to have time within which to learn about the existence of the requirements to use metric measurement and to come into compliance. Section 13 of the FPLA states that the metric amendments "shall have no effect on the sale or distribution of products whose labels have been printed before" February 14, 1994. (15 U.S.C. 1451(13).)

The Commission expects that the states, as in the past, will adopt uniform state laws that mirror the Commission's new FPLA metric requirements. The National Conference on Weights and Measures,[60] which represents state enforcers of such laws, already has adopted an enforcement policy designed to avoid undue hardship to those firms who may have been unaware of the pending metric requirements. In its "Resolution on Enforcement of SI Metric Labeling Requirements," NCWM has stated that it is advisable "to allow ample time for industry to become aware of the metric labeling requirements, and to reduce the burden on industry and thus reduce the cost of updating of package labels."[61] To achieve these goals, the National Conference has resolved to enforce its metric labeling requirements until November 8, 1994 by sending to non-complying businesses letters which state "not only the area of noncompliance, but also the correct way to be in compliance."[62]

Commission law enforcement actions during this period against non-complying firms could undercut the objectives stated in the NCWM resolution. While states enforce independent laws, these laws for the most part mirror the Commission's FPLA rules. Thus, fear of enforcement by the Commission of the federal version of the new state metric requirements could lead some firms immediately to incur costs of re-labeling, despite assurances of no state law enforcement actions. In the interest of promoting harmonization with state enforcement, the Commission therefore has determined to avoid taking law enforcement actions against companies not in compliance with the metric amendments to the final FPLA regulations until November 8, 1994.[63]

List of Subjects in 16 CFR Part 500

Fair Packaging and Labeling Act, Labeling, Packaging and containers, Trade practices.

For the reasons set out in the preamble, Title 16 of the Code of Federal Regulations is amended by revising part 500 to read as follows:

PART 500—REGULATIONS UNDER SECTION 4 OF THE FAIR PACKAGING AND LABELING ACT

Sec.

500.1 Scope of the regulations of this part.
500.2 Terms defined.
500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.
500.4 Statement of identity.
500.5 Name and place of business of manufacturer, packer or distributor.
500.6 Net quantity of contents declaration, location.
500.7 Net quantity of contents, method of expression.
500.8 Units of weight or mass and measure.
500.9 Units of weight or mass, how expressed.
500.10 Units of fluid measure, how expressed.
500.11 Measurement of commodity length, how expressed.
500.12 Measurement of commodities by length and width, how expressed.
500.13 Measurement of commodities by area measure only, how expressed.
500.14 Statements of cubic measure and dry measure.
500.15 Units of count, more than one ply.
500.16 Measurement of container type commodities, how expressed.
500.17 Fractions.
500.18 SI metric prefixes.
500.19 Conversion of SI metric quantities to inch/pound quantities and inch/pound quantities to SI metric quantities.
500.20 Conspicuousness.
500.21 Type size in relationship to the area of the principal display panel.
500.22 Abbreviations.
500.23 Expression of net quantity of contents in SI Metric units.
500.24 Supplemental statements.
500.25 Net quantity, average quantity, permitted variations.
500.26 Representations of servings, uses, applications.
500.27 Multiunit packages.
500.28 Variety packages.
500.29 Combination packages.

Authority: 15 U.S.C. 1453, 1454, 1455.

§ 500.1 Scope of the regulations of this part.

The regulations in this part establish requirements for labeling of consumer commodities as hereinafter defined with respect to identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and net quantity of servings, uses, or applications represented to be present.

§ 500.2 Terms defined.

As used in this part, unless the context otherwise specifically requires:

(a) The term *Act* means the "Fair Packaging and Labeling Act" (Pub. L. 89–755, approved Nov. 3, 1966; 80 Stat. 1296 *et seq.*; 15 U.S.C. 1451 *et seq.*, as amended by Public Law 102–329, August 3, 1992).

(b) The term *regulation* or *regulations* means regulations promulgated by the Commission pursuant to sections 4, 5, and 6 of the Act (15 U.S.C. 1453, 1454, 1455).

(c) The term *consumer commodity* or *commodity* means any article, product, or commodity of any kind or class which is customarily produced or distributed for sale through retail sales agencies or instrumentalities for consumption by individuals, or use by individuals for purposes of personal care or in the performance of services ordinarily rendered within the household, and which usually is consumed or expended in the course of such consumption or use. For purposes of the regulations in this part the term *consumer commodity* does not include any food, drug, device or cosmetic as defined by section 201 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321); any meat or meat product, poultry or poultry product, or tobacco or tobacco product; any commodity subject to packaging or labeling requirements imposed by the Administrator of the Environmental Protection Agency pursuant to the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. 136 *et seq.*); any commodity subject to the provisions of the eighth paragraph under the heading "Bureau of Animal Industry" of the Virus-Serum-Toxin Act (21 U.S.C. 151–157); any beverage subject to or complying with packaging or labeling requirements imposed under the Federal Alcohol Administration Act (27 U.S.C. 201 *et seq.*); any commodity subject to the provisions of the Federal Seed Act (7 U.S.C. 1551–1610).

(d) The term *package* means any container or wrapping in which any consumer commodity is enclosed for use in the delivery or display of that commodity to retail purchasers. For purposes of the regulations in this part the term *package* does not include shipping containers or wrappings used solely for the transportation of any consumer commodity in bulk or in quantity to manufacturers, packers, or processors, or to wholesale or retail distributors thereof unless used in retail display; shipping containers or outer wrappings used by retailers to ship or deliver any commodity to retail customers if such containers and wrappings bear no printed matter pertaining to any particular commodity; or containers subject to the provisions of the Act of August 3, 1912 (37 Stat. 250, as amended; 15 U.S.C. 231–233), the Act of March 4, 1915 (38 Stat. 1186, as amended; 15 U.S.C. 234–236); or transparent wrappers or containers which do not bear written, printed, or graphic matter obscuring any part of the label information required by this part.

(e) The term *label* means any written, printed, or graphic matter affixed to or appearing upon any consumer commodity or affixed to or appearing upon a package containing any consumer commodity; except that:

(1) An inspector's tag or other nonpromotional matter affixed to or appearing upon a consumer commodity shall not be deemed to be a label requiring the repetition of label information required by this part, and

(2) For the purposes of the regulations in this part the term *label* does not include written, printed, or graphic matter affixed to or appearing upon commodities, or affixed to or appearing upon containers or wrappers for commodities sold or distributed to industrial or institutional users.

(f) The term *person* includes any firm, corporation or associations.

(g) The term *commerce* means:

(1) Commerce between any State, the District of Columbia, the Commonwealth of Puerto Rico, or any territory or possession of the United States, and any place outside thereof, and

(2) Commerce within the District of Columbia or within any territory or possession of the United States, not organized with a legislature, but shall not include exports to foreign countries.

(h) The term *principal display panel* means that part of a label that is most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel must be large enough to accommodate all the mandatory label information required to be placed thereon by this part without obscuring designs, vignettes, or crowding. This definition does not preclude utilization of alternate principal display panels on a label of a package, but alternate principal display panels must duplicate the information required to be placed on the principal display panel by this part. This definition does not preclude utilization of the container closure as the surface bearing the principal display panel if that label location is the one most likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a label appearing on a cylindrical surface is that 40 percent of the circumference which is more likely to be displayed, presented, shown, or examined under normal and customary conditions of display for retail sale. The principal display panel of a consumer commodity marketed in a decorative type container, or a container having a capacity of 1/4 ounce (7.4 mL) or less, may be considered to be a tear-away tag or tape affixed to the container and bearing the mandatory label information as required by this part, but the type size of the net quantity of contents statement shall be governed by the dimensions of the container itself. The principal display panel of a consumer commodity marketed on a display card to which the immediate container of the commodity is affixed may be considered to be the display panel of the card, and the type size of the net quantity of contents statement is governed by the dimensions of the display card.

(i) The term *random package* means a package which is one of a lot, shipment, or delivery of packages of the same consumer commodity with varying weights, that is, packages with no fixed weight pattern.

(j) The term *SI metric* refers to units belonging to the International System of Units (abbreviated "SI" from the French, *Le Systeme International d'Unites*), as interpreted or modified for use in the United States by the Secretary of Commerce. They include the SI units (together with their multiples and submultiples) as well as other metric units (e.g., the liter) that are accepted for use with the SI units because of their practical importance.

(k) The term *customary inch/pound* refers to units belonging to the system of units used in the United States based on or derived from the ounce, pound, and ton for weight; the inch, foot, yard, and mile for length; the fluid ounce, pint, quart, and gallon for volume; and dry pint, dry quart, peck, and bushel for dry measure.

(l) The term *"e" mark* refers to the symbol "e" used in connection with the quantity declarations on labels of some consumer commodities marketed primarily in the European Community (EC). The "e" mark constitutes a representation by the packer or importer that the package to which it is applied has been filled in accordance with the average system of quantity specified by the EC. The average system is a method of declaring package fill in the EC and other countries of the world, including the United States.

§ 500.3 Prohibited acts, coverage, general labeling requirements, exemption procedures.

(a) No person engaged in the packaging or labeling of any consumer commodity for distribution in commerce, and no person (other than a common carrier for hire, or a freight forwarder for hire) engaged in the distribution in commerce of any packaged or labeled consumer commodity, shall distribute or cause to be distributed in commerce any such commodity if such commodity is contained in a package, or if there is affixed to that commodity a label, which does not conform to the provisions of the Act and of the regulations in this part.

(b) Persons engaged in business as wholesale or retail distributors of consumer commodities shall be subject to the Act and the regulations in this part to the extent that such persons are engaged in the packaging or labeling of consumer commodities, or prescribe or specify by any means the manner in which such consumer commodities are packaged or labeled.

(c) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act (15 U.S.C. 1454(b)), shall, upon being prepared for distribution in commerce or for sale at retail, and before being distributed in commerce or offered for sale at retail, be labeled in accordance with the requirements of the Act and the regulations in this part.

(d) Each packaged or labeled consumer commodity, unless it has been exempted through proceedings under section 5(b) of the Act, shall bear a label specifying the identity of the commodity; the name and place of business of the manufacturer, packer, or distributor; the net quantity of contents; and the net quantity per serving, use or application, where there is a label representation as to the number of servings, uses, or applications obtainable from the commodity.

(e) Regulations will be promulgated by the Commission exempting particular consumer commodities from one or more of the requirements of section 4 of the Act and the regulations

[60] The National Conference on Weights and Measures is a voluntary standards-writing body whose members are State and local weights and measures officials and which has Federal Government, business, industry and consumer representatives. NCWM, 19, 1.

[61] *Id.* at 6.

[62] *Id.*

[63] Further, the delay of enforcement gives companies time to learn about these amendments without subjecting them to the burden of litigation. All other aspects of the Commission's regulations issued under the FPLA will not be affected by the postponement of enforcement of the SI metric amendments.

thereunder to the extent and under such conditions as are consistent with the declared policy of the Act whenever the Commission finds that, because of the nature, form, or quantity of the particular consumer commodity, or for other good and sufficient reasons, full compliance with all the requirements otherwise applicable is impracticable or is not necessary for the adequate protection of consumers. Proceedings for the promulgation of such exempting regulations may be commenced by the Commission upon its own initiative or pursuant to petition filed with the Secretary by any interested person or group stating reasonable grounds for the proposed exemption, pursuant to Section 1.15 of this chapter of the Commission's general procedures.

§ 500.4 Statement of identity.

(a) The principal display panel of a consumer commodity shall bear a specification of the identity of the commodity.

(b) Such specification of identity shall comprise a principal feature of the principal display panel, shall be in such type size and so positioned as to render it easily read and understood by the consumer, and shall be in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed.

(c) Such specification of identity shall be in terms of:

(1) The name now or hereafter specified in or required by any applicable Federal law or regulation; or in the absence thereof,

(2) The common or usual name of the commodity; or in the absence thereof,

(3) The generic name or in other appropriately descriptive terms such as a specification which includes a statement of function.

(d) The specification of identity shall not be false, misleading, or deceptive in any respect. Ingredients or components which are not present in the commodity in a substantial or significantly effective amount may not be mentioned in the specification of identity; except that a component present in a formulation in substantial and effective amounts, but not present in the final product due to conversion or transformation into a different entity (which different entity is present in the final product), may be mentioned in the specification of identity.

§ 500.5 Name and place of business of manufacturer, packer or distributor.

(a) The label of a consumer commodity shall specify conspicuously the name and place of business of the manufacturer, packer, or distributor. Where the consumer commodity is not manufactured by the person whose name appears on the label, the name shall be qualified by a phrase that reveals the connection such person has with such commodity; such as "Manufactured for _____," "Distributed by _____," or any other wording that expresses the facts.

(b) The requirement for declaration of the manufacturer, packer, or distributor shall in the case of a corporation be deemed to be satisfied only by the actual corporate name, which may be preceded or followed by the name of the particular division of the corporation. In the case of an individual, partnership, or association, the name under which the business is conducted shall be used.

(c) The statement of the place of business shall include the street address, city, State, and Zip Code; however, the street address may be omitted if it is shown in a current city directory or telephone directory.

(d) If a person manufactures, packs, or distributes a consumer commodity at a place other than his principal place of business, the label may state the principal place of business in lieu of the actual place where such consumer commodity was manufactured or packed or is to be distributed, unless such statement would be misleading.

(e) Standard abbreviations may be used in complying with the requirements of this section.

§ 500.6 Net quantity of contents declaration, location.

(a) The label of a consumer commodity shall bear a declaration of the net quantity of contents separately and accurately stated on the principal display panel.

(b) The declaration of net quantity shall appear as a distinct item on the principal display panel, shall be separated (by at least a space equal to the height of the lettering used in the declaration) from other printed label information appearing above or below the declaration and, shall not include any term qualifying a unit of weight or mass, measure, or count such as "jumbo quart," "giant liter," "full gallon," "when packed," "minimum," or words of similar import. The declaration of net quantity shall be separated (by at least a space equal to twice the width of the letter "N" of the style of type used in the net quantity statement) from other printed label information appearing to the left or right of the declaration. However, the "e" mark shall not be considered to be a qualifying word or phrase and may be used as part of the statement of the net quantity of contents where warranted. When used, the "e" mark shall be at least 3 millimeters (approximately 1/8 in) in height. The declaration of net quantity of contents shall be placed on the principal display panel within the bottom 30 percent of the area of the label panel in lines generally parallel to the base on which the package or commodity rests as it is designed to be displayed: *Provided*, that:

(1) On consumer commodities having a principal display panel of 5 square inches (32.2 cm^2) or less, the requirement for placement within the bottom 30 percent of the area of the label panel shall not apply when the declaration of net quantity of contents meets the other requirements of this part, and

(2) The requirements as to separation, location, and type size, specified in this part are waived with respect to variety and combination packages as defined in this part.

§ 500.7 Net quantity of contents, method of expression.

The net quantity of contents shall be expressed in terms of weight or mass, measure, numerical count, or a combination of numerical count and weight or mass, size, or measure so as to give accurate information regarding the net quantity of contents thereof, and thereby facilitate value comparisons by consumers. The net quantity of contents statement shall be in terms of fluid measure if the commodity is liquid, or in terms of weight or mass if the commodity is solid, semi-solid, or viscous, or a mixture of solid and liquid. If there is a firmly established general consumer usage and trade custom of declaring the contents of a liquid by weight or mass, or a solid, semi-solid, or viscous product by fluid measure, numerical count, and/or size, or (as in the case of lawn and plant care products) by cubic measure, it may be used, when such declaration provides sufficient information to facilitate value comparisons by consumers. The declaration may appear in more than one line of print or type.

§ 500.8 Units of weight or mass and measure.

(a) Statements of weight or mass shall be in terms of both avoirdupois pound and ounce and SI metric kilograms, grams, or milligrams. (Examples of avoirdupois/metric declarations: "Net Wt 15 oz (425 g)" or "Net Wt 1½ lbs (680 g)" or " 2.5 oz (70.8 g)"; examples of metric/avoirdupois declarations: "Net Mass 425 g (15 oz)" or "Net Mass 680 g (1½ lbs)" or "100 g e (3.5 oz).")

(b) Statements of fluid measure shall be in terms of both the U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof and SI metric liters or milliliters and shall (except in the case of petroleum products, for which the declaration shall express the volume at 60 °Fahrenheit (15.6 °Celsius)) express the volume at 68 °Fahrenheit (20 °Celsius). (Examples of gallon/metric declarations: "Net 12 fl oz (354 mL)" or "Net Contents 1 gal (3.78 L)" or "8 fl oz (236 mL)"; examples of metric/gallon declarations: "Net 500 mL (1.05 pt)" or "Net Contents 1 L (1.05 qt).")

(c) Statements of linear measure shall be in terms of both yards, feet, and inches and SI metric meters, centimeters, or millimeters.

(d) Statements of measure of area shall be in terms of both square yards, square feet, and square inches and SI metric square meters, square decimeters, square centimeters, or square millimeters.

(e) Statements of dry measure shall be in terms of both the U.S. bushel of 2,150.42 cubic inches and peck, dry quart, and dry pint subdivisions thereof and SI metric liters or milliliters.

(f) Statements of cubic measure shall be in terms of both cubic yard, cubic foot, and cubic inch and SI metric cubic meters, cubic decimeters, or cubic centimeters.

§ 500.9 Units of weight or mass, how expressed.

(a) The term "net weight" or "net mass" may be used in stating the net quantity of contents in terms of weight or mass. However, where the term "net weight" or "net mass" is not used, the quantity of contents shall always disclose the net quantity of contents. For example: "453 g (1 lb)" or "Net Wt 1 lb (453 g)" or "Net Mass 453 g (1 lb)".

(b) With the exception of random packages, the statement of net quantity of contents in terms of avoirdupois weight shall be expressed as follows:

(1) If less than 1 pound, in terms of ounces. (Examples: "Net Weight 12 oz. (340 g)" or "Net Mass 340 g (12 oz)".)

(2) If at least 1 pound but less than 4 pounds, in whole pounds, with any remainder in ounces or common or decimal fractions of the pound, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of ounces.

(Examples: "Net Wt. 1 lb. 8 oz. (680 g)" or "Net Wt. 1.5 lb./24 oz. (680 g)" or "24 oz. (1½ lb.) 680 g".)

(3) If 4 pounds or more, in terms of whole pounds, with any remainder in terms of ounces or common or decimal fractions of the pound, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of ounces. (Examples: "Net Weight 5 pounds 4 ounces (2.38 kg)" or "Net Mass 2.38 kg (5 lbs 4 oz)" or "Net Wt. 5¼ lbs. (2.38 kg)" or "Net Mass 2.38 kg (5¼ lbs.)" or "Net Wt. 5.25 lbs. (2.38 kg) or "Net Mass 2.38 kg (5.25 lbs)".)

(c) If the net quantity of contents declaration appears on a random package it may, when the net weight exceeds 1 pound, be expressed in terms of pounds and decimal fractions of the pound carried out to not more than three decimal places. When the net weight does not exceed 1 pound, the declaration on the random package may be in terms of decimal fractions of the pound in lieu of ounces. (Examples: "Net Wt. 0.75 lb." and "Net Weight 1.05 pounds.") Such decimal declaration shall be exempt from the type size and placement requirements of section 4(a) of the Act if the accurate statement of net weight is presented prominently and conspicuously on the principal display panel of the package. The net quantity of contents declaration on a random package is not required to, but may include a statement in terms of the SI metric system carried out to not more than 3 decimal places.

(d) It is sufficient to distinguish avoirdupois ounce from fluid ounce through association of terms. (Examples: "Net Wt. 8 oz." vs. "8 fl. oz." or "Net Contents 6 fl. oz.")

§ 500.10 Units of fluid measure, how expressed.

(a) Use of the terms "net" or "net contents" is optional.

(b) Declaration of net quantity of contents in terms of fluid measure shall be identified as such in each instance and the statement of U.S. gallon of 231 cubic inches and quart, pint, and fluid ounce subdivisions thereof shall be expressed as follows:

(1) If less than 1 pint, in terms of fluid ounces. (Example: "Net Contents 8 fl. oz. (236 mL)" or "Net Contents 236 mL (8 fl. oz.)".)

(2) If at least 1 pint but less than 1 gallon, in terms of the largest whole unit (quarts, quarts and pints or pints, as appropriate), with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of fluid ounces. (Examples: "1 qt. (946 mL)" or "Net contents 1 qt. 1 pt. 8 oz./56 fl. oz. (1.65 L)", but not in terms of quart and ounce such as "1 quart 24 ounces (1.65 L)".)

(3) If 1 gallon or more, in terms of the largest whole unit (gallons followed by common or decimal fractions of a gallon or by the next smaller whole unit or units viz, quarts and pints) with any remainder in terms of fluid ounces or common or decimal fractions of the pint or quart, except that it shall be optional to include an immediately adjacent additional expression of net quantity in terms of fluid ounces.

(Examples: "Net contents 2½ gal. (9.46 L)", "Contents 2.5 gal. (9.46 L)", or "Net contents 2 gallons 2 quarts (9.46 L)" but not as "2 gallons 4 pints (9.46 L)".)

§ 500.11 Measurement of commodity length, how expressed.

Declaration of net quantity in terms of yards, feet, and inches shall be expressed as follows:

(a) If less than 1 foot, in terms of inches and fractions thereof.

(b) If 1 foot or more, in terms of the largest whole unit (a yard or foot) with any remainder in terms of inches or common or decimal fractions of the foot or yard, except that it shall be optional to express the length in the preceding manner followed by a statement of the length in terms of inches.

§ 500.12 Measurement of commodities by length and width, how expressed.

For bidimensional commodities (including roll-type commodities) measured in terms of commodity length and width, the declaration of net quantity of contents shall be expressed in the following manner:

(a) The declaration of net quantity for bidimensional commodities having a width of more than 4 inches (10.1 cm) shall:

(1) When the commodity has an area of less than 1 square foot (929 cm^2) be expressed in terms of length and width in linear measure. The customary inch/pound statement is to be expressed in inches and fractions thereof.

(2) When the commodity has an area of 1 square foot (929 cm^2) or more, but less than 4 square feet (37.1 dm^2), be expressed in terms of area, followed by the length and width. The customary inch/pound statement of area is to be expressed in square inches with length and width expressed in the largest whole unit (yard or foot) with any remainder in inches or common or decimal fractions of the yard or foot except that a dimension of less than 2 feet (60.9 cm) may be stated in inches. Commodities consisting of usable individual units (e.g., paper napkins) while requiring a declaration of unit area need not declare the total area of all such individual units.

(3) When the commodity has an area of 4 square feet (37.1 dm^2) or more, be expressed in terms of area, followed by

the length and width. The customary inch/pound statement of area is to be expressed in square feet with the length and width expressed in the largest whole units (yards or feet) with any remainder in terms of inches or common or decimal fractions of the foot or yard except that a dimension of less than 2 feet (60.96 cm) may be stated in inches.

(4) For any commodity for which the quantity of contents is required by paragraph (a) (2) or (3) of this section to include a declaration of the linear dimensions, the quantity of contents, in addition to being declared in the manner prescribed by the appropriate provisions of this regulation, may also include, after the customary inch/pound statement of the linear dimensions of the largest unit of measurement, a parenthetical declaration of the linear dimensions of said commodity in terms of inches.

(**Example:** "25 sq. ft. (12 in. x 8.33 yd.) (12 in. x 300 in.)
2.32 m² (30.4 cm x 7.62 m)".)

(b) For bidimensional commodities having a width of 4 inches (10.16 cm) or less, the declaration of net quantity shall be expressed in terms of width and length in linear measure. The customary inch/pound statement of width shall be expressed in terms of linear inches and fractions thereof, and length shall be expressed in the largest whole unit (yard or foot) with any remainder in terms of the common or decimal fractions of the yard or foot, except that it shall be optional to express the length in the largest whole unit followed by a statement of length in inches or to express the length in inches followed by a statement of length in the largest whole unit.

(**Example:** "2 inches x 10 yards (5.08 cm x 9.14 m)",
"2 inches x 10 yards (360 inches) 5.08 cm x 9.14 m", or
"2 inches x 360 inches (10 yards) 5.08 cm x 9.14 m".)

§ 500.13 Measurement of commodities by area measure only, how expressed.

For commodities measured in terms of area measure only declaration of net quantity in terms of square yards, square feet, and square inches shall be expressed in the following manner:

(a) If less than 1 square foot (929 cm²), in terms of square inches and fractions thereof.

(b) If at least 1 square foot (929 cm²) but less than 4 square feet (37.1 dm²), in terms of square feet with any remainder in terms of square inches or common or decimal fractions of the square foot.

(c) If 4 square feet (37.1 dm²) or more, in terms of the largest appropriate whole unit (square yards, square yards and square feet, or square feet) with any remainder in terms of square inches or common or decimal fractions of the square foot or square yard.

§ 500.14 Statements of cubic measure and dry measure.

Statements of cubic measure and dry measure shall be expressed in terms most appropriate to the providing of accurate information as to the net quantity of contents, and to the facilitating of value comparisons by consumers. When the content declaration on a commodity sold in compressed form is stated in terms of cubic measure there may also be a statement indicating the amount of material from which the final product was compressed. Such statement shall not exceed the actual amount of material that can be recovered.

§ 500.15 Units of count, more than one ply.

If the commodity is in distinct usable units made up of one or more components or ply, the statement of net quantity of contents shall (in addition to complying with the requirements of linear and area measurement declaration for each unit as specified in § 500.12) include the number of ply and the total number of usable units.

(**Example:** "100 2-ply facial tissues, 8½ inches x 10 inches" (21.5 x 25.4 cm).) For the purposes of this section, roll type commodities (e.g. paper towels), irrespective of perforations, shall not be considered to be usable units, and shall be labeled in terms of total area measurement and the number of ply. Such area measurement, however, shall be supplemented by a count statement and the dimensions of a single unit.

§ 500.16 Measurement of container type commodities, how expressed.

Notwithstanding other provisions of this Part 500 of the regulations pertaining to the expression of net quantity of contents by measurement, commodities designed and sold at retail to be used as containers for other materials or objects, such as bags, cups, boxes, and pans, shall be labeled in accordance with the following paragraphs:

(a) The declaration of net quantity for container commodities shall be expressed as follows:

(1) For bag type commodities, in terms of count followed by linear dimensions of the bag (whether packaged in a perforated roll or otherwise) Net quantity of contents in terms of feet and inches shall be expressed as follows:

(i) When the unit bag is characterized by two dimensions because of the absence of a gusset, the width and length will be expressed in inches, except that a dimension of 2 feet or more will be expressed in feet with any remainder in terms of inches or common or decimal fractions of the foot.

(**Example:** "25 bags, 17 in. x 20 in. (43.1 x 50.8 cm)" or "200 bags, 20 in. x 2 ft. 6 in. (50.8 x 76.2 cm)", or "50 bags, 20 in. x 2½ ft. (50.8 x 76.2 cm)".)

(ii) When the unit bag is gussetted, the dimensions will be expressed as width, depth and length in terms of inches except that any dimensions of 2 feet or more will be expressed in feet with any remainder in terms of inches or the common or decimal fractions of the foot.

(**Examples:** "25 bags, 17 in. x 4 in. x 20 in. (43 x 10 x 50 cm)", or "200 bags, 20 in. x 12 in. x 2½ ft. (50.8 x 30.4 x 76.2 cm)".)

(2) For other square, oblong, rectangular or similarly shaped containers, in terms of count followed by length, width, and depth except depth need not be listed when less than 2 inches (5.08 cm).

(**Example:** "2 cake pans, 8 in. x 8 in. (20.3 x 20.3 cm)", or "roasting pan, 12 in. x 8 in. x 3 in. (30.4 x 20.3 x 7.62 cm)".)

(3) For circular or other generally round shaped containers, except cups, and the like, in terms of count followed by diameter and depth except depth need not be listed when less than 2 inches (5.08 cm).

(**Example:** "4 pie pans, 8 in. diameter (20.3 cm)" or "2 cake pans, 8 in. diameter x 4 in. (20.3 x 10.1 cm)".)

(b) When the functional use of the container is related by label reference in standard terms of measure to the capability of holding a specific quantity of substance or class of substances such references shall be a part of the net quantity statement and shall specify capacity as follows:

(1) Liquid measure for containers which are intended to be used for liquids, semi-solids, viscous materials or mixtures of solids and liquids. The customary inch/pound statement of capacity shall be stated in terms of the largest whole U.S. gallon of 231 cubic inches, quart, pint, or ounce with any remainder in terms of the common or decimal fraction of that unit.

(**Example:** Freezer Boxes: "4 boxes, 1 qt. capacity, 6 in. x 6 in. x 4 in. (946 mL capacity, 15.2 x 15.2 x 10.1 cm)".)

(2) Dry measure for containers which are intended to be used for solids. The customary inch/pound statement of capacity shall be stated in terms of the largest whole U.S. bushel of 2,150.42 cubic inches, peck, dry quart, or dry pint with any remainder in terms of the common or decimal fraction of that unit.

(**Example:** Leaf Bags: "8 bags, 6 bushel capacity, 4 feet x 5 feet (211 L capacity—1.21 m x 1.52 m)".)

(3) Where containers are used as liners for other more permanent containers, in the same terms as are normally used to express the capacity of the more permanent container.

(**Example:** Garbage Can Liners: "10 liners, 2 ft. 6 in. x 3 ft. 1 in., fits up to 30 gallon cans (76.2 x 93.9 cm, fits up to 113 L cans".)

(c) Notwithstanding the above requirements, the net quantity statement for containers such as cups will be listed in terms of count and liquid capacity per unit.

(**Example:** "24 cups, 6 fl. oz. capacity (177 mL)".)

(d) For purposes of this section, the use of the terms "capacity," "diameter," and "fluid" is optional.

§ 500.17 Fractions.

(a) SI metric declarations of net quantity of contents of any consumer commodity may contain only decimal fractions. Other declarations of net quantity of contents may contain common or decimal fractions. A common fraction shall be in terms of halves, quarters, eighths, sixteenths, or thirty-seconds; except that:

(1) If there exists a firmly established general consumer usage and trade custom of employing different common fractions in the net quantity declaration of a particular commodity, they may be employed, and

(2) If linear measurements are required in terms of yards or feet, common fractions may be in terms of thirds. A common fraction shall be reduced to its lowest terms; a decimal fraction shall not be carried out to more than three places.

(b) If a statement includes small fractions, smaller variations in the actual size or weight of the commodity will be permitted as provided in § 500.25, than in cases where the larger fractions or whole numbers are used.

§ 500.18 SI metric prefixes.

The following chart indicates SI prefixes that may be used on a broad range of consumer commodity labels:

Prefix	Symbol	Multiplying factor[1]
Kilo-	k	x 10^3
Deca-	da	x 10
Deci-	d	x 10^{-1}
Centi-	c	x 10^{-2}
Milli-	m	x 10^{-3}
Micro-	μ	x 10^{-6}

[1] 10^2=100; 10^3=1000; 10^{-1}=0.1; 10^{-2}=0.01.
Thus, 2 kg=2x1000 g=2000 g, and 3 cm=3x0.01 m=0.03 m.

§ 500.19 Conversion of SI metric quantities to inch/pound quantities and inch/pound quantities to SI metric quantities.

(a) For calculating the conversion of SI metric quantities to inch/pound quantities and inch/pound quantities to metric quantities, the factors in the following chart and none others shall be employed:

SI METRIC INCH/POUND CONVERSION FACTORS

Inch/pound	Metric
Length	
1 mil=25.4 microm-eters (μm)*.	1 micrometer=0.039370 mil.
1 inch=2.54 cm*	1 millimeter=0.039 370 in.
1 foot=30.48 cm*	1 centimeter=0.393 701 in.
1 yard=0.9144m*	1 meter=3.280 84 ft.
Area	
1 square inch=6.4516 cm^2*.	1 square centimeter=0.155 000 in^2.
1 square foot=929.0304 cm^2*.	1 square decimeter=0.107 639 ft^2.
=9.290 304 dm^2	1 square meter=10.763 9 ft^2.
1 square yard=0.836 127 m^2.	
Volume or Capacity	
1 cubic inch=16.3871 cm^3.	1 cubic centimeter=0.061 023 7 in^3.
1 cubic foot=0.028 316 8 m^3.	1 cubic decimeter=0.035 314 7 ft^3.
=2.83 168 dm^3	1 cubic meter=35.314 7 ft^3.
1 cubic yard=0.764 555 m^3.	=1.307 95 yd^3.
1 fluid ounce=29.573 5 mL.	1 milliliter=0.033 814 0 fluid oz.
1 liquid pint=473.177 mL.	1 liter=1.05669 liquid quart.
=0.473 177 L	1 liter=0.264 172 gal-lon.
1 liquid quart=946.353 mL.	1 dry pint=550.610 5 mL.
=0.946 353 L	1 dry quart=1.101 221 L.
1 gallon=3.785 41 L	1 dry peck=8.809 768 L.
1 bushel=35.2391 L.	

SI METRIC INCH/POUND CONVERSION FACTORS—Continued

Inch/pound	Metric
Weight or Mass	
1 ounce=28.349 5 g	1 milligram=0.000 035 274 0 oz.
1 pound=453.592 g	=0.015 432 4 grain.
=0.453 592 kg	1 gram=0.035 274 0 oz.
	1 kilogram=2.204 62 lb.

*Exactly.
NOTE: These conversion factors are given to six significant digits to provide such accuracy when necessary.

(b) The SI metric quantity declaration should be shown in three digits except where the quantity is below 100 grams, milliliters, centimeters, square centimeters or cubic centimeters, where it can be shown in two figures. In either case, any final zero appearing to the right of a decimal point need not be shown.

(**Examples:** "1 lb (453 g)" not "1 lb (453.592 g)"; "Net Wt. 2 oz (56 g)" or "Net Wt 2 oz (56.6 g)" not "Net Wt. 2 oz (56.69 g)".)

§ 500.20 Conspicuousness.

The statement of net quantity of contents shall appear in conspicuous and easily legible boldface type or print in distinct contrast (by typography, layout, color, embossing, or molding) to other matter on the package; except that a statement of net quantity blown, embossed, or molded on a glass or plastic surface is permissible when all label information is so formed on the surface.

§ 500.21 Type size in relationship to the area of the principal display panel.

(a) The statement of net quantity of contents shall be in letters and numerals in a type size established in relationship to the area of the principal display panel of the package or commodity and shall be uniform for all packages or commodities of substantially the same size. For this purpose, "area of the principal display panel" means the area of the side or surface that bears the principal display panel, exclusive of tops, bottoms, flanges at tops and bottoms of cans, and shoulders and necks of bottles and jars. This area shall be:

(1) In the case of a rectangular package or commodity where one entire side properly can be considered to be a principal display panel side, the product of the height times the width of that side;

(2) In the case of a cylindrical or nearly cylindrical container or

commodity, 40 percent of the product of the height of the container or commodity times the circumference; and

(3) In the case of any otherwise shaped container or commodity, 40 percent of the total surface of the container or commodity: *Provided*, however, that where such container or commodity presents an obvious "principal display panel" such as the top of a triangular or oval shaped container, the area shall consist of the entire top surface.

(b) With area of principal display panel defined as above, the type size in relationship to area of that panel shall comply with the following specifications:

(1) Not less than 1/16 inch (1.5 mm) in height on packages the principal display panel of which has an area of 5 square inches or (32.2 cm²) less.

(2) Not less than 1/8 inch (3.1 mm) in height on packages the principal display panel of which has an area of more than 5 (32.2 cm²) but not more than 25 square inches (161 cm²).

(3) Not less than 3/16 inch (4.7 mm) in height on packages the principal display panel of which has an area of more than 25 (161 cm²) but not more than 100 square inches (6.45 dm²).

(4) Not less than 1/4 inch (6.35 mm) in height on packages the principal display panel of which has an area of more than 100 square inches (6.45 dm²), except not less than 1/2 (12.7 mm) inch in height if the area is more than 400 square inches (25.8 dm²).

(c) Where the statement of net quantity of contents is blown, embossed, or molded on a glass or plastic surface rather than by printing, typing, or coloring, the lettering sizes specified in paragraph (b) of this section shall be increased by 1/16 of an inch (1.5 mm).

(d) Letter heights pertain to upper case or capital letters. When upper and lower case or all lower case letters are used, it is the lower case letter "o" or its equivalent that shall meet the minimum standards.

(e) The ratio of height to width of a letter shall not exceed a differential of 3 units to 1 unit (no more than 3 times as high as it is wide).

(f) When fractions are used, each component shall meet one-half the minimum height standards.

(g) The type size requirements specified in this section do not apply to the "e" mark. (See § 500.6(b).)

(h) When upper and lower case or all lowercase letters are used in SI metric symbols, it is the uppercase "L," lowercase "d," or their equivalent in the print or type used that shall meet the minimum height requirement. Other letters and exponents must be presented in the same type style and in proportion to the type size used. However, no letter shall be less than 1.6 mm (1/16 inch) in height.

§ 500.22 Abbreviations.

The following abbreviations and none other may be employed in the required net quantity declaration:

Inch—in.
Feet or foot—ft.
Fluid—fl.
Liquid—liq.
Ounce—oz.
Gallon—gal.
Pint—pt.
Pound—lb.
Quart—qt.
Square—sq.
Weight—wt.
Yard—yd.
Avoirdupois—avdp.
Cubic—cu.

Note: Periods and plural forms shall be optional.

§ 500.23 Expression of net quantity of contents in SI Metric units.

(a) The selected multiple or submultiple prefixes for SI metric units shall result in numerical values between 1 and 1000, except that centimeters or millimeters may be used where a length declaration is less than 100 centimeters. For example, "1.96 kg" instead of "1960 g" and "750 mL" instead of "0.75 L".

(b) The following symbols for SI metric units and none others may be employed in the required net quantity declaration:

centimeter—cm
cubic centimeter—cm³
cubic decimeter—dm³
meter—m
milligram—mg
liter—L or l
milliliter—mL or ml
square decimeter—dm²
cubic meter—m³
kilogram—kg
micrometer—μm
gram—g
millimeter—mm
square meter—m²
square centimeter—cm²

Note: Symbols, except for liter, are not capitalized. Periods should not be used after the symbol. Symbols are always written in the singular form.

§ 500.24 Supplemental statements.

Nothing contained in the regulations in this part shall prohibit supplemental statements, at locations other than the principal display panel, describing in non-deceptive terms the net quantity of contents: *Provided* that such supplemental statements of net quantity of contents shall not include any term qualifying a unit of weight or mass, measure, or count that tends to exaggerate the amount of commodity contained in the package. (Examples of prohibited language are: "Giant Quart," "Jumbo Liter," "Full Gallon," "When Packed," "Minimum," or words of similar import.) Required combination declarations of net quantity of contents (for example, a combination of net weight or mass plus numerical count, numerical count plus dimensions of the commodity, etc.) are not regarded as supplemental net quantity statements and shall be located on the principal display panel. Dilution directions or other similar directions for use are not regarded as supplemental net quantity statements and may be located on the principal display panel. Size characterizations in compliance with standards promulgated under section 5(c)(1) of the Act may appear on the principal display panel.

§ 500.25 Net quantity, average quantity, permitted variations.

(a) The statement of net quantity of contents shall accurately reveal the quantity of the commodity in the container exclusive of wrappers and other material packed therewith: *Provided*, that in the case of a commodity packed in a container designed to deliver the commodity under pressure, the statement shall declare the net quantity of the contents that will be expelled when the instructions for use are followed. The propellant is included in the net quantity statement.

(b) Variations from the stated weight or mass or measure shall be permitted when caused by ordinary and customary exposure, after the commodity is introduced into interstate commerce, to conditions which normally occur in good distribution practice and which unavoidably result in change of weight or mass or measure.

(c) Variations from the stated weight or mass, measure, or numerical count shall be permitted when caused by unavoidable deviations in weighing, measuring, or counting the contents of individual packages which occur in good packaging practice: *Provided*, that such variations shall not be permitted to such extent that the average of the quantities in the packages comprising a shipment or other delivery of the commodity is below the quantity stated, and no unreasonable shortage in any package will be permitted even though overages in other packages in the same shipment or delivery compensate for such shortage. Variations from stated quantity of contents shall not be unreasonably large.

§ 500.26 Representations of servings, uses, applications.

(a) The label of any packaged consumer commodity which bears a representation as to the number of servings, uses, or applications of such commodity contained in such package shall bear in immediate conjunction therewith, and in letters the same size as those used for such representations, a statement of the net quantity (in terms of weight or mass, measure, or numerical count) of each such serving, use, or application: *Provided*, that such statement may be expressed in terms that differ from terms used in the required statement of net contents (e.g., cupsful, tablespoonful, etc.), when such differing terms describe a constant quantity. Such statement may not be misleading in any particular.

(b) Representations as to the total amount of object or objects to which the commodity may be applied or upon which or in which the commodity may be used, will not be considered to be representations as to servings, uses, or applications, if such amount is expressed in terms of standard units of weight or mass, measure, size, or count.

(c) If there exists a voluntary product standard promulgated pursuant to the procedures found in 15 CFR Part 10, by the Department of Commerce, quantitatively defining the meaning of the terms "serving," "use," or "application" with respect to a particular consumer commodity, then any label representation as to the number of servings, uses, or applications in such packaged consumer commodity shall correspond with such quantitative definition. (Copies of published standards will be available upon request from the National Institute of Standards and Technology, Department of Commerce, Washington, DC 20899.)

§ 500.27 Multiunit packages.

(a) A multiunit package is a package intended for retail sale, containing two or more individual packaged or labeled units of an identical commodity in the same quantity. The declaration of net quantity of contents of a multiunit package shall be expressed as follows:

(1) The number of individual packaged or labeled units;

(2) The quantity of each individual packaged or labeled unit; and

(3) The total quantity of the multiunit package.

Examples: Soap bars: "6 Bars, Net Wt. 3.4 ozs. (96.3 g) each, Total Net Wt. 1 lb. 4.4 oz. (578 g)" Facial Tissues: "10 Packs, each 25 two-ply tissues, 9.7 in. x 8.2 in. (24.6 x 20.8 cm), Total 250 Tissues."

(b) The individual packages or labeled units of a multiunit package, when intended for individual sale separate from the multiunit package, shall be labeled in compliance with the regulations under this part 500 applicable to that package.

(c) A multiunit package containing unlabeled individual packages which are not intended for retail sale separate from the multiunit package may contain, in lieu of the requirements of Paragraph (a) of this section, a declaration of quantity of contents expressing the total quantity of the multiunit package without regard for inner packaging. For such multiunit packages it shall be optional to include a statement of the number of individual packages when such a statement is not otherwise required by the regulations.

Examples: Deodorant Cakes: "5 Cakes, Net Wt. 4 ozs. (113 g) each, Total Net Wt. 1.25 lb. (566 g)" or "5 Cakes, Total Net Wt. 1 lb. 4 ozs. (566 g)";

Soap Packets: "10 Packets, Net Wt. 2 ozs. (56.6 g) each, total Net Wt 1.25 lb. (586 g)" or "Net Wt 1 lb. 4 ozs. (566 g)" or "10 Packets, Total Net Wt. 1 lb. 4 ozs. (566 g)."

§ 500.28 Variety packages.

(a) A variety package is a package intended for retail sale, containing two or more individual packages or units of similar but not identical commodities. Commodities which are generically the same but which differ in weight or mass, measure, volume, appearance or quality are considered similar but not identical. The declaration of net quantity for a variety package will be expressed as follows:

(1) The number of units for each identical commodity followed by the weight or mass, volume, or measure of that commodity: and

(2) The total quantity by weight or mass, volume, measure, and count, as appropriate, of the variety package. The statement of total quantity shall appear as the last item in the declaration of net quantity and shall not be of greater prominence than other terms used.

Examples:

(i) "2 sponges 4½ ins. x 4 ins. x¾ in. (11.4 cm x 10.1 cm x 1.9 cm); 1 sponge 4½ ins. x 8 ins. x¾ in. (11.4 cm x 20.3 cm x 1.9 cm); 4 sponges 2½ ins. x 4 ins. x½ in. (6.3 cm x 10.1 cm x 1.2 cm)
Total: 7 sponges".

(ii) "2 soap bars Net Wt. 3.2 ozs. (90 g) each; 1 soap bar Net Wt. 5.0 ozs. (141 g).
Total: 3 bars Net Wt. 11.4 ozs. (323 g)."

(iii) Liquid Shoe Polish: "1 Brown 3 fl. ozs. (88 mL); 1 Black 3 fl. ozs. (88 mL); 1 White 5 fl. ozs. (147 mL).
Total: 11 fl. ozs. (325 mL)."

(iv) Picnic Ware: "34 spoons; 33 forks; 33 knives.
Total: 100 pieces."

(b) When the individual units in a variety package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be labeled in compliance with the applicable regulations under this Part 500.

§ 500.29 Combination packages.

(a) A combination package is a package intended for retail sale, containing two or more individual packages or units of dissimilar commodities. The declaration of net quantity for a combination package will contain an expression of weight or mass, volume, measure or count or a combination, thereof, as appropriate for each individual package or unit: *Provided*, that the quantity statements for identical packages or units shall be combined.

Examples

(1) Lighter fluid and flints: "2 cans—each 8 fl. ozs. (236 mL); 1 package—8 flints."

(2) Sponges & Cleaner: "2 sponges each 4 in. x 6 in. x 1 in. (10.1 x 15.2 x 2.5 cm); 1 box cleaner—Net Wt. 6 ozs. (170 g)"

(3) Picnic Pack: "20 spoons, 10 knives and 10 forks, 10 2-ply napkins 10 ins. x 10 ins. (25.4 x 25.4 cm) 10 cups—6 fl. ozs. (177 mL)".

(b) When the individual units in a combination package are either packaged or labeled and are intended for retail sale as individual units, each unit shall be in compliance with the applicable regulations under this part 500.

By direction of the Commission.

Donald S. Clark

Secretary.

[FR Doc. 94–767 Filed 1–11–94; 8:45 am]
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federal register

Wednesday
January 12, 1994

Part VI

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

Funding Availability for Historically Black Colleges and Universities Program; Notice

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–3682; FR–3615–N–01]

Notice of Funding Availability for Historically Black Colleges and Universities Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice of Funding Availability (NOFA) for Fiscal Year (FY) 1994 and notice of additional funding and extension of application due date under FY 1993 NOFA.

SUMMARY: This NOFA announces $6.5 million of FY 1994 funding for the Historically Black Colleges and Universities (HBCU) Program plus an additional $2 million of FY 1993 funding. The total amount of FY 1993 and FY 1994 funding, $13 million, is combined into a single competition and the application due date of the FY 1993 NOFA is extended to run concurrently with this FY 1994 NOFA.

DATES: No applications for the FY 1993 and FY 1994 HBCU NOFAs will be accepted after 4:30 pm on February 11, 1994. This application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, the Department will treat as ineligible for consideration any application that is received after the deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems. A "FAX" will not constitute delivery.

ADDRESSES: For an application kit contact: Sylvester C. Angel, Processing and Control Branch, Office of Community Planning and Development, Department of Housing and Urban Development, 451 7th Street SW., room 7255, Washington, DC 20410–3500. Requests must be in writing and may be sent to this address or may be made by facsimile machine to the following number: (202) 708–3363. The TDD number for the hearing impaired is (202) 708–2565. (This is not a toll-free number.) When requesting an application kit, please refer to document FR–3615, and provide your name, address (including zip code), and telephone number (including area code).

FOR FURTHER INFORMATION CONTACT: Dr. James Turk, Office of Technical Assistance, Department of Housing and Urban Development, 451 7th Street SW., room 7253, Washington, DC 20410. Telephone Number: (202) 708–3176. The TDD number for the hearing impaired is (202) 708–2565. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: A Notice of Funding Availability (NOFA) announcing HUD's FY 1993 funding of $4.5 million for the Historically Black Colleges and Universities (HBCU) Program was published on September 17, 1993 (58 FR 48716). A technical correction to the FY 1993 NOFA, which clarified that the application due date was December 1, 1993, was published on October 4, 1993 (58 FR 51647).

The Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriations Act 1994, (approved October 28, 1993, Public Law 103–124) (94 App. Act) made $6.5 million available for the HBCU Program in FY 1994. The Department is also making an additional $2 million of FY 1993 HBCU funds eligible for program applicants.

Because of the large number of applications anticipated for funding under the FY 1993 NOFA, and to make the FY 1994 funds available as soon as possible, the Department is combining the FY 1993 and 1994 funds into a single competition under this Notice. All of the applications received for the FY 1993 NOFA will be considered for funding from this combined pool of $13,000,000.

In addition, the Department is extending the application due date to 4:30 p.m. on February 11, 1994, to give additional applicants an opportunity to apply for funding under this program. However, applicants who have already submitted an application may not submit an additional application.

The total of $13,000,000 announced as available in this Notice will be awarded under the same terms set forth in the FY 1993 NOFA, cited above (September 17, 1993, 58 FR 48716).

Authority: Title I, Housing and Community Development Act of 1974 (42 U.S.C. 5301–5320); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d); 24 CFR 570.404).

Dated: December 14, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 94–737 Filed 1–11–94; 8:45 am]

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federal register

Wednesday
January 12, 1994

Part VII

Department of Commerce

National Institute of Standards and Technology

Manufacturing Extension Partnership Program; Notice

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket No. 93110–3310]

Manufacturing Extension Partnership Program

AGENCY: National Institute of Standards and Technology (NIST), Technology Administration, Commerce.

ACTION: Notice. (This information is provided for planning purposes only, and is not a solicitation for proposals)

SUMMARY: This notice describes three projects to be conducted by the National Institute of Standards and Technology (NIST) in FY94, under its Manufacturing Extension Partnership (MEP) program, to provide planning and initial implementation assistance for manufacturing extension programs. These projects correspond to the State Technology Extension Program (STEP) component of MEP, and are intended to help states improve the planning, coordination, and implementation of their technology extension activities. In conjunction with this notice, the MEP program office will conduct workshops and make MEP staff available to describe fully the projects in advance of a formal solicitation for proposals.

The three projects are:

Program Planning: To support the creation of a program plan for a state-wide, coordinated technology extension system to enhance the competitiveness of small and medium-sized manufacturers through the application of technology.

Program Implementation: To support the initial implementation of a comprehensive state-wide industrial extension program or the pilot testing of new program and service concepts to help small and medium-sized manufacturers improve productivity and competitiveness.

Regional Linkages: To support inter-state or multi-state efforts to expand the scope and enhance the effectiveness of technical assistance services available regionally to small and medium-sized manufacturers.

Program Planning projects are open to all states, regardless of state size, industrial density/sparseness, or number of existing industrial assistance programs.

For Program Implementation and Regional Linkages projects, NIST plans to give priority consideration to projects having the best potential to benefit areas with relatively sparse distribution of industry, or low industry density areas that do not lend themselves to large extension centers as a method of service delivery.

DATES: The following schedule is anticipated but is subject to change:

* January 12, 1994—Program announcement published in the **Federal Register**. All potential applicants will have an opportunity for dialogue with NIST MEP staff and questions will be accepted prior to notice requesting proposals.

* January 31, 1994—Informational workshop at NIST to address questions about the MEP program. MEP staff will be available to meet with representatives from individual states.

* February 28, 1994—Notice requesting proposals published in **Federal Register**. Dialogue with MEP staff regarding notice restricted.

* March 31, 1994—Deadline for submission of proposals.

* May 13, 1994—Award announcements.

FOR FURTHER INFORMATION CONTACT: For information regarding this announcement, contact Ms. Gale Morse at (301) 975–3944, or at: Manufacturing Extension Partnership, Polymers Building (Bldg. 224), room B115, National Institute of Standards and Technology, Gaithersburg, Maryland 20899.

SUPPLEMENTARY INFORMATION:

Background

In accordance with the provisions of the National Institute of Standards and Technology Act (15 U.S.C. 2781), as amended, NIST will provide assistance in FY94 to help states develop manufacturing assistance programs aimed at small- and medium-sized manufacturers and help bring those state programs to a level of performance where they can provide the full range of manufacturing extension services required by their manufacturers. Under the NIST Manufacturing Extension Partnership (MEP), a cooperative effort to link and strengthen the nation's manufacturing extension programs and activities, NIST will make merit-based awards to states to help improve their planning, coordination, and implementation of their technology extension activities. This funding will also be available to multi-state partnerships which seek to expand the scope of technology assistance related services regionally available to small- and medium-sized manufacturers. MEP assumes a broad definition of manufacturing, and recognizes a wide range of technology and concepts, including durable goods production; chemical, biotechnology and other materials processing; chemical, biotechnology and other materials processing; electronic component and system fabrication; and engineering services associated with manufacturing, as lying within the definition of manufacturing.

Funding Available

Approximately, $2,500,000 will be available to support cooperative agreements on a matching funds basis under this program. Funding size will vary according to the project category and scope of work. For example, program planning projects have typically averaged less than $100,000 in past years. Program Planning projects that include pilot testing of the proposed extension plan will be eligible for NIST funding up to $150,000. For Program Implementation projects and Regional Linkage projects, awards will also vary, but NIST funds may not exceed $250,000 per project. States will be able to submit proposals for each of the three project categories.

The cooperative agreements entered into under this program will be available for one year. NIST will have no obligation to provide any additional future funding to applicants selected for funding under these projects. Renewal of an award to increase funding or extend the period of performance will be at the local discretion of NIST.

Projects

Program Planning Projects

Project Objective

The purpose of Program Planning projects will be to create plans for state-wide, coordinated, technology extension programs in order to enhance the competitiveness of small- and medium-sized manufacturers. These projects will plan for the development and coordination of existing and/or newly formed services, such as state industrial assistance programs; workforce training; university-based industrial assistance programs; and management assistance programs; into a unified state-wide program. Plans will include providing access to a wide range of technology and services, such as technology deployment, worker skills development, technology transfer and commercialization, or export and market development.

Applicants may conduct planning activities on a regional basis within a state, when regions are defined by the state. Regions should be clearly defined by the proposing organizations and it must be clear why the program is regionally oriented, versus state-wide, and how the regions will be integrated into a state-wide plan or interact such that state-wide coverage is achieved.

Applicants may include pilot testing activities as part of their planning process. If pilot testing of the proposed extension plan is included in the project, it should include methods of evaluating the pilot's success in implementing the proposed extension plan. Any proposed pilot activity must be consistent with the program plan developed for the state.

Program Planning Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all five selection criteria and selection criteria 1–3 will be weighted more heavily than criteria 4–5. Selection will be based upon total evaluation score as well as geographic distribution.

1. *Target population (25 points):* Potential applicants should specify a methodology for identifying a population of beneficiary companies (the target population) and their technology assistance-related needs. Factors that will be considered include:

(a) Methodology for defining the size and demographic characteristics of the target population to be served by the program plan.

(b) Methodology for determining the target population's assistance needs, e.g. technology, training, information, quality improvement, management, etc.

(c) Methodology to ensure that the plan is appropriate for addressing identified industry needs.

2. *Resource identification and assessment (20 points):* Applicants should describe the methodology for collecting information about the number, size, technical sophistication, type, and relevance of industrial assistance activities that will be part of the coordination effort. Factors that will be considered include:

(a) Methodology for identifying relevant assistance programs and other sources of expertise outside applicant's organization.

(b) Methodology for assessing relevance and effectiveness of resources in addressing identified industry needs.

3. *Coordination with existing resources (25 points):* Applicants should set forth a plan for interacting or coordinating with appropriate existing and/or newly-formed state and local technology-industrial assistance services, potential industry partners, and appropriate federal services, to develop a coordinated state-wide delivery system. Factors that will be considered include:

(a) Methodology and adequacy of plans for forming effective linkages and partnerships necessary to plan for and provide a coordinated range of services to meet the needs of the target population.

(b) Safeguards to ensure that planned activity does not duplicate existing services or resources.

4. *Management (15 points):* Applicants should specify plans for proper organization, staffing, and management of the planning process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct a state-wide (or regional) planning process.

(b) Qualifications of the project team and its leadership to conduct a state-wide (or regional) planning process.

(c) Appropriateness of the organizational approach for carrying out the planning activity.

(d) Evidence of significant involvement and support by the state and by private industry.

5. *Financial plan (15 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Cost effectiveness of the budget.

(b) Strength of commitment of proposer's cost share.

(c) Effectiveness of management plans for control of budget.

(d) Appropriateness of matching contribution.

(e) Plan for maintaining the program after the cooperative agreement has expired.

Selection Procedures

The Director of NIST will appoint an impartial evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review. This review process should take approximately 30 days. The Director of NIST, or her designee, shall select awardees based on the rank order of total evaluation scores, geographic distribution, and the availability of funds.

Eligibility

Eligible applicants for these projects are state technology extension programs operated by state governments, or on behalf of state governments by private or public non-profit organizations. All states will be eligible, regardless of state size, industrial density/sparseness, or number of existing industrial assistance programs. States that have received previous planning grants remain eligible for additional Program Planning projects. Applicants will be able to propose conducting the planning activities themselves or arranging for some or all of the planning activities to be carried out by a second party. One proposal for Program Planning will be accepted per state.

Financial Information

A matching contribution from each applicant is required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share may not exceed $150,000. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Required Letters

A letter will be required from the Governor indicating that the eligible applicant is the lead organization in that state for Program Planning activities, and acknowledging that there is only one proposal from that state for a Program Planning project. Where more than one such otherwise qualified Program Planning proposal per state is submitted, all such proposals from that state may be disqualified.

Program Implementation Projects

Project Objective

The purpose of Program Implementation projects is to support the implementation of comprehensive, state-wide industrial extension programs and/or pilot testing of new program and service concepts, such as pilot outreach centers and other extension activities, to help small and medium-sized manufacturers improve productivity and competitiveness.

For projects that support the implementation of a comprehensive state-wide industrial extension system, activities must build upon existing services and be consistent with comprehensive state plans, if such plans exist. Extension programs should provide access to a range of services, including but not limited to: technical extension, training, management assistance, and quality improvement.

Pilot testing of new services and activities will be permitted on a limited

scale where there is an intent to replicate these services on a larger scale or to move toward full-scale implementation. Accordingly, pilot testing must include evaluation, analysis and documentation, and may include some planning activities as necessary.

NIST plans to give priority consideration to projects having the best potential to benefit areas with relatively sparse distribution of industry, or low density industry areas that do not lend themselves to large extension centers as a method of service delivery.

Program Implementation Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all six selection criteria and selection criteria 1–4 will be weighted more heavily than criteria 5–6. Selection will be based upon total evaluation score as well as geographic distribution.

1. *Target population (20 points):* Potential applicants will be required to identify a population of beneficiary companies (the target population) and their technology-related assistance needs in the proposed service area. Factors that will be considered include:

(a) A clear definition of the target population, its size and demographic characteristics.

(b) Demonstrated understanding of the target population's assistance needs, e.g., technology, training, information, quality improvement, management, etc.

(c) Appropriateness of the size of the target population and the anticipated impact for the proposed expenditure.

2. *Delivery mechanisms (20 points):* Applicants will need to specify the mechanism for delivery of services to the population of beneficiary companies (the target population). Factors that will be considered include:

(a) Appropriateness and effectiveness of proposed delivery mechanism for meeting the identified needs of the target population.

(b) Demonstration of capacity to form effective linkages and partnerships with other appropriate service providers.

(c) Technical quality of the proposed approach, including knowledge and use of best industrial modernization practices.

3. *Coordination with existing resources (20 points):* Applicants will need to describe how they will coordinate with existing or newly formed state or local technology/industrial assistance services, and federal services, to allow for increased economies of scale and to avoid duplication of services in providing assistance to small and medium-sized manufacturers. For a comprehensive, state-wide industrial extension program, the applicant must show the degree to which activities integrate with and enhance existing or newly formed state, local, and appropriate federal technology assistance and industrial modernization activities to present a unified program of assistance. Factors that will be considered include:

(a) Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population.

(b) Adequate linkages and partnerships with existing organizations and clear definition of those organizations' roles in the proposed activities.

(c) Proposed activity does not duplicate existing services or resources.

(d) Consistency with comprehensive state plans if such plans exist.

4. *Program evaluation (20 points):* The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that will be considered include:

(a) Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(b) In the case of pilot projects, the proposer's plan must include documentation, analysis of the results, and must show how the results can be used in program development.

5. *Financial plan (10 points):* Applicants should show the relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and a plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Reasonableness of the budget, both in income and expenses.

(b) Strength of commitment of the proposer's cost share.

(c) Effectiveness of management plans for control of budget.

(d) Appropriateness of matching contributions.

(e) Plan for maintaining the program after the cooperative agreement has expired.

6. *Management (10 points):* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct the proposed activities.

(b) Qualifications of the project team and its leadership to conduct the proposed activity.

(c) Soundness of staffing plans, including recruitment, selection, training, and continuing professional development.

(d) Appropriateness of the organizational approach for carrying out the proposed activity.

(e) Evidence of significant involvement and support by private industry.

Selection Procedures

The Director of NIST will appoint an impartial evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review. This review process should take approximately 30 days. The Director of NIST, or her designee, shall select awardees based on the rank order of total evaluation scores, geographic distribution, and the availability of funds.

Eligibility

Eligible applicants for these projects are state technology extension programs operated by state governments, or on behalf of state governments by private or public non-profit organizations. States that have received previous implementation grants remain eligible for additional Program Implementation projects. Applicants will be able to propose providing services directly or arranging for the provision of some or all of the proposed services by a second party. More than one proposal may be accepted from each state.

Financial Information

A matching contribution from each applicant will be required. NIST may provide financial support up to 50 percent of the total budget for the project; however, the federal share may not exceed $250,000. One half of the applicant's required match (i.e. 25% of the total) must be non-federal cash. Cash may include dollar contributions from state, county, industrial or other non-federal sources. The applicant's share of the budget may include in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Required Letters

All proposals for Program Implementation projects must contain a letter from the Governor indicating that the applicant is the lead organization in that state for conducting the proposed activities.

Where linkages to other organizations are proposed, applicants are advised to include a letter of support and commitment from the linking organization.

Regional Linkages Projects

Project Objective

The purpose of Regional Linkage projects is to support inter-state or multi-state partnerships that will expand the scope and enhance the effectiveness of technical assistance services regionally available to small and medium-sized manufacturers. Project may be assistance service-led, or industry-led partnerships to provide assistance services that cross institutional and political boundaries. Assistance service-led partnerships, for example, can include shared assistance services that cross state boundaries, or electronic networking. Industry-led partnerships can include linkage activities between original equipment manufacturers (OEMs) and suppliers, creating a multi-state network of suppliers, program planning for multi-state assistance delivery, or other activities that improve the interactions between manufacturers.

Regional Projects Evaluation Criteria

Proposals from applicants will be evaluated and rated on the basis of the following criteria by an impartial competitive review panel. Each proposal should address all six selection criteria and selection criteria 1–4 will be weighted more heavily than criteria 5–6. Selection will be based upon total evaluation score as well as geographical distribution.

1. *Target population (20 points):* Potential applicants will be required to identify a population of beneficiary companies (the target population) and their technology-related assistance needs in the proposed service area. Factors that will be considered include:

(a) A clear definition of the target population, its size and demographic characteristics.

(b) Demonstrated understanding of the target population's assistance needs, eg. technology, training, information, quality improvement, management, etc.

(c) Appropriateness of the size of the target population and the anticipated impact for the proposed expenditures.

2. *Delivery mechanisms (20 points):* Applicants will need to specify the mechanism for delivery of services to the population of beneficiary companies (the target population). Facts that will be considered include:

(a) Appropriateness and effectiveness of proposed delivery mechanism for meeting the identified needs of the target population.

(b) Demonstration of capacity to form effective linkages and partnerships with other appropriate service providers.

(c) Technical quality of the proposed approach, including knowledge and use of best industrial modernization practices.

3. *Coordination with existing resources (20 points):* Applicants will need to describe how they will coordinate with existing or newly-formed technology/industrial assistance services and resources that will allow for increased economies of scale and complementary capabilities, and will avoid duplication of efforts in providing assistance to small and medium-sized manufacturers. It will be important to show how the proposed approach can reach across political or institutional boundaries to provide access to services. Factors that will be considered include:

(a) Demonstrated understanding of existing organizations and resources relevant for providing technology assistance related services to the target population.

(b) Strength of plans to establish and maintain linkages and partnerships with existing organizations (particularly across state boundaries), and a clear definition of those organizations' roles in the proposed activities.

(c) Proposed activity does not duplicate existing services or resources.

(d) Consistency with comprehensive state plans if such plans exist.

4. *Program evaluation (20 points):* The applicant should specify plans for evaluation of the effectiveness of the proposed program and for ensuring continuous improvement of program activities. Factors that will be considered include:

(a) Thoroughness of evaluation plans, including internal evaluation for management control, external evaluation for assessing outcomes of the activity, and "customer satisfaction" measures of performance.

(b) Plans for the documentation, analysis for the results, and how the results can be used in program development.

5. *Financial plan (10 points):* Applicants should show that relevance and cost effectiveness of the financial plan for meeting the objectives of the project; the firmness and level of the applicant's total financial support for the project; and the plan to maintain the program after the cooperative agreement has expired. Factors that will be considered include:

(a) Reasonableness of the budget, both in income and expenses.

(b) Strength of commitment of the proposer's cost share.

(c) Effectiveness of management plans for control of the budget.

(d) Appropriateness of matching contributions.

(e) Plan for maintaining the program after the cooperative agreement has expired.

6. *Management (10 points):* Applicants should specify plans for proper organization, staffing, and management of the implementation process. Factors that will be considered include:

(a) Appropriateness and authority of the governing or managing organization to conduct the proposed inter-state or multi-state activities.

(b) Qualifications of the project team and its leadership to conduct the proposed activity.

(c) Soundness of staffing plans, including recruitment, selection, training, and continuing professional development.

(d) Appropriateness of the organizational approach for carrying out the proposed activity.

(e) Evidence of significant involvement and support by private industry.

Selection Procedures

The Director of NIST will appoint an impartial evaluation panel to review and evaluate all qualified proposals in accordance with the evaluation criteria and values set forth in this notice. From the qualified proposals a group of finalists will be selected based on this review. This review process should take approximately 30 days. The Director of NIST, or her designee, shall select awardees based on the rank order of total evaluation scores, geographic distribution, and the availability of funds.

Eligibility

Eligible applicants for these projects will be state and local governments, representing either themselves or a consortium of states, and appropriate private or public non-profit organizations, operating on behalf of a consortium of states or as a representative of states. Applicants will be able to propose providing services directly or arranging for the provision of any or all of the proposed services by a second party. At least one state

represented in the partnership or consortium must be characterized by relatively sparse distribution of industry or as having lower industrial densities.

Financial Information

A matching contribution from each applicant will be required. NIST may provide financial support up to 50% of the total budget for the project, however, the federal share may not exceed $250,000. The applicant's share of the budget may include dollar contributions from state, county, industrial or other non-federal sources and in-kind contributions necessary and reasonable for proper accomplishment of project objectives.

Additional Requirements

Federal Policies and Procedures

Recipients and subrecipients are subject to all Federal laws and Federal and DOC policies, regulations, and procedures applicable to Federal financial assistance awards.

Past Performance

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

Preaward Activities

If applicants incur any cost prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that may have been received, there is no obligation on the part of DOC to cover pre-award costs.

Delinquent Federal Debts

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full;
2. A negotiated repayment schedule is established and at least one payment is received; or
3. Other arrangements satisfactory to DOC are made.

Name Check Review

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Primary Applicant Certification

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying," and the following explanations are hereby provided.

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

4. Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transaction at any tier under the award to submit, if applicable, a complete Form CD–512, "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion—Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities;" Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

False Statements

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Catalog of Federal Domestic Assistance

The catalog number for the award of State Technology Extension Program funds in the Catalog of Federal Domestic Assistance is 11613.

Executive Order 12372 "Intergovernmental Review of Federal Programs."

Is applicable to the extent permitted by law.

Classification

The Manufacturing Extension Partnership is being carried out under the authority of the Omnibus Trade and Competitiveness Act of 1988, as amended 15 U.S.C. 2781. This notice relating to public property, loans, grants, benefits, or contracts is exempt from all requirements of section 553 of the Administrative Procedure Act (5 U.S.C. 553(a)(2)) including notice and opportunity for comment. Therefore, a Regulatory Flexibility Analysis is not required and was not prepared for this notice for purposes of the Regulatory Flexibility Act (5) U.S.C. 603 and 604). The program is not a major Federal action requiring an environmental assessment under the National Environmental Policy Act. This notice does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612. This notice contains collection of information requirements subject to the Paperwork Reduction Act which have been approved by the Office of Management and Budget (OMB Control Number 0693–0010).

Dated: January 6, 1994.

Samuel Kramer,

Associate Director.

[FR Doc. 94–647 Filed 1–11–94; 8:45 am]

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Wednesday, January 12, 1994

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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

A cumulative list of Public Laws for the first session of the 103d Congress was published in Part IV of the **Federal Register** on January 3, 1994.

Public Laws

103d Congress, 2d Session, 1994

Pamphlet prints of public laws, often referred to as slip laws, are the initial publication of Federal laws upon enactment and are printed as soon as possible after approval by the President. Legislative history references appear on each law. Subscription service includes all public laws, issued irregularly upon enactment, for the 103d Congress, 2d Session, 1994.

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Of significant historical interest is Appendix C, which lists the agencies and functions of the Federal Government abolished, transferred, or changed in name subsequent to March 4, 1933.

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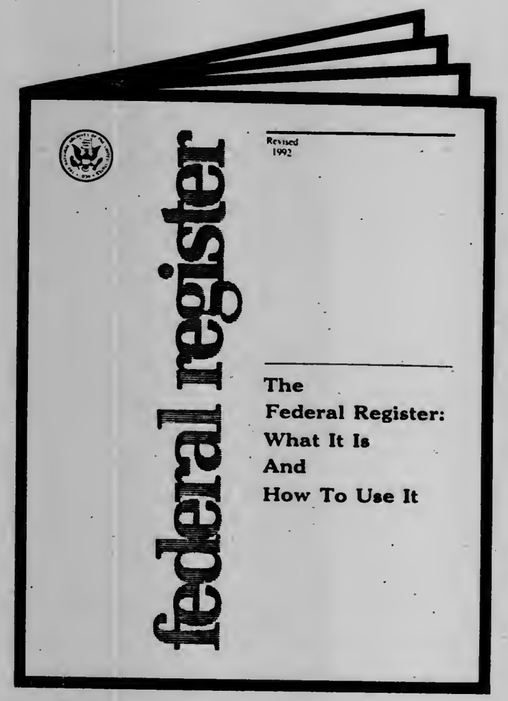
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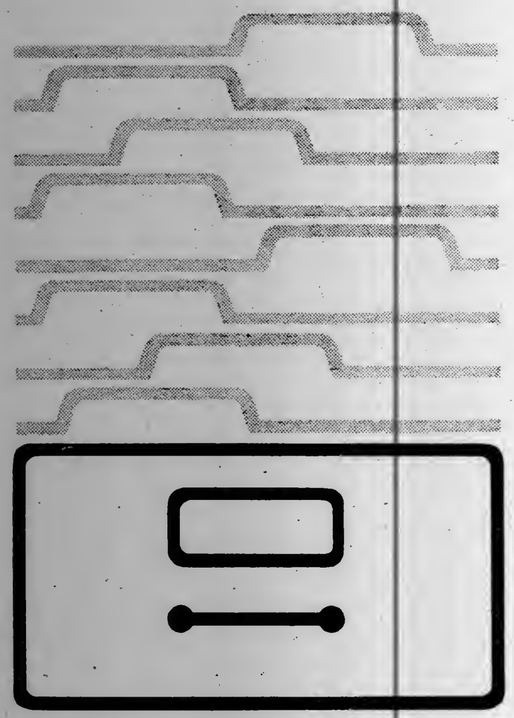
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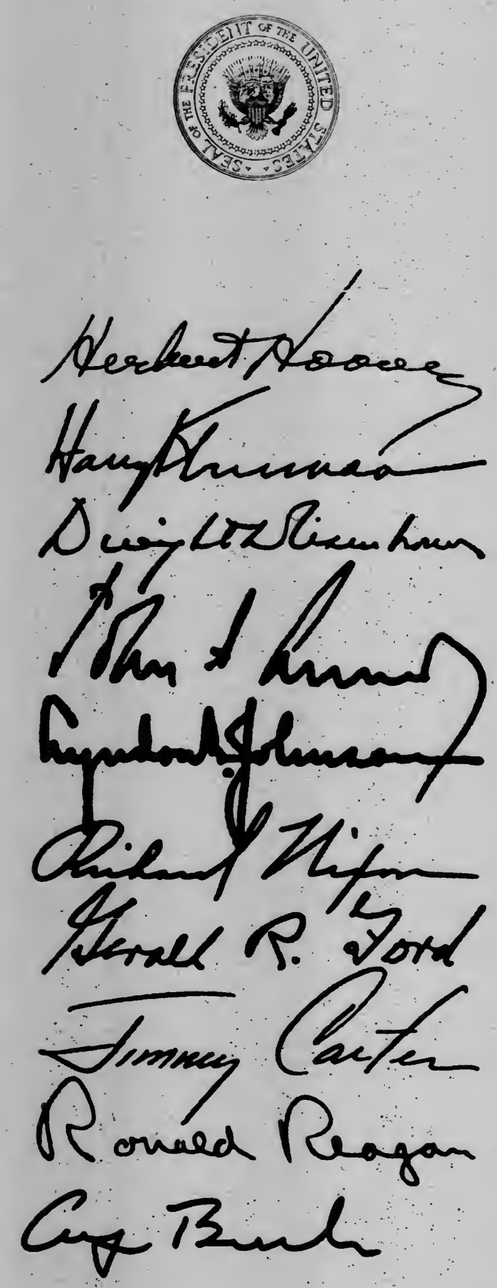
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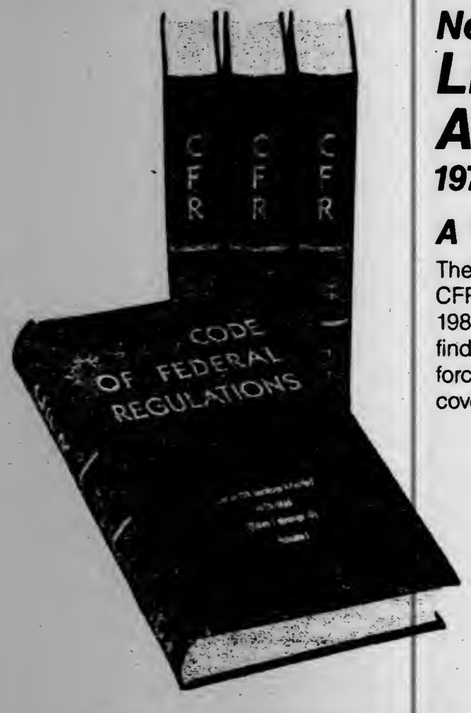
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FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

5 CFR Part 1620

Removal of Investment Restrictions for Judges, Justices, and Magistrates

AGENCY: Federal Retirement Thrift Investment Board.

ACTION: Interim rule with request for comments.

SUMMARY: The Executive Director of the Federal Retirement Thrift Investment Board (Board) is publishing amendments to interim regulations on participation in the Thrift Savings Plan (TSP) by certain justices, judges, and magistrates. These amendments reflect the provisions of the Thrift Savings Plan Technical Amendments Act of 1990, which removed a previously existing requirement that these judges, justices, and magistrates invest their entire TSP accounts in the Government Securities Investment Fund (G Fund). The amendments conform part 1620 with the provisions of 5 CFR part 1601, which also provide that such judges, justices, and magistrates may now invest in all three TSP investment funds in a manner similar to participants covered by the Civil Service Retirement System (CSRS).

DATES: Effective Date: These interim rules are effective on January 13, 1994. Comments: Comments must be received on or before March 14, 1994.

ADDRESSES: Comments may be sent to: David L. Hutner, Federal Retirement Thrift Investment Board, 1250 H Street NW, Washington, DC 20005.

FOR FURTHER INFORMATION CONTACT: David L. Hutner, (202) 942–1661.

SUPPLEMENTARY INFORMATION: With respect to choice of Thrift Savings Plan (TSP) investment funds, judges and justices covered by 5 U.S.C. 8440a (added by the Federal Employees Health Benefits Amendments Act of 1988, Public Law 100–654, November 14, 1988) and bankruptcy judges and magistrates covered by 5 U.S.C. 8440b (added by the Retirement and Survivors' Annuities for Bankruptcy Judges and Magistrates Act of 1988, Public Law 100–659, November 15, 1988) are subject to the same rules as those applicable to participants covered by the Civil Service Retirement System (CSRS). At the time of enactment of 5 U.S.C. 8440a and 5 U.S.C. 8440b, CSRS employees were required to invest their entire TSP account balances in the Government Securities Investment Fund established under 5 U.S.C. 8438(b)(1)(A). Thus, justices, judges and magistrates covered by those provisions were similarly limited to investment in the G Fund. The restrictions were reflected in the regulations at 5 CFR 1620.83(c) and 5 CFR 1620.72(d), which provided that new TSP contributions by participants covered by 5 U.S.C. 8440a and 5 U.S.C. 8440b, respectively, must be invested in the G Fund; and in the regulations at 5 CFR 1620.84 and 5 CFR 1620.73, which provided that the accounts of participants invested in the C or F Funds prior to becoming covered by 5 U.S.C. 8440a or 5 U.S.C. 8440b, respectively, shall, upon the participant becoming so covered, be transferred entirely to the G Fund.

The requirement that CSRS participants invest their entire TSP accounts in the G Fund was eliminated by amendments to 5 U.S.C. 8438 contained in section 3 of the Thrift Savings Plan Technical Amendments Act of 1990, Pub. L. 101–335, July 17, 1990. The lifting of the investment restrictions was made effective as of the second TSP election period commencing after enactment, or such earlier date as prescribed in regulations by the Executive Director. The Executive Director issued regulations, published in the **Federal Register** on January 7, 1991, implementing the removal of the investment restrictions effective as of December 31, 1990. Those regulations, found at 5 CFR part 1601, provided that the lifting of the investment restrictions applied to participants covered by 5 U.S.C. 8440a and 5 U.S.C. 8440b, and that such participants could invest their TSP accounts in all three TSP investment funds in the same manner as other TSP participants. The present amendments, by deleting the investment restrictions previously contained in 5 CFR 1620.72(d), 1620.73, 1620.83(c), and 1620.84, conform the provisions of part 1620 with the regulations implementing Public Law 101–335 that resulted in the elimination of the investment restrictions previously applicable to participants covered by 5 U.S.C. 8440a and 8440b.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

I certify that these regulations do not require additional reporting under the criteria of the Paperwork Reduction Act of 1980.

Waiver of Notice of Proposed Rulemaking

Pursuant to 5 U.S.C. 553(b)(B), I find that because of the need for TSP participants to be fully advised of their statutory investment options, good cause exists for waiving the general notice of proposed rulemaking.

List of Subjects in 5 CFR Part 1620

Employee benefit plans, Government employees, Retirement, Pensions.

Federal Retirement Thrift Investment Board.

Francis X. Cavanaugh,
Executive Director.

Part 1620 of chapter VI of title 5 of the Code of Federal Regulations is amended as set forth below:

PART 1620—[AMENDED]

1. The authority citation for part 1620 continues to read as follows:

Authority: 5 U.S.C. 8474, 5 U.S.C. 2101.

§ 1620.72 [Amended]

2. Section 1620.72 is amended by removing paragraph (d).

§ 1620.73 [Removed]

3. Section 1620.73 is removed and §§ 1620.74, 1620.75, and 1620.76 are redesignated as §§ 1620.73, 1620.74, and 1620.75.

§ 1620.83 [Amended]

4. Section 1620.83 is amended by removing paragraph (c).

§ 1620.84 [Removed]

5. Section 1620.84 is removed and §§ 1620.85 and 1620.86 are redesignated as §§ 1620.84 and 1620.85.

[FR Doc. 94–861 Filed 1–12–94; 8:45 am]
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DEPARTMENT OF AGRICULTURE

Agriculture Marketing Service

7 CFR Part 54

[No. LS–93–006]

RIN 0581–AB07

Changes in Fees for Federal Meat Grading and Certification Services; Correction

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule; correction.

SUMMARY: This document contains a correction to an interim final rule which revised the hourly fee rates for voluntary Federal grading and acceptance services.

EFFECTIVE DATE: This correction is effective December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Larry R. Meadows, Chief, Meat Grading and Certification Branch, (202) 720–1246.

SUPPLEMENTARY INFORMATION: This rule was published in the **Federal Register** on December 9, 1993 (58 FR 64669). The "**DATES:**" section on page 64669, in the first column, is corrected to read as follows:

DATES: Interim rule effective December 9, 1993. Comments must be received on or before February 7, 1994.

Dated: January 5, 1994.

Lon Hatamiya,

Administrator.

[FR Doc. 94–883 Filed 1–12–94; 8:45 am]
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Food and Nutrition Service

7 CFR Parts 210, 215 and 220

National School Lunch Program, Special Milk Program for Children and School Breakfast Program: Finalization of Coordinated Review Effort Interim Rule

AGENCY: Food and Nutrition Service, USDA.

ACTION: Final rule.

SUMMARY: On July 17, 1991, the Department published a final rule in the **Federal Register** which set forth the Coordinated Review Effort, a unified accountability system required by the Child Nutrition and WIC Reauthorization Act of 1989. On August 26, 1992, the Department published an interim rule in the **Federal Register** which became effective on September 25, 1992, and which modified a number of provisions contained in the 1991 final rule. This rulemaking responds to the comments received during the interim rule comment period and adopts as final, with changes, the provisions which were set forth in the August 26, 1992 interim rule. These revisions are a part of the Coordinated Review Effort and are intended to facilitate the review activities of the State agencies.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Robert M. Eadie or Charles Heise, Policy and Program Development Branch, Child Nutrition Division, FNS, USDA, 3101 Park Center Drive, room 1007, Alexandria, Virginia 22302, Phone: 703–305–2620.

SUPPLEMENTARY INFORMATION:

Classification

This final rule is issued in conformance with Executive Order 12866.

This rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act (5 U.S.C. 601 through 612). The Acting Administrator of the Food and Nutrition Service has certified that this rule will not have a significant economic impact on a substantial number of small entities. This rule will affect State agencies and school food authorities since this rule is expected to clarify regulatory requirements and facilitate the review activities of State agencies. However, the effect of these modifications will not be significant since State agencies and school food authorities already conduct review activities under the Coordinated Review Effort and this rule will not increase their current Coordinated Review Effort activities.

The National School Lunch Program, Special Milk Program for Children and the School Breakfast Program are listed in the Catalog of Federal Domestic Assistance under Nos. 10.555, 10.566, and 10.553, respectively, and are subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. (7 CFR part 3015, subpart V and final rule-related notice at 48 FR 29112, June 24, 1983.)

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations or policies which conflict with its provisions or which would otherwise impede its full implementation. This rule is not intended to have retroactive effect unless so specified in the "**EFFECTIVE DATE**" section of this preamble. Prior to any judicial challenge to the provisions of this rule or the application of the provisions, all applicable administrative procedures must be exhausted. In the National School Lunch Program, the administrative procedures are set forth under the following regulations: (1) School food authority appeals of State agency findings as a result of a Coordinated Review must follow State agency hearing procedures as established pursuant to 7 CFR 210.18(q); (2) school food authority appeals of FNS findings as a result of a Coordinated Review must follow FNS hearing procedures as established pursuant to 7 CFR 210.30(d)(3); and (3) State agency appeals of State Administrative Expense fund sanctions (7 CFR 235.11(b)) must follow the FNS Administrative Review Process as established pursuant to 7 CFR 235.11(f).

Information Collection

The reporting and recordkeeping requirements identified in this rule have been approved by the OMB for use through September 30, 1994. The OMB control number is 0584–0006.

Background

Legislative History

Section 110 of Public Law 101–147, enacted November 10, 1989, amended the National School Lunch Act (42 U.S.C. 1751–1769c) by adding a new section 22 which states: "There shall be a unified system prescribed and administered by the Secretary for ensuring that local food service authorities that participate in the school lunch program under this Act comply with the provisions of this Act * * *. [E]ach State educational agency shall—(A) require that local food service authorities comply with the provisions of this Act; and (B) ensure such compliance through reasonable audits and supervisory assistance reviews. * * * In carrying out this section, the Secretary shall—(1) assist the State educational agency in the monitoring of programs conducted by local food service authorities; and (2) through management evaluations, review the compliance of the State educational agency and the local school food service authorities with regulations issued under this Act * * *."

Regulatory History

On July 17, 1991, the Department published a final rule in the **Federal Register** (56 FR 32920) which set forth the Coordinated Review Effort, a unified accountability system required by the Child Nutrition and WIC Reauthorization Act of 1989. On August 26, 1992, the Department published an interim rule in the **Federal Register** (57 FR 38579) which modified a number of provisions contained in the July 17 final rule. The interim rulemaking was effective on September 25, 1992 and provided for a 60-day comment period which ended on October 26, 1992. Fifty-four comments were received during the comment period. The Department would like to take this opportunity to thank those individuals who commented on the interim rulemaking. It was clear that commenters put a great deal of effort in describing their concerns and offering their suggestions. The Department is most appreciative of that effort. This final rule responds to the comments received during the interim rule comment period and restates, as appropriate, the provisions set forth in the interim rule. The provisions set forth in the interim rule:

- Implementation Dates—Authorized FNS to approve a State agency's written request showing good cause to delay implementation of the Coordinated Review Effort from July 1, 1992 to January 1, 1993. (§ 210.18(a))
- Residential Child Care Institutions—Excluded residential child care institutions from the 100/100 school selection criteria. (§ 210.18(e))
- Application Review Procedures—Allowed State agencies the option of reviewing (a) all approved free and reduced price applications effective for the review period (as required in the July 17, 1991 final Coordinated Review Effort rule) or (b) all approved free and reduced price applications back to the beginning of the school year, or (c) all approved free and reduced price applications effective on the day(s) the review is conducted. (§ 210.18(g))
- Notice of Fiscal Action or Withholding Payment—Required State agencies to advise school food authorities in writing of the grounds for denial of all or a part of a Claim for Reimbursement or withholding of payment resulting from a review conducted under § 210.18 and of the appeal rights available to affected school food authorities. (§ 210.18(j))
- Withholding Payment—Limited mandatory withholding of payments on a follow-up review. Specifically, the interim rule limited mandatory withholding of all Program payments to those school food authorities with critical area violations which exceed review threshold(s). In addition, the interim rule required the withholding of a minimum of 10 percent of Program payments where serious problems continue to exist in either of two aspects of the general areas of review, verification and recordkeeping. (§ 210.18(l))
- Withholding Payment Exception—Allowed State agencies to reduce the amount withheld from a school food authority which fails to take corrective action by as much as 60 percent of the total Program payments when it is determined to be in the best interest of the Program. Withholding less than 40 percent would continue to require the approval of FNS. (§ 210.18(l))
- Fiscal Action—Allowed State agencies to limit fiscal action from the point corrective action occurs back through the beginning of the review period for errors of certification, issuance of benefits and updating eligibility status identified on an administrative review, provided corrective action occurs. (§ 210.18(m))
- Administrative Appeal Process—Established an administrative appeal procedure which allows school food authorities the opportunity to appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments which result from a review required under § 210.18. (§ 210.18(q), § 210.30(d), § 215.11(b)(2), and § 220.13(f)(2))
- Overpayment Disregard—Allowed FNS, the Department's Office of Inspector General and State agencies to disregard any overpayment identified by management evaluations, reviews or audits if the total, in any fiscal year, does not exceed $600. (§ 210.19(d), § 215.13(e) and § 220.15(f))

Commenter concerns, corrections and revisions addressed in this rulemaking are discussed in this preamble by the pertinent regulatory citation.

Section 210.18(a) Implementation Dates

Section 210.18(a), *Implementation dates*, of the interim rule, authorized FNS to approve a State agency's written request to delay implementation of the Coordinated Review Effort from July 1, 1992 to January 1, 1993 if FNS determined that the State agency demonstrated good cause to delay implementation.

Nineteen commenters to the interim rule expressed concerns regarding the start of the staggered review cycles which resulted from the delayed start option. In general, commenters sought to standardize the review cycle so that all State agencies are on the same cycle. A number of beginning and ending dates were suggested; however, there was no consensus of opinion.

Two commenters, on behalf of the same State agency, requested that FNS allow a 5-year review cycle for those State agencies which review all other school related programs on a 5-year cycle.

The Department concurs that a standardized cycle of review is in the best interest of the Program. To protect the interests of both those State agencies beginning on July 1, 1992 and of those beginning on January 1, 1993, the Department has determined to extend the first year of the first 4-year cycle. Thus, paragraph (a) is unchanged and the first sentence of introductory paragraph (c) has been revised to read: "The first year of the first 4-year review cycle began on July 1, 1992, or as otherwise authorized under paragraph (a) of this section and shall end on June 30, 1994. For each State agency, the first 4-year review cycle shall end on June 30, 1997."

Given the commenter concerns regarding standardization of the review cycle in this final rule, the Department has determined to retain the 4-year cycle, thus making no provision for the 5-year cycle sought by two commenters. However, the Department will continue to consider this issue for possible future revision.

Section 210.18(e) Residential Child Care Institutions

Section 210.18(e), *Number of schools to review*, as amended by the interim rule, limited the number of multi-site residential child care institutions a State agency needs to review to the minimum number identified in Table A. Paragraph (e)(1) of the interim rule stated "Except for residential child care institutions, the State agency shall review all schools with a free average daily participation of 100 or more and a free participation factor of 100 percent or more. In no event shall the State agency review less than the minimum number of schools in Table A." (Table A was not changed.)

Generally, residential child care institutions are single unit institutions; however, in some cases, the residential child care institution has a number of units that report to a single governing body, (e.g., State administered juvenile detention centers). The term "multi-site residential child care institution" is intended to refer to those institutions which have a number of units that report to a single governing body.

Six commenters to the interim rule, all representing State agencies, addressed this provision. All were in

complete support of the interim provision to limit the number of multi-site residential child care institutions a State agency needed to review to the minimum number identified in Table A. For this reason, the provisions set forth in paragraph (e)(1) of the interim rule are adopted without change.

Section 210.18(g) Application Review Procedures

Section 210.18(g), *Critical areas of review*, as amended by the interim rule, expanded the methodology for the review of the free and reduced price applications. Rather than limiting the review of the free and reduced price applications to those applications effective for the review period, paragraph (g)(1) of the interim rule allowed the State agency to review (a) all approved free and reduced price applications effective for the review period; or (b) all approved free and reduced price applications back to the beginning of the school year; or (c) all approved free and reduced price applications effective on the day(s) the review is conducted.

Thirteen commenters addressed this provision of the interim rule. Virtually all commenters were supportive of this provision; however, a number of commenters requested expanding the provision to include specific procedures to facilitate implementation of this provision. Some commenters questioned implementation of this provision, as well as what is meant by "statistically valid sample" and how potential reclaims (overpayment of Federal funds) would be calculated. Some commenters were confused about references to an abbreviated application provision and whether it became effective on September 25, 1992, as did the other provisions of the interim rule.

This final rule leaves unchanged the provisions of paragraph (g)(1) as presented in the interim rule. The Department would like to assure commenters that instructions for implementation of this provision, for implementation of the statistical sampling provision and for information on how to calculate potential reclaims are addressed in the guidance materials prepared for the Coordinated Review Effort. These materials were developed by FNS, with the help of State agency and local personnel. The materials were distributed to State agencies in the Spring of 1993. Thus, all of the questions raised by commenters can be resolved through reference to these materials.

The Department would like to take this opportunity to clarify a misunderstanding regarding an abbreviated review of the free and reduced price applications. The development of procedures which would enable State agencies to conduct an abbreviated review of free and reduced price applications is currently underway. However, it is the Department's position that these procedures would benefit from the solicitation of public comment. Thus, the Department is also developing a proposed rulemaking which will set forth the proposed procedures and request comments from the public. Since the Department intends to pursue a proposed rulemaking, these procedures will not become effective until such time as the proposal is issued, comments are received and analyzed, and a final rule is published in the **Federal Register**.

Section 210.18(j) Notice of Fiscal Action or Withholding Payment

Section 210.18(j), *Exit conference and notification*, as amended by the interim rule, required the State agency to notify school food authorities in writing of the grounds for denial of all or a part of a Claim for Reimbursement resulting from a review conducted under § 210.18. The notice, "which shall be sent by certified mail, return receipt requested, shall also include a statement indicating that the school food authority may appeal the denial of all or a part of a Claim for Reimbursement or withholding payment and the entity (i.e., FNS or State agency) to which the appeal should be directed."

Only one commenter, a State agency, addressed this provision. While agreeing that the information should be made available to the school food authority, the commenter observed that the information could be provided at the entrance or exit conference. Requiring a certified letter was seen as "overkill".

Since only one commenter found these provisions burdensome, the Department leaves unchanged the provision as set forth in the interim rule. The Department believes the "certified" letter requirement is necessary to document that the State agency has met the required timeframes.

Section 210.18(l)(1) Withholding Payment

Section 210.18(l)(1), *Withholding payment*, as amended by the interim rule, limited the mandatory withholding provision to those school food authorities with critical area violations which exceed the review threshold(s) and/or where serious problems continue to exist in either of two aspects of the general areas of review, verification and recordkeeping. In addition, rather than withholding all Program payments for serious violations of the verification or recordkeeping requirements, paragraph (l)(1)(iv) required the State agency to withhold a minimum of 10 percent of the Program payments if the State agency finds, on a follow-up review, that serious problems continue to exist in the school food authority's verification or recordkeeping activities.

Of the 13 commenters addressing this provision, two commenters disapproved of withholding payment for any reason whereas one commenter approved of the interim rule provision. Other commenters offered suggestions to modify the interim provisions. For example, four commenters suggested limiting mandatory withholding to critical areas, one commenter suggested limiting mandatory withholding for both the critical and general areas to 10 percent of the Program payments, and one commenter suggested withholding only those payments related to critical area violations in the specific schools which caused a threshold to be exceeded.

Several commenters opposed the 10 percent withholding provision because it was perceived as burdensome and too complex to administer. Commenters argued that more guidance will be needed to implement this provision. Two commenters asked for a definition of "serious problems".

This final rule limits the mandatory withholding provision to those school food authorities with critical area violations which exceed the review threshold(s). State agencies are encouraged to withhold payments for serious problems in the areas of verification and recordkeeping; however, the mandatory minimum withholding for serious verification and recordkeeping problems has been removed.

Section 210.18(l)(3) Withholding Payment Exception

Section 210.18(l)(3), *Exceptions*, as amended by the interim rule, allowed the State agency to withhold as little as 40 percent of total program payments. To withhold less than 40 percent continued to require the approval of FNS.

Of the three commenters addressing this provision, two commenters supported the flexibility of this provision and one commenter argued that withholding 40 percent is too burdensome and too complex to administer. It was suggested that where funds for an individual school can be separately identified, their claim for reimbursement be withheld instead of that of the entire school food authority.

This final rule makes no change to the exception authorized under paragraph (l)(3) in the interim rule. Commenter suggestions are being taken under advisement pending a review of withholding situations as they arise.

Section 210.18(m) Fiscal Action

Section 210.18(m), *Fiscal action*, as amended by the interim rule, allowed a State agency to limit fiscal action for errors found on a first review related to certification, updating eligibility and issuing benefits. For first review errors related to certification, issuance of benefits and updating eligibility status, the State agency was authorized to limit fiscal action to the period from the point corrective action occurs back through the beginning of the review period, provided corrective action occurs.

Of the 14 commenters addressing this interim provision all expressed varying degrees of support. Two commenters representing the same State agency suggested that while limiting fiscal action to the review period is appropriate, this change, when taken together with the expanded application review methodology allowing options for the review period and the increased overpayment disregard threshold, may result in future increased error rates since there is less likelihood of having to repay funds which were incorrectly claimed. These commenters questioned whether it is appropriate to have all three changes.

Five commenters argued that the interim rule changes were not sufficient to improve fiscal action requirements set forth in the final rule. These commenters opposed fiscal action back to the beginning of the year for "non-correctable" errors. Several of these commenters suggested that there must be an error tolerance in the evaluation of the eligibility procedures and in the evaluation of meal components. Another concern related to allowing underclaims to offset fiscal action.

This final rule adopts the provision as set forth in the interim rule. As with the withholding of payments provisions, the commenter suggestions are being taken under advisement pending a review of the implementation of the fiscal action requirements. The Department would like to take this opportunity to point out that existing policy authorizes State agencies to allow underclaims to offset overclaims.

Section 210.18(q) and § 210.30(d) Administrative Appeal Process

Sections 210.18(q), *School food authority appeal of State agency findings*, and § 210.30(d), *School food authority appeal of FNS findings*, as set forth in the interim rule, established appeal procedures so that school food authorities could appeal the denial of all or a part of a Claim for Reimbursement or withholding of payments resulting from a review under the Coordinated Review Effort.

Of the 10 commenters addressing this provision, six commenters were supportive although several observed that the procedures were somewhat cumbersome. Two commenters representing the same State agency believed the appeal procedures were unnecessary, very cumbersome and overly prescriptive. These commenters observed that school food authorities presently have the opportunity to provide documentation to reduce fiscal action. Two commenters expressed concerns about the timeframes specified.

This final rule leaves unchanged the appeal procedures as stated in § 210.18(q) and § 210.30(d) of the interim rule and the authority for such appeals as set forth in 7 CFR 215.11(b)(2) and 7 CFR 220.13(f)(2). The appeal procedures were modeled after those used in the Child and Adult Care Food Program and, as such, have been tested over the years. As these procedures are implemented in the National School Lunch Program, the Department would be willing to consider modifications which would expedite the process. The Department intends to take commenter concerns under advisement until such time.

Section 210.19(d), § 215.13(e) and § 220.15(f) Overpayment Disregard

Section 210.19(d), *Management evaluations*, as amended by the interim rule, raised the overpayment disregard from $250 to $600. The interim rule made similar changes to 7 CFR 215.13(e) and 7 CFR 220.15(f). As a result of this change, State agencies, FNS, and the Department's Office of the Inspector General were authorized to disregard any overpayment if the total overpayment does not exceed $600 for any fiscal year.

Eleven commenters supported the increased overpayment disregard; however, several commenters suggested that the disregard should be greater than $600. Examples of $1,000 and $750 were provided. On behalf of Arizona, two commenters pointed out that the State Attorney General's Office has indicated that Arizona prohibits disregarding any overpayment. The Arizona State agency suggested language which would enable the State agency to employ the $600 disregard.

The final rule adopts the interim provision with only a minor technical change until such time as data is available to re-evaluate the $600 figure. In the case of the Arizona State agency, the State's rule of disregard does not authorize an amount in excess of the Federal minimum amount set forth in this final rule, but rather, sets a more stringent monetary standard. Because an overpayment disregard is discretionary on the part of the evaluating entity (unless there is evidence of violations of criminal law or civil fraud statutes), the prohibition in Arizona which prevents the State agency from disregarding any overpayment discovered during an evaluation does not conflict with this final rule. The Department will not, therefore, revise the final provision to allow the Arizona State agency to employ the $600 disregard.

Miscellaneous Correction

Section 210.19(c)(2)(ii), *Fiscal action*, as amended by the interim rule, required fiscal action to be extended back to that point in time during the current school year when the infraction first occurred, "[u]nless otherwise specified under § 210.18(m) * * *." The wording "[u]nless otherwise specified under § 210.18(m)" was a technical change to accommodate the limitation on fiscal action authorized under § 210.18(m) of the interim rule.

The interim rule made an inadvertent change to this provision. Under the 1991 final rule, fiscal action was required "back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, as applicable." The interim rule incorrectly restated this provision, by replacing the words "as applicable" with the words "whichever is earlier." This change had the effect of making the fiscal action provision more stringent; this was unintentional. For this reason, this final rule replaces the words "whichever is earlier" with the words "as applicable" to ensure that it is correctly stated.

List of Subjects

7 CFR Part 210

Children, Commodity School Program, Food assistance programs, Grants programs—social programs, National School Lunch Program, Nutrition, Reporting and recordkeeping requirements, Surplus agricultural commodities.

7 CFR Part 215

Children, Food assistance programs, Grant programs—social programs, Milk, Nutrition, Reporting and recordkeeping requirements, Special Milk Program for Children.

7 CFR Part 220

Children, Food assistance programs, Grant programs—social programs, Nutrition, Reporting and recordkeeping requirements, School Breakfast Program.

Accordingly, the interim rule amending 7 CFR parts 210, 215 and 220 which was published at 57 FR 38579 on August 26, 1992, and became effective on September 25, 1992, is adopted as final, with the following changes:

PART 210—NATIONAL SCHOOL LUNCH PROGRAM

1. The authority citation for 7 CFR part 210 is revised to read as follows:

Authority: 42 U.S.C. 1751–1760, 1779.

2. In § 210.18,

a. The first sentence of the introductory text of paragraph (c) is removed, and two new sentences are added in its place to read as set forth below.

b. The semicolon and the words "and/or" at the end of paragraph (l)(1)(iii) are removed and replaced with a period; paragraph (l)(1)(iv) is removed, and paragraph (l)(1)(v) is redesignated as paragraph (l)(1)(iv).

The addition reads as follows:

§ 210.18 Administrative reviews.

* * * * *

(c) * * * The first year of the first 4-year review cycle began on July 1, 1992, or as otherwise authorized under paragraph (a) of this section and shall end on June 30, 1994. For each State agency, the first 4-year review cycle shall end on June 30, 1997. * * *

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3. In § 210.19,

a. The first sentence of paragraph (c)(2)(ii) is revised to read as set forth below.

b. The fourth sentence of paragraph (d) is amended by removing the word "and" between the words "reviews" and "audits" and adding the word "or" in its place.

The revision reads as follows:

§ 210.19 Additional responsibilities.

* * * * *

(c) * * *

(2) * * *

(ii) Unless otherwise specified under § 210.18(m) of this part, fiscal action shall be extended back to the beginning of the school year or that point in time during the current school year when the infraction first occurred, as applicable.* * *

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7 CFR PART 215—SPECIAL MILK PROGRAM FOR CHILDREN

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 1772, 1779.

§ 215.13 [Amended]

2. In § 215.13, the first sentence of paragraph (e) is amended by removing the word "and" between the words "reviews" and "audits" and adding the word "or" in its place.

PART 220—SCHOOL BREAKFAST PROGRAM

1. The authority citation is revised to read as follows:

Authority: 42 U.S.C. 1773, 1779, unless otherwise noted.

§ 220.15 [Amended]

2. In § 220.15, the first sentence of paragraph (f) is amended by removing the word "and" between the words "reviews" and "audits" and adding the word "or" in its place.

Dated: January 3, 1994.

George A. Braley,

Acting Administrator.

[FR Doc. 94–838 Filed 1–12–94; 8:45 am]

BILLING CODE 3410–30–U

Agricultural Marketing Service

7 CFR Part 955

[Docket No. FV93–955–21FR]

Vidalia Onions Grown in Georgia; Revision of Handler Reporting Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule revises the administrative rules and regulations established under the Federal marketing order for Vidalia onions grown in Georgia. This rule will relax the reporting requirements on handlers by expanding the period of coverage of the report for receipts and shipments of onions from one week to one month. This is the only form handlers are required to file with the Vidalia Onion Committee (Committee). The reduction in the reporting burden on handlers will not adversely impact program operations. This rule is based on a unanimous recommendation of the Committee, which is responsible for local administration of the order.

DATES: Effective on January 13, 1994. Comments which are received by February 14, 1994, will be considered prior to any finalization of this interim final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this interim final rule. Comments must be sent in triplicate to the Docket Clerk, Marketing Order Administrative Branch, F&V, AMS, USDA, room 2523–S, P.O. Box 96456, Washington, DC 20090–6456, FAX number (202) 720–5698. Comments should reference this docket number, the date and page number of this issue of the Federal Register and will be made available for public inspection in the Office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Shoshana Avrishon, Marketing Specialist, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, room 2536–S, P.O. Box 96456, Washington, DC 20090–6456; telephone (202) 720–3610, or FAX (202) 720–5698; or William G. Pimental, Marketing Specialist, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, Florida 33883–2276; (813) 299–4770, or FAX (813) 299–5169.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Order No. 955 (7 CFR part 955) regulating the handling of Vidalia onions grown in Georgia. The marketing agreement and order are authorized by the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

The Department is issuing this rule in conformance with Executive Order 12866.

This rule has been reviewed under the Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court

of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 145 handlers of Vidalia Onions that are subject to regulation under the marketing order and approximately 250 producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers have been defined as those having annual receipts of less than $500,000. The majority of the Vidalia onion handlers and producers may be classified as small entities.

This action revises § 955.101 of Subpart—Administrative Rules and Regulations and is based on a unanimous recommendation of the Committee and other available information.

Currently under § 955.101, Report of Shipments, handlers are required to provide the Committee with information regarding the volume of Vidalia onions received and shipped during each week of the shipping season. The normal shipping season for cured Vidalia onions runs from April through June, approximately 12 weeks. In addition, green Vidalia onions usually are shipped beginning in January of each year. Handlers are required to provide this information to the Committee each week. The Committee provides a form to assist handlers in providing this information. The information required includes the name and address of handler, the period covered for the report, the total weekly receipts of Vidalia onions and the total fresh market shipments of Vidalia onions.

The Committee needs such information for the purpose of computing and collecting assessments, which are necessary to finance the program. When this reporting requirement was first implemented, the Committee believed that the best method for obtaining the necessary information was to require handlers to report to the Committee the volume of fresh market shipments at the end of each week during the harvesting and shipping season.

The Committee also uses the information on these reports in planning and evaluating market development activities and recommending production research projects. This information is also made available to the industry on a composite basis to aid growers and handlers in planning their individual operations and making marketing decisions during the season. At the time of implementation, the reporting burden was estimated to be five minutes for a handler to complete each weekly report.

The Committee has been experiencing problems in receiving the reports on a timely basis from many handlers. Many of the handlers not reporting are smaller grower-handlers (2 to 10 acres) who only operate two or three months of the year and do their bookkeeping at the end of the season. During the harvest season, these small handlers, mostly family-run operations, are very busy and have complained that weekly reporting is burdensome to them.

These reports are used by the Committee in calculating the assessments owed by each handler. Thus, it is important that the reports be filed on a timely basis. Because many handlers have filed reports late, the Committee has experienced difficulty in collecting all assessments due the Committee. The Committee has expended much time and effort in identifying and locating these handlers. In addition, handlers who have filed their reports on a timely basis have complained to the Committee that others are not being assessed.

The Committee met on August 28, 1993, to discuss these complaints and reporting problems and unanimously recommended revising the administrative rules and regulations by expanding the period of coverage of the reports to be filed from one week to one month. This will reduce the number of reports filed on an annual basis from approximately 24 to approximately 6. Prior to the issuance of this rule, the reporting process for the 24-week period expended approximately 203 reporting hours annually. This action will reduce the reporting hours to approximately 93, a reduction of 110 hours on an annual basis.

The Committee also recommended that the report be required to be filed no later than seven days after the end of each month.

The Committee believes that this recommendation will decrease the reporting burden on handlers by eliminating unnecessary reporting while still providing the Committee with the information it needs to properly administer the order. This action will bring the reporting requirements into conformance with current industry operating practices and provide an acceptable time frame for the submission of reports.

The Committee believes that this relaxation will enable the small family-run operations to file reports and pay assessments on a timely basis. This will, in turn, reduce the time and effort the Committee expends on locating handlers who have not filed reports.

The Committee was concerned about the effect monthly reporting will have on their marketing efforts. The weekly reporting provided a good source of information that was used in their marketing decisions. It was determined that the monthly reporting should provide sufficient information to assist the Committee in its marketing efforts and if any problems arise at a later date, alternate sources of obtaining this information on a weekly basis can be explored. The Committee believes, at this time, it is more important to ensure that all handlers are properly filing reports with the Committee and paying assessments that are due on a timely and equitable basis.

Based on the above, the Administrator of the AMS has determined that this interim final rule will not have a significant economic impact on a substantial number of small entities.

The information collection requirements contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB Control Number 0581–0160.

After consideration of all relevant information presented, including the Committee's unanimous recommendation and other information, it is found that this regulation, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined that upon good cause it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective

date of this action until 30 days after publication in the Federal Register because: (1) This action relaxes requirements on handlers; (2) this action was unanimously recommended at a public meeting; (3) it is desirable to have this action in place as soon as possible because the 1994 shipping season for green Vidalia onions is expected to begin in January, and the relaxed reporting requirements should apply to as much of that crop as possible; and (4) this rule provides a 30-day comment period and any comments received will be considered prior to finalization of this rule.

List of Subjects in 7 CFR Part 955

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 955 is amended as follows:

PART 955—VIDALIA ONIONS GROWN IN GEORGIA

1. The authority citation for 7 CFR part 955 is amended to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 955.101 is added to read as follows:

§ 955.101 Report of shipments.

Each handler, at the end of each month's operation, but not later than seven (7) days after the end of the month, shall report to the Committee, on a form provided to such handler by the Committee, the following information:

(a) Name of handler;
(b) Address of handler;
(c) Period covered;
(d) Total receipts of Vidalia onions;
(e) Total fresh market shipments of Vidalia onions.

Dated: January 5, 1994.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 94–671 Filed 1–12–94; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF JUSTICE

8 CFR Parts 3, 103, 242, and 292

[AG Order No. 1835–93]

Executive Office for Immigration Review; Rules of Procedure Before Immigration Judges

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: The rules of administrative procedure that are followed in all matters before the Immigration Judges were published in interim form on April 6, 1992 at 57 FR 11568–11575. Following a period of public comment, the rules of procedure were amended to reflect many of the suggestions and comments that were received.

Changes adopted in the final rule clarify that an exception exists to the standards for summary dismissal of an appeal when a "good faith" argument is made for modification, extension or reversal of the law. The specific language that was required for certification of translation of a foreign language document has been deleted from the final rule as too restrictive. To comply with statutory requirements for notice of hearings to aliens in deportation proceedings, the final rule amends the definition of "service" of a document.

The final rule also clarifies the authority of an Immigration Judge to waive the appearance of minors and represented aliens at hearing, and further distinguishes the requirements for proceeding *in absentia* in deportation proceedings from those in exclusion hearings.

In addition to implementing the changes outlined above, the final rule establishes the procedural requirements for custody hearings, pre-hearing conferences, filing documents and applications, and public access to hearings. The interim rule that established disciplinary proceedings against attorneys for frivolous behavior has not been amended, and will continue in interim form until further notice, to allow further consideration of the comments received.

EFFECTIVE DATE: This final rule is effective January 13, 1994, except for § 292.3, which will continue in interim form.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041. (703) 305–0470.

SUPPLEMENTARY INFORMATION: The Department of Justice promulgated an interim rule to implement provisions in sections 504, 545 and 701 of the Immigration Act of 1990, Pub. L. 101–649 ("IMMACT"), and to address procedural and administrative matters which arise in immigration proceedings. The Executive Office for Immigration Review ("EOIR") received 53 comments from legal aid organizations and attorneys nationwide. The comments concerned many of the interim rules, and all were carefully considered in the adoption of the final rule. What follows is a discussion of the issues raised in the comments, the agency response to the comments, and the revisions to the interim rule.

1. Promulgation of the Rule

Several commenters objected to the promulgation of the rule in interim form, which provided an opportunity for public comment only after publication. Commenters suggested that by publishing the rule in interim form without opportunity for pre-publication comment, the agency did not comply with the Administrative Procedure Act ("APA"). This conclusion is incorrect. Provisions in the interim rule are procedural rules or interpretative rules. The APA provides that such rules may be issued without notice and opportunity for prior comment and may be effective upon publication. See 5 U.S.C. 553 (b)(A), (d). Moreover, the interim rule provided that two provisions which arguably contained "substantive" rules (§§ 3.15, 3.26) would not be effective until more than thirty days after the end of the comment period specified in the interim rule, and more than sixty days after the publication of the interim rule. Further, the interim rule invoked the "good cause" exception to the APA's requirement that a rule be published thirty days before its effective date. 57 FR at 11570. Finally, although the final rule modifies the interim rule, it remains a logical outgrowth of the interim rule. Accordingly, no additional opportunity for comment on the final rule is required. For these reasons, the interim rule could be promulgated without opportunity for prior comment and with most of its provisions effective on the date of publication, and this final rule can be effective on the date of publication.

2. Section 3.1(d)(1–a) Summary Dismissal of Appeals

This rule received 33 comments. Some commenters objected to the provision allowing dismissal of an appeal which lacks an arguable basis in law or fact. Commenters suggested that this standard is too vague and does not provide sufficient notice to the appealing party of the Board of Immigration Appeals ("Board") requirements for avoiding summary dismissal. The commenters argued that an appeal should not be dismissed if it is supported by a "good faith argument for an extension, modification or reversal of existing law". The commenters requested that the regulation incorporate this language so that attorneys "will not be deterred from bringing appeals to improve the law".

This "good faith exception" language is found at § 292.3(a)(15)(i) but had not been included in the provision concerning summary dismissal of an appeal in § 3.1. The final rule adds this exception to § 3.1. This language will clarify the exception to the grounds for summary dismissal, and will encourage effective advocacy while still maintaining high standards for appellate review.

Commenters further objected to dismissal of an appeal for which no brief is filed, arguing that summary dismissal of an appeal without review of the file is particularly harmful to a pro se alien who may not realize the consequences of failing to file a brief. Summary dismissal is not mandated under the final rule, but is within the Board's discretion. The Board may review the record on the merits if it so chooses.

In section 545(a) of IMMACT (8 U.S.C. 1252b(d)), Congress directed the Attorney General to create regulations that would specify circumstances under which an administrative appeal would be considered frivolous and circumstances under which an appeal could be summarily dismissed. The final rule clearly delineates such circumstances, and reflects the Congressional mandate to limit frivolous appeals in immigration proceedings.

3. Section 3.13 Definitions

Eighteen identical comments were received concerning the definition of the word "service". Commenters noted that the definition of "service" did not reflect the requirements of section 242B of the Immigration and Nationality Act as amended ("Act") (8 U.S.C. 1252b) which directs that notices of deportation hearings be served in person or by certified mail. The commenters are correct, and the final rule is changed to include reference to this provision. If the document to be served is an Order to Show Cause ("OSC") or a Notice of Deportation Hearing, such document shall be served in person or by certified mail. However, the definition of service found in the interim rule that allows for first-class mailed service will be retained for documents that are not subject to section 242B of the Act.

4. Section 3.14 Jurisdiction and Commencement of Proceedings

Twenty-seven comments were received concerning this part of the rule. The commenters requested that the alien, as well as the Immigration and Naturalization Service ("INS"), have an opportunity to file the OSC to begin deportation proceedings. The commenters argued that allowing the alien to file the OSC at the location of his or her choice would permit the alien better access to witnesses and counsel. Prior to the interim rule, EOIR had allowed the alien to file a copy of the OSC, and the Board acknowledged that the regulation was silent regarding which party could file the OSC. See *Matter of Sanchez*, ID 3139.

EOIR decided to terminate its practice of accepting OSCs from aliens to begin deportation proceedings, because it is within the discretion of the party bringing the charges, i.e., INS, to choose the place of initial venue. It is particularly important in detained cases that INS have the ability to begin deportation proceedings near where the alien is detained. In some cases, aliens have arranged to have OSCs filed in cities other than where the alien was located, causing the INS to seek a change of venue in order to keep the alien detained. If an alien can demonstrate need for change of venue, he or she may request a change of venue from the Immigration Judge.

5. Section 3.15 Contents of the Order To Show Cause and Notification of Change of Address

Twenty-six comments were received, many suggesting alternatives to the requirement imposed on an alien to report his or her address to EOIR within five days of service of the OSC or within five days after any change in address. Some commenters requested that the reporting period be lengthened and suggested extensions ranging from two weeks to thirty days. However, the reporting requirement as incorporated by Congress in section 242B of the Act used the term "immediately". The agency interpreted this term to mean a very short duration, and therefore set a period of five days for an alien to report any change of address. The five-day period meets the statutory requirement, while giving the public specific guidelines to follow. EOIR has created a standard change of address form, the EOIR–33, which will allow the alien to provide all the necessary information required under the rule. The form is designed to be folded and mailed, and is addressed to the Office of the Immigration Judge where the change of address should be filed. INS distributes the EOIR–33 with each OSC, and EOIR provides these forms with its Notices of Hearing. These procedures provide the alien with an easy and uniform method of complying with the statutory reporting requirement.

Commenters also raised concerns with the language in the introductory phrase of § 3.15(a), which stated that "Omission of any of these items (listed within the body of paragraph (a) of the rule) shall not provide the alien with any substantive or procedural rights". The commenters suggested that if any of the administrative information listed in § 3.15(a) is missing from the OSC, the OSC should be considered defective and set aside. EOIR disagrees. The introductory phrase was added to the rule to distinguish those items in § 3.15(a) which are necessary to EOIR in the administration of case processing, as distinguished from those items found in § 3.15(b) which are required to be included on the OSC by statute in section 242B(a)(1) of the Act (8 U.S.C. 1252b(a)(1)). EOIR requires INS to include certain information on the OSC before accepting the document for case processing. However, the alien has no statutory benefit or right accruing from the omission of that information. Therefore, the five-day reporting requirement, and the introductory phrase in § 3.15(a) are retained in the final rule.

6. Section 3.19 Custody/Bond

Twenty-four comments were received regarding this rule. Many commenters expressed concern with the requirement that an alien who has already had a bond redetermination must request a subsequent redetermination in writing. The commenters argued that this requirement would limit the number of bond redeterminations that an alien could request. The rule, however, does not limit the number of bond redeterminations. It does require an alien who has had a bond redetermination to provide a written demonstration of a material change in circumstances prior to another redetermination. Requiring the respondent to set forth a showing of material change in circumstances before appearing before the Immigration Judge will permit meritorious cases to be heard more quickly, and will discourage frivolous requests for multiple bond hearings. The rule has been continued in final form.

7. Section 3.20 Change of Venue

This rule received 18 identical comments requesting that venue be set where the respondent resides, or where the acts which render the alien deportable are committed. Venue is determined by INS at the time the charging document is filed. When an alien has a fixed residence and/or can demonstrate factors that warrant a change of venue, the Immigration Judge has the authority to change venue to that location. The interim rule did remove the authority of the Immigration

Judge to change venue on his or her own motion; venue may now be changed only upon motion of either party. This change is retained in the final form.

8. Section 3.21 Pre-Hearing Conferences and Statements

Twenty-five comments were received. Many commenters objected to the use of pre-hearing conferences for pro se aliens, arguing that the process is too complex for unrepresented aliens to understand. One commenter praised the idea of pre-hearing conferences, and suggested that the process will be effective in handling complex cases. While the rule concerning pre-hearing conferences existed prior to the interim rule, the interim rule expanded the authority of the Immigration Judge to order the parties to file statements of fact, stipulations, lists of witnesses and exhibits, etc. that would assist in the processing of the case. The pre-hearing conference will aid in identifying issues that can be clarified by the parties outside the courtroom and help to resolve issues about which there is little or no dispute. This regulation encourages meetings between the parties prior to the hearing to refine the case for ultimate presentation to the Immigration Judge. Requirements of the pre-hearing conference are within the discretion of the Immigration Judge, who can best evaluate the circumstances of a particular case. The rule applies to all parties, including pro se aliens. The Immigration Judge is best situated to determine whether a pre-hearing conference is needed when a pro se alien is involved.

9. Section 3.26 In Absentia Hearings

Twenty-two comments were received. The commenters noted that the language of the interim rule did not distinguish the requirements for an *in absentia* hearing in deportation proceedings under section 242B of the Act from the *in absentia* process followed in exclusion hearings. Section 242B of the Act mandates an *in absentia* hearing in deportation proceedings only under certain specific conditions that require personal or certified mailed notice of the hearing to the alien. The final rule includes language that accurately reflects these statutory requirements in deportation proceedings.

In addition, the rule has been amended to clarify that the Immigration Judge shall order the respondent deported *in absentia* if the Service meets the requirements of section 242B(c)(1) of the Act and establishes notice and deportability. This change follows the language of the statute and leaves no ambiguity that a hearing held under section 242B(c)(1) shall result in a deportation order if the Service meets its burden of establishing notice and deportability. The commenters noted that the regulation did not indicate that the burden of proof in establishing notice and deportability lay with INS; therefore this requirements has been expressed in the final rule.

Further, a provision has been added to clarify the circumstances in which an Immigration Judge can proceed *in absentia* in exclusion proceedings. The rule has been amended to specify that notice of the time and place of the hearing on the charging document is sufficient notice to proceed *in absentia* in exclusion proceedings.

Many commenters suggested that this rule eliminates an Immigration Judge's discretionary authority to waive the presence of minors and represented aliens at hearing under certain circumstances. The Immigration Judge continues to have discretionary authority to waive the presence of minors and represented aliens for good cause, as set forth in the interim rule under redesignated § 3.25. In addition, § 3.26 is amended to include language concerning the waiver authority.

10. Section 3.27 Public Access to Hearing

Seven comments were received that raised concerns about the adequacy of the rule in protecting battered spouses. Commenters requested that certain INS forms, particularly the Waiver of Joint Petition (I–751) and the application for work authorization (Form I–765) provide that the information contained on these forms be treated as confidential information. These forms are not EOIR forms and while EOIR has no jurisdiction over these forms, EOIR has forwarded the comments concerning this regulation to INS for its consideration.

In all EOIR proceedings concerning an abused spouse or child, the proceedings and the record will be closed to the public, unless the affected party requests otherwise. Commenters raised a question as to who would prevail in the situation where a parent and child disagree as to whether the hearing should be open to the public. In that instance, the Immigration Judge is in the best position to determine the need for confidentiality, and the decision to open the case will rest with the Judge.

11. Sections 3.31 and 103.7 Filing Documents and Applications.

Thirty-three comments were received concerning pre-paying fees to INS prior to filing documents with EOIR. Commenters note that some INS field offices are not easily accessible, or are closed at certain times during the workday. Many Commenters requested that EOIR reinstitute the practice of collecting fees on behalf of INS for the convenience of the parties or their attorneys. EOIR does not process fees, although in certain locations EOIR did collect fees on behalf of INS. INS has the administrative process in place to collect and process fees under § 103.7, which system includes fiscal requirements by the Department of Treasury, personnel resources and equipment. A duplication of these resources at this time is not warranted by the demand for such services and the rule will not be modified.

12. Section 3.32 Service and Size of Documents

Eighteen comments were received. Commenters suggested amending this rule to include reference to the requirements under section 242B of the Act for notices of hearing. However, these requirements have been included in the final version of § 3.15, and therefore it would be redundant to incorporate the notice requirements in this section.

In addition, some commenters suggested that all documents filed in an *in absentia* case be served on the absent party. There is no obligation to furnish an absent party with documents or records received during the proceeding, and this suggestion will not be adopted.

13. Section 3.33 Translation of Documents

Three comments requested that the rule be changed to allow the translator to provide a generic certification of a foreign language document, rather than one with the specific language set forth in the interim regulation. The commenters noted that many documents are translated overseas and arrive in this county without the specific language of certification that was required in the interim rule. The underlying necessity for a translator to certify to competency and accuracy can be served by a generic certification. The final rule reflects this change.

14. Section 3.37 Decisions

Nineteen comments were received. The commenters cited confusion with the use of the phrases "minute orders" and "memorandum of oral decision". In the supplementary information given with the publication of the interim rule, these two expressions were used interchangeably, although the language in the rule itself refers to the Immigration Judge's order as a "memorandum of oral decision". Both expressions refer to the same abbreviated order that the Immigration Judge issues at the end of the proceeding, indicating the decision of the court.

The commenters argued that the memorandum summarizing the oral decision does not adequately explain the reasons for the disposition of the case, and should be expanded in order to form the basis of an appeal. However, the memorandum of oral decision is not a substitute for the actual reasoned decision of the Immigration Judge, which is provided orally at the hearing and by transcript to the alien if the case is ultimately appealed. The purpose of the memorandum order is to serve as an efficient and expeditious method of summarizing the order of the Immigration Judge immediately at hearing, and to provide a brief record of the ultimate outcome of the hearing. It was not meant to replace the oral decision, and expanding it to include reasonings and citations of law would defeat its purpose.

In addition, a provision has been added to this section which indicates that a written copy of the decision will not be sent to an alien who has failed to provide an address. Section 242B of the Act has placed upon the alien the requirement that he or she must provide a written record of an address at which he or she may be contacted respecting proceedings. Section 242B(c)(2) of the Act specifies that no notice of hearing is required if the alien has failed to provide an address. It therefore follows that there is no requirement that the alien receive a copy of the decision, absent an address having been provided.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects

8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

8 CFR Part 103

Administrative practice and procedure, Authority delegations (Government agencies), Freedom of information, Privacy, Reporting and recordkeeping requirements, Surety bonds.

8 CFR Part 242

Administrative practice and procedure, Aliens.

8 CFR Part 292

Administrative practice and procedure, Immigration, Lawyers, Reporting and recordkeeping requirements.

Accordingly, the interim rule amending 8 CFR chapter I which was published at 57 FR 11568 on April 6, 1992, is adopted as a final rule with the following changes set forth below, except for § 292.3, which shall continue in interim form:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2 Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.1 is amended by revising paragraph (d)(1-a) to read as follows:

§ 3.1 General authorities.

* * * * *

(d) * * *

(1–a) *Summary dismissal of appeals.* (i) *Standards.* The Board may summarily dismiss any appeal or portion of any appeal in any case in which:

(A) The party concerned fails to specify the reasons for the appeal on Form EOIR–26 or Form EOIR–29 (Notices of Appeal) or other document filed therewith;

(B) The only reason for the appeal specified by the party concerned involves a finding of fact or a conclusion of law that was conceded by that party at a prior proceeding;

(C) The appeal is from an order that granted the party concerned the relief that had been requested;

(D) The Board is satisfied, from a review of the record, that the appeal is filed for an improper purpose, such as to cause unnecessary delay, or that the appeal lacks an arguable basis in law or fact unless the Board determines that it is supported by a good faith argument for extension, modification or reversal of existing law.

(E) The party concerned indicates on Form EOIR–26 or Form EOIR–29 that he or she will file a brief or statement in support of the appeal and, thereafter, does not file such brief or statement, or reasonably explain his or her failure to do so, within the time set for filing; or

(F) The appeal fails to meet essential statutory or regulatory requirements or is expressly excluded by statute or regulation.

(ii) *Disciplinary consequences.* The filing by an attorney or representative accredited under § 292.2(d) of this chapter of an appeal which is summarily dismissed under paragraph (d)(1–a)(i) of this section may constitute frivolous behavior under § 292.3(a)(15) of this chapter. Summary dismissal of an appeal under paragraph (d)(1–a)(i) of this section does not limit the other grounds and procedures for disciplinary action against attorneys or representatives.

* * * * * *

3. Section 3.13 is amended by revising the definition "service" to read as follows:

§ 3.13 Definitions.

* * * * *

Service means physically presenting or mailing a document to the appropriate party or parties; however, if the document to be served is the Order to Show Cause or the Notice of Deportation Hearing, such document shall be served in person to the alien, or by certified mail to the alien or the alien's attorney.

4. § 3.26 is revised to read as follows:

§ 3.26 In absentia hearings.

(a) In any exclusion proceeding before an Immigration Judge in which the applicant fails to appear, the Immigration Judge shall conduct an *in absentia* hearing if the Immigration Judge is satisfied that notice of the time and place of the proceeding was provided to the applicant on the record at a prior hearing or by written notice to the applicant or to the applicant's counsel of record on the charging document or at the most recent address in the Record of Proceeding.

(b) In any deportation proceeding before an Immigration Judge in which the respondent fails to appear, the Immigration Judge shall order the respondent deported *in absentia* if: (1) The Service establishes by clear, unequivocal and convincing evidence that the respondent is deportable; and (2) the Immigration Judge is satisfied that written notice of the time and place of the proceedings and written notice of the consequences of failure to appear, as set forth in section 242B(c) of the Act (8 U.S.C. 1252b(c)), were provided to the respondent in person or were provided to the respondent or the respondent's counsel of record, if any, by certified mail.

(c) Written notice to the respondent at the most recent address contained in the

Record of Proceeding shall be considered sufficient for purposes of this section. If the respondent fails to provide his or her address as required under § 3.15(c), no written notice shall be required for an Immigration Judge to proceed with an *in absentia* hearing. This subsection shall not apply in the event that the Immigration Judge waives the appearance of an alien under § 3.25.

5. § 3.33 is revised to read as follows:

§ 3.33 Translation of documents.

Any foreign language document offered by a party in a proceeding shall be accompanied by an English language translation and a certification signed by the translator that must be printed legibly or typed. Such certification must include a statement that the translator is competent to translate the document, and that the translation is true and accurate to the best of the translator's abilities.

6. § 3.37 is amended by adding paragraph (b) to read as follows:

§ 3.37 Decisions.

* * * * *

(b) A written copy of the decision will not be sent to an alien who has failed to provide a written record of an address.

Dated: December 29, 1993.

Janet Reno,

Attorney General.

[FR Doc. 94–573 Filed 1–12–94; 8:45 am]

BILLING CODE 1531–26–M

NUCLEAR REGULATORY COMMISSION

10 CFR Parts 20 and 34

RIN 3150—AA38

Standards for Protection Against Radiation; Removal of Expired Material: Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Final rule; removal of expired material: correction.

SUMMARY: This document corrects a final rule that removed the text of the standards for protection against radiation that are no longer in effect. In the final rule published on December 22, 1993 (58 FR 67657), the NRC inadvertently failed to remove one of the expired sections. This action is necessary to remove that section, make other minor corrections, and inform the public and licensees of these corrections.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Donald A. Cool, Office of Nuclear Regulatory Research, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492–3785.

SUPPLEMENTARY INFORMATION:

1. On page 67659, in the first column, amendatory instructions numbered 6 through 10 are corrected to read as follows:

§§ 20.1–20.602 [Removed]

6. Sections 20.1 through 20.602 are removed.

Appendix A to §§ 20.1–20.602 [Removed]

7. Appendix A to §§ 20.1–20.602 is removed.

Appendix B to 20.1–20.602 [Removed]

8. Appendix B to §§ 20.1–20.602 is removed.

Appendix C to §§ 20.1–20.602 [Redesignated]

9. Appendix C to §§ 20.1–20.602 is redesignated as appendix B to 10 CFR part 30.

Appendix D to §§ 20.1–20.602 [Removed]

10. Appendix D to §§ 20.1–20.602 is removed.

2. On page 67660, in the second column, amendatory instruction numbered 37 is corrected to read as follows:

§ 34.42 [Amended]

37. In § 34.42, remove the phrases "§ 20.204(c) or, for licensees implementing the provisions of §§ 20.1001–20.2401," and "§ 20.203 (b) and (c)(1) or, for licensees implementing the provisions of §§ 20.1001–20.2401,".

Dated at Bethesda, Maryland this 6th day of January, 1994.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 94–701 Filed 1–12–94; 8:45 am]

BILLING CODE 7590–01–P

FEDERAL FINANCIAL INSTITUTIONS EXAMINATION COUNCIL

12 CFR Part 1102

[Docket No. AS94–1]

Appraisal Subcommittee; Appraiser Regulation; Freedom of Information Act Implementation

AGENCY: Appraisal Subcommittee, Federal Financial Institutions Examination Council.

ACTION: Final rules.

SUMMARY: The Appraisal Subcommittee ("ASC") of the Federal Financial Institutions Examination Council is adopting amendments to the portion of its regulations regarding the availability of information to enable interested persons: To obtain copies of ASC final opinions and orders in adjudications, statements of general policy not published in the **Federal Register**, interpretive, no-action requests and responses and certain other correspondence related to ASC field reviews; to request confidential treatment of information subject to a Freedom of Information Act ("FOIA") request; and to petition for the issuance, amendment or repeal of an ASC rule.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Edwin W. Baker, Executive Director, or Marc L. Weinberg, General Counsel, at (202) 634–6520, Appraisal Subcommittee, 2100 Pennsylvania Avenue NW., suite 200, Washington, DC 20037.

SUPPLEMENTARY INFORMATION:

I. Background and Authority

FOIA, 5 U.S.C. 552, generally requires each Federal agency to make available to the public information regarding its organization, operation, rules of procedure, substantive rules and interpretations of general applicability and statements of general policy. 5 U.S.C. 552(a)(1). In addition, each agency, in accordance with published rules, must "make available for public inspection and copying—(A) final opinions, * * * as well as orders, made in the adjudication of cases; (B) those statements of policy and interpretations which have been adopted by the agency and are not published in the **Federal Register**, and (C) administrative staff manuals and instructions to staff that affect a member of the public * * *." 5 U.S.C. 552(a)(2). Certain documents and portions thereof, however, can be withheld from disclosure under one or more statutory exemptions set out in FOIA, 5 U.S.C. 552(b), or the Privacy Act of 1974, 5 U.S.C. 552a.[1]

Executive Order No. ("EO") 12600, 52 FR 23781 (June 23, 1987), generally requires each agency subject to FOIA to establish procedures to notify submitters of records containing confidential commercial information when those records are requested under FOIA and the agency determines that the information may be required to disclose that information.

Paragraph (e) of 5 U.S.C. 553 requires each agency to give an interested person the right to petition for the issuance, amendment or repeal of a rule.

On October 13, 1993, the ASC proposed for comment several amendments to its related regulations in 12 CFR part 1102, subpart D (1993), to implement these authorities. The comment period closed on December 9, 1993, and no written comments were received. The ASC, however, received and incorporated into the final version of the amendments oral comments of a technical nature from the Office of Management and Budget ("OMB").

II. Description of the Final Amendments

The ASC is adopting technical amendments to subpart D—new §§ 1102.305, .306 and .307—to implement the provisions summarized above. In that regard, new § 1102.305 clarifies that certain written communications, such as the ASC's annual report to Congress; all final opinions and orders made in the adjudication of cases; all statements of general policy not published in the **Federal Register**, and incoming and outgoing correspondence concerning interpretive, no-action and State review matters, shall be made publicly available on a routine basis no sooner than ten business days after the ASC or its staff sends or gives the item of correspondence to the affected person or persons.

Next, the ASC is adopting § 1102.306, consistent with EO 12600, to provide predisclosure notification procedures for confidential commercial information. Under paragraph (a) of the new section, a submitter of written information to the ASC who wants some or all of that information to be treated as confidential information under 5 U.S.C. 552(b)(4) may file a request for confidential treatment with the ASC at the time the information is submitted to the ASC or soon thereafter. Confidential information means "trade secrets and commercial or financial information obtained from a person and privileged or confidential," as stated in section 552(b)(4).

New paragraphs (b) and (c) of § 1102.306 deal with the form of the request. They require the submitter to include in reasonable detail the facts and arguments supporting the request and its legal justification, to designate clearly all information considered confidential and to separate clearly such information from other non-confidential information, whenever possible.

Paragraph (d) of the section notes that a request for confidential treatment will be considered by the ASC only in connection with a FOIA request for access to the claimed confidential information under FOIA. That is, the ASC will not determine whether the request for confidential treatment should be granted or denied, in whole or in part, when the request is received by the ASC. The ASC, however, will process the request upon receipt to ensure that it is complete and would place it with the related information submission. If a FOIA request were made respecting that information, the ASC then will be required to send written notices to the submitter and the FOIA requester. The submitter will have no longer than ten business days to file written objections to the ASC's disclosure of the information. The ASC may provide a submitter with a notice even if the submitter did not request confidential treatment of the requested information.[2]

These notice requirements will not have to be followed under certain stated circumstances, such as if the ASC determines under this subpart that the information should not be disclosed. The ASC must carefully consider the issues involved and, if disclosure of the requested information is warranted, a written notice containing a brief description of why the submitter's objections were not sustained must be forwarded to the submitter within ten business days. The time for response may be extended up to ten additional business days, as provided in 5 U.S.C. 552(a)(6)(B), of for other periods by agreement between the requester and the ASC. This notice shall be provided to the submitter at least five business days prior to release of the requested information. Last, the ASC will be required to notify a submitter promptly of any filing of any suit against the ASC pursuant to 5 U.S.C. 552 to compel disclosure of documents or information covered by the submitter's request for confidential treatment, and conversely, will be required to notify the requester of the documents or information of any suit filed by the submitter against the ASC to enjoin disclosure.

Finally, § 1102.307 would provide an interested person with the right to petition the ASC for the issuance, amendment or repeal of a rule, thus implementing 5 U.S.C. 553(e).

III. Conclusion

For the reasons stated above, the ASC has determined to adopt the amendments to subpart D of part 1102 to implement 5 U.S.C. 552 and 553(e) and EO 12600.

IV. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. 35, forms, reporting and recordkeeping requirements included in 12 CFR part 1102, subpart D, §§ 1102.305, 1102.306 and 1102.307 were submitted for review and approval to OMB. See 58 FR 54153 (October 20, 1993). OMB approved these sections, as revised by this final rule, until December 31, 1996, and assigned them control number 3139–0006. The public reporting burden for the collection of information requirements contained in these sections are estimated to include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed and completing and reviewing the collection of information. The sections would enhance the ASC's FOIA program, would conform the ASC's rules and regulations to EO 12600, and would specifically provide for the public's petition rights under 5 U.S.C. 553(e). The estimated number of respondents each year is 100 for § 1102.305, two for § 1102.306 and one for § 1102.307, with an estimated average reporting burden of .5 hours per response and an estimated annual total reporting burden of 51.5 hours.

V. Regulatory Flexibility Act Statement

Pursuant to section 605(b) of the Regulatory Flexibility Act, the ASC certifies that §§ 1102.305, 1102.306 and 1102.307 are not expected to have a significant economic impact on a substantial number of small entities. The rules will fully implement FOIA, EO 12600 and 5 U.S.C. 553(e). None of these authorities addresses business or corporate entities. Accordingly, a regulatory flexibility analysis is not required.

VI. EO 12866 Statement

These rules were reviewed by the Office of Information and Regulatory Affairs of OMB.

[1] On December 14, 1992, the ASC adopted 12 CFR part 1102, subpart D, implementing the ASC's basic program for complying with FOIA. *See* 57 FR 60722 (December 22, 1992). And, on August 7, 1992, the ASC adopted 12 CFR part 1102, subpart C, implementing the Privacy Act. *See* 57 FR 36356 (August 13, 1992).

[2] If the ASC required the submitter to provide the requested information, the ASC would need to have substantial reason to believe that disclosure of the requested information would result in substantial competitive harm to the submitter. On the other hand, if the submitter provided the information voluntarily to the ASC, the ASC would need to believe that the information is of a kind that the submitter would not customarily make available to the public. See *Critical Moss Energy Project* v. *Nuclear Regulatory Commission*, 975 F.2d 871 (D.C. Cir. 1992), *cert. denied* 113 S. Ct. 1579 (1993).

List of Subjects in 12 CFR Part 1102

Administrative practice and procedure, Appraisers, Banks, Banking, Freedom of information, Mortgages, Reporting and recordkeeping requirements.

Text of the Rule

Chapter XI, title 12, part 1102, subpart D of the Code of Federal Regulations is amended as set forth below:

PART 1102—APPRAISER REGULATION

Subpart D—Description of Office, Procedures, Public Information

1. The authority citation for subpart D is revised to read as follows:

Authority: 5 U.S.C. 552, 553(e); and Executive Order 12600, 52 FR 23781 (3 CFR, 1987 Comp., p. 235).

2. New sections 1102.305, 1102.306 and 1102.307 are added to read as follows:

§ 1102.305 Availability of interpretive, no-action and other written communications.

(a) *In general.* Subject to the provisions of § 1102.304 and subpart C of this part, certain types of ASC written communications shall be made publicly available upon request.

(b) *Types of written communications.* The following types of written communications shall be subject to paragraph (a) of this section:

(1) The ASC's annual report to Congress;

(2) All final opinions and orders made in the adjudication of cases;

(3) All statements of general policy not published in the **Federal Register.**

(4) Requests for the ASC or its staff to provide interpretive advice with respect to the meaning or application of any statute administered by the ASC or any rule or regulation adopted thereunder and any ASC responses thereto;

(5) Requests for a statement that, on the basis of the facts presented in such a request, the ASC would not take any enforcement action pertaining to the facts as represented and any ASC responses thereto: and

(6) Correspondence between the ASC and a State appraiser regulatory agency arising out of the ASC's field review of the State agency's appraiser regulatory program.

(c) *Embargo period.* Unless the ASC determines otherwise, the written communications in paragraph (b) of this section shall be made publicly available no sooner than ten business days after a written response has been sent or given to the affected person or persons.

§ 1102.306 Confidential treatment procedures.

(a) *In general.* Any submitter of written information to the ASC who desires that some or all of his or her submission be afforded confidential treatment under 5 U.S.C. 552(b)(4) (*i.e.*, trade secrets and commercial or financial information obtained from a person and privileged or confidential) shall file a request for confidential treatment with the Executive Director of the ASC at the time the written information is submitted to the ASC or within ten business days thereafter. Nothing in this section limits the authority of the ASC and its staff to make determinations regarding access to documents under this subpart.

(b) *Form of request.* A request for confidential treatment shall be submitted in a separate letter or memorandum conspicuously entitled, "Request for Confidential Treatment." Each request shall state in reasonable detail the facts and arguments supporting the request and its legal justification. If the submitter had been required by the ASC to provide the particular information, conclusory statements that the information would be useful to competitors or would impair sales or similar statements generally will not be considered sufficient to justify confidential treatment. When the submitter had voluntarily provided the particular information to the ASC, the submitter must specifically identify the documents or information which are of a kind the submitter would not customarily make available to the public.

(c) *Designation and separation of confidential material.* Submitters shall clearly designate all information considered confidential and shall clearly separate such information from other non-confidential information, whenever possible.

(d) *ASC action on request.* A request for confidential treatment of information will be considered only in connection with a request for access to the information under FOIA as implemented by this subpart. Upon the receipt of a request for access, the Executive Director or his or her designee ("ASC Officer") as soon as possible shall provide the submitter with a written notice describing the request and shall provide the submitter with a reasonable opportunity, no longer than ten business days, to submit written objections to disclosure of the information. Notice may be given orally, and such notice shall be promptly confirmed in writing. The ASC Officer may provide a submitter with a notice if the submitter did not request confidential treatment of the requested information. If the ASC required the submitter to provide the requested information, the ASC Officer would need substantial reason to believe that disclosure of the requested information would result in substantial competitive harm to the submitter. If the submitter provided the information voluntarily to the ASC, the ASC officer would need to believe that the information is of a kind the submitter would not customarily make available to the public. The ASC Officer similarly shall notify the person seeking disclosure of the information under FOIA of the existence of a request for confidential treatment. These notice requirements need not be followed if the ASC Officer determines under this subpart that the information should not be disclosed; the information has been published or has been officially made available to the public; disclosure of the information is required by law (other than FOIA); or the submitter's request for confidential treatment appears obviously frivolous, in such instance the submitter shall be given written notice of the determination to disclose the information at least five business days prior to release. The ASC Officer shall carefully consider the issues involved, and if disclosure of the requested information is warranted, a written notice, containing a brief description of why the submitter's objections were not sustained, must be forwarded to the submitter within ten business days. The time for response may be extended up to ten additional business days, as provided in 5 U.S.C. 552(a)(6)(B), or for other periods by agreement between the requester and the ASC Officer. This notice shall be provided to the submitter at least five business days prior to release of the requested information.

(e) *Notice of lawsuit.* The ASC Officer shall notify a submitter of any filing of any suit against the ASC pursuant to 5 U.S.C. 552 to compel disclosure of documents or information covered by the submitter's request for confidential treatment within ten business days of service of the suit. The ASC Officer also shall notify the requester of the documents or information of any suit filed by the submitter against the ASC to enjoin their disclosure within ten business days of service of the suit.

§ 1102.307 Right to petition for issuance, amendment and repeal of rules of general application.

Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition for those purposes with the Executive Director of the ASC. The petition shall include a statement setting forth the text or substance of any proposed rule or amendment desired or shall specify the rule for which repeal is desired. The petitioner also shall state the nature of his or her interest and the reasons for seeking ASC action. The Executive Director shall acknowledge receipt of the petition within ten business days of receipt. As soon as reasonably practicable, the ASC shall consider the petition and related staff recommendations and shall take such action as it deems appropriate. The Executive Director shall notify the petitioner in writing of the ASC action within ten business days of the action.

By the Appraisal Subcommittee of the Federal Financial Institutions Examination Council.

Dated: January 5, 1994.

Fred D. Finke,

Chairperson.

[FR Doc. 94–813 Filed 1–12–94; 8:45 am]

BILLING CODE 6210–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–130–AD; Amendment 39–8777; AD 93–25–13]

Airworthiness Directives; Airbus Industrie Model A320 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320 series airplanes, that requires a cold expansion of certain attachment holes for the forward pintle fitting and certain holes at the actuating cylinder anchorage of the main landing gear (MLG). This amendment is prompted by reports that, during fatigue testing, cracking was found propagating from attachment holes for the forward pintle fitting of the MLG. The actions specified by this AD are intended to prevent fatigue cracking, which may lead to rupture of the inner rear spar and subsequent reduced structural integrity of the wing.

DATES: Effective February 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus A320 series airplanes was published in the **Federal Register** on September 14, 1993 (58 FR 48009). That action proposed to require a cold expansion of all the attachment holes for the forward pintle fitting of the main landing gear (MLG), except for the holes that are for taper-lok bolts. The proposed AD would also require a cold expansion of the bolts that have not been previously cold expanded at the actuating cylinder anchorage of the MLG.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 600 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $165,000, or $33,000 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States; on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–13 Airbus Industrie: Amendment 39–8777. Docket 93–NM–130–AD.

Applicability: Model A320 series airplanes, manufacturer's serial numbers (MSN) 002 through 051 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue cracking, which could lead to reduced structural integrity of the wing, accomplish the following:

(a) Prior to the accumulation of 12,000 total landings, or within 2,000 landings after the effective date of this AD, whichever occurs later, accomplish the requirements of paragraphs (a)(1) and (a)(2) of this AD in accordance with Airbus Industrie Service Bulletin A320–57–1060, dated December 8, 1992.

(1) Perform a cold expansion of all the attachment holes for the forward pintle fitting of the MLG, except for the holes that are for taper-lok bolts.

(2) Perform a cold expansion of the holes at the actuating cylinder anchorage of the MLG.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The cold expansion shall be done in accordance with Airbus Industrie Service Bulletin A320–57–1060, dated December 8, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 14, 1994.

Issued in Renton, Washington, on December 21, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–828 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–136–AD; Amendment 39–8779; AD 93–25–15]

Airworthiness Directives; Beech Model 400A and 400T Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Beech Model 400A and 400T airplanes, that requires inspection of the rivets in the escape hatch substructure to verify that the proper rivets are installed, and replacement of the incorrect rivets with new rivets or fasteners. This amendment is prompted by the discovery that, during production, incorrect rivets may have been installed in the escape hatch substructure. The actions specified by this AD are intended to prevent reduced structural capability of the airframe.

DATES: Effective February 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Larry Engler, Aerospace Engineer, Propulsion Branch, ACE–140W, FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4122; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Beech Model 400A and 400T airplanes was published in the **Federal Register** on September 13, 1993 (58 FR 47839). That action proposed to require a one-time inspection of the rivets in the escape hatch substructure to verify that the proper rivets are installed, and replacement of the incorrect rivets with new rivets or fasteners.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 94 Beech Model 400A and 400T airplanes of the affected design in the worldwide fleet. The FAA estimates that 78 airplanes of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $400 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $65,520, or $840 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–15 Beech Aircraft Corporation: Amendment 39–8779. Docket 93–NM–136–AD.

Applicability: Model 400A airplanes having serial numbers RK–1 through RK–57 inclusive, RK–59, RK–60, and RK–62 through RK–66 inclusive; and Model 400T airplanes having serial numbers TT–02 through TT–30 inclusive, and TT–32; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural capability of the airframe, accomplish the following:

(a) Within 200 hours time-in-service after the effective date of this AD, inspect the rivets in the escape hatch substructure to verify that the proper rivets are installed in accordance with Beechcraft Service Bulletin 2509, dated July 1993.

(1) If the rivet is part number (P/N) MS20470E6, no further action is required by this AD.

(2) If the rivet is not P/N MS20470E6, prior to further flight, replace the rivet with a new Cherry Max rivet or a HI-LOK fastener, in accordance with Beechcraft Service Bulletin 2509, dated July 1993.

(b) As of the effective date of this AD, no person shall install any rivet having P/N MS20470AD5 in the location shown in Figure 1 of Beechcraft Service Bulletin 2509, dated July 1993, on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Beechcraft Service Bulletin 2509, dated July 1993. (Note: The issue date of Service Bulletin 2509 is indicated only on page 1 of the document; no other page of this document is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 14, 1994.

Issued in Renton, Washington, on December 21, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–829 Filed 01–12–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–CE–42–AD; Amendment 39–8782; AD 94–01–01]

Airworthiness Directives: Beech Aircraft Corporation Models B300 and B300C Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to certain Beech Aircraft Corporation (Beech) Models B300 and B300C airplanes that do not have all cabin seats modified through the incorporation of Beech Kit No. 303–307. This action requires inspecting the cabin seat frames for cracks, repairing any cracks, and modifying the cabin seat frames by incorporating the kit referenced above. Inspection of affected in-service airplanes reveals cracking of these cabin seats around the welded-in bushings. The bearing shafts, which retain the seat frame and belted occupant, are bolted to the frame through these bushings. The actions specified by this AD are intended to prevent separation of the seat from its base caused by cracks around the welded-in bushings, which, in the event of an accident, could result in occupant injury.

DATES: Effective February 11, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 11, 1994.

ADDRESSES: Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, or Tosington Enterprises Inc., 2261 Maders Road, Simi Valley, California. This information may also be examined at the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4128; facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an AD that would apply to certain Beech Models B300 and B300C airplanes that do not have all cabin seats modified through the incorporation of Beech Kit 303–307 was published in the **Federal Register** on September 10, 1993 (58 FR 47678). The action proposed to require inspecting the cabin seat frames for cracks, repairing any cracks, and modifying the cabin seat frames by incorporating Beech Kit No. 303–307. The proposed actions would be accomplished in accordance with either Beech SB No. 2443 or Tosington SB No. 001, both dated July 1993, as applicable.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

After careful review, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. The FAA has determined that these minor corrections will not change the meaning of the AD nor add any additional burden upon the public than was already proposed.

The FAA estimates that 79 airplanes in the U.S. registry would be affected by this AD, that it would take approximately 45 workhours per airplane (5 hours per seat × 9 seats per airplane) to accomplish the required action, and that the average labor rate is approximately $55 an hour. Parts will be provided by the manufacturer at no cost to the airplane operator. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $195,525. This figure is based on the assumption that none of the affected airplanes operators have accomplished the required action.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the final evaluation prepared for this action is contained in the Rules Docket. A copy

of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES".

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

Section 39.13 [Amended]

2. Section 39.13 is amended by adding the following new AD:

94–01–01 Beech Aircraft Corporation: Amendment 39–8782; Docket No. 93–CE–43–AD.

Applicability: The following model and serial number airplanes, certificated in any category, that do not have all nine (9) cabin seats modified through the incorporation of Beech Kit No. 303–307:

Model	Serial numbers
B300	FL–1 through FL–76.
B300C	FM–1, FM–2, and FM–3.

Note 1: Beech Service Bulletin (SB) 2443 and Tosingtion Enterprises Inc. (Tosington) SB No. 001, both dated July 1993, specify procedures for determining whether Beech Kit No. 303–307 is installed on a cabin seat frame.

Compliance: Required within the next 150 hours time-in-service after the effective date of this AD, unless already accomplished.

To prevent separation of the seat from its base caused by cracks around the welded-in bushings, which, in the event of an accident, could result in occupant injury, accomplish the following:

(a) Inspect each cabin seat for cracks in accordance with the Accomplishment Instructions section of either Beech SB 2443 or Tosington SB No. 001, both dated July 1993, as applicable. If any crack is found, prior to further flight, repair the crack in accordance with the applicable service bulletin referenced above.

Note 2: Each cabin seat has a placard on the lower seat frame that specifies whether the seat is manufactured by Gordon-Piatt Energy Group (Beech SB No. 2443) or Tosington Enterprises Inc. (Tosington SB No. 001).

(b) Modify the cabin seat frames by incorporating Beech Kit No. 303–307 in accordance with the actions specified in the Accomplishment Instructions section of either Beech SB 2443 or Tosington SB No. 001, both dated July 1993, as applicable.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) An alternative method of compliance or adjustment of the compliance time that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office ACO), FAA, 1801 Airport Road, room 100, Wichita, Kansas 67209. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and send it to the Manager, Wichita ACO.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(e) The inspection and modification required by this AD shall be done in accordance with either Beech Service Bulletin 2443 or Tosington Service Bulletin No. 001, both dated July 1993, as applicable. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085, or Tosington Enterprises Inc., 2261 Madera Road, Simi Valley, California 93065. Copies may be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri, or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment (39–8782) becomes effective on February 11, 1994.

Issued in Kansas City, Missouri, on December 22, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Office.

[FR Doc. 94–830 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–U

14 CFR Part 39

[Docket No. 93–NM–127–AD; Amendment 39–8784; AD 94–01–02]

Airworthiness Directives; Boeing Model 767 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Boeing Model 767 series airplanes, that requires modification of the ram air turbine (RAT) system wiring. This amendment is prompted by a report of chatter occurring during takeoff and landing in the RAT airspeed switch relay. The actions specified by this AD are intended to prevent the inability to maintain hydraulic system power in the event that power is lost in both engines.

DATES: Effective February 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Kristin Larson, Aerospace Engineer, Systems and Equipment Branch, ANM–130S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1760; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Boeing Model 767 series airplanes was published in the **Federal Register** on September 17, 1993 (58 FR 48617). That action proposed to require modification of the ram air turbine (RAT) system wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Three commenters support the proposed rule.

The Air Transport Association (ATA) of America, on behalf of one of its members, requests that the proposed compliance time be extended to allow the proposed modification to be accomplished within 4,000 hours time-in-service or 15 months after the effective date of the rule, whichever occurs later. This will allow the proposed modification to be accomplished during the time of a regularly scheduled "C" check. The commenter considers that the adoption of the proposed compliance time of 4,000 hours time-in-service would require scheduling special times for the accomplishment of the modification, at additional expense.

The FAA concurs with the commenter's request to extend the compliance time. Extending the compliance time as suggested by the commenter will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. Paragraph (a) of the final rule has been revised accordingly.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 90 Model 767 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 53 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost for required parts will be minimal. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $10,203, or $193 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–01–02 Boeing: Amendment 39–8784. Docket 93–NM–127–AD.

Applicability: Model 767 series airplanes; as listed in Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent the inability to maintain hydraulic system power in the event that power is lost in both engines, accomplish the following:

(a) Within 4,000 hours time-in-service or 15 months after the effective date of this AD, whichever occurs later, replace the ram air turbine (RAT) airspeed switch; cap and stow the wire between the RAT airspeed switch and the air/ground relay; and perform a functional test of the RAT deployment system; in accordance with Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Boeing Service Bulletin 767–29–0021, Revision 4, dated May 12, 1988, which contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–4, 6, 10	4	May 12, 1988
5, 7–9, 11–14	1	August 10, 1984.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on February 14, 1994.

Issued in Renton, Washington, on December 28, 1993.

Bill R. Boxwell,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–24 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–SW–21–AD; Amendment 39–8766; AD 93–15–10]

Airworthiness Directives; Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C2, F–28F, 280, 280C, 280F, and 280FX Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–15–10 that was sent previously to all known U.S. owners and operators of The Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C2, F–28F, 280, 280C, 280F, and 280FX helicopters by individual letters. This AD requires an initial inspection of the composite-wrapped main rotor shaft for composite-wrapping separation, red color residue, corrosion, or cracks, and replacement of certain main rotor shafts. This amendment is prompted by the discovery of a significant crack in a composite-wrapped main rotor shaft. The actions specified by this AD are intended to prevent failure of the main rotor shaft, loss of the main rotor, and subsequent loss of control of the helicopter.

DATES: Effective January 28, 1994, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 93–15–10, issued on August 3, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–21–AD, 2601 Meacham Boulevard, room 663, Fort Worth, Texas 76137.

The applicable service information may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. This information may be examined at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Joe McGarvey, Aerospace Engineer, Chicago Aircraft Certification Office, FAA, Airframe Branch, Small Airplane Directorate, 2300 East Devon Avenue, room 232, Des Plaines, Illinois 60018, telephone (708) 294–7136, fax (708) 294–7834.

SUPPLEMENTARY INFORMATION: On August 3, 1993, the FAA issued Priority Letter AD 93–15–10, applicable to The Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C2, F–28F, 280, 280C, 280F, and 280FX helicopters, which requires an initial inspection of the composite-wrapped main rotor shaft (shaft) for composite-wrapping separations, red color residue, corrosion, or cracks, and replacement of certain shafts. That action was prompted by the discovery of a significant crack in a shaft. This condition, if not corrected, could result in failure of the shaft, loss of the main rotor, and subsequent loss of control of the helicopter.

The FAA has reviewed and approved The Enstrom Helicopter Corporation Service Directive Bulletin No. 0083, dated July 16, 1993, that describes an initial inspection of the shafts for evidence of separation between the composite-wrapping and the shaft, corrosion, or cracks. Service Directive Bulletin No. 0083 also specifies replacement of certain shafts.

Since the unsafe condition described is likely to exist or develop on other helicopters of the same type design, the FAA issued Priority Letter AD 93–15–10 to prevent failure of the shaft, loss of the main rotor, and subsequent loss of control of the helicopter. The AD requires an initial inspection of the shaft, part number (P/N) 28–13183, for composite-wrapping separation, red color residue, corrosion, or cracks, and replacement of the shaft upon discovery of these conditions. The AD also requires replacement of the shaft whenever vibrations occur that cannot be corrected with track and balance procedures or if track and balance procedures are required more than once. Further, the AD requires replacement of any shaft, P/N 28–13183, with an airworthy shaft, P/N 28–13140–11 or P/N 28–13104–1, within the next 10 hours' time-in-service or at the next annual inspection after the effective date of this AD, whichever occurs first. The actions are required to be accomplished in accordance with the service directive bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on August 3, 1993, to all known U.S. owners and operators of The Enstrom Helicopter Corporation Model F–28A, F–28C, F–28C2, F–28F, 280, 280C, 280F, and 280FX helicopters. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to Section 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this rule must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–21–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft and that it is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [AMENDED]

2. Section 39.13 is amended by adding the following new airworthiness directive:

The Enstrom Helicopter Corporation: Amendment 39–8766. Docket Number 93–SW–21–AD. Final Rule of a Priority Letter AD.

Applicability: Model F–28A, F–28C, F–28C2, F–28F, 280, 280C, 280F, and 280FX helicopters equipped with composite-wrapped main rotor shaft, part number (P/N) 28–13183, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the main rotor shaft (shaft), loss of the main rotor, and subsequent loss of control of the helicopter, accomplish the following:

(a) Before further flight, after the effective date of this airworthiness directive (AD), perform a one-time inspection of the shaft in accordance with paragraph 5.1 of The Enstrom Helicopter Corporation Service Directive Bulletin No. 0083, dated July 16, 1993.

(b) If the shaft is found with composite-wrapping separation, corrosion, red color residue or cracks during the inspections in paragraph (a) of this AD, remove the shaft from further service and install an airworthy shaft, P/N 28–13140–11 or P/N 28–13104–1.

(c) If main rotor (M/R) vibrations occur that cannot be corrected with track and balance procedures; or, if M/R track and balance procedures are required more than once, replace the shaft with an airworthy shaft, P/N 28–13140–11 or P/N 28–13104–1, before further flight.

(d) Within the next 10 hours' time-in-service, or at the next annual inspection after the effective date of this AD, whichever occurs first, remove the shaft, P/N 28–13183, and install an airworthy shaft, P/N 28–13140–11 or P/N 28–13104–1.

(e) Installation of airworthy shafts, P/N 28–13140–11 or P/N 28–13104–1, constitutes terminating action for the requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Chicago Aircraft Certification Office, 2300 East Devon Avenue, room 232, Des Plaines, IL 60018. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Chicago Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Chicago Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of only paragraphs (a) and (d) of this AD can be accomplished.

(h) The inspection, removal and replacement shall be done in accordance with The Enstrom Helicopter Corporation Service Directive Bulletin No. 0083, dated July 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from The Enstrom Helicopter Corporation, Twin County Airport, P.O. Box 490, Menominee, Michigan 49858. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 2601 Meacham Boulevard, room 663, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(i) This amendment becomes effective January 28, 1994, to all persons except those persons to whom it was made immediately effective by Priority Letter AD 93–15–10, issued August 3, 1993, which contained the requirements of this amendment.

Issued in Fort Worth, Texas, on December 3, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–141 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–137–AD; Amendment 39–8778; AD 93–25–14]

Airworthiness Directives; SAAB-Scania Model SF340A and SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain SAAB-Scania Model SF340A and SAAB 340B series airplanes, that requires replacement of the left- and right-hand AC generator control relays with new relays at the generator control positions. This amendment is prompted by reports that in-service AC generator control relays, specifically used for generator transfer functions, have failed where the main contacts arced. The actions specified by this AD are intended to prevent loss of AC electrical power, and local area damage that may lead to further electrical failures and smoke in the cockpit.

DATES: Effective February 14, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 14, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from SAAB-Scania AB, SAAB Aircraft Support Product, S–581.88, Linköping, Sweden. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain SAAB-Scania Model SF340A and SAAB 340B series airplanes was published in the **Federal Register** on September 14, 1993 (58 FR 48010). That action proposed to require replacement of the left- and right-hand AC generator control relays, part number (P/N) SM15CXD1, with new relays, P/N SM15CXD4, at the generator control positions (7XA/8XA).

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 200 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2.5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer at no cost to the operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $27,500, or $137.50 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or

on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–25–14 SAAB-Scania: Amendment 39–8778. Docket 93–NM–137–AD.

Applicability: Model SAAB SF340A series airplanes, serial numbers 004 through 159 inclusive; and Model SAAB 340B series airplanes, serial numbers 160 through 325 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of AC electrical power, and local area damage that may lead to further electrical failures and smoke in the cockpit, accomplish the following:

(a) Within 6 months after the effective date of this AD, replace the left- and right-hand AC generator control relays, part number (P/N) SM15CXD1, with new relays, P/N SM15CXD4, at generator control positions 7XA and 8XA, in accordance with SAAB 340 Service Bulletin SAAB 340–24–022, dated October 21, 1992.

(b) As of the effective date of this AD, no person shall install an AC generator control relay, P/N SM15CXD1, at generator control positions 7XA or 8XA on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with SAAB 340 Service Bulletin SAAB 340–24–022, dated October 21, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from SAAB-Scania AB, SAAB Aircraft Support Product, S–581.88, Linköping, Sweden. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on February 14, 1994.

Issued in Renton, Washington, on December 21, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–831 Filed 1-12-94; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–224–AD; Amendment 39–8790; AD 94–01–08]

Airworthiness Directives; McDonnell Douglas Model DC–9 and C–9 (Military) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9 and C–9 (military) series airplanes. This action requires inspections to detect cracking in the ventral aft pressure bulkhead, and repair, if necessary. This amendment is prompted by reports of cracking found in the ventral aft pressure bulkhead on several airplanes. The actions specified in this AD are intended to prevent the propagation of cracks in the ventral aft pressure bulkhead, which could lead to failure of the bulkhead and subsequent rapid decompression of the airplane.

DATES: Effective January 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–224–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P. O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: David Y. J. Hsu, Airframe Branch, ANM–120L, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA has recently received reports of cracking found in the ventral aft pressure bulkhead on several McDonnell Douglas Model DC–9 series airplanes. Two operators reported finding fatigue cracks on four airplanes in both the left- and right-hand side ventral aft pressure bulkhead web and doublers, between water lines (stations) Z=43.000 and Z=74.000. The length of the reported cracks found in the webs ranged from 5 inches to 48 inches. The webs of each of the cracked bulkheads on the subject airplanes were made of 2014–T6 material and were 0.042 inch thick. It is suspected that fatigue is the cause of the cracks. The affected airplanes had accumulated between 73,803 and 83,760 landings at the time of the crack findings. In each case, the cracking was found during inspections that were outside of the operator's normal maintenance program schedule. Currently, there is no requirement for regular inspection of the affected area of the bulkhead. Cracking in the ventral aft pressure bulkhead web or doublers, if allowed to propagate to a critical length, could lead to failure of the bulkhead, extensive structural damage, and subsequent rapid decompression of the airplane.

The FAA has reviewed and approved McDonnell Douglas DC–9 Alert Service Bulletin A53–264, dated December 22, 1993, that describes procedures for conducting repetitive visual, low frequency eddy current, and high frequency eddy current inspections to detect cracking in the ventral aft pressure bulkhead. The area of inspection includes the upper left and right sides of the ventral aft pressure bulkhead in the area of the finger doublers and web between stations Z=34.000 and Z=74.000, from the edge of the ventral doorway outboard and upward along the edge of the doublers.

Since an unsafe condition has been identified that is likely to exist or develop on other Model DC–9 and C–9 (military) series airplanes of the same type design, this AD is being issued to prevent failure of the ventral aft pressure bulkhead due to cracking. This AD requires repetitive visual, low frequency eddy current, and high frequency eddy current inspections to detect cracking in the ventral aft pressure bulkhead. These inspections are required to be accomplished in accordance with the service bulletin described previously. Any cracks found are required to be repaired, prior to further flight, in accordance with a method approved by the FAA. Additionally, operators are required to submit a report of initial inspection findings to the FAA.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption ADDRESSES. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–224–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–01–08 McDonnell Douglas: Amendment 39–8790. Docket 93–NM–224–AD.

Applicability: Model DC–9 and C–9 (military) series airplanes, as listed in McDonnell Douglas DC–9 Alert Service Bulletin A53–264, dated December 22, 1993; equipped with a ventral aft pressure bulkhead web composed of 2014–T6 material that is 0.042 inch thick; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the aft pressure bulkhead due to cracking, accomplish the following:

(a) For airplanes on which the procedures specified in McDonnell Douglas DC–9 Service Bulletins 53–26 and A53–144, or production equivalent, have not been accomplished (Group I airplanes): Upon the accumulation of 50,000 total landings, or within 30 days after the effective date of this AD, whichever occurs later, conduct an initial visual, low frequency eddy current, and high frequency eddy current inspection to detect cracks in the ventral aft pressure bulkhead, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–264, dated December 22, 1993.

(1) If no crack is detected during any of the inspections, repeat these inspections at intervals not to exceed 1,500 landings.

(2) If any crack is detected during any of the inspections, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate.

(b) For airplanes on which the procedures specified in McDonnell Douglas DC–9 Service Bulletins 53–26 and A53–144, or production equivalent, have previously been accomplished (Group II airplanes): Upon the

accumulation of 60,000 total landings, or within 60 days after the effective date of this AD, whichever occurs later, conduct an initial visual, low frequency eddy current, and high frequency eddy current inspection to detect cracks in the ventral aft pressure bulkhead, in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–264, dated December 22, 1993.

(1) If no crack is detected during any of the inspections, repeat these inspections at intervals not to exceed 1,500 landings.

(2) If any crack is detected during any of the inspections, prior to further flight, repair in accordance with a method approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate.

(c) Within 10 calendar days after accomplishing the initial inspection required by paragraph (a) or (b) of this AD, as applicable, submit a report of inspection findings, both positive and negative, to the Manager, Los Angles ACO, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425; fax (310) 988–5210. The report must include the following information:

(1) Factory serial number of the airplane;

(2) Total time and flight cycles on the airplane;

(3) A detailed description of the discrepancy finding;

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections shall be done in accordance with McDonnell Douglas DC–9 Alert Service Bulletin A53–264, dated December 22, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P. O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on January 28, 1994.

Issued in Renton, Washington, on January 3, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94–345 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–SW–02–AD; Amdt. 39–8738; AD 93–23–04]

Airworthiness Directives; Societe Nationale Industrielle Aerospatiale and Eurocopter France Model SE 3160, SA 315B, SA 316B, SA 316C, and SA 319B Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Societe Nationale Industrielle Aerospatiale and Eurocopter France Model SE 3160, SA 315B, SA 316B, SA 316C, and SA 319B series helicopters, that requires installation of a supplemental outside air temperature (OAT) and velocity never exceed (V_{NE}) airspeed limitation flip chart placard for use in cold temperature operations and use of a new flight manual supplement. This amendment is prompted by several reports of excessive main rotor vibrations and associated cyclic and collective control feedback forces occurring under conditions of high altitude, high gross weight, cold temperatures, and high flight speeds when the helicopter is equipped with a certain design main rotor blade. The actions specified by this AD are intended to prevent excessive main rotor vibrations that could result in failure of rotor system components, and subsequent loss of control of the helicopter.

DATES: Effective February 17, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of February 17, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Les "Blades" de l'Helicoptere, Ltd., 5132 Greencrest Road, La Canada Flintridge, California 91011. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, Bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Lirio Liu, Aerospace Engineer, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5229; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Societe Nationale Industrielle Aerospatiale and Eurocopter France Model SE 3160, SA 315B, SA 316B, SA 316C, and SA 319B series helicopters when equipped with certain main rotor blades was published in the **Federal Register** on June 7, 1993 (58 FR 31922). That action proposed to require (1) installation of a supplemental outside air temperature (OAT) and velocity never exceed (V_{NE}) flip chart placard that applies to cold temperature operations and (2) use of a new flight manual supplement.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

The only commenter states that the problem could be alleviated and it would be unnecessary to issue the AD if common sense were used and if airspeed was promptly reduced when experiencing excessive vibrations. The FAA concurs with the comment that slowing the helicopter will alleviate the condition but maintains that an AD is still necessary. The FAA believes that mandatory adherence to reduced airspeeds is necessary to avoid excessive vibration and possible fatigue damage to rotor system components. The AD requires pilots to comply with a Rotorcraft Flight Manual (RFM) supplement dated November 25, 1992, and a new OAT and V_{NE} airspeed limitation flip chart placard. This procedure is consistent with the "cold temperature" airspeed limitations approved during many rotorcraft certification programs.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with only editorial changes. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35 helicopters of U.S. registry will be affected by this AD, that it will take approximately 1 workhour per helicopter to accomplish the required actions, and that the average labor rate is $55 per workhour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,925.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12812, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air Transportation, Aircraft, Aviation Safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 93–23–04 Societe Nationale Industrielle Aerospatiale and Eurocopter France: Amendment 39–8738. Docket Number 93–SW–02–AD.

Applicability: Model SE 3160, SA 315B, SA 316B, SA 316C, and SA 319B series helicopters equipped with main rotor blades, part number (P/N) LOM3160–100 installed in accordance with Supplemental Type Certificate (STC) No. SH778GL, certificated in any category.

Compliance: Required within 25 hours' time-in-service after the effective date of this airworthiness directive (AD), unless accomplished previously.

To prevent excessive main rotor vibrations that could result in failure of rotor system components, and subsequent loss of control of the helicopter, accomplish the following:

(a) Install an outside air temperature (OAT) and velocity never exceed (V_{NE}) airspeed limitation flip chart placard, P/N LOM3160–151, on top of the instrument panel immediately to the right of the existing V_{NE} placard, using velcro strips as described in Les "Blades" De L'Helicoptere, Ltd. Service Information Letter No. 1–11–92A, dated December 3, 1992.

(b) After compliance with paragraph (a) of this AD, operate the helicopter in accordance with the Helicopter Flight Manual Supplement, approved and dated November 25, 1992, that is applicable to helicopters modified in accordance with STC SH778GL.

(c) An alternate method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California 90806–2425. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles Aircraft Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished, provided the indicated airspeed is limited to no more than 50 knots.

(e) The installation shall be done in accordance with Les "Blades" de l'Helicoptere, Ltd. Service Information Letter No. 1–11–92A, dated December 3, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Les "Blades" de l'Helicoptere, Ltd., 5132 Greencrest Road, La Canada Flintridge, California 91011. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective February 17, 1994.

Issued in Fort Worth, Texas, on November 12, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 94–142 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–215–AD; Amdt. 39–8796; AD 94–01–14]

Airworthiness Directives; Canadair Model CL–600–2B19 (Regional Jet) Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Canadair Model CL–600–2B19 (Regional Jet) series airplanes. This action revises the FAA-approved Airplane Flight Manual (AFM) to require that both integrated drive generators (IDG) be operational for dispatch. This AD also requires repetitive inspections of the IDG oil level, and replenishing with oil, if necessary; and, for certain airplanes, an inspection of the oil level, and replacement of the IDG with a serviceable unit. This AD also specifies an optional terminating action for the repetitive inspections and AFM revision. This amendment is prompted by reports of failures of the IDG constant speed drive (CSD) on Canadair Model CL–600–2B19 series airplanes. The actions specified in this AD are intended to prevent loss of engine oil and subsequent engine shutdown during flight.

DATES: Effective on January 28, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of January 28, 1994.

Comments for inclusion in the Rules Docket must be received on or before March 14, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–215–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Peter Cuneo, Electrical Engineer, Systems and Equipment Branch, ANE-173, FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Room 202, Valley Stream, New York 11581; telephone (516) 791-6427; fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Transport Canada Aviation, which is the airworthiness authority for Canada, recently notified the FAA that an unsafe condition may exist on certain Canadair Model CL-600-2B19 (Regional Jet) series airplanes. Transport Canada Aviation advises that there have been four reports of failures of the integrated drive generator (IDG) constant speed drive (CSD) on Canadair Model CL-600-2B19 series airplanes. One of these incidents resulted in engine shutdown during flight. Investigation revealed that the retaining ring, which restrains the CSD input shaft bearing, can become unseated from its positional groove on the input shaft. This condition could result in loss of IDG oil and subsequent disconnection of the IDG. In addition, the input shaft could move abnormally, which could cause damage to the engine seal. This condition, if not corrected, could result in loss of engine oil and subsequent engine shutdown during flight.

Bombardier Inc. has issued Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision "A," dated December 1, 1993, that describes procedures for repetitive inspections of the IDG oil level, and replenishing with oil, if necessary. For airplanes on which the IDG has been disconnected during flight, the alert service bulletin describes procedures for inspecting the oil level, and replacement of the IDG with a serviceable unit.

The alert service bulletin also references Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-016, Revision "A," dated December 3, 1993, which describes procedures for accomplishment of a modification that would terminate the repetitive inspections and AFM revision. The modification involves installing a new bearing retainer and new input shaft bearings in the CSD units. Accomplishment of this modification will eliminate the loss of IDG oil and engine oil.

Transport Canada Aviation classified these alert service bulletins as mandatory and issued Canadian Airworthiness Directive CF-93-29, dated December 3, 1993, in order to assure the continued airworthiness of these airplanes in Canada.

This airplane model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada Aviation has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada Aviation, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent loss of engine oil and subsequent engine shutdown during flight. This AD revises the Limitations Section of the FAA-approved Airplane Flight Manual (AFM) to require that both IDG's be operational for dispatch. This AD also requires repetitive inspections of the IDG oil level, and replenishing with oil, if necessary. Additionally, for airplanes on which the IDG has been disconnected during flight, this AD requires replacement of the IDG with a serviceable unit. The inspections and replacement are required to be accomplished in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, described previously.

In addition, this AD provides an optional terminating modification, which, if accomplished, would terminate the repetitive oil level inspections and the AFM revision.

This is considered to be interim action. The FAA is considering further rulemaking action to require accomplishment of the optional terminating modification specified in this AD. However, the proposed compliance time for the modification is sufficiently long so that notice and opportunity for public comment would not be impracticable.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93-NM-215-AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94-01-14 Canadair Limited: Amendment 39-8796. Docket 93-NM-215-AD.

Applicability: Model CL-600-2B19 (Regional Jet) series airplanes, serial numbers 7003 through 7028 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of engine oil and subsequent engine shutdown during flight, accomplish the following:

(a) Within 14 days after the effective date of this AD, add the following to the Limitations Section of the FAA-approved Airplane Flight Manual (AFM). This may be accomplished by inserting a copy of this AD in the AFM. This AFM revision may be removed from the AFM if the optional terminating action specified in paragraph (d) of this AD is accomplished.

Both integrated drive generators must be operational for dispatch. Note: This overrides the current applicable Master Minimum Equipment List (MMEL) requirement.

(b) For airplanes on which the IDG has been disconnected during flight: Prior to further flight, inspect the integrated drive generator (IDG) oil level in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision 'A,' dated December 1, 1993.

(1) If the oil level is on or below the "ADD" mark, prior to further flight, replace the IDG with a serviceable unit in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision 'A,' dated December 1, 1993, or modify the IDG in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-016, Revision 'A,' dated December 3, 1993.

(2) If the oil level is above the "ADD" mark, replace the IDG with a serviceable unit in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision 'A,' dated December 1, 1993; or modify the IDG in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-016, Revision 'A,' dated December 3, 1993. The action shall be accomplished prior to further flight, except that a special flight permit may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location in order to comply with the requirements of this paragraph, provided that the IDG remains disconnected.

(c) Within 14 days after the effective date of this AD, inspect the IDG oil level in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision 'A,' dated December 1, 1993. if the oil level is on or below the "ADD" mark, prior to further flight, replenish with oil in accordance with the service bulletin. Repeat the inspection thereafter at intervals not to exceed 30 hours time-in-service.

(d) Modification of the IDG in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-016, Revision 'A,' dated December 3, 1993, constitutes terminating action for the requirements of this AD. If this modification is accomplished, the AFM revision required by paragraph (a) of this AD shall be removed from the AFM.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), ANE-170, FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(g) The actions shall be done in accordance with Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-015, Revision 'A,' dated December 1, 1993, and Canadair Regional Jet Alert Service Bulletin S.B.A601R-24-016, Revision 'A,' dated December 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Bombardier, Inc., Bombardier Regional Aircraft Division, Garratt Boulevard, Downsview, Ontario M3K 1Y5, Canada. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Engine and Propeller Directorate, New York Aircraft Certification Office, 181 South Franklin Avenue, Valley Stream, New York; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on January 28, 1994.

Issued in Renton, Washington, on January 5, 1994.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 94-583 Filed 1-12-94; 8:45 am]

BILLING CODE 4910-13-P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 30

Foreign Option Transactions

AGENCY: Commodity Futures Trading Commission.

ACTION: Order.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is authorizing Overnight Option contracts on the 10-Year Australian Treasury Bond, 3-Year Australian Treasury Bond and the All-Ordinaries Share Price Index futures contracts traded on the Sydney Futures Exchange Limited ("SFE") to be offered or sold to persons located in the United States. This Order is issued pursuant to: Commission rule 17 CFR 30.3(a), which makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States; and the Commission's Order issued on July 20, 1988, (53 FR 28832, (July 29, 1988), authorizing certain option products traded on SFE to be offered or sold in the United States.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Robert H. Rosenfeld, Esq., Division of Trading and Markets, Commodity Futures Trading Commission, 2033 K Street, NW, Washington, DC 20581, 202-254-8955.

SUPPLEMENTARY INFORMATION: The Commission has issued the following Order:

Order Under Commission Rule § 30.3(a) Permitting Overnight Option Contracts on the 10-Year Australian Treasury Bond, 3-Year Australian Treasury Bond and All-Ordinaries Share Price Index Futures Contracts Traded on the Sydney Futures Exchange Limited to be Offered or Sold in the United States.

By Order issued on July 20, 1988 ("Initial Order"), the Commission authorized, pursuant to Commission rule § 30.3(a),[1] certain option products traded on the Sydney Futures Exchange Limited ("SFE") to be offered or sold in the United States. 53 FR 28832 (July 29, 1988). Among other conditions, the Initial Order specified that:

Except as otherwise permitted under the Commodity Exchange Act and regulations thereunder, * * * no offer or sale of any SFE option product in the United States shall be made until thirty days after publication in the **Federal Register** of notice specifying the particular option(s) to be offered or sold pursuant to this Order * * *.

By letter dated November 24, 1993, the SFE requested that the Commission supplement its previous orders authorizing certain SFE options to be offered or sold to persons in the United States,[2] by also authorizing SFE Overnight Options on 10-Year Australian Treasury Bond, 3-Year Australian Treasury Bond and the All Ordinaries Share Price Index futures contracts, which are traded on the Sydney Futures Exchange Computerized Overnight Market ("SYCOM"), SFE's overnight electronic trading system, to be offered or sold to persons located in the United States.

Overnight Options are described by the SFE as short term options which provide investors with a means of hedging overnight risk exposure. The primary difference between Overnight Options and other existing SFE options is that Overnight Options have a lifespan that is valid only for the duration of a single SYCOM trading session (currently 4:40 p.m. to 4 a.m.). Moreover, Overnight Options are European style options (*i.e.*, exercise possible only at expiration) and are traded exclusively on SYCOM. Finally, the strike prices used for Overnight Options differ from the strike price intervals set for existing SFE options.

Accordingly, pursuant to Commission rule 30.3(a) and the Commission's Initial Order issued on July 20, 1988 and subject to the terms and conditions specified therein, the Commission hereby authorizes SFE's Overnight Options on the 10-Year Treasury Bond, 3-Year Treasury Bond and All Ordinaries Share Price Index futures contracts to be offered or sold to persons located in the United States effective as of the date of publication of this Order in the **Federal Register**.[3]

CONTRACT SPECIFICATIONS

Options on 10-year Treasury bond futures	Options on 3-year Treasury bond futures	Options on all-ordinaries share price index futures
Trading unit:		
One Sydney Futures Exchange (SFE) ten year treasury bond futures contract of A$100,000 notional value.	One SFE three year treasury bond futures contract of A$100,000 notional value.	A$25 times the index.
Trading hours:		
Coincide with Sydney Futures Exchange Computerized Overnight Market (SYCOM) trading session (presently 4:40 p.m. to 4:00 a.m.).	Same	Same.
Contract months:		
March, June, September, December (at present only futures front month is traded).	Same	Same.
Strike price interval:		
0.01% at-the-money (latest futures settlement price) and four above and four below.	Same	5 pts, AIM, 6+, 6−.
Minimum price fluctuation:		
0.005% of notional value (approx. A$37.00)	0.01% (approx. A$28.00)	0.1 All-Ordinaries Index points (A$25).
Expiration:		
Conclusion of each SYCOM trading session	Same	Same.
Style:		
European (exercise only at expiration)	Same	Same.
Trading medium:		
SYCOM	Same	Same.
Premiums:		
Multiples of 0.005% per annum	Same	0.1 index points.
Settlement:		
The arithmetical mean of bid and ask quotations in the underlying futures contract taken at the times of 8:32 a.m., 8:34 a.m., 8:36 a.m., 8:38 a.m. and 8:40 a.m., rounded to the nearest multiple of 0.005%. This price is then used to determine which strikes are automatically exercised.	Same except rounded to nearest multiple of 0.01%.	The arithmetical mean of bid and ask quotations in the underlying futures contract taken at the time of 9:55 a.m., 9:56 a.m., 9:57 a.m., 9:58 a.m., 9:59 a.m., 10:00 a.m., 10:01 a.m., 10:02 a.m., 10:03 a.m., 10:04 a.m. and 10:05 a.m., rounded to the nearest multiple of 0.1 point. This price is then used to determine which strikes are automatically exercised.

[1] Commission rule § 30.3(a) makes it unlawful for any person to engage in the offer or sale of a foreign option product until the Commission, by order, authorizes such foreign option to be offered or sold in the United States.

[2] See 53 FR 28832 (July 29, 1988) (options on 90-day Bank Accepted Bills, 10-Year Treasury Bonds and Australian Dollars futures contracts); 53 FR 30673 (August 15, 1988) (options on 3-Year Treasury Bond futures contracts); and 56 FR 51650 (October 15, 1991) (options on All-Ordinaries Share Price Index futures contracts).

[3] As noted above, the Commission previously authorized, subject to a 30-day waiting period, the offer or sale of SFE option contracts on 3- and 10-year Australian Treasury Bond and All Ordinaries Share Price Index futures contracts. See n.2. The current request of the SFE would essentially trade similar option contracts, differing primarily only as to duration of contract, exercise and strike price. Under such circumstances, the Commission believes that a 30-day waiting period is not necessary.

List of Subjects in 17 CFR Part 30

Commodity futures, Commodity options, Foreign transactions.

Accordingly, 17 CFR Part 30 is amended as set forth below:

PART 30—FOREIGN FUTURES AND FOREIGN OPTION TRANSACTIONS

1. The authority citation for part 30 continues to read as follows:

Authority: Secs. 2(a)(1)(A), 4, 4c, and 8a of the Commodity Exchange Act, 7 U.S.C. 2, 6, 6c and 12a.

2. Appendix B to part 30 is amended by adding the following entry after the existing entries for "Sydney Futures Exchange" to read as follows:

APPENDIX B TO PART 30.—OPTION CONTRACTS PERMITTED TO BE OFFERED OR SOLD IN THE U.S. PURSUANT TO § 30.3(A)

Exchange	Type of contract	FR date and citation
Sydney Futures Exchange	Overnight Options on 10-Year Treasury Bond, 3-Year Treasury Bond and the All-Ordinaries Share Price Index futures contracts.	January 13, 1994; 59 FR _____.

Issued in Washington, DC on January 6, 1994.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–710 Filed 1–12–94; 8:45 am]

BILLING CODE 6351–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 375

[Docket No. RM93–20–000, Order No. 564]

Electronic Filing of FERC Form No. 1 and Delegation to Chief Accountant; Final Rule

Issued December 30, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission is amending its regulations to provide for delegation to the Chief Accountant of authority to act on requests for waiver of the FERC Form No. 1 and the FERC Form No. 1–F filing requirements. This will expedite the processing of such requests.

EFFECTIVE DATE: This rule is effective February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Richard Mattingly (Legal Information), Electric Rates and Corporate Regulation, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2070; James G. Baird (Technical Information), Office of Chief Accountant, Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, (202) 219–2613.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE, Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the text of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of the Final Rule will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE, Washington, DC 20426.

I. Introduction

On July 23, 1993, the Federal Energy Regulatory Commission (Commission) issued a notice of proposed rulemaking (NOPR)[1] in which the Commission proposed to amend 18 CFR Parts 141 and 385 to provide for the electronic filing of FERC Form No. 1, "Annual Report of Major electric utilities, licensees and others" (Form 1). The Commission also proposed to amend 18 CFR part 375 to delegate to the Chief Accountant or his designee the authority to act on requests for waiver of the Form 1 and Form 1–F[2] filing requirements.

The Commission is issuing separately in this docket notice of its intent to delay implementation of the Form 1 electronic filing requirement pending development and testing of the necessary software.

In this order, the Commission is adopting a final rule amending its regulations to provide for the delegation of authority to the Chief Accountant or his designee to deny or grant (in whole or in part) waiver of the Form 1 and Form 1–F filing requirements. The language of the amendment is identical to that proposed in the NOPR.

II. Reporting Burden

There is no reporting burden associated with the delegation of authority to the Chief Accountant or his designee.

III. Discussion of Comments

Only one party, American Electric Power System (AEP), commented on the proposal to delegate authority to the Chief Accountant or his designee to rule on Form 1 and Form 1–F waiver requests. AEP supports the proposal. The Commission finds that the proposal is reasonable. Accordingly, the proposal will be adopted.

IV. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act[3] requires rulemakings to contain either a description and analysis of the effect that a rule will have on small entities or to certify that the rule will not have a significant economic effect on a

[1] 58 FR 40606 (July 29, 1993); IV FERC Stats. & Regs. ¶ 32,498 (1993).

[2] FERC Form No. 1–F, "Annual Report of Nonmajor public utilities and licensees."

[3] 5 U.S.C. 601–612.

substantial number of small entities.[4] Because most Form 1 and Form 1–F respondents do not fall within the definition of small entity, the Commission certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Information Collection Statement

The regulations of the Office of Management and Budget (OMB)[5] require that OMB approve certain information and recordkeeping requirements imposed by an agency. In this instance the rule being adopted does not impose any information or recordkeeping requirements, and there is thus no need to obtain OMB approval. However, the Commission is sending a copy of this order to OMB for information purposes.

V. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for any Commission action that may have a significant adverse effect on the human environment.[6] However, no environmental consideration is necessary for actions that are procedural, ministerial, or internal administrative and management actions, programs or decisions,[7] or that are proposals for legislation or promulgation of rules that are clarifying, corrective, or procedural or that do not substantially change the effect of legislation or regulations being amended.[8] The final rule is such an action, and, accordingly, no environmental consideration is necessary.

VI. Effective Date

This final rule is effective February 14, 1994.

List of Subjects in 18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission amends part 375 in chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7107–7532.

2. Section 375.303 is amended by adding paragraph (l) to read as follows:

§ 375.303 Delegations to the Chief Accountant.

* * * * *

(l) Deny or grant, in whole or part, requests for waiver of the requirements for statements or reports under § 141.1 of this chapter (FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others) and § 141.2 of this chapter (FERC Form No. 1–F, Annual Report for Nonmajor Public Utilities and Licensees).

[FR Doc. 94–683 Filed 1–12–94; 8:45 am]

BILLING CODE 6717–01–P

[4] See 5 U.S.C. 601(3), citing to section 3 of the Small Business Act, 15 U.S.C. 632, which defines a "small-business concern" as a business which is independently owned and operated and which is not dominant in its field of operation.

[5] 5 CFR 1320.14.

[6] Regulations Implementing National Environmental Policy Act, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Preambles 1986–90 ¶ 30,783 (1987).

[7] 18 CFR 380.4(a)(1).

[8] 18 CFR 380.4(a)(2)(ii).

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Parts 4 and 123

[T.D. 93–96]

RIN 1515–AB31

Reporting Requirements for Vessels, Vehicles and Individuals; Correction

AGENCY: U.S. Customs, Department of the Treasury.

ACTION: Final rule; correction.

SUMMARY: This document corrects a typographical error that appeared in a final rule document published in the **Federal Register** on December 21, 1993, regarding reporting requirements for vessels, vehicles and individuals.

EFFECTIVE DATE: January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Larry L. Burton (202) 482–6940.

SUPPLEMENTARY INFORMATION: On December 21, 1993, Customs published a document in the **Federal Register** (58 FR 67312), that amended the Customs Regulations to implement certain provisions of the Customs Enforcement Act of 1986, a part of the Anti-Drug Abuse Act of 1986, designed to strengthen Federal efforts to improve the enforcement of Federal drug laws and enhance the interdiction of illicit drug shipments. The regulatory changes pertained to the arrival, entry, and departure reporting requirements applicable to vessels, vehicles, and individuals, and informed the public regarding applicable penalty, seizure and forfeiture provisions for violation of the provisions. A typographical error appeared in that document.

Correction

The error appears in the amended language of section 4.52, Customs Regulations, which is set forth on page 67317 of the December 21, 1993 **Federal Register**. In the second sentence of the section, there is an incorrect reference to "18 U.S.C. 1459"; the reference should read "19 U.S.C. 1459".

Dated: January 5, 1994.

Harold Singer,

Chief, Regulations Branch.

[FR Doc. 94–805 Filed 1–12–94; 8:45 am]

BILLING CODE 4820–02–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Starch, Pregelatinized

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) held by Shulcon Industries, Inc. The NADA provides for use of pregelatinized starch as an antidiarrheal in newborn calves. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of the NADA.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 111–068 for use of Scourx® Calf Antidiarrheal (pregelatinized starch) in nonmedicated liquid feed or water for the symptomatic treatment (i.e., increasing fecal consistency) of nonspecific diarrhea in newborn calves. The NADA is held by Shulcon Industries, Inc., 4351 East Sarnac Dr., Tucson, AZ 86718. The agency is taking this action because the firm failed to respond to a notice of opportunity for a hearing on a proposal to withdraw approval of the NADA due to the firm's failure to submit the reports required by 21 CFR 510.300. This document amends 21 CFR 510.600(c)(1) and (c)(2) to remove references to the firm because it is no longer the sponsor of an approved NADA, and removes 21 CFR 520.2155 to reflect the withdrawal of approval of this NADA.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "Shulcon Industries, Inc.," and in the table in paragraph (c)(2) by removing the entry for "052292".

PART 520–ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2155 [Removed]

4. Section 520.2155 *Starch, pregelatinized* is removed.

Dated: January 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–811 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 510 and 520

Animal Drugs, Feeds, and Related Products; Trichlorofon and Phenothiazine Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to remove those portions of the regulations that reflect approval of a new animal drug application (NADA) held by TPC Products, Inc. The NADA provides for use of the combination drug trichlorofon and phenothiazine as a parasiticide in horses. In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of this NADA in addition to two others which are not codified.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In a notice published elsewhere in this issue of the **Federal Register**, FDA is withdrawing approval of NADA 13–685 (in addition to two uncodified NADA's for other phenothiazine drugs) for use of the combination drug trichlorofon and phenothiazine as a parasiticide in horses. The NADA is held by TPC Products, Inc., P.O. Box 4308, 2021 North Grove St., Fort Worth, TX 76106. The agency is taking this action because the firm failed to respond to a notice of opportunity for a hearing on a proposal to withdraw approval of the NADA due to the firm's failure to submit the reports required by 21 CFR 510.300. This document removes 21 CFR 520.2520h to reflect the withdrawal of approval of the NADA. Additionally, because the firm is no longer the sponsor of an approved NADA, this document amends 21 CFR 510.600(c)(1) and (c)(2) to remove references to the firm.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 520 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

§ 510.600 [Amended]

2. Section 510.600 *Names, addresses, and drug labeler codes of sponsors of approved applications* is amended in the table in paragraph (c)(1) by removing the entry for "TPC Products, Inc.," and in the table in paragraph (c)(2) by removing the entry for "011531".

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.2520h [Removed]

4. Section 520.2520h *Trichlorofon and phenothiazine powder* is removed.

Dated: January 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–853 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Show Cause Orders

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interor.

ACTION: Final rule; correction.

SUMMARY: OSM is correcting an error in the preamble to the final rule approving Indiana program amendment number 93–2 published on Thursday, November 18, 1993 (58 FR 60783).

EFFECTIVE DATE: This correction is effective November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal

Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226–6166.

SUPPLEMENTARY INFORMATION: On page 60783, third column, third full paragraph, the last sentence is corrected to read as follows:

In a letter dated August 30, 1993, Indiana informed OSM that it should proceed with a final rulemaking and that issues raised in OSM's July 23, 1993, letter will be addressed in a future State program amendment (Administrative Record No. IND–1297).

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 1994.

Carl C. Close,

Assistant Director, Eastern Support Center

[FR Doc. 94–893 Filed 1–12–94; 8:45 am]

BILLING CODE 4310–05–M

Proposed Rules

Federal Register
Vol. 59, No. 9
Thursday, January 13, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0812]

Truth in Savings; Proposed Regulatory Amendment

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; Extension of comment period.

SUMMARY: On December 6, 1993, the Board requested comment on a proposal to amend Regulation DD (Truth in Savings) dealing with the calculation of the annual percentage yield (58 FR 64190). The Secretary of the Board, acting pursuant to delegated authority, has extended the comment period for 30 days to give the public additional time to provide comments.

DATES: Comments must be received by February 14, 1994.

ADDRESSES: Comments, which should refer to Docket No. R–0812, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Kyung Cho, Kurt Schumacher or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412. For the hearing impaired only Telecommunications Device for the Deaf Dorothea Thompson (202) 452–3544.

SUPPLEMENTARY INFORMATION: The Board is extending the comment period on the proposed amendments to Regulation DD (Truth In Savings), to give the public additional time to comment on the proposal.

By order of the Secretary of the Board, acting pursuant to delegated authority for the Board of Governors of the Federal Reserve System, January 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–842 Filed 1–12–94; 8:45 am]

BILLING CODE 6210–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 917

Kentucky Permanent Regulatory Program; Disposal of Coal Fly Ash, Bottom Ash, and Scrubber Sludge

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the Kentucky permanent regulatory program (hereinafter referred to as the Kentucky program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). By letter of November 17, 1993, (Administrative Record No. KY–1260) Kentucky submitted a proposed program amendment that adds a new section to Kentucky's Administrative Regulations. The amendment consists of a proposed new section to Kentucky Administrative Regulations (KAR) at 405 KAR 7:200 relating to disposal of coal combustion fly ash, bottom ash and scrubber sludge under special waste permit-by-rule at 401 KAR 45:060 Section 1(6).

This document sets forth the times and locations that the Kentucky program and the proposed amendment are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and the procedures that will be followed regarding a public hearing if one is requested.

DATES: Written comments must be received on or before 4 p.m. on February 14, 1994. If requested, a public hearing on the proposed amendment will be held at 10 a.m. on February 7, 1994. Requests to present oral testimony at the hearing must be received on or before 4 p.m. on January 28, 1994. Any disabled individual who has need for a special accomendation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

ADDRESSES: Written comments and requests to testify at the hearing should be mailed or hand delivered to: William J. Kovacic, Director, Lexington Field Office, Office of Surface Mining Reclamation and Enforcement, 2675 Regency Road, Lexington, Kentucky 40503.

Copies of the Kentucky program, the proposed amendment, and all written comments received in response to this document will be available for review at the addresses listed below, Monday through Friday, 9 a.m. to 4 p.m., excluding holidays. Each requestor may receive, free of charge, one copy of the proposed amendment by contacting OSM's Lexington Field Office.

Office of Surface Mining Reclamation and Enforcement, Lexington Field Office, 2675 Regency Road, Lexington, Kentucky 40503, Telephone: (606) 233–2896.

Office of Surface Mining Reclamation and Enforcement, Eastern Support Center, Ten Parkway Center, Pittsburgh, Pennsylvania 15220, Telephone: (412) 937–2828.

Department of Surface Mining Reclamation and Enforcement, No. 2 Hudson Hollow Complex, Frankfort, Kentucky 40601, Telephone: (502) 564–6940.

If a public hearing is held, its location will be: The Harley Hotel, 2143 North Broadway, Lexington, Kentucky 40505.

FOR FURTHER INFORMATION CONTACT: William J. Kovacic, Director, Lexington Field Office, Telephone (606) 233–2896.

SUPPLEMENTARY INFORMATION:

I. Background

On May 18, 1982, the Secretary of the Interior conditionally approved the Kentucky program. Information pertinent to the general background, revisions, modifications, and amendments to the proposed permanent program submission, as well as the Secretary's findings, the disposition of

comments and a detailed explanation of the conditions of approval can be found in the May 18, 1982, **Federal Register** (47 FR 21404–21435). Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 917.11, 917.15, 917.16 and 917.17.

II. Discussion of Amendment

By letter of November 17, 1993, (Administrative Record No. KY–1260) Kentucky submitted a proposed program amendment that adds a new section to Kentucky's Administrative Regulations. The amendment consists of proposed new section to Kentucky Administrative Regulations (KAR) at 405 (KAR) 7:200 relating to disposal of coal combustion fly ash, bottom ash and scrubber sludge under special waste permit-by-rule at 401 KAR 45:060 Section 1(6).

This proposed administrative regulation offers surface coal mining permittee the option to dispose of coal combustion waste on the permit area under the special waste permit-by-rule established at 401 KAR 45:060 Section 1(6). Applicants who obtain a permit from the Cabinet's Department for Surface Mining Reclamation and Enforcement under this proposed administrative regulation are deemed to have received a permit from the Cabinet's Department for Environmental Protection, Division of Waste Management, without having applied separately to the Division of Waste Management. A person who wishes to dispose of coal combustion waste on a surface mining permit area in a manner that is not authorized in this proposed administrative regulations may, as at present, apply separately to the Division of Waste Management for a special waste formal permit under 401 KAR 45:030.

Among other requirements, this proposed administrative regulation requires that disposal of coal combustion waste be approved in the surface mining permit; limits the waste to those coal combustion wastes authorized under 401 KAR 45:060 Section 1(6); requires identification of the generating facility; requires laboratory analysis to characterize the waste to show its potential to leach certain contaminants; restricts disposal to coal extraction areas of surface mines; limits waste volume at a location to the volume of coal extracted at that location; requires the permittee to keep records of the source and amount of shipments of waste received, and maps of disposal locations, and amounts; requires public notice of the intent to dispose of waste; requires written consent of the surface owner for disposal of waste on his property; requires a detailed plan for waste disposal; requires background characterization of ground water and surface water; requires the permittee's surface mining performance bond to be specifically applicable to waste disposal; requires compliance with certain environmental protection performance standards, including placement criteria that depend upon the leaching characteristics of the waste; and requires monitoring and reporting of quality of ground water and surface water.

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is now seeking comment on whether the amendment proposed by Kentucky satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the Kentucky program.

Written Comments

Written comments should be specific, pertain only to the issues proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicted under "**DATES**" or at locations other than the Lexington Field Office will not necessarily be considered in the final rulemaking or included in the Administrative Record.

Public Hearing

Persons wishing to comment at the public hearing should contact the person listed under "**FOR FURTHER INFORMATION CONTACT**" by 4 p.m. on January 28, 1994. If no one requests an opportunity to comment at a public hearing, the hearing will not be held. Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions. The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not been scheduled to comment, and who wish to do so, will be heard following those scheduled. The hearing will end after all persons scheduled to comment and persons present in the audience who wish to comment have been heard.

Public Meeting

If only one person requests an opportunity to comment at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendments may request a meeting at the OSM, Lexington Field Office listed under "**ADDRESSES**" by contacting the person listed under "**FOR FURTHER INFORMATION CONTACT.**" All such meetings will be open to the public and, if possible, notices of meetings will be posted in advance at the locations listed under "**ADDRESSES.**" A written summary of each meeting will be made a part of the Administrative Record.

IV. Procedural Determinations

Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for the rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 917

Intergovernmental relations, Surface mining, Underground mining.

Dated: January 7, 1994.

Carl C. Close,

Assistant Director, Eastern Support Center.

[FR Doc. 94–894 Filed 1–12–94; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Ch. I

[FRL–4824–9]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Announcement of meeting.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on February 3 and 4. On February 3, we'll start at 9 a.m. and run until completion. On February 4, we'll start at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The meeting will be held at the Georgetown Conference Center, 3800 Reservoir Road, Washington, DC, (202) 687–3232.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Bruce Madariaga of EPA's Office of Air Quality Planning and Standards at 919–541–5290. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–486–5822.

Dated: January 6, 1994.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 94–758 Filed 11–12–94; 8:45 am]

BILLING CODE 6560–60–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 571 and 572

[Docket No. 93–23]

Advance Notice of Proposed Rulemaking Concerning Section 6(g) of the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance Notice of Proposed Rulemaking; Extension of Time.

SUMMARY: The Commission by Advance Notice of Proposed Rulemaking published November 29, 1993 (58 FR 62616) sought comments on whether it should issue regulations or guidelines that would describe the Commission's enforcement policy with respect to section 6(g) of the Shipping Act of 1984, which authorizes the Commission to seek an injunction against substantially anticompetitive agreements. Upon request by the National Customs Brokers and Forwarders Association, the Commission has determined to grant a 30-day extension of time for filing comments, thus providing a total comment period of 90 days.

DATES: Comments due on or before February 28, 1994.

ADDRESSES: Send comments (original and 15 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5840.

Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573–0001, (202) 523–5787.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 94–827 Filed 1–12–94, 8:45 am]

BILLING CODE 6730–01–M

Notices

Federal Register
Vol. 59, No. 9
Thursday, January 13, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

January 7, 1994.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contract person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, Room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Farmers Home Administration

7 CFR 1924–B, Management Advice to Individual Borrowers and Applicants
FmHA 431–1, 2, 4, 432–1, 2, 10; 1924–22, 23, 24, 27
Recordkeeping; on occasion
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 23,935 responses; 1,428,799 hours
Jack Holston (202) 720–9736

Extension

- Agricultural Stabilization and Conservation Service

7 CFR 1421.551—5559—Subpart—Standards for Approval of Warehouses for Grain, Rice, Dry Edible Beans, and Seed CCC–20, 24, 24–1, 25–1, 25–2, 26, 26–1, 26–2
Recordkeeping; On occasion, Annually
Businesses or other for-profit; 8,965 responses; 615,826 hours
Gene Williams (202) 720–2738

New Collection

- Agricultural Cooperative Service

Emerging Agriculture Cooperative: Key Factors for Formation and Success
One time only
Small businesses or organizations; 124 responses; 155 hours
Phillip F. Brown (202) 690–1406

- Agricultural Stabilization and Conservation Service

Automated Clearing House (ACH) Payee Participation Notice
KC–352
Recordkeeping; Quarterly
Businesses or other for-profit; Federal agencies or employees; 1,300 responses; 375 hours
Sandra Bearden (816) 926–6327

Reinstatement

- Agricultural Stabilization and Conservation Service

7 CFR 719, Farm Reconstitutions
ASCS–155
On occasion
Farms; 359,921 responses; 269,941 hours
JoAnne Franta (202) 720–5103

- Agricultural Stabilization and Conservation Service

7 CFR 781, Foreign Investment Disclosure Act Report
ASCS–153
Annually
Individuals or households; Farms; Businesses or other for-profit; Small businesses or organizations; 4,375 responses; 2,108 hours
William Brown (202) 720–6833

- Farmers Home Administration

7 CFR 1944–E, Rural Rental and Rural Cooperative Housing Loan Policies, Procedures, and Authorizations
FmHA 1944–7, 30, 31, 33, 34, 35, 37, 38
On occasion
State or local governments; businesses or other for-profit; Nonprofit institutions; Small businesses or organizations; 25,165 responses; 143,735 hours
Jack Holston (202) 720–9736

- Agricultural Stabilization and Conservation Service

7 CFR 1468, Wool and Mohair Programs
CCC–1155, CCC–1155 (Supplement), CCC–1155A
Annually
Farms; 375,000 responses; 41,665 hours
Clarence Domire (202) 720–7673

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 94–882 Filed 1–12–94; 8:45 am]
BILLING CODE 3410–01–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 940107–4007]

Foreign Availability Determination for Certain Telecommunications Transmission Equipment Controlled by ECCN 5A02A(a)

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Notice of positive determination.

SUMMARY: Under section 5(f) of the Export Administration Act (EAA) and part 791 of the Export Administration Regulations (EAR), the Department of Commerce determined on January 10, 1994, that foreign availability exists within the meaning of the EAA and the EAR for certain telecommunications transmission equipment to all COCOM-controlled destinations. The United States Government controls this equipment under ECCN 5A02A(a) of the Commerce Control List (CCL) (15 CFR 799.1, Supplement 1) of the EAR.

On October 6, 1993, the United States removed the national security-based validated export license requirements for exports of this telecommunications transmission equipment to most non-controlled countries by making this equipment eligible for export under General License GFW (58 FR 52179). The October rule revised ECCN 5A02A and other entries on the Commerce Control List to conform to changes in the International Industrial List maintained by governments participating in COCOM (the Coordinating Committee for Multilateral Export Controls). However, a validated export license continues to be required to the following non-controlled destinations: Iran, Syria, Country Group S, and the South African military and police. A validated export license also continues to be required for exports of this equipment to all controlled destinations: Country Groups Q, W, Y, and Z, and the People's Republic of China.

The January 10, 1994, determination is limited to certain telecommunications transmission equipment operating according to the synchronous digital hierarchy (SDH) at digital transfer rates up to 623 million bits per second (mbps), and does not include the design, development, and production technology for SDH equipment that United States controls under ECCN 5E02A.

The January 10, 1994, determination does not result in the immediate removal of validated licensing requirements for this equipment to controlled destinations. As provided for by the Export Administration Act, the United States will enter into negotiations with its allies so as to preserve our shared security interests with respect to this equipment and to reach agreement as to what future export restrictions may be necessary to preserve those interests. Consistent with the provisions of section 5 of the EAA and part 791 of the EAR, the Commerce Department will take appropriate action by May 9, 1994, to remove national security-based validated license requirements for exports of this telecommunications transmission equipment to most controlled destinations.

FOR FURTHER INFORMATION CONTACT: For questions concerning the October 6, 1993 regulation change (58 FR 52179), contact Dale Jensen, Office of Technology and Policy Analysis, Telephone: (202) 482–0730.

For questions concerning the foreign availability assessment, contact Michael Andrews, Foreign Industrial Analyst, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

Background

Section 5(f)(3) of the EAA and part 791 of the EAR set forth the procedures and criteria for determining the foreign availability of items controlled for national security reasons. The Secretary of Commerce, or the Secretary's designee, is authorized to determine whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to countries when the Department determines that items of comparable quality are available, in fact, to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On August 9, 1993, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of certain telecommunications transmission equipment controlled by ECCN 5A02A in response to a claim filed pursuant to section 791 of the EAR. The Department published a notice of the initiation of the assessment in the **Federal Register** on September 2, 1993. (58 FR 46625).

On December 9, 1993, the Assistant Secretary, having considered the assessment and other relevant information provided by OFA and other concerned agencies, made a preliminary determination that foreign availability exists to controlled countries, within the meaning of section 5(f) of the EAA and part 791 of the EAR, for certain SDH telecommunications transmission equipment operating at digital transfer rates up to 623 mbps. Consistent with the EAA, the Department provided all interested agencies an opportunity to review and comment on the assessment and determination during a one month period.

On January 10, 1994, the Assistant Secretary made a final determination that foreign availability exists for certain telecommunications transmission equipment to COCOM-controlled destinations.

As a result of an October 6, 1993, regulatory action (58 FR 52179), exports of the above telecommunications transmission equipment no longer require a validated license for national security reasons to most destinations in Country Group T or V. Subject to the restrictions in § 771.2(c), U.S. exporters of this telecommunications transmission equipment may export it under General License GFW to most destinations in Country Groups T and V. General license GFW is not available for exports to Iran, Syria, the People's Republic of China or the South African military or police; and the United States continues to require a validated license for exports of all telecommunications transmission equipment controlled by ECCN 5A02A to these destinations. Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq, Haiti, and the Federal Republic of Yugoslavia (Serbia and Montenegro).

A validated license requirement also continues to apply to exports of all telecommunications transmission equipment controlled by 5A02A to all destinations in Country Groups Q, S, W, Y, and Z, and the People's Republic of China. Foreign policy-based validated license requirements remain in effect for exports to Iran or Syria of all equipment controlled by 5A02A. All other foreign policy-based validated license requirements also remain in effect.

This determination is limited to certain SDH telecommunications transmission equipment operating at digital transfer rates up to 623 million bits per second (mbps), and does not include the design, development, and production technology for SDH equipment that United States controls under ECCN 5E02A.

As mentioned above, the January 10, 1994, determination does not result in the immediate removal of validated licensing requirements for this equipment to controlled destinations. As provided for by the Export Administration Act, the United States will enter into negotiations with its allies so as to preserve our shared security interests with respect to this equipment and to reach agreement as to what future export restrictions may be necessary to preserve those interests. Consistent with the provisions of section 5 of the EAA and part 791 of the EAR, the Commerce Department will take appropriate action by May 9, 1994, to remove national security-based validated license requirements for exports of this telecommunications transmission equipment to most controlled destinations.

Dated: January 10, 1994.

Sue E. Eckert,
Assistant Secretary for Export Administration.
[FR Doc. 94–913 Filed 1–10–94; 4:55 pm]
BILLING CODE 3510–DT–P

Foreign-Trade Zones Board

[Docket No. 1–94]

Foreign-Trade Zone 104—Savannah, Georgia; Application for Subzone, Merck & Co. Pharmaceutical Plant, Dougherty County, GA

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Savannah Airport Commission, grantee of FTZ 104, requesting special-purpose subzone status for the pharmaceutical manufacturing facility of Merck & Co., Inc., (Merck) in Dougherty County, Georgia. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended

(19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 3, 1994.

Merck is one of the world's largest pharmaceutical manufacturers with nearly $9 billion in total sales in 1991. Its primary product lines include: patented prescription and over-the-counter pharmaceutical products, veterinary pharmaceuticals and agricultural and specialty chemicals. This proposal is part of an overall company cost reduction effort (Subzone status is being requested for seven other Merck facilities).

Merck's Georgia plant (800 acres, 283,910 sq. ft., 35 bldgs.) is located at 3517 Radium Springs Road, Dougherty County, Georgia, 7 miles southeast of Albany and some 180 miles southwest of Savannah. The facility (310 employees) is used to produce bulk pharmaceutical chemicals and intermediates used in Merck's human and animal health products. Company plans call for expansion of plant facilities to include refrigerated storage and tank farms.

At the outset, zone procedures would be used primarily for the production of Cefoxitin, Omeprazole, and Losartan. Zone procedures could also include production of remoxipride hydrochloride, TRUSOPT, and chlorsulon. Currently, foreign-sourced materials account for 10 to 20 percent of finished product value and include the following specific ingredients: TAC (Thienylscetyl chloride), P–TSC (Paratoluenesulfonchloride), metmereazole, pyrmethyl alcohol, imidazole intermediate, bromo benzyl bromide, S-2-Aminomethyl-1-ethyl pyrollidone, N-Bromo-Succinimide, hydroxy sulfone, M-Nitro benzaldehyde. The company also may purchase from abroad other active ingredients and items in the following general product categories: gums, starches, waxes, vegetable extracts, mineral oils, phosphoric acid, hydroxides, hydrazine and hydroxylamine, chlorides, phosphates, carbonates, hydrocarbons, alcohols, phenols, ethers, epoxides, acetals, aldehydes, ketone function compounds, mono- and polycarboxylic acids, phosphoric esters, amine-, carboxymide, nitrile- and oxygen-function compounds, heterocyclic compounds, sulfonamides, vitamins, hormones, sugars, antibiotics, gelatins, enzymes, color lakes, soaps and detergents, medicaments, and pharmaceutical products. The company may also source from abroad insecticides, rodenticides, fungicides and herbicides for use in agricultural/veterinary products.

Zone procedures would exempt Merck from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 23.5%, most falling in the 3.7% to 16.6% range). The duty rates on foreign-sourced items range from duty-free to 23.5 percent, with most falling in the 3.7%–20% range. The application indicates that the savings from zone procedures will help improve the firm's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is on March 14, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 29, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

Port Director, Port of Savannah, U.S. Customs Service, Southeast Region, 1 East Bay Street, Savannah, Georgia 31401.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 3, 1994.

John J. DaPonte, Jr.,

Executive Secretary.

[FR Doc. 94–885 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 3–94]

Foreign-Trade Zone 46—Cincinnati, Ohio Area Application for Relocation/Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Greater Cincinnati Foreign Trade Zone, Inc., grantee of FTZ 46, requesting authority to relocate and expand its zone in the Cincinnati, Ohio, area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on January 6, 1994.

FTZ 46 was approved on January 12, 1979 (Board Order 141, 44 FR 4003, 1/19/79), authorizing a general-purpose foreign-trade zone in Butler County, Ohio. The zone currently involves a site (17 acres) located at 2940 Highland Drive, Cincinnati.

The applicant is now requesting authority to relocate the zone to a larger site (35 acres) located at 175 Progress Place in the City of Springdale, Hamilton County, Ohio, 17 miles north of downtown Cincinnati. The site contains a warehouse facility (1.1 million sq. ft.) owned by Avon Products, Inc. (Avon). Avon is presently using 800,000 sq. ft. of the facility for manufacturing and warehouse/distribution functions. The remaining 300,000 square feet is being developed as a warehouse/office-park type facility.

Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period of their receipt is on March 14, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 29, 1994).

A copy of the application and accompanying exhibits will be available for public inspections at each of the following locations:

U.S. Department of Commerce, 9504 Federal Building, 550 Main St., Cincinnati, Ohio 45202.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 6, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–886 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

[Docket No. 2–94]

Foreign-Trade Zone 39—Dallas/Fort Worth, TX Application for Expansion

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Dallas/Fort Worth International Airport Board, grantee of FTZ 39, requesting authority to expand its zone in the Dallas/Fort Worth, Texas, area, adjacent to the Dallas/Fort Worth Customs port of entry. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR Part 400). It was formally filed on January 4, 1994.

FTZ 39 was approved on August 17, 1978 (Board Order 133, 43 FR 37478, 8/23/78) and expanded on December 11, 1992 (Board Order 613, 57 FR 61046, 12/23/92). It currently consists of 2,400 acres within the 18,000-acre Dallas/Fort Worth International Airport complex.

The applicant is now requesting authority to expand the general-purpose zone to include a site (552 acres) at the Grayson County Airport, located in Grayson County, seven miles southwest of Denison, Texas, and some 60 miles northeast of the Dallas/Fort Worth area. The proposed zone site consists of 3 parcels (431 acres) within the 1,100-acre airport complex and a parcel (121 acres) adjacent to the airport on Highway 1417, owned by Reedrill, Inc. The site would be operated by the DFW Airport Board in conjunction with the Grayson County Airport Board.

No specific manufacturing requests are being made at this time. Such requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is on March 14, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to March 29, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 2050 N. Stemmons Freeway, Suite 170, Dallas, Texas 75258.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: January 4, 1994.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 94–887 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–588–832, A–421–806]

Notice of Postponement of Preliminary Determinations of Sales at Less Than Fair Value: Color Negative Photographic Paper and Chemical Components Thereof From Japan and the Netherlands

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: John Beck or Bill Crow, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3464 and 482–0116.

Postponements

On September 20, 1993 (58 FR 50331, September 27, 1993), the Department of Commerce (the Department) issued a notice of the initiation of antidumping duty investigations of color negative photographic paper and chemical components thereof from Japan and the Netherlands. On November 15, 1993, the Department presented Fuji Photo Film Company Ltd. of Japan and its related U.S. entity, Fuji Photo Film U.S.A. Inc., (hereinafter referred to collectively as "Fuji") with its antidumping duty questionnaire. On November 19, 1993, the Department presented Fuji Photo Film B.V. of the Netherlands, Fuji Photo Film Europe, and their related U.S. entity, Fuji Photo Film U.S.A. Inc.,(hereinafter referred to collectively as "Fuji"), with its antidumping duty questionnaire.

On December 14, 1993, Fuji submitted a statement in support of the Department postponing the preliminary determinations in these investigations. On December 23, 1993, Eastman Kodak Company, petitioner in these investigations, requested that the Department postpone the preliminary determinations in these investigations pursuant to section 733(c)(1) of the Tariff Act of 1930, as amended (the Act) (19 U.S.C. 1673b(c)(1)) and section 19 CFR 353.15(c). Petitioner made this request in order to allow the Department time to adequately analyze the complex responses to be submitted by Fuji In these investigations. We find no compelling reasons to deny this request. Accordingly, we hereby extend the due date for the preliminary determinations until not later than March 29, 1994, which is 210 days after the date of filing of the petition.

This notice is published pursuant to section 733(c)(2) of the Act and 19 CFR 353.15(d).

Dated: January 6, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–890 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–822]

Corrosion-Resistant Carbon Steel Flat Products From Canada: Termination of Antidumping Changed Circumstances Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Stephen Jacques or Rick Johnson, Office of Agreements Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3793.

SUMMARY: On October 26, 1993, National Steel Corporation (National) requested that the Department of Commerce (Department) terminate the changed circumstances administrative review of DNN Galvanizing Corp. (DNN). The Department is now terminating this review, and liquidation of imports of corrosion-resistant steel from DNN will continue to be suspended at the current rate.

SUPPLEMENTARY INFORMATION:

Background

On August 31, 1993, the Department received a request from National to conduct immediately a changed circumstances review of imports of corrosion-resistant steel from DNN pursuant to section 751(b) of the Tariff Act of 1930, as amended (the Act). National indicated that DNN had begun tolling steel to which National held title after the period of investigation. National alleged that liquidation of its imports of tolled steel was being suspended at a rate based on untolled sales. On September 14, 1993, the Department initiated this review, after determining that these allegations by National constituted sufficient good

cause to warrant initiating a changed circumstances review before the end of the second annual anniversary month of the antidumping duty order.

On October 26, 1993, National indicated to the Department that it no longer desired a review of DNN's sales, and requested that the Department terminate this review.

One of the bases of good cause for conducting this review was that DNN had begun to toll steel from National, and that, as a result, a rate for untolled steel was being applied to National's tolled steel. As National has now indicated that it is no longer interested in a review of imports of that steel, the Department concludes that there is no longer good cause to conduct this review, as required by section 751(b)(2) of the Act and 19 CFR 353.22(f)(3).

Accordingly, the Department has decided to terminate the changed circumstances administrative review. This notice is published pursuant to section 751(b) of the Act and § 353.22(f) of the Department's regulations (19 CFR 353.22(f)).

Dated: January 5, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–888 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–829]

Notice of Final Determination of Sales at Less Than Fair Value: Defrost Timers From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116.

FINAL DETERMINATION: We determine that defrost timers from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margin is shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the preliminary determination of sales at less than fair value and the postponement of the final determination in this investigation on August 24, 1993 (58 FR 44655, August 24, 1993), the following events have occurred. On September 15, 1993, Sankyo Seiki Manufacturing Co. Ltd. (Sankyo) submitted its response to the Department's second deficiency letter. On September 30, 1993, the Department sent Sankyo the agenda outlining the format of the Department's verification of Sankyo's responses. From October 18 through October 22, 1993, the Department conducted the verification of Sankyo's questionnaire response in Japan. On November 26, 1993, petitioner submitted its case brief in this investigation. On December 2, 1993, Sankyo submitted its rebuttal brief in this investigation.

Scope of Investigation

For purposes of this investigation, defrost timers are electro-mechanical and electronic defrost timers for residential refrigerators. Electro-mechanical defrost timers are comprised of several components that make or break electric circuits by activating two sets of electrical contact points—one to disconnect the compressor (the cooling mechanism) and the other to connect the defrost heater. The articles are equipped with a synchronous or subsynchronous motor. The defrost timer disconnects the compressor by opening an electrical circuit after the compressor itself has run for a length of time predetermined by the manufacturer depending on the specifications of the model. Upon completion of the compressor run cycle (and simultaneously with the compressor's disconnection) the defrost heater is activated and runs for a preset time (again depending on the model), as predetermined by the manufacturer. Electronic defrost timers have a similar function but operate with greater efficiency. This is because a microprocessor in the device uses information gathered during the defrost cycle to adjust the compressor run time. This system defrosts only when needed, thereby improving the efficiency of the refrigerator.

The defrost timers subject to this investigation are currently classifiable under subheading 9107.00.4000 of the Harmonized Tariff Schedule of the United States (HTSUS). The HTSUS subheadings are provided for convenience and customs purposes. The written description of the scope of this investigation is dispositive.

Period of Investigation (POI)

We initiated this investigation using a six-month POI from July 1, 1992, through December 30, 1992. In order to capture U.S. sales made pursuant to long-term contracts, we expanded the POI to include two additional six-month periods (i.e., April 30–September 30, 1991, and October 1, 1991–March 31, 1992). Respondent reported home market sales in these periods to correspond to U.S. sales contracted in July 1991 and January 1992, respectively (see memorandum from Richard Moreland to Barbara Stafford dated June 4, 1993).

Best Information Available

We have determined, in accordance with section 776(b) and 776(c) of the Act, that the use of best information available (BIA) is appropriate for sales of subject merchandise in this investigation. In deciding whether to use BIA, section 776(b) provides that the Department shall use BIA if it is unable to verify the accuracy of the information submitted. Further, section 776(c) provides that the Department may take into account whether the respondent was able to produce information requested in a timely manner and in the form required. In this case, Sankyo did not do so.

The Department also took into consideration whether or not the respondent cooperated with the Department. In this case, while its submissions contained significant deficiencies, and could not be completely verified, the respondent was cooperative. As BIA for Sankyo, we are assigning the average margin contained in the petition, in accordance with the two-tiered BIA methodology under which the Department imposes a less adverse rate upon those respondents that cooperate in the proceeding. The Department's two-tier methodology for assigning BIA based on the degree of respondents' cooperation has been upheld by the U.S. Court of Appeals for the Federal Circuit. (See *Allied-Signal Aerospace Co.* v. *the United States*, Appeal No. 93–1049 (Fed. Cir. June 22, 1993); see also *Krupp Stahl AG. et al* v. *the United States*, 822 F. Supp. 789 (CIT May 26, 1993).) The average of the margins contained in the petition is 83.67 percent. For a more detailed discussion of the Department's decision to use BIA in this case, see the December 16, 1993, memorandum from David Binder to Barbara Stafford.

Interested Party Comments

Comment 1: Petitioner argues that due to the various discrepancies and deficiencies discovered by the Department at verification, the Department should use the dumping margins calculated in the petition as BIA. Petitioner bases its request for the use of BIA on the portion of home market sales omitted from respondent's sales listing, the improper matching of certain U.S. and home market models, the unverifiable assembly costs included in the difference in merchandise (difmer) adjustment, the unverifiable warranty expenses, and the pattern of contracting which existed for home market sales and which called into question respondent's reported home market sales.

Respondent, on the other hand, argues that the Department should reject petitioner's request for the use of BIA across the board because respondent has cooperated in the investigation and because the large majority of its response has been verified as complete. Therefore, respondent requests that the Department limit the use of BIA only to those instances where deficiencies or discrepancies were found during verification.

DOC Position: We agree with petitioner. We learned at verification of home market sales which respondent omitted from its reported database. In addition, we discovered that respondent had eliminated many sales because it believed them not to be subject to the investigation based on the channel of trade and/or ultimate use of the timer models in question; however, respondent had not disclosed these eliminations in its responses to the Department's questionnaire. Because of these late revelations, the Department was not able to structure verification to scrutinize thoroughly these unreported sales. We also established that a pattern of contracting existed for home market sales which raises questions as to the validity of respondent's determination of home market date of sale. The use of contract dates in the home market, rather than the reported order entry dates, would change completely the selection of transactions used to calculate foreign market value. In combination with other discrepancies, these problems call into question the reliability of the home market database.

We also learned at verification that a very significant portion of U.S. products representing a majority of U.S. sales had not been matched correctly to home market models in accordance with the instructions contained in Appendix V of the Department's questionnaire. The Department cannot be responsible for rematching this large percentage of the total data base. Further, the mismatched U.S. models could only be re-matched to a limited set of similar home market sales for which no difmer information had been provided by respondent. Therefore, the majority of U.S. sales would be subject to some form of BIA. In combination with other discrepancies, these problems call into question the reliability of the entire U.S. database. Due to the number and extent of the discrepancies discovered at the verification, the Department is basing the final determination in this investigation on BIA.

In spite of the outcome at verification, we find that the respondent cooperated in this investigation. The numerous mistakes, omissions and deficiencies which were not corrected, clarified or amplified in a timely manner require the use of BIA. While some of these deficiencies, by themselves, may not have led to the use of total BIA, the collective discrepancies and deficiencies discovered at verification undermine the basic reliability of the submitted information.

Given the Department's use of BIA, other comments submitted by the parties in their briefs in this investigation are moot, and will not be addressed in this notice.

Continuation of Suspension of Liquidation

In accordance with section 735 of the Act, we are directing the Customs Service to continue to suspend liquidation of all entries of defrost timers produced or exported from Japan, that are entered, or withdrawn from warehouse, for consumption on or after August 24, 1993. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated final dumping margin, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
Sankyo Seiki Manufacturing Co. Ltd	83.67
All others	83.67

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our determination.

Notification to Interested Parties

This notice also serves as the only reminder to parties subject to administrative protective order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Failure to comply is a violation of the APO.

This determination is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(a)(4).

Dated: January 6, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 94–891 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

[A–201–805, A–580–809, A–351–809, A–307–805]

Preliminary Affirmative Determination of Scope Inquiry on Antidumping Duty Orders on Certain Circular Welded Non-Alloy Steel Pipe From Brazil, the Republic of Korea, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary affirmative determination of scope inquiry.

SUMMARY: We preliminarily determine that (1) pipe certified to American Petroleum Institute (API) 5L line pipe specifications (API 5L line pipe or line pipe) and (2) pipe certified to both the API 5L line pipe specifications and the less stringent American Standard Testing and Materials (ASTM) A–53 standard pipe specifications (dual-certified pipe), when actually used as certain circular welded non-alloy steel pipe (standard pipe), and falling within the physical parameters outlined in the scope of the orders, are within the scope of the antidumping duty orders on standard pipe from Brazil, the Republic of Korea, Mexico and Venezuela. We will direct the U.S. Customs Service to suspend liquidation of these products as follows: (1) All dual-certified pipe and API 5L line pipe falling within the physical parameters outlined in the scope of the orders that enter without an end-use certificate and (2) all dual-certified pipe and API 5L line pipe falling within the physical parameters outlined in the scope of the orders that enter with an end-use certificate certifying end use in a standard pipe application. No suspension of liquidation is required for dual-certified pipe and API 5L line pipe that enters with an end-use certificate certifying end use in a line pipe application. Interested parties are invited to comment on this preliminary determination.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Kimberley Huffman at (202) 482–0780 or Wendy Frankel at (202) 482–5253, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department

of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION:

Background

On April 23, 1993, the petitioners in the original less-than-fair-value investigations (Allied Tube & Conduit Corporation, Sawhill Tubular Division, Tex-Tube Division American Tube Company, Century Tube Corporation, Laclede Steel Company, LTV Tubular Products Company, Sharon Tube Company, Western Tube & Conduit Corp., Wheatland Tube Company, and CSI Tubular Products, Inc.) filed anticircumvention petitions with the Department of Commerce (the Department) arguing, pursuant to section 781(c) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 353.29(g) (1992), that exports from Korea, Mexico and Brazil of API 5L line pipe and dual-certified pipe are circumventing the antidumping duty orders on standard pipe when they are actually used in standard pipe applications. The Department determined that a scope inquiry pursuant to 19 CFR 353.29(i) was the appropriate approach to address the issues raised by petitioners.

Exports of standard pipe from Venezuela were the subject of a concurrent antidumping investigation. The scope of the resulting affirmative order is exactly the same as that of Mexico, Korea and Brazil. For this reason, even though in their original petition for an anticircumvention investigation petitioners did not request that imports from Venezuela be examined, we determined in our October 25, 1993, recommendation memorandum, on file at the Central Records Unit, room B099, of the Department of Commerce Main Building, that it is appropriate in the context of the present scope inquiry to clarify whether imports of line pipe and dual-certified pipe, when actually used as standard pipe and fall within the physical parameters outlined in the scope of the orders, are within the scope of the antidumping duty order on standard pipe from Venezuela.

The scope of the order on standard pipe from Taiwan, another concurrent investigation, differs from that of the remaining orders. See 57 FR 49454 (1992). Therefore, this scope determination does not apply to the scope of the Taiwanese order.

The Department initiated its scope inquiry on June 7, 1993, and granted interested parties the formal opportunity to comment on whether API 5L line pipe and dual-certified pipe, when used in standard pipe applications and falling within the physical parameters outlined in the scope of the orders, are within the class or kind of merchandise subject to the orders. We received comments on July 6, 1993, from petitioners and six respondents, and rebuttal comments on July 19, 1993. In addition, the Department later provided interested parties the opportunity to meet individually with the Acting Assistant Secretary for Import Administration to further discuss how the Department should properly resolve this inquiry. Petitioners and five respondents participated in the meetings. Due to the significant difficulty presented by this scope inquiry, we have determined that it is appropriate to issue a preliminary determination.

Under 19 CFR 353.29(i), the Department first examines the descriptions of the subject merchandise contained in the petition, the initial investigations, and the Department's and ITC's determinations. The regulations provide that if it determines these descriptions are not dispositive, the Department will consider the factors provided for under 19 CFR 353.29(i)(2), known commonly as the Diversified Products criteria. *See Diversified Products Corp.* versus *United States*, 572 F. Supp. 883 (CIT 1983).

In our recommendation memorandum, of October 25, 1993, we found that the specifications of API 5L line pipe and dual-certified pipe encompass the less demanding specifications for standard pipe. We determined that it was unclear as to whether the orders "included API 5L line pipe and dual-certified pipe within the scope whenever those categories of pipe are actually used in a standard pipe application" based upon the following: the overlap in physical parameters, the Department's conclusion that both dual-certified pipe and line pipe can be and sometimes are actually used in standard pipe applications, and the ambiguity in the orders and descriptions of the subject merchandise from the original investigations. See the Department's Recommendation Memorandum dated October 25, 1993. Therefore, on October 27, 1993, the Department requested that the interested parties comment on the Diversified Products criteria provided for under 19 CFR 353.29(i)(2). These criteria include: (i) The physical characteristics of the product; (ii) the expectations of the ultimate purchasers; (iii) the ultimate use of the product; and (iv) the channels of trade. See 19 CFR 353.29(i)(2). The following interested parties filed comments and rebuttals on November 22, 1993, and December 3, 1993, respectively: Allied Tube & Conduit Corporation, Sawhill Tubular Division, Tex-Tube Division American Tube Company, Century Tube Corporation, Laclede Steel Company, LTV Tubular Products Company, Sharon Tube Company, Western Tube & Conduit Corp., Wheatland Tube Company, and CSI Tubular Products, Inc., collectively referred to as petitioners; Mannesmann Pipe & Steel Corporation; Korea Iron and Steel Association, Dongbu Steel Co., Ltd., Hyundai Steel Pipe Co., Ltd., Korea Steel Pipe Co., Ltd., Pusan Steel Pipe Co., Ltd. and Union Steel Manufacturing Co., Ltd. (Korea), collectively referred to as the Korean respondents; and HYLSA, S.A. de C.V., referred to as HYLSA.

Analysis

General Issues: The purpose of the Department's scope inquiry is to determine whether dual-certified pipe and API 5L line pipe, when used in a standard pipe application and which fall within the physical parameters outlined in the scope of the orders, are within the scope of the orders. *See* the Department's October 25, 1993, Recommendation Memorandum.

In this regard, respondents argue initially that the Department has improperly read into the scope a possible use requirement and that to determine that line and dual-certified pipe are covered on this basis would amount to an impermissible expansion of the scope of the orders. In support of this position, the Korean respondents distinguish between what they refer to as a pipe product's "chief end use" and the "actual use" to which the pipe is put. They argue that within the pipe industry it is recognized that line and dual-certified pipe (as well as standard pipe) are intended for use in certain applications—their "chief end uses"—a fact which is made explicit by their industry labeling. The Korean respondents argue that the orders exclude these categories of pipe based upon an assumption that these chief end uses differ from those of standard pipe, without reference to the question of how they are actually used. They cite *Ipsco, Inc.* versus *United States*, 715 F. Supp. 1104 (CIT 1989), to argue that absent such an explicit reference to actual use, the Department may not concern itself now with actual use. Therefore, the Korean respondents argue that there is no basis for the Department to resort to the *Diversified Products* criteria under 19 CFR 353.29(i)(2).

We disagree. Besides providing a physical description of standard pipe, the orders state that "[s]tandard pipes and tubes *are intended for* the low pressure conveyance of water, steam, natural gas," and other related uses, as well as light load bearing and mechanical applications. Antidumping Orders, 57 FR 49452, 49453 (1992) (emphasis added). The issue raised by respondents, which the Department's recommendation memorandum did not directly address, concerns the proper interpretation to be given the phrase "are intended for" certain uses. Respondents are correct that, in using this phrase in the orders, the Department did not expressly refer to actual use (nor did we refer to actual use in the orders wherein we appeared to exclude line pipe and certain dual or triple certified pipe). At the same time, however, as indicated in our recommendation memorandum, neither did the Department expressly limit the phrase "are intended for" to "chief end uses" nor stenciling indicative of standard pipe. Thus, as a threshold matter, the orders and the descriptions from the underlying investigations do not preclude the Department from considering the actual end use to which a particular type of pipe product (regardless of stenciling) is put in determining whether that type of product is "intended for use" as standard pipe and, therefore, covered by the orders on standard pipe.

The issue herein closely resembles the issue addressed in *Ipsco*, a case arising from a scope inquiry concerning oil country tubular goods (OCTG) from Canada. The Department had defined the subject merchandise as, " 'hollow steel products of circular cross-section intended for use in drilling for oil and gas.' " *Ipsco*, 715 F. Supp. at 1105 (quoting OCTG from Canada, 51 FR 21,782, 21,1783 (1986)) (emphasis added by Court). At issue was whether, later, the Department had reasonably clarified the scope of the orders, and in particular the phrase "intended for use in drilling for oil and gas," as covering not only API specification OCTG pipe but " 'all other pipe with [certain specified] characteristics used in OCTG applications. . . .' " *Ipsco* at 1105 (quoting the Department's unpublished scope ruling). In reaching this determination, the Department also provided an additional description of the covered merchandise, and instituted an end-use certification procedure. See *Ipsco*.

The Court of International Trade (Court) upheld the Department's determination, disagreeing with "plaintiffs' contention that a pipe's stencil or marking should be regarded as conclusive evidence of the pipe's intended use * * * when such pipe possesses all of the physical characteristics which would enable it to be used as OCTG." *Id.* at 1108. The Court added:

> Although stencilling or marking may be strong evidence of what the manufacturer considers to be the product's intended use, such labelling does not necessarily reflect an importer or end-user's view of the product's intended use, nor does it prevent the pipe from actually being used as OCTG. As indicated in the record, a knowledgeable engineer may use for drilling purposes any pipe that meets the minimum requirements for OCTG.

Id.

The Court went so far as to hold that the Department "acted reasonably in rejecting plaintiffs' suggested approach which would allow manufacturers and importers to evade the imposition of duties by simply labelling OCTG pipe as non-OCTG pipe sharing the same physical characteristics." *Id.* The Court's decision endorsed the Department's argument that "the stencilling or marking of pipe is a voluntary practice which is not required by the API or any other governmental or private authority, [and] . . . the labelling and marking of pipe as standard or line pipe is meaningless within the context of these orders." *Id.* at 1107–08.

Thus, a central issue in *Ipsco*, as here, concerned the meaning of the phrase "intended for use" in certain specified applications. There, the Department interpreted the phrase as permitting an inquiry into how the pipe at issue was actually used. Here, the Department determines that the phrase, when read in conjunction with the remainder of the scope descriptions in the orders, does not clearly include or exclude line pipe or dual-certified pipe falling within the physical parameters outlined in the scope of the orders which is actually used in standard pipe applications. Thus, we must resort to a Diversified Products analysis.

Physical Characteristics: Respondents argue that the physical differences between standard pipe and line pipe/dual-certified pipe are significant enough to warrant a determination that standard pipe and line pipe/dual-certified pipe constitute separate classes or kinds of merchandise, especially due to such factors as (1) chemical composition, (2) end finish and couplings and (3) weight and dimensional tolerances. We note that, although certain respondents discuss dual-certified pipe separately from line pipe, respondents argue generally that dual-certified pipe falls within the class or kind of merchandise of line pipe, which they claim is separate from standard pipe (regardless of the actual use of a particular pipe).

According to respondents, with regard to chemical composition, the allowable chemical tolerances for carbon, manganese, phosphorus and sulfur are different for line pipe and standard pipe. Respondents assert that the requirements for end finish and couplings also differ significantly between the two kinds of pipe. For example, the coupling diameter under API 5L specifications is, on average, 17.09 percent greater than the coupling diameter required under ASTM A–53 specifications. Similarly, the specified end taper finish for ASTM A–53 standard pipe (0.750" per foot) is more than ten times that mandated for API 5L specifications (0.0625" per foot). With regard to weight and dimensional tolerances, respondents point out that ASTM A–53 specifications permit a larger variance in diameter than API 5L specifications. The API 5L specifications impose an upper limit on variance in wall thickness; while ASTM A–53 does not. For weight tolerances, ASTM A–53 specifications permit a lower limit variance of up to 10 percent, while API 5L specifications permit a lower limit variance in weight of no more than 3.5 percent (a 65 percent difference between the two standards). Finally, with regard to length, the minimum allowable length of ASTM A–53 standard pipe is 12 feet, while the minimum permissible length under API 5L specifications is 9 feet.

All the respondents agree that physical characteristics constitute a very important factor in this analysis. The Korean producers conclude that "[p]hysical characteristics * * * are the bedrock on which the Department—and petitioners—originally excluded line and dual-stencil pipe from the scope of the investigation."

Petitioners argue that pipe made to either the API 5L line pipe specifications or the dual-certified specifications meets the physical characteristic requirements set forth in the scope of the orders. Petitioners argue that respondents are misdirected in emphasizing the differences between pipe meeting API specifications and ASTM specifications with regard to chemical composition, end finish and weight and thickness tolerances. First, the physical description of standard pipe set forth in the scope language of the orders cover standard pipe that "generally" (not exclusively) meets the ASTM A–53 specifications. Thus, the physical description is not limited to A–53 standard pipe. Second, the scope language expressly includes pipe

meeting the physical description expressed therein, regardless of wall thickness, surface finish and end finish. Therefore, according to petitioners, the differences in these characteristics are irrelevant to the scope inquiry. Because dual-certified pipe meets both the A–53 specifications and the API 5L specifications, petitioners assert, it meets the physical description of the pipe described in the scope of the orders. Further, pipe which meets the API 5L specifications also meets the physical description of the pipe described in the scope because the higher specifications of API 5L encompass the A–53 specifications.

The Department determines that line pipe and dual-certified pipe (within the physical parameters outlined in the scope of the orders), when used in standard pipe applications, have the same primary physical characteristics as standard pipe. As stressed above, we are only concerned with clarifying whether line and dual-certified pipe which is actually used in standard pipe applications and fall within the physical parameters outlined in the scope of the orders is within the scope of the orders on standard pipe. Nevertheless, as the scope of the orders indicates and as the Department discussed in its recommendation memorandum, it is important to note that the overlap between the physical characteristics of line and dual-certified pipe and standard pipe exists both for line and dual-certified pipe which is actually used as standard pipe and for other line and dual-certified pipe as well. The physical description of standard pipe contained in the orders read, in part, as follows:

> The merchandise subject to this investigation is circular welded non-alloy steel pipes and tubes of circular cross-section, not more than 406.4mm (16 inches) in outside diameter, regardless of wall thickness, surface finish (black, galvanized, or painted), or end finish (plain end, bevelled end, threaded, or threaded and coupled). These pipes and tubes are generally known as standard pipe, though they may also be called structural or mechanical tubing in certain applications.

Clearly, virtually all line and dual-certified pipe possess these physical characteristics. To the extent a particular shipment or piece of line pipe does not possess different characteristics which would impede its use in a standard pipe application (a condition which does not apply to most line pipe), these physical characteristics would enable any line or dual-certified pipe to be used in a standard pipe application.

Having said the above, respondents are correct that chemical composition, end finish and couplings and weight and dimensional tolerances can be somewhat different between ASTM A–53 specifications and API 5L specifications. However, the significance of these observations is undermined by the above-noted overlap in primary physical characteristics among the various types of pipe and by specific language in the orders relating to these characteristics.

Regarding the latter point, the scope of the orders covers standard pipe regardless of wall thickness, surface finish or end finish. Thus, unique tolerances with respect to these characteristics cannot affect our determination of whether a product is standard pipe (as that term is understood in the orders). Moreover, even with respect to acknowledged physical characteristics of standard pipe, uniquely stringent tolerances that exceed ASTM A–53 specifications should not prevent a product which is being used in standard pipe applications from being considered standard pipe, provided that the product meets all of the standard pipe specifications as expressed in the orders.

Therefore, the Department preliminarily determines that line pipe and dual-certified pipe which fall within the physical parameters outlined in the scope of the orders, when used in standard pipe applications, have the same primary physical characteristics as standard pipe; such pipe generally meets the physical description listed in the scope of the orders, a fact which supports inclusion within the class or kind of merchandise for standard pipe.

Expectations of the Ultimate Purchasers: The Korean producers argue that line pipe and dual-stenciled pipe are manufactured to more exacting standards than standard pipe. The API specifications governing the chemistry, weight, outside diameter, marking and so forth of line pipe were established by the American Petroleum Institute for the peculiar needs of the oil, gas, pipeline and utility industries. Thus, purchasers of these line pipe products expect such products to be fit for use in these industries. Dual-stenciled API 5L/ASTM A–53 pipe is manufactured to conform to the more stringent API specifications, which automatically qualify it for the lower ASTM specifications applicable to standard pipe. Thus, purchasers of dual-stenciled pipe expect it to meet the API standards but also to have added flexibility because it is additionally marked with the ASTM certification. Finally, the Korean producers assert that imported dual-certified pipe is not being sold exclusively or predominantly to customers for standard pipe uses.

HYLSA argues that the differing expectations of ultimate purchasers of dual-stenciled API–5L line pipe, as compared with ASTM A–53 standard pipe, may be inferred, in part, from (a) the fact that some users only use dual-stenciled pipe, and (b) the physical differences between the two products. Pipe is produced to meet API–5L specifications at home and abroad because there is a market demand for the *physical* characteristics of API–5L line pipe. Unless there were distinct expectations on the part of the ultimate purchasers with regard to dual-stanciled line pipe, manufacturers would just produce the less costly ASTM A–53 standard pipe.

Petitioners state that the ultimate purchasers of dual-certified pipe and API–5L line pipe have a critical expectation when they purchase such pipe from one of the countries involved in this scope proceeding. That critical expectation is that they are purchasing a pipe that will perform a standard pipe application at the lowest cost. More specifically, the purchasers of dual-certified pipe and API–5L line pipe simply want a product that meets the A–53 specification for use in a standard pipe application. Therefore, petitioners assert that the line pipe and dual-certified products being sold to standard pipe customers are intended for, and in fact are now being used for, the same standard pipe applications that were previously met by A–53 pipe.

The Department recognizes that the ultimate purchaser of line or dual-certified pipe receives a product that is certified to perform a more demanding application, *i.e.*, a line pipe application. At the same time, some purchasers of line and dual-certified pipe expect to use it and actually do use it in a standard pipe application. (Neither the Korean respondents nor HYLSA attempt to contravene petitioners' evidence that imported dual-certified pipe and imported line pipe are being sold to customers for standard pipe uses.) Bearing in mind that this scope inquiry is only concerned with purchasers who actually use line pipe or dual-certified pipe in a standard pipe application and which fall within the physical parameters outlined in the scope of the orders, we find that the expectations of these purchasers with respect to such purchases are that the higher specification product will be put to the same use as standard pipe which is manufactured to the lower ASTM specifications. This type of purchase can occur when prices in the pipe

market permit the substitution, in standard pipe applications, of line pipe or dual-certified pipe for standard pipe.

Our focus here is not on the consumer expectations the manufacturer anticipates at the time of production, but rather on the actual expectations of the ultimate purchaser of the merchandise at issue here, *i.e.*, line pipe and dual-certified pipe when actually used in a standard pipe application. *Cf. IPSCO*, 715 F. Supp. at 1108. Thus, HYLSA's analysis of why a producer would produce to the more demanding specifications is irrelevant. Similarly, the Korean producers' assumption that the purchaser is using the pipe in a line pipe application makes their argument inapposite. Finally, we do not need to address here the Korean producers' assertion that imported dual-certified pipe is not being sold exclusively or predominantly to customers for standard pipe uses. It is sufficient to note that the parties do not dispute that some such sales are occurring.

Ultimate Use of the Product: Respondents' main argument regarding ultimate use is that the Department's analysis should be "directed at the product generally, not at the disposition or end use of any particular entries." As support, the Korean respondents cite the Department's Final Determination of Sales at Less Than Fair Value: Uranium from the Ukraine and Tajikistan. 58 FR 36,640, 36,644 (1994), which states:

> Every product has alternative uses or the potential for alternative uses. For purposes of a class or kind analysis, it is the Department's responsibility to determine not the number of alternative uses but rather the significance of any or all of those alternatives.

According to the Korean respondents, the primary or "significant" use of line and dual-certified pipe has always been and is now in the oil, gas and utility industries, *i.e.*, it is a line pipe use. The Korean respondents argue that it is this use, as under Customs law, that determines the products' proper class or kind, not the specific uses of an isolated minority of entries.

Respondents also contest petitioners' claims that all or most line pipe or dual-stenciled pipe is being used for standard pipe applications. HYLSA adds that petitioners' argument is premised fundamentally on the unsubstantiated claim that dual-certified pipe is only used as standard pipe. HYLSA acknowledges that by virtue of its physical characteristics, dual-certified pipe is suitable for and may be used in standard pipe applications. However, that possibility does not alter the fact that it is still line pipe.

Petitioners assert that the petition provides a description of the uses of standard pipe that is consistent with the one published in the antidumping duty orders. Although no specific exclusions were listed in the petition, petitioners argue that the scope includes and excludes specific "classes or kinds" of pipes based on end use, and therefore end use is the determining factor of the scope. According to petitioners, the term "standard pipe," as used, covers a group of piper products used for a particular group of purposes. The orders include pipe used for other purposes such as line pipe, oil country tubular goods, boiler tubing, mechanical tubing, pipe and tube hollows for redraws, finished scaffolding, and finished conduit. Petitioners assert that each of these categories of pipe describes a particular use of pipe that is different from a standard pipe application. Therefore, they assert that pipe used in one of the excluded uses, such as in a line pipe application, is not covered. However, pipe that is capable of being used for line pipe, but which is actually used as standard pipe, is specifically covered by the orders. This includes dual-certified pipe and API 5L pipe.

The Department preliminarily determines that when dual-certified and line pipe are actually used in standard pipe applications and fall within the physical parameters outlined in the scope of the orders, the ultimate use of these products is the same as that of standard pipe. This Diversified Products criterion therefore supports inclusion of such products in the scope of the orders on standard pipe.

We agree with respondents that it is important to isolate the primary or most significant use of a product in determining whether its ultimate use is the same or similar to that of the subject merchandise. However, we are not here attempting to determine the ultimate use of all line pipe and dual-certified pipe. We are only concerned with line and dual-certified pipe which fall within the physical parameters outlined in the scope of the orders and is actually used in a standard pipe application. Thus, in order to properly analyze the ultimate use of line and dual-certified pipe when used in a standard pipe application, we must compare that use to the ultimate use of standard pipe.

As identified in the scope, standard pipe is "intended for the low pressure conveyance of water, steam, natural gas, and other liquids and gases in plumbing and heating systems, and other related uses," as well as certain structural and mechanical uses. These uses are essentially the same as those for the products at issue, *i.e.*, for line pipe and dual-certified pipe which is actually used in standard pipe applications. Thus, when properly viewed, respondents' line of argument does not point toward a determination that line and dual-certified pipe, when actually used as standard pipe, represent a different class or kind of merchandise than standard pipe. See, *e.g.*, *Smith Corona Corp.* versus *United States*, 915 F.2d 683, 687 (Fed. Cir. 1990); *Final Scope Ruling; Portable Electric Typewriters From Japan*, 55 FR 47,358 (1990), *aff'd*, *Matsushita Elec. Indus. Co.* versus *United States*, 787 F. Supp. 1461 (CIT 1992).

Moreover, the fact that line pipe and dual-certified pipe—When actually used as standard pipe—otherwise could have been used to perform the more demanding line pipe applications is irrelevant. The primary use—indeed the only use—of the products at issue is in standard pipe applications.

Channels of Trade: Respondents concede that the channels of trade overlap in distributors for standard pipe, dual-certified pipe and API 5L line pipe. However, they argue that this fact alone does not support a determination that line pipe, dual-certified pipe and standard pipe are a single class or kind of merchandise within the scope of the orders covering standard pipe.

Petitioners assert that the channels of trade for standard pipe, API 5L line pipe and dual-certified pipe have traditionally been similar, though not identical.

The Department agrees that the channels of trade overlap for standard pipe, dual-certified pipe and line pipe. The Department also acknowledges in response to respondents' argument that this criterion alone is not dispositive as to whether API 5L line pipe and dual-certified pipe fall within the scope of the orders at issue.

Conclusion

Based upon our analysis of the comments provided by all of the interested parties on the physical characteristics, expectations of the ultimate purchasers, ultimate use of the product, and the channels of trade, in accordance with 19 CFR 353.29(i), we preliminary determine that when API 5L pipe and dual-certified pipe are used in a standard pipe application and fall within the physical parameters outlined in the scope of the orders, they are the same class or kind of merchandise as standard pipe and are therefore included within the scope of the orders on circular welded non-alloy steel pipe from Mexico, Korea, Brazil, and Venezuela (case numbers A–201–805, A–580–809, A–351–809 and A–307–805).

We invite interested parties to comment on this preliminary determination, and to address the end-use certification process within 30 days of publication of this preliminary determination. Rebuttal comments are due within 37 days of publication of this preliminary determination. See 19 CFR 353.29(d)(3). The Department will consider such comments in reaching its final determination.

This preliminary scope ruling is in accordance with 19 CFR 353.29(d)(3).

Dated: January 6, 1994.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 94–889 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–M

[C–357–048]

Certain Textiles and Textile Products From Argentina; Revocation of Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration; Department of Commerce.

ACTION: Notice of Revocation of Countervailing Duty Order.

SUMMARY: The Department of Commerce is revoking the countervailing duty order on certain textiles and textile products from Argentina because it is no longer of interest to interested parties.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Alexander Braier or Rick Herring, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 19, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 61069) its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina (43 FR 53421; November 16, 1978). Additionally, as required by 19 CFR 355.25(d)(4)(ii), the Department served, by certified mail, written notice of its intent to revoke this countervailing duty order on each party listed on its most current service list.

Scope of the Order

Imports covered by this order are shipments of men's and boys' woolen apparel from Argentina. Such apparel is currently classified under the items of the Harmonized Tariff Schedule (HTS) listed in the appendix to this notice.

Determination to Revoke

The Department may revoke a countervailing duty order if the Secretary of Commerce concludes that the order is no longer of interest to interested parties. We conclude that there is no interest in a countervailing duty order when no interested party has requested an administrative review for at least five consecutive review periods and when no domestic interested party objects to the revocation (19 CFR 355.25(d)(4)(iii)).

We received neither objections to our notice of intent to revoke the countervailing duty order, nor requests for an administrative review. Therefore, we have concluded that the countervailing duty order covering certain textiles and textile products from Argentina is no longer of interest to interested parties, and we are revoking this countervailing duty order in accordance with 19 CFR 355.25(d)(4)(iii).

Further, as required by 19 CFR 355.25(d)(5), the Department is terminating the suspension of liquidation on the subject merchandise as of the effective date of this notice, and will instruct the Customs Service to liquidate, without regard to countervailing duties, all unliquidated entries of this merchandise exported from Argentina on or after January 1, 1992.

This notice is published in accordance with 19 CFR 355.25(d)(4)(iii).

Dated: January 4, 1994.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

Appendix—Men's and Boys' Woolen Apparel

6101.10.00
6101.30.15
6103.11.00
6103.12.10
6103.19.10
6103.21.00
6103.31.00
6103.41.10
6103.41.20
6103.43.10
6103.49.10
6105.20.10
6105.90.10
6107.19.00
6107.29.20
6107.99.20
6109.90.15
6110.10.10
6110.10.20
6110.30.15
6112.19.20
6114.10.00
6117.10.10
6117.10.30
6117.20.00
6117.90.00
6201.11.00
6201.13.10
6201.13.30
6201.91.10
6201.91.20
6201.93.25
6203.11.10
6203.11.20
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6203.43.30
6205.10.10
6205.10.20
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6207.99.20
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6208.19.40
6208.99.20
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6211.31.00
6212.90.00
6214.20.00
6215.90.00
6217.90.00

[FR Doc. 94–892 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 121393C]

1992 Survey of Atlantic Striped Bass Fisheries

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Summary and notice of availability of survey results.

SUMMARY: NMFS summarizes and announces the availability of the results of a survey of Atlantic coast striped bass fisheries for 1992, as required by the Atlantic Striped Bass Conservation Act (the Act), to provide information on the status of the fisheries.

ADDRESSES: Copies of the survey results are available from David G. Deuel, NOAA/NMFS/FCM3, 1335 East-West Highway, Silver Spring, MD 20910, (301) 713–2347.

FOR FURTHER INFORMATION CONTACT: David G. Deuel, (301) 713–2347.

SUPPLEMENTARY INFORMATION: The Act requires the Secretary of Commerce and the Secretary of the Interior to conduct a comprehensive annual survey of the Atlantic striped bass fisheries. The following is a summary of the survey for 1992. Management measures restricting the harvest of striped bass by commercial and recreational fisheries remained in place during 1992, as the stocks continue to rebuild. The 1992 commercial harvest of striped bass was 1,692,000 pounds (523.9 mt), an increase of 537,000 pounds (243.6 mt) above the landings of 1,155,000 pounds (523.9 mt) in 1991. The Chesapeake Bay area (Maryland, Virginia and the Potomac River) accounted for 67 percent of the 1992 commercial landings. The recreational catch in 1992 was an estimated 4,282,000 fish, of which 416,000 were harvested; the remaining 3,866,000 were released alive. The estimated weight of the recreational harvest was 4,902,000 pounds (2,223.5 mt), about three times that of the commercial harvest. Juvenile production in 1992 was below the long-term averages for Maryland, North Carolina, and New York; and about average for Virginia and Delaware. Information from sampling the population of striped bass shows an increased relative abundance of striped bass from recent year classes. Copies of the survey are available upon request (see **ADDRESSES**).

Dated: January 5, 1994.

David S. Crestin,

Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–824 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–22–P

Patent and Trademark Office

Economics and Statistics Administration

Technology Administration

Cancellation of Public Hearings on Economic Aspects of the U.S. Patent System

AGENCIES: Patent and Trademark Office; Economics and Statistics Administration; Technology Administration; Department of Commerce.

ACTION: Notice of cancellation of public hearing.

SUMMARY: The Patent and Trademark Office (PTO), Economics and Statistics Administration (ESA) and Technology Administration (TA) announce the cancellation of a public hearing scheduled for January 25, 1994, at the San Jose Convention Center, on certain economic aspects of the United States patent system. The hearing has been canceled due to the lack of interest of parties in presenting oral testimony. Parties interested in commenting on the topics addressed in the **Federal Register** notice announcing the hearing (58 FR 68394), dated December 27, 1993, may provide those comments in written form pursuant to the guidelines indicated in that notice.

DATES: Written comments on topics presented in the supplementary information section of the **Federal Register** notice announcing the hearing (58 FR 68394), dated December 27, 1993, should be received by the PTO on or before March 1, 1994. The public hearing scheduled for January 25, 1994, in San Jose, California, is canceled.

ADDRESSES: Those interested in presenting written comments should consult the **Federal Register** notice announcing the hearing (58 FR 68394) for information regarding such comments.

FOR FURTHER INFORMATION CONTACT: Jeff Kushan by telephone at (703) 305–9300, by fax at (703) 305–8885, by electronic mail at kushan @uspto.gov, or by mail marked to his attention addressed to the Commissioner of Patents and Trademarks, Box 4, Washington, DC 20231.

Dated: January 6, 1994.

Bruce A. Lehman,

Assistant Secretary of Commerce and Commissioner of Patents and Trademarks.

[FR Doc. 94–857 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Mauritius

January 7, 1994.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

A Memorandum of Understanding (MOU) dated October 22, 1993 between the Governments of the United States and Mauritius establishes, among other things, limits for certain textile products, produced or manufactured in Mauritius and exported during the period beginning on January 1, 1994 and extending through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 58 FR 62645, published on November 29, 1993).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

January 7, 1994.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Memorandum of Understanding (MOU) dated October 22, 1993 between the Governments of the United States and Mauritius; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 14, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Mauritius and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit [1]
Knit group 345, 438, 445, 446, 645 and 646, as a group.	133,585 dozen.

Category	Twelve-month restraint limit[1]
Levels not in a group	
237	172,265 dozen.
335/835	68,476 dozen.
336	80,580 dozen.
338/339	322,595 dozen.
340/640	525,000 dozen of which not more than 319,580 dozen shall be in Categories 340–Y/640–Y[2].
341/641	363,679 dozen.
347/348	679,048 dozen.
351/651	159,703 dozen.
352/652	1,354,284 dozen of which not more than 1,151,142 dozen shall be in Category 352.
442	11,368 dozen.
604–A[3]	326,858 kilograms.
638/639	370,985 dozen.
647/648/847	500,250 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1993.

[2] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 604–A: only HTS number 5509.32.0000.

Imports charged to these category limits for the period October 1, 1992 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated October 22, 1993 between the Governments of the United States and Mauritius.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 94–884 Filed 1–12–94; 8:45 am]

BILLING CODE 3510–DR–F

DEPARTMENT OF EDUCATION

Advisory Council on Education Statistics; Meeting

AGENCY: Advisory Council on Education Statistics, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming meeting of the Advisory Council on Education Statistics. This notice also describes the functions of the Council. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE AND TIME: February 10, 1994, 9 a.m.–5 p.m. and February 11, 1994, 9 a.m.–Noon.

ADDRESSES: 555 New Jersey Avenue, NW., room 326 Washington, DC 20208.

FOR FURTHER INFORMATION CONTACT: Barbara Marenus, Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue, room 400J, Washington, DC 20208–7575, telephone: (202) 219–1839.

SUPPLEMENTARY INFORMATION: The Advisory Council on Education Statistics (ACES) is established under section 406(c)(1) of the Education Amendments of 1974, Pub. L. 93–380. The Council is established to review general policies for the operation of the National Center for Education Statistics (NCES) in the Office of Educational Research and Improvement and is responsible for advising on standards to insure that statistics and analyses disseminated by NCES are of high quality and are not subject to political influence. The meeting of the Council is open to the public.

The proposed agenda includes the following:

- Overview of NCES Data Collection Program.
- Ethics Training for New Council Members.
- Proposals for future ACES activities.
- Council Business.

Records are kept of all Council proceedings and are available for public inspection at the Office of the Executive Director, Advisory Council on Education Statistics, 555 New Jersey Avenue NW., room 400J, Washington, DC 20208–7575.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 94–856 Filed 1–12–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for the Proposed Central Neutralization Facility Pipeline Extension at the K–25 Site, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Floodplain statement of findings.

SUMMARY: This is a Floodplain Statement of Findings for the Central Neutralization Facility (CNF) Pipeline Extension to the Clinch River, prepared in accordance with 10 CFR part 1022. DOE proposes to extend the CNF pipeline from the K–801 facility (National Pollutant Discharge Elimination System (NPDES) Outfall 011), to the Clinch River (new permitted NPDES Outfall 014) in floodplains located in Roane County, Tennessee. DOE prepared a floodplain assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplains. DOE will allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Information on the proposed action (including maps of potentially disturbed floodplain areas) is available from: Mr. Larry Radcliffe, Director Waste Management and Technology Development Division, Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–9212, or fax comments to (615) 576–5333. For further information on general DOE floodplain/wetland environmental review requirements, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW, Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the CNF Pipeline Extension to the Clinch River, prepared in accordance with 10 CFR part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on June 11, 1993, 58 FR 32658, and a Floodplain Assessment was prepared. DOE is proposing to extend the CNF pipeline from the K–801 facility (NPDES Outfall 011) to the Clinch River (new permitted NPDES Outfall 014). The route would begin at the K–801 facility on Poplar Creek and the pipeline would be laid in Poplar Creek to the Clinch River. The proposed route lies in the Poplar Creek and Clinch River floodplains. The action is proposed to be located in the floodplains because (1) it would involve a State of Tennessee mandated discharge into the Clinch River which requires crossing the Clinch River and Poplar Creek floodplains for access to the Clinch River; (2) there would be no hydrologic impacts as determined by the floodplain assessment; and (3) there would be no increased risks to individuals, property, or the environment during or following the construction of the proposed pipeline extension. Alternatives to the proposed action considered included (1) no action, (2) further treatment of the effluent, (3) transportation of the effluent to the Clinch River, (4) provision of supplemental dilution flow, (5) extension of the underground pipeline, and (6) use of an existing underground carbon steel pipe. The proposed action would conform to applicable floodplain protection standards. The proposed action would not alter the existing normal channel cross section or storage capacity of Poplar Creek and Clinch River. The assessment reveals no change in the water elevations and no effect on the storage capacities of either or both floodplains. Construction in the floodplains would take only a few days and would be scheduled during the dry season to minimize potential harm to or within the floodplain. DOE will allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Lawrence H. Harmon,

Acting Director, Office of Waste Operations, Office of Waste Management, Environmental Restoration, and Waste Management.

[FR Doc. 94–866 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

Floodplain Statement of Findings for the Proposed K–1515 Sanitary Water Treatment Plant Improvements at the K–25 Site, Oak Ridge, TN

AGENCY: Department of Energy.

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed activities at the K–1515 area of the Oak Ridge K–25 Site, prepared in accordance with 10 CFR part 1022. DOE proposes to replace the K–1515–C Lagoon with the construction of a new 1.1 million gallon lagoon (K–1515–F) and discharge pipeline to the Clinch River. The proposed actions would take place in a floodplain located in Roane County, Tennessee.

DOE prepared a Floodplain Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION, CONTACT: Information on the proposed action (including maps of potentially disturbed floodplain areas) is available from: Ms. Nancy Hendrix-Ward, NEPA Program Manager, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541, (615) 576–4642, or fax comments to (615) 576–6074. For further information on general DOE floodplain/wetland environmental review requirements, contact: Ms. Carol Borgstrom, Director, Office of NEPA Oversight (EH–25), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed activities at the K–1515 area of the Oak Ridge K–25 Site, prepared in accordance with 10 CFR part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on May 20, 1993, 58 FR 29401. The proposed action would be an improvement to waste water treatment by directly replacing the K–1515–C Lagoon, which functions as a settling basin for effluent from the K–1515 Sanitary Water Treatment Plant at the Oak Ridge K–25 Site, and providing a direct discharge to the Clinch River. The purpose of this action would be to eliminate the use of the K–1515–C Lagoon as a settling basin because the lagoon has been declared "waters of the State."

The project would involve construction and operation of a 1.1 million gallon lagoon (K–1515–F), relocation of the discharge point by installing a discharge pipeline to the Clinch River; installation of a recycle line to the raw water tank; and installation of associated piping, pumps, instrumentation, wiring, and electrical controls. To meet effluent criteria, the discharge must be directed to the Clinch River since the water flow of the existing K–1515–C lagoon is insufficient. Approximately 110 linear feet of the discharge pipeline would be buried in the floodplain of the Clinch River. Temporary disturbances would occur in the floodplain during excavation of a trench and burial of the pipeline. The temporary disturbance would last approximately 2–3 weeks. After installation of the pipeline, the trench would be filled and the topography returned to the contours and elevations that existed prior to installing the pipeline. There would be no permanent impacts to the floodplain because the pipeline would be buried and would not change the topography or vegetation (currently a grassy mixture without trees) of the ground surface in the floodplain. Other alternatives, such as no action, installation of a pipeline from the City of Oak Ridge Treatment Plant, construction of a new treatment facility adjacent to K–1515, and rerouting the "blue-line" stream around the K–1515–C Lagoon were considered and evaluated in making this determination. A floodplain assessment was performed to assess potential hydrological impacts of the proposed action. It addressed (1) the potential for alteration of the Clinch River floodplain after the proposed actions, (2) the increase in water surface elevations during flood events, and (3) the potential impacts on nearby properties and the environment. Results of the floodplain assessment indicate the proposed action would have inconsequential hydrologic impacts; therefore, no alternatives or mitigation measures to the proposed action were considered. The 100- and 500-year floodplains are below the elevation of the proposed site for the new lagoon. The discharge pipe extending to the Clinch River would be buried and would not have an impact on the floodplain. Therefore, the floodplain assessment shows that the proposed action would not have any significant environmental impact; would have no adverse impact on the floodplain; would not cause impacts such as backwater effects or inundation of land, property, or individuals; and would not promote development in the floodplain. DOE will allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Lawrence H. Harmon,

Acting Director, Office of Waste Operations, Office of Waste Management, Environmental Restoration and Waste Management.

[FR Doc. 94–867 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[FE Docket No. 93–150–NG]

CATEX Vitol Gas, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas, Including Liquefied Natural Gas, From and To Canada and Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting CATEX Vitol Gas, Inc. authorization to import and export up to a combined total of 150 Bcf of natural gas, including liquefied natural gas, from and to Canada and Mexico, over a two-year term beginning on the date of first import or export.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–869 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–147–NG]

DGS Trading Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of an order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting DGS Trading Inc. blanket authorization to import and export up to a combined total of 76 billion cubic feet (Bcf) of natural gas from and to Canada over a two-year term beginning on the date of the first import or export.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–870 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–130–LNG]

Distrigas Corporation; Order Granting Blanket Authorization To Import Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Distrigas Corporation authorization to import up to 100 Bcf of liquefied natural gas (LNG) from any foreign supplier of LNG, over a two-year term beginning on the date of first delivery.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 3, 1994.

Clifford P. Tomaszewski,

Director, Office of Natural Gas, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–868 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–143–NG]

Enron Gas Marketing, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing, Inc. authorization to import up to 400 Bcf and to export up to 400 Bcf of natural gas from and to Mexico over a two-year term, beginning on the date of first import or export delivery after December 31, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–871 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–144–NG]

Enron Gas Marketing, Inc.; Order Granting Blanket Authorization To Import and Export Natural Gas From and To Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Enron Gas Marketing, Inc. authorization to import up to 1 Tcf and to export up to 1 Tcf of natural gas from and to Canada over a two-year term, beginning on the date of first import or export delivery after December 31, 1993.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–872 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–146–NG]

Great West Energy Inc.; Order Granting Blanket Authorization To Export Natural Gas to Canada

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of Order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Great West Energy Inc. blanket authorization to export up to 30 Bcf of natural gas to Canada over a period of two years beginning on the date of the first delivery.

This order is available for inspection and copying in the Office of Fuels Programs Docket room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–873 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–135–NG]

Mobil Natural Gas Inc.; Blanket Authorization To Import Natural Gas From Canada, Including Liquefied Natural Gas

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting Mobil Natural Gas Inc. blanket authorization to import up to 200 Bcf of natural gas, including liquefied natural gas (LNG), from Canada over a two-year period beginning on the date of the first delivery after February 15, 1994.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, room 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–874 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–136–NG]

Mobil Natural Gas Co.; Order Granting Blanket Authorization To Import Natural Gas From Mexico, and To Import LNG From Any Foreign Country

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting blanket authorization to Mobil Natural Gas Co. to import natural gas from Mexico and to import liquefied natural gas (LNG) from any foreign country, over a period of two years beginning on the date of the first import of either natural gas or LNG after February 15, 1994. The volume of gas and LNG imported will not exceed an aggregate of 200 Bcf.

This order is available for inspection and copying in the Office of Fuels Programs Docket Room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC on January 5, 1994.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–875 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–P

[FE Docket No. 93–125–NG]

TransTexas Gas Corporation; Order Granting Blanket Authorization To Import Natural Gas From Canada and To Import and Export Natural Gas From and to Mexico

AGENCY: Office of Fossil Energy, DOE.

ACTION: Notice of order.

SUMMARY: The Office of Fossil Energy of the Department of Energy gives notice that it has issued an order granting TransTexas Gas Corporation authorization to import up to 150 Bcf of natural gas from Canada and to import and export up to an aggregate of 150 Bcf of natural gas from and to Mexico. This authorization shall extend for a period of two years beginning on the date of the initial import or export delivery, whichever occurs first.

This order is available for inspection and copying in the Office of Fuels Programs docket room, 3F–056, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9478. The docket room is open between the hours of 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

Issued in Washington, DC, January 5, 1994

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 94–876 Filed 1–12–94; 8:45 am]

BILLING CODE 6450–01–M

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of December 10 Through December 17, 1993

During the Week of December 10 through December 17, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 6, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS

[Week of December 10 through December 17, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 6, 1993 ...	M.S.A.D. 8, Vinahaven, Maine	RR272–123	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The November 26, 1993 Decision and Order (Case No. RF272–81367) issued to M.S.A.D. 8 would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.
Dec 9, 1993	Universities Research Association, Inc., Dallas, Texas.	LWZ–0023	Motion to Dismiss. If granted: Complaint for Contractor Employee Protection under 10 CFR part 708 would be dismissed.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued
[Week of December 10 through December 17, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Dec. 10, 1993 .	Rockford Grain Growers, Rockford, Washington.	LEE–0064	Exception to the Reporting Requirements. If granted: Rockford Grain Growers would not be required to file Form EIA–782B, "Reseller/Retailers' Monthly Petroleum Product Sales Report."
Dec. 10, 1993 .	Star-Lite Propane Gas Corporation, North Bay Shore, New York.	LEE–0065	Exception to the Reporting Requirements. If granted: Star-Lite Propane Gas Corporation would not be required to file Form EIA–782B, "Resellers/Retailers' Monthly Petroleum Product Sales Report."
Dec. 13, 1993 .	Marbob Energy Corporation, Artesia, New Mexico.	LEE–0066	Exception to the Reporting Requirements. If granted: Marbob Energy Corporation would not be required to file Form EIA–23, "Survey of Domestic Oil and Gas Reserves."
Dec. 13, 1993 .	Marlene Flor, Albuquerque, New Mexico	LFA–0343	Appeal of an Information Request Denial. If granted: The November 1, 1993, Freedom of Information Request Denial issued by the Albuquerque Field Office would be rescinded, and Marlene Flor would receive three pages faxed to Security Affairs, DOE Headquarters, on April 22, 1992, concerning Ms. Flor.
Dec. 13, 1993 .	Dicks Oil Company, Belle Fourche, South Dakota.	LEE–0067	Exception to the Reporting Requirements. If granted: Dicks Oil Company would not be required to file Form EIA–782B, "Resellers/Retailers Monthly Petroleum Product Sales Report."
Dec. 16, 1993 .	Lakeland School Corporation Lagrange, Indiana.	RR272–122	Request for Modification/Rescission in the Crude Oil Refund Proceeding. If granted: The December 9, 1993 Dismissal Letter (Case No. RF272–81353) issued to Lakeland School Corporation would be modified regarding the firm's application for refund submitted in the Crude Oil Refund Proceeding.

Date received	Name of refund proceeding/name of refund application	Case number
12/10/93 thru 12/17/93	Crude Oil Refund, applications received	RF272–95084 thru RF272–95087
12/10/93 thru 12/17/93	Atlantic Richfield, applications received	RF304–15427 thru RF304–15439
12/10/93 thru 12/17/93	Texaco Oil Refund, applications received	RF321–19998 thru RF321–20001

[FR Doc. 94–865 Filed 1–12–94; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF ENERGY

Office of Hearings and Appeals

Cases Filed During the Week of November 5 Through November 12, 1993

During the week of November 5 through November 12, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 6, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of Nov. 5 through Nov. 12, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 5, 1993	ARCO/Bassman, Mitchell & Alfano, Washington, DC.	RR304–65	Request for modification/rescission in the ARCO refund proceeding. If granted: The August 4, 1993 Decision and Order (Case No. RF304–14224) issued to Bassman, Mitchell and Alfano regarding the firm's Application for Refund submitted in the ARCO refund proceeding would be modified.
Do	Benton County, Kennewick, WA	LPA–0001	PETT Appeal (Payments-Equal-To-Taxes Appeal). If granted: The determination of DOE's Richland Office would be modified and Benton County, Washington, would receive $45,751,726 with interest from the Department of Energy for its Payments-Equal-To-Taxes.
Do	Energy Refunds, Inc., Hardin, KY, .	LFR–0013	Request for modification/rescission. If granted: The October 5, 1993 Decision and Order (Case No. LFR–0012) would be modified and alleged defects corrected.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued
[Week of Nov. 5 through Nov. 12, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Do	Angela M. Hagwood, Powell, TN ...	LFA–0333	Appeal of an information request denial. If granted: Angela M. Hagwood would receive a copy of correspondence concerning an investigation that was conducted through the Martin Marietta Energy Systems, Oak Ridge National Laboratory, Affirmative Action Office.
Nov. 8, 1993	Eugene Maples, Hopkins, SC	LFA–0335	Appeal of an information request denial. If granted: The October 18, 1993 Freedom of Information Request Denial issued by the Chicago Operations Office would be rescinded, and Eugene Maples would receive information withheld under Exemption 5 of the FOIA.
Do	Marlene Flor, Albuquerque, NM	LFA–0334	Appeal of an information request denial. If granted: The September 27, 1993 Freedom of Information Request Denial issued by the Office of Economic Impact and Diversity would be rescinded, and Marlene Flor would receive access to each speech presented by the Department of Energy's representatives at the National Federally Employed Women's Conference held in Las Vegas in July 1993.
Do	Town of Townsend, Townsend, MA.	RR272–121	Request for modification/rescission in the crude oil refund proceeding. If granted: The September 7, 1993 Dismissal Letter (Case No. RF272–88394) issued to Town of Townsend regarding the Town's Application for Refund submitted in the Crude Oil Refund Proceeding would be modified.
Nov. 9, 1993	Texaco/Inter City Texaco, Memphis, TN.	RR321–139	Request for modification/rescission in the Texaco refund proceeding. If granted: The December 10, 1992 Decision and Order (Case No. RF321–19481) issued to Inter City Texaco regarding the firm's Application for Refund submitted in the Texaco refund proceeding would be modified.
Do	Van Dyke Gas Company, Center Line, MI.	LEE–0058	Exception to the reporting requirements. If granted: Van Dyke Gas Company would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Produce Sales Report."
Do	Westinghouse Hanford Company, Richland, WA.	LFA–0336	Appeal of an information request Denial. If granted: The November 3, 1993 Freedom of Information Request Denial issued by the Richland Field Office would be rescinded, and Westinghouse Hanford Company would receive access to Internal Audit Reports.

REFUND APPLICATIONS RECEIVED

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/5/93 thru 11/12/93	Crude oil refund Applications received	RF272–95011 thru RF272–95019.
11/5/93 thru 11/12/93	Texaco oil refund Applications received	RF321–19960 thru RF321–19969.
11/5/93 thru 11/12/93	Atlantic Richfield Refund Applications received	RF304–14739 thru RF304–14783.
11/9/93	Mays Gulf	RF300–21764.

[FR Doc. 94–864 Filed 1–12–94; 8:45 am]
BILLING CODE 6450–01–P

Cases Filed During the Week of November 26 Through December 3, 1993

During the Week of November 26 through December 3, 1993, the appeals and applications for exception or other relief listed in the Appendix to this Notice were filed with the Office of Hearings and Appeals of the Department of Energy. Submissions inadvertently omitted from earlier lists have also been included.

Under DOE procedural regulations, 10 CFR part 205, any person who will be aggrieved by the DOE action sought in these cases may file written comments on the application within ten days of service of notice, as prescribed in the procedural regulations. For purposes of the regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date of receipt by an aggrieved person of actual notice, whichever occurs first. All such comments shall be filed with the Office of Hearings and Appeals, Department of Energy, Washington, DC 20585.

Dated: January 6, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS
[Week of Nov. 26 through Dec. 3, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Mar. 12, 1990	Gulf College Gulf Service, Cullowhee, North Carolina.	RR300–255	Request for modification/rescission in the Gulf refund proceeding. If granted: The November 28, 1988 Decision and Order (Case No. RF300–1764) issued to College Gulf Service would be modified regarding the firm's application for refund submitted in the Gulf refund proceeding.

LIST OF CASES RECEIVED BY THE OFFICE OF HEARINGS AND APPEALS—Continued
[Week of Nov. 26 through Dec. 3, 1993]

Date	Name and location of applicant	Case No.	Type of submission
Nov. 18, 1993	Beacon/Valley Oil Distributing Co., Salinas, California.	RR238–5	Request for modification/rescission in the Beacon refund proceeding. If granted: The July 16, 1991 Decision and Order (Case No. RF238–55) issued to Valley Oil Distributing Company would be modified regarding the firm's application for refund submitted in the Beacon refund proceeding.
Nov. 26, 1993	Arco/Major Oils, Rochester, New York	RR304–66	Request for modification/rescission in the Arco refund proceeding. If granted: The October 2, 1990 Decision and Order (Case No. RF304–3436) issued to Major Oils would be modified regarding the firm's application for refund submitted in the Arco refund proceeding.
Nov. 29, 1993	Armor Elevator Company, Inc., Elk Grove Village, Illinois.	LFA–0340	Appeal of an information request denial. If granted: The November 12, 1993 Freedom of Information Request Denial issued by the Batavia Area Office would be rescinded and Armor Elevator Company would receive access to detailed pricing sheets submitted in response to Fermilab National Accelerator Laboratory Proposal No. FESS/BS–1952–ARF.
Do	Bollmann Oil Inc., Mankato, Minnesota	LEE–0061	Exception to the reporting requirements. If granted: Bollmann Oil Inc. would not be required to file Form EIA–782B, "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Dec. 1, 1993	Radio Oil Company, Inc., Worcester, Massachusetts.	LEE–0062	Exception to the reporting requirements. If granted: Radio Oil Company, Inc. would not be required to file Form EIA–782B. "Resellers'/Retailers' Monthly Petroleum Product Sales Report."
Dec. 3, 1993	Cynthia Ann Virostek, Apollo, Pennsylvania.	LFA–0342	Appeal of an information request denial. If granted: The November 4, 1993 Freedom of Information Request Denial issued by the Office of the Executive Secretariat would be rescinded, and Cynthia Ann Virostek would receive access to the listed enclosures in order to obtain a complete copy of the January 27, 1976 letter from Robert Seamans, Administrator, Energy Research and Development Administration, to William Anders, Chairman of the Nuclear Regulatory Commission.
Do	Government Accountability Project, Seattle Washington.	LFA–0341	Appeal of an information request denial. If granted: Government Accountability Project would receive a fee waiver for documents requested from the Richland Field Office pertaining to an alleged "whistleblower."

REFUND APPLICATIONS RECEIVED
[Week of Nov. 26 through Dec. 3, 1993]

Date received	Name of refund proceeding/name of refund applicant	Case No.
11/24/93	Hi-Jo Hydrocarbons, Inc	RF315–10281.
12/3/93	Andrew Louthern	RC272–221.
12/3/93	Schneider L.P. Gas	RF340–194.
12/1/93	Knop Butane Company	RF340–193.
12/1/93	Browing-Ferris Ind. of K.C	RC272–218.
12/1/93	Browing-Ferris Ind. of TN	RC272–219.
12/1/93	Continental Cheese Company	RC272–220.
12/1/93	Jamison Oil Company	RF315–10282.
11/26/93 thru 12/3/93	Crude oil refund applications received	RF272–95047 thru RF272–95069.
11/26/93 thru 12/3/93	Atlantic Richfield applications received	RF304–14999 thru RF304–15059.
11/26/93 thru 12/3/93	Texaco Oil refund applications received	RF321–19977 thru RF321–19989.

[FR Doc. 94–862 Filed 1–12–94; 8:45 am]
BILLING CODE 6450–01–P

Issuance of Proposed Decision and Order During the Week of November 15 Through November 19, 1993

During the week of November 15 through November 19, 1993, the proposed decision and order summarized below was issued by the Office of Hearings and Appeals of the Department of Energy with regard to an application for exception.

Under the procedural regulations that apply to exception proceedings (10 CFR Part 205, Subpart D), any person who will be aggrieved by the issuance of a proposed decision and order in final form may file a written notice of objection within ten days of service. For purposes of the procedural regulations, the date of service of notice is deemed to be the date of publication of this Notice or the date an aggrieved person receives actual notice, whichever occurs first.

The procedural regulations provide that an aggrieved party who fails to file a Notice of Objection within the time period specified in the regulations will be deemed to consent to the issuance of the proposed decision and order in final form. An aggrieved party who wishes to contest a determination made in a proposed decision and order must also file a detailed statement of objections within 30 days of the date of service of the proposed decision and order. In the statement of objections, the aggrieved party must specify each issue of fact or law that it intends to contest in any further proceeding involving the exception matter.

Copies of the full text of this proposed decision and order are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays.

Dated: January 6, 1994.

George B. Breznay,

Director, Office of Hearings and Appeals.

Rand Oil Co., Groesbeck, TX, LEE–0053

Rand Oil Co. filed an Application for Exception from the Energy Information Administration (EIA) requirement that it file Form EIA–782B, the "Reseller/Retailer's Monthly Petroleum Product Sales Report." In considering the request, the DOE found that the firm was experiencing a serious hardship due to the medical problems of its owner, C.R. Rand. Accordingly, on November 18, 1993, the DOE issued a Proposed Decision and Order determining that the exception request should be granted in part.

[FR Doc. 94–863 Filed 1–12–94; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. TM94–4–48–000]

ANR Pipeline Company; Proposed Changes in FERC Gas Tariff

January 6, 1994.

Take notice that on January 3, 1994, ANR Pipeline Company (ANR), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the tariff sheets as listed in Appendix A to the filing, with a proposed effective date of February 1, 1994.

ANR states that the referenced tariff sheets are being submitted as part of ANR's Fifth Annual Reconciliation of buyout buydown costs being recovered by means of Volumetric Buyout Buydown Surcharges and Fixed Monthly Charges contained in Docket Nos. RP91–33, et al., RP91–192, RP92–4, RP92–199, RP93–29 and RP93–149.

ANR states that a copy of this filing, or such applicable parts, has been mailed to all of its Volume No. 1 customers and interested State Commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before January 13, 1994. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 94–816 Filed 1–12–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. ER94–142–000]

CRSS Power Marketing, Inc.; Issuance of Order

January 7, 1994.

On November 10, 1993, CRSS Power Marketing, Inc. (CRSS Power) submitted for filing a rate schedule under which CRSS Power will engage in wholesale electric power and energy transactions as a marketer. CRSS Power also requested waiver of various Commission regulations. In particular, CRSS Power also requested that the Commission grant blanket approval under 18 CFR Part 34 of all future issuances of securities and assumptions of liability by CRSS Power.

On December 30, 1993, pursuant to delegated authority, the Director, Division of Applications, Office of Electric Power Regulation, granted requests for blanket approval under 18 CFR Part 34, subject to the following:

Within thirty days of the date of this order, any person desiring to be heard or to protest the blanket approval of issuances of securities or assumptions of liability by CRSS Power should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214).

Absent a request for hearing within this period, CRSS Power is authorized to issue securities and assume obligations or liabilities as a guarantor, indorser, surety, or otherwise in respect of any security of another person; provided that such issuance or assumption is for some lawful object within the corporate purposes of the applicant, and compatible with the public interest, and is reasonably necessary or appropriate for such purposes.

The Commission reserves the right to require a further showing that neither public or private interests will be adversely affected by continued approval of CRSS Power's issuances of securities or assumptions of liability.

Notice is hereby given that the deadline for filing motions to intervene or protests, as set forth above, is January 31, 1994.

Copies of the full text of the order are available from the Commission's Public Reference Branch, room 3308, 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 94–815 Filed 1–12–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. RP93–4–000]

Mississippi River Transmission Corp.; Informal Settlement Conference

January 7, 1994.

Take notice that an informal settlement conference will be convened in this proceeding on Monday, January 24, 1993, at 1 p.m., and continuing at 10 a.m. on Tuesday, January 25, 1994, at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined in 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–817 Filed 1–12–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RP93–189–000]

Texas Gas Transmission Corp.; Technical Conference

January 7, 1994.

In the Commission's order issued on October 1, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, January 13, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 94–818 Filed 1–12–94; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4826–1]

Effluent Guidelines Task Force Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of meeting.

SUMMARY: The Effluent Guidelines Task Force, an EPA advisory committee, will hold a meeting to discuss improvements to the Agency's Effluent Guidelines Program. The meeting is open to the public.

DATES: The meeting will be held on Tuesday, February 8, from 8:30 a.m. to 5 p.m. and Wednesday, February 9, 1994, from 8:30 a.m. to 3 p.m.

ADDRESSES: The meeting will take place at the Dupont Plaza Hotel, 1500 New Hampshire Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Eric Strassler, Effluent Guidelines Task Force Staff Director, Office of Water (4303), 401 M Street, SW., Washington, DC 20460; telephone 202–260–7150, fax 202–260–7185.

SUPPLEMENTARY INFORMATION: Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), the Environmental Protection Agency gives notice of a meeting of the Effluent Guidelines Task Force (EGTF). The EGTF is a subcommittee of the National Advisory Council for Environmental Policy and Technology (NACEPT), the external policy advisory board to the Administrator of EPA.

The EGTF was established in July of 1992 to advise EPA on the Effluent Guidelines Program, which develops regulations for dischargers of industrial wastewater pursuant to Title III of the Clean Water Act (33 U.S.C. 1251 et seq.). The Task Force consists of members appointed by EPA from industry, citizen groups, state and local government, the academic and scientific communities, and EPA regional offices. The Task Force was created to offer advice to the Administrator on the long-term strategy for the effluent guidelines program, and particularly to provide recommendations on a process for expediting the promulgation of effluent guidelines.

The meeting agenda will include a discussion on draft recommendations regarding pollution prevention in effluent guidelines. There will also be Task Force work group discussions and reports from the groups on methodology for conducting preliminary industry studies, and improving the project management and data collection processes for effluent guidelines. The Task Force generally does not discuss specific effluent guideline regulations currently under development.

The meeting will be open to the public. Limited seating for the public is available on a first-come, first-served basis. The public may submit written comments to the Task Force regarding improvements to the Effluent Guidelines program. Comments should be sent to Eric Strassler at the above address. Comments submitted by February 1 will be considered by the Task Force at or subsequent to the meeting.

Dated: January 7, 1994.

Shelley Allen-Moorefield,

Acting NACEPT Designated Federal Official.

[FR Doc. 94–859 Filed 1–12–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4827–1]

Science Advisory Board; Emergency Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, emergency notice is hereby given that two committees of the Science Advisory Board (SAB) will hold public teleconference meetings on the dates and times described below. All times given are Eastern Time. All meetings are open to the public. For further information concerning each meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB staff. One of the meetings listed below refers to the SAB's Environmental Futures Project, which was described in 58 FR 48063, dated September 14, 1993.

Research Strategies Advisory Committee

The Research Strategies Advisory Committee (RSAC) of the Science Advisory Board (SAB) will meet by conference call from 4–5:30 pm on January 19, 1994. The Committee will offer comments on the design of an EPA Laboratory Study. The EPA program contact for this study is Mr. Tom Hadd, (202) 260–7500, Office of Research Program Management, 401 M Street, SW., Washington, DC 20460.

For additional information concerning this teleconference, please contact Mrs. Dorothy Clark, Staff Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 260–6552; Fax: (202) 260–7118. Anyone wishing to submit written public comment for the teleconference should provide thirty-five copies to Mrs. Clark no later than 12 noon on Friday, January 14, 1994. Individuals wishing to participate in the meeting as audience or commenters should call the Designated Federal Official (DFO) for the RSAC, Dr. Edward Bender at (202) 260–2562 as soon as possible as the number of available conference lines is limited.

Radiation Advisory Committee

The *Radiation Environmental Futures Subcommittee (REFS) of the Radiation Advisory Committee (RAC)* of the Science Advisory Board (SAB) will conduct a teleconference on January 21, 1994 from 11:00 am to 1:00 pm to discuss the topic of Radiation Environmental Futures and the status of its deliberative draft materials, which are currently under preparation and are not yet available to the public. The REFS met previously on December 3 & 4, 1993 (See 58 FR 61689, dated November 22, 1993).

For additional information concerning this teleconference, please contact Mrs. Diana Pozun, Staff Secretary, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, D.C. 20460. Phone: (202) 260–6552; Fax: (202) 260–7118. Anyone wishing to submit written public comment for the teleconference should provide thirty-five copies to Mrs. Pozun no later than 12 noon on Friday, January 14, 1994. Individuals wishing to participate in the meeting as audience or commenters should call Mrs. Pozun no later than 2 pm on January 20, 1994, as the number of available conference lines is limited.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting or forwarded to them following the meeting or teleconference. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: January 6, 1994.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 94–996 Filed 1–12–94; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4826–2]

Washington: Partial Program Adequacy Determination of State/Tribal Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on partial program application of Washington for partial program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site-specific flexibility provided by part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the Federal landfill criteria will apply to all permitted and unpermitted MSWLF facilities.

Washington applied for a partial determination of adequacy under section 4005 of RCRA. EPA reviewed Washington's application and made a tentative determination of adequacy for those portions of the Washington's MSWLF permit program that are adequate to assure compliance with the revised MSWLF Criteria. These portions are described later in this notice. The State/Tribe plans to revise the remainder of its permit program to assure complete compliance with the revised MSWLF Criteria and gain full program approval. Washington's application for partial program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below within 30 days of the date of publication of this notice, the Region will hold a hearing on the date given in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section below.

DATES: All comments on Washington's application for a partial determination of adequacy must be received by the close of business on March 1, 1994. If a public hearing is held, it will be scheduled for March 1, 1994. Washington will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Steven Sharp, USEPA, M/S HW–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6517.

Copies of Washington's application for partial adequacy determination are available 8:30 a.m. to 4:30 p.m. during normal working days at the following addresses for inspection and copying: Washington State Department of Ecology, 300 Desmond Drive, Lacey, Washington, Attn: Mr. Randy Martin (206) 407–6136; USEPA Region X Library, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–1289.

FOR FURTHER INFORMATION CONTACT: Steve Sharp, USEPA, M/S HW–107, 1200 Sixth Avenue, Seattle, WA 98101, (206) 553–6517.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to propose in STIR to allow partial approvals if: (1) The Regional Administrator determines that the State/Tribal permit program largely meets the requirements for ensuring compliance with part 258; (2) changes to a limited narrow part(s) of the State/Tribal permit program are needed to meet those requirements; and (3) provisions not included in the partially approved portions of the State/Tribal

permit program are a clearly identifiable and separable subset of part 258 These requirements if promulgated, will address the potential problems posed by the dual State/Tribal and Federal programs that came into effect in October 1993 in those States/Tribes that only have partial approvals of their MSWLF programs. On that date, Federal rules covering any portion of a State/Tribe's program that has not received EPA approval became enforceable. Owners and operators of MSWLFs subject to such dual programs must be able to understand which requirements apply and comply with them. In addition, the pieces of the Federal program that are in effect must mesh well enough with the approved portions of the State/Tribal program to leave no significant gaps in regulatory control of MSWLF's. Partial approval would allow the Agency to approve those provisions of the State/Tribal permit program that meet the requirements and provide the State/Tribe time to make necessary changes to the remaining portions of its program. As a result, owners/operators will be able to work with the State/Tribal permitting agency to take advantage of the Criteria's flexibility for those portions of the program which have been approved.

As provided in the October 9, 1991 municipal landfill rule, EPA's national subtitle D standards took effect on October 9, 1993. Consequently, any remaining portions of the Federal Criteria that are not included in an approved State/Tribal program apply directly to the owner/operator without any approved State/Tribal flexibility. On October 1, 1993, the October 9, 1993 effective date was extended for certain smaller landfills and for certain landfills receiving waste from flood disaster areas (58 FR 51536). The effective date is now April 9, 1994, for MSWLFs that accept less than 100 tons of waste per day, are not a Superfund National Priority List site, and are either in a State that has submitted an application before October 9, 1993 for EPA approval, or are located on Tribal lands. The effective date has been extended to October 9, 1995, for very small landfills (less than 20 tons of waste per day) in arid climates that lack a practicable alternative for waste disposal or very small landfills that experience significant disruption of surface transportation. Certain large facilities receiving waste from flood disaster areas also are allowed an extension of the compliance date if the State determines that they are needed to dispose of flood debris.

EPA intends to approve portions of State/Tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

EPA also is requesting States/Tribes seeking partial program approval to provide a schedule for the submittal of all remaining portions of their MSWLF permit programs. EPA notes that it intends to propose to make submission of a schedule mandatory in STIR.

B. Washington

On April 9, 1993, Washington submitted an application for partial program adequacy determination. This initial application was found to be incomplete by EPA as it referred to draft regulations. On October 15, 1993, Washington submitted a revised application for partial program adequacy determination. EPA has reviewed Washington's application and tentatively determined that all parts, with the exceptions listed below, of Washington's MSWLF permit program will ensure compliance with the Federal revised Criteria. Portions not ensuring compliance with Federal Criteria:

1. Definitions of "Existing MSWLF unit" and "Lateral expansion" (40 CFR 258.2).

2. Washington's design criteria for nonarid landfills (40 CFR 258.40(a)(2). Washington's program is not enforceable on indian lands.

EPA is not approving Washington's design standards for nonarid landfills due to the inclusion within this standard of an "equivalent" liner design. While Washington has developed a composite design that ensures compliance with 40 CFR 258.40(a)(2), it allows the use of alternative designs based on "equivalent" demonstrations. EPA does not feel that this ensures compliance with the Federal criteria. EPA will continue to work with Washington to resolve this issue.

Washington is using state approved flexibility to develop a program that ensures compliance with the Federal criteria while tailoring their program to the needs of the State. Washington's ground-water monitoring program, while not mirroring the Federal criteria, makes use of the available flexibility within the Federal rules to develop an alternative detection monitoring system. Washington is using its approved State flexibility to establish an alternative list of geochemical parameters in lieu of the heavy metals listed for detection monitoring in appendix I of the Federal criteria. EPA believes that this alternative detection monitoring program ensures compliance with the Federal criteria.

Not all States/Tribes will have existing permit programs through which they can ensure compliance with all provisions of the revised Federal Criteria. Were EPA to restrict a State/Tribe from submitting its application until it could ensure compliance with the entirety of 40 CFR part 258, many States/Tribes would need to postpone obtaining approval of their permit programs for a significant amount of time. This delay in determining the adequacy of the State/Tribal permit program while the State/Tribe revises its statutes or regulations could impose a substantial burden on owners and operators of landfills because the State/Tribe would be unable to exercise the flexibility available to States/Tribes with permit programs which have been approved as adequate. As a State's/Tribe's regulations and statutes are amended to comply with the Federal MSWLF landfill regulations, unapproved portions of a partially approved MSWLF permit program may be approved by the EPA. The State/Tribe may submit an amended application to EPA for review and an adequacy determination will be made using the same criteria as for the initial application. This adequacy determination will be published in the **Federal Register** summarizing the Agency's decision and the portion(s) of the State/Tribal MSWLF permit program affected and providing an opportunity to comment for a period of 30 days. The adequacy determination will become effective sixty (60) days following publication if no adverse comments are received. If EPA receives adverse comments on its adequacy determination, another **Federal Register** notice will be published either affirming or reversing the initial decision while responding to the public comments. The State of Washington is continuing to work towards resolution of the issues involved for those portions of its program that EPA does not feel are adequate to ensure compliance with all of the revised Federal Criteria. Unless the State of Washington makes further demonstrations that the Agency finds satisfactory, the State has agreed to revise the following portions of its permit program:

1. Washington will revise its definitions of "existing MSWLF unit" and "lateral expansion" to ensure compliance with the Federal definitions of the same (40 CFR 258.2).

2. Washington will revise its regulations for "standard designs" of nonarid landfills (WAC 173–351–300(2)(a)) to ensure compliance with 40 CFR 258.40(a)(2).

Washington submitted a schedule indicating that it will continue to work towards resolution of these non-approved portions of its MSWLF permit program. If the issues are not resolved by January 15, 1995, the State has agreed to initiate the necessary rule changes and have the new rules in place by October 9, 1995. To allow the State/Tribe to begin exercising some of the flexibility allowed in States/Tribes with adequate permit programs, EPA is proposing to approve those portions of the State/Tribe's program that are ready for action today.

EPA reviewed the State/Tribe's schedule and believes it is reasonable because resolution of these issues may require multiple demonstrations and the State has agreed to a schedule that is realistic for the State of Washington's rulemaking process for any rule changes required.

The public may submit written comments on EPA's tentative determination until March 1, 1994. Copies of Washington's application are available for inspection and copying at the location indicated in the "Addresses" section of this notice.

EPA will consider all public comments on its tentative determination received during the public comment period and during any public hearing held. Issues raised by those comments may be the basis for a determination of inadequacy for Washington's program. EPA will make a final decision on whether or not to approve Washington's program by June 1, 1994 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: January 6, 1994.

Gerald A. Emison,

Acting Regional Administrator.

[FR Doc. 94–860 Filed 1–12–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of a proposed information collection by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT: Federal Reserve Board Clearance Officer, Mary M. McLaughlin (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551; OMB Desk Officer, Gary Waxman (202-395-7340), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, D.C. 20503.

Final approval under OMB delegated authority of the extension without revision of the following report:

1. *Report title:* Report of Medium-Term Note Issuance
Agency form number: FR 2600m, q, and s
OMB Docket number: 7100-0245
Frequency: Monthly or quarterly or semiannually
Reporters: U.S. corporations
Annual reporting hours: 107
Estimated average hours per response: 0.083
Number of respondents: 4 (FR 2600m); 250 (FR 2600q); 120 (FR 2600s)
Small businesses are not affected.
General description of report: This information collection is voluntary [12 U.S.C. 225a and 353] and is given confidential treatment [5 U.S.C. 552(b)(4)].
Abstract: These reports collect monthly balances of corporate medium-term note issues. Medium-term notes are interest-bearing noncallable corporate obligations with a maturity greater than 270 days but generally less than 10 years. The data are used in the estimates of corporate securities issues issued and outstanding.

Board of Governors of the Federal Reserve System, January 7, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-843 Filed 1-12-94; 8:45 am]

BILLING CODE 6210-01-F

National City Corporation; Application to Engage De Novo in Underwriting and Dealing in Certain Bank-Ineligible Securities on a Limited Basis, and Other Securities-Related Activities

National City Corporation, Cleveland, Ohio (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)), to engage *de novo* through its subsidiary, National City Investments Corporation, Cleveland, Ohio (Company), in various securities and securities-related activities described below.

Applicant proposes to engage *de novo* in the following activities previously authorized by the Board:

(1) Making and servicing loans pursuant to § 225.25(b)(1) of Regulation Y;

(2) Engaging in investment advisory activities pursuant to § 225.25(b)(4) of Regulation Y;

(3) Providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of Regulation Y;

(4) Providing discount and full service brokerage services pursuant to § 225.25(b)(15)(i) and (ii) of Regulation Y;

(5) Underwriting U.S. Government, agency, state, and municipal securities pursuant to § 225.25(b)(16) of Regulation Y;

(6) Providing foreign exchange advisory and transactional services pursuant to § 225.25(b)(17) of Regulation Y;

(7) Engaging in futures commission merchant activities pursuant to § 225.25(b)(18) of Regulation Y;

(8) Providing investment advice on financial futures and options on futures pursuant to § 225.25(b)(19) of Regulation Y.

Applicant proposes to engage *de novo* in activities which previously have been determined by the Board by Order to be closely related to banking. Applicant proposes to buy and sell in secondary market trading all types of securities on the order of investors as a "riskless principal." Applicant proposes to underwrite and deal in municipal revenue bonds, residential mortgage related securities, consumer receivable-related securities, and commercial paper. Applicant also proposes to engage in the private placement of all types of securities and to provide related advisory services. In addition, Applicant proposes to act as agent in the purchase and sale of gold and silver bullion, bars, rounds, and coins for the account of customers.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity "which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be proper incident thereto." This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, "closely related to banking." Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

Applicant believes that these proposed activities are "so closely related to banking or managing or controlling banks as to be proper incident thereto." The Board has previously authorized riskless principal and private placement activities, subject to certain prudential limitations which address the potential for conflicts of interest, unsound banking practices, and other adverse effects. *See, e.g., J.P. Morgan & Company Inc.*, 76 Federal Reserve Bulletin 26 (1990); *Bankers Trust New York Corporation*, 75 Federal Reserve Bulletin 829 (1989). The Board also has previously authorized bank holding companies to underwrite and deal in municipal revenue bonds, residential mortgage related securities, consumer receivable-related securities, and commercial paper provided that the underwriting subsidiary derives no more than 10 percent of its total gross revenue from underwriting and dealing in the approved securities over any two-year period. *See Citicorp*, 73 Federal Reserve Bulletin 473 (1987) *aff'd sub nom. Securities Industry Association v Board of Governors of the Federal Reserve System*, 839 F.2d 47 (2d Cir. 1988), *cert. denied*, 108 S.Ct. 2830 (1988), *modified by Order Approving Modifications to Section 20 Orders*, 75 Federal Reserve Bulletin 751 (1989). In addition, the Board has previously authorized bank holding companies to purchase and sell gold and silver bullion, rounds, and coins for the account of customers. *See First Interstate Bancorp*, 71 Federal Reserve Bulletin 467 (1985); *Midland Bank PLC*, 76 Federal Reserve Bulletin 860 (1990).

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicants believe that the proposed activities will benefit the public by promoting competition. Applicants also believe that approval of this application will allow Company to provide a wider range of services and added convenience to its customers. Applicants believe that the proposed activities will not result in any unsound banking practices or other adverse effects.

In conducting these activities, Applicant will comply with the commitments and prudential limitations established by the Board in previous Orders, except that Applicant proposes to have one officer interlock and less than a majority, but no more than two, director interlocks between Applicant's subsidiary banks and Company. Applicant states that the Board previously has allowed director interlocks between bank subsidiaries and a section 20 subsidiary of a bank holding company. *See Synovus Financial Corporation*, 77 Federal Reserve Bulletin 954 (1991). Applicant also states that the Board has allowed officer interlocks between a U.S. branch of a foreign bank and a section 20 subsidiary. *See Barclays Bank PLC*, 76 Federal Reserve Bulletin 158 (1990). Applicant believes that the proposed interlocks are consistent with the prudential framework established by the Board in prior orders approving the proposed activities.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any views or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551, not later than February 2, 1994. Any request for hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of Cleveland.

Board of Governors of the Federal Reserve System, January 7, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-844 Filed 1-12-94; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Diseases Transmitted Through the Food Supply

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice of annual update of list of infectious and communicable diseases that are transmitted through handling the food supply and the methods by which such diseases are transmitted.

SUMMARY: Section 103(d) of the Americans with Disabilities Act of 1990 requires the Secretary to publish a list of infectious and communicable diseases that are transmitted through handling the food supply and to review and update the list annually. The Centers for Disease Control and Prevention (CDC) published a final list on August 16, 1991, (56 FR 40897) and an update on September 8, 1992, (57 FR 40917). No new information that would warrant additional changes has been received; therefore the list, as set forth in the first update and below, remains unchanged.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Morris E. Potter, National Center for Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–09, Atlanta, Georgia 30333, telephone (404) 639–2237.

SUPPLEMENTARY INFORMATION: Section 103(d) of the Americans with Disabilities Act of 1990, 42 U.S.C. 12113(d), requires the Secretary of Health and Human Services to:

1. Review all infectious and communicable diseases which may be transmitted through handling the food supply;
2. Publish a list of infectious and communicable diseases which are transmitted through handling the food supply;
3. Publish the methods by which such diseases are transmitted; and,
4. Widely disseminate such information regarding the list of diseases and their modes of transmissibility to the general public.

Additionally, the list is to be updated annually.

Since the publication of the revised list on September 8, 1992, no information has been received on additional diseases that are transmitted through handling the food supply. Therefore, the list set forth below is unchanged from the list published in the **Federal Register** on September 8, 1992:

I. Pathogens Often Transmitted by Food Contaminated by Infected Persons Who Handle Food, and the Modes of Transmission of Such Pathogens

The contamination of raw ingredients from infected food-producing animals and contamination during processing are more important causes of foodborne disease than is contamination of foods by persons with infectious or contagious diseases. However, some pathogens are frequently transmitted by food contaminated by infected persons. The presence of any one of the following signs or symptoms in persons who handle food may indicate infection by one of these pathogens: Diarrhea, vomiting, open skin sores, boils, fever, dark urine, or jaundice. The failure of food employees to wash hands (in situations such as after using the toilet, handling raw meat, cleaning spills, or carrying garbage, for example), wear clean gloves, or use clean utensils is responsible for the foodborne transmission of these pathogens. Non-foodborne routes of transmission, such as from one person to another, are also important in the spread of these pathogens. Pathogens that can cause diseases after an infected person handles food are the following:

Hepatitis A virus
Norwalk and Norwalk-like viruses
Salmonella typhi
Shigella species
Staphylococcus aureus
Streptococcus pyogenes

II. Pathogens Occasionally Transmitted by Food Contaminated by Infected Persons Who Handle Food, But Usually Transmitted by Contamination at the Source or in Food Processing or by Non-foodborne Routes

Other pathogens are occasionally transmitted by infected persons who handle food, but usually cause disease when food is intrinsically contaminated or cross-contaminated during processing or preparation. Bacterial pathogens in this category often require a period of temperature abuse to permit their multiplication to an infectious dose before they will cause disease in consumers. Preventing food contact by persons who have an acute diarrheal illness will decrease the risk of transmitting the following pathogens:

Campylobacter jejuni
Entamoeba histolytica
Enterohemorrhagic *Escherichia coli*
Enterotoxigenic *Escherichia coli*
Giardia lamblia
Nontyphoidal *Salmonella*
Rotavirus
Taenia solium
Vibrio cholerae 01
Yersinia enterocolitica

References

1. World Health Organization. Health surveillance and management procedures for food-handling personnel: report of a WHO consultation. World Health Organization technical report series; 785. Geneva: World Health Organization, 1989.

2. Frank JF, Barnhart HM. Food and dairy sanitation. In: Last JM, ed. Maxcy-Rosenau public health and preventive medicine, 12th edition. New York Appleton-Century-Crofts, 1986:765–806.

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Dated: January 7, 1994.

Walter R. Dowdle,

Deputy Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–848 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–18–P

Opportunity for a License for Nonpatented Material

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Centers for Disease Control and Prevention (CDC), National Center for Infectious Diseases (NCID), Division of Viral and Rickettsial Diseases (DVRD), Hepatitis Branch, has available for licensing recombinant proteins and synthetic peptides containing broadly immunoreactive antigenic epitopes to be used as immunodiagnostic reagents for the detection of antibodies to the Hepatitis C Virus (HCV).

FOR FURTHER INFORMATION CONTACT: If you are interested in the opportunity for a license to the nonpatented material described above, please contact the following for additional information.

Technical Contact: Howard A. Fields, Ph.D., Division of Viral and Rickettsial Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop A–33, Atlanta, GA 30333, telephone 404–639–2335.

Business Contact: Lisa Blake-Dispigna, Technology Transfer Representative, National Center for

Infectious Diseases, Centers for Disease Control and Prevention (CDC), 1600 Clifton Road, NE., Mailstop C–19, Atlanta, GA 30333, telephone 404–639–3227.

SUPPLEMENTARY INFORMATION: A set of recombinant glutathione-S-transferase fusion proteins have been prepared by using polymerase chain reaction to amplify the NS3–NS4–NS5 region of the hepatitis C virus (HCV) genome in 300 (monomers) and 600 (dimers) nucleotide fragments. Most of the monomers and dimers have been expressed in *Escherichia coli* and tested against a panel of anti-HCV positive and negative sera to ascertain specificity. A full length authentic fusionless recombinant nucleocapsid protein has also been prepared and tested as an immunodiagnostic reagent. This single protein alone will detect approximately 90% of anti-HCV positive sera. Synthetic peptides have been prepared to the nucleocapsid region in addition to the NS3–NS4–NS5 region. All the synthetic peptides have been tested to determine their immunoreactivity.

The nonpatented recombinant proteins and synthetic peptides are now available for licensing, and if interested, see **FOR FURTHER INFORMATION CONTACT** section of notice.

Dated: January 6, 1994.

Ladene H. Newton,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–849 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93N–0158]

Shulcon Industries, Inc.; Withdrawal of Approval of a New Animal Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new animal drug application (NADA) held by Shulcon Industries, Inc., for use of pregelatinized starch as an antidiarrheal in newborn calves. FDA is taking this action because the firm failed to respond to a notice of opportunity for a hearing proposing to withdraw approval of the application. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entry which reflects approval of the NADA.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 17, 1993 (58 FR 33445), CVM provided a notice of opportunity for a hearing on a proposal to withdraw approval of NADA 111–068 held by Shulcon Industries, Inc., 4351 East Sarnac Dr., Tucson, AZ 86718, for use of Scourx® Calf Antidiarrheal (pregelatinized starch) in nonmedicated liquid feed or water for the symptomatic treatment (i.e., increasing fecal consistency) of nonspecific diarrhea in newborn calves. The application was approved December 20, 1983.

The notice of opportunity for a hearing stated that CVM was proposing to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the NADA and all amendments and supplements thereto on the ground that the firm has failed to submit the reports required under 21 CFR 510.300. The firm was given until July 19, 1993, to file a written notice of appearance and a request for a hearing (58 FR 33445 at 33446). Shulcon Industries, Inc., failed to file such an appearance and request for a hearing.

Under § 514.200 *Contents of notice of opportunity for a hearing* (21 CFR 514.200), the failure of the sponsor to file a written appearance in answer to a notice of opportunity for a hearing constitutes a waiver of the right to a hearing and is grounds for CVM to summarily enter a final order withdrawing approval of the NADA.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applicotions* (21 CFR 514.115), notice is given that approval of NADA 111–068 and all amendments and supplements thereto is hereby withdrawn, effective January 13, 1994.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600(c)(1) and (c)(2) to remove references to the firm (the firm is no longer the sponsor of an approved NADA) and is removing 21 CFR 520.2155 to reflect the withdrawal of approval of the NADA.

Dated: January 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–812 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0019]

TPC Products, Inc.; Withdrawal of Approval of New Animal Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of three new animal drug applications (NADA's) held by TPC Products, Inc., for use of certain phenothiazine-containing drug products. FDA is taking this action because the firm failed to respond to a notice of opportunity for a hearing proposing to withdraw approval of the applications. In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending the regulations by removing the entries which reflect approval of the only codified drug product, a combination of trichlorofon and phenothiazine powder.

EFFECTIVE DATE: January 13, 1994.

FOR FURTHER INFORMATION CONTACT: William C. Keller, Center for Veterinary Medicine (HFV–210), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1722.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of April 27, 1993 (58 FR 25653), FDA provided a notice of opportunity for a hearing on a proposal to withdraw approval of three NADA's held by TPC Products, Inc., P.O. Box 4308, 2021 North Grove St., Fort Worth, TX 76106. The firm held: (1) NADA 3–808 for the use of phenothiazine drench in cattle, (2) NADA 5–224 for the use of phenothiazine and lead arsenate drench in sheep and goats, and (3) NADA 13–685 for the use of trichlorofon and phenothiazine as a parasiticide in horses. The NADA's were approved April 24, 1941, June 8, 1945, and November 6, 1963, respectively.

The notice of opportunity for a hearing stated that FDA was proposing to issue an order under section 512(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(e)) withdrawing approval of the NADA's and all amendments and supplements thereto on the ground that the firm has failed to submit the reports required under 21 CFR 510.300. The firm was given until May 27, 1993, to file a written notice of appearance and a request for a hearing (58 FR 25653). TPC Products, Inc., failed to file such an appearance and request for a hearing.

Under 21 CFR 514.200, the failure of the sponsor to file a written appearance in answer to a notice of opportunity for a hearing constitutes a waiver of the right to a hearing and is grounds for FDA to summarily enter a final order withdrawing approval of the NADA's.

Therefore, under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.84), and in accordance with § 514.115 *Withdrawal of approval of applications* (21 CFR 514.115), notice is given that approval of NADA's 3–808, 5–224, and 13–685 and all amendments and supplements thereto is hereby withdrawn, effective January 13, 1994.

In a final rule published elsewhere in this issue of the **Federal Register**, FDA is amending 21 CFR 510.600(c)(1) and (c)(2) by removing the entries to the firm (no longer the sponsor of an approved NADA) and is removing § 520.2520h *Trichlorofon and phenothiazine powder* (21 CFR 520.2520h) (the other two drug products are not codified) which reflects the approval of the NADA.

Dated: January 4, 1994.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 94–854 Filed 1–12–94; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

[ORD–066–N]

Health Care Financing Research and Demonstration Cooperative Agreements and Grants for Fiscal Years 1994 Through 1996

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice.

SUMMARY: This notice announces the availability of HCFA funding under cooperative agreements and grants for projects that will focus on major issues in the reform, financing, and delivery of health care. The notice contains information about the subject areas for cooperative agreements and grants that will be given priority, project requirements, application procedures, and other relevant considerations.

DATES: Cooperative agreement and grant applications for priority areas, as described in sections I. and II. of this notice, must be submitted by March 24, 1994, February 7, 1995, or February 6, 1996, in order to be considered under the annual funding cycle. For an explanation of timely submission, see section VIII. of this notice.

ADDRESSES: Standard application forms and related instructions may be requested by telephone, by calling (410) 966–6120, or may be requested in writing from and must be formally submitted to:

Ms. JuDee Caquelin, Grants Officer, Health Care Financing Administration, Office of Budget and Administration, Office of Acquisitions and Grants, Room 389 East High Rise, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

Ms. Caquelin is also available at (410) 966–5157 to answer questions and to provide guidance regarding completion of the application forms.

FOR FURTHER INFORMATION CONTACT: Carl Hackerman, (410) 966–6644, Health Care Financing Administration, Office of Research and Demonstrations, Office of Operations Support, Division of Program Support, 2–C–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187.

SUPPLEMENTARY INFORMATION:

I. HCFA's Research and Demonstration Projects Awarded as Cooperative Agreements and Grants

A. Goals

Our research and demonstration program conducts studies whose goals are to assess the current health care delivery/financing sector and to develop innovative ways to improve the quality and cost-effectiveness of health care programs. We support the conduct of extramural research and demonstration projects principally through two award mechanisms: procurements (contracts) and assistance awards (cooperative agreements and grants). This announcement concerns projects that will be awarded as cooperative agreements and grants. (Announcements of planned procurement awards are made through notices published in the "Commerce Business Daily.") The principal purpose of our cooperative agreements and grants program is to stimulate, support, and assist, through an active health services research and demonstration program, the resolution of major health care organizational and financing issues. We hope to advance knowledge in issues of health care financing and delivery and to develop ways of applying that knowledge. We believe this assistance will serve a long term and vital purpose—to increase the efficiency and effectiveness of the entire health care sector by improving the ways in which health care is financed and delivered.

Direct payments for health care services constitute one of the largest single segments of Federal and State budgets. In addition, employee health benefits paid by businesses add significantly to the cost of United States (U.S.) goods and services. Access to and quality of care and cost-effectiveness of current delivery systems and potential new financing mechanisms continue to be areas of significant research interest as we continually reassess current methods of payment for health care programs and look for innovative methods for paying for health care services in the future. The public interest in research in these areas is particularly great at this time as the Nation considers approaches to restructuring the health care sector and controlling expenditures for health care. Many of the research topics described in this solicitation reflect overarching issues that must be considered as part of health care reform.

These and other research interests described here are intended to provide information on controlling health care costs and restructuring current systems that will be useful to a broad audience, including State governments, private insurers, and self-insured businesses, as well as the Federal government.

This notice describes the application procedures, general policy considerations, criteria to be used in reviewing applications, and selection criteria for our cooperative agreements and grants. Our current research and demonstration interest is for applications that address the following areas:

- Health care systems reform and financing.
- Managed care systems.
- Provider payment.
- Access and quality of care.
- Service delivery systems.
- Subacute and long-term care.

B. Funds for Cooperative Agreements and Grants

A review of the requirements for existing priorities, our FY 1994 budget, and expected FY 1995 and FY 1996 budgets indicate that approximately up to $2 million to $4 million per year may be available to the Office of Research and Demonstrations (ORD), HCFA, to fund new cooperative agreements and grants for research and demonstration projects.

C. Eligibility Requirements

Applications for cooperative agreements and grants may be submitted by private or public nonprofit agencies

or organizations, including State agencies that administer the Medicaid program. Private for-profit organizations may apply for cooperative agreements and grants (discretionary funds) under sections 1110(a)(1), 1875(a) and 1881(f) of the Social Security Act; section 402(a)(1) of Public Law 90–248, as amended; section 222(a) of Public Law 92–603, as amended; and section 9335 of Public Law 99–509.

D. Number and Size of Projects

Most awards range from $100,000 to $350,000 per year for 1 to 3 years. We also may award some projects for larger amounts. The number of cooperative agreements and grants depends on: the availability of funds; needs of projects that are continuing from prior years; priority interest areas established by us; and the technical quality of applications.

E. Additional Information

Information on our authority for making these awards, applicable regulations, and the duration of funding is contained in section IV of this notice. Application procedures are detailed in section V of this notice.

II. Priority Areas

A. Health Care Systems Reform and Financing

The U.S. spends more per capita on health care than any nation in the world, yet many Americans have no reliable way to finance their access to our health care system. Growth in U.S. health care costs for several decades has been more than 4 percent faster than general inflation, and it now consumes more than one-eighth of our entire gross domestic product (GDP). If current trends continue, total health spending will reach or exceed 26 percent of our GDP by the year 2030. Medicare spending increased by nearly 300 percent in the past decade. Medicaid spending has increased by nearly 600 percent since 1980. U.S. businesses are spending more on health care premiums than they earn in after-tax profits.

There are some major distortions in the U.S. market for health insurance that yield inefficiencies: (a) Fragmentation of the marketplace, (b) the nature of consumer demand, including tax subsidies that lower consumer sensitivity to costs, (c) limited consumer information, which can lead consumers to mistake higher prices or more intensive service delivery for better care or superior outcomes, and (d) opportunities for favorable risk selection that give inefficient health care plans unfair cost advantages. Also, the substantial consumer and provider uncertainties about the effectiveness of a broad range of diagnostic and therapeutic procedures and technologies, plus the limited emphasis on disease prevention, contribute to overutilization and occurrences of preventable illness.

Critics suggest that the U.S. health care system is too complex and often lacking in accountability for the billions of dollars it consumes. Others would point to the excellence of what the U.S. health care system produces. While some aspects of the U.S. health care system are envied by most of the world, the sector appears rife with contradictory incentives for providers, patients, and payers. There is wide concern about the administrative costs of insurers and providers and that buyers are too weak to exercise market power. Experience rating practices, coupled with such underwriting devices as exclusions for pre-existing conditions and the requirements of various individual States for mandatory coverage of certain kinds of limited license providers or specified services, work synergistically to raise premiums beyond many persons' ability to pay and the ability of many small businesses to offer health insurance to employees.

We are interested in supporting research to address three general areas: (a) Extending access to needed services to all segments of our population, (b) controlling the growth in health care costs, and (c) improving the quality of health care services and products. These three subjects have become almost universally recognized as key areas by those who are committed to reforming our health care system. Therefore, we wish to sponsor research concerning major U.S. health care sector reform issues and also aspects of reforming health care financing incentives.

The types of issues in this category that we believe need study are grouped into two general areas: health care systems reform issues, and health care financing issues.

1. Systems Reform Issues

From these studies we hope to obtain useful guidance about how much restructuring of the current U.S. health care sector is necessary as well as feasible to implement and sustain.

• *Managed competition.* We are interested in research into the following topics to support the managed competition portion of health care reform:

—*Risk adjusters.* Under many health reform proposals, premiums to health plans would be adjusted to reflect enrollees' health risks. This would lessen incentives to select (and retain) only healthy enrollees. Plans that cover a sicker than average population would receive a transfer of funds from plans with a healthier than average population. Implementation of the system would require the development of health risk adjusters. Other issues need to be addressed, such as whether geographic variations in prices and utilization within State and sub-State areas should be recognized in the payment system.

The Administration's health reform proposal recognizes the need for risk adjusters and the reality that, in the short term, some reliance will need to be placed on retrospective approaches while work proceeds on prospective approaches. In the short term, risk adjustment may use reinsurance (based on costs or on fixed payments for high cost conditions and treatments), demographics, and survey data for risk adjustment/pooling. In the medium term, prospective systems relying on diagnostic, health status, and other information should be tested and implemented.

Health risk adjusters need to be designed, for both Medicare and non-Medicare populations including children, to predict expected health care costs based on the health status of the individuals to be covered by the system. Research projects could include work on a number of possible methodologies: Ambulatory care groups (ACGs); diagnostic cost groups (DCGs); payment amounts for capitated systems; ACG and DCG hybrid adjusters; and other risk adjusters based on more detailed clinical data, demographic data, administrative data, or survey data.

The Administration's proposal recognizes that special approaches, perhaps relying heavily on retrospective adjustments, need to be developed for mental illness. We are interested in private sector efforts in managed care for mental illness and how they may aid in the development of payment methods and risk adjustments for and in the management of mental health services in health reform. The Administration proposal recognizes that States may need to provide incentives for health plans to enroll and serve disadvantaged groups. We are interested in ways to modify the payment/risk adjustment methodology to provide financial incentives to ensure enrollment and access, and in ways to measure any extra costs associated with ensuring adequate care.

We are also interested in the development of databases and systems necessary to support health risk adjuster methodologies and in risk adjustment mechanisms currently used in the private sector. We are interested in research on the sensitivity of risk adjusters to "gaming," on simulations of the effect of risk adjusters on premiums, and on ways to manage and monitor the system. We are interested in further research on other pooling mechanisms such as re-insurance and outlier payments for costly cases or diseases.

We are interested in shared risk arrangements between a payer and a plan or a plan and a provider.

While we are interested in both long- and short-term research, because of the importance of risk adjusters for managed competition approaches, projects of practical value that can be completed in a short time are a very high priority.

—*Administrative costs.* We are interested in funding projects that investigate possible changes in administrative costs associated with the provision of health care under reform and explore how administrative functions and costs might vary under health alliances of different sizes and with different characteristics. In particular, we are interested in projects that look at administrative functions and costs associated with health alliances (or other mechanisms that pool the purchasing of health insurance), and with the provision of large group health insurance coverage in the place of small and individual policies. We are interested in projects that consider changes in the administrative costs of insurance, of providers (for example, managed care arrangements, physician offices, and hospitals), and in States' administrative costs associated with their responsibilities under health reform.

—*Consumer behavior.* We are interested in funding projects that examine consumer behavior in choosing health insurance coverage. Particularly, we are interested in studies that estimate the potential for consumer shifts to lower cost plans provided by the health alliance under reform, and the size of potential savings that could be expected as a result of these shifts. A related area of interest is research that examines consumer choice when confronted with a variety of health coverage options (for example, traditional fee-for-service, health maintenance organization (HMO), and other managed care arrangements).

• *Consumer and beneficiary information.* Very little is known, from the viewpoint of either the beneficiary or the health care provider, concerning how consumers make decisions affecting their health care. Under the current system of health insurance, consumers (including Medicare beneficiaries and Medicaid recipients) often have little information on benefit plans, coverage restrictions, and cost-sharing, as well as the quality and/or efficiency of health insurance options. Improved information resources would enable purchasers to choose among health plans based on their relative value and quality and support the objectives of health care reform. Ultimately, improved information for consumers could give providers greater incentives to control costs while improving quality of services.

Information gaps are most prominent in the following areas: (1) Consumer knowledge of benefit plans, coverage, cost-sharing, and utilization controls, (2) effects of consumer knowledge on the selection of health plans, including the interaction of health status and expected level of use on choice; (3) the types of information most helpful in assisting consumers in selecting efficient providers, such as information about the costs and quality of services, and (4) the types of information that can be developed to help consumers to become knowledgeable about outcomes and costs of alternative treatments. We are interested in projects in all of the above areas, including projects that improve the information that Medicare beneficiaries and Medicaid recipients and other health care consumers receive (for example, assessing various ways of providing information to consumers) and evaluate the impact of improved information on consumer satisfaction, access to health care, quality of care, and the cost of health care services. These might include analyses of current HMO/CMP marketing practices that emphasize the "quality" features of their plan versus those of others.

• *International perspectives.* We are interested in detailed studies that analyze specific health care policies of other developed nations. Studies should examine specific features of other countries' health financing and delivery systems, with special emphasis placed on: health care cost containment; health care market characteristics, including the extent of managed care development; payment mechanisms, including negotiation-based approaches; modalities for delivering primary care; health care quality measures; health outcomes measures; health planning; and policies fostering lower infant mortality. Studies should evaluate system features or initiatives at a micro-level rather than use general aggregate information, and should include detailed analyses of relevant data. We would like to support studies of the reimbursement and payment systems used in other developed countries that evaluate the pertinence of these systems in the context of the U.S. health care system. Similarly, we would consider projects offering comparisons and evaluations of cost containment mechanisms used or proposed for other countries that might be considered for use in the U.S.

• *Analyzing global payment strategies.* We are interested in initiating both research and pilot efforts to develop global payment strategies. The effort would encompass approaches for developing budgets at national, State, sub-State, and community (including the rural community) levels. As currently envisioned, these projects would develop processes involving major sectors of the health care provider, practitioner, and supplier industries, with health alliances and other major purchasers of health care and public representatives, in the development of a global payment target for what health care spending should be in a near term.

We are also interested in other formula-based approaches or institutional mechanisms for establishing targets. We believe this will require more research into current health expenditure patterns, which examines their stability, and trends for population groups in geographic areas. Our interest also extends to studies of mechanisms for implementing or enforcing targets through such methods as third-party utilization review and controls on premiums. We want to know more about administrative features including data needs and reports, the monitoring for looming problems, the roles of voluntary mechanisms, and the options for mitigating financial gains or losses. We are also interested in studies of current methods of third-party utilization review and premium controls, and how these might be linked with performance-based quality measurements.

• *Assessing advantages and disadvantages of all-payer systems.* Issues of cost-shifting by providers and among payers have been discussed and analyzed for at least 50 years. Today, there appears to be a common understanding that only a small percentage of patients actually pay the full submitted charges from hospitals and physicians for the care they receive. By and large, publicly financed and operated programs pay at lower levels than do most private health insurance systems. Within the private health sector, larger insurers and employers are

often able to achieve acceptance of lower payments than those that smaller firms or plans can obtain. A wide variety of hospital and/or physician networks have developed, based in large part on the willingness of the providers to accept discounts from regularly billed charges and fees. In order to be able to determine whether uniform or "all-payer" systems for health care are desirable and feasible, we believe that more study of uniform payment system approaches that would be compatible with managed competition initiatives is warranted. We are particularly interested in systems that would encompass many kinds of health care providers, practitioners, suppliers, and their services including "mixed" models covering both managed care plans and traditional health insurance. We believe that initial steps will involve the careful design of systems that would take the following into consideration:

—The data needs for the construction and implementation of such a system and their sources, strengths, and limitations.
—Means for involving hospitals, physicians, and suppliers.
—Ways of involving all payers, both public and private.
—Administrative approaches.
—Consumer and community involvement.
—Transitional considerations.
—Resource requirements for development and operation of the system.
—Potential legal impediments (national, State, and/or local).
—Capabilities of States to develop effective systems.
—Likely impacts of such systems on health services costs, access, and quality.
—Consideration of the possible special circumstances of, and factors related to, rural communities that might necessitate different all-payer approaches.

• *Medicare Current Beneficiary Survey data and other new data bases.* In 1991, we launched the first round of a Medicare Current Beneficiary Survey (MCBS), a longitudinal panel survey that collects information on about 13,000 aged and disabled Medicare beneficiaries. Persons aged 85 and over and persons entitled to Medicare due to disability were oversampled to increase the sample size of these vulnerable subgroups. The MCBS collects a variety of information relating to the use of covered and noncovered services, including costs, insurance coverage, out-of-pocket expenditures, health status, income, assets, and living arrangements. Three interviews are conducted annually for persons living in the community and for the institutionalized.

Medicare administrative claims data, which contain detailed information on the use and cost of Medicare-covered services, are being linked with data collected from the MCBS. At this point, it is anticipated that a survey panel will run for about 3 years, although Medicare administrative data could be appended for many years thereafter. This data set will make possible studies of, for example, supplemental insurance coverage held by Medicare beneficiaries or out-of-pocket payments for health care services; consumer cost and consumer choice issues; for example, choice/satisfaction of Medicare beneficiaries enrolling in HMOs versus fee-for-service plans; Medigap employer coverage; and managed care information.

At this time, researchers have planned a series of analyses using the MCBS to examine whether or not the introduction of the Medicare physician fee schedule had an impact on access. Also, the MCBS is useful for the development of the adjusted average per capita cost, which is, in turn, useful for refining risk adjustments. We are interested in studies that seek to refine risk adjustment methodologies using the MCBS. In general, we are interested in encouraging proficiency in and use of this valuable database among additional researchers, particularly to address research issues and topics identified in this solicitation. In addition, in 1991, we established a National Claims History File (NCHF) system that facilitates access to Medicare claims data. The NCHF also is a rich source of data for analyses of health care services and financing issues. We encourage researchers to consider ways to use these data sets, when appropriate, in developing research projects.

2. Financing Issues

The aim of these studies is to find better ways for individuals, households, businesses, insurers, health care providers and institutions, communities, and governments to provide and arrange payment for needed health care services through improvements in the health care system and its financing mechanisms, including the following alternatives:

• *General financing approaches.* We continue to be interested in research on the design and impact of proposals for reducing tax burden on low-income taxpayers; income-related financing of premiums and/or copayments; changing the distribution of financing between taxpayers and beneficiaries; and examination of approaches such as medical savings accounts that encourage private savings for health care expenses.

• *Alternatives for Medicaid financing.* Medicaid covers an extensive variety of health care services, both acute and long-term care, and stresses benefits for eligible children and pregnant women. There are Federal minimum standards mandating particular services and populations to be covered, and a State can extend these minimums in a variety of ways. Federal payments are made to a State for a percentage of the benefit payments under its State Plan for Medical Assistance, and for a percentage of its costs in administering the plan.

—We are interested in ways to improve the Federal financing of, and arrangements with, State low-income health care programs. One area of interest involves the basic approach for determining the Federal assistance payments to States. Under present law, the Federal medical assistance percentage (FMAP) determines a percentage rate of Federal participation that is based on State per capita income levels. In 1991, these FMAPs ranged from 50 percent (the statutory minimum) to nearly 80 percent. We are interested in the assessment of alternative methods for computing the FMAP. Models might consider the potential impact (State-by-State) of (a) calculating the basic Federal matching rate based on State fiscal capacity or number of persons requiring health care subsidies instead of per capital income, with and without ceilings and/or floors; (b) modifying the FMAP to consider a State's actual Medicaid expenditures relative to its fiscal capacity; (c) paying for basic services to specific enrollee groups at a higher rate than other services or groups and/or limiting expenditures for nonbasic services (for example, personal care aides) to a percentage of that for basic services (for example, preventive care); (d) reducing the FMAP when expenditures exceed a specified threshold; (e) projects to examine linksges between Medicaid and workplace health insurance; and (f) projects that study alternative approaches to monitoring family income. We are highly interested in careful studies of competing ideas for improving the efficiency, effectiveness, and fairness of funding of health care for the poor and the uninsurable. These approaches might consider changes proposed in Federal funding and budgetary constraints imposed under health care reform. For example, approaches could include: Methods for determining the level and composition of State funding of health care costs and determining the maintenance of that effort; equity across States in health care expenditures; the extent to which disproportionate share payments, as well as provider taxes and donations, are included in or excluded from the base used in calculating Federal payments; and the extent to which a State must provide residual Medicaid services to low-income persons or provides other health care services not included in the standard benefit package and the costs of that care. Another analysis might consider designing matching incentives according to the extent States use managed care arrangements. Considerations should also be given to approaches based on Federal global capitation payments to States; Federal or State or joint arrangements with private health insurers to provide health care coverage for low-income persons; and to approaches that rely upon those low-income individuals who receive health care subsidies to select an approach that they believe is suitable for themselves.

—We are also interested in projects or simulations uncoupling Medicaid acute care services from Medicaid long-term care to examine alternative Federal/State financing arrangements for each type of care. We are also interested in designs of approaches under which the Federal Government would capitate States for all or part of their Medical Assistance Plan in place of FMAP for those parts, in exchange for greater flexibility for States.

• *Private insurance financing.* Under current tax policy, the unemployed and many individuals in low-paying jobs do not benefit from the tax provisions associated with employer-paid health insurance. These tax incentives benefit higher-income employed persons who, in order to protect their incomes and assets, presumably would want to purchase insurance even in the absence of tax incentives. We are interested in analyses of these equity issues. Projects might examine a refundable tax credit that could replace the current tax exclusion. By using tax credits, rather than exclusions, the link between a taxpayer's marginal tax rate and the amount of the tax subsidy is eliminated. Such tax credits could also extend more of the tax subsidy to the unemployed, the working poor, and the self-employed. Other modifications of the tax code that might be examined include increasing deductions for self-paid premiums and/or setting caps on the amount of exclusion of employer's premium payments. But, these would appear to also result in larger subsidies to higher-income persons than to those with lower incomes.

Various models such as health insurance networks and health alliances have been identified as methods for extending the negotiating and purchasing power of large employers to groups of small employers. Models such as multiple employer trusts, multiple employer welfare arrangements, employer coalitions, and other approaches already exist that have allowed small employers to band together to purchase insurance that they could not have afforded alone. However, these arrangements have not been without problems and a number of these groups have become insolvent. We are interested in analyses of the strengths and weaknesses of these approaches. This interest also includes analyses of how such models would operate in rural and small metropolitan areas and whether modifications to the basic models, or alternative approaches, should be considered for these areas.

• *Supplemental insurance.* We are interested in studies of the demand for and use of insurance policies that supplement Medicare and other health insurance (including Medicare Select) and their effect on utilization of services and patient outcomes. Individuals and families might use supplemental policies to fill gaps in coverage and/or to cover deductibles and coinsurance, either of which might affect utilization. We would like to know what types of co-payment are used and what their relationships are to risk selection.

• *Alternative approaches to prepayment for health care expenses.* We are interested in projects that examine further incentives for individuals, businesses, and governments to improve risk-sharing approaches. We are interested in approaches that might undertake the sharing by the Federal Government of financing risks with States, communities, or private entities. For instance, for the Medicare program, we would be interested in the design of approaches involving public or private sponsors. These might be either a private entity such as a health insurer or a labor/management welfare fund or a State or local government agency that would assume the responsibility and risk for paying Medicare benefits for entitled residents of a defined area. If this were a public institution, its own program benefits would presumably be administered in the same manner (perhaps consolidating the Medicare and Medicaid benefits for the residents of a State). If this were a private entity, it would likewise coordinate administration of its private benefits with Medicare's benefits. Issues to be considered include rate-setting, performance monitoring, and distribution of gains or losses.

B. Managed Care Systems

Managed care refers to a diverse, and still evolving, set of alternative delivery models introduced over the past two decades. Managed care plans offer the opportunity for more cost-efficient use of health resources, expanded choices of health service delivery systems for consumers, and better health outcomes through effective care management.

Our interest in managed care encompasses a wide range of alternative service delivery, case management, payment and data systems that encourage or facilitate a cost-effective continuum of care, or that otherwise foster efficiency in health service delivery through management of the volume, intensity, and appropriateness of care.

In an effort to better understand and increase enrollment in HMOs, preferred provider organizations (PPOs), and other managed care plans, we are interested in a variety of research in two general areas:

1. Understanding Current Managed Care Techniques and Service Delivery Models

• *Identifying efficient and effective practices.* In order to expand our understanding of how managed care systems might best be structured to provide cost-effective, quality care, we need to understand the techniques and methods used by current managed care models, particularly those that may be determinants of successful risk contractors. We believe emphasis needs to be placed on studies that determine which features contribute most to the efficiency and effectiveness of specific managed care models, including the impact of these approaches on utilization, costs of care, and health outcomes. These studies should provide information to help identify those features that have potential for general application. The types of "best practices" in which we are interested include approaches for marketing programs to beneficiaries and other enrollee groups, enrollee education strategies, incentives to physicians, and the use of new technology by HMOs.

We are very interested in studies of how managed care programs deal with the challenges involved in enrolling

disabled and special needs populations. For example, studies could examine the experience of State managed care programs and identify best practices and lessons learned.

• *New models.* We are interested in studies and evaluation of new managed care models. We are particularly interested in the recent experience of new and evolving models such as primary care case management approaches, the use of primary care case management by private insurance and public programs, and its applicability to health care reform and/or existing programs such as Medicare and Medicaid.

• *Data and managed care.* We are interested in evaluation of prototype data systems and managed care. This is a critical area for managed competition and health care reform. We are interested in studies and development of claims data systems that capture needed information across alternative delivery systems and that serve complimentary objectives to fee-for-service data systems.

• *Barriers to entry.* We are interested in studies that provide an improved understanding of the factors that may present barriers to entry or expansion of existing managed care programs, including (1) physician attitudes toward HMO contracting, (2) the impact of the new resource-based fee schedule for physicians on their decisions to participate in HMOs, (3) factors that influence a Medicare HMO's decision not to participate in risk contracting, (4) barriers affecting enrollment of Medicare or Medicaid recipients in managed care systems, (5) State legislative and regulatory barriers, and (6) public attitude toward managed care plans.

• *Comparisons of managed and fee-for-service care.* We would like to support studies that examine the relative effectiveness of managed capitated systems compared to traditional delivery systems. We are interested in comparisons in terms of cost, quality of care, and, particularly, health outcomes. Although some prior research has been done on this issue, payment reforms and changes in delivery models and benefit packages have occurred in the interim that may have changed the relative cost-effectiveness of the systems and the impact of the systems on health outcomes. The following are examples of questions that appear to require answers:

—How satisfied are HMO/CMP enrollees versus fee-for-service enrollees?

—What are the short- and long-term effects of HMOs offering supplemental benefits (for example, coverage of prescription drugs)? Do these benefits tend to increase adverse selection into plans? Does an HMO's decision to provide non-Medicare-covered services in some cases result in better care? Are these benefits cost-effective in the long term by delaying or preventing more expensive illness and medical care?

—How do HMOs make use of new technology relative to the fee-for-service sector? HMOs provide a unique setting for analyzing the use of new technology, since HMOs do not have the incentives inherent in fee-for-service practice to use new technologies as services that can increase revenue. We are interested in studies that provide information about the extent to which new technologies are accepted and used in HMOs versus the fee-for-service sector in terms of the types of technology utilized, the extent of this utilization, and the effects of utilization on health outcomes. We are interested in knowing whether the use of new technologies more closely resembles fee-for-service patterns in certain types of managed care plans—for example, individual practice association models versus staff model plans; or hospital-controlled plans versus physician-controlled plans. Studies in this area could examine use of information technology as well as medical technology.

—What are the impacts of recent fee-for-service payment reforms (for example, prospective payment systems and physician payment reforms) on managed care plans? Have these changes in payment methods altered the ability of managed care plans to attract providers into risk-sharing arrangements or to contract with providers on a discounted fee-for-service basis? Has risk-sharing between HMOs and physicians been reduced? Have physician payment reforms made primary care physicians less likely to contract with HMOs and specialists more likely to do so? What are the effects of these reforms on the ability of managed care plans to reduce utilization below fee-for-service levels?

—What is the relative cost-effectiveness of various managed care models? How do HMOs, PPOs, Federally Qualified Health Centers (FQHCs), and other organizational models compare with each other and with fee-for-service in terms of cost-effectiveness and outcomes of care?

—We are also interested in studies that examine the quality of care among managed care systems and whether there are differences between the quality of care provided under such systems and under traditional fee-for-service systems, with emphasis on health outcomes, particularly outcomes over an extended period (for example, 6 months to 1 year after an event). Similarly, we are interested in studies that examine whether there are differences in access to, and utilization of, certain types of services in managed care systems versus traditional delivery systems. For example, what type and levels of preventive services are provided in HMOs or in FQHCs? Are there differences in rates of expensive procedures (for example, hip replacement and coronary artery bypass graft)? We would like to be able to identify and evaluate tools to assess the effectiveness of quality assurance systems and the quality of medical care being provided to enrollees in both managed care and fee-for-service systems. The studies might also provide suggestions on effective measurements including both process of care and alternate outcome measures (for example, readmissions and complications) and suggest how they might be incorporated into monitoring programs.

• *Quality of care.* We are interested in studies that provide improved information to measure the quality of care provided in managed care systems, including measurement of health outcomes, development of performance standards for managed care providers, and assessments of different quality review systems used by HMOs. Our interest includes projects that develop improved tools for assessing the quality and effectiveness of care in HMOs. Also, we are interested in cost-benefit studies that examine trade-offs between investment in administrative systems (for example, computer-based data systems) and other case management efforts (for example, utilization reviews).

• *Targeting approaches.* We would like to support additional work to develop: (1) Techniques to better target managed care interventions and/or to be able to establish risk-sensitive payments to managed care plans and providers (for example, through the analysis of provider and/or beneficiary claims history data); and (2) methodologies to assess the cost-effectiveness and relative value of alternative utilization management interventions, such as

provider education efforts, provider incentives to reduce utilization, more intensive prior or concurrent review applied to selected providers, specialties, or services, and beneficiary-oriented utilization management interventions. These approaches may include case management or "gatekeeper" systems to minimize the risks of excessive or inappropriate service use, interventions targeted toward "high-cost" patients, and consumer information and counseling programs (for example, management of exceptionally high-cost medical cases).

• *Private sector activities.* We are interested in studies that examine the experiences of private sector managed care activities and retiree programs and identify lessons for managed care programs serving Medicare beneficiaries and Medicaid recipients.

2. Developing Alternative Managed Care Service Delivery Models and Payment Systems

We are interested in improving current health care delivery and payment systems through the development and testing of alternative models, including the following areas:

• We would like to support projects that assist potential enrollees in choosing, accessing, and effectively using managed care services. We are particularly interested in developing and testing approaches to promote informed choice, to reduce burden, and to minimize biased selection in consumer access to managed care systems, such as coordinated open enrollment or enrollment through independent entities capable of facilitating unbiased access to managed care systems.

• Our interest in development of improved risk adjusters, identified previously in the section on Health Systems Reform and Financing, includes an interest in studies that develop improved risk adjusters for the adjusted average per capita cost payment system for Medicare HMOs.

• We are interested in studies that examine the use of competitive bidding approaches to establish payment levels for HMOs, for example, studies to synthesize existing information and research, and studies that analyze data to estimate the payments and effects of these types of approaches.

• Recognizing that managed care models also involve providers paid on a fee-for-service basis (such as PPO networks and various utilization and/or case management systems), we are interested in studies and demonstrations that develop and/or test cost-effective payment methods for these fee-for-service-based managed care models. Examples of such projects include (a) methodologies to establish and ensure cost-effective payments for the administrative costs of the PPOs, case management, or other organizations administering these managed care systems, including incentive payment arrangements based on measures of program benefit savings (or losses) achieved by such entities; (b) approaches to establishing cost-effective fee-for-service payments to affected providers, or otherwise controlling their costs (for example, through negotiated discounts, bundled payments, incentive arrangements with participating providers, resource-based relative value units, or flexible allocation of coverage and payment allowances within pre-established limits); and (c) studies that examine the applicability of such mechanisms in the Medicare and/or Medicaid programs, including the use of independent entities such as PPOs or "brokers" to establish alternative payment arrangements within fee-for-service-based managed care models and point-of-service PPOs that incorporate negotiated rates with providers and strong incentives for beneficiaries.

3. State Level Managed Care Program

With increased emphasis on managed care, the program parameters that administrators use to monitor program and recipient performance are, increasingly, program data. In the past, this was the claim form itself. In many capitated systems under managed care, claims are nonexistent. Instead, practitioners are paid on a salaried basis and work in terms of patient encounters. Key questions that need to be addressed follow:

• We wish to develop, demonstrate, and evaluate data systems that capture needed information across alternate delivery systems, not just for fee-for-service systems. We would like to know what data elements are critical for administrators to track in a managed care setting? How can these be related to the fee-for-service environment? What portions of current automated data systems are appropriate for capturing information on managed care?

• From what lessons learned in the private insurance sector may regulators benefit? Which States are doing a "better" job of handling this fluid data environment? Why? What lessons can be learned from these States that would be useful to other States?

C. Provider Payment

In FY 1991, Medicare payments amounted to $114 billion and are expected to exceed $160 billion by FY 1994. By far the greatest part of this amount is for payments to hospitals for inpatient and outpatient services (64 percent), followed by payments for physician and supplier services (30 percent). The latest data show that hospital costs have increased by a rate of 9 percent during FY 1990. Simultaneously, between FY 1980 and FY 1990, Medicare spending for physician services per beneficiary tripled, increasing at an annual rate of over 12 percent. Even with physician payment reform, total Medicare expenditures are expected to increase at an annual rate of 12 percent from 1991 to 1996. In FY 1994, Medicare expenditures for physician and supplier services are expected to be $44.3 billion.

The rise in payments for hospital outpatient services is no less dramatic. In recent years, Medicare benefit payments for outpatient hospital services have increased more than twice as fast as payments for inpatient services. Between 1986 and 1991, inpatient hospital payments increased from $46.4 billion to $63.2 billion, an increase of 35 percent with an annual rate of change of 6.2 percent. For outpatient hospital services, payments rose from $5.1 billion to $9.8 billion, an increase of 90 percent with an annual rate of change of 13.7 percent.

While the data described here relate to a large public program, similar increases can be found in the private sector. Given the recent attention to the rate of increase in national health expenditures, we have supported, and will continue to support, research that explores promising approaches to reform the way in which services are purchased from providers. In particular, we are interested in studies and demonstrations in the following areas:

• *Characteristics of efficient providers and methods for determining efficiency and effectiveness.* Classical economic theory makes a series of assumptions about the characteristics of a perfectly competitive market and the behavior of consumers and providers. If these assumptions are met and the firm behaves rationally, the theory states that the firm will minimize production costs thereby achieving economic efficiency and the firm will set its level of output so that the marginal cost of producing an additional unit is equal to the price.

A perfectly competitive market is often not the case, however, especially in the health care sector, where many of the conditions that will, in theory, lead to economic efficiency are lacking. Most providers are nonprofit; patients are not fully informed about their diagnosis, alternative treatment modes, quality of different providers and prices charged

by different providers; many consumers have extensive insurance coverage, which reduces their price sensitivity; and there are significant legal and regulatory barriers to entry into the market in the form of licensing for professionals and certificate of need requirements for hospitals. As a result, there is less reason to believe that health care providers and provider managers are striving for maximum economic efficiency. For example, under the economic theory of cost minimization, hospitals should purchase technology only if it will result in decreased costs or higher quality. However, unlike industries where capital investments are typically made to reduce total costs, in the hospital industry, capital costs typically lead to increases in operating costs as well. There is a concern that the availability of technology will create a demand to use the service and thereby increase the intensity of services provided. The expensive technology adds significantly to the hospital's cost, and it is frequently underutilized. In addition to increasing the level of expenditures, if an adequate level of proficiency in a new technology cannot be obtained through a sufficient volume, there can be a higher than necessary rate of complications and deaths, as is seen in the example of open heart surgery. While the introduction of the prospective payment system (PPS) for hospitals and physician payment reform are changing the environment somewhat, health care providers do have multiple objectives and therefore do not operate to provide their services at the lowest cost.

Accordingly:

—We are interested in studies that investigate the characteristics of hospitals that are efficient in the sense of providing patients an adequate level of care in the least costly manner. In defining hospital efficiency, it is critical that account be taken of the impact of technological change on the services provided by hospitals. Differences in services (or "outputs") must be controlled for and judgments must be made about appropriate levels and/or mixes of services. Hospital efficiency may need to be evaluated in the context of risk-adjusted population-based utilization measures that reflect systemwide utilization.

—We would also support studies that develop criteria for identifying efficient medical practices, and methods for examining their practice costs.

—We are interested in studies that provide improved understanding of the determinants of hospital costs, their differences across hospitals, and the growth in volume and intensity of services in hospitals; the implications of growing resource intensity of inpatient care and decline of inpatient volume for hospitals, patients, and health care expenditures; and effects of changes in the marketplace on patient care, hospital market structure, and hospitals' financial relationships with other providers such as home health agencies, skilled nursing facilities, and ambulatory surgical centers.

—We are interested in analyses that would examine cost data for outpatient departments and/or ambulatory surgical centers to distinguish between efficient and inefficient providers and to identify determinants of efficient performance for high quality care. These studies might examine characteristics of efficient hospitals, particularly within a major category of hospitals (for example, size, urban/rural, teaching/nonteaching) in providing outpatient care. Traditionally, we have used the following approach to establish prices for inpatient and outpatient hospital services and physician and supplier services. Under the direction of legislation, historic data have been used to establish a fee-for-service payment amount for physician and supplier services that is then trended forward with adjustments for increased productivity and inflation. Increasingly, we have had difficulty accurately reflecting productivity gains and the true cost of new technology in our fee schedules. We are interested in studies that develop new methodologies for these purposes.

• *Payment systems that promote efficiency.* We are interested in testing payment systems that promote provider efficiency while maintaining an adequate level of care.

The private sector has used the market to establish prices for provider services through the use of a variety of models. HMOs, employer groups, and insurance companies all use a variety of selective contracting arrangements that use competitive pricing. These approaches have the advantage of forcing the provider to reveal prices for which they can provide the services after factoring in such variables as increased productivity, new technology, and the use of alternative services. We are interested in research examining, analyzing, and comparing the mechanisms these approaches use to establish prices for health care services. While the private sector uses the market to establish prices, it recognizes that ensuring quality of care is an equally important aspect of the selection process. Accordingly, great attention to quality of care is included in the payment system. We are interested in further testing of administrative mechanisms (such as PPO arrangements) that use market forces to establish prices in large geographic areas.

• *Bundling provider payments.* We continue to be interested in testing a bundled payment option for all services routinely furnished within an episode of care. By combining the payment for physician and facility services into one price, this approach enables health care providers to allocate medical resources based upon their own discretion while coordinating the delivery of medical services and often divergent incentives to maximize efficiency and quality. We are currently testing payment models of this type for coronary artery bypass grafts and cataract surgery. We are interested in supporting the development and testing of similar approaches for other types of medical and surgical procedures and/or other types of patients or development of classification systems and weights for combined systems.

• *Refinements to the hospital PPS.* The evolution and extension of PPS for hospital services creates an ongoing need for research to develop and evaluate refinements to existing payment methods. We are interested in studies of refinements to the present PPS, including the following:

—Improved geographic adjusters, including alternative methods of constructing the hospital wage index and defining labor market areas, and use of alternative sources of data.

—Studies that examine sources of case mix intensity changes, and methods of classifying patients by resource use.

—Studies related to the possible effects of the new capital payment regulation.

—Studies that develop methods to evaluate new technologies and that examine the influence of new technologies and procedures and how they should affect payments (for example, effects on diagnosis-related group (DRG) weights, studies of the cost and necessity for computerized axial tomography, and magnetic resonance imaging).

—Development of prospective payment systems for types of hospitals now excluded from PPS.

• *Payment for physician services.* We are particularly interested in projects that develop, refine, and/or test alternative payment systems for physician services that include incentives to control the growth in expenditures for physician services, particularly approaches that involve coordinating or bundling payments for physician services and for related health care services. The current fee-for-service system for billing and paying physician services under Medicare generates about one-half billion billed services each year, and this number has been growing rapidly. This rapid growth has been accompanied by growth and expansions in the numbers of nonphysician services paid by Medicare and continues to complicate the Medicare payment system. In the early 1980s, the Congress directed us to examine whether the DRG system used for inpatient hospital prospective payment might be used to also pay physician services (section 603(a)(2)(B) of Pub. L. 98–21). As explained earlier under the discussion of hospital payment issues, we are interested in research to determine whether there are more feasible methods for coordinating or bundling payments for physician and related health care services provided to a patient. These might range from approaches that merely bundle payment for fairly standard tests with visit payments, to systems that examine services of all physicians and others who provide care to the same patient. Such systems could include hospital medical staff models, models based on physician groups, or methods that profile the amounts and kinds of care provided to patients. We are interested in research to identify opportunities to increase the efficiency of the Medicare fee schedule payment system for various types of physician specialties or services, and in studies that provide a better understanding of physician practice costs and whether/how these costs are changing over time, for example, studies that examine resource-based practice expense allocations and risk-based malpractice allocations or a service- or category-specific risk-based approach to allocate malpractice expenses. We also seek alternative approaches for valuing payments for nonphysician services. We are interested in projects for options that might be used to encourage more primary care.

• *Outpatient services.* We are placing a high priority on the issue of payment for outpatient services because of the rapid growth of expenditures in this area and the potential to significantly benefit from reform. Unlike inpatient services, which are primarily paid for on a prospective basis, most hospital outpatient services are paid for based entirely or partially on costs. As a result, there are only limited incentives toward efficiency. Thus, we would like to complete our work on the development and evaluation of prospective payment for outpatients as we move toward implementation and to sponsor additional research on several related issues.

Over the past several years, we have sponsored several research projects relating to payment for outpatient services and the development of possible models for a prospective payment system for outpatient services. This research has covered several topics, including the development of Ambulatory Patient Groups (APGs), a typology of outpatient services that can be used for a PPS for outpatients; research into the resource costs of delivering outpatient services in a variety of settings, including outpatient departments, ambulatory surgery centers, and physician offices; and a series of analyses of the outpatient setting and the potential effects of implementing an outpatient PPS. In addition, we have sponsored the development and implementation of a PPS for use in a State Medicaid Program and have sponsored the evaluation of this system.

As we move toward the possible implementation of a PPS for outpatient services in the Medicare program, we are interested in supporting and stimulating additional efforts in this area, for example, research related to the following:

—Additional research into the resource costs of providing ambulatory care in a variety of settings, including research into the effects of volume of services on fixed costs and research into the effects of administrative costs on per service costs of care.

—Additional refinement of APGs, especially in areas such as mental health treatment where existing International Classification of Diseases, 9th revision (ICD–9) codes may prove an inadequate basis for estimating resource consumption on the basis of diagnosis.

—Continuing research into the impacts of various payment approaches on various types of providers.

—The impact of new technologies and program changes related to outpatient care.

—Bundling of outpatient services: The extent to which services such as diagnostic services (for example, laboratory tests, radiology, and other tests), physician professional services, and/or other services are bundled into the payment for the outpatient visit is an important issue. Bundling gives providers incentives to use the packaged services more efficiently. We encourage additional research on alternative methods and approaches (for example, separate payment for bundled physician and hospital services, and payment for bundled services combined with the facility payment) to bundle outpatient diagnostic, physician professional, and/or other services, as well as examinations of potential provider responses to bundling various types of services.

—Alternative sites of care: There has been proliferation of types and numbers of outpatient sites of care in recent years, with a large growth in ambulatory surgical centers, freestanding radiology centers, and other sites that compete with hospital outpatient departments. We are interested in studies that examine the determinants of growth of alternative providers of hospital outpatient services and also studies that analyze resource costs and outcomes at hospital outpatient departments and at alternate sites of ambulatory care.

—We are interested in studying and testing alternative payment arrangements for rural hospitals and allied providers that promote both access to care and economic efficiency.

—We are interested in projects that demonstrate and evaluate the effectiveness of rural telemedicine systems and in projects to develop, pilot test, and evaluate payment methodology for telemedicine consultations.

• *Controlling volume and intensity growth.* We are interested in studies of approaches for controlling unwarranted growth in the volume and intensity of all kinds of personal health care services. These might also examine the impact of Medicare's current volume performance standards for physicians and alternative formulations of these standards.

D. Access and Quality of Care

We wish to support projects that develop knowledge that can be used in assessing and improving access and quality of care, especially for underserved populations. During the more than a quarter of a century of operation of the Medicare and Medicaid programs, access and quality of care have been public policy issues, and they will continue to be so. We believe emphasis is indicated in the following areas:

• *Studies relating to basic access issues, for example, system capacity.* Projects that examine the basic capacity of the health care system, including primary care, specialty care, and inpatient services, are of interest to us. Studies that treat these issues in the light of health care reform are of highest interest.

• *Studies relating to the maternal and child health populations.* Projects that develop methods for assessing access and quality of care for these populations are of highest interest. Examples of possible studies would be the application of quality of care measures to (a) the study of Medicaid capitated, Medicaid noncapitated, and capitated non-Medicaid maternal and child groups within a State; and (b) emergency room use by Medicaid recipients, the privately insured, and the uninsured for selected clinical conditions.

Poverty is associated with higher mortality and morbidity rates starting at the youngest end of the age spectrum. This is reflected in the higher incidence of poor pregnancy outcomes, including low birth weight, birth defects, and infant death. Increasing numbers of poor children, lacking adequate health care, suffer from preventable conditions such as iron deficiency anemias and high lead blood levels, thus impairing mental and physical development. Additionally, because of marked declines in immunization rates among poor children, they have a higher incidence of infectious diseases. This is the population that the Early Periodic Screening, Diagnosis, and Treatment (EPSDT) Program is focused on.

There is a need to develop more appropriate health services for vulnerable populations groups, such as pregnant women and children. Prenatal care is the first step in the obstetric chain that includes labor and delivery, birth outcomes, and infant health. Prior studies suggest that adequate prenatal care is cost-effective and generally correlated with birth outcomes such as infant mortality, birth weight, and prematurity, thereby reducing costs for subsequent health care. Yet, between 1980 and 1989 the proportion of mothers receiving late or no prenatal care increased for each age group except mothers over the age of 35. At the same time, there was a 50 percent rise in the proportion of mothers in their twenties receiving late or no prenatal care. Neonatal and postneonatal death rates for nonwhites are more than double those of whites. Factors that are positively and negatively associated with an individual's receipt of early and adequate prenatal care need to be studied.

Black and low-income children receive the least amount of health services, especially for those conditions that call for early intervention and more intensive treatment and follow-up. Utilization of preventive care services for children and the adequacy of outreach programs need further investigation.

Approaches to extend health care to these populations, such as Medicaid eligibility expansions or the EPSDT populations, do not ensure adequate access to care. Issues related to the availability of health providers and appropriate utilization of services have led many States to encourage managed care systems. The extent to which managed care improves the quality and availability of care for the poor, especially women, infants, and children, needs to be studied further. In addition, studies are needed to assess what protective mechanisms are in place to safeguard against adverse outcomes for these vulnerable population groups.

We also would be interested in comparative studies of delivery systems in other countries for maternal and child health and for prenatal care and their possible effects on maternal and child health outcomes.

• *Women's health issues.*

Recently, in response to public policy concerns that women had not been included in many of the biomedical studies sponsored by the Federal Government, a number of studies and clinical trials have been designed to focus on women's health issues. While health services research studies of the Medicare and Medicaid populations have often examined issues relating to women's health—such as insurance coverage of pregnant women and children, the use of cardiac procedures in hospitalized patients, and the characteristics of elderly women living alone—there are many other areas of inquiry relating to access, quality of care, and effectiveness that could provide new knowledge for the development of health policy. For example, health services research studies of Medicaid and other low income groups that examine access to family planning and the prevention, treatment, and screening for sexually-transmitted diseases and acquired immune deficiency syndrome (AIDS) and human immunodeficiency virus-related conditions would be desirable. Also, studies relating to risk factors, prevention, and effectiveness of different treatments for heart disease, cancer, osteoporosis, depression, substance abuse, and alcoholism in women are of interest. In addition, we are interested in health services research studies that shed light on the potential effects on women of various health care reform options, especially those relating to the financing and delivery of health care services.

• *Studies relating to prevention and special services.* There is a growing consensus that prevention of illness is fundamental to improving health status as well as an important factor in curtailing the escalation of health care spending. Preventive services are important for the Medicaid population; several preventive services, including the Maternal and Child Health populations, are now included under Medicare. Studies that focus on access to these services are of interest to us.

• *Studies relating to early retirees.* We are interested in examining the incentives related to health care coverage and benefits and out-of-pocket costs in the context of early retirement. What are the factors affecting early retirement? What are the utilization patterns of early retirees?

• *Maintaining Medicare eligibles within mainstream Health Alliance structures.* When early retirees age sufficiently to become eligible for Medicare benefits, they must decide to stay in their Health Alliance or enroll in Medicare. This could involve a change in providers, caregivers, and coverage limits, as well as the change of insurer. What are the strategies for maintaining continuity of care and coverage for care when an early retiree becomes eligible for Medicare?

• *Research and demonstration projects that develop methods and applications for applying knowledge about quality and appropriateness of care.* Projects that develop the components and methodology for quality reporting systems for accountable health plans, including appropriate controls for illness severity or projects in which the results of research about quality of care are used or adapted locally by public and private organizations responsible for ensuring utilization and appropriateness of care, are of special interest to us.

• *Over- and under-utilization of health care.* Both over-and under-utilization of health care are problems that can lead to unnecessary expenditures, and we believe this misutilization is at least partially related to access to care. We would like to support studies in this area. Comparative assessments of utilization and expenditures by the privately insured, Medicare, Medicaid, and the uninsured populations are important parts of such studies. We encourage studies to develop criteria for judging over- and under-utilization from claims data or in managed care settings.

We are also interested in supporting projects that implement counseling programs for patients and providers to improve their understanding of the patient's right to decline medical treatment and/or to formulate advance directives.

• *Education and feedback.* There are indications that education and feedback are important components in maximizing the dissemination of knowledge that can improve quality of care. We are interested in supporting projects that test methods of providing information to, and educating, practitioners and reviewers of medical care in a way that achieves appropriate changes in physician and provider behavior.

• *Prescription drug payment and related studies.* Recent or proposed changes in Federal drug payment and other policies have affected the marketplace for prescription drugs. For example, the Omnibus Budget Reconciliation Act (OBRA) of 1990 imposed limits on price increases of Medicaid drugs and mandated rebates, drug utilization review, and patient counseling. The Veterans Health Care Act of 1992 mandated a minimum discount of 24 percent for all Federal drug purchases. And, the Administration's Health Security Act proposes to mandate a basic rebate of 17 percent for a Medicare drug benefit program. In addition to the greater role played by the Government as purchaser of pharmaceuticals, a number of other changes have affected the market: the growing importance of price conscious managed care, rapidly emerging biotechnology, recent changes in the tax law (that is, OBRA 1993), and increasing generic competition. We are interested in supporting both empirical and theoretical research to examine the effects of payment and other broad policies (for example, formularies, prior authorization, drug utilization review) on the use of drugs, expenditures for drugs, and the development of new products.

—*Academic Detailing.* Drug utilization review programs may detect aberrant patterns in a physician's prescribing behavior. Different means of contacting physicians have been used, including letters, telephone calls and visits (known as academic detailing) to the physician by a trained physician or pharmacist. We are interested in studies and demonstrations of the effects of the use of person-to-person interventions to influence physician prescribing practices in both public and private insurance programs and other settings. Three important areas are: The relative costs of academic detailing compared to existing program interventions that influence physician prescribing; who, how, and what drugs or diseases to target; and the development of cost-effective approaches for such programs.

—*Prior Approval.* Medicaid programs and private insurers have instituted prior approval programs to control the use and cost of prescription drugs. A prior approval list contains medications requiring authorization for use prior to reimbursement by insurers. We are interested in studies relating to the effects of such programs on access to prescription drugs and their impact on use, outcomes, and costs of services. We are also interested in studies that examine the decision making process of placing drugs on a prior approval list and the consistency across prior approval programs.

E. Service Delivery Systems

Providing affordable health care to all Americans while containing health care spending growth and maintaining the excellence of health care services requires not only the comprehensive assessment of how health services are and should be financed, but also the assessment of how health services are and should be delivered. Policy makers have assumed that higher payments for health services will ensure access to services and increase the supply of providers—institutional or professional, where the services are needed. This, however, is not necessarily the case. Health delivery systems are affected by specific delivery characteristics as well as the medical care provider payment system. System characteristics are important irrespective of the financing mechanism for payment of services. We are interested in comprehensive and balanced studies of what features of health care delivery systems are effective in ensuring that services are available in geographic areas that may be currently underserved (for example, urban inner city and rural or frontier areas); and what methods may be effective in restraining growth of the health infrastructure in areas that are, by many measures, oversupplied or overutilized. We seek more than an enumeration of the current situation; rather, we seek to understand what should be undertaken in preparing for the future. We desire a comprehensive review of the U.S. health service delivery sector that examines demographic, behavioral, and economic factors that influence the U.S. health delivery sector and an examination of new provider delivery settings. Toward this goal, we are interested in examining: (a) How markets arrange for and allocate health resources, the supply of health organizations or institutions or professionals, and the geographic distributions of resources within the health delivery system, especially rural/inner city issues; (b) personnel and medical professional manpower issues; and (c) the study of new provider settings and service delivery approaches.

• *Allocation of health resources.* We would like to sponsor examinations of how markets arrange for and allocate health resources, the supply of health organizations, institutions, or professionals, and the geographic distribution of resources within the health delivery system; and studies of alternative delivery systems and financing models to address the many problems faced by the health care system. We are interested in studies that do the following:

—*Develop resource distribution planning models.* Mechanisms to better distribute health care resources to meet underserved rural community and inner city needs are of interest to us. These may include the creation of networks of health care providers that ensure access for rural and inner city residents to an organized system of providers that covers the entire continuum of care.

—*Develop additional alternatives to those rural hospitals that are no longer viable in their communities.* These alternatives may include both inpatient and outpatient models with both physician and nonphysician providers.

—*Investigate what health planning models and assumptions are useful and have been successful.* Although in the late 1980s some mandatory planning models were considered by some to be ineffective in reducing capital expansion and health spending, are there successful health system resource and services planning models that should be reexamined? Additionally, we know very little about effectiveness of the voluntary business and health provider coalitions that have emerged. Some States consider health planning extremely useful and have continued certificate of need programs. We are interested in studies of what constitutes a successful planning program.

—*Develop measures of capacity.* We need to critically reanalyze commonly accepted measures of health system capacity to determine if measures such as beds per capita, full time employees, hospital admissions, average length of stay, bed occupancy, and other institutional measures of utilization are appropriate (adequate) measures of the supply and stock of services that should be provided.

• *Health and medical professional manpower issues.* In order to more fully understand the relationship between health financing models and the supply of health resources, we are interested in exploring the factors that influence the supply of health professionals, specialty training, and geographic dispersion. An example of the types of questions of concern here would be: Can the elements of the educational process and the "service" aspects of medical interns' and residents' training be disentangled? If they can, what would be a minimum medical school curriculum for safe practice, given some educators belief that much of an intern's and resident's time is spent in service tasks, not educational efforts. Examples in this area include:

—*Medical education financing effects on practice choices.* We are interested in projects that consider how Medicare funds currently paid to hospitals in the form of direct medical education payments or indirect medical education adjustments to prospective payments for inpatient hospital care can affect the specialty and type-of-practice choices of physicians.

—*Incentives for nonhospital ambulatory training sites.* Such studies could focus on developing model approaches to encourage more noninpatient training sites and facilitate the training of more primary care and minority physicians in settings such as HMOs, group practices, ambulatory care settings, and nursing homes. This should lead to a model that could increase nonhospital based ambulatory training for all physicians, but especially those training to be primary care practitioners. It would also be desirable that the model encourage physicians to practice in underserved areas (urban and rural).

—*Manpower issues.* We are interested in the development of financial mechanisms to provide incentives for more physicians to practice in rural areas (especially obstetricians and primary care physicians such as family practitioners, internists, and pediatricians). We also are interested in studying the availability and effective use of pediatric and family nurse practitioner services under State Medicaid programs.

—*Measures of underutilization.* Given the mobility of the U.S. population, we need to reevaluate the relevancy of common measures of underservice, such as communities without a practicing physician. This reevaluation could examine such issues as the minimum population size needed to support a primary care practice, a general surgical practice, and very specialized practices. Examination of population density should address such issues as whether there are populations so sparse that no permanent medical professional can be supported. Definitions of fundamental primary health care needs may play a part in such studies. The work should define basic assumptions used to derive appropriate minimum/maximum physician rates per population.

• *Studies of new provider settings and delivery approaches.* We would like to conduct studies and demonstrations largely designed to increase the use of primary and preventive health services and thereby reduce the incidence of more serious conditions as well as long-term costs. Our interest includes settings and approaches that improve health delivery for specified populations such as the homeless, migrant workers, maternal and child health, adolescent males, and the disabled. Examples of these initiatives include:

—*More convenient service locations,* such as (a) school-based and school-related health clinics, (b) health care in public housing, and (c) mobile health units.

—*Service integration initiatives* designed to remove institutional barriers to the receipt of health care and to provide access to the full range of available services in order to maximize the benefit of these public programs, for example, (a) "one-stop shopping" initiatives that would provide a variety of support services at one location to increase the utilization of services by populations such as high-risk pregnant women, (b) outstationed Medicaid eligibility workers in Federally qualified health centers, homeless shelters, and schools, (c) new provider settings for EPSDT services, and (d) innovative settings for the delivery of family planning and prenatal care services for adolescents.

—*Other populations.* We are interested in studies that provide information about changes in the patient populations and service patterns of special populations, for example, patients with human immunodeficiency virus, autoimmune deficiency syndrome, and end-stage renal disease. We also are interested in studies and demonstrations that examine cost-effective alternative service modalities targeted toward specific populations.

—*Alternative service delivery models.* We are interested in demonstrations of alternative service delivery models that would promote more cost-effective and high-quality health care, for example:

+Geriatric care models that more effectively integrate and coordinate prevention, primary care, and chronic care for the elderly, including hospital-based geriatric care models.

+Alternative settings for transitional care that would reduce health care expenditures through earlier discharges from hospitals.

F. Subacute and Long-Term Care

Demographic and practice pattern changes continue to increase demands on subacute and long-term care delivery and financing mechanisms. Medicaid is the principal source of funding for long-term care in the United States. In FY 1994, Federal expenditures for long-term care under the Medicaid program are expected to exceed $30 billion, 34 percent of all Medicaid vendor payments. Medicare policy changes, in response to industry and congressional pressures, have led to rapidly rising payments for subacute care by skilled nursing facilities and home health agencies, and, as the elderly population continues to grow, further program benefit expansions may be approved by the Congress. Several major policy committees (for example, the President's Task Force on National Health Care Reform) have targeted long-term care as one component of the health services delivery sector requiring attention and potentially major reform in the next few years.

We wish to support this process through studies designed to better understand the trends and factors affecting the cost, accessibility, and quality of subacute and long-term care services under Medicare and Medicaid and to explore cost-effective delivery and financing mechanisms.

• *Innovative approaches to the delivery of long-term care.* We are interested in sponsoring research and demonstration efforts on innovative approaches to the cost-effective delivery of long-term care services. Such studies will examine methods of targeting

services to special populations in greatest need of services, as well as exploring whether new types of services or provider organizations should be developed to supplement those now covered under Medicare and Medicaid for these populations. We are also interested in innovative managed care models in both institutional and noninstitutional settings.

We are particularly interested in research and demonstration efforts that focus on the development of geriatric care models that more effectively integrate and coordinate prevention, primary care, and chronic care of the elderly. Special emphasis should be given to models that can be implemented in managed-care settings, such as HMOs contracting on a risk basis under the rules of section 1876 of the Social Security Act.

The relationship between long-term care services (including personal care and assistive devices) and housing is becoming increasingly important. For example, in caring for the frail elderly in noninstitutional settings, supported housing brings participants with needs for custodial care physically closer. Such a setting allows the frail elderly to preserve some independence in their living environment, while it facilitates economies of scale in providing for their care. Use of congregate care can be seen in the increasing number of alternative housing settings for the elderly, such as adult foster homes and assisted living facilities. Continuing care retirement communities likewise combine housing and long-term care services. Supported housing is also a key component in providing treatment and related services to individuals with chronic mental illness. We are interested in research and demonstration efforts that more fully explore this relationship. For example, how might the acute and chronic care benefit package of an integrated service delivery and financing model be delivered in the context of an assisted living facility?

• *Payment and benefit initiatives.* We are interested in sponsoring research and demonstration efforts that explore innovative approaches to integrate acute and post-acute care benefits so as to improve coordination of care. Such initiatives may take a general approach (for example, across DRGs) or may be limited to selected conditions.

We are also interested in payment alternatives to current cost-based payment for home health agency and rehabilitation facility services, including studies of the feasibility of case-mix systems for these settings.

We continue to be interested in studies that examine financial incentives for cost-effective, quality care in nursing homes, such as capitation for long-term care services.

• *Eligibility initiatives.* Studies are of interest that examine the feasibility and effect of using various disability criteria (for example, limitations in function, ability to perform work or other major activities, or the availability of family or other informal care) as the basis for eligibility determinations for long-term care benefits for both elderly and nonelderly populations.

The growth in Medicaid estate planning has highlighted Medicaid financial eligibility criteria as they relate to transfer of assets for purposes of becoming Medicaid eligible. We are interested in studies that examine the relationship between these transfers and overall increases in long-term care expenditures. We are also interested in studies of innovative State programs that address this issue, including studies of estate recovery programs.

• *Financing initiatives.* We are interested in studying developments in the private and public sectors that affect the provision and financing of long-term care services, such as further development of the private long-term care insurance market.

There have been discussions of financing approaches for long-term care such as universal long-term care insurance for all employed persons. For example, one approach might couple State-administered universal coverage for episodes of care, lasting 30 or more days, at a recognized long-term care facility with a State trust fund dedicated to long-term care financing and supported by employer/active employee premium payments. The coverage would extend to workers, retirees, spouses, and dependents. States would determine premium requirements, the employer/employee premium sharing parameters, the provider payment rates, and the arrangements for disbursing benefits. The trust fund might be managed by the State or by an insurance company or investment firm under State regulation.

Currently, funding of long-term care for both the elderly and nonelderly disabled is primarily through Medicaid, although private insurance, individual resources, and State and local dollars are also sources, depending on the target group. Long-term care financing for individuals with disabilities can be described as financing across age and disability groups, financed through these sources, rather than different financing mechanisms for different disability groups. However, some recent proposals have suggested that alternative financing strategies should be considered for different disability groups. For example, a study completed by HHS recommended that funding for individuals with mental retardation and related conditions be taken out of the Medicaid program and a new Federal program be created to fund a range of services for these individuals. These financing proposals are based on a recognition that different disability groups require different types of health and social support services, have developed distinct service systems, etc. We are interested in research that explores the strengths and weaknesses of the current system of long-term care financing, relative to financing systems developed for different disability groups.

• *Use of long-term care by nonelderly populations.* We wish to expand our research and demonstration agenda to focus on the service delivery and financing issues related to providing long-term care services to individuals with mental retardation, chronic mental illness, and other nonelderly disabled populations. In contrast to the considerable support for research and demonstration projects involving long-term care for the functionally disabled elderly, we have sponsored few projects to examine the role of the Medicare program or the use of flexibilities under Medicaid optional services and waivers to meet the rapidly changing environment of long-term care for the non-aged disabled. The following are examples of the types of issues that are of interest to us:

—*Children with disabilities.* We are interested in studies that examine the effect of the recent Zebley decision on disability determinations for children, and subsequent changes in eligibility for and use of long-term care services.

Also, research on the extent to which children with disabilities have public or private health insurance coverage, and the impact of such coverage on Medicaid program expenditures and on access to care, is of interest.

—*Mental retardation and related conditions.* We are interested in answers to the following questions:

(a) What is the impact of standards for licensing service providers and surveying quality of community-based services on the quality of care delivered?

(b) What factors influence the costs of intermediate care facilities for the mentally retarded?

(c) What is the relationship between cost and effectiveness?

(d) What assessments can be done of the cost-effectiveness and quality of

community-based care for individuals with mental retardation under Medicaid, including the Medicaid 2176 waiver program, the Community Supported Living Arrangements program, and other State optional services?

—*Chronically mentally ill.* We would like information on the characteristics of long-term care service use among State Medicaid programs and the changing patterns of use over time.

—*Working-age disabled.* We would like to know: (a) What is the impact of current public and private insurance limitations in meeting the acute rehabilitative and long-term needs of this population, and (b) to what extent do various subpopulations of the non-aged disabled (for example, working-age adults and individuals with selected types of disabilities) have public or private health insurance coverage, and what is the impact of this coverage on Medicare and Medicaid program expenditures and access to care? We are interested in studies that focus on the new specialized health service delivery programs and innovative payment approaches designed to meet the rapidly growing demand for specialized services, such as rehabilitation services, maintenance services, assistive technology, durable medical equipment, social assistance services, and environmental modifications.

Studies of work transitions for this population continue to be of interest to us. Included are assessments of Medicaid's impact in facilitating section 1619 transitional work-programs for supplemental security income adult disabled persons and assessments of an extended period of Medicare coverage for social security disability insurance beneficiaries who return to work.

We are particularly interested in studies that include research emphasizing secondary analyses that document the implications of demographic trends on the financing, delivery, and quality of long-term care services for these groups. We are also interested in studies that examine and attempt to account for wide variation among States in the use of institutional, relative to community-based, services.

• *Dynamics of disability and service use.* We would like to initiate studies to understand the dynamics of chronic physical and cognitive disability and acute, subacute, and long-term care service use and the implications for future demand for long-term care under Medicare and Medicaid. Studies are of interest that link and analyze data from multiple data bases such as the Medicare Current Beneficiary Survey, National Long-term Care Survey, the Survey of Income and Program Participation, the National Medical Expenditure Survey, and the National Health Interview Survey with our administrative data to examine, using both cross-sectional and longitudinal analyses, characteristics of the disabled and long-term care service.

• *Access issues.* We are interested in studies assessing problems of access to long-term care for certain subpopulations of the disabled, such as beneficiaries in inner city areas or rural areas.

• *Effects of program changes.* We would like to study the effects of major program changes on the cost, accessibility, and quality of subacute and long-term care services under Medicare and Medicaid. Examples of possible new studies in this area are those that examine the following:

—Patient-level cost, utilization, transitions, substitution, and outcomes of Medicare-supported rehabilitation hospital units, skilled nursing facility, and home health services.

—The cost-effectiveness of services experiencing rapid expansion, such as Medicare and Medicaid financed home care and case management services.

—Service utilization and expenditures of Medicare program and policy changes related to home health and nursing facility coverage.

III. Purpose and Content of Cooperative Agreements and Grants

A. General Considerations

The cooperative agreements and grants we award are intended to assist in the resolution of major health financing issues or in developing new methods for administration of our programs. Our cooperative agreement and grant program focuses primarily on analyses, experiments, pilot projects, and demonstrations that provide information useful for the Medicare and Medicaid programs. Applications that fit one of the priority areas will be considered to have been solicited.

B. Cooperative Agreements and Grants

All cooperative agreements will include an explicit statement of the nature, character, and intent of anticipated Federal programmatic involvement to ensure that the responsibilities of both parties are understood. Each cooperative agreement will incorporate the requirements of 45 CFR part 74 or part 92 or both, as applicable, among its terms and conditions. Cooperative agreements will not be awarded to a State Medicaid agency for section 1115 (of the Social Security Act (the Act)) projects in which only waivers of Federal Medicaid State plan requirements under section 1902 of the Act or costs not otherwise matchable under section 1903 of the Act are approved to carry out a demonstration. The instrument to be used for this type of award may be a grant (without discretionary funds) of waivers under section 1115(a)(1) and costs authorized under section 1115(a)(2) of the Act. Cooperative agreements may be awarded for section 1115 projects with discretionary funds, even if waivers under section 1115(a)(1) and costs under section 1115(a)(2) also are involved. In these cases, the cooperative agreement conditions will apply to the entire operation and management of the project. Cooperative agreements may be used for projects awarded under all other authorities listed in section IV.A. (Authorities) of this notice.

We may suspend or terminate any cooperative agreement or grant, in whole or in part, at any time before the date of expiration, whenever we determine that the awardee has materially failed to comply with the terms of the cooperative agreement or grant. We will promptly notify the awardee in writing of the determination and the reasons for, and the effective date of, the suspension or termination. In addition, we reserve the right to withdraw waivers at any time if we determine that continuing the waivers would no longer be in the public interest. If a waiver is withdrawn, we will be liable only for normal closeout costs.

C. Waivers

1. Demonstrations Requiring Waiver of Medicaid Rules

Researchers who wish to conduct demonstrations that would require that Medicaid rules be waived must contact the appropriate State Medicaid agency. Demonstration proposals involving the Medicaid program must be submitted by the single State agency responsible for administration of the Medicaid program in that State. Organizations that wish to ask for Medicaid waivers are strongly encouraged to coordinate with researchers or research firms in order to ensure that the experimental design and evaluation protocol are of the highest quality.

2. Section 1115(a) Projects

Under section 1115(a)(1) of the Act, compliance with statutory Medicaid State plan requirements (section 1902 of the Act) may be waived in order to enable a State Medicaid agency to carry out a demonstration project that will further the general objectives of the Medicaid program. Under section 1115(a)(2) of the Act, costs of a section 1115(a) project that otherwise would not properly be included as expenditures under the State plan may be regarded as expenditures and thus be subject to Federal financial participation (FFP). Unless they are specifically waived, all requirements of the Act, the Code of Federal Regulations, and other issuances that pertain to the title XIX program apply to a project approved under section 1115(a). If a State Medicaid agency applies for a section 1115(a) project, it should give special attention to the preparation of the budget. The agency must provide estimates of the costs or savings attributable to the demonstration project contrasted with the normal Federal program costs. That is, the agency must furnish the estimated yearly costs, before waivers and after waivers, for both service costs and administrative costs. These budgets are substantially more extensive than the budget for other applications.

3. Other Waivers

Waivers of the requirements of title XVIII of the Act and of corresponding HCFA regulations may be requested for projects conducted under section 222(a) of the Social Security Amendments of 1972 (Pub. L. 92–603), as amended, and section 402 of the Social Security Amendments of 1967 (Pub. L. 90–248), as amended. (See 42 U.S.C. 1395b–1.) The waivers requested must relate to an experimental or demonstration project that involves changes in the benefit package or method of payment. In applying for these waivers or changes in payment or Federal financial participation, the applicant must provide sufficient budgeting information to permit estimates of the likely costs or savings of the project compared to the normal Federal program costs. That is, the application must furnish the estimated yearly costs, before waivers and after waivers, for both program and administrative costs.

4. Methodology for Estimated Gross Costs of Projects Involving Waivers

We have a methodology to be used in estimating gross and net waiver costs. A description of this methodology may be obtained by contacting Carl Hackerman at the address given at the beginning of this notice.

This methodology is subject to change, and applicants are therefore instructed to ensure they are using the current methodology.

IV. Cooperative Agreements and Grants—General Information

A. Authorities

Our authority for making these awards is based on the following:

1. The Social Security Act, section 1110, 42 U.S.C. 1310, concerning Medicaid cooperative research or demonstration projects, and section 1115(a), 42 U.S.C. 1315(a), concerning Medicaid demonstration projects.

2. The Social Security Act, section 1875, 42 U.S.C. 1395ll, concerning Medicare studies and recommendations for cooperative agreements only, and section 1881(f), 42 U.S.C. 1395rr(f), concerning end-stage renal disease experiments and pilot projects.

3. Section 402 of the Social Security Amendments of 1967 (Public Law 90–248), as amended, 42 U.S.C. 1395b–1, concerning Medicare and Medicaid experiments and demonstration projects.

4. Section 222(a) of the Social Security Amendments of 1972 (Public Law 92–603), as amended, 42 U.S.C. 1395b–1 (note), concerning experiments and demonstration projects pertaining to prospectively-based payment systems.

5. The Social Security Act, section 1881(c)(7), 42 U.S.C. 1395rr(c)(7), concerning the national end-stage renal disease registry.

B. Regulations

General policies and procedures that govern the administration of all HHS cooperative agreements and grants are located in title 45 of the CFR, parts 74 and 92. Applicants are urged to review the requirements contained in those regulations.

C. Duration of Funding

We fund projects for a period of 1 year at a time and may continue funding on a noncompetitive basis, generally for up to 3 years, if we made the original award as a multiple year project. Continuation funding is contingent on the availability of future year funds, the applicant's ability to meet prior year project objectives, and whether continued funding is in the best interest of the Government. We treat applicants that seek to continue a project for a longer period of time than that stated in the original awards as applicants for new projects. Thus, they must compete for available funds, and we will review these applications competitively along with all other new applications. Under this announcement, we do not intend to award grants or cooperative agreements with performance periods longer than 3 years.

Applications received for projects of more than 3 years duration will be considered, but they will be carefully analyzed to determine if the period of performance can be shortened by curtailing some of the activities. Under rare circumstances, and if the Government determines that the time period cannot be reduced, awards of more than 3 years duration are possible.

V. Application Procedures

A. Priority Area Designation

Each application should be limited to one of the priority areas described earlier. The application must include in the project title block the priority area title to which the applicant is responding. If we determine a different priority area is a more appropriate area for consideration of a proposal, we reserve the right to change priority area designation without notifying the applicant. (An application being submitted for an unsolicited area should identify the program area from among those listed earlier into which the application most clearly fits.)

B. Criteria for Screening and Reviewing Applications

1. Screening Requirements

In order for an application to be in conformance, it must meet all of the requirements listed below. Applications that do not meet these screening requirements will not be considered for funding/approval by the review panels.

a. Length. The applicant should provide a brief (1 or 2 paragraph) abstract summarizing the objectives of the proposal. A summary, not to exceed 5 pages, of the proposed project must be included. This summary should discuss the project objectives, hypotheses to be examined, data to be used and their source(s), model type(s) and structure(s) to be used in analyses, resources available to conduct the project, and amount and duration of support requested. The narrative portion of the application should be typewritten, single-sided, and should not exceed 50 (for a research proposal) or 80 (for a demonstration proposal) double-spaced pages, exclusive of resumes, forms, and so forth. Applications should be neither unduly elaborative nor contain voluminous or unnecessary documentation.

b. Number of copies. An original signed application and 14 copies must be submitted. Medicaid State agencies are required to submit an original signed application and two copies. Additional copies—up to a maximum of 10—would assist in the processing of the application.

c. HCFA priorities. Those projects that specifically address a priority area/topic stated in this announcement generally will receive preference. Applications determined by HCFA or the review panel to be unrelated to our announced priorities will not generally be considered for funding.

2. Evaluation Criteria

Applications that meet the screening criteria will be reviewed by a technical review panel composed of at least three individuals. Reviewers will score the applications basing their scoring decisions and approval recommendations on the following criteria. (Relative weights are shown in parentheses.)

a. Project methodology/design. (40 points) The application describes specific plans for conducting the project in terms of the tasks to be performed. It includes relevant information about: Hypotheses to be tested (if applicable); concise and clear statement of goals and measurable/achievable objectives; what the project will do and how it relates to similar work done in the area; how the project will be conducted; data to be collected (including specification of data sources); plan for data analysis; and milestones/phases in the progress of the project.

Specifically, the proposal should contain the following:

(i) A clear, quantifiable statement of the project goals and objectives.

(ii) An explicit description of the research design, including the questions to be addressed and the methods and data to be used. The methodology must be well defined and scientifically valid.

(iii) If the project is a demonstration proposal, the applicant should include separate sections on both the research design and the evaluation design. The research design section should include a detailed description of the payment methodology and other programmatic changes. The evaluation section should provide an indication of the applicant's understanding of the evaluation issues and the various approaches to them. Should an award be made, the applicant may be required to collect data in a standardized manner to facilitate evaluation efforts. We will have the option of determining whether the applicant or HCFA will be responsible for the evaluation.

(iv) Demonstrations must contain a phase-down/phase-out plan that:

(A) Ensures that Medicare and Medicaid beneficiaries, as well as any other project participants, are phased out of any special programs that were initiated and exist as payable or covered health services only under the auspices of the project, or ensures that plans are in effect to provide other care for the project participants by the date the project is scheduled to end; and

(B) Ensures that any new payment methods initiated by the project will cease to apply at the end of the project (that is, the project in and of itself cannot commit the Medicare or Medicaid programs to an indefinite use of the payment methodology beyond the end of the project).

(v) The tasks and milestones must be clearly described and must include a schedule of reports to be submitted to HCFA (Progress and Financial Reports as required by 45 CFR parts 74 and 92).

(vi) The application must contain information specifying the availability of the data to be used, if data are to be collected. The discussion must describe the nature of the data sought, the sample design and size controls, comparisons of any data, and the problems that might be encountered in collection. Data that are collected under a HCFA cooperative agreement or grant must be available to HCFA or its agents. The applicant, however, must ensure the confidentiality of any personally identifiable information collected under the auspices of any HCFA cooperative agreement or grant. The application must contain detailed plans to protect the confidentiality of all information that identifies individuals under the project. The plan must specify that this information is confidential, that it may not be disclosed directly or indirectly except for purposes directly connected with the conduct of the project, and that in all cases where disclosure takes place for any purpose not directly connected with the conduct of the project, the informed written consent of the individual must be obtained.

(vii) Projects that require waivers (for example those under section 1115(a) of the Act, section 222(a) of Public Law 92–603, as amended, and section 402(b) of Public Law 90–248, as amended) must define the services, list the waivers, discuss the implications if these waivers are granted, and state the effect on Federal, State, and local laws as well as the effect (beneficial or adverse) on individuals enrolled in the project. If the project involves both Medicare and Medicaid waivers, a request for Medicaid waivers from the State agency administering the Medicaid program must be included with the application. Applicants should contact HCFA for further information if questions arise in these cases.

b. Knowledge/experience/capability in area. (20 points) The application describes the applicant's prior experience in the area or in related areas. The principal investigator and other key staff are qualified and possess the experience in this or related areas and the variety of skills required to produce final results that are readily comprehensible and usable. The application should provide evidence of understanding and knowledge of prior and ongoing work in the area. Specific information also must be provided concerning how the personnel are to be organized in the project, to whom they will report, and how they will be used to accomplish specific objectives or portions of the project.

c. Level of effort. (20 points) The resources that will be needed to conduct the project are specified, including personnel, time, budget, and facilities. The staffing pattern clearly links responsibilities/levels of efforts to project tasks. The project's costs are reasonable in view of the anticipated results. Any collaborative effort (including subcontracts) with other organizations is clearly identified and written assurances included. A description by category (personnel, travel, consultants, and so forth) of the total of the Federal funds required is included. Funds are specified for each budget period. Specifically, the application should contain the following:

(i) Information specifying the availability of adequate facilities and equipment for the project or clearly state how these are to be obtained.

(ii) The budget must be developed in detail with justifications and explanations for the amount requested. The estimated costs must be reasonable considering the anticipated results.

(iii) Applicants are expected to contribute towards the project costs. Generally 5 percent of the total costs is considered acceptable. No demonstration project will be awarded that covers 100 percent of the project's costs. The budget may not include costs for construction or remodeling or for project activities that take place before the applicant has received official notification of our approval of the project.

(iv) For demonstration projects involving waivers, budget estimates for administrative and service costs must be prepared in accordance with the prescribed methodology. Such applications also must contain estimates, prepared in accordance with the prescribed methodology in this announcement, of the amount of program and administrative expenditures that will occur under the waivers and a comparison of these expenditures to those that are projected to occur in the program in the absence of the waivers.

(v) Each application must include a statement that, if the project is awarded, the awardee will furnish quarterly reports of expenditures for administrative and program costs (and, for demonstration projects involving waivers, for service costs) for the project within the approved budget in the format to be specified under special terms and conditions in the cooperative agreement or grant.

d. Project objectives and expected outcomes. (20 points) How closely do the project objectives fit those of the solicitation? What is the intrinsic merit of the research/study? The need for the project is discussed in terms of the importance of the issues to be addressed and the particular project proposed, as well as how the proposed project builds on and expands previous work in the area. The application should discuss plans for utilization of the project's results, for the potential usefulness of the anticipated results, and expected benefits to HCFA and other target groups.

VI. Other Considerations

A. Selection Criteria for Funding New Projects

Although the recommendations of the technical review panels are a major factor in making the decision about an application, scores and recommendations are not the only factors. The compatibility of applications to our priorities as judged by HCFA Senior Staff, the availability of HCFA resources, and the comments of other HCFA and Department staff are considered in making funding decisions.

B. Other Requirements

1. This program is not covered by Executive Order 12372, "Intergovernmental Review of Federal Programs."

2. Applications approved by us for funding will contain a specific set of special terms and conditions that are applicable upon the applicant's acceptance of the award.

These include the following:

a. The HCFA project officer will be notified before formal presentation of any report or statistical or analytical material based on information obtained through this cooperative agreement. Formal presentation includes papers, articles, professional publications, speeches and testimony. In the course of this research, whenever the principal investigator determines that a significant new finding has been developed, he or she will immediately communicate it to the HCFA project officer before formal dissemination to the general public. As required by section 511 of the Departments of Labor, Health and Human Services, and Education and Related Agencies Appropriations Act of 1990 (Pub. L. 101–166), the awardee, whenever issuing statements, press releases, requests for proposals, bid solicitations, and other documents (including reports and published articles) concerning this project or findings and results from this project, must clearly state (1) the percentage of the total cost of the project financed with Federal money, (2) the dollar amount of Federal funds for the project, and (3) the percentage and dollar amount of the total costs of the project financed by nongovernmental sources. The final report may not be released or published without permission from the HCFA project officer within the first 4 months following receipt of the report by the HCFA project officer. The final report will contain a disclaimer that the opinions expressed are those of the awardee and do not necessarily reflect the opinions of HCFA.

b. At any phase of the project, including the project's conclusion, the awardee, if requested by us, must submit the analytic data file(s) with appropriate documentation, representing the data developed/used in end product analyses generated under the award. The analytic file(s) may include primary data collected, acquired, or generated under the award and/or data furnished by us. The content, format, documentation, and schedule for production of the data will be agreed upon by the principal investigator and the HCFA project officer. The negotiated format(s) could include both file(s) that would be limited to HCFA internal use and file(s) that HCFA could make available to the general public.

c. At any phase of the project, including at the project's conclusion, the awardee, if so requested by us, must deliver to us any materials, systems, or other items developed, refined, or enhanced in the course of the project or under the award. The awardee agrees that HCFA will have royalty-free, nonexclusive, and irrevocable rights to reproduce, publish, or otherwise use and to authorize others to use the items for Federal Government purposes.

d. Any additional specific project requirements.

3. When a project is completed, the awardee must submit a final report. As a minimum, the report must contain the following:

a. Identification of the project director, principal investigator, cooperative agreement or grant number, awardee, and title of the project.

b. Acknowledgment of the support received from us and a disclaimer to the effect that the findings do not necessarily reflect the opinions or policies of HCFA.

c. An executive summary (one or two pages) that provides an overview of the project and highlights significant findings.

d. A description of the initial hypotheses, objectives, and scope of the project.

e. An explanation of the study methodology.

f. A discussion of significant findings and demonstration or research results (and the implications of these results, if any). In the final report, and on a semiannual basis during the course of the project, the awardee must provide a list and copies of all papers presented and of all articles, reports, and other types of publications that result from the project, for inclusion in a subject bibliography system maintained by ORD, HCFA. It is further requested that the awardee continue to provide the updated information for 2 years after the project's completion. The ORD "Author's Guidelines for Cooperative Agreements, Grants and Contracts" should be used in preparing the final report. This document is available on request from the ORD Publications Coordinator, room 1–C–9 Oak Meadows Building, 6325 Security Boulevard, Baltimore, Maryland 21207–5187, (410) 966–6885.

C. Multiple Applications

The applicant must indicate when the same or a similar application is submitted to another HHS agency, for example, the Social Security Administration or one of the Public Health Service programs.

D. Cooperative Agreement and Grant Policies

Projects are funded through a competitive process and chosen from among the applications submitted in response to this announcement. In the case of demonstration projects, all awardees are expected to share directly in the costs of the project. Normally, this sharing must be at least 5 percent

of the total project costs. For section 1115(a) of the Act projects, the amount that the single State agency will be expected to provide generally must be at least 5 percent of the special Federal project funds.

If, following review of a proposed activity, we determine that a research or demonstration project presents a danger to the physical or mental well-being of a participant of the project, Federal funds will not be made available for that project without the written informed consent of each participant. Other policies, including responsibilities, awarding and payment procedures, special provisions, and assurances, may be found in 45 CFR parts 74 and 92.

It is a national policy to place a fair share of purchases with small, minority-owned, and woman-owned business firms. HHS is strongly committed to the objectives of this policy and encourages all recipients of its cooperative agreements and grants to take affirmative steps to ensure such fairness; in particular, recipients should (1) place small, minority-owned, and woman-owned business firms on bidders' mailing lists, (2) solicit these firms whenever they are potential sources of supplies, equipment, construction, or services, (3) where feasible, divide total requirements into smaller needs and set delivery schedules that will encourage participation by these firms, and (4) use the assistance of the Minority Business Development Agency of the Department of Commerce, the Office of Small and Disadvantaged Business Utilization, HHS, and similar available State and local government agencies.

VII. Review of Applications

An independent review will be conducted by a panel of not less than three experts. The panel will include experts from both HHS and the private sector. There will be at least one independent review panel for each priority area. An ORD chairperson will coordinate the panel's review but will not vote. The chairperson will also prepare the panelists' recommendations (summary statement) to the Director, ORD. The panelists' recommendations will contain numerical ratings (based on the specified rating criteria), ranking of all applications, and a written assessment of each application. These will be summarized in a ranking and approval list and in a matrix that will be prepared for each application. When the panelists determine that an application is unrelated to the announced funding priorities, numerical ratings will generally not be assigned to the application, and the application will generally not be considered for funding. Applicants may request in writing a copy of the summary statement of the review of their application after they have received from HCFA the letter announcing approval or disapproval. Summary statements will be made available subject to the applicable limitations of the Freedom of Information Act (5 U.S.C. 552), the Federal Advisory Committee Act (5 U.S.C. App. 2), the Privacy Act (5 U.S.C. 552a), and 45 CFR parts 5, 5b, and 11.

VIII. Closing Date and Time

In order to be considered under this announcement, for the annual funding cycles for FYs 1994, 1995, and 1996, a cooperative agreement and grant application, as described in sections I and III of this notice, must be submitted to HCFA by March 24, 1994, by February 7, 1995, or by February 6, 1996, respectively. Submissions by facsimile (FAX) transmission will not be accepted. Applications mailed through the U.S. Postal Service or a commercial delivery service will be "on time" if they are received on or before the closing date, or sent on or before the closing date and received in time for submission to the independent review group. Applicants are cautioned to request a legible U.S. Postal Service postmark or to obtain a legibly dated receipt from the commercial carrier or the U.S. Postal Service. Privately metered postmarks will not be acceptable as proof of timely mailing. Applications that do not meet the above criteria will be considered late applications. Those submitting late applications will be notified that the applications were not considered in the current competition.

Authority: Sections 1110, 1115(a), 1875, 1881(c)(7) and 1881(f) of the Social Security Act (42 U.S.C. 1310, 1315(a) 1395ll, 1395rr(c)(7) and 1395rr(f)); section 402 of the Social Security Amendments of 1967, as amended (42 U.S.C. 1395b-1); section 222(a) of the Social Security Amendments of 1972, as amended (42 U.S.C. 1395–1 (note)).

(Catalog of Federal Domestic Assistance Program No. 93.779, Health Financing Research, Demonstrations and Experiments).

Editorial Note: This document was received by the Office of the Federal Register on January 13, 1994.

Dated: July 20, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 94–851 Filed 1–12–94; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–94–3636; FR–3501–N–03]

Notice of Fund Availability for HOPE for Public and Indian Housing Homeownership Program (HOPE 1); Amendment to 1993 NOFA

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of amendment.

SUMMARY: This NOFA Amendment decreases the amount of funds made available for implementation grants for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1) due to a Congressional rescission of funds.

FOR FURTHER INFORMATION CONTACT: Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410: Gary Van Buskirk, Office of Resident Initiatives, room 4112, telephone (202) 708–4233. To provide service for persons who are hearing- or speech-impaired, this number may be reached via TDD by dialing the Federal Information Relay Service on 1–800–877–TDDY, 1–800–877–8339, or 202–708–9300. (Telephone numbers, other than "800" TDD numbers, are not toll-free.)

SUPPLEMENTARY INFORMATION: On August 2, 1993, the Department published a NOFA announcing the availability of $182,047,160 in funding for implementation grants for the HOPE for Public and Indian Housing Homeownership Program (HOPE 1) (58 FR 41126). On September 1, 1993 the Department published an amendment to the NOFA increasing the funding being made available by $24,000,000 from $182,047,160 to $206,047,160 due to a reprogramming action (58 FR 46209). The funds were appropriated by the Departments of Veterans Affairs and Housing and Urban Development, and Independent Agencies Appropriation Acts for fiscal year 1992 (Pub. L. 102–139, approved October 28, 1991) and fiscal year 1993 (Pub. L. 102–389, approved October 6, 1992). In its Fiscal Year 1994 appropriations bill for the Department of Housing and Urban Development, Congress rescinded $45,000,000 from the amounts remaining available for the HOPE for Public and Indian Housing Homeownership program under the Department's fiscal year 1992 appropriation (Pub. L. 102–139) and $130,000,000 from the amounts remaining available under the Department's fiscal year 1993 appropriation (Pub. L. 102–389) for a total rescission of $175,000,000 in the amount of funds made available under the previously published NOFA and amendment. Accordingly, the HOPE 1 NOFA published on August 2, 1993 and amended on September 1, 1993 is further amended to decrease the amount available from $206,047,160 to $31,047,160.

Dated: January 6, 1994.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 94–845 Filed 1–12–94; 8:45 am]

BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Notice of Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to Section 10(c) of the Endangered Species Act of 1973, *as amended* (16 U.S.C. 1531, *et seq.*):

Applicant: Konopacky Environmental, Meridian, ID, PRT–785643.

The applicant requests a permit to take (collect) Utah valvata snail (*Valvata utahensis*), Banbury Springs limpet (*Lanx* spp.), Idaho Spring snail (*Pyrgulopsis idahoensis*), Bliss Rapids snails (Undescribed hydrobiid genus & species), and Snake River Physa snail (*Physa natricina*) to determine their presence or absence in the Snake River Drainage, Idaho.

Applicant: San Diego Zoo, San Diego, CA, PRT–785441.

The applicant requests a permit to import 2 female captive-bred Persian fallow deer (*Dama dama mesopotamica*) from the Opel Zoo, Kronberg, Germany, for breeding purposes to enhance the survival of the species.

Applicant: Archie Carr Center for Sea Turtle Research, Gainesville, FL, PRT–724540.

The applicant requests a permit to import blood and tissue samples of the following sea turtle species for studies on nutrition, demography, and growth rates: green sea turtle (*Chelonia mydas*), Pacific green sea turtle (*C. m. agassiszi*), loggerhead sea turtle (*Caretta caretta*), hawksbill sea turtle (*Eretmochelys imbricata*), olive (Pacific) ridley sea turtle (*Lepidochelys olivacea*), Kemps' (Atlantic) ridley sea turtle (*Lepidochelys kempii*), and leatherback sea turtle (*Dermochelys coriacea*). Samples will be collected throughout the turtles' range and the live turtles will be released at the site of capture. No animals will be held in captivity.

Applicant: Jardin Zoologica de Puerto Rico, Mayaguez, PR, PRT–784619.

The applicant requests a permit to export one male tiger (*Panthera tigris*) to Parque Zoologico Nacional, Dominican Republic, for breeding purposes to enhance the survival of the species.

Applicant: E.T. Trader, Withams, VA, PRT–785361.

The applicant requests a permit to purchase in interstate commerce 2 pairs of captive-bred Nene geese (*Branta sandvicensis*) for breeding purposes to enhance the survival of the species.

Applicant: National Wildlife Health Research Center, Madison, WI, PRT–783742.

The applicant requests a permit to import sera samples from captive-hatched crane species: white-naped crane (*Grus vipio*), manchurian crane (*Grus joponensis*) and siberian white crane (*Grus leucogeranus*) for scientific research on inclusion body disease.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, *subject to the requirements of the Privacy Act and Freedom of Information Act*, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: January 7, 1994.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 94–814 Filed 1–12–94; 8:45 am]

BILLING CODE 4310–55–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32426]

Laurinburg Oil Company—Merger Exemption—Laurinburg and Southern Railroad Company, et al.

Laurinburg and Southern Railroad Company (LSR),[1] Robeson County Railroad Corporation (RCR),[2] Yadkin Valley Railroad Company (YVR), and Nash County Railroad Corporation (NCRC), nonconnecting rail common carriers within the State of North Carolina, have filed a notice of exemption under 49 CFR 1180.2(d)(3) to merge with and into Laurinburg Oil Company (LOC), a North Carolina corporation. The transaction was to be consummated December 31, 1993. LSR, RCR, YVR, and NCRC are jointly owned with LOC.

The proposed transaction is within a corporate family specifically exempted under section 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The transaction's purpose is to ensure fair and equitable treatment of shareholders, simplify administrative and financial matters, and eliminate unnecessary legal entities and related costs.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in *New York Dock Ry.—Control-Brooklyn Eastern Dist.*, 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed by any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Fritz R. Kahn, Suite 120, 1101 30th Street, NW., Washington, DC 20007.

Decided: January 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–855 Filed 1–12–94; 8:45 am]

BILLING CODE 7035–01–P

[1] LSR controls two inactive railroad carriers: Saltville Railroad Corporation and Franklin County Railroad Corporation. The shares of stock in the two companies will be assigned to Laurinburg Oil Company as a contribution to capital.

[2] A division of RCR operates under the name Red Springs and Northern Railroad Company.

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Advanced Scientific Computing; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and committee code: Special Emphasis Panel in Advanced Scientific Computing (1185).

Date and time: February 4, 1994; 8:30 a.m. to 5 p.m.

Place: Room 380, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Michael McGrath, Program Director, Centers Program, National Science Foundation, 4201 Wilson Boulevard, room 1122, Arlington, VA 22230. Telephone: (703) 306–1970.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate postdoctoral research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 10, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–832 Filed 1–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meetings

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following two meetings:

Date & time: January 31–February 2, 1994; 8:30 a.m. to 5 p.m.

Place: Room 370, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact person: Dr. James R. Estes, Division of Environmental Biology, room 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1483.

Agenda: To review and evaluate Survey and Inventory research proposals as part of the selection process for awards.

Date & time: February 2–4, 1994; 8:30 a.m. to 5 p.m.

Place: Room 330, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Contact person: Dr. Richard F. Dame, Division of Environmental Biology, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Agenda: To review and evaluate Postdoctoral and Midcareer Research Fellowship proposals as part of the selection process for awards.

Type of meetings: Closed.

Purpose of meetings: To provide advice and recommendations concerning support for research proposals submitted to the NSF for financial support.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552(c) (4) and (6) of the Government in the Sunshine Act.

Dated: January 10, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–833 Filed 1–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Chemistry; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and committee code: Special Emphasis Panel in Chemistry (1191).

Date and time: February 17–18, 1994; 8 a.m. to 5 p.m.

Place: Rooms 310, 310.2, 340, 360, 360.2, and 365, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Seymour J. Lapporte, National Science Foundation, Division of Chemistry, Office of Special Projects, 4201 Wilson Boulevard, room 1050, Arlington, VA 22230. Telephone (703) 306–1847.

Purpose of meeting: To provide advice and recommendations concerning applications submitted to NSF for financial support.

Agenda: To review and evaluate applications for Postdoctoral Fellowships in Chemistry as part of the selection process for awards.

Reason for closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 10, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–834 Filed 1–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name and committee code: Special Emphasis Panel in Mechanical and Structural Systems (1205).

Date and time: February 3–4, 1994; 8:30 a.m. to 5 p.m.

Place: Room 340, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. John B. Scalzi, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1361.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate research proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 10, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–835 Filed 1–12–94; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mechanical and Structural Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation (NSF) announces the following meeting:

Name: Special Emphasis Panel in Mechanical and Structural Systems.

Date and time: February 7–8, 1994; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Conference Rooms 380 and 390.

Contact person: Dr. Devendra P. Garg, Program Director, Dynamic Systems and Control, Telephone: (703) 306–1361.

Type of meeting: Closed.

Purpose of meeting: To provide advice and recommendations concerning unsolicited proposals submitted to NSF for financial support.

Agenda: To review and evaluate proposals submitted to the Division of Mechanical and Structural Systems as part of the selection process for awards.

Reason for closing: The proposals being reviewed included information of a proprietary or confidential nature, including technical information, financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: January 10, 1994.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 94–836 Filed 1–12–94; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Postponement of Meeting

A meeting of the 61st Advisory Committee on Nuclear Waste (ACNW) scheduled to be held on Wednesday and Thursday, January 19 and 20, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland has been postponed until February 23 and 24, 1994. Notice of the meeting was published in the **Federal Register** on Thursday, December 23, 1993 (58 FR 68180).

For further information contact: Mr. Richard Major, Chief, Nuclear Waste Branch, (telephone: 301/492–8109) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: January 7, 1994.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 94–839 Filed 1–12–94; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on January 25 and 26, 1994, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, January 25, 1994—8:30 a.m. until the conclusion of business

Wednesday, January 26, 1994—8:30 a.m. until the conclusion of business

The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GENE) Advanced Boiling Water Reactor (ABWR) design and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Representatives of GENE and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: January 7, 1994.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 94–840 Filed 1–12–94; 8:45 am]

BILLING CODE 7590–01–M

[General License 10 CFR 150.20 EA 92–102]

Modified Confirmatory Order; American Testing and Inspection, Inc. Country Club Hills, IL

I

American Testing and Inspection, Inc. (ATI), was formerly holder or State of Illinois Byproduct Material License No. 01085–01 (License) issued on January 8, 1988. The License authorized the possession and use of sealed sources of iridium–192 in industrial radiographic exposure devices to perform licensed activities within the State of Illinois. Pursuant to 10 CFR 150.20 and its License, ATI was authorized to possess and use licensed byproduct materials to perform industrial radiography in non-Agreement States. ATI's License expired on August 31, 1992. The License was transferred to McNDT Leasing, Inc. and amended in its entirety in accordance with letters dated August 31, 1992 and September 3, 1992.

II

An inspection by the Nuclear Regulatory Commission (NRC) was conducted on February 12 through March 27, 1992, of ATI's activities that were conducted in the States of Indiana and Michigan (non-Agreement States). Six violations were identified, including (1) the failure to file NRC Form 241 on 174 days in 1991 when performing radiography in non-Agreement States in accordance with 10 CFR 150.20(b)(1); (2) performing radiography in non-Agreement States on more than 180 days within calendar year 1991 in violation of 10 CFR 150.20(b)(3); and (3) the failure of ATI to have a qualified independent organization observe ATI's radiographers or conduct an audit of ATI's radiation safety program in violation of Section IV.C. of an Order Modifying License that was issued by the NRC to ATI on November 30, 1989.

The NRC issued Enforcement Action (EA) 92–102 against ATI consisting of a Notice of Violation and Proposed Imposition of Civil Penalty-$15,000 (Notice) dated October 7, 1992. Mr. Ronald Preston, formerly President, ATI, responded on November 30, 1992, to the Notice admitting the violations, but requesting that the proposed civil penalty be vacated since ATI had gone into Chapter 7 bankruptcy and ceased industrial radiography operations. The Notice did not preclude Mr. Preston from performing radiography under another licensee's Agreement State license and, pursuant to 10 CFR 150.20, from engaging in licensed activities in NRC jurisdiction.

A Confirmatory Order was issued on March 24, 1993, which constituted settlement of the civil penalty proposed in the Notice. In that Order, the civil penalty was withdrawn on the basis of Mr. Preston's inability to pay the $15,000 civil penalty and subsequent proposal that for a period of three years, he, ATI, or a successor entity wherein Mr. Preston is an authorized user, radiographer, radiographer's assistant, Radiation Safety Officer, an Assistant Radiation Safety Officer, an officer, or a controlling stockholder, would not apply to the NRC for a new license, nor would Mr. Preston, ATI, or a successor entity, as described above, engage in

licensed activities within NRC jurisdiction for that same period of time.

IV

The Confirmatory Order was executed on March 24, 1993. In August and September 1993, Mr. Preston indicated a financial need to engage in licensed activities; however, he remained unable to pay the $15,000 civil penalty. Specifically, on September 23, 1993, Mr. Preston contacted Ms. Patricia A. Santiago of the NRC Office of Enforcement, and indicated he was unable to obtain a loan or funds and requested that he be permitted to work as an assistant radiographer. In light of the fact that Mr. Preston has recognized the violations that led to the previous enforcement action, and Mr. Preston's inability to pay the $15,000 civil penalty and need to earn a livelihood, the NRC has reconsidered its previous order, and is satisfied that with the protections afforded by the supervision provided to an assistant radiographer, the Confirmatory Order may be modified as set forth below consistent with protection of the public health and safety. The NRC is willing to modify the Confirmatory Order to permit Mr. Preston to work as an assistant radiographer, with the addition of certain notice requirements.

V

Accordingly, pursuant to sections 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR parts 30, 34, and 150, it is hereby ordered, stipulated and agreed between the NRC and Mr. Preston as follows:

1. Except as provided in paragraph 4 below, the NRC withdraws the civil penalty of $15,000 as proposed in the Notice dated October 7, 1992 (EA 92–102);

2. Until March 23, 1996, Mr. Preston, ATI, or any successor entity, wherein Mr. Preston is an authorized user, radiographer, Radiation Safety Officer, an Assistant Radiation Safety Officer, an officer, or a controlling stockholder, will not apply to the NRC for a new license.

3. From the date Mr. Preston signs this Modified Confirmatory Order until March 23, 1996, Mr. Preston may engage in licensed activities within NRC jurisdiction only as an assistant radiographer. He may not act as a radiographer, supervisor, or Radiation Safety Officer within NRC jurisdiction. If Mr. Preston acts as an assistant radiographer within NRC jurisdiction during this period, he shall:

a. Notify the Regional Administrator, NRC Region III, 799 Roosevelt Road, Glen Ellyn, Illinois, 60137, at least five days prior to his being employed to perform work as an assistant radiographer within NRC jurisdiction. The Notice shall include the name, address, and telephone number of the NRC or Agreement State licensee; and

b. Provide a copy of this Modified Confirmatory Order to any employer holding either an NRC license or an Agreement State license performing licensed activities in NRC jurisdiction, prior to his performing work for that employer as an assistant radiographer.

4. Notwithstanding the provisions of paragraph 1, above, in the event that Mr. Preston, ATI, or a successor entity violates paragraph 3 of this Section, then the civil penalty of $15,000 will be reinstated by an Order Imposing Civil Penalty and the civil penalty of $15,000 will be due in full within 30 days of the date of that Order Imposing Civil Penalty.

5. Mr. Preston, ATI, and any successor entity waive the right to contest this Modified Confirmatory Order in any manner, including requesting a hearing on this Amended Confirmatory Order or the Order Imposing Civil Penalty, should one be issued as provided in paragraph 4 of this Section.

For the Nuclear Regulatory Commission.

Dated: January 5, 1994.

James Lieberman,

Director, Office of Enforcement.

For American Testing and Inspection, Inc. and Ronald Preston.

Dated: December 1, 1993.

Ronald Preston,

Former President, American Testing and Inspection, Inc.

[FR Doc. 94–704 Filed 1–12–94; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–390 50–391]

Tennessee Valley Authority; Watts Bar Nuclear Plant, Units 1 and 2

Order

Tennessee Valley Authority (the permittee) is the current holder of Construction Permit Nos. CPPR–91 and CPPR–92, issued by the Atomic Energy Commission on January 23, 1973, for construction of the Watts Bar Nuclear Plan, Units 1 and 2. These facilities are currently under construction at the permittee's site on the west branch of the Tennessee River approximately 50 miles northeast of Chattanooga, Tennessee.

On November 10, 1993, the Tennessee Valley Authority filed a request pursuant to 10 CFR 50.55(b) for an extension of the completion dates. The permittee requested this extension for Unit 1 because, at the time the last extension was requested, the permittee could only make a best estimate of the extra time needed to complete construction and modification, and under-estimated. Furthermore, to ensure that Unit 1 has been properly constructed, the permittee is performing a comprehensive Preoperational Testing Program, instead of relying on preoperational test results obtained a few years ago.

The permittee requested extension for Unit 2 because it plans to complete Unit 2 only after Unit 1 enters operation successfully.

The NRC staff has concluded that good cause has been shown for the delays, the extension is for a reasonable period, and that this action involves no significant hazards consideration, the basis for which are set forth in the staff's evaluation.

The NRC staff has prepared an environmental assessment and finding of no significant impact which was published in the **Federal Register** on December 14, 1993.

Pursuant to 10 CFR 51.32, the Commission has determined that extending the construction completion dates will have no significant impact on the environment.

The applicant's letter dated November 10, 1993, and the NRC staff's letter and Safety Evaluation of the request for extension of the construction permits, dated December 14, 1993, are available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the Chattanooga-County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

It is hereby ordered that the latest completion dated for Construction Permit No. CPPR–91 is extended from December 31, 1993 to December 31, 1994 and the latest completion date for Construction Permit No. CPPR–92 is extended from June 30, 1997 to December 31, 1999.

Dated at Rockville, Maryland, this 14th day of December 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 94–841 Filed 1–12–94; 8:45 am]

BILLING CODE 7590–01–M

POSTAL RATE COMMISSION

[Docket No. A94–6 and Order No. 1000]

Notice and Order Accepting Appeal and Establishing Procedural Schedule Under 39 U.S.C. 404(b)(5)

Issued January 7, 1994.

In the Matter of: Poland, Maine 04273 (Herbert Bunker, Petitioner) Before Commissioners: W.H. "Trey" LeBlanc III, Vice Chairman; George W. Haley; H. Edward Quick, Jr.; Wayne A. Schley.

Docket Number: A94–6.

Name of Affected Post Office: Poland, Maine 04273.

Name(s) of Petitioner(s): Herbert Bunker.

Type of Determination: Closing.

Date of Filing of Appeal Papers: January 3, 1994.

Categories of Issues Apparently Raised:

1. Effect on postal services (39 U.S.C. 404(b)(2)(C)).
2. Effect on the community (39 U.S.C. 404(b)(2)(A)).
3. Economic savings (39 U.S.C. 404(b)(2)(D)).

After the Postal Service files the administrative record and the Commission reviews it, the Commission may find that there are more legal issues than those set forth above. Or, the Commission may find that the Postal Service's determination disposes of one or more of those issues.

The Postal Reorganization Act requires that the Commission issue its decision within 120 days from the January 3, 1994 filing date of this appeal (39 U.S.C. 404(b)(5)). In the interest of expedition, in the light of the 120-day decision schedule, the Commission reserves the right to request the Postal Service to submit memoranda of law on any appropriate issue. If requested, such memoranda will be due 20 days from the issuance of the request and the Postal Service shall serve a copy of its memoranda on the petitioner. The Commission reserves the right to ask the petitioner for more information.

If the Postal Service files a brief or motion to dismiss or a motion to affirm the appeal, the Postal Service may incorporate by reference any memoranda it previously filed in this docket.

The Commission Orders

(a) The Postal Service shall file the record in this appeal by January 18, 1994.

(b) The Secretary of the Postal Rate Commission shall publish this Notice and Order and Procedural Schedule in the **Federal Register.**

By the Commission.

Charles L. Clapp,

Secretary.

Appendix

January 3, 1994
Filing of Appeal Letter
January 7, 1994
Commission Notice and Order of Filing of Appeal
January 28, 1994
Last day of filing of petitions to intervene (see 39 CFR 3001.111(b))
February 7, 1994
Petitioner's Participant Statement or Initial Brief (see 39 CFR 3001.115 (a) and (b))
February 28, 1994
Postal Service's Answering Brief (see 39 CFR 3001.115(c))
March 15, 1994
Petitioner's Reply Brief should the Petitioner choose to file one (see 39 CFR 3001.115(d))
March 22, 1994
Deadline for motions by any party requesting oral argument. The Commission will schedule oral argument only when it is a necessary addition to the written filings (see 39 CFR 3001.116)
May 2, 1994
Expiration of the Commission's 120-day decisional schedule (see 39 U.S.C. 404(b)(5))

[FR Doc. 94–826 Filed 1–12–94; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33442; File No. SR–CBOE–93–49]

Self-Regulatory Organizations; Order Approving a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Listing of Options and Long-Term Options on the CBOE Gaming Index and Long-Term Options on a Reduced-Value Gaming Index

January 6, 1994.

I. Introduction

On October 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to provide for the listing and trading of index options on the CBOE Gaming Index ("Gaming Index" or "Index"). Notice of the proposal appeared in the **Federal Register** on November 18, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

II. Description of Proposal

A. General

The CBOE proposes to list and trade options on the CBOE Gaming Index, an index developed by the CBOE. The CBOE also proposes to list either long-term options on the full-value Index or long-term options on a reduced-value Index that will be computed at one-tenth of the value of the Gaming Index ("Gaming LEAPS" or "Index LEAPS").[4] Gaming LEAPS will trade independent of and in addition to regular Gaming Index options traded on the Exchange.[5]

B. Composition of the Index

The Index is based on fifteen gaming industry stocks. Eight of those stocks currently trade on the New York Stock Exchange, Inc. ("NYSE"), and seven currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[6] The Index is price-weighted and will be calculated on a real-time basis using last sale prices.

As of December 31, 1993, the Index was at 244.52. As of October 20, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $5.08 billion to a low of $137.123 million, with the mean and median being $1.305 billion and $447.6 million, respectively. The market capitalization of all the stocks in the Index was $19.581 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 122.571 million shares to a low of 9.066 million shares. The average price

[3] See Securities Exchange Act Release No. 33173 (November 9, 1993), 58 FR 60889 (November 18, 1993).

[4] LEAPS is an acronym for Long-Term Equity Anticipation Securities. LEAPS are long-term index option series that expire from twelve to thirty-six months from their date of issuance. See CBOE Rule 24.9(b)(1).

[5] According to the CBOE, the S&P Gaming Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, the CBOE concludes, should offer investors a low-cost means to achieve diversification of their portfolios toward or away from the gaming industry. The CBOE believes the Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed gaming industry funds, as well as a means of hedging the risks of investing in the gaming industry.

[6] All seven NASDAQ component stocks are currently qualified for and traded on the NASDAQ National Market.

per share of the stocks in the Index, for a six-month period between April 1 and September 30, 1993, ranged from a high of $56.15 to a low of $7.92. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 1,099,278 shares per day to a low of 93,627 shares per day, with the mean and median being 384,389 and 351,635 shares, respectiveiy. Lastly. no one stock comprised more than 16.19% of the Index's total value and the percentage weighting of the five largest issues in the Index accounted for 55.51% of the Index's value. The percentage weighting of the lowest weighted stock was 1.57% of the Index and the percentage weighting of the five smallest issues in the Index accounted for 16.28% of the Index's value.

C. Maintenance

The Index will be maintained by the CBOE. The CBOE may change the composition of the Index at any time to reflect the conditions in the gaming industry. If it becomes necessary to replace a stock in the Index, the Exchange represents that it will make every effort to add new stocks that are representative of the gaming industry and will take into account a stock's capitalization, liquidity, volatility, and name recognition. Further, stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of Index component stocks to fewer than ten, the proposal provides that the CBOE will submit a rule filing with the Commission pursuant to Section 19(b) of the Act. In addition, in choosing replacement stocks for the Index, the CBOE will be required to ensure that at least 90% of the weight of the Index continues to be made up of stocks that are eligible for standardized options trading. [7]

D. Applicability of CBOE Rules Regarding Index Options

Except as modified by this order, the rules in Chapter XXIV of the CBOE Rules will be applicable to Gaming Index options. Those rules address, among other things, the applicable position and exercise limits, policies regarding trading halts and suspensions, and margin treatment for both broad and narrow-based index options.

[7] See note 22, *infra*.

E. Calculation of the Index

The CBOE Gaming Index is a price-weighted index and reflects changes in the prices of the Index component stocks relative to the Index's base date. Specifically, the Index value is calculated by adding the prices of the component stocks and them dividing this summation by a divisor that is equal to the number of stocks in the Index to get the average price. To maintain the continuity of the Index, the divisor will be adjusted to reflect non-market changes in the prices of the component securities as well as changes in the composition of the Index. Changes which may result in divisor adjustments include, but are not limited to, stock splits and dividends, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index will be calculated continuously and will be disseminated to the Options Price Reporting Authority ("OPRA") every fifteen seconds by the CBOE, based on the last-sale prices of the component stocks. [8] OPRA, in turn, will disseminate the Index value to other financial vendors such as Reuters, Telerate, and Quotron.

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration. In the case of securities traded on and trough the NASDAQ National Market, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (*i.e.*, Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for purposes of determining the settlement value of the Index, the CBOE will wait until the end of the trading day on expiration Friday. [9]

F. Contract Specifications

The proposed options on the Index will be cash-settled, European-style options. [10] Standard options trading hours (8:30 a.m. to 3:10 p.m.) Central Standard time) will apply to the contracts. The Index multiplier will be 100. The strike price interval will be $5.00 for full-value Index options with a duration of one year or less to expiration. [11] In addition, pursuant to CBOE Rule 24.9, there will be six expiration months outstanding at any given time. Specifically, there will be three expiration months from the March, June, September, and December cycle plus three additional near-term months so that the two nearest term months will always be available. As described in more detail below, the Exchange also Intends to list several Index LEAP series that expire from twelve to thirty-six months from the date of issuance.

Lastly, the options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Accordingly, since options on the Index will settle based upon opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Gaming Index

The proposal provides that the Exchange may list long-term Index options that expire from 12 to 36 months from listing on the full-value Gaming Index or a reduced-value Gaming Index that will be computed at one-tenth the value of the full-value Index. Existing Exchange requirements applicable to full-value and reduced-value LEAPS will apply to full-value and reduced-value Index LEAPS. [12] Also, the current and closing Index value for reduced-value Gaming LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, a Index value of 185 185.46 would be 18.55 for the Index LEAPS and 185.43 would become 18.54. The reduced-value Index LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

[8] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the CBOE will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[9] *Id.*

[10] A European-style option can be exercised only during a specified period before the option expires.

[11] For a description of the strike price intervals for reduced-value Index options and long-term Index options, See Section G, *infra*.

[12] See CBOE Rule 24.9(b).

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is classified as an Industry Index under CBOE rules, Exchange rules that are applicable to the trading of options on narrow-based indexes will apply to the trading of Gaming Index options and Gaming Index LEAPS. Specifically, Exchange rules governing margin requirements, [13] position and exercise limits, [14] and trading halt procedures [15] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that, for purposes of determining whether a given position in reduced-value Index options complies with applicable position and exercise limits, positions in reduced-value Index options will be aggregated with positions in the full-value Index options. For these purposes, tend reduced-value contracts will equal one full-value contract for purposes of aggregating these positions.

I. Surveillance

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in full-value and reduced-value Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index. [16]

[13] Pursuant to CBOE Rule 24.11, the margin requirements for the Index options will be: (1) For short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long term options positions, 100% of the options premium paid.

[14] Pursuant to CBOE Rules 24.4A and 24.5, respectively, the position and exercise limits for the Index options will be 6,000 contracts, unless the Exchange determines, pursuant to Rules 24.4A and 24.5 that a lower limit is warranted.

[15] Pursuant to CBOE Rule 24.7, the trading on the CBOE of Index options may be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[16] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[17] 15 U.S.C. 78f(b)(5) (1988).

[18] Pursuant to Section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the pubic interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Gaming Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks comprising the gaming industry in the U.S. stock markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the gaming industry sector of the U.S. stock markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. Moreover, the Commission believes that the reduced-value Index LEAPS, that will be traded on an index computed at one-tenth the value of the Gaming Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5). [17] Specifically, the Commission finds that the trading of Gaming Index options, including full-value and reduced-value Index LEAPS, will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the gaming industry. [18] The trading of options on the Gaming Index, including full-value and reduced-value LEAPS on the Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the CBOE adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Gaming Index and reduced-value Gaming Index are narrow-based indices. The Gaming Index is comprised of only fifteen stocks, all of which are within one industry—the gaming industry. In addition, the basic character of the reduced-value Gaming Index, which is comprised of the same component securities as the Gaming Index and calculated by dividing the Gaming Index value by ten, is essentially identical to the Gaming Index. [19] Accordingly, the Commission believes it is appropriate for the CBOE to apply its rules governing narrow-based index options to trading in the Index options. [20]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume of 384,389 and 351,635 shares, respectively. [21] Second, the market capitelizations of the stocks in the Index are very large, ranging from a high of $5.08 billion to a low of $37.123 million as of October 20, 1993, with the mean and median being $1.305 billion and $447.566 million, respectively. Third, although the Index is only comprised of fifteen component stocks, no one particular stock or group of stocks dominates the Index. Specifically, no one stock comprises more than 16.19% of the Index's total value and the percentage weighting of the three largest issues in the Index accounting for 37.75% of the Index's value. Fourth, all fifteen stocks in the Index currently are eligible for options trading. [22] The proposed CBOE maintenance requirement that 90% of the weighting of the Index be comprised of stocks that are eligible for options trading will ensure that the Index is almost completely comprised of options eligible stocks. Fifth, if the CBOE increases the number of component stocks to more than twenty or decreases that number to less than ten, the CBOE will be required to seek Commission approval pursuant to Section 19(b)(2) of the Act before listing new strike price or expiration month series of Gaming

[19] See generally Securities Exchange Act Release No. 29994 (November 26, 1991), 56 FR 63536 (December 4, 1991) (order designating the PSE Technology Index as a broad-based index rather than a narrow-based index).

[20] See supra notes 13 through 15, and a accompanying text.

[21] In addition, for the six-month period between April 1 and September 30, 1993, all of the companies comprising the Index had an average daily trading volume greater than 93,627 shares per day.

[22] The CBOE's options listing standards, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months. See CBOE Rule 5.3.

Index options. This will help protect against material changes in the composition and design of the Index that might adversely affect the CBOE's obligations to protect investors and to maintain fair and orderly markets in Gaming Index options. Finally, the Commission believes that the expense of attempting to manipulate the value of the Gaming Index in any significant way through trading in component stocks (or options on those stocks) coupled with, as discussed below, existing mechanisms to monitor trading activity in those securities, will help deter such illegal activity.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Gaming Index options (including full-value and reduced-value Gaming LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the CBOE, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Gaming Index options and Gaming Index LEAPS.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[23] In this regard, the CBOE, NYSE, and NASD are all members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[24]

D. Market Impact

The Commission believes that the listing and trading of Gaming Index options, including full-value and reduced-value Index LEAPS on the CBOE will not adversely impact the underlying securities markets.[25] First, as described above, for the most part, no one stock or group of stocks dominates the Index. Second, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly-capitalized stocks.[26] Third, the position and exercise limits applicable to Index options and Index LEAPS will serve to minimize potential manipulation and market impact concerns. Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Gaming Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[27]

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,[28] that the proposed rule change (SR–CBOE–93–49) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–877 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

[23] Securities Exchange Act Release No. 31243 (September 28, 1992), 57 FR 45849 (October 5, 1992).

[24] See note 16, *supra*. Although the Index currently does not contain ADRs, the proposal provides that the Index could contain ADRs representing gaming industry stocks. If the composition of the Index would change so that greater than 20% of the Index was represented by ADRs whose underlying securities were not subject to a comprehensive surveillance sharing arrangement, then it would be difficult for the Commission to reach the conclusions reached in this order and the Commission would have to determine whether it would be suitable to continue to trade options on the Index. The CBOE should, accordingly, notify the Commission immediately if more than twenty percent of the numerical value of the Index is represented by ADRs whose underlying securities are not subject to a comprehensive surveillance sharing agreement. Such a change in the composition of the Index may warrant the submission of a rule filing pursuant to Section 19 under the Act.

[25] In addition, the CBOE has represented that the CBOE and the Options Price Reporting Authority ("OPRA") have the necessary systems capacity to support those new series of index options that would result from the introduction of Index options and Index LEAPS. See letter from Nancy L. Nielsen, Assistant Corporate Secretary, CBOE, to Sharon Lawson, Assistant Director, Division of Market Regulation, SEC, dated October 26, 1993, and memorandum from Joe Corrigan, Executive Director, OPRA, to Eileen Smith, CBOE, dated October 22, 1993.

[26] See note 22, *supra*.

[27] See Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992).

[28] 15 U.S.C. 78s(b)(2) (1988).

[29] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33430; File No. SR–CBOE–93–51]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to an Extension of the Modified Trading System Pilot Program

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 24, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to extend its Modified Trading System pilot program until November 30, 1994. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change.

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has

prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to extend the operation of the Exchange's Modified Trading System pilot program ("MTS Pilot Program" or Pilot Program').[1] Under Exchange Rule 8.80(a), the MTS Pilot has been authorized by the Commission to operate through September 22, 1993.[2] The proposed rule change would revise Exchange Rule 8.80(a) to extend the MTS Pilot Program until November 30, 1994.

The Exchange's MTS Pilot Program permits the CBOE to assign a Designated Primary Market Maker ("DPM") for options classes. Under the Pilot Program, members appointed as DPMs assume responsibilities and acquire rights in their appointed options classed beyond the obligations and rights of other market makers that trade in the same options class. Specifically, in addition to the normal obligations of a market maker, the DPM assumes additional obligations designed to strengthen the market making in the designated options class, such as (1) assuring that disseminated market quotations are accurate; (2) being present at the training post throughout every business day; (3) resolving trading disputes, subject to Floor Official review; and (4) participating at all times in any automated execution system which may be open in appointed options classes.[3]

When the Commission last extended the MTS Pilot Program in 1991, the Commission stated that prior to granting permanent approval or a further extension of the Pilot Program, the Exchange would have to submit a report discussing various aspects of the Pilot Program.[4] As a result, in connection with this filing, the CBOE has filed such a report with the Commission ("MTS Report").[5] The central findings stated by the Exchange in the MTS Report are that: (1) No complaints have been lodged with the Exchange concerning the operation of the Pilot Program; (2) no disciplinary or performance action has been taken against any Exchange member due to the operation of the Pilot Program; (3) since its inception, use of the Pilot Program by members has consistently increased in terms of the number of DPMs, the number of options classes assigned to DPMs, and the aggregate average daily trading volume associated with options classes assigned to DPMs; and (4) objective and subjective surveys of members conducted by the Exchange's research department have consistently shown that options classes assigned to DPMs are characterized by narrower bid/ask spreads than other options classes listed on the Exchange.[6]

The CBOE believes that the proposed rule change is consistent with Section 6(b) of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade, and perfect the mechanism of a free and open market. Specifically, the Exchange believes that the proposed rule change will continue the operation of a trading system that, in accordance with Section 11A(a)(1)(C)(i) of the Act,[7] assures the economic and efficient execution of securities transactions.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change to extend the MTS Pilot Program until November 30, 1994 is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of Section 6(b)(5) thereunder.[8] Specifically, based on the representations made by the Exchange in the MTS Report, the Commission concludes that the Pilot Program has contributed to the protection of investors and to the Exchange's ability to provide fair and orderly markets in new options products. Additionally, the growth in the use of the MTS Pilot Program as represented by the CBOE, combined with the Exchange's findings that options classes assigned to DPMs are consistently characterized as having narrowing bid/ask spreads than other options classes, leads the Commission to conclude that the Pilot Program is beneficial in achieving fair and orderly markets for options classes. Accordingly, for the reasons stated herein and for the reasons originally articulated in the Commission's order first approving the MTS Pilot Program,[9] the Commission concludes that extending the Pilot Program will further contribute to the protection of investors and to the Exchange's ability to provide fair and orderly markets in new options products.[10]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** in order to permit the uninterrupted continuation of the MTS Pilot Program. As set forth

[1] The MTS was originally approved by the Commission in 1987 as a two-year pilot program. *See* Securities Exchange Act Release No. 24934 (September 22, 1987), 52 FR 36122 (September 29, 1987).

[2] See Securities Exchange Act Release Nos. 27167 (August 22, 1989), 54 FR 35960 (August 30, 1989) (extending MTS Pilot Program until September 22, 1991); and 29935 (November 13, 1991), 56 FR 58595 (November 20, 1991) (extending MTS Pilot Program until September 22, 1993) ("Exchange Act Release No. 29935").

[3] See Exchange Rule 8.80(c)

[4] Specifically, the Exchange was to submit a report addressing: (1) whether there have been any complaints regarding the operation of the Pilot Program; (2) whether the CBOE has taken any disciplinary or performance action against any member due to the operation of the Pilot Program; (3) the number of DPM's involved in the Pilot Program; (4) the extent to which the Pilot Program has been used on the CBOE; (5) whether the CBOE terminated or replaced a DPM and the reasons therefore; (6) the impact of the Pilot Program on the bid/ask spreads, depth and continuity in the CBOE options markets; and (7) whether the CBOE has taken any action or there have been any complaints against DPMs or associated broker-dealers relating to the improper activity as a result of DPM affiliations with upstairs firms. See Exchange Act Release No. 29935, *supra* note 2.

[5] See Letter from Daniel Hustad, Director, Market Procedures and Planning Department, CBOE, to Richard Zack, Branch Chief, Office of Derivatives Regulation, Division of Market Regulation, Commission, dated January 5, 1994.

[6] *Id.*

[7] 15 U.S.C. § 78k–1(a)(1)(C)(i) (1990).

[8] 15 U.S.C. 78f(b)(5) (1982).

[9] See Exchange Act Release No. 24934, *supra* note 1.

[10] The Commission notes, however, that before the pilot program can be approved on a permanent basis or further extended, the CBOE must provide the Commission with a detailed report on the operation of the MTS pilot program incorporating the MTS Report and supplementing it with any new developments arising during this extension of the pilot program.

in the MTS Report, the CBOE has represented that no adverse comments have been received and no problems have arisen in connection with the operation of the MTS Pilot Program since its inception. Furthermore, the Commission has not received any comments opposing the Pilot Program or otherwise indicating that the Pilot Program is operating other than as originally intended. Accordingly, the Commission believes good cause exists for approving the extension of the Pilot Program until November 30, 1994, on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–51 and should be submitted by February 3, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[11] that the proposed rule change (SR–CBOE–93–51) is approved, and, accordingly, the MTS Pilot Program is extended until November 30, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–819 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

[11] 15 U.S.C. 78s(b)(2) (1982).

[12] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33436; File No. SR–CBOE–93–61]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Message Service User Fees

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 29, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to increase the monthly subscriber fees to be paid by members who receive local time and sales microfiche. The text of the proposed rule change is available at the Office of the Secretary, CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The purpose of the proposed amendment is to increase the monthly subscriber fees, effective January 1, 1994, to be paid by members who receive local time and sales microfiche.[1] The current fees, established in 1987, for time and sales microfiche is $250 per month for each copy received. The CBOE represents that increased supplier costs and additional option classes have caused production costs to rise. To cover these costs, the local time and sales microfiche fees will increase to $335 per month for each copy received.

This action is being taken pursuant to CBOE Rule 2.22, which permits the Exchange to impose fees on members for the use of Exchange facilities or for any services or privileges granted by the Exchange.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(4), in particular, in that it is designed to provide for the equitable allocation of reasonable dues, fees, and charges among CBOE members.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes a due, fee, or other charge imposed by the Exchange, it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e)(1) of Rule 19b–4 thereunder. At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the

[1] The Exchange has provided notice of this fee increase to all subscribers of the microfiche service. See Exchange Regulatory Circular #RG93–66 from the CBOE Market Operations Department to the Exchange's Local Time and Sales Microfiche Subscribers, dated December 22, 1993.

Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–61 and should be submitted by February 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–820 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33432; File No. SR–NASD–93–73]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of a Proposed Rule Change by the National Association of Securities Dealers, Inc., Relating to Increased Position and Exercise Limits on Individual Equity Options

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 3, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD proposes to amend Section 3 of Appendix E of the NASD's Rules of Fair Practice ("Section 3") to increase certain of its position and exercise limit rules to conform to certain of the increased limits recently approved by the Commission for the options exchanges.[1] Specifically, the NASD proposes to increase the current position and exercise limits for equity options from 3,000, 5,500, and 8,000 contracts to 4,500, 7,500, and 10,500 contracts, respectively. The text of the proposed rule change is available at the Office of the Secretary, NASD, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The NASD proposes to amend its rules governing position and exercise limits for equity options[2] to conform to similar proposals by the options exchanges which were recently approved by the Commission.[3] Currently, under NASD rules, position and exercise limits are determined according to a "three-tiered" system. Specifically, depending upon the trading volume and float of the underlying security and whether the underlying security underlies an exchange-traded option, the position limit for an equity option is either 3,000, 5,500, or 8,000 contracts.[4] In particular, under Section 3, the 8,000 contract position limit applies to: (1) Exchange-listed options traded by "access"[5] firms with a corresponding 8,000 contract position limit imposed by the options exchange(s) on which the option is traded; and (2) all conventional options[6] overlying equity securities which underlie exchange-traded options that have an 8,000 contract position limit. Similarly, the 5,500 contract position limit applies to: (1) Exchange-listed options traded by access firms with a corresponding 5,500 contract position limit imposed by the options exchange(s) on which the option is traded; and (2) all conventional options overlying equity securities which underlie exchange-traded options that have a 5,500 contract position limit. Lastly, the 3,000 contract position limit applies to: (1) Exchange-listed options traded by access firms with a corresponding 3,000 contract position limit imposed by the options exchange(s) on which the option is traded; and (2) all conventional options overlying equity securities which either underlie exchange-traded options that have a 3,000 contract position limit or do not underlie an exchange-traded option.

Under the proposal, the NASD proposes to increase the current position and exercise limits for equity options from 3,000, 5,500, and 8,000 contracts to 4,500, 7,500, and 10,500 contracts, respectively. Thus, for NASD members that are access firms and all NASD members involved in transactions in conventional options on securities which underlie exchange-traded options, the proposal will conform the NASD's position and exercise limits to the limits of the options exchanges. The proposed amendments also will raise position and exercise limits for conventional options on securities that do not underlie exchange-traded options from 3,000 contracts to 4,500 contracts.

The NASD believes the proposed increases in equity option position and exercise limits are warranted for the following reasons. First, the proposed

[2] 17 CFR 200.30–3(a)(12) (1993).

[1] See Securities Exchange Act Release Nos. 33285 (December 3, 1993), 58 FR 65201 (December 13, 1993) (order approving File No. SR–Amex–93–27); 33283 (December 3, 1993), 58 FR 65204 (December 13, 1993) (order approving File No. SR–CBOE–93–43); 33284 (December 3, 1993), 58 FR 65215 (December 13, 1993) (order approving File No. SR–NYSE–93–41); 33282 (December 3, 1993), 58 FR 65218 (December 13, 1993) (order approving File No. SR–PSE–92–36); and 33288 (December 3, 1993), 58 FR 65221 (December 13, 1993) (order approving File No. SR–Phlx–93–07) (collectively, "1993 Position Limit Approval Orders").

[2] Position limits impose a ceiling on the number of option contracts in each class on the same side of the market (i.e., aggregating long calls and short puts, and long puts and short calls) that can be held or written by an investor or group of investors acting in concert. Exercise limits restrict the number of options contracts which an investor or group of investors acting in concert can exercise within five consecutive business days. Under NASD Rules, exercise limits correspond to position limits, such that investors in options classes on the same side of the market are allowed to exercise, during any five consecutive business days, only the number of options contracts set forth as the applicable position limit for those options classes. See Sections 3 and 4 of Appendix E of the NASD's Rules of Fair Practice.

[3] See supra note 1.

[4] In this connection, the NASD's rules do not specifically govern how a specific equity option falls within one of the three position limit tiers. Rather, the NASD's position limit rule provides that the position limit established by an options exchange for a particular equity option is the applicable position limit for purposes of the NASD's rule. See, e.g., Commentary .07 to American Stock Exchange, Inc. Rule 904.

[5] "Access" firms are NASD members which conduct a business in exchange-listed options but which are not members of any of the options exchanges upon which the options are listed and traded.

[6] Conventional equity options are defined in Section (1)(gg) of Appendix E to the NASD's Rules of Fair Practice to mean "any option contract not issued, or subject to issuance, by The Options Clearing Corporation."

increases will afford market participants greater flexibility to employ larger options positions when effectuating their investment strategies. Second, the NASD believes that the proposed increases likely will facilitate greater activity in exchange-traded options, thereby enhancing liquidity in the markets for exchange-traded options and the securities underlying those options. Third, by conforming the NASD's position and exercise limits to the limits of the options exchanges, the NASD believes there will be no confusion among market participants concerning applicable position and exercise limits. Finally, with respect to equity securities underlying exchange-traded options, market participants will continue to be able to establish conventional options positions on these securities equivalent in size to standardized options position on these securities.

Moreover, the NASD believes that the adoption of increased equity option position and exercise limits will not compromise the integrity of the options markets or jeopardize the stability of the securities markets underlying exchange-traded equity options or conventional equity options. In this regard, because the proposal will result in only a modest increase in the percentage of the capitalization of the underlying equity security that an investor or group of investors acting in concert can control under the new position limits for any given equity security, the NASD believes the proposed position limit increases are very modest. Furthermore, the NASD notes that it will continue to apply its options surveillance procedures, that the options exchanges will continue to apply their surveillance procedures, and that the NASD and the options exchanges will continue to be members on the Intermarket Surveillance Group.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that it is designed to promote just and equitable principles of trade, remove impediments to and perfect the mechanism of a free and open market and a national market system.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were either solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the proposed rule changes be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[7] Specifically, the Commission concludes that the proposed position and exercise limits of 4,500 contracts, 7,500 contracts, and 10,500 contracts for equity options will further increase the potential depth and liquidity of the options market as well as the underlying cash market without significantly increasing concerns regarding intermarket manipulations or disruptions of the market for the options or underlying securities.

The discussion articulated in the 1993 Position Limit Approval Orders,[8] is incorporated herein.

In addition, the absence of discernible manipulative problems under the current three-tiered limit system for individual equity options leads the Commission to conclude that the increases being proposed by the NASD are warranted. The Commission recognizes that there are no ideal limits in the sense that options positions of any given size can be stated conclusively to be free of any manipulative concerns. The options exchanges, the NASD, and the Commission, however, have relied largely on the absence of discernible manipulation or disruption problems under current limits as an indicator that additional increases can be safely considered. The Commission believes for these reasons that the liberalization of existing position and exercise limits is now appropriate.[9]

The Commission notes that the NASD has had considerable experience monitoring the current three-tiered framework in individual equity options.[10] The Commission has not found that differing position and exercise limit requirements based on the particular options product to have created programming or monitoring problems for securities firms, or to have led to significant customer confusion. Based on the current experience in handling position and exercise limits, the Commission believes that the increase in position and exercise limits for individual equity options will not cause significant problems. Additionally, the Commission believes that the NASD's surveillance program will be adequate to detect and deter the use of illegal position limits by market participants as well as attempted manipulative activity and other trading abuses.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice thereof in the **Federal Register** because, in light of the Commission's recent approval of similar proposals by the options exchanges,[11] accelerating approval of this proposal will permit the position and exercise limit framework for individual equity options across options exchanges and the NASD to remain uniform.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to File Number SR-NASD-93-73 and should be submitted by February 3, 1994.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[12] that the proposed rule change (SR-NASD-93-73) relating to an increase in position and exercise limits is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-821 Filed 1-12-93; 8:45 am]

BILLING CODE 8010-01-M

[7] 15 U.S.C. 78f(b)(5) (1982).

[8] See *supra* note 1.

[9] The Commission continues to believe that proposals to increase position limits and exercise limits must be justified and evaluated separately. After reviewing the proposed exercise limits, along with the eligibility criteria for each tier, the Commission has concluded that the exercise limit increases for the three-tiered framework, do not raise manipulation problems or increase concerns over market disruption in the underlying securities.

[10] Currently, for example, position and exercise limits for individual equity options are limited to positions of 8,000, 5,500, and 3,000 contracts.

[11] See *supra* note 1.

[12] 15 U.S.C. 78s(b)(2) (1982).

[13] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33441; File No. SR-PSE-93-23]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Pacific Stock Exchange, Inc., Relating to Employee Gratuities

January 6, 1994.

On September 28, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b-4 thereunder,[2] a proposed rule change to amend the PSE's rules to increase from $25.00 to $50.00 the amount of gifts or gratuities which an Exchange employee or the employee of an Exchange member may receive from an Exchange member without the consent of his employer.

The proposed rule change was published for comment in Securities Exchange Act Release No. 33091 (October 22, 1993), 58 FR 50210. No comments were received on the proposed rule change.

Currently, Exchange Rule 1.17(g), "Gratuities, Employees," prohibits members from giving any compensation or gratuity to any employee of any other Exchange member, or non-member brokers, dealers, banks, or institutions, without the prior consent of his employer. Exchange Rule 1.18(g) also prohibits members from giving any compensation or gratuity to any Exchange employee without the prior written consent of the Exchange. Under the rules, a gift of any character having a valuation of more than $25.00 is considered to be a gratuity. Exchange Rule 1.17 (f), "Requests for Approval," provides that any request to the Exchange for consent to make a gift or gratuity to an Exchange employee must specify, among other things, the dollar amount of the value of such gift or gratuity when it is in excess of $25.00. The Exchange proposes to amend Exchange Rules 1.17 (f) and (g) to increase the dollar amount from $25.00 to $50.00 in order to make the PSE's rules consistent with the rules of the other self-regulatory organizations ("SROs")[3] and to allow for inflation.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular the requirements of section 6(b)(5)[4] in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. The Commission believes that Exchange Rules 1.17 and 1.18 are designed to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts without the employer's knowledge. In particular, the rules require the principal employer (i.e., the relevant Exchange member and/or the Exchange) to review a gratuity or compensation arrangement to determine whether a conflict of interest exists. Under the proposed rule change, the employer will still be required to approve in writing any of the covered gratuity or compensation arrangements, and thus will have to review the proposed arrangements.

The proposal will change only the dollar limitations in the Exchange's rules, so that gifts over $50.00, rather than $25.00, will be considered gratuities. The Commission believes that the proposed increase from $25.00 to $50.00 will neither compromise the intent nor reduce the ability of the rules to prevent fraudulent acts and practices which might arise in connection with the giving of valuable gifts or payments to persons without their employer's knowledge. In addition, the Commission notes that the proposal is consistent with the rules of other SROs.[5]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[6] that the proposed rule change (SR-PSE-93-23) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94-823 Filed 1-12-94; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1993).

[3] See, e.g., New York Stock Exchange Rule 350(a)(2); American Stock Exchange Rule 348, Commentary .01; Chicago Board Options Exchange Rule 4.4; and National Association of Securities Dealers Rules of Fair Practice, Article III, § 10(a) (paragraph 2160).

[4] 15 U.S.C. 78f(b) (1982).

[5] See note 3, *supra.*

[6] 15 U.S.C. 78s(b)(2) (1982).

[7] 17 CFR 200.30-3(a)(12) (1993).

[Release No. 34-33431; File No. SR-PSE-93-32]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to Listing and Trading Options on the Interactive Communications Sector Index

January 5, 1994.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 30, 1993, the Pacific Stock Exchange ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to list for trading options on the Interactive Communications Sector Index. The text of the proposed rule change is available at the Office of the Secretary, PSE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The PSE has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Exchange proposes to trade options on the Interactive Communications Sector Index ("Index"), a new stock index developed by the Exchange based on various stocks in the interactive communications industry that are traded on either the New York Stock Exchange, Inc. ("NYSE"), the American Stock Exchange, Inc. ("Amex"), or are national market system ("NMS") securities traded through the facilities of the National Association of Securities Dealers ("NASD") Automated Quotations System ("NASDAQ"). The Exchange also proposes to list long-term options on the Index and on a reduced-value Index ("Index LEAPS"), which will trade independent of and in addition to regular Index options traded on the Exchange.

Composition of the Index

The Index contains securities of highly-capitalized companies in the interactive communications industry. Currently, the Index is comprised of 24 stocks from the following three categories: Content providers (8 stocks);[1] distribution networks (8 stocks);[2] and information processors (8 stocks).[3] More specifically, the Index is comprised of individual stocks from the following 15 industry subgroups: Transaction services; filmed entertainment; programmers; music, games & education; publishing; business information systems; cable television operating companies; regional telephone companies; long-distance telephone companies; wireless communications; computers; consumer electronics; software; semiconductors; and communications equipment.

The 24 component stocks are listed for trading on the NYSE (13 stocks), the Amex (3 stocks),[4] or are traded through NASDAQ (8 stocks).[5] As of November 9, 1993, all of the component stocks in the Index, with the exception of one component (comprising 4.2% of the Index value) meet the Exchange's initial listing standards set forth in PSE Rule 3.6.

Index Calculation

The Index value is calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities is represented in approximately an "equal" dollar amount in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the interactive communications industry there is a great disparity in market value. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the interactive communications industry, AT&T currently represents over 22% of the aggregate market value of the Index. The Exchange believes that options on market-value weighted indexes dominated by one component stock are less useful to investors, since the index will tend to represent the one component and not the target industry that the Index is designed to represent.

The following is a description of how the equal-dollar weighted calculation method works. As of the market close on November 11, 1993, a portfolio of interactive communications stocks was established representing an investment of $41,667 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Index equals the current market value of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. Each quarter, following the close of trading on the third Friday of January, April, July, and October, the Index portfolio will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. The Exchange has chosen to rebalance the Index following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the equal-dollar weighting feature of the Index. If necessary, a divisor adjustment is made when the rebalancing occurs to ensure continuity of the Index's value. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Exchange does not believe that there will be investor confusion regarding the adjustments since they will be done on a regular and timely basis, with adequate notice given. Specifically, the Exchange represents that an information circular will be distributed to all Exchange members notifying them of the quarterly changes. This circular will also be sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options-related information circulars, and made available to subscribers of the Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Index a description of the equal-dollar weighting methodology.

As noted above, the number of shares of each component stock in the Index portfolio remains fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level immediately prior to the merger or consolidation. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

The Exchange or its designee will calculate and maintain the Index, and may at any time or from time to time substitute stocks, or adjust the number of stocks included in the Index, based on changing conditions in the interactive communications industry. However, in the event the Exchange determines to increase the number of index component stocks to greater than thirty-two or reduce the number of component stocks to fewer than sixteen, the Exchange will give prior written notice to the Commission.[6] In selecting securities to be included in the Index, the Exchange will be guided by a number of factors including market value of outstanding shares and trading activity. The eligibility standards for Index components are described below.

The value of the Index will be calculated every fifteen seconds throughout the trading day by Bridge Data Services and will be disseminated by the Options Price Reporting Authority to wire services, quote vendors and the financial media.

Expiration and Settlement

The proposed options on the Index will be European-style[7] and cash-settled. The Exchange's standard options trading hours, from 6:30 a.m. to 1:15 p.m. Eastern Standard Time, will apply. The options on the Index will expire on the Saturday ("Expiration Saturday") following the third Friday of the expiration month. The last trading day in an expiring series will normally be the second to the last business day preceding Expiration Saturday (normally a Thursday), with trading to cease at the close of business on such day.

The Exchange plans to list option series with expirations in the three near-term calendar months and in the two additional calendar months in the January cycle. In addition, the Exchange proposes to list longer term option series having up to thirty-six months to expiration. In lieu of such long-term options on a full-value Index level, the Exchange also proposes to have the option of listing long-term, reduced-value put and call options based on one-tenth (1/10th) the Index's full value. In either event, the interval between expiration months for either a full-value or reduced-value long-term option would not be less than six months. The trading of any long-term options would be subject to the same rules which govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures and all options will have European-style exercise. Position limits on reduced-value long-term Index options would be ten times the position limits for regular (full value) Index options and would be aggregated on a one for one basis with such options (for example, if the position limit for full value options is 10,500 contracts on the same side of the market, then the position limit for the reduced-value options will be 105,000 contracts on the same side of the market).

The Index value for purposes of settling the Index options will be calculated based upon the opening prices of the component securities pursuant to the normal opening procedures of the primary exchange where the securities are traded on the Friday before Expiration Saturday. In the case of securities traded through the NASDAQ system, the first reported sale price on the Friday before Expiration Saturday will be used. As trading begins in each of the Index's component securities, its opening sale price is captured for use in the calculation. Once all of the component stocks have opened, the Index settlement value is then determined. If any of the component stocks do not open for trading on the last trading day before Expiration Saturday, then the prior day's last sale price is used in the calculation.

Eligibility Standards for Index Components

In choosing among interactive communications industry stocks for inclusion in the Index, the Exchange will focus only on stocks that are traded on the NYSE, the Amex,[8] or are NMS securities traded through the NASDAQ. In addition, the Exchange intends to select stocks that:

(1) Have a minimum market value (in U.S. dollars of at least $75 million;[9] and

(2) Have an average monthly trading volume in U.S. markets over the previous six month period of not less than one million shares (or American Depository Receipts ("ADRs"[10])).

The Index is currently comprised of 24 component securities. Of the components, 23 are eligible for, and are the subject of, standardized options trading.[11] However, to address concerns about the possibility of manipulation of an index containing a large percentage of stocks that do not meet the eligibility standards applicable to stocks eligible for standardized options trading, at each quarterly rebalancing, stocks that meet the then current criteria for standardized options trading set forth in Exchange Rule 3.6 will be required to account for at least 90% of the Index's numerical index value.

Exchange Rules Applicable to Stock Index Options

PSE Rule 7 will apply to the trading of options contracts based on the Index. Surveillance procedures currently used to monitor trading in the Exchange's other index options will also be used to monitor trading in options on the Index. The Exchange proposes to list near-the-money (i.e., within ten points above or below the current index value) option series on the Index at 2½ point strike (exercise) price intervals when the value of the Index is below 200 points.

Basis

The Exchange believes that the proposed rule change is consistent with section 6 of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

[1] These components of the Index are: Time Warner, Inc.; Walt Disney Co.; turner Broadcasting System Inc. (Class B); QVC Network, Inc.; Viacom, Inc. (Class B); Tribune Company; Electronic Arts, Inc.; and Broderbund Software, Inc.

[2] These components of the Index are: Bell Atlantic Corp.; BellSouth Corp.; U.S. West, Inc.; Motorola, Inc.; American Telephone & Telegraph Co.; Comcast Corp.; Pacific Telesis Group; and Telephone and Data Systems, Inc.

[3] These components of the Index are: DSC Communications Corp.; Northern Telecom Limited; 3DO Co.; Apple Computer, Inc.; Silicon Graphics, Inc.; General Instrument Corp.; Scientific-Atlanta, Inc.; and Microsoft Corp.

[4] All of the Amex components are listed pursuant to Amex's Original Listing Requirements contained in Sections 101–145 of the Amex Company Guide. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulations, PSE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on January 5, 1994.

[5] Currently all of the NASDAQ issues included in the Index are NMS securities.

[6] Such a change in the number of components in the Index may warrant the submission of a rule filing pursuant to Section 19 of the Act of Rule 19b–4 thereunder.

[7] European-style options can only be exercised during a specified period before the options expire.

[8] Securities listed on the Amex will only be considered for inclusion in the Index if those securities satisfy the Original Listing Requirements set forth in Sections 101–145 of the Amex Company Guide. Telephone conversation between Michael Pierson, Senior Attorney, Market Regulation, PSE, and Brad Ritter, Attorney, Office of Derivatives Regulation, Division of Market Regulation, Commission, on January 5, 1994.

[9] In the case of ADRs, this represents market value as measured by total world-wide shares outstanding.

[10] An ADR is a negotiable receipt which is issued by a depository, generally a bank, representing shares of a foreign issuer that have been deposited and are held, on behalf of holders of the ADRs, at a custodian bank in the foreign issuer's home country.

[11] 3DO Co. is the only component of the Index not currently eligible for standardized options trading.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–32 and should be submitted by February 3, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–822 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. IC–20006; 812–8690]

PIC Investment Trust, et al.; Notice of Application

January 7, 1994.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: PIC Investment Trust (the "Trust"), on behalf of two of its series, PIC Pinnacle Growth Fund and PIC Balanced Investors Fund (each a "Fund"); First Fund Distributors, Inc. (the "Distributor"); and all other open-end management investment companies, or series thereof, which invest substantially all of their assets in a registered investment company for which the adviser in the future serves as investment adviser, that are in the same "group of investment companies," as defined in rule 11a–3 under the Act, as the Funds, and whose shares will be distributed on substantially the same basis as those of the Funds.

[12] 17 CFR 200.30–3(a)(12) (1993).

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 22(c), and 22(d), and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order that would permit certain registered open-end investment companies to impose a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain specified instances.

FILING DATE: The application was filed on November 16, 1993, and amended on December 21, 1993. By letter dated January 6, 1994, applicants have agreed to make certain technical changes to the application, and to file an amendment prior to the issuance of any order granting the requested relief. This notice reflects the application as though such amendment had been filed.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 1, 1994, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. The Trust and the Funds, 300 North Lake Avenue, Pasadena, California 91101; the Distributor, 479 West 22nd Street, New York, New York 10011.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations:

1. The Trust is an open-end management investment company organized as a Delaware business trust. The Trust currently is comprised of six series, including the Funds. The Funds will be offered to the public, upon the effectiveness of the Trust's registration statement covering them, and if the requested order is issued.

2. Each Fund will invest substantially all of its assets in a corresponding portfolio, PIC Pinnacle Growth Portfolio and PIC Balanced Portfolio (the "Portfolios"), which are registered open-end management investment companies organized as a New York business trusts. The Portfolios will not offer their shares to the public but will sell their shares to other mutual funds or institutional investors in private placement transactions. Under this arrangement, the Portfolios would be "master" funds, and the Funds would be "feeder" funds.

3. Each Portfolio has entered into or will enter into an advisory agreement with Provident Investment Counsel (the "Adviser"), a registered investment adviser, and an administration agreement with Investment Company Administration Corporation (the "Administrator"). The Trust and the Funds have not retained the services of an investment adviser because the Funds seek to achieve their investment objectives by investing all of their assets in corresponding Portfolios. Distribution and shareholder servicing fees and costs, and additional administrative expenses, are paid by the Trust at the Fund level. The Trust and each Fund have entered into or will enter into an administration agreement with the Administrator, which will provide administrative services, and distribution and shareholder service plans with the Distributor.

4. The Distributor is a registered broker-dealer and will serve as the principal underwriter for each Fund. The Distributor will enter into selling group agreements with unaffiliated broker-dealers pursuant to which the broker-dealers will sell Fund shares.

5. Under the "master-feeder" structure between the Trust and the Portfolios, all portfolio management services are provided, and all related costs are incurred, at the Portfolio level, although each Fund will bear its *pro rata* share of the corresponding Portfolio's costs and expenses.

6. Shares of the Funds generally will be offered for sale to the public at net asset value plus a front-end sales load. Currently, the proposed sales load will be 4.75 percent for purchases of less than $50,000, with lesser sales load applying to larger purchases, and no front-end sales load applying to purchases of $1,000,000 or more.

7. Applicants request an exemptive order that would permit them to assess a CDSC on shares sold without a front-end sales load because of a volume purchase of $1,000,000 or more, and that are redeemed within a specified period (the "CDSC period") after their purchase date. The CDSC will be equal to a percentage (the "CDSC percentage") of the lesser of the net asset value of the shares at the time of purchase or at the time of redemption. Currently, the CDSC period is anticipated to be one year, and the CDSC percentage is anticipated to be one percent. Applicants in all cases will comply with article III, section 26(d) of the Rules of Fair Practice of the National Association of Securities Dealers, Inc., as it relates to the maximum amount of asset-based sales charges that may be imposed by an investment company, when and in the form (as amended from time to time) the provisions of such Rules relating to such charges become effective, and for as long as they remain in effect.

8. No CDSC will be imposed on redemptions of shares acquired through reinvestment of income dividends or capital gain distributions, on amounts derived from increases in the value of the account above the amount of purchase payments, or on shares held for longer than the CDSC period. In determining whether the CDSC is payable, it will be assumed that shares not subject to the CDSC are redeemed first and that other shares then are redeemed in the order purchased. In addition, no CDSC will be imposed on the redemption of shares of the Funds purchased prior to the grant of the requested order.

9. Applicants proposes to waive the CDSC on redemptions of shares of the Fund: (a) For distributions from qualified retirement plans and other employee benefit plans qualified under section 401(a) of the Internal Revenue Code of 1986, as amended (the "Code"), (b) for distributions from custodial accounts under section 403(b)(7) of the Code or individual retirement accounts ("IRAs") due to death, disability, or attainment of age 59½, (c) for tax-free returns of excess contributions to IRAs, (d) for any partial or complete redemptions following death or disability (as defined in section 72(m)(7) of the Code) of a shareholder from an account in which the deceased or disabled is named, provided the redemption is made within one year of death or initial determination of disability, (e) pursuant to involuntary redemptions and automatic withdrawals, as described in each Fund's prospectus, and (f) by—(i) current or retired directors, trustees, partners, officers, and employees of the Trust, the Portfolios, the Distributor, the Adviser, family members of such persons, and trusts or plans primarily for such persons (ii) the Adviser, (iii) trustees and other fiduciaries purchasing shares for retirement plans of organizations with retirement plan assets of $100,000,000 or more, (iv) insurance company separate accounts, and (v) participants in pension, profit-sharing, or employee benefit plans sponsored by the Distributor and its affiliates.

10. The Distributor will provide a *pro rata* refund, out of its own assets, of any CDSC paid in connection with a redemption of shares (by crediting such CDSC to such shareholder's account) if, within 90 days of such redemption, all or any portion of the redemption proceeds are reinvested in shares of the Funds. Any such reinvestment will be made without the imposition of a front-end sales load but will be subject to the same CDSC to which such amount was subject prior to the redemption. The CDSC time period will run from the original investment date but will be extended by the number of days between the redemption and reinvestment dates.

11. Applicants may in the future reduce the CDSC percentage, or shorten the CDSC period. Applicants also may temporarily or permanently discontinue the CDSC in the future. However, any future changes, variations, discontinuations, or reinstatements of the CDSC will be disclosed in each affected Fund's prospectus, and will not affect shares issued prior to such disclosure.

Applicants' Condition

Applicants agree that the order granting the requested relief may be subject to the following condition:

Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–878 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25971]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

January 7, 1994.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 31, 1994, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

General Public Utilities Corporation (70–7933)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, has filed a post-effective amendment to its declaration under section 12(b) of the Act and Rule 45 thereunder.

By order dated March 6, 1992 (HCAR No. 25486) ("Order"), the Commission authorized GPU through December 31, 1993 to make cash capital contributions to its three electric public-utility subsidiary companies ("Subsidiaries") in the following amounts: $100 million for Jersey Central Power & Light Company ("JCP&L"); $50 million for Metropolitan Edison Company ("Met-Ed"); and $50 million for Pennsylvania Electric Company ("Penelec"). GPU requested such authorization to provide it with flexibility to meet the Subsidiaries' financing and cash working capital requirements, while enabling the Subsidiaries to remain within the short-term debt limits of their respective charters particularly in the event that market or other conditions constrained the Subsidiaries' ability to issue senior securities.

Pursuant to Order, in October 1993 GPU made a cash capital contribution to Met-Ed in the amount of $50 million in order to enable Met-Ed to redeem two outstanding series of Met-Ed cumulative preferred stock pursuant to their

optional redemption provisions. GPU has not made any other cash capital contributions pursuant to the Order.

In order to maintain the financing flexibility described above, GPU now requests: (1) An extension of the time during which it may make the cash capital contributions authorized in the Order to JCP&L and Penelec, through December 31, 1996; and (2) authorization to make additional cash contributions to Met-Ed in the amount of $50 million, through December 31, 1996.

New England Electric System, et al. (70–7950)

New England Electric System ("NEES"), a registered holding company, and its nonutility subsidiary company, New England Electric Resources, Inc. ("NEERI"), both located at 25 Research Drive, Westborough, Massachusetts 01582, have filed a post-effective amendment under sections 9(a), 10 and 12(b) of the Act and Rule 45 thereunder. By order dated September 4, 1992 (HCAR No. 25621), the Commission, among other things, authorized NEERI to start the business of providing consulting services to nonaffiliates for profit.

NEERI now proposes to expand its consulting business, through December 31, 1997, to include the performance of electrical related services (designing, engineering, assisting in licensing and permitting, procuring materials and equipment, and installing, removing, or constructing electrical related materials). For instance, NEERI might install electrical poles, insulated wire, metering equipment or provide a turnkey installation service for small generators. In addition, NEES proposes to make additional capital contributions through December 31, 1997 of up to $1 million to NEERI.

Consolidated Natural Gas Company, et al. (70–8285)

Consolidated Natural Gas Company ("CNG"), a registered holding company, and it wholly owned nonutility subsidiary company, CNG Energy Company ("Energy"), both located at CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

By order dated December 26, 1991 ("1991 Order"), HCAR No. 25446, Consolidated was authorized to provide, through December 31, 1996, up to $15 million to Energy for it to engage in preliminary development and administrative activities with respect to qualifying cogeneration facilities ("QFs") as defined in the Public Utility Regulatory Policies Act of 1978 ("PURPA"). As of June 30, 1993, CNG has provided $1.235 million to Energy under this authorization.

CNG now proposes to continue its preliminary project development and administrative activities in connection with its possible investments in QFs. Such activities will be consistent with those authorized in the 1991 Order. CNG further proposes to engage in preliminary development and administrative activities with respect to qualifying small power production facilities as defined in PURPA ("QSPs"), exempt wholesale generators ("EWGs") within the meaning of section 32 of the Act and foreign utility companies ("FUCOs") within the meaning of section 33 of the Act (collectively, "Preliminary Activities"). CNG further proposes to provide Energy, through December 31, 1998, up to an aggregate principal amount of $15 million to engage in Preliminary Activities. CNG and Energy will not, without further required Commission authorization, engage in any intrasystem financing for the future acquisition by Energy of an interest in QFs, QSPs, EWGs, or FUCOs.

Energy proposes to raise funds for the Preliminary Activities by: (1) Selling shares of its common stock, $1,000 par value, to CNG, (2) open account advances, or (3) long-term loans from CNG, in any combination thereof. The open account advances and long-term loans will have the same effective terms and interest rates as related borrowings of CNG in the forms stated below.

Open account advances may be made to Energy to provide working capital and to finance the activities authorized by the Commission. Open account advances will be made under letter agreement with Energy and will be repaid on or before a date not more than one year from the date of the first advance with interest at the same effective rate of interest as CNG's weighted average effective rate for commercial paper and/or revolving credit borrowings. If no such borrowings are outstanding, the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York.

CNG may make long-term loans to Energy for the financing of its activities described herein. Loans to Energy shall be evidenced by long-term non-negotiable notes of CNG Energy (documented by book entry only) maturing over a period of time (not in excess of 30 years) to be determined by the officers of CNG, with the interest predicated on and substantially equal to CNG's cost of funds for comparable borrowings by the parent. In the event CNG has not had recent comparable borrowings, the rates will be tied to the Solomon Brothers Inc. indicative rate for comparable debt issuances published in Solomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown. All loans may be prepaid at any time without premium or penalty. CNG will obtain the funds required for Energy through internal cash generation, issuance of long-term debt securities, borrowings under credit agreements or through other future authorizations approved by the Commission.

American Electric Power Co., Inc., et al. (70–8307)

American Electric Power Company, Inc. ("AEP"), a registered holding company, and its nonutility subsidiary company, AEP Energy Services, Inc. ("AEP Energy") (collectively, "Applicants"), both located at 1 Riverside Plaza, Columbus, Ohio 43215, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, 12(b) and 13(b) of the Act and Rules 45, 50(a)(5), 87, 90, and 91 thereunder.

By order dated April 26, 1982 (HCAR No. 22468), the Commission authorized AEP to organize AEP Energy for the purpose of providing consulting services to nonassociate companies.[1] The 1982 Order also authorized AEP to make capital contributions to AEP Energy in the amount of up to $1 million.

The preliminary development activities associated with AEP Energy's consulting business include contract drafting and negotiating, preparation of proposals and other necessary activities to identify and analyze feasible consulting opportunities and to initiate the commercialization of a project. Authorized administrative activities include the ongoing personnel, accounting, engineering, legal, financial and other support activities necessary for AEP Energy to manage its preliminary development activities related to consulting activities. However, AEP Energy is not proposing to provide demand-side management services.

AEP Energy anticipates undertaking the activities on its own and in conjunction with unaffiliated third parties. The arrangements may take the form of informal and unincorporated consortia. AEP Energy anticipates that any consulting opportunities arising from the arrangements will either take the form of a direct contractual relationship with the end-user of its services, or as a subcontractor working under the direction of a general contractor of a particular project.

AEP now proposes to make additional investments in AEP Energy, through December 31, 1995, in the amount of $5 million for preliminary development activities associated with its consulting business. Investments in AEP Energy may take the form of additional acquisitions of common stock, capital contributions, open account advances and/or subordinated loans (collectively, "Investments"). Any such open account advances or subordinated loans would bear interest at a rate based on AEP's cost of funds in effect on the date of issue, but in no case in excess of the prime rate at a bank designated by AEP. AEP's cost of funds is represented by its commercial paper rating, which is currently rated P–2 by Moody's Investors Services, Inc. and F–2 by Fitch Investors Service, Inc. Recently, on December 10, 1993, AEP sold $64 million of commercial paper notes at a discount rate of 3.28%, for a term of 18 days and maturing on December 28, 1993.

In addition, it is contemplated that AEP Energy may obtain debt financing from unaffiliated third parties consisting of commercial banks, insurance companies or other institutional investors ("Debt Financing"), as long as the total of all Investments together with any Debt Financing does not exceed the total funding authorization of AEP Energy of $5 million. Such Debt Financing may require a guarantee by AEP. Nonaffiliated Debt Financing obtained by AEP Energy will not exceed a term of ten years or bear a floating interest rate in excess of 115% of the prime rate in effect at the time of issuance. In connection with any Debt Financing obtained by AEP Energy, it may be required to pay commitment and other fees not to exceed 25 basis points per annum on the total amount of the Debt Financing. AEP Energy requests an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereof in connection with such Debt Financing.

AEP and AEP Energy also request authority to expand the current scope of financial commitment of AEP to include the issuance of guarantees or assumption of liabilities by AEP on behalf of AEP Energy to unaffiliated third parties in an aggregate amount not to exceed $25 million. These may take the form of performance guarantees or direct or indirect financial guarantees. The Applicants state that such arrangements may be necessary in order for AEP Energy to satisfy a potential customer that it has the financial support for its contractual warranty obligations as may be negotiated as features of specific contracts.

[1] The 1982 Order also authorized AEP Energy to sell or otherwise dispose of intellectual property owned and/or developed by AEP system companies. Should AEP Energy use any intellectual property developed by American Electric Power Service Corporation ("AEP Service") or any other AEP system company, AEP Energy states that it will pay the following amounts to that AEP system company for any such intellectual property actually sold or licensed by AEP Energy: (1) 70% of the revenues from the intellectual property until the AEP system company that developed the intellectual property recovers its programming and development costs; and (2) 20% of such revenues thereafter. AEP Energy would pay cost for intellectual property developed at its request. AEP Energy would address such requests only to AEP Service.

General Public Utilities Corporation, et al. (70–8315)

General Public Utilities Corporation ("GPU"), 100 Interpace Parkway, Parsippany, New Jersey 07054, a registered holding company, and its wholly owned non-utility subsidiary company, Energy Initiatives, Inc. ("EII") (collectively, "Applicants"), One Upper Pond Road, Parsippany, New Jersey 07074, have filed an application-declaration under sections 6, 7, 9, 10, 12(b), and 32 of the Act and Rules 45 and 53 thereunder.

EII proposes to acquire a limited partnership interest for $11.5 million in a Canadian limited partnership ("Partnership") being formed to develop, construct, own, and operate a 22.5 megawatt wood and oil fired cogeneration facility in Brooklyn, Nova Scotia, Canada ("Project"). Applicants expect that Polsky Energy Corporation, or a wholly owned subsidiary or affiliate thereof, will be the general partner and a limited partner of the Partnership. Applicants state that the Project will not engage in any retail electric sales, and anticipate that it will qualify as an exempt wholesale generator as defined by section 32(a)(1) of the Act.

EII proposes to secure its equity contribution to the Partnership through an irrevocable letter of credit ("Letter of Credit") for $11.5 million with GPU unconditionally guaranteeing EII's obligations. Alternatively, should the Partnership elect to borrow $11.5 million from lending institutions to provide a portion of the construction financing, GPU proposes to guarantee unconditionally EII's repayment obligations.

Applicants anticipate that the Letter of Credit will expire no later than March 31, 1996 and that any drawings thereon will bear interest at not more than five percent above the prevailing prime rate for large United States commercial banks. Related Letter of Credit fees payable by EII or GPU will not exceed one percent annually of the face amount of the Letter of Credit. Any Partnership construction borrowings guaranteed by GPU in lieu of the Letter of Credit will mature no later than March 31, 1996, will bear interest at no more than 1.5% above the prevailing London Interbank Offered Rate, and will be prepayable by the Partnership as and to the extent provided in the related loan agreements.

Jersey Central Power & Light Company (70–8323)

Jersey Central Power & Light Company 300 Madison Avenue, Morristown, New Jersey 07960 ("JCP&L"), a subsidiary of General Public Utilities Corporation, a registered holding company, has filed a declaration under section 6(a) and 7 of the Act.

JCP&L maintains an insurance policy that provides coverage for workers compensation claims, as required by New Jersey Law. The insurance policy also provides liability insurance coverage for employee claims made directly against JCP&L.

JCP&L has decided to modify the insurance policy so that JCP&L would now be required to pay a deductible for each claim, up to a specified maximum amount for all claims in the calender year ("Deductible Cap"). While the insurance company would continue to administer and pay all claims as they arise, JCP&L would, on a monthly basis, reimburse the insurance company for the amount of each claim paid up to the deductible amount, subject to the Deductible Cap.

In order to secure its obligations, JCP&L proposes to enter into letter of credit reimbursement agreements with banks and to deliver to their insurance company irrevocable bank letters of credit ("LOC") from time-to-time through December 31, 1998. The insurance company would be entitled to draw upon the LOC in the event that JCP&L fails to reimburse the insurance company.

The LOC would expire not later than December 31, 1998, and would be in the aggregate face amount not to exceed $15 million. Drawings on the LOC would bear interest at not more than 5% above the bank's prime rate as in effect from time-to-time. For example, based on the present prime rate of 6%, the maximum interest rate would be 11%. JCP&L may also be required to pay annual LOC fees which would not exceed 1% of the face amount of the LOC.

For the Commission, by the Division of Investment Management pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–879 Filed 1–12–94; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

[Docket 49119 and Order 94–1–3]

Application of Airtrain Corporation for Issuance of New Certificate Authority

AGENCY: Office of the Secretary, DOT.

ACTION: Notice of order to show cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order (1) finding AirTrain Corporation fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than January 21, 1994.

ADDRESSES: Objections and answers to objections should be filed in Docket 49119 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Janet A. Davis, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: January 6, 1994.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 94–806 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–62–P

National Highway Traffic Safety Administration

[Docket No. 94–002; Notice 1]

Ford Motor Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its vehicles fail to comply with the labeling requirements of 49 CFR 571.101, Motor Vehicle Safety Standard No. 101, "Controls and Displays," and 49 CFR 571.105, Motor Vehicle Safety Standard No. 105, "Hydraulic Brake Systems," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Ford has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S5.2 and Table 2 of Standard No. 101 specify that the brake system display telltale shall be identified with the word "brake" and provide that additional words or symbols may be used at the manufacturer's discretion for the purpose of clarity. In addition, paragraph S5.3.5(c)(1) of Standard No. 105 specifies that brake system indicator lamps shall display the word "brake."

During the period of July 19, 1993 to August 19, 1993, Ford manufactured approximately 40,300 Ranger and Explorer vehicles which, instead of having the brake system telltale identified by the word "brake," it is identified by the International Standards Organization (ISO) symbol. These vehicles were manufactured with instrument panel clusters built by Ford's supplier mistakenly using tachometer assemblies intended for use only on vehicles to be exported to Europe, where the ISO symbol is the required telltale identifier. Ford submitted diagrams of the U.S. and European tachometer assemblies, which are contained in its petition on file in NHTSA's Docket Section.

Ford supports its petition for inconsequential noncompliance with the following:

In Ford's judgement, the condition is inconsequential to motor vehicle safety. The affected Ranger and Explorer brake display telltales illuminate red as required, and except for the missing identifier word "Brake," the vehicles comply with all other applicable FMVSS requirements. Even though "Brake" is not used, Ford believes that the likelihood is remote that a driver of one of the affected vehicles would not recognize illumination of the red-colored brake telltales as an indication of a possible brake system malfunction, principally for three reasons:

(1) * * * [T]he brake system ISO symbol and the parking brake ISO symbol are part of the same brake warning jewel; both are simultaneously illuminated by the same light source. Both identifications illuminate simultaneously every time the parking brake is applied, during the cluster warning lamp function check, and if a brake system malfunction occurs. Because this telltale is illuminated during parking brake engagement and during lamp function checks, an operator is conditioned to associate these two identifiers with "brakes," and therefore their illumination would alert that operator to a possible brake system malfunction (or that the parking brake is applied).

(2) Ford believes that the brake ISO symbol is more widely recognized at present than in the past; use of this symbol in combination with the word "Brake" is common in the majority of vehicles manufactured by Ford Motor Company, and also in many vehicles of other manufacturers, so that the telltale design will satisfy both U.S. and Canadian standards. (Corresponding Canadian standards require the symbol rather than the word "Brake," but also permit both the symbol and word identification.)

(3) The function of the brake warning jewel is fully explained as "a warning light for brakes" in the Owner Guide furnished with each vehicle.

In summary, while the absence of the brake system telltale "Brake" identification on the affected vehicles is a "technical" noncompliance, [Ford believes] that the condition is not a risk to motor vehicle safety because even without the identifier word "Brake," an operator would recognize the illumination of the red brake jewel to be a warning of possible brake system problems. [Ford is] aware of no complaints, accidents, or injuries related to this condition.

Interested persons are invited to submit written data, views, and arguments on the petition of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 14, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on January 6, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–807 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–003; Notice 1]

Ford Motor Company; Receipt of Petition for Determination of Inconsequential Noncompliance

Ford Motor Company (Ford) of Dearborn, Michigan has determined that some of its replacement windshields fail to comply with the labeling requirements of 49 CFR 571.205, Motor Vehicle Safety Standard No. 205, "Glazing Materials," and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Ford has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Standard No. 205, which incorporates, by reference, the American National Standards Institute's "Safety Code for Safety Glazing Materials for Glazing Motor Vehicles Operating on Land Highways" Z–26.1–1977, January 26, 1977, as supplemented by Z26.1a, July 3, 1980 (ANS Z26.1), specifies that, with certain exceptions, glazing materials for use in motor vehicles shall conform with Paragraphs S5, "Requirements," S6, "Certification and Marking," and ANS Z26.1.6, "Marking of Safety Glazing Materials." Specifically, section 6 of ANSI Z26.1 states "[G]lazing materials, which in a single sheet of material are intentionally made with an area having a luminous transmittance of not less than 70 percent (Test No. 2), adjoining an area that has less than 70 percent luminous transmittance, shall be permanently marked at the edge of the sheet to show the limits of the area that is intended to comply with Test No. 2. The markings shall be A⊥S1 or AⱦS2 etc. * * *."

Approximately 98,000 W1099V windshields manufactured from June 1992 through October 1993 and 14,800 W911V windshields manufactured from August 1992 to June 1993 are missing the A⊥S1 marking at the bottom edge of the shade band. The subject windshields are manufactured as replacements for windshields in 1980 through 1994 model year Ford F–Series and Bronco vehicles.

Ford supports its petition for inconsequential noncompliance with the following:

The affected windshields were produced by a Ford supplier without A⊥S1 markings at the bottom edge of the shade band, but meet all other marking and performance requirements of Standard No. 205 and ANSI Z26.1 including the appropriate AS1 marking in the area of the trademark identifying the type of construction of the glazing material.

[Ford believes that t]he omission of the marking presents no risk of accident or injury. Consequently in Ford's judgment, the omission is inconsequential as it relates to motor vehicle safety. The stated purposes of [Federal Motor Vehicle Safety Standard] FMVSS No. 205 are to reduce injuries resulting from impact to glazing surfaces, to ensure a necessary degree of transparency in motor vehicle windows for driver visibility, and to minimize the possibility of occupants being thrown through the vehicle windows in collisions. As previously noted, the affected windshields fully comply with the performance requirements of FMVSS No. 205 and although missing the A⊥S1 marking at the bottom of the shade band, they do have the correct SA1 marking to indicate the type of construction of the glazing material. Because all performance requirements are met, the omission of the marking at the shade band has no effect upon the ability of the glazing to perform in the manner intended by the standard. Ford is not aware of any complaints, accidents, or injuries related to this condition.

Interested persons are invited to submit written data, views, and arguments on the petition of Ford, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 14, 1994.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: January 6, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–808 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 94–001; Notice 1]

Uniroyal Goodrich Tire Company; Receipt of Petition for Determination of Inconsequential Noncompliance

The Uniroyal Goodrich Tire Company (Uniroyal) of Greenville, South Carolina, has determined that some of its tires fail to comply with 49 CFR 571.109, Motor Vehicle Safety Standard No. 109, "New Pneumatic Tires," and 49 CFR 571.119, Motor Vehicle Safety Standard No. 119, "New Pneumatic Tires for Vehicles Other Than Passenger Cars," and has filed an appropriate report pursuant to 49 CFR Part 573, "Defect and Noncompliance Reports." Uniroyal has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as its relates to motor vehicle safety.

This notice of receipt of a petition is published under Section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgement concerning the merits of the petition.

Paragraph S4.3.3(b) of Standard No. 109 and paragraph S6.5(d) of Standard No. 119 specify that each tire be labeled with an identification number. The last digit of this identification number should represent the year of manufacture.

In the 46th week of 1993, Uniroyal manufactured approximately 6,500 tires in several brands and sizes with an incorrect year of manufacture contained in the tire identification number. The last digit in the identification number on the subject tires is incorrectly marked "4," signifying 1994. The last number should be "3," signifying 1993.

Uniroyal supports its petition for inconsequential noncompliance with the statement that it does not "believe that this error will impact motor vehicle safety since only the year of manufacture is incorrect." All tires are sold only in the replacement market.

Interested persons are invited to submit written data, views, and arguments on the petition of Uniroyal, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC, 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The

application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: February 14, 1994.

(15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8)

Issued on: January 6, 1994.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 94–809 Filed 1–12–94; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

January 6, 1994.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0169.

Form Number: IRS Forms 4461, 4461–A, and 4461–B.

Type of Review: Extension.

Title: Application for Approval of Master or Prototype and Regional Prototype Defined Contribution Plan (Form 4461); Application for Approval of Master or Prototype and Regional Prototype Defined Benefit Plan (Form 4461–A); and Application for Approval of Master or Prototype Plan or Regional Prototype Plan (Form 4461–B).

Description: The Internal Revenue Service (IRS) uses these forms to determine from the information submitted whether the applicant plan qualifies under section 401(a) of the Internal Revenue Code for plan approval. The application is also used to determine if the related trust qualifies for tax exempt status under Code section 501(a).

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents/ Recordkeepers: 1,200.

Estimated Burden Hours Per Respondent/Recordkeeper:

	Form 4461	Form 4461–A	Form 446–B
Recordkeeping	40 hours 40 minutes	40 hours	5 hours 30 minutes.
Learning about the law or the form	5 hours 2 minutes	4 hours 56 minutes	1 hour 10 minutes.
Preparing the form	6 hours 51 minutes	4 hours 48 minutes	2 hours 14 minutes.
Copying, assembling, and sending the form to the IRS	16 minutes	16 minutes	16 minutes.

Frequency of Response: On occasion (These forms are generally filed only once).

Estimated Total Reporting/ Recordkeeping Burden: 120,374 hours.

Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 94–850 Filed 1–12–94; 8:45 am]

BILLING CODE 4830–01–P

Sunshine Act Meetings

Federal Register

Vol. 59, No. 9

Thursday, January 13, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 Fed. Reg. 69456, Thursday, December 30, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time), Tuesday, January 11, 1994.

CHANGE IN THE MEETING: The Closed Session of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: January 11, 1994.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 94–1050 Filed 1–11–94; 2:55 pm]

BILLING CODE 6570–06–M

NATIONAL CREDIT UNION ADMINISTRATION

TIME AND DATE: 9:30 a.m., Wednesday, January 19, 1994.

PLACE: Board Room, 7th Floor, Room 7047, 1775 Duke Street, Alexandria, Virginia 22314–3428.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Approval of Minutes of Previous Closed Meeting.
2. Administrative Action under Section 206 of the Federal Credit Union Act. Closed pursuant to exemptions (5), (7), (8), and (10).
3. Administrative Action under Section 205 and 208 of the Federal Credit Union Act. Closed pursuant to exemptions (8), (9)(A)(ii), and (9)(B).
4. Requests by Corporate Federal Credit Unions for Field of Membership Amendments. Closed pursuant to exemption (8).
5. Requests by Corporate Federal Credit Unions for Waivers from Part 704, NCUA's Rules and Regulations. Closed pursuant to exemption (8).

FOR MORE INFORMATION CONTACT: Becky Baker, Secretary of the Board, Telephone (703) 518–6304.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–1036 Filed 1–11–94; 2:22 pm]

BILLING CODE 7535–01–M

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 648 January 5, 1994].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, December 30, 1993.

CHANGE IN THE MEETING: Deletion.

The following item was not considered at a closed meeting on Friday, January 7, 1994, at 10 a.m.:

Opinion.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact Brian Lane at (202) 272–2400.

Dated: January 7, 1994.

Jonathan G. Katz,

Secretary.

[FR Doc. 94–1009 Filed 1–11–94; 1:12 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [59 FR 1415, January 10, 1994].

STATUS: Open meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Thursday, January 6, 1994.

CHANGE IN THE MEETING: Time Change.

The open meeting scheduled for Wednesday, January 12, 1994 at 10 a.m., has been rescheduled for Wednesday, January 12, 1994 at 11 a.m.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Blair Thomas at (202) 272–2300.

Dated: January 11, 1994.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 94–1064 Filed 1–11–94; 3:53 pm]

BILLING CODE 8010–01–M

Corrections

Federal Register
Vol. 59, No. 9
Thursday, January 13, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 63

[AD-FRL-4793-6]

RIN 2060-AD67

National Emission Standards for Hazardous Air Pollutants for Source Categories and for Coke Oven Batteries

Correction

In rule document 93-26162 beginning on page 57898 in the issue of Wednesday, October 27, 1993, make the following corrections:

Appendix A to Subpart L-[Corrected]

1. On page 57924, in the second column, in Appendix A to subpart L, in entry No. 13, in the column designated "Battery", remove "8".

Appendix A to part 63-[Corrected]

2. On page 57926, in the second column, in Appendix A to part 63, in 3.9, in the equation, "L" should read ". . .".

3. On page 57928, in the second column, in Appendix A to part 63, in 5.6.5.2, in (Eq. 303-10), "+ K" should read "+ . . .".

4. On page 57929, in the second column, in Appendix A to part 63, in 5.6.6.2, in (Eq. 303-12), remove "K".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS-42111C; FRL 4047-2]
RIN 2070-AB94

Office of Water Chemicals; Final Test Rule

Correction

In rule document 93-27610 beginning on page 59667 in the issue of Wednesday, November 10, 1993, make the following correction:

§ 799.5075 [Corrected]

On page 59682, in the second column, in § 799.5075(d), in the second line, "December 24, 1993" should "December 27, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS No. 1611-93]
RIN 1115-AB72

Temporary Entry of Business Persons Under the North American Free Trade Agreement (NAFTA)

Correction

In rule document 93-32008 beginning on page 69205 in the issue of Thursday, December 30, 1993, make the following corrections:

1. On page 69210, in the second column, in amendment 5. to § 212.1, in the first line, "(1)" should read "(l)".

§ 212.1 [Corrected]

2. On the same page, in the same column, in § 212.1, in the first line "(1)" should read "(l)".

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 94-5]

Decision Following Petition by Domestic Interested Party—Location of Country of Origin Marking for Frozen Produce Packages

Correction

In rule document 93-31855 beginning on page 68743 in the issue of Wednesday, December 29, 1993, make the following correction:

On page 68743, in the first column, in **EFFECTIVE DATE:**, in the sixth and seventh lines, "February 11, 1993." should read "February 11, 1994

BILLING CODE 1505-01-D

federal register

Thursday
January 13, 1994

Part II

Department of Transportation

Coast Guard

46 CFR Part 114, et al.

Small Passenger Vessel Inspection and Certification; Proposed Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 114 through 139, 170, 171, 173, and 175 through 185

[CGD 85–080]

RIN 2115–AC22

Small Passenger Vessel Inspection and Certification

AGENCY: Coast Guard, DOT.

ACTION: Supplemental notice of proposed rulemaking.

SUMMARY: The Coast Guard is revising its original proposal, published as a Notice of Proposed Rulemaking (NPRM) in the Federal Register (54 FR 4412) of January 30, 1989, to amend the regulations governing small passenger vessels. This Supplemental Notice of Proposed Rulemaking (SNPRM) contains a complete revision of the proposed regulations affecting small passenger vessels based on the numerous comments received to the NPRM. In this SNPRM, the Coast Guard is proposing significant changes including: The creation of separate regulations for small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers; alternative requirements to certain lifesaving equipment; greater allowance of non-Coast Guard approved noncombustible materials; and the establishment of new upper limit breakpoints above which a vessel would have to comply with the construction and outfitting requirements applicable to a passenger vessel of more than 100 gross tons. These proposed revisions are expected to minimize the complexity of the original proposed regulation.

DATES: Comments on this SNPRM must be received on or before June 13, 1994.

ADDRESSES: Written comments should be submitted to the Executive Secretary, Marine Safety Council (G–LRA–2/3600)(CGD 85–080), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001. Comments may be delivered to and will be available for inspection or copying, and the materials referenced in this SNPRM will be available for examination and copying, at the Marine Safety Council (G–LRA–2), room 3406, U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, (202) 267–1477, between 8 a.m. and 3 p.m., Monday through Friday, except holidays. Comments on collection of information requirements must be mailed also to the Office of Information and Regulatory Affairs, Office of Management and Budget, 725 17th Street NW., Washington, DC 20503, ATTN: Desk Officer, U.S. Coast Guard.

FOR FURTHER INFORMATION CONTACT: LCDR Marc C. Cruder, Project Manager, Office of Merchant Marine Safety, Security, and Environmental Protection, (G–MVI), phone (202) 267–1181.

SUPPLEMENTARY INFORMATION:

Requests for Comments

Interested persons are invited and encouraged to participate in this proposed rulemaking by submitting written views, data, or arguments on the contents of this SNPRM. Persons submitting comments should include their name and address, reference this SNPRM (CGD 85–080), give the specific section of the proposed regulations to which each comment applies, and include supporting documents or sufficient detail to indicate the reason for each comment. Persons desiring an acknowledgment that their comments were received should include a stamped, self-addressed envelope or post card. This SNPRM may be changed in light of the comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this SNPRM.

The Coast Guard has determined that the opportunity for oral presentations will aid this rulemaking, and will hold public hearings in New London, CT, Seattle, WA, Tampa, FL, and Chicago, IL. Interested persons who can demonstrate that the opportunity to make an oral presentation at a different location will aid this rulemaking are requested to submit recommendations for hearing locations and dates by writing to the Marine Safety Council at the address under "**ADDRESSES**". Recommendations on the locations and dates for hearings on this rulemaking must be received prior to February 28, 1994. The Coast Guard will announce the times and places of the public hearings by a later notice in the Federal Register.

Drafting Information

The principal persons involved in the drafting of this proposal are Lieutenant Commander Marc C. Cruder, Project Manager, Commanders William C. Bennett and William P. Cummins, Project Managers Emeriti, and Commander Mark G. VanHaverbeke, Project Analyst, Office of Merchant Marine Safety, Security, and Environmental Protection, and Mr. Nicholas Grasselli, Project Attorney, Office of Chief Counsel.

Background and Purpose

Subchapter T contains the regulations for the inspection and certification of small passenger vessels including construction, outfitting of lifesaving and fire protection equipment, machinery and electrical installations, and operational requirements. The initial regulations applicable to small passenger vessels were promulgated in 46 CFR subchapter T, in the Federal Register of 5 October 1957 (22 FR 7949). Subchapter T originally regulated vessels of 65 feet or less in length, measuring more than 15 but less than 100 gross tons, and carrying more than 6 passengers. The last major revision to subchapter T was made in 1963 when the scope of the regulations was broadened to include vessels of more than 65 feet in length, measuring less than 100 gross tons, and carrying one or more passengers (28 FR 9733). Several minor revisions have also been made to subchapter T since 1963.

A NPRM, published in the Federal Register (54 FR 4412) of January 30, 1989, contained a proposed revision of subchapter T. A description of the small passenger vessel fleet and detailed reasons for the proposed revision of subchapter T are contained in the NPRM. As part of the proposal in the NPRM to revise subchapter T, the Coast Guard also proposed to revise portions of 46 CFR subchapter S, Subdivision and Stability, which affect small passenger vessels. The NPRM invited and encouraged interested persons to participate in the proposed rulemaking by submitting written comments, including views, data, or arguments, on the proposal by May 31, 1989. By a notice published in the Federal Register (54 FR 17997) on April 26, 1989, the Coast Guard extended the deadline for receipt of comments to July 31, 1989, and announced the date and location of six public hearings on the proposed rulemaking.

The Coast Guard received over 300 comment letters on the NPRM providing both support and criticism of the various proposed changes. Of these letters, approximately 80 were received after July 31, 1989. Although received after the close of the officially announced comment period, the Coast Guard considered the comments in these letters in developing this SNPRM.

Most letters contained comments on several different aspects of the proposal. Letters were received from numerous individual small passenger vessel owners and operators as well as private surveyors, boat builders, naval architects, designers, insurance companies, and equipment vendors.

Several associations representing large groups of vessel owners and others involved with the small passenger vessel industry submitted comment letters. Detailed letters were received from the American Sailing Training Association, the International Association of Masters, Mates, and Pilots, the National Association of Passenger Vessel Owners (NAPVO), the National Marine Manufacturers Association (NMMA), the National Party Boat Owners Alliance, and the United States Marine Safety Association, as well as many more regional organizations. Letters were also received from many members of Congress as well as government agencies including the National Transportation Safety Board (NTSB), the Federal Communications Commission (FCC), and Coast Guard Marine Safety Offices and Marine Inspection Offices. Only a few letters could be identified as being submitted by individuals who are not connected with the small passenger vessel industry in some way, except as passengers.

Six public hearings were held on the NPRM in the cities of: Washington, DC; St. Louis, MO; New Orleans, LA; San Francisco, CA; Chicago, IL; and Boston, MA. Over 225 persons attended and 116 members of the public presented their views on the NPRM at the hearings.

An initial analysis of the comments, the proposed rules, and the draft evaluation indicated that some changes to the rules proposed in the NPRM were necessary. The Coast Guard is proposing in this SNPRM to revise the regulations governing small passenger vessels. The Coast Guard originally informed the public of its intent to publish this SNPRM by a notice published in the Federal Register (54 FR 38410) of September 18, 1989. This SNPRM substantially changes some sections of the NPRM, and includes provisions not contemplated in the original NPRM. Comments are desired on this modified proposal.

Discussion of Comments and Proposed Amendments

This SNPRM contains a complete revision of the proposed regulations affecting small passenger vessels based on the numerous comments received to the NPRM. Comments which are generally applicable to more than one part of the proposed regulations, such as organization (including the development of a new subchapter K for certain small passenger vessels), specific vessel types, existing vessels, and manning, are discussed under (a) *General Comments*. Significant changes, along with the reasons for the changes, to each regulation in subchapter T and parts 170, 171, and 173 of subchapter S are discussed under (b) *Specific Comments* in numerical order by the section number proposed in the NPRM. To prevent confusion, some of the subchapter K and subchapter T regulation cites are cross-referenced in brackets. An example is: § 175.120 Load lines. (K § 114.120). Where sections proposed in the NPRM have been redesignated, the revised designation is included in parentheses. Additional information on specific regulations, particularly those which have been republished in this SNPRM without any substantial changes from the NPRM and which are not discussed in this preamble, may be found in the NPRM.

Distribution and derivation tables are included at the end of this section of the preamble. The distribution table shows where each section of the existing regulations would be in the proposed regulations in this SNPRM. The derivation table shows where each section of the regulations proposed in this SNPRM originated.

(a) General Comments

Complexity and Organization of the Regulations. Although most comments supported the Coast Guard's efforts to consolidate regulations and policies and reduce inconsistencies, numerous comments were received about the apparent complexity of the proposed regulations. The NPRM incorporated the basic provisions of the International Maritime Organization's (IMO) "Code of Safety for Dynamically Supported Craft," the requirements of Coast Guard Navigation and Inspection Circular (NVIC) 11–83, "Regulations for Very Large 46 CFR subchapter T Passenger Vessels," and other NVICs, the contents of numerous policy letters, and the provisions of the Coast Guard Marine Safety Manual (MSM). The MSM provides guidance to the Coast Guard Officer in Charge, Marine Inspection (OCMI) on the enforcement and interpretation of inspection regulations. Consolidation of these many standards and policies into the regulatory requirements gives the impression that regulations are being increased when, in fact, many of the "new" regulations have long existed as policy. This method also made the NPRM "complex" and hard to use.

In addition, many comments were concerned with the inclusion of regulations for specific vessels not previously addressed in subchapter T, such as Dynamically Supported Craft and vessels with overnight accommodations for more than 49 passengers. Some comments expressed a fear of such regulations "trickling down," i.e., intentionally or unintentionally being applied to smaller, less complex vessels, without a need for such requirements.

The Coast Guard understands the concerns of industry on the complexity of the regulations. Consequently, this SNPRM proposes organizing the small passenger vessel regulations in a significantly different manner. In order to separate requirements for larger vessels from those for smaller vessels, a new subchapter K is being proposed for vessels which, because of their greater size, passenger capacity, and resulting complexity, are beyond the traditional description of a small passenger vessel. In this SNPRM, subchapter T contains the regulations for vessels carrying not more than 150 passengers including vessels with overnight accommodations for not more than 49 passengers. Subchapter K contains the regulations for small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers. These two breakpoints were chosen for the applicability of subchapter K since more stringent structural fire protection requirements are proposed for any vessels exceeding the two points.

The numbering system and organizational structure of the new subchapter K is designed to parallel the numbering system and structure of subchapter T. This will expedite familiarization with the new subchapter and provide for easy reference between subchapters although they are designed to be used independently of each other without any need for cross-referencing. In subchapter K all requirements for vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers, even if identical to those in subchapter T, will be repeated to prevent the need for cross-referencing. In subchapter T, references to other subchapters were minimized.

The creation of a new subchapter should make the regulations easier to read and understand, and eliminate any fears of an unintentional "trickle down effect."

Except for parts 178 and 179, the general order of parts, subparts, sections, and paragraphs in the proposed subchapters T and K is basically unchanged from the existing subchapter T. However, the outdated numbering system of the existing regulations would be revised to correspond to the revised CFR numbering system.

In a few cases, a section previously included in subchapter T, as proposed in the NPRM, is proposed by this

SNPRM to be included only in subchapter K. Typically this would include sections which are only applicable to vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers.

A comparison of the organization of the two proposed subchapters for use as an index is provided in the following table.

ORGANIZATION OF PROPOSED SUBCHAPTERS T AND K

Subject matter	Subchapter K part no.	Subchapter T part no.
General provisions	114	175
Inspection and certification	115	176
Construction and arrangement	116	177
Intact stability and seaworthiness	N/A	178
Subdivision, damage stability, and watertight integrity	N/A	179
Lifesaving equipment and arrangements	117	180
Fire protection equipment	118	181
Machinery installation	119	182
Electrical installation	120	183
Control and miscellaneous systems	121	184
Operations	122	185

Breakpoints. As with existing subchapter T, the NPRM proposed a graduated system of regulations with generally increasingly stringent requirements as a vessel exceeds certain thresholds or breakpoints. The proposed breakpoints varied, using factors such as total passenger capacity, length, existence of overnight accommodations, number of decks, service, route, and machinery.

The Coast Guard received numerous comments concerning the use of breakpoints throughout subchapter T. The Coast Guard response to comments on breakpoints for specific requirements in the NPRM is discussed throughout this preamble. For example, changes in the criteria used to determine the need for certain survival craft are discussed under part 180 in this preamble.

The NTSB endorsed the use of a graduated system of regulations based on criteria other than tonnage. The Coast Guard agrees with the NTSB and others that the number of passengers carried should be the primary factor in determining safety requirements. However, the Coast Guard has retained the use of a variety of factors to establish the applicability of requirements. For example, the physical size of the vessel is important in determining the standards to be used for hull construction as well as the volume of fire fighting water needed. The practicality of installing subdivision bulkheads is partly dependent on the length of a vessel. The need for survival craft may be influenced by the route of a vessel, i.e., the distance it travels from shore based search and rescue resources.

Several comments stated they had expected more than one major breakpoint based on passenger capacity. The comments expressed a desire for an upper breakpoint such as 600 passengers so that requirements which should only be applicable to very large vessels are not also made applicable to vessels carrying between 151 and 600 passengers. The comments claim that the absence of a passenger capacity breakpoint above the existing 150 passenger point would result in overly stringent requirements for smaller vessels.

The Coast Guard concurs with the need for a new, less complex breakpoint scheme. Breakpoints are needed to limit the ever increasing size, and passenger carrying capacity of vessels which, through the use of various devices in the basic tonnage formulae, are considered small passenger vessels. Under the proposal, the split between subchapter T and K serves as a major breakpoint. Subchapter K contains the following new upper breakpoints for vessels which must comply with subchapter H (Passenger Vessels):

a. Vessels which carry more than 600 passengers;

b. Vessels with overnight accommodations for more than 150 passengers; or

c. Vessels of more than 200 feet in length.

Vessels exceeding any one of these breakpoints because of their capacity or length would still be considered small passenger vessels because of their gross tonnage, but would have to comply with the requirements for construction and outfitting for a passenger vessel (of at least 100 gross tons) presently contained in subchapters H, F (Marine Engineering), J (Electrical Engineering), and S (Subdivision and Stability). The inspection and operational requirements of parts 114, 115, 121, and 122 of proposed subchapter K (corresponding to parts 175, 176, 184, and 185 of subchapter T) would still be applicable to the small passenger vessels which would be regulated by requirements of these other subchapters. Specifically, newly constructed passenger vessels exceeding these breakpoints would be inspected under the requirements for certification that appear in subpart H of part 115. Existing vessels would be grandfathered, as allowed by § 114.110(c)(2).

With the establishment of these breakpoints, application of certain requirements primarily intended for vessels carrying as many as 3,000 passengers could be reduced. This would minimize the so called "trickle down effect" whereby smaller capacity vessels are required to comply with requirements intended for larger capacity vessels. These new proposed breakpoints are also in keeping with the Coast Guard's desire to minimize the complexity of the regulations by minimizing the number of breakpoints and aligning them with the type of vessels which the industry has become accustomed to building and operating as small passenger vessels. The proposed breakpoints were chosen as discussed in the following paragraphs.

Six hundred passengers would be the upper passenger capacity breakpoint for subchapter K. Six hundred passengers is presently used in subchapter S for subdivision purposes. Additionally, industry comments also suggested 600 passengers as the breakpoint for the establishment of regulations for "large type subchapter T vessels." Presently, relatively few vessels less than 100 gross tons (approximately 25) carry more than 600 passengers.

One hundred fifty passengers would be the overnight accommodation capacity upper breakpoint which would trigger compliance with subchapter H.

This is consistent with existing § 177.10–5 which requires vessels carrying more than 150 passengers to comply with structural fire protection requirements of subpart 72.05 of subchapter H which the OCMI determines to be applicable. The Coast Guard considers the provisions of NVIC 11–83 as adequate for vessels with overnight accommodations for between 50 and 150 passengers and proposes to incorporate them into subchapter K. The additional expense of full compliance with the applicable requirements of subchapters F, J, H, and S is not warranted. Presently, there are no small passenger vessels with overnight accommodations for more than 150 passengers. In fact, 138 is the largest number of overnight accommodations on a small passenger vessel of which the Coast Guard is aware.

The 200 foot maximum length breakpoint would help limit the size of small passenger vessels. Although passenger capacity is the primary criterion for evaluating risk, length is another criterion to consider. Vessels under 200 feet may use the American Bureau of Shipping (ABS) Rules for Building and Classing Steel Vessels Under 61 Meters (200 feet) and ABS Rules for Building and Classing Reinforced Plastic Vessels. Lacking a maximum length criterion, it is possible to build a vessel significantly more than 200 feet in length that is less than 100 gross tons and certificated for just under the maximum passenger capacity breakpoint. At least 2 vessels with registered lengths of more than 200 feet and several vessels with overall lengths of more than 200 feet are below 100 gross tons.

The breakpoints between subchapters T, K, and H, as proposed in this SNPRM are outlined in the table below.

BREAKPOINTS FOR APPLICATION OF SUBCHAPTERS T, K, AND H TO SMALL PASSENGER VESSELS

Subchapter T	Subchapter K	Subchapter K[1]
≤ 150 passengers or.	151–600 passengers or.	≥ 601 passengers or
Overnight accommodations for ≤ 49 passengers and.	Overnight accommodations for 50–150 passengers and.	Overnight accomodations for ≥ 151 passengers or
≤ 200 feet	≤ 200 feet ...	≥ 200 feet

[1] Vessels in this category would still be small passenger vessels (passenger vessels less than 100 GT), but would be required to comply with parts 72, 75, and 76 of subchapter H, parts 114, 115, 121, and 122 of subchapter K, and the applicable requirements of subchapters F and J.

Specific Vessel Types

Some comments requested specific regulations for other types of vessels, including crew boats, dive boats, party fishing boats, and dinner boats. In fact, the regulations proposed in the NPRM and in this SNPRM do contain some specific regulations for vessels such as ferries, sailing vessels, non-self-propelled vessels, dive boats, and vessels engaged in recreational fishing. Because of the newly proposed split between subchapters T and K, and the removal of the individual requirements for Dynamically Supported Craft (discussed below), the specific regulations for special types of vessels are now very limited in number. The remaining limited number of individual requirements has been retained within the main functional parts of subchapters T and K.

Dynamically Supported Craft

Because of the uniqueness of Dynamically Supported Craft (DSC), the rules proposed in the NPRM contained specific requirements, which vary from those for conventional vessels, for DSC design, construction, equipment, and operation. The DSC regulations and definitions in the NPRM are primarily based on the IMO "Code of Safety for Dynamically Supported Craft" (DSC Code). Recognizing the unique design and operational characteristics of DSC, the DSC Code was developed by IMO to provide a level of safety for DSC on international voyages which is equivalent to that provided by the International Convention for the Safety of Life at Sea, 1974, as amended by the Articles of the Protocol of 1978 and the Amendments of 1981 and 1983 (SOLAS) and the loadline requirements.

The preamble to the DSC Code states that it was developed to allow the design and operation of DSC which take a number of forms. DSC designs include air cushion vessels, hydrofoil vessels, sidewall vessels, and other types of craft essentially within the spectrum existing between ships and aircraft. Many existing regulations were not practicable or sufficient for design or safety reasons. Due to their high speeds, maneuverability, normal dynamic support, aircraft like operations, necessary light weight, and unique machinery, DSC needed alternative requirements. Other vessels, such as certain catamarans, may also have characteristics different enough from conventional displacement vessels, such that, in order for the vessels to safely and properly operate, alternative measures must be used. These characteristics include high speed, the need for a light weight structure, and a planing mode of operation. In order to establish a level of safety equivalent to displacement vessels, the DSC Code contains special provisions in many areas, such as: Advanced methods of design and analysis; weather conditions which might restrict operations; areas of operation; radio communications, evacuation of passengers; rescue services; and vessel maintenance. To prevent piecemeal application of the DSC Code, which might result in a system imbalance that is hazardous to passengers, the DSC Code states that full compliance with all applicable provisions is required if the DSC Code is to be used as an equivalency to the international conventions.

Numerous comments were submitted on both the definition of DSC and the specific requirements proposed for DSC. Three comments stated their support for the proposed rules because the rules would specifically certify DSC, recognize the DSC Code, and clarify what DSC designers must do to meet Coast Guard requirements. However, most other comments did not support the proposed rules regarding DSC, as discussed below. The Coast Guard has reviewed the comments and the intent of the DSC Code, and has consequently made significant revisions to the proposed regulations affecting DSC.

Many comments had various objections to the definition of DSC in the NPRM. Because the provisions of the DSC Code would be incorporated by reference, as discussed below, the Coast Guard's position is that it is important to include the definition of DSC, as specifically contained in the DSC Code, and has done so in § 175.400 (K–§ 114.400) of this SNPRM. The only difference between the definition of a DSC in the IMO Code and the definition proposed in the NPRM was that the definition in the IMO Code (which is the definition proposed in this SNPRM) states that a vessel is a DSC if the vessel is balanced in one mode of operation by other than hydrostatic forces or the vessel meets the speed-length formula.

The definition in the NPRM (which no longer applies) was written so that a vessel had to be both dynamically supported *and* meet the speed-length formula. The definition of DSC is now listed alphabetically with the other terms in § 175.400(b) (K–§ 114.400(b)) of this SNPRM. Under this definition, air cushion vessels, hydrofoil vessels, and sidewall vessels (surface effect ships) would be included as DSC, as would many high speed catamarans and high speed monohull vessels which meet the specified speed-length formula and are supported, at least partially, in one mode of operation by other than hydrostatic forces.

Several comments stated the DSC rules should only be applicable to air cushion vessels, hydrofoils, and sidewall vessels, believing that the speed-length formula in the definition unjustifiably results in many high speed excursion yachts, party fishing boats, and catamarans having to meet the requirements for DSC. One comment stated the opposite, indicating that monohull vessels should be considered DSC if they are capable of DSC performance. One comment stated that the DSC definition should be revised to reflect the actual intent of the DSC Code which is to serve as an optional alternative to SOLAS.

The Coast Guard supports the philosophy of the DSC Code and is proposing in this SNPRM that compliance with the DSC requirements should be mandatory for vessels with the design and operations typical of air cushion vessels, hydrofoil vessels, and surface effect ships (i.e., those vessels which have all or a significant part of their weight supported by other than hydrostatic forces). However, the owner of a vessel which meets the speed-length criteria in the DSC definition in this SNPRM should have the option of using the provisions of the DSC Code. The DSC Code could be used to establish an equivalent level of safety if compliance with the regulations for conventional vessels is impossible or may harmfully affect the weight, speed, and other desirable operational characteristics of the vessel. In this SNPRM, vessels with high speed planing hulls or vessels such as fast catamarans, which meet the definition of a DSC, would not be required to comply with the DSC Code but could propose to use the provisions of the Code as equivalent to subchapter T or K requirements under new § 175.540(b) (K–§ 114.540(b)). The Coast Guard's position is that, in general, the provisions of the DSC Code are not suitable for vessels which are not of the light weight construction and do not operate at the high speed typical of DSC. The DSC Code will not be considered equivalent to SOLAS or U.S. Regulations for vessels which do not meet the definition of a DSC.

In this SNPRM, the Coast Guard is proposing to incorporate by reference the provisions of the DSC Code by listing it in § 175.600 (K–§ 114.600).

Owners of any vessel which meets the DSC definition in this SNPRM and which is to be certificated for international voyages will be required to comply with all provisions of the DSC Code, or alternatively, all provisions of SOLAS. This is in keeping with the intent of the DSC Code. Owners of any DSC which has all or a significant part of its weight supported by other than hydrostatic forces (i.e., an air-cushion vehicle, hydrofoil, or surface effects ship) will most likely not be able to meet the requirements of SOLAS, and will have to comply with the DSC Code.

Owners of any vessel which meets the DSC definition in this SNPRM and which will not be certificated for international voyages, would be required to comply either with the DSC Code or subchapter T (or K, as applicable), at the option of the owner. For vessels which meet the DSC definition in this SNPRM, which will not be certificated for international voyages, and which the owners choose to design in compliance with subchapters T or K instead of the DSC Code, the OCMI may require operational controls or additional safety equipment. Under newly proposed §§ 176.110, 177.700(a), 177.800(f), and 184.100(b) (K–§§ 115.110, 116.700(a), 116.800(f), and 121.100(b)), operational controls or additional safety equipment, such as seat belts or radar, which are specified in the DSC Code but which are not specifically required on all small passenger vessels by proposed subchapters T or K, may be required by the OCMI on a case-by-case basis. These proposed sections are included in the specific section discussions later on in this preamble. Because proposed subchapters T and K do not address many operational characteristics of DSC which have all or a significant part of their weight supported by other than hydrostatic forces (i.e., an air-cushion vehicle, hydrofoil, or surface effects ship), compliance with some portions of the DSC Code may be required (i.e., stability and operation in the dynamically supported mode). Owners of these types of vessels also will most likely not be able to meet the requirements of subchapter K, and will have to comply with the DSC Code.

The Coast Guard is revising proposed § 175.540(b) (K–§ 114.540(b)) to state that the Commandant may accept the provisions of the DSC Code as equivalent to the applicable requirements of subchapter T or K. Requests to use the DSC Code as an equivalent would be handled on a case by case basis by the Marine Technical and Hazardous Materials Division at Coast Guard Headquarters, and will be carefully evaluated to ensure that system safety, as envisioned in the DSC Code, is maintained. Where the DSC Code does not have provisions equivalent to specific requirements proposed in subchapters T or K, or where the Code leaves determinations up to the administration, such as the specific wiring requirements in § 183.340 (K–§ 120.340), a vessel would be expected to comply with the applicable requirements in subchapters T or K.

U.S. regulations require all vessels carrying greater than 150 passengers to be of steel or equivalent metal construction, i.e., noncombustible. However, the DSC Code allows the use of other than noncombustible materials provided the administration is satisfied that additional precautions are taken to ensure that an equivalent level of safety is achieved. Longstanding Coast Guard policy is that it is difficult, if not impossible, to make structural vessel components (such as hulls, bulkheads, and decks) of combustible materials (such as fiber reinforced plastic (FRP)) equivalent to metal construction. Therefore, DSC constructed of combustible materials have not been allowed by the Coast Guard to operate in the U.S. carrying greater than 150 passengers.

Because of these changes the Coast Guard has deleted § 176.116 and the specific construction, outfitting, and operational requirements for DSC proposed throughout the NPRM. With the removal of specific DSC requirements, it is not necessary to define the other terms associated with DSC as proposed in the NPRM. Therefore, § 175.400(c) has been removed.

Submersible Passenger Vessels. The regulations proposed in the NPRM did not specifically address the special considerations and operations of submersible passenger vessels. One comment suggested adding structural standards for submersibles. The Coast Guard disagrees. Submersible passenger vessels are still considered novel and unique vessels. As such, these vessels require individual attention and case by case review and approval by the Commandant (G–MVI). At this time there are approximately 7 submersibles certificated as small passenger vessels which is a very small fraction of the small passenger vessel fleet. A NVIC entitled "Guidance for Certification of Passenger Carrying Submersibles" is being developed to explain Coast Guard policy concerning the limited number of these unique vessels and their operations.

Uninspected Vessels. Numerous comments were received expressing the opinion that uninspected vessels, including uninspected passenger vessels (i.e., those vessels carrying 6 or less passengers), vessels operating under bareboat charters, commercial fishing vessels, and recreational vessels, are less safe than small passenger vessels. These comments opposed any further regulation of the small passenger vessel industry and suggested that any new regulations should apply to uninspected vessels. This opinion encompasses many complex and related issues.

Vessels operating under invalid bareboat charters, or demise charters, are subject to subchapter T, but have long been an enforcement problem for the Coast Guard. The Coast Guard has determined that it cannot legally regulate true bareboat chartered vessels under subchapter T. Therefore, these proposed rules do not address bareboat chartered vessels.

The Commercial Fishing Industry Vessel Safety Act of 1988 (PL 100–424) became law on 9 September 1988. The Act required the Coast Guard to publish safety regulations, develop plans for licensing commercial fishing industry vessel operators, and work with the Marine Board of the National Academy of Sciences to conduct a safety study to determine if fishing vessels require an inspection program. A final rule [CGD 88–079] was published in the **Federal Register** on August 14, 1991 (56 FR 40364). The fishing vessel safety regulations are intended to improve overall safety of commercial fishing industry vessels and are outside the scope of this SNPRM.

The Coast Guard does not agree that recreational boating is an area currently requiring increased regulation. Coast Guard statistics indicate that the number of deaths and injuries resulting from recreational boating incidents are decreasing. There are no plans to promulgate more regulations. Furthermore, recreational boats are beyond the scope of this rulemaking.

Existing Vessels

Parts 177 to 185 (K Parts 116 to 122) contain sections which specify how the requirements in that part apply to existing vessels. An existing vessel means any vessel other than a new vessel. Section 175.400 in the NPRM defined a new vessel as a vessel for which:

(1) The initial construction began on or after the date the regulations would take effect;

(2) An initial Certificate of Inspection was issued six months after the regulations would take effect;

(3) A major conversion was initiated on or after the date the regulations would take effect;

(4) A major conversion was completed for which an amended Certificate of Inspection was issued six months after the regulations would take effect;

(5) Its authorized route was increased by the cognizant OCMI from a route of lesser severity to a route of greater severity; or

(6) The maximum number of passengers it is permitted to carry was increased to above certain specified capacities.

Generally, the NPRM proposed that all new and existing vessels meet the revised inspection and operating requirements in parts 175, 178, and 185. With some exceptions, only new vessels would have to meet the construction and outfitting requirements proposed in parts 177 through 184. New equipment which is not installed to specifically replace existing equipment would have to comply with the revised regulations. Alterations to existing vessels would have to comply with the revised regulations. Replacement of equipment in kind (i.e., with equipment similar to that presently installed on the vessel) or replacement to meet existing requirements applicable to the vessel before the revised regulations take effect, need not meet the revised requirements, with the exception of wiring. Repairs or replacement in kind would normally have to meet the requirements in effect when the vessel was built. However, the owner could choose to meet any revised requirements.

As specified in § 180.15, existing vessels would have to meet the survival craft and EPIRB requirements in the proposed rules within specified time periods. As specified in § 181.115, existing fiberglass vessels would have to meet the requirements in § 181.400 for fixed fire extinguishing and detecting systems. And as specified in § 184.115, certain existing vessels would have to meet the requirements for public address systems and first aid kits within specified time periods.

Numerous comments were received on the applicability of specific proposed regulations to existing vessels. Those comments are discussed in this preamble under the sections on existing vessels in each applicable part, such as § 177.115 or § 178.115. The Coast Guard's response to general comments on the effects of the regulations proposed in the NPRM on existing vessels are discussed immediately below.

Several comments stated that the sections in each part on applicability to existing vessels need to be clarified. The Coast Guard has revised those sections for clarification wherever possible. Several comments suggested that the wording of the sections on existing vessels do not clearly indicate that an owner has the option of complying with the existing regulations or the revised regulations. The introductory sentences of §§ 177.115, 178.115, 179.115, 180.15, 181.115, 182.115, and 183.115 (and the corresponding sections of subchapter K) have been revised to more clearly indicate that, with only a few exceptions, a vessel would have to meet the existing requirements or, as an alternative, the revised requirements.

Numerous parties stated the requirements proposed in the NPRM would have significant effects on existing vessels, because the vessels could not be sold to new owners who want to upgrade the route of the vessel or increase the passenger capacity without significant costs. Some comments specifically proposed eliminating items (5) and (6) of the "new vessel" definition.

Existing vessels may be redesigned to increase passenger capacity or to operate on routes for which the vessel was not originally designed. The intention of the definition of "new vessel" in the NPRM was to require existing vessels which upgraded their capacity or route to comply with the new, more stringent requirements in the revised regulations. Allowing such an upgrade for an existing vessel, with a corresponding increase in risk, and only requiring compliance with the regulations in effect at the time the vessel was originally certificated would be unfair to owners of new vessels. However, the Coast Guard agrees that the proposed definition of a "new vessel" in the NPRM could unfairly affect existing vessels which may be certificated for a lower passenger capacity or a less stringent route than actually designed. Without making any major changes, the vessel may be structurally adequate for a more severe route and meet the existing requirements for greater passenger capacity. An owner may have originally requested the lower capacity or less severe route for equipment outfitting purposes or because the particular planned operations of the vessel did not

necessitate a larger capacity or more severe route.

The Coast Guard is therefore proposing to change the definition of "new vessel" by deleting paragraphs (5) and (6) of the definition contained in the NPRM which referred to increasing the route and passenger capacity on the vessel's Certificate of Inspection (COI). However, to ensure that unfair competition with new vessels does not occur, the Coast Guard is also proposing in this SNPRM to revise the definition of "major conversion" to include a conversion of a vessel that substantially alters the design, scantlings, or arrangement so that the vessel is capable of carrying more passengers, or suitable for operation on a route of greater severity, than for which it was originally built.

Some comments stated that existing vessels should always be grandfathered regardless of changes in construction or arrangement. The Coast Guard disagrees that existing vessels should always be grandfathered. Because statistics show the risk of a casualty is generally greater for an older vessel, the requirements proposed in this SNPRM may be even more important for existing vessels. The proposal in this SNPRM which could have the most significant effect on existing vessels is the requirement for inflatable survival craft on certain vessels. Because survival craft serve as the primary piece of lifesaving equipment aboard a vessel, the Coast Guard believes that existing vessels should comply with these proposed rules. The installation of survival craft on existing vessels is further discussed in this preamble under part 180.

The NPRM proposed that an increase in route severity would necessitate compliance with the revised regulations. One comment stated that the revised requirements should not be applied to a vessel if it moves from one harbor to another harbor. Another comment stated that route severity is not defined. Another comment requested that the Coast Guard confirm that a vessel would not have to comply with the revised requirements if the service of the vessel changes but only if the severity of the route or the number of passengers increases.

These comments may have been made because of a lack of understanding of the phrase "route of greater severity", which is now proposed to be used in the definition of "major conversion." As used in this proposed definition, the term "route" only refers to a general description of the bodies of water a vessel is permitted to operate on, as endorsed on its COI. Routes include, from greater to lesser severity: Oceans; coastwise; Great Lakes; lakes, bays, and sounds; and rivers. Information on the "routes" a vessel is permitted to operate on and a listing of the order of severity of routes is contained in § 176.110 (K–§ 115.110) of both the NPRM and this SNPRM.

A vessel which has its specific area of operation changed from one harbor to another would not normally have to comply with the proposed requirements. Likewise, a vessel which only has its service changed would not normally have to comply with the proposed requirements. Service, as used in regards to the inspection of a small passenger vessel, means the type of operation in which the vessel is employed, i.e., dinner cruises; excursions, including tours, whale watching, or regatta viewing; crew boats; or fishing. Of course, a change of service may require that a vessel comply with some existing or even new requirement specifically applicable to a vessel in the new service. For example, certain watertight doors on a crew boat would have to be removed or permanently sealed if the vessel changed its service.

As proposed in the NPRM, a vessel whose construction began prior to the effective date of the final rule and which is not issued its initial COI prior to six months after the effective date of the final rule, would be considered to be a new vessel and would have to meet all the revised regulations. One comment, representing the Sea Explorers, indicated that an existing vessel which has not yet been certificated should be grandfathered so that it would only have to meet the presently existing requirements. The Coast Guard disagrees. Generally, allowing such existing vessels to meet only the presently existing requirements would provide an unfair advantage over vessels built after the effective date of the new regulations. The MSM presently contains policy on inspection requirements for Sea Explorer vessels which consider their special operations.

As discussed under part 177 of this preamble, changes have been made to the structural fire protection requirements which apply only to vessels proposed to be regulated by the new subchapter K. The Coast Guard anticipates that many existing vessels may want to make use of the wider range of materials allowed for components such as bulkhead and ceiling linings, and carpets. The increased use of fire retardant materials, in lieu of present requirements for noncombustible materials, was based in part on the increased fire protection and detecting requirements in part 118. Owners of small passenger vessels regulated by subchapter K which upgrade the interior furnishings and finishings of their vessels, using the requirements of part 116, would also be required to ensure their vessels meet the requirements of part 118.

Manning

The Coast Guard does not anticipate any revision to the present manning requirements. The regulatory project (CGD 85–080a) to establish new minimum manning requirements for small passenger vessels was withdrawn in January 1990. However, as a result of National Transportation Safety Board (NTSB) recommendation M–89–111, in NTSB's Safety Study of Passenger Vessels Operating from U.S. Ports (November 28, 1989), the Coast Guard plans to include damage stability, emergency steering, and emergency procedures prior to and after grounding on the examinations for master and mate of a small passenger vessel. Also as a result of NTSB's recommendation, fire fighting systems, equipment and regulations, and electronic navigation have been stressed on these examinations.

Americans With Disabilities Act of 1990

The Coast Guard realizes that regulations which will be published to implement the Americans with Disabilities Act of 1990 (Pub. L. 101–336—July 26, 1990) on ferries and other passenger vessels will impact small passenger vessel design and operation. The Coast Guard will be staying abreast of these requirements and will be providing input to the projects.

Miscellaneous Comments

Several comments suggested the Coast Guard should work more closely with industry to reach workable solutions while developing these regulations and specifically stated that an advisory committee or panel was needed for the small passenger vessel industry. The Coast Guard recognizes that an advisory committee for the small passenger vessel industry, similar to the Towing Safety Advisory Committee or the National Offshore Safety Advisory Committee, would provide valuable information, advice, and recommendations concerning the small passenger vessel industry and the maritime field in general. The Coast Guard has not been provided with funding or a legislative mandate to establish an advisory committee for the small passenger vessel industry, and therefore, does not intend to do so. Instead, the Coast Guard will continue to work together with industry in an attempt to establish cost effective safety requirements. It should be noted that the Coast Guard has considered all comments in the docket and held six public hearings because of its interest in working with the small passenger vessel industry.

Several comments indicated that metric (SI) units were not consistently used in the NPRM. This SNPRM makes some use of metric equivalents. When the final rule is published, metric units will be used, immediately followed by English units in parenthesis throughout the regulations.

Several other comments pointed out that the NPRM did not have an index, while existing subchapter T and other subchapters do have an index. A useful index will be provided in the final rule.

Numerous comments were received stating that the Coast Guard estimated costs for the drug testing regulations were much lower than in actuality. Requirements for drug and alcohol testing of crew members were published as a final rule in the **Federal Register** (53 FR 47064) of November 21, 1988, entitled "Programs for Chemical Drug and Alcohol Testing of Commercial Vessel Personnel." All issues raised by the comments to the subchapter T docket were addressed in that final rule on drug testing and will not be addressed by this SNPRM.

One comment stated that the drug testing regulations should be repeated in subchapter T. The requirements in the drug testing rule were very complex and are presently centrally located in 46 CFR part 16 for applicability to all vessels. It is unnecessary to repeat them in subchapter T.

Many comments were received concerning the use, abuse, and elimination of tonnage measurement loopholes which allow the size and capacity of vessels to be increased while remaining under 100 gross tons. Some of these comments specifically mentioned adoption of the International Tonnage Convention (ITC) or revision of the regulations in 46 CFR part 69—Measurement of Vessels. Part 69 was rewritten and the ITC was adopted as the primary tonnage measurement instrument of the United States in a final rule published in the **Federal Register** (54 FR 37657) on 12 September 1989. Many of the other issues which were raised concerning breakpoints for application of subchapter H are addressed previously in this preamble, under the section on Breakpoints.

One comment stated that the waters defined by a lakes, bays, and sounds route needed to be clearly defined or eliminated. The Coast Guard disagrees. The route categories which appear on a COI (oceans; coastwise; Great Lakes; lakes, bays, and sounds; or, rivers) describe geographical areas which dictate lifesaving and other outfitting needs. Establishing firm criteria for categorizing "lakes, bays, and sounds" routes would be unrealistic due to the large number of variables involved. Eliminating the route would place an undue burden on vessels operating on what are generally considered inland waters because current lakes, bays, and sounds routes would be generally reclassified as coastwise.

The comment also stated that the definitions of oceans, coastwise, Great Lakes, lakes, bays, and sounds, and rivers routes were inadequate and confusing, and went on to suggest that the intact stability criteria definitions for protected, partially protected, and exposed waters should be harmonized with routes found on a COI. The terms protected, partially protected, and exposed are used for stability purposes to describe the sea conditions that a vessel might encounter. While these conditions follow general geographical trends, this is not always the case. For example, a sound is generally considered to be partially protected but may be classified as exposed due to local conditions. Geographic terms are occasionally used for stability purposes, and parallel those used for vessel outfitting, with the exception of oceans. For stability purposes, oceans includes coastwise.

(b) Specific Comments

46 CFR Subchapter S—Subdivision and Stability

Many of the comments received concerning subdivision and stability requirements discussed the effects of the changes proposed in the NPRM, or suggested additional changes, which would affect other classes of vessels, such as passenger vessels of at least 100 gross tons and offshore supply vessels. The Coast Guard Marine Technical and Hazardous Materials Division is currently reviewing stability requirements for all types of vessels under a project entitled "General Revisions to Stability Regulations" [CGD 89–036]. The changes proposed in the NPRM to some sections of subchapter S (§§ 170.090, 170.170, 170.173, 171.050, 171.055, 171.070, 171.076, 171.077, and 171.080) are now being evaluated under the stability revisions project so that the effect that any proposed changes might have on other types of vessels can be considered. Therefore, these proposed changes to subchapter S have been removed from the small passenger vessel SNPRM. All comments received on the applicable subchapter S sections will be considered in the development of proposed rules under the stability revisions project. The Coast Guard anticipates that an NPRM for the stability revisions project will be published this year.

Since publishing the NPRM, the Coast Guard Marine Technical and Hazardous Materials Division has also amended this subpart under a project entitled "Stability Design and Operational Regulations" [CGD 89–037]. These amendments included requirements for stability verification and logging, loading door closure and logging, hull markings, periodic lightship verification, and residual stability for new passenger vessels. These changes were published in a final rule on September 11, 1992, and except for the periodic lightship verification requirements, were effective on December 10, 1992. The effective date of the lightship verification requirements was indefinitely suspended, and is not included in this SNPRM. A comment period was reopened relative to these requirements, with revised amendments due to be published in the near future. The remaining amendments have been incorporated into the SNPRM.

Part 170—Stability Requirements for All Inspected Vessels

One comment proposed that naval architects be allowed to review and certify a vessel's stability as an alternative to Coast Guard review. The Coast Guard disagrees with this proposal. Because of the importance of small passenger vessel stability and subdivision, the Coast Guard has not delegated this function to any classification society or other party. No change was made to the NPRM.

One comment suggested that when evaluating damaged stability, it is inappropriate to limit the maximum draft based on floodable length. Floodable length calculations only need to be done at the same draft and trim as damaged stability and it is often a less severe criteria than damaged stability requirements. No changes were made to the NPRM.

Section 170.050 General Terms

One comment suggested amending the definition of "partially protected waters" to be the same as in proposed § 175.400. The Coast Guard has determined that since this change would affect vessels other than small passenger vessels, implementing the suggestion would go beyond the scope of this project. No change was made to the NPRM.

Section 170.055 Definitions Concerning a Vessel

The proposed rule would allow the Marine Safety Center (MSC) to include underwater projections in the value of "length between perpendiculars (LBP)" to make the application of stability criteria better reflect the buoyancy distribution of a vessel. One comment suggested using a new term to describe the length of a vessel that would include large underwater projections, rather than modifying the definition of LBP. The Coast Guard disagrees because another definition for length would make the regulations more complicated. The use of the term LBP within subchapter S, in sections applicable to small passenger vessels, is sufficient to determine volumes subject to flooding. In these cases, a modified definition of LBP should not create confusion.

The proposed definition of a "small passenger vessel" eliminates those vessels carrying six or less passengers and came from the law (46 U.S.C. 2101(35)). One comment suggested that due to this definition, all small passenger vessels would have to comply with part 170 on stability, and that this would require even small passenger vessels of not more than 65 feet in length to have inclining and hydrostatic curves drawn by a naval architect. This is not true. Proposed § 178.310 permits an owner of a vessel, with only a limited knowledge of stability, to perform a simplified stability proof test, which can be conducted under the supervision of the Coast Guard. The cognizant OCMI has the discretion to determine that certain vessels carrying not more than 49 passengers are not required to undergo this test. Section 178.310 also specifically identifies which vessels must meet subchapter S criteria and which sections are applicable. No changes were made to the NPRM.

Section 170.255 Class 1 Doors; Permissible Locations

This section of the existing regulations contains requirements for Class 1 watertight doors. In the NPRM, no changes to the existing regulations were proposed. Requirements for watertight doors on small passenger vessels were proposed in § 179.330 of the NPRM. One comment suggested current policy on watertight doors should be included in existing § 170.255 and that the requirement for an open/closed indicator in existing § 170.255(e) should apply to class 2 and 3 doors as well. The Coast Guard disagrees. Current policy is being included in proposed § 179.330, which applies existing § 170.255 to small passenger vessels. Remote indicators are already required for class 2 and class 3 doors by existing § 170.270(d). No change has been made to the NPRM.

Part 171—Special Rules Pertaining to Vessels Carrying Passengers

Section 171.010 Definitions

One comment suggested amending the definition of "ferry" in § 171.010(d) to be the same as § 175.400 of the proposed rule. The proposed rules defined "ferry" in § 175.400, using the definition in existing § 175.10–9, except that the clause "having provisions only for deck passengers and/or vehicles" was inadvertently left out. The Coast Guard agrees that definitions should be consistent, if possible. "Ferry" is also defined in 46 CFR subchapter H, "Passenger Vessels", which uses the same definition as existing subchapter T. The definition of ferry in § 175.400 has been changed to what it is in the existing regulation and is now consistent with subchapter H. The definition of ferry in § 171.010(d) has been changed to be consistent with the other subchapters by changing the wording concerning routes in (d)(1) and adding the phrase "short runs" to (d)(3). It is of particular importance to note that the only passengers allowed on ferries are "deck passengers." The term deck passenger generally refers to a passenger for whom no berthing or other accommodation is provided, other than the freedom to occupy allotted deck space, as opposed to cabin passengers. Deck passage is usually limited to short voyages. Berthing is important for stability because berthed passengers sleep in closed compartments. The standard of subdivision for a ferry is much less than that applicable to other passenger vessels. This trade-off demands much less risk, in the form of awake and alert passengers and easy escape routes.

Section 171.035 Intact Stability Requirements for a Sailing Vessel or an Auxiliary Sailing Vessel

The proposed rule would have deleted § 171.035, removing the provisions for a simple proof test for initial stability, taking the position that a simplified analysis of the intact stability was not sufficient for sailing vessels. This would have required the stability of all sailing vessels to be analyzed with the procedures applicable to larger sailing vessels. Four comments expressed reservations with the complete elimination of § 171.035, and questioned if it was intended to subject all sail and auxiliary sail vessels to the requirements for large sail vessels, including inclining experiments.

Since the NPRM was published, the Coast Guard has performed a stability study on sailboats of not more than 65 feet in length. The results showed that the simplified proof test is sufficient for typical arrangements (decked vessels with a cockpit no longer than 0.2L), and ensures a level of safety similar to a more formal analysis, provided downflooding openings are well inboard. Therefore, the requirements in existing § 171.035 have been retained, but placed in new § 178.325.

Section 178.325 contains revised descriptions of hull forms for which the simplified evaluation procedures are not sufficient to ensure that small vessels are stable. The inclusion of this section was most easily and logically made by making some changes and additions concerning sail and auxiliary sail vessels to proposed §§ 178.310 (a) and (b)(2), and inserting a new § 178.330(e) concerning applicability and procedures for simplified stability proof tests. The term "self-bailing cockpit", which is used in proposed § 178.325(d) of this SNPRM, is defined in proposed § 175.400. Proposed § 171.045(f), which would have required all small passenger vessels which are sailing vessels to meet large vessel stability criteria, has been removed.

Section 171.057 Intact Stability Requirements for a Sailing Catamaran

The proposed rules did not address § 171.057. One comment suggested modifying the required heeling moment to account for sail rigs which have a headsail that goes only part way up the mast. The Coast Guard agrees. Recent advances in the design of catamaran mast and sail arrangements have resulted in designs which are unduly penalized because they have a higher than normal mast and use sails that do not go all the way to the masthead. The formulas in this section have been modified to use the height of the center-of-effort of the sail plan rather than the height of the mast. This approach is more realistic than using a height coefficient and more in keeping with the requirements for monohull sailing vessels.

Section 171.085 Collision Bulkhead

The proposed rules did not address the requirements for collision bulkheads in existing § 171.085. One comment suggested that paragraphs (c), (d), and (j) of § 171.085 are incompatible and confusing. The Coast Guard agrees that numerous problems interpreting this regulation have been experienced. The Coast Guard Marine Technical and Hazardous Materials Division is currently considering changes to clarify this section as part of a regulation project entitled "General Revisions to Stability Regulations" (CGD 89–036) that will update and correct subchapter S in general. An NPRM is expected to be published in the future.

46 CFR Subchapter T

Part 175—General Provisions

Section 175.110 General Applicability

One comment requested that existing Table 175.05–1(a) be updated since it provides a convenient means of determining which inspection subchapters regulate each type of vessel. The Coast Guard's position is that it is not necessary to include the detailed applicability table in the revised subchapter T since proposed § 175.110 is sufficiently clear as to which vessels must comply with subchapter T, and because Table 2.01–7(a) in 46 CFR Part 2, Vessel Inspection, can be used as the entry table to initially determine the inspection subchapter which applies to the various vessel types. Removal of the table from part 175 will simplify the part and reduce volume.

One comment stated that subchapter T should apply to towboats which are permanently or semi-permanently attached to passenger barges since such boats often provide all vital systems for the barge. The Coast Guard has recently decided that the towing vessel portion of an integrated tug/barge combination in passenger service is not subject to inspection as a passenger vessel, unless passengers are allowed aboard the attending towing vessel. The barge itself is inspected as a non-self-propelled passenger barge, and should have all required emergency equipment on board, including, but not limited to, the emergency source of power and all lifesaving and firefighting equipment.

One comment stated the terms "laid up, dismantled, or out of commission", as used in § 175.110(b)(2) of the NPRM, should be defined. These terms are commonly used in industry and the regulations and do not need to be defined. However, § 175.110(b)(2) has been deleted because it is not necessary for the determination of whether a vessel must comply with the small passenger vessel regulations.

Section 175.122 Load Lines

This section identifies which vessels must comply with the load line regulations in 46 CFR subchapter E. This section is provided for the convenience of the reader since subchapter E contains a separate applicability section. The wording of this section is almost identical to that in existing § 175.07–1.

One comment stated the section does not correspond to 46 U.S.C. 5102 (Load Lines—Application) in that it fails to address the applicability of load lines for certain vessels in domestic service. Since subchapter T is only concerned with small passenger vessels, this section only addresses load line requirements for small passenger vessels. Small passenger vessels on domestic voyages are specifically excluded from load line requirements by 46 U.S.C. 5102(b)(11). One comment asked if the Coast Guard was dropping the 100 ton limit for load lines and using length instead. The only breakpoint applicable to small passenger vessels for load lines is 79 feet. The only use of tonnage as a breakpoint under the load line law is that existing vessels of not more than 150 gross tons on domestic voyages need not comply with the applicable requirements. Since all small passenger vessels are under 100 gross tons, there is no need to address the tonnage of vessels in § 175.122.

The proposed rule uses the words "foreign voyage" instead of "international voyages" which is used in existing § 175.07–1. "Foreign voyage" is used since that term is used in 46 U.S.C. 5102. In response to two comments questioning the definitions of foreign voyage and international voyage, the proposed wording was changed to use the wording "voyage other than a domestic voyage" to more closely mirror the law. The law defines domestic voyage as movement of a vessel between places in, or subject to, the jurisdiction of the U.S., except movements involving certain territories, possessions, and Trust Territories. One comment stated that certain vessels will make foreign voyages but not international voyages in order to avoid load line regulations. Under the above definition, any small passenger vessel of more than 79 feet in length, not on a domestic voyage, is required to comply with the load line requirements. The Coast Guard Marine Technical and Hazardous Materials Division is currently considering changes to these definitions under a project entitled "Comprehensive Revision of Load Line Regulations" (CGD 86–013). An NPRM is scheduled to be published at a later date.

One comment suggested referring specifically to part 46 of subchapter E in the section. However, since other parts of the subchapter can also be applicable, the Coast Guard did not adopt this recommendation. Another comment suggested that a provision should be included for exemptions from certain load line requirements under certain circumstances. This is not necessary since there are already specific provisions for exemptions within subchapter E. Since few small passenger vessels will have to comply with load line requirements, there is no need to include detailed requirements and exemption procedures in this rulemaking.

One comment suggested allowing the use of cargo vessel load lines and certificates for small passenger vessels over 79 feet in length, to facilitate international movement while carrying 12 or less passengers. The Coast Guard disagrees. Passenger vessels require a subdivision load line. Only cargo vessels, that is, those vessels which are inspected under subchapter I, Cargo and Miscellaneous Vessels, and which meet all applicable international standards for cargo vessels, including load line requirements, can carry 12 or less passengers on international voyages with a cargo vessel load line.

Section 175.200 Gross Tonnage as Criterion for Requirements

This section in the NPRM, adopted from existing § 175.05–15, states that regulations in addition to or in place of those in subchapter T may be prescribed if the Commandant determines that a small passenger vessel, which has measured under 100 gross tons only because of extensive use of exemptions, reductions, or other devices in the gross tonnage formulation, may be subjected to safety hazards or risks that regulations in subchapter T do not adequately address.

The Coast Guard received many comments on this section. Most comments generally opposed the provision or wanted it to be more specific in regards to additional requirements that might be imposed. As previously discussed in the section of this preamble on Breakpoints, the Coast Guard is proposing to create a new subchapter K and to adopt upper limit breakpoints above which vessels would have to comply with most of the requirements applicable to passenger vessels of at least 100 gross tons (subchapter H). This breakpoint scheme moves away from using gross tonnage as the primary factor in determining applicability of the regulations and should control the continued escalating use of tonnage innovations to stay under 100 gross tons. By proposing the adoption of this breakpoint scheme, the Coast Guard is making the determination that gross tonnage is not a valid criterion for certain vessels, and that passenger capacity or length are the preferred criteria. Because of this

determination, this section has been deleted from proposed subchapter K as unnecessary, but has been left in proposed subchapter T.

Section 175.400 Definitions

This section of the SNPRM revises and expands upon existing § 175.10. Numerous comments were made on this section giving support for centrally locating the definitions, asking for further clarification of already defined words, and asking for additional definitions. Generally, words or terms which, based on Coast Guard experience, may require interpretation have been defined in § 175.400, except that a word that is used only within one section in the subchapter may be defined within that section.

Auxiliary sailing vessel. One comment suggested adding the definition of an auxiliary sailing vessel. Since there are no requirements in this SNPRM for a sailing vessel with auxiliary power (an auxiliary sailing vessel) that do not also apply to a sailing vessel, the term "auxiliary sailing vessel" is not used in the proposed regulations.

Cargo space. One comment stated that "cargo oil tank" and "product or chemical tank" should be deleted from the definition of cargo space since their inclusion wrongly indicates that a small passenger vessel can carry such cargo in integral tanks. The Coast Guard agrees and the noted terms have been deleted.

Coastwise. One comment stated that "coastwise" is not defined as it is used in 43 U.S.C. 1333 and in 46 CFR 46.05–15. "Coastwise" is defined in 43 U.S.C. 1333 for the purposes of U.S. Customs laws, and is defined in 46 CFR 46.05–15 for load lines purposes. Prior to the recodification of 46 U.S.C., the load line law referred to "coastwise." Chapter 51 of 46 U.S.C. now uses the term "domestic voyage." The definition of coastwise used in the NPRM is the definition which has been traditionally used in all vessel inspection subchapters. To change the definition of coastwise used in all inspection subchapters would not be beneficial.

Commandant. One comment expressed concern that under the proposed definition, a marine inspector could be considered an authorized representative of the Commandant. As such, the chain of appeal could be compromised. The Coast Guard agrees and proposes to revise the definition to include only authorized Coast Guard headquarters staff officials.

Corrosion-resistant material. One comment stated that brass should not be labeled "corrosion resistant." One comment stated that stainless steel and monel should be included as "corrosion resistant." Certain grades of brass are more prone to zinc deterioration than other grades. For example, a naval brass installed in a salt water system will provide better service than a lesser grade of brass intended for a lighter duty service. Some grades of stainless steel and nickel-copper (monel) are considered corrosion resistant in marine environments. The NPRM rule has been changed to clarify the meaning of corrosion resistant.

Draft. One comment suggested defining draft from the bottom of the keel rather than the molded baseline, noting that other subchapters use the bottom of the keel as a reference. The Coast Guard disagrees. With one exception, the use of "draft" in this subchapter is for the purpose of describing the buoyant hull in stability calculations, not the depth of a vessel below the waterline or the underbottom clearance. For these purposes, on most small vessels, the molded baseline is a better indicator than the bottom of the keel, especially for vessels with large skegs and keels. The exception is for the draft marks required by § 185.602. No change has been made to the NPRM.

Freeing port. One comment suggested adding "from exposed decks" between "water" and "overboard" in the proposed definition of freeing ports. The Coast Guard agrees this would clarify the definition. The proposed rule has been revised with minor additional changes made to clarify the definition.

Great Lakes. One comment suggested revising the definition of Great Lakes to be consistent with that found in 46 CFR 10.103 in order to avoid confusion. Generally, 46 CFR Part 10 deals with the requirements for licensing of Merchant Marine Officers. The definition in proposed § 175.400 is used for stability concerns and lifesaving equipment requirements, which are independent of 46 CFR 10.103. Although the Coast Guard agrees with the concept of consistent definitions, adopting the Part 10 definition would require some vessels operating on the tributary rivers to meet the higher standards of Great Lakes routes, rather than rivers routes. No change has been made to the NPRM.

Harbor of Safe Refuge. The term "harbor of safe refuge" is used in §§ 170.170, 175.400, 175.530, 176.110, 180.15, and 180.75 of the NPRM. The primary purpose of using the term is to allow reduced stability criteria and an exemption from certain lifesaving equipment for a vessel which is able to travel in a short time to a location accessible to the vessel and where it would be sheltered from a rapidly developing storm which is not forecasted in sufficient time for safe trip-planning. Using local knowledge and information in sources such as Coast Pilots and charts, the OCMI must determine the acceptability of the location of a "harbor of safe refuge" on a vessel-by-vessel basis. This determination normally depends on the vessel's size and evidence that a harbor, port, or anchorage provides satisfactory shelter.

Several comments requested that the term "harbor of safe refuge" be defined to ensure consistent application of the term. The Coast Guard agrees and has proposed a definition in § 175.400 in this SNPRM.

International voyage. The proposed definition in the NPRM for "international voyage" is based on the provisions of existing subpart 176.35. Two comments stated that paragraphs (2) and (3) of the definition, which includes voyages between the continental United States and Alaska or Hawaii, or between Alaska and Hawaii, should be deleted since their inclusion is unfair to vessels in such service and the provisions serve no practical purposes. The inclusion of such voyages as international voyages basically requires any vessel on a trip between the U.S. mainland and Alaska or Hawaii, or both, to comply with SOLAS. Existing subpart 176.35 was first promulgated when provisions of SOLAS 1960 were incorporated into subchapter T in 1965. Voyages from the U.S. mainland to and between Alaska and Hawaii were designated as international voyages in all the vessel subchapters (D, H, I, T) because, when promulgated, it was believed that such voyages were similar in nature to "international voyages" and for safety reasons the increased standards of SOLAS were needed for vessels on such routes.

The Coast Guard agrees that in many cases it may be unnecessary and inequitable for small passenger vessels on voyages listed in paragraphs (2) and (3) of the "international voyage" definition to be required to comply with SOLAS. Under the existing regulations a small passenger vessel can make a voyage from Ketchikan, Alaska to Anchorage, Alaska without having to comply with SOLAS, but the same vessel would have to comply with SOLAS for the shorter, probably safer voyage from Seattle, Washington to Ketchikan. Additionally, under the proposed regulations, a small passenger vessel making the subject voyages would need inflatable survival crafts regardless of SOLAS. One of the primary reasons for previously requiring vessels on the subject voyages to comply with SOLAS was due to the more stringent lifesaving equipment

standards of SOLAS. If adopted, the revised regulations would increase the safety equipment required for vessels, including both inflatable survival craft and fixed fire extinguishing systems, regardless of their need to comply with SOLAS requirements. Therefore, in this SNPRM the Coast Guard is revising the definition of an international voyage to be a voyage to or from a country which is party to SOLAS.

Large. Several comments expressed concern about the use of the word "large" in the NPRM and wanted it defined. The primary concern such persons have is when "large" is used as an adjective for "vessels." In the preamble for the NPRM, the terms "large vessels" or "very large small passenger vessels" are generally used to describe vessels which are bigger than the size of boats which subchapter T was originally intended to regulate. The word "large" is never used in connection with the size of a vessel within the actual regulations in the NPRM or this SNPRM. When separate regulations are proposed for vessels of different sizes, the specific parameters are described such as "a vessel of not more than 65 feet in length with overnight accommodations for more than 49 passengers." The word "large" was used as little as possible throughout this preamble, and when used its meaning is clear within the context of that sentence or paragraph. "Large" has not been defined.

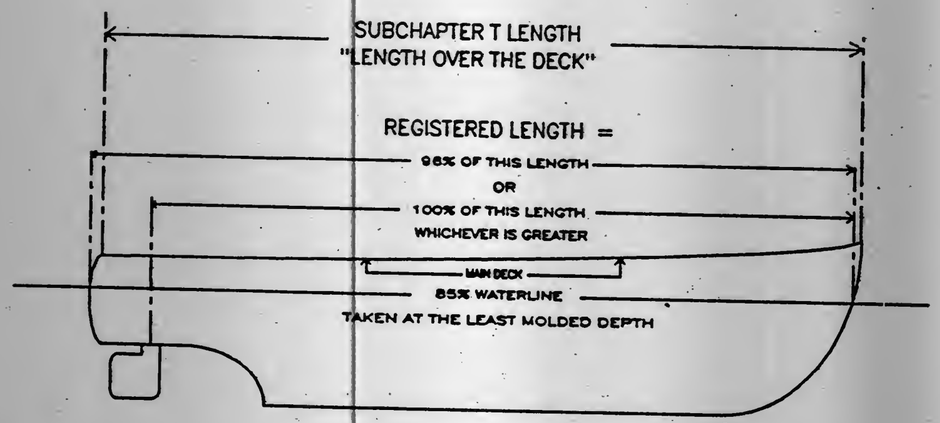
Length. The NPRM defines "length" similar to the definition in the existing regulations except it is more detailed, describes some specific exclusions, and provides a separate definition for subdivision requirements of a vessel with a "bulbous bow." Several comments were submitted on the definition, including requests to be more specific, simplify it, or to redefine it as the "registered length" used for tonnage measurement purposes.

The Coast Guard agrees that the use of "registered length" would provide the simplest, most concise measurement for those requirements whose applicability is based on length. Prior to the passage of Pubic Law 96–378, small passenger vessels were divided into two categories using an overall length of 65 feet as the breakpoint, primarily due to an existing definition of "motorboat" based on length overall. With the current absence of any length criteria in the small passenger vessel law, there is no statutory reason to retain the traditional definition of length.

The registered length of all vessels required to have a Certificate of Documentation is placed in the length block of the Certificate of Documentation. The length "over the deck", measured from end to end excluding sheer, as defined in § 175.10–19, is presently used to determine applicable requirements for small passenger vessels. It is the registered length which is automatically recorded by the MSIS on the COI of an inspected vessel. Under the provisions of 46 CFR part 69 (Measurement of Vessels), which was revised on September 12, 1989 (54 FR 37652), the registered length of a vessel which has an overall length under 79 feet and which is measured using simplified admeasurement, is the overall length defined in 46 CFR 69.203 as the horizontal distance between the outboard side of the foremost part of the stem and the outboard side of the aftermost part of the stern, excluding rudders, outboard motor brackets, and other similar fittings and attachments. The definition of the registered length for other vessels was adopted from the International Tonnage Convention and is defined in 46 CFR 69.53 as the greatest of either: (1) 96 percent of the length of the vessel on a waterline at 85 percent of the last molded depth; or (2) the length of the vessel from the fore side of the stem to the center axis of the rudder stock on that same waterline. These definitions of length are illustrated in the diagram below.

BILLING CODE 4910–14–P

LENGTH COMPARISON



BILLING CODE 4910-14-C

Vessels which are not issued a Certificate of Documentation under 46 CFR part 69 are normally required to have a Certificate of Number under the provisions of 33 CFR part 173, issued either by the Coast Guard or a State. The length of a vessel, which is defined in 33 CFR 183.3, is recorded on the Certificate of Number. "Length" as defined in 33 CFR 183.3 is, for all practical purposes, the same as the "overall length" defined in 46 CFR 69.203.

The Coast Guard has revised the definition of "length" in § 175.400 of this SNPRM to be the length listed on a vessel's Certificate of Documentation or Certificate of Number. This proposal will make it easier for owners and inspectors to determine the length for vessel inspection requirements. The definition of "length" in subchapters T and K would be consistent with registered length used for measurement and documentation purposes, and with length as used for other vessel inspection and load line requirements.

In making this change to the definition of "length", the Coast Guard realizes that some vessels which measure greater than 65 feet in length using the existing definition might measure less than 65 feet using the proposed definition. However, the requirements in this SNPRM which use 65 feet as a breakpoint are not so critical to safety that a few feet in length will make a difference. The increased use of passenger capacity as a breakpoint and the separation between subchapters T and K helps to limit the apparent lessening of any safety threshold. The Coast Guard solicits additional comments on this proposed definition of "length".

Length between perpendiculars (LBP). One comment suggested changing the definition of LBP to be the same as in 46 CFR 42.13–15(a), which is dependent on the molded depth rather than the draft. This would make requirements which are dependent on the definition of LBP independent of the draft. The Coast Guard disagrees. Small passenger vessels usually have a restricted range of drafts during normal operating conditions, which remains fairly constant for the life of the vessel. No change has been made to the NPRM.

Machinery space. Four comments stated that this definition is too broad because it includes equipment such as oil fired heaters, air conditioners, compressors, and small motors over 10 hp, and that a literal interpretation of the proposal would possibly require overly stringent requirements for spaces with such units. The comments requested specific requirements because the risk is not the same for all included spaces. The Coast Guard disagrees and thinks most OCMI's and marine inspectors will reasonably interpret this and all other regulations. If an owner or operator thinks they are being overburdened by the unreasonable interpretation or application of regulations they can appeal under § 175.540 [K–§ 114.540]. No change has been made to the NPRM.

Oceans. One comment suggested that the Great Lakes be included in the definition of "oceans" based on a perceived similarity in hazard levels. The Coast Guard disagrees that operating environments on oceans and Great Lakes routes are similar. No change has been made to the NPRM.

Operating Station. One comment stated that the definition of "operating station" in the NPRM implies that a licensed individual must actually serve as the helmsman of the vessel. Proposed § 185.304 does indicate that the movement of the vessel must be under the direction and control of a licensed individual at all times, although an unlicensed individual may actually be at the helm physically steering the vessel. However, the Coast Guard agrees that the definition of "operating station" could be interpreted to require the licensed individual to serve as the helmsman. Since this is not the intent, the proposed definition is revised in this SNPRM by deleting the reference to "licensed" individual.

Overnight Accommodations. The terms "overnight accommodations" or "overnight accommodation space" were defined in the NPRM to ensure consistent application of the requirements where the terms are used, including in parts 177, 181, and 185. Two comments recommended that the term "berthing area" be used instead of "overnight accommodations." The Coast Guard disagrees. The term "overnight accommodations" was adopted from NVIC 11–83 and is commonly used. "Overnight" modifies "accommodation space" which is defined separately in § 175.400 and which is commonly used throughout the inspection regulations.

One comment stated that the last sentence of the proposed definition in the NPRM concerning seats contains a contradiction. This sentence has been shortened and clarified in this SNPRM.

Some comments expressed the concern that the definition of "overnight accommodations" in § 175.400 would adversely affect fishing party vessels or headboats. Some of these vessels leave at 10 P.M. or midnight and passengers sleep in their seats while the vessels are underway to their fishing spots. The definition of "overnight accommodations" in this SNPRM specifically allows this practice.

Pontoon boats. One comment suggested adding the definition of a pontoon boat to this section. The Coast Guard disagrees because the term "pontoon boat" is well understood and sketches of a typical pontoon vessel are located in proposed § 178.340. No change has been made to the NPRM.

Sailing vessel. One comment suggested deleting the word "principally" from the definition of sailing vessel since it might be argued that sails of sail-assisted vessels are not the principal means used to propel the vessel. The Coast Guard disagrees because the issue is the difference between vessels intended to be normally powered by sail and those normally powered by mechanical means, a distinction which is normally quite clear with small passenger vessels. A small passenger vessel is either a motor vessel, or a sailing vessel (which includes a sailing vessel with an auxiliary engine), and cannot be a motor vessel with auxiliary sails, as is the case with some recent innovations on large cargo ships trying to reduce costs. Subchapter S will still define and use the term "auxiliary sailing vessel" for specifying requirements for vessels to which Subchapter S applies. No change has been made to the NPRM.

Scupper. Although no comment was received concerning the definition of a scupper, it was modified to more clearly differentiate it from a freeing port. A scupper is a drain opening in a deck, whereas a freeing port is an opening in the sideshell or hull of a vessel.

Switchboard. One comment stated that the definition of "switchboard" should be clarified. The Coast Guard does not agree. The definition for switchboard in § 175.400 is accepted as the national standard found in ANSI/IEEE Standard 100–1977.

Weathertight. One comment stated that, in the definition of this term, the phrase "into the unit" can be deleted without changing the intent. The term "weathertight" can apply to a machinery component, or a compartment or closure aboard a vessel. The phrase "into the unit" does not necessarily clarify the definition and has been deleted. The intent of the regulation does not change.

Well deck. One comment suggested modifying the definition of well deck to describe an exposed recess in the weather deck with sides which are not common with the sideshell. The Coast Guard disagrees. Whether the sides of the recess are common with the sideshell (in which case they are bulwarks) or not, does not affect the

concept of a well deck. No change has been made to the NPRM.

Section 175.500 Conduct of an Inspection for Certification

This section in the NPRM is almost identical to existing § 175.20–1 and discusses the time, place, and persons present during an inspection. One comment stated that this section should be moved to Part 176, Inspection for Certification. The Coast Guard agrees and proposes in this SNPRM to move the contents of paragraphs (a) and (b) of § 175.500 to new paragraphs (b) and (c) of § 176.400.

Section 175.510 Notice of Deficiencies and Requirements

The wording of this section is basically identical to existing § 175.20–5 and discusses procedures for a marine inspector to point out deficiencies to the owner of a vessel. Two comments stated that, for consistency, the parties listed in §§ 175.500 and 175.510 as being responsible for arranging and being present at inspections and for receiving notification of outstanding inspection deficiencies should be the same. The Coast Guard agrees and has revised paragraphs (a) and (b) of both sections in this SNPRM by listing the responsible parties as "the owner, managing operator, or a representative thereof."

One comment stated that this section should be in subpart D of part 176. The Coast Guard agrees that it would be more appropriate for the section to be in part 176, which contains specific inspection requirements, but is proposing in this SNPRM to move it to subpart H of part 176, which discusses inspection standards and requirements for all types of inspections, whereas subpart D specifically addresses inspections for certification.

Section 175.530 Alternative Standards

One comment stated that the equivalencies allowed by the NPRM for DSC's should also be allowed for other small passenger vessels. In fact, § 175.530, Alternative standards, in the NPRM specifically stated that the owner of a vessel which does not meet the definition of a DSC may request that the vessel be certificated under the regulations applicable to DSC providing the vessel complies with the same operational restrictions imposed on DSC. The NTSB stated that a vessel which is not a DSC should not be allowed to comply with the DSC requirements, especially reduced structural fire protection requirements, since it would represent an unjustified, increased risk for passengers. In consideration of the changes proposed to the regulations affecting DSC, discussed in this preamble in the section on "Specific Vessel Types," the Coast Guard has not included § 175.530 in this revised SNPRM. However, under both existing § 175.15–1 or proposed § 175.540(a), any owner may request that the Commandant accept in substitution for a required arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test an equivalent that is as effective as that required by the regulations and is consistent with the intent of and the minimum safety standards specified in the regulations.

Section 175.540 Equivalents

As in the existing § 175.15–1, this section would allow the Commandant to accept substitutes for an arrangement, or items such as a fitting or piece of equipment, required by specific regulation. Numerous comments stated that the OCMI should have the authority to grant equivalencies (at least to some degree), waive requirements under special circumstances, or evaluate and adjust applicable rules to make each vessel safer. These comments stated that the process of the Commandant granting an equivalency may be too slow and cumbersome, and might prevent adjustments for the uniqueness of operations in various areas. The Coast Guard's position is that the Commandant should normally remain responsible for the granting of equivalencies, primarily to ensure more consistent application and interpretation of the regulations. Section 175.550 authorizes the OCMI to grant limited equivalencies under special circumstances. The Commandant's review of equivalency requests may be occasionally delayed due to a backlog of work, but if requests are properly documented and justified by the owner, and submitted during the normal plan review process, requests for equivalencies can normally be acted upon by the Commandant before the review of all the vessel's plans are complete.

Section 175.550 Special Consideration

As presently allowed by existing § 175.25–1, this proposed section would allow the OCMI to grant equivalencies but only in unusual cases when compliance with a specific regulation is not practicable. Such special equivalencies would only be valid within the zone of the OCMI who granted the equivalency. One comment stated that the authority granted to the OCMI by this section contradicts those sections which restrict equivalency authority to the Commandant. The comment stated that the OCMI should have full equivalency authority in all cases. The Coast Guard disagrees. This provision has been retained for those unusual cases where it may be necessary for the local OCMI to have the discretion to act. However, one of the primary purposes of this revision is to reduce the inconsistent application of the regulations among marine inspection zones. This is especially important with the large number of vessels moving from zone to zone or being built in one zone for operation in another zone. Therefore, it is necessary that the Commandant retain the general equivalency authority contained in § 175.540.

Several comments stated that equivalent arrangements or departures from regulatory requirements allowed in one zone should be accepted in any other zone. The Coast Guard disagrees. This would increase the inconsistent application of the regulations from one zone to the next, rather than decrease it. An arrangement which might be safe in one port, zone or geographic area may not be safe in another. If an owner or operator thinks that a vessel will be operating in more than one zone during its life, he or she should apply to Commandant for an equivalency determination, rather than to the OCMI for special consideration.

Another comment recommended that any special consideration allowed under this section should be endorsed on the COI. The Coast Guard agrees that this is necessary for both the owner's and Coast Guard's information. Section 176.103 has been revised in this SNPRM by requiring that equivalencies be recorded on the COI.

Section 175.600 Incorporation by Reference

This section of the proposed rules lists industrial and government standards, that are incorporated into subchapter T by reference, as the governing requirements for certain subject matters. The standards are cited within specific sections throughout the subchapter dependent on the subject matter. Section 175.600 is provided in accordance with Federal Register procedures and lists all incorporations by reference throughout the subchapter including an address from which an interested person could receive a copy of a particular standard. Use of standards reduces cost to the Coast Guard and industry by decreasing repetitiveness, and making product specifications common throughout industry. Use of standards also increases the quality and safety of products and systems.

One comment stated that the large number of references incorporated in the NPRM made the proposal too complex and that most owners do not hold the required references. The Coast Guard disagrees that incorporating references will make the regulations too complex. Incorporating by reference actually reduces the volume of necessary regulations. Most references specify standards which must be complied with during construction. Therefore, providing the vessel is maintained as originally constructed, normally only builders need to have copies of the applicable references. Standard 302 of the National Fire Protection Association (NFPA) and some American Boat and Yacht Council (ABYC) projects do contain some operational practices.

The proposed incorporation of the standards listed in § 175.600 [K-§ 114.600] complies with the Office of Management and Budget's Circular 119, "Federal Participation in the Development and Use of Voluntary Standards," which requires the Coast Guard's participation in the development and use of voluntary standards. Further information on the incorporation of standards is contained in a final rule on the "Incorporation and Adoption of Industry Standards" (CGD 88–032) published in the **Federal Register** on 29 July 1991 (56 FR 35817).

When referring to a specific incorporation by reference in § 182.130, one comment stated that the date of publication of the standard should be included. The Coast Guard agrees that it is important to include the date of publication for any standard being incorporated by reference. This is necessary since later editions of a standard may contain changes which the public should have an opportunity to comment on before being required to comply with the change. To simplify any necessary future changes, the date of publication of an incorporated reference is listed in § 175.600, either as part of the title of the standard (e.g., A 17.1–1984) or separately, instead of being included in the section where the standard is specifically referenced.

One comment stated that whenever a standard is referenced to establish a construction or operational requirement, the standard should include a definitive test method for determining compliance with a performance standard. The performance standard would be better than an installation standard and ensure consistency. The test standard should come from an organization like the American National Standards Institute (ANSI). Other than this comment, there was minimal feedback from industry questioning the adequacy of the standards proposed to be incorporated. These standards were chosen because of their histories of successful application, and provide an adequate level of safety while minimizing hardship to the industry. Many of the standards include or reference test methods, but some do not. Equipment which is built to installation or construction standards which do not have specific test methods is tested after installation, during system tests. No change was made to the NPRM as a result of this comment.

Several persons had comments on specific standards incorporated by reference in the proposed Subchapter T in the NPRM or recommended the incorporation of other standards. The Coast Guard response to such comments is included in the discussion on the particular section to which the reference is relevant.

Part 176—Inspection and Certification

Section 176.100 When Required

This section reiterates the provisions of 46 U.S.C. 3311(a) and 3313(a) that a small passenger vessel not be operated without having a COI and that during the term of the COI a vessel must remain in compliance with the conditions of the COI. Several comments objected to this section stating it was too restrictive and would significantly affect owners. This section cannot be substantially changed since it reiterates statutory requirements. Section 176.114 would provide relief to owners who desire to change service and remain certificated. Proposed § 176.100(b) has been revised to clarify that compliance with a vessel's COI is only required when passengers are aboard. A discussion under § 176.114 in this preamble explains the history and reason for both proposed §§ 176.100 and 176.114.

One comment stated that the word "operated" as used in § 176.100(a) would generate many problems and that the phrase "in navigation" should be used instead. The Coast Guard disagrees in that the use of the term "in navigation" would indicate that compliance with the COI would only be required when a vessel is actually underway. Legislative and regulatory history indicates that Congress did not use the term "operated" to mean only when underway but to include whenever the vessel is in use. Consistent with this interpretation, for the purposes of small passenger vessels, the Coast Guard has determined "operated" to mean whenever a small passenger vessel is underway or has passengers on board even if moored or tied up at a dock.

One comment recommended eliminating the reference to a temporary COI in § 176.100(c) because, especially with the Coast Guard's MSIS system, there is no need for a temporary COI. The Coast Guard understands the concern over a temporary COI in that it does not contain as much information as a regular COI. However, due to the administrative logistics of issuing a COI, it is often not possible to issue a complete, regular COI upon successful completion of an inspection for certification. The law in 46 U.S.C. 3309 specifically authorizes a temporary COI and House Report No. 98–338 concerning Public Law 98–89, addresses temporary COIs by stating: "* * * The Coast Guard can issue a temporary Certificate of Inspection upon compliance with the applicable laws or regulations to facilitate the preparation, processing, and forwarding of the regular COI to the vessel." A temporary certificate does not imply less than satisfactory compliance.

Section 176.103 Description

Proposed § 176.103, adopted from existing § 176.01–5, describes the minimum contents of the COI with other sections in subpart A of part 176, which expand on the required contents. One comment stated that an effort should be made to reduce COIs to one page so masters would be more likely to read them. An MSIS generated COI is designed to contain all the basic information on the first page but often additional information is necessary to describe the inspection status of the vessel. Coast Guard experience demonstrates that it is important to have all the vital inspection information for a vessel on one document rather than spreading such information over several documents. The OCMI normally records information on the COI as concisely as possible. It is the duty of the owner or managing operator to ensure that masters are familiar with documents such as the COI, Stability Letter, and Emergency Procedures.

The Coast Guard is proposing to revise § 176.103 by adding, as a required item on a COI, any equivalencies allowed for the vessel under §§ 175.540 and 175.550. This is to help ensure that masters, owners, and inspectors are aware of the equivalencies.

Section 176.105 How To Obtain or Renew

This section describes how to apply for a COI and the basic acceptance criteria for issuance of a COI.

One comment stated that this section should be revised to require a vessel to be inspected in the zone in which it

normally operates, at the discretion of the OCMI. The Coast Guard disagrees that the proposed restriction is necessary. In modern operations, small passenger vessels frequently are built in one zone, operate in another, and seek economical repair facilities in a third. It would be an administrative burden to the Coast Guard and owners to require inspection in one certain zone. A primary purpose of this rulemaking is to reduce inconsistencies among OCMIs. As a result, the advantages of an owner seeking out specific OCMIs will be minimized. Presently, through the computerized MSIS, all OCMIs are able to record and track unique inspection requirements and other problems, as well as whenever a vessel has applied for an inspection. The MSIS record is checked prior to inspections, and unusual inspection patterns are noted. Additionally, some vessels are limited to operations in specific geographic areas. Coast Guard policy already dictates that when a vessel is being inspected outside of its normal location, the attending OCMI contact the other zone to check on unique problems or requirements. Finally, the person completing the application for inspection is required to certify on CG Form 3752 (Revised 4–82) whether a previous application was made for the particular inspection.

One comment stated that a paragraph should be added to this section reiterating 46 U.S.C. 3309(c), which requires that an owner notify the OCMI between 30 and 60 days before the current COI expires whether or not the vessel will be required to be inspected again. This recommendation has not been adopted since the requirements of 46 U.S.C. 3309(c) are adequately addressed in 46 CFR 2.01–3. In addition, owners or operators with accurate addresses on file at the offices of the OCMI which issued their current COI receive a "reminder" letter to let them know the COI is about to expire, asking them to contact the appropriate OCMI.

Section 176.107 Period of Validity

The Coast Guard proposed in this section to make a COI valid for three years on all small passenger vessels, except for vessels with SOLAS certificates. Annual reinspections would be required on all vessels. Many comments supported this proposal indicating it will reduce paperwork.

One comment objected to the requirement that the COI of a vessel which also has a SOLAS certificate shall be valid only for a period of one year stating that this requirement creates a burden on both the Coast Guard and the owner. The Coast Guard agrees and is proposing to eliminate the one year COI provision for vessels with SOLAS certificates. This elimination should reduce some administrative time without any decrease in safety. Annual SOLAS surveys and drydockings will still be required by SOLAS for a vessel with an international route.

One comment stated the COI interval should be extended to five years to coincide with other intervals. However, 46 U.S.C. 3307 requires that the interval be a maximum of three years.

One comment complained that requiring completion of an inspection for certification before the current COI expires results in the inspection due date constantly advancing (inspection date creep) often into a busy operational season. The Coast Guard acknowledges that inspection date creep can be a problem which is best handled on a local level by the OCMI. Due to the 3 year statutory inspection requirement, a regulatory change cannot be used to directly address the issue. Presently, inspection date creep is probably only a significant problem for vessels of more than 65 feet in length, because of the present 1 year COI expiration date for these vessels. However, the inspection interval of 3 years proposed for all vessels in this SNPRM will diminish the problem. The inspection due date would only creep back every 3 years, as opposed to every year.

Section 176.110 Routes Permitted

Proposed § 176.110 in the NPRM is basically the same as existing § 176.01–20 and specifies the type and order of severity of routes which may be endorsed on a COI. Based on a perception of the relative hazards of these waters, one comment suggested reordering the severity of routes in paragraphs (a) and (d) to: Great Lakes winter; oceans; Great Lakes summer; coastwise; lakes, bays, and sounds; and rivers. The Coast Guard disagrees. For stability purposes, a general coastwise route is more severe than a Great Lakes summer route. The requirements proposed in this SNPRM for survival craft and EPIRBs to be carried aboard small passenger vessels on Great Lakes routes do not support treating Great Lakes routes as oceans. The section of the regulations concerning lifesaving equipment is the only section where Great Lakes requirements are on a par with, or more stringent than, a coastwise route. The NPRM has not been changed.

One comment stated the safety requirements for vessels with a Great Lakes route should be no more severe than those for vessels with a lakes, bays, and sounds route. The comment contended that the NPRM equates Great Lakes routes with coastwise routes although the listed order of severity is: oceans; coastwise; Great Lakes; lakes, bays, and sounds; and rivers. The comment stated that the use of vessels on the Great Lakes for excursions (dinner cruises and tours for example) and short ferry runs is more equivalent to lakes, bays, and sounds route operations because of near shore operation and fair weather, and because the summer schedule generally avoids Great Lakes winter weather problems. The comment noted that the proposed stability criteria designated the Great Lakes route during the summer season as being partially protected. For stability purposes, a general coastwise route is more severe than a Great Lakes summer route. For some safety equipment purposes, the water temperature, geographic location, and other factors make operating conditions similar enough that the Coast Guard considers the same safety equipment necessary for coastwise and Great Lakes routes.

One comment stated that the OCMI should be able to approve an "oceans" or "coastwise" route for a non-self-propelled vessel, contrary to paragraph (e) which limits this authority to the Commandant. The Coast Guard disagrees. Because of the very limited experience with passenger carrying seagoing barges, the Coast Guard has not developed specific regulations for such operations. Authorization for such operations should remain with the Commandant to ensure consistent application of necessary special provisions.

One comment suggested including Great Lakes with oceans and coastwise in paragraph (e) of this section, as routes where a non-self-propelled vessel may operate only with the approval of the Commandant. The Coast Guard agrees in part. Possible bad weather conditions to which a barge-type vessel might be exposed warrant consideration of this comment. A particular concern is that a tug should be able to maintain control of a passenger barge under all conditions. The Coast Guard considers this suggestion reasonable for vessels on Great Lakes winter routes, where control of a barge might be more difficult. Including Great Lakes routes in this paragraph would allow the Commandant to approve the routes for all non-self-propelled vessels which operate on exposed waters. The proposed rule has been changed in this SNPRM.

One comment suggested not using geographical points as references for determining routes to help eliminate inconsistencies and noted that licenses

for Masters no longer refer to geographical points. In general, the Coast Guard advocates not using geographical limits, to the extent practicable. However, the OCMI should have flexibility to address special circumstances and the wide variety of routes which exist. The Coast Guard thinks this proposal would be too rigid. No change was made to the NPRM.

One comment stated that the geographic experience of the master should be considered before a vessel is allowed to operate on a route which is less severe than that endorsed on the COI, as authorized in paragraph (d). The Coast Guard agrees but finds that the existing licensing and manning regulations adequately address this concern.

The Coast Guard is proposing to amend paragraphs (a) and (f) of § 176.110 by emphasizing that the OCMI may impose operational restrictions on a vessel as well as specify the area of operation, i.e., its route. OCMIs presently impose such restrictions including limiting a vessel to daytime operations or prohibiting operations in certain weather conditions. The OCMI may also impose special operational restrictions on specific vessels on a case by case basis such as requiring high speed DSC to participate in vessel traffic control systems, maintain radar watches, or follow specific procedures regarding operating in the dynamically supported mode.

Section 176.113 Passengers Permitted

This section in the NPRM contains provisions basically identical to those contained in existing § 176.01–25, except that areas specifically prohibited from being used in determining passenger capacity are included.

Two comments implied that the proposed standards result in overcrowded and dangerous conditions. Although the standards may sometimes result in comparably crowded conditions, the Coast Guard has no evidence that the proposed methods of determining maximum capacity, which are essentially the same as those contained in existing § 176.01–25, are unsafe. The OCMI is responsible for determining the maximum capacity of a vessel. Although the capacity may not exceed the criteria of proposed § 176.113, the OCMI must also consider the stability, general arrangement, means of escape, and lifesaving equipment of a vessel when limiting a vessel's capacity.

One comment stated that on party fishing boats used in cold weather, the capacity should be based on the area available in heated spaces. Generally, due to competition and passenger demand, most vessels used in cold weather will be equipped with adequate shelter without a need to impose specific requirements. Passengers boarding small passenger vessels to fish in cold weather should be prepared for such weather.

One comment stated that the criteria in this section should only be used to determine the overall maximum passenger capacity of the vessel and not to specify the maximum capacity of each individual deck. The comment further stated that stability calculations should be used to determine limitations on passenger capacity of individual decks, and that it is difficult and unreasonable to require a master to keep track of the numbers of passengers on each deck. The Coast Guard partially agrees. Although different criteria might be used for each deck, the provisions of § 176.113 are intended to be used to determine the total vessel capacity. However, stability calculations may additionally restrict the number of passengers on a vessel or on individual decks. If the number of passengers permitted on upper decks is limited by stability calculations, a master must comply with the restrictions of the stability letter, and signs would have to be posted as proposed in § 185.602(e) of the SNPRM (§ 185.602(d) of the NPRM).

Some comments stated that the regulations should be clarified to indicate whether more than one criterion may be used to determine capacity. Several comments stated that the passenger capacity should be determined based on a combination of all three criterion. The Coast Guard agrees that the section needs to be clarified to better indicate when more than one criterion may be used. This section has been revised in this SNPRM to allow the use of different criteria on each deck and to also allow the combined use of the seating criterion and the deck area criterion on an individual deck. The length of rail criterion cannot be combined on one deck with the other criteria since the rail criterion is designed to determine the capacity for a complete single deck and is based on only a single dimension. The other criteria use square footage or a combination of maximum seat width and aisle sizes.

The Coast Guard is also proposing to revise paragraph (b)(2) of this section to prohibit using any area that does not have a solid deck when using the deck area criterion in determining the number of passengers. The need to include this prohibition was highlighted by an appeal whereby an owner of a multi-hull vessel believed that he could allow passengers to occupy the netting area between the hulls when the vessel is underway. For sound safety reasons, OCMIs have generally prohibited such a practice.

Section 176.114 Special Endorsement for Carrying Six or Less Passengers

The regulations proposed in the NPRM authorize the OCMI to permit a small passenger vessel to operate in accordance with the laws and regulations applicable to an uninspected vessel, when the small passenger vessel is carrying six or less passengers, by endorsing the vessel's COI. Under the NPRM proposal, the vessel would not have to comply with the route restrictions and manning requirements on the COI while operating as an "uninspected vessel", but the equipment required to be on the vessel by the COI would have to remain aboard and inspection due dates would still have to be met.

Paragraph (b) of existing 46 CFR 176.01–1 states that a small passenger vessel of not more than 65 feet in length "when carrying not more than 6 passengers, and when operating as a yacht, commercial fishing vessel, cargo carrier, etc., will be subject only to the laws, rules and regulations governing the type of operation in which it engages." This provision allowing a certificated small passenger vessel of not more than 65 feet in length to operate basically as an uninspected vessel has been in subchapter T since the regulations were first promulgated in 1957. This provision appears to have been included in the regulations to provide a mechanism to allow owners to easily switch service. For example, an owner could use a boat for commercial fishing in the winter and for party boat fishing in the summer, which has been common practice since before small passenger vessels were first regulated. However, there appears to be no evidence in the legislative history of the laws affecting small passenger vessels which supports 46 CFR 176.01–1(b). There have also been several challenges to existing § 176.01–1(b) due to the requirement of 46 U.S.C. 3313, which states that a vessel must be in compliance with its COI at all times.

The Coast Guard recognizes the inconsistencies between 46 U.S.C. 3313(a) and 46 CFR 176.01–1(b) and also recognizes that the statute requiring compliance with the COI at all times takes precedence. Because of this longstanding inconsistency, the Coast Guard's present policy is not to take any enforcement action against the owner/operator of a small passenger vessel of not more than 65 feet in length carrying

not more than six passengers, which is being operated as if it were an uninspected vessel, until the existing regulations have been revised.

Proposed § 176.100(b) clearly states that all small passenger vessels must be in compliance with their COI at all times as required by 46 U.S.C. 3313(a). However, proposed § 176.114 is intended to provide a legal alternative to this restriction. Proposed § 176.114 would:

(1) Allow small passenger vessels to remain competitive with uninspected vessels;

(2) Eliminate unnecessary barriers to safe operations when passengers are not being carried;

(3) Encourage some owners to operate their vessels as certificated vessels whereas they might otherwise forego inspected service and operate in the uninspected passenger vessel service; and

(4) Allow vessels to operate in a manner at least similar to the way they have operated safely, with few exceptions, since 1957.

Without the proposed provisions of § 176.114, or similar provisions, the owners of many vessels would be significantly impacted. Unless a small passenger vessel's COI was surrendered by the owner, changing berths with no passengers aboard could not legally be done without fully complying with the required manning on its COI. Similarly, a vessel moving to another port without passengers, just to be drydocked, could not do so without having aboard all the lifesaving equipment required by its COI. Another typical example is a vessel certificated to carry 12 people on a coastwise route, required under proposed part 180 to carry inflatable buoyant apparatus. This vessel would not be able to carry just six passengers on an oceans route more than 50 miles offshore, because it would be required to have inflatable liferafts under proposed part 180, even though an uninspected passenger vessel carrying six passengers, not equipped with any survival craft or required to meet any inspections standards, could operate on a full oceans voyage. Many small passenger vessel owners would also suffer a significant economic loss if they were suddenly prohibited from using their vessel as an uninspected vessel, such as for commercial fishing. Some vessels which are presently inspected under subchapter T may choose to drop certification if they derive more income from uninspected vessel operations, such as commercial fishing or charter boat fishing carrying 6 or less passengers.

To operate as an uninspected vessel, a small passenger vessel can surrender its COI and have it reissued at a later time, or in some cases an excursion permit could be issued. However, neither of these options is considered an acceptable alternative on a routine basis as both options would place a significant administrative burden on the Coast Guard and owners. Presently, numerous vessels routinely operate carrying six or less passengers without being in full compliance with their COI.

Existing § 176.01–1(b) only applies to small passenger vessels of not more than 65 feet in length. Proposed § 176.114 would apply to all small passenger vessels less than 100 GT since the reasons to allow operations comparable to uninspected vessels are applicable to all vessels regardless of size.

The proposed regulation in the NPRM only indicates that a vessel could comply "* * * with the laws and regulations applicable to an uninspected vessel when the vessel is carrying six or less passengers * * *". The proposal also states that "* * * the vessel must be maintained and outfitted in compliance with the terms and conditions of its COI * * *". The primary intent of the proposal is to allow a small passenger vessel which is carrying not more than six passengers, including when carrying no passengers, to operate on a route more severe than the route allowed when carrying more than six passengers. However, when operating on the increased route, the owner/operator may not change the condition of the vessel or the equipment on it. Two examples are: the electrical system and equipment could not be modified; and, any lifesaving equipment required based on the route of the vessel when carrying more than six passengers could not normally be removed.

To clarify the impact of the proposal, the wording in this SNPRM has been revised to specifically indicate which subchapter T regulations an inspected vessel operating in a normally uninspected vessel service need not comply with, providing the COI is so endorsed and the vessel meets certain applicable regulations or requirements for uninspected commercial or recreational vessels operating in the same service. The regulations which will not be required to be met but which will be addressed by the endorsement are those which are based on route, passengers, or a combination thereof, and which are different for inspected and uninspected vessels. These include those regulations relating to structural adequacy in subpart C of part 177, stability and subdivision in parts 178 and 179, lifejackets and survival craft in part 180, and navigation equipment in part 184. Requirements which must be met when an inspected vessel is operating in an uninspected service are those concerning permanent outfitting and design requirements such as electrical or firefighting equipment, requirements involving good seamanship which should be applicable to both inspected and uninspected vessels, and statutory requirements, including those for EPIRBs, passenger lists, and passenger counts. The proposed endorsement will indicate the maximum route, number of passengers and maintenance required for the requested uninspected vessel service contemplated.

Several comments stated that the proposed endorsement is not necessary because a vessel is not a small passenger vessel unless it is carrying more than six passengers. Title 46, U.S.C. 2101(35), does define a small passenger vessel as a vessel of less than 100 gross tons carrying more than six passengers. However, a review of the statutory history shows that the intent of the law is that once a small passenger vessel is issued a COI, it must remain in compliance with the terms of the certificate even when carrying not more than six passengers.

Concern has been expressed over the potential liability imposed on the Coast Guard by allowing a small passenger vessel to operate basically as an uninspected vessel, especially since it appears that the proposed endorsement contradicts 46 U.S.C. 3313. The revised § 176.114 in this SNPRM should eliminate most concerns over liability since it requires the OCMI to consider both route and manning before issuing the endorsement.

The proposal in the NPRM stated the minimum manning and route restrictions on the COI need not be complied with when operating under the proposed endorsement. As noted below, the revised proposal in this SNPRM would require that the OCMI give specific consideration to the vessel's manning and route when allowing a vessel to operate beyond the normal route restrictions on its COI. The revision also states that equipment required by a vessel's COI for its normal route and service may not be removed without permission of the OCMI. This is to ensure that the vessel is properly equipped when operating in its normal service but allows the OCMI to authorize the temporary removal of such equipment for such reasons as the periodic servicing of the rafts.

Several comments to the NPRM provided general support for the proposed endorsement while several

others opposed it. One comment stated that because of the lack of manning restrictions on uninspected vessels, uninspected passenger vessels have a high risk of casualties and that manning requirements should be dropped on small passenger vessels only if there are not any passengers aboard. Another comment stated that the proposal could be interpreted to mean a licensed operator would not be required while operating under this endorsement. Another comment wanted to include a requirement for two crews, when operating in excess of 12 hours, to reduce fatigue.

The Coast Guard agrees there is room for concern about manning on small passenger vessels operating as uninspected vessels. Title 46 U.S.C., section 8902 requires that a small passenger vessel be operated by an individual licensed to operate that type of vessel in the particular geographic area. No provision is included in the statute for those times when a small passenger vessel is providing what would otherwise be an uninspected vessel service. Therefore, proposed § 176.114 is revised in this SNPRM to require the OCMI to specify the minimum manning when issuing the proposed endorsement. Due to the requirements of 46 U.S.C. 8902, a vessel operating under the endorsement must be manned with at least one licensed master. When specifying the actual manning for such an endorsement, the OCMI must consider factors such as the number of passengers on board, if any, duration of voyages under the endorsement, and vessel size. If § 176.114 is adopted in the final rule, the Coast Guard intends to include sample manning scales and endorsements in the MSM as guidance to OCMIs.

An OCMI must presently determine if a vessel meets minimum structural and intact stability requirements for a vessel's intended normal route before issuing a COI for that route. Under the revised proposal in this SNPRM, the OCMI must also consider the structural safety, stability, and seaworthiness of a vessel for the extended route it might be authorized to operate on under the endorsement proposed by § 176.114. A small passenger vessel under 20 feet in overall length, which is operating as a recreational boat, or an uninspected vessel carrying six or fewer passengers, must comply with either: (1) The structural and stability requirements of subchapter T, or; (2) the standards applicable to recreational boats in 33 CFR part 183. A small passenger vessel which is being used as a commercial fishing vessel when it is not carrying passengers would have to meet the stability requirements applicable to commercial fishing vessels. A final rule containing stability criteria for fishing vessels of 79 feet or greater in length was published in the **Federal Register** August 14, 1991 (56 FR 40364). An SNPRM proposing stability requirements for fishing vessels of less than 79 feet was published in the **Federal Register** on October 27, 1992 (57 FR 48670). Owners of other vessels would have to establish to the satisfaction of the OCMI that they are safe for the intended route, considering the reduced number or absence of passengers and the actual service of the vessel when operating under the endorsement. This could be established by: (1) Voluntary compliance with the subchapter T requirements; (2) voluntary compliance with the requirements for recreational or fishing vessels; (3) evidence of past satisfactory service; or, (4) other evidence that the design and construction of the vessel is satisfactory for the intended route.

One comment stated that the OCMI should automatically place the endorsement on a COI. The Coast Guard disagrees. By requiring an owner to request the endorsement, the Coast Guard can better ensure that the owner is aware of the implications of the endorsement and the applicable uninspected vessel requirements in 46 CFR subchapter C or recreational boat requirements in 33 CFR subchapter S.

Several comments stated that passengers should be informed when a vessel is operating under the provisions of the proposed endorsement. The Coast Guard agrees and § 185.506(a)(10) in the NPRM (renumbered as (a)(9) in this SNPRM) would require that a verbal announcement be made. The requirement for the announcement is also contained in revised proposed § 176.114. Some comments stated the COI and COI Expiration Sticker should also be removed. Removing the COI and Expiration Sticker are unnecessary because the COI remains valid. The proposed endorsement only alters the normal conditions of the COI for when the vessel is carrying six or less passengers.

One comment stated the endorsement to be placed on the COI should be specified in the regulations. The Coast Guard disagrees because the differences in factors such as route, passengers carried, and type of service, will result in a need for flexibility in issuing such endorsements. Therefore, the actual wording of specific endorsements is not included in this proposal but the proposal states the endorsement must note the maximum route, passengers (if any), and manning required to operate under the provisions of § 176.114. If the proposal is adopted, the Coast Guard intends to develop recommended guidance for OCMIs to use in issuing such endorsements. An example of an endorsement for a vessel normally certified for a coastwise route carrying not more than 49 passengers with one master and one deckhand is: "Under the provisions of 46 CFR 176.114, this vessel may be operated on an oceans route carrying not more than six passengers with a reduced manning of 1 licensed master."

One comment stated the proposal in the NPRM contradicts 46 U.S.C. 3313. Although 46 U.S.C. 3313 does require a vessel to comply with its COI at all times, 46 U.S.C. 3306 authorizes the Coast Guard to establish regulations on the design, construction, and equipment for small passenger vessels. For a vessel which would be operating under the endorsement proposed in this SNPRM, the regulatory requirements would be reduced in consideration of the reduced number or absence of passengers. The proposed endorsement would also promote a safer situation by allowing the use of an inspected vessel in a service that does not require a vessel to be inspected at all. Prohibition of small passenger vessels from operating as basically uninspected vessels when carrying less than six passengers would cause many owners to drop the certification of their vessels, creating a potentially less safe situation.

Section 176.202 Permit To Proceed

This section was based on the provisions of 46 U.S.C. 3313(b)(2) and existing 46 CFR 176.01–27. The wording has been changed to more accurately reflect the wording of 46 U.S.C. 3313(b)(2).

Two comments believed that the rule is too restrictive and that the Coast Guard should not be concerned with the vessel's movement when passengers are not aboard. The Coast Guard disagrees. As discussed under § 176.114 in this preamble, the law requires that a vessel be in compliance with its COI at all times. Therefore, even if there are no passengers aboard a small passenger vessel, a vessel must remain in compliance with subchapter T. The Permit to Proceed basically serves as a substitute for the regular COI allowing a vessel to legally proceed even though it may not be in its normally required condition. The OCMI will normally return the regular COI, or issue a new COI if necessary, upon completion of necessary repairs.

Section 176.202(b) in the NPRM states that a Permit to Proceed may only be

issued after the COI is surrendered. The Coast Guard is proposing to revise this to state the permit shall be issued only after the OCMI has withdrawn the COI from the vessel. The word "surrender" indicates a permanent giving up of the COI whereas the intent is that the OCMI will only temporarily withdraw the COI and replace it with a Permit to Proceed. When an owner voluntarily surrenders a vessel's COI and removes the vessel from passenger carrying service, a full inspection for certification must normally be conducted in order for a new COI to be issued. Under these circumstances a Permit to Proceed will not be issued to the vessel since it is no longer considered an inspected vessel.

Paragraph (c) of the NPRM states that passengers may not be carried when a vessel is operated under a Permit to Proceed. Neither the law nor the existing regulation contain such a specific prohibition. The OCMI must evaluate each vessel on a case-by-case basis to determine whether it remains safe to carry passengers while operating under a Permit to Proceed. This section of the SNPRM has been revised to let the OCMI determine whether or not the vessel is safe to carry passengers while operating under a Permit to Proceed.

Section 176.204 Permit to Carry Excursion Party

Adopted from existing § 176.01–30, this section would authorize an OCMI to allow a vessel to carry extra passengers or operate beyond the route on its COI. One comment requested to know if the statement in the proposed section that "The permit acts as a temporary one-time supplement to the vessel's COI * * *" means that an excursion permit may be issued only once during the term of a COI. The intent of the excursion permit, which is authorized by 46 U.S.C. 2113, is to allow a vessel to carry more passengers than normally allowed by its COI or to operate outside the route permitted by its COI for a limited time in order to participate in special events such as regattas, to serve as a viewing platform for races, or otherwise provide passenger service for or due to an event that does not occur on a frequent basis and which will last for only a limited time. A vessel could be issued an excursion permit more than once during the term of its COI, but an individual permit may only be issued for a limited time and may not be used as a device to circumvent normal inspection requirements. Prior to issuing an excursion permit, the OCMI must consider whether there are other inspected vessels already available to adequately provide the services for which the permit is being requested and whether it would be economically feasible for the vessel to routinely meet all the inspection requirements for the passenger capacity and route for which the excursion permit is being requested. The wording proposed in the NPRM has been changed to show that an excursion permit is of "limited duration" rather than a "one time-supplement."

Three comments recommended that excursion permits not be issued which would allow vessels to circumvent stability restrictions and structural fire protection requirements imposed by subchapter T. They also recommended that the existing restrictions on the issuance of excursion permits in the MSM concerning stability, capacity, and fire protection be incorporated into regulation. The Coast Guard agrees. Volume II, section 10.B, of the MSM presently states that:

1. The OCMI shall not waive the applicable minimum stability and fire safety standards when issuing an excursion permit;
2. The number of passengers normally permitted on an excursion vessel shall be governed by 46 CFR 176.01–25; and
3. Vessels that do not comply with the structural fire protection requirements of 46 CFR 177.10–5 shall not carry more than 150 passengers.

The Coast Guard is proposing to incorporate these restrictions in this SNPRM.

Subpart C—Posting of Certificates, Permits and Stability Letters

The regulations proposed in the NPRM mirrored the existing regulations in requiring the posting of certificates, permits, and stability letters. In order to comply with the Paperwork Reduction Act of 1980, which requires federal agencies to seek ways to reduce regulatory paperwork burdens placed on individuals and other entities, the Coast Guard reviewed the posting requirements of this subpart and is revising two of its posting requirements. The Coast Guard is proposing to delete the requirement to post a Permit to Proceed, Form CG–948, and a Permit to Carry Excursion Parties, Form CG–949. The Permit to Proceed serves as a substitute for the COI after the OCMI determines that a major deficiency requires immediate repairs. The permit is intended to be valid only until a vessel reaches the port where repairs will be conducted. The Coast Guard has determined that just carrying a permit in a readily available location is sufficient and less burdensome than requiring posting. Likewise, a Permit to Carry Excursion Party may modify the route, operating conditions, or required emergency equipment, and is also intended to be valid for a short period. Posting is not considered necessary. Section 176.302 has therefore been revised by deleting the requirement for the posting of a Permit to Proceed or an Excursion Permit. Permits which are posted would be considered readily available.

Consideration was also given to deleting the requirement to post a stability letter. However, due to the type of operations and the frequent crew turnover on small passenger vessels, the Coast Guard's position is that stability letters, when issued to small passenger vessels, should be posted to better ensure the vessel's officers are aware of its contents.

One comment stated that all pages of a stability letter should be clearly visible. The Coast Guard agrees. All pages of a vessel's stability letter contain vital information which, if not visible, may not be read by the operator. Because it also contains important information, the vessel's COI is required to be posted by law. The Coast Guard has revised §§ 176.302 and 176.306 to require that all pages of a COI or stability letter be clearly visible. It is the owner or managing operator's responsibility to ensure that the master has read and understands the provisions and limitations in these documents.

Section 176.402 Initial Inspection for Certification

Paragraph (a) of this section in the NPRM states that the plans required by part 177 must be submitted prior to starting construction or prior to the initiation of the initial inspection of an existing vessel being converted to a small passenger vessel. One comment stated that to require the submission of plans before the inspection is too restrictive. In most cases the required plans should be submitted prior to the inspection. Experience has shown that the initiation of an inspection before plans are submitted and approved often results in a wasteful use of the Coast Guard, owners', and builders' time. During initial and new construction inspections, vessels are often found to be in non-compliance with requirements. Initial plan review may detect non-compliance before a vessel is built or inspected. However, the Coast Guard does agree that there are instances where the delay of the submission of plans may be necessary or beneficial. Paragraph (a) has therefore been revised so that the OCMI may allow a delay in plan submittal. Owners and builders should realize that any construction or changes made prior to actual plan approval is at their risk.

Another comment stated that plans should not only be submitted but approved prior to initiation of an inspection. The Coast Guard agrees that, ideally, plans should be approved prior to initiation of an inspection. Lack of approved plans will often hinder an inspector from conducting an adequate inspection and result in delays. However, due to workload and limited personnel resources, there is often a delay between submittal and when the staff of the OCMI or the Marine Safety Center can review a plan. Requiring plan approval before inspection would, in many cases, place an undue burden on an owner. Therefore, the Coast Guard does not intend to normally require plan approval before initiation of an inspection. However, neither an initial inspection will be completed nor will a vessel be certificated without approved plans and the vessel found to be constructed in accordance with those plans. Additionally, certain aspects of an inspection may not be able to be initiated until certain plans have been approved. No change was made to the NPRM.

Paragraph (c) of proposed § 176.402 states that the owner shall ensure that a vessel complies with applicable laws and regulations. One comment stated that the owner should only be required to ensure compliance "as far as can be reasonably determined." The Coast Guard disagrees. The owner has a responsibility to comply with all requirements and to make the vessel safe for its intended route and service. The addition of this type of caveat would diminish the responsibility of the owner to comply.

Section 176.404 Subsequent Inspections for Certification

This section of the NPRM states the inspection requirements for renewal of a COI and directs the owner to conduct all tests as required by the marine inspector. One comment suggested that the inspector should only require those tests specified by Subchapter T. The intention of this section is to require those tests and drills listed in subpart H of part 176. However, the OCMI and the inspector are specifically allowed to use their judgment in directing the owner to perform other tests, inspections, and drills. This section has been revised to specifically include drills in the wording.

One comment stated this section should be revised to require that, once an application for inspection is received and an inspection is begun, the existing COI should be void. The Coast Guard disagrees. Under some circumstances, inspections for certification can take 2 to 4 weeks to complete. In these situations, important lifesaving and firefighting equipment is usually examined on the first visit. If a COI has not yet expired when an inspection begins and the vessel does not have any discrepancies which would invalidate the COI or make the vessel unsafe, the COI should not be considered void. Once an inspection begins, the COI for a vessel is sometimes removed but this is not necessary in all cases. Often a requirement is issued by the inspector which restricts the route or conditions of operation because of equipment which is missing or expired. Under the restrictions the vessel can still operate safely. No changes have been made to the NPRM.

Subpart E—Reinspection

Section 176.500 When Required

This section requires that the owner or managing operator make the vessel available for annual reinspections within 60 days of the anniversary date of the COI and that the OCMI be contacted to arrange for the reinspections. One comment stated that an annual deck inspection is too frequent, but that an inspection every three years is not enough. The comment recommended a biennial inspection for certification. The Coast Guard disagrees. Presently all small passenger vessels, depending upon their length, undergo either an annual inspection for certification or an annual reinspection. The reasons for proposing a thorough inspection for certification for all small passenger vessels every three years are to comply with the intent of Public Law 96–378, as presently codified in 46 U.S.C. 3307, to provide more uniform requirements for all small passenger vessels, and to decrease the administrative burden on both the industry and the Coast Guard. The Coast Guard has concluded that a reinspection should be conducted on all small passenger vessels at least annually due to the rigorous use of most vessels.

One comment stated that because a small passenger vessel may be laid up for long periods, it should be reinspected if it has not carried passengers for a period exceeding 120 days. The Coast Guard does not agree that such a specific requirement is necessary. In addition to the annual reinspection, paragraph (b) of this proposed section gives the OCMI authority to require a reinspection whenever it is determined that one is necessary, which could include the situation where a vessel has been laid up for a long period. No revisions were made to the NPRM.

Section 176.502 Scope

This section of the NPRM states that the scope of a reinspection is the same as an inspection for certification but in less detail. Two comments believed that paragraph (b) of this section limited the extent of a reinspection which a marine inspector could conduct. Paragraph (a) of this section already states the extent of a reinspection is the same as an inspection for certification, "but in less detail * * *". Other sections in subchapter T already cite the inspection authority of a reinspection. The MSM details the normal manner in which a reinspection should be carried out. In this SNPRM the Coast Guard is proposing to delete paragraph (b).

Section 176.600 Drydock and Internal Structural Examination Intervals

This section in the NPRM proposed to increase the intervals between drydock exams. Several persons specifically approved of the general increase in intervals. Others had some specific concerns. Two comments stated that the drydock interval should actually be decreased to 12 months citing two casualties which may have been prevented, the COMET and the JOAN LA RIE III. The Coast Guard disagrees and believes that a two year drydock interval is adequate for most vessels. As noted in the NPRM, when the COMET sank it did not have a valid COI. If it had been under certification, any inadequacies in the hull, which may have caused its sinking, would probably have been discovered during routine inspections and drydock examinations. There is no evidence that the JOAN LA RIE III casualty was caused by inadequacies which could have been discovered only during a drydock exam. Section 176.802 provides for the inspection of all accessible parts of the exterior and interior of hulls during all inspections and reinspections. Such inspections should normally allow the OCMI to determine if the hull is in satisfactory condition. If, during inspection or reinspection, it is determined that the hull may not be in satisfactory condition, the OCMI has the authority under § 176.600 (K § 115.600) to require a special drydock examination to verify the condition of the hull. Underway tests may be required during the inspection or reinspection that would also help prove the integrity of the hull.

One comment requested that the drydock interval be extended to three years, while another recommended that the interval should be made the same as passenger vessels under 46 CFR subchapter H, i.e., two drydockings

every five years but not more than 3 years between drydockings. The Coast Guard disagrees, believing that there is insufficient information available to adequately determine whether drydock examination intervals can be safely extended to three years for small passenger vessels. If the proposed two year period is adopted, and there is sufficient data accumulated on the condition of the underwater body of vessels using the two year examination interval, the Coast Guard may review the issue and consider further interval extensions.

One comment stated that underwater surveys should be allowed in lieu of drydockings especially in areas where there are no drydock facilities. Due to the level of safety to which vessels carrying passengers should be held, the Coast Guard's position is that the drydock exam of small passenger vessels should not normally be waived or the exam interval extended. However, the Coast Guard realizes that special circumstances may necessitate extensions on a case-by-case basis. Proposed § 176.670 would authorize the extension of the drydock interval for extenuating circumstances. Equivalencies to drydock exams, such as underwater surveys, could also be accepted in unusual cases under the provisions of §§ 175.540 or 175.550. In extending drydocking intervals from 18 months to 2 years the Coast Guard took into account disruptions in operating schedules. A 2 year interval allows drydockings at the same time of year without alternate year interruptions.

One comment suggested that the use of the word "operates" in paragraphs (c)(1) and (c)(2) of the NPRM may allow some owners to circumvent a required drydocking by taking a vessel "out of service" and not operating it. The intent of paragraph (c) is to establish differing drydock exam intervals based on the amount of time the underwater body of a vessel is exposed to salt water. If an owner temporarily takes a vessel out of service while its COI is still valid, the drydock intervals of this section remain valid. To clarify this, the Coast Guard has revised proposed paragraph (c) by changing the words "that operates in salt water" to "which is exposed to salt water."

Paragraph (d) of this section would decrease the drydock interval of wooden hull vessels operating in fresh water from 5 years to 2 years. One comment objected to the decreased interval stating that wooden vessels operating on inland routes are not exposed to the hogging and sagging experienced by vessels on oceans routes. The Coast Guard disagrees and has retained the two year interval in this SNPRM. There is evidence that fresh water accelerates the deterioration of wood due to rot, and wooden vessels in fresh water should be drydocked at shorter intervals than metal hull vessels. Although it is true that inland vessels are not exposed to hogging and sagging as severe as that to which a seagoing vessel is exposed, it is also true that they are allowed to be built to reduced scantlings as compared to seagoing vessels.

As a result of the casualty analysis discussed under part 180, subpart E of this preamble, the Coast Guard has determined that wooden vessels over 20 years old are more at risk from hull and through hull fitting failures than other categories of vessels. The Coast Guard is proposing in this SNPRM that wooden vessels over 20 years old be drydocked every year.

Paragraph (e) of this section authorizes the OCMI to conduct an internal structural examination or a drydocking when damage or deterioration to hull plating or structural members is discovered. One comment stated that this authorization should be extended to include when a grounding occurs. The intent of this section is to allow the OCMI to satisfactorily examine the vessel whenever damage or deterioration is suspected. Paragraph (e) is revised in this SNPRM to reflect this intent.

One comment requested that paragraph (g) be revised to indicate that credit may be given whenever a vessel is drydocked and examined by a marine inspector in excess of the minimal intervals required by this section. The Coast Guard agrees that credit should be given whenever a satisfactory examination is conducted and believes that this is already indicated by the use of the words "at least" before the specified intervals.

Paragraph (f) of this section allows a vessel on a foreign voyage which becomes due for a drydock examination during the voyage to complete the voyage before drydocking. One comment questioned the need for this clause. This paragraph is based on Chapter I, Regulation 14, of SOLAS which allows such a delay for vessels which are on international voyages and have valid SOLAS certificates. For clarity, § 176.600(f) (K § 115.600(e)) has been changed in this SNPRM to apply to a vessel on an "international voyage."

One comment wanted a 30 day grace period for the drydock due date to allow for scheduling. The Coast Guard disagrees. The NPRM already increases the drydock exam interval. Allowing such a grace period would further extend the interval. Owners should arrange drydockings sufficiently in advance to avoid exceeding due dates. If unforeseen problems arise, an extension may be requested under § 176.670.

Section 176.610 Scope of Drydock and Internal Structural Examinations

This section describes what is inspected during a drydock examination. One comment recommended that the section be revised to include a specific statement that fasteners for wooden vessels may be required to be pulled for examination. The Coast Guard concurs and consequently has incorporated this existing policy into this section.

Section 176.612 Notice and Plans Required

Paragraph (a) of this section in the NPRM requires that the OCMI be notified whenever the owner intends to drydock a vessel in order to make "major repairs or alterations affecting the safety or seaworthiness of a vessel." One comment stated, "major repairs or alterations" should be defined. The Coast Guard acknowledges that the term "major repairs or alterations" is subject to inconsistent interpretation and has revised the paragraph to indicate the type of drydock hull repair which would require an owner to notify the OCMI.

Paragraph (b) of this section requires that whenever a vessel is drydocked only for the purpose of minor repairs or maintenance, no report need be made to the OCMI. Two comments stated that the OCMI should be notified so he can determine whether or not the repairs are minor. The Coast Guard agrees that whenever damage repairs are made the OCMI should be notified and is revising paragraph (b) by deleting the words "minor repairs." Other vessel inspection subchapters also require that an owner notify the OCMI whenever a vessel is to be drydocked. Because of the comparative ease of drydocking many small passenger vessels, many owners pull their vessels out of the water for routine maintenance in excess of the required drydocking intervals. The Coast Guard does not deem notification necessary for routine maintenance work.

Section 176.670 Extension of Examination Intervals

This section proposes that the Commandant authorize extensions of the required drydock examination interval. Existing § 176.15–1(a) also authorizes the Commandant to grant extensions. As noted in the MSM, Commandant (G–MVI) has delegated to OCMIs the authority to extend drydock examinations for up to one year. Two comments stated that OCMIs should keep their authority to grant extensions, whereas one comment believes Commandant (G–MVI) should retain extension authority to ensure consistent application. To minimize the administrative burden, the Coast Guard has revised this section of this SNPRM by specifically stating that the Commandant may delegate authority to grant extensions to OCMIs. The Coast Guard expects that with the increase in drydock examination intervals, the need for and length of extensions will decrease. To ensure better consistency among inspection zones, the MSM will be revised to include more specific guidance on when extensions may be considered.

Section 176.700 Permission for Repairs and Alterations

This section of the NPRM states that repairs or alterations to machinery which affects the safety of the vessel may not be made without the approval of the OCMI, and lists examples. One comment stated that "* * * overhaul, disassembly, or repair or alterations to mechanical systems not limited to the main engines, transmissions, generators, steering gear, pumps and hydraulic systems * * *" should be added to the list of examples. The Coast Guard disagrees. The intention of this section is that the OCMI be made aware of any damage, repairs, alterations to, or replacements of (other than replacements in kind), the vessel's hull or essential equipment. It is not intended that the OCMI be notified of normal maintenance work on small passenger vessels such as engine overhauls or replacement with like material due to normal wear and tear. Section 176.700 has been revised in this SNPRM to clarify the intent of this section.

Section 176.710 Inspection and Testing for Gas Hazards

This section states that NFPA publication 306, "Control of Gas Hazards on Vessels," (NFPA 306) should be used as a guide to ensure that confined spaces are suitable for entering and that before performing hot work on fuel tanks and related appurtenances a marine chemist must certify that it is safe to conduct such work. Sections similar to § 176.710 are presently in other vessel inspection subchapters, except that the other subchapters specifically state that NFPA 306 must be used as a guide in conducting required inspections prior to hot work, and they do not specifically address using it for confined space entry.

Three comments recommended changes to § 176.710 including the adoption of Occupational Safety and Health Standards for Shipyard Employment in 29 CFR 1915 for use prior to hot work and confined space entry. Because of the similarities regarding hot work and confined space entry on most vessels, incorporating the standards in 29 CFR into small passenger vessel regulations would involve safety and policy issues which affect other inspected vessels. Consideration will be given to such changes in the future. The Coast Guard is revising § 176.710 in this SNPRM to read similarly to corresponding existing sections in other vessel inspection subchapters.

Subpart H—Material Inspections

This subpart lists the material inspections and tests which an owner must be prepared for and which will normally be conducted during an inspection. One comment stated that "and reinspection" should be added to the phrase "At each initial inspection and subsequent inspection for certification * * *" used throughout the subpart since the listed inspections and tests should be done annually with the same scope each time. The Coast Guard's position is that § 176.502 adequately discusses conducting a reinspection.

One comment stated that, unlike existing § 176.25–25(a), under § 176.810 the inspector would no longer examine and test fire extinguishing systems and would therefore rely on the statements of the owner. The comment stated that such a situation could leave too much to interpretation. In fact, sections in existing part 176, subpart 176.25, Material Inspections, start out "* * * the marine inspector shall examine and test * * *". The corresponding sections in proposed part 176, subpart H of the NPRM were intentionally changed to read: "* * * the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of * * *". The change was made to emphasize that the burden is on the owner to have the vessel in satisfactory condition and to conduct satisfactory tests. Section 176.404 of the NPRM also points this out, stating: "The owner or managing operator shall conduct all tests as required by the marine inspector, and make the vessel available for all specific inspections required by subpart H * * *". Subpart H lists the specific tests and inspections which will normally be conducted by the owner and witnessed by the marine inspector during an inspection. Some tests may not need to be witnessed by a marine inspector, such as portable fire extinguisher servicing under § 176.810(b). The rule proposed in the NPRM has not been changed.

Historically, the Coast Guard has approached commercial vessel safety by inspection of vessels and casualty investigations which looked for mechanical breakdown or equipment problems. The Coast Guard looked less closely at human factors and management elements, including vessel and equipment maintenance, training and certification of personnel, and management of vessel and company operations, which might lead to a better understanding of the root causes of casualties.

The Coast Guard has begun to focus efforts on the human and management roles in marine safety. IMO Resolution A–465, "Management Guidelines for Safe Ship Operation and Pollution Prevention," outlines management's role in casualty avoidance. It was described and its use encouraged in NVIC 1–90. The public expects and the Coast Guard demands that all vessels should be maintained to the highest safety standards, crewed with personnel trained and qualified to do their jobs in a professional manner, and managed proactively and effectively. What this ultimately means is that owners and operators must assume more of the responsibility for safe operation of their vessels.

Section 176.802 Hull

Paragraphs (b) and (c) of this section state that a vessel must be afloat for that portion of an inspection required by the inspector and that, when required by the inspector, a portion of the inspection must be conducted while underway. One comment stated that the phrase "required by the marine inspector" should be removed to avoid inconsistencies. The Coast Guard disagrees. A primary purpose of this revision is to reduce inconsistencies among inspection zones primarily with regard to design, construction, and outfitting requirements. However, there are many variables during subsequent inspections, such as the age and condition of a vessel, which necessitate that the inspector be afforded some discretion regarding the extent of the inspection. Existing Coast Guard policy, when possible, is to conduct a portion of the inspection for certification on wooden hull vessels while the vessel is underway.

Section 176.804 Machinery

This section describes machinery and equipment testing and inspection during initial and subsequent

inspections for certification of a vessel. One comment stated that the operational testing of valves in bulkheads and through hull fittings, required by paragraph (g), should be done during a drydock exam. The Coast Guard disagrees. Through hull fittings and valves are thoroughly inspected during each drydock exam. This section calls for an operational test of these valves to ensure proper working order.

With reference to paragraph (h), one comment stated that the bilge pump should not be allowed to pump bilges when also being used for a fire pump, and that separate pumps are needed. The Coast Guard agrees a single pump should not be used to pump bilges and charge the fire main simultaneously. This would probably lead to oily water being introduced into the fire main, which could be dangerous, and produce low or no fire main pressure, depending on the piping arrangement. In fact, §§ 182.520(i) (2) and (3) of this subchapter would not allow this arrangement. Section 182.520(i)(2) indicates that two pumps are required for simultaneous pressurization of the fire main and operation of the bilge pump system. Section 182.520(i)(3) requires the interconnected fire and bilge systems to be capable of being isolated so that they can be operated simultaneously, using separate pumps. The last three lines of § 176.804(h) in the NPRM have been deleted.

Section 176.810 Fire Protection

Three comments suggested deleting paragraph (a)(5), which states that cylinders have to be tested and inspected in accordance with part 147, § 147.60. This requirement emphasizes that cylinders for compressed gases must be constructed, production tested, and marked in accordance with the applicable DOT cylinder specifications in Title 49 of the CFR. No change was made to the NPRM.

Three other comments suggested deleting the reference to part 147, § 147.65 in paragraph (a)(6), and recommended the inclusion of the actual requirements. The Coast Guard considered this suggestion, but is retaining the reference to § 147.65 because it includes hydrostatic test requirements for flexible connections and discharge hoses, as well as cylinders. Retaining this reference reduces the amount of text for this section. No change was made to the NPRM.

A number of comments were received addressing the requirements of the tables in paragraph (b) for inspection, maintenance, and periodic testing of portable fire extinguishers. Some comments requested deletion of Table 176.810(b)(1) which specifies the testing of portable fire extinguishers, and recommended referencing the maintenance requirements of NFPA Standard 10, "Portable Fire Extinguishers" (NFPA 10). Maintenance of portable fire extinguishers in accordance with NFPA 10 is consistent with extinguisher industry and independent testing laboratory practice. All Coast Guard approved extinguishers and all shoreside extinguishers, other than household extinguishers, have a statement on their labels that the extinguisher is to be maintained in accordance with NFPA 10. As a result, Coast Guard inspectors are using NFPA 10 as the standard guide and reference for inspection and maintenance of portable fire extinguishers. A review of the applicable sections of NFPA 10 reveals the following extinguisher servicing philosophy:

1. Monthly inspections or "quick checks" of the portable fire extinguishers by vessel operator.
2. Annual servicing by trained persons, using the appropriate extinguisher manufacturer's servicing manuals, the proper types of tools, recharge materials, lubricants, and the manufacturer's recommended replacement parts.
3. For certain types of fire extinguishers, emptying the extinguishers every six years by trained persons and conducting specific maintenance procedures.
4. Conducting periodic hydrostatic pressure tests of rechargeable extinguishers with the frequency as detailed in NFPA 10. This testing must be conducted by persons trained in pressure testing procedures and safeguards, and having available suitable testing equipment, facilities, and appropriate servicing manual(s). If the servicing of DOT cylinders is required, the servicing organization must be certified by DOT in accordance with the applicable DOT regulations.

After reviewing the comments received on inspecting and maintaining portable fire extinguishers, the Coast Guard agrees that portable fire extinguishers should be inspected and maintained in accordance with NFPA 10. Table 176.810(b)(1) has been deleted in this SNPRM and paragraph (b) has been revised. New Table 176.810(b) addresses the inspection and testing of semi-portable extinguishers as well as portable extinguishers and fixed systems.

One comment questioned whether it was necessary to service dry chemical fire extinguishers annually. NFPA 10 requires such servicing, although this does not mean "recharging" as the comment implied. The comment may have misunderstood the term "servicing" to mean "recharging," rather than just the maintenance procedure specified by NFPA 10 for dry chemical fire extinguishers.

One comment requested clarification about who is authorized to service fire extinguishers. One comment stated that maintenance should only be performed by professional servicing organizations, since vessel owner/operators are not qualified to service extinguishers. One comment suggested that the vessel's master should be designated as one of the persons authorized to conduct extinguisher servicing. The Coast Guard agrees, in principle, that the maintenance of currently approved extinguishers can be hazardous because it involves pressurized cylinders and requires trained personnel having specialized equipment. Being the master of a vessel does not automatically qualify someone to service fire extinguishers, nor does it prohibit trained or experienced masters or crewmembers from doing so. Unless vessel personnel have been specifically trained and have the necessary equipment, manufacturer's servicing manuals, and recommended replacement parts, maintenance of extinguishers is best conducted by a professional servicing organization. Most recharging and hydrostatic testing will have to be done at the facility of a professional servicing organization. No change has been made to the NPRM.

Section 176.812 Pressure Vessels and Boilers

Existing requirements in §§ 176.25–30 and 176.25–32 give specific requirements for pressure vessels, including a requirement for internal examinations of most pressure vessels every 3 years. Boilers are required to undergo the tests and examinations in part 61 of subchapter F. The requirements proposed in the NPRM simply referred to the inspection and testing requirements of part 61, subpart 61.10 for pressure vessels and part 61, subpart 61.05 for boilers. Five comments pointed out that this was confusing because subpart 61.10 refers to biennial (once every 2 years) internal examinations for pressure vessels, instead of the existing triennial (once every 3 years) requirement. Several questioned why 3 year intervals were good enough for small passenger vessels, but only 2 year intervals were allowed on other types of vessels. Some comments wanted to know why the intervals were being reduced. One comment thought the proposal was good, because the pressure vessel test and examination requirements should be the same for all vessels.

The present subchapter F requirement for biennial internal examination of pressure vessels on most types of vessel exists, in part, in order to be in alignment with their inspection for certification and drydocking intervals, both of which were 2 years before 1987. In 1987 the drydocking interval for most vessels was changed to be two drydockings in any five year period, with no more than 3 years between any two examinations. Because it may be more appropriate to inspect and test most machinery on larger vessels at the time of drydocking, the Coast Guard is proposing to extend the pressure vessel internal examination interval under a project entitled "Incorporation of Amendments to the International Convention for Safety of Life at Sea, 1974" (CGD 83–043). An NPRM was published in the **Federal Register** 28 September 1990. A final rule will be published at a later date.

Under the existing regulations, a triennial internal examination of pressure vessels is convenient for most small passenger vessels because it lines up with annual and triennial inspections for certification, and 18 and 36 month drydocking intervals. Under the requirements proposed in this SNPRM, most small passenger vessels will be drydocking every 2 years while a few vessels operating in freshwater will be drydocking every 5 years. All vessels will have to have an inspection for certification every 3 years. A pressure vessel internal examination interval of 2 years would line up well with the proposed drydocking intervals, but would be more restrictive than that proposed in the NPRM for docket CGD 83–043. The intervals proposed in the NPRM for docket CGD 83–043 also line up for small passenger vessels because they would match the triennial inspection for certification interval proposed in this SNPRM. Owner/operators would also have the flexibility to perform the tests and inspections at the proposed time of drydocking (both 2 and 5 years), if this would be more convenient. An additional advantage will be that pressure vessel internal examination intervals for all vessel types would now be the same. The wording of § 176.812 has not been revised in this SNPRM. This reflects the Coast Guard's position that the period proposed in the NPRM for docket CGD 83–043 will be in effect before final rules for subchapter T are published. The Coast Guard does not consider it necessary to repeat the Subchapter F requirements in this section.

Section 176.910 Passenger Ship Safety Certificate

Paragraph (a) of this section in the NPRM requires that a vessel which carries more than 12 passengers on an international voyage must have a valid SOLAS Passenger Ship Safety Certificate. It specifically exempts a vessel on a voyage between the continental United States and Alaska or Hawaii, or between Alaska and Hawaii, from the requirement for a SOLAS certificate, although under the definition of "international voyage" in § 175.400 of the NPRM such a voyage is an "international voyage". One comment objected to the proposed exemption for SOLAS certificates for such vessels stating that vessels on voyages between the continental United States and Alaska or Hawaii, or between Alaska and Hawaii, should be considered to be on international voyages. The Coast Guard disagrees and for the purposes of this subchapter has revised the definition of "international voyages" by deleting the reference to voyages between the continental United States and Alaska or Hawaii, or between Alaska and Hawaii, for the reasons noted under the discussion of comments on § 175.400 in this preamble. Correspondingly, the references to such voyages have not been included in § 176.910(a) in this SNPRM.

Section 176.910(a) also states that the Commandant will issue SOLAS Passenger Ship Safety Certificates. Commandant (G–MVI) will continue to issue all initial SOLAS certificates to a vessel. Commandant (G–MVI) has recently delegated authority to OCMIs to reissue SOLAS Passenger Ship Safety Certificates, as well as SOLAS Exemption Certificates. Whenever any changes to the vessel or its operations occur necessitating a change to the SOLAS Passenger Ship Safety Certificate or SOLAS Exemption Certificate, such revised certificates must be issued by Commandant (G–MVI). Both § 176.910(a) and § 176.920(d) have been revised in this SNPRM to reflect this change.

Section 176.932 Equivalency for Voyages to The Bahamas

This section lists the criteria for the Commandant to determine that a vessel complies with requirements equivalent to SOLAS requirements for small passenger vessels operating between the Bahamas and Florida. Several comments were received questioning the limitations of the equivalency. The United States accepted the equivalency under Regulation 5, Chapter 1, of SOLAS, the provisions of which are repeated in § 176.930. Other equivalencies to SOLAS would also be considered. For instance, the U.S. recently accepted another equivalency by considering the requirements of subchapter T equivalent to SOLAS requirements for small passenger vessels which: (1) Do not proceed more than 20 miles from land; (2) carry not more than 150 passengers; (3) have overnight accommodations for less than 50 passengers; (4) have inflatable survival craft for 100% of the persons on board; and, (5) are certificated for an oceans route. Because any equivalency must be applied on an individual, case-by-case basis, and because additional equivalencies may be accepted in the future, the Coast Guard's position is that it is best not to incorporate the provisions of specific equivalents for small passenger vessels into regulation. Therefore, proposed § 176.932 has been deleted.

Part 177—Construction and Arrangement

Section 177.115 Applicability to Existing Vessels

Several comments stated that an existing vessel must always be grandfathered regardless of any changes in construction or arrangements on the vessel. The Coast Guard disagrees and believes that any significant alteration or change in the design of the hull or superstructure of a vessel should be done in compliance with any revised requirements applicable to the change. However, such a change would not automatically result in the vessel being considered a "new vessel," which must comply with all the new requirements proposed by this SNPRM, unless the vessel is considered to have undergone a "major conversion" as defined in § 175.400.

The last sentence of this section, as proposed in the NPRM, stated that repairs or maintenance conducted on an existing vessel, resulting in no changes to the original structure or arrangement of the vessel, must comply with either the new or the existing regulations. One comment stated that this sentence is too broad because it depends on a judgment call by a marine inspector, presumedly to determine if any changes were made or not, and this would result in inconsistencies of application of the regulations to vessels in the same zone, and to vessels in different zones. A major purpose of this rulemaking is to reduce inconsistencies in the application of regulations. However, a determination as to whether a change has been made to the structure or arrangement is normally not difficult

and any disagreements with an inspector's decision can be appealed.

One comment stated that existing uncertificated vessels constructed more than 5 years before being certified and which carry less than 150 passengers should have to comply only with the proposed regulations in part 177 as much as possible. This category would include present uninspected passenger vessels or bareboat vessels which do not have to comply with subchapter T. The Coast Guard disagrees. Such vessels should generally be treated as new vessels. There are sufficient provisions in subpart C of part 177 to allow an owner of a vessel to prove the structural soundness of the vessel's hull by other than specific design criteria. There are also sufficient provisions for equivalencies if an owner believes the design or arrangement of a vessel is as effective as that required by part 177. The structural fire protection requirements proposed in this section of the NPRM would apply only to vessels proposed in this SNPRM to be regulated by the new subchapter K. Therefore, they no longer appear in part 177 of subchapter T, as proposed in the SNPRM, but only in part 116 of subchapter K. In light of the changes made to the structural fire protection requirements, the Coast Guard perceives that many existing vessels may want to make use of the wider range of materials allowed for bulkhead and ceiling linings, carpets, and similar items. The increased use of fire retardant materials, in lieu of present requirements for noncombustible materials, was based in part on the increased fire protection and detecting requirements in subchapter K, part 118. Owners which upgrade the interior furnishings and finishings of their vessels, using the requirements of subchapter K, part 116, must also ensure their vessels meet the requirements of subchapter K, part 118.

Section 177.202 Plans and Information Required

Numerous comments stated that the additional plans required by this section are costly and unnecessary, will add to plan review time, and may require additional Coast Guard billets for plan review. The comments went on to state the required information would result in more than the minimal cost and effort discussed in the preamble of the NPRM and the evaluation. The comments estimated that engineering costs could rise 25 to 120 percent. On the other hand, one comment stated that additional "structural" plans, other than a "Midship Section", were needed. The Coast Guard disagrees with all of these comments. The OCMI has always had, and still has, the authority to request that additional information and plans be submitted by the owner or builder. Not all of the information under paragraph (a) may be applicable to every vessel. Under paragraphs (a) and (b) the OCMI determines what level of information is necessary. Most of the new information listed in this section is already provided in plans and blueprints presently submitted to the Coast Guard. Many OCMIs have plan review information packages which amplify existing plan submittal requirements, and many boat builders have received letters asking for additional information before their plans can be approved. This section more clearly specifies the information the Coast Guard wants submitted. The Coast Guard envisions that this list will not substantially change the amount of information already required by most OCMIs. The list of necessary information does not require that separate plans be submitted for each item. The information can be put on as few or as many plans deemed necessary by the designer, as long as all information required by the OCMI is provided.

One comment suggested that production boats built to ABYC standards, as allowed by §§ 182.130 and 183.130 for small passenger vessels of not more than 65 feet in length carrying not more than 12 passengers, should not have to undergo the extensive plan review normally required. A manufacturer could demonstrate the stability of a vessel, and all vessels in that class could then be accepted. The Coast Guard agrees. Section 177.315 provides guidance concerning OCMI acceptance and approval of the scantlings for these vessels.

One comment questioned the requirement to submit plans to the OCMI, noting that it has been the practice to submit plans to the Marine Safety Center for small passenger vessels more than 65 feet in length or having large passenger capacities. The procedure outlined in the NPRM requires initial plan submittal for all vessels to be made to the OCMI. This ensures that each OCMI becomes aware of all new construction being planned to occur in his or her zone. The OCMI may then authorize plan submittal directly to the Marine Safety Center for larger small passenger vessels, if the OCMI desires or as Coast Guard policy dictates.

Two comments expressed the concern that long Coast Guard plan review and approval times, due to a great increase in plans and corresponding greater time for review, would delay construction of a vessel. One of the comments recommended a time limit for Coast Guard plan approval. The Coast Guard does not consider a time limit necessary to remedy the problem of long plan review time. Owners, designers, and builders should submit their plans in advance of the construction date.

One comment thought the provision in paragraph (a), concerning submission of plans prior to construction, "if practicable", conflicts with § 176.402(a). The comment recognizes that plans should be submitted before construction, and that OCMIs must continue to exercise good judgment in this matter, as they have in the past, but states that plans should always be submitted before construction or inspection begins. The Coast Guard does not see a conflict. Section 177.202(a) has been changed by replacing the phrase "if practicable" with "unless otherwise allowed by the OCMI." The intent of paragraphs (a) and (d) of this section is to make builders realize that construction of a vessel without approved plans is at the builder's and owner's risk.

One comment stated that 3 sets of plans would be necessary if the Marine Safety Center reviews the plans as allowed by paragraph (c). The Coast Guard agrees because this would allow the Marine Safety Center to retain a copy, provide an approved copy to the OCMI, and return an approved copy to the builder/designer. In addition, it is current policy to submit 3 copies of all documents for Marine Safety Center approval. This paragraph has been changed to require submission of 3 sets of plans.

Section 177.210 Plans for Sister Vessels

Two comments asked that "sister vessel" be defined. OCMIs will be able to determine whether any two vessels are sister ships without a specific definition. Some factors that have been judged to be important are: Construction material, construction method, machinery systems, (including type, number and size of main engines) interior layout, and, type and number of overnight accommodations. Some differences which at first seem minor, such as location of water and fuel tanks, size and height of deckhouses or bridges, and location of machinery, may affect stability and cause the vessels to not be considered sister vessels. For fiberglass vessel construction, the lay up schedule, and type of resins used could affect the determination of whether two vessels are sisters. Technical criteria for the determination of sister vessels is given in chapter 6 of volume IV of the MSM.

One comment expressed concern about the requirement for having approved plans for a sister vessel on file at the local OCMIs office. The comment pointed out that: (1) The OCMI in the zone where the first vessel was built may not want to transfer a set of prints from a new construction file because the plans may be needed for future use; and (2) owners rarely get approved construction plans from the builder. The intent of this section is that the OCMI which will be inspecting the vessel while it is being built must have a set of approved plans before construction is started. If the prospective owner cannot obtain a set by transferring or copying those on file at a Coast Guard office, the normal plan approval process must be initiated in accordance with § 177.202.

Section 177.300 Structurol Design

The proposed rule lists specific structural design standards acceptable for the construction of small passenger vessels. One comment suggested additional introductory text to point out that the standards listed in the proposed rule are adequate for all services. One comment noted that the listed standards in the proposed rule did not adequately address inland routes, and recommended ABS guidance for vessels of not more than 65 feet in length. These comments point out that most of the listed standards are for unrestricted open water (i.e., oceans) service. Owners, operators, or designers desiring approval of reduced scantlings for their vessels because of operation on a less severe route, could apply under §§ 177.310 or 177.340.

Four comments pointed out that for protected routes, ABS rules for inland service, or equivalent, would be satisfactory for the hull structure. The Coast Guard agrees that guidance and standards are necessary. For a long time Coast Guard policy has been that inland vessels made of steel should be designed to the ABS Rules for Building and Classing Steel Vessels in Service on Rivers and Intracoastal Waterways. No problems have been encountered. The proposed rule has been changed to include this standard.

One comment suggested adding ABS Rules for Classing Steel Vessels and Det norske Veritas (DnV) Rules for Classing of Steel Ships. Two comments suggested allowing the use of DnV Rules for Classification of High-Speed Light Craft. The Coast Guard disagrees. Small passenger vessels are generally not large enough to have to comply with the ABS Rules for Classing Steel Vessels or the DnV Rules for Classing of Steel Ships, and the DnV Light Craft Rules have not yet been widely accepted by builders and designers in this country. Any of these rules might be acceptable as alternative design criteria for specific vessels under proposed § 177.340. No change was made to the NPRM.

One comment suggested adopting a standard for wood vessels that is more current than Lloyd's, which the comment believed was outdated. The Coast Guard disagrees, because alternate and more recent standards of a similar scope do not exist. Nor does the age of a standard mean it is deficient for vessels of the type for which it was written. The proposed rule has not been changed.

Many comments suggested referencing NVIC 11–80 on aluminum crew boat construction, or even replacing the proposed standards for aluminum vessels with NVIC 11–80. One comment questioned if NVIC 11–80 is considered to be an adequate standard for aluminum small passenger vessels that are not in the mineral and oil (M&O) industry. The Coast Guard accepts the guidelines in NVIC 11–80 for many vessels which do not operate in the M&O industry since structural standards apply to general categories of hull shapes in general types of environments. There is no reason to change the engineering standards provided in NVIC 11–80 for application to any small aluminum vessel. Consequently, any hard chine aluminum planing hull of moderate length can be suitably evaluated with NVIC 11–80. Its use would be permitted under § 175.540. NVIC 11–80 is not listed in the proposed rule because NVICs may not be cited in the CFR since they are policy documents. No change was made to the NPRM.

One comment suggested that the listed standards be dispensed with if a vessel manufacturer proves compliance with another industry standard, such as ABYC, but noted that the available alternatives are not known. The Coast Guard agrees that the listed standards are generally not intended for small vessels, and commercial boat standards may be suitable. Proposed § 177.315 specifically provides for small vessels. Sections 177.310 and 177.340, as well as the equivalency provision of § 175.540, also allow for alternatives to § 177.300. The proposed rule has not been changed.

One comment stated Lloyd's rules are inadequate for catamarans and recommended using industry experience to determine acceptable rules. The comment also stated that Coast Guard use of the "in-house immersion of up to six feet full under water rule" results in acceptable vessels being rejected. The Coast Guard agrees that Lloyd's rules may not be adequate for multihulls because composite design has gone beyond the state of the art in structural design which existed at the time when many of the listed standards were developed. The Coast Guard is working toward setting a standard for composite construction and is relying upon industry involvement to ensure that any standard developed is appropriate. In the interim, proposed § 177.340 on alternate design considerations may be used. The rule objected to by the comment is no longer in use, and has not been for some years. The proposed rule has not been changed.

One comment suggested adding a new section concerning structural standards required for pontoon vessels and catamarans. Current Coast Guard policy is that each hull of a multihull vessel must meet the structural standards for a monohull of the same size and service. Multihull cross structures and pontoon vessels receive special consideration based on sound design and engineering principles. No change was made to the NPRM.

One comment stated that we should incorporate by reference the destructive test standards of the American Society of Testing and Materials (ASTM) for testing FRP. The Coast Guard's position is that the specific incorporation of such standards into subchapter T is presently unnecessary. Although there is presently no regulation addressing destructive tests or standards, both ABS and Lloyd's rules for the structural design of FRP, which are proposed for incorporation by reference, address the need for destructive testing of FRP and refer directly or indirectly to ASTM standards. NVIC 8–87, entitled "Notes on Design, Construction, Inspection and Repair of Fiber Reinforced Plastic Vessels," also provides guidance on the testing of FRP using ASTM standards. No change has been made to the NPRM.

Section 177.310 Satisfactory Service as a Design Basis

The rule, as originally proposed, provided for the acceptance of scantlings found to be equivalent to those on another vessel of not more than 65 feet in length that has had satisfactory structural service for at least five years. It was adopted from existing § 177.10–1(a). As a substitute for using the standards in § 177.300, satisfactory structural service can be used for new construction design or for structural approval of existing vessels which are desired to be certificated. This latter method has been used often in the past. This section has been revised to more clearly show that the vessel in question

may itself provide the evidence of satisfactory service after five years of satisfactory operation with no hull or internal structural problems.

One comment said the term "approximating the same size, power, and displacement" was too vague. The Coast Guard disagrees. For the purpose of structural suitability very minor differences are generally of little consequence. To require exact duplication would severely limit the scope of the proposed rule. The NPRM was not changed.

One comment suggested that 5 years is an insufficient period to ascertain satisfactory design and believed that many vessels, especially those of FRP construction, fail after the age of 5 years. The Coast Guard disagrees because casualty data does not show any instances of major structural failure or loss of life due to inadequate design. The proposed rule has not been changed.

One comment agreed with the 65 foot length limitation, stating that the structural adequacy of large vessels should be determined by basic principles. Seven comments suggested removing the 65 foot length limit for application of the 5 year rule. The Coast Guard agrees that the limit should be removed. Design standards are available for larger vessels and they are easy to use. The concept should not be restricted to vessels of a certain size because casualty data does not indicate that the lack of a length limitation in the existing rules is a major problem. The proposed rule has been changed by removing the length limitation.

The Coast Guard has considered the question of the applicability of this section to vessels which will carry more than 150 passengers or have overnight accommodations for more than 49 passengers (i.e., those vessels proposed to be regulated by subchapter K). The Coast Guard has determined that, although the length limit for application of this section is being removed, this section is not appropriate for vessels carrying such large numbers of passengers and will not be included in subchapter K.

One comment suggested the regulations stifled research and development by requiring new vessels to be designed like old vessels, rather than encouraging new designs. The Coast Guard disagrees. Proposed § 177.340 allows novel designs and new construction materials resulting from research and development to be reviewed by the Marine Safety Center. The regulations ensure a minimum level of safety, reducing the impact upon industry by applying the least costly and easiest method of structural evaluation possible. The proposed rule has not been changed.

One comment stated that it would be difficult to adequately document the area and frequency of operation for many recreational vessels and vessels carrying not more than six passengers. This lack of adequate documentation could result in unfair competition between vessels built to a design standard versus those modeled on recreational vessels. The Coast Guard agrees that any procedure intended to be flexible may result in some inequities, but considers the requirements proposed in the NPRM workable. The existing vessel should have experienced the same operating environment planned for the new vessel, and show satisfactory service in that environment for five years. Pages 1–3 through 1–4 of NVIC 8–87 give guidance concerning the 5 year rule, which can be applied to all vessels, not just those of FRP construction. The burden is upon the designer or owner to show the similarities between the proposed and existing vessels. The OCMI has the responsibility for determining the adequacy of any documentation submitted. The proposed rule has not been changed.

Section 177.315 Vessels of Not More Than 65 Feet in Length Carrying Not More Than 12 Passengers

This proposed section allows the OCMI to approve the scantlings of a vessel of not more than 65 feet in length and carrying not more than 12 passengers if the builder of the vessel can show that the design and construction of the vessel is adequate for the intended service. Four comments suggested deleting this proposed rule or specifying guidance on adequate standards, possibly NMMA standards. The Coast Guard disagrees. A provision is needed for small vessels not of a novel design which: (1) Due to their size and service may not need to be built to the design standards of § 177.300; or (2) lack adequate service time to meet the 5 year requirement of § 177.310. No criteria are specified in order to allow the OCMI flexibility when approving these smaller vessels. The Coast Guard envisions that a designer or builder, whose qualifications the OCMI is assured of, may be able to demonstrate the adequacy of a hull structure to an OCMI by comparison with: (1) Regional standards which experience has shown are adequate; (2) a specific manufacturer's criteria which experience has shown are adequate; or (3) calculations other than those provided for by § 177.300.

One comment suggested requiring compliance with recreational vessel standards to minimize OCMI discretion and inconsistencies. The Coast Guard is not aware of any structural standard which has been widely accepted by recreational boat builders. The OCMI has authority to determine the appropriateness of a proposed vessel's structure. The proposed rule has not been changed.

One comment suggested deleting this proposed rule because NMMA approval is not structurally sufficient for seagoing vessels, and further stated the proposed rule would effectively allow recreational vessels, suitable only for a maximum of 6 passengers, to carry 12 passengers. The Coast Guard is not aware of an NMMA structural standard. Flexibility is needed to accommodate small vessels. Under this section OCMIs may require additional evidence of the adequate design and strength of the vessel. The proposed rule has not been changed.

One comment suggested removing the 65 foot vessel length limitation since good structural design is not a function of length. The Coast Guard disagrees because the proposed rule is intended to minimize the impact of regulations on small vessels for which structural standards are not readily available, whereas suitable standards do exist for larger vessels. A length limit is also necessary to limit the inconsistency that might result from such a flexible requirement. The proposed rule has not been changed.

Section 177.330 Sailing Vessels

The proposed rule requires suitable rigging for sailing vessels and permits the OCMI to require design calculations. One comment questioned the availability of standards. The Coast Guard is not aware of any existing suitable standards for modern rigging. Cooperative efforts with industry are underway to develop a suitable standard for sailing school vessels. The proposed rule is intended to ensure that appropriate consideration is given by the designer to the adequacy of the rigging, and does not require that a particular standard be met. Routine plan review is not expected, partly due to the lack of suitable design standards. This section is similar to existing paragraphs (b) and (c) of part 169, § 169.309 which apply to sailing school vessels. The proposed rule has not been changed.

Section 177.340 Alternate Design Considerations

The proposed rule provides for review of calculations for designs which cannot be properly evaluated with existing

structural standards or within the framework of the other proposed rules. One comment suggested permitting the "first principles" approach for all small passenger vessels to permit advances in novel craft. The Coast Guard agrees, and anyone desiring to submit a first principles design analysis for any type of vessel may do so. But first principles analysis is only necessary when a new design or technology is being used. The adoption of design standards ensures a uniform level of safety. Further, the Coast Guard does not have the resources to review first principle approach calculations for every small passenger vessel. Experience has shown that industry and the Coast Guard benefit from the time saved by using design standards rather than the long involved process associated with first principles. The proposed rule has not been changed.

One comment suggested adding "for initial evaluation and forwarding to Commandant" at the end of this section. The Coast Guard agrees. However, it is the Marine Safety Center which has the responsibility for evaluating design calculations based on first principles, whereas Commandant (G–MTH) generally performs the concept review. In this SNPRM, the proposed rule has been changed to incorporate this comment.

Subpart D—Fire Protection

The following remarks, which address the comments received on this subpart of the NPRM, are arranged in order of the section numbers proposed in the NPRM. However, many of these proposed sections which would have applied only to vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers, are now proposed to be regulated by subchapter K. Therefore, many of these sections no longer apply to subchapter T vessels and do not appear in part 177, but are in part 116 of subchapter K.

In analyzing the numerous comments, the Coast Guard took a systems analysis viewpoint of small passenger vessels. For example, it is very difficult to evaluate requirements for flammability of interior finishings and furnishings without considering the type and amount of fire detection and extinguishing systems. It is important to remember relaxations in one system might be made because of stricter requirements in another.

In order to make these requirements simpler to understand and easier to use, the Coast Guard has revised the arrangement of the sections found in subchapter K by splitting them into more, but smaller, sections consistent with subject areas. The section numbers for a subject area may no longer correspond to those in the NPRM.

Section 177.400 General Arrangement and Outfitting

This section has been changed in several ways. It has been renumbered as § 177.405 (K–§ 116.405). Some requirements concerning combustible materials, such as plastic piping, have been moved to this section because they are more easily associated with minimizing fire hazards in construction and outfitting than with interior finishes.

Paragraph (c) of the NPRM has been simplified by deleting the subparagraph which allows watertight engine boxes as a substitute for vaportight bulkheads. Although this is still an unobjectionable equivalent, it need not be stated in regulation.

Paragraph (f) of the NPRM would have required all waste receptacles (trash cans) to be noncombustible and without openings in the sides or bottom. One comment thought this requirement should be applicable to existing vessels as well as new vessels. One comment suggested that noncombustible waste receptacles should only be required in "high risk" areas such as engine rooms. Numerous comments stated that metal cans were unsightly, rusty, and hard to keep clean, and believed plastic cans should be allowed. Combustible trash cans perform poorly in a fire. A typical scenario involves ignition of the receptacles contents by a discarded cigarette. A fire in a noncombustible trash can may be contained by putting a lid on top of it and smothering the fire. Combustible trash cans are easily breached by the fire and this technique cannot be used. Combustible trash cans fail to contain the fire once it is established and add to the fire load. They may also be tough to jettison because of breaching. This paragraph has been changed in this SNPRM so that existing vessels must also meet the requirement to have noncombustible waste receptacles. SOLAS approved noncombustible composite trash cans are available for those who would like to use them.

Paragraph (g) of the NPRM proposed to limit paint thickness on interior surfaces of enclosed or partially enclosed spaces to .075 inches or less. A number of comments objected to this requirement and wanted it deleted. Most stated that the requirement would be difficult to meet and difficult to enforce. The Coast Guard recognizes the concerns posed by the comments and has deleted the requirement in this SNPRM.

Paragraph (g) of the NPRM also proposed to prohibit nitrocellulose paint, which is no longer used in standard vessel construction and outfitting practices. The specific prohibition is no longer necessary and has been deleted in this SNPRM.

Paragraph (h) of the NPRM required mattresses to comply with 16 CFR part 1632, subpart A (FF–4–72.10). Regardless of the size of vessel, mattresses must not contain polyurethane foam. One comment said that this should only be applicable to vessels carrying over 150 passengers. Another agreed that polyurethane foam should be restricted from use in mattresses. One comment stated that the "California Standard" for smoke/toxicity/ignitability should be cited. Another comment said that "toxic when burning" foam should be banned from vessels carrying less than 150 passengers. Polyurethane foam is a notoriously poor fire performer. The Coast Guard is proposing to retain the requirement that prohibits polyurethane foam from use in mattresses and has redesignated this requirement as paragraph (g) in this SNPRM. It should be noted that this material is banned from use in public buildings in the U.K. and France. Upholstered furniture and furnishings are often padded with this type of foam. Because furniture and furnishings are a primary fuel source in most fires, polyurethane foam would not be allowed in furniture or furnishings under paragraph (h) of this SNPRM. This is consistent with the Coast Guard's position on material used in mattresses. The California Bureau of Home Furnishings requirements are not incorporated into the SNPRM to prevent undue difficulty in obtaining mattresses or other items made of polyurethane foam in areas where furnishings for the California market are not available.

Section 177.420 Structural Fire Protection for Vessels Carrying Not More Than 150 Passengers or With Overnight Accommodations for Not More Than 49 Passengers

The NPRM proposed to require that the resin used on FRP vessels have an ASTM E–84 flame spread rating of not more than 100, and that surfaces within 3 feet of cooking areas have a flame spread rating of not more than 75. Most comments, including those from builders, architects, ABYC, and NMMA objected to the use of fire retardant resins, primarily citing cost and lay up difficulties. Two comments recommended incorporating the equivalency criteria contained in NVIC

8–87, but also recommended retaining the requirement for MIL–21607 resin. As a matter of policy, the Coast Guard has allowed the use of general purpose resins (NVIC 8–87 as amended by G–MVI letter 16703/46 CFR 177.10–5 dated 21 September 89) provided that a number of additional measures are taken to ensure a comparable level of fire safety. This is the basis for the revision to the NPRM. Resin with an ASTM E–84 flame spread rating of 100 is available and is not hard to find. Although smaller fiberglass shops generally don't carry it, this resin is available from larger suppliers. Resins with an ASTM E–84 flame spread of 100 or less costs 50–60 percent more than general purpose resins. This SNPRM proposes to allow general purpose resin to be used provided that the additional requirements and restrictions previously found in NVIC 8–87 are met. This will effectively provide industry an option of either meeting the fire retardant resin requirements or the equivalency criteria.

A recent Commandant decision concerned the use of general purpose FRP resin alone, or of a thin layer of FRP layed up using general purpose resin, as an interior coating or paint on a wooden vessel. Use of FRP resin or a thin FRP layer as an interior paint or finish on vessels constructed of wood or other non-fire retardant material (except FRP) is acceptable as long as it is for non-structural purposes. In this particular case, the Commandant determined that the maximum thickness of the general purpose FRP should not be thicker than .075 inches, based on present interior finish requirements and the flammability of general purpose resin. Essentially, the Coast Guard believes there is no reason for an interior finish this flammable to be thicker than .075 inches. Interior FRP coats on vessels constructed of FRP would be required to meet §§ 177.410(c) and (d) of this SNPRM.

Three comments objected to the requirement that surfaces within 3 feet of cooking appliances have an ASTM E–84 flame spread rating of not more than 75. This requirement remains because cooking and heating appliances are the second most common ignition source of small passenger vessel fires. In the event that surfaces within 3 feet consist of a laminate facing and backing material such as plywood, only the laminate facing must meet the flame spread requirement when subjected to the ASTM E–84 test. There are laminate facings which meet this requirement. Stainless steel, other sheet metal surfacing, or other noncombustible material would also be satisfactory.

Section 177.430 Fire Control Boundaries for Vessels Carrying More Than 150 Passengers

This section has been moved to subchapter K, § 116.415. The NPRM would have required the hull, structural bulkheads, columns, stanchions, superstructures, and deckhouses to be composed of "steel or equivalent material." Three comments believed that the NPRM stated that vessels could only be built of steel, not aluminum. These concerns are unfounded. Under the definition of "steel or equivalent material" found in proposed § 175.400, aluminum construction is allowed. When aluminum is used, it is subject to additional insulation requirements in order to improve its fire performance so that it becomes comparable to that of steel. Aluminum inherently has a much lower fire resistance since it loses approximately half its strength at a temperature of 400 degrees F. Steel, on the other hand, must be heated to 1100 degrees F before losing half of its strength. Therefore, an aluminum structure must be insulated in order to achieve only an A–0 classification.

Fire endurance requirements for bulkheads and decks were proposed in Tables 177.430 (c) and (d) of the NPRM. Two comments expressed concern that although these tables are economically suitable for steel construction, they are too costly for aluminum construction. One of the comments proposed a separate set of tables for aluminum vessels that upgraded deck and bulkhead fire endurance requirements in many locations but also reduced A-Class structure to C-Class in others. This resulted from a proposed substitution of uninsulated aluminum (C-Class) for uninsulated steel (A-Class). The Coast Guard's intention, by having only one set of bulkhead and deck classification tables, was to assure a uniform measure of structural fire integrity for all passenger vessels subject to this subpart, regardless of the construction material or type. Adopting a different set of tables for different construction types would defeat this purpose and would lead to confusion during design and construction.

Guidelines explaining how to insulate aluminum are found in NVIC 6–80 and in the Society of Naval Architects and Marine Engineers (SNAME) Technical and Research (T&R) Bulletin 2–21, which is referenced by NVIC 6–80. Two comments suggested that SNAME T&R Bulletin 2–21 be used to determine the insulation requirements for aluminum structure. In fact, for many years these documents have been used by designers to successfully meet structural fire protection insulation requirements. The basis of SNAME T&R Bulletin 2–21 is full scale fire testing, which was done at the National Institute for Standards and Technology. These full scale tests established what amount of insulation was necessary for aluminum to achieve equivalence to A–0, A–30, and A–60 steel fire resistance. The SNAME Bulletin outlines two separate and acceptable methods of determining acceptable insulation arrangements for aluminum decks and bulkheads. The first method is prescriptive in that an insulation thickness is specified that will bring the bulkhead or deck classification up to that required by regulation. Four comments recommended that insulation requirements be based on the fire load of the subject space. This is, in fact, the second approach allowed by the SNAME T&R Bulletin. In spaces where the fire load is low (less than .5 pounds per square foot), uninsulated aluminum structure is allowed. Therefore, uninsulated aluminum (C-Class) may be used where uninsulated steel (A-Class) is currently required, provided that the fire load is less than .5 pounds per square foot. Further relief is found in NVIC 6–80, which allows the use of uninsulated aluminum bulkheads and decks in locations that separate water tanks, ballast tanks, and voids from open deck areas. Additionally, aluminum weather decks need not be insulated per NVIC 6–80.

Subparagraph (b)(5) of this section allows main horizontal zones (MHZs), instead of main vertical zones (MVZs), for vehicle decks on vehicle ferries. One comment recommended a wording change stating that vehicle decks on ferries must be subdivided, where MVZ's are impractical MHZ's may be used. The Coast Guard agrees and has clarified this in this SNPRM.

Paragraph (c) of the NPRM outlines fire ratings for bulkheads and decks, such as A–60, A–15, or B–15. Two comments were concerned that a space with an emergency generator could be separated from a control space by only B–0 bulkheads because the definition of control space includes those spaces that contain an emergency source of power. The Coast Guard agrees this could be a problem. In this SNPRM, the definitions of "control space" and "machinery space" have been modified to include a space with electrical generators under the category of a machinery space.

Section 177.432 Fire Load and Outfitting on Vessels Carrying More Than 150 Passengers

This section of the NPRM which outlines the requirements for fire load calculations, has been moved to subchapter K, §§ 116.422, .423, .425, and .427. In order to simplify finish and furnishing material and fire load requirements, the Coast Guard has broken this section of the NRPM into a number of smaller sections. In this preamble, the requirements will be referred to by the section and paragraph number used in the NPRM.

Five comments believed that materials included in fire load calculations required by paragraph (b) should not be subject to the flame spread and smoke generation requirements of paragraph (c). Some comments stated their concerns in a slightly different manner by saying that materials with low flame spread and smoke generation properties shouldn't be included in the fire load calculation. One comment stated that all combustibles should be included in the fire load calculation, including items such as cable insulation and light diffusers. One comment wanted to know how the maximum fire loads were determined.

From the comments received, it is apparent that there is wide spread misunderstanding regarding the definition of fire load and the role of low flame spread, low smoke generation materials. Fire load is an important measure of a potential fire's duration and intensity. This has direct impact on structural integrity because the longer a structure is exposed to a fire, the more it will heat up, resulting in a loss of rigidity. Thus, there is a need to control the fire load as well as to insulate the structure itself. Fire load calculations must contain all combustibles in a space; in other words, everything that will burn. The concept of limiting the amount of combustible material used in construction is inconsistent with exempting low flame spread, low smoke-generating materials from the fire load. These materials may be less hazardous than others but they are still combustible and will add to the duration and intensity of a potential fire. They must, therefore, be included in the fire load calculation.

Limiting flame spread and smoke production are separate fire protection principles that have important life safety implications. Rapidly propagating flames or high smoke production rates pose serious threats to effective egress and human life. Therefore, the concept posed by some comments of allowing any and all types of construction materials in a space so long as they are included in a fire load calculation is also inappropriate. The break points in the NPRM, of 3 pounds per square foot and 6 pounds per square foot for the fire load of low and high risk accommodation spaces, respectively, were chosen from a comparison with fire loads in similar shoreside occupancies. The NPRM proposal to designate accommodation spaces as either high risk or low risk, based on the fire load, has not been used in this SNPRM. This was done to simplify design and construction requirements, and to maintain a uniform measure of structural fire protection on all small passenger vessels to which this subpart applies. Accommodation spaces designated as high and low risk in the NPRM (Type 4 & 5 spaces) are now designated solely as accommodation spaces (SNPRM Type 4). Tables 177.430 (c) and (d), now Tables 116.415(b) and (c), have been revised to reflect this. The tables in the SNPRM are based on those from the NPRM, using high risk accommodation space (NPRM Type 4) requirements, vice low risk accommodation (NPRM Type 5) requirements, to provide a greater measure of protection at the minimal expense of an additional 1/2" to 1" of thermal insulation. The only proposed exception involves bulkheads separating adjacent accommodation spaces (SNPRM Type 4) which were required to be rated A–15 in the NPRM but have been revised to B–15 in this SNPRM. This simplifies construction and is consistent with the requirements for large passenger vessels. In addition, the maximum fire load for all accommodation spaces (SNPRM Type 4) has been established as 7.5 pounds per square foot of deck area, consistent with longstanding Coast Guard policy found in NVIC 6–80.

The Coast Guard thinks that as a result of the fire detection and extinguishing systems which will be installed on these vessels, and the reduced use of combustible materials, fire load calculations will not be necessary for most vessels which will be built. Therefore, fire load calculations will not be required unless the cognizant OCMI determines that the fire load being put into the vessel is large enough to warrant them. Under new § 116.427, the cognizant OCMI can require fire load calculations at any point in a vessel's life span if it is determined that fire load growth has occurred to the point that the actual fire equivalent mass must be increased by a ratio of the heat of combustion of the material divided by the heat of combustion of wood. The explanation of fire load calculations in § 114.400(b)(3) has also been revised to clearly indicate that it includes all combustibles including items such as light diffusers and cable insulation. The confusing wording in § 177.432(c) of the NPRM, which includes low flame spread materials in calculation of fire loads for some spaces but not in others, has been revised so that all combustibles are included.

One comment stated that a structural fire protection plan should be carried onboard each vessel. The Coast Guard agrees. A new § 116.530 has been added requiring subchapter K vessels to have a Fire Control Plan posted.

Paragraph (c) of the NPRM prescribes allowable flame spread and smoke generation characteristics for ceilings, interior finishings, and deck coverings. Numerous comments requested that materials acceptable for shoreside use in similar occupancies be accepted for use on small passenger vessels, and recommended the approval of NFPA 101 Class A interior finishes. Class A interior finishes are considered inappropriate for use because they have smoke developed ratings that are 45 times greater than those that would have been permitted by the NPRM. Smoke is the primary hazard in most fires. While these materials are routinely used in shoreside installations, those shoreside installations must also be fitted with automatic sprinkler systems. This balances the increased hazard posed by Class A interior finishes. The Coast Guard has historically taken the approach that the best method of preventing the spread of fire is by limiting the amount of combustibles used in construction. Internationally, other countries have permitted higher amounts of combustible material when automatic sprinklers are also fitted. However, the U.S.-adopted philosophy of limiting combustibles is now the required method of construction for new vessels worldwide.

Combustible acoustical materials that are listed by Underwriters Laboratories and have an ASTM E–84 or UL 723 flame spread rating of not more than 20 and a smoke developed rating of not more than 10 were proposed by the NPRM for use in ceilings. The Coast Guard has found that more than 40% of UL listed ceiling tiles meet the proposed criteria, and can be available from a number of manufacturers (including Armstrong, Celotex and USG Interiors) within 7 days. The Coast Guard has also found that more than 50% of the UL listed interior finishes meet the criteria proposed in the NPRM and are readily available from several manufacturers (including Sherwin Williams and Glidden) through sources such as commercial building suppliers. Therefore, the original requirements of

the NPRM have been retained in this SNPRM.

Many of these products may simply be labeled as Class A materials (because they have an ASTM E–84 flame spread rating of less than 25 and smoke developed rating of less than 450) without specific rating information. Specific ratings can be obtained from product data sheets on hand with the distributors.

There is also some apparent confusion concerning use of Coast Guard approved materials. Neither the NPRM nor this SNPRM require Coast Guard approved materials to be used for acoustic ceilings or interior finishes, although Coast Guard approved materials are certainly acceptable. Materials which are used need only meet the test and thickness requirements of this section.

One comment indicated that requiring interior finishes to have ASTM E–84 or UL 723 flame spread and smoke developed ratings of not more than 20 and 10, respectively, was sufficient and that limiting the thickness to .075 inches was redundant. The Coast Guard disagrees. It is important to limit the amount of fuel that is mounted vertically, such as on bulkheads, because burning is much more vigorous and flame spread is much greater on materials that are mounted in the vertical orientation. The requirement has been retained.

As discussed previously, the .075 inch thickness limit for paint has been removed. It is important to note that, although the definition of "interior finish" in § 175.400 (K § 114.400) of this SNPRM could be interpreted to include paint, it is not intended to do so. The definition specifically states this. If an OCMI determines that the characteristics (including flammability) of a paint or any other interior finish are hazardous to the safety of the crew, passengers, or vessel, the OCMI may limit or completely rule out the use of such materials.

Two comments believed carpet should be allowed on bulkheads. The Coast Guard disagrees. Carpets burn much more vigorously in the vertical orientation resulting in greater flame spread. Also, the combustibility rating of carpets has been decreased as discussed below. The NPRM has not been changed.

With reference to paragraph (e) of the NPRM, fire protection requirements for nonmetallic pipe in a concealed space within a control space, accommodation space, or service space have also been added to this SNPRM. The Coast Guard's position is that limited quantities of nonmetallic pipe should be allowed for sanitary service, beverage service, potable water, and other non-vital non-flammable services to facilitate commercial construction practices. Limited quantities of such piping pose a similar problem as electric cable insulation in concealed spaces. Therefore, nonmetallic pipe must have a flame spread rating of not more than 20 and a smoke developed rating of not more than 50 when water filled or 20 and 130, respectively, when dry, when tested in accordance with ASTM E–84 or UL 723. Suppliers and manufacturers have indicated that nonmetallic pipe meeting this criteria is commercially available.

Paragraph (f) of the NPRM allowed combustible insulation in a very limited number of locations. This has been revised in this SNPRM to further limit the locations where combustible insulation can be used. This is appropriate due to the larger number of people at risk on passenger carrying vessels.

Paragraph (g) of the NPRM prescribes allowable flame spread and smoke generation characteristics for deck coverings. Numerous comments want carpet materials that are acceptable for shoreside use in similar occupancies to be accepted for use on small passenger vessels, and recommended the approval of Class I deck coverings (defined in NFPA 101 as being able to withstand a critical radiant flux of not less than .45 watts per square centimeter). The Coast Guard has revised this SNPRM so that Class I coverings would be allowed in all spaces.

One comment believed carpets should not be allowed in machinery spaces. The Coast Guard agrees and is proposing in this SNPRM to extend this requirement to high risk service spaces. Carpet readily absorbs flammable and combustible liquids and then acts as a wick to promote burning, posing serious flame spread problems.

Paragraph (h) of the NPRM established flame spread ratings for the exposed surfaces of case furniture as well as fire resistance requirements for upholstery, draperies, and curtains. One comment stated that it is difficult to find case furniture surfacing materials with an ASTM E–84 flame spread rating of less than 100. The Coast Guard disagrees. Plenty of surfacing materials including most types of wood meet the flame spread requirement. The requirement has been retained in this SNPRM.

Another comment stated that freestanding furniture should be allowed without limit since it can be thrown overboard in the event of a fire. The Coast Guard disagrees because such actions are impractical during fire situations.

Consistent with the approach taken on mattresses, a new § 177.405(g) (K § 116.405(j)) has been added which would prohibit polyurethane from being used in furniture and furnishings.

Section 177.434 Windows and Airports in Fire Control Boundaries on Vessels Carrying More Than 150 Passengers

The comments received on this section, now found in subchapter K § 116.433, were mostly minor in nature. A couple of comments did not understand the reason paragraph (c) limits the base of windows in bulkheads adjoining passageways to 36 inches above the deck. Limiting window bases from being less than 36 inches above the deck is applicable only to bulkheads adjacent to passageways. The primary purpose for this is to keep people from tripping over window frames or lower support structures for the glass, or falling through the windows themselves, during an emergency. An alternative to this requirement has been proposed in this SNPRM. It omits the 36" limitation when the passageway is fitted with storm rails that are structurally independent of the glass.

Other comments objected to the requirement in paragraph (d) for steel or equivalent window and airport frames in A-Class bulkheads. Steel or equivalent frames are required in all interior and exterior A-Class divisions consistent with the definition of A-Class division which requires barriers to be of steel or equivalent material. Aluminum structures must be thermally insulated to meet this requirement. Aluminum frames are allowed provided that they adequately retain the glass. Therefore, steel glazing beads or steel angles are required because aluminum performs poorly in a fire environment.

One comment believed the fire shutters referred to in § 177.434(e) are too expensive. Fire shutters may be expensive. Therefore, this SNPRM allows for the option of using A-Class glass instead. This may be a more cost effective approach.

One comment wanted to know if passageways included exterior walkways. Exterior walkways are not normally considered passageways provided they meet the definition of "open deck".

Section 177.436 Doors on Vessels Carrying More Than 150 Possengers

The comments received on this section, now found in subchapter K § 116.435, were also minor in nature. Two comments believed the NPRM would prohibit the use of aluminum doors. This is not so. The requirement is for steel or equivalent material. Aluminum is suitable for use when it is adequately insulated.

One comment believed the maximum gap between double swing doors, required by subparagraph (b)(4)(i) to be ⅛ inch, should be increased to ¼ inch. The Coast Guard retains the ⅛ inch requirement so as to minimize the degradation of the fire control boundary in which the doors are installed.

Referring to subparagraph (c)(7), one comment recommended that horizontal stairway doors be prohibited. The Coast Guard is in agreement with this recommendation. Horizontal doors complicate egress as they are difficult to locate during a fire or in a smoke filled room, are unfamiliar to most passengers, and can be easily blocked. The NPRM has been revised so that horizontal doors are permitted only in spaces that are used strictly by crew members, subject to the original requirements stated in the NPRM.

Another comment believed the minimum door thickness required by subparagraph (c)(9) should be reduced. The Coast Guard disagrees because adequate fire resistance is not achieved with a reduced thickness.

One comment recommended prohibiting the ventilation grilles or louvers in B-Class doors, which are allowed by subparagraph (d)(4). This recommendation has been adopted. During a fire, this will reduce smoke flow through B-Class bulkheads and limit its spread beyond the room of fire origin.

Section 177.438 Stairtowers, Stairways, Ladders and Elevators on Vessels Carrying More Than 150 Passengers

A number of comments objected to the loading and material requirements for stairtowers, stairways, ladders, elevators, and landings. The primary concern was over the requirement in paragraph (b) for these structures to be made only of steel, thus prohibiting the use of aluminum. The Coast Guard has required steel because it exhibits outstanding fire endurance. Aluminum has a much lower fire resistance and loses half of its strength by the time it reaches 400 °F. Temperatures such as these are reached early in a fire and although aluminum decks and bulkheads can be insulated to provide adequate fire performance, it is impractical to similarly insulate stairway treads and support structure.

The loading criteria for stairtowers, stairways, ladders, elevators, and landings has been a longstanding Coast Guard requirement that is based on conservative design practice due to the paramount need to assure adequate means of vertical egress. No changes have been made to the NPRM.

One comment wanted wood handrails to be accepted in lieu of the noncombustible handrails required by paragraph (d) for stairtowers, stairways, ladders, and elevators. The Coast Guard disagrees and has retained the noncombustible requirement so as to minimize fire load and to assure the integrity of these egress facilities.

A number of comments wanted more latitude on the stairway riser height and tread depth specified in paragraph (h). The criteria proposed in the NPRM is in accordance with shoreside building codes, thus stairways will have a familiar "feel" to passengers. However, the NFPA has found that nosings exceeding ½ inch pose a tripping hazard. The requirement for nosing width has been reduced from 1 inch to ½ inch.

Three comments believed the area required by paragraph (i)(2) for intermediate landings in stairways was too restrictive. The Coast Guard disagrees because smaller intermediate landings will act as choke points that will adversely impact the flow of people during egress.

A number of comments believed the 40° limit in paragraph (j) on stairway inclination would cause stairways to take up too much space. Others were in strong approval of the proposed requirement but believed the limit should be relaxed to 50° for crew spaces. The Coast Guard has retained the 40° limit for stairways used by passengers because it is comparable to what is required in similar shoreside occupancies and will feel familiar to passengers, thus aiding egress. It is also the current limit for Type 1 and Type 2 stairways on vessels that carry over 150 passengers. In this SNPRM, stairways accessing spaces visited solely by crew members are now allowed to have an inclination up to 50° and the minimum width of these stairways has been reduced to 28 inches.

In this SNPRM, §§ 177.438 (k) and (l) (now §§ 116.438 (j) and (k)) have been revised to provide additional guidance and to clarify the requirements for stairtowers and stairways.

Referring to paragraph (n), now § 116.438(m), numerous comments believed a tread width in a stairtower stairway should have a specified upper limit. A number of widths were suggested. The Coast Guard disagrees with this approach. In order to provide adequate egress capacity, the maximum width of stairtower stairways must be based on the number of people who will use the stairway. The approach used in the NPRM is analogous to the minimum requirements of NFPA 101 that is used in shoreside occupancies. Further, § 177.438(n)(4), now § 116.438(m)(4), allows the use of multiple smaller stairtowers in lieu of a single large stairtower, thus providing greater flexibility in design, yet also assuring adequate egress capacity.

Section 177.439 Balconies on Vessels Carrying More Than 150 Passengers

One comment believed the 80 percent rule for balconies posed in subparagraph (b)(1) of the NPRM would not work and should be dropped, but that the fire integrity of stairways and stairtowers serving such spaces should be maintained. The Coast Guard agrees that in some cases the 80 percent rule could be difficult to apply. The intent of this rule was to ensure that a fire in a space with a balcony would be obvious to individuals on both levels. Further, the 80 percent rule was also intended to prohibit the use of small openings between decks under the pretense that the upper deck is a balcony. Similar land based codes also have this same problem defining a balcony in such a way as to allow creative design while still maintaining an acceptable level of fire safety. Some codes require that floor openings be sized and arranged so that a fire or effects of a fire will be obvious to occupants on both levels before the onset of hazardous conditions. This type of requirement would be difficult to apply consistently. Because there will usually be many passengers and service personnel (waiters and waitresses) in these areas, and because of the fire detecting systems required by § 181.400, the Coast Guard believes no requirement is needed and has deleted this paragraph.

However, the Coast Guard is concerned that this provision could be misused to allow the joining of two effectively separate spaces by small openings, such as those for pipe, cable, ducting, machinery trunks, or even unenclosed stairways, which would let fire, heat, and smoke into another space. The definition of "balcony" in § 114.400 has been revised to clearly show that any vertical opening which provides free communication between two spaces creates a balcony which invokes this section.

The Coast Guard is also concerned about the lack of standardization of equivalencies which have been granted in the past for spaces, particularly spaces with balconies, which have exceeded the maximum MVZ length. The Coast Guard has included the so

called "Balcony Rule", from § 72.05–5(m)(1) of subchapter H, in this section of the SNPRM. Owners desiring to have large spaces with balconies which cause the "equivalent" MVZ length, as calculated using the Balcony Rule, to exceed the maximum allowable length of 131 feet (40 meters) will be given the option of complying with requirements for atriums, as long as the actual length of the compartment does not exceed the maximum allowable MVZ length.

Although the NPRM contained regulations regarding balconies and partial decks, it failed to address atriums. New designs are more frequently incorporating atriums and this SNPRM contains fire protection provisions for them. The requirements proposed in § 116.440 of this SNPRM are similar to those found in IMO/MSC Circular 526 dated 29 June 1990. Section 177.440 of the NPRM is applicable only to subchapter K vessels and has been located in subchapter K as § 116.400.

Section 177.500 Means of Escape

The majority of comments received on this section concerned the use of watertight doors and ladders as a means of escape and proposed new door width requirements. One comment believed it would help to design for emergency situations if "means of escape" were defined. The Coast Guard agrees and this has been added to proposed § 175.400 (K § 114.400).

Two comments believed watertight doors should be allowed by paragraph (a) as a means of escape. The NPRM requirement allows one of the two means of escape to be a watertight door but not both. Watertight doors are typically more difficult to operate than non-watertight doors and are unfamiliar to most passengers. Further, the hydrostatic forces that develop due to flooding can render watertight doors unopenable. To preclude the trapping of passengers and crew, and to preclude delays in egress, the requirement is retained. A number of comments fully understood and supported the requirement.

One comment believed sizing egress facilities on the full fixed seating capacity of accommodation spaces, as proposed in § 177.500(e)(iii) of the NPRM, would result in the need for a major refit and loss of capacity. The Coast Guard disagrees. The proposed rules are applicable only to new vessel construction and modifications to existing vessels. No refitting of an existing vessel is necessary unless it undergoes a modification. Further, the proposed capacity criteria are based on longstanding Coast Guard regulation and policy to which existing small passenger vessels carrying over 150 passengers were built. This section should have no impact on passenger capacity.

Three comments believed the door width criteria proposed in paragraph (h) would reduce passenger space. However, two other comments, including one from the NTSB, supported the criteria, stating that it will improve passenger safety. The Coast Guard agrees with the latter and realizes that in some cases passenger space may be slightly reduced. However, the need to assure a safe means of escape is an overriding concern. The criteria used for door and egress widths is similar to that for comparable shoreside occupancies. Although ships and buildings have numerous and important differences, the activities that passengers and occupants engage in are often analogous, including social functions, dining, dancing, business meetings, and lectures. It is reasonable for passengers to expect and for owners to provide similar life safety design features for similar types of occupancies whether they are marine or land based. Therefore, the requirements that were posed in the NPRM are retained and further clarification concerning corridor widths has been added in § 177.500(f) (K § 116.500(g)) of this SNPRM.

Two comments believed a minimum size should be specified for doors and scuttles used for means of escape. The Coast Guard agrees and this has been incorporated into paragraphs §§ 177.500(f) and (m) (K §§ 116.500(g) and (n)) of this SNPRM.

The maximum length of a dead end corridor has been reduced to 20 feet in § 177.500(g) (K § 116.500(h)). This is consistent with the requirements for similar shoreside occupancies.

One comment wanted to know whether § 177.500(l) of the NPRM, (§ 177.500(j) of this SNPRM) concerning marking of exits, applied only to the primary means of escape. The marking requirement applies to all means of escape.

Referring to paragraph (m) of the NPRM (paragraph (k) of this SNPRM), five comments believed ladders leading to deck scuttles should be counted as one of the two required means of escape on vessels over 65 feet in length. The Coast Guard disagrees. Ladders leading to scuttles are permitted as a means of escape on vessels of not more than 65 feet only because of severe space constraints. Ladders are an undesirable method of escape because they are unusable to many passengers, including the elderly, the disabled, those unfamiliar with vessel construction, or those disoriented by fire, smoke, or other emergency. To avoid confusion, the term "vertical ladder" has been replaced with "ladder" as this regulation is intended to apply to all steep ladders and not just ones that are solely in the vertical orientation.

One comment said that the 3 inch toe space for ladders required by § 177.500(n)(3) of the NPRM ((l)(3) of the SNPRM) was insufficient and should be increased to 7 inches in accordance with ANSI 14.3. The Coast Guard agrees and has revised this in the SNPRM.

One comment believed the provisions of paragraph (q) of the NPRM, ((o) of the SNPRM) allowing windows and windshields to be used as one of the two means of escape on vessels not more than 65 feet in length, should apply to all small passenger vessels. The Coast Guard disagrees because windows and windshields are a cumbersome means of escape, but are allowed due to the severe space constraints on smaller vessels.

Another comment wanted dimensional requirements for such windows and windshields to be specified. The dimensions specified in this section are required for all means of escape, including windows. The OCMI will use this section as guidance in determining if the designated escape route, including a window or windshield and access to the window or windshield, is of proper dimensions.

Paragraph (r) of the NPRM ((p) of this SNPRM) requires only one exit for certain low risk spaces with a maximum dimension (length or breadth) of less than 12 feet. This is primarily because the likelihood of fire and number of occupants in such spaces is low and because another exit will not be separated far enough to materially improve egress efforts. One comment believed this requirement should be modified to allow "normally unoccupied" spaces with a maximum dimension of less than 25 feet to have only one means of escape. The Coast Guard disagrees. Some normally unoccupied spaces, such as engine rooms on larger vessels, are indeed "normally unoccupied" yet present sufficient fire risk to warrant two means of escape. Additional guidance is found in § 177.500(a) of the NPRM which requires two means of escape only for spaces that are accessible to passengers or are used by the crew on a regular basis. Therefore, spaces such as steering gear rooms which are rarely used by the crew would not require two means of escape.

Section 177.510 Embarkation Stations

This section has been moved to subchapter K § 116.510. Numerous comments believed small passenger vessels had insufficient room for embarkation stations. Others believed the requirement should be based on whether or not the vessel has overnight accommodations and not on whether it carries over 150 passengers. Two comments desired specific design guidance. The requirement to have specifically designated embarkation stations was proposed so that vessels carrying over 150 passengers or with overnight accommodations for more than 49 passengers would have specific areas where passengers would normally be expected to board survival craft. Architects, operators, and inspectors would know that the area should be arranged so passengers could easily embark to survival craft, access to the area would not be blocked, and passengers could be informed where they would normally have to board survival craft. This will add a higher level of organization to the somewhat chaotic evolution of abandoning ship. Although the requirement may in some cases cause a slight reduction in passenger area, it is intended to ensure safe egress routes. The 150 passenger and 49 overnight accommodation breakpoints are retained so as to assure adequate egress on both day cruisers and overnight vessels. Additional guidance expressing Coast Guard intent concerning the arrangement and design of embarkation stations has been added as requested.

Section 177.520 Muster Stations

A large number of comments were received stating that muster stations were not applicable to small passenger vessels nor feasible in a typical operation. In this SNPRM the requirements for the means of escape are now more specific and the requirements for embarkation stations have been clarified. The Coast Guard has reconsidered the applicability of muster stations aboard small passenger vessels and removed this section from the SNPRM.

Vessels carrying more than 600 passengers would be required by subchapter K to meet the applicable embarkation and muster requirements incorporated in the fire protection requirements of subchapter H. Multiple MVZ vessels which would permit complete evacuation of a fire effected MVZ are preferred, but not always practical. NVIC 14–91, "Guidance on Means of Egress and Refuge Areas for Certain Passenger Vessels Operating in Protected or Partially Protected Waters," would also be applicable to these vessels. This NVIC, developed with substantial public review and input, was published 2 October 1991 to announce an equivalent alternative to the emergency means of egress and refuge requirements built into subchapter H.

The Coast Guard is concerned about what would happen to the passengers aboard a 150 to 600 passenger vessel if there were no safe haven in the event of a fire or other casualty. The newer designs for "river boats" and modern sleek-looking harbor cruise vessels leave little or no room on outside portions of the main deck for escape from a fire in a primary accommodation space. The Coast Guard does not believe that passengers should have to jump overboard for lack of a safe refuge or a safe way to get to a designated embarkation station if it becomes necessary to abandon ship. The Coast Guard also realizes that on many vessels this may not be a problem and does not want to burden the owners of vessels with unnecessary requirements.

Section 116.520 of this SNPRM proposes that vessels which would be regulated by subchapter K must submit an emergency evacuation plan for approval during plan review. The emergency evacuation plan would identify safe areas of assembly for all passengers in the event of a fire in, or flooding of, any accommodation space, and the procedures for abandoning ship. For some vessels the emergency evacuation plan would be relatively short. For other vessels a substantial document may be required.

NVIC 14–91 is written to apply to those vessels which must meet the structural fire protection requirements in subchapter H and would not be directly applicable to subchapter K vessels, i.e., those vessels carrying not more than 600 passengers. Because the provisions of the NVIC are equivalent to the emergency egress requirements in subchapter H, which has a higher standard than subchapter K, the Coast Guard would accept the provisions of the NVIC as equivalent, under § 114.540 of subchpater K, to the applicable passenger capacity, means of escape, and emergency escape plan requirements proposed in §§ 115.113, 116.500, and 116.520 of subchapter K.

One specific difference between NVIC 14–91 and § 116.520 of subchapter K is that NVIC 14–91 specifies standards which define an area of refuge and its required level of fire protection while § 116.520 does not propose any such standards. The Coast Guard is considering including standards for areas of refuge, similar to those in NVIC 14–91, in the final rule for this project and solicits comments concerning the applicability of the standards in NVIC 14–91 to subchapter K vessels. For reference purposes, NVIC 14–91 is included as Appendix I at the end of this SNPRM.

Section 177.600 Ventilation of Enclosed and Partially Enclosed Spaces

Two comments were received stating that the use of "hull" in subparagraph (b)(2) does not reflect the intent of prohibiting downflooding points in the sideshell. The Coast Guard agrees and has changed the wording in this SNPRM.

Seven comments stated that the requirement in paragraph (c) for a means to close or shut off all ventilation passages was not justifiable or necessary on vessels carrying less than 150 passengers, especially when the vessels themselves may be built of wood or FRP. The Coast Guard agrees and has removed this requirement from proposed subchapter T in this SNPRM. Under paragraph (b)(3), the OCMI can require any closures which are deemed necessary to preserve watertight integrity. However, this requirement has been left in proposed subchapter K and now appears as § 116.610(c) of this SNPRM. The removal of this requirement from subchapter T does not mean that vent openings for engine rooms or other spaces protected by fixed gas fire extinguishing systems must not have the closure devices required by §§ 182.460(l) and 182.465(h) (K-§ 119.465(h)).

Two comments stated that the power ventilation remote shutoffs required by paragraph (d) were unnecessary, and one comment stated they were important enough to be located on the bridge. The Coast Guard thinks a power ventilation remote shutoff is necessary, and that having all ventilation shutoffs located at the same place would be safer. This paragraph has been revised to require all power ventilation systems be able to be shut down from the pilot house.

One comment stated that materials such as electrical wiring, piping, and combustibles should be kept out of ventilation ducts. The Coast Guard agrees, as such arrangements promote flame spread within ducting. New paragraph (g) has been added in this SNPRM to include this suggestion.

Section 177.610 Ventilation Ducts on Vessels Carrying More Than 150 Passengers

This section has been moved to subchapter K, § 116.610. A number of

comments believed the requirements of this section should apply only to vessels carrying a larger number of passengers. The Coast Guard disagrees. It is necessary to include requirements for HVAC ducting in order to assure that fire control boundaries are maintained. Vessels currently carrying over 150 passengers must meet criteria similar to that in subchapter H.

One comment believed the minimum duct thickness at bulkhead penetrations should be reduced. The Coast Guard disagrees. The proposed thickness requirement in the NPRM is to assure that duct penetrations have an endurance rating equal to that of the bulkhead.

One comment recommended that fire dampers in ducts penetrating MVZ bulkheads, and in ducts penetrating bulkheads separating cargo spaces, machinery spaces, and vehicle spaces from accommodation spaces be both manually and automatically operated. The Coast Guard concurs and this requirement has been added in paragraphs (e) and (f) of this SNPRM.

The requirement in paragraph (h) has been revised to prevent the passage of air between any spaces, not just accommodation spaces and passageways. In conjunction with the removal of § 177.436(d)(4), which would have allowed ventilation grilles or louvers in B-Class doors, this important fire protection measure will reduce smoke flow through B-Class bulkheads and limit the spread of a fire beyond the room(s) of origin. Section 116.610(i) would require ventilation return to be via ducting.

Subpart G—Crew Accommodations

The Coast Guard is proposing in this SNPRM to rename, rearrange, and renumber the requirements in subpart G on crew spaces. The proposal aligns the arrangement of the requirements in subpart G with the arrangement of the requirements for passenger accommodations in subpart H.

The text has been revised to indicate the general arrangement requirements of this section are also applicable to work spaces, such as the operating station aboard a vessel. This subpart has also been revised to emphasize that when designing the arrangement and outfitting of a space, the route, speed, and modes of operation of a vessel must be considered. Most traditional small passenger vessels have adequate work and accommodation spaces for their crew. However, special provisions may have to be made for certain vessels due to their operations. For instance, due to high speeds, emphasis needs to be placed on the outfitting of the operating space on DSC, and, as specified in the DSC Code, builders of most DSC will often provide seat belts for the control seats and ensure instruments are readily visible to the seated operator.

Section 177.700 When Required

This section has been renamed "General requirements" and includes requirements from §§ 177.710 and 177.720 of the NPRM. Two comments were received questioning the requirement for the deck above a crew accommodation space to be above the deepest load waterline. This requirement presently exists for passenger accommodations (under subchapter H § 72.25.10) and is not as severe as that for crew members of passenger vessels (under subchapter H § 72.20–10(b)) or cargo and miscellaneous vessels (under subchapter I § 92.20–10(b)). Since most quarters aboard small passenger vessels are against the skin of the vessel and susceptible to damage, this requirement allows a breathing space or air pocket in case of flooding. For consistency, proposed § 177.700(b) has been reworded to read the same as proposed § 177.800(e).

Section 177.710 Location

This section has been renamed "Overnight accommodations" and repeats the requirements of § 177.700 of the NPRM. Three comments were received which indicated that this section was confusing and did not clearly state the requirement. The intent is that vessels which operate more than 12 hours in a 24 hour period must either provide overnight accommodations for the full crew complement, or put the crew ashore and be provided with a new crew. This latter method of operation is usually done under an endorsement on the COI which allows reduced manning for a vessel operating with a reduced crew for less than 12 hours in a 24 hour period. This section has been reworded to more clearly express this intent.

Subpart H—Passenger Accommodations

Section 177.800 General Requirements

Two comments were received concerning the requirement in paragraph (f) (now (e)) for the deck above a passenger accommodation space to be above the deepest load waterline. As discussed under § 177.700 of this preamble, this requirement presently exists for passenger accommodations under § 72.25–10 of subchapter H. This requirement allows a breathing space or air pocket in case of flooding. No change has been made to the NPRM.

A new paragraph (d) of this SNPRM is being proposed to require passenger accommodations to be arranged and equipped to provide for the safety of the passengers, considering the route, modes of operation, and speed of the vessel. The passenger accommodations on most vessels are adequately arranged and outfitted. This new paragraph is added to emphasize that special care must be taken in arranging and outfitting passenger accommodations on certain vessels, such as DSC, which may be subjected to high speeds or sudden changes in mode of operation.

Section 177.810 Overnight Accommodations

Several comments thought that the aisle widths specified in paragraph (c) were too wide and took up too much room. These dimensions were taken from existing requirements, and have worked well in the past. No changes were made in the SNPRM.

Section 177.820 Seating

Many comments were received about subparagraph (d)(4), which requires that, when using the fixed seating criteria, all seats used to determine the number of passengers must be secured by permanent or temporary means. Most of the comments thought that this requirement prohibited moveable or portable chairs and tables. This interpretation is incorrect. This requirement means a space which contains portable or moveable chairs and tables for passenger seating, such as a dining room, must have the passenger capacity of that space determined by the length of rail or deck area criteria. No change was made to the NPRM.

Some of these comments wanted to know if the aisle widths for moveable furniture should be determined with the chairs pushed in or out. One comment suggested that the aisle widths should be determined, with the chairs pushed in, to be at least 36 inches wide, to account for people who are seated or seats which might be in the way. The Coast Guard's position is that aisle widths should be 30 inches with the chairs pushed out as far as they would normally be when being used.

Section 177.840 Washrooms and Toilets

Numerous responses were received stating: (1) The number of toilets was not a safety issue and should not be regulated; (2) unisex toilets should be allowed; and (3) passenger demands for comfort would self-regulate this area. The Coast Guard agrees. This area is not regulated on other means of transportation. This section has been deleted.

Section 177.900 Deck Rails

Numerous comments asked about the design criteria and specifications for deck rails. The Coast Guard agrees that the specifications in the NPRM may be ambiguous in some areas and too specific in other areas, and has determined that a performance standard would be better. The Building Officials and Code Administrators International, Inc. (BOCA) National Building Code and the Standard Building Code contain similar performance criteria for handrails. The Coast Guard is proposing that all deck rails be designed and constructed to withstand a point load of 200 pounds (91 kilograms) applied at any point in any direction, and a uniform load of 50 pounds/foot (74 kilograms/meter) applied to the top rail in any direction. The point and uniform loads would not need to be applied simultaneously.

Paragraph (c)(4) of § 177.900 in the NPRM proposes that a temporary rail of at least 30 inches in height be installed in way of a fixed seat used for fishing which is equipped with a restraining device (seat belt) if it can be shown that a 36 inch high rail would interfere with a person fishing from the seat. The proposed regulation was based on current policy used by Coast Guard field units and a recent appeal decision made by Commandant. The Coast Guard intended to ensure more consistent application of existing § 177.35–1(d) by deleting the term "sport fishing vessels" and specifying when 30 inch rails would be allowed.

Five specific comments on proposed subparagraph (c)(4) ((d)(4) in this SNPRM) were received. Two comments requested that the existing § 177.35–1(d) be retained. One comment disagreed with classifying "sport fishing" vessels as only those vessels with fishing seats. Another comment wanted clarification as to whether the proposal in the NPRM would require 36 inch rails on all fishing vessels unless equipped with a fixed fishing seat. Another comment stated a 30 inch rail height should be allowed on sport fishing vessels in way of a cockpit or well deck area. One writer knew of no accidents that would have been prevented by 36 inch rails vice 30 inch rails. One writer noted that "temporary rails" and "fixed seats used for fishing" must be defined while another questioned the need for "temporary" rails.

These comments indicate the need for clarification of the existing requirement. A survey of Coast Guard field units indicated that about 50 percent of the units consider a "sports fishing vessel" to be any vessel used to carry passengers on recreational fishing trips whereas the remaining 50 percent of the units consider a sport fishing vessel to be a vessel of cockpit design usually equipped with fighting chairs for big game fishing. Available information indicates the original intent of existing § 177.35–1(d) was to allow the reduced rail heights on low freeboard vessels, such as those with cockpits. Regardless of how "sport fishing vessel" is defined, the controlling factor in existing § 177.35–1(d) is that the 30 inch rail height may be permitted only if an owner can show that 36 inch rail heights would interfere with the operation of the vessel.

Analysis of Coast Guard casualty data for the period 1981–1986 revealed two reportable man overboard casualties which may have been prevented by higher rails on small passenger vessels engaged in fishing. There were also three man overboard casualties on uninspected vessels which may have had rails or bulwarks of only 30 inches in height. Reportable casualties include only those where there was a fatality or a person was incapacitated for a period in excess of 72 hours. It is probable that several people went overboard from small passenger vessels engaged in fishing during the six year period, but fortunately only two incidents necessitated filing marine casualty reports due to injuries.

Because man overboard incidents would increase with low (30 inch) rail heights, the only time when low rail heights are justified on a small passenger vessel would be when the boat is used for big game angling. Big game angling for fish like marlin and sailfish typically requires the use of a fighting chair or other techniques which might necessitate lower rails. Although it may be somewhat inconvenient for some persons to fish next to 36 inch rails, the average height of passengers dictates a minimum 36 inch rail height. If there are unusual conditions, the provisions of proposed §§ 175.540 or 175.550 could be used.

In consideration of the comments received, proposed § 177.900(c)(4) ((d)(4) in this SNPRM) has been revised to clarify that the minimum 30 inch rail height would only be allowed in way of a person engaged in big game fishing when a 36 inch rail would interfere with the techniques and equipment used, such as a pedestal mounted fighting chair. This might mean that a 30 inch stern rail would be allowed, but side rails might be required to be 36 inches high. The cognizant OCMI would make this type of determination.

The specific provision for a fishing seat to be equipped with a seat belt has been deleted since such seats are not normally equipped with seat belts, although the safety of the person fishing near the reduced rails must be specifically considered when an OCMI allows the lower rail.

Special rail heights for vessels engaged in big game angling or the discharge of persons or cargo in a seaway will not be applicable to vessels proposed to be regulated by subchapter K. Therefore, these provisions have not been included in proposed subchapter K.

Subpart J—Window Construction and Visibility

The proposed rule requires the use of shatterproof glass suitable for a vessel's route, and requires adequate visibility from the operating station. One comment suggested that custom builders who do not use standard fittings and who have glass cut at local shops will encounter additional costs because of the use of safer materials. The Coast Guard agrees that some builders not presently building to the proposed standards may have higher costs. However, most builders already use standard sizes. Because the use of shatterproof glass is safer, the proposed rule has not been changed.

One comment suggested adding a section to prevent vertical sliding windows from falling down. The comment was familiar with one casualty in which a child was hurt by a sliding window. The Coast Guard has insufficient casualty data to warrant such a specific provision. The OCMI has the authority to prevent generally unsafe conditions, such as windows which may pose a hazard. The rule proposed in the NPRM has not been changed.

Section 177.1020 Strength

The proposed rule requires that windows and their attachments be capable of withstanding expected environmental forces, and reflects a "suitable for service" approach in lieu of a specific structural standard. This section applies to windows or viewing ports which are below and above the waterline. One comment stated that the proposed rule clarifies existing policy and should be retained. Three comments suggested using a more specific definition of window strength or including a criterion or standard, such as the International Standards Organization (ISO) or the British Standards Institute. Two of these comments suggested guidance be placed in a NVIC or the MSM. Two other comments suggested a formula or

industry standard in lieu of the undefined maximum load called for in the proposed rule. The Coast Guard disagrees. A comparison to window designs on vessels with satisfactory service will identify those vessels with windows which need to be structurally evaluated. The general nature of the proposed rule is sufficient until such time as suitable window standards are developed. The Coast Guard will consider publishing such guidelines in the MSM or in a NVIC. The rule proposed in the NPRM has not been changed.

One comment suggested window strength requirements were not needed for vessels on protected waters such as routes encompassing Great Lakes harbors and rivers. The Coast Guard disagrees because the proposed rule only requires that the window strength be "suitable for the service" and does not impose a specific structural standard. The rule proposed in the NPRM has not been changed.

Part 178—Intact Stability and Seaworthiness.

The rules proposed in this part return stability requirements for small passenger vessels of not more than 65' to subchapter T. In 1984 these requirements were placed in subchapter S to have stability and subdivision requirements for all types of vessels in one subchapter. In response to small passenger vessel operator and owner concerns, the Coast Guard determined that it would be easier for owner/operators of small passenger vessels of not more than 65' to have to deal with only one set of regulations. Stability and subdivision requirements for small passenger vessels of not more than 65' were moved back to subchapter T in the NPRM.

Two comments specifically supported moving the stability and subdivision requirements into subchapter T with one comment stating that the stability requirements for all small passenger vessels should be in subchapter T. Three comments objected to putting the stability and subdivision requirements into subchapter T believing that the present organization, with stability and subdivision for all types of vessels in subchapter S, would facilitate use by designers and simplify future changes. Another comment said that this would require designers to cross reference subchapters T and S. The Coast Guard has determined that the location of stability and subdivision requirements for small passenger vessels proposed in this SNPRM is the best arrangement considering all users. As proposed in the NPRM, part 178 of this SNPRM contains regulations on intact stability and seaworthiness. Part 179 regulates subdivision, damage stability, and watertight integrity. Subchapter K does not contain parts on stability and subdivision but instead requires compliance with subchapter S. Subchapter K does contain requirements for drainage and watertight integrity of weather decks in part 116, subpart K. Designers and naval architects are much better equipped to handle the use of two subchapters for stability requirements than a greater number of owners who may not be able to find the applicable requirements in subchapter S. The NPRM has not been changed based on these comments.

In this SNPRM, the simplified stability and subdivision requirements which most vessels carrying not more than 150 passengers or with overnight accommodations for not more than 49 passengers can use are proposed to be located in subchapter T because of the comparative ease of use and need which owners of small passenger vessels have for a self-contained subchapter. The stability and subdivision requirements for vessels to be regulated by subchapter K are retained in subchapter S because of their greater complexity.

One comment suggested including requirements for catamarans, trimarans, and submersibles. As discussed above under part 177, specific standards have not been developed for multihulls. The current policy for submersibles is not sufficiently tested to place it into the regulations. The rule proposed in the NPRM has not been changed.

Section 178.220 Stability booklet

The proposed rule requires review of stability booklets by the MSC. One comment suggested referencing subchapter S in lieu of referencing § 170.110. The Coast Guard agrees because a general reference is equivalent but will not become outdated as subchapter S is changed over time. The rule proposed in the NPRM has been changed to incorporate the comment.

Section 178.230 Stability Letter or Certificate of Inspection Stability Details

The proposed rule specifies general information that must be located on the document the operator refers to for stability information. One comment suggested adding "or freeboard" to paragraph (b) ((b)(2) in this SNPRM). The Coast Guard agrees. It is standard practice to refer to freeboard if the vessel does not have draft marks or a load line. The rule proposed in the NPRM has been changed to incorporate the comment..

One comment suggested the possible use of the word "doors" in lieu of the word "openings" in paragraph (c) ((b)(3) in this SNPRM). The Coast Guard disagrees. Although the normal openings in watertight bulkheads are doors, there might be other openings, such as galley service windows. The rule proposed in the NPRM has not been changed.

One comment suggested paragraph (d), ((b)(4) in this SNPRM), is too vague and should require identification of the actual subdivision bulkheads. The Coast Guard agrees. The specific identification of the actual bulkheads has been standard practice at the MSC since 1986, as a result of recommendations made by the NTSB after the MISSISSIPPI QUEEN casualty in 1985. The rule proposed in the NPRM has been changed to incorporate the comment.

One comment stated paragraph (e), ((b)(5) in this SNPRM), appears incorrect because openings considered closed for the stability analysis are presently put on the stability letter. The Coast Guard disagrees. The intent of the requirement is to include in the stability letter those openings in watertight bulkheads which the operator should ensure are closed to limit flooding, such as watertight doors. The SNPRM has been changed to clarify the requirement.

One comment suggested adding the word "type" in paragraph (f) ((b)(6) in this SNPRM). The Coast Guard agrees because this provision will make the description of fixed ballast more accurate. The NPRM has been changed to incorporate the comment.

One comment suggested adding a new paragraph (i) to read "maximum weight of primary lifesaving appliances and their exact location in the vessel." The Coast Guard disagrees. Although some owners move these and similarly heavy items without concern for stability, most owners do not. Also, stability letters and booklets routinely contain a provision that when any weights are shifted or modifications made to the vessel, the OCMI must be notified. The rule proposed in NPRM the has not been changed to incorporate the comment.

Subpart C—Intact Stability Standards

As previously discussed with proposed § 171.035, the Coast Guard is proposing to retain existing § 171.035 as new § 178.325, which would allow certain sailing vessels the option of passing a simplified stability proof test instead of meeting subchapter S stability criteria. Some restrictions concerning cockpit length and downflooding were added and were previously discussed with proposed § 171.035. In order to retain this section, it was necessary to modify the wording of paragraphs 178.310(a) and (b) and to insert a new paragraph 178.330(e).

Section 178.310 Application Based on Length, Passenger Capacity, and Propulsion

The NPRM states which vessels must comply with subchapter S and which vessels may perform a simplified stability proof test. Two comments suggested the proposed rules should require full stability tests, including hydrostatics and stability calculations, for all small passenger vessels regardless of size. The Coast Guard disagrees because the simplified (proof) test and deadweight surveys in combination with safely assumed vessel vertical center of gravity (VCG) have been satisfactorily used for many years. No change was made to the rule proposed in the NPRM.

One comment suggested that in lieu of requiring a full stability review under subchapter S, OCMIs should be allowed to accept the designers' calculations on vessels with more than one deck above the bulkhead deck, in an effort to minimize MSC workload. A simplified proof test could be used to verify the calculations. The Coast Guard disagrees. The MSC must check compliance with subchapter S. Small passenger vessel stability and subdivision is a category of work which is important enough that the Coast Guard has no intention of delegating review. No change was made to the rule proposed in the NPRM.

One comment suggested the three categories in paragraph (a) should be simultaneous conditions. The Coast Guard disagrees. Each of these three categories is intended to require a vessel to meet the stability criteria of subchapter S. The rule proposed in the NPRM has been changed in this SNPRM to clarify this. Paragraph (a)(1) is no longer applicable because of the split between subchapters T and K, and has been deleted.

One comment suggested revising paragraphs (a)(3) and (b)(5) to read passenger deck versus deck. The Coast Guard disagrees because of the concern with multiple levels of structure as well as multiple levels accessible to passengers. A vessel with two or more decks above the bulkhead deck can have a high enough metacentric height to pass criteria for initial stability but lack stability at higher angles of heel. The rule proposed in the NPRM has not been changed.

Section 178.320 Intact Stability Requirements for Mechanically Propelled and Non-Self-Propelled Vessels

The proposed rule identifies which type of procedures would be used on those vessels allowed to meet simplified stability criteria. Two comments suggested defining a pontoon vessel or making reference to Figure 178.340(f). The Coast Guard disagrees because the paragraph already refers to proposed § 178.340. The rule proposed in the NPRM has not been changed.

One comment suggested including examples of how stability can be ascertained without the proof test on vessels carrying not more than 49 passengers. The Coast Guard disagrees because any list of examples will remove the intended flexibility. The Coast Guard's intention is that OCMIs will continue to compare vessels to similar vessels with satisfactory service rather than require a specific test. Vessels of a new design first operating in the area would have to undergo at least the simplified stability proof test. The rule proposed in the NPRM has not been changed.

One comment suggested adding a limitation to the proposed rule that would force any vessel carrying deck cargo to perform a test, even if carrying not more than 49 passengers. The Coast Guard agrees because small passenger vessels carrying deck cargo cannot be compared to other types of vessels such as those that carry only deck cargo. Paragraph (c) has been revised in this SNPRM.

One comment suggested prohibiting the use of ballast water to meet any stability criteria because masters are not tested for competency in stability and because most small passenger vessel stability guidance is provided as simple instructions in a letter. The Coast Guard agrees in principle. Proposed § 178.510 of the NPRM incorporated the comment. However, some vessels, especially SWATH (small waterplane area twin hull) designs, must have water ballast systems to safely operate. Masters of these vessels receive special training in ballast system operation. Section 178.510 of this SNPRM proposes that water ballast systems must be approved by the Marine Safety Center.

Section 178.325 Intact Stability Requirements for a Sailing Vessel

This is a new section which contains requirements similar to those in existing § 171.035 of subchapter S. This newly proposed section is discussed earlier in this preamble under § 171.035.

Section 178.330 Simplified Stability Proof Test

The proposed rule contains all of the procedures for conducting the basic intact stability test for small passenger vessels. One comment suggested including the ¼ freeboard submergence proof test, which forecasts the results of completing the test with the required heeling moment. The Coast Guard disagrees. In general, the effect of applying an increasing heeling moment may not be linear. Such a test has value in reducing the labor necessary if the test is being performed to explore the vessel's stability and can be used as an indicator if special uncommon circumstances exist. No change has been made to the rule proposed in the NPRM.

One comment suggested including primary lifesaving equipment in subparagraph (c)(4) as a weight to be simulated if the equipment is not present. The Coast Guard agrees because such gear is easy to forget at the time of vessel delivery. This type of equipment may not be aboard until final outfitting is completed. The rule proposed in the NPRM has been changed to incorporate the comment.

One comment suggested revising the center of gravity to 1 meter to make the value consistent with international practice. The Coast Guard disagrees. A value of 2.5 feet is consistent with existing regulations and is a standard that has been used successfully for decades. Vessels using this test are not qualified to make international voyages with more than 12 passengers. The rule proposed in the NPRM has not been changed.

One comment suggested allowing the vertical center of gravity of the weights simulating passengers be 1.5 feet above the deck, so that 55 gallon drums can be used without stacking them on top of each other and creating an unsafe condition. The Coast Guard disagrees because the purpose of the test is to test the vessel in its worst operating condition. Alternatives to stacking 55 gallon drums are available. The rule proposed in the NPRM has not been changed.

One comment suggested revising paragraph (g) to start "When demonstrating compliance with paragraph (e) of this section, the freeboard must be measured with all test loads aboard and the effects of trim and heel minimized, as follows * * *". The Coast Guard disagrees because paragraph (c) specifies these conditions. The rule proposed in the NPRM has not been changed.

One comment suggested subparagraphs (e)(1) and (e)(2) should

refer to §§ 178.420(b) and 178.430(d) to indicate that a vessel having less than 10 inches of freeboard when fully loaded will have to comply with subchapter S. The Coast Guard does not agree the 10 inch freeboard requirement needs to be repeated in this section. As discussed below, revision of the worksheet form used for the simplified stability test will include a note to check that there is at least a 10 inch freeboard when the vessel is fully loaded and in a condition of normal trim. The rule proposed in the NPRM has not been changed.

One comment suggested continuing the use of the old Coast Guard worksheets and believed the proposed rule might lead to other less effective forms. Another comment stated the old Coast Guard work sheet should be modified if the proposed changes are made. The regulations do not presently require the use of any specific form or worksheet for stability calculations. However, under the present policy the existing Coast Guard form (CG–4006) is used by Coast Guard marine inspectors and will require revision when these rules become final. This revision will include a note to check that there is at least a 10 inch freeboard when the vessel is fully loaded (using test weights) and in a condition of normal trim. The rule proposed in the NPRM has not been changed.

One comment suggested allowing full freeboard immersion for sailing vessels, as with proposed § 170.170. The Coast Guard agrees because the design of the buoyant volume of typical sailing vessels is similar for vessels under and over 65 feet in length. New § 178.330(f)(5) has been added to this SNPRM to permit a flush deck sailing vessel to submerge up to the full freeboard in lieu of half the freeboard.

One comment suggested that the words "acceptable manner" in paragraph (h) could be interpreted to mean the total weight must be loaded and unloaded to prove compliance. The Coast Guard agrees that this is the intent of this requirement. The rule proposed in the NPRM has not been changed.

One comment suggested incorporating the passenger density proposed in § 171.050 to account for rail crowding. The Coast Guard disagrees because this test has proven sufficient for many years. The rule proposed in the NPRM has not been changed.

Section 178.340 Stability Standards for Pontoon Vessels on Protected Waters

The proposed rule requires a transverse and longitudinal moment proof test for pontoon vessels with two pontoons. One comment suggested that stability of pontoon vessels is already covered in the MSM. The rule proposed in the NPRM incorporated information which is in the MSM. Coast Guard intent is to include existing policy in the regulations whenever appropriate. The rule proposed in the NPRM has not been changed.

One comment requested an explanation of the proposed requirement in paragraph (a), which states that the deck accessible to passengers must not extend past the outboard edge of either pontoon. The Coast Guard finds this provision necessary to prevent possible capsizing as the passenger heeling moment exceeds the righting moment of the vessel. Although an infrequent problem, the possibility of capsizing exists and the only way to ensure safety on pontoon vessels is not to permit overhang. Rails or bulkheads preventing passenger movement will be satisfactory to meet this requirement. The rule proposed in the NPRM has not been changed.

One comment suggested precluding passenger access beyond the fore and aft ends of the pontoons, as well as outboard of the pontoons. The Coast Guard agrees because, although envisioned as less of a potential problem than passengers outboard of a pontoon, it is possible that seesawing could lead to pitchpoling. The rule proposed in the NPRM has been changed to incorporate the comment. Rails or bulkheads preventing passenger movement will be satisfactory to meet this requirement also.

One comment suggested rewording the survival criteria to show a loss of not more than one-half of the freeboard area existing before the weight shift, versus having more sectional area remaining than was submerged. The Coast Guard disagrees. The comment merely addresses semantics. The proposed wording and figure clearly demonstrates the concept. The rule proposed in the NPRM has not been changed.

Since the NPRM was published, ABYC has published specification H–35, "Powering and Load Capacity of Pontoon Boats". This specification provides guidelines, instructions, and pass/fail criteria for a stability test. It includes vessels with more than two pontoons and more than one deck. The Coast Guard solicits comments on the usefulness of this standard for use on inspected small passenger vessels.

Subpart D—Drainage of Weather Decks

The rules proposed in the NPRM require a specific size drainage area to allow boarding seas to flow overboard. One comment suggested that the proposed rules clarify existing policy and regulations and therefore should remain as proposed. The Coast Guard agrees. Many of the requirements proposed in the NPRM repeat existing regulations. Corrections to the NPRM have been made as discussed below. Because of the changes to the cockpit drainage requirements discussed under § 178.420 and the changes to the drainage calculation formula discussed under § 178.450, the Coast Guard is soliciting comments concerning whether freeing ports, which are required on well deck vessels, can be used on cockpit vessels, or if cockpit vessels should be required to have scuppers.

In general, there is no need to have a part in subchapter K which corresponds to part 178 in subchapter T. However, there is a need for requirements concerning drainage and watertight integrity. Therefore, proposed subchapter K contains subpart K, part 116, "Drainage and Watertight Integrity", which contains the same requirements as §§ 178.410 to 178.450 and § 179.360 of proposed subchapter T. Proposed § 116.100(b) will allow compliance with subpart K in lieu of meeting requirements in §§ 171.124 through 171.155 of subchapter S.

Section 178.420 Drainage of Cockpit Vessels

The NPRM contains specific requirements for the amount and method of drainage of cockpit vessels. One comment suggested removing the term "freeing port" from paragraph (d). The Coast Guard agrees. Freeing ports are not associated with cockpit vessels in the existing regulations nor should they be in the proposed rule. Cockpits are usually much smaller than wells and retain a lesser volume of water, reducing the free surface effect. When using the simplified stability proof test, requirements are also different for cockpit vessels because of the way freeboard is measured and freeboard immersion is calculated. Because of this, cockpit vessels are required to have less drainage area than well deck vessels under the existing regulations.

Along with this is the concept that cockpits are drained by scuppers, while well decks are drained by freeing ports. The arrangement of each vessel is different, but in general, the cockpit sole of a cockpit vessel is closer to the level of the waterline than the deck of a well deck vessel, with a greater possible need for non-return closures. The term "self-bailing" is used in existing § 171.145(b), when referring to a cockpit. Although not used or defined in the NPRM, self-bailing generally implies a passive means by which a vessel frees itself of water via scuppers which are sometimes fitted with non-return valves. The non-return valves do not allow water back into the vessel. To maintain the concept of a cockpit with scuppers for drainage, paragraph (d) has been revised in this SNPRM to specifically require self-bailing cockpits. "Self-bailing cockpit" is now defined in proposed § 175.400 of this SNPRM. Cockpits which have decks lower than 10 inches above the deepest load waterline must have the scuppers fitted with non-return valves.

Section 178.430 Drainage of Well Deck Vessels

The NPRM contains specific requirements for the amount and method of drainage of well deck vessels. Compared to the scuppers required to drain cockpits, freeing ports found on well deck vessels are typically required to be much larger in area, to quickly "free" the deck of large amounts of water shipped aboard during heavy weather. This prevents the weight and movement of the water within a well, which is larger than a cockpit and could contain more water, from adversely affecting stability. Because of the differences in design and arrangement of well deck vessels and cockpit vessels, and because of the difference in stability requirements (as discussed under § 178.420), well deck drainage does not need to be restricted to freeing ports. Scuppers would perform adequately. Because of the large drainage area requirements for some vessels operating on partially protected or exposed waters, practicality will limit the use of scuppers. However, the owner or designer of a vessel operating on protected waters (where the drainage area requirements would be the same for cockpit and well deck vessels) might prefer to use scuppers instead of freeing ports. This SNPRM allows the use of scuppers or freeing ports for drainage of well deck vessels.

One comment suggested that paragraph (b) should not give owners the option of two drainage requirements. The Coast Guard disagrees. This requirement gives the option of having additional survivability features as a tradeoff for a smaller drainage area. It exists in the current regulations. The rule proposed in the NPRM has not been changed.

One comment suggested that confusion exists because the stability criteria required by paragraph (b)(2) as a tradeoff for a smaller drainage area are not applicable to vessels which carry not more than 49 passengers. The Coast Guard does not agree that there should be any confusion. The higher criteria required by this paragraph are performance standards which are required for a special drainage allowance, regardless of the number of passengers carried. In this instance, they are not being used as required stability criteria for certain vessels. The rule proposed in the NPRM has not been changed.

Section 178.450 Calculation of Drainage Area

The NPRM contains the formula to be used to determine the drainage area of cockpit and well deck vessels. The formula accounts for route, freeboard, bulwark height, and superstructures which exclude water volume. As discussed in the NPRM, the Coast Guard is concerned about the rapid clearing of water taken onto the weatherdeck. One comment suggested making the calculation simpler by putting required drainage area into chart form. The Coast Guard disagrees. Any chart or table which could be devised would require interpolation, whereas the formula provides direct calculation of the area. Any given vessel will need only one series of calculations. The rule proposed in the NPRM has not been changed.

One comment did not understand the formula and suggested the volume factor refers only to cockpit vessels. The Coast Guard disagrees. The volume factor is a constant for some vessels but a formula for other vessels and is applicable to all well deck and cockpit vessels.

One comment pointed out that the factor "f" was determined in § 178.330, not the factor "b". This error has been corrected.

One comment suggested that "meeting the requirements of § 179.360" be inserted in the definition of the factor "H" after "weathertight superstructure". This would more clearly require that all areas excluded from the total deck area have watertight coamings in accordance with § 179.360, which was the intent of this requirement. The rule proposed in the NPRM has been changed.

One comment suggested requiring less drainage, especially in restricted operating areas, because few vessels sink due to a lack of drainage. The Coast Guard disagrees. Improper deck drainage has been a contributing cause to some vessel sinkings.

One comment suggested that freeing port area (in square inches) should be 15, or some other appropriate constant, times the volume of water which can be trapped (in cubic feet). The Coast Guard disagrees. Drainage should be a function of factors such as the type of vessel, route, freeboard, and bulwark or cockpit height.

Two comments suggested making the drainage area the same for exposed waters as for partially protected waters due to similar operating conditions which can be experienced while in these sets of waters. The Coast Guard agrees that vessels are sometimes operated on the more exposed portions of routes for which they were designed, but not originally planned to be operated. As an example, a vessel can be subjected to severe seas for a longer period of time when it is not close to a harbor of safe refuge (but within 20 miles of shore, therefore qualifying for a partially protected route) than it would if operated one to three miles offshore. A distinction has always existed between exposed and partially protected waters. The existing regulations have drainage requirements which are much greater for exposed routes than for partially protected routes. The formula proposed in the NPRM attempts to smooth out the amount of required drainage area, reducing the step effect and providing more balanced drainage requirements. The rule proposed in the NPRM has been changed as discussed below. These changes also make the formula easier to use.

The drainage area formula has been adjusted slightly to equalize the drainage area requirements for well deck and cockpit vessels with wells/cockpits which are near the same size. This change has made § 178.430(b)(3) unnecessary, and it has been removed in this SNPRM.

The drainage calculation formula has also been changed to reflect higher drainage requirements based on a vessel's propensity to ship water. Vessels with lower freeboards or which are operated on more severe routes have a need for more drainage than vessels with higher freeboards operated on protected routes, because they will be exposed to situations where they can easily ship large amounts of water. The highest impact will be on small, low freeboard vessels (typically cockpit vessels) operated on exposed or partially protected routes. Vessels on protected routes will not be affected. Builders and designers will notice that, because of the deck exclusion provision in the proposed formula, the amount of drainage area for a well deck vessel on an exposed or partially protected route will generally be less than that required by the existing formula, depending on its freeboard and bulwark height.

Under §§ 178.420 and 178.430 of this SNPRM, the requirements to have scuppers to drain a cockpit vessel and to have freeing ports to drain a well deck vessel are clearly differentiated.

However, the Coast Guard is open to comments on the merit of not specifically requiring a drainage method and allowing the designer, builder, owner, or operator to choose the method (scuppers or freeing ports), as long as the required drainage area is provided. The Coast Guard solicits comments on this concept.

Section 178.510 Fixed Ballast

In general, there is no need to have a part in subchapter K which corresponds to part 178 in subchapter T. However, there is a need for requirements concerning ballast and ballast systems. Therefore, proposed subchapter K contains subpart L, part 116, "Ballast Systems", which contains the same requirements as § 178.510 of proposed subchapter T.

The proposed rule prohibits the use of liquid ballast if necessary to meet the stability requirements applicable to that particular vessel. Any optional ballast, including water ballast systems, may be added. However, the designer must show that throughout the range of all possible operating conditions, from full to empty ballast tank(s), the vessel will still meet all applicable stability criteria. Two comments suggested adding liquid ballast as an option due to its ability to compensate for a wide variety of service conditions. The comment added that its use should not be precluded because of operator error, which can occur under any circumstances with any system. The Coast Guard is concerned with actions which may be taken by the crew or master of a small passenger vessel because of a lack of knowledge concerning ballast procedures and/or basic stability fundamentals. Small passenger vessel masters are not required to, and most often do not, understand this subject. Experience has shown that some operators show wanton disregard for stability instructions on the use of liquid ballast.

In the past, the installation of fixed ballast has not proven to be difficult or overly restrictive for vessel loading and operation. Increasingly, novel vessel designs, such as catamarans, SWATHs, and DSC, have needed active water ballast systems to adjust draft, list or trim, while other vessels have used them as a means of tonnage exemption. The Marine Safety Center and Commandant have approved some active water ballast systems on a case by case basis. Permanent water ballast has also been accepted to meet specific stability requirements. Fixed (or permanent) water ballast does not qualify for tonnage exemption.

Current policy for active water ballast requires the designer to show that throughout the range of all possible operating conditions the vessel will still meet all applicable stability criteria. Ballast loading restrictions, which incorporate simple restrictions, must be included in the stability letter which is issued. Professional competence of masters and crew members, as well as ballast system design and operation, are of particular concern. The owner or operator should be prepared to satisfy the OCMI that the crew is trained in the critical nature and proper operation of the system. Training may be required by the OCMI as well as an endorsement on the COI requiring an endorsement on the master's license authorizing service on a particular vessel or class of vessels. This section has been revised to incorporate case-by-case approval of water ballast systems.

One comment suggested the ballast limits recommended in NVIC 5–82, "Fixed Ballast", should be included in the regulations. The Coast Guard disagrees because the details in NVIC 5–82 are merely guidance and are inappropriate for the regulations. The rule proposed in the NPRM has not been changed.

Part 179—Subdivision, Damage Stability, and Watertight Integrity Requirements

The NPRM returns subdivision and watertight integrity standards to subchapter T after being located in subchapter S since 1984. One comment suggested adding a new subpart that would require vessels less than 20 feet, most of which are outboard motor propelled and do not comply with part 179, subpart B, to meet the level flotation requirements for outboard boats in 33 CFR part 183, subpart G or H. The comment further suggested that similar standards could be required for vessels over 20 feet in length. The Coast Guard agrees with the intent of this suggestion but is not changing the rule proposed in the NPRM. The proposed rule was written with a graduated scale of requirements depending on a vessel's size, number of passengers, and route. The suggested requirement would be out of concert with this scale, requiring very small vessels to meet a higher standard than larger vessels carrying more passengers. Casualty data does not show any significant problems for vessels 40 feet or less in length. Many OCMIs do not certificate vessels this small on oceans or coastwise routes without a close look at items such as flotation and lifesaving equipment. Under proposed § 175.540, an owner may propose the flotation test required for recreational craft by 33 CFR part 183 as an equivalent or alternative to other requirements.

Section 179.210 Collision Bulkhead

The proposed rule establishes which vessels must have a collision bulkhead. One comment suggested requiring a collision bulkhead on vessels which operate on exposed waters on the Great Lakes since they are exposed to the same hazards as vessels operating on coastwise routes. The Coast Guard disagrees. Although prudence indicates a collision bulkhead should be installed on all vessels, casualty data does not justify adding such a requirement to the current regulations. The rule proposed in the NPRM has not been changed.

One comment suggested rewording paragraph (b) to be more clear by specifying vessels operating on exposed waters as a category and vessels of more than 40 feet in length operating on partially protected waters as categories. The Coast Guard agrees. All oceans routes are exposed and the provision concerning vessels not more than 40 feet in length is limited to partially protected waters in the existing regulations. The rule proposed in the NPRM has been changed to incorporate the comment.

Section 179.212 Watertight Bulkheads for Subdivision

The proposed rule establishes which vessels must have watertight subdivision bulkheads. One comment supported subdivision requirements, especially on new vessels, and suggested that the installation of subdivision bulkheads should be accepted as a cheaper alternative to inflatable liferafts. The Coast Guard concurs and is proposing in this SNPRM that vessels of not more than 65 feet in length carrying not more than 49 passengers may voluntarily meet certain subdivision requirements in return for a reduction in the lifesaving equipment requirements. Part 180 of this preamble discusses this alternative.

One comment suggested a one compartment standard of damage stability for new vessels of all sizes on all routes. The Coast Guard agrees that prudence dictates that all vessels should meet a one compartment standard. The existing and proposed one compartment standard of subdivision for small vessels has no damage stability provision to ensure that a flooded vessel will stay upright. The Coast Guard is proposing in this SNPRM that vessels of not more than 65 feet in length with overnight accommodations for not more than 49 passengers may voluntarily meet certain subdivision requirements in return for a reduction in the lifesaving equipment requirements. Part 180 of this preamble discusses this alternative.

Section 179.240 Foam Flotation Material

The rule proposed in the NPRM returns existing requirements on foam used for flotation to subchapter T from 46 CFR subchapter S, and limits the use of foam flotation to small vessels. One comment stated 33 CFR 183.114 deals with absorption of petroleum products and has nothing to do with ignition resistance. The Coast Guard agrees. However, for the purposes of the NPRM, 33 CFR 183.114 applies only to those spaces that are not free of ignition sources where foam flotation that had absorbed petroleum products would constitute a fire hazard. The rule proposed in the NPRM has not been changed.

Two comments suggested permitting the use of foam flotation on all lengths of vessels, especially on FRP vessels, to provide buoyancy. The comments also suggested that the use of foam flotation would help vessels meet subdivision standards. The Coast Guard does not agree that the proposed rule should be changed. Although foam flotation installed to the specifications in the proposed rule will augment subdivision, foam installation generally tends to aggravate maintenance problems by restricting access. A vessel designed without foam flotation is much easier for the owner to maintain and the Coast Guard to inspect. Removal of foam flotation, a major undertaking, may be required periodically for hull inspection. Also, casualty statistics do not indicate that vessels designed and operated within the constraints of the regulations have inadequate buoyancy.

One comment suggested foam flotation deteriorates with age and inspection plates should be provided to permit periodic sampling to determine the density and condition of the material. The Coast Guard agrees there is a need to periodically ascertain the condition of the foam flotation. Installations of foam flotation vary in detail and adequate inspection requirements are best determined on a case-by-case basis. The rule proposed in the NPRM has not been changed.

Section 179.310 Collision Bulkheads

The proposed rule establishes the vertical extent and longitudinal locations acceptable for collision bulkheads. Two comments suggested rewording paragraph (a)(1) to say "the weather deck, or the first deck above the bulkhead deck, whichever is lower", because the proposed wording could be interpreted to mean a vessel must have a deck above the bulkhead deck, prohibiting flush deck vessels. The Coast Guard agrees. It was not the intent to exclude flush deck vessels and the suggested wording is clearer. The rule proposed in the NPRM has been changed to incorporate the comment.

One comment suggested that requiring the collision bulkhead to extend to the bulkhead deck is unreasonable and unnecessary and that other provisions which establish equivalent safety should be permitted. The Coast Guard disagrees. This provision has been in the existing regulations for decades. The HERALD OF FREE ENTERPRISE disaster in 1987, where hundreds died, showed the hazard of trapping water in the superstructure through an open bow with no collision bulkhead. Proposed § 175.540 provides for equivalents, which might include demonstrating by calculation that a vessel can survive with water in the superstructure. The rule proposed in the NPRM was not changed.

One comment suggested rewording paragraph (a)(1) to state "exposed waters" rather than "other than all other waters." The Coast Guard agrees. The proposed rule reproduced the existing requirement in § 171.085. The existing requirement requires the collision bulkhead to extend to the weather deck on all small passenger vessels. However, the size of small passenger vessels has continued to increase and the Coast Guard now considers the requirements applicable to a vessel inspected under subchapter H appropriate. The rule proposed in the NPRM has been changed to require the collision bulkhead to extend to the weather deck, or the first deck above the bulkhead deck, whichever is lower, for service on oceans or coastwise routes.

One comment suggested not limiting the longitudinal location if subdivision standards are met and using the same limitations for small passenger vessels as for large passenger vessels (regulated by subchapter H). The Coast Guard agrees in part. The forward position was determined from casualty data, which show that a bulkhead forward of that position will often be breached in a collision. For 2 years Coast Guard policy has been to remove the aft (15 per cent) limitation if a vessel meets the subdivision standards. Since this change affects all vessel types, the Coast Guard is pursuing the change in a regulation project, entitled "General Revisions to Stability Regulations" (CGD 89–038), that will update subchapter S. The rule proposed in the NPRM has not been changed.

Three comments noted that the longitudinal position of the collision bulkhead is not stipulated, in paragraph (b), for vessels of not more than 65 feet in length. Another comment suggested changing the cutoff requirement for longitudinal location of the collision bulkhead, in paragraph (b), to more than 49 passengers versus more than 150, to provide consistency with proposed § 179.210, which establishes which vessels must have a collision bulkhead. As proposed in this SNPRM, the following vessels must have a collision bulkhead: a vessel of more than 65 feet in length; a vessel of not more than 65 feet in length which carries more than 49 passengers or which operates on exposed waters; and a vessel of more than 40 feet in length which operates on partially protected waters. The Coast Guard agrees with the comments, and is revising the SNPRM to require that all vessels which must have a collision bulkhead in compliance with § 179.210 must also comply with the location requirement in § 179.310(b). The rule proposed in this SNPRM is essentially the same as the existing requirements in subchapter S. However, industry input indicates that this proposed location requirement adversely affects the use of interior space. Casualty data shows that a collision bulkhead further forward, as many small passenger vessel owners prefer, may not be effective in a collision. The Coast Guard solicits more comments on vessels which should be required to have a collision bulkhead.

One comment suggested permitting the collision bulkhead to follow cant frames to achieve watertight integrity on old wooden vessels. The Coast Guard disagrees. In general, the concept of a one compartment standard of subdivision is based on plane bulkheads. The equivalency provision in proposed § 175.540 could accommodate non-plane collision bulkheads provided all sections of the bulkhead were acceptably located. The rule proposed in the NPRM has not been changed.

One comment suggested the 15 percent limit does not satisfy SOLAS requirements for some vessels and might preclude international service at some time. The Coast Guard agrees that it is possible to have a situation exist where the placement of the collision bulkhead meets SOLAS, but does not comply with subchapter T because the 15% limit has been exceeded. However, it is possible to build a vessel to meet both SOLAS and subchapter T if planned and built accordingly. It is the owner and operator's responsibility to have the vessel properly designed and built if international voyages are ever a

possibility. The rule proposed in the NPRM has not been changed.

Section 179.320 Watertight Bulkheads

The proposed rule requires plane bulkheads of adequate strength with a minimum of penetrations. One comment suggested rewording the proposed rule to clarify that it applies only to bulkheads required by proposed part 179. The Coast Guard agrees because the proposed section has no applicability clause like other sections in proposed subpart C. The rule proposed in the NPRM has been changed to incorporate the comment.

Section 179.330 Watertight Doors

The proposed rule addresses where watertight doors may be used and the alarms and closing devices for such doors. Watertight doors impose a safety hazard, especially on small vessels. Most small vessels are designed to a one compartment standard of subdivision. One door inadvertently left open when an adjacent space is damaged will often lead to foundering. One comment specifically concurred with allowing watertight doors which provide access to machinery spaces. The Coast Guard is proposing to allow watertight doors between machinery spaces and accommodations because the heat, noise, and smell will normally provide a sufficient incentive for crew and passengers to keep these doors closed. The rule proposed in the NPRM has not been changed.

Two comments suggested the proposed rule does not give clear guidance to OCMIs on when watertight doors would be allowed, and recommended omitting the OCMI's discretion. The Coast Guard disagrees with the former and agrees with the latter. The Coast Guard recently revised its policy concerning watertight doors. The new policy removed almost all OCMI discretion and allows doors only to machinery spaces, except on vessels serving the offshore oil industry. If a vessel in oil and mineral service changes to passenger service, all watertight doors which do not comply with this new policy must be removed or closed and permanently sealed. This policy has been incorporated in this proposed rule. The provision in existing § 170.255(b)(2) restricting Class I doors to vessels operating less than 20 nautical miles from shore was inadvertently omitted from the NPRM and has been reinserted in this SNPRM.

Three comments suggested removing reference to § 179.210 since existing § 171.085(h)(2) prohibits doors in collision bulkheads, and one comment pointed out that ABS rules require an intact collision bulkhead only on vessels over 40 feet in length. The Coast Guard disagrees because in unusual circumstances a vessel can have a door in the segment of the bulkhead above the bulkhead deck. The provision for approval by Commandant will ensure sufficient control. The rule proposed in the NPRM has not been changed.

One comment suggested the proposed rule does not adequately address types of watertight doors allowed in required subdivision bulkheads, noting the existing regulations concerning door location aboard small vessels are focused on Class I (hinged) doors. The Coast Guard agrees. Sliding watertight doors, which are seldom used on small passenger vessels, do not pose the potential hazards inherent with hinged doors. It is not necessary to complicate this section with definitions of door types. Paragraph (a) in the NPRM has been changed in this SNPRM to specifically address only hinged doors, which are by definition Class I doors. The second sentence of paragraph (d) clearly indicates that sliding doors, which are by definition either Class II or Class III doors, must comply with subchapter S.

Section 179.350 Openings in the Side of a Vessel Below the Bulkhead or Weather Deck

The proposed rule addresses port lights and pipe penetrations. One comment suggested that port lights which open should not be allowed on monohull sailing vessels. Paragraph (a) of the proposed rule allows port lights which open for all vessels on an equal basis. The Coast Guard understands the concern of this comment, especially since the proposed stability criteria for sailing vessels has been changed to allow the freeboard to be totally immersed during a simplified stability proof test. This would definitely submerge any port lights. The rule proposed in the NPRM has not been changed in this SNPRM, but the Coast Guard solicits more comments concerning the location, on sailing vessels, of port lights which can be opened.

Two comments suggested that requirements for dead covers be reevaluated, and stated that port lights should be equivalent in strength to the hull which would do away with the need for dead covers. The Coast Guard disagrees that port lights must be equivalent in strength to the hull. In general, glass, which is used for most port lights, cannot sustain loads in a manner equivalent to the hull material, especially if the area of the port light is larger than conventional portholes. Dead covers provide necessary protection against damage to port lights. If the port light and its method of attachment to the hull can be shown to be equivalent in strength to the hull under proposed § 175.540, dead covers are not necessary. The rule proposed in the NPRM has not been changed.

One comment suggested requiring all through hull fittings and skin valves to be metallic. One comment suggested that brass valves should not be allowed. Brass is a copper alloy consisting of 5 to 40% zinc. In a marine environment brass can dezincify which reduces the strength of the material. One comment suggested prohibiting gate valves as sea valves because: gate valves are often made of brass instead of bronze, and brass can dezincify; gate valves require many turns to shut off, instead of a quick motion like a sea cock; gate valves provide no external indication of whether they are open or shut; and, if gate valves become clogged, they may not fully shut and give no indication of this to the operator. None of these proposed requirements are part of the existing § 171.119. The rule proposed in the NPRM has not been changed, but the Coast Guard solicits more comments on the type of valves which should be used on through hull penetrations and what materials should or should not be allowed.

Section 179.360 Watertight Integrity

The proposed rule establishes the degree of weathertightness above the bulkhead deck, including coaming heights. The Coast Guard thinks that many small vessels will capsize if much water is trapped within the superstructure. Five comments suggested coamings pose a tripping hazard. Two of them stated that water passing through an entrance would flow overboard through ports or pose a negligible risk of significant flooding to below deck spaces. One suggested completely eliminating coamings. One stated that more than 75 percent of slips and falls can be at least partly attributed to required coamings. One suggested the Coast Guard should try to prevent falls, which are the majority of insurance claims. Two other comments suggested not reducing the proposed coaming heights because water on deck which can flood interior spaces is a greater hazard than tripping. One comment made the specific proposal of 6-inch coamings for exposed routes, 3-inch coamings for partially protected routes, and no coamings for protected routes. The comment noted satisfactory service on 30-year-old vessels, with no coamings, on protected routes.

The Coast Guard has no data to dispute the observation that coamings contribute to falls. The Coast Guard disagrees that water passing through an entrance is not a major hazard because few vessels are fitted with drains to remove water from enclosed superstructure or deck houses. The NPRM has been revised to reduce tripping hazards where possible while still providing safety. Paragraph (d) has been modified. Coamings will not be required on or above the main deck of a flush deck vessel with a route on protected waters, or above the main deck of a flush deck vessel with a route on exposed or partially protected waters. The Coast Guard solicits additional comments on this matter, and is interested in definite proposals supported by historical data.

One comment suggested that the proposed coaming heights are not sufficient to meet requirements for a load line. The Coast Guard realizes that load line requirements are 23.5 or 15 inches. Any vessel applying for a load line must meet all load line requirements, even if more severe than the requirements for vessels not receiving a load line. No change was made to the rule proposed in the NPRM.

Subpart D—Special Requirements for Vessels on International Voyages

The rule proposed in the NPRM identifies major differences in bulkhead spacing and required double bottoms which must be specially designed into a small passenger vessel to ensure compliance with SOLAS. Part 176, subpart I reflects the intent that vessels on international voyages must meet all SOLAS requirements, including fire protection, structure, stability, and subdivision. This subpart is considered repetitious and has been deleted from this SNPRM.

Part 180—Lifesaving Equipment and Arrangement

Section 180.64 Emergency Position Indicating Radio Beacons (EPIRB)

The NPRM proposed that vessels on oceans and coastwise routes have on board a Category 1 (406 MHz) satellite EPIRB, and that vessels on the Great Lakes have either a Category 1 EPIRB or a Class C EPIRB which operates on the VHF–FM band. Current EPIRB regulations require a Class A (121.5/243 MHz) EPIRB on vessels on ocean and coastwise routes, except for coastwise vessels with a VHF–FM radio which have a route which does not extend more than 20 miles from a harbor of safe refuge. Vessels on Great Lakes routes are required to carry either a Class A EPIRB or a Class C EPIRB. The NPRM proposed a six-year phase-in period for replacement of the Class A and Class C EPIRBs on existing vessels, and proposed to no longer exempt vessels operating within 20 miles of a harbor of safe refuge from carrying an EPIRB.

Several comments expressed general support for the proposed EPIRB requirements. Some were especially supportive of the proposal to eliminate the present Class A EPIRB exemption for vessels operating within 20 miles of a harbor of safe refuge. There were several other comments that expressed concern about the anticipated high cost of the Category 1 satellite EPIRB. Some stated that the cost could not be justified, especially for those vessels which did not go more than a few miles offshore, or for vessels which were built to a higher safety standard. One comment suggested that EPIRBs should not be required on vessels which go as far as 25 miles offshore. Some comments suggested shorter phase-in periods for Category 1 satellite EPIRBs, while another favored a longer phase-in period. Two comments expressed concern about allowing the Class C EPIRB to be continued in use on the Great Lakes because of its limited effectiveness.

A study prepared by the Coast Guard, based on casualty statistics over the last 20 years, reexamined the requirements for survival craft on small passenger vessels, including the role and effectiveness that Category 1 satellite EPIRBs will have on rescue times. The study has been entered in the docket and is available for public inspection and copying. A review of the five small passenger vessel "abandon-ship" casualties which have occurred over the past 20 years within three miles of the coastline, shows that an EPIRB would not have been a factor in rescue operations in any of these cases. These casualties were the PEARL C, DIXIE LEE II, SAN MATEO, FANTASY ISLANDER, and MERRY JANE. On the other hand, recommendations favoring the carriage of an EPIRB were made as the result of Coast Guard and NTSB casualty investigations involving the COMET (7 miles offshore), the JOAN LA RIE III (8.5 miles offshore), and the COUGAR (40 miles offshore). Both the COUGAR and the COMET were not operating as inspected passenger vessels. The COMET had 27 persons on board, but its COI had been removed because of numerous deficiencies, including deteriorated hull planking. The COUGAR was operating with only six passengers as an uninspected passenger vessel. Although it may be inappropriate to include these two vessels in a casualty analysis relevant to inspected small passenger vessels, the lessons learned can be applied.

The regulations proposed in this SNPRM have been revised to parallel the EPIRB requirement for commercial fishing vessels in 46 CFR part 25, subpart 25.26. Each small passenger vessel which operates on the high seas or which operates beyond three miles from the coastline of the Great Lakes, would be required to have a Category 1 satellite EPIRB. The high seas, as defined in 33 CFR 2.05–1(a), are those waters more than 3 miles from the territorial sea baseline, which generally follows the coastline. The Great Lakes requirement is proposed to apply beyond three miles from the coastline. The definition of high seas, as defined in 33 CFR 2.05–1(a), will be repeated in § 175.400 of subchapter T (K § 114.400). Many small passenger vessels in tour, dinner, or ferry services do not go beyond three miles from the coastline and suspend services in bad sea conditions, and would not be required to carry a Category 1 satellite EPIRB. As compared to the NPRM, excluding vessels which operate within 3 miles on ocean, coastwise, and Great Lakes routes will reduce the cost to some operators since they will no longer be required to carry and maintain EPIRBs of any kind.

The Coast Guard does not agree with some comments which suggested that EPIRBs were unnecessary or could not be justified in terms of cost. The cost of Category 1 satellite EPIRBs is not as great as stated in some of the comments. Current prices range from $800 to $1200. Some of these EPIRBs incorporate a hydrostatic release which must be replaced every 2 years at a cost of about $80. Batteries must be replaced every 4 to 5 years at a cost of $200 to $400.

Some comments expressed concern about the reliability of the new Category 1 satellite EPIRBs. However, there is no basis to question the reliability of EPIRBs. Each EPIRB must go through an extensive series of electronic and environmental tests before being type approved by the FCC. According to COSPAS–SARSAT, an international organization which manages the 406 MHz satellite distress system worldwide, the 406 MHz system has already been credited with assisting in the rescue of 32 persons in distress cases as of December 1990.

As discussed in a following preamble section, under subpart E of this part, the Coast Guard is proposing new survival craft requirements which are a significant reduction, in some cases, from the regulations that were proposed in the NPRM. These reductions can be

justified only if casualty notification and location is improved through the use of Category 1 satellite EPIRBs. The widespread use of Category 1 satellite EPIRBs is expected to significantly improve the efficiency of the Coast Guard's search and rescue operations and reduce the Coast Guard's cost in many rescue cases. Phase out of Class A EPIRBs will also reduce the number of false alarms, estimated to cost the Coast Guard $4,130 each. During one 6-month study period in 1988, 15,426 alerts were recorded, of which only 28 proved to be real emergencies.

Section 180.15(f) of the NPRM proposed a six-year period for phasing-in the new Category 1 satellite EPIRB requirements, and phasing-out Class A and Class C EPIRBs. The rules proposed in this SNPRM have been revised to coincide with the FCC's implementation date for the global maritime distress and safety system (GMDSS). Under § 180.15(g) (K § 117.15(f)) of the NPRM, Class A EPIRBs already on board vessels as of a date 45 days after the effective date of the final rule could be used until February 1, 1999. However, as the result of an FCC rule in 47 CFR 80.1053, Class A EPIRBs manufactured before October 1, 1988 are no longer permitted to be used to meet Coast Guard requirements. Under § 180.15(h) (K § 117.15(g)) of this SNPRM, vessels on Great Lakes routes with Class C EPIRBs already on board as of a date 45 days after the effective date of the final rule for this docket, could use the Class C EPIRBs until February 1, 1999. Under § 180.15(i) (K § 117.15(h)) of this SNPRM, coastwise vessels operating within 20 miles of a harbor of safe refuge and not equipped with a Class A EPIRB, would have to have a Category 1 satellite EPIRB by one year after the date of publication of the final rule for this docket. This schedule will get Category 1 satellite EPIRBs on vessels which presently have no EPIRBs, and allow owners of vessels presently required to carry EPIRBs a reasonable time to replace their existing less effective EPIRBs.

Section 180.68 Distress Flares.

The NPRM proposed a minimum of six hand red flares and six hand orange smoke signals for oceans, coastwise, and Great Lakes service, and three hand red flares and three hand orange smoke signals for lakes, bays, and sounds, and river service. Alternative signal combinations were also listed, all totalling twelve signals for oceans, coastwise, and Great Lakes service, and six for lakes, bays, and sounds, and river service. A vessel operating on short runs limited to approximately 30 minutes away from the dock would not be required to carry distress flares and smoke signals. One comment suggested that vessels not more than one mile from shore in daylight, and on rivers not more than 1/2 mile wide should be exempt from flare requirements. The Coast Guard does not agree with this suggestion. In many cases these vessels would be under the 30 minute exemption. Some vessels may, however, make long trips close to shore. These vessels should be able to attract the attention of persons on shore who do not have marine radios. Flares and smoke signals are an inexpensive way to provide this capability.

One comment said that vessels in oceans and coastwise service should carry parachute flares for general locating and hand flares for pinpointing location, but another said that parachute flares were too expensive. Another comment suggested that vessels in lakes, bays, and sounds, and river service also be required to carry a total of twelve signals unless on a route of 30 minutes or less. The Coast Guard realizes that parachute flares are generally more effective distress signals than hand flares or smoke signals, and that additional flares for vessels in lakes, bays, and sounds, and river service would provide additional alerting and locating capability. However, there has been no indication from casualty experience that the requirement for hand flares needs to be upgraded, or that the number of flares needs to be increased for lakes, bays, and sounds, or river service. As explained below, the regulation proposed in this notice would give operators more options for carriage of parachute flares in place of hand flares and smoke signals.

One comment recommended that requirements for flares on Great Lakes services be the same as for oceans and coastwise services. The Coast Guard agrees and has incorporated this suggestion in this SNPRM. In the NPRM, the basic requirement was the same, but Great Lakes vessels had an additional option. As discussed below, carriage options have been unified for all services.

One comment said that each vessel should carry flares since it would be difficult to determine whether or not a vessel was on a short run of 30 minutes or less. In order to qualify for the flare exemption, the vessel's COI must carry the 30 minute endorsement and the vessel must operate on a route which complies with the restriction. Therefore, the Coast Guard sees no particular difficulty in determining whether or not a vessel is on a short run of 30 minutes or less.

There was a suggestion to extend service life of signals to 4 years since many expired flares are in good condition. Although many flares will be in serviceable condition at the end of their present 3–1/2 year service life, others will not be serviceable. A recent study of expired signals conducted by Underwriters Laboratories for the Coast Guard, indicated that an extension of the service life could not be justified on the basis of the number of unserviceable signals found.

The requirements proposed in this SNPRM are basically the same as those proposed in the NPRM, but they have been simplified. The requirements for oceans, coastwise, and Great Lakes service remain six hand red flares and six hand orange smoke signals. The requirements for lakes, bays, and sounds, or river service remain three hand red flares and three hand orange smoke signals. Alternative higher-performance signals, such as rocket parachute flares, are listed as acceptable substitutions for the hand flare and smoke signals. This gives the operator the option of carrying one or two parachute flares, for example, in place of one or two hand flares or smoke signals. In the NPRM, the only alternatives for an operator wanting to carry parachute flares were to either carry twelve parachute flares in substitution for the six hand flares and six hand smoke signals, or else carry the parachute flares in addition to the six hand flares and six hand smoke signals.

Paragraph (e), on stowage, has been revised in this SNPRM to remove a reference to 46 CFR 160.038, a specification on the construction of a portable magazine chest. The reference has been replaced with a new ASTM standard, ASTM F—[Reserved for number of standard being developed by ASTM], "Pyrotechnic Locker", which is expected to be approved and published by ASTM in 1994.

Section 180.70 Ring Life Buoys

The NPRM proposed requirements for a minimum of one 20-inch ring life buoy for vessels up to 26 feet, one 24-inch buoy for vessels up to 65 feet, and three 24-inch buoys for vessels over 65 feet. On oceans and coastwise routes, the ring life buoy would be required to be orange. One ring life buoy would be required to have a 60-foot lifeline. Unless limited to daytime operation, one ring life buoy would have to be equipped with a floating waterlight. One comment said that the ring life buoys should be the same minimum size regardless of boat length. Although larger life buoys do provide somewhat better flotation performance than smaller life buoys, the Coast Guard has not adopted this comment. For smaller vessels, such as those under subchapter T, smaller life buoys have been accepted to facilitate their stowage.

Another comment suggested that at least two ring life buoys be required on vessels from 26 to 40 feet in length. The Coast Guard does not agree. Vessels of this size are small enough so that the ring life buoy should be able to be obtained readily from any point on board. Accident experience does not suggest that an increase in the number of ring life buoys on vessels of this size would be justified.

This comment also suggested that all ring life buoys have lines to get off a second throw, if necessary. The Coast Guard does not think it is necessary for all ring life buoys to have lines. Although a ring life buoy with a lifeline can be pulled back and thrown again, there is also some advantage in having ring life buoys unencumbered by lines and lights. They can be thrown more easily without the risk of being fouled in a tangled line. On larger vessels, which are not generally as maneuverable as small vessels, it may be safer to leave a person in the water without a lifeline from the vessel while the vessel maneuvers to get into position for recovery of the person. Once alongside, the ring life buoy with the lifeline can be thrown in order to pull the person back to the side of the vessel.

For consistency and safety, one comment recommended that ring life buoys on vessels in all services be required to be orange. Approved ring life buoys are either orange or white. Both colors provide good contrast against clear or muddy waters. Orange ring life buoys are generally considered better under glare, foam, and whitecap conditions. Many operators prefer the appearance of white ring life buoys, however, so the use of orange ring life buoys has not been required except in ocean and coastwise service, even though they would provide better visibility on other waters in some cases. Experience with accidents on vessels in Great Lakes, lakes, bays, and sounds, and river service does not suggest that an improvement in visibility is needed.

One comment noted that the wording of paragraph (c) would allow the addition of non-buoyant lifelines on ring life buoys as long as one life buoy had a buoyant lifeline. The comment suggested that all ring life buoy lifelines be required to be buoyant. The Coast Guard agrees. If an operator decides to have lifelines on additional life buoys, the additional lifelines should also be buoyant. However, on a vessel which carries more than one ring life buoy, at least one ring life buoy should be required to be free of a lifeline for the reasons discussed previously. Paragraph (c) has been revised accordingly.

One comment recommended that each floating waterlight be attached to its ring life buoy by a clip at the end of its lanyard, rather than being securely attached. Since the lights make it hard to throw the life buoy, the clip would allow them to be quickly disconnected for daytime use, when the light would not be needed. The Coast Guard agrees with this comment, and has incorporated it into paragraph (d) of this SNPRM for vessels carrying only one ring life buoy. As discussed previously, there is good reason to have unencumbered life buoys—the light interferes with throwing the life buoy. The clip would allow the waterlight to be disconnected and make throwing of the ring life buoy easier when the light is not needed. The Coast Guard solicits comments on whether the clip requirement should be included in the final rule. Questions that should be considered are: Do vessels under 65 feet in length carrying only one ring life buoy need to have a detachable water light, since they should be readily maneuverable and able to come alongside a person in the water quickly? On vessels over 65-feet with three ring life buoys, is a clip required on a water light lanyard if the ring life buoy is not the one with a lifeline?

Another comment said that ring life buoys should be in sight of every passenger regardless of the number of ring life buoys required. While the Coast Guard agrees in principle with this comment, on some vessels this could lead to an unnecessarily large number of ring life buoys. No change has been made from the wording in the NPRM which requires that the life buoys be readily accessible.

Section 180.71 Lifejackets

The NPRM would require an adult-size lifejacket for each person permitted on board a vessel. In addition, if children were to be carried, child-size lifejackets would be required in a number equal to at least 10% of the number of passengers permitted on board. More child-size lifejackets would be needed as necessary to provide appropriate sizes for everyone on board. There were several comments in general agreement with the lifejacket proposals, and in particular with the provisions for child-size lifejackets. Two comments recommended that vessels be permitted to temporarily use lifejackets from other vessels, especially in cases where they are needed for unusually large numbers of children on board. This would save the expense of having every vessel equipped with large numbers of child-size lifejackets for the occasional carriage of large numbers of children. The Coast Guard has no objection to the temporary use of lifejackets from other vessels. Because the number of persons permitted to be on board by the COI is in part determined by the number of serviceable lifejackets on board at the time of inspection, the carriage of additional persons needs to be authorized by the OCMI. OCMIs have the authority to authorize such temporary use, and it does not need to be specifically addressed in the regulations. However, lifejackets carried temporarily should not have to be marked with the name of the vessel. The marking requirements in § 185.604(b) of this SNPRM have been revised for clarification.

One comment noted the apparent discrepancy between the percentages of extra lifejackets carried for children based on the number of passengers permitted on board, and the existing requirement for child-size lifejackets in 46 CFR 180.25–5(a), which is in terms of the number of persons permitted on board. The recommendation was made that both should be consistent and based on the number of persons permitted on board. The Coast Guard agrees, and paragraph (b) has been revised in this SNPRM.

One comment suggested that the last sentence of paragraph (b) should permit elimination of the child-size lifejackets only if the COI is endorsed for the carriage of adults only. The Coast Guard agrees that the elimination of child-size lifejackets should be dependent upon an endorsement on the COI for the carriage of adults only, because this endorsement would remove some of the ambiguity of the wording proposed in the NPRM as to whether or not children were carried. Paragraph (b) has been amended accordingly.

Another comment suggested that the size limit for lifejackets be identified in regulations to avoid confusion. A simple regulation change could be made if the lifejacket size limit changes. Lifejacket size limits are usually based on the maximum weight of the person which can use the lifejacket. The maximum size limit for child-size lifejackets is typically 90 pounds, but cannot be identified in regulations because it may be different for different lifejacket designs. The size limits are clearly marked on lifejacket labels.

One comment observed that the NPRM contained no provision for the acceptance of cork or balsa lifejackets, many of which are still serviceable even

though they are no longer produced. The last of the approved cork and balsa lifejackets were produced over 25 years ago. Because of performance and reliability concerns, they have not been allowed on commercial vessels on international voyages since 1965. The Coast Guard's position is that most of these lifejackets still on small passenger vessels have reached the end of their useful lives and have been or should be replaced. As in the NPRM, they would not be allowed for use.

Section 180.75 Lifejacket Lights

The NPRM contained no substantive change from the existing requirements for lifejacket lights. Each lifejacket carried on a vessel on an oceans, coastwise, or Great Lakes route, would be required to have a lifejacket light. An exception to the lifejacket light requirement would apply to ferries, and vessels on routes not more than 20 miles from a harbor of safe refuge. One comment complained about the low quality of existing battery powered lifejacket lights. The Coast Guard is not satisfied with the quality of some of the existing battery powered lifejacket lights approved under 46 CFR 161.012. Some newer lifejacket lights meeting the 1983 Amendments to SOLAS must go through additional testing that appears to result in lights of a higher quality (and a higher price). In addition to being identified with Coast Guard approval numbers of both the 161.012 and the 161.112 series, these lights have markings indicating that they meet the 1983 SOLAS Amendments. The Coast Guard is planning a future rulemaking on lifejacket lights which will address the quality and testing of these lights.

Another comment suggested elimination of the 20 mile exemption, citing the same reasoning used in the NPRM to justify the carriage of EPIRBs in this same area. No change has been made to the exemption for vessels on routes not more than 20 miles from a harbor of safe refuge. The Category 1 satellite EPIRBs and inflatable liferafts, inflatable buoyant apparatus, life floats, or buoyant apparatus that vessels would have to carry under the rules proposed in this SNPRM would all be equipped with locating lights. Once the EPIRBs and survival craft have been located, search and rescue forces should be able to locate persons in the water at night by the retroreflective material which is already required on each lifejacket. Vessels operating within 20 miles from a harbor of safe refuge should be close enough to search and rescue facilities so that persons in the water should not become separated too far from the survival craft by the time assistance arrives on scene, especially with the rapid distress notification expected with the Category 1 satellite EPIRBs.

Section 180.78 Stowage of Lifejackets

The NPRM contained a number of stowage requirements intended to make lifejackets readily identifiable and available. One comment expressed confusion over the requirement for distribution of lifejackets throughout accommodation spaces, but in a container designed to allow the lifejackets to float free if practicable. The comment said that the lifejackets could not float free from accommodation spaces. There is no conflict between the requirements for distribution of lifejackets throughout accommodation spaces, and to be in float free containers if practicable. The definition of "accommodation space" proposed in § 175.400(b) does not limit such spaces to enclosed decks. Therefore, any open-deck accommodation space could have a float free container.

Another comment said that lifejackets should be accessible throughout the vessel without any intervening obstructions, including stairways and doors, and not just on an upper deck in a float free container. The proposed regulation would require lifejackets to be distributed in convenient places throughout accommodation spaces. Appropriate convenient places might require passage through doors or stairways on some vessels, but not on others. The suggested change has merit, but is considered too restrictive. No change has been made to the rule proposed in the NPRM.

Section 180.110 Survival Craft Embarkation Ladders

The NPRM included a proposed requirement for an embarkation ladder at each embarkation station, if the distance from the deck to the vessel's lightest operating waterline is more than 10 feet. Embarkation ladders are not addressed in the existing regulations in subchapter T. One comment suggested this requirement is inappropriate for dinner boats, regardless of size or capacity, and should be deleted. The reason given in the comment was that if it is necessary to abandon a dinner boat, any location close to the water and away from the area of the vessel threatened by fire, flooding, or other danger would be appropriate. The Coast Guard considers an embarkation ladder to be necessary on any vessel, including dinner boats, if the vessel carries survival craft which are not davit launched. No change has been made to the rule proposed in the NPRM.

The Coast Guard's position is that, for their own safety, passengers should not have to jump very far in order to board a survival craft or otherwise debark the vessel in an emergency. From a distance of five feet, passengers can be readily assisted by crew members. For heights greater than five feet, an embarkation ladder or other embarkation appliance should be provided. The Coast Guard realizes that embarkation ladders or appliances for small vessels of the type which are proposed to be regulated by subchapter T, especially small party (or head) boats or small harbor tour boats, are not very practical. In this SNPRM, the Coast Guard is proposing to retain the 10-foot limit for vessels which would be regulated by subchapter T, but is proposing to decrease it to 5 feet for vessels proposed to be regulated by subchapter K.

For simplification, this section has been combined with § 180.150 of this SNPRM so that all embarkation arrangement requirements are located in one section.

Section 180.130 Stowage of Survival Craft

The NPRM contained a number of requirements for the stowage of survival craft, including painter arrangements, float-free arrangements, and requirements for getting survival craft over or through a rail. Most of the comments on this section were statements in agreement with the proposals. Several comments, responding to a request for comments in the preamble of the NPRM, addressed themselves to paragraph (c) which proposed a requirement for a mechanical, manually operated device to assist in launching a survival craft, if the survival craft weighs more than 200 pounds and requires lifting to be launched. One comment incorrectly interpreted this as a requirement for liferaft launching davits. Although a lifting device might take the form of a small davit, it would merely be an aid to lifting the survival craft over the rail or bulwark, and would not be a liferaft launching davit. The Coast Guard believes that most operators affected by this requirement would opt for a gate in the rail or bulwark adjacent to the survival craft, so that lifting would not be required. Therefore, no change was made to the rule proposed in the NPRM.

Five comments addressed the 200 pound criterion for requiring mechanical assistance to launch a survival craft if the survival craft has to be lifted to be launched. One said the criteria should be raised to 400 pounds to be consistent with a 185 kg (407 pounds) weight limit in SOLAS.

Another comment noted that the SOLAS weight limit was too heavy for lifting, and supported the 200 pound proposal. Another said that 200 pounds is excessive and the limit should be lowered to 100 pounds. The NPRM preamble stated that as many as three people might be needed to lift even a 200 pound liferaft. The fourth comment questioned how this might be accomplished on a vessel which did not have a total of three crewmembers. The last comment questioned why the 200 pound weight limit was needed when the present 400 pound limit has not proven to be excessive. The 200 pound limit has been retained in the rules proposed in this SNPRM. If a particular vessel with a 200 pound liferaft does not have a total of three crewmembers, then passengers would have to assist in getting it over the rail. Contrary to one comment which stated that a 400 pound weight limit has not proven to be excessive, there have been several casualties in which liferafts weighing close to 400 pounds could not be lifted over the rail. These were discussed in the NPRM preamble. The SOLAS 185 kg limit is not exactly analagous. SOLAS links this limit with transportability of the liferaft over an open deck, rather than the need to lift it over the rail.

One comment suggested a revision that would require any protective covers to be arranged so that they do not interfere with launching. Another comment stated that survival craft are often stowed on top of cabins and awnings and are difficult to get to, and that there needs to be a means to get to them or a launching device that can be operated remotely. The Coast Guard agrees with the need for these revisions. To include these new requirements on access and protective covers, paragraph (a) has been revised in this SNPRM.

Section 180.137 Stowage of Life Floats and Buoyant Apparatus

The NPRM included stowage requirements for life floats and buoyant apparatus which are essentially identical to the present regulations, with the exception of a 200 pound weight limit on each group of life floats and buoyant apparatus on a single painter, in place of the present 400 pound limit. One comment questioned the need for the 200 pound weight limit in paragraph (e)(1), if the deck loads are not excessive. The 200 pound weight limit was intended to be consistent with the 200 pound limit in § 180.130(c)(1) and had nothing to do with deck loads. The current 400 pound limit is based on the assumption that any group of life floats and buoyant apparatus will have to be moved and launched together, and that 400 pounds is the maximum weight that can reasonably be expected to be transportable over an open deck. The rules proposed in this SNPRM return to the 400 pound weight limit, except for a group of life floats and buoyant apparatus which must be lifted to be launched, in order to be consistent with § 180.130(c)(1).

Section 180.150 Survival Craft Embarkation Arrangements

This section proposed that a survival craft launching appliance be provided when either the embarkation station is on a deck more than 15 feet above the waterline, or the survival craft is boarded prior to being placed in the water. One comment said that launching appliances are not needed for dinner boats regardless of size or capacity because buoyant apparatus can be lowered to the water and used easily. The comment described maintenance as constant and expensive, and also discussed complexity and crew training. The comment added that any improvement in passenger safety is not justified by cost. Another comment also noted that crew size might have to be increased if launching appliances are used. Regardless of the service of the vessel, some type of launching appliance is required if the embarkation deck is located too far above the waterline, whether or not crew size would have to be increased. Survival craft launching appliances such as davits and slides are designed to be used with inflatable liferafts and inflatable buoyant apparatus, not with life floats and buoyant apparatus. This section has been revised in this SNPRM to clarify that it should apply only to vessels equipped with inflatable liferafts or inflatable buoyant apparatus.

The survival craft embarkation ladder requirements proposed in § 180.110 of the NPRM have been combined into this section of this SNPRM so that all survival craft embarkation arrangement requirements are located in one section.

Section 180.175 Survival Craft Equipment

This SNPRM deletes survival craft equipment requirements for inflatable buoyant apparatus from this section. Unlike the equipment for life floats and inflatable liferafts, equipment requirements for inflatable buoyant apparatus are included in approval specification provisions.

Subpart E—Number and Type of Survival Craft

The NPRM proposed that many small passenger vessels operating on cold waters carry inflatable liferafts or inflatable buoyant apparatus. The NPRM proposals were based on the assumption that passengers would be at increasing risk from the effects of hypothermia as water temperature decreased, and the time to rescue increased. Consequently, the NPRM proposed increasing levels of protection from immersion in cold water as water temperature decreased and distance offshore increased.

Although some comments supported the proposal and some even suggested increases in the proposed requirements, most comments from operators opposed them, citing a good safety record which did not justify the cost required to comply. Comments raised many issues of varying merit. Some said that length of trip and distance from shore should be a factor in determining what survival craft are required. Others disagreed with the water temperature criteria used to differentiate between cold and warm water. Some comments suggested that hull material, subdivision, and fire protection should be taken into account when determining which vessels are to carry survival craft. The high cost of buying and maintaining inflatables was cited as a reason for objecting to the proposals.

In order to address the comments, the Coast Guard prepared a study which reexamined the requirements for survival craft on small passenger vessels. This study takes into account several factors that were not included in the analysis which led to the previous proposals. These include the effect that Category 1 satellite EPIRBs will have on rescue times, and the reduced risk of loss that a vessel has if equipped with appropriate fire protection equipment and subdivision. The study examines the casualty record of the 16 small passenger vessel losses over the past 20 years where there was loss of life, loss of the vessel, or both. It does not include casualties on small passenger vessels carrying more than 150 passengers or with overnight accommodations for more than 49 passengers such as the PILGRIM BELLE, and MAJESTIC EXPLORER (which would be regulated under proposed subchapter K). The study has been entered in the docket and is available for public inspection and copying in the offices of the Marine Safety Council at the address under "ADDRESSES:".

Briefly, the study shows that all but one of the casualties involved vessels of wooden construction, and that these vessels were much older than the small passenger vessel fleet as a whole. The casualties fell into three broad categories: Capsizings; fires; and hull or through hull fitting failures. The

capsizings could not be associated with the age or material of construction. The three fires originated in the engine compartment and spread throughout the wood vessels, leading to abandonment of the vessels. The hull and through hull fitting failures were associated with undetected deterioration of the wood hull or fittings.

The study suggests that small passenger vessels need better protection from fire and flooding, especially as they age. The NPRM and this SNPRM propose that all new small passenger vessels and existing small passenger vessels constructed of FRP must have fixed fire extinguishing systems in machinery spaces, and that certain vessels be built to a one-compartment standard of subdivision. As discussed under § 181.115 of this preamble, this SNPRM proposes that existing wood vessels be required to retrofit fixed fire extinguishing systems. This SNPRM also proposes, for some vessels operating on cold waters, subdivision as an alternative to outfitting the vessel with inflatable buoyant apparatus, as proposed in the NPRM. Watertight subdivision bulkheads improve the survivability of a vessel and help make the vessel its own best survival craft. Retrofitting subdivision will be difficult and may be impractical for some existing vessels, but will be an alternative for certain vessels.

The retrofit requirements and alternatives proposed in this SNPRM will have the beneficial effects of requiring or encouraging the vessels most at risk to have adequate lifesaving and firefighting equipment, and remove part of the cost disincentive for replacement of older vessels.

The study also examined the role of Category 1 satellite EPIRBs on rescue times. It concluded that when a Category 1 satellite EPIRB is successfully used, the Coast Guard should be able to have rescue resources on the way to the scene of a casualty within 2.5 hours for most casualties that occur within 50 miles of the coast of the United States. Further offshore, more than 50 miles off the coast, it becomes more difficult for helicopters to stay on scene for extended periods of time or to ferry survivors to shore and return for more survivors. Other vessels are also less likely to be close by to assist a vessel in distress, compared to areas closer to shore. On the other hand, closer to shore, within three miles of the coastline, EPIRBs of any kind would not be necessary. The high seas designation was introduced into the lifesaving regulatory scheme by the acts which required fishing vessels and other uninspected vessels to carry EPIRBs. The high seas break point tracks much better with the small passenger vessel casualty record than present exemption for vessels operating within 20 miles of a harbor of safe refuge. High seas, as defined in § 175.400 of this SNPRM using the definition in 33 CFR 2.05–1(a) for consistency with other laws and regulations, means all waters which are neither territorial seas nor internal waters of the United States or of any foreign country. Generally, this includes waters more than three miles offshore. EPIRB requirements are more fully discussed under § 180.64 of this preamble.

The study documented several cases where the limited buoyancy of a buoyant apparatus, and its inability to support at least some survivors out of the water, reduced the effectiveness of the buoyant apparatus. Life floats are better lifesaving devices. The rules proposed in this SNPRM will no longer require buoyant apparatus, but will require life floats instead. Existing buoyant apparatus will be phased out by allowing them to meet the requirement for life floats, so long as the buoyant apparatus are in good and serviceable condition.

In determining the amount and type of survival craft to be required, the Coast Guard also tried to balance its public responsibility for crew and passenger safety against industry concerns, as expressed in the comments to the NPRM, by looking at vessel factors such as survivability, casualty analysis and rescue scenarios, number of passengers, overall level and type of other required equipment, and route.

In developing a scheme for the capacity of survival craft which should be carried on a vessel, the Coast Guard philosophy was that, except in limited circumstances, if survival craft are needed, enough should be provided for everyone on board, not just a small percentage. The Coast Guard took into consideration the fact that inflatable buoyant apparatus can be overloaded in calm water, and still keep people out of the water, while life floats used at their rated capacity leave people in the water hanging on to the outside of the life float. Therefore, life floats should not be overloaded in circumstances where rescue resources (Coast Guard or other vessels which would be nearby) will not quickly arrive on scene in case of an accident.

Overall, the survival craft requirements proposed in this SNPRM have been reduced from those in the NPRM in consideration of the proposed requirements for bilge level alarms, increased carriage of Category 1 satellite EPIRBs, increased radar requirements for certain ferries on rivers routes (see § 184.404 of this preamble), and increased installation of fixed fire extinguishing systems.

The Coast Guard is proposing in this SNPRM that vessels which would be regulated by proposed subchapter T and certificated to go beyond 50 miles from the coast, should be equipped with inflatable liferafts for everyone on board. At these distances, vessels may not be able to return to port in time to avoid adverse weather and sea conditions. Rescue may take an extended period of time, even with the use of Category 1 satellite EPIRBs. Inflatable liferafts provide the necessary protection and equipment for a survival period which extends overnight, or even for a day or two, at sea.

For vessels operating on ocean routes not more than 50 miles offshore, and on coastwise routes, Category 1 satellite EPIRBs will be the primary means of distress alerting and then locating the vessel. The Coast Guard's position is that small passenger vessels in the highest risk categories should be equipped to allow passengers to disembark and survive for at least four hours at sea. The higher risk vessels are primarily the older wooden vessels which do not have one-compartment subdivision. For water temperatures less than 59° F, this SNPRM proposes that these vessels have inflatable buoyant apparatus for everyone on board. For vessels with one-compartment subdivision, and for those without one-compartment subdivision operating in warmer waters, life floats for everyone on board would suffice. For some vessels, this will mean phasing out buoyant apparatus and replacing them with life floats over a period of time as they become unserviceable. As discussed above, the rules proposed in this SNPRM would permit existing buoyant apparatus to meet the requirement for life floats, so long as the buoyant apparatus are in good and serviceable condition.

For small passenger vessels operating in shallow waters on lakes, bays, and sounds and rivers routes a provision for exemption from survival craft requirements has been included in this SNPRM, as suggested in some of the comments.

The Coast Guard's study on survival craft requirements discusses the fact that a vessel carrying a large number of passengers could overwhelm the capacity of rescue resources which could be quickly brought on scene to assist persons in the water. The Coast Guard's largest helicopter can accommodate 10 to 15 persons in addition to the aircrew in an emergency. This helicopter will be replaced over the next few years with one that has a higher speed and longer range, but smaller passenger capacity. It is anticipated that a major surface rescue effort would have to be initiated from shore or by vessels already in the area to provide rescue assistance to vessels proposed by this SNPRM to be regulated by subchapter K (vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers). For persons in cold water suffering from hypothermia, time is of the essence, and they might not be able to wait for large vessels to arrive. For this reason the Coast Guard considers increased survival craft requirements to be necessary for these vessels, to provide protection in the event of a low probability, high consequence accident.

In determining the type and amount of survival craft necessary, the Coast Guard realizes that subchapter K vessels will already have smoke actuated fire detection systems, engine room fire extinguishing systems, grease extraction hoods with fire extinguishing systems, structural fire protection, higher subdivision and stability standards than a subchapter T vessel, and bilge level alarms. However, it should be noted that the use of flammable finish and interior construction materials proposed in this SNPRM is less restrictive than proposed in the NPRM. The Coast Guard is proposing in subchapter K of this SNPRM:

(a) That all vessels traveling more than 50 miles from shore have liferafts for all persons on board. Vessels on oceans routes not more than 50 miles offshore must have inflatable buoyant apparatus for all persons on board;

(b) That all vessels with overnight accommodations for more than 49 passengers operating on coastwise, Great Lakes, and lakes, bays, and sounds routes must have inflatable buoyant apparatus for all persons on board;

(c) That all vessels with overnight accommodations for not more than 49 passengers operating on coastwise, Great Lakes, and lakes, bays, and sounds routes must have survival craft based on route and water temperature; and

(d) That all vessels operating on a rivers route in cold waters must have life floats for 50 per cent of the persons on board. No survival craft are required in warm waters; and

In this SNPRM the Coast Guard is proposing a provision to exempt vessels operating in shallow waters on lakes, bays, and sounds and rivers routes from survival craft requirements, as suggested in some of the comments. Vessels with ferry boat type operations (i.e., operating on a specific route between two points on a set schedule), which maintain a 15 minute radio communications schedule with an operations base, and which have routes that never take them farther than 20 miles from a harbor of safe refuge, would be able to substitute lifefloats for inflatable buoyant apparatus if the OCMI determines that it would be safe to do so.

The survival craft requirements proposed in subchapters T and K of this SNPRM are summarized in the "Survival Craft Requirements Table" below.

In a separate rulemaking project entitled "Commercial Fishing Industry Vessel Regulations" (CGD 88–079) the Coast Guard published safety regulations for fishing vessels as a Final Rule in the **Federal Register** (56FR40364) on August 14, 1991. These regulations contain survival craft and immersion suit requirements which apply to vessels operating in areas where the mean water temperature is 59° F (15° C) or less (i.e., "cold water"). Sections 180.202, 180.204, 180.206, and 180.208 of the subchapter T NPRM also contained survival craft requirements dependent on water temperature. In order to establish consistent boundaries for cold water areas, which would apply to all classes of vessels with requirements dependent on water temperature, the Coast Guard decided to publish a NVIC specifying geographic limits of cold water areas. Use of a NVIC rather than specifying cold water/warm water areas in the regulations gives several benefits: (1) Allows flexibility and ease of change to update geographical limits of areas having seasonal cold water; (2) seasonal changes and geographical limits can be portrayed on chartlets which can be quickly accessed and easily understood; and (3) avoids repetition of a long list of geographical boundaries in more than one location or set of regulations. As a result, the Coast Guard published NVIC 7–91, "Determination of Cold Water Areas", on May 20, 1991. The appropriate paragraphs of the NPRM have been removed from this SNPRM.

Section 180.210 Rescue Boats

Under the NPRM, vessels would be equipped with a rescue boat, unless the OCMI determined that the vessel is operated and arranged in such a way that it can recover persons who fall overboard. Vessels under 65 feet would be exempt if they do not carry passengers on an open or partially enclosed deck. Rescue boats on vessels over 65 feet in length would have to meet the same requirements as on passenger vessels over 100 gross tons, but rescue boats on smaller vessels would only have to be acceptable to the OCMI. Some comments supported application of rescue boat requirements by OCMIs, but others were concerned with the possibility of arbitrary and inconsistent application of the requirements by different OCMIs. The Coast Guard agrees that there is potential for inconsistent application of the rescue boat requirements. Rather than outline detailed requirements in the regulations, the Coast Guard intends to provide guidance to OCMIs in the MSM on the application of these requirements. No change was made to the rule proposed in the NPRM.

One comment suggested that "rescue ladders" could perform the same function as rescue boats. A "rescue ladder" is not an acceptable substitute for a rescue boat, because an incapacitated person can not use a ladder or be carried up a vertical ladder. A "rescue platform", however, could be acceptable if it does not present a hazard to the person being rescued, and if there are adequate provisions for bringing the incapacitated person aboard the vessel from the rescue platform. This issue would also be covered in the MSM.

In paragraph (c) of this SNPRM, the reference to subchapter W has been changed to subchapter H.

Part 181—Fire Protection Equipment

Section 181.115 Applicability to Existing Vessels

Paragraph (b) of the NPRM requires only vessels constructed of FRP to be retrofitted with fixed fire extinguishing systems. Three comments thought that existing vessels of FRP construction are unfairly disadvantaged by having to meet the requirements of § 181.400, which specifies where fixed fire extinguishing and detecting systems are required, while existing vessels constructed of other materials don't. These comments wanted § 181.115(b) removed. Other comments identified the same inconsistency but believed the regulation should be simplified by requiring all existing vessels to comply with § 181.400. In addition to the fire casualty statistics presented in the preamble of the NPRM, the Coast Guard has prepared a study based on casualty statistics over the last 20 years. This study reexamines the requirements for survival craft on small passenger vessels, including the role of fixed fire extinguishing systems in machinery spaces. The study has been entered in the docket and is available for public inspection and copying.

The origin of most fires is in the engineroom and is independent of

construction material. Frequent ignition sources involve fuel or lube oil spray contacting a hot surface, or electrical equipment overheating or arcing. Wooden hull vessels have suffered the most severe fires, perhaps because wood absorbs fuel and lubricating oils. This results in a severe fire if the initial fire is not immediately extinguished. Although the hulls of wood and FRP vessels are combustible, threats to human life can develop early in a fire, before involvement of the hull and structure, due to the accumulation of smoke and toxic gasses. This rapidly developing hazard is similar for all vessels regardless of the construction material.

Appropriate concern was expressed in the NPRM by requiring detection and fixed extinguishing systems on all new vessels. As discussed in this preamble, under subpart E of part 180, the Coast Guard is proposing new survival craft requirements which are a significant reduction, in some cases, from the regulations that were proposed in the NPRM. These reductions can be justified only if other means which establish an equivalent safety level, such as improving each vessel's ability to survive a fire at sea, are provided. Fixed fire extinguishing systems are expected to improve a vessel's ability to act as its own survival craft. It is inconsistent from a life safety standpoint to require such systems on all new vessels and on existing vessels of FRP construction, but not on other existing vessels in a similar risk category, such as those made of combustible materials. The Coast Guard has concluded that exempting existing vessels in higher risk categories from fixed fire extinguishing system requirements would provide a cost disincentive discouraging the construction of new and safer vessels. In order to ensure a consistent level of life safety on all small passenger vessels, § 181.115(b) has been revised in this SNPRM to require all existing wooden vessels, as well as FRP vessels, to comply with § 181.400 within 3 years of the effective date of the final rule.

Section 181.120 Equipment Installed But Not Required

Existing Coast Guard policy and regulation, as well as this section of the NPRM, require that excess fire protection equipment and systems be type approved or approved systems. The Coast Guard encourages the use of excess fire protection equipment and is proposing to accept excess systems which are designed, installed, and maintained in accordance with an appropriate industry standard acceptable to the Commandant, such as those of the NFPA. One area of concern is that some standards have not been written with high vibration levels, salt air corrosion, or other characteristics of the marine shipboard environment in mind. The Coast Guard solicits comments on the application of this proposal to small passenger vessels.

Section 181.300 Fire Pumps

Numerous comments expressed concern that the fire pump capacity requirements proposed in the NPRM would cause a large increase in electrical demand thereby necessitating increases in electrical generator size and increasing cost, especially for those vessels just over 65 feet in length. A couple of comments wanted the criteria for hose line flow rates and pitot tube pressures to be replaced with simple pump pressure and flow criteria. One comment specifically recommended that the requirements be graduated according to the size and capacity of the vessel. The Coast Guard has considered these concerns. This SNPRM proposes graduated hose stream requirements which will have a lesser electrical and economic impact than those posed in the NPRM.

The requirements in this SNPRM for fire pumps on vessels carrying not more than 150 passengers closely resemble those in existing subchapter T. Ferry vessels of not more than 65 feet in length carrying not more than 49 passengers generally do not use nozzles that produce a hose stream suitable for measurement with a pitot tube. The fire hose performance criteria for these vessels has been simplified by using flow rate and hose stream throw distance. A pump flow rate of 10 gallons per minute was selected to be compatible with the existing and proposed bilge pump flow rate with which these vessels must comply. A hose stream throw distance of 25 feet was determined to be the minimum effective distance for fighting a small fire.

The criteria proposed in subchapter T of this SNPRM, for vessels of not more than 65 feet in length carrying more than 49 passengers, and vessels of more than 65 feet in length, is the existing requirement for T–L vessels (vessels of more than 65 feet in length).

The Coast Guard's position is that these criteria will keep the requirements of subchapter T simple and compliance can be easily determined without the need to use a pitot tube or take special measurements.

The Coast Guard does not agree that pump pressure and flow criteria would ensure adequate hoseline performance for vessels proposed to be regulated by subchapter K. In proposed subchapter K, the requirement for 2 hoselines to flow at 50 psi pitot tube pressure is reduced to one hoseline for vessels carrying not more than 600 passengers with overnight accommodations for not more than 49 passengers. Vessels with overnight accommodations for more than 49 passengers would have to comply with subchapter H, as would those vessels above the proposed subchapter K/subchapter H breakpoints. On a large multideck vessel, a 15 to 20 horsepower motor should be sufficient to generate two streams at 50 psi pitot tube pressure. This sort of electrical load would significantly impact a head boat near 65 feet in length, but for a vessel with large hotel loads, such as a dinner cruise vessel or a vessel with overnight accommodations for more than 49 passengers, such an electrical load should not present a problem.

One comment liked the option to connect fire pump suction to the bilge system but another believed the opposite because the fire pump could accidentally be run dry. The regulation proposed in the NPRM was not changed. Operators should make sure valves are correctly lined up for operations.

A number of comments responded negatively to the provision requiring remote operation of the fire pump, citing concern over running the pump dry due to valve misalignment. Others wanted to retain the regulation because it reduces response time and frees a crew member to assist in fire fighting operations. Again, assuring correct valve line-up will alleviate concerns over running the fire pump dry. No change has been made to the rule proposed in the NPRM.

Because performance criteria for hoses is included in this SNPRM, § 181.300(f), which addresses fire main piping size, is no longer needed and has been removed.

A number of comments wanted to know if the proposed regulation applied to existing vessels. The proposed regulation would apply only to new vessels as specified in proposed § 181.115.

Section 181.320 Fire Hoses and Nozzles

While one comment agreed that a fire hose with nozzle should remain attached to each hydrant at all times, as required by paragraph (a), several other comments stated that a fire hose should not be attached to each hydrant, but kept stored in a safe, dry area until needed. The comments requested that the rules be made flexible to deal with

cold weather. The Coast Guard will continue to require that the hose be attached to the hydrant under normal weather conditions, because there may not be time in an emergency situation to locate, unroll, and attach the hose to the hydrant. This will ensure that the hose is available for use when and where needed. However, a provision has been included in this SNPRM which permits fire hose to be temporarily removed from the hydrant and stowed in an accessible nearby location. This will be limited to open decks, where no protection is afforded to the hose in heavy weather, or where the hose may be liable to damage from the handling of cargo or stores.

Two comments requested that hoses other than the UL 19 labeled hose proposed by paragraph (b)(1) of the NPRM be authorized for use. The reason cited was that commercial fire hose does not stand up well to weather and fishing vessel operations. The comments suggested that hose similar to that used on fuel trucks be permitted. The latter hose is usually a hard rubber hose of various diameters requiring the use of hose reels to store the hose, while the UL19 fire hose is a standard 1½ inch collapsible fire hose. The Coast Guard has amended this provision in this SNPRM and will permit the use of alternate hose types of the required diameter if such hose is listed and labeled by an independent laboratory as being equivalent in performance to UL 19 fire hose.

One comment proposed allowing fire hose nozzles similar to those used by fire departments, because these nozzles are lighter and more available. The Coast Guard has initiated a program of approving industrial fire hose nozzles as equivalent to the traditional combination fire hose nozzles. A certificate indicating this approval has been issued by the Coast Guard to those manufacturers whose nozzles were determined to be equivalent. Although plastic nozzles are corrosion-resistant and less likely to be stolen, and aluminum nozzles are light in weight, the Coast Guard does not intend to permit the use of plastic or aluminum nozzles where approved nozzles are required. Nozzles made of these materials have not been shown to have the same corrosion resistance and fire safety properties as brass when used as fire hose nozzles in a marine environment. No change has been made to the rule proposed in the NPRM.

One comment requested that in paragraph (d) the words "capable of providing a solid stream or spray pattern" be changed to "capable of being changed between a solid stream and a spray pattern." The Coast Guard has revised paragraph (d) in this SNPRM accordingly.

This section has been revised to make the hose and nozzle requirements match the revised fire pump requirements proposed in this SNPRM.

Subpart D—Fixed Fire Extinguishing Systems

Section 181.400 Where Required

Several comments, including one from the NTSB, supported the proposal in the NPRM to require fixed extinguishing systems. Other comments pointed out that most fires have occurred on wooden vessels, and urged that fixed systems should be required only on wooden and FRP vessels. Although the cause of fire is usually not related to the hull material, the Coast Guard realizes that, because the hull material itself is combustible, wooden vessels are more susceptible to fires spreading out of control, especially engine room flammable liquid fires which are not quickly extinguished. As discussed in this preamble, under Subpart E of Part 180, the Coast Guard is proposing new survival craft requirements which are a significant reduction, in some cases, from the regulations that were proposed in the NPRM. These reductions can be justified only if other means which establish an equivalent safety level, such as improving each vessel's ability to survive a fire at sea, are provided. Fixed fire extinguishing systems are expected to improve a vessel's ability to act as its own survival craft. Therefore, the requirement for fixed fire extinguishing systems on new vessels is retained in this SNPRM. As discussed under § 181.115 of this preamble, it is proposed that fixed extinguishing systems should be retrofitted on all existing vessels of wood and FRP construction.

One comment objected to the use of carbon dioxide because its release would leave the vessel dead in the water, without power, lights, and fire fighting capability. In the case of any engine room fire, it is important to shut down the engine(s) unless a collision is imminent. Section 181.410(b)(10) of this SNPRM would require that powered ventilation and engines which draw intake air from the protected space be shut down automatically prior to the release of the extinguishing agent into the space. This is necessary to prevent depletion of the extinguishing agent and to stop the flow of fuel or lubricating oil which is a likely source of the fire. Fixed extinguishing systems, approved by the Coast Guard under approval number 162.029, which incorporate an automatic engine shutdown are also equipped with a mechanism to permit a quick restart of the engine(s). All approved fixed systems (as well as portable fire extinguishers) are self-contained and do not need vessel power.

Two comments objected to the use of halon due to its decomposition into toxic products during a fire. Another comment recommended that halon be restricted to unmanned spaces. While halon will decompose during a fire, halon systems are designed to extinguish the fire quickly, resulting in a minimum of halon decomposition. The amount of halon decomposing during fire extinguishment will not significantly increase the amount of toxic products generated by the fire itself. Also, the Coast Guard requires spaces protected by halon to be unmanned or personnel must be evacuated before the halon is released. Therefore, the chances of personnel injury due to toxic products of halon decomposition are remote. The Coast Guard is not aware of any case in marine or shore applications since halon was first used as a fire extinguishing agent which has resulted in fatalities or injuries due to toxic products generated by halon decomposition.

One comment questioned the use of halon for environmental reasons (ozone depletion). Halon 1301 and 1211 have been identified as ozone depleters and their production is expected to be phased out by January 1, 1994, through international treaties and domestic regulations. Development of non-ozone depleting alternatives is underway. Until phase-out of production or development of replacement agents, whichever comes first, the Coast Guard will permit the use of halon 1211 and 1301 in portable extinguishers and fixed systems in view of their importance in saving lives during fires. However, fire equipment practices and consensus standards (specifically those of the NFPA) concerning the recycling of halon and testing techniques which do not require the release of halon are expected to limit the release of halon to that needed in fighting fires. In any case, the Coast Guard does not specify the agent, only the type of fire on which it must be effective. The vessel operator chooses the type of agent (halon, carbon dioxide, or dry chemical) which is best suited for a particular vessel.

Many comments objected to the NPRM requirement for fixed systems, citing cost, lack of deaths attributable to fires, and complexity of systems. Some of the comments pointed out that most

fires have occurred on small wooden and FRP vessels. The Coast Guard does not agree with these comments. Many vessels of more than 65 feet in length are relatively new. To wait until fires and fatalities occur before requiring the carriage of fixed systems is not justifiable. Fixed extinguishing systems in the machinery space are a proven fire protection concept. Many fixed systems have been installed voluntarily on pleasure craft by the public. For many small passenger vessels, these systems can be simple and relatively inexpensive.

One comment stated that fixed systems would be useless on some vessels since the extinguishing agent would quickly dissipate up the stack. Proposed paragraph (b)(4) of the NPRM permits the OCMI to waive the requirements for installing a fixed system if it is determined that the space is so open to the atmosphere that a fixed gas system would be ineffective. No change was made to the rule proposed in the NPRM.

One comment requested that the requirement in paragraph (a)(2) to provide fixed extinguishing systems in a space containing internal combustion engine(s) of more than 50 horsepower be increased to 500 horsepower. The comment stated that a detection system should be required in lieu of a fixed extinguishing system for engines smaller than 500 horsepower. Another comment stated that no spaces should be exempt from having fixed systems, and recommended deleting paragraph (a)(2). The Coast Guard doesn't consider the engine horsepower to have a direct relationship to the risk of fire, and intended that, except for small installations, spaces containing internal combustion engines be protected by fixed extinguishing systems. No changes have been made to the rule proposed in the NPRM.

One comment proposed adding "or ship stores" after "cargo" in paragraph (a)(6) because some vessels carry combustible paper products and liquor as ships stores below the main deck. The Coast Guard agrees, and is adding the above wording in this SNPRM. In addition, a revision to indicate that such systems must use carbon dioxide is being added, since halon systems approved by the Coast Guard are not designed to extinguish Class A fires, such as wood, paper, and plastics. The Coast Guard realizes that fixed systems are not designed to extinguish fires in Class A hazards, but a carbon dioxide system will keep the fire knocked down until the vessel reaches port.

One comment pointed out that the limitation proposed in paragraph (b)(2) which limits the maximum gross volume of a space protected by pre-engineered halon systems to 1200 cubic feet conflicts with existing Coast Guard approvals of up to 1292 cubic feet for halon systems and 2000 cubic feet for pre-engineered carbon dioxide systems. The Coast Guard agrees, and has changed the limit in this SNPRM to 2000 cubic feet.

One comment suggested that the extinguishing medium be specified for the B-II fire extinguisher permitted by paragraph (b)(3) as a substitute for a fixed system protecting small spaces. The comment did not recommend a specific extinguishing medium. While a gas type extinguisher is often preferred for an enclosed space, the Coast Guard will leave the selection of medium for the B–II sized extinguishing system to the vessel operator.

Paragraph (d) of the NPRM required that grease extraction hoods be fitted over grills, broilers, and deep fat fryers on vessels carrying more than 400 passengers and on vessels with overnight accommodations for more than 49 passengers. One comment expressed support for requiring such systems. One comment requested that this section be revised to require a grease extraction hood for each galley, regardless of the size of the vessel. The Coast Guard has reconsidered the issue and agrees that the fire hazard posed by accumulated grease exists in any galley, and cannot be directly related to the number of passengers carried or vessel size. This section has been revised in this SNPRM to require a grease extraction hood wherever grills, broilers and deep fat fryers are installed, regardless of vessel size or of the number of passengers carried.

One comment recommended that paragraph (e) should state "Each overnight accommodation space" rather than "An overnight accommodation space." This SNPRM has been changed to clarify this requirement.

One comment requested that the break point in paragraph (f), which requires a smoke actuated fire detection system for vessels carrying more than 150 passengers, be raised to more than 400 passengers. Another comment suggested that these detection systems, and the ones required by paragraph (g) on vessels carrying more than 400 passengers, should be required only on vessels having overnight accommodations for more than 49 passengers. The Coast Guard has concluded that the amount and type of fire fighting equipment should be based on the level of protection provided by using noncombustible furnishings and/or structural fire protection. In this SNPRM, these latter areas have been reduced, and the Coast Guard does not want to reduce the level of required fire detection and fighting equipment to a level which would be unsafe. The Coast Guard also would like to bring the 400 passenger break point in this section of the NPRM in line with the break points proposed in this SNPRM. Therefore, the Coast Guard is proposing that any vessel having overnight accommodations for more than 49 passengers or carrying more than 150 passengers must have a smoke activated fire detection system. These requirements were moved to subchapter K in § 118.400 (c) and no longer appear in subchapter T in this SNPRM. Under the newly proposed break points, vessels having overnight accommodations for more than 150 passengers or carrying more than 600 passengers would be required to comply with the fire detection requirements of subchapter H.

Paragraph (h) (paragraph (f) in this SNPRM) should cite the requirements of § 76.25 of subchapter H for automatic sprinkler systems, and has been corrected in this SNPRM.

Paragraph (i) (paragraph (g) in this SNPRM) allows either a manual or automatic sprinkler system for vessels with partially enclosed vehicle spaces. Automatic sprinkler systems are not effective at detecting a fire in this situation because the heat is not adequately trapped to actuate a sprinkler head. The SNPRM has been revised to allow only manual sprinklers, with automatic sprinkler systems not being an option.

It was discovered that §§ 181.400(j) and 182.410(e) of the NPRM, which require vapor detection systems on some vessels, were redundant. Paragraph (j) has been removed and the requirement for vapor detection systems remains in § 182.410(c) of this SNPRM.

Section 181.410 Fixed Gas Fire Extinguishing Systems

One comment opposed fixed systems for boats less than 40 feet, and stated that a fire bucket is good enough. The Coast Guard disagrees since fires in engine compartments occur in boats of less than 40 feet as well as in larger vessels. Buckets with water are also intended for Class A fires (involving combustible solids such as wood, paper, and plastic) while the fixed gas systems are intended to extinguish fires of combustible liquids (Class B fires) which are the primary hazard in engine compartments.

One comment questioned the need for fixed systems on small vessels in view of the alleged high cost, and suggested a bottle of carbon dioxide and a manual tripping device as a substitute for a small fixed system. The Coast Guard disagrees, since some fixed systems for small vessels appear no more expensive than the comment's proposed solution. More important, there is no way of knowing whether the comment's proposed fire fighting arrangement will result in fire extinguishment, while approved fixed systems have been determined to be effective through independent laboratory tests.

One comment suggested removing "custom engineered" from paragraph (a) as well as from the definitions in § 175.400, since it is a commonly understood phrase and does not add anything to the definition of fixed systems. The Coast Guard is retaining this term to differentiate them from pre-engineered systems. The two types of systems are designed and tested differently, and are usually intended for different applications (manned vs. unmanned spaces).

Two comments requested clarification of the requirement in paragraph (b)(2) that the release of the agent requires two distinct controls, and suggested that "two distinct operations" would be more appropriate wording. Since the purpose of the requirement is to prevent the accidental discharge of the system by someone operating the wrong control by mistake, the Coast Guard agrees, and has changed the wording in this SNPRM to "two distinct operations."

One comment suggested that the breakglass enclosure required in paragraph (b)(4) be replaced with "readily accessible enclosure." While controls must be accessible, the purpose of this requirement is to prevent the accidental discharge of the extinguishing agent. Therefore, the rule proposed in the NPRM is being retained.

Two comments asked clarification on whether the engine shutdown required by paragraph (b)(10) is mandatory in addition to the proposed mandatory shutdown of powered (mechanical) ventilation. The comments also suggested that systems be required to have only manual actuation of a fixed fire extinguishing system, supplemented by a detection system, to prevent a vessel from suddenly becoming "dead ship," which could be an even more hazardous situation. The NPRM proposed mandatory shutdown of any engine which draws intake air from the protected space before extinguishing agent is released. The purpose is to prevent an engine from depleting or reducing the concentration of the extinguishing agent, thus significantly reducing the extinguishing capability of the agent. Shutting down the engine(s) also has the benefit of stopping the flow of fuel or lubricating oil which is a likely source of the fire. The proposed requirement was apparently misinterpreted. Automatic actuation of a fixed fire extinguishing system is not required. Manual actuation is preferred, but automatic actuation would be allowed by § 181(c)(2) under special circumstances. But once the system is actuated, engines must be automatically shut down. This allows the vessel's master to retain control of when the vessel goes "dead ship," which prevents any dangerous "in extremis" situations. However, discretion should be exercised in delaying actuation of a fixed fire extinguishing system to prevent unnecessary damage or danger to passengers. No change was made to the rule proposed in the NPRM.

One comment stated that the hydrostatic test required by paragraph (d)(8)(ii) is not realistic since it can't be performed at most boat yards during most times of the year. The comment is misinterpreting the proposed requirement. What is meant here is that the piping should be tested at the internal pressure which the cylinder would reach if it were heated to its maximum allowable storage temperature of 130°. It is not the Coast Guard's intent that the piping itself be heated to 130° and then leak tested. The intent is to have the piping tested at the maximum working pressure, which will vary for carbon dioxide, Halon 1301 pressurized with nitrogen to 360 psi (at 70°), and Halon 1301 pressurized with nitrogen to 600 psi (at 70°).

One comment requested that paragraph (g)(2) be modified to require the quantity of halon recommended by NVIC 6–72, Change I (B.3). While a detailed calculation method is contained in the NVIC, the quantity of halon required by subparagraph (g)(2) is consistent. No change to the rule proposed in the NPRM is necessary.

Section 181.420 Pre-Engineered Halon Fixed Gas Systems

One comment stated that "pre-engineered" is not a useful term since the regulations in this section are necessary for all fixed systems. The Coast Guard disagrees because "pre-engineered" and "custom engineered" halon systems are different in design, are tested differently, and are used for protecting different spaces (small unmanned vs. large manned spaces). A separate section for pre-engineered systems emphasizes their difference from custom-engineered systems.

Another comment stated that pre-engineered systems should not be permitted to have automatic actuation because of possible piloting problems. The comment suggested instead the use of heat actuated detectors in combination with systems which only have manual actuation. The Coast Guard disagrees, since the use of automatic systems in unmanned spaces offers a distinct advantage in the early detection of the fire and automatic discharge of the extinguishing agent. Owners or operators who are concerned that automatic discharge of the extinguishing agent will render the vessel without power in a precarious situation should purchase a system with an optional engine restart mechanism.

One comment requested that a paragraph be added emphasizing that only one pre-engineered (automatic) system may be used to protect each space. The Coast Guard agrees. The installation of several small systems in place of one large system may cause the individual systems to discharge at different times, causing the concentration of halon to not reach high enough levels to extinguish the fire. Paragraph (c), stating that only one system may be installed in each space, has been added to this section of this SNPRM.

Section 181.425 Galley Hood Fire Extinguishing Systems

Another comment suggested removing the word "pre-engineered" from paragraph (b) since it is not necessary. The Coast Guard agrees, and has deleted it in this SNPRM.

Subpart E—Portable Fire Extinguishers

Section 181.500 Required Number, Type, and Location

One comment requested inclusion of UL extinguisher classifications in addition to the Coast Guard classification in the last column of Teble 181.509(a). This is not necessary since the requirements in this section reference Coast Guard extinguisher classifications, not UL extinguisher classifications. All Coast Guard approved extinguishers carry the markings necessary to make extinguisher selections.

One comment suggested that the type of halon be specified. The Coast Guard does not agree. At the present time Halon 1211, 1301, or a mixture thereof, is acceptable. Portable extinguishers using a type of halon which is not accepted by the Coast Guard will not be Coast Guard approved or accepted by UL for marine use.

Two comments stated that Table 181.500(a) should be revised to increase the number of portable fire extinguishers required for a given size accommodation area. The comment

further stated that the table as proposed in the NPRM would result in numerous multideck vessels which would not need portable fire extinguishers in the accommodation areas. Existing subchapter T currently requires at least one extinguisher in each accommodation space, regardless of the size of the area. Even if a deck has small or no accommodation areas, it is unlikely that any deck would be without at least one extinguisher of some type. However the Coast Guard does agree that each accommodation space should have an A–II fire extinguisher, regardless of the size of the space. The Coast Guard has revised this table in this SNPRM.

Table 181.500(a) is also being corrected in this SNPRM to delete the halon extinguisher from the selection for accommodation spaces since the Coast Guard has not approved halon extinguishers for Class A fires.

One comment stated that foam fire extinguishers should not be allowed and should be deleted from Table 181.500(a) since they add nothing to the table. The comment is apparently referring to the old inverting type chemical foam extinguishers which are obsolete. However, mechanical foam (AFFF) extinguishers are being used shoreside, and can be useful in marine applications. While none are now approved for marine use, approvals of mechanical foam (AFFF) portable fire extinguishers suitable for use in a marine environment are expected in the future. The Coast Guard is retaining the category of portable foam extinguishers in this SNPRM in anticipation of approving portable AFFF fire extinguishers in the near future.

Another comment pointed out that the B–II extinguisher located outside the entrance to the machinery space, under paragraph (b) of the NPRM, is inadequate. The comment further concluded that the addition of a fixed system does not change this. The Coast Guard disagrees. Portable fire extinguishers are provided as a first defense against small, local, incipient fires. Portable fire extinguishers are not intended for fighting large, well developed fires. Fires which can not be extinguished immediately with the portable fire extinguisher must be fought with the fixed extinguishing system.

One comment recommended deleting the phrase "with a volume of more than 3000 cubic feet" from paragraph (b). Since no details were provided it is assumed that the comment believes that a B–II portable fire extinguisher should be provided to supplement the fixed system regardless of the size of the machinery space. The Coast Guard agrees and has deleted the volumetric reference in this SNPRM. Another related comment suggested deleting this paragraph and requiring a B–II extinguisher instead of the B–I required by Table 181.500(a) for machinery spaces. The Coast Guard considered both comments, and thinks that a single B–II located just outside a machinery space will be sufficient as a first defense. The B–II will provide more fire fighting capacity than a B–I, which will no longer be required. Paragraph (b) has been removed and Table 181.500(a) changed. Because most machinery spaces contain generators, electrical wiring and/or motors, the Coast Guard is proposing in this SNPRM to change the required extinguisher to a B–II,C–II instead of just a B–II. The effect of the proposed change would be to require a B–II,C–II extinguisher located outside the entrance of a machinery space.

One comment recommended that a galley should have an A–II extinguisher for normal Class A use. The Coast Guard agrees, and has changed the required B–II extinguisher to A–II, B–II in this SNPRM. This would require an extinguisher suitable for both combustible solids (wood, paper, and plastics) and flammable liquids. The selection of agent will be limited to dry chemical or foam (if available), since only the latter agents are suitable for both classes of fires.

Another comment recommended requiring B–II extinguishers in open or enclosed accommodation areas. The Coast Guard disagrees, since the primary danger is expected to be Class A fires caused by dropped cigarettes and matches, or electrical wiring, rather than flammable liquids. Owners or operators desiring an extinguisher which is also effective on flammable liquids may select a dry chemical extinguisher of a type suitable for use on Class A, B, and C fires (an ABC type extinguisher).

One comment suggested deleting "B–V" from paragraph (e) of the NPRM. This could result in many fire extinguishers being permanently attached to a bulkhead or deck. The purpose of this requirement is to prevent wheeled semiportable fire extinguishers from being uncontrollable in heavy seas. Since the same problem does not exists with portable fire extinguishers, the Coast Guard retained the proposed requirement in paragraph (d) of the SNPRM.

Section 181.520 Installation and Location

This section of the NPRM proposed to require portable fire extinguishers to be placed at a location satisfactory to the OCMI. One comment said that this section should address the visibility of fire extinguishers. The Coast Guard has included additional wording pertaining to this proposed requirement in this SNPRM.

Subpart F—Additional Equipment

Section 181.600 Fire Axe

One comment believed that fire axes should be stowed in locations only accessible to the crew and not to passengers. The Coast Guard disagrees. The requirement to locate the fire axe in or adjacent to the operating stations will assure that it is readily available for use and not difficult to locate, which it might be if stowed as recommended above. The rule proposed in the NPRM has not been changed.

Section 181.610 Fire Bucket

Although a number of comments stated that the requirement for fire buckets was ridiculous, others concurred with the requirement. Although buckets are very simple, they can be highly effective for extinguishing fires, especially on smaller vessels. On the M/V ACADIA a bucket brigade extinguished a rather significant fire in September 1989 with seawater. The requirement is retained in subchapter T, but is not proposed in Subchapter K because of the higher level of fire detecting and extinguishing equipment proposed to be installed on these vessels.

One comment wanted to know if fire buckets were required to meet any construction specifications. Although no specifications are cited, buckets are to be of suitable construction and acceptable to the OCMI.

Part 182—Machinery Installation

Subpart A—General Provisions

Section 182.130 Alternative Standards

For vessels of not more than 65 feet in length carrying not more than 12 passengers, alternative standards may be met. Among those alternative standards are various ABYC and 33 CFR subchapter S requirements. Two comments stated that there is no need for this regulation because there are not many vessels which carry this few passengers. Also, more resources will be needed to track the vessel from zone to zone to ensure it is never allowed to carry more than 12 passengers. The Coast Guard has adopted industry standards to as large an extent as possible to reduce the burden on industry. With the use of the MSIS system, keeping track of these vessels should not impose an undue administrative burden.

One comment stated that ABYC standards are not product standards but installation standards which contain few performance requirements. The Coast Guard notes that most of the scope sections of the ABYC standards state that the standards are intended as guides for design, construction, and installation of the applicable system. The Coast Guard considers the use of or reference to standards such as those promulgated by ABYC or NFPA valuable, and that such use or reference increases the safety and quality of systems and vessels. The Coast Guard actively participates in the development of ABYC and NFPA standards. ABYC standards are being used by ISO to develop international standards. Specific problems with the ABYC or their standards should be brought to the attention of the Coast Guard. If technical arguments can be provided, the Coast Guard may be successful in getting changes made to the ABYC standards.

Subpart B—Propulsion Machinery

Section 182.200 General

This section called for engines to have at least two means of being stopped, and an overspeed trip and or shutdown device for all diesel and gas turbine engine installations rated at 300 horsepower or more. Numerous comments stated that overspeed shutdowns are not necessary. They stated that it would be unsafe to have an engine shut down when operating near a bridge or in vessel traffic as maneuverability would be impaired. One additional comment stated that overspeed trips are unnecessary on four cycle engines. And another comment wanted to know at what RPM setting the overspeed shutdown would operate. The Coast Guard considers overspeed trips to be proven, inexpensive safety devices which are appropriate if the installation criteria of existing published industry standards are met. The requirement for an overspeed trip and/or shutdown device on diesel engines has been retained, and the Coast Guard is proposing to incorporate ABS standards which specify overspeed settings in this SNPRM. This proposed requirement, which is applicable to auxiliary machinery as well as propulsion machinery, has been moved to a new § 182.410(e) to show more clearly its application to all diesel engine installations. The provisions of § 182.220(c) cover the limited number of cases in which gas turbines are installed aboard small passenger vessels and the overspeed shutdown requirement for gas turbines has been left out of this section of this SNPRM.

Subpart D—Specific Machinery Requirements

Section 182.405 Fuel Restrictions

This section restricts the use of liquefied and non-liquefied flammable gases as fuel for internal combustion engines on all small passenger vessels. One comment strongly opposed the use of gasoline for all inboards. The comment stated that there are more benefits from prohibiting the use of gasoline as an inboard propulsion fuel than from other costly fire safety rules proposed. The Coast Guard's position is that there are valid environmental and energy conservation reasons for the exploration of alternative main machinery fuels (including gasoline) and does not wish to prohibit their use. It is not intended to imply that unsafe fuels are encouraged, but it is important to recognize that alternative fuels will be proposed and their application must be anticipated. Statistics indicate that gasoline is more dangerous than diesel fuel. For this reason, additional precautions must be adhered to when gasoline systems are installed. The rule proposed in the NPRM has been revised in this SNPRM to allow the use of other alternative fuels on a case-by-case basis. The Coast Guard solicits additional input relative to alternative fuel safety, design, and applications.

Presently there are no vessels carrying more than 150 passengers which use gasoline as a propulsion fuel, and there are only 4 such vessels which carry more than 100 passengers (105, 119, 120, and 150 passengers). Generally, vessels which would be regulated by proposed subchapter K would not use gasoline as a fuel for propulsion or other machinery, except for outboard motors on small boats. Therefore, references to items such as gasoline, gasoline vapors, and carburetors have been removed from proposed subchapter K in this SNPRM, except for § 119.458 which contains requirements for portable fuel systems such as outboard motors. Section 119.405 would allow the use of alternative fuels, including gasoline and compressed gas, on a case-by-case basis.

Section 182.410 General Requirements

This section proposed general requirements for gauges, rotating machinery guards, enclosed machinery space gasoline engine requirements, and compressed air starting for diesel engines. Several requirements in paragraphs (a), (b), (d), and (f), which cover specified machinery design or complicated the regulations, have been removed in this SNPRM.

Two comments indicated that, as a result of casualties, there is a need for paragraph (c) in the NPRM to require both visible and audible alarms for exhaust cooling water flow failure. The Coast Guard has concluded that a suitable visible or audible warning device is adequate and has included this requirement in § 182.425 (b)(5).

Another comment stated that outboards should be exempt from paragraph (c). The Coast Guard agrees this requirement is not intended to apply to outboard engines and has clarified this in this SNPRM.

One comment stated that the vapor detectors required by paragraph (e), (now paragraph (c) in the SNPRM) are complex, vulnerable to damage and corrosion, and some are useless at high or low temperatures. The Coast Guard has concluded that reliable marine combustible gas indicators are necessary to protect against the hazards of gasoline and other fuels with low flashpoints. Combustible gas indicators have been effective in atmospheres containing gasoline fumes and compressed natural gas. The indicators must be strictly used and maintained as recommended by the manufacturer to ensure reliability.

One comment proposed that paragraph (e) in the NPRM should require any space containing gasoline fuel tanks, as well as gasoline machinery, to have vapor detectors due to possible valve and gage leaks. Casualty statistics do not support the need for this measure. Although the Coast Guard agrees that valve and gage leaks are possible, the likelihood of fuel leaks is much greater in a machinery space. Most separate fuel tank compartments will have much fewer, if any, ignition sources and the risk of explosion is much less. Therefore, the Coast Guard has limited requirements for vapor detectors to machinery spaces in this SNPRM.

Another comment stated that vapor detectors are not necessary on open boats whose decks are open at sides for ventilation, since the operator can detect the gasoline odors. Reliance on the operator's ability to smell gasoline odors is not considered to be an adequate substitute for a vapor detector.

One comment stated that all hoses should be double clamped where practicable. Double clamping for hoses is found in several regulation cites, specifically: § 182.422(e), keel coolers; § 182.445(g), fuel fill and sounding pipes; and § 182.455(a)(2)(viii), fuel piping. The Coast Guard has decided to have a general requirement for double clamping where use of clamped hoses is allowed. The double clamping of hoses is included as a general requirement in new paragraph (d) [K § 119.410(c)] in this SNPRM.

Section 182.415 Carburetors

No comments were received on this section. However, in another regulatory project entitled "Incorporation and Adoption of Industry Standards" [CGD 88–032], published as a final rule in the **Federal Register** on 29 July 1991 (56 FR 35817), the Coast Guard developed new standards for backfire flame arrestors. These standards have been incorporated into this SNPRM. As a result, the two additional industry standards cited in that rule have been included for incorporation by reference under proposed § 175.600 of this SNPRM. These standards do not apply to outboard engines, and proposed § 182.415(b) has been revised accordingly.

Section 182.420 Engine Cooling

This section proposed specific requirements for engine cooling systems for all inboard engine installations. In the NPRM, reference was made to ABYC standards P–4 and P–10 for vessels of not more than 65 feet in length carrying not more than 12 passengers. ABYC P–10 is an outdated standard. ABYC P–4 has been updated and the appropriate requirements concerning air-cooled engines were incorporated into it. The SNPRM reflects this update.

One comment pointed out that ABYC P–4 does not limit maximum temperatures of exposed exhaust surfaces or require ignition protection of starter, distributor, or other components, and recommended that, for all gasoline installations, all electrical components and the engine should be ignition protected as determined using UL test method 1500. The Coast Guard realizes that ABYC P–4 does not specifically address ignition protection of electrical components of engines. However, ABYC P–4 references ABYC E–9 which requires potential sources of ignition located in gasoline machinery or fuel tank spaces to be ignition protected. The Coast Guard does not agree that the engines themselves need to be ignition protected and considers the requirements contained in ABYC P–4 and §§ 182.410 and 183.530 [K § 120.530] to be sufficient.

Section 182.422 Keel Cooler Installations

This section contained requirements for keel coolers similar to those found in 46 CFR 56.50–96 of subchapter F. Two comments stated that isolation valves are not necessary and two others stated that internal shutoff valves may cause more problems than they solve. The Coast Guard disagrees. Isolation valves must be installed to ensure system integrity. The Coast Guard is not aware of any problems caused by properly installed and maintained internal shutoff valves in keel cooler installations. These, like other internal shutoff valves (e.g., sea chest valves) are necessary to prevent uncontrolled flooding in the event of structural failure.

One comment stated that double hose clamps should be required by paragraph (e)(3) in all cases, because it is difficult to determine visually whether a pipe has beaded ends. Another comment recommended that all pipe ends be required to be beaded because it gives superior sealing results. The Coast Guard agrees a beaded pipe provides better sealing performance than straight pipe. Therefore, only single clamping is required on a beaded pipe. However, it is difficult to determine if a pipe is beaded when an existing installation is inspected. If the marine inspector is not convinced that the pipe is beaded, double clamping will be required where practicable. Double clamping of hoses is also discussed under § 182.410 of this preamble.

Several comments stated that the requirements for keel coolers were too specific and too complex, citing requirements such as required edge preparation, cooler structure, and fairing requirements. The Coast Guard concurs and has greatly simplified these requirements in this SNPRM. In addition the requirements for keel coolers in § 182.423 have been combined with this section because they are now so similar.

Section 182.423 Grid Cooler Installations

This section, which has been combined with § 182.422 in this SNPRM, proposed requirements for grid cooler hull penetrations, protective measures, and shutoff (isolation) valves. One comment stated that grid cooler hull penetrations through cofferdams or seachests, required by paragraph (a), eliminated the need for the shutoff valves required by (c). The Coast Guard disagrees. Longstanding policy for grid coolers assumes that the force required to damage a non-integral keel cooler would likely be sufficient to indent a vessel's hull and place severe stresses on inboard piping. Such a casualty could conceivably lead to a concurrent piping system failure. Isolation valves must be installed to ensure system integrity.

One comment stated that internal shutoff valves may cause more problems than they solve. The Coast Guard disagrees. Isolation valves must be installed to ensure system integrity. The Coast Guard is not aware of any problems caused by properly installed and maintained internal shutoff valves in keel or grid cooler installations. These, like other internal shutoff valves (e.g., sea chest valves), are necessary to prevent uncontrolled flooding in the event of structural failure.

Another comment stated that the phrase "as close to the hull as practicable" should be added to paragraph (c). The Coast Guard concurs and the addition has been made in § 182.422 (b) of this SNPRM to clarify the intended location of the shutoff valves.

Several comments stated that the requirements for grid coolers were too specific and too complex, citing requirements such as required edge preparation, cooler structure, and fairing requirements. The Coast Guard concurs and has greatly simplified these requirements in this SNPRM.

Section 182.425 Engine Exhaust Cooling

This section contains requirements for horizontal and vertical exhaust systems, and exhaust cooling water systems. It references ABYC Standard P–1 as an alternative. One comment called for more stringent standards for dry exhaust systems, as per NTSB Recommendation M–85–083. The Coast Guard disagrees. NTSB recommendation 85–083 calls for dry exhaust stacks to be insulated with removable insulation pads as a result of a fire onboard M/V FANTASY ISLANDER. Other factors contributed to the fire on that vessel. Overall, satisfactory performance has been achieved from properly installed and maintained exhaust insulation.

One comment stated that cooling water for an exhaust pipe is sometimes injected after a dry muffler, in which cases the exhaust will be lagged as necessary. The Coast Guard agrees. However, § 182.425(b)(3) adequately covers this concern.

One comment stated that paragraph (b)(5) should specifically define failure in terms of partial or full water flow loss, or temperature increase. The regulation is written such that the designer will consider and anticipate the additional concern associated with an exhaust cooling system which is separate from the engine cooling system. As with all designs, it is incumbent on the designer to ensure that his particular system is adequately safeguarded. However, the regulation in this paragraph and in § 182.410(c) has been reworded in this SNPRM for clarification.

One comment expressed concerns that ABYC P–1, referenced in paragraph (c), allows too many questionable materials and that the loss of cooling water will damage them. It recommended the use of UL test method 1129 to ensure higher temperatures can be withstood. Additionally, the comment recommended using UL ignition protection test method 1500 to check if exposed surfaces reach 200°F. The Coast Guard disagrees. ABYC Standard P–1 is the primary standard referenced in 46 CFR Subchapter F for many years. Acceptable service has resulted from complying with this standard. To minimize the burden on the industry while maintaining safety, meeting ABYC Standard P–1 is considered to be satisfactory.

Section 182.430 Engine Exhaust Pipe Installation

Requirements for installation of horizontal and vertical exhaust systems, insulation, and exhaust cooling water systems are contained in this section, which references ABYC Standard P–1 as an alternative. One comment stated that simply requiring schedule 80 piping requirement in paragraph (c) (paragraph (d) in the SNPRM) is not good because materials such as PVC might be used, and recommended that an ABYC or NFPA requirement be referenced instead. The Coast Guard agrees, and the second sentence of the paragraph directed the reader to the materials listed in ABYC Standard P–1. This standard is referred to in § 182.45 of the SNPRM. PVC pipe is not listed, but fiberglass materials which have been certified for marine use are acceptable for the exhaust piping in wet exhaust systems for both gasoline and diesel engines.

Two comments stated that the schedule 80 requirement is too strict because most problems occur at the point of water injection, and schedule 40 should be allowed at other points. The Coast Guard disagrees. The most highly recommended materials for use in exhaust systems are all corrosion resistant. Limited life can be expected from galvanized steel and iron piping, which are subject to corrosion at high rates. Therefore, the requirement for such materials to be schedule 80 is not unreasonable.

Concerning paragraph (d), two comments stated that any hose should be "certified" for exhaust use. Materials required to be "certified" for marine use are subject to manufacturer self-certification. The Coast Guard does not think it is necessary to require this "certification" for exhaust hose. Recreational boats are the only products presently required to be "certified" by their manufacturers.

Two comments stated that clamped hoses should be double clamped. The Coast Guard agrees. This statement is consistent with ABYC Project P–1, which requires double clamping, and has been incorporated by reference in these regulations. As discussed under § 182.410, the NPRM has been revised by requiring double clamping of any flexible nonmetallic hose, when practicable. There will be few or no occasions when double clamps should not be used in exhaust systems.

Four comments stated that water cooled aluminum exhaust pipe should be allowed to penetrate an aluminum bulkhead on an aluminum vessel. The Coast Guard disagrees. ABYC Standard P–1 is the recognized standard for exhaust systems for propulsion and auxiliary machinery. This standard does not recognize aluminum as an acceptable material for either wet or dry exhaust systems for diesel or gasoline engine installations. Aluminum has a relatively low melting point and will distort when subjected to high temperatures resulting from engine exhaust.

Three comments stated that the spark arresters required by paragraph (g) are not necessary on steel or aluminum vessels or for diesel engine installations. The Coast Guard agrees they are not necessary on diesel engines, and has deleted the requirement in this SNPRM. Section § 182.415 requires backfire flame control on gasoline engines, except outboard motors, to minimize the chance of a fire.

One comment requested that paragraph (i) be changed to more clearly require adequate access for inspection. The Coast Guard concurs with the intent of this comment and has reworded the regulation in this SNPRM to clarify that access should be adequate to allow complete inspection of the exhaust system.

One comment recommended adding a subparagraph prohibiting exhaust piping from passing through or within 3 feet of fuel tanks. Installations are occasionally attempted with exhaust pipes touching, or passing through tunnels in, fuel tanks. The Coast Guard agrees that there is danger in allowing hot exhaust pipes near fuel tanks. Section 177.400(a) states that the general construction of the vessel must be such as to minimize fire hazards and § 182.430(i) states that arrangements must be made to provide access to the exhaust piping throughout its length. Exhaust piping should not touch fuel tanks or be run through fuel tanks in pipe tunnels. The regulations as written are adequate to decrease the incidence of unsafe arrangements while allowing the designer flexibility in design and arrangement of vessel systems.

Section 182.435 Integral Fuel Tanks

Requirements for gasoline and diesel integral fuel tanks are proposed in this section. One comment questioned why independent tanks are prohibited from having access openings in sides and ends of tanks and integral tanks are not. This comment stated there was little difference between independent and integral tanks, and that the regulations concerning access openings should be the same. The prohibitions against openings in sides and ends of independent fuel tanks in § 182.440 are consistent with other established standards such as UL 1102. Due to the arrangement of some integral tanks, manhole openings may not always be practicably located on the top of the tanks. The rule proposed in the NPRM is considered adequate.

Section 182.440 Independent Fuel Tanks

This section proposed requirements for independent fuel tanks which address materials, construction, location, installation, tests, and alternative procedures. One comment stated that the design details in paragraph (a) could be omitted if an overpressure test was required. The Coast Guard disagrees because a hydrostatic test cannot be used in lieu of design requirements which address things such as fire protection, mechanical damage, and free surface effects. The tests required by § 182.440(c) are intended to ensure adequate construction.

One comment stated that a section discussing resins which are acceptable when wrapping steel or aluminum tanks in FRP should be added. The Coast Guard disagrees because this type of installation is not typical aboard inspected vessels. ABYC Projects H–24 and H–33 both include guidance for metallic and nonmetallic tanks that are enclosed in plastic. This guidance is considered acceptable for vessels of not more than 65 feet in length carrying not more than 12 passengers. Wrapping steel or aluminum tanks in FRP for use on larger vessels must be approved by Commandant as stated in § 182.440(a)(2) of the NPRM.

One comment stated that stainless steel should be specifically listed as a non-approved material. The Coast Guard agrees. Footnote 4 to Table § 182.440(a)(1) of the NPRM stated that stainless steel is not accepted under the heading of "steel". This requirement has been clarified in this SNPRM by adding a separate footnote to address stainless

steel. However, materials other than those listed in Table 182.440(a)(1), including stainless steel, will be considered by Commandant under § 182.440(a)(3) of this SNPRM.

One comment stated there seems to be an inconsistency in the NPRM, because footnote 4 of the Table prohibits stainless fuel tanks but paragraph (d) makes an exception by accepting ABYC which allows stainless steel cylindrical tanks less than 150 gallons. Alternative procedures in paragraph (d) allow tanks to be built in accordance with ABYC Projects H–24 or H–33, on vessels of not more than 65 feet in length carrying not more than 12 passengers. Both ABYC standards allow 316L stainless steel to be used in construction of cylindrical tanks of less than 20 gallons with domed heads. Accelerated localized corrosion is a major shortcoming of stainless steel in an environment subjected to contact with salt water. Paragraph (d) and the footnotes to Table 182.440(a)(1) have been modified in this SNPRM to reflect the current policy that stainless steel and other materials not listed in the table can only be used with the Commandant's approval.

One comment strongly supported installation of metallic fuel tanks in a manner which will permit examination of the entire top of the tank and the fittings allowed by paragraph (a)(4) of the NPRM, since the tank is subject to corrosion. The Coast Guard agrees that the top of the tank is subject to corrosion which necessitates close inspection. Section 182.440(b)(2) of the NPRM proposed that fuel tanks and fittings be installed to permit examination and is unchanged in this SNPRM.

One comment observed the inconsistency in the NPRM that sight glasses are not permitted by paragraph (a)(4), but paragraph (a)(6) allows them for diesel tanks. The prohibition against sight glasses in gasoline fuel tanks is consistent with subchapter F (46 CFR 58.50). To make paragraphs (a)(4) and (a)(6) of the NPRM consistent, paragraph (a)(4) (paragraph (a)(5) of this SNPRM) has been modified to allow tubular gauge glasses for diesel systems. Future consideration will be given to making 46 CFR 182.440, 46 CFR 58.50, and the ABYC standards consistent.

Two comments stated that tank cleaning openings allowed by paragraph (a)(4)(i) of the NPRM should be required to be valved to prevent accidental discharges of fuel. Allowing an opening for a threaded plug or cap is consistent with subchapter F (46 CFR 58.50) requirements. To require a valved arrangement for a small passenger vessel would exceed the requirement for vessels subject to 46 CFR subchapter F. Alternative compliance with ABYC Projects H–24 or H–33 provides allowances for drain valves on fuel tanks. Provided that it is adequately guarded against accidental opening, the valved fuel drain might be a better arrangement. Removal of this paragraph will be considered in the next revision of subchapter F. Consideration will be given to making 46 CFR 182.440, 46 CFR 58.50, and the ABYC standards consistent.

Referencing paragraph (a)(6), one comment recommended that try cocks not be allowed on any tank as they are too easily left in the open position. The Coast Guard agrees. Try cocks may be accidentally left in the open position and may even vibrate open if not properly maintained. Try cocks in fuel systems are not a good practice because fuel invariably flows to the bilges or on other equipment during soundings. The SNPRM has been revised in paragraph (a)(7) to delete the reference to try cocks.

One comment stated that the requirements for vertical baffle plates in paragraph (a)(7) of the NPRM ((a)(8) in the SNPRM) is irrational and cumbersome, and increases maintenance and difficulty in construction. This comment thought paragraph (a)(9) of the NPRM sufficient to avoid structural damage or instability. Another comment stated that no similar requirements exist for integral tanks and that fuel sloshing frequency will rarely reach the natural frequency of the tank for a 30 inch dimension. Another comment disagreed, stating that structural integrity problems and dynamic instability will occur if baffle spacing exceeds 30 inches, and that apparent cost savings do not justify the work and calculations to prove, under paragraph (a)(9) of the NPRM, that certain baffles are not required. The Coast Guard sees no reason to limit the flexibility allowed by the regulations as written. The regulations permit the flexibility of following the regulatory requirement for constructing the tank with baffles, or using design calculations to show equivalent tank design and construction.

One comment stated paragraph (a)(8) of the NPRM should require baffles to be continuously welded or specify a welding sequence, because the welds pull loose when spot welded. The baffle plate requirement is consistent with Subchapter F requirements (46 CFR 58.50) and ABYC standards. No changes were made to the rule proposed in the NPRM.

Two comments requested identification of the types of calculations required by paragraph (a)(9) of the NPRM to show the adequacy of tanks without baffles. The Coast Guard disagrees. There are many methods ranging from finite elements to basic handbook formulae which incorporate a wide range of assumptions. The designer must substantiate the method used to the OCMI who may, in turn, request technical assistance from the Marine Safety Center as necessary.

One comment stated that FRP standards should be included in Table 182.440(a)(1). The Coast Guard agrees. Fiberglass has been added to the Table, with specific fire retardancy and construction requirements given in new paragraph (a)(2). Paragraphs (a)(3) through (a)(8) have been renumbered. The two ASTM test standards cited in the new paragraph (a)(2) have been included for incorporation by reference under proposed § 175.600 of this SNPRM. Paragraphs (a)(5), (a)(6), (a)(7), (a)(8) and (a)(9) of the NPRM have been revised in this SNPRM to clarify that certain of the proposed requirements are applicable only to metal tanks. In particular, baffle plates are not considered necessary in fiberglass tanks because the tanks must pass the sloshing and impulse loading tests of UL 1102, which are designed to test the structural adequacy of the tank. UL 1102 is widely accepted as a standard for fiberglass tanks. Baffle plates may be installed in fiberglass tanks if the owner or builder desires, as allowed by proposed § 182.440(a)(2)(v) of this SNPRM. In the past, and as proposed in this SNPRM, regulatory design standards have been substituted for performance standards such as UL 1102. Persons wishing to do so may propose, under § 175.540, that the design standards for fiberglass tanks in UL 1102 be accepted as equivalent to the requirements in this section for the construction of metal tanks. These equivalencies would be handled on a case-by-case basis by the Marine Technical and Hazardous Materials Division at Coast Guard Headquarters.

One comment stated that ABYC standards should not be allowed as alternatives in paragraph (d) because they allow rotationally molded plastic tanks on which ABYC has not yet completed the 2½ minute burn test. The Coast Guard's position is that nonmetallic tanks can be used, but agrees that materials used in the construction of tanks must be regulated. Paragraph (d) has been modified in this SNPRM to reflect current policy on materials not listed in Table 182.440(a)(1).

Section 182.445 Fill and Sounding Pipes for Fuel Tanks

This section is similar to existing regulations, but has the significant difference of allowing alternative compliance with ABYC standards and 33 CFR part 183 for vessels of not more than 65 feet in length carrying not more than 12 passengers. One comment stated that flexible hose allowed by paragraph (g) of this section and § 182.450(g) should be labeled A–1 if it can trap fuel and B–1 otherwise. The regulations in 33 CFR part 183 adequately address the use of USCG Type A–1 and B–1 hose. The Coast Guard does not intend for this requirement to limit hose selection to Type A–1 and B–1 hoses. Many other hoses meeting the fuel requirements in SAE J1942 may be used if Type A1 or B1 hose is not adequate for the intended application.

One comment stated that sounding pipes on the sides of a tank are impractical and inaccurate. The Coast Guard agrees that sounding pipes on sides of tanks may be impractical. However, where it is necessary to have sounding pipes on the sides of the tanks, these regulations do not prohibit such an arrangement.

Section 182.450 Vent Pipes for Fuel Tanks

This section is similar to existing regulations, but has the significant difference of allowing alternative compliance with ABYC standards and 33 CFR part 183 for vessels of not more than 65 feet in length carrying not more than 12 passengers. One comment stated that paragraph (f) should be deleted and that paragraph (e) is adequate. The comment stated that ABYC and 33 CFR do not adequately address flame screens. The Coast Guard disagrees. ABYC and 33 CFR require flame arresters, which accomplish the same thing as flame screens, and these standards are considered adequate for vessels of not more than 65 feet in length carrying not more than 12 passengers.

Section 182.455 Fuel Piping

This section is similar to existing regulations, but has the significant difference of allowing alternative compliance with ABYC standards and 33 CFR part 183 for vessels of not more than 65 feet in length carrying not more than 12 passengers. Further, it has been reorganized by referencing a new § 182.720(e) specifically dealing with the use of flexible nonmetallic hose installations, and by moving paragraph (a)(2) to that new section.

There were no comments questioning the 30 inch hose length limitation in paragraph (a)(2)(i). The Coast Guard periodically receives inquiries concerning the use of substantially longer lengths of flexible hose as fuel line. Reasons for a 30 inch limitation are that hard piped fuel systems result in a somewhat higher level of safety and reliability, and, traditionally, are good engineering practice. The Coast Guard's position is that hoses are reliable when properly maintained and installed, and provide excellent service in areas of high vibration and difficult access, and has allowed their use for runs longer than 30 inches in the past. In this SNPRM, the 30 inch limitation has been removed, but the Coast Guard is soliciting comments concerning the reliability and safety of using flexible hose in place of fuel piping or tubing. Although not proposed in this SNPRM, the Coast Guard is considering a mandatory replacement interval for flexible nonmetallic hose, and solicits comments from hose manufacturers and users on recommended replacement intervals.

One comment recommended adding a section to paragraph (a)(2) restricting the use of flexible hose in undesirable locations, recommending, "(ii) flexible hose may only be used where necessary for vibration absorption such as where connecting up to running machinery." The requirement proposed in the NPRM would prohibit flexible hose from being installed in undesirable locations. Specifically, "flexible hose runs must be visible, easily accessible, and must not penetrate watertight bulkheads." The Coast Guard sees no reason to make a change.

One comment stated that allowing the use of 5 psi A and B hose in subparagraph (a)(2)(vi) would provide relief for both inspectors and owners. Another comment stated that there should not even be this much of a relaxation of this requirement. The Coast Guard agrees that this would be a relaxation to owners and inspectors and disagrees that the regulation is too relaxed. Careful reading of the regulation shows that the operating pressure is limited to 5 psi and that the limitations of 33 CFR must be followed.

Paragraph (a)(2) has been moved to a new § 182.720(e)(3) in this SNPRM so that, as much as is possible, nonmetallic flexible hose requirements are in one location with requirements for other nonmetallic piping materials.

One comment stated that the phrase "The shutoff valve at the tank must be operable from outside the tank compartment" in paragraph (b)(4) raises the question of the acceptability of reaching through an access opening or door into the compartment, and if so, whether the valve should be shielded from flames. The Coast Guard's position is that if the remote shutoff valve is located in the engine room, then it should be remotely operable from outside the space in order to shut off fuel in case of an emergency. This requirement has been reworded in this SNPRM to be more like the wording in § 56.50–60(d)(1) of subchapter F, which more clearly shows the intent that the fuel shutoff valve must be operable from outside the compartment in which the valve is located. Additional requirements have been added to ensure that, if someone has to reach into the engine room to operate the remote fuel shutoff valve, the valve is not located more than 12 inches away from the deck or bulkhead and is shielded from flames by the same material the hull is constructed of, or some noncombustible material. If the remote shutoff valve is located in any other compartment but the engine room, these additional requirements would not apply.

Section 182.458 Portable Fuel Systems

The regulation proposed in the NPRM is new and adopts ABYC H–25 for outboard engine portable fuel system installations. One comment stated that portable tanks should have a label or marking showing that it was constructed to the ABYC standard. The Coast Guard agrees. However, neither ABYC H–25 nor UL 1102 requires marking that would indicate compliance with the standard. UL 1102 does require that the tanks be marked indicating that they are tested under 33 CFR 183.580, which is the Coast Guard requirement for testing of fuel tanks permanently installed on recreational boats. In future modifications to ABYC H–25, the Coast Guard will propose markings which show compliance.

Section 182.460 Ventilation of Spaces Containing Gasoline Machinery or Fuel Tanks

This section is similar to existing regulations, but has the significant difference of allowing alternative compliance with ABYC standards and 33 CFR part 183 for vessels of not more than 65 feet in length carrying not more than 12 passengers. One comment stated that the terms "enclosed spaces" and "partially enclosed spaces" used in paragraphs (a)(1) and (a)(2) should be defined. Also, "open spaces" should be defined to have the same meaning as in 33 CFR part 183. The Coast Guard agrees in principal. "Open to the atmosphere" is defined in 33 CFR 183.605 and ABYC Project H–2, and can be repeated in this regulation. Likewise, "enclosed spaces" and "partially

enclosed spaces" may be unnecessarily vague and open to too much interpretation. In proposed § 175.400 of this SNPRM, the Coast Guard has included definitions to clarify these three terms. The proposed definitions are: "open to the atmosphere" means a compartment that has at least 15 square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume; "enclosed space" means a compartment that is not exposed to the atmosphere when all access and ventilation closures are secured; and "partially enclosed space" means a compartment that is neither open to the atmosphere nor an enclosed space. However, defining these terms will affect the following sections which also use these terms: § 177.400(g) which limits paint thickness in enclosed and partially enclosed spaces; § 177.500(q) which concerns means of escape from enclosed spaces; § 177.600 which affects ventilation of enclosed and partially enclosed spaces; § 181.400(b)(4) which uses the phrase "so open to the atmosphere" in referring to spaces which require fixed gas fire extinguishing systems; and §§ 181.400(h) and (i) which use the terms "enclosed" and "partially enclosed" in referring to vehicle spaces which require sprinkler systems. These definitions shouldn't impact the other requirements. However, the Coast Guard specifically solicits comments concerning these proposed definitions.

One comment stated that there are major problems with ABYC H–2, which is allowed by paragraph (m) as an alternative for vessels of not more than 65 feet in length carrying not more than 12 passengers. The comment recommended that at least one power driven exhaust blower should be installed for each piece of gasoline powered machinery as well as for each gasoline storage place. The Coast Guard disagrees. ABYC Project H–2 is a standard similar to 33 CFR part 183, subpart K and has proven to be adequate. Although ABYC Project H–2 does not require a specific number of blowers to be installed, it does provide guidance on the required air flow in cubic feet per minute.

Section 182.465 Ventilation of Spaces Containing Diesel Machinery

This section is similar to existing regulations, but has the significant difference of allowing alternative compliance with ABYC standards and 33 CFR part 183 for vessels of not more than 65 feet in length carrying not more than 12 passengers. One comment stated that the requirement, in paragraph (c), to extend the duct to the bottom of the diesel engine room is unnecessary if the forced air system can provide the necessary circulation. The Coast Guard disagrees. The reason for the duct extending to the bottom of the engine room is to ensure that diesel fumes, which are denser than air and tend to accumulate in the bilges, are removed by the ventilation system. No changes have been made to the rule proposed in the NPRM.

One comment stated that the requirement, in paragraph (e), for the area of the cowl opening to be twice the area of the vent duct is impractical. Requiring the cowl area to be not less than the required vent area should be sufficient. This part of the regulation is consistent with the analogous regulation in § 182.460 for spaces containing gasoline machinery. This cowl sizing requirement is intended to minimize airflow losses due to restrictions and turbulence in the intake. An even larger cowl opening is necessary to compensate for installed wire screen.

Subpart E—Bilge and Ballast Systems

Section 182.500 General

This section expands upon current regulations by addressing larger small passenger vessels, and allows ABYC Project H–22 as an alternative for vessels of not more than 65 feet in length carrying not more than 12 passengers. One comment stated that the phrase "small buoyancy compartment" in paragraph (a) should be defined. In general, a small buoyancy compartment is a "small" void space which, if flooded, does not impair the stability of the vessel. Some OCMIs might require the submission of stability calculations to prove that the stability of the vessel is not impaired.

One comment stated that paragraph (b) is grossly inadequate, and stated as an example that ABYC does not specify where pumps should be located. The Coast Guard disagrees. ABYC Project H–22 is not intended for small passenger vessels of more than 65 feet in length or with large passenger capacities, but this regulation is written to allow this standard to be used as an alternative only for vessels of not more than 65 feet in length carrying not more than 12 passengers. ABYC H–22 is considered adequate for this application

Another comment stated that paragraph (b) would allow the use of submersible pumps on vessels of not more than 65 feet in length carrying not more than 12 passengers, which may be unsafe because it puts the entire load of dewatering on the vessel's battery system. ABYC Project H–22 addresses electrically operated bilge pumps. As long as the system is installed in accordance with the standard, it should be safe. The boat's electrical system, including size and number of batteries and alternators, must be adequately designed and proper maintenance must be conducted to account for the load of the electrically operated pumps.

Proposed paragraph (c), which contained the requirement for vessels proposed in this SNPRM to be regulated by subchapter K to have bilge pumps and piping in accordance with subchapter F, has been deleted in this SNPRM. This requirement has been incorporated into K §§ 119.510 and 119.520.

Section 182.510 Bilge Piping System

This section contains requirements for bilge piping systems which are similar to previous regulations. One comment agreed that the "Rule" type pumps (Rule is a manufacturer of small submersible electric bilge pumps) allowed by paragraph (c) were acceptable but should only be authorized for vessels of not more than 65 feet in length carrying not more than 49 passengers and each pump should have the minimum capacity specified in the table. The comment suggested that this could be corrected by referencing § 182.520(e). The Coast Guard agrees, and finds the regulations proposed in the NPRM are adequate in fulfilling this need. In selecting a "Rule" pump it is necessary to refer to § 182.520(e).

Section 182.520 Bilge Pumps

This section is essentially the same as existing regulations, but also incorporates current policy concerning power pumps as an alternative to portable and fixed hand pumps, greater acceptance of electric submersible bilge pumps, and bilge pump requirements for catamarans. The wide range of comments illustrates the philosophical differences regarding the function of the bilge system. Regardless of individual biases on the issue, current Coast Guard policy is that the bilge system is not intended to serve as the primary deterrent against the ingress of seawater due to flooding but serves to dewater accumulation in spaces which results from normal vessel operations including sweating, packing and seal leakage, and other normal leakage from properly operating equipment and machinery. The bilge system also serves to dewater after a casualty is corrected. Note that "ordinary leakage" is specifically addressed in § 182.510(a). The Coast Guard opinions below reflect this line of thinking.

One comment expressed the belief that this section was grossly inadequate, and recommended large capacity auto/manual electric pumps in each compartment. The comment indicated that undetected flooding has caused the greatest loss of certificated vessels, and that engine driven pumps are unacceptable. The Coast Guard disagrees. Proposed § 182.530 requires bilge level alarms on vessels of at least 26 feet in length, which will help solve the problem of undetected flooding. All vessels greater than 26 feet in length must also be equipped with fixed power bilge pumps in case of flooding.

One comment recommended that Table 182.520(a) require two 25 gpm fixed power bilge pumps on ferries and vessels carrying more than 49 passengers since the failure of a single pump would be catastrophic. The Coast Guard disagrees. To require ferries carrying more than 49 passengers and not more than 65 feet in length to have more than one bilge pump would be more restrictive than 46 CFR subchapter F, which would require only one power bilge pump. This change is not considered necessary.

Three comments stated that emergency hand pumps required by paragraph (b) are useless and unnecessary. The Coast Guard disagrees with these comments. The comments went on to state that the size of the vessel should be considered in allowing hand pumps. The size of the vessel is considered since hand pumps are required only on smaller vessels. However, portable hand pumps are not as effective as power bilge pumps. As stated in the preamble of the NPRM, power pumps are allowed as alternatives when portable and fixed hand pumps are required. The rule proposed in the NPRM has been revised in this SNPRM to specifically allow power pumps as alternatives when portable and fixed hand pumps are required.

One comment stated that the criteria in paragraph (b)(2) are not sufficient for minimum suction and discharge hose lengths. The Coast Guard disagrees. The regulation states that the suction and discharge hoses for portable hand bilge pumps are to be "capable of reaching the bilges of each watertight compartment." The suction hoses should be long enough to draw water out of each bilge and the discharge hose should be long enough to safely discharge bilge water overboard. Portable hand pumps often discharge into a bucket for subsequent disposal of bilge water. This may not be accepted by the OCMI for larger vessels. The regulation as written is considered adequate.

One comment stated that paragraph (e), allowing the use of submersible pumps on vessels of not more than 65 feet in length carrying not more than 49 passengers, may be unsafe because it puts the entire load of dewatering on the vessel's battery system. The Coast Guard does not agree that this will be unsafe if the system is designed and installed properly. The boat's electrical system, including size and number of batteries and alternators, must be adequately designed and proper maintenance must be conducted to account for the load of the electrically operated pumps. A new paragraph (e)(8) is being proposed which will require that electrical capacity be taken into account in design of the electrical system on a vessel equipped with submersible bilge pumps. However, bilge pumps are not intended to be able to keep up with uncontrollable flooding.

Two comments recommended that the "Rule" type pumps allowed by paragraph (e) should each have a capacity of 10 gpm, and that this should be clearly stated in the regulations. The Coast Guard agrees but finds that it is already stated adequately. Paragraph (e) states that a "submersible electric bilge pump may only be used as a power bilge pump required by Table 182.520(a) * * *" provided certain conditions are met. Table 182.520(a) lists the minimum requirements for power bilge pumps, the least capacity of which is 10 gpm. It should be noted that most submersible electric bilge pumps are of the low pressure centrifugal type which have a reduced flow capacity when operating resistance (or head) is increased. Most of these pumps come with a head-capacity diagram from the manufacturer, which frequently indicate that actual flow can be as much as 50% less than nominal flow when operating against as little as 2 or 3 feet of head. This should be taken into account by owners and operators when designing and installing these pumps, so that the flow, from the pump as installed, meets the regulatory minimum.

One comment stated that, where individual pumps are used for separate spaces as allowed by paragraph (e), they should be required to be controlled from a central point. One comment stated each bilge pump allowed under paragraph (e) should have a running light at the operator's station. The Coast Guard agrees that individual pumps provided for separate spaces should be controlled from a central point. A light which shows that a bilge pump is running will provide instant feedback to the operator on the status of the bilge pumps. Many present installations are already this way. The rule proposed in the NPRM has been revised in this SNPRM to identify requirements for individual pumps which are provided for separate spaces.

One comment stated each bilge pump allowed under paragraph (e) should be controlled by a float switch. The Coast Guard does not agree that float switches are necessary for a safe bilge pump system.

Two comments stated each bilge pump allowed under paragraph (e) should be connected by rigid piping to non-return valves. The Coast Guard considers suitable flexible hose adequate, and the proposed requirements for its use are in the NPRM. The Coast Guard concurs that a non-return valve is good idea, but the pressure put out by these pumps is typically not enough to open a check (non-return) valve. For this reason a shutoff valve is required at the hull penetration in case of back flooding.

One comment questioned the meaning of the term "primary pump" used in paragraph (j)(1), and requested that the connection between this term and Table 182.520(a) be clarified. The Coast Guard agrees. To minimize confusion, the term "primary" has been changed to "dedicated" in this SNPRM to agree with terminology found elsewhere in this subpart.

One comment stated submersible bilge pumps should not be allowed in lieu of required bilge pumps and one comment stated that submersible pumps are highly overrated and that a standard should be referenced to ensure that the pumps meet minimum safety requirements. The Coast Guard disagrees. Electric submersible pumps are often the preferred option of builders and have proven successful in their usage. The acceptance of electric submersible bilge pumps reflects current policy of many OCMIs and satisfactory experience with such pumps.

Section 182.530 Bilge Level Alarms

This section of the NPRM proposed high bilge level alarms for unattended machinery spaces below the deepest load waterline on all vessels of at least 26 feet in length. Two comments suggested that bilge alarms be required on all vessels of not more than 65 feet which carry passengers. Two comments recommended that bilge alarms be installed in all watertight compartments of all wooden vessels. One comment opposed bilge alarms on all boats under 40 feet. One comment stated that bilge level alarms did not need to be required on open vessels or vessels not operated from a flying bridge. The Coast Guard's position is that bilge alarms are

necessary and that the requirement proposed in the NPRM strikes a good middle ground for the comments received. Vessels under 26 feet generally have small bilge areas which are readily monitored by the crew, and bilge alarms are not necessary. Vessels 26 to 40 feet may have bilge areas which are not readily accessible or observable to the operator. In unattended areas where large quantities of bilge water can accumulate, bilge level monitoring provides an inexpensive means of informing the operator of bilge status. Casualty records have indicated that certain casualties may have been avoided if the operators had been aware of the bilge level.

One comment recommended that "tattletale" lights be installed to warn the operator that the bilge pump is not keeping up with the flow of water into the vessel. The Coast Guard disagrees. High level alarms and indicators, which will show when automatic bilge pumps are operating, are proposed by this SNPRM. If the pump is not keeping up with the flow of water into a vessel, the operation indicator will remain on continuously and the high level alarm will draw the operator's attention to this.

Subpart F—Steering Systems

Section 182.610 Main Steering Gear

The NPRM proposed new requirements for minimum rudder swing times, rudder angle indicators (for certain vessels), electrically operated rudder installations, and rudder stops. One comment stated that rudder movement cannot be practically measured, as required by paragraph (a)(3), unless rudder angle indicators are required on all vessels. The Coast Guard has concluded that, if a rudder angle indicator is not installed, fairly accurate approximations of actual rudder movement during operational tests can be made, and should be satisfactory.

One comment concurred with the addition of the steering gear performance requirements in paragraph (a)(3), but stated that 28 seconds is an unrealistically slow time for rudder travel. The Coast Guard disagrees. This regulation is a minimum requirement based on the vessel moving ahead at maximum service speed. Smaller, slower vessels normally meet this time limit easily but larger, faster vessels may approach the 28 second limit for the rudder(s) having to travel 65 degrees. The 28 second duration is adequate to provide an acceptable margin of safety.

One comment recommended the deletion of the paragraph (b), ((f)(1) in this SNPRM), requirement for a visual indicator showing operation of the power units for power driven steering gear since it is an unnecessary gadget. The operator would immediately know of a steering failure due to the difference in effort to operate the helm. The Coast Guard disagrees but recognizes that remote visual indicators may not be appropriate for all vessels. The rule proposed in the NPRM has been revised in this SNPRM to require visual indicators only on vessels of more than 65 feet in length with power driven steering gear installations.

One comment recommended that the requirement in paragraph (c) ((f)(2) in this SNPRM), to post transfer procedures should be limited to small passenger vessels of more than 65 feet in length and vessels with overnight accommodations for more than 49 passengers. The Coast Guard agrees that this requirement may be unnecessary on smaller vessels, and has revised the rule in this the SNPRM to require posting of steering transfer procedures only on vessels of more than 65 feet in length with power driven steering gear installations.

Five comments stated that the rudder angle indicators required by paragraph (e), ((f)(4) in this SNPRM), are generally unnecessary. The Coast Guard disagrees. This regulation is consistent with regulations presently requiring rudder angle indicators on vessels comparable in size to small passenger vessels of more than 65 feet in length, including offshore supply vessels and sailing school vessels. In addition, a review of steering casualties on all vessels with power actuated steering shows that a rudder angle indicator can provide the initial indication of a steering failure.

One comment stated that manual means to steady the rudder required by paragraph (i), ((f)(6) in the SNPRM), is unnecessary for twin screw vessels with hydraulic steering. Another comment stated that manual means of steering is unnecessary since there will be auxiliary steering. Although twin screw vessels are more maneuverable than single screw vessels, the difference is not great enough to eliminate the requirement to manually steady the rudders in an emergency. The auxiliary means of steering is used when control is lost from the primary control station. This regulation addresses an emergency of greater magnitude, such as when rudder control is totally lost and the rudder is swinging freely. This requirement would not require manual steering, just that the operator be able to steady and center the rudder(s).

Three comments stated that limit switches required by paragraph (j), ((f)(7) in the SNPRM), are unnecessary since hydraulic systems have built-in stops at cylinder ends and pressure relief devices to prevent overstressing. The Coast Guard disagrees. Limit switches are intended to prevent rudders from hitting the stops and to prevent the activation of safety devices such as relief valves during normal service.

One comment stated that the requirements proposed in paragraph (k) would cause problems with practical implementation, referring to things such as the type of spring arrangement and method of installation. The Coast Guard agrees and has removed this paragraph in this SNPRM.

One comment recommended that all bolts and clevis pins on steering gear linkages should be drilled and cotter pinned for safety. The Coast Guard agrees. However, experience indicates that this has been standard engineering practice which does not necessitate inclusion in the regulations.

Due to the number of comments received, and the general nature of this section's original focus, the entire section has been revised in this SNPRM to better apply specific requirements to specific vessels based on size and steering gear type.

Section 182.620 Auxiliary Means of Steering

This section contains requirements for auxiliary means of steering and specifies circumstances where auxiliary means of steering are not required. One comment recommended that paragraph (a)(3) be revised to read "* * * location that permits the person steering to have the best possible all around vision and does not expose the person * * * *". The Coast Guard disagrees. Some auxiliary steering stations are in the steering gear room which necessitates the operator to communicate to control station personnel via intercom, sound powered phone, or other method. The overall view of the person is not always a concern. Section 184.602 proposes adequate internal communications for such purposes.

One comment recommended that in paragraph (a)(3) "personnel hazards" replace "danger", and "extreme" be deleted. The Coast Guard agrees that the suggested wording is an improvement. The paragraph has been revised in this SNPRM to clarify the wording.

Subpart G—Piping Systems

One comment stated that the term "piping systems" should be clarified and specifically include the term "components." The Coast Guard agrees. The definition of "piping system" has been incorporated into § 175.400 of this SNPRM.

Section 182.710 Piping for Vital Systems

This section defines vital and non-vital systems and contains requirements for piping used in vital systems. Two comments stated that aluminum vessels with aluminum piping are not considered in 46 CFR 56.60, which is referenced by paragraph (c), and that aluminum piping should be allowed on aluminum vessels, as is the current practice. The Coast Guard disagrees. Aluminum piping is addressed in 46 CFR 56.60–20 (subchapter F). Aluminum alloy pipe or tube may also be used within the limitations stated in section 123.2.7 of ANSI B31.1 and 46 CFR 56.10–5(c)(4). If authorized by the Commandant, aluminum and aluminum alloys may be used to conduct flammable, combustible, or dangerous fluids, or may be used in vital systems.

One comment stated that this subpart does not clarify where nonmetallic pipe may be used, such as in bilge systems. The Coast Guard disagrees. This section refers to § 182.720 where the use of nonmetallic piping is addressed further.

Section 182.720 Nonmetallic Piping Materials

This section contains requirements for, and limitations on, the use of nonmetallic piping, including bulkhead and shell penetration requirements. It is largely the same as existing requirements in subchapter T. Due to the nature of comments received, it was apparent that requirements for the use of nonmetallic flexible hose were not written clearly enough. The SNPRM now includes a new paragraph (e), dealing specifically with nonmetallic flexible hose, which contains requirements from subchapter F and from § 182.455 of the NPRM.

One comment questioned why the last sentence of paragraph (a) apparently allows plastic (vinyl) tubing in pneumatic control systems since this is not currently accepted. Another comment stated that this regulation is not clear, noting that propulsion systems are defined as vital and that nonmetallic materials may not be used in vital systems, and questioned if Coast Guard allowance of nonmetallic flexible materials in pneumatic systems extended to propulsion systems. The Coast Guard did not intend that plastic (vinyl) tubing be allowed in pneumatic control systems. However, the Coast Guard does agree that flexible nonmetallic materials are sometimes necessary in vital as well as non-vital systems due to the vibrating or impulse-pressuring nature of some equipment, including pneumatic controls for propulsion systems. The last sentence in paragraph (a) of the NPRM, (now (b) in the SNPRM) has been revised to reference a new paragraph (e) for the use of nonmetallic flexible hose.

One comment stated that nonmetallic pipes meeting certain specifications should be permitted in bilge systems on vessels of not more than 65 feet in length. Although currently allowed by existing subchapter T for vessels of not more than 65 feet in length carrying not more than 49 passengers, this would be inconsistent with the revised and more specific definition and requirements for vital systems, which now include bilge systems. It is the Coast Guard's intention to make the construction material requirements for vital system piping consistent for all vessels regardless of size or passenger capacity. The only exception to the requirement for metallic piping in bilge systems is found in § 182.520, for the discharge lines of submersible electric bilge pumps, where they are permitted. Reference to this exception is made in new paragraph (e) of this SNPRM which contains requirements for the use of nonmetallic flexible hose.

One comment stated that nonmetallic piping should be allowed for non-vital systems and that installing a valve on each side of a bulkhead when using a metal spool piece, as required by subparagraph (c)(2), (paragraph (d) in the SNPRM), is unnecessary. Nonmetallic piping would be allowed in non-vital systems by the regulations proposed in the NPRM. The purpose of the valves and metallic spool piece is to maintain firetight and watertight integrity. No change was made for the SNPRM.

One comment stated that valves required by paragraphs (c) (1) and (2), (now (d)(1) and (2) in the SNPRM) are not required if the penetration is above the margin line, adding that this requirement is not stated in the new regulations and should be addressed because the intent as written is unclear. The Coast Guard agrees. Paragraph 182.720(c)(1) specifically addresses "required watertight decks and bulkheads." Paragraph 182.720(c)(2) is also intended to address required watertight decks and bulkheads and has been reworded in this SNPRM to clarify the decks and bulkheads to which this regulation applies.

One comment stated that approval of nonmetallic fittings, allowed by paragraphs (c)(4) and (5), (now (d)(3) and (4) in the SNPRM) should be retained by the Commandant. The Coast Guard disagrees. The OCMI may request technical assistance from the Marine Safety Center or Commandant if necessary.

Section 182.730 Nonferrous Metallic Piping Materials

This section contains requirements and restrictions for use of nonferrous piping materials. It allows use of nonferrous piping materials in non-vital systems and some limited use of aluminum piping on aluminum hulled vessels. Nonferrous piping materials may be used in other situations as deemed appropriate by the OCMI. Restrictions include provisions for protection in high risk fire areas and against galvanic corrosion effects. Two comments requested the rationale in denying use of copper or brass in bilge lines where aluminum is not involved. Copper, copper-nickel, nickel-copper, brass, and bronze are acceptable for use in bilge systems, and have been used frequently in the past. The Coast Guard did not intend that they be omitted. The rule proposed in the NPRM has been revised in this SNPRM to allow the use of nonferrous metallic piping with melting temperature above 1700° F to be used in vital systems to the satisfaction of the OCMI.

One comment stated that if it is the intention of paragraph (b)(4) to limit copper content in aluminum piping to 0.6 percent, aluminum should be specified. The Coast Guard agrees that the proposed regulation addresses aluminum. The analogous regulation in 46 CFR 56.60–20(a)(4) specifically addresses aluminum. The rule proposed in the NPRM has been revised in this SNPRM to limit the copper content in aluminum alloys.

One comment stated that aluminum fuel piping is currently used in machinery spaces and its use should continue to be allowed. In general, because of its low melting point, aluminum is not suitable as fuel piping in spaces such as engine rooms and other machinery spaces, which are more likely to be exposed to a fire. Subchapter F prohibits the use of aluminum piping for combustible fluids unless approved by the Commandant. Coast Guard interpretation of existing § 182.20–40(a) does not normally allow this practice on small passenger vessels. However, local building practices and OCMI policies sometimes allow limited use of thick walled aluminum piping in circumstances such as short runs from fuel tanks in or adjacent to the engine room to the first valve in the fuel line. Use of structural fire protection insulation has sometimes been required. Aluminum fuel piping would be allowed outside of machinery spaces in

accordance with the limitations proposed in this SNPRM, but would not be allowed in machinery spaces. However, other installations of aluminum diesel fuel piping (i.e., in machinery spaces) may be accepted by the OCMI under proposed § 182.730(a)(4) of the NPRM, which has been renumbered as § 182.730(a)(5) of this SNPRM. Each installation of aluminum piping for fuel service will be individually reviewed and many factors (such as electrolysis, corrosion, fire hazard, amount of insulation/fire protection and practicality) will be taken into consideration. The OCMI may rely upon the Marine Safety Center or Commandant for technical assistance.

Part 183—Electrical Installations

Subpart A—General Provisions

The NPRM proposed to revise the regulations governing small passenger vessel electrical installations to reflect current installation practices and technologies. One comment suggested that since noncommercial boat electrical regulations are in 33 CFR part 183 and that equipment in 33 CFR part 183 is required to be marked "Meets Part 183", the T-Boat electrical regulations in 46 CFR part 183 should be moved to another section to avoid confusion with 33 CFR part 183. The Coast Guard disagrees. Noncommercial electrical components manufactured to comply with 33 CFR part 183 are generally ignition protected electrical components designed for use in gasoline engine installations. There is no specific requirement to label noncommercial electrical components with the words "Meets 33 CFR 183" or "Meets Part 183", but the Coast Guard recognizes that since noncommercial components are under a manufacturer self-certification program, some manufacturers may in fact be placing this statement on their equipment. However, since there are no marking requirements in 46 CFR part 183, field personnel should easily be able to evaluate and determine component suitability.

ABYC Standards E–8 and E–9 provide thorough guidelines for AC and DC electrical systems. Although no comments were received, the Coast Guard is considering allowing the use of these two standards as an alternative to the requirements in part 183 for all vessels proposed in this SNPRM to be regulated by subchapter T. The Coast Guard is hereby soliciting specific comments concerning the practicality and safety of this alternative.

Subpart B—General Requirements

Section 183.220 General Safety Provisions

This section of the NPRM outlines general safety guidelines which equipment must meet and conditions which designers and installers must be aware of. Two comments suggested that a vessel's route of operation be considered in determining specific equipment standards, with one making specific reference to the relaxing of UL lighting fixture standards for vessels on protected routes. The Coast Guard agrees in part, and has revised § 183.410(d) in this SNPRM by expanding the list of UL lighting fixture standards which are acceptable for fixtures used in interior spaces.

One comment suggested that this section include a regulation requiring all electrical components to be UL approved. The Coast Guard disagrees. Components suitable for the intended service should be adequate. Use of all UL approved electrical components does not provide an increased level of safety. A properly designed system constructed in accordance with these regulations provides a minimum level of safety for marine electrical installations. The use of all UL components will not be required. Use of all UL approved electrical components may be used at the discretion of the builder or operator.

Subpart C—Power Sources and Distribution Systems

Section 183.310 Power Sources

The NPRM outlines the basic requirements for vessel power and distribution systems. Two comments suggested that no evidence exists to support the need for two independent sources of power for vital loads. Further, the comment stated that there is no evidence to show that this requirement will increase safety. The Coast Guard disagrees. With the increase in vital systems which are electrically powered or controlled, the intent of the proposed rule is to prevent a failure of one power source from disabling the vessel. Vital systems which do not depend upon electrical power do not require a second power source.

One comment suggested eliminating the redundancy in § 183.310 where systems which are referenced in paragraph (a)(1)(i) are repeated in paragraphs (a)(1) (iii), (vi) and (vii). The Coast Guard agrees. In the SNPRM the text has been revised to eliminate redundancy.

One comment suggested that a definition for the term "batteries of adequate capacity" is necessary for clarification of § 183.310(a)(2). The Coast Guard agrees that this wording is vague and may lead to confusion. In the SNPRM, the text of proposed § 183.310(a)(2) has been revised.

Two comments stated that it is not clear whether paragraph (b) applies to battery charging devices or a ship service generator driven by the main engine. The Coast Guard agrees that the wording proposed in the NPRM may present some confusion. The proposed rule applies to engine or shaft driven ship service generators, where engine speed is critical to electrical power output. The proposed rule does not apply to installations where generators or alternators are used to keep batteries charged. In the SNPRM, the text has been revised for clarification.

Section 183.312 Power Sources on Vessels of More Than 65 ft. in Length With Overnight Accommodations for More Than 49 Passengers

This section has been moved to subchapter (K) § 120.312. The NPRM requires certain vessels to meet requirements in addition to those found in § 183.310. One comment said it would be clearer to state what is intended in this paragraph instead of referencing § 111.10 because it is not clear whether the emergency power reference in § 111.10 is being adopted. The comment also suggested that a definition of "final emergency power source" be provided. The Coast Guard agrees and has referenced specific sections of parts 111 and 112 to clarify the SNPRM.

Section 183.320 Generators and Motors

One comment stated that generators should be temperature rated using the National Electrical Manufacturers Association (NEMA) standard, with a continuous rating of 80°C rise over 40°C ambient temperature rating. The comment stated the present rating requirement of 95°C over 50°C ambient temperature is unnecessary and overly expensive. The Coast Guard disagrees. First, there is no specific proposed or existing requirement for temperature rise above ambient, but there is an ambient temperature rating requirement. This requirement is based on matching the motor or generator ambient temperature rating to the temperature of the space in which it will be operating. Machinery spaces may exceed 40°C, depending on the amount of other machinery normally running and the degree of installed ventilation. Further, existing subchapter T and the NPRM allow the use of generators rated at 40°C by downrating the generator output 20%

or substantiating that the average temperature in the space does not exceed 40°C. The Coast Guard is interested in the increased use of recognized published standards, such as the NEMA standard for generator temperature ratings. The Coast Guard is concerned that generators be installed to perform as rated in a maximum ambient environment of 50°C, unless the average ambient temperature of the space under normal load operating conditions can be proved to be otherwise. Therefore, the Coast Guard is soliciting specific comments on the suitability of the commonly available 80°C rise over 40°C ambient temperature generators in 50°C environments. Insulation details and specific reasons other than cost should be provided.

Three comments were received concerning the differing motor/generator name plate requirements for vessels depending upon their length. The comments suggested that the name plate data be the same regardless of vessel length. The Coast Guard agrees that a single requirement for nameplate data should be adopted. In the SNPRM the text has been revised to provide a single reference for motor/generator nameplate data.

One comment recommended that required nameplate data include the service factor. The Coast Guard agrees this information is useful, but since many manufacturers already provide this information on their nameplates, compliance with the National Electric Code (NEC) for nameplate data as required by this section is considered adequate as a minimum requirement.

Section 183.322 Multiple Generators

One comment suggested deletion of "as required by § 183.310(a)", or the addition of a reference to § 183.312(a). The Coast Guard agrees that the wording in this section is unclear. Section 183.322 addresses additional requirements for generators installed to operate in parallel, whether required by this subpart or not. In the SNPRM the text has been revised for clarification.

One comment suggested that a definition for the term "independent power source", used in paragraph (a), should be added. The Coast Guard agrees this term could be misleading. In the SNPRM, the text has been revised to read "independent prime mover".

Section 183.324 Dual Voltage Generators

Four comments disagreed with the requirement to ground the neutral conductor of the generator at the switchboard. From review of the comments received, it appears that this requirement was misinterpreted. Grounding of a current-carrying neutral conductor at the switchboard is an existing requirement, and means connection to a neutral bus which is then connected to ground, and not a solid connection to the metallic switchboard enclosure. Further, this requirement is consistent with current industry practice for dual voltage systems both in marine installations and ashore.

Section 183.330 Distribution Panels and Switchboards

One comment suggested the amount of working space should be specified in § 183.330(f) by reference to § 111.30–1 of subchapter J. The Coast Guard agrees the amount of working space should be specified, and proposes to use the requirements outlined in existing subchapter T. In the SNPRM the text has been revised to include this change.

One comment suggested that § 183.330 include interlock requirements which would deenergize circuits upon opening panel doors, except for vital systems. The Coast Guard agrees, but only if there is more than one source of potential to the enclosure. In the SNPRM, the text has been revised to include this situation.

Section 183.340 Cable and Wiring Requirements

Two comments suggested clarification of the term "other enclosure" used in § 183.340(a). The Coast Guard agrees that the meaning of this term is unclear. In the SNPRM, the text has been revised to include the word "protective" to describe the enclosure. The intent is to provide an enclosure for wire installations which will afford protection from mechanical damage.

One comment suggested that regulations addressing wire and cable supports be added. The Coast Guard agrees. In the SNPRM, the text has been revised to add parameters for support material and spacing, including reference to ABYC Standards and Recommended Practices for Small Craft for certain vessel installations.

Two comments suggested the elimination of the requirement for "wire" conduit, because armored "cable" or plastic coated shipboard "wire" is satisfactory. Five comments suggested that multiconductor "cable" did not need to be run inside conduit and one comment suggested that wireways be required instead of conduit. The Coast Guard disagrees. The terms "wire" and "cable" were used interchangeably in the comments received. The definitions in § 175.400 make a specific distinction between the terms "wire" and "cable". The intent of the proposed rule is to offer protection from mechanical damage to "wire" installations, not "cable" installations. The intent was not to limit electrical installations to the use of "cable" only. The rule proposed in the NPRM was not changed.

One comment suggested the splicing prohibition in §§ 183.340(m) and 183.340(n) be deleted because it appears to be in conflict with subparagraphs 183.340(g)(3) and (g)(4), which allow a different kind of splice. Further, the comment suggested the requirements in paragraphs (g) and (h) already provide sufficient protection and flexibility for splices. The Coast Guard disagrees. The requirements outlined in § 183.340 follow those for other vessels found in §§ 111.60–17 and 111.60–19 of Subchapter J. The requirements in § 183.340(g) and (h) apply to individual conductor connections made within an enclosure, while § 183.340(m) and (n) apply to cable splices. Therefore, the rule proposed in the NPRM was not changed.

Two comments suggested wire nuts be exclusively prohibited. The Guard agrees. Wire nuts may loosen due to the vibrations inherent in the shipboard environment. Damage to the conductor wires which is not detectable may also result. In the SNPRM the text of paragraph (j) has been revised to prohibit the use of wire nuts.

One comment suggested that paragraph (p) adopt the NEC 310–15B requirement for voltage drop in lieu of 10%, as proposed by the NPRM. The Coast Guard disagrees, and has no information which would justify mandating the stricter standard.

One comment suggested incorporating the tables currently found in 46 CFR 183.05–45(a) and (c) into the proposed rules. The Coast Guard agrees in part, but considers only the 12 volt section of Table 183.05–45(c), with the subsequent formula for calculation of all other voltages, appropriate for retention as a tool used during initial plan review. The NEC contains more comprehensive, up-to-date tables for ampacity which are a suitable replacement for Table 183.05–45(a). A new Table 183.340(p), which contains the 12 volt section of existing Table 183.05–45(c), has been provided in this SNPRM and the text of paragraph (p) has been revised.

Section 183.350 Batteries, General.

One comment stated that paragraph (b) should read "as high in the bilge as possible and preferably on or above the ER deck", and one comment suggested watertight boxes be required for battery installations. The Coast Guard does not

agree that battery boxes need to be watertight. Requiring watertight enclosures is not supported by existing casualty data and would place an unnecessary financial burden on vessel owner/operators. However, the SNPRM has been revised to include a statement addressing the protection of batteries from exposure to water splash or spray.

One comment suggested deleting the requirement in paragraph (c) that there be sufficient free space above batteries for removal. The Coast Guard agrees that accessibility can be provided by means other than free space above the batteries, and has revised the wording in this section to reflect this comment.

One comment suggested § 183.350(e) should specify a minimum height requirement of 3" and thickness for trays of 1/16", in line with the existing requirements in § 111.15–5(g) of Subchapter J. The Coast Guard disagrees, and considers this degree of specificity unnecessary.

One comment suggested specifying fiberglass/resin or fiberglass/epoxy battery trays or liners. The Coast Guard disagrees. A battery tray or liner may be constructed of any material which is resistant to damage by the installed battery electrolyte. Section 183.350 as written in the NPRM is considered adequate and is not changed in this SNPRM.

Two comments suggested a more specific definition than "adjacent to a distribution panel" be provided in § 183.350(g). The Coast Guard disagrees. This is an existing regulation whose intent is to prevent arcing and fires due to a short circuit in the supply cable from the battery to the distribution panel. The term "adjacent to a distribution panel" means close enough that the likelihood of damage to the connecting power cable is minimized or nonexistent due to its negligible length. No change has been made to the rule proposed in the NPRM.

One comment suggested that batteries used for starting should be located as close to the starter motor as practical. The Coast Guard agrees. A requirement has been added to § 183.350 of the SNPRM which requires that batteries be placed as close as possible to the starter motors.

Section 183.352 Battery Categories

One comment asked if an engine driven alternator qualified as a battery charger. There is no specific requirement in the regulations for a battery charger, although most installations have one available as a charging source. An engine driven alternator, while not classified strictly as a battery charger, is an acceptable charging source. If an engine driven alternator is the charging source for a battery system used to meet the requirements in proposed § 183.310, then it would be considered a battery charger subject to the requirements of this section.

Five comments suggested the battery categories are ridiculous. The Coast Guard disagrees. Upon review of examples cited in the comments, a misinterpretation of the regulation is apparent. The determination of battery categories does not apply to propulsion engine starting batteries. It does apply to battery systems used to meet the requirements in proposed § 183.310, where a second power source is specified for certain normal or emergency loads. To simplify the requirements for storage battery charging, battery categories have been reduced to 2 in number with additional requirements specified if the continuous charging rate is greater than 2 kilowatts (kw). In the SNPRM, the text has been revised to reflect these changes.

One comment suggested the method for determining output, in kw, of a battery charging system be added. The Coast Guard disagrees with the need to include this formula in the text of the regulations, since it can be easily determined from normal reference sources. The standard formula for DC systems is: POWER (in watts) = VOLTAGE × AMPERAGE (either charging or discharging). For example, a 40 amp alternator connected to a 12 volt system would have an output of 480 (12 × 40) watts (.48 kw). Similarly, for a 24 volt system with a 60 amp alternator the output would be 1,440 (24 × 60) watts (1.44 kw), still well under the 2 kw limit for large battery installations. The Coast Guard has determined that very few vessels proposed to be regulated by Subchapter T or K will have battery banks big enough to be categorized as "large" (i.e., greater than 2 kw charging power output), unless one of the power sources required by § 183.310 is a battery bank.

Section 183.354 Battery Installations

The Coast Guard has reevaluated this section, placing additional requirements only on those installations with a continuous charging rate greater than 2 kw. This section is now expected to affect only the largest of the small passenger vessel population. One comment suggested that large battery installations not be classified as hazardous locations. The Coast Guard disagrees. Overcharging or deep discharge of commonly used lead acid storage batteries are just two of the mechanisms which may cause excess hydrogen gas production. If this occurs, the concentration of gas in the space may reach explosive levels. This is the justification for the Class I, Division 1, Group B requirement.

One comment suggested § 183.354(a) be rewritten for clarity. The Coast Guard disagrees. The present text references § 111.105 of subchapter J, which references § 111.15. Subpart 111.15 provides more comprehensive requirements for battery installations.

One comment suggested that the battery compartment/box be non-conductive. The Coast Guard agrees this is a good idea, but does not see the need to specify this in the regulations.

Seven comments disagree with the need for a battery room. The comments stress the impracticality and lack of safety of such an arrangement on small passenger vessels. Locating batteries in an already well ventilated space such as an engine room, as most installations are now, is considered adequate. Two comments also disagree with battery stowage on deck. The Coast Guard has clarified the battery category definitions by specifying that this section does not include starting battery installations. Further, the Coast Guard requirement now only specifies a dedicated battery location for installations with a continuous charging rate greater than 2 kw. In the SNPRM, the text has been revised to reflect these changes.

Section 183.360 Semiconductor Rectifier Systems

One comment suggested that nameplate data for SCR systems be required. The Coast Guard agrees. In the SNPRM, the text has been revised to require compliance with specific sections of the ABS rules, which would require nameplate data.

Section 183.370 System and Equipment Grounding

One comment suggested that §§ 111.05–15(a) and 111.05–17 of Subchapter J, concerning grounding, be applied to this section, and that ungrounded systems be addressed. The Coast Guard agrees that the additional requirements in Subchapter J should be applied to a grounded system. Present installations are commonly of this type and include these requirements. In the SNPRM, the text of the proposed § 183.370 has been revised.

Section 183.380 Overcurrent Protection

One comment suggested lighting branch circuits should be 15 amps vice 30 amps as allowed by paragraph (f). The Coast Guard disagrees. This rating is consistent with industry practice and is also found in § 111.75–5(a) of Subchapter J.

Paragraph (h) of the NPRM would require protection of motor conductors and control apparatus against overcurrent due to short circuits or ground faults. Although there were no specific comments concerning protection against overload due to motor running overcurrent, this requirement has been added in this paragraph of the SNPRM. A similar requirement can be found in existing § 183.10–40.

One comment suggested the emergency battery switch required by paragraph (i) should be located where accessible in an emergency, not necessarily at the batteries. The Coast Guard agrees. Proximity as well as accessibility is important. In the SNPRM, the text has been revised.

One comment suggested that reference to "another independent laboratory" in paragraph (m) be deleted. The Coast Guard disagrees since the listing of a product should not be limited to UL exclusively. However, the wording in the SNPRM has been revised to show that the independent laboratory must be recognized the Commandant.

Paragraph (n) of this section requires circuit breakers to meet UL Standard 498. The Coast Guard is also aware of UL Standard 1193 for Boat Circuit Breakers designed for vessels less than 65 feet, published on June 22, 1988. The Coast Guard is soliciting specific comments concerning the suitability of this standard in addition to UL 498 for inclusion in the revised Subchapter T.

One comment suggested requiring Ground Fault Indicator circuit breakers in damp locations. The Coast Guard disagrees. Insufficient casualty data exists to require the added expense of these devices.

Section 183.392 Radiotelephone Installations

One comment suggested this rule be clarified or deleted because multiple radio installations should not require separate circuits. The Coast Guard disagrees. The intent of this regulation is to prevent a fault in one line tripping a circuit breaker and taking down all radio communications.

Subpart D—Lighting Systems

Section 183.410 Lighting Systems

Ten comments expressed objection to requiring interior lighting fixtures to meet UL 595. One comment suggested that a reference to decorative lighting be added.

One comment suggested the Coast Guard should require UL 595 lighting fixtures on vessels under 65 feet in length. The Coast Guard recognizes that the UL 595 specification may not be necessary for all applications, and does not consider a differentiation based on vessel length necessary. Lighting fixtures located in interior spaces which are not subject to the exterior marine environment need not meet the requirements of UL 595. In the SNPRM, the text has been revised to reflect this change.

Section 183.420 Navigation Lights

One comment suggested the OCMI exemption statement required by paragraph (a) is not necessary. The Coast Guard agrees. Further, the reference to § 111.75–17(d) for vessels of more than 65 feet in length has been removed and the referenced requirements have been included in the text of the SNPRM.

Section 183.432 Emergency Lighting

One comment suggested the emergency lighting requirements of paragraph (a) be extended to crew accommodation spaces. The Coast Guard agrees and has revised the text in this SNPRM.

One comment suggested that emergency lighting on party fishing boats is not necessary due to their design. The Coast Guard disagrees, but realizes that all vessels of more than 65 feet may not warrant such an extensive emergency lighting system, and that the present wording may be misleading. This is an extension of an existing regulation for passenger egress from spaces below the main deck which has simply been amplified to include crew accommodations, and all other spaces where due to the size of the vessel or number of passengers, existing lighting would prove inadequate. The text has been changed in this SNPRM to clarify this point.

Section 183.434 Lifeboat and Liferaft Floodlight on Vessels of More Than 65 Feet in Length With Overnight Accommodations for More Than 49 Passengers

This section has been moved to Subchapter K, § 120.434. One comment suggested flood or searchlights at rescue platforms or rescue boarding areas on a vessel without a rescue boat, and lights for the embarkation station of a rescue boat, for vessels so equipped. The Coast Guard agrees. In the SNPRM, the text has been revised to include lighting at all rescue boarding locations or where primary lifesaving devices may be deployed.

Subpart E—Miscellaneous Systems and Requirements

Section 183.510 Propulsion Engine Control Systems

This section has been revised to clarify the control system requirements outlined in the NPRM, and relocated to § 184.620. It would specifically require that a vessel have a means of controlling the speed, direction of shaft rotation, and shutting down of the propulsion engine(s). The requirement to have an independent propulsion engine shutdown at each location where a propulsion engine can be started or have its speed controlled has been deleted. This emergency shutdown would only be required at the main pilothouse control station.

Four comments suggested that the phrase "two means of controlling each (propulsion) engine", used in paragraph (a)(1), be more clearly defined. The Coast Guard agrees and has clarified this requirement in this SNPRM.

One comment suggested that two means of controlling each propulsion engine was not cost effective or necessary. Two comments suggested that this section be rewritten to clarify the intent that a twin engine vessel with independent remote control would not need backup controls on each engine. In the SNPRM, the text has been revised to indicate that multiple engine vessels do not require a second means of control.

One comment does not think it necessary to have engine shutdown controls at wing stations which are in close proximity to controls in the pilot house, as required by paragraph (b). Further, the comment stated that engine starting is just as important as engine shutdown, and that the NPRM did not address this feature. The Coast Guard agrees concerning shutdown requirements, and has revised the SNPRM to require an emergency engine shutdown only at the main wheelhouse control station. However the Coast Guard disagrees that engine starting capability should be specified by regulation. Most pilothouse control installations already include this feature. This is an item which will be left to the discretion of the owner.

One comment suggested relocating this section to § 182.200. The Coast Guard agrees that this may not be the best location for this subpart, and has moved it to § 184.620 of Subpart F—Control and Internal Communications, which was previously titled "Stabilization systems on dynamically supported craft".

Section 183.530 Hazardous Locations

One comment suggested paragraphs (a) and (b) specify the hazardous areas and refer to § 1M.105 of Subchapter J to address all other aspects of Hazardous Areas. The Coast Guard disagrees that further specification of hazardous areas is necessary. This section has been reworded to be consistent with other wording on this topic throughout the SNPRM.

One comment requested that electric solenoid valves installed for remote fuel tank shutoffs be addressed. The Coast Guard agrees, but will address this issue in § 182.455(b).

Section 183.550 General Alarm Systems on Vessels of More Thon 65 Feet in Length With Overnight Accommodations for More Thon 49 Passengers

One comment suggested some type of alarm system be required for any boat with overnight accommodations. The Coast Guard agrees and this section has been rewritten in this SNPRM to address all vessels.

Part 184—Vessel Control and Miscellaneous Systems and Equipment

Supbart A—General Provisions

Section 184.100 General Requirement

The Coast Guard is proposing in this SNPRM to add a new paragraph to this section emphasizing that the OCMI is authorized to require navigation, control, or communications equipment, in excess of the equipment specifically required by this part, on a vessel which is of a novel design, operates at high speeds in restricted or high traffic areas, operates in a dynamically supported mode, or operates on extended routes or in remote locations. The Coast Guard has determined that the specific equipment requirements of this part are adequate for most small passenger vessel operations. However, due to the type of operations and the route of certain types of vessels, equipment may be needed beyond that specifically required by part 184. Since operating areas vary significantly, this paragraph would allow the OCMI to require special equipment on a case by case basis for the type of operations listed in the paragraph. Although the present regulations do not contain any specific requirements for electronic navigation equipment, some OCMIs presently require the installation of Loran equipment on small passenger vessels operating more than 100 miles from shore. Others have required the installation of radar on high speed surface effect vessels operating in busy waterways.

Section 184.115 Existing Vessels

One comment submitted by the NTSB stated that existing vessels should have to meet the requirements for radar, electronic position fixing devices, and internal communications systems, required by §§ 184.404, 184.410, and 184.602, respectively, and should not be grandfathered as proposed. The Coast Guard disagrees. The incremental cost of adding this equipment while building a new vessel is much less than the cost of retrofitting an existing vessel. Although some casualties have been caused by not having or using this equipment, casualty statistics do not justify retrofitting. Most existing vessels already have radar or electronic position fixing devices. For those vessels which do not, § 184.115(a) specifically authorizes the OCMI to require this equipment if it is determined to be necessary for a vessel's route or service.

Subpart B—Cooking and Heating

Section 184.202 Restrictions

The proposed rule does not allow gasoline systems to be used for heating, refrigeration, or cooking, and gives limitations on the use of liquified and non-liquified gas. One comment suggested that the provisions of 46 CFR 147.50, restricting the use of liquified and non-liquified gas on board inspected vessels, should be included in this section to make this restriction clear. The Coast Guard does not consider this necessary, but does agree that the restriction can be clarified. A recent final rule entitled "Carriage and Use of Liquified and Non-Liquified Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire," [CGD 83–013] published in the **Federal Register** (55 FR 3957) on February 6, 1990, adopted new regulations concerning the use of Liquified Petroleum Gas (LPG) and Compressed Natural Gas (CNG). For consistency, § 184.202(b) has been reworded to read exactly the same as existing § 184.05–1(b), which was rewritten by the new final rule on LPG and CNG. The wording of existing § 184.05–1(d), which was adopted by the new final rule, will be included in the Subchapter T final rule as § 184.240. These changes will clearly express Coast Guard requirements.

Coast Guard has determined that cooking or heating appliances that use fuel which burns with an open flame should be specifically prohibited. This requirement is consistent with the spirit of ABYC A–3 and A–7, and NFPA 302, which are incorporated by reference. This new restriction is not intended to prohibit wood burning stoves, such as Ben Franklin stoves, or fireplaces with proper doors. Open fireplaces would be prohibited.

Section 184.240 Gas Systems

Five comments were received concerning the safety and suitability of gas systems aboard vessels. Gas systems aboard vessels were addressed by the regulatory project mentioned above, entitled "Carriage and Use of Liquified and Non-Liquified Flammable Gas as Cooking Fuels on Vessels Carrying Passengers for Hire," published as a final rule in the **Federal Register** (55 FR 3957) on 6 February 1990. The concerns expressed in the 5 comments received were addressed by that project and are not considered to be within the scope of this rulemaking. Section 184.240 of this SNPRM is reserved. The new final rule, which allows the use of LPG and CNG on board small passenger vessels subject to certain restrictions, will be included in this section of the Subchapter T final rule.

One comment noted that § 175.600, which lists standards incorporated by reference in Subchapter T, cites the 1984 edition of the National Fire Protection Association Standard 302 (NFPA 302) as being referenced in § 184.200. The comment correctly points out that NFPA 302 was revised in 1989. The final rule published 6 February 1990 incorporates the 1989 edition. Consequently, the 1989 edition is incorporated by reference in this SNPRM.

Subpart C—Mooring and Towing Equipment

Section 184.300 Ground Tackle and Mooring Lines

The proposed rule required the owner to determine and provide ground tackle and mooring lines suitable for safe anchoring and mooring of the vessel, considering the vessels' operations and subject to the approval of the OCMI. Two comments wanted equipment sizes to be specified in the regulations, or the required use of a classification society's standard, to prevent inconsistency between OCMIs. The size and type of anchors and lines or chains necessary to safely anchor or moor a vessel depend on many factors and will vary significantly. While numerous guidelines and standards, including a classification society's rules, are available, no one standard could properly cover each possible situation. Therefore, the Coast Guard is not making any change to the rule proposed in the NPRM, other than the clarification that the owner's selection of size and type is subject to the approval of the OCMI.

Subpart D—Navigation Equipment

One comment suggested that the proposed rules should require main engine tachometers, or other devices to determine the vessel's speed, for dead reckoning navigation. The Coast Guard disagrees. These methods would provide a gross estimate at best, and be affected by sea state, ocean current, and wind, among other factors. Use of tachometers would require preparation of a table comparing engine speed to actual vessel speed. No changes are being made to the rule proposed in the NPRM.

Section 184.402 Compasses

The proposed rule required a magnetic compass for each vessel, which must be mounted at "the operating station" when the vessel is underway. Two comments stated that a compass should be mounted at each operating station, while two other comments stated that only one compass should be required for each vessel. One comment stated that it was obvious that the compass needed to be mounted at the operating station. The Coast Guard agrees that only one compass per vessel, located at the primary operating station, is needed and concludes that there should be a specific mounting requirement to prevent unmounted boat compasses from being used. Proposed § 184.402(c) has been deleted and the wording in § 184.402(a) clarified in this SNPRM to show this intent.

One comment suggested that magnetic compass deviation cards should be required. The Coast Guard agrees in principle, but thinks that a deviation card is more important for large vessels operating on extensive offshore routes. Small passenger vessels carrying large numbers of passengers or operating on ocean routes are required to have a radar and electronic position fixing device, which decreases the need for accurate navigation using a deviation card. Operators finding themselves offshore with only a magnetic compass for navigation, will be able to proceed towards shore. Although the course set may not be accurate, it will allow them to get to an area where coastal piloting can be used. The effort and expense for a small vessel without a gyrocompass to accurately determine deviation is substantial, while the increase in the safety level is small. For many smaller vessels, the compass itself, and the course that is able to be made good in a seaway, may have much greater error than that caused by failure to account for deviation. No changes were made to the rule proposed in the NPRM.

The NTSB urged that the regulations be changed to require gyrocompasses on all vessels on other than rivers routes with overnight accommodations for more than 49 passengers. The Coast Guard realizes that a compass is a necessary navigation tool on vessels navigating out of sight of land. However, the Coast Guard does not agree that a gyrocompass is necessary. A review of casualty data did not show a need for the more sophisticated compass. The rule proposed in the NPRM has not been changed.

Section 184.404 Radars

In general the comments were favorable concerning the NPRM's requirements for radar on certain vessels. One comment stated all vessels should have radar and another comment stated that all vessels carrying more than 49 passengers should have a radar. The Coast Guard concurs with these comments, but cost-benefit considerations do not warrant such a requirement. One comment stated that radars are not necessary on large river vessels, because they run the same route all the time. Although all river vessel masters may be familiar with the route traveled, the Coast Guard thinks that large river vessels (of more than 65 feet in length with overnight accommodations for more than 49 passengers, or carrying more than 150 passengers) should have a radar as a safety measure to navigate during poor weather conditions. The OCMI has the authority to determine that a radar is not necessary. No change was made to the rule proposed in the NPRM.

In its comment letter, the NTSB stated that the regulations should be changed to require gyrostabilized radar on all vessels with overnight accommodations for more than 49 passengers, and all vessels carrying more than 150 passengers on lakes, bays and sounds, coastwise, and oceans routes. As stated in the preceding paragraphs the Coast Guard agrees that certain vessels should be required to have a radar. However, the Coast Guard has determined that the accuracy provided by a gyrostabilized radar is not warranted on small passenger vessels.

The survival craft requirements proposed in this SNPRM for vessels on rivers routes have been reduced from those proposed in the NPRM. The nature of harbor tour and dinner cruise vessel operations is such that they can be more flexible with regard to schedules, routes taken, and weather, and these vessels generally avoid operating under poor conditions. Ferries must generally operate on a specified schedule and plotted route in restricted waters, regardless of the weather or visibility. To provide an acceptable level of safety, the Coast Guard has determined it is now necessary to require radar on ferry vessels carrying more than 49 passengers operating on rivers routes more than a mile from shore. This change has been incorporated into this SNPRM.

Four comments were received concerning the need for radar performance standards that are more specific, to ensure that the radars installed aboard small passenger vessels are effective navigational safety devices. One of the comments provided some minimum technical standards. The FCC noted that the performance standards and specifications for radar in 47 CFR part 80 do not apply to vessels under 500 gross tons, which includes small passenger vessels. The Coast Guard agrees that more specific standards are necessary, but determined that the application of FCC standards for large vessels to small passenger vessels would be burdensome. Specifically the Coast Guard realizes that the present requirements in 47 CFR part 80 do not and should not apply to small passenger vessels. However, radars which are installed should be FCC Type Accepted to insure certain minimum standards are met. The Radio Technical Commission for Maritime Services (RTCM) is a non-profit organization in which commercial interests and government agencies cooperate to study existing and proposed maritime telecommunications systems, and often develop recommendations for national and international action. The RTCM is developing recommended radar specifications appropriate for small vessels. The Coast Guard is providing information to, and working with, the RTCM Special Committee working on these standards. When developed, the Coast Guard will consider RTCM's recommendations and evaluate them for applicability to small passenger vessels.

Section 184.408 Fathometers

The NPRM requires fathometers on all vessels over 65 feet in length, unless the OCMI determines a fathometer is not necessary. Several comments were received disagreeing with the proposed regulation. The NTSB supported the proposal and urged that fathometers be required on all vessels except those with rivers routes. The Coast Guard has determined that requiring fathometers on all small passenger vessels would be excessive because of their small size and routine operating area. While properly used fathometers can prevent some

groundings, a review of the available casualty data shows a lack of casualties in which a fathometer would have made a difference. Therefore, this section has been deleted from the SNPRM.

Section 184.410 Electronic Position Fixing Devices

The comments received concerning the NPRM requirement for electronic position fixing devices on vessels with oceans routes were generally favorable. One of the comments from an operator of vessels on lakes, bays, and sounds routes stated that electronic position fixing devices were costly, without adding to safety. The Coast Guard agrees that electronic position fixing devices are not needed on lakes, bays, and sounds routes, and they were not required by the NPRM. One comment thought that electronic position fixing devices should also be required on vessels with coastwise routes. In its comment letter, the NTSB recommended that a requirement for electronic position fixing devices on all vessels, other than those on rivers routes, be adopted, in case of emergency or poor visibility. Although the Coast Guard considers electronic position fixing devices necessary for vessels operated offshore, there are other position fixing means (radar and visual lines of position (LOPs), and dead reckoning navigation) for most other vessels, including those on coastwise routes. Cost-benefit concerns were also considered. No change was made to the rule proposed in the NPRM.

The RTCM commented that general system and equipment performance standards should be included for electronic position fixing devices, and is developing recommended performance standards. When their recommendations are formalized the Coast Guard will evaluate them for applicability to small passenger vessels.

The Coast Guard is revising its radiobeacon service areas from two LOPs (for position fixing) to one LOP (for homing), and has evaluated Radio Direction Finders (RDFs) as not acceptable for use as electronic position fixing devices. Under the revised system, an RDF is not considered capable of providing accurate fixes.

Section 184.420 Charts and Nautical Publications

The NPRM required charts and several important navigation publications aboard all vessels, as appropriate for the intended voyage. One comment suggested that subchapter T should be carried onboard. The Coast Guard does not consider this necessary. The owner and/or operator is responsible for being aware of Coast Guard standards and requirements, whether a copy of the regulations is aboard the vessel or not. One comment stated that the Navigation Rules should be required to be onboard. In 33 CFR 88.05, each self-propelled vessel 12 meters (39.4 feet) or longer is required to have a copy of the Inland Navigation Rules onboard. The Inland Rules are collocated with the International Rules in most publications. Any local OCMI can require sail propelled vessels to have Navigations Rules on board if determined to be appropriate. One comment wanted the wording of this section to reflect that vessels such as ferries, on short frequent trips over the same route, do not need charts and publications. On many ferries or other vessels on short frequently traveled routes, it may not be necessary to have charts, Coast Pilots, and other publications. However, tide variations may warrant tide and tidal current tables. The Coast Guard's position is that the local OCMI can best make this determination based on local geography, weather conditions, tidal range and current, and other factors. No changes were made to the rule proposed in the NPRM.

Subpart E—Radio

The NPRM requires that radio installations comply with FCC requirements and have an emergency broadcast placard nearby. One comment suggested the radio should have a separate power source located nearby, in case of emergency or if the main power must be shut down. While the Coast Guard accepts the location on the bridge of a separate battery for the radios and other navigation equipment as a prudent practice, no change has been made to the rule proposed in the NPRM. Proposed § 183.310 of this SNPRM requires two power sources for some systems, not including radios. The Coast Guard solicits specific comments on separate power sources for radios.

Section 184.502 Requirements of the Federal Communications Commission

The wording in this section has been revised in this SNPRM to show that all radio installations, including but not limited to radiotelegraph, radiotelephone (MF/HF), and VHF radiotelephone, must comply with applicable FCC requirements.

Subpart F—Control and Internal Communication Systems

Section 184.602 Internal Communication Systems

Many comments noted that the requirements proposed in the NPRM are more applicable to larger vessels than to small, less complicated vessels with small engine rooms and varied layouts. Some of the comments stated that a fixed communication system would not be useful on such small vessels. The Coast Guard has determined that in the event of a loss of engine or steering control a means of communication between the pilothouse and the control station is imperative for the safe operation of the vessel. Sufficient leeway is given in the regulations to account for most vessel configurations. The OCMI can allow other means of communication under paragraph (d).

Two comments thought that this requirement should not apply to twin screw vessels. The Coast Guard agrees and in this SNPRM has revised paragraph (a) accordingly.

One comment wanted to know what is meant by a fixed 2-way system, and if hand-held radios were satisfactory. As addressed in the preamble to the NPRM, a fixed communication system means a system that is "hard wired" to the vessel. Examples would include a simple sound tube or a 3-way talk back system. Paragraph (d) does allow direct voice communication, if acceptable to the OCMI. In this SNPRM, this section has been revised to allow the OCMI to accept hand held radios.

Section 184.610 Public Address Systems

The NPRM requires installed public address systems on vessels of more than 65 feet in length. On vessels with overnight accommodations or more than one passenger deck, a public address system must be operable from the operating station. Public address systems will help the crew sound alarms, arouse passengers and distribute information, even when separated from passengers. A vessel of not more than 65 feet in length has the option of demonstrating to the OCMI that a battery powered bullhorn may satisfactorily serve as the public address system while underway. A vessel of not more than 65 feet in length carrying not more than 49 passengers has the opportunity under proposed § 184.610(a) of the NPRM to demonstrate to the OCMI that it does not need a public address system for voice announcements to be heard while the vessel is underway. Three comments specifically stated they were in favor of the requirements as written.

One comment stated that requiring a wooden vessel with sleeping accommodations on a lakes, bays, and sounds route to have a fixed public address system would be ludicrous. The Coast Guard disagrees. Casualty data show that personnel injury and loss of life during emergencies can be reduced by use of a public address system.

One comment wanted all vessels carrying more than 12 passengers to be equipped with public address systems. The Coast Guard disagrees. Effective communications can be achieved on many vessels without a fixed public address system.

Four comments were received expressing the opinion that there should be a provision allowing OCMIs to determine the need for public address systems on small passenger vessels of more than 65 feet in length or carrying more than 49 passengers. The Coast Guard disagrees and thinks that the proposed regulations allow sufficient flexibility for different types of vessels and operations without leaving room for inconsistent application from zone to zone.

One comment was concerned that this regulation did not address systems which can selectively make announcements only in specific spaces, and that some OCMIs might not accept such a system. A selective system would meet the regulatory requirement. It would be better engineered if there were a master switch which would override the selecting switches, so that announcements could be quickly and surely made to all compartments during an emergency. New installations should have a master switch, which will make the system more acceptable to the OCMI, but it is not required. No changes were made to the rule proposed in the NPRM as a result of this comment.

One comment suggested that more specific voltage, power and transformer requirements be added for public address system construction. The Coast Guard disagrees. Coast Guard regulations are performance oriented, not construction based. This allows the designer to construct an effective system as economically as possible.

One comment stated that a marine loudhailer should be used in lieu of a bullhorn. The Coast Guard disagrees. A bullhorn, if audible throughout the required spaces, would meet the requirements of the proposed rule. No changes were made to the rule proposed in the NPRM.

One comment stated that a public address system is not needed on crew boats. The passengers are normally professionals and a public address system normally exists for the exterior of the vessel. The Coast Guard disagrees. Passengers, regardless of profession, are not members of the crew. Experienced offshore oil field workers may not need some of the items required for "off the street" passengers, but the Coast Guard considers a public address system necessary for the safety of the passengers.

The Coast Guard has rewritten this section for this SNPRM to make the intended requirements more clear. One change was made to indicate that the public address system must be audible during normal operating conditions. Normal operating conditions means that the vessel is underway with all normal machinery operating.

Subpart G—Miscellaneous

Section 184.704 Marine Sanitation Devices

This section of the NPRM reminds small passenger vessel owner/operators about the requirements in 33 CFR part 159, that all vessels operating on the waters of the United States and having installed toilet facilities must have a Marine Sanitation Device (MSD). Under these regulations, a portable toilet which is permanently secured to the vessel is considered to be installed and must be able to function as a Type III MSD or be connected to a Type I or II MSD.

One comment stated that this section conflicted with § 177.840 of the NPRM, which allowed portable toilets. Section 177.840, which has been removed in this SNPRM, allowed certain vessels to permanently install portable toilets. Once installed, they must meet the MSD requirements. No change has been made to the rule proposed in the NPRM.

Section 184.710 First Aid Kits

The NPRM required a Coast Guard approved First Aid Kit, or a kit with equivalent contents, to be carried on all vessels. One comment supported the NPRM.

One comment wanted to know if this requirement applied to existing vessels. A section in the introductory portion of this preamble specifically discusses the applicability of proposed rules to existing vessels. Each part of proposed subchapters T and K begins with a section concerning applicability. Unless the applicability section exempts existing vessels or allows a time interval before compliance is mandatory, the regulation applies to all vessels covered by the section as soon as it is effective. In the absence of specific exemptions or delays for existing vessels, each regulation applies to all vessels as soon as it is effective. In this case, under § 184.115(c) an existing vessel need not have a first-aid kit until one year after the regulations become effective.

Another comment wanted specific equipment to be listed for vessels of not more than 65 feet in length, including special items for fishing and dive boats. The Coast Guard agrees that it would be prudent for a small passenger vessel to carry any equipment considered necessary for important emergencies which will frequently occur, but does not concur that a special First Aid Kit should be required for each vessel type. The Coast Guard's intent is that standard emergency first-aid equipment be on hand to treat minor injuries which will routinely occur aboard most vessels. No changes were made to the regulations proposed in the NPRM.

Section 184.720 Emergency Equipment

The NPRM required vessels with overnight accommodations for more than 49 passengers to carry the emergency equipment required by subchapter H. The vessels to which this section would have applied are above the proposed breakpoint requiring compliance with new subchapter K. Many of these vessels will also be above the proposed breakpoints which would require them to comply with subchapter H. The Coast Guard does not consider the amount and level of emergency equipment required by subchapter H necessary on the few vessels which would have been required to have the equipment by the NPRM, but which will be below the proposed breakpoint for compliance with subchapter H. Therefore, this section is deleted in this SNPRM.

Part 185—Operations

Subpart B—Marine Casualties and Voyage Records

Section 185.202 Notice of casualty

One comment correctly pointed out an error on page 4415 of the NPRM preamble, stating that an injury resulting in incapacitation for more than 72 hours must be reported. This provision was changed in a separate rulemaking published in the **Federal Register** (53 FR 47077) on November 21, 1988. A report is now required for an injury which requires professional medical treatment beyond first-aid or, in the case of a person engaged or employed on board a vessel in commercial service, for an injury which renders the individual unfit to perform routine vessel duties. This requirement, presently contained in 46 CFR 4.05–1, was correctly stated in § 185.202(e) in

the NPRM and has been retained in this SNPRM.

One comment stated that the injury reporting criterion in § 185.202(e) in the NPRM is vague and will lead to reports of casualties that are not significant and will place an administrative burden on the Coast Guard and industry. The Coast Guard recognizes the concerns regarding the revised reportable injury criterion, which is presently contained in 46 CFR 4.05–1. Alternative wording is being considered for a future revision to 46 CFR part 4.

One comment suggested the addition of collisions as a reportable casualty even when any resultant damage is valued at less than $25,000. The Coast Guard disagrees. The Coast Guard's marine casualty reporting criteria were amended in the early 1980s after lengthy study and public comment, with the lower limit for property damage increasing from $1,500 to $25,000. Some of the reasons for doing so were to narrow the Coast Guard's focus on more significant accidents as a means of measuring safety trends, to reflect the increased cost of marine repairs, and to reduce the paperwork burden on the reporting public. In view of these factors, reverting back to a lower damage limit for any or all classes of vessel casualties would serve little purpose and could not be justified. Existing criteria requires a report of any incidents which affect seaworthiness of a vessel. Many collisions, even where resulting damages less than $25,000, would still need to be reported.

Section 185.204 Substance of Marine Casualty Notice

One comment stated that the name of the person in charge of the vessel involved in a casualty should be included in § 185.204. The Coast Guard has concluded that the provisions of § 185.206, which require the timely submission of a written report on form CG–2692, are sufficient for identifying the operator of a vessel involved in a casualty.

Section 185.207 Alcohol or Drug Use by Individuals Directly Involved in Casualties

This section has been renumbered as § 185.210 in this SNPRM and contains requirements for determining and documenting alcohol or drug use by individuals involved in a casualty requiring reporting under § 185.202. The requirements of this section are identical to those in 46 CFR 4.05–12 and are repeated for the sake of convenience.

One comment stated the section should be revised to reflect changes in the final rules concerning drugs which was published in the **Federal Register** of 21 November 1988 (53 FR 47044). While the final rule did not change 46 CFR 4.05–12, there were new requirements for mandatory chemical testing following serious incidents involving vessels in commercial service. Due to their length and complexity, the specific requirements for such testing are not repeated in the proposed small passenger vessel subchapters. However, this SNPRM does contain a new § 185.212 (K–§ 122.212) to remind marine employers of their obligations under the new requirements in 46 CFR, part 4, subpart 4.06.

Section 185.208 Damage to Pressure Vessel

One comment stated that this section, which requires the reporting of damage to boilers or unfired pressure vessels, was not necessary. The Coast Guard disagrees. This section is included to ensure that the Coast Guard becomes aware of failures of pressure vessels and boilers which did not result in a serious enough casualty to report under § 185.202. Reports under this section need not be in writing. This section was incorporated into the NPRM from § 78.33 of subchapter H. The requirement to report pressure vessel or boiler failure which renders further use of the unit unsafe is applicable to all vessels, and has been retained in the SNPRM.

Section 185.220 Records

Two comments stated that an owner should not be required to keep the records under this section. The Coast Guard disagrees. This section is adopted verbatim from existing § 4.05–15 and is repeated in Part 185 for convenience. The section does not require that any new information be recorded, but only that the owner or a representative retain any records or information which is normally recorded or maintained by the vessel if it is involved in a casualty, so that such records or information might be used in any investigation.

Section 185.240 Reports When State of War Exists

Section 185.240 in the NPRM, adopted verbatim from § 4.05–25, requires that special care be taken when communicating information about casualties in time of war. One comment recommended this section be deleted. The Coast Guard agrees and has not included the section on reports during a state of war in this SNPRM. The section would need to be expanded during actual time of war. Since existing § 4.05–25 provides a sufficient base for promulgating any new regulations on the topic and it is also applicable to small passenger vessels, the section can be deleted from Part 185 without detrimentally affecting the goal of a self-contained subchapter.

Subpart C—Miscellaneous Operating Requirements

Section 185.304 Navigation Underway

This section was adopted from 33 CFR 164.11 as a result of a NTSB recommendation. The section mandates safety procedures which most masters routinely perform and which are considered to be prudent seamanship.

Three comments objected to the section, stating that the Coast Guard has sufficient authority to address crew performance by taking penalty action or initiating Suspension and Revocation Proceedings in the event of a casualty. They believed it could be implied that a person might not be responsible if a casualty occurred as a result of a navigational error other than one of the listed requirements. The Coast Guard disagrees. The preamble in the NPRM does state that the section contains requirements "designed to ensure the safe navigation of a vessel." However, compliance with the requirements of this new section, as with all regulations, does not guarantee the safe navigation of a vessel. The proposed section will help ensure that masters are aware of many of their critical responsibilities. Proposed §§ 185.100 and 185.370, as well as existing §§ 15.401 and 15.405 of the manning requirements in 46 CFR, also contain general requirements concerning the safe navigation of a vessel as well as other prudent practices which are not specifically listed in this section.

One comment stated that the section was copied from 33 CFR 164.11 without regard to its appropriateness to small passenger vessels. The Coast Guard disagrees. Several changes were made to the requirements of 33 CFR 164.11 to make them relevant to small passenger vessels. The applicability of this section to small passenger vessels also varies. This is reflected by provisions such as the one in paragraph (a)(2), which states that the person navigating the vessel needs to know certain items, such as gyrocompass error, only "when necessary" for the vessel on its present voyage.

One comment stated that applicants for a license as master or mate of a vessel of 100 or less gross tons were not required to be able to determine the state of the tide for any given location or time, as required by paragraph (a)(2). The Coast Guard disagrees. The state of the tide includes whether it is falling or rising, how low or high it is going to get, and the resulting tidal currents which will occur. For these licenses an applicant is tested on the ability to determine, for all reference and subordinate stations: (1) the time and height of tide at high and low water; and (2) the times and velocities of the resulting minimum and maximum currents.

One comment questioned the need to know magnetic compass deviation and how to use it, as required by paragraphs (a)(2)(i) and (b)(5), if a current deviation card was not required to be aboard. Deviation cards are discussed under § 184.402. Some vessels do have deviation cards, although they are not required. It is important for all persons directing the movement of a vessel to understand how a magnetic compass works, what errors or inaccuracies it is subject to, and how to use one as well as possible. These requirements have been changed to show that they would not apply if the vessel does not possess the necessary equipment.

Section 185.306 Passengers Excluded From Operating Station

Numerous comments specifically objected to the provisions of this section in the NPRM which prohibits passengers from entering the operating station, i.e., pilothouse, of a vessel carrying more than 150 passengers or with overnight accommodations for more than 49 passengers. Many comments recommended that passengers be prohibited in the pilothouse only in hazardous situations. Three comments recommended that passengers be excluded from the operating station on any vessel regardless of the number of passengers carried.

Proposed § 185.306 was adopted from § 78.10–1 of subchapter H, and was included in the NPRM upon the specific recommendation of the NTSB (M–86–68) following a collision between the passenger vessel MISSISSIPPI QUEEN and the towboat CRIMSON GLORY. When this casualty occurred a passenger was in the pilothouse of the MISSISSIPPI QUEEN. Although there is no specific evidence that the passenger's presence contributed to the casualty, it was a potential distraction to the navigating crew and a violation of § 78.10–1. NTSB recommended that, where practical, passengers also be prohibited from the pilothouse of small passenger vessels while underway to minimize distractions.

The Coast Guard agrees that the navigating crew could also be distracted by passengers in the pilothouse of a small passenger vessel. On numerous small passenger vessels there is no physical separation between the operating station where the vessel's controls are located and where passengers stand or sit. In such cases, casualty history shows that masters have successfully used their skills and authority to minimize distractions which may result in unsafe navigation.

As testified to by numerous small passenger vessel owners, an important part of a cruise for many passengers is a visit to the pilothouse while underway. Consequently, many owners allow passengers in the pilothouse while underway, under controlled circumstances. Also, there is little evidence to support a complete ban of passengers in pilothouses which are separated from passenger accommodations.

In consideration of the above, the Coast Guard is proposing in this SNPRM to remove § 185.306 from subchapter T, but to leave a revised section in subchapter K (K § 122.306). This section would prohibit passengers in the operating station in certain circumstances where the Coast Guard considers it vital that the navigating crew is not distracted to any extent. An additional paragraph has been added to the revised section to allow persons such as marine inspectors and Sea Scouts to be in the operating station when specifically allowed by the master.

Section 185.352 Ventilation of Gasoline Machinery Spaces

One comment stated that vessel movement and/or operation of machinery should cause enough air flow while machinery was operating that the requirement in paragraph (2), to have the exhaust fan run continuously, was not necessary. The comment further noted that the vapor detector would provide warning of problems. The Coast Guard agrees that this requirement is not necessary and has removed it in this SNPRM.

Section 185.356 Carriage of Hazardous Materials

The proposed rule states that a vessel must not be used to transport a hazardous material listed in 49 CFR 172.101 in commerce unless that material is handled and transported in accordance with 49 CFR parts 171 through 176 which contain the package hazardous materials regulations.

One comment said that the carriage of a hazardous material listed in 49 CFR 172.101 should be permitted only if the material is packaged on a vehicle or rail car in accordance with 49 CFR part 171 to 174 and 49 CFR part 177. In addition, the comment said that no hazardous material should be permitted to be transported by a vessel without appropriate personnel accompanying the shipment, and no passengers should be permitted on board.

The Coast Guard disagrees with these comments. The Hazardous Materials Regulations, 49 CFR 171–179, already contain specific requirements concerning which hazardous materials may or may not be carried on vessels carrying passengers as well as specific requirements which apply to the packaging, handling, and stowage of hazardous materials. The text of § 185.356 is merely a restatement of the applicability of the hazardous materials regulations to vessels regulated under subchapter T and does not alter these regulations or their applicability. In order to be more precise and consistent with similar language in other subchapters, the Coast Guard is changing the reference in § 185.356 in this SNPRM to 49 CFR part 171 through part 179 since requirements in parts 177, 178 and 179 also may be applicable.

Subpart D—Crew Requirements

Section 185.420 Crew Training

This proposed section would require that upon first being employed and at least once every two months, each crew member on any small passenger vessel be instructed about the individual duties that the crew member is expected to perform in an emergency. This section was developed because of casualties which may have been less severe had crew members been better prepared for an emergency. Two comments specifically supported the proposed requirement. Two comments stated that there should be a requirement for refresher first-aid and Cardiopulmonary Resuscitation (CPR) courses. First-aid and CPR training is now required by 46 CFR part 10. All licensed officers are expected to know basic first-aid. CPR refresher courses were previously discussed in the **Federal Register** of 4 January 1989 (54 FR 132), which contained the final rules entitled Licensing of Maritime Personnel.

Subpart E—Preparations for Emergencies

Section 185.502 Crew/Passenger List and Voyage Plan

This proposed section in the NPRM would require recording the names of all passengers and crew on vessels on oceans, coastwise, and Great Lakes voyages, vessels with overnight accommodations making overnight

voyages, and vessels on foreign voyages. The requirement is based on 46 U.S.C. 3502 as well as recommendations resulting from both NTSB and Coast Guard casualty investigations, and is discussed in the preamble for the NPRM. The law is presently in effect although implementing regulations have not yet been developed.

The Coast Guard received numerous comments opposing all or part of the requirement proposed in the NPRM. Some comments stated that casualty data does not justify the time or expense. Other comments reported the difficulty in recording names during short turn around periods and that requesting names would annoy and frighten passengers. Several comments wanted specific exceptions from the requirement for certain type vessels while many stated that vessels on the Great Lakes should not have to maintain the required list, as it is not required by law for most Great Lakes vessels.

The Coast Guard estimates that this proposed rule imposes a significant cost of over $1 million annually. However, it implements existing law, and as detailed in the NPRM preamble, several casualties have occurred in which the information required by the proposed section would have greatly assisted the ensuing search cases. All the casualties suggesting the need for a list involved vessels carrying passengers on fishing trips on oceans or coastwise routes. In an effort to reduce this cost to the industry, and stay strictly within the statutory requirements of 46 U.S.C. 3502, the Coast Guard has revised the SNPRM by deleting the passenger list requirement for vessels on overnight voyages not involving oceans or coastwise routes.

Further, the Coast Guard agrees that the casualty record and the type of operations of most vessels on the Great Lakes do not justify the cost of maintaining crew and passenger lists. Therefore, § 185.502 has been revised in this SNPRM by deleting the general requirement for passenger lists for most vessels on Great Lakes voyages, unless specifically mandated by 46 U.S.C. 3502. As proposed, most vessels on Great Lakes voyages would only need to maintain a passenger count in accordance with § 185.504. Owners of vessels operating on coastwise and ocean routes would still be required to maintain a list as required by 46 U.S.C. 3502.

Some comments questioned the need for keeping a list of persons who embark and disembark from the applicable vessels. This provision of the regulation cannot be changed because it only reiterates the law which states "The owner * * * shall keep a correct list of passengers received and delivered from day to day * * *".

Some comments were concerned that passengers might consider a requirement for recording their name as an invasion of privacy and might give false names. The Coast Guard disagrees. Passenger manifests are routinely maintained by the airline industry without significant problems.

The primary intent of the crew and passenger list requirement is to provide a list of persons aboard a vessel for emergency use by search and rescue personnel. Therefore, paragraph (b) of § 185.502 would require that the list be deposited ashore before the vessel departs its berth to begin a voyage. Two comments were concerned that this requirement would significantly interrupt schedules. The Coast Guard acknowledges that the requirement would impose a burden on operators but believes the burden will be reduced as resourceful operators develop systems to record names.

The list may be hand-carried ashore or transmitted by radio or other electronic means. It may be deposited ashore in a well-marked lock box at the vessel's departure berth, at an office readily identifiable with the vessel, at a nearby port captain's office, or at another location of which the owner notifies the OCMI. An operator could hand deliver an initial list ashore and call in by radio any last minute walk-on passengers.

One comment recommended that the required list be attached in a watertight case to the vessel's EPIRB for use in an emergency. The Coast Guard disagrees with this proposal because the vessel's EPIRB may not be recoverable, making any attached list useless.

Further, the Coast Guard believes that the information required by this proposed regulation might be satisfied by a count rather than a list that includes the names of the passengers. Any additional safety benefits from collecting names may be very small as compared with the cost of preparing a passenger manifest. At this juncture, however, the Coast Guard has not been able to structure the rule so as to satisfy its interpretation of legal requirements in a way that would limit the information requirements to a count of passengers as opposed to a manifest.

Paragraph (b) of § 185.502 has been revised in this SNPRM by adding a new requirement that the master of a vessel required to make a crew and passenger list also complete a voyage plan to be deposited ashore with the list. The voyage plan requirement is based on NTSB recommendation M–90–16, issued after the sinking of the inspected vessel COUGAR off the coast of Oregon on September 16, 1988. This casualty resulted in the deaths of four persons. If the master of the COUGAR had filed a voyage plan, the deaths might have been prevented and the costs of the extensive search and rescue effort greatly reduced. There have been other similar cases in the past. The Coast Guard concurs with the need for voyage plans. Since all prudent masters presently file a voyage plan, the additional cost imposed by this new requirement is insignificant.

Section 185.504 Passenger Count

This section requires that the master of a vessel must keep a correct count of all passengers received and delivered if not required to make a crew and passenger list under § 185.502. One comment stated that the proposal does not consider vessels on short voyages where the passenger count is done by the ticket office, not the master. As written in the NPRM, § 185.504 repeats almost verbatim the statutory requirements of

The corresponding control numbers are displayed in proposed §§ 114.900 and 175.900 of this SNPRM.46 U.S.C. 3502(b). Therefore, the provisions of the requirement cannot be made less stringent regardless of voyage length. The regulation and the law states that the master shall keep the count of passengers since the master is primarily responsible for the safety of the vessel and its passengers. However, the count may be taken by other persons and maintained in a written record on shore providing the master ensures the count is made and recorded. The count may be made by ticket sales, a turnstile, physical count, or other acceptable means.

One comment implied that a count is usually not needed because boats are rarely filled to capacity. The Coast Guard disagrees. The passenger count is valuable information in search and rescue cases as well as in determining whether the number of passengers exceeds the number allowed by a vessel's COI.

One comment stated that requiring a passenger count is appropriate and is what the law intends. Another comment stated that a written record of the count should be maintained on shore prior to getting underway. The Coast Guard believes that it is a prudent practice for masters to leave behind voyage plans which include the number of passengers aboard. In fact, the count would be of little use to emergency rescue personnel unless it was left ashore when the vessel departed. Therefore, this section would require that the count be left ashore before the vessel departs. Any of the means acceptable for leaving behind a passenger list, as discussed under § 185.502, would be acceptable for leaving behind a passenger count.

Section 185.506 Passenger Safety Orientation

This section in the NPRM requires that an audible announcement must be made to the passengers about safety procedures and equipment aboard the vessel before getting underway. In response to recommendations following several casualties where passengers were provided with little or no information regarding emergency procedures or equipment, the proposed requirement expands the present requirement for a safety orientation in § 185.25–1. The preamble in the NPRM provides detailed background on the proposal.

Three comments supported the proposed requirement as written. Many comments were also received opposing any audible announcement requirement or requesting specific changes to the requirement. Two comments stated that announcements should be allowed to be made after a vessel has gotten underway as is done on aircraft. The Coast Guard disagrees with this proposal. One of the most hazardous portions of a voyage for some vessels may be as the vessel first gets underway and enters a busy waterway. Due to other distractions, including engine noise, it may also be more difficult to get the full attention of passengers after getting underway. By way of comparison, safety briefings are required to be given on passenger carrying airplanes before each takeoff, in accordance with 14 CFR 121.571 and 121.573.

One comment questioned the need to tell passengers how to don lifejackets. The Coast Guard disagrees. In an emergency situation many people panic. The situation may be intensified for passengers unfamiliar with lifejackets which they may have to don rapidly. Lifejackets have different means of fastening. The regulation requires a demonstration of the proper donning of a lifejacket only for a vessel on an ocean or coastwise voyage. Although demonstrations on other vessels are encouraged, announcements may be limited to simple verbal instructions on donning a lifejacket with reference to the lifejacket placard which would be required by proposed § 185.516.

Paragraph (a)(6) of the NPRM required that the safety orientation include an announcement that passengers would be required to don lifejackets in hazardous situations, but may also don jackets wherever they desire. One comment requested that paragraph (a)(6) be revised so that unruly passengers do not abuse lifejackets. The Coast Guard agrees that some unruly passengers may playfully don lifejackets and possibly damage them. The provisions allowing passengers to don lifejackets whenever they desire was included because of complaints that some masters have prohibited passengers from wearing jackets. To address the comment, the Coast Guard is proposing in this SNPRM to delete the requirement for an announcement about the voluntary donning of lifejackets, but to revise proposed § 185.508 to require that a passenger desiring to wear a lifejacket must be allowed to do so. Existing civil law concerning destruction of property may be used to control abuse of lifejackets.

Five comments stated that passengers will either ignore announcements or forget information passed in announcements that are too detailed. The Coast Guard acknowledges that a certain percentage of passengers will not pay attention to or or will not be able to retain the information passed during a safety announcement. However, verbal announcements will better assure that most passengers are aware of basic emergency procedures and will know where to find posted placards which will help to remind passengers of safety concerns during a voyage.

Several comments expressed concerns that the proposed requirement does not recognize differences between types of vessels or different routes, and stated, among other things: Ferry and crew boat passengers are usually repeat customers; ferries often have short turn around times which makes it difficult to make an announcement; and on car ferries many people sit with car engines running and windows rolled up for heating or air-conditioning purposes.

Although some vessels such as ferries and crew boats may primarily carry repeat passengers, on most voyages there will be some passengers unfamiliar with the vessel's applicable emergency procedures or safety equipment. As on aircraft, it is therefore important that a safety orientation be conducted prior to each voyage. The Coast Guard recognizes that there is a difference in the type of information which needs to be presented on individual vessels. Paragraph (a) of § 185.506 states that passengers shall be informed of the listed information "when applicable."

The Coast Guard realizes that adequately broadcasting just the listed applicable information on some vessels, such as ferries on short voyages with rapid turn around times, may be difficult. Even with vehicle motors turned off as required by existing § 185.20–20(b) and proposed § 185.340(b), occupants of vehicles may still have difficulty hearing verbal announcements due to vessel noises, rolled up windows, or echoing. To address these concerns the Coast Guard is proposing alternative safety announcements for vessels on inland routes where history shows a reduced risk of a casualty occurring. However, the need remains for a complete audible safety announcement for vessels on oceans and coastwise routes as provided for in the NPRM.

This SNPRM revises § 185.506 by allowing the master of a vessel on other than an ocean or coastwise route to make an abbreviated safety announcement, providing that printed cards or pamphlets supplementing the verbal announcements are hand delivered to each passenger prior to departure or are located near each seat on a vessel for which there are seats for every passenger. A marine inspector may review any safety orientation cards or pamphlets for adequacy during a routine inspection.

In response to a comment received from the NTSB, this SNPRM adds a new paragraph (d) to § 185.506, requiring that passengers on voyages of more than 24 hours duration be requested to don a lifejacket and go to their embarkation station during the safety orientation. Although the Coast Guard does not agree that the master can require passengers to participate in such activities, passengers should be encouraged by the crew to don a lifejacket and go to their muster station. This proposed paragraph is further discussed in this preamble under § 185.520.

Section 185.508 Wearing of Lifejackets

This section would require that the master ensure that passengers don lifejackets under certain conditions. This requirement was proposed based on recommendations made by the NTSB. The preamble in the NPRM contains a detailed discussion. In response to the NPRM, the NTSB urged adoption of the proposed rule stating that although the proposal does not specifically comply with their recommendations, a reasonable interpretation of the proposed rule would require the wearing of lifejackets at times of greatest concern. One comment stated that the wearing of lifejackets in any situation short of imminent danger can cause needless apprehension among passengers. Based on casualty history, the Coast Guard has

determined that lifejackets should normally be worn by passengers in the conditions listed in the NPRM. Passengers should be aware when there is a heightened need for safety. To minimize apprehension passengers may be informed that although no problems are expected, wearing of lifejackets under the existing conditions is a required safety precaution, just as the wearing of seat belts in an automobile is often required for their own safety.

One comment stated that this section should specify that a passenger desiring to wear a lifejacket be allowed to do so. The Coast Guard agrees and as discussed under § 185.506 in this preamble, has added new § 185.506(c) in this SNPRM.

Section 185.516 Lifejacket Placards

Paragraph (a) of this section in the NPRM requires that lifejacket instruction placards be posted in conspicuous places aboard each vessel, and paragraph (b) specifically requires that such placards be posted in each passenger cabin or stateroom on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers. The one comment on this section suggested posting placards in each cabin and stateroom regardless of the number of overnight accommodations or length of a small passenger vessel. The Coast Guard disagrees. The proposal is adequate to ensure that passengers have ample opportunity to see the placards and study proper donning methods on smaller vessels with overnight accommodations for not more than 49 passengers (vessels which are proposed by this SNPRM to be regulated by Subchapter T). Under this SNPRM, only vessels regulated by Subchapter K would be required to have lifejacket placards in each overnight accommodation space.

Section 185.518 Inflatable Liferaft Placards

The NPRM proposed that every vessel with inflatable liferafts have instruction placards posted in conspicuous places. Two comments suggested that this section be broadened to include inflatable buoyant apparatus, since they are launched and used in virtually the same way as inflatable liferafts. The Coast Guard agrees with the comments and the section has been broadened in this SNPRM to include all inflatable survival craft. Although specific placards are not yet issued for inflatable buoyant apparatus, the Coast Guard is considering this approach. Until such placards have been approved, any instruction card acceptable to the OCMI will be satisfactory.

Section 185.520 Abandon Ship and Man Overboard Instructions and Drills

Section 185.520 in the NPRM proposes that the master be required to conduct sufficient drills and give sufficient instructions to ensure that all crew members are familiar with their duties in an emergency. Paragraph (b) proposes specific drill frequency and crew participation requirements for certain vessels. Paragraph (c) specifies what an abandon ship drill must consist of including the summoning of passengers on a vessel on an overnight voyage to muster stations. The corresponding existing section in subchapter T, § 185.25–10, only requires that drills on small passenger vessels be held and instructions provided to ensure all crew members are familiar with their duties. The provisions of the proposed section were developed in response to casualty investigation results, including a specific recommendation (M–86–060) in the NTSB report on the PILGRIM BELLE grounding. In its report the NTSB recommended that fire and boat drills which include passengers reporting to muster stations be required within 24 hours of departure on cruises that are more than one day's duration.

In response to the NPRM, the NTSB commented that the proposed section is inadequate and urged revision of it to better comply with its recommendation M–86–060. The Coast Guard concurs with the intent of the NTSB recommendation that passengers aboard vessels on 24 hour voyages have experience with both donning a lifejacket and with knowing where to go in an emergency. Ideally, passengers on all vessels should be exposed to such training. However, for small passenger vessels on short voyages, actually requiring passengers to participate in drills would be impractical due to time and space limitations. To ensure passengers on 24 hour voyages are familiar with donning a lifejacket and finding their embarkation station, the Coast Guard is proposing in this SNPRM to make such a requirement part of the safety orientation required by § 185.506.

The Coast Guard is also proposing in this SNPRM to revise paragraph (a) of this section to emphasize that the section is primarily requiring instructions and drills for emergencies involving abandon vessel situations and the recovery of persons who have fallen overboard. This section emphasizes that man overboard drills must be held on all vessels. Such drills are necessary regardless of whether a rescue boat, a special platform, or the vessel itself is used for the recovery. Proposed § 185.420 already contains a general requirement for the instruction of crew members on their expected duties in a variety of emergencies.

Paragraph (b) only requires that vessels with more than four survival craft and vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers conduct a minimum number of drills. Instead of using "four survival craft", the Coast Guard proposes in this SNPRM to require that vessels carrying more than 150 passengers or having overnight accommodations for more than 49 passengers (i.e., those vessels proposed to be regulated by subchapter K) conduct the prescribed minimum number of drills. A minimum number of drills on vessels carrying not more than 150 passengers or with overnight accommodations for not more than 49 passengers (proposed to be regulated by subchapter T) has not been proposed in this SNPRM since the need for routine drills varies more on smaller vessels, depending on the size and turnover of the crew, the service provided, route, and other factors. As the number of passengers grows larger, such as over 150, it becomes more difficult for the crew to handle passengers in an emergency and the number of survival craft increases making it more difficult for the master to direct an evacuation.

Paragraph (c) (now (b) in the SNPRM) lists the minimum tasks with which all crews should be familiar in preparation for an abandon ship situation. One comment stated that these requirements should only be applicable to large overnight vessels. The Coast Guard disagrees. Any size vessel might need to be abandoned. The details of the drills and actual time necessary to conduct an adequate drill obviously vary significantly based on a vessel's size, design, crew, and other factors. Some tasks such as summoning passengers or deploying survival craft may have to be simulated.

Paragraph (e) (now (d) in the SNPRM) of this section in the NPRM states that each rescue boat must be launched and maneuvered during a man overboard drill once each month, if practicable, but not less than every three months. Some comments pointed out that since some small passenger vessels are not required to have rescue boats, they would not need to conduct the proposed periodic drill. The Coast Guard agrees and has revised this SNPRM to clarify that periodic drills with a rescue boat are only required when a rescue boat is carried.

One comment stated that the provisions of paragraph (e) should be changed to reflect the fact that some vessels are only operated seasonally. The Coast Guard agrees and has revised paragraph (e) in this SNPRM.

Paragraph (f) (now (e) in the SNPRM) of this section requires onboard training for davit-launched liferafts at least every 4 months on vessels so equipped. The Coast Guard does not expect that many davit-launched rafts will be installed on small passenger vessels. However, paragraph (f) was proposed due to the additional crew training necessary on vessels whose owners decide to install davit-launched liferafts as an optional means of complying with the survival craft requirements in this SNPRM. One comment stated that the inflating and lowering of such a liferaft or the purchase of a special training raft is not a no-cost item as indicated by the regulatory evaluation. The Coast Guard acknowledges that the subsequent servicing and packing of any inflatable survival craft is expensive. However, the proposed regulation does not require the actual inflation and lowering of the raft but only states that it should be done when practicable. A special training raft is also not required although it is recommended for instruction. To provide better training and significantly reduce any expense that is involved with the deployment of any inflatable survival craft, such craft could be inflated as part of instructions or drills prior to having the required annual servicing completed on the craft, or before the CO_2 bottle for the craft has to be tested and refilled (hydrostatic tests are required every five years, and are done at the annual servicing after the due date).

One comment stated that drills should never be held with passengers aboard. The Coast Guard disagrees. It is preferable that drills be held whenever possible with passengers aboard to provide realistic training. Large, ocean-going cruise ships routinely hold drills in which passengers willingly participate, giving crew members training in the handling of persons unfamiliar with the vessel. However, the Coast Guard realizes that passengers are not required to participate in such drills. Paragraph (c) (now (b) in the SNPRM) only requires that passengers be summoned during an abandon ship drill and that the crew practice how to handle passengers during an emergency. Under the NPRM few vessels would actually have to conduct drills when passengers are aboard, although it is recommended. The summoning of passengers may be simulated as part of the drill if passengers are not aboard.

One comment stated that charterers would cancel trips if they were delayed because of having to hold drills. The Coast Guard disagrees. Such cancellations are doubtful if, by regulation, all vessels in a certain service are subject to the same safety requirements.

Section 185.524 Fire Fighting Training and Fire Drills

This section requires that the master conduct such fire drills as are necessary to make sure that all members of the crew are familiar with their duties in case of a fire, that each fire drill include the summoning of passengers on a vessel on an overnight voyage, a demonstration of the crews' assigned duties during a fire, and instruction in the use of fire fighting equipment on board.

The NTSB stated that the requirements proposed in the NPRM are inadequate and urged revision of the NPRM to comply with NTSB Recommendation M–86–060. NTSB Recommendation M–86–060, made as a result of the PILGRIM BELLE grounding, recommended that during fire drills on vessels on cruises of more than 24 hours duration, passengers report to their emergency muster stations. The Coast Guard's opinion on the reporting of passengers to muster stations during drills was discussed in this preamble under § 185.520. The Coast Guard agrees that fire drills should be held at regular intervals on vessels carrying a large number of passengers and, in this SNPRM, is proposing weekly fire drills for vessels to be regulated by subchapter K.

One comment stated that fire drills and abandon vessel drills should be held at random and not in a set order so that crews are better prepared. The Coast Guard agrees and has added an appropriate requirement in this SNPRM to the fire drill section of proposed subchapter K.

Section 185.602 Hull Markings

The rule proposed in the NPRM would establish requirements for either draft marks or maximum loading markings. One comment endorsed the requirement for draft marks, noting an old requirement for them on small passenger vessels over 50 GT. This comment opposed maximum loading marks because the maximum allowable draft and trim is not well defined. The comment noted that draft marks facilitate any stability test. The Coast Guard finds that, for safety, marks are needed to help the operator ascertain compliance with the vessel's stability letter. Conventional draft marks are not necessary, although they are preferable. Maximum loading marks have proven to work well with the Load Line Convention. Maximum draft and trim are well defined in the stability letter and are based on the loading conditions shown by the owner to comply with the applicable stability criteria. The rule proposed in the NPRM has not been changed.

One comment suggested clarifying that if the vessel is issued a load line it will have load line marks. The Coast Guard agrees. The midship marks required by the Load Line Convention take precedence over the marks described in this section. In paragraph (d) this SNPRM reflects that, if the vessel has a load line, the midship marks will be those required by the International Load Line Convention.

Subpart F—Markings Required

Section 185.604 Lifesaving Equipment Markings

The NPRM contained a number of requirements for marking lifesaving equipment with the name of the vessel and capacity (number of persons) of the equipment, and also for marking with retroreflective material. Three comments suggested requiring retroreflective material on life floats and buoyant apparatus. Manufacturers have been required to put retroreflective material on all new approved life floats and buoyant apparatus since 1983. Therefore, there is no need to repeat the requirement in this section. As older life floats and buoyant apparatus are replaced, all survival craft will eventually be equipped with retroreflective material.

Another comment suggested deleting the reference to immersion suits, since immersion suits are not required to be carried on small passenger vessels. Immersion suits are not required on small passenger vessels, but may be carried voluntarily, especially in cold water regions. It is a common practice on many vessels carrying immersion suits for a suit to be assigned to or owned by a particular crew member. This is often the case for persons who need an immersion suit other than the universal adult size. Paragraph (b) has been revised in this SNPRM to indicate that an immersion suit could be marked with the name of the person to whom it is assigned as an acceptable alternative to the name of the vessel.

Paragraph (b) has also been revised in this SNPRM to permit the temporary carriage of lifejackets which are not marked with the vessel's name. The need for this alternative was addressed in the preamble discussion of § 180.71.

Paragraph (g) has been revised in this SNPRM to allow identification of stowage locations with the symbols in IMO Resolution A.603(15), "Symbols related to life-saving appliances and arrangements", as an alternative to the use of words.

One comment suggested that arranging the retroreflective material according to an IMO recommendation, as required by paragraphs (i) and (j), should not be required retroactively. The Coast Guard has no intent to require rearrangement of retroreflective material presently on lifesaving equipment. Paragraphs (i) and (j) have been revised in this SNPRM to clarify that arrangement of retroreflective material conforming to the IMO recommendation is required only after the effective date of the final rule.

Section 185.606 Escape Hatches and Emergency Exits

This section in the NPRM repeats the requirements of the existing § 185.30–15 that emergency hatches and exits be marked with one-inch letters unless deemed unnecessary by the OCMI. One comment stated that such markings should be at least two inches high. The Coast Guard agrees that one inch markings may be inadequate in many cases and this SNPRM revises the normal height for exit sign letters to 2 inches.

Both the existing rules and this SNPRM authorize the OCMI to waive the marking requirement if the OCMI believes the marking is unnecessary, such as when a normal door serves as an obvious means of escape. Under the same provision, an OCMI could allow a reduced letter height if a particular compartment is small. As a possible guideline, NVIC 4–89, "Introduction to Human Factors Engineering," provides recommended minimum letter heights based on the viewing distance. The recommended heights were adopted from an industry standard, ASTM F 1166–88.

Section 185.115(b) has been revised in this SNPRM to include emergency exit markings in the group of markings and labels which do not have to be immediately remarked. New requirements for the size or content of markings must be followed after the existing markings are no longer legible.

Subpart G—Operational Readiness, Maintenance, and Inspection of Lifesaving Equipment

Section 185.730 Servicing of Inflatable Liferafts, Inflatable Buoyant Apparatus, Inflatable Lifejackets and Inflated Rescue Boats

This section of the NPRM proposes annual servicing of inflatable lifesaving equipment, which is already an existing requirement. Several comments opposed this requirement, primarily on the basis of its high cost. Three or four-year intervals were suggested. Different servicing intervals for inflatable liferafts will be addressed under a project entitled "Inflatable Liferafts" (CGD 85–205). The Coast Guard anticipates publishing an NPRM for that rulemaking in 1993.

Section 185.740 Periodic Servicing of Hydrostatic Release Units

This section of the NPRM proposes annual servicing of hydrostatic release units, which is the same as existing regulations. One comment suggested a three-year servicing interval because of the high cost of servicing. The Coast Guard does not agree that servicing intervals can be increased, because the performance of hydrostatic releases is adversely affected by accumulation of dirt, salt, and deterioration of rubber diaphragms and springs. They must be cleaned and checked annually. However, the Coast Guard has approved a disposable hydrostatic release which is replaced at two-year intervals. Some operators believe that the disposable device is more economical than annual servicing of conventional releases. This section has been revised in this SNPRM to provide for the use of disposable releases.

Distribution Table

The following is a distribution table indicating where existing requirements in subchapters S and T have been moved to, or if they have been deleted, by this proposal. Since subchapter T is proposed to be completely revised, all existing requirements of subchapter T are listed in this table. However, only those requirements of subchapter S actually proposed to be relocated or deleted have been listed.

In the left column of the distribution table, designated "Old Section", are listed the existing subparts, sections, or paragraphs of subchapters S and T that are being revised. In the center column, designated "New T Section", is listed the location of the proposed requirement in the revised (new) subchapter T that pertains to the existing (old) subpart, section, or paragraph. In the right column, designated "New K Section", is listed the location of the requirement proposed in the new subchapter K that pertains to the existing (old) subpart, section, or paragraph. If the Coast Guard proposes that the contents of an existing subpart, section, or paragraph be deleted, the reason for such deletion is indicated in the new section column by the words unnecessary, obsolete, or unsatisfactory.

SUBCHAPTER S

Old section	New T section	New K section
170.105(b)(1)	Unnecessary	N/A.
170.160(b)(1)	Unnecessary	N/A.
171.020	Unnecessary	N/A.
171.030(a)	178.310(a)	N/A.
171.030(b)	178.320(a)	N/A.
171.030(c),(d),(e),(f),(g),(h)	178.330(c),(d),(f),(g),(h),(i)	N/A.
171.035	178.325; 178.330(d),(e), (f)(4),(h)	N/A.
171.040(a)(1)	179.210	N/A.
171.040(a)(2)	179.212	N/A.
171.040(a)(3)	179.220	N/A.
171.040(b)	179.210	N/A.
171.040(c)	179.320(b)	N/A.
171.043	179.220	N/A.
171.110(b)	Unnecessary	N/A.
171.114	179.320(c),(d)	N/A.
171.115(b)	Unnecessary	N/A.
171.119	179.350	N/A.
171.124	179.360	116.100(b); 116.1160
171.130(b)	Unnecessary	N/A.

SUBCHAPTER S—Continued

Old section	New T section	New K section
171.140	178.410116.100(b)	116.1110
171.145	178.420; 178.450	116.100(b); 116.1120; 116.1150
171.150	178.430; 178.450	116.100(b); 116.1130; 116.1150
171.155	178.440	116.100(b); 116.1140

SUBCHAPTER T

175.01–1	175.100	114.100
175.01–3	175.900	114.900
175.05–1(a)	175.110	114.110
175.05–1(b)	Unnecessary	Unnecessary.
175.05–1(c)	175.120	114.120
175.05–1(d)	185.356	122.356
175.05–1(e)	Unnecessary	Unnecessary.
175.05–2	Unnecessary	Unnecessary.
175.05–3	175.110	114.110
175.05–5(a)–(c),(e)	Unnecessary	Unnecessary.
175.05–5(d)	175.112	114.112
175.05–15	175.200	114.200
175.07–1	175.122	114.122
175.10–1 to 175.10–40	175.400	114.400
175.15–1	175.540	114.540
175.20–1	176.400(b),(c)	115.400(b),(c)
175.20–5	176.801	115.801
175.25–1	175.550	114.550
175.27–1	175.600	114.600
175.27–5	175.600(c)	114.600(c)
175.27–20	Obsolete	Obsolete.
175.30–1	175.560	114.560
175.35–1	Unnecessary	Unnecessary.
176.01–1	176.100	115.100
176.01–3	176.100	115.100
176.01–5	176.103	115.103
176.01–10	176.105	115.105
176.01–15	176.107	115.107
176.01–20	176.110	115.110
176.01–25	176.113	115.113
176.01–27(a),(b),(c)	176.202	115.202
176.01–27(d)	176.302	115.302
176.01–30	176.204	115.204
176.01–35	176.120	115.120
176.01–40	176.302	115.302
176.01–45	176.310	115.310
176.05–1	176.400(a)	115.400(a)
176.05–5	176.402	115.402
176.05–10(a)	176.404	115.404
176.05–10(b)	Unnecessary	Unnecessary.
176.10–1	176.500	115.500
176.10–5	176.502	115.502
176.15–1	176.600	115.600
176.15–5	176.610	115.610
176.15–10	176.612(a),(b)	115.612(a),(b)
176.20–1	176.700(a),(b)	115.700(a),(b)
176.20–5	176.700(d)	115.700(d)
176.25–1	176.800	115.800
176.25–5	176.802	115.802
176.25–10	176.804	115.804
176.25–15	176.806	115.806
176.25–20	176.808	115.808
176.25–22	176.808	115.808
176.25–25	176.810	115.810
176.25–27	176.810	115.810
176.25–30	176.812	115.812
176.25–32	176.812	115.812
176.25–35	176.814	115.814
176.25–40	176.816	115.816
176.25–45	176.818	115.818
176.25–50	176.830	115.830
176.30–1	176.840	115.840
176.35–1	176.900; 176.920	115.900; 115.920
176.35–5	175.400	114.400
176.35–10	175.400	114.400

SUBCHAPTER S—Continued

Old section	New T section	New K section
176.35–15	176.910(a),(b)	115.910(a),(b)
176.35–20	176.920(d)	115.920(d)
176.35–25	176.302	115.302
176.35–30	176.910(c),(d); 176.920(d)	115.910(c),(d); 115.920(d)
177.01–1	177.115	116.115
177.01–5	177.100	116.100
177.05–1	177.202	116.202
177.05–3	177.202	116.202
177.05–5	177.210	116.210
177.10–1(a)	177.300; 177.330	116.300; 116.310; 116.330
177.10(1)(b)	177.340	116.340
177.10–5	177.400	116.400
177.13–1	Unnecessary	Unnecessary.
177.15–1	177.500	116.500
177.20–1	177.600(a),(b)	116.600(a),(b)
177.20–5	177.600(d),(e)	116.600(d),(e)
177.25–1	177.700; 177.710	116.700; 116.710; 116.730
177.30–1	177.820	116.820
177.30–7	177.400; 177.500; 177.800; 177.810	116.400; 116.500; 116.800; 116.810
177.35–1	177.900	116.900
177.35–5	177.920	116.920
177.35–10	177.940	116.940
177.35–15	177.960	116.960
180.01–1	Unnecessary	Unnecessary.
180.01–5	Unnecessary	Unnecessary.
180.05–1(a)	175.800	114.800
180.05–1(b)	Unnecessary	Unnecessary.
180.05–5(a)	180.25(a)	117.25(a)
180.05–5(b)	180.72	117.72
180.10–1(a)	180.200	117.200
180.10–1(b)	Obsolete	Obsolete.
180.10–5	180.202; 180.204; 180.206	117.202; 117.204; N/A.
180.10–15	180.204; 180.206	117.204
180.10–20	180.204; 180.207	117.204
180.10–25	180.208	117.208
180.10–30	180.200	117.200
180.10–35	180.210	117.210
180.15–1	180.175(c),(e)	117.175(c),(e)
180.15–5	180.175(f)	117.175(f)
180.15–10	180.175(f)(2)	117.175(f)(2)
180.20–1	180.130; 180.137; 180.175(f)	117.130; 117.137; 117.175(f)
180.20–5	185.604	122.604
180.25–1	180.71	117.71
180.25–5	180.71	117.71
180.25–10	180.71; 180.78	117.71; 117.78
180.25–15	185.604	122.604
180.25–20	180.71; 180.75	117.71; 117.75
180.25–25	185.604(i)	122.604(i)
180.30–1	180.70	117.70
180.30–5	180.70	117.70
180.30–10	180.70	117.70
180.35–1	180.68	117.68
180.35–5	180.68	117.68
180.35–10	180.68(e)	117.68(e)
180.40–1	180.64	117.64
181.01–1(a)	Unnecessary	Unnecessary.
181.01–1(b)	181.115	118.115
181.01–5	Unnecessary	Unnecessary.
181.05–1	175.800	114.800
181.05–5	181.120	118.120
181.10–1	181.300(a),(b),(c),(d)	118.300(a),(b),(c),(d)
181.10–5	181.610	118.610
181.15–1	181.310(a)	118.310(a)
181.15–5(a),(b)	181.310(a)	118.310(a)
181.15–5(c)	181.310(b)	118.310(b)
181.15–10(a)	181.320(a)	118.320(a)
181.15–10(b)	181.320(c)	118.320(c)
181.15–10(c)	181.320(b),(c)	118.320(b),(c)
181.15–10(d)	181.320(b),(c),(d)	118.320(b),(c),(d)
181.15–10(e),(f)	181.320(d)	118.320(d)
181.15–10(g)	181.320(a)	118.320(a)
181.20–1	181.400(a)	118.400(a)

SUBCHAPTER S—Continued

Old section	New T section	New K section
181.20–5(a)	181.400(a); 410(a)	118.400(a); 410(a)
181.20–5(b)	181.400(a)(2)	118.400(a)(2)
181.20–10	181.410(f)	118.410(f)
181.20–15(a),(c)	181.410(b)	118.410(b)
181.20–15(d)	185.612(a)	122.612(a)
181.20–20	181.410(d)	118.410(d)
181.20–25	181.410(f)	118.410(f)
181.20–30	181.410(c)	118.410(c)
181.20–35	182.460(l); 182.465(h)	119.460(l); 465(h)
181.25–1	181.400(f),(g)	118.400(f),(g)
181.25–5	181.430	118.430
181.30–1	181.500	118.500
181.30–5	181.500	118.500
181.30–10(a),(b)	181.520	118.520
181.30–10(c)	Unnecessary	Unnecessary.
181.30–12	181.500(d)	118.500(d)
181.35–1	181.600	118.600
182.01–1	182.115	119.115
182.01–5	182.100	119.100
182.05–1	182.200	119.200
182.05–5	182.220	119.220
182.10–1	182.300	119.300
182.10–5	182.310; 182.330	119.310; 119.330
182.15–1	182.400	119.400
182.15–5	182.405; 182.410	119.405; 119.410
182.15–7	182.415	119.415
182.15–10	182.420	119.420
182.15–15	182.425	119.425
182.15–20	182.420; 182.430	119.420; 119.430
182.15–25	182.440	119.440
182.15–30	182.445	119.445
182.15–35	182.450	119.450
182.15–40	182.455	119.455
182.15–45	182.460; 177.600	119.460; 116.600
182.20–1	182.400	119.400
182.20–5(a)	182.410(a)	119.410(a)
182.20–5(b)	182.410(c)	119.410(c)
182.20–10	182.420	119.420
182.20–15	182.425	119.425
182.20–20	182.430	119.430
182.20–22	182.435	119.435
182.20–25	182.440	119.440
182.20–30	182.445	119.445
182.20–35	182.450	119.450
182.20–40	182.455	119.455
182.20–45	182.465	119.465
182.20–50	182.470	119.470
182.25–1	182.500	119.500
182.25–5	182.510	119.510
182.25–10	182.520	119.520
182.25–15	182.540	119.540
182.30–1	182.610(a)	119.600
182.30–5	182.620	119.600
182.35–1	177.400(c)	116.400(c)
182.40–1	182.700; 182.720	119.700; 119.720
182.40–5	182.710; 182.720	119.710; 119.720
182.40–10	182.715; 182.720	119.715; 119.720
183.01–1	Unnecessary	Unnecessary.
183.01–5	183.100; 183.200	120.100; 120.200
183.01–10	Unnecessary	Unnecessary.
183.01–15	175.600	114.600
183.05–1	Unnecessary	Unnecessary.
183.05–5	183.320(c)	120.320(c)
183.05–10	183.320	120.320
183.05–15	183.330	120.330
183.05–20	183.350; 183.352; 183.354	120.350; 120.352; 120.354
183.05–25	183.392	120.392
183.05–30	183.380	120.380
183.05–35	183.210(b),(c); 183.410	120.210(b),(c); 120.410
183.05–40	Unnecessary	Unnecessary.
183.05–45	183.340	120.340
183.05–50	183.340; 183.370	120.340; 120.370

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Old section	New T section	New K section
183.10–1	Unnecessary	Unnecessary.
183.10–5	183.320	120.320
183.10–10	183.210; 183.330	120.210; 120.330
183.10–15	183.330	120.330
183.10–20	183.340; 183.410	120.340; 120.410
183.10–25	183.380	120.380
183.10–30	183.370	120.370
183.10–35	183.380	120.380
183.10–40	183.380	120.380
183.10–45(a)	184.210	121.210
183.10–45(b)	184.220	121.220
183.10–50	183.390	120.390
184.01–1	Unnecessary	Unnecessary.
184.01–5	184.100	121.100
184.05–1	184.200; 184.202; 184.240	121.200; 121.202; 121.240
184.10–1	184.300	121.300
184.20–1	184.402	121.402
184.25–1	184.502	121.502
184.30–1	183.430	120.430
184.30–5	183.432	120.432
184.35–1	184.602(c)	121.602(c)
184.40–1	180.72	117.72
184.40–5	180.72	117.72
184.40–10	180.78(b)	117.78(b)
184.40–15	176.808(a)(2),(d),(f)	115.808(a)(2),(d),(f)
185.01–1	Unnecessary	Unnecessary.
185.01–5	185.100	122.100
185.05–1	185.900; 185.910	122.900; 122.910
185.10–1	185.402	122.402
185.12–1	176.306	115.306
185.15–1	Subpart B of Part 185	Subpart B of Part 122
185.17–1	185.370	122.370
185.19–1	185.250	122.250
185.20–1	185.310	122.310
185.20–10	185.320	122.320
185.20–15	185.330	122.330
185.20–20	185.340	122.340
185.20–25	185.350	122.350
185.20–30	185.360	122.360
185.20–35	184.420	121.420
185.22–1	185.410	122.410
185.25–1	185.510	122.510
185.25–5	185.512	122.512
185.25–7	185.518	122.518
185.25–10	185.520(a); 185.524(a)	122.520(a); 122.524
185.25–15	185.530	122.530
185.25–20	185.728; 185.726(d)	122.728; 122.726(d)
185.30–1	185.602(a)	122.602(a)
185.30–5	185.604	122.604
185.30–10	185.604(g)	122.604(g)
185.30–15	185.606	122.606
185.30–20	185.608	122.608
185.30–25	185.610	122.610
185.30–30	185.604(c)	122.604(c)

Derivative Table

The following is a derivative table of the proposed and corresponding existing regulations in subchapters S and T. In the left column, designated "New Section", are proposed paragraphs, sections, and subparts of this rulemaking. In the middle column, designated "Old Section", is the paragraph, section, or subpart of subchapters S and T where the regulation listed in the left column is currently published. If the word "Revised" is included, it indicates the proposal contains a change in the current rule other than a minor change involving grammar, format, elimination of archaic language, or authority and reference citations which do not affect the basic requirements of a section. For certain new sections there are no corresponding existing sections because a new requirement is proposed by this rulemaking. These sections and subparts have the word "New" listed in the "Old Section" column. The right column, "Reference", lists sources used in developing the proposed regulations. The list of references is not all inclusive. It does not contain internal policy letters and investigation reports. Sources listed in the right column are abbreviated as follows:

(1) "CGD" means Coast Guard Regulatory Docket;

(2) "NVIC" means U.S. Coast Guard Navigation and Vessel Inspection Circular;

(3) "MSM" means the U.S. Coast Guard Marine Safety Manual;

(4) "IMO" means the International Maritime Organization's Code of Safety for Dynamically Supported Craft;

(5) "SOLAS" means the International Convention for the Safety of Life at Sea, 1974, as amended; and

(6) "Subch." means the specified subchapter from Chapter I of Title 46 of the Code of Federal Regulations.

Other abbreviations include references listed in § 175.600 of the proposed regulations. Individual numbers listed refer to specific sections in Title 46 of the Code of Federal Regulations unless preceded by another title designation.

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New section	Old section	Reference
170.055(h)(1)	New	
170.055(v)	New	46 U.S.C. 2101.
170.010(e), (m), (o)	New	46 U.S.C. 2101.

SUBCHAPTER K

114.100	175.01–1(a), Revised	
114.110	175.05–1; 175.05–3, Revised	46 U.S.C. 3301–3303.
114.112	175.05–5(d), Revised	
114.120	175.05–1(c)	
114.122	175.07–1	46 U.S.C. 5102.
114.200	175.05–15	
114.400	175.10, Revised	46 U.S.C. 2101; IMO; Subch. F, H, J, S.
114.540	175.15–1	
114.550	175.25–1	
114.560	175.30–1	
114.600	175.27–1, Revised	
114.800	175.10–1; 175.10–2; 181.05–1, Revised	
114.900	175.01–3	
115.100	176.01–1; 176.01–3, Revised	46 U.S.C. 3311, 3313.
115.103	176.01–5, Revised	
115.105	176.01–10	
115.107	176.01–15, Revised	46 U.S.C. 3307.
115.110	176.01–20, Revised	IMO.
115.112	New	
115.113	176.01–25, Revised	IMO.
115.114	New	
115.120	176.01–35	
115.202	176.01–27	46 U.S.C. 3313.
115.204	176.01–30	46 U.S.C. 2113.
115.302	176.01–40; 176.01–27(d); 176.35–25	
115.306	185.12–1	
115.310	176.01–45	
115.400(a)	176.05–1	
115.400(b), (c)	175.20–1	
115.402	176.05–5, Revised	46 U.S.C. 3305.
115.402(e)(8)	New	IMO.
115.404	176.05–10	
115.500	176.10–1	
115.502	176.10–5	
115.600	176.15–1, Revised	
115.610	176.15–5, Revised	
115.612(a), (b)	176.15–10	
115.612(c)	New	
115.630	New	
115.670	176.15–1(a)	
115.700(a), (b)	176.20–1, Revised	NVIC 11–83; 78.33.
115.700(c)	New	
115.700(d)	176.20–5	
115.702	New	
115.704	New	NVIC 11–83; 78.33.
115.710	New	
115.800	176.25–1, Revised	
115.801	175.20–5	
115.802	176.25–5, Revised	MSM.
115.804	176.25–10, Revised	
115.806	176.25–15, Revised	
115.808	176.25–20; 176.25–22, Revised	
115.810	176.25–25, Revised	
115.812	176.25–30; 176.25–32, Revised	
115.814	176.25–35, Revised	
115.816	176.25–40	

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New section	Old section	Reference
115.818	176.25–45	
115.830	176.25–50	
115.840	176.30–1	
115.900(a), (b)	176.35–1(a), (b)	
115.910	176.35–15; 176.35–30, Revised	
115.920(a), (b)	176.35–1(c), (d), (e), Revised	
115.920(c), (d)	176.35–20, Revised	
115.930	New	SOLAS Ch. 1, Reg. 5, MSM II–9.I.1.
116.100	177.01–5	
116.115	New	
116.202	177.05–1; 177.05–3, Revised	IMO; Subch. H.
116.210	177.05–5, Revised	
116.300	177.10–1(a), Revised	
116.330	177.10–1(a), Revised	169.309(b), (c).
116.340	177.10–1(b), Revised	
116.400	New	NVIC 11–83.
116.405(a)	177.10–5(a)	
116.405(b)	177.10–5(b), Revised	
116.405(c)	182.35–1, Revised	ABYC A–3–70, NFPA 701.
116.405(d)	177.10–5(c)	
116.405(e)	New	
116.405(f)	177.30–7(d), Revised	
116.405(g)	New	
116.405(h)	177.30–7(b), Revised	
116.405(i)	New	
116.415	New	Subch. H.
116.420	New	Subch. H, NVIC 6–80.
116.422	New	Subch. H, NVIC 6–80.
116.423	New	Subch. H, NVIC 6–80.
116.425	New	Subch. H, NVIC 6–80.
116.427	New	Subch. H, NVIC 6–80.
116.430	New	Subch. H, NVIC 6–80.
116.433	New	Subch. H.
116.435	New	Subch. H, NFPA 436.
116.438	New	Subch. H.
116.439	New	NFPA 101.
116.440	New	IMO/MSC Circular 526.
116.500	177.15–1; 177.30–7(c), Revised	IMO 4.3, NFPA 101.
116.510	New	
116.520	New	
116.530	New	
116.600	177.20–1; 177.20–5; 181.20–35; 182.15–45, Revised.	72.05–50(i).
116.610	New	Subpart 72.15, NVIC 6–80.
116.620	New	
116.700	177.25–1, Revised	
116.710	New	
116.730	New	Subch. H; NVIC 11–83.
116.800(a), (b), (c)	177.30–7(a), Revised	
116.800(d), (e)	New	IMO 4.1.
116.800(f)	New	NVIC 11–83; 72.25–10.
116.800(g)	New	
116.810(a)	New	
116.810(b), (c), (d)	177.30–7(b), Revised	
116.820	177.30–1, Revised	IMO 4.2.
116.900	177.35–1, Revised	MSM II–10.A.6, SOLAS.
116.920	177.35–5, Revised	
116.940	177.35–10, Revised	
116.960	177.35–15, Revised	
116.970	New	
116.1010	New	IMO 4.14, 14.6
116.1020	New	
116.1030	New	IMO 14.2.1.
116.1110	New	171.140.
116.1120	New	171.145.
116.1130	New	171.150.
116.1140	New	171.155.
116.1150	New	171.145; 171.150.
116.1160	New	171.124.
116.1200	New	170.235.
117.10	New	SOLAS; NVIC 11–83.
117.15	New	

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New section	Old section	Reference
117.25(a)	180.05–5(a)	
117.25(b)	New	
117.64	180.40–1, Revised	
117.68	180.35–1; 180.35–5	180.35–10, Revised.
117.70	180.30–1; 180.30–5	180.30–10, Revised.
117.71	180.25–1; 180.25–5; Revised	180.25–10; 180.25–20.
117.72	New	
117.75	180.25–20	
117.78	180.25–10, Revised	
117.110	New	
117.130	180.20–1, Revised	
117.137	180.20–1, Revised	
117.150	New	Subch. H.
117.175	180.15–1; 180.15–5; 180.15–10; 180.20–1	Subch. H.
117.200	180.10–30, Revised	
117.202	180.10–5, Revised	
117.204	180.10–5; 180.10–15, 180.10–20, Revised	
117.208	180.10–25, Revised	
117.209	New	
117.210	180.10–35, Revised	
118.115	181.01–1(b), Revised	
118.120	181.05–5, Revised	
118.300(a), (b), (c), (d)	181.10–1(a),(b),(c),(d),(e), Revised	
118.300(e)	New	
118.310(a)	181.15–1; 181.15–5(a),(b)	
118.310(b)	181.15–5(c), Revised	
118.320(a)	181.15–10(a),(g), Revised	
118.320(b)	181.15–10(c),(d), Revised	
118.320(c)	181.15–10(b),(c),(d), Revised	
118.320(d)	181.15–10(d)(2),(e),(f), Revised	
118.400(a)	181.20–1(a), Revised	
118.400(a)(1)	New	
118.400(a)(2)	181.20–5(b), Revised	
118.400(b)	New	
118.400(c)	New	
118.400(d)	New	
118.400(e)	New	NVIC 11–83.
118.400(f)	181.25–1, Revised	
118.400(g)	New	
118.410(a)	181.20–5, Revised	NVIC 6–72.
118.410(b)	181.20–15, Revised	
118.410(c)	181.20–30, Revised	
118.410(d)	181.20–20, Revised	
118.410(e)	New	
118.410(f)	181.20–10; 181.20–25	
118.410(g)	New	NVIC 6–72.
118.420	New	
118.425	New	
118.430	181.25–5, Revised	
118.450	New	
118.465	New	
118.470	New	
118.500	181.30–1; 181.30–5, Revised	
118.500(d)	181.30–12	
118.520	181.30–10(a),(b)	
118.600	181.35–1	
118.610	181.10–5, Revised	
119.100	182.01–5	
119.115	182.01–1, Revised	
119.200(a)	182.05–1	
119.200(b)	New	IMO 9.2.3.
119.220	182.05–5	
119.300	182.10–1	
119.310	182.10–5	
119.320	New	54.01–5; 53–01–10.
119.330	182.10–5(d)	
119.400	182.15–1; 182.20–1	
119.405	182.15–5(c), Revised	
119.410(a),(c)	182.15–5(a),(b), 182.20–5	
119.410(b), (d), (e), (f), (g)	New	
119.415	182.15–7, Revised	
119.420	182.15–10; 182.15–20; 182.20–10, Revised	MSM II 10.A.j; ABYC P–10.

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New section	Old section	Reference
119.422	New	56.60–96.
119.423	New	
119.425	182.15–15; 182.20–15, Revised	ABYC P–2.
119.430	182.15–20; 182.20–20, Revised	
119.435	182.20–22	
119.440	182.15–25; 182.20–25, Revised	
119.445	182.15–30; 182.20–30, Revised	
119.450	182.15–35; 182.20–35, Revised	
119.455	182.15–40; 182.20–40, Revised	
119.458	New	ABYC H–25–86.
119.460	182.15–45, Revised	
119.460(l)	181.20–35; 182.15–45(h)	
119.465	182.20–45, Revised	
119.465(h)	181.20–35	
119.470	182.20–50, Revised	
119.480	New	
119.500	182.25–1, Revised	NVIC 11–83.
119.510	182.25–5, Revised	NVIC 11–83.
119.520	182.25–10, Revised	NVIC 11–83.
119.530	New	
119.540	182.25–15, Revised	
119.600	182.30–1; 182.30–5; Revised	NVIC 11–83.
119.700	New	
119.710	182.40–5, Revised	
119.715	New	NVIC 11–83.
119.720	Subpart 182.40, Revised	NVIC 11–83.
119.730	New	56.60–20.
120.100	183.01–5, Revised	
120.115	New	
120.200	183.01–5 Revised	
120.210	183.05–35	
120.220	New	
120.310	New	
120.312	New	111.10; NVIC 11–83.
120.320	183.05–5; 183.05–10; 183.10–5, Revised	
120.322	New	
120.324	New	111.05.
120.330	183.05–15; 183.10–15	
120.340	183.05–40; 183.05–45; 183.05–50; 183.05–20, Revised.	
120.350	183.05–20, Revised	
120.352	New	111.15.
120.354	New	111.15.
120.360	New	111.33.
120.370	183.05–50(d), 183.10–30, Revised	
120.380	183.05–25; 183.05–30; 183.10–25; 183.10–35; 183.10–40, Revised.	
120.390	183.10–50, Revised	
120.392	183.05–25(a), Revised	
120.410	183.05–35; 183.10–20(j), Revised	
120.420	New	Navigation Rules.
120.430	184.30–1, Revised	
120.432	184.30–5, Revised	NVIC 11–83.
120.434	New	111.75–16; NVIC 11–83.
120.520	New	
120.530	New	33 CFR 183.
120.540	New	
120.550	New	NVIC 11–83; 113.25.
121.100	183.01–5	
121.115	New	
121.200	184.05–1(a), Revised	
121.202	184.05–1(c)	
121.210	183.10–45(a), Revised	
121.220	183.10–45(b), Revised	
121.240	184.05–1(d), Revised	OGD 83–013.
121.300	184.10–1	IMO 6.
121.402(a), (b)	184.20–1, Revised	
121.402(c)	New	
121.404	New	
121.408	New	
121.410	New	
121.420	185.20–35	

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New section	Old section	Reference
121.502	184.25–1	
121.506	New	
121.602(a),(b),(d)	New	
121.602(c)	184.35–1	
121.610	New	
121.620	New	
121.702	New	
121.704	New	
121.710	New	
122.100	185.01–5	
122.115	New	
122.202	New	4.05–1.
122.204	New	4.05–5.
122.206	New	4.05–10.
122.208	New	NVIC 11–83; 78.33.
122.210	New	4.05–10.
122.212	New	Subpart 4.06.
122.220	New	4.05–15.
122.230	New	4.05–20.
122.250	185.19–1, Revised	46 U.S.C. 2303, 2304.
122.260	New	Subpart 4.04, 46 U.S.C. 2306.
122.280	New	NVIC 11–83; 46 U.S.C. 11301; Subpart 78.37.
122.282	New	78.37–3(c); NVIC 11–83.
122.304	New	33 CFR 164.11.
122.306	New	78.10–1.
122.310	185.20–1	
122.315	New	OGD 89–037.
122.320	185.20–10, Revised	
122.330	185.20–15, Revised	NVIC 11–83; 78.15.
122.335	New	OGD 89–037.
122.340	185.20–20, Revised	
122.350	185.20–25	
122.352	182.15–45(d), Revised	
122.356	175.05–1(d)	
122.360	185.20–30, Revised	
122.370	185.17–1	
122.402	185.10–1	
122.410	185.22–1, Revised	46 U.S.C. 8102.
122.420	185.25–10, Revised	IMO 17.2.
122.502	New	46 U.S.C. 3502
122.504	New	46 U.S.C. 3502.
122.506	185.25–1(d), Revised	
122.508	New	
122.510	185.25–1(a),(b),(c)	
122.512	185.25–5, Revised	
122.514	New	NVIC 11–83; 78.13.
122.515	New	78.47–47; NVIC 11–83.
122.516	New	NVIC 11–83; 78.47–47.
122.518	185.25–7, Revised	160.051.
122.520	185.25–10	NVIC 11–83; 78.17–50.
122.524	185.25–10	NVIC 11–83; 78.17–50; IMO 17.5.3.
122.530	185.25–15	
122.602(a), (b), (f)	185.30–1	
122.602(c), (d), (e), (g)	New	NFPA 101.
122.604	185.30–5, 185.30–10, 185.30–30, 180.20–5, 180.25–15, 180.25–25, Revised.	
122.606	185.30–15	
122.608	185.30–20	
122.610	185.30–25	
122.612(a), (c)	181.20–15(d), Revised	78.47–15.
122.612(b), (d)–(h)	New	NVIC 11–83; 78.47.
122.700	New	
122.702	New	
122.704	New	
122.720	New	
122.722	New	
122.724	New	
122.726	185.25–20(b), Revised	
122.728	185.25–20, Revised	
122.730	New	160.051–6; 160.076; 160.077.
122.740	New	160.062.

SUBCHAPTER S—Continued

New section	Old section	Reference
122.900	185.05–1(a)	
122.910	185.05–1(b)	
SUBCHAPTER T		
175.100	175.01–1(a), Revised	
175.110	175.05–1; 175.05–3	46 U.S.C. 3301–3303 Revised.
175.112	175.05–5(d), Revised	
175.120	175.05–1(c)	
175.122	175.07–1	46 U.S.C. 5102.
175.200	175.05–15	
175.400	175.10, Revised	46 U.S.C. 2101; IMO; Subch. F, H, J, S.
175.540	175.15–1	
175.550	175.25–1	
175.560	175.30–1	
175.600	175.27–1, Revised	
175.800	175.10–1; 175.10–2; 181.05–1, Revised	
175.900	175.01–3	
176.100	176.01–1; 176.01–3, Revised	46 U.S.C. 3311, 3313.
176.103	176.01–5, Revised	
176.105	176.01–10	
176.107	176.01–15, Revised	46 U.S.C. 3307.
176.110	176.01–20, Revised	IMO.
176.112	New	
176.113	176.01–25, Revised	IMO.
176.114	New	
176.120	176.01–35	
176.202	176.01–27	46 U.S.C. 3313.
176.204	176.01–30	46 U.S.C. 2113.
176.302	176.01–40; 176.01–27(d); 176.35–25	
176.306	185.12–1	
176.310	176.01–45	
176.400(a)	176.05–1	
176.400(b), (c)	175.20–1	
176.402	176.05–5, Revised	46 U.S.C. 3305.
176.402(e)(8)	New	IMO.
176.404	176.05–10	
176.500	176.10–1	
176.502	176.10–5	
176.600	176.15–1, Revised	
176.610	176.15–5, Revised	
176.612(a), (b)	176.15–10	
176.612(c)	New	
176.630	New	
176.670	176.15–1(a)	
176.700(a), (b)	176.20–1, Revised	NVIC 11–83; 78.33.
176.700(c)	New	
176.700(d)	176.20–5	
176.702	New	
176.704	New	NVIC 11–83; 78.33.
176.710	New	
176.800	176.25–1, Revised	
176.801	175.20–5	
176.802	176.25–5, Revised	MSM.
176.804	176.25–10, Revised	
176.806	176.25–15, Revised	
176.808	176.25–20; 176.25–22, Revised	
176.810	176.25–25, Revised	
176.812	176.25–30; 176.25–32, Revised	
176.814	176.25–35, Revised	
176.816	176.25–40	
176.818	176.25–45	
176.830	176.25–50	
176.840	176.30–1	
176.900(a), (b)	176.35–1(a), (b)	
176.910	176.35–15; 176.35–30, Revised	
176.920(a), (b)	176.35–1(c), (d), (e), Revised	
176.920(c), (d)	176.35–20, Revised	
176.930	New	SOLAS Ch.1, Reg. 5, MSM II–9.I.1.
177.100	177.01–5	
177.115	New	

SUBCHAPTER S—Continued

New section	Old section	Reference
177.202	177.05–1; 177.05–3, Revised	IMO; Subch. H.
177.210	177.05–5, Revised	
177.300	177.10–1(a), Revised	
177.310	177.10–1(a), Revised	
177.315	New	
177.330	177.10–1(a), Revised	169.309(b), (c).
177.340	177.10–1(b), Revised	
177.405(a)	177.10–5(a)	
177.405(b)	177.10–5(b), Revised	
177.405(c)	182.35–1, Revised	ABYC A–3–70, NFPA 701.
177.405(d)	177.10–5(c)	
177.405(e)	New	
177.405(f)	177.30–7(d), Revised	
177.405(g)	New	
177.405(h)	177.30–7(b), Revised	
177.405(i)	New	
177.410(a)	177.10–5(a–1), Revised	NVIC 8–87.
177.410(b)	177.10–5(b), Revised	
177.410(c), (d)	New	NVIC 8–87; policy.
177.430	New	Subch. H, NVIC 6–80.
177.500	177.15–1; 177.30–7(c), Revised	IMO 4.3, NFPA 101.
177.600	177.20–1; 177.20–5; 181.30–35; 182.15–45, Revised.	72.05–50(i).
177.620	New	
177.700	177.25–1, Revised	
177.710	New	
177.800(a), (b), (c)	177.30–7(a), Revised	
177.800(d), (e)	New	IMO 4.1.
177.800(f)	New	NVIC 11–83; 72.25–10.
177.800(g)	New	
177.810(a)	New	
177.810(b), (c), (d)	177.30–7(b), Revised	
177.820	177.30–1, Revised	IMO 4.2.
177.900	177.35–1, Revised	MSM II–10.A.6, SOLAS.
177.920	177.35–5, Revised	
177.940	177.35–10, Revised	
177.960	177.35–15, Revised	
177.970	New	
177.1010	New	IMO 4.1.4, 14.6.
177.1020	New	
177.1030	New	IMO 14.2.1.
178.115	New	170.001; 171.001.
178.210	New	170.110; 170.120; NVIC 10–83.
178.220	New	170.110.
178.230	New	170.120.
178.310	New	171.020.
178.320	New	171.030.
178.325	New	171.035.
178.330	New	171.030.
178.340	New	MSM IV–6.D.3.b.
178.410	New	171.140.
178.420	New	171.145.
178.430	New	171.150.
178.440	New	171.155.
178.450	New	
178.510	New	170.235.
179.115	New	170.001.
179.210	New	171.040; 171.060.
179.212	New	171.040; 171.060.
179.220	New	171.043.
179.230	New	171.080.
179.240	New	170.245.
179.310	New	171.040; 171.085.
179.320	New	171.040(e); 171.114.
179.330	New	170.255; 170.270; 171.114; MSM IV–6.I.
179.340	New	171.113.
179.350	New	171.119.
179.360	New	171.124.
180.10	New	SOLAS; NVIC 11–83.
180.15	New	
180.25(a)	180.05–5(a)	

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New section	Old section	Reference
180.25(b)	New	
180.64	180.40–1, Revised.	
180.68	180.35–1; 180.35–5; 180.35–10, Revised.	
180.70	180.30–1; 180.30–5; 180.30–10, Revised.	
180.71	180.25–1; 180.25–5; 180.25–10; 180.25–20, Revised.	
180.72	New	
180.75	180.25–20	
180.78	180.25–10, Revised	
180.110	New	
180.130	180.20–1, Revised	
180.137	180.20–1, Revised	
180.150	New	Subch. H.
180.175	180.15–1; 180.15–5; 180.15–10; 180.20–1	Subch. H.
180.200	180.10–30, Revised	
180.202	180.10–5, Revised	
180.204	180.10–5; 180.10–15; 180.10–20, Revised	
180.206	180.10–5; 180.10–15, Revised	
180.207	180.10–20, Revised	
180.208	180.10–25, Revised	
180.209	New	
180.210	180.10–35, Revised	
181.115	181.01–1(b), Revised	
181.120	181.05–5, Revised	
181.300(a), (b), (c), (d)	181.10–1(a), (b), (c), (d), (e), Revised	
181.300(e)	New	
181.310(a)	181.15–1; 181.15–5(a), (b)	
181.310(b)	181.15–5(c), Revised	
181.320(a)	181.15–10(a), (g), Revised	
181.320(b)	181.15–10(c), (d), Revised	
181.320(c)	181.15–10(b), (c), (d), Revised	
181.320(d)	181.15–10(d)(2), (e), (f), Revised	
181.400(a)	181.20–1(a), Revised	
181.400(a)(1)	New	
181.400(a)(2)	181.20–5(b), Revised	
181.400(b)	New	
181.400(c)	New	
181.400(d)	New	
181.400(e)	New	NVIC 11–83.
181.400(f)	181.25–1, Revised	
181.400(g)	New	
181.410(a)	181.20–5, Revised	NVIC 6–72.
181.410(b)	181.20–15, Revised	
181.410(c)	181.20–30, Revised	
181.410(d)	181.20–20, Revised	
181.410(e)	New	
181.410(f)	181.20–10; 181.20–25, Revised	
181.410(g)	New	NVIC 6–72.
181.420	New	
181.425	New	
181.430	181.25–5, Revised	
181.450	New	
181.460	New	
181.465	New	
181.500	181.30–1; 181.30–5, Revised	
181.500(d)	181.30–12	
181.520	181.30–10(a), (b)	
181.600	181.35–10	
181.610	181.10–5, Revised	
182.100	182.01–5	
182.115	182.01–1, Revised	
182.130	New	
182.200(a)	182.05–1	
182.200(b)	New	IMO 9.2.3.
182.220	182.05–5	
182.300	182.10–1	
182.310	182.10–5	
182.320	New	54.01–5; 53–01–10.
182.330	182.10–5(d)	
182.400	182.15–1; 182.20–1	
182.405	182.15–5(c), Revised	
182.410(a), (c)	182.15–5(a), (b); 182.20–5	

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New section	Old section	Reference
182.410(b), (d), (e), (f), (g)	New	
182.415	182.15–7, Revised	
182.420	182.15–10; 182.15–20; 182.20–10, Revised	MSM II 10.A.j; ABYC P–10.
182.422	New	56.60–96.
182.423	New	
182.425	182.15–15; 182.20–15, Revised	ABYC P–2.
182.430	182.15–20; 182.20–20, Revised	
182.435	182.20–22	
182.440	182.15–25; 182.20–25, Revised	
182.445	182.15–30; 182.20–30, Revised	
182.450	182.15–35; 182.20–35, Revised	
182.455	182.15–40; 182.20–40, Revised	
182.458	New	ABYC H–25–86.
182.460	182.15–45, Revised	
182.460(1)	181.20–35; 182.15–45(h)	
182.465	182.20–45, Revised	
182.465(h)	181.20–35	
182.470	182.20–50, Revised	
182.480	New	
182.500	182.25–1, Revised	NVIC 11–83.
182.510	182.25–5, Revised	
182.520	182.25–10, Revised	
182.530	New	
182.540	182.25–15, Revised	
182.600(a)	New	
182.600(b)	New	NVIC 11–83.
182.610(a)	182.30–1; Revised	
182.610(b)–(f)	New	
182.620(a), (b)	182.30–5(a), Revised	
182.620(c)	182.30–5(b), Revised	
182.700	New	
182.710	182.40–5, Revised	
182.715	New	NVIC 11–83.
182.720 (a), (b), (c)	Subpart 182.40, Revised	NVIC 11–83.
182.720(d)	182.15–40; 182.20–40, Revised	33 CFR 183.
182.730	New	56.60–20.
183.100	183.01–5, Revised	
183.115	New	
183.130	New	
183.200	183.01–5, Revised	
183.210	183.05–35	
183.220	New	
183.310	New	
183.320	183.05–5; 183.05–10; 183.10–5, Revised	
183.322	New	
183.324	New	111.05.
183.330	183.05–15; 183.10–15	
183.340	183.05–40; 183.05–45; 183.05–50; 183.10–20, Revised.	
183.350	183.05–20, Revised	
183.352	New	111.15.
183.354	New	111.15.
183.360	New	111.33.
183.370	183.05–50(d), 183.10–30, Revised	
183.380	183.05–25; 183.05–30; 183.10–25; 183.10–35; 183.10–40, Revised.	
183.390	183.10–50, Revised	
183.392	183.05–25(a), Revised	
183.410	183.05–35; 183.10–20(j), Revised	
183.420	New	Navigation Rules.
183.430	184.30–1, Revised	
183.432	184.30–5, Revised	NVIC 11–83.
183.520	New	
183.530	New	33 CFR 183.
183.540	New	
183.550	New	NVIC 11–83; 113.25.
184.100	184.01–5	
184.115	New	
184.200	184.05–1(a), Revised	
184.202	184.05–1(c)	
184.210	183.10–45(a), Revised	
184.220	183.10–45(b), Revised	

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New section	Old section	Reference
184.240	184.05–1(d), Revised	CGD 83–013.
184.300	184.10–1	IMO 6.
184.402(a), (b)	184.20–1, Revised	
184.402(c)	New	
184.404	New	
184.408	New	
184.410	New	
184.420	185.20–35	
184.502	184.25–1	
184.506	New	
184.602(a), (b), (d)	New	
184.602(c)	184.35–1	
184.610	New	
184.620	New	
184.702	New	
184.704	New	
184.710	New	
185.100	185.01–5	
185.115	New	
185.202	New	4.05–1.
185.204	New	4.05–5.
185.206	New	4.05–10.
185.208	New	NVIC 11–83; 78.33.
185.210	New	4.05–12.
185.212	New	Subpart 4.06.
185.220	New	4.05–15.
185.230	New	4.05–20.
185.250	185.19–1, Revised	46 U.S.C. 2303, 2304.
185.260	New	Subpart 4.04, 46 U.S.C. 2306.
185.280	New	NVIC 11–83; 46 U.S.C 11301; Subpart 78.37.
185.304	New	33 CFR 164.11.
185.310	185.20–1	
185.315	New	CGD 89–037.
185.320	185.20–10, Revised	
185.330	185.20–15, Revised	NVIC 11–83; 78.15.
185.335	New	CGD 89–037.
185.340	185.20–20, Revised	
185.350	185.20–25	
185.352	182.15–45(d), Revised	
185.356	175.05–1(d)	
185.360	185.20–30, Revised	
185.370	185.17–1	
185.402	185.10–1	
185.410	185.22–1, Revised	46 U.S.C. 8102.
185.420	185.25–10, Revised	IMO 17.2.
185.502	New	46 U.S.C. 3502.
185.504	New	46 U.S.C. 3502.
185.506	185.25–1(d), Revised	
185.508	New	
185.510	185.25–1(a), (b), (c)	
185.512	185.25–5, Revised	
185.514	New	NVIC 11–83; 78.13.
185.516	New	NVIC 11–83; 78.47–47.
185.518	185.25–7, Revised	160.051.
185.520	185.25–10	NVIC 11–83; 78.17–50.
185.524	185.25–10	NVIC 11–83; 78.17–50; IMO 17.5.3.
185.530	185.25–15	
185.602(a), (b), (f)	185.30–1	
185.602(c), (d), (e), (g)	New	NFPA 101.
185.604	185.30–5, 185.30–10, 185.30–30, 180.20–5, 180.25–15, 180.25–25, Revised.	
185.606	185.30–15	
185.608	185.30–20	
185.610	185.30–25	
185.612(a), (c)	181.20–15(d), Revised	78.47–15.
185.612(b), (d)–(h)	New	NVIC 11–83; 78.47.
185.700	New	
185.702	New	
185.704	New	
185.720	New	
185.722	New	

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New section	Old section	Reference
185.724	New	
185.726	185.25–20(b), Revised	
185.728	185.25–20, Revised	
185.730	New	160.051–6; 160.076; 160.07.
185.740	New	160.062.
185.900	185.05–1(a)	
185.910	185.05–1(b)	

Regulatory Assessment

This document has been reviewed under Executive Order 12866, "Regulatory Planning and Review," and is considered a significant regulatory action under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

In conjunction with the NPRM, the Coast Guard conducted a detailed assessment of the costs and benefits of the proposed changes affecting small passenger vessel owners, the public, and the Coast Guard. The average annual cost to the small passenger vessel industry of the proposed changes in the NPRM was estimated to be $8.44 million per year in 1987 dollars. The NPRM preamble included an explanation of how the cost was determined, details of some of the more expensive cost items, and an analysis of the anticipated impact. Many responses to the NPRM focused on a few key issues, which are discussed in the following paragraphs.

The prices used for new equipment proposed in the NPRM reflected the minimum cost that would be incurred by a vessel owner or operator to meet the regulations. This is not necessarily the equipment of choice for most vessels. Many vessel owners and operators presently use equipment proposed by this SNPRM because they recognize the need for such equipment. In doing so, they have voluntarily installed high quality, expensive equipment based on factors such as reliability, serviceability, and superior performance. Thus, while an inexpensive fathometer installed on a transom mount would meet the letter of the regulation and save the cost of drydocking, most owners would install a more expensive device, with a through-hull transducer, in order to gain reliability. Owners have pointed out that inexpensive equipment does not stand up to the rigors of commercial use and may cost more than quality equipment in the long run, because the failure of a device may prevent a vessel from operating and earning revenue.

In order to more accurately reflect the impact of this regulatory package, the Coast Guard has increased the assumed cost of many add-on items based upon responses to the NPRM. For example, the assumed cost of a radar has been increased from $3,000 to $6,000 based upon industry comments. Further, to more accurately reflect the costs experienced by industry in maintaining and eventually replacing equipment, the annual maintenance cost has been assumed as 20 percent of the initial procurement and installation cost.

Other comments stated that the interest rate assumed in the analysis (10 per cent annually) and the period over which costs were annualized (25 years) were grossly misrepresentative of the financing that is available to the industry in terms of interest rates and repayment period.

The Coast Guard was not attempting to model actual interest rates and loan periods when choosing the values used in the analysis. Rather, the Coast Guard was relying on guidance provided by the Office of Management and Budget (OMB) through Executive Order 12291. That order specifies that a time value of money of ten percent be used and suggests an analysis period of 30–35 years, beyond which the impact of a constant cash flow becomes negligible in terms of present value. In the analysis which accompanied the NPRM, the Coast Guard assumed a time value of money of 10 per cent and extended the analysis over a period of 100 years to determine the cost of the rulemaking. For the SNPRM, the latest OMB direction requires the Coast Guard to assume a time value of money of 7 per cent. Additionally, the Coast Guard has limited the evaluation cost of the rulemaking to a 30 year period instead of 100 years.

It is apparent that some confusion was caused by the Coast Guard's use of four sample vessels to quantify the impact. As a matter of simplification, the Coast Guard chose to use a period of 25 years, the assumed life of a small passenger vessel, when quantifying the impact on the sample vessels. These examples have not been used in this SNPRM.

Several comments pointed out that, on the basis of fleet size and number of passengers carried, the small passenger vessel fleet has an exemplary safety record, particularly when compared to other transportation modes, and recommended that the Coast Guard compare the safety records of different transportation modes before proceeding with the rulemaking.

The Coast Guard reviewed safety data from different transportation modes and found no common basis for comparison. Further compounding the complexity of the issue is the variety of reasons involved with choice of transportation modes. For example, travel via scheduled airlines is generally recognized to involve some degree of risk. However, millions of people travel by air annually, at a relatively high monetary cost, because of a need to travel a large distance in a short period of time. With the exception of some ferry operations, passengers are generally not driven to travel on small passenger vessels by some need which outweighs the perceived risk. Rather, most small passenger vessel travel is done for pleasure under a perception of minimal risk, if any.

Several comments suggested that the cost of the other regulations and policies which have been promulgated recently or are expected to be published, such as alcohol and drug regulations and manning policies, should be considered a part of the evaluation for the subchapter T proposal because the costs will all impact upon the same small passenger vessel operator. The Coast Guard recognizes the industry's concern about multiple regulatory projects which cumulatively increase the operational costs of a small passenger vessel. This concern is addressed in Executive Order 12291 and DOT Order 2100.5, which require that each regulatory project must be justifiable on its own merits in terms of balancing costs and benefits.

The analysis for this SNPRM is a revision of the analysis completed for the NPRM, with changes made to reflect industry comments and inputs. Because several comments from the insurance

industry stated that little or no saving in insurance premiums would accrue to vessel owners for improvements such as fixed fire extinguishing systems, these savings have not been included in the evaluation of this SNPRM.

This SNPRM proposed several changes in the small passenger vessel regulations which will decrease the operating costs of the fleet overall. These decreased costs will primarily be due to:

1. Reduced fire damage due to increased fire protection equipment;
2. Extended drydocking intervals for non wood-hulled vessels;
3. Reduced structural fire protection requirements; and
4. Greater flexibility in the choice of structural fire protection materials and piping materials.

The regulations proposed in this SNPRM would result in an overall increased cost, for the initial purchase and outfitting of a new, small passenger vessel, of approximately $1,500 to $94,000 per vessel depending upon the vessel's operation and number of passengers permitted to be carried. The total net present value of the cost of the proposed changes is $102.7 million.

Time phasing and discounting were used to determine the Net Present Value (NPV) and Average Annual Cost (AAC). Discounting recognizes that future costs or benefits are not worth the same amount at the present time, and that the relationship between monetary values at different points in time is the interest rate or discount factor. The NPV is the total value of all future costs and benefits from this proposal on the effective date of the regulations. To calculate the NPV of the regulations as proposed in this SNPRM, the regulations were assumed to be effective for a planning period of 30 years, instead of 100 years as used in the NPRM. Each year's expected yearly cost was multiplied by a discount factor and summed over all years of the planning period. The AAC is the NPV discounted over all the years of the planning period, producing equal annual costs. For the evaluation the average life of a small passenger vessel was estimated to be 25 years.

More than 70 individual changes from the existing regulations were identified in this proposal as being monetary cost/benefit items. The most significant of these items were:

1. Liferafts or inflatable buoyant apparatus for certain vessels ($4.87 million AAC);
2. Passenger/crew lists ($1.03 million AAC); and
3. Fixed total flooding fire extinguishing systems in machinery spaces ($1.96 million AAC).

The estimated cost of the proposed changes are based on information from small passenger vessel owners, builders, equipment vendors, and marine equipment catalogs, and include estimated initial outfitting costs and the annual recurring costs. Outfitting costs include the initial purchase price and installation charge for new equipment. Recurring costs include annual maintenance and service cost, annual labor cost for making passenger and crew lists, and an annual pro rata replacement cost for the cited equipment based on a ten year life expectancy, minus any quantifiable monetary benefit from annual cost savings due to items such as reduced insurance premiums, reduced material costs, and reduced number of drydockings. A discussion of the individual cost or monetary benefit of many proposed changes is included in the "Discussion of Proposed Regulations" in this preamble. Comments are requested on the costs stated throughout this preamble.

The small passenger vessel industry would incur a direct, average annual cost of $9.71 million as a result of this SNPRM. Although the direct cost may be considered large, the need for and benefits of the proposed regulations justify the cost.

The primary benefit of the proposed regulations is that they are expected to reduce the number of lives lost, and injuries and property damage sustained, as a result of casualties involving small passenger vessels. This primary benefit can not be readily calculated in monetary terms. Some of the requirements proposed by this rulemaking for which the full monetary benefit of the requirement can not be easily quantified include: liferafts and inflatable buoyant apparatus, EPIRBs, fixed total flooding fire extinguishing systems, fire detecting systems, and passenger and crew lists.

Based on available small passenger vessel casualty data, the proposed requirements for inflatable liferafts and buoyant apparatus are expected to save two lives per year. The requirement that lifejackets be worn in hazardous situations is estimated to save an additional life per year.

Concerning the requirement for fixed fire extinguishing systems in machinery spaces, the Coast Guard estimates that this requirement will prevent $0.3 million in property damage each year.

The Department of Transportation General Counsel's memorandum of January 8, 1983, noted that $2.5 million per statistical life saved is a reasonable estimate of people's willingness to pay for safety. Injuries are calculated at varying fractions of this amount depending on the severity of the injury. Considering the three lives per year estimated to be saved by the implementation of these proposed regulations, the Coast Guard estimates that this rulemaking will produce an annual benefit of at least $7.5 million in lives saved and injuries prevented alone.

Additionally, the Coast Guard estimated that these proposed regulations will produce other unquantified savings. The revised format of these regulations alone, with the creation of subchapter K, will make them generally easier to use. EPIRBs will reduce the number of search and rescue false alarms and reduce search time. Passenger lists and voyage plans will further reduce Coast Guard search and rescue resources expended in offshore searches. EPIRBs and inflatable primary lifesaving equipment will also reduce the number of cold water related injuries. When considered collectively, the Coast Guard believes these unquantified benefits, as well as the estimated savings in the deployment of search and rescue resources will easily produce an additional benefit of $2 million annually.

Based on an estimated 3 lives saved (liferafts and lifejackets) and other unquantified benefits, the equivalent of an additional life saved or one severe injury prevented would be required for the regulation, taken as a whole, to be fully cost-effective. The Coast Guard has considered a range of options in structuring this proposed rule, and has tried to structure the components of this rule in as cost-effective a way as possible. In some cases, quantifiable benefits may not appear to fully justify the costs. The Coast Guard will continue to evaluate how to weigh costs and quantify benefits in making decisions as this rulemaking progresses. In evaluating the proposed requirements, final decisions are critically dependent on the treatment of low probability, high consequence events. To what extent, for example, is there adequate justification to support a conclusion that fires, occurring in machinery spaces not otherwise protected by the provisions in this proposed rule, could lead to the loss of the equivalent of 20 lives over the 30 year life of this rule? The Coast Guard specifically seeks comment on such potential costs and benefits.

Fortunately, a United States small passenger vessel carrying a large number of passengers has not been involved, to date, in a major casualty resulting in a significant number of injuries or deaths. As available statistics indicate, the average size of small passenger vessels is increasing. As the average size increases, the risk of having a catastrophic casualty also increases. A low probability, high consequence accident is difficult to predict using casualty statistics. The historical lack of a small passenger vessel accident resulting in a large loss of life can not be used as an argument to say that such an incident will not happen in the future.

The existing regulations do not adequately address the continuing increase in the number of persons being carried on small passenger vessels today. This continuing increase emphasizes the need for the proposed regulations. One casualty involving a small passenger vessel carrying a large number of passengers, which involves a large fire or results in passengers entering the water, would dramatically increase the number of lives saved by equipment and procedures required by the proposed regulations. The number of lives saved by the proposed regulations for survival craft alone would be much more than the estimated average, based on recent casualty data, of two lives per year.

The proposals for liferafts and inflatable buoyant apparatus are based on the recognition of the potential for a tragic accident involving a large number of passengers as well as the number of deaths which have occurred in the past. Because of the high cost of survival craft, alternatives to the proposed requirements were extensively considered. The proposed regulations for survival craft were determined to be the best balance of number of persons at risk, the threat due to hypothermia, and cost.

The proposal to require Category 1 satellite EPIRBs on all small passenger vessels presently required to have EPIRBs, as well as on vessels on coastwise routes and Great Lakes routes more than three miles from shore, is based upon: (1) The improved signals that the new Category 1 satellite EPIRBs transmit; and (2) recognition that many casualties occur close to shore without an adequate distress signal being transmitted. The proposed requirements for Category 1 satellite EPIRBs would improve rescue response by reducing delays and increasing the accuracy of the signal location. The costs to search and rescue units would be decreased because such units would have to spend less time responding and also because of an expected reduction in the number of false alarms which must be tracked down. False alarms from Category 1 satellite EPIRBs are less likely and easier to trace than from the presently required Class A or Class C EPIRBs. The benefits of the proposed requirement for Category 1 satellite EPIRBs are difficult to quantify.

The proposal that fixed total flooding fire extinguishing systems be installed in enclosed machinery spaces on all vessels was based upon the large number of casualties involving machinery space fires and the relatively inexpensive cost of these systems for most small passenger vessels. The monetary benefit of such systems due to reduced fire damage and insurance premiums, which can be quantified, has been included in the average annual cost. Some insurance industry estimates indicate that fixed total flooding fire extinguishing systems actually "pay for themselves" in three to ten years due to reduced insurance premiums. However, as comments to the NPRM stated that this would not be the case for many vessels, these potential benefits were not included in the analysis.

Smoke detecting systems do result in reduced insurance premiums and are considered essential for ensuring early detection of a fire, which leads to more organized and effective firefighting and evacuation responses. Organized and effective response is of particular concern for vessels carrying more than 150 passengers because of the large numbers of people at risk. These vessels would be subject to the requirements for smoke detecting systems in this SNPRM. The installation of these detecting systems is also considered necessary in order to allow reduced structural fire protection. A monetary benefit from smoke detecting systems due to reduced fire damage can not be determined. However, a rapid response to one fire detected by smoke detecting systems aboard a small passenger vessel carrying more than 150 passengers would justify the expense of such systems.

The proposed regulations for passenger and crew lists stem from requirements in the law. The need for such lists is bolstered by recommendations from NTSB and Coast Guard casualty reports. The lists will provide search and rescue personnel with the number and identity of persons missing in the event of a casualty. Often in such situations these details are difficult to determine with any degree of certainty which makes it difficult to determine when to suspend a search. The monetary benefit of such lists is difficult to estimate but such lists would reduce the time it takes for search and rescue personnel to determine how many persons are missing and result in more efficient use of resources.

A revised draft regulatory assessment has been prepared and placed in the rulemaking docket. The assessment contains information on the methodology and data sources used in determining costs and benefits, details on the costs and benefits of each change, alternatives to proposed changes, costs for sample small passenger vessels, and a profile of the small passenger fleet and its casualty history. For information concerning inspecting and copying the draft assessment, refer to "ADDRESSES" above. Copies may also be received by contacting the person listed under "FOR FURTHER INFORMATION CONTACT".

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 through 612), the Coast Guard must consider whether this rule is likely to have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses which are not dominant in their field and which would otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

A large percentage of small passenger vessels are owned or managed by small entities. In order to reduce the impact of the proposed regulations on these vessels, alternatives have been proposed which are intended to reduce the cost. These alternatives include route restrictions (i.e., less than one mile from shore) and recognition that a vessel with subdivision is less likely to sink. Further, requirements for existing vessels to be retrofitted to meet the new standards were limited to those areas where the greatest benefits may be realized.

The type of vessel for which the regulations would have the greatest cost impact are vessels on oceans or coastwise routes which are permitted to carry only a few more passengers than the maximum of six which may be carried on uninspected vessels. This group of vessels is primarily composed of sport fishing vessels which carry passengers on chartered trips. Some of these are only operated on a part time basis. The owners of vessels operated part time would be affected the most since such vessels make only a limited number of trips from which they can recover the cost of the proposed regulations. The number of vessels in this category is unknown but is estimated to be so small as to have a negligible effect on the cost of this rulemaking.

The reason that the sport fishing vessels are affected the most by the regulations is because approximately 80 percent of the cost increase for a vessel operating on an oceans, coastwise, or Great Lakes route is due to the proposed requirement for liferafts and inflatable buoyant apparatus. The per passenger impact of the requirement for inflatable survival craft increases as the passenger capacity of a vessel decreases.

This SNPRM will also have an impact on wood hulled vessels of more than 10 years of age operated on ocean routes. Some operators of wood hulled vessels in marginal condition may find that they have to alter the scope of their vessel operation, either by carrying fewer passengers or by operating on a more restricted route, in order to remain financially sound. Because these vessels account for the majority of casualties which result in the total loss of a vessel at sea, the impact on the industry at large will be reduced by the continuing decline in the number of wood hulled vessels. In 1987 there were 1,535 wood hulled vessels, comprising 32 per cent of the fleet. By 1991 this number was reduced to 1,417 and represented only 25 per cent of the fleet. Wood is being used in only 8 per cent of the new vessels being constructed.

Based on the discussion above, the Coast Guard has determined that this proposed rulemaking will not have a significant economic impact on a substantial number of small entities.

Collection of Information

Under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), the Office of Management and Budget (OMB) reviews each proposed rule which contains collection of information requirements to determine whether the practical value of the information is worth the burden imposed by its collection. Collection of information requirements include reporting, recordkeeping, notification, and other, similar requirements.

This proposal contains collection of information requirements in the following sections of 46 CFR: 115.105(a), 115.202, 115.204, 115.302, 115.306, 115.310, 115.500(a), 115.612, 115.700, 115.704, 115.710, 115.810(b), 115.920(c), 115.930, 116.202, 116.330, 116.340, 116.610(e), 118.610, 119.460(e), 120.220(d), 120.320 (d) and (e), 121.420, 121.506, 122.202, 122.206, 122.208, 122.220, 122.230, 122.260, 122.280, 122.282, 122.304(c), 122.340(c), 122.402, 122.502, 122.504, 122.506, 122.510, 122.514, 122.515, 122.516, 122.518, 122.602, 122.604, 122.606, 122.608, 122.610, 122.612, 122.702, 122.704(c), 176.105(a), 176.202, 176.204, 176.302, 176.306, 176.310, 176.500(a), 176.612, 176.700, 176.704, 176.710, 176.810(b), 176.920(c), 176.930, 177.202, 177.330, 177.340, 178.210, 178.220, 178.230, 181.610, 182.460(e), 182.610(f), 183.220(d), 183.320 (d) and (e), 184.420, 184.506, 185.202, 185.206, 185.208, 185.220, 185.230, 185.260, 185.280, 185.340(c), 185.402, 185.502, 185.504, 185.506, 185.510, 185.514, 185.516, 185.518, 185.602, 185.604, 185.606, 185.608, 185.610, 185.612, 185.702, 185.704(c).

The information collection requirements for the NPRM (all those above with section numbers between 176 and 185) were submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act. OMB approved the information collection requirements, except for 46 CFR 185.502 (Passenger Lists). Since newly proposed subchapter K (section numbers between 115 and 122 above) would apply only to vessels included under the requirements of the NPRM, there are no additional information collection requirements in this SNPRM. For the purposes of this SNPRM the same control numbers are used in subchapter K for any requirements that are identical or similar to the ones in subchapter T. The corresponding control numbers are displayed in proposed §§ 114.900 and 175.900 of this SNPRM. The Coast Guard has resubmitted the information collection requirements for §§ 185.502 and 122.502 to OMB.

Persons desiring to comment on any of these information collection requirements should submit their comments both to the OMB and to the Coast Guard where indicated under "ADDRESSES".

Federalism

This proposed rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2. of Commandant Instruction M16475.1B, this proposal is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and has been placed in the rulemaking docket.

List of Subjects

46 CFR Part 114, 175

Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 115, 176

Fire prevention, Marine safety, Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Parts 116, 117, 119, 171, 177, 178, 179, 180, 182

Marine safety, Passenger vessels.

46 CFR Part 118, 181

Fire prevention, Marine safety, Passenger vessels.

46 CFR Part 120, 183

Electric power, Marine safety, Passenger vessels.

46 CFR Part 121, 184

Communications equipment, Marine safety, Navigation (water), Passenger vessels.

46 CFR Part 122, 185

Alcohol and alcoholic beverages, Drugs, Hazardous materials, Marine safety, Navigation (water), Passenger vessels, Reporting and recordkeeping requirements.

46 CFR Part 170

Marine safety, Reporting and recordkeeping requirements, Vessels.

46 CFR Part 173

Marine safety, Vessels.

For the reasons set out in the preamble, the Coast Guard proposes to amend title 46, Code of Federal Regulations by: redesignating parts 114 through 139 (reserved in subchapter J) as subchapter K; amending parts 170, 171, and 173 of subchapter S, and by amending subchapter T as follows.

1. Parts 114 through 139 (reserved in subchapter J) are redesignated and added as subchapter K to read as follows:

SUBCHAPTER K—SMALL PASSENGER VESSELS CARRYING MORE THAN 150 PASSENGERS OR WITH OVERNIGHT ACCOMMODATIONS FOR MORE THAN 49 PASSENGERS

PART 114—GENERAL PROVISIONS

Sec.

114.100 Purpose.
114.110 General applicability.
114.112 Specific applicability for individual parts.
114.120 Vessels on an international voyage.
114.122 Load lines.
114.200 Gross tonnage as a criterion for requirements.
114.400 Definitions of terms used in this subchapter.
114.540 Equivalents.
114.550 Special consideration.
114.560 Appeals.
114.600 Incorporation by reference.
114.800 Approved equipment and material.
114.900 OMB control numbers.

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App. 1804; 49 CFR 1.45, 1.46; § 114.900 also issued under authority of 44 U.S.C. 3507.

§ 114.100 Purpose.

The purpose of this subchapter is to implement applicable sections of subtitle II of title 46, United States Code, which require the inspection and certification of small passenger vessels.

§ 114.110 General applicability.

(a) Except as provided in paragraphs (b) through (f) of this section, this subchapter applies to each vessel of less than 100 gross tons and less than 200 feet which:

(1) Carries more than 150 passengers; or

(2) Has overnight accommodations for more than 49 passengers.

(b) A vessel of less than 100 gross tons which either carries not more than 150 passengers, or has overnight accommodations for not more than 49 passengers, and which is not more than 200 feet in length, may comply with the provisions in subchapter T (Small Passenger Vessels) of this chapter.

(c) A vessel of less than 100 gross tons must comply with parts 72, 75, and 76 of subchapter H (Passenger Vessels) of this chapter, and with the applicable requirements for marine engineering and electrical systems contained in subchapter F (Marine Engineering) and subchapter J (Electrical Engineering) of this chapter if it is:

(1) A vessel which carries more than 600 passengers,

(2) A vessel with overnight accommodations for more than 150 passengers; or

(3) A vessel of more than 200 feet in length which carries more than six passengers.

(d)(1) Unless otherwise provided, an existing vessel which is not required to comply with a requirement in this subchapter may comply with the regulation that was applicable to the vessel on [*date of the day before the effective date of the final rule*].

(2) A vessel required by this subchapter to meet applicable sections of subchapter H shall follow the phase-in schedule for certain equipment and requirements found in this subchapter.

(e) This subchapter does not apply to:

(1) A vessel operating exclusively on inland waters which are not navigable waters of the United States;

(2) An oceanographic research vessel;

(3) A boat forming part of a vessel's lifesaving equipment and which is not used for carrying passengers except in emergencies or during emergency drills;

(4) A vessel of a foreign country which is a party to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), to which the United States Government is currently a party, and which has on board a current valid SOLAS Passenger Ship Safety Certificate; or

(5) A vessel of a foreign country, whose government has inspection laws approximating those of the United States and which by its laws accords similar privileges to vessels of the United States, which has on board a current valid certificate of inspection, permitting the carrying of passengers, issued by its government.

(f) The relationship between this subchapter and other subchapters pertaining to the inspection and certification of small passenger vessels (passenger vessels under 100 GT) is provided in the table below, which shows the breakpoints between subchapters T, K, and H of this chapter.

TABLE 114.110(f)

Subchapter T	Subchapter K	Subchapter K[1]:
≤ 150 passengers or overnight accommodations for ≤ 49 passengers, and ≤ 200 feet	151—600 passengers or overnight accommodations for 50—150 passengers and ≤ 200 feet	≥ 601 passengers or overnight accommodations for ≥ 151 passengers or ≥ 200 feet

[1] Vessels in this category are small passenger vessels (passenger vessels less than 100 GT) but are required to comply with parts 72, 75, and 76 of subchapter H, parts 114, 115, 121, and 122 of subchapter K, and the applicable requirements of subchapters F and J.

§ 114.112 Specific applicability for individual parts.

At the beginning of certain parts of this subchapter, a more specific application is given for all or particular portions of that part. This application sets forth the type, size, service, or age of a vessel to which certain portions of that part apply or particular dates by which an existing vessel must comply with certain portions of that part.

§ 114.120 Vessels on an international voyage.

A mechanically propelled vessel which carries more than 12 passengers on an international voyage must comply with the applicable requirements of SOLAS as well as this subchapter.

§ 114.122 Load lines.

A vessel of 79 feet in length or more, the keel of which was laid or which was at a similar stage of construction on or after July 21, 1968, and which is on a voyage other than a domestic voyage is subject to load line assignment, certification, and marking under subchapter E (Load Lines) of this chapter.

§ 114.400 Definitions of terms used in this subchapter.

(a) Terms used in this subchapter are defined in paragraph (b) of this section. The number in brackets after certain terms describing areas on a vessel refers to the applicable column and row number where that area is listed in Tables 116.415 (b) and (c) of part 116 of this subchapter.

(b) *General terms.*

Accommodation space [4] means a space used as a:

(1) Public space;
(2) Hall;
(3) Dining room and messroom;
(4) Lounge or cafe;
(5) Public sales room;
(6) Overnight accommodation space;
(7) Barber shop or beauty parlor;
(8) Office or conference room;
(9) Washroom or toilet space;
(10) Medical treatment room or dispensary; or
(11) Game or hobby room.

Atrium means a continuous deck opening connecting more than two deck levels that is covered at the top of the series openings and is used for purposes other than an enclosed stairway, elevator hoistway, escalator opening or utility trunk used for pipe, cable, or ductwork.

Balcony means a partial deck within an accommodation space open to the deck below to create two freely communicating levels within the same space.

Beam or *B* means the maximum width of a vessel from:

(1) Outside of planking to outside of planking on wooden vessels; and
(2) Outside of frame to outside of frame on all other vessels.

Bulbous bow means a design of bow in which the forward underwater frames ahead of the forward perpendicular are swelled out at the forefoot into a bulbous formation.

Bulkhead deck means the uppermost deck to which watertight bulkheads and the watertight shell extend.

Cable means single or multiple insulated conductors with an outer protective jacket.

Cargo space [8] means a:

(1) Cargo hold;

(2) Refrigerated cargo space; or

(3) A trunk leading to or from a space listed above.

Char length means the numeric value in inches assigned to a material when tested in accordance with NFPA 261 by an independent laboratory.

Coast Guard District Commander or *District Commander* means an officer of the Coast Guard designated as such by the Commandant to command Coast Guard activities within a district.

Coastwise means a route which is not more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;

(2) The Gulf of Mexico;

(3) The Caribbean Sea;

(4) The Bering Sea;

(5) The Gulf of Alaska; or

(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Cockpit vessel means a vessel with an exposed recess in the weather deck extending not more than one-half of the length of the vessel measured over the weather deck.

Commandant means the Commandant of the Coast Guard or an authorized Headquarters staff officer designated in § 1.01 of this chapter.

Continuous B-Class ceiling means an approved structural ceiling composed of B-Class panels that terminates only at an approved A-Class or B-Class bulkhead.

Control space [1] means a space containing:

(1) An emergency source of power, excluding generators;

(2) Navigating and radio equipment and which is normally manned;

(3) Centralized fire control or detection equipment, such as fixed extinguishing system controls; or

(4) Machinery controls not located within a machinery space.

Corrosion-resistant material or *corrosion-resistant* means made of one of the following materials in a grade suitable for its intended use in a marine environment:

(1) Silver;

(2) Copper;

(3) Brass;

(4) Bronze;

(5) Aluminum alloys with a copper content of no more than 0.4 percent;

(6) Copper-nickel;

(7) Plastics;

(8) Stainless steel;

(9) Nickel-copper; or

(10) A material, which when tested in accordance with ASTM B–117 for 200 hours, does not show pitting, cracking, or other deterioration.

Crew accommodation space means an accommodation space designated for the use of crew members and which passengers are normally not allowed to occupy.

Critical radiant flux means the numeric value assigned to a material when tested in accordance with ASTM E–648 by an independent laboratory.

Custom engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed for a specific space requiring individual calculations for the extinguishing agent volume, flow rate, piping, and similar factors.

Distribution panel means an electrical panel which receives energy from the switchboard and distributes the energy to energy consuming devices or other panels.

Draft means the vertical distance from the molded baseline of a vessel amidships to the waterline.

Dripproof means enclosed equipment so constructed or protected that falling drops of liquid or solid particles striking the enclosure at any angle from 0 to 15 degrees downward from the vertical do not interfere with the operation of the equipment. A National Electrical Manufacturers Association type 1 enclosure with a dripshield is considered to be dripproof.

Dynamically supported craft means a craft which is operable on or above the water and which has characteristics so different from those of conventional displacement ships to which the existing international conventions apply, particularly SOLAS, that alternative measures should be used to achieve an equivalent level of safety. Within the aforementioned generality, a craft which complies with either of the following characteristics would be considered a dynamically supported craft:

(1) The weight, or a significant part thereof, is balanced in one mode of operation by other than hydrostatic forces.

(2) The craft is able to operate at speeds such that the function $v/\sqrt{gL}$ is equal to or greater than 0.9, where "v" is the maximum speed, "L" is the waterline length and "g" is the acceleration due to gravity, all in consistent units.

Embarkation deck means;

(1) The deck from which davit launched survival craft are designed to be boarded; or

(2) If no davit launched survival craft are carried aboard the vessel, the main deck or lowest deck available for embarking or debarking passengers.

Embarkation station [9] means the place on the vessel from which a survival craft is boarded.

Enclosed space means a compartment that is not exposed to the atmosphere when all access and ventilation closures are secured.

Existing vessel means a vessel which is not a new vessel.

Exposed waters is a term used in connection with stability criteria and means:

(1) Waters, except the Great Lakes, more than 20 nautical miles from a harbor of safe refuge;

(2) Those portions of the Great Lakes more than 20 nautical miles from a harbor of safe refuge from October 1 of one year through April 15 of the next year (winter season); and

(3) Those waters less than 20 nautical miles from a harbor of safe refuge which the cognizant Officer in Charge, Marine Inspection, determines are not partially protected waters or protected waters because they present special hazards due to weather or other circumstances.

Ferry means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Has provisions only for deck passengers or vehicles, or both;

(3) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(4) Offers a public service of a type normally attributed to a bridge or tunnel.

Fiber reinforced plastic means plastics reinforced with fibers or strands of some other material.

Fire control boundary means a deck or bulkhead meeting the requirements for A-Class, B-Class, or C-Class construction in accordance with § 116.415 of this subchapter.

Fire load means a measure in pounds per square foot equaling the weight of all combustible material which is in a compartment and comprises its construction, as defined in § 116.427(b) of this subchapter, divided by the floor area of that compartment. The pounds of combustible material is the wood equivalent weight.

Flame spread means the numeric value assigned to a material when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

Flash point means the temperature at which a liquid gives off a flammable vapor when heated using the Pensky-Martens Closed Cup Tester method in accordance with ASTM D–93.

Float-free launching or arrangement means that method of launching a survival craft whereby the survival craft is automatically released from a sinking vessel and is ready for use.

Flush deck vessel means a vessel with a continuous weather deck located at the uppermost sheer line of the hull.

Freeing port means any direct opening through the vessel's bulwark or hull to quickly drain overboard water which has been shipped on exposed decks.

Galley means a space containing appliances with cooking surfaces which may exceed 250° F, such as ovens, griddles, and deep fat fryers.

Great Lakes means a route on the waters of any of the Great Lakes.

Gross tonnage and *gross tons* is an indicator of a vessel's approximate volume as determined in accordance with part 69 (Measurement of Vessels) of this chapter and recorded on the vessel's Certificate of Admeasurement.

Harbor of safe refuge means a port, inlet, or other body of water normally sheltered from heavy seas by land and in which a vessel can navigate and safely moor. The cognizant Officer in Charge, Marine Inspection, shall determine the suitability of a location as a harbor of safe refuge. The suitability will vary for each vessel, depending on the vessel's size, maneuverability, and mooring gear.

Hardwood means any wood with a specific gravity, oven dry volume, of not less than 0.66.

High risk service space [5] means a space used as a:

(1) Motion picture projection room;

(2) Galley;

(3) Large laundry or drying room;

(4) Garbage or trash disposal storage area;

(5) Paint or lamp locker;

(6) Cleaning gear locker or small storeroom in an accommodation area; or

(7) Mail or baggage room.

High seas means all waters which are neither territorial seas (the waters in a belt 3 nautical miles wide, that is adjacent to the coast and seaward of the territorial sea baseline) nor internal waters of the United States or of any foreign country.

Independent laboratory means a laboratory accepted under § 159.010 of this chapter.

Inflatable survival craft or lifejacket means one which depends upon nonrigid, gas filled chambers for buoyancy, and which is normally kept uninflated until ready for use.

Interior finish means any coating, overlay or veneer which is applied to interior surfaces such as bulkheads, linings, or suspended ceilings for decorative or other purposes. It includes not only the visible finish, but also all material used in its composition and application. In general, a paint is not considered an interior finish.

International voyage means a voyage between a country to which SOLAS applies and a port outside that country.

A country, as used in this definition, includes every territory for the international relations of which a contracting government to the convention is responsible or for which the United Nations is the administering authority. For the U.S., the term "territory" includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate. For the purposes of this subchapter, vessels are not considered as being on an "international voyage" when solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

Lakes, bays, and sounds means a route on any of the following waters:

(1) A lake other than the Great Lakes;

(2) A bay;

(3) A sound; or

(4) Such other similar waters as may be designated by a Coast Guard District Commander.

Launching appliance means a device for transferring a survival craft or rescue boat from its stowed position safely to the water. For a launching appliance using a davit, the term includes the davit, winch and falls.

Length when used in terms of the vessel's length, means:

(1) The length listed on the vessel's Certificate of Documentation issued under the provisions of part 67 (Documentation of Vessels) of this chapter or Certificate of Number issued under the provisions of 33 CFR part 173, subpart B (Numbering); or

(2) For a vessel which does not have a Certificate of Documentation or a Certificate of Number, the "registered length" as defined in § 69.53 of this chapter or, for a vessel which is less than 79 feet in overall length and is measured using simplified admeasurement, the registered length as defined in § 69.203 of this chapter; or

(3) For the purposes of part 179 of this subchapter, the "length" of a vessel with a bulbous bow means the larger of the length as defined in paragraph (1) of this definition or the straight line horizontal measurement from the forwardmost tip of the bulbous bow to the aftermost part of the vessel measured parallel to the center line.

Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the "length" of a vessel.

Length between perpendiculars or *(LBP)* means the horizontal distance measured between perpendiculars taken at the forwardmost and aftermost points on the waterline corresponding to the deepest operating draft.

Lining means a bulkhead panel.

Low risk service space (6) means a space used as a:

(1) Small pantry with only a microwave or other low heat appliance;

(2) Main pantry or storeroom including connecting alleyways and stairs;

(3) Small laundry or drying room containing only a tub, washing machine, and/or household type electric dryer; or

(4) Workshop which is not part of a machinery space;

Machinery space (7) means a space including a trunk, alleyway, stairway, or duct to such a space, that contains:

(1) Propulsion machinery of any type;

(2) Steam or internal combustion machinery;

(3) Oil transfer equipment;

(4) Electrical motors of more than 10 hp;

(5) Refrigeration equipment;

(6) One or more oil-fired boilers or heaters; or

(7) Electrical generating machinery.

Main horizontal zone means a vehicle space which is separated from the remainder of the vessel by horizontal fire control boundaries required by the structural fire protection requirements of this subchapter.

Main transverse watertight bulkhead means a transverse bulkhead that must be maintained watertight in order for the vessel to meet the damage stability and subdivision requirements of this subchapter.

Main vertical zone means that section of a vessel into which the hull, superstructure, and deckhouse are required to be divided by vertical fire control boundaries required by the structural fire protection requirements of this subchapter.

Major conversion means a conversion of a vessel that, as determined by the Commandant:

(1) Alters the dimensions of the vessel including but not limited to gross tonnage, length, breath, or height;

(2) Alters the design or arrangement so that the vessel is capable of carrying more passengers than it was originally built to carry;

(3) Alters the design or scantlings of a vessel so that it is suitable for operation on a route of greater severity than the route for which it was originally built; or

(4) Adds or modifies overnight accommodation spaces for passengers so that the total number of passengers that

can be accommodated in such spaces changes from not more than 49 to more than 49.

Marine inspector or *inspector* means any civilian employee or military member of the Coast Guard assigned by an Officer in Charge, Marine Inspection, or the Commandant to perform duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations.

Master means the individual having command of the vessel and who is the holder of a valid license which authorizes the individual to serve as master of a small passenger vessel.

Means of escape means a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station. It consists of three distinct components:

(1) The exit access;
(2) The exit; and
(3) The exit discharge.

A means of escape can be both vertical and horizontal, and includes doorways, passageways, stairtowers, stairways, and public spaces. High risk service spaces, low risk service spaces, cargo spaces, machinery spaces, control spaces, rest rooms, barber shops, sales rooms, hazardous areas, escalators, and elevators must not be any part of a means of escape.

New vessel means a vessel:

(1) The initial construction of which began on or after (*effective date of the final rule*);

(2) Which was issued an initial Certificate of Inspection on or after (*six months after effective date of the final rule*);

(3) Which underwent a major conversion which was initiated on or after (*effective date of the final rule*); or

(4) Which underwent a major conversion which was completed and for which an amended Certificate of Inspection was issued on or after (*six months after effective date of the final rule*).

Noncombustible material means any material approved under § 164.009 of this chapter.

Non-self-propelled vessel means a vessel which does not have installed means of propulsion, including propulsive machinery, masts, spars, or sails.

Oceans means a route which is more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;
(2) The Gulf of Mexico;
(3) The Caribbean Sea;
(4) The Bering Sea;
(5) The Gulf of Alaska; or,
(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Officer In Charge, Marine Inspection, or *OCMI* means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspections, enforcement, and administration of vessel safety and navigation laws and regulations. The cognizant OCMI is the OCMI that has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

Open boat means a vessel not protected from entry of water by means of a complete weathertight deck, or by a combination of a partial weathertight deck and superstructure which is structurally suitable for the waters upon which the vessel operates.

Open deck (9) means a deck that is permanently open to the weather on one or more sides and, if covered, any spot on the overhead is less than 15 feet from the nearest opening to the weather.

Open to the atmosphere means a compartment that has at least 15 square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

Operating station means the principal steering station on the vessel from which the individual on duty normally navigates the vessel.

Overnight accommodations or *overnight accommodation space* means an accommodation space for use by passengers or by crew members, which has one or more berths, including beds or bunks, for passengers or crew members to rest for extended periods. Staterooms, cabins, and berthing areas are normally overnight accommodation spaces. Overnight accommodations do not include spaces which contain only seats, including reclining seats.

Partially enclosed space means a compartment that is neither open to the atmosphere nor an enclosed space.

Partially protected waters is a term used in connection with stability criteria and means:

(1) Waters not more than 20 nautical miles from a harbor of safe refuge, unless determined by the cognizant OCMI to be exposed waters;

(2) Those portions of rivers, estuaries, harbors, lakes, and similar waters which the cognizant OCMI determines not to be protected waters; and

(3) Waters of the Great Lakes from April 16 through September 30 of the same year (summer season).

Passenger means an individual carried on a vessel except:

(1) The owner or representative of the owner;

(2) The master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(3) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(4) An employee of the demise charterer of the vessel engaged in the business of the demise charterer;

(5) A guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or

(6) An individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.

Passenger accommodation space means an accommodation space designated for the use of passengers.

Pilothouse control means that controls to start and stop the engines and control the direction and speed of the propeller of the vessel are located at the operating station.

Piping system includes piping, fittings, and appurtenances as described in 46 CFR 56.07–5.

Protected waters is a term used in connection with stability criteria and means sheltered waters presenting no special hazards such as most rivers, harbors, and lakes, and which is not determined to be exposed waters or partially protected waters by the OCMI.

Pre-engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed and tested to be suitable for installation without modification, as a complete unit in a space of a set volume, regardless of the specific design of the vessel on which it is installed.

Rivers means a route on any of the following waters: (1) A river; (2) A canal; or (3) Such other similar waters as may be designated by a Coast Guard District Commander.

Sailing vessel means a vessel principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion.

Scupper means a pipe or tube of at least 1.25 inches in diameter leading down from a deck or sole and through the hull to drain water overboard.

Self-bailing cockpit means a cockpit, with watertight sides and floor (sole), which is designed to free itself of water by gravity drainage through scuppers.

Service space means a high risk service space or a low risk service space.

Ship's service loads means services necessary for maintaining the vessel in normal operational and habitable conditions. These loads include, but are not limited to, safety, lighting, ventilation, navigational, and communications loads.

Short international voyage means an international voyage where: (1) The vessel is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and

(2) The total distance between the last port of call in the country in which the voyage began and the final port of destination does not exceed 600 nautical miles.

Smoke developed rating means the numeric value assigned to a material when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

Specific optical density means the numeric value assigned to a material when tested in accordance with ASTM E–662 by an independent laboratory.

Stairtower (3) means a fully enclosed group of stairways located one above another.

Stairway (3) means an inclined means of escape between two decks.

Standard fire test means a test in which a specimen is exposed in a test furnace to temperatures corresponding to the standard time-temperature curve. The specimen must resemble, as closely as possible, the intended construction and include, where appropriate, at least one joint. The standard time-temperature curve is defined by a smooth curve drawn through the following points, starting at ambient temperature:

(1) At the end of 5 minutes—556 °C (1,033 °F);
(2) At the end of 10 minutes—659 °C (1,218 °F);
(3) At the end of 15 minutes—718 °C (1,324 °F);
(4) At the end of 30 minutes—821 °C (1,509 °F); and
(5) At the end of 60 minutes—925 °C (1,697 °F).

Steel or equivalent material means steel or any noncombustible material which, by itself or due to insulation provided, has structural and integrity properties equivalent to steel at the end of the standard fire test.

Stepped main vertical zone means a main vertical zone in which the main vertical zone bulkhead is not in a continuous plane on adjoining decks.

Survival craft means a lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or a small boat carried aboard a vessel in accordance with § 117.200(b) of this subchapter.

Switchboard means an electrical panel which receives power from a generator, battery, or other electrical power source and distributes power directly or indirectly to all equipment supplied by the generating plant.

Trunk means a vertical shaft or duct for the passage of pipes, wires, or other devices.

Vehicle space (8) means a space not on an open deck, for the carriage of motor vehicles with fuel in their tanks, into and from which such vehicles can be driven and to which passengers have access.

Veneer means a thin covering of combustible material on bulkheads, bulkhead panels, or furniture.

Vessel includes every description of watercraft or other artificial contrivance, used or capable of being used as a means of transportation on water.

Vessel of the United States means a vessel documented or numbered under the laws of the United States, the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

Watertight means designed and constructed to withstand a static head of water without any leakage, except that "watertight" for the purposes of electrical equipment means enclosed so that water does not enter the equipment when a stream of water from a hose with a nozzle one inch in diameter that delivers at least 65 gallons per minute is played on the enclosure from any direction from a distance of ten feet for five minutes.

Weather deck means a deck which is partially or completely exposed to the weather from above or from at least two sides.

Weathertight means that water will not penetrate in any sea condition, except that "weathertight equipment" means equipment constructed or protected so that exposure to a beating rain will not result in the entrance of water.

Well deck vessel means a vessel with a weather deck fitted with solid bulwarks that impede the drainage of water over the sides or a vessel with an exposed recess in the weather deck extending more than one-half of the length of the vessel measured over the weather deck.

Wire means an individual insulated conductor without an outer protective jacket.

Work space means a space, not normally occupied by a passenger, in which a crew member performs work and includes, but is not limited to, a galley, operating station, or machinery space.

§ 114.540 Equivalents.

(a) The Commandant may accept in substitution for a required arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test an equivalent that is as effective as that required by the regulations and is consistent with the intent of the requirements and the minimum safety standards specified in this subchapter. Requests for equivalents must be submitted to the Commandant via the cognizant OCMI. If necessary, the Commandant may require engineering evaluations and tests to demonstrate the equivalence of the substitute.

(b) The Commandant may accept compliance by a dynamically supported craft with the provisions of the IMO "Code of Safety for Dynamically Supported Craft" as an equivalent to compliance with applicable requirements of this subchapter. Requests for equivalents must be submitted to the Commandant via the cognizant OCMI.

(c) The Commandant may approve a novel lifesaving appliance or arrangement as an equivalent if it has performance characteristics at least equivalent to the appliance or arrangement required under this part, and:

(1) Is evaluated and tested under IMO Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements"; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

§ 114.550 Special consideration.

In applying the provisions of this subchapter, the OCMI may give special consideration to authorizing departures from the specific requirements when unusual circumstances or arrangements warrant such departures and an equivalent level of safety is provided. The OCMI of each marine inspection zone in which a vessel operates must approve any special consideration granted to the vessel.

§ 114.560 Appeals.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with part 1, subpart 1.03 of this chapter.

§ 114.600 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the **Federal**

Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the **Federal Register**, 800 N. Capitol Street NW., Suite 700, Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subchapter and the sections affected are:

American Bureau of Shipping (ABS), P.O. Box 910, 45 Eisenhower Dr., Paramus, NJ 07652

Rules for Building and Classing Aluminum Vessels, 1975, 116.300
Rules for Building and Classing Steel Vessels, 1993, 119.410; 120.360
Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, 1983, 116.300
Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1980, 116.300

American Boat and Yacht Council (ABYC), 3069 Solomon's Island Road, Edgewater, MD 21037

A–1–90—Marine LPG—Liquified Petroleum Gas Systems, 121.240
A–3–70—Recommended Practices and Standards Covering Galley Stoves, 121.200
A–7–70—Recommended Practices and Standards Covering Boat Heating Systems, 121.200
A–22–78—Marine CNG—Compressed Natural Gas Systems, 121.240
H–25–86—Portable Fuel Systems for Flammable Liquids, 119.458
P–1–86—Installation of Exhaust Systems for Propulsion and Auxiliary Engines, 116.405; 119.425; 119.430

American National Standards Institute (ANSI), United Engineering Center, 345 East 47th St., New York, NY 10017

A 17.1–1984—American Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, 120.540
B 31.1—1986—American National Standard Code for Pressure Piping, Power Piping, 119.710
Z 26.1–1983—Safety Glazing Materials For Glazing Motor Vehicles Operating on Land Highways, 116.1030

Amerian Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103

B–117–79—Method of Salt Spray (Fog) Testing, 114.400
D–93–80—Flash Point By Pensky-Martens Closed Cup Tester, 114.400
D–635–81—Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Self-supporting Plastics in a Horizontal Position, 119.440
D–2863–77—Standard Test Method for Measuring the Minimum Oxygen Concentration to Support Candle-like Combustion of Plastics (Oxygen Index), 119.440
E–84–81—Test for Surface Burning Characteristics of Building Materials, 114.400; 116.422; 116.423; 116.425
E–648–78—Test for Critical Radiant Flux of Floor Covering Systems Using a Radiant Heat Energy Source, 114.400; 116.425
E–662–79—Test for Specific Optical Density of Smoke Generated by Solid Materials, 114.400; 116.425
F–(Reserved for standard on pyrotechnic lockers under development by ASTM), 117.68

Australian Transport Advisory Council, Australian Government Publishing Service, Canberra, Australia

Australia Shipping Law Code Section 5, Subsection J, as amended to August 1, 1984, 116.300

Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, NJ. 08854

Standard 45–1983—Recommended Practice for Electrical Installations on Shipboard, 120.340

International Maritime Organization (IMO), IMO Sales, New York Nautical Instrument and Service Corp., 40 W. Broadway, NY, NY 10013

Code of Safety for Dynamically Supported Craft, 1987, 114.540
Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements—IMO Resolution A.520(13), 114.540(c)
Resolution on the Installation of Reflective Tape on Lifesaving Equipment, Resolution A.658(16), 122.604

National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101

10–1988—Portable Fire Extinguishers, 115.810
17–1985—Dry Chemical Extinguishing Systems, 118.425
17A–1986—Wet Chemical Extinguishing Systems, 118.425
70–1987—National Electrical Code (NEC)
Section 250 95, 120.370
Section 310–13, 120.340,
Section 310–15, 120.340
Article 430, 120.320
Article 445, 120.320
261–1989—Method of Test For Determining Resistance of Mock-up Upholstered Furniture Material Assemblies to ignition by Smoldering Cigarettes, 114.400; 116.423
302–1989—Pleasure and Commercial Motor Craft, Chapter 6, 121.200; 121.240
306–1988—Control of Gas Hazards on Vessels, 115.710
701–1977—Methods of Fire Tests For Flame-Resistant Textiles and RM Films, 116.423
1963–1985—Screw Threads and Gaskets for Fire Hose Connections, 118.320

Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001

SAE J–1928—Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989, 119.415

Underwriters Laboratories Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709

UL 19–1978—Woven Jacketed, Rubber Lined Fire Hose, 118.320
UL 57–1980—Electric Lighting Fixtures, 120.410
UL 174–1983—Standard for Household Electric Stowage Tank Water Heaters, 119.320
UL 217–1985—Standard for Single and Multiple Station Smoke Detectors, 118.450
UL 486A–1978—Electric Wire Connectors and Soldering Lugs for Use With Copper Conductors, 120.340
UL 489–1986—Molded—Case Circuit Breakers and Circuit Breaker Enclosures, 120.380
UL 595–1980—Marine Type Electric Lighting Fixtures, 120.410
UL 710–1984—Grease Extractors for Exhaust Ducts, 118.425
UL 723–1983—Test for Surface Burning Characteristics of Building Materials, 114.400; 116.422; 116.423; 116.425
UL 1058–1984—Halogenated Agent Fire Extinguishing System Units, 118.410(g)
UL 1102–1980—Non-integral Marine Fuel Tanks, 119.440
UL 1110–1976—Marine Combustible Gas Indicators, 119.480
UL 1111–1988—Marine Carburetor Flame Arrestors, 119.415
UL 1453–1982—Electric Booster and Commercial Storage Tank Water Heaters, 119.320
UL 1570–1988—Fluorescent Lighting Fixtures, 120.410
UL 1571–1984—Incandescent Lighting Fixtures, 120.410
UL 1572–1984—High Intensity Discharge Lighting Fixtures, 120.410
UL 1573–1985—Stage and Studio Lighting Units, 120.410
UL 1574–1987—Track Lighting Systems, 120.410

§ 114.800 Approved equipment and material.

(a) Equipment and material that is required by this subchapter to be approved or of an approved type, must have been manufactured and approved in accordance with the design and testing requirements in subchapter Q (Equipment, Construction, and Materials: Specifications and Approval) of this chapter or as otherwise specified by the Commandant.

(b) Notice regarding equipment approvals is published in the **Federal Register**. Coast Guard publication COMDTINST M16714.3, "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws", lists approved equipment by type and manufacturer. COMDTINST M16714.3 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

§ 114.900 OMB control numbers.

(a) *Purpose.* This section lists the control numbers assigned to information collection and record keeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of OMB for each approved agency information collection requirement.

(b) Display.

46 CFR section where identified	Current OMB described control No.
115.105(a)	2115–0578.
115.202	2115–0578.
115.204	2115–0578.
115.302	2115–0578.
115.306	2115–0578.
115.310	2115–0578.
115.500(a)	2115–0578.
115.612	2115–0578.
115.700	2115–0578.
115.704	2115–0578.
115.710	2115–0578.
115.810(b)	2115–0578.
115.920(c)	2115–0578.
115.930	2115–0578.
116.202	2115–0578.
116.330	2115–0578.
116.340	2115–0578.
116.520	Will be displayed when assigned by OMB.
116.530	Will be displayed when assigned by OMB.
116.610(f)	2115–0578.
120.220(d)	2115–0578.
120.320(d) and (e)	2115–0578.
121.420	2115–0578.
121.506	2115–0578.
122.202	2115–0003.
122.206	2115–0003.
122.208	2115–0578.
122.220	2115–0578.
122.230	2115–0578.
122.260	2115–0578.
122.280	2115–0578.
122.282	2115–0578.
122.315	2115–0589.
122.335	2115–0589.
122.304(c)	2115–0578.
122.340(c)	2115–0578.
122.402	2115–0578.
122.502	Will be displayed when assigned by OMB.
122.504	2115–0578.
122.506	2115–0578.
122.510	2115–0578.
122.514	2115–0578.
122.515	2115–0578.
122.516	2115–0578.
122.518	2115–0578.
122.602	2115–0578.
122.604	2115–0578.
122.606	2115–0578.
122.608	2115–0578.
122.610	2115–0578.
122.612	2115–0578.
122.70	2115–0578.
122.704(c)	2115–0578.

PART 115—INSPECTION AND CERTIFICATION

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115.814 Steering systems.
115.816 Miscellaneous systems and equipment.
115.818 Sanitary inspection.
115.830 Unsafe practices.
115.840 Additional tests and inspections.

Subpart I—International Convention for Safety of Life at Sea, 1974, as Amended (SOLAS)

115.900 Applicability.
115.920 Exemptions.
115.930 Equivalents.

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 743; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—Certificate of Inspection

§ 115.100 When required.

(a) A vessel to which this subchapter applies may not be operated without having on board a valid U.S. Coast Guard Certificate of Inspection.

(b) Except as provided in § 115.114, each vessel inspected and certificated under the provisions of this subchapter must, when any passengers are aboard during the tenure of the certificate, be in full compliance with the terms of the certificate.

(c) If necessary to prevent delay of the vessel, a temporary Certificate of Inspection may be issued pending the issuance and delivery of the regular Certificate of Inspection. The temporary certificate must be carried in the same manner as the regular certificate and is considered the same as the regular Certificate of Inspection which it represents.

(d) A vessel on a foreign voyage between a port in the United States and a port in a foreign country, whose Certificate of Inspection expires during the voyage, may lawfully complete the voyage without a valid Certificate of Inspection provided the voyage is completed within 30 days of expiration and the certificate did not expire within 15 days of sailing on the foreign voyage from a U.S. port.

§ 115.103 Description.

The Certificate of Inspection issued to a vessel describes the vessel, the route(s)

which it may travel, the minimum manning requirements, the survival and rescue craft carried, the minimum fire extinguishing equipment and lifejackets required to be carried, the maximum number of passengers and total persons which may be carried, the number of passengers the vessel may carry in overnight accommodation spaces, the name of the owner and managing operator, any equivalencies accepted or authorized by the Commandant or any OCMI under § 114.540 or § 114.550, and such other conditions of operations as may be determined by the cognizant OCMI.

§ 115.105 How to obtain or renew.

(a) A Certificate of Inspection is obtained or renewed by making application for an initial or periodic inspection on Form CG 3752, Application for Inspection of U.S. Vessel, to the Coast Guard OCMI of the marine inspection zone in which the inspection is to be made. Form CG–3752 may be obtained at any U.S. Coast Guard Marine Safety Office or Marine Inspection Office.

(b) The application for initial inspection of a vessel being newly constructed or converted must be submitted prior to the start of the construction or conversion.

(c) The construction, arrangement, and equipment of each vessel must be acceptable to the cognizant OCMI as a prerequisite of the issuance of the initial Certificate of Inspection. Acceptance is based on the information, specifications, drawings and calculations available to the OCMI and on the successful completion of an initial inspection for certification.

(d) A Certificate of Inspection is renewed by the issuance of a new Certificate of Inspection.

(e) The condition of the vessel and its equipment must be acceptable to the cognizant OCMI as a prerequisite to the Certificate of Inspection renewal. Acceptance is based on the condition of the vessel as found at the periodic inspection for certification.

§ 115.107 Period of validity.

(a) A Certificate of Inspection is issued for a period of three years.

(b) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

§ 115.110 Routes permitted.

(a) The area of operation for each vessel and any necessary operational limits are determined by the cognizant OCMI, and recorded on the vessel's Certificate of Inspection. Each area of operation, referred to as a route, is described on the Certificate of Inspection under the major headings "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," or "rivers," as applicable. Further limitations imposed or extensions granted are described by reference to bodies of waters, geographical points, distance from geographical points, distances from land, depths of channel, seasonal limitations, and similar factors.

(b) The maximum allowable distance a dynamically supported craft or a vessel complying with the IMO "Code of Safety for Dynamically Supported Craft" as equivalent to the requirements of this subchapter, as allowed by § 114.540(b) of this subchapter, may operate from a harbor of safe refuge is designated by the cognizant OCMI, but may not be more than 100 nautical miles.

(c) Operation of a vessel on a route of lesser severity than those specifically described or designated on the Certificate of Inspection is permitted unless expressly prohibited on the Certificate of Inspection. The general order of severity of routes is: "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," and "rivers." The cognizant OCMI may prohibit a vessel from operating on a route of lesser severity than the primary route a vessel is authorized to operate on if local conditions necessitate such a restriction.

(d) Non-self-propelled vessels are prohibited from operating on an "oceans", "coastwise", or "Great Lakes" route unless the Commandant approves such a route.

(e) When designating a permitted route or imposing any operational limits on a vessel, the OCMI may consider:

(1) Requirements of this subchapter for which compliance is based on the route of the vessel;

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, other characteristics; and

(3) The suitability of the vessel for night-time operations and use in all weather conditions.

§ 115.112 Total persons permitted.

The cognizant OCMI determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons permitted to be carried, the OCMI may consider stability restrictions and subdivision requirements of the vessel, the vessel's route, general arrangement, means of escape, lifesaving equipment, the minimum manning requirements, and the maximum number of passengers permitted in accordance with § 115.113.

§ 115.113 Passengers permitted.

(a) The maximum number of passengers permitted to be carried on a vessel is determined by the cognizant OCMI. The maximum number permitted must be not more than that allowed by the requirements of this section, except as authorized by the OCMI under paragraph (d) of this section.

(b) The maximum number of passengers permitted on any vessel may be the greatest number permitted by the length of rail criterion, deck area criterion, or fixed seating criterion described in this paragraph or a combination of these criteria as allowed by paragraph (c) of this section.

(1) *Length of rail criterion.* One passenger may be permitted for each 30 inches of rail space available to the passengers at the periphery of each deck. The following rail space may not be used in determining the maximum number of passengers permitted:

(i) Rail space in congested areas unsafe for passengers, such as near anchor handling equipment or line handling gear, in the way of sail booms, running rigging, or paddle wheels, or along pulpits;

(ii) Rail space on stairways; and

(iii) Rail space where persons standing in the space would block the line of vision of the licensed individual operating the vessel.

(2) *Deck area criterion.* One passenger may be permitted for each 10 square feet of deck area available for the passengers' use. In computing such deck area, the areas occupied by the following must be excluded:

(i) Concession stands, fixed tables, fixed gambling equipment, and similar furnishings;

(ii) Toilets and washrooms;

(iii) Companionways and stairways;

(iv) Spaces occupied by and necessary for handling lifesaving equipment, anchor handling equipment or line handling gear, or in the way of sail booms or running rigging;

(v) Spaces below deck which are unsuitable for passengers or which would not normally be used by passengers;

(vi) Interior passageways less than 30 inches wide and passageways on open deck, less than 18 inches wide;

(vii) Bow pulpits, swimming platforms and areas which do not have a solid deck, such as netting on multi-hull vessels;

(viii) Deck areas in way of paddle wheels; and

(ix) Aisle area provided in accordance with § 116.820(d).

(3) *Fixed seating criterion.* One passenger may be permitted for each 18 inches of width of fixed seating provided under § 116.820 of this subchapter. Each sleeping berth in overnight accommodation spaces shall be counted as only one seat.

(c) Different passenger capacity criteria may be used on each deck of a vessel and added together to determine the total passenger capacity of that vessel. Where seats are provided on part of a deck and not on another, the number of passengers permitted on a vessel may be the sum of the number permitted by the seating criterion for the space having seats and the number permitted by the deck area criterion for the space having no seats. The length of rail criterion must not be combined with either the deck area criterion or the fixed seating criterion on an individual deck.

(d) For a vessel operating on short runs on protected waters such as a ferry, the cognizant OCMI may give special consideration to increases in passenger allowances.

§ 115.114 Alternative requirements for a vessel carrying six or less passengers.

(a) When authorized by the cognizant OCMI by an endorsement of the vessel's Certificate of Inspection, a small passenger vessel carrying six or less passengers, and operating as a commercial fishing vessel or other uninspected vessel or as a recreational vessel, need not meet requirements of:

(1) Part 117, subpart C, D, and E of this subchapter providing the vessel is in satisfactory compliance with the lifesaving equipment regulations for an uninspected vessel or recreational vessel in a similar service;

(2) Part 116, subpart C of this subchapter and subchapter S of this chapter providing the vessel is in satisfactory compliance with applicable regulations for an uninspected vessel or recreational vessel in a similar service or if the owner of the vessel otherwise establishes to the satisfaction of the cognizant OCMI that the vessel is seaworthy for the intended service; and

(3) Sections 121.404, 121.408, and 121.410 of this subchapter providing the vessel is in satisfactory compliance with any navigational equipment requirements for an uninspected or recreational vessel in a similar service.

(b) A vessel operating under the alternative regulations of paragraph (a) of this section must:

(1) Not alter the arrangement of the vessel nor remove any equipment required by the certificate for the intended operation, without the consent of the cognizant OCMI;

(2) Comply with minimum manning specified on the Certificate of Inspection, which may include reduced manning for when the vessel carries not more than six passengers;

(3) When carrying from one to six passengers, make the announcement required by § 122.506(a)(9) of this subchapter before getting underway; and

(4) If a vessel of more than 15 gross tons, not carry freight for hire.

(c) The endorsement issued under paragraph (a) of this section must indicate the maximum route, number of passengers, and the manning required to operate under the provisions of this section.

§ 115.120 Certificate of Inspection amendment.

(a) An amended Certificate of Inspection may be issued at any time by any OCMI. The amended Certificate of Inspection replaces the original, but the expiration date remains the same as that of the original. An amended Certificate of Inspection may be issued to authorize and record a change in the dimensions, gross tonnage, owner, managing operator, manning, persons permitted, route permitted, conditions of operations, or equipment of a vessel, from that specified in the current Certificate of Inspection.

(b) A request for an amended Certificate of Inspection must be made to the cognizant OCMI by the owner or managing operator of the vessel at any time there is a change in the character of a vessel or in its route, equipment, ownership, operation, or other similar factors specified in its current Certificate of Inspection.

(c) The OCMI may require an inspection prior to the issuance of an amended Certificate of Inspection.

Subpart B—Special Permits and Certificates

§ 115.202 Permit to proceed.

(a) When a vessel is not in compliance with its certificate of inspection or fails to comply with a regulation of this subchapter, the cognizant OCMI may permit the vessel to proceed to another port for repair if, in the judgment of the OCMI, the trip can be completed safely, even if the Certificate of Inspection of the vessel has expired or is about to expire.

(b) Form CG–948, "Permit to Proceed to another Port for Repairs," may be issued by the cognizant OCMI to the owner, managing operator, or the master of the vessel stating the conditions under which the vessel may proceed to another port. The permit may be issued only upon the written application of the owner, managing operator, or master, and after the vessel's Certificate of Inspection is turned over to the OCMI.

(c) A vessel may not carry passengers when operating in accordance with a permit to proceed, unless the cognizant OCMI determines that it is safe to do so.

§ 115.204 Permit to carry excursion party.

(a) The cognizant OCMI may permit a vessel to engage in a temporary excursion operation with a greater number of persons or on a more extended route, or both, than permitted by its Certificate of Inspection when, in the opinion of the OCMI, the operation can be undertaken safely.

(b) Upon the written application of the owner or managing operator of the vessel, the cognizant OCMI may issue a "Permit To Carry Excursion Party", Form CG–949, to indicate his or her permission to carry an excursion party. The OCMI will indicate on the permit the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, the route for which the permit is granted, and the dates on which the permit is valid.

(c) The number of passengers normally permitted on an excursion vessel is governed by § 115.113.

(d) The OCMI shall not normally waive the applicable minimum safety standards when issuing an excursion permit. In particular, a vessel which is being issued an excursion permit should meet the minimum stability, survival craft, fire safety, and manning standards applicable to a vessel in the service for which the excursion permit is requested.

(e) The permit acts as a temporary, limited duration supplement to the vessel's Certificate of Inspection and must be carried with the Certificate of Inspection. A vessel operating under a permit to carry an excursion party must be in full compliance with the terms of its Certificate of Inspection as supplemented by the permit.

(f) The OCMI may require an inspection prior to the issuance of a permit to carry an excursion party.

Subpart C—Posting of Certificates, Permits, and Stability Letters

§ 115.302 Certificates and permits.

The Certificate of Inspection and any SOLAS Certificates must be posted under glass or other suitable transparent material, such that all pages are visible, in a conspicuous place on the vessel where observation by passengers is likely. If posting is impracticable, such

as on open boats, the certificates must be kept on board in a weathertight container readily available for use by the crew and for display to passengers and others on request.

§ 115.306 Stability letter.

When, in accordance with § 170.120 of this chapter, a vessel must be provided with a stability letter, the stability letter must be posted under glass or other suitable transparent material, such that all pages are visible, at the operating station of the vessel. If posting is impracticable, the stability letter must be kept on board in a weathertight container readily available for use by the crew and for display to passengers and others on request.

§ 115.310 Certification expiration date stickers.

(a) A Certification Expiration Date Sticker indicates the date upon which the vessel's Certificate of Inspection expires and is provided by the cognizant OCMI in the number required, upon issuance or renewal of the Certificate of Inspection.

(b) A vessel that is issued a Certificate of Inspection under the provisions of this subchapter must not be operated without a valid Certification Expiration Date Sticker affixed to the vessel on a place that is:

(1) A glass or other smooth surface from which the sticker may be removed without damage to the vessel;

(2) Readily visible to each passenger prior to boarding the vessel and to patrolling Coast Guard law enforcement personnel; and

(3) Acceptable to the Coast Guard marine inspector.

(c) The Coast Guard marine inspector may require the placement of more than one sticker in order to insure compliance with paragraph (a)(2) of this section.

Subpart D—Inspection for Certification

§ 115.400 General.

(a) An inspection is required before the issuance of a Certificate of Inspection. Such an inspection for certification is not made until after receipt of the application for inspection required by § 115.105.

(b) Upon receipt of a written application for inspection, the cognizant OCMI assigns a marine inspector to inspect the vessel for compliance with this subchapter at a time and place mutually agreed upon by the OCMI and the owner, managing operator, or representative thereof.

(c) The owner, managing operator, or a representative thereof shall be present during the inspection.

§ 115.402 Initial inspection for certification.

(a) Before construction or conversion of a vessel intended for small passenger vessel service, the owner of the vessel shall submit plans, manuals, and calculations indicating the proposed arrangement, construction, and operations of the vessel, to the cognizant OCMI for approval, except when submitted to the Marine Safety Center as allowed by part 116 of this subchapter, unless otherwise allowed by the OCMI. The plans, manuals, and calculations required to be submitted and the disposition of these plans are set forth in part 116, subpart B of this subchapter.

(b) The initial inspection is conducted to determine that the vessel and its equipment comply with applicable regulations and that the vessel was built or converted in accordance with approved plans, manuals, and calculations. Additionally, during the inspection the materials, workmanship, and condition of all parts of the vessel and its machinery and equipment may be checked to determine if the vessel is satisfactory in all respects for the service intended.

(c) The owner or managing operator of a vessel shall ensure that the vessel complies with the laws and regulations applicable to the vessel and that the vessel is otherwise satisfactory for the intended service. The initial inspection may include an inspection of the following items:

(1) The arrangement, installation, materials, and scantlings of the structure including the hull and superstructure, yards, masts, spars, rigging, sails, piping, main and auxiliary machinery, pressure vessels, steering apparatus, electrical installations, fire resistant construction materials, lifesaving appliances, fire detecting and extinguishing equipment, pollution prevention equipment, and all other equipment;

(2) Arrangement and means of emergency egress;

(3) Sanitary conditions and fire hazards; and

(4) Certificates and operating manuals, including certificates issued by the Federal Communications Commission.

(d) During an initial inspection for certification the owner or managing operator shall conduct all tests and make the vessel available for all applicable inspections discussed in this paragraph, and in subpart H of this part, to the satisfaction of the cognizant OCMI, including the following:

(1) The installation of each rescue boat and survival craft launching appliance required by § 71.20–20(a)(1) of this chapter.

(2) The installation of each rescue boat, liferaft, inflatable buoyant apparatus, and launching appliance as listed on its Certificate of Approval (Form CGHQ–10030).

(3) Machinery, fuel tanks, and pressure vessels required by part 119 of this subchapter.

(4) A stability test when required by § 170.175 of this chapter.

(5) Watertight bulkheads as required by subchapter S of this chapter.

(6) Firefighting systems as required by part 118 of this subchapter.

(7) The operation of all smoke and fire detecting systems, fire alarms and sensors, and fire confining appliances (such as fire screen doors and fire dampers).

§ 115.404 Subsequent inspections for certification.

An inspection for renewal of a Certificate of Inspection normally includes inspection and testing of the structure, machinery, equipment, and on a sailing vessel, rigging and sails. The owner or managing operator shall conduct all tests as required by the marine inspector, and make the vessel available for all specific inspections and drills required by subpart H of this part. The inspection is conducted to determine if the vessel is in satisfactory condition, fit for the service intended, and complies with the applicable regulations in this subchapter.

Subpart E—Reinspection

§ 115.500 When required.

(a) The owner or managing operator shall make a vessel available for reinspections within 60 days of each anniversary of the date of issuance of the Certificate of Inspection during each triennial inspection period. The owner or managing operator shall contact the cognizant OCMI to arrange for a reinspection to be conducted at a time and place acceptable to the OCMI.

(b) In addition to the requirements of paragraph (a) of the section, a reinspection may be made at such other times as may be required by the cognizant OCMI.

§ 115.502 Scope.

In general, the scope of the reinspection is the same as the inspection for certification but in less detail unless it is determined that a major change has occurred since the last inspection for certification.

Subpart F—Hull and Tailshaft Examinations

§ 115.600 Drydock and internal structural examination intervals.

(a) The owner or managing operator shall make a vessel available for drydock examinations and internal structural examinations required by this section.

(b) A vessel making an international voyage must undergo a drydock examination and an internal structural examination at least once every 12 months. If the vessel becomes due for a drydock examination or an internal structural examination during the voyage, it may lawfully complete the voyage prior to the examination if it undergoes the required examination upon completion of the voyage to the United States but not later than 30 days after the examination is due. If the vessel is due for an examination within 15 days of sailing on an international voyage from a United States port, it must undergo the required examination before sailing.

(c) Except as provided in paragraph (d) and (e) of this section, a vessel not making an international voyage must undergo a drydock examination and an internal structural examination as follows:

(1) A vessel which is exposed to salt water more than three months in any 12 month period since the last examination must undergo a drydock examination and an internal structural examination at least once every two years; and

(2) A vessel which is exposed to salt water not more than three months in any 12 month period since the last examination must undergo a drydock examination and an internal structural examination at least once every five years.

(d) Whenever damage or deterioration to hull plating or structural members which may affect the seaworthiness of a vessel is discovered or suspected, the cognizant OCMI may conduct an internal structural examination in any affected space, including fuel tanks, and require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(e) Whenever a vessel is drydocked or hauled out other than as required by this section, the owner or operator must notify the cognizant OCMI so that a marine inspector may examine the vessel.

§ 115.610 Scope of drydock and internal structural examinations.

(a) A drydock examination conducted in compliance with § 115.600 must be conducted while the vessel is hauled out of the water or placed in a drydock or slipway. During the examination all accessible parts of the vessel's underwater body and all through hull fittings, including the hull plating, appendages, propellers, shafts, bearings, rudders, sea chests, sea valve, and sea strainers must be examined. Sea chests, sea valves, and sea strainers must be opened for examination.

(b) An internal structural examination conducted in compliance with § 115.600 may be conducted while the vessel is afloat or out of the water and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating, voids, and ballast, cargo, and fuel oil tanks. Where the internal framing or plating of the vessel is concealed, sections of the lining, ceiling or insulation may be removed or the parts otherwise probed or exposed so that the inspector may be satisfied as to the condition of the hull structure. Fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

§ 115.612 Notice and plans required.

(a) The owner or managing operator shall notify the cognizant OCMI as far in advance as possible whenever a vessel is to be hauled out or placed in a drydock or slipway in compliance with § 115.600 or to undergo repairs or alterations affecting the safety of the vessel, together with the nature of any repairs or alterations contemplated. Hull repairs or alterations which affect the safety of the vessel include but are not limited to the replacement, repair, or refastening of planking, plating, or structural members, including the repair of cracks in the hull.

(b) Whenever a vessel is hauled out or placed in a drydock or slipway in excess of the requirements of this subpart for the purpose of maintenance, such as changing a propeller, painting, or cleaning the hull, no report need be made to the cognizant OCMI.

(c) The owner or managing operator of each vessel that holds a Load Line Certificate shall make plans showing the vessel's scantlings available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs or alterations affecting the safety or seaworthiness of the vessel are made to the vessel's hull.

§ 115.630 Tailshaft examinations.

The marine inspector may require any part or all of the propeller shafting to be drawn for examination of the shafting and stern bearing of a vessel whenever the condition of the shafting and bearings are in question. The inspector may conduct a visual examination and may require nondestructive testing of the tailshaft.

§ 115.670 Extension of examination intervals.

The intervals between drydock examinations and internal structural examinations specified in § 115.600 may be extended by the Commandant. Requests for extensions must be submitted to the Commandant via the cognizant OCMI.

Subpart G—Repairs and Alterations

§ 115.700 Permission for repairs and alterations.

(a) Repairs or alterations to the hull, machinery, or equipment which affect the safety of the vessel must not be made without the approval of the cognizant OCMI, except during an emergency. When repairs are made during an emergency, the owner, managing operator, or master shall notify the OCMI as soon as practicable after such repairs or alterations are made. Repairs or alterations which affect the safety of the vessel include, but are not limited to, the: Replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; damage repair or replacement, other than replacement in kind, of electrical wiring, fuel lines, tanks, boilers and other pressure vessels, and steering, propulsion and power supply systems; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment.

(b) The owner or managing operator shall submit drawings, sketches, or written specifications describing the details of any proposed alterations to the cognizant OCMI. Proposed alterations must be approved by the OCMI before work is started.

(c) Drawings are not required to be submitted for repairs or replacements in kind.

(d) The OCMI may require an inspection and testing whenever a repair or alteration is undertaken.

§ 115.702 Installation tests and inspections.

Whenever a launching appliance, survival craft, rescue boat, fixed fire extinguishing equipment, machinery, fuel tank, or pressure vessel is installed aboard a vessel after completion of the initial inspection for certification of the vessel, as replacement equipment or as

a new installation, the owner or managing operator shall conduct the tests and make the vessel ready for the inspections required by § 115.402(d) to the satisfaction of the cognizant OCMI.

§ 115.704 Breaking of safety valve seats.

The owner, managing operator, or master shall notify the cognizant OCMI as soon as practicable after the seal on a boiler safety valve on a vessel is broken.

§ 115.710 Inspection and testing for gas hazards.

(a) An inspection must be conducted in accordance with the provisions of NFPA 306 before alterations, repairs, or other operations involving riveting, welding, burning, or other fire producing actions may be made aboard a vessel:

(1) Within or on the boundaries of fuel tanks; or

(2) To pipelines, heating coils, pumps, fittings, or other appurtenances connected to fuel tanks.

(b) An inspection required by paragraph (a) of this section must be conducted as required by this paragraph.

(1) In ports or places in the United States or its territories and possessions, the inspection must be conducted by a marine chemist certificated by the National Fire Protection Association. However, if the services of a certified marine chemist are not reasonably available, the cognizant OCMI, upon the recommendation of the vessel owner or managing operator, may authorize another person to inspect the vessel. If the inspection indicates that the operations can be undertaken safely, a certificate setting forth this fact in writing must be issued by the certified marine chemist or the authorized person before the work is started. The certificate must include any requirements necessary to reasonably maintain safe conditions in the spaces certified throughout the operation, including any precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) When not in a port or place in the United States or its territories and possessions, and when a marine chemist or a person authorized by the cognizant OCMI is not reasonably available, the master shall conduct the inspection and enter the results of the inspection in the vessel's logbook.

(c) The owner, managing operator, or master shall obtain a copy of certificates issued by the certified marine chemist or the other person authorized by the cognizant OCMI, and shall ensure that all conditions on the certificates are observed and that the vessel is maintained in a safe condition. The owner, managing operator, or master shall maintain a safe condition on the vessel by requiring full observance, by persons under his or her control, of all requirements listed in the certificate.

Subpart H—Material Inspections

§ 115.800 Inspection standards.

(a) A vessel is inspected for compliance with the standards required by this subchapter. Machinery, equipment, materials, and arrangements not covered by standards in this subchapter may be inspected in accordance with standards acceptable to the cognizant OCMI as good marine practice.

(b) In the application of inspection standards due consideration must be given to the hazards involved in the operation permitted by a vessel's Certificate of Inspection. Thus, the standards may vary in accordance with the vessel's area of operation or any other operational restrictions or limitations.

(c) The published standards of classification societies and other recognized safety associations may be used as guides in the inspection of vessels when such standards do not conflict with the requirements of this subchapter.

§ 115.801 Notice of inspection deficiencies and requirements.

(a) If during the inspection of a vessel, the vessel or its equipment is found not to conform to the requirements of law or the regulations in this subchapter, the marine inspector will point out deficiencies observed and discuss all requirements with the owner, managing operator, or a representative thereof. Normally, the marine inspector will list all such requirements which have not been completed and present the list to the owner, managing operator, or a representative thereof.

(b) In any case where further clarification of or reconsideration of any requirement placed against the vessel is desired, the owner, managing operator, or a representative thereof, may discuss the matter with the cognizant OCMI.

§ 115.802 Hull.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of the hull structure and its appurtenances, including the following:

(1) Inspection of all accessible parts of the exterior and interior of the hull, the watertight bulkheads, and weather decks;

(2) Inspection and operation of all watertight closures in the hull, decks, and bulkheads including through hull fittings and sea valves;

(3) Inspection of the condition of the superstructure, masts, and similar arrangements constructed on the hull, and on a sailing vessel all spars, standing rigging, running rigging, blocks, fittings, and sails;

(4) Inspection of all railings and bulwarks and their attachment to the hull structure;

(5) Inspection to ensure that guards or rails are provided in dangerous places;

(6) Inspection and operation of all weathertight closures above the weather deck and the provisions for drainage of sea water from the exposed decks; and

(7) Inspection of all interior spaces to ensure that they are adequately ventilated and drained, and that means of escape are adequate and properly maintained.

(b) The vessel must be afloat for at least a portion of the inspection as required by the marine inspector.

(c) When required by the marine inspector, a portion of the inspection must be conducted while the vessel is underway so that the working of the hull can be observed.

§ 115.804 Machinery.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of machinery, fuel, and piping systems, including the following:

(a) Operation of the main propulsion machinery both ahead and astern;

(b) Operational test and inspection of engine control mechanisms including primary and alternate means of starting machinery;

(c) Inspection of all machinery essential to the routine operation of the vessel including generators and cooling systems;

(d) External inspection of fuel tanks and inspection of tank vents, piping, and pipe fittings;

(e) Inspection of all fuel systems;

(f) Operational test of all valves in fuel lines by operating locally and at remote operating positions;

(g) Operational test of all overboard discharge and intake valves and watertight bulkhead pipe penetration valves;

(h) Operational test of the means provided for pumping bilges; and

(i) Test of machinery alarms including bilge level alarms.

§ 115.806 Electrical.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of electrical equipment and systems, including the following:

(a) Inspection of all cable as far as practicable without undue disturbance of the cable or electrical apparatus;

(b) Test of circuit breakers by manual operation;

(c) Inspection of fuses including ensuring the ratings of fuses are suitable for the service intended;

(d) Inspection of rotating electrical machinery essential to the routine operation of the vessel;

(e) Inspection of all generators, motors, lighting fixtures and circuit interrupting devices located in spaces or areas which may contain flammable vapors;

(f) Inspection of batteries for condition and security of stowage;

(g) Operational test of electrical apparatus, which operates as part of or in conjunction with a fire detection or alarm system installed on board the vessel, by simulating, as closely as practicable, the actual operation in case of fire; and

(h) Operational test of all emergency electrical systems.

§ 115.808 Lifesaving.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of lifesaving equipment and systems, including the following:

(1) Tests of each rescue boat and each rescue boat launching appliance and survival craft launching appliance in accordance with § 71.25–15 of subchapter H (Passenger Vessels) of this chapter;

(2) Inspection of each lifejacket, work vest, and marine buoyant device;

(3) If used, inspection of the passenger safety orientation cards or pamphlets allowed by § 122.506(c) of this subchapter;

(4) Inspection of each inflatable liferaft and inflatable lifejacket to determine that it has been serviced as required by § 122.730 of this subchapter; and

(5) Inspection of each hydrostatic release unit to determine that it is in compliance with the servicing and usage requirements of § 122.740 of this subchapter.

(b) Each item of lifesaving equipment determined by the marine inspector to not be in serviceable condition must be repaired or replaced.

(c) Each item of lifesaving equipment with an expiration date on it must be replaced if the expiration date has passed.

(d) The owner or managing operator shall destroy, in the presence of the marine inspector, each lifejacket, other personal floatation device, and other lifesaving device found to be defective and incapable of repair.

(e) At each initial and subsequent inspection for certification of a vessel, the vessel must be equipped with an adult size lifejacket for each person authorized. The vessel must also be equipped with child size lifejackets equal to at least 10 percent of the maximum number of passengers permitted to be carried unless children are prohibited from being carried aboard the vessel.

(f) Lifejackets, work vests, and marine buoyant devices may be marked with the date and marine inspection zone to indicate that they have been inspected and found to be in serviceable condition by a marine inspector.

(g) At each initial and subsequent inspection for certification, the marine inspector may require that an abandon ship or man overboard drill be held under simulated emergency conditions specified by the inspector.

§ 115.810 Fire protection.

(a) At each initial and subsequent inspection for certification, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of its fire protection equipment, including the following:

(1) Inspection of each hand portable fire extinguisher, semiportable fire extinguisher, and fixed gas fire extinguishing system to check for excessive corrosion and general condition;

(2) Inspection of piping, controls, and valves, and the inspection and testing of alarms and ventilation shutdowns, for each fire extinguishing system and detecting system to determine that the system is in operating condition;

(3) Operation of the fire main system and checking of the pressure at the most remote and highest outlets;

(4) Testing of each firehose to a test pressure equivalent to its maximum service pressure;

(5) Checking of each cylinder containing compressed gas to ensure it has been tested and marked in accordance with part 147, § 147.60 of this chapter;

(6) Testing or renewal of flexible connections and discharge hoses on semiportable extinguishers and fixed gas extinguishing systems in accordance with part 147, § 147.65 of this chapter; and

(7) Inspection and testing of smoke and fire detecting systems (including sensors and alarms) and fire confining appliances (such as fire screen doors and fire dampers).

(b) The owner, managing operator, or a qualified servicing facility as applicable shall conduct the following inspections and tests:

(1) For portable fire extinguishers, the inspections, maintenance procedures, and hydrostatic pressure tests required by chapter 4 of NFPA 10 with the frequency specified by NFPA 10. In addition, carbon dioxide and halon portable fire extinguishers must be refilled when the net content weight loss exceeds that specified for fixed systems by Table 115.810(b). The owner or managing operator shall provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(2) For semiportable and fixed systems, the inspections and tests required by Table 115.810(b), in addition to the tests required by part 147, § 147.60 of this chapter. The owner or managing operator shall provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests.

TABLE 115.810(b).—SEMIPORTABLE AND FIXED SYSTEMS

Type system	Test
Carbon dioxide.	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.

TABLE 115.810(b).—SEMIPORTABLE AND FIXED SYSTEMS—Continued

Type system	Test
Halon	Weigh cylinders. Recharge if weight loss exceeds 5% of weight of charge. If the system has a pressure gauge, also recharge if pressure loss (adjusted for temperature) exceeds 10%. Test time delays, alarms and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Dry Chemical.	Examine pressure cartridge and replace (cartridge operated) if end is punctured or if determined to have leaked or to be in unsuitable condition. Inspect hose and nozzle to see if they are clear. Insert charged cartridge. Ensure dry chemical is free flowing (not caked) and extinguisher contains full charge.
Dry chemical (stored pressure).	See that pressure gauge is in operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low or if dry chemical is needed.
Foam (cartridge operated).	Examine pressure cartridge and replace if end is punctured or if determined to have leaked or to be in unsuitable condition. Ensure extinguisher contains full charge. Replace premixed agent every 3 years.
Foam (stored pressure).	See that pressure gauge, if so equipped, is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.

(c) The owner, managing operator, or master shall destroy, in the presence of the marine inspector, each fire hose found to be defective and incapable of repair.

(d) At each initial and subsequent inspection for certification, the marine inspector may require that a fire drill be held under simulated emergency conditions to be specified by the inspector.

§ 115.812 Pressure vessels and boilers.

(a) Periodic inspection and testing requirements for pressure vessels are contained in part 61, subpart 61.10 of this chapter.

(b) Periodic inspection and testing requirements for boilers are contained in part 61, subpart 61.05 of this chapter.

§ 115.814 Steering systems.

At each initial and subsequent inspection for certification the owner or managing operator shall be prepared to test the steering systems of the vessel and make them available for inspection to the extent necessary to determine that they are in suitable condition and fit for the service intended. Servo-type power systems, such as orbitrol systems, must be tested and capable of smooth operation by a single person in the manual mode, with hydraulic pumps secured.

§ 115.816 Miscellaneous systems and equipment.

At each initial and subsequent inspection for certification the owner or managing operator shall be prepared to test and make available for inspection all items in the ship's outfit, such as ground tackle, navigation lights and equipment, markings, and placards, which are required to be carried by the regulations in this subchapter, as necessary to determine that they are fit for the service intended.

§ 115.818 Sanitary inspection.

At each inspection for certification and at every other vessel inspection, quarters, toilet and washing spaces, galleys, serving pantries, lockers, and similar spaces may be examined to determine that they are serviceable and in a sanitary condition.

§ 115.830 Unsafe practices.

(a) At each inspection for certification and at every other vessel inspection all observed unsafe practices, fire hazards, and other hazardous situations must be corrected and all required guards and protective devices must be in satisfactory condition.

(b) At each inspection for certification and at every other vessel inspection the bilges and other spaces may be examined to see that there is no accumulation of oil, trash, debris, or other matter which might create a fire hazard, clog bilge pumping systems, or block emergency escapes.

§ 115.840 Additional tests and inspections.

The cognizant OCMI may require that a vessel and its equipment undergo any additional test or inspection deemed necessary to determine that the vessel and its equipment are suitable for the service in which they are to be employed.

Subpart I—International Convention for Safety of Life at Sea, 1974, as Amended (SOLAS)

§ 115.900 Applicability.

(a) Except as otherwise provided in this subpart, a mechanically propelled vessel of the United States, which carries more than 12 passengers on an international voyage must be in compliance with the applicable requirements of the SOLAS, to which the United States Government is currently a party.

(b) SOLAS does not apply to a vessel solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

§ 115.910 Passenger Ship Safety Certificate.

(a) A vessel which carries more than 12 passengers on an international voyage must have a valid SOLAS Passenger Ship Safety Certificate. The Commandant issues the original SOLAS Passenger Ship Safety Certificate after receiving notification from the cognizant OCMI that the vessel complies with the applicable SOLAS regulations. Subsequent SOLAS Passenger Ship Safety Certificates are issued by the cognizant OCMI unless any changes to the vessel or its operations have occurred which changes the information on the certificate, in which case the Commandant will reissue the certificate.

(b) The route specified on the Certificate of Inspection and the SOLAS Passenger Ship Safety Certificate must agree.

(c) A SOLAS Passenger Ship Safety Certificate is issued for a period of not more than 12 months.

(d) The SOLAS Passenger Ship Safety Certificate may be withdrawn, revoked, or suspended at any time when the vessel is not in compliance with applicable SOLAS requirements.

§ 115.920 Exemptions.

(a) In accordance with Regulation 4, Chapter I (General Provisions) of SOLAS, the Commandant may exempt a vessel, which is not normally engaged on an international voyage but which in exceptional circumstances is required to undertake a single international voyage, from any of the requirements of SOLAS provided that the vessel complies with safety requirements which are adequate in the Commandant's opinion for the voyage which is to be undertaken.

(b) In accordance with Chapter II–1 (Construction—Subdivision and Stability, Machinery and Electrical Installations) Regulation 1, Chapter II–2 (Construction—Fire Protection, Fire Detection and Fire Extinction) Regulation 1, and Chapter III (Life Saving Appliances and Arrangements) Regulation 2 of SOLAS, the Commandant may exempt a vessel which does not proceed more than 20 miles from the nearest land from any of the specific requirements of Chapters II–1, II–2, and II of SOLAS if the Commandant determines that the sheltered nature and conditions of the voyage are such as to render the application of such requirements unreasonable or unnecessary.

(c) The Commandant may exempt a vessel from requirements of the regulations of SOLAS in accordance with paragraphs (a) and (b) of this section upon a written request from the owner or managing operator submitted to the Commandant via the cognizant OCMI.

(d) When the Commandant grants an exemption to a vessel in accordance with this section, the Commandant will issue the original SOLAS Exemption Certificate describing the exemption. Subsequent SOLAS Exemption Certificates are issued by the cognizant OCMI unless any changes to the vessel or its operations have occurred which changes the information on the SOLAS Exemption or Passenger Ship Safety Certificates, in which case the Commandant shall reissue the certificate. A SOLAS Exemption Certificate is not valid for longer than the period of the SOLAS Passenger Ship Safety Certificate to which it refers.

§ 115.930 Equivalents.

In accordance with Regulation 5, Chapter I (General Provisions) of SOLAS, the Commandant may accept an equivalent to a particular fitting, material, appliance, apparatus, or any particular provision required by the SOLAS regulations if satisfied that such equivalent is at least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent following the procedures in § 114.540 of this subchapter. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Passenger Ship Safety Certificate.

PART 116—CONSTRUCTION AND ARRANGEMENT

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Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 116.100 General requirements.

(a) The construction and arrangement of a vessel must allow the safe operation of the vessel in accordance with the terms of its certificate of inspection giving consideration to provisions for a seaworthy hull, protection against fire, means of escape in case of a sudden unexpected casualty, guards and rails in hazardous places, ventilation of enclosed spaces, and necessary facilities for passengers and crew.

(b) Vessels to which this subchapter applies must meet the applicable provisions in subchapter S (Subdivision and Stability) of this chapter, except that the requirements in subpart K of this part may be met in lieu of the requirements of §§ 171.124 through 171.155 of subchapter S.

§ 116.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the construction and arrangement regulations which were applicable to the vessel on [date of day before effective date of the final rule) or, as an alternative, the vessel may comply with the regulations in this part.

(b) Alterations or modifications which are not a major conversion, made to the structure or arrangements, regulated by this part, of an existing vessel on or after [effective date of the final rule] must comply with the regulations of this part. Repairs or maintenance conducted on an existing vessel, resulting in no significant changes to the original structure or arrangement of the vessel, must comply with the regulations applicable to the vessel on [date of day before effective date of the final rule] or, as an alternative, with the regulations in this part. However, when outfit items such as furnishings and mattresses are renewed, they must comply with the regulations in this part.

Subpart B—Plans

§ 116.202 Plans and information required.

(a) Except as provided in § 116.210, the owner of a vessel requesting initial inspection for certification shall, prior to the start of construction unless otherwise allowed by the cognizant OCMI, submit for approval to the cognizant OCMI, at least two copies of the following plans, manuals, analyses,

and calculations that are applicable to the vessel as determined by the OCMI:

(1) Midship section;
(2) Outboard profile;
(3) Inboard profile;
(4) Arrangement of decks;
(5) Structural fire protection details;
(6) Emergency evacuation plan required under § 116.520, with drawings showing embarkation stations, areas of refuge, and escape routes;
(7) Machinery installation;
(8) Electrical installation including, but not limited to:
(i) Elementary one-line diagram of the power system;
(ii) Cable lists;
(iii) Bills of materials;
(iv) Type and size of generators and prime movers;
(v) Type and size of generator cables, bus-tie cables, feeders, and branch circuit cables;
(vi) Power, lighting, and interior communication panelboards with number of circuits and rating of energy consuming devices;
(vii) Type and capacity of storage batteries;
(viii) Rating of circuit breakers and switches, interrupting capacity of circuit breakers, and rating and setting of overcurrent devices;
(ix) Electrical plant load analysis; and
(x) For a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers, an overcurrent protective device coordination analysis if the information required by paragraph (a)(8)(i) through (a)(8)(ix) of this section is not considered adequate by the cognizant OCMI to review the electrical system of the vessel;
(9) Lifesaving equipment locations and installation;
(10) Ventilation diagrams;
(11) Engine exhaust diagram;
(12) Fire main system plans and calculations;
(13) Fixed gas fire extinguishing system plans and calculations;
(14) Fire detecting system and smoke detecting system plans;
(15) Sprinkler system plans and calculations;
(16) Portable fire extinguisher types, sizes and locations;
(17) Fire load calculations of accommodation and service spaces, if required under § 116.427;
(18) Fuel tanks;
(19) Piping systems including: firemain, bilge, ballast, hydraulic, sanitary, compressed air, combustible and flammable liquids, vents, soundings, and overflows;
(20) Hull penetrations and shell connections;
(21) Lines and offsets, curves of form, cross curves of stability, and tank capacities including size and location on vessel;
(22) Masts, including integration into the ship's structure, on sailing vessels;
(23) Rigging plan showing sail areas and centers of effort as well as the arrangement, dimensions, and connections of the standing rigging for sailing vessels;
(24) Steering and steering control, including rudder details;
(25) Marine sanitation device model number, approval number, connecting wiring and piping; and
(26) Propulsion and propulsion control, including shaft details.

(b) When authorized by the cognizant OCMI, an owner may submit any plans, manuals, or calculations, required to be submitted to the OCMI under this part, to the Commanding Officer, U.S. Coast Guard Marine Safety Center (Marine Safety Center), 400 Seventh Street SW., Washington, DC 20590–0001. Three copies of all documents are required to be submitted for Marine Safety Center plan approval.

(c) For a vessel, the construction of which was begun prior to approval of the plans and information required by paragraphs (a) and (b) of this section, the cognizant OCMI may require any additional plans and information, manufacturers' certifications of construction, testing including reasonable destructive testing, and inspections, which the OCMI determines are necessary to verify that the vessel complies with the requirements of this subchapter.

§ 116.210 Plans for sister vessels.

(a) Plans are not required for a vessel which is a sister vessel, provided:
(1) Approved plans for the original vessel are on file at the Marine Safety Center or in the files of the cognizant OCMI;
(2) The owner of the plans authorizes their use for the new construction of the sister vessel;
(3) The regulations used for the original plan approval have not changed since the original approval; and
(4) There are no major modifications to any of the systems to be used.

(b) If approved plans for original vessel are not on file at the MSC or with the cognizant OCMI, the vessel owner shall submit plans as described in § 116.202.

Subpart C—Hull Structure

§ 116.300 Structural design.

Except as otherwise allowed by this subpart, a vessel must comply with the structural design requirements of one of the standards listed in this section for the hull material of the vessel.

(a) Steel hull vessels:
(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's; or
(2) Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, ABS;

(b) Aluminum hull vessels:
(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's;
(2) For a vessel of more than 100 feet in length—Rules for Building and Classing Aluminum Vessels, ABS; or
(3) For a vessel of not more than 100 feet in length—Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, ABS, with the appropriate conversions from the ABS Rules for Building and Classing Aluminum Vessels;

(c) Ferrocement hull vessels—Australian Transport Advisory Council Shipping Laws Code Section 5, Subsection J.

(d) Steel hull vessels operating in protected waters—Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, ABS.

§ 116.330 Sailing vessels.

The design, materials, and construction of masts, posts, yards, booms, bowsprits, and standing rigging on a sailing vessel must be suitable for the intended service. The hull structure must be adequately reinforced to ensure sufficient strength and resistance to plate buckling. The cognizant OCMI may require the owner to submit detailed calculations on the strength of the mast, post, yards, booms, bowsprits, and standing rigging.

§ 116.340 Alternate design considerations.

When the structure of vessel is of novel design, unusual form, or special materials, which cannot be reviewed or approved under § 116.300, the structure may be approved by the Commanding Officer, Marine Safety Center, when it can be shown by systematic analysis based on engineering principles that the structure provides adequate safety and strength. The owner shall submit detailed plans, material component specifications, and design criteria, including the expected operating environment, resulting loads on the vessel, and design limitations for such vessel, to the cognizant OCMI for initial evaluation and forwarding to the Marine Safety Center.

Subpart D—Fire Protection

§ 116.400 Application.

(a) This subpart applies to:
(1) Vessels carrying more than 150 passengers; or
(2) Vessels with overnight accommodations for not more than 49 passengers.

(b) A vessel with overnight accommodations for more than 49 passengers must comply with § 72.05 of this chapter.

§ 116.405 General arrangement and outfitting.

(a) *Fire hazards to be minimized.* The general construction of the vessel must be such as to minimize fire hazards insofar as it is reasonable and practicable.

(b) *Combustible materials to be limited.* Limited amounts of combustible materials such as wiring insulation, pipe hanger linings, nonmetallic (plastic) pipe, and cable ties are permitted in concealed spaces except as otherwise prohibited by this subpart.

(c) *Combustibles insulated from heated surfaces.* Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from combustible material. Dry exhaust systems for internal combustion engines on wooden or fiber reinforced plastic vessels must be installed in accordance with ABYC Standard P–1.

(d) *Separation of machinery and fuel tank spaces from accommodation spaces.* Machinery and fuel tank spaces must be separated from accommodation spaces by boundaries which prevent the passage of vapors.

(e) *Paint and flammable liquid lockers.* Paint and flammable liquid lockers must be constructed of steel or equivalent material, or wholly lined with steel or equivalent material.

(f) *Nonmetallic piping in concealed spaces.* The use of short runs of nonmetallic (plastic) pipe within a concealed space in a control space, accommodation space, or service space is permitted in nonvital service only, provided it is not used to carry flammable liquids (including liquors of 80 proof or higher) and:

(1) Has a flame spread rating of not more than 20 and a smoke developed rating of not more than 50 when filled with water and tested in accordance with ASTM E–84 or UL 273 by an independent laboratory; or

(2) Has a flame spread rating of not more than 20 and a smoke developed rating of not more than 130 when empty and tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

(g) *Vapor barriers.* Vapor barriers must be provided where insulation of any type is used in spaces where flammable and combustible liquids or vapors are present, such as machinery spaces and paint lockers.

(h) *Interior finishes.* Combustible interior finishes allowed by § 116.422(d) must not extend into hidden spaces, such as behind linings, above ceilings, or between bulkheads.

(i) *Waste receptacles.* Waste receptacles must be constructed of noncombustible materials with no openings in the sides or bottom.

(j) *Mattresses.* All mattresses must comply with the U.S. Department of Commerce Standard for Mattress Flammability (FF 4–72.16), 16 CFR part 1632, subpart A. Mattresses must not contain polyurethane foam.

(k) *Furniture and furnishings.* The use of polyurethane foam in furniture and furnishings is prohibited.

§ 116.415 Fire control boundaries.

(a) *Type and construction of fire control bulkheads and decks.* (1) Major hull structure—The hull, structural bulkheads, columns and stanchions, superstructures, and deckhouses must be composed of steel or equivalent material.

(2) Bulkheads and decks—Bulkheads and decks must be classed as A–60, A–30, A–15, A–0, B–15, B–0, or C, based on the following:

(i) A-Class bulkheads or decks must be composed of steel or equivalent material, suitably stiffened and made intact with the main structure of the vessel, such as the shell, structural bulkheads, and decks. They must be so constructed that, if subjected to the standard fire test, they are capable of preventing the passage of smoke and flame for 1 hour. In addition, they must be so insulated with approved structural insulation, bulkhead panels, or deck covering so that, if subjected to the standard fire test for the applicable time period listed below, the average temperature on the unexposed side does not rise more than 250 °F (139 °C) above the original temperature, nor does the temperature at any one point, including any joint, rise more than 325 °F (181 °C) above the original temperature:

A–60 Class	60 minutes
A–30 Class	30 minutes
A–15 Class	15 minutes
A–0 Class	0 minutes

(ii) Penetrations in A-Class fire control boundaries for electrical cables, pipes, trunks, ducts, etc. must be constructed to prevent the passage of flame and smoke for one hour. In addition, the penetration must be designed or insulated so that it will withstand the same temperature rise limits as the boundary penetrated.

(iii) B-Class bulkheads must be constructed of noncombustible materials and made intact from deck to deck and to shell or other boundaries, except that a B-Class bulkhead need not extend above an approved continuous B-Class ceiling. They must be so constructed that, if subjected to the standard fire test, they are capable of preventing the passage of flame for 30 minutes. In addition, their insulation value must be such that, if subjected to the standard fire test for the applicable time period listed below, the average temperature of the unexposed side does not rise more than 250 °F (139 °C) above the original temperature, nor does the temperature at any one point, including any joint, rise more than 405 °F (225 °C) above the original temperature:

B–15 Class	15 minutes
B–0 Class	0 minutes

(iv) Penetrations in B-Class fire control boundaries for electrical cables, pipes, trunks, ducts, etc. must be constructed to prevent the passage of flame for 30 minutes. In addition, the penetration must be designed or insulated so that it will withstand the same temperature rise limits as the boundary penetrated.

(v) Where B-Class bulkhead panels are used, all four edges of a panel must be retained by a continuous frame of steel or equivalent material on both sides of the panel offering an overlap of not less than 3/4-inch.

(vi) C-Class bulkheads and decks must be composed of noncombustible materials.

(vii) Any sheathing, furring, or holding pieces incidental to the securing of structural insulation must be approved noncombustible material.

(b) *Bulkhead requirements.* Bulkheads between various spaces must meet the requirements of Table 116.415(b).

TABLE 116.415(B)

Spaces		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Control	(1)	B–0	A–0	A–0	A–30	A–60	A–0	A–60	A–60	A–0	A–0
Passageway	(2)	.....	C	A–0	B–15	A–0	A–0	A–0	A–15	A–0	A–0
Stairway	(3)	.....	.....	A–0	A–15	A–15	A–0	A–30	A–15	A–0	A–0
Accommodation	(4)	.....	.....	.....	B–15	A–30	A–30	A–60	A–30	A–15	A–0
High Risk Service Space	(5)	.....	.....	.....	.....	A–0	A–0	A–0	A–15	A–15	A–0
Low Risk Service Space	(6)	.....	.....	.....	.....	.....	C	A–0	A–0	A–0	A–0
Machinery	(7)	.....	.....	.....	.....	.....	.....	A–0	A–0	A–15	A–0
Cargo or Vehicle	(8)	.....	.....	.....	.....	.....	.....	.....	A–0	A–0	A–0
Open Deck or Embarkation Station	(9)	.....	.....	.....	.....	.....	.....	.....	.....	A–0	A–0
Voids, Fuel Tanks, or Water Tanks	(10)	.....	.....	.....	.....	.....	.....	.....	.....	.....	A–0

(c) *Deck requirements.* Decks between various spaces must meet the requirements of Table 116.415(c), except that where linings or bulkhead panels are framed away from the shell or structural bulkheads, the deck within the void space so formed need only meet A–0 Class requirements.

TABLE 116.415(C)

Below: above		(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
Control Space	(1)	A–0	A–15	A–0	A–30	A–0	A–0	A–0	A–0	A–0	A–0
Passageway	(2)	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0
Stairway	(3)	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0
Accommodation Space	(4)	A–60	A–30	A–30	A–60	A–30	A–15	A–30	A–30	A–0	*A–0
High Risk Service Space	(5)	A–60	A–30	A–30	A–60	A–30	A–30	A–30	A–30	A–0	*A–0
Low Risk Service Space	(6)	A–15	A–0	A–15	A–0	A–0	A–0	A–0	A–0	A–0	A–0
Machinery Space	(7)	A–60	A–60	A–60	A–60	A–30	A–30	A–0	A–30	A–0	*A–0
Cargo or Vehicle Space	(8)	A–60	A–30	A–30	A–30	A–0	A–0	A–0	A–0	A–0	*A–0
Open Deck or Embarkation Station	(9)	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0
Voids, Fuel Tanks, or Water Tanks	(10)	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0	A–0

*—Decks forming boundaries for an embarkation station must be of at least A–60 class construction.

(d) *Main vertical zones.* (1) The hull, superstructure, and deck houses of a vessel, except for a vehicle space on a vehicle ferry, must be subdivided by bulkheads into main vertical zones which:

(i) Are not more than 131 feet in length on any one deck;

(ii) Must be of at least A–30 Class construction or meet the requirements of paragraph (b) of this section, whichever is greater; and

(iii) May have small horizontal steps, if the steps:

(A) Do not exceed 10 feet; and

(B) Are of A–60 Class construction.

(2) Vehicle decks on a vehicle ferry must be subdivided. Where main vertical zones are impractical due to the vehicle carrying configuration, main horizontal zones may be provided. The decks bounding such a zone must be of at least A–30 construction or meet the requirements of paragraph (c) of this section, whichever is greater.

(e) *Draft stops.* In concealed spaces above ceilings and between linings and the shell of a vessel, draft stops must be fitted not more than 45 feet apart. Draft stops must be of at least B-Class construction and be fitted in a vertical position.

§ 116.422 Ceilings, linings, trim, interior finish and decorations.

(a) Ceilings, linings, and any furring incidental to their installation in control spaces, passageways, stairways, accommodation spaces and service spaces must be of noncombustible material, except:

(1) Combustible acoustical materials listed by Underwriters Laboratories for use in fire resistant construction and having a flame spread rating of not more than 20 and a smoke developed rating of not more than 10 when tested in accordance with ASTM E–84 or UL 723, may be used as a ceiling in accommodation spaces, service spaces and control spaces; and

(2) Gypsum wall board listed by Underwriters Laboratories for use in fire resistant construction and having a flame spread rating of not more than 20 and a smoke developed rating of not more than 10, when tested in accordance with ASTM E–84 or UL 723, may be used as a lining in accommodation spaces, service spaces and control spaces.

(b) Ceiling or lining panels must be retained by continuous flanges of steel or equivalent material on the exposed side of the panel.

(c) Bulkheads, linings and ceilings may be covered by a combustible interior finish provided that such a finish is:

(1) Approved under § 164.012 of this chapter; or

(2) Listed by Underwriters Laboratories, does not exceed .075 inches in thickness, and has a flame spread rating of not more than 20 and a smoke developed rating of not more than 10 when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory.

(d) Combustible interior finishes, trim and decorations which do not meet the requirements of paragraph (c) of this section are permitted in accommodation spaces, provided:

(1) The overall thickness of the interior finish does not exceed .075 inches; and

(2) The total volume of the combustible interior finish, trim, mouldings and decorations in any space does not exceed a volume equivalent to a thickness of 1/10-inch on the combined area of the bulkheads of the space.

§ 116.423 Furniture and furnishings.

(a) *Upholstered furniture.* (1) Furniture such as chairs, sofas, tables, and similar items must be constructed with frames of steel or other noncombustible material.

(2) Upholstered furniture must be shown to resist ignition by cigarettes as determined by tests conducted in accordance with NFPA 261, Standard Method of Test for Determining Resistance of Mock-Up Upholstered Furniture Material Assemblies to Ignition by Smouldering Cigarettes. The testing must be conducted by an independent laboratory and the maximum allowable char length is 1.5 inches.

(b) *Case furniture.* Case furniture such as bookshelves, desks, cabinets, counters, beds, or other freestanding furniture must be constructed entirely of noncombustible materials, except that a combustible veneer not exceeding 1/8-inch in thickness and having a flame spread rating and smoke developed rating of not more than 100 when tested in accordance with ASTM E–84 or UL 723 by an independent laboratory may be used on the top surface of such articles.

(c) *Drapes.* Draperies, curtains and other similar furnishings and decorations must be flame resistant. These materials must be tested in accordance with NFPA 701, and must comply with both the small and large scale tests.

§ 116.425 Deck coverings.

(a) Except as provided in this section, deck coverings used for leveling or finishing purposes in control spaces, stairway enclosures, passageways, accommodation spaces and service spaces must be noncombustible.

(1) Materials approved under § 164.006 of this chapter may be used in thicknesses not to exceed the approved thickness.

(2) Combustible materials not approved under § 164.006 of this chapter may be used in a thickness not to exceed ⅜ inch.

(b) Rugs and carpet may be used in addition to deck coverings. Rugs and carpets must be able to withstand a critical radiant flux of not less than .45 watts/square centimeter when tested to ASTM E–648 by an independent laboratory.

(c) Rugs and carpets must not extend up bulkheads or vertical surfaces more than four inches above a deck.

(d) Rugs and carpets are not permitted in machinery spaces, high risk service spaces, or in areas where the spillage or leakage of flammable or combustible liquids is possible.

§ 116.427 Fire load of accommodation spaces.

(a) When the cognizant OCMI determines that the fire load present in an accommodation space requires fire load calculations, they must be submitted for review, via the OCMI, to the Commanding Officer, Marine Safety Center.

(b) When required under paragraph (a) of this section, fire load calculations must include all combustible construction and outfitting materials in addition to all loose or freestanding combustibles intended for use or stowage in the space. This includes but is not limited to: Furniture, furnishings, carpets, rugs, combustible deck coverings, draperies, combustible interior finish, electrical cable insulation, plastic piping, light diffusers, mattresses, bedding, lifesaving equipment, and similar materials. The maximum fire load of an accommodation space as determined by fire load calculations must not exceed 7.5 pounds of combustible per square foot of deck area.

§ 116.430 Insulation other than for structural fire protection.

(a) Combustible insulation may be used for pipe and machinery covering or lagging within a machinery space, or used in an individual refrigerator box if the refrigerator box was purchased with the insulation already installed.

(b) Except as allowed by paragraph (a) of this section, any insulation installed for purposes other than structural fire protection and all material incidental to its installation must be noncombustible or approved under part 164, subpart 164.009 of this chapter. Surfacing material applied to such insulation must be noncombustible or may meet the requirements of § 116.422(c).

§ 116.433 Windows and air ports in fire control boundaries.

(a) Windows or air ports must be of tempered glass of at least ¼ inch in thickness. The use of other glazing material such as polycarbonate sheets may be approved by the Commandant for specific installations.

(b) Windows or air ports in bulkheads adjacent to passageways must not extend below a point 36 inches above the deck unless storm rails, that are structurally independent of the glass, are fitted in the passageway.

(c) Windows or air ports in A–Class bulkheads must be fitted with frames of steel or equivalent material. Glazing beads or angles of steel or equivalent material must be installed to hold glass in place in windows or air ports in a fire control boundary in event of a fire if:

(1) Where a steel frame is used, it is not arranged to retain the glass in place; or

(2) A frame of aluminum or other material with low melting point is used.

(d) A window or air port which is adjacent to an embarkation station, escape route, or survival craft stowage must be:

(1) Of A–Class construction; or

(2) Fitted with shutters, operable from outside the space, of steel or equivalent material.

(e) A window installed in an internal fire control boundary must comply with the requirements of § 72.05–30 of this chapter, except that fire window frames and glazing material listed by Underwriters Laboratories may be used in B–Class bulkheads.

(f) Windows in doors in fire control boundaries must comply with the requirements of paragraphs (a) through (e) of this section.

§ 116.435 Doors.

(a) A door, other than a watertight door, must meet the requirements of this section.

(b) A door in a fire control boundary must meet the following requirements:

(1) A door in an accommodation space, stairway, stairtower, or passageway must be oriented vertically.

(2) A door must be capable of operation from either side by one person;

(3) A door in an accommodation space, stairway, stairtower, passageway, or control space must open in the direction of escape, where practicable;

(4) Combustible veneers may be used on doors subject to the same restrictions as the fire control boundary in which the doors are fitted;

(5) Door frames must be of rigid construction and provide at least a ½ inch overlap at the sides and top, except:

(i) Double doors capable of independent operation and latching may have a clearance between the doors of not more than ⅛ inch. However, if one door must always be closed first, an astragal strip of at least ½ inch overlap must be provided for the second door; and

(ii) A double swing door, may have a clearance of not more than ⅛ inch at the top and sides;

(6) The maximum width of an individual door must not exceed 48 inches; and

(7) Hose ports, if fitted, must be in the lower corner of the door opposite the hinge so a hose may pass through the doorway when the door is open and still allow the door to close over the hose. The hose port should be approximately 6 inches square. A self-closing hinged or pivoted steel or equivalent material cover must be fitted in the opening.

(c) Doors in A-Class fire control boundaries must meet the following additional requirements:

(1) A door in a bulkhead required to be A–60, A–30, or A–15 Class must be of hollow steel or equivalent material construction, solidly filled with approved structural insulation, and capable of meeting the requirements of an A–15 Class bulkhead;

(2) A door in a bulkhead required to be A–0 Class must be of solid or hollow steel or equivalent material construction, and capable of meeting the requirements of an A–0 Class bulkhead;

(3) A door must have a latch with a minimum throw of ¾-inch;

(4) A door must not have vent grilles or louvers;

(5) A door must not be undercut more than ½-inch above the door sill or deck covering. Rugs and carpets must not pass through doorways, but linoleum and similar deck coverings may;

(6) A door in a stairtower, stairway, and main vertical zone bulkhead must meet the following additional requirements:

(i) A door must be of the self-closing type capable of closing against a 3.5° list of the vessel; and

(ii) Holdback hooks are not allowed. If installed, a hold back mechanism for a door must allow the door to be released:

(A) Locally;

(B) Upon a signal from a control space; and

(C) Upon disruption of the power system.

(7) Horizontal doors are allowed only for access to spaces that are accessible only to crew members and are used only by crew members, subject to the following requirements:

(i) The door must be self-closing with a closure time of not less than 5 seconds and not more than 10 seconds, and be capable of closing against a 3.5° list of the vessel;

(ii) Holdback hooks are not allowed. If installed, a holdback mechanism for a door must allow the door to be released:

(A) Locally;

(B) Upon a signal from a control space; and

(C) Upon disruption of the power system.

(iii) The forces required to fully open the door must not exceed 5 pounds to release the latch, 10 pounds to set the door in motion, and 5 pounds to open the door to the width of the stairway; and

(iv) The door latch must be capable of keeping the door closed when a pressure of 0.01 psi is applied to the underside of the door.

(8) Double swing doors must not be used in any bulkhead except between a food preparation space, such as a galley or pantry, and a messroom or dining room; and

(9) A door opening onto weather decks must meet the requirements of paragraphs (c)(1) or (c)(2) of this section or may be composed of hardwood of not less than 1.75 inches in thickness.

(d) Doors in B-Class fire control boundaries must meet the following requirements in addition to those in paragraph (b) of this section:

(1) A door must be of solid or hollow steel or equivalent material construction, or must be of noncombustible material and be specifically approved by the Commandant;

(2) A door must have a latch with a minimum throw of ⅜-inch; and

(3) A door must not be undercut more than 1 inch above the door sill or deck covering. Rugs and carpets must not pass through doorways but linoleum and similar coverings may.

(e) A door in a C-Class bulkhead must be of noncombustible material.

(f) A door used for decorative purposes, and which is not required to comply with paragraphs (b) through (e) of this section, must be constructed of noncombustible material or hardwood, must not interfere with the normal operation of the required doors, and must open in the same direction as the required doors. Decorative doors must not be used in stairways or stairtowers.

§ 116.438 Stairtowers, stairways, ladders, and elevators.

(a) Stairways, stairtowers, ladders, elevators, and landings must be composed of steel and be of sufficient strength to sustain a load of 100 pounds per square foot with a safety factor of 4 in the design.

(b) A stairway or stairtower must be fitted with handrails on both sides at a vertical height above the tread at its nosing of between 33 and 36 inches. A stairway or stairtower of more than 66 inches in width must also be fitted with a center handrail.

(c) A handrail fitted in a stairtower, stairway, landing, ladder, or elevator must be constructed of noncombustible material.

(d) A stairway or stairtower must be clear of all obstructions other than handrails.

(e) Curved, spiral, or winding stairways are not permitted without the specific approval of the Commandant.

(f) Differences in the depth of tread or height of riser of stairs in different flights of stairs in a stairway or stairtower must be minimized. In an individual flight of stairs in a stairway or stairtower, the depth of the tread and the height of riser must not vary.

(g) In a stairway or stairtower, the sum of the riser height and tread depth must be at least 17 inches and not more than 18 inches. A stairway or stairtower having treads less than 10 inches in depth must have a nosing of ½-inch in width.

(h) Landings for stairways and stairtowers must meet the following requirements:

(1) A clear landing having an area at least equal to the square of the tread width must be provided at the top and bottom of each stairway; and

(2) Any interruption or change of direction in a stairway must be accomplished by means of an intermediate landing of a width and length at least equal to the tread width of the stairway.

(i) A stairway or stairtower must not have an angle of inclination from the horizontal of more than 40 degrees. However, stairways accessing spaces visited solely by crew members must not have an angle of inclination from the horizontal of more than 50 degrees.

(j) Where a continuous vertical deck penetration for a stairway or elevator exceeds one deck, the integrity of all decks must be assured by enclosure bulkheads and decks meeting the requirements of §§ 116.415(b) and 116.415(c). Doors meeting the requirements of §§ 116.435(b) and 116.435(c) must be fitted in the enclosure at each deck serviced.

(k) Where a vertical deck penetration for a stairway or elevator involves only one deck, the integrity of the deck must be assured as required by paragraph (j) of this section. Alternatively the integrity of the deck may be maintained at one level only by means of bulkheads of the same fire control boundary rating as the deck penetrated. A door meeting the requirements of §§ 116.435(b) and 116.435(c) must be fitted in the enclosure. In spaces containing a balcony, the integrity of the balcony deck in the way of stairways or elevators need not be assured. However, such stairways must not be considered to be a means of escape.

(l) Each main vertical zone must be served by at least one stairtower, so that a person may escape from any accommodation space or any other space where persons may be normally quartered or employed, to all other decks having any such spaces within the same main vertical zone, without coming out of the stairtower enclosure. Each stairtower must give access to the embarkation deck, an embarkation station, or an area of refuge identified in the emergency escape plan required by § 116.520. Where a stairtower is accessible from two main vertical zones, it may be considered as the required stairtower for both main vertical zones provided all boundaries of the stairtower meet main vertical zone boundary requirements contained in § 116.415. Insofar as is reasonable and practicable, stairtowers shall not give direct access to cabins, service lockers, service spaces, machinery spaces, or other enclosed spaces in which a fire is likely to originate.

(m) The minimum tread width of a stairway or stairtower must be 0.333 inches for each person served, but must not be less than 36 inches. However, in stairways accessing spaces visited solely by crew members, the minimum tread width must be 0.333 inches for each person served, but not less than 28 inches.

(1) The minimum tread width of a stairway or stairtower must be determined for each deck considering only those persons on that deck, except as provided in paragraph (m)(3) of this section. Once a minimum tread width has been established at any deck, it must not be decreased in the direction of escape.

(2) In determining the number of persons served, a space must be considered to contain at least the number of persons as follows:

(i) Passenger overnight accommodation spaces: Designed capacity;

(ii) Accommodation spaces having fixed seating for passengers: Maximum seating capacity;

(iii) Public spaces, including spaces such as casinos, restaurants, club rooms, and cinemas, and public accommmodation spaces as defined in § 114.400, except overnight accommodation spaces: One person for each 10 square feet of deck area. In computing such deck area, the following areas must be excluded:

(A) Obstructions, including stairway and elevator enclosures, elevated stages, bars, and cashier stands, but not including slot machines, tables, or other room furnishings;

(B) Areas for which the number of persons permitted is determined using the fixed seating criterion;

(C) Toilets and washrooms;

(D) Interior passageways less than 34 inches wide and passageways on open deck less than 28 inches wide;

(E) Spaces necessary for handling lifesaving equipment, anchor handling equipment, or line handling gear, or in way of sail booms or running rigging; and

(F) Bow pulpits, swimming platforms, and areas which do not have a solid deck, such as netting on multi hull vessels;

(iv) Crew overnight accommodation spaces: Two-thirds designed capacity; and

(v) Work spaces: Occupancy under normal operating conditions.

(3) If a stairway forms part of a normal embarkation or debarkation route, the number of persons using the stairway for that purpose must be used in determining the minimum tread width.

(4) If more than one stairtower serves a main vertical zone, the number of persons in that main vertical zone may be distributed among the stairtowers.

§ 116.439 Balconies.

(a) An accommodation space containing a balcony must meet the requirements of this section.

(b) Each level of a space containing a balcony must have two independent means of escape that meet the requirements of § 116.500.

(c) Each level of a space containing a balcony must be adequately protected by the smoke actuated fire detecting system required by § 118.400 of this subchapter.

(d) For the purpose of main vertical zone bulkhead spacing requirements, the length of the space to which the balcony is open will be considered increased by an amount equal to the gross area of the balcony divided by the average width of the space. If this equivalent main vertical zone length exceeds that specified in § 116.415(d)(1)(i), the space may alternatively meet the requirements for an atrium in § 116.440 as long as the actual length of the space does not exceed the main vertical zone maximum length specified in § 116.415(d)(1)(i).

§ 116.440 Atriums.

(a) The maximum fire load within an atrium and in spaces opening into the atrium must not be more than 1.5 pounds of combustible per square foot of deck area.

(b) The entire main vertical zone containing an atrium must be protected throughout with a smoke detection system of an approved type and must be installed in accordance with § 76.33 of this chapter.

(c) The entire main vertical zone containing an atrium must be protected with an automatic sprinkler system meeting the requirements of § 76.25 of this chapter.

(d) The atrium must be provided with a smoke extraction system capable of exhausting the entire volume of the space within 10 minutes. The smoke extraction system must be capable of being activated by both the smoke detection system and by manual control, and designed with sufficient plenum air openings to prevent excessive negative air pressure in the atrium.

(e) Each level within the atrium must have two independent means of escape that comply with § 116.500. At least one of the means of escape must be a stairtower.

Subpart E—Escape and Embarkation Station Requirements

§ 116.500 Means of escape.

(a) Except as otherwise provided in this section, each space accessible to passengers or used by the crew on a regular basis, must have at least two means of escape, one of which must not be a watertight door.

(b) The two required means of escape must be widely separated and, if possible, at opposite ends or sides of the space to minimize the possibility of one incident blocking both escapes.

(c) At least one means of escape from each space must provide a satisfactory route to an embarkation station required by § 116.510.

(d) Subject to the restrictions of this section, means of escape may include normal exits and emergency exits, passageways, stairways, ladders, deck scuttles, and windows.

(e) The number and dimensions of the means of escape from each space must be sufficient for rapid evacuation in an emergency for the number of persons served as determined using § 116.438(m)(2).

(f) The dimensions of a means of escape must be such as to allow easy movement of persons when wearing lifejackets. There must be no protrusions in means of escape which could cause injury, ensnare clothing, or damage lifejackets.

(g) The minimum clear opening of a door or passageway used as a means of escape must not be less than 32 inches in width. The sum of the width of all doors and passageways used as means of escape from a space must not be less than 0.333 inches multiplied by the

number of passengers for which the space is designed.

(h) A dead end passageway, or the equivalent, of more than 20 feet in length is prohibited.

(i) The maximum allowable travel distance from the most remote point in a space to the nearest means of escape must not be more than be 150 feet.

(j) Each door, hatch, or scuttle, used as a means of escape, must be capable of being opened by one person, from either side, in both light and dark conditions. The method of opening a means of escape must be obvious, rapid, and of adequate strength. Handles and securing devices must be permanently installed and not capable of being easily removed. A door, hatch or scuttle must open towards the expected direction of escape from the space served.

(k) A means of escape which is not readily apparent to a person from both inside and outside the space must be adequately marked.

(l) A ladder leading to a deck scuttle may not be used as a means of escape except:

(1) On a vessel of not more than 65 feet in length, a vertical ladder and a deck scuttle may be used as not more than one of the means of escape from a passenger accommodation space; and

(2) As not more than one of the means of escape from any crew accommodation space or work space.

(m) Each ladder used as a means of escape must be mounted at least 7 inches from the nearest permanent object in back of the ladder. Rungs must be:

(1) At least 16 inches in width;

(2) Not more than 12 inches apart, and uniformly spaced for the length of the ladder with at least 4.5 inches clearance above each rung.

(n) When a deck scuttle serves as a means of escape, it must not be less than 18 inches in diameter and must be fitted with a quick acting release and a holdback device to hold the scuttle in an open position.

(o) Footholds, handholds, ladders, and similar means provided to aid escape, must be suitable for use in emergency conditions, of rigid construction, and permanently fixed in position, unless they can be folded, yet brought into immediate service in an emergency.

(p) On a vessel of not more than 65 feet in length, a window or windshield of sufficient size and proper accessibility may be used as one of the required means of escape from an enclosed space, provided it:

(1) Does not lead directly overboard;

(2) Can be opened or is designed to be kicked or pushed out; and

(3) Is suitably marked.

(q) Only one means of escape is required from a space where:

(1) The maximum dimension (length, breadth, or depth) of a space is less than 12 feet;

(2) There is no stove, heater, or other source of fire in the space;

(3) The means of escape is located as far as possible from a machinery space or fuel tank; and

(4) If an accommodation space, the single means of escape does not include a deck scuttle or a ladder.

(r) Alternative means of escape from spaces may be provided if acceptable to the cognizant OCMI.

§ 116.510 Embarkation stations.

(a) A vessel must have at least two designated embarkation stations on the embarkation deck of each main vertical zone, and at least one on each side of the vessel.

(b) Embarkation stations and approaches thereto must:

(1) Be areas that are easily traversed;

(2) Be provided with handholds; and

(3) Be well illuminated.

(c) Each embarkation station must be arranged to allow the safe boarding of survival craft. They must not be located in areas where rolling of the vessel could cause contact between the propeller(s) and survival craft. Bulwarks, handrails, and lifelines must be fitted with openings that are normally closed but which may be opened while survival craft are being boarded, allowing passengers to pass through rather than climb over.

§ 116.520 Emergency evacuation plan.

The owner or managing operator shall prepare an evacuation plan which must:

(a) Identify possible casualties involving fires or flooding, including a fire in the largest capacity passenger space in each main vertical zone;

(b) Provide procedures for evacuating all affected spaces in the event of possible fire or flooding in the largest capacity passenger space in each main vertical zone, without abandoning the vessel, including:

(1) Identify readily accessible areas of refuge for the maximum number of persons allowed aboard the vessel. The capacity for an area of refuge may not exceed the number of persons specified in § 116.438(m)(2), except that one person may be permitted for each 5 square feet of deck area in public spaces; and

(2) Identify at least two escape routes from the space being evacuated to the embarkation deck, embarkation station, or an area of refuge; and

(c) Include procedures to evacuate passengers from the vessel using an abandon ship plan, considering the number of passengers and the vessel's route. The abandon ship plan must identify at least one escape route from each area of refuge to each embarkation station required by § 116.510.

§ 116.530 Fire control plan.

A fire control plan must be posted on the vessel in a location that is accessible and visible to all passengers. The plan must show escape routes, embarkation stations, the location of fire protection/emergency equipment, compartment titles and hazard classification of accommodation and service spaces, and structural fire protection boundaries.

Subpart F—Ventilation

§ 116.600 Ventilation of enclosed and partially enclosed spaces.

(a) An enclosed or partially enclosed space within a vessel must be adequately ventilated in a manner suitable for the purpose of the space.

(b) Ventilation openings serving enclosed or partially enclosed spaces, including openings in ventilation ducts and pipes, ventilators, and louvers must:

(1) Be above the main deck;

(2) Not penetrate the sideshell or the outboard side of the bulwarks of the vessel;

(3) If located along the inner periphery of bulwarks, be:

(i) Located as high as possible in the side of the cockpit or well; and

(ii) Be not more than 2 inches in height; and

(4) When determined necessary by the OCMI, be fitted with closure devices suitable for preventing the entry of water in adverse weather conditions.

(c) A power ventilation system must be capable of being shut down from the pilot house.

(d) An enclosed crew accommodation space and any other space occupied by a crew member on a regular basis must be ventilated by a power ventilation system unless natural ventilation in all ordinary weather conditions is satisfactory to the OCMI.

(e) An enclosed passenger accommodation space must be ventilated by a power ventilation system unless smoking is prohibited and natural ventilation in all ordinary weather conditions is satisfactory to the OCMI.

(f) An exhaust duct over a frying vat or a grill must be fitted with an automatic fire damper as defined in § 116.610(f)(5).

(g) Electrical wiring, piping, combustibles and other foreign materials are not allowed within ventilation ducts.

§ 116.610 Ventilation ducts.

(a) For the purposes of this section, a ventilation duct includes any type of piping, chamber, or conduit used for ventilation.

(b) A ventilation duct, and materials incidental to its installation, must be made of noncombustible material.

(c) Suitable means, such as a manual damper, automatic damper, or vent cover, must be provided in an accessible location outside the space served by the ventilation duct for shutting off the passage of air through the ventilation duct in the event of fire.

(d) A ventilation duct must not serve more than one main vertical zone; penetrations of main vertical zones must be minimized.

(e) A ventilation duct penetrating an A-Class or B-Class fire control boundary must meet the following requirements:

(1) A ventilation duct must meet the same requirements relative to the passage of smoke and flame as the fire control boundary penetrated;

(2) A steel duct penetrating an A-Class fire control boundary must be of at least 11 U.S. Standard Guage (USSG), and a steel duct penetrating a B-Class bulkhead or deck must be of at least 16 USSG;

(3) A duct which is not steel must be fitted with a steel sleeve at each A-Class or B-Class fire control boundary penetrated. The sleeves must extend at least 18 inches on each side of the penetration and be of the same thickness required for steel ducts;

(4) A duct penetrating a main vertical zone bulkhead must be fitted with an automatic fire damper at the main vertical zone bulkhead;

(5) A duct penetrating an A-Class fire control boundary and opening into a space formed by that boundary must be equipped with a fire damper;

(6) A steel duct which penetrates an A-Class fire control boundary other than a main vertical zone bulkhead, and does not open within the space formed by the boundary need not be fitted with a fire damper provided the duct is at least 11 USSG throughout that space; and

(7) A duct penetrating an insulated fire control boundary must be fitted with insulation of the same type and thickness as the boundary penetrated for a distance of at least 12 inches on the insulated side of the boundary. A fire damper blade need not be insulated.

(8) Ducts serving cargo spaces, machinery spaces, or vehicle spaces must be fitted with automatic fire dampers.

(f) Fire dampers, where required by this section, must comply with the following requirements:

(1) A fire damper and casing must be at least 11 USSG and have not more than 1/8-inch gap between the blade and casing;

(2) A fire damper must close against the draft in the duct and be accessible for periodic inspection by means of a hinged or bolted plate in the duct;

(3) Fire damper springs, blades, and hinges must be of stainless steel construction or of steel suitably coated to prevent corrosion; and

(4) Fire dampers must be capable of manual operation from outside the space served, be fitted with an indicator showing whether the damper is open or closed, and be marked with red letters of at least ½-inch in height stating "VENTILATION FIRE DAMPER."

(5) An automatic fire damper must meet the above requirements and must be designed to operate at 165°F for normal locations and approximately 212°F for locations such as galleys.

(g) A ventilation duct serving a stairtower must not serve another space.

(h) A stairway or a stairtower must not serve as an air return for another space.

(i) A duct in a bulkhead or overhead designed for the passage of air from one space to another (i.e., a "jumper duct") is prohibited.

(j) The use of concealed spaces as return ventilation plenums or ducts is prohibited. Ventilation air return must be by ducts.

§ 116.620 Ventilation of machinery and fuel tank spaces.

In addition to the requirements of this subpart, ventilation systems for spaces containing machinery or fuel tanks must comply with the requirements of part 119 of this subchapter.

Subpart G—Crew Spaces

§ 116.700 General requirements.

(a) A crew accommodation space and a work space must be of sufficient size, adequate construction, and with suitable equipment to provide for the safe operation of the vessel and the protection and accommodation of the crew in a manner practicable for the size, facilities, service, route, speed, and modes of operation of the vessel.

(b) The deck above a crew accommodation space must be located above the deepest load waterline.

§ 116.710 Overnight accommodations.

(a) Overnight accommodations must be provided for all crew members if the vessel is operated more than 12 hours in a 24 hour period, unless the crew is put ashore and the vessel is provided with a new crew.

(b) Overnight accommodations for crew members are required on vessels with crews which remain aboard more than 12 hours in any 24 hour period.

§ 116.730 Crew accommodations on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

A crew accommodation space on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must comply with §§ 72.20–10 (a), (b), (d), and (e); 72.20–15; 72.20–20(c)(1); 72.20–25(a) and (d); 72.20–30; 72.20–35; 72.20–45; 72.20–50; and 72.20–55 of this chapter.

Subpart H—Passenger Accommodations

§ 116.800 General requirements.

(a) All passenger accommodations must be arranged and equipped to provide for the safety of the passengers in consideration of the route, modes of operation, and speed of the vessel.

(b) The height of ceilings in a passenger accommodation space, including aisles and passageways, must be at least 74 inches, but may be reduced at the sides of a space to allow for camber, wiring, ventilation ducts, and piping.

(c) A passenger accommodation space must be maintained to minimize fire and safety hazards and to preserve sanitary conditions. Aisles must be kept clear of obstructions.

(d) A passenger accommodation space must not contain:

(1) Electrical equipment, high temperature parts, pipelines, rotating assemblies, or any other item which could injure a passenger, unless such an item is adequately shielded or isolated; or

(2) A control for operating the vessel, unless the control is so protected and located that operation of the vessel by a crew member will not be impeded by a passenger during normal or emergency operations.

(e) The deck above a passenger accommodation space must be located above the deepest load waterline.

(f) A variation from a requirement of this subpart may be authorized by the cognizant OCMI for an unusual arrangement or design provided there is no significant reduction of space, accessibility, safety, or sanitation.

§ 116.810 Overnight accommodations.

(a) A berth must be provided for each passenger authorized to be carried in overnight accommodation spaces. Each berth must measure at least 74 inches by 24 inches and have at least 24 inches of clear space above.

(b) Berths must not be located more than three high and must be constructed of wood, fiber reinforced plastic, or metal. A berth located more than 60 inches above the deck must be fitted with a suitable aid for access.

(c) The construction and arrangement of berths and other furniture must allow free and unobstructed access to each berth. Each berth must be immediately adjacent to an aisle leading to a means of escape from the accommodation space. An aisle alongside a berth must be at least 24 inches wide. An aisle joining two or more aisles in an overnight accommodation space must be at least 42 inches wide.

§ 116.820 Seating.

(a) A seat must be provided for each passenger permitted in a space for which the fixed seating criterion in § 115.113(b)(3) of this subchapter has been used to determine the number of passengers permitted.

(b) A seat must be constructed to minimize the possibility of injury and avoid trapping occupants.

(c) Installation of seats must provide for ready escape.

(d) Seats, including fixed, temporary, or portable seats, must be arranged as follows:

(1) An aisle of not more than 15 feet in overall length must be not less than 24 inches in width.

(2) An aisle of more than 15 feet in overall length must be not less than 30 inches in width.

(3) Where seats are in rows, the distance from seat front to seat front must be not less than 30 inches and the seats must be secured to a deck or bulkhead.

(4) Seats used to determined the number of passengers permitted, in accordance with § 115.113(b)(3) of this subchapter, must be secured to the deck, bulkhead, or bulwark by permanent or temporary means.

Subpart I—Rails and Guards

§ 116.900 Deck rails.

(a) Except as otherwise provided in this section, rails or equivalent protection must be installed near the periphery of all decks of a vessel accessible to passengers or crew. Equivalent protection may include lifelines, wire rope, chains, and bulwarks, which provide strength and support equivalent to fixed rails. Deck rails must include a top rail with the minimum height required by this section, and lower courses or equivalent protection as required by this section.

(b) Deck rails must be designed and constructed to withstand a point load of 200 pounds (91 kilograms) applied at any point in any direction, and a uniform load of 50 pounds per foot (74 kilograms per meter) applied to the top rail in any direction. The point and uniform loads do not need to be applied simultaneously.

(c) Where space limitations make deck rails impractical for areas designed for crew use only, such as at narrow catwalks in way of deckhouse sides, hand grabs may be substituted.

(d) The height of top rails required by paragraph (a) of this section must be as follows:

(1) Rails on passenger decks of a ferry or a vessel engaged in excursion trips, including but not limited to sightseeing trips, dinner and party cruises, and overnight cruises, must be at least 39.5 inches high.

(2) Rails on a vessel subject to the 1966 International Convention on Loadlines must be at least 39.5 inches high.

(3) All other rails must be at least 36 inches high.

(e) A sailing vessel, an open boat, or any other vessel not specifically covered elsewhere in this section, must have rails of a minimum height or equivalent protection as considered necessary by the cognizant OCMI, based on the vessel's operation, route, and seating arrangement.

(f) Rail courses or an equivalent must be installed between a top rail required by paragraph (a) of this section and the deck so that no open space exists which is more than 12 inches high, except:

(1) On passenger decks of a ferry or of a vessel on an excursion trip the following must be installed:

(i) Bulwarks;

(ii) Chain link fencing or wire mesh which has openings of not more than 4 inches in diameter; or

(iii) Bars, slats, rail courses, or an equivalent spaced at intervals of not more than 4 inches.

(2) On a vessel subject to the 1966 International Convention on Loadlines, rail courses, or an equivalent, must be installed so that there is not an open space higher than 9 inches from the deck to the first rail course or equivalent.

(g) Rails must be permanently installed except that the following rails may be removable:

(1) Rails in way of embarkation stations and boarding locations; and

(2) Rails on a vessel when the service of the vessel is routinely changed, as determined by the cognizant OCMI, and the required top rail height varies depending on the service of the vessel at a particular time.

§ 116.920 Storm rails.

Suitable storm rails or hand grabs must be installed where necessary in passageways, at deckhouse sides, and at ladders and hatches.

§ 116.940 Guards in vehicle spaces.

On a vessel authorized to carry one or more vehicles, suitable chains, cables, or other barriers must be installed at the end of each vehicle runway. In addition, temporary rails or equivalent protection must be installed in way of each vehicle ramp, in compliance with § 116.900, when the vessel is underway.

§ 116.960 Guards for exposed hazards.

An exposed hazard, such as gears or rotating machinery, must be protected by a cover, guard, or rail.

§ 116.970 Protection against hot piping.

Piping, including valves, pipe fittings and flanges, conveying vapor, gas, or liquid, the temperature of which exceeds 150°F, must be insulated where necessary to prevent injuries.

Subpart J—Window Construction and Visibility

§ 116.1010 Safety glazing materials.

Glass and other glazing material used in windows must be of material which will not break into dangerous fragments if fractured.

§ 116.1020 Strength.

Each window, port hole, and its means of attachment to the hull or deck house, must be capable of withstanding the maximum load from wave and wind conditions expected due to its location on the vessel and the authorized route of the vessel.

§ 116.1030 Operating station visibility.

(a) Windows and other openings at the operating station must be of sufficient size and properly located to provide an adequate view for safe navigation in all operating conditions.

(b) Glass or other glazing material used in windows at the operating station must have a light transmission of not less than 70 percent according to Test 2 of ANSI Z 26.1, and must comply with Test 15 of ANSI Z 26.1 for Class I Optical Deviation.

Subpart K—Drainage and Watertight Integrity of Weather Decks

§ 116.1110 Drainage of flush deck vessels.

(a) Except as provided in paragraph (b) of this section, the weather deck on a flush deck vessel must be watertight and have no obstruction to overboard drainage.

(b) Each flush deck vessel may have solid bulwarks in the forward one-third length of the vessel if:

(1) The bulwarks do not form a well enclosed on all sides; and

(2) The foredeck of the vessel has sufficient sheer to ensure drainage aft.

§ 116.1120 Drainage of cockpit vessels, well deck vessels, and open boats.

Drainage of cockpit vessels, well deck vessels, and open boats must meet the applicable requirements of §§ 178.420, 178.430, 178.440, 178.450 of this chapter.

§ 116.1160 Watertight integrity.

(a) A hatch exposed to the weather must be watertight, except that the following hatches may be weathertight:

(1) A hatch on a watertight trunk that extends at least 12 inches above the weather deck;

(2) A hatch in a cabin top; and

(3) A hatch on a vessel that operates only on protected waters.

(b) A hatch cover must:

(1) Have securing devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or other devices of substantial strength to prevent its loss.

(c) A hatch cover that provides access to accommodation spaces must be operable from either side.

(d) A weathertight door must be provided for each opening located in a deck house or companionway. Permanent watertight coamings must be provided as follows:

(1) On a vessel on an exposed or partially protected route, a watertight coaming with a height of at least 6 inches must be provided under each weathertight door in a cockpit or a well, or on the main deck of a flush deck vessel.

(2) On a vessel on a protected route, a watertight coaming with a height of at least 3 inches must be provided under each weathertight door in a cockpit or a well.

(3) The height of the watertight coaming for a hinged watertight door, need only be sufficient to accommodate the door.

Subpart L—Ballast Systems

§ 116.1200 Ballast.

(a) Any solid fixed ballast used to comply with the requirements of parts 170 and 171 of this chapter must be:

(1) Stowed in a manner that prevents shifting of the ballast; and

(2) Installed to the satisfaction of the cognizant OCMI.

(b) Solid fixed ballast may not be located forward of the collision bulkhead unless the installation and arrangement of the ballast and the collision bulkhead minimizes the risk of the ballast penetrating the bulkhead in a collision.

(c) Solid fixed ballast may not be removed from a vessel or relocated unless approved by the cognizant OCMI except that ballast may be temporarily moved for a vessel examination or repair if it is replaced to the satisfaction of the OCMI.

(d) Water ballast, either as an active system or permanent, must be approved by the Commanding Officer, Marine Safety Center.

PART 117—LIFESAVING EQUIPMENT AND ARRANGEMENTS

Subpart A—General Provisions

Sec.

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117.210 Rescue boats.

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 117.10 Applicability to vessels on an international voyage.

A vessel on an international voyage must meet the requirements in subchapter H of this chapter for passenger vessels.

§ 117.15 Applicability to existing vessels.

An existing vessel must comply with the requirements of this part except as otherwise specified by this section.

(a) Before [*date 5 years after effective date of the final rule*] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel may comply with the requirements in effect for the vessel prior to [*effective date of the final rule*] for the number and type of survival craft, stowage arrangements, and launching appliances for survival craft.

(b) On or before [*date 5 years after effective date of the final rule*] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel must:

(1) Be equipped with the number of survival craft required for its route under §§ 117.202, 117.204, 117.206, 117.207, or 117.208, as applicable; and

(2) Comply with the stowage and launching appliance requirements for survival craft in §§ 117.130 through 117.150.

(c) Each inflatable liferaft, inflatable buoyant apparatus, life float, and buoyant apparatus on the vessel on [*effective date of the final rule*], may be used to meet the requirements of this part as long as the survival craft is in good and serviceable condition.

(d) When any lifesaving equipment on a vessel is replaced or a vessel undergoes repairs, alterations, or modifications of a major character involving replacement of, or any addition to, the existing lifesaving equipment, each new piece of lifesaving equipment must meet this part.

(e) A combination flare and smoke distress signal approved under § 160.023 of this chapter may be used on an existing vessel until the expiration date of the distress signal but no later than [*3 years after effective date of the final rule*] as one of the distress signals required by § 117.68.

(f) Until February 1, 1999, a Coast Guard approved 121.5/243 MHz Class A Emergency Position Indicating Radiobeacon (EPIRB) may be used to meet the requirement for an EPIRB under § 117.64, if the EPIRB:

(1) Is operable;

(2) Is installed to automatically float-free and activate;

(3) Was manufactured on or after October 1, 1988; and

(4) Was installed on the vessel on or before [*date 45 days after effective date of the final rule*].

(g) Until February 1, 1999, an FCC Type Accepted VHF–FM Class C EPIRB may be used to meet the requirement for

an EPIRB on a vessel operating on a Great Lakes route under § 117.64, if the EPIRB:

(1) Is operable; and

(2) Was installed on the vessel on or before [*date 45 days after effective date of the final rule*].

(h) Until [*date 1 year after effective date of the final rule*], an existing vessel on a coastwise route operating not more than 20 nautical miles from a harbor of safe refuge, need not comply with § 117.64.

(i) An existing vessel need not comply with § 117.78(a)(4).

(j) An existing vessel must comply with either § 117.210 or with the regulations for rescue boats that were in effect for the vessel prior to [*effective date of the final rule*].

§ 117.25 Additional requirements.

(a) Each item of lifesaving equipment carried on board a vessel but not required under this part, must be of an approved type meeting the specifications for lifesaving equipment in subchapter Q of this chapter.

(b) The cognizant OCMI may require a vessel to carry specialized or additional lifesaving equipment if:

(1) The OCMI determines the conditions of the voyage render the requirements of this part inadequate; or

(2) The vessel is operated in Arctic, Antarctic, or other severe conditions not covered under this part.

Subpart B—Emergency Communications

§ 117.64 Emergency Position Indicating Radiobeacons (EPIRB).

Each vessel which operates on the high seas, or which operates beyond three miles from the coastline of the Great Lakes, must have on board a FCC Type Accepted Category 1 406 MHz EPIRB, installed to automatically float free and activate.

§ 117.68 Distress flares and smoke signals.

(a) *Oceans, coastwise, and Great Lakes routes.* A vessel on an oceans, coastwise, or Great Lakes route must carry:

(1) Six hand red flare distress signals approved under part 160, subpart 160.021 of this chapter; and

(2) Six hand orange smoke distress signals approved under part 160, subpart 160.037 of this chapter.

(b) *Lakes, bays, and sounds, and rivers routes.* A vessel on a lakes, bays, and sounds, or rivers route must carry:

(1) Three hand red flare distress signals approved under part 160, subpart 160.021 of this chapter; and

(2) Three hand orange smoke distress signals approved under part 160, subpart 160.037 of this chapter.

(c) *Substitutions.* (1) A rocket parachute flare approved under part 160, subpart 160.036 of this chapter may be substituted for any of the hand red flare distress signals required under paragraph (a) or (b) of this section.

(2) One of the following may be substituted for any of the hand orange smoke distress signals required under paragraph (a) or (b) of this section:

(i) A rocket parachute flare approved under part 160, subpart 160.036 of this chapter.

(ii) A hand red flare distress signal approved under part 160, subpart 160.021 of this chapter.

(iii) A floating orange smoke distress signal approved under part 160, subpart 160.022 of this chapter.

(d) *Exemption for vessels on short runs.* A vessel operating on short runs limited to approximately 30 minutes away from the dock is not required to carry distress flares and smoke signals under this section.

(e) *Stowage.* Each flare carried to meet this section must be stowed in one of the following:

(1) A portable watertight container complying with § 160.021–6 of this chapter, carried at the operating station; or

(2) A pyrotechnic locker secured above the freeboard deck, away from heat, in the vicinity of the operating station. An example of an acceptable pyrotechnic locker is described in ASTM F—[reserved for number of standard under development by ASTM].

Subpart C—Life Buoys and Lifejackets

§ 117.70 Ring life buoys.

(a) A vessel must have one or more ring life buoys as follows:

(1) A vessel of not more than 26 feet in length must carry a minimum of one life buoy of not less than 20 inches in diameter;

(2) A vessel of more than 26 feet in length, but not more than 65 feet, must carry a minimum of one life buoy of not less than 24 inches in diameter; and

(3) A vessel of more than 65 feet in length must carry a minimum of three life buoys of not less than 24 inches in diameter.

(b) Each ring life buoy on a vessel must:

(1) Be approved under part 160, subpart 160.050 of this chapter;

(2) Be readily accessible;

(3) Be stowed in a way that it can be rapidly cast loose;

(4) Not be permanently secured in any way; and

(5) If on a vessel on an oceans or coastwise route, be orange in color.

(c) At least one ring life buoy must be fitted with a lifeline. If more than one ring life buoy is carried, at least one must not have a lifeline attached. Each lifeline on a ring life buoy must:

(1) Be buoyant;

(2) Be of at least 60 feet in length;

(3) Be non-kinking;

(4) Have a diameter of at least 5/16-inch;

(5) Have a breaking strength of at least 1,124 pounds; and

(6) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light.

(d) At least one ring buoy must be fitted with a floating waterlight, unless the vessel is limited to daytime operation, in which case no floating waterlight is required.

(1) Each floating waterlight must be approved under part 161, subpart 161.010 of this chapter.

(2) Each ring life buoy with a floating waterlight must have a lanyard of at least 3 feet in length, but not more than 6 feet, securing the waterlight around the body of the ring life buoy.

(3) Each floating waterlight installed after [*date one year after effective date of the final rule*] on a vessel carrying only one ring life buoy, must be attached to a lanyard with a corrosion-resistant clip. The clip must have a strength of at least 50 pounds and allow the waterlight to be quickly disconnected from the ring life buoy.

§ 117.71 Lifejackets.

(a) An adult lifejacket must be provided for each person permitted on board a vessel.

(b) In addition, a number of child-size lifejackets equal to at least 10% of the number of the persons permitted on board must be provided, or such greater number as necessary to provide a lifejacket for each person being carried that is smaller than the lower size limit of the adult lifejackets provided to meet this section, except that:

(1) Child-size lifejackets are not required if the vessel's Certificate of Inspection is endorsed for the carriage of adults only, or

(2) When all "extended size" life preservers (those with a lower size limit of 47 inches in height or weighing 45 pounds) are carried on board, a minimum of only 5% additional child size devices need be carried.

(c) Each lifejacket must be approved under either part 160, subparts 160.002, 160.005, or 160.055 of this chapter.

§ 117.72 Personal flotation devices carried in addition to lifejackets.

(a) Equipment carried under this section is not acceptable in lieu of any portion of the required number of approved lifejackets and must not be substituted for the approved lifejackets required to be worn during drills and emergencies.

(b) Wearable marine buoyant devices which include "ski vests", "boating vests", and "fishing vests", approved under part 160, subpart 160.064 of this chapter, may be carried as additional equipment.

(c) Buoyant work vests approved under part 160, subpart 160.053 of this chapter may be carried as additional equipment for use of persons working near or over the water.

(d) Commercial hybrid personal flotation devices (PFDs) approved under part 160, subpart 160.077 of this chapter may be carried as additional equipment for use of persons working near or over the water. Each commercial hybrid PFD must be:

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices under § 160.077–29 of this chapter and any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

§ 117.75 Lifejacket lights.

(a) Each lifejacket carried on a vessel on an oceans, coastwise, or Great Lakes route, must have a lifejacket light approved under part 161, subpart 161.012 of this chapter. Each lifejacket light must be securely attached to the front shoulder area of the lifejacket.

(b) Notwithstanding the requirements of paragraph (a) of this section, lifejacket lights are not required for lifejackets on:

(1) Ferries; and

(2) Vessels with Certificates of Inspection endorsed only for routes that do not extend more than 20 miles from a harbor of safe refuge.

§ 117.78 Stowage of lifejackets.

(a) *General.* Unless otherwise stated in this section, lifejackets must be stored in convenient places distributed throughout accommodation spaces.

(1) Each stowage container for lifejackets must not be capable of being locked. If practicable, the container must be designed to allow the lifejackets to float free.

(2) Each lifejacket kept in a stowage container must be readily available.

(3) Each lifejacket stowed overhead must be supported in a manner which allows quick release for distribution.

(4) If lifejackets are stowed more than 7 feet above the deck, a means for quick release must be provided and must be capable of operation by a person standing on the deck.

(5) Each child size lifejacket must be stowed in a location which is appropriately marked and separated from adult lifejackets so the child size lifejackets are not mistaken for adult lifejackets.

(b) *Additional personal flotation devices.* The stowage locations of the personal flotation devices carried in addition to lifejackets under § 117.72, must be separate from the lifejackets, and such as not to be easily confused with that of the lifejackets.

Subpart D—Survival Craft Arrangements and Equipment

§ 117.130 Stowage of survival craft.

(a) Each survival craft must be: (1) Secured to the vessel by a painter with a float-free link permanently attached to the vessel except that a float-free link is not required if the vessel operates only on waters not as deep as the length of the painter;

(2) Stowed so that when the vessel sinks the survival craft floats free and, if inflatable, inflates automatically;

(3) Stowed in a position which is readily accessible to crew members for launching, or else provided with a remotely operated device which releases the survival craft into launching position or into the water;

(4) Stowed in a way that permits manual release from its securing arrangements;

(5) Ready for immediate use so that two crew members can carry out preparations for embarkation and launching in less than 5 minutes;

(6) Provided with means to prevent shifting;

(7) Stowed in a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft at any other launching station;

(8) Stowed in a way that any protective covers will not interfere with launching and embarkation.

(9) Fully equipped as required under this part; and

(10) Stowed, as far as practicable, in a position sheltered from breaking seas and protected from damage by fire and explosion.

(b) A hydrostatic release unit used in a float-free arrangement must be approved under part 160, subpart 160.062 of this chapter.

(c) A mechanical, manually operated device to assist in launching a survival craft must be provided if:

(1) The survival craft weighs more than 200 pounds; and

(2) The survival craft requires lifting to be launched.

§ 117.137 Stowage of life floats and buoyant apparatus.

(a) In addition to meeting § 117.130, each life float and buoyant apparatus must be stowed as required under this section.

(b) The float-free link required by § 117.130(a)(1) must be:

(1) Certified to meet Part 160, Subpart 160.073 of this chapter;

(2) Of proper strength for the size of the life float or buoyant apparatus as indicated on its identification tag; and

(3) Secured to the painter at one end and to the vessel on the other end.

(c) The means used to attach the float-free link to the vessel must:

(1) Have a breaking strength of at least the breaking strength of the painter;

(2) If synthetic, be of a dark color or of a type certified to be resistant to deterioration from ultraviolet light; and

(3) If metal, be corrosion resistant.

(d) If the life float or buoyant apparatus does not have a painter attachment fitting, a means for attaching the painter must be provided by a wire or line which:

(1) Encircles the body of the device;

(2) Will not slip off;

(3) Has a breaking strength which is at least the strength of the painter; and

(4) If synthetic, is of a dark color or is of a type certified to be resistant to deterioration from ultraviolet light.

(e) If the vessel carries more than one life float or buoyant apparatus in a group with each group secured by a single painter:

(1) The combined weight of each group of life floats and buoyant apparatus must not exceed 400 pounds;

(2) Each group of life floats and buoyant apparatus is considered a single survival craft for the purposes of § 117.130(c).

(3) Each life float and buoyant apparatus must be individually attached to the painter by a line meeting § 117.175(e)(3)(ii), (iii), and (iv) and long enough that each life float or buoyant apparatus can float without contacting any other life float or buoyant apparatus in the group; and

(4) The strength of the float-free link under paragraph (b)(2) of this section and the strength of the painter under § 117.175(e)(3)(ii) must be determined by the combined capacity of the group of life floats and buoyant apparatus.

(f) Life floats and buoyant apparatus must not be stowed in tiers more than 4 feet high. When stowed in tiers, the separate units must be kept apart by spacers.

§ 117.150 Survival craft embarkation arrangements.

(a) A launching appliance approved under part 160, subpart 160.032 of this chapter must be provided for each inflatable liferaft and inflatable buoyant apparatus when either:

(1) The embarkation station for the survival craft is on a deck more than 15 feet above the waterline; or

(2) The inflatable liferaft or inflatable buoyant apparatus will be boarded prior to being placed in the water.

(b) An embarkation ladder, approved under part 160, subpart 160.017 of this chapter, must be at each embarkation station if the distance from the embarkation deck to the vessel's lightest operating waterline is more than 10 feet.

§ 117.175 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, and efficient for the purpose it is intended to serve. Unless otherwise stated in this section, each item of equipment carried, whether required under this section or not, must be secured by lashings, stored in lockers, compartments, brackets, or have equivalent mounting or storage arrangements which do not:

(1) Reduce survival craft capacity;

(2) Reduce space available to the occupants;

(3) Interfere with launching, recovery, or rescue operations; or

(4) Adversely affect seaworthiness of the survival craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

(1) Limited Service;

(2) SOLAS B Pack;

(3) SOLAS A Pack; or

(4) Ocean Service.

(c) *Life floats.* Each life float must be fitted with a lifeline, pendants, two paddles, a painter, and a light.

(d) *Buoyant apparatus.* Each buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a light.

(e) *Equipment specifications for life floats and buoyant apparatus.* The equipment required for lifefloats and buoyant apparatus must meet the following specifications:

(1) *Lifeline and pendants.* The lifeline and pendants must be as furnished by the manufacturer with the approved life float or buoyant apparatus. Replacement lifelines and pendants must meet the requirements in part 160, subpart 160.010 of this chapter.

(2) *Paddle.* Each paddle must be of at least 4 feet in length and buoyant.

(3) *Painter.* The painter must:

(i) Be of at least 100 feet in length, but not less than three times the distance between the deck where the life float or buoyant apparatus it serves is stowed and the lightship waterline of the vessel;

(ii) Have a breaking strength of at least 1500 pounds, except that if the capacity of the life float or buoyant apparatus is 50 persons or more, the breaking strength must be at least 3000 pounds;

(iii) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light; and

(iv) Be stowed in such a way that it runs out freely when the life float or buoyant apparatus floats away from a sinking vessel.

(4) *Light.* The light must be a floating waterlight approved under part 161, subpart 161.010 of this chapter. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 12-thread manila, or equivalent, lanyard of at least 18 feet in length.

(f) *Other survival craft.* If survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, and buoyant apparatus are carried on the vessel, such as lifeboats or rigid liferafts, they must be installed, arranged, and equipped as required under subchapter H (Passenger Vessels) of this chapter for passenger vessels on the same route.

Subpart E—Number and Type of Survival Craft

§ 117.200 Survival craft—general.

(a) Each survival craft required on a vessel by this part must meet one of the following:

(1) For an inflatable liferaft—part 160, subpart 160.051 of this chapter, with the applicable equipment pack, as determined by the cognizant OCMI. Each inflatable liferaft required on a vessel by this part must have a capacity of 6 persons or more. Inflatable liferafts may be substituted for inflatable buoyant apparatus or life floats required under this section.

(2) For a life float—part 160, subpart 160.027 of this chapter. Buoyant apparatus may be used to meet requirements for life floats if the buoyant apparatus was installed on board the vessel on or before [*effective date of the final rule*], and if the buoyant apparatus remains in good and serviceable condition.

(3) For an inflatable buoyant apparatus—part 160, subpart 160.010 of this chapter. Inflatable buoyant apparatus may be substituted for life floats required under this section.

(b) If the vessel carries a small boat or boats, the capacity of these boats may be counted toward the buoyant apparatus or life float capacity required by this subpart. Such boats must meet the requirements for safe loading and flotation in 33 CFR part 183, and must meet the stowage, launching, and equipment requirements in this part for the survival craft they replace.

(c) A summary of survival craft requirements is provided in Table 117.200(c). The citations identify the sections of this part which contain the specific requirements.

TABLE 117.200(C)

Route	Survival craft required
Oceans, more than 50 miles offshore	100% ILR—§ 117.202(a)
Oceans, 20–50 miles offshore	100% IBA—§ 117.202(b)
Coastwise	
(a) W/overnight accommodations for > 49 passengers	100% IBA—§ 117.204(a)
(b) W/overnight accommodations for ≤ 49 passengers.	
(i) Cold water[1]	50% IBA[2]—§ 117.204(b)(1)
(ii) Warm water[3]	100% LF[4]—§ 117.204(b)(2)
(iii) Within one mile of shore.	
(A) Cold water[1]	50% LF[4]—§ 117.204(d)
(B) Warm water[1]	None—§ 117.204(e).
Great Lakes	
(a) Same as Coastwise (a) & (b)	§ 117.206(a).
(b) Within one mile of shore	None—§ 117.206(b).
Lakes, bays & sounds	
(a) W/overnight accommodations for > 49 passengers	100% IBA—§ 117.207(a)

TABLE 117.200(C)—Continued

Route	Survival craft required
(b) W/overnight accommodations for ≤ 49 passengers.[5]	
(i) Cold water[1]	50% IBA[2]—§ 117.207(b)(1).
(ii) Warm water[3]	50% LF[4]—§ 117.204(b)(2).
(iii) Within one mile of shore	None—§ 117.207(c).
Rivers	
(a) Cold water[6].	
(i) 50% LF[4]	§ 117.208(a).
(ii) Within one mile of shore	None—§ 117.208(c).
(b) Warm water	None—§ 117.208(b).

Abbreviations used: ILR=Inflatable liferaft; IBA=Inflatable Buoyant Apparatus; LF=Life Float.
[1] Cold water means the cognizant OCMI has determined the prevailing temperature of the water is ≤ 15° C (59° F).
[2] Certain ferry type operations may substitute 100% LF for IBA—§§ 117.204(c), 117.206(a), and 117.207(c).
[3] Warm water means the cognizant OCMI has determined the prevailing temperature of the water is > 15° C (59° F).
[4] Any buoyant apparatus in use on an existing vessel on [effective date of the final rule] may be used to meet the requirements for LF as long as the buoyant apparatus is in good and serviceable condition—§ 117.15(c).
[5] Shallow water exception—§ 117.207(e).
[6] Shallow water exception—§ 117.208(d).

§ 117.202 Survival craft—vessels operating on oceans routes.

(a) Each vessel certificated to operate on an oceans route more than 50 nautical miles offshore must be provided with inflatable liferafts of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(b) Each vessel certificated to operate on an oceans route not more than 50 nautical miles offshore must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

§ 117.204 Survival craft—vessels operating on coastwise routes.

(a) Each vessel with overnight accommodations for more than 49 passengers certificated to operate on a coastwise route must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(b) Each vessel with overnight accommodations for not more than 49 passengers certificated to operate on a coastwise route, must:

(1) Except as allowed by paragraphs (c) and (d) of this section, if operated in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less, be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board; or

(2) Except as allowed by paragraph (e) of this section, if operated in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F), be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(c) Each vessel operating between two points, with a set schedule on a specific route which does not take it more than 20 nautical miles from a harbor of safe refuge, and which maintains a 15 minute radio communications schedule with an operations base, may be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(d) Each vessel certificated to operate on a coastwise route within one mile of land in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less may be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board.

(e) Each vessel certificated to operate on a coastwise route within one mile of land in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) is not required to carry survival craft.

§ 117.206 Survival craft—vessels operating on Great Lakes routes.

(a) Except as allowed by paragraph (b) of this section, each vessel certificated to operate on a Great Lakes route must be provided with the survival craft required by §§ 117.204 (a), (b), or (c), as applicable.

(b) Each vessel certificated to operate on a Great Lakes route within one mile of land is not required to carry survival craft.

§ 117.207 Survival craft—vessels operating on lakes, bays, and sounds routes.

(a) Each vessel with overnight accommodations for more than 49 passengers certificated to operate on a lakes, bays, and sounds route must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(b) Except as allowed by paragraphs (c), (d), and (e) of this section, each vessel with overnight accommodations for not more than 49 passengers certificated to operate on a lakes, bays, and sounds route must:

(1) If operated in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less, be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board; or

(2) If operated in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F), be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board.

(c) Each vessel operating between two points, with a set schedule on a specific route which does not take it more than 20 nautical miles from a harbor of safe refuge, and which maintain a 15 minute radio communications schedule with an operations base, may be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(d) Each vessel certificated to operate on a lakes, bays and sounds route

within one mile of land is not required to carry survival craft.

(e) For a vessel certificated to operate on a lakes, bays and sounds route in shallow water where the vessel cannot sink deep enough to submerge the topmost passenger deck or where survivors can wade ashore, the cognizant OCMI may waive a requirement for survival craft, if the OCMI determines that it is safe to do so, taking into consideration the vessel's scope of operation, hazards of the route, and availability of assistance.

§ 117.208 Survival craft—vessels operating on rivers routes.

(a) Except as allowed by paragraphs (c) and (d) of this section, each vessel certificated to operate on a rivers route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less must be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board.

(b) Each vessel certificated to operate on a rivers route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) is not required to carry survival craft.

(c) Each vessel certificated to operate on a rivers route within one mile of land is not required to carry survival craft.

(d) For a vessel certificated to operate on a rivers route in shallow water where the vessel cannot sink deep enough to submerge the topmost passenger deck or where survivors can wade ashore, the cognizant OCMI may waive a requirement for life floats, if the OCMI determines that it is safe to do so, taking into consideration the vessel's scope of operation, hazards of the route, and availability of assistance.

§ 117.210 Rescue boats.

(a) Each vessel must carry at least one rescue boat unless the cognizant OCMI determines that:

(1) The vessel is sufficiently maneuverable, arranged, and equipped to allow the crew to recover a helpless person from the water;

(2) Recovery of a helpless person can be observed from the operating station; and

(3) The vessel does not regularly engage in operations that restrict its maneuverability.

(b) On a vessel of more than 65 feet in length, a required rescue boat and its installation must meet the requirements in subchapter H (Passenger Vessels) of this chapter for a rescue boat on a passenger vessel having the same route. On a vessel of not more than 65 feet in length, a required rescue boat must be acceptable to the cognizant OCMI.

PART 118—FIRE PROTECTION EQUIPMENT

Subpart A—General Provisions

Sec.

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118.600 Fire axe.

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 118.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b), (c), and (d) of this section, an existing vessel must comply with the fire protection equipment regulations applicable to the vessel on [*date of day before effective date of the final rule*] or, as an alternative, the vessel may comply with the regulations in this part.

(b) An existing vessel with a hull, or a machinery space boundary bulkhead or deck, composed of wood or fiber reinforced plastic, or sheathed on the interior in fiber reinforced plastic, must comply with the requirements of § 118.400 on or before [*date 3 years after effective date of the final rule*].

(c) New installations of fire protection equipment on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after [*effective date of of the final rule*], must comply with the regulations of this part. Replacement of existing equipment installed on the vessel prior to [*effective date of of the final rule*] need not comply with the regulations in this part.

§ 118.120 Equipment installed but not required.

Fire extinguishing and detecting equipment installed on a vessel in excess of the requirements of §§ 118.400 and 118.500 must be designed, constructed, installed and maintained in a manner acceptable to the Commandant.

Subpart B—Reserved

Subpart C—Fire Main System

§ 118.300 Fire pumps.

(a) A self priming, power driven fire pump must be installed on each vessel.

(b) On a vessel with overnight accommodations for not more than 49 passengers, the fire pump must be capable of delivering a single hose stream from the highest hydrant, through the hose and nozzle required by § 118.320, at a pitot tube pressure of 50 psi.

(c) On a vessel with overnight accommodations for more than 49 passengers the fire pump must meet the fire pump requirements in § 76.10–5 of this chapter.

(d) A fire pump may be driven by a propulsion engine. A fire pump must be permanently connected to the fire main and may be connected to the bilge system to meet the requirements of § 119.520 of this subchapter.

(e) A fire pump must be capable of both remote operation from the operating station and local, manual operation at the pump.

§ 118.310 Fire main and hydrants.

(a) A vessel must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

(b) Piping, valves, and fittings in a fire main system must comply with part 119, subpart G of this subchapter.

§ 118.320 Fire hoses and nozzles.

(a) A fire hose with a nozzle must be attached to each fire hydrant at all times. For fire stations located on open decks or cargo decks, where no protection is provided, hoses may be temporarily removed during heavy weather or cargo handling operations, respectively. Hoses so removed must be stored in nearby accessible locations.

(b) Each hose must:

(1) Be lined commercial fire hose that conforms to UL 19 or hose that is listed and labeled by an independent laboratory recognized by the Commandant as being equivalent in performance;

(2) Be 50 feet in length and 1.5 inches in diameter; and

(3) Have fittings of brass or other suitable corrosion-resistant material which comply with NFPA 1963.

(c) Each nozzle must be of a type approved under subpart 162.027 of this chapter.

Subpart D—Fixed Fire Extinguishing and Detecting Systems

§ 118.400 Where required.

(a) The following spaces must be equipped with a Halon or carbon dioxide fixed gas fire extinguishing system, in compliance with § 118.410, except as otherwise allowed by paragraph (b) of this section:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp;

(3) A space containing an oil fired boiler;

(4) A space containing combustible cargo or ship's stores inaccessible during the voyage (a carbon dioxide system must be installed in such a space, and Halon systems are not allowed);

(5) A paint locker; and

(6) A storeroom containing flammable liquids (including liquors of 80 proof or higher).

(b) Alternative system types and exceptions to the requirements of paragraph (a) of this section are:

(1) A fixed gas fire extinguishing system, which is capable of automatic discharge upon heat detection, may only be installed in a normally unoccupied space with a gross volume of not more than 6000 cubic feet;

(2) A pre-engineered fixed gas fire extinguishing system must be in compliance with § 118.420 and may only be installed in a normally unoccupied machinery space, a paint locker, or a storeroom containing flammable liquids (including liquors of 80 proof or higher), with a gross volume of not more than 2000 cubic feet;

(3) A B–II portable fire extinguisher installed outside the space may be substituted for a fixed gas fire extinguishing system in a storeroom containing flammable liquids (including liquors of 80 proof or higher) or a paint locker, with a volume of not more that 200 cubic feet; and

(4) A space which is so open to the atmosphere that a fixed gas fire extinguishing system would be ineffective, as determined by the cognizant OCMI, is not required to have a fixed gas fire extinguishing system.

(c) The following spaces must be equipped with a fire detecting system of an approved type which is installed in accordance with part 76, subpart 76.27 of this chapter, except when a fixed gas fire extinguishing system which is capable of automatic discharge upon heat detection is installed or when the space is manned:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp; and

(3) A space containing an oil fired boiler.

(d) All grills, broilers, and deep fat fryers must be fitted with a grease extraction hood which complies with § 118.425.

(e) Each accommodation space, control space, and service space must be fitted with the following systems:

(1) A smoke actuated fire detecting system of a type approved by the Commandant which is installed in accordance with part 76, subpart 76.27 of this chapter; and

(2) A manual alarm system which meets the requirements in part 76, subpart 76.35 of this chapter.

(f) An enclosed vehicle space must be fitted with an automatic sprinkler system which meets the requirements of part 76, subpart 76.25 of this chapter; and

(1) A smoke actuated fire detecting system of a type approved by the Commandant which is installed in accordance with part 76, subpart 76.27 of this chapter; or

(2) A smoke detecting system of a type approved by the Commandant which is installed in accordance with part 76, subpart 76.33 of this chapter.

(g) A partially enclosed vehicle space must be fitted with a manual sprinkler system which meets the requirements of part 76, subpart 76.23 of this chapter.

§ 118.410 Fixed gas fire extinguishing systems.

(a) *General.*

(1) A fixed gas fire extinguishing system aboard a vessel must be approved by the Commandant, and be custom engineered to meet the requirements of this section unless the system meets the requirements of § 118.420.

(2) System components must be listed and labeled by an independent laboratory. A component from a different system, even if from the same manufacturer, must not be used unless included in the approval of the installed system.

(3) System design and installation must be in accordance with the Marine Design, Installation, Operation, and Maintenance Manual approved for the system by the Commandant.

(4) A fixed gas fire extinguishing system may protect more than one space. The quantity of extinguishing agent must be at least sufficient for the space requiring the greatest quantity as determined by the requirements of paragraphs (f)(4) or (g)(2) of this section.

(b) *Controls.*

(1) Controls and valves for operation of a fixed gas fire extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of fire in the space protected by the system.

(2) Except as provided in paragraph (c)(2) of this section, release of an extinguishing agent into a space must require two distinct operations.

(3) A system must have local manual controls at the storage cylinders capable of releasing the extinguishing agent. In addition, a normally manned space must have remote controls for releasing the extinguishing agent immediately outside the primary exit from the space.

(4) Remote controls must be located in a breakglass enclosure to preclude accidental discharge.

(5) Valves and controls must be of a type approved by the Commandant and protected from damage or accidental activation. A pull cable used to activate the system controls must be enclosed in conduit.

(6) A system protecting more than one space must have a manifold with a normally closed stop valve for each space protected.

(7) A gas actuated valve or device must be capable of manual override at the valve or device.

(8) A system, which has more than one storage cylinder for the extinguishing agent and which relies on pilot cylinders to activate the primary storage cylinders, must have at least two pilot cylinders. Local manual controls in compliance with paragraph (b)(3) of this section must be provided to operate the pilot cylinders but are not required for the primary storage cylinders.

(9) A system protecting a manned space must be fitted with a time delay and alarm of a type approved by the Commandant, arranged to require the alarm to sound for at least 20 seconds or the time necessary to escape from the space, whichever is greater, before the agent is released into the space. Alarms must be conspicuously and centrally located. The alarm must be powered by the extinguishing agent.

(10) A device must be provided to automatically shut down power ventilation serving the protected space and engines which draw intake air from the protected space prior to release of the extinguishing agent into the space.

(11) Controls and storage cylinders must not be in a locked space unless the key is in a breakglass type box conspicuously located adjacent to the space.

(c) *Storage space.*

(1) Except as provided in paragraph (c)(2) of this section, a storage cylinder for a fixed gas extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of a fire in the space protected by the system.

(2) A normally unoccupied space of less than 6000 cubic feet may have the storage cylinders located within the space protected. When the storage cylinders are located in the space:

(i) The system must be capable of automatic operation by a heat actuator within the space; and

(ii) Have manual controls in compliance with paragraph (b) of this section except for paragraphs (b)(2) and (b)(3).

(3) A space containing a storage cylinder must be maintained at a temperature within the range from −20°F (−30°C) to 130°F (55°C) or at another temperature as listed by the independent laboratory and stated in the manufacturer's approved manual.

(4) A storage cylinder must be securely fastened, supported, and protected against damage.

(5) A storage cylinder must be accessible and capable of easy removal for recharging and inspection. Provisions must be available for weighing each storage cylinder in place.

(6) Where subject to moisture, a storage cylinder must be installed to provide a space of at least 2 inches between the deck and the bottom of the storage cylinder.

(7) A Halon 1301 storage cylinder must be stowed in an upright position unless otherwise listed by the independent laboratory. A carbon dioxide cylinder may be inclined not more than 30° from the vertical, unless fitted with flexible or bent siphon tubes, in which case they may be inclined not more than 80° from the vertical.

(8) Where a check valve is not fitted on an independent storage cylinder discharge outlet, a plug or cap must be provided for closing the outlet resulting from storage cylinder removal.

(9) Each storage cylinder must meet the requirements of § 147.60 of this chapter.

(10) A storage cylinder space must have doors which open outwards or be fitted with kickout panels installed in each door.

(d) *Piping.*

(1) A pipe, valve, or fitting of ferrous material must be protected inside and outside against corrosion unless otherwise approved by the Commandant. Aluminum or other low melting material must not be used for a component of a fixed gas fire extinguishing system except as specifically approved by the Commandant.

(2) A distribution line must extend at least 2 inches beyond the last orifice and be closed with a cap or plug.

(3) Piping, valves, and fittings must be securely supported, and where necessary, protected against damage.

(4) Drains and dirt traps must be fitted where necessary to prevent the accumulation of dirt or moisture and located in accessible locations.

(5) Piping must be used for no other purpose except that it may be incorporated with the fire detecting system.

(6) Piping passing through accommodation spaces must not be fitted with drains or other openings within such spaces.

(7) The distribution piping of a carbon dioxide fixed gas extinguishing system must be tested as required by this paragraph, upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen gas.

(i) Piping between a storage cylinder and a stop valve in the manifold must be subjected to a pressure of 1,000 psi, except as permitted in paragraph (d)(7)(iii) of this section. Without additional gas being introduced to the system, the pressure drop must not exceed 300 psi after two minutes.

(ii) A distribution line to a space protected by the system must be subjected to a test pressure of 600 psi. For the purpose of this test, the distribution piping must be capped within the space protected at the first joint between the nozzles and the storage cylinders.

(iii) A small independent system protecting a space such as a paint locker may be tested by blowing out the piping with air at a pressure of not less than 100 psi.

(8) The distribution piping of a Halon 1301 fixed gas extinguishing system must be tested, as required by this paragraph, upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen.

(i) When pressurizing the piping, pressure must be increased in small increments. Each joint must be subjected to a soap bubble leak test, and all joints must be leak free.

(ii) Piping between the storage cylinders and the manifold stop valve must be subjected to a leak test conducted at the maximum allowable working pressure at 130°F (55°C). Without additional gas being added to the system, there must be no loss of pressure over a two minute period after thermal equilibrium is reached.

(iii) Distribution piping between the manifold stop valve and the first nozzle in the system must be capped and pneumatically tested for a period of 10 minutes at 150 psig. At the end of 10 minutes, the pressure drop must not exceed 10% of the test pressure.

(e) *Pressure relief.* When required by the cognizant OCMI, spaces which are protected by a fixed gas fire extinguishing system and which are relatively air tight, such as refrigeration spaces, paint lockers, etc., must be provided with suitable means for relieving excessive pressure within the space when the agent is released.

(f) *Specific requirements for carbon dioxide systems.* A custom engineered fixed gas fire extinguishing system, which uses carbon dioxide as the extinguishing agent, must meet the requirements of this paragraph.

(1) Piping, valves, and fittings must have a bursting pressure of not less than 6,000 psi. Piping, in nominal sizes of not more than ¾ inch, must be at least Schedule 40 (standard weight), and in nominal sizes of over ¾ inch, must be at least Schedule 80 (extra heavy).

(2) A pressure relief valve or equivalent set to relieve at between 2,400 and 2,800 psi must be installed in the distribution manifold to protect the piping from overpressurization.

(3) Nozzles must be approved by the Commandant.

(4) When installed in a machinery space, paint locker, a space containing flammable liquid stores, or a space with a fuel tank, a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide (in pounds) that the system must be capable of providing to a space must not be less than the gross volume of the space divided by the appropriate factor given in Table 118.410(f)(4)(i). If fuel can drain from a space being protected to an adjacent space or if the spaces are not entirely separate, the volume of both spaces must be used to determine the quantity of carbon dioxide required. The carbon dioxide must be arranged to discharge into both such spaces simultaneously.

TABLE 118.410(f)(4)(i)

Factor	Gross volume of space in cubic feet	
	Over	Not over
15		500
16	500	1,600
18	1,600	4,500
20	4,500	50,000
22	50,000	

(ii) The minimum size of a branch line to a space must be as noted in Table 118.410(f)(4)(ii).

TABLE 118.410(f)(4)(ii)

Maximum quantity of carbon dioxide (pounds)	Minimum nominal pipe size (inches)	Maximum quantity of carbon dioxide required (pounds)	Minimum nominal pipe size (inches)
100	.50	2,500	2.5
225	.75	4,450	3
300	1	7,100	3.5
600	1.25	10,450	4
1,000	1.5	15,000	4.5
2,450	2		

(iii) Distribution piping within a space must be proportioned from the distribution line to give proper supply to the outlets without throttling.

(iv) The number, type, and location of discharge outlets must provide uniform distribution of carbon dioxide throughout a space.

(v) The area of each discharge outlet must not exceed 85 percent nor be less than 35 percent of the nominal cylinder outlet area or the area of the supply pipe, whichever is smaller. The nominal cylinder outlet area (in square inches) is determined by multiplying the factor 0.0022 by the total capacity (in pounds) of all carbon dioxide cylinders in the system, except in no case must the outlet area be of less than 0.110 square inch.

(vi) The discharge of at least 85 percent of the required amount of carbon dioxide must be completed within two minutes.

(5) When installed in an enclosed ventilation system for rotating electrical propulsion equipment a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide (in pounds) must be sufficient for initial and delayed discharges as required by this paragraph. The initial discharge must be equal to the gross volume of the system divided by 10 for ventilation systems having a volume of less than 2,000 cubic feet, or divided by 12 for ventilation systems having a volume of at least 2,000 cubic feet. In addition, there must be sufficient carbon dioxide available to permit delayed discharges to maintain at least a 25 percent concentration until the equipment can be stopped. If the initial discharge achieves this concentration until the equipment is stopped, a delayed discharge is not required.

(ii) The piping sizes for the initial discharge must be in accordance with Table 118.410(f)(4)(ii) and the discharge of the required amount must be completed within two minutes.

(iii) Piping for the delayed discharge must not be less than ½-inch nominal pipe size, may be incorporated with the initial discharge piping, and need not meet specific requirement for discharge rate.

(6) When installed in a cargo space a fixed carbon dioxide system must meet the following requirements.

(i) The number of pounds of carbon dioxide required for each space in cubic feet must be equal to the gross volume of the space in cubic feet divided by 30;

(ii) System piping must be of at least ¾-inch.

(iii) No specific discharge rate is required.

(g) *Specific requirements for Halon 1301 systems.*

(1) A custom engineered fixed gas fire extinguishing system which uses Halon 1301 must comply with the applicable sections of UL 1058 and the requirements of this paragraph (g).

(2) The Halon 1301 quantity and discharge requirements of UL 1058 apply, with the exception that the Halon 1301 design concentration must be 6 percent at the lowest ambient temperature expected in the space. If the lowest temperature is not known, a temperature of 0 °F must be assumed.

(3) Each storage cylinder in a system must have the same pressure and volume.

(4) Computer programs used in designing systems must be approved by an independent laboratory recognized by the Commandant.

§ 118.420 Pre-engineered fixed gas fire extinguishing systems.

(a) A pre-engineered fixed gas fire extinguishing system must:

(1) Be approved by the Commandant;

(2) Be capable of manual actuation from outside the space in addition to automatic actuation by a heat detector; and

(3) Automatically shut down all power ventilation systems and all engines that draw intake air from within the protected space.

(b) A vessel on which a pre-engineered fixed gas system is installed must have the following equipment at the operating station:

(1) A light to indicate discharge;

(ii) An audible alarm which sounds upon discharge; and

(iii) A means to reset devices used to automatically shut down ventilation systems and engines as required by paragraph (a)(3) of this section.

(c) Only one pre-engineered fixed gas system is allowed to be installed in each space protected by such a system.

§ 118.425 Galley hood fire extinguishing systems.

(a) A grease extraction hood required by § 118.400 must meet UL 710.

(b) A grease extraction hood must be equipped with a dry or wet chemical fire extinguishing system meeting the applicable sections of NFPA 17 or 17A, and must be listed by an independent laboratory recognized by the Commandant.

Subpart E—Portable Fire Extinguishers

§ 118.500 Required number, type, and location.

(a) Each portable fire extinguisher on a vessel must be of a type approved by the Commandant. The minimum number of portable fire extinguishers required on a vessel must be acceptable to the cognizant OCMI, but must be not less than the minimum number required by Table 118.500(a) and other provisions of this section.

TABLE.—118.500(a)

Space protected	Minimum number required	CG class	Medium	Medium size
Operation station	1	B–I, C–I	Halon	2.5 lb.
			CO2	4 lb.
			Dry Chemical	2 lb.

TABLE.—118.500(a)—Continued

Space protected	Minimum number required	CG class	Medium	Medium size
Machinery Space	1	B–II, C–II located just outside exit	Halon	10 lb.
			CO_2	15 lb.
			Dry Chemical	10 lb.
Open vehicle deck	1 for each 10 vehicles	B–II	Foam	2.5 gal.
			Halon	10 lb.
			CO_2	15 lb.
			Dry Chemical	10 lb.
Accommodation space	1 for each 2,500 square feet or fraction thereof	A–II	Foam	2.5 gal.
			Dry Chemical	5 lb.
Galley, Pantry, Concession Stand	1	A–II, B–II	Foam	2.5 gal.
			Dry Chemical	10 lb.

(b) A vehicle deck without a fixed sprinkler system and exposed to weather must have one B-II portable fire extinguisher for every five vehicles, located near an entrance to the space.

(c) The cognizant OCMI may permit the use of a larger portable fire extinguisher, or a semiportable fire extinguisher, in lieu of those required by this section.

(d) The frame or support of each B-V fire extinguisher permitted by paragraph (c) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

§ 118.520 Installation and location.

Portable fire extinguishers must be located so that they are clearly visible and readily accessible from the space being protected. The installation and location must be to the satisfaction of the cognizant OCMI.

Subpart F—Additional Equipment

§ 118.600 Fire axe.

A vessel of more than 65 feet in length must have at least one fire axe located in or adjacent to the primary operating station.

PART 119—MACHINERY INSTALLATION

Subpart A—General Provisions

Sec.

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Subpart B—Propulsion Machinery

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Subpart E—Bilge and Ballast Systems

119.500 General.
119.510 Bilge piping system.
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Subpart F—Steering Systems

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Subpart G—Piping Systems

119.700 General.
119.710 Piping for vital systems.
119.715 Piping subject to more than 15 psi in non-vital systems.
119.720 Nonmetallic piping materials.
119.730 Nonferrous metallic piping materials.

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 119.100 Intent.

This part contains requirements for the design, construction, installation, and operation of propulsion and auxiliary machinery, piping and pressure systems, steering apparatus, and associated safety systems. Machinery and equipment installed on each vessel must be suitable for the vessel and its operation and for the purpose intended. All machinery and equipment must be installed and maintained in such a manner as to afford adequate protection from causing fire, explosion, machinery failure, and personnel injury.

§ 119.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the regulations on machinery, bilge and ballast system equipment, steering apparatus, and piping systems or components which were applicable to the vessel on *[date of day before effective date of the final rule]* or, as an alternative, the vessel may comply with the regulations in this part.

(b) New installations of machinery, bilge and ballast system equipment, steering equipment, and piping systems or components on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after *[effective date of the final rule]*, must comply with the regulations of this part. Replacement of existing equipment installed on the vessel prior to *[effective date of the final rule]* need not comply with the regulations in this part.

Subpart B—Propulsion Machinery

§ 119.200 General.

(a) Propulsion machinery must be suitable in type and design for propulsion requirements of the hull in which it is installed and capable of operating at constant marine load under such requirements without exceeding its designed limitations.

(b) All engines must have at least two means for stopping the engine(s) under any operating conditions. The fuel oil shutoff required at the engine by § 119.455(b)(4) will satisfy one means of stopping the engine.

§ 119.220 Installations.

(a) The installation requirements for machinery and boilers for steam and electrically propelled vessels are contained in applicable regulations in subchapter F (Marine Engineering) and subchapter J (Electrical Engineering) of this chapter.

(b) Installation of propulsion machinery of an unusual type for small passenger vessels must be given separate consideration and must be subject to such requirements as determined necessary by the cognizant OCMI. Unusual types of propulsion machinery include:

(1) Gas turbine machinery installations;

(2) Air screws;

(3) Hydraulic jets; and

(4) Machinery installations using propulsion and lift devices.

Subpart C—Auxiliary Machinery

§ 119.300 General.

Auxiliary machinery must be suitable in type and design for the purpose intended.

§ 119.310 Installations.

(a) Auxiliary machinery of the internal combustion piston type must comply with the provisions of this part.

(b) Auxiliary machinery of the steam or gas turbine type will be given separate consideration and must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter as determined necessary by the cognizant OCMI.

(c) Auxiliary boilers and heating boilers and their associated piping and fittings will be given separate consideration and must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter as determined necessary by the cognizant OCMI, except that heating boilers must be tested or examined every three years.

§ 119.320 Hot water heaters.

(a) A hot water heater must meet the requirements of parts 52 and 63 of this chapter if rated at more than 100 psig (689 kPa) or 250 °F (121 °C).

(b) A hot water heater must meet the requirements of parts 53 and 63 of this chapter if rated at not more than 100 psig (689 kPa) and 250 °F (121 °C), except that an electric hot water heater is also acceptable if it:

(1) Has a capacity of not more than 120 gallons (454 liters);

(2) Has a heat input of not more than 58.6 kilowatts (200,000 Btu per hour);

(3) Is listed by Underwriters' Laboratories under UL 174 or 1453; and

(4) Is protected by a pressure-temperature relief device.

§ 119.330 Pressure vessels.

All unfired pressure vessels must be installed to the satisfaction of the cognizant OCMI. The design, construction, and original testing of such unfired pressure vessels must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter.

Subpart D—Specific Machinery Requirements

§ 119.400 Applicability.

(a) This subpart applies to all propulsion and auxiliary machinery installations of the internal combustion piston type.

(c) Where no specific fuel designation exists, the requirements of this subpart are applicable to all types of fuels and machinery.

§ 119.405 Fuel restrictions.

The use of a fuel, other than diesel fuel, as an alternative fuel for an internal combustion engine, except gasoline when used as a fuel for outboard motors as allowed by § 119.458, will be reviewed on a case-by-case basis by the Commandant.

§ 119.410 General requirements.

(a) Each starting motor, generator, and spark producing device must be mounted as high above the bilges as practicable.

(b) Gauges to indicate RPM, engine cooling water discharge temperature, and lubricating oil pressure must be provided for all propulsion engines installed in the vessel. The gauges must be readily visible at the operating station.

(c) In systems and applications where flexible hoses are permitted to be clamped:

(1) Double hose clamping is required on each end of the hose, where practicable, except that one hose clamp can be used if the pipe ends are expanded or beaded to provide a positive stop against hose slippage;

(2) The clamps must be of a corrosion resistant metallic material; and

(3) The clamps must not depend on spring tension for their holding power.

(d) An overspeed trip and or shutdown device must be installed on all diesel engine installations designed to produce 300 or more horsepower under ideal conditions, as follows:

(1) For main propulsion engines, meet section 34.11.6 of the ABS "Rules for Building and Classing Steel Vessels."

(2) For generator prime movers, meet section 35.21.2 of the ABS "Rules for Building and Classing Steel Vessels."

§ 119.420 Engine cooling.

(a) Except as otherwise provided in paragraph (b) of this section, all engines must be water cooled and meet the requirements of this paragraph.

(1) The engine head, block, and exhaust manifold must be water jacketed and cooled by water from a pump which operates whenever the engine is operating.

(2) A suitable hull strainer must be installed in the circulating raw water intake line of an engine cooling water system.

(3) A closed fresh water system may be used to cool the engine.

(b) A propulsion or auxiliary diesel engine may be air cooled or employ an air cooled jacket water radiator when:

(1) Installed on an open deck and sufficient ventilation for machinery cooling is available; or

(2) Installed in an enclosed or partially enclosed space for which ventilation for machinery cooling which complies with the requirement of § 119.465(b) of this chapter is provided, and other necessary safeguards are taken so as not to endanger the vessel.

§ 119.422 Keel and grid cooler installations.

(a) A keel or grid cooler installation used for engine cooling must be designed to prevent flooding.

(b) A shutoff valve must be located where the cooler piping penetrates the shell, as near the shell as practicable, except where the penetration is forward of the collision bulkhead.

(c) The thickness of the inlet and discharge connections, outboard of the shutoff valves required by paragraph (b) of this section, must be at least Schedule 80.

(d) Short lengths of approved nonmetallic flexible hose, fixed by hose clamps, may be used at machinery connections for a keel cooler installation.

§ 119.425 Engine exhaust cooling.

(a) Except as otherwise provided in this paragraph, all engine exhaust pipes must be water cooled.

(1) Vertical dry exhaust pipes are permissible if installed in compliance with §§ 116.405(c) and 116.970 of this subchapter.

(2) Horizontal dry exhaust pipes are permitted only if:

(i) They do not pass through living or berthing spaces;

(ii) They terminate above the deepest load waterline;

(iii) They are so arranged as to prevent entry of cold water from rough or boarding seas;

(iv) They are constructed of corrosion resisting material at the hull penetration; and

(v) They are installed in compliance with §§ 116.405(c) and 116.970 of this subchapter.

(b) The exhaust pipe cooling water system must comply with the requirements of this paragraph.

(1) Water for cooling the exhaust pipe must be obtained from the engine cooling water system or a separate engine driven pump.

(2) Water for cooling an exhaust pipe, other than a vertical exhaust, must be injected into the exhaust system as near to the engine manifold as practicable. The water must pass through the entire length of the exhaust pipe.

(3) The part of the exhaust system between the point of cooling water injection and the engine manifold must be water-jacketed or effectively insulated and protected in compliance with §§ 116.400(b) and 116.970 of this subchapter.

(4) Each vertical exhaust pipe must be water-jacketed or suitably insulated between the engine manifold and the spark arrester required by § 119.430(g).

(5) When the exhaust cooling water system is separate from the engine cooling water system, a suitable warning device, visual or audible, must be installed at the operating station to indicate any reduction in normal water flow in the exhaust cooling system.

(6) A suitable hull strainer must be installed in the circulating raw water intake line for the exhaust cooling system.

(c) Engine exhaust cooling systems built in accordance with the requirements of ABYC P–1 will be considered as meeting the requirements of this section.

§ 119.430 Engine exhaust pipe installation.

(a) The design of all exhaust systems must ensure minimum risk of injury to personnel. Protection must be provided in compliance with § 116.970 of this subchapter at such locations where persons or equipment might come in contact with an exhaust pipe.

(b) Exhaust gas must not leak from the piping or any connections. The piping must be properly supported by noncombustible hangers or blocks.

(c) The exhaust piping must be so arranged as to prevent backflow of water from reaching engine exhaust ports under normal conditions.

(d) An exhaust pipe discharge located less than 3 inches above the deepest load waterline must be fitted with means to prevent the ingress of water.

(e) Pipes used for wet exhaust lines must be at least Schedule 80 or corrosion-resistant material and adequately protected from mechanical damage.

(f) Where flexibility is necessary, a section of flexible metallic hose may be used. Nonmetallic hose may be used for wet exhaust systems provided it is especially adapted to resist the action of oil, acid, and heat, and has a wall thickness sufficient to prevent collapsing or panting.

(g) Where an exhaust pipe passes through a watertight bulkhead, the watertight integrity of the bulkhead must be maintained. Noncombustible packing must be used in bulkhead penetration glands for dry exhaust systems. A wet exhaust pipe may be welded to a steel bulkhead in way of a penetration if suitable arrangements are provided to relieve the stresses resulting from the expansion of the exhaust piping.

(h) A dry exhaust pipe must:

(1) If it passes through a combustible bulkhead or partition, be kept clear of and suitably insulated or shielded from combustible material.

(2) Be provided with noncombustible hangers and blocks for support.

(i) An exhaust pipe discharge terminating in a transom must be located as far outboard as practicable so that exhaust gases cannot re-enter the vessel.

(j) Arrangements must be made to provide access to allow complete inspection of the exhaust piping throughout its length.

(k) An exhaust installation subject to pressures in excess of 15 pounds per square inch gauge or having exhaust pipes passing through living or working spaces must meet the material requirements of part 56 of subchapter F (Marine Engineering) of this chapter.

(l) Engine exhaust installations built in accordance with the requirements of ABYC P–1 will be considered as meeting the requirements of this section.

§ 119.435 Integral fuel tanks.

(a) Diesel fuel tanks may not be built integral with the hull of a vessel unless the hull is made of steel or aluminum.

(b) During the initial inspection for certification of a vessel, integral fuel tanks must withstand a hydrostatic pressure test of 5 pounds per square inch, or the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 11.5 feet in height attached to the tank may be filled with water to accomplish the 5 pounds per square inch test.

§ 119.440 Independent fuel tanks.

(a) *Materials and construction.* Independent fuel tanks must be designed and constructed of materials in compliance with the requirements of this paragraph.

(1) The material used and the minimum thickness allowed must be as indicated in Table 119.440(a)(1), except that other materials which provide equivalent safety may be approved for use under paragraph (a)(3) of this section. Tanks having a capacity of more than 150 gallons must be designed to withstand the maximum head to which they may be subjected in service, but in no case may the thickness be less than that specified in Table 119.440(a)(1).

TABLE.—119.440(a)(1)

Material	ASTM specification (latest edition)	Thickness in inches & gage number[1] vs. tank capacities for		
		1 to 80 gallon tanks	More than 80 and not more than 150 gallon tanks	Over 150[2] gallon tanks
Nickel-copper	B127, hot rolled sheet or plate	0.037 (USSG 20)[3].	0.050 (USSG 18)	0.107 (USSG 12)
Steel or iron[4 5]		0.0747 (MSG 14)	0.1046 (MSG 12)	0.1793 (MSG 7)

TABLE.—119.440(a)(1)—Continued

Material	ASTM specification (latest edition)	Thickness in inches & gage number[1] vs. tank capacities for		
		1 to 80 gallon tanks	More than 80 and not more than 150 gallon tanks	Over 150[2] gallon tanks
Aluminum[6]	B209, alloy 5052, 5083, 5086	0.250 (USSG 3)	0.250 (USSG 3)	0.250 (USSG 3)
Fiber reinforced plastic		As required[7]	As required[7]	As required[7]

[1] The gage numbers used in this table may be found in many standard engineering reference books. The letters "USSG" stand for "U.S. Standard Gage," which was established by the act of March 3, 1892 (15 U.S.C. 206), for sheet and plate iron and steel. The letters "MSG" stand for "Manufacturers' Standard Gage" for sheet steel thickness.

[2] Tanks over 400 gallons shall be designed with a factor of safety of four on the ultimate strength of the material used with a design head of not less than 4 feet of liquid above the top of the tank.

[3] Nickel-copper not less than 0.031 inch (USSG 22) may be used for tanks up to 30-gallon capacity.

[4] Tanks intended for use with diesel oil shall not be internally galvanized.

[5] Stainless steel tanks are not included in this category.

[6] Anodic to most common metals. Avoid dissimilar metal contact with tank body.

[7] The requirements of § 119.440(a)(2) apply.

(2) Fiber reinforced plastic may be used for diesel fuel tanks under the following provisions:

(i) The materials must be fire retardant. Flammability of the material must be determined by the standard test methods ASTM D635 and ASTM D2863. The results of these tests must show that the average extent of burning is less than 0.394 inches (10mm), the average time of burning is less than 50 seconds, and the limiting oxygen index is greater than 21.

(ii) Tanks must meet UL 1102. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(iii) Tanks must be designed to withstand the maximum head to which they may be subjected to in service.

(iv) Installation of nozzles, flanges or other fittings for pipe connections to the tanks must be acceptable to the cognizant OCMI.

(v) Baffle plates, if installed, must be of the same material and not less than the minimum thickness of the tank walls. Limber holes at the bottom and air holes at the top of all baffles must be provided. Baffle plates must be installed at the time the tests required by UL 1102 are conducted.

(3) Materials other than those listed in Table 119.440(a)(1) must be approved by the Commandant. An independent tank using material approved by the Commandant under this paragraph (a) must meet the testing requirements of UL 1102. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(4) Tanks with flanged-up top edges which may trap and hold moisture are prohibited.

(5) Openings for fill pipes, vent pipes, and machinery fuel supply pipes, and openings for fuel level gauges, where used, must be on the topmost surfaces of tanks. Tanks may not have any openings in bottoms, sides, or ends, except for:

(i) An opening fitted with a threaded plug or cap installed for tank cleaning purposes; and

(ii) In a diesel fuel tank, openings for supply piping and tubular gauge glasses.

(6) All tank joints must be welded or brazed. Lap joints may not be used.

(7) Nozzles, flanges, or other fittings for pipe connections to a metal tank must be welded or brazed to the tank. Tank openings in way of pipe connections must be properly reinforced where necessary. Where fuel level gauges are used on a metal tank, the flanges to which gauge fittings are attached must be welded or brazed to the tank. Tubular gauge glasses, if fitted to diesel fuel tanks, must be of heat resistant materials, adequately protected from mechanical damage, and provided at the tank connections with devices which will automatically close in the event of rupture of the gauge or gauge lines.

(8) A metal tank exceeding 30 inches in any horizontal dimension must:

(i) Be fitted with vertical baffle plates, which meet paragraph (a)(9) of this section, at intervals not exceeding 30 inches to provide strength and to control the excessive surge of fuel; or

(ii) The owner shall submit calculations to the cognizant OCMI demonstrating the structural adequacy of the tank in a fully loaded static condition and in a worst case dynamic (sloshing) condition.

(9) Baffle plates, where required in metal tanks, must be of the same material and not less than the minimum thickness required in the tank walls and must be connected to the tank walls by welding or brazing. Limber holes at the bottom and air holes at the top of all baffles must be provided.

(10) Iron or steel diesel fuel tanks must not be galvanized on the interior. Galvanizing, paint, or other suitable coating must be used to protect the outside of iron and steel diesel fuel tanks.

(b) *Location and installation.* Independent fuel tanks must be located and installed in compliance with the requirements of this paragraph.

(1) Fuel tanks must be located in, or as close as practicable to, machinery spaces.

(2) Fuel tanks and fittings must be so installed as to permit examination, testing, or removal for cleaning with minimum disturbance to the hull structure.

(3) Fuel tanks must be adequately supported and braced to prevent movement. The supports and braces must be insulated from contact with the tank surfaces with a nonabrasive and nonabsorbent material.

(4) All fuel tanks must be electrically bonded to a common ground.

(c) *Tests.* Independent fuel tanks must be tested in compliance with the requirements of this part prior to being used to carry fuel.

(1) Prior to installation, tanks vented to the atmosphere must be hydrostatically tested to, and must withstand, a pressure of 5 pounds per square inch or 1.5 times the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 11.5 feet in height attached to the tank may be filled with water to accomplish the 5 pounds per square inch test. Permanent deformation of the tank will not be cause for rejection unless accompanied by leakage.

(2) After installation of the fuel tank on a vessel, the complete installation must be tested in the presence of a marine inspector to a head not less than that to which the tank may be subjected

in service. Fuel may be used as the testing medium.

(3) All tanks not vented to the atmosphere must be constructed and tested in accordance with § 119.330.

§ 119.445 Fill and sounding pipes for fuel tanks.

(a) Fill pipes for fuel tanks must be not less than 1.5 inches nominal pipe size.

(b) There must be a means of accurately determining the amount of fuel in each fuel tank either by sounding, through a separate sounding pipe or a fill pipe, or by an installed marine type fuel gauge.

(c) Where sounding pipes are used, each opening must be at least as high as the opening of the fill pipe and they must be kept closed at all times except during sounding.

(d) Fill pipes and sounding pipes must be so arranged that overflow of liquid or vapor cannot escape to the inside of the vessel.

(e) Fill pipes and sounding pipes must run as directly as possible, preferably in a straight line, from the deck connection to the top of the tank. Such pipes must terminate on the weather deck and must be fitted with shutoff valves, watertight deck plates, or screw caps, suitably marked for identification. Diesel fill pipes and sounding pipes may terminate at the top of the tank.

(f) Where a flexible fill pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1.5 times the pipe diameter and must be secured at each end by clamps. The flexible section must be accessible and as near the upper end of the fill pipe as practicable. When the flexible section is a nonconductor of electricity, the metallic sections of the fill pipe separated thereby must be joined by a conductor for protection against generation of a static charge when filling with fuel.

§ 119.450 Vent pipes for fuel tanks.

(a) Each unpressurized fuel tank must be fitted with a vent pipe connected to the highest point of the tank.

(b) The minimum net cross sectional area of the vent pipe for diesel fuel tanks must be as follows:

(1) Not less than the cross sectional area of ⅝-inch outer diameter (O.D.) tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe terminates at the top of the tank;

(2) Not less than the cross sectional area of ¾-inch O.D. tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe extends into the tank; and

(3) Not less than the cross sectional area of the fill pipe if the tank is filled under pressure.

(c) The discharge ends of fuel tank vent pipes must terminate on the hull exterior as high above the waterline as practicable and remote from any hull openings, or they must terminate in U-bends as high above the weather deck as practicable and as far as practicable from openings into any enclosed spaces. Vent pipes terminating on the hull exterior must be installed or equipped to prevent the accidental contamination of the fuel by water under normal operating conditions.

(d) The discharge ends of fuel tank vent pipes must be fitted with removable flame screens or flame arresters. The flame screens must consist of a single screen of corrosion resistant wire of at least 30x30 mesh. The flame screens or flame arresters must be of such size and design as to prevent reduction in the net cross sectional area of the vent pipe and permit cleaning or renewal of the flame screens or arrester elements.

(e) Where a flexible vent pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1.5 times the pipe diameter and must be secured at each end by clamps. The flexible section must be accessible and as near the upper end of the vent pipe as practicable.

§ 119.455 Fuel piping.

(a) *Materials and workmanship.* The materials and construction of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Fuel lines must be annealed tubing of copper, nickel-copper, or copper-nickel having a minimum wall thickness of 0.035 inch except that:

(i) Diesel fuel piping of other materials, such as seamless steel pipe or tubing, which provide equivalent safety may be used;

(ii) Diesel fuel piping of aluminum is acceptable on aluminum hull vessels provided it is installed outside the machinery space and is at least Schedule 80; and

(iii) When used, flexible hose must meet the requirements of § 56.60–25 of this chapter.

(2) Tubing connections and fittings must be of nonferrous drawn or forged metal of the flared type except that flareless fittings of the nonbite type may be used when the tubing system is of nickel-copper or copper-nickel. When making tube connections, the tubing must be cut square and flared by suitable tools. Tube ends must be annealed before flaring.

(3) Cocks are prohibited except for the solid bottom type with tapered plugs and union bonnets.

(b) *Installation.* The installation of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Diesel fuel lines may be connected to the fuel tank at or near the bottom of the tank.

(2) Fuel lines must be accessible, protected from mechanical injury, and effectively secured against excessive movement and vibration by the use of soft nonferrous metal straps which have no sharp edges and are insulated to protect against corrosion. Where passing through bulkheads, fuel lines must be protected by close fitting ferrules or stuffing boxes. All fuel lines and fittings must be accessible for inspection.

(3) Shutoff valves, installed so as to close against the fuel flow, must be fitted in the fuel supply lines, one at the tank connection and one at the engine end of the fuel line to stop fuel flow when servicing accessories. The shutoff valve at the tank must be manually operable from outside the compartment in which the valve is located, preferably from an accessible position on the weather deck. If the shutoff valve at the tank is located inside the tank compartment, it must be located so that the operator does not have to reach more than 12 inches into the compartment and be shielded from flames by the same material the hull is constructed of, or some noncombustible material. Electric solenoid valves must not be used, unless used in addition to the manual valve.

(4) A loop of copper tubing or a short length of flexible hose must be installed in the fuel supply line at or near the engines. The flexible hose must meet the requirements of § 56.60–25 of this chapter.

(5) A suitable metal marine type strainer, meeting the requirements of the engine manufacturer, must be fitted in the fuel supply line in the engine compartment. Strainers must be leak free. Strainers must be of the type opening on top for cleaning screens. Fuel filter and strainer bowls must be highly resistant to shattering due to mechanical impact and resistant to failure due to thermal shock. Fuel filters fitted with bowls of other than steel construction must be approved by the Commandant and be protected from mechanical damage. Approval of bowls of other than steel construction will specify if a flame shield is required.

(6) All accessories installed in the fuel line must be independently supported.

(7) Valves for removing water or impurities from diesel fuel in water traps or strainers are permitted. These valves must be provided with caps or plugs to prevent fuel leakage.

§ 119.458 Portable fuel systems.

(a) Portable fuel systems, including portable tanks and related fuel lines and accessories, are prohibited except where used for outboard motor installations.

(b) The design, construction and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC H–25.

§ 119.465 Ventilation of spaces containing diesel machinery.

(a) A space containing diesel machinery must be fitted with adequate means, such as dripproof ventilators, ducts, or louvers, to provide sufficient air for proper operation of main engines and auxiliary engines.

(b) Air-cooled propulsion and auxiliary diesel engines installed below deck, as permitted by § 119.420, must be fitted with air supply ducts or piping from the weather deck. The ducts or piping must be so arranged and supported to be capable of safely sustaining stresses induced by weight and engine vibration and to minimize transfer of vibration to the supporting structure. Prior to installation of ventilation system for such engines, plans or sketches showing machinery arrangement including air supplies, exhaust stack, method of attachment of ventilation ducts to the engine, location of spark arresting mufflers and capacity of ventilation blowers must be submitted to the cognizant OCMI for approval.

(c) A space containing diesel machinery must be fitted with at least two ducts to furnish natural or powered supply and exhaust ventilation. One duct must extend to a point near the bottom of the space, and be so installed that the ordinary collection of water in the bilge will not block air flow in the duct. Where powered ventilation is installed, the duct extending near the bottom of the space must be the exhaust. The total inlet area and the total outlet area of each ventilation duct may not be less than one square inch for each foot of beam of the vessel. These minimum areas must be increased as necessary when the ducts are considered as part of the air supply to the engines.

(d) A duct must be of rigid permanent construction, which does not allow any appreciable vapor flow except through normal openings, and made of the same material as the hull or of noncombustible material. The duct must lead as directly as possible from its intake opening to its terminus and be securely fastened and supported.

(e) A supply duct must be provided with a cowl or scoop having a free area not less than twice the required duct area. When the cowl or scoop is screened, the mouth area must be increased to compensate for the area of the screen wire. A cowl or scoop must be kept open at all times except when the weather is such as to endanger the vessel if the openings are not temporarily closed.

(f) Dampers may not be fitted in a supply duct.

(g) A duct opening may not be located where the natural flow of air is unduly obstructed, adjacent to possible sources of vapor ignition, or where exhaust air may be taken into a supply duct.

(h) Provision must be made for closing all supply duct cowls or scoops and exhaust duct discharge openings for a space protected by a fixed gas extinguishing system. All closure devices must be readily available and mounted in the vicinity of the vent.

§ 119.470 Ventilation of spaces containing diesel fuel tanks.

(a) Unless provided with ventilation which complies with § 119.465, a space containing a diesel fuel tank and no machinery must meet one of the following requirements:

(1) A space of 500 cubic feet or more in volume must have a gooseneck vent of not less than 2.5 inches in diameter; or

(2) A space of less than 500 cubic feet in volume must have a gooseneck vent of not less than 1.5 inches in diameter.

(b) Vent openings may not be located adjacent to possible sources of vapor ignition.

Subpart E—Bilge and Ballast Systems

§ 119.500 General.

(a) A vessel must be provided with a satisfactory arrangement for draining any watertight compartment, other than small buoyancy compartments, under all practicable conditions. Sluice valves are not permitted in watertight bulkheads.

(b) Special consideration may be given to vessels, such as dynamically supported craft, that have a high degree of subdivision and utilize numerous small buoyancy compartments. Where the probability of flooding of the space is limited to external hull damage, compartment drainage may be omitted provided it can be shown by stability calculations, submitted to the cognizant OCMI, that the safety of the vessel will not be impaired.

§ 119.510 Bilge piping system.

A vessel must be provided with a piping system that meets § 56.50–50 of this chapter, with the following exceptions:

(a) The space forward of the collision bulkhead need not be fitted with a bilge suction line when the arrangement of the vessel is such that ordinary leakage may be removed from this compartment by the use of a hand portable bilge pump or other equipment, and such equipment is provided; and

(b) The vessel need not comply with § 56.50–50(f).

§ 119.520 Bilge pumps.

(a) Each vessel must be provided with bilge pumps in accordance with § 56.50–55 of this chapter, with the following exceptions:

(1) Note 1 in Table 56.50–55(a) is not applicable and should be disregarded; and

(2) A non-self-propelled vessel must comply with § 56.50–55(a) of this chapter instead of § 56.50–55(b).

(b) In addition to the requirements of paragraph (a) of this section, a vessel of not more than 65 feet in length must have a portable hand bilge pump which must be:

(1) Capable of pumping water, but not necessarily simultaneously, from all watertight compartments; and

(2) Provided with suitable suction and discharge hoses capable of reaching the bilges of each watertight compartment, and discharging overboard.

(c) A second power pump is an acceptable alternative to a hand pump if it is supplied by a source independent of the first power bilge pump.

§ 119.530 Bilge level alarms.

(a) Each vessel must be provided with a visual and audible alarm at the operating station to indicate high bilge level in all normally unattended machinery spaces located below the deepest load waterline.

(b) A visual indicator must be provided at the operating station to indicate when any automatic bilge pump is operating.

§ 119.540 Ballast systems.

Solid and water ballast must comply with the requirements of subpart L of part 116 of this subchapter.

Subpart F—Steering Systems

§ 119.600 General.

A self-propelled vessel must meet the applicable requirements for main and

auxiliary steering apparatus in subchapters F (Marine Engineering) and J (Electrical Engineering) of this chapter.

Subpart G—Piping Systems

§ 119.700 General.

Materials used in piping systems must meet the requirements of this subpart and be otherwise acceptable to the cognizant OCMI.

§ 119.710 Piping for vital systems.

(a) Vital systems are those systems which are vital to a vessel's survivability and safety. For the purpose of this part the following are vital systems:

(1) Fuel system;
(2) Fire main;
(3) CO_2 and Halon systems;
(4) Bilge system;
(5) Steering system;
(6) Propulsion system and its necessary auxiliaries and controls;
(7) Ship's service and emergency electrical generation system and its necessary auxiliaries; and
(8) A marine engineering system identified by the cognizant OCMI as being crucial to the survival of the vessel or to the protection of the personnel on board.

(b) For the purpose of this part, a system not identified in paragraph (a) of this section is a non-vital system.

(c) Piping used in a vital system must meet part 56, subpart 56.60 of this chapter, except that § 119.730 replaces § 56.60–20 of this chapter.

§ 119.715 Piping subject to more than 150 psi in non-vital systems.

Piping subject to more than 150 psi in a non-vital system must be designed, fabricated, and inspected in accordance with the principles of ANSI B 31.1 or other industry standard acceptable to the Commandant.

§ 119.720 Nonmetallic piping materials.

Nonmetallic piping materials, including nonmetallic flexible hose assemblies, must meet the requirements of § 56.60–25 of this chapter.

§ 119.730 Nonferrous metallic piping materials.

(a) Nonferrous metallic piping materials are acceptable for use in the following:

(1) Non-vital systems;
(2) Aluminum fuel piping on an aluminum hulled vessel, if at least Schedule 80 and located outside the machinery space;
(3) Aluminum bilge, ballast, and firemain piping on an aluminum hulled vessel;
(4) If acceptable to the cognizant OCMI, nonferrous metallic piping with a melting temperature above 1700°F may be used in vital systems that are deemed to be galvanically compatible; and
(5) Other uses specifically accepted by the cognizant OCMI.

(b) Where nonferrous metallic material is permitted for use in piping systems by this subpart, the restrictions in this paragraph apply:

(1) Provisions must be made to protect piping systems using aluminum alloys in high risk fire areas due to the low melting point of aluminum alloys;

(2) Provisions must be made to prevent or mitigate the effect of galvanic corrosion due to the relative solution potentials of copper, aluminum, and alloys of copper and aluminum, which are used in conjunction with each other, steel, or other metals and their alloys;

(3) A suitable thread compound must be used in making up threaded joints in aluminum pipe to prevent seizing. Pipe in the annealed temper must not be threaded;

(4) The use of aluminum alloys with a copper content exceeding 0.6 percent is prohibited; and

(5) The use of cast aluminum alloys in hydraulic fluid power systems must be in accordance with the requirements of § 58.30–15(f) of this chapter.

PART 120—ELECTRICAL INSTALLATIONS

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Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 120.100 Intent.

This part contains requirements for the design, construction, installation, and operation of electrical equipment and systems including power sources, lighting, motors, miscellaneous equipment, and safety systems.

§ 120.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b) and (c) of this section, an existing vessel must comply with the regulations on electrical installations, equipment, and material which were applicable to the vessel on [date of the day before the effective date of the final rule] or, as an alternative, the vessel may comply with the regulations in this part.

(b) An existing vessel must comply with the requirements of §§ 120.420 and 120.430.

(c) New installations of electrical equipment and material, and the repair or replacement of wire and cable, on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after [effective date of the final rule], must comply with this part. Replacement of existing equipment, not including wire or cable, installed on the the vessel prior to [effective date of the final rule] need not comply with the regulations in this part.

Subpart B—General Requirements

§ 120.200 General design, installation, and maintenance requirements.

Electrical equipment on a vessel must be installed and maintained to:

(a) Provide services necessary for safety under normal and emergency conditions;

(b) Protect passengers, crew, other persons, and the vessel from electrical hazards, including fire, caused by or originating in electrical equipment, and electrical shock;

(c) Minimize accidental personnel contact with energized parts; and

(d) Prevent electrical ignition of flammable vapors.

§ 120.210 Protection from wet and corrosive environments.

(a) Electrical equipment used in the following locations must be dripproof:

(1) A machinery space;

(2) A location normally exposed to splashing, water washdown, or other wet conditions within a galley, a laundry, or a public washroom or toilet room that has a bath or shower; or

(3) Another space with a similar moisture level.

(b) Electrical equipment exposed to the weather must be watertight.

(c) Electrical equipment exposed to corrosive environments must be of suitable construction and corrosion-resistant.

§ 120.220 General safety provisions.

(a) Electrical equipment and installations must be suitable for the roll, pitch, and vibration of the vessel underway.

(b) All equipment, including switches, fuses, lampholders, etc., must be suitable for the voltage and current utilized.

(c) Receptacle outlets of the type providing a grounded pole or a specific direct current polarity must be of a configuration that will not permit improper connection.

(d) All electrical equipment and circuits must be clearly marked and identified.

(e) Any cabinet, panel, box, or other enclosure containing more than one source of power must be fitted with a sign warning persons of this condition and identifying the circuits to be disconnected.

Subpart C—Power Sources and Distribution Systems

§ 120.310 Power sources.

(a)(1) Each vessel that relies on electricity to power the following loads must have at least two sources of electricity for each load:

(i) The vital systems listed in § 119.710 of this subchapter.

(ii) Interior lighting except for decorative lights.

(iii) Communication systems including a public address system required under § 121.610 of this subchapter.

(iv) Navigation equipment and lights.

(2) Except as provided in § 120.312, a vessel with batteries of adequate capacity to supply the loads specified in paragraph (a)(1) of this section, and a generator or alternator driven by a propulsion engine, complies with the requirement in paragraph (a)(1) of this section.

(b) Where a ship service generator driven by a propulsion engine is used as a source of electrical power, a vessel speed change, throttle movement or change in direction of the propeller shaft rotation must not interrupt power to any of the loads specified in paragraph (a)(1) of this section.

§ 120.312 Power sources on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have:

(a) Two generator sets;

(b) An electrical power system which complies with the requirements of §§ 111.10–4, 111.10–5, 111.10–9, 111.10–11 of this chapter; and

(c) A final emergency power source, as defined by § 112.01–20 of this chapter, with sufficient capacity to power the loads listed in § 112.15–5 of this chapter.

§ 120.320 Generators and motors.

(a) Each generator and motor must be:

(1) In a location that is accessible, adequately ventilated, and as dry as practicable; and

(2) Mounted above the bilges to avoid damage by splash and to avoid contact with low lying vapors.

(b) Each generator and motor must be designed for an ambient temperature of 50°C (122°F) except that:

(1) If the ambient temperature in the space where a generator or motor will be located will not exceed 40°C under normal operating conditions, the generator or motor may be designed for an ambient temperature of 40°C; and

(2) A generator or motor designed for 40°C may be used in 50°C ambient locations provided the generator or motor is derated to 80 percent of the full load rating, and the rating or setting of the overcurrent devices is reduced accordingly.

(c) A voltmeter and an ammeter, which can be used for measuring voltage and current of a generator that is in operation, must be provided for a generator rated at 50 volts or more. For each alternating current generator, a means for measuring frequency must also be provided. Additional control equipment and measuring instruments must be provided, if needed, to ensure satisfactory operation of each generator.

(d) Each generator must have a nameplate attached to it containing the information required by Article 445 of the NEC (NFPA 70), and for a generator derated in accordance with paragraph (b)(2) of this section, the derated capacity.

(e) Each motor must have a nameplate attached to it containing the information required by Article 430 of the NEC (NFPA 70), and for a motor derated in accordance with paragraph (b)(2) of this section, the derated capacity.

§ 120.322 Multiple generators.

When a vessel is equipped with two or more generators to supply ship's service power, the following requirements must be met:

(a) Each generator must have an independent prime mover; and

(b) The generator circuit breakers must be interlocked to prevent the generators from being simultaneously connected to the switchboard, except for the circuit breakers of a generator operated in parallel with another generator when the installation meets §§ 111.05–13, 111.12–11(f), 111.30–19(a), and 111.30–25(d) of this chapter.

§ 120.324 Dual voltage generators.

When a dual voltage generator is installed on a vessel:

(a) The neutral of a dual voltage system must be solidly grounded at the switchboard's neutral bus and be accessible for checking the insulation resistance of the generator to ground before the generator is connected to the bus; and

(b) Ground detection must be provided that:

(1) For an alternating current system, meets § 111.05–27 of this chapter; and

(2) For a direct current system, meets § 111.05–29 of this chapter.

§ 120.330 Distribution panels and switchboards.

(a) Each distribution panel and switchboard must be in as dry a location as practicable, accessible, adequately ventilated, and protected from falling debris and dripping or splashing water.

(b) Each distribution panel or switchboard must be totally enclosed and of the dead front type.

(c) Each switchboard must have nonconductive handrails.

(d) Each switchboard must be fitted with a dripshield.

(e) Distribution panels and switchboards which are accessible from the rear must be constructed to prevent a person from accidentally contacting energized parts.

(f) Working space must be provided around all main distribution panels and switchboards of at least 24 inches in front of the switchboard, and behind the switchboard at least 18 inches from the nearest bulkhead, stiffener, or frame, or have no rear access.

(g) Nonconducting mats or grating must be provided on the deck in front of each switchboard and, if accessible from the rear, on the deck in the rear of the switchboard.

(h) All uninsulated current carrying parts must be mounted on noncombustible, nonabsorbent, high dielectric insulating material.

(i) Equipment mounted on a hinged door of an enclosure must be constructed or shielded so that a person will not accidentally contact energized parts of the door mounted equipment when the door is open and the circuit energized.

(j) In the design of a control, interlock, or indicator circuit, all practicable steps must be taken to eliminate all but one source of potential in an enclosure. If the control functions make it impracticable to energize the control, interlock or indicator circuit from the load side of a motor and control disconnect device, each conductor of such a circuit, except those vital circuits identified in § 119.710 of this subchapter, must be disconnected from all sources of potential by a disconnect device actuated by the opening of the controller door. The disconnect device and its connections, including each terminal block for terminating the vessel's wiring, must not have any electrically unshielded or uninsulated surfaces.

(k) Switchboards and distribution panels must be adequately sized for the expected loads.

§ 120.340 Cable and wiring requirements.

(a) If individual wires, rather than cables, are used in systems greater than 50 volts, the wire must be run in a protective enclosure. The protective enclosure must have drain holes to prevent the build up of condensation.

(b) All cable and wire must:

(1) Have stranded copper conductors with sufficient current carrying capacity for the circuit in which they are used;

(2) Be installed in a manner to avoid or reduce interference with radio reception and compass indication;

(3) Be protected from the weather;

(4) Be installed with metal supports spaced not more than 24 inches apart, and in such a manner as to avoid chafing and other damage. The use of plastic tie wraps must be limited to bundling or retention of multiple cable installations, and not used as a means of support;

(5) Not be installed with sharp bends;

(6) Be protected by metal coverings or other suitable means if in areas subject to mechanical abuse;

(7) Be suitable for low temperature and high humidity if installed in refrigerated compartments;

(8) Not be located in a tank unless the cable provides power to equipment in the tank; and

(9) Have sheathing or wire insulation compatible with the fluid in a tank when installed as allowed by paragraph (b)(8) of this section.

(c) Conductors in power and lighting circuits must be No. 14 AWG or larger. Conductors in control and indicator circuits must be No. 22 AWG or larger.

(d) Cable and wire for power and lighting circuits must:

(1) Meet Section 310–13 of the NEC (NFPA 70) except that asbestos insulated cable and dry location cables can not be used;

(2) Be listed by Underwriters Laboratories Inc. as UL Boat or UL Marine cable; or

(3) Meet § 111.60–1 of this chapter.

(e) Cable or wire serving vital systems listed in § 119.710 of this subchapter or emergency loads must be routed as far as practicable from high risk fire areas such as galleys, laundries, and machinery spaces.

(f) Cable or wire serving duplicated equipment must be separated so that a casualty that affects one cable does not effect the other.

(g) Each connection to a conductor or terminal part of a conductor that is larger than No. 10 AWG must be made within an enclosure and have:

(1) A pressure type connector on each conductor;

(2) A solder lug on each conductor;

(3) A splice made with a pressure type connector to a flexible lead or conductor; or

(4) A splice that is soldered, brazed, or welded to a flexible lead or conductor.

(h) Each connection to a conductor or a terminal part of a conductor that is No. 10 AWG or smaller must be made within an enclosure and:

(1) Meet paragraph (g) of this section; or

(2) Have clamps or screws with terminal plates that have turned lugs or other suitable means to capture the terminal.

(i) A connector or lug of the set screw type must not be used with a stranded conductor smaller than No. 14 AWG except if there is a nonrotating follower that travels with the set screw and makes pressure contact with the conductor.

(j) Each pressure type wire connector and lug must meet UL 486A. The use of wire nuts is prohibited.

(k) Each terminal block must have 6–32 terminal screws or larger.

(l) Wire connectors utilized in conjunction with screw type terminal blocks must be of the captive type such as the ring or the flanged spade type.

(m) A cable must not be spliced in:

(1) A hazardous location; or

(2) In another location except:

(i) A cable installed in a subassembly may be spliced to a cable installed in another subassembly;

(ii) For a vessel receiving alterations, a cable may be spliced to extend a circuit;

(iii) A cable having a large size or exceptional length may be spliced to facilitate its installation; and

(iv) A cable may be spliced to replace a damaged section of the cable if, before replacing the damaged section, the insulation resistance of the remainder of the cable is measured, and it is determined that the condition of the insulation is unimpaired.

(n) All material in a cable splice must be chemically compatible with all other material in the splice and with the materials in the cable.

(o) Ampacities for conductors must meet Section 310–15 of the NEC (NFPA 70) or IEEE Standard 45, as appropriate.

(p) Conductors must be sized so that the voltage drop at the load terminals does not exceed 10 percent. Table 120.340(p) indicates the size of conductor required for corresponding lengths and steady state (stable) values to obtain not more than this voltage drop at the load terminals of a two conductor circuit.

TABLE 120.340(P).—CONDUCTOR SIZES FOR AMPERES—LENGTHS

Total current on circuit, amperes	Length of conductor in feet from source of current to most distant fixture [12 volts, 2-wire—10 percent drop wire sizes (A.W.G.)]										
	10	15	20	25	30	35	40	45	50	55	60
5	14	14	14	14	14	14	14	14	12	12	12
10	14	14	14	12	12	12	10	10	10	10	8
15	14	14	12	10	10	10	8	8	8	8	8

TABLE 120.340(P).—CONDUCTOR SIZES FOR AMPERES—LENGTHS—Continued

Total current on circuit, amperes	Length of conductor in feet from source of current to most distant fixture [12 volts, 2-wire—10 percent drop wire sizes (A.W.G.)]										
	10	15	20	25	30	35	40	45	50	55	60
20	12	12	10	10	8	8	8	8	6	6	6
25	10	10	10	8	8	8	6	6	6	6	4

Other values can be computed by means of the following formula:

$$cm = \frac{K \times I \times L (\times 2 \text{ for two-wire circuit})}{E} \quad (1)$$

Where:

cm = Circular-mil area of conductor

K = 10.75 (a constant representing the mil-foot resistance of copper).

I = Load current, in amperes.

L = Length of conductor from center of distibution, in feet.

E = Voltage drop at load, in volts.

(q) If used, each armored cable metallic covering must:

(1) Be electrically continuous; and

(2) Be grounded at each end of the run to:

(i) The metallic hull; or

(ii) The common ground plate on nonmetallic vessels; and

(3) Have final sub-circuits grounded at the supply end only.

(r) A portable or temporary electric cord or cable must be constructed and used in compliance with the requirements of § 111.60–13 of this chapter for a flexible electric cord or cable.

§ 120.350 Batteries—general.

(a) Where provisions are made for charging batteries, there must be natural or induced ventilation sufficient to dissipate the gases generated.

(b) Each battery must be located as high above the bilge as practicable, secured to protect against shifting with the roll and pitch of the vessel, and free from exposure to water splash or spray.

(c) Batteries must be accessible for maintenance and removal.

(d) Connections must be made to battery terminals with permanent type connectors. Spring clips or other temporary type clamps are prohibited.

(e) Batteries must be mounted in trays lined with, or constructed of, a material which is resistant to damage by the electrolyte.

(f) Battery chargers must have an ammeter connected in the charging circuit.

(g) If the batteries are not adjacent to a distribution panel or switchboard which distributes power to the lighting, motor, and appliance circuits, the battery lead must have a fuse in series, located as close as practicable to the battery.

(h) Batteries used for engine starting are to be located as close as possible to the engine or engines served.

§ 120.352 Battery categories.

This section applies to batteries installed to meet the requirements of § 120.310 for secondary sources of power to vital loads, or sources of power to final emergency loads.

(a) *Large.* A large battery installation is one connected to a battery charger having an output of more than 2 kw, computed from the highest possible charging current and the rated voltage of the battery installation.

(b) *Small.* A small battery installation is one connected to a battery charger having an output of 2 kw or less, computed from the highest possible charging current and the rated voltage of the battery installation.

§ 120.354 Battery installations.

(a) *Large batteries.* Each large battery installation must be located in a locker, room or enclosed box solely dedicated to the storage of batteries. Ventilation must be provided in accordance with § 111.15–10 of this chapter. Electrical equipment located within the battery enclosure must be approved by an independent laboratory for Class I, Division 1, Group B hazardous locations and meet part 111, subpart 111.105 of this chapter.

(b) *Small batteries.* Each small battery installation must be located in a well ventilated space and protected from falling objects. A small battery installation must not be in a closet, storeroom, or similar space.

§ 120.360 Semiconductor rectifier systems.

(a) Each semiconductor rectifier system must have an adequate heat removal system that prevents overheating.

(b) Where a semiconductor rectifier system is used in a propulsion system or in other vital systems it must:

(1) Have a current limiting circuit;

(2) Have external overcurrent protection; and

(3) Meet Sections 35.84.2 and 35.84.4 of the ABS "Rules for Building and Classing Steel Vessels."

§ 120.370 System and equipment grounding.

(a) All metallic enclosures and frames of electrical equipment must be permanently grounded to the hull on a metallic vessel. On a nonmetallic vessel the enclosures and frames of electrical equipment must be bonded together to a common ground by a normally non-current carrying conductor. Metallic cases of instruments and secondary windings of instrument transformers must be grounded.

(b) If a grounded distribution system is provided, there must be only one connection to ground, regardless of the number of power sources. This ground connection must be at the switchboard or at the common ground plate, which must be accessible.

(c) Each propulsion, power, lighting, or distribution system having a neutral bus or conductor must have the neutral grounded.

(d) The neutral of each grounded generation and distribution system must be grounded at the generator switchboard and have the ground connection accessible for checking

insulation resistance of the generator to ground before the generator is connected to the bus, except the neutral of an emergency power generation system must be grounded with:

(1) No direct ground connection at the emergency switchboard;

(2) The neutral bus permanently connected to the neutral bus on the main switchboard; and

(3) No switch, circuit breaker, or fuse in the neutral conductor of the bus-tie feeder connecting the emergency switchboard to the main switchboard.

(e) On a nonmetallic vessel where a ground plate is provided for radio equipment, it must be connected to the common ground.

(f) On a metallic vessel a grounded alternating current system must be grounded to the hull. On a nonmetallic vessel the neutral must be connected to the common ground, except that aluminum grounding conductors must not be used.

(g) Equipment grounding conductors must be sized in accordance with Section 250–95 of the NEC (NFPA 70).

(h) Each insulated grounding conductor of a cable must be identified by one of the following means:

(1) A green braid or green insulation;

(2) Stripping the insulation from the entire exposed length of the grounding conductor; or

(3) Marking the exposed insulation of the grounding conductor with green tape or green adhesive labels.

(i) A vessel's hull must not carry current as a conductor except for the following systems:

(1) Impressed current cathodic protection systems; or

(2) Battery systems for engine starting.

(j) Cable armor must not be used to ground electrical equipment or systems.

(k) Receptacle outlets and attachment plugs for portable lamps, tools, and similar apparatus operating at 100 volts or more, must have a grounding pole and a grounding conductor in the portable cord.

(l) Each nonmetallic mast and top mast must have a lightning ground conductor.

§ 120.380 Overcurrent protection.

(a) Overcurrent protection must be provided for each ungrounded conductor for the purpose of opening the electric circuit if the current reaches a value that causes an excessive or dangerous temperature in the conductor or conductor insulation.

(b) A conductor of a control, interlock, or indicator circuit, such as a conductor for an instrument, pilot light, ground detector light, or potential transformer, must be protected by an overcurrent device.

(c) Each generator must be protected by an overcurrent device set at a value not exceeding 115 per cent of the generator full load rating.

(d) All circuits other than steering system circuits must be protected against both overload and short circuit.

(e) Each steering gear feeder circuit must be protected by a circuit breaker that meets the requirements of paragraphs (a) and (b) of § 111.93–11 of this chapter.

(f) Each lighting branch circuit must be protected against overcurrent either by fuses or circuit breakers rated at not more than 30 amperes.

(g) Conductors must be protected in accordance with their current carrying capacities. If the allowable current carrying capacity does not correspond to a standard device size, the next larger overcurrent device may be used provided it does not exceed 150 per cent of the conductor current carrying capacity.

(h) Overcurrent devices capable of carrying the starting current of the motor must be installed to protect motors, motor conductors, and control apparatus against:

(1) Overcurrent due to short circuits or ground faults; and

(2) Overload due to motor running overcurrent, in accordance with § 111.70–1 of this chapter. A protective device integral with the motor, which is responsive to both motor current and temperature, may be used.

(i) An emergency switch must be provided in the normally ungrounded main supply conductor from a battery. The switch must be accessible and located as close to the battery as practicable.

(j) The grounded conductor of a circuit must not be disconnected by a switch or circuit breaker, unless the ungrounded conductors are simultaneously disconnected.

(k) Disconnect means must be provided on the supply side of and adjacent to all fuses for the purpose of de-energizing the fuses for inspection and maintenance purposes.

(l) If the disconnect means is not within sight of the equipment that the circuit supplies, means must be provided for locking the disconnect device in the open position.

(m) Fuses must be of the cartridge type only and be listed by Underwriters Laboratories or another independent laboratory recognized by the Commandant.

(n) Each circuit breaker must meet UL 489 and be of the manually reset type designed for:

(1) Inverse time delay;

(2) Instantaneous short circuit protection; and

(3) Switching duty if the breaker is used as a switch.

(o) Each circuit breaker must indicate whether it is in the open or closed position.

§ 120.390 Shore power.

A vessel with an electrical system operating at more than 50 volts, which is provided with a means to connect to shore power, must meet the following:

(a) A shore power connection box or receptacle must be permanently installed at a convenient location;

(b) A cable connecting the shore power connection box or receptacle to the switchboard or main distribution panel must be permanently installed;

(c) A circuit breaker must be provided at the switchboard or main distribution panel for the shore power connection; and

(d) The circuit breaker, required by paragraph (c) of this section, must be interlocked with the vessel's power sources so that shore power and the vessel's power sources may not be operated simultaneously.

§ 120.392 Radiotelephone installations.

A separate circuit, with overcurrent protection at the main distribution panel, must be provided for each radiotelephone installation.

Subpart D—Lighting Systems

§ 120.410 Lighting fixtures.

(a) Each lighting fixture globe, lens, or diffuser must have a guard or be made of high strength material, except in an accommodation space, radio room, galley, or similar space where it is not subject to damage.

(b) A lighting fixture may not be used as a connection box for a circuit other than the branch circuit supplying the fixture.

(c) A lighting fixture must be installed as follows:

(1) Each fixture must comply with § 120.200.

(2) Each lighting fixture and lampholder must be fixed. A fixture must not be supported by the screw shell of a lampholder.

(3) Each pendant type lighting fixture must be suspended by and supplied through a threaded, rigid conduit stem.

(4) Each table lamp, desk lamp, floor lamp, or similar equipment must be secured in place so that it cannot be displaced by the roll or pitch of the vessel.

(d) An exterior lighting fixture in an electrical system operating at more than 50 volts must comply with the requirements of UL 595. A lighting fixture in an accommodation space, radio room, galley or similar interior space may comply with UL 57, 1570, 1571, 1572, 1573, or 1574.

§ 120.420 Navigation lights.

All vessels must have navigation lights that are in compliance with the applicable sections of the International and Inland Navigation Rules, except that a vessel of more than 65 feet in length must also have navigation lights that meet UL 1104.

§ 120.430 Portable lights.

Each vessel must be equipped with at least two portable battery lights. One of these lights must be located at the operating station and the other at the access to the propulsion machinery space.

§ 120.432 Emergency lighting.

(a) Each vessel must have adequate emergency lighting fitted along the line of escape to the main deck from all passenger and crew accommodation spaces located below the main deck.

(b) The emergency lighting required by paragraph (a) of this section must automatically actuate upon failure of the main lighting system. If a vessel is not equipped with a single source of power for emergency lighting, it must have individual battery powered lights which:

(1) Are automatically actuated upon loss of normal power;

(2) Are not readily portable;

(3) Are connected to an automatic battery charger; and

(4) Have sufficient capacity for a minimum of 6 hours of continuous operation.

(c) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have an emergency lighting system which complies with part 112 of this chapter.

§ 120.434 Lifeboat and liferaft-floodlights on vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

Each vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have floodlights for illuminating the stowage position and embarkation station of lifeboats, liferafts, rescue boats, and rescue platforms, where installed. These floodlights must meet the requirements of § 111.75–16 of this chapter.

Subpart E—Miscellaneous Systems and Requirements

§ 120.520 Lifeboat winches.

Each electric power operated lifeboat winch must meet part 111, subpart 111.95 and part 160, subpart 160.015 of this chapter.

§ 120.530 Hazardous areas.

(a) Electrical equipment in lockers used to store paint, oil, turpentine, or other flammable liquids must be explosion-proof or be part of an intrinsically safe system.

(b) Explosion-proof equipment and intrinsically safe systems must meet the requirements of part 111, subpart 111.105 of this chapter.

§ 120.540 Elevators.

Each electric power, control, and interlock circuit of an elevator on a vessel must meet the requirements of ANSI A17.1.

§ 120.550 General alarm systems.

(a) All vessels with overnight accommodations must be equipped with a general alarm system.

(b) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must have a general alarm which meets the requirements of part 113, subpart 113.25 of this chapter.

(c) The public address system required by § 121.610 of this subchapter may be used to sound the general alarm signal.

PART 121—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

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Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 121.100 General requirement.

(a) Vessel control systems and other miscellaneous systems and equipment required by this part must be suitable for the purposes intended.

(b) The cognizant OCMI may require navigation, control, or communication equipment, in excess of the equipment specifically required by this part, on a vessel which is of a novel design, operates at high speeds in restricted or high traffic areas, operates in a dynamically supported mode, or operates on extended routes or in remote locations.

§ 121.115 Applicability to existing vessels.

(a) An existing vessel need not comply with §§ 121.402(c), 121.404, 121.410, and 121.602 unless the cognizant OCMI specifically requires compliance due to the route or service of the vessel.

(b) An existing vessel need not comply with the requirements of § 121.610 until [*date 5 years after effective date of the final rule*], or 10 years after its keel was laid or the vessel was at a similar stage of construction, whichever is later.

(c) An existing vessel need not comply with the requirements of § 121.710 until [*date 1 year after effective date of the final rule*].

Subpart B—Cooking and Heating

§ 121.200 General.

Cooking and heating equipment must be suitable for marine use. Equipment designed and installed in accordance with ABYC A–3 and A–7, or with NFPA 302 complies with this requirement, except as restricted by § 121.202.

§ 121.202 Restrictions.

(a) The use of gasoline for cooking, heating, or lighting is prohibited on all vessels.

(b) Fireplaces or other heating and cooking equipment with open flames are prohibited from being used on all vessels.

(c) Vessels permitted to use liquefied and non-liquefied gases as cooking fuels by 46 CFR part 147 must meet the requirements of § 121.240. The use of these fuels for cooking, heating, and lighting on ferry vessels is prohibited by 46 CFR part 147.

§ 121.210 Heating equipment.

(a) Each heater must be so constructed and installed as to prevent the hanging from it of items such as towels and clothing.

(b) Each electric space heater must be provided with a thermal cutout to prevent overheating.

(c) Each heater element of an electric space heater must be of an enclosed type, and the element case or jacket must be made of a corrosion resistant material.

§ 121.220 Cooking equipment.

(a) Doors on a cooking appliance must be provided with heavy duty hinges and locking devices to prevent accidental opening in heavy seas.

(b) A cooking appliance must be installed to prevent movement in heavy seas.

(c) For a grill or similar type of cooking appliance, means must be provided to collect grease or fat and to prevent its spillage on wiring or the deck.

(d) Grab rails must be installed on a cooking appliance when determined by the cognizant OCMI to be necessary for safety.

(e) Sea rails, with suitable barriers to prevent accidental movement of cooking pots, must be installed on a cooking range.

(f) Electric connections for a cooking appliance must be dripproof.

§ 121.240 Gas systems.

[Reserved for final rules which have been developed under Coast Guard Docket 83–013, Carriage and Use of Liquefied and Non-liquefied Gas as Cooking Fuels on Vessels Carrying Passengers, and which will be inserted in this section.]

Subpart C—Mooring and Towing Equipment

§ 121.300 Ground tackle and mooring lines.

A vessel must be fitted with ground tackle and mooring lines necessary for the vessel to be safely anchored and moored. The ground tackle and mooring lines provided must be satisfactory for the size of the vessel, the waters on which the vessel operates, and other operating hazards, subject to the approval of the cognizant OCMI.

Subpart D—Navigation Equipment

§ 121.402 Compasses.

(a) Except as otherwise provided in this section every vessel must be fitted with a suitable magnetic compass designed for marine use, to be mounted at the primary operating station.

(b) The following vessels need not be fitted with a compass:

(1) A vessel on a rivers route;

(2) A non-self-propelled vessel; and

(3) A vessel operating on short restricted routes on lakes, bays, and sounds.

(c) Except on a vessel limited to daytime operations, the compass must be illuminated.

§ 121.404 Radars.

(a) The following self-propelled vessels must be fitted with a FCC type accepted general marine radar system for surface navigation with a radar screen mounted at the primary operating station:

(1) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers; and

(2) A ferry which operates on a rivers route not within one mile of land.

(3) Any other vessel, except a vessel operated on a short restricted route when the cognizant OCMI has determined that a radar is not necessary due to the vessel's route and local weather conditions.

(b) The radar and its installation must be suitable for the intended speed and route of the vessel.

§ 121.410 Electronic position fixing devices.

A vessel on an oceans route must be equipped with an electronic position fixing device, capable of providing accurate fixes for the area in which the vessel operates, to the satisfaction of the cognizant OCMI.

§ 121.420 Charts and nautical publications.

(a) As appropriate for the intended voyage, a vessel must carry adequate and up-to-date:

(1) Charts of large enough scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide tables published by the National Ocean Service; and

(5) Current tables published by the National Ocean Service, or a river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Extracts from the publications listed in paragraph (a) of this section for the areas to be transited may be provided instead of the complete publication.

Subpart E—Radio

§ 121.502 Requirements of the Federal Communications Commission.

A vessel must comply with the applicable requirements for any radio and EPIRB installations, including the requirements for a station license and installation certificates to be issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

§ 121.506 Emergency broadcast placard.

A durable placard must be posted next to all radiotelephone installations with the following instructions and information, specific to the individual vessel, indicated on it:

Emergency Broadcast Procedures

(1) Make sure your radiotelephone is on.

(2) Select 156.8 mHz (channel 16 VHF) or 2182 kHz. (Channel 16 VHF and 2182 kHz on SSB are for emergency and calling purposes only.)

(3) Press microphone button and, speaking slowly—clearly—calmly, say: "MAYDAY—MAYDAY—MAYDAY"

for situations involving Immediate Danger to Life and Property; and "PAN—PAN—PAN"

for urgent situations where there is No Immediate Danger to Life or Property.

(4) Say: "THIS IS (VESSEL'S NAME), (VESSEL'S NAME), (VESSEL'S CALL SIGN), OVER."

(5) Release the microphone button briefly and listen for acknowledgment. If no one answers, repeat steps 3 & 4.

(6) If there is no acknowledgment, or if the Coast Guard or another vessel responds, say: "MAYDAY" or "PAN", (VESSEL'S NAME)."

(7) Describe Your Position using latitude and longitude coordinates, LORAN coordinates, or range and bearing from a known point.

(8) State The Nature of The Distress.

(9) Give Number Of Persons Aboard And The Nature Of Any Injuries.

(10) Estimate the Present Seaworthiness of Your Vessel.

(11) Briefly Describe Your Vessel: (Length, Color, Hull Type, Trim, Masts, Power, any Additional Distinguishing Features).

(12) Say: "I Will Be Listening on Channel 16/2182."

(13) End message by saying: "THIS IS (VESSEL'S NAME & CALL SIGN)."

(14) If your situation permits, stand by the radio to await further communication with the Coast Guard or another vessel. If no answer, repeat, then try another channel.

Subpart F—Control and Internal Communication Systems

§ 121.602 Internal communication systems.

(a) A vessel equipped with pilothouse control must have a fixed means of two-way communication from the operating station to the location where the means of controlling the propulsion machinery, required by § 121.620(a), is located. Twin screw vessels with pilothouse control for both engines are not required to have a fixed communications system.

(b) A vessel equipped with auxiliary means of steering, required by § 119.620 of this subchapter, must have a fixed means of two-way communication from the operating station to the location where the auxiliary means of steering is controlled.

(c) When the propulsion machinery of a vessel cannot be controlled from the operating station, an efficient communication system must be provided between the operating station and the propulsion machinery space.

(d) When the locations addressed in paragraphs (a), (b), and (c) of this section are sufficiently close together, direct voice communication satisfactory to the cognizant OCMI is acceptable instead of the required fixed means of communications.

(e) The OCMI may accept hand held portable radios as satisfying the communications system requirement of this section.

§ 121.610 Public address systems.

(a) Except as provided in paragraph (d) of this section, each vessel must be equipped with a public address system.

(b) On a vessel of more than 65 feet in length, the public address system must be a fixed installation and be audible during normal operating conditions throughout the accommodation spaces and all other spaces normally manned by crew members.

(c) A vessel with more than one passenger deck and a vessel with overnight accommodations must have the public address system operable from the operating station.

(d) On a vessel of not more than 65 feet in length, a battery powered bullhorn may serve as the public address system if audible throughout the accommodation spaces of the vessel during normal operating conditions. The bullhorn's batteries are to be continually maintained at a fully charged level by use of a battery charger or other means acceptable to the cognizant OCMI.

§ 121.620 Propulsion engine control systems.

(a) A vessel must have two independent means of controlling each propulsion engine. Control must be provided for the engine speed, direction of shaft rotation, and engine shutdown.

(1) One of the means may be the ability to readily disconnect the remote engine control linkage to permit local operation.

(2) A multiple engine vessel with independent remote propulsion control for each engine need not have a second means of controlling each engine.

(b) In addition to the requirements of paragraph (a), a vessel must have a reliable means for shutting down a propulsion engine, which is independent of the engine's speed control, located at the main pilothouse control station.

(c) A propulsion engine control system, including pilothouse control, must be designed so that a loss of power to the control system does not result in an increase in shaft speed or propeller pitch.

Subpart G—Miscellaneous

§ 121.702 Oil pollution prevention equipment and procedures.

A vessel must comply with the applicable design, equipment, personnel, procedures, and record requirements of 33 CFR parts 151, 155, and 156.

§ 121.704 Marine sanitation devices.

A vessel with installed toilet facilities must have a marine sanitation device which complies with 33 CFR part 159.

§ 121.710 First aid kits.

A vessel must carry a first aid kit approved under part 160, subpart 160.041 of this chapter or a kit with equivalent contents, instructions, and markings. The contents must be stowed in a suitable container, easily visible and readily available to the crew.

PART 122—OPERATIONS

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Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 122.100 General requirement.

A vessel must be operated in accordance with applicable laws and regulations and in such a manner as to afford adequate precaution against hazards which might endanger the vessel and the persons being transported.

§ 122.115 Applicability to existing vessels.

(a) An existing vessel need not comply with the hull marking requirements in § 122.602(b) until completion of a vessel's first drydock required by § 115.600 of this subchapter which occurs after [effective date of the final rule].

(b) An existing vessel need not comply with the marking requirements in §§ 122.604 and 122.610, where the size and contents of the markings required by §§ 122.604 and 122.610 vary from the size and contents of required markings on lifesaving equipment, watertight doors, and watertight hatches on the vessel prior to [effective date of the final rule], until the existing markings are no longer legible as determined by the cognizant OCMI.

(c) An existing vessel need not comply with the requirements of §§ 122.514, 122.515, 122.516, and 122.604(j) until completion of the first inspection for certification which occurs after [effective date of the final rule].

Subpart B—Marine Casualties and Voyage Records

§ 122.202 Notice of casualty.

(a) The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) An accidental grounding, or an intentional grounding which meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function for any period of time.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, failure of or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems.

(4) Loss of life.

(5) Injury which requires professional medical treatment beyond first aid and, in the case of a person engaged or employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties.

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking, or demurrage.

(b) A vessel is excluded from the requirements of paragraphs (a)(4) and (a)(5) of this section with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a vessel casualty (e.g., collision) or a vessel equipment casualty (e.g., cargo boom failure) and are subject to the reporting requirements of the Occupational Safety and Health Administration under 29 CFR part 1904.

§ 122.204 Substance of marine casualty notice.

The notice required in § 122.202 must include the name and official number (or the number issued in accordance with 33 CFR part 173) of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

§ 122.206 Written report of marine casualty.

(a) In addition to the notice required by § 122.202, the owner, master, agent, or person in charge of the vessel shall, within five days, report in writing to the OCMI at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents must be made on Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 122.202.

§ 122.208 Damage to pressure vessels.

The owner, managing operator, or master shall report damage to a boiler or unfired pressure vessel, which renders further use of the item unsafe until repairs are made, to the OCMI at the port in which the casualty occurred or nearest the port of first arrival, as soon as practicable after the damage occurs.

§ 122.210 Alcohol or drug use by individuals directly involved in casualties.

(a) For each marine casualty required to be reported by § 122.202, the owner, agent, master, or person in charge of the vessel shall determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty.

(b) The owner, agent, master, or person in charge of the vessel shall include in the written report, Form CG 2692, submitted for the casualty information which:

(1) Identifies those individuals for whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained; and

(2) Specifies the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.

(c) An entry must be made in the Official Logbook, if carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual must be informed of this entry and the entry must be witnessed by a second person.

(d) If an individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a Coast Guard commissioned, warrant, or petty officer, or any other law enforcement officer authorized to obtain a chemical test under Federal, state, or local law, or by the owner, agent, master, or person in charge, this fact must be noted in the Official Logbook, if carried, and in the written report (Form CG 2692), and will be admissible as evidence in any administrative proceeding.

§ 122.212 Mandatory chemical testing following serious marine incidents.

A marine employer whose vessel is involved in a casualty or incident which is, or is likely to become, a serious marine incident as defined in § 4.03–2 of this chapter shall comply with the requirements of part 4, subpart 4.06 of this chapter.

§ 122.220 Records of a voyage resulting in a marine casualty.

The owner, agent, master, or person in charge of any vessel involved in a marine casualty for which a report is required under § 122.202 shall retain all voyage records as are maintained by the vessel, including rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyrocompass records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and

received, radio logs, crew and passenger lists and counts, articles of shipment, official logs, and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer, or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

§ 122.230 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the person in charge of such vessel shall report the accident to the nearest OCMI. No report on Form CG 2692 is required unless otherwise required under § 122.202.

§ 122.250 Assistance required.

(a) The master of a vessel involved in a collision, accident, or other casualty, shall render all practicable and necessary assistance to persons affected by the collision, accident, or casualty to the extent possible without serious danger to his or her own vessel or persons aboard. The master shall also give his or her name, address, and the identification of his or her vessel to any person injured and to the owner of any property damaged.

(b) The master of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master can do so without seriously endangering the master's vessel or individuals on board.

§ 122.260 Reports of potential vessel casualty.

(a) An owner, charterer, managing operator, or agent of a vessel shall immediately notify either of the following Coast Guard offices if there is reason to believe the vessel is lost or imperiled:

(1) The Coast Guard district rescue coordination center (RCC) cognizant over the area in which the vessel was last operating; or

(2) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

(b) Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel.

(c) The owner, charterer, managing operator, or agent notifying the Coast Guard under paragraph (a) of this section, shall:

(1) Provide the name and identification number of the vessel, a description of the vessel, the names or number of individuals on board, and other information that may be requested by the Coast Guard; and

(2) Submit written confirmation within 24 hours to the Coast Guard facility to which notice was given of the possibility of the vessel being in distress, unless the original notice was in writing.

§ 122.280 Official Logbook for foreign voyages.

(a) Every vessel on a voyage from a port in the United States to a foreign port except to a port in Canada, or vice versa, must have an Official Logbook.

(b) The master shall make or have made in the Official Logbook the following entries:

(1) Each legal conviction of a seaman of the vessel and the punishment inflicted;

(2) Each offense committed by a seaman of the vessel for which it is intended to prosecute or to enforce under a forfeiture, together with statements about reading the entry and the reply made to the charge as required by 46 U.S.C. 11502;

(3) Each offense for which punishment is inflicted on board and the punishment inflicted;

(4) A statement of the conduct, character, and qualifications of each seaman of the vessel or a statement that the master declines to give an opinion about that conduct, character, and qualifications;

(5) Each illness of or injury to a seaman of the vessel, the nature of the illness or injury, and the medical treatment;

(6) Each death on board, with the cause of death, and if a seaman, the following information required by 46 U.S.C. 10702;

(i) The wages due to a seaman who dies during the voyage and the gross amount of all deductions to be made from the wages;

(ii) The sale of the property of a seaman who dies during the voyage, including a statement of each article sold and the amount received for the property;

(7) Each birth on board, with the sex of the infant and name of the parents;

(8) Each marriage on board, with the names and ages of the parties;

(9) The name of each seaman who ceases to be a crew member (except by death), with the place, time, manner, and the cause why the seaman ceased to be a crew member; and

(10) When a marine casualty occurs, a statement about the casualty and the circumstances under which it occurred, made immediately after the casualty when practicable to do so.

§ 122.282 Logbook for vessels of more than 65 feet in length with overnight accommodations for more than 49 passengers.

Except for a vessel required to have an Official Logbook by § 122.280, the owner, managing operator, or master of a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers shall supply logs or records in any form, which will be considered to take the place of the Official Logbook and may be used for the purpose of making entries therein as required by law or regulations in this subchapter. Such logs or records shall be kept available for review by a marine inspector for a period of one year after the date to which the records refer.

Subpart C—Miscellaneous Operating Requirements

§ 122.304 Navigation underway.

(a) The master of a vessel underway shall ensure that:

(1) The movement of the vessel is under the direction and control of the master or a licensed mate at all times;

(2) The individual who directs and controls the movement of the vessel is competent to perform that duty and, when necessary, knows:

(i) The magnetic variation of the area being transited, the vessel's deviation (if known), and the gyrocompass error (if the vessel is so equipped);

(ii) The current velocity and direction of the area being transited;

(iii) The predicted set and drift for the area being transited; and

(iv) The tidal state for the area being transited;

(3) If a pilot other than a member of the vessel's crew is employed, the pilot is informed of the draft, maneuvering characteristics, and peculiarities of the vessel and of any abnormal circumstances on the vessel that may affect its safe navigation; and

(4) The equipment required by this part is maintained in operable condition.

(b) The individual directing the movement of the vessel shall:

(1) Ensure that an individual whom the master has determined is competent to steer the vessel is at the helm of the vessel at all times;

(2) Set the vessel's speed with consideration for:

(i) The prevailing visibility and weather conditions;

(ii) The proximity of the vessel to fixed shore and marine structures;

(iii) The comparative proportions of the vessel and the channel;

(iv) The density of marine traffic;

(v) The damage that might be caused by the vessel's wake;

(vi) The strength and direction of the current; and

(vii) Any local vessel speed limit;

(3) Ensure that rudder orders are executed as given;

(4) Ensure that engine speed and direction orders are executed as given;

(5) Correctly apply magnetic variation, and deviation and gyrocompass errors when applicable; and

(6) Evaluate the danger of each closing visual or each closing radar contact.

(c) The master of a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers shall, in addition to the requirements of paragraph (a) of this section, ensure that:

(1) The individual directing and controlling the movement of the vessel periodically fixes or has another competent individual fix the vessel's position as necessary for the voyage;

(2) The position of the vessel at each fix is plotted on an adequate chart of the area and the individual directing the movement of the vessel is informed of the vessel's position;

(3) Electronic and other navigational equipment, external fixed aids to navigation, geographic reference points, and hydrographic contours are used when fixing the vessel's position;

(4) Buoys alone are not used to fix the vessel's position; and

(5) The vessel's anchors are ready for letting go when navigating in a congested area or a narrow channel.

§ 122.306 Passengers excluded from operating station.

(a) When practicable, the master shall exclude passengers, other than those listed in paragraph (b) of this section, from an operating station of the vessel when the vessel is underway in congested waters, heavy weather, reduced visibility, where crossing or overtaking crossing situations may be expected, docking and locking operations, or other situations and emergencies where the passengers could distract the navigating crew from their responsibilities, or when otherwise directed by the cognizant OCMI.

(b) Persons involved in the safety of the vessel or passengers training in vessel navigation and operations may be allowed in the operating station as authorized by the master.

§ 122.310 Compliance with provisions of Certificate of Inspection.

The master of a vessel shall ensure that all of the provisions of the Certificate of Inspection are strictly adhered to; however, the master may divert from the route prescribed in the Certificate of Inspection or take such other steps as deemed necessary and prudent to assist vessels in distress or for other similar emergencies.

§ 122.315 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(c) If a log book is required, then the master must enter an attestation statement verifying that the vessel complies with the applicable stability requirements at the times specified in paragraph (a) of this section.

§ 122.320 Steering gear, controls, and communication system tests.

The master of a vessel shall have examined and tested the steering gear, signaling whistle, propulsion controls, and communication systems of the vessel within 12 hours of getting underway for a voyage, except that such examination and testing need not be conducted more than once in any 24 hour period.

§ 122.330 Hatches and other openings.

(a) Except when operating on lakes, bays, and sounds, or river routes in calm weather, all hatches and openings in the hull of a vessel must be kept tightly closed except when being used.

(b) All watertight doors in subdivision bulkheads must be kept tightly closed during the navigation of the vessel except when being used for transit between compartments.

§ 122.335 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that—

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purpose of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) If a log book is required, then the master shall make the following entries:

(1) The time and door location of every closing of the loading doors; and

(2) Any opening of the doors in accordance with paragraph (a) (2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

§ 122.340 Vessels carrying vehicles.

(a) Automobiles or other vehicles must be stowed in such a manner as to permit both passengers and crew to get out and away from the vehicles freely in the event of fire or other disaster. The decks, where necessary, must be distinctly marked with painted lines to indicate the vehicle runways and the aisle spaces.

(b) The master shall take any necessary precautions to see that automobiles or other vehicles have their motors turned off and their emergency brakes set when the vessel is underway, and that the motors are not started until the vessel is secured to the landing. In addition, a vehicle at each end of a line of vehicles or next to a loading ramp must have its wheels securely blocked, while the vessel is being navigated.

(c) The master shall have appropriate "NO SMOKING" signs posted and shall take all necessary precautions to prevent smoking or carrying of lighted or smoldering pipes, cigars, cigarettes, or similar items in the deck area assigned to automobiles or other vehicles.

(d) The master shall, prior to getting underway, ensure that vehicles are properly distributed consistent with the guidance in the vessel's stability letter and Certificate of Inspection, if applicable.

§ 122.356 Carriage of hazardous materials.

A vessel must not be used to transport a hazardous material, listed in 49 CFR 172.101, in commerce unless that material is handled and transported in accordance with 49 CFR Parts 171 through 179.

§ 122.360 Use of auto pilot.

Whenever an automatic pilot is used the master shall ensure that:

(a) It is possible to immediately establish manual control of the vessel's steering;

(b) A competent person is ready at all times to take over steering control; and

(c) The changeover from automatic to manual steering and vice versa is made by, or under the supervision of, the master or the mate on watch.

§ 122.370 Reckless or negligent operation

(a) A person shall not operate a vessel subject to the provisions of this subchapter in a negligent manner which endangers the life, limb, or property of any person. Violations of this section involving grossly negligent operation subject the violator, in addition to any other penalties, to the criminal penalties prescribed in 46 U.S.C. 2302.

(b) The master of a vessel subject to the provisions of this subchapter shall not get the vessel underway, nor shall the owner, charterer, or managing operator of the vessel permit the master to get the vessel underway, when any passengers are aboard and the vessel is in an unseaworthy condition or weather or sea conditions make vessel operation unsafe.

Subpart D—Crew Requirements

§ 122.402 Licenses.

Each licensed individual employed upon any vessel subject to the provisions of this subchapter shall have his or her license on board and available for examination at all times when the vessel is operating.

§ 122.410 Watchmen.

The owner, charterer, master, or managing operator of a vessel carrying passengers shall have a suitable number of watchmen patrol throughout the vessel during the nighttime, whether or not the vessel is underway, to guard against, and give alarm in case of, a fire or other danger.

§ 122.420 Crew training.

The owner, charterer, master, or managing operator shall instruct each crewmember, upon first being employed and prior to getting underway for the first time on a particular vessel and at least once every two months, as to the duties that the crew member is expected to perform in an emergency including, but not limited to, the emergency instructions listed on the emergency instruction placard required by § 122.510 and, when applicable, the duties listed in the station bill required by § 122.514.

Subpart E—Preparations for Emergencies

§ 122.502 Crew and passenger list, and voyage plan.

(a) The owner, charterer, managing operator, or master of the following vessels must keep a correct list of the names of all persons which embark on and disembark from the vessel:

(1) A vessel making an oceans or coastwise voyage;

(2) A vessel making a voyage of more than 300 miles on the Great Lakes, except from a Canadian to a United States port; and

(3) A vessel arriving from a foreign port except at a United States Great Lakes port from a Canadian Great Lakes port.

(b) The master of a vessel required to prepare a crew and passenger list by paragraph (a) of this section shall also prepare a voyage plan. The voyage plan and the list required by paragraph (a) of this section must be prepared prior to departing on a voyage and deposited ashore in a well marked location at the vessel's normal berthing location or with a representative of the owner or managing operator of the vessel.

§ 122.504 Passenger count.

The master of a vessel, except a vessel listed in § 122.502(a), shall keep a correct, written count of all passengers which embark on and disembark from the vessel. Prior to departing on a voyage, the passenger count must be deposited ashore in a well marked location at the vessel's normal berthing location or with a representative of the owner or managing operator of the vessel.

§ 122.506 Passenger safety orientation.

(a) Except as allowed by paragraph (b) of this section, before getting underway on a voyage, the master of a vessel shall ensure that suitable public announcements are made informing all passengers of the information in this section when applicable to the vessel's operations and arrangement:

(1) A general explanation of emergency and evacuation procedures;

(2) The location of emergency exits and survival craft embarkation areas;

(3) The stowage location(s) of lifejackets;

(4) The proper method of donning and adjusting lifejackets of the type(s) carried on the vessel including a demonstration of the proper donning of a lifejacket prior to beginning an oceans or coastwise voyage;

(5) The location of the instruction placards for lifejackets and other lifesaving devices;

(6) That all passengers will be required to don lifejackets when possible hazardous conditions exist, as directed by the master;

(7) The type and location of survival craft and ring life buoys carried on the vessel;

(8) The location and contents of the "Emergency Instructions" required by § 122.510; and

(9) If the vessel is operating with reduced manning or equipment requirements under § 115.114 of this subchapter.

(b) On a vessel with other than an oceans or coastwise route, as an alternative to making an announcement which complies with paragraph (a) of this section, the master or other designated person may:

(1) Make an abbreviated announcement consisting of:

(i) A statement that passengers should follow the instructions of the crew in an emergency;

(ii) The location of lifejackets; and

(iii) That further information concerning emergency procedures including the donning of lifejackets, location of other emergency equipment, and emergency evacuation procedures are located on the card or pamphlet which was given to each passenger or is located near each seat; and

(2) Prior to getting underway, deliver to each passenger or, on a vessel which does not carry vehicles and which has seats for each passenger, place near each seat, a card or pamphlet which has the information listed in paragraphs (a)(1) through (a)(9) of this section.

(c) The master of a vessel shall ensure that a passenger, who boards the vessel on a voyage after the initial public announcement has been made as required by paragraphs (a) or (b) of this section, is also informed of the required safety information.

(d) On a vessel on a voyage of more than 24 hours duration, passengers shall be requested to don lifejackets and go to the appropriate embarkation station during the safety orientation. If only a small number of passengers embark at a port after the original muster has been held, these passengers must be given the passenger safety orientation required by paragraphs (a) or (b) of this section if another muster is not held.

§ 122.508 Wearing of lifejackets.

(a) The master of a vessel shall require passengers to don lifejackets when possible hazardous conditions exist, including, but not limited to:

(1) When transiting hazardous bars and inlets;

(2) During severe weather;

(3) In event of flooding, fire, or other events which may possibly call for evacuation; and

(4) When the vessel is being towed, except a non-self-propelled vessel under normal operating conditions.

(b) When evaluating the need to require the donning of lifejackets, the master shall consider the size of the vessel and the location of the passengers on the vessel.

(c) Any passenger or crew member shall be permitted to voluntarily don a lifejacket whenever he or she desires.

(d) The master or crew shall assist passengers in obtaining a lifejacket and donning it, as necessary.

§ 122.510 Emergency instructions.

(a) Except as otherwise provided in this section, the master shall prepare and post durable emergency instruction placards in conspicuous places accessible and visible to the crew and passengers.

(b) Except when in the judgment of the cognizant OCMI the operation of a vessel does not present one of the hazards listed, the emergency instruction placard must contain at least the applicable portions of the "Emergency Instructions" listed in § 122.512. The emergency instructions must be further designed to address the particular equipment, arrangement, and operation of each individual vessel.

(c) If the cognizant OCMI determines that there is no suitable mounting surface aboard the vessel, the emergency instructions need not be posted but must be carried aboard the vessel and be available to the crew and passengers for familiarization.

§ 122.512 Emergency instruction placard format.

An emergency instruction placard containing the following information will satisfy the requirements of § 122.510.

Emergency Instructions

(1) *Rough weather at sea, crossing hazardous bars, or flooding.*

(i) Close all watertight and weathertight doors, hatches, and airports to prevent taking water aboard or further flooding in the vessel.

(ii) Keep bilges dry to prevent loss of stability due to water in bilges. Use power driven bilge pump, hand pump, and buckets to dewater.

(iii) Align fire pumps to use as bilge pump if possible.

(iv) Check all intake and discharge lines, which penetrate the hull, for leakage.

(v) Passengers must remain seated and evenly distributed.

(vi) Passengers must don lifejackets if the going becomes very rough, you are about to cross a hazardous bar, or when otherwise instructed by the master.

(vii) Never abandon the vessel unless actually forced to do so.

(viii) If assistance is needed follow the procedures on the emergency broadcast placard posted by the radiotelephone.

(ix) Prepare survival craft (life floats, (inflatable) rafts, (inflatable) buoyant apparatus, boats) for launching.

(2) *Man overboard.*

(i) Throw a ring buoy overboard as close to the person as possible.

(ii) Post a lookout to keep the person overboard in sight.

(iii) Launch rescue boat and maneuver to pick up person in the water, or maneuver the vessel to pick up the person in the water.

(iv) Have crew member put on lifejacket, attach a safety line to him or her, and have him or her stand by to jump into the water to assist the person overboard if necessary.

(v) If person is not immediately located, notify Coast Guard and other vessels in vicinity by radiotelephone.

(vi) Continue search until released by Coast Guard.

(3) *Fire.*

(i) Cut off air supply to fire—close openings such as hatches, ports, doors, ventilators, and louvers, and shut off ventilation system.

(ii) Cut off electrical system supplying affected compartment if possible.

(iii) If safe, immediately use portable fire extinguishers at base of flames for flammable liquid or grease fires or water for fires in ordinary combustible materials. Do not use water on electrical fires.

(iv) If fire is in machinery spaces, shut off fuel supply and ventilation and activate fixed extinguishing system if installed.

(v) Maneuver vessel to minimize effect of wind on fire.

(vi) If unable to control fire, immediately notify the Coast Guard and other craft in the vicinity by radiotelephone.

(vii) Move passengers away from fire, have them put on lifejackets, and if necessary, prepare to abandon the vessel.

§ 122.514 Station bill.

(a) A station bill must be posted by the master on a vessel of more than 65 feet in length having:

(1) Overnight accommodations for more than 49 passengers; or

(2) A Certificate of Inspection requiring more than four crew members at any one time, including the master.

(b) A vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers must comply with the requirements of part 78, subpart 78.13 of this chapter in regards to the content of a station bill, the duties of the crew, emergency signals, an emergency squad, and instructions.

(c) Except when paragraph (b) of this section is applicable, the station bill of a vessel of more than 65 feet in length required to have more than four crew members, must set forth the special duties and duty station of each crew member for various emergencies. The duties must, as far as possible, be comparable with the regular work of the individual. The duties must include at least the following and any other duties necessary for the proper handling of a particular emergency:

(1) The closing of hatches, airports, watertight doors, vents, scuppers, and valves for intake and discharge lines which penetrate the hull, the stopping of fans and ventilating systems, and the operating of all safety equipment;

(2) The preparing and launching of survival craft and rescue boats;

(3) The extinguishing of fire; and

(4) The mustering of passengers including the following:

(i) Warning the passengers;

(ii) Seeing that passengers are fully clothed and wearing lifejackets.

(iii) Assembling the passengers and directing them to their appointed stations; and

(iv) Keeping order in the passageways and stairways and generally controlling the movement of the passengers.

(d) The station bill must be posted at the operating station and a conspicuous location in each crew accommodation space.

§ 122.515 Passenger safety bill.

(a) A passenger safety bill must be posted by the master in each passenger cabin or stateroom on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers.

(b) Each passenger safety bill required by this section must list:

(1) The embarkation station and the number and location of the survival craft to which each occupant of the space is assigned;

(2) The fire and emergency signal and the abandon ship signal;

(3) Essential action that must be taken in an emergency; and

(4) If immersion suits are provided for passengers, the location of the suits and illustrated instructions on the method of donning the suits.

§ 122.516 Lifejacket placards.

(a) Placards containing instructions for the donning and use of the lifejackets aboard the vessel must be posted in conspicuous places which are regularly accessible and visible to the crew and passengers.

(b) Lifejacket placards must be posted in each passenger cabin or stateroom on a vessel of more than 65 feet in length with overnight accommodations for more than 49 passengers.

(c) If the cognizant OCMI determines that there is no suitable mounting surface aboard the vessel, the lifejacket placards need not be posted but must be carried aboard the vessel and be available to the crew and passengers for familiarization.

§ 122.518 Inflatable survival craft placards.

(a) Every vessel equipped with an inflatable survival craft must have posted in conspicuous places which are regularly accessible and visible to the crew and passengers, and by each inflatable survival craft, approved placards or other cards containing instructions for launching and inflating inflatable survival craft for the information of persons on board. The number and location of such placards for a particular vessel must be acceptable to the cognizant OCMI.

(b) Under the requirement in § 160.051–6(c)(1) of this chapter, the manufacturer of approved inflatable liferafts is required to provide approved placards containing such instructions with each liferaft. Similar placards must be used for other inflatable survival craft.

§ 122.520 Abandon ship and man overboard drills and training.

(a) The master shall conduct sufficient drills and give sufficient instructions to make sure that all crew members are familiar with their duties during emergencies which necessitate abandoning ship or the recovery of persons who have fallen overboard.

(b) A randomly scheduled abandon ship drill must be conducted as follows:

(1) An abandon ship drill must be conducted on the vessel at least once each week;

(2) Each member of the crew shall participate in at least one abandon ship drill each month; and

(3) If more than 25% of the crew have not participated in an abandon ship drill on board that particular vessel in the previous month, a drill must be conducted before the vessel leaves port.

(c) Each abandon ship drill must include:

(1) Summoning the crew to report to assigned stations and prepare for assigned duties;

(2) Summoning passengers on a vessel on an overnight voyage to areas of refuge or embarkation stations and ensuring that they are made aware of how the order to abandon ship will be given;

(3) Checking that passengers and crew are suitably dressed;

(4) Checking that lifejackets are correctly donned;

(5) Operation of any davits used for launching liferafts; and

(6) Instruction on the automatic and manual deployment of survival craft.

(d) Each abandon ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(e) Each rescue boat required in accordance with § 117.210 of this subchapter must be launched with its assigned crew aboard and maneuvered in the water as if during an actual man overboard situation:

(1) Once each month, if reasonable and practicable; but

(2) At least once within a 3 month period before the vessel gets underway with passengers.

(f) Onboard training in the use of davit launched liferafts must take place at intervals of not more than 4 months on a vessel with a davit launched liferaft. Whenever practicable, this must include the inflation and lowering of a liferaft. If a special liferaft intended for training purposes only is used, and is not part of the vessel's lifesaving equipment, the special liferaft must be conspicuously marked.

§ 122.524 Fire fighting drills and training.

(a) The master shall conduct sufficient fire drills to make sure that each crew member is familiar with his or her duties in case of a fire.

(b) A randomly scheduled fire drill must be conducted once each week.

(c) Each fire drill must include:

(1) Summoning passengers on a vessel on an overnight voyage to areas of refuge or embarkation stations;

(2) Summoning the crew to report to assigned stations and to prepare for and demonstrate assigned duties; and

(3) Instruction in the use of fire extinguishers and any other fire fighting equipment on board.

(d) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

§ 122.530 Responsibilities of licensed individuals.

Nothing in the emergency instructions or a station bill required by this subpart exempts any licensed individual from the exercise of good judgment in an emergency situation.

Subpart F—Markings Required

§ 122.602 Hull markings.

(a) This section applies to each vessel that fits into any one of the following categories:

(1) A vessel of more than 65 feet (19.8 meters) in length.

(2) A sailing vessel of more than 65 feet (19.8 meters) in length.

(3) A vessel authorized to carry more than 150 passengers.

(4) A vessel authorized to carry more than 12 passengers on an international voyage.

(5) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

(b) Each vessel must be marked as required by part 67 of this chapter.

(c) Each vessel must:

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward, amidships, and aft to indicate the maximum allowable draft and trim.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 8 inches in length and 1 inch in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel which has a load line, the amidships marks required by paragraph (c)(2) of this section will be those required by the International Load Line Convention.

(f) In cases where draft marks are obscured due to operational constraints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on the upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at least 1 inch numbers and letters at the entranceway to each such deck.

§ 122.604 Lifesaving equipment markings.

(a) The name of a vessel must be marked or painted in clearly legible letters and numbers at least 3 inches high:

(1) On each side of the bow of each rescue boat; and

(2) On each life float and buoyant apparatus.

(b) Each lifejacket, immersion suit, and ring life buoy must be marked in clearly legible block capital letters with the vessel's name. The marking is not required on a lifejacket carried to meet a temporary need for additional lifejackets, if the lifejacket has the name of another vessel marked on it. For an immersion suit, the name of the person to whom the immersion suit is assigned is an acceptable alternative to the name of the vessel.

(c) The name of the vessel must be marked or painted in clearly legible letters on each Emergency Position Indicating Radio Beacon (EPIRB), except on an EPIRB in an inflatable liferaft.

(d) The number of persons capacity must be marked or painted in clearly

legible letters on each side of the bow of each rescue boat in letters and numbers at least 1.5 inches high.

(e) The number of persons capacity must be marked or painted in clearly legible letters on each life float and buoyant apparatus in letters and numbers at least 1.5 inches high. This number must:

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for as shown on its nameplate.

(f) The number of persons each inflatable liferaft is permitted to accommodate must be marked or painted in clearly legible letters and numbers at least 1.5 inches high on the inflatable liferaft container.

(g) The number and identification of the items stowed inside, and their sizes, must be marked in clearly legible letters and numbers on each container for lifejackets and immersion suits. Identification of the items may be in words, or the appropriate symbols in IMO Resolution A.603(15). Letters and numbers must be at least 2 inches high. Symbols must be at least 100 mm (4 inches) square.

(h) The name of the vessel must be marked or painted in clearly legible letters on each oar and paddle.

(i) Each lifejacket must be marked with Type I retroreflective material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material applied after [*effective date of the final rule*] must be as specified by IMO Resolution A.658(16).

(j) Each rescue boat and ring life buoy must be marked with Type II retroreflective material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material applied after [*effective date of the final rule*] must be as specified by IMO Resolution A.658(16).

§ 122.606 Escape hatches and emergency exits.

All escape hatches and other emergency exits used as means of escape must be marked on both sides in clearly legible letters at least 2 inches high: "EMERGENCY EXIT, KEEP CLEAR", unless such markings are deemed unnecessary by the cognizant OCMI.

§ 122.608 Fuel shutoff valves.

Remote fuel shutoff stations must be marked in clearly legible letters at least 1 inch high indicating purpose of the valve and direction of operation.

§ 122.610 Watertight doors and watertight hatches.

Watertight doors and watertight hatches must be marked on both sides in clearly legible letters at least 1 inch high: "WATERTIGHT DOOR—KEEP CLOSED" or "WATERTIGHT HATCH—KEEP CLOSED", unless such markings are deemed unnecessary by the cognizant OCMI.

§ 122.612 Fire protection equipment.

(a) Complete but simple instructions for the operation of a fixed gas fire extinguishing system must be located in a conspicuous place at or near each pull box and stop valve control and in the space where the extinguishing agent cylinders are stored. If the storage cylinders are separate from the protected space, the instructions must also include a schematic diagram of the system and instructions detailing alternate methods of releasing the extinguishing agent should the local manual release or stop valve controls fail to operate. Each control valve to a distribution line must be marked to indicate the space served.

(b) An alarm for a fixed gas fire extinguishing system must be clearly and conspicuously marked in clearly legible letters "WHEN ALARM SOUNDS-VACATE AT ONCE. CARBON DIOXIDE (HALON) BEING RELEASED".

(c) Each distribution line valve of a fixed gas fire extinguishing system and the fire main, must be plainly, conspicuously, and permanently marked indicating the space served.

(d) A manual fire alarm box must be conspicuously marked in clearly legible letters "IN CASE OF FIRE BREAK GLASS".

(e) An alarm for an automatic fire detecting system or a manual alarm system must be conspicuously marked in clearly legible letters "FIRE ALARM".

(f) An alarm for an automatic sprinkler system must be conspicuously marked in clearly legible letters "SPRINKLER ALARM".

(g) An alarm bell for a smoke detecting system must be conspicuously marked in clearly legible letters "SMOKE DETECTION ALARM".

(h) A control cabinet or space containing valves, manifolds, or controls for any fixed gas fire extinguishing system must be conspicuously marked in clearly legible letters "CARBON DIOXIDE (HALON) FIRE EXTINGUISHING APPARATUS", or as otherwise required by the cognizant OCMI.

Subpart G—Operational Readiness, Maintenance, and Inspection of Lifesaving Equipment

§ 122.700 Operational readiness.

(a) Each launching appliance and each survival craft and rescue boat on a vessel must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is underway.

(b) Each deck where survival craft or rescue boats are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the survival craft or rescue boat.

§ 122.702 Maintenance.

(a) The manufacturer's instructions for onboard maintenance of survival craft, rescue boats, and launching appliances, manufactured on or after [*effective date of the final rule*], must be onboard a vessel of more than 65 feet in length and readily available for a vessel of not more than 65 feet in length. The instructions must also be readily available at each inspection for certification and reinspection. The instructions must include the following:

(1) Checklists for use when carrying out the inspections required under this subpart;

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The owner or managing operator shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) The cognizant OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

§ 122.704 Maintenance of falls.

(a) Each fall used in a launching appliance on a vessel must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is earlier.

(c) Each fall must have a corrosion resistant tag with the following permanently marked on it in clearly legible letters:

(1) The date the new fall was installed; and

(2) If the fall has been turned end for end, the date it was turned.

§ 122.720 Weekly maintenance and inspections.

The following tests and inspections must be carried out weekly on a vessel:

(a) Each survival craft, rescue boat, and launching appliance must be visually inspected to ensure its readiness for use;

(b) Each rescue boat engine must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimum temperature required for starting the engine; and

(c) Each battery for rescue boat engine starting must be brought up to full charge at least once each week if:

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

§ 122.722 Monthly inspections.

Each survival craft, rescue boat, and launching appliance on a vessel must be inspected monthly, using the applicable checklist when required under § 122.702, to make sure it is complete and in good order.

§ 122.724 Quarterly inspections.

(a) Each winch control apparatus of a launching appliance on a vessel, including motor controllers, emergency switches, master switches, and limit switches, must be examined once in each 3 months.

(b) The examination required by paragraph (a) of this section must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

§ 122.726 Annual inspections.

(a) Each rescue boat must be stripped, cleaned, and thoroughly inspected and repaired at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired once each year.

(c) Each item of lifesaving equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of lifesaving equipment, except inflatable survival craft equipment, must be replaced during the annual inspection if the expiration date of the battery has passed. The expiration date of the battery may be marked on the battery in clearly legible letters or the owner or managing operator may have a record of the expiration date from the manufacturer of a battery marked with a serial number.

(e) Except for a storage battery used in a rescue boat, each battery without an expiration date indicated on it or for which the owner or managing operator does not have a record of the expiration date, used in an item of lifesaving equipment, must be replaced during the annual inspection.

(f) The requirements in this section do not relieve the master of the requirement under § 122.700 to keep the equipment ready for immediate use.

§ 122.728 Testing and servicing of Emergency Position Indicating Radiobeacons (EPIRBs).

The master of the vessel shall ensure that:

(a) Each EPIRB, other than an EPIRB in an inflatable liferaft, must be tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and,

(b) The EPIRB's battery is replaced after it is used, or before the date required by FCC regulations in 47 CFR Part 80, whichever comes sooner.

§ 122.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable buoyant apparatus, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft and inflatable buoyant apparatus must be serviced:

(1) Whenever the container of the raft is damaged, or the straps or seal are broken; and

(2) In accordance with the servicing procedure under part 160, subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under part 160, subpart 160.176 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under part 160, subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant, except for emergency repairs carried out on board the vessel.

§ 122.740 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit, other than a disposable unit, must be serviced:

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under part 160, subpart 160.062 of this chapter.

(b) Each disposable hydrostatic release unit must be marked in clearly legible letters with an expiration date of two years after the date on which the unit is installed.

Subpart H—Penalties

§ 122.900 Penalty for violations.

Violation of the provisions of this subchapter will subject the violator to the applicable penalty provisions of subtitle II of title 46, United States Code.

§ 122.910 Suspension and revocation.

An individual holding a license, certificate of registry, or merchant mariner's document who commits an act of misconduct, negligence, or incompetence, or who violates or fails to comply with this subchapter or any other law or regulation intending to promote marine safety, is subject to proceedings under the provisions of 46 U.S.C. 7703 and part 5 of this chapter with respect to suspension or revocation of a license, certificate, or document.

PARTS 123–139—[RESERVED]

SUBCHAPTER S—SUBDIVISION AND STABILITY

PART 170—STABILITY REQUIREMENTS FOR ALL INSPECTED VESSELS

2. The authority citation for part 170 is revised to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.46.

§ 170.001 [Amended]

3. Section 170.001 is amended by removing the date of January 3, 1984 in paragraphs (a) and (b) and inserting in its place the date of [effective date of the final rule].

4. Section 170.055 is amended by adding two sentences to the end of paragraph (i)(1) and adding paragraph (w) to read as follows:

§ 170.055 Definitions concerning a vessel.

* * * * *

(i) * * *

(1) * * * For a small passenger vessel which has underwater projections extending forward of the forwardmost point or aft of the aftermost point on the deepest waterline of the vessel, the Commanding Officer, U.S. Coast Guard Marine Safety Center, may include the length or a portion of the length of the underwater projections in the value used for the LBP for the purposes of this subchapter. The length or a portion of the length of projections which contribute more than 2 percent of the underwater volume of the vessel is normally added to the actual LBP.

* * * * *

(w) "Small passenger vessel" means a vessel of less than 100 gross tons carrying more than six passengers, as defined in § 175.400 of this chapter.

§ 170.075 [Amended]

5. Paragraph (b) of § 170.075 is amended by removing the citation "§ 171.030(b)(2)" and adding, in its place, "§ 178.320" and by removing the citation "§ 171.043" and adding, in its place, "§ 179.220".

§ 170.105 [Amended]

6. Section 170.105 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2) through (b)(5) as paragraphs (b)(1) through (b)(4), respectively.

§ 170.160 [Amended]

7. Section 170.160 is amended by removing paragraph (b)(1) and by redesignating paragraphs (b)(2) through (b)(4) as paragraphs (b)(1) through (b)(3), respectively.

PART 171—SPECIAL RULES PERTAINING TO VESSELS CARRYING PASSENGERS

8. The authority citation for part 171 is revised to read as follows:

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

9 and 10. Section 171.010 is amended by revising paragraphs (d)(1) and (3); redesignating paragraphs (l), (m) and (n) as (n), (p) and (q), respectively; redesignating paragraphs (e) through (k) as (f) through (l), respectively; and by adding newly designated paragraphs (e) and (m), and new paragraph (o) to read as follows:

§ 171.010 Definitions.

* * * * *

(d) * * *

(1) Operates in other than ocean or coastwise service; * * *

(3) Operates on a short run on a frequent schedule between two points over the most direct water route;

* * * * *

(e) *Freeing port* means any direct opening through the vessel's bulwark or hull to quickly drain overboard water which has been shipped on exposed decks.

* * * * *

(m) *Small passenger vessel* means a vessel of less than 100 gross tons carrying more than six passengers, as defined in § 175.400 of this chapter.

* * * * *

(o) *Scupper* means a pipe or tube of at least 1.25 inches in diameter leading down from a deck or sole and through the hull to drain water overboard.

11. Subpart B consisting of §§ 171.020 through 171.043, is removed and reserved.

12. Paragraphs (a) and (b) of § 171.057 are amended by revising the equations, revising the definitions of As, removing the definitions of Hm and replacing them with the definitions of Hc, and revising the definitions of W, to read as follows:

§ 171.057 Intact stability requirements for a sailing catamaran.

(a) * * *

$$\frac{0.1(W)B}{(As)(Hc)}$$

* * * * *

As = the maximum sail area in square feet (square meters)

Hc = the height of the center of effort of the sail area above the deck, in feet (meters)

W = the total displacement of the vessel, in pounds (kilograms)

* * * * *

(b) * * *

$$\frac{0.1(W)B}{(As)(Hc)}$$

* * * * *

As = the maximum sail area in square feet (square meters)

Hc = the height of the center of effort of the sail area above the deck, in feet (meters)

W = the total displacement of the vessel, in pounds (kilograms)

* * * * *

§ 171.110 [Amended]

13. Section 171.110 is amended by removing paragraph (b) and by removing the designation (a) for the remaining text.

§ 171.114 [Removed]

14. Section 171.114 is removed.

§ 171.115 [Amended]

15. Section 171.115 is amended by removing paragraph (b) and by removing the designation (a) for the remaining text.

§ 171.119 [Removed]

16. Section 171.119 is removed.

17. Section 171.120 is revised to read as follows:

§ 171.120 Specific applicability.

A vessel of at least 100 gross tons must comply with § 171.122.

§ 171.124 [Removed]

18. Section 171.124 is removed.

§ 171.130 [Amended]

19. Section 171.130 is amended by removing paragraph (b) and by removing the designation (a) for the remaining text.

§§ 171.140, 171.145, 171.150, and 171.155 [Removed]

20. Sections 171.140, 171,145, 171,150 and 171.155 are removed.

PART 173—SPECIAL RULES PERTAINING TO VESSEL USE

21. The authority citation for part 173 continues to read as follows:

Authority: 43 U.S.C. 1333; 46 U.S.C. 2113, 3306, 5115; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

22. The cited sections or paragraphs of part 173 listed in Column 1 of the following table, are amended by removing the existing reference, listed in Column 2, in the cited section or paragraph and adding in its place the new reference listed in Column 3.

Column 1	Column 2	Column 3
Cite	Existing reference	New reference
173.054(a)(1)	171.040(a)(1)	179.210(a) of this chapter.
173.054(b)(1)	171.040(a)(1)	179.210(a) of this chapter.

Column 1	Column 2	Column 3
Cite	Existing reference	New reference
173.054(b)(1)	171.043	179.220 of this chapter.
173.063(a)	171.035	170.170, 171.050, and 171.055.
173.064(d)	171.035 (d) through (h)	178.300 and 178.310 of this chapter.

23. The cited sections or paragraphs of part 173 listed in Column 1 of the following table, are amended by adding the corresponding phrase, listed in Column 2, to the end of the cited section or paragraph.

Column 1	Column 2
Cite	New phrase
173.059	"Or §§ 179.320, 179.330, and 179.340 of this chapter."
173.060(a)	"Or § 179.350 of this chapter."
173.061	"Or § 179.360 of this chapter."
173.062	"Or Subpart D of Part 178 of this chapter."

24. Subchapter T is revised to read as follows:

SUBCHAPTER T—SMALL PASSENGER VESSELS

PART 175—GENERAL PROVISIONS

Sec.

175.100 Purpose.
175.110 General applicability.
175.112 Specific applicability for individual parts.
175.120 Vessels on an international voyage.
175.122 Load lines.
175.200 Gross tonnage as a criterion for requirements.
175.400 Definitions of terms used in this subchapter.
175.540 Equivalents.
175.550 Special consideration.
175.560 Appeals.
175.600 Incorporation by reference.
175.800 Approved equipment and material.
175.900 OMB control numbers.

Authority: 46 U.S.C. 2103, 3306, 3703; 49 U.S.C. App.1804; 49 CFR 1.45, 1.46; § 175.900 also issued under authority of 44 U.S.C. 3507.

§ 175.100 Purpose.

The purpose of this subchapter is to implement applicable sections of Subtitle II of Title 46, United States Code, which require the inspection and certification of small passenger vessels.

§ 175.110 General applicability.

(a) Except as provided in paragraphs (b) and (c) of this section, this subchapter applies to each vessel of less than 100 gross tons which carries more than six passengers.

(b) A vessel of less than 100 gross tons must comply with subchapter K of this chapter if it is:

(1) A vessel which carries more than 150 passengers;

(2) A vessel with overnight accommodations for more than 49 passengers; or

(3) A vessel of more than 200 feet in length which carries more than six passengers.

(c) This subchapter does not apply to:

(1) A vessel operating exclusively on inland waters which are not navigable waters of the United States;

(2) An oceanographic research vessel;

(3) A boat forming part of a vessel's lifesaving equipment and which is not used for carrying passengers except in emergencies or during emergency drills;

(4) A vessel of a foreign country which is a party to the International Convention for the Safety of Life at Sea, 1974, as amended (SOLAS), to which the United States Government is currently a party, and which has on board a current valid SOLAS Passenger Ship Safety Certificate; or

(5) A vessel of a foreign country, whose government has inspection laws approximating those of the United States and which by its laws accords similar privileges to vessels of the United States, which has on board a current valid certificate of inspection, permitting the carrying of passengers, issued by its government.

(d) The relationship between this subchapter and other subchapters pertaining to the inspection and certification of small passenger vessels is provided in the table below, which shows the breakpoints between subchapters T and K of this chapter.

TABLE 175.110(d)

Subchapter T	Subchapter K	Subchapter K[1]
≤150 passengers or overnight accomodations for ≤ 49 passengers and ≤ 200 feet.	151–600 passengers or overnight accomodations for 50–150 passengers and ≤ 200 feet.	≥ 601 passengers or overnight accomodations for ≥ 151 passengers or ≥ 200 feet.

[1] Vessels in this category are small passenger vessels (passenger vessels less than 100 GT) but are required to comply with parts 72, 75, and 76 of subchapter H, parts 114, 115, 121, and 122 of subchapter K, and the applicable requirements of subchapters F and J.

§ 175.112 Specific applicability for individual parts.

At the beginning of certain parts of this subchapter, a more specific application is given for all or particular portions of that part. This application sets forth the type, size, service, or age of a vessel to which certain portions of that part apply or particular dates by which an existing vessel must comply with certain portions of that part.

§ 175.120 Vessels on an international voyage.

A mechanically propelled vessel which carries more than 12 passengers on an international voyage must comply with the applicable requirements of SOLAS, as well as this Subchapter.

§ 175.122 Load lines.

A vessel of 79 feet in length or more, the keel of which was laid or which was at a similar stage of construction on or after July 21, 1968, and which is on a voyage other than a domestic voyage is subject to load line assignment, certification, and marking under subchapter E (Load Lines) of this chapter.

§ 175.200 Gross tonnage as criterion for requirements.

(a) The regulations in this subchapter take into account a vessel's length, passenger capacity, construction, equipment, intended service, and operating area. The criterion for application of this subchapter is the gross tonnage of the vessel. When the Commandant determines that the gross

tonnage of a particular vessel, which is attained by exemptions, reductions, or other devices in the basic gross tonnage formulation, will circumvent or be incompatible with the application of specific regulations for a vessel of such physical size, the Commandant will prescribe the regulations to be made applicable to the vessel.

(b) When the Commandant determines that the gross tonnage is not a valid criterion for the use of certain regulations based on the relative size of the vessel, the owner will be informed of the determination and of the regulations applicable to the vessel. The vessel must be brought into compliance with all additional requirements before a Certificate of Inspection is issued.

§ 175.400 Definitions of terms used in this subchapter.

The following terms are used in this subchapter:

Accommodation space means a space used as a:

(1) Public space;
(2) Hall;
(3) Dining room and messroom;
(4) Lounge or cafe;
(5) Public sales room;
(6) Overnight accommodation space;
(7) Barber shop or beauty parlor;
(8) Office or conference room;
(9) Washroom or toilet space;
(10) Medical treatment room or dispensary; or
(11) Game or hobby room.

Beam or *B* means the maximum width of a vessel from:

(1) Outside of planking to outside of planking on wooden vessels; and
(2) Outside of frame to outside of frame on all other vessels.

Bulbous bow means a design of bow in which the forward underwater frames ahead of the forward perpendicular are swelled out at the forefoot into a bulbous formation.

Bulkhead deck means the uppermost deck to which watertight bulkheads and the watertight shell extend.

Cable means single or multiple insulated conductors with an outer protective jacket.

Cargo space means a:

(1) Cargo hold;
(2) Refrigerated cargo space; or
(3) A trunk leading to or from a space listed above.

Coast Guard District Commander or *District Commander* means an officer of the Coast Guard designated as such by the Commandant to command Coast Guard activities within a district.

Coastwise means a route which is not more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;
(2) The Gulf of Mexico;
(3) The Caribbean Sea;
(4) The Bering Sea;
(5) The Gulf of Alaska; or
(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Cockpit vessel means a vessel with an exposed recess in the weather deck extending not more than one-half of the length of the vessel measured over the weather deck.

Commandant means the Commandant of the Coast Guard or an authorized Headquarters staff officer designated in § 1.01 of this chapter.

Corrosion-resistant material or *corrosion-resistant* means made of one of the following materials in a grade suitable for its intended use in a marine environment:

(1) Silver;
(2) Copper;
(3) Brass;
(4) Bronze;
(5) Aluminum alloys with a copper content of no more than 0.4 percent;
(6) Copper-nickel;
(7) Plastics;
(8) Stainless steel;
(9) Nickel-copper; or
(10) A material, which when tested in accordance with ASTM B–117 for 200 hours, does not show pitting, cracking, or other deterioration.

Crew accommodation space means an accommodation space designated for the use of crew members and which passengers are normally not allowed to occupy.

Custom engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed for a specific space requiring individual calculations for the extinguishing agent volume, flow rate, piping, and similar factors for the space.

Distribution panel means an electrical panel which receives energy from the switchboard and distributes the energy to energy consuming devices or other panels.

Draft means the vertical distance from the molded baseline of a vessel amidships to the waterline.

Dripproof means enclosed equipment so constructed or protected that falling drops of liquid or solid particles striking the enclosure at any angle from 0 to 15 degrees downward from the vertical do not interfere with the operation of the equipment. A National Electrical Manufacturers Association type 1 enclosure with a dripshield is considered to be dripproof.

Dynamically supported craft means a craft which is operable on or above the water and which has characteristics so different from those of conventional displacement ships, to which the existing international conventions, particularly SOLAS, apply, that alternative measures should be used to achieve an equivalent level of safety. Within the aforementioned generality, a craft which complies with either of the following characteristics would be considered a dynamically supported craft:

(1) The weight, or a significant part thereof, is balanced in one mode of operation by other than hydrostatic forces.

(2) The craft is able to operate at speeds such that the function $v/\sqrt{gL}$ is equal to or greater than 0.9, where "v" is the maximum speed, "L" is the waterline length and "g" is the acceleration due to gravity, all in consistent units.

Embarkation station means the place on the vessel from which a survival craft is boarded.

Enclosed space means a compartment that is not exposed to the atmosphere when all access and ventilation closures are secured.

Existing vessel means a vessel which is not a new vessel.

Exposed waters is a term used in connection with stability criteria and means:

(1) Waters, except the Great Lakes, more than 20 nautical miles from a harbor of safe refuge;

(2) Those portions of the Great Lakes more than 20 nautical miles from a harbor of safe refuge from October 1 of one year through April 15 of the next year (winter season); and

(3) Those waters less than 20 nautical miles from a harbor of safe refuge which the cognizant Officer in Charge, Marine Inspection, determines are not partially protected waters or protected waters because they present special hazards due to weather or other circumstances.

Ferry means a vessel that:

(1) Operates in other than ocean or coastwise service;

(2) Has provisions only for deck passengers or vehicles, or both;

(3) Operates on a short run on a frequent schedule between two points over the most direct water route; and

(4) Offers a public service of a type normally attributed to a bridge or tunnel.

Fiber reinforced plastic means plastics reinforced with fibers or strands of some other material.

Flash point means the temperature at which a liquid gives off a flammable vapor when heated using the Pensky-Martens Closed Cup Tester method in accordance with ASTM D–93.

Float-free launching or arrangement means that method of launching a survival craft whereby the survival craft is automatically released from a sinking vessel and is ready for use.

Flush deck vessel means a vessel with a continuous weather deck located at the uppermost sheer line of the hull.

Freeing port means any direct opening through the vessel's bulwark or hull to quickly drain overboard water which has been shipped on exposed decks.

Galley means a space containing appliances with cooking surfaces which may exceed 250°F, such as ovens, griddles, and deep fat fryers.

Great Lakes means a route on the waters of any of the Great Lakes, except that for the purposes of parts 178 and 179 of this subchapter, "Great Lakes" means both the waters of the Great Lakes and of the St. Lawrence River as far east as a straight line drawn from Cap de Rosiers to West Point, Anticosti Island, and west of a line along the 63rd meridian from Anticosti Island to the north shore of the St. Lawrence River.

Gross tonnage and *gross tons* is an indicator of a vessel's approximate volume as determined in accordance with part 69 (Measurement of Vessels) of this chapter and recorded on the vessel's Certificate of Admeasurement.

Harbor of safe refuge means a port, inlet, or other body of water normally sheltered from heavy seas by land and in which a vessel can navigate and safely moor. The suitability of a location as a harbor of safe refuge shall be determined by the cognizant Officer in Charge, Marine Inspection, and varies for each vessel, dependent on the vessel's size, maneuverability, and mooring gear.

High seas means all waters which are neither territorial seas (the waters in a belt 3 nautical miles wide, that is adjacent to the coast and seaward of the territorial sea baseline) nor internal waters of the United States or of any foreign country.

Independent laboratory means a laboratory accepted under part 159, subpart 159.010 of this chapter.

Inflatable survival craft or lifejacket means one which depends upon nonrigid, gas-filled chambers for buoyancy, and which is normally kept uninflated until ready for use.

International voyage means a voyage between a country to which SOLAS applies and a port outside that country. A country, as used in this definition, includes every territory for the international relations of which a contracting government to the convention is responsible or for which the United Nations is the administering authority. For the U.S., the term "territory" includes the Commonwealth of Puerto Rico, all possessions of the United States, and all lands held by the United States under a protectorate or mandate. For the purposes of this subchapter, vessels are not considered as being on an "international voyage" when solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd meridian.

Lakes, bays, and sounds means a route on any of the following waters:

(1) A lake other than the Great Lakes;
(2) A bay;
(3) A sound; or
(4) Such other similar waters as may be designated by a Coast Guard District Commander.

Launching appliance means a device for transferring a survival craft or rescue boat from its stowed position safely to the water. For a launching appliance using a davit, the term includes the davit, winch and falls.

Length when used in terms of the vessel's length, means:

(1)(i) The length listed on the vessel's Certificate of Documentation issued under the provisions of part 67 (Documentation of Vessels) of this chapter or Certificate of Number issued under the provisions of 33 CFR part 173, subpart B (Numbering); or

(ii) For a vessel which does not have a Certificate of Documentation or a Certificate of Number, the "registered length" as defined in § 69.53 of this chapter or, for a vessel which is less than 79 feet in overall length and is measured using simplified admeasurement, the registered length as defined in § 69.203 of this chapter; or

(2) For the purposes of part 179 of this subchapter, the "length" of a vessel with a bulbous bow means the larger of the length as defined in paragraph (1)(i) of this definition or the straight line horizontal measurement from the forwardmost tip of the bulbous bow to the aftermost part of the vessel measured parallel to the centerline.

Bow sprits, bumpkins, rudders, outboard motor brackets, handles, and other similar fittings, attachments, and extensions are not included in the "length" of a vessel.

Length between perpendiculars or *(LBP)* means the horizontal distance measured between perpendiculars taken at the forwardmost and aftermost points on the waterline corresponding to the deepest operating draft.

Machinery space means a space including a trunk, alleyway, stairway, or duct to such a space, that contains:

(1) Propulsion machinery of any type;
(2) Steam or internal combustion machinery;
(3) Oil transfer equipment;
(4) Electrical motors of more than 10 hp;
(5) Refrigeration equipment;
(6) One or more oil-fired boilers or heaters; or
(7) Electrical generating machinery.

Main transverse watertight bulkhead means a transverse bulkhead that must be maintained watertight in order for the vessel to meet the damage stability and subdivision requirements of this subchapter.

Major conversion means a conversion of a vessel that, as determined by the Commandant:

(1) Alters the dimensions of the vessel including but not limited to gross tonnage, length, breath, or height;

(2) Alters the design or arrangement so that the vessel is capable of carrying more passengers than it was originally built to carry;

(3) Alters the design or scantlings of a vessel so that it is suitable for operation on a route of greater severity than the route for which it was originally built; or

(4) Adds or modifies overnight accommodation spaces for passengers so that the total number of passengers that can be accommodated in such spaces changes from not more than 49 to more than 49.

Marine inspector or *inspector* means any civilian employee or military member of the Coast Guard assigned by an Officer in Charge, Marine Inspection, or the Commandant to perform duties with respect to the inspection, enforcement, and administration of vessel safety and navigation laws and regulations.

Master means the individual having command of the vessel and who is the holder of a valid license which authorizes the individual to serve as master of a small passenger vessel.

Means of escape means a continuous and unobstructed way of exit travel from any point in a vessel to an embarkation station. It consists of three distinct components:

(1) The exit access;
(2) The exit; and
(3) The exit discharge.

A means of escape can be both vertical and horizontal, and includes doorways, passageways, stairtowers, stairways, and public spaces. Cargo spaces, machinery spaces, rest rooms, hazardous areas, escalators, and elevators must not be any part of a means of escape.

New vessel means a vessel:

(1) The initial construction of which began on or after [*effective date of the final rule*];

(2) Which was issued an initial Certificate of Inspection on or after [*six*

months after effective date of the final rule];

(3) Which underwent a major conversion which was initiated on or after [*effective date of the final rule*]; or

(4) Which underwent a major conversion which was completed and for which an amended Certificate of Inspection was issued on or after [*six months after effective date of the final rule*].

Noncombustible material means any material approved under § 164.009 of this chapter.

Nonself-propelled vessel means a vessel which does not have installed means of propulsion, including propulsive machinery, masts, spars, or sails.

Oceans means a route which is more than 20 nautical miles offshore on any of the following waters:

(1) Any ocean;

(2) The Gulf of Mexico;

(3) The Caribbean Sea;

(4) The Bering Sea;

(5) The Gulf of Alaska; or

(6) Such other similar waters as may be designated by a Coast Guard District Commander.

Officer In Charge, Marine Inspection, or *OCMI* means an officer of the Coast Guard designated as such by the Commandant and who, under the direction of the Coast Guard District Commander, is in charge of a marine inspection zone, described in part 1 of this chapter, for the performance of duties with respect to the inspections, enforcement, and administration of vessel safety and navigation laws and regulations. The cognizant OCMI is the OCMI that has immediate jurisdiction over a vessel for the purpose of performing the duties previously described.

Open boat means a vessel not protected from entry of water by means of a complete weathertight deck, or by a combination of a partial weathertight deck and superstructure which is structurally suitable for the waters upon which the vessel operates.

Open deck means a deck that is permanently open to the weather on one or more sides and, if covered, any spot on the overhead is less than 15 feet from the nearest opening to the weather.

Open to the atmosphere means a compartment that has at least 15 square inches of open area directly exposed to the atmosphere for each cubic foot of net compartment volume.

Operating station means the principal steering station on the vessel from which the individual on duty normally navigates the vessel.

Overnight accommodations or *overnight accommodation space* means an accommodation space for use by passengers or by crew members, which has one or more berths, including beds or bunks, for passengers or crew members to rest for extended periods. Staterooms, cabins, and berthing areas are normally overnight accommodation spaces. Overnight accommodations do not include spaces which contain only seats, including reclining seats.

Partially enclosed space means a compartment that is neither open to the atmosphere nor an enclosed space.

Partially protected waters is a term used in connection with stability criteria and means:

(1) Waters not more than 20 nautical miles from the mouth of a harbor of safe refuge, unless determined by the cognizant OCMI to be exposed waters;

(2) Those portions of rivers, estuaries, harbors, lakes, and similar waters which the cognizant OCMI determines not to be protected waters; and

(3) Waters of the Great Lakes from April 16 through September 30 of the same year (summer season).

Passenger means an individual carried on a vessel except:

(1) The owner or representative of the owner;

(2) The master or a crewmember engaged in the business of the vessel who has not contributed consideration for carriage and who is paid for services;

(3) An employee of the owner of the vessel engaged in the business of the owner, except when the vessel is operating under a demise charter;

(4) An employee of the demise charterer of the vessel engaged in the business of the demise charterer;

(5) A guest on board a vessel being operated only for pleasure who has not contributed consideration for carriage on board; or

(6) An individual on board a towing vessel of at least 50 gross tons who has not contributed consideration for carriage on board.

Passenger accommodation space means an accommodation space designated for the use of passengers.

Pilothouse control means that controls to start and stop the engines and control the direction and speed of the propeller of the vessel are located at the operating station.

Piping system includes piping, fittings, and appurtenances as described in 46 CFR 56.07–5.

Protected waters is a term used in connection with stability criteria and means sheltered waters presenting no special hazards such as most rivers, harbors, and lakes, and which is not determined to be exposed waters or partially protected waters by the cognizant OCMI.

Pre-engineered means, when referring to a fixed gas fire extinguishing system, a system that is designed and tested to be suitable for installation without modification as a complete unit in a space of a set volume, regardless of the specific design of the vessel on which it is installed.

Rivers means a route on any of the following waters:

(1) A river;

(2) A canal; or

(3) Such other similar waters as may be designated by a Coast Guard District Commander.

Sailing vessel means a vessel principally equipped for propulsion by sail even if the vessel has an auxiliary means of propulsion.

Scupper means a pipe or tube of at least 1.25 inches in diameter leading down from a deck or sole and through the hull to drain water overboard.

Self-bailing cockpit means a cockpit, with watertight sides and floor (sole), which is designed to free itself of water by gravity drainage through scuppers.

Ship's service loads means services necessary for maintaining the vessel in normal operational and habitable conditions. These loads include, but are not limited to, safety, lighting, ventilation, navigational, and communications loads.

Short international voyage means an international voyage where:

(1) The vessel is not more than 200 nautical miles from a port or place in which the passengers and crew could be placed in safety; and

(2) The total distance between the last port of call in the country in which the voyage began and the final port of destination does not exceed 600 nautical miles.

Stairway means an inclined means of escape between two decks.

Steel or equivalent material means steel or any noncombustible material which, by itself or due to insulation provided, has structural and integrity properties equivalent to steel at the end of the standard fire test.

Survival craft means a lifeboat, rigid liferaft, inflatable liferaft, life float, inflatable buoyant apparatus, buoyant apparatus, or a small boat carried aboard a vessel in accordance with § 180.200(b) of this subchapter.

Switchboard means an electrical panel which receives power from a generator, battery, or other electrical power source and distributes power directly or indirectly to all equipment supplied by the generating plant.

Trunk means a vertical shaft or duct for the passage of pipes, wires, or other devices except that for the purposes of part 179 of this subchapter, "trunk" means a large enclosed passageway through any deck or bulkhead of a vessel.

Vehicle space means a space not on an open deck, for the carriage of motor vehicles with fuel in their tanks, into and from which such vehicles can be driven and to which passengers have access.

Vessel includes every description of watercraft or other artificial contrivance, used or capable of being used as a means of transportation on water.

Vessel of the United States means a vessel documented or numbered under the laws of the United States, the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

Watertight means designed and constructed to withstand a static head of water without any leakage, except that "watertight" for the purposes of electrical equipment means enclosed so that water does not enter the equipment when a stream of water from a hose with a nozzle one inch in diameter that delivers at least 65 gallons per minute is played on the enclosure from any direction from a distance of ten feet for five minutes.

Weather deck means a deck which is partially or completely exposed to the weather from above or from at least two sides, except that for the purposes of parts 178 and 179 of this subchapter, "weather deck" means the uppermost deck exposed to the weather to which a weathertight sideshell extends.

Weathertight means that water will not penetrate in any sea condition, except that "weathertight equipment" means equipment constructed or protected so that exposure to a beating rain will not result in the entrance of water.

Well deck vessel means a vessel with a weather deck fitted with solid bulwarks that impede the drainage of water over the sides or a vessel with an exposed recess in the weather deck extending more than one-half of the length of the vessel measured over the weather deck.

Wire means an individual insulated conductor without an outer protective jacket.

Work space means a space, not normally occupied by a passenger, in which a crew member performs work and includes, but is not limited to, a galley, operating station, or machinery space.

§ 175.540 Equivalents.

(a) The Commandant may accept in substitution for a required arrangement, fitting, appliance, apparatus, equipment, calculation, information, or test an equivalent that is as effective as that required by the regulations and is consistent with the intent of the requirements and the minimum safety standards specified in this subchapter. Requests for equivalents must be submitted to the Commandant via the cognizant OCMI. If necessary, the Commandant may require engineering evaluations and tests to demonstrate the equivalence of the substitute.

(b) The Commandant may accept compliance by a dynamically supported craft with the provisions of the IMO "Code of Safety for Dynamically Supported Craft" as an equivalent to compliance with applicable requirements of this subchapter. Requests for equivalents must be submitted to the Commandant via the cognizant OCMI.

(c) The Commandant may approve a novel lifesaving appliance or arrangement as an equivalent if it has performance characteristics at least equivalent to the appliance or arrangement required under this part, and:

(1) Is evaluated and tested under IMO Resolution A.520(13), "Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements"; or

(2) Has successfully undergone evaluation and tests that are substantially equivalent to those recommendations.

§ 175.550 Special consideration.

In applying the provisions of this subchapter, the OCMI may give special consideration to authorizing departures from the specific requirements when unusual circumstances or arrangements warrant such departures and an equivalent level of safety is provided. The OCMI of each marine inspection zone in which the vessel operates must approve any special consideration granted to a vessel.

§ 175.560 Appeals.

Any person directly affected by a decision or action taken under this subchapter, by or on behalf of the Coast Guard, may appeal therefrom in accordance with part 1, subpart 1.03 of this chapter.

§ 175.600 Incorporation by reference.

(a) Certain material is incorporated by reference into this subchapter with the approval of the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish a notice of change in the **Federal Register** and make the material available to the public. All approved material is on file at the Office of the Federal Register, 800 N. Capitol Street NW., suite 700, Washington, DC, and at the U.S. Coast Guard, Merchant Vessel Inspection Division (G–MVI), 2100 Second Street SW., Washington, DC 20593–0001 and is available from the sources indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this subchapter and the sections affected are:

American Bureau of Shipping (ABS), P.O. Box 910, 45 Eisenhower Dr., Paramus, NJ 07652

Rules for Building and Classing Aluminum Vessels, 1975, 177.300

Rules for Building and Classing Reinforced Plastic Vessels, 1978, 177.300

Rules for Building and Classing Steel Vessels, 1991, 182.410; 183.360

Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, 1983, 177.300

Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, 1980, 177.300

American Boat and Yacht Council (ABYC), P.O. Box 747, 405 Headquarters Dr., Suite 3, Millersville, MD 21108–07477

A–1–78—Marine CNG—Liquefied Petroleum Gas Systems, 184.240

A–3–70—Recommended Practices and Standards Covering Galley Stoves, 184.200

A–7–70—Recommended Practices and Standards Covering Boat Heating Systems, 184.200

A–16–89—Electric Navigation Lights, 183.130

A–22–78—Marine CNG—Compressed Natural Gas Systems, 184.240

E–8–85—Alternating Current (AC) Electrical Systems on Boats, 183.130

E–9–90—Direct Current (DC) Electrical Systems on Boats, 183.130

H–2–89—Ventilation of Boats Using Gasoline, 182.130; 182.460

H–22–86—DC Electric Bilge Pumps Operating Under 50 Volts, 182.130; 182.500

H–24–89—Gasoline Fuel Systems, 182.130; 182.440; 182.445; 182.450; 182.455

H–25–86—Portable Fuel Systems for Flammable Liquids, 182.130; 182.458

H–32–87—Ventilation of Boats Using Diesel Fuel, 182.130; 182.465; 182.470

H–33–89—Diesel Fuel Systems, 182.130; 182.440; 182.445; 182.450; 182.455

P–1–86—Installation of Exhaust Systems for Propulsion and Auxiliary Engines, 177.405; 177.410; 182.130; 182.425; 182.430

P–4–89—Marine Inboard Engines, 182.130; 182.420

American National Standards Institute (ANSI), United Engineering Center, 345 East 47th St., New York, NY 10017

A 17.1–1984—American Standard Safety Code for Elevators, Dumbwaiters, Escalators, and Moving Walks, 183.540
B 31.1–1986—American National Standard Code for Pressure Piping, Power Piping, 182.710
Z 26.1–1983—Safety Glazing Materials For Glazing Motor Vehicles Operating on Land Highways, 177.1030

American Society for Testing and Materials (ASTM), 1916 Race St., Philadelphia, PA 19103

B–117–79—Method of Salt Spray (Fog) Testing, 175.400
D–93–80—Flash Point By Pensky-Martens Closed Cup Tester, 175.400
D–635–81—Standard Test Method for Rate of Burning and/or Extent and Time of Burning of Self-supporting Plastics in a Horizontal Position, 182.440
D–2863–77—Standard Test Method for Measuring the Minimum Oxygen Concentration to Support Candle-like Combustion of Plastics (Oxygen Index), 182.440
E–84–81—Test for Surface Burning Characteristics of Building Materials, 177.410
F—[Reserved for standard on pyrotechnic lockers under development by ASTM], 180.68

Australian Transport Advisory Council, Australian Government Publishing Service, Canberra, Australia

Australia Shipping Law Code Section 5, Subsection J, as amended to August 1, 1984, 177.300

Institute of Electrical and Electronics Engineers, Inc. (IEEE), IEEE Service Center, 445 Hoes Lane, Piscataway, N.J. 08854

Standard 45–1983—Recommended Practice for Electrical Installations on Shipboard, 183.340

International Maritime Organization (IMO), IMO Sales, New York Nautical Instrument and Service Corp., 40 W. Broadway, New York, NY 10013

Code of Safety for Dynamically Supported Craft, 1987, 175.540
Code of Practice for the Evaluation, Testing and Acceptance of Prototype Novel Lifesaving Appliances and Arrangements—IMO Resolution A.520(13), 175.540(c)
Resolution on the Installation of Reflective Tape on Lifesaving Equipment—IMO Resolution A.658(16), 185.604

Lloyd's Register of Shipping, 17 Battery Place, Suite 1013, New York, NY 10004

Rules and Regulations for the Classification of Yachts and Small Craft, as amended through May 11, 1983, 177.300

National Fire Protection Association (NFPA), 1 Batterymarch Park, Quincy, MA 02269–9101

10–1988—Portable Fire Extinguishers, 176.810
17–1985—Dry Chemical Extinguishing Systems, 181.425
17A–1986—Wet Chemical Extinguishing Systems, 181.425
70–1987—National Electrical Code (NEC) Section 250–95 183.370
Section 310–13, 183.340
Section 310–15, 183.340
Article 430, 183.320
Article 445, 183.320
302–1989—Pleasure and Commercial Motor Craft, Chapter 6, 184.200; 184.240
306–1988—Control of Gas Hazards on Vessels, 176.710
1963–1985—Screw Threads and Gaskets for Fire Hose Connections, 181.320

Naval Publications and Forms Center, Customer Service Code 1052, 5801 Tabor Ave., Philadelphia, PA 19120

Military Specification MIL-P–21929B (1970)—Plastic Material, Cellular Polyurethane, Foam-in-Place, Rigid (2 and 4 pounds per cubic foot), 179.240

Society of Automotive Engineers (SAE), 400 Commonwealth Drive, Warrendale, PA 15096–0001

SAE J1475—Hydraulic Hose Fittings For Marine Applications, 1984, 182.720
SAE J1928—Devices Providing Backfire Flame Control for Gasoline Engines in Marine Applications, August 1989, 182.415
SAE J1942—Hose and Hose Assemblies for Marine Applications, (date of standard to be inserted upon publication, which is expected prior to the final rule), 182.720

Underwriters Laboratories Inc. (UL), 12 Laboratory Drive, Research Triangle Park, NC 27709

UL 19–1978—Woven Jacketed, Rubber Lined Fire Hose, 181.320
UL 57–1980—Electric Lighting Fixtures, 183.410
UL 174–1983—Standard for Household Electric Stowage Tank Water Heaters, 182.320
UL 217–1985—Standard for Single and Multiple Station Smoke Detectors, 181.450
UL 486A–1978—Electric Wire Connectors and Soldering Lugs For Use With Copper Conductors, 183.340
UL 489–1986—Molded—Case Circuit Breakers and Circuit Breaker Enclosures, 183.360
UL 595–1980—Marine Type Electric Lighting Fixtures, 183.410
UL 710–1984—Grease Extractors for Exhaust Ducts, 181.425
UL 1058–1984—Halogenated Agent Fire Extinguishing System Units, 181.410(g)
UL 1102–1980—Non-integral Marine Fuel Tanks, 182.440
UL 1110–1976—Marine Combustible Gas Indicators, 182.480
UL 1111–1988—Marine Carburetor Flame Arrestors, 182.415
UL 1453–1982—Electric Booster and Commercial Storage Tank Water Heaters, 182.320
UL 1570–1988—Fluorescent Lighting Fixtures, 183.410
UL 1571–1984—Incandescent Lighting Fixtures, 183.410
UL 1572–1984—High Intensity Discharge Lighting Fixtures, 183.410
UL 1573–1985—Stage and Studio Lighting Units, 183.410
UL 1574–1987—Track Lighting Systems, 183.410

§ 175.800 Approved equipment and material.

(a) Equipment and material that is required by this subchapter to be approved or of an approved type, must have been manufactured and approved in accordance with the design and testing requirements in subchapter Q (Equipment, Construction, and Materials: Specifications and Approval) of this chapter or as otherwise specified by the Commandant.

(b) Notice regarding equipment approvals is published in the **Federal Register**. Coast Guard publication COMDTINST M16714.3, "Equipment Lists, Items Approved, Certificated or Accepted under Marine Inspection and Navigation Laws", lists approved equipment by type and manufacturer. COMDTINST M16714.3 may be obtained from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

§ 175.900 OMB control numbers.

(a) *Purpose.* This section lists the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et. seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR Section where identified:	Current OMB Control Number:
176.105(a)	:2115–0578
176.202	:2115–0578
176.204	:2115–0578
176.302	:2115–0578
176.306	:2115–0578
176.310	:2115–0578
176.500(a)	:2115–0578
176.612	:2115–0578
176.700	:2115–0578
176.704	:2115–0578
176.710	:2115–0578
176.810(b)	:2115–0578
176.920(c)	:2115–0578
176.930	:2115–0578
177.202	:2115–0578
177.315	:2115–0589
177.330	:2115–0578
177.335	:2115–0589
177.340	:2115–0578
178.210	:2115–0578
178.220	:2115–0559
178.230	:2115–0559

46 CFR Section where identified:	Current OMB Control Number:
181.610	:2115–0578
182.460(e)	:2115–0578
182.610(f)	:2115–0578
183.220(d)	:2115–0578
183.320(d) and (e)	:2115–0578
184.420	:2115–0578
184.506	:2115–0578
185.202	:2115–0003
185.206	:2115–0003
185.208	:2115–0578
185.220	:2115–0578
185.230	:2115–0578
185.260	:2115–0578
185.280	:2115–0578
185.340(c)	:2115–0578
185.402	:2115–0578
185.502	:will be displayed when assigned by OMB
185.504	:2115–0578
185.506	:2115–0578
185.510	:2115–0578
185.514	:2115–0578
185.516	:2115–0578
185.518	:2115–0578
185.602	:2115–0578
185.604	:2115–0578
185.606	:2115–0578
185.608	:2115–0578
185.610	:2115–0578
185.612	:2115–0578
185.702	:2115–0578
185.704(c)	:2115–0578

PART 176—INSPECTION AND CERTIFICATION

Subpart A—Certificate of Inspection

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176.612 Notice and plans required.
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Subpart G—Repairs and Alterations

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176.806 Electrical.
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176.810 Fire protection.
176.812 Pressure vessels and boilers.
176.814 Steering systems.
176.816 Miscellaneous systems and equipment.
176.818 Sanitary inspection.
176.830 Unsafe practices.
176.840 Additional tests and inspections.

Subpart I—International Convention for Safety of Life at Sea, 1974, as Amended (SOLAS)

176.900 Applicability.
176.910 Passenger Ship Safety Certificate.
176.920 Exemptions.
176.930 Equivalents.

Authority: 33 U.S.C. 1321(j); 46 U.S.C. 2103, 3306; 49 U.S.C. App. 1804; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp., p. 793; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—Certificate of Inspection

§ 176.100 When required.

(a) A vessel to which this subchapter applies may not be operated without having on board a valid U.S. Coast Guard Certificate of Inspection.

(b) Except as noted in § 176.114, each vessel inspected and certificated under the provisions of this subchapter must, when any passengers are aboard during the tenure of the certificate, be in full compliance with the terms of the certificate.

(c) If necessary to prevent delay of the vessel, a temporary Certificate of Inspection may be issued pending the issuance and delivery of the regular Certificate of Inspection. The temporary certificate must be carried in the same manner as the regular certificate and is considered the same as the regular Certificate of Inspection which it represents.

(d) A vessel on a foreign voyage between a port in the United States and a port in a foreign country, whose Certificate of Inspection expires during the voyage, may lawfully complete the voyage without a valid Certificate of Inspection provided the voyage is completed within 30 days of expiration and the certificate did not expire within 15 days of sailing on the foreign voyage from a U.S. port.

§ 176.103 Description.

The Certificate of Inspection issued to a vessel describes the vessel, the route(s) which it may travel, the minimum manning requirements, the survival and rescue craft carried, the minimum fire extinguishing equipment and lifejackets required to be carried, the maximum number of passengers and total persons which may be carried, the number of passengers the vessel may carry in overnight accommodation spaces, the name of the owner and managing operator, any equivalencies accepted or authorized by the Commandant or any OCMI under §§ 175.540 or 175.550, and such other conditions of operations as may be determined by the cognizant OCMI.

§ 176.105 How to obtain or renew.

(a) A Certificate of Inspection is obtained or renewed by making application for an initial or periodic inspection on Form CG 3752, Application for Inspection of U.S. Vessel, to the Coast Guard OCMI of the marine inspection zone in which the inspection is to be made. Form CG–3752 may be obtained at any U.S. Coast Guard Marine Safety Office or Marine Inspection Office.

(b) The application for initial inspection of a vessel being newly constructed or converted must be submitted prior to the start of the construction or conversion.

(c) The construction, arrangement, and equipment of each vessel must be acceptable to the cognizant OCMI as a prerequisite of the issuance of the initial Certificate of Inspection. Acceptance is based on the information, specifications, drawings and calculations available to the OCMI and on the successful completion of an initial inspection for certification.

(d) A Certificate of Inspection is renewed by the issuance of a new Certificate of Inspection.

(e) The condition of the vessel and its equipment must be acceptable to the cognizant OCMI as a prerequisite to the Certificate of Inspection renewal. Acceptance is based on the condition ot the vessel as found at the periodic inspection for certification.

§ 176.107 Period of validity.

(a) A Certificate of Inspection is issued for a period of three years.

(b) A Certificate of Inspection may be suspended and withdrawn or revoked by the cognizant OCMI at any time for noncompliance with the requirements of this subchapter.

§ 176.110 Routes permitted.

(a) The area of operation for each vessel and any necessary operational limits are determined by the cognizant OCMI, and recorded on the vessel's Certificate of Inspection. Each area of operation, referred to as a route, is described on the Certificate of Inspection under the major headings "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," or "rivers," as applicable. Further limitations imposed or extensions granted are described by reference to bodies of water, geographical points, distance from geographical points, distances from land, depths of channel, seasonal limitations, and similar factors.

(b) The maximum allowable distance a dynamically supported craft or a vessel complying with the IMO "Code of Safety for Dynamically Supported Craft" as equivalent to the requirements of this subchapter, as allowed by § 175.540(b) of this subchapter, may operate from a harbor of safe refuge is designated by the cognizant OCMI, but may not be more than 100 nautical miles.

(c) Operation of a vessel on a route of lesser severity than those specifically described or designated on the Certificate of Inspection is permitted unless expressly prohibited on the Certificate of Inspection. The general order of severity of routes is: "oceans," "coastwise," "Great Lakes," "lakes, bays, and sounds," and "rivers." The cognizant OCMI may prohibit a vessel from operating on a route of lesser severity than the primary route a vessel is authorized to operate on if local conditions necessitate such a restriction.

(d) Nonself-propelled vessels are prohibited from operating on an "oceans", "coastwise", or "Great Lakes" route unless the Commandant approves such a route.

(e) When designating a permitted route or imposing any operational limits on a vessel, the OCMI may consider:

(1) Requirements of this subchapter for which compliance is based on the route of the vessel;

(2) The performance capabilities of the vessel based on design, scantlings, stability, subdivision, propulsion, speed, operating modes, maneuverability, and other characteristics; and

(3) The suitability of the vessel for night-time operations and use in all weather conditions.

§ 176.112 Total persons permitted.

The cognizant OCMI determines the total number of persons permitted to be carried on a vessel. In determining the total number of persons permitted to be carried, the OCMI may consider stability restrictions and subdivision requirements of the vessel, the vessel's route, general arrangement, means of escape, lifesaving equipment, the minimum manning requirements, and the maximum number of passengers permitted in accordance with § 176.113.

§ 176.113 Passengers permitted.

(a) The maximum number of passengers permitted to be carried on a vessel is determined by the cognizant OCMI. The maximum number permitted must be not more than that allowed by the requirements of this section, except as authorized by the OCMI under paragraph (d) of this section.

(b) The maximum number of passengers permitted on any vessel may be the greatest number permitted by the length of rail criterion, deck area criterion, or fixed seating criterion described in this paragraph or a combination of these criteria as allowed by paragraph (c) of this section.

(1) *Length of rail criterion.* One passenger may be permitted for each 30 inches of rail space available to the passengers at the periphery of each deck. The following rail space may not be used in determining the maximum number of passengers permitted:

(i) Rail space in congested areas unsafe for passengers, such as near anchor handling equipment or line handling gear, in the way of sail booms, running rigging, or paddle wheels, or along pulpits;

(ii) Rail space on stairways; and

(iii) Rail space where persons standing in the space would block the vision of the licensed individual operating the vessel.

(2) *Deck area criterion.* One passenger may be permitted for each 10 square feet of deck area available for the passengers' use. In computing such deck area, the areas occupied by the following must be excluded:

(i) Concession stands, fixed tables, fixed gambling equipment, and similar furnishings;

(ii) Toilets and washrooms;

(iii) Companionways and stairways;

(iv) Spaces occupied by and necessary for handling lifesaving equipment, anchor handling equipment or line handling gear, or in the way of sail booms or running rigging;

(v) Spaces below deck which are unsuitable for passengers or which would not normally be used by passengers;

(vi) Interior passageways less than 30 inches wide and passageways on open deck less than 18 inches wide;

(vii) Bow pulpits, swimming platforms and areas which do not have a solid deck, such as netting on multi-hull vessels;

(viii) Deck areas in way of paddle wheels; and

(ix) Aisle area provided in accordance with § 177.820(d).

(3) *Fixed seating criterion.* One passenger may be permitted for each 18 inches of width of fixed seating provided under § 177.820 of this subchapter. Each sleeping berth in overnight accommodation spaces shall be counted as only one seat.

(c) Different passenger capacity criteria may be used on each deck of a vessel and added together to determine the total passenger capacity of that vessel. Where seats are provided on part of a deck and not on another, the number of passengers permitted on a vessel may be the sum of the number permitted by the seating criterion for the space having seats and the number permitted by the deck area criterion for the space having no seats. The length of rail criterion must not be combined with either the deck area criterion or the fixed seating criterion on an individual deck.

(d) For a vessel operating on short runs on protected waters such as a ferry, the cognizant OCMI may give special consideration to increases in passenger allowances.

§ 176.114 Alternative requirements for a vessel carrying six or less passengers.

(a) When authorized by the cognizant OCMI by an endorsement of the vessel's Certificate of Inspection, a small passenger vessel carrying six or less passengers, and operating as a commercial fishing vessel or other uninspected vessel or as a recreational vessel, need not meet the requirements of:

(1) Part 180, subparts C, D, and E, of this subchapter providing the vessel is in satisfactory compliance with the lifesaving equipment regulations for an uninspected vessel or recreational vessel in a similar service;

(2) Part 177, subpart C, and parts 178 and 179 of this subchapter providing the vessel is in satisfactory compliance with applicable regulations for an uninspected vessel or recreational vessel in a similar service or if the owner of the vessel otherwise establishes to the satisfaction of the cognizant OCMI that the vessel is seaworthy for the intended service; and

(3) Sections 184.404 and 184.410 of this subchapter providing the vessel is in satisfactory compliance with applicable regulations for an uninspected or recreational vessel in a similar service.

(b) A vessel operating under the alternative regulations of paragraph (a) of this section must:

(1) Not alter the arrangement of the vessel nor remove any equipment required by the certificate for the intended operation, without the consent of the cognizant OCMI;

(2) Comply with the minimum manning specified on the Certificate of Inspection, which may include reduced manning for when the vessel carries not more than six passengers;

(3) When carrying from one to six passengers, make the announcement required by § 185.506(a)(9) of this subchapter must be made before getting underway; and

(4) If a vessel of more than 15 gross tons, not carry freight for hire.

(c) The endorsement issued under paragraph (a) of this section must indicate the maximum route, number of passengers, and the manning required to operate under the provisions of this section.

§ 176.120 Certificate of inspection amendment.

(a) An amended Certificate of Inspection may be issued at any time by any OCMI. The amended Certificate of Inspection replaces the original, but the expiration date remains the same as that of the original. An amended Certificate of Inspection may be issued to authorize and record a change in the dimensions, gross tonnage, owner, managing operator, manning, persons permitted, route permitted, conditions of operations, or equipment of a vessel, from that specified in the current Certificate of Inspection.

(b) A request for an amended Certificate of Inspection must be made to the cognizant OCMI by the owner or managing operator of the vessel at any time there is a change in the character of a vessel or in its route, equipment, ownership, operation, or similar factors specified in its current Certificate of Inspection.

(c) The OCMI may require an inspection prior to the issuance of an amended Certificate of Inspection.

Subpart B—Special Permits and Certificates

§ 176.202 Permit to proceed.

(a) When a vessel is not in compliance with its Certificate of Inspection or fails to comply with a regulation of this subchapter, the cognizant OCMI may permit the vessel to proceed to another port for repair, if in the judgment of the OCMI, the trip can be completed safely, even if the Certificate of Inspection of the vessel has expired or is about to expire.

(b) Form CG–948, "Permit to Proceed to another Port for Repairs," may be issued by the cognizant OCMI to the owner, managing operator, or the master of the vessel stating the conditions under which the vessel may proceed to another port. The permit may be issued only upon the written application of the owner, managing operator, or master, and after the vessel's Certificate of Inspection is turned over to the OCMI.

(c) A vessel may not carry passengers when operating in accordance with a permit to proceed, unless the cognizant OCMI determines that it is safe to do so.

§ 176.204 Permit to carry excursion party.

(a) The cognizant OCMI may permit a vessel to engage in a temporary excursion operation with a greater number of persons or on a more extended route, or both, than permitted by its Certificate of Inspection when, in the opinion of the OCMI, the operation can be undertaken safely.

(b) Upon the written application of the owner or managing operator of the vessel, the cognizant OCMI may issue a "Permit To Carry Excursion Party", Form CG–949, to indicate his or her permission to carry an excursion party. The OCMI will indicate on the permit the conditions under which it is issued, the number of persons the vessel may carry, the crew required, any additional lifesaving or safety equipment required, the route for which the permit is granted, and the dates on which the permit is valid.

(c) The number of passengers normally permitted on an excursion vessel shall be governed by § 176.113.

(d) The OCMI shall not normally waive the applicable minimum safety standards when issuing an excursion permit. In particular, a vessel which is being issued an excursion permit should meet the minimum stability, survival craft, fire safety, and manning standards applicable to a vessel in the service for which the excursion permit is requested.

(e) The permit acts as a temporary, limited duration supplement to the vessel's Certificate of Inspection and must be carried with the Certificate of Inspection. A vessel operating under a permit to carry an excursion party must be in full compliance with the terms of its Certificate of Inspection as supplemented by the permit.

(f) The OCMI may require an inspection prior to the issuance of a permit to carry an excursion party.

Subpart C—Posting of Certificates, Permits, and Stability Letters

§ 176.302 Certificates and permits.

The Certificate of Inspection and any SOLAS Certificates must be posted under glass or other suitable transparent material, such that all pages are visible, in a conspicuous place on the vessel where observation by passengers is likely. If posting is impracticable, such as on open boats, the certificates must be kept on board in a weathertight container readily available for use by the crew and display to passengers and others on request.

§ 176.306 Stability letter.

When, in accordance with § 178.210 of this subchapter, a vessel must be provided with a stability letter, the stability letter must be posted under glass or other suitable transparent material, such that all pages are visible, at the operating station of the vessel. If posting is impracticable, the stability letter must be kept on board in a weathertight container readily available for use by the crew and display to passengers and others on request.

§ 176.310 Certification expiration date stickers.

(a) A Certification Expiration Date Sticker indicates the date upon which the vessel's Certificate of Inspection expires and is provided by the cognizant OCMI in the number required, upon issuance or renewal of the Certificate of Inspection.

(b) A vessel that is issued a Certificate of Inspection under the provisions of this subchapter must not be operated without a valid Certification Expiration Date Sticker affixed to the vessel on a place that is:

(1) A glass or other smooth surface from which the sticker may be removed without damage to the vessel;

(2) Readily visible to each passenger prior to boarding the vessel and to patrolling Coast Guard law enforcement personnel; and

(3) Acceptable to the Coast Guard marine inspector.

(c) The Coast Guard marine inspector may require the placement of more than one sticker in order to insure compliance with paragraph (b)(2) of this section.

Subpart D—Inspection for Certification

§ 176.400 General.

(a) An inspection is required before the issuance of a Certificate of

Inspection. Such an inspection for certification is not made until after receipt of the application for inspection required by § 176.105.

(b) Upon receipt of a written application for inspection, the cognizant OCMI assigns a marine inspector to inspect the vessel for compliance with this subchapter at a time and place mutually agreed upon by the OCMI and the owner, managing operator, or representative thereof.

(c) The owner, managing operator, or a representative thereof shall be present during the inspection.

§ 176.402 Initial inspection for certification.

(a) Before construction or conversion of a vessel intended for small passenger vessel service, the owner of the vessel shall submit plans, manuals, and calculations indicating the proposed arrangement, construction, and operations of the vessel, to the cognizant OCMI for approval, except when submitted to the Marine Safety Center (MSC) as allowed by part 177 of this subchapter, unless otherwise allowed by the OCMI. The plans, manuals, and calculations required to be submitted and the disposition of these plans are set forth in part 177, subpart B of this subchapter.

(b) The initial inspection is conducted to determine that the vessel and its equipment comply with applicable regulations and that the vessel was built or converted in accordance with approved plans, manuals, and calculations. Additionally, during the inspection the materials, workmanship, and condition of all parts of the vessel and its machinery and equipment may be checked to determine if the vessel is satisfactory in all respects for the service intended.

(c) The owner or managing operator of a vessel shall ensure that the vessel complies with the laws and regulations applicable to the vessel and that the vessel is otherwise satisfactory for the intended service. The initial inspection may include an inspection of the following items:

(1) The arrangement, installation, materials, and scantlings of the structure including the hull and superstructure, yards, masts, spars, rigging, sails, piping, main and auxiliary machinery, pressure vessels, steering apparatus, electrical installations, fire resistant construction materials, lifesaving appliances, fire detecting and extinguishing equipment, pollution prevention equipment, and all other equipment;

(2) Sanitary conditions and fire hazards; and

(3) Certificates and operating manuals, including certificates issued by the FCC.

(d) During an initial inspection for certification the owner or managing operator shall conduct all tests and make the vessel available for all applicable inspections discussed in this paragraph, and in subpart H of this part, to the satisfaction of the cognizant OCMI, including the following:

(1) The installation of each rescue boat and survival craft launching appliance required by § 71.20–20(a)(1) of this chapter.

(2) The installation of each rescue boat, liferaft, inflatable buoyant apparatus, and launching appliance as listed on its Certificate of Approval (Form CGHQ–10030).

(3) Machinery, fuel tanks, and pressure vessels as required by part 182 of this subchapter.

(4) A stability test or a simplified stability test when required by § 170.175 of this chapter or § 178.320 of this subchapter.

(5) Watertight bulkheads as required by part 179 of this subchapter.

(6) Firefighting systems as required by part 181 of this subchapter.

(7) The operation of all smoke and fire detecting systems, and fire alarms and sensors.

§ 176.404 Subsequent inspections for certification.

An inspection for renewal of a Certificate of Inspection normally includes inspection and testing of the structure, machinery, equipment, and on a sailing vessel, rigging and sails. The owner or managing operator shall conduct all tests as required by the marine inspector, and make the vessel available for all specific inspections and drills required by subpart H of this part. The inspection is conducted to determine if the vessel is in satisfactory condition, fit for the service intended, and complies with the applicable regulations in this subchapter.

Subpart E—Reinspection

§ 176.500 When required.

(a) The owner or managing operator shall make a vessel available for reinspections within 60 days of each anniversary of the date of issuance of the Certificate of Inspection during each triennial inspection period. The owner or managing operator shall contact the cognizant OCMI to arrange for a reinspection to be conducted at a time and place acceptable to the OCMI.

(b) In addition to the requirements of paragraph (a) of this section, a reinspection may be made at such other times as may be required by the cognizant OCMI.

§ 176.502 Scope.

In general, the scope of the reinspection is the same as the inspection for certification but in less detail unless it is determined that a major change has occurred since the last inspection for certification.

Subpart F—Hull and Tailshaft Examinations

§ 176.600 Drydock and internal structural examination intervals.

(a) The owner or managing operator shall make a vessel available for drydock examinations and internal structural examinations required by this section.

(b) A vessel making an international voyage must undergo a drydock examination and an internal structural examination at least once every 12 months. If the vessel becomes due for a drydock examination or an internal structural examination during the voyage, it may lawfully complete the voyage prior to the examination if it undergoes the required examination upon completion of the voyage to the United States but not later than 30 days after the examination was due. If the vessel is due for an examination within 15 days of sailing on an international voyage from a United States port, it must undergo the required examination before sailing.

(c) Except as provided in paragraphs (d) through (f) of this section, a vessel not making an international voyage must undergo a drydock examination and an internal structural examination as follows:

(1) A vessel which is exposed to salt water more than three months in any 12 month period since the last examination must undergo a drydock examination and an internal structural examination at least once every two years; and

(2) A vessel which is exposed to salt water not more than three months in any 12 month period since the last examination must undergo a drydock examination and an internal structural examination at least once every five years.

(d) Regardless of the type of water in which it operates, a vessel with a wooden hull must undergo a drydock examination and an internal structural examination as follows:

(1) If not more than 20 years old, at least once every two years; or

(2) If more than 20 years old, at least once every 12 months.

(e) Whenever damage or deterioration to hull plating or structural members which may affect the seaworthiness of a vessel is discovered or suspected, the cognizant OCMI may conduct an internal structural examination in any affected space including fuel tanks, and require the vessel to be drydocked or otherwise taken out of service to further assess the extent of the damage and to effect permanent repairs.

(f) Whenever a vessel is drydocked or hauled out other than as required by this section, the owner or operator must notify the cognizant OCMI so that a marine inspector may examine the vessel.

§ 176.610 Scope of drydock and internal structural examinations.

(a) A drydock examination conducted in compliance with § 176.600 must be conducted while the vessel is hauled out of the water or placed in a drydock or slipway. During the examination all accessible parts of the vessel's underwater body and all through hull fittings, including the hull plating and planking, appendages, propellers, shafts, bearings, rudders, sea chests, sea valves, and sea strainers must be examined. Sea chests, sea valves, and sea strainers must be opened for examination. On wooden vessels, fastenings may be required to be pulled for examination.

(b) An internal structural examination conducted in compliance with § 176.600 may be conducted while the vessel is afloat or out of the water and consists of a complete examination of the vessel's main strength members, including the major internal framing, the hull plating and planking, voids, and ballast, cargo, and fuel oil tanks. Where the internal framing, plating, or planking of the vessel is concealed, sections of the lining, ceiling or insulation may be removed or the parts otherwise probed or exposed so that the inspector may be satisfied as to the condition of the hull structure. Fuel oil tanks need not be cleaned out and internally examined if the marine inspector is able to determine by external examination that the general condition of the tanks is satisfactory.

§ 176.612 Notice and plans required.

(a) The owner or managing operator shall notify the cognizant OCMI as far in advance as possible whenever a vessel is to be hauled out or placed in a drydock or slipway in compliance with § 176.600 or to undergo repairs or alterations affecting the safety of the vessel, together with the nature of any repairs or alterations contemplated. Hull repairs or alternations which affect the safety of the vessel include but are not limited to the replacement, repair, or refastening of planking, plating, or structural members including the repair of cracks.

(b) Whenever a vessel is hauled out or placed in a drydock or slipway in excess of the requirements of this subpart for the purpose of maintenance, such as changing a propeller, painting, or cleaning the hull, no report need be made to the cognizant OCMI.

(c) The owner or managing operator of each vessel that holds a Load Line Certificate shall make plans showing the vessel's scantlings available to the Coast Guard marine inspector whenever the vessel undergoes a drydock examination or internal structural examination or whenever repairs or alterations affecting the safety or seaworthiness of the vessel are made to the vessel's hull.

§ 176.630 Tailshaft examinations.

The marine inspector may require any part or all of the propeller shafting to be drawn for examination of the shafting and stern bearing of a vessel whenever the condition of the shafting and bearings are in question. The inspector may conduct a visual examination and may require nondestructive testing of the tailshaft.

§ 176.670 Extension of examination intervals.

The intervals between drydock examinations and internal structural examinations specified in § 176.600 may be extended by the Commandant. Requests for extensions must be submitted to the Commandant via the cognizant OCMI.

Subpart G—Repairs and Alterations

§ 176.700 Permission for repairs and alterations.

(a) Repairs or alterations to the hull, machinery, or equipment which affect the safety of the vessel must not be made without the approval of the cognizant OCMI, except during an emergency. When repairs are made during an emergency, the owner, managing operator, or master shall notify the OCMI as soon as practicable after such repairs or alternations are made. Repairs or alterations which affect the safety of the vessel include, but are not limited to: replacement, repair, or refastening of deck or hull planking, plating, and structural members; repair of plate or frame cracks; damage repair or replacement, other than replacement in kind, of electrical wiring, fuel lines, tanks, boilers and other pressure vessels, and steering, propulsion and power supply systems; alterations affecting stability; and repair or alteration of lifesaving, fire detecting, or fire extinguishing equipment.

(b) The owner or managing operator shall submit drawings, sketches, or written specifications describing the details of any proposed alterations to the cognizant OCMI. Proposed alterations must be approved by the OCMI before work is started.

(c) Drawings are not required to be submitted for repairs or replacements in kind.

(d) The OCMI may require an inspection and testing whenever a repair or alteration is undertaken.

§ 176.702 Installation tests and inspections.

Whenever a launching appliance, survival craft, rescue boat, fixed fire extinguishing equipment, machinery, fuel tank, or pressure vessel is installed aboard a vessel after completion of the initial inspection for certification of the vessel, as replacement equipment or as a new installation, the owner or managing operator shall conduct the tests and make the vessel ready for the inspections required by § 176.402(d) to the satisfaction of the cognizant OCMI.

§ 176.704 Breaking of safety valve seals.

The owner, managing operator, or master shall notify the cognizant OCMI as soon as practicable after the seal on a boiler safety valve on a vessel is broken.

§ 176.710 Inspection and testing for gas hazards.

(a) An inspection must be conducted in accordance with the provisions of NFPA 306 before alterations, repairs, or other operations involving riveting, welding, burning, or other fire producing actions may be made aboard a vessel:

(1) Within or on the boundaries of fuel tanks; or

(2) To pipelines, heating coils, pumps, fittings, or other appurtenances connected to fuel tanks.

(b) An inspection required by paragraph (a) of this section must be conducted as required by this paragraph.

(1) In ports or places in the United States or its territories and possessions, the inspection must be conducted by a marine chemist certificated by the National Fire Protection Association. However, if the services of a certified marine chemist are not reasonably available, the cognizant OCMI, upon the recommendation of the vessel owner or managing operator, may authorize another person to inspect the vessel. If the inspection indicates that the operations can be undertaken safely, a

certificate setting forth this fact in writing must be issued by the certified marine chemist or the authorized person before the work is started. The certificate must include any requirements necessary to reasonably maintain safe conditions in the spaces certified throughout the operation, including any precautions necessary to eliminate or minimize hazards that may be present from protective coatings or residues from cargoes.

(2) When not in a port or place in the United States or its territories and possessions, and when a marine chemist or a person authorized by the cognizant OCMI is not reasonably available, the master shall conduct the inspection and enter the results of the inspection in the vessel's logbook.

(c) The owner, managing operator, or master shall obtain a copy of certificates issued by the certified marine chemist or the other person authorized by the cognizant OCMI, and shall ensure that all conditions on the certificates are observed and that the vessel is maintained in a safe condition. The owner, managing operator, or master shall maintain a safe condition on the vessel by requiring full observance, by persons under his or her control, of all requirements listed in the certificate.

Subpart H—Material Inspections

§ 176.800 Inspection standards.

(a) A vessel is inspected for compliance with the standards required by this subchapter. Machinery, equipment, materials, and arrangements not covered by standards in this subchapter may be inspected in accordance with standards acceptable to the cognizant OCMI as good marine practice.

(b) In the application of inspection standards due consideration must be given to the hazards involved in the operation permitted by a vessel's Certificate of Inspection. Thus, the standards may vary in accordance with the vessel's area of operation or any other operational restrictions or limitations.

(c) The published standards of classification societies and other recognized safety associations may be used as guides in the inspection of vessels when such standards do not conflict with the requirements of this subchapter.

§ 176.801 Notice of inspection deficiencies and requirements.

(a) If during the inspection of a vessel, the vessel or its equipment is found not to conform to the requirements of law or the regulations in this subchapter, the marine inspector will point out deficiencies observed and discuss all requirements with the owner, managing operator, or a representative thereof. Normally, the marine inspector will list all such requirements which have not been completed and present the list to the owner, managing operator, or a representative thereof.

(b) In any case where further clarification of or reconsideration of any requirement placed against the vessel is desired, the owner, managing operator, or a representative thereof, may discuss the matter with the cognizant OCMI.

§ 176.802 Hull.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of the hull structure and its appurtenances, including the following:

(1) Inspection of all accessible parts of the exterior and interior of the hull, the watertight bulkheads, and weather decks;

(2) Inspection and operation of all watertight closures in the hull, decks, and bulkheads including through hull fittings and sea valves;

(3) Inspection of the condition of the superstructure, masts, and similar arrangements constructed on the hull, and on a sailing vessel all spars, standing rigging, running rigging, blocks, fittings, and sails;

(4) Inspection of all railings and bulwarks and their attachment to the hull structure;

(5) Inspection to ensure that guards or rails are provided in dangerous places;

(6) Inspection and operation of all weathertight closures above the weather deck and the provisions for drainage of sea water from the exposed decks; and

(7) Inspection of all interior spaces to ensure that they are adequately ventilated and drained, and that means of escape are adequate and properly maintained.

(b) The vessel must be afloat for at least a portion of the inspection as required by the marine inspector.

(c) When required by the marine inspector, a portion of the inspection must be conducted while the vessel is underway so that the working of the hull can be observed.

§ 176.804 Machinery.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of machinery, fuel, and piping systems, including the following:

(a) Operation of the main propulsion machinery both ahead and astern;

(b) Operational test and inspection of engine control mechanisms including primary and alternate means of starting machinery;

(c) Inspection of all machinery essential to the routine operation of the vessel including generators and cooling systems;

(d) External inspection of fuel tanks and inspection of tank vents, piping, and pipe fittings;

(e) Inspection of all fuel systems;

(f) Operational test of all valves in fuel lines by operating locally and at remote operating positions;

(g) Operational test of all overboard discharge and intake valves and watertight bulkhead pipe penetration valves;

(h) Operational test of the means provided for pumping bilges; and

(i) Test of machinery alarms including bilge level alarms.

§ 176.806 Electrical.

At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of electrical equipment and systems, including the following:

(a) Inspection of all cable as far as practicable without undue disturbance of the cable or electrical apparatus;

(b) Test of circuit breakers by manual operation;

(c) Inspection of fuses including ensuring the ratings of fuses are suitable for the service intended;

(d) Inspection of rotating electrical machinery essential to the routine operation of the vessel;

(e) Inspection of all generators, motors, lighting fixtures and circuit interrupting devices located in spaces or areas which may contain flammable vapors;

(f) Inspection of batteries for condition and security of stowage;

(g) Operational test of electrical apparatus, which operates as part of or in conjunction with a fire detection or alarm system installed on board the vessel, by simulating, as closely as practicable, the actual operation in case of fire; and

(h) Operational test of all emergency electrical systems.

§ 176.808 Lifesaving.

(a) At each initial and subsequent inspection for certification of a vessel, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspections of lifesaving equipment and systems, including the following:

(1) Tests of each rescue boat and each rescue boat launching appliance and survival craft launching appliance in accordance with § 71.25–15 of this chapter;

(2) Inspection of each lifejacket, work vest, and marine buoyant device;

(3) If used, inspection of the passenger safety orientation cards or pamphlets allowed by § 185.506(b)(2) of this subchapter;

(4) Inspection of each inflatable liferaft and inflatable lifejacket to determine that it has been serviced as required by § 185.730 of this subchapter; and

(5) Inspection of each hydrostatic release unit to determine that it is in compliance with the servicing and usage requirements of § 185.740 of this subchapter.

(b) Each item of lifesaving equipment determined by the marine inspector to not be in serviceable condition must be repaired or replaced.

(c) Each item of lifesaving equipment with an expiration date on it must be replaced if the expiration date has passed.

(d) The owner or managing operator shall destroy, in the presence of the marine inspector, each lifejacket, other personal floatation device, and other lifesaving device found to be defective and incapable of repair.

(e) At each initial and subsequent inspection for certification of a vessel, the vessel must be equipped with an adult size lifejacket for each person authorized. The vessel must also be equipped with child size lifejackets equal to at least 10 percent of the maximum number of passengers permitted to be carried unless children are prohibited from being carried aboard the vessel.

(f) Lifejackets, work vests, and marine buoyant devices may be marked with the date and marine inspection zone to indicate that they have been inspected and found to be in serviceable condition by a marine inspector.

(g) At each initial and subsequent inspection for certification, the marine inspector may require that an abandon ship or man overboard drill be held under simulated emergency conditions specified by the inspector.

§ 176.810 Fire protection.

(a) At each initial and subsequent inspection for certification, the owner or managing operator shall be prepared to conduct tests and have the vessel ready for inspection of its fire protection equipment, including the following:

(1) Inspection of each hand portable fire extinguisher, semiportable fire extinguisher, and fixed gas fire extinguishing system to check for excessive corrosion and general condition;

(2) Inspection of piping, controls, and valves, and the inspection and testing of alarms and ventilation shutdowns, for each fire extinguishing system and detecting system to determine that the system is in operating condition;

(3) Operation of the fire main system and checking of the pressure at the most remote and highest outlets;

(4) Testing of each firehose to a test pressure equivalent to its maximum service pressure;

(5) Checking of each cylinder containing compressed gas to ensure it has been tested and marked in accordance with part 147, § 147.60 of this chapter;

(6) Testing or renewal of flexible connections and discharge hoses on semiportable extinguishers and fixed gas extinguishing systems in accordance with part 147, § 147.65 of this chapter; and

(7) Inspection and testing of all smoke and fire detection systems, including sensors and alarms.

(b) The owner, managing operator, or a qualified servicing facility as applicable shall conduct the following inspections and tests:

(1) For portable fire extinguishers, the inspections, maintenance procedures, and hydrostatic pressure tests required by Chapter 4 of NFPA 10 with the frequency specified by NFPA 10. In addition, carbon dioxide and halon portable fire extinguishers must be refilled when the net content weight loss exceeds that specified for fixed systems by Table 176.810(b). The owner or managing operator shall provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests. A tag issued by a qualified servicing organization, and attached to each extinguisher, may be accepted as evidence that the necessary maintenance procedures have been conducted.

(2) For semiportable and fixed systems, the inspections and tests required by Table 176.810(b), in addition to the tests required by §§ 147.60 and 147.65 of this chapter. The owner or managing operator shall provide satisfactory evidence of the required servicing to the marine inspector. If any of the equipment or records have not been properly maintained, a qualified servicing facility may be required to perform the required inspections, maintenance procedures, and hydrostatic pressure tests.

TABLE 176.810(b).—SEMIPORTABLE AND FIXED SYSTEMS

Type system	Test
Carbon Dioxide.	Weigh cylinders. Recharge if weight loss exceeds 10% of weight of charge. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Halon	Weigh cylinders. Recharge if weight loss exceeds 5% of weight of charge. If the system has a pressure gauge, also recharge if pressure loss (adjusted for temperature) exceeds 10%. Test time delays, alarms, and ventilation shutdowns with carbon dioxide, nitrogen, or other nonflammable gas as stated in the system manufacturer's instruction manual. Inspect hoses and nozzles to be sure they are clean.
Dry Chemical (Cartridge Operated).	Examine pressure cartridge and replace if end is punctured or if determined to be in unsuitable condition. Inspect hose and nozzle to see if they are clear. Insert charged cartridge. Ensure dry chemical is free flowing (not caked) and extinguidher contains full charge.
Dry Chemical (Stored Pressure).	See that pressure gauge is in operating range. If not, or if seal is broken, weigh or otherwise determine that extinguisher is fully charged with dry chemical. Recharge if pressure is low of if dry chemical is needed.
Foam (Cartridge Operated).	Examine pressure cartridge and replace if end is punctured or if determined to have leaked or to be in unsuitable condition. Ensure extinguisher contains full charge. Replace premixed agent every 3 years.
Foam (Stored Pressure).	See that pressure gauge, if so equipped, is in the operating range. If not, or if the seal is broken, weigh or otherwise determine that extinguisher is fully charged with foam. Recharge if pressure is low or if foam is needed. Replace premixed agent every 3 years.

(c) The owner, managing operator, or master shall destroy, in the presence of the marine inspector, each fire hose

found to be defective and incapable of repair.

(d) At each initial and subsequent inspection for certification, the marine inspector may require that a fire drill be held under simulated emergency conditions to be specified by the inspector.

§ 176.812 Pressure vessels and boilers.

(a) Periodic inspection and testing requirements for pressure vessels are contained in part 61, subpart 61.10 of this chapter.

(b) Periodic inspection and testing requirements for boilers are contained in part 61, subpart 61.05 of this chapter.

§ 176.814 Steering systems.

At each initial and subsequent inspection for certification the owner or managing operator shall be prepared to test the steering systems of the vessel and make them available for inspection to the extent necessary to determine that they are in suitable condition and fit for the service intended. Servo-type power systems, such as orbitrol systems, must be tested and capable of smooth operatation by a single person in the manual mode, with hydraulic pumps secured.

§ 176.816 Miscellaneous systems and equipment.

At each initial and subsequent inspection for certification the owner or managing operator shall be prepared to test and make available for inspection all items in the ship's outfit, such as ground tackle, navigation lights and equipment, markings, and placards, which are required to be carried by the regulations in this subchapter, as necessary to determine that they are fit for the service intended.

§ 176.818 Sanitary inspection.

At each inspection for certification and at every other vessel inspection, quarters, toilet and washing spaces, galleys, serving pantries, lockers, and similar spaces may be examined to determine that they are serviceable and in a sanitary condition.

§ 176.830 Unsafe practices.

(a) At each inspection for certification and at every other vessel inspection all observed unsafe practices, fire hazards, and other hazardous situations must be corrected and all required guards and protective devices must be in satisfactory condition.

(b) At each inspection for certification and at every other vessel inspection the bilges and other spaces may be examined to see that there is no accumulation of oil, trash, debris, or other matter which might create a fire hazard, clog bilge pumping systems, or block emergency escapes.

§ 176.840 Additional tests and inspections.

The cognizant OCMI may require that a vessel and its equipment undergo any additional test or inspection deemed necessary to determine that the vessel and its equipment are suitable for the service in which they are to be employed.

Subpart I—International Convention for Safety of Life at Sea, 1974, as Amended (SOLAS)

§ 176.900 Applicability.

(a) Except as otherwise provided in this subpart, a mechanically propelled vessel of the United States, which carries more than 12 passengers on an international voyage must be in compliance with the applicable requirements of SOLAS, to which the United States Government is currently a party.

(b) SOLAS does not apply to a vessel solely navigating the Great Lakes and the St. Lawrence River as far east as a straight line drawn from Cap des Rosiers to West Point, Anticosti Island and, on the north side of Anticosti Island, the 63rd Meridian.

§ 176.910 Passenger Ship Safety Certificate.

(a) A vessel, which carries more than 12 passengers on an international voyage must have a valid SOLAS Passenger Ship Safety Certificate. The Commandant issues the original SOLAS Passenger Ship Safety Certificate after receiving notification from the cognizant OCMI that the vessel complies with the applicable SOLAS regulations. Subsequent SOLAS Passenger Ship Safety Certificates are issued by the cognizant OCMI unless any changes to the vessel or its operations have occurred which changes the information on the certificate, in which case the Commandant will reissue the certificate.

(b) The route specified on the Certificate of Inspection and the SOLAS Passenger Ship Safety Certificate must agree.

(c) A SOLAS Passenger Ship Safety Certificate is issued for a period of not more than 12 months.

(d) The SOLAS Passenger Ship Safety Certificate may be withdrawn, revoked, or suspended at any time when the vessel is not in compliance with applicable SOLAS requirements.

§ 176.920 Exemptions.

(a) In accordance with Regulation 4, Chapter I (General Provisions) of SOLAS, the Commandant may exempt a vessel, which is not normally engaged on an international voyage but which in exceptional circumstances is required to undertake a single international voyage, from any of the requirements of the regulations of SOLAS provided that the vessel complies with safety requirements which are adequate in the Commandant's opinion for the voyage which is to be undertaken.

(b) In accordance with Chapter II–1 (Construction—Subdivision and Stability, Machinery and Electrical Installations) Regulation 1, Chapter II–2 (Construction—Fire Protection, Fire Detection and Fire Extinction) Regulation 1, and Chapter III (Life Saving Appliances and Arrangements) Regulation 2 of SOLAS, the Commandant may exempt a vessel which does not proceed more than 20 miles from the nearest land from any of the specific requirements of Chapters II–1, II–2, and III of SOLAS if the Commandant determines that the sheltered nature and conditions of the voyage are such as to render the application of such requirements unreasonable or unnecessary.

(c) The Commandant may exempt a vessel from requirements of the regulations of SOLAS in accordance with paragraphs (a) and (b) of this section upon a written request from the owner or managing operator submitted to the Commandant via the cognizant OCMI.

(d) When the Commandant grants an exemption to a vessel in accordance with this section, the Commandant will issue the original SOLAS Exemption Certificate describing the exemption. Subsequent SOLAS Exemption Certificates are issued by the cognizant OCMI unless any changes to the vessel or its operations have occurred which changes the information on the SOLAS Exemption or Passenger Ship Safety Certificates, in which case the Commandant will reissue the certificate. A SOLAS Exemption Certificate is not valid for longer than the period of the SOLAS Passenger Ship Safety Certificate to which it refers.

§ 176.930 Equivalents.

In accordance with Regulation 5, Chapter I (General Provisions) of SOLAS, the Commandant may accept an equivalent to a particular fitting, material, appliance, apparatus, or any particular provision required by SOLAS regulations if satisfied that such equivalent is as least as effective as that required by the regulations. An owner or managing operator of a vessel may submit a request for the acceptance of an equivalent following the procedures in § 175.540 of this subchapter. The Commandant will indicate the acceptance of an equivalent on the vessel's SOLAS Passenger Ship Safety Certificate.

PART 177—CONSTRUCTION AND ARRANGEMENT

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Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 177.100 General requirement.

The construction and arrangement of a vessel must allow the safe operation of the vessel in accordance with the terms of its certificate of inspection giving consideration to provisions for a seaworthy hull, protection against fire, means of escape in case of a sudden unexpected casualty, guards and rails in hazardous places, ventilation of enclosed spaces, and necessary facilities for passengers and crew.

§ 177.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraph (b) of this section, an existing vessel must comply with the construction and arrangement regulations which were applicable to the vessel on [*date of day before effective date of the final rule*] or, as an alternative, the vessel may comply with the regulations in this part.

(b) Alterations or modifications which are not a major conversion, made to the structure or arrangements, regulated by this part, of an existing vessel on or after [*effective date of the final rule*] must comply with the regulations of this part. Repairs or maintenance conducted on an existing vessel, resulting in no significant changes to the original structure or arrangement of the vessel, must comply with the regulations applicable to the vessel on [*date of day before effective date of the final rule*] or, as an alternative, with the regulations in this part. However, when outfit items such as furnishings and mattresses are renewed, they must comply with the regulations in this part.

Subpart B—Plans

§ 177.202 Plans and information required.

(a) Except as provided in paragraph (b) of this section and § 177.210, the owner of a vessel requesting initial inspection for certification shall, prior to the start of construction unless otherwise allowed by the cognizant OCMI, submit for approval to the cognizant OCMI, at least two copies of the following plans, manuals, analyses, and calculations that are applicable to the vessel as determined by the OCMI:

(1) Midship section;
(2) Outboard profile;
(3) Inboard profile;
(4) Arrangement of decks;
(5) Survival craft embarkation stations;
(6) Machinery installation;
(7) Electrical installation including, but not limited to:
(i) Elementary one-line diagram of the power system;
(ii) Cable lists;
(iii) Bills of materials;
(iv) Type and size of generators and prime movers;
(v) Type and size of generator cables, bus-tie cables, feeders, and branch circuit cables;
(vi) Power, lighting, and interior communication panelboards with number of circuits and rating of energy consuming devices;
(vii) Type and capacity of storage batteries;
(viii) Rating of circuit breakers and switches, interrupting capacity of circuit breakers, and rating and setting of overcurrent devices; and
(ix) Electrical plant load analysis.
(8) Lifesaving equipment locations and installation;
(9) Ventilation diagrams;
(10) Engine exhaust diagram;
(11) Fire main system plans and calculations;
(12) Fixed gas fire extinguishing system plans and calculations;
(13) Fire detecting system and smoke detecting system plans;
(14) Sprinkler system plans and calculations;
(15) Portable fire extinguisher types, sizes and locations;
(16) Fuel tanks;
(17) Piping systems including: firemain, bilge, ballast, hydraulic, sanitary, compressed air, combustible and flammable liquids, vents, soundings, and overflows;
(18) Hull penetrations and shell connections;
(19) Lines and offsets, curves of form, cross curves of stability, and tank capacities including size and location on vessel;
(20) Masts, including integration into the ship's structure, on sailing vessels;
(21) Rigging plan showing sail areas and centers of effort as well as the arrangement, dimensions, and connections of the standing rigging for sailing vessels;
(22) Steering and steering control, including rudder details;
(23) Marine sanitation device model number, approval number, connecting wiring and piping; and
(24) Propulsion and propulsion control, including shaft details.

(b) For a vessel of not more than 65 feet in length, the owner may submit specifications, sketches, photographs, line drawings or written descriptions instead of any of the required drawings, provided the required information is adequately detailed and acceptable to the cognizant OCMI.

(c) When authorized by the cognizant OCMI, an owner may submit any plans, manuals, or calculations, required to be submitted to the OCMI under this part, to the Commanding Officer, U.S. Coast Guard Marine Safety Center (Marine Safety Center), 400 Seventh Street, SW., Washington, DC 20590–0001. Three copies of all documents are required to be submitted for Marine Safety Center plan approval.

(d) For a vessel, the construction of which was begun prior to approval of the plans and information required by

paragraphs (a) and (b) of this section, the cognizant OCMI may require any additional plans and information, manufacturers' certifications of construction, testing including reasonable destructive testing, and inspections, which the OCMI determines are necessary to verify that the vessel complies with the requirements of this subchapter.

§ 177.210 Plans for sister vessels.

(a) Plans are not required for a vessel which is a sister vessel, provided:

(1) Approved plans for the original vessel are on file at the Marine Safety Center or in the files of the cognizant OCMI;

(2) The owner of the plans authorizes their use for the new construction of the sister vessel;

(3) The regulations used for the original plan approval have not changed since the original approval; and

(4) There are no major modifications to any of the systems to be used.

(b) If approved plans for the original vessel are not on file at the MSC or with the cognizant OCMI, the vessel owner shall submit plans as described in § 177.202.

Subpart C—Hull Structure

§ 177.300 Structural design.

Except as otherwise allowed by this subpart, a vessel must comply with the structural design requirements of one of the standards listed below for the hull material of the vessel.

(a) Wooden hull vessels—Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's Register of Shipping (Lloyd's);

(b) Steel hull vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's; or

(2) Rules for Building and Classing Steel Vessels Under 61 Meters (200 Ft) in Length, ABS;

(c) Fiber reinforced plastic vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's; or

(2) Rules for Building and Classing Reinforced Plastic Vessels, ABS;

(d) Aluminum hull vessels:

(1) Rules and Regulations for the Classification of Yachts and Small Craft, Lloyd's;

(2) For a vessel of more than 100 feet in length—Rules for Building and Classing Aluminum Vessels, ABS; or

(3) For a vessel of not more than 100 feet in length—Rules for Building and Classing Steel Vessels Under 61 Meters (200 Feet) in Length, ABS, with the appropriate conversions from the ABS Rules for Building and Classing Aluminum Vessels;

(e) Ferrocement hull vessels—Australian Transport Advisory Council Shipping Laws Code Section 5, Subsection J.

(f) Steel hull vessels operating in protected waters—Rules for Building and Classing Steel Vessels for Service on Rivers and Intracoastal Waterways, ABS.

§ 177.310 Satisfactory service as a design basis.

When scantlings for the hull, deckhouse, and frames of the vessel differ from those specified by the standards listed in § 177.300, and the owner can demonstrate that the vessel, or another vessel approximating the same size, power, and displacement, has been built to such scantlings and has been in satisfactory service insofar as structural adequacy is concerned for a period of at least 5 years, such scantlings may be approved by the cognizant OCMI instead of the scantlings required by the applicable standards specified in § 177.300.

§ 177.315 Vessels of not more than 65 feet in length carrying not more than 12 passengers.

The scantlings for a vessel of not more than 65 feet in length carrying not more than 12 passengers which do not meet the standards in §§ 177.300 or 177.310 may be approved by the cognizant OCMI if the builder of the vessel establishes to the satisfaction of the OCMI that the design and construction of the vessel is adequate for the intended service.

§ 177.330 Sailing vessels.

The design, materials, and construction of masts, posts, yards, booms, bowsprits, and standing rigging on a sailing vessel must be suitable for the intended service. The hull structure must be adequately reinforced to ensure sufficient strength and resistance to plate buckling. The cognizant OCMI may require the owner to submit detailed calculations on the strength of the mast, post, yards, booms, bowsprits, and standing rigging.

§ 177.340 Alternate design considerations.

When the structure of vessel is of novel design, unusual form, or special materials, which cannot be reviewed or approved under §§ 177.300, 177.310 or 177.315, the structure may be approved by the Commanding Officer, Marine Safety Center, when it can be shown by systematic analysis based on engineering principles that the structure provides adequate safety and strength. The owner shall submit detailed plans, material component specifications, and design criteria, including the expected operating environment, resulting loads on the vessel, and design limitations for such vessel, to the cognizant OCMI for initial evaluation and forwarding to the Marine Safety Center.

Subpart D—Fire Protection

§ 177.405 General arrangement and outfitting.

(a) *Fire hazards to be minimized.* The general construction of the vessel must be such as to minimize fire hazards insofar as it is reasonable and practicable.

(b) *Combustibles insulated from heated surfaces.* Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitably insulated from combustible material. Dry exhaust systems for internal combustion engines on wooden or fiber reinforced plastic vessels must be installed in accordance with ABYC Standard P–1.

(c) *Separation of machinery and fuel tank spaces from accommodation spaces.* Machinery and fuel tank spaces must be separated from accommodation spaces by boundaries which prevent the passage of vapors.

(d) *Paint and flammable liquid lockers.* Paint and flammable liquid lockers must be constructed of steel or equivalent material, or wholly lined with steel or equivalent material.

(e) *Vapor barriers.* Vapor barriers must be provided where insulation of any type is used in spaces where flammable and combustible liquids or vapors are present, such as machinery spaces and paint lockers.

(f) *Waste receptacles.* Waste receptacles must be constructed of noncombustible materials with no openings in the sides or bottom.

(g) *Mattresses.* All mattresses must comply with the U.S. Department of Commerce Standard for Mattress Flammability (FF 4–72.16), 16 CFR part 1632, subpart A. Mattresses must not contain polyurethane foam.

(h) *Furniture and furnishings.* The use of polyurethane foam in furniture and furnishings is prohibited.

§ 177.410 Structural fire protection.

(a) *Cooking areas.* Vertical or horizontal surfaces within 3 feet of cooking appliances must have an ASTM E–84 flame spread rating of not more than 75. Curtains, draperies, or free hanging fabrics must not be fitted within 3 feet of cooking or heating appliances.

(b) *Fiber reinforced plastic.* When the hull, decks, deckhouse, or superstructure of a vessel is partially or completely constructed of fiber reinforced plastic, including composite construction, the resin used must have an ASTM E–84 flame spread rating of not more than 100.

(c) *Use of general purpose resin.* General purpose resins may be used in lieu of those having an ASTM E–84 flame spread rating of not more than 100 provided that the following additional requirements are met:

(1) *Cooking and heating appliances*—Galleys must be surrounded by B–15 rated fire boundaries. This may not apply to concession stands which are not considered high fire hazards areas (galleys) as long as they do not contain medium to high heat appliances such as deep fat fryers, flat plate type grilles, and open ranges. Open flame systems for cooking and heating are not allowed.

(2) *Sources of ignition*—Electrical equipment and switch boards must be protected from fuel or water sources. Fuel lines and hoses must be located as far as practical from heat sources. Internal combustion engine exhausts, boiler and galley uptakes, and similar sources of ignition must be kept clear of and suitability insulated from any woodwork or other combustible matter. Internal combustion engine dry exhaust systems must be installed in accordance with ABYC Standard P–1.

(3) *Fire detection and extinguishing systems*—Fire detection and extinguishing systems must be installed in compliance with §§ 181.400 through 181.420 of this subchapter. Additionally, all FRP vessels constructed with general purpose resins must be fitted with a smoke activated fire detection system of an approved type, installed in accordance with part 76, subpart 76.27 of this chapter, in all accommodation spaces, all service spaces, and in isolated spaces such as voids and storage lockers that contain an ignition source such as electric equipment or piping for a dry exhaust system.

(4) *Machinery space boundaries*—Boundaries that separate machinery spaces from accommodation spaces, service spaces, and control spaces must be lined with noncombustible panels or insulation approved under § 164.009 of this chapter.

(5) *Furnishings*—Furniture and furnishings must comply with § 116.423 of this chapter.

(d) *Limitations on the use of general purpose resin.*

(1) *Overnight accommodations*—Vessels with overnight passenger accommodations must not be constructed with general purpose resin.

(2) *Gasoline fuel systems*—Vessels with engines powered by gasoline or other fuels having a flash point of 110°F or lower must not be constructed with general purpose resin, except for vessels powered by outboard engines with portable fuel tanks stored in an open area aft, if, as determined by the cognizant OCMI, the arrangement does not produce an unreasonable hazard.

(3) *Cargo*—Vessels carrying or intended to carry hazardous, combustible or flammable cargo must not be constructed with general purpose resin.

Subpart E—Escape Requirements

§ 177.500 Means of escape.

(a) Except as otherwise provided in this section, each space accessible to passengers or used by the crew on a regular basis, must have at least two means of escape, one of which must not be a watertight door.

(b) The two required means of escape must be widely separated and, if possible, at opposite ends or sides of the space to minimize the possibility of one incident blocking both escapes.

(c) Subject to the restrictions of this section, means of escape may include normal exits and emergency exits, passageways, stairways, ladders, deck scuttles, and windows.

(d) The number and dimensions of the means of escape from each space must be sufficient for rapid evacuation in an emergency for the number of persons served. In determining the number of persons served, a space must be considered to contain at least the number of persons as follows:

(1) Passenger overnight accommodation spaces: Designed capacity;

(2) Accommodation spaces having fixed seating for passengers: Maximum seating capacity;

(3) Public spaces, including spaces such as casinos, restaurants, club rooms, and cinemas, and public accommmodation spaces as defined in § 175.400, except overnight accommodation spaces: One person may be permitted for each 10 square feet of deck area. In computing such deck area, the following areas must be excluded:

(i) Obstructions, including stairway and elevator enclosures, elevated stages, bars, and cashier stands, but not including slot machines, tables, or other room furnishings;

(ii) Areas for which the number of persons permitted is determined using the fixed seating criterion;

(iii) Toilets and washrooms;

(iv) Interior passageways less than 34 inches wide and passageways on open deck less than 28 inches wide;

(v) Spaces necessary for handling lifesaving equipment, anchor handling equipment, or line handling gear, or in way of sail booms or running rigging; and

(vi) Bow pulpits, swimming platforms, and areas which do not have a solid deck, such as netting on multi hull vessels;

(4) Crew overnight accommodation spaces: Two-thirds designed capacity; and

(5) Work spaces: Occupancy under normal operating conditions.

(e) The dimensions of a means of escape must be such as to allow easy movement of persons when wearing lifejackets. There must be no protrusions in means of escape which could cause injury, ensnare clothing, or damage lifejackets.

(f) The minimum clear opening of a door or passageway used as a means of escape must not be less than 32 inches in width. The sum of the width of all doors and passageways used as means of escape from a space must not be less than 0.333 inches multiplied by the number of passengers for which the space is designed.

(g) A dead end passageway, or the equivalent, of more than 20 feet in length is prohibited.

(h) [Reserved]

(i) Each door, hatch, or scuttle, used as a means of escape, must be capable of being opened by one person, from either side, in both light and dark conditions. The method of opening a means of escape must be obvious, rapid, and of adequate strength. Handles and securing devices must be permanently installed and not capable of being easily removed. A door, hatch or scuttle must open towards the expected direction of escape from the space served.

(j) A means of escape which is not readily apparent to a person from both inside and outside the space must be adequately marked.

(k) A ladder leading to a deck scuttle may not be used as a means of escape except:

(1) On a vessel of not more than 65 feet in length, a vertical ladder and a deck scuttle may be used as not more than one of the means of escape from a passenger accommodation space; and

(2) As not more than one of the means of escape from any crew accommodation space or work space.

(l) Each ladder used as a means of escape must be mounted at least 7 inches from the nearest permanent object in back of the ladder. Rungs must be:

(1) At least 16 inches in width;

(2) Not more than 12 inches apart, and uniformly spaced for the length of the

ladder with at least 4.5 inches clearance above each rung; and

(m) When a deck scuttle serves as a means of escape, it must not be less than 18 inches in diameter and must be fitted with a quick acting release and a holdback device to hold the scuttle in an open position.

(n) Footholds, handholds, ladders, and similar means provided to aid escape, must be suitable for use in emergency conditions, of rigid construction, and permanently fixed in position, unless they can be folded, yet brought into immediate service in an emergency.

(o) On a vessel of not more than 65 feet in length, a window or windshield of sufficient size and proper accessibility may be used as one of the required means of escape from an enclosed space, provided it:

(1) Does not lead directly overboard;

(2) Can be opened or is designed to be kicked or pushed out; and

(3) Is suitably marked.

(p) Only one means of escape is required from a space where:

(1) The maximum dimension (length, breadth, or depth) of a space is less than 12 feet;

(2) There is no stove, heater, or other source of fire in the space;

(3) The means of escape is located as far as possible from a machinery space or fuel tank; and

(4) If an accommodation space, the single means of escape does not include a deck scuttle or a ladder.

(q) Alternative means of escape from spaces may be provided if acceptable to the cognizant OCMI.

Subpart F—Ventilation

§ 177.600 Ventilation of enclosed and partially enclosed spaces.

(a) An enclosed or partially enclosed space within a vessel must be adequately ventilated in a manner suitable for the purpose of the space.

(b) Ventilation openings serving enclosed or partially enclosed spaces, including openings in ventilation ducts and pipes, ventilators, and louvers, must:

(1) Be above the main deck;

(2) Not penetrate the sideshell or the outboard side of the bulwarks of the vessel;

(3) If located along the inner periphery of bulwarks, be:

(i) Located as high as possible in the side of the cockpit or well; and

(ii) Be not more than 2 inches in height; and

(4) When determined necessary by the OCMI, be fitted with closure devices suitable for preventing the entry of water in adverse weather conditions.

(c) A power ventilation system must be capable of being shut down from the pilot house.

(d) An enclosed crew accommodation space and any other space occupied by a crew member on a regular basis must be ventilated by a power ventilation system, unless natural ventilation in all ordinary weather conditions is satisfactory to the OCMI.

(e) An enclosed passenger accommodation space must be ventilated by a power ventilation system, unless smoking is prohibited and natural ventilation in all ordinary weather conditions is satisfactory to the OCMI.

(f) An exhaust duct over a frying vat or a grill must be fitted with a fire damper that will close automatically in event of a fire.

(g) Electrical wiring, piping, combustibles and other foreign materials are not allowed within ventilation ducts.

§ 177.620 Ventilation of machinery and fuel tank spaces.

In addition to the requirements of this subpart, ventilation systems for spaces containing machinery or fuel tanks must comply with the requirements of part 182 of this subchapter.

Subpart G—Crew Spaces

§ 177.700 General requirements.

(a) A crew accommodation space and a work space must be of sufficient size, adequate construction, and with suitable equipment to provide for the safe operation of the vessel and the protection and accommodation of the crew in a manner practicable for the size, facilities, service, route, speed, and modes of operation of the vessel.

(b) The deck above a crew accommodation space must be located above the deepest load waterline.

§ 177.710 Overnight accommodations.

(a) Overnight accommodations must be provided for all crew members if the vessel is operated more than 12 hours in a 24 hour period, unless the crew is put ashore and the vessel is provided with a new crew.

(b) Overnight accommodations for crew members are required on vessels with crews which remain aboard more than 12 hours in any 24 hour period.

Subpart H—Passenger Accommodations

§ 177.800 General requirements.

(a) All passenger accommodations must be arranged and equipped to provide for the safety of the passengers in consideration of the route, modes of operation, and speed of the vessel.

(b) The height of ceilings in a passenger accommodation space, including aisles and passageways, must be at least 74 inches, but may be reduced at the sides of a space to allow for camber, wiring, ventilation ducts, and piping.

(c) A passenger accommodation space must be maintained to minimize fire and safety hazards and to preserve sanitary conditions. Aisles must be kept clear of obstructions.

(d) A passenger accommodation space must not contain:

(1) Electrical equipment, high temperature parts, pipelines, rotating assemblies, or any other item which could injure a passenger, unless such an item is adequately shielded or isolated; and

(2) A control for operating the vessel, unless the control is so protected and located that operation of the vessel by a crew member will not be impeded by a passenger during normal or emergency operations.

(e) The deck above a passenger accommodation space must be located above the deepest load waterline.

(f) A variation from a requirement of this subpart may be authorized by the cognizant OCMI for an unusual arrangement or design provided there is no significant reduction of space, accessibility, safety, or sanitation.

§ 177.810 Overnight accommodations.

(a) A berth must be provided for each passenger authorized to be carried in overnight accommodation spaces. Each berth must measure at least 74 inches by 24 inches and have at least 24 inches of clear space above.

(b) Berths must not be located more than three high and must be constructed of wood, fiber reinforced plastic, or metal. A berth located more than 60 inches above the deck must be fitted with a suitable aid for access.

(c) The construction and arrangement of berths and other furniture must allow free and unobstructed access to each berth. Each berth must be immediately adjacent to an aisle leading to a means of escape from the accommodation space. An aisle alongside a berth must be at least 24 inches wide. An aisle joining two or more aisles in an overnight accommodation space must be at least 42 inches wide.

§ 177.820 Seating.

(a) A seat must be provided for each passenger permitted in a space for which the fixed seating criterion in § 176.113(b)(3) of this subchapter has been used to determine the number of passengers permitted.

(b) A seat must be constructed to minimize the possibility of injury and avoid trapping occupants.

(c) Installation of seats must provide for ready escape.

(d) Seats, including fixed, temporary, or portable seats, must be arranged as follows:

(1) An aisle of not more than 15 feet in overall length must be not less than 24 inches in width.

(2) An aisle of more than 15 feet in overall length must be not less than 30 inches in width.

(3) Where seats are in rows, the distance from seat front to seat front must be not less than 30 inches and the seats must be secured to a deck or bulkhead.

(4) Seats used to determine the number of passengers permitted, in accordance with § 176.113(b)(3) of this subchapter, must be secured to the deck, bulkhead, or bulwark by permanent or temporary means.

Subpart I—Rails and Guards

§ 177.900 Deck rails.

(a) Except as otherwise provided in this section, rails or equivalent protection must be installed near the periphery of all decks of a vessel accessible to passengers or crew. Equivalent protection may include lifelines, wire rope, chains, and bulwarks, which provide strength and support equivalent to fixed rails. Deck rails must include a top rail with the minimum height required by this section, and lower courses or equivalent protection as required by this section.

(b) Deck rails must be designed and constructed to withstand a point load of 200 pounds (91 kilograms) applied at any point in any direction, and a uniform load of 50 pounds per foot (74 kilograms per meter) applied to the top rail in any direction. The point and uniform loads do not need to be applied simultaneously.

(c) Where space limitations make deck rails impractical for areas designed for crew use only, such as at narrow catwalks in way of deckhouse sides, hand grabs may be substituted.

(d) The height of top rails required by paragraph (a) of this section must be as follows:

(1) Rails on passenger decks of a ferry or a vessel engaged in excursion trips, including but not limited to sightseeing trips, dinner and party cruises, and overnight cruises, must be at least 39.5 inches high.

(2) Rails on a vessel subject to the 1966 International Convention on Loadlines must be at least 39.5 inches high.

(3) All other rails must be at least 36 inches high.

(4) While engaged in big game angling, the minimum rail height may be reduced to not less than 30 inches in way of a person using specialized angling techniques or equipment, such as when using a pedestal mounted fixed fighting chair on a low freeboard vessel, if it can be shown that a higher rail would interfere with the fishing operation and the lower rail would not significantly reduce safety. A rail complying with the requirements of paragraphs (d) (1), (2), or (3) of this section as applicable must be installed when big game angling is not being conducted.

(e) Where the principal business of the vessel requires the discharge of persons or cargo in a seaway, such as on pilot boats and dive boats, the cognizant OCMI may accept alternatives to the rails required in paragraphs (d) (1), (2), and (3) of this section for those areas of a deck where passengers or cargo are discharged and for which removable rails, lifelines, or chains would hinder discharge operations.

(f) A sailing vessel, an open boat, or any other vessel not specifically covered elsewhere in this section, must have rails of a minimum height or equivalent protection as considered necessary by the cognizant OCMI, based on the vessel's operation, route, and seating arrangement.

(g) Rail courses or equivalent must be installed between a top rail required by paragraph (a) of this section, and the deck so that no open space exists which is more than 12 inches high except:

(1) On passenger decks of a ferry or of a vessel on an excursion trip the following must be installed:

(i) Bulwarks;

(ii) Chain link fencing or wire mesh which has openings of not more than 4 inches in diameter; or

(iii) Bars, slats, rail courses, or an equivalent spaced at intervals of not more than 4 inches.

(2) On a vessel subject to the 1966 International Convention on Loadlines, rail courses, or an equivalent, must be installed so that there is not an open space higher than 9 inches from the deck to the first rail course or equivalent.

(h) Rails must be permanently installed except that the following rails may be removable:

(1) Rails in way of embarkation stations and boarding locations;

(2) Rails over 30 inches high in way of fishing seats addressed by paragraph (d)(4) of this section; and

(3) Rails on a vessel when the service of the vessel is routinely changed, as determined by the cognizant OCMI, and the required top rail height varies depending on the service of the vessel at a particular time.

§ 177.920 Storm rails.

Suitable storm rails or hand grabs must be installed where necessary in passageways, at deckhouse sides, and at ladders and hatches.

§ 177.940 Guards in vehicle spaces.

On a vessel authorized to carry one or more vehicles, suitable chains, cables, or other barriers must be installed at the end of each vehicle runway. In addition, temporary rails or equivalent protection must be installed in way of each vehicle ramp, in compliance with § 177.900, when the vessel is underway.

§ 177.960 Guards for exposed hazards.

An exposed hazard, such as gears or rotating machinery, must be properly protected by a cover, guard, or rail.

§ 177.970 Protection against hot piping.

Piping, including valves, pipe fittings and flanges, conveying vapor, gas, or liquid, the temperature of which exceeds 150°F, must be suitably insulated where necessary to prevent injuries.

Subpart J—Window Construction and Visibility

§ 177.1010 Safety glazing materials.

Glass and other glazing material used in windows must be of material which will not break into dangerous fragments if fractured.

§ 177.1020 Strength.

Each window, port hole, and its means of attachment to the hull or deck house, must be capable of withstanding the maximum load from wave and wind conditions expected due to its location on the vessel and the authorized route of the vessel.

§ 177.1030 Operating station visibility.

(a) Windows and other openings at the operating station must be of sufficient size and properly located to provide an adequate view for safe navigation in all operating conditions.

(b) Glass or other glazing material used in windows at the operating station must have a light transmission of not less than 70 percent according to Test 2 of ANSI Z 26.1, and must comply with Test 15 of ANSI Z 26.1 for Class I Optical Deviation.

PART 178—INTACT STABILITY AND SEAWORTHINESS

Subpart A—General Provision

Sec.

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Subpart B—Stability Instructions for Operating Personnel

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178.220 Stability booklet.
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Subpart C—Intact Stability Standard

178.310 Applicability based on length, passenger capacity, and propulsion.
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Subpart D—Drainage of Weather Deck

178.410 Drainage of flush deck vessels.
178.420 Drainage of cockpit vessels.
178.430 Drainage of well deck vessels.
178.440 Drainage of open boats.
178.450 Calculation of drainage area of cockpit and well deck vessels.

Subpart E—Special Installations

178.510 Ballast.

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 178.115 Applicability to existing vessels.

An existing vessel must comply with the intact stability and seaworthiness regulations which were applicable to the vessel on [date of the day before the effective date of the final rule] or, as an alternative, the vessel may comply with the regulations in this part.

Subpart B—Stability Instructions for Operating Personnel

§ 178.210 Stability information.

(a) Stability information (stability details indicated on the Certificate of Inspection, a stability letter, or a stability booklet) is required on certain vessels by paragraphs (b) or (c) of this section. Enough stability information must be provided for the master to have sufficient understanding of operating guidelines, loading restrictions, and stability calculations (and assumptions used in making them), to be able to ensure compliance with the applicable intact and damage stability regulations of this chapter.

(b) A vessel which, under § 178.310, must comply with requirements of subchapter S of this chapter, must have stability details on the vessel's Certificate of Inspection, a stability letter issued by the cognizant OCMI or the Commanding Officer, Marine Safety Center, or an approved stability booklet. The form in which the stability information must be contained (i.e., stability details on the Certificate of Inspection, a stability letter, or a stability booklet) will be determined by the Commanding Officer, U.S. Coast Guard Marine Safety Center.

(c) When necessary for safe operation, the cognizant OCMI may place specific stability restrictions in a stability letter or on the Certificate of Inspection of a vessel of not more than 65 feet in length, which, under § 178.310, must comply with the requirements of § 178.320.

§ 178.220 Stability booklet.

When the Commanding Officer, Marine Safety Center determines, in accordance with § 178.210(b), that a vessel must have a stability booklet, the owner or operator must prepare the booklet in accordance with subchapter S of this chapter, and submit it through the cognizant OCMI for approval by the Commanding Officer, Marine Safety Center.

§ 178.230 Stability letter or Certificate of Inspection stability details.

(a) When the cognizant OCMI or the Commanding Officer, Marine Safety Center determines, in accordance with § 178.210, that a vessel must have stability details indicated on its Certificate of Inspection or a stability letter, the owner or operator must submit the information listed in paragraph (b) of this section:

(1) If § 178.210(c) is applicable, to the OCMI for approval; or

(2) If § 178.210(b) is applicable, to the Commanding Officer, Marine Safety Center for his or her approval.

(b) The following applicable information, and the necessary calculations used to determine that information, must be submitted as required by paragraph (a) of this section:

(1) Allowable number of passengers and crew on each deck;

(2) Deepest waterline drafts or freeboard;

(3) Location of watertight bulkheads and openings in watertight bulkheads;

(4) Explanation of the vessel's subdivision and specific identification of the vessel's subdivision bulkheads;

(5) Location of openings through watertight bulkheads, such as watertight doors, which must be closed to limit flooding in an emergency;

(6) Location, type and amount of fixed ballast;

(7) Location and details of foam flotation material; and

(8) Maximum weight of portable equipment permitted on the vessel including diving equipment.

Subpart C—Intact Stability Standards

§ 178.310 Applicability based on length, passenger capacity, and propulsion.

(a) A vessel of not more than 65 feet in length must meet the applicable requirements of §§ 178.320 or 178.325, or of §§ 170.170, 170.173, and 171.050 of subchapter S of this chapter, if:

(1) Carrying not more than 150 passengers on a domestic voyage;

(2) Carrying not more than 12 passengers on an international voyage; or

(3) It has not more than one deck above the bulkhead deck, exclusive of a pilot house.

(b) The following vessels must meet the appropriate requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of subchapter S of this chapter:

(1) A vessel of more than 65 feet in length;

(2) A sailing vessel of more than 65 feet in length;

(3) A vessel carrying more than 12 passengers on an international voyage; and

(4) A vessel with more than 1 deck above the bulkhead deck exclusive of a pilot house.

§ 178.320 Intact stability requirements for mechanically propelled and nonself-propelled vessels.

(a) A vessel, except a pontoon vessel operating on protected waters, must undergo a simplified stability proof test in accordance with § 178.330 in the presence of a Coast Guard marine inspector.

(b) A pontoon vessel operating on protected waters must undergo a simplified stability proof test in accordance with § 178.340 in the presence of a Coast Guard marine inspector.

(c) The cognizant OCMI may dispense with the simplified stability proof test in § 178.330 for a vessel carrying not more than 49 passengers where it can be established that, due to the form, arrangement, construction, number of decks, route, and operating restrictions of the vessel, the vessel's stability can be safely determined without such a test. Vessels which carry deck cargo must undergo a simplified stability proof test.

(d) A vessel whose stability is questioned by the cognizant OCMI must be shown by design calculations to meet the applicable stability criteria of §§ 170.170, 170.173, and 171.050 of this chapter in each condition of loading and operation.

(e) A simplified stability proof test is conducted to determine if a vessel, as built and operated, has a minimum level of initial stability. Failure of the simplified test does not necessarily mean that the vessel lacks stability for the intended route, service, and operating condition, but that calculations or other methods must be used to evaluate the stability of the vessel.

§ 178.325 Intact stability requirements for a sailing vessel.

(a) Except as provided in paragraphs (b), (c) and (e) of this section, each sailing vessel must undergo a simplified stability proof test in accordance with § 178.330 in the presence of a Coast Guard marine inspector.

(b) Each of the following sailing vessels must meet the intact stability standards of §§ 170.170 and 171.055 of this subchapter:

(1) A vessel to be operated in exposed waters;

(2) A vessel to be operated during non-daylight hours;

(3) A vessel of unusual type, rig, or hull form, including vessels without a weathertight deck, such as open boats;

(4) A vessel that carries more than 49 passengers;

(5) A sailing school vessel that carries a combined total of six or more sailing school students or instructors;

(6) A vessel on which downflooding occurs at angles of 60° or less; and

(7) A vessel which has a cockpit longer than LOD/5.

(c) A catamaran must meet the intact stability requirements of §§ 170.170 and 171.057 of this subchapter.

(d) A cockpit on a sailing vessel which is not listed in paragraph (b) or (c) of this section and which operates on partially protected waters must be self-bailing.

(e) The cognizant OCMI may perform operational tests to determine whether the vessel has adequate stability and satisfactory handling characteristics under sail for protected waters or partially protected waters, in lieu of conducting a simplified stability proof test.

(f) Commanding Officer, Marine Safety Center, may prescribe additional or different stability requirements for a broad, shallow draft vessel with little or no ballast outside the hull.

§ 178.330 Simplified stability proof test.

(a) A vessel must be in the condition specified in this paragraph when a simplified stability proof test is performed.

(1) The construction of the vessel must be complete in all respects.

(2) Ballast, if necessary, must be in compliance with § 178.510 and must be on board and in place.

(3) Each fuel and water tank must be approximately three-quarters full.

(4) A weight equal to the total weight of all passengers, crew, and other loads permitted on the vessel must be onboard and distributed so as to provide normal operating trim and to simulate the vertical center of gravity causing the least stable condition that is likely to occur in service. Unless otherwise specified, weight and vertical center of gravity is assumed to be as follows:

(i) The weight of primary lifesaving equipment should be simulated at its normal location, if not on board at the time of the test;

(ii) The weight of one person is considered to be 160 pounds except the weight of one person is considered to be 140 pounds if the vessel always carries only women and children, and operates exclusively on protected waters;

(iii) The vertical center for the simulated weight of passengers, crew, and other loads must be at least 2.5 feet above the deck; and

(iv) If the vessel carries passengers on diving excursions, the total weight of diving gear must be included in the test as follows:

(A) The total weight of individual diving gear for each passenger carried is assumed to be 80 pounds, which includes the weight of scuba tanks, harness, regulator, weight belt, wet suit, mask, and other personal diving equipment;

(B) The weight of any air compressors carried; and

(C) Other portable equipment carried.

(5) All non-return closures on cockpit scuppers or on weather deck drains must be kept open during the test.

(b) A vessel must not exceed the limitations in paragraph (d) of this section, when subjected to the greater of the following heeling moments:

$M_p = (W)(B)/6$; or

$M_w = (P)(A)(H)$

where:

M_p=passenger heeling moment in foot-pounds (kilogram-meters);

W=the total passenger weight using 160 pounds (72.6 kilograms) per passenger, or, if the vessel will always carry women and children and operate exclusively on protected waters, 140 pounds (63.5 kilograms) per passenger may be used;

B=the maximum transverse distance in feet (meters) of a deck that is accessible to passengers;

M_w=wind heeling moment in foot-pounds (kilogram-meters);

P=wind pressure of:

(1) 7.5 pounds/square foot (36.6 kilograms/square meter) for operation on protected waters;

(2) 10.0 pounds/square foot (48.8 kilograms/square meter) for operation on partially protected waters; or

(3) 15.0 pounds/square foot (73.3 kilograms/square meter) for operation on exposed waters.

A=area, in square feet (square meters), of the projected lateral surface of the vessel above the waterline (including each projected area of the hull, superstructure and area bounded by railings and structural canopies). For sailing vessels this is the bare poles area, or, if the vessel has no auxiliary power, with storm sails set.

H=height, in feet (meters), of the center of area (A) above the waterline, measured up from the waterline.

(c) For sailing vessels the heeling moment used for this test must be the greater of the following:

(1) Passenger heeling moment from paragraph (b) of this section.

(2) Wind heeling moment from paragraph (b) of this section.

(3) Wind heeling moment calculated from the wind heeling moment equation in paragraph (b) of this section, where:

M_w=wind heeling moment in foot-pounds (kilogram-meters).

A=the windage area of the vessel in square feet (square meters) with all sails set and trimmed flat.

H=height, in feet (meters), of the center of effort of area (A) above the waterline, measured up from the waterline.

P=1.0 pounds/square foot (4.9 kilograms/square meter) for both protected and partially protected waters.

(d) A vessel must not exceed the following limits of heel:

(1) On a flush deck vessel, not more than one-half of the freeboard may be immersed.

(2) On a well deck vessel, not more than one-half of the freeboard may be immersed, except that, on a well deck vessel that operates on protected waters and has non-return scuppers, the full freeboard may be immersed if the full freeboard is not more than one-quarter of the distance from the waterline to the gunwale.

(3) On a cockpit vessel, the maximum allowable immersion is calculated from the following equation:

(i) On exposed waters—

$i=f(2L-1.5L')/4L$

(ii) On protected or partially protected waters—

$i=f(2L-L')/4L$

where:

i=maximum allowable immersion in feet (meters);

f=freeboard in feet (meters);

L=length of the weather deck, in feet (meters); and

L'=length of cockpit in feet (meters).

(4) On an open boat, not more than one quarter of the freeboard may be immersed.

(5) On a flush deck sailing vessel, the full freeboard may be immersed.

(6) In no case may the angle of heel exceed 14 degrees.

(e) The limits of heel must be measured at:

(1) The point of minimum freeboard; or

(2) At a point three-quarters of the vessel's length from the bow if the point of minimum freeboard is aft of this point.

(f) When demonstrating compliance with paragraph (d) of this section, the freeboard must be measured as follows:

(1) For a flush deck or well deck vessel, the freeboard must be measured to the top of the weatherdeck at the side of the vessel; and

(2) For a cockpit vessel or for an open boat, the freeboard must be measured to the top of the gunwale.

(g) A ferry must also be tested in a manner acceptable to the cognizant OCMI to determine whether the trim or heel during loading or unloading will submerge the deck edge. A ferry passes this test if with the total number of passengers and the maximum vehicle weight permitted onboard, the deck edge is not submerged during loading or unloading of the vessel.

§ 178.340 Stability standards for pontoon vessels on protected waters.

(a) The portion of the deck accessible to passengers on a pontoon vessel must not extend beyond the outboard edge of either pontoon, nor beyond the forward or aft ends of the pontoons.

(b) A pontoon vessel that has more than 2 pontoons or has decks higher than 6 inches above the pontoons must meet a stability standard acceptable to the Commanding Officer, Marine Safety Center.

(c) A pontoon vessel must be in the condition described in § 178.330(c) when the simplified stability proof test is performed, except that the simulated load of passengers, crew, and other weights is initially centered on the vessel so that trim and heel are minimized.

(d) A pontoon vessel has the minimum acceptable level of initial stability if it meets the following:

(1) With the simulated load located at the extreme outboard position of the deck on the side with the least initial freeboard, the remaining exposed cross sectional area of the pontoon on that side must be equal to or greater than the cross sectional area submerged due to the load shift, as indicated in figure 178.340(d)(1); and

(2) With the simulated load located on the centerline at the extreme fore or aft end of the deck, whichever position is further from the initial position of the load, the top of the pontoon must not be submerged at any location, as indicated in figure 178.340(d)(2).

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Figure 178.340(d)(1)

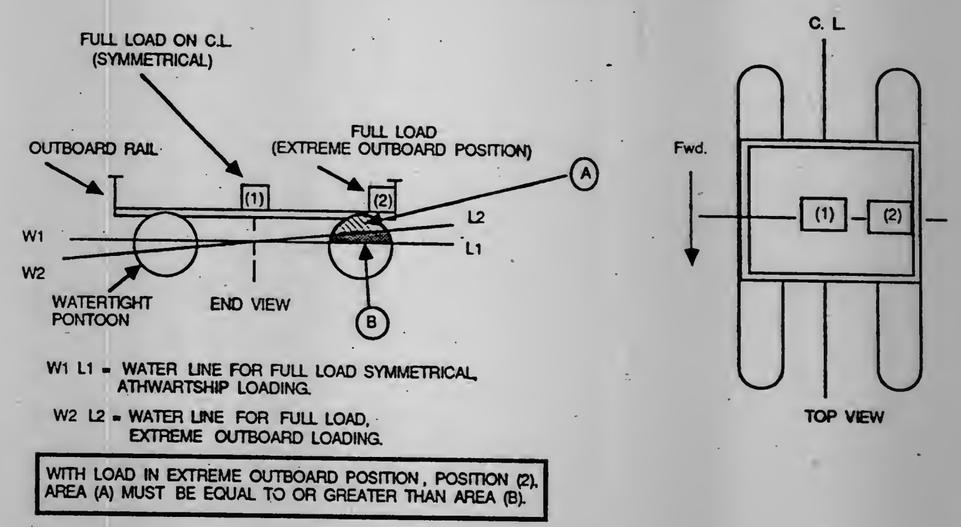
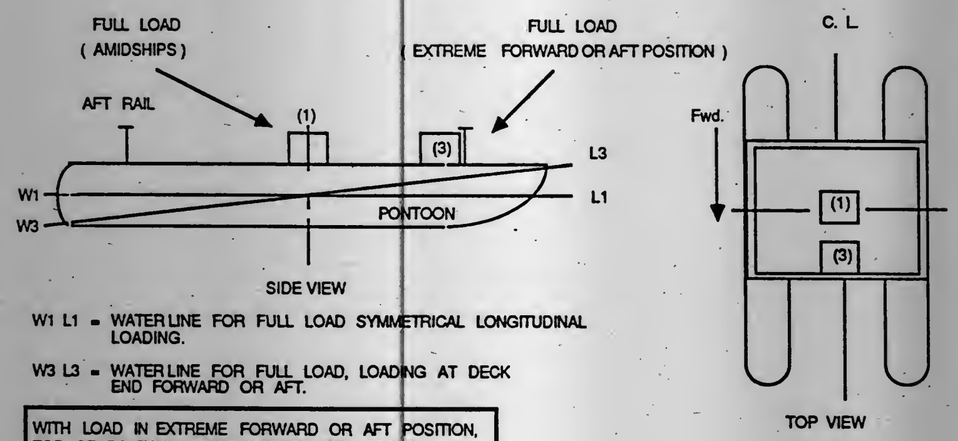


Figure 178.340(d)(2)

LONGITUDINAL STABILITY STANDARD



W1 L1 = WATER LINE FOR FULL LOAD SYMMETRICAL LONGITUDINAL LOADING.

W3 L3 = WATER LINE FOR FULL LOAD, LOADING AT DECK END FORWARD OR AFT.

WITH LOAD IN EXTREME FORWARD OR AFT POSITION, TOP OF PONTOON MUST NOT BE SUBMERGED.

BILLING CODE 4910-14-C

Subpart D—Drainage of Weather Decks

§ 178.410 Drainage of flush deck vessels.

(a) Except as provided in paragraph (b) of this section, the weather deck on a flush deck vessel must be watertight and have no obstruction to overboard drainage.

(b) Each flush deck vessel may have solid bulwarks in the forward one-third length of the vessel if:

(1) The bulwarks do not form a well enclosed on all sides; and

(2) The foredeck of the vessel has sufficient sheer to ensure drainage aft.

§ 178.420 Drainage of cockpit vessels.

(a) Except as follows, the cockpit on a cockpit vessel must be watertight:

(1) A cockpit may have companionways if the companionway openings have watertight doors, or weathertight doors and coamings which meet § 179.360 of this subchapter.

(2) A cockpit may have ventilation openings along its inner periphery if the vessel operates only on protected or partially protected waters.

(b) The cockpit deck of a cockpit vessel that operates on exposed or partially protected waters must be at least 10 inches above the deepest load waterline unless the vessel complies with:

(1) The intact stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter;

(2) The Type II subdivision requirements in §§ 171.070, 171.072, and 171.073 of this chapter; and

(3) The damage stability requirements in § 171.080 of this chapter.

(c) The cockpit deck of a cockpit vessel that does not operate on exposed or partially protected waters must be located as high above the deepest load waterline as practicable.

(d) The cockpit must be self-bailing. Scuppers for the cockpit deck of a cockpit vessel must:

(1) Be located to allow rapid clearing of water in all probable conditions of list and trim;

(2) Have a combined drainage area of at least the area required by § 178.450; and

(3) If the deck is less than 10 inches above the deepest load waterline of the vessel, be fitted with non-return valves.

§ 178.430 Drainage of well deck vessels.

(a) The weather deck on a well deck vessel must be watertight.

(b) The area required on a well deck vessel for drainage of the well formed by the bulwarks must be determined as required by this paragraph.

(1) If a vessel operates on exposed or partially protected waters, it must have at least 100 percent of the drainage area required by § 178.450.

(2) If a vessel operates only on protected or partially protected waters, it must have at least 50 percent of drainage area required by § 178.450 if the vessel meets the following requirements for a vessel that operates on exposed waters:

(i) The intact stability requirements of §§ 170.170, 170.173, 171.050, 171.055 and 171.057 of this chapter;

(ii) The Type II subdivision requirements of §§ 171.070, 171.072, and 171.073 of this chapter; and

(iii) The damage stability requirements of § 171.080 of this chapter.

(c) The freeing ports or scuppers on a well deck vessel must be located to allow rapid clearing of water in all probable conditions of list and trim.

(d) The deck of a well deck vessel that operates on exposed or partially protected waters must be at least 10 inches above the deepest load waterline unless the vessel complies with:

(1) The intact stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter;

(2) The Type II subdivision requirements in §§ 171.070, 171.072, and 171.073 of this chapter; and

(3) The damage stability requirements in § 171.080 of this chapter.

§ 178.440 Drainage of open boats.

The deck within the hull of an open boat must drain to the bilge. Overboard drainage of the deck is not permitted.

§ 178.450 Calculation of drainage area for cockpit and well deck vessels.

The drainage area required on a vessel must be computed using the following formula:

Required drainage area in inch^2=Volume Factor×Effective Deck Area where:

Volume Factor=0.1 for all vessels operating on protected waters, or

=0.8b^2/(b+f−K), but not less than 0.1, for all vessels operating on exposed and partially protected waters, where:

b=average height in feet of the bulwark above the deck;

f=height of the freeboard above the deepest waterline in feet as determined in accordance with § 178.330(h); and K=3.0 feet for vessels operating on exposed waters and 2.0 feet for vessels operating on partially protected waters; and

Effective Deck Area=D−H

Where:

D=total deck area of the cockpit or well deck measured in feet^2, including the deck area of the superstructure; and

H=any area of weathertight superstructure within the cockpit or well deck area which meets the requirements of § 179.360 of this subchapter, measured in feet^2 which extends vertically at least as high as the deck in which the cockpit is located or the top of the bulwark which forms the well.

Subpart E—Special Installations

§ 178.510 Ballast.

(a) Any solid fixed ballast used to comply with the requirements of parts 170, 171, 178, and 179 of this chapter must be:

(1) Stowed in a manner that prevents shifting of the ballast; and

(2) Installed to the satisfaction of the cognizant OCMI.

(b) Solid fixed ballast may not be located forward of the collision bulkhead unless the installation and arrangement of the ballast and the collision bulkhead minimizes the risk of the ballast penetrating the bulkhead in a collision.

(c) Solid fixed ballast may not be removed from a vessel or relocated unless approved by the cognizant OCMI except that ballast may be temporarily moved for a vessel examination or repair if it is replaced to the satisfaction of the OCMI.

(d) Water ballast, either as an active system or permanent, must be approved by the Commanding Officer, Marine Safety Center.

PART 179—SUBDIVISION, DAMAGE STABILITY AND WATERTIGHT INTEGRITY REQUIREMENT

Subpart A—General Provision

Sec.

179.115 Applicability to existing vessels.

Subpart B—Subdivision and Damage Stability Requirements

179.210 Collision bulkhead.
179.212 Watertight bulkheads for subdivision.
179.220 Location of watertight bulkheads for subdivision.
179.230 Damage stability requirements.
179.240 Foam flotation material.

Subpart C—Watertight Integrity Requirements

179.310 Collision bulkheads.
179.320 Watertight bulkheads.
179.330 Watertight doors.
179.340 Trunks.
179.350 Openings in the side of a vessel below the bulkhead or weather deck.
179.360 Watertight integrity.

Authority: 43 U.S.C. 1333; 46 U.S.C. 2103, 3306, 3703; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.46.

Subpart A—General Provisions

§ 179.115 Applicability to existing vessels.

An existing vessel must comply with the subdivision, damage stability, and watertight integrity regulations which were applicable to the vessel on [*date of the day before the effective date of the final rule*] or, as an alternative, the vessel may comply with the regulations in this part.

Subpart B—Subdivision and Damage Stability Requirements

§ 179.210 Collision bulkhead.

(a) A vessel of more than 65 feet in length must have a collision bulkhead.

(b) A vessel of not more than 65 feet in length must have a collision bulkhead if it:

(1) Carries more than 49 passengers;

(2) Operates on exposed waters; or

(3) Is of more than 40 feet in length and operates on partially protected waters.

(c) A double-ended ferry required to have a collision bulkhead must have a collision bulkhead at each end of the vessel.

§ 179.212 Watertight bulkheads for subdivision.

(a) A vessel of not more than 65 feet in length, carrying more than 49 passengers, must comply with § 179.220, except that, if designed to comply with the intact stability requirements of §§ 170.170, 170.173, 171.050 and 171.055 of this chapter, the vessel must comply with the Type II subdivision requirements of §§ 171.070 through 171.073 of this chapter.

(b) A vessel of more than 65 feet in length must comply with the Type II subdivision requirements of §§ 171.070 through 171.073 of this chapter.

(c) A vessel that carries more than 12 passengers on an international voyage must meet the Type II subdivision requirements of §§ 171.070 through 171.073 of this chapter.

§ 179.220 Location of watertight bulkheads for subdivision.

(a) The maximum distance between adjacent main transverse watertight bulkheads on a vessel, required by § 179.212(a) to comply with this section, must not be more than the smaller of the following:

(1) One third of the length of the bulkhead deck; or

(2) The distance given by the following equation:

l=((F)(f)(L))/D

Where:

l=the maximum length of the bulkhead deck in feet between adjacent main transverse watertight bulkheads;

f=the effective freeboard in feet calculated for each pair of adjacent bulkheads in accordance with paragraph (b) of this section;

L=vessel length in feet;

F=the floodable length factor from Table 179.220.

D=the depth in feet, measured amidships at a point one-quarter of the maximum beam out from the centerline, from the inside of the bottom planking or plating to the level of the top of the bulkhead deck at side as shown in Figure 179.220(a).

TABLE 179.220—TABLE OF FLOODABLE LENGTH FACTORS

(d/L)×100	F
0–15	0.33
20	0.34
25	0.36
30	0.38
35	0.43
40	0.48
45	0.54
50	0.61
55	0.63
60	0.58
65	0.53
70	0.48
75	0.44
80	0.40
85	0.37
90–100	0.34

(1) Where:

d=distance in feet from the midpoint of the compartment to the forwardmost point on the bulkhead deck excluding sheer.

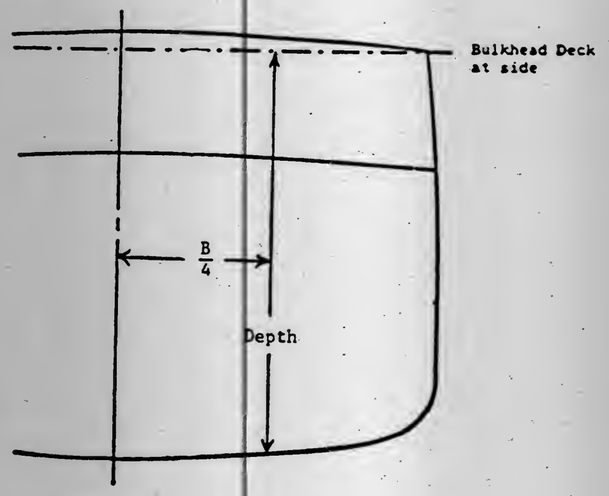
L=vessel length in feet measured over the bulkhead deck.

(2) Intermediate values of floodable length factor may be obtained by interpolation.

BILLING CODE 4910-14-P

Figure 179.220(a)

Transverse Location for Measuring Depth (D)



BILLING CODE 4910-14-C

(b) The effective freeboard for each compartment is calculated by the following equation: f=(a+b)/2

Where:

f=the effective freeboard in feet.

a=the freeboard in feet measured:

(1) At the forward main transverse watertight bulkhead; and

(2) From the deepest waterline to:

(i) The top of the bulkhead deck on a flush deck vessel; or

(ii) If a vessel has a stepped bulkhead deck, the line shown in Figure 179.220(b); or

(iii) If a vessel has an opening port light below the bulkhead deck, the line shown in Figure 179.220(c).

b=the freeboard in feet measured:

(1) At the aft main transverse watertight bulkhead; and

(2) From the deepest waterline to:

(i) The top of the bulkhead deck on a flush deck vessel; or

(ii) If a vessel has a stepped bulkhead deck, the line shown in Figure 179.220(b)(1); or

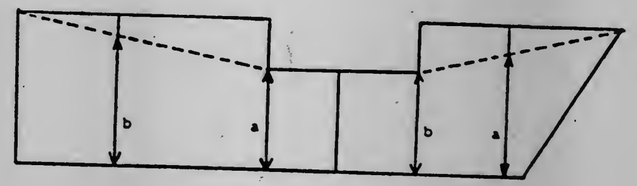
(iii) If a vessel has an opening port light below the bulkhead deck, the line shown in Figure 179.220(b)(2).

BILLING CODE 4910-14-P

Figure 179.220(b)(1)

Freeboard Measurement-

Vessel with a Stepped Bulkhead Deck



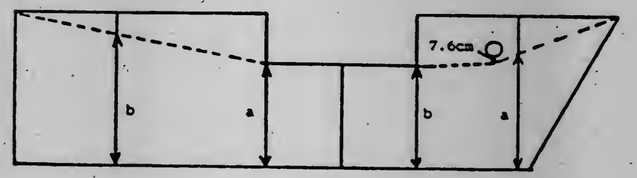
(a and b shown for two sample compartments)

Figure 179.220 (b)(2)

Freeboard Measurement-

Vessel with a Stepped Bulkhead Deck and

a Port Light Below the Bulkhead Deck



(a and b shown for two sample compartments)

BILLING CODE 4910-14-C

§ 179.230 Damage stability requirements.

A vessel which, in accordance with § 179.212(b), must meet the requirements of §§ 171.070 through 171.073 of this chapter for Type II subdivision must meet the damage stability requirements of § 171.080 of this chapter.

§ 179.240 Foam flotation material.

(a) Foam may only be installed as flotation material on a vessel of not more than 65 feet in length, when approved by the cognizant OCMI.

(b) If foam is installed as flotation material on a vessel, the owner shall ensure that the following tests are conducted and requirements are met, to the satisfaction of the cognizant OCMI:

(1) All foam must comply with MIL–P–21929B, including the requirements for fire resistance;

(2) Foam may be installed only in void spaces that are free of ignition sources, unless the foam complies with the requirements of 33 CFR 183.114;

(3) Foam may be installed adjacent to fuel tanks only if the boundary between the tank and the space has doubled continuous fillet welds;

(4) The structure enclosing the foam must be strong enough to accommodate the buoyancy of the foam;

(5) Piping and cables must not pass through foamed spaces unless they are within piping and cable ways accessible from both ends;

(6) Blocked foam must:

(i) Be used in each area that may be exposed to water; and

(ii) Have a protective cover, approved by the cognizant OCMI, to protect it from damage;

(7) A water submergence test must be conducted on the foam for a period of at least 7 days to demonstrate to the satisfaction of the cognizant OCMI that the foam has adequate strength to withstand a hydrostatic head equivalent to that which would be imposed if the vessel were submerged to its bulkhead deck;

(8) The effective buoyancy of the foam must be determined at the end of the submergence test required by paragraph (b)(7) of this section. The effective buoyancy or 55 pounds per cubic foot, whichever is less, must be used in determining the location of watertight bulkheads for subdivision required by § 179.212; and

(9) The owner or operator must obtain sample foam specimens during installation of the foam and determine the density of the installed foam.

Subpart C—Watertight Integrity Requirements

§ 179.310 Collision bulkheads.

(a) Each collision bulkhead required by § 179.210, must be constructed in accordance with § 179.320, except that a collision bulkhead:

(1) Must extend to the weather deck or to one deck above the bulkhead deck, whichever is lower, for service on oceans or coastwise routes, and

(2) Must not be fitted with any type of penetration or opening except penetrations may be made if they are located as high and as far inboard as practicable and they have a means to make them watertight.

(b) The forward collision bulkhead required to be on a vessel by § 179.210 must be:

(1) Located at least 5 percent but not more than 15 percent of the LBP aft of the forward perpendicular, or for vessels with bulbous bows extending forward of the forward perpendicular and contributing more than 2 percent of the underwater volume of the vessel, located at least 5 percent but not more than 15 percent of the LBP aft of the mid-length of such extension; and

(2) Installed in a single plane, with no recess or step, up to the bulkhead deck;

(c) The after collision bulkhead on a double-ended ferry of more than 65 feet in length must be:

(1) At least 5 percent but not more than 15 percent of the LBP forward of the after perpendicular; and

(2) Installed in a single plane, with no recess or step, at least up to the bulkhead deck.

§ 179.320 Watertight bulkheads.

(a) Each watertight bulkhead must be of sufficient strength to be capable of remaining watertight with a head of water to the top of the bulkhead.

(b) Each watertight bulkhead must extend to the bulkhead deck and be installed in one plane without steps or recesses insofar as is reasonable and practicable. Any steps or recesses permitted must comply with the applicable subdivision requirements in this subchapter.

(c) The number of penetrations in a watertight bulkhead must be minimized. A penetration in a watertight bulkhead must be as high and as far inboard in the bulkhead as practicable, and made watertight.

(d) Sluice valves are not permitted in watertight bulkheads.

§ 179.330 Watertight doors.

(a) Except as permitted in paragraph (b) of this section, hinged watertight doors are not permitted in bulkheads required by §§ 179.210 or 179.212 unless the vessel will not proceed more than 20 nautical miles (37 kilometers) from shore and:

(1) The door separates a machinery space from an accommodation space and, in the judgment of the cognizant OCMI, the door will be kept closed except when a person is passing through the door; or

(2) The Commandant determines that, due to the arrangements of the vessel, the door will be kept closed except when a person is passing through the door.

(b) Watertight doors are permitted in any bulkhead, except the collision bulkhead, on a vessel that operates only in the offshore oil industry.

(c) A hinged watertight bulkhead door must be fitted with a quick action closing device operable from both sides of the door and indicator lights at the operating station showing whether the door is open or closed.

(d) Sliding watertight doors must meet the requirements of part 170, subpart H of this chapter.

(e) No more than one watertight door may be fitted in a watertight bulkhead, and it must be located as high and as far inboard as practicable.

§ 179.340 Trunks.

Where a trunk, i.e., an enclosed passageway through a deck or bulkhead, is installed, it must comply with the requirements of § 179.360(a)(1) and with the requirements of § 171.113 of this chapter.

§ 179.350 Openings in the side of a vessel below the bulkhead or weather deck.

(a) On a vessel operating on exposed or partially protected waters, an opening port light is not permitted below the weather deck unless the sill of the port light is at least 30 inches above the deepest load waterline.

(b) A port light must have an inside, hinged dead cover regardless of whether the port light is or is not capable of being opened.

(c) Except for engine exhausts, each inlet or discharge pipe that penetrates the hull below a line drawn parallel to and at least 6 inches above the deepest load waterline must have means to prevent water from entering the vessel if the pipe fractures or otherwise fails.

(d) A positive action valve or cock that is located as close as possible to the hull is an acceptable means for complying with paragraph (c) of this section.

(e) If an inlet or discharge pipe is inaccessible, the means for complying with paragraph (c) of this section must be a shutoff valve that is:

(1) Operable from the weather deck or any other accessible location above the bulkhead deck; and

(2) Labeled at the operating point for identity and direction of closing.

(f) Any connecting device or valve in a hull penetration must not be cast iron.

(g) Each plug cock in an inlet or discharge pipe must have a means, other than a cotter pin, to prevent its loosening or removal from the body.

§ 179.360 Watertight integrity.

(a) A hatch exposed to the weather must be watertight, except that the following hatches may be weathertight:

(1) A hatch on a watertight trunk that extends at least 12 inches above the weather deck;

(2) A hatch in a cabin top; and

(3) A hatch on a vessel that operates only on protected waters.

(b) A hatch cover must: (1) Have securing devices; and

(2) Be attached to the hatch frame or coaming by hinges, captive chains, or other devices of substantial strength to prevent its loss.

(c) A hatch cover that provides access to accommodation spaces must be operable from either side.

(d) A weathertight door must be provided for each opening located in a deck house or companionway. Permanent watertight coamings must be provided as follows:

(1) On a vessel on an exposed or partially protected route, a watertight coaming with a height of at least 6 inches must be provided under each weathertight door in a cockpit or a well, or on the main deck of a flush deck vessel.

(2) On a vessel on a protected route, a watertight coaming with a height of at least 3 inches must be provided under each weathertight door in a cockpit or a well.

(3) The height of the watertight coaming for a hinged watertight door need only be sufficient to accommodate the door.

PART 180—LIFESAVING EQUIPMENT AND ARRANGEMENTS

Subpart A—General Provisions

Sec.

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Authority: 46 U.S.C. 2104, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.46.

Subpart A—General Provisions

§ 180.10 Applicability to vessels on an international voyage.

A vessel on an international voyage must meet the requirements in subchapter H of this chapter for passenger vessels in the same service, instead of the requirements of this part.

§ 180.15 Applicability to existing vessels.

An existing vessel must comply with the requirements of this part except as otherwise specified by this section.

(a) Before [*date 5 years after effective date*] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel may comply with the requirements in effect for the vessel prior to [*effective date*] for the number and type of survival craft, stowage arrangements, and launching appliances for survival craft.

(b) On or before [*date 5 years after effective date*] or 10 years after the vessel's keel was laid or the vessel was at a similar stage of construction, whichever is later, an existing vessel must:

(1) Be equipped with the number of survival craft required for its route under §§ 180.202, 180.204, 180.206, 180.207, or 180.208, as applicable; and

(2) Comply with the stowage and launching appliance requirements for survival craft in §§ 180.130 through 180.150, inclusive.

(c) An existing vessel which meets the following requirements may be equipped with life floats of an aggregate capacity which will accommodate the total number of persons permitted on board, in lieu of meeting the requirements for the use of inflatable buoyant apparatus in §§ 180.202(c), 180.204(a)(1), and 180.206(a).

(1) The vessel is constructed of a material other than wood;

(2) The vessel is of not more than 65 feet in length and carries not more than 49 passengers;

(3) The vessel is certificated to operate on oceans, coastwise, or Great Lakes routes;

(4) The vessel must meet the standards for collision bulkheads in § 179.310 of this subchapter; and

(5) The vessel must meet the standards for one-compartment subdivision in §§ 179.220 and 179.320 of this subchapter, at least in way of the engine room and lazarette.

(d) Each inflatable liferaft, inflatable buoyant apparatus, life float, and buoyant apparatus on the vessel on [*effective date*], may be used to meet the requirements of this part for these survival craft as long as the survival craft is continued in use on the vessel, and is in good and serviceable condition.

(e) When any lifesaving equipment on a vessel is replaced or a vessel undergoes repairs, alterations, or modifications of a major character involving replacement of, or any addition to, the existing lifesaving equipment, each new piece of lifesaving equipment must meet this part.

(f) A combination flare and smoke distress signal approved under § 160.023 of this chapter may be used on an existing vessel until the expiration date of the distress signal but no later than [*3 years after effective date*] as one of the distress signals required by § 180.68.

(g) Until January 1, 1996, a Coast Guard approved 121.5/243 MHz Class A EPIRB may be used to meet the requirement for an EPIRB under § 180.64, if the EPIRB:

(1) Is operable;

(2) Is installed to automatically float-free and activate;

(3) Was manufactured on or after October 1, 1988; and

(4) Was installed on the vessel on or before [*date 45 days after effective date*]

(h) Until January 1, 1995, an FCC Type Accepted VHF–FM Class C EPIRB may be used to meet the requirement for an EPIRB on a vessel operating on a Great Lakes route under § 180.64, if the EPIRB:

(1) Is operable; and

(2) Was installed on the vessel on or before [*date 45 days after effective date*].

(i) Until January 1, 1994, an existing vessel on a coastwise route operating not more than 20 nautical miles from a harbor of safe refuge, need not comply with § 180.64.

(j) An existing vessel need not comply with § 180.78(a)(4).

(k) An existing vessel must comply with § 180.210 or may comply with the regulations for rescue boats that were in effect for the vessel prior to [*effective date of regulations*].

§ 180.25 Additional requirements.

(a) Each item of lifesaving equipment carried on board a vessel but not required under this part, must be approved by the Commandant.

(b) The cognizant OCMI may require a vessel to carry specialized or additional lifesaving equipment if:

(1) The OCMI determines the conditions of the voyage render the requirements of this part inadequate; or

(2) The vessel is operated in Arctic, Antarctic, or other severe conditions not covered under this part.

Subpart B—Emergency Communications

§ 180.64 Emergency Position Indicating Radiobeacons (EPIRB).

Each vessel which operates on the high seas, or which operates beyond three miles from the coastline of the Great Lakes, must have on board a Federal Communications Commission (FCC) Type Accepted Category 1, 406 MHz Emergency Position Indicating Radio Beacon (EPIRB), installed to automatically float free and activate.

§ 180.68 Distress flares and smoke signals.

(a) *Oceans, coastwise, and Great Lakes routes.* A vessel on an oceans, coastwise, or Great Lakes route must carry:

(1) Six hand red flare distress signals approved under subpart 160.021 of this chapter; and

(2) Six hand orange smoke distress signals approved under subpart 160.037 of this chapter.

(b) *Lakes, bays, and sounds, and rivers routes.* A vessel on a lakes, bays, and sounds, or rivers route must carry:

(1) Three hand red flare distress signals approved under subpart 160.021 of this chapter; and

(2) Three hand orange smoke distress signals approved under subpart 160.037 of this chapter.

(c) *Substitutions:* (1) A rocket parachute flare approved under subpart 160.036 of this chapter may be substituted for any of the hand red flare distress signals required under paragraph (a) or (b) of this section.

(2) One of the following may be substituted for any of the hand orange smoke distress signals required under paragraph (a) or (b) of this section:

(i) A rocket parachute flare approved under subpart 160.036 of this chapter.

(ii) A hand red flare distress signal approved under subpart 160.021 of this chapter.

(iii) A floating orange smoke distress signal approved under subpart 160.022 of this chapter.

(d) *Exemption for vessels on short runs.* A vessel operating on short runs limited to approximately 30 minutes away from the dock is not required to carry distress flares and smoke signals under this section.

(e) *Stowage.* Each flare carried to meet this section must be stowed in one of the following:

(1) A portable watertight container complying with § 160.021–6 of this chapter, carried at the operating station; or

(2) A pyrotechnic locker secured above the freeboard deck, away from heat, in the vicinity of the operating station. An acceptable pyrotechnic locker is described in ASTM F— [reserved for name of standard under development by ASTM].

Subpart C—Life Buoys and Lifejackets

§ 180.70 Ring life buoys.

(a) A vessel must have one or more ring life buoys as follows:

(1) A vessel of not more than 26 feet in length must carry a minimum of one life buoy of not less than 20 inches in diameter;

(2) A vessel of more than 26 feet in length, but not more than 65 feet, must carry a minimum of one life buoy of not less than 24 inches in diameter; and

(3) A vessel of more than 65 feet in length must carry a minimum of three life buoys of not less than 24 inches in diameter.

(b) Each ring life buoy on a vessel must:

(1) Be approved under subpart 160.050 of this chapter;

(2) Be readily accessible;

(3) Be stowed in a way that it can be rapidly cast loose;

(4) Not be permanently secured in any way; and

(5) If on a vessel on an oceans or coastwise route, be orange in color.

(c) At least one ring life buoy must be fitted with a lifeline. If more than one ring life buoy is carried, at least one must not have a lifeline attached. Each lifeline on a ring life buoy must:

(1) Be buoyant;

(2) Be of at least 60 feet in length;

(3) Be non-kinking;

(4) Have a diameter of at least $\frac{5}{16}$ of an inch;

(5) Have a breaking strength of at least 1,124 pounds; and

(6) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light.

(d) A vessel must carry one floating waterlight, unless it is limited to daytime operation, in which case no floating waterlight is required.

(1) Each floating waterlight must be approved under subpart 161.010 of this chapter.

(2) Each ring life buoy with a floating waterlight must have a lanyard of at least 3 feet in length, but not more than 6 feet, securing the waterlight around the body of the ring life buoy.

(3) Each floating waterlight installed after [*date one year after effective date*] on a vessel carrying only one ring life buoy, must be attached to the lanyard with a corrosion-resistant clip. The clip must have a strength of at least 50 pounds, and allow the waterlight to be quickly disconnected from the ring life buoy.

§ 180.71 Lifejackets.

(a) An adult lifejacket must be provided for each person permitted on board a vessel.

(b) In addition, a number of child size lifejackets equal to at least 10% of the number of the persons permitted on board must be provided, or such greater number as necessary to provide a lifejacket for each person being carried that is smaller than the lower size limit of the adult lifejackets provided to meet this section. However, child size lifejackets are not required if the vessel's Certificate of Inspection is endorsed for the carriage of adults only.

(c) Each lifejacket must be approved under either subpart 160.002, subpart 160.005, or subpart 160.055 of this chapter.

§ 180.72 Personal flotation devices carried in addition to lifejackets.

(a) Equipment carried under this section is not acceptable in lieu of any portion of the required number of approved lifejackets and must not be substituted for the approved lifejackets required to be worn during drills and emergencies.

(b) Wearable marine buoyant devices which include "ski vests", "boating vests", and "fishing vests", approved under subpart 160.064 of this chapter, may be carried as additional equipment.

(c) Buoyant work vests approved under subpart 160.053 of this chapter may be carried as additional equipment for use of persons working near or over the water. Each commercial hybrid PFD must be:

(1) Used, stowed, and maintained in accordance with the procedures set out in the manual required for these devices under § 160.077–29 of this chapter and any limitation(s) marked on them; and

(2) Of the same or similar design and have the same method of operation as each other hybrid PFD carried on board.

(d) Commercial hybrid personal flotation devices (PFD) approved under subpart 160.077 of this chapter may be carried as additional equipment for use

§ 180.75 Lifejacket lights.

(a) Each lifejacket carried on a vessel on an oceans, coastwise, or Great Lakes route, must have a lifejacket light approved under subpart 161.012 of this chapter. Each lifejacket light must be securely attached to the front shoulder area of the lifejacket.

(b) Notwithstanding the requirements of paragraph (a) of this section, lifejacket lights are not required for lifejackets on:

(1) Ferries; and

(2) Vessels with Certificates of Inspection endorsed only for routes that do not extend more than 20 miles from a harbor of safe refuge.

§ 180.78 Stowage of lifejackets.

(a) *General.* Unless otherwise stated in this section, lifejackets must be stored in convenient places distributed throughout accommodation spaces.

(1) Each stowage container for lifejackets must not be capable of being locked. If practicable, the container must be designed to allow the lifejackets to float free.

(2) Each lifejacket kept in a stowage container must be readily available.

(3) Each lifejacket stowed overhead must be supported in a manner which allows quick release for distribution.

(4) If lifejackets are stowed more than 7 feet above the deck, a means for quick release must be provided and must be capable of operation by a person standing on the deck.

(5) Each child size lifejacket must be stowed in a location which is appropriately marked and separated from adult lifejackets so the child size lifejackets are not mistaken for adult lifejackets.

(b) *Additional personal flotation devices.* The stowage locations of the personal flotation devices carried in addition to lifejackets under § 180.72, must be separate from the lifejackets, and such as not to be easily confused with that of the lifejackets.

Subpart D—Survival Craft Arrangements and Equipment

§ 180.130 Stowage of survival craft.

(a) Each survival craft must be:

(1) Secured to the vessel by a painter with a float-free link permanently attached to the vessel except that a float-free link is not required if the vessel operates only on waters not as deep as the length of the painter;

(2) Stowed so that when the vessel sinks the survival craft floats free and, if inflatable, inflates automatically;

(3) Stowed in a position which is readily accessible to crew members for launching, or else provided with a remotely operated device which releases the survival craft into launching position or into the water;

(4) Stowed in a way that permits manual release from its securing arrangements;

(5) Ready for immediate use so that two crew members can carry out preparations for embarkation and launching in less than 5 minutes;

(6) Provided with means to prevent shifting;

(7) Stowed in a way that neither the survival craft nor its stowage arrangements will interfere with the embarkation and operation of any other survival craft at any other launching station;

(8) Stowed in a way that any protective covers will not interfere with launching and embarkation.

(9) Fully equipped as required under this part; and

(10) Stowed, as far as practicable, in a position sheltered from breaking seas and protected from damage by fire and explosion.

(b) A hydrostatic release unit used in a float-free arrangement must be approved under subpart 160.062 of this chapter.

(c) A mechanical, manually operated device to assist in launching a survival craft must be provided if:

(1) The survival craft weighs more than 200 pounds; and

(2) The survival craft requires lifting to be launched.

§ 180.137 Stowage of life floats and buoyant apparatus.

(a) In addition to meeting § 180.130, each life float and buoyant apparatus must be stowed as required under this section.

(b) The float-free link required by § 180.130(a)(1) must be:

(1) Certified to meet subpart 160.073 of this chapter;

(2) Of proper strength for the size of the life float or buoyant apparatus as indicated on its identification tag; and

(3) Secured to the painter at one end and to the vessel on the other end.

(c) The means used to attach the float-free link to the vessel must:

(1) Have a breaking strength of at least the breaking strength of the painter;

(2) If synthetic, be of a dark color or of a type certified to be resistant to deterioration from ultraviolet light; and

(3) If metal, be corrosion resistant.

(d) If the life float or buoyant apparatus does not have a painter attachment fitting, a means for attaching the painter must be provided by a wire or line which:

(1) Encircles the body of the device;

(2) Will not slip off;

(3) Has a breaking strength which is at least the strength of the painter; and

(4) If synthetic, is of a dark color or is of a type certified to be resistant to deterioration from ultraviolet light.

(e) If the vessel carries more than one life float or buoyant apparatus in a group with each group secured by a single painter:

(1) The combined weight of each group of life floats and buoyant apparatus must not exceed 400 pounds;

(2) Each group of life floats and buoyant apparatus is considered a single survival craft for the purposes of § 180.130(c);

(3) Each life float and buoyant apparatus must be individually attached to the painter by a line meeting §§ 180.175(e)(3)(ii), (iii), and (iv) and long enough that each life float or buoyant apparatus can float without contacting any other life float or buoyant apparatus in the group; and

(4) The strength of the float-free link under paragraph (b)(2) of this section and the strength of the painter under § 180.175(e)(3)(ii) must be determined by the combined capacity of the group of life floats and buoyant apparatus.

(f) Life floats and buoyant apparatus must not be stowed in tiers more than four feet high. When stowed in tiers, the separate units must be kept apart by spacers.

§ 180.150 Survival craft embarkation arrangements.

(a) A launching appliance which complies with the installation and arrangement requirements for launching appliances in subchapter H of this chapter must be provided for each inflatable liferaft and inflatable buoyant apparatus when either:

(1) The embarkation station for the survival craft is on a deck more than 15 feet above the waterline; or

(2) The inflatable liferaft and inflatable buoyant apparatus is boarded prior to being placed in the water.

(b) An embarkation ladder, approved under subpart 160.017 of this chapter, must be at each embarkation station if the distance from the deck on which an embarkation station is located to the vessel's lightest operating waterline is more than 10 feet.

§ 180.175 Survival craft equipment.

(a) *General.* Each item of survival craft equipment must be of good quality, and efficient for the purpose it is intended to serve. Unless otherwise stated in this section, each item of equipment carried, whether required under this section or not, must be secured by lashings, stored in lockers, compartments, brackets, or have equivalent mounting or storage arrangements which do not:

(1) Reduce survival craft capacity;

(2) Reduce space available to the occupants;

(3) Interfere with launching, recovery, or rescue operations; or

(4) Adversely affect seaworthiness of the survival craft.

(b) *Inflatable liferafts.* Each inflatable liferaft must have one of the following equipment packs as shown by the markings on its container:

(1) Limited Service;

(2) SOLAS B Pack;

(3) SOLAS A Pack; or

(4) Ocean Service.

(c) *Life floats.* Each life float must be fitted with a lifeline, pendants, two paddles, a painter, and a light.

(d) *Buoyant apparatus.* Each buoyant apparatus must be fitted with a lifeline, pendants, a painter, and a light.

(e) *Equipment specifications for life floats and buoyant apparatus.* The equipment required for lifefloats and buoyant apparatus must meet the following specifications:

(1) *Lifeline and pendants.* The lifeline and pendants must be as furnished by the manufacturer with the approved life float or buoyant apparatus. Replacement lifelines and pendants must meet the requirements in subpart 160.010 of this chapter.

(2) *Paddle.* Each paddle must be of at least 4 feet in length and buoyant.

(3) *Painter.* The painter must:

(i) Be of at least 100 feet in length, but not less than 3 times the distance between the deck where the life float or buoyant apparatus it serves is stowed and the lowest load waterline of the vessel;

(ii) Have a breaking strength of at least 1500 pounds, except that if the capacity of the life float or buoyant apparatus is 50 persons or more, the breaking strength must be at least 3000 pounds;

(iii) Be of a dark color if synthetic, or of a type certified to be resistant to deterioration from ultraviolet light; and

(iv) Be stowed in such a way that it runs out freely when the life float or buoyant apparatus floats away from a sinking vessel.

(4) *Light.* The light must be a floating waterlight approved under subpart 161.010 of this chapter. The floating waterlight must be attached around the body of the life float or buoyant apparatus by a 12-thread manila, or equivalent, lanyard of at least 18 feet in length.

(f) *Other survival craft.* If survival craft other than inflatable liferafts, life floats, inflatable buoyant apparatus, and buoyant apparatus are carried on the vessel, such as lifeboats or rigid liferafts, they must be installed, arranged, and equipped as required under subchapter H (Passenger Vessels) of this chapter for passenger vessels on the same route.

Subpart E—Number and Type of Survival Craft

§ 180.200 Survival craft—general.

(a) Each survival craft required on a vessel by this part must meet one of the following:

(1) For an inflatable liferaft—subpart 160.051 of this chapter, with the applicable equipment pack, as determined by the cognizant OCMI. Each inflatable liferaft required on a vessel by this part must have a capacity of 6 persons or more. Inflatable liferafts may be substituted for inflatable buoyant apparatus or life floats required under this section;

(2) For a life float—subpart 160.027 of this chapter. Buoyant apparatus may be used to meet requirements for life floats if the buoyant apparatus was installed on board the vessel on or before [*effective date of final rule*], and if the buoyant apparatus remains in good and serviceable condition;

(3) For an inflatable buoyant apparatus—subpart 160.010 of this chapter. Inflatable buoyant apparatus may be substituted for life floats required under this section.

(b) If the vessel carries a small boat or boats, the capacity of these boats may be counted toward the buoyant apparatus or life float capacity required by this part. Such boats must meet the requirements for safe loading and flotation in 33 CFR part 183, and must meet the stowage, launching, and equipment requirements in this part for the survival craft they replace.

(c) A summary of survival craft requirements is provided in Table 180.200(c). The citations identify the sections of this part which contain the specific requirements.

TABLE 180.200(C)

Route	Survival craft requirements
Oceans, more than 50 miles offshore	100% ILR—§ 180.202(a)
Oceans, 20–50 miles offshore	(a) wood—100% IBA—§ 180.202(b) (b) nonwood—same as Coastwise (a) & (b)—§ 180.202(c)
Coastwise	(a) cold water [1] (i) w/subdivision—100% LF [2]—§ 180.204(a)(2) (ii) existing nonwood vessels, ≤ 65', ≤ 49 passengers, w/collision bkhd and simplified subdivision in way of Eng. Rm. & lazarette—100% LF [2]—§ 180.15(c) (iii) w/o subdivision—100% IBA—§ 180.204(a)(1) (iv) within one mile of shore (A) w/subdivision—50% LF [2]—§ 180.204(c)(2) (B) w/o subdivision—100% LF [2]—§ 180.204(c)(1) (b) warm water [3] (i) 100% LF [2]—§ 180.204(b) (ii) within one mile of shore—NONE—§ 180.204(d)
Great Lakes	(a) same as Coastwise (a) & (b)—§ 180.206(a) (b) within one mile of shore—NONE—§ 180.206(b)
Lakes, Bays, & Sounds	(a) cold water [4] (i) w/subdivision—50% LF [2]—§ 180.207(a)(2) (ii) w/o subdivision—100% LF [2]—§ 180.207(a)(1) (iii) within 1 mile of shore—NONE—§ 180.207(c) (b) warm water—NONE—§ 180.207(b)

TABLE 180.200(C)—Continued

Route	Survival craft requirements
Rivers	(a) cold water [5] (i) w/subdivision—NONE—§ 180.208(a)(2) (ii) w/o subdivision—50% LF [2]—§ 180.208(a)(1) (iii) within one mile of shore—NONE—§ 180.208(c) (b) warm water—NONE—§ 180.208(b)

Abbreviations used:
ILR = inflatable liferaft.
IBA = inflatable Buoyant Apparatus.
LF = Life Float.

[1] Cold water means the cognizant OCMI has determined the prevailing temperature of the water is ≤ 15 °C (59 °F).
[2] Any buoyant apparatus in use on an existing vessel on [*insert effective date of the final rule*] may be used to meet the requirements for LF as long as the buoyant apparatus is in good and serviceable condition—§ 180.15(d).
[3] Warm water means the cognizant OCMI has determined the prevailing temperature of the water is > 15 °C (59 °F).
[4] Shallow water exception—§ 180.207(d).
[5] Shallow water exception—§ 180.208(d).

§ 180.202 Survival craft—vessels operating on oceans routes.

(a) Each vessel certificated to operate on an oceans route more than 50 nautical miles offshore must be provided with inflatable liferafts of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(b) Each vessel constructed of wood and certificated to operate on an oceans route not more than 50 nautical miles offshore must be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(c) Each vessel constructed of a material other than wood and certificated to operate on an oceans route not more than 50 nautical miles offshore must be provided with the survival craft required by §§ 180.204 (a) or (b), as applicable.

§ 180.204 Survival craft—vessels operating on coastwise routes.

(a) Except as allowed by paragraph (c) of this section, each vessel certificated to operate on a coastwise route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less must either:

(1) Be provided with inflatable buoyant apparatus of an aggregate capacity which will accommodate at least the total number of persons permitted on board; or

(2) Meet either the standards for collision bulkheads in §§ 179.310 or 171.085 of this chapter and the standards for subdivision in §§ 179.220 and 179.320 of this subchapter or the standards for subdivision and damaged stability in §§ 171.070 through 171.073 and 171.080 of this chapter, as appropriate, and be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(b) Except as allowed by paragraph (d) of this section, each vessel certificated to operate on a coastwise route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) must be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board.

(c) Each vessel certificated to operate on a coastwise route within one mile of land in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less must either:

(1) Be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board; or

(2) Meet either the standards for collision bulkheads in §§ 179.310 or 171.085 of this chapter and the standards for subdivision and damaged stability in §§ 171.070 through 171.073 and 171.080 of this chapter, as appropriate, and be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board.

(d) Each vessel certificated to operate on a coastwise route within one mile of land in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) is not required to carry survival craft.

§ 180.206 Survival craft—vessels operating on Great Lakes routes.

(a) Except as allowed by paragraph (b) of this section, each vessel certificated to operate on a Great Lakes route must be provided with the survival craft required by §§ 180.204 (a) or (b), as appropriate.

(b) Each vessel certificated to operate on a Great Lakes route within one mile of land is not required to carry survival craft.

§ 180.207 Survival craft—vessels operating on lakes, bays, and sounds routes.

(a) Except as allowed by paragraphs (c) and (d) of this section, each vessel certificated to operate on a lakes, bays and sounds route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less must either:

(1) Be provided with life floats of an aggregate capacity which will accommodate at least the total number of persons permitted on board; or

(2) Meet either the standards for collision bulkheads in §§ 179.310 or 171.085 of this chapter and the standards for subdivision in §§ 179.220 and 179.320 of this subchapter or the standards for subdivision and damaged stability in §§ 171.070 through 171.073 and 171.080 of this chapter, as appropriate, and be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board.

(b) A vessel certificated to operate on a lakes, bays and sounds route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) is not required to carry survival craft.

(c) A vessel certificated to operate on a lakes, bays and sounds route within one mile of land is not required to carry survival craft.

(d) For a vessel certificated to operate on a lakes, bays and sounds route in shallow water where the vessel cannot sink deep enough to submerge the

topmost passenger deck or where survivors can wade ashore, the cognizant OCMI may waive a requirement for life floats, if the OCMI determines that it is safe to do so, taking into consideration the vessel's scope of operation, hazards of the route, and availability of assistance.

§ 180.208 Survival craft—vessels operating on rivers routes.

(a) Except as allowed by paragraphs (c) and (d) of this section, each vessel certificated to operate on a rivers route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is 15°C (59°F) or less is either:

(1) Be provided with life floats of an aggregate capacity which will accommodate at least 50% of the total number of persons permitted on board; or

(2) Meet either the standards for collision bulkheads in §§ 179.310 or 171.085 of this chapter and the standards for subdivision in §§ 179.220 and 179.320 of this subchapter or the standards for subdivision and damaged stability in §§ 171.070 through 171.073 and 171.080 of this chapter, as appropriate, and not be required to carry survival craft.

(b) A vessel certificated to operate on a rivers route in an area and time of year where the prevailing water temperature, as determined by the cognizant OCMI, is above 15°C (59°F) is not required to carry survival craft.

(c) A vessel certificated to operate on a rivers route within one mile of land is not required to carry survival craft.

(d) For a vessel certificated to operate on a rivers route in shallow water where the vessel cannot sink deep enough to submerge the topmost passenger deck or where survivors can wade ashore, the cognizant OCMI may waive a requirement for life floats, if the OCMI determines that it is safe to do so, taking into consideration the vessel's scope of operation, hazards of the route, and availability of assistance.

§ 180.210 Rescue boats.

(a) A vessel of more than 65 feet in length must carry at least one rescue boat unless the cognizant OCMI determines that:

(1) The vessel is sufficiently maneuverable, arranged, and equipped to allow the crew to recover a helpless person from the water;

(2) Recovery of a helpless person can be observed from the operating station; and

(3) The vessel does not regularly engage in operations that restrict its maneuverability.

(b) A vessel of not more than 65 feet in length is not required to carry a rescue boat unless:

(1) The vessel carries passengers on an open or partially enclosed deck; and

(2) The cognizant OCMI determines that the vessel is designed, arranged, or involved in operations so that the vessel itself cannot serve as an adequate rescue craft.

(c) On a vessel of more than 65 feet in length, a required rescue boat and its installation must meet the requirements in subchapter H (Passenger Vessels) of this chapter for a rescue boat on a passenger vessel having the same route. On a vessel of not more than 65 feet in length, a required rescue boat must be acceptable to the cognizant OCMI.

PART 181—FIRE PROTECTION EQUIPMENT

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Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 181.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b), (c), and (d) of this section, an existing vessel must comply with the fire protection equipment regulations applicable to the vessel on [*date of day before effective date of regulations*] or, as an alternative, the vessel may comply with the regulations in this part.

(b) An existing vessel with a hull, or a machinery space boundary bulkhead or deck, composed of wood or fiber reinforced plastic, or sheathed on the interior in fiber reinforced plastic, must comply with the requirements of § 181.400 on or before [*date 3 years after effective date of regulations*].

(c) New installations of fire protection equipment on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after) *effective date of regulations*], must comply with the regulations of this part. Replacement of existing equipment installed on the vessel prior to [*effective date of regulations* need not comply with the regulations] in this part.

§ 181.120 Equipment installed but not required.

Fire extinguishing and detecting equipment installed on a vessel in excess of the requirements of §§ 181.400 and 181.500 must be designed, constructed, installed and maintained in accordance with a recognized industry standard acceptable to the Commandant.

Subpart B—Reserved

Subpart C—Fire Main System

§ 181.300 Fire pumps.

(a) A self priming, power driven fire pump must be installed on each vessel:

(1) Of not more than 65 feet in length which is a ferry vessel;

(2) Of not more than 65 feet in length which carries more than 49 passengers; or

(3) Of more than 65 feet in length.

(b) On a vessel of not more than 65 feet in length carrying more than 49 passengers, and on a vessel of more than 65 feet in length, the minimum capacity of the fire pump must be 50 gallons per minute at a pressure of not less than 60 pounds per square inch at the pump outlet. The pump outlet must be fitted with a pressure gauge.

(c) On a ferry vessel of not more than 65 feet in length carrying not more than 49 passengers, the minimum capacity of the fire pump must be 10 gallons per minute. The fire pump must be capable of projecting a hose stream from the highest hydrant, through the hose and nozzle required by § 181.320, a distance of 25 feet.

(d) A fire pump may be driven by a propulsion engine. A fire pump must be permanently connected to the fire main and may be connected to the bilge system to meet the requirements of § 182.520 of this subchapter.

(e) A fire pump must be capable of both remote operation from the operating station and local, manual operation at the pump.

§ 181.310 Fire main and hydrants.

(a) A vessel which has a power driven fire pump must have a sufficient number of fire hydrants to reach any part of the vessel using a single length of fire hose.

(b) Piping, valves, and fittings in a fire main system must comply with part 182, subpart G of this subchapter.

§ 181.320 Fire hoses and nozzles.

(a) A fire hose with a nozzle must be attached to each fire hydrant at all times. For fire stations located on open decks or cargo decks, where no protection is provided, hoses may be temporarily removed during heavy weather or cargo handling operations, respectively. Hoses so removed must be stored in nearby accessible locations.

(b) On a vessel of not more than 65 feet in length carrying more than 49 passengers, and on a vessel of more than 65 feet in length, each hose must:

(1) Be lined commercial fire hose that conforms to UL 19 or hose that is listed and labeled by an independent laboratory recognized by the Commandant as being equivalent in performance;

(2) Be 50 feet in length and 1½ inches in diameter; and

(3) Have fittings of brass or other suitable corrosion-resistant material which comply with NFPA 1963.

(c) Each fire hose on a vessel of not more than 65 feet in length carrying not more than 49 passengers must:

(1) Comply with paragraphs (b)(1) and (b)(3) of this section or be garden type hose of not less than ⅝ inch nominal inside diameter;

(2) Be of one piece not less than 25 feet and not more than 50 feet in length; and

(3) If of the garden type, be of a good commercial grade constructed of an inner rubber tube, plies of braided fabric reinforcement, and an outer cover of rubber or equivalent material, and of sufficient strength to withstand the maximum pressure which can be produced by the fire pump. All fittings on the hose must be of suitable corrosion-resistant material.

(d) Each nozzle must be of corrosion-resistant material and be capable of being changed between a solid stream and a spray pattern. A nozzle on a vessel of not more than 65 feet in length carrying more than 49 passengers, and on a vessel of more than 65 feet in length, must be of an approved type.

Subpart D—Fixed Fire Extinguishing and Detecting Systems

§ 181.400 Where required.

(a) The following spaces must be equipped with a Halon or carbon dioxide fixed gas fire extinguishing system, in compliance with § 181.410, except as otherwise allowed by paragraph (b) of this section:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp;

(3) A space containing an oil fired boiler;

(4) A space containing machinery powered by gasoline or any other fuels having a flash point of 110°F or lower;

(5) A space containing a fuel tank for gasoline or any other fuel having a flash point of 110°F or lower;

(6) A space containing combustible cargo or ship's stores inaccessible during the voyage (in these types of spaces only carbon dioxide, and not Halon, systems will be allowed);

(7) A paint locker; and

(8) A storeroom containing flammable liquids (including liquors of 80 proof or higher).

(b) Alternative system types and exceptions to the requirements of paragraph (a) of this section are:

(1) A fixed gas fire extinguishing system, which is capable of automatic discharge upon heat detection, may only be installed in a normally unoccupied space with a gross volume of not more than 6000 cubic feet;

(2) A pre-engineered fixed gas fire extinguishing system must be in compliance with § 181.420 and may only be installed in a normally unoccupied machinery space, a paint locker, or a storeroom containing flammable liquids (including liquors of 80 proof or higher), with a gross volume of not more than 2000 cubic feet;

(3) A B–II portable fire extinguisher installed outside the space may be substituted for a fixed gas fire extinguishing system in a storeroom containing flammable liquids (including liquors of 80 proof or higher) or a paint locker, with a volume of not more that 200 cubic feet; and

(4) A space which is so open to the atmosphere that a fixed gas fire extinguishing system would be ineffective, as determined by the cognizant OCMI, is not required to have a fixed gas fire extinguishing system.

(c) The following spaces must be equipped with a fire detecting system of an approved type which is installed in accordance with § 76.27 of this chapter, except when a fixed gas fire extinguishing system which is capable of automatic discharge upon heat detection is installed or when the space is manned:

(1) A space containing propulsion machinery;

(2) A space containing an internal combustion engine of more than 50 hp;

(3) A space containing an oil fired boiler;

(4) A space containing machinery powered by gasoline or any other fuels having a flash point of 110 °F or lower; and

(5) A space containing a fuel tank for gasoline or any other fuel having a flash point of 110 °F or lower.

(d) All grills, broilers, and deep fat fryers must be fitted with a grease extraction hood in compliance with § 181.425.

(e) Each overnight accommodation space on a vessel with overnight accommodations for passengers must be fitted with an independent modular smoke detecting and alarm unit in compliance with § 181.450.

(f) An enclosed vehicle space must be fitted with an automatic sprinkler system which meets the requirements of § 76.25 of this chapter; and

(1) A smoke actuated fire detecting system of an approved type which is installed in accordance with § 76.27 of this chapter; or

(2) A smoke detecting system of an approved type which is installed in accordance with § 76.33 of this chapter.

(g) A partially enclosed vehicle space must be fitted with a manual sprinkler system which meets the requirements of § 76.23 of this chapter.

§ 181.410 Fixed gas fire extinguishing systems.

(a) *General.*

(1) A fixed gas fire extinguishing system aboard a vessel must be approved by the Commandant, and be custom engineered to meet the requirements of this section unless the system meets the requirements of § 181.420.

(2) System components must be listed and labeled by an independent laboratory. A component from a different system, even if from the same manufacturer, must not be used unless included in the approval of the installed system.

(3) System design and installation must be in accordance with the Marine Design, Installation, Operation, and Maintenance Manual approved for the system by the Commandant.

(4) A fixed gas fire extinguishing system may protect more than one space. The quantity of extinguishing agent must be at least sufficient for the space requiring the greatest quantity as determined by the requirements of paragraphs (f)(4) and (g)(2) of this section.

(b) *Controls.*

(1) Controls and valves for operation of a fixed gas fire extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of fire in the space protected by the system.

(2) Except as provided in paragraph (c)(2) of this section, release of an extinguishing agent into a space must require two distinct operations.

(3) A system must have local manual controls at the storage cylinders capable of releasing the extinguishing agent. In addition, a normally manned space must have remote controls for releasing the extinguishing agent at the primary exit from the space.

(4) Remote controls must be located in a breakglass enclosure to preclude accidental discharge.

(5) Valves and controls must be of an approved type and protected from damage or accidental activation. A pull cable used to activate the system controls must be enclosed in conduit.

(6) A system protecting more than one space must have a manifold with a normally closed stop valve for each space protected.

(7) A gas actuated valve or device must be capable of manual override at the valve or device.

(8) A system, which has more than one storage cylinder for the extinguishing agent and which relies on pilot cylinders to activate the primary storage cylinders, must have at least two pilot cylinders. Local manual controls, in compliance with paragraph (b)(3) of this section, must be provided to operate the pilot cylinders but are not required for the primary storage cylinders.

(9) A system protecting a manned space must be fitted with an approved time delay and alarm arranged to require the alarm to sound for at least 20 seconds or the time necessary to escape from the space, whichever is greater, before the agent is released into the space. Alarms must be conspicuously and centrally located. The alarm must be powered by the extinguishing agent.

(10) A device must be provided to automatically shut down power ventilation serving the protected space and engines which draw intake air from the protected space prior to release of the extinguishing agent into the space.

(11) Controls and storage cylinders must not be in a locked space unless the key is in a breakglass type box conspicuously located adjacent to the space.

(c) *Storage space.*

(1) Except as provided in paragraph (c)(2) of this section, a storage cylinder for a fixed gas extinguishing system must be:

(i) Located outside the space protected by the system; and

(ii) Not located in a space that might be inaccessible in the event of a fire in the space protected by the system.

(2) A normally unoccupied space of less than 6000 cubic feet may have the storage cylinders located within the space protected. When the storage cylinders are located in the space:

(i) The system must be capable of automatic operation by a heat actuator within the space; and

(ii) Have manual controls in compliance with paragraph (b) of this section except for paragraphs (b)(2) and (b)(3).

(3) A space containing a storage cylinder must be maintained at a temperature within the range from −20 °F (−30 °C) to 130 °F (55 °C) or at another temperature as listed by the independent laboratory and stated in the manufacturer's approved manual.

(4) A storage cylinder must be securely fastened, supported, and protected against damage.

(5) A storage cylinder must be accessible and capable of easy removal for recharging and inspection. Provisions must be available for weighing each storage cylinder in place.

(6) Where subject to moisture, a storage cylinder must be installed to provide a space of at least 2 inches between the deck and the bottom of the storage cylinder.

(7) A Halon 1301 storage cylinder must be stowed in an upright position unless otherwise listed by the independent laboratory. A carbon dioxide cylinder may be inclined not more than 30° from the vertical, unless fitted with flexible or bent siphon tubes, in which case they may be inclined not more than 80° from the vertical.

(8) Where a check valve is not fitted on an independent storage cylinder discharge, a plug or cap must be provided for closing the outlet resulting from storage cylinder removal.

(9) Each storage cylinder must meet the requirements of § 147.60 of this chapter.

(10) A storage cylinder space must have doors which open outwards or be fitted with kickout panels installed in each door.

(d) *Piping.*

(1) A pipe, valve, or fitting of ferrous material must be protected inside and outside against corrosion unless otherwise approved by the Commandant. Aluminum or other low melting material must not be used for a component of a fixed gas fire extinguishing system except as specifically approved by the Commandant.

(2) A distribution line must extend at least 2 inches beyond the last orifice and be closed with a cap or plug.

(3) Piping, valves, and fittings must be securely supported, and where necessary, protected against damage.

(4) Drains and dirt traps must be fitted where necessary to prevent the accumulation of dirt or moisture and located in accessible locations.

(5) Piping must be used for no other purpose except that it may be incorporated with the fire detecting system.

(6) Piping passing through accommodation spaces must not be fitted with drains or other openings within such spaces.

(7) Installation test requirements for carbon dioxide systems. The distribution piping of a carbon dioxide fixed gas extinguishing system must be tested as required by this paragraph, upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen gas.

(i) Piping between a storage cylinder and a stop valve in the manifold must be subjected to a pressure of 1,000 psi, except as permitted in paragraph (d)(7)(iii) of this section. Without additional gas being introduced to the system, the pressure drop must not exceed 300 psi after two minutes.

(ii) A distribution line to a space protected by the system must be subjected to a test similar to that described in paragraph (d)(7)(i) of this section except the pressure used must be 600 psi. For the purpose of this test, the distribution piping must be capped within the space protected at the first joint between the nozzles and the storage cylinders.

(iii) A small independent system protecting a space such as a paint locker may be tested by blowing out the piping with air at a pressure of not less than 100 psi instead of the tests prescribed in the paragraphs (d)(7)(i) and (d)(7)(ii) of this section.

(8) Installation test requirements for Halon 1301 systems. The distribution piping of a Halon 1301 fixed gas extinguishing system must be tested, as required by this paragraph (d), upon completion of the piping installation, using only carbon dioxide, compressed air, or nitrogen.

(i) When pressurizing the piping, pressure must be increased in small increments. Each joint must be subjected to a soap bubble leak test, and all joints must be leak free.

(ii) Piping between the storage cylinders and the manifold stop valve must be subjected to a leak test conducted at the maximum allowable working pressure at 130 °F (55 °C).

Without additional gas being added to the system, there must be no loss of pressure over a two minute period after thermal equilibrium is reached.

(iii) Distribution piping between the manifold stop valve and the first nozzle in the system must be capped and pneumatically tested for a period of 10 minutes at 150 psig. At the end of 10 minutes, the pressure drop must not exceed 10% of the test pressure.

(e) *Pressure relief.* When required by the cognizant OCMI, spaces which are protected by a fixed gas fire extinguishing system and which are relatively air tight, such as refrigeration spaces, paint lockers, etc., must be provided with suitable means for relieving excessive pressure within the space when the agent is released.

(f) *Specific requirements for carbon dioxide systems.* A custom engineered fixed gas fire extinguishing system, which uses carbon dioxide as the extinguishing agent, must meet the requirements of this paragraph.

(1) Piping, valves, and fittings must have a bursting pressure of not less than 6,000 psi. Piping, in nominal sizes of not more than ¾ inch, must be at least Schedule 40 (standard weight), and in nominal sizes of over ¾ inch, must be at least Schedule 80 (extra heavy).

(2) A pressure relief valve or equivalent set to relieve at between 2,400 and 2,800 psi must be installed in the distribution manifold to protect the piping from overpressurization.

(3) Nozzles must be approved by the Commandant.

(4) When installed in a machinery space, paint locker, a space containing flammable liquid stores, or a space with a fuel tank, a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide (in pounds) that the system must be capable of providing to a space must not be less than the gross volume of the space divided by the appropriate factor given in Table 181.410(f)(4)(i). If fuel can drain from a space being protected to an adjacent space or if the spaces are not entirely separate, the volume of both spaces must be used to determine the quantity of carbon dioxide to be provided. The carbon dioxide must be arranged to discharge into both such spaces simultaneously.

TABLE 181.410(f)(4)(i)

[Gross volume of space in cubic feet]

Factor	Over	Not over
15		500
16	500	1,500
18	1,500	4,500
20	4,500	50,000
22	50,000	

(ii) The minimum size of a branch line to a space must be as noted in Table 181.410(f)(4)(ii).

TABLE 181(f)(4)(ii)

Maximum quantity of carbon dioxide required (pounds)	Minimum nominal pipe size (inches)	Maximum quantity of carbon dioxide required (pounds)	Minimum nominal pipe size (inches)
100	½	2,500	2.5
225	¾	4,450	3
300	1	7,100	3.5
600	1.25	10,450	4
1,000	1.5	15,500	4.5
2,450	2		

(iii) Distribution piping within a space must be proportioned from the distribution line to give proper supply to the outlets without throttling.

(iv) The number, type, and location of discharge outlets must provide uniform distribution of carbon dioxide throughout a space.

(v) The area of each discharge outlet must not exceed 85 percent nor be less than 35 percent of the nominal cylinder outlet area or the area of the supply pipe, whichever is smaller. The nominal cylinder outlet area (in square inches) is determined by multiplying the factor 0.0022 by the total capacity (in pounds) of all carbon dioxide cylinders in the system, except in no case must the outlet area be of less than 0.110 square inch.

(vi) The discharge of at least 85 percent of the required amount of carbon dioxide must be completed within two minutes.

(5) When installed in an enclosed ventilation system for rotating electrical propulsion equipment a fixed carbon dioxide system must meet the following requirements.

(i) The quantity of carbon dioxide (in pounds) must be sufficient for initial and delayed discharges as required by this paragraph. The initial discharge must be equal to the gross volume of the system divided by 10 for ventilation systems having a volume of less than 2,000 cubic feet, or divided by 12 for ventilation systems having a volume of at least 2,000 cubic feet. In addition, there must be sufficient carbon dioxide available to permit delayed discharges to maintain at least a 25 percent concentration until the equipment can be stopped. If the initial discharge achieves this concentration until the equipment is stopped, a delayed discharge is not required.

(ii) The piping sizes for the initial discharge must be in accordance with Table 181.410(f)(4)(ii) and the discharge of the required amount must be completed within two minutes.

(iii) Piping for the delayed discharge must not be less than ½ inch nominal pipe size, may be incorporated with the initial discharge piping, and need not meet specific requirement for discharge rate.

(6) When installed in a cargo space a fixed carbon dioxide system must meet the following requirements.

(i) The number of pounds of carbon dioxide required for each space in cubic feet must be equal to the gross volume of the space in cubic feet divided by 30;

(ii) System piping must be of at least ¾ inch.

(iii) No specific discharge rate is required.

(g) *Specific requirements for Halon 1301 systems.*

(1) A custom engineered fixed gas fire extinguishing system, which uses Halon 1301, must comply with the applicable sections of UL Standard 1058 and the requirements of this paragraph (g).

(2) The Halon 1301 quantity and discharge requirements of UL 1058 apply, with the exception that the Halon 1301 design concentration must be 6 percent at the lowest ambient temperature expected in the space. If the lowest temperature is not known, a temperature of 0 °F must be assumed.

(3) Each storage cylinder in a system must have the same pressure and volume.

(4) Computer programs used in designing systems must have been approved by an independent laboratory.

§ 181.420 Pre-engineered fixed gas fire extinguishing systems.

(a) A pre-engineered fixed gas fire extinguishing system must:

(1) Be approved by the Commandant;

(2) Be capable of manual actuation from outside the space in addition to automatic actuation by a heat detector; and

(3) Automatically shut down all power ventilation systems and all engines that draw intake air from within the protected space.

(b) A vessel on which a pre-engineered fixed gas system is installed must have the following equipment at the operating station:

(1) A light to indicate discharge;

(2) An audible alarm which sounds upon discharge; and

(3) A means to reset devices used to automatically shut down ventilation systems and engines as required by paragraph (a)(3) of this section.

(c) Only one pre-engineered fixed gas system is allowed to be installed in each space protected by such a system.

§ 181.425 Galley hood fire extinguishing systems.

(a) A grease extraction hood required by § 181.400 must meet UL 710.

(b) A grease extraction hood must be equipped with a dry or wet chemical fire extinguishing system meeting the applicable sections of NFPA 17 or 17A, and must be listed by an independent laboratory recognized by the Commandant.

§ 181.450 Independent modular smoke detecting units.

An independent modular smoke detecting unit must:

(a) Meet UL Standard 217 and be listed as a "Single Station Smoke Detector—Also suitable for use in Recreational Vehicles";

(b) Contain an independent power source; and

(c) Alarm on low power.

Subpart E—Portable Fire Extinguishers

§ 181.500 Required number, type, and location.

(a) Each portable fire extinguisher on a vessel must be of an approved type. The minimum number of portable fire extinguishers required on a vessel must be acceptable to the cognizant OCMI, but must be not less than the minimum number required by Table 181.500(a) and other provisions of this section.

TABLE.—181.500(a)

Space protected	Minimum number required	CG Class	Medium	Minimum size
Operating station	1	B–I, C–I	Halon	2.5 lb.
			CO_2	4 lb.
			Dry chemical	2 lb.
Machinery space	1	B–II, C–II located just outside exit	Halon	10 lb.
			CO_2	15 lb.
			Dry chemical	10 lb.
Open vehicle deck	1 for each 10 vehicles	B–II	Foam	2.5 gal
			Halon	10 lb.
			CO_2	15 lb.
			Dry chemical	10 lb.
Accomodation space	1 for each 2,500 square feet or fraction thereof	A–II	Foam	2.5 gal.
			Dry chemical	5 lb.
Galley, pantry, concession stand	1	A–II, B–II	Foam	2.5 gal.
			Dry chemical	10 lb.

(b) A vehicle deck without a fixed sprinkler system and exposed to weather must have one B–II portable fire extinguisher for every five vehicles, located near an entrance to the space.

(c) The cognizant OCMI may permit the use of a larger portable fire extinguisher, or a semiportable fire extinguisher, in lieu of those required by this section.

(d) The frame or support of each B–V fire extinguisher permitted by paragraph (c) of this section must be welded or otherwise permanently attached to a bulkhead or deck.

§ 181.520 Installation and location.

Portable fire extinguishers must be located so that they are clearly visible and readily accessible from the space being protected. The installation and location must be to the satisfaction of the Officer in Charge, Marine Inspection.

Subpart F—Additional Equipment

§ 181.600 Fire axe.

A vessel of more than 65 feet in length must have at least one fire axe located in or adjacent to the primary operating station.

§ 181.610 Fire bucket.

A vessel must have at least three 2½ gallon buckets, with an attached lanyard satisfactory to the cognizant OCMI, placed so as to be easily available during an emergency. The words "FIRE BUCKET" must be stenciled in a contrasting color on each bucket.

PART 182—MACHINERY INSTALLATION

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182.465 Ventilation of spaces containing diesel machinery.
182.470 Ventilation of spaces containing diesel fuel tanks.
182.480 Flammable vapor detection systems.

Subpart E—Bilge and Ballast Systems

182.500 General.
182.510 Bilge piping system.
182.520 Bilge pumps.
182.530 Bilge level alarms.
182.540 Ballast systems.

Subpart F—Steering Systems

182.600 General.
182.610 Main steering gear.
182.620 Auxiliary means of steering.

Subpart G—Piping Systems

182.700 General.
182.710 Piping for vital systems.
182.715 Piping subject to more than 150 psi in non-vital systems.
182.720 Nonmetallic piping materials.
182.730 Nonferrous metallic piping materials.

Authority: 46 U.S.C. 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 182.100 Intent.

This part contains requirements for the design, construction, installation, and operation of propulsion and auxiliary machinery, piping and pressure systems, steering apparatus, and associated safety systems. Machinery and equipment installed on each vessel must be suitable for the vessel and its operation and for the purpose intended. All machinery and equipment must be installed and maintained in such a manner as to afford adequate protection from causing fire, explosion, machinery failure, and personnel injury.

§ 182.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b) and (c) of this section, an existing vessel must comply with the regulations on machinery, bilge and ballast system equipment, steering apparatus, and piping systems or components which were applicable to the vessel on [*date of day before effective date of regulations*] or, as an alternative, the vessel may comply with the regulations in this part.

(b) New installations of machinery, bilge and ballast system equipment, steering equipment, and piping systems or components on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after [*effective date of regulations*], must comply with the regulations of this part. Replacement of existing equipment installed on the vessel prior to [*effective date of regulations*] need not comply with the regulations in this part.

(c) An existing vessel equipped with machinery powered by gasoline or other fuels having a flash point of 110 °F or lower must comply with the requirements of § 182.410(c) on or before [*date 3 years after effective date of regulations*].

§ 182.130 Alternative standards.

(a) A vessel of not more than 65 feet in length carrying not more than 12 passengers propelled by gasoline or diesel internal combustion engines, other than a dynamically supported craft, may comply with the requirements listed in paragraph (b) of this section instead of complying with the requirements of this part.

(b) The alternative standards for vessels identified in paragraph (a) of this section are:

(1) Auxiliary boilers, hot water heaters, and all unfired pressure vessels must comply with subpart C of this part;

(2) Gasoline engines must comply with § 182.415;

(3) Bilge systems must comply with § 182.500;

(4) Steering systems must comply with subpart F of this part; and

(5) The following American Boat and Yacht Council (ABYC) Projects and regulations in 33 CFR subchapter S (Boating Safety), where applicable:

(i) H–2—"Ventilation of Boats Using Gasoline," or 33 CFR part 183, subpart K, "Ventilation";

(ii) H–22—"DC Electric Bilge Pumps Operating Under 50 Volts";

(iii) H–24—"Gasoline Fuel Systems", or 33 CFR part 183, subpart J—"Fuel System";

(iv) H–25—"Portable Fuel Systems for Flammable Liquids";

(v) H–32—"Ventilation of Boats Using Diesel Fuel";

(vi) H–33—"Diesel Fuel Systems";

(vii) P–1—"Installation of Exhaust Systems for Propulsion and Auxiliary Engines"; and

(viii) P–4—"Marine Inboard Engines".

Subpart B—Propulsion Machinery

§ 182.200 General.

(a) Propulsion machinery must be suitable in type and design for propulsion requirements of the hull in which it is installed and capable of operating at constant marine load under such requirements without exceeding its designed limitations.

(b) All engines must have at least two means for stopping the engine(s) under any operating conditions. The fuel oil shutoff required at the engine by § 182.455(b)(4) will satisfy one means of stopping the engine.

§ 182.220 Installations.

(a) Except as otherwise provided in this section, propulsion machinery installations must comply with the provisions of this part.

(b) The requirements for machinery and boilers for steam and electrically propelled vessels are contained in applicable regulations in subchapter F (Marine Engineering) and subchapter J (Electrical Engineering) of this chapter.

(c) Propulsion machinery of an unusual type for small passenger vessels must be given separate consideration and must be subject to such requirements as determined necessary by the Officer in Charge, Marine Inspection. These unusual types of propulsion machinery include:

(1) Gas turbine machinery installations;

(2) Air screws;

(3) Hydraulic jets; and

(4) Machinery installations using propulsion and lift devices.

Subpart C—Auxiliary Machinery

§ 182.300 General.

Auxiliary machinery must be suitable in type and design for the purpose intended.

§ 182.310 Installations.

(a) Auxiliary machinery of the internal combustion piston type must comply with the provisions of this part.

(b) Auxiliary machinery of the steam or gas turbine type will be given separate consideration and must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter as determined necessary by the cognizant OCMI.

(c) Auxiliary boilers and heating boilers and their associated piping and fittings will be given separate consideration and must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter as determined necessary by the cognizant OCMI, except that heating boilers must be tested or examined every three years.

§ 182.320 Hot water heaters.

(a) A hot water heater must meet the requirements of parts 52 and 63 of this chapter if rated at more than 100 psig (689 kPa) or 250°F (121°C).

(b) A hot water heater must meet the requirements of parts 53 and 63 of this chapter if rated at not more than 100 psig (689 kPa) and 250°F (121°C), except that an electric hot water heater is also acceptable if it:

(1) Has a capacity of not more than 120 gallons (454 liters);

(2) Has a heat input of not more than 58.6 kilowatts (200,000 Btu per hour);

(3) Is listed by Underwriters' Laboratories under UL Standard 174 or 1453; and

(4) Is protected by a pressure-temperature relief device.

§ 182.330 Pressure vessels.

All unfired pressure vessels must be installed to the satisfaction of the cognizant OCMI. The design, construction, and original testing of such unfired pressure vessels must meet the applicable requirements of subchapter F (Marine Engineering) of this chapter.

Subpart D—Specific Machinery Requirements

§ 182.400 Applicability.

(a) This subpart applies to all propulsion and auxiliary machinery installations of the internal combustion piston type.

(b) Requirements of this subpart that are only applicable to engines which use gasoline or other fuels having a flashpoint of 110°F or lower are specifically designated in each section.

(c) Requirements of this subpart that are only applicable to engines which use diesel fuel or other fuels having a flashpoint of more than 110°F are specifically designated in each section.

(d) Where no specific gasoline, diesel, or other fuel designation exists, the requirements of this subpart are applicable to all types of fuels and machinery.

§ 182.405 Fuel restrictions.

The use of alternative fuels, other than diesel fuel or gasoline, as fuel for an internal combustion engine will be reviewed on a case by case basis by Commandant.

§ 182.410 General requirements.

(a) Starting motors, generators, and any spark producing device must be mounted as high above the bilges as practicable. Electrical equipment in spaces, compartments, or enclosures that contain machinery powered by, or fuel tanks for, gasoline or other fuels having a flashpoint of 110°F or lower must be explosion-proof, intrinsically safe, or ignition protected for use in a gasoline atmosphere as required by § 183.530 of this subchapter.

(b) Gauges to indicate engine RPM, cooling water discharge temperature, and lubricating oil pressure must be provided for all propulsion engines installed in the vessel. The gauges must be readily visible at the operating station.

(c) An enclosed space containing machinery powered by gasoline or other fuels having a flash point of 110°F or lower must be equipped with a flammable vapor detection device in compliance with § 182.460.

(d) In systems and applications where flexible hoses are permitted to be clamped:

(1) Double hose clamping is required where practicable;

(2) The clamps must be of a corrosion resistant metallic material;

(3) The clamps must not depend on spring tension for their holding power; and

(4) Two clamps must be used on each end of the hose, or one hose clamp can be used if the pipe ends are expanded or beaded to provide a positive stop against hose slippage.

(e) An overspeed trip and or shutdown device must be installed on all diesel engine installations designed to produce 300 or more horsepower under ideal conditions, as follows:

(1) For main propulsion engines, meet section 34.11.6 of the ABS "Rules for Building and Classing Steel Vessels."

(2) For generator prime movers, meet section 35.21.2 of the ABS "Rules for Building and Classing Steel Vessels."

§ 182.415 Carburetors.

(a) All carburetors except the downdraft type must be equipped with integral or externally fitted drip collectors of adequate capacity and arranged so as to permit ready removal of fuel leakage. Externally fitted drip collectors, must be covered with flame screens. Drip collectors, where practicable, should automatically drain back to engine air intakes.

(b) All gasoline engines installed in a vessel, except outboard engines, must be equipped with an acceptable means of backfire flame control. Installation of backfire flame arresters bearing basic Approval Numbers 162.015 or 162.041 or engine air and fuel induction systems bearing basic Approval Numbers 162.042 or 162.043 may be continued in use as long as they are serviceable and in good condition. New installations or replacements must meet the applicable requirements of this section.

(c) The following are acceptable means of backfire flame control for gasoline engines:

(1) A backfire flame arrester complying with SAE J–1928 or UL 1111 and marked accordingly. The flame arrester must be suitably secured to the air intake with a flametight connection.

(2) An engine air and fuel induction system which provides adequate protection from propagation of backfire flame to the atmosphere equivalent to that provided by an acceptable backfire flame arrester. A gasoline engine utilizing an air and fuel induction system, and operated without an approved backfire flame arrester, must either include a reed valve assembly or be installed in accordance with SAE J–1928.

(3) An arrangement of the carburetor or engine air induction system that will disperse any flames caused by engine backfire. The flames must be dispersed to the atmosphere outside the vessel in such a manner that the flames will not endanger the vessel, persons on board, or nearby vessels and structures. Flame dispersion may be achieved by attachments to the carburetor or location of the engine air induction system. All attachments must be of metallic construction with flametight connections and firmly secured to withstand vibration, shock, and engine backfire. Such installations do not require formal approval and labeling but must comply with this subpart.

(4) An engine air induction system on a vessel with an integrated engine-vessel design must be approved, marked, and tested under § 162.043 of this chapter.

§ 182.420 Engine cooling.

(a) Except as otherwise provided in paragraphs (b), (c), (d), and (e) of this section, all engines must be water cooled and meet the requirements of this paragraph.

(1) The engine head, block, and exhaust manifold must be water-jacketed and cooled by water from a pump which operates whenever the engine is operating.

(2) A suitable hull strainer must be installed in the circulating raw water intake line of an engine cooling water system.

(3) A closed fresh water system may be used to cool the engine.

(b) An engine water cooling system on a vessel of not more than 65 feet in length carrying not more than 12 passengers, may comply with the requirements of ABYC Project P–4, "Marine Inboard Engines," instead of the requirements of paragraph (a) of this section.

(c) On a vessel of not more than 65 feet in length carrying not more than 12 passengers, a propulsion gasoline engine may be air cooled when in compliance with the requirements of ABYC Project P–4, "Marine Inboard Engines."

(d) An auxiliary gasoline engine may be air cooled when:

(1) It has a self-contained fuel system and it is installed on an open deck; or

(2) On a vessel of not more than 65 feet in length carrying not more than 12 passengers, it is in compliance with the requirements of ABYC P–4, "Marine Inboard Engines."

(e) A propulsion or auxiliary diesel engine may be air cooled or employ an air cooled jacket water radiator when:

(1) Installed on an open deck and sufficient ventilation for machinery cooling is available;

(2) Installed in an enclosed or partially enclosed space for which ventilation for machinery cooling is provided, which complies with the requirement of § 119.465(b), and other necessary safeguards are taken so as not to endanger the vessel; or

(3) Installed on a vessel of not more than 65 feet in length carrying not more than 12 passengers, in compliance with the requirements of ABYC Project P–4, "Marine Inboard Engines."

§ 182.422 Keel and grid cooler installations.

(a) A keel or grid cooler installation used for engine cooling must be designed to prevent flooding.

(b) A shutoff valve must be located where the cooler piping penetrates the shell, as near the shell as practicable, except where the penetration is forward of the collision bulkhead.

(c) The thickness of the inlet and discharge connections, outboard of the shutoff valves required by paragraph (b) of this section, must be at least Schedule 80.

(d) Short lengths of approved nonmetallic flexible hose, fixed by hose clamps, may be used at machinery connections for a keel cooler installation.

§ 182.425 Engine exhaust cooling.

(a) Except as otherwise provided in this paragraph, all engine exhaust pipes must be water cooled.

(1) Vertical dry exhaust pipes are permissible if installed in compliance with §§ 177.405(b) and 177.970 of this subchapter.

(2) Horizontal dry exhaust pipes are permitted only if:

(i) They do not pass through living or berthing spaces;

(ii) They terminate above the deepest load waterline;

(iii) They are so arranged as to prevent entry of cold water from rough or boarding seas;

(iv) They are constructed of corrosion resisting material at the hull penetration; and

(v) They are installed in compliance with §§ 177.405(b) and 177.970 of this subchapter.

(b) The exhaust pipe cooling water system must comply with the requirements of this paragraph.

(1) Water for cooling the exhaust pipe must be obtained from the engine cooling water system or a separate engine driven pump.

(2) Water for cooling the exhaust pipe, other than a vertical exhaust, must be injected into the exhaust system as near to the engine manifold as practicable. The water must pass through the entire length of the exhaust pipe.

(3) The part of the exhaust system between the point of cooling water injection and the engine manifold must be water-jacketed or effectively insulated and protected in compliance with §§ 177.405(b) and 177.970 of this subchapter.

(4) Vertical exhaust pipes must be water-jacketed or suitably insulated between the engine manifold and the spark arrester required by § 182.430(g).

(5) When the exhaust cooling water system is separate from the engine cooling water system, a suitable warning device, visual or audible, must be installed at the operating station to indicate any reduction in normal water flow in the exhaust cooling system.

(6) A suitable hull strainer must be installed in the circulating raw water intake line for the exhaust cooling system.

(c) Engine exhaust cooling systems built in accordance with the requirements of ABYC Project P–1, "Installation of Exhaust Systems for Propulsion and Auxiliary Machinery," will be considered as meeting the requirements of this section.

§ 182.430 Engine exhaust pipe installation.

(a) The design of all exhaust systems must ensure minimum risk of injury to personnel. Protection must be provided in compliance with § 177.970 of this subchapter at such locations where persons or equipment might come in contact with an exhaust pipe.

(b) Exhaust gas must not leak from the piping or any connections. The piping must be properly supported by noncombustible hangers or blocks.

(c) The exhaust piping must be so arranged as to prevent backflow of water from reaching engine exhaust ports under normal conditions.

(d) An exhaust pipe discharge located less than 3 inches above the deepest load waterline must be fitted with means to prevent the ingress of water.

(e) Pipes used for wet exhaust lines must be schedule 80 or corrosion-resistant material and adequately protected from mechanical damage.

(f) Where flexibility is necessary, a section of flexible metallic hose may be used. Nonmetallic hose may be used for wet exhaust systems provided it is especially adapted to resist the action of oil, acid, and heat, has a wall thickness sufficient to prevent collapsing or panting, and is double clamped.

(g) Where an exhaust pipe passes through a watertight bulkhead, the watertight integrity of the bulkhead must be maintained. Noncombustible packing must be used in bulkhead penetration glands for dry exhaust systems. A wet exhaust pipe may be welded to a steel bulkhead in way of a penetration and a fiberglass wet exhaust pipe may be fiberglassed to a fiberglass reinforced plastic bulkhead if suitable arrangements are provided to relieve the stresses resulting from the expansion of the exhaust piping.

(h) A dry exhaust pipe must:

(1) If it passes through a combustible bulkhead or partition, be kept clear of and suitably insulated or shielded from combustible material.

(2) Be provided with noncombustible hangers and blocks for support.

(i) An exhaust pipe discharge terminating in a transom must be located as far outboard as practicable so that exhaust gases cannot re-enter the vessel.

(j) Arrangements must be made to provide access to allow complete inspection of the exhaust piping throughout its length.

(k) An exhaust installation subject to pressures in excess of 15 pounds per square inch gauge or having exhaust pipes passing through living or working spaces must meet the material requirements of part 56 of subchapter F (Marine Engineering) of this chapter.

(l) Engine exhaust installations built in accordance with the requirements of ABYC Project P–1, "Installations of Exhaust Systems for Propulsion and Auxiliary Machinery," will be considered as meeting the requirements of this section.

§ 182.435 Integral fuel tanks.

(a) Gasoline fuel tanks must be independent of the hull.

(b) Diesel fuel tanks may not be built integral with the hull of a vessel unless the hull is made of:

(1) Steel;

(2) Aluminum; or

(3) Fiber reinforced plastic when:

(i) Sandwich construction is not used; or

(ii) Sandwich construction is used with only a core material of closed cell polyvinyl chloride.

(c) During the initial inspection for certification of a vessel, integral fuel tanks must withstand a hydrostatic pressure test of 5 pounds per square inch, or the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 11½ feet in height attached to the tank may be filled with water to accomplish the 5 pounds per square inch test.

§ 182.440 Independent fuel tanks.

(a) *Materials and construction.* Independent fuel tanks must be designed and constructed of materials in compliance with the requirements of this paragraph.

(1) The material used and the minimum thickness allowed must be as indicated in table 182.440(a)(1), except that other materials which provide equivalent safety may be approved for use under paragraph (a)(3) of this section. Tanks having a capacity of more than 150 gallons must be designed to withstand the maximum head to which they may be subjected in service, but in no case may the thickness be less than that specified in table 182.440(a)(1).

TABLE—182.440(a)(1)

Material	ASTM specification (latest edition)	Thickness in inches & gage number[1] vs. tank capacities for		
		1 to 80 gallon tanks	More than 80 and not more than 150 gallon tanks	Over 150[2] gallon tanks
Nickel-copper	B127, hot rolled sheet or plate	0.037 (USSG 20)[3].	0.050 (USSG 18).	0.107 (USSG 12)
Copper-nickel[4]	B122, UNS alloy C71500	0.045 (AWG 17).	0.057 (AWG 15).	0.128 (AWG 8)
Copper[4]	B152, UNS alloy C11000	0.057 (AWG 15).	0.081 (AWG 12).	0.182 (AWG 5)
Copper-silicon[4]	B97, alloys A, B, and C	0.051 (AWG 16).	0.064 (AWG 14).	0.144 (AWG 7)
Steel or iron[5,6]		0.0747 (MSG 14).	0.1046 (MSG 12).	0.1793 (MSG 7)
Aluminum[7]	B209, alloy 5052, 5083, 5086	0.250 (USSG 3).	0.250 (USSG 3).	0.250 (USSG 3)
Fiber reinforced plastic		As required[8] ...	As required[8] ...	As required[8]

[1] The gage numbers used in this table may be found in many standard engineering reference books. The letters "USSG" stand for "U.S. Standard Gage," which was established by the Act of March 3, 1892 (15 U.S.C. 206), for sheet and plate iron and steel. The letters "AWG" stand for "American Wire Gage" (or Brown and Sharpe Gage) for nolerrous sheet thicknesses. The letters "MSG" stand for "Manufacturers' Standard Gage" for sheet steel thickness.

[2] Tanks over 400 gallons shall be designed with a factor of safety of four on the ultimate strength of the material used with a design head of not less than 4 feet of liquid above the top of the tank.

[3] Nickel-copper not less than 0.031 inch (USSG 22) may be used for tanks up to 30-gallon capacity.

[4] Acceptable only for gasoline service.

[5] Gasoline fuel tanks constructed of iron or steel, which are less than 3/16 inch thick, shall be galvanized inside and outside by the hot dip process. Tanks intended for use with diesel oil shall not be internally galvanized.

[6] Stainless steel tanks are not included in this category.

[7] Anodic to most common metals. Avoid dissimilar metal contact with tank body.

[8] The requirements of § 182.440(a)(2) apply.

(2) Fiber reinforced plastic may be used for diesel fuel tanks under the following provisions:

(i) The materials must be fire retardant. Flammability of the material must be determined by the standard test methods ASTM D635 and ASTM D2863. The results of the tests must show that the average extent of burning is less than 0.394 inches (10mm); the average time of burning is less than 50 seconds, and the limiting oxygen index is greater than 21.

(ii) Tanks must meet UL Standard 1102. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(iii) Tanks must be designed to withstand the maximum head to which they may be subjected to in service.

(iv) Installation of nozzles, flanges or other fittings for pipe connections to the tanks must be acceptable to the cognizant OCMI.

(v) Baffle plates, if installed, must be of the same material and not less than the minimum thickness of the tank walls. Limber holes at the bottom and air holes at the top of all baffles must be provided. Baffle plates must be installed at the time the tests required by UL Standard 1102 are conducted.

(3) Materials other than those listed in Table 182.440(a)(1) must be approved by the Commandant. An independent tank using material approved by the Commandant under this paragraph must meet the testing requirements of UL Standard 1102. Testing may be accomplished by an independent laboratory or by the fabricator to the satisfaction of the OCMI.

(4) Tanks with flanged-up top edges which may trap and hold moisture are prohibited.

(5) Openings for fill pipes, vent pipes, and machinery fuel supply pipes, and openings for fuel level gauges, where used, must be on the topmost surfaces of tanks. Tanks may not have any openings in bottoms, sides, or ends, except for:

(i) An opening fitted with a threaded plug or cap installed for tank cleaning purposes; and

(ii) In a diesel fuel tank, openings for supply piping and tubular gauge glasses.

(6) All tank joints must be welded or brazed. Lap joints may not be used.

(7) Nozzles, flanges, or other fittings for pipe connections to a metal tank must be welded or brazed to the tank. Tank openings in way of pipe connections must be properly reinforced where necessary. Where fuel level gauges are used on a metal tank, the flanges to which gauge fittings are attached must be welded or brazed to the tank. No tubular gauge glasses may be fitted to gasoline fuel tanks. Tubular gauge glasses, if fitted to diesel fuel tanks, must be of heat resistant materials, adequately protected from mechanical damage, and provided at the tank connections with devices which will automatically close in the event of rupture of the gauge or gauge lines.

(8) A metal tank exceeding 30 inches in any horizontal dimension must:

(i) Be fitted with vertical baffle plates, which meet paragraph (a)(9) of this section, at intervals not exceeding 30 inches to provide strength and to control the excessive surge of fuel; or

(ii) The owner shall submit calculations to the cognizant OCMI demonstrating the structural adequacy of the tank in a fully loaded static condition and in a worst case dynamic (sloshing) condition.

(9) Baffle plates, where required in metal tanks, must be of the same material and not less than the minimum thickness required in the tank walls and must be connected to the tank walls by welding or brazing. Limber holes at the bottom and air holes at the top of all baffles must be provided.

(10) Iron or steel diesel fuel tanks must not be galvanized on the interior. Galvanizing, paint, or other suitable coating must be used to protect the outside of iron and steel diesel fuel tanks and the inside and outside of iron and steel gasoline fuel tanks.

(b) *Location and installation.* Independent fuel tanks must be located and installed in compliance with the requirements of this paragraph.

(1) Fuel tanks must be located in, or as close as practicable to, machinery spaces.

(2) Fuel tanks and fittings must be so installed as to permit examination, testing, or removal for cleaning with minimum disturbance to the hull structure.

(3) Fuel tanks must be adequately supported and braced to prevent movement. The supports and braces must be insulated from contact with the tank surfaces with a nonabrasive and nonabsorbent material.

(4) All fuel tanks must be electrically bonded to a common ground.

(c) *Tests.* Independent fuel tanks must be tested in compliance with the requirements of this part prior to being used to carry fuel.

(1) Prior to installation, tanks vented to the atmosphere must be hydrostatically tested to, and must withstand, a pressure of 5 pounds per square inch or 1½ times the maximum pressure head to which they may be subjected in service, whichever is greater. A standpipe of 11½ feet in height attached to the tank may be filled with water to accomplish the 5 pounds per square inch test. Permanent deformation of the tank will not be cause for rejection unless accompanied by leakage.

(2) After installation of the fuel tank on a vessel, the complete installation must be tested in the presence of a marine inspector to a head not less than that to which the tank may be subjected in service. Fuel may be used as the testing medium.

(3) All tanks not vented to the atmosphere must be constructed and tested in accordance with § 182.330.

(d) *Alternative procedures.* A vessel of not more than 65 feet in length carrying not more than 12 passengers, with independent gasoline fuel tanks built in accordance with ABYC Project H–24 or 33 CFR part 183, subpart J, or with independent diesel fuel tanks built in accordance with ABYC Project H–33, will be considered as meeting the requirements of this section. However, tanks must not be fabricated from any material not listed in table 182.440(a)(1) without approval by the Commandant under paragraph (a)(3) of this section.

§ 182.445 Fill and sounding pipes for fuel tanks.

(a) Fill pipes for fuel tanks must be not less than 1½ inches nominal pipe size.

(b) There must be a means of accurately determining the amount of fuel in each fuel tank either by sounding, through a separate sounding pipe or a fill pipe, or by an installed marine type fuel gauge.

(c) Where sounding pipes are used, their openings must be at least as high as the opening of the fill pipe and they must be kept closed at all times except during sounding.

(d) Fill pipes and sounding pipes must be so arranged that overflow of liquid or vapor cannot escape to the inside of the vessel.

(e) Fill pipes and sounding pipes must run as directly as possible, preferably in a straight line, from the deck connection to the top of the tank. Such pipes must terminate on the weather deck and must be fitted with shutoff valves, watertight deck plates, or screw caps, suitably marked for identification. Gasoline fill pipes and sounding pipes must extend to within one half of their diameter from the bottom of the tank. Diesel fill pipes and sounding pipes may terminate at the top of the tank.

(f) A vessel of not more than 65 feet carrying not more than 12 passengers, with a gasoline fuel system built in accordance with ABYC Project H–24 or 33 CFR part 183, subpart J, or with a diesel fuel system built in accordance with ABYC Project H–33 will be considered as meeting the requirements of this section.

(g) Where a flexible fill pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1½ times the pipe diameter and must be secured at each end by clamps. The flexible section must be accessible and as near the upper end of the fill pipe as practicable. When the flexible section is a nonconductor of electricity, the metallic sections of the fill pipe separated thereby must be joined by a conductor for protection against generation of a static charge when filling with fuel.

§ 182.450 Vent pipes for fuel tanks.

(a) Each unpressurized fuel tank must be fitted with a vent pipe connected to the highest point of the tank.

(b) The net cross sectional area of the vent pipe for a gasoline fuel tank must not be less than that of ¾ inch O.D. tubing (0.035 inch wall thickness, 20 gauge), except that, where the tank is filled under pressure, the net cross sectional area of the vent pipe must be not less than that of the fill pipe.

(c) The minimum net cross sectional area of the vent pipe for diesel fuel tanks must be as follows:

(1) Not less than the cross sectional area of ⅜ inch O.D. tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe terminates at the top of the tank;

(2) Not less than the cross sectional area of ¾ inch O.D. tubing (0.035-inch wall thickness, 20 gauge), if the fill pipe extends into the tank; and

(3) Not less than the cross sectional area of the fill pipe if the tank is filled under pressure.

(d) The discharge ends of fuel tank vent pipes must terminate on the hull exterior as high above the waterline as practicable and remote from any hull openings, or they must terminate in U-bends as high above the weather deck as practicable and as far as practicable from openings into any enclosed spaces. Vent pipes terminating on the hull exterior must be installed or equipped to prevent the accidental contamination of the fuel by water under normal operating conditions.

(e) The discharge ends of fuel tank vent pipes must be fitted with removable flame screens or flame arresters. The flame screens must consist of a single screen of corrosion resistant wire of at least 30×30 mesh. The flame screens or flame arresters must be of such size and design as to prevent reduction in the net cross sectional area of the vent pipe and permit cleaning or renewal of the flame screens or arrester elements.

(f) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with fuel gasoline tank vents built in accordance with ABYC Project H–24, or 33 CFR part 183, subpart J, or with diesel fuel tank vents built in accordance with ABYC Project

H–33, will be considered as meeting the requirements of this section.

(g) Where a flexible vent pipe section is necessary, suitable flexible tubing or hose having high resistance to salt water, petroleum oils, heat and vibration, may be used. Such hose must overlap metallic pipe ends at least 1½ times the pipe diameter and must be secured at each end by clamps. The flexible section must be accessible and as near the upper end of the vent pipe as practicable.

§ 182.455 Fuel piping.

(a) *Materials and workmanship.* The materials and construction of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Fuel lines must be annealed tubing of copper, nickel-copper, or copper-nickel having a minimum wall thickness of 0.035 inch except that:

(i) Diesel fuel piping of other materials, such as seamless steel pipe or tubing, which provide equivalent safety may be used;

(ii) Diesel fuel piping of aluminum is acceptable on aluminum hull vessels provided it is installed outside the machinery space and is a minimum of Schedule 80 wall thickness; and

(iii) When used, flexible hose must meet the requirements of § 182.720(e).

(2) Tubing connections and fittings must be of nonferrous drawn or forged metal of the flared type except that flareless fittings of the non-bite type may be used when the tubing system is of nickel-copper or copper-nickel. When making tube connections, the tubing must be cut square and flared by suitable tools. Tube ends must be annealed before flaring.

(3) Cocks are prohibited except for the solid bottom type with tapered plugs and union bonnets.

(4) Valves for gasoline fuel lines must be of a suitable nonferrous type.

(b) *Installation.* The installation of fuel lines, including pipe, tube, and hose, must comply with the requirements of this paragraph.

(1) Gasoline fuel lines must be connected at the top of the fuel tank and run at or above the level of the tank top to a point as close to the engine connection as practicable, except that lines below the level of the tank top are permitted if equipped with anti-siphon protection.

(2) Diesel fuel lines may be connected to the fuel tank at or near the bottom of the tank.

(3) Fuel lines must be accessible, protected from mechanical injury, and effectively secured against excessive movement and vibration by the use of soft nonferrous metal straps which have no sharp edges and are insulated to protect against corrosion. Where passing through bulkheads, fuel lines must be protected by close fitting ferrules or stuffing boxes. All fuel lines and fittings must be accessible for inspection.

(4) Shutoff valves, installed so as to close against the fuel flow, must be fitted in the fuel supply lines, one at the tank connection and one at the engine end of the fuel line to stop fuel flow when servicing accessories. The shutoff valve at the tank must be manually operable from outside the compartment in which the valve is located, preferably from an accessible position on the weather deck. If the shutoff valve at the tank is located inside the Engine Room, it must be located so that the operator does not have to reach more than 12" into the Engine Room and the valve must be shielded from flames by the same material the hull is constructed of, or some noncombustible material. Electric solenoid valves must not be used, unless used in addition to the manual valve.

(5) A loop of copper tubing or a short length of flexible hose must be installed in the fuel supply line at or near the engines. The flexible hose must meet the requirements of § 182.720(e).

(6) A suitable metal marine type strainer, meeting the requirements of the engine manufacturer, must be fitted in the fuel supply line in the engine compartment. Strainers must be leak free. Strainers must be of the type opening on top for cleaning screens. A drip pan fitted with flame screen must be installed under gasoline strainers. Fuel filter and strainer bowls must be highly resistant to shattering due to mechanical impact and resistant to failure due to thermal shock. Fuel filters fitted with bowls of other than steel construction must be approved by the Commandant and be protected from mechanical damage. Approval of bowls of other than steel construction will specify if a flame shield is required.

(7) All accessories installed in the fuel line must be independently supported.

(8) Outlets in gasoline fuel lines which would permit drawing fuel below deck, for any purpose, are prohibited.

(9) Valves for removing water or impurities from diesel fuel in water traps or strainers are permitted. These valves must be provided with caps or plugs to prevent fuel leakage.

(c) *Alternative procedures.* A vessel of not more than 65 feet carrying not more than 12 passengers, with machinery powered by gasoline and a fuel system built in accordance with ABYC Project H–24 or 33 CFR part 183, subpart J, or with machinery powered by diesel fuel and a fuel system built in accordance with ABYC Project H–33, will be considered as meeting the requirements of this section.

§ 182.458 Portable fuel systems.

(a) Portable fuel systems, including portable tanks and related fuel lines and accessories, are prohibited except where used for outboard motor installations.

(b) The design, construction and stowage of portable tanks and related fuel lines and accessories must meet the requirements of ABYC Project H–25, "Portable Fuel Systems for Flammable Liquids."

§ 182.460 Ventilation of spaces containing machinery powered by, or fuel tanks for, gasoline.

(a) A space containing machinery powered by, or fuel tanks for, gasoline must have a ventilation system which complies with this section and consists of:

(1) For an enclosed space:

(i) At least two natural ventilation supply ducts located at one end of the space and which extend to the lowest part of the space or to the bilge on each side of the space; and

(ii) A mechanical exhaust system consisting of at least two ventilation exhaust ducts located at the end of the space opposite from where the supply ducts are fitted, which extend to the lowest part or the bilge of the space on each side of the space, and which are led to one or more powered exhaust blowers; and

(2) For a partially enclosed space, at least one ventilation duct installed in the forward part of the space and one ventilation duct installed in the after part of the space, or as otherwise required by the cognizant OCMI. Ducts for partially enclosed spaces must have cowls or scoops as required by paragraph (i) of this section.

(b) A mechanical exhaust system required by paragraph (a)(1)(ii) of this section must be such as to assure the air changes as noted in Table 182.460(b) depending upon the size of the space.

TABLE.—182.460(b)

Size of space in cubic feet		
Over	Not over	Minutes per air change
0	500	2
500	1,000	3
1,000	1,500	4
1,500		5

(c) An exhaust blower motor may not be installed in a duct, and if mounted in any space required to be ventilated by this section, must be located as high above the bilge as practicable. Blower blades must be nonsparking with reference to their housings.

(d) Where a fixed gas fire extinguishing system is installed in a space, all powered exhaust blowers for the space must automatically shut down upon release of the extinguishing agent.

(e) Exhaust blower switches must be located outside of any space required to be ventilated by this section, and must be of the type interlocked with the starting switch and the ignition switch so that the blowers are started before the engine starter motor circuit or the engine ignition is energized. A red warning sign at the switch must state that the blowers must be operated prior to starting the engines for the time sufficient to insure at least one complete change of air in the space served.

(f) The area of the ventilation ducts must be sufficient to limit the air velocity to a maximum of 2,000 feet per minute. A duct may be of any shape, provided that in no case will one cross sectional dimension exceed twice the other.

(g) A duct must be so installed that ordinary collection of water in the bilge will not block vapor flow.

(h) A duct must be of rigid permanent construction, which does not allow any appreciable vapor flow except through normal openings, and made of the same material as the hull or of noncombustible material. The duct must lead as directly as possible from its intake opening to its terminus and be securely fastened and supported.

(i) A supply duct must be provided at its intake opening with a cowl or scoop having a free area not less than twice the required duct area. When the cowl or scoop is screened, the mouth area must be increased to compensate for the area of the screen wire. A cowl or scoop must be kept open at all times except when the weather is such as to endanger the vessel if the openings are not temporarily closed.

(j) Dampers may not be fitted in a supply duct.

(k) A duct opening may not be located where the natural flow of air is unduly obstructed, adjacent to possible sources of vapor ignition, or where exhaust air may be taken into a supply duct.

(l) Provision must be made for closing all supply duct cowls or scoops and exhaust duct discharge openings for a space protected by a fixed gas extinguishing system. All closure devices must be readily available and mounted in the vicinity of the vent.

(m) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with ABYC Project H–2, "Ventilation of Boats Using Gasoline," or 33 CFR part 183, subpart K, "Ventilation," will be considered as meeting the requirements of this section.

§ 182.465 Ventilation of spaces containing diesel machinery.

(a) A space containing diesel machinery must be fitted with adequate means such as dripproof ventilators, ducts, or louvers, to provide sufficient air for proper operation of main engines and auxiliary engines.

(b) Air-cooled propulsion and auxiliary diesel engines installed below deck, as permitted by § 182.420, must be fitted with air supply ducts or piping from the weather deck. The ducts or piping must be so arranged and supported to be capable of safely sustaining stresses induced by weight and engine vibration and to minimize transfer of vibration to the supporting structure. Prior to installation of ventilation system for such engines, plans or sketches showing machinery arrangement including air supplies, exhaust stack, method of attachment of ventilation ducts to the engine, location of spark arresting mufflers and capacity of ventilation blowers must be submitted to the cognizant OCMI for approval.

(c) A space containing diesel machinery must be fitted with at least two ducts to furnish natural or powered supply and exhaust ventilation. One duct must extend to a point near the bottom of the space, and be so installed that the ordinary collection of water in the bilge will not block air flow in the duct. Where powered ventilation is installed, the duct extending near the bottom of the space must be the exhaust. The total inlet area and the total outlet area of each ventilation duct may not be less than one square inch for each foot of beam of the vessel. These minimum areas must be increased as necessary when the ducts are considered as part of the air supply to the engines.

(d) A duct must be of rigid permanent construction, which does not allow any appreciable vapor flow except through normal openings, and made of the same material as the hull or of noncombustible material. The duct must lead as directly as possible from its intake opening to its terminus and be securely fastened and supported.

(e) A supply duct must be provided with a cowl or scoop having a free area not less than twice the required duct area. When the cowl or scoop is screened, the mouth area must be increased to compensate for the area of the screen wire. A cowl or scoop must be kept open at all times except when the weather is such as to endanger the vessel if the openings are not temporarily closed.

(f) Dampers may not be fitted in a supply duct.

(g) A duct opening may not be located where the natural flow of air is unduly obstructed, adjacent to possible sources of vapor ignition, or where exhaust air may be taken into a supply duct.

(h) Provision must be made for closing all supply duct cowls or scoops and exhaust duct discharge openings for a space protected by a fixed gas extinguishing system. All closure devices must be readily available and mounted in the vicinity of the vent.

(i) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with ABYC Project H–32, "Ventilation of Boats Using Diesel Fuel," will be considered as meeting the requirements of this section.

§ 182.470 Ventilation of spaces containing diesel fuel tanks.

(a) Unless provided with ventilation which complies with § 182.465, a space containing a diesel fuel tank and no machinery must meet the requirements of this paragraph.

(1) A space of 500 cubic feet or more in volume must have a gooseneck vent of not less than 2½ inches in diameter.

(2) A space of less than 500 cubic feet in volume must have a gooseneck vent of not less than 1½ inches in diameter.

(b) Vent openings may not be located adjacent to possible sources of vapor ignition.

(c) A vessel of not more than 65 feet in length carrying not more than 12 passengers, with ventilation installations in accordance with ABYC Project H–32, "Ventilation of Boats Using Diesel Fuel," will be considered as meeting the requirements of this section.

§ 182.480 Flammable vapor detection systems.

(a) A flammable vapor detection system must meet UL Standard 1110 and be approved by an independent laboratory.

(b) Procedures for checking the proper operation of a flammable vapor detection system must be posted at the primary operating station. The system must be self-monitoring and include a ground fault indication alarm.

(c) A flammable vapor detection system must be operational for 30 seconds prior to engine startup and continue sensing the entire time the engine is running.

(d) A flammable vapor detection system must provide a visual and audible alarm at the operating station.

(e) A sensor must be located above the expected bilge water level in the following locations:

(1) The lowest part of a machinery space;

(2) The lowest part of a space containing a fuel tank when separate from the machinery space; and

(3) Any other location when required by the cognizant Officer in Charge, Marine Inspection.

(f) A flammable vapor detection system must be installed so as to permit calibration in a vapor free atmosphere.

(g) Electrical connections, wiring, and components for a flammable vapor detection system must comply with part 183 of this subchapter.

(h) An operation and maintenance manual for the flammable vapor detection system must be kept onboard.

Subpart E—Bilge and Ballast Systems

§ 182.500 General.

(a) A vessel must be provided with a satisfactory arrangement for draining any watertight compartment, other than small buoyancy compartments, under all practicable conditions. Sluice valves are not permitted in watertight bulkheads.

(b) A vessel of not more than 65 feet in length carrying not more than 12 passengers may meet the requirements of American Boat and Yacht Council Project H–22 in lieu of the requirements of this subpart, provided that each watertight compartment, other than small buoyancy compartments and the compartment forward of the collision bulkhead, is provided with a means for dewatering.

(c) Special consideration may be given to vessels, such as dynamically supported craft, that have a high degree of subdivision and utilize numerous small buoyancy compartments. Where the probability of flooding of the space is limited to external hull damage, compartment drainage may be omitted provided it can be shown by stability calculations, submitted to the cognizant OCMI, that the safety of the vessel will not be impaired.

§ 182.510 Bilge piping system.

(a) A vessel of at least 26 feet in length must be provided with individual bilge lines and bilge suctions for each watertight compartment, except that the space forward of the collision bulkhead need not be fitted with a bilge suction line when the arrangement of the vessel is such that ordinary leakage may be removed from this compartment by the use of a hand portable bilge pump or other equipment, and such equipment is provided.

(b) A bilge pipe in a vessel of not more than 65 feet in length must be not less than 1 inch nominal pipe size. A bilge pipe in a vessel of more than 65 feet in length must be not less than 1½ inches nominal pipe size. A bilge suction must be fitted with a suitable strainer having an open area not less than three times the area of the bilge pipe.

(c) Except when individual pumps are provided for separate spaces, individual bilge suction lines must be led to a central control point or manifold and provided with a stop valve at the control point or manifold and a check valve at some accessible point in the bilge line. A stop-check valve located at a control point or manifold will meet the requirements for both a stop valve and a check valve.

(d) A bilge pipe piercing the collision bulkhead must be fitted with a screw-down valve located on the forward side of the collision bulkhead and operable from the weather deck, or, if it is readily accessible under service conditions, a screw-down valve without a reach rod may be fitted to the bilge line on the after side of the collision bulkhead.

§ 182.520 Bilge pumps.

(a) A vessel must be provided with bilge pumps in accordance with Table 182.520(a). A second power pump is an acceptable alternative to a hand pump if it is supplied by a source of power independent of the first power bilge pump. Individual power pumps used for separate spaces are to be controlled from a central control point and must have a light or other visual means at the control point to indicate operation.

TABLE.—182.520(a)

Number of passengers	Length of vessel	Bilge pumps required	Minimum capacity required per pump (gal. per minutes)
Any number	More than 65 feet	2 fixed power pumps	50 GPM.
More than 49 passengers and all ferry vessels.	Not more than 65 feet	1 fixed power pump and 1 portable hand pump.	25 GPM (power); 10 GPM (hand).
Not more than 49 passengers (other than ferry vessels).	26 feet up to 65 feet	1 fixed power pump and 1 portable hand pump, or 1 fixed hand pump and 1 portable hand pump.	10 GPM (fixed power); 10 GPM (fixed hand); 5 GPM (portable hand).
	Less than 26 feet	1 portable hand pump	5 GPM.

(b) A portable hand bilge pump must be:

(1) Capable of pumping water, but not necessarily simultaneously, from all watertight compartments; and

(2) Provided with suitable suction and discharge hoses capable of reaching the bilges of each watertight compartment.

(c) Each fixed power bilge pump must be self priming. It may be driven off the main engine or other source of power. It must be permanently connected to the bilge manifold and may also be connected to the fire main. If of sufficient capacity, a power bilge pump may also serve as a fire pump.

(d) Where two fixed power bilge pumps are installed, they must be driven by different sources of power. If one pump is driven off the main engine in a single propulsion engine installation, the other must be independently driven. In a twin propulsion engine installation, each pump may be driven off a different propulsion engine.

(e) A submersible electric bilge pump may be used as a power bilge pump required by Table 182.520(a) only on a vessel of not more than 65 feet in length carrying not more than 49 passengers, other than a ferry, provided that:

(1) The pump is listed by Underwriters Laboratories Inc. or another independent laboratory;

(2) The pump is used to dewater not more than one watertight compartment;

(3) The pump is permanently mounted;

(4) The pump is equipped with a strainer which can be readily inspected and cleaned without removal;

(5) The pump discharge line is suitably supported; if flexible hose is used, the hose does not penetrate any required watertight bulkheads;

(6) The opening in the hull for the pump discharge is placed as high above the waterline as possible; and

(7) A positive shutoff valve is installed at the hull penetration.

(8) The capacity of the electrical system, including wiring, and size and number of batteries, is designed to allow all bilge pumps to be operated simultaneously.

(f) A flexible tube or hose may be used instead of fixed pipe for the discharge line of a submersible electric bilge pump provided the hose or tube does not penetrate any required watertight bulkheads and is:

(1) Of good quality and of substantial construction, suitable for the intended use; and

(2) Highly resistant to salt water, petroleum oil, heat, and vibration.

(g) If a fixed hand pump is used to comply with Table 182.520(a), it must be permanently connected to the bilge system.

(h) On a vessel of not more than 65 feet in length, a power driven fire pump required by § 181.300 of this subchapter may serve as a fixed power bilge pump required by this subpart, provided it has the minimum flow rate required by Table 182.520(a).

(i) On a vessel of more than 65 feet in length, a power driven fire pump required by § 181.300 of this subchapter may serve as one of the two fixed power bilge pumps required by this subpart, provided:

(1) The bilge and fire pump systems are interconnected;

(2) The dedicated bilge pump is capable of pumping the bilges at the same time the fire/bilge pump charges the firemain; and

(3) Stop valves and check valves are installed in the piping to isolate the systems during simultaneous operation and prevent possible flooding through the bilge system.

(j) A catamaran vessel must be equipped with bilge pumps for each hull, as if each hull is a separate vessel, in accordance with Table 182.520(a), except where:

(1) One dedicated pump is located in each hull;

(2) Each dedicated pump is driven by an independent source of power; and

(3) The bilge system is permanently cross connected between hulls.

§ 182.530 Bilge level alarms.

(a) On a vessel of at least 26 feet in length, a visual and audible alarm must be provided at the operating station to indicate high bilge level in all normally unattended machinery spaces located below the deepest load waterline.

(b) A visual indicator must be provided at the operating station to indicate when any automatic bilge pump is operating.

§ 182.540 Ballast systems.

(a) Ballast piping must not be installed in any compartment integral with the hull of a wooden vessel. Where the carriage of liquid ballast in such a vessel is necessary, suitable ballast tanks, structurally independent of the hull, must be provided.

(b) Solid and water ballast must comply with the requirements of part 178 of this subchapter.

Subpart F—Steering Systems

§ 182.600 General.

A self-propelled vessel must comply with the provisions of this subpart.

§ 182.610 Main steering gear.

(a) A vessel must be provided with a main steering gear that is:

(1) Of adequate strength and capable of steering the vessel at all service speeds;

(2) Designed to operate at maximum astern speed without being damaged or jammed; and

(3) Capable of moving the rudder from 35 degrees on one side to 30 degrees on the other side in not more than 28 seconds with the vessel moving ahead at maximum service speed.

(b) Control of the main steering gear, including control of any necessary associated devices (motor, pump, valve, etc.), must be provided from the operating station.

(c) The main steering gear must be designed so that transfer from the main steering gear or control to the auxiliary means of steering required by § 182.620 can be achieved rapidly. Any tools or equipment necessary to make the transfer must be readily available.

(d) The operating station must be arranged to permit the person steering to have the best possible all around vision.

(e) Strong and effective rudder stops must be provided to prevent jamming and damage to the rudder and its fittings. These stops may be structural or internal to the main steering gear.

(f) In addition to meeting the requirements of paragraphs (a) thru (e) of this section, a vessel with a power driven main steering gear must be provided with the following:

(1) A visual means, located at the operating station, to indicate operation of the power units;

(2) Instructions for transfer procedures from the main steering gear or control to the auxiliary means of steering required by § 182.620, posted at the location where the transfer is carried out;

(3) A disconnect switch located in the steering compartment, and instantaneous short circuit protection for electrical power and control circuits sized and located in accordance with §§ 111.93–11 (d) and (e) of this chapter. Overload protection is prohibited;

(4) An independent rudder angle indicator at the operating station;

(5) An arrangement that automatically resumes operation, without reset, when power is restored after a power failure;

(6) A manual means to center and steady the rudder(s) in an emergency;

(7) A limit switch to stop the steering gear before it reaches the rudder stops required by paragraph (e) of this section.

§ 182.620 Auxiliary means of steering.

(a) Except as provided in paragraph (c) of this section, a vessel must be

provided with an auxiliary means of steering that is:

(1) Of adequate strength;

(2) Capable of moving the rudder from 15 degrees on one side to 15 degrees on the other side in not more than 60 seconds with the vessel at one-half its maximum service speed ahead, or 7 knots, whichever is greater; and

(3) Controlled from a location that permits safe maneuvering of the vessel and does not expose the person operating the auxiliary means of steering to personnel hazards during normal or heavy weather operation.

(b) A suitable hand tiller may be acceptable as the auxiliary means of steering where satisfactory to the Officer in Charge, Marine Inspection.

(c) An auxiliary means of steering need not be provided if:

(1) The main steering gear and its controls are provided in duplicate;

(2) Multiple screw propulsion, with independent pilothouse control for each screw, is provided, and the vessel is capable of being steered using pilothouse control;

(3) No regular rudder is fitted and steering action is obtained by a change of setting of the propelling unit; or

(4) Where a rudder and hand tiller are the main steering gear.

Subpart G—Piping Systems

§ 182.700 General.

Materials used in piping systems must meet the requirements of this subpart and be otherwise acceptable to the Officer in Charge, Marine Inspection.

§ 182.710 Piping for vital systems.

(a) Vital systems are those systems which are vital to a vessel's survivability and safety. For the purpose of this part the following are vital systems:

(1) Fuel system;

(2) Fire main;

(3) CO_2 and Halon systems;

(4) Bilge system;

(5) Steering system;

(6) Propulsion system and its necessary auxiliaries and controls;

(7) Ship's service and emergency electrical generation system and its necessary auxiliaries; and

(8) A marine engineering system identified by the cognizant OCMI as being crucial to the survival of the vessel or to the protection of the personnel on board.

(b) For the purpose of this part, a system not identified in paragraph (a) of this section is a non-vital system.

(c) Piping used in a vital system must:

(1) Be composed of ferrous materials except when:

(i) Nonmetallic piping materials are permitted by § 182.720; or

(ii) Nonferrous metallic piping materials are permitted by § 182.730; and

(2) If subject to a pressure of more than 150 psi, be designed, fabricated, and inspected in accordance with the principles of ANSI B31.1 or another industry standard acceptable to the Commandant.

§ 182.715 Piping subject to more than 150 psi in non-vital systems.

Piping subject to more than 150 psi in a non-vital system must be designed, fabricated, and inspected in accordance with the principles of ANSI B31.1 or other industry standard acceptable to the Commandant.

§ 182.720 Nonmetallic piping materials.

(a) Rigid nonmetallic materials (plastic) may be used only in non-vital systems and in accordance with paragraphs (c) and (d) of this section.

(b) Flexible nonmetallic materials (hose) may be used in vital and non-vital systems where permitted by paragraph (e) of this section.

(c) Nonmetallic piping must not be used in gasoline or diesel fuel systems. Flexible nonmetallic materials (hose) may be used where permitted by paragraph (e) of this section.

(d) Where rigid nonmetallic material (plastic) is permitted for use in piping systems by this section, the following restrictions apply:

(1) Penetrations of required watertight decks and bulkheads by any rigid plastic pipe are prohibited unless the following requirements are met:

(i) Each penetration must be accomplished using an acceptable metallic through deck or through bulkhead fitting which is welded or otherwise attached to the bulkhead or deck by an accepted method; and

(ii) One or more metallic shutoff valves must be installed adjacent to the fitting in one of the following ways:

(A) Only one metallic shutoff valve must be installed if it is operable from above the bulkhead deck;

(B) If two metallic shutoff valves are installed, one on either side of the bulkhead, they need not be operable from above the bulkhead deck provided immediate access to both is possible; or

(C) Where both plastic and metallic materials are used in piping which penetrates a bulkhead, and the two materials exist entirely on opposite sides of the bulkhead, a metallic shutoff valve must be installed at the bulkhead in the metallic part of the system, with the valve being capable of operation from above the bulkhead deck, or locally if immediate access is possible;

(2) Protection from mechanical damage must be specifically considered and all protective covering or shields must be installed to the satisfaction of the Officer in Charge, Marine Inspection;

(3) Through hull fittings and shutoff valves must be metallic. In the case of nonmetallic hulls, materials which will afford an equal degree of safety and heat resistivity as that afforded by the hull may be approved; and

(4) The material specification must show that the rigid nonmetallic material possesses characteristics adequate for its intended service and environment and must be approved for use by the Officer in Charge, Marine Inspection.

(e) Where flexible nonmetallic hose is permitted for use in piping systems by this section, it must meet SAE Standard J1942 or be specifically approved by the Commandant. The following restrictions apply.

(1) Flexible nonmetallic hose must be complete with factory-assembled end fittings requiring no further adjustment of the fittings on the hose, or field attachable type fittings may be used. Hose end fittings must comply with SAE J–1475. Field attachable fittings must be installed following the manufacturer's recommended practice. If special equipment is required, such as crimping machines, it must be of the type and design specified by the manufacturer. If field attachable type fittings are used, each hose assembly must be individually hydrostatically tested to twice the rated pressure stamped thereon;

(2) Flexible nonmetallic hose may be used in non-vital water and pneumatic systems, subject to the limitations of paragraph (d)(1) through (d)(4) of this section. Unreinforced hoses are limited to a maximum service pressure of 50 psi, reinforced hoses are limited to a maximum service pressure of 150 psi; and

(3) Flexible nonmetallic hose may be used in lube oil, fuel oil and fluid power systems, subject to the following requirements:

(i) Flexible hose may only be used at a pressure not to exceed the manufacturer's rating and must have a high resistance to saltwater, petroleum oils, and vibration;

(ii) Flexible hose runs must be visible, easily accessible, and must not penetrate watertight bulkheads;

(iii) Flexible hose must be fabricated with an inner tube and a cover of synthetic rubber or other suitable material reinforced with wire braid;

(iv) Flexible hose used for alcohol-gasoline blend fuels must meet the permeability requirements specified in 33 CFR part 183, subpart J; and

(v) Flexible hose installed in lengths of not more than 30 inches for the purpose of flexibility only, and subject to pressures of not more than 5 pounds per square inch, may meet the following requirements:

(A) Suitable compression type connection fittings may be accepted;

(B) Flexible hose designed for use with hose clamps may be installed with two clamps, at both ends of the hose, which:

(*1*) Do not rely on the spring tension of the clamp for compressive force; and

(*2*) Are installed beyond the bead or flare or over the serrations of the mating spud, pipe, or hose fitting; and

(C) USCG Type A1, A2, B1, or B2 flexible hose may be accepted in accordance with 33 CFR part 183, subpart J.

§ 182.730 Nonferrous metallic piping materials.

(a) Nonferrous metallic piping materials are acceptable for use in the following:

(1) Non-vital systems;

(2) Aluminum fuel piping, if of a minimum of schedule 80 wall thickness on an aluminum hulled vessel and located outside the machinery space;

(3) Aluminum bilge, ballast, and firemain piping on an aluminum hulled vessel;

(4) If acceptable to the cognizant OCMI, nonferrous metallic piping with a melting temperature above 1700°F may be used in vital systems that are deemed to be galvanically compatible; and

(5) Other uses specifically accepted by the cognizant OCMI.

(b) Where nonferrous metallic material is permitted for use in piping systems by this subpart, the restrictions in this paragraph apply:

(1) Provisions must be made to protect piping systems using aluminum alloys in high risk fire areas due to the low melting point of aluminum alloys;

(2) Provisions must be made to prevent or mitigate the effect of galvanic corrosion due to the relative solution potentials of copper, aluminum, and alloys of copper and aluminum, which are used in conjunction with each other, steel, or other metals and their alloys;

(3) A suitable thread compound must be used in making up threaded joints in aluminum pipe to prevent seizing. Pipe in the annealed temper must not be threaded;

(4) The use of aluminum alloys with a copper content exceeding 0.6 percent is prohibited; and

(5) The use of cast aluminum alloys in hydraulic fluid power systems must be in accordance with the requirements of § 58.30–15(f) of this chapter.

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183.540 Elevators.
183.550 General alarm systems.

Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p.277; 49 CFR 1.46.

Subpart A—General Provisions

§ 183.100 Intent.

This part contains requirements for the design, construction, installation, and operation of electrical equipment and systems including power sources, lighting, motors, miscellaneous equipment, and safety systems.

§ 183.115 Applicability to existing vessels.

(a) Except as otherwise required by paragraphs (b) and (c) of this section, an existing vessel must comply with the regulations on electrical installations, equipment, and material which were applicable to the vessel on [*date of the doy before the effective date of the final rule*] or, as an alternative, the vessel may comply with the regulations in this part.

(b) An existing vessel must comply with the requirements of §§ 183.420 and 183.430.

(c) New installations of electrical equipment and material, and the repair or replacement of wire and cable, on an existing vessel, which are completed to the satisfaction of the cognizant OCMI on or after [*effective date of the final rule*], must comply with this part. Replacement of existing equipment, not including wire or cable, installed on the vessel prior to [*effective date of the final rule*] need not comply with the regulations in this part.

§ 183.130 Alternative standards.

(a) A vessel, other than a dynamically supported craft, of not more than 65 feet in length carrying not more than 12 passengers, may comply with the following requirements instead of complying with the requirements of this part in their entirety:

(1) § 183.420; and

(2) The following ABYC Projects where applicable:

(i) E–8;

(ii) E–9; and

(iii) A–16.

(b) A vessel with an electrical installation operating at less than 50 volts may meet the requirements in 33 CFR 183.430 instead of those in § 183.340 of this subchapter.

Subpart B—General Requirements

§ 183.200 General design, installation, and maintenance requirements.

Electrical equipment on a vessel must be installed and maintained to:

(a) Provide services necessary for safety under normal and emergency conditions;

(b) Protect passengers, crew, other persons, and the vessel from electrical hazards, including fire, caused by or originating in electrical equipment, and electrical shock;

(c) Minimize accidental personnel contact with energized parts; and

(d) Prevent electrical ignition of flammable vapors.

§ 183.210 Protection from wet and corrosive environments.

(a) Electrical equipment used in the following locations must be dripproof:

(1) A machinery space;

(2) A location normally exposed to splashing, water washdown, or other wet conditions within a galley, a laundry, or a public washroom or toilet room that has a bath or shower; or

(3) Another space with a similar moisture level.

(b) Electrical equipment exposed to the weather must be watertight.

(c) Electrical equipment exposed to corrosive environments must be of

suitable construction and corrosion-resistant.

§ 183.220 General safety provisions.

(a) Electrical equipment and installations must be suitable for the roll, pitch, and vibration of the vessel underway.

(b) All equipment, including switches, fuses, lampholders, etc., must be suitable for the voltage and current utilized.

(c) Receptacle outlets of the type providing a grounded pole or a specific direct current polarity must be of a configuration that will not permit improper connection.

(d) All electrical equipment and circuits must be clearly marked and identified.

(e) Any cabinet, panel, box, or other enclosure containing more than one source of power must be fitted with a sign warning persons of this condition and identifying the circuits to be disconnected.

Subpart C—Power Sources and Distribution Systems

§ 183.310 Power sources.

(a)(1) Each vessel that relies on electricity to power the following loads must have at least two sources of electricity for each load:

(i) The vital systems listed in § 182.710 of this subchapter.

(ii) Interior lighting except for decorative lights.

(iii) Communication systems including a public address system required under § 184.610 of this subchapter.

(iv) Navigation equipment and lights.

(2) A vessel with batteries of adequate capacity to supply the loads specified in paragraph (a)(1) of this section, and a generator or alternator driven by a propulsion engine, complies with the requirement in paragraph (a)(1) of this section.

(b) Where a ship service generator driven by a propulsion engine is used as a source of electrical power, a vessel speed change, throttle movement or change in direction of the propeller shaft rotation must not interrupt power to any of the loads specified in paragraph (a)(1) of this section.

§ 183.320 Generators and motors.

(a) Each generator and motor must be:

(1) In a location that is accessible, adequately ventilated, and as dry as practicable; and

(2) Mounted above the bilges to avoid damage by splash and to avoid contact with low lying vapors.

(b) Each generator and motor must be designed for an ambient temperature of 50°C (122°F) except that:

(1) If the ambient temperature in the space where a generator or motor will be located will not exceed 40°C under normal operating conditions, the generator or motor may be designed for an ambient temperature of 40°C; and

(2) A generator or motor designed for 40°C may be used in 50°C ambient locations provided the generator or motor is derated to 80 percent of the full load rating, and the rating or setting of the overcurrent devices is reduced accordingly.

(c) A voltmeter and an ammeter, which can be used for measuring voltage and current of a generator that is in operation, must be provided for a generator rated at 50 volts or more. For each alternating current generator, a means for measuring frequency must also be provided. Additional control equipment and measuring instruments must be provided, if needed, to ensure satisfactory operation of each generator.

(d) Each generator must have a nameplate attached to it containing the information required by Article 445 of the NEC (NFPA 70), and for a generator derated in accordance with paragraph (b)(2) of this section, the derated capacity.

(e) Each motor must have a nameplate attached to it containing the information required by Article 430 of the NEC (NFPA 70), and for a motor derated in accordance with paragraph (b)(2) of this section, the derated capacity.

§ 183.322 Multiple generators.

When a vessel is equipped with two or more generators to supply ship's service power, the following requirements must be met:

(a) Each generator must have an independent prime mover; and

(b) The generator circuit breakers must be interlocked to prevent the generators from being simultaneously connected to the switchboard, except for the circuit breakers of a generator operated in parallel with another generator when the installation meets §§ 111.05–13, 111.12–11(f), 111.30–19(a), and 111.30–25(d) of this chapter.

§ 183.324 Dual voltage generators.

When a dual voltage generator is installed on a vessel:

(a) The neutral of a dual voltage system must be solidly grounded at the switchboard's neutral bus and be accessible for checking the insulation resistance of the generator to ground before the generator is connected to the bus; and

(b) Ground detection must be provided that:

(1) For an alternating current system, meets § 111.05–27 of this chapter; and

(2) For a direct current system, meets § 111.05–29 of this chapter.

§ 183.330 Distribution panels and switchboards.

(a) Each distribution panel and switchboard must be in as dry a location as practicable, accessible, adequately ventilated, and protected from falling debris and dripping or splashing water.

(b) Each distribution panel or switchboard must be totally enclosed and of the dead front type.

(c) Each switchboard must be fitted with a dripshield.

(d) Distribution panels and switchboards which are accessible from the rear must be constructed to prevent a person from accidentally contacting energized parts.

(e) Working space must be provided around all main distribution panels and switchboards of at least 24 inches in front of the switchboard, and behind the switchboard at least 18 inches from the nearest bulkhead, stiffener, or frame, or have no rear access.

(f) Nonconducting mats or grating must be provided on the deck in front of each switchboard and, if accessible from the rear, on the deck in the rear of the switchboard.

(g) All uninsulated current carrying parts must be mounted on noncombustible, nonabsorbent, high dielectric insulating material.

(h) Equipment mounted on a hinged door of an enclosure must be constructed or shielded so that a person will not accidentally contact energized parts of the door mounted equipment when the door is open and the circuit energized.

(i) In the design of a control, interlock, or indicator circuit, all practicable steps must be taken to eliminate all but one source of potential in an enclosure. If the control functions make it impracticable to energize the control, interlock or indicator circuit from the load side of a motor and control disconnect device, each conductor of such a circuit, except those vital circuits identified in § 182.710 of this subchapter, must be disconnected from all sources of potential by a disconnect device actuated by the opening of the controller door. The disconnect device and its connections, including each terminal block for terminating the vessel's wiring, must not have any electrically unshielded or uninsulated surfaces.

(j) Switchboards and distribution panels must be adequately sized for the expected loads.

§ 183.340 Cable and wiring requirements.

(a) If individual wires, rather than cable, are used in systems greater than 50 volts, the wire must be run in a protective enclosure. The protective enclosure must have drain holes to prevent the build up of condensation.

(b) All cable and wire must:

(1) Have stranded copper conductors with sufficient current carrying capacity for the circuit in which they are used;

(2) Be installed in a manner to avoid or reduce interference with radio reception and compass indication;

(3) Be protected from the weather;

(4) Be installed with metal supports spaced not more than 24 inches apart, and in such a manner as to avoid chafing and other damage. The use of plastic tie wraps must be limited to bundling or retention of multiple cable installations, and not used as a means of support, except that on vessels of not more than 65 feet in length, installations in accordance with paragraph 14.h of ABYC E–8 and paragraph 15.h of ABYC E–9 are acceptable as meeting the requirements of this section;

(5) Not be installed with sharp bends;

(6) Be protected by metal coverings or other suitable means if in areas subject to mechanical abuse;

(7) Be suitable for low temperature and high humidity if installed in refrigerated compartments;

(8) Not be located in a tank unless the cable provides power to equipment in the tank; and

(9) Have sheathing or wire insulation compatible with the fluid in a tank when installed as allowed by paragraph (b)(8) of this section.

(c) Conductors in power and lighting circuits must be No. 14 AWG or larger. Conductors in control and indicator circuits must be No. 22 AWG or larger.

(d) Cable and wire for power and lighting circuits must:

(1) Meet Section 310–13 of the NEC (NFPA 70), except that asbestos insulated cable and dry location cables can not be used;

(2) Be listed by Underwriters Laboratories Inc. as UL Boat or UL Marine cable; or

(3) Meet § 111.60–1 of this chapter.

(e) Cable or wire serving vital systems listed in § 182.710 of this subchapter or emergency loads must be routed as far as practicable from high risk fire areas such as galleys, laundries, and machinery spaces.

(f) Cable or wire serving duplicated equipment must be separated so that a casualty that affects one cable does not affect the other.

(g) Each connection to a conductor or terminal part of a conductor that is larger than No. 10 AWG must be made within an enclosure and have:

(1) A pressure type connector on each conductor;

(2) A solder lug on each conductor;

(3) A splice made with a pressure type connector to a flexible lead or conductor; or

(4) A splice that is soldered, brazed, or welded to a flexible lead or conductor.

(h) Each connection to a conductor or a terminal part of a conductor that is No. 10 AWG or smaller must be made within an enclosure and:

(1) Meet paragraph (g) of this section; or

(2) Have clamps or screws with terminal plates that have turned lugs or other suitable means to capture the terminal.

(i) A connector or lug of the set screw type must not be used with a stranded conductor smaller than No. 14 AWG except if there is a nonrotating follower that travels with the set screw and makes pressure contact with the conductor.

(j) Each pressure type wire connector and lug must meet UL 486A. The use of wire nuts is prohibited.

(k) Each terminal block must have 6–32 terminal screws or larger.

(l) Wire connectors utilized in conjunction with screw type terminal blocks must be of the captive type such as the ring or the flanged spade type.

(m) A cable must not be spliced in:

(1) A hazardous location; or

(2) In another location except:

(i) A cable installed in a subassembly may be spliced to a cable installed in another subassembly;

(ii) For a vessel receiving alterations, a cable may be spliced to extend a circuit;

(iii) A cable having a large size or exceptional length may be spliced to facilitate its installation; and

(iv) A cable may be spliced to replace a damaged section of the cable if, before replacing the damaged section, the insulation resistance of the remainder of the cable is measured, and it is determined that the condition of the insulation is unimpaired.

(n) All material in a cable splice must be chemically compatible with all other material in the splice and with the materials in the cable.

(o) Ampacities for conductors must meet Section 310–15 of the NEC (NFPA 70) or IEEE Standard 45, as appropriate.

(p) Conductors must be sized so that the voltage drop at the load terminals does not exceed 10 percent. Table 183.340(p) indicates the size of conductor required for corresponding lengths and steady state (stable) values to obtain not more than this voltage drop at the load terminals of a two conductor circuit.

TABLE 183.340(p).—CONDUCTOR SIZES FOR AMPERES—LENGTHS

Total current on circuit, amperes	Length of conductor in feet from source of current to most distant fixture										
	10	15	20	25	30	35	40	45	50	55	60
	12 volts, 2-wire—10 percent drop wire sizes (A.W.G.)										
5	14	14	14	14	14	14	14	14	12	12	12
10	14	14	14	12	12	12	10	10	10	10	8
15	14	14	12	10	10	10	8	8	8	8	8
20	12	12	10	10	8	8	8	8	6	6	6
25	10	10	10	8	8	8	6	6	6	6	4

Other values can be computed by means of the following formula:

$$cm = \frac{K \times I \times L (\times 2 \text{ for two-wire circuit})}{E} \quad (1)$$

Where:
cm=Circular-mil area of conductor.
K=10.75 (a constant representing the mil-foot resistance of copper).
I=Load current, in amperes.
L=Length of conductor from center of distribution, in feet.
E=Voltage drop at load, in volts.

(q) If used, each armored cable metallic covering must:
(1) Be electrically continuous; and
(2) Be grounded at each end of the run to:
(i) The metallic hull; or
(ii) The common ground plate on nonmetallic vessels; and
(3) Have final sub-circuits grounded at the supply end only.

(r) A portable or temporary electric cord or cable must be constructed and used in compliance with the requirements of § 111.60–13 of this chapter for a flexible electric cord or cable.

§ 183.350 Batteries—general.

(a) Where provisions are made for charging batteries, there must be natural or induced ventilation sufficient to dissipate the gases generated.

(b) Each battery must be located as high above the bilge as practicable, secured to protect against shifting with the roll and pitch of the vessel, and free from exposure to water splash or spray.

(c) Batteries must be accessible for maintenance and removal.

(d) Connections must be made to battery terminals with permanent type connectors. Spring clips or other temporary type clamps are prohibited.

(e) Batteries must be mounted in trays lined with, or constructed of, a material which is resistant to damage by the electrolyte.

(f) Battery chargers must have an ammeter connected in the charging circuit.

(g) If the batteries are not adjacent to a distribution panel or switchboard which distributes power to the lighting, motor, and appliance circuits, the battery lead must have a fuse in series as close as practicable to the battery.

(h) Batteries used for engine starting are to be located as close as possible to the engine or engines served.

§ 183.352 Battery categories.

This section applies to batteries installed to meet the requirements of § 183.310 for secondary sources of power to vital loads, or sources of power to final emergency loads.

(a) *Large.* A large battery installation is one connected to a battery charger having an output of more than 2 kw, computed from the highest possible charging current and the rated voltage of the battery installation.

(b) *Small.* A small battery installation is one connected to a battery charger having an output of 2 kw or less, computed from the highest possible charging current and the rated voltage of the battery installation.

§ 183.354 Battery installations.

(a) *Large batteries.* Each large battery installation must be located in a locker, room or enclosed box solely dedicated to the storage of batteries. Ventilation must be provided in accordance with § 111.15–10 of this chapter. Electrical equipment located within the battery enclosure must be approved by an independent laboratory for Class I, Division 1, Group B hazardous locations and meet part 111, subpart 111.105 of this chapter.

(b) *Small batteries.* Each small battery installation must be located in a well ventilated space and protected from falling objects. A small battery installation must not be in a closet, storeroom, or similar space.

§ 183.360 Semiconductor rectifier systems.

(a) Each semiconductor rectifier system must have an adequate heat removal system that prevents overheating.

(b) Where a semiconductor rectifier system is used in a propulsion system or in other vital systems it must:
(1) Have a current limiting circuit;
(2) Have external overcurrent protection; and
(3) Meet sections 35.84.2 and 35.84.4 of the ABS "Rules for Building and Classing Steel Vessels."

§ 183.370 System and equipment grounding.

(a) All metallic enclosures and frames of electrical equipment must be permanently grounded to the hull on a metallic vessel. On a nonmetallic vessel the enclosures and frames of electrical equipment must be bonded together to a common ground by a normally non-current carrying conductor. Metallic cases of instruments and secondary windings of instrument transformers must be grounded.

(b) If a grounded distribution system is provided, there must be only one connection to ground, regardless of the number of power sources. This ground connection must be at the switchboard or at the common ground plate, which must be accessible.

(c) Each propulsion, power, lighting, or distribution system having a neutral bus or conductor must have the neutral grounded.

(d) The neutral of each grounded generation and distribution system must be grounded at the generator switchboard and have the ground connection accessible for checking insulation resistance of the generator to ground before the generator is connected to the bus, except the neutral of an emergency power generation system must be grounded with:
(1) No direct ground connection at the emergency switchboard;
(2) The neutral bus permanently connected to the neutral bus on the main switchboard; and
(3) No switch, circuit breaker, or fuse in the neutral conductor of the bus-tie feeder connecting the emergency switchboard to the main switchboard.

(e) On a nonmetallic vessel where a ground plate is provided for radio equipment, it must be connected to the common ground.

(f) On a metallic vessel a grounded alternating current system must be grounded to the hull. On a nonmetallic vessel the neutral must be connected to the common ground, except that aluminum grounding conductors must not be used.

(g) Equipment grounding conductors must be sized in accordance with Section 250–95 of the NEC (NFPA 70).

(h) Each insulated grounding conductor of a cable must be identified by one of the following means:
(1) A green braid or green insulation;
(2) Stripping the insulation from the entire exposed length of the grounding conductor; or
(3) Marking the exposed insulation of the grounding conductor with green tape or green adhesive labels.

(i) A vessel's hull must not carry current as a conductor except for the following systems:
(1) Impressed current cathodic protection systems; or
(2) Battery systems for engine starting.

(j) Cable armor must not be used to ground electrical equipment or systems.

(k) Receptacle outlets and attachment plugs for portable lamps, tools, and similar apparatus operating at 100 volts or more, must have a grounding pole and a grounding conductor in the portable cord.

(l) Each nonmetallic mast and top mast must have a lightning ground conductor.

§ 183.380 Overcurrent protection.

(a) Overcurrent protection must be provided for each ungrounded conductor for the purpose of opening the electric circuit if the current reaches a value that causes an excessive or dangerous temperature in the conductor or conductor insulation.

(b) A conductor of a control, interlock, or indicator circuit, such as a conductor

for an instrument, pilot light, ground detector light, or potential transformer, must be protected by an overcurrent device.

(c) Each generator must be protected by an overcurrent device set at a value not exceeding 115 per cent of the generator full load rating.

(d) All circuits other than steering system circuits must be protected against both overload and short circuit.

(e) Each steering gear feeder circuit must be protected by a circuit breaker that meets the requirements of paragraphs (a) and (b) of § 111.93–11 of this chapter.

(f) Each lighting branch circuit must be protected against overcurrent either by fuses or circuit breakers rated at not more than 30 amperes.

(g) Conductors must be protected in accordance with their current carrying capacities. If the allowable current carrying capacity does not correspond to a standard device size, the next larger overcurrent device may be used provided it does not exceed 150 per cent of the conductor current carrying capacity.

(h) Overcurrent devices capable of carrying the starting current of the motor must be installed to protect motors, motor conductors, and control apparatus against:
(1) Overcurrent due to short circuits or ground faults; and
(2) Overload due to motor running overcurrent, in accordance with § 111.70–1 of this chapter. A protective device integral with the motor, which is responsive to both motor current and temperature, may be used.

(i) An emergency switch must be provided in the normally ungrounded main supply conductor from a battery. The switch must be accessible and located as close to the battery as practicable.

(j) The grounded conductor of a circuit must not be disconnected by a switch or circuit breaker, unless the ungrounded conductors are simultaneously disconnected.

(k) Disconnect means must be provided on the supply side of and adjacent to all fuses for the purpose of de-energizing the fuses for inspection and maintenance purposes.

(l) If the disconnect means is not within sight of the equipment that the circuit supplies, means must be provided for locking the disconnect device in the open position.

(m) Fuses must be of the cartridge type only and be listed by Underwriters Laboratories or another independent laboratory recognized by the Commandant.

(n) Each circuit breaker must meet UL 489 and be of the manually reset type designed for:
(1) Inverse time delay;
(2) Instantaneous short circuit protection; and
(3) Switching duty if the breaker is used as a switch.

(o) Each circuit breaker must indicate whether it is in the open or closed position.

§ 183.390 Shore power.

A vessel with an electrical system operating at more than 50 volts, which is provided with a means to connect to shore power, must meet the following:

(a) A shore power connection box or receptacle must be permanently installed at a convenient location;

(b) A cable connecting the shore power connection box or receptacle to the switchboard or main distribution panel must be permanently installed;

(c) A circuit breaker must be provided at the switchboard or main distribution panel for the shore power connection; and

(d) The circuit breaker, required by paragraph (c) of this section, must be interlocked with the vessel's power sources so that shore power and the vessel's power sources may not be operated simultaneously.

§ 183.392 Radiotelephone installations.

A separate circuit, with overcurrent protection at the main distribution panel, must be provided for each radiotelephone installation.

Subpart D—Lighting Systems

§ 183.410 Lighting fixtures.

(a) Each lighting fixture globe, lens, or diffuser must have a guard or be made of high strength material, except in an accommodation space, radio room, galley, or similar space where it is not subject to damage.

(b) A lighting fixture may not be used as a connection box for a circuit other than the branch circuit supplying the fixture.

(c) A lighting fixture must be installed as follows:
(1) Each fixture must comply with § 183.200.
(2) Each lighting fixture and lampholder must be fixed. A fixture must not be supported by the screw shell of a lampholder.
(3) Each pendant type lighting fixture must be suspended by and supplied through a threaded, rigid conduit stem.
(4) Each table lamp, desk lamp, floor lamp, or similar equipment must be secured in place so that it cannot be displaced by the roll or pitch of the vessel.

(d) A exterior lighting fixture in an electrical system operating at more than 50 volts must comply with the requirements of UL 595. A lighting fixture in an accommodation space, radio room, galley or similar interior space may comply with UL 57, 1570, 1571, 1572, 1573, or 1574.

§ 183.420 Navigation lights.

All vessels must have navigation lights that are in compliance with the applicable sections of the International and Inland Navigation Rules, except that a vessel of more than 65 feet in length must also have navigation lights that meet UL 1104.

§ 183.430 Portable lights.

Each vessel must be equipped with at least two portable battery lights. One of these lights must be located at the operating station and the other at the access to the propulsion machinery space.

§ 183.432 Emergency lighting.

(a) Each vessel must have adequate emergency lighting fitted along the line of escape to the main deck from all passenger and crew accommodation spaces located below the main deck.

(b) The emergency lighting required by paragraph (a) of this section must automatically actuate upon failure of the main lighting system. If a vessel is not equipped with a single source of power for emergency lighting, it must have individual battery powered lights which:
(1) Are automatically actuated upon loss of normal power;
(2) Are not readily portable;
(3) Are connected to an automatic battery charger; and
(4) Have sufficient capacity for a minimum of 6 hours of continuous operation.

Subpart E—Miscellaneous Systems and Requirements

§ 183.520 Lifeboat winches.

Each electric power operated lifeboat winch must meet part 111, subpart 111.95 and part 160, subpart 160.015 of this chapter.

§ 183.530 Hazardous areas.

(a) Electrical equipment in spaces containing machinery powered by, or fuel tanks for, gasoline or other fuels having a flashpoint of 110°F or lower must be explosion-proof or ignition-protected, or be part of an intrinsically safe system.

(b) Electrical equipment in lockers used to store paint, oil, turpentine, or other flammable liquids must be

explosion-proof or be part of an intrinsically safe system.

(c) Explosion-proof equipment and intrinsically safe systems must meet the requirements of part 111, subpart 111.105 of this chapter.

§ 183.540 Elevators.

Each electric power, control, and interlock circuit of an elevator on a vessel must meet the requirements of ANSI A17.1.

§ 183.550 General alarm systems.

All vessels with overnight accommodations must be equipped with a general alarm system. The public address system required by § 184.610 of this subchapter may be used to sound the general alarm signal.

PART 184—VESSEL CONTROL AND MISCELLANEOUS SYSTEMS AND EQUIPMENT

Subpart A—General Provisions

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Authority: 46 U.S.C. 2103, 3306; E.O. 12234, 45 FR 58801, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 184.100 General requirement.

(a) Vessel control systems and other miscellaneous systems and equipment required by this part must be suitable for the purposes intended.

(b) The cognizant OCMI may require navigation, control, or communication equipment, in excess of the equipment specifically required by this part, on a vessel which is of a novel design, operates at high speeds in restricted or high traffic areas, operates in a dynamically supported mode, or operates on extended routes or in remote locations.

§ 184.115 Applicability to existing vessels.

(a) An existing vessel need not comply with §§ 184.402(c), 184.404, 184.410, and 184.602 unless the cognizant OCMI specifically requires compliance due to the route or service of the vessel.

(b) An existing vessel need not comply with the requirements of § 184.610 until [*date 5 years after effective date of the final rule*], or 10 years after its keel was laid or the vessel was at a similar stage of construction, whichever is later.

(c) An existing vessel need not comply with the requirements of § 184.710 until [*date 1 year after effective date of the final rule*].

Subpart B—Cooking and Heating

§ 184.200 General.

Cooking and heating equipment must be suitable for marine use. Equipment designed and installed in accordance with ABYC A–3 and A–7, or with NFPA 302 complies with this requirement, except as restricted by § 184.202.

§ 184.202 Restrictions.

(a) The use of gasoline for cooking, heating, or lighting is prohibited on all vessels.

(b) Fireplaces or other heating and cooking equipment with open flames are prohibited from being used on all vessels.

(c) Vessels permitted to use liquefied and non-liquefied gases as cooking fuels by 46 CFR part 147 must meet the requirements of § 184.240. The use of these fuels for cooking, heating, and lighting on ferry vessels is prohibited by 46 CFR part 147.

§ 184.210 Heating equipment.

(a) Each heater must be so constructed and installed as to prevent the hanging from it of items such as towels and clothing.

(b) Each electric space heater must be provided with a thermal cutout to prevent overheating.

(c) Each heater element of an electric space heater must be of an enclosed type, and the element case or jacket must be made of a corrosion resistant material.

§ 184.220 Cooking equipment.

(a) Doors on a cooking appliance must be provided with heavy duty hinges and locking devices to prevent accidental opening in heavy seas.

(b) A cooking appliance must be installed to prevent movement in heavy seas.

(c) For a grill or similar type of cooking appliance, means must be provided to collect grease or fat and to prevent its spillage on wiring or the deck.

(d) Grab rails must be installed on a cooking appliance when determined by the cognizant OCMI to be necessary for safety.

(e) Sea rails, with suitable barriers to prevent accidental movement of cooking pots, must be installed on a cooking range.

(f) Electric connections for a cooking appliance must be dripproof.

§ 184.240 Gas systems. [Reserved]

[Note: The regulations in 46 CFR 184.05–1 will be redesignated as § 184.240 when a final rule is published.]

Subpart C—Mooring and Towing Equipment

§ 184.300 Ground tackle and mooring lines.

A vessel must be fitted with ground tackle and mooring lines necessary for the vessel to be safely anchored and moored. The ground tackle and mooring lines provided must be satisfactory for the size of the vessel, the waters on which the vessel operates, and other operating hazards, subject to the approval of the cognizant OCMI.

Subpart D—Navigation Equipment

§ 184.402 Compasses.

(a) Except as otherwise provided in this section every vessel must be fitted with a suitable magnetic compass designed for marine use, to be mounted at the primary operating station.

(b) The following vessels need not be fitted with a compass:

(1) A vessel on a rivers route;

(2) A nonself-propelled vessel; and

(3) A vessel operating on short restricted routes on lakes, bays, and sounds.

(c) Except on a vessel limited to daytime operations, the compass must be illuminated.

§ 184.404 Radars.

(a) A vessel must be fitted with a FCC type accepted general marine radar system for surface navigation with a radar screen mounted at the primary operating station if:

(1) The vessel is self-propelled;

(2) The vessel has an oceans, coastwise, or Great Lakes route; and

(3) The vessel carries more than 49 passengers.

(b) A ferry which carries more than 49 passengers on a rivers route not within one mile of land must be fitted with a Federal Communications Type Accepted general marine radar system for surface navigation with a radar screen mounted at the primary operating station.

(c) The radar and its installation must be suitable for the intended speed and route of the vessel.

(d) A vessel operated on a short restricted route need not be fitted with a radar if the cognizant OCMI determines that a radar is not necessary due to the vessel's route and local weather conditions.

§ 184.410 Electronic position fixing devices.

A vessel on an oceans route must be equipped with an electronic position fixing device, capable of providing accurate fixes for the area in which the vessel operates, to the satisfaction of the cognizant OCMI.

§ 184.420 Charts and nautical publications.

(a) As appropriate for the intended voyage, a vessel must carry adequate and up-to-date:

(1) Charts of large enough scale to make safe navigation possible;

(2) U.S. Coast Pilot or similar publication;

(3) Coast Guard Light List;

(4) Tide tables published by the National Ocean Service; and

(5) Current tables published by the National Ocean Service, or a river current publication issued by the U.S. Army Corps of Engineers or a river authority.

(b) Extracts from the publications listed above for the areas to be transited may be provided instead of the complete publication.

Subpart E—Radio

§ 184.502 Requirements of the Federal Communications Commission.

A vessel must comply with the applicable requirements for any radio and EPIRB installations, including the requirements for a station license and installation certificates to be issued by the Federal Communications Commission, as set forth in 47 CFR part 80.

§ 184.506 Emergency broadcast placard.

A durable placard must be posted next to all radiotelephone installations with the following instructions and information, specific to the individual vessel, indicated on it:

Emergency Broadcast Procedures

(1) Make sure your radiotelephone is on.

(2) Select 156.8 mHz (channel 16 VHF) or 2182 kHz. (Channel 16 VHF and 2182 kHz on SSB are for emergency and calling purposes only.)

(3) Press microphone button and, speaking slowly—clearly—calmly, say:

"MAYDAY—MAYDAY—MAYDAY"

for situations involving Immediate Danger to Life and Property; and

"PAN—PAN—PAN"

for urgent situations where there is No Immediate Danger to Life or Property.

(4) Say: "THIS IS (VESSEL'S NAME), (VESSEL'S NAME), (VESSEL'S NAME), (VESSEL'S CALL SIGN), OVER."

(5) Release the microphone button briefly and listen for acknowledgment. If no one answers, repeat steps 3 & 4.

(6) If there is no acknowledgment, or if the Coast Guard or another vessel responds, say: "MAYDAY" or "PAN", (VESSEL'S NAME)."

(7) DESCRIBE YOUR POSITION using latitude and longitude coordinates, LORAN coordinates, or range and bearing from a known point.

(8) STATE THE NATURE OF THE DISTRESS.

(9) GIVE NUMBER OF PERSONS ABOARD AND THE NATURE OF ANY INJURIES.

(10) ESTIMATE THE PRESENT SEAWORTHINESS OF YOUR VESSEL.

(11) BRIEFLY DESCRIBE YOUR VESSEL: (LENGTH, COLOR, HULL TYPE, TRIM, MASTS, POWER, ANY ADDITIONAL DISTINGUISHING FEATURES).

(12) Say: "I WILL BE LISTENING ON CHANNEL 16/2182."

(13) End message by saying: "THIS IS (VESSEL'S NAME & CALL SIGN)."

(14) If your situation permits, stand by the radio to await further communication with the Coast Guard or another vessel. If no answer, repeat, then try another channel.

Subpart F—Control and Internal Communication Systems

§ 184.602 Internal communication systems.

(a) A vessel equipped with pilothouse control must have a fixed means of two-way communication from the operating station to the location where the means of controlling the propulsion machinery, required by § 184.620(a), is located. Twin screw vessels with pilothouse control for both engines are not required to have a fixed communications system.

(b) A vessel equipped with auxiliary means of steering, required by § 182.620 of this subchapter, must have a fixed means of two-way communication from the operating station to the location where the auxiliary means of steering is controlled.

(c) When the propulsion machinery of a vessel cannot be controlled from the operating station, an efficient communication system must be provided between the operating station and the propulsion machinery space.

(d) When the locations addressed in paragraphs (a), (b), and (c) of this section are sufficiently close together, direct voice communication satisfactory to the cognizant OCMI is acceptable instead of the required fixed means of communications.

(e) The OCMI may accept hand held portable radios as satisfying the communications system requirement of this section.

§ 184.610 Public address systems.

(a) Except as noted in paragraphs (d) and (e) of this section, each vessel must be equipped with a public address system.

(b) On a vessel of more than 65 feet in length, the public address system must be a fixed installation and be audible during normal operating conditions throughout the accommodation spaces and all other spaces normally manned by crew members.

(c) A vessel with more than one passenger deck and a vessel with overnight accommodations must have the public address system operable from the operating station.

(d) On a vessel of not more than 65 feet in length, a battery powered bullhorn may serve as the public address system if audible throughout the accommodation spaces of the vessel during normal operating conditions. The bullhorn's batteries are to be continually maintained at a fully charged level by use of a battery charger or other means acceptable to the cognizant OCMI.

(e) On a vessel of not more than 65 feet in length carrying not more than 49 passengers, a public address system is not required if a public announcement made from the operating station without amplification can be heard throughout the accommodation spaces of the vessel during normal operating conditions, to the satisfaction of the cognizant OCMI.

§ 184.620 Propulsion engine control systems.

(a) A vessel must have two independent means of controlling each propulsion engine. Control must be provided for the engine speed, direction of shaft rotation, and engine shutdown.

(1) One of the means may be the ability to readily disconnect the remote engine control linkage to permit local operation.

(2) A multiple engine vessel with independent remote propulsion control for each engine need not have a second means of controlling each engine.

(b) In addition to the requirements of paragraph (a), a vessel must have a reliable means for shutting down a propulsion engine, which is independent of the engine's speed control, located at the main pilothouse control station.

(c) A propulsion engine control system, including pilothouse control, must be designed so that a loss of power to the control system does not result in an increase in shaft speed or propeller pitch.

Subpart G—Miscellaneous

§ 184.702 Oil pollution prevention equipment and procedures.

A vessel must comply with the applicable design, equipment, personnel, procedures, and record requirements of 33 CFR parts 151, 155, and 156.

§ 184.704 Marine sanitation devices.

A vessel with installed toilet facilities must have a marine sanitation device which complies with 33 CFR part 159.

§ 184.710 First aid kits.

A vessel must carry a first aid kit approved under part 160, subpart 160.041 of this chapter or a kit with equivalent contents, instructions, and markings. The contents must be stowed in a suitable container, easily visible and readily available to the crew.

PART 185—OPERATIONS

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Authority: 46 U.S.C. 2103, 3306, 6101; E.O. 12234, 3 CFR, 1980 Comp., p. 277; 49 CFR 1.46.

Subpart A—General Provisions

§ 185.100 General requirement.

A vessel must be operated in accordance with applicable laws and regulations and in such a manner as to afford adequate precaution against hazards which might endanger the vessel and the persons being transported.

§ 185.115 Applicability to existing vessels.

(a) An existing vessel need not comply with the hull marking requirements in § 185.602(b) until completion of a vessel's first drydock required by § 176.600 of this subchapter, which occurs after [*effective date of the final rule*].

(b) An existing vessel need not comply with the marking requirements in §§ 185.604 and 185.610, where the size and contents of the markings required by §§ 185.604 and 185.610 vary from the size and contents of required markings on lifesaving equipment, watertight doors, and watertight hatches on the vessel prior to [*effective date of the final rule*], until the existing markings are no longer legible as determined by the cognizant OCMI.

(c) An existing vessel need not comply with the requirements of §§ 185.514, 185.516, and 185.604(j) until completion of the first inspection for certification which occurs after [*effective date of the final rule*].

Subpart B—Marine Casualties and Voyage Records

§ 185.202 Notice of casualty.

(a) The owner, agent, master, or person in charge of a vessel involved in a marine casualty shall give notice as soon as possible to the nearest Coast Guard Marine Safety or Marine Inspection Office whenever the casualty involves any of the following:

(1) An accidental grounding, or any intentional grounding which meets any of the other reporting criteria or creates a hazard to navigation, the environment, or the safety of the vessel;

(2) Loss of main propulsion or primary steering, or any associated component or control system, the loss of which causes a reduction of the maneuvering capabilities of the vessel. Loss means that systems, component parts, subsystems, or control systems do not perform the specified or required function for any period of time.

(3) An occurrence materially and adversely affecting the vessel's seaworthiness or fitness for service or route, including but not limited to fire, flooding, failure of or damage to fixed fire extinguishing systems, lifesaving equipment, auxiliary power generating equipment, or bilge pumping systems.

(4) Loss of life.

(5) Injury which requires professional medical treatment beyond first aid and, in the case of a person engaged or employed on board a vessel in commercial service, which renders the individual unfit to perform routine vessel duties.

(6) An occurrence not meeting any of the above criteria but resulting in damage to property in excess of $25,000. Damage cost includes the cost of labor and material to restore the property to the service condition which existed prior to the casualty, but does not include the cost of salvage, cleaning, gas freeing, drydocking, or demurrage.

(b) A vessel is excluded from the requirements of paragraphs (a)(4) and (a)(5) of this section with respect to the death or injury of shipyard or harbor workers when such accidents are not the result of either a vessel casualty (e.g., collision) or a vessel equipment casualty (e.g., cargo boom failure) and are subject to the reporting requirements of the Occupational Safety and Health Administration under 29 CFR part 1904.

§ 185.204 Substance of marine casualty notice.

The notice required in § 185.202 must include the name and official number (or the number issued in accordance with 33 CFR part 173) of the vessel involved, the name of the vessel's owner or agent, the nature and circumstances of the casualty, the locality in which it occurred, the nature and extent of injury to persons, and the damage to property.

§ 185.206 Written report of marine casualty.

(a) In addition to the notice required by § 185.202, the owner, master, agent, or person in charge of the vessel shall, within five days, report in writing to the OCMI at the port in which the casualty occurred or nearest the port of first arrival. The written report required for vessel or personnel accidents must be made on Form CG–2692.

(b) If filed without delay, the Form CG–2692 may also provide the notice required by § 185.202.

§ 185.208 Damage to pressure vessels.

The owner, managing operator, or master shall report damage to a boiler or unfired pressure vessel, which renders further use of the item unsafe until repairs are made, to the OCMI at the port in which the casualty occurred or nearest the port of first arrival, as soon as practicable after the damage occurs.

§ 185.210 Alcohol or drug use by individuals directly involved in casualties.

(a) For each marine casualty required to be reported by § 185.202, the owner, agent, master, or person in charge of the vessel shall determine whether there is any evidence of alcohol or drug use by individuals directly involved in the casualty.

(b) The owner, agent, master, or person in charge of the vessel shall include in the written report, Form CG 2692, submitted for the casualty information which:

(1) Identifies those individuals for whom evidence of drug or alcohol use, or evidence of intoxication, has been obtained; and

(2) Specifies the method used to obtain such evidence, such as personal observation of the individual, or by chemical testing of the individual.

(c) An entry must be made in the Official Logbook if carried, pertaining to those individuals for whom evidence of intoxication is obtained. The individual shall be informed of this entry and the entry shall be witnessed by a second person.

(d) If an individual directly involved in a casualty refuses to submit to, or cooperate in, the administration of a timely chemical test, when directed by a Coast Guard commissioned, warrant, or petty officer, or any other law enforcement officer authorized to obtain a chemical test under Federal, state, or local law, or by the owner, agent, master, or person in charge, this fact must be noted in the Official Logbook, if carried, and in the written report (Form CG 2692), and will be admissible as evidence in any administrative proceeding.

§ 185.212 Mandatory chemical testing following serious marine incidents.

A marine employer whose vessel is involved in a casualty or incident which is, or is likely to become, a serious marine incident as defined in § 4.03–2 of this chapter shall comply with the requirements of part 4, subpart 4.06 of this chapter.

§ 185.220 Records of a voyage resulting in a marine casualty.

The owner, agent, master, or person in charge of any vessel involved in a marine casualty for which a report is required under § 185.202 shall retain all voyage records maintained by the vessel, including rough and smooth deck and engine room logs, bell books, navigation charts, navigation work books, compass deviation cards, gyrocompass records, stowage plans, records of draft, aids to mariners, night order books, radiograms sent and received, radio logs, crew and passenger lists and counts, articles of shipment, official logs, and other material which might be of assistance in investigating and determining the cause of the casualty. The owner, agent, master, other officer, or person responsible for the custody thereof, shall make these records available upon request, to a duly authorized investigating officer, administrative law judge, officer or employee of the Coast Guard.

§ 185.230 Report of accident to aid to navigation.

Whenever a vessel collides with a lightship, buoy, or other aid to navigation under the jurisdiction of the Coast Guard, or is connected with any such collision, the person in charge of such vessel shall report the accident to the nearest OCMI. No report on Form CG 2692 is required unless otherwise required under § 185.202.

§ 185.250 Assistance required.

(a) The master of a vessel involved in a collision, accident, or other casualty, shall render all practicable and necessary assistance to persons affected by the collision, accident, or casualty to the extent possible without serious danger to his or her own vessel or persons aboard. The master shall also give his or her name, address, and the identification of his or her vessel to any person injured and to the owner of any property damaged.

(b) The master of a vessel shall render assistance to any individual found at sea in danger of being lost, so far as the master can do so without seriously endangering the master's vessel or individuals on board.

§ 185.260 Reports of potential vessel casualty.

(a) An owner, charterer, managing operator, or agent of a vessel shall immediately notify either of the following Coast Guard offices if there is reason to believe the vessel is lost or imperiled:

(1) The Coast Guard district rescue coordination center (RCC) cognizant over the area in which the vessel was last operating; or

(2) The Coast Guard search and rescue authority nearest to where the vessel was last operating.

(b) Reasons for belief that a vessel is in distress include, but are not limited to, lack of communication with or nonappearance of the vessel.

(c) The owner, charterer, managing operator, or agent notifying the Coast Guard under paragraph (a) of this section, shall:

(1) Provide the name and identification number of the vessel, a

description of the vessel, the names or number of individuals on board, and other information that may be requested by the Coast Guard; and

(2) Submit written confirmation within 24 hours to the Coast Guard facility to which notice was given of the possibility of the vessel being in distress, unless the original notice was in writing.

§ 185.280 Official Logbook for foreign voyages.

(a) Every vessel on a voyage from a port in the United States to a foreign port except to a port in Canada, or vice versa, must have an Official Logbook.

(b) The master shall make or have made in the Official Logbook the following entries:

(1) Each legal conviction of a seaman of the vessel and the punishment inflicted;

(2) Each offense committed by a seaman of the vessel for which it is intended to prosecute or to enforce under a forfeiture, together with statements about reading the entry and the reply made to the charge as required by 46 U.S.C. 11502;

(3) Each offense for which punishment is inflicted on board and the punishment inflicted;

(4) A statement of the conduct, character, and qualifications of each seaman of the vessel or a statement that the master declines to give an opinion about that conduct, character, and qualifications;

(5) Each illness of or injury to a seaman of the vessel, the nature of the illness or injury, and the medical treatment;

(6) Each death on board, with the cause of death, and if a seaman, the information required by 46 U.S.C. 10702;

(i) The wages due to a seaman who dies during the voyage and the gross amount of all deductions to be made from the wages;

(ii) The sale of the property of a seaman who dies during the voyage, including a statement of each article sold and the amount received for the property.

(7) Each birth on board, with the sex of the infant and name of the parents;

(8) Each marriage on board, with the names and ages of the parties;

(9) The name of each seaman who ceases to be a crew member (except by death), with the place, time, manner, and the cause why the seaman ceased to be a crew member;

(10) When a marine casualty occurs, a statement about the casualty and the circumstances under which it occurred, made immediately after the casualty when practicable to do so.

Subpart C—Miscellaneous Operating Requirements

§ 185.304 Navigation underway.

(a) The master of a vessel underway shall ensure that:

(1) The movement of the vessel is under the direction and control of the master or a licensed mate at all times;

(2) The individual who directs and controls the movement of the vessel is competent to perform that duty and, when necessary, knows:

(i) The magnetic variation of the area being transited, the vessel's deviation (if known), and the gyrocompass error (if the vessel is so equipped);

(ii) The current velocity and direction of the area being transited;

(iii) The predicted set and drift for the area being transited; and

(iv) The tidal state for the area being transited;

(3) If a pilot other than a member of the vessel's crew is employed, the pilot is informed of the draft, maneuvering characteristics, and peculiarities of the vessel and of any abnormal circumstances on the vessel that may affect its safe navigation; and

(4) The equipment required by this part is maintained in operable condition.

(b) The individual directing the movement of the vessel shall:

(1) Ensure that an individual whom the master has determined is competent to steer the vessel is at the helm of the vessel at all times;

(2) Set the vessel's speed with consideration for:

(i) The prevailing visibility and weather conditions;

(ii) The proximity of the vessel to fixed shore and marine structures;

(iii) The comparative proportions of the vessel and the channel;

(iv) The density of marine traffic;

(v) The damage that might be caused by the vessel's wake;

(vi) The strength and direction of the current; and

(vii) Any local vessel speed limit;

(3) Ensure that rudder orders are executed as given;

(4) Ensure that engine speed and direction orders are executed as given;

(5) Correctly apply magnetic variation, and deviation and gyrocompass errors when applicable; and

(6) Evaluate the danger of each closing visual or each closing radar contact.

§ 185.310 Compliance with provisions of Certificate of Inspection.

The master of a vessel shall ensure that all of the provisions of the Certificate of Inspection are strictly adhered to; however, the master may divert from the route prescribed in the Certificate of Inspection or take such other steps as deemed necessary and prudent to assist vessels in distress or for other similar emergencies.

§ 185.315 Verification of vessel compliance with applicable stability requirements.

(a) After loading and prior to departure and at all other times necessary to assure the safety of the vessel, the master shall determine that the vessel complies with all applicable stability requirements in the vessel's trim and stability book, stability letter, Certificate of Inspection, and Load Line Certificate, as the case may be. The vessel may not depart until it is in compliance with these requirements.

(b) When determining compliance with applicable stability requirements the vessel's draft, trim, and stability must be determined as necessary and any stability calculations made in support of the determination must be retained on board the vessel for the duration of the voyage.

(c) If a log book is required, then the master must enter an attestation statement verifying that the vessel complies with the applicable stabilty requirements at the times specified in paragraph (a) of this section.

§ 185.320 Steering gear, controls, and communication system tests.

The master of a vessel shall have examined and tested the steering gear, signaling whistle, propulsion controls, and communication systems of the vessel within 12 hours of getting underway for a voyage, except that such examination and testing need not be conducted more than once in any 24 hour period.

§ 185.330 Hatches and other openings.

(a) Except when operating on lakes, bays, and sounds, or rivers routes in calm weather, all hatches and openings in the hull of a vessel must be kept tightly closed except when being used.

(b) All watertight doors in subdivision bulkheads must be kept tightly closed during the navigation of the vessel except when being used for transit between compartments.

§ 185.335 Loading doors.

(a) The master of a vessel fitted with loading doors shall assure that all loading doors are closed watertight and secured during the entire voyage except that:

(1) If a door cannot be opened or closed while the vessel is at a dock, it may be open while the vessel approaches and draws away from the dock, but only as far as necessary to enable the door to be immediately operated.

(2) If needed to operate the vessel, or embark and disembark passengers when the vessel is at anchor in protected waters, loading doors may be open provided that the master determines that the safety of the vessel is not impaired.

(b) For the purposes of this section, "loading doors" include all weathertight ramps, bow visors, and openings used to load personnel, equipment, and stores, in the collision bulkhead, the side shell, and the boundaries of enclosed superstructures that are continuous with the shell of the vessel.

(c) If a log book is required, then the master shall make the following entries:

(1) The time and door location of every closing of the loading doors; and

(2) Any opening of the doors in accordance with paragraph (a)(2) of this section setting forth the time of the opening of the doors and the circumstances warranting this action.

§ 185.340 Vessels carrying vehicles.

(a) Automobiles or other vehicles must be stowed in such a manner as to permit both passengers and crew to get out and away from the vehicles freely in the event of fire or other disaster. The decks, where necessary, must be distinctly marked with painted lines to indicate the vehicle runways and the aisle spaces.

(b) The master shall take any necessary precautions to see that automobiles or other vehicles have their motors turned off and their emergency brakes set when the vessel is underway, and that the motors are not started until the vessel is secured to the landing. In addition, a vehicle at each end of a line of vehicles or next to a loading ramp must have its wheels securely blocked, while the vessel is being navigated.

(c) The master shall have appropriate "NO SMOKING" signs posted and shall take all necessary precautions to prevent smoking or carrying of lighted or smoldering pipes, cigars, cigarettes, or similar items in the deck area assigned to automobiles or other vehicles.

(d) The master shall, prior to getting underway, ensure that vehicles are properly distributed consistent with the guidance in the vessel's stability letter and Certificate of Inspection, if applicable.

§ 185.350 Fueling of vessels using fuel having a flash point of 110°F or lower (such as gasoline).

A vessel must not take on fuel having a flash point of 110°F or lower when passengers are on board.

§ 185.352 Ventilation of gasoline machinery spaces.

The mechanical exhaust for the ventilation of a gasoline machinery space, required by § 182.460(a)(1)(ii) of this subchapter, must be operated prior to starting gasoline engines for the time sufficient to insure at least one complete change of air in the space served.

§ 185.356 Carriage of hazardous materials.

A vessel must not be used to transport a hazardous material, listed in 49 CFR 172.101, in commerce unless that material is handled and transported in accordance with 49 CFR parts 171 through 179.

§ 185.360 Use of auto pilot.

Whenever an automatic pilot is used the master shall ensure that:

(a) It is possible to immediately establish manual control of the vessel's steering;

(b) A competent person is ready at all times to take over steering control; and

(c) The changeover from automatic to manual steering and vice versa is made by, or under the supervision of, the master or the mate on watch.

§ 185.370 Reckless or negligent operation.

(a) A person shall not operate a vessel subject to the provisions of this subchapter in a negligent manner which endangers the life, limb, or property of any person. Violations of this section involving grossly negligent operation subject the violator, in addition to any other penalties, to the criminal penalties prescribed in 46 U.S.C. 2302.

(b) The master of a vessel subject to the provisions of this subchapter shall not get the vessel underway, nor shall the owner, charterer, or managing operator of the vessel permit the master to get the vessel underway, when any passengers are aboard and the vessel is in an unseaworthy condition or weather or sea conditions make vessel operation unsafe.

Subpart D—Crew Requirements

§ 185.402 Licenses.

Each licensed individual employed upon any vessel subject to the provisions of this subchapter shall have his or her license on board and available for examination at all times when the vessel is operating.

§ 185.410 Watchmen.

The owner, charterer, master, or managing operator of a vessel carrying passengers shall have a suitable number of watchmen patrol throughout the vessel during the nighttime, whether or not the vessel is underway, to guard against, and give alarm in case of, a fire or other danger.

§ 185.420 Crew training.

The owner, charterer, master or maneging operator shall instruct each crew member, upon first being employed and prior to getting underway for the first time on a particular vessel and at least once every two months, as to the duties that the crew member is expected to perform in an emergency including, but not limited to, the emergency instructions listed on the emergency instruction placard required by § 185.510 and, when applicable, the duties listed in the station bill required by § 185.514.

Subpart E—Preparations for Emergencies

§ 185.502 Crew and passenger list, and voyage plan.

(a) The owner, charterer, managing operator, or master of the following vessels must keep a correct list of the names of all persons which embark on and disembark from the vessel:

(1) A vessel making an oceans or coastwise voyage;

(2) A vessel making a voyage of more than 300 miles on the Great Lakes, except from a Canadian to a United States port; and

(3) A vessel arriving from a foreign port except at a United States Great Lakes port from a Canadian Great Lakes port.

(b) The master of a vessel required to prepare a crew and passenger list by paragraph (a) of this section shall also prepare a voyage plan. The voyage plan and the list required by paragraph (a) of this section must be prepared prior to departing on a voyage and deposited ashore in a well marked location at the vessel's normal berthing location or with a representative of the owner or managing operator of the vessel.

§ 185.504 Passenger count.

The master of a vessel, except a vessel listed in § 185.502(a), shall keep a correct, written count of all passengers which embark on and disembark from the vessel. Prior to departing on a voyage, the passenger count must be deposited ashore in a well marked location at the vessel's normal berthing location or with a representative of the owner or managing operator of the vessel.

§ 185.506 Passenger safety orientation.

(a) Except as allowed by paragraph (b) of this section, before getting underway on a voyage, the master of a vessel shall ensure that suitable public announcements are made informing all

passengers of the information in this section when applicable to the vessel's operations and arrangement:

(1) A general explanation of emergency and evacuation procedures;

(2) The location of emergency exits and survival craft embarkation areas;

(3) The stowage location of lifejackets;

(4) The proper method of donning and adjusting lifejackets of the type(s) carried on the vessel including a demonstration of the proper donning of a lifejacket prior to beginning an oceans or coastwise voyage;

(5) The location of the instruction placards for lifejackets and other lifesaving devices;

(6) That all passengers will be required to don lifejackets when possible hazardous conditions exist, as directed by the master;

(7) The type and location of survival craft and ring life buoys carried on the vessel;

(8) The location and contents of the "Emergency Instructions" required by § 185.510; and

(9) If the vessel is operating with reduced manning or equipment requirements under § 176.114 of this subchapter.

(b) On a vessel with other than an oceans or coastwise route, as an alternative to making an announcement which complies with paragraph (a) of this section, the master or other designated person may:

(1) Make an abbreviated announcement consisting of:

(i) A statement that passengers should follow the instructions of the crew in an emergency;

(ii) The location of lifejackets; and

(iii) That further information concerning emergency procedures including the donning of lifejackets, location of other emergency equipment, and emergency evacuation procedures are located on the card or pamphlet which was given to each passenger or is located near each seat; and

(2) Prior to getting underway, deliver to each passenger or, on a vessel which does not carry vehicles and which has seats for each passenger, place near each seat, a card or pamphlet which has the information listed in paragraphs (a)(1) through (a)(9) of this section.

(c) The master of a vessel shall ensure that a passenger, who boards the vessel on a voyage after the initial public announcement has been made as required by paragraphs (a) or (b) of this section, is also informed of the required safety information.

(d) On a vessel on a voyage of more than 24 hours duration, passengers shall be requested to don lifejackets and go to the appropriate embarkation station during the safety orientation. If only a small number of passengers embark at a port after the original muster has been held, these passengers shall be given the passenger safety orientation required by paragraphs (a) or

(b) of this section if another muster is not held.

§ 185.508 Wearing of lifejackets.

(a) The master of a vessel shall require passengers to don lifejackets when possible hazardous conditions exist, including, but not limited to:

(1) When transiting hazardous bars and inlets;

(2) During severe weather;

(3) In event of flooding, fire, or other events which may possibly call for evacuation; and

(4) When the vessel is being towed, except a nonself-propelled vessel under normal operating conditions.

(b) When evaluating the need to require the donning of lifejackets, the master shall consider the size of the vessel and the location of the passengers on the vessel.

(c) Any passenger or crew member shall be permitted to voluntarily don a lifejacket whenever he or she desires.

(d) The master or crew shall assist each passenger in obtaining a lifejacket and donning it, as necessary.

§ 185.510 Emergency instructions.

(a) Except as otherwise provided in this section, the master shall prepare and post durable emergency instruction placards in conspicuous places accessible and visible to the crew and passengers.

(b) Except when in the judgment of the cognizant OCMI the operation of a vessel does not present one of the hazards listed, the emergency instruction placard must contain at least the applicable portions of the "Emergency Instructions" listed in § 185.512. The emergency instructions must be further designed to address the particular equipment, arrangement, and operation of each individual vessel.

(c) If the cognizant OCMI determines that there is no suitable mounting surface aboard the vessel, the emergency instructions need not be posted but must be carried aboard the vessel and be available to the crew and passengers for familiarization.

§ 185.512 Emergency instruction placard format.

An emergency instruction placard containing the following information will satisfy the requirements of § 185.510.

EMERGENCY INSTRUCTIONS

(1) *Rough weather at sea, crossing hazardous bars, or flooding.*

(i) Close all watertight and weathertight doors, hatches, and airports to prevent taking water aboard or further flooding in the vessel.

(ii) Keep bilges dry to prevent loss of stability due to water in bilges. Use power driven bilge pump, hand pump, and buckets to dewater.

(iii) Align fire pumps to use as bilge pump if possible.

(iv) Check all intake and discharge lines, which penetrate the hull, for leakage.

(v) Passengers must remain seated and evenly distributed.

(vi) Passengers must don lifejackets if the going becomes very rough, you are about to cross a hazardous bar, or when otherwise instructed by the master.

(vii) Never abandon the vessel unless actually forced to do so.

(viii) If assistance is needed follow the procedures on the emergency broadcast placard posted by the radiotelephone.

(ix) Prepare survival craft (life floats, (inflatable) rafts, (inflatable) buoyant apparatus, boats) for launching.

(2) *Man overboard.*

(i) Throw a ring buoy overboard as close to the person as possible.

(ii) Post a lookout to keep the person overboard in sight.

(iii) Launch rescue boat and maneuver to pick up person in the water, or maneuver the vessel to pick up the person in the water.

(iv) Have crew member put on lifejacket, attach a safety line to him or her, and have him or her stand by to jump into the water to assist the person overboard if necessary.

(v) If person is not immediately located, notify Coast Guard and other vessels in vicinity by radiotelephone.

(vi) Continue search until released by Coast Guard.

(3) *Fire.*

(i) Cut off air supply to fire—close items such as hatches, ports, doors, ventilators, and louvers, and shut off ventilation system.

(ii) Cut off electrical system supplying affected compartment if possible.

(iii) If safe, immediately use portable fire extinguishers at base of flames for flammable liquid or grease fires or water for fires in ordinary combustible materials. Do not use water on electrical fires.

(iv) If fire is in machinery spaces, shut off fuel supply and ventilation and activate fixed extinguishing system if installed.

(v) Maneuver vessel to minimize effect of wind on fire.

(vi) If unable to control fire, immediately notify the Coast Guard and other craft in the vicinity by radiotelephone.

(vii) Move passengers away from fire, have them put on lifejackets, and if necessary, prepare to abandon the vessel.

§ 185.514 Station bill.

(a) A station bill must be posted by the master on a vessel of more than 65 feet in length having a Certificate of Inspection requiring more than four crew members at any one time, including the master.

(b) The station bill required by paragraph (a) of this section must set forth the special duties and duty station of each crew member for various emergencies. The duties must, as far as possible, be comparable with the regular work of the individual. The duties must include at least the following and any other duties necessary for the proper handling of a particular emergency:

(1) The closing of hatches, airports, watertight doors, vents, scuppers, and valves for intake and discharge lines which penetrate the hull, the stopping of fans and ventilating systems, and the operating of all safety equipment;

(2) The preparing and launching of survival craft and rescue boats;

(3) The extinguishing of fire; and

(4) The mustering of passengers including the following:

(i) Warning the passengers;

(ii) Seeing that they are dressed and have put on their lifejackets.

(iii) Assembling the passengers and directing them to their appointed stations; and

(iv) Keeping order in the passageways and stairways and generally controlling the movement of the passengers.

(c) The station bill must be posted at the operating station and in a conspicuous location in each crew accommodation space.

§ 185.516 Lifejacket placards.

(a) Placards containing instructions for the donning and use of the lifejackets aboard the vessel must be posted in conspicuous places which are regularly accessible and visible to the crew and passengers.

(b) If the cognizant OCMI determines that there is no suitable mounting surface aboard the vessel, the lifejacket placards need not be posted but must be carried aboard the vessel and be available to the crew and passengers for familiarization.

§ 185.518 Inflatable survival craft placards.

(a) Every vessel equipped with an inflatable survival craft must have posted in conspicuous places which are regularly accessible and visible to the crew and passengers, and by each inflatable survival craft, approved placards or other cards containing instructions for launching and inflating inflatable survival craft for the information of persons on board. The number and location of such placards for a particular vessel must be acceptable to the cognizant OCMI.

(b) Under the requirement in § 160.051–6(c)(1) of this chapter, the manufacturer of approved inflatable liferafts is required to provide approved placards containing such instructions with each liferaft. Similar placards must be used for other inflatable survival craft.

§ 185.520 Abandon ship and man overboard drills and training.

(a) The master shall conduct sufficient drills and give sufficient instructions to make sure that all crew members are familiar with their duties during emergencies which necessitate abandoning ship or the recovery of persons who have fallen overboard.

(b) Each abandon ship drill must include:

(1) Summoning the crew to report to assigned stations and prepare for assigned duties;

(2) Summoning passengers on a vessel on an overnight voyage to muster stations or embarkation stations and ensuring that they are made aware of how the order to abandon ship will be given;

(3) Checking that passengers and crew are suitably dressed;

(4) Checking that lifejackets are correctly donned;

(5) Operation of any davits used for launching liferafts; and

(6) Instruction on the automatic and manual deployment of survival craft.

(c) Each abandon ship drill must, as far as practicable, be conducted as if there were an actual emergency.

(d) Each rescue boat required in accordance with § 180.210 of this subchapter must be launched with its assigned crew aboard and maneuvered in the water as if during an actual man overboard situation:

(1) Once each month, if reasonable and practicable; but

(2) At least once within a 3 month period before the vessel gets underway with passengers.

(e) Onboard training in the use of davit launched liferafts must take place at intervals of not more than 4 months on a vessel with a davit launched liferaft. Whenever practicable, this must include the inflation and lowering of a liferaft. If a special liferaft intended for training purposes only is used, and is not part of the vessel's lifesaving equipment, the special liferaft must be conspicuously marked.

§ 185.524 Fire fighting drills and training.

(a) The master shall conduct sufficient fire drills to make sure that each crew member is familiar with his or her duties in case of a fire.

(b) Each fire drill must include:

(1) Summoning passengers on a vessel on an overnight voyage to muster or embarkation stations;

(2) Summoning the crew to report to assigned stations and to prepare for and demonstrate assigned duties; and

(3) Instruction in the use of fire extinguishers and any other fire fighting equipment on board.

(c) Each fire drill must, as far as practicable, be conducted as if there were an actual emergency.

§ 185.530 Responsibilities of licensed individuals.

Nothing in the emergency instructions or a station bill required by this subpart exempts any licensed individual from the exercise of good judgment in an emergency situation.

Subpart F—Markings Required

§ 185.602 Hull markings.

(a) This section applies to each vessel that fits into any one of the following categories:

(1) A vessel of more than 65 feet (19.8 meters) in length.

(2) A sailing vessel of more than 5 feet (19.8 meters) in length.

(3) A vessel authorized to carry more than 160 passengers.

(4) A vessel authorized to carry more than 12 passengers on an international voyage.

(5) A vessel with more than 1 deck above the bulkhead deck exlusive of a pilot house.

(b) Each vessel must be marked as required by part 67 of this chapter.

(c) Each vessel which complies with the stability requirements of §§ 170.170, 170.173, 171.050, 171.055, and 171.057 of this chapter, in accordance with § 178.310 of this subchapter, must:

(1) Have permanent draft marks at each end of the vessel; or

(2) Have permanent loading marks placed on each side of the vessel forward, amidships, and aft to indicate the maximum allowable draft and trim.

(d) A loading mark required by paragraph (c)(2) of this section must be a horizontal line of at least 8 inches in length and 1 inch in height, with its upper edge passing through the point of maximum draft. The loading mark must be painted in a contrasting color to the sideshell paint.

(e) On a vessel which has a load line, the amidships marks required by paragraph (c)(2) of this section will be those required by the International Load Line Convention.

(f) In cases where draft marks are obscured due to operational constaints or by protrusions, the vessel must be fitted with a reliable draft indicating system from which the bow and stern drafts can be determined.

(g) On a vessel on which the number of passengers permitted on upper decks is limited by stability criteria, as indicated by the vessel's stability letter, the maximum number of passengers allowed on an upper deck must be indicated by a durable marking of at

least 1 inch numbers and letters at the entranceway to each such deck.

§ 185.604 Lifesaving equipment markings.

(a) The name of a vessel must be marked or painted in clearly legible letters and numbers at least 3 inches high:

(1) On each side of the bow of each rescue boat; and

(2) On each life float and buoyant apparatus.

(b) Each lifejacket, immersion suit, and ring life buoy must be marked in clearly legible block capital letters with the vessel's name. The marking is not required on a lifejacket carried to meet a temporary need for additional lifejackets, if the lifejacket has the name of another vessel marked on it. For an immersion suit, the name of the person to whom the immersion suit is assigned is an acceptable alternative to the name of the vessel.

(c) The name of the vessel must be marked or painted in clearly legible letters on each Emergency Position Indicating Radio Beacon (EPIRB), except on an EPIRB in an inflatable liferaft.

(d) The number of persons capacity must be marked or painted in clearly legible letters on each side of the bow of each rescue boat in letters and numbers at least 1.5 inches high.

(e) The number of persons capacity must be marked or painted in clearly legible letters on each life float and buoyant apparatus in letters and numbers at least 1.5 inches high. This number must:

(1) Be the number of persons the device is equipped for; and

(2) Not be greater than the number of persons the device is approved for as shown on its nameplate.

(f) The number of persons each inflatable liferaft is permitted to accommodate must be marked or painted in clearly legible letters and numbers at least 1.5 inches high on the inflatable liferaft container.

(g) The number and identification of the items stowed inside, and their sizes, must be marked in clearly legible letters and numbers on each container for lifejackets and immersion suits. Identification of the items may be in words, or the appropriate symbols in IMO Resolution A.603(15). Letters and numbers must be at least 2 inches high. Symbols must be at least 100 mm (4 inches) square.

(h) The name of the vessel must be marked or painted in clearly legible letters on each oar and paddle.

(i) Each lifejacket must be marked with Type I retroreflective material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material applied after [effective date of the final rule] must be as specified by IMO Resolution A.658(16).

(j) Each rescue boat and ring life buoy must be marked with Type II retroreflective material approved under part 164, subpart 164.018 of this chapter. The arrangement of the retroreflective material applied after [insert effective date of the final rule] must be as specified by IMO Resolution A.658(16).

§ 185.606 Escape hatches and emergency exits.

All escape hatches and other emergency exits used as means of escape must be marked on both sides in clearly legible letters at least 2 inches high: "EMERGENCY EXIT, KEEP CLEAR", unless such markings are deemed unnecessary by the cognizant OCMI.

§ 185.608 Fuel shutoff valves.

Remote fuel shutoff stations must be marked in clearly legible letters at least 1 inch high indicating purpose of the valve and direction of operation.

§ 185.610 Watertight doors and watertight hatches.

Watertight doors and watertight hatches must be marked on both sides in clearly legible letters at least 1 inch high: "WATERTIGHT DOOR—KEEP CLOSED" or "WATERTIGHT HATCH—KEEP CLOSED", unless such markings are deemed unnecessary by the cognizant OCMI.

§ 185.612 Fire protection equipment.

(a) Complete but simple instructions for the operation of a fixed gas fire extinguishing system must be located in a conspicuous place at or near each pull box and stop valve control and in the space where the extinguishing agent cylinders are stored. If the storage cylinders are separate from the protected space, the instructions must also include a schematic diagram of the system and instructions detailing alternate methods of releasing the extinguishing agent should the local manual release or stop valve controls fail to operate. Each control valve to a distribution line must be marked to indicate the space served.

(b) An alarm for a fixed gas fire extinguishing system must be clearly and conspicuously marked "WHEN ALARM SOUNDS—VACATE AT ONCE. CARBON DIOXIDE (HALON) BEING RELEASED".

(c) Each distribution line valve of a fixed gas fire extinguishing system and the fire main, must be plainly, conspicuously, and permanently marked indicating the space served.

(d) An alarm for an automatic sprinkler system must be conspicuously marked in clearly legible letters "SPRINKLER ALARM".

(e) An alarm bell for a smoke detecting system must be conspicuously marked in clearly legible letters "SMOKE DETECTION ALARM".

(f) A control cabinet or space containing valves, manifolds, or controls for any fixed gas fire extinguishing system must be conspicuously marked in clearly legible letters "CARBON DIOXIDE (HALON) FIRE EXTINGUISHING APPARATUS", or as otherwise required by the cognizant OCMI.

Subpart G—Operational Readiness, Maintenance, and Inspection of Lifesaving Equipment

§ 185.700 Operational readiness.

(a) Each launching appliance and each survival craft and rescue boat on a vessel must be in good working order and ready for immediate use before the vessel leaves port and at all times when the vessel is underway.

(b) Each deck where survival craft or rescue boats are stowed or boarded must be kept clear of obstructions that would interfere with the boarding and launching of the survival craft or rescue boat.

§ 185.702 Maintenance.

(a) The manufacturer's instructions for onboard maintenance of survival craft, rescue boats, and launching appliances, manufactured on or after [*effective date of the final rule*], must be onboard a vessel of more than 65 feet in length and readily available for a vessel of not more than 65 feet in length. The instructions must also be readily available at each inspection for certification and reinspection. The instructions must include the following:

(1) Checklists for use when carrying out the inspections required under this subpart;

(2) Maintenance and repair instructions;

(3) A schedule of periodic maintenance;

(4) A diagram of lubrication points with the recommended lubricants;

(5) A list of replaceable parts;

(6) A list of sources of spare parts; and

(7) A log for records of inspections and maintenance.

(b) The owner or managing operator shall make sure that maintenance is carried out in accordance with the instructions required under paragraph (a) of this section.

(c) The cognizant OCMI may accept, instead of the instructions required under paragraph (a) of this section, a shipboard planned maintenance program that includes the items listed in that paragraph.

§ 185.704 Maintenance of falls.

(a) Each fall used in a launching appliance on a vessel must be turned end for end at intervals of not more than 30 months.

(b) Each fall must be renewed when necessary due to deterioration or at intervals of not more than 5 years, whichever is earlier.

(c) Each fall must have a corrosion resistant tag with the following permanently marked on it:

(1) The date the new fall was installed; and

(2) If the fall has been turned end for end, the date it was turned.

§ 185.720 Weekly maintenance and inspections.

The following tests and inspections must be carried out weekly on a vessel:

(a) Each survival craft, rescue boat, and launching appliance must be visually inspected to ensure its readiness for use;

(b) Each rescue boat engine must be run ahead and astern for not less than 3 minutes, unless the ambient temperature is below the minimum temperature required for starting the engine; and

(c) Each battery for rescue boat engine starting must be brought up to full charge at least once each week if:

(1) The battery is of a type that requires recharging; and

(2) The battery is not connected to a device that keeps it continuously charged.

§ 185.722 Monthly inspections.

Each survival craft, rescue boat, and launching appliance on a vessel must be inspected monthly, using the applicable checklist when required under § 185.702, to make sure it is complete and in good order.

§ 185.724 Quarterly inspections.

(a) Each winch control apparatus of a launching appliance on a vessel, including motor controllers, emergency switches, master switches, and limit switches, must be examined once in each 3 months.

(b) The examination required by paragraph (a) of this section must include the removal of drain plugs and the opening of drain valves to make sure that enclosures are free of water.

§ 185.726 Annual inspections.

(a) Each rescue boat must be stripped, cleaned, and thoroughly inspected and repaired at least once each year, including emptying and cleaning of each fuel tank, and refilling it with fresh fuel.

(b) Each davit, winch, fall and other launching appliance must be thoroughly inspected and repaired once each year.

(c) Each item of lifesaving equipment with an expiration date must be replaced during the annual inspection and repair if the expiration date has passed.

(d) Each battery used in an item of lifesaving equipment, except inflatable survival craft equipment, must be replaced during the annual inspection if the expiration date of the battery has passed. The expiration date of the battery may be marked on the battery or the owner or managing operator may have a record of the expiration date from the manufacturer of a battery marked with a serial number.

(e) Except for a storage battery used in a rescue boat, each battery without an expiration date indicated on it or for which the owner or managing operator does not have a record of the expiration date, used in an item of lifesaving equipment, must be replaced during the annual inspection.

(f) The requirements in this section do not relieve the master of the requirement under § 185.700 to keep the equipment ready for immediate use.

§ 185.728 Testing and servicing of Emergency Position Indicating Radiobeacons (EPIRBs).

The master of the vessel shall ensure that:

(a) Each EPIRB, other than an EPIRB in an inflatable liferaft, must be tested monthly, using the integrated test circuit and output indicator, to determine that it is operative; and,

(b) The EPIRB's battery is replaced after it is used, or before the date required by FCC regulations in 47 CFR part 80, whichever comes sooner.

§ 185.730 Servicing of inflatable liferafts, inflatable buoyant apparatus, inflatable lifejackets and inflated rescue boats.

(a) Each inflatable liferaft, inflatable buoyant apparatus, inflatable lifejacket, and hybrid inflatable lifejacket or work vest must be serviced:

(1) Within 12 months of its initial packing; and

(2) Within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months.

(b) Each inflatable liferaft and inflatable buoyant apparatus must be serviced:

(1) Whenever the container of the raft is damaged, or the straps or seal are broken; and

(2) In accordance with the servicing procedure under part 160, subpart 160.051 of this chapter.

(c) Each inflatable lifejacket must be serviced in accordance with the servicing procedure under part 160, subpart 160.176 of this chapter.

(d) Each hybrid inflatable lifejacket or work vest must be serviced in accordance with the servicing procedure under part 160, subpart 160.077 of this chapter.

(e) Repair and maintenance of inflated rescue boats must be in accordance with the manufacturer's instructions. All repairs must be made at a servicing facility approved by the Commandant, except for emergency repairs carried out on board the vessel.

§ 185.740 Periodic servicing of hydrostatic release units.

(a) Each hydrostatic release unit, other than a disposable unit, must be serviced:

(1) Within 12 months of its manufacture and within 12 months of each subsequent servicing, except when servicing is delayed until the next scheduled inspection of the vessel, provided that the delay does not exceed 5 months; and

(2) In accordance with the repair and testing procedures under part 160, subpart 160.062 of this chapter.

(b) Each disposable hydrostatic release unit must be marked with an expiration date of two years after the date on which the unit is installed.

Subpart H—Penalties

§ 185.900 Penalty for violations.

Violation of the provisions of this subchapter will subject the violator to the applicable penalty provisions of Subtitle II of Title 46, United States Code.

§ 185.910 Suspension and revocation.

An individual holding a license, certificate of registry, or merchant mariner's document who commits an act of misconduct, negligence, or incompetence, or who violates or fails to comply with this subchapter or any other law or regulation intending to promote marine safety, is subject to proceedings under the provisions of 46 U.S.C. 7703 and part 5 of this chapter with respect to suspension or revocation of a license, certificate, or document.

Signed: December 21, 1993.
J. W. Kime,
Admiral, U.S. Coast Guard Commandant.
[FR Doc. 94–19 Filed 1–12–94; 8:45 am]
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federal register

Thursday
January 13, 1994

Part III

Office of Personnel Management

The President's Pay Agent; Notice

OFFICE OF PERSONNEL MANAGEMENT

The President's Pay Agent

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: The Office of Personnel Management, on behalf of the President's Pay Agent, is providing herein the tables showing locality rates of pay effective on the first day of the first pay period beginning on or after January 1, 1994, for General Schedule employees in each of the locality pay areas that the Pay Agent established. These salary tables are based on the 1993 General Schedule and reflect the locality pay percentages authorized by the President in his December 1, 1993, Memorandum for the President's Pay Agent (58 FR 64097, December 3, 1993).

Also included are tables showing 1994 pay rates for law enforcement officers, employees receiving interim geographic adjustments, the Senior Executive Service, employees in senior-level and scientific or professional positions, administrative law judges, members of boards of contract appeals, and individuals covered by the Executive Schedule. The 1993 General Schedule is included because it continues to apply to employees in Alaska, Hawaii, and all areas outside the United States and must also be used for certain pay administration purposes. Finally, the exact definition of each locality pay area also is included.

For the President's Pay Agent:

Lorraine A. Green,

Deputy Director.

1994 Salary Tables—General Schedule and Locality Rates of Pay

January 1994

The rates of pay for the General Schedule were authorized under Executive order 12826 of December 30, 1992, and became effective in January 1993. Public Law 103–123, October 28, 1993, canceled the general pay adjustment for the General Schedule for 1994.

Locality-based comparability payments are authorized under 5 U.S.C. 5304. The attached 1994 salary tables show the locality rates of pay for General Schedule employees in each of the 28 locality pay areas. The locality rates of pay are computed based on the annual rates shown on the General Schedule (salary table 94–GS) and reflect the locality pay percentages authorized by the President on December 1, 1993. The locality rates of pay are considered basic pay for retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. They are also used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. They are *NOT* considered basic pay for any other purpose.

SALARY TABLE NO. 94–GS—1994 GENERAL SCHEDULE

[Effective January 1993]

	Annual rates by grade and step										Within grade increase amounts
	1	2	3	4	5	6	7	8	9	10	
GS–1	$11,903	$12,300	$12,695	$13,090	$13,487	$13,720	$14,109	$14,503	$14,521	$14,891	VARIES
GS–2	13,382	13,701	14,145	14,521	14,683	15,115	15,547	15,979	16,411	16,843	VARIES
GS–3	14,603	15,090	15,577	16,064	16,551	17,038	17,525	18,012	18,499	18,986	$487
GS–4	16,393	16,939	17,485	18,031	18,577	19,123	19,669	20,215	20,761	21,307	546
GS–5	18,340	18,951	19,562	20,173	20,784	21,395	22,006	22,617	23,228	23,839	611
GS–6	20,443	21,124	21,805	22,486	23,167	23,848	24,529	25,210	25,891	26,572	681
GS–7	22,717	23,474	24,231	24,988	25,745	26,502	27,259	28,016	28,773	29,530	757
GS–8	25,159	25,998	26,837	27,676	28,515	29,354	30,193	31,032	31,871	32,710	839
GS–9	27,789	28,715	29,641	30,567	31,493	32,419	33,345	34,271	35,197	36,123	926
GS–10	30,603	31,623	32,643	33,663	34,683	35,703	36,723	37,743	38,763	39,783	1,020
GS–11	33,623	34,744	35,865	36,986	38,107	39,228	40,349	41,470	42,591	43,712	1,121
GS–12	40,298	41,641	42,984	44,327	45,670	47,013	48,356	49,699	51,042	52,385	1,343
GS–13	47,920	49,517	51,114	52,711	54,308	55,905	57,502	59,099	60,696	62,293	1,597
GS–14	56,627	58,515	60,403	62,291	64,179	66,067	67,955	69,843	71,731	73,619	1,888
GS–15	66,609	68,829	71,049	73,269	75,489	77,709	79,929	82,149	84,369	86,589	2,220

SALARY TABLE NO. 94–ATL—INCORPORATING THE 3.86 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ATLANTA, GA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,362	$12,775	$13,189	$13,595	$14,008	$14,250	$14,654	$15,063	$15,082	$15,466
GS–2	13,899	14,230	14,691	15,082	15,250	15,698	16,147	16,596	17,044	17,493
GS–3	15,167	15,672	16,178	16,684	17,190	17,696	18,201	18,707	19,213	19,719
GS–4	17,026	17,593	18,160	18,727	19,294	19,861	20,428	20,995	21,562	22,129
GS–5	19,048	19,683	20,317	20,952	21,586	22,221	22,855	23,490	24,125	24,759
GS–6	21,232	21,939	22,647	23,354	24,061	24,769	25,476	26,183	26,890	27,598
GS–7	23,594	24,380	25,166	25,953	26,739	27,525	28,311	29,097	29,884	30,670
GS–8	26,130	27,002	27,873	28,744	29,616	30,487	31,358	32,230	33,101	33,973
GS–9	28,862	29,823	30,785	31,747	32,709	33,670	34,632	35,594	36,556	37,517
GS–10	31,784	32,844	33,903	34,962	36,022	37,081	38,141	39,200	40,259	41,319

SALARY TABLE NO. 94–ATL—INCORPORATING THE 3.86 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ATLANTA, GA—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–11	34,921	36,085	37,249	38,414	39,578	40,742	41,906	43,071	44,235	45,399
GS–12	41,854	43,248	44,643	46,038	47,433	48,828	50,223	51,617	53,012	54,407
GS–13	49,770	51,428	53,087	54,746	56,404	58,063	59,722	61,380	63,039	64,698
GS–14	58,813	60,774	62,735	64,695	66,656	68,617	70,578	72,539	74,500	76,461
GS–15	69,180	71,486	73,791	76,097	78,403	80,709	83,014	85,320	87,626	89,931

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–BOS—INCORPORATING THE 5.47 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF BOSTON-WORCESTER-LAWRENCE, MA–NH–ME–CT

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,554	$12,973	$13,389	$13,806	$14,225	$14,470	$14,881	$15,296	$15,315	$15,706
GS–2	14,114	14,450	14,919	15,315	15,486	15,942	16,397	16,853	17,309	17,764
GS–3	15,402	15,915	16,429	16,943	17,456	17,970	18,484	18,997	19,511	20,025
GS–4	17,290	17,866	18,441	19,017	19,593	20,169	20,745	21,321	21,897	22,472
GS–5	19,343	19,988	20,632	21,276	21,921	22,565	23,210	23,854	24,499	25,143
GS–6	21,561	22,279	22,998	23,716	24,434	25,152	25,871	26,589	27,307	28,025
GS–7	23,960	24,758	25,556	26,355	27,153	27,952	28,750	29,548	30,347	31,145
GS–8	26,535	27,420	28,305	29,190	30,075	30,960	31,845	32,729	33,614	34,499
GS–9	29,309	30,286	31,262	32,239	33,216	34,192	35,169	36,148	37,122	38,099
GS–10	32,277	33,353	34,429	35,504	36,580	37,656	38,732	39,808	40,883	41,959
GS–11	35,462	36,644	37,827	39,009	40,191	41,374	42,556	43,738	44,921	46,103
GS–12	42,502	43,919	45,335	46,752	48,168	49,585	51,001	52,418	53,834	55,250
GS–13	50,541	52,226	53,910	55,594	57,279	58,963	60,647	62,332	64,016	65,700
GS–14	59,724	61,716	63,707	65,698	67,690	69,681	71,672	73,663	75,655	77,646
GS–15	70,253	72,594	74,935	77,277	79,618	81,960	84,301	86,643	88,984	91,325

Note: Law enforcement officers are entitled to higher rates of pay under salary table 94–BOS (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–CHI—INCORPORATING THE 5.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL–IN–WI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,539	$12,957	$13,373	$13,789	$14,207	$4,453	$14,862	$15,277	$15,296	$15,686
GS–2	14,097	14,433	14,900	15,296	15,467	15,922	16,377	16,832	17,287	17,742
GS–3	15,383	15,896	16,409	16,922	17,435	17,948	18,461	18,974	19,487	20,000
GS–4	17,268	17,844	18,419	18,994	19,569	20,144	20,719	21,294	21,870	22,445
GS–5	19,319	19,963	20,607	21,250	21,894	22,537	23,181	23,825	24,468	25,112
GS–6	21,535	22,252	22,969	23,687	24,404	25,121	25,839	26,556	27,274	27,991
GS–7	23,930	24,728	25,525	26,322	27,120	27,917	28,715	29,512	30,309	31,107
GS–8	26,502	27,386	28,270	29,154	30,038	30,922	31,805	32,689	33,573	34,457
GS–9	29,273	30,248	31,224	32,199	33,175	34,150	35,126	36,101	37,077	38,052
GS–10	32,237	33,312	34,386	35,461	36,535	37,610	38,684	39,758	40,833	41,907
GS–11	35,418	36,599	37,780	38,961	40,142	41,323	42,504	43,684	44,865	46,046
GS–12	42,450	43,865	45,279	46,694	48,109	49,523	50,938	52,353	53,768	55,182
GS–13	50,479	52,161	53,843	55,526	57,208	58,890	60,573	62,255	63,937	65,619
GS–14	59,651	61,640	63,629	65,617	67,606	69,595	71,584	73,573	75,561	77,550
GS–15	70,166	72,504	74,843	77,182	79,520	81,859	84,197	86,536	88,874	91,213

Note: Law enforcement officers receiving statutory special salary rates are entitled to higher rates of pay under salary table 94–CHI (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–CIN—INCORPORATING THE 4.22 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CINCINNATI-HAMILTON, OH–KY–IN

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,405	$12,819	$13,231	$13,642	$14,056	$14,299	$14,704	$15,115	$15,134	$15,519
GS–2	13,947	14,279	14,742	15,134	15,303	15,753	16,203	16,653	17,104	17,554
GS–3	15,219	15,727	16,234	16,742	17,249	17,757	18,265	18,772	19,280	19,787
GS–4	17,085	17,654	18,223	18,792	19,361	19,930	20,499	21,068	21,637	22,206
GS–5	19,114	19,751	20,388	21,024	21,661	22,298	22,935	23,571	24,208	24,845
GS–6	21,306	22,015	22,725	23,435	24,145	24,854	25,564	26,274	26,984	27,693
GS–7	23,676	24,465	25,254	26,042	26,831	27,620	28,409	29,198	29,987	30,776
GS–8	26,221	27,095	27,970	28,844	29,718	30,593	31,467	32,342	33,216	34,090
GS–9	28,962	29,927	30,892	31,857	32,822	33,787	34,752	35,717	36,682	37,647
GS–10	31,894	32,957	34,021	35,084	36,147	37,210	38,273	39,336	40,399	41,462
GS–11	35,042	36,210	37,379	38,547	39,715	40,883	42,052	43,220	44,388	45,557
GS–12	41,999	43,398	44,798	46,198	47,597	48,997	50,397	51,796	53,196	54,596
GS–13	49,942	51,607	53,271	54,935	56,600	58,264	59,929	61,593	63,257	64,922
GS–14	59,017	60,984	62,952	64,920	66,887	68,855	70,823	72,790	74,758	76,726
GS–15	69,420	71,734	74,047	76,361	78,675	80,988	83,302	85,616	87,929	90,243

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–CLE—INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,066	16,513	16,959	17,406
GS–3	15,091	15,594	16,097	16,601	17,104	17,607	18,110	18,614	19,117	19,620
GS–4	16,941	17,505	18,069	18,633	19,197	19,762	20,326	20,890	21,454	22,019
GS–5	18,953	19,584	20,215	20,847	21,478	22,110	22,741	23,372	24,004	24,635
GS–6	21,126	21,830	22,533	23,237	23,941	24,645	25,348	26,052	26,756	27,460
GS–7	23,476	24,258	25,040	25,823	26,605	27,387	28,169	28,952	29,734	30,516
GS–8	25,999	26,866	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803
GS–9	28,717	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330
GS–10	31,625	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112
GS–11	34,746	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,481

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DFW—INCORPORATING THE 4.21 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DALLAS-FORT WORTH, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,404	$12,818	$13,229	$13,641	$14,055	$14,298	$14,703	$15,114	$15,132	$15,518
GS–2	13,945	14,278	14,741	15,132	15,301	15,751	16,202	16,652	17,102	17,552
GS–3	15,218	15,725	16,233	16,740	17,248	17,755	18,263	18,770	19,278	19,785
GS–4	17,083	17,652	18,221	18,790	19,359	19,928	20,497	21,066	21,635	22,204
GS–5	19,112	19,749	20,386	21,022	21,659	22,296	22,932	23,569	24,206	24,843
GS–6	21,304	22,013	22,723	23,433	24,142	24,852	25,562	26,271	26,981	27,691
GS–7	23,673	24,462	25,251	26,040	26,829	27,618	28,407	29,195	29,984	30,773
GS–8	26,218	27,093	27,967	28,841	29,715	30,590	31,464	32,338	33,213	34,087
GS–9	28,959	29,924	30,889	31,854	32,819	33,784	34,749	35,714	36,679	37,644
GS–10	31,891	32,954	34,017	35,080	36,143	37,206	38,269	39,332	40,395	41,458
GS–11	35,039	36,207	37,375	38,543	39,711	40,879	42,048	43,216	44,384	45,552
GS–12	41,995	43,394	44,794	46,193	47,593	48,992	50,392	51,791	53,191	54,590
GS–13	49,937	51,602	53,266	54,930	56,594	58,259	59,923	61,587	63,251	64,916
GS–14	59,011	60,978	62,946	64,913	66,881	68,848	70,816	72,783	74,751	76,718

SALARY TABLE NO. 94–DFW—INCORPORATING THE 4.21 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DALLAS-FORT WORTH, TX—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	69,413	71,727	74,040	76,354	78,667	80,981	83,294	85,607	87,921	90,234

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DAY—INCORPORATING THE 3.77 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DAYTON-SPRINGFIELD, OH

[Effective January 1994]

	Annual Rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,352	$12,764	$13,174	$13,583	$13,995	$14,237	$14,641	$15,050	$15,068	$15,452
GS–2	13,887	14,218	14,678	15,068	15,237	15,685	16,133	16,581	17,030	17,478
GS–3	15,154	15,659	16,164	16,670	17,175	17,680	18,186	18,691	19,196	19,702
GS–4	17,011	17,578	18,144	18,711	19,277	19,844	20,411	20,977	21,544	22,110
GS–5	19,031	19,665	20,299	20,934	21,568	22,202	22,836	23,470	24,104	24,738
GS–6	21,214	21,920	22,627	23,334	24,040	24,747	25,454	26,160	26,867	27,574
GS–7	23,573	24,359	25,145	25,930	26,716	27,501	28,287	29,072	29,858	30,643
GS–8	26,107	26,978	27,849	28,719	29,590	30,461	31,331	32,202	33,073	33,943
GS–9	28,837	29,798	30,758	31,719	32,680	33,641	34,602	35,563	36,524	37,485
GS–10	31,757	32,815	33,874	34,932	35,991	37,049	38,107	39,166	40,224	41,283
GS–11	34,891	36,054	37,217	38,380	39,544	40,707	41,870	43,033	44,197	45,360
GS–12	41,817	43,211	44,604	45,998	47,392	48,785	50,179	51,573	52,966	54,360
GS–13	49,727	51,384	53,041	54,698	56,355	58,013	59,670	61,327	62,984	64,641
GS–14	58,762	60,721	62,680	64,639	66,599	68,558	70,517	72,476	74,435	76,394
GS–15	69,120	71,424	73,728	76,031	78,335	80,639	82,942	85,246	87,550	89,853

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DEN—INCORPORATING THE 4.54 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DENVER-BOULDER-GREELEY, CO

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,443	$12,858	$13,271	$13,684	$14,099	$14,343	$14,750	$15,161	$15,180	$15,567
GS–2	13,990	14,323	14,787	15,180	15,350	15,801	16,253	16,704	17,156	17,608
GS–3	15,266	15,775	16,284	16,793	17,302	17,812	18,321	18,830	19,339	19,848
GS–4	17,137	17,708	18,279	18,850	19,420	19,991	20,562	21,133	21,704	22,274
GS–5	19,173	19,811	20,450	21,089	21,728	22,366	23,005	23,644	24,283	24,921
GS–6	21,371	22,083	22,795	23,507	24,219	24,931	25,643	26,355	27,066	27,778
GS–7	23,748	24,540	25,331	26,122	26,914	27,705	28,497	29,288	30,079	30,871
GS–8	26,301	27,178	28,055	28,932	29,810	30,687	31,564	32,441	33,318	34,195
GS–9	29,051	30,019	30,987	31,955	32,923	33,891	34,859	35,827	36,795	37,763
GS–10	31,992	33,059	34,125	35,191	36,258	37,324	38,390	39,457	40,523	41,589
GS–11	35,149	36,321	37,493	38,665	39,837	41,009	42,181	43,353	44,525	45,697
GS–12	42,128	43,532	44,935	46,339	47,743	49,147	50,551	51,955	53,359	54,763
GS–13	50,096	51,765	53,435	55,104	56,774	58,443	60,113	61,782	63,452	65,121
GS–14	59,198	61,172	63,145	65,119	67,093	69,066	71,040	73,014	74,988	76,961
GS–15	69,633	71,954	74,275	76,595	78,916	81,237	83,558	85,879	88,199	90,520

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DET—INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,479	$12,895	$13,309	$13,724	$14,140	$14,384	$14,792	$15,205	$15,224	$15,612
GS–2	14,030	14,364	14,830	15,224	15,394	15,847	16,299	16,752	17,205	17,658
GS–3	15,310	15,820	16,331	16,841	17,352	17,863	18,373	18,884	19,394	19,905

SALARY TABLE NO. 94–DET—INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–4	17,186	17,759	18,331	18,904	19,476	20,049	20,621	21,193	21,766	22,338
GS–5	19,228	19,868	20,509	21,149	21,790	22,431	23,071	23,712	24,352	24,993
GS–6	21,432	22,146	22,860	23,574	24,288	25,002	25,716	26,430	27,144	27,858
GS–7	23,817	24,610	25,404	26,197	26,991	27,785	28,578	29,372	30,166	30,959
GS–8	26,377	27,256	28,136	29,016	29,895	30,775	31,654	32,534	33,414	34,293
GS–9	29,134	30,105	31,076	32,046	33,017	33,988	34,959	35,930	36,901	37,871
GS–10	32,084	33,154	34,223	35,292	36,362	37,431	38,500	39,570	40,639	41,708
GS–11	35,250	36,426	37,601	38,776	39,951	41,127	42,302	43,477	43,652	45,828
GS–12	42,248	43,656	45,064	46,472	47,880	49,288	50,696	52,104	53,512	54,920
GS–13	50,239	51,914	53,588	55,262	56,937	58,611	60,285	61,959	63,634	65,308
GS–14	59,368	61,347	63,327	65,306	67,285	69,265	71,244	73,223	75,203	77,182
GS–15	69,833	72,160	74,488	76,815	79,143	81,470	83,798	86,125	88,452	90,780

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–HOU—INCORPORATING THE 6.52 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF HOUSTON-GALVESTON-BRAZORIA, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,679	$13,102	$13,523	$13,943	$14,366	$14,615	$15,029	$15,449	$15,468	$15,862
GS–2	14,255	14,594	15,067	15,468	15,640	16,100	16,561	17,021	17,481	17,941
GS–3	15,555	16,074	16,593	17,111	17,630	18,149	18,668	19,186	19,705	20,224
GS–4	17,462	18,043	18,625	19,207	19,788	20,370	20,951	21,533	22,115	22,696
GS–5	19,536	20,187	20,837	21,488	22,139	22,790	23,441	24,092	24,742	25,393
GS–6	21,776	22,501	23,227	23,952	24,677	25,403	26,128	26,854	27,579	28,304
GS–7	24,198	25,005	25,811	26,617	27,424	28,230	29,036	29,843	30,649	31,455
GS–8	26,799	27,693	28,587	29,480	30,374	31,268	32,162	33,055	33,949	34,843
GS–9	29,601	30,587	31,574	32,560	33,546	34,533	35,519	36,505	37,492	38,478
GS–10	32,598	33,685	34,771	35,858	36,944	38,031	39,117	40,204	41,290	42,377
GS–11	35,815	37,009	38,203	39,397	40,592	41,786	42,980	44,174	45,368	46,562
GS–12	42,925	44,356	45,787	47,217	48,648	50,078	51,509	52,939	54,370	55,801
GS–13	51,044	52,746	54,447	56,148	57,849	59,550	61,251	62,952	64,653	66,355
GS–14	60,319	62,330	64,341	66,352	68,363	70,375	72,386	74,397	76,408	78,419
GS–15	70,952	73,317	75,681	78,046	80,411	82,776	85,140	87,505	89,870	92,235

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–HNT—INCORPORATING THE 4.10 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF HUNTSVILLE, AL

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,391	$12,804	$13,215	$13,627	$14,040	$14,283	$14,687	$15,098	$15,116	$15,502
GS–2	13,931	14,263	14,725	15,116	15,285	15,735	16,184	16,634	17,084	17,534
GS–3	15,202	15,709	16,216	16,723	17,230	17,737	18,244	18,750	19,257	19,764
GS–4	17,065	17,633	18,202	18,770	19,339	19,907	20,475	21,044	21,612	22,181
GS–5	19,092	19,728	20,364	21,000	21,636	22,272	22,908	23,544	24,180	24,816
GS–6	21,281	21,990	22,699	23,408	24,117	24,826	25,535	26,244	26,953	27,661
GS–7	23,648	24,436	25,224	26,013	26,801	27,589	28,377	29,165	29,953	30,741
GS–8	26,191	27,064	27,937	28,811	29,684	30,558	31,431	32,304	33,178	34,051
GS–9	28,928	29,892	30,856	31,820	32,784	33,748	34,712	35,676	36,640	37,604
GS–10	31,858	32,920	33,981	35,043	36,105	37,167	38,229	39,290	40,352	41,414
GS–11	35,002	36,169	37,336	38,502	39,669	40,836	42,003	43,170	44,337	45,504
GS–12	41,950	43,348	44,746	46,144	47,542	48,941	50,339	51,737	53,135	54,533
GS–13	49,885	51,547	53,210	54,872	56,535	58,197	59,860	61,522	63,185	64,847
GS–14	58,949	60,914	62,880	64,845	66,810	68,776	70,741	72,707	74,672	76,637
GS–15	69,340	71,651	73,962	76,273	78,584	80,895	83,206	85,517	87,828	90,139

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94—IND—INCORPORATING THE 3.68 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,341	$12,753	$13,162	$13,572	$13,983	$14,225	$14,628	$15,037	$15,055	$15,439
GS–2	13,874	14,205	14,666	15,055	15,223	15,671	16,119	16,567	17,015	17,463
GS–3	15,140	15,645	16,150	16,655	17,160	17,665	18,170	18,675	19,180	19,685
GS–4	16,996	17,562	18,128	18,695	19,261	19,827	20,393	20,959	21,525	22,091
GS–5	19,015	19,648	20,282	20,915	21,549	22,182	22,816	23,449	24,083	24,716
GS–6	21,195	21,901	22,607	23,313	24,020	24,726	25,432	26,138	26,844	27,550
GS–7	23,553	24,338	25,123	25,908	26,692	27,477	28,262	29,047	29,832	30,617
GS–8	26,085	26,995	27,825	28,694	29,564	30,434	31,304	32,174	33,044	33,914
GS–9	28,812	29,772	30,732	31,692	32,652	33,612	34,572	35,532	36,492	37,452
GS–10	31,729	32,787	33,844	34,902	35,959	37,017	38,074	39,132	40,189	41,247
GS–11	34,860	36,023	37,185	38,347	39,509	40,672	41,834	42,996	44,158	45,321
GS–12	41,781	43,173	44,566	45,958	47,351	48,743	50,136	51,528	52,920	54,313
GS–13	49,683	51,339	52,995	54,651	56,307	57,962	59,618	61,274	62,930	64,585
GS–14	58,711	60,668	62,626	64,583	66,541	68,498	70,456	72,413	74,371	76,328
GS–15	69,060	71,362	73,664	75,965	78,267	80,569	82,870	85,172	87,474	89,775

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–KC—INCORPORATING THE 3.30 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF KANSAS CITY, MO–KS

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,296	$12,706	$13,114	$13,522	$13,932	$14,173	$14,575	$14,982	$15,000	$15,382
GS–2	13,824	14,153	14,612	15,000	15,168	15,614	16,060	16,506	16,953	17,399
GS–3	15,085	15,588	16,091	16,594	17,097	17,600	18,103	18,606	19,109	19,613
GS–4	16,934	17,498	18,062	18,626	19,190	19,754	20,318	20,882	21,446	22,010
GS–5	18,945	19,576	20,208	20,839	21,470	22,101	22,732	23,363	23,995	24,626
GS–6	21,118	21,821	22,525	23,228	23,932	24,635	25,338	26,042	26,745	27,449
GS–7	23,467	24,249	25,031	25,813	26,595	27,377	28,159	28,941	29,723	30,504
GS–8	25,989	26,856	27,723	28,589	29,456	30,323	31,189	32,056	32,923	33,789
GS–9	28,706	29,663	30,619	31,576	32,532	33,489	34,445	35,402	36,359	37,315
GS–10	31,613	32,667	33,720	34,774	35,828	36,881	37,935	38,989	40,042	41,096
GS–11	34,733	35,891	37,049	38,207	39,365	40,523	41,681	42,839	43,997	45,154
GS–12	41,628	43,015	44,402	45,790	47,177	48,564	49,952	51,339	52,726	54,114
GS–13	49,501	51,151	52,801	54,450	56,100	57,750	59,400	61,049	62,699	64,349
GS–14	58,496	60,446	62,396	64,347	66,297	68,247	70,198	72,148	74,098	76,048
GS–15	68,807	71,100	73,394	75,687	77,980	80,273	82,567	84,860	87,153	89,446

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–LA—INCORPORATING THE 5.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCAITY PAY AREA OF LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA, (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE)

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,580	$13,000	$13,417	$13,835	$14,254	$14,501	$14,912	$15,328	$15,347	$15,738
GS–2	14,143	14,481	14,950	15,347	15,518	15,975	16,432	16,888	17,345	17,801
GS–3	15,434	15,949	16,463	16,978	17,493	18,007	18,522	19,037	19,552	20,066
GS–4	17,326	17,903	18,480	19,057	19,634	20,211	20,788	21,365	21,942	22,519
GS–5	19,384	20,029	20,675	21,321	21,967	22,612	23,258	23,904	24,550	25,195
GS–6	21,606	22,326	23,046	23,765	24,485	25,205	25,925	26,644	27,364	28,084
GS–7	24,010	24,810	25,610	26,410	27,210	28,010	28,810	29,610	30,410	31,210
GS–8	26,591	27,477	28,364	29,251	30,138	31,024	31,911	32,798	33,684	34,571
GS–9	29,370	30,349	31,328	32,306	33,285	34,264	35,242	36,221	37,200	38,178
GS–10	32,344	33,422	34,500	35,578	36,656	37,735	38,813	39,891	40,969	42,047
GS–11	35,536	36,721	37,906	39,091	40,275	41,460	42,645	43,830	45,014	46,199
GS–12	42,591	44,010	45,430	46,849	48,269	49,688	51,107	52,527	53,946	55,366
GS–13	50,647	52,335	54,022	55,710	57,398	59,086	60,774	62,462	64,150	65,837
GS–14	59,849	61,845	63,840	65,835	67,831	69,826	71,822	73,817	75,812	77,808

SALARY TABLE NO. 94–LA—INCORPORATING THE 5.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCAITY PAY AREA OF LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA, (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE)—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	70,399	72,745	75,092	77,438	79,784	82,131	84,477	86,823	89,170	91,516

Note: General Schedule employees in the Los Angeles-Riverside-Orange County, CA CMSA are entitled to higher rates of pay under salary table 94–IGA. Law enforcement officers are entitled to higher rates of pay under salary table 94–LA (LEO 1) or 94–LA (LEO 2). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–MEM—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF MEMPHIS, TN–AR–MS

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–NY—INCORPORATING THE 5.77 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY–NJ–PA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,590	$13,010	$13,428	$13,845	$14,265	$14,512	$14,923	$15,340	$15,359	$15,750
GS–2	14,154	14,492	14,961	15,359	15,350	15,987	16,444	16,901	17,358	17,815
GS–3	15,446	15,961	16,476	16,991	17,506	18,021	18,536	19,051	19,566	20,081
GS–4	17,339	17,916	18,494	19,071	19,649	20,226	20,804	21,381	21,959	22,536
GS–5	19,398	20,044	20,691	21,337	21,983	22,629	23,276	23,922	24,568	25,215
GS–6	21,623	22,343	23,063	23,783	24,504	25,224	25,944	26,665	27,385	28,105
GS–7	24,028	24,828	25,629	26,430	27,230	28,031	28,832	29,633	30,433	31,234
GS–8	26,611	27,498	28,385	29,273	30,160	31,048	31,935	32,823	33,710	34,597
GS–9	29,392	30,372	31,351	32,331	33,310	34,290	35,269	36,248	37,228	38,207
GS–10	32,369	33,448	34,527	35,605	36,684	37,763	38,842	39,921	41,000	42,078
GS–11	35,563	36,749	37,934	39,120	40,306	41,491	42,677	43,863	45,049	46,234
GS–12	42,623	44,044	45,464	46,885	48,305	49,726	51,146	52,567	53,987	55,408
GS–13	50,685	52,374	54,063	55,752	57,442	59,131	60,820	62,509	64,198	65,887
GS–14	59,894	61,891	63,888	65,885	67,882	69,879	71,876	73,873	75,870	77,867
GS–15	70,452	72,800	75,149	77,497	79,845	82,193	84,541	86,889	89,237	91,585

Note: General Schedule employees in the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA are entitled to higher rates of pay under salary table 94–IGA. Law enforcement officers are entitled to higher rates of pay under salary table 94–NY (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–NFK—INCORPORATING THE 3.28 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA–NC

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,293	$12,703	$13,111	$13,519	$13,929	$14,170	$14,572	$14,979	$14,997	$15,379
GS–2	13,821	14,150	14,609	14,997	15,165	15,611	16,057	16,503	16,949	17,395
GS–3	15,082	15,585	16,088	16,591	17,094	17,597	18,100	18,603	19,106	19,609
GS–4	16,931	17,495	18,059	18,622	19,186	19,750	20,314	20,878	21,442	22,006
GS–5	18,942	19,573	20,204	20,835	21,466	22,097	22,728	23,359	23,990	24,621
GS–6	21,114	21,817	22,520	23,224	23,927	24,630	25,334	26,037	26,740	27,444
GS–7	23,462	24,244	25,026	25,808	26,589	27,371	28,153	28,935	29,717	30,499
GS–8	25,984	26,851	27,717	28,584	29,450	30,317	31,183	32,050	32,916	33,783
GS–9	28,700	29,657	30,613	31,570	32,526	33,482	34,439	35,395	36,351	37,308
GS–10	31,607	32,660	33,714	34,767	35,821	36,874	37,928	38,981	40,034	41,088
GS–11	34,726	35,884	37,041	38,199	39,357	40,515	41,672	42,830	43,988	45,146
GS–12	41,620	43,007	44,394	45,781	47,168	48,555	49,942	51,329	52,716	54,103
GS–13	49,492	51,141	52,791	54,440	56,089	57,739	59,388	61,037	62,687	64,336
GS–14	58,484	60,434	62,384	64,334	66,284	68,234	70,184	72,134	74,084	76,034
GS–15	68,794	71,087	73,379	75,672	77,965	80,258	82,551	84,843	87,136	89,429

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94—OKC-INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF OKLAHOMA CITY, OK

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,066	16,513	16,959	17,406
GS–3	15,091	15,594	16,097	16,601	17,104	17,607	18,110	18,614	19,117	19,620
GS–4	16,941	17,505	18,069	18,633	19,197	19,762	20,326	20,890	21,454	22,019
GS–5	18,953	19,584	20,215	20,847	21,478	22,110	22,741	23,372	24,004	24,635
GS–6	21,126	21,830	22,533	23,237	23,941	24,645	25,348	26,052	26,756	27,460
GS–7	23,476	24,258	25,040	25,823	26,605	27,387	28,169	28,952	29,734	30,516
GS–8	25,999	26,866	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803
GS–9	28,717	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330
GS–10	31,625	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112
GS–11	34,746	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,841

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–PHL—INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,493	$12,910	$13,325	$13,739	$14,156	$14,401	$14,809	$15,222	$15,241	$15,630
GS–2	14,046	14,381	14,847	15,241	15,411	15,865	16,318	16,772	17,225	17,678
GS–3	15,327	15,838	16,350	16,861	17,372	17,883	18,394	18,905	19,417	19,928
GS–4	17,206	17,779	18,352	18,925	19,498	20,072	20,645	21,218	21,791	22,364
GS–5	19,250	19,891	20,532	21,174	21,815	22,456	23,097	23,739	24,380	25,021
GS–6	21,457	22,172	22,887	23,601	24,316	25,031	25,746	26,460	27,175	27,890
GS–7	23,844	24,638	25,433	26,227	27,022	27,816	28,611	29,406	30,200	30,995
GS–8	26,407	27,288	28,168	29,049	29,929	30,810	31,691	32,571	33,452	34,332
GS–9	29,167	30,139	31,111	32,083	33,055	34,027	34,999	35,971	36,943	37,915
GS–10	32,121	33,192	34,262	35,333	36,403	37,474	38,544	39,615	40,686	41,756
GS–11	35,291	36,467	37,644	38,821	39,997	41,174	42,350	43,527	44,704	45,880
GS–12	42,297	43,706	45,116	46,526	47,935	49,345	50,754	52,164	53,574	54,983
GS–13	50,297	51,973	53,649	55,325	57,002	58,678	60,354	62,030	63,707	65,383
GS–14	59,436	61,417	63,399	65,381	67,362	69,344	71,326	73,307	75,289	77,271

SALARY TABLE NO. 94–PHL—INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	69,913	72,243	74,573	76,903	79,233	81,563	83,893	86,224	88,554	90,884

Note: Law enforcement officers receiving statutory special salary rates are entitled to higher rates of pay under salary table 94–PHL (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SAC—INCORPORATING THE 3.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SACRAMENTO-YOLO, CA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,342	$12,754	$13,163	$13,573	$13,985	$14,226	$14,630	$15,038	$15,057	$15,440
GS–2	13,876	14,207	14,667	15,057	15,225	15,673	16,121	16,569	17,017	17,465
GS–3	15,142	15,647	16,152	16,657	17,162	17,667	18,172	18,677	19,182	19,687
GS–4	16,998	17,564	18,130	18,696	19,262	19,829	20,395	20,961	21,527	22,093
GS–5	19,017	19,650	20,284	20,917	21,551	22,184	22,818	23,452	24,085	24,719
GS–6	21,197	21,903	22,610	23,316	24,022	24,728	25,434	26,140	26,846	27,553
GS–7	23,555	24,340	25,125	25,910	26,695	27,480	28,265	29,050	29,835	30,620
GS–8	26,087	26,957	27,827	28,697	29,567	30,437	31,307	32,177	33,047	33,917
GS–9	28,814	29,775	30,735	31,695	32,655	33,615	34,575	35,536	36,496	37,456
GS–10	31,732	32,790	33,848	34,905	35,963	37,020	38,078	39,136	40,193	41,251
GS–11	34,864	36,026	37,188	38,351	39,513	40,676	41,838	43,000	44,163	45,325
GS–12	41,785	43,178	44,570	45,963	47,355	48,748	50,140	51,533	52,925	54,318
GS–13	49,688	51,344	53,000	54,656	56,312	57,968	59,624	61,280	62,936	64,592
GS–14	58,717	60,674	62,632	64,590	66,547	68,505	70,463	72,420	74,378	76,336
GS–15	69,067	71,369	73,671	75,973	78,275	80,576	82,878	85,180	87,482	89,784

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94—STL—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ST. LOUIS, MO–IL

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SLC—INCORPORATING THE 3.09 PERCENT LOCALITY PAY AREA OF SALT LAKE CITY-OGDEN, UT

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,608	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573

SALARY TABLE NO. 94–SLC—INCORPORATING THE 3.09 PERCENT LOCALITY PAY AREA OF SALT LAKE CITY-OGDEN, UT—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SA—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SAN ANTONIO, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	26,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SD—INCORPORATING THE 3.88 Percent LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SAN DIEGO, CA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,365	$12,777	$13,188	$13,598	$14,010	$14,252	$14,656	$15,066	$15,084	$15,469
GS–2	13,901	14,233	14,694	15,084	15,253	15,701	16,150	16,599	17,048	17,497
GS–3	15,170	15,675	16,181	16,687	17,193	17,699	18,205	18,711	19,217	19,723
GS–4	17,029	17,596	18,163	18,731	19,298	19,865	20,432	20,999	21,567	22,134
GS–5	19,052	19,686	20,321	20,956	21,590	22,225	22,860	23,495	24,129	24,764
GS–6	21,236	21,944	22,651	23,358	24,066	24,773	25,481	26,188	26,896	27,603
GS–7	23,598	24,385	25,171	25,958	26,744	27,530	28,317	29,103	29,889	30,676
GS–8	26,135	27,007	27,878	28,750	29,621	30,493	31,364	32,236	33,108	33,979
GS–9	28,867	29,829	30,791	31,753	32,715	33,677	34,639	35,601	36,563	37,525
GS–10	31,790	32,850	33,910	34,969	36,029	37,088	38,148	39,207	40,267	41,327
GS–11	34,928	36,092	37,257	38,421	39,586	40,750	41,915	43,079	44,244	45,408
GS–12	41,862	43,257	44,652	46,047	47,442	48,837	50,232	51,627	53,022	54,418
GS–13	49,779	51,438	53,097	54,756	56,415	58,074	59,733	61,392	63,051	64,710
GS–14	58,824	60,785	62,747	64,708	66,669	68,630	70,592	72,553	74,514	76,475
GS–15	69,193	71,500	73,806	76,112	78,418	80,724	83,030	85,336	87,643	89,949

Note: Law enforcement officers are entitled to higher rates of pay under salary table 94–SD (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SF—INCORPORATING THE 6.18 PERCENT LOCALITY PAY AREA OF SAN FRANCISCO-OAKLAND-SAN JOSE, CA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,639	$13,060	$13,480	$13,899	$14,320	$14,568	$14,981	$15,399	$15,418	$15,811
GS–2	14,209	14,548	15,019	15,418	15,590	16,049	16,508	16,967	17,425	17,884
GS–3	15,505	16,023	16,540	17,057	17,574	18,091	18,608	19,125	19,642	20,159
GS–4	17,406	17,986	18,566	19,145	19,725	20,305	20,885	21,464	22,044	22,624
GS–5	19,473	20,122	20,771	21,420	22,068	22,717	23,366	24,015	24,663	25,312
GS–6	21,706	22,429	23,153	23,876	24,599	25,322	26,045	26,768	27,491	28,214
GS–7	24,121	24,925	25,728	26,532	27,336	28,140	28,944	29,747	30,551	31,355
GS–8	26,714	27,605	28,496	29,386	30,277	31,168	32,059	32,950	33,841	34,731
GS–9	29,506	30,490	31,473	32,456	33,439	34,422	35,406	36,389	37,372	38,355
GS–10	32,494	33,577	34,660	35,743	36,826	37,909	38,992	40,076	41,159	42,242
GS–11	35,701	36,891	38,081	39,272	40,462	41,652	42,843	44,033	45,223	46,413
GS–12	42,788	44,214	45,640	47,066	48,492	49,918	51,344	52,770	54,196	55,622
GS–13	50,881	52,577	54,273	55,969	57,664	59,360	61,056	62,751	64,447	66,143
GS–14	60,127	62,131	64,136	66,141	68,145	70,150	72,155	74,159	76,164	78,169
GS–15	70,725	73,083	75,440	77,797	80,154	82,511	84,869	87,226	89,583	91,940

Note: General Schedule employees in the San Francisco-Oakland-San Jose, CA CMSA are entitled to higher rates of pay under salary table 94–IGA. Law enforcement officers are entitled to higher rates of pay under salary table 94–SF (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–SEA—INCORPORATING THE 3.92 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SEATTLE-TACOMA-BREMERTON, WA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,370	$12,782	$13,193	$13,603	$14,016	$14,258	$14,662	$15,072	$15,090	$15,475
GS–2	13,907	14,238	14,699	15,090	15,259	15,708	16,156	16,605	17,054	17,503
GS–3	15,175	15,682	16,188	16,694	17,200	17,706	18,212	18,718	19,224	19,730
GS–4	17,036	17,603	18,170	18,738	19,305	19,873	20,440	21,007	21,575	22,142
GS–5	19,059	19,694	20,329	20,964	21,599	22,234	22,869	23,504	24,139	24,773
GS–6	21,244	21,952	22,660	23,367	24,075	24,783	25,491	26,198	26,906	27,614
GS–7	23,608	24,394	25,181	25,968	26,754	27,541	28,328	29,114	29,901	30,688
GS–8	26,145	27,017	27,889	28,761	29,633	30,505	31,377	32,248	33,120	33,992
GS–9	28,878	29,841	30,803	31,765	32,728	33,690	34,652	35,614	36,577	37,539
GS–10	31,803	32,863	33,923	34,983	36,043	37,103	38,163	39,223	40,283	41,342
GS–11	34,941	36,106	37,271	38,436	39,601	40,766	41,931	43,096	44,261	45,426
GS–12	41,878	43,273	44,669	46,065	47,460	48,856	50,252	51,647	53,043	54,438
GS–13	49,798	51,458	53,118	54,777	56,437	58,096	59,756	61,416	63,075	64,735
GS–14	58,847	60,809	62,771	64,733	66,695	68,657	70,619	72,581	74,543	76,505
GS–15	69,220	71,527	73,834	76,141	78,448	80,755	83,062	85,369	87,676	89,983

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–DCB—INCORPORATING THE 4.23 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE, DC–MD–VA–WV (INCLUDING ST. MARY'S COUNTY, MD)

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,406	$12,820	$13,232	$13,644	$14,058	$14,300	$14,706	$15,116	$15,135	$15,521
GS–2	13,948	14,281	14,743	15,135	15,304	15,754	16,205	16,655	17,105	17,555
GS–3	15,221	15,728	16,236	16,744	17,251	17,759	18,266	18,774	19,282	19,789
GS–4	17,086	17,656	18,225	18,794	19,363	19,932	20,501	21,070	21,639	22,208
GS–5	19,116	19,753	20,389	21,026	21,663	22,300	22,937	23,574	24,211	24,847
GS–6	21,308	22,018	22,727	23,437	24,147	24,857	25,567	26,276	26,986	27,696
GS–7	23,678	24,467	25,256	26,045	26,834	27,623	28,412	29,201	29,990	30,779
GS–8	26,223	27,098	27,972	28,847	29,721	30,596	31,470	32,345	33,219	34,094
GS–9	28,964	29,930	30,895	31,860	32,825	33,790	34,755	35,721	36,686	37,651
GS–10*	31,898	32,961	34,024	35,087	36,150	37,213	38,276	39,340	40,403	41,466
GS–11	35,045	36,214	37,382	38,551	39,719	40,887	42,056	43,224	44,393	45,561
GS–12	42,003	43,402	44,802	46,202	47,602	49,002	50,401	51,801	53,201	54,601
GS–13	49,947	51,612	53,276	54,941	56,605	58,270	59,934	61,599	63,263	64,928

SALARY TABLE NO. 94–DCB—INCORPORATING THE 4.23 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE, DC–MD–VA–WV (INCLUDING ST. MARY'S COUNTY, MD)—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–14	59,022	60,990	62,958	64,926	66,894	68,862	70,829	72,797	74,765	76,733
GS–15	69,427	71,740	74,054	76,368	78,682	80,996	83,310	85,624	87,938	90,252

Note: Law enforcement officers receiving statutory special salary rates are entitled to higher rates of pay under salary table 94–DCB (LEO). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

SALARY TABLE NO. 94–RUS—INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF REST OF U.S.

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,855	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	15,054	15,556	16,058	16,560	17,062	17,564	18,067	18,569	19,071	19,573
GS–4	16,900	17,462	18,025	18,588	19,151	19,714	20,277	20,840	21,403	21,965
GS–5	18,907	19,537	20,166	20,796	21,426	22,056	22,686	23,316	23,946	24,576
GS–6	21,075	21,777	22,479	23,181	23,883	24,585	25,287	25,989	26,691	27,393
GS–7	23,419	24,199	24,980	25,760	26,541	27,321	28,101	28,882	29,662	30,442
GS–8	25,936	36,801	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721
GS–9	28,648	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239
GS–10	31,549	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables" cover sheet.

1994 Salary Tables for Law Enforcement Officers

January 1994

Law enforcement officers (LEO's) may be paid the greater of (1) the applicable special law enforcement adjusted rate of pay, or (2) the applicable locality rate of pay.

Special pay adjustments for LEO's with duty stations in selected locations are authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 (FEPCA). Public Law 103–123, October 28, 1993, canceled the general pay adjustment for the General Schedule for 1994. Therefore, there is no statutory basis for adjusting the special law enforcement adjusted rates of pay.

The attached 1994 salary tables for LEO's show the rates of pay applicable to LEO's in each of the 28 locality pay areas. These rates of pay are computed based on the annual rates shown on the General Schedule (salary table 94–GS), including special salary rates for LEO's at grades GS–3 through GS–10 under section 403 of FEPCA and incorporating the greater of the applicable locality pay adjustment authorized by the President on December 1, 1993, or the special pay adjustment for LEO's under section 404 of FEPCA.

The special law enforcement adjusted rates of pay and the locality rates of pay for LEO's are considered basic pay for retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. They are also used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. They are *NOT* considered basic pay for any other purpose.

SALARY TABLE NO. 94–ATL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.86 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ATLANTA, GA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,362	$12,775	$13,185	$13,595	$14,008	$14,250	$14,654	$15,063	$15,082	$15,466
GS–2	13,899	14,230	14,691	15,082	15,250	15,698	16,147	16,596	17,044	17,493
GS–3	18,201	18,707	19,213	19,719	20,225	20,730	21,236	21,742	22,248	22,754
GS–4	20,428	20,995	21,562	22,129	22,697	23,264	23,831	24,398	24,965	25,532
GS–5	23,490	24,125	24,759	25,394	26,028	26,663	27,298	27,932	28,567	29,201

SALARY TABLE NO. 94–ATL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.86 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ATLANTA, GA—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–6	24,769	25,476	26,183	26,890	27,598	28,305	29,012	29,720	30,427	31,134
GS–7	26,739	27,525	28,311	29,097	29,884	30,670	31,456	32,242	33,029	33,815
GS–8	27,873	28,744	29,616	30,487	31,358	32,230	33,101	33,973	34,844	35,715
GS–9	29,823	30,785	31,747	32,709	33,670	34,632	35,594	36,556	37,517	38,479
GS–10	32,844	33,903	34,962	36,022	37,081	38,141	39,200	40,259	41,319	42,378
GS–11	34,921	36,085	37,249	38,414	39,578	40,742	41,906	43,071	44,235	45,399
GS–12	41,854	43,248	44,643	46,038	47,433	48,828	50,223	51,617	53,012	54,407
GS–13	49,770	51,428	53,087	54,746	56,404	58,063	59,722	61,380	63,039	64,698
GS–14	58,813	60,774	62,735	64,695	66,656	68,617	70,578	72,539	74,500	76,461
GS–15	69,180	71,486	73,791	76,097	78,403	80,709	83,014	85,320	87,626	89,931

NOTE: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–BOS (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE BOSTON-WORCESTER-LAWRENCE, MA–NH–ME–CT CMSA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–CHI (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 5.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL–IN–WI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,539	$12,957	$13,373	$13,789	$14,207	$14,453	$14,862	$15,277	$15,296	$15,686
GS–2	14,097	14,433	14,900	15,296	15,467	15,922	16,377	16,832	17,287	17,742
GS–3	18,461	18,974	19,487	20,000	20,513	21,026	21,539	22,052	22,565	23,078
GS–4	20,719	21,294	21,870	22,445	23,020	23,595	24,170	24,745	25,321	25,896
GS–5	23,825	24,468	25,112	25,756	26,399	27,043	27,687	28,330	28,974	29,617
GS–6	25,121	25,839	26,556	27,274	27,991	28,708	29,426	30,143	30,860	31,578
GS–7	27,120	27,917	28,715	29,512	30,309	31,107	31,904	32,702	33,499	34,297
GS–8	28,270	29,154	30,038	30,922	31,805	32,689	33,573	34,457	35,341	36,224
GS–9	30,248	31,224	32,199	33,175	34,150	35,126	36,101	37,077	38,052	39,027
GS–10	33,312	34,386	35,461	36,535	37,610	38,684	39,758	40,833	41,907	42,982
GS–11	35,418	36,599	37,780	38,961	40,142	41,323	42,504	43,684	44,865	46,046
GS–12	42,450	43,865	45,279	46,694	48,109	49,523	50,938	52,353	53,768	55,182
GS–13	50,479	52,161	53,843	55,526	57,208	58,890	60,573	62,255	63,937	65,619
GS–14	59,651	61,640	63,629	65,617	67,606	69,595	71,584	73,573	75,561	77,550

SALARY TABLE NO. 94–CHI (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 5.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CHICAGO-GARY-KENOSHA, IL–IN–WI—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	70,166	72,504	74,843	77,182	79,520	81,859	84,197	86,536	88,874	91,213

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–CIN (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICIERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.22 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CINCINNATI-HAMILTON, OH–KY–IN

[Effective Janaury 1994]

	Annual rates by grade and steps									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,405	$12,819	$13,231	$13,642	$14,056	$14,299	$14,704	$15,115	$15,134	$15,519
GS–2	13,947	14,279	14,742	15,134	15,303	15,753	16,203	16,653	17,104	17,554
GS–3	18,265	18,772	19,280	19,787	20,295	20,802	21,310	21,817	22,325	22,833
GS–4	20,499	21,068	21,637	22,206	22,775	23,344	23,913	24,482	25,051	25,620
GS–5	23,571	24,208	24,845	25,482	26,119	26,755	27,392	28,029	28,666	29,302
GS–6	24,854	25,564	26,274	26,984	27,693	28,403	29,113	29,823	30,532	31,242
GS–7	26,831	27,620	28,409	29,198	29,987	30,776	31,565	32,354	33,143	33,932
GS–8	27,970	28,844	29,718	30,593	31,467	32,342	33,216	34,090	34,965	35,839
GS–9	29,927	30,892	31,857	32,822	33,787	34,752	35,717	36,682	37,647	38,612
GS–10	32,957	34,021	35,084	36,147	37,210	38,273	39,336	40,399	41,462	42,525
GS–11	35,042	36,210	37,379	38,547	39,715	40,883	42,052	43,220	44,388	45,557
GS–12	41,999	43,398	44,798	46,198	47,597	48,997	50,397	51,796	53,196	54,596
GS–13	49,942	51,607	53,271	54,935	56,600	58,264	59,929	61,593	63,257	64,922
GS–14	59,017	60,984	62,952	64,920	66,887	68,855	70,823	72,790	74,758	76,726
GS–15	69,420	71,734	74,047	76,361	78,675	80,988	83,302	85,616	87,929	90,243

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–CLE (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF CLEVELAND-AKRON, OH

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,066	16,513	16,959	17,406
GS–3	18,110	18,614	19,117	19,620	20,123	20,627	21,130	21,633	22,136	22,640
GS–4	20,326	20,890	21,454	22,019	22,583	23,147	23,711	24,276	24,480	25,404
GS–5	23,372	24,004	24,635	25,267	25,898	26,529	27,161	27,792	28,424	29,055
GS–6	24,645	25,348	26,052	26,756	27,460	28,163	28,867	29,571	30,274	30,978
GS–7	26,605	27,387	28,169	28,952	29,734	30,516	31,299	32,081	32,863	33,645
GS–8	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803	34,670	35,537
GS–9	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330	38,286
GS–10	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112	42,166
GS–11	34,746	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,481

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–DFW (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.21 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DALLAS-FORT WORTH, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,404	$12,818	$13,229	$13,641	$14,055	$14,298	$14,703	$15,114	$15,132	$15,518
GS–2	13,945	14,278	14,741	15,132	15,301	15,751	16,202	16,652	17,102	17,552
GS–3	18,263	18,770	19,278	19,785	20,293	20,800	21,308	21,815	22,323	22,830
GS–4	20,497	21,066	21,635	22,204	22,773	23,342	23,911	24,480	25,049	25,618
GS–5	23,569	24,206	24,843	25,479	26,116	26,753	27,390	28,026	28,663	29,300
GS–6	24,852	25,562	26,271	26,981	27,691	28,400	29,110	29,820	30,529	31,239
GS–7	26,829	27,618	28,407	29,195	29,984	30,773	31,562	32,351	33,140	33,929
GS–8	27,967	28,841	29,715	30,590	31,464	32,338	33,213	34,087	34,961	35,836
GS–9	29,924	30,889	31,854	32,819	33,784	34,749	35,714	36,679	37,644	38,609
GS–10	32,954	34,017	35,080	36,143	37,206	38,269	39,332	40,395	41,458	42,521
GS–11	35,039	36,207	37,375	38,543	39,711	40,879	42,048	43,216	44,384	45,552
GS–12	41,995	43,394	44,794	46,193	47,593	48,992	50,392	51,791	53,191	54,590
GS–13	49,937	51,602	53,266	54,930	56,594	58,259	59,923	61,587	63,251	64,916
GS–14	59,011	60,978	62,946	64,913	66,881	68,848	70,816	72,783	74,751	76,718
GS–15	69,413	71,727	74,040	76,354	78,667	80,981	83,294	85,607	87,921	90,234

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–DAY (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.77 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DAYTON-SPRINGFIELD, OH

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,352	$12,764	$13,174	$13,583	$13,995	$14,237	$14,641	$15,050	$15,068	$15,452
GS–2	13,887	14,218	14,678	15,068	15,237	15,685	16,133	16,581	17,030	17,478
GS–3	18,186	18,691	19,196	19,702	20,207	20,712	21,218	21,723	22,229	22,734
GS–4	20,411	20,977	21,544	22,110	22,677	23,243	23,810	24,377	24,943	25,510
GS–5	23,470	24,104	24,738	25,372	26,006	26,640	27,274	27,908	28,542	29,176
GS–6	24,747	25,454	26,160	26,867	27,574	28,280	28,987	29,694	30,400	31,107
GS–7	26,716	27,501	28,287	29,072	29,858	30,643	31,429	32,214	33,000	33,785
GS–8	27,849	28,719	29,590	30,461	31,331	32,202	33,073	33,943	34,814	35,684
GS–9	29,798	30,758	31,719	32,680	33,641	34,602	35,563	36,524	37,485	38,446
GS–10	32,815	33,874	34,932	35,991	37,049	38,107	39,166	40,224	41,283	42,341
GS–11	34,891	36,054	37,217	38,380	39,544	40,707	41,870	43,033	44,197	45,360
GS–12	41,817	43,211	44,604	45,998	47,392	48,785	50,179	51,573	52,966	54,360
GS–13	49,727	51,384	53,041	54,698	56,355	58,013	59,670	61,327	62,984	64,641
GS–14	58,762	60,721	62,680	64,639	66,599	68,558	70,517	72,476	74,435	76,394
GS–15	69,120	71,424	73,728	76,031	78,335	80,639	82,942	85,246	87,550	89,853

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–DEN (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 Through GS–10 AND INCORPORATING THE 4.54 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DENVER-BOULDER-GREELEY, CO

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,443	$12,858	$13,271	$13,684	$14,099	$14,343	$14,750	$15,161	$15,180	$15,567
GS–2	13,990	14,323	14,787	15,180	15,350	15,801	16,253	16,704	17,156	17,608
GS–3	18,321	18,830	19,339	19,848	20,357	20,866	21,375	21,884	22,394	22,903
GS–4	20,562	21,133	21,704	22,274	22,845	23,416	23,987	24,557	25,128	25,699
GS–5	23,644	24,283	24,921	25,560	26,199	26,838	27,476	28,115	28,754	29,392
GS–6	24,931	25,643	26,355	27,066	27,778	28,490	29,202	29,914	30,626	31,338
GS–7	26,914	27,705	28,497	29,288	30,079	30,871	31,662	32,453	33,245	34,036
GS–8	28,055	28,932	29,810	30,687	31,564	32,441	33,318	34,195	35,072	35,949
GS–9	30,019	30,987	31,955	32,923	33,891	34,859	35,827	36,795	37,763	38,731
GS–10	33,059	34,125	35,191	36,258	37,324	38,390	39,457	40,523	41,589	42,655

SALARY TABLE NO. 94–DEN (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 Through GS–10 AND INCORPORATING THE 4.54 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DENVER-BOULDER-GREELEY, CO—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–11	35,149	36,321	37,493	38,665	39,837	41,009	42,181	43,353	44,525	45,697
GS–12	42,128	43,532	44,935	46,339	47,743	49,147	50,551	51,955	53,359	54,763
GS–13	50,096	51,765	53,435	55,104	56,774	58,443	60,113	61,782	63,452	65,121
GS–14	59,198	61,172	63,145	65,119	67,093	69,066	71,040	73,014	74,988	76,961
GS–15	69,633	71,954	74,275	76,595	78,916	81,237	83,558	85,879	88,199	90,520

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–DET (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.84 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF DETROIT-ANN ARBOR-FLINT, MI

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,479	$12,895	$13,309	$13,724	$14,140	$13,384	$14,792	$15,205	$15,224	$15,612
GS–2	14,030	14,364	14,830	15,224	15,394	15,847	16,299	16,752	17,205	17,658
GS–3	18,373	18,884	19,394	19,905	20,415	20,926	21,437	21,947	22,458	22,968
GS–4	20,621	21,193	21,766	22,338	22,911	23,483	24,056	24,628	25,200	25,773
GS–5	23,712	24,352	24,993	25,633	26,274	26,915	27,555	28,196	28,836	29,477
GS–6	25,002	25,716	26,430	27,144	27,858	28,572	29,286	30,000	30,714	31,428
GS–7	26,991	27,785	28,578	29,372	30,166	30,959	31,753	32,547	33,340	34,134
GS–8	28,136	29,016	29,895	30,775	31,654	32,534	33,414	34,293	35,173	36,052
GS–9	30,105	31,076	32,046	33,017	33,988	34,959	35,930	36,901	37,871	38,842
GS–10	33,154	34,223	35,292	36,362	37,431	38,500	39,570	40,639	41,708	42,778
GS–11	35,250	36,426	37,601	38,776	39,951	41,127	42,302	43,477	44,652	45,828
GS–12	42,248	43,656	45,064	46,472	47,880	49,288	50,696	52,104	53,512	54,920
GS–13	50,239	51,914	53,588	55,262	56,937	58,611	60,285	61,959	63,634	65,308
GS–14	59,368	61,347	63,327	65,306	67,285	69,265	71,244	73,223	75,203	77,182
GS–15	69,833	72,160	74,488	76,815	79,143	81,470	83,798	86,125	88,452	90,780

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–HOU (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 6.52 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF HOUSTON-GALVESTON-BRAZORIA, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,679	$13,102	$13,523	$13,943	$14,366	$14,615	$15,029	$15,449	$15,468	$15,862
GS–2	14,255	14,594	15,067	15,468	15,640	16,100	16,561	17,021	17,481	17,941
GS–3	18,668	19,186	19,705	20,224	20,743	21,261	21,780	22,299	22,818	23,336
GS–4	20,951	21,533	22,115	22,696	23,278	23,859	24,441	25,023	25,604	26,186
GS–5	24,092	24,742	25,393	26,044	26,695	27,346	27,997	28,647	29,298	29,949
GS–6	25,403	26,128	26,854	27,579	28,304	29,030	29,755	30,481	31,206	31,932
GS–7	27,424	28,230	29,036	29,843	30,649	31,455	32,262	33,068	33,874	34,681
GS–8	28,587	29,480	30,374	31,268	32,162	33,055	33,949	34,843	35,736	36,630
GS–9	30,587	31,574	32,560	33,546	34,533	35,519	36,505	37,492	38,478	39,465
GS–10	33,685	34,771	35,858	36,944	38,031	39,117	40,204	41,290	42,377	43,463
GS–11	35,815	37,009	38,203	39,397	40,592	41,786	42,980	44,174	45,368	46,562
GS–12	42,925	44,356	45,787	47,217	48,648	50,078	51,509	52,939	54,370	55,801
GS–13	51,044	52,746	54,447	56,148	57,849	59,550	61,251	62,952	64,653	66,355
GS–14	60,319	62,330	64,341	66,352	68,363	70,375	72,386	74,397	76,408	78,419
GS–15	70,952	73,317	75,681	78,046	80,411	82,776	85,140	87,505	89,870	92,235

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–HNT (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.10 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF HUNTSVILLE, AL

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,391	$12,804	$13,215	$13,627	$14,040	$14,283	$14,687	$15,098	$15,116	$15,502
GS–2	13,931	14,263	14,725	15,116	15,285	15,735	16,184	18,634	17,084	17,534
GS–3	18,244	18,750	19,257	19,764	20,271	20,778	21,285	21,792	22,299	22,806
GS–4	20,475	21,044	21,612	22,181	22,749	23,317	23,886	24,454	25,023	25,591
GS–5	23,544	24,180	24,816	25,452	26,089	26,725	27,361	27,997	28,633	29,269
GS–6	24,826	25,535	26,244	26,953	27,661	28,370	29,079	29,788	30,497	31,206
GS–7	26,801	27,589	28,377	29,165	29,953	30,741	31,529	32,317	33,105	33,893
GS–8	27,937	28,811	29,684	30,558	31,431	32,304	33,178	34,051	34,925	35,798
GS–9	29,892	30,856	31,820	32,784	33,748	34,712	35,676	36,640	37,604	38,568
GS–10	32,920	33,981	35,043	36,105	37,167	38,229	39,290	40,352	41,414	42,476
GS–11	35,002	36,169	37,335	38,502	39,669	40,836	42,003	43,170	44,337	45,504
GS–12	41,950	43,348	44,746	46,144	47,542	48,941	50,339	51,737	53,135	54,533
GS–13	49,885	51,547	53,210	54,872	56,535	58,197	59,860	61,522	63,185	64,847
GS–14	58,949	60,914	62,880	64,845	66,810	68,776	70,741	72,707	74,672	76,637
GS–15	69,340	71,651	73,962	76,273	78,584	80,895	83,206	85,517	87,828	90,139

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–IND (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.68 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF INDIANAPOLIS, IN

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,341	$12,753	$13,162	$13,572	$13,983	$14,225	$14,628	$15,037	$15,055	$15,439
GS–2	13,874	14,205	14,666	15,055	15,223	15,671	16,119	16,567	17,015	17,463
GS–3	18,170	18,675	19,180	19,685	20,190	20,695	21,199	21,704	22,209	22,714
GS–4	20,393	20,959	21,525	22,091	22,657	23,223	23,789	24,355	24,922	25,488
GS–5	23,449	24,083	24,716	25,350	25,983	26,617	27,250	27,884	28,517	29,151
GS–6	24,726	25,432	26,138	26,844	27,550	28,256	28,962	29,668	30,374	31,080
GS–7	26,692	27,477	28,262	29,047	29,832	30,617	31,402	32,186	32,971	33,756
GS–8	27,825	28,694	29,564	30,434	31,304	32,174	33,044	33,914	34,784	35,653
GS–9	29,772	30,732	31,692	32,652	33,612	34,572	35,532	36,492	37,452	38,412
GS–10	32,787	33,844	34,902	35,959	37,017	38,074	39,132	40,189	41,247	42,305
GS–11	34,860	36,023	37,185	38,347	39,509	40,672	41,834	42,996	44,158	45,321
GS–12	41,781	43,173	44,566	45,958	47,351	48,743	50,136	51,528	52,920	54,313
GS–13	49,683	51,339	52,995	54,651	56,307	57,962	59,618	61,274	62,930	64,585
GS–14	58,711	60,668	62,626	64,583	66,541	68,498	70,456	72,413	74,371	76,328
GS–15	69,060	71,362	73,664	75,965	78,267	80,569	82,870	85,172	87,474	89,775

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers"

SALARY TABLE NO. 94–KC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.30 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF KANSAS CITY, MO–KS

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,296	$12,706	$13,114	$13,522	$13,932	$14,173	$14,575	$14,982	$15,000	$15,382
GS–2	13,824	14,153	14,612	15,000	15,168	15,614	16,060	16,506	16,953	17,399
GS–3	18,103	18,606	19,109	19,613	20,116	20,619	21,122	21,625	22,128	22,631
GS–4	20,318	20,882	21,446	22,010	22,574	23,138	23,702	24,266	24,830	25,394
GS–5	23,363	23,995	24,626	25,257	25,888	26,519	27,150	27,782	28,413	29,044
GS–6	24,635	25,338	26,042	26,745	27,449	28,152	28,856	29,559	30,263	30,966
GS–7	26,595	27,377	28,159	28,941	29,723	30,504	31,286	32,068	32,850	33,632
GS–8	27,723	28,589	29,456	30,323	31,189	32,056	32,923	33,789	34,656	35,523
GS–9	29,663	30,619	31,576	32,532	33,489	34,445	35,402	36,359	37,315	38,272
GS–10	32,667	33,720	34,774	35,828	36,881	37,935	38,989	40,042	41,096	42,149
GS–11	34,733	35,891	37,049	38,207	39,365	40,523	41,681	42,839	43,997	45,154

SALARY TABLE NO. 94–KC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.30 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF KANSAS CITY, MO–KS—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–12	41,628	43,015	44,402	45,790	47,177	48,564	49,952	51,339	52,726	54,114
GS–13	49,501	51,151	52,801	54,450	56,100	57,750	59,400	61,049	62,699	64,349
GS–14	58,496	60,446	62,396	64,347	66,297	68,247	70,198	72,148	74,098	76,048
GS–15	68,807	71,100	73,394	75,687	77,980	80,273	82,567	84,860	87,153	89,446

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–LA (LEO 1)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,654	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,906	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	39,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	36,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,789	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: This salary table applies only to law enforcement officers whose official duty stations are located within the Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers whose official duty stations are located in Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA are entitled to the rates of pay under salary table 94–LA (LEO 2). Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–LA (LEO 2)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 5.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE)

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,580	$13,000	$13,417	$13,835	$14,254	$14,501	$14,912	$15,328	$15,347	$15,738
GS–2	14,143	14,481	14,950	15,347	15,518	15,975	16,432	16,888	17,345	17,801
GS–3	18,522	19,037	19,552	20,066	20,581	21,096	21,610	22,125	22,640	23,155
GS–4	20,788	21,365	21,942	22,519	23,096	23,674	24,251	24,828	25,405	25,982
GS–5	23,904	24,550	25,195	25,841	26,487	27,133	27,779	28,424	29,070	29,716
GS–6	25,205	25,925	26,644	27,364	28,084	28,804	29,523	30,243	30,963	31,683
GS–7	27,210	28,010	28,810	29,610	30,410	31,210	32,010	32,810	33,610	34,411
GS–8	28,364	29,251	30,138	31,024	31,911	32,798	33,684	34,571	35,458	36,345
GS–9	30,349	31,328	32,306	33,285	34,264	35,242	36,221	37,200	38,178	39,157
GS–10	33,422	34,500	35,578	36,656	37,735	38,813	39,891	40,969	42,047	43,125
GS–11	35,536	36,721	37,906	39,091	40,275	41,460	42,645	43,830	45,014	46,199
GS–12	42,591	44,010	45,430	46,849	48,269	49,688	51,107	52,527	53,946	55,366
GS–13	50,647	52,335	54,022	55,710	57,398	59,086	60,774	62,462	64,150	65,837
GS–14	59,849	61,845	63,840	65,835	67,831	69,826	71,822	73,817	75,812	77,808

SALARY TABLE NO. 94–LA (LEO 2)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 5.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF LOS ANGELES-RIVERSIDE-ORANGE COUNTY, CA (INCLUDING SANTA BARBARA COUNTY AND ALL OF EDWARDS AIR FORCE BASE)—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–15	70,399	72,745	75,092	77,438	79,784	82,131	84,477	86,823	89,170	91,516

Note: This salary table applies only to law enforcement officers whose official duty stations are located in Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers whose official duty stations are located within the Los Angeles-Riverside-Orange County, CA CMSA are entitled to the rates of pay under salary table 94–LA (LEO 1). Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–MEM (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF MEMPHIS, TN–AR–MS

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	18,067	18,569	19,071	19,573	20,075	20,577	21,079	21,581	22,083	22,585
GS–4	20,277	20,840	21,403	21,965	22,528	23,091	23,654	24,217	24,780	25,343
GS–5	23,316	23,946	24,576	25,206	25,835	26,465	27,095	27,725	28,355	28,985
GS–6	24,585	25,287	25,989	26,691	27,393	28,095	28,797	29,499	30,201	30,903
GS–7	26,541	27,321	28,101	28,882	29,662	30,442	31,223	32,003	32,784	33,564
GS–8	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721	34,586	35,451
GS–9	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239	38,194
GS–10	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012	42,064
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–NY (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE NEW YORK-NORTHERN NEW JERSEY-LONG ISLAND, NY–NJ–CT–PA CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–NFK (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.28 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF NORFOLK-VIRGINIA BEACH-NEWPORT NEWS, VA–NC

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,293	$12,703	$13,111	$13,519	$13,929	$14,170	$14,572	$14,979	$14,997	$15,379
GS–2	13,621	14,150	14,609	14,997	15,165	15,611	16,057	16,503	16,949	17,395
GS–3	18,100	18,603	19,106	19,609	20,112	20,615	21,118	21,621	22,124	22,627
GS–4	20,314	20,878	21,442	22,006	22,570	23,134	23,698	24,262	24,825	25,389
GS–5	23,359	23,990	24,621	25,252	25,883	26,514	27,145	27,776	28,407	29,038
GS–6	24,630	25,334	26,037	26,740	27,444	28,147	28,850	29,554	30,257	30,960
GS–7	26,589	27,371	28,153	28,935	29,717	30,499	31,280	32,062	32,844	33,626
GS–8	27,717	28,584	29,450	30,317	31,183	32,050	32,916	33,783	34,649	35,516
GS–9	29,657	30,613	31,570	32,526	33,482	34,439	35,395	36,351	37,308	38,264
GS–10	32,660	33,714	34,767	35,821	36,874	37,928	38,981	40,034	41,088	42,141
GS–11	34,726	35,884	37,041	38,199	39,357	40,515	41,672	42,830	43,988	45,146
GS–12	41,620	43,007	44,394	45,781	47,168	48,555	49,942	51,329	52,716	54,103
GS–13	49,492	51,141	52,791	54,440	56,089	57,739	59,388	61,037	62,687	64,336
GS–14	58,484	60,434	62,384	64,334	66,284	68,234	70,184	72,134	74,084	76,034
GS–15	68,794	71,087	73,379	75,672	77,965	80,258	82,551	84,843	87,136	89,429

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–OKC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.34 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF OKLAHOMA CITY, OK

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,301	$12,711	$13,119	$13,527	$13,937	$14,178	$14,580	$14,987	$15,006	$15,388
GS–2	13,829	14,159	14,617	15,006	15,173	15,620	16,066	16,513	16,959	17,406
GS–3	18,110	18,614	19,117	19,620	20,123	20,627	21,130	21,633	22,136	22,640
GS–4	20,326	20,890	21,454	22,019	22,583	23,147	23,711	24,276	24,840	25,404
GS–5	23,372	24,004	24,635	25,267	25,898	26,529	27,161	27,792	28,424	29,055
GS–6	24,645	25,348	26,052	26,756	27,460	28,163	28,867	29,571	30,274	30,978
GS–7	26,605	27,387	28,169	28,952	29,734	30,516	31,299	32,081	32,863	33,645
GS–8	27,733	28,600	29,467	30,334	31,201	32,068	32,935	33,803	34,670	35,537
GS–9	29,674	30,631	31,588	32,545	33,502	34,459	35,416	36,373	37,330	38,286
GS–10	32,679	33,733	34,787	35,841	36,895	37,950	39,004	40,058	41,112	42,166
GS–11	34,748	35,904	37,063	38,221	39,380	40,538	41,697	42,855	44,014	45,172
GS–12	41,644	43,032	44,420	45,808	47,195	48,583	49,971	51,359	52,747	54,135
GS–13	49,521	51,171	52,821	54,472	56,122	57,772	59,423	61,073	62,723	64,374
GS–14	58,518	60,469	62,420	64,372	66,323	68,274	70,225	72,176	74,127	76,078
GS–15	68,834	71,128	73,422	75,716	78,010	80,304	82,599	84,893	87,187	89,481

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–PHL (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO's) INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,493	$12,910	$13,325	$13,739	$14,156	$14,401	$14,809	$15,222	$15,241	$15,630
GS–2	14,046	14,381	14,847	15,241	15,411	15,865	16,318	16,772	17,225	17,678
GS–3	18,394	18,905	19,417	19,928	20,439	20,950	21,461	21,972	22,483	22,995
GS–4	20,645	21,218	21,791	22,364	22,937	23,510	24,083	24,656	25,229	25,802
GS–5	23,739	24,380	25,021	25,663	26,304	26,945	27,587	28,228	28,869	29,511
GS–6	25,031	25,746	26,460	27,175	27,890	28,605	29,320	30,034	30,749	31,464
GS–7	27,022	27,816	28,611	29,406	30,200	30,995	31,789	32,584	33,378	34,173
GS–8	28,168	29,049	29,929	30,810	31,691	32,571	32,452	34,332	35,213	36,094
GS–9	30,139	31,111	32,083	33,055	34,027	34,999	35,971	36,943	37,915	38,887
GS–10	33,192	34,262	35,333	36,403	37,474	38,544	39,615	40,686	41,756	42,827

SALARY TABLE NO. 94–PHL (LEO) RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S) INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.96 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF PHILADELPHIA-WILMINGTON-ATLANTIC CITY, PA–NJ–DE–MD—Continued

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–11	35,291	36,467	37,644	38,821	39,997	41,174	42,350	43,527	44,704	45,880
GS–12	42,297	43,706	45,116	46,526	47,935	49,345	50,754	52,164	53,574	54,983
GS–13	50,297	51,973	53,649	55,325	57,002	58,678	60,354	62,030	63,707	65,383
GS–14	59,436	61,417	63,399	65,381	67,362	69,344	71,326	73,307	75,289	77,271
GS–15	69,913	72,243	74,573	76,903	79,233	81,563	83,893	86,224	88,554	90,884

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SAC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.69 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SACRAMENTO-YOLO, CA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,342	$12,754	$13,163	$13,573	$13,985	$14,226	$14,630	$15,038	$15,057	$15,440
GS–2	13,876	14,207	14,667	15,057	15,225	15,673	16,121	16,569	17,017	17,465
GS–3	18,172	18,677	19,182	19,687	20,192	20,697	21,201	21,706	22,211	22,716
GS–4	20,395	20,961	21,527	22,093	22,659	23,226	23,792	24,358	24,924	25,490
GS–5	23,452	24,085	24,719	25,352	25,986	26,619	27,253	27,886	28,520	29,153
GS–6	24,728	25,434	26,140	26,846	27,553	28,259	28,965	29,671	30,377	31,083
GS–7	26,695	27,480	28,265	29,050	29,835	30,620	31,405	32,190	32,974	33,759
GS–8	27,827	28,697	29,567	30,437	31,307	32,177	33,047	33,917	34,787	35,657
GS–9	29,775	30,735	31,695	32,655	33,615	34,575	35,536	36,496	37,456	38,416
GS–10	32,790	33,848	34,905	35,963	37,020	38,078	39,136	40,193	41,251	42,309
GS–11	34,864	36,026	37,188	38,351	39,513	40,676	41,838	43,000	44,163	45,325
GS–12	41,785	43,178	44,570	45,963	47,355	48,748	50,140	51,533	52,925	54,318
GS–13	49,688	51,344	53,000	54,656	56,312	57,968	59,624	61,280	62,936	64,592
GS–14	58,717	60,674	62,632	64,590	66,547	68,505	70,463	72,420	74,378	76,336
GS–15	69,067	71,369	73,671	75,973	78,275	80,576	82,878	85,180	87,482	89,784

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–STL (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF ST. LOUIS, MO–IL

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	18,067	18,569	19,071	19,573	20,075	20,577	21,079	21,581	22,083	22,585
GS–4	20,277	20,840	21,403	21,965	22,528	23,091	23,654	24,217	24,780	25,343
GS–5	23,316	23,946	24,576	25,206	25,835	26,465	27,095	27,725	28,355	28,985
GS–6	24,585	25,287	25,989	26,691	27,393	28,095	28,797	29,499	30,201	30,903
GS–7	26,541	27,321	28,101	28,882	29,662	30,442	31,223	32,003	32,784	33,564
GS–8	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721	34,586	35,451
GS–9	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239	38,194
GS–10	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012	42,064
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SLC (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SALT LAKE CITY-OGDEN, UT

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	18,067	18,569	19,071	19,573	20,075	20,577	21,079	21,581	22,083	22,585
GS–4	20,277	20,840	21,403	21,965	22,528	23,091	23,654	24,217	24,780	25,343
GS–5	23,316	23,946	24,576	25,206	25,835	26,465	27,095	27,725	28,355	28,985
GS–6	24,585	25,287	25,989	26,691	27,393	28,095	28,797	29,499	30,201	30,903
GS–7	26,541	27,321	28,101	28,882	29,662	30,442	31,223	32,003	32,784	33,564
GS–8	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721	34,586	35,451
GS–9	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239	38,194
GS–10	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012	42,064
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SA (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SAN ANTONIO, TX

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	18,067	18,569	19,071	19,573	20,075	20,577	21,079	21,581	22,083	22,585
GS–4	20,277	20,840	21,403	21,965	22,528	23,091	23,654	24,217	24,780	25,343
GS–5	23,316	23,946	24,576	25,206	25,835	26,465	27,095	27,725	28,355	28,985
GS–6	24,585	25,287	25,989	26,691	27,393	28,095	28,797	29,499	30,201	30,903
GS–7	26,541	27,321	28,101	28,882	29,662	30,442	31,223	32,003	32,784	33,564
GS–8	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721	34,586	35,451
GS–9	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239	38,194
GS–10	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012	42,064
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SD (LEO)— RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 8 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE SAN DIEGO, CA METROPOLITAN STATISTICAL AREA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,855	$13,284	$13,711	$14,137	$14,566	$14,818	$15,238	$15,663	$15,683	$16,082
GS–2	14,453	14,797	15,277	15,683	15,858	16,324	16,791	17,257	17,724	18,190
GS–3	18,927	19,453	19,979	20,505	21,031	21,557	22,083	22,609	23,135	23,661
GS–4	21,243	21,832	22,422	23,012	23,601	24,191	24,781	25,370	25,960	26,550
GS–5	24,426	25,086	25,746	26,406	27,066	27,726	28,386	29,046	29,705	30,365
GS–6	25,756	26,491	27,227	27,962	28,698	29,433	30,169	30,904	31,640	32,375
GS–7	27,805	28,622	29,440	30,257	31,075	31,892	32,710	33,528	34,345	35,163
GS–8	28,984	29,890	30,796	31,702	32,608	33,515	34,421	35,327	36,233	37,139
GS–9	31,012	32,012	33,012	34,012	36,013	36,013	37,013	38,013	39,013	40,013
GS–10	34,153	35,254	36,356	37,458	38,559	39,661	40,762	41,864	42,966	44,067

SALARY TABLE NO. 94–SD (LEO)— RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 8 PERCENT LEO SPECIAL PAY ADJUSTMENT FOR THE SAN DIEGO, CA METROPOLITAN STATISTICAL AREA—Continued

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–11	36,313	37,524	38,734	39,945	41,156	42,366	43,577	44,788	45,998	47,209
GS–12	43,522	44,972	46,423	47,873	49,324	50,774	52,224	53,675	55,125	56,576
GS–13	51,754	53,478	55,203	56,928	58,653	60,377	62,102	63,827	65,552	67,276
GS–14	61,157	63,196	65,235	67,274	69,313	71,352	73,391	75,430	77,469	79,509
GS–15	71,938	74,335	76,733	79,131	81,528	83,926	86,323	88,721	91,119	93,516

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SF (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 16 PERCENT LOCALITY PAY ADJUSTMENT FOR THE SAN FRANCISCO-OAKLAND-SAN JOSE, CA CMSA

[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$13,807	$14,268	$14,726	$15,184	$15,645	$15,915	$16,366	$16,823	$16,844	$17,274
GS–2	15,523	15,893	16,408	16,844	17,032	17,533	18,035	18,536	19,037	19,538
GS–3	20,329	20,894	21,459	22,024	22,589	23,154	23,719	24,283	24,848	25,413
GS–4	22,816	23,449	24,083	24,716	25,349	25,983	26,616	27,250	27,883	28,516
GS–5	26,236	26,944	27,653	28,362	29,071	29,780	30,488	31,197	31,906	32,615
GS–6	27,664	28,454	29,244	30,034	30,824	31,613	32,403	33,193	33,983	34,773
GS–7	29,864	30,742	31,620	32,499	33,377	34,255	35,133	36,011	36,889	37,767
GS–8	31,131	32,104	33,077	34,051	35,024	35,997	36,970	37,944	38,917	39,890
GS–9	33,309	34,384	35,458	36,532	37,606	38,680	39,754	40,829	41,903	42,977
GS–10	36,683	37,866	39,049	40,232	41,415	42,599	43,782	44,965	46,148	47,331
GS–11	39,003	40,303	41,603	42,904	44,204	45,504	46,805	48,105	49,406	50,706
GS–12	46,746	48,304	49,861	51,419	52,977	54,535	56,093	57,651	59,209	60,767
GS–13	55,587	57,440	59,292	61,145	62,997	64,850	66,702	68,555	70,407	72,260
GS–14	65,687	67,877	70,067	72,258	74,448	76,638	78,828	81,018	83,208	85,398
GS–15	77,266	79,842	82,417	84,992	87,567	90,142	92,718	95,293	97,868	100,443

Note: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–SEA (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.92 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF SEATTLE-TACOMA-BREMERTON, WA

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,370	$12,782	$13,193	$13,603	$14,016	$14,258	$14,662	$15,072	$15,090	$15,475
GS–2	13,907	14,238	14,699	15,090	15,259	15,708	16,156	16,605	17,054	17,503
GS–3	18,212	18,718	19,224	19,730	20,236	20,742	21,249	21,755	22,261	22,767
GS–4	20,440	21,007	21,575	22,142	22,710	23,277	23,844	24,412	24,979	25,547
GS–5	23,504	24,139	24,773	25,408	26,043	26,678	27,313	27,948	28,583	29,218
GS–6	24,783	25,491	26,198	26,906	27,614	28,321	29,029	29,737	30,444	31,152
GS–7	26,754	27,541	28,328	29,114	29,901	30,688	31,474	32,261	33,048	33,834
GS–8	27,889	28,761	29,633	30,505	31,377	32,248	33,120	33,992	34,864	35,736
GS–9	29,841	30,803	31,765	32,728	33,690	34,652	35,614	36,577	37,539	38,501
GS–10	32,863	33,923	34,983	36,043	37,103	38,163	39,223	40,283	41,342	42,402
GS–11	34,941	36,106	37,271	38,436	39,601	40,766	41,931	43,096	44,261	45,426
GS–12	41,878	43,273	44,669	46,065	47,460	48,856	50,252	51,647	53,043	54,438
GS–13	49,798	51,458	53,118	54,777	56,437	58,096	59,756	61,416	63,075	64,735
GS–14	58,847	60,809	62,771	64,733	66,695	68,657	70,619	72,581	74,543	76,505
GS–15	69,220	71,527	73,834	76,141	78,448	80,755	83,062	85,369	87,676	89,983

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–DCB (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 4.23 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF WASHINGTON-BALTIMORE, DC–MD–VA–WV (INCLUDING ST. MARY'S COUNTY, MD)

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,406	$12,820	$13,232	$13,644	$14,058	$14,300	$14,706	$15,116	$15,135	$15,521
GS–2	13,948	14,281	14,743	15,135	15,304	15,754	16,205	16,655	17,105	17,555
GS–3	18,266	18,774	19,282	19,789	20,297	20,804	21,312	21,820	22,327	22,835
GS–4	20,501	21,070	21,639	22,208	22,777	23,346	23,916	24,485	25,054	25,623
GS–5	23,574	24,211	24,847	25,484	26,121	26,758	27,395	28,032	28,668	29,305
GS–6	24,857	25,567	26,276	26,986	27,696	28,406	29,116	29,825	30,535	31,245
GS–7	26,834	27,623	28,412	29,201	29,990	30,779	31,568	32,357	33,146	33,935
GS–8	27,972	28,847	29,721	30,596	31,470	32,345	33,219	34,094	34,968	35,843
GS–9	29,930	30,895	31,860	32,825	33,790	34,755	35,721	36,686	37,651	38,616
GS–10	32,961	34,024	35,087	36,150	37,213	38,276	39,340	40,403	41,466	42,529
GS–11	35,045	36,214	37,382	38,551	39,719	40,887	42,056	43,224	44,393	45,561
GS–12	42,003	43,402	44,802	46,202	47,602	49,002	50,401	51,801	53,201	54,601
GS–13	49,947	51,612	53,276	54,941	56,605	58,270	59,934	61,599	63,263	64,928
GS–14	59,022	60,990	62,958	64,926	66,894	68,862	70,829	72,797	74,765	76,733
GS–15	69,427	71,740	74,054	76,368	78,682	80,996	83,310	85,624	87,938	90,252

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

SALARY TABLE NO. 94–RUS (LEO)—RATES OF PAY FOR LAW ENFORCEMENT OFFICERS (LEO'S), INCLUDING SPECIAL SALARY RATES AT GS–3 THROUGH GS–10 AND INCORPORATING THE 3.09 PERCENT LOCALITY PAY ADJUSTMENT FOR THE LOCALITY PAY AREA OF REST OF U.S.

[Effective January 1994]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,271	$12,680	$13,087	$13,494	$13,904	$14,144	$14,545	$14,951	$14,970	$15,351
GS–2	13,796	14,124	14,582	14,970	15,137	15,582	16,027	16,473	16,918	17,363
GS–3	18,067	18,569	19,071	19,573	20,075	20,577	21,079	21,581	22,083	22,585
GS–4	20,277	20,840	21,403	21,965	22,528	23,091	23,654	24,217	24,780	25,343
GS–5	23,316	23,946	24,576	25,206	25,835	26,465	27,095	27,725	28,355	28,985
GS–6	24,585	25,287	25,989	26,691	27,393	28,095	28,797	29,499	30,201	30,903
GS–7	26,541	27,321	28,101	28,882	29,662	30,442	31,223	32,003	32,784	33,564
GS–8	27,666	28,531	29,396	30,261	31,126	31,991	32,856	33,721	34,586	35,451
GS–9	29,602	30,557	31,512	32,466	33,421	34,375	35,330	36,285	37,239	38,194
GS–10	32,600	33,652	34,703	35,755	36,806	37,858	38,909	39,961	41,012	42,064
GS–11	34,662	35,818	36,973	38,129	39,285	40,440	41,596	42,751	43,907	45,063
GS–12	41,543	42,928	44,312	45,697	47,081	48,466	49,850	51,235	52,619	54,004
GS–13	49,401	51,047	52,693	54,340	55,986	57,632	59,279	60,925	62,572	64,218
GS–14	58,377	60,323	62,269	64,216	66,162	68,108	70,055	72,001	73,947	75,894
GS–15	68,667	70,956	73,244	75,533	77,822	80,110	82,399	84,687	86,976	89,265

Note: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Law Enforcement Officers" cover sheet.

1994 Salary Table for Interim Geographic Adjustments—Salary Table No. 94–IGA

January 1994

The adjusted rates of pay in Salary Table 94–IGA were authorized under section 302 of the Federal Employees Pay Comparability Act of 1990 and Executive Order 12826 of December 30, 1992. They reflect an adjustment of 8 percent to all rates of basic pay within the General Schedule. Regulations on administering interim geographic adjustments are found at 5 CFR part 531, subpart A.

The adjusted rates of pay in Salary Table 94–IGA are applicable only to General Schedule employees in the following Consolidated Metropolitan Statistical Areas: New York-Northern New Jersey-Long Island, NY–NJ–CT–PA; San Francisco-Oakland-San Jose, CA; and Los Angeles-Riverside-Orange County, CA. These adjusted rates are considered basic pay for retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. They are also used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. They are *NOT* considered basic pay for any other purpose.

SALARY TABLE NO. 94–IGA—INCLUDING 8 PERCENT INTERIM GEOGRAPHIC ADJUSTMENTS
[Effective January 1993]

	Annual rates by grade and step									
	1	2	3	4	5	6	7	8	9	10
GS–1	$12,855	$13,284	$13,711	$14,137	$14,566	$14,818	$15,238	$15,663	$15,683	$16,082
GS–2	14,453	14,797	15,277	15,683	15,858	16,324	16,791	17,257	17,724	18,190
GS–3	15,771	16,297	16,823	17,349	17,875	18,401	18,927	19,453	19,979	20,505
GS–4	17,704	18,294	18,884	19,473	20,063	20,653	21,243	21,832	22,422	23,012
GS–5	19,807	20,467	21,127	21,787	22,447	23,107	23,766	24,426	25,086	25,746
GS–6	22,078	22,814	23,549	24,285	25,020	25,756	26,491	27,227	27,962	28,698
GS–7	24,534	25,352	26,169	26,987	27,805	28,622	29,440	30,257	31,075	31,892
GS–8	27,172	28,078	28,984	29,890	30,796	31,702	32,608	33,515	34,421	35,327
GS–9	30,102	31,012	32,012	33,012	34,012	35,013	36,013	37,013	38,013	39,013
GS–10	33,051	34,153	35,254	36,356	37,458	38,559	39,661	40,762	41,864	42,966
GS–11	36,313	37,524	38,734	39,945	41,156	42,366	43,577	44,788	45,998	47,209
GS–12	43,522	44,972	46,423	47,873	49,324	50,774	52,224	53,675	55,125	56,576
GS–13	51,754	53,478	55,203	56,928	58,653	60,377	62,102	63,827	65,552	67,276
GS–14	61,157	63,196	65,235	67,274	69,313	71,352	73,391	75,430	77,469	79,509
GS–15	71,938	74,335	76,733	79,131	81,528	83,926	86,323	88,721	91,119	93,516

Note: The adjusted rates of pay above apply only to General Schedule employees in the New York-Northern New Jersey-Long Island, NY–NJ–CT–PA CMSA, San Francisco-Oakland-San Jose, CA CMSA, and Los Angeles-Riverside-Orange County, CA CMSA. Law enforcement officers are entitled to higher rates of pay under salary tables 94–NY (LEO), 94–SF (LEO), and 94–LA (LEO 1). The adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Table for Interim Geographic Adjustments" cover sheet.

1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals

January 1994

The scheduled rates of pay for members of the Senior Executive Service, employees in senior-level and scientific or professional positions, administrative law judges, and members of Boards of Contract Appeals were authorized under Executive Order 12826 of December 30, 1992. Public Law 103–123 canceled the general pay adjustment for the General Schedule for 1994, which resulted in no adjustment in the Executive Schedule for 1994. Therefore, there is no statutory basis for adjustments in scheduled rates of pay in 1994 for these positions.

Under 5 U.S.C. 5304(h) and Executive Order 12883 of November 29, 1993, the President's Pay Agent has extended locality-based comparability payments to all members of the Senior Executive Service, employees in senior-level and scientific or professional positions, administrative law judges, and members of Boards of Contract Appeals. The locality rates of pay for affected individuals are shown on salary tables 94–ES (LOC), 94–SL/ST (LOC), 94–ALJ (LOC), and 94–BCA (LOC). These rates of pay are computed based on the scheduled rates of pay for these positions and reflect the locality pay percentages authorized by the President on December 1, 1993. Salary tables 94–ES (LEO) and 94–SL/ST (LEO) show the special law enforcement adjusted rates of pay for members of the Senior Executive Service and employees in senior-level and scientific or professional positions whose official duty stations are located in five special pay adjustment areas. These rates of pay were authorized by section 404 of the Federal Employees Pay Comparability Act of 1990 and became effective in January 1993.

The locality rates of pay and the special law enforcement adjusted rates of pay are considered basic pay for retirement, life insurance, premium pay, and severance pay purposes and for advances in pay. They are also used to compute workers' compensation payments and lump-sum payments for accrued and accumulated annual leave. They are *NOT* considered basic pay for any other purpose.

Rates of Pay for Members of The Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals

Effective January 1993

SALARY TABLE NO. 94–ES.—RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE (SES)

	Annual Rate
ES–1	$92,900
ES–2	97,400
ES–3	101,800
ES–4	107,300
ES–5	111,800
ES–6	115,700

SALARY TABLE NO. 94–SL/ST.—RATES OF PAY FOR EMPLOYEES IN SENIOR-LEVEL (SL) AND SCIENTIFIC OR PROFESSIONAL (ST) POSITIONS

	Annual rate
Minimum	$79,931
Maximum	115,700

SALARY TABLE NO. 94–ALJ.—RATES OF PAY FOR ADMINISTRATIVE LAW JUDGE (ALJ) POSITIONS

	Annual rate
AL–3/A	$75,205
AL–3/B	80,990
AL–3/C	86,775
AL–3/D	92,560
AL–3/E	98,345
AL–3/F	104,130
AL–2	109,915
AL–1	115,700

SALARY TABLE NO. 94–BCA.—RATES OF PAY FOR MEMBERS OF BOARDS OF CONTRACT APPEALS (BCA)

	Annual rate
Chairman	$115,700
Vice Chairman	112,229
Other Members	108,758

LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS
[Effective January 1994]

Locality pay area	Salary Table No. 94–ES (LOC)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LOC)—Senior-level (SL) and scientific or professional (ST) positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Atlanta, GA	$96,486	$101,160	$105,729	$111,442	$116,115	$120,166	$83,016	$120,166
Boston-Worcester-Lawrence, MA–NH–ME–CT	97,982	102,728	107,368	113,169	117,915	122,029	84,303	122,029
Chicago-Gary-Kenosha, IL–IN–WI	97,861	102,601	107,236	113,030	117,770	121,878	84,199	121,878
Cincinnati-Hamilton, OH–KY–IN	96,820	101,510	106,096	111,828	116,518	120,583	83,304	120,583
Cleveland-Akron, OH	96,003	100,653	105,200	110,884	115,534	119,564	82,601	119,564
Dallas-Fort Worth, TX	96,811	101,501	106,086	111,817	116,507	120,571	83,296	120,571
Dayton-Springfield, OH	96,402	101,072	105,638	111,345	116,015	120,062	82,944	120,062
Denver-Boulder-Greeley, CO	97,118	101,822	106,422	112,171	116,876	120,953	83,560	120,953
Detroit-Ann Arbor-Flint, MI	97,396	102,114	106,727	112,493	117,211	121,300	83,800	121,300
Houston-Galveston-Brazoria, TX	98,957	103,750	108,437	114,296	119,089	123,100	85,143	123,100
Huntsville, AL	96,709	101,393	105,974	111,699	116,384	120,444	83,208	120,444
Indianapolis, IN	96,319	100,984	105,546	111,249	115,914	119,958	82,872	119,958
Kansas City, MO–KS	95,966	100,614	105,159	110,841	115,489	119,518	82,569	119,518
Los Angeles-Riverside-Orange County, CA	98,186	102,942	107,592	113,405	118,161	122,283	84,479	122,283
Memphis, TN–AR–MS	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	98,260	103,020	107,674	113,491	118,251	122,376	84,543	122,376
Norfolk-Virginia Beach-Newport News, VA–NC	95,947	100,595	105,139	110,819	115,467	119,495	82,553	119,495
Oklahoma City, OK	96,003	100,653	105,200	110,884	115,534	119,564	82,601	119,564
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD	97,508	102,231	106,849	112,622	117,345	121,439	83,896	121,439
Sacramento-Yolo, CA	96,328	100,994	105,556	111,259	115,925	119,969	82,880	119,969
St. Louis, MO–IL	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
Salt Lake City-Ogden, UT	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
San Antonio, TX	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275
San Diego, CA	96,505	101,179	105,750	111,463	116,138	120,189	83,032	120,189
San Francisco-Oakland-San Jose, CA	98,641	103,419	108,091	113,931	118,709	122,850	84,871	122,850
Seattle-Tacoma-Bremerton, WA	96,542	101,218	105,791	111,506	116,183	120,235	83,064	120,235

LOCALITY RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS—Continued

[Effective January 1994]

Locality pay area	Salary Table No. 94–ES (LOC)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LOC)—Senior-level (SL) and scientific or professional (ST) positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6	Minimum	Maximum
Washington-Baltimore, DC–MD–VA–WV	96,830	101,520	106,106	111,839	116,529	120,594	83,312	120,594
Rest of U.S	95,771	100,410	104,946	110,616	115,255	119,275	82,401	119,275

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Law enforcement officers are entitled to the rates on salary tables 94–ES (LEO) or 94–SL/ST (LEO), as appropriate. Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

LOCALITY RATES OF PAY FOR ADMINISTRATIVE LAW JUDGES AND MEMBERS OF BOARDS OF CONTRACT APPEALS

[Effective January 1994]

Locality pay area	Salary table No. 94–ALJ (LOC)—Administrative Law Judges								Salary table No. 94–BCA (LOC)—Members of Boards of Contract Appeals (BCA)		
	AL–3/A	AL–3/B	AL–3/C	AL–3/D	AL–3/E	AL–3/F	AL–2	AL–1	Chairman	Vice chairman	Other members
Atlanta, GA	$78,108	$84,116	$90,125	$96,133	$102,141	$108,149	$114,158	$120,166	$120,166	$116,561	$112,956
Boston-Worcester-Lawrence, MA–NH–ME–CT	79,319	85,420	91,522	97,623	103,724	109,826	115,927	122,029	122,029	118,368	114,707
Chicago-Gary-Kenosha, IL–IN–WI	79,221	83,315	91,409	97,503	103,597	109,691	115,784	121,878	121,878	118,222	114,566
Cincinnati-Hamilton, OH–KY–IN	78,379	84,408	90,437	96,466	102,495	108,524	114,553	120,583	120,583	116,965	113,348
Cleveland-Akron, OH	77,717	83,695	89,673	95,652	101,630	107,608	113,586	119,564	119,564	115,977	112,391
Dallas-Fort Worth, TX	78,371	84,400	90,428	96,457	102,485	108,514	114,542	120,571	120,571	116,954	113,337
Dayton-Springfield, OH	78,040	84,043	90,046	96,050	102,053	108,056	114,059	120,062	120,062	116,460	112,858
Denver-Boulder-Greeley, CO	78,619	84,667	90,715	96,762	102,810	108,858	114,905	120,953	120,953	117,324	113,696
Detroit-Ann Arbor-Flint, MI	78,845	84,910	90,975	97,040	103,105	109,170	115,235	121,300	121,300	117,661	114,022
Houston-Galveston-Brazoria, TX	80,108	86,271	92,433	98,595	104,757	110,919	117,081	[1]123,100	[1]123,100	119,546	115,849
Huntsville, AL	78,288	84,311	90,333	96,355	102,377	108,399	114,422	120,444	120,444	116,830	113,217
Indianapolis, IN	77,973	83,970	89,968	95,966	101,964	107,962	113,960	119,958	119,958	116,359	112,760
Kansas City, MO–KS	77,687	83,663	89,639	95,614	101,590	107,566	113,542	119,518	119,518	115,933	112,347
Los Angeles-Riverside-Orange County, CA	79,484	85,598	91,712	97,827	103,941	110,055	116,169	122,283	122,283	118,615	114,946
Memphis, TN–AR–MS	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	79,544	85,663	91,782	97,901	104,020	110,138	116,257	122,376	122,376	118,705	115,033
Norfolk-Virginia Beach-Newport News, VA–NC	77,672	83,646	89,621	95,596	101,571	107,545	113,520	119,495	119,495	115,910	112,325
Oklahoma City, OK	77,717	83,695	89,673	95,652	101,630	107,608	113,586	119,564	119,564	115,977	112,391
Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD	78,935	85,007	91,079	97,151	103,223	109,295	115,367	121,439	121,439	117,796	114,152
Sacramento-Yolo, CA	77,980	83,979	89,977	95,975	101,974	107,972	113,971	119,969	119,969	116,370	112,771
St. Louis, MO–IL	77,529	83,493	89,456	95,420	101,384	107,384	113,311	119,275	119,275	115,697	112,119
Salt Lake City-Ogden, UT	77,529	83,493	89,456	95,420	101,384	107,384	113,311	119,275	119,275	115,697	112,119
San Antonio, TX	77,529	83,493	89,456	95,420	101,384	107,384	113,311	119,275	119,275	115,697	112,119
San Diego, CA	78,123	84,132	90,142	96,151	102,161	108,170	114,180	120,189	120,189	116,583	112,978
San Francisco-Oakland-San Jose, CA	79,853	85,995	92,138	98,280	104,423	110,565	116,708	122,850	122,850	119,165	115,479
Seattle-Tacoma-Bremerton, WA	78,153	84,165	90,177	96,188	102,200	108,212	114,224	120,235	120,235	116,628	113,021
Washington-Baltimore, DC–MD–VA–WV	78,386	84,416	90,446	96,475	102,505	108,535	114,564	120,594	120,594	116,976	113,358
Rest of U.S.	77,529	83,493	89,456	95,420	101,384	107,348	113,311	119,275	119,275	115,697	112,119

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).

NOTE: Locality rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

SPECIAL LAW ENFORCEMENT ADJUSTED RATES OF PAY FOR MEMBERS OF THE SENIOR EXECUTIVE SERVICE AND EMPLOYEES IN SENIOR-LEVEL AND SCIENTIFIC OR PROFESSIONAL POSITIONS

[Effective January 1994]

Special pay adjustment area	Salary table No. 94–ES (LEO)—Senior Executive Service (SES)						Salary table No. 94–SL/ST (LEO)—Senior-Level (SL) and Scientific or Professional (ST) Positions	
	ES–1	ES–2	ES–3	ES–4	ES–5	ES–6 Salary	Minimum	Maximum
Boston-Worcester-Lawrence, MA–NH–ME–CT	$107,764	$112,984	$118,088	[1]$123,100	[1]$123,100	[1]$123,100	$92,720	[1]$123,100
Los Angeles-Riverside-Orange County, CA [2]	107,764	112,984	118,088	[1]123,100	[1]123,100	[1]123,100	92,720	[1]123,100
New York-N. New Jersey-Long Island, NY–NJ–CT–PA	107,764	112,984	118,088	[1]123,100	[1]123,100	[1]123,100	92,720	[1]123,100
San Diego, CA	100,332	105,192	109,944	115,884	120,744	[1]123,100	86,325	[1]123,100
San Francisco-Oakland-San Jose, CA	107,764	112,984	118,088	[1]123,100	[1]123,100	[1]123,100	92,720	[1]123,100

[1] Rate limited to the rate for level III of the Executive Schedule (5 U.S.C. 5304(g)(2)).
[2] Does not include Santa Barbara County or that portion of Edwards Air Force Base outside the Los Angeles-Riverside-Orange County, CA CMSA.

NOTE: Special law enforcement adjusted rates of pay are considered basic pay only for certain purposes—see "1994 Salary Tables for Members of the Senior Executive Service, Employees in Senior-Level and Scientific or Professional Positions, Administrative Law Judges, and Members of Boards of Contract Appeals" cover sheet.

1994 Salary Table for The Executive Schedule

January 1994

The scheduled rates of pay for the Executive Schedule were authorized under 5 U.S.C. 5318 and Executive Order 12826 of December 30, 1992. Public Law 103–123 canceled the general pay adjustment for the General Schedule for 1994, which resulted in no adjustment in the Executive Schedule for 1994.

Rates of Pay for the Executive Schedule

Effective January 1993

SALARY TABLE NO. 94–EX.—EXECUTIVE SCHEDULE (EX)

	Annual rate
Level I	$148,400
Level II	133,600
Level III	123,100
Level IV	115,700
Level V	108,200

Definitions of Locality Pay Areas

The regulation defining the locality pay areas (5 CFR § 531.603) was issued by the Office of Personnel Management under the authority in 5 U.S.C. 5304(i). With two exceptions, the geographic boundaries of the pay localities for the first locality payments coincide with the boundaries of the 27 Metropolitan Statistical Areas (MSA's) and Consolidated Metropolitan Statistical Areas (CMSA's) within which the Bureau of Labor Statistics conducted salary surveys for locality pay purposes, plus 1 additional area composed of the "Rest of the United States." MSA's and CMSA's are defined by the Office of Management and Budget in OMB Bulletin No. 93–17, June 30, 1993.

The two exceptions are the Los Angeles-Riverside-Orange County, CA, and the Washington-Baltimore, DC–MD–VA–WV, locality pay areas. These two areas also include certain areas outside the corresponding CMSA's.

The definitions of the locality pay areas follow. Unless otherwise noted, all of the components listed below are counties. The geographic codes are maintained by the General Services Administration, which periodically publishes them in *Worldwide Geographic Location Codes*. The geographic codes listed for the majority of the pay areas consist of a 2-digit State and a 3-digit county identifier. When necessary, city codes were added to the geographic code. These areas are identified by a 2-digit State, a 4-digit city, and a 3-digit county code. The District of Columbia is identified by its 2-digit State code only.

In parts of the Boston and New York pay areas where nine-digit codes are used, this list covers all locations within the boundaries of the pay area that are listed in *Worldwide Geographic Location Codes*. Some minor civil divisions that are part of the OMB definition of the CMSA do not appear here because they have no geographic code. In some instances, there are multiple locations within a single minor civil division that have a geographic code. Each is listed here separately.

Atlanta, GA

13–013 Barrow
13–015 Bartow
13–045 Carroll
13–057 Cherokee
13–063 Clayton
13–067 Cobb
13–077 Coweta
13–089 Dekalb
13–097 Douglas
13–113 Fayette
13–117 Forsyth
13–121 Fulton
13–135 Gwinnett
13–151 Henry
13–217 Newton
13–223 Paulding
13–227 Pickens
13–247 Rockdale
13–255 Spalding
13–297 Walton

Boston-Worcester-Lawrence, MA–NH–ME–CT

Massachusetts

25–009 all of Essex County
25–017 all of Middlesex County
25–021 all of Norfolk County
25–023 all of Plymouth County
25–025 all of Suffolk County

The following parts of Bristol County:
250007005 Acushnet
250039005 Assonent
250096005 Berkley
250188005 Chartley
250251005 Dartmouth

250254005 Dighton
250281005 East Freetown
250299005 Easton
250315005 Fairhaven
250385005 Freetown
250670005 Mansfield
250850005 New Bedford
250911005 North Dartmouth
250912005 North Dighton
250913005 North Easton
250924005 Norton
251064005 Raynham
251062005 Raynham Center
251135005 Segreganset
251219005 South Dartmouth
251225005 South Easton
251280005 Taunton

The following part of Hampden County:
250489013 Holland

The following parts of Worcester County:
250032027 Ashburnham
250055027 Auburn
250079027 Barre
250080027 Barre Plains
250098027 Berlin
250110027 Blackstone
250117027 Bolton
250123027 Boylston
250150027 Brookfield
250185027 Charlton
250186027 Charlton City
250189027 Charlton Depot
250220027 Clinton
250252027 Douglas
250263027 Dudley
250272027 East Brookfield
250280027 East Douglas
250902027 Northbridge
250910027 N. Brookfield
250916027 N. Grafton
250918027 N. Oxford
250927027 N. Uxbridge
250944027 Oakdale
250943027 Oakham
250980027 Oxford
250999027 Paxton
251045027 Princeton
251080027 Rochdale
251100027 Rutland
251172027 Shrewsbury
251200027 South Barre
251203027 South Berlin
251204027 Southborough
251210027 Southbridge
250297027 East Princeton
250332027 Fayville
250350027 Fitchburg
250390027 Gardner
250436027 Grafton
250467027 Harvard
250480027 Holden
250510027 Hopedale
250555027 Jefferson
250565027 Lancaster
250585027 Leicester
250610027 Leominster
250619027 Linwood
250640027 Lunenburg
250664027 Manchaug
250745027 Mendon
250780027 Milford
250785027 Millbury
250820027 Millville
250834027 Morningdale
250900027 Northborough
251228027 South Grafton
251240027 South Lancaster
251260027 Spencer
251273027 Sterling
251266027 Sterling Junction
251271027 Still River
251278027 Sturbridge
251269027 Sutton
251283027 Templeton
251310027 Upton
251320027 Uxbridge
251376027 Waterville
251380027 Webster
251390027 Westborough
251395027 West Boylston
251410027 West Brookfield
251439027 Westminster
251455027 West Upton
251470027 Whitinsville
251500027 Winchendon
251520027 Worcester

New Hampshire

The following parts of Hillsborough County:
330011011 Amherst
330018011 Bedford
330031011 Brookline
330160011 Goffstown
330180011 Greenville
330234011 Hollis
330240011 Hudson
330299011 Litchfield
330310011 Manchester
330324001 Mason
330334011 Merrimack
330340011 Milford
330344011 Mont Vernon
330350011 Nashua
330357011 New Ipswich
330401011 Pelham
330434011 Reeds Ferry
330509011 Weare
330540011 Wilton

The following part of Merrimack County:
330236013 Hooksett

The following parts of Rockingham County:
330012015 Atkinson
330013015 Auburn
330025015 Brentwood
330032015 Candia
330045015 Chester
330087015 Danville
330085015 Derry
330105015 East Derry
330108015 East Hampstead
330112015 East Kingston
330123015 Epping
330130015 Exeter
330153015 Fremont
330176015 Greenland
330195015 Hampstead
330200015 Hampton
330199015 Hampton Beach
330201015 Hampton Falls
330252015 Kensington
330255015 Kingston
330305015 Londonderry
330355015 New Castle
330354015 Newfields
330356015 Newington
330370015 Newmarket
330381015 Newton
330382015 Newton Junction
330391015 North Hampton
330384015 North Salem
330417015 Plaistow
330430015 Portsmouth
330435015 Raymond
330445015 Rye
330447015 Rye Beach
330448015 Salem
330462015 Sandown
330466015 Seabrook
330474015 South Danville
330475015 South Hampton
330478015 Stratham
330533015 West Rye
330527015 Westville
330551015 Windham

The following parts of Strafford County:
330029017 Barrington
330090017 Dover
330100017 Durham
330140017 Farmington
330281017 Lee
330311017 Madbury
330342017 Milton
330345017 Milton Mills
330440017 Rochester
330443017 Rollinsford
330470017 Somersworth

Maine

The following parts of York County:
230450031 Berwick
231445031 Cape Neddick
232450031 Eliot
234250031 Kittery
234300031 Kitterypoint
237450031 South Berwick
239800031 York
239900031 York Beach
239950031 York Harbor

Connecticut

The following parts of Windham County:
090231015 Fabyan
090259015 Grosvenordale
090373015 Mechanicsville
090500015 N. Grosvenordale
090603015 Quinebaug
090749015 Thompson

Chicago-Gary-Kenosha, IL–IN–WI

Illinois

17–031 Cook
17–037 DeKalb
17–043 DuPage
17–063 Grundy
17–089 Kane
17–091 Kankakee
17–093 Kendall
17–097 Lake
17–111 McHenry
17–197 Will

Indiana

18–089 Lake
18–127 Porter

Wisconsin

55–059 Kenosha

Cincinnati-Hamilton, OH–KY–IN

Ohio

39–015 Brown
39–017 Butler
39–025 Clermont
39–061 Hamilton
39–165 Warren

Kentucky

21–015 Boone
21–037 Campbell
21–077 Gallatin
21–081 Grant
21–117 Kenton
21–191 Pendleton

Indiana

18–029 Dearborn
18–115 Ohio

Cleveland-Akron, OH

39–007 Ashtabula
30–035 Cuyahoga
39–055 Geauga
39–085 Lake
39–093 Lorain
39–103 Medina
39–133 Portage
39–153 Summit

Dallas-Fort Worth, TX

48–085 Collin
48–113 Dallas
48–121 Denton
48–139 Ellis
48–213 Henderson
48–221 Hood
48–231 Hunt
48–251 Johnson
48–257 Kaufman
48–367 Parker
48–397 Rockwall
48–439 Tarrant

Dayton-Springfield, OH

39–023 Clark
39–057 Greene
39–109 Miami
39–113 Montgomery

Denver-Boulder-Greeley, CO

08–001 Adams
08–005 Arapahoe
08–013 Boulder
08–031 Denver
08–035 Douglas
08–059 Jefferson
08–123 Weld

Detroit-Ann Arbor-Flint, MI

26–049 Genesee
26–087 Lapeer
26–091 Lenawee
26–093 Livingston
26–099 Macomb
26–115 Monroe
26–125 Oakland
26–147 St. Clair
26–161 Washtenaw
26–163 Wayne

Houston-Galveston-Brazoria, TX

48–039 Brazoria
48–071 Chambers
48–157 Fort Bend
48–167 Galveston
48–201 Harris
48–291 Liberty
48–339 Montgomery
49–473 Waller

Huntsville, AL

01–083 Limestone
01–089 Madison

Indianapolis, IN

18–011 Boone
18–057 Hamilton
18–059 Hancock
18–063 Hendricks
18–081 Johnson
18–095 Madison
18–097 Marion
18–109 Morgan
18–145 Shelby

Kansas City, MO–KS

Missouri

29–037 Cass
29–047 Clay
29–049 Clinton
29–095 Jackson
29–107 Lafayette
29–165 Platte
29–177 Ray

Kansas

20–091 Johnson
20–103 Leavenworth
20–121 Miami
20–209 Wyandotte

Los Angeles-Riverside-Orange County, CA

06–037 Los Angeles
06–059 Orange
06–065 Riverside
06–071 San Bernardino
06–083 Santa Barbara
06–011 Ventura
061077029 Edwards Air Force Base

Memphis, TN–AR–MS

Tennessee

47–047 Fayette
47–157 Shelby
47–167 Tipton

Arkansas

05–035 Crittenden

Mississippi

28–033 DeSoto

NewYork-Northern New Jersey-Long Island, NY–NJ–CT–PA

New York

36–005 Bronx
36–027 Dutchess
36–047 Kings
36–059 Nassau
36–061 New York
36–071 Orange
36–079 Putnam
36–081 Queens
36–085 Richmond
36–087 Rockland
36–103 Suffolk
36–119 Westchester

New Jersey

34–003 Bergen
34–013 Essex
34–017 Hudson
34–019 Hunterdon
34–021 Mercer
34–023 Middlesex
34–025 Monmouth
34–027 Morris
34–029 Ocean
34–031 Passaic
34–035 Somerset
34–037 Sussex
34–039 Union
34–041 Warren

Connecticut

09–001 all of Fairfield County
09–009 all of New Haven County

The following parts of Litchfield County:
090051005 Bethlehem
090083005 Bridgewater
090247005 Gaylordsville
090372005 Marble Dale
090450005 New Milford
090454005 New Preston
090535005 Oakville
090629005 Roxbury
090740005 Thomaston
090802005 Washington
090805005 Washington Depot
090817005 Watertown
090857005 Woodbury

The following parts of Middlesex County:

090130007 Clinton
00332007 Killingsworth

Pennsylvania

42–103 Pike

Norfolk-Virginia Beach-Newport News, VA–NC

Virginia

51–073 Gloucester
51–093 Isle of Wight
51–095 James City County
51–115 Mathews
51–199 York
51–550 Chesapeake city
51–650 Hampton city
51–700 Newport News city
51–710 Norfolk city
51–735 Poquoson city
51–740 Portsmouth city
51–800 Suffolk city
51–810 Virginia Beach city
51–830 Williamsburg city

North Carolina

37–053 Currituck

Oklahoma City, OK

40–017 Canadian
40–027 Cleveland
40–083 Logan
40–087 McClain
40–109 Oklahoma
40–125 Pottawatomie

Philadelphia-Wilmington-Atlantic City, PA–NJ–DE–MD

Pennsylvania

42–017 Bucks
42–029 Chester
42–045 Delaware
42–091 Montgomery
42–101 Philadelphia

New Jersey

34–001 Atlantic
34–005 Burlington
34–005 Camden
34–009 Cape May
34–011 Cumberland
34–015 Gloucester
34–033 Salem

Delaware

10–003 New Castle

Maryland

24–015 Cecil

Sacramento-Yolo, CA

06–017 El Dorado
06–061 Placer
06–067 Sacramento
06–113 Yolo

St. Louis, MO-IL

Missouri

The following part of Crawford County:
297630055 Sullivan City
29–071 Franklin
29–099 Jefferson
29–113 Lincoln
29–183 St. Charles
29–189 St. Louis
29–219 Warren
29–510 St. Louis city

Illinois

17–027 Clinton
17–083 Jersey
17–119 Madison
17–133 Monroe
17–163 St. Clair

Salt Lake City-Ogden, UT

49–011 Davis
49–035 Salt Lake
49–057 Weber

San Antonio, TX

48–029 Bexar
48–091 Comal
48–187 Guadalupe
48–493 Wilson

San Diego, CA

06–073 San Diego

San Francisco-Oakland-San Jose, CA

06–001 Alameda
06–013 Contra Costa
06–041 Marin
06–055 Napa
06–075 San Francisco
06–081 San Mateo
06–085 Santa Clara
06–087 Santa Cruz
06–095 Solano
06–097 Sonoma

Seattle-Tacoma-Bremerton, WA

53–029 Island
53–033 King
53–035 Kitsap
53–053 Pierce
53–061 Snohomish
53–067 Thurston

Washington-Baltimore, DC-MD-VA-WV

11 District of Columbia

Maryland

24–003 Anne Arundel
24–005 Baltimore
24–009 Calvert
24–013 Carroll
24–017 Charles
24–021 Frederick
24–025 Harford
24–027 Howard
24–031 Montgomery
24–033 Prince George's
24–035 Queen Anne's
24–037 St. Mary's
24–043 Washington
24–510 Baltimore city

Virginia

51–013 Arlington
51–043 Clarke
51–047 Culpeper
51–059 Fairfax
51–061 Fauquier
51–099 King George
51–107 Loudoun
51–153 Prince William
51–177 Spotsylvania
51–179 Stafford
51–187 Warren
51–510 Alexandria city
51–600 Fairfax city
51–610 Falls Church city
51–630 Fredericksburg city
51–683 Manassas city
51–685 Manassas Park city

West Virginia

54–003 Berkeley
54–037 Jefferson

Rest of U.S.

Those portions of the 48 contiguous States and the District of Columbia not located within another locality pay area.

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BILLING CODE 6325–01–M

federal register

Thursday
January 13, 1994

Part IV

Department of the Interior

Bureau of Indian Affairs

25 CFR Part 23
Indian Child Welfare Act; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

25 CFR Part 23

RIN 1076–AC55

Indian Child Welfare Act

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Final rule.

SUMMARY: The Bureau of Indian Affairs (BIA) is publishing final Indian Child Welfare Act (ICWA) grant regulations in response to comments received during the Notice of Proposed Rulemaking (NPRM) comment period and in response to recommendations received from numerous Indian tribes, Indian organizations and other interested parties during a series of consultation sessions held during 1990–1992. Indian tribes collectively recommended the conversion of the current competitive grant award process to a noncompetitive funding mechanism for tribes, the stabilization of tribal ICWA programs through the provision of recurring base funding, and the continuation of a competitive award system for off-reservation Indian organization applicants.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Betty B. Tippeconnie, Division of Social Services, Bureau of Indian Affairs, Department of the Interior, telephone (202) 208–2721.

SUPPLEMENTARY INFORMATION: This final rule is published under authority delegated by the Secretary of the Interior (Secretary) to the Assistant Secretary—Indian Affairs in the Departmental Manual at 209 DM 8. This final rule, revising regulations which govern the ICWA grant process as codified at 25 CFR part 23, was preceded by the publication of the NPRM in the **Federal Register** on January 12, 1993 (Vol. 58, No. 7), with a 30-day public comment period.

Current regulations provide for the competitive award of ICWA grants to Indian tribes and off-reservation Indian organizations based on the BIA's review of applications. In the past, limited appropriations necessitated the competitive award process. Under this system, tribes were unable to develop long-range plans and programs due to the uncertainty of sustained resources. Moreover, administration of this program was costly and time consuming, because tribes needed to complete lengthy applications for ICWA grant funds which were then reviewed and considered by BIA.

In order for the BIA to convert to a noncompetitive grant award system for tribes, it was necessary to secure sufficient ICWA appropriations. In FY 1992, the BIA requested a substantial increase in appropriations for the ICWA grants program so that noncompetitive awards could be made to tribes. This was explained in the BIA's budget request and was approved by the Office of Management and Budget, creating a $16,786,000 program. The FY 1994 ICWA appropriations include $22,905,000 for Indian tribes and $1,735,000 for off-reservation Indian organizations. These increased ICWA funds and the revised regulations will fulfill the BIA's goal to convert to a noncompetitive award system for all federally recognized tribes, enabling them to access recurring base ICWA funds via the tribe/agency funding mechanism already in place. The revised regulations will require all applicants to develop multi-year comprehensive programs which will reduce the overall burden on the public and the Federal Government by reducing the amount of time, resources, and paperwork associated with implementing the current competitive grant application system and related grant administration and fiscal activities. Additionally, all program operation activities will be moved from the headquarters level to the lowest possible level of decisionmaking, and the appeals process will be streamlined substantially for all applicants at all levels of government. Thus, the revised regulations will be less burdensome and more cost-effective, and efficient.

Although these regulations convert ICWA grants to a noncompetitive system for federally recognized Indian tribes on reservations, the competitive award system will be retained for off-reservation Indian organizations. This is because there will not be sufficient ICWA grant funds available for noncompetitive awards to all eligible off-reservation Indian organization applicants.

Fifty-five individual comments and two documents containing consolidated recommendations and comments were received by February 11, 1993, the closing date of the comment period. The consolidated comments were the result of meetings facilitated by two BIA area offices. Each comment was carefully reviewed by a Division of Social Services work group, which adopted, rejected or developed a modified version of each recommendation for incorporation into the final rule. Several comments received after the close of the comment period were not considered.

A number of comments pertained to issues that cannot properly be addressed in regulations. These comments fell within one of the following categories:

(1) Matters outside the realm and purview of these regulations that may be addressed through other means, such as state non-compliance issues with respect to implementing applicable provisions of the Act, or special consideration to extend a tribe's service area so that it may serve tribal members residing in a major urban area;

(2) Proposals regarding distribution methodologies for ICWA grant funds, such as a distribution based upon where the majority of Indian populations are concentrated; and

(3) Requests for examples and how they relate to specific circumstances. Requests for such information and technical assistance on the application of specific regulations should be directed to appropriate agency or area office staff.

This final rule is the result of extensive consultation on this subject matter since 1990. The BIA is committed to tribal participation in fostering a true tribal-BIA partnership in addressing priority issues in Indian Country. We have communicated to the Indian communities in various ways that Indian child welfare services are of paramount concern and importance to the BIA. The BIA conducted a series of tribal consultation sessions prior to the publication of the NPRM revising the current ICWA regulations. The BIA believes that Indian tribes and Indian organizations have had ample opportunity for meaningful input into the development of both the proposed and final regulatory revisions, and options for the distribution of the ICWA grant funds. The following is a brief synopsis of these activities.

In February 1990, the Acting Deputy to the Assistant Secretary—Indian Affairs (Tribal Services) called upon each BIA area office (areas) to establish tribal technical work groups for the purpose of reviewing the existing ICWA grant process, identifying problem areas, and making recommendations for improvement. Additionally, each area was requested to develop a methodology for measuring the impact of ICWA programs. Working under a tight deadline, the areas convened work groups and submitted reports suggesting several ways to improve the capabilities of ICWA programs. In September 1990, the BIA issued an executive summary of the area reports which contained comments and recommendations received from tribes and Indian organizations. Essentially, the collective findings and recommendations of the work groups addressed the competitive nature of the grant process and the impacts that unstable, insufficient funding levels have had on the continuity of programs.

The BIA's Division of Social Services then crafted proposed changes to 25 CFR part 23, incorporating recommendations contained in the executive summary, thereby revising the regulations governing the ICWA grant process. The BIA distributed these draft regulations to the areas for a second round of consultations in March 1991. Included on the consultation agenda were ICWA funding-related issues/concerns. Each of the twelve areas met the challenge and conducted field hearings and solicited comments on the proposed regulations. Subsequent to these area consultation sessions, all comments received from tribes and interested parties were considered and incorporated, to the extent feasible, into the NPRM.

A third consultation session facilitated by the BIA was held in Denver, Colorado, in November 1991, for the exclusive purpose of addressing the development of options for the distribution of the ICWA grant funds. At this meeting, the BIA made a commitment to continue tribal consultation on the proposed changes to the ICWA grant process. Based on recommendations received from tribes in Denver, the BIA developed nine proposed methods for the distribution of ICWA grant funds. Consistent with the BIA's government-to-government relationship with Indian tribes, the BIA, in December 1991, communicated directly with tribally-elected officials in conducting a preference survey to arrive at the most preferred option for distributing ICWA grant funds. Fiscal Year (FY) 1992 ICWA grant funds were distributed to eligible Indian tribes through a methodology reflective of a combination of three options most preferred by tribal leadership. Funds were distributed to 374 tribes and Alaska native villages.

In summary, the BIA has to date demonstrated its commitment to, and has facilitated the consultative process on behalf of, Indian tribes and other interested parties with respect to the ICWA regulatory revisions.

Although the final rule significantly differs in organization from the NPRM as published, the major components remain intact. Some sections have been rearranged to better delineate and identify under one subpart all the applicable sections on the grant application procedures. Some sections have been consolidated, condensed, or rephrased for purposes of clarity. After careful consideration of all comments and recommendations received, sections that were considered no longer necessary or applicable were deleted. Additionally, the ICWA grant process has been divided into two different processes: a newly-designated Subpart C pertains exclusively to Indian tribes and a newly designated Subpart D pertains exclusively to off-reservation Indian organization applicants pursuant to 25 U.S.C. 1932. In response to recommendations received, both processes also have been restructured so that ICWA grants will be processed by the appropriate BIA agency or area office. The move in this direction is consistent with BIA policy that program decisions be made by BIA line officials at the lowest level of decision-making.

Contingent upon annual congressional appropriations, the purposes of the final rule remain the same as announced in the NPRM, namely:

(1) To convert the competitive ICWA grant award process to a noncompetitive award system for eligible Indian tribes;

(2) To promote long-term planning;

(3) To stabilize and provide core funding for tribal ICWA programs, enabling them to develop, coordinate, and implement comprehensive Indian child and family service programs;

(4) To provide for off-reservation ICWA programs to continue to be awarded competitively; and

(5) To establish new requirements for internal evaluation processes for all grantees.

In all its consultation sessions on regulatory revisions to date, the BIA has made known publicly its intentions for implementing both the proposed noncompetitive ICWA grant award system for federally recognized Indian tribes and Alaska native villages, and the competitive award system for off-reservation Indian organization applicants. The following is background information on and the reasons why the BIA has determined it would develop and implement two separate grant processes.

(1) Public Law 95–608 statutorily treats federally recognized Indian tribes and off-reservation Indian organization applicants differently at 25 U.S.C. 1931 and 1932 respectively. 25 U.S.C. 1931 delineates for Indian tribes eight separate ICWA program activities, while 25 U.S.C. 1932 identifies four ICWA program activities for off-reservation Indian organizations. Moreover, under 25 U.S.C. 1931, tribes may use ICWA funds as non-Federal matching shares for programs administered under the Social Security Act. This provision is consistent with entities considered eligible, by other Federal programs, to apply for and administer Social Security Act programs, whereas off-reservation Indian organizations are not statutorily authorized to do so.

(2) The Federal government has a government-to-government relationship with the sovereign governments of federally recognized Indian tribes and Alaska native villages as contemplated by Public Law 95–608. Therefore, federal funds for which a tribe is eligible are distributed directly to the tribe by a Federal Finance System. Once the revised regulations are implemented, this funds distribution system will allow tribes quick access to program funds and will reduce the burden hours heretofore required for the execution and administration of grants. The Federal government does not, however, have a similar relationship with off-reservation Indian organizations incorporated under state law. As a result of these relationships, the BIA may develop and implement a noncompetitive grant award system for Indian tribes, while retaining a competitive system for off-reservation Indian organization applicants.

(3) The Congress has been informed of the BIA's intent to develop and implement two separate grant award systems, one for Indian tribes and another for off-reservation Indian organization applicants. Since FY 1991, the BIA has submitted budget justification documents informing the Congress of all actions contemplated with respect to the implementation of the new ICWA initiative and its attendant regulatory revisions.

(4) Beginning in FY 1993, the Congress earmarked a national allocation of ICWA funds to be awarded competitively to successful off-reservation Indian organization applicants. Likewise, Congress earmarked FY 1993 ICWA funds to be granted noncompetitively to tribal programs.

(5) Limited funds appropriated and earmarked for the off-reservation ICWA grant competition precludes the BIA from funding these organizations noncompetitively, because there would not be enough funds for all eligible off-reservation Indian organization applicants. Other concerns inherent in the noncompetitive funding of off-reservation Indian organization grantees include the fact that there is no fair manner in which the BIA may fund a select few of the many eligible organizations. Any preferential treatment given such a select group would be deemed discriminatory by those organizations not funded. Considering the limited funds available

for successful off-reservation Indian organization applicants, a competitive award process is the only alternative available to the BIA.

The decision to continue a competitive award system for off-reservation Indian organization applicants should not in any way be construed to mean that off-reservation ICWA programs are valued less than tribal programs. The BIA recognizes and acknowledges that off-reservation ICWA programs play an important advocacy role on behalf of many Indian families residing in urban settings in brokering services provided by urban agencies/services providers. Off-reservation ICWA programs oftentimes provide the key link between Indian tribes and their tribal members residing off-reservation who may be experiencing crisis situations, particularly those involving involuntary child custody proceedings in state courts.

During the November 1991 tribal consultation session conducted in Denver, Colorado, tribes requested that the BIA seek a legal opinion as to the applicability of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended, to tribal ICWA grant programs. Tribes recommended and supported the concept of converting the competitive ICWA grant award process to a noncompetitive award system for tribes under the authority of Public Law 93–638. Tribes also recommended that all provisions of Public Law 93–638 be made applicable to tribal ICWA programs once this conversion materializes. In particular, tribes sought entitlement to contract support costs for tribal ICWA programs and eligibility for indirect costs at the tribes' negotiated rates with the Office of the Inspector General (OIG). Ninety percent of tribal governments who submitted comments during the NPRM comment period reiterated their recommendations with respect to the provision of contract support funds for tribal ICWA programs.

In response to the BIA's request for a legal opinion on behalf of Indian tribes with respect to the specific issues stated above, the Department of the Interior's Solicitor for Indian Affairs determined that there is neither statutory authority nor Indian Self-Determination regulatory provisions which would permit Title II Indian Child Welfare Act grant programs to be awarded as contracts to tribes under the authority of the Indian Self-Determination and Education Assistance Act (Pub. L. 93–638), as amended.

Pursuant to Public Law 93–638, as amended, tribes are entitled to contract with the BIA to plan, conduct, and administer all or parts of any program which the BIA is authorized to administer for the benefit of Indians. However, grants made under the Indian Child Welfare Act are not such a program. The BIA can neither operate ICWA programs on behalf of Indian tribes nor can it assume the operation of such a program in the event a tribe no longer wishes to operate an ICWA program. Hence, ICWA grants are not contractible under the regulatory provisions which implement Public Law 93–638. However, the Solicitor concluded that there are no statutory or regulatory restrictions on the allocation of indirect costs to ICWA grants awarded to Indian tribes under section 201 of the Act (25 U.S.C. 1931) at the OIG-negotiated indirect cost rates.

Therefore, based upon the above Solicitor's opinion, BIA policy, and subject to the availability of contract support funds, ICWA contract support costs for tribes may be paid. However, there are no funds currently appropriated for ICWA indirect costs.

Changes Adopted Due to Comments Received

Comment. A commenter recommended that the purpose statement at § 23.1 be restated to reflect that these regulations govern the provision of funding for, and the administration of ICWA programs, rather than addressing the performance of the Federal government's responsibilities under the Act.

Response. The BIA agrees with the recommendation, and the purpose statement at § 23.1 incorporates this recommendation.

Comment. Commenters recommended that several new definitions be added because they were necessary, or that other definitions be clarified because they were unclear in meaning. Commenters also recommended deletion of entire definitions or portions thereof because they were perceived to be unnecessary, confusing, or irrelevant to the ICWA grant process. Two commenters recommended the deletion of any references to status offenses (such as truancy and incorrigibility) within the definition of *child custody proceeding* because such language is not contained in the Act.

Response. The BIA agrees with the rationales provided to add the following new definitions:

(1) *Bureau of Indian Affairs;* (2) *child custody proceeding,* to clarify that other tribal placements made in accordance with the Act are included, but that status offenses are excluded; (3) *grants officer,* to define the responsibilities of this BIA official; (4) *off-reservation ICWA program,* as distinguishable from a tribal government ICWA program; (5) *Title II of Pub. L. 95–608,* due to provisions therein that provide authority for ICWA grant programs; and (6) *tribal government,* which now better defines tribal applicants and is preferable to the definition of "on- and near-reservation programs," as formerly used in the NPRM.

The following definitions are being deleted for the reasons given:

(1) *Director, Office of Tribal Services* is no longer used in this rule; (2) *indirect costs;* (3) *indirect cost rate* because their applicability is discussed in 25 CFR part 276, Appendix A; (4) *near-reservation* because this term was confusing to those tribes who do not have designated near-reservation service areas (instead, grants formerly designated as "on- and near-reservation" are redesignated as tribal government ICWA grants); and (5) *unduplicated case count* is no longer used in this rule. A change in the definition of *Indian* is made to be consistent with the definition at 43 U.S.C. 1606. Additionally, clarifying language for purposes of eligibility for ICWA grants under 25 U.S.C. 1932 is being added to the definition of *Indian organization.* It is intended that this definition be solely applicable to off-reservation Indian organizations, not Indian organizations located within the confines of the geographical boundaries of Indian reservations.

Comment. Although several commenters agreed with the NPRM policy statement at § 23.3, emphasizing the provision of prevention and reunification services, other commenters recommended that the policy statement be consistent with the Congressional declaration of policy at 25 U.S.C. 1902 (Pub. L. 95–608), and that ICWA programs should be comprehensive in nature and approach.

Response. The BIA agrees with the above recommendations and has revised the policy statement to reflect these recommendations, with emphasis on the design, development and implementation of Indian child and family service programs to coordinate with, rather than to supplant, existing programs.

Comment. A commenter inquired as to notification responsibilities, under 25 U.S.C. 1912, of child custody proceedings in state courts when the location of the Indian parents, Indian custodians or the Indian child's tribe is known.

Response. The BIA agrees that current regulations are unclear as to notification responsibilities under 25 U.S.C. 1912 when the whereabouts of the Indian parents, Indian custodians or child's tribe are known. Thus, § 23.11(a) now begins with a new paragraph which specifically delineates the responsibility of any party seeking to effect a foster care placement of, or termination of parental rights to, an Indian child under state law to notify directly, and in a timely manner, the affected Indian parents, Indian custodians or the child's tribe of such state court proceeding. For purposes of efficacy and to avoid duplication of effort, included in this section is a new requirement to send copies of notices provided in accordance with this section to the Secretary and the appropriate Area Director. The Secretary has, heretofore, experienced such duplication of effort.

Comment. Additional tribal comments received on § 23.11 included exceptions to BIA area offices designated to process ICWA notices in behalf of said tribes as specified at § 23.11 (c)(1)–(12).

Response. All exceptions to § 23.11 (c)(1)–(12) are incorporated.

Comment. One commenter requested that more inclusive information be secured with respect to the notification requirements at § 23.11 (d)(1)–(3).

Response. Notification requirements identified at § 23.11 (d)(1)–(2) are rephrased to be more inclusive, concise, and clear regarding attempts to secure information on the Indian child's lineal ancestors.

Comment. A commenter requested clarification as to which agency pays for court-appointed counsel under section § 23.11 (e)(2).

Response. Language at § 23.11 (e)(2) is rephrased to be consistent with 25 U.S.C. 1912, which addresses the provision of court-appointed counsel when a state court determines indigency and payment for such counsel as authorized by state law. Additionally, language at § 23.11 (e)(4) is consistent with the new requirement at § 23.11 (a) that the moving party is responsible for providing to the Secretary and appropriate Area Director copies of ICWA notices sent to the affected parties pursuant to 25 U.S.C. 1912.

Comment. A commenter recommended that language at § 23.11 (e)(5) closely follow 25 U.S.C. 1911.

Response. The above recommendation is incorporated at § 23.11 (e)(5) to reflect language in the Act and to give clearer meaning to this section.

Comment. A commenter suggested that the confidentiality requirement at § 23.11 (d)(7) be applicable to all parties notified rather than just BIA officials.

Response. The BIA agrees that the confidentiality requirement is applicable to all Federal and tribal personnel involved in the handling of ICWA notices at all levels. This section is revised to reflect this understanding. The publication of confidential information related to ICWA notices in tribal newsletters is prohibited as well.

Comment. A commenter recommended that § 23.11(f), which establishes timeframes within which the BIA must notify the affected Indian parties and the child's tribe of child custody proceedings, be consistent with the 15-day requirement established by law.

Response. The BIA agrees, and the timeframe is changed from the 10 days indicated in the NPRM to 15 days as provided for by statute.

Comment. A commenter suggested that the BIA clarify to whom section § 23.11(g) applies.

Response. This section has been clarified to address participants in Indian child custody proceedings.

Comment. The Division of Social Services is including at § 23.12 the authority for this provision. A new change provides that the Secretary or his/her designee shall update and publish as necessary the names and addresses of tribal agents for service of ICWA notices. This change is made because the Division of Social Services published in the March 26, 1993, **Federal Register** (Vol. 58, No. 57) the most comprehensive listing ever of designated tribal agents for all federally recognized Indian tribes and Alaska native villages, and thus foresees the publication of updated information only as necessary in the future, rather than on an annual basis.

Comment. The Division of Social Services is adding the word "involuntary" to the title heading of § 23.13 and at paragraph (a) of this section to clarify that the provisions are applicable only to "involuntary child custody proceedings" as provided for in 25 U.S.C. 1912 and to be consistent with the title heading in Subpart B.

Comment. The Department of the Interior's Office of the Solicitor (Indian Affairs) and the Board of Indian Appeals (IBIA) recommended the incorporation of specific citations they provided with respect to decisions appealable to the IBIA under § 23.13 (c) and (f). The IBIA also recommended deletion of the words "Hearings and" from the title in Subpart F as there are no provisions for the conduct of hearings under this subpart.

Response. The BIA agrees that the citations provided for appeals in the NPRM were general in nature and that Subpart F contains no provisions for hearings. Therefore, recommended citations on appeals are being incorporated into § 23.13 (c) and (f) and the words "Hearings and" are being deleted from the title in Subpart F.

Comment. Numerous comments recommended that the entire grant process be streamlined for both "on-reservation" and off-reservation Indian organization applicants, as well as the establishment of minimum grant application and grant administration requirements. Commenters stated that some of the detailed information required for the submission of grant applications is excessive or redundant; some sections are considered restrictive; and that the application process could be streamlined.

Tribes recommended that, in keeping with the BIA's policy on program operations, the entire grant process be dealt with at the lowest level of decision-making, in this case by the Agency Superintendent. Similarly, all comments received from potential off-reservation Indian organization applicants supported and recommended that the area offices continue to bear the responsibility for the conduct of the competitive ICWA grant review and award process for off-reservation applicants. Tribes also recommended that the ICWA grants be awarded under the authority of the Indian Self-Determination Act and regulations. However, for the reason discussed earlier, this is not feasible.

Response: Although off-reservation Indian organizations presented their views on why ICWA grants to such organizations should also be awarded noncompetitively, that is not an alternative for the BIA for the reasons discussed in the preamble. Some off-reservation Indian organizations also requested authority to operate the same types of on-reservation programs operated by tribes. These regulations identify off-reservation ICWA programs as those delineated by statute at 25 U.S.C. 1932. However, it should be noted that the list of off-reservation ICWA programs is nonexclusive, provided other program activities promote and fulfill the intent and purposes of the Act.

Based upon the above comments and as previously discussed, the grant applications and award processes are dichotomized to address two categories of applicants: (1) Tribal government applicants (formerly called "on- and near-reservation programs"); and (2) off-reservation Indian organization applicants. Accordingly, tribal applicants formerly identified at proposed § 23.21 are designated as "tribal government" applicants at a newly established subpart C, and subsequent references are consistent

with this renamed applicant category. The term "tribal government" better defines the tribal applicants and recognizes the Federal government's government-to-government relationship with Indian tribes, rather than relating to tribal ICWA programs on the basis of their locales.

Subpart C includes and sequences all sections applicable to the noncompetitive tribal government grant application and administrative processes as published in the NPRM at proposed §§ 23.21; 23.22; 23.23; 23.24; 23.26; 23.27; 23.28; 23.32; 23.33; 23.42; 23.43; 23.45; and 23.51, the basic components of which remain intact in subpart C of the final rule. Tribal government applications will be processed by the appropriate Agency Superintendent or Area Director.

Likewise, the newly established subpart D delineates the competitive grant review and award process exclusively for off-reservation Indian organization applicants. The grant application process in subpart D has been redirected in response to overwhelming support for the area offices to continue to conduct the competitive reviews of off-reservation ICWA applications and make funding decisions. Thus, off-reservation ICWA applications will be reviewed and processed in their entirety by the Area Directors, rather than by the centralized review committee as previously contemplated.

Subparts C and D each identify in one subpart all sections applicable to each respective applicant.

All general references to the BIA in the NPRM are corrected throughout this document. Specific BIA officials and/or offices are now identified.

Subpart C. The following section-by-section discussion of subpart C of the final rule highlights only those changes or additions made in response to specific comments/recommendations with respect to the implementation of this subpart for tribal government applicants. The rearrangement of those grant application contents and procedures, grant reporting requirements and other administrative provisions identified and published in the NPRM at §§ 23.21; 23.22; 23.23; 23.24; 23.26; 23.27; 23.28; 23.32; 23.33; 23.42; 23.43; 23.44; 23.47 and 23.51, and which basically remain intact in subpart C of the final rule, will not be discussed in detail. Applicable sections cited are consolidated and streamlined for purposes of clarity and efficiency.

Sec. 23.21. Through publication of a **Federal Register** announcement at the outset of the implementation of the noncompetitive ICWA grant award process during which tribal applications will be initially solicited, the Assistant Secretary will notify eligible tribal applicants under subpart C of the amount of ICWA funds available for their ICWA program. The funding levels will be based upon the service area population to be served. Upon the receipt of this notice from the Agency Superintendent or appropriate Area Director, tribal applicants shall prepare and submit a complete ICWA application within the prescribed timeframe to the Agency Superintendent or Area Director. Thereafter, it is intended that core ICWA grant funds will be awarded annually to eligible tribal applicants, provided their ICWA programs meet the requirements delineated at § 23.23(c).

One political subunit of a tribal government sought recognition as an eligible tribal applicant, separate from the tribe's governing body. No change is made because such an exception would permit the receipt and award of two ICWA grants for the benefit of one tribe.

Sec. 23.22. This section provides a nonexclusive list of ICWA programs and activities, including tribally designed programs intended to promote the intent and purposes of the Act. Use of ICWA funds as non-Federal matching shares is consistent with the new policy statement. In keeping with the tenets of Indian Self-Determination policy and to facilitate increased self-determination among tribes, tribal governments are given the flexibility and latitude they sought to design, develop, and implement comprehensive Indian child and family service programs designed to meet community needs. In order to maximize the impact of available resources, it is intended that ICWA grant programs funded under subpart C coordinate with and complement similar Federal, state, local, and tribal programs.

Sec. 23.23. For purposes of clarification in this section and elsewhere within the regulations, reference is made to the Secretary or his/her designee to indicate that the Secretary delegates his/her decision-making authority to other Federal officials.

For the reasons given, references to the following subject matter are deleted: (1) The verification process for the applicant's service area population because this determination will not occur annually, but only during the initial funding phase; (2) all references to preventive and reunification services, because the current emphasis is on comprehensiveness, which includes prevention and reunification services; (3) references to specific employee qualifications/staffing requirements, plans for regular access to professional services, and the provision of specialized child welfare services, because it is expected that applicant staffing plans will address these concerns; and (4) the discussion on contract support costs and indirect cost rates, because relevant material on the subject matter is found at 25 CFR part 276, Appendix A.

In order to ensure that grantees comply with title IV of Pub. L. 101–630 with respect to the conduct of character and background investigations of personnel identified in the statute, grantees are expected to initiate efforts to conduct the investigations prior to the actual employment of such personnel and to complete the investigations in a timely fashion.

The subsections on application contents are restated to define more clearly the intended comprehensive developmental approach sought and to better delineate the application requirements. Applicable citations or explanatory language are provided throughout subpart C where references are made to existing Federal requirements.

Subpart D. The following section-by-section discussion of subpart D of the final rule highlights only those changes or additions made in response to specific comments/recommendations with respect to the implementation of this subpart for off-reservation Indian organization applicants.

Similar to the discussion on subpart C, the rearrangement of all sections applicable to competitive grant application contents and procedures, grant reporting requirements and other administrative provisions published in the NPRM at §§ 23.21; 23.22; 23.23; 23.25; 23.26; 23.27; 23.28; 23.29; 23.30; 23.42; 23.43; and 23.47, and which basically remain intact in subpart D of the final rule, will not be discussed in detail. Applicable sections cited are consolidated and streamlined for purposes of clarity and efficiency.

This subpart is refocused from a centralized review system to a competitive review of applications by area review committees, under the direction of the Area Directors. Thus, all references to the Assistant Secretary and the proposed centralized review system are deleted and replaced with the area review system.

Sec. 23.31. As previously discussed and in accordance with the recommendations received from affected applicants, applications under Subpart D will be solicited in response to periodic **Federal Register** announcements and processed in their entirety by the appropriate Area Director designated at § 23.11 of this part. This designation clearly identifies for prospective applicants under this subpart which Area Director processes their applications. Heretofore, this information was lacking and caused some confusion among applicants as to where to submit their ICWA grant applications.

Sec. 23.32. Similar to § 23.22, this section provides language which comports with the Act and the same nonexclusive list of ICWA programs and activities as those identified in the statute at 25 U.S.C. 1932.

Sec. 23.33. All mandatory application requirements cited herein were previously identified in the NPRM. However, the timeframe allowing for the Area Director's certification and subsequent transmittal of an application to the area review committee is changed from 15 working days to 5 working days because it is anticipated that fewer applications will be received under this subpart. The five-day timeframe, not to be confused with the timeframe for the actual review and scoring of the application, is deemed sufficient for purposes of certification of the application contents only.

As in § 23.23, the subsections on application contents are restated to define better the intended comprehensive developmental approach sought and to delineate better the application requirements. Applicable citations or explanatory language are provided throughout Subpart D where references are made to existing Federal requirements.

For the reasons given, references to the following subject matters are deleted: (1) The requirement for evidence of tribal support via a tribal resolution if more than one-half of the applicant's service area population are members of one tribe. This is deleted because commenters stated this was an unrealistic expectation and there are other means available to determine an applicant's service area population; (2) all references to preventive and reunification services as the current emphasis is on comprehensiveness which includes prevention and reunification services; (3) references to specific employee qualifications/staffing requirements, plans for regular access to professional services, and the provision of specialized child welfare services as it is expected that applicant staffing plans will address these concerns; and (4) the discussion on contract support costs and indirect cost rates is deleted because relevant material on the subject matter is found at 25 CFR part 276, Appendix A.

In order to ensure that grantees comply with Title IV of Pub. L. 101–630 with respect to the conduct of character and background investigations of personnel identified in that statute, grantees are expected to conduct and complete the investigations prior to the actual employment of such personnel.

Applicable citations or explanatory language are provided throughout Subpart D where references are made to existing Federal requirements. Additionally, personnel/offices responsible for implementing specific actions/activities are identified.

Sec. 23.34. In accordance with recommendations received from commenters as discussed earlier, the entire section on the review of, and decisions regarding, off-reservation applications is changed from a centralized review system to area reviews. The personnel and offices identified to carry out the responsibilities as outlined are consistent with area office organizational structures. The competitive review and decision-making processes remain the same, except that the entire process will occur at the area office level.

In response to commenters and to ensure that applications are reviewed by experienced, knowledgeable reviewers, each area review committee is chaired by a person qualified by training and experience in the delivery of Indian child and family service programs.

All funding decisions are made by Area Directors and subject to appeal procedures under § 23.82.

Sec. 23.35. For purposes of timeliness, the timeframe for Central Office action is changed from 60 days to 30 days because fewer competitive applications than in the past are expected to be processed. This would require less time to distribute available funds to the area offices.

Subpart E. All applicable general and uniform grant administrative provisions and requirements are identified herein. New language reflects considerations given to circumstances where changes might occur in the future with respect to applicable Federal statute, regulations, or OMB circulars.

Sec. 23.42. Timeframe requirements for requesting technical assistance, as well as responses to technical assistance, are deleted. It is expected that tribes needing technical assistance will request such assistance to comply with the timeframe for the submission of tribal government applications as delineated in § 23.21 (b), and that appropriate BIA personnel will honor in a timely manner such tribal requests. The timeframe for the receipt of requests from off-reservation applicants for technical assistance is changed to no later than 10 days prior to the close of the application deadline. This is consistent with past experience and, thus, is considered a reasonable timeframe.

In response to commenters, a new section is added on the provision of technical assistance in the event a program receives an unsatisfactory program evaluation.

Sec. 23.43. Consistent with previous changes, authorities for the approval and execution of grants is changed from the Assistant Secretary—Indian Affairs to Area Directors for grants awarded under Subpart D. Likewise, a similar change is made for grants awarded under Subpart C from Area Directors to Agency Superintendents, where applicable. The separation of authorities under this section and those identified in § 23.44 are consistent with current BIA practice.

Sec. 23.44. This section is refocused to grantee responsibility for achieving programmatic goals, providing assurance that the quality and quantity of actual program performance conforms to the requirements of the grant award document and compliance with applicable Federal requirements. Consistent with current policy and practice, grant program and fiscal monitoring responsibilities are assigned or designated by the Area Directors.

Sec. 23.45. Commenters expressed concerns that grants awarded competitively under Subpart D should be scored and awarded on the basis of the final form of the grant application received at the close of the application period. Applicants should identify all subgrants within their application; thus, the provision for subgrants under Subpart D was considered unnecessary.

The BIA agrees. Therefore, subgranting procedures will apply only to grants awarded under Subpart C of this part.

Sec. 23.46 (h). This subsection, formerly identified in the NPRM at § 23.48 (Penalties), is moved to § 23.46 (h) for purposes of applicability under this section and an appropriate citation is provided for said penalties.

Sec. 23.47. Specific timeframe requirements for the receipt of required reports and other information are changed to reflect reporting due dates specified in grant award documents. This is a more reasonable approach than the timeframes imposed in the NPRM.

Sec. 23.47 (c)(1)(iv). This statistical reporting requirement, mandated by Pub. L. 99–570 since enactment in 1986, is being included in regulation. To date, the BIA has not had the opportunity to

include this reporting requirement in any regulation.

Sec. 23.47 (c)(2). Language change in this section reflects that the BIA may negotiate for the provision of other grant-related reports not previously identified, replacing the NPRM language which stated that reports would be submitted in response to requests from OMB or the Congress.

Sec. 23.47 deletions. Commenters regarded the following requirements as unnecessary: (1) Calculating program unit costs; (2) quantification of program outputs; and (3) specific recordkeeping requirements for the maintenance of client case records. The BIA agreed that numbers 1 and 2 were unnecessary and deleted them. However, the specificity for client case record content is removed and is now covered under the general recordkeeping requirements as §§ 23.23 and 23.33.

Sec. 23.50. Due to concerns expressed with respect to serving all members of an Indian family unit, regardless of tribal membership/affiliation, this section is revised so that tribes may, under Subpart C, extend ICWA services to non-Indian family members related by marriage to tribal members; provided that such services comport with the intent and purposes of the ICWA.

NPRM references to service eligibility for on- and near-reservation Indian child and family service programs are deleted and replaced with tribal government ICWA programs, consistent with the terminology used for tribal ICWA programs.

Sec. 23.51. The section on Revisions or Amendments of grants formerly identified at § 23.51 in the NPRM is moved to § 23.21 (c) and is applicable to grants awarded under Subpart C. Commenters expressed concerns that grants awarded competitively under Subpart D should be scored, awarded, and operated on the basis of the final form of the grant application contents received at the close of the application period. Commenters expressed their belief that applications which are awarded competitively would not ordinarily have a need for grant revisions or modifications of a material nature once awarded. The BIA agrees and thus these provisions will apply only to grants awarded under Subpart C of this part.

Secs. 23.52 and 23.53. These two sections identify by title the BIA officials responsible for taking the specific actions delineated in these two sections. This change replaces the generic term "BIA" as used in the NPRM.

Subpart F—Appeals. In response to comments received, the words "Hearings and" are removed from the title in Subpart F because no provisions for the conduct of hearings are included in this subpart. Consistent with the changes made with respect to the BIA line officials making decisions on all aspects of the ICWA grant award process, their decisions are subject to appeal under this subpart. The titles of these decision makers are included in §§ 23.61 and 23.62. Specific appeal citations provided by the IBIA with respect to decisions appealable to the IBIA are incorporated at §§ 23.61 and 23.62. These citations replace the generic references made in the NPRM to "subpart 2 of this chapter."

Subpart H—Assistance to State Courts. For purposes of clarification in this subpart, new language refers to the Secretary or his/her designee to indicate that the Secretary delegates his/her decision-making authority to other Federal officials. An additional change in this subpart clarifies that the BIA is not obligated to pay for the services identified in this subpart.

Comments Not Adopted.

Comment. Some commenters recommended that the definitions of *Indian, Indian child,* and *Indian tribe* be changed and/or expanded, such as the inclusion of Alaska Native corporations incorporated under state law under the definition of *Indian tribe.*

Response. These three definitions are taken verbatim from Pub. L. 95–608, the Indian Child Welfare Act. The BIA has no authority to change these statutory definitions.

Comment. One commenter recommended that revised regulations require ICWA notices be sent to tribes via registered mail. Additionally, one commenter suggested that the time limitation imposed on tribes to prepare for involuntary child custody proceedings in state courts be extended to 30 days to allow additional time to prepare for court proceedings.

Response. No change is made in the manner in which ICWA notices are served due to considerations given for proof of delivery of said notices in a timely manner. Registered mail is delivered only to the addressee. This means ICWA notices may not be delivered should the addressee not be present at the time of mail delivery. Unclaimed registered mail is held by the mail service for a limited number of days and then returned to the sender. On the other hand, mail delivered via certified mail with return receipt requested may be delivered to the office in the address rather than only to a specific person. Because the intent of providing ICWA notices is timely tribal notification of child custody proceedings and proof that such notice was given, certified mail with return receipt requested is the preferred method of serving ICWA notices to assure its timely delivery.

The timeframes specified for all parties/agents involved in the service of ICWA notices pursuant to 25 U.S.C. 1912 are imposed by statute and therefore not subject to change.

Comment. A commenter recommended that state courts be required to notify tribes of voluntary child custody proceedings under § 23.11.

Response. This recommendation is not incorporated because the ICWA addresses only mandatory tribal notification in cases involving involuntary child custody proceedings.

Comment. Some commenters requested clarification of the "juvenile delinquency" as it is used in § 23.13. No change is made.

Response. The manner in which the above term is used is in the context of applying and following state-established procedures and criteria in calculating legal payment fees/rates for court-appointed legal counsel in accordance with § 23.13. Each state has set criteria, procedures, and rates applicable to the calculation of legal fees associated with the conduct of state juvenile delinquency proceedings. In the absence of similar state-established criteria, procedures, and rates to assist in determining attorney fees and expenses associated with involuntary child custody proceedings, the language at § 23.13 (d) is intended to lend guidance to state courts in determining/calculating attorney fees and legal expenses for court-appointed legal counsel in accordance with § 23.13 by following the same state-established procedures and criteria for calculating legal payment fees/rates for state juvenile delinquency proceedings. This section does not imply that juvenile delinquency proceedings are covered under the ICWA.

Comments. One commenter recommended that failure of the Area Director to comply with the established timeframes specified at §§ 23.13 (c) and 23.13 (f) be grounds for automatic approval of attorney fees and expenses pursuant to § 23.13. A commenter suggested that the provision for payment of attorney fees and expenses be extended to attorneys representing Indian tribes in state courts.

Response. No change is made because automatic approval would neither guarantee nor assure that applicants under § 23.13 would be eligible for attorney fees or expenses as delineated in that section. No change is made with respect to payment of attorney fees for legal counsel representing tribes in state courts, because the ICWA addresses only the need for court-appointed legal counsel to represent an Indigent Indian parent or Indian custodian, but does not address similar representation for tribes.

Comment. Commenters recommended that the term "multi-year" be defined in terms of years.

Response. This suggestion is not adopted because the BIA desires to allow flexibility within the meaning of multi-year, whether it be in terms of two, three, or five years. As the BIA and tribes gain experience in the ICWA noncompetitive grant award system, both parties may eventually desire long-term grant awards to tribes.

Comment. A commenter recommended that off-reservation ICWA programs be allowed to serve those individuals who meet the definition of *Indian* as defined in the Indian Health Care Improvement Act of 1976.

Response. For purposes of service eligibility for off-reservation ICWA grant programs, the definition of *Indian* already includes persons defined in section (4)(c) of the Act cited above. (25 U.S.C. 1603 and 1934).

Comment. One commenter recommended that off-reservation Indian organization applicants under Subpart D be allowed to use ICWA funds as non-Federal matching shares for other Federal programs in the same manner that Indian tribes are.

Response. The above recommendation is not incorporated because the statutory provision for this flexibility is limited to Indian tribes (25 U.S.C. 1931) and does not extend to off-reservation Indian organizations. This is because, absent any support from and/or sanction by tribal governments, these organizations, in and of themselves, do not qualify under current regulations as eligible applicants in their own right to apply for funds or administer such Federal programs as those under Title IV–B, IV–E, or XX of the Social Security Act.

Comment. Several off-reservation Indian organizations who have successfully operated ICWA programs since the inception of the grant program recommended that similarly situated grantees receive some type of recognition during the grant application scoring process for demonstrating a history of successful program performance.

Response. Although specific procedural scoring issues relative to competitive grant applications are generally not covered by regulation, the BIA implemented the above recommendation by way of awarding bonus points to off-reservation applicants for past successful program performance during the FY 1993 grant cycle. It is anticipated that bonus points will continue to be used in the future.

Comment. Some off-reservation Indian organizations recommended that national ICWA program priorities be established to give more specific guidance to applicants.

Response. No change is made with respect to the establishment of national ICWA program priorities. It is the position of the BIA that program priorities should be locally determined on the basis of identified needs and gaps in services.

Comment. Some commenters recommended that tribes involved in the subgranting of certain administrative procedures to Indian organizations be held harmless with respect to grantee accountability over ICWA grant activity and funds.

Response. No change is made because the subgranting procedures at § 23.45 are consistent with existing BIA regulations on subgrants whereby the grantee retains administrative and financial responsibility over the ICWA grant activity and funds.

Comment. Comments were received with respect to the applicability of these regulations to tribes with Self-governance compacts.

Response. To the extent that Self-governance compact tribes do not request and secure approval for waivers to specific regulations, all regulatory provisions are applicable to Self-governance tribes. Similarly, all regulations are applicable to tribes operating Consolidated Tribal Government Programs.

Comment. One law firm and one Indian organization expressed their views that the BIA failed to engage in "meaningful" consultation.

Response. As discussed in the preamble, the BIA has repeatedly provided various forums and opportunities for tribal participation throughout the entire regulatory revision process during 1990–1992. The BIA feels it conducted "meaningful" consultation with tribes and other interested parties.

The information collection requirements contained in Part 23.13 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number [insert new number]. This information is being collected and will be used to determine eligibility for payment of legal fees for indigent Indian parents and Indian custodians, involved in involuntary Indian child custody proceedings in state courts, who are not eligible for legal services through other mechanisms. Response to this request is required to obtain a benefit.

Public reporting for this information collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimates or any aspect of this information collection should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Paperwork Reduction Project—insert new clearance number], Office of Management and Budget, Washington, DC 20503.

The information collection requirements contained in 25 CFR parts 23.21; 23.31; 23.46; 23.47, and 23.71 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076–0131. The information collection requirements under 25 CFR parts 23.21 and 23.31 are collected in the form of ICWA grant applications from Indian tribes and off-reservation Indian organizations. A response to this request is required to obtain grant funds. The information collection requirements under 25 CFR part 23.46 are collected in compliance with applicable OMB circulars on financial management, internal and external controls and other fiscal assurances. The grantee information collection requirements under 25 CFR part 23.47 are collected in the form of quarterly and annual program performance narrative reports and statistical data as required by the grant award document. Pursuant to 25 U.S.C. 1951, the information collection requirement under 25 CFR part 23.71 is collected from state courts entering final adoption decrees for any Indian child and is provided to and maintained by the Secretary.

Public reporting for the information collection at 25 CFR parts 23.21 and 23.31 is estimated to average 32 hours per response, including the time for reviewing the grant application instructions, gathering the necessary information and data, and completing the grant application. Public reporting for the information collection at 25 CFR parts 23.46 and 23.47 is estimated to average a combined total of 16 annual hours per grantee, including the time for gathering the necessary information and data, and completing the required forms and reports. Public reporting for the information collection at 25 CFR part

23.71 is estimated to average 4 hours per response, including the time for obtaining and preparing the final adoption decree for transmittal to the Secretary. Direct comments regarding any of these burden estimates or any aspect of this information collection should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C Street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs [Paperwork Reduction Project 1076–0131], Office of Management and Budget, Washington, DC 20503.

This rulemaking action revising 25 CFR part 23 will be limited in applicability to federally recognized Indian tribes and off-reservation Indian organizations applying for grant programs. BIA personnel will receive and process grant applications and monitor the grants once awarded. Indian tribes and off-reservation Indian organizations will administer and manage the day-to-day operations of the grant activities. Individual Indians and Indian families will be the recipients of services under these grant programs. Given the low levels of funding which are expected to be available for small tribes, this rule will not impose a significant economic effect on a substantial number of small entities.

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because of the limited applicability as stated above.

This regulation has been reviewed under Executive Order 12866.

The Department of the Interior has determined that this rule is not a Federal action significantly affecting the quality of the human environment and that no detailed statement is required pursuant to the National Environment Policy Act of 1969.

In accordance with Executive Order 12630, the Department of the Interior has determined that this rule does not have significant takings implications.

The Department of the Interior has determined that this rule does not have significant federalism effects.

The Department of the Interior has certified to the Office of Management and Budget that these final regulations meet the applicable standards provided in Sections 2(a) and 2(b)(2) of Executive Order 12778.

The primary author of this document is Betty B. Tippeconnie, Chief, Branch of Child and Family Services, Division of Social Services, Office of Tribal Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 310–SIB, Washington, DC 20240.

List of Subjects in 25 CFR Part 23

Administrative practices and procedures, Child custody proceedings, Child Welfare, Grant programs—Indians, Grant programs—child and family service, Grant appeals, Indians, Reporting and recordkeeping requirements.

For the reasons set out in the preamble, part 23 of title 25, chapter I, of the Code of Federal Regulations is revised as set forth below.

PART 23—INDIAN CHILD WELFARE ACT

Subpart A—Purpose, Definitions, Policy

Sec. 23.1 Purpose.
Sec. 23.2 Definitions.
Sec. 23.3 Policy.
Sec. 23.4 Information collection.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts

Sec. 23.11 Notice.
Sec. 23.12 Designated tribal agent for service of notice.
Sec. 23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.

Subpart C—Grants to Indian Tribes for Title II Indian Child and Family Service Programs

Sec. 23.21 Noncompetitive tribal government grants.
Sec. 23.22 Purpose of tribal government grants.
Sec. 23.23 Tribal government application contents.

Subpart D—Grants to Off-reservation Indian Organizations for Title II Indian Child and Family Service Programs

Sec. 23.31 Competitive off-reservation grant process.
Sec. 23.32 Purpose of off-reservation grants.
Sec. 23.33 Competitive off-reservation application contents and application selection criteria.
Sec. 23.34 Review and decision on off-reservation applications by Area Director.
Sec. 23.35 Deadline for Central Office action.

Subpart E—General and Uniform Grant Administration Provisions and Requirements

Sec. 23.41 Uniform grant administration provisions, requirements and applicability.
Sec. 23.42 Technical assistance.
Sec. 23.43 Authority for grant approval and execution.
Sec. 23.44 Grant administration and monitoring.
Sec. 23.45 Subgrants.
Sec. 23.46 Financial management, internal and external controls and other assurances.
Sec. 23.47 Reports and availability of information to Indians.
Sec. 23.48 Matching shares and agreements.
Sec. 23.49 Fair and uniform provision of services.
Sec. 23.50 Service eligibility.
Sec. 23.51 Grant carry-over authority.
Sec. 23.52 Grant suspension.
Sec. 23.53 Cancellation.

Subpart F—Appeals

Sec. 23.61 Appeals from decision or action by Agency Superintendent, Area Director or Grants Officer.
Sec. 23.62 Appeals from decision or action by Area Director under subpart D.
Sec. 23.63 Appeals from inaction of official.

Subpart G—Administrative Provisions

Sec. 23.71 Recordkeeping and information availability.

Subpart H—Assistance to State Courts

Sec. 23.81 Assistance in identifying witnesses.
Sec. 23.82 Assistance in identifying language interpreters.
Sec. 23.83 Assistance in locating biological parents of Indian child after termination of adoption.

Authority: 5 U.S.C. 301; 25 U.S.C. 2, 9, 1901–1952.

Subpart A—Purpose, Definitions, and Policy

§ 23.1 Purpose.

The purpose of the regulations in this part is to govern the provision of funding for, and the administration of Indian child and family service programs as authorized by the Indian Child Welfare Act of 1978 (Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 2, 9, 1901–1952).

§ 23.2 Definitions.

Act means the Indian Child Welfare Act (ICWA), Pub. L. 95–608, 92 Stat. 3069, 25 U.S.C. 1901 *et seq.*

Assistant Secretary means the Assistant Secretary—Indian Affairs, the Department of the Interior.

Bureau of Indian Affairs (BIA) means the Bureau of Indian Affairs, the Department of the Interior.

Child Custody Proceeding includes:

(1) Foster care placement, which shall mean any action removing an Indian child from his or her parent or Indian custodian for temporary placement in a foster home or institution or the home of a guardian or conservator where the parent or Indian custodian cannot have the child returned upon demand, but where parental rights have not been terminated;

(2) Termination of parental rights, which shall mean any action resulting in the termination of the parent-child relationship;

(3) Preadoptive placement, which shall mean the temporary placement of an Indian child in a foster home or institution after the termination of parental rights, but prior to or in lieu of adoptive placement;

(4) Adoptive placement, which shall mean the permanent placement of an Indian child for adoption, including any action resulting in a final decree of adoption; and

(5) Other tribal placements made in accordance with the placement preferences of the Act, including the temporary or permanent placement of an Indian child in accordance with tribal children's codes and local tribal custom or tradition;

(6) The above terms shall not include a placement based upon an act which, if committed by an adult, would be deemed a crime in the jurisdiction where the act occurred or upon an award, in a divorce proceeding, of custody to one of the parents.

Consortium means an association or partnership of two or more eligible applicants who enter into an agreement to administer a grant program and to provide services under the grant to Indian residents in a specific geographical area when it is administratively feasible to provide an adequate level of services within the area.

Extended family member shall be as defined by the law or custom of the Indian child's tribe or, in the absence of such law or custom, shall be a person who has reached the age of 18 and who is the Indian child's grandparent, aunt or uncle, brother or sister, brother-in-law or sister-in-law, niece or nephew, first or second cousin, or stepparent.

Grant means a written agreement between the BIA and the governing body of an Indian tribe or Indian organization wherein the BIA provides funds to the grantee to plan, conduct or administer specific programs, services, or activities and where the administrative and programmatic provisions are specifically delineated.

Grantee means the tribal governing body of an Indian tribe or Board of Directors of an Indian organization responsible for grant administration.

Grants Officer means an officially designated officer who administers ICWA grants awarded by the Bureau of Indian Affairs, the Department of the Interior.

Indian means any person who is a member of an Indian tribe, or who is an Alaska Native and a member of a Regional Corporation as defined in section 7 of the Alaska Native Claims Settlement Act, 43 U.S.C. 1606.

Indian child means any unmarried person who is under age 18 and is either a member of an Indian tribe, or is eligible for membership in an Indian tribe and is the biological child of a member of an Indian tribe.

Indian child's tribe means the Indian tribe in which an Indian child is a member or is eligible for membership or, in the case of an Indian child who is a member of or is eligible for membership in more than one tribe, the Indian tribe with which the Indian child has the more significant contacts, to be determined in accordance with the BIA's "Guidelines for State Courts—Indian Child Custody Proceedings."

Indian custodian means any Indian person who has legal custody of an Indian child under tribal law or custom or under state law or to whom temporary physical care, custody and control has been transferred by the parent of such child.

Indian organization, solely for purposes of eligibility for grants under subpart D of this part, means any legally established group, association, partnership, corporation, or other legal entity which is owned or controlled by Indians, or a majority (51 percent or more) of whose members are Indians.

Indian preference means preference and opportunities for employment and training provided to Indians in the administration of grants in accordance with section 7 (b) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450).

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians federally recognized as eligible for the services provided to Indians by the Secretary because of their status as Indians, including any Alaska Native village as defined in section 3 (c) of the Alaska Native Claims Settlement Act, 43 U.S.C. 1602 (c).

Off-reservation ICWA program means an ICWA program administered in accordance with 25 U.S.C. 1932 by an off-reservation Indian organization.

Parent means the biological parent or parents of an Indian child or any Indian person who has lawfully adopted an Indian child, including adoptions under tribal law or custom. The term does not include the unwed father where paternity has not been acknowledged or established.

Reservation means Indian country as defined in 18 U.S.C. 1151 and any lands not covered under such section, title to which is either held by the United States in trust for the benefit of any Indian tribe or individual or held by any Indian tribe or individual subject to a restriction by the United States against alienation.

Secretary means the Secretary of the Interior.

Service areas solely for newly recognized or restored Indian tribes without established reservations means those service areas congressionally established by Federal law to be the equivalent of a reservation for the purpose of determining the eligibility of a newly recognized or restored Indian tribe and its members for all Federal services and benefits.

State court means any agent or agency of a state, including the District of Columbia or any territory or possession of the United States, or any political subdivision empowered by law to terminate parental rights or to make foster care placements, preadoptive placements, or adoptive placements.

Subgrant means a secondary grant that undertakes part of the obligations of the primary grant, and assumes the legal and financial responsibility for the funds awarded and for the performance of the grant-supported activity.

Technical assistance means the provision of oral, written, or other relevant information and assistance to prospective grant applicants in the development of their grant proposals. Technical assistance may include a preliminary review of an application to assist the applicant in identifying the strengths and weaknesses of the proposal, ongoing program planning, design and evaluation, and such other program-specific assistance as is necessary for ongoing grant administration and management.

Title II means Title II of Public Law 95–608, the Indian Child Welfare Act of 1978, which authorizes the Secretary to make grants to Indian tribes and off-reservation Indian organizations for the establishment and operation of Indian child and family service programs.

Tribal Court means a court with jurisdiction over child custody proceedings and which is either a Court of Indian Offenses, a court established and operated under the code or custom of an Indian tribe, or any other administrative body of a tribe which is vested with authority over child custody proceedings.

Tribal government means the federally recognized governing body of an Indian tribe.

Value means face, par, or market value, or cost price, either wholesale or retail, whichever is greater.

§ 23.3 Policy.

In enacting the Indian Child Welfare Act of 1978, Pub. L. 95–608, the Congress has declared that it is the policy of this Nation to protect the best interests of Indian children and to promote the stability and security of Indian tribes and Indian families by the

establishment of minimum Federal standards to prevent the arbitrary removal of Indian children from their families and tribes and to ensure that measures which prevent the breakup of Indian families are followed in child custody proceedings (25 U.S.C. 1902). Indian child and family service programs receiving Title II funds and operated by federally recognized Indian tribes and off-reservation Indian organizations shall reflect the unique values of Indian culture and promote the stability and security of Indian children, Indian families and Indian communities. It is the policy of the Bureau of Indian Affairs to emphasize and facilitate the comprehensive design, development and implementation of Indian child and family service programs in coordination with other Federal, state, local, and tribal programs which strengthen and preserve Indian families and Indian tribes.

§ 23.4 Information collection.

(a) The information collection requirements contained in § 23.13 of this part have been approved by the Office of Management and Budget (OMB) under 44 U.S.C. 3501 *et seq.*, and assigned clearance number 1076–0111.

(1) This information will be used to determine eligibility for payment of legal fees for indigent Indian parents and Indian custodians, involved in involuntary Indian child custody proceedings in state courts, who are not eligible for legal services through other mechanisms. Response to this request is required to obtain a benefit.

(2) Public reporting for this information collection is estimated to average 10 hours per response, including the time for reviewing instructions, gathering and maintaining data, and completing and reviewing the information collection. Direct comments regarding the burden estimate or any aspect of this information collection should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, Room 336–SIB, 1849 C street, NW., Washington, DC 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076–0111, Office of Management and Budget, Washington, DC 20503.

(b) The information collection requirements contained in §§ 23.21; 23.31; 23.46; 23.47, and 23.71 have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1076–0131. The information collection requirements under §§ 23.21 and 23.31 are collected in the form of ICWA grant applications from Indian tribes and off-reservation Indian organizations. A response to this request is required to obtain grant funds. The information collection requirements under 23.46 are collected in compliance with applicable OMB circulars on financial management, internal and external controls and other fiscal assurances in accordance with existing Federal grant administration and reporting requirements. The grantee information collection requirements under § 23.47 are collected in the form of quarterly and annual program performance narrative reports and statistical data as required by the grant award document. Pursuant to 25 U.S.C. 1951, the information collection requirement under § 23.71 is collected from state courts entering final adoption decrees for any Indian child and is provided to and maintained by the Secretary.

(1) Public reporting for the information collection at §§ 23.21 and 23.31 is estimated to average 32 hours per response, including the time for reviewing the grant application instructions, gathering the necessary information and data, and completing the grant application. Public reporting for the information collection at §§ 23.46 and 23.47 is estimated to average a combined total of 16 annual hours per grantee, including the time for gathering the necessary information and data, and completing the required forms and reports. Public reporting for the information collection at § 23.71 is estimated to average 4 hours per response, including the time for obtaining and preparing the final adoption decree for transmittal to the Secretary.

(2) Direct comments regarding any of these burden estimates or any aspect of these information collection requirements should be mailed or hand-delivered to the Bureau of Indian Affairs, Information Collection Clearance Officer, room 336–SIB, 1849 C Street, NW., Washington, DC, 20240; and the Office of Information and Regulatory Affairs Paperwork Reduction Project—1076–0131, Office of Management and Budget, Washington, DC 20503.

Subpart B—Notice of Involuntary Child Custody Proceedings and Payment for Appointed Counsel in State Courts

§ 23.11 Notice.

(a) In any involuntary proceeding in a state court where the court knows or has reason to know that an Indian child is involved, and where the identity and location of the child's Indian parents or custodians or tribe is known, the party seeking the foster care placement of, or termination of parental rights to, an Indian child shall directly notify the Indian parents, Indian custodians, and the child's tribe by certified mail with return receipt requested, of the pending proceedings and of their right of intervention. Notice shall include requisite information identified at paragraphs (d)(1) through (4) and (e)(1) through (6) of this section, consistent with the confidentiality requirement in paragraph (e)(7) of this section. Copies of these notices shall be sent to the Secretary and the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section.

(b) If the identity or location of the Indian parents, Indian custodians or the child's tribe cannot be determined, notice of the pendency of any involuntary child custody proceeding involving an Indian child in a state court shall be sent by certified mail with return receipt requested to the appropriate Area Director listed in paragraphs (c)(1) through (12) of this section. In order to establish tribal identity, it is necessary to provide as much information as is known on the Indian child's direct lineal ancestors including, but not limited to, the information delineated at paragraph (d)(1) through (4) of this section.

(c)(1) For proceedings in Alabama, Connecticut, Delaware, District of Columbia, Florida, Georgia, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Mississippi, New Hampshire, New Jersey, New York, North Carolina, Pennsylvania, Rhode Island, South Carolina, Tennessee, Vermont, Virginia, West Virginia or any territory or possession of the United States, notices shall be sent to the following address: Eastern Area Director, Bureau of Indian Affairs, 3701 N. Fairfax Drive, Suite 260, Arlington, Virginia 22201.

(2) For proceedings in Illinois, Indiana, Iowa, Michigan, Minnesota, Ohio, or Wisconsin, notices shall be sent to the following address: Minneapolis Area Director, Bureau of Indian Affairs, 331 Second Avenue South, Minneapolis, Minnesota 55401–2241.

(3) For proceedings in Nebraska, North Dakota, or South Dakota, notices shall be sent to the following address: Aberdeen Area Director, Bureau of Indian Affairs, 115 Fourth Avenue, SE, Aberdeen, South Dakota 57401.

(4) For proceedings in Kansas, Texas (except for notices to the Ysleta del Sur Pueblo of El Paso County, Texas), and the western Oklahoma counties of Alfalfa, Beaver, Beckman, Blaine, Caddo, Canadian, Cimarron, Cleveland, Comanche, Cotton, Custer, Dewey, Ellis, Garfield, Grant, Greer, Harmon, Harper, Jackson, Kay, Kingfisher, Kiowa, Lincoln, Logan, Major, Noble, Oklahoma, Pawnee, Payne, Pottawatomie, Roger Mills, Texas, Tillman, Washita, Woods and Woodward, notices shall be sent to the following address: Anadarko Area Director, Bureau of Indian Affairs, P.O. Box 368, Anadarko, Oklahoma 73005. Notices to the Ysleta del Sur Pueblo of El Paso County, Texas shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(5) For proceedings in Wyoming or Montana (except for notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana), notices shall be sent to the following address: Billings Area Director, Bureau of Indian Affairs, 316 N. 26th Street, Billings, Montana 59101. Notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, Montana, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(6) For proceedings in the Texas counties of El Paso and Hudspeth and proceedings in Colorado or New Mexico (exclusive of notices to the Navajo Tribe from the New Mexico counties listed in paragraph (c)(9) of this section), notices shall be sent to the following address: Albuquerque Area Director, Bureau of Indian Affairs, 615 First Street, P.O. Box 26567, Albuquerque, New Mexico 87125. Notices to the Navajo Tribe shall be sent to the Navajo Area Director at the address listed in paragraph (c)(9) of this section.

(7) For proceedings in Alaska (except for notices to the Metlakatla Indian Community, Alaska), notices shall be sent to the following address: Juneau Area Director, Bureau of Indian Affairs, 709 West 9th Street, Juneau, Alaska 99802–1219. Notices to the Metlakatla Indian Community of the Annette Islands Reserve, Alaska, shall be sent to the Portland Area Director at the address listed in paragraph (c)(11) of this section.

(8) For proceedings in Arkansas, Missouri, and the eastern Oklahoma counties of Adair, Atoka, Bryan, Carter, Cherokee, Craig, Creek, Choctaw, Coal, Delaware, Gervin, Grady, Haskell, Hughes, Jefferson, Johnson, Latimer, LeFlore, Love, Mayes, McCurtain, McClain, McIntosh, Murray, Muskogee, Nowata, Okfuskee, Okmulgee, Osage, Ottawa, Pittsburg, Pontotoc, Pushmataha, Marshall, Rogers, Seminole, Sequoyah, Wagoner, Washington, Stephens, and Tulsa, notices shall be sent to the following address: Muskogee Area Director, Bureau of Indian Affairs, 101 North Fifth Street, Muskogee, Oklahoma 74401.

(9) For proceedings in the Arizona counties of Apache, Coconino (except for notices to the Hopi and San Juan Paiute Tribes) and Navajo (except for notices to the Hopi Tribe); the New Mexico counties of McKinley (except for notices to the Zuni Tribe), San Juan, and Socorro; and the Utah county of San Juan, notices shall be sent to the following address: Navajo Area Director, Bureau of Indian Affairs, P.O. Box 1060, Gallup, New Mexico 87301. Notices to the Hopi and San Juan Paiute Tribes shall be sent to the Phoenix Area Director at the address listed in paragraph (c)(10) of this section. Notices to the Zuni Tribe shall be sent to the Albuquerque Area Director at the address listed in paragraph (c)(6) of this section.

(10) For proceedings in Arizona (exclusive of notices to the Navajo Tribe from those counties listed in paragraph (c)(9) of this section), Nevada or Utah (exclusive of San Juan county), notices shall be sent to the following address: Phoenix Area Director, Bureau of Indian Affairs, 1 North First Street, P.O. Box 10, Phoenix, Arizona 85001.

(11) For proceedings in Idaho, Oregon or Washington, notices shall be sent to the following address: Portland Area Director, Bureau of Indian Affairs, 911 NE 11th Avenue, Portland, Oregon 97232. All notices to the Confederated Salish & Kootenai Tribes of the Flathead Reservation, located in the Montana counties of Flathead, Lake, Missoula, and Sanders, shall also be sent to the Portland Area Director.

(12) For proceedings in California or Hawaii, notices shall be sent to the following address: Sacramento Area Director, Bureau of Indian Affairs, Federal Office Building, 2800 Cottage Way, Sacramento, California 95825.

(d) Notice to the appropriate Area Director pursuant to paragraph (b) of this section may be sent by certified mail with return receipt requested or by personal service and shall include the following information, if known:

(1) Name of the Indian child, the child's birthdate and birthplace.

(2) Name of Indian tribe(s) in which the child is enrolled or may be eligible for enrollment.

(3) All names known, and current and former addresses of the Indian child's biological mother, biological father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married and former names or aliases; birthdates; places of birth and death; tribal enrollment numbers, and/or other identifying information.

(4) A copy of the petition, complaint or other document by which the proceeding was initiated.

(e) In addition, notice provided to the appropriate Area Director pursuant to paragraph (b) of this section shall include the following:

(1) A statement of the absolute right of the biological Indian parents, the child's Indian custodians and the child's tribe to intervene in the proceedings.

(2) A statement that if the Indian parent(s) or Indian custodian(s) is (are) unable to afford counsel, and where a state court determines indigency, counsel will be appointed to represent the Indian parent or Indian custodian where authorized by state law.

(3) A statement of the right of the Indian parents, Indian custodians and child's tribe to be granted, upon request, up to 20 additional days to prepare for the proceedings.

(4) The location, mailing address, and telephone number of the court and all parties notified pursuant to this section.

(5) A statement of the right of the Indian parents, Indian custodians and the child's tribe to petition the court for transfer of the proceeding to the child's tribal court pursuant to 25 U.S.C. 1911, absent objection by either parent: Provided, that such transfer shall be subject to declination by the tribal court of said tribe.

(6) A statement of the potential legal consequences of the proceedings on the future custodial and parental rights of the Indian parents or Indian custodians.

(7) A statement that, since child custody proceedings are conducted on a confidential basis, all parties notified shall keep confidential the information contained in the notice concerning the particular proceeding. The notices shall not be handled by anyone not needing the information contained in the notices in order to exercise the tribe's rights under the Act.

(f) Upon receipt of the notice, the Secretary or his/her designee shall make reasonable documented efforts to locate and notify the child's tribe and the child's Indian parents or Indian custodians. The Secretary or his/her designee shall have 15 days, after receipt of the notice from the persons initiating the proceedings, to notify the child's tribe and Indian parents or Indian custodians and send a copy of the notice to the court. If within the 15-day time period the Secretary or his/her designee is unable to verify that the child meets the criteria of an Indian child as defined in 25 U.S.C. 1903, or is unable to locate the Indian parents or

Indian custodians, the Secretary or his/her designee shall so inform the court prior to initiation of the proceedings and state how much more time, if any, will be needed to complete the search. The Secretary or his/her designee shall complete all research efforts, even if those efforts cannot be completed before the child custody proceeding begins.

(g) Upon request from a party to an Indian child custody proceeding, the Secretary or his/her designee shall make a reasonable attempt to identify and locate the child's tribe, Indian parents or Indian custodians to assist the party seeking the information.

§ 23.12 Designated tribal agent for service of notice.

Any Indian tribe entitled to notice pursuant to 25 U.S.C. 1912 may designate by resolution, or by such other form as the tribe's constitution or current practice requires, an agent for service of notice other than the tribal chairman and send a copy of the designation to the Secretary or his/her designee. The Secretary or his/her designee shall update and publish as necessary the names and addresses of the designated agents in the **Federal Register**. A current listing of such agents shall be available through the area offices.

§ 23.13 Payment for appointed counsel in involuntary Indian child custody proceedings in state courts.

(a) When a state court appoints counsel for an indigent Indian party in an involuntary Indian child custody proceeding for which the appointment of counsel is not authorized under state law, the court shall send written notice of the appointment to the BIA Area Director designated for that state in § 23.11. The notice shall include the following:

(1) Name, address, and telephone number of attorney who has been appointed.

(2) Name and address of client for whom counsel is appointed.

(3) Relationship of client to child.

(4) Name of Indian child's tribe.

(5) Copy of the petition or complaint.

(6) Certification by the court that state law makes no provision for appointment of counsel in such proceedings.

(7) Certification by the court that the Indian client is indigent.

(b) The Area Director shall certify that the client is eligible to have his or her appointed counsel compensated by the BIA unless:

(1) The litigation does not involve a child custody proceeding as defined in 25 U.S.C. 1903 (1);

(2) The child who is the subject of the litigation is not an Indian child as defined in 25 U.S.C. 1903 (4);

(3) The client is neither the Indian child who is the subject of the litigation, the Indian child's parent as defined in 25 U.S.C. 1903 (9), nor the child's Indian custodian as defined in 25 U.S.C. 1903 (6);

(4) State law provides for appointment of counsel in such proceedings;

(5) The notice to the Area Director of appointment of counsel is incomplete; or

(6) Funds are not available for the particular fiscal year.

(c) No later than 10 days after receipt of the notice of appointment of counsel, the Area Director shall notify the court, the client, and the attorney in writing whether the client has been certified as eligible to have his or her attorney fees and expenses paid by the BIA. If certification is denied, the notice shall include written reasons for that decision, together with a statement that complies with 25 CFR 2.7 and that informs the applicant that the decision may be appealed to the Assistant Secretary. The Assistant Secretary shall consider appeals under this subsection in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

(d) When determining attorney fees and expenses, the court shall:

(1) Determine the amount of payment due appointed counsel by the same procedures and criteria it uses in determining the fees and expenses to be paid appointed counsel in state juvenile delinquency proceedings; and

(2) Submit approved vouchers to the Area Director who certified eligibility for BIA payment, together with the court's certification that the amount requested is reasonable under the state standards considering the work actually performed in light of criteria that apply in determining fees and expenses for appointed counsel in state juvenile delinquency proceedings.

(e) The Area Director shall authorize the payment of attorney fees and expenses in the amount requested in the voucher approved by the court unless:

(1) The amount of payment due the state-appointed counsel is inconsistent with the fees and expenses specified in § 23.13 (d)(1); or

(2) The client has not been certified previously as eligible under paragraph (c) of this section; or

(3) The voucher is submitted later than 90 days after completion of the legal action involving a client certified as eligible for payment of legal fees under paragraph (b) of this section.

(f) No later than 15 days after receipt of a payment voucher, the Area Director shall send written notice to the court, the client, and the attorney stating the amount of payment, if any, that has been authorized. If the payment has been denied, or the amount authorized is less than the amount requested in the voucher approved by the court, the notice shall include a written statement of the reasons for the decision together with a statement that complies with 25 CFR 2.7 and that informs the client that the decision may be appealed to the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340.

(g) Failure of the Area Director to meet the deadline specified in paragraphs (c) and (f) of this section may be treated as a denial for purposes of appeal under paragraph (f) of this section.

(h) Payment for appointed counsel does not extend to Indian tribes involved in state court child custody proceedings or to Indian families involved in Indian child custody proceedings in tribal courts.

Subpart C—Grants to Indian Tribes for Title II Indian Child and Family Service Programs

§ 23.21 Noncompetitive tribal government grants.

(a) *Grant application information and technical assistance.* Information on grant application procedures and related information may be obtained from the appropriate Agency Superintendent or Area Director. Pre-award and ongoing technical assistance to tribal governments shall be provided in accordance with § 23.42 of this part.

(b) *Eligibility requirements for tribal governments.* The tribal government(s) of any Indian tribe or consortium of tribes may submit a properly documented application for a grant to the appropriate Agency Superintendent or Area Director. A tribe may neither submit more than one application for a grant nor be the beneficiary of more than one grant under this subpart.

(1) Through the publication of a **Federal Register** announcement at the outset of the implementation of the noncompetitive grant award process during which tribal applications will be solicited, the Assistant Secretary will notify eligible tribal applicants under this subpart of the amount of core funds available for their ICWA program. The funding levels will be based on the service area population to be served. Upon the receipt of this notice from the Agency Superintendent or appropriate Area Director, tribal applicants shall submit a completed ICWA application no later than 60 days after the receipt of this notice.

(2) A grant to be awarded under this subpart shall be limited to the tribal governing body(ies) of the tribe(s) to be served by the grant.

(3) For purposes of eligibility for newly recognized or restored Indian tribes without established reservations, such tribes shall be deemed eligible to apply for grants under this subpart to provide ICWA services within those service areas legislatively identified for such tribes.

(4) A grantee under this subpart may make a subgrant to another Indian tribe or an Indian organization subject to the provisions of § 23.45.

(c) *Revision or amendment of grants.* A grantee under this subpart may submit a written request and justification for a post-award grant modification covering material changes to the terms and conditions of the grant, subject to the approval of the grants officer. The request shall include a narrative description of any significant additions, deletions, or changes to the approved program activities or budget in the form of a grant amendment proposal.

(d) Continued annual funding of an ICWA grant under this subpart shall be contingent upon the fulfillment of the requirements delineated at § 23.23(c).

(e) Monitoring and program reporting requirements for grantees under this subpart are delineated at §§ 23.44 and 23.47.

§ 23.22 Purpose of tribal government grants.

(a) Grants awarded under this subpart are for the establishment and operation of tribally designed Indian child and family service programs. The objective of every Indian child and family service program shall be to prevent the breakup of Indian families and to ensure that the permanent removal of an Indian child from the custody of his or her Indian parent or Indian custodian shall be a last resort. Such child and family service programs may include, but need not be limited to:

(1) A system for licensing or otherwise regulating Indian foster and adoptive homes, such as establishing tribal standards for approval of on-reservation foster or adoptive homes;

(2) The operation and maintenance of facilities for counseling and treatment of Indian families and for the temporary custody of Indian children with the goal of strengthening Indian families and preventing parent-child separations;

(3) Family assistance, including homemaker and home counselors, protective day care and afterschool care, recreational activities, respite care, and employment support services with the goal of strengthening Indian families and contributing to family stability;

(4) Home improvement programs with the primary emphasis on preventing the removal of children due to unsafe home environments by making homes safer, but not to make extensive structural home improvements;

(5) The employment of professional and other trained personnel to assist the tribal court in the disposition of domestic relations and child welfare matters, but not to establish tribal court systems;

(6) Education and training of Indians, including tribal court judges and staff, in skills relating to child and family assistance and service programs;

(7) A subsidy program under which Indian adoptive children not eligible for state or BIA subsidy programs may be provided support comparable to that for which they could be eligible as foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(8) Guidance, legal representation and advice to Indian families involved in tribal, state, or Federal child custody proceedings; and

(9) Other programs designed to meet the intent and purposes of the Act.

(b) Grants may be provided to tribes in the preparation and implementation of child welfare codes within their jurisdiction or pursuant to a tribal-state agreement.

(c) Grantees under this subpart may enhance their capabilities by utilizing ICWA funds as non-Federal matching shares in connection with funds provided under titles IV–B, IV–E and XX of the Social Security Act or other Federal programs which contribute to and promote the intent and purposes of the Act through the provision of comprehensive child and family services in coordination with other tribal, Federal, state, and local resources available for the same purpose.

(d) Program income resulting from the operation of programs under this subpart, such as day care operations, may be retained and used for purposes similar to those for which the grant was awarded.

§ 23.23 Tribal government application contents.

(a) The appropriate Area Director shall, subject to the tribe's fulfillment of the mandatory application requirements and the availability of appropriated funds, make a grant to the tribal governing body of a tribe or consortium of tribes eligible to apply for a grant under this subpart.

(b) The following mandatory tribal application requirements must be submitted to the appropriate Agency Superintendent or Area Director in accordance with the timeframe established in § 23.21 (b) of this subpart:

(1) A current tribal resolution requesting a grant by the Indian tribe(s) to be served by the grant. If an applicant is applying for a grant benefiting more than one tribe (consortium), an authorizing resolution from each tribal government to be served must be included. The request must be in the form of a current tribal resolution by the tribal governing body and shall include the following information:

(i) The official name of tribe(s) applying for the grant and who will directly benefit from or receive services from the grant;

(ii) The proposed beginning and ending dates of the grant;

(iii) A provision stating that the resolution will remain in effect for the duration of the program or until the resolution expires or is rescinded; and

(iv) The signature of the authorized representative of the tribal government and the date thereof.

(2) A completed Application for Federal Assistance form, SF–424.

(3) A narrative needs assessment of the social problems or issues affecting the resident Indian population to be served; the geographic area(s) to be served; and estimated number of resident Indian families and/or persons to receive benefits or services from the program.

(4) A comprehensive developmental multi-year plan in narrative form describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include:

(i) The program goals and objectives, stated in measurable terms, to be achieved through the grant;

(ii) A narrative description of how Indian families and communities will benefit from the program; and

(iii) The methodology, including culturally defined approaches, and procedures by which the tribe(s) will accomplish the identified goals and objectives.

(5) An internal monitoring system to measure progress and accomplishments, and to assure that the quality and quantity of actual performance conforms to the requirements of the grant.

(6) A staffing plan that is consistent with the implementation of the above-described program plan of operation

and the procedures necessary for the successful delivery of services.

(i) The plan must include proposed key personnel; their qualifications, training or experience relevant to the services to be provided; responsibilities; Indian preference criteria for employment; and position descriptions.

(ii) In accordance with 25 U.S.C. 3201 *et seq.* (Pub. L. 101–630), title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute. Grantees must initiate character and background investigations of said personnel prior to their actual employment, and complete the investigations in a timely manner.

(7) A program budget and budget narrative justification submitted on an annual basis for the amount of the award and supported by the proposed plan, appropriate program services and activities for the applicable grant year.

(8) Identification of any consultants and/or subgrantees the applicant proposes to employ; a description of the consultant and/or subgrantee services to be rendered; the qualifications and experience in performing the identified services; and the basis for the cost and amount to be paid for such services.

(9) A certification by a licensed accountant that the bookkeeping and accounting procedures which the tribe(s) uses or intends to use meet existing Federal standards for grant management and administration specified at § 23.46.

(10) A system for managing property and recordkeeping which complies with subpart D of 43 CFR part 2 implementing the Privacy Act (5 U.S.C. 552a) and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant.

(11) A listing of equipment, facilities, and buildings necessary to carry out the grant program. Liability insurance coverage for buildings and their contents is recommended for grantees under this subpart.

(12) Pursuant to the Drug-Free Workplace Act of 1988, tribal programs shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

(c) Continued annual funding of an ICWA program under this subpart shall be contingent upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation must be submitted together with an annual budget and budget narrative justification in accordance with paragraph (b)(7) of this section. Minimum standards for receiving a satisfactory evaluation shall include:

(1) The timely submission of all fiscal and programmatic reports;

(2) A narrative program report indicating work accomplished in accordance with the applicant's approved multi-year plan and, if applicable, a description of any modification in programs or activities to be funded in the next fiscal year; and

(3) The implementation of mutually determined corrective action measures, if applicable.

Subpart D—Grants to Off-Reservation Indian Organizations for Title II Indian Child and Family Service Programs

§ 23.31 Competitive off-reservation grant process.

(a) Grant application procedures and related information may be obtained from the Area Director designated at § 23.11 for processing ICWA notices for the state in which the applicant is located. Pre-award and ongoing technical assistance of off-reservation Indian organization grantees shall be provided in accordance with § 23.42.

(b) Prior to the beginning of or during the applicable year(s) in which grants for off-reservation programs will be awarded competitively, the Assistant Secretary—Indian Affairs shall publish in the **Federal Register** an announcement of the grant application process for the year(s), including program priorities or special considerations (if any), applicant eligibility criteria, the required application contents, the amount of available funding and evaluation criteria for off-reservation programs.

(c) Based on the announcement described in paragraph (b) of this section, an off-reservation applicant shall prepare a multi-year developmental application in accordance with § 23.33 of this subpart. To be considered in the area competitive review and scoring process, a complete application must be received by the deadline announced in the **Federal Register** by the Area Director designated at § 23.11 for processing ICWA notices for the state in which the applicant is located.

(d) Eligibility requirements for off-reservation Indian organizations. The Secretary or his/her designee shall, contingent upon the availability of funds, make a multi-year grant under this subpart for an off-reservation program when officially requested by a resolution of the board of directors of the Indian organization applicant, upon the applicant's fulfillment of the mandatory application requirements and upon the applicant's successful competition pursuant to § 23.33 of this subpart.

(e) A grant under this subpart for an off-reservation Indian organization shall be limited to the board of directors of the Indian organization which will administer the grant.

(f) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the grantee's fulfillment of the requirements delineated at § 23.33 (e).

(g) Monitoring and program reporting requirements for grants awarded to off-reservation Indian organizations under this subpart are delineated at §§ 23.44 and 23.47.

§ 23.32 Purpose of off-reservation grants.

The Secretary or his/her designee is authorized to make grants to off-reservation Indian organizations to establish and operate off-reservation Indian child and family service programs for the purpose of stabilizing Indian families and tribes, preventing the breakup of Indian families and, in particular, to ensure that the permanent removal of an Indian child from the custody of his/her Indian parent or Indian custodian shall be a last resort. Child and family service programs may include, but are not limited to:

(a) A system for regulating, maintaining, and supporting Indian foster and adoptive homes, including a subsidy program under which Indian adoptive children may be provided support comparable to that for which they would be eligible as Indian foster children, taking into account the appropriate state standards of support for maintenance and medical needs;

(b) The operation and maintenance of facilities and services for counseling and treatment of Indian families and Indian foster and adoptive children with the goal of strengthening and stabilizing Indian families;

(c) Family assistance (including homemaker and home counselors), protective day care and afterschool care, employment support services, recreational activities, and respite care with the goal of strengthening Indian families and contributing toward family stability; and

(d) Guidance, legal representation and advice to Indian families involved in state child custody proceedings.

§ 23.33 Competitive off-reservation application contents and application selection criteria.

(a) An application for a competitive multi-year grant under this subpart shall be submitted to the appropriate Area Director prior to or on the announced deadline date published in the **Federal Register**. The Area Director shall certify the application contents pursuant to § 23.34 and forward the application within five working days to the area review committee, composed of members designated by the Area Director, for competitive review and action. Modifications and/or information received after the close of the application period, as announced in the **Federal Register**, shall not be reviewed or considered by the area review committee in the competitive process.

(b) Mandatory application requirements for Indian organization applicants shall include:

(1) An official request for an ICWA grant program from the organization's board of directors covering the duration of the proposed program;

(2) A completed Application for Federal Assistance form, SF 424;

(3) Written assurances that the organization meets the definition of Indian organization at § 23.2;

(4) A copy of the organization's current Articles of Incorporation for the applicable grant years;

(5) Proof of the organization's nonprofit status;

(6) A copy of the organization's IRS tax exemption certificate and IRS employer identification number;

(7) Proof of liability insurance for the applicable grant years; and

(8) Current written assurances that the requirements of Circular A–128 for fiscal management, accounting, and recordkeeping are met.

(9) Pursuant to the Drug-Free Workplace Act of 1988, all grantees under this subpart shall comply with the mandatory Drug-Free Workplace Certification, a regulatory requirement for Federal grant recipients.

(c) *Competitive application selection criteria.* The Area Director or his/her designated representative shall select those proposals which will in his/her judgment best promote the proposes of the Act. Selection shall be made through the area review committee process in which each application will be scored individually and ranked according to score, taking into consideration the mandatory requirements as specified above and the following selection criteria:

(1) The degree to which the application reflects an understanding of the social problems or issues affecting the resident Indian client population which the applicant proposes to serve;

(2) Whether the applicant presents a narrative needs assessment, quantitative data and demographics of the client Indian population to be served;

(3) Estimates of the number of Indian people to receive benefits or services from the program based on available data;

(4) Program goals and objectives to be achieved through the grant;

(5) A comprehensive developmental multi-year narrative plan describing what specific services and/or activities will be provided each program year and addressing the above-identified social problems or issues. At a minimum, the plan must include a narrative description of the program; the program goals and objectives, stated in measurable terms, to be achieved through the grant; and the methodology, including culturally defined approaches, and procedures by which the grantee will accomplish the identified goals and objectives;

(6) An internal monitoring system the grantee will use to measure progress and accomplishments, and to ensure that the quality and quantity of actual performance conforms to the requirements of the grant;

(7) Documentation of the relative accessibility which the Indian population to be served under a specific proposal already has to existing child and family service programs emphasizing the prevention of Indian family breakups, such as mandatory state services. Factors to be considered in determining accessibility include:

(i) Cultural barriers;

(ii) Discrimination against Indians;

(iii) Inability of potential Indian clientele to pay for services;

(iv) Technical barriers created by existing public or private programs;

(v) Availability of transportation to existing programs;

(vi) Distance between the Indian community to be served under the proposal and the nearest existing programs;

(vii) Quality of services provided to Indian clientele; and

(viii) Relevance of services provided to specific needs of the Indian clientele.

(8) If the proposed program duplicates existing Federal, state, or local child and family service programs emphasizing the prevention of Indian family breakups, proper and current documented evidence that repeated attempts to obtain services have been unsuccessful;

(9) Evidence of substantial support from the Indian community or communities to be served, including but not limited to:

(i) Tribal support evidenced by a tribal resolution or cooperative service agreements between the administrative bodies of the affected tribe(s) and the applicant for the duration of the grant period, or

(ii) Letters of support from social services organizations familiar with the applicant's past work experience;

(10) A staffing plan that is consistent with the implementation of the above-described program plan of operation and the procedures necessary for the successful delivery of services. The plan must include proposed key personnel, their qualifications, training or experience relevant to the services to be provided, responsibilities, Indian preference criteria for employment and position descriptions. In accordance with 25 U.S.C. 3201 et seq. (Pub. L. 101–630), Title IV, the Indian Child Protection and Family Violence Prevention Act, grantees shall conduct character and background investigations of those personnel identified in that statute prior to their actual employment;

(11) The reasonableness and relevance of the estimated overall costs of the proposed program or services and their overall relation to the organization's funding base, activities, and mission;

(12) The degree to which the detailed annual budget and justification for the requested funds are consistent with, and clearly supported by, the proposed plan and by appropriate program services and activities for the applicable grant year;

(13) The applicant's identification of any consultants and/or subgrantees it proposes to employ; description of the services to be rendered; the qualifications and experience of said personnel, reflecting the requirements for performing the identified services; and the basis for the cost and the amount to be paid for such services;

(14) Certification by a licensed accountant that the bookkeeping and accounting procedures that the applicant uses or intends to use meet existing Federal standards for grant administration and management specified at § 23.46;

(15) The compliance of property management and recordkeeping systems with subpart D of 43 CFR part 2 (the Privacy Act, 5 U.S.C. 552a), and with existing Federal requirements for grants at 25 CFR 276.5 and 276.11, including the maintenance and safeguarding of direct service case records on families and/or individuals served by the grant;

(16) A description of the proposed facilities, equipment, and buildings

necessary to carry out the grant activities; and

(17) Proof of liability insurance coverage for the applicable grant year(s).

(d) Two or more applications receiving the same competitive score will be prioritized in accordance with announcements made in the **Federal Register** pursuant to § 23.31 (b) for the applicable year(s).

(e) Continued annual funding of a multi-year grant award to an off-reservation ICWA program under this subpart shall be contingent upon the availability of appropriated funds and upon the existing grant program receiving a satisfactory program evaluation from the area social services office for the previous year of operation. A copy of this evaluation shall be submitted together with an annual budget and budget narrative justification in accordance with paragraph (c) (10) of this section. Minimum standards for receiving a satisfactory evaluation shall include the timely submission of all fiscal and programmatic reports; a narrative program report indicating work accomplished in accordance with the initial approved multi-year plan; and the implementation of mutually determined corrective action measures, if applicable.

§ 23.34 Review and decision on off-reservation applications by Area Director.

(a) *Area office certification.* Upon receipt of an application for a grant by an off-reservation Indian organization at the area office, the Area Director shall:

(1) Complete and sign the area office certification form. In completing the area certification form, the Area Director shall assess and certify whether applications contain and meet all the application requirements specified at § 23.33. Area Directors shall be responsible for the completion of the area office certification forms for all applications submitted by off-reservation Indian organizations.

(2) Acknowledge receipt of the application to the applicant and advise the applicant of the disposition of the application within 10 days of receipt; and

(3) Transmit all applications within five working days of receipt to the area review committee for competitive review and subsequent approval or disapproval of the applications.

(b) *Area office competitive review and decision for off-reservation applications.* Upon receipt of an application for an off-reservation grant under this part requiring the approval of the Area Director, the Area Director shall:

(1) Establish and convene an area review committee, chaired by a person qualified by knowledge, training and experience in the delivery of Indian child and family services.

(2) Review the area office certification form required in paragraph (a) of this section.

(3) Review the application in accordance with the competitive review procedures prescribed in § 23.33. An application shall not receive approval for funding under the area competitive review and scoring process unless a review of the application determines that it:

(i) Contains all the information required in § 23.33 which must be received by the close of the application period. Modifications of the grant application received after the close of the application period shall not be considered in the competitive review process.

(ii) Receives at least the established minimum score in an area competitive review, using the application selection criteria and scoring process set out in § 23.33. The minimum score shall be established by the Central Office prior to each application period and announced in the **Federal Register** for the applicable grants year(s).

(4) Approve or disapprove the application and promptly notify the applicant in writing of the approval or disapproval of the application. If the application is disapproved, the Area Director shall include in the written notice the specific reasons therefore.

(c) The actual funding amounts for the initial grant year shall be subject to appropriations available nationwide and the continued funding of an approved off-reservation grant application under subpart D of this part shall be subject to available funds received by the respective area office for the applicable grant year. Initial funding decisions and subsequent decisions with respect to funding level amounts for all approved grant applications under this part shall be made by the Area Director.

§ 23.35 Deadline for Central Office action.

Within 30 days of the receipt of grant reporting forms from the Area Directors identifying approved and disapproved applications pursuant to subpart D of this part and recommended funding levels for approved applications, the Secretary or his/her designee shall process the Area Directors' funding requests.

Subpart E—General and Uniform Grant Administration Provisions and Requirements

§ 23.41 Uniform grant administration provisions, requirements and applicability.

The general and uniform grant administration provisions and requirements specified at 25 CFR part 276 and under this subpart are applicable to all grants awarded to tribal governments and off-reservation Indian organizations under this part, except to the extent inconsistent with an applicable Federal statute, regulation or OMB circular.

§ 23.42 Technical assistance.

(a) Pre-award and ongoing technical assistance may be requested by an Indian tribe or off-reservation Indian organization from the appropriate agency or area office to which the tribe or organization will be submitting an application for funds under subparts C and D of this part. A request for pre-award technical assistance by an off-reservation Indian organization must be received by the Area Director designated at § 23.11 for the state in which the applicant is located no later than 10 days prior to the application deadline to assure sufficient time for area response.

(b) Pre-award and ongoing technical assistance may be provided by the appropriate BIA agency or area office for purposes of program planning and design, assistance in establishing internal program monitoring and evaluation criteria for ongoing grant administration and management, and for other appropriate assistance requested.

(c) The area social services staff shall provide technical assistance to grantees upon receipt of an authorized request from the grantee or when review of the grantee's quarterly performance reports shows that:

(1) An ICWA program is yielding results that are or will be detrimental to the welfare of the intended Indian beneficiaries of the program;

(2) A program has substantially failed to implement its goals and objectives;

(3) There are serious irregularities in the fiscal management of the grant; or

(4) The grantee is otherwise deficient in its program performance.

(5) Upon receiving an authorized request from the grantee, the area social services staff and/or grants officer shall provide the necessary technical assistance to arrive at mutually determined corrective action measures and their actual implementation, if necessary, and the timeframes within which said corrective actions will be implemented.

§ 23.43 Authority for grant approval and execution.

(a) *Tribal government programs.* The appropriate Agency Superintendent or Area Director may approve a grant application and its subsequent execution under subpart C when the intent, purpose and scope of the application pertains solely to reservations located within the service area jurisdiction of the agency or area office.

(b) *Off-reservation programs.* The appropriate Area Director may approve a grant application and its subsequent execution under subpart D when the intent, purpose and scope of the grant proposal pertains to off-reservation Indian service populations or programs.

§ 23.44 Grant administration and monitoring.

All grantees under this part shall be responsible for managing day-to-day program operations to ensure that program performance goals are being achieved and to ensure compliance with the provisions of the grant award document and other applicable Federal requirements. Unless delegated to the Agency Superintendent, appropriate area office personnel designated by the Area Director shall be responsible for all grant program and fiscal monitoring responsibilities.

§ 23.45 Subgrants.

A tribal government grantee may make a subgrant under subpart C of this part, provided that such subgrants are for the purpose for which the grant was made and that the grantee retains administrative and financial responsibility over the activity and the funds.

§ 23.46 Financial management, internal and external controls and other assurances.

Grantee financial management systems shall comply with the following standards for accurate, current and complete disclosure of financial activities.

(a) OMB Circular A–87 (Cost principles for state and local governments and federally recognized Indian tribal governments).

(b) OMB Circular A–102 (Common rule 43 CFR part 12).

(c) OMB Circular A–128 (Single Audit Act).

(d) OMB Circular A–110 or 122 (Cost principles for non-profit organizations and tribal organizations, where applicable).

(e) *Internal control.* Effective control and accountability must be maintained for all grants. Grantees must adequately safeguard any property and must ensure that it is used solely for authorized purposes.

(f) *Budget control.* Actual expenditures must be compared with budgeted amounts for the grant. Financial information must be related to program performance requirements.

(g) *Source documentation.* Accounting records must be supported by such source documentation as cancelled checks, paid bills, payrolls, time and attendance records, grant documents, or other information required by the grantee's financial management system. The Secretary or his/her designee may review the adequacy of the financial management system of an Indian tribe(s) or off-reservation Indian organization applying for a grant under this part.

(h) Pursuant to 18 U.S.C. 641, whoever embezzles, steals, purloins, or knowingly converts to his or her use or the use of another, or without authority, sells, conveys or disposes of any record, voucher, money, or thing of value of the United States or of any department or agency thereof, or any property made or being made under contract for the United States or any department or agency thereof; or whoever receives, conceals, or retains the same with intent to convert it to his or her use or gain, knowing it to have been embezzled, stolen, purloined, or converted shall be fined not more than $10,000 or imprisoned not more than 10 years, or both; but if the value of such property does not exceed the sum of $100, he or she shall be fined not more than $1,000 or imprisoned not more than one year, or both.

§ 23.47 Reports and availability of information to Indians.

(a) Any tribal government or off-reservation Indian organization receiving a grant under this part shall make general programmatic information and reports concerning that grant available to the Indian people it serves or represents. Access to this information may be requested in writing and shall be made available within 10 days of receipt of the request. Except as required by title IV of Pub. L. 101–630, the Indian Child Protection and Family Violence Prevention Act, grantees shall hold confidential all information obtained from persons receiving services from the program, and shall not release such information without the individual's written consent. Information may be disclosed in a manner which does not identify or lead to the identification of particular individuals.

(b) Grantees shall submit Standard Form 269 or 269A on a quarterly and an annual basis to report their status of funds by the dates specified in the grant award document.

(c) Grantees shall furnish and submit the following written quarterly and annual program reports by the dates specified in the award document:

(1) Quarterly and annual statistical and narrative program performance reports which shall include, but need not be limited to, the following;

(i) A summary of actual accomplishments and significant activities as related to program objectives established for the grant period;

(ii) The grantee's evaluation of program performance using the internal monitoring system submitted in their application;

(iii) Reports on all significant ICWA direct service grant activities including but not limited to the following information:

(A) Significant title II activities;

(B) Data reflecting numbers of individuals referred for out-of-home placements, number of individuals benefiting from title II services and types of services provided, and

(C) Information and referral activities.

(iv) Child abuse and neglect statistical reports and related information as required by 25 U.S.C. 2434, Pub. L. 99–570, the Indian Alcohol and Substance Abuse Prevention and Treatment Act of 1986;

(v) A summary of problems encountered or reasons for not meeting established objectives;

(vi) Any deliverable or product required in the grant; and

(vii) Additional pertinent information when appropriate.

(2) The BIA may negotiate for the provision of other grant-related reports not previously identified.

(d) Events may occur between scheduled performance reporting dates which have significant impact on the grant-supported activity. In such cases, the grantee must inform the awarding agency as soon as problems, delays, adverse conditions, or serious incidents giving rise to liability become known and which will materially impair its ability to meet the objectives of the grant.

§ 23.48 Matching shares and agreements.

(a) Grant funds provided to Indian tribes under subpart C of this part may be used as non-Federal matching shares in connection with funds provided under titles IV-B, IV-E and XX of the Social Security Act or such other Federal programs which contribute to and promote the purposes of the Act as specified in §§ 23.3 and 23.22 (25 U.S.C. 1931).

(b) Pursuant to 25 U.S.C. 1933, in furtherance of the establishment, operation, and funding of programs funded under subparts C and D of this part, the Secretary may enter into agreements with the Secretary of Health and Human Services. The latter Secretary is authorized by the Act to use funds appropriated for the Department of Health and Human Services for programs similar to those funded under subparts C and D of this part (25 U.S.C. 1931 and 1932), provided that authority to make payment pursuant to such agreements shall be effective only to the extent and in such amounts as may be provided in advance by appropriation Acts.

§ 23.49 Fair and uniform provision of services.

(a) Grants awarded under this part shall include provisions assuring compliance with the Indian Civil Rights Act; prohibiting discriminatory distinctions among eligible Indian beneficiaries; and assuring the fair and uniform provision by the grantees of the services and assistance they provide to eligible Indian beneficiaries under such grants. Such procedures must include criteria by which eligible Indian beneficiaries will receive services, recordkeeping mechanisms adequate to verify the fairness and uniformity of services in cases of formal complaints, and an explanation of what rights will be afforded an individual pending the resolution of a complaint.

(b) Indian beneficiaries of the services to be rendered under a grant shall be afforded access to administrative or judicial bodies empowered to adjudicate complaints, claims, or grievances brought by such Indian beneficiaries against the grantee arising out of the performance of the grant.

§ 23.50 Service eligibility.

(a) Tribal government Indian child and family service programs. Any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in § 23.2 is eligible for services provided under 25 U.S.C. 1931 of the Act. Tribal membership status shall be determined by tribal law, ordinance, or custom. The tribe may, under subpart C, extend services to nontribal family members related by marriage to tribal members, provided such services promote the intent and purposes of the Act. A tribe may also, within available resources, extend services under this part to individuals who are members of, or are eligible for membership in other Indian tribes, and who reside within the tribe's designated service area.

(b) Off-reservation Indian child and family service programs and agreements with the Secretary of Health and Human Services pursuant to 25 U.S.C. 1933. For purposes of eligibility for services provided under 25 U.S.C. 1932 and 1933 of the Act, any person meeting the definition of Indian, Indian child, Indian custodian, or Indian parent of any unmarried person under the age of 18 as defined in § 23.2, or the definition of Indian as defined in 25 U.S.C. 1603(c), shall be eligible for services. Tribal membership status shall be determined by tribal law, ordinance, or custom.

§ 23.51 Grant carry-over authority.

Unless restricted by appropriation, and contingent upon satisfactory program evaluations from the appropriate area or agency office for an existing program, grantees are authorized to carry over unliquidated grant funds which remain at the end of a budget period. Such funds may be carried over for a maximum period of two years beyond the initial grant funding period and must be utilized only for the intent, purpose and scope of the original grant. These carry-over grant funds shall not be reprogrammed into other appropriation activities or subactivities. Funds carried over into another fiscal year will be added to the grantee's new fiscal year funding amount.

§ 23.52 Grant suspension.

(a) When a grantee has materially failed to comply and remains out of compliance with the terms and conditions of the grant, the grants officer may, after reasonable notice to the grantee and the provision of requested technical assistance, suspend the grant. The notice preceding the suspension shall include the effective date of the suspension, the corrective measures necessary for reinstatement of the grant and, if there is no immediate threat to safety, a reasonable timeframe for corrective action prior to actual suspension.

(b) No obligation incurred by the grantee during the period of suspension shall be allowable under the suspended grant, except that the grants officer may at his/her discretion allow necessary and proper costs which the grantee could not reasonably avoid during the period of suspension if such costs would otherwise be allowable under the applicable cost principles.

(c) Appropriate adjustments to the payments under the suspended grant will be made either by withholding the payments or by not allowing the grantee credit for disbursements which the grantee may make in liquidation of unauthorized obligations the grantee incurs during the period of suspension.

(d) Suspension shall remain in effect until the grantee has taken corrective action to the satisfaction of the grants officer, or given assurances satisfactory to the grants officer that corrective action will be taken, or until the grants officer cancels the grant.

§ 23.53 Cancellation.

(a) The grants officer may cancel any grant, in whole or in part, at any time before the date of completion whenever it is determined that the grantee has:

(1) Materially failed to comply with the terms and conditions of the grant;

(2) Violated the rights as specified in § 23.49 or endangered the health, safety, or welfare of any person; or

(3) Been grossly negligent in, or has mismanaged the handling or use of funds provided under the grant.

(b) When it appears that cancellation of the grant will become necessary, the grants officer shall promptly notify the grantee in writing of this possibility. This written notice shall advise the grantee of the reason for the possible cancellation and the corrective action necessary to avoid cancellation. The grants officer shall also offer, and shall provide, if requested by the grantee, any technical assistance which may be required to effect the corrective action. The grantee shall have 60 days in which to effect this corrective action before the grants officer provides notice of intent to cancel the grant as provided for in paragraph (c) of this section.

(c) Upon deciding to cancel for cause, the grants officer shall promptly notify the grantee in writing of that decision, the reason for the cancellation, and the effective date. The Area Director or his/her designated official shall also provide a hearing for the grantee before cancellation. However, the grants officer may immediately cancel the grant, upon notice to the grantee, if the grants officer determines that continuance of the grant poses an immediate threat to safety. In this event, the Area Director or his/her designated official shall provide a hearing for the grantee within 10 days of the cancellation.

(d) The hearing referred to in paragraph (c) of this section shall be conducted as follows:

(1) The grantee affected shall be notified, in writing, at least 10 days before the hearing. The notice should give the date, time, place, and purpose of the hearing.

(2) A written record of the hearing shall be made. The record shall include

written statements submitted at the hearing or within five days following the hearing.

Subpart F—Appeals

§ 23.61 Appeals from decision or action by Agency Superintendent, Area Director or Grants Officer.

A grantee or prospective applicant may appeal any decision made or action taken by the Agency Superintendent, Area Director, or grants officer under subparts C or E of this part. Such an appeal shall be made to the Assistant Secretary who shall consider the appeal in accordance with 25 CFR 2.20 (c) through (e). Appeal procedures shall be as set out in part 2 of this chapter.

§ 23.62 Appeals from decision or action by Area Director under subpart D.

A grantee or applicant may appeal any decision made or action taken by the Area Director under subpart D that is alleged to be in violation of the U.S. Constitution, Federal statutes, or the regulations of this part. These appeals shall be filed with the Interior Board of Indian Appeals in accordance with 25 CFR 2.4 (e); 43 CFR 4.310 through 4.318 and 43 CFR 4.330 through 4.340. However, an applicant may not appeal a score assigned to its application or the amount of grant funds awarded.

§ 23.63 Appeals from inaction of official.

A person or persons whose interests are adversely affected, or whose ability to protect such interests is impeded by the failure of an official to act on a request to the official, may make the official's inaction the subject of an appeal under part 2 of this chapter.

Subpart G—Administrative Provisions

§ 23.71 Recordkeeping and information availability.

(a) (1) Any state court entering a final decree or adoptive order for any Indian child shall provide the Secretary or his/her designee within 30 days a copy of said decree or order, together with any information necessary to show:

(i) The Indian child's name, birthdate and tribal affiliation, pursuant to 25 U.S.C. 1951;

(ii) Names and addresses of the biological parents and the adoptive parents; and

(iii) Identity of any agency having relevant information relating to said adoptive placement.

(2) To assure and maintain confidentiality where the biological parent(s) have by affidavit requested that their identity remain confidential, a copy of such affidavit shall be provided to the Secretary or his/her designee. Information provided pursuant to 25 U.S.C. 1951(a) is not subject to the Freedom of Information Act (5 U.S.C. 552), as amended. The Secretary or his/her designee shall ensure that the confidentiality of such information is maintained. The address for transmittal of information required by 25 U.S.C. 1951(a) is: Chief, Division of Social Services, Bureau of Indian Affairs, 1849 C Street, NW., Mail Stop 310–SIB, Washington, DC 20240. The envelope containing all such information should be marked "Confidential." This address shall be sent to the highest court of appeal, the Attorney General and the Governor of each state. In some states, a state agency has been designated to be repository for all state court adoption information. Where such a system is operative, that agency may assume reporting responsibilities for the purposes of the Act.

(b) The Division of Social Services, Bureau of Indian Affairs, is authorized to receive all information and to maintain a central file on all state Indian adoptions. This file shall be confidential and only designated persons shall have access to it. Upon the request of an adopted Indian individual over the age of 18, the adoptive or foster parents of an Indian child, or an Indian tribe, the Division of Social Services shall disclose such information as may be necessary for purposes of tribal enrollment or determining any rights or benefits associated with tribal membership, except the names of the biological parents where an affidavit of confidentiality has been filed, to those persons eligible under the Act to request such information. The chief tribal enrollment officer of the BIA is authorized to disclose enrollment information relating to an adopted Indian child where the biological parents have by affidavit requested anonymity. In such cases, the chief tribal enrollment officer shall certify the child's tribe, and, where the information warrants, that the child's parentage and other circumstances entitle the child to enrollment consideration under the criteria established by the tribe.

Subpart H—Assistance to State Courts

§ 23.81 Assistance in identifying witnesses.

Upon the request of a party in an involuntary Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying qualified expert witnesses. Such requests for assistance shall be sent to the Area Director designated in § 23.11(c). The BIA is not obligated to pay for the services of such expert witnesses.

§ 23.82 Assistance in identifying language interpreters.

Upon the request of a party in an Indian child custody proceeding or of a court, the Secretary or his/her designee shall assist in identifying language interpreters. Such requests for assistance should be sent to the Area Director designated in § 23.11(c). The BIA is not obligated to pay for the services of such language interpreters.

§ 23.83 Assistance in locating biological parents of Indian child after termination of adoption.

Upon the request of a child placement agency, the court or an Indian tribe, the Secretary or his/her designee shall assist in locating the biological parents or prior Indian custodians of an adopted Indian child whose adoption has been terminated pursuant to 25 U.S.C. 1914. Such requests for assistance should be sent to the Area Director designated in § 23.11(c).

Marshall M. Cutsforth,

Acting Assistant Secretary—Indian Affairs

[FR Doc. 94–570 Filed 1–12–94; 8:45 am]

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Part V

Department of Housing and Urban Development

Office of the Assistant Secretary

NOFA for the Operating Assistance and Capital Improvement Loan Components of the Flexible Subsidy Program for FY 1994

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

[Docket No. N–94–3692; FR–3601–N–01]

NOFA for the Operating Assistance and Capital Improvement Loan Components of the Flexible Subsidy Program for FY 1994

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Notice of Fund Availability (NOFA) for Fiscal Year 1994.

SUMMARY: This notice announces HUD's funding for the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program for Fiscal Year 1994. This document includes information concerning the following:

(a) The purpose of the NOFA and information regarding eligibility, available amounts, and selection criteria;

(b) Application processing, including how to apply and how selections will be made; and

(c) A checklist of steps and exhibits involved in the application process.

DATES: The due date for submission of applications by project owners in response to this NOFA is February 28, 1994. Application materials may be obtained from the local HUD Field Office.

Applications must be physically received by the applicable HUD Field Office Loan Management Branch on the due date by 4 p.m., local time. Please see the Application Process section of this NOFA (Section II) for further information on what constitutes proper submission of an application.

The application deadline is firm as to date and hour. In the interest of fairness to all competing applicants, HUD will treat as ineligible for consideration any application that is not received on or before the application deadline. Applicants should take this practice into account and make early submission of their materials to avoid any risk of loss of eligibility brought about by unanticipated delays or other delivery-related problems.

FOR FURTHER INFORMATION CONTACT: Program Support Branch, Office of Multifamily Housing Management, 451 Seventh Street SW., Washington DC 20410, telephone (202) 708–2654 (voice) or (202) 708–3938 (TDD for hearing-impaired). (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Statement

The Office of Management and Budget has approved the use of the Flexible Subsidy forms under OMB control number 2502–0395.

I. Purpose and Substantive Description:

A. Statutory Authority

Sec. 201, Housing and Community Development Amendments of 1978 (12 U.S.C. 1715z–1a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

B. Flexible Subsidy Program

1. Authorizing Legislation

Section 201 of the Housing and Community Development Amendments of 1978 (HCDA) created the Flexible Subsidy Program to provide Operating Assistance to eligible projects experiencing financial difficulty. Operating Assistance is provided in the form of a deferred loan and, in conjunction with other resources, is designed to restore or maintain the physical and financial soundness of eligible projects. The 1983 amendments to section 201 of the HCDA expanded the universe of eligible projects and clarified that a project need not have an FHA-insured mortgage to be eligible for Flexible Subsidy assistance (e.g., a non-insured section 236 project is eligible).

The 1987 amendments to section 201 of the HCDA created a new category of assistance to be provided under the Flexible Subsidy Program for projects that needed capital improvements to achieve physical soundness that cannot be funded from project reserve funds without jeopardizing other major repairs or replacements that are reasonably expected to be required in the near future.

Sections 405 and 406 of the Housing and Community Development Act of 1992 (Pub.L. 102–550, approved October 28, 1992) (1992 Act) further amended section 201 of the HCDA. The amendments made to section 201 by the 1992 Act were discussed in detail in the proposed rule published on June 25, 1993 (58 FR 34506). That rule proposed to amend HUD's Flexible Subsidy regulations at 24 CFR part 219 to bring these regulations into conformity with the changes made to the Flexible Subsidy Program by the 1992 Act. The changes to the Flexible Subsidy Program made by the 1992 Act also were discussed and incorporated in the FY 1993 Flexible Subsidy NOFA published on June 7, 1993 (58 FR 32022). The proposed amendments to 24 CFR part 219 published on June 25, 1993 were adopted by a final rule published on December 6, 1993 (58 FR 64138).

2. Assurance of Support of Preservation Efforts

This notice assures support of preservation efforts by providing for a set-aside of $20.0 million for Flexible Subsidy Capital Improvement funding to insured projects that are eligible to receive incentives in exchange for extending the low-to moderate-income use of the projects under plans of action approved in accordance with 24 CFR part 248.

The $20.0 million set-aside will be made available under a separate notice of fund availability. The remainder of the Flexible Subsidy Fund is made available under this NOFA for the award of funds to eligible projects in accordance with the priorities specified in this NOFA.

C. Allocation Amounts

1. Total Available Funding for FY 1994

The Flexible Subsidy Fund is comprised of excess rental receipts paid to HUD from owners of section 236 projects, interest earned on the fund, repayment of Operating Assistance loans made by HUD in past fiscal years, and amounts appropriated by the Congress, if any, to carry out the purposes of the Flexible Subsidy Program.

The Capital Improvement Loan portion of the program is required by statute to be funded at a minimum level of $30.0 million or 40 percent of the amount in the Flexible Subsidy Fund, whichever is less. Any of that amount not used for loans under that program before the last 60 days of a fiscal year shall become available for Operating Assistance loans. This year, $30.0 million is less than 40 percent of the fund, and therefore, is the amount designated for Capital Improvement Loans.

Funding availability for Fiscal Year 1994 is estimated as follows:

FY 1994 Appropriation	$35,747,000
Estimated Offsetting Collections	76,916,000
Carryover of Unreserved 1993 Funds	7,839,534
Estimated Available Funds—Fiscal Year 1994	120,502,534
Less: Set-aside for capital improvements for insured projects with incentives under part 248 (available under a separate funding action)	20,000,000
Net Available Funds under this NOFA	100,502,534
Amount of Available Funds segregated for Capital Improvement Loans under this NOFA	10,000,000
Amount of Available Funds set aside for the Operating Assistance component	90,502,534

2. Distribution of Funds—Regional Allocation

For FY 1994, HUD is distributing the Flexible Subsidy funds under this NOFA to each of its ten Regional Offices on the basis of a formula allocation. The formula takes into consideration the number of potentially eligible projects in each region and the extent of the troubled project inventory.

Flexible Subsidy funds available under this NOFA are distributed to the ten Regional Offices in accordance with the following schedule:

HUD region	Operating assistance	Capital improvement loan
Region I	7,240,203	800,000
Region II	4,525,127	500,000
Region III	9,050,253	1,000,000
Region IV	15,385,431	1,700,000
Region V	19,910,558	2,200,000
Region VI	9,955,279	1,100,000
Region VII	5,430,152	600,000
Region VIII	3,620,101	400,000
Region IX	11,765,329	1,300,000
Region X	3,620,101	400,000
Totals	90,502,534	10,000,000

The Regional Offices will make awards under this NOFA in accordance with the selection criteria and procedures described in this NOFA.

3. Emergency Assistance

The Secretary may, at his discretion, waive the NOFA requirements set out in section 102(a)(1), (2) and (3) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989) and approve the award of Flexible Subsidy assistance for appropriate response to an emergency, *e.g.*, hurricane, flood, *etc.*, as provided for by section 102(a)(5) of said Act in cases where the NOFA process would be too time-consuming to get the assistance to the projects in need.

D. Eligibility

1. Types of Projects

The following types of rental or cooperative housing are eligible for Flexible Subsidy assistance:

a. A project assisted under the section 236 interest reduction program, including State Agency non-insured projects, the section 221(d)(5) program (commonly known as the 221(d)(3) Below Market Interest Rate Program), or the Rent Supplement Program.

b. A project that was constructed more than 15 years before assistance is to be provided under the Flexible Subsidy Program with a direct loan under the section 202 Program for Housing for the Elderly or the Disabled.

c. A project assisted under section 23 of the 1937 Act as in effect immediately before January 1, 1975, that is ineligible for assistance under the modernization program operated under the 1937 Act.

d. A project assisted under the Section 8 Housing Assistance Payments Program after conversion from assistance under the section 236 Rental Assistance Payments Program or the Rent Supplement Program.

e. A project that met the criteria in item a or b above before acquisition by HUD, and that has been sold by HUD subject to a mortgage insured or held by HUD and subject to an agreement which provides that the low- and moderate-income character of the project will be maintained. An application for Flexible Subsidy assistance for a project in this category must be received by HUD within three years of the date of the sale of the project by HUD.

2. Conditions for Assistance

Flexible Subsidy assistance will be made available in accordance with the conditions imposed by section 201 of HCDA, as amended by the 1992 Act. Accordingly, assistance under this NOFA can be provided only if the following conditions are determined to exist:

a. The assistance is necessary, when considered with other resources available to the project, to restore or maintain the financial or physical soundness of the project; and to preserve the low- and moderate-income character of the project.

b. The owner has agreed to maintain the low- and moderate-income character of the project for a period at least equal to the remaining term of the project mortgage. This constitutes the minimum period for low-income affordability restriction. As authorized by the 1992 Act, HUD, at its discretion, may extend this period of restriction to the remaining useful life of the housing.

c. The assistance will be less costly to the Federal Government over the useful life of the project than other reasonable alternatives of preserving the occupancy character of the project.

d. The project owner, and any mortgagor of a project that does not have an FHA-insured mortgage, has provided or agreed to provide the required owner contribution.

e. The project is or can reasonably be made structurally sound, as determined in accordance with an on-site inspection.

f. All reasonable attempts have been made to take all appropriate actions and provide suitable housing for project residents.

g. There is a feasible plan to involve the residents in project decisions as demonstrated through documentation submitted to HUD.

h. The project is operated competently and has complied with all regulatory and administrative requirements, as determined by HUD in a management review.

i. Project management is in accordance with any management improvement and operating (MIO) plan approved by HUD for the project.[1]

j. The Affirmative Fair Housing Marketing plan meets applicable requirements.

k. The owner certifies that he/she will comply with all applicable equal opportunity statutes.

l. The project is not receiving financial assistance under the ELIHPA or the LIHPRHA.

m. In the case of an application for a Capital Improvement Loan, the owner has funded the reserve for replacements in accordance with HUD requirements, and yet the reserve (and any other project funds available to fund the reserve) is insufficient to finance both the capital improvements for which assistance is being requested, and other capital improvements that are reasonably expected to be required within the next 24 months.

3. Owner Contribution

a. *Limited dividend and profit-motivated.* These types of owners who seek Operating Assistance must make a minimum financial contribution of 25 percent of the amount needed to render the project financially and physically sound. If seeking a Capital Improvement Loan, the owner must contribute 25 percent of the total estimated cost of the capital improvements involved. In addition, a profit-motivated owner or an owner of a limited-dividend project seeking Operating Assistance under the Flexible Subsidy Program must agree to waive the right to pay distributions while any portion of the Operating Assistance loan is outstanding.

[1] Under HUD's Flexible Subsidy Program, the MIO Plan consists of two parts—Part I and Part II. The components of both parts are discussed in Section III.A.1.a. and 1.b of this NOFA, 24 CFR 219.210, and in sections 5–3 and 5–4 of HUD Handbook 4355.1, REV–1, Flexible Subsidy. Unless specific reference is made in this NOFA to either Part I or Part II, reference simply to the MIO Plan is intended to refer to both parts.

b. *Non-profit.* The owner or sponsor of a non-profit rental or non-profit cooperative project seeking Operating Assistance must make a contribution toward the total amount needed. However, if HUD determines that neither the owner (mortgagor) nor the sponsor has the financial capacity to make a cash contribution, HUD may permit the non-profit owner to contribute to the project in the form of services. If seeking a capital improvement loan, a non-profit owner, other than a cooperative association, is exempt from providing a contribution. Owners of cooperative projects are not exempt and must contribute 25 percent of the total estimated cost of the capital improvements involved.

c. *Source of contribution.* In no instance may the owner contribution be taken from project income. Also, cash that was previously agreed to be contributed as a condition for approval of purchase of the project (i.e., transfer of physical assets (TPA)) may not be considered for this purpose unless a finding is made that the additional work and cost required were not anticipated or deemed necessary at the time of HUD's preliminary approval of the TPA and preliminary approval of the TPA was received not later than 36 months prior to the Flexible Subsidy application. However, cash contributions made by the owner within 36 months before the Flexible Subsidy application, from sources other than project income, may be considered.

In the case of a Capital Improvement Loan, and in accordance with the amendments made to section 201 of the HCDA by section 405(e) of the 1992 Act, when an owner has spent its own money, to attempt to repair capital items within the 36 months before the application, and the repair was unsuccessful and has resulted in a need for a replacement (to be funded by a Capital Improvement Loan), that expenditure will be considered for credit for purposes of meeting the contribution requirement.

In addition to the required owner contribution, other non-federal sources of funding must be pursued aggressively. These include grants or loans from State or local governments, e.g., community development block grants. Note that the infusion of funding from non-Federal sources does not eliminate or reduce the requirement for an owner contribution of 25 percent.

4. Special Eligibility Limits

A project owner may request and receive Flexible Subsidy more than once during the term of the mortgage. However, a repair or replacement item is eligible for Operating Assistance only if no previous payment of HUD-related assistance has been made (e.g., previous Operating Assistance, Housing Development Grant or Community Development Block Grant) for that particular repair or replacement item. A repair or replacement item is eligible for a Capital Improvement Loan to a project owner who has previously received Flexible Subsidy assistance only if the capital items which are the subject of the application have reached the end of their useful life.

A repair or replacement included as an action item on the Form HUD–9835 (project improvement program) and made by the owner on an emergency basis before execution of the Flexible Subsidy contract may be funded with Operating Assistance only if the owner received advance approval from the HUD Field Office to proceed with the emergency repair.

E. Selection Criteria and Funding Priorities

1. Field Review

Each application for Operating Assistance and/or a Capital Improvement Loan will be reviewed by the HUD Field Office having jurisdiction over the project in question. Field Offices will recommend applications for funding to the HUD Regional Office.

2. Funding Priorities Established by the 1992 Act

Funding will be awarded within each component of the Flexible Subsidy Program (Operating Assistance and Capital Improvement Loans) to applications in the category order as specified below under this paragraph 2.

Category 1. Insured projects, designated as troubled by the HUD Field Office, for which half or more of the MIO dollar amount (for Operating Assistance) or Capital Improvement amount is designated for emergency health and safety problems which, if allowed to continue, could present an imminent threat to the life, health, and safety of project residents. Assistance is limited to those projects with emergency problems that are of such a magnitude that:

(a) They cannot be mitigated at a cost that can be in any way absorbed within the operating budget; and

(b) Their continuation could potentially result in tenant displacement.

Accounts payable included in the MIO Plan for operating assistance may be considered "emergency" only to the extent that they directly relate to vital services provided to the project (e.g., utility payables). (Examples of emergency health and safety problems involving possible capital improvements that may be included in this category are broken heating systems, leaking gas stoves and falling balconies.)

Category 2. Insured projects, designated by the HUD Field Office as troubled with serious financial and physical problems, whose sponsors do not have the necessary funds available to cure the immediate problems and in which the income stream cannot be sufficiently improved to meet the project's expenses without first correcting its physical problems.

Category 3. HUD-held projects and projects assisted under section 202 of the HCDA, designated by the HUD Field Office as troubled for which half or more of the MIO dollar amount (for Operating Assistance) or Capital Improvement amount is designated for emergency health and safety problems which, if allowed to continue, could present an imminent threat to the life, health, and safety of project residents. Assistance is limited to those projects with emergency problems that are of such a magnitude that (a) they cannot be mitigated at a cost that can be in any way absorbed within the operating budget; and (b) their continuation could potentially result in tenant displacement.

Category 4. HUD-held projects and projects assisted under section 202 of the HCDA, designated by the HUD-Field Office as troubled, with serious financial and physical problems, which do not have available necessary funds to cure the immediate problems, and in which the income stream cannot be sufficiently improved to meet the project's expenses without first correcting its physical problems.

Category 5. State Agency non-insured projects designated as troubled with emergency problems presenting an imminent threat to the life, health and safety of tenants shall be funded first in this category, and troubled projects with serious financial and physical problems, where the owner has insufficient income and cannot improve the income stream to address the problems, shall be funded next.

Category 6. State Agency owned projects designated as troubled with emergency problems presenting an imminent threat to the life, health and safety of tenants shall be funded first in this category, and troubled projects with serious financial and physical problems, where the owner has insufficient income and cannot improve the income stream to address the problems, shall be funded next.

3. Funding Eligible Projects Within the Priority Categories

The above categories represent the order of priority that each HUD Regional Office will implement to fund eligible projects seeking assistance under the Operating Assistance and Capital Improvement Loan components of the Flexible Subsidy Program. All projects in a given category will be funded prior to projects in succeeding categories. When available funds are insufficient to fund all projects within a given category, to the extent of available funds, projects in that category will be funded in accordance with their rank. Projects in succeeding categories will not be funded. Scoring and ranking of projects will be based on the following considerations.

The financial distress of a project will be assessed to determine which projects within each funding category are most in need. The severity of a project's financial condition and its ability to meet short-term operating needs and obligations, including debt service payments, will be measured by HUD, using financial data contained in the project's most recently audited balance sheet and statement of profit and loss.

In assessing financial distress, HUD will use the following ratios, awarding a maximum of 15 points for each ratio. Projects with poor financial ratios (e.g., income/expense ratios with a negative value) will be assigned higher point scores than projects with break-even or positive income/expense ratios from operations.

1. Income/Expense Ratio defined as follows:

$$\frac{\text{Total Revenue}}{\text{Total Cost of Operation before Depreciation}}$$

2. Debt Service Coverage Ratio defined as follows:

$$\frac{\text{Net Profit/Loss Before Depreciation PLUS Interest Payments MINUS Reserve Payments Made}}{\text{Level Annuity Monthly Payments TIMES 12 PLUS MIP or Service Charge}}$$

Up to an additional 15 points will be assigned to those applications where the project serves as a residence for low-income families, and HUD determines that other suitable housing is unavailable for such families in the area in which the project is located. Up to an additional 15 points will be assigned for applicants, other than owners of cooperatives, submitting documented evidence that there exist or will exist significant opportunities for residents to be involved in management and/or participate in the ownership of the project.

F. Other Loan Terms and Conditions

1. Operating Assistance

Operating Assistance may be used to correct physical deficiencies which have resulted from deferral of regularly scheduled maintenance and repairs, financial deficiencies that have accrued as a result of prior years' operating deficits, and operating deficits which will accrue during the assistance year.

Project deficiencies which require capital improvements are eligible for Operating Assistance only if they are necessary to meet local building codes or to maintain the project in a decent, safe and sanitary condition, and it is determined that Operating Assistance is the most efficient method of funding the improvements. Operating Assistance may not be used to repair or replace items that have already received HUD-related assistance; provide major new improvements; or to make repairs needed due to an owner's failure to honor a commitment in a TPA or Workout Agreement.

Operating Assistance is provided as a deferred loan with an interest rate of one percent per annum and no maturity date. In general, repayment in full is required when the term of the mortgage expires, the mortgage insurance terminates, or a TPA is approved by HUD. Owners may not pay distributions as long as the Operating Assistance loan is outstanding. However, owners do retain the right to accrue distributions and may pay them from surplus cash after the Operating Assistance loan is repaid.

2. Capital Improvement Loan

Repair items eligible for funding as a Capitel Improvement Loan include any major repair or replacement of building components or other on-site improvements included in allowable costs when the project was built, e.g., sewer laterals, roof structures, ceilings, wall or floor structures, foundations, plumbing, heating, cooling, electrical systems and major equipment, as well as any major repair or replacement of any short-lived building equipment or component before the expiration of its useful life. All capital improvements must be implemented in accordance with HUD's Flexible Subsidy regulations at 24 CFR part 219.125 (Environmental Requirements).

Improvements eligible for funding may also include limited supplements or enhancements to mechanical equipment To The Extent They Are Needed For The Health And Safety Of The Residents (e.g., air conditioning, heating equipment, and building sprinkler systems) where they do not exist; improvements necessary to comply with HUD's standards in 24 CFR part 8 for accessibility to individuals with handicaps; and cost effective energy efficiency improvements. Improvements eligible for funding as a Capital Improvement Loan do not include maintenance of any building components or equipment.

A capital improvement may not be financed partly by Operating Assistance and partly by a Capital Improvement Loan. However, an owner may apply for a Capital Improvement Loan to cover eligible capital improvements and simultaneously apply for Operating Assistance to cover deferred liabilities. Only one application would be required, but it must include all required documents for each program.

Capital Improvement assistance must be provided in the form of an amortizing loan. The interest rate on the loan may not be less than 3 percent nor more than 6 percent unless HUD determines that a lower rate is necessary to maintain

reasonable rental rates. However, in no case may the interest rate be less than 1 percent. The rate is determined taking into consideration the project's ability to absorb the rent increase and the percentage of the tenants receiving rental assistance. Interest on the Capital Improvement Loan starts to accrue and the loan amortization period begins immediately upon full disbursement of loan proceeds.

II. Application and Funding Award Process

A. Obtaining and Preparing Applications

1. Obtaining Applications

Applicants may obtain application materials from the local HUD Field Office.

2. Necessity to Specify Type of Assistance for Which Application is Being Made

An owner may apply for an Operating Assistance Loan only, a Capital Improvement Loan only, or both an Operating Assistance Loan and a Capital Improvement Loan simultaneously in a single application package. The application cover letter must clearly state the type (or types) of loan for which application is being made. Each application will be treated separately under the selection criteria and ranking factors cited in the NOFA.

3. Applying for Both Types of Assistance

If application is being made for both an Operating Assistance Loan and a Capital Improvement Loan simultaneously, with the exception of the Management Objectives, Action Items, and Sources and Uses of Funds (Forms HUD–9835, HUD–9835–A, HUD–9835–B), those documents which are common to both programs may be submitted only once. However, all documents required for each program must be included in the application package.

Two distinct and separate sets of Management Objectives, Action Items, and Sources and Uses of Funds (Forms HUD–9835, HUD–9835–A, HUD–9835–B) are required; taken together they must contain the entire comprehensive plan to correct all project deficiencies. The MIO Plan and Forms HUD–9835 for the Operating Assistance Loan application must contain all items for which funding is being requested under Operating Assistance; the Forms HUD–9835 for the Capital Improvement Loan must contain all items for which funding is being requested under the Capital Improvement Loan program.

In addition, deficiencies, which are to be corrected with funds from sources other than Flexible Subsidy, must be identified on the MIO Plan and Forms HUD–9835 as if Flexible Subsidy assistance were being requested. Note that, if a limited-dividend project is selected for Operating Assistance, the owner must agree to waive his right to pay distributions as long as the Operating Assistance Loan is outstanding.

B. Submitting Applications

1. To ensure consideration for funding under this NOFA, completed applications must be physically received by the HUD Field Office Loan Management Branch before or on the due date by 4 p.m. local time. It is not sufficient for an application to bear a postmark date within the submission time period. The HUD Field Office will date-stamp incoming applications to evidence (timely or late) receipt, and, on request, provide the applicant with an acknowledgement of receipt.

After HUD receives the application, it will perform a physical inspection to assure that the MIO Plan addresses in a comprehensive fashion all the financial and physical deficiencies. HUD also will conduct a comprehensive management review to assure that all management issues are addressed as part of the MIO Plan and project operation and improvement program. HUD may require changes to the MIO Plan as a result of the physical inspection or comprehensive management review.

2. Applications received after the due date and time specified in this NOFA may be considered for funding in FY 1994 only if it is determined that assistance is needed immediately in response to emergency circumstances, and only to the extent that contract authority is available to satisfy the request for assistance.

C. Funding Award Process: Compliance With HUD Reform Act

1. Section 103

In accordance with the requirements of section 103 of the HUD Reform Act and HUD's implementing regulations at 24 CFR part 4, no selection information will be made available to applicants or other persons not authorized to receive this information during the period of HUD review and evaluation of the applications (see also Section VI of this NOFA). However, applicants that are declared ineligible or late will be notified of their ineligibility at the time such determination is made.

The disclosure prohibition of section 103 applies to HUD assistance programs that entail a competition for the distribution of the assistance. Under the Flexible Subsidy Program, if a given HUD Regional Office determines that competition is not necessary for the distribution of funds in a priority category, because there are sufficient funds to award assistance to all eligible projects in that category, then the Regional Office will begin the process of awarding funds to each eligible project in that category.

Noncompetitive individual funding allocations and announcements in a given priority category will be made, as funding determinations are completed, through the HUD Regional or Field Offices after notification to the Congressional delegation. No information regarding any unfunded application or any competition in any other category will be made available to the public. All awards will be disclosed publicly at the conclusion of the entire selection process. These procedures are in accordance with the requirements of section 103.

2. Section 102

Section 102 contains a number of provisions that are designed to ensure greater accountability and integrity in the provision of certain types of assistance administered by HUD. The following requirements concerning documentation and public access, disclosures, and subsidy layering determinations are applicable to assistance awarded under this NOFA.

a. *Documentation and public access.* HUD will ensure that documentation and other information regarding each application submitted pursuant to this NOFA are sufficient to indicate the basis upon which assistance was provided or denied. This material, including any letters of support, will be made available for public inspection for a five-year period beginning not less than 30 days after the award of the assistance. Material will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. In addition, HUD will include the recipients of assistance pursuant to this NOFA in its quarterly **Federal Register** notice of all recipients of HUD assistance awarded on a competitive basis. (See 24 CFR 12.14(a) and 12.16(b), and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these requirements.)

b. *Disclosures.* HUD will make available to the public for five years all applicant disclosure reports (Form HUD–2880) submitted in connection with this NOFA. Update reports (also Form HUD–2880) will be made available along with the applicant disclosure reports, but in no case for a period less than three years. All reports—both applicant disclosures and updates—will be made available in accordance with the Freedom of Information Act (5 U.S.C. 552) and HUD's implementing regulations at 24 CFR part 15. (See 24 CFR part 12, subpart C, and the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942), for further information on these disclosure requirements.)

c. *Subsidy-layering determinations.* 24 CFR 12.52 requires HUD to certify that the amount of HUD assistance is not more than is necessary to make the assisted activity feasible after taking into account other government assistance. HUD will make the decision with respect to each certification available to the public free of charge, for a three-year period. (See the notice published in the **Federal Register** on January 16, 1992 (57 FR 1942) for further information on requesting these decisions.) Requests for additional information about applications, HUD certifications, and assistance adjustments, both before assistance is provided or subsequently, are to be made under the Freedom of Information Act (24 CFR part 15).

D. Coordination of Assistance

Section 405(f) of the 1992 Act requires the coordination of the allocation of Flexible Subsidy assistance with the allocation of assistance made under section 8 of the 1937 Act and section 203 of the HCDA.

Application review and determination for the award of section 8 assistance under the Section 8 Loan Management Set-Aside (LMSA) program will be made during the same time period as the final application review and determinations for the award of Flexible Subsidy assistance. To ensure coordination of assistance under these two programs, HUD will identify those projects seeking assistance under the Flexible Subsidy program which have been approved for the award of LMSA. For those projects so identified, a further review will be made to evaluate the effect of the award of LMSA on the project's cash flow and the enhanced ability of the project to fund MIO repair items from the increased project operating income. By taking into consideration all funding sources, this review will insure that the infusion of Flexible Subsidy assistance together with the LMSA represents the appropriate solution to satisfying the project's need for stabilization of project operations and maintenance or restoration of the project to an acceptable physical and financial condition.

With respect to coordination of assistance under section 203 of the HCDA, HUD does not intend to provide Flexible Subsidy assistance when there exists delinquent indebtedness to the Government, or where a project is either owned by HUD or HUD anticipates foreclosure.

III. Checklist of Application Submission Requirements

A. Operating Assistance Under the Flexible Subsidy Program

The following items must be submitted with an application for Operating Assistance under the Flexible Subsidy Program.

1. Items Pertaining to Project Operation and Improvement.

a. Management Improvement and Operating (MIO) Plan Part I. (Refer to section 5–3 of HUD Handbook 4355.1, Rev-1, Flexible Subsidy, for further discussion of MIO Plan Part I.)

The MIO Plan Part I must include documentation of eligibility and fully address all financial, management, and physical deficiencies of the project. To be included in every MIO Plan are:

(1) A detailed maintenance schedule;

(2) A schedule for correcting past deficiencies in maintenance, repairs, and replacements;

(3) A plan to upgrade the project to meet cost-effective energy efficiency standards approved by HUD;

(4) A plan to improve financial and management control systems;

(5) An updated annual operating budget (Form HUD–92547–A) if the last budget was submitted more than 90 days before; and

(6) A description of cost controls, procedures and savings.

b. MIO Plan Part II— Management Objectives, Action Items, and Sources and Uses of Funds (Forms HUD–9835, HUD–9835–A, HUD–9835–B). (Refer to section 5–4 of HUD Handbook 4355.1, Rev.1, Flexible Subsidy, for further discussion of MIO Plan Part II.)

(1) Management Objectives must be specific, measurable, and must address all management deficiencies including actions which will be performed to improve management and personnel and upgrade tenant services, and provide opportunities for resident involvement in management of the project, as appropriate.

(2) Action Items must address all project deficiencies, including those which are to be corrected using resources other than Flexible Subsidy assistance. Action Items must be written in a manner which specifically describes the scope of the work and provides an estimate of the cost of the work to be performed. In addition, they must be structured so as to be highly visible items for which expenditures and work progress can be easily monitored. For example, if boilers are to be replaced, the description should identify the malfunctioning unit, its age, and its location, e.g., building number, basement/roof. A further explanation should identify the replacement unit, the estimated cost per unit and the labor cost associated with the entire replacement. Failure to provide the requisite comprehensiveness and specificity may adversely affect the funding decision.

All emergency repair Action Items must be clearly identified and must be accompanied by a full and detailed justification as to the reasons the repair should be considered "emergency" in nature, including supporting documentation as appropriate, e.g., fire or building code violations or inspections from local government authorities.

(3) The Sources and Uses of Funds will serve to document how much each source will contribute to the Project Improvement Account in the implementation of the MIO Plan. It must be signed by both the owner and the management agent.

2. Application for Flexible Subsidy Assistance (Form HUD–9826 (2/93)).[2]

3. Budget Worksheet, Income & Expenses Projections (Form HUD–92547 or HUD approved equivalent).

4. All documentation required by HUD Notice H–90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of Administrative Guidelines to be Applied to Assistance Programs of the Office of Housing, published on April 9, 1991 (56 FR 14436).

5. Anti-lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for Grants Exceeding $100,000; and Disclosure of Lobbying Activities (Standard Form–LLL if warranted. Standard Form–LLL is required if funds other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal

[2] The certification of compliance with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, and the certification of compliance with the equal opportunity and nondiscrimination statutes and regulations, which were listed as individual items under previous Flexible Subsidy NOFAs, are now part of the Application for Flexible Subsidy Assistance.

Government regarding specific contracts, grants, loans or cooperative agreements.

6. Form HUD–2530, Previous Participation Certificate(s) for all principals requiring clearance under these procedures.

7. Affirmative Fair Housing Marketing Plan on Form HUD–935.2.

8. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

B. Capital Improvement Loan Program (CILP)

The following items must be submitted with an application for a Capital Improvement Loan under the Flexible Subsidy Program.

1. A work write-up and cost estimates listing:

a. the major project components that have failed, or are likely to fail or seriously deteriorate within the next 24 months;

b. capital items that can be upgraded to meet cost-effective energy efficiency standards approved by HUD;

c. supplements or enhancements to mechanical equipment and the extent they are needed for health or safety reasons; and

d. amounts needed to comply with the Department's standards as set forth in 24 CFR part 8, which concern accessibility by individuals with handicaps.

2. Application for Flexible Subsidy Assistance (Form HUD–9826 (2/93)).

3. All documentation required by HUD Notice H–90–17, Combining Low-Income Housing Tax Credits (LIHTC) with HUD Programs, and by the Notice of Administrative Guidelines to be Applied to Assistance Programs of the Office of Housing, published on April 9, 1991 (56 FR 14436).

4. Anti-lobbying Certification for Contracts, Grants, Loans and Cooperative Agreements for Grants Exceeding $100,000; and the Disclosure of Lobbying Activities (Standard Form-LLL), if warranted. Standard Form-LLL is required if funds other than federally appropriated funds will be or have been used to lobby the Executive or Legislative branches of the Federal Government regarding specific contracts, grants, loans or cooperative agreements.

5. A Comprehensive Technical Energy Audit. A Comprehensive Technical Energy Audit (CTEA) is required only when either of the below-listed condifions is met. (For guidance on preparation of the CTEA, see Chapter 12 of HUD Handbook 4350.1 REV–1, Multifamily Asset Management and Project Servicing.) When neither of the below-listed conditions is met, an energy analysis that is provided by a local utility company and that contains a measure of cost-effectiveness information is acceptable in meeting this requirement.

a. Implementation of energy conservation measures is a primary purpose of the CILP loan.

b. The cost of energy conservation measures accounts for 50% or more of the proposed CILP loan.

6. MIO Plan Part I. (See item 1.a under Section III.A. of this NOFA.). A MIO Plan Part I for the Capital Improvement Loan Program is required only when one or more of the following conditions exist:

a. The project is in default or was in default at any time during the one-year period preceding the application date.

b. The project received a Below Average or Unsatisfactory rating for Overall Physical Condition or for Maintenance Policies and Practices on the most recent HUD–9822, Physical Inspection Report (unless the owner has since corrected the problems in a manner satisfactory to HUD).

c. The project received a Below Average or Unsatisfactory rating in the Financial Management Section or Overall Management Section on the HUD–9834, Management Review, in the past 24 months (unless the owner has corrected the problems through a substitution of management agent, management personnel, or otherwise, in a manner satisfactory to HUD).

7. MIO Plan Part II, Management Objectives, Action Items, and Sources and Uses of Funds (Forms HUD–9835, HUD–9835–A, HUD–9835–B). (See item 1.b under Section III.A of this NOFA.)

8. A statement outlining the owner's contribution.

9. Form HUD–2530, Previous Participation Certificate(s) for all principals requiring clearance under these procedures.

10. Form HUD–2880, Applicant/Recipient Disclosure/Update Report, as required under subpart C of 24 CFR part 12, Accountability in the Provision of HUD Assistance.

IV. MIO Plan Review

Within 30 days of receipt by HUD from the owner of the MIO Plan Part I, HUD will advise the owner, in writing, whether or not the MIO Plan Part I meets the submission requirements as stated in Section III.A.1.a. of this NOFA. Should HUD fail to inform the owner of its disapproval within the 30-day time-frame, the MIO Plan Part I shall be considered to be approved. If HUD disapproves the MIO Plan Part I, no further consideration will be given to the applicant for award of funds under this NOFA.

V. Corrections to Deficient Applications

HUD will notify an applicant, in writing, shortly after the expiration of the NOFA response deadline of any technical deficiencies in the application. In order to receive further consideration for assistance, the applicant must submit corrections to the Loan Management Branch within 14 calendar days from the postmark date of HUD's letter notifying the applicant of any such deficiencies. Corrections to technical deficiencies will be accepted within the 14 day time limit, but substantive changes or supplements to the application initiated by the applicant will not be accepted.

Applicants will be permitted to correct those deficiencies determined to be technical, (i.e., those that do not change the substance of the application, e.g., a missing certification, or missing signature) or to make changes as required by HUD. Technical deficiencies do not include owner-initiated changes to the MIO Plan or Form HUD–9835. Applicants will be required to cure any such deficiency within 14 days from the date of HUD's written notice to the applicant of the problem(s). Deficiencies determined to be substantive and not made at the direction of HUD may not be corrected.

VI. Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The Finding of No Significant Impact is available for public inspection during business hours in the Office of the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Federalism Executive Order

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that this Notice of Fund Availability will not have substantial, direct effects on States, on their political subdivisions, or on their relationship with the Federal Government, or on the distribution of power and responsibilities between them and other levels of government.

Family Executive Order

The General Counsel, as the Designated Official under Executive Order 12606, the Family, has determined that this Notice of Fund Availability will not have a significant impact on family formation, maintenance or well being, and therefore, is not subject to review under the order. The NOFA, insofar as it funds emergency repairs to multifamily housing projects, will assist in preserving decent housing stock for families residing there.

Prohibition Against Lobbying Activities: The Byrd Amendment

The use of funds awarded under this NOFA is subject to the disclosure requirements and prohibitions of section 319 of the Department of Interior and Related Agencies Appropriations Act for Fiscal Year 1990 (31 U.S.C. 1352) (the "Byrd Amendment"), and the implementing regulations at 24 CFR part 87. These authorities prohibit recipients of Federal contracts, grants, or loans from using appropriated funds for lobbying the Executive or Legislative Branches of the Federal Government in connection with a specific contract, grant, or loan. The prohibition also covers the awarding of contracts, grants, cooperative agreements, or loans unless the recipient has made an acceptable certification regarding lobbying. Under 24 CFR part 87, applicants, recipients, and subrecipients of assistance exceeding $100,000, and applicants for Federal commitments exceeding $150,000 must certify that no Federal funds have been or will be spent on lobbying activities in connection with the assistance.

Indian Housing Authorities (IHAs) established by an Indian tribe as a result of the exercise of the tribe's sovereign power are excluded from coverage of the Byrd Amendment, but IHAs established under State law are not excluded from the statute's coverage.

Prohibition Against Lobbying of HUD Personnel

Section 13 of the Department of Housing and Urban Development Act (42 U.S.C. 3537b) contains two provisions dealing with efforts to influence HUD's decisions with respect to financial assistance. The first imposes disclosure requirements on those who are typically involved in these efforts—those who pay others to influence the award of assistance or the taking of a management action by the Department and those who are paid to provide the influence. The second restricts the payment of fees to those who are paid to influence the award of HUD assistance, if the fees are tied to the number of housing units received or are based on the amount of assistance received, or if they are contingent upon the receipt of assistance.

HUD's regulation implementing section 13 is codified at 24 CFR part 86. If readers are involved in any efforts to influence the Department in these ways, they are urged to read the final rule, particularly the examples contained in appendix A of the rule. Appendix A of this rule contains examples of activities covered by this rule.

Any questions concerning the rule should be directed to the Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410. Telephone: (202) 708–3815 (voice/TDD). This is not a toll-free number. Forms necessary for compliance with the rule may be obtained from the local HUD office.

Prohibition Against Advance Disclosure of Funding Decisions

Section 103 of the HUD Reform Act proscribes the communication of certain information by HUD employees to persons not authorized to receive that information during the selection process for the award of assistance. HUD's regulation implementing section 103 is codified at 24 CFR part 4. HUD employees involved in the review of applications and in the making of funding decisions are restrained by 24 CFR part 4 from providing advance information to any person (other than an authorized employee of HUD) concerning funding decisions, or from otherwise giving any applicant an unfair competitive advantage. Persons who apply for assistance in this competition should confine their inquiries to the subject areas permitted by 24 CFR part 4. Applicants who have questions should contact the HUD Office of Ethics (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

Catalog. The Catalog of Federal Domestic Assistance Program number is 14.164.

Dated: December 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 94–846 Filed 1–12–94; 8:45 am]

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federal register

Thursday
January 13, 1994

Part VI

Department of the Interior

Bureau of Indian Affairs

Wind River Irrigation Project O&M Rate Increase, Wyoming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

[K00464-04-12210-241.A]

Wind River Irrigation Project O&M Rate Increase, Wyoming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Final Rate Change.

SUMMARY: The Bureau of Indian Affairs published in the **Federal Register** on Thursday, June 3, 1993, 58 FR 31644 a proposal to increase the Wind River Irrigation Project's current operation and maintenance assessment rate of $10.90 per assessable acre to $12.00 per acre per year. The Wind River Irrigation Project received no adverse comments concerning the proposed rate increase during the 30-day comment period.

The Wind River Irrigation Project's new operation and maintenance assessment rate for the 1994 irrigation season and subsequent irrigation seasons will be $12.00 per acre per year.

DATES: This final rate becomes effective on March 14, 1994.

ADDRESSES: This notice will be published and posted at the following locations:

U.S. Post Offices

Fort Washakie, Wyoming 82514,
Lander, Wyoming 82520, Riverton, Wyoming 82501.

Newspaper

Wyoming State Journal, Lander, WY 82520.
Riverton Ranger, Riverton, WY 82501.

Bureau of Indian Affairs

Wind River Agency, Fort Washakie, Wyoming 82514.

FOR FURTHER INFORMATION CONTACT: Superintendent, Wind River Agency, Bureau of Indian Affairs, Fort Washakie, Wyoming 82514, Telephone number (307) 332-7810.

SUPPLEMENTARY INFORMATION: This notice sets forth changes to the irrigation operation and maintenance charges for the Wind River Irrigation Project, Wyoming. These changes are made pursuant to the authority contained in the Act of April 4, 1910, c. 140, secs. 1 and 2 (36 Stat. 272), as amended, 25 U.S.C. 385; 25 CFR, 171.1.

This notice of rate change in the irrigation operation and maintenance rates is published under the authority delegated to the Commissioner of Indian Affairs and the Deputy Commissioner of Indian Affairs by the Secretary of the Interior in Secretarial Order 3150, Section 7b, and in accordance with the Code of Federal Regulations, Title 25, 171.1, which authorizes the Area Director to fix and announce irrigation operation and maintenance assessment rates for the Wind River Irrigation Project for calendar year 1994 and subsequent years.

Dated: December 15, 1993.

W.D. Babby,

Acting Deputy Commissioner of Indion Affairs.

[FR Doc. 94-881 Filed 1-12-94; 8:45 am]

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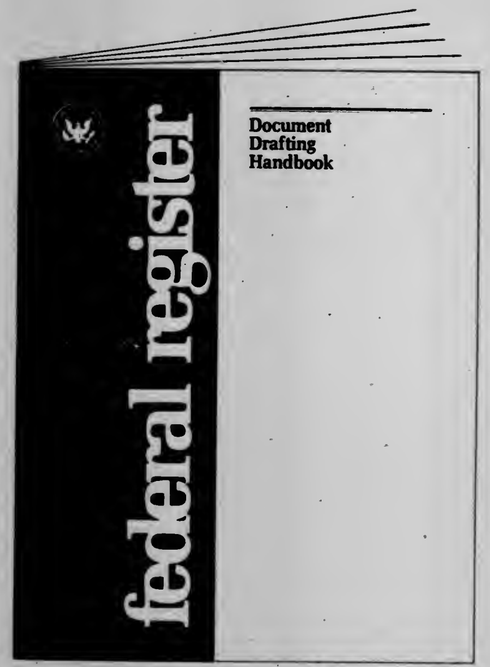
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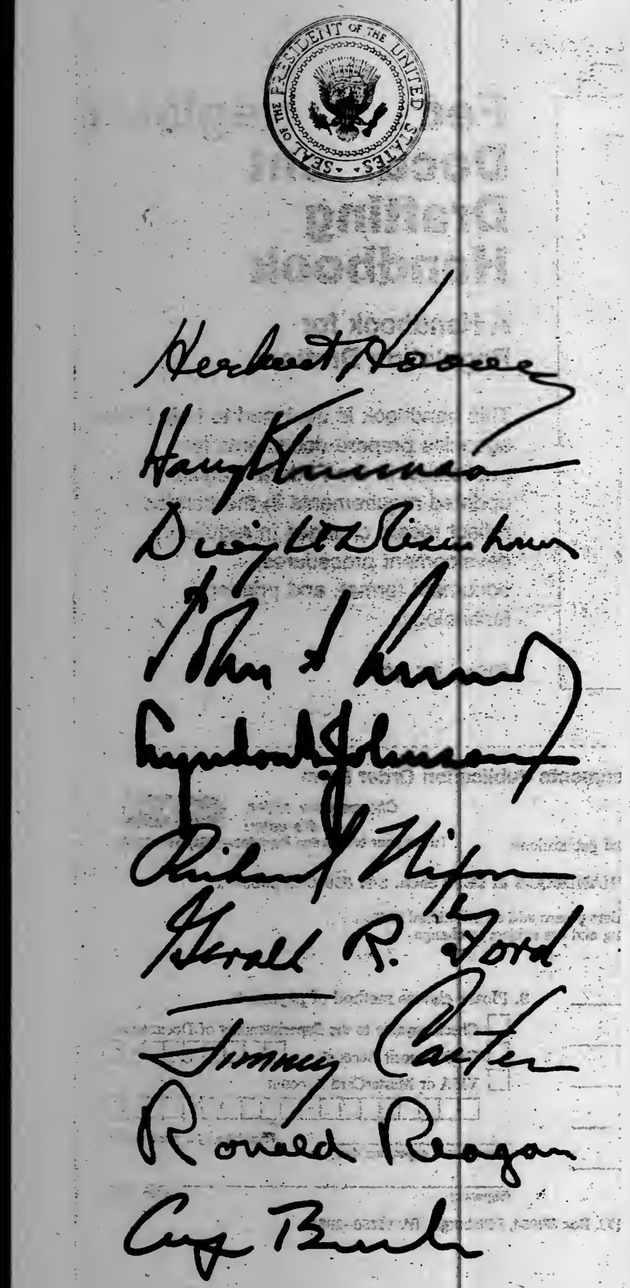
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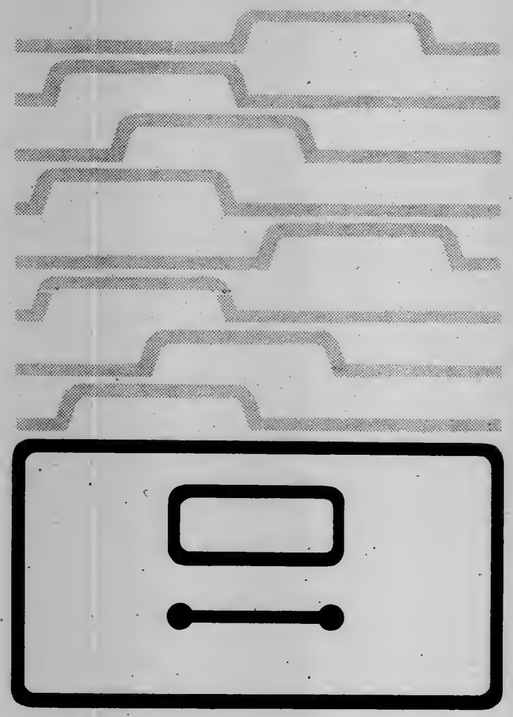
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Federal Register
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Friday, January 14, 1994

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket 91-155-11]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding a new portion of Los Angeles County, CA, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective January 10, 1994. Consideration will be given only to comments received on or before March 15, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91-155-11. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78-10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573-57579, Docket No. 91-155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 22, October 14, November 23, and December 22, 1993 (57 FR 42485-42486, Docket No. 91-155-2; 57 FR 54166-54169, Docket No. 91-155-3; 58 FR 6343-6346, Docket No. 91-155-4; 58 FR 39123-39124, Docket No. 91-155-5; 58 FR 42489-42491, Docket No. 91-155-6; 58 FR 49186-49190, Docket No. 91-155-7; 58 FR 53105-53109, Docket No. 91-155-8; 58 FR 63027-63031, Docket No. 91-155-9; and 58 FR 67627-67630, Docket No. 91-155-10).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the Wilmington area in Los Angeles County, CA.

The regulations in § 301.78-3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78-3 by expanding the area that extends through Los Angeles and Orange Counties with the addition of a Los Angeles County area of approximately 101 square miles. The new quarantined area is as follows:

Los Angeles County

That portion of Los Angeles County bounded by a line drawn as follows: Beginning at the intersection of State Highway 91 and Crenshaw Boulevard; then south along Crenshaw Boulevard to its intersection with North Palos Verdes Drive; then east along North Palos Verdes Drive to its intersection with Palos Verdes Drive East; then south along Palos Verdes Drive East to its intersection with 25th Street; then east along 25th Street to its intersection with Gaffey Street; then north along Gaffey Street to its intersection with 22nd Street; then east along 22nd Street to its intersection with Pacific Avenue; then south along Pacific Avenue to its intersection with Bluff Place; then south from this intersection along an imaginary line to its intersection with the Pacific Ocean coastline; then east along the Pacific Ocean coastline to its intersection with the San Pedro Breakwater; then east along the San Pedro Breakwater to the Los Angeles Harbor Light Station; then east from the Los Angeles Harbor Light Station along an imaginary line to the Los Angeles Harbor Entrance East Light; then northeast from the Los Angeles Harbor Entrance East Light along the Middle Breakwater to the Long Beach Harbor Light Station; then north from the Long Beach Harbor Light Station along an imaginary line to the intersection of Harbor Scenic Way and Harbor Scenic Drive; then northwest along Scenic Harbor Drive to its intersection with Queen's Way; then north along Queen's Way to its intersection with Ocean

Boulevard; then east along Ocean Boulevard to its intersection with Alamitos Avenue; then northeast along Alamitos Avenue to its intersection with State Highway 1; then east along State Highway 1 to its intersection with Cherry Avenue; then north along Cherry Avenue to its intersection with Willow Street; then east on Willow Street to its intersection with Lakewood Boulevard; then north on Lakewood Boulevard to its intersection with Carson Street; then west on Carson Street to its intersection with Paramount Boulevard; then north on Paramount Boulevard to its intersection with State Highway 91; then West on Highway 91 to the point of beginning.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the Wilmington area of Los Angeles County, CA. There are approximately 223 small entities that could be affected, including 122 fruit sellers, 21 nurseries, 6 distributors, 7 growers, 50 vendors, 6 food banks, 1 farmers' market, and 10 swapmeets.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement, and the sale of these articles would not be affected by this interim regulation.

In the new quarantined area in Los Angeles County, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas are amended by revising the entry for Los Angeles and Orange Counties, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * * *

Los Angeles and Orange Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Crenshaw Boulevard; then south along Crenshaw Boulevard to its intersection with North Palos Verdes Drive; then east along North Palos Verdes Drive to its intersection with Palos Verdes Drive East; then south along Palos Verdes Drive East to its intersection with 25th Street; then east along 25th Street to its intersection with Gaffey Street; then north along Gaffey Street to its intersection with 22nd Street; then east along 22nd Street to its intersection with Pacific Avenue; then south along Pacific Avenue to its intersection with Bluff Place; then south from this intersection along an imaginary line to its intersection with the Pacific Ocean coastline; then east along the Pacific Ocean coastline to its intersection with the San Pedro Breakwater; then east along the San Pedro Breakwater to the Los Angeles Harbor Light Station; then east from the Los Angeles Harbor Light Station along an imaginary line to the Los Angeles Harbor Entrance East Light; then northeast from the Los Angeles Harbor Entrance East Light along the Middle Breakwater to the Long Beach Harbor Light Station; then north from the Long Beach Harbor Light Station along an imaginary line to the intersection of Harbor Scenic Way and Harbor Scenic Drive; then northwest along Scenic Harbor Drive to its intersection with Queen's Way; then north along Queen's Way to its intersection with Ocean Boulevard; then east along Ocean Boulevard to its intersection with Alamitos Avenue; then northeast along Alamitos Avenue to its intersection with State Highway 1; then east along State Highway 1 to its intersection with Cherry Avenue; then north along Cherry Avenue to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Interstate Highway 405; then, east and south along Interstate Highway 405 to its intersection with Culver Drive; then, northeast along Culver Drive to its intersection with Walnut Avenue; then, northwest along Walnut Avenue to its intersection with Jamboree Road; then, northeast along Jamboree Road to its intersection with Chapman Avenue; then north from this intersection along an imaginary line to the intersection of Serrano Avenue and Nohl Ranch Road; then northwest along Nohl Ranch Road to its intersection with the Imperial Highway; then north on the Imperial Highway to its intersection with State Highway 91; then west along State Highway 91 to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning.

Done in Washington, DC, this 10th day of January 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–993 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–34–P

Commodity Credit Corporation

7 CFR Part 1468

RIN 0560–AC65

Support Prices for Shorn Wool, Wool on Unshorn Lambs, and Mohair for the 1993 Marketing Year

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: On July 14, 1993, the Commodity Credit Corporation (CCC) issued a proposed rule (58 FR 37876) with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1993 marketing year. The support level for wool on unshorn lambs has been determined by taking 80 percent of the difference between the 1993 support price for shorn wool and the 1993 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool on an average 100-pound unshorn lamb). The mohair support level has been determined to be $4.738, which is equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1993 marketing year. These actions are required by section 703 of the National Wool Act of 1954, as amended (Wool Act).

EFFECTIVE DATE: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Janise A. Zygmont, Fibers and Rice Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), room 3756–S, PO Box 2415, Washington, DC 20013–2415 or call 202–720–6734.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866 and has been determined to be a "significant regulatory action." Based on information compiled by USDA, it has been determined that this final rule:

(1) Would have an annual effect on the economy of more than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of

the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: National Wool Act Payments—10.059.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778. The provisions of this final rule do not preempt State laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1468 set forth in this final rule will not result in any change in the public reporting burden. Therefore, the information collection requirements of the Paperwork Reduction Act are not applicable to this amendment.

Final Regulatory Impact Analysis

The Final Regulatory Impact Analysis describing the options considered in developing this final rule and the impact of the implementation of each option is available on request from the above-named individual.

Background

This final rule amends 7 CFR part 1468 to set forth determinations with respect to the support prices for shorn wool, wool on unshorn lambs, and mohair for the 1993 marketing year. A general description of the statutory basis for such determinations in this final rule was set forth at 58 FR 37876 (July 14, 1993).

A total of seven comments were received during the 30-day public comment period that ended August 13, 1993. Three respondents recommended that no changes be made to current support rates. Three respondents recommended that the price support programs be eliminated. In response to these 6 comments, it should be noted that although the proposed rule will be adopted without change, the wool and mohair programs will cease to exist after December 31, 1995.

One respondent suggested that full payment for wool on unshorn lambs should be made only on unshorn lambs up to 125 pounds, liveweight, and that no payments should be made on any weight exceeding 125 pounds. The respondent cited a problem with the current payment method which prorates payments based on the amount of weight gained while the lamb is owned first by the producer and later, a lamb feeder. The respondent noted that prorating payments encourages the production of over-fat lambs—a product that is not wanted by the American consumer—resulting in low lamb prices to the detriment of producers. This comment has not been adopted because it would increase recordkeeping requirements significantly for both ASCS and program participants, and it would require ASCS to make major revisions to the current procedure for calculating unshorn lamb payments. The potential savings resulting from lower payments would not be sufficient to justify such an increase in the administrative burden.

After considering these comments, the following determinations have been made with respect to the wool and mohair price support programs for the 1993 marketing year.

Support Price—Wool on Unshorn Lambs

In accordance with section 703 of the Wool Act, the support price for wool on unshorn lambs shall be determined by taking 80 percent of the difference between the 1993 support price for shorn wool and the 1993 national average market price for shorn wool, multiplied by 5 pounds (the amount of wool pulled from the pelt of an average 100-pound unshorn lamb).

Support Price—Mohair

In accordance with section 703 of the Wool Act, the support price for mohair for the 1993 marketing year shall be $4.738, which is equal to 85 percent of the comparable percentage of parity at which shorn wool is supported for the 1993 marketing year.

The support programs conducted pursuant to the Wool Act are subject to the provisions of the Balanced Budget and Deficit Reduction Act of 1985, as amended. As a result, the price support levels announced in this rule may be recalculated to comply with this Act.

List of Subjects in 7 CFR part 1468

Assistance grant programs—agriculture, Livestock, Mohair, Reporting and recordkeeping requirements, Wool.

Accordingly, 7 CFR part 1468 is amended as follows:

PART 1468—WOOL AND MOHAIR

1. The authority citation for 7 CFR part 1468 continues to read as follows:

Authority: 7 U.S.C. 1781–1787; 15 U.S.C. 714b and 714c.

2. Section 1468.4 is amended by revising paragraph (b) to read as follows:

§ 1468.4 Eligibility for payments.

* * * * *

(b)(1) The shorn wool support price for the 1991 through 1995 marketing years shall be 77.5 percent of an amount which is determined by multiplying 62 cents (the support price in 1965) by the ratio of:

(i) The average of the parity index (the index of prices paid by farmers, including commodities and services, interest, taxes, and farm wage rates) for the three calendar years immediately preceding the calendar year in which such support price is being determined and announced to:

(ii) The average parity index for the three calendar years 1958, 1959, and 1960, rounding the result to the nearest full cent. The shorn wool support price shall be as follows:

(A) 1991—$1.88 per pound.

(B) 1992—$1.97 per pound.

(C) 1993—$2.04 per pound.

(2) The payment rate for wool on unshorn lambs for the 1991 through 1995 marketing years shall be 80 percent of the difference between the national average price received by producers for shorn wool during a specified marketing year and the shorn wool support price multiplied by 5 (the average grease wool yield per hundredweight of live, unshorn lambs marketed). The payment rate for wool on unshorn lambs shall be as follows:

(i) 1991—$5.32 per hundredweight.

(ii) 1992—$4.92 per hundredweight.

(iii) 1993—an amount equal to 80 percent of the difference between the national average price received by producers for shorn wool for the 1993 marketing year and the 1993 shorn wool support price, multiplied by 5.

(3) The mohair support price for the 1991 through 1995 marketing years shall be established at such level, in relationship to the support price for shorn wool, which is determined necessary to maintain approximately the same percentage of parity for mohair as for shorn wool. The mohair support price shall be set within a range of 15 per centum above or below the comparable percentage of parity at which shorn wool is supported, as determined and announced by CCC. The support price for mohair shall be as follows:

(i) 1991—$4.448 per pound.

(ii) 1992—$4.613 per pound.

(iii) 1993—$4.738 per pound.

* * * * *

Signed at Washington, DC, on January 6, 1994.

Grant Buntrock,

Executive Vice President, Commodity Credit Corporation.

[FR Doc. 94–943 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–05–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–103–3]

Change in Disease Status of Belgium Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are declaring Belgium free of rinderpest and foot-and-mouth disease. Rinderpest has not existed in Belgium since 1920 and there have been no outbreaks of foot-and-mouth disease since 1976. This action removes the prohibition on the importation from Belgium into the United States of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation from Belgium of milk and milk products from ruminants. This action does not relieve restrictions on the importation from Belgium of swine and fresh, chilled, and frozen meat from swine, because Belgium has not been declared free of hog cholera and swine vesicular disease.

We also are adding Belgium to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to restrictions on the importation of their meat and other animal products into the United States. Finally, we also are adding Belgium to the list of countries from which the importation into the United States of llamas and alpacas is restricted.

EFFECTIVE DATE: January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Dr. Marolo Garcia, Senior Staff Veterinarian, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 757, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7830.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as "the regulations") govern the importation into the United States of specified animals and animal products to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease (SVD). These are dangerous and destructive communicable diseases of ruminants and swine.

On September 13, 1993, we published in the **Federal Register** (58 FR 47834–47836, Docket No. 93–103–1) a proposal to amend the regulations by adding Belgium to the list in § 94.1(a)(2) of countries that are declared to be free of rinderpest and FMD.

We solicited comments concerning our proposal for a 30-day period ending on October 13, 1993. During that period, we received one comment from a national dairy association requesting that we reopen and extend the comment period so that its members would have ample time to prepare and submit comments. In response, on October 28, 1993, we published in the **Federal Register** (58 FR 57971–57972, Docket No. 93–103–2) a document reopening and extending the comment period until November 29, 1993. We considered all comments received following the date of publication of the proposed rule and on or before the new comment period closing date. We received only one comment by the new comment period closing date, from a national dairy cattle breed association, which fully supported our proposed rule.

Therefore, based on the rationale set forth in the proposed rule, we are adopting the provisions of the proposal as a final rule without change.

Effective Date

This is a substantive rule that relieves restrictions and, pursuant to the provisions of 5 U.S.C. 553, may be made effective less than 30 days after publication in the **Federal Register**. This rule removes the prohibition on the importation into the United States, from Belgium, of ruminants and fresh, chilled, and frozen meat from ruminants and relieves restrictions on the importation, from Belgium, of milk and milk products from ruminants. We have determined that approximately 2 weeks are needed to ensure that Animal and Plant Health Inspection Service personnel at ports of entry receive official notice of this change in the regulations. Therefore, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule should be made effective 15 days after publication in the **Federal Register**.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

We are adding Belgium to the list in part 94 of countries declared to be free of rinderpest and FMD. This action removes the prohibition on the importation into the United States, from Belgium, of ruminants and fresh, chilled, and frozen meat from ruminants, and relieves restrictions on the importation, from Belgium, of milk and milk products from ruminants. This action does not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine from Belgium because Belgium is still considered to be affected with hog cholera and SVD.

Based on available information, the Department does not anticipate a major increase in exports of ruminants and fresh, chilled, or frozen meat of ruminants from Belgium into the United States as a result of this rule.

The value of total U.S. imports of cattle in 1991 was $951.6 million, and

the value of total U.S. imports of sheep in 1991 was about $1.6 million. The United States did not import any cattle or sheep from Belgium during 1991. In fact, no cattle or sheep were imported into the United States from any country in Western Europe during 1991 (USDA, Economic Research Service (ERS), "Foreign Agricultural Trade of the United States: Calendar Year 1991 Supplement," 1992). Western Europe is not a source of ruminants for the United States; any increase in the import of ruminants from Belgium as a result of this rule will have a negligible impact on existing trade patterns.

Currently, due to APHIS restrictions, the United States does not import uncooked meat or meat products from Belgium. In 1991, total meat production in the United States (excluding pork) was just under 10.7 million metric tons, while total meat production in Belgium (excluding pork) was 385,000 metric tons, less than four percent of United States production. It is improbable that Belgium will begin to export any significant portion of its meat products to the United States as a result of this rule. Therefore, we estimate that the effect of this rule on domestic meat prices or supplies will be insignificant.

Similarly, we do not anticipate a major increase in exports of milk and milk products from Belgium into the United States as a result of this rule. Importation into the United States of all dairy products, except for casein and other caseinates, is restricted by quotas. Furthermore, while the United States imports more than half of the casein produced in the world and the regulations allow casein and other caseinates to be imported from countries where rinderpest or FMD exists (if the importer has applied for and obtained written permission from the Administrator), Belgium does not currently export casein to the United States. Consequently, we believe that declaring Belgium free of rinderpest and FMD will have no significant effect on the amount of casein imported into the United States.

The effect of declaring Belgium free of rinderpest and FMD on the trade in bovine embryos and semen will probably also be minimal. The United States is a net exporter of bovine embryos and semen; in 1991, the value of bovine embryo and semen exports totalled $46.5 million and $10.2 million, respectively, while imports amounted to only $2.7 million and $89,000, respectively. Though similar trade data was not available for Belgium, we believe that due to the relatively small size of the Belgium market, any increase in the export of bovine embryos and semen from Belgium will have a minimal impact on the United States market.

Five United States importers, all of whom are considered small entities by Small Business Administration standards (they have fewer than 100 employees), have expressed interest in importing bovine embryos and semen from Belgium. APHIS expects the value of the anticipated imports to be minimal in comparison to the domestic production of these entities.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been submitted and approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 is amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 continues to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, and 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. Section 94.1, paragraph (a)(2), is amended by adding "Belgium," immediately after "Barbados,".

3. Section 94.1, paragraph (d)(1), is amended by adding "Belgium," immediately before "Chile,".

§ 94.11 [Amended]

4. In § 94.11, paragraph (a), the first sentence is amended by adding "Belgium," immediately after "The Bahamas,".

Done in Washington, DC, this 10th day of January 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–995 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–34–P

COMMODITY FUTURES TRADING COMMISSION

17 CFR Parts 1 and 5

Contract Market Rule Review Procedures

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rules.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is amending Regulation 1.41 to revise the Commission's requirements with respect to the number of copies of rule change proposals that an exchange must provide to the Commission. The Commission also is adopting amendments that would revise certain of the procedures and standards set forth in the Commission's expedited approval rules, Regulations 1.41(h) through 1.41(t), to reflect recent innovations by the exchanges as well as miscellaneous amendments to the procedural aspects of the expedited approval rules. Other proposed amendments include miscellaneous clarifying amendments to the Commission's Guideline No. 1.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Richard A. Shilts, Supervisory Economist, Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Telephone: (202) 254–7303.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 5a(a)(12) of the Commodity Exchange Act ("Act"), 7 U.S.C. 7a(12),

provides that all rules[1] of a contract market which relate to terms and conditions[2] in futures or option contracts traded on or subject to the rules of a contract market must be submitted to the Commission for its prior approval. Section 5a(a)(12) further requires that contract markets submit all other rules to the Commission. Such other rules may be made effective ten days after Commission receipt unless, within the ten-day period, the Exchange requests Commission approval or the Commission notifies the Exchange that it intends to review the rules for approval.

Commission Regulation 1.41 sets forth procedures for submitting proposed exchange rules for Commission approval, permitting certain exchange rules to go into effect without Commission approval, and dealing with exchange emergency rules. All proposed exchange rules relating to the terms and conditions of a commodity futures or option contract must, and any other rule may, be submitted for prior Commission approval, under Section 5a(a)(12) of the Act, pursuant to procedures set forth in Regulation 1.41(b). Regulation 1.41(c) sets forth the submission requirements for rules that do not relate to terms and conditions and which may be placed into effect without Commission approval ten days after receipt by the Commission. Regulation 1.41(d) sets forth the submission requirements for rules that are exempt from the requirements of Section 5a(a)(12) of the Act. Regulations 1.41(h) through (t) set forth conditions under which, in lieu of submission under Regulation 1.41(b), certain types of exchange rule proposals relating to terms and conditions requiring Commission approval may be deemed approved either upon adoption by the exchange or within a specified number of days of Commission receipt, which ranges from one to ten days.[3]

In submitting rules to the Commission under any of Regulations 1.41(b), 1.41(c), or 1.41(h) through (t), an exchange is required to furnish three copies of the proposal to the Commission's Washington, DC headquarters and one copy to the regional office of the Commission having local jurisdiction over that exchange. For rules submitted under the provisions of Regulation 1.41(d), an exchange is required to furnish one copy of the proposal to the Commission's Washington, DC headquarters and one copy to the regional office of the Commission having local jurisdiction over that exchange.

Commission Regulation 1.41a sets forth procedures delegating to the Directors of the Divisions of Trading and Markets (T&M) and Economic Analysis (DEA) the authority to make certain decisions regarding rule submissions. Specifically, this regulation delegates to the Directors of T&M and DEA the authority to determine: (1) Whether to remit and not accept for review rules submitted under Regulations 1.41(b), (c) or (d) that do not comply with the applicable submission requirements of those regulations; (2) whether a rule submission submitted under Regulation 1.41(c) or (d) relates to terms and conditions thus requiring prior Commission approval pursuant to the provisions of Regulation 1.41(b); (3) whether rules submitted under Regulation 1.41(c) do not require prior approval under Section 5a(a)(12) of the Act and Regulation 1.41(b) and whether such rules may become effective prior to the expiration of the ten-day period following receipt for such rules by the Commission; and (4) whether proposals submitted under any of the expedited procedures of Regulations 1.41(h) through (t) comply with the applicable provisions of these regulations and, if not, to notify the contract market that the submission is subject to the provisions of Regulation 1.41(b).

II. Amendments to Regulation 1.41

The Commission is adopting amendments to Regulation 1.41 that would revise the requirements of Regulations 1.41(b), 1.41(c) and 1.41(h) through (t) to reduce to one from three the number of copies of rule change proposals that an exchange must furnish to the Commission at its Washington, DC headquarters for rule changes submitted under these regulations. However, with respect to applications for contract market designation, under the amendments the exchanges would continue to be required to submit three copies of the application, including the proposed rules, to the Commission at its Washington, DC headquarters. Amendments to appendix A to part 5 of the Commission's regulations reflect this continuing requirement.

Also, the Commission is eliminating the requirement that exchanges must submit one copy of rules submitted under Regulations 1.41(d) and 1.41(h) through (t) to the regional office of the Commission having local jurisdiction over that exchange. The exchanges would continue to be required to submit one copy of rule proposals submitted under Commission Regulations 1.41(b) and 1.41(c) to the regional office of the Commission having local jurisdiction over that exchange.

The Commission has reviewed its procedures for processing rule submissions under Regulations 1.41(b), 1.41(c), and 1.41(h) through (t), and, as a result of that review, the Commission has determined that the submission of more than one copy of a rule change proposal to the Washington, DC headquarters is not necessary. Moreover, the Commission has determined that, for rule change proposals submitted under Regulations 1.41(d) and 1.41(h) through (t), the submission of a copy of such rule to the regional office of the Commission having local jurisdiction over that exchange also is not necessary.[4] Further, these amendments would diminish the paperwork burden on the exchanges and would reduce costs associated with filing submissions under these regulations.

The Commission also is adopting amendments that would clarify and

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[1] Commission Regulation 1.41(a)(1) defines "rule" of a contract market as follows:

• • • any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, or instrument corresponding thereto, in whatever form adopted, and any amendment or addition thereto or repeal thereof, made or issued by a contract market, or by the governing board of thereof or any committee thereof.

[2] Commission Regulation 1.41(a)(2) defines "terms and conditions" as follows:

Any definition of the trading unit or the specific commodity underlying a contract for the future delivery of a commodity or commodity option contract, specification of settlement or delivery standards and procedures, and establishment of buyers' and sellers' rights and obligations under the contract. Terms and conditions shall be deemed to include provisions relating to the following:

(i) Quality or quantity standards for a commodity and any applicable exemptions or discounts;

(ii) Trading hours, trading months and the listing of contracts;

(iii) Minimum and maximum price limits and the establishment of settlement prices;

(iv) Position limits and position reporting requirements;

(v) Delivery points and locational price differentials;

(vi) Delivery standards and procedures, including alternatives to delivery and applicable penalties or sanctions for failure to perform;

(vii) Settlement of the contract; and

(viii) Payment or collection of commodity option premiums or margins.

[3] Regulations 1.41(e) and 1.41(f), respectively, set forth the submission requirements for exchange membership and contract market rules relating to temporary emergencies. These regulations are not affected by the amendments proposed in this notice.

[4] These changes would not affect the current submission requirements under paragraph (f) of Regulation 1.41 regarding temporary emergency rules, where the exchange is required to notify the Commission at its Washington, DC headquarters by the fastest available means of communication. A written copy of the emergency rule shall be furnished to the Commission at its Washington, DC headquarters and two copies of the rule shall be furnished to the regional office of the Commission having local jurisdiction over that exchange.

update the standards set forth in the expedited approval procedures in paragraphs (h), (l), (o), (p), and (q) of Regulation 1.41. Paragraph (h) establishes an expedited review procedure for changes to the composition, computation, or method of stock selection of a stock index in which a contract market is designated to trade futures contracts, or options on such futures contracts. Currently, such changes are deemed approved upon adoption by the contract market if: (i) The index is compiled for commercial purposes by an independent third party; (ii) the change is consistent with a rule of the contract market which has been approved by the Commission for this purpose which specifically defines, or establishes standards governing, the composition of the stock index upon which the designated futures contracts are authorized to trade; (iii) the contract market provides the Commission with written notice of the change within five days after the change is adopted by the contract market; and (iv) the contract market labels the written notice as being submitted under Regulation 1.41(h). This expedited procedure was established because routine changes to an index to maintain its continuity were not expected to require detailed review by the Commission under paragraph (b) of Regulation 1.41.

Based on approximately 10 years of experience in administering the provisions of Regulation 1.41(h), the Commission has determined that the submission to the Commission on a routine basis of changes which relate to maintaining the continuity of a stock index is not necessary. Further, deleting this requirement would reduce the paperwork burden on the exchanges.

Accordingly, the amendment to Regulation 1.41(h) would delete items (iii) and (iv) above, so that a contract market no longer would be required to submit routinely to the Commission a written notice of a change in the composition, computation, or method of stock selection that is made to maintain the continuity of a stock index in which that contract market is designated to trade futures or futures option contracts. In order for such a change to be deemed approved by the Commission pursuant to Regulation 1.41(h) as amended, the index must continue to be compiled for commercial purposes by an independent third party, and the change must be consistent with a rule of the contract market which has been approved by the Commission for this purpose which defines, or establishes standards governing, the composition of the stock index. Under the amended regulation, however, such changes would not routinely be required to be submitted to the Commission following adoption by the exchange. As currently provided, contract markets would continue to be required to submit to the Commission for review and approval under Regulation 1.41(b) all changes to the composition, computation, or method of stock selection that are for purposes other than the continuity of the index.

Further, under amended Regulation 1.41(h), contract markets would be required to provide to the Commission, upon special call to the contract market, information regarding the composition, computation, or method of stock selection of the index, including any change or changes related to the continuity of the index, or any other issues relating to the index, as instructed, and within the time, and for the period, specified in the call. Such a special call would provide the Commission with information, as requested, to assure that the contract market continued to meet its regulatory obligations.

Paragraph (l) of Regulation 1.41 establishes an expedited procedure for changes in trading months. Such changes are deemed approved 10 days after the Commission receives written notification of the proposal, provided certain conditions are satisfied. The amendment to paragraph (l) would clarify that this paragraph applies to exchange proposals to delist contract months without open interest as well as to exchange proposals to list new months. In that regard, the division directors or their delegees routinely process requests to delist contact months under Regulation 1.41(l), as long as the months to be delisted have no open interest. The amendment simply clarifies the division directors' delegated authority in this regard.

Paragraph (o) establishes an expedited procedure for changes in strike price listing procedures. Such changes are deemed approved 10 days after the Commission receives written notification of the proposal, provided certain conditions are satisfied. The amendment to paragraph (o) would clarify that this paragraph applies to exchange proposals to amend strike price listing procedures for listed options without open interest, as well as for options not listed, at the time the rule goes into effect.

Paragraph (p) establishes an expedited procedure for changes in the last trading day of an option contract. Such changes are deemed approved 10 days after the Commission receives written notification of the proposal, provided certain conditions are satisfied. One amendment to paragraph (p) would clarify that this paragraph applies to listed options without open interest, as well as to options not listed, at the time the rule goes into effect. Another amendment is non-substantive and would correct a typographical error in section (3) of that paragraph. Specifically, the amendment would clarify that the Commission will, within 10 days after receipt of a submission regarding a change in option last trading day specifications, notify the contract market if the change appears to not be consistent with the provisions of this paragraph.

Paragraph (q) of Regulation 1.41 provides that changes related to "cabinet trade" provisions for options may be approved under expedited procedures. A cabinet trade currently is defined as an option trade that represents a closing transaction for both parties to the trade and which is specifically identified as such in the contract market's rules. The amendments to paragraph (q) revise the expedited approval standard to remove the requirement that option cabinet trade rules eligible for treatment under this paragraph must involve closing transactions exclusively. This revision in the expedited approval standard reflects recent innovations by the exchanges with respect to cabinet trade provisions. An amendment to section (3) of that paragraph is non-substantive and corrects a typographical error. Specifically, the amendment clarifies that the Commission will, within 10 days after receipt of a submission regarding a change in the cabinet trade provisions of an option contract, notify the contract market if the change appears to not be consistent with the provisions of this paragraph.

III. Amendments to Regulation 1.41a

In connection with the foregoing amendments to Regulation 1.41, the Commission is adopting amendments to paragraph (a)(5) of Regulation 1.41a. Currently, as noted above, this regulation delegates to the Director of the Division of Trading and Markets and to the Director of the Division of Economic Analysis, or their respective delegees, authority to determine whether changes submitted under paragraphs (h)–(t) of Regulation 1.41 are inconsistent with the relevant provisions of those paragraphs and to notify contract markets if such submissions are to be subject to the usual review procedures under Section 5a(a)(12) of the Act and Regulation 1.41(b).

One amendment to Regulation 1.41a provides that the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, or their respective delegees, have the delegated authority to give notice that rules submitted pursuant to §§ 1.41(k)–(t) comply with the provisions of §§ 1.41(k)–(t), as applicable, and therefore shall be deemed approved prior to the end of the period specified in the applicable rule. Such period commences on the day the rule is received by the Commission at its Washington, DC headquarters. The Commission has received requests from exchanges for notice that rules submitted under the expedited procedures of §§ 1.41(k)–(t) are deemed approved prior to the end of the specified period in order to provide for timely implementation of rules to respond to rapidly changing market conditions or to avoid a market problem.

Another amendment to Regulation 1.41a would expand the delegated authority of the Director of the Division of Trading and Markets and the Director of the Division of Economic Analysis, or their respective delegees, to notify a contract market that a rule submitted under Section 5a(a)(12) of the Act and § 1.41(b) will be treated as if submitted pursuant to §§ 1.41(h)–(t), as applicable, if the rule submitted pursuant to the provisions of § 1.41(b) complies with any of the provisions of §§ 1.41(h)–(t). Current procedures can delay processing of the proposal and impede timely implementation of the rule.

IV. Amendments to Commission Guideline No. 1

Guideline No. 1 sets forth the Commission's economic and public interest requirements for initial and continuing designation of a contract market in a particular commodity. The Commission is proposing to revise this guideline to correct an improper rule reference. Specifically, item 5 in column 2 of the "Option Designation Checklist For Options On Futures Contracts" (option on futures checklist) and the "Option Designation Checklist For Options on Physicals" (option on physicals checklist) regarding the option expiration criteria cites Commission Regulation 33.4(d)(1) as the applicable Commission regulation for these criteria. However, as a result of substantive revisions to the Commission's option regulations adopted in September 1991 (56 FR 43694), many of the Commission's option regulations were renumbered, including Regulation 33.4(d)(1) which was renumbered as 33.4(b)(2). Therefore, the Commission hereby is amending the option checklists to replace 33.4(d)(1) with 33.4(b)(2) as the cited Commission regulation for the option expiration criteria in each of those checklists.

Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 *et seq.*, requires that agencies, in adopting rules, consider their impact on small businesses. The Commission has previously determined that contract markets are not small entities for purposes of the Regulatory Flexibility Act. 47 FR 18618 (April 30, 1982). Moreover, no additional regulatory burdens are imposed by these amendments. Therefore, the Acting Chairman on behalf of the Commission hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 et seq., imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. In compliance with the Act, the Commission has submitted these amended rules and their associated information collection requirements to the Office of Management and Budget.

While these amended rules result in no increased burden, the group of rules (OMB control # 3038–0007) of which they are a part has the following burden:

Average Burden Hours per Response: 50.34.

Number of Respondents: 10,727,182.

Frequency of Response: Monthly.

Persons wishing to comment on the estimated paperwork burden associated with these amended rules should contact Gary Waxman, Office of Management and Budget, room 3228, NEOB, Washington, DC 20503. Copies of the information collection submission to OMB are available from Joe F. Mink, CFTC Clearance Officer, 2033 K Street, NW., Washington, DC 20581, (202) 254–9735.

C. Notice and Comment

Section 553(b) of the Administrative Procedure Act, 5 U.S.C. 553(b), requires in most instances that a notice of proposed rulemaking be published in the **Federal Register** and that opportunity for comment be provided when an agency promulgates new regulations. Section 553(b) sets forth an exception, however, for rules of agency organization, procedure, or practice. The instant amendments provide expedited procedures for the approval of certain contract market rules. The Commission has determined that these amendments, which will reduce the burden on the exchanges, relate to Commission procedure and practice and therefore that notice and comment is not required.

Section 553(b) also sets forth an exception to the requirement of notice and opportunity for public comment when the Commission for good cause finds such notice and public comment are unnecessary or contrary to the public interest. The Commission finds that notice and public comment on the rule changes announced herein are unnecessary because the changes are procedural in nature and do not establish any new obligations under the Act.

List of Subjects in 17 CFR Parts 1 and 5

Commodity futures, Contract market rules, Consumer protection, Rule review procedures, Reporting and recordkeeping requirements.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 4c, 5a, and 8a thereof, 7 U.S.C. 6c, 7a and 12a, the Commission hereby amends parts 1 and 5 of chapter I of title 17 of the Code of Federal Regulations as follows:

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

1. The authority citation for part 1 continues to read as follows:

Authority: 7 U.S.C. 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6i, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a–1, 16, 16a, 19, 21, 23, and 24, unless otherwise stated.

2. Section 1.41 is amended by revising paragraphs (b) introductory text, (c)(1), (d)(2) and (h), by redesignating (l)(1)(iii) as (l)(1)(iv) and adding a new (l)(1)(iii), and by revising (o)(1)(ii), (p)(2)(ii), (p)(3), and (q) to read as follows:

§ 1.41 Contract market rules; submission of rules to the Commission; exemption of certain rules.

* * * * *

(b) *Submission of rules for prior Commission approval.* Except as provided herein and in paragraph (f) of this section, all proposed contract market rules that relate to terms and conditions and any other rules that the Commission has determined pursuant to

paragraph (c) of this section require prior approval must, and any other rule may, be submitted to the Commission for approval pursuant to section 5a(a)(12) of the Act prior to their proposed effective dates. One copy of each such rule submitted under this section shall be furnished to the Commission at its Washington, DC headquarters, and, excluding submissions under paragraphs (h) through (t) of this section, one copy shall be furnished to the regional office of the Commission having local jurisdiction over the contract market. Provided, however, that for submissions under appendix A to part 5 of the Commission's Regulations with respect to contract market designation applications, three copies of such submissions shall be furnished to the Commission at its Washington, DC headquarters. Each submission under this paragraph (b) shall, in the following order:

* * * * *

(c) *Rules that do not relate to terms and conditions.* (1) Except as provided in paragraphs (d) and (f) of this section (exempt or temporary emergency rules), one copy of any rule which does not relate to terms and conditions or which a contract market proposes to place into effect without submission to the Commission for approval under section 5a(a)(12) of the Act and paragraph (b) of this section shall be furnished to the Commission at its Washington, DC headquarters at least ten days prior to its proposed effective date. One copy also shall be transmitted by the contract market to the regional office of the Commission having local jurisdiction over the contract market. Each such submission shall be labeled as being submitted pursuant to paragraph (c) of this section and include the information required by paragraphs (b)(2) through (b)(5) of this section.

* * * * *

(d) * * *

(2) Rules that are exempt from the requirements of section 5a(a)(12) of the Act in accordance with the provisions of this paragraph (d) shall nonetheless be submitted to the Commission pursuant to the provisions of section 5a(a)(1) of the Act. Each such submission shall be labeled as being submitted pursuant to section 5a(a)(1) of the Act and paragraph (d) of this section. One copy of each such submission shall be furnished to the Commission at its Washington, DC headquarters.

* * * * *

(h) *Stock index contracts.* (1) Notwithstanding the provisions of paragraph (b) of this section, all changes in the composition, computation, or method of stock selection of a stock index in which a contract market is designated to trade futures contracts, or options on such futures contracts, shall be deemed approved by the Commission at the time such changes are adopted by a contract market if:

(i) The index is compiled for commercial purposes by an independent third party; and

(ii) The change is consistent with a rule of the contract market which has been approved by the Commission for this purpose which specifically defines, or establishes standards governing, the composition of the stock index upon which the designated futures contracts are authorized to trade.

(2) The contract market must provide to the Commission, upon special call, information regarding the composition, computation, or method of stock selection of the index, including any change or changes, or any other issues relating to the index, as instructed, and within such time, and for such a period, specified in the call.

* * * * *

(l) * * *

(1) * * *

(iii) For proposals to delist previously listed futures or option contract months, the months to be delisted have no open interest at the time of delisting.

* * * * *

(o) * * *

(1) * * *

(ii) The amended rule does not affect any option with open interest at the time the rule goes into effect.

* * * * *

(p) * * *

(2) * * *

(ii) The amended last trading day rule does not apply to any option with open interest at the time the rule goes into effect.

* * * * *

(3) The Commission will, within 10 days after receipt by the Commission of notice of a change in the last trading day specification of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12) of the Act and paragraph (b) of this section.

(q) *Option cabinet trade provisions.* (1) For purposes of this paragraph, a cabinet trade is defined as an option trade that represents a transaction whereby the per-contract value of the cabinet trade is less than the per-contract value associated with a trade at the existing minimum premium fluctuation specified in the contract market's rules for that option contract.

(2) Notwithstanding the provisions of paragraph (b) of this section, all initial specifications of, and changes to, option cabinet trade provisions shall be deemed approved by the Commission 10 days after written notice of such change is received by the Commission if:

(i) The initial specification of a cabinet trade rule or a change thereto provides that the per-contract value (or values) of the cabinet trade is (are) less than the per-contract value associated with a trade at the existing minimum premium fluctuation specified in the contract market's rules for that option contract.

(ii) The contract market labels the written notice as being submitted pursuant to paragraph (q) of this section.

(3) The Commission will, within 10 days after receipt by the Commission of notice of a change in the cabinet trade provisions of an option contract, notify the contract market making the submission if it appears that the change is not consistent with the provisions of this paragraph. Upon such notification by the Commission to the contract market, the change will be subject to the usual procedures under section 5a(a)(12) of the Act and paragraph (b) of this section.

* * * * *

3. Section 1.41a is amended by revising paragraph (a)(5) to read as follows:

§ 1.41a Delegation of authority to the Directors of the Division of Trading and Markets and the Division of Economic Analysis to process certain contract market rules.

(a) * * *

(5) Pursuant to §§ 1.41(h) through (t) to determine:

(i) Whether contract market rules submitted pursuant to Section 5a(a)(12) of the Act and the provisions of §§ 1.41(h) through (t) comply with the provisions of §§ 1.41(h) through (t), as applicable;

(ii) To give notice that rules submitted pursuant to §§ 1.41(k) through (t) comply with the provisions of §§ 1.41(k) through (t), as applicable, and therefore shall be deemed approved prior to the end of the period specified in the applicable rule, commencing on the day the rule is received by the Commission at its Washington, DC headquarters;

(iii) If contract market rules submitted pursuant to the provisions of §§ 1.41(h) through (t) do not comply with the applicable provisions of these regulations, to notify the submitting contract market that such rules are therefore subject to the procedures specified in Section 5a(a)(12) of the Act and § 1.41(b); and

(iv) If contract market rules submitted pursuant to the provisions of § 1.41(b) comply with any of the provisions of §§ 1.41(h) through (t), to notify the contract market that such rules will be treated as if submitted pursuant to §§ 1.41(h) through (t) as applicable.

* * * * *

PART 5—DESIGNATION OF AND CONTINUING COMPLIANCE BY CONTRACT MARKETS

4. The authority citation for part 5 continues to read as follows:

Authority: 7 U.S.C. 6c, 7, 7a, 8 and 12a, unless otherwise noted.

5. Appendix A to part 5, Commission Guideline No. 1, is amended by revising the introductory text of the appendix and by revising the option designation checklists in paragraph (b)(2) and paragraph (c)(5) to read as follows:

Appendix A to Part 5—Guideline No. 1; Interpretive Statement Regarding Economic and Public Interest Requirements for Contract Market Designation

For purposes of a board of trade seeking designation as a contract market and thereafter for the purpose of demonstrating continued compliance with the requirements of sections 4c, 5 and 5a of the Commodity Exchange Act, and regulations thereunder, the following shall be provided to the Commission. The board of trade shall furnish to the Commission at its Washington, DC headquarters three copies of the application including the proposed rules.

* * * * *

(b) * * *

(2) * * *

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON FUTURES CONTRACTS

Criteria	Applicable Commission Rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	Combined net position in futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as section 1.61(g) of this chapter or previously approved language.	
3. Reporting level	15.00(b)(2)	50 contracts or fewer.	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic.	
5. Option expiration	33.4(b)(2)	Options, except for options on cash-settled futures contracts, expire not less than one business day before the earlier of the last trading day or the first notice day of the underlying futures contract.	
6. Minimum tick	33.4(d)	Tick is equal to, or less than, the underlying futures tick.	
7. Daily price limit, if specified	33.4(d)	Price limit, if any, is equal to, or greater than, underlying futures price limit.	

* * * * *

(c) * * *

(5) * * *

OPTION DESIGNATION CHECKLIST FOR OPTIONS ON PHYSICALS

Criteria	Applicable Commission Rule, 17 CFR	Standard	Met by exchange rule number
1. Speculative limits	1.61	If there is a futures contract in the same commodity on the same exchange, combined futures and options on a futures-equivalent basis at the futures position levels, with inter-month spread exemptions that are consistent with those of the futures contracts.	
2. Aggregation rule	1.61(g)	Same as Section 1.61(g) of this chapter or previously approved language.	
3. Reporting level	15.00(b)(2)	50 contracts or fewer.	
4. Strike prices	33.4(b)(1)	Procedures for listing strikes are specified and automatic.	
5. Option expiration	33.4(b)(2)	Options expire not less than one business day before the earlier of the last trading day or the first notice day of any futures contract in the same or a related commodity, except for cash-settled futures contracts.	

* * * * *

Issued in Washington, DC on January 10, 1994, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 94–962 Filed 1–13–94; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF THE TREASURY

Customs Service

19 CFR Part 175

[T.D. 94–5 Correction]

Decision Following Petition by Domestic Interested Party—Location of Country of Origin Marking for Frozen Produce Packages

AGENCY: Customs Service, Treasury.

ACTION: Final interpretive rule; correction.

SUMMARY: This document corrects a previously published decision of Customs by adding Headquarters Ruling HQ 735085 (June 4, 1993), to the list of previous determinations affected by the decision.

EFFECTIVE DATE: The decision regarding the marking of frozen produce articles published in the **Federal Register** on December 29, 1993, and this correction of that decision become effective as to merchandise entered, or withdrawn from warehouse, for consumption, on or after February 11, 1994. Parties adversely affected by any compliance obligations of the December 29 decision or this correction shall have until May 8, 1994, to bring their frozen produce packaging into conformity with these requirements. After that date, all packaged frozen produce articles entered for consumption or withdrawn from warehouse for consumption and not marked to indicate the country of origin in accordance with this decision and other marking requirements of the Tariff Act and Customs Regulations shall be assessed marking duties.

FOR FURTHER INFORMATION CONTACT: Robert Cascardo, Value and Marking Branch, (202) 482–7010.

SUPPLEMENTARY INFORMATION:

Background

On December 29, 1993, Customs published a decision in the **Federal Register** (58 FR 68743) concerning the country of origin marking requirements for imported frozen produce. The decision implemented a new Customs interpretation of section 304 of the Tariff Act of 1930, as amended (19 U.S.C. 1304). Under the decision, packages of imported frozen produce will be required to be marked with their country of origin on the front side of the packaging in specified types and styles. However, the decision's section entitled: "Previous Decisions Affected" should have made clear that HQ 735085 (June 4, 1993) was being modified accordingly. This section on page 68747, second column, is corrected to read, in its entirety, as follows:

Previous Decisions Affected

HRL 731830 (November 21, 1988), is revoked. HQ 735085 (June 4, 1993), and a related determination, HRL 735222 (June 28, 1993), are modified such that the rendering of the required marking shall be in accordance with this decision. T.D. 91–48 (May 28, 1991), is modified. Conspicuous marking within the meaning of T.D. 91–48 shall be limited to marking which complies with the specifications set forth in this decision.

Dated: January 10, 1994.

Harvey B. Fox,

Director, Office of Regulations and Rulings.

[FR Doc. 94–880 Filed 1–13–94; 8:45 am]

BILLING CODE 4820–02–P

RAILROAD RETIREMENT BOARD

20 CFR Part 209

RIN 3220–AB04

Railroad Employers' Reports and Responsibilities

AGENCY: Railroad Retirement Board.

ACTION: Interim final rule.

SUMMARY: The Railroad Retirement Board (Board) hereby amends its regulations to increase the amount of gross earnings required to be reported by employers. This amendment is necessary to reflect increases in the tax and benefit bases.

DATES: Effective Date: This rule is effective January 14, 1994. Comments: The Board will consider comments received by the public up to February 14, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4513, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Benefits under the Railroad Retirement Act (RRA) are financed by an employment tax imposed under the Railroad Retirement Tax Act (RRTA) upon wages paid by railroad employers. The tax has two components, a tier I level and a tier II level. The tier I level is the same as the tax imposed by the Federal Insurance Contributions Act (FICA) and is used to finance what are the equivalent of social security benefits payable under the RRA. The amount of compensation subject to tax is based upon the contribution and benefit base as defined in section 230 of the Social Security Act (see 26 U.S.C. 3231(e)(2)(B)). The contribution base generally rises each year to reflect increases in the national wage rate. In order to estimate future revenues the Board has required employers to report gross earnings, up to $300,000, of a one-percent sample of their employees (20 CFR 209.12). However, the Omnibus Budget Reconciliation Act of 1993 eliminated the wage cap base for the Hospital Insurance Program (Medicare) portion of the tier I tax. Consequently, the $300,000 cap is no longer adequate for making computations with respect to the financial interchange between the railroad retirement and social security/medicare trust funds. Railroad retirement beneficiaries are covered under Medicare by virtue of section 7(d) of the RRA.

Consequently, the Board is amending its regulations to require employers to report gross wages, not just wages up to $300,000.

In order for the amendment increasing the amount of reportable earnings to be effective with respect to the 1993 reports, due by March 1, 1994, the Board is publishing this rule as an interim final rule. However, the Board does invite comments on the change.

The information collections associated with these amendments have been approved by the Office of Management and Budget under Control Number 3220–0132.

List of Subjects in 20 CFR Part 209

Railroad employees, Railroad retirement, Railroads.

PART 209—RAILROAD EMPLOYERS' REPORTS AND RESPONSIBILITIES

1. The authority citation for part 209 continues to read as follows:

Authority: 45 U.S.C. 231f.

2. Section 209.12(b) is amended by revising the first sentence to read as follows:

§ 209.12 Employers' gross earnings reports.

* * * * *

(b) Employers shall report for employees in the gross earnings sample

the employee's gross earnings in a year, including both taxable and non-taxable compensation for the year. * * *

Dated: January 5, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–935 Filed 1–13–94; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 176

[Docket No. 92F–0056]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to expand the safe use of aromatic petroleum hydrocarbon resin hydrogenated, as a component of wax polymer blend coatings for paper and paperboard in contact with fatty foods. This action responds to a food additive petition filed by Arakawa Chemical Industries, Ltd.

DATES: Effective on January 14, 1994; written objections and requests for a hearing by February 14, 1994.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew J. Zajac, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of March 17, 1992 (57 FR 9260), FDA announced that a food additive petition (FAP 2B4315) had been filed by Arakawa Chemical Industries, Ltd., c/o 1001 G St. NW., suite 500 West, Washington, DC 20001. The petition proposed that § 176.170 *Components of paper and paperboard in contact with aqueous and fatty foods* (21 CFR 176.170) be amended to provide for the safe use of hydrogenated aromatic petroleum hydrocarbon resin in coatings on paper and paperboard in contact with fatty foods.

FDA has evaluated data in the petition and other relevant material and concludes that the proposed expanded use of the additive is safe. The agency further concludes that § 176.170 should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

Any person who will be adversely affected by this regulation may at any time on or before February 14, 1994, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.170 is amended in the table in paragraph (a)(5) by revising the entry for "Aromatic petroleum hydrocarbon resin, hydrogenated (CAS Reg. No. 88526–47–0)" to read as follows:

§ 176.170 Components of paper and paperboard in contact with aqueous and fatty foods.

* * * * *

(a) * * *

(5) * * *

List of Substances	Limitations
* * *	* *
Aromatic petroleum hydrocarbon resin, hydrogenated (CAS Reg. No. 88526–47–0), produced by the catalytic polymerization of aromatic substituted olefins from low boiling distillates of cracked petroleum stocks with a boiling point no greater than 220 °C (428 °F), and the subsequent catalytic reduction of the resulting aromatic petroleum hydrocarbon resin. The resin meets the following specifications: softening point 85 °C (185 °F) minimum, as determined by ASTM Method E 28–67 (Reapproved 1982), "Standard Test Method for Softening Point by Ring-and-Ball Apparatus," and aniline point 70 °C (158 °F) minimum, as determined by ASTM Method D 611–82, "Standard Test Methods for Aniline Point and Mixed Aniline Point of Petroleum Products and Hydrocarbon Solvents," which are incorporated by reference in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from the American Society for Testing and Materials, 1916 Race St., Philadelphia, PA 19103, or may be examined at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.	For use only as modifiers in wax polymer blend coatings for paper and paperboard at a level not to exceed 50 weight-percent of the coating solids under conditions of use E, F, and G identified in Table 2 of paragraph (c) of this section.
* * * * *	

Dated: January 4, 1994.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 94–897 Filed 1–13–94; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Approved State Plans for Enforcement of State Standards Approval of Supplements to the Utah, Arizona, and Puerto Rico State Plans

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of Federal approval of State Plan supplements concerning the Utah, Arizona and Puerto Rico Voluntary Protection Programs (VPP). These programs are modeled on the OSHA VPP, which recognize excellence in worksite safety and health. Employers participating in VPP can realize lower workers' injury rates, lower workers' compensation costs and greater employee productivity.

EFFECTIVE DATE: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: James Foster, Director, Office of Information and Consumer Affairs, Occupational Safety and Health Administration, room N3647, 200 Constitution Avenue, NW., Washington, DC, 20210, Telephone (202) 219–8148.

SUPPLEMENTARY INFORMATION:

A. Background

The Utah Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on January 10, 1973 (38 FR 1178). A determination of final approval was made under section 18(e) of the Act on July 16, 1985 (50 FR 28770).

The Arizona Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and Part 1902 of this chapter on October 29, 1974 (39 FR 39037). A determination of final approval was made under section 18(e) of the Act on June 20, 1985 (50 FR 25571).

The Puerto Rico Occupational Safety and Health Plan was approved under section 18(c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 667(c)) (hereinafter referred to as the Act) and 29 CFR Part 1902 on August 30, 1977 (42 FR 43629).

Part 1953 of this chapter provides procedures for the review and the approval of State change supplements by the Assistant Secretary of Labor for Occupational Safety and Health (hereinafter referred to as the Assistant Secretary).

B. Description of Supplements

On June 18, 1992, Jay W. Bagley, Administrator, Utah Occupational Safety and Health Division, submitted a plan change supplement concerning Utah's Voluntary Protection Programs (VPP). After Federal review of the Utah VPP and subsequent modifications made by the State, Utah's program was found to be generally identical to the Federal Voluntary Protection, as described in the **Federal Register** on July 2, 1982 (47 FR 29025).

On August 30, 1993, Cathy Neville, Assistant Director, Arizona Division of Occupational Safety and Health, submitted a plan change supplement concerning Arizona's Voluntary Protection Program (VPP). After Federal review of the Arizona VPP, Arizona's program was found to be generally identical to the Federal Voluntary Protection Programs, with the exception that the State's VPP is limited to the Star Program in general industry, excludes the Merit and Demonstration Programs and excludes the construction industry.

On January 10, 1993, Yazminnie Vazquez, Director, Voluntary Program, Puerto Rico submitted a plan change supplement concerning Puerto Rico's Voluntary Protection Programs (VPP). The Puerto Rico program also was found to be generally identical to the Federal VPP with the exception of changes to reflect different structure and exclusion of the Demonstration Program.

C. Location of Supplement for Inspection and Copying

A copy of the State plan supplement on the Utah VPP may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Occupational Safety and Health Administration, Office of the Regional Administrator, room 1554, Federal Building, 1961 Stout Street, Denver, Colorado 80202; the Industrial Commission of Utah, UOSHA Offices at 160 East 300 South, 3rd Floor, P.O. Box 146600, Salt Lake City, Utah 84114–6600.

A copy of the State plan supplement on the Arizona VPP may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Occupational Safety and Health Administration, Office of the Regional Administrator, 71 Stevenson Street, 4th Floor, San Francisco, California 94105; Industrial Commission of Arizona, Division of Occupational Safety and Health, 800 W. Washington, Phoenix, Arizona 85007.

A copy of the State plan supplement on the Puerto Rico VPP may be inspected and copied during normal business hours at the following locations: U.S. Department of Labor, Occupational Safety and Health Administration, Office of the Regional Administrator, 201 Varick Street, room 670, New York, New York 10014; Puerto Rico Department of Labor and Human Resources, Prudencio Rivera Martinez Building, 505 Munoz Rivera Avenue, Hato Rey, Puerto Rico 00918.

Copies of the Utah, Arizona and Puerto Rico supplements also are available at the U.S. Department of Labor, Occupational Safety and Health Administration, Directorate of Federal-State Operations, 200 Constitution Avenue, NW., room N3700, Washington, DC 20210.

D. Public Participation

Under 29 CFR 1953.2(c) of this chapter, the Assistant Secretary may prescribe alternative procedures to expedite the review process or for any other good cause which may be consistent with applicable law. The Assistant Secretary finds that Utah's, Arizona's and Puerto Rico's Voluntary Protection Programs are generally identical to the Federal Voluntary Protection Programs, meet Federal requirements and were adopted by the States in accordance with State procedural requirements. Good cause is therefore found for approval of these supplements and further public participation would be unnecessary.

E. Decision

After careful consideration and review by the Regional and National Offices, the Utah, Arizona and Puerto Rico plan supplements described above are found to meet OSHA requirements and are hereby approved under part 1953 of this chapter. The decision incorporates the requirements of the Act and implementing regulations applicable to State plans generally.

Signed at Washington, DC this 30th day of December, 1993.

Joseph A. Dear,

Assistant Secretary of Labor.

Accordingly, for the reasons set forth in the preamble, 29 CFR part 1952 is hereby amended as follows:

PART 1952—[AMENDED]

1. The authority citation for part 1952 continues to read as follows:

Authority: Sec. 18, 84 Stat. 1608 (29 U.S.C. 657); 29 CFR part 1902, Secretary of Labor's Order No. 1–90 (55 FR 9033).

2. Subpart E—Utah, § 1952.117 is amended by adding paragraph (b) to read as follows:

§ 1952.117 Changes to approved plans.

* * * * *

(b) *The Voluntary Protection Program.* On December 30, 1993, the Assistant Secretary approved Utah's plan supplement, which is generally identical to the Federal Voluntary Protection Program.

3. Subpart CC—Arizona is amended by adding § 1952.357 to read as follows:

§ 1952.357 Changes to approved plans.

(a) *The Voluntary Protection Program.* On December 30, 1993, the Assistant Secretary approved Arizona's plan supplement, which is generally identical to the Federal Voluntary Protection Programs with the exception that the State's VPP is limited to the Star Program in general industry, excludes the Merit and Demonstration Programs and excludes the construction industry.

4. Subpart FF—Puerto Rico is amended by adding § 1952.385 to read as follows:

§ 1952.385 Changes to approved plans.

(a) *The Voluntary Protection Programs.* On December 30, 1993, the Assistant Secretary approved Puerto Rico's plan supplement, which is generally identical to the Federal Voluntary Protection Program with the exception of changes to reflect different structure and exclusion of the Demonstration Program.

[FR Doc. 94–837 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–26–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2610 and 2622

Late Premium Payments and Employer Liability Underpayments and Overpayments; Interest Rate for Determining Variable Rate Premium; Amendments to Interest Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This document notifies the public of the interest rate applicable to late premium payments and employer liability underpayments and overpayments for the calendar quarter beginning January 1, 1994. This interest rate is established quarterly by the Internal Revenue Service. This document also sets forth the interest rates for valuing unfunded vested benefits for premium purposes for plan years beginning in November 1993 through January 1994. These interest rates are established pursuant to section 4006 of the Employee Retirement Income Security Act of 1974, as amended. The effect of these amendments is to advise plan sponsors and pension practitioners of these new interest rates.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: As part of title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("PBGC") collects premiums from ongoing plans to support the single-employer and multiemployer insurance programs. Under the single-employer program, the PBGC also collects employer liability from those persons described in ERISA section 4062(a). Under ERISA section 4007 and 29 CFR 2610.7, the interest rate to be charged on unpaid premiums is the rate established under section 6601 of the Internal Revenue Code ("Code"). Similarly, under 29 CFR 2622.7, the interest rate to be credited or charged with respect to overpayments or underpayments of employer liability is the section 6601 rate. These interest rates are published by the PBGC in appendix A to the premium regulation and appendix A to the employer liability regulation.

The Internal Revenue Service has announced that for the quarter beginning January 1, 1994, the interest charged on the underpayment of taxes will be at a rate of 7 percent. Accordingly, the PBGC is amending appendix A to 29 CFR part 2610 and appendix A to 29 CFR part 2622 to set forth this rate for the January 1, 1994, through March 31, 1994, quarter.

Under ERISA section 4006(a)(3)(E)(iii)(II), in determining a single-employer plan's unfunded vested benefits for premium computation purposes, plans must use an interest rate equal to 80% of the annual yield on 30-year Treasury securities for the month preceding the beginning of the plan year for which premiums are being paid. Under § 2610.23(b)(1) of the premium regulation, this value is determined by reference to 30-year Treasury constant maturities as reported in Federal Reserve Statistical Releases G.13 and H.15. The PBGC publishes

these rates in appendix B to the regulation.

The PBGC publishes these monthly interest rates in appendix B on a quarterly basis to coincide with the publication of the late payment interest rate set forth in appendix A. (The PBGC publishes the appendix A rates every quarter, regardless of whether the rate has changed.) Unlike the appendix A rate, which is determined prospectively, the appendix B rate is not known until a short time after the first of the month for which it applies. Accordingly, the PBGC is hereby amending appendix B to part 2610 to add the vested benefits valuation rates for plan years beginning in November 1993 through January 1994.

The appendices to 29 CFR parts 2610 and 2622 do not prescribe the interest rates under these regulations. Under both regulations, the appendix A rates are the rates determined under section 6601(a) of the Code. The interest rates in appendix B to part 2610 are prescribed by ERISA section 4006(a)(3)(E)(iii)(II) and § 2610.23(b)(1) of the regulation. These appendices merely collect and republish the interest rates in a convenient place. Thus, the interest rates in the appendices are informational only. Accordingly, the PBGC finds that notice of and public comment on these amendments would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making these amendments effective immediately.

The PBGC has determined that none of these actions is a "significant regulatory action" under the criteria set forth in Executive Order 12866, because they will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for these amendments, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2622

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements, Small businesses.

In consideration of the foregoing, part 2610 and part 2622 of chapter XXVI of title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2610—PAYMENT OF PREMIUMS

1. The authority citation for part 2610 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

2. Appendix A to part 2610 is amended by adding a new entry for the quarter beginning January 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2610—Late Payment Interest Rates

The following table lists the late payment interest rates under § 2610.7(a) for the specified time periods:

From—	Through—	Interest rate (percent)
•	•	•
Jan. 1, 1994	Mar. 31, 1994 ..	7

3. Appendix B to part 2610 is amended by adding to the table of interest rates new entries for premium payment years beginning in November of 1993 through January of 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2610—Interest Rates for Valuing Vested Benefits

The following table lists the required interest rates to be used in valuing a plan's vested benefits under § 2610.23(b) and in calculating a plan's adjusted vested benefits under § 2610.23(c)(1):

For premium payment years beginning in—	Required interest rate [1]
•	•
Nov. 1993	4.75
Dec. 1993	4.97
Jan. 1994	5.00

[1] The required interest rate listed above is equal to 80% of the annual yield for 30-year Treasury constant maturities, as reported in Federal Reserve Statistical Release G.13 and H.15 for the calendar month preceding the calendar month in which the premium payment year begins.

PART 2622—EMPLOYER LIABILITY FOR WITHDRAWALS FROM AND TERMINATIONS OF SINGLE-EMPLOYER PLANS

4. The authority citation for part 2622 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–68.

5. Appendix A to part 2622 is amended by adding a new entry for the quarter beginning January 1, 1994, to read as follows. The introductory text is republished for the convenience of the reader and remains unchanged.

Appendix A to Part 2622—Late Payment and Overpayment Interest Rates

The following table lists the late payment and overpayment interest rates under § 2622.7 for the specified time periods:

From—	Through—	Interest rate (percent)
•	•	•
Jan. 1, 1994	Mar. 31, 1994 ..	7

Issued in Washington, DC, this 11th day of January 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–1031 Filed 1–14–94; 8:45 am]

BILLING CODE 7708–01–M

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676).

Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in February 1994, and to multiemployer plans with valuation dates in February 1994.

EFFECTIVE DATE: February 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202–326–4024 (202–326–4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This rule adopts the February 1994 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", i.e., all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during February 1994 and multiemployer plans that have undergone mass withdrawal and have valuation dates during February 1994.

For annuity benefits, the interest rates will be 5.90% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.50% for the period during which benefits are in pay status and 4.0% during the period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) These annuity and lump sum interest assumptions are unchanged from the January 1994 interest assumptions.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to the date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during February 1994, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during February 1994, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, Pensions.

29 CFR Part 2676

Employee benefit plans, Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, 1362.

2. In appendix B, Rate Set 4 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form v^n (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee

contributions upon death), the PBGC shall employ the values of i_t set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_t shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
4	2-1-94	3-1-94	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(x)}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formules set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the value of i_t prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_1, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rats. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
February 1994	.0590	1-25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), 1441 (b)(1).

4. In appendix B, Rate Set 4 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used to Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{(x)}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_t prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0<y\leq n_1$), interest rate i_t shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1<y\leq n_1+n_2$), interest rate i_2 shall apply from the valuation date for a period of $y-n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n_1+n_2$), interest rate i_3 shall apply from the valuation date for a period of $y-n_1-n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I
[Lump Sum Valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
4	2-1-94	3-1-94	4.50	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{(x)}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the value of i_t prescribed in the table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i_1, i_2, * * *, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II
[Annuity Valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_t	for t=	i_t	for t=	i_t	for t=
February 1994	.0590	1-25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 11th day of January 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94-1032 Filed 1-13-94; 8:45 am]

BILLING CODE 7708-01-M

29 CFR Part 2644

Collection of Withdrawal Liability; Adoption of New Interest Rate

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This is an amendment to the Pension Benefit Guaranty Corporation's regulation on Notice and Collection of Withdrawal Liability. That regulation incorporates certain interest rates published by another Federal agency. The effect of this amendment is to add to the appendix of that regulation a new interest rate to be effective from January 1, 1994, to March 21, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Under section 4219(c) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), the Pension Benefit Guaranty Corporation ("the PBGC") promulgated a final regulation on Notice and Collection of Withdrawal Liability. That regulation, codified at 29 CFR part 2644, deals with the rate of interest to be charged by multiemployer pension plans on withdrawal liability payments that are overdue or in default, or to be credited by plans on overpayments of withdrawal liability. The regulation allows plans to set rates, subject to certain restrictions. Where a plan does not set the interest rate, § 2644.3(b) of the regulation provides that the rate to be charged or credited for any calendar quarter is the average quoted prime rate on short-term commercial loans for the fifteenth day (or the next business day if the fifteenth day is not a business day) of the month preceding the beginning of the quarter, as reported by the Board of Governors of the Federal Reserve System in Statistical Release H.15 ("Selected Interest Rates").

Because the regulation incorporates interest rates published in Statistical Release H.15, that release is the authoritative source for the rates that are to be applied under the regulation. As a convenience to persons using the regulation, however, the PBGC collects the applicable rates and republishes them in an appendix to part 2644. This amendment adds to this appendix the interest rate of 6 percent, which will be effective from January 1, 1994 through March 31, 1994. This rate represents no change from the rate in effect for the fourth quarter of 1993: This rate is based on the prime rate in effect on December 15, 1993.

The appendix to 29 CFR part 2644 does not prescribe interest rates under the regulation; the rates prescribed in the regulation are those published in Statistical Release H.15. The appendix merely collects and republishes the rates in a convenient place. Thus, the interest rates in the appendix are informational only. Accordingly, the PBGC finds that notice of and public comment on this amendment would be unnecessary and contrary to the public interest. For the above reasons, the PBGC also believes that good cause exists for making this amendment effective immediately.

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious

inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of receipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects in 29 CFR Part 2644

Employee benefit plans, Pensions.

In consideration of the foregoing, part 2644 of Subchapter F of Chapter XXVI of Title 29, Code of Federal Regulations, is amended as follows:

PART 2644—NOTICE AND COLLECTION OF WITHDRAWAL LIABILITY

1. The authority citation for part 2644 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(6).

2. Appendix A to part 2644 is amended by adding to the end of the table a new entry to read as follows:

Appendix A to part 2644—Table of Interest Rates

* * * * *

From	To	Date of quotation	Rate (percent)
. . . . .	.	.	.
01/01/94	03/31/94	12/15/93	6

Issued in Washington, DC, on this 11th day of January 1994.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 94–1033 Filed 1–13–94; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 936

Oklahoma Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Notice of informal conference.

SUMMARY: On January 19, 1981, the Secretary of the Interior approved Oklahoma's program under the Surface Mining Control and Reclamation Act of 1977 (SMCRA) (see 46 FR 4902). On November 12, 1993, OSM notified the Governor of Oklahoma that it had reason to believe that serious problems exist that are adversely affecting the effective implementation, administration, maintenance and enforcement of Oklahoma's approved regulatory program (see **SUPPLEMENTARY INFORMATION** below).

Under the provisions of OSM's regulations at 30 CFR 733.12(c), OSM will hold an informal conference to discuss the facts surrounding such a notification if an informal conference is requested by the State. By letter dated December 22, 1993, the Oklahoma Department of Mines (ODM) requested an informal conference. Accordingly, OSM hereby notifies Oklahoma and the public that it will hold an informal conference. All interested persons may attend the informal conference.

DATES: OSM has scheduled an informal conference on January 27, 1994, beginning at 10 a.m.

ADDRESSES: The conference will be held in room 911 of the Federal Building, 200 NW 5th, Oklahoma City, Oklahoma 73102.

Copies of Administrative Record documents referenced in this notice are available for public inspection and copying during normal business hours at: Office of Surface Mining Reclamation and Enforcement, Tulsa Field Office, 5100 East Skelly Drive, Suite 550, Tulsa, Oklahoma 74135.

FOR FURTHER INFORMATION CONTACT: Mr. James H. Moncrief, Director, Tulsa Field Office, Office of Surface Mining Reclamation and Enforcement, 5100 East Skelly Drive, suite 550, Tulsa, Oklahoma 74135, Telephone: (918) 581–6430.

SUPPLEMENTARY INFORMATION: On January 19, 1981, the Secretary of the Interior conditionally approved the Oklahoma program (46 FR 4902–4911).

On November 12, 1993, OSM notified the Governor of Oklahoma that it had reason to believe that serious problems exist that are adversely affecting the effective implementation, administration, maintenance, and enforcement of Oklahoma's approved permanent regulatory program under SMCRA (OK–945).

Since the approval of Oklahoma's program, and in keeping with its policy of working closely with the State, OSM has had numerous discussions with ODM officials about the State's performance. Recent discussions and investigations have centered on inadequacies of ODM's implementation of the approved program in the areas set forth below.

1. *Citing Violations:* ODM has not cited all violations as the State program requires.

2. *Unreasonable Extensions of Abatement of Violations:* Failure to abate cessation orders have not been issued in cases where such would have been appropriate. Instead, ODM has repeatedly extended abatement periods of violations. Contrary to the approved program, ODM has routinely extended the period for abatement of violations cited in NOV's beyond 90 days without compelling reasons.

3. *Civil Penalty Reductions:* After appropriate initial assessments, ODM has frequently reduced penalties without appropriate justification when those penalties were challenged in assessment conferences and settlement agreements.

4. *Applicant Violator System Not Updated:* ODM has not properly updated the applicant violator system, which negates the use of the system to block approval of permits and revisions for entities that have outstanding violations.

5. *Reclamation and Bonding Failure:* ODM has allowed mine operators to create a disturbed area that is larger than the acreage specified in the approved mine plan, thereby leading to inadequate bond.

6. *Permit Defects:* ODM has approved permits and permit revisions that allow practices that do not comply with the Oklahoma program.

7. *Failure to Enact Program Amendments:* Oklahoma has failed to promulgate rules approved in amendments to the Oklahoma program that were required for the program to be no less stringent than SMCRA and no less effective than the Federal regulations.

8. *Inadequate Allowance for Public Participation:* ODM has not maintained or made available inspection and enforcement files in the county of the mining as required by the State program. ODM has not thoroughly investigated and acted on citizen's comments on permitting actions. ODM discouraged public participation through an improper decision that awarded attorney's fees to a mine operator.

In the November 12, 1993, notification, OSM specified a date for ODM to present a plan to correct the deficiencies in the implementation of its program.

Section 733.12(c) of 30 CFR requires OSM to provide the State regulatory authority an opportunity for an informal conference. On December 22, 1993, the Chief Counsel of ODM requested that OSM hold such an informal conference. (OK–945.02)

The informal conference may pertain to the facts of the deficiencies or the time period for accomplishing remedial actions.

Conference Rules: The informal conference is an opportunity for OSM to discuss the status of the implementation of Oklahoma's program with Oklahoma officials.

No testimony from the public will be taken but a verbatim transcript of the meeting will be kept.

Dated: January 10, 1994.

Ed Kay,

Acting Deputy Director, Office of Surface Mining Reclamation and Enforcement.

[FR Doc. 94–895 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–05–M

Bureau of Land Management

43 CFR Public Land Order 7025

[MT–930–4210–06; MTM 40730]

Partial Revocation of Secretarial Order Dated February 16, 1909; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order partially revokes a Secretarial order insofar as it affects 35 acres of public lands withdrawn for the Bureau of Reclamation's Yellowstone Project. The lands are no longer needed for reclamation purposes, and the revocation is needed to permit disposal of the lands through competitive sale under section 203 of the Federal Land Policy and Management Act of 1976. This action will open the land to surface entry. The minerals are held in trust for the Crow Tribe by the United States under the Act of August 14, 1958 (Pub. L. 85–628, 72 Stat. 575). The lands have been and remain open to mineral leasing.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Sandra Ward, BLM Montana State Office, P.O. Box 36800, Billings, Montana 59107, 406–255–2949.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated February 16, 1909, which withdrew public lands for the Bureau of Reclamation's Yellowstone Project, is hereby revoked insofar as it affects the following described lands:

Principal Meridian, Montana

T. 2 N., R. 27 E.,
Sec. 35, NE¼NE¼SE¼, SE¼NW¼NE¼SE¼, SW¼NE¼SE¼, and S½SE¼NW¼SE¼;
Sec. 36, NE¼SW¼SW¼NW¼ and S½SW¼SW¼NW¼.

The area described aggregates 35 acres in Yellowstone County.

2. At 9 a.m. on February 14, 1994, the lands shall be opened to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. All valid applications received at or prior to 9 a.m. on February 14, 1994, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

3. All mineral interests in the above described lands are owned by the United States in trust for the Crow Tribe, and shall be leased or otherwise disposed of under the laws and regulations relating to Indian trust lands as provided by the Act of August 14, 1958 (Pub. L. 85–628, 72 Stat. 575).

Dated: January 3, 1994.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 94–978 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–DN–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–203; RM–8245, RM–8340]

Radio Broadcasting Services; Islesboro and Winter Harbor, ME

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 288B1 to Islesboro, Maine, in response to a petition filed by Islesboro Broadcasting Company. See 58 FR 39722, July 26, 1993. There is a site restriction 16.7 kilometers (10.4 miles) south of the community. The coordinates for Channel 288B1 are 44–09–31 and 68–53–03. In response to a counterproposal filed by Winter Harbor Wireless Associates we will allot Channel 249A to Winter Harbor, Maine, at coordinates 44–23–42 and 68–05–06. Canadian concurrence has been obtained for both allotments. The applicants for Channel 288B1 at Islesboro must conform with the technical requirements of § 73.1030(c)(1)–(5) of the Rules regarding protection to the Commission's monitoring station at Belfast, Maine. With this action, this proceeding is terminated.

DATES: Effective February 14, 1994. The window period for filing applications for Channel 288B1 at Isleboro, Maine, and Channel 249A at Winter Harbor, Maine, will open on February 15, 1994, and close on March 17, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–203, adopted December 9, 1993, and released December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contactors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Maine, is amended by adding Channel 288B1, Islesboro and Channel 249A, Winter Harbor.

Federal Communications Commission.

John A. Karouso,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–953 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–219; RM–8290]

Radio Broadcasting Services; Staples, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In response to a petition for reconsideration filed by NorMin Broadcasting Company, this document rescinds the allotment of Channel 234C3 at Staples, Minnesota. The Report and Order in MM Docket No. 93–219 allotted Channel 234C3 to Staples, Minnesota, and modified the construction permit for Station KSKK(FM), Channel 234A, to specify operation on Channel 234C3. See 58 FR 59375 (1993). NorMin Broadcasting Company has filed an application seeking to take advantage of the Commission's new Rules permitting an upgrade in facilities by the application process rather than the rule making process (BMPH–931102IE). See FM Channel and Class Modifications by Application, 58 FR 38534, July 19, 1993. With this action, this proceeding is terminated.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order, MM Docket No. 93–219, adopted December 8, 1993, and released December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.20 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Minnesota, is amended by removing Channel 234C3 and adding Channel 234A at Staples.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–954 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 89–486; RM–6913, RM–7253]

Radio Broadcasting Services; Kaukauna and Cleveland, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document dismisses petitions for reconsideration filed by WinCom Wisconsin Limited Partnership and Sheboygan County Broadcasting Co., Inc. See 56 FR 64210 (December 9, 1991). With this action, the proceeding is terminated.

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Hayne, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Memorandum Opinion and Order, MM Docket No. 89–486, adopted December 9, 1993, and released December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 634–6530.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154,303.

Federal Communications Commission.

Douglas W. Webbink,

Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–955 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–236; RM–8306]

Radio Broadcasting Services; Tulelake, CA

AGENCY: Federal Communications Commission.

SUMMARY: This document substitutes Channel 243C for Channel 243C2 at Tulelake, California, and modifies the permit for Station KFLS–FM to specify operation on the higher powered channel, as requested by Wynne Broadcasting Company, Inc. See 58 FR 46152, September 1, 1993. Coordinates for Channel 243C at Tulelake are 42–05–50 and 121–37–59. With this action, the proceeding is terminated.

EFFECTIVE DATE: February 14, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–236, adopted December 21, 1993, and released, December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by removing Channel 243C2 and adding Channel 243C at Tulelake.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–952 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1051, 1053 and 1312

[Ex Parte No. MC–180 (Sub-No. 3)]

Regulations Implementing Section 7 of the "Negotiated Rates Act of 1993"

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final rule.

SUMMARY: The "Negotiated Rates Act of 1993" amends the Interstate Commerce Act by adding section 10767. Section 10767 requires that the Commission establish regulations to prohibit, except for certain services, motor common and contract carriers of property from providing a reduction in a tariff rate or contract rate to a person who is a nonpayer of freight charges. This proceeding establishes, as set forth below, the regulations required by the statute.

EFFECTIVE DATE: February 13, 1994.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher (202) 927–5160 or Ronald A. Hall (202) 927–5595; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: By a Notice of Proposed Rulemaking (NPR) in Ex Parte No. MC–180 (Sub-No. 2), Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges (not printed) served June 4, 1993 (58 FR 32340, June 9, 1993), the Commission instituted a proceeding to determine whether off-bill discounting where it does or may result in a misrepresentation of shipping charges should be found to be an unreasonable practice or otherwise unlawful. However, the "Negotiated Rates Act of 1993" (Pub. L. 103–180) since has been enacted and amends subchapter IV of chapter 107 of title 49, United States Code, by adding section 10767, which requires that the Commission issue regulations by April 2, 1994, that will:

(1) *Prohibit*, except as described in (4) below, motor common and contract carriers of property from providing a reduction in a tariff or contract rate to any party other than the person directly responsible to the carrier for payment of the transportation service according to the bill of lading, receipt, or contract, or an agent of the person paying for the transportation. 49 U.S.C. 10767(a).

(2) *Require* a motor common carrier of property to disclose, either by a shipping document or an electronic transmission, the actual tariff rate, charge, or allowance to the person directly responsible for payment for the transportation service. 49 U.S.C. 10767(b).

(3) *Prohibit* any person from causing a motor common carrier of property to present a document to any party of the transaction, which contains false or misleading information about the actual tariff rate, charge, or allowance. 49 U.S.C. 10767(b).

(4) *Permit* motor common and contract carriers of property to make actual tariff or contract payments or allowances to a party to the transaction, when such party performs a transportation service that would otherwise be performed by the carrier, such as a loading and unloading service, provided that the payment or allowance is reasonably related to the cost that such party knows or has reason to know would otherwise be incurred by the motor carrier if it had performed the service. 49 U.S.C. 10767(c).

Because section 10767 supersedes the NPR, the Ex Parte No. MC–180 (Sub-No. 2) proceeding is discontinued.

The Commission does not believe this revision requires notice and comment rulemaking under section 553 of the Administrative Procedure Act (5 U.S.C. 553) because it establishes regulations mandated by Congress.

This decision will not affect significantly either the quality of the human environment or the conservation of energy resources.

List of Subjects

49 CFR Part 1051

Buses, Freight, Motor carriers, Reporting and recordkeeping requirements.

49 CFR Part 1053

Motor contract carriers.

49 CFR Part 1312

Motor carriers, Moving of household goods, Pipelines, Tariffs.

Decided: December 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, the Commission amends chapter X of title 49 of the Code of Federal Regulations as follows:

PART 1051—RECEIPTS AND BILLS

1. The authority citation for part 1051 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10767 and 11144.

2. In § 1051.2, paragraph (a) introductory text and paragraphs (a)(1) through (a)(11) are redesignated as paragraph (a)(1) introductory text and paragraphs (a)(1)(i) through (a)(1)(xi), respectively, and new paragraphs (a)(2) and (a)(3) are added to read as follows:

§ 1051.2 Expense bills.

(a) Property. (1) * * *

(2) A documents for payment that is presented or transmitted electronically by a motor carrier to the person directly responsible to the motor carrier for payment, or to an agent of such responsible person, must:

(i) Disclose the actual rates, charges, or allowances for the transportation service.

(ii) Indicate that a reduction, allowance, or other adjustment may apply when the actual rate, charge, or allowance is dependent upon the performance of a service by a party to the transportation arrangement, such as tendering a volume of freight over a stated period of time.

(3) No person shall cause a motor carrier to present false or misleading information on a document for payment about the actual rate, charge, or allowance to any party to the transaction.

* * * * *

3. A new part 1053 is added to read as follows:

PART 1053—LIMITATION ON CONTRACT CARRIER RATE REDUCTIONS

Sec. 1053.1 Rate reduction limitations.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321 and 10767.

§ 1053.1 Rate reduction limitations.

(a) Except as provided in paragraph (b) of this section, a motor contract carrier of property shall not establish or maintain contracts providing a reduction in a rate set forth in its contract to any person other than:

(1) The person directly responsible to the motor carrier for payment for the transportation service, according to the bill of lading, receipt or contract; or

(2) An agent of the person directly responsible to the motor carrier.

(b) The provisions of paragraph (a) of this section shall not prohibit a motor contract carrier of property from making contractual payments or allowances to a party to the transaction for services that would otherwise be performed by the motor carrier, *e.g.* loading or unloading service, if the payments or allowances are reasonably related to the cost that such party knows or has reason to know would otherwise be incurred by the motor carrier.

PART 1312—REGULATIONS FOR THE PUBLICATION, POSTING AND FILING OF TARIFFS, SCHEDULES AND RELATED DOCUMENTS

4. The authority citation for part 1312 is revised to read as follows:

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10762 and 10767.

5. In § 1312.14, a new paragraph (a)(4) is added to read as follows:

§ 1312.14 Statement of rates and fares.

(a) * * *

(4)(i) Except as provided in paragraph (a)(4)(ii) of this section, a motor common carrier of property shall not establish or maintain tariffs providing a reduction in a rate to any person other than:

(A) The person directly responsible to the motor carrier for payment for the transportation service, according to the bill of lading or receipt; or

(B) An agent of the person directly responsible to the motor carrier. See also, § 1051.2(a) of this chapter.

(ii) The provisions of paragraph (a)(4)(i) of this section shall not prohibit a motor carrier from making tariff specified payments or allowances to a party to the transaction for services that would otherwise be performed by the motor carrier, *e.g.* as loading or unloading service, if the payments or allowances are reasonably related to the cost that such party knows or has reason to know would otherwise be incurred by the motor carrier. See also, § 1312.28.

* * * * *

[FR Doc. 94–1010 Filed 1–13–94; 6:45 am]
BILLING CODE 7035–01–P

49 CFR Part 1056

[Ex Parte No. MC–19 (Sub-No. 42)]

Practices of Motor Common Carriers of Household Goods; Performance Reports

AGENCY: Interstate Commerce Commission.

ACTION: Final rules.

SUMMARY: The Commission is adopting modifications to the Annual Performance Report, Form OCP–101 (OCP–101), which sets forth requirements that relate to carrier performance information given to prospective individual shippers of household goods. This proceeding was instituted to address concerns expressed by consumer groups and the moving industry regarding the quality and reliability of the information provided by household goods carriers in the OCP–101. The modified OCP–101 requires objective disclosure by carriers of their performance to prospective shippers and verification of accuracy of the data contained in the reports.

EFFECTIVE DATE: The revised rules are effective February 13, 1994.

FOR FURTHER INFORMATION CONTACT: Charles E. Wagner (202) 927–5530 or John Fristoe, (202) 927–5520. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Currently, the Commission's rules require household goods common carriers that transport 100 or more shipments to individual shippers, as defined in the Commission's rules, to provide information annually to the Commission about their previous year's performance by filing an *Annual Performance Report* (Form OCP–101). Under the new rules adopted in this decision, *all* household goods common carriers will be required to file the OCP–101 annually. However, only carriers that deliver 100 or more individual C.O.D. shipments will be required to complete the major portion of the form (Part B) and provide copies of it to prospective shippers. Part B of the OCP–101 shows a carrier's performance in the areas of estimating, on-time performance, and claims handling in a calendar year for C.O.D. shippers only. The OCP–101 must be filed with the Commission's Office of Compliance and Consumer Assistance by March 31 of the following calendar year.

A notice of proposed rulemaking was published on February 3, 1993, at 58 FR 6912. Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5721.]

Energy and Environmental Consideration

We conclude that modification of the regulations governing Form OCP–101 will not significantly affect either the quality of the human environment or the conservation of energy resources.

Regulatory Flexibility Analysis

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. We are modifying the OCP–101 requirements that relate to a carrier's performance information given to prospective individual shippers of household goods by motor common carriers of household goods transporting 100 or more C.O.D. individual-type shipments. The modified form will require verification of the data in the report by a company official. The regulations will have some impact on the administrative costs of preparing and duplicating the OCP–101 for smaller carriers (*i.e.*, Class II and III carriers) of household goods. The information required for completing that form is the type of information already kept by such entities and the time required to compile the data for that form should be minimal and vary proportionately with the number of shipments transported by the carrier. Although transportation consumers should benefit from the availability of this information, the cost to small carriers should be relatively minimal. Accordingly, it is unlikely that the economic impact on these small entities will be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1056

Advertising, Consumer protection, Freight, Insurance, Motor carriers, Moving of household goods, Reporting and recordkeeping requirements.

Decided: January 4, 1994.

By the Commission, Chairman McDonald, Vice Chairmen Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,
Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1056 of the Code of Federal Regulations is amended as follows:

PART 1056—TRANSPORTATION OF HOUSEHOLD GOODS IN INTERSTATE OR FOREIGN COMMERCE

1. The authority citation for part 1056 continues to read as follows:

Authority: 49 U.S.C. 10321, 11109, 11110 and 5 U.S.C. 553.

2. In § 1056.2, paragraph (a)(3) is revised to read as follows:

§ 1056.2 Information for shippers.

(a) * * *

(3) A copy of Form OCP–101, *Annual Performance Report,* most recently filed with the Commission, as prescribed in § § 1056.18, if the carrier is required to complete part B of that form.

* * * * *

3. Section 1056.18 is revised to read as follows:

§ 1056.18 Preparation and filing of annual performance report.

(a) Filing requirement. Each motor common carrier for household goods as defined in § 1056.1(b) that delivers interstate shipments to individual C.O.D. shippers, during any calendar year *shall,* on or before March 31 of the following year, file with the Office of Compliance and Consumer Assistance, Interstate Commerce Commission, Washington, DC 20423–0001, a report of the service performed during the report year. The report shall be submitted on Form OCP–101, and its accuracy must be verified by an official of the carrier. All carriers must complete part A of Form OCP–101, and those carriers transporting 100 or more shipments also must complete part B.

(b) Prescribed Annual Performance Report Form OCP–101.

Interstate Commerce Commission

Office of Compliance and Consumer Assistance

Annual Performance Report for Year Ended December 31, 19—

Carrier's Name _____
Carrier's Address _____
ICC Number _____

Part A

During the year, the total number of household goods shipments (1st proviso) delivered for each type of shipper was:

1. C.O.D. shipments delivered under your common carrier authority (excluding all Government, Freight Forwarder, and Interline shipments) _____
2. All other 1st proviso shipments (including all Government, Freight Forwarder, and Interline shipments) _____
3. Total of Lines 1 and 2 (NOTE: Total must agree with total 1st proviso shipments reported in your ICC Annual Report, Schedule 600, Line 7, Column d, if you are required to file that report) _____

Part B

Complete part B only if the C.O.D. delivered shipments reported in part A, Line 1, equals or exceeds 100 shipments. The questions and answers below deal only with the shipments reported in part A, Line 1.

4. Number of C.O.D. shipments where the order for service was based upon a *written binding estimate* (included are so-called hybrid estimates such as Guaranteed Price and Price Protection) _____
5. Number of C.O.D. shipments where the charges were based on a *written non-binding estimate* _____
6. Number of C.O.D. shipments where the charges were based on *other than* a written binding or non-binding estimate _____
7. Total of Lines 4, 5, and 6 (NOTE: Total should equal the shipment count reported in part A, Line 1) _____
8. Percentage of shipments delivered where the final charges *exceeded* the initial written binding estimate _____
9. Percentage of shipments delivered where the final charges *exceeded* the initial written non-binding estimate by 10% or more _____
10. Percentage of shipments that were picked up *after* the last date for pickup listed on the order for service or bill of lading _____
11. Percentage of shipments that were delivered *after* the last date of delivery specified on the order for service or bill of lading _____
12. Percentage of shipments delivered where *there was* a claim filed (in excess of $200) for property damage or loss _____
13. Percentage of shipments delivered where *there was* a claim filed (in excess of $200) for damages resulting from late pickup or delivery _____
14. *Average* number of days required to settle a claim (in excess of $200) _____
15. Percentage of claims (in excess of $200) that were resolved through the use of an arbitration program _____
16. Percentage of claims (in excess of $200) that were resolved after the carrier received a legal notice of a lawsuit filed by the shipper _____

Carrier's Oath (Must be Completed by a Carrier Official)

I, *(name and title of company official),* verify under penalty of perjury, under the laws of the United States of America, that all information supplied on this form or relative to the data contained in the form is, to the best of my knowledge and belief, true, correct and complete, based on all the information required to be included therein, of which I have any knowledge, and these representations are made in good faith. Further, I certify that I am qualified and authorized to certify the accuracy of the data. I know that willful misstatements or omission of material facts constitutes Federal crime violations punishable under 18 U.S.C. § 1001 by imprisonment up to 5 years and fines up to $10,000 for each offense.

Signature _____

Title _____

Date _____

(c) Instructions for Preparation of Annual Performance Report, Form OCP–101.

Instructions for Preparation

General Instructions

1. Data for completion of Form OCP–101 may be obtained by random sampling providing that in every instance, the universe sampled is all shipments delivered under your common carrier authority (excluding Government, Freight forwarder, and Interline traffic) during the report year or all claims arising out of the transportation of those shipments that were received or settled, as appropriate, during the report year.

2. When random sampling is used, the minimum sample size in every instance shall be 400 shipments or claims, as appropriate, in replicates of 100 shipments or claims each. All samples must conform to standard deviation with a 95% confidence level.

3. Carriers submitting Form OCP–101 shall retain and make available for review by an authorized Commission employee all working papers, notes, and other files relating to the preparation of each report for a period of not less than 24 months following the date of filing such a report.

4. The data in Form OCP–101 must be verified by a sworn statement signed by an official of the company.

Specific Instructions

Part A

Line 1: Only report those 1st proviso C.O.D. shipments moved under your common carrier authority after excluding all Government, Freight forwarder and Interline traffic.

Line 2: Report all other 1st proviso shipments, including those moving under contract carriage provisions and all

Government, Freight forwarder and Interline traffic.

Line 3: Sum lines 1 and 2. The total should agree with total 1st proviso shipments reported in your ICC Annual Report, Schedule 600, Line 7, Column d, if you are required to file that report.

Part B

It is not necessary to complete Part B if the total of C.O.D. shipments reported on Part A, Line 1, did not equal or exceed 100 shipments. If completion of Part B is not required, sign the Certification and return the form to the Interstate Commerce Commission.

Line 4: Report only those C.O.D. shipments where the order for service was signed after the receipt of a written binding estimate. Include in this computation all so-called hybrid estimates (*e.g.*, Guaranteed Price and Price Protection options).

Line 5: Report the total number of C.O.D. shipments where the order for service was signed after the receipt of a written non-binding estimate. In the case of non-binding estimates, the actual charges are determined after the shipment has been picked up and weighed.

Line 6: Report only those C.O.D. shipments where there was no requirement for the preparation of a binding or non-binding written estimate by the carrier. As with non-binding estimates, the charges here are determined after the shipment has been picked up and weighed.

Line 7: Sum of Lines 4, 5, and 6. The number of shipments reported on Line 7 should be the same as those reported in Part A, Line 1.

Computation of Percentages or Averages

You must determine the number of shipments falling into each of the categories described in Lines 8 and 9, respectively, and divide these shipments by the number of shipments reported on Lines 4 and 5, respectively.

You must determine the number of shipments falling into each of the categories described in Lines 10 through 16 and divide these shipments by the number of shipments reported on Line 7. (Exception: Line 13 is an average, not a percentage.)

Line 8: Compute the percentage of those shipments delivered where the final charges exceeded the written estimate initially provided to the shipper because of changes agreed to by the carrier and shipper in commodities transported and services provided.

Line 9: Compute the percentage of those shipments delivered under a non-binding written estimate where the final charges exceeded the written estimate provided to the shipper by 10% or more. The 10% figure is used because every C.O.D. shipper is required to have available 110% of the estimate at the time of delivery.

Line 10: Compute the percentage of those shipments where the actual pickup date occurred after the last date for pickup promised on the order for service or bill of lading.

Line 11: Compute the percentage of those shipments where the actual delivery date occurred after the last date for delivery promised on the order for service or bill of lading.

Line 12: Compute the percentage of those shipments where there was a claim filed within 60 days of the actual date of delivery to the residence. Only count those claims where the dollar value of the amount claimed by the shipper exceeded $200 and resulted from property damaged or lost. This excludes claims for late pickups and deliveries which are reported on line 13.

Line 13: Compute the percentage of those shipments where there was a claim filed within 60 days of the actual date of delivery to the residence. Only count those claims where the dollar value of the amount claimed by the shipper exceeded $200 and resulted from a late pickup or delivery. Late pickups and deliveries are defined in Instructions 10 and 11.

Line 14: Enter the average number of days required to pay, decline, or make a firm compromise offer of settlement of all claims exceeding $200 during the report year. For the purpose of this report, a claim shall be considered to be a "claim filed" if it meets the criteria set forth in Lines 11 and 12, and shall be considered as paid, declined, or compromised on the date on which a written offer is mailed or delivered in person to a claimant.

Line 15: Compute the percentage of the claims exceeding $200 arising out of the transportation of shipments which were resolved during the report year through the use of a dispute resolution or arbitration procedure maintained or participated in by the carrier.

Line 16: Compute the percentage of the claims exceeding $200 arising out of the transportation of shipments which were resolved during the report year as a result of legal notice of suit to recover being filed by the shipper.

[FR Doc. 94–1042 Filed 1–3–94; 8:45 am]

BILLING CODE 7035–01–P

Proposed Rules

Federal Register
Vol. 59, No. 10
Friday, January 14, 1994

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 13

RIN 0560–AC23

Excessive Manufacturing (Make) Allowance in State Marketing Orders for Milk

AGENCY: Office of the Secretary, USDA.

ACTION: Supplemental proposed rule; extension of comment period.

SUMMARY: This document announces a 60-day extension of the time for submitting comments on the supplemental proposed rule, published in the **Federal Register** on November 1, 1993 (58 FR 58299), and additional comments on the original proposed rule, published in the **Federal Register** on June 19, 1992 (57 FR 27371), for implementing section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990, as amended.

DATES: All comments on the original and supplemental proposed rules must be received on or before April 1, 1994, in order to be assured of consideration.

ADDRESSES: Comments should be submitted to Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Dr. Charles N. Shaw, Director, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture, P.O. Box 2415, Washington, DC 20013–2415, on 202–720–7601.

SUPPLEMENTARY INFORMATION: Section 102 of the Food, Agriculture, Conservation, and Trade Act of 1990 provides that no State shall provide for (and no person shall collect, directly or indirectly) a greater allowance for the processing of milk ("make allowance") than is permitted under a Federal program to establish a Grade A price for manufacturing butter, nonfat dry milk, or cheese.

On November 1, 1993, a supplemental proposed rule was published to implement section 102. A supplemental proposed rule was deemed necessary because of (1) comments received on the original proposed rule published on June 19, 1992, and (2) regulations issued by the Agricultural Marketing Service concerning the pricing of milk used to produce nonfat dry milk after the publication of the original proposed rule for section 102. The supplemental proposed rule specified that all comments had to be received by January 31, 1994, in order to be assured of consideration.

Requests have been received from interested parties who indicate that they need additional time to prepare an analysis of the supplemental proposed rule. Based upon our review of those requests, it has been determined that an additional 60 days will be allowed for comment. Accordingly, comments on the proposed rule must now be received by April 1, 1994, in order to be assured of consideration.

Notice

Notice is hereby given that the period of time for submitting comments on the supplemental proposed rule published on November 1, 1993 (58 FR 58299), and for submitting additional comments on the original proposed rule, published in the **Federal Register** on June 19, 1992 (57 FR 27371), is extended to April 1, 1994.

Signed this 10th day of January 1994 in Washington, DC.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 94–988 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–05–P

Farmers Home Administration

7 CFR Parts 1941, 1943, 1945, and 1951

RIN 0575–AB71

Revisions to the Direct Operating (OL), Farm Ownership (FO), Soil and Water (SW) and Emergency (EM) Loan Regulations to Modify Collateral Requirements

AGENCY: Farmers Home Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Farmers Home Administration (FmHA) proposes to amend its direct operating (OL), farm ownership (FO), soil and water (SW) and emergency (EM) loan making and servicing regulations to modify collateral requirements. These amendments concern the amount of collateral required when an FmHA loan is made. There will be no change in security requirements for loan restructuring. The intended effect is to reduce the burden on farmers and FmHA personnel in servicing FmHA loan collateral and to avoid encumbering all of a farmer's collateral, thereby making it less difficult for farmers who receive FmHA loans to subsequently obtain non-FmHA credit.

DATES: Written comments must be submitted on or before January 31, 1994.

ADDRESSES: Submit written comments, in duplicate, to the Office of the Chief, Regulations Analysis and Control Branch, Farmers Home Administration, USDA, room 6348, South Agriculture Building, 14th Street and Independence Avenue SW., Washington, DC 20250–0700. All written comments made pursuant to this notice will be available for public inspection during regular working hours at the above address.

FOR FURTHER INFORMATION CONTACT: David R. Smith, Senior Loan Officer, Farmer Programs Loan Making Division, Farmers Home Administration, USDA, South Agriculture Building, room 5430, 14th and Independence Avenue, SW., Washington, DC 20250–0700, Telephone (202) 720–5114.

SUPPLEMENTARY INFORMATION:

Classification

We are issuing this proposed rule in conformance with Executive Order 12866, and we have determined that it is not a "significant regulatory action." Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements,

grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Intergovernmental Consultation

1. For the reasons set forth in the final rule related to Notice 7 CFR part 3015, subpart V (48 FR 29115, June 24, 1983) and FmHA Instruction 1940–J, "Intergovernmental Review of Farmers Home Administration Programs and Activities" (December 23, 1983), Farm Ownership Loans, Farm Operating Loans, and Emergency Loans are excluded from the scope of Executive Order 12372, which requires intergovernmental consultation with State and local officials.

2. The Soil and Water Loan Program is subject to the provisions of Executive Order 12372 and FmHA Instruction 1940–J.

Programs Affected

These changes affect the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404—Emergency Loans
10.406—Farm Operating Loans
10.407—Farm Ownership Loans
10.416—Soil and Water Loans

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment, and in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Civil Justice Reform

This document has been reviewed in accordance with Executive Order (E.O.) 12778. It is the determination of FmHA that this action does not unduly burden the Federal Court System in that it meets all applicable standards provided in section 2 of the E.O.

Paperwork Reduction Act

The information collection requirements contained in these regulations have been approved by the Office of Management and Budget (OMB) under the provisions of 44 U.S.C. Chapter 35 and have been assigned OMB control numbers 0575–0141, 0575–0085, 0575–0083, 0575–0090 and 0575–0133 in accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507). The proposed rule does not revise or impose any new information collection or recordkeeping requirement from those approved by OMB.

Discussion of Proposed Rule

It is the policy of this Department that rules relating to public property, loans, grants, benefits, or contracts shall be published for comment not withstanding the exemption of 5 U.S.C. 553 with respect to such rules. FmHA is publishing this proposed rule with a 15-day comment period. This proposed rule relieves the restriction of taking a lien on all assets at the time of loan making. Furthermore, the Agency has concluded that the need to provide immediate assistance to farmers who have suffered severe production and physical losses as a result of natural disasters also justifies the shortened comment period under 5 U.S.C. 553(d) as discussed below.

Major agricultural disasters during the 1993 crop year, including extensive flooding and rainfall in 9 Midwestern States and drought in 3 Southeastern States will result in a significant increase in demand for FmHA direct loan assistance. Requests will not be limited to emergency loan applications. In the 9 flood states alone, over 8 million acres of crops were lost or not planted in 1993. Estimates indicate that the 1993 floods were the second costliest weather disaster in the history of the United States. Preliminary estimates are that as many as 10,000 of the affected farmers may require financial assistance from FmHA.

Frequently, other lenders are willing to provide part of the farmers' credit needs, in combination with some FmHA assistance. However, the existing FmHA loan security requirements would preclude many lenders from continuing to provide credit to these farmers. FmHA does not have the staff or financial resources to cope with this situation without participation from private sector lenders. The need for a change in the regulations is immediate. Most farmers are now concluding 1993 operations, consulting with their lenders, and planning for 1994. FmHA is receiving loan requests at an increasing rate. The Agency wants to give the public an opportunity for input on the proposed change but FmHA needs regulations in place for spring planting, so a reasonable compromise was the 15-day comment period. Because of the scope of the situation and the impact on local, regional, and national economies, the Agency believes that an amendment to the regulations after a shortened comment period is the only way to assure that affected farmers receive the assistance they need on a timely basis to recover from these disasters. Any further delay in the timing of this amendment will reduce the Agency's ability to meet the needs of those affected, thus imposing additional hardships on those who have already suffered substantially from flood or drought, and jeopardizing individual and community financial recovery from these disasters.

In 1989, the General Accounting Office (GAO) submitted a report (GAO/RCED–89–9) to the Senate Committee on Agriculture addressing FmHA's loan making policies and practices. One of the concerns noted was FmHA's eroding security position on many loans and the significant dollar losses being projected (and realized). One of GAO's recommendations addressed the need for a change in FmHA collateral requirements. The report recommended additional security be taken when servicing loans, including obtaining the best security interest available on all of the borrower's assets. In an effort to reduce loan losses and protect the public interest, FmHA published a proposed rule on February 15, 1991, requiring a lien on all assets when loans are made. A final rule implementing this policy was published on April 30, 1992. On April 30, 1992, the Agency also published an interim rule requiring a lien on all a borrower's assets when loans are restructured. This policy had been issued as a proposed rule on October 23, 1991.

The requirement for a lien on all assets at the time a loan is made was intended to assure that FmHA had a security interest in all of a borrower's property, reducing the potential for program abuse and loan losses. However, this policy has proven unwieldy, imposing an excessive burden on FmHA borrowers and requiring an excessive amount of FmHA staff time. When FmHA acquires a security interest in property owned by a borrower, that security must be serviced in accordance with all FmHA regulations applying to the type of security property involved, regardless of the purpose of the loan. For example, under existing regulations, the recipient of an FmHA FO loan must pledge not only real estate, but all chattel property as well to secure the loan. The borrower must account to FmHA for all farm products sold, even though FmHA's primary interest in the sale is for payment of the FO loan installment coming due, not the disposition of loan security. This requirement imposes a major burden on borrowers, especially on those who sell farm products on a frequent basis. Also, FmHA employees must spend a significant amount of time completing the necessary documentation for release of its security interest for such sales. This time is a precious resource that the Agency believes would be better spent providing advice and counsel to those borrowers under the most severe hardship who could benefit most from FmHA credit supervision.

One of the exceptions to FmHA's blanket lien requirement is that a lien will not be taken on chattel security when it will prevent the applicant from obtaining operating credit from other sources. This exception does not adequately correct the problems experienced with the lien on all assets rule. FmHA officials sometimes determine this exception is not necessary at the time the loan is made. However, taking a lien can later interfere with a borrower's ability to obtain credit from other sources, when borrowers have sufficient equity in assets to qualify for a non-FmHA loan to meet a portion of their credit needs. The Agency can subordinate or release liens on security property to facilitate credit from other lenders. However, these actions also impose a processing burden on borrowers and require staff time. Further, the Agency has found that some lenders shy away from providing credit to such borrowers due to the time and paperwork involved, even though the borrower otherwise meets the lender's loan criteria. The only recourse for the borrower to meet his or her credit needs is to request FmHA assistance. Thus, the lien on all assets requirement forces those borrowers who would otherwise not have a need for FmHA credit to consume resources which would be more appropriately directed toward borrowers in greater difficulty. Devoting more attention to those borrowers who desperately need intensive financial assistance and the time of FmHA staff should reduce the failure rate of these borrowers, thereby reducing program costs.

The intent of this proposed rule is to make the loan security requirements less demanding while continuing to protect the Government's interest. The Agency will continue to make loans provided the value of the security available is at least equal to the amount of the loan. This is consistent with the authorizing statute and the Agency's mission of providing assistance to farmers with limited financial resources. However, rather than requiring a lien on all a borrower's additional assets, if any, when making a loan, FmHA generally will only require a lien on property only to the point that the value of the security is at least equal to 150 percent of the amount of the loan. The Agency has determined that security at least equal to 150 percent of the loan amount will provide adequate assurance of repayment. Studies have indicated that loan liquidation costs are about 20 percent of the value of collateral. Additionally, the Agency has a funding cost as a result of monies borrowed from the Treasury in accordance with the Federal Credit Reform Act of 1990, which continues until the loan is paid or written off. This cost is difficult to estimate because interest rates and liquidation periods vary widely. However, this cost should be no more than 30 percent of the loan amount on the average.

Obtaining security at least equal to 150 percent of the loan amount is a goal. Generally, the Agency will be unable to obtain security exactly meeting the 150 percent goal. Security in excess of 150 percent of the loan will only be taken when it is not practicable to separate the property, i.e., a tract of land, same type of livestock (dairy cows, brood sows), and when nonessential assets are taken as security for EM loans, as discussed below.

The first security preference for operating type loans will be crops/chattels, and for real estate type loans the first priority will be real estate. Where there are several collateral possibilities for chattels (cattle, machinery) or real estate (different tracts of land), the FmHA loan approval official will select the most reasonable choice to reach the 150 percent collateral goal. If the applicant offers an acceptable alternative, the loan approval official will accept the applicant's choice. Because of this change, entity members no longer need to pledge their assets as collateral. Entity members still will be personally obligated on the loan note(s). The Agency proposes to amend 7 CFR part 1941, subpart A, § 1941.19; part 1943, subpart A, § 1943.19; part 1943, subpart B, § 1943.69; and part 1945, subpart D, § 1945.169 to incorporate these changes. All loan making regulations are being changed because most applicants affected by disasters apply for various types of farm loans and the changes are needed for administrative consistency.

The Agency also proposes to amend 7 CFR part 1943, subpart A, § 1943.19 to state that chattel property will be taken as security for real estate loans only in certain situations. For the reasons discussed earlier with regard to burdensome chattel security servicing requirements and reduced availability of conventional credit, farm ownership (FO) loans will not be secured with chattels unless there is no other real estate available to provide security at least equal to the loan amount, or unless the chattels are real estate improvements (fixtures) made with FO funds. Generally, real estate values are more constant than chattel values and provide adequate loan security. Chattel security is not desirable on long term real estate loans due to servicing difficulties and rapid depreciation. Because of the limited circumstances in which certain chattel security will be taken on real estate loans, the exception for when title to a livestock or crop enterprise is held by a contractor or under a share lease agreement is no longer needed. The exception to taking a lien, therefore, is being removed from subparts A and B and part 1943. To clarify the existing policy and to assure that all possibilities are considered when the available loan security is not at least equal to the loan amount, 7 CFR part 1943, subpart A, § 1943.19, along with 7 CFR part 1941, subpart A, § 1941.19; 7 CFR part 1943, subpart B, § 1943.69; and 7 CFR part 1945, subpart D, § 1945.169, are revised to specifically state that in situations where the farmer does not or will not have adequate real estate or chattel property to secure the loan needed, other property, including real estate owned by a third party, can serve as security. A pledge of security is preferable to a cosigner. 7 CFR part 1943, subpart A, § 1943.19, 7 CFR part 1943, subpart B, § 1943.69, and 7 CFR part 1945, subpart D, § 1945.169 will be revised accordingly. This policy already is stated in existing 7 CFR part 1941, subpart A, § 1941.19.

The Agency also proposes to amend 7 CFR part 1945, subpart D, § 1945.169 to add a provision regarding nonessential assets in EM loan situations. In many cases, EM loan applicants are not typical FmHA loan applicants in that they may have significant nonfarm asset holdings. Prior to April 30, 1992, FmHA had required EM loan applicants to liquidate nonessential assets prior to loan closing if possible, on the theory that the applicant's equity in these assets should be used to reduce Government subsidized credit needs. This policy proved to impose hardship on farmers already suffering from the affects of a disaster, with minimal results. In many cases, the assets in question could not be sold for the estimated value, and thus no equity was realized. In other cases, the assets were not readily liquidated, and loan recipients were forced to accept much less than true value, or unable to liquidate the assets at any price within the necessary timeframe. As a result of

these difficulties, FmHA modified this policy and amended the regulations to require a lien on, rather than a sale of, such assets. A lien on all nonessential assets (with no 150% limit) assures the Agency that the equity will be applied to reducing the farmer's Federally subsidized credit when nonessential assets are sold. On this basis, the requirement for a lien on all nonessential assets in the case of EM loans is continued even though the requirement for a lien on all farm assets is substantially modified.

Finally, the Agency has amended 7 CFR part 1951, subpart S, § 1951.910. The requirement that liens will be taken on all assets when loans are restructured will be continued to protect against potential loan losses as a result of extended repayment terms. The Agency proposes to continue this action since a significant amount of debt has been written off over the years, the Agency continues to have a large number of financially stressed high-risk borrowers, and to comply with the GAO report discussed previously in this rule. This section had previously referred to the loan making regulations to prescribe the security requirements for loan restructuring. Since the requirements for loan making will now be different from loan servicing, it is necessary to insert the guidelines into the debt restructuring regulations.

List of Subjects

7 CFR part 1941

Crops, Livestock, Loan programs—Agriculture, Rural areas, Youth.

7 CFR part 1943

Credit, Loan programs—Agriculture, Recreation, Water resources.

7 CFR part 1945

Agriculture, Disaster assistance, Loan programs—Agriculture.

7 CFR part 1951

Account servicing, Debt restructuring, Credit, Loan programs—Agriculture, Loan programs—Housing and community development, Low and moderate income housing loans—Servicing.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is proposed to be amended as follows:

PART 1941—OPERATING LOANS

1. The authority citation for part 1941 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Operating Loan Policies, Procedures, and Authorizations

2. Section 1941.19 is amended by redesignating current paragraphs (b) through (i) as paragraphs (c) through (j), respectively, revising paragraph (a), and adding a new introductory paragraph and a new paragraph (b) to read as follows:

§ 1941.19 Security.

Primary security must be available for the loan. If available, the total amount of security required will be at least equal to 150 percent of the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practicable to separate the property, i.e., same type of livestock (dairy cows, brood sows). In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3 (d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) *Chattels.* The loan must be secured by:

(1) A first lien on all property or products acquired, produced, or refinanced with loan funds.

(2) If the security for the loan under paragraph (a)(1) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, up to the point that security for the loan at least equals 150 percent of the loan amount.

(i) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official will select the most logical and efficient alternative for obtaining security.

(ii) When alternatives exist and the applicant has a preference as to the property to be taken for security, the approval official will honor the preference so long as the requirements of paragraphs (a) (1) and (2) of this section are met.

(b) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral.

(1) Security may also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(2) Advice on obtaining security will be received from OGC when necessary.

* * * * *

PART 1943—FARM OWNERSHIP, SOIL AND WATER AND RECREATION

3. The authority citation for part 1943 continues to read as follows:

Authority: 7 U.S.C. 1989; 5 U.S.C. 301; 7 CFR 2.23 and 2.70.

Subpart A—Direct Farm Ownership Loan Policies, Procedures and Authorizations

4. Section 1943.19 is amended by removing paragraphs (a)(2), and (b)(4); redesignating current paragraphs (a)(3) through (a)(8) as paragraphs (a)(2) through (a)(7), respectively, and paragraph (b)(5) as (b)(4); redesignating current paragraphs (b), (d), (e), and (f), as paragraphs (d), (e), (f), and (g), respectively; revising the introductory paragraph, paragraph (a)(1), newly redesignated paragraph (a)(2), paragraph (c), and adding new paragraph (b) to read as follows:

§ 1943.19 Security.

Each FO loan will be secured by real estate. Chattels and/or other security also may be taken as security. The total amount of security required will be the lesser of 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practicable to separate the property, i.e., a tract of land. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) * * * (1) A mortgage will be taken on all real estate acquired, refinanced or improved with FO funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm, such as but not limited to assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

* * * * *

(b) *Chattel security.* Ordinarily, FO loans will not be secured by chattels. However, loans will be secured by chattels as follows:

(1) A first lien will be taken on equipment or fixtures purchased or refinanced with loan funds whenever such property cannot be included in the real estate lien and the additional security is needed to secure the loan.

(2) Chattel security will be obtained when there is not enough real estate security for the loan and the best lien obtainable on all real estate has been taken.

(3) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(4) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(c) *Other security.* (1) A pledge of real estate by a third party may be taken as security when the real estate owned and to be acquired by the applicant is not adequate to secure the loan.

(2) Other property may be taken as additional security when the real estate owned and to be acquired by the applicant is not adequate to secure the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

* * * * *

Subpart B—Direct Soil and Water Loan Policies, Procedures and Authorizations

5. Section 1943.69 is amended by removing paragraphs (a)(2), (b)(4), and (c)(1); redesignating current paragraphs (a)(3) through (a)(8) as paragraphs (a)(2) through (a)(7) respectively; redesignating current paragraph (b)(5) as paragraph (b)(4); redesignating current paragraphs (c)(2) through (c)(5) as paragraphs (c)(1) through (c)(4) respectively; revising the introductory paragraph, paragraph (a)(1), newly redesignated paragraph (a)(2), paragraph (c) introductory text, and newly redesignated paragraph (c)(1) to read as follows:

§ 1943.69 Security.

Each SW loan will be secured by real estate. Chattels and/or other security also may be taken as security. The total amount of security required will be the lesser of 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount. Security in excess of 150 percent of the loan amount will only be taken when it is not practicable to separate the property, i.e., a tract of land. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of subpart A of part 1910 of this chapter or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(a) * * * (1) A mortgage will be taken on all real estate refinanced or improved with SW funds, and by any additional real estate security needed to meet the requirements of this section.

(2) Security will also include items which are considered part of the farm and ordinarily pass with the title to the farm, such as, but not limited to assignments of leases or leasehold interests having mortgageable value, water rights, easements, rights-of-way, revenues, and royalties from mineral rights.

* * * * *

(c) *Chattel security.* Loans will be secured by chattels when there is not adequate real estate security for the loan.

(1) The loan will be secured by:

(i) A first lien on all property acquired, improved, or refinanced with loan funds; and

(ii) If the security for the loan is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, up to the point that security for the loan equals 150 percent of the loan amount.

* * * * *

PART 1945—EMERGENCY

6. The authority citation for part 1945 is revised to read as follows:

Authority: 5 U.S.C. 301; 7 U.S.C. 1989; 42 U.S.C. 1480; 7 CFR 2.23 and 2.70.

Subpart D—Emergency Loan Policies, Procedures and Authorizations

7. Section 1945.169 is amended by redesignating current paragraphs (b) through (n) as paragraphs (d) through (p), respectively; revising paragraph (a), and adding a new introductory paragraph and paragraphs (b) and (c) to read as follows:

§ 1945.169 Security.

Each EM loan will be secured by chattels, real estate, and/or other security and nonessential assets in accordance with this section. The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Thus, a junior lien on property serving as collateral for a guaranteed loan(s) is acceptable.

(a) *Security for operating type purposes.* In the case of emergency loans made for subtitle B (operating) purposes, primary security must be available for the loan, except as provided for in § 1945.169 (e)(2) of this section. If available, the total amount of security required will be at least equal to 150 percent of the loan amount. Except as provided in paragraph (c) of this section, security in excess of 150 percent of the loan amount will only be taken when it is not practicable to separate the property, i.e., same type of livestock (dairy cows, brood sows). In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3 (d) of subpart A of part 1910 of this chapter, or a pledge of security from a third party. A pledge of security is preferable to a cosigner.

(1) *Chattels.* The loan must be secured by:

(i) A first lien on all property or products acquired, produced, or refinanced with loan funds.

(ii) If the security for the loan under paragraph (a)(1)(i) of this section is not at least equal to 150 percent of the loan amount, the best lien obtainable will be taken on other chattel security owned by the applicant, up to the point that security for the loan at least equals 150 percent of the loan amount.

(A) When there are several alternatives available (cattle, machinery), any one of which will meet the security requirements of this section, the approval official will select the most logical and efficient alternative for obtaining security.

(B) When alternatives exist and the applicant has a preference as to the property to be taken for security, the approval official will honor the preference so long as the requirements of paragraphs (a)(1)(i) and (ii) of this section are met.

(2) *Real estate.* The loan approval official will require a lien on all or part of the applicant's real estate as security when chattel security alone is not at least equal to 150 percent of the amount of the loan. Different lien positions on real estate are considered separate and identifiable collateral.

(3) *Other security.*

(i) A pledge of real estate or chattels by a third party may be taken as security when the property owned by the applicant is not adequate to secure the loan.

(ii) Other property that cannot be converted to cash without jeopardizing the applicant's farm operation or imposing substantial financial penalty on the applicant may be taken as additional security when the property owned by the applicant is not adequate

to secure the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(b) *Security for real estate type purposes.* EM loans made for subtitle A (real estate) purposes will be secured by real estate. Chattels and/or other security also may be taken as security. The total amount of security required will be the lesser of 150 percent of the loan amount, or all real estate owned by the applicant. A loan will be considered adequately secured when the real estate security for the loan is at least equal to the loan amount, except as provided for in § 1945.169(e)(2) of this section. Except as provided in paragraph (c) of this section, security in excess of 150 percent of the loan amount will only be taken when it is not practicable to separate the property, i.e., a tract of land. In unusual cases, the loan approval official may require a cosigner as defined in § 1910.3(d) of subpart A of part 1910 of this chapter, or a pledge of security from someone other than the applicant(s). A pledge of security is preferable to a cosigner.

(1) *Real estate security.*

(i) A mortgage will be taken on all real estate repaired or rehabilitated, refinanced, or improved with EM funds, and by any additional real estate security needed to meet the requirements of this section.

(ii) Security will also include assignments of leases or leasehold interests which have mortgageable value, water rights, easements, rights of way, mineral rights, and royalties.

(iii) A first lien is required on real estate, when available. Loans may be secured by a junior lien on real estate provided:

(A) Prior lien instruments do not contain provisions for future advances (except for taxes, insurance, and other costs needed to protect the security, or reasonable foreclosure costs), cancellation, summary forfeiture, or other clauses that may jeopardize the Government's interest or the applicant's ability to pay the loan unless any such undesirable provision is waived, modified, or subordinated insofar as the Government is concerned.

(B) Agreements are obtained from prior lienholders to give notice of foreclosure to FmHA whenever State law or other arrangements do not require such a notice. Any agreements needed will be obtained as provided in subpart B of part 1927 of this chapter, except as modified by the "Memorandum of Understanding-FCA-FmHA," FmHA Instruction 2000–R (available in any FmHA office).

(2) *Chattel security.* Loans will be secured by chattels as follows:

(i) A first lien will be taken on equipment or fixtures purchased or refinanced with loan funds whenever such property cannot be included in the real estate lien and the additional security is needed to secure the loan.

(ii) Chattel security will be obtained when there is not enough real estate security for the loan.

(iii) The same collateral may be used to secure two or more loans made, direct or guaranteed, to the same borrower. Therefore, junior liens on chattels may be taken when there is enough equity in the property. However, when possible, a first lien on selected chattel items should be obtained.

(iv) Chattel security liens will be obtained and kept effective, as provided in subpart A of part 1962 of this chapter.

(3) *Other security.*

(i) A pledge of real estate by a third party may be taken as security when the real estate owned and to be acquired by the applicant is not adequate to secure the loan.

(ii) Other property may be taken as additional security when the real estate owned and to be acquired by the applicant is not adequate to secure the loan. Examples of such security include but are not limited to cash surrender value of life insurance, securities, patents and copyrights, and membership or stock in cooperatives and associations.

(c) *Nonessential assets.* Nonessential assets are assets which the applicant has an ownership interest in that do not contribute a net income to pay family living expenses or to maintain a sound farming operation (see § 1962.17 of subpart A of part 1962 of this chapter for further guidance). A lien will be taken on all nonessential assets if an applicant cannot or will not dispose of the assets and use the proceeds to reduce the FmHA credit needs prior to loan closing. The 150 percent security requirement does not apply to nonessential assets.

* * * * *

PART 1951—SERVICING AND COLLECTIONS

8. The authority citation for part 1951 continues to read as follows:

Authority: 42 U.S.C. 1480; 5 U.S.C. 301; 7 CFR 2.23; 7 CFR 2.70.

Subpart S—Farmer Programs Account Servicing Policies

9. Section 1951.910 is amended by revising paragraph (b) to read as follows:

§ 1951.910 Consideration of borrower's other assets for NEW APPLICATIONS.

* * * * *

(b) *Lien on certain assets.* Delinquent borrowers must pledge certain assets, essential and nonessential, unencumbered to FmHA as security at the time FmHA loans are restructured, as follows:

(1) The best lien obtainable will be taken on all assets owned by the borrower. When the borrower is an entity, the best lien obtainable will be taken on all assets owned by the entity, and all assets owned by all members of the entity. Different lien positions on real estate are considered separate and identifiable collateral.

(2) Security will include, but is not limited to, the following: land, buildings, structures, fixtures, machinery, equipment, livestock, livestock products, growing crops, stored crops, inventory, supplies, accounts receivable, certain cash or special cash collateral accounts, marketable securities, certificates of ownership of precious metals, and cash surrender value of life insurance.

(3) Security will also include assignments of leases or leasehold interests having mortgageable value, revenues, royalties from mineral rights, patents and copyrights, and pledges of security by third parties.

(4) The exceptions set forth in § 1941.19(c) of subpart A of part 1941 apply.

(5) These assets will be considered as additional security for the loans as well as any shared appreciation agreement. The value of the essential assets will not be included in the NRV calculation to determine restructure. The FmHA lien will be taken only at the time of closing the restructured FmHA loans.

Dated: January 8, 1994.

Bob J. Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 94–944 Filed 01–13–94; 8:45 am]

BILLING CODE 3410–07–U

Animal and Plant Health Inspection Service

9 CFR Part 78

[Docket No. 93–024–1]

Brucellosis Surveillance; MCI Reactor Prevalence Rates

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the brucellosis regulations to eliminate the requirement that States maintain specified Market Cattle Identification (MCI) reactor prevalence rates to maintain their official classifications. We are proposing instead to require the States to successfully close (epidemiologically investigate and resolve) certain percentages of cases detected through the MCI program. We believe these amendments would better serve Federal and State animal health officials in their efforts to prevent the interstate spread of brucellosis.

DATES: Consideration will be given only to comments received on or before February 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–024–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. M.J. Gilsdorf, National Brucellosis Epidemiologist, Cattle Diseases and Surveillance Staff, VS, APHIS, USDA, room 731, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4918.

SUPPLEMENTARY INFORMATION:

Background

Brucellosis is an infectious disease of certain animals and humans. In its principal animal hosts, it is characterized by abortion and impaired fertility. Through a cooperative Federal-State effort, the United States is now approaching total eradication of the field strain *Brucella abortus* in domestic cattle and bison herds. As of May 1993, there were only 337 known infected cattle and bison herds, and the U.S. Department of Agriculture (USDA) had declared 32 States, Puerto Rico, and the U.S. Virgin Islands free of the disease. Fewer than 500 new infected herds were identified last year.

The regulations in 9 CFR part 78 (referred to below as the regulations) govern the interstate movement of cattle, bison, and swine to prevent the spread of brucellosis. Section 78.1 defines the terms used in the regulations. In accordance with § 78.1, States and areas can be classified as Class Free, Class A, Class B, or Class C. These terms refer to stages of the eradication process as determined by the USDA's Animal and Plant Health Inspection Service (APHIS) and State animal health officials. Class Free States and areas are considered to be free of *Brucella abortus* in all domestic livestock, and Class C States and areas have the highest levels of brucellosis infection. Section 78.1 sets forth the standards States or areas must meet to achieve and maintain each of the classifications.

One standard for classification is the Market Cattle Identification (MCI) reactor prevalence rate. Under the MCI program, slaughtering establishments must collect blood samples from 95 percent of all cows and bulls 2 years of age and older (known as MCI test cattle). The samples are then subjected to an official brucellosis test. Animals that have serologically positive results to the official brucellosis test administered under the MCI program are MCI reactors. The regulations require animal health officials to trace MCI reactors to the farm of origin and conduct an epidemiologic investigation, to evaluate the risk that brucellosis could spread from the farm of origin. Class Free and Class A States and areas must trace at least 90 percent of all MCI reactors to the farm of origin, and Class B and Class C States and areas must trace at least 80 percent to the farm of origin. When required by the results of the epidemiologic investigation, herd blood tests must be conducted or the herds must be confined to the premises under quarantine. Examples of when herd testing or quarantine may not be necessary include cases where epidemiologic investigation reveals the MCI reactor results were not caused by field strains of *Brucella*, or that the herd has been or will be sent to slaughter.

The MCI reactor prevalence rate is the rate of infection in a State or area's cattle population based on the percentage of MCI reactors found in the total number of MCI tested cattle. Under the regulations, Class Free States and areas must maintain a 12-consecutive-month MCI reactor prevalence rate not to exceed 0.050 percent. For Class A States and areas, the rate must not exceed 0.10 percent, and for Class B States and areas, the rate must not exceed 0.30 percent. Class C States and areas have an MCI reactor prevalence rate that exceeds 0.30 percent. Class Free, Class A, and Class B States and areas that exceed the required percentages may be reclassified to a lower classification.

Tests used to identify MCI reactors detect not only serum titers caused by brucellosis infection but also serum titers caused by certain other organisms and by vaccination. As a result of such spurious titers, an estimate of brucellosis prevalence based solely on the MCI reactor prevalence rate in a State or area would overestimate the rate of brucellosis infection. Nevertheless, the MCI reactor data has been helpful to Federal and State animal health officials who use the rates of the individual States and areas to reveal trends and to compare their progress in eradicating brucellosis.

When the United States had thousands of infected herds, we did not consider the effect of spurious titers on the States' and areas' MCI reactor prevalence rates to be significant. However, as the level of brucellosis infection in this country has declined, the proportion of spurious titers in the MCI reactor prevalence rates has increased. As a result, in Class Free States and areas, the MCI reactor prevalence rate may consist entirely of spurious titers. Therefore, we no longer believe a State or area's MCI reactor prevalence rate is a good indication of its eradication progress, and we are proposing to eliminate the requirement in the regulations that States and areas meet specific MCI reactor prevalence rates to maintain their official classifications.

If States no longer need to meet specific MCI reactor prevalence rates, we believe it is even more important for the States to concentrate on the activities required following identification of an MCI reactor (tracebacks, epidemiologic investigations, and, usually, herd testing or quarantine). The epidemiologic investigation and herd testing can reveal whether an MCI reaction is a spurious titer or a valid indication of brucellosis. If herd testing reveals one or more animals that test positive to the official test for brucellosis (brucellosis reactors), all other animals in the herd are considered brucellosis exposed. Brucellosis reactor cattle and brucellosis exposed cattle may move interstate only in accordance with subpart B of part 78 (§§ 78.5 through 78.14), to control the spread of brucellosis.

If a herd is quarantined in lieu of testing following epidemiologic investigation of an MCI reactor herd, the quarantine protects against the possibility that the herd may be infected and could spread brucellosis.

Herd testing or quarantine only occur for MCI reactor cases that are "successfully closed" (defined below). The larger the number of MCI reactor cases that are not successfully closed, the greater the possibility that brucellosis could spread from herds

associated with the uninvestigated MCI reactors. Therefore, we are proposing to require that a minimum percentage of MCI reactor cases must be successfully closed.

We would consider MCI reactor cases that have been traced to the farm of origin to be successfully closed when: (1) An epidemiologic investigation is completed within specified time limits; and (2) the herd is tested, or State or APHIS animal health officials confine the animals to their premises under quarantine; or (3) State or APHIS animal health officials determine there is justification for not testing the herd or quarantining it. We propose to add to § 78.1 a definition of "successfully closed case" that reflects this standard for successful closure.

For Class Free and Class A States, animal health officials would have to complete the epidemiologic investigation within 15 days after they are notified by the cooperative State-Federal laboratory that brucellosis reactors were found on an MCI test. For Class B and Class C States, the time limit would be 30 days. This time standard for completing the epidemiologic investigation is the same standard required in the current regulations. Experience with brucellosis program operations has shown the time limits to be long enough to be workable for animal health officials, and short enough to support effective controls on the spread of brucellosis.

We believe there are circumstances that would constitute acceptable justification for not testing or quarantining a herd following an MCI reactor traceback. The current regulations merely state that herd testing or quarantine will be employed "[W]hen required by the results of the epidemiologic investigation." We would like to provide more specific guidance concerning when it would be justified to forego herd testing or quarantine.

We are proposing to require that herd blood tests be conducted or the herd be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

1. The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or,

2. Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

a. The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety. In this case, the potential for the herd to spread brucellosis no longer exists.

b. The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated. In such cases it is probable that the MCI test was a false positive, due to a titer caused by the vaccine.

c. The brucellosis reactor showed a low titer on the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by the regulations. This is another case where the probability of a false positive or other error in the MCI test is far greater than the probability that the herd of origin is affected by brucellosis.

Animal health officials could report a traceback to a farm of origin in another State as a successfully closed case because we do not expect animal health officials to conduct epidemiologic investigations and herd testing in another State. However, as part of successfully closing the case we would require them to notify in writing the State animal health official in the State where the farm of origin is located so officials in that State could take proper follow-up action.

Under this proposal, Class Free and Class A States and areas would need to successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin, and Class B and Class C States and areas would need to successfully close at least 90 percent of such cases. This means that 1 in 20 MCI reactor cases could be left unclosed in Class Free and Class A States, and 1 in 10 reactor cases could be left unclosed in Class B and Class C States.

If adopted, this proposal would reduce current recordkeeping requirements for the States. While State officials would still need to compile data, the time involved should be much less than what is currently required for computing the MCI reactor prevalence rate. Under our proposal, States would focus their recordkeeping on a fairly small number of MCI reactors, rather than the much larger number of cattle with negative MCI test results. States would no longer need to count all cattle tested, separate out cattle from other States, and then calculate an MCI reactor prevalence rate based on the number of their State's cattle that were tested and the number of MCI reactors found through such testing. Instead, each State would need to include in its annual report to APHIS the percentage of MCI reactor cases it successfully closes.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule:

(1) Would have an effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Only State animal health agencies would be affected by this proposed rule; it would have no effect on the private sector. State animal health officials would need to provide information on only the MCI reactors detected each month instead of total numbers of MCI test cattle slaughtered. They would also need to maintain records of the numbers of MCI reactor cases that are successfully closed and report the percentage of successfully closed cases annually to APHIS. The States are already required to carry out the activities that constitute successful case closure.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are in conflict with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to:

(1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and

(2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 78

Animal diseases, Bison, Cattle, Hogs, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 78, subpart A, would be amended as follows:

PART 78—BRUCELLOSIS

1. The authority citation for part 78 would continue to read as follows:

Authority: 21 U.S.C. 111–114a–1, 114g, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 78.1 would be amended as follows:

a. A new definition of *Successfully closed case* would be added, in alphabetical order, to read as set forth below.

b. In the definition of *Class A State or area*, paragraph (a)(2)(ii) would be revised to read as set forth below and paragraph (c) would be removed.

c. In the definition of *Class B State or area*, paragraph (a)(2)(ii) would be revised to read as set forth below and paragraph (c) would be removed.

d. In the definition of *Class C State or area*, paragraph (a)(2)(ii) would be revised to read as set forth below and paragraph (c) would be removed.

e. In the definition of *Class Free State or area*, paragraph (a)(2)(ii) would be revised to read as set forth below and paragraph (c) would be removed.

§ 78.1 Definitions.

* * * * *

Class A State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors*—(A) *Tracebacks.* At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class A. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or,

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or,

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class B State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors*—(A) *Tracebacks.* At least 80 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 90 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class B. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or,

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or,

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class C State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*—(A) *Tracebacks.* At least 80 percent of all brucellosis reactors found in the course

of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 90 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class C. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 30 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or,

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or,

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Class Free State or area. * * *

(a) * * *

(2) * * *

(ii) *Brucellosis reactors.*—(A) *Tracebacks.* At least 90 percent of all brucellosis reactors found in the course of MCI testing must be traced to the farm of origin.

(B) *Successfully closed cases.* The State or area must successfully close at least 95 percent of the MCI reactor cases traced to the farm of origin during the 12-consecutive-month period immediately prior to the most recent anniversary of the date the State or area was classified Class Free. To successfully close an MCI reactor case, State representatives or APHIS representatives must conduct an epidemiologic investigation at the farm of origin within 15 days after notification by the cooperative State-Federal laboratory that brucellosis reactors were found on the MCI test. Herd blood tests must be conducted or the herd must be confined to the premises under quarantine within 30 days after notification that brucellosis reactors were found on the MCI test, unless a designated epidemiologist determines that:

(*1*) The brucellosis reactor is located in a herd in a different State than the State where the MCI blood sample was collected. In such cases a State representative or APHIS representative must give written notice of the MCI test results to the State animal health official in the State where the brucellosis reactor is located; or,

(*2*) Evidence indicates that the brucellosis reactor is from a herd that no longer presents a risk of spreading brucellosis, or is from a herd that is unlikely to be infected with brucellosis. Such evidence could include, but is not limited to, situations where:

(*i*) The brucellosis reactor is traced back to a herd that has been sold for slaughter in entirety;

(*ii*) The brucellosis reactor is traced back to a herd that is certified brucellosis free and is 100-percent vaccinated; or,

(*iii*) The brucellosis reactor showed a low titer in the MCI test and is traced back to a dairy herd that is 100 percent vaccinated and has tested negative to the most recent brucellosis ring test required by this section for herds producing milk for sale.

* * * * *

Successfully closed case. Follow up of an MCI reactor traceback with an epidemiologic investigation which results in brucellosis testing or quarantine of the herd of origin, or a determination by a designated brucellosis epidemiologist that justification exists for not testing or quarantining the herd of origin.

* * * * *

Done in Washington, DC, this 10th day of January 1994.

Patricia Jensen,

Acting Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 94–994 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–ASW–59]

Proposed Modification of Class D Airspace: Roswell, NM

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the current Class D airspace and to establish a Class E extension to the Class D surface area at Roswell, NM. This action proposes to amend a previous airspace action that established a 14.8 NM Class D airspace extension to the Class D surface area for Roswell, NM. Because the arrival extension is greater than two miles, it should have been classified as Class E airspace. However, it was incorrectly classified as Class D airspace. The intended effect of this proposal is to reclassify a portion of the current Class D airspace extension at Roswell, NM to a class E airspace extension to contain instrument approach procedures and to provide adequate Class D airspace to contain IFR operations and require two-way radio communications at Roswell Industrial Air Center.

DATES: Comments must be received on or before February 18, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–59, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 2601 Meacham Boulevard, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–222–5595.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–59." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel at 2601 Meacham Boulevard, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class D airspace at Roswell, NM. The current Class D airspace at Roswell Industrial Air Center, NM, was modified by rulemaking action dated December 12, 1993 (58 FR 63885). That modification included an extension of the Class D airspace within 3.7 miles each side of the Chisum Very High Omni-Directional Radio Range/Tactical Air Navigation (VORTAC) 290° radial extending from the 5.0-mile radius to 14.8 miles northwest of the airport. That extension to the Class D airpace in excess of 2 nautical miles should have been classified as Class E airspace. The intended effect of this proposal is to reclassify a portion of the current Class D airspace extension at Roswell, NM to a Class E airspace extension to contain instrument approach procedures and to provide adequate Class D airspace to contain IFR operations and require two-way radio communications at Roswell Industrial Air Center.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace areas designated as extensions to Class D surface areas are published in Paragraph 6004 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000 General

* * * * *

ASW NM D Roswell, NM [Modify]
Roswell Industrial Air Center, NM (lat. 33°18'05"N., long. 104°31'50"W.)

That airspace extending upward from the surface to and including 6,200 feet MSL within a 5-mile radius of Roswell Industrial Air Center. This Class D airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Paragraph 6004 Class E Airspace Areas Designated as an Extension to a Class D Surface Area

* * * * *

ASW NM E4 Roswell, NM [New]
Roswell Industrial Air Center, NM (lat. 33°18'05"N., long. 104°31'50"W.)

That airspace extending upward from the surface within 3.7 miles each side of the Chisum very high omni-directional radio range/tactical air navigation (VORTAC 290° radial extending from the 5.0-mile radius to 14.8 miles northwest of the airport. This Class E airspace area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published-in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on January 7, 1994.

James A. Caudle,

Acting Manager, Air Traffic Division, Southwest Region.

[FR Doc. 94–902 Filed 1–13–94; 8:45 am]

BILLING CODE 4910–13–M

RAILROAD RETIREMENT BOARD

20 CFR Part 200

RIN 3220–AB05

Availability of Information to the Public

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations establishing fees to be assessed in connection with the search

for records and provision of documents by the Board. The proposed rule increases some of the fees based on updates of estimates of direct costs to the Board of providing these services and adds a fee for transmittal of documents by other than regular mail.

DATES: Comments shall be submitted on or before February 14, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Michael C. Litt, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751–4929, TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Title 5 U.S.C. 552(a) requires the promulgation of a regulation specifying the schedule of fees applicable to the processing of requests for information. These fees are to provide for the recovery of the direct costs of search, duplication, and review. The fees currently provided for in § 200.4(g)(1) no longer reflect the actual costs of processing requests for information and do not include fees for specific methods of transmittal of documents. Consequently, the Board proposes to increase these fees presently found in § 200.4(g) and to add a new paragraph to provide a charge for transmittal of documents by other than regular post.

The Board has determined that this is not a major rule under Executive Order 12291. Therefore, no regulatory impact analysis is required. There are no information collections associated with this proposed rule within the meaning of the Paperwork Reduction Act of 1980.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad retirement, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; sec. 200.4 also issued under 5 U.S.C. 552; sec. 200.5 also issued under 5 U.S.C. 552a; sec. 200.6 also issued under 5 U.S.C. 552b; sec. 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.4 is amended by revising paragraph (g)(1) to read as follows:

§ 200.4 Availability of information to public.

* * * * *

(g) * * *

(1) *Fee schedule.* To the extent that the following are chargeable, they are chargeable according to the following schedule:

(i) The charge for making a manual search for records shall be $14.00 per hour;

(ii) The charge for reviewing documents to determine whether any portion of any located document is permitted to be withheld shall be $30.00 per hour;

(iii) The charge for making photocopies of any size document shall be $.10 per copy per page;

(iv) The charge for computer-generated listings or labels shall include the direct cost to the RRB of analysis and programming, where required, plus the cost of computer operations to produce the listing or labels. The maximum computer search charge shall be $2,451.60 per hour ($40.86 per minute). Search time shall not include the time expended in analysis or programming where these operations are required.

(v) There shall be no charge for transmitting documents by regular post. The charge for all other methods of transmitting documents shall be the actual cost of transmittal.

* * * * *

Dated: January 5, 1994.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–936 Filed 1–13–94; 8:45 am]

BILLING CODE 7905–01–M

20 CFR Part 200

[RIN 3220–AB02]

Assessment or Waiver of Interest, Penalties, and Administrative Costs With Respect To Collection of Certain Debts

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend its regulations to clarify when interest and penalties begin to accrue on an amount owed to the Board under the Railroad Unemployment Insurance Act (RUIA).

DATES: Comments must be received February 14, 1994.

ADDRESSES: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Thomas W. Sadler, Assistant General Counsel, Bureau of Law, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611 (312) 751–4513; TDD (312) 751–4701.

SUPPLEMENTARY INFORMATION: Section 200.7(b)(2) of the Board's regulations provides that:

> Interest shall accrue from the date on which notice of the debt and demand for repayment with interest is first mailed or hand-delivered to the debtor, or in the case of a debt which is subject to section 10(c) of the Railroad Retirement Act or section 2(d) of the Railroad Unemployment Insurance Act, interest shall accrue from the date that a denial of waiver or recovery is mailed or hand-delivered to the debtor or, if waiver has not been requested, upon the expiration of the time within which to request wavier, except as otherwise specified in this section.

Section 200.7(c) of the regulations provides that:

> (1) A penalty charge of 6 percent per year shall be assessed on any debt that is delinquent for more than 90 days.
>
> (2) The penalty charge shall accrue from the date on which the debt became delinquent.
>
> (3) A debt is delinquent if it has not been paid in full by the 30th day after the date on which the initial demand letter was first mailed or hand-delivered, or, if the debt is being repaid under an installment payment agreement, at any time after the debtor fails to satisfy his or her obligation for payment thereunder.

Section 12(o) of the Railroad Unemployment Insurance Act provides that benefits payable to an employee with respect to days of sickness shall be payable regardless of the liability of any person to pay damages for such infirmity. The Board shall be entitled to reimbursement from any sum or damages paid or payable to such employee or other person through suits, compromise, settlement, judgment, or otherwise on account of any liability (other than a liability under health, sickness, accident, or similar insurance policy) based upon such infirmity, to the extent that it will have paid or will pay benefits for days of sickness resulting from such infirmity. Upon notice to the person against whom such right or claim exists or is asserted, the Board shall have a lien upon such right or claim, any judgment obtained thereunder, and any sum or damages paid under such right or claim, to the extent of the amount to which the Board is entitled by way of reimbursement.

Section 341.6 of the Board's regulations provides that a person or company subject to the lien must notify the agency within five days of a settlement or judgment and must pay the agency the amount withheld to satisfy the lien within 30 days. In the case where a lien arises in favor of the Board as a result of a settlement or judgment but the Board is not notified of the settlement or judgment in a timely manner, the employer or third party who has been served with a Notice of Lien and notice of the amount of that lien already has notice of the existence and amount of the debt. Accordingly, interest should accrue from the date of settlement or judgment, but would be waived if paid within 30 days in accordance with § 200.7(g)(1) of the Board's regulations.

Likewise, a section 12(o) debt should be considered delinquent if the lien is not satisfied within 30 days after settlement or entry of judgment.

Consequently, the Board proposes to amend § 200.7 of its regulations to provide for the accrual of interest on section 12(o) debts and for the accrual of penalties on such debts when they become delinquent.

The Board has determined that this is not a significant regulatory action for purposes of Executive Order 12866; therefore, no regulatory impact analysis is required. There are no information collections associated with this rule.

List of Subjects in 20 CFR Part 200

Railroad employees, Railroad unemployment insurance.

For the reasons set out in the preamble, title 20, chapter II, part 200 of the Code of Federal Regulations is proposed to be amended as follows:

PART 200—GENERAL ADMINISTRATION

1. The authority citation for part 200 continues to read as follows:

Authority: 45 U.S.C. 231f(b)(5) and 45 U.S.C. 362; section 200.4 also issued under 5 U.S.C. 552; section 200.5 also issued under 5 U.S.C. 552(a); section 200.6 also issued under 5 U.S.C. 552b; and section 200.7 also issued under 31 U.S.C. 3717.

2. Section 200.7 is amended by redesignating paragraph (b)(3) as paragraph (b)(4) and adding a new paragraph (b)(3) to read as follows:

§ 200.7 Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts.

* * * * *

(b) * * *

(3) In the case of a lien for reimbursement of sickness benefits pursuant to part 341 of this chapter, interest on the amount of the lien shall accrue from the day of settlement or the entry of final judgment.

* * * * *

3. Section 200.7 is amended by adding a new paragraph (c)(4) to read as follows:

§ 200.7 Assessment or waiver of interest, penalties, and administrative costs with respect to collection of certain debts.

* * * * *

(c) * * *

(4) In the case of a lien for reimbursement of sickness benefits pursuant to part 341 of this chapter, the amount of the lien is delinquent if it has not been paid in full by the 30th day after the date of settlement or entry of final judgment.

* * * * *

By Authority of the Board.

Dated: January 6, 1994.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 94–937 Filed 1–13–94; 8:45 am]

BILLING CODE 7905–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 347

[Docket No. 78N–0021]

Talc; Consumer Uses and Health Perspectives; Public Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public meetings.

SUMMARY: The Food and Drug Administration (FDA) and the International Society of Regulatory Toxicology and Pharmacology (ISRTP) are announcing forthcoming public meetings to discuss the latest toxicologic and epidemiologic studies and how they reflect on issues related to the safe use of talc in consumer products.

DATES: The meetings will be held on Monday, January 31, 1994, and Tuesday, February 1, 1994, 9 a.m. to 4:30 p.m. Registration by January 15, 1994, is required. Interested persons, whether or not they are able to attend, may submit written comments on the skin protectant drug product aspects of the issues described in this notice by March 2, 1994, referencing the docket number found in the heading of this document. Three copies of all comments are to be submitted, except that individuals may submit one copy.

ADDRESSES: The meetings will be held at the Lister Hill Auditorium, National Institutes of Health, Bethesda, MD. Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Regarding registration and over-the-counter (OTC) skin protectant drug products contact: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

Regarding cosmetic products contact: John E. Bailey, Jr., Center for Food Safety and Applied Nutrition (HFS–100), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–4530.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 20, 1990 (55 FR 25204 at 25232), FDA proposed talc, 45 to 100 percent, as Category I (generally recognized as safe and effective and not misbranded) as an OTC skin protectant active ingredient for the treatment and prevention of diaper rash. Specific warnings and directions were proposed for powder products containing talc. The final monograph for OTC skin protectant drug products will be published in a future issue of the **Federal Register**. The discussion of talc at these public meetings may be considered by the agency in the preparation of this final monograph for OTC skin protectant drug products.

The purpose of these meetings is to provide a forum for an updated discussion of the origins, manufacture, characterization, toxicology, and epidemiology of talc and related products. The principal focus will be on the latest toxicologic and epidemiologic studies, particularly as they reflect on the safe uses of talc in consumer products.

The following topic areas will be discussed: (1) Characteristics of cosmetic-grade talc; (2) a history of the uses of talc in a variety of consumer products; (3) current quality control measures to insure safety; (4) the regulatory history of talc; (5) recent National Toxicology Program studies of chronic pulmonary exposure of rodents to talc and the relevance of these studies to human risk assessment; and (6) the significance of contrasting epidemiologic studies of talc exposure. Speakers and panelists will include well-known regulatory specialists, toxicologists, epidemiologists, pathologists, talc product manufacturers, talc production experts, and consumer representatives. A critical panel discussion by speakers and invited experts will complete each session.

Dated: January 11, 1994
Michael R. Taylor,
Deputy Commissioner for Policy.
[FR Doc. 94–1083 Filed 1–12–94; 8:47 am]
BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1204

[NHTSA Docket No. 93–21; Notice 1]

RIN 2127–AE90

Amendments to Highway Safety Program Guidelines

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Request for comments.

SUMMARY: Section 2002 of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Highway Safety Programs, requires that the uniform guidelines for State Highway Safety Programs include six critical programs. The existing 18 Highway Safety Program Guidelines currently address four of the six programs identified in ISTEA, but do not specifically address Speed Control or Occupant Protection. The agencies therefore propose to amend the regulations by adopting guidelines for these two programs. The agencies also propose to issue a guideline on Roadway Safety, corresponding to the Roadway Safety Priority Program Area.

In addition to three new guidelines, the agencies propose to revise six of the existing 18 guidelines to reflect new issues and to emphasize program methodology and approaches which have proven to be especially successful in these program areas. The guidelines the agencies propose to revise are as follows:

Guideline No. 3	Motorcycle Safety
Guideline No. 8	Alcohol in Relation to Highway Safety
Guideline No. 10	Traffic Records
Guideline No. 11	Emergency Medical Services
Guideline No. 14	Pedestrian Safety
Guideline No. 15	Police Traffic Services

The agencies believe that the proposed revisions will provide more detailed guidance to the States.

DATES: Comments on this document must be received no later than February 28, 1994.

ADDRESSES: Comments should reference the docket and notice numbers of this document and be submitted (preferably in ten copies) to: Docket Section, room 5109, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: In NHTSA, Ms. Kathy DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590; telephone: (202) 366–1834 or Ms. Marlene Markison, Office of Regional Operations, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590; telephone: (202) 366–0166. In FHWA, Mr. Will Baccus, Office of Chief Counsel, Federal Highway Administration; telephone: (202) 366–0780 or Ms. Mila Plosky, Office of Highway Safety, FHWA; telephone: (202) 366–6902.

SUPPLEMENTARY INFORMATION:

Background

Section 402 of the Highway Safety Act of 1966 directed the Secretary of Transportation to promulgate uniform standards for State highway safety programs, specified the subjects of several standards, and required States to conform to these uniform standards or risk losing portions of their Federal-aid highway funds. Between 1967 and 1972, the Secretary promulgated 18 Uniform Standards for State Highway Safety Programs (published at 23 CFR part 1204).

Until 1976, the section 402 program was principally directed at achieving State and local conformance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions available for non-compliance. In 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became guidelines for use by the States. Management of the program shifted from one focused upon enforcing program standards to one focused upon problem identification, countermeasure development and evaluation, with the standards to be used as a framework for the State programs. Few changes have been made in the guidelines since that time.

Section 2002 of ISTEA, Highway Safety Programs, requires that the uniform guidelines for State Highway Safety Programs include programs: (1) To reduce injuries and deaths resulting from motor vehicles being driven in excess of the posted speed limits; (2) to encourage the proper use of occupant protection devices (including the use of safety belts and child restraint systems) by occupants of motor vehicles and to increase public awareness of the benefit of motor vehicles equipped with airbags; (3) to reduce deaths and injuries resulting from persons driving motor vehicles while impaired by alcohol or a controlled substance; (4) to reduce deaths and injuries resulting from crashes involving motor vehicles and motorcycles; (5) to reduce injuries and deaths resulting from crashes involving school buses; and (6) to improve law enforcement services in motor vehicle accident prevention, traffic supervision, and post-accident procedures.

Four of the areas represented by these six guidelines (i.e., Impaired Driving, Occupant Protection, Motorcycle Safety, and Police Traffic Services) have previously been identified as National Priority Program Areas (under 23 CFR part 1205). Other Priority Areas include Emergency Medical Services, Pedestrian/Bicycle Safety, Traffic Records, and Roadway Safety. Although Speed Control and School Bus Safety are not currently Priority Areas, the agencies are now engaged in another rulemaking action and in a separate notice in today's Federal Register are considering whether to amend 23 CFR part 1205 to include Speed Control and/or School Buses as National Priority Program Areas. Further, the Guideline for Pupil Transportation was revised in April of 1991 and needs no further revision at this time. In addition, section 4002 of ISTEA requires that State agencies which receive Motor Carrier Safety Assistance Program (MCSAP) grants coordinate their respective commercial motor vehicle (CMV) safety enforcement plans with the State highway safety agency (49 CFR 350). FHWA administers the MCSAP.[1]

[1] Under MCSAP, States conduct uniform inspections of commercial motor vehicles at roadside sites and perform safety reviews of carriers to check for compliance with safety and hazardous materials regulations. Under the ISTEA, MCSAP was expended to include additional safety activities, such as traffic enforcement, impaired driving initiatives, uniform truck and bus accident reporting, vehicle weight enforcement, training for hazardous materials enforcements, Commercial Drivers License (CDL) enforcement, research and development, public education, and drug interdiction efforts. Information on CMV inspections and crashes is collected by the States and transmitted electronically to FHWA's mainframe through the SAFETYNET system. Since all States have access to SAFETYNET, information on the system can be valuable in identifying problems and improving traffic safety. The agencies encourage States to coordinate their section 402 plans and activities with MCSAP where appropriate in order to maximize benefits to both programs.

Proposed Addition of Three New Guidelines

The existing 18 Highway Safety Program Guidelines currently address four of the six programs identified in ISTEA; they do not specifically address Speed Control or Occupant Protection. Therefore, the agencies propose to issue two new guidelines: Highway Safety Program Guideline No. 19, Speed Control; and Highway Safety Program Guideline No. 20, Occupant Protection. Though Speed Control has always been a component of the Police Traffic Services Priority Area, it requires special attention in light of the involvement of speed in many traffic crashes. The agencies also intend to take this opportunity to propose issuance of one additional guideline, which would be identified as Highway Safety Program Guideline No. 21, Roadway Safety. The Roadway Safety Guideline is a consolidation of the key aspects of various Guidelines which relate to the roadway. The addition of these new guidelines will result in a formal guideline corresponding to each of the current National Priority Program Areas. Because the vast majority of all highway safety projects funded under title 23 U.S.C. 402 are designed to address one or more of these Priority Program Areas, the existence of corresponding guidelines for each will be of great value to the States and communities in the design and implementation of highway safety programs.

Proposed Guideline #19: Speed Control

The issue of speed control has received considerable attention by NHTSA. Over the course of the agency's history, NHTSA has funded and promoted many programs and initiatives addressing the problem. Some common conclusions from these programs and initiatives indicate that higher speeds and speeds too fast for conditions (whether or not travelling in excess of the speed limit) adversely affect the safety of motorists.

Historically, Speed Control has not been separately identified as a National Priority Program Area under 23 CFR part 1204. It has, however, been an integral part of the Priority Program Area involving Police Traffic Services, resulting in numerous programs at the State and local levels. In addition, the FHWA, through the MCSAP, supports speed control initiatives as part of an overall traffic enforcement program aimed specifically at commercial motor vehicles. The agencies are currently engaged in rulemaking to add Speed Control as a separate National Priority Program Area. This proposed guideline is written to assist States and communities in the design and implementation of effective Speed Control Programs. The guideline sets forth recommendations for the development and management of effective speed control plans, visible public information and education efforts to gain voluntary compliance, promotion of the use of new technology in the enforcement of speed laws, the establishment of safe and reasonable speed limits, and effective training for police officers involved in speed control.

Proposed Guideline #20: Occupant Protection

When the original highway safety program standards were established by NHTSA and FHWA, an occupant protection program was not among them. Although lap and shoulder belts have been required for front outboard positions and lap belts for all other seating positions in all passenger cars sold in the U.S. after January 1, 1968, belt usage remained very low through the 1970's. In 1970, under the Federal Motor Carrier Safety Regulations, FHWA required drivers of commercial motor vehicles in interstate commerce to use a safety belt if it was installed in the vehicle. During the 1980's, States participating in MCSAP adopted this requirement for commercial motor vehicle drivers in intrastate commerce. During the 1970's, a national Highway Safety Needs Study indicated that significant reductions in highway losses could be achieved with increased public use of occupant protection devices. NHTSA began to explore promotional activities to encourage the public to buckle up.

In 1982, the agencies issued a final rule which identified six National Priority Program Areas that were considered the most effective in reducing highway deaths and injuries. Occupant Protection was included as one of the six most effective programs.

Although the agencies never issued a highway safety program standard or guideline, occupant protection has remained a National Priority Program Area. Recognition of the importance of this program increased substantially during the 1980's with evidence that safety belts are effective in preventing death and serious injury in 40–50 percent of all crashes; passage or upgrading of child safety seat usage laws in every State; passage of safety belt use laws in a majority of States; major increases in funding at the Federal, State and local levels; and significant increases in occupant protection use rates. The agencies have conducted two subsequent rulemakings to review the effectiveness of the Priority Program Areas. No comments have been received from the public suggesting that the area of occupant protection should be deleted from the list of National Priorities.

The life-saving benefits of occupant protection programs are now widely recognized. The proposed Occupant Protection program guideline has been prepared to provide current information on effective program elements for States to use in producing and assessing their programs. The proposed guideline reflects the experience of States in program content and highlights state-of-the-art knowledge in highway safety programs relating to occupant protection. The guideline sets forth recommendations for effective management and evaluation of occupant protection programs, legislative initiatives and employment policies mandating use of occupant protection devices, strategic efforts to enforce use laws and policies, public information efforts to reinforce use laws or policies and to inform the public of enforcement efforts, and education programs to promote occupant protection through various organizations including health and medical groups, schools, and employers throughout the State.

Proposed Guideline #21: Roadway Safety

When the original 18 standards were established under the Highway Safety Act of 1966, FHWA was responsible for developing and implementing programs relating to the roadway environment. Thus, Standards 9, 12, 13, and the roadway-related aspects of Standard 14 (Pedestrian Safety) fell under FHWA's purview. In 1981, when FHWA and NHTSA identified six highway safety program areas which were considered the most effective, and thus designated National Priority Program Areas, one of the six was FHWA's Safety Construction and Operational Improvements.

In 1987, when the agencies reviewed the effectiveness of the various programs and retained the six priority areas, the Safety Construction and Operational Improvement Priority Program was changed to "Roadway Safety" to encompass a wider breadth of safety activities which are related to the driving environment. Roadway Safety involves various highway safety activities which relate to safety aspects of the roadway environment. Currently, many roadway safety-related activities are described in three of the original Highway Safety Program Guidelines: Guideline #9 Identification and Surveillance of Accident Locations

Guideline #12 Highway Design, Construction and Maintenance
Guideline #13 Traffic Engineering Services

Further, there are additional roadway-related activities included in the pedestrian and bicycle safety initiatives which are outlined in the Pedestrian and Bicycle Guideline No. 14.

In order to more effectively organize and consolidate the roadway safety components from each of these various guidelines, the agencies propose to create a new guideline entitled "Roadway Safety". While the four related guidelines will remain unchanged, the new Roadway Safety Guideline highlights selected aspects from these four guidelines which are recommended to be included in any State Roadway Safety program.

The addition of these three new guidelines will ensure that guidelines reflecting the current state-of-the-art are available for each of the National Priority Program Areas listed at 23 CFR part 1205.

Proposed Revision of Six Existing Guidelines

Since the original program standards were issued in the early 1970's, much has changed in both technology and societal behavior which affects the methodology and approach to solving highway safety problems. When the standards were originally issued, there were no State laws requiring safety belt or child safety seat use, there was little public awareness about drunk driving, and highway safety was not yet a matter of great public concern. Because the highway safety environment has changed so dramatically during the past twenty years, the agencies propose to update the guidelines to provide current information on effective program content for States to use in producing and assessing their traffic safety programs. Each of the proposed revised guidelines reflects the experience of States in traffic safety program content and highlights state-of-the-art knowledge in highway safety. They provide a framework for producing and assessing a balanced highway safety program and a tool with which States can assess the effectiveness of their own programs.

The agencies propose to update only those guidelines which correspond to the programs currently designated as Priority Areas. The agencies strongly believe that focusing attention on the priority programs has the greatest impact on highway safety. The revised guidelines will emphasize these areas of national concern and highlight the effective countermeasures which are available, while continuing to permit States to receive funding for additional areas of local concern when justified, and thus ensure that section 402 resources are being allocated in the most effective manner.

Proposed Revision to Guideline No. 3—Motorcycle Safety

The elements of the present Motorcycle Safety Guideline No. 3 address the following safety issues: (1) Preventing or reducing the severity of head injuries; (2) determining whether novice motorcyclists have the basic skills; and (3) assuring that the vehicles have minimum safety equipment and are adequately maintained.

The proposed new Motorcycle Safety Guideline No. 3 continues to emphasize the importance of motorcyclists wearing helmets and places great emphasis on improving the knowledge and skills of all motorcycle operators through motorcycle rider education and training programs. The guideline also strongly encourages states and communities to develop comprehensive motorcycle safety programs that address (1) the effective management of the program through a central or lead agency; (2) the requirement for special licensing exams; (3) the influence of alcohol and other drugs on motorcyclists; and (4) the issues of motorcycle conspicuity and motorist awareness.

Proposed Revision to Guideline No. 8—Alcohol in Relation to Highway Safety

The current Guideline No. 8 contains the elements which provide the basic structure underlying the drinking and driving laws of the states. These include the use of chemical tests, the establishment of a BAC value (.10%) which is presumptive evidence of intoxication and the enactment of laws establishing the "implied consent" of a motorist to submit to a chemical test. The other components of the current guideline relate to the collection of data on alcohol-related fatalities, and the specifications and qualifications of chemical testing equipment and personnel administering the tests. The primary effort of the guideline was to establish some reasonable conformity with a uniform legal basis for detecting and prosecuting drunk drivers.

Under the current guideline, the States follow a "specific deterrence" approach designed to remove from the road those who had been arrested for DWI. However, the majority of alcohol-related crashes involve drivers with no previous DWI arrest; moreover, the majority of intoxicated drivers on the road go undetected.

The proposed Guideline No. 8, entitled "Impaired Driving", reflects a comprehensive, community-based approach with goals of (1) preventing people from being killed and injured in the short-term through general deterrence programs, and (2) permanently reducing the number of drinking and drugged drivers through long-term prevention and intervention measures.

Under the general deterrence approach, the objective is to increase the perceived risk by the drinking driver that he or she will be caught and convicted of DWI. The proposed guideline recommends states establish a BAC value of .08% as the illegal per se level, at or above which a drive is considered to be driving while intoxicated; implement specific countermeasures designed to better equip and train police officers in recognizing, tracking, and arresting impaired drivers; enable prompt suspension of drivers licenses through streamlined administrative procedures; result in punitive action such as fines, community service, jail or the suspension of driving privileges; and ensure the public is fully aware of the increased enforcement efforts.

Under the "prevention and intervention" approach, the guideline recommends strategies which are aimed at permanently changing the public's attitudes and behaviors concerning drinking and driving. These include public information and education for students in schools and colleges, for adults through programs in the workplace and for the general population through programs in health care settings. Other education efforts include promotion of designated driver programs; responsible alcohol service efforts, citizen support and outreach efforts, and the establishment of self-sufficient programs requiring offenders to defray program costs.

The States should also be aware of and enforce alcohol and drug requirements for CMV drivers. The FHWA established a BAC level of .04 percent as the threshold at which a CMV driver is considered to be under the influence of alcohol and subject to disqualification from driving ranging from one year to life. In addition, a CMV driver found to have any measurable or detectable alcohol level in his or her system while operating a CMV is prohibited from driving for 24 hours. FHWA also requires motor carriers to have specific drug testing programs of CMV drivers in place.

Proposed Revisions to Guideline No. 10—Traffic Records

The current Traffic Records Guideline is directed toward improving the operational efficiency of record systems involving crash statistics, driver licensing, vehicle registration, vehicle inspection, traffic citations, roadway related data, EMS, and driver education. In the past, however, the operational condition of many of these record systems maintained by the States was insufficient to provide a reliable total information base. The growth of the files as well as increased processing costs caused administrators to seek methods of modernizing the files and improving compatibility of related systems.

The proposed Guideline No. 10 recommends methods to establish comprehensive traffic records systems to enable states to use data to identify emerging traffic safety problems, develop appropriate countermeasures, and evaluate program performance. The guideline focuses attention on the need to link computer systems, establish uniform data elements including CMV crash data and integrate data elements where appropriate. In addition, the proposed guideline suggests innovative driver licensing techniques that will effectively identify problem drivers whose driver licenses have been suspended or revoked in other states.

Proposed Revisions to Guideline No. 11—Emergency Medical Services

The current Emergency Medical Services (EMS) Guideline No. 11 is based upon the philosophy that by improving pre-hospital emergency medical services in general, the system will serve the highway-injured patient better. The focus of programs under this guideline has been upon those elements of emergency medical care which precede the patient's arrival in a hospital emergency department. This includes setting standards and requirements for qualified and trained personnel, the types and number of ambulances and other emergency response vehicles, communication systems and equipment, and coordination with other components of the medical care system.

With the maturing of the nationwide EMS Program, the proposed EMS Guideline No. 11 reflects a new emphasis and expanded focus for emergency medical services. The proposed guideline recommends improvements to the entire emergency medical services system for highway-injured patients. The elements deemed most effective in improving trauma care for the highway-injured patient include a common phone number (e.g., 9–1–1) for quick public access, communication between ambulances and hospitals, trained first responders and pre-hospital personnel, adequate and appropriate transportation coverage, highly trained in-hospital personnel at specialized trauma care centers, pre-hospital and hospital coordination, and improved data on trauma patients. The proposed guideline also recommends improved public information, education and injury prevention efforts.

Proposed Revisions to Guideline No. 14—Pedestrian Safety

The current Pedestrian Guideline No. 14 does not address Bicycle Safety Programs. The guideline was developed when Pedestrian Safety was not a National Priority Program Area and before many countermeasures were proven to be effective. The current guideline is narrowly focused on single issue countermeasure activities which involved primarily the inventory of the pedestrian problem; education, particularly aimed at young school children; and engineering.

In a NHTSA/FHWA joint NPRM published in the **Federal Register** on May 3, 1991, the agencies stated that effective countermeasures have been developed to address both Pedestrian and Bicycle safety problems and specifically, concerns caused by an increase in the elderly population and the growth in popularity of walking, jogging and bicycling. On October 4, 1991, a Final Rule was issued making Pedestrian and Bicycle Safety a National Priority program area.

The proposed Guideline No. 14 addresses both pedestrian and bicycle safety and describes countermeasures that are comprehensive in nature, involve a multi-disciplinary approach. These require the combined and coordinated support of law enforcement, education, public health, driver education and licensing, transportation engineering, and public communications. In addition, the guideline provides for legislative and regulatory solutions, outlines methods to enlist the support of individuals and organizations outside the traditional highway safety community, features innovative school-based practices, and highlights traffic engineering components that promote pedestrian and bicycle safety while reducing traffic congestion.

Proposed Revisions to Guideline No. 15—Police Traffic Services

The current Police Traffic Service Guideline No. 15 emphasizes the use of police patrols to enforce traffic laws, improve traffic flow, prevent crashes, aid the injured, document each crash, supervise cleanup, and restore traffic flow. The guideline provides minimum standards by which a police department can measure its quality in traffic services, and suggests uniform training procedures, as well as standardized records and reporting systems. The guideline also addresses selective assignment of personnel and coordination with other agencies and neighboring jurisdictions and recommends in-service training for police personnel.

The proliferation of highway safety legislation in recent years, such as tougher DWI laws, child restraint and seat belt use laws, and commercial motor vehicle safety laws, combined with an increased demand for other law enforcement services, has placed a strain on police agencies during a time of reduced budgets, manpower and resources. The proposed Guideline No. 15 assists law enforcement agencies by addressing how to do more with less. Such efforts include developing and participating in comprehensive programs; enlisting support of the media, community leaders, business and volunteer/activist groups; developing resource management plans; and training officers in state-of-the-art enforcement curricula.

Other Guidelines Remain Unchanged

The following 12 guidelines currently contained in § 1204 will remain intact and unchanged by this proposal:

Guideline No. 1 Periodic Motor Vehicle Inspection
Guideline No. 2 Motor Vehicle Registration
Guideline No. 4 Driver Education
Guideline No. 5 Driver Licensing
Guideline No. 6 Codes and Laws
Guideline No. 7 Traffic Courts
Guideline No. 9 Identification and Surveillance of Accident Locations
Guideline No. 12 Highway Design, Construction, and Maintenance
Guideline No. 13 Traffic Engineering Services
Guideline No. 16 Debris Hazard Control and Cleanup
Guideline No. 17 Pupil Transportation Safety (Rev. 4/91)
Guideline No. 18 Accident Investigation and Reporting

It should be noted that the guidelines are not binding on the States. A State's decision not to adopt a portion of a guideline, for example, would not entail penalties for the State. Nonetheless, the agencies encourage the use of the recommendations contained in these guidelines to optimize the effectiveness of highway safety programs conducted at the State and local level.

Comments

Interested persons are invited to submit comments on this proposal. It is requested but not required that 10 copies be submitted.

In order to expedite the submission of comments, copies of this notice are being mailed to all Governors, Governors' Representatives for Highway Safety, and State EMS Directors.

Comments should not exceed 15 pages in length. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

All comments received before the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the revisions to these guidelines may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a pre-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Economic and Other Effects

The agencies have considered the impacts that would be associated with this proposed action, and determined that it is not significant within the meaning of Executive Order 12866 or the Department of Transportation Regulatory Policies and Procedures. The guidelines contained in part 1204 are advisory, not mandatory. Accordingly, a full regulatory evaluation is not necessary.

Since this matter relates to grants, the notice and comment requirements established in the Administrative Procedure Act, 5 U.S.C. 553, are not applicable. Because the agencies are not required to published a notice of proposed rulemaking regarding this rule, the agencies are not required to analyze the effect of this rule on small entities, in accordance with the Regulatory Flexibility Act. The agencies have nonetheless evaluated the effects of this notice on small entities. Based on the evaluation, I certify that this notice will not have a significant economic impact on a substantial number of small entities. Accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action will not have any effect on the human environment.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

List of Subjects in 23 CFR Part 1204

Grant programs, Highway safety.

In consideration of the foregoing, the agencies propose to amend 23 CFR part 1204 as follows:

PART 1204—[AMENDED]

1. The authority citation for part 1204 would continue to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

§ 1204.4 [Amended]

2. In § 1204.4, the following items would be added to the list of Highway Safety Program Guideline Numbers and Titles contained in the first paragraph:

§ 1204.4 Highway Safety Program Guidelines.

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19 Speed control.
20 Occupant protection.
21 Roadway safety.

3. In § 1204.4 Guideline Nos. 3, 8, 10, 11, 14 and 15 would be revised and Guideline Nos. 19, 20 and 21 would be added to read as follows:

§ 1204.4 Highway Safety Program Guidelines.

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Highway Safety Program Guideline

No. 3

Motorcycle Safety

Each State, in cooperation with its political subdivisions, should have a comprehensive program to promote motorcycle safety. To be effective in reducing the number of motorcycle crash deaths and injuries, State programs should address the use of helmet and other protective gear, proper licensing, impaired riding, rider training, conspicuity, and motorist awareness. This Motorcycle Safety Program Guideline will assist States and local communities in the development and implementation of effective motorcycle safety programs.

I. Program Management

Each State should identify the nature and extent of its motorcycle safety problems, establish goals and objectives for the State's motorcycle safety program, and implement projects to reach the goals and objectives. State motorcycle safety plans should:

Designate a lead agency for motorcycle safety;
Develop funding sources;
Collect and analyze data on motorcycle safety;
Identify the State's motorcycle safety problem areas;
Develop programs (with specific projects) to address problems;
Coordinate motorcycle projects with those for the general motoring public; and
Integrate motorcycle safety into community traffic safety programs.

II. Motorcycle Personal Protective Equipment

Each State should encourage motorcycle operators and passengers to use the following protective equipment:

Motorcycle helmets (which should be required by law);
Proper clothing, including gloves, boots, long pants, and a durable long-sleeved jacket; and
Eye (which should be required by law) and face protection.

Additionally, each passenger should be provided a seat and footrest.

III. Motorcycle Operator Licensing

States should require every person who operates a motorcycle on public roadways to pass an examination designed especially for motorcycle operation and to hold a license endorsement specifically authorizing motorcycle operation. Each State should have a motorcycle licensing system that requires:

Motorcycle operator's manual;
Motorcycle license examination, including knowledge and skill tests, and State licensing medical criteria;
License examiner training;
Motorcycle license endorsement;
Motorcycle license renewal requirements;
Learner's permit issued for a period of 90 days and only twice per applicant; and
Penalties for violation of motorcycle licensing requirements.

IV. Motorcycle Rider Education and Training

Safe motorcycle operation requires specialized training by qualified instructors. Each State should establish a State Motorcycle Rider Education Program that provides for:

Source of program funding;
State organization to administer the program;
Use of Motorcycle Safety Foundation curriculum or equivalent State-approved curriculum;
Reasonable availability of rider education courses for all interested residents of legal riding age;
Instructor training and certification;
Incentives for successful course completion such as licensing skills test exemption;
Quality control of the program;
Ability to purchase insurance for the program;
Permission to spend money in other motorcycle safety program areas as deemed appropriate;
State guidelines for conduct of the program; and Program evaluation.

V. Motorcycle Operation Under the Influence of Alcohol or Other Drugs

Each State should ensure that programs addressing drunk and drugged driving include a focus on motorcycles. The following programs should include an emphasis on impaired motorcyclists.

Community traffic safety programs;
Public information and education campaigns;
Youth impaired driving programs;
Law enforcement programs;
Judge and prosecutor training programs;
Anti-drunk and drugged driving organizations; and
College and school programs.

VI. Motorcycle Conspicuity and Motorist Awareness Programs

State motorcycle safety programs should emphasize the issues of rider conspicuity and motorist awareness of motorcycles. These programs should address:

Daytime use of motorcycle lights;
Brightly colored clothing and reflective materials for motorcycle riders;
Lane positioning of motorcycles to increase vehicle visibility;
Reasons why motorists do not see motorcycles; and
Ways that other motorists can increase their awareness of motorcyclists.

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Highway Safety Program Guideline

No. 8

Impaired Driving

Each State, in cooperation with its political subdivisions, should have a comprehensive program to combat impaired driving. This guideline describes the areas that each State's program should address. Throughout this guideline, "impaired driving" means operating any motor vehicle while one's faculties are affected by alcohol or other drugs, medications, or other substances. "Impaired driving" includes, but is not limited to, impairment as defined in State statutes.

I. Prevention

Each State should have prevention programs to reduce impaired driving through approaches commonly associated with public health—altering social norms, changing risky or dangerous behaviors, and creating protective environments. Prevention and public health programs promote activities to educate the public on the effects of alcohol and other drugs, limit alcohol and drug availability, and prevent those impaired by alcohol and drugs from driving. Prevention programs are typically carried out in schools, work sites, medical and health care facilities, and community groups. Each State should implement a system of impaired driving prevention activities and to work with the public health community to foster health and reduce traffic-related injuries.

A. Public Information and Education for Prevention

States should develop and implement public information and education (PI&E) programs directed at impaired driving. Programs should start at the State level and extend to communities through State assistance, model programs, and public encouragement. States should:

Have a statewide plan, program, and coordinator for all impaired driving PI&E activities;
Develop their own PI&E campaigns and materials, either by adapting materials from the Federal government or other States, or by creating new campaigns and materials;
Encourage and support communities to implement awareness programs at the local level;
Encourage businesses and private organizations to participate in impaired driving PI&E campaigns; and
Encourage media to support impaired driving highway safety issues by reporting on programs, activities (including enforcement campaigns), alcohol-related arrests, and alcohol-related crashes.

B. School Programs

Student programs, including kindergarten through college and trade school, play a critical role in preventing impaired driving. States should:

Implement K–12 traffic safety education, with appropriate emphasis on impaired driving, as part of a comprehensive health education program;
Establish and support student safety clubs and activities and create a statewide network linking these groups;
Establish liaisons with higher education institutions to encourage policies to reduce alcohol, other drug, and traffic safety problems on college campuses;
Promote alcohol- and drug-free events throughout the school year, with particular emphasis on high-risk times such as prom, spring break, and graduation;
Coordinate closely with anti-drug education efforts and programs;
Develop working relationships with school health personnel as a means of providing information to students about a variety of traffic safety and health behaviors; and
Make effective use of criminal justice, medical, or other professionals through presentations in the classroom or assembly programs.

C. Employer Programs

States should provide information and technical assistance to all employers, encouraging them to offer programs to reduce impaired driving by employees and their families. These programs should include:

Model policies for impaired driving and other traffic safety issues, including safety belt use and speeding;
Management training to recognize and address alcohol and drug-impairment;
Education and treatment programs for employees; and
Employee awareness activities.

States should especially encourage companies and businesses to provide impaired driving programs to their youthful employees. The States should also be familiar with FHWA's drug and alcohol requirements for employers of CMV drivers.

D. Responsible Alcohol Service

States should promote responsible alcohol service policies and practices in the retail alcohol service industry, including package stores, restaurants, and taverns, through well-publicized and enforced laws, regulations, and policies. States should:

Implement and enforce programs to eliminate the sale of alcoholic beverages to those under 21 years of age;
Promote alcohol server and service programs, including assessments, written policies, and training;
Ensure adequate alcohol control regulations dealing with issues such as service to visibly intoxicated patrons, elimination of "happy hours", and availability of food and non-alcoholic beverages;
Provide adequate resources (including budget, staff, and training) to enforce alcohol beverage control regulations;
Promote the display of responsible alcohol use and drinking and driving information in alcohol sales and service establishments;
Promote establishment participation in designated driver, safe rides, and other alternative transportation programs; and
Provide that commercial establishments may be held responsible for damages caused by any patron who was served alcohol when visibly intoxicated.

E. Transportation Alternatives

States should promote alternative transportation programs that enable

impaired drinkers to reach their destinations without driving. Alternative transportation programs include:

Designated drivers; and
Safe rides.

II. Deterrence

Each State should have a deterrence program to reduce impaired driving through activities to create the maximum possible perception of detection, arrest and punishment among persons who might be tempted to drive under the influence of alcohol or other drugs, including CMV drivers. Close coordination with law enforcement agencies on the municipal, county, and State levels is needed to create and sustain the perceived risk of being detected and arrested. Specialized traffic enforcement efforts, such as MCSAP, also serve as a core element in the detection of impaired drivers. Equally close coordination with courts and the motor vehicle licensing and registration agency is needed to enhance the fear of punishment. Effective use of all available media is essential to create and maintain a strong public awareness of impaired driving enforcement and sanctions.

Each State should implement a system of activities to deter impaired driving. The deterrence system should include legislation, public information and education, enforcement, prosecution, adjudication, criminal sanctions, driver licensing, and vehicle registration activities. The goal should be to increase the perception and probability of arrest for violators and the imposition of swift and sure sanctions.

A. Laws To Deter Impaired Driving

States should enact laws that define and prohibit impaired driving in broad and readily enforceable terms, facilitates the acquisition of evidence against impaired drivers, and permit a broad range of administrative and judicial penalties and actions. These laws should:

Define impaired driving offenses—

Establish .08 Blood Alcohol Concentration (BAC) as the blood alcohol level at or above which it is illegal to operate a motor vehicle ("illegal per se");
Establish .04 BAC as the illegal per se blood alcohol level for commercial truck and bus operators, as provided by commercial driver license regulations;
Establish that it is illegal per se for persons under the age of 21 (the legal drinking age) to drive with any measurable amount of alcohol in their blood, breath, or urine;
Establish that driving under the influence of other drugs (whether illegal, prescription, or over-the-counter) is unlawful and is treated similarly to driving under the influence of alcohol;
Establish vehicular homicide or causing personal injury while under the influence of alcohol as a separate offense; and
Prohibit open alcohol containers and consumption of alcohol in motor vehicles.

Provide for effective enforcement of these laws—

Authorize police to conduct checkpoints, in which vehicles are stopped on a nondiscriminatory basis to determine whether or not the operators are driving under the influence of alcohol or drugs;
Authorize police to use a preliminary breath test for a vehicle operator stopped for a suspected impaired driving offense;
Authorize police to test for impairing drugs other than alcohol;
Include implied consent provisions that permit the use of chemical tests and that allow the arresting officer to require more than one test of a vehicle operator stopped for a suspected impaired driving offense;
Require prompt and certain license revocation or suspension for persons who refuse to take a chemical test to determine whether they were driving while intoxicated ("implied consent"); and
Require mandatory blood alcohol concentration testing whenever a law enforcement officer has probable cause to believe that a driver has committed an alcohol-related offense.

Provide effective penalties for these offenses—

Require prompt and certain administrative license revocation or suspension of at least 90 days for persons determined by chemical test to violate the State's BAC limit;
Provide for increasingly more severe penalties for repeat offenders, including lengthy license revocation, substantial criminal fines, jail, and/or impoundment or confiscation of license plates or vehicles registered by the offender;
Provide for more stringent criminal penalties for those convicted of more serious offenses, such as vehicular homicide;
Contain special provisions for youth under the age of 21 that mandate driver's license suspension for any violations of laws regarding the use or possession of alcohol or other drugs; and
Establish victim assistance and victim restitution programs and require the use of a victim impact statement prior to sentencing in all Driving While Intoxicated (DWI) cases where death or serious injury occurred.

B. Public Information and Education for Deterrence

States should implement public information and education (PI&E) programs to maximize public perception of the risks of being caught and punished for impaired driving. Public information programs should be:

Comprehensive;
Seasonally focused; and
Sustained.

C. Enforcement

States should implement comprehensive enforcement programs to maximize the likelihood of detecting, investigating, arresting, and convicting impaired drivers. These programs should:

Secure a commitment to rigorous DWI enforcement from the top levels of police management and State and local government;
Provide state-of-the-art training for police officers, including Standardized Field Sobriety Testing (SFST) and Drug Evaluation and Classification (DEC);
Provide adequate equipment and facilities, including preliminary and evidentiary breath test equipment;
Deploy patrol resources effectively, using cooperative efforts of various State and local police agencies as appropriate;
Maximize the likelihood of violator-officer contact;
Make regular use of sobriety checkpoints;
Facilitate the arrest process;
Implement state-of-the-art post-arrest investigation of apprehended impaired drivers;
Emphasize enforcement of youth impaired driving and drinking age laws; and
Emphasize enforcement of laws regulating alcohol or drug impairment by CMV drivers.

D. Prosecution

States should implement a comprehensive program for visible and aggressive prosecution of impaired driving cases. These programs should:

Give DWI cases high priority for prosecution;
Provide sufficient resources to prosecute cases presented by law enforcement efforts;
Facilitate uniformity and consistency in prosecution of impaired driving cases;
Provide training for prosecutors so they can obtain high rates of conviction and seek appropriate sanctions for offenders;
Prohibit plea bargaining in DWI cases, through appropriate legislation;
Encourage vigorous prosecution of alcohol-related fatality and injury cases under both DWI and general criminal statutes; and
Ensure that prosecutors are knowledgeable and prepared to prosecute youthful offenders appropriately.

E. Adjudication

The effectiveness of prosecution and enforcement efforts is lost without support and strength in adjudication. States should implement a comprehensive impaired driving adjudication program to:

Provide sufficient resources to adjudicate cases and manage the dockets brought before them;
Facilitate uniformity and consistency in adjudication of impaired driving cases;
Give judges the skills necessary to appropriately adjudicate impaired driving cases;
Provide similar training to administrative hearing officers who hear administrative license revocation appeals;
Inform the judiciary about technical evidence presented in impaired driving cases, including SFST and DEC testimony;
Educate the judiciary in appropriate and aggressive sanctions for offenders including violators of commercial motor vehicle safety regulations; and
Ensure that judges are knowledgeable and prepared to adjudicate youthful offenders in an appropriate and aggressive manner.

F. Licensing

Driver licensing actions can be an effective means for preventing, deterring, and monitoring impaired driving. In addition to the license sanctions for impaired driving offenses discussed earlier, States should:

Issue provisional licenses to novice drivers;
Provide for license suspension for driver under age 21 who drives with a BAC exceeding .02 (or some other low value);
Issue distinctive licenses to drivers under the age of 21;
Monitor licensing records to identify high risk drivers for referral to education or remediation programs;
Ensure the accurate and timely reporting of alcohol and drug violations as proscribed by the Commercial Drivers License (CDL) regulations;
Assure that all licensing records are used to help assess whether a driver requires alcohol or drug treatment; and
Actively participate in the Driver License Compact to facilitate the exchange of driver license information between jurisdictions.

III. Treatment and Rehabilitation

Many first-time impaired driving offenders and most repeat offenders have substantial substance abuse problems that affect their entire lives, not just their driving. They have been neither prevented nor deterred from impaired driving. Each State should implement a system to identify and refer these drivers to appropriate substance abuse treatment programs to change their dangerous behavior.

A. Diagnosis and Screening

States should have a systematic program to evaluate persons who have been convicted of an impaired driving offense to determine if they have an alcohol or drug abuse problem. This evaluation should:

Be required by law;
Be conducted by qualified personnel prior to sentencing; and
Be used to decide whether a substance abuse treatment program should be part of the sanctions imposed.

B. Treatment and Rehabilitation

States should establish and maintain programs to treat alcohol and other drug dependent persons referred through traffic courts and other sources. These programs should:

Ensure that those referred for impaired driving offenses are not permitted to drive again until their substance abuse problems are under control;
Be conducted in addition to, not as a substitute for, license restrictions and other sanctions; and
Be conducted separately for youth.

IV. Program Management

Good program management produces effective programs. Planning and coordination are especially important for impaired driving activities, since many different parties are involved. Each State's impaired driving program management system should have an established process for managing its planning (including problem identification), program control, and evaluation activities. The system should provide for community traffic safety programs (CTSPs), State and local task forces, data analysis, and funding. It also should include planning and coordination of activities with other agencies involved in impaired driving programs, such as MCSAP.

A. State Program Planning

States should develop and implement an overall plan for all impaired driving activities. The plan should:

Be based on careful problem definition that makes use of crash and driver record data; and
Direct State and community resources toward effective measures that address the State's impaired driving issues.

B. Program Control

States should establish procedures to ensure that program activities are implemented as intended. The procedures should provide for systematic monitoring and review of ongoing programs to:

Detect and correct problems quickly;
Measure progress in achieving established goals and objectives; and
Ensure that appropriate data are collected for evaluation.

C. State and Local Task Forces and Community Traffic Safety Programs

States should encourage the development of State and community impaired driving task forces and community traffic safety programs. States should:

Use these groups to bring a wide variety of interests and resources to bear on impaired driving issues; and
Ensure that Federal, State, and local organizations coordinate impaired driving activities, so that the activities complement rather than compete with each other.

D. Data and Records

States should establish and maintain records systems for accidents, arrests, dispositions, driver licenses, and vehicle registrations. Especially important are tracking systems which can provide information on every driver arrested for DWI to determine the disposition of the case and compliance with sanctions. These records systems should be:

Accurate;
Timely;
Able to be linked to each other; and
Readily accessible to police, courts, and planners.

E. Evaluation

States should evaluate all impaired driving system activities regularly to ensure that programs are effective and scarce resources are allocated appropriately. Evaluation should be:

Included in initial program planning to ensure that appropriate data are available and that adequate resources are allocated;
Designed to use available traffic records systems effectively; and
Conducted regularly.

Evaluation results should be:

Reported regularly to project and program managers; and
Used to guide further program activities.

F. Funding

States should allocate funding to impaired driving programs that is:

Adequate for program needs;
Steady—from dedicated sources; and
To the extent possible, paid by the impaired drivers themselves. The programs should work toward being self-sufficient.

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Highway Safety Program Guideline

No. 10

Traffic Records

Each State, in cooperation with its political subdivisions, should establish and implement a complete traffic records program. The Statewide program should include, or provide for, data for the entire State. A complete traffic records program is necessary for planning (problem identification), operational management or control, and evaluation of a State's highway safety activities. This type of program is basic to identifying highway safety problems, tracking safety trends, and implementing highway safety countermeasures. It is the key ingredient to safety effectiveness and management.

I. Traffic Records System

To provide a complete and useful records system for safety program management at both the State and local level, the State should have a data base consisting of the following:

An Accident File with data on the time, environment, and circumstances of a crash; identification of the vehicles, drivers, cyclists, occupants, and pedestrians involved; and documentation of crash consequences (fatalities, injuries, property damage and violations charged) with the data tied to a location reference system;

A Driver File or driver history record of licensed drivers in the State, with data on personal identification and driver license number, type of license, license status (suspended or revoked), driver restrictions, driver convictions for traffic violations, crash history, driver control or improvement actions, and safety education data;

A Vehicle File with information on identification, ownership and taxation, and vehicle inspection (where applicable);

A Roadway File with information about roadway location, identification, and classification as well as a description of a road's total physical characteristics, which is tied to a location reference system. This file should also contain data for normalizing purposes, such as miles of roadway and average daily traffic (ADT);

A Commercial Motor Vehicle Crash File which uses uniform data definitions and collects information on the vehicle configuration, cargo body type, hazardous materials, information to identify the motor carrier, as well as information on the crash.

A Citation/Conviction File which identifies the type of citation and the time, date, and location of the violation; the violator, vehicle and the enforcement agency; and adjudication action and results, including court of jurisdiction (an Enforcement/Citation File could be maintained separate from a Judicial/Conviction File) and fines assessed and collected;

An Emergency Medical Services (EMS) file with emergency care and victim outcome information about ambulance responses to crashes, e.g., emergency care unit, care given, injury data, and times of EMS notification and arrival; information on emergency facility and hospital care, including Trauma Registry data; and medical outcome data relative to crash victims receiving rehabilitation and for those who died as the result of the crash, and

Provisions for file linkage through common data elements between the files or through other consistent means; performance level data as part of the traffic records system; demographic data to normalize or adjust for exposure when analyzing the various data in the files; and provisions for the use of cost data relative to amounts spent on countermeasure programs and the costs of fatalities, injuries and property damage.

II. Data Characteristics

Traffic records programs should meet basic requirements for the most effective use of the data by program managers. Accordingly, each State should emphasize the following characteristics:

An accurate identification of the crash location;

Timely and accurate data collection and input to all files, and especially to the Accident and Driver Files, to assure maximum utilization and confidence in the traffic records system. Each state is encouraged to join and fully participate in the driver license compact to ensure that complete data is available from other states;

Data uniformity, providing for uniform coding and definition of data elements to allow a State to compare its crash problems to other States, regions and the nation; and the use of uniform coding of violations and convictions for the efficient exchange of driver information between States;

Data consistency within a State over time to provide for multi-year analysis of data to detect trends and for identification of emerging problems, as well as to determine beneficial effects of highway safety programs; and

Timely and complete data output to ensure that highway safety program managers will have records that are accessible, understandable, and effective.

III. Use of Traffic Records

The measure of a good records system is the degree to which it is used by those it was designed to serve. Each State should establish a process for the effective use of traffic records by highway safety management, including the following:

A management process which addresses the role or use of traffic records data in planning (including problem identification), program control, and evaluation;

A problem identification strategy that specifies the necessary data, assures that accurate and timely data are available, defines the analyses conducted (including the variables used, statistical tests applied, and trends examined), and describes how results are reported and used;

Presentation of analysis results so that they are clearly understood and usable by managers, including the use of problem reports which describe the magnitude of the problems, and appropriate graphs, tables and charts to support the conclusions reached; and

Provisions for program evaluation, beginning at the planning stage and carrying through implementation and final evaluation, essentially using the same types of data that were used in developing the programs implemented.

IV. Managing Traffic Records

Each State should have an organizational structure in place for effective administration of its traffic records program, at a minimum consisting of the following components:

A permanent Traffic Records Committee, representing the principal users and custodians of the data in the State, that provides administrative and technical guidance. The Committee should be responsible for adopting requirements for file structure and linkage, assessing capabilities and resources, establishing goals for improving the traffic records program, evaluating the program, continuously developing cooperation and support from State and local agencies as well as the private sector, and ensuring that high quality and timely data are available to authorized persons or agencies for appropriate use;

A single state agency with responsibility for coordinating the traffic safety-related data aspects of the various State information systems. This would include ensuring that the necessary data were available for use in safety and analyses; and

Professional staff with analytical expertise to perform data analysis for program planning and evaluation, including a basic understanding of data processing as it relates to the use of personal computers (PCs) and the ability to use PC software application packages to perform problem identification and program evaluation tasks.

Highway Safety Program Guideline

No. 11

Emergency Medical Services

Each State, in cooperation with its political subdivisions, should ensure that persons incurring traffic injuries (or other trauma) receive prompt emergency medical care under the range of emergency conditions encountered. Each of the component parts of a system should be equally committed to its role in the system and ultimately to the care of the patient. At a minimum, the EMS program should be made up of the components detailed in this chapter.

I. Regulation and Policy

Each State should embody comprehensive enabling legislation, regulations, and operational policies and procedures to provide an effective system of emergency medical and trauma care. This legal framework should:

Establish the program and designate a lead agency;

Outline the lead agency's basic responsibilities, including licensure and certification;

Require comprehensive planning and coordination;

Designate EMS and trauma system funding sources;

Require data collection and evaluation; and

Provide authority to establish minimum standards and identify penalties for noncompliance.

Each of these components, which are discussed in different sections of this guideline, are critical to the effectiveness of legislation that is the legal foundation for a statewide EMS system.

II. Resource Management

Each State should establish a central lead agency at the State level to identify categorize, and coordinate resources necessary for overall system implementation and operation. The lead agency should:

Maintain a coordinated response and ensure that resources are used appropriately throughout the State;

Provide equal access to basic emergency care for all victims of medical or traumatic emergencies;

Provide adequate triage and transport of all victims by appropriately certified personnel (at a minimum, trained to the emergency medical technician [EMT] basic level) in properly licensed, equipped, and maintained ambulances;

Provide transport to a facility that is appropriately equipped, staffed, and ready to administer to the needs of the patient (section 4: Transportation); and,

Appoint an advisory council to provide a forum for cooperative action and maximum use of resources.

III. Human Resources and Training

Each State should ensure that its EMS system has essential trained human resources to perform required tasks. These personnel include: first responders (e.g., police and fire), prehospital providers (e.g., emergency medical technicians and paramedics), communications specialists, physicians, nurses, hospital administrators, and planners.

Each State should provide a comprehensive statewide plan for stable and consistent EMS training programs with effective local and regional support. The State agency should:

Ensure sufficient availability of adequately trained EMS personnel;

Establish EMT-Basic as the state minimum level of training for all transporting EMS personnel;

Routinely monitor training programs to ensure uniformity and quality control;

Use standardized curricula throughout the State;

Ensure availability of continuing education programs;

Require instructors to meet State requirements;

Develop and enforce certification criteria for first responders and prehospital providers; and

Require EMS operating organizations to collect data to evaluate emergency care in terms of frequency, category, and severity as well as the use of appropriate knowledge and skills.

IV. Transportation

Each State should require safe, reliable ambulance transportation, which is critical to an effective EMS system. States should:

Develop statewide transportation plans, including the identification of specific service areas;

Implement regulations that provide for the systematic delivery of patients to appropriate facilities;

Develop routine, standardized methods for inspection and licensing of all emergency medical transport vehicles;

Establish a minimum number of providers at the desired level of certification on each response;

Coordinate all emergency transports within the EMS system, including public, private, or specialty (air and ground) transport; and

Develop regulations to ensure ambulance drivers are properly trained and licensed.

V. Facilities

It is imperative that the seriously injured patient be delivered in a timely manner to the closest appropriate facility. Each State should ensure that:

Both stabilization and definitive care needs of the patient are considered;

The determination is free of political considerations and the capabilities of the facilities are clearly understood by prehospital personnel;

Hospital resources capabilities are known in advance, so that appropriate primary and secondary transport decisions can be made; and

Agreements are made between facilities to ensure that patients receive treatment at the closest, most appropriate facility, including facilities in other states or counties.

VI. Communications

An effective communications system is essential to EMS operations and provides the means by which emergency resources can be accessed, mobilized, managed, and coordinated. Each State should require a communication system to:

Begin with a universal system access number, such as 911;

Provide for prioritized dispatch (dispatch-to-ambulance, ambulance-to-ambulance, ambulance-to-hospital, and hospital-to-hospital communication);

Ensure the receiving facility is ready and able to accept the patient; and

Provide for dispatcher training and certification standards.

Each State should develop a statewide communications plan that defines State government roles in EMS system communications.

VII. Trauma Systems

Each State should maintain a fully functional trauma system to provide a high quality, effective patient care system. States should implement legislation requiring the development of a trauma system, including:

Trauma center designation, using American College of Surgeons Committee on Trauma guidelines as a minimum;

Triage and transfer standards for trauma patients;

Data collection and trauma registry definitions for quality assurance;

Mandatory autopsies to determine preventable deaths; and

Systems management and quality assurance.

VIII. Public Information and Education

Public awareness and education about the EMS system are essential to a high quality system. Each State should implement a public information and education (PI&E) plan to address:

The components and capabilities of an EMS system;

The public's role in the system;

The public's ability to access the system;

What to do in an emergency (e.g., bystander care training);

Education on prevention issues (e.g., alcohol or other drugs, occupant protection, speeding, motorcycle and bicycle safety); and

The need for dedicated staff and resources for PI&E programming.

IX. Medical Direction

Physician involvement in all aspects of the patient care system is critical for effective EMS operations. EMS is a medical care system in which physicians delegate responsibilities to non-physician providers who manage patient care outside the traditional confines of the office or hospital. States should require physicians to be involved in all aspects of the patient care system, including:

Planning and protocols;

On-line and off-line medical direction and consultation; and

Audit and evaluation of patient care.

X. Evaluation

Each State should implement a comprehensive evaluation program to effectively assess and improve a statewide EMS system. EMS system managers should:

Evaluate the effectiveness of services provided to victims of medical or trauma-related emergencies;

Define the impact of patient care on the system;

Evaluate resource utilization, scope of service, patient outcome, and effectiveness of operational policies, procedures, and protocols; and

Develop a data-gathering mechanism that provides for the linkage of data from different data sources through the use of common data elements.

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Highway Safety Program Guideline

No. 14

Pedestrian and Bicycle Safety

Each State, in cooperation with its political subdivisions, should have a comprehensive pedestrian and bicycle safety program that educates and motivates its citizens to follow safe pedestrian and bicycle practices. A combination of legislation, regulations, policy, enforcement, public information, education, incentives, and engineering is necessary to achieve significant,

lasting improvements in pedestrian and bicycle crash rates.

Each State should recognize that its pedestrians and bicyclists—citizens of all ages who are virtually unprotected from the forces of a crash, face major safety problems and are a valid traffic safety concern. Because of the diverse nature of these issues, education, enforcement, and engineering are critical components to any strategies devised to reduce these problems. In formulating policy, the State should promote these specific issues:

The provision of early pedestrian and bicycle safety education and training for preschool children;
The inclusion of pedestrian and bicyclist safety in health and safety education curricula;
The inclusion of pedestrian and bicyclist safety in driver training programs and driver licensing activities;
The provision of a safe environment for pedestrians and bicyclists through such measures as sidewalks and bicycle facilities, in the planning and design of all highway projects;
The use of bicycle helmets as a primary measure to reduce death and injury among bicyclists;
An awareness of the role of alcohol in adult pedestrian accidents;
The safeguarding of older citizens from pedestrian accidents; and,
The establishment and support of Community/Corridor Traffic Safety Programs at the local level.

A comprehensive highway safety system is the most effective means of producing consistent, long-term changes in knowledge and behavior necessary to improve pedestrian and bicycle safety. The following components create a structure for identifying problem areas; implementing, measuring, and evaluating the problem areas; and directing the results back into system improvements. We believe these elements will effectively address the problem.

I. Program Management

Each State should have centralized program planning, initiation, and coordination to promote pedestrian and bicycle safety program issues as part of a comprehensive highway safety program. Evaluation is also important for determining progress and ultimate success of pedestrian and bicycle safety programs and for providing those results to revise existing programs and to develop new programs. The State should have program staff trained in pedestrian and bicyclist safety so that this program can:

Conduct regular problem identification activities to identify fatality and injury crash trends for pedestrians and bicyclists and to provide guidance in development of countermeasures,
Provide leadership, training, and technical assistance to other State agencies and local pedestrian and bicycle safety programs and projects;
Convene a pedestrian and bicycle safety advisory task force or coalition to organize, integrate with other involved groups, and generate broad-based support for programs;
Integrate pedestrian and bicycle safety programs into Community/Corridor Traffic Safety Programs, injury prevention programs, and transportation plans; and
Evaluate the effectiveness of its pedestrian and bicycle safety program.

II. Multi-Disciplinary Involvement

Pedestrian and bicyclist safety goes beyond the confines of any single State or local agency (enforcement or education) and requires the combined support and coordinated attention of multiple agencies, representing a variety of disciplines, at the State and local level. At a minimum, the following kinds of agencies should be involved:

Law Enforcement
Education
Public Health
Driver Education and Licensing
Transportation—Engineering, Planning
Public Communications

III. Legislation and Regulations

Each State should enact and enforce pedestrian and bicyclist-related traffic laws and regulations. Specific policies should be developed to encourage coordination with the Federal Highway Administration (FHWA) and other agencies, in the development of regulations and laws to promote pedestrian and bicyclist safety.

IV. Law Enforcement

Each State should ensure that State and community pedestrian and bicycle programs include a law enforcement component. Each State should strongly emphasize the role played by law enforcement personnel in pedestrian and bicyclist safety. Essential components of that role include:

Developing knowledge of pedestrian and bicyclist crash situations; investigating crashes; and maintaining a report system that supports problem identification and evaluation activities;
Providing public information and education support;
Providing training to law enforcement personnel in matters of pedestrian and bicycle safety;
Establishing agency policies; and
Coordinating with the supporting education and engineering components.

V. Traffic Engineering

Traffic engineering is a critical element of any crash reduction program. This is true not only for the development of programs to reduce an existing crash problem, but also to design transportation facilities that provide for the safe movement of pedestrians, bicyclists, and all motor vehicles. Balancing the needs of pedestrians and those of vehicular traffic (including bicycle) must always be considered. Therefore, each State should ensure that State and community pedestrian and bicycle programs include a traffic engineering component. Traffic engineering efforts should be coordinated with enforcement and educational efforts. This effort should improve the protection of pedestrians and bicyclists by application of appropriate traffic engineering measures in design, construction, operation, and maintenance. These measures should include but not be limited to the following:

Pedestrians signals, signs, and markings
Parking regulations
Sidewalk design
Pedestrian pathways
Bicycle routes and pathways

VI. Public Information and Education

Each State should ensure that State and community pedestrian and bicycle programs contain a public information and education component. This component should address school-based education programs, coordination with traffic engineering and law enforcement components, public information and awareness campaigns, and other targeted educational programs such as those for the elderly. These programs should address issues such as:

Being visible in the traffic system (conspicuity)
Use of facilities and accommodations
Law enforcement initiatives
Proper street crossing behavior
The nature and extent of the problem
Driver training with regard to pedestrian and bicycle safety
Rules of the road
Proper selection and use of bicyclist helmets
Skills training for bicyclists
Proper use of bicycle equipment
Sharing the road

The State should enlist the support of a variety of media, including mass media, to improve public awareness of pedestrian and bicyclist crash problems and programs directed at preventing them.

VII. Outreach Program

Each State should encourage extensive community involvement in pedestrian and bicycle safety education by involving individuals and organizations outside the traditional highway safety community. Community involvement broadens public support for the State's programs and can increase a State's ability to deliver highway safety education programs. To encourage community involvement, States should:

Establish a coalition or task force of individuals and organizations to actively promote safe pedestrian and bicycle safety practices (see Program Management Component);
Create an effective communications network among coalition members to keep members informed; and
Provide materials and resources necessary to promote pedestrian and bicycle safety education programs.

VIII. School-Based Program

Each State should incorporate pedestrian and bicycle safety education into school curricula. Safe walking and bicycle-riding practices to and from school and school-related events are good health habits and, like other health habits, must be taught at an early age and reinforced until the habit is well established. The State Department of Education and the State Highway Safety Agency should:

Ensure that highway safety in general, and pedestrian and bicycle safety in particular, are included in the State-approved K–12 health and safety education curricula and textbooks;
Establish and enforce written policies requiring safe walking and bicycling practices to and from school, including use of bicycle helmets on school property; and
Encourage active promotion of safe walking and bicycling practices (including helmet usage) through classroom and extra-curricular activities.

IX. Driver Education and Licensing

Each State should address pedestrian and bicycle issues in State driver education and licensing programs. Pedestrian and bicycle safety principles and rules should be included in all driver training and licensing examinations.

X. Evaluation Program

Both evaluation and problem identification require good record keeping by the State and its political subdivisions. The State should identify the types and frequency of pedestrian and bicyclist crash problems in terms that are relevant to both the selection and evaluation of appropriate countermeasure programs.

The State should promote effective evaluation of programs by:

Supporting the continuing analysis of police accident reports (PARs) of pedestrian and bicyclist crashes for both problem identification and program evaluation activities;
Encouraging, supporting, and training localities in impact and process evaluations of local programs;
Conducting and publicizing statewide surveys of public knowledge and attitudes about pedestrian and bicyclist safety;
Maintaining awareness of trends in pedestrian and bicyclist crashes at the national level and how this might influence activities statewide;
Evaluating the use of program resources and the effectiveness of existing general public and target population countermeasure programs.
Ensuring that evaluation results are an integral part of new program planning and problem identification.

Highway Safety Program Guideline

No. 15

Police Traffic Services

Each State, in cooperation with its political subdivisions, should have an efficient and effective police traffic services (PTS) program to enforce traffic laws, prevent crashes, assist the injured, document specific details of individual crashes, supervise crash clean-up, and restore safe and orderly movement of traffic. PTS is critical to the success of most traffic safety countermeasures. Traffic law enforcement plays an important role in deterring drunk and drugged driving, achieving safety belt use, encouraging compliance with speed laws, and reducing other unsafe driving actions. Experience has shown that a combination of highly visible enforcement, public information, education, and training is necessary to achieve a significant and lasting impact in reducing crashes, injuries, and fatalities. At a minimum, a well-balanced statewide PTS program should be made up of the components detailed below.

I. Program Management

A. Planning and Coordination

Centralized program planning, implementation, and coordination are essential for achieving and sustaining effective PTS programs. The State Highway Safety Agency (SHSA), in conjunction with State and local law enforcement agencies, should ensure that these planning and coordinating functions are performed with regard to the State's traffic safety program, since law enforcement is in most instances a principle component of that program. In carrying out its responsibility of centralized program planning and coordination, the State should:

Provide leadership, training, and technical assistance to State and local law enforcement agencies;
Coordinate PTS and other traffic safety program areas including Commercial Motor Vehicle (CMV) safety activities such as the Motor Carrier Safety Assistance Program;
Develop and implement a comprehensive plan for all PTS activities, in cooperation with law enforcement leaders;
Generate broad-based support for enforcement programs; and
Integrate PTS into Community/Corridor Traffic Safety Programs.

B. Program Elements

State and local law enforcement agencies, in conjunction with the SHSA, should establish PTS as a priority within their total enforcement program. A PTS program should be built on a foundation of commitment, coordination, planning, monitoring, and evaluation within the agency's enforcement program. State and local law enforcement agencies should:

Provide the public with a high quality, effective PTS system and have enabling legislation and regulations in place to implement PTS functions;
Develop and implement a comprehensive enforcement plan for alcohol and drug impaired driving, safety belt use and child passenger safety laws, speeding, and other hazardous moving violations. The plan should initiate action to look beyond the issuance of traffic tickets to include enforcement of laws by drivers of all types of vehicles, including trucks, automobiles, and motorcycles;
Develop a cooperative working relationship with other local, county, and State governmental agencies and community organizations on traffic safety issues;
Issue and enforce policies on roadside sobriety checkpoints, safety belt use, pursuit driving, crash investigating and reporting, speed enforcement, and serious traffic violations; and
Develop performance measures for PTS that are both qualitative and quantitative.

II. Resource Management

States should encourage law enforcement agencies to develop and maintain a comprehensive resource management plan to identify and deploy resources needed to effectively support enforcement programs. The resource management plan should include a specific component on traffic enforcement and safety, integrating traffic enforcement and safety initiatives into a total agency enforcement program. Law enforcement agencies should:

Conduct periodic assessments of service demands and resources to meet identified needs;
Develop a comprehensive resource management plan, including a specific traffic enforcement and safety component;
Define the plan in terms of budget requirements and services to be provided; and
Develop and implement operational policies for the deployment of resources to

address program demands and to meet agency goals.

III. Traffic Law Enforcement

The enforcement of traffic laws and ordinances is a basic responsibility shared by all police agencies. The primary objective of this function is to encourage motorists and pedestrians to comply voluntarily with the laws. Administrators should apply their enforcement resources in ways that ensure the greatest safety impact. Traffic law enforcement programs should be based on:

Accurate problem identification;
Countermeasures designed to address specific problems;
Enforcement actions applied at appropriate times and places, coupled with a public information effort designed to make the motoring public aware of the problem and the planned enforcement action; and
A system to document and publicize results.

IV. Public Information and Education

A. Necessity of Public Information and Education

Public awareness and knowledge about traffic enforcement are essential for sustaining increased compliance with all traffic laws. This requires a well-organized, effectively-managed public information and education program. The SHSA, in cooperation with law enforcement agencies, should develop a statewide public information and education campaign that:

Identifies and targets specific audiences;
Addresses enforcement of safety belt use and child passenger safety, drunk and drugged driving, speed, and other serious traffic laws;
Capitalizes on special events, such as Operation C.A.R.E., Child Passenger Safety Awareness, Buckle Up, America! and Drunk and Drugged Driving Awareness weeks;
Identifies and supports the efforts of traffic safety activist groups to gain increased support of and attention to traffic safety and enforcement;
Uses national themes, events, and materials; and
Motivates the public to support increased enforcement of traffic laws.

The task of public information can be divided into two interconnected areas: external and internal information. Both areas, properly administered, will benefit the agency and work in concert to accomplish the goal of establishing and maintaining a positive police-public relationship.

B. Development of Public Information and Education Functions by Law Enforcement Agencies

External

Educate and remind the public about traffic laws and safe driving behavior;
Disseminate information to the public about agency activities and accomplishments;
Enhance relationships with news media;
Provide safety education and community services;
Provide legislative and judicial information and support; and
Increase the public's understanding of the enforcement agency's role in traffic safety;

Internal

Disseminate information about internal activities to sworn and civilian members of the agency;
Enhance the agency's safety enforcement role and increase employee understanding and support; and
Recognize employee achievements.

V. Data Collection and Analysis

The availability of valid data is critical to any approach intended to increase the level of highway safety. An effective records program provides fast and accurate information to field personnel who are performing primary traffic functions and to management for decision-making. Data are usually collected from crash reports, daily officer activity reports that contain workload and citation information, highway department records (*e.g.*, traffic volume), citizen complaints, and officer observations. An effective records program should:

Provide information rapidly and accurately;
Provide routine compilations of data for management use in the decision making process;
Provide data for operational planning and execution;
Interface with a variety of data systems, including statewide traffic safety records system; and
Be accessible to enforcement, planners, and management.

VI. Training

Training is one of the most important activities in a law enforcement agency, and it is essential to support the special requirements of traffic law enforcement and safety. It is essential for operational personnel to be prepared to effectively perform their duties. Traffic enforcement training can be conducted by the agency, the State Police Officer Standards and Training (POST) agency, or a commercial trainer.

A. Purpose and Goals of Training

Training accomplishes a wide variety of important and necessary goals. Proper training should:

Prepare officers to act decisively and correctly;
Increase compliance with agency enforcement goals;
Assist in meeting priorities;
Improve compliance with established policies;
Result in greater productivity and effectiveness;
Foster cooperation and unity of purpose;
Help offset liability actions; and
Motivate and enhance officer professionalism.

B. State and Local Law Enforcement Agencies Should

Periodically assess enforcement activities to determine training needs;
Require traffic enforcement knowledge and skills in all recruits;
Provide traffic enforcement in-service training to experienced officers;
Provide specialized CMV in-service training to traffic enforcement officers;
Conduct training to implement specialized traffic enforcement skills, techniques, or programs; and
Train instructors, to increase agency capabilities and to ensure continuity of specialized enforcement skills and techniques.

VII. Evaluation

The SHSA, in conjunction with State and local law enforcement agencies, should develop a comprehensive evaluation program to measure progress toward established project goals and objectives; effectively plan and implement statewide and local PTS programs; optimize the allocation of limited resources; measure the impact of traffic enforcement on reducing crime and traffic crashes, injuries, and deaths; and compare costs of criminal activity to costs of traffic crashes. Law enforcement managers should:

Include evaluation in initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;
Report results regularly to project and program managers, to police field commanders and officers, and to the public and private sectors;
Use results to guide future activities and to assist in justifying resources to legislative bodies;
Conduct a variety of surveys to assist in determining program effectiveness, such as roadside sobriety surveys, speed surveys, license checks, belt use surveys, and surveys measuring public knowledge and attitudes about traffic enforcement programs;
Evaluate the effectiveness of services provided in support of priority traffic safety areas; and
Maintain and report traffic data to the International Association of Chiefs of Police Traffic Data Report and other appropriate repositories, such as the FBI Uniform Crime Report, FHWA's SAFETYNET system, and annual statewide reports.

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Highway Safety Program Guideline

No. 19

Speed Control

Each State, in cooperation with its political subdivisions, should have, as part of a comprehensive highway safety program, an effective speed control program that encourages its citizens to voluntarily comply with speed limits. The program should stress systematic and rational establishment of speed limits, a law enforcement commitment to controlling speed on all public roads, a commitment to utilize both traditional methods and state-of-the art equipment in setting and enforcing speed limits, and a strong public information and education program aimed at increasing driver compliance with speed limits.

I. Program Management

State and local law enforcement agencies, transportation departments, and the State Highway Safety Agency (SHSA) should establish speed control as a priority within their total highway safety program. The speed control program should contain the following elements: program management, procedures for establishing reasonable speed limits, coordinated enforcement efforts, public information and education, identification and utilization of new technology, legislative coordination and commitment, training, and evaluation. When planning and developing a program to address speed control, the issue of speed should be examined in light of the empirical data available, current methods for setting speed limits, and the current public perception of speed compliance. Added to these elements is the law enforcement response, including the resources available to enforcement agencies. Only after these components have been examined and defined can the goals of a speed control program be formulated. In carrying out its responsibility of centralized program planning and coordination, the State should:

Develop and implement a comprehensive speed control plan in cooperation with law enforcement leaders, traffic engineers, educators, and leaders of the community;
Provide leadership, training, and technical assistance to State and local law enforcement agencies and highway/traffic agencies;
Generate broad based support for speed control programs through education on the scope and severity of the problem; and
Integrate speed control into the overall traffic enforcement and engineering program.

II. Enforcement Program

Each State should strongly emphasize speed enforcement as part of its overall traffic enforcement program. The speed enforcement program should include enforcement strategies and other components of a comprehensive approach to address the speed issue. The plan should address the following concepts:

Including public information and education components along with vigorous enforcement in State and local anti-speeding programs;
Collecting data to help in problem identification and evaluation;
Identifying high risk crash locations where speed is a contributing factor in crashes;
Integrating speed control programs into related highway safety activities such as drunk driving prevention, safety belt and safety programs for young people;
Targeting anti-speeding programs to address specific audiences and situations: young drivers, males, nighttime, adverse weather and traffic conditions, drunk driving, CMV drivers, school zones, construction and maintenance work zones, roads and streets with major potential conflicts in traffic and with pedestrians, and so on;
Using speed measuring devices that are both efficient and cost effective, including new speed measurement technology such as laser speed measuring devices, electronic signing and photo-radar; and
Training officers in the proper use of equipment and educating other members of the criminal justice system, such as judges and prosecutors, on the principles of devices using new technology.

III. Setting of Speed Limits

States and local governments should undertake comprehensive efforts to identify rational criteria for establishing speed limits and should include strategies to address the speed issue. These efforts should include:

Identification of criteria used to establish speed limits including the recognition of unique operational characteristics of CMV's;
Use of state-of-the art technology to collect data to establish speed limits;
Use of variable message speed limit signs to reinforce the appropriate speed limit for prevailing conditions;
Identification of high hazard locations where speeding is a contributing factor;
A coordinated effort with enforcement agencies, educators, and community leaders to provide information on setting of speed limits; and
Training traffic and enforcement personnel in the proper techniques for establishing safe and reasonable speed limits and in the use and deployment of speed monitoring equipment.

IV. Public Information and Education

Focused public information and education campaigns are an essential part of a comprehensive speed control program. Research shows that compliance with and support for traffic laws can be increased through aggressive, targeted enforcement combined with an effective public information and education campaign. The SHSA, in cooperation with law enforcement and transportation agencies, should develop a Statewide public information and education campaign that:

Identifies and targets specific audiences;
Addresses criteria for setting speed limits and enforcement of speed limits particularly for locations experiencing excessive speed or speed related crashes;
Capitalizes on special events (cooperative, multi-jurisdictional enforcement efforts) such as Operation Co-Flame and Span I–70 and other special holiday enforcement programs;
Identifies and supports the efforts of traffic safety activist groups to gain increased support of and attention to traffic safety and speed control;
Use national themes, events, and materials; and
Motivates the public to support speed control by pointing out the public health issues of injury, death, and economic costs of speed related crashes.

V. Technology

New and updated technology for speed measurement is needed to determine appropriated speed limits for a variety of conditions and to provide maximum enforcement activity with fewer available resources. Current technology for measuring speed, such as loop detectors, should be used not only to establish viable speed limits but also to vary speed limits to conform to existing conditions. State and local governments should only utilize speed measurement equipment for enforcement that is approved or recognized as reliable and accurate. All law enforcement agencies should use the International Association of Chiefs of Police (IACP) regional testing laboratories to ensure that equipment used to measure speeds meets minimum standards. For CMV enforcement purposes, the FHWA will provide MCSAP funding only for those items of speed control equipment approved by the ICAP or which meet other suitable standards. The SHSA, in conjunction with law enforcement and traffic/highway agencies, should support programs providing for:

Collection of operational speed data to determine appropriate speed limits and for use of these data in conjunction with variable message signs;
Police Radar Model Minimum Specifications—NHTSA, in cooperation with the IACP and the National Institute of Standards and Technology (NIST), has developed model specifications and testing protocols for police traffic radar. Using these

model specification, IACP in cooperation with radar manufacturers and NHTSA, has established a program to test radar sets that are available for purchase by law enforcement agencies. Reports of the testing were published by IACP along with a Consumer Products List which provides law enforcement agencies with the names of radar sets conforming with the model performance specifications.

Police Radar Testing Program—To ensure that law enforcement agencies can continue to purchase and operate accurate radar devices, IACP, in cooperation with radar manufacturers and NHTSA, has established an ongoing process of performance testing for newly developed devices and for maintaining existing equipment. Testing laboratories have been established at five universities. These laboratories will continue the testing program and will provide services to the law enforcement community.

Model Performance Specifications and Test Protocols—NIST, Law Enforcement Standards Laboratory, is developing model minimum performance and testing protocols for automated speed enforcement (ASE) devices, including photo-radar devices and laser speed measurement devices;

Basic Training Program in VASCAR Speed Measurement—NHTSA has developed a training course for the VASCAR (Visual Average Speed Computer and Recorder) time-distance speed measurement devices. This course was developed specifically for use by law enforcement officers; and

Basic Training Program in Radar Speed Measurement—NHTSA has developed a basic training course which teaches the correct procedures for law enforcement's use of police radar and also the proper instructional techniques for those teaching the course;

VI. Legislation

To encourage voluntary compliance by drivers, speed limits must be safe, reasonable, and uniform to the greatest extent possible. Realistic speed limits on roadways (other than those governed by the National Maximum Speed Limit) should:

Be based upon traffic and engineering investigations;

Encourage drivers to comply with the posted limits and allow enforcement agencies to better target speeders;

Be accompanied by sanctions, including court and administrative penalties, which are set by law;

Be as consistent as possible with the physical and operational characteristics (actual and perceived) of the roadway; and

Take into account the needs and safety of all highway users, motorists and non-motorists alike.

Legislative components of an effective speed control program should:

Encourage the highway safety community to develop laws, rules, and regulations that will provide for reasonable and safe speed limits;

Provide appropriate legislation to allow the establishment of regulatory variable speed limits, such as the provisions of Chapter 11, Article VIII of the Uniform Vehicle Code;

Provide for public information and education programs to explain how speed limits are established and to convince drivers that speed limits are realistic, reasonable, and include sanctions; and

Establish sanctions for speeding violations that are reasonable, uniform, and effective as a deterrent.

New devices and technology are available for use in determining appropriate speed limits and in law enforcement actions to measure the speed of vehicles. Transportation and law enforcement agencies should work closely with the SHSA to make certain new technologies can be used under existing legislation. As necessary, these groups should work together in ensuring development and adoption of legislation allowing use of new technologies.

VII. Training

NHTSA fully supports and encourages training for law enforcement officers in the use of speed measurement devices, model speed enforcement strategies, combined enforcement projects, and planning and implementing public information and education programs.

In support of law enforcement training NHTSA will continue to publish and widely distribute training programs. These courses are related to established as well as new and emerging techniques of speed measurement and enforcement. The training courses are recommended for officers in law enforcement agencies using speed measuring devices. FHWA also provides training programs on CMV traffic enforcement.

Training for law enforcement officers involved in speed enforcement should include:

Proper use of devices used to measure speed;

How to use data and analysis to define the speed problem, to target enforcement activities, and to evaluate the results of countermeasures;

How to relate speed enforcement to public safety;

How to plan and implement a PI&E program on speed enforcement;

Model speed enforcement strategies including examples of combined enforcement programs; and

Escorting and assisting traffic engineers and technicians in deployment and use of speed measuring equipment.

Training for traffic engineers and technicians should include:

Proper use and development of speed measurement equipment; and

Interpreting geometric, operational and environmental data for their impact on roadway safety and user performance.

VIII. Evaluation

The SHSA, in conjunction with State and local law enforcement and transportation agencies should develop a comprehensive evaluation program to measure progress toward established project goals and objectives. The evaluation should measure the impact of speed control programs on traffic crashes, injuries, and deaths; and provide information for revised improved program planning. These agencies should:

Include evaluation in initial program planning efforts to ensure that data will be available and that sufficient resources will be allocated;

Report results regularly to project and program managers, to police field commanders and officers, to transportation engineers, and to the public and private sectors.

Use results to verify problem identification, guide future speed control activities, and assist in justifying resources to legislative bodies;

Conduct a variety of surveys to assist in determining program effectiveness, such as speed surveys and surveys measuring public knowledge and attitude about speed control programs;

Analyze speed compliance and speed-related crashes in areas with actual hazards to the public;

Evaluate the effectiveness of speed control activities provided in support of other priority traffic safety areas; and

Maintain and report traffic data to the SHSA, IACP Traffic Data Report and other appropriate repositories, such as the FBI Uniform Crime Reports, FHWA's SAFETYNET system, and annual statewide reports.

Highway Safety Program Guideline

No. 20

Occupant Protection

Each State, in cooperation with its political subdivisions, should have a comprehensive occupant protection program that educates and motivates its citizens to use available motor vehicle occupant protection systems. A combination of use requirements, enforcement, public information, education, and incentives is necessary to achieve significant, lasting increases in safety belt usage. Therefore, a well-balanced State occupant protection program should include the components described below.

I. Program Management

Each State should have centralized program planning, implementation and coordination to achieve and sustain high rates of safety belt use. Evaluation is also important for determining progress and ultimate success of occupant protection programs. The State Highway Safety Agency (SHSA) should:

Provide leadership, training, and technical assistance to other state agencies and local occupant protection programs and projects;

Convene an occupant protection advisory task force or coalition to organize and generate broad-based support for programs;

Integrate occupant protection programs into community/corridor traffic safety programs; and

Evaluate the effectiveness of its occupant protection program.

II. Legislation, Regulation, and Policy

Each State should enact and enforce safety belt use laws, regulations, and policies to provide clear guidance to the motoring public concerning motor vehicle occupant protection systems. This legal framework should include:

Legislation requiring all motor vehicle occupants to use the systems provided by the vehicle manufacturer and establish educational programs to explain their benefits and the correct way to use them;

Legislation requiring children up to 40 pounds (or five years old if weight cannot be determined) to ride in a safety device certified by the manufacturer to meet all applicable Federal performance standards;

Regulations requiring employees of all levels of government to wear safety belts when traveling on official business;

Official policy requiring that organizations receiving Federal highway safety program grant funds have and enforce an employee safety belt use policy; and

Encouragement for automobile insurers to offer economic incentives for policy holders to wear safety belts, to secure small children in child safety seats, and to purchase cars equipped with air bags.

III. Enforcement Program

Each State should have a strong law enforcement program, coupled with public information and education, to increase safety belt and child safety seat use. Essential components of a law enforcement program include:

Written, enforced belt use policies for law enforcement agencies with sanctions for noncompliance to protect law enforcement officers from harm and for officers to serve as role models for the motoring public;

Vigorous enforcement of public safety belt use and child safety seat laws, including citations and warnings;

Accurate reporting of occupant protection system information on accident report forms, including use or non-use of belts, type of belt, and presence of and deployment of air bag;

Public information and education (PI&E) campaigns to inform the public about occupant protection laws and related enforcement activities;

Routine monitoring of citation rates for non-use of safety belts and child safety seats; and

Certification of an occupant protection training course for both basic and in-service training by the Police Officer Standards and Training (POST) board.

IV. Public Information and Education Program

As part of each State's public information and education program, the State should enlist the support of a variety of media, including mass media, to improve public awareness and knowledge about safety belts, air bags, and child safety seats. To sustain or increase rates of safety belt and child safety seat use, a well-organized, effectively managed public information program should:

Identify and target specific audiences, (e.g., low-use, high risk motorists) and develop messages appropriate for these audiences;

Address the enforcement of the State's belt use and child passenger safety laws; the safety benefits of regular, correct safety belt (both manual and automatic) and child safety seat use; and the additional protection provided by air bags;

Capitalize on special events, such as nationally recognized safety weeks and local enforcement campaigns;

Coordinate different materials and media campaigns where practicable, (e.g., by using a common theme and logo);

Use national themes and materials to the fullest extent possible;

Publicize belt-use surveys and other relevant statistics;

Encourage news media to report belt use and non-use in motor vehicle crashes;

Involve media representatives in planning and disseminating public information campaigns;

Encourage private sector groups to incorporate belt-use messages into their media campaigns;

Take advantage of all media outlets: television, radio, print, signs, billboards, theaters, sports events, health fairs; and

Evaluate all media campaign efforts.

V. Health/Medical Program

Each State should integrate occupant protection into health programs. The failure of drivers and passengers to use occupant protection systems is a major health problem that must be recognized by the health care community. The SHSA and the State Health Department should collaborate in developing programs that:

Integrate occupant protection into professional health training curricula and comprehensive public health planning;

Promote occupant protection systems as a health promotion/disease prevention measure;

Require public health and medical personnel to use available motor vehicle occupant protection systems when on the job;

Provide technical assistance and education about the importance of motor vehicle occupant protection to primary caregivers, (e.g., doctors, nurses, clinic staff);

Include questions about safety belt use in health risk appraisals;

Utilize health care providers as visible public spokespersons for belt use and child safety seat use;

Provide information about availability of child safety seats through maternity hospitals and other pre-natal and natal care centers (see Program Component VI: Child Passenger Safety Program); and

Collect, analyze, and publicize data on additional injuries and medical expenses resulting from non-use of occupant protection devices.

VI. Child Passenger Safety Program

Each State should vigorously promote the use of child safety seats. States should require every child up to 40 pounds to ride correctly secured in a child safety seat that meets Federal Motor Vehicle Safety Standards (see Program Component II: Legislation, Regulation, and Policy). State and community child passenger safety programs that will help to achieve that objective should be established to:

Educate parents, pediatricians, hospitals, law enforcement, EMS and the general public about the safety risks to small children, the benefits of child safety seats, and their responsibilities for compliance with child passenger safety laws;

Encourage child safety seat retailers and auto dealers to provide information about child seat and vehicle compatibility, as well as correct use;

Require safe child transportation policies for certification of pre-school and day care providers;

Require hospitals to ensure that newborn and other small children are correctly secured in an approved child safety seat or safety belt upon discharge;

Make child safety seats available at affordable cost to low-income families; and

Encourage local law enforcement to vigorously enforce child passenger safety laws, including safety belt use laws as they apply to children.

VII. School-Based Program

Each State should incorporate occupant protection education in school curricula. Buckling up is a good health habit and, like other health habits, must be taught at an early age and reinforced until the habit is well established. The State Department of Education and the State Highway Safety Agency should:

Ensure that highway safety in general, and occupant protection in particular, are included in the State-approved K–12 health and safety education curricula and textbooks;

Establish and enforce written policies requiring that school employees operating a motor vehicle on the job use safety belts; and

Encourage active promotion of regular safety belt use through classroom and extra-curricular activities as well as in the school-based health clinics.

VIII. Worksite Program

Each State should encourage all employers to require safety belt use on

the job as a condition of employment. The Federal government has already taken that step for its employees. Private sector employers should follow the lead of Federal and State government employers and comply with all applicable FHWA Federal Motor Carrier Safety Regulations or Occupational Health and Safety (OSHA) regulations requiring private business employees to use safety belts on the job. All employers should:

Establish and enforce a safety belt use policy with sanctions; and

Conduct occupant protection education programs for employees on their belt use policies and the safety benefits of motor vehicle occupant protection.

IX. Outreach Program

Each State should encourage extensive community involvement in occupant protection education by involving individuals and organizations outside the traditional highway safety community. Community involvement broadens public support for the State's programs and can increase a State's ability to deliver highway safety education programs. To encourage community involvement, States should:

Establish a coalition or task force of individuals and organizations to actively promote use of occupant protection systems;

Create an effective communications network among coalition members to keep members informed; and

Provide materials and resources necessary to conduct occupant protection education programs, especially directed toward young people, in local settings.

X. Evaluation Program

Each State should conduct several different types of evaluation to effectively measure progress and to plan and implement new program strategies. Program management should:

Conduct and publicize at least one statewide observational survey of safety belt and child safety seat use annually, making every effort to ensure that it meets applicable federal guidelines;

Maintain trend data on child safety seat and belt use in fatal crashes;

Identify target populations through observational surveys and crash statistics;

Conduct and publicize statewide surveys of public knowledge and attitudes about occupant protection laws and systems;

Obtain monthly or quarterly data from law enforcement agencies on the number of safety belt and child passenger safety citations and convictions;

Evaluate the use of program resources and the effectiveness of existing general public and target population education programs;

Obtain data on morbidity as well as the estimated cost of crashes in regards to safety belt usage and non-usage; and

Ensure that evaluation results are an integral part of new program planning and problem identification.

Highway Safety Program Guideline

No. 21

Roadway Safety

Each State, in cooperation with its political subdivisions, should have a comprehensive roadway safety program that is directed toward reducing the number and severity of traffic crashes.

I. Program Management

The Federal Highway Administration (FHWA) provides administrative oversight for the Roadway Safety portion of the section 402 highway safety program in close coordination with the State Highway Safety Agency (SHSA) and the State Highway Agency (SHA). Although section 402 dollars cannot be utilized for highway construction, maintenance or design activities, they can be used to develop and implement systems and procedures for carrying out safety construction and operational improvements. These funds can also be used to augment Federal-aid highway programs, such as the Hazard Elimination Program (Section 152) and the Rail-Highway Crossings Programs (Section 130), as well as other safety construction activities.

An effective Roadway Safety program is based on sound analyses of roadway-related crash information and applies engineering principles in identifying highway design or operational improvements that will address the crash problem. The SHSA should:

Assign program staff to work directly with the FHWA division safety engineer on roadway-related safety programs.

Work in close harmony with the SHA, particularly with SHA staff who are responsible for traffic engineering, pedestrian and bicycle programs, CMV safety, rail-highway crossing safety issues, work zone safety, design and operational improvements, and hazardous roadway locations.

Foster an ongoing dialogue among all disciplines with a vested interest in highway safety, including engineers, enforcement personnel, traffic safety specialists, driver licensing administrators, CMV safety specialists, and data specialists.

Promote a multi-disciplinary approach to addressing highway safety issues which focuses on comprehensive solutions to identified problems. An example is assisting in the coordination and the implementation of Community/Corridor Traffic Safety Programs, and MCSAP, where appropriate.

Become familiar with the various highway-safety related categories of Federal-aid highway funds—in addition to section 402—in order to maximize the safety benefits of the entire program.

Become familiar with the State's traffic records system and play a role in the system's ongoing operation, maintenance and enhancement.

Assist community leaders in managing and/or coordinating programs designed to address roadway safety issues and concerns which fall under the jurisdiction of local communities.

Become familiar with MCSAP and coordinate MCSAP and section 402 program activities.

II. Related Highway Safety Program Guidelines

Roadway Safety applies to highway safety activities related to the roadway environment and includes activities which are described in the following Highway Safety Program Guidelines:

Guideline #9: Identification and Surveillance of Accident Locations,
Guideline #12: Highway design, Construction and maintenance,
Guideline #13: Traffic Engineering Services,
Guideline #14: Pedestrian Safety.

A model Roadway Safety program would encompass the following aspects of these four guidelines:

Procedures for accurate identification of crash locations on all roads and streets which identify crash experience on specific sections of the road and street system.

Methods to produce an inventory of high crash locations experiencing sharp increases as well as design and operational features with which high crash frequencies or severities are associated.

Appropriate measures to reduce crashes and evaluate the effectiveness of safety improvements on any specific section of the road or street system.

A systematically organized method to ensure continuing surveillance of the roadway network for potentially high crash locations and the development of methods for their correction.

Design guidelines relating to safety features such as sight distances, horizontal and vertical curvature, spacing of decision points, width of lanes, etc. for all new construction or reconstruction at least on expressways, major streets and highways, and through streets and highways.

Street systems that are designated to provide a safe traffic environment for all roadway users when subdivisions and residential areas are developed or redeveloped.

Efforts to ensure that roadway lighting is provided or upgraded on a priority basis at: expressways and other major arteries in urban areas, junctions of major highways in rural areas, locations or sections of streets and highways which have high ratios of night-to-day motor vehicle and/or pedestrian crashes, and tunnels and long underpasses.

Guidelines for pavement design and construction with specific provisions for high skid resistance qualities.

A program for resurfacing or other surface treatment with emphasis on correction of locations or sections of streets and highways with low skid resistance and high or potentially high crash rates susceptible to reduction by providing improved surfaces.

Efforts to ensure that there is guidance, warning and regulation of traffic approaching and traveling over construction or repair sites and detours.

A method for systematic identification and tabulation of all rail-highway grade crossings and a program for the elimination of hazards and dangerous crossings.

Projects which provide for the safe and efficient movement of traffic, by ensuring that roadways and the roadsides are maintained consistent with the design guidelines which are followed in construction.

Identify and correct hazards within the highway right-of-way.

Wherever possible for crash prevention and crash survivability, efforts to include at least the following highway design and construction features:

Roadsides which are clear of obstacles, with clear distance determined on the basis of traffic volumes, prevailing speeds, and the nature of development along the street or highway;

Supports for traffic control devices and lighting that are designed to yield or break away under impact wherever appropriate;

Protective devices that afford maximum protection to the occupants of vehicles where fixed objects cannot be reasonably removed or designed to yield;

Bridge railings and parapets which are designed to minimize severity of impact, to retain the vehicle, to redirect the vehicle so that it will move parallel to the roadway, and to minimize danger to traffic below;

Guardrails, and other design features which protect people from out-of-control vehicles at locations of special hazard such as playgrounds, schoolyards and commercial areas.

A post-crash program that includes at least the following:

Signs at freeway interchanges directing motorists to hospitals which have emergency care capabilities;

Maintenance personnel who are trained in procedures for summoning aid, protecting others from hazards at crash sites, and removing debris;

Provisions for access and egress for emergency vehicles to freeway sections where this would significantly reduce travel time without reducing the safety benefits of access control.

A comprehensive resource development plan to provide the necessary traffic engineering capability, including:

Provisions for supplying traffic engineering assistance to those jurisdictions which are unable to justify a full-time traffic engineering staff;

Provisions for upgrading the skills of practicing traffic engineers, and providing basic instruction in traffic engineering techniques to other professionals and technicians.

The utilization of traffic engineering principles and expertise in the planning, design, construction, and maintenance of the public roadways, and in the application of traffic control devices.

A traffic control device plan which includes:

An inventory of all traffic control devices;

Periodic review of existing traffic control devices, including a systematic upgrading of substandard devices to conform with standards endorsed by the Federal Highway Administrator;

A maintenance schedule adequate to insure proper operation and timely repair of control devices, including daytime and nighttime inspections;

And where appropriate, the application and evaluation of new ideas and concepts in applying control devices and in the modification of existing devices to improve their effectiveness through controlled experimentation.

An implementation schedule which utilizes traffic engineering resources to:

Review road projects during the planning, design, and construction stages to detect and correct features that may lead to operational safety difficulties;

Install safety-related improvements as part of routine maintenance and/or repair activities;

Correct conditions noted during routine operational surveillance of the roadway system to rapidly adjust for the changes in traffic and road characteristics as a means of reducing the frequency and severity of crashes;

Conduct traffic engineering analyses of all high crash locations and the development of corrective measures;

Analyze potentially hazardous locations—such as sharp curves, steep grades, and railroad grade crossings—and develop appropriate countermeasures.

Identify traffic control needs and determine short and long range requirements.

Evaluate the effectiveness of specific traffic control measures in reducing the frequency and severity of traffic crashes;

Conduct traffic engineering studies to establish traffic regulations, such as fixed or variable speed limits.

A method to ensure a continuing statewide inventory of pedestrian-motor vehicle crashes identifying the location and times of the crash, as well as the age of the pedestrian and circumstances of the incident.

Statewide operational procedures for improving the protection of pedestrians through the application of traffic engineering practices, careful land-use planning in newly developed areas, physical separation of pedestrian pathways from vehicle roadways, and environmental illumination of high volume and/or potentially hazardous pedestrian crossings.

Periodic evaluation of each of the Roadway Safety projects by the State, or appropriate Federal department or agency where applicable. The evaluation should provide information detailing the program's effectiveness in terms of crash reduction and the end results of crashes, and the Federal Highway Administration should be provided with an evaluation summary.

Companion Highway Safety Program Manuals (February, 1974), which supplement Guidelines 9, 12, and 13 and provide additional information to assist State and local agencies in implementing their roadway safety programs are available from the Federal Highway Administration's Office of Highway Safety.

Issued on: January 4, 1994.

Rodney E. Slater,
Administrator, Federal Highway Administration.
Howard M. Smolkin,
Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 94–660 Filed 1–13–94; 8:45 am]
BILLING CODE 4910–59–M

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1205

[NHTSA Docket No. 93–20; Notice 1]

RIN 2127–AE89

Highway Safety Programs; Determination of Effectiveness

AGENCY: National Highway Traffic Safety Administration (NHTSA) and Federal Highway Administration (FHWA), Department of Transportation (DOT).

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) was signed into law December 18, 1991. Section 2002(a) of ISTEA, Highway Safety Programs, requires that the Secretary of Transportation either designate six key areas as priority highway safety programs or submit a report to congress describing the reasons for not prioritizing these programs. The six program areas involve: Speed control, Use of occupant protection devices, Driving while impaired, Motorcycle safety, School Bus Safety, and Police Traffic Services. The existing National Priority Program Areas address four of the six areas identified by the Act, but do not include Speed Control or School Bus Safety. The agencies have reviewed existing data and statistics regarding deaths and injuries attributable to these two areas and have considered the availability of existing countermeasures related to speed control and school bus safety, and tentatively propose to include Speed Control as a Priority Program Area, but have tentatively concluded that School Bus Safety does not warrant being included as a Priority Program. Interested persons are invited to submit comments on this proposal.

DATES: Comments on this document must be received no later than February 28, 1994.

ADDRESSES: Commenters should reference the docket and notice numbers of this document and be submitted (preferably in ten copies) to: Docket Section, room 5109, U.S. Department of Transportation, 400 7th Street, SW., Washington, DC 20590. Docket hours are from 9:30 a.m. to 4 p.m.

FOR FURTHER INFORMATION CONTACT: In NHTSA: Ms. Marlene Markison, Office of Regional Operations, NRO–01, National Highway Traffic Safety Administration, 400 7th Street, SW., Washington, DC 20590, telephone: (202) 366–0166; or Ms. Kathy DeMeter, Office of Chief Counsel, National Highway Traffic Safety Administration, telephone: (202) 366–1834. In FHWA: Ms. Julie Cirillo, HHS–112, Federal Highway Administration, telephone: (202) 366–2170.

SUPPLEMENTARY INFORMATION:

Background

The State and Community Highway Safety Grant Program (the 402 program) was established under the Highway Safety Act of 1966, 23 U.S.C. 402. The Act required the establishment of Uniform Standards for State Highway Safety Programs to assist the States and local communities in organizing their highway safety programs.

Eighteen such standards were established and have been administered at the Federal level by FHWA and NHTSA. NHTSA is responsible for developing and implementing highway safety programs relating to the vehicle and driver, while FHWA has similar responsibilities in program areas involving the roadway.

Until 1976, the 402 program was principally directed towards achieving State and local compliance with the 18 Highway Safety Program Standards, which were considered mandatory requirements with financial sanctions for noncompliance. Under the Highway Safety Act of 1976, Congress provided for a more flexible implementation of the program so that the Secretary would not have to require State compliance with every uniform standard or with each element of every uniform standard. As a result, the standards became more like guidelines for use by the States. Management of the program then shifted from enforcing standards to one of problem identification, and countermeasure development and evaluation, using the standards as a framework for the State programs.

In 1981, Congress passed the Omnibus Budget Reconciliation Act of 1981, Public Law 97–35, revising the section 402 program. The Act directed the agencies to conduct rulemaking to determine those State and local highway safety programs most effective in reducing accidents, injuries, and fatalities.

On April 1, 1982, NHTSA and FHWA issued a joint final rule (47 FR 15116) identifying six National Priority Program Areas which the agencies then considered to be the most effective highway safety programs. The six program areas included one FHWA program area, Safety Construction and Operational Improvements, and the following NHTSA Program Areas: Occupant Protection, Alcohol Countermeasures, Police Traffic Services, Emergency Medical Services, and Traffic Records.

The April 1982 final rule provided that these National Priority Program Areas would be eligible for Federal funding under an expedited procedure under the 402 program (23 CFR 1205.4.). It also established a mechanism by which other, non-priority programs identified by a State may be eligible for Federal funding. (23 CFR 1205.5 (a) and (b).)

Periodic Review and Determination of Priority Programs

On April 2, 1987, the enactment of the Surface Transportation and Uniform Relocation Assistance Act of 1987 (Pub. L. 100–17) revised 23 U.S.C. 402. The changes provided for a periodic review of the effectiveness of the various programs eligible for funding under section 402 in reducing crashes, injuries and fatalities. The periodic review procedure was believed to be the best method of ensuring the continued relevance of the section 402 program to changing circumstances and traffic safety needs, and for ensuring that Federal funds continue to be used for the most effective programs.

The legislation also provided that the terms "standard" and "standards" within 23 CFR Part 1204 be replaced with the words "guideline" and "guidelines." The purpose of this amendment was to conform the language of section 402 to the current implementation of the programs.

Pursuant to these amendments, NHTSA and FHWA conducted a rulemaking action to review those programs most effective in reducing crashes, injuries and fatalities. In a final rule issued on April 6, 1988, (53 FR 1255) the agencies determined that the National Priority Program Areas should continue to include the one FHWA program area, Roadway Safety (formerly, Safety Construction and Operational Improvements), and the five NHTSA program areas that had been identified in 1982. In addition, the agencies determined that a sixth NHTSA area, Motorcycle Safety, should also be included.

On May 3, 1991, NHTSA/FHWA published a joint NPRM (56 FR 20387) proposing to add Pedestrian and Bicycle Safety as one of the National Priority program areas. The public comments supported that proposal and resulted in the addition of that area as one of the National Priority Program Areas eligible for the expedited funding process.

As a result of these prior rulemaking actions, the National Priority Program Areas currently include the following:

1. Alcohol and Other Drug Countermeasures
2. Police Traffic Services
3. Occupant Protection
4. Traffic Records
5. Emergency Medical Services
6. Motorcycle Safety
7. Pedestrian and Bicycle Safety and
8. Roadway Safety

The agencies apply three criteria to determine whether a program area should be identified as a National Priority Program under 23 CFR Part 1205:

- Whether the problem is of national concern;
- Whether effective countermeasures have been developed in this area which address this concern; and
- Whether State programs in the area appear to be among the most effective in reducing crashes, injuries, and fatalities as compared to other traffic safety program areas.

In determining whether a problem is of national concern, the agencies consider the relative magnitude of the problem.

Today's notice is being issued to solicit comments on a proposal of the National Highway Traffic Safety Administration (NHTSA) and the Federal Highway Administration (FHWA) to expand this list of National Priority Program Areas to include Speed Control, and to obtain comments on the agencies' preliminary determination that School Bus Safety should not be added as a National Priority Program Area at this time. The agencies have considered relevant data, statistics, and other available information in reaching this conclusion and now seek public comments from interested parties on these tentative determinations. The following discussion highlights the key issues and factors considered by the agencies in making these preliminary determinations. (In a separate notice published elsewhere in this issue of the **Federal Register**, the agencies are requesting comments on revisions and amendments to Highway Safety Program Guidelines relating to several program areas including Speed Control.)

Speed Control as a National Priority Area

Is Speeding a Problem of National Concern?

The issue of speed control has received considerable attention by NHTSA and FHWA. Over the course of the agencies' history, we have funded and promoted many programs and initiatives addressing the problem. Speeding is defined as not only exceeding the posted speed limit, but also driving too fast for conditions. Some common conclusions from these programs and initiatives indicate that higher speeds and speeds too fast for conditions (whether or not travelling in excess of the speed limit) adversely affect the safety of motorists.

Speeding is Becoming More Prevalent

While many speed/traffic surveys are taken, reliable data on travel speed are relatively limited, and often difficult to compare. The most reliable speed data are those reported by the States for National Maximum Speed Limit (NMSL) roadways posted at 55 mph. The Federal Highway Administration (FHWA) publishes an annual report containing a compendium of speed monitoring data submitted by each State. Analyses of recent speed monitoring data by the FHWA indicate that speeds at which many motorists travel have increased in recent years.

There are less comprehensive data collected for roadways which have speed limits of less than 55 mph, including the many rural highways and urban/suburban streets and roads which are posted at lower speeds for reasons of road design, traffic patterns, volume, and safety. These non-NMSL roads account for 74 percent of the total paved road mileage in the U.S. and for approximately 47 percent of all traffic deaths. The lack of empirical data makes it difficult to identify the extent of the speeding problem on these non-NMSL roads. A recent FHWA study of these roads entitled *Assessment of Current Speed Zoning Criteria* found that: (1) On average, seven out of ten motorists exceeded posted limits; (2) average speeds ran approximately two to six mph above posted limits; and (3) prevailing 85th percentile speeds ran approximately eight to twelve mph above posted limits. The observations of law enforcement executives and other highway safety officials confirm that speeds are increasing on these roads.

Speed surveys on the Interstate highways also show that average speeds and the percent of traffic travelling at high speeds have also increased on these roads. For example, the percent of vehicles exceeding 65 mph (on roadways with a 65 mph speed limit) were estimated to be 47 percent in 1990 (up from 37% in 1988) while those exceeding 70 mph accounted for approximately 19 percent (up from approximately 16 percent in 1988).

After Congress amended the NMSL in 1987 to permit 20 States to increase the speed limit to 65 mph on rural interstates as a demonstration program, NHTSA issued a detailed report on the effects of the increase. This interim report indicated that average speeds increased somewhat on rural interstates. The latest NMSL research, contained in the agency's *Report to Congress on the Effects of the 65 mph Speed Limit through 1990* (NHTSA, May 1992), shows the average travel speed on rural 65 mph Interstates in 1990 was 65 mph (up from 63 mph in 1988); the 85th percentile speed was 71 mph (up from 69 mph in 1988); and fatalities on rural interstates were an estimated 30 percent higher in 1990 than the number expected, based on historical trends, had the speed limit remained at 55 mph. A series of focus group discussions held by NHTSA with the general public suggest that most drivers recognize speeding as a violation of the law, but few regard the violation as a serious offense.

These studies all suggest that the motoring public does not view speeding per se as an immediate risk to their personal safety.

Excessive Speed Causes Crashes

Speeding is one of the most prevalent reported factors associated with crashes. Studies identify correlations between speeding and other factors including alcohol involvement, young drivers, male drivers, motorcyclists, and nighttime driving. Speeding is cited as a contributing factor in approximately 11 percent of all police-reported crashes and in approximately 34 percent of all fatal crashes (NHTSA, Fatal Accident Reporting System, 1991). It is estimated that in 1991, 13,909 fatalities and 77,277 moderate to critical injuries occurred in speed-related crashes. The economic cost of all speed-related crashes (including all injury levels) was over $18 billion.

Excessive speed has long been recognized as one of the prime factors contributing to motor vehicle crashes. This contribution has several sources:

- Drivers have less time to react when travelling at higher speeds since speed increases the distance a vehicle travels during the time it takes for a driver to react to a perceived danger;
- Speed increases the total stopping distance necessary to halt a vehicle; and
- Speed reduces a driver's ability to steer safely around curves on highways, or objects in the roadway.

A major speed-related factor which has been linked to crash involvement is speed variance: The difference in speed among vehicles in the traffic stream. Speed variance is calculated in terms of standard deviation from the mean speed. For example, ten vehicles all traveling at 55 mph on the same highway would have a mean speed of 55 mph and a standard deviation of zero, whereas five vehicles traveling at 65 mph and five vehicles traveling at 45 mph would have a mean speed of 55 mph but a standard deviation of 10.5.

Research studies such as those in 55: *A Decade of Experience* (Transportation Research Board, 1984) have shown that motor vehicle crashes are more likely where speed variance is greater. As speed variance increases, vehicles come close to each other more frequently. This leads to more frequent lane changes and passing maneuvers as the faster drivers seek to avoid slower vehicles. Data from the *National Crash Severity Study* (1979) show that vehicles travelling 20 mph above the average speed experience a crash risk 11 times greater than those travelling at the average speed. This data implies that crashes can be reduced by controlling speed variance. Controlling speed variance is especially critical on roadways with speed limits less than 65 mph, where conflicting actions and reactions typically cause much larger variations in speed.

Speed Increases the Severity of Crashes

The trend toward increased speeds is cause for concern because of the reduced margin for error and the increase in severity for those vehicles involved in crashes. As the speed of a car increases from 20 mph to 80 mph, a factor of four, the energy of the impact delivered in a collision with a fixed object goes up by a factor of sixteen. The chance of death or serious injury increases dramatically for every 10 mph increase in vehicle speed for the crash involved vehicle. The *National Crash Severity Study* (NHTSA, 1979) revealed that a driver crashing with a 50 mph change in velocity is twice as likely to be killed as one crashing with a 40 mph change in velocity. In short, crashes at higher speeds increase the potential for more deaths and disabling injuries.

Have Effective Speed Control Countermeasures Been Developed?

Enforcement personnel have several effective countermeasures available for speed control which have been developed by new technology.

Traditional methods of speed control once involved the use of stopwatches and pneumatic hoses stretched across the roadway to determine vehicle speeds. Later developments included the introduction of radar and VASCAR which more precisely measured vehicle speeds and reduced the degree of possible operator error. Currently laser speed measuring devices with an extremely high degree of accuracy are becoming available to the law enforcement community.

NHTSA has taken an active role in identifying and evaluating new law enforcement technology. After evaluating new devices, NHTSA has established demonstration programs to introduce those devices into the law enforcement community to further advance speed control efforts. These demonstration programs have included enforcing speed limits using radar, VASCAR, laser speed measuring devices, aerial speed measurement, photo radar, electronic signing and saturation patrols.

NHTSA studies show that one of the best methods to obtain compliance with speed limits is to combine an aggressive enforcement campaign with a vigorous public information and education effort. Public service announcements (PSA) regarding speed are regularly developed and distributed by NHTSA. Furthermore, other effective countermeasures, such as saturation patrols and multi-agency, multi-jurisdictional enforcement efforts, have been developed and furnished to the law enforcement community. These programs can easily become a part of an agency's traffic enforcement program.

Several highway design and traffic control measures have also demonstrated effectiveness for speed control. Freeway design, culminating in the Interstate System, eliminated all at-grade intersections thus providing for free flow traffic. This singular design characteristic resulted in significant reduction in speed variance and the promotion of uniform operating speed. Speed variances on the Interstate System have traditionally been in the range of 6–9 miles per hour while speed variances on non-freeway facilities can be as great as 20 miles per hour.

In addition, the need to control speed for varying conditions has led to the development of variable message speed signs. These devices, first used on the New Jersey Turnpike in the late 1960's have had widespread implementation on all types of facilities and warn drivers of impeding congestion, weather conditions, construction, and incidents which required reduction in operating speed. Real time regulatory variable speed limits are now being tested in the State of Washington.

The agencies believe that Federal, State, and local governments should have balanced programs that use the most cost-effective strategies for decreasing crash risks from speeding. This includes: (1) Targeting enforcement where speeding has a significant impact on public safety and accompanying it with public information and education; (2) using a variety of techniques and technologies for speed control; (3) understanding who speeds, where, and why; and (4) ensuring that posted speed limits are appropriate for conditions. These efforts can be further enhanced through the development of comprehensive speed control programs which include establishment of appropriate criteria for the setting and posting of speed limits, focused attention upon roadway construction and condition, posting of appropriate roadway signs, elimination of hazards adjacent to the roadway, and establishment of research projects to further study the characteristics and consequences of speeding in order to develop improved countermeasures and guidelines.

NHTSA submitted a report to Congress in 1991 entitled *Speed Enforcement Program Plan* to identify methods to address the speeding problem. The plan relies heavily upon programs and projects that have proven to be most effective and outlines speed control initiatives that have proven successful. The plan also stresses a law enforcement commitment to controlling speed on all public roads, using state-of-the-art equipment, with a strong emphasis on public information and education designed to increase driver compliance with speed limits.

Are State Speed Control Programs Effective in Reducing Crashes, Injuries, and Fatalities?

The State programs that have been conducted to date demonstrate that speed control countermeasures are extremely effective in reducing deaths and injuries. For example, the New York State Police 55 mph enforcement project was successful in decreasing the number of drivers traveling at the highest rates of speed (often considered to be "professional speeders"). While average speed declined slightly from 61.6 to 61.3 mph, the percent of drivers exceeding 70 mph declined from 6.9% to 5.1%. The percent exceeding 65 mph declined from 24.1% to 21.4%, and the percent exceeding 60 mph declined from 56.4% to 55.7%. This success is believed to have ultimately led to reductions in the number of fatal crashes, fatalities and serious injuries suffered in New York.

In South Carolina, it is believed that the state's rural initiative involving sheriffs contributed to a significant reduction in crashes, injuries, and fatalities in 1991 as compared to 1989. During that period, the state experienced 12,472 fewer crashes, 2,331 fewer injuries and 106 fewer fatalities. South Carolina's PSA campaign also received widespread recognition from across the State and is believed to have contributed to the reduction of crashes during the time the campaign was operational.

During the first year of the St. Louis enforcement operation, ending September 1991, the average speed dropped from 62 mph to 61 mph on the 55 mph roadways in the metro area, as a result of the police agencies issuing 3,698 citations and 5,600 warnings for speeding during the Operation Gateway period. This cooperative program is continuing and is expected to result in further speed decreases on the involved roadways in the metro St. Louis area.

Similarly, the speed control efforts targeting commercial vehicles appear to be effective, with early results from the 1987 Commercial Motor Vehicle Enforcement project in California indicating that all crashes where commercial vehicles were at fault decreased by 3.5% (from 810 in 1986 to 782 in 1987) in the five test sites throughout the State. Further, the number of accidents caused by commercial vehicles which resulted in injuries in these test sites also declined by 11.2% (from 259 in 1986 to 230 in 1987). Accompanying that reduction was a corresponding decrease in the societal cost of injuries and fatalities resulting from such crashes.

Determination Regarding Speed Control

The agencies believe it is clear that excessive speed does represent a significant traffic safety problem. Speeding is a problem throughout the country in all regions and on all types of roads. Numerous countermeasures have been developed that have proven to be most effective in addressing this problem.

The agencies, therefore, tentatively conclude that Speed Control meets all requisite criteria and propose to include it as a National Priority Program Area.

School Bus Safety as a National Priority Area

Is School Bus Safety a Problem of National Concern?

The safety of children in school buses has been a primary concern of parents and school systems ever since buses began to be used to transport children. That concern has helped develop school buses into the safest form of transportation in the country. According to the National Safety Council's "Accident Facts" (1991), during the 1989–90 school year, it is estimated that 380,000 buses were used to transport 22 million pupils approximately 3.8 billion miles (21 million miles per school day). The National Safety Council statistics also indicate fatality rates per hundred million passenger miles in 1989 were 1.12 for passenger cars and 0.04 for school buses.

The relative safety of school buses is evident from the following table, which shows all vehicle occupant fatalities. Included are the number of preschool (0–4) and school-age children (5–18) who were fatally injured in motor vehicle crashes in 1990, and the type of vehicle in which they were riding at the time.

TABLE 1.—OCCUPANT FATALITIES BY VEHICLE TYPE AND AGE GROUP FATAL ACCIDENT REPORTING SYSTEM 1990

	Total	Age of occupant				
		0–4	5–12	13–18	19+	Unknown
Total	37,134	623	716	4,292	31,466	37
Vehicle type:						
Passenger Car	24,092	476	457	3,042	20,086	31
Light Truck/Van	7,387	101	164	701	6,419	2
Medium Truck	134	2	0	7	125	0
Heavy Truck	571	2	4	7	556	2
Motorcycle	3,244	2	27	310	2,904	1
School Bus	13	0	5	2	6	0
Other Bus	19	0	1	4	14	0
On/Off Road Vehicle	1,214	33	35	149	997	0
Other Vehicle	296	4	19	55	218	0
Unknown	164	3	4	15	141	1

School bus-related crashes result in fatalities not only to occupants of school buses and other vehicles, but also to pedestrians. Pedestrians accounted for 28 percent of the total school bus-related fatalities from 1986 through 1990. In crashes involving school buses during that period, an average of 38 pedestrians were fatally injured each year, with 72 percent being struck by the bus, while the remaining 28 percent were struck by another vehicle. Approximately 75 percent of pedestrian fatalities involving school buses from 1986–1990 were of school age (less than 20 years of age); of these, approximately 69 percent were struck by the bus.

The National Safety Council reports that during the 1989–1990 school year, most of these pedestrian fatalities involved individuals who were either approaching or leaving a loading zone and that more than half of the pupil pedestrian victims were struck by the school bus which they were boarding or exiting. The National Academy of Science's Special Report No. 222, "School Bus Safety," (1989) states that injuries received at bus stops tend to be more severe than injuries received on board a bus. The report also states that, as pedestrians, children between the ages of five and six are particularly vulnerable and account for more than one-half of the young pedestrians fatally injured by school buses.

School bus crashes have a much different effect on the population as a whole than automobile crashes. When a child is fatally injured in a school bus crash there is a greater sense of loss and a greater sense of tragedy. For this reason, school bus fatalities and crashes often receive a high degree of public attention and draw an immediate and passionate response from the community. However, the number of fatalities in school bus crashes is small, particularly when considering exposure and when compared to the number of fatalities related to other priority programs.

In 1991, passenger cars were involved in 82.8 percent of all traffic crashes and 67.9 percent of all fatal crashes; whereas school buses were involved in only 0.4 percent of all traffic crashes and in 0.3 percent of all fatal crashes. These data demonstrate that the safety problem related to school buses is not great when compared to that of other types of vehicles.

Have Effective School Bus Safety Measures Been Developed?

Although statistics demonstrate that school buses already provide a remarkably safe form of transportation, the agency has taken steps to further improve school bus safety. At the request of Congress, the National Academy of Sciences (NAS) studied school bus safety to determine which safety measures would be "most effective" in protecting school children while boarding, exiting and riding in school buses. (See, "Surface Transportation and Uniform Relocation Assistance Act of 1987," Pub. L. 100–17, 204(a), 101 Stat. 219, April 2, 1987.) In May 1989, the National Research Council (NRC), an agency of the NAS, issued a report entitled "Improving School Bus Safety," Special Report No. 222. The report confirmed the high level of safety provided by the Nation's school bus fleet, and also suggested measures that could further improve the safety of school buses.

In accordance with the 1987 law, NHTSA reviewed the findings of the NAS report and, on July 13, 1989, published a notice in the **Federal Register** (54 FR 29629), in which the agency determined which safety measures would be most effective in protecting the safety of school children while boarding, exiting and riding in school buses.

NHTSA found replacing pre-1977 school buses to be a "most effective" measure, because of the higher level of crashworthiness provided by NHTSA's 1977 school bus standards, the improved mirror systems, and other crash avoidance measures typically provided on newer school buses. The agency also found prohibiting standees on school buses to be a "most effective" measure. In addition, NHTSA found a number of measures which address the safety of children while boarding or exiting the bus to be "most effective." They include equipping new buses with stop signal arms and cross-view mirrors and implementing student crossing, pedestrian safety education and school bus driver training programs. NHTSA also identified a number of measures as "effective."

The agency took several steps to encourage the adoption of these "effective" and "most effective" measures. In FY's 1990 and 1991, NHTSA set aside, in accordance with provisions in the Highway Safety Act of 1987 (Title II, Pub. L. 100–17), funds to assist the States in implementing these school bus safety measures. The funds were used by States on measures that had been designated by NHTSA to be either "effective" or "most effective" in improving school bus safety.

In addition, NHTSA conducted a number of rulemaking actions to upgrade the agency's school bus safety standards. For example, NHTSA issued a final rule on May 3, 1991, requiring new school buses manufactured after September 1, 1992, to be equipped with a stop signal arm (56 FR 20363); a final rule on November 2, 1992, revising the minimum requirements for school bus emergency exits and improving access to school bus emergency doors (57 FR 49413); and a final rule on December 2, 1992, requiring that school buses enable drivers to see, either directly or through mirrors, certain specified areas in front of and along both sides of the buses (57 FR 57000).

Further, as stated previously, in a final rule dated October 4, 1991, NHTSA and FHWA expanded the list of National Priority programs areas, which are eligible for section 402 funding using an expedited process, to include Pedestrian and Bicycle Safety. The agencies considered the problem of school bus-related pedestrian fatalities when they decided to add Pedestrian and Bicycle Safety to the list of priority programs, and specifically stated, in the final rule, that programs designed to prevent these fatalities are within the scope of this new priority program.

Are These School Bus Safety Measures Effective in Reducing Crashes, Injuries, and Fatalities?

As stated previously, school buses already provide the safest form of transportation in our country. Since the number of fatalities that are school bus-related is already so small, it is difficult to quantify the benefits of the actions that have been taken. The agencies believe, however, that these measures are the ones most likely to reduce or eliminate fatal and serious injuries.

Determination Regarding School Bus Safety

Based upon the agencies' review of the available material regarding the scope of the problem, including FHWA studies regarding bus driver training and driver fatigue, we have determined that significant attention has been devoted to school bus safety, and steps have been taken to improve the already excellent safety record of this mode of transportation.

In view of the successful measures already taken, the agencies do not view school bus transportation as a problem nearly as significant as other highway safety program areas.

Furthermore, the states already have the ability under the section 402 program to address school bus and other highway safety programs, and are proficient in allocating existing resources as they deem necessary to achieve maximum safety benefits. In addition, the recent designation of Pedestrian and Bicycle Safety as a National Priority program area has facilitated the States' ability to address the majority of school bus-related fatalities, which occur while children are boarding or existing, not riding the bus.

The agencies believe that the establishment of School Bus Safety as a priority area could result in States shifting 402 funds away from other priority programs, and that the expenditure of an increased level of 402 funds in this manner would not significantly affect the overall safety of school buses.

Therefore, the agencies tentatively conclude that School Bus Safety should not be included as a National Priority program at this time. The agencies wish to stress that this tentative decision should not be construed to imply that the current resources focused upon School Bus Safety should be reduced or redirected. NHTSA and FHWA believe that all existing efforts in this area should be continued to maintain the impressive safety record associated with school bus transportation. The agencies hereby request data, statistics, and other substantive information relevant to this determination.

Comments

Those wishing to comment on this document should limit comments to the safety aspects of these two programs, and submit data or statistics which demonstrate the extent of the nation's highway safety problem which is attributable to either Speeding or School Bus Safety, along with any discussion of countermeasures which are or could be effective in reducing the number of deaths and injuries in either of these two areas. In determining whether these programs should be identified as National Priority Programs, the agencies will determine whether the problem is of national concern; whether effective countermeasures have been developed to address the concern; and whether State programs appear to be among the most effective as compared to other traffic safety program areas.

In order to expedite the submission of comments, simultaneous with issuance of this notice, copies of this notice will be mailed to all Governors and Governors' Representatives for Highway Safety.

Comments should not exceed 15 pages in length. It is requested but not required that 10 copies be submitted. Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

All comments received before the closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. However, the rulemaking action may proceed at any time after that date. The agencies will continue to file relevant material in the docket as it becomes available after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the docket should enclose, in the envelope with their comments, a pre-addressed stamped postcard. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Economic and Other Effects

The agencies have considered the impacts that would be associated with this proposed action, and determined that it is significant within the meaning of Executive Order 12866 and the DOT Regulatory Policies and Procedures since it raises policy issues concerning the setting of priority programs. This rulemaking document was reviewed under E.O. 12866. The rulemaking would not affect the level of funding available in the highway safety program, or otherwise have a significant economic impact. The agency has prepared a Preliminary Regulatory Evaluation which is available in the docket.

Small Entity Impact

In compliance with the Regulatory Flexibility Act, the agencies have evaluated the effects of this action on small entities. Based on the evaluation, we certify that this rule will not have a significant economic impact on a substantial number of small entities. States will be recipients of any funds awarded under the regulation and, accordingly, the preparation of a Regulatory Flexibility Analysis is unnecessary.

Environmental Impacts

The agencies have also analyzed this action for the purpose of the National Environmental Policy Act. The agencies have determined that this action would not have any effect on the human environment.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612 and it has been determined that it has no federalism implication that warrants the preparation of a federalism assessment.

Paperwork Reduction Act

The requirement relating to this proposal, that each State must submit a highway safety plan to receive section 402 grant funds, is considered to be an information collection requirement, as that term is defined by the Office of Management and Budget (OMB) in 5 CFR part 1320. Accordingly, these requirements have been submitted to and approved by OMB, pursuant to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*). These requirements have been approved through 11/30/95; OMB No. 2127–0501. This NPRM would establish no new information collection requirement, as that term is defined by the OMB in 5 CFR part 1320.

List of Subjects in 23 CFR Part 1205

Grant programs, Highway safety.

In consideration of the foregoing, the agencies propose to amend 23 CFR part 1205 as follows:

PART 1205—[AMENDED]

1. The authority citation for part 1205 continues to read as follows:

Authority: 23 U.S.C. 402; delegations of authority at 49 CFR 1.48 and 1.50.

2. In § 1205.3, paragraph (a)(7) is added to read as follows:

§ 1205.3 Identification of National Priority Program Areas.

(a) * * *

(7) Speed enforcement.

* * * * * *

Issued on January 4, 1994.

Rodney E. Slater,

Administrator, Federal Highway Administration.

Howard M. Smolkin,

Executive Director, National Highway Traffic Safety Administration.

[FR Doc. 94–445 Filed 1–13–94; 8:45 am]

BILLING CODE 4910–59–P–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

43 CFR Part 12

RIN 1090–AA41

Administrative and Audit Requirements and Cost Principles for Assistance Programs

AGENCY: Office of the Secretary, Department of the Interior.

ACTION: Proposed rule; reopening of comment period.

SUMMARY: This document reopens and extends the comment period for the notice of proposed rulemaking published on August 12, 1993 (58 FR 42918). This action is being taken because the Department was unable to publish the final rule before the end of Fiscal Year 1993 and the Buy American requirements were again included in the Department of the Interior and Related Agencies Appropriations Act, 1994 and the Energy and Water Development Appropriations Act, 1994. Pursuant to these statutory provisions, the Department proposes to extend the requirements to Fiscal Year 1994, under the same terms as set forth in the August 12, 1993 document.

DATES: Comments must be in writing and must be received by February 14, 1994. Comments should be mailed to Acquisition and Assistance Division, Office of Acquisition and Property Management, Department of the Interior, 1849 C St., NW., Mail Stop 5512, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Dean Titcomb (Chief, Acquisition and Assistance Division), (202) 208–6431.

SUPPLEMENTARY INFORMATION: On October 5, 1992, the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1993 ("the Act") was signed into law. Section 319 of the Act was entitled "Buy American Requirements." The section applied to funds appropriated or transferred pursuant to the Act for the purchase of any equipment or product that may have been authorized to be purchased with financial assistance.

Section 319(b)(2) required that in providing financial assistance under the Act, the Secretary shall provide to each recipient of the assistance a notice describing the Buy American requirement. No other specific Congressional guidance was given regarding the implementation of this requirement.

The Department proposed to revise 43 CFR part 12, by adding subpart E to implement these requirements. Since no specific guidance was provided by Congress, the Department decided to base its implementation upon similar rules in the Federal Acquisition Regulation.

Public Law 103–138, the "Department of the Interior and Related Agencies Appropriations Act, 1994," and Public Law 103–126, the "Energy and Water Development Appropriations Act, 1994," extend the Buy American requirements to awards of financial assistance under the Department's general appropriation for Fiscal Year 1994, as well as to similar awards by the Bureau of Reclamation. Because the statutes change no other portions of the Buy American requirements, and because the Department was unable to issue a final rule prior to the enactment of the two statutes, the Department now proposes to issue a final rule based on the proposed rule published on August 12, 1993. No other significant changes are proposed.

Only one public comment was received in response to the publication of the proposed rule. This action will allow for the receipt of more comments to be considered prior to the publication of the final rule.

Dated: December 22, 1993.

B.R. Cohen,

Assistant Secretary-Policy, Management and Budget.

[FR Doc. 94–919 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–RF–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–318; RM–8364]

Radio Broadcasting Services; Clinton, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Thunderbolt Broadcasting Company, Inc., proposing the allotment of Channel

271C3 to Clinton, Kentucky, as that community's first local aural transmission service. Channel 271C3 can be allotted to Clinton in compliance with the Commission's minimum distance separation requirements with a site restriction of 11.2 kilometers (7.0 miles) northeast to avoid short-spacings to Station WCMT–FM, Channel 269A, Martin, Tennessee, Station KJBR, Channel 270C, Jonesboro, Arkansas, and Station KDEX–FM, Channel 272A, Dexter, Missouri. The coordinates for Channel 271C3 at Clinton are North Latitude 36–44–30 and West Longitude 88–54–30.

DATES: Comments must be filed on or before February 22, 1994, and reply comments on or before March 9, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, Esq., Pepper & Corazzini, 1776 K Street NW., suite 200, Washington, DC 20006 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–318, adopted December 20, 1993, and released December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–956 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–320, RM–8407]

Radio Broadcasting Services; Ellison Bay, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Eden Broadcast Group proposing the allotment of Channel 223A to Ellison Bay, Wisconsin, as that community's first local FM broadcast service. Channel 223A can be allotted to the community without a site restriction. Canadian concurrence will be requested for the allotment of Channel 223A at Ellison Bay at coordinates 45–15–12 North Latitude and 87–04–24 West Longitude.

DATES: Comments must be filed on or before February 22, 1994, and reply comments on or before March 9, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: James M. Kenyon, Eden Broadcast Group, 1161 Hwy 42, Ellison Bay, Wisconsin 54210.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–320, adopted, December 15, 1993, and released, December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–958 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–319; RM–8404]

Radio Broadcasting Services; Omak, WA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Omak Community Broadcasters proposing the allotment of Channel 282C2 to Omak, Washington, as that community's second local FM transmission service. Channel 282C2 can be allotted to Omak in compliance with the Commission's minimum distance separation requirements with a site restriction of 16.5 kilometers (10.2 miles) south to avoid short-spacings to vacant allotment 281B, Trail, British Columbia and Station KAFE, Channel 282C, Bellingham, Washington. The coordinates for Channel 282C2 at Omak are North Latitude 48–15–44 and West Longitude 119–31–58. Since Omak is located within 320 kilometers (200 miles) of the U.S.-Canadian border, Canadian concurrence has been requested.

DATES: Comments must be filed on or before February 22, 1994, and reply comments on or before March 9, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Dawn M. Sciarrino, Haley, Bader & Potts, suite 900, 4350 North Fairfax Drive, Arlington, Virginia 22203–1633 (Counsel for Petitioner).

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–319, adopted December 20, 1993, and released December 30, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 94–957 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

GENERAL SERVICES ADMINISTRATION

48 CFR Parts 519 and 552

[GSAR Notice 5–384]

General Services Administration Acquisition Regulation; Small Business Subcontracting Program

AGENCY: Office of Acquisition Policy, GSA.

ACTION: Proposed rule.

SUMMARY: This notice invites written comments on a proposed revision which expresses GSA's expectation that offerors under GSA procurements, in submitting required subcontracting plans, will do more than merely restate minimum plan requirements described at FAR 52.219–9. GSA also expects subcontracting plans to demonstrate aggressiveness, creativity, and innovation in involving small, small disadvantaged, and women-owned small business concerns in subcontracting opportunities and an understanding of the requirement that these concerns be afforded the maximum practicable opportunity to perform as subcontractors in the offeror's procurements. In negotiated solicitations, the subcontracting plan will be negotiated with price and any technical and management proposal required by the solicitation. In sealed bid solicitations, target goals may be stated by GSA in the solicitation. GSA understands, however, that offerors' subcontracting circumstances may vary greatly. The proposed revision also deletes various sections because they concern nonregulatory material.

DATES: Comments are due in writing on or before March 15, 1994.

ADDRESSES: Comments should be addressed to the GSA Desk Officer, room 3235, NEOB, Washington, DC 20503 and Marjorie Ashby, Office of GSA Acquisition Policy, 18th and F Streets, NW., room 4006, Washington, DC 20405.

FOR FURTHER INFORMATION CONTACT: Paul Linfield, Office of GSA Acquisition Policy, (202) 501–1224.

SUPPLEMENTARY INFORMATION:

A. Executive Order 12866

This rule was not submitted to the Office of Management and Budget (OMB) for review because the rule is not a significant regulatory action as defined in Executive Order 12866, Regulatory Planning and Review, and, therefore, was not required to be submitted.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the GSA certifies that the proposed rule will not have significant impact on a substantial number of small entities, since the revised subcontracting plan requirements in the proposed regulation will not apply to small business concerns. Accordingly, an initial regulatory flexibility analysis has not been prepared.

C. Paperwork Reduction Act

The retitled provision at 552.219–73 contains an information collection requirement that is subject to the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and it has been submitted to OMB for approval under the Act. Comments on the information collection may be submitted to the Office of Information and Regulatory Affairs of OMB, Attention: Desk Officer for GSA, Washington, DC 20503. The title of the information collection is "GSAR 552.219–73 Preparation, Submission, and Negotiation of Subcontracting Plans." The provision requires all offerors, other than small business concerns, responding to a negotiated solicitation to submit a subcontracting plan with their respective offers so that a plan can be negotiated concurrently with other parts of the proposal. The respondents are potential GSA contractors. The contracting officer will use the information to evaluate whether GSA's expectation that subcontracting opportunities exist for small, small disadvantaged and women-owned small business is reasonable under the circumstances; negotiate goals consistent with statutory requirements and acquisition objectives; and expedite the award process. The estimated annual burden for this additional collection is 14,690 hours. This is based on an estimated burden per response of 11.3 hours, a proposed frequency of one response per respondent, and an estimated number of likely respondents of 1,300.

List of Subjects in 48 CFR Parts 519 and 552

Government procurement.

Accordingly, it is proposed that 48 CFR parts 519 and 552 be amended to read as follows:

1. The authority citation for 48 CFR parts 519 and 552 continues to read as follows:

Authority: 40 U.S.C. 486(c).

PART 519—SMALL BUSINESS AND SMALL DISADVANTAGED BUSINESS CONCERNS

519.701, 519.702 and 519.704 [Removed]

2. Sections 519.701, 519.702, and 519.704 are removed.

3. Section 519.705–2 is revised to read as follows:

519.705–2 Determining the need for a subcontracting plan.

The requirement at FAR 19.702(a)(1) for submission of a subcontracting plan by only the apparently successful offeror does not apply to GSA negotiated solicitations when the contract is expected to exceed $500,000 ($1,000,000 for construction). Except for acquisitions of leasehold interests in real property using expedited procedures and those offering minimal subcontracting opportunities, negotiated solicitations shall require submission with the initial offer of a subcontracting plan in the format described in FAR 52.219–9 by all offerors that are not small business concerns. Where price is the basis for award, such as multiple award schedule contracts, the plan will be evaluated and negotiated along with price. In solicitations requiring

technical and management proposals, the subcontracting plan will be included as an evaluation factor or subfactor and negotiated concurrently with the technical, management, and price proposals.

519.705–4, 519.705–6, 519.706, and 519.706–70 [Removed]

4. Section 519.705–4, 519.705–6, 519.706, and 519.706–70 are removed.

5. Section 519.708 is revised to read as follows:

519.708 Solicitation provisions and contract clauses.

(a) The contracting officer shall insert the provision at 552.219–72, Notice to Offerors of Subcontracting Plan Requirements, on the cover page of the solicitation if the contract amount is expected to exceed $500,000 ($1,000,000 for construction) except for:

(1) Acquisitions set aside for small business;

(2) Solicitations for personal services;

(3) Solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico; and

(4) Acquisitions of leasehold interests in real property using expedited procedures.

(b) The contracting officer shall insert the provision at 552.219–73, Preparation, Submission, and Negotiation of Subcontracting Plans, in negotiated solicitations if the contract amount is expected to exceed $500,000 ($1,000,000 for construction) except for:

(1) Acquisitions set aside for small business;

(2) Solicitations for personal services;

(3) Solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico;

(4) Acquisitions of leasehold interests in real property using expedited procedures; and

(5) Solicitations where, in the judgment of the contracting officer, subcontracting opportunities are minimal.

(c) The contracting officer shall insert the provision at 552.219–74, Goals for Subcontracting Plan, in sealed bid solicitations if the contract amount is expected to exceed $500,000 ($1,000,000 for construction) except for:

(1) Acquisitions set aside for small business;

(2) Solicitations for personal services;

(3) Solicitations for work to be performed outside any state, territory, or possession of the United States, the District of Columbia, and the Commonwealth of Puerto Rico. The basic provision should be used when the contracting officer is able to realistically establish target goals. Alternate I should be used when the contracting officer cannot establish realistic target goals.

519.770, 519.770–1, and 519.770–3 [Removed]

6. Sections 519.770, 519.770–1, and 519.770–3 are removed.

7. Section 552.219–72 is revised to read as follows:

552.219–72 Notice to offerors of subcontracting plan requirements.

As prescribed in 519.708(a), insert the following provision:

Notice to Offerors of Subcontracting Plan Requirements (XXX 1993)

The General Services Administration (GSA) is committed to assuring that maximum practicable opportunity is provided to small, small disadvantaged, and women-owned small business concerns to participate in the performance of this contract consistent with its efficient performance. GSA expects any subcontracting plan submitted pursuant to FAR 52.219–9 to reflect this commitment. Consequently, an offeror, other than a small business concern, before being awarded a contract exceeding $500,000 ($1,000,000 for construction) will be required to demonstrate that its subcontracting plan represents an aggressive program for involving small, small disadvantaged, and women-owned small business concerns as subcontractors in the performance of this contract.
(End of Provision)

8. Section 552.219–73 is revised to read as follows:

552.219–73 Preparation, submission, and negotiation of subcontracting plans.

As prescribed in 519.708(b), insert the following provision:

Preparation, Submission, and Negotiation of Subcontracting Plans (XXX 1993)

(a) An offeror, other than a small business concern, submitting an offer that exceeds $500,000 ($1,000,000 for construction) shall submit a subcontracting plan with its initial offer. The subcontracting plan will be negotiated concurrently with price and any required technical and management proposals, unless the offeror submits a previously-approved commercial products plan. Maximum practicable utilization of small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. It is the General Services Administration's (GSA's) expectation that an offeror's subcontracting plan will reflect a commitment to assuring that small, small disadvantaged, and women-owned small business concerns are provided the maximum practicable opportunity, consistent with efficient contract performance, to participate as subcontractors in the performance of the resulting contract.

(b) GSA believes that this potential contract provides significant opportunities for the use of small, small disadvantaged, and women-owned small business concerns as subcontractors. Consequently, in addressing the eleven elements described at FAR 52.219–9(d), the offeror shall demonstrate that its subcontracting plan represents an aggressive program for involving small, small disadvantaged, and women-owned small business concerns in performing the contract. The subcontracting plan shall include a description of the offeror's subcontracting strategies used in any previous contracts, significant achievements, and how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its plan that it understands the small business subcontracting program's objectives, GSA's expectations, and actions necessary to meet these goals and expectations.

(c) In determining the acceptability of any subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with the respect to the program and has included all the information, goals, and assurances required by FAR 52.219–9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, small disadvantaged, and women-owned small business concerns; and

(4) Review, when applicable, the offeror's description of its strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, small disadvantaged, and women-owned small business concerns.

(d) Failure to submit to subcontracting plan and/or correct deficiencies in the plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.
(End of Provision)

9. Section 552.219–74 is added to read as follows:

552.219–74 Goals for subcontracting plan.

As prescribed in 519.708(c), insert the following provision:

Goals for Subcontracting Plan (XXX 1993)

(a) Maximum practicable utilization of small, small disadvantaged, and women-owned small business concerns as subcontractors is a matter of national interest with both social and economic benefits. The General Services Administration's (GSA's) commitment to ensuring that maximum practicable opportunity is provided to small, small disadvantaged, and women-owned small business concerns to participate as subcontractors in the performance of this contract, consistent with its efficient performance, must be reflected in the offeror's subcontracting plan submitted pursuant to FAR 52.219–9. In addressing the eleven elements described at FAR 52.219–9(d), the offeror shall demonstrate that its subcontracting plan represents an aggressive program for involving small, small disadvantaged, and women-owned small business concerns in performing this contract. The subcontracting plan shall include a description of the offeror's subcontracting strategies used in previous contracts, significant achievements, and how this plan will build upon those earlier achievements. Additionally, the offeror shall demonstrate through its's plan that it understands the small business subcontracting program's objectives, GSA's expectations, and actions necessary to meet these goals and expectations.

(b) GSA believes that this contract provides significant opportunities for the use of small, small disadvantaged, and women-owned small business concerns as subcontractors. Accordingly, it is anticipated that an acceptable subcontracting plan will contain at least the following goals:

Small Business: ____ percent
Small Disadvantaged Business: ____ percent
Women-Owned Small Business: ____ percent

Note: Target goals are expressed as a percentage of planned subcontracting dollars.

(c) In determining the acceptability of a subcontracting plan, the Contracting Officer will—

(1) Review the plan to verify that the offeror has demonstrated an understanding of the small business subcontracting program's objectives and GSA's expectations with respect to the program and has included all the information, goals, and assurances required by FAR 52.219–9;

(2) Consider previous goals and achievements of contractors in the same industry;

(3) Consider information and potential sources obtained from agencies administering national and local preference programs and other advocacy groups in evaluating whether the goals stated in the plan adequately reflect the anticipated potential for subcontracting to small, small disadvantaged, and women-owned small business concerns; and

(4) Review, when applicable, the offeror's description of strategies, historical performance and significant achievements in placing subcontracts for the same or similar products or services with small, small disadvantaged, and women-owned small business concerns.

(d) Failure to submit an acceptable subcontracting plan and/or correct deficiencies in the plan within the time specified by the Contracting Officer shall make the offeror ineligible for award.
(End of Provision)

Alternate I (XXX 1993)

The Contracting Officer, as prescribed in 519.708(c) shall delete paragraph (b) of the basic provision and redesignate paragraphs (c) and (d) as paragraphs (b) and (c).

Dated: December 21, 1993.

Richard H. Hopf, III,

Associate Administrator for Acquisition Policy.

[FR Doc. 94–491 Filed 1–13–94; 8:45 am]

BILLING CODE 6820–61–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. MC–180 (Sub-No. 2)]

Rulemaking—Payment of Discounts by Motor Carriers of Property to the Nonpayer of Freight Charges

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Proposed Rule; Discontinue proceeding.

SUMMARY: By a Notice of Proposed Rulemaking (NPR) served June 4, 1993, and published at 58 FR 32340, June 9, 1993, the Commission instituted this proceeding to determine whether off-bill discounting where it does or may result in a misrepresentation of shipping charges should be found to be an unreasonable practice or otherwise unlawful. However, the "Negotiated Rates Act of 1993" (Pub. L. 103–180), since has been enacted and amends subchapter IV of chapter 107 of title 49, United States Code, by adding section 10767. Section 10767 requires that the Commission establish regulations to prohibit, except for certain services, motor common and contract carriers of property from providing a reduction in a tariff rate or contract rate to a person who is a nonpayer of freight charges. The Commission must issue these regulations by April 2, 1994. Because section 10767 supersedes the NPR, the Commission is discontinuing this proceeding.

FOR FURTHER INFORMATION CONTACT: Charles E. Langyher, (202) 927–5160 or Ronald A. Hall, (202) 927–5595; TDD for hearing-impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: The Commission's rules implementing section 10767 are published in Ex Parte No. MC–180 (Sub-No. 3), *Regulations Implementing Section 7 of the "Negotiated Rates Act of 1993"*. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing-impaired is available through TDD service, (202) 927–5721.]

This decision will not affect significantly the quality of the human environment or the conservation of energy resources.

Decided: December 30, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1011 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 638

[I.D. 010494A]

Coral and Coral Reefs of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of intent to prepare a supplemental environmental impact statement (SEIS) and request for comments.

SUMMARY: NMFS announces the intention of the Gulf of Mexico and South Atlantic Fishery Management Councils (Councils) to prepare an SEIS for proposed Amendment 2 to the Fishery Management Plan for Coral and Coral Reefs of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Councils and approved and implemented by the Secretary of Commerce under provisions of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The purpose of Amendment 2 is to manage the harvest of "live rock," living marine organisms attached to a hard substrate, such as dead coral or rock, and used primarily in the marine aquarium trade. Management measures under consideration include a prohibition on, or phase-out of, harvest of live rock with possible provisions for aquaculture; establishment of an annual quota or limited access management program; and implementation of a permitting system for wild harvest or aquaculture.

The Councils intend to conduct a continuing public process to determine the scope of issues to be addressed and to identify the significant issues related to live rock management. The purpose of this notice is to inform the public of this ongoing process and of the opportunity to participate by submitting written comments.

DATES: Written comments on the scope of the SEIS must be submitted by February 14, 1994.

ADDRESSES: Scoping comments and requests for additional information should be sent to Georgia Cranmore, Fishery Administrator, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, FL 33702. Copies of the public hearing document for this amendment may be obtained by writing to the Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL 33609–2486.

FOR FURTHER INFORMATION CONTACT: Georgia Cranmore, 813–893–3161.

SUPPLEMENTARY INFORMATION: In 1989, the Florida Department of Natural Resources (FDNR) (now Department of Environmental Protection) determined that live rock harvest (i.e., the collection of rocks with marine organisms attached for use in home aquariums) was detrimental to the Florida Reef Tract and other hard bottom habitat areas. The Florida Marine Fisheries Commission (FMFC) noted that the only current net production of the carbonate substrate underlying live rock occurs on living coral reefs and, in Florida, these areas are either in equilibrium or eroding. FDNR personnel testified that more than 90 percent of the live rock examined at the request of enforcement agents contained visible colonies of prohibited corals, such as stony corals and sea fans. The FMFC concluded that live rock removal (1) can violate State and Federal laws that prohibit taking of corals, (2) reduces the surface area and topographic complexity of Florida's coral reefs and other live bottom areas, and (3) removes entire micro-communities along with targeted aquarium species. As a result of these consideration, Florida prohibited live rock landings from State waters in May 1989. As a result of this rulemaking, live rock harvesting efforts shifted to the exclusive economic zone (EEZ) off Florida.

The FMFC has noted that in 1991 approximately 35 individuals reported combined landings of about 300 tons of live rock from EEZ waters adjacent to the Florida Reef Tract, Florida's east coast reefs, and the Gulf of Mexico hard bottom areas. In 1992, reported Florida landings from the EEZ totalled about 400 tons.

Although the Councils have discussed the live rock issue, particularly pertaining to EEZ waters over recent years, they took no regulatory action since the FMFC had decided to initiate rulemaking regarding live rock landings from the EEZ off Florida. Specifically, the Councils deferred action since Florida's planned phase-out of live rock landings appeared to address what seemed to be a Florida area management issue.

In June 1992, the Florida Governor and Cabinet approved the FMFC rule to phase-out live rock landings in Florida from the EEZ over a 3-year period ending on June 30, 1995. The phase-out was designed to allow development of live rock aquaculture which would be exempt from the eventual total harvest ban. The phase-out was to be accomplished by a 25 percent annual reduction in allowable landings (based on the 1991 reported landings) accompanied by a 500 pound daily vessel limit.

On March 31, 1993, a U.S. District Court Judge issued a preliminary injunction to prevent enforcement of Florida's quota and vessel landing limits relating to possession or landing of live rock taken in the EEZ. Florida live rock fishermen argued that the Magnuson Act superseded State landing laws and the Councils had made "an affirmative and conscious decision" not to prohibit the taking of live rock in the EEZ.

Because of the District Court action, the Councils are now concerned that removal of live rock from the EEZ is currently unregulated. Also, there is a growing interest in harvest of live rock from North Carolina to Alabama. In April 1993, the South Atlantic Council approved a motion to include live rock in the FMP and reactivate the Coral Advisory Panel. In May 1993, the Gulf Council, on being advised of recent live rock landings in Alabama, and at the request of that State and Florida, initiated development of options for live rock management. In June 1993, the South Atlantic Council held a public scoping meeting in Duck Key, Florida, to solicit input from the harvesters and the general public on the management of live rock. In November 1993, the Councils prepared a draft Amendment 2 to the FMP to address live rock issues, and established a schedule for further public hearings. See **ADDRESSES** to obtain a copy of this document.

The Councils are considering the following management measures for Amendment 2 (with certain alternatives indicated).

Proposed Management Measures and Alternatives

A. Definitions for Management Unit

(1) Define live rock and add it to the management unit.

(2) Redefine allowable octocorals to eliminate taking of live rock under existing provisions of the FMP.

B. Management of the Live Rock Harvest

(1) No action.

(2) Harvest limits: a. establish an annual harvest quota for live rock; b. limit access and provide effort limits.

(3) Harvest prohibition: a. prohibit live rock harvest; b. phase-out live rock harvest; c. provide for aquaculture of otherwise prohibited live rock.

(4) Provide for different management in the jurisdictional areas of the two councils.

(5) Permits: a. provide for a Federal permit for wild live rock harvest and possession; b. provide for a Federal permit for possession and harvest of live rock from aquaculture; and c. provide for a Federal permit to take prohibited live rock for scientific and educational purposes.

The South Atlantic Council's Habitat and Environmental Protection Committee prefers a prohibition on harvest and possession of live rock on implementation of Amendment 2, possibly as early as 1994. The Gulf Council prefers to allow three years of continued harvest after implementation of Amendment 2 to allow additional time for harvesters to convert to aquaculture; subsequently, harvest and possession of live rock would be limited to persons with aquaculture permits.

Timetable for SEIS Preparation and Decisionmaking Schedule

The South Atlantic Council is holding public hearings on live rock management on January 5, 1994, in Savannah, Georgia, on January 6 in Duck Key, Florida, and on January 13 in Wrightsville Beach, North Carolina. The Gulf Council will hold hearings on January 11, in Pensacola, Florida, and on January 19, in Clearwater Beach, Florida. Specific times and locations are available from the Gulf Council listed above. The Gulf Council is scheduled to take action on the draft amendment and a draft SEIS at its January 19 meeting in Clearwater Beach, Florida. The South Atlantic Council is scheduled to take action on these draft documents at its February 7–11 meeting in St. Augustine, Florida.

The draft SEIS is expected to be filed with the Environmental Protection agency in February or March 1994 for public review and comment. Following a 45-day public comment period, a final SEIS will be prepared in support of the final Amendment 2 to be submitted by the Councils to the Secretary of Commerce for review and approval (expected by 1994).

Authority: 16 U.S.C. 1801 *et seq.*

Dated: January 10, 1994.

Richard H. Schaefer,

Director of Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–946 Filed 1–13–94; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 59, No. 10

Friday, January 14, 1994

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 94–001N]

National Advisory Committee on Microbiological Criteria for Foods; Meeting

Notice is hereby given that a meeting of the National Advisory Committee on Microbiological Criteria for Foods will be held January 31 through February 4, 1994: Monday, 8:30 a.m. to 5 p.m.; Tuesday, 8:30 a.m. to 5 p.m.; Wednesday, 8:30 a.m. to 5 p.m.; Thursday; 8:30 a.m. to noon; and Friday 8:30 a.m. to noon, at the Residence Inn Orlando, 7975 Canada Avenue, Orlando, Florida 32819, telephone (407) 345–0117.

The Committee provides advice and recommendations to the Secretaries of Agriculture and Health and Human Services concerning the development of microbiological criteria by which the safety and wholesomeness of food can be assessed, including criteria pertaining to microorganisms that indicate whether food has been processed using good manufacturing processes. The meeting will include discussion of the following topics as time permits.

Monday, January 31
- 8:30 a.m.–12 p.m.—Meat and Poultry Working Group
- 1:00 p.m.–5 p.m.—Meat and Poultry Working Group

Tuesday, February 1
- 8:30 a.m.–12 p.m.—Risk Analysis Working Group
- 1:00 p.m.–5 p.m.—Risk Analysis Working Group

Wednesday, February 2
- 8:30 a.m.–5 p.m.—Plenary Session

Thursday, February 3
- 8:30 a.m.–12 p.m.—Seafood Working Group

Friday, February 4
- 8:30 a.m.–12 p.m.—Plenary Session

The Committee meeting is open to the public on a space available basis. Interested persons may file comments prior to and following the meeting. Comments should be addressed to: Mr. Craig Fedchock, Advisory Committee Specialist, U.S. Department of Agriculture, Food Safety and Inspection Service, room 2151, South Agriculture Building, 14th and Independence Avenue, SW., Washington, DC 20250. Background materials are available for inspection by contacting Mr. Fedchock on (202) 720–9150.

William J. Hudnall,

Associate Administrator.

[FR Doc. 94–1066 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–DM

Forest Service

East Shore Project, Lake Tahoe Basin Management Unit (LTBMU), Washoe County, Douglas County, and Carson City Rural Area, NV

AGENCY: Forest Service, USDA.

ACTION: Notice, intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement on a proposal to harvest 30–40 million board feet of both merchantable and unmerchantable wood products from approximately 8,000 acres of National Forest System lands on the east side of Lake Tahoe in Nevada. Dead and dying trees would be cut, and a green tree thinning component is also proposed to improve forest health. Jeffrey pine beetle suppression comprises part of the project. The proposed action also uses prescribed fire and analyzes post sale treatments, including watershed improvement projects.

DATES: Agencies and the public are invited to participate at any stage of the process; however, the Forest Supervisor requests that individuals concerned with the scope of the analysis comment by February 14, 1994.

ADDRESSES: Written comments concerning the DEIS should be sent to the responsible official, Forest Supervisor, LTBMU, 870 Emerald Bay Road, Suite 1, South Lake Tahoe, California, 96150.

FOR FURTHER INFORMATION CONTACT: Direct questions concerning the proposed action and alternatives to Scott Parsons, Interdisciplinary Team Leader, (916) 573–2600 or the above address.

SUPPLEMENTARY INFORMATION: The proposed action harvests dead, dying, and diseased trees, many of which are beetle-infested, over approximately 8,000 acres of an 11,000-acre study area. Green trees would be thinned from overstocked stands, over about 2,000 acres, some of which overlap the salvage acreage, and some of which is separate. Some of the 30 to 40 million board feet removed will be useful lumber; much of the timber removed will have no commercial value.

Trees would be removed from gentle slopes by tractor skidding systems. Trees would be flown from steeper terrain by helicopter. No new permanent roads would be constructed; however, construction of additional temporary access roads and landing sites would be required, as well as reconstruction and restoration of existing historic roads.

This proposed action includes treatments that will follow removal of the trees. This includes (but is not limited to) site preparation, planting, treatment of slash generated by the project, obliteration of temporary and unneeded roads, and restoration of landings. Monitoring how effectively the project prevents future beetle attacks is part of "post sale" work. The use of prescribed fire will be analyzed, both as a post-harvest treatment and as a long-term management tool. This alternative treats the most acres with prescribed fire.

Heritage (historic archaeological) resources are dispersed throughout the study area. Most are the remains of 19th century logging, and not all of them will be protected. In addition to mitigation negotiated with the Advisory Council of Historic Preservation, a key component of the analysis is to seek and address enhancement opportunities for representative heritage properties.

Watershed restoration projects, road closures, and mistletoe reduction opportunities may also be included in the proposed action if they are, in the language of the National Environmental Policy Act (NEPA), "connected", "cumulative" in their effects with the removal of dead trees, or are "ripe for decision".

This action is proposed because of current forest mortality stemming from

historical activities. Beginning in the 1850's many of the 200–500 year old pine trees around Lake Tahoe were harvested in support of silver mining activities of the Comstock Lode. Earlier, the forest and consisted of diverse species that resisted drought and insect attacks. After logging slowed in the 1890's, the area began to revegetate naturally. But a new and different forest grew to replace the old. In the absence of frequently recurring fires, dense thickets of moisture-loving fir trees replaced much of the open pine forest that had been cut. The drought that began in 1987 weakened and killed those fir trees that had sprouted after the massive Comstock cutting.

Forty years of fire suppression has dramatically increased the density of trees and the amount of dead wood, standing or on the ground. Members of the public have expressed concern over the large numbers of dead trees the amount of forest fuels now present. Many requests have been made for projects to remove timber to reduce safety hazards, fire danger, and to improve visual quality. Such projects would reduce the "fuel loading" and could decrease the risk and severity of a catastrophic fire. Additionally, thinning of overstocked stands can be an effective way to prevent future catastrophic insect and disease outbreaks.

The environmental analysis provides the decisionmaker—the LTBMU Forest Supervisor with an evaluation of what will happen if nothing is done, and what may result from the proposed action, and other alternatives Such disclosure will allow a reasoned choice between management options. If an alternative other than No Action is preferable, then the work has to proceed quickly. If actively infested trees are removed before the onset of summer when the beetles fly, then fewer healthy trees may be attacked. On small scale, high value areas, such as the East Shore beaches, beetle suppression work may reduce the number of large Jeffrey pines that die. Further, trees that are harvested quickly will have more commercial value. The high cost of a predominantly helicopter operation could deter potential bidders as the soundness of the trees declines. Consequently, project implementation is expected to begin during the summer or fall of 1994.

Over sixty agencies, organizations, and individuals were notified of this proposed project through the LTBMU NEPA Status Report. A public meeting was held on October 5, 1993 as part of the scoping process. Some people also provided written comments. Tahoe Regional Planning Agency staff was briefed about the project on November 10, 1993. The Nevada State Historic Preservation Officer has also been briefed.

Originally conceived and publicly scoped as a project whose environmental analysis would be documented in an environmental assessment, it was determined in late December 1993 that its potential environmental effects warrant an Environmental Impact Statement (EIS). Project activities will adversely affect heritage resources in a National Register-eligible historic district.

While the type of NEPA documentation has changed since the project's conception, the project itself has not changed. Consequently, only minimal additional public scoping will occur. A public and agency briefing on the project, to be announced in the Tahoe Daily Tribune and through letters sent to those parties who have expressed interest in the East Shore Project, will be held on January 26, 1994, at the El Dorado County Library at 1000 Rufus Allen Boulevard in South Lake Tahoe. Participants in the planning process will be sent copies of the draft EIS for the public comment period. Availability of the draft EIS will also be noticed in the **Federal Register**, and the Tahoe Daily Tribune, the LTBMU's newspaper of record. Written comments and suggestions received by January 24, 1994 will be addressed in the draft EIS.

The "no action" alternative proposes a continuation of the current types of management activities currently conducted in the study areas, without imposing impacts from logging to heritage resources. Trees which pose hazards to life and property will be taken down. While the long-term management of the Genoa Peak road system is primarily for off-highway vehicle use, road reconstruction and maintenance at a logging truck standard along a portion of the road will be required to accommodate log haul for timber sales on the adjacent Toiyabe National Forest, as analyzed in the Carson District's Spooner Salvage Sale environmental assessment. Short-term road closures will prevent public recreation use of parts of the area during timber sale operations. Obliteration of nonhistoric nonsystem roads, maintenance of existing system roads and trails, watershed improvement projects, and study and management of the proposed National Register District will continue as part of ongoing programs.

The "salvage only" alternative harvests dead, dying, and diseased trees, many of which are beetle-infested, over approximately 6,600 acres. No green tree thinning will occur. Removal of about 30 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except when modified as described: (1) While treatment of activity fuels will occur, only limited use of prescribed fire as a management tool is proposed, in selected areas, such as for use as a fuelbreak near urban areas; (2) site preparation and planting will occur on high value areas only (such as at the beaches and along roadway corridors) and natural regeneration only will occur in general forest zones; and (3) only temporary roads and landings used as part of the project will be obliterated.

The fourth alternative emphasizes helicopter harvesting in areas with significant heritage resources. It harvests dead, dying, and diseased trees, many of which are beetle-infested, over approximately 6,750 acres—with approximately 550 acres less tractor logging than alternatives two or three. Green trees would be thinned from overstocked stands only within those areas entered for salvage activities. Removal of 30 to 35 MMBF of both merchantable and unmerchantable material is anticipated. This alternative includes all components of the proposed action, except when modified as described: (1) While treatment of activity fuels will occur, only limited use of prescribed fire as a management tool is proposed, in selected areas, such as for use as a fuelbreak near urban areas.

Implementation of this project requires a permit from the Tahoe Regional Planning Agency (TRPA). It is in a classification of actions requiring TRPA Governing Board review and approval. Additionally, encroachment permits from the Nevada Department of Transportation are required for project implementation. Consultation with the Nevada State Historic Preservation Office (SHPO) and the Advisory Council on Historic Preservation (ACHP) in accordance with the National Historic Preservation Act of 1966 (16 U.S.C. 470 *et seq.*) is required. Concurrence from the U.S. Fish and Wildlife Service is needed if the Forest Service Biological Assessment results in a "may affect" determination.

The decision on this analysis, pursuant to NEPA, is made by Lake Tahoe Basin Management Unit Forest Supervisor, Robert Harris, as the Forest Service is the lead agency under NEPA. There is no other joint lead agency and no cooperating agencies under NEPA.

The draft EIS is anticipated to be filed with the Environmental Protection Agency and made available to the

public for comment in February of 1994. The final EIS and its Record of Decision is expected in May of 1994. The decision will be appealable under Forest Service regulations found at 36 CFR part 215.

The comment period for the draft EIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** The public will also be informed of the availability of the DEIS by news releases issued to the media in the Lake Tahoe region. It is very important that those interested in this proposed action participate at that time. To be the most helpful, comments on the draft EIS should be as specific as possible and may address the adequacy of the statement or the merits of the alternatives discussed (see the Council on Environmental Quality Regulations for implementing the procedural provisions of NEPA at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of draft EIS' must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC,* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *City of Angoon* v. *Hodel,* (9th Circuit, 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available for the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: January 4, 1994.

John R. Swanson,

Acting Forest Supervisor.

[FR Doc. 94–917 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–11–M

Restoration Plan for the Exxon Valdez Oil Spill Area, Prince William Sound, Gulf of Alaska, and Alaska Peninsula, AK

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an Environmental Impact Statement.

SUMMARY: On April 10, 1992 (57 FR 12473–12475) on behalf of the Exxon Valdez Trustee Council, the Department of Agriculture, Forest Service published a Notice of Intent to prepare a programmatic Environmental Impact Statement (EIS) for the development of a Restoration Plan following the March 24, 1989, Exxon Valdez oil spill. This notice revises the dates for completion of the Draft and Final EIS and provides more information on the proposed action. The responsible official for the preparation of the EIS is the Regional Forester, Michael A. Barton. The Restoration Plan will establish management direction and guide all natural resource restoration activities covered by the civil settlement to the Exxon Valdez oil spill.

DATES: Initial comments concerning the proposed development of a Restoration Plan should be received by February 7, 1994.

ADDRESSES: Send written comments to or for further information contact Rod Kuhn, EIS Project Manager, 645 G Street, Anchorage, Alaska, 99501; phone (907) 278–8012.

SUPPLEMENTARY INFORMATION:

A. Introduction

On October 8, 1991, a federal court approved settlement between the State and Federal governments and Exxon under which Exxon will pay $1 billion in criminal restitution and civil damages to the governments. The State and Federal Trustees will receive $900 million in civil damages from Exxon over the 10 years. The funds are to be used to restore to their pre-spill condition the natural resources and the services they provide, that were injured by the Exxon Valdez oil spill. This includes the restoration of any natural resource injured, lost or destroyed and the services provided by that resource or which replaces or substitutes for the injured, lost or destroyed resource and affected services. Restoration includes all phases of injury assessment, restoration, replacement, and enhancement of natural resources, and acquisition of equivalent resources and services.

All decisions about restoration and uses of restoration funds are determined by six natural resources Trustees, three Federal and three State. The three Federal Trustees are: The Administrator for the National Oceanic and Atmospheric Administration, U.S. Department of Commerce, and the Secretaries of the Department of Agriculture and of the Interior. The three State Trustees are: The Commissioners of Fish and Game and Environmental Conservation, and the Attorney General. A Trustee Council, located in Alaska, which is made up of designees of the Federal Trustees and the three State Trustees, is responsible for decisions relating to the assessment of injuries, uses of the restoration funds, and all restoration activities including the preparation of a Restoration Plan.

On April 10, 1992 (57 FR 12473–12475) on behalf of the Exxon Valdez Trustee Council, the Forest Service published a Notice of Intent to prepare an EIS on the Restoration Plan. Since then the Trustee Council has developed a draft Restoration Plan which has become the proposed action for the analysis to be conducted in the EIS.

B. Draft Restoration Plan

The proposed action (Draft Restoration Plan) consists of nine policy statements, a discussion of categories of restoration actions and broad objectives for injured resources. The policies for identifying and conducting restoration actions are:

1. The restoration program will take an ecosystem approach.

2. Restoration activities may be considered for any injured resource or service.

3. Most restoration activities will occur within the spill area. However, restoration activities outside the spill are, but within Alaska, may be considered when the most effective restoration actions for an injured migratory population are in a part of its range outside the spill area or when the information acquired from research and monitoring activities outside the spill area will be important for restoration or understanding injuries within the spill area.

4. Restoration activities will emphasize resources and services that have not recovered. Resources and service will be enhanced, as appropriate, to promote restoration. Restoration projects should not adversely affect the ecosystem.

5. Projects designed to restore or enhance an injured service must have a sufficient relationship to an injured resource; must benefit the same user group that was injured; and, should be compatible with the character and public uses of the area.

6. Competitive proposals for restoration projects will be encouraged.

7. Restoration projects will be subject to independent scientific review before Trustee Council approval.

8. Meaningful public participation in restoration decisions will be actively solicited.

9. Government agencies will be funded only for restoration work that they do not normally conduct.

Four types of restoration actions are identified and discussed in the Draft Restoration Plan: General restoration, habitat protection and acquisition, monitoring and research, and public information and administration.

Alternatives to the proposed action will place different emphases on each of these categories of restoration actions.

General Restoration consists of activities that fall within manipulation of the environment, management of human use for reduction of marine pollution. Decisions about conducting general restoration projects would look at the following factors: Extent of natural recovery, the value of an injured resource to the ecosystem and to the public, the duration of benefits, the technical feasibility of the project, the likelihood of success, the relationship of costs to expected benefits, potential for harmful side effects, benefits to more than one resource, effects on health and human safety, consistency with applicable laws, and policies, and duplication with other actions.

Habitat Protection and Acquisition is a category that includes purchase of private land or interests in land such as conservation easements, mineral rights, or timber rights. It also includes recommendations for changing public agency management practices. Specific policies that relate to habitat protection and acquisition are proposed. These policies deal with ranking potential lands to determine potential benefits, the need for a willing seller, purchasing at fair market value, post acquisition management of the acquired lands and involving the public in the prioritization process.

Monitoring and Research consists of recovery monitoring, restoration monitoring and ecological monitoring and research. Specific policies governing the selecting and performance of monitoring activities are discussed in the Draft Restoration Plan.

Public Information and Administration is the last category of restoration actions. It consists of all necessary administrative actions that are not attributable to a particular project. The Draft Restoration Plan goal for this category is for administrative costs to average no more than 5 percent of overall restoration expenditures for the remainder of the settlement period.

General restoration objectives have been developed for resources that are recovering, resources not recovering, resources where the recovery is unknown, resources such as archaeological resources and wilderness, and services. These broad objectives will guide in the development of annual work plans.

Further information regarding the proposed action and possible restoration alternatives is included in the Exxon Valdez Oil Spill Restoration, Volume I: Restoration Framework, April, 1992; the Draft Exxon Valdez Oil Spill Restoration Plan, Summary of Alternatives for Public Comment, April 1993; the Supplement to Draft Exxon Valdez Oil Spill Restoration Plan, Summary of Alternatives for Public Comment, June 1993; the Summary of Public Comment on Alternatives of the Draft Exxon Valdez Oil Spill Restoration Plan, September 1993; and the Draft Exxon Valdez Oil Spill Restoration Plan, November 1993. Copies of these documents may be required from the Oil Spill Public Information Office, 645 G. Street, Anchorage, Alaska, 99501. Phone number 907 278–8008 or within Alaska 800 478–7745, outside Alaska 800 283–7745.

C. Scoping and Issue Development

With publication of this Revised Notice of Intent, the Trustees are continuing a process intended to identify those issues that need to be addressed in preparing the Draft EIS (DEIS). Under the National Environmental Policy Act, this process is called "scoping." Two rounds of public meetings have been held within the spill area soliciting comments on development of the Draft Restoration Plan. The results of the scoping to date have guided the preparation of the Draft Restoration Plan. During the scoping process for development of the proposed action the Trustees obtained information, comments, and assistance from Federal, State and local agencies, and other individuals or organizations interested in, or affected by restoration. Several of the documents referenced above provide summaries of public comments received to date.

Further scoping is being conducted to identify the issues to be addressed in the EIS and the range of alternatives that will need to be developed and analyzed. In addition to publishing this Revised Notice of Intent, interested and affected people within the spill area will be contacted through the news media. The Public Advisory Group will also be contacted soliciting comments.

D. Expected Time for Completion

A DEIS should be filed with EPA by mid June 1994 and the final EIS should be filed in late October 1994. The Trustees will consider the comments, responses, disclosure of environmental consequences, and applicable laws, regulations and policies in making decisions regarding restoration.

E. Comments

The comment period on the DEIS will be 45 days from the date the Environmental Protection Agency's notice of availability appears in the **Federal Register.** It is very important that those interested in this proposed action participate at that time. To be most helpful, comments on the DEIS statement should be as specific as possible, and may address the adequacy of the statement or the merits of the alternatives discussed. (See the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3).

In addition, Federal court decisions have established that reviewers of DEIS statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and concerns. *Vermont Yankee Nuclear Power Corp.* v. *NRDC.* 435 U.S. 519, 553 (1978). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final EIS. *Wisconsin Heritage, Inc.* v. *Harris,* 490 F. Supp. 1334, 1138 (E.D. Wis. 1980). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final.

Dated: January 6, 1994.

Michael A. Barton,

Regional Forester.

[FR Doc. 94–959 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–11–M

Compartment 28 (Zulu Smoot) Timber Sales; Kootenai National Forest; Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the Zulu and Can Creek and South Fork of the Yaak River drainages located about 18 air miles northeast of Troy, Montana. This EIS will tier to the Kootenai National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to harvest dead, dying or high risk (to mountain pine beetle infestation) stands of lodgepole pine to reduce potential excessive future natural fuel loadings, increase the health and productivity of stands that are currently declining in vigor and

provide a more balanced distribution of timber age classes in the Project Area.

DATES: Written comments and suggestions should be received no later than February 28, 1994.

ADDRESSES: Send written comments to John R. Righter, District Ranger, Three Rivers Ranger District, 1437 North Highway 2, Troy, Montana, 59935.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Supervisory Forester, (406) 295–4693.

SUPPLEMENTARY INFORMATION: The timber management activities under consideration would occur within a 13,234 acre analysis area which includes 8,000 acres of Inventoried Roadless Area X166, Pink Mountain (6,400 acres), and portion of 684, Roderick (approximately 1,600 acres).

The proposed action would harvest about 7.2 million board feet from 15 harvest units totalling 706 acres. Approximately six miles of new specified road would be constructed and 2 miles of existing road would be reconstructed. Approximately 1.5 miles of temporary road would be required and approximately .6 miles of constructed skid trail. With this proposed action, a portion of the roadless areas may be affected.

There are a variety of purposes for timber harvest and reforestation in the South Fork Yaak area; the primary purposes are: (1) To improve timber productivity by replacing stands of dead dying or high risk lodgepole pine with younger, more vigorously growing trees; (2) to salvage the dead and lodgepole pine; (3) to reduce potentially future catastrophic wildfire conditions by removal of natural dead or dying fuels; and (4) to increase the overall health and vigor of other stands being considered for management. Additionally, the purpose of road construction and reconstruction is to facilitate access to the timber stands to be harvested.

The project area consists of approximately 13,234 acres located in Sections 2–11, 4–22, 28–30, T34N, R31W; Sections 1, 12, 13, 24, 25, T34N, R32W; Sections 29–34, T35N, R31W; and Section 36, T35N, R32W; P.M.M., Lincoln County, Montana.

The decision to be made is what, if anything, should be done in the South Fork Yaak River Project Area to: (a) Increase timber health and productivity and contribute to the Forest's sustained yield of timber products, (b) reduce natural fuel loadings of dead and dying lodgepole pine as a result of past and potential mountain pine beetle infestations, (c) dispose of slash and reforest harvested lands, (d) develop and manage the road system to facilitate removal of timber, reforest stands and maintain or improve wildlife security and (e) create a situation of better age class distributions of stands within project area.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed timber harvest and reforestation would occur within Management Areas 12, 15, 17 and 14. Timber harvest would occur only on suitable timber land. Road construction and reconstruction would occur in these four management areas. Below is a brief description of the applicable management direction.

Management Area 12—These are areas that contain productive timber lands which are suitable for timber harvest, provided that big game summer habitat objectives are met.

Management Area 14—These are areas that contain productive timber lands which are suitable for timber harvest, provided that grizzly bear habitat objectives are met.

Management Area 15—These are areas that contain productive timber lands which are suitable for timber harvest.

Management Area 17—These are areas that contain productive timber lands which are suitable for timber harvest, viewing objectives are met.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest Lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7) which has already occurred in December of 1991. In addition, the public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time.

Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to be analyzed in depth.
3. Eliminate minor issues or those which have been covered by a relevant previous environmental analysis, such as the Kootenai Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary scoping, including public and agency participation, was initiated in December, 1991, and has continued through this year. Until recently, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were envisioned. However, it became apparent to the Interdisciplinary Team that there could be significant effects on the human environment in Roadless Areas X166 and 684.

The principal environmental issues identified to date are related to:

1. Impacts on the character of the area of Roadless Area 684 and X166.
2. Impacts on fish habitat and other beneficial uses due to potential sediment increase.
3. Impacts on big game security and habitat.
4. Fuels accumulations in terms of potential catastrophic wildfire situations.

Other issues commonly associated with timber harvesting and road construction include: effects on water quality, cultural resources, soils, old growth, and visuals. This list may be verified, expanded, or modified based on public scoping for this proposal.

Consultation with the U.S. Fish and Wildlife Service has been initiated with regard to listed species. The Montana Department of Health and Welfare-Division of Environmental Quality, Montana Department of Fish and Game, and the Kootenai Salish Indian Tribe will also be consulted.

While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in March, 1994. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision. The final EIS is expected to be filed in June, 1994.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EISs must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir, 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: January 5, 1994.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 94–915 Filed 1–13–94; 8:45 am]

BILLING CODE 3410–11–M

Boppin Basin Salvage Sale; Kootenai National Forest; Lincoln County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to analyze and disclose the environmental impacts of a proposal to harvest timber and construct and reconstruct roads in the East and West Fork of Basin Creek located about 29 air miles northeast of Troy, Montana. This EIS will tier to the Kootenai National Forest Land and Resource Management Plan and EIS, which provide overall guidance for achieving the desired forest condition of the area. The purpose of the proposed action is to help reduce existing natural fuel loadings of standing and down dead lodgepole pine, increase the productivity on those suitable areas that sites currently are not growing anywhere near full potential and increase the health and vigor of proposed salvage stands which will help maintain a more equal distribution of timber age classes.

DATES: Written comments and suggestions should be received by February 28, 1994.

ADDRESSES: Send written comments to John B. Righter, District Ranger, Three Rivers Ranger District, 1437 North Highway 2, Troy, Montana, 59935.

FOR FURTHER INFORMATION CONTACT: Monte Fujishin, Supervisory Forester, (406) 295–4693.

SUPPLEMENTARY INFORMATION: The timber salvage management activities under consideration would occur within a 6,046 acre analysis area which is immediately adjacent to the East and West Fork of Basin Creek.

The proposed action would harvest about 17.6 million board feet from 10 harvest units totaling 1,258 acres. Approximately 4 miles of new road would be constructed and 3 miles of existing road would be reconstructed.

There are a variety of purposes for timber harvest and reforestation in the Basin Creek area; the primary purposes are: (1) To improve timber productivity by replacing stands of dead, down or dying lodgepole pine with younger, more vigorously growing trees; (2) to salvage the dead, down and dying lodgepole pine; and (3) to reduce potentially catastrophic wildfire conditions by removal of natural dead, down or dying fuels. Additionally, the purpose of road construction and reconstruction is to facilitate access to the timber stands to be harvested.

The project area consists of approximately 6,046 acres located in Sections 20–22, 26–29, and 32–34, T36N, R30N, P.M.M., Lincoln County, Montana.

The decision to be made is what, if anything, should be done in the Basin Creek Project Area to: (a) Increase timber productivity and contribute to the Forest's sustained yield of timber products through salvage operations, (b) reduce natural fuel loadings of dead, down and dying lodgepole pine as a result of past mountain pine beetle infestations, (c) dispose of slash and reforest harvested lands, (d) develop and manage the road system to facilitate removal of timber, reforest stands and maintain or improve wildlife and (e) create a situation of better age class distributions of stands within project area.

The Kootenai Forest Plan provides guidance for management activities within the potentially affected area through its goals, objectives, standards and guidelines, and management area direction. The areas of proposed timber harvest and reforestation would occur within Management Areas 12 and 14. Timber harvest would occur only on suitable timber land. Road construction and reconstruction would occur in these two management areas plus Management Area 13 when crossing the East Fork of Basin Creek. Below is a brief description of the applicable management direction.

Management Area 12—These are areas that contain productive timber lands which are suitable for timber harvest, provided that big game summer habitat objectives are met.

Management Area 13—These are areas that contain special habitat characteristics which are suitable for old-growth dependent wildlife. Local road construction is permitted, providing that they are restricted following use to protect snag characteristics.

Management Area 14—These are areas that contain productive timber lands which are suitable for timber harvest, provided that grizzly bear habitat objectives are met.

The Forest Service will consider a range of alternatives. One of these will be the "no action" alternative, in which none of the proposed activities will be implemented. Additional alternatives will examine varying levels and locations for the proposed activities to achieve the proposal's purposes, as well as to respond to the issues and other resource values.

The EIS will analyze the direct, indirect, and cumulative environmental effects of the alternatives. Past, present, and projected activities on National Forest Lands will be considered. The EIS will disclose the analysis of site-specific mitigation measures and their effectiveness.

Public participation is an important part of the analysis, commencing with the initial scoping process (40 CFR 1501.7) which has already occurred in March of 1992. In addition, public is encouraged to visit with Forest Service officials at any time during the analysis and prior to the decision. The Forest Service will be seeking information, comments, and assistance from Federal, State and local agencies and other

individuals or organizations who may be interested in or affected by the proposed action. No public meetings are scheduled at this time. Comments from the public and other agencies will be used in preparation of the Draft EIS. The scoping process will be used to:

1. Identify potential issues.
2. Identify major issues to by analyzed in depth.
3. Eliminates minor issues or those which have been covered by a relevant previous environmental analysis, such as the Kootenai Forest Plan EIS.
4. Identify alternatives to the proposed action.
5. Identify potential environmental effects of the proposed action and alternatives (i.e. direct, indirect, and cumulative effects).
6. Determine potential cooperating agencies and task assignments.

Preliminary scoping, including public and agency participation, was initiated in March, 1992, and has continued through this year. Until recently, an Environmental Assessment (EA) and Finding of No Significant Impact (FONSI) were envisioned. However, it became apparent to the Interdisciplinary Team that due to the size and scope of the proposed action, that effects on the biological characteristics of the area could be considered significant. In such cases, an EIS is required.

The principal environmental issues identified to date are related to:

1. Wildlife habitat and security maintenance.
2. Fuels treatment and accumulations in terms of potential catastrophic wildfire situations.

Other issues commonly associated with timber harvesting and road construction include: effects on water quality, cultural resources, soils, old growth, and visuals. This list may be verified, expanded, or modified based on public scoping for this proposal.

Consultation with the U.S. Fish and Wildlife Service has been initiated with regard to listed species. The Montana Department of Health and Welfare-Division of Environmental Quality, Montana Department of Fish and Game, and the Kootenai Salish Indian Tribe will also be consulted.

While public participation in this analysis is welcome at any time, comments received within 45 days of the publication of this notice will be especially useful in the preparation of the draft EIS, which is expected to be filed with the EPA and available for public review in March, 1994. A 45-day comment period will follow publication of a Notice of Availability of the draft EIS in the **Federal Register**. The comments received will be analyzed and considered in preparation of a final EIS, which will be accompanied by a Record of Decision. The final EIS is expected to be filed in June, 1994.

The Forest Service believes it is important at this early stage to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 513 (1978). Also, environmental objections that could be raised at the draft EIS stage but that are not raised until after completion of the final EIS may be waived or dismissed by the courts *City of Angoon* v. *Hodel*, 803 F.2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages Inc.* v. *Harris*, 490 F.Supp. 1334, 1338 (E.D. Wis., 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments should be as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this environmental impact statement.

Dated: January 5, 1994.

Robert L. Schrenk,

Forest Supervisor, Kootenai National Forest.

[FR Doc. 94-916 Filed 1-13-94; 8:45 am]

BILLING CODE 3410-11-M

Newberry National Volcanic Monument Advisory Council Meeting

AGENCY: Forest Service, USDA.

ACTION: Newberry National Volcanic Monument Advisory Council Meeting.

SUMMARY: The Newberry National Volcanic Monument Advisory Council will meet on February 3 and 4, 1994 at the Bend/Fort Rock Ranger District, 1230 NE 3rd Street in Bend, Oregon. The meetings will begin at 9 a.m. and continue until 4 p.m. Agenda items to be covered include: reviewing the draft Environmental Impact Statement for the Monument, staff reports on the winter recreation season, and public comments on the draft plan for the Monument.

Interested members of the public are encouraged to attend.

FOR FURTHER INFORMATION CONTACT: Direct questions regarding this meeting to Carolyn Wisdom, Project Coordinator, Fort Rock Ranger District USFS, 1230 NE 3rd, Bend, OR 97701, (503) 383-4702 or 383-4704.

Dated: December 22, 1993.

Sally Collins,

Deschutes National Forest Supervisor.

[FR Doc. 94-918 Filed 1-13-94; 8:45 am]

BILLING CODE 3410-11-M

Soil Conservation Service

Cane-Mussacuna Creeks Watershed, DeSoto County, MS

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); the Soil Conservation Service Regulations (7 CFR part 650); and the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Cane-Mussacuna Creeks Watershed, DeSoto County, Mississippi.

FOR FURTHER INFORMATION CONTACT: L. Pete Heard, State Conservationist, Soil Conservation Service, Suite 1321, Dr. A.H. McCoy Federal Building, 100 West Capitol Street, Jackson, Mississippi 39269-1399, telephone (601) 965-5205.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, L. Pete Heard, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purposes are to reduce damage to agricultural land and public utilities, reduce downstream damages due to sedimentation, reduce land loss from channel instability and to reduce flooding of crop fields. The planned works of improvement include one hundred sixteen minor grade control (pipe) structures, eight road culvert stabilization (rock) sites, five major grade control structures, ten thousand linear feet of stream bank stabilization, approximately 4.7 miles of channel restoration and accelerated technical assistance for land treatment.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting L. Pete Heard.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

L. Pete Heard,

State Conservationist.

[FR Doc. 94-945 Filed 1-13-94; 8:45 am]

BILLING CODE 3410-16-M

DEPARTMENT OF COMMERCE

Under Secretary for Export Administration

[Docket Number AB-3-89]

Martin Brothers International, Respondent; Order Modifying Administrative Appeal Decision and Order

On November 30, 1993, I entered an Administrative Appeal Decision and Order in the above-captioned matter imposing a civil penalty of $75,000 on Martin Brothers International and denying Martin Brothers International's export privileges for one year, with the last 10 months suspended.

Through inadvertence, that Order failed to state the date upon which the civil penalty is due. To correct that oversight, I hereby order that the $75,000 civil penalty imposed in the November 30, 1993 Administrative Appeal Decision and Order in the above-captioned matter is due and shall be paid in its entirety, in accordance with the attached instructions, within 30 days of the date of this Order.

In addition, that Order failed to list the countries in the Middle East to which Martin Brothers International is denied export privileges for one year, with the last 10 months suspended. To correct that oversight, I hereby order that the September 9, 1992 Supplement to Decision and Order issued by the Administrative Law Judge is modified by adding the following sentence at the end of Part II. thereof:

For purposes of this Order, "Middle East destinations" include Bahrain, Iraq, Jordan, Kuwait, Lebanon, Libya, Oman, Qatar, Saudi Arabia, Syria, United Arab Emirates, and the Republic of Yemen.

This order, which is effective immediately, shall be served on Martin Brothers International and published in the **Federal Register**.

Entered this 6th day of January 1994.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 94-942 Filed 1-13-94; 8:45 am]

BILLING CODE 3510-DT-M

Minority Business Development Agency

Business Development Center Applications: Las Vegas, Nevada

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) Program. The total cost of performance for the first budget period (12 months) from May 1, 1994 to April 30, 1995, is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, clients fees, in-kind contributions or combinations thereof. The MBDC will operate in the Las Vegas, Nevada Geographic Service Area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number or points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as an MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is February 18, 1994. Applications must be postmarked on or before February 18, 1994.

The mailing address for submission is: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room

1280, San Francisco, California 94105, 415/744–3001.

A pre-application conference to assist all interested applicants will be held at the following address and time: San Francisco Regional Office, Minority Business Development Agency, U.S. Department of Commerce, 221 Main Street, room 1280, San Francisco, California 94105, February 1, 1994 at 10 a.m.

FOR FURTHER INFORMATION CONTACT: Xavier Mena, Regional Director, San Francisco Regional Office at 415/744–3001.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, a repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are unsatisfactory performance of MBDC work requirements, and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, § 26.605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, § 26.105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance).

Dated: January 7, 1994.

Xavier Mena,

Regional Director, San Froncisco Regional Office.

[FR Doc. 94–960 Filed 1–13–94; 8:45 am]

BILLING CODE 3510–21–M

National Oceanic and Atmospheric Administration

[I.D. 010794B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council (Council) and its Large Pelagic/Shark Committee, Executive Committee, Summer Flounder Monitoring Committee, and Scallop and Lobster Committee will meet on January 24–27, 1994, at the Dunes Manor Hotel, 28th Street and the Ocean, Ocean City, MD; telephone: (410) 289–1100.

The Large Pelagic/Shark Committee will meet on January 25 at 3:30 p.m. and continue until 5 p.m. The Council will meet on January 26 at 8 a.m. and continue until 5 p.m. On January 27 the Council will reconvene at 8 a.m. and continue until 12 noon.

The following topics will be discussed:

(1) NMFS proposed rule on undersized swordfish;

(2) NMFS proposed rule on shark trip limits;

(3) Possible action on National Fishing Association petition;

(4) Summer flounder recreational fishery management measures for 1994;

(5) American Lobster fishery management plan Amendment #5; and

(6) Committee reports and other fishery matters as deemed necessary.

The Council meeting may be lengthened or shortened based on the progress of the agenda. The Council may go into closed session (not open to the public) to discuss personnel or national security matters. The Summer Flounder Monitoring Committee will meet with the Council during part of the session.

In addition, the Stock Assessment Workshop (SAW) will meet on January 24 beginning at 1 p.m. until approximately 5 p.m. On January 25 the SAW meeting will reconvene at 8 a.m. and adjourn at 12 noon.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Joanna Davis on (302) 674–2331 at least five (5) days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: January 10, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1029 Filed 1–13–94; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 010794A]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will hold a public meeting on February 1–3, 1994, at the Red Lion Sea-Tac, 18740 Pacific Highway South, Seattle, WA; telephone: (206) 246-8600. The meeting will begin on February 1 at 1 p.m., and reconvene on February 2 and February 3 at 8 a.m. The sessions will not adjourn until the business for each day is completed and therefore may go into the evening hours.

The purpose of the meeting is to review appeals on applications for West Coast groundfish limited entry permits which were denied by the National Marine Fisheries Service.

This meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Thomas Bigford on (206) 526-6140 at least five (5) days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: Thomas Bigford, National Marine Fisheries Service, 7600 Sand Point Way NE, BIN C15700, Seattle, WA 98115; telephone: (206) 526-6140.

Dated: January 10, 1994.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 94–1030 Filed 1–13–94; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to the procurement list.

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: February 14, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On October 22, November 19, and November 29, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 54559, 61072 and 62646) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Box, Seedling Growing
3990–00–NSH–0070
(Requirements of the U.S. Department of Agriculture, Roseburg, Oregon)

Pallet, Greenhouse
3990–00–NSH–0071
(Requirements of the U.S. Department of Agriculture, Roseburg, Oregon)

Lath, Wood
5510–00–NSH–0041
(Requirements of the U.S. Department of Agiculture, Eugene, OR)

Dispenser, Tape
7520–00–240–2411

Necktab, Women's Shirt
8445–01–295–3434

Service

Mailroom Operation, National Archives, 8601 Aldelphi Road, College Park, MD and all Washington, DC Metropolitan Area Locations.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 94–1026 Filed 1–13–94; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: February 14, 1994.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2–3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities and services have been proposed for addition to Procurement List for production by the nonprofit agencies listed:

Commodities

Pitcher, Water
7350–01–136–0022
NPA: Knox County Association for Retarded Citizens, Inc. Vincennes, Indiana
Cup, Specimen
6530–01–163–3704
NPA: Columbia County Chapter, NYSARC Mellenville, New York
Stake, Wood, Survey
5510–00–NSH–0039
(Requirements for the Federal Highway Administration, Vancouver, Washington)
NPA: Sunrise Enterprises of Roseburg, Inc. Roseburg, Oregon
Hub, Full Length
5510–00–NSH–0040
(Requirements for the Federal Highway Administration, Vancouver, Washington)
NPA: Sunrise Enterprises of Roseburg, Inc. Roseburg, Oregon

Services

Laundry Service, McChord Air Force Base, Washington
NPA: Northwest Center for the Retarded Seattle, Washington
Laundry Service, Naval Air Station, Whidbey Island, Oak Harbor, Washington
NPA: Northwest Center for the Retarded Seattle, Washington
Sharpening of Drill Bits, Fleet and Industrial Supply Center, Jacksonville, Florida
NPA: Tampa Lighthouse for the Blind Tampa, Florida
Commissary Shelf Stocking, Custodial and Receiving, Los Angeles Air Force Base, California
NPA: Goodwill Industries of Southern California Los Angeles, California
Operation of the Postal Service Center, Eglin Air Force Base, Florida
NPA: Lakeview Center, Inc. Pensacola, Florida
Janitorial/Custodial, U.S. Courthouse, 500 State Avenue, Kansas City, Kansas
NPA: The Helping Hand of Goodwill Industries Extended Employment Sheltered Workshop, Inc., Kansas City, Missouri.

Beverly L. Milkman,
Executive Director.

[FR Doc. 94–1027 Filed 1–13–94; 8:45 am]
BILLING CODE 6820–33–P

COMMODITY FUTURES TRADING COMMISSION

New York Cotton Exchange Futures and Futures Option Contracts Based on Five Currency Cross-Rates: French Franc/Deutsche Mark, et al.

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures and option contracts.

SUMMARY: The New York Cotton Exchange (NYCE or Exchange) has applied for designation as a contract market in currency cross-rate futures and futures option contracts based on each of the following five currency crosses: French franc/Deutsche mark; Swedish krone/Deutsche mark; Italian lira/Deutsche mark; Japanese yen/Deutsche mark; and Deutsche mark/British pound. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposals for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before February 14, 1994.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581. Reference should be made to the NYCE currency cross-rate futures and futures option contracts.

FOR FURTHER INFORMATION CONTACT: Please contact Steve Sherrod of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the applications for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's Regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on January 10, 1994.

Blake Imel,
Acting Director.

[FR Doc. 94–963 Filed 1–13–94; 8:45 am]
BILLING CODE 6351–01–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Renewal of the Special Operations Policy Advisory Group (SOPAG)

ACTION: Notice.

SUMMARY: The SOPAG is being renewed for a two-year period in consonance with the public interest, and in accordance with the provisions of Public Law 92–463, the "Federal Advisory Committee Act."

The SOPAG provides advice to the Secretary of Defense, the Under Secretary of Defense for Policy, and the Assistant Secretary of Defense for Special Operations and Low Intensity Conflict (SOLIC) on key issues related to the formulation of policy concerning special operations and low intensity conflict matters. The types of activities for which the SOPAG renders advice include: strategic and tactical reconnaissance, unconventional warfare, theater search and rescue, counter-terrorism, counter-narcotics, special forces operations, and humanitarian assistance.

The Group will continue to be a well-balanced unit, composed of approximately ten members, who are recognized experts in military activities focusing on special operations. Members will be selected from among DoD military and civilian officials, retired flag officers, former diplomatic representatives, and academic and other private communities, to ensure a balanced perspective from the standpoint of functions performed and interest groups represented.

For further information regarding the SOPAG, contact: Col. Dick Blair, Office of the Assistant Secretary (SOLIC), (703) 693–2896.

Dated: January 11, 1994.

L.M. Bynum,
Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 94–975 Filed 1–13–94; 8:45 am]
BILLING CODE 5000–04–M

Department of the Army, Corps of Engineers

Intent To Prepare a Draft Environment Impact Statement for the Proposed Coast Rock Products Mining and Reclamation Plan In and Along the Sisquoc and Santa Maria Rivers In Santa Barbara and San Luis Obispo Counties, CA

AGENCY: U.S. Army Corps of Engineers, DOD.

ACTION: Notice of intent.

SUMMARY: The proposed action is to mine construction-grade aggregate deposits from a seventeen-mile stretch of the Santa Maria and Sisquoc Rivers, both waters of the United States. The California Division of Mines and Geology has determined that the most significant concentration of construction-grade aggregate in the region occurs in and just adjacent to the rivers. This deposit contains material that is important to two counties for the construction, maintenance and rehabilitation of public and private facilities. The proposed action is intended to help satisfy the long-term demand for commercially-useable aggregate material in the region.

Because the action will require a permit under section 404 of the Clean Water Act (as amended) and adverse impacts to the aquatic ecosystem may result, the Corps has determined that the proposed action warrants an Environmental Impact Statement (EIS) pursuant to the National Environmental Policy Act.

A Joint Review Panel (JRP) consisting of the primary permitting agencies for the project has been formed to coordinate multi-agency review. The JRP includes representatives of the U.S. Army Corps of Engineers, California Division of Mines and Geology, County of Santa Barbara and San Luis Obispo will serve as co-lead agencies under the California Environmental Quality Act (CEQA). The environmental document will therefore be circulated as a joint Environmental Impact Statement/Environmental Impact Report (EIS/EIR).

DATES: The scoping comment period will expire February 28, 1994.

ADDRESSES: U.S. Army Corps of Engineers, ATTN: Regulatory Branch, 2151 Alessandro Drive, suite 100, Ventura, California 93001.

FOR FURTHER INFORMATION: Mr. Michael Jewell, (805) 641–0301.

SUPPLEMENTARY INFORMATION:

1. Proposed Action

Coast Rock Products, Inc. (Coast Rock), has applied to the Corps of Engineers for a section 404 individual permit to remove sand and gravel material from a seventeen-mile stretch of the Santa Maria and Sisquoc Rivers over the course of the next 25 years. In 1989, the California Division of Mines and Geology (CDMG) reported that currently permitted sources of construction-grade aggregate (classified as MRZ–2 by CDMG) are theoretically sufficient to supply only 65 percent of the projected aggregate demand in San Luis Obispo and Santa Barbara Counties (the service area) over the next 50 years. CDMG further found that the largest concentration of construction-grade material in the service area extends along these rivers from a narrow canyon in the Sisquoc Ranch to the ancient floodplain underlying the City of Santa Maria. Because much of this material is no longer accessible due to surface improvements or established land use, the most viable long-term sources have been identified to occur within and adjacent to the rivers. Thus, the overall purpose of the proposed action is to mine high-quality, construction-grade aggregate (MRZ–2 classified) deposits from within the service area for the long-term utilization of the resource (at least the next 25 years) and reclaim mined lands in accordance with the requirements of the California State Surface Mining and Reclamation Act (SMARA).

In addition to mining sand and gravel, Coast Rock proposes several secondary objectives to the overall project purpose. These include providing flood protection, enhancing groundwater recharge, reclaiming farm land lost to erosion and past mining, and establishing wildlife habitat.

2. Alternatives

At least the following alternatives will be considered: (1) No action; (2) applicant's preferred project; (3) off-site (outside the 100-year floodplain) mining; (4) mining in the river (within the 100-year floodplain) but not within section 404 jurisdiction; (5) a reduced-scale project; and (6) alternative landuse/reclamation scenarios.

3. Scoping Process

a. Federal, State and local agencies and other interested private citizens and

organizations are encouraged to send their written comments to Mr. Michael Jewell at the address provided. This scoping comments period will expire 45 days from the date of this notice appearing in the **Federal Register.**

b. Significant issues to be analyzed in depth in the draft Environmental Impact Statement (DEIS) include hydrology/hydraulics, biological resources, water quality, cultural resources, air quality, transportation, groundwater recharge, noise, aesthetics, and socioeconomic.

c. Coordination will be undertaken with the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, California Department of Fish and Game, State Historic Preservation Office, and California Regional Water Quality Control Board.

d. As noted above, the project will also undergo review under the California Environmental Quality Act. A draft EIS/EIR will be published which will discuss both NEPA and CEQA issues.

4. Scoping Meeting

A scoping meeting will be held on Thursday, January 27, 1994 from 1:30 to 4:30 and then again from 6:30 to 8:00 to assess preliminary issues relative to the Coast Rock Mining and Reclamation Plan. The scoping meeting will be held at the County Government Center, Board of Supervisors Hearing Room, 511 East Lakeside Parkway, City of Santa Maria, County of Santa Barbara, California. Participation in the scoping meeting by Federal, State and local agencies, and other interested private citizens and organizations is encouraged.

5. DEIS Schedule

The current schedule estimates that the DEIS will be available for public review and comment in May 1994.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 94–1093 Filed 1–13–94; 8:45 am]

BILLING CODE 3710–08–M

Record of Decision: Relocation of the Woodbridge Research Facility Electromagnetic Pulse Simulators

AGENCY: Department of the Army, DoD.

ACTION: Availability of record of decision.

SUMMARY: This announces the availability of the Record of Decision (ROD) regarding the relocation of the Army's electromagnetic pulse (EMP) simulators currently located at the Woodbridge Research Facility (WRF), in Woodbridge, Virginia, to a new location selected from six candidate relocation sites evaluated for the facility. The Army has decided to relocate its four existing simulators, construct a new simulator, the Vertical EMP Simulator-Second Generation (VEMPS II), and operate the new facility at the Orogrande Site at White Sands Missile Range, New Mexico.

SUPPLEMENTARY INFORMATION: On October 27, 1989, the Army announced a proposal to relocate the WRF EMP simulators to a new site, citing the following reasons: The need to continue simulated EMP testing in accordance with Army requirements, the desire to use the economics of collocation of test operations, and the concern to adjust to the rapidly expanding population in the Woodbridge and Northern Virginia areas. In 1991, after the Army announced its proposal to relocate the WRF EMP simulators, the WRF was designated for closure in accordance with the Defense Base Closure and Realignment Act (Pub. L. 101–510). The Army is planning to close the WRF in September 1994.

As presented in the Final EIS, the Department of the Army's proposed action is to relocate its existing electromagnetic pulse (EMP) simulators from the Woodbridge Research Facility, Woodbridge, Virginia, construct a new simulator, the Vertical EMP Simulator II (VEMPS II), and operate them at a site selected from six candidate sites at Army installations in Arizona, New Mexico, and Utah. This action entails the dismantling of the existing EMP simulators at the WRF, transporting the equipment to the selected new site, preparation of the site facilities at the new location and the construction and operation of the EMP simulators at the new site.

Council on Environmental Quality regulations (40 CFR 1505.2) for implementing the provisions of the National Environmental Policy Act direct the preparation of a public Record of Decision concerning decisions reached on actions considered in Environmental Impact Statements. The relocation of the WRF EMP simulators to a new location and its potential impacts have been discussed in the final environmental documents filed with the Environmental Protection Agency, as announced on November 26, 1993 (58 FR, No. 226; p. 62345).

The ROD identifies the Orogrande Site as the site for construction of the new facility and summarizes the alternatives considered, the basis for selection of this site, and measures that will be undertaken to minimize environmental effects. This site was both the Army's preferred site and the environmentally preferred site because Orogrande is the location of the U.S. Army Test and Evaluation Command Nuclear Effects Directorate, and essentially all Army scientists and engineers who perform EMP testing are located in this area, thus simplifying logistics for operating the site. Further, the availability of these technologists and easily accessible operations and maintenance support from the main post area at WSMR simplifies test support logistics, thereby, minimizing the costs and time required to complete tests. Additionally, laboratory and administrative space is available at the existing Nuclear Effects Directorate offices, thereby minimizing the dollar investment to construct the site. The utilization of these spaces also eliminates the ground disturbance and loss of biological habitat and archeological resources associated with constructing the administrative staging areas and buildings, the need to construct four miles of security fencing and perimeter roadways, thus reducing cost and additional loss of biological habitat and archeological resources, and the impact to biological species. Also the roadways and test areas of the EMP facilities can be sited to avoid archeological resources and their operation at the Orogrande Site will have the least impact on the operations and facilities at WSMR.

Interested individuals or organizations may obtain copies of the ROD by contacting: U.S. Army Research Laboratory, Attn: David Davison (AMSRL–CP–S–PA), 2800 Powder Mill Road, Adephi, MD 20783–1145, (301) 394–3590.

Dated: January 6, 1994.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 94–899 Filed 1–13–94; 8:45 am]

BILLING CODE 3710–08–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before February 14, 1994.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: January 10, 1994.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.
Title: Application to Participate in the State Student Incentive Grant Program.
Frequency: Annually.
Affected Public: State or local governments.
Reporting Burden:
Responses: 57
Burden Hours: 228
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This form will be used by the State Educational agencies to apply for funding under the State Student Incentive Grant Program. The Department will use the information to make grant awards.

Office of the Under Secretary

Type of Review: New.
Title: State Surveys for the Drug-Free Schools and Communities Act—Outcomes of State and Local Programs.
Frequency: One time.
Affected Public: State or local governments.
Reporting Burden:
Responses: 104
Burden Hours: 5,720
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study will be used to describe state and local activities associated with DFSCA programs and to prepare a 1991–1993 biennial performance report to Congress. The Department will use the information to improve the administration of DFSCA-funded programs and to provide support to strengthening state-level evaluation activities.

[FR Doc. 94–906 Filed 1–13–94; 8:45 am]

BILLING CODE 4000–01–M

CFDA No: 84.097A

Law School Clinical Experience Program; Technical Assistance Workshop

AGENCY: Law School Clinical Experience Program, Education.

ACTION: Notice of technical assistance workshop.

SUMMARY: The Department of Education will conduct a technical assistance workshop to assist prospective applicants in developing applications for the Law School Clinical Experience Program for fiscal year 1994. Reservations are not required for attendance at this workshop, which will be conducted from 9 a.m. to 3 at the site. The date and workshop location are as follows:

Date: Friday, January 14, 1994.
Location: Federal Office Building 6, Henry Barnard Auditorium (Room 1134), 400 Maryland Avenue, SW., Washington, DC 20202.

FOR FURTHER INFORMATION CONTACT: John J. Lank, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3106B, Washington, DC 20202–5251. Telephone: (202) 708–7863. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1134u, 1134v.

Dated: January 12, 1994.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 94–1107 Filed 1–12–94; 12:51 pm]

BILLING CODE 4000–01–P

Office of Postsecondary Education

Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee; Meeting

AGENCY: Office of Postsecondary Education, Department of Education.

ACTION: Notice of first meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee.

SUMMARY: This notice sets forth the date and location of the forthcoming meeting of the Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee. This notice also describes the functions of the committee. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATES: January 26–27, 1994 from 9 a.m. to 5 p.m.

LOCATION: The Radisson Plaza Hotel at Mark Center, 5000 Seminary Road, Alexandria, Virginia, 22311.

FOR FURTHER INFORMATION CONTACT: Jennifer Peck, Office of the Assistant for Postsecondary Education, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4082, ROB–3), Washington, DC 20202–5100, Telephone: (202) 708–5547. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time. Monday through Friday.

SUPPLEMENTARY INFORMATION: The Direct Student Loan Regulations Negotiated Rulemaking Advisory Committee is

established by sections 422 and 457 of the Higher Education Act of 1965, as amended by the Student Loan Reform Act of 1993 (Pub. L. 103–66; 20 USC 1087g). The Committee is also established in accordance with the provisions of the Negotiated Rulemaking Act (Pub. L. 101–648, as amended; 5 U.S.C. 561). The Advisory Committee is established to provide advice to the Secretary on the standards, criteria, procedures, and regulations governing the Direct Student Loan Program beginning with academic year 1995–1996. The Direct Student Loan Program is authorized by the Student Loan Reform Act of 1993. The Act authorizes the Secretary of Education to enter into agreements with selected institutions of higher education. These agreements will enable the institutions to originate loans to eligible students and eligible parents of such students.

The meeting is open to the public. The agenda for the initial meeting will include discussion of the committee's organizational structure and protocols, and establish a schedule to negotiate proposed rules by the summer.

Records are kept of all committee proceedings and are available for public inspection at the Office of the Assistant Secretary for Postsecondary Education, room 4082, ROB–3, 7th and D Streets SW., Washington, DC from the hours of 9 a.m. to 5 p.m. weekdays, except Federal holidays.

David A. Longanecker,

Assistant Secretary, Office of Postsecondary Education, U.S. Department of Education.

[FR Doc. 94–948 Filed 1–13–94; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. ER94–347–000 through ER94–887–000]

Electric Rate Filings Made Between December 22, 1993 and January 3, 1994, Including Amnesty Filings; Notice of Certain Rate Filings

January 11, 1994.

The Commission has received 438 rate filings, made under section 205 of the Federal Power Act, during the period December 22, 1993 through January 3, 1994. Many of the filings reflect the submission of multiple agreements for Commission review. Most of the filings have been made to take advantage of a general amnesty period, announced on July 30, 1993, for the filing of agreements under which jurisdictional service was being provided as of that date under previously-unfiled rates, terms and conditions. See Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,139, reh'g denied, 65 FERC ¶ 61,081 (1993).

Attachment A to this notice lists all of these rate filings in chronological and numerical order, starting with filings made on December 22, 1993. Attachment B to this notice lists all of these filings in alphabetical order, by applicant.

Because of the extremely large number of rate filings made during the period December 22, 1993 through January 3, 1994, the Commission is unable to issue individual notices of filing for each of the filings made during this period. In order to ensure issuance of notice of filings at the earliest possible date, and to allow sufficient time for review and response, the Commission hereby issues this single notice for all of the filings listed in the Attachments. [1] Any person desiring to inspect a copy of any of the filings may do so during normal business hours in the Commission's public reference room, room 3104, 941 North Capitol Street NE., Washington, DC 20426. (Of course, customers to the filed agreements and, in many cases, affected state commissions already have actual notice of the contents of the filings by virtue of the Commission's regulations, see 18 CFR 35.2(d)).

Any person desiring to be heard or to protest any of the enumerated filings should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211, 385.214. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to any of the proceedings. Any person desiring to become a party must file a motion to intervene.

Motions or protests in response to filings made from December 22, 1993 through December 27, 1993, as indicated in the Attachments, should be filed on or before January 19, 1994. Motions or protests in response to filings made from December 28, 1993 through December 29, 1993 should be filed on or before January 20, 1994. Motions or protests in response to filings made from December 30, 1993 through January 3, 1994 should be made on or before January 21, 1994.

Lois D. Cashell,

Secretary.

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994

ER94–347	000	Niagara Mohawk Power Corporation	12–22–93
ER94–348	000	Public Service Co. of New Mexico	12–22–93
ER94–349	000	Midwest Power Systems Inc	12–22–93
ER94–350	000	Jersey Central Pwr & Light, et al	12–22–93
ER94–351	000	Midwest Power Systems, Inc	12–22–93
ER94–352	000	Pacificorp	12–22–93
ER94–353	000	Pacificorp	12–22–93
ER94–354	000	PacifiCorp	12–22–93
ER94–355	000	Public Service Co of New Mexico	12–22–93
ER94–356	000	Nevada Power Company	12–22–93
ER94–357	000	Nevada Power Company	12–22–93
ER94–358	000	Nevada Power Company	12–22–93
ER94–359	000	Nevada Power Company	12–22–93
ER94–360	000	San Diego Gas & Electric	12–22–93
ER94–361	000	Public Svc Electric & Gas Co, et al	12–22–93
ER94–362	000	Public Svc Electric & Gas Co, et al	12–22–93
ER94–363	000	Portland General Electric Company	12–22–93
ER94–364	000	Arizona Public Service Company	12–22–93
ER94–365	000	Western Resources, Inc	12–22–93

[1] If an individual notice of filing has issued or does issue in any one of the enumerated dockets, then that notice will control the deadline for interventions and protests.

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94–366	000	Western Resources, Inc	12–22–93
ER94–367	000	Western Resources, Inc	12–22–93
ER94–368	000	Georgia Power Company	12–22–93
ER94–369	000	Wisconsin Power & Light Company	12–23–93
ER94–370	000	Black Hills Power & Light Company	12–23–93
ER94–371	000	New England Power Company	12–23–93
ER94–372	000	New England Power Company	12–23–93
ER94–373	000	Midwest Power Systems, Inc	12–23–93
ER94–374	000	New England Power Company	12–23–93
ER94–375	000	Public Service Co. of New Mexico	12–23–93
ER94–376	000	Public Service Co. of New Mexico	12–23–93
ER94–377	000	Public Service Co. of New Mexico	12–23–93
ER94–378	000	Public Service Co. of New Mexico	12–23–93
ER94–379	000	Florida Power Corporation	12–23–93
ER94–380	000	Florida Power Corporation	12–23–93
ER94–381	000	Puget Sound Power & Light Company	12–23–93
ER94–382	000	Puget Sound Power & Light Company	12–23–93
ER94–383	000	Puget Sound Power & Light Company	12–23–93
ER94–384	000	Puget Sound Power & Light Company	12–23–93
ER94–385	000	Puget Sound Power & Light Company	12–23–93
ER94–386	000	Puget Sound Power & Light Company	12–23–93
ER94–387	000	Ollahoma Gas and Elec. Company	12–23–93
ER94–388	000	Public Service Co. of New Mexico	12–23–93
ER94–389	000	Tenaska Power Services Company	12–23–93
ER94–390	000	Allegheny Power Service Corporation	12–23–93
ER94–391	000	Consumers Power Company	12–23–93
ER94–392	000	Washington Water Power Company	12–23–93
ER94–393	000	Washington Water Power Company	12–23–93
ER94–394	000	Washington Water Power Company	12–23–93
ER94–395	000	Public Service Elec. & Gas Company	12–23–93
ER94–396	000	Public Service Elec. & Gas Company	12–23–93
ER94–397	000	Montana Power Company	12–23–93
ER94–398	000	Montana Power Company	12–23–93
ER94–399	000	Montana Power Company	12–23–93
ER94–400	000	Montana Power Company	12–23–93
ER94–401	000	Montana Power Company	12–23–93
ER94–402	000	Nevada Power Company	12–23–93
ER94–403	000	Nevada Power Company	12–23–93
ER94–404	000	Nevada Power Company	12–23–93
ER94–405	000	Nevada Power Company	12–23–93
ER94–406	000	Nevada Power Company	12–23–93
ER94–407	000	Northern States Power Co. (MN)	12–23–93
ER94–408	000	Portland General Elec. Company	12–23–93
ER94–409	000	Portland General Elec. Company	12–23–93
ER94–410	000	Western Resources, Inc	12–23–93
ER94–411	000	Western Resources, Inc	12–23–93
ER94–412	000	Portland General Elec. Company	12–23–93
ER94–413	000	Texas New Mexico Power Company	12–23–93
ER94–414	000	Arizona Public Service Company	12–23–93
ER94–415	000	Orange & Rockland Utilities Inc	12–23–93
ER94–416	000	Cleveland Elec. Illuminating Co	12–23–93
ER94–417	000	Cleveland Elec. Illuminating Co	12–23–93
ER94–418	000	Toledo Edison Company	12–23–93
ER94–419	000	Arizona Public Service Company	12–23–93
ER94–420	000	Niagara Mohawk Power Corporation	12–23–93
ER94–421	000	Wisconsin Elec. Power Company	12–23–93
ER94–422	000	Niagara Mohawk Power Corporation	12–27–93
ER94–423	000	Niagara Mohawk Power Corporation	12–27–93
ER94–424	000	Niagara Mohawk Power Corporation	12–27–93
ER94–425	000	Niagara Mohawk Power Corporation	12–27–93
ER94–426	000	Boston Edison Company	12–27–93
ER94–427	000	Pennsylvania Electric Company	12–27–93
ER94–428	000	Niagara Mohawk Power Corporation	12–27–93
ER94–429	000	Washington Water Power Company	12–27–93
ER94–430	000	Rochester Gas & Electric Corp	12–27–93
ER94–431	000	Rochester Gas & Electric Corp	12–27–93
ER94–432	000	Rochester Gas & Electric Corp	12–27–93
ER94–433	000	Rochester Gas & Electric Corp	12–27–93
ER94–434	000	Rochester Gas & Electric Corp	12–27–93
ER94–435	000	Public Service Elec. & Gas Company	12–27–93
ER94–436	000	Iowa Electric Light & Power Company	12–27–93
ER94–437	000	Rochester Gas & Electric Corp	12–27–93
ER94–438	000	Montana Power Company	12–27–93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-439	000	Montana Power Company	12-27-93
ER94-440	000	Montana Power Company	12-27-93
ER94-441	000	Washington Water Power Company	12-27-93
ER94-442	000	Pennsylvania Electric Company	12-27-93
ER94-443	000	Pennsylvania Electric Company	12-27-93
ER94-444	000	Idaho Power Company	12-27-93
ER94-445	000	Idaho Power Company	12-27-93
ER94-446	000	Southwire Company	12-27-93
ER94-447	000	Texas-New Mexico Power Company	12-27-93
ER94-448	000	Texas-New Mexico Power Company	12-27-93
ER94-449	000	Illinois Power Company	12-27-93
ER94-450	000	Northeast Utilities Svc. Company	12-28-93
ER94-451	000	Northeast Utilities Svc. Company	12-28-93
ER94-452	000	Northeast Utilities Svc. Company	12-28-93
ER94-453	000	Kansas City Power & Light Company	12-28-93
ER94-454	000	Kansas City Power & Light Company	12-28-93
ER94-455	000	Kansas City Power & Light Company	12-28-93
ER94-456	000	Pacificorp	12-28-93
ER94-457	000	Pacificorp	12-28-93
ER94-458	000	Ohio Valley Electric Corporation	12-28-93
ER94-459	000	Pennsylvania Electric Co., et al	12-28-93
ER94-460	000	Vermont Electric Power Company, Inc	12-28-93
ER94-461	000	Portland General Electric Company	12-28-93
ER94-462	000	Portland General Electric Company	12-28-93
ER94-463	000	Portland General Electric Company	12-28-93
ER94-464	000	Portland General Electric Company	12-28-93
ER94-465	000	Beebee Island Corporation	12-28-93
ER94-466	000	Moreau Manufacturing Corporation	12-28-93
ER94-467	000	PSI Energy, Inc	12-28-93
ER94-468	000	Texas-New Mexico Power Company	12-28-93
ER94-469	000	Nevada Power Company	12-28-93
ER94-470	000	Portland General Electric Company	12-28-93
ER94-471	000	Portland General Electric Company	12-28-93
ER94-472	000	Portland General Electric Company	12-28-93
ER94-473	000	Union Electric Company	12-28-93
ER94-474	000	Montana Power Company	12-28-93
ER94-475	000	Wisconsin Power & Light Company	12-28-93
ER94-476	000	Wisconsin Public Service Corp	12-28-93
ER94-477	000	Arizona Public Service Company	12-28-93
ER94-478	000	Medina Power Company	12-28-93
ER94-479	000	Public Svc Company of New Hampshire	12-28-93
ER94-480	000	Arizona Public Service Company	12-28-93
ER94-481	000	Pennsylvania Electric Company	12-28-93
ER94-483	000	Pacificorp	12-28-93
ER94-484	000	New England Power Company	12-28-93
ER94-485	000	Puget Sound Power & Light Company	12-28-93
ER94-486	000	Puget Sound Power & Light Company	12-28-93
ER94-487	000	Puget Sound Power & Light Company	12-28-93
ER94-488	000	Puget Sound Power & Light Company	12-28-93
ER94-489	000	Puget Sound Power & Light Company	12-28-93
ER94-490	000	Puget Sound Power & Light Company	12-28-93
ER94-491	000	Puget Sound Power & Light Company	12-28-93
ER94-492	000	Puget Sound Power & Light Company	12-28-93
ER94-493	000	Orange and Rockland Utilities, Inc	12-28-93
ER94-494	000	Pacific Gas and Electric Company	12-29-93
ER94-495	000	Pacific Gas and Electric Company	12-29-93
ER94-496	000	Portland General Electric Company	12-28-93
ER94-497	000	Arizona Public Service Company	12-23-93
ER94-498	000	Public Service Company of Colorado	12-29-93
ER94-499	000	Alabama Power Company	12-23-93
ER94-500	000	Public Service Company of Colorado	12-29-93
ER94-501	000	Public Service Company of Colorado	12-29-93
ER94-502	000	Public Service Company of Colorado	12-29-93
ER94-503	000	Public Service Company of Colorado	12-29-93
ER94-504	000	Public Service Company of Colorado	12-29-93
ER94-505	000	Public Service Company of Colorado	12-29-93
ER94-506	000	Public Service Company of Colorado	12-29-93
ER94-507	000	Public Service Company of Colorado	12-29-93
ER94-508	000	Public Service Company of Colorado	12-29-93
ER94-509	000	Public Service Company of Colorado	12-29-93
ER94-510	000	Public Service Company of Colorado	12-29-93
ER94-511	000	Public Service Company of Colorado	12-29-93
ER94-512	000	Public Service Company of Colorado	12-29-93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-513	000	Public Service Company of Colorado	12-29-93
ER94-514	000	Public Service Company of Colorado	12-29-93
ER94-515	000	Public Service Company of Colorado	12-29-93
ER94-516	000	Public Service Company of Colorado	12-29-93
ER94-517	000	Public Service Company of Colorado	12-29-93
ER94-518	000	Public Service Company of Colorado	12-29-93
ER94-519	000	Public Service Company of Colorado	12-29-93
ER94-520	000	Public Service Company of Colorado	12-29-93
ER94-521	000	Great Bay Power Corporation	12-29-93
ER94-522	000	Public Service Co. of New Mexico	12-29-93
ER94-523	000	Public Service Co. of New Mexico	12-29-93
ER94-524	000	Public Service Co. of New Mexico	12-29-93
ER94-525	000	Pennsylvania Electric Company	12-29-93
ER94-526	000	Consumers Power Company	12-29-93
ER94-527	000	Pennsylvania Electric Company	12-29-93
ER94-528	000	Wisconsin Power and Light Company	12-29-93
ER94-529	000	Detroit Edison Company	12-29-93
ER94-530	000	Detroit Edison Company	12-29-93
ER94-531	000	Pacificorp	12-29-93
ER94-532	000	Philadelphia Electric Company	12-29-93
ER94-533	000	PSI Energy, Inc	12-29-93
ER94-534	000	Puget Sound Power and Light Company	12-29-93
ER94-535	000	Puget Sound Power and Light Company	12-29-93
ER94-536	000	Puget Sound Power and Light Company	12-29-93
ER94-537	000	Old Dominion Electric Cooperative	12-23-93
ER94-538	000	New England Power Company	12-29-93
ER94-539	000	Portland General Electric Company	12-29-93
ER94-540	000	Portland General Electric Company	12-29-93
ER94-541	000	Portland General Electric Company	12-29-93
ER94-542	000	Portland General Electric Company	12-29-93
ER94-543	000	Portland General Electric Company	12-29-93
ER94-544	000	Portland General Electric Company	12-29-93
ER94-545	000	Portland General Electric Company	12-29-93
ER94-546	000	Portland General Electric Company	12-29-93
ER94-547	000	Portland General Electric Company	12-29-93
ER94-548	000	Portland General Electric Company	12-29-93
ER94-549	000	Portland General Electric Company	12-29-93
ER94-550	000	Portland General Electric Company	12-29-93
ER94-551	000	Sierra Pacific Power Company	12-29-93
ER94-552	000	Sierra Pacific Power Company	12-29-93
ER94-553	000	Sierra Pacific Power Company	12-29-93
ER94-554	000	Sierra Pacific Power Company	12-29-93
ER94-555	000	Cleveland Electric Illuminating Co	12-29-93
ER94-556	000	Montana-Dakota Utilities Co	12-29-93
ER94-557	000	Pennsylvania Electric Company	12-29-93
ER94-558	000	Arizona Public Service Company	12-29-93
ER94-559	000	Northeast Utilities Service Company	12-29-93
ER94-560	000	Oregon Trail Elec. Consumers Coop	12-29-93
ER94-561	000	Public Service Company of Colorado	12-29-93
ER94-562	000	Nevada Power Company	12-29-93
ER94-563	000	Nevada Power Company	12-29-93
ER94-564	000	Nevada Power Company	12-29-93
ER94-565	000	Nevada Power Company	12-29-93
ER94-566	000	Detroit Edison Company	12-29-93
ER94-567	000	Toledo Edison Company	12-29-93
ER94-568	000	Cleveland Elec. Illuminating Co	12-29-93
ER94-569	000	Toledo Edison Company	12-29-93
ER94-570	000	Cleveland Elec. Illuminating Co	12-29-93
ER94-571	000	Alabama Power Company	12-29-93
ER94-572	000	Southern California Edison Company	12-29-93
ER94-573	000	Florida Power & Light Company	12-29-93
ER94-574	000	Southern California Edison Co	12-29-93
ER94-575	000	Montana Power Company	12-29-93
ER94-576	000	Montana Power Company	12-29-93
ER94-577	000	Montana Power Company	12-29-93
ER94-578	000	Montana Power Company	12-29-93
ER94-579	000	Montana Power Company	12-29-93
ER94-580	000	Superior Water, Light and Power Co	12-29-93
ER94-581	000	Minnesota Power and Light Co	12-29-93
ER94-582	000	Southern Calif. Edison Company	12-29-93
ER94-583	000	Southern Calif. Edison Company	12-29-93
ER94-584	000	Southern Calif. Edison Company	12-29-93
ER94-585	000	Southern Calif. Edison Company	12-29-93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-586	000	Southern Calif. Edison Company	12-29-93
ER94-587	000	Southern Calif. Edison Company	12-29-93
ER94-588	000	Southern Calif. Edison Company	12-29-93
ER94-589	000	Southern Calif. Edison Company	12-29-93
ER94-590	000	Southern Calif. Edison Company	12-29-93
ER94-591	000	Southern Calif. Edison Company	12-29-93
ER94-592	000	Southern Calif. Edison Company	12-29-93
ER94-593	000	Minnesota Power and Light Company	12-29-93
ER94-594	000	Southern Calif. Edison Company	12-29-93
ER94-595	000	Southern Calif. Edison Company	12-29-93
ER94-596	000	Southern Calif. Edison Company	12-29-93
ER94-598	000	Arizona Public Service Company	12-29-93
ER94-599	000	Washington Water Power	12-29-93
ER94-600	000	Washington Water Power	12-29-93
ER94-601	000	Washington Water Power	12-29-93
ER94-602	000	Washington Water Power	12-29-93
ER94-603	000	Washington Water Power	12-29-93
ER94-604	000	Washington Water Power	12-29-93
ER94-605	000	Washington Water Power	12-29-93
ER94-606	000	Washington Water Power	12-29-93
ER94-607	000	Entergy Services, Inc	12-29-93
ER94-608	000	Entergy Services, Inc	12-29-93
ER94-609	000	Entergy Services, Inc	12-29-93
ER94-610	000	Entergy Services, Inc	12-29-93
ER94-611	000	Entergy Services, Inc	12-29-93
ER94-612	000	Entergy Services, Inc	12-29-93
ER94-613	000	Entergy Services, Inc	12-29-93
ER94-614	000	Missouri Public Service	12-29-93
ER94-615	000	Missouri Public Service	12-29-93
ER94-616	000	Missouri Public Service	12-29-93
ER94-617	000	Southern Calif. Edison Company	12-30-93
ER94-618	000	Pennsylvania Power & Light Company	12-30-93
ER94-619	000	Pennsylvania Power & Light Company	12-30-93
ER94-620	000	Pennsylvania Power & Light Company	12-30-93
ER94-621	000	Pennsylvania Power & Light Company	12-30-93
ER94-622	000	Pennsylvania Power & Light Company	12-30-93
ER94-623	000	Pennsylvania Power & Light Company	12-30-93
ER94-624	000	Pennsylvania Power & Light Company	12-30-93
ER94-625	000	Pennsylvania Power & Light Company	12-30-93
ER94-626	000	Pennsylvania Power & Light Company	12-30-93
ER94-627	000	Pennsylvania Power & Light Company	12-30-93
ER94-628	000	Pennsylvania Power & Light Company	12-30-93
ER94-629	000	Pennsylvania Power & Light Company	12-30-93
ER94-630	000	Pennsylvania Power & Light Company	12-30-93
ER94-631	000	Pennsylvania Power & Light Company	12-30-93
ER94-632	000	Pennsylvania Power & Light Company	12-30-93
ER94-633	000	Pennsylvania Power & Light Company	12-30-93
ER94-634	000	Pennsylvania Power & Light Company	12-30-93
ER94-635	000	Pennsylvania Power & Light Company	12-30-93
ER94-636	000	Wisconsin Public Service Corp	12-30-93
ER94-637	000	Connecticut Valley Elec. Co. Inc	12-30-93
ER94-638	000	Connecticut Valley Elec. Co. Inc	12-30-93
ER94-639	000	Central Vermont Public Service Corp	12-30-93
ER94-640	000	Central Vermont Public Service Corp	12-30-93
ER94-641	000	Northeast Utilities Service Company	12-30-93
ER94-642	000	Northeast Utilities Service Company	12-30-93
ER94-643	000	Central Maine Power Company	12-30-93
ER94-644	000	Arizona Public Service Company	12-30-93
ER94-645	000	Arizona Public Service Company	12-30-93
ER94-646	000	Black Hills Power and Light Company	12-30-93
ER94-647	000	Pacificorp	12-30-93
ER94-648	000	New York State Elec. & Gas Corp	12-30-93
ER94-649	000	Duquesne Light Company	12-30-93
ER94-650	000	Cleveland Elec. Illum. Co., et al	12-30-93
ER94-651	000	Public Service Company of Oklahoma	12-30-93
ER94-652	000	Florida Power & Light Company	12-30-93
ER94-653	000	Interstate Power Company	12-30-93
ER94-654	000	Interstate Power Company	12-30-93
ER94-655	000	Interstate Power Company	12-30-93
ER94-656	000	Commonwealth Edison Company	12-30-93
ER94-657	000	Eastern Edison Co., et al	12-30-93
ER94-658	000	Wisconsin Power and Light Company	12-30-93
ER94-659	000	Iowa Southern Utilities Company	12-30-93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-660	000	Midwest Power Systems Inc	12-30-93
ER94-661	000	New England Power Company	12-30-93
ER94-662	000	Northeast Util. Service et al	12-30-93
ER94-663	000	Connecticut Light and Power Co	12-30-93
ER94-664	000	Pennsylvania Power Company	12-30-93
ER94-665	000	Pennsylvania Power Company	12-30-93
ER94-666	000	Midwest Power Systems Inc.	12-30-93
ER94-667	000	Public Service Co. of New Mexico	12-30-93
ER94-668	000	Public Service Co. of New Mexico	12-30-93
ER94-669	000	Public Service Co. of New Mexico	12-30-93
ER94-670	000	Black Hills Power and Light Company	12-30-93
ER94-671	000	Black Hills Power and Light Company	12-30-93
ER94-672	000	Central Maine Power Company	12-30-93
ER94-673	000	Citizens Utilities Company	12-30-93
ER94-674	000	Public Service Co. of New Mexico	12-30-93
ER94-675	000	Long Island Lighting Company	12-30-93
ER94-676	000	Metropolitan Edison Co., et al	12-30-93
ER94-677	000	Pacificorp	12-30-93
ER94-678	000	Pacific Gas and Electric Company	12-30-93
ER94-679	000	Pacificorp	12-30-93
ER94-680	000	Pacificorp	12-30-93
ER94-681	000	Pacificorp	12-30-93
ER94-682	000	Sierra Pacific Power Company	12-30-93
ER94-683	000	Sierra Pacific Power Company	12-30-93
ER94-684	000	Pacificorp	12-30-93
ER94-685	000	Pacificorp	12-30-93
ER94-686	000	Nevada Power Company	12-30-93
ER94-687	000	Nevada Power Company	12-30-93
ER94-688	000	Sierra Pacific Power Company	12-30-93
ER94-689	000	El Paso Electric Company	12-30-93
ER94-690	000	El Paso Electric Company	12-30-93
ER94-691	000	El Paso Electric Company	12-30-93
ER94-692	000	Concord Electric Company	12-30-93
ER94-693	000	Maine Electric Power Company, Inc	12-30-93
ER94-694	000	Pacific Gas & Electric Company	12-30-93
ER94-695	000	Blackstone Valley Electric Company	12-30-93
ER94-696	000	Montaup Electric Company	12-30-93
ER94-697	000	Ohio Edison Company	12-30-93
ER94-698	000	Ohio Edison Company	12-30-93
ER94-699	000	Pacific Gas and Electric Company	12-30-93
ER94-700	000	Pacific Gas and Electric Company	12-30-93
ER94-701	000	Portland General Electric Company	12-30-93
ER94-702	000	Portland General Electric Company	12-30-93
ER94-703	000	Portland General Electric Company	12-30-93
ER94-704	000	Portland General Electric Company	12-30-93
ER94-705	000	Portland General Electric Company	12-30-93
ER94-706	000	Portland General Electric Company	12-30-93
ER94-707	000	Portland General Electric Company	12-30-93
ER94-708	000	Portland General Electric Company	12-30-93
ER94-709	000	Portland General Electric Company	12-30-93
ER94-710	000	Portland General Electric Company	12-30-93
ER94-711	000	Portland General Electric Company	12-30-93
ER94-712	000	Portland General Electric Company	12-30-93
ER94-713	000	Portland General Electric Company	12-30-93
ER94-714	000	Portland General Electric Company	12-30-93
ER94-715	000	Portland General Electric Company	12-30-93
ER94-716	000	Portland General Electric Company	12-30-93
ER94-717	000	Portland General Electric Company	12-30-93
ER94-718	000	Portland General Electric Company	12-30-93
ER94-719	000	Portland General Electric Company	12-30-93
ER94-720	000	Portland General Electric Company	12-30-93
ER94-721	000	Portland General Electric Company	12-30-93
ER94-722	000	Pacific Gas and Electric Company	12-30-93
ER94-723	000	Central Vermont Public Service Corp	12-30-93
ER94-724	000	Fourth Branch Assoc. Mechanicville	12-30-93
ER94-725	000	New York State Elec. and Gas Corp	12-30-93
ER94-726	000	New York State Elec. and Gas Corp	12-30-93
ER94-727	000	New York State Elec. and Gas Corp	12-30-93
ER94-728	000	New York State Elec. and Gas Corp	12-30-93
ER94-729	000	New York State Elec. and Gas Corp	12-30-93
ER94-730	000	New York State Elec. and Gas Corp	12-30-93
ER94-731	000	New York State Elec. and Gas Corp	12-30-93
ER94-732	000	New York State Elec. and Gas Corp	12-30-93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-733	000	Southwestern Electric Power Co	12-30-93
ER94-734	000	New Charleston Power I, L. P	12-30-93
ER94-735	000	Washington Water Power	12-30-93
ER94-736	000	Washington Water Power	12-30-93
ER94-737	000	Washington Water Power	12-30-93
ER94-738	000	Washington Water Power	12-30-93
ER94-739	000	Minnesota Power and Light Company	12-30-93
ER94-740	000	Minnesota Power and Light Company	12-30-93
ER94-741	000	Minnesota Power and Light Company	12-30-93
ER94-742	000	Green Mountain Power Corporation	12-30-93
ER94-743	000	Green Mountain Power Corporation	12-30-93
ER94-744	000	Entergy Services, Inc	12-30-93
ER94-745	000	Minnesota Power and Light Company	12-30-93
ER94-746	000	Minnesota Power and Light Company	12-30-93
ER94-747	000	Energy Services, Inc	12-30-93
ER94-748	000	Puget Sound Power & Light Company	12-30-93
ER94-749	000	Puget Sound Power & Light Company	12-30-93
ER94-750	000	Puget Sound Power & Light Company	12-30-93
ER94-751	000	Puget Sound Power & Light Company	12-30-93
ER94-752	000	Puget Sound Power & Light Company	12-30-93
ER94-753	000	Puget Sound Power & Light Company	12-30-93
ER94-754	000	Puget Sound Power & Light Company	12-30-93
ER94-755	000	Puget Sound Power & Light Company	12-30-93
ER94-756	000	Puget Sound Power & Light Company	12-30-93
ER94-757	000	Puget Sound Power & Light Company	12-30-93
ER94-758	000	Puget Sound Power & Light Company	12-30-93
ER94-759	000	Puget Sound Power & Light Company	12-30-93
ER94-760	000	Puget Sound Power & Light Company	12-30-93
ER94-761	000	Puget Sound Power & Light Company	12-30-93
ER94-762	000	Puget Sound Power & Light Company	12-30-93
ER94-763	000	Puget Sound Power & Light Company	12-30-93
ER94-764	000	Puget Sound Power & Light Company	12-30-93
ER94-765	000	Puget Sound Power & Light Company	12-30-93
ER94-766	000	Puget Sound Power & Light Company	12-30-93
ER94-767	000	Puget Sound Power & Light Company	12-30-93
ER94-768	000	Puget Sound Power & Light Company	12-30-93
ER94-769	000	Puget Sound Power & Light Company	12-30-93
ER94-770	000	Puget Sound Power & Light Company	12-30-93
ER94-771	000	Puget Sound Power & Light Company	12-30-93
ER94-772	000	Puget Sound Power & Light Company	12-30-93
ER94-773	000	Long Island Lighting Company	12-30-93
ER94-774	000	Southwestern Public Service Co	12-30-93
ER94-775	000	Southern Calif. Edison Co., et al	12-30-93
ER94-776	000	Westplains Energy	12-30-93
ER94-777	000	Westplains Energy	12-30-93
ER94-778	000	Westplains Energy	12-30-93
ER94-779	000	Westplains Energy	12-30-93
ER94-780	000	Gulf States Utilities Company	12-30-93
ER94-781	000	Georgia Power Company	12-30-93
ER94-782	000	Tucson Elec. Power Company	12-30-93
ER94-783	000	South Florida Cogeneration, Associat	12-30-93
ER94-784	000	Idaho Power Company	12-30-93
ER94-785	000	Idaho Power Company	12-30-93
ER94-786	000	Idaho Power Company	12-30-93
ER94-787	000	Idaho Power Company	12-30-93
ER94-788	000	Idaho Power Company	12-30-93
ER94-789	000	Public Service Co. of New Hampshire	12-30-93
ER94-790	000	Virginia Electric and Power Company	12-30-93
ER94-791	000	Black Hills Power and Light Company	12-30-93
ER94-792	000	UGI Utilities, Inc	12-30-93
ER94-793	000	Midwest Power Systems Inc	01-03-94
ER94-794	000	Midwest Power Systems Inc	01-03-94
ER94-795	000	United Illuminating Company	01-03-94
ER94-796	000	Illinois Gas & Electric Company	01-03-94
ER94-797	000	New England Power Company	01-03-94
ER94-798	000	Massachusetts Electric Company	01-03-94
ER94-799	000	Montana Power Company	01-03-94
ER94-800	000	Montana Power Company	01-03-94
ER94-801	000	Montana Power Company	01-03-94
ER94-802	000	Midwest Power Systems Inc	01-03-94
ER94-803	000	Iowa-Illinois Gas and Electric Co	01-03-94
ER94-804	000	Midwest Power Systems Inc	01-03-94
ER94-805	000	Old Dominion Electric Cooperative	01-03-94

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-806	000	Northern States Power Company (MN)	01-03-94
ER94-807	000	Louisville Gas & Electric Company	01-03-94
ER94-808	000	Carolina Power & Light Company	01-03-94
ER94-809	000	Niagara Mohawk Power Corporation	01-03-94
ER94-810	000	Niagara Mohawk Power Corporation	01-03-94
ER94-811	000	Canal Electric Company	01-03-94
ER94-812	000	American Elec. Pwr. Svc. Corp, et al	01-03-94
ER94-813	000	Westplains Energy	01-03-94
ER94-814	000	Northern States Power Company	12-30-93
ER94-815	000	Northern States Power Company	12-30-93
ER94-816	000	Northern States Power Company	12-30-93
ER94-817	000	Northern States Power Company	12-30-93
ER94-818	000	Northern States Power Company	12-30-93
ER94-819	000	Northern States Power Company	12-30-93
ER94-820	000	Northern States Power Company	12-30-93
ER94-821	000	Northern States Power Company	12-30-93
ER94-822	000	Northern States Power Company	12-30-93
ER94-823	000	Northern States Power Company	12-30-93
ER94-824	000	Northern States Power Company	12-30-93
ER94-825	000	Northern States Power Company	12-30-93
ER94-826	000	Northern States Power Company	12-30-93
ER94-827	000	Northern States Power Company	12-30-93
ER94-828	000	Northern States Power Company	12-30-93
ER94-829	000	Northern States Power Company	12-30-93
ER94-830	000	Northern States Power Company	12-30-93
ER94-831	000	Northern States Power Company	12-30-93
ER94-832	000	Northern States Power Company (MN)	12-30-93
ER94-833	000	Northern States Power Company	12-30-93
ER94-834	000	Northern States Power Company	12-30-93
ER94-835	000	Northern States Power Company	12-30-93
ER94-836	000	Northern States Power Company (WI)	12-30-93
ER94-837	000	Northern States Power Company	12-30-93
ER94-838	000	Northern States Power Company	12-30-93
ER94-839	000	Northern States Power Company	12-30-93
ER94-840	000	Northern States Power Company	12-30-93
ER94-841	000	Northern States Power Company	12-30-93
ER94-842	000	Northern States Power Company	12-30-93
ER94-843	000	Northern States Power Company	12-30-93
ER94-844	000	Northern States Power Company	12-30-93
ER94-845	000	Northern States Power Company	12-30-93
ER94-846	000	Northern States Power Company	12-30-93
ER94-847	000	Northern States Power Company	12-30-93
ER94-848	000	Northern States Power Company	12-30-93
ER94-849	000	Northern States Power Company	12-30-93
ER94-850	000	Northern States Power Company	12-30-93
ER94-851	000	Northern States Power Company	12-30-93
ER94-852	000	Northern States Power Company	12-30-93
ER94-853	000	Northern States Power Company	12-30-93
ER94-854	000	Northern States Power Company	12-30-93
ER94-855	000	Northern States Power Company (MN)	12-30-93
ER94-856	000	Northern States Power Company (MN)	12-30-93
ER94-857	000	Northern States Power Company (MN)	12-30-93
ER94-858	000	Northern States Power Company (MN)	12-30-93
ER94-859	000	Northern States Power Company (MN)	12-30-93
ER94-860	000	Northern States Power Company (MN)	12-30-93
ER94-861	000	Northern States Power Company (MN)	12-30-93
ER94-862	000	Northern States Power Company (MN)	12-30-93
ER94-863	000	Northern States Power Company (MN)	12-30-93
ER94-864	000	Northern States Power Company (MN)	12-30-93
ER94-865	000	Northern States Power Company (MN)	12-30-93
ER94-866	000	Northern States Power Company (MN)	12-30-93
ER94-867	000	Northern States Power Company (MN)	12-30-93
ER94-868	000	Northern States Power Company (MN)	12-30-93
ER94-869	000	Northern States Power Company (WI)	12-30-93
ER94-870	000	Northern States Power Company (MN)	12-30-93
ER94-871	000	Northern States Power Company (MN)	12-30-93
ER94-872	000	Northern States Power Company (WI)	12-30-93
ER94-873	000	Northern States Power Company (WI)	12-30-93
ER94-874	000	Northern States Power Company (MN)	12-30-93
ER94-875	000	Northern States Power Company (MN)	12-30-93
ER94-876	000	Northern States Power Company (MN)	12-30-93
ER94-877	000	Northern States Power Company (MN)	12-30-93
ER94-878	000	Northern States Power Company (MN)	12-30-93

ATTACHMENT A.—CHRONOLOGICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-879	000	Northern States Power Company (MN)	12-30-93
ER94-880	000	Northern States Power Company (MN)	12-30-93
ER94-881	000	Northern States Power Company (MN)	12-30-93
ER94-882	000	Northern States Power Company (MN)	12-30-93
ER94-883	000	Northern States Power Company (MN)	12-30-93
ER94-884	000	Northern States Power Company (MN)	12-30-93
ER94-885	000	Northern States Power Company (MN)	12-30-93
ER94-886	000	Northern States Power Company (MN)	12-30-93
ER94-887	000	PSI Energy, Inc	12-28-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994

ER94-499	000	Alabama Power Company	12-23-93
ER94-571	000	Alabama Power Company	12-29-93
ER94-390	000	Allegheny Power Service Corporation	12-23-93
ER94-812	000	American Elec. Pwr. Svc. Corp, et al	01-03-94
ER94-364	000	Arizona Public Service Company	12-22-93
ER94-414	000	Arizona Public Service Company	12-23-93
ER94-419	000	Arizona Public Service Company	12-23-93
ER94-477	000	Arizona Public Service Company	12-28-93
ER94-480	000	Arizona Public Service Company	12-28-93
ER94-497	000	Arizona Public Service Company	12-23-93
ER94-558	000	Arizona Public Service Company	12-29-93
ER94-598	000	Arizona Public Service Company	12-29-93
ER94-644	000	Arizona Public Service Company	12-30-93
ER94-645	000	Arizona Public Service Company	12-30-93
ER94-465	000	Beebee Island Corporation	12-28-93
ER94-370	000	Black Hills Power & Light Company	12-23-93
ER94-646	000	Black Hills Power & Light Company	12-30-93
ER94-670	000	Black Hills Power & Light Company	12-30-93
ER94-671	000	Black Hills Power & Light Company	12-30-93
ER94-791	000	Black Hills Power & Light Company	12-30-93
ER94-695	000	Blackstone Valley Electric Company	12-30-93
ER94-426	000	Boston Edison Company	12-27-93
ER94-811	000	Canal Electric Company	01-03-94
ER94-808	000	Carolina Power & Light Company	01-03-94
ER94-643	000	Central Maine Power Company	12-30-93
ER94-672	000	Central Maine Power Company	12-30-93
ER94-639	000	Central Vermont Public Service Corp	12-30-93
ER94-640	000	Central Vermont Public Service Corp	12-30-93
ER94-723	000	Central Vermont Public Service Corp	12-30-93
ER94-673	000	Citizens Utilities Company	12-30-93
ER94-416	000	Cleveland Elec. Illuminating Co	12-23-93
ER94-417	000	Cleveland Elec. Illuminating Co	12-23-93
ER94-568	000	Cleveland Elec. Illuminating Co	12-29-93
ER94-570	000	Cleveland Elec. Illuminating Co	12-29-93
ER94-650	000	Cleveland Elec. Illuminating Co., et al	12-30-93
ER94-555	000	Cleveland Elec. Illuminating Co	12-29-93
ER94-656	000	Commonwealth Edison Company	12-30-93
ER94-692	000	Concord Electric Company	12-30-93
ER94-663	000	Connecticut Light and Power Co	12-30-93
ER94-637	000	Connecticut Valley Elec. Co. Inc	12-30-93
ER94-638	000	Connecticut Valley Elec. Co. Inc	12-30-93
ER94-391	000	Consumers Power Company	12-23-93
ER94-526	000	Consumers Power Company	12-29-93
ER94-529	000	Detroit Edison Company	12-29-93
ER94-530	000	Detroit Edison Company	12-29-93
ER94-566	000	Detroit Edison Company	12-29-93
ER94-649	000	Duquesne Light Company	12-30-93
ER94-657	000	Eastern Edison Co., et al	12-30-93
ER94-689	000	El Paso Electric Company	12-30-93
ER94-690	000	El Paso Electric Company	12-30-93
ER94-691	000	El Paso Electric Company	12-30-93
ER94-747	000	Energy Services, Inc	12-30-93
ER94-607	000	Entergy Services, Inc	12-29-93
ER94-608	000	Entergy Services, Inc	12-29-93
ER94-609	000	Entergy Services, Inc	12-29-93
ER94-610	000	Entergy Services, Inc	12-29-93
ER94-611	000	Entergy Services, Inc	12-29-93
ER94-612	000	Entergy Services, Inc	12-29-93
ER94-613	000	Entergy Services, Inc	12-29-93
ER94-744	000	Entergy Services, Inc	12-30-93
ER94-379	000	Florida Power Corporation	12-23-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-380	000	Florida Power Corporation	12-23-93
ER94-573	000	Florida Power & Light Company	12-29-93
ER94-652	000	Florida Power & Light Company	12-30-93
ER94-724	000	Fourth Branch Assoc. Mechanicville	12-30-93
ER94-368	000	Georgia Power Company	12-22-93
ER94-781	000	Georgia Power Company	12-30-93
ER94-521	000	Great Bay Power Corporation	12-29-93
ER94-742	000	Green Mountain Power Corporation	12-30-93
ER94-743	000	Green Mountain Power Corporation	12-30-93
ER94-780	000	Gulf States Utilities Company	12-30-93
ER94-444	000	Idaho Power Company	12-27-93
ER94-445	000	Idaho Power Company	12-27-93
ER94-784	000	Idaho Power Company	12-30-93
ER94-785	000	Idaho Power Company	12-30-93
ER94-786	000	Idaho Power Company	12-30-93
ER94-787	000	Idaho Power Company	12-30-93
ER94-788	000	Idaho Power Company	12-30-93
ER94-796	000	Illinois Gas & Electric Company	01-03-94
ER94-449	000	Illinois Power Company	12-27-93
ER94-653	000	Interstate Power Company	12-30-93
ER94-654	000	Interstate Power Company	12-30-93
ER94-655	000	Interstate Power Company	12-30-93
ER94-436	000	Iowa Electric Light & Power Company	12-27-93
ER94-803	000	Iowa-Illinois Gas and Electric Co.	01-03-94
ER94-659	000	Iowa Southern Utilities Company	12-30-93
ER94-350	000	Jersey Central Pwr & Light, et al	12-22-93
ER94-453	000	Kansas City Power & Light Company	12-28-93
ER94-454	000	Kansas City Power & Light Company	12-28-93
ER94-455	000	Kansas City Power & Light Company	12-28-93
ER94-675	000	Long Island Lighting Company	12-30-93
ER94-773	000	Long Island Lighting Company	12-30-93
ER94-807	000	Louisville Gas & Electric Company	01-03-94
ER94-693	000	Maine Electric Power Company, Inc	12-30-93
ER94-798	000	Massachusetts Electric Company	01-03-94
ER94-478	000	Medina Power Company	12-28-93
ER94-676	000	Metropolitan Edison Co., et al	12-30-93
ER94-349	000	Midwest Power Systems, Inc	12-22-93
ER94-351	000	Midwest Power Systems, Inc	12-22-93
ER94-373	000	Midwest Power Systems, Inc	12-23-93
ER94-660	000	Midwest Power Systems, Inc	12-30-93
ER94-666	000	Midwest Power Systems Inc	12-30-93
ER94-793	000	Midwest Power Systems Inc	01-03-94
ER94-794	000	Midwest Power Systems Inc	01-03-94
ER94-802	000	Midwest Power Systems Inc	01-03-94
ER94-804	000	Midwest Power Systems Inc	01-03-94
ER94-581	000	Minnesota Power and Light Co	12-29-93
ER94-593	000	Minnesota Power and Light Company	12-29-93
ER94-739	000	Minnesota Power and Light Company	12-30-93
ER94-740	000	Minnesota Power and Light Company	12-30-93
ER94-741	000	Minnesota Power and Light Company	12-30-93
ER94-745	000	Minnesota Power and Light Company	12-30-93
ER94-746	000	Minnesota Power and Light Company	12-30-93
ER94-614	000	Missouri Public Service	12-29-93
ER94-615	000	Missouri Public Service	12-29-93
ER94-616	000	Missouri Public Service	12-29-93
ER94-556	000	Montana-Dakota Utilities Co	12-29-93
ER94-397	000	Montana Power Company	12-23-93
ER94-398	000	Montana Power Company	12-23-93
ER94-399	000	Montana Power Company	12-23-93
ER94-400	000	Montana Power Company	12-23-93
ER94-401	000	Montana Power Company	12-23-93
ER94-438	000	Montana Power Company	12-27-93
ER94-439	000	Montana Power Company	12-27-93
ER94-440	000	Montana Power Company	12-27-93
ER94-474	000	Montana Power Company	12-28-93
ER94-575	000	Montana Power Company	12-29-93
ER94-576	000	Montana Power Company	12-29-93
ER94-577	000	Montana Power Company	12-29-93
ER94-578	000	Montana Power Company	12-29-93
ER94-579	000	Montana Power Company	12-29-93
ER94-799	000	Montana Power Company	01-03-94
ER94-800	000	Montana Power Company	01-03-94
ER94-801	000	Montana Power Company	01-03-94

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-696	000	Montaup Electric Company	12-30-93
ER94-466	000	Moreau Manufacturing Corporation	12-28-93
ER94-356	000	Nevada Power Company	12-22-93
ER94-357	000	Nevada Power Company	12-22-93
ER94-358	000	Nevada Power Company	12-22-93
ER94-359	000	Nevada Power Company	12-22-93
ER94-402	000	Nevada Power Company	12-23-93
ER94-403	000	Nevada Power Company	12-23-93
ER94-404	000	Nevada Power Company	12-23-93
ER94-405	000	Nevada Power Company	12-23-93
ER94-406	000	Nevada Power Company	12-23-93
ER94-469	000	Nevada Power Company	12-28-93
ER94-562	000	Nevada Power Company	12-29-93
ER94-563	000	Nevada Power Company	12-29-93
ER94-564	000	Nevada Power Company	12-29-93
ER94-565	000	Nevada Power Company	12-29-93
ER94-686	000	Nevada Power Company	12-30-93
ER94-687	000	Nevada Power Company	12-30-93
ER94-734	000	New Charleston Power I, L. P	12-30-93
ER94-371	000	New England Power Company	12-23-93
ER94-372	000	New England Power Company	12-23-93
ER94-374	000	New England Power Company	12-23-93
ER94-484	000	New England Power Company	12-28-93
ER94-538	000	New England Power Company	12-29-93
ER94-661	000	New England Power Company	12-30-93
ER94-797	000	New England Power Company	01-03-94
ER94-648	000	New York State Elec. and Gas Corp	12-30-93
ER94-725	000	New York State Elec. and Gas Corp	12-30-93
ER94-726	000	New York State Elec. and Gas Corp	12-30-93
ER94-727	000	New York State Elec. and Gas Corp	12-30-93
ER94-728	000	New York State Elec. and Gas Corp	12-30-93
ER94-729	000	New York State Elec. and Gas Corp	12-30-93
ER94-730	000	New York State Elec. and Gas Corp	12-30-93
ER94-731	000	New York State Elec. and Gas Corp	12-30-93
ER94-732	000	New York State Elec. and Gas Corp	12-30-93
ER94-347	000	Niagara Mohawk Power Corporation	12-22-93
ER94-420	000	Niagara Mohawk Power Corporation	12-23-93
ER94-422	000	Niagara Mohawk Power Corporation	12-27-93
ER94-423	000	Niagara Mohawk Power Corporation	12-27-93
ER94-424	000	Niagara Mohawk Power Corporation	12-27-93
ER94-425	000	Niagara Mohawk Power Corporation	12-27-93
ER94-428	000	Niagara Mohawk Power Corporation	12-27-93
ER94-809	000	Niagara Mohawk Power Corporation	01-03-94
ER94-810	000	Niagara Mohawk Power Corporation	01-03-94
ER94-662	000	Northeast Utilities Service Company et al	12-30-93
ER94-450	000	Northeast Utilities Service Company	12-28-93
ER94-451	000	Northeast Utilities Service Company	12-28-93
ER94-452	000	Northeast Utilities Service Company	12-28-93
ER94-559	000	Northeast Utilities Service Company	12-29-93
ER94-641	000	Northeast Utilities Service Company	12-30-93
ER94-642	000	Northeast Utilities Service Company	12-30-93
ER94-407	000	Northern States Power Company (MN)	12-23-93
ER94-606	000	Northern States Power Company (MN)	01-03-94
ER94-814	000	Northern States Power Company	12-30-93
ER94-815	000	Northern States Power Company	12-30-93
ER94-816	000	Northern States Power Company	12-30-93
ER94-817	000	Northern States Power Company	12-30-93
ER94-818	000	Northern States Power Company	12-30-93
ER94-819	000	Northern States Power Company	12-30-93
ER94-820	000	Northern States Power Company	12-30-93
ER94-821	000	Northern States Power Company	12-30-93
ER94-822	000	Northern States Power Company	12-30-93
ER94-823	000	Northern States Power Company	12-30-93
ER94-824	000	Northern States Power Company	12-30-93
ER94-825	000	Northern States Power Company	12-30-93
ER94-826	000	Northern States Power Company	12-30-93
ER94-827	000	Northern States Power Company	12-30-93
ER94-828	000	Northern States Power Company	12-30-93
ER94-829	000	Northern States Power Company	12-30-93
ER94-830	000	Northern States Power Company	12-30-93
ER94-831	000	Northern States Power Company	12-30-93
ER94-832	000	Northern States Power Company (MN)	12-30-93
ER94-833	000	Northern States Power Company	12-30-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22. 1993 AND JANUARY 3, 1994—Continued

ER94-834	000	Northern States Power Company	12-30-93
ER94-835	000	Northern States Power Company	12-30-93
ER94-836	000	Northern States Power Company (WI)	12-30-93
ER94-837	000	Northern States Power Company	12-30-93
ER94-838	000	Northern States Power Company	12-30-93
ER94-839	000	Northern States Power Company	12-30-93
ER94-840	000	Northern States Power Company	12-30-93
ER94-841	000	Northern States Power Company	12-30-93
ER94-842	000	Northern States Power Company	12-30-93
ER94-843	000	Northern States Power Company	12-30-93
ER94-844	000	Northern States Power Company	12-30-93
ER94-845	000	Northern States Power Company	12-30-93
ER94-846	000	Northern States Power Company	12-30-93
ER94-847	000	Northern States Power Company	12-30-93
ER94-848	000	Northern States Power Company	12-30-93
ER94-849	000	Northern States Power Company	12-30-93
ER94-850	000	Northern States Power Company	12-30-93
ER94-851	000	Northern States Power Company	12-30-93
ER94-852	000	Northern States Power Company	12-30-93
ER94-853	000	Northern States Power Company	12-30-93
ER94-854	000	Northern States Power Company	12-30-93
ER94-855	000	Northern States Power Company (MN)	12-30-93
ER94-856	000	Northern States Power Company (MN)	12-30-93
ER94-857	000	Northern States Power Company (MN)	12-30-93
ER94-858	000	Northern States Power Company (MN)	12-30-93
ER94-859	000	Northern States Power Company (MN)	12-30-93
ER94-860	000	Northern States Power Company (MN)	12-30-93
ER94-861	000	Northern States Power Company (MN)	12-30-93
ER94-862	000	Northern States Power Company (MN)	12-30-93
ER94-863	000	Northern States Power Company (MN)	12-30-93
ER94-864	000	Northern States Power Company (MN)	12-30-93
ER94-865	000	Northern States Power Company (MN)	12-30-93
ER94-866	000	Northern States Power Company (MN)	12-30-93
ER94-867	000	Northern States Power Company (MN)	12-30-93
ER94-868	000	Northern States Power Company (MN)	12-30-93
ER94-869	000	Northern States Power Company (WI)	12-30-93
ER94-870	000	Northern States Power Company (MN)	12-30-93
ER94-871	000	Northern States Power Company (MN)	12-30-93
ER94-872	000	Northern States Power Company (WI)	12-30-93
ER94-873	000	Northern States Power Company (WI)	12-30-93
ER94-874	000	Northern States Power Company (MN)	12-30-93
ER94-875	000	Northern States Power Company (MN)	12-30-93
ER94-876	000	Northern States Power Company (MN)	12-30-93
ER94-877	000	Northern States Power Company (MN)	12-30-93
ER94-878	000	Northern States Power Company (MN)	12-30-93
ER94-879	000	Northern States Power Company (MN)	12-30-93
ER94-880	000	Northern States Power Company (MN)	12-30-93
ER94-881	000	Northern States Power Company (MN)	12-30-93
ER94-882	000	Northern States Power Company (MN)	12-30-93
ER94-883	000	Northern States Power Company (MN)	12-30-93
ER94-884	000	Northern States Power Company (MN)	12-30-93
ER94-885	000	Northern States Power Company (MN)	12-30-93
ER94-886	000	Northern States Power Company (MN)	12-30-93
ER94-697	000	Ohio Edison Company	12-30-93
ER94-698	000	Ohio Edison Company	12-30-93
ER94-458	000	Ohio Valley Electric Corporation	12-28-93
ER94-387	000	Oklahoma Gas and Elec. Company	12-23-93
ER94-537	000	Old Dominion Electric Cooperative	12-23-93
ER94-805	000	Old Dominion Electric Cooperative	01-03-94
ER94-415	000	Orange & Rockland Utilities Inc	12-23-93
ER94-493	000	Orange and Rockland Utilities, Inc	12-28-93
ER94-560	000	Oregon Trail Elec. Consumers Coop	12-29-93
ER94-494	000	Pacific Gas and Electric Company	12-29-93
ER94-495	000	Pacific Gas and Electric Company	12-29-93
ER94-678	000	Pacific Gas and Electric Company	12-30-93
ER94-694	000	Pacific Gas and Electric Company	12-30-93
ER94-699	000	Pacific Gas and Electric Company	12-30-93
ER94-700	000	Pacific Gas and Electric Company	12-30-93
ER94-722	000	Pacific Gas and Electric Company	12-30-93
ER94-888	000	Pacificorp	01-05-94
ER94-889	000	Pacificorp	01-05-94
ER94-352	000	Pacificorp	12-22-93
ER94-353	000	Pacificorp	12-22-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-354	000	Pacificorp	12-22-93
ER94-456	000	Pacificorp	12-28-93
ER94-457	000	Pacificorp	12-28-93
ER94-483	000	Pacificorp	12-28-93
ER94-531	000	Pacificorp	12-29-93
ER94-647	000	Pacificorp	12-30-93
ER94-677	000	Pacificorp	12-30-93
ER94-679	000	Pacificorp	12-30-93
ER94-680	000	Pacificorp	12-30-93
ER94-681	000	Pacificorp	12-30-93
ER94-684	000	Pacificorp	12-30-93
ER94-685	000	Pacificorp	12-30-93
ER94-427	000	Pennsylvania Electric Company	12-27-93
ER94-442	000	Pennsylvania Electric Company	12-27-93
ER94-443	000	Pennsylvania Electric Company	12-27-93
ER94-459	000	Pennsylvania Electric Co., et al	12-28-93
ER94-481	000	Pennsylvania Electric Company	12-28-93
ER94-525	000	Pennsylvania Electric Company	12-29-93
ER94-527	000	Pennsylvania Electric Company	12-29-93
ER94-557	000	Pennsylvania Electric Company	12-29-93
ER94-618	000	Pennsylvania Power & Light Co	12-30-93
ER94-619	000	Pennsylvania Power & Light Co	12-30-93
ER94-620	000	Pennsylvania Power & Light Co	12-30-93
ER94-621	000	Pennsylvania Power & Light Co	12-30-93
ER94-622	000	Pennsylvania Power & Light Co	12-30-93
ER94-623	000	Pennsylvania Power & Light Co	12-30-93
ER94-624	000	Pennsylvania Power & Light Co	12-30-93
ER94-625	000	Pennsylvania Power & Light Co	12-30-93
ER94-626	000	Pennsylvania Power & Light Co	12-30-93
ER94-627	000	Pennsylvania Power & Light Co	12-30-93
ER94-628	000	Pennsylvania Power & Light Co	12-30-93
ER94-629	000	Pennsylvania Power & Light Co	12-30-93
ER94-630	000	Pennsylvania Power & Light Co	12-30-93
ER94-631	000	Pennsylvania Power & Light Co	12-30-93
ER94-632	000	Pennsylvania Power & Light Co	12-30-93
ER94-633	000	Pennsylvania Power & Light Co	12-30-93
ER94-634	000	Pennsylvania Power & Light Co	12-30-93
ER94-635	000	Pennsylvania Power & Light Co	12-30-93
ER94-664	000	Pennsylvania Power Company	12-30-93
ER94-665	000	Pennsylvania Power Company	12-30-93
ER94-532	000	Philadelphia Electric Company	12-29-93
ER94-363	000	Portland General Electric Company	12-22-93
ER94-408	000	Portland General Electric Company	12-23-93
ER94-409	000	Portland General Electric Company	12-23-93
ER94-412	000	Portland General Electric Company	12-23-93
ER94-461	000	Portland General Electric Company	12-28-93
ER94-462	000	Portland General Electric Company	12-28-93
ER94-463	000	Portland General Electric Company	12-28-93
ER94-464	000	Portland General Electric Company	12-28-93
ER94-470	000	Portland General Electric Company	12-28-93
ER94-471	000	Portland General Electric Company	12-28-93
ER94-472	000	Portland General Electric Company	12-28-93
ER94-496	000	Portland General Electric Company	12-28-93
ER94-539	000	Portland General Electric Company	12-29-93
ER94-540	000	Portland General Electric Company	12-29-93
ER94-541	000	Portland General Electric Company	12-29-93
ER94-542	000	Portland General Electric Company	12-29-93
ER94-543	000	Portland General Electric Company	12-29-93
ER94-544	000	Portland General Electric Company	12-29-93
ER94-545	000	Portland General Electric Company	12-29-93
ER94-546	000	Portland General Electric Company	12-29-93
ER94-547	000	Portland General Electric Company	12-29-93
ER94-548	000	Portland General Electric Company	12-29-93
ER94-549	000	Portland General Electric Company	12-29-93
ER94-550	000	Portland General Electric Company	12-29-93
ER94-701	000	Portland General Electric Company	12-30-93
ER94-702	000	Portland General Electric Company	12-30-93
ER94-703	000	Portland General Electric Company	12-30-93
ER94-704	000	Portland General Electric Company	12-30-93
ER94-705	000	Portland General Electric Company	12-30-93
ER94-706	000	Portland General Electric Company	12-30-93
ER94-707	000	Portland General Electric Company	12-30-93
ER94-708	000	Portland General Electric Company	12-30-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-709	000	Portland General Electric Company	12-30-93
ER94-710	000	Portland General Electric Company	12-30-93
ER94-711	000	Portland General Electric Company	12-30-93
ER94-712	000	Portland General Electric Company	12-30-93
ER94-713	000	Portland General Electric Company	12-30-93
ER94-714	000	Portland General Electric Company	12-30-93
ER94-715	000	Portland General Electric Company	12-30-93
ER94-716	000	Portland General Electric Company	12-30-93
ER94-717	000	Portland General Electric Company	12-30-93
ER94-718	000	Portland General Electric Company	12-30-93
ER94-719	000	Portland General Electric Company	12-30-93
ER94-720	000	Portland General Electric Company	12-30-93
ER94-721	000	Portland General Electric Company	12-30-93
ER94-467	000	PSI Energy, Inc	12-28-93
ER94-533	000	PSI Energy, Inc	12-29-93
ER94-887	000	PSI Energy, Inc	12-28-93
ER94-348	000	Public Service Co. of New Mexico	12-22-93
ER94-355	000	Public Service Co. of New Mexico	12-22-93
ER94-375	000	Public Service Co. of New Mexico	12-23-93
ER94-376	000	Public Service Co. of New Mexico	12-23-93
ER94-377	000	Public Service Co. of New Mexico	12-23-93
ER94-378	000	Public Service Co. of New Mexico	12-23-93
ER94-388	000	Public Service Co. of New Mexico	12-23-93
ER94-395	000	Public Service Elec. & Gas Company	12-23-93
ER94-396	000	Public Service Elec. & Gas Company	12-23-93
ER94-435	000	Public Service Elec. & Gas Company	12-27-93
ER94-498	000	Public Service Company of Colorado	12-29-93
ER94-500	000	Public Service Company of Colorado	12-29-93
ER94-501	000	Public Service Company of Colorado	12-29-93
ER94-502	000	Public Service Company of Colorado	12-29-93
ER94-503	000	Public Service Company of Colorado	12-29-93
ER94-504	000	Public Service Company of Colorado	12-29-93
ER94-505	000	Public Service Company of Colorado	12-29-93
ER94-506	000	Public Service Company of Colorado	12-29-93
ER94-507	000	Public Service Company of Colorado	12-29-93
ER94-508	000	Public Service Company of Colorado	12-29-93
ER94-509	000	Public Service Company of Colorado	12-29-93
ER94-510	000	Public Service Company of Colorado	12-29-93
ER94-511	000	Public Service Company of Colorado	12-29-93
ER94-512	000	Public Service Company of Colorado	12-29-93
ER94-513	000	Public Service Company of Colorado	12-29-93
ER94-514	000	Public Service Company of Colorado	12-29-93
ER94-515	000	Public Service Company of Colorado	12-29-93
ER94-516	000	Public Service Company of Colorado	12-29-93
ER94-517	000	Public Service Company of Colorado	12-29-93
ER94-518	000	Public Service Company of Colorado	12-29-93
ER94-519	000	Public Service Company of Colorado	12-29-93
ER94-561	000	Public Service Company of Colorado	12-29-93
ER94-520	000	Public Service Company of Colorado	12-29-93
ER94-522	000	Public Service Co. of New Mexico	12-29-93
ER94-523	000	Public Service Co. of New Mexico	12-29-93
ER94-524	000	Public Service Co. of New Mexico	12-29-93
ER94-789	000	Public Service Co. of New Hampshire	12-30-93
ER94-651	000	Public Service Company of Oklahoma	12-30-93
ER94-667	000	Public Service Co. of New Mexico	12-30-93
ER94-668	000	Public Service Co. of New Mexico	12-30-93
ER94-669	000	Public Service Co. of New Mexico	12-30-93
ER94-674	000	Public Service Co. of New Mexico	12-30-93
ER94-361	000	Public Svc Electric & Gas Co, et al	12-22-93
ER94-362	000	Public Svc Electric & Gas Co, et al	12-22-93
ER94-479	000	Public Svc Company of New Hampshire	12-28-93
ER94-381	000	Puget Sound Power & Light Company	12-23-93
ER94-382	000	Puget Sound Power & Light Company	12-23-93
ER94-383	000	Puget Sound Power & Light Company	12-23-93
ER94-384	000	Puget Sound Power & Light Company	12-23-93
ER94-385	000	Puget Sound Power & Light Company	12-23-93
ER94-386	000	Puget Sound Power & Light Company	12-23-93
ER94-485	000	Puget Sound Power & Light Company	12-28-93
ER94-486	000	Puget Sound Power & Light Company	12-28-93
ER94-487	000	Puget Sound Power & Light Company	12-28-93
ER94-488	000	Puget Sound Power & Light Company	12-28-93
ER94-489	000	Puget Sound Power & Light Company	12-28-93
ER94-490	000	Puget Sound Power & Light Company	12-28-93

ATTACHMENT B.—ALPHABETICAL LIST OF RATE FILINGS BETWEEN DECEMBER 22, 1993 AND JANUARY 3, 1994—Continued

ER94-491	000	Puget Sound Power & Light Company	12-28-93
ER94-492	000	Puget Sound Power & Light Company	12-28-93
ER94-534	000	Puget Sound Power & Light Company	12-29-93
ER94-535	000	Puget Sound Power & Light Company	12-29-93
ER94-536	000	Puget Sound Power & Light Company	12-29-93
ER94-748	000	Puget Sound Power & Light Company	12-30-93
ER94-749	000	Puget Sound Power & Light Company	12-30-93
ER94-750	000	Puget Sound Power & Light Company	12-30-93
ER94-751	000	Puget Sound Power & Light Company	12-30-93
ER94-752	000	Puget Sound Power & Light Company	12-30-93
ER94-753	000	Puget Sound Power & Light Company	12-30-93
ER94-754	000	Puget Sound Power & Light Company	12-30-93
ER94-755	000	Puget Sound Power & Light Company	12-30-93
ER94-756	000	Puget Sound Power & Light Company	12-30-93
ER94-757	000	Puget Sound Power & Light Company	12-30-93
ER94-758	000	Puget Sound Power & Light Company	12-30-93
ER94-759	000	Puget Sound Power & Light Company	12-30-93
ER94-760	000	Puget Sound Power & Light Company	12-30-93
ER94-761	000	Puget Sound Power & Light Company	12-30-93
ER94-762	000	Puget Sound Power & Light Company	12-30-93
ER94-763	000	Puget Sound Power & Light Company	12-30-93
ER94-764	000	Puget Sound Power & Light Company	12-30-93
ER94-765	000	Puget Sound Power & Light Company	12-30-93
ER94-766	000	Puget Sound Power & Light Company	12-30-93
ER94-767	000	Puget Sound Power & Light Company	12-30-93
ER94-768	000	Puget Sound Power & Light Company	12-30-93
ER94-769	000	Puget Sound Power & Light Company	12-30-93
ER94-770	000	Puget Sound Power & Light Company	12-30-93
ER94-771	000	Puget Sound Power & Light Company	12-30-93
ER94-772	000	Puget Sound Power & Light Company	12-30-93
ER94-430	000	Rochester Gas & Electric Corp	12-27-93
ER94-431	000	Rochester Gas & Electric Corp	12-27-93
ER94-432	000	Rochester Gas & Electric Corp	12-27-93
ER94-433	000	Rochester Gas & Electric Corp	12-27-93
ER94-434	000	Rochester Gas & Electric Corp	12-27-93
ER94-437	000	Rochester Gas & Electric Corp	12-27-93
ER94-360	000	San Diego Gas & Electric	12-22-93
ER94-551	000	Sierra Pacific Power Company	12-29-93
ER94-552	000	Sierra Pacific Power Company	12-29-93
ER94-553	000	Sierra Pacific Power Company	12-29-93
ER94-554	000	Sierra Pacific Power Company	12-29-93
ER94-682	000	Sierra Pacific Power Company	12-30-93
ER94-683	000	Sierra Pacific Power Company	12-30-93
ER94-688	000	Sierra Pacific Power Company	12-30-93
ER94-783	000	South Florida Cogeneration Associat	12-30-93
ER94-582	000	Southern Calif. Edison Company	12-29-93
ER94-583	000	Southern Calif. Edison Company	12-29-93
ER94-584	000	Southern Calif. Edison Company	12-29-93
ER94-585	000	Southern Calif. Edison Company	12-29-93
ER94-587	000	Southern Calif. Edison Company	12-29-93
ER94-588	000	Southern Calif. Edison Company	12-29-93
ER94-589	000	Southern Calif. Edison Company	12-29-93
ER94-590	000	Southern Calif. Edison Company	12-29-93
ER94-591	000	Southern Calif. Edison Company	12-29-93
ER94-592	000	Southern Calif. Edison Company	12-29-93
ER94-595	000	Southern Calif. Edison Company	12-29-93
ER94-596	000	Southern Calif. Edison Company	12-29-93
ER94-775	000	Southern Calif. Edison Co., et al	12-30-93
ER94-572	000	Southern Calif. Edison Company	12-29-93
ER94-574	000	Southern Calif. Edison Company	12-29-93
ER94-586	000	Southern Calif. Edison Company	12-29-93
ER94-594	000	Southern Calif. Edison Company	12-29-93
ER94-617	000	Southern Calif. Edison Company	12-29-93
ER94-733	000	Southwestern Electric Power Co	12-30-93
ER94-774	000	Southwestern Public Service Co	12-30-93
ER94-446	000	Southwire Company	12-30-93
ER94-580	000	Superior Water, Light and Power Co	12-27-93
ER94-389	000	Tenaska Power Services Company	12-29-93
ER94-413	000	Texas-New Mexico Power Company	12-23-93
ER94-447	000	Texas-New Mexico Power Company	12-23-93
ER94-448	000	Texas-New Mexico Power Company	12-27-93
ER94-468	000	Texas-New Mexico Power Company	12-27-93
ER94-418	000	Toledo Edison Company	12-28-93
ER94-567	000	Toledo Edison Company	12-23-93
ER94-569	000	Toledo Edison Company	12-29-93
ER94-782	000	Tucson Elec. Power Company	12-29-93
ER94-792	000	UGI Utilities, Inc	12-30-93
ER94-473	000	Union Electric Company	12-30-93
ER94-795	000	United Illuminating Company	12-28-93
ER94-460	000	Vermont Electric Power Company, Inc	01-03-94
ER94-790	000	Virginia Electric and Power Company	12-28-93
ER94-392	000	Washington Water Power	12-30-93
ER94-393	000	Washington Water Power	12-23-93
ER94-394	000	Washington Water Power	12-23-93
ER94-429	000	Washington Water Power	12-23-93
ER94-441	000	Washington Water Power	12-27-93
ER94-599	000	Washington Water Power	12-27-93
ER94-600	000	Washington Water Power	12-29-93
ER94-601	000	Washington Water Power	12-29-93
ER94-602	000	Washington Water Power	12-29-93
ER94-603	000	Washington Water Power	12-29-93
ER94-604	000	Washington Water Power	12-29-93
ER94-605	000	Washington Water Power	12-29-93
ER94-606	000	Washington Water Power	12-29-93
ER94-735	000	Washington Water Power	12-30-93
ER94-736	000	Washington Water Power	12-30-93
ER94-737	000	Washington Water Power	12-30-93
ER94-738	000	Washington Water Power	12-30-93
ER94-365	000	Western Resources, Inc	12-22-93
ER94-366	000	Western Resources, Inc	12-22-93
ER94-367	000	Western Resources, Inc	12-22-93
ER94-410	000	Western Resources, Inc	12-23-93
ER94-411	000	Western Resources, Inc	12-23-93
ER94-776	000	Westplains Energy	12-30-93
ER94-777	000	Westplains Energy	12-30-93
ER94-778	000	Westplains Energy	12-30-93
ER94-779	000	Westplains Energy	12-30-93
ER94-813	000	Westplains Energy	01-03-94
ER94-421	999	Wisconsin Elec. Power Company	12-23-93
ER94-369	000	Wisconsin Power & Light Company	12-23-93
ER94-475	000	Wisconsin Power & Light Company	12-28-93
ER94-528	000	Wisconsin Power & Light Company	12-29-93
ER94-658	000	Wisconsin Power & Light Company	12-30-93
ER94-476	000	Wisconsin Public Service Corp	12-28-93
ER94-636	000	Wisconsin Public Service Corp	12-30-93

[FR Doc. 94-1028 Filed 1-13-94; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. ER88-83-010 et al.]

Southern California Edison Co., et al.; Electric Rate and Corporate Regulation Filings

January 7, 1994.

Take notice that the following filings have been made with the Commission:

1. Southern California Edison Company

[Docket No. ER88-83-010]

Take notice that on December 22, 1993, Southern California Edison Company tendered for filing its refund report in the above-referenced docket.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Georgia Power Company

[Docket No. ER93-325-002]

Take notice that on December 22, 1993, Georgia Power Company (Georgia Power) tendered for filing revised tariff sheets for its FERC Electric Tariff, First Revised Volume No. 2 (partial requirements service). The tariff changes deleted certain resale restrictions as ordered by the Commission.

Georgia Power states that the tariff changes comply with the Commission's Order of November 19, 1993.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. Columbus Southern Power Company, Ohio Power Company

[Docket No. ER93-537-000]

Take notice that on December 22, 1993, American Electric Power Service Corporation, on behalf of Columbus Southern Power Company (CSP) and Ohio Power Company (OPCO) tendered for filing Supplement B to CSP's FERC Rate Schedule No. 37 and OPCO's FERC Rate Schedule No. 74. Supplement B caps the transmission rate in Rate Schedule Nos. 37 and 74 respectively, for transactions exceeding one year in length at the level ultimately approved by FERC in Docket No. ER93-540-000.

A copy of the filing was served upon the American Municipal Power-Ohio Inc., the City of Columbus, Ohio, and the Public Utility Commission of Ohio.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Heartland Energy Services, Inc.

[Docket No. ER94-108-000]

Take notice that on December 22, 1993, Heartland Energy Services, Inc. (HES) tendered for filing with the Federal Energy Regulatory Commission supplemental material relating to the above docket.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. North American Conservation, Inc.

[Docket No. ER94–152–000]

Take notice that on December 28, 1993, North American Conservation Inc. tendered for filing an amendment to its November 12, 1993, filing filed in this docket.

Comment date: January 18, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Minnesota Power & Light Company

[Docket No. ER94–174–000]

Take notice that on December 20, 1993, Minnesota Power & Light Company (Minnesota) tendered for filing an amendment to its original filing filed in this docket on November 19, 1993.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. Western Resources, Inc.

[Docket No. ER94–308–000]

Take notice that on December 20, 1993, Western Resources, Inc. (WRI) tendered for filing a proposed change to its Federal Regulatory Commission Electric Service Tariff No. 251. WRI states the purpose of the change is to extend the term of the existing Electric Power Supply Contract between WRI and the City of Troy, Kansas. The change is proposed to become effective February 18, 1994.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Kentucky Utilities Company

[Docket No. ER94–309–000]

Take notice that on December 20, 1993, Kentucky Utilities Company (KU) tendered for filing a Letter Agreement with the City of Bardstown, Kentucky to provide excess of normal facilities.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Illinois Power Company

[Docket No. ER94–310–000]

Take notice that on December 20, 1993, Illinois Power Company (IP) tendered for filing a service agreement, Appendix A to the Interconnection Agreement between IP and Southern Illinois Power Cooperative (SIPC). The Appendix provides for an additional point of interconnection between SIPC and IP. IP proposes an effective date of November 14, 1991, and, therefore, request waiver of the Commission's notice requirements.

Copies of the filing have been served on SIPC and the Illinois Commerce Commission.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. New England Power Company

[Docket No. ER94–313–000]

Take notice that on December 20, 1993, New England Power Company (NEP or Company) filed a Petition for Waiver of Fuel Adjustment Clause Regulations and an amendment to the Fuel Adjustment Clause in NEP's FERC Electric Tariff, Original Volume No. 1. NEP requests permission to amend its Tariff No. 1 Fuel Adjustment Clause to allow flow-through to customers of revenues and expenses associated with NEP's sulfur dioxide (SO_2) allowance administration and trading.

NEP furthermore filed a Compensating Generation Agreement that provides for the sale of surplus SO_2 allowances if NEP receives EPA approval to participate in Phase I of the Federal Acid Rain Program. NEP also filed a service agreement under its FERC Electric Tariff, Original Volume No. 5 for a power sale related to the SO_2 contract. NEP seeks waiver of the Commission's notice requirements and asks that the Commission make each document effective in accordance with its terms.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

11. Washington Water Power Company

[Docket No. ER94–314–000]

Take notice that on December 21, 1993, the Washington Water Power Company (WWP) tendered for filing with the Federal Energy Regulatory Commission, pursuant to Docket No. ER93–2–002 pertaining to final amnesty for jurisdictional service and waiver of notice a Transmission Agreement between the WWP and Bonneville Power Administration (BPA). The Transmission Agreement provides for BPA to transmit power and energy, associated with the Colstrip Thermal Generating Plant, to WWP's system.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

12. San Diego Gas & Electric Company

[Docket No. ER94–315–000]

Take notice that on December 20, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing the California Transmission System Participation Agreement between Imperial Irrigation District (IID) and SDG&E, and the Agreement for Communication Service between SDG&E and IID (collectively "Agreements").

The Agreements provide for the construction and operation of the joint 500 kV transmission line to supply SDG&E transmission from the Imperial Valley Substation to the Arizona-California Border and the associated communications system. SDG&E request that the Commission disclaim jurisdiction over all or certain portions of the Agreements.

Copies of the filing were served upon the Public Utilities Commission of the State California and IID.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

13. Washington Water Power Company

[Docket No. ER94–316–000]

Take notice that on December 21, 1993, the Washington Water Power Company (WWP), tendered for filing with the Federal Energy Regulatory Commission, pursuant to Docket No. ER93–2–002 pertaining to a final amnesty for jurisdictional service and waiver of notice, a Transmission Agreement between WWP and Bonneville Power Administration (BPA). The Transmission Agreement provides for BPA to transmit power an energy, associated with a Capacity and Energy Exchange Agreement WWP and Pacific Gas and Electric Company, to and from WWP's system.

Comment date: January 21, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94–965 Filed 1–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. EL94–16.000 et al.]

Wisconsin Electric Power Co., et al.; Electric Rate and Corporate Regulation Filings

January 6, 1994.

Take notice that the following filings have been made with the Commission:

1. Wisconsin Electric Power Company

[Docket No. EL94–16–000]

Take notice that on December 20, 1993, Wisconsin Electric Power Company (Wisconsin Electric or the Company) submitted for filing pursuant to the policy established by the Commission in an order issued on November 29, 1993 in Western Resources, Inc., Docket No. EL93–14–000, a request for waiver of the fuel clause regulations to give the Company the opportunity to limit its potential refund liability by making a filing for waiver at this time, after the costs have been collected. Since the proceeding in Docket No. FA88–62–000 involves various interrelated issues concerning the Company's recovery of reclamation costs through the wholesale fuel clause, the Company also requests the Commission to defer any action on this filing until all issues in that docket are before it.

Comment date: January 26, 1994, in accordance with Standard Paragraph E at the end of this notice.

2. Florida Power Corporation

[Docket No. ER94–33–000]

Take notice that on December 17, 1993, Florida Power Corporation requested the Commission to withdraw its filing made on October 15, 1993 in the above named docket. That filing contained provisions concerning displacement energy purchased by Seminole Electric Cooperative, Inc. Since the same provisions are contained in a settlement agreement filed on December 17, 1993, in Docket No. ER93–299–000, and since those provisions constitute an integral part of the settlement, Florida Power states that those provisions should be reviewed as part of the settlement rather than in this docket.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

3. New England Power Company

[Docket No. ER94–70–000]

Take notice that on December 15, 1993, New England Power Company (NEP), and Boston Edison Company (BECO) tendered an amendment to their filing in this docket. The applicants continue to request that the contract which is the subject of this filing be deemed effective November 1, 1993.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

4. Kentucky Power Company

[Docket No. ER94–121–000]

Take notice that on December 16, 1993, Kentucky Power Company (Kentucky Power) filed, as an amendment to the filing made in this Docket on October 28, 1993, a proposed form of service agreement for proposed tariff MRS-T, and a service agreement executed by the City of Vanceburg, Kentucky (Vanceburg). The amendment was submitted in compliance with a request by the Commission's Staff. Kentucky Power requests an effective date of January 1, 1994.

Kentucky Power states that a copy of its filing was served upon Vanceburg and the Kentucky Public Service Commission.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

5. Black Hills Corporation

[Docket No. ER94–130–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on November 8, 1993, tendered for filing an agreement for Relocation of Lines and Joint Use of Transmission System, dated July 21, 1992 (Agreement), entered into between Black Hills and Tri-County Electric Association, Inc. (Tri-County).

The reasons for the Agreement are to provide for the relocation of certain 69 kV transmission lines of Tri-County to accommodate surface coal mining and to provide for the interconnection of Neil Simpson Unit No. 2, an 80 MW coal-fired electric power plant under construction by Black Hills to what are defined as Joint Use Facilities under the terms of the Agreement. The Agreement further provides for the exchange of breaker positions, the obligation of Black Hills to operate and maintain the Joint Use Facilities and the sharing of costs between Black Hills and Tri-County.

Black Hills has made an amended filing setting forth certain detailed cost data estimating Operation and Maintenance Costs of the Joint Use Facilities and breakers, the use of which are to be exchanged.

Copies of the amended filing were provided to Tri-County, Basin Electric Power Cooperative, Rushmore Electric Power Cooperative, Inc., Black Hills Electric Power, Inc., Butte Electric Cooperative, Inc., PacifiCorp, the South Dakota Public Utilities Commission, the Wyoming Public Service Commission, and the Montana Public Service Commission.

Black Hills has requested that further notice requirements be waived and the acceptance of the Agreement for filing be entered forthwith.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

6. Philadelphia Electric Company

[Docket No. ER94–318–000]

Take notice that on December 21, 1993, Philadelphia Electric Company, Public Service Electric and Gas Company, Atlantic City Electric Company and Delmarva Power & Light Company (the Peach Bottom Owners) submitted the Owners Agreement for Peach Bottom No. 2 and 3 Nuclear Units, dated November 24, 1971, as supplemented, and asked the Commission to disclaim jurisdiction over it. This Agreement, according to the Peach Bottom Owners, is not required to be filed under Section 205 of the Federal Power Act.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

7. PacifiCorp

[Docket No. ER94–319–000]

Take notice that on December 21, 1993, PacifiCorp, tendered for filing in accordance with Commission's Order pertaining to agreements involving final amnesty for jurisdictional service and waiver of notice, issued July 30, 1993 under Docket No. PL93–2–002, the Service Agreement between Tri-State Generation and Transmission Association Inc. (Tri-State) and PacifiCorp, effective September 28, 1989.

Copies of this filing were supplied to Tri-State, the Public Utility Commission of Oregon and the Utah Public Service Commission.

PacifiCorp requests in accordance with 18 CFR 35.11 of the Commission's Rules and Regulations and that a waiver of prior notice requirements be granted.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Company

[Docket No. ER94-320-000]

Take notice that on December 21, 1993, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission one Letter Agreement between Wisconsin Power and Light Company (WP&L) and Water Works and Lighting Commission (WWLC). Under the General Purpose Energy Agreement, WP&L will make non-firm energy available to WWLC, with terms and quantities to be arranged by mutual agreement.

Wisconsin Power and Light respectfully requests an effective date sixty (60) days from the date of filing.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

9. Massachusetts Electric Company

[Docket No. ER94-321-000]

Take notice that Massachusetts Electric Company (MECo), on December 21, 1993, tendered for filing two power purchases contract assignments that it has entered into with New England Power Company.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

10. PacifiCorp

[Docket No. ER94-323-000]

Take notice that PacifiCorp, on December 21, 1993, tendered for filing, in accordance with 18 CFR 35.13(a)(2)(i)(C) of the Commission's Rules and Regulations, a Wheeling Agreement between PacifiCorp and City of Bountiful Light & Power (Bountiful City) dated October 4, 1978.

Under the Wheeling Agreement, PacifiCorp provides non-firm wheeling of energy for Bountiful City.

PacifiCorp's filing herein, is in response to the Commission's July 30, 1993, Final Order in Docket No. PL93-2-000 regarding prior notice and filing requirements (Final Order). PacifiCorp requests, pursuant to the Final Order and 18 CFR 35.11 of the Commission's Rules and Regulations that a waiver of prior notice be granted and that an effective date of October 4, 1978 be assigned. This date being the effective date of the Wheeling Agreement. Such waiver will have no effect on wholesale or wheeling customers under other rate schedules.

Copies of this filing were supplied to the Public Service Commission of Utah.

Comment date: January 20, 1994, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 94-966 Filed 1-13-94; 8:45 am]

BILLING CODE 6717-01-P

[Project No. 2514-003 Virginia]

Appalachian Power Company; Availability of Draft Environmental Assessment

January 10, 1994.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new license for the existing Byllesby-Buck Hydroelectric Project, located on the New River in Carroll County, Virginia, near the city of Galax, and has prepared a Draft Environmental Assessment (DEA). In the DEA, the Commission's staff has analyzed the existing and potential future environmental impacts of the project and has concluded that licensing the project, with appropriate environmental protection, mitigation, and enhancement measures, would not constitute a major federal action that would significantly affect quality of the human environment.

Copies of the DEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Any comments should be filed within 30 days from the date of this notice and should be addressed to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. For further information, contact Jerry Ziewitz, Environmental Coordinator, at (202) 219-3157.

Lois D. Cashell,

Secretary.

[FR Doc. 94-967 Filed 1-13-94; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2426-063, et al.]

Hydroelectric Applications; State of California Department of Water Resources, et al.

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Amendment of License.

b. *Project No.:* 2426-063.

c. *Date Filed:* December 13, 1993.

d. *Applicant:* State of California, Department of Water Resources.

e. *Name of Project:* California Aqueduct.

f. *Location:* The project is located in the State of California, San Bernardino County, 12 miles north of the City of San Bernardino, on the California Aqueduct.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Viju Patel, Power Manager, Division of Operations and Maintenance, Department of Water Resources, P.O. Box 942836, Sacramento, CA 94236-0001, (916) 653-3014.

i. *FERC Contact:* Buu T. Nguyen, (202) 219-2913.

j. *Comment Date:* February 11, 1994.

k. *Description of Amendment:* State of California, Department of Water Resources, applied for an amendment of license to construct a new tunnel intake structure replacing an existing intake structure. The construction is necessary because the existing intake structure does not meet current seismic design standards and there would be an unacceptably long interruption in water deliveries if the intake structure be upgraded. The new intake structure will be constructed behind an earth plug, with the Silverwood Lake level lowered to elevation 3310 feet during construction. Upon completion of construction, the lake water level will be lowered to elevation of 3260 feet for removing the earth plug. The normal water elevation of the Silverwood Lake is 3320 feet.

l. This notice also consists of the following standard paragraphs; B, C1, and D2.

2 a. *Type of Application:* Minor License (Notice of Tendering).

b. *Project No.:* 11060-001.

c. *Date Filed:* December 13, 1993.

d. *Applicant:* J.M. Miller Enterprises.

e. *Name of Project:* Sahko Water Power Project.

f. *Location:* On the Kastelu Drain, an irrigation return to the Snake River in Twin Falls County, Idaho near the town of Filer. T. 9 S., R. 15 E., section 13, Boise Meridian.

g. *Filed Pursuant to:* Federal Power Act, 16 USC 791 (a)-825(r).

h. *Applicant Contact:*

J.M. Miller Enterprises, Inc., P.O. Box 595, Twin Falls, ID 83303, (208) 622-7215.

D.W. Bill Block, P.E., J-U-B Engineers, Inc., 800 Falls Ave., Twin Falls, ID 83301, (208) 733-2414.

i. *FERC Contact:* Ms. Deborah Frazier-Stutely, (202) 219-2842.

j. *Brief Description of Project:* The proposed project will consist of two earth-fill dams, each with an overflow spillway and a bypass pipe, an intake structure, a penstock, a powerhouse with an installed capacity of 500 kilowatts, a tailrace channel, a transmission line tying into an existing Idaho Power Company system, and related facilities.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by 106, of the National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

3 a. *Type of Application:* New License for Major Project (Tendered Notice).

b. *Project No.:* 2687-014.

c. *Date Filed:* December 20, 1993.

d. *Applicant:* Pacific Gas & Electric Company.

e. *Name of Project:* Pit 1 Project.

f. *Location:* On the Fall River and the Pit River, near the towns of Fall River Mills, McArthur, and Burney, in Shasta County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Steve Christ, Project Manager, Pacific Gas & Electric Company P.O. Box 770000, P10A, San Francisco, California 94177. (415) 973-2629.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219-2827.

j. *Description of Project:* The project as licensed consists of: (1) A 15-foot-high concrete diversion structure on the Fall River forming a small impoundment; (2) a 40-foot-high earthen dam on the Fall River forming a 222-acre forebay impoundment; (3) an intake structure on each impoundment; (4) a 1,200-foot-long canal carrying water from each intake structure to a tunnel; (5) the 10,076-foot-long, 14-foot-high tunnel; (6) two 1,372-foot-long penstocks; (7) a powerhouse containing two generating units with a total installed capacity of 61 MW; (8) a 1,150-foot-long tailrace returning water to the Pit River; and (9) appurtenant facilities.

k. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR 800.4.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR 4.32(b)(7)), if any resource agency, SHPO, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is March 20, 1994.

4 a. *Type of Application:* Subsequent License (Tendered Notice).

b. *Project No.:* 2699-001

c. *Date Filed:* December 21, 1993.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Angels Hydroelectric Project.

f. *Location:* On Angels Creek in Calaveras County California.

g. *Filed Pursuant to:* Federal Power Act 16 USC 791(a)-825(r).

h. *Applicant Contact:*

Shan Bhattacharya, Manager, Hydro Generation Department, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973-4603.

Annette Faraglia, Attorney, Law Department, Pacific Gas and Electric Company, 77 Beale Street, room 3051, P.O. Box 7442, San Francisco, CA 94120-7442, (415) 973-7145.

Kathryn M. Petersen, License Coordinator, Pacific Gas and Electric Company, 201 Mission Street, room 1012, P.O. Box 770000, Mail P10A, San Francisco, CA 94177, (415) 973-4054.

i. *FERC Contact:* Héctor M. Pérez at (202) 219-2843.

j. *Description of Project:* The existing project consists of: (1) the 5.6-foot-high, 64-foot-long gunite faced rock-wall and concrete buttress Angels Diversion Dam (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot-high and 710-foot-long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2 acre-feet; (7) the 8,624-foot-long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

k. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

5 a. *Type of Application:* Amendment of License.

b. *Project No:* 1835-100.

c. *Date Filed:* October 28, 1993.

d. *Applicant:* Nebraska Public Power District.

e. *Name of Project:* North Platte/Keystone Diversion Dam.

f. *Location:* On the North and South Platte Rivers, Nebraska.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b).

h. *Applicant Contact:* Mr. R. L. Peterson, Nebraska Public Power District, P.O. Box 310, North Platte, NE 69103 (308) 532-9200.

i. *FERC Contact:* Mr. Steve Hocking, (202) 219-2656.

j. *Comment Date:* February 28, 1994.

k. *Description of proposed amendment:* Nebraska Public Power District, licensee for the North Platte/Keystone Diversion Dam Project, filed an application to amend article 401 of their license. Article 401 requires the licensee to develop and maintain eight islands as nesting habitat for interior

least terns and piping plovers. The proposed amendment would allow the licensee to substitute up to four sand pits for four of the eight islands they are required to develop. The proposed amendment requires a plan on how these sand pits would be developed. A draft plan was included in the licensee's filing.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

6 a. *Type of Application:* As-Built Exhibits.

b. *Project No.:* 5867–038.

c. *Date Filed:* July 30 and August 19, 1993.

d. *Applicant:* Alice Falls Corporation.

e. *Name of Project:* Alice Falls Project.

f. *Location:* On the Ausable River, in Clinton and Essex Counties, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Charles McGrath, McGrath Hydro, Inc., 8 Petra Lane, Clifton Park, NY 12205, (518) 464–1081.

i. *FERC Contact:* Paul Shannon, (202) 219–2866.

j. *Comment Date:* February 23, 1994.

k. *Description of Filings:* Alice Falls Corporation filed as-built exhibits A, F, and G in accordance with article 33 of its license. The exhibits show the constructed configuration of the project's features. In particular, the exhibit G drawings show the realigned transmission line. The length of the transmission line is 1100 feet instead of the authorized 400 feet. The exhibit G drawings also show an additional two acres of land within the project boundary around the realigned portion of the transmission line.

l. This paragraph also consists of the following standard paragraphs: B, C1, and D2.

7 a. *Type of Application:* Minor License.

b. *Project No.:* 10867–000.

c. *Date Filed:* March 31, 1993.

d. *Applicant:* Holliday Historic Restoration Associates, Ltd.

e. *Name of Project:* Holliday Hydroelectric Plant.

f. *Location:* On the West Fork of the White River, in Noblesville, Hamilton County, Indiana.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* David H. Kinloch, 414 South Wenzel Street, Louisville, Kentucky 40204, (502) 589–0975.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline for Interventions and Protests:* March 10, 1994.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D4.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing concrete dam 350 feet long and 10 feet high; (2) an existing reservoir, about 425 acres, with a normal water surface elevation of 764 feet mean sea level; (3) an existing powerhouse containing two new turbine-generator units having a total generating capacity of 450 kilowatts; and (4) appurtenant facilities. The applicant estimates that the total average annual generation would be 1,634,000 kilowatthours. The project site is owned by PSI Energy, Inc.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale.

n. This notice also consists of the following standard paragraphs: A3, A9, B1, and D4.

o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. David H. Kinloch, 414 South Wenzel Street, Louisville, KY 40204 (502) 589–0975.

8 a. *Type of Application:* Original License for Major Project.

b. *Project No.:* 11367–001.

c. *Date filed:* July 20, 1993.

d. *Applicant:* Peak Power Corporation, Kvaener Venture, Inc., Las Vegas Energy Storage Limited Partnership.

e. *Name of Project:* Sheep Mountain Pumped Storage Hydroelectric Project.

f. *Location:* Predominantly on lands administered by the Bureau of Land Management in the Sheep Mountains, approximately 19 miles south of Las Vegas, in Clark County, Nevada. R. 60 E., T. 22 S. to T. 25 S.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* David Olsen, President, Peak Power Corporation, 4365 Executive Drive, Suite 900, San Diego, CA 92121, (619) 622–7800.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. Deadline date for interventions and protests: March 14, 1994.

k. Status of Environmental Analysis: This application is not ready for environmental analysis at this time—see attached paragraph D7.

l. Description of Project: The proposed pumped storage project would consist of: (1) Five dams, ranging in height from 18 feet to 130 feet, forming a 50-acre upper reservoir; (2) a 14-foot-diameter, 730-foot-long concrete vertical shaft; (3) a 14-foot-diameter, 1,700-foot-long concrete horizontal tunnel; (4) a 1,255-foot-long steel penstock; (5) a powerhouse containing two generating units with a total installed capacity of 200 MW; (6) a 50-foot-high dam creating a 65-acre lower reservoir; (7) a 17.5-mile-long transmission line interconnecting with an existing Nevada Power Company transmission line; and (8) appurtenant facilities.

m. This notice also consists of the following standard paragraphs: A2, A9, B1 and D7.

n. Available Locations of Application: A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of the Peak Power Corporation referenced above.

9 a. *Type of Application:* Minor License.

b. *Project No.:* 11454–000.

c. *Date filed:* December 27, 1993.

d. *Applicant:* Magic Water Company, Inc.

e. *Name of Project:* Magic Water.

f. *Location:* Partially on lands administered by the Bureau of Land Management, on Salmon Falls Creek, in Twin Falls County, Idaho. Township 10 S., Range 13 E., Section 2.

g. Filed Pursuant to: Federal Power Act 16 U.S.C. 791(a)—825(r).

h. *Applicant Contact:* Mr. John J. Straubhar, P.O. Box 820, Twin Falls, ID 83303, (208) 736–8255.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Description of Project:* The proposed project would consist of: (1) An existing 12-foot-high earth and rockfill dam; (2) an 18 acre reservoir with a storage capacity of 55-acre-feet; (3) a 36-inch-diameter, 2,584-foot-long penstock; (4) a powerhouse containing a generating unit with a capacity of 113 kW and an estimated average annual generation of 900 MWh; (5) a 50-foot-long underground transmission line connecting to an existing Idaho Power Company distribution line; and (6) appurtenant facilities.

k. With this notice, we are initiating consultation with the STATE HISTORIC PRESERVATION OFFICER (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory council on Historic Preservation, 36 CFR, at section 800.4.

l. Under § 4.32 (b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

m. The Commission's deadline for the applicant's filing of a final amendment to the application is March 27, 1994.

10 a. *Type of Application:* License (Tendered Notice).

b. *Project No.:* 11452–000.

c. *Date filed:* December 28, 1993.

d. *Applicant:* Northern California Power Agency.

e. *Name of Project:* Angels.

f. *Location:* On Angels Creek in Calaveras County, CA.

g. Filed pursuant to Federal Power Act, 16 U.S.C. sections 791(a)—825(r).

h. *Competing Application:* Project No. 2699–001, filed December 21, 1993.

i. *Applicant contact:* James Lynch, Environmental Liaison Northern California Power Agency, 180 Cirby Way, Roseville, CA 95678; (916) 781–4275.

j. *FERC Contact:* Hector Perez, (202) 219–2843.

k. *Description of project:* The existing project consists of: (1) The 5.6-foot high, 64-foot long gunite faced rock-wall and concrete buttress Angels Diversion Dam; (2) the Upper Angels Canal, approximately 2.5 miles long, to Ross Reservoir; (3) the 100-acre-feet gross storage capacity Ross Reservoir and a 44-foot high and 710-foot long earthfill, masonry, and rock structure dam; (5) the Lower Angels Canal, approximately 3.3 miles long; (6) the Angels Forebay with a gross storage capacity of 2 acre-feet; (7) the 8,624-foot long Angels Penstock; (8) a powerhouse with an installed capacity of 1,400 kW; and (9) other appurtenances.

The Applicant proposes to remove the Angels Penstock and decommission power generation facilities in the existing powerhouse.

l. Under § 4.32(b)(7) of the Commission's regulations (18 CFR), if any resource agency, Indian Tribe, or person believes that the applicant should conduct an additional scientific study to form an adequate factual basis for a complete analysis of the application on its merits, they must file a request for the study with the Commission, not later than 60 days after the application is filed, and must serve a copy of the request on the applicant.

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. Development Application—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", or "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (February 22, 1994 for Project No. 10867–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (April 25, 1994 for Project No. 10867–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D7. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must (1) bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," or "COMPETING APPLICATION;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application.

Dated: January 10, 1994, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 94–968 Filed 1–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–52–000, et al.]

Equitrans, Inc., et al.; Natural Gas Certificate Filings

January 7, 1994.

Take notice that the following filings have been made with the Commission:

1. Equitrans, Inc.

[Docket No. CP94–52–000]

Take notice that on December 22, 1993, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed a revision to a prior notice request it filed on November 3, 1993, with the Commission in Docket No. CP94–52–000 pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to construct and operate a sales tap under Equitrans's blanket certificates issued in Docket Nos. CP83–508–000 and CP86–676–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is open to the public for inspection.

Equitrans inadvertently proposed to a install a sales tap in the City of Monongahela Township, Washington County, Pennsylvania, to provide gas service to Equitable Gas Company, a division of Equitable Resources, Inc. (Equitable). Equitrans converted its sales entitlements on September 1, 1993, to transportation in accordance with Order No. 636. As such, the proposed tap should be classified as a delivery tap supporting transportation deliveries to Equitable. Equitrans would deliver up to one Mcf of natural gas on a peak day under its FERC Rate Schedule FTS. Equitrans states that installation of the proposed delivery tap would permit Equitable to provide gas service to Albert M. and Shirle Gallick of Marianna, Pennsylvania. Equitrans also states that its tariff does not prohibit this type of service.

Comment date: February 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Pacific Gas and Electric Company

[Docket No. CP94–158–000]

Take notice that on December 23, 1993, Pacific Gas and Electric Company (PG&E), a California Hinshaw pipeline company, 77 Beale Street, San Francisco, California 94105, exempt from Federal Energy Regulatory Commission jurisdiction under Section 7(c) of the Natural Gas Act, filed in Docket No. CP94–158–000 an application pursuant to § 284.224 of the regulations for a blanket certificate authorizing the transportation, sale, and assignment of natural gas under procedures provided in Subpart C, D, E or Part 284 of the regulations, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

PG&E states that it proposes to transport gas through California between interconnecting pipelines, including Pacific Gas Transmission Company, El Paso Natural Gas Company, Transwestern Pipeline Company and Kern River Gas Transmission Company. PG&E will also offer transportation access to California storage facilities and California gas production to customers in both the Northwest and Southwest U. S.

PG&E states that pursuant to 18 CFR 284.123(b)(1)(ii), it will utilize rates for comparable intrastate transportation services authorized by the California Public Utilities Commission.

Comment date: January 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Sea Robin Pipeline Company

[Docket No. CP94–160–000]

Take notice that on December 23, 1993, Sea Robin Pipeline Company (Sea Robin), P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–160–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon the transportation services it renders under its Rate Schedules X–16 and X–17 on behalf of Koch Gateway Pipeline Company (Koch Gateway) effective as of November 1, 1993, all as more fully set forth in the application on file with the Commission and open to public inspection.

Sea Robin states that it has provided firm transportation service on behalf of Koch Gateway pursuant to Sea Robin's Rate Schedules X–16 and X–17 from production areas in offshore Louisiana, to delivery points onshore at Erath, Louisiana. Sea Robin further states that Koch Gateway has requested abandonment of service under Sea Robin's X–16 and X–17 Rate Schedules. Koch Gateway has stated that the transportation service is not required by Koch Gateway or its shippers on its system and that to the extent it or its shippers need transportation service on Sea Robin's system they can request such transportation under Sea Robin's Rate Schedule FT pursuant to Part 284 of the Commission's Regulations. Accordingly, Sea Robin has requested the abandonment of Rate Schedules X–16 and X–17, effective November 1, 1993.

Comment date: January 28, 1994, in accordance with Standard Paragraph F at the end of this notice.

4. Equitrans, Inc.

[Docket No. CP94–168–000]

Take notice that on January 4, 1994, Equitrans, Inc. (Equitrans), 3500 Park Lane, Pittsburgh, Pennsylvania 15275, filed in Docket No. CP94–168–000, a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install a delivery tap under Equitrans' blanket certificate issued in Docket No. CP83–508–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Equitrans proposes to construct and operate one delivery tap in Washington County, Pennsylvania. Equitrans states that it would use the tap to deliver gas to Harry Good for the account of Equitable Gas Company. Equitrans estimates the peak day deliveries through the proposed facilities to be 1 Mcf.

Equitrans asserts that the proposed service will not impact its peak day or annual deliveries and that its tariff does not prohibit this type of service.

Comment date: February 22, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to Section 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 94–969 Filed 1–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–156–000, et al.]

NUI Corporation; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. NUI Corporation Pennsylvania & Southern Gas Company

[Docket No. CP94–156–000]

January 5, 1994.

Take notice that on December 22, 1993, NUI Corporation (NUI), 550 Route 202–206, P.O. Box 760, and Pennsylvania & Southern Gas Company (PSGC), 102 Desmond Street, Sayre, Pennsylvania 18840, filed in Docket No. CP94–156–000 a joint application requesting a certificate pursuant to Section 7(c) of the Natural Gas Act (NGA) permitting NUI to acquire and operate the jurisdictional facilities of PSGC, abandonment authorization pursuant to Section 7(b) for PSGC regarding the same facilities, and a service area determination for NUI pursuant to Section 7(f) of the NGA, all as more fully set forth in the application on file with the Commission and open to public inspection.

NUI proposes to merge with PSGC and acquire certain minor natural gas facilities in New York and Pennsylvania used by PSGC to transport gas in interstate commerce in conjunction with PSGC's local distribution activities. It is stated that in order to operate the facilities acquired from PSGC, NUI requests a declaration that it qualifies as a local distribution company in the service area to be determined for purposes of Section 311 of the Natural Gas Policy Act (NGPA). NUI also requests a waiver of the regulatory requirements ordinarily applicable to a natural gas company under the NGA and the NGPA.

It is stated that the facilities are minor in nature and involve only a few gas consumers along the New York–Pennsylvania border. It is asserted that NUI does not intend to make any physical modifications to the facilities. It is further asserted that the Commission authorizations must be received in order to consummate the transfer of facilities.

Comment date: January 26, 1994, in accordance with Standard Paragraph F at the end of this notice.

2. Panhandle Eastern Pipe Line Company

[Docket Nos. CP94–151–000 and CP90–1050–002]

January 6, 1994.

Take notice that on December 21, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77001, filed an application pursuant to section 7(b) of the Natural Gas Act for authority to abandon by transfer to its subsidiary, Panhandle Field Services Company (Field Services), gathering systems located on its West End System in the states of Colorado, Kansas, Oklahoma and Texas, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Panhandle states that, as a result of its compliance with Order No. 636 and the required unbundling of its transportation and gathering rates together with its customers' elections to cease purchasing natural gas from Panhandle, the utilization of Panhandle's gathering facilities has declined and is expected to continue to decline. It also indicated that Order No. 636 has intensified the competition for gathering services in the Anadarko Basin Area where the bulk of Panhandle's facilities are located. It is alleged that because of its status as a "natural gas company" under the provisions of the Natural Gas Act, Panhandle cannot compete with gatherers that are not subject to the Commission's jurisdiction. Panhandle proposes to transfer its gathering facilities to Field Services which would not be subject to the Commission's jurisdiction. Panhandle then contends that Field Services could then compete as a gatherer on a more level playing field with the competition.

Panhandle states that approval would permit Panhandle to eliminate its existing gathering rates and would result in a decrease in Field Zone transportation rates. Panhandle also indicates that its customers would not be exposed to the potential of Order No. 636 transition costs associated with the stranded investment of any gathering facilities in the future. It is then indicated that, upon transfer of the facilities to Field Services, the facilities would be operated on a stand-alone, open-access basis. It is also indicated that Field Services would be responsible for all of the financial, economic, operational and business risks associated with the facilities.

Panhandle proposes to transfer at net book value 54 distinct gathering systems. Panhandle indicates that as of April 30, 1993, the net book value of the facilities to be transferred was $39,012,101.

Panhandle also proposes to further amend in Docket No. CP90–1050–002 a pending application filed in Docket No. CP90–1050–000, *et al*, to conform its application to reflect the abandonment of its gathering facilities to Field Services and to update the list of facilities proposed to be certificated *nunc pro tunc* and/or refunctionalized, all as more fully set forth in the application which is on file with the Commission and open to public inspection. Panhandle proposes to reduce from 283 to 94 the facilities proposed to be refunctionalized from gathering to transmission in the application to amend filed in Docket No. CP90–1050–001. Panhandle also proposes to refunctionalize from gathering to transmission 74 other facilities not previously requested to be refunctionalized. Panhandle estimates the book value of the facilities proposed to be refunctionalized from gathering to transmission in the amended application in Docket No. CP90–1050–002 at $4,623,276.

Comment date: January 27, 1994, in accordance with Standard Paragraph F at the end of this notice.

3. Panhandle Field Services Company

[Docket No. CP94–152–000]

January 6, 1994.

Take notice that on December 21, 1993, Panhandle Field Services Company (Field Services), 5400 Westheimer Court, Houston, Texas 77056–5310, filed a petition for declaratory order in Docket No. CP94–152–000, requesting that the Commission declare that neither Field Services' proposed acquisition, ownership, and operation of certain natural gas gathering systems and related facilities presently owned by Panhandle Eastern Pipe Line Company (Panhandle), Field Services' affiliate, nor any of Field Services' facilities or services would subject Field Services or any portion of its facilities or services to the jurisdiction of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

Specifically, Field Services seeks a declaratory order from the Commission finding that:

(1) Panhandle's West End gathering systems are facilities used for the gathering of natural gas and therefore exempt from the Commission's jurisdiction pursuant to Section 1(b) of the Natural Gas Act;

(2) Field Services would not be a "natural gas company" pursuant to Section 2(6) of the Natural Gas Act by virtue of its proposed acquisition, ownership, and operation of such facilities;

(3) The gathering services that Field Services seeks to perform as described in the petition would be exempt from the Commission's jurisdiction under section 1(b) of the Natural Gas Act; and

(4) Field Services' rates and charges for gathering services would not be subject to the Commission's jurisdiction pursuant to sections 4 and 5 of the Natural Gas Act.

In support of its request, Field Services states that the primary function of the facilities is gathering as defined under the modified *Farmland* test, as set forth in *Amerada Hess Corporation*, 52 FERC ¶ 61,268 (1990), and as exhibited by the size, pressure, length, configuration, and utilization of each of the gathering systems or groups of gathering systems. It is indicated that each of the 54 gathering systems (1) operates at low-gathering-line pressure, (2) consists of discrete sections of generally small-diameter pipe, (3) is in a typical "spider-web" or "rib-like" gathering configuration in appearance, (4) has wells along its length, (5) is located behind compression which boosts pressures from low, wellhead pressures so that the gas can enter Panhandle's mainline transmission system, or (6) is located behind a processing plant.

Field Services states that it is a wholly-owned subsidiary of Panhandle. Field Services describes the facilities to be transferred as the West End Systems of Panhandle in Colorado, Kansas, Oklahoma, and Texas. Field Services indicates that these facilities are the subject of Panhandle's companion abandonment application filed in Docket No. CP94–151–000 and Panhandle's application in Docket No. CP90–1050–002 to further amend its pending application in Docket No. CP90–1050–000, *et al*.

Comment date: January 27, 1994, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should, on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 94–970 Filed 1–13–94; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. ST94–1–000, et al.]

Arkla Energy Resources Co.; Self-Implementing Transactions

January 10, 1994.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under Section 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–1	Arkla Energy Resources Co.	Marathon Oil Co	10–01–93	G–S	15,000	N	I	09–17–93	Indef.
ST94–2	Arkla Energy Resources Co.	Minnesota Mining & Manufacturing.	10–01–93	G–S	750	N	I	09–25–93	Indef.
ST94–3	Arkla Energy Resources Co.	Phoenix Gas Marketing Co.	10–01–93	G–S	25,000	N	I	09–03–93	Indef.
ST94–4	Trunkline Gas Co	Exxon Corp	10–01–93	G–S	2,535,750	N	I	09–01–93	Indef.
ST94–5	Trunkline Gas Co	Alpha Corp	10–01–93	G–S	207	N	F	09–01–93	Indef.
ST94–6	Trunkline Gas Co	City of Newbern	10–01–93	G–S	2,484	N	I	09–01–93	Indef.
ST94–7	Williston Basin Inter. P/L Co.	South Dakota State Cement Plant.	10–01–93	G–S	438	A	F	09–01–93	08–31–94
ST94–8	Williston Basin Inter. P/L Co.	Western Gas Resources, Inc.	10–01–93	G–S	265,135	A	I	09–01–93	08–31–95
ST94–9	Transcontinental Gas P/L Corp.	Sonat Marketing Co	10–01–93	G–S	100,000	N	I	09–22–93	Indef.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–13	Panhandle Eastern Pipe Line Co.	Union Pacific Fuels, Inc.	10–01–93	G–S	25,000	N	I	09–01–93	08–31–08
ST94–14	Panhandle Eastern Pipe Line Co.	Mesa Operating, L.P.	10–01–93	G–S	70,000	N	I	09–01–93	08–31–98
ST94–15	Panhandle Eastern Pipe Line Co.	Dominion Gas Ventures, Inc.	10–01–93	G–S	1,100	N	I	09–01–93	08–31–98
ST94–16	Panhandle Eastern Pipe Line Co.	Archer Daniels Midland Co.	10–01–93	G–S	1,650	N	F	09–01–93	09–30–93
ST94–17	Panhandle Eastern Pipe Line Co.	Anadarko Trading Co.	10–01–93	G–S	10,000	N	F	09–01–93	09–30–03
ST94–18	Panhandle Eastern Pipe Line Co.	Semco Energy Services, Inc.	10–01–93	G–S	1,850	N	F	09–01–93	09–30–93
ST94–19	Panhandle Eastern Pipe Line Co.	Coastal Gas Marketing Co.	10–01–93	G–S	4,000	N	F	09–01–93	09–30–93
ST94–20	Panhandle Eastern Pipe Line Co.	Mobil Natural Gas, Inc.	10–01–93	G–S	1,800	N	F	09–14–93	09–30–93
ST94–21	Panhandle Eastern Pipe Line Co.	Nat. Refractories & Minerals Corp.	10–01–93	G–S	9,000	N	I	09–01–93	03–31–98
ST94–22	Panhandle Eastern Pipe Line Co.	Battle Creek Gas Co	10–01–93	G–S	6,000	N	F	09–01–93	09–30–93
ST94–23	Panhandle Eastern Pipe Line Co.	Panhandle Trading Co.	10–01–93	G–S	32,200	A	F	09–02–93	09–30–93
ST94–24	Panhandle Eastern Pipe Line Co.	Hadson Gas Systems, Inc.	10–01–93	G–S	1,193	N	F	09–01–93	09–30–93
ST94–25	Panhandle Eastern Pipe Line Co.	NGC Transportation, Inc.	10–01–93	G–S	15,000	N	F	09–02–93	09–30–93
ST94–26	Seagull Shoreline System.	Texas Eastern Transmission Corp.	10–01–93	C	5,000	N	I	09–05–93	Indef.
ST94–27	Delhi Gas Pipeline Corp.	Tennessee Gas Pipeline Co., et al.	10–01–93	C	2,500	N	I	09–01–93	Indef.
ST94–28	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	10–01–93	C	50,000	N	I	09–09–93	Indef.
ST94–29	Houston Pipe Line Co.	Texas Eastern Transmission Corp.	10–01–93	C	25,000	N	I	08–01–93	Indef.
ST94–30	Houston Pipe Line Co.	Northern Natural Gas Co.	10–01–93	C	50,000	N	I	08–26–93	Indef.
ST94–31	Oasis Pipe Line Co.	Natural Gas Pipeline Co. of America.	10–01–93	C	20,000	N	I	08–01–93	Indef.
ST94–32	Oasis Pipe Line Co.	Natural Gas Pipeline Co. of America.	10–01–93	C	100,000	N	I	08–17–93	Indef.
ST94–33	Valero Transmission, L.P.	Koch Gateway Pipeline Co.	10–04–93	C	1,000	N	I	09–16–93	Indef.
ST94–34	Valero Transmission, L.P.	El Paso Natural Gas Co.	10–04–93	C	2,000	N	I	09–16–93	Indef.
ST94–35	Gulf Energy Pipeline Co.	Tennessee Gas Pipeline Co.	10–04–93	C	30,000	N	I	09–01–93	Indef.
ST94–36	Gulf Energy Pipeline Co.	Trunkline Gas Co	10–05–93	C	10,000	N	I	10–01–93	Indef.
ST94–37	Gulf Energy Pipeline Co.	Natural Gas Pipeline Co. of America.	10–05–93	C	30,000	N	I	09–01–93	Indef.
ST94–38	Seagas Pipeline Co.	Phillips Gas Pipeline Co.	10–05–93	C	75,000	N	I	03–01–93	Indef.
ST94–39	Bridgeline Gas Distribution Co.	Columbia Gulf Transmission Co.	10–05–93	C	4,673	N	I	09–08–93	Indef.
ST94–40	Phillips Gas Pipeline Co.	Seagas Pipeline Co.	10–05–93	B	50,000	A	I	08–01–93	Indef.
ST94–41	Pacific Gas Transmission Co.	Coastal Gas Marketing Co.	10–06–93	G–S	100,000	N	I	09–10–93	Indef.
ST94–42	Supenn Pipeline	United Gas Pipe Line Co.	10–06–93	C	35,000	N	I	09–30–93	Indef.
ST94–43	Colorado Interstate Gas Co.	City of Trinidad	10–06–93	G–S	5,940	N	I	10–01–93	09–30–96
ST94–44	Colorado Interstate Gas Co.	City of Keyes	10–06–93	G–S	366	N	I	10–01–93	09–30–96
ST94–45	Colorado Interstate Gas Co.	City of Walsenburg ..	10–06–93	G–S	1,980	N	I	10–01–93	09–30–96
ST94–46	Colorado Interstate Gas Co.	City of Fort Morgan .	10–06–93	G–S	6,864	N	I	10–01–93	09–30–96
ST94–47	Colorado Interstate Gas Co.	Eastern Colorado Utility Co.	10–06–93	G–S	3,725	N	I	10–01–93	09–30–96
ST94–48	Natural Gas P/L Co. of America.	Midwest Gas	10–06–93	B	10,291	N	F	10–01–93	09–30–01

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ST94–49	Northern Natural Gas Co.	Associated Natural Gas, Inc.	10–07–93	G–S	10,000	N	F/I	09–10–93	Indef.
ST94–50	Colorado Interstate Gas Co.	Public Service Co. of Colorado.	10–07–93	G–S	481,790	N	I	10–01–93	09–30–96
ST94–51	Colorado Interstate Gas Co.	City of Colorado Springs.	10–07–93	G–S	51,220	N	I	10–01–93	09–30–96
ST94–52	Colorado Interstate Gas Co.	Ration Gas Transmission Co., Inc.	10–07–93	G–S	9,900	N	I	10–01–93	09–30–96
ST94–53	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	10–07–93	G–S	510	A	F	10–01–93	12–31–93
ST94–54	Arkla Energy Resources Co.	Pennzoil Gas Marketing Co.	10–07–93	G–S	5,000	N	I	10–01–93	Indef.
ST94–55	Arkla Energy Resources Co.	Transok Gas Co	10–07–93	G–S	6,224	N	F	10–01–93	Indef.
ST94–56	Arkla Energy Resources Co.	Marathon Oil Co	10–07–93	G–S	15,000	N	I	10–01–93	Indef.
ST94–57	Arkla Energy Resources Co.	Heritage Energy Co .	10–07–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–58	Arkla Energy Resources Co.	BCF Gas Ltd	10–07–93	G–S	10,000	N	I	10–01–93	Indef.
ST94–59	Arkla Energy Resources Co.	Pet Inc	10–07–93	G–S	400	N	I	10–01–93	Indef.
ST94–60	Natural Gas P/L Co. of America.	Broad Street Oil & Gas Co.	10–07–93	G–S	5,000	N	F	10–01–93	10–31–93
ST94–61	High Island Offshore System.	Coastal Gas Marketing Co.	10–08–93	K–S	11,298	A	F	09–01–93	Indef.
ST94–62	High Island Offshore System.	Amax Gas Marketing, Inc.	10–08–93	K–S	5,000	N	I	09–01–93	Indef.
ST94–63	High Island Offshore System.	Transco Liquids Co .	10–08–93	K–S	150,000	N	I	08–01–93	Indef.
ST94–64	Algonquin Gas Transmission Co.	New Jersey Natural Gas Co.	10–08–93	B	6,106	N	F	09–23–93	Indef.
ST94–65	Algonquin Gas Trasnmission Co.	Commonwealth Gas Co.	10–08–93	B	6,233	N	F	09–30–93	Indef.
ST94–66	Trunkline Gas Co	Illinois Power Co	10–08–93	G–S	3,726	N	I	09–01–93	Indef.
ST94–67	Trunkline Gas Co	Northern Indiana Public Service Co.	10–08–93	G–S	5,175	N	F	09–01–93	Indef.
ST94–68	Trunkline Gas Co	City of Flora	10–08–93	G–S	6,210	N	I	09–01–93	Indef.
ST94–69	Trunkline Gas Co	City of Belle Rive	10–08–93	G–S	248	N	I	09–01–93	Indef.
ST94–70	Trunkline Gas Co	City of Bluford	10–08–93	G–S	702	N	I	09–01–93	Indef.
ST94–71	Trunkline Gas Co	City of Splendora	10–08–93	G–S	518	N	I	09–01–93	Indef.
ST94–72	Trunkline Gas Co	City of Byrlalia	10–08–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–73	Trunkline Gas Co	City of Karnak	10–08–93	G–S	414	N	I	09–01–93	Indef.
ST94–74	Trunkline Gas Co	Consumers Power Co.	10–08–93	G–S	336,375	N	F	09–01–93	Indef.
ST94–75	Trunkline Gas Co	Central Illinois Public Service Co.	10–08–93	G–S	7,763	N	I	09–01–93	Indef.
ST94–76	Williams Natural Gas Co.	Atchison Casting Corp.	10–08–93	B	3,500	N	I	09–15–93	10–01–93
ST94–77	Arkla Energy Resources Co.	Western Resources, Inc.	10–08–93	G–S	1,735	N	F	10–01–93	Indef.
ST94–78	Colorado Interstate Gas Co.	Kn Interstate Gas Transmission Co.	10–08–93	G–S	7,496	N	I	10–01–93	09–30–96
ST94–79	Colorado Interstate Gas Co.	Citizens Utilities Co .	10–08–93	G–S	5,563	N	I	10–01–93	09–30–96
ST94–80	Colorado Interstate Gas Co.	Greeley Gas Co	10–08–93	G–S	16,005	N	I	10–01–93	09–30–96
ST94–81	Colorado Interstate Gas Co.	Cheyenne Light, Fuel, & Power Co.	10–08–93	G–S	13,486	N	I	10–01–93	09–30–96
ST94–82	Colorado Interstate Gas Co.	Kn Energy, Inc	10–08–93	G–S	3,900	N	I	10–01–93	09–30–96
ST94–83	Colorado Interstate Gas Co.	Kn Energy, Inc	10–08–93	G–S	11,396	N	I	10–01–93	09–30–96
ST94–84	Colorado Interstate Gas Co.	Peoples Natural Gas Co.	10–08–93	G–S	19,732	N	I	10–01–93	09–30–96
ST94–85	Colorado Interstate Gas Co.	Northern Gas of Wyoming.	10–08–93	G–S	156	N	I	10–01–93	09–30–96
ST94–86	Colorado Interstate Gas Co.	Peoples Natural Gas Co.	10–12–93	G–S	7,000	N	F	10–01–93	09–30–96
ST94–87	Colorado Interstate Gas Co.	City of Colorado Springs.	10–12–93	G–S	40,747	N	F	10–01–93	09–30–96

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ST94–88	Colorado Interstate Gas Co.	Public Service Co. of Colorado.	10–12–93	G–S	543,066	N	F	10–01–93	09–30–96
ST94–89	Colorado Interstate Gas Co.	Fuel Resource Development Co.	10–12–93	G–S	2,460	N	F	10–01–93	12–31–08
ST94–90	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	10–12–93	G–S	1,590	N	F	10–01–93	08–31–94
ST94–91	Colorado Interstate Gas Co.	Greeley Gas Co	10–12–93	G–S	1,408	N	F	10–01–93	09–30–96
ST94–92	Colorado Interstate Gas Co.	Western Natural Gas & Transmission.	10–12–93	G–S	8,190	N	F	10–01–93	07–31–96
ST94–93	Colorado Interstate Gas Co.	Cheyenne Light, Fuel & Power Co.	10–12–93	G–S	14,793	N	F	10–01–93	09–30–96
ST94–94	Colorado Interstate Gas Co.	City of Colorado Springs.	10–12–93	G–S	29,550	N	F	10–01–93	09–30–96
ST94–95	Colorado Interstate Gas Co.	Citizens Utilities Co	10–12–93	G–S	10,403	N	F	10–01–93	09–30–96
ST94–96	Trunkline Gas Co	Gastrak Corp	10–12–93	G–S	100,000	N	I	07–24–93	Indef.
ST94–97	Trunkline Gas Co	Polaris Pipeline Corp	10–12–93	G–S	20,000	N	I	07–24–93	Indef.
ST94–98	Trunkline Gas Co	City of Arlington	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–99	Trunkline Gas Co	City of Greenup	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–100	Trunkline Gas Co	City of Clinton	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–101	Trunkline Gas Co	City of Rensselaer	10–12–93	G–S	6,831	N	I	09–01–93	Indef.
ST94–102	Trunkline Gas Co	City of Wayne City	10–12–93	G–S	2,122	N	I	09–01–93	Indef.
ST94–103	Trunkline Gas Co	City of La Center	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–104	Trunkline Gas Co	City of Toledo	10–12–93	G–S	983	N	I	09–01–93	Indef.
ST94–105	Trunkline Gas Co	City Gas Co	10–12–93	G–S	1,242	N	I	09–01–93	Indef.
ST94–106	Trunkline Gas Co	City of Troy	10–12–93	G–S	1,035	N	I	09–01–93	Indef.
ST94–107	Trunkline Gas Co	City of Mason	10–12–93	G–S	175	N	I	09–01–93	Indef.
ST94–108	Trunkline Gas Co	City of Wickliffe	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–109	Trunkline Gas Co	City of Trimble	10–12–93	G–S	414	N	I	09–01–93	Indef.
ST94–110	Trunkline Gas Co	City of Milford	10–12–93	G–S	2,070	N	I	09–01–93	Indef.
ST94–111	Trunkline Gas Co	City of Bardwell	10–12–93	G–S	4,140	N	I	09–01–93	Indef.
ST94–112	Northwest Pipeline Corp.	Coastal Gas Marketing Co.	10–12–93	G–S	250,000	N	I	08–02–93	Indef.
ST94–113	Northwest Pipeline Corp.	City of Ellensburg	10–12–93	G–S	1,500	N	F	09–09–93	Indef.
ST94–114	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	225	N	F	10–01–93	Indef.
ST94–115	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	502	N	F	10–01–93	Indef.
ST94–116	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	87	N	F	10–01–93	Indef.
ST94–117	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	159	N	F	10–01–93	Indef.
ST94–118	Arkla Energy Resources Co..	Alumax Magnolia Division.	10–12–93	G–S	1,250	N	F	10–01–93	Indef.
ST94–119	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	191	N	F	10–01–93	Indef.
ST94–120	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	915	N	F	10–01–93	Indef.
ST94–121	Arkla Energy Resources Co..	Pilgrim's Pride	10–12–93	G–S	165	N	F	10–01–93	Indef.
ST94–122	Arkla Energy Resources Co..	Helena Cotton Oil Co., Inc.	10–12–93	G–S	293	N	F	10–01–93	Indef.
ST94–123	Arkla Energy Resources Co..	Wheatland Tube Co	10–12–93	G–S	195	N	F	10–01–93	Indef.
ST94–124	Arkla Energy Resources Co..	Pace Industries, Inc	10–12–93	G–S	325	N	F	10–01–93	Indef.
ST94–125	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	650	N	F	10–01–93	Indef.
ST94–126	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	204	N	F	10–01–93	Indef.
ST94–127	Arkla Energy Resources Co..	Pilgrim's Pride	10–12–93	G–S	290	N	F	10–01–93	Indef.
ST94–128	Arkla Energy Resources Co..	Fordyce Picture Frams Co., Inc.	10–12–93	G–S	180	N	F	10–01–93	Indef.
ST94–129	Arkla Energy Resources Co..	Doctor's Hospital	10–12–93	G–S	144	N	F	10–01–93	Indef.
ST94–130	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	182	N	F	10–01–93	Indef.
ST94–131	Arkla Energy Resources Co..	Tyson Foods, Inc	10–12–93	G–S	177	N	F	10–01–93	Indef.

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ST94–132	Columbia Gas Transmission Corp.	Snyder Armclar Gas Co.	10–12–93	G–S	3,000	N	I	10–01–93	Indef.
ST94–133	Columbia Gas Transmission Corp.	Aig Trading Corp	10–12–93	G–S	200,000	Y	I	09–27–93	Indef.
ST94–134	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	10–12–93	G–S	1,529	Y	F	10–01–93	Indef.
ST94–135	Columbia Gas Transmission Corp.	Commonwealth Gas Services, Inc.	10–12–93	G–S	471	Y	F	10–01–93	Indef.
ST94–136	Colorado Interstate Gas Co.	Western Sugar Co	10–12–93	G–S	730	N	F	10–01–93	03–31–94
ST94–137	Colorado Interstate Gas Co.	Amoco Energy Trading Corp.	10–12–93	G–S	10,312	N	F	10–01–93	10–31–94
ST94–138	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	10–12–93	G–S	7,730	A	F	10–01–93	10–31–94
ST94–139	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	10–12–93	G–S	16,640	A	F	10–01–93	05–31–94
ST94–140	Colorado Interstate Gas Co.	Chevron U.S.A., Inc	10–12–93	G–S	10,270	N	F	10–01–93	10–31–94
ST94–141	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	10–12–93	G–S	42,000	A	F	10–01–93	12–31–02
ST94–142	Colorado Interstate Gas Co.	Snyder Oil Corp	10–12–93	G–S	10,950	N	F	10–01–93	09–30–94
ST94–143	Colorado Interstate Gas Co.	Coastal Chem, Inc	10–12–93	G–S	23,220	A	F	10–01–93	08–31–95
ST94–144	Colorado Interstate Gas Co.	Vesgas Co	10–12–93	G–S	3,200	N	F	10–01–93	06–30–95
ST94–145	Colorado Interstate Gas Co.	Enron Oil & Gas Co	10–12–93	G–S	126,336	N	F	10–01–93	12–31–02
ST94–146	Channel Industries Gas Co.	Tennessee Gas Pipeline Co.	10–12–93	C	5,000	Y	I	09–11–93	Indef.
ST94–147	Valero Transmission, L.P..	Natural Gas Pipeline Co. of America.	10–12–93	C	6,000	N	I	09–16–93	Indef.
ST94–148	Transtexas Pipeline	Natural Gas Pipeline Co. of America.	10–12–93	C	6,000	N	I	09–16–93	Indef.
ST94–149	Valero Transmission, L.P..	Transwestern Pipeline Co.	10–12–93	C	35,000	N	I	09–28–93	Indef.
ST94–150	Texas Gas Transmission Corp.	Willamette Industries, Inc.	10–13–93	G–S	10,000	N	I	10–01–93	Indef.
ST94–151	Texas Gas Transmission Corp.	Columbia Energy Services Corp.	10–13–93	G–S	25,000	Y	I	10–01–93	Indef.
ST94–152	Texas Gas Transmission Corp.	O&R Energy, Inc	10–13–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–153	Texas Gas Transmission Corp.	Enron Gas Marketing, Inc.	10–13–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–154	Texas Gas Transmission Corp.	Enron Gas Marketing, Inc.	10–13–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–155	Colorado Interstate Gas Co.	CNG Producing Co	10–13–93	G–S	4,220	N	F	10–01–93	01–31–03
ST94–156	Colorado Interstate Gas Co.	CNG Producing Co	10–13–93	G–S	12,600	N	F	10–01–93	12–31–03
ST94–157	Colorado Interstate Gas Co.	U.S. Air Force Academy.	10–13–93	G–S	6,700	N	F	10–01–93	Indef.
ST94–158	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–13–93	G–S	23,630	N	F	10–01–93	12–31–96
ST94–159	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	10–13–93	G–S	50,000	N	F	10–01–93	10–31–03
ST94–160	Colorado Interstate Gas Co.	Conoco, Inc	10–13–93	G–S	10,500	N	F	10–01–93	12–31–98
ST94–161	Colorado Interstate Gas Co.	North American Resources Co.	10–13–93	G–S	10,130	N	F	10–01–93	11–30–06
ST94–162	Colorado Interstate Gas Co.	Peoples Natural Gas Co.	10–13–93	G–S	5,588	N	F	10–01–93	9–30–96
ST94–163	Columbia Gulf Transmission Co.	Coast Energy Group, Inc.	10–13–93	G–S	25,000	N	I	09–29–93	Indef.
ST94–164	Columbia Gulf Transmission Co.	MG Natural Gas Corp.	10–13–93	G–S	5,000	N	I	09–17–93	Indef.
ST94–165	Columbia Gulf Transmission Co.	Mobil Natural Gas, Inc.	10–13–93	G–S	60,000	N	I	09–25–93	Indef.
ST94–166	Columbia Gulf Transmission Co.	North Canadian Marketing Co.	10–13–93	G–S	150,000	N	I	10–02–93	Indef.
ST94–167	Columbia Gulf Transmission Co.	Total Minatome Corp	10–13–93	G–S	100,000	N	I	09–16–93	Indef.

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ST94–168	Transcontinental Gas P/L Corp.	Equitable Resources Marketing Co.	10–13–93	G–S	160,000	N	I	09–24–93	Indef.
ST94–169	Transcontinental Gas P/L Corp.	PNG Energy	10–13–93	G–S	200,000	N	I	09–16–93	Indef.
ST94–170	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc	10–13–93	G–S	112,000	N	I	09–30–93	Indef.
ST94–171	Koch Gateway Pipeline Co.	Vesta Energy Co	10–13–93	G–S	104,800	N	I	09–05–93	02–02–94
ST94–172	Koch Gateway Pipeline Co.	KCS Energy Marketing, Inc.	10–13–93	G–S	78,600	N	I	09–29–93	01–27–94
ST94–173	Koch Gateway Pipeline Co.	Western Gas Resources, Inc.	10–13–93	G–S	75,000	N	I	10–05–93	02–02–94
ST94–174	Koch Gateway Pipeline Co.	Murphy Oil USA, Inc	10–13–93	G–S	100,000	N	I	10–05–93	02–02–94
ST94–175	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	10–14–93	G–S	4,152	N	F	10–01–93	Indef.
ST94–176	Midwestern Gas Transmission Co.	Mobil Natural Gas, Inc.	10–14–93	G–S	50,000	N	I	09–27–93	Indef.
ST94–177	Stingray Pipeline Co	Scana Hydrocarbons, Inc.	10–14–93	G–S	5,000	N	I	10–01–93	Indef.
ST94–178	Stingray Pipeline Co	Western Gas Resources, Inc.	10–14–93	G–S	30,000	N	I	10–01–93	Indef.
ST94–179	Natural Gas P/L Co. of America.	NGC Transportation, Inc.	10–14–93	G–S	40,000	A	F	10–01–93	10–31–93
ST94–180	Northern Natural Gas Co.	Enogex, Inc	10–14–93	B	100,000	N	F/I	09–01–93	Indef.
ST94–181	Northern Natural Gas Co.	Transok Gas Co	10–14–93	G–S	30,000	N	F/I	09–26–93	Indef.
ST94–182	Northern Natural Gas Co.	OXY USA, Inc	10–14–93	G–S	15,000	N	F/I	09–01–93	Indef.
ST94–183	ONG Transmission Co.	Ozark Pipeline Co	10–14–93	C	50,000	N	I	09–15–93	Indef.
ST94–184	Columbia Gas Transmission Corp.	Constitution Gas Transport Co., Inc.	10–14–93	G–S	15,000	N	I	10–01–93	Indef.
ST94–185	Columbia Gas Transmission Corp.	U.S. Energy Development Corp.	10–14–93	G–S	6,000	N	I	10–01–93	Indef.
ST94–186	Colorado Interstate Gas Co.	Wyoming Gas Co	10–14–93	G–S	400	N	F	10–01–93	1–31–95
ST94–187	Colorado Interstate Gas Co.	Mountain Fuel Supply Co.	10–14–93	G–S	540	N	F	10–01–93	Indef.
ST94–188	Colorado Interstate Gas Co.	Helmerich & Payne Energy Services.	10–14–93	G–S	30,000	N	F	10–01–93	3–31–94
ST94–189	Colorado Interstate Gas Co.	ANR Pipeline Co	10–14–93	G–S	35,820	Y	F	10–01–93	10–31–93
ST94–190	Colorado Interstate Gas Co.	Holnam, Inc	10–14–93	G–S	130	N	F	10–01–93	09–30–94
ST94–191	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	10–14–93	G–S	10,000	N	F	10–01–93	10–31–95
ST94–192	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–14–93	G–S	10,310	N	F	10–01–93	09–30–97
ST94–193	Colorado Interstate Gas Co.	Fuel Resource Development Co.	10–14–93	G–S	1,750	N	F	10–01–93	12–31–08
ST94–194	Southern Natural Gas Co.	Yuma Gas Corp	10–15–93	G–S	50,000	N	I	10–08–93	Indef.
ST94–195	Southern Natural Gas Co.	Petro Source Gas Ventures.	10–15–93	G–S	50,000	N	I	10–11–93	Indef.
ST94–196	Southern Natural Gas Co.	Tennessee Gas Pipeline Co.	10–15–93	G–S	10,000	N	I	10–08–93	Indef.
ST94–197	Southern Natural Gas Co.	Equitable Resources Marketing.	10–15–93	G–S	100,000	N	I	10–02–93	Indef.
ST94–198	Sea Robin Pipeline Co.	Natural Gas Pipeline Co.	10–15–93	G–S	10,000	N	F	10–01–93	09–11–94
ST94–199	Colorado Interstate Gas Co.	Chevron USA, Inc	10–15–93	G–S	10,270	N	F	10–01–93	10–31–94
ST94–200	Colorado Interstate Gas Co.	Texaco Gas Marketing, Inc.	10–15–93	G–5	8,500	N	F	10–01–93	10–31–93.
ST94–201	Colorado Interstate Gas Co.	Snyder Oil Corp	10–15–93	G–5	21,000	N	F	10–01–93	10–31–03.
ST94–202	Colorado Interstate Gas Co.	City of Colorado Springs.	10–15–93	G–5	23,135	N	F	10–01–93	09–30–96.
ST94–203	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–15–93	G–5	4,160	N	F	10–01–93	08–31–94

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–204	Great Lakes Gas Trans., L.P.	Coastal Gas Marketing Co.	10–15–93	G–5	10,000	N	I	10–01–93	10–31–93.
ST94–205	Great Lakes Gas Trans., L.P.	Gaz Metropolitan & Co., P.P.	10–15–93	G–5	100,000	N	I	09–16–93	10–31–93.
ST94–206	Great Lakes Gas Trans., L.P.	Coenergy Ventures, Inc.	10–15–93	G–5	30,000	N	I	10–01–93	10–31–93
ST94–207	Florida Gas Transmission Co.	City of Lakeland	10–15–93	G–5	9,338	N	I	08–20–93	INDF.
ST94–208	Tennessee Gas Pipeline Co.	People's Natural Gas Co.	10–18–93	G–5	33,357	N	F	10–01–93	INDF.
ST94–209	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	10–18–93	G–5	30,601	N	F	10–08–93	INDF.
ST94–210	Tennessee Gas Pipeline Co.	Pawtucket Power Associates.	10–18–93	G–5	15,000	N	I	10–01–93	INDF.
ST94–211	Tennessee Gas Pipeline Co.	Niagara Mohawk Power Corp.	10–18–93	G–5	50,467	N	F	10–01–93	INDF.
ST94–212	Tennessee Gas Pipeline Co.	Equitable Inc	10–18–93	G–5	227,000	N	I	10–01–93	INDF.
ST94–213	Arkla Energy Resources Co.	Tenaska Marketing Ventures.	10–18–93	G–5	75,000	N	I	09–01–93	INDF.
ST94–214	Arkla Energy Resources Co.	J. Aron & Co	10–18–93	G–5	30,000	N	I	09–01–93	INDF.
ST94–215	Arkla Energy Resources Co.	Vesta Energy Co	10–18–93	G–5	230	N	F	09–01–93	INDF.
ST94–216	Arkla Energy Resources Co.	Reynolds Metals Co	10–18–93	G–5	3,000	N	I	09–01–93	INDF.
ST94–217	Trunkline Gas Co	City of Vienna	10–18–93	G–5	1,449	N	I	09–01–93	INDF.
ST94–218	Trunkline Gas Co	United Cities Gas Co	10–18–93	G–5	521	N	I	09–01–93	INDF.
ST94–219	Trunkline Gas Co	Entex	10–18–93	G–5	5,072	N	I	09–01–93	INDF.
ST94–220	Trunkline Gas Co	Central Illinois Public Service Co.	10–18–93	G–5	10,340	N	I	09–01–93	INDF.
ST94–221	Trunkline Gas Co	City of Hickman	10–18–93	G–5	3,002	N	I	09–01–93	INDF.
ST94–222	Trunkline Gas Co	United Cities Gas Co	10–18–93	G–5	10,350	N	I	09–01–93	INDF.
ST94–223	Trunkline Gas Co	City of Clay City	10–18–93	G–5	1,139	N	I	09–01–93	INDF.
ST94–224	Trunkline Gas Co	Vesta Energy Co	10–18–93	G–5	10,000	N	I	09–01–93	INDF.
ST94–225	Trunkline Gas Co	BP Gas, Inc	10–18–93	G–5	350,000	N	I	09–26–93	INDF.
ST94–226	Trunkline Gas Co	Chevron U.S.A., Inc	10–18–93	G–5	20,000	N	I	09–01–93	INDF.
ST94–227	Trunkline Gas Co	Chevron U.S.A., Inc	10–18–93	G–5	20,000	N	I	09–01–93	INDF.
ST94–228	Arkansas Oklahoma Gas Corp.	Ozark Gas Trans. System, et al.	10–18–93	C	800	N	I	09–01–93	INDF.
ST94–229	Natural Gas P/L Co. of America.	Northern Indiana Public Service Co.	10–18–93	G–5	310,000	N	I	07–12–93	INDF.
ST94–230	Natural Gas P/L Co. of America.	Northern Indiana Public Service Co.	10–18–93	G–5	100,000	N	I	07–12–93	INDF.
ST94–231	Natural Gas P/L Co. of America.	North Shore Gas Co	10–18–93	G–5	10,000	N	F	09–25–93	10–25–93.
ST94–232	Transtexas Pipeline	Texas Eastern Transmission Corp.	10–18–93	C	32,939	N	I	10–01–93	INDF.
ST94–233	Valero Transmission, L.P.	Tennessee Gas Pipeline Co.	10–18–93	C	7,500	N	I	10–01–93	INDF.
ST94–234	Valero Transmission, L.P.	Trunkline Gas Co	10–18–93	C	10,927	N	I	10–01–93	INDF.
ST94–235	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	10–18–93	C	11,612	N	I	10–03–93	INDF.
ST94–236	Transtexas Pipeline	Tennessee Gas Pipeline Co.	10–18–93	C	7,500	N	I	10–01–93	INDF.
ST94–237	Bridgeline Gas Distribution Co.	Columbia Gulf Transmission Co.	10–19–93	G–HT	11,874	N	F	09–22–93	INDF.
ST94–238	Tennessee Gas Pipeline Co.	Alcan Aluminum Corp.	10–19–93	G–5	7,000	N	F	10–05–93	INDF.
ST94–239	Tennessee Gas Pipeline Co.	Transco Energy Marketing Co.	10–19–93	G–5	1,138	N	F	10–01–93	INDF.
ST94–240	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	10–19–93	G–5	402,540	N	F	10–01–93	INDF.
ST94–241	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	10–19–93	G–5	N/A	N	I	10–01–93	INDF.
ST94–242	Transcontinental Gas P/L Corp.	Ledco, Inc	10–19–93	G–5	80,000	N	I	10–01–93	INDF.
ST94–243	Transcontinental Gas P/L Corp.	Vesta Energy Co	10–19–93	G–5	1,000	N	I	10–02–93	INDF.
ST94–244	Transcontinental Gas P/L Corp.	Associated Natural Gas, Inc.	10–19–93	G–5	180,000	N	I	10–08–93	INDF.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–245	Colorado Interstate Gas Co.	Snyder Oil Corp	10–19–93	G–S	50,076	N	F	10–01–93	04–30–08.
ST94–246	Trunkline Gas Co	Louisiana Gas Service Co.	10–20–93	G–S	104	N	I	09–01–93	INDF.
ST94–247	Trunkline Gas Co	City of Colfax	10–20–93	G–S	932	N	I	09–01–93	INDF.
ST94–248	Trunkline Gas Co	Lake County Utility District.	10–20–93	G–S	4,140	N	I	09–01–93	INDF.
ST94–249	Trunkline Gas Co	Hardeman-Fayette Utility District.	10–20–93	G–S	3,933	N	I	09–01–93	Indef.
ST94–250	Trunkline Gas Co	City of Jeffersonville	10–20–93	G–S	414	N	I	09–01–93	Indef.
ST94–251	Enogex Inc	Arkla Energy Resources Co.	10–20–93	C	50,000	N	I	10–01–93	Indef.
ST94–252	Enogex Inc	Phillips Gas Pipeline Co.	10–20–93	C	10,000	N	I	10–01–93	Indef.
ST94–253	Northern Natural Gas Co.	Enron Oil & Gas Marketing, Inc.	10–20–93	G–S	47,500	A	F/I	09–23–93	Indef.
ST94–254	Transwestern Pipeline Co.	Southern California Gas Co.	10–20–93	B	100,000	N	I	09–20–93	Indef.
ST94–255	Transwestern Pipeline Co.	U.S. Gas Transport, Inc.	10–20–93	G–S	12,000	N	F	09–24–93	09–30–93
ST94–256	Tennessee Gas Pipeline Co.	Connecticut Natural Gas Corp.	10–20–93	G–S	2,336	N	F	10–01–93	Indef.
ST94–257	Tennessee Gas Pipeline Co.	Rochester Gas & Electric Corp.	10–20–93	G–S	35,485	N	F	10–01–93	Indef.
ST94–258	Tennessee Gas Pipeline Co.	Hope Gas, Inc	10–20–93	G–S	2,261	N	F	10–01–93	Indef.
ST94–259	Tennessee Gas Pipeline Co.	Washington Gas Light Co.	10–20–93	G–S	4,128	N	F	10–06–93	Indef.
ST94–260	Midwestern Gas Transmission Co.	Phibro Energy, Inc ..	10–20–93	G–S	200,000	N	I	10–01–93	Indef.
ST94–261	Midwestern Gas Transmission Co.	Centran Corp	10–20–93	G–S	30,000	N	I	10–01–93	Indef
ST94–262	Midwestern Gas Transmission Co.	Entrade Corp	10–20–93	G–S	5,300	A	F	10–01–93	Indef.
ST94–263	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	10–20–93	G–S	100,000	N	F	10–01–93	Indef.
ST94–264	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	10–20–93	B	405,000	N	I	10–06–93	Indef.
ST94–265	Colorado Interstate Gas Co.	Mountain Cement Co.	10–20–93	G–S	100	N	I	10–01–93	Indef.
ST94–266	Colorado Interstate Gas Co.	Coastal Gas Marketing Co.	10–20–93	G–S	149,473	A	I	10–01–93	12–31–99
ST94–267	Colorado Interstate Gas Co.	Stand Energy Corp .	10–20–93	G–S	100	N	I	10–01–93	Indef.
ST94–268	Colorado Interstate Gas Co.	Windsor Gardens Association.	10–20–93	G–S	525	N	I	10–01–93	Indef.
ST94–269	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	10–20–93	G–S	67,700	N	I	10–01–93	Indef.
ST94–270	Colorad99Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–20–93	G–S	86,375	N	I	10–01–93	Indef.
ST94–271	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–20–93	G–S	9,424	N	I	10–01–93	Indef.
ST94–272	ANR Pipeline Co	Associated Natural Gas, Inc.	10–20–93	G–S	150,000	N	I	09–28–93	Indef.
ST94–273	ANR Pipeline Co	Union Pacific Fuels, Inc.	10–20–93	G–S	100,000	N	F	10–01–93	10–31–93
ST94–274	ANR Pipeline Co	Coastal Gas Marketing Co.	10–20–93	G–S	50,000	A	I	10–01–93	Indef.
ST94–275	ANR Pipeline Co	Oryx Gas Marketing, L.P..	10–20–93	G–S	150,000	N	I	09–26–93	Indef.
ST94–276	ANR Pipeline Co	Frontier Natural Gas Corp.	10–20–93	G–S	4,000	N	F	10–01–93	10–31–93
ST94–277	ANR Pipeline Co	O&R Energy, Inc	10–20–93	G–S	50,000	N	F	10–02–93	Indef.
ST94–278	ANR Pipeline Co	Semco Energy Services, Inc.	10–20–93	G–S	3,600	N	F	10–01–93	10–31–93
ST94–279	Koch Gateway Pipeline Co.	KCS Energy Marketing, Inc.	10–21–93	G–S	78,600	N	I	10–13–93	02–10–94
ST94–280	Koch Gateway Pipeline Co.	Chevron U.S.A., Inc	10–21–93	G–S	78,600	N	I	10–13–93	02–10–94
ST94–281	Koch Gateway Pipeline Co.	Chevron U.S.A., Inc	10–21–93	G–S	300,000	N	I	10–13–93	02–10–94

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ST94–282	Koch Gateway Pipeline Co.	Texaco Gas Marketing, Inc.	10–21–93	G–S	32,900	N	I	10–14–93	02–11–94
ST94–283	Koch Gateway Pipeline Co.	MG Natural Gas Corp.	10–21–93	G–S	41,920	N	I	10–13–93	02–10–94
ST94–284	Colorado Interstate Gas Co.	Anadarko Trading Corp.	10–21–93	G–S	226	N	I	10–01–93	Indef.
ST94–285	Colorado Interstate Gas Co.	Amoco Energy Trading Corp.	10–21–93	G–S	100	N	I	10–01–93	Indef.
ST94–286	Colorado Interstate Gas Co.	OXY USA, Inc	10–21–93	G–S	22,282	N	I	10–01–93	Indef.
ST94–287	Colorado Interstate Gas Co.	Western Natural Gas & Trans. Corp.	10–21–93	G–S	18,727	N	I	10–01–93	Indef.
ST94–288	Colorado Interstate Gas Co.	Interenergy Transmission Partners.	10–21–93	G–S	20,990	N	I	10–01–93	Indef.
ST94–289	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10–21–93	G–S	14,110	N	I	10–01–93	Indef.
ST94–290	Trailblazer Pipeline Co.	Arkla Energy Marketing Co.	10–21–93	Gas9S	353,000	N	I	10–01–93	Indef.
ST94–291	U–T Offshore System.	National Gas Resources, L.P..	10–21–93	G–S	50,000	N	I	10–08–93	10–07–94
ST94–292	Westar Transmission Co.	Natural Gas Pipeline Co. of America.	10–21–93	C	20,000	N	I	09–04–93	Indef.
ST94–293	Tennessee Gas Pipeline Co.	Tenngasco Corp	10–22–93	G–S	1,200	A	F	10–01–93	Indef.
ST94–294	K N Interstate Gas Trans. Co.	Enron Gas Marketing, Inc.	10–22–93	G–S	75,000	N	I	10–01–93	Indef.
ST94–295	K N Interstate Gas Trans. Co.	Maxus Exploration Co.	10–22–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–296	K N Interstate Gas Trans. Co.	Associated Intrastate Pipeline Co.	10–22–93	B	50,000	A	I	10–01–93	Indef.
ST94–297	K N Interstate Gas Trans. Co.	Arco Natural Gas Marketing, Inc.	10–22–93	G–S	195,000	N	I	10–01–93	Indef.
ST94–298	K N Interstate Gas Trans. Co.	LL&E Interstate Gas Transmission Co.	10–22–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–299	K N Interstate Gas Trans. Co.	Vesta Energy Co	10–22–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–300	K N Interstate Gas Trans. Co.	Exxon Corp	10–22–93	G–S	23,000	N	I	10–01–93	Indef.
ST94–301	K N Interstate Gas Trans. Co.	Energy Dynamics, Inc.	10–22–93	G–S	30,000	N	I	10–01–93	Indef.
ST94–302	K N Interstate Gas Trans. Co.	Mississippi River Transmission Corp.	10–22–93	G	5,000	N	I	10–01–93	Indef.
ST94–303	K N Interstate Gas Trans. Co.	Associated Natural Gas, Inc.	10–22–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–304	K N Interstate Gas Trans. Co.	Pennzoil Gas Marketing Co.	10–22–93	G–S	5,000	N	I	10–01–93	Indef.
ST94–305	K N Interstate Gas Trans. Co.	Coastal Gas Marketing Co.	10–22–93	G–S	30,000	N	I	10–01–93	Indef.
ST94–306	K N Interstate Gas Trans. Co.	Chevron USA, Inc ...	10–22–93	G–S	25,000	N	I	10–01–93	Indef.
ST94–307	K N Interstate Gas Trans. Co.	Chevron USA, Inc ...	10–22–93	G–S	60,000	N	I	10–01–93	Indef.
ST94–308	K N Interstate Gas Trans. Co.	Aquila Energy Marketing Corp.	10–22–93	G–S	100,000	N	I	10–01–93	Indef.
ST94–309	K N Interstate Gas Trans. Co.	Enogex Services Corp.	10–22–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–310	K N Interstate Gas Trans. Co.	Premier Gas Co	10–22–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–311	K N Interstate Gas Trans. Co.	Delhi Gas Pipeline Corp.	10–22–93	B	75,000	N	I	10–01–93	Indef.
ST94–312	K N Interstate Gas Trans. Co.	Transok Gas Co	10–22–93	G–S	50,000	N	I	10–01–93	Indef.
ST94–313	K N Interstate Gas Trans. Co.	Williams Gas Marketing Co.	10–22–93	G–S	80,000	N	I	10–01–93	Indef.
ST94–314	K N Interstate Gas Trans. Co.	New Mexico Natural Gas Co., Inc.	10–22–93	B	15,000	N	I	10–01–93	Indef.
ST94–315	K N Interstate Gas Trans. Co.	Oryx Gas Marketing, L.P..	10–22–93	G–S	130,000	N	I	10–01–93	Indef.
ST94–316	K N Interstate Gas Trans. Co.	Equitable Resources Marketing Co.	10–22–93	G–S	20,000	N	I	10–01–93	Indef.
ST94–317	K N Interstate Gas Trans. Co.	Post Rock Gas, Inc .	10–22–93	G–S	2,000	N	I	10–01–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-318	Natural Gas P/L Co. of America.	O&R Energy, Inc	10-22-93	G-S	10,000	N	F	10-09-93	10-31-93
ST94-319	Natural Gas P/L Co. of America.	Associated Natural Gas, Inc.	10-22-93	G-S	70,500	N	F	10-01-93	09-30-98
ST94-320	Houston Pipe Line Co.	Northern Natural Gas Co.	10-22-93	C	10,000	N	I	09-01-93	Indef.
ST94-321	Houston Pipe Line Co.	Northern Natural Gas Co.	10-22-93	C	50,000	N	I	09-27-93	Indef.
ST94-322	Colorado Interstate Gas Co.	Coastal Oil & Gas Corp.	10-22-93	G-S	33,336	A	I	10-01-93	Indef.
ST94-323	ANR Pipeline Co	Coastal Gas Marketing Co.	10-22-93	G-S	230,000	A	I	10-01-93	Indef.
ST94-324	Oasis Pipe Line Co .	Transwestern Pipeline Co.	10-22-93	C	7,000	N	I	08-01-93	Indef.
ST94-325	Oasis Pipe Line Co .	AMOCO Gas Co	10-22-93	C	50,000	N	I	09-01-93	Indef.
ST94-326	Houston Pipe Line Co.	Natural Gas Pipeline Co. of America.	10-22-93	C	25,000	N	I	09-24-93	Indef.
ST94-327	Colorado Interstate Gas Co.	Aquila Energy Marketing Corp.	10-22-93	G-S	10,367	N	I	10-01-93	Indef.
ST94-328	Colorado Interstate Gas Co.	Associated Intrastate Pipeline Co.	10-22-93	G-S	32,292	N	I	10-01-93	Indef.
ST94-329	Colorado Interstate Gas Co.	Chevron USA, Inc ...	10-22-93	G-S	147	N	I	10-01-93	Indef.
ST94-330	Colorado Interstate Gas Co.	Coastal Chem, Inc ..	10-22-93	G-S	17,616	A	I	10-01-93	Indef.
ST94-331	K N Interstate Gas Trans. Co.	Boyd Rosene & Associates, Inc.	10-25-93	G-S	10,000	N	I	10-01-93	Indef.
ST94-332	K N Interstate Gas Trans. Co.	Premier Gas Co	10-25-93	G-S	6,000	N	I	10-01-93	Indef.
ST94-333	K N Interstate Gas Trans. Co.	Mobil Natural Gas, Inc.	10-25-93	G-S	19,000	N	F	10-01-93	02-28-95
ST94-334	K N Interstate Gas Trans. Co.	Transok, Inc	10-25-93	B	25,000	N	I	10-01-93	Indef.
ST94-335	K N Interstate Gas Trans. Co.	Tenaska Marketing Ventures.	10-25-93	G-S	5,154	N	F	10-01-93	10-31-93
ST94-336	K N Interstate Gas Trans. Co.	Bridge Gas USA, Inc	10-25-93	G-S	75,000	N	I	10-01-93	Indef.
ST94-337	K N Interstate Gas Trans. Co.	Western Natural Gas & Trans. Corp.	10-25-93	G-S	500	N	I	10-01-93	Indef.
ST94-338	K N Interstate Gas Trans. Co.	Transok, Inc	10-25-93	B	50,000	N	I	10-01-93	Indef.
ST94-339	K N Interstate Gas Trans. Co.	LL&E Gas Marketing, Inc.	10-25-93	G-S	5,015	N	F	10-01-93	03-31-94
ST94-340	K N Interstate Gas Trans. Co.	Coastal Gas Marketing Co.	10-25-93	G-S	50,000	N	I	10-01-93	Indef.
ST94-341	K N Interstate Gas Trans. Co.	Chevron USA Production Co.	10-25-93	G-S	32,000	N	I	10-01-93	Indef.
ST94-342	K N Interstate Gas Trans. Co.	Aquila Energy Marketing corp..	10-25-93	G-S	150,000	N	I	10-01-93	Indef.
ST94-343	K N Interstate Gas Trans. Co.	Texaco Gas Marketing, Inc.	10-25-93	G-S	5,000	N	I	10-01-93	Indef.
ST94-344	K N Interstate Gas Trans. Co.	Western Gas Resources, Inc.	10-25-93	G-S	25,000	N	I	10-01-93	Indef.
ST94-345	K N Interstate Gas Trans. Co.	Continental Natural Gas, Inc.	10-25-93	G-S	50,000	N	I	10-01-93	Indef.
ST94-346	K N Interstate Gas Trans. Co.	Universal Resources Corp.	10-25-93	G-S	27,000	N	I	10-01-93	Indef.
ST94-347	K N Interstate Gas Trans. Co.	American Central Gas Cos., Inc.	10-25-93	G-S	100,000	N	I	10-01-93	Indef.
ST94-348	K N Interstate Gas Trans. Co.	Enron Gas Marketing, Inc.	10-25-93	G-S	30,000	N	I	10-01-93	Indef.
ST94-349	K N Interstate Gas Trans. Co.	Oxy USA, Inc	10-25-93	G-S	20,000	N	I	10-01-93	Indef.
ST94-350	K N Interstate Gas Trans. Co.	North Canadian Marketing Corp.	10-25-93	G-S	50,000	N	I	10-01-93	Indef.
ST94-351	K N Interstate Gas Trans. Co.	Anadarko Trading Co.	10-25-93	G-S	30,000	N	I	10-01-93	Indef.
ST94-352	K N Interstate Gas Trans. Co.	Williams Gas Marketing Co.	10-25-93	G-S	100,000	N	I	10-01-93	Indef.
ST94-353	K N Interstate Gas Trans. Co.	Prairie Gas Transportation Co.	10-25-93	G-S	20,000	N	I	10-01-93	ndef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-354	K N Interstate Gas Trans. Co.	K N Gas Marketing, Inc.	10-25-93	G-S	250,000	A	I	10-01-93	Indef.
ST94-355	K N Interstate Gas Trans. Co.	Kerr-McGee Corp	10-25-93	G-S	30,000	N	I	10-01-93	Indef.
ST94-356	K N Interstate Gas Trans. Co.	Mountain Iron & Supply Co.	10-25-93	G-S	20,000	N	I	10-01-93	Indef.
ST94-357	K N Interstate Gas Trans. Co.	Tenaska Marketing Ventures.	10-25-93	G-S	100,000	N	I	10-01-93	Indef.
ST94-358	K N Interstate Gas Trans. Co.	Texaco Exploration & Production.	10-25-93	G-S	10,000	N	I	10-01-93	Indef.
ST94-359	K N Interstate Gas Trans. Co.	Interenergy Corp	10-25-93	G-S	5,000	N	I	10-01-93	Indef.
ST94-360	K N Interstate Gas Trans. Co.	Cimarron Gas Companies, Inc.	10-25-93	G-S	50,000	N	I	10-01-93	Indef.
ST94-361	Mojave Pipeline Co .	Meridian Oil, Inc	10-25-93	G-S	100,000	N	F	12-21-90	10-02-08
ST94-362	K N Interstate Gas Trans. Co.	Boyd Rosene & Associates, Inc.	10-25-93	G-S	12,000	N	I	10-01-93	Indef.
ST94-363	K N Interstate Gas Trans. Co.	Transok, Inc	10-25-93	B	50,000	N	I	10-01-93	Indef.
ST94-364	Colorado Interstate Gas Co.	K N Gas Marketing, Inc.	10-25-93	G-S	108,789	N	I	10-01-93	Indef.
ST94-365	Colorado Interstate Gas Co.	Consolidated Fuel Corp.	10-25-93	G-S	1,513	N	I	10-01-93	Indef.
ST94-366	Colorado Interstate Gas Co.	Farmer's Union Central Exchange.	10-25-93	G-S	3,412	N	I	10-01-93	Indef.
ST94-367	Colorado Interstate Gas Co.	Grand Valley Gas Co.	10-25-93	G-S	13,402	N	I	10-01-93	Indef.
ST94-368	Colorado Interstate Gas Co.	Kiowa Gas Co	10-25-93	G-S	274	N	I	10-01-93	Indef.
ST94-369	Natural Gas P/L Co. of America.	International Paper Co.	10-25-93	G-S	16,500	N	F	09-01-93	06-30-94
ST94-370	Transco-Louisiana Intra. P/L Co.	Transcontinental Gas Pipe Line Corp.	10-25-93	C	120,000	N	I	08-01-93	Indef.
ST94-371	Valero Transmission, L.P.	Trunkline Gas Co	10-26-93	C	10,000	N	I	10-01-93	Indef.
ST94-372	Mojave Pipeline Co .	Meridian Oil, Inc	10-25-93	G-S	100,000	N	F	10-03-93	10-02-08
ST94-373	Trunkline Gas Co	City of Somerville	10-26-93	G-S	1,705	N	F	09-01-93	Indef.
ST94-374	Trunkline Gas Co	Direct Gas Supply Corp.	10-26-93	G-S	12,420	N	I	10-01-93	Indef.
ST94-375	Trunkline Gas Co	Yuma Gas Corp	10-26-93	G-S	51,750	N	I	09-01-93	Indef.
ST94-376	Trunkline Gas Co	Electric Energy, Inc .	10-26-93	G-S	136,620	N	I	10-03-93	Indef.
ST94-377	Trunkline Gas Co	City of Sims	10-26-93	G-S	311	N	F	09-01-93	Indef.
ST94-378	Trunkline Gas Co	City of Boyce	10-26-93	G-S	932	N	F	09-01-93	Indef.
ST94-379	Trunkline Gas Co	City of Louisville	10-26-93	G-S	1,242	N	F	09-01-93	Indef.
ST94-380	Trunkline Gas Co	City of Cisne	10-26-93	G-S	828	N	F	09-01-93	Indef.
ST94-381	Trunkline Gas Co	City of McLeansboro	10-26-93	G-S	3,312	N	F	09-01-93	Indef.
ST94-382	Trunkline Gas Co	KCS Energy Marketing, Inc.	10-26-93	G-S	51,750	N	I	09-01-93	Indef.
ST94-383	Trunkline Gas Co	City of Pittsburg	10-26-93	G-S	311	N	F	09-01-93	Indef.
ST94-384	Trunkline Gas Co	Consolidated Fuel Corp.	10-26-93	G-S	51,750	N	I	09-09-93	Indef.
ST94-385	Trunkline Gas Co	Unigas Energy, Inc ..	10-26-93	G-S	20,700	N	I	09-01-93	Indef.
ST94-386	Trunkline Gas Co	Coastal Gas Marketing Co.	10-26-93	G-S	207,000	N	I	09-01-93	Indef.
ST94-387	Trunkline Gas Co	Panhandle Trading Co.	10-26-93	G-S	100,000	A	I	09-07-93	Indef.
ST94-388	Trunkline Gas Co	City of Obion	10-26-93	G-S	302,220	N	F	09-01-93	Indef.
ST94-389	Trunkline Gas Co	City of Fairfield	10-26-93	G-S	6,417	N	F	09-01-93	Indef.
ST94-390	Colorado Interstate Gas Co.	NGC Transportation, Inc.	10-26-93	G-S	8,345	N	I	09-01-93	Indef.
ST94-391	Colorado Interstate Gas Co.	People Natural Gas Co.	10-26-93	G-S	489	N	I	09-01-93	Indef.
ST94-392	Colorado Interstate Gas Co.	PG&E Resources Co	10-26-93	G-S	3,000	N	I	09-01-93	Indef.
ST94-393	Colorado Interstate Gas Co.	Mountain Fuel Supply Co.	10-26-93	G-S	508	N	I	09-01-93	Indef.
ST94-394	Colorado Interstate Gas Co.	Quivira Gas Co	10-26-93	G-S	9,652	N	I	09-01-93	Indef.
ST94-395	El Paso Natural Gas Co.	Mock Resources, Inc	10-26-93	G-S	10,300	N	I	10-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-396	Trunkline Gas Co	Eastex Hydrocarbons, Inc.	10-27-93	G-S	20,000	N	I	10-01-93	Indef.
ST94-397	Trunkline Gas Co	City of Dahlgren	10-27-93	G-S	427	N	F	09-01-93	Indef.
ST94-398	Panhandle Eastern Pipe Line Co.	Entrade Corp	10-27-93	G-S	200,000	N	I	10-01-93	09-30-98.
ST94-399	Panhandle Eastern Pipe Line Co.	Thomson Consumer Electronics, Inc.	10-27-93	G-S	1,500	N	F	10-01-93	09-30-96.
ST94-400	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	10-27-93	B	10,380	N	F	10-13-93	Indef.
ST94-401	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	10-27-93	B	6,066	N	F	10-12-93	Indef.
St94-402	Algonquin Gas Transmission Co.	Southern Connecticut Gas.	10-27-93	B	4,517	N	FF	10-13-93	Indef.
ST94-403	Algonquin Gas Transmission Co.	Colonial Gas Co	10-27-93	B	7,918	N	F	10-07-93	Indef.
ST94-404	Algonquin Gas Transmission Co.	Yankee Gas Services Co.	10-27-93	B	8,862	N	F	10-06-93	Indef.
ST94-405	Algonquin Gas Transmission Co.	Commonwealth Gas Co.	10-27-93	B	16,226	N	F	10-12-93	Indef.
ST94-406	Columbia Gas Transmission Corp.	United States Gypsum Co.	10-27-93	G-S	1,000	N	I	10-01-93	Indef.
ST94-407	Colorado Interstate Gas Co.	Rhone-Poulenc Pipeline Co.	10-27-93	G-S	3,261	N	I	10-01-93	Indef.
ST94-408	Colorado Interstate Gas Co.	Rangeline Corp	10-27-93	G-S	164	N	I	10-01-93	Indef.
ST94-409	Colorado Interstate Gas Co.	Snyder Oil Corp	10-27-93	G-S	33,639	N	I	10-01-93	Indef.
ST94-410	Colorado Interstate Gas Co.	SDS Petroleum Products, Inc.	10-27-93	G-S	181	N	I	10-01-93	Indef.
ST94-411	Colorado Interstate Gas Co.	Santa Fe Minerals, Inc.	10-27-93	G-S	823	N	I	10-01-93	Indef.
ST94-412	Colorado Interstate Gas Co.	Sinclair Oil Corp	10-27-93	G-S	8,709	N	I	10-01-93	Indef.
ST94-413	Midwestern Gas Transmission Co.	Superior Natural Gas Corp.	10-28-93	G-S	100,000	N	I	10-01-93	Indef.
ST94-414	Tennessee Gas Pipeline Co.	East Ohio Gas	10-28-93	G-S	48,385	N	F	10-01-93	Indef.
ST94-415	Tennessee Gas Pipeline Co.	Corning Natural Gas Corp.	10-28-93	G-S	3,854	N	F	10-01-93	Indef.
ST94-416	Tennessee Gas Pipeline Co.	CNG Gas Services Corp.	10-28-93	G-S	250,000	N	I	10-15-93	Indef.
ST94-417	Tennessee Gas Pipeline Co.	Washington Gas Light Co.	10-28-93	G-S	7,338	N	FF	10-05-93	Indef.
ST94-418	Tennessee Gas Pipeline Co.	Colonial Gas Co	10-28-93	G-S	3,361	N	F	10-01-93	Indef.
ST94-419	Tennessee Gas Pipeline Co.	Public Service Electric & Gas Co.	10-28-93	G-S	10,206	N	FF	10-13-93	Indef.
ST94-420	Channel Industries Gas Co.	Tennessee Gas Pipeline Co., Et Al.	10-28-93	C	100,000	Y	I	10-01-93	Indef.
ST94-421	Gas Co. of New Mexico.	El Paso Natural Gas Co.	10-28-93	C	20,000	N	I	10-08-93	Indef.
ST94-422	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	10-28-93	C	9,500	N	I	10-01-93	Indef.
ST94-423	Colorado Interstate Gas Co.	Union Pacific Fuels, Inc.	10-28-93	G-S	10,250	N	I	10-01-93	Indef.
ST94-424	Colorado Interstate Gas Co.	Texaco Gas Marketing, Inc.	10-28-93	G-S	44,615	N	I	10-01-93	Indef.
ST94-425	Colorado Interstate Gas Co.	Tiger National Gas, Inc.	10-28-93	G-S	121	N	I	10-01-93	Indef.
ST94-426	Colorado Interstate Gas Co.	Public Service Co. of Colorado.	10-28-93	G-S	10,276	N	I	10-01-93	Indef.
ST94-427	Colorado Interstate Gas Co.	Public Service Co. of Colorado.	10-28-93	G-S	6,000	N	I	10-01-93	Indef.
ST94-428	Colorado Interstate Gas Co.	Universial Resources Corp.	10-28-93	G-S	4,474	N	I	10-14-93	Indef.
ST94-429	Colorado Interstate Gas Co.	Vesgas Co	10-28-93	G-S	6,870	N	I	10-01-93	Indef.
ST94-430	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	10-28-93	G-S	2,760	N	F	10-01-93	10-31-93.
ST94-431	Transwestern Pipeline Co.	Brooklyn Interstate Natural Gas.	10-28-93	G-S	5,000	N	F	10-01-93	10-31-93.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94-432	Transwestern Pipeline Co.	Anthem Energy Co., L.P.	10-28-93	G-S	13,780	N	F	10-01-93	10-31-93.
ST94-433	Transwestern Pipeline Co.	Richardson Products Co.	10-28-93	G-S	41,340	N	F	10-01-93	10-31-93.
ST94-434	Transwestern Pipeline Co.	NGC Transportation, Inc.	10-28-93	G-S	19,570	N	F	10-01-93	10-31-93.
ST94-435	Transwestern Pipeline Co.	NGC Transportation, Inc.	10-28-93	G-S	15,790	N	F	10-01-93	10-31-93.
ST94-436	Transwestern Pipeline Co.	GPM Gas Corp	10-28-93	G-S	20,000	N	F	10-01-93	10-31-93.
ST94-437	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	10-28-93	G-S	200	N	A	10-01-93	06-30-94.
ST94-438	Transwestern Pipeline Co.	Arkla Energy Marketing.	10-28-93	G-S	100,000	N	I	10-01-93	Indef.
ST94-439	Transwestern Pipeline Co.	Cibola Corp	10-28-93	G-S	6,000	N	F	10-01-93	02-28-94.
ST94-440	Transwestern Pipeline Co.	Production Gathering Co.	10-28-93	G-S	530	N	F	10-01-93	10-31-93.
ST94-441	Transwestern Pipeline Co.	Tristar Gas Co	10-28-93	G-S	6,128	N	F	10-01-93	10-31-93.
ST94-442	Transwestern Pipeline Co.	F&M Oil & Gas Co ..	10-28-93	G-S	50,000	N	I	10-01-93	Indef.
ST94-443	Transwestern Pipeline Co.	Brooklyn Interstate Natural Gas.	10-28-93	G-S	50,000	N	I	10-16-93	Indef.
ST94-444	Transwestern Pipeline Co.	Production Gathering Co.	10-28-93	G-S	220	N	F	10-01-93	10-31-93.
ST94-445	Transwestern Pipeline Co.	Enogex Services Corp.	10-28-93	G-S	3,500	N	F	10-02-93	10-31-93
ST94-446	Transwestern Pipeline Co.	Gas Co. of Mexico ..	10-28-93	G-S	5,000	N	F	10-05-93	10-31-93
ST94-447	Transwestern Pipeline Co.	Tristar Gas Co	10-28-93	G-S	1,000	N	F	10-02-93	10-31-93
ST94-448	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	10-28-93	G-S	5,000	N	F	10-01-93	10-31-93
ST94-449	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	10-28-93	G-S	1,200	A	F	10-03-93	10-31-93
ST94-450	Transwestern Pipeline Co.	Tristar Gas Co	10-28-93	G-S	1,000	N	F	10-02-93	10-05-93
ST94-451	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	10-28-93	G-S	4,175	A	F	10-06-93	10-31-93
ST94-452	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	10-28-93	G-S	5,000	N	F	10-01-93	10-31-93
ST94-453	Williams Natural Gas Co.	Grove Municipal Services Authority.	10-28-93	G-S	5,500	N	F	10-01-93	Indef.
ST94-454	Williams Natural Gas Co.	Greeley Gas Co	10-28-93	G-S	1,187	N	F	10-01-93	Indef.
ST94-455	Williams Natural Gas Co.	Brock Gas Systems & Equipment, Inc.	10-28-93	G-S	354	N	F	10-01-93	10-01-95
ST94-456	Williams Natural Gas Co.	Brock Gas Systems & Equipment, Inc.	10-28-93	G-S	350	N	F	10-01-93	10-01-95
ST94-457	Williams Natural Gas Co.	Atchison Casting Corp.	10-28-93	B	3,500	N	I	10-01-93	10-01-94
ST94-458	Williams Natural Gas Co.	Amarillo Natural Gas, Inc.	10-28-93	B	250	N	I	10-01-93	Indef.
ST94-459	Williams Natural Gas Co.	Triumph Natural Gas, Inc.	10-28-93	G-S	18,000	N	I	10-01-93	Indef.
ST94-460	Williams Natural Gas Co.	Farmland Industries, Inc.	10-28-93	G-S	250,000	N	I	10-01-93	Indef.
ST94-461	Williams Natural Gas Co.	City Utilities of Springfield.	10-28-93	G-S	120,000	N	I	10-20-93	Indef.
ST94-462	Williams Natural Gas Co.	American Central Gas Cos., Inc.	10-28-93	G-S	20,000	N	I	10-01-93	10-01-94
ST94-463	Williams Natural Gas Co.	Citation Oil & Gas Corp.	10-28-93	G-S	500	N	I	10-22-93	Indef.
ST94-464	Williams Natural Gas Co.	City of Burlingame ...	10-28-93	G-S	496	N	F	10-01-93	Indef.
ST94-465	Williams Natural Gas Co.	City of Denison	10-28-93	G-S	128	N	I	10-01-93	Indef.
ST94-466	Williams Natural Gas Co.	City of Granby	10-28-93	G-S	999	N	I	10-01-93	Indef.
ST94-467	Williams Natural Gas Co.	Greeley Gas Co	10-28-93	G-S	2,650	N	I	10-01-93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–468	Williams Natural Gas Co.	Missouri Public Service.	10–28–93	G–S	5,834	N	F	10–07–93	Indef.
ST94–469	Williams Natural Gas Co.	Western Resources, Inc.	10–28–93	G–S	14,640	N	F	10–01–93	Indef.
ST94–470	Williams Natural Gas Co.	City Utilities of Springfield.	10–28–93	B	4,833	N	F	10–01–93	10–01–94
ST94–471	Williams Natural Gas Co.	City Utilities of Springfield.	10–28–93	B	6,588	N	F	10–01–93	Indef.
ST94–472	Williams Natural Gas Co.	Western Resources, Inc.	10–28–93	G–S	7,614	N	F	10–01–93	Indef.
ST94–473	Williams Natural Gas Co.	Western Resources, Inc.	10–28–93	G–S	6,450	N	F	10–01–93	Indef.
ST94–474	Williams Natural Gas Co.	Altamont Municipal Gas Authority.	10–28–93	G–S	996	N	I	10–01–93	Indef.
ST94–475	Williams Natural Gas Co.	Quaker Oats Co	10–28–93	G–S	2,000	N	I	10–09–93	10–01–94
ST94–476	Williams Natural Gas Co.	Post Rock Gas, Inc .	10–28–93	G–S	150	N	I	10–01–93	Indef.
ST94–477	Williams Natural Gas Co.	Pawnee Pipeline & Marketing Co.	10–28–93	G–S	500	N	I	10–01–93	Indef.
ST94–478	Williams Natural Gas Co.	Midcoast Energy Resources, Inc.	10–28–93	G–S	8,000	N	I	10–09–93	Indef.
ST94–479	Williams Natural Gas Co.	Kansas Municipal Gas Agency.	10–28–93	G–S	11,108	N	I	10–08–93	Indef.
ST94–480	Panhandle Eastern Pipe Line Co.	Ward Gas Marketing, Inc.	10–28–93	G–S	78,000	N	I	10–01–93	09–30–95
ST94–481	Panhandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	10–28–93	G–S	2,628	N	F	10–01–93	10–31–93
ST94–482	Panhandle Eastern Pipe Line Co.	Gedi, Inc	10–28–93	G–S	1,500	N	I	10–01–93	09–30–98
ST94–483	Panhandle Eastern Pipe Line Co.	Tylex, Inc	10–28–93	G–S	3,500	N	I	10–01–93	04–30–98
ST94–484	Panhandle Eastern Pipe Line Co.	Mountain Front Pipeline Co., Inc.	10–28–93	G–S	20,000	N	I	10–01–93	08–31–98
ST94–485	Natural Gas P.L Co. of America.	Tenngasco Corp	10–28–93	B	60,000	N	I	06–01–87	Indef.
ST94–486	Natural Gas P.L Co. of America.	Diamond Shamrock Offshore Partners.	10–28–93	B	50,000	N	I	09–01–87	Indef.
ST94–487	Natural Gas P.L Co. of America.	Energy Marketing Exchange, Inc.	10–28–93	B	30,000	N	I	04–01–87	Indef.
ST94–488	Natural Gas P.L Co. of America.	Chevron U.S.A., Inc	10–28–93	B	9,000	N	I	08–01–88	Indef.
ST94–489	Natural Gas P.L Co. of America.	Texaco Gas Marketing, Inc.	10–28–93	B	100,000	N	I	12–01–87	Indef.
ST94–490	Natural Gas P.L Co. of America.	Amgas, Inc	10–28–93	B	100,000	N	I	04–01–87	Indef.
ST94–491	Natural Gas P.L Co. of America.	Humble Gas Transmission Co.	10–28–93	B	75,000	N		04–01–87	Indef.
ST94–492	Channel Industries Gas Co.	Northern Natural Gas Co., et al.	10–29–93	C	50,000	Y	I	10–01–93	Indef.
ST94–493	Channel Industries Gas Co.	THC Pipeline Co., et al.	10–29–93	C	75,000	N	I	10–01–93	Indef.
ST94–494	Transok, Inc	ANR Pipeline Co., et al.	10–29–93	C	50,000	N	I	10–01–93	Indef.
ST94–495	Delhi Gas Pipeline Corp.	Ozark Gas Transmission System	10–29–93	C	25,000	N	I	10–11–93	Indef.
ST94–496	Delhi Gas Pipeline Corp.	Ozark Gas Transmission System	10–29–93	C	600	N	I	10–09–93	Indef.
ST94–497	Transok, Inc	ANR Pipeline Co., et al.	10–29–93	C	10,000	N	I	10–01–93	10–31–93
ST94–498	Transok, Inc	ANR Pipeline Co., et al.	10–29–93	C	20,000	N	I	10–01–93	Indef.
ST94–499	Texas Gas Transmission Corp.	Corning Natural Gas Corp.	10–29–93	G–S	2,882	N	F	10–14–93	Indef.
ST94–500	Texas Gas Transmission Corp.	Sonat Marketing Co	10–29–93	G–S	100,000	N	I	10–20–93	Indef.
ST94–501	Texas Gas Transmission Corp.	Enron Gas Marketing, Inc.	10–29–93	G–S	50,000	N	I	10–11–93	Indef.
ST94–502	Texas Gas Transmission Corp.	Sonat Marketing Co	10–29–93	G–S	100,000	N	I	10–20–93	Indef.
ST94–503	Texas Gas Transmission Corp.	Sonat Marketing Co	10–29–93	G–S	100,000	N	I	10–20–93	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–504	Texas Gas Transmission Corp.	CMS Gas Marketing	10–29–93	G–S	100,000	N	I	10–15–93	Indef.
ST94–505	Kotch Gateway Pipeline Co.	Transco Energy Marketing Co.	10–29–93	G–S	104,800	N	I	10–14–93	02–11–94
ST94–506	Texas Eastern Transmission Corp.	Brooklyn Union Gas Co.	10–29–93	G	20,604	N	F	10–01–93	10–31–99
ST94–507	Texas Eastern Transmission Corp.	Corning Natural Gas Corp.	10–29–93	G	850	N	F	10–01–93	10–31–99
ST94–508	Texas Eastern Transmission Corp.	UGI Utilities, Inc	10–29–93	G–S	4,000	N	F	10–01–93	10–31–99
ST94–509	Texas Eastern Transmission Corp.	Columbia Gas of Ohio, Inc.	10–29–93	G–S	11,000	N	F	10–01–93	10–31–99
ST94–510	Texas Eastern Transmission Corp.	UGI Utilities, Inc	10–29–93	G–S	25,749	N	I	10–01–93	09–30–94
ST94–511	Texas Eastern Transmission Corp.	Texas-Ohio Gas, Inc	10–29–93	G–S	1,000	N	I	10–02–93	09–30–94
ST94–512	Texas Eastern Transmission Corp.	New York State Electric & Gas Corp.	10–29–93	G	17,237	N	F	10–01–93	10–31–99
ST94–513	Texas Eastern Transmission Corp.	Richmond Dept. of Public Utility.	10–29–93	G	3,422	N	I	10–01–93	10–31–99
ST94–514	Texas Eastern Transmission Corp.	River Gas Co	10–29–93	G	1,409	N	I	10–01–93	10–31–99
ST94–515	Texas Eastern Transmission Corp.	Virginia Natural Gas, Inc.	10–29–93	G	4,586	N	I	10–01–93	10–31–99
ST94–516	Texas Eastern Transmission Corp.	Hope Gas, Inc	10–29–93	G–S	5,000	N	I	09–01–93	10–31–99
ST94–517	Texas Eastern Transmission Corp.	East Ohio Gas Co ...	10–29–93	G	44,127	N	F	10–01–93	10–31–99
ST94–518	Texas Eastern Transmission Corp.	East Ohio Gas Co ...	10–29–93	G	30,000	N	I	10–01–93	10–31–99
ST94–519	Texas Eastern Transmission Corp.	Elizabethtown Gas Co.	10–29–93	G	3,603	N	I	10–01–93	10–31–99
ST94–520	Texas Eastern Transmission Corp.	Long Island Lighting Co.	10–29–93	G	12,578	N	I	10–01–93	10–31–99
ST94–521	Texas Eastern Transmission Corp.	National Fuel Gas Dist. Corp.	10–29–93	G	44,313	N	F	10–01–93	10–31–99
ST94–522	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	10–29–93	G	5,243	N	I	10–01–93	10–31–99
ST94–523	Texas Eastern Transmission Corp.	Middleborough Gas & Electric Dept.	10–29–93	G	119	N	I	10–01–93	10–31–99
ST94–524	Texas Eastern Transmission Corp.	Boston Gas Co	10–29–93	G	5,033	N	F	10–01–93	10–31–99
ST94–525	Texas Eastern Transmission Corp.	East Ohio Gas Co ...	10–29–93	G	20,762	N	F	10–01–93	10–31–99
ST94–526	Texas Eastern Transmission Corp.	Carnegie Natural Gas Co.	10–29–93	G	18,207	N	F	10–01–93	10–31–99
ST94–527	Texas Eastern Transmission Corp.	Valero Gas Marketing, L.P.	10–29–93	G–S	30,000	N	I	10–01–93	05–30–94
ST94–528	Texas Eastern Transmission Corp.	Miami Valley Resources, Inc.	10–29–93	G–S	4,791	N	I	10–01–93	10–31–93
ST94–529	Texas Eastern Transmission Corp.	Suburbas Natural Gas Co.	10–29–93	G–S	1,060	N	I	10–01–93	11–01–94
ST94–530	Texas Eastern Transmission Corp.	Yuma Gas Corp	10–29–93	G–S	621	N	I	10–01–93	10–31–94
ST94–531	Texas Eastern Transmission Corp.	Union Electric Co	10–29–93	G–S	2,000	N	I	10–02–93	11–01–93
ST94–532	Texas Eastern Transmission Corp.	Meridian Marketing & Trans. Corp.	10–29–93	G–S	10,000	N	I	10–02–93	06–30–94
ST94–533	Texas Eastern Transmission Corp.	Apache Corp	10–29–93	G–S	100,000	N	I	10–02–93	08–31–94
ST94–534	Texas Eastern Transmission Corp.	Murphy Exploration & Production.	10–29–93	G–S	48,439	N	I	10–03–93	09–30–94
ST94–535	Texas Eastern Transmission Corp.	Santa Fe Energy Oper. Partnership.	10–29–93	G–S	25,000	N	I	10–03–93	09–30–94
ST94–536	Texas Eastern Transmission Corp.	Bristol & Warren Gas Co.	10–29–93	G	549	N	I	10–01–93	10–31–99
ST94–537	Texas Eastern Transmission Corp.	Niagara Mohawk Power Corp.	10–29–93	G	23,935	N	F	10–01–93	10–31–99
ST94–538	Texas Eastern Transmission Corp.	Colonial Gas Co	10–29–93	G	1,996	N	F	10–01–93	10–31–99

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–539	Texas Eastern Transmission Corp.	Commonwealth Gas Co.	10–29–93	G	4,781	N	F	10–01–93	10–31–99
ST94–540	Texas Eastern Transmission Corp.	North Attleboro Gas Co.	10–29–93	G	79	N	F	10–01–93	10–31–99
ST94–541	Texas Eastern Transmission Corp.	Providence Gas Co	10–29–93	G	1,814	N	F	10–01–93	10–31–99
ST94–542	Texas Eastern Transmission Corp.	Southern Connecticut Gas Co.	10–29–93	G	2,970	N	F	10–01–93	10–31–99
ST94–543	Texas Eastern Transmission Corp.	Yankee Gas Services Co.	10–29–93	G	3,660	N	F	10–01–93	10–31–99
ST94–544	Texas Eastern Transmission Corp.	Baltimore Gas & Electric Co.	10–29–93	G	21,616	N	F	10–01–93	10–31–99
ST94–545	Texas Eastern Transmission Corp.	People Natural Gas	10–29–93	G	35,618	N	F	10–01–93	10–31–99
ST94–546	Texas Eastern Transmission Corp.	Public Service Electric & Gas Co.	10–29–93	G	7,690	N	F	10–01–93	10–31–99
ST94–547	Texas Eastern Transmission Corp.	Public Service Co of NC, Inc.	10–29–93	G	5,206	N	F	10–01–93	10–31–99
ST94–548	Texas Eastern Transmission Corp.	Rochester Gas & Electric Corp.	10–29–93	G	48,046	N	F	10–01–93	10–31–99
ST94–549	Texas Eastern Transmission Corp.	Washington Gas Light Co.	10–29–93	G	23,459	N	F	10–01–93	10–31–99
ST94–550	Texas Eastern Transmission Corp.	CNG Transmission Corp.	10–29–93	G	2,993	N	F	10–01–93	10–31–99
ST94–551	Texas Eastern Transmission Corp.	Penn Fuel Gas, Inc	10–29–93	G	16,136	N	I	10–01–93	01–01–00
ST94–552	Texas Eastern Transmission Corp.	New Jersey Natural Gas Co.	10–29–93	G-S	27,000	N	F	10–01–93	10–31–99
ST94–553	Texas Eastern Transmission Corp.	Interest Gas Supply, Inc.	10–29–93	G-S	2,070	N	I	10–01–93	10–31–93
ST94–554	Transcontinental Gas P/L Corp.	Washington Gas Light Co.	10–29–93	G-S	2,343	N	F	10–08–93	10–31–93
ST94–555	Transcontinental Gas P/L Corp.	East Ohio Gas Co	10–29–93	G-S	20,326	N	F	10–01–93	10–31–12
ST94–556	Transcontinental Gas P/L Corp.	Balitmore Gas & Electric Co.	10–29–93	G-S	2,157	N	F	10–01–93	10–31–12
ST94–557	Transcontinental Gas P/L Corp.	Sun Co, Inc	10–29–93	G-S	40,000	N	F	10–01–93	10–31–12
ST94–558	Tennessee Gas Pipeline Co.	UGI Utilities, Inc	10–29–93	G-S	29,999	N	I	10–01–93	Indef.
ST94–559	Williams Natural Gas Co.	Tenaska Marketing Ventures.	10–29–93	G-S	100,000	N	I	10–01–93	Indef.
ST94–560	Williams Natural Gas Co.	Western Resources, Inc.	10–29–93	G-S	50,000	N	I	10–09–93	Indef.
ST94–561	Williams Natural Gas Co.	Nebraska Public Gas Agency.	10–29–93	G-S	10,000	N	I	10–01–93	Indef.
ST94–562	Williams Natural Gas Co.	Mid-Continent Energy, Inc.	10–29–93	G-S	250	N	I	10–21–93	10–01–94
ST94–563	Williams Natural Gas Co.	Centran Corp	10–29–93	G-S	500	N	I	10–01–93	10–01–94
ST94–564	Williams Natural Gas Co.	Nebraska Public Gas Agency.	10–29–93	G-S	6,375	N	I	10–01–93	Indef.
ST94–565	Williams Natural Gas Co.	Wann Public Works Authority.	10–29–93	G-S	30,660	N	F	10–01–93	Indef.
ST94–566	Williams Natural Gas Co.	Anadarko Trading Co.	10–29–93	G-S	3,235	N	F	10–01–93	Indef.
ST94–567	Williams Natural Gas Co.	Armco, Inc	10–29–93	G-S	1,200	N	F	10–01–93	Indef.
ST94–568	Williams Natural Gas Co.	Conoco, Inc	10–29–93	G-S	800	N	F	10–01–93	Indef.
ST94–569	Williams Natural Gas Co.	Continental Natural Gas, Inc.	10–29–93	G-S	1,260	N	F	10–01–93	Indef.
ST94–570	Williams Natural Gas Co.	City of Cleveland	10–29–93	G-S	2,000	N	F	10–13–93	Indef.
ST94–571	Natural Gas P/L Co of America.	Westar Transmission Co.	10–29–93	B	2,000	N	I	03–01–87	Indef.
ST94–572	Natural Gas P/L Co of America.	Transcontinental Gas Pipe Line Corp.	10–29–93	B	400,000	N	I	05–18–87	05–29–87
ST94–573	Natural Gas P/L Co of America.	Monarch Gas Co	10–29–93	B	5,000	N	I	01–01–87	Indef.

Docket No.[1]	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity[2]	Aff. Y/A/N[3]	Rate sch.	Date commenced	Projected termination date
ST94–574	Colorado Interstate Gas Co.	Montana Power Co	10–29–93	B	100	N	I	10–07–93	Indef.
ST94–575	Panhandle Eastern Pipe Line Co.	Amgas, Inc	10–29–93	G-S	10,000	N	F	10–01–93	03–31–94
ST94–576	Panhandle Eastern Pipe Line Co.	Guardian Industries Corp.	10–29–93	G-S	1,271	N	F	10–01–93	03–31–94
ST94–577	Panhandle Eastern Pipe Line Co.	Associated Natural Gas, Inc.	10–29–93	G-S	20,000	N	F	10–01–93	10–31–93
ST94–578	Panhandle Eastern Pipe Line Co.	Columbia Gas of Ohio, Inc.	10–29–93	G-S	30,000	N	F	10–01–93	06–30–94

[1] Notice of transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372, 1

[2] Estimated maxium daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

[3] Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and a "N" indicates no affiliation.

[FR Doc. 94–973 Filed 1–13–94; 8:45 am]
BILLING CODE 6717–01–P

[Docket No. JD94–01915T Oklahoma–64]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 10, 1994.

Take notice that on December 29, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Skinner, Mississippian, Woodford and Hunton formations, underlying Section 2 and Section 3, Township 10 North Range 7 West, Canadian and Grady County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978.

The notice of determination contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–971 Filed 1–13–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. JD94–01917T Oklahoma–64]

State of Oklahoma; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

January 10, 1994.

Take notice that on December 29, 1993, the Corporation Commission of the State of Oklahoma (Oklahoma) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Sycamore and Hunton formations, underlying the S/2 of Section 30, Township 4 North, Range 3 West, and the N/2 of Section 31, Township 4 North, Range 3 West, Garvin County, Oklahoma, qualify as tight formations under section 107(b) of the Natural Gas Policy Act of 1978.

The notice of determination contains Oklahoma's findings that the referenced formations meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 94–972 Filed 1–13–94; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. TM94–2–17–000 and TM94–2–17–001]

Texas Eastern Transmission Corp.; Technical Conference

January 10, 1994.

In the Commission's order issued on November 30, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, January 25, 1994, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 94–974 Filed 1–13–94; 8:45 am]
BILLING CODE 6717–01–M

[ER–FRL–4707–4]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 Or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed January 03, 1994 Through January 07, 1994 Pursuant to 40 CFR 1506.9.

EIS No. 940000, Draft EIS, IBR, AZ, Glen Canyon Dam Operation, Implementation, Colorado River Storage Project, Funding and COE Section 10 and 404 Permits, Coconino County, AZ, Due: April 11, 1994, Contact: Lee J. McQuivey (801) 524–5479.

EIS No. 940001, Final EIS, BLM, AK, Fort Wainwright Maneuver Area, Resource Management Plan for Nonmilitary Uses, AK, Due: February 15, 1994, Contact: Jim Ducker (907) 271–3369.

EIS No. 940002, Final EIS, BLM, AK, Fort Greely Maneuver Area and Air Drop Zone, Resource Management Plan for Nonmilitary Uses, AK, Due: February 15, 1994, Contact: Jim Ducker (907) 271–3369.

EIS No. 940003, Draft EIS, AFS, ID, Lower Elkhorn Timber Sale, Harvesting Timber and Road Construction, Payette National Forest, New Meadows Ranger District, Idaho County, ID, Due: March 15, 1994, Contact: Mike Balboni (208) 634–0629.

EIS No. 940004, Final EIS, BLM, AZ, Kingman Resource Area, Resource Management Plan, Implementation, Mohave, Yavapi and Coconino, AZ, Due: February 14, 1994, Contact: Ken R. Drew (602) 757–3161.

EIS No. 940005, Revised Draft EIS, COE, FL, Fort Pierce Harbor Navigation Improvement Project, Additional Information concerning Plan Modifications, Indian River, St. Lucie County, FL, Due: February 28, 1994, Contact: Jonathan D. Moulding (904) 232–2286.

EIS No. 940006, Draft EIS, UAF, CA, Castle Air Force Base (AFB) Disposal and Reuse, Implementation, Merced County, CA, Due: March 02, 1994, Contact: Ltc. Gary Baumgartel (210) 536–3907.

Dated: January 10, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–1006 Filed 1–13–94; 8:45 am]

BILLING CODE: 6560–50–P

[ER–FRL–4707–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared December 27, 1993 Through December 31, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–FHW–K40201–AZ Rating EC2, Red Mountain Freeway (Loop 202) Transportation Facility, Construction from Salt River between the Price Freeway on the west and AZ–87 on the east, COE section 404 and NPDES Permits, Phoenix Metropolitan Area, Maricopa County, AZ.

Summary: EPA expressed environmental concerns because the proposed project may encroach into the Salt River floodplain and floodway. EPA also requested additional information in the FEIS regarding compliance with the conformity requirements of the Clean Air Act and potential impacts to waters of the United States.

ERP No. D–NIH–D81023–MD Rating EC2, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Implementation, Montgomery County, MD.

Summary: EPA had environmental concerns with the potential deterioration of air quality as a result of traffic increases around the site, with the failure to consider alternatives to demolition of the 2.3 million square foot Clinical Center, and with overlooked opportunities to incorporate energy and water conservation measures in the project Master Plan and corresponding Transportation and Energy Management Plans.

ERP No. D–NPS–K61127–CA Rating EC2, Presidio of San Francisco General Management Plan, Golden Gate National Recreation Areas, Implementation, San Francisco, CA.

Summary: EPA expressed environmental concerns and requested that the FEIS address these concerns: how future park uses may be affected by multiple types of contamination at the Presidio; the most current information on hazardous substances contamination at the Presidio; identification of the responsible party for ensuring compliance with federal and state requirements on asbestos and polychlorinated biphenyls; and the project's consistency with federal requirements regarding the placement of dredged or fill material in wetlands and waters of the United States.

Final EISs

ERP No. F–FRC–K05051–CA, Lower Mokelumne River Hydroelectric Project Modifications, Licensing, (FERC. No. 29116–004), Parts of Pardee and Camanhe Dams, Mokelumne River, CA.

Summary: Review of the Final EIS was not deemed necessary. No comment letter was sent to the preparing agency.

Regulations

ERP No. R–NOA–A91059–00, 50 CFR Parts 215, 216, and 222 Protected Species Special Exception Permits, To Import Marine Mammals for Scientific Research, Proposed Rule (58 FR 53320).

Summary: Review of the final EIS/Regulation has been completed and the project found to be satisfactory. No comment letter was sent to the preparing agency.

ERP No. R–SCS–A90082–00, Emergency Wetlands Reserve Program, Restoration and Maintenance, Interm Rule, 7 CFR part 623.

Summary: EPA was very encouraged by the positive environmental impacts, such as restoring cropland to floodplain wetlands, stated in this interim rule. However, EPA provided a number of suggestions that may allow the rule to more adequately respond to questions regarding land eligibility, owner obligations and payment provisions.

Dated: January 10, 1994.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 94–1007 Filed 11–13–94; 8:45am]

BILLING CODE 6560–50–P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4826–7]

Ohio Adequacy Determination of State Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region 5).

ACTION: Notice of tentative determination on application of Ohio for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste will comply with the revised Federal Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the United States Environmental Protection Agency (USEPA) to determine whether States have adequate permit programs for MSWLFs, but does not mandate issuance of a rule for such determinations. The USEPA has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR) that will provide procedures by which the USEPA will approve, or partially approve, State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, States/Tribes may use the draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal MSWLF permit programs provide interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in States/Tribes with approved MSWLF permit programs can use the site-specific flexibility provided by the revised Federal Criteria to the extent the State/Tribe MSWLF permit program allows such flexibility. The USEPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, the revised Federal Criteria apply to all permitted and unpermitted MSWLF facilities.

Ohio applied for a determination of adequacy under section 4005 of RCRA. At the same time, Ohio proposed modifications to current regulations that will facilitate full approval of its solid waste program. The rules contained in the proposed revisions to the Ohio Administrative Code (OAC), Chapter 3745–27, add definitions and requirements that are no less stringent than portions of the revised Federal Criteria. The specific revised Federal Criteria that Ohio will incorporate are identified in the Ohio Solid Waste Program Application for U.S. EPA Authorization, October 1993. The USEPA reviewed Ohio's application and has made a tentative determination that the combination of Ohio's existing MSWLF permit program and the incorporation of certain portions of the revised Federal Criteria will be adequate to assure compliance with the revised Federal Criteria. The Ohio application for program adequacy determination is available for public review and comment.

The USEPA has also received the proposed revisions to the regulations for review. See *Proposed Municipal Solid Waste Landfill Regulations, OAC–3745–27,* Ohio Environmental Protection Agency (OEPA), December 23, 1993. Review of the finalized OEPA regulations will occur prior to the USEPA's final determination of program adequacy. If the OEPA regulations, when fully promulgated and effective, are essentially unchanged from proposed and are comparable to the revised Federal Criteria, the USEPA may approve the Ohio solid waste program.

Although RCRA does not require USEPA to hold a hearing on any determination to approve a State/Tribal MSWLF permit program, the USEPA Region 5 may schedule an opportunity for a public hearing on this tentative determination. Details appear below in the "DATES" section.

DATES: All comments on Ohio's application for a full determination of adequacy must be received by USEPA Region 5 by the close of business on March 1, 1994. If there is sufficient public interest, USEPA Region 5 will hold a public hearing on March 1, 1994, starting at 1 p.m. at the offices of the Ohio Environmental Protection Agency, Conference Room 1A, located at 1800 Watermark Drive in Columbus, Ohio. Ohio will participate in the public hearing, if held, by USEPA Region 5 on this subject. Written comments on Ohio's application should be submitted to USEPA Region 5 at the address specified below during the public comment period. In addition, oral and/or written comments can be submitted during the public hearing, if held.

Persons requesting that USEPA Region 5 hold a public hearing and/or wishing to be notified of the public hearing, if held, should contact the USEPA Region 5 contact given below in the "FOR FURTHER INFORMATION CONTACT" section, within 30 days of the date of the publication of this notice. Such persons contacting the USEPA will be notified directly if the public hearing will be held or not held, at least 2 weeks prior to March 1, 1994.

ADDRESSES: All written comments should be sent to the USEPA Region 5 Office.

Copies of Ohio's application for full adequacy determination are available from 9 a.m. to 4 p.m. during normal working days at the following addresses for inspection and copying: Ohio Environmental Protection Agency, Library, 1800 Watermark Drive, Columbus, Ohio 43266–0149, Attn: Ms. Ruth Ann Evans; and USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J.

FOR FURTHER INFORMATION CONTACT: USEPA Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, Attn: Mr. Andrew Tschampa, mailcode HRP–8J, telephone (312) 886–0976.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, the USEPA promulgated revised Federal Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with the revised Federal Criteria. Subtitle D also requires in section 4005 that the USEPA determine the adequacy of State MSWLF permit programs to ensure compliance with the revised Federal Criteria. To fulfill these requirements, the Agency has drafted and is in the process of proposing the State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

The USEPA intends to approve State/Tribal MSWLF permit programs prior to the promulgation of the STIR. The USEPA interprets the requirements for States or Tribes to develop adequate programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to the revised Federal Criteria. Next, the State/Tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, the USEPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator who fails to comply with an approved MSWLF program.

The USEPA will determine whether a State/Tribe has submitted an adequate program based on the interpretation outlined above. The USEPA plans to provide more specific criteria for this evaluation when it proposes the State/Tribal Implementation Rule. The USEPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF permit program before it gives full approval to a MSWLF permit program.

As provided in the revised Federal Criteria, USEPA's national Subtitle D standards took effect on October 9, 1993. On October 1, 1993, USEPA published a final ruling which modified the effective date of the landfill criteria for certain classifications of landfills (58 FR 51536). Thus, for certain small landfills that accept less than 100 tons of waste per day, the Federal landfill criteria will not be effective until April 9, 1994, instead of October 9, 1993. The exact classifications of landfills and details on the effective date extensions are contained in the final rule. See 58 FR 51536 (October 1, 1993).

B. State of Ohio

On October 9, 1993, Ohio submitted an application for program adequacy determination. The USEPA has reviewed Ohio's application and has tentatively determined that the combination of the State's existing permit program and the incorporation of certain portions of the revised Federal Criteria will ensure full compliance with all of the revised Federal Criteria.

The Ohio regulations, contained in OAC–3745–27, currently contain the following elements that are considered equivalent to the revised Federal Criteria:

1. Consideration of other Federal laws (USEPA approval is for current Ohio requirements that are comparable to 40 CFR 258.3);

2. Location restrictions for floodplains, fault areas, seismic impact zones, and unstable areas (USEPA approval is for current Ohio requirements that are comparable to 40 CFR 258.11, 258.13, 258.14, and 258.15);

3. Operating criteria for daily cover material, disease vector control, air criteria, access restrictions, and liquids restrictions (USEPA approval is for current Ohio requirements that are comparable to 40 CFR 258.21, 258.22, 258.24, 258.25, and 258.28);

4. Design criteria (USEPA approval is for current Ohio requirements that are comparable to 40 CFR 258.40);

5. Financial assurance criteria for closure, post-closure care, and allowable mechanisms (USEPA approval is for current Ohio requirements that are comparable to 40 CFR 258.70, 258.71, 258.72, and 258.74).

In addition, the proposed modifications to the OEPA Municipal Solid Waste Landfill Regulations contain the following elements that are considered equivalent to the revised Federal Criteria:

1. General requirements and definitions (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.1 and 258.2);

2. Location restrictions for airport safety and wetlands (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.10 and 258.12);

3. Closure of existing MSWLFs (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.16);

4. Operating criteria for excluding the receipt of hazardous waste, explosive gases control, run-on/run-off control systems, and surface water requirements (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.20, 258.23, 258.26, and 258.27);

5. Recordkeeping requirements (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.29);

6. Groundwater monitoring applicability, systems, sampling and analysis, detection monitoring program, assessment monitoring program, assessment of corrective measures, selection of remedy, and implementation requirements (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.50, 258.51, 258.53, 258.54, 258.55, 258.56, 258.57, and 258.58);

7. Closure and post-closure care requirements (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.60 and 258.61);

8. Financial assurance criteria for corrective action (USEPA approval would be for proposed Ohio requirements that are comparable to 40 CFR 258.73).

The elements of the revised Federal Criteria to be incorporated into the Ohio permit program (1–8 above) are contained in the proposed regulations currently under promulgation by the OEPA. See *Proposed Municipal Solid Waste Landfill Regulations, OAC–3745–27*, Ohio Environmental Protection Agency, December 23, 1993.

For purposes of implementation of the revised Federal Criteria, Ohio is incorporating a "unit concept" into its current landfill permitting process. Currently, large areas of unprepared land are permitted for a MSWLF facility as opposed to discrete areas or units prepared for actual waste placement. Landfill owners and operators will be designating "existing units" at MSWLF facilities according to a specific procedure and guidelines established by the proposed OEPA regulations. The procedure involves a clear delineation of the limits of waste placement, design components, significant boundaries, and what the owner or operator designates as an existing unit or new unit(s) at a MSWLF facility as of April 1994. The guidelines require that all areas designated as an existing unit are geographically contiguous and the unfilled areas of the existing unit meet, at a minimum, specific design requirements which are equivalent to the revised Federal Criteria. The revised OEPA regulations, when effective, will then apply to existing units, which have been designated by the landfill owner or operator, as well as all new units.

The revised Federal Criteria require a final cover system with an erosion layer underlain by an infiltration layer comprised of at least 18 inches of earthen material with a permeability less than or equal to any bottom liner system or no greater than 10^{-5} cm/sec, whichever is less. Ohio's final cover design allows for a composite liner involving a flexible membrane liner and a geocomposite clay liner in lieu of 18 inches of recompacted clay. The geocomposite component of the final cover must be demonstrated to have a permeability less than or equal to 18 inches of recompacted clay with a permeability of 10^{-6} cm/sec, which exceeds the Federal Criteria. The use of an alternative final cover design to achieve an equivalent reduction in infiltration is allowed pursuant to 40 CFR 258.60(b).

In addition, the revised Federal Criteria require unfiltered groundwater samples to be used in laboratory analysis. Currently, Ohio regulations require sampling and analysis procedures which ensure monitoring results that provide an "accurate representation" of groundwater quality. This requirement can be interpreted to require unfiltered samples. The USEPA intends to revisit this issue during a proposed rulemaking. If the proposed rulemaking upholds the ban on field filtering, the State will be required to incorporate the provisions of 40 CFR 258.53(b) into its policy regarding groundwater sampling and analysis procedures.

The Ohio program will differ from the revised Federal Criteria with respect to the general effective date of the requirements. The planned effective date of the currently proposed Ohio regulations, which incorporate the Federal Criteria, is April 1994. The rulemaking process in Ohio is extensive, involving the widespread circulation of draft regulations to all interested parties, public comment periods and hearings, and legislative review and approval, a process which takes a minimum of 8 to 12 months. The USEPA understands that State law cannot be retroactive and feels that an effective date of April 1994 for revised State rules incorporating the Federal Criteria will be adequate. However, as stated previously, the effective date of the revised Federal Criteria remains October 9, 1993, unless a facility qualifies for the extension granted to certain small MSWLFs. See 58 FR 51536 (October 1, 1993). All landfill owners and operators in Ohio were notified directly by USEPA that MSWLFs will be regulated under both existing State rules as well as the revised Federal Criteria contained in 40 CFR part 258 from October 9, 1993, until the date that the revised Ohio rules are fully promulgated and effective.

As previously discussed, the USEPA has a final draft of the proposed OEPA regulations. If the OEPA regulations, when fully promulgated and effective, remain unchanged from proposed and adequately incorporate the revised Federal Criteria listed above, the USEPA may approve the Ohio solid waste program.

The public may submit written comments on USEPA's tentative determination until March 1, 1994. The USEPA will consider all public comments on its tentative determination that are received during the public comment period and during any public hearing, if held. Issues raised by those comments will be the basis for a final determination of adequacy for Ohio's program. The USEPA will make a final decision on whether or not to fully approve Ohio's program by April 29, 1994, and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the revised Federal Criteria in 40 CFR part 258 independent of any State/Tribal enforcement program. As the USEPA explained in the preamble to the final revised Federal Criteria, theUSEPA expects that any owner or operator complying with the provisions in a State/Tribal program approved by the USEPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this tentative approval will not have a significant impact on a substantial number of small entities. It does not impose any new burdens on small entities. This proposed notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: January 7, 1994.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 94–1022 Filed 1–13–94; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

January 7, 1994.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.

Title: Section 90.673, Modification of EMSP License.

Action: New collection.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 6,120 responses; .50 hours average burden per response; 3,060 hours total annual burden.

Needs and Uses: Section 90.673 requires any Expanded Mobile Service Provider (EMSP) to submit, along with any application for modification of its EMSP license to include new base station facilities, certain information necessary to determine whether the proposed modification complies with applicable rules. Specifically, the applicant for EMSP license modification must submit a list of all co-channel facilities and previously filed applications for such facilities, not under the control of the EMSP licensee, within 113 km of the proposed base station, a description of how the proposed base station provides protection to these co-channel facilities as required under § 90.621(b) or 90.675, and certification that the proposed station or modification will afford such protection to the other facilities. The request for modification must include the co-channel stations' call signs, coordinates, effective radiated power and directional antenna height above average terrain. This data is necessary to ensure that the Commission will not authorize EMSP operations where they could cause harmful interference to the SMR systems of co-channel licensees. Furthermore, the information collection will lessen the administrative burdens and delays that would be created if the Commission performed the engineering analyses that produce this information.

OMB Number: None.

Title: Section 90.677, Authorization, Construction and Implementation of EMSP Systems.

Action: New collection.

Respondents: Individuals or households, state or local governments, and businesses or other for-profit (including small businesses).

Frequency of Response: One time filing requirement.

Estimated Annual Burden: 135 responses; .50 hours average burden per response; 68 hours total annual burden.

Needs and Uses: Section 90.677 requires any Expanded Mobile Service Provider (EMSP) to submit certain information necessary to determine whether the EMSP has constructed a system that serves 80 percent of the geographic area or 80 percent of the population in the Rand-McNally Major Trading Area (MTA) covered by the EMSP license. Specifically, the applicant for EMSP license modification must submit a U.S. Geological Survey map(s) of the MTA, depicting the licensee's authorized base station sites within the MTA and their respective 40 db contours, a description of how the stations serve the required land area or population, and an explanation and justification of any alternative method used to calculate contours aside from the Commission's R6602 F(50,50) curves with a 9 db adjustment. This data is necessary to ensure that licensees construct and place into operation their authorized channels so as to provide effective service to the public. Furthermore, the information collection will lessen the administrative burdens that would be created if the Commission required EMSP licensees, like traditional Specialized Mobile Radio (SMR) licensees, to demonstrate efficient use of their authorized spectrum by submitting information on loading.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 94–898 Filed 1–13–94; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Determination of Insufficiency of Assets To Satisfy All Claims of Certain Financial Institutions in Receivership

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice.

SUMMARY: In accordance with the authorities contained in 12 U.S.C. 1821(c), the Federal Deposit Insurance Corporation (FDIC) was duly appointed receiver for each of the financial institutions specified in **SUPPLEMENTARY INFORMATION.** The FDIC has determined that the proceeds which can be realized from the liquidation of the assets of these receivership estates are insufficient to satisfy all classes of claims, asserted or unasserted against the receivership estate. Therefore, upon satisfaction of secured claims, depositor claims and claims which have priority over depositors under applicable state law, no amount will remain or will be recovered sufficient to allow a dividend, distribution or payment to any other creditor and therefore the claim of any such creditor is worthless.

FOR FURTHER INFORMATION CONTACT: Keith Ligon, Counsel, Legal Division, FDIC, 1717 H Street, NW., Washington, DC 20006. Telephone: (202) 736–0160.

SUPPLEMENTARY INFORMATION:

Financial Institutions in Receivership Determined To Have Insufficient Assets To Satisfy All Claims

Citizen's Bank #4437, Dallas, Georgia
Breman State Bank, #4559, Breman, Kansas
Cypress Savings Bank, #7586, Plantation, Florida
Bank of Horton, #4366, Horton, Kansas
Cardinal Savings Bank, #7573, Newport, North Carolina

Dated: January 10, 1994.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Acting Executive Secretary.

[FR Doc. 94–907 Filed 1–13–94; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before March 15, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Reinstatement of 3067–0213.

Title: FEMA Contract Clause—Accessibility of Meetings to Persons with Disabilities.

Abstract: Contractors who plan meetings, conferences, or seminars for FEMA must develop a plan to ensure that minimum accessibility standards for the disabled as set forth in the contract clause will be met. The plan must be approved by the FEMA Contracting Officer.

Type of Respondents: Businesses or other for-profit, non-profit institutions, small businesses or organizations.

Estimate of Total Annual Reporting and Recordkeeping Burden: 30 hours.

Number of Respondents: 10.

Estimated Average Burden Time per Response: 3 hours.

Frequency of Response: On occasion.

Dated: January 5, 1994.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–985 Filed 1–13–94; 8:45 am]

BILLING CODE 6718–01–M

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before March 15, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to: The FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Muriel Anderson, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW. Washington, DC 20472, (202) 646–2624.

Type: Existing Collection in Use without an OMB Control Number.

Title: Financial Reporting for Grants and Cooperative Agreements.

Abstract: This collection of information focuses on the financial and administrative reporting and recordkeeping requirements associated with the financial assistance programs funded by the Federal Emergency Management Agency through the Comprehensive Cooperative Agreement. In the future, these requirements will also encompass reporting on financial assistance provided under FEMA's Disaster Assistance Programs and through other discretionary grants and cooperative agreements. The specific information collections include SF 424, Application for Federal Assistance, the Indirect Cost Agreement, FEMA Form 20–20, Budget Information—Nonconstruction Programs, FEMA Form 20–15, Budget Information—Construction Programs, FEMA Form 20–16, Summary Sheet for Assurances and Certifications, FEMA Form 76–10A, Obligating Document for Award/Amendment, FEMA Form 20–10, Financial Status Report, FEMA Form 20–17, Outlay Report and Request for Reimbursement for Construction Programs, Budget/Program Deviations, FEMA Form 20–18, Report of Government Property, and four modular instructions for completing these information requirements.

Type of Respondents: States and territories.

Estimate of Total Annual Reporting and Recordkeeping Burden: 26,284 hours.

Number of Respondents: 56.

Estimated Average Burden Time per Response: 469 hours.

Frequency of Response: Annually, quarterly, as required.

Dated: December 23, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 94–986 Filed 1–13–94; 8:45 am]

BILLING CODE 6718–01–M

[FEMA–1006–DR]

Missouri; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Missouri, (FEMA–1006–DR), dated December 1, 1993, and related determinations.

EFFECTIVE DATE: January 7, 1994.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Response and Recovery Directorate, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–3606.

SUPPLEMENTARY INFORMATION: The notice of a major disaster for the State of Missouri dated December 1, 1993, is hereby amended to include the following area among those areas determined to have been adversely affected by the catastrophe declared a major disaster by the President in his declaration of Missouri:

Pulaski County for Individual Assistance.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance)

Richard W. Krimm,

Associate Director, Response and Recovery Directorate.

[FR Doc. 94–987 Filed 1–13–94; 8:45 am]

BILLING CODE 6718–02–M

FEDERAL RESERVE SYSTEM

Bankers Trust New York Corporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than February 7, 1994.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Bankers Trust New York Corporation, New York, New York; to acquire The New York Equity Fund 1993 Limited Partnership, New York, New York, and thereby engage in the making of equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, and services or jobs for residents pursuant to § 225.25(b)(6) of the Board's Regulation Y, and simultaneously, applies to make an investment in New York Equity Fund 1993 Limited Partnership. **Comments on this application must be received by January 28, 1994.**

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. AmSouth Bancorporation, Birmingham, Alabama; to acquire Fortune Bancorp, Inc., Clearwater, Florida, and thereby acquire its thrift subsidiary, Fortune Bank, A Savings Bank, Clearwater, Florida, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. First Tennessee National Corporation, Memphis, Tennessee; to acquire Highland Capital Management Corp., Memphis, Tennessee, and to merge it into First Tennessee Investment Management, Inc., Memphis, Tennessee, and thereby engage in providing investment advice pursuant to § 225.25(b)(4) of the Board's Regulation Y. **Comments on this application must be received by January 28, 1994.**

2. National Commerce Bancorporation, Memphis, Tennessee; to acquire Brooks, Montague & Associates, Inc., Chattanooga, Tennessee, and thereby engage in providing portfolio investment advice pursuant to § 225.25(b)(4)(iii) of the Board's Regulation Y. **Comments on this application must be received by January 28, 1994.**

Board of Governors of the Federal Reserve System, January 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1000 Filed 1-13-94; 8:45 am]

BILLING CODE 6210-01-F

First Virginia Banks, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the

evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than February 7, 1994.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. First Virginia Banks, Inc., Falls Church, Virginia; to merge with FNB Financial Corporation, Knoxville, Tennessee, and thereby indirectly acquire First National Bank of Knoxville, Knoxville, Tennessee.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Synovus Financial Corporation and TB&C Bancshares, Inc., both of Columbus, Georgia; to merge with PNB Bankshares, Inc., Peachtree City, Georgia, and thereby indirectly acquire Peachtree National Bank, Peachtree City, Georgia.

C. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Liberty National Bancorp, Inc., Louisville, Kentucky; to convert First Federal Savings Bank, Hopkinsville, Kentucky, from a thrift to a national bank to be named Liberty National Bank and Trust Company of Western Kentucky, Hopkinsville, Kentucky.

Board of Governors of the Federal Reserve System, January 10, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1001 Filed 1-13-94; 8:45 am]

BILLING CODE 6210-01-F

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of January meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Thursday, January 20, 1994 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions on (1) an accounting liability concept, (2) cost accounting issues, (3) accrual accounting and criteria for when current value accounting might be appropriate, (4) appropriate ways to address OPEB in the liabilities ED, and (5) entity and display issues.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7350.

Authority: Federal Advisory Committee Act. Public Law No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: January 10, 1994.

Ronald S. Young,

Executive Director.

[FR Doc. 94–964 Filed 1–3–94; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Funded Childhood Lead Poisoning Prevention Program Grantee Workshop

The National Center for Environmental Health (HCEH) of the Centers for Disease Control and Prevention (CDC) announces the following workshop.

Name: CDC Funded Childhood Lead Poisoning Prevention Program Grantee Workshop.

Times and Dates: 8:30 a.m.–5 p.m., February 22–24, 1994. 8:30 a.m.–12 noon, February 25, 1994.

Place: Hotel Nikko, 3300 Peachtree Road, NE., Atlanta, Georgia 30305.

Status: Open to the public, limited only by the space available.

Purpose: The primary purpose of this workshop is to provide assistance to CDC's Childhood Lead Poisoning Prevention grant recipients in addressing program development, assessment and evaluation issues and concerns.

Matters to Be Discussed: Topics to be discussed include information management, program evaluation, and training issues.

Agenda items are subject to change as priorities dictate.

Contact Person For More Information: Dave Forney, Childhood Lead Poisoning Prevention Branch, Division of Environmental Hazards and Health Effects (F42), NCEH, CDC, 4770 Buford Highway, NE., Chamblee, Georgia 30341, telephone 404/488–7330.

Written comments are welcome and should be received by the contact person no later than February 8, 1994. Persons wishing to make oral comments at the workshop should notify the contact person in writing or by telephone no later than February 8, 1994. All requests to make oral comments should contain the name, address, telephone number, and organizational affiliation of the presenter. Depending on the time available and the number of requests to make oral comments, it may be necessary to limit the time of each presenter.

Dated: January 10, 1994.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 94–961 Filed 1–13–94; 8:45 am]

BILLING CODE 4160-18-M

Administration For Children and Families

Agency Information Collection Under OMB Review

Under the provisions of the Federal Paperwork Reduction Act (44 U.S.C. chapter 35), we have submitted to the Office of Management and Budget (OMB) a request for an urgent review of a new information collection titled: "Application for Fiscal Year 1994 Funds for Family Preservation and Family Support Services." This request for OMB clearance is made by the Children's Bureau of the Administration on Children, Youth and Families (ACYF) of the Administration for Children and Families.

ADDRESSES: Copies of the information collection request may be obtained from Stephen R. Smith, of the Office of Information Systems Management, ACF, by calling (202) 401–6964.

Written comments and questions regarding the requested approval for information collection should be sent directly to: Laura Oliven, OMB Desk Officer for ACF, OMB Reports Management Branch, New Executive Office Building, room 3002, 725 17th Street NW., Washington, DC 20503, (202) 395–7316.

Information on Document

Title: Application for FY 1994 Funds for Family Preservation and Family Support Services.

OMB No.: 0980—New Request.

Description: New legislation in the Omnibus Budget Reconciliation Act (OBRA) of 1994 authorizes entitlement funding to States and certain Indian Tribes and Tribal organizations for family preservation and family support services. The major purpose of family preservation services is to help alleviate family crises that otherwise might lead to the foster care placement of children, e.g., intensive in-home services, respite care, and services for adoptive parents. The major purpose of family support services is to provide preventive services to families to help alleviate stress (e.g., to prevent child abuse), increase parents' child-rearing abilities and parenting skills, and assist families to use other available community resources, e.g., center-based services, home visiting, and early developmental screening of children.

Annual Number of Respondents: 92.

Annual Frequency: 1.

Average Burden Hours Per Response: 144.

Total Burden Hours: 13,248.

Dated: January 10, 1994.

Larry Guerrero,

Deputy Director, Office of Information Systems Monogement.

[FR Doc. 94–1115 Filed 1–13–94; 8:45 am]

BILLING CODE 4184-01-M

Food and Drug Administration

[Docket No. 93N–0490]

Improvements in the Drug Master File System; Notice of a Public Workshop

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public workshop on possible improvements in the drug master file (DMF) system. The purpose of this workshop is to exchange ideas with interested persons about ways of improving the drug substance and drug substance intermediate Type II DMF review process.

DATES: The public workshop will be held on January 31, 1994, 8:30 a.m. to 5 p.m. Registration will be between 8 a.m. and 8:30 a.m. Interested persons are encouraged to preregister before January 21, 1994, by telephoning the contact person. Space for the workshop is limited.

ADDRESSES: The public workshop will be held at the Parklawn Bldg., conference rms. D and E, 5600 Fishers Lane, Rockville, MD 20857. Written comments regarding the workshop may be submitted to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Copies of a report entitled "Recommendations for Improvement in FDA's Drug Master File System" may be obtained from the Freedom of Information Office (HFI–35), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Eric P. Duffy, Center for Drug Evaluation and Research (HFD–635), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–0360.

SUPPLEMENTARY INFORMATION: A DMF is a submission to FDA that may be used to provide confidential, detailed information about facilities, processes, or articles used in the manufacturing, processing, packaging, and storing of one or more human drugs (see 21 CFR 314.420). The submission of a DMF is not required by law or FDA regulation. A DMF is submitted solely at the discretion of the holder. The information contained in the DMF may be used to support an investigational new drug application, a new drug application, an abbreviated new drug application, another DMF, an export application, or amendments and supplements to any of these. FDA's Center for Drug Evaluation and Research (CDER) reviews the DMF only when it is referenced in such submissions.

Five types of DMF's exist regarding the following topics: Type I—manufacturing site, facilities, operating procedures, and personnel; Type II—drug substance, drug substance intermediate, and material used in their preparation, or drug product; Type III—packaging material; Type IV—excipient, colorant, flavor, essence, or material used in their preparation; and Type V—FDA-accepted reference information.

CDER is considering ways to improve the DMF system, especially Type II DMF's, which often constitute a critical part of a submission. The workshop will focus on alternative ways for CDER to review Type II DMF's for drug substances and intermediates. CDER's Chemistry, Manufacturing and Controls Coordinating Committee has recommended changes to the DMF review process in a report entitled "Recommendations for Improvement in FDA's Drug Master File System," dated November 2, 1993. The report is available from the Freedom of Information Office (address above) or may be viewed at the Dockets Management Branch (address above) [Docket No. 90S–0308 (document #M–203)].

A tentative agenda for the public workshop is as follows:

Morning session, 8:30 a.m. to 12:30 p.m.

1. FDA presentations:

Recommended review processes for Type II DMF's (drug substances and intermediates)

a. existing DMF system;

b. suggested improvements to the existing DMF system;

c. abbreviated antibiotic application model—approval; and

d. Type II DMF "authorization."

2. Presentations by industry representatives:

Perspectives on the Type II DMF review process and proposals.

3. Presentations by other interested persons/Questions for presenters/ Open discussion

Approvals/nonapprovals/other—pros/cons.

Afternoon session, 1:30 p.m. to 5 p.m.

1. Overview—Other DMF systems for drug substances and intermediates—foreign models.

a. European Community Drug Substance DMF Format and Content; and

b. Canadian Drug Substance DMF Format and Content.

2. Presentations by other interested persons/Questions for presenters/Open discussion.

A transcript and summary of the workshop will be available from the Freedom of Information Office (address above) approximately 10 days after the workshop at a cost of 10 cents per page.

Interested persons may submit comments on the workshop to the Dockets Management Branch (address above). Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

To permit time for all interested persons to submit data, information, or views on this subject, the docket for the workshop will remain open until March 14, 1994. Persons who wish to provide additional materials for consideration should file these materials with the Dockets Management Branch (address above).

Dated: January 10, 1994.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 94–1048 Filed 1–12–94; 11:29 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Advisory Council Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory body scheduled to meet during the month of February 1994:

Name: Advisory Committee on Infant Mortality.

Date and Time: February 16–17, 1994, 8:30 a.m.

Place: The Grand Ballroom, The Grand Hotel, 2250 M Street, NW., Washington, DC 20037.

The meeting is open to the public.

Purpose: The Committee provides advice and recommendations to the Secretary on the following: Department programs which are directed at reducing infant mortality and improving the health status of pregnant women and infants; how best to coordinate the variety of Federal, State, local and private programs and efforts that are designed to deal with the health and social problems impacting on infant mortality; and the implementation of the Healthy Start initiative and infant mortality objectives from Healthy People: 2000: National Health Promotion and Disease Prevention Objectives.

Agenda: Topics that will be discussed include: Presentation on the History of Maternal-Child Health; analysis of Health Care Reform and Infant Mortality; and updates on current programs at the National level.

Anyone requiring information regarding the Committee should contact Dr. Peter van Dyck, Executive Secretary, Advisory Committee on Infant Mortality, Health Resources and Services Administration, room 18–44, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2204.

Persons interested in attending any portion of the meeting should contact Ms. Kerry P. Nesseler, Maternal and Child Health Bureau, Health Resources and Services Administration, Telephone (301) 443–2204.

Agenda Items are subject to change as priorities dictate.

Dated: January 10, 1994.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 94–950 Filed 1–13–94; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Notice of Meetings of Panel

Notice is hereby given of the first meeting of the National Institutes of Health (NIH) Human Embryo Research Panel, a panel of special consultants to the Advisory Committee to the Director (ACD), NIH, established to recommend guidelines for Federal funding of human embryo research. The Panel's first meeting will be held February 2–3, 1994, from 9 a.m. to 5 p.m. on the 2nd, and 8:30 a.m. to 4:30 p.m. on the 3rd. The meeting will be held at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, Maryland. Dates of subsequent Panel meetings will be determined at the first meeting.

Until June 1993, Federal regulations governing research on human subjects (45 CFR part 46) required research involving in vitro fertilization (IVF) to be reviewed by an Ethics Advisory Board (EAB). Because of the absence of an EAB since 1980, Federal funding of IVF protocols was not possible. With the enactment of the NIH Revitalization Act of 1993 (Pub. L. 103–43), the regulatory provision requiring EAB review of IVF proposals was nullified. As a result, IVF proposals, as well as research involving human embryos that result from IVF or other sources, may now be considered for Federal funding.

The NIH has received a number of applications for support in this area and in the related field of parthenogenesis. However, before proceeding with the consideration of specific human embryo research proposals for funding, the NIH must address the profound moral and ethical issues raised by the use of human embryos in research and develop guidelines to govern the review and conduct of Federally-funded research. Panel members will be asked to consider various areas of research involving the human embryo and provide advice as to those areas they view to be acceptable for Federal funding, areas that warrant additional review, and areas that are unacceptable for Federal support. For those areas of research considered acceptable for Federal funding, the Panel will be asked to recommend specific guidelines for the review and conduct of this research. Ethical issues related to human germ-line gene modification are not within the Panel's purview. The Panel's final report will be presented to the ACD for review.

The NIH invites public input into this process. Those who wish to share their views about Federal funding of human embryo research may address the Panel during public comment periods that will be scheduled during each meeting. The public comment period during the first meeting is scheduled to take place February 2 from 3 p.m. to 5 p.m. Those who wish to address the Panel at this or subsequent meetings are asked to contact Ms. Peggy Schnoor, by telephoning 301–496–1454 or by sending a facsimile message to 301–402–0280 or 301–402–1759. Oral statements must not exceed five minutes in length, and opportunities to present statements will be determined by the order in which requests are received. Those who wish to present oral statements should forward a one-page summary of their remarks in advance of the scheduled presentation date. Individuals and organizations may also submit written comments of any length to the Panel. These should be forwarded to the NIH in care of Ms. Schnoor at 9000 Rockville Pike, Building 1, room 218, Bethesda, Maryland 20892.

The NIH will endeavor to provide seating for all members of the public who wish to attend the meetings. Individuals are, however, asked to notify the NIH of their interest in attending by using the telephone or facsimile numbers listed above. Individuals who require special accommodations are also asked to contact Ms. Schnoor at the above number. General questions about the Panel or the first meeting should also be directed to Ms. Schnoor.

Future meetings of the Panel will be announced in this publication.

Dated: January 10, 1994.

Harold Varmus,

Director, NIH.

[FR Doc. 94–1017 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Mental Health; Meetings

Pursuant to Public Law 92–463, notice is hereby given of the meetings of the review committees of the National Institute of Mental Health for February 1994.

These meetings will be open to the public as indicated below for the discussion of NIMH policy issues and will include current administrative, legislative, and program developments. Attendance by the public will be limited to space available.

All meetings will be closed to the public as indicated below in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Joanna L. Kieffer, Committee Management Officer, National Institute of Mental Health, Parklawn Building, room 9–105, 5600 Fishers Lane, Rockville, MD 20857, Area Code 301, 443–4333, will provide a summary of the meeting and a roster of committee members.

Other information pertaining to the meetings may be obtained from the contact person indicated.

Committee Name: Neuropharmacology and Neurochemistry Review Committee.
Contact: Wm. Gregory Zimmerman, Parklawn Building, room 9C–18, Telephone: 301, 443–3857.
Meeting Date: February 3–4, 1994.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: February 3, 1994, 8:30 a.m.–10 a.m.
Closed: February 3, 1994, 10 a.m.–5 p.m.; February 4, 1994, 8:30 a.m.–adjournment.

Committee Name: Clinical Neuroscience Review Committee.
Contact: Maurine L. Eister, Parklawn Building, room 9C–18, Telephone: 301, 443–3936.
Meeting Date: February 9–11, 1994.
Place: Bethesda Holiday Inn, 8120 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 9, 1994, 9 a.m.–10 a.m.
Closed: February 9, 1994, 10 a.m.–5 p.m.; February 10, 1994, 9 a.m.–5 p.m.; February 11, 1994, 9 a.m.–adjournment.

Committee Name: Clinical Psychopathology Review Committee.
Contact: Frances Smith, Parklawn Building, room 9C–02, Telephone: 301, 443–4868.
Meeting Date: February 9–11, 1994.
Place: Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC 20337.
Open: February 9, 1994, 9 a.m.–10 a.m.
Closed: February 9, 1994, 10 a.m.–5 p.m.; February 10, 1994, 9 a.m.–5 p.m.; February 11, 1994, 9 a.m.–adjournment.

Committee Name: Health Behavior and Prevention Review Committee.
Contact: Monica F. Woodfork, Parklawn Building, room 9C–05, Telephone: 301, 443–4843.
Meeting Date: Feb ary 9–11, 1994.
Place: Sheraton Washington Hotel, 2660 Woodley Road, NW., Washington, DC 20008.
Open: February 9, 1994, 9 a.m.–10 a.m.
Closed: February 9, 1994, 10 a.m.–5 p.m.; February 10, 1994, 9 a.m.– 5 p.m.; February 11, 1994, 9 a.m.–adjournment.

Committee Name: Behavioral Neuroscience Review Committee.
Contact: Wm. Gregory Zimmerman, Parklawn Building, room 9C–18, Telephone: 301, 443–3857.
Meeting Date: February 10–11, 1994.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: February 10, 1994, 8:30 a.m.–10 a.m.
Closed: February 10, 1994, 10 a.m.–5 p.m.; February 11, 1994, 8:30 a.m.–adjournment.

Committee Name: Molecular, Cellular, and Developmental Neurobiology Review Committee.
Contact: Katie O'Donnel, Parklawn Building, room 9C–18, Telephone: 301–443–3857.
Meeting Date: February 14–16, 1994.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 14, 1994, 8:30 a.m.–10 a.m.
Closed: February 14, 1994, 10 a.m.–5 p.m.; February 15, 1994, 8:30 a.m.–5 p.m.; February 16, 1994, 8:30 a.m.—adjournment.

Committee Name: Services Research Review Committee.
Contact: Frances Smith, Parklawn Building, room 9C–14, Telephone: 301–443–1367.
Meeting Date: February 16–18, 1994.
Place: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.
Open: February 16, 1994, 9 a.m.–9:30 a.m.
Closed: February 16, 1994, 9:30 a.m.–5 p.m.; February 17, 1994, 9 a.m.–5 p.m.; February 18, 1994, 9 a.m.–adjournment.

Committee Name: Cognitive Functional Neuroscience Review Committee.
Contact: Shirley H. Maltz, Parklawn Building, room 9C–18, Telephone: 301–443–3936.
Meeting Date: February 17–18, 1994.
Place: Crowne Plaza Holiday Inn, 1750 Rockville Pike, Rockville, MD 20852.
Open: February 17, 1994, 9 a.m.–10 a.m.
Closed: February 17, 1994, 10 a.m.–5 p.m.; February 18, 1994, 9 a.m.–adjournment.

Committee Name: Emotion and Personality Review Committee.
Contact: Sheri L. Schwartzback, Parklawn Building, room 9C–05, Telephone: 301–443–4843.
Meeting Date: February 17–18, 1994.
Place: Key Bridge Marriott Hotel, 1401 Lee Highway, Arlington, VA 22209.
Open: February 17, 1994, 8:30 a.m.–9 a.m.
Closed: February 17, 1994, 9 a.m.–5 a.m.; February 18, 1994, 8:30 a.m.–adjournment.

Committee Name: Mental Health Special Projects Review Committee, Behavioral Subcommittee.
Contact: Monica F. Woodfork, Parklawn Building, room 9C–05, Telephone: 301–443–6470 or 4843.
Meeting Date: February 17–18, 1994.
Place: Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814.
Open: February 17, 1994, 9 a.m.–10 a.m.
Closed: February 17, 1994, 10 a.m.–5 p.m.; February 18, 1994, 9 a.m.–adjournment.

Committee Name: Treatment Assessment Review Committee.
Contact: Frances Smith, Parklawn Building, room 9C–02, Telephone: 301–443–4868.
Meeting Date: February 17–18, 1994.
Place: Barcelo Washington Hotel, 2121 P Street, NW., Washington, DC 20037.
Open: February 17, 1994, 8:30 a.m.–9:30 a.m.
Closed: February 17, 1994, 9:30 a.m.–5 p.m.; February 18, 1994, 8:30 a.m.–adjournment.

Committee Name: Social and Group Processes Review Committee.
Contact: Bernice R. Cherry, Parklawn Building, room 9C–15, Telephone: 301–443–6470.
Meeting Date: February 17–19, 1994.
Place: Residence Inn by Marriott, 7335 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 17, 1994, 9 a.m.–10 a.m.
Closed: February 17, 1994, 10 a.m.–5 p.m.; February 18, 1994, 9 a.m.–5 p.m.; February 19, 1994, 9 a.m.–adjournment.

Committee Name: Mental Disorders of Aging Review Committee.
Contact: Phyllis L. Zusman, Parklawn Building, room 9C–02, Telephone: 301–443–1340.
Meeting Date: February 23–25, 1994.
Place: Bethesda Ramada Inn, 8400 Wisconsin Avenue, Bethesda, MD 20814.
Open: February 23, 1994, 9 a.m.–10 a.m.
Closed: February 23, 1994, 10 a.m.–5 p.m.; February 24, 1994, 9 a.m.–5 p.m.; February 25, 1994, 9 a.m.–adjournment.

Committee Name: Violence and Traumatic Stress Review Committee.
Contact: Phyllis D. Artis, Parklawn Building, room 9C–15, Telephone: 301–443–6470.
Meeting Date: February 23–25, 1994.
Place: Chevy Chase Holiday Inn, 5520 Wisconsin Avenue, Chevy Chase, MD 20815.
Open: February 23, 1994, 9 a.m.–10 a.m.
Closed: February 23, 1994, 10 a.m.–5 p.m.; February 24, 1994, 9 a.m.–5 p.m.; February 25, 1994, 9 a.m.–adjournment.

Committee Name: Psychobiology and Behavior Review Committee.
Contact: William H. Radcliff, Parklawn Building, room 9C–18, Telephone: 301, 443–3857.
Meeting Date: February 24–25, 1994.
Place: The Canterbury Hotel, 1733 N Street, NW., Washington, DC 20036.
Open: February 24, 1994, 9 a.m.–10 a.m.
Closed: February 24, 1994, 10 a.m.–5 p.m.; February 25, 1994, 9 a.m.–adjournment.

Committee Name: Child/Adolescent Risk and Prevention Review Committee.
Contact: Phyllis D. Artis, Parklawn Building, room 9C–05, Telephone 301, 443–1177.
Meeting Date: February 24–26, 1994.
Place: Embassy Suites Hotel, 4300 Military Road, NW., Washington, DC 20015.
Open: February 24, 1994, 9 a.m.–10 a.m.

Closed: February 24, 1994, 10 a.m.–5 p.m.; February 25, 1994, 9 a.m.–5 p.m.; February 26, 1994, 9 a.m.–adjournment.

Committee Name: Perception and Cognition Review Committee.

Contact: Regina M. Thomas, Parklawn Building, room 9C–15, Telephone: 301, 443–6470.

Meeting Date: February 24–26, 1994.

Place: Embassy Square Suites, 2000 N Street, NW., Washington, DC 20036.

Open: February 24, 1994, 9 a.m.–10 a.m.

Closed: February 24, 1994, 10 a.m.–5 p.m.; February 25, 1994, 9 a.m.–5 p.m.; February 26, 1994, 9 a.m.–adjournment.

Committee Name: Mental Health Small Business Research Review Committee.

Contact: Francis Smith, Parklawn Building, room 9C–14, Telephone: 301, 443–1367.

Meeting Date: February 28-March 1, 1994.

Place: The River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 28, 1994, 9 a.m.–10 a.m.

Closed: February 28, 1994, 10 a.m.–5 p.m.; March 1, 1994, 9 a.m.–adjournment.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the contact person named above in advance of the meeting.

(Catalog of Federal Domestic Assistance Program Numbers 93.128, Small Business Innovation Research; 93.176, ADAMHA Small Instrumentation Program Grants; 93.242, Mental Health Research Grants; 93.281, Mental Research Scientist Development Award and Research Scientist Development Award for Clinicians; 93.282, Mental Health Research Service Awards for Research Training; and 93.921, ADAMHA Science Education Partnership Award)

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1018 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Alcohol Abuse and Alcoholism; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the National Institute on Alcohol Abuse and Alcoholism.

These meetings will be open to the public to discuss administrative details or other issues relating to committee activities as indicated in the notices. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Diana Widner at (301) 443–4376.

These meetings will be closed to the public as indicated below in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual research grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Council meeting on February 4 may also be closed as noted below in accordance with the provisions set forth in section 552b(c)(9)(B) of title 5, U.S. Code and section 10(d) of Public Law 92–463. This would be if the Council members wish to discuss and prepare comments to submit to the Director, NIH, to be included in the biennial report to the Congress.

Summaries of the meetings and the rosters of committee members may be obtained from: Ms. Diana Widner, NIAAA Committee Management Officer, National Institute on Alcohol Abuse and Alcoholism, Willco Building, suite 409, 6000 Executive Blvd., Rockville, MD 20892, telephone: (301) 443–4376. Other information pertaining to the meetings can be obtained from the Scientific Review Administrator indicated.

Name of Committee: National Advisory Council on Alcohol Abuse and Alcoholism.

Executive Secretary: James F. Vaughan.

Date of Meeting: February 4, 1994.

Place of Meeting: Wilson Hall, 3rd Floor, NIH Campus, 9000 Rockville Pike, Bethesda, MD 20892.

Open: February 4, 10 a.m. to 2:30 p.m.

Agenda: Discussion of administrative details and other issues relating to council activities.

Closed: February 4, 2:30 p.m. to adjournment.

Name of Committee: Biochemestry, Physiology, and Medicine Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Ronald Suddendorf, Ph.D.

Dates of Meeting: February 7–9, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 7, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 7, 10 a.m. to recess; February 8, 9 a.m. to recess; February 9, 9 a.m. to adjournment.

Name of Committee: Neuroscience and Behavior Subcommittee, Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Antonio Noronha, Ph.D.

Dates of Meeting: February 14–16, 1994.

Place of Meeting: Hyatt Regency Bethesda, One Bethesda Metro Center, Bethesda, MD 20814.

Open: February 14, 9 a.m. to 11 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 14, 10 a.m. to recess; February 15, 9 a.m. to recess; February 16, 9 a.m. to adjournment.

Name of Committee: Epidemiology and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Lenore S. Radloff.

Dates of Meeting: February 16–18, 1994.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 16, 9 a.m. to 10 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 16, 10 a.m. to recess; February 17, 9 a.m. to recess; February 18, 9 a.m. to adjournment.

Name of Committee: Clinical and Prevention Subcommittee of the Alcohol Psychosocial Research Review Committee.

Scientific Review Administrator: Thomas D. Sevy, M.S.W.

Dates of Meeting: February 24–25, 1994.

Place of Meeting: River Inn, 924 25th Street, NW., Washington, DC 20037.

Open: February 24, 8:30 a.m. to 9 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: February 24, 9 a.m. to recess; February 25, 9 a.m. to adjournment.

Name of Committee: Immunology and AIDS Subcommittee of the Alcohol Biomedical Research Review Committee.

Scientific Review Administrator: Barbara Smothers, Ph.D.

Dates of Meeting: March 3–4, 1994.

Place of Meeting: Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852.

Open: March 3, 8:30 a.m. to 9:30 a.m.

Agenda: Reports by Division Directors, Branch Chief, and Scientific Review Administrator on Committee concerns followed by open discussion and review of administrative details.

Closed: March 3, 9:30 a.m. to recess; March 4, 9 a.m. to adjournment.

(Catalog of Federal Domestic Assistance Program No. 13.242, 13.272, 13.273, 13.278, 13.279, 13.282, 93.271, 93.272, 93.273, 93.277, 93.278, 93.281, 93.282, National Institutes of Health).

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1019 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Literature Selection Technical Review Committee

Pursuant to Public Law 92–463, notice is hereby given of a meeting of the Literature Selection Technical Review Committee, National Library of Medicine, on February 3–4, 1994, convening at 9 a.m. on February 3 and at 8:30 a.m. on February 4 in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on February 3 will be open to the public from 9 a.m. to approximately 10:30 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Ms. Karen Griffin at 301–496–6921 two weeks before the meeting.

In accordance with provisions set forth in sec. 552b(c)(9)(B), title 5, U.S.C., Public Law 92–463, the meeting will be closed on February 3 from 10:30 a.m. to approximately 5 p.m. and on February 4 from 8:30 a.m. to adjournment for the review and discussion of individual journals as potential titles to be indexed by the National Library of Medicine. The presence of individuals associated with these publications could hinder fair and open discussion and evaluation of individual journals by the Committee members.

Mrs. Lois Ann Colaianni, Scientific Review Administrator of the Committee, and Associate Director, Library Operations, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496–6921, will provide a summary of the meeting, rosters of the committee members, and other information pertaining to the meeting.

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1020 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Biomedical Library Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Biomedical Library Review Committee on March 2–3, 1994, convening at 8:30 a.m. in the Board Room of the National Library of Medicine, Building 38, 8600 Rockville Pike, Bethesda, Maryland.

The meeting on March 2 will be open to the public from 8:30 a.m. to approximately 11 a.m. for the discussion of administrative reports and program developments. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign-language interpretation or other reasonable accommodations, should contact Dr. Roger W. Dahlen at 301–496–4221 two weeks before the meeting.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C., and section 10(d) of Public Law 92–463, the meeting on March 2 will be closed to the public for the review, discussion, and evaluation of individual grant applications from 11 a.m. to approximately 5 p.m., and on March 3 from 8:30 a.m. to adjournment. These applications and the discussion could reveal confidential trade secrets or commercial property, such as patentable material, and personal information concerning individuals associated with the applications, disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Dr. Robert W. Dahlen, Scientific Review Administrator, and Chief, Biomedical Information Support Branch, Extramural Programs, National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland 20894, telephone number: 301–496-4221, will provide summaries of the meeting, rosters of the committee members, and other information pertaining to the meeting.

(Catalog of Federal Domestic Assistance Program No. 93.879—Medical Library Assistance; National Institutes of Health)

Dated: January 10, 1994.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 94–1021 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Cell Stress Transcriptional Factors

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 15 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive world-wide license to practice the invention embodied in U.S. Patent Application SN 07/617,910, entitled "Cell Stress Transcriptional Factors" to StressTech Biomedical, Inc. of San Francisco, CA. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. It is anticipated that this license will be limited to the fields of commercial screening assay services and kits provided to third parties. This prospective exclusive license may be granted unless within 60 days from the date of this published notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The patent application is based upon the observation that activation of heat shock proteins in an organism indicates elevated or environmental temperatures or a variety of other environmental stresses. Activation involves binding of a heat shock factor (HSF) to heat shock elements (HSE) and consequent transcription of heat shock genes. This method for detecting the accumulation of HSF in the nucleus of stressed cells involves novel activators for *Drosophilia* and human HSF, polynucleotides encoding those activators, and antibodies to natural and recombinant DNA. The method may also be used to monitor and diagnose the effects of abnormal stresses, including disease, on cells.

ADDRESSES: Requests for a copy of this patent application, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Steven M. Ferguson, Technology Licensing Specialist, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. A signed Confidentiality Agreement will be required to receive a copy of the patent application. Applications for a license in the indicated exclusive fields filed in response to this notice will be treated as objections to the grant of the contemplated license. Only written comments and/or applications for a license which are received by NIH within sixty (60) days of this notice will be considered.

Dated: January 3, 1994.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 94–908 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on December 23, 1993.

(Call PHS Reports Clearance Officer on (202) 690–7100 for copies of requests).

1. Survey of NIH Extramural Shared Instrumentation Activitie—0925–0318—The capabilities of expensive state-of-the-art biomedical instruments can be made available to the largest number of researchers in the most cost-effective manner by awarding them on the condition that they be shared. This study will examine the extent to which such instruments are shared; and how fully they are utilized, by whom, and for what purpose. *Respondents:* Non-profit institutions; Businesses or other for-profit; *Number of Respondents:* 9,870; *Number of Responses per Respondent:* 1; *Average Burden per Response:* .286 hours; *Estimated Annual Burden:* 2,819 hours.

2. Application for Designation as a Federally Qualified Health Center—0915–1042 (Revision)—Health centers use the application guide to apply for designation as a Federally Qualified Health Center (FQHC). FQHCs are qualified to be reimbursed by Medicaid for 100 percent of reasonable costs for services to eligible persons. FQHCs use the recertification form to certify continued compliance with program requirements. *Respondents:* Non-profit organizations.

Title	Number of responses	Number of responses per respondent	Average burden per response
Application form ..	60	1	120 hrs.
Recertification form ..	140	1	20 hrs.

Estimated Total Annual Burden—10,000 hours.

3. CD4+ T-Lymphocyte Testing Impact Evaluation—New—The purpose of the proposed survey is to evaluate the relative effectiveness of each of the initiatives of CDC's Division of Laboratory Services, while controlling for the influence of non-CDC factors in improving the quality of CD4+ T-cell testing in clinical flow cytometry laboratories. This study will collect new information from CD4+ T-cell testing staff to characterize changes in laboratory practices in both MPEP and non-MPEP laboratories. Information obtained from this study will be used to identify items that influence laboratories to change. *Respondents:* Non-profit institutions, Businesses or other for-profit; Small businesses or organizations. *Respondents:* 955; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* .769 hour; *Estimated Annual Burden:* 734 hours.

4. Cardiovascular Health Study (CHS)—0925–0122 (Revision)—This submission is for modification of a previously approved study involving a random sample of men and women by adding a procedure to measure body composition and bone mineral density as measured by dual energy x-ray absorptiometry (DEXA). The procedure will involve 2,400 individuals and 10 minutes of questions to assess the relation of body weight, fat distribution, and bone density to cardiovascular risk factors and disease. *Respondents:* Individuals or Households. *Respondents:* 6,113; *Number of Responses Per Respondent:* 3,176; *Average Burden Per Response:* 0.92 hour; *Estimated Annual Burden:* 17,885 hours.

5. New Animal Drug Application, 21 CFR part 514—0910–0032 (Reinstatement and consolidation with 0910–0228)—Applicants proposing to market animal drugs must detail (1) the scientific and technical information required for the physical manufacture of the drug product and (2) scientific information relative to the safety and effectiveness of the drug use. *Respondents:* Businesses or other for-profit, Small businesses or organizations.

Title	Number of responses	Number of responses per respondent	Average burden per response
Reporting: Content/format of NADA 21 CFR 514.1	190	7.98	212.6 hrs.
Supplemental applications 21 CFR 514.8 and .9	190	7.98	30 hrs.

Estimated Total Annual Burden: 367,781 hours.

Written comments and recommendations concerning the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: January 7, 1994.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 94–997 Filed 1–13–94; 8:45 am]

BILLING CODE 4160–17–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Acetaminophen

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of acetaminophen, which is a widely consumed analgesic found in several nonprescription pharmaceuticals.

Two-year toxicology and carcinogenesis studies were conducted by administering to both sexes of rats and mice doses of 0, 600, 3,000, or 6,000 ppm acetaminophen in feed for 104 weeks.

Under the conditions of these 2-year feed studies, there was no evidence of carcinogenic activity [1] of acetaminophen in male F344/N rats that received 600, 3,000, or 6,000 ppm. There was equivocal evidence of carcinogenic activity of acetaminophen in female F344/N rats based on increased incidences of mononuclear cell leukemia. There was no evidence of carcinogenic activity of acetaminophen in male and female B6C3F1 mice that received 600, 3,000, or 6,000 ppm.

Nonneoplastic lesions associated with exposure to acetaminophen included increased severity of nephropathy and increased incidences of renal tubule hyperplasia and parathyroid hyperplasia in male rats, increased severity of nephropathy in female rats, and increased incidences of thyroid follicular cell hyperplasia in male and female mice.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Acetaminophen (CAS No. 103–90–2) in F344/N Rats and B6C3F1 Mice (Feed Studies) (TR–394) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

Dated: January 7, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–909 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Furan

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of furan, used primarily as an intermediate in the synthesis and preparation of other organic compounds and also in the preparation of numerous polymeric compounds used for preparation of temperature-resistant structural laminates. Copolymers of maleic acid and furan form complexes with alkaline earth ions and are used in metals, foodstuffs, and machine dishwashing products as alternatives to phosphorus- and nitrogen-containing detergents.

Two-year toxicology and carcinogenesis studies were conducted by administering to both sexes of rats doses of 0, 2, 4, or 8 mg furan per kg body weight and 0, 8, or 15 mg/kg furan to both sexes of mice in corn oil by gavage 5 days per week for 2 years.

Under the conditions of these 2-year gavage studies there was clear evidence of carcinogenic activity [1] of furan in male and female F344/N rats based on increased incidences of cholangiocarcinoma and hepatocellular neoplasms of the liver and on increased incidences of mononuclear cell leukemia. There was clear evidence of carcinogenic activity of furan in male and female B6C3F1 mice based on increased incidences of hepatocellular neoplasms of the liver and benign pheochromocytomas of the adrenal gland.

Nonneoplastic liver lesions associated with furan administration in rats and mice included biliary tract fibrosis, hyperplasia, inflammation, and proliferation, as well as hepatocellular cytomegaly, degeneration, hyperplasia, necrosis, and vacuolization. In rats, increased severity of nephropathy with an associated increased incidence of parathyroid hyperplasia was associated with exposure to furan.

The study scientist for this bioassay is Dr. R. D. Irwin. Questions or comments about the Technical Report should be directed to Dr. Irwin at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3340.

Copies of Toxicology and Carcinogenesis Studies of Furan (CAS No. 110–00–9) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR–402) are available without charge from Central Data Management, NIEHS, MD AO–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 7, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–910 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of o-Nitroanisole

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of o-nitroanisole which is used as an intermediate for the preparation of o-anisidine and in the manufacture of azo dyes.

Toxicology and carcinogenicity studies were conducted by feeding groups of 60 F344 rats of each sex diets containing 0, 222, 666, or 2,000 ppm o-nitroanisole and groups of 60 B6C3F1 mice of each sex diets containing 0, 666, 2,000, or 6,000 ppm o-nitroanisole for 103 weeks. In a companion study, male and female rats were fed 0, 6,000, or 18,000 ppm o-nitroanisole for 6 months and maintained on untreated feed for 1½ years.

Under the conditions of these feed studies there was clear evidence of carcinogenic activity [1] of o-nitroanisole in male and female F344 rats that received diets containing 6,000 to 18,000 ppm for 6 months based on overall increased incidences of benign and malignant neoplasms of the urinary bladder, transitional cell neoplasms of the kidney, and benign and malignant neoplasms of the large intestine. There was a chemical-related increased incidence of mononuclear cell leukemia in male and female rats receiving diets containing 222, 666, or 2,000 ppm o-nitroanisole for 2 years. Marginally increased incidences of uncommon renal tubule neoplasms in male rats and forestomach neoplasms in male and female rats were considered uncertain findings. There was clear evidence of carcinogenic activity of o-nitroanisole in male B6C3F1 mice based on increased incidences of benign and malignant hepatocellular neoplasms. There was some evidence of carcinogenic activity of o-nitroanisole in female B6C3F1 mice based on increased incidences of hepatocellular adenomas.

Increased severity of nephropathy in male rats, and increased incidences of focal hyperplasia of the renal tubule epithelium and forestomach ulcers in male rats, and of transitional cell hyperplasia of the urinary bladder, focal hyperplasia of the forestomach, and hyperplasia of transitional epithelium of the kidney pelvis in male and female rats were associated with exposure to o-nitroanisole.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of o-Nitroanisole (CAS No. 91–23–6) in F344 Rats and B6C3F1 Mice (Feed Studies) (TR–416) are available without charge from Central Data Management, NIEHS, MD AO–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 7, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–911 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of Pentachloroanisole

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of pentachloroanisole, a chlorinated aromatic compound which is widely distributed at low levels in the environment and in food products. Formation of pentachloroanisole in the environment may result from the degradation of structurally related, commercially important, ubiquitous chlorinated aromatic compounds such as pentachlorophenol and pentachloronitrobenzene which are known rodent toxins or carcinogens.

Two year toxicology and carcinogenesis studies were conducted by administering pentachloroanisole in corn oil by gavage 5 days per week for up to 2 years to groups of 70 male and 70 female rats and mice of each sex. Male rats received doses of 0, 10, 20, and 40 mg/kg of pentachloroanisole; female rats and mice received doses of 0, 20, and 40 mg/kg pentachloroanisole.

Under the conditions of these 2-year gavage studies, there was some evidence of carcinogenic activity [1] of pentachloroanisole in male F344/N rats based on increased incidences of benign pheochromocytomas of the adrenal medulla. There was equivocal evidence of carcinogenic activity of pentachloroanisole in female F344/N rats based on marginally increased incidences of benign pheochromocytomas of the adrenal medulla. There was some evidence of carcinogenic activity of pentachloroanisole in male B6C3F1 mice based on increased incidence of benign pheochromocytomas of the adrenal medulla and hemangiosarcomas of the liver. There was no evidence of carcinogenic activity of pentachloroanisole in female B6C3F1 mice given doses of 20 or 40 mg/kg.

Pentachloroanisole administration was associated with increased incidences of adrenal medulla hyperplasia in female rats and increased incidences of pigmentation in the renal tubule epithelium, olfactory epithelium, and hepatocytes of male and female rats. In addition, decreased incidences of pancreatic adenomas and focal hyperplasia in male rats and decreased incidences of mammary gland fibroadenomas and uterine stromal polyps and sarcomas (combined) in female rats were observed. Hyperthermia-related lesions in male rats receiving 20 or 40 mg/kg were considered indirectly related to pentachloroanisole administration.

Pentachloroanisole administration was associated with increased incidences of adrenal medulla hyperplasia and hypertrophy and hepatocellular mixed cell foci in male mice. In male and female mice, nonneoplastic liver lesions associated with pentachloranisole administration included hepatocellular cytologic alteration, Kupffer cell pigmentation, biliary tract hyperplasia, and subacute inflammation.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of Pentachloroanisole (CAS No. 1825–21–4) in F344/N Rats and B6C3F1 Mice (Gavage Studies) (TR–414) are available without charge from Central Data Management, NIEHS, MD AO–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: January 7, 1994.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 94–912 Filed 1–13–94; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–94–1917; FR–3350–N–66]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: January 14, 1994.

ADDRESSES: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* versus *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: January 7, 1994.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 94–847 Filed 1–13–94; 8:45 am]

BILLING CODE 4210–29–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Extension of Comment Period for the Draft Supplemental Programmatic Environmental Impact Statement on the Federal Aid in Sport Fish Restoration and Federal Aid in Wildlife Restoration Programs

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: A Notice of Availability pertaining to the draft document was published in the **Federal Register** on November 1, 1993, (58 FR 58347). The comment period has been extended in response to requests of several parties for more time.

DATES: Written comments will be accepted through March 2, 1994. This is a 45-day extension beyond the previously announced date of January 17, 1994.

ADDRESSES: Comments should be sent to U.S. Fish and Wildlife Service, Division of Federal Aid, 1849 C Street, NW. (Mail Stop 140 Arlington Square), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Columbus H. Brown, Chief, Division of Federal Aid, U.S. Fish and Wildlife Service, 140 Arlington Square, 4401 North Fairfax Drive, Arlington, Virginia, 22203. Telephone (703) 358–2156.

SUPPLEMENTARY INFORMATION: The U.S. Fish and Wildlife Service is reviewing the operation and management of its Federal Aid in Sport Fish and Wildlife Restoration Programs into the next century. This Supplemental Programmatic Environmental Impact Statement is being prepared to supplement the Programmatic Environmental Impact Statement published in 1978.

Copies are available at the U.S. Fish and Wildlife Service, Division of Federal Aid, 4401 North Fairfax Drive, Arlington, Virginia, room 140 during normal working hours. Telephone (703) 358–2156.

Dated: January 6, 1994.

Bruce Blanchard,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–949 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–55–M

Meetings: Klamath River Basin Fisheries Task Force

AGENCY: Department of the Interior, Fish and Wildlife Service.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Klamath River Basin Fisheries Task Force and the Klamath Fishery Management Council, established under the authority of the Klamath River Basin Fishery Resources Restoration Act (16 U.S.C. 460ss *et seq.*). The meeting is open to the public. Handicap access and hearing-impaired assistance will be provided if requested. Persons needing special assistance must notify the Klamath River Fishery Resource Office (see **FOR FURTHER INFORMATION CONTACT:**) in advance of the meetings.

DATES: The Klamath River Basin Fisheries Task Force (Task Force) will meet from 10 a.m. to 4:45 p.m. on Tuesday, February 1, and from 8 a.m. to 12 noon, Wednesday, February 2, 1994. The Task Force will then meet in joint session with the Klamath Fishery Management Council (Council) from 1 p.m. until 5 p.m. on February 2. The Task Force will adjourn at 5 p.m., February 2, and the Council will continue to meet from 9 a.m. until 1:30 p.m. on February 3, 1994.

ADDRESSES: The meeting will be held at the Mad River Saloon and Eatery's banquet room at 3535 Janes Road in Arcata, California.

FOR FURTHER INFORMATION CONTACT: Dr. Ronald A. Iverson, Project Leader, U.S. Fish and Wildlife Service, P.O. Box 1006, Yreka, California 96097–1006, telephone (916) 842–5763.

SUPPLEMENTARY INFORMATION: For background information on the Task Force and Council, please refer to the notice of their initial meetings that appeared in the **Federal Register** on July 8, 1987 (52 FR 25639).

Primary discussion items that the Task Force will cover include the long-term needs for restoration of the Klamath River fishery resources; the proposed amendment to the long-range plan which incorporates the Klamath Basin above Iron Gate Dam into the Restoration Program planning area; and instream flow needs.

The agenda specifies approximate times that the public is invited to comment on meeting discussion items.

During the joint session of the Task Force and the Council, the two committees will discuss topics such as the 1993 inriver fall chinook salmon run size and harvest, and water needs for fish and farmers. Comments from the public will again be invited.

At the Council's meeting on February 3, members will hear reports from the Council's Technical Advisory Team on issues involving incidental salmon harvest in the Pacific whiting fishery and data on the spring chinook salmon harvest. The Council will also draft a list of tasks to be addressed by the spring chinook salmon workgroup, comment on on-going issues, and set priorities for salmon harvest management recommendations to be made in 1994. The Council will take action by adopting a process for identifying high-priority data needs and adopting a meeting schedule and agenda items for 1994.

Dated: January 5, 1994.

Marvin L. Plenert,

Regional Director, U.S. Fish and Wildlife Service.

[FR Doc. 94–977 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–55–M

Bureau of Land Management

[ID–020–4060–02]

Notice of Availability of the Proposed Twin Falls County Solid Waste Facility (TFSWF) Draft Environmental Impact Statement and Draft Land Use Plan Amendment

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Twin Falls County, Idaho has made application to purchase 1083.77 acres of public land managed by the Bureau of Land Management (BLM), on which they propose to construct, operate and maintain a state of the art "Subtitle D" solid waste facility. The proposed project is located near Hub Butte, 10 miles south of the City of Twin Falls, Idaho. The purpose of the proposed facility would be to bring Twin Falls County into compliance with the Resource Conservation and Recovery Act (RCRA) and its associated regulations, 40 CFR 257 and 258 "Subtitle D". These regulations set forth many new requirements for solid waste facilities that are in operation after April 9, 1993 that the existing facilities in Twin Falls County do not meet. The proposed facility would be constructed and administered by Twin Falls County and would be operated by a private contractor.

DATES: All comments must be received by BLM or postmarked by April 15, 1994. A formal public meeting to receive comments on the Draft Environmental Impact Statement and Draft Plan Amendment (DEIS/DPA) will be held on February 15, 1994 in the College of Southern Idaho cafeteria in Twin Falls, ID from 7 p.m. to 9 p.m.

ADDRESSES: Comments regarding the DEIS/DPA may be made orally at the meeting or they can be submitted in writing to the Burley District Manager, Bureau of Land Management, Route 3, Box 1, Burley, Idaho 83318.

FOR FURTHER INFORMATION CONTACT: Scott Barker, Project Manager, Bureau of Land Management, Burley District Office, Route 3, Box 1, Burley, Idaho 83318. Phone (208) 678–5514.

SUPPLEMENTARY INFORMATION: A Draft Environmental Impact Statement/Draft Plan Amendment (DEIS/DPA) has been prepared which identifies resource values and analyzes the environmental impacts to these resource that would be expected from the proposed action. The DEIS/DPA identifies the preferred alternative, which is the proposed action, and a no action alternative. The Bureau of Land Management is the lead Federal Agency in the preparation of the TFSWF DEIS/DPA.

Copies of the DEIS/DPA are being sent to all individuals and agencies that have participated in the public scoping process or have otherwise asked to be included on the mailing list.

Additional copies are available from the Burley District of the Bureau of Land Management, Route 3, Box 1, Burley, Idaho, 83318. The Burley District telephone number is (208) 678–5514.

Dated: January 5, 1994.

Marvin R. Bagley,

Associate District Manager.

[FR Doc. 94–920 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–GG–M

[OR–014–4333–04; G4–058]

Emergency Road Closure and Restrictions; Wood River Ranch—Correction

AGENCY: Bureau of Land Management, Lakeview District, Klamath Falls Resource Area, Interior.

ACTION: Correction.

SUMMARY: In the public notice document located on page 41800 in the issue of Thursday August 5, 1993, make the following correction.

On page 41800 in the first column this, the third sentence of the Emergency Closure and Restrictions; Wood River Ranch, OR SUMMARY: is deleted: Day use is defined as the hours of 4 a.m. to 10 p.m. The following sentence replaces the deleted sentence: Day use is defined as two hours before sunrise and one half hour after sunset.

On page 41800 in the second column this, the third sentence is deleted: "Vehicles used for administrative, emergency, and law enforcement and adjacent land owners, their agency, and employees, with a right-of-way for access will be exempt from the motor vehicle restrictions". The following two sentences replace the deleted sentence: Vehicles used for administrative, emergency, and law enforcement will be exempt from the motor vehicle restrictions. Adjacent landowners, their agents and employees, with a right-of-way for access, may use vehicles on the dike roads only to gain access to adjacent private property, may not take vehicles off of the dike roads, and while on the Wood River Ranch, may not off-load personnel, personal property or equipment.

FOR FURTHER INFORMATION CONTACT: Lakeview District, Klamath Falls Resource Office, Tom Cottingham, 2795 Anderson Avenue, Building 25, Klamath Falls, OR 97603; 503–883–6916.

Dated: December 29, 1993.

A. Barron Bail,

Klamath Falls Resource Area Manager.

[FR Doc. 94–921 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–33–M

[WY–920–41–5700; WYW72473]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 6, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72473 for lands in Campbell County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16 ⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72473 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 94–922 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW72460]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 6, 1994.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2–3 (a) and (b)(1), a petition for reinstatement of oil and gas lease WYW72460 for lands in Johnson County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW72460 effective June 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 94–923 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–22–M

[WY–920–41–5700; WYW113055]

Proposed Reinstatement of Terminated Oil and Gas Lease

January 6, 1994.

Pursuant to the provisions of 30 U.S.C. 188(d) and (e), and 43 CFR 3108.2–3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW113055 for lands in Sweetwater County, Wyoming, was timely filed and accompanied by all the required rentals accruing from the date of termination.

The lessee has agreed to the amended lease terms for rentals and royalties at rates of $10.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW113055 effective October 1, 1993, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 94–924 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–22–M

[AK–040–04–4210–03; AA–60570]

Realty Action: Section 1303(b) ANILCA Special Use Permit Proposal Near Unalakleet, AK

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: This notice of realty action involves an application for a special use permit on public lands administered by the Bureau of Land Management. The permit is intended to authorize continued use of approximately one (1) acre of land for an existing subsistence cabin and related structures near Unalakleet, Alaska. This land and the application has been examined and reviewed under the provisions of section 1303(b) of the Alaska National Interest Lands Conservation Act (ANILCA), as amended. The site for the application is located on the right bank of the Unalakleet National Wild River within the following described area:

Kateel River Meridian, Alaska

T. 18 S., R. 8 W.,
Sec. 16 that portion within a one acre parcel around an existing cabin and other related structures.
The area described contains 1.00 acre.

The above land would be offered noncompetitively to the applicant and owner of the improvements, Mrs. Eunice E. Ryan of Unalakleet, Alaska, under a five (5) year permit which would only be renewable for the life of the applicant at no less than fair market rental. The permit would be issued under the provisions of section 1303(b) of ANILCA.

The general terms and conditions for permits found in 43 CFR part 2920 will also apply.

DATES: Interested parties may submit comments on or before February 28, 1994.

ADDRESSES: Comments must be submitted to the Anchorage District Manager, 6881 Abbott Loop Road, Anchorage, Alaska 99507–2599.

FOR FURTHER INFORMATION CONTACT: Sandra Dunn (907) 267–1214.

Dated: December 16, 1993.

Richard J. Vernimen,

Anchorage District Manager.

[FR Doc. 94–979 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–JA–M

[AZ 054–04–4210–05; AZA 28241; 4–00162]

Arizona: Realty Action; Classification of Public Lands for Lease for Recreation and Public Purposes in La Paz County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in La Paz County, Arizona, has been examined and found suitable for classification for lease to the Buckskin Fire Department under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*). The fire department will use the land for a fire station and water rescue and medical aid facility.

Gila and Salt River Meridian, Arizona

T. 10 N., R. 19 W.,
Sec. 14, portion of lot 10.
The area described contains 0.949 acre, more or less.

The lease is consistent with the current Bureau planning for this area and is in the public interest. The lease, when issued, will be subject to the provisions of the Recreation and Public Purposes Act, a Bureau of Reclamation withdrawal, and applicable regulations of the Secretary of the Interior.

DATES: On or before February 28, 1994, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager at the address under the **ADDRESSES** caption of this notice. Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective on March 15, 1994.

Upon publication of this notice in the **Federal Register**, the lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, except for lease under the Recreation and Public Purposes Act and leasing under the mineral leasing laws.

ADDRESSES: Interested persons may submit comments regarding the proposed lease or classification of the land to the District Manager, Bureau of Land Management, Yuma District Office, 3150 Winsor Avenue, Yuma, Arizona 85365.

FOR FURTHER INFORMATION CONTACT: Debbie Rowland, Realty Specialist, Bureau of Land Management, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasua City, Arizona 86406, (602) 855–8017.

SUPPLEMENTARY INFORMATION: The parcel is currently withdrawn by the Bureau of Reclamation for the Colorado River Storage Project and is leased to the Buckskin Fire Department under Reclamation authority. This action will convert the fire department to the Bureau of Land Management's Recreation and Public Purposes leasing authority.

Dated: January 6, 1994.

Judith I. Reed,

District Manager.

[FR Doc. 94–925 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–32–M

[MT–025–04–4333–04; M–80893]

Realty Action—Exchange

AGENCY: Bureau of Land Management, Montana, Miles City District, Billings Resource Area, Interior.

ACTION: Notice of Realty Action M–80893, exchange of public and private lands in Yellowstone County.

SUMMARY: The following described lands have been determined to be suitable for disposal by exchange under section 206 of the Federal Land Policy and Management Act of 1976, U.S.C. 1716:

Principal Meridian, Montana

T.3 N., R.27 E.,
Sec. 14, NE¼, SW¼.
Containing 320 acres of public lands.

In exchange for these lands, the United States will acquire the following described lands from Herman Thaut:

Principal Meridian, Montana

T.3 N., R.27 E.,
Sec. 1, Lots 1 to 4, inclusive, S½N½, S½.
Containing 639.6 acres of private lands.

DATES: Comments will be accepted until February 28, 1994 in the **Federal Register** to the address shown below. Any adverse comments will be evaluated by the BLM Montana State Director who may sustain, vacate or modify this realty action. In absence of any objections this realty action will become the final determination of the Department of the Interior.

FOR FURTHER INFORMATION CONTACT: The Bureau of Land Management, Area Manager, 810 East Main, Billings, Montana 59105, (406) 657–6262. Information related to the exchange, including the environmental assessment is available for review at this address.

SUPPLEMENTARY INFORMATION: The publication of this notice segregates the public lands described above from settlement, sale, location and entry under the public land laws, but not from exchange pursuant to Section 206 of the Federal Land Policy and Management Act for a period of two years from the date of first publication, issuance of a U.S. Government Patent or notice of termination in the **Federal Register**, whichever occurs first. The exchange will be made subject to:

1. A reservation to the United States of a right-of-way for ditches or canals in accordance with 43 U.S.C. 945.
2. A reservation to the United States of all federally owned minerals in the lands being transferred.
3. All valid existing rights of record. MTM–53015, road-of-way to Yellowstone County. MTM–74903, an overhead power distribution line right-of-way to Yellowstone Valley Electric Cooperative.
4. Meeting the requirements of 43 CFR 4110.4–2(b). This exchange is consistent with Bureau of Land Management policies and planning and has been discussed with state and local officials.

The estimated intended time of the exchange is March 15, 1994. The public interest will be served by completion of this exchange because it will enable the Bureau of Land Management to acquire lands with high public values and will increase management efficiency of the public lands in the area.

Donald E. Nelson,

Acting District Manager.

[FR Doc. 94–926 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–DN–M

[NV–930–04–4210–05; N58101; 4–00154]

Realty Action: Lease or Sale of Public Lands for Recreation and Public Purpose, Pershing County, NV

SUMMARY: In response to an application from the Pershing County Fair and Recreation Board, the following described land is being considered for an eighteen hole championship golf course pursuant to the Recreation and Public Purpose Act as amended (43 U.S.C. 869, *et seq.*):

Mount Diablo Meridian, Nevada

T. 27 N., R. 31 E.,
Sec. 7, E½SE¼NE¼, NE¼SW¼SE¼, S½SW¼SE¼, E½SE¼;
Sec. 8, SW¼NW¼, W½SW¼;
Sec. 18, N½NE¼, E½NE¼NW¼.
Totalling approximately 350 acres.

Upon publication of this Notice in the **Federal Register** the above described lands will be segregated from all forms of appropriation under the public land laws, including the general mining laws, but not the Recreation and Public Purpose Act and the Mineral Leasing Laws.

When the required environmental, archaeological and mineral reports are completed and a determination is made that the lands are suitable for the use proposed, a subsequent Notice of Realty Action will be published in the **Federal Register** and appropriate newspapers classifying the lands for lease/conveyance. At that time, a 45 day public comment period will be provided.

FOR FURTHER INFORMATION CONTACT: Chuck Valentine, Bureau of Land Management, 705 E. Fourth Street, Winnemucca, Nevada 89445, (702) 623–1500.

Dated: January 7, 1994.

Ronald Wenker,

District Manager, Winnemucca.

[FR Doc. 94–928 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–4210–05; N–58162; 4–00154]

Realty Action: Non-Competitive Sale of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Non-Competitive Sale of Public Lands in Henderson, Nevada.

SUMMARY: The following described public land in Clark County, Nevada has been examined and found suitable for sale utilizing non-competitive procedures, at not less than the fair market value. Authority for the sale is section 203 and section 209 of Public Law 94–579, the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 and 43 U.S.C. 1719).

Mount Diablo Meridian, Nevada

T. 21 S., R. 62 E.,
Sec. 35: NE¼SW¼.
Containing 40.00 acres, more or less.

This parcel of land, situated in Henderson is being offered as a direct sale to the City of Henderson.

This land is not required for any Federal purposes. The sale is consistent with current Bureau planning for this area and would be in the public interest.

In the event of a sale, conveyance of the available mineral interests will occur simultaneously with the sale of the land. The mineral interests being offered for conveyance have no known mineral value. Acceptance of a direct sale offer will constitute an application for conveyance of those mineral interests. The applicant will be required to pay a $50.00 nonreturnable filing fee for conveyance of the available mineral interests.

The patent, when issued, will contain the following reservations to the United States:

1. A right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 2890 (43 U.S.C. 945).

2. Oil, gas, sodium, potassium and saleable minerals.

and will be subject to:

1. An easement for roads, public utilities and flood control purposes in accordance with the transportation plan for Clark County.

2. Those rights for Airport marker purposes which have been granted to the Federal Aviation Administration by Permit No. N–4245 under the authority of 44 LD513.

3. Those rights for natural gas pipeline purposes which have been granted to Southwest Gas Corporation by Permit No. NEV–015814 under section 28 of the Mineral Leasing Act of 1920.

4. Those rights for water pipeline purposes which have been granted to Las Vegas Valley Water District by Permit No. NEV–043457 under the Act of October 21, 1976.

5. Those rights for a public road purposes which have been granted to the City of Henderson by Permit No. N–31767 under the Act of October 21, 1976.

6. Those rights for highway (Boulder Highway) purposes which have been granted to the Nevada Department of Transportation by Permit No. CC–018944 under the Act of November 9, 1921.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for sales and disposals under the mineral disposal laws. This segregation will terminate upon issuance of a patent or 270 days from the date of this publication, whichever occurs first.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior. The Bureau of Land Management may accept or reject any or all offers, or withdraw any land or interest in the land from sale, if, in the opinion of the authorized officer, consummation of the sale would not be fully consistent with the Public Law 94–579, or other applicable laws. The lands will not be offered for sale until at least 60 days after the date of publication of this notice in the **Federal Register**.

Dated: January 3, 1994.

Mason K. Hall,

(Acting) District Manager, Las Vegas, NV.

[FR Doc. 94–927 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Big Thicket National Preserve; Boundaries Description

Whereas, the Act of July 1, 1993 (Pub. L. 103–46), which may be referred to as the "Big Thicket National Preserve Addition Act of 1993, provides for the addition of the Village Creek Corridor unit, the Big Sandy Corridor unit and the Canyonlands unit to the Big Thicket National Preserve, to be administered by the Secretary of the Interior, as a part of the National Park System.

Whereas, section 2(a) of said act states that the addition to Big Thicket National Preserve (hereafter referred to as the preserve), shall include the units as generally depicted on the map entitled "Big Thicket National Preserve," dated October, 1992, and numbered 175–80008.

Whereas, section 2(a) of said act designates the area of the following units:

Village Creek Corridor unit, Hardin County, Texas, comprising approximately four thousand seven hundred and ninety-three acres;

Big Sandy Corridor unit, Hardin, Polk and Tyler Counties, Texas, comprising approximately four thousand four hundred and ninety seven acres; and

Canyonlands unit, Tyler County, Texas, comprising approximately one thousand four hundred and seventy-six acres.

Whereas, section 2(c) provides that a detailed description of the boundaries of the additions to the preserve shall be published in the **Federal Register** not later than six months after the date of enactment of the act.

Now, therefore, a boundary description is hereby published for the Big Thicket National Preserve.

Dated: December 13, 1993.

John E. Cook,

Regional Director, Southwest Region.

The boundaries of Village Creek Corridor unit, the Big Sandy Corridor unit and the Canyonlands unit of the Big Thicket National Preserve are particularly described, as follows:

Boundary Description, Big Thicket National Preserve, Village Creek Corridor Unit; That Portion Lying Within Hardin County

The lands described below are derived from National Park Service Map Number 175–80008, copies of which are available for public inspection in the offices of the National Park Service, Department of the Interior, and the offices of the Superintendent of the preserve.

Survey and Abstract No.: E. Duncan; A–14.

Portion: Part of said A–14 described as follows: Beginning at Lower Neches River Corridor unit angle point no. 38; Thence, S. 37°44′23″ W., 1450 feet, along the common line between Lower Neches River Corridor unit and Village Creek Corridor unit; Thence, Northerly, approximately 3000 feet along the northerly gradient boundary of Village Creek; Thence, N. 86°29′16″ E., 2500 feet, along the North line of said A–14, to the Point of Beginning.

Also Beginning at Lower Neches River Corridor unit angle point no. 39; Thence, along the common line between the Lower Neches River Corridor unit and the Village Creek Corridor unit the following 2 courses: 1. S. 51°59′45″ E., 1594.97 feet to angle point no. 40; 2. S. 08°44′42″ W., 2053.48 feet to angle point no. 41; Thence, N. 41°12′23″ W., 4100 feet; Thence, N. 27°56′24″ W., 1775 feet; Thence, N. 86°29′16″ E., 1450 feet, along the North line of said A–14; Thence, Southerly, approximately 3000 feet, along the southerly gradient boundary of Village Creek; Thence, S. 37°44′23″ W., 850 feet, along the common line between the Lower Neches River Corridor unit and the Village Creek unit, to the Point of Beginning.

Survey and Abstract No.: S. K. Van Meter; A–53.

Portion: Part of said A–53 described as follows: Beginning at Lower Neches River Corridor unit angle point no. 38; Thence, S. 86°29′16″ W., 2500 feet; Thence, Northwesterly, approximately 19,500 feet, along the northerly gradient boundary of Village Creek; Thence, N. 03°00′28″ W., 1050 feet; Thence, N. 88°50′ E., 5900 feet; Thence, S. 64°05′ E., 2600 feet; Thence S. 58°00′ E., 2800 feet; Thence, S. 34°51′12″ E., 2700 feet; Thence, S. 63°21′36″ E., 1200 feet, to the Point of Beginning.

Also Beginning on the South line of said A–53 at a point which lies S. 86°29′16″ W., 2600 feet from angle point no. 38 of the Lower Neches River Corridor unit; Thence, S. 86°29′16″ W., 5100 feet; Thence, N. 03°06′02″ W., 2784.02 feet; Thence, S. 86°55′02″ W., 5244.43 feet; Thence, N. 03°00′28″ W., 1862.70 feet; Thence, Southeasterly, approximately 19,500 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: D. C. Montgomery; A–39.

Portion: Part of A–39 described as follows: Beginning on the North line of said A–39 at a point which lies N. 86°55′58″ E., 1150 feet from the Northwest corner of A–39; Thence, N. 86°55′58″ E., 700 feet; Thence, Southerly, approximately 15,000 feet, along the westerly gradient boundary of Village Creek; Thence, along the northerly right-of-way line of said U.S. Highway 96, S. 44°20′ W., 200 feet; Thence, leaving said highway right-of-way line S. 86°52′59″ W., 1450 feet, along the South line of said A–39; Thence, N. 02°50′ W., 2525 feet; Thence, N. 20°39′ W., 3825 feet; Thence, N. 04°18′ W. 800 feet, to the Point of Beginning.

Also Beginning on the North line of said A–39 at a point which lies N. 86°55′58″ E., 2000 feet, from the Northwest corner of A–39; Thence, N. 86°55′58″ E., 1700 feet; Thence S. 36°02′ E., 600 feet, Thence, S. 03°37′19″ E., 1550 feet; Thence, S. 41°31′31″ E. 2125 feet, Thence, S. 06°34′ W., 625 feet; Thence, S. 47°22′ W., 750 feet; Thence, S. 04°34′ E., 1425 feet; Thence, S. 44°20′ W., 650 feet, along the northerly right-of-way line of U.S. Highway 96; Thence, Northerly, approximately 15,000 feet along the easterly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: H. A. Hooks-855; A–879.

Portion: Part of A–879 described as follows: Beginning at the Northwest corner of A–879; Thence, Easterly 300 feet along the North line of A–879; Thence Southeasterly, approximately 1100 feet, along the westerly gradient boundary of said Village Creek; Thence, Westerly, 100 feet, along the North line of the M. M. Bradley survey, A–7; Thence, Southerly, 4200 feet, along the east line of said A–879; Thence, Southerly, approximately 4000 feet, along the westerly gradient boundary of Village Creek; Thence, S. 86°55′58″ W., 700 feet, along the South line of said A–879; Thence, N. 04°18′ W., 1000 feet; Thence, along the Westerly line of said A–879 the following 4 courses: 1. N. 82°55′58″ E., 800 feet; 2. N. 07°04′02″ W., 56 feet; 3. N. 82°55′58″ E., 108 feet; 4. N. 03°02′ W., 6600 feet, to the Point of Beginning.

Also Beginning on the South line of A–879, at a point which lies N. 86°55′58″ E., 2000 feet from the Northwest corner of the D. C. Montgomery survey, A–39; Thence, Northeasterly, approximately 4000 feet, along the easterly gradient boundary of Village Creek; Thence, Southerly, 2800 feet, along the East line of said A–879; Thence, S. 86°55′58″ W., 1100 feet, along the South line of said A–879, to the Point of Beginning.

Survey and Abstract No.: W. Weiss-9; A–634.

Portion: Part of A–634 described as follows: Beginning on the East line of said A–634 at a point which lies S. 03°02′ E., 3800 feet from the Northeast corner of A–634; Thence, along the easterly line of A–634, the following 4 courses: 1. S. 03°02′ E., 2800 feet; 2. S. 82°55′58″ W., 107 feet; 3. S. 07°04′02″ E., 56 feet; 4. S. 82°55′58″ W., 800 feet; Thence, N. 04°18′ W., 1500 feet; Thence, N. 30°19′ E., 1700 feet, to the Point of Beginning.

Also Beginning at the Northeast corner of A–634; Thence, S. 03°02′ E., 1500 feet, along the East line of A–634; Thence, N. 51°34′ W., 2350 feet; Thence,

N. 88°47'33" E., 1762 feet, along the North line of A–634, to the Point of Beginning.

Survey and Abstract No.: M. M. Bradley; A–7.

Portion: Part of A–7 described as follows: Beginning at the Northwest corner of A–7; Thence, East, 100 feet along the North line of A–7, Thence, Southeasterly and Southwesterly approximately 5000 feet along the westerly gradient boundary of Village Creek; Thence, Northerly 4200 feet along the east line of A–7 to the Point of Beginning.

Also Beginning on the South line of said A–7, at a point which lies N. 86°55'58" E., 3100 feet from the Northwest corner of the D. C. Montgomery survey, A–39; Thence, Northerly, 2800 feet, along the West line of said A–7; Thence, Northeasterly, approximately 1000 feet, along the easterly, gradient boundary of Village Creek; Thence, N. 87°08' E., 900 feet, Thence, S. 18°46' W., 2900 feet; Thence, S. 36°02' E., 969.16 feet; Thence, S. 86°55'58" W., 600 feet, along the south line of A–7, to the Point of Beginning.

Survey and Abstract No.: A. E. Spellenberg-35; A–459.

Portion: Part of said A–459 described as follows: Beginning on the North line of said A–459, at a point which lies N. 86°20' E., 2600 feet from the Northwest corner of said A–459; Thence, N. 86°20' E., 1950 feet, along the North line of said A–459; Thence, Southeasterly, approximately 2000 feet, along the westerly gradient boundary of said Village Creek; Thence, S. 88°47'33" W., 2050 feet, along the South line of said A–459; Thence, N. 51°34' W., 2000 feet, to the Point of Beginning.

Survey and Abstract No.: A. E. Spellenberg-36; A–458.

Portion: Part of said A–458 described as follows: Beginning on the North line of said A–458 at a point which lies N. 86°20' E., 2550 feet from the Northwest corner of said A–458; Thence, N. 86°20' E., 1800 feet, along the North line of said A–458; Thence, Southwesterly, Northerly and Southeasterly, approximately 4500 feet, along the westerly gradient boundary of Village Creek; Thence, S. 86°20' W., 1950 feet, along the South line of said A–458; Thence, N. 51°34' W., 2325 feet, to the Point of Beginning.

Survey and Abstract No.: F. McCafferty-38; A–397.

Portion: All.

Survey and Abstract No.: F. F. McCafferty-37; A–396.

Portion: Beginning at the Northwest corner of A–396; Thence, N. 88°11' E., 350 feet; Thence, Southeasterly, approximately 7500 feet, along the southerly gradient boundary of Village Creek; Thence, S. 86°44' W., 5550 feet, along the South line of A–396; Thence, N. 01°35'15" W., 1352.23 feet, to the Point of Beginning.

Also Beginning at the Northeast corner of A–396; Thence, S. 01°49' E., 300 feet; Thence Northwesterly, approximately 5500 feet, along the northerly gradient boundary of Village Creek; Thence, N. 88°11' E., 4550 feet, along the North line of A–396, to the Point of Beginning.

Survey and Abstract No.: J. M. Swisher; A–631.

Portion: Part of said A–631 described as follows: Beginning on the North line of said A–631 at a point which lies N. 84°52'22" W., 5650 feet, from the Northwest corner of said A–631; Thence, N. 84°52'22" E., 2800 feet, along the North line of A–631; Thence, Southeasterly, approximately 3000 feet, along the westerly gradient boundary of Village Creek; Thence, S. 88°11' W., 350 feet, along the North line of the F. McCafferty survey, A–396; Thence, S. 01°35'15" E., 1352.23 feet, along the easterly boundary of A–631; Thence, N. 55°00' W., 2650 feet; Thence, S. 86°44' W., 2950 feet, along the north line of the J. Lewis survey, A–365; Thence, N. 01°38' W., 350 feet, to the Point of Beginning.

Survey and Abstract No.: G. R. Ferguson; A–678.

Portion: Part of A–678 described as follows: Beginning on the North line of said A–678 at a point which lies S. 84°52'22" W., 3900 feet, from the Northeast corner of said A–678; Thence, S. 71°40' E., 2250 feet; Thence, S. 88°11' W., 1000 feet; Thence, Northwesterly, approximately 3000 feet, along the easterly gradient boundary of Village Creek; Thence, N. 84°52'22" E., 1500 feet, to the Point of Beginning.

Survey and Abstract No.: L. De Lesslie; A–35.

Portion: Part of said A–35 described as follows: Beginning on the south line of said A–35 at a point which lies S. 84°52'22" W., 7450 feet from the southeast corner of said A–35; Thence, S. 84°52'22" W., 1500 feet; Thence, Northwesterly, approximately 2000 feet, along the easterly gradient boundary of Village Creek; Thence, N. 66°14' E., 600 feet, along the southerly right-of-way line of Texas State Highway 327; Thence, S. 44°39' E., 1000 feet; Thence, S. 05°03' E., 500 feet; Thence, S. 71°40' E., 1550 feet, to the Point of Beginning.

Also Beginning on the South line of said A–35 at a point which lies N. 84°52'22" E., 6950 feet from the Southwest corner of said A–35; Thence, N. 07°49' E., 150 feet; Thence, N. 72°02' E., 250 feet; Thence, N. 07°29' W. 200 feet; Thence, N. 35°21' W., 250 feet; Thence, N. 00°25' W., 200 feet; Thence, N. 86°44' E., 400 feet; Thence, N. 04°21' W., 450 feet; Thence, N. 66°14' E., 1300 feet, along the South right-of-way line of Texas State Highway 327; Thence, Southeasterly, approximately 2000 feet, along the westerly gradient boundary of Village Creek; Thence S. 84°52'22" W., 2800 feet, to the Point of Beginning.

Also Beginning on the Northerly right-of-way line of Texas State Highway No. 327 at a point which lies S. 04°21' E., 150 feet; N. 66°14' E., 2000 feet; S. 44°39' E., 1000 feet; S. 05°03' E., 500 feet; S. 71°40' E., 1550 feet; N. 84°52'22" E., 7450 feet from the Southeast corner of said A–35; Thence, N. 04°21' W. 1300 feet; Thence, S. 86°44' W. 3750 feet; Thence, N. 03°52' W., 2600 feet; Thence, Southeasterly, approximately 13,500 feet along the westerly gradient boundary of Village Creek; Thence, S. 66°14' W., 1200 feet, along the North right-of-way line of Texas State Highway 327, to the Point of Beginning.

Survey and Abstract No.: Jacob Hall; A–31.

Portion: Part of said A–31 described as follows: Beginning on the North line of said A–31 at a point which lies N. 87°00' E., 2800 feet from the Northwest corner of said A–31; Thence, N. 87°00' E., 400 feet, along the North line of said A–31; Thence, Southeasterly, approximately 15,500 feet, along the westerly gradient boundary of Village Creek; Thence, S. 86°55' W., 950 feet, along the South line of said A–31; Thence, N. 05°00' W., 850 feet; Thence, N. 29°21' W., 900 feet; Thence, N. 07°46' W., 550 feet; Thence, N. 41°02' W., 900 feet; Thence, N. 26°10' W., 1750 feet; Thence, N. 00°14' W., 1100 feet; Thence, N. 10°31' W., 1650 feet, to the Point of Beginning.

Also Beginning on the South line of said A–31 at a point which lies N. 86°55' E., 2750 feet from the Northwest corner of the L. De Lesslie Survey, A–35; Thence, Easterly, approximately 2600 feet, along the Southerly gradient boundary of Village Creek; Thence, S. 86°55' W., 1700 feet, to the Point of Beginning.

Survey and Abstract No.: Henry Binns; A–6.

Portion: Part of said A–6 described as follows: Beginning on the South line of said A–6 at a point which lies N. 87°00' E., 5850 feet from the Southwest corner of said A–6; Thence, N. 03°10' E., 1125 feet; Thence, S. 85°46' E., 600 feet, along the South right-of-way line of the A.T. and S.F. Railroad; Thence, Southerly, approximately 2000 feet, along the westerly gradient boundary of Village Creek; Thence, S. 87°00' W., 500 feet, along the south line of said A–6, to the Point of Beginning.

Also Beginning at a point of intersection of the Westerly gradient boundary of Village Creek with the North right-of-way line of A. T. and S. F. Railroad which lies N. 87°00' E., 5850 feet; N. 03°10' E., 1125 feet; S. 85°46' E., 600 feet and N. 04°14' E., 400 feet from the Southwest corner of said A–6; Thence, N. 85°46' W., 600 feet; Thence, N. 01°09' E., 1800 feet; Thence, N. 11°57' W., 1750 feet; Thence, 1400.85 feet; Thence, N. 88°15' E., 1400 feet, along the South right-of-way line of Farm Road 418; Thence, Southerly, approximately 10,000 feet, along the westerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the North line of said A–6 at a point which lies N. 87°42' E., 4300 feet from the Northwest corner of A–6; Thence, N. 87°42' E., 2100 feet, along the North line of A–6; Thence, Southerly, approximately 1000 feet, along the westerly gradient boundary of Village Creek; Thence S. 88°51' W., 2300 feet, along the North right-of-way line of Farm Road 418; Thence, S. 73°47' W., 400 feet, continuing along said North right-of-way line; Thence, N. 04°23' W., 600 feet, to the Point of Beginning.

Also Beginning on the North line of said A–6 at a point which lies N. 87°42' E., 6550 feet, from the Northwest corner of A–6; Thence, N. 87°42' E., 766 feet; Thence, S. 32°14' E., 693 feet; Thence, S. 88°51' W., 500 feet, along the Northerly right-of-way line of Farm Road 418; Thence, Northwesterly, approximately 1000 feet, along the easterly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: A. Hampton; A–30.

Portion: Part of said A–30 described as follows: Beginning on the North line of said A–30 at a point which lies N. 88°07'29" E., 5400 feet, from the Northwest corner of said A–30; Thence, N. 88°07'29" E., 1300 feet, along the North line of said A–30; Thence, Southwesterly, approximately 14,000 feet along the westerly gradient boundary of Village Creek; Thence, S. 87°42' W., 1100 feet; Thence, N. 16°22' E., 1306.04 feet; Thence, N. 41°32' E., 1500 feet; Thence, N. 68°07' E., 1100 feet; Thence, N. 11°23' E., 2000 feet, to the Point of Beginning.

Also Beginning on the South line of A–30 at a point which lies N. 87°42' E., 5600 feet from the Northwest corner of the Henry Binns survey, A–6; Thence, N. 05°20' W., 900 feet; Thence, Southeasterly, approximately 1500 feet, along the westerly gradient boundary of Village Creek; Thence, S. 87°42' W., 800 feet, along the South line of said A–30, to the Point of Beginning.

Also Beginning on the North line of A–30 at a point which lies N. 88°07'29" E., 7300 feet from the Northwest corner of said A–30; Thence, N. 88°07'29" E., 300 feet; Thence, Westerly, approximately 600 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the North line of A–30 at a point which lies N. 88°07'29" E., 7700 feet from the Northwest corner of said A–30; Thence, N. 88°07'29" E., 811.83 feet; Thence, S. 18°41'55" W., 1012.93 feet; Thence, N. 77°58' W., 650 feet; Thence, West, 300 feet; Thence, Northwesterly, approximately 1250 feet, along the easterly gradient boundary of Village Creek; Thence, N. 88°07'29" E., 300 feet, along the North line of A–30; Thence, Easterly, approximately 1000 feet along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the South line of A–30 at a point which lies N. 87°42' E., 6550 feet from the Northwest corner of the Henry Binns survey, A–6; Thence, Northwesterly and Northeasterly, approximately 11,000 feet, along the easterly gradient boundary of Village Creek; Thence, N. 85°01' E., 700 feet; Thence, S. 42°41' W., 4900 feet; Thence, S. 37°15' E., 1425 feet; Thence, S. 32°14' E., 657 feet; Thence, S. 87°42' W., 766 feet, to the Point of Beginning.

Survey and Abstract No.: F. P. Elliott; A–18.

Portion: Part of said A–18 described as follows: Beginning on the North line of said A–18 at a point which lies N. 86°44' E., 4488.81 feet, from the Northwest corner of said A–18, Thence, N. 86°44' E., 3500 feet, along the North line of said A–18; Thence, S. 21°24'28" W., 2352.86 feet; Thence, S. 14°00' W., 400 feet; S. 14°02' E., 1250 feet; Thence, S. 33°45' E., 2500 feet; Thence, S. 14°40' E., 1150 feet; Thence, S. 88°07'29" W., 811.83 feet, along the South line of said A–18; Thence, Northwesterly, approximately 11,750 feet, along the easterly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the North line of said A–18 at a point which lies N. 86°44' E., 2500 feet from the Northwest corner of said A–18; Thence, N. 86°44' E., 988.81 feet, along the North line of said A–18; Thence, Southeasterly and Northeasterly approximately 500 feet, along the southerly gradient boundary of Village Creek; Thence, N. 86°44' E., 600 feet, along the North line of A–18; Thence, Southeasterly 11,800 feet, along the westerly gradient boundary of Village Creek; Thence, S. 88°07'29" W., 300 feet, along the South line of said A–18; Thence, Northwesterly and Southwesterly, 800 feet, along the northerly gradient boundary of Village Creek; Thence, S. 88°07'29" W., 1300 feet, along the South line of A–18; Thence, N. 16°41'06" W., 3455.80 feet; Thence, N. 00°55' W., 1900 feet; Thence, N. 60°58' W., 1850 feet; Thence, N. 48°46' W., 1006.93 feet, to the Point of Beginning.

Also Beginning on the North line of said A–18 at a point which lies N. 86°44' E., 3588.81 feet from the Northwest corner of said A–18; Thence, N. 86°44' E., 100 feet, along the North line of said A–18; Thence, Westerly, 150 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the South line of said A–18 at a point which lies N. 88°07'29" E., 6850 feet from the Southwest corner of said A–18; Thence, Northeasterly and Southeasterly, approximately 500 feet, along the southerly gradient boundary of Village Creek; Thence, S. 88°07'29" W., 300 feet, to the Point of Beginning.

Survey and Abstract No.: A.A. Burell; A–5.

Portion: Part of said A–5 described as follows: Beginning on the South line of said A–5 at a point which lies N. 86°44' E., 2500 feet from the Southwest corner of said A–5; Thence, N. 48°46' W., 3593.07 feet; Thence, N. 03°25'18" W., 900 feet, along the West line of said A–5; Thence, Southeasterly approximately 8500 feet along the westerly gradient boundary of Village Creek; Thence, S. 86°44' W., 988.81 feet, along the South line of said A–5, to the Point of Beginning.

Also Beginning on the South line of said A–5 at a point which lies N. 86°44' E., 4488.81 feet, from the Southwest corner of A–5; Thence, Northwesterly and Southwesterly approximately, 1500 feet, along the northerly gradient boundary of Village Creek; Thence, S. 86°44' W., 100 feet, along the South line of said A–5; Thence, Northerly, approximately 8500 feet, along the easterly gradient boundary of Village Creek; Thence, N. 03°25'18" W., 1350 feet along the west line of said A–5; Thence S. 37°25' E., 1750 feet; Thence, S. 26°14'10" E., 950 feet; Thence, S. 65°31'04" E., 2400 feet; Thence, S. 77°49' E., 1800 feet; Thence, South, 950 feet; Thence, S. 86°44' W., 600 feet, to the Point of Beginning.

Also Beginning on the South line of said A–5 at a point which lies N. 86°44' E., 3788.81 feet, from the Southwest corner of A–5; Thence, Northeasterly and Southeasterly, approximately 1250 feet, along the southerly gradient

boundary of Village Creek; Thence, S. 86°44′ W., 600 feet, along the South line of said A–5, to the Point of Beginning.

Survey and Abstract No.: G. W. E.; A–886.

Portion: All.

Survey and Abstract No.: Lawrence & Creecy; A–374.

Portion: Part of A–374 described as follows: Beginning at the Northeast corner of said A–374; Thence, S. 03°25′18″ E., 550 feet, along the East line of A–374; Thence, Northerly, approximately 600 feet, along the easterly gradient boundary of Village Creek; Thence, N. 88°00′ E., 50 feet, to the Point of Beginning.

Also Beginning on the North line of A–374 at a point which lies S. 88°00′ W., 150 feet from the Northeast corner of said A–374; Thence, Southerly, approximately 700 feet, along the westerly gradient boundary of Village Creek; Thence, S. 03°25′18″ E., 300 feet, Thence, N. 51°13′ W., 1500 feet, Thence, N. 88°00′ E., 961.15 feet, along the North line of said A–374, to the Point of Beginning.

Survey and Abstract No.: H. Barber; A–88.

Portion: Part of A–88 described as follows: Beginning on the West line of said A–88 at a point which lies S. 03°23′ E., 4400 feet, from the Northwest corner of said A–88; Thence, S. 36°11′ E., 5050 feet; Thence, S. 59°21′ E., 4400 feet; Thence, S. 03°25′18″ E., 800 feet, along the East line of said A–88; Thence, S. 86°58′27″ W., 100 feet along the South line of said A–88; Thence, Northwesterly, approximately 17,500 feet along the easterly gradient boundary of Village Creek; Thence, N. 03°23′ W., 1000 feet, along the West line of said A–88 to the Point of Beginning.

Survey and Abstract No.: G. Kisner; A–349.

Portion: Part of A–349 described as follows: Beginning on the East line of said A–349 at a point which lies S. 03°23′ E., 3800 feet from the Northeast corner of said A–349; Thence, S. 03°23′ E., 1000 feet, along the East line of said A–349; Thence, Southwesterly, approximately 4000 feet, along the northerly gradient boundary of Village Creek; Thence, N. 03°23′ W., 950 feet, along the West line of said A–349; Thence, N. 86°37′ E., 1300 feet; Thence, N. 58°36′ E., 2050 feet, to the Point of Beginning.

Survey and Abstract No.: G. Dorsey-1; A–191.

Portion: Part of A–191 described as follows: Beginning on the West line of said A–191 at a point which lies N. 04°50′ W., 4000 feet from the Southwest corner of said A–191; Thence, N. 04°50′ W., 300 feet, along the West line of said A–191; Thence, Easterly, approximately 5000 feet, along the southerly gradient boundary of Village Creek; Thence, S. 04°50′ E., 500 feet, along the East line of said A–191; Thence, S. 53°51′ W., 3050 feet, to the Point of Beginning.

Survey and Abstract No.: G. Dorsey-2; A–192.

Portion: Part of A–192 described as follows: Beginning on the East line of said A–192 at a point which lies N. 04°50′ W., 4000 feet, from the Southeast corner of said A–192; Thence, S. 86°37′ W., 900 feet; Thence, N. 66°31′ W., 2250 feet; Thence, N. 04°50′ W., 900 feet, along the West line of said A–192; Thence, Easterly, approximately 6000 feet, along the southerly gradient boundary of Village Creek; Thence, S. 04°50′ E., 300 feet, along the East line of said A–192, to the Point of Beginning.

Survey and Abstract No.: G. Dorsey-3; A–193.

Portion: Part of A–193 described as follows: Beginning on the East line of said A–193 at a point which lies N. 04°50′ W., 5050 feet from the Southeast corner of said A–193; Thence, N. 59°51′ W., 1450 feet; Thence, S. 56°43′ W., 1150 feet; Thence, N. 03°56′ W., 1650 feet, along the West line of said A–193; Thence, Easterly, approximately 3500 feet, along the southerly gradient boundary of Village Creek; Thence, S. 04°50′ E., 900 feet, to the Point of Beginning.

Survey and Abstract No.: T.M. McNeely; A–838.

Portion: Part of A–838 described as follows: Beginning at Turkey Creek Unit angle point no. 92; Thence, along the Easterly line of said Turkey Creek Unit the following 3 courses: 1. S. 34°41′58″ W., 1201.85 feet, to angle point no. 91; 2. S. 03°01′54″ E., 2960.10 feet, to angle point no. 90; 3. N. 71°43′43″ E., 1516.87 feet, to angle point no. 89; Thence, N. 05°14′01″ W., 2551.72 feet, along the West line of said A–838; Thence, N. 36°15′ W., 1150 feet, to the Point of Beginning.

Survey and Abstract No.: B. B. B. & C. R. R.–120; A–97.

Portion: Part of A–97 described as follows: Beginning at Turkey Creek Unit angle point no. 89, said point being the Southwest corner of said A–97; Thence, N. 05°14′01″ W., 2551.72 feet; Thence, S. 42°09′ E., 1800 feet; Thence, S. 11°12′ W., 1350 feet; Thence, N. 78°17′10″ W., 762.39 feet, along the South line of said A–97, to the Point of Beginning.

Also land in Hardin County as follows: All land lying between the Northerly and Easterly gradient boundary and southerly and westerly gradient boundary of Village Creek extending from the westerly line of the Lower Neches River Corridor Unit of the preserve upstream to the Easterly line of the Turkey Creek Unit of the preserve.

Boundary Description, Big Thicket National Preserve Big Sandy Corridor Unit;That Portion Lying Within Hardin County

The lands described below are derived from National Park Service Map Number 175–80008, copies of which are available for public inspection in the office of the National Park Service, Department of the Interior and the offices of the Superintendent of the preserve.

Survey and Abstract No.: George Brown Heirs; A–74.

Portion: Part of A–74 described as follows: Beginning at Turkey Creek Unit angle point no. 77; Thence, Northwesterly, approximately 10,000 feet, along the northerly gradient boundary of Village Creek; Thence, N. 01°00′ W., 1600 feet along the West line of said A–74; Thence, S. 70°47′ E., 1250 feet; Thence, S. 62°52′ E., 3700 feet; Thence, N. 70°37′ E., 1750 feet; Thence, N. 88°22′ E., 1500 feet; Thence, S. 18°57′10″ W., 900 feet, along the common line between the Turkey Creek Unit and said A–74, to the Point of Beginning.

Survey and Abstract No.: Samuel McDade; A–400.

Portion: Part of A–400 described as follows: Beginning at the Northeast corner of said A–400; Thence, S. 03°07′ E., 2250 feet, along the East line of said A–400; Thence, N. 81°10′ W., 3850 feet; Thence, N. 03°07′ W., 1750 feet, along the West line of A–400; Thence, Southeasterly, approximately 4500 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: James Castello; A–165.

Portion: Part of A–165 described as follows: Beginning at the Northeast corner of said A–165; Thence, S. 03°07′ E., 1750 feet along the East line of A–165; Thence, N. 60°30′ E., 840 feet; Thence, S. 12°51′ W., 300 feet; Thence, S. 61°20′W., 200 feet; Thence, S. 07°47′E., 250 feet; Thence, S. 22°48′ E., 500 feet; Thence, S. 07°17′ E., 500 feet; Thence, S. 22°50′ W., 300 feet; Thence, S. 04°56′ E., 250 feet; Thence, S. 24°07′ W., 570 feet; Thence, S. 14°44′ E., 600 feet; Thence, S. 08°40′ W., 850 feet; Thence, S. 16°27′05″ E., 725 feet; Thence, S. 52°59′33″ W., 213.60 feet; Thence, N. 16°27′05″ W., 300 feet along the East line of lands of United States of America, National Park Service; Thence, N. 16°27′05″ W., 544.56 feet; Thence, N. 08°40′ E., 853.14 feet; Thence N.14°44′ W., 691.11 feet; Thence, N. 24°07′ E., 588.71 feet;

Thence, N. 04°56′ W., 247.62 feet; Thence, N. 22°50′ E., 295.63 feet; Thence, N. 07°17′ W., 418.94 feet; Thence, N. 22°48′ W., 499.11 feet; Thence, N. 07°47′ W., 414.12 feet; Thence, N. 61°20′ E., 247.70 feet; Thence, N. 12°51′ E., 269.75 feet; Thence, N. 60°30′ W., 2751.25 feet; Thence, N. 03°07′ W., 1200 feet; Thence, Southeasterly, approximately 5500 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Hardin County School Land; A–257.

Portion: Part of A–257 described as follows: Beginning at the Southeast corner of said A–257; Thence, Northwesterly, approximately 2250 feet, along the northerly gradient boundary of Village Creek; Thence, N. 01°30′ W., 700 feet along the common line between J. N. Cotten survey, A–534 and said A–257; Thence, S. 70°47′ E., 1150 feet; Thence, S. 01°00′ E., 1600 feet, along the common line between George Brown Heirs survey, A–74 and said A–257, to the Point of Beginning.

Also Beginning at the point of intersection of the West right-of-way line of U.S. Highway 69 and 287 with the northerly gradient boundary of Village Creek; Thence, Westerly, approximately 350 feet, along the northerly gradient boundary of Village Creek; Thence, N. 20°00′ W., 1800 feet, along the East right-of-way line of Southern Pacific Railroad; Thence, N. 88°52′ E., 600 feet; Thence, S. 10°55′42″ E., 1750 feet along the West right-of-way line of U.S. Highway 69 and 287, to the Point of Beginning.

Also Beginning at the point of intersection of the West line of the tract of land now or formerly owned by G.N. Christian, A–257–24, with the northerly gradient boundary of Village Creek; Thence, Northwesterly, approximately 8000 feet, along the northerly gradient boundary of Village Creek; Thence, N. 02°58′ W., 1300 feet, along the East line of the tract of land now or formerly owned by Watson and Watson, A–257–86–A; Thence, S. 59°23′ E., 5500 feet; Thence, S. 02°55′ E., 2050 feet, to the Point of Beginning.

Survey and Abstract No.: J.N. Cotten; A–534.

Portion: Part of A–534 described as follows: Beginning at the point of intersection of the West right-of-way line of U.S. Highway 69 and 287 with the northerly gradient boundary of Village Creek; Thence, N. 11°38′ W., 1250 feet, along the East right-of-way line of said U.S. Highway 69 and 287; Thence S. 70°47′ E., 1200 feet; Thence, S. 01°30′ E., 700 feet, along the East line of said A–534; Thence, Northwesterly, approximately 1400 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Samuel Lint; A–368.

Portion: Part of A–368 described as follows: Beginning at the Northeast corner of said A–368; Thence, S. 03°07′ E., 1200 feet, along the East line of said A–368; Thence, S. 88°09′ W., 850 feet; Thence, N. 11°38′ W., 1300 feet, along the East right-of-way line of U.S. Highway 69 and 287; Thence, Easterly, approximately 1200 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning at the point of intersection of the West right-of-way line of U.S. Highway 69 and 287 with the southerly gradient boundary of Village Creek; Thence, S. 10°55′42″ E., 1750 feet, along the West right-of-way line of U.S. Highway 69 and 287 to the point of intersection of said West right-of-way of U.S. Highway 69 and 287 with the East right-of-way line of the Southern Pacific Railroad; Thence, N. 20°00′ W., 1800 feet, along the East right-of-way line of the Southern Pacific Railroad; Thence, Easterly, approximately 250 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning at the Northwest corner of said A–368; Thence, Easterly, approximately 1250 feet, along the southerly gradient boundary of Village Creek; Thence, S. 20°00′ E., 1200 feet, along the Westerly right-of-way line of Southern Pacific Railroad; Thence, S. 88°09′ W., 1325 feet; Thence, N. 03°32′ W., 1050 feet, to the Point of Beginning.

Survey and Abstract No.: James U. Richardson; A–436.

Portion: Part of A–436 described as follows: Beginning at the Northeast corner of said A–436; Thence, S. 03°14′ E., 700 feet, along the East line of said A–436; Thence, N. 49°04′ W., 400 feet; Thence, N. 71°14′ W., 2000 feet; Thence, West, 2250 feet; Thence, N. 03°47′ W., 2700 feet, along the East line of the tract of land now or formerly owned by G.D. Flowers, A–436–6; Thence, S. 87°00′ W., 1300 feet, along the North line of said A–436–6; Thence, N. 03°47′ W., 1600 feet, along the West line of said A–436; Thence, Southeasterly, approximately 9000 feet along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Sam Overstreet; A–851.

Portion: Part of A–851 described as follows: Beginning on the West line of said A–851 at a point which lies N. 03°47′ W., 1150 feet, from the Southwest corner of said A–851; Thence, N. 03°37′ W., 250 feet, along the West line of said A–851; Thence, Northeasterly, approximately 4000 feet along the southerly gradient boundary of Village Creek; Thence, S. 03°47′ E., 1600 feet, along the East line of said A–851; Thence, S. 87°00′ W., 1250 feet, to the Point of Beginning.

Survey and Abstract No.: A. Rodriguez; A–434.

Portion: Part of A–434 described as follows: Beginning at the Southwest corner of A–434; Thence, N. 03°19′ W., 500 feet, along the West line of said A–434; Thence, N. 45°56′ E., 1800 feet; Thence, S. 80°41′ E., 1450 feet; Thence, S. 01°55′ E., 900 feet; Thence, Northwesterly and Southwesterly, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Edward Lubititet; A–366.

Portion: Part of A–366 described as follows: Beginning at the Southwest corner of said A–366; Thence, N. 04°55′ W., 1000 feet, along the West line of said A–366; Thence, S. 82°53′ E., 3475 feet; Thence, S. 04°55′ E., 1300 feet, along the East line of said A–366; Thence, Westerly, approximately 4500 feet along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Jacob Buckman; A–85.

Portion: Part of A–85 described as follows: Beginning at the Northwest corner of said A–85; Thence, Easterly, approximately 3500 feet, along the southerly gradient boundary of Village Creek; Thence, S. 04°11′ E., 350 feet, along the East line of said A–85; Thence, N. 86°10′ W., 3275 feet; Thence, N. 02°30′ W., 850 feet, along the West line of said A–85, to the Point of Beginning.

Survey and Abstract No.: Thomas J. Hatton; A–279.

Portion: Part of A–279 described as follows: Beginning at the Southwest corner of said A–279; Thence, N. 04°30′ W., 2000 feet, along the West line of said A–279; Thence, S. 59°47′ E., 3200 feet; Thence, S. 04°55′ E., 1000 feet, along the East line of said A–279; Thence, Northwesterly, approximately 3000 feet along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Luke Bryan; A–76.

Portion: Part of A–76 described as follows: Beginning at the Northeast corner of said A–76; Thence, S. 02°30′ E., 850 feet along the East line of said A–76; Thence, N. 38°02′ W., 1025 feet; Thence, S. 87°36′ W., 1300 feet; Thence, N. 03°15′ W., 600 feet, along the West line of said A–76; Thence, Southeasterly, 2500 feet, along the

southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: William Hamilton; A–266.

Portion: Part of said A–266 described as follows: Beginning at the Southwest corner of said A–266; Thence, N. 03°30′ W., 1300 feet, along the West line of said A–266; Thence, S. 75°30′ E., 2050 feet; Thence, S. 04°30′ E., 2000 feet, along the East line of said A–266; Thence, Northwesterly, approximately 3250 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Lewis Andrews; A–65.

Portion: Part of A–65 described as follows: Beginning at the Northeast corner of said A–65; Thence, S. 03°15′ E., 600 feet, along the East line of said A–65, Thence, S. 87°36′ W., 900 feet; Thence, N. 14°35′ W., 1275 feet; Thence, N. 39°12′ W., 1125 feet; Thence, N. 03°15′ W., 350 feet, along the West line of said A–65; Thence, Southeasterly, approximately 3000 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Thomas Penny; A–424.

Portion: Part of A–424 described as follows: Beginning at the Northeast corner of said A–424; Thence, S. 03°15′ E., 350 feet, along the East line of said A–424; Thence, S. 87°28′ W., 2700 feet; Thence, N. 02°45′ W., 1050 feet, along the West line of said A–424; Thence, Southeasterly, approximately 4000 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: W.O. Flowers; A–205.

Portion: Part of A–205 described as follows: Beginning at the Southwest corner of said A–205; Thence, N. 03°30′ W., 800 feet, along the West line of said A–205; Thence, S. 75°30′ E., 1900 feet; Thence, S. 03°30′ E., 1300 feet, along the East line of said A–205; Thence, Northwesterly, approximately 2500 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: D.F. Singleton; A–881.

Portion: Part of A–881 described as follows: Beginning at the Southwest corner of said A–881; Thence, N. 03°30′ W., 1000 feet, along the West line of said A–881; Thence, S. 75°30′ E., 350 feet; Thence, S. 03°30′ E., 800 feet, along the East line of said A–881; Thence, Southwesterly and Northwesterly, approximately 500 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: T.&N.O. Railroad; A–482.

Portion: Part of A–482 described as follows: Beginning at the Northeast corner of said A–482; Thence, S. 02°45′ E., 1050 feet, along the East line of said A–482; Thence, S. 87°28′ W., 2650 feet; Thence, N. 03°15′ W., 1100 feet, along the West line of said A–482; Thence, Easterly, approximately 2700 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Louis E. Nordman; A–412.

Portion: Part of A–412 described as follows: Beginning at the Southwest corner of said A–412; Thence, N. 03°54′ W., 1500 feet, along the West line of said A–412; Thence, S. 87°17′ E., 2600 feet; Thence, S. 03°30′ E., 1000 feet, along the East line of said A–412; Thence, Westerly, approximately 2500 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: James E. Price; A–556.

Portion: Part of A–556 described as follows: Beginning at the Northeast corner of said A–556; Thence, S. 03°15′ E., 1100 feet, along the East line of said A–556; Thence, S. 87°28′ W., 2700 feet; Thence, N. 03°15′ W., 850 feet, along the West line of said A–556; Thence, Easterly, approximately 3200 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Andrew Hay; A–264.

Portion: Part of A–264 described as follows: Beginning at the Northeast corner of said A–264; Thence, S. 03°15′ E., 850 feet, along the East line of said A–264; Thence, N .85°49′ W., 300 feet; Thence, N. 02°58′ W., 600 feet; Thence, Northeasterly and Southeasterly approximately 450 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning at the Northwest corner of said A–264; Thence, Southeasterly and Northeasterly, approximately 2250 feet, along the southerly gradient boundary of Village Creek; Thence, S. 02°58′ E., 850 feet; Thence, S. 88°04′ W., 1600 feet; Thence, N. 03°15′ W., 1550 feet along the West line of said A–264, to the Point of Beginning.

Survey and Abstract No.: Wilson Brooks; A–79.

Portion: ALL, of said A–79 that lies North of Farm Road 943.

Survey and Abstract No.: F. Helfenstein; A–263.

Portion: Part of A–263 described as follows: Beginning at the Southwest corner of said A–263; Thence, N.04°33′ W., 1950 feet, along the West line of said A–263; Thence, N. 88°31′ E., 4600 feet; Thence, S. 05°04′ E., 1950 feet, along the East line of said A–263; Thence, Northwesterly and Southwesterly, approximately 7500 feet along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Wilbur Cherry; A–154.

Portion: Part of A–154 described as follows: Beginning at the Northeast corner of said A–154; Thence, S. 03° 15′ E., 1050 feet, along the East line of said A–154; Thence, N. 82° 21′ W., 2000 feet; Thence, N. 01° 30′ W., 1500 feet, along the West line of said A–154; Thence, Southeasterly, approximately 3500 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also Beginning on the West line of said A–154 at a point which lies N. 01° 30′ W., 8050 feet from the Southwest corner of said A–154; Thence, N. 01° 30′ W., 300 feet, along the West line of said A–154; Thence, Southerly, approximately 350 feet, along the westerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Henry Emerson; A–203.

Portion: Part of A–203 described as follows: Beginning at the Southwest corner of said A–203; Thence, N. 03° 32′ W., 2500 feet, along the West line of said A–203; Thence, N. 85° 59′ E., 2650 feet; Thence, S. 04° 33′ E., 4400 feet, along the East line of said A–203; Thence, Northwesterly, approximately 4500 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Peter Rich; A–433.

Portion: Part of A–433 described as follows: Beginning at the Northwest corner of said A–433; Thence, Easterly, approximately 1500 feet, along the southerly gradient boundary of Village Creek; Thence, S. 01° 30′ E., 300 feet; Thence, Southerly, approximately 500 feet along the westerly gradient boundary of Village Creek; Thence, S. 01° 30′ E., 1500 feet, along the East line of said A–433; Thence, N. 59° 31′ W., 1600 feet; Thence, N. 01° 30′ W., 1250 feet, along the West line of said A–433, to the Point of Beginning.

Survey and Abstract No.: Eliza A. Davis; A–565.

Portion: Part of A–565 described as follows: Beginning at the Northeast corner of said A–565; Thence, S. 01° 30′ E., 1250 feet; Thence, N. 59° 31′ W., 450 feet; Thence, N. 44° 57′ W., 3825 feet; Thence, N. 02° 45′ W., 800 feet, along the West line of said A–565; Thence, Southeasterly, approximately 5500 feet, to the Point of Beginning.

Survey and Abstract No.: F. Kriner; A–352.

Portion: All.

Survey and Abstract No.: T. & N. O. Railroad; A–680.

Portion: All.

Big Sandy Corridor Unit That Portion Lying Within Hardin and Tyler Counties

Survey and Abstract No.: Mosley Baker; A–87.

Portion: Part of A–87 within Hardin County described as follows: Beginning at the Northeast corner of said A–87; Thence, S. 02°45′ E., 800 feet, along the East line of A–87; Thence, N. 83°04′ W., 1400 feet; Thence, N. 03°00′ W., 1200 feet, along the West line of said A–87, to a point on the North line of Hardin County; Thence, East, 1000 feet along the North line of Hardin County; Thence, Southerly, approximately 800 feet along the westerly gradient boundary of Village Creek, to the Point of Beginning.

Also, a part of A–87 within Tyler County, Beginning at the Northwest corner of said A–87; Thence, Easterly, approximately 1000 feet, along the southerly gradient boundary of Village Creek; Thence, West, 1000 feet, along the South line of Tyler County; Thence, N. 03°00′ W., 100 feet, along the West line of said A–87, to the Point of Beginning.

Survey and Abstract No.: Elizabeth McAnally; A–392.

Portion: Part of A–392 within Hardin County described as follows: Beginning on the North line of Hardin County at a point which lies S. 03°00′ E., 100 feet from the Northeast corner of said A–392; Thence, S. 03° 00′ E., 1200 feet, along the East line of said A–392; Thence, N. 83°04′ W., 1875 feet; Thence, N. 02°15′ W., 850 feet, along the West line of said A–392; Thence, East, 1850 feet, along the North line of Hardin County, to the Point of Beginning.

Also, a part of A–392 within Tyler County, Beginning at the Northeast corner of said A–392; Thence, S. 03°00′ E., 100 feet along the East line of said A–392; Thence, West, 1850 feet along the South line of Tyler County; Thence, N. 02°15′ W., 150 feet, along the West line of said A–392; Thence, Easterly, approximately 2000 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: John P. Dorenburg; A–186.

Portion: Part of A–186 within Hardin County described as follows: Beginning at the Northwest corner of said A–186; Thence, Northeasterly, 1000 feet, along the southerly gradient boundary of Village Creek; Thence, East 400 feet, along the North line of Hardin County; Thence, S. 02°15′ E., 850 feet, along the East line of said A–186; Thence, S. 87°54′ W., 1350 feet; Thence, North, 525 feet along the West line of said A–186, to the Point of Beginning.

Also, a part of A–186 within Tyler County, Beginning, at the Northeast corner of said A–186; Thence, S. 02°15′ E., 150 feet, along the East line of said A–186; Thence, West, 400 feet, along the South line of Tyler County; Thence, Northeasterly and Easterly approximately 500 feet, along the southerly gradient boundary of Village Creek, to the Point of Beginning.

Also, land in Hardin County and Tyler County described as follows: All land lying between the Northerly and Easterly gradient boundary and Southerly and Westerly gradient boundary of Village Creek extending from the westerly line of the Turkey Creek Unit of the preserve upstream, crossing through Hardin County and Tyler County to the Easterly line of Polk County.

Big Sandy Corridor Unit, That Portion Lying Within Tyler County

Survey and Abstract No.: F. Kriner; A–423.

Portion: Part of A–423 described as follows: Beginning at the Southwest corner of A–423; Thence, N. 02°45′ W., 1250 feet, along the West line of said A–423; Thence, N. 87°32′ E., 2800 feet; Thence, S. 03°32′ E., 1850 feet, along the East line of said A–423; Thence, West, 2850 feet, along the South line of Tyler County, to the Point of Beginning.

Survey and Abstract No.: T. & N. O. Railroad; A–924.

Portion: Part of A–924 described as follows: Beginning at the Southwest corner of said A–924; Thence, N. 03°00′ W., 1000 feet, along the West line of said A–924; Thence, N. 87°32′ E., 600 feet; Thence, S. 02°45′ E., 1250 feet, along the East line of A–924; Thence, West, 400 feet, along the South line of Tyler County; Thence, Northwesterly, approximately 500 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Survey and Abstract No.: Frederick Gunderman; A–286.

Portion: Part of A–286 described as follows: Beginning at the Southwest corner of said A–286; Thence, N. 03°00′ W., 1125 feet, along the West line of said A–286; Thence N. 87°00′ E., 1750 feet; Thence, S. 03°00′ E., 1100 feet, along the East line of said A–286; Thence, Westerly, approximately 1800 feet, along the northerly gradient boundary of Village Creek, to the Point of Beginning.

Big Sandy Corridor Unit, That Portion Lying Within Polk County

Survey and Abstract No.: C.J. Conner; A–463.

Portion: Part of A–463 described as follows: Beginning at the Northwest corner of said A–463; Thence, Southeasterly approximately 5000 feet along the southerly gradient boundary of Big Sandy Creek; Thence, S. 03°45′ E., 1600 feet along the East line of said A–463; Thence, Southwesterly and Northwesterly, approximately 2500 feet, along the northerly right-of-way line of Farm Road 943; Thence, N. 03°45′ W., 3400 feet, along the West line of said A–463, to the Point of Beginning.

Survey and Abstract No.: T.F. Pinckney; A–1030.

Portion: All.

Exception to A–1030

Excepting Therefrom the following described parcel: Beginning on the East line of said A–1030; Thence, S. 78°10′ W., 50 feet; Thence, N. 59°55′18″ W., 325 feet; Thence, N. 25°25′ E., 450 feet; Thence, East, 150 feet; Thence, S. 03°45′ W., 550 feet, along the East line of said A–1030, to the Point of Beginning.

Survey and Abstract No.: Hugh Jackson; A–361.

Portion: Part of A–361 described as follows: Beginning at the Northeast corner of said A–361; Thence, S. 03°45′ E., 3400 feet, along the East line of A–361; Thence, Northwesterly, approximately 3500 feet, along the North right-of-way line of Farm Road 943; Thence, N. 03°30′ W., 1300 feet, along the West line of said A–361; Thence, Easterly, approximately 4500 feet, along the southerly gradient boundary of Big Sandy Creek, to the Point of Beginning.

Survey and Abstract No.: Michael Fedenspill; A–725.

Portion: Part of A–725 described as follows: Beginning at the Southeast corner of said A–725; Thence, Westerly, approximately 3000 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 03°30′ W., 1230 feet; Thence, S. 87°54′ 33″ E., 1914.28 feet; Thence, S. 03°45′ E., 1080 feet, along the East line of said A–725, to the Point of Beginning.

Survey and Abstract No.: Marcell Victor; A–588.

Portion: Part of A–588 described as follows: Beginning at the Northwest corner of A–588; Thence, N. 67°00′ E., 350 feet, along the Northerly line of A–588; Thence, Southeasterly, approximately 3000 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 03°30′ E., 1300 feet, along the East line of said A–588;

Thence, Northwesterly, approximately 3000 feet, along the North right-of-way line of Farm Road 943; Thence, N. 03°45' W., 1400 feet, along the West line of said A–588, to the Point of Beginning.

Also Beginning at the Northeast corner of said A–588; Thence, S. 03°30' E., 1450 feet, along the East line of said A–588; Thence, Northwesterly, approximately 3000 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 67°00' E., 2600 feet, along the North line of said A–588, to the Point of Beginning.

Survey and Abstract No.: P. Garcia; A–254.

Portion: Part of A–254 described as follows: Beginning at the Northeast corner of said A–254; Thence, S. 03°45' E., 1400 feet along the East line of A–254; Thence, Northwesterly, approximately 1500 feet, along the Northerly right-of-way line of Farm Road 943; Thence, N. 67°00' E., 1450 feet, along the North line of A–254, to the Point of Beginning.

Survey and Abstract No.: Jacob Buckman; A–111.

Portion: Part of A–111 described as follows: Beginning at the Southeast corner of said A–111; Thence, N. 53°33' E., 3618.44 feet, along the South line of said A–111; Thence, N. 02°45' W., 1230.86 feet along the West line of said A–111; Thence, S. 48°30' E., 3875 feet; Thence, S. 04°45' E., 814.38 feet, along the East line of said A–111, to the Point of Beginning.

Survey and Abstract No.: I. & G. N. Railroad; A–701.

Portion: Part of said A–701 described as follows: Beginning at the Southeast corner of said A–701; Thence, Northwesterly, approximately 250 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 53°33' W., 170 feet along the southerly line of said A–701; Thence, Northwesterly, approximately 1100 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 53°33' W., 650 feet, along the southerly line of said A–701; Thence, Northwesterly, approximately 900 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 53°33' W., 450 feet, along the Southerly line of said A–701; Thence, Northwesterly, approximately 800 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 53°33' W., 1550 feet, along the Southerly line of said A–701; Thence, N. 36°52' W., 1350 feet; Thence, S. 48°30' E., 4500 feet; Thence, S. 02°45' E., 1230.86 feet, along the East line of said A–701, to the Point of Beginning.

Also Beginning on the South line of said A–701 at a point which lies N. 53°33' W., 100 feet from the Southeast corner of said A–701; Thence, N. 53°33' W., 50.29 feet, along the south line of said A–701; Thence, Southeasterly, approximately 250 feet along the southerly gradient boundary of Big Sandy Creek, to the Point of Beginning.

Also Beginning on the South line of said A–701 at a point which lies N. 53°33' W., 520.29 feet from the Southeast corner of said A–701; Thence, N. 53°33' W., 750 feet along the South line of said A–701; Thence, Southeasterly, approximately 1100 feet, along the southerly gradient boundary of Big Sandy Creek, to the Point of Beginning.

Also Beginning on the South line of said A–701 at a point which lies N. 53°33' W., 2120.29 feet, from the Southeast corner of said A–701; Thence, N. 53°33' W., 500 feet, along the South line of said A–701; Thence, Southeasterly, approximately 900 feet, along the southerly gradient boundary of Big Sandy Creek, to the Point of Beginning.

Also Beginning on the South line of said A–701 at a point which lies N. 53°33' W., 3270.29 feet from the Southeast corner of said A–701; Thence, N. 53°33' W., 350 feet, along the South line of said A–701; Thence, Southeasterly, approximately 800 feet, along the southerly gradient boundary of Big Sandy Creek, to the Point of Beginning.

Survey and Abstract No.: Andreas Morales; A–52.

Portion: Part of A–52 described as follows: Beginning on the Southeasterly line of said A–52 at a point which lies S. 67°00' W., 4400 feet from the Easterly most corner of said A–52; Thence N. 54°24'31" W., 848.66 feet, along the North right-of-way line of Farm Road 943; Thence, N. 23°49' W., 700 feet; Thence, N. 05°25' W., 2300 feet; Thence, N. 39°32' W., 2700 feet; Thence, N. 88°56' W., 1540 feet; Thence, N. 63°10' W., 625 feet; Thence, S. 65°25' W., 175 feet; Thence, N. 24°35' W., 1350 feet; Thence, S. 63°43' W., 2050 feet; Thence, N. 52°51' W., 2600 feet; Thence, S. 63°14' W., 1825 feet; Thence, N. 63°23' W., 1925 feet, along the North right-of-way line of Farm Road 943; Thence, N. 59°53' W., 3250 feet, along the North right-of-way line of Farm Road 943; Thence, N. 65°00' E., 3700 feet along the Northwesterly line of said A–52; Thence, Southeasterly, approximately 21,000 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 350 feet along the Northeasterly line of said A–52; Thence, Southeasterly, approximately 900 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 500 feet along the Northeasterly line of said A–52; Thence, Southeasterly, approximately 1000 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 750 feet, along the Northeasterly line of said A–52; Thence, Southeasterly, approximately 500 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 50.29 feet, along the Northeasterly line of said A–52; Thence, southeasterly, approximately 8100 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 67°00' W., 1800 feet, along the southerly line of said A–52, to the Point of Beginning.

Also Beginning at the most Northerly corner of said A–52; Thence, S. 27°46' W., 2100 feet; Thence, Northwesterly, approximately 2500 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 65°00' E., 3000 feet along the Northwesterly line of said A–52, to the Point of Beginning.

Also Beginning on the Northeasterly line of A–52 at a point which lies N. 53°33' W., 9000 feet; from the most Easterly corner of said A–52; Thence, Northwesterly, approximately 900 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 450 feet, along the Northeasterly line of said A–52, to the Point of Beginning.

Also Beginning on the Northeasterly line of said A–52 at a point which lies N. 53°33' W., 7650 feet; from the most Easterly corner of said A–52; Thence, Northwesterly, approximately 1000 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 650 feet, along the Northeasterly line of A–52, to the Point of Beginning.

Also Beginning on the Northeasterly line of said A–52 at a point which lies N. 53°33' W., 6530 feet; from the most Easterly corner of said A–52; Thence, Northwesterly, approximately 500 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 170 feet, along the Northeasterly line of said A–52, to the Point of Beginning.

Also Beginning at the most Easterly corner of said A–52; Thence, S. 67°00' W., 2600 feet, along the Southerly line of said A–52; Thence, Northwesterly, approximately 8000 feet, along the Northerly gradient boundary of Big Sandy Creek; Thence, S. 53°33' E., 6279.71 feet, along the Northeasterly line of said A–52, to the Point of Beginning.

Survey and Abstract No.: Mary Thomas; A–75.

Portion: Part of said A–75 described as follows: Beginning on the Southerly line of said A–75 at a point which lies S. 65°00' W., 3805.45 feet, from the most Easterly corner of said A–75; Thence, S. 65°00' W., 1969.57 feet, along the Southerly line of said A–75; Thence, N. 54°13' W., 2425 feet; Thence, N. 61°43' E., 1950 feet; Thence, N. 53°26' W., 1400 feet; Thence, N. 65°00' E., 2200 feet; Thence, Southeasterly, approximately 3500 feet, along the southerly gradient boundary of Big Sandy Creek; Thence, S. 63°16' W., 1200 feet; Thence, S. 53°26' E., 1750 feet, to the Point of Beginning.

Also Beginning on the Northeasterly line of said A–75 at a point which lies N. 54°46' W., 1901.61 feet, from the most Easterly corner of said A–75; Thence, S. 63°16' W., 2396.27 feet; Thence, Northwesterly, approximately 3500 feet, along the northerly gradient line of Big Sandy Creek; Thence, N. 65°00' E., 1400 feet; Thence, S. 54°46' E., 2083.50 feet, to the Point of Beginning.

Also Beginning at the most Easterly corner of said A–75, Thence, S. 65°00' W., 3000 feet, along the Southerly line of said A–75; Thence, Northwesterly, approximately 3500 feet, along the northerly gradient boundary of Big Sandy Creek; Thence, N. 63°16' E., 2800 feet; Thence, S. 54°46' E., 1650 feet, along the Northeasterly line of said A–75, to the Point of Beginning.

Also, land in Polk County described as follows: All land lying between the Northerly and Easterly gradient boundary and Southerly and Westerly gradient boundary of Big Sandy Creek extending upstream, from the East line of Polk County to the East line of the Big Sandy Creek Unit of the preserve.

Boundary Description—Big Thicket National Preserve, Canyonlands Unit, That Portion Lying Within Tyler County

The lands described below are derived from National Park Service Map Number 175–80,008, copies of which are available for public inspection in the offices of the National Park Service, Department of the Interior, and the offices of the Superintendent of the preserve.

Survey and Abstract No.: John J. Pemberton; A–503.

Portion: Part of A–503 described as follows: Beginning on the Westerly line of the Upper Neches River Corridor Unit at a point which lies S. 04°55'40" E., 382.17 feet, from angle point no. 134 of said Upper Neches River Corridor Unit; Thence, S. 04°55'40" E., 109.71 feet; Thence, S. 86°20'45" W., 1300 feet; Thence, N. 51°18' W., 700 feet; Thence, N. 87°39' E., 2150 feet, along the North line of said A–503, to the Point of Beginning.

Survey and Abstract No.: John J. Pemberton; A–529.

Portion: Part of A–529 described as follows: Beginning at angle point no. 132 on the Westerly line of the Upper Neches River Corridor Unit; Thence, along the Westerly line of said Upper Neches River Corridor Unit, the following 3 courses: 1. S. 35°10'38" E., 979.76 feet; 2. S. 40°36'33" W., 2180.43 feet; 3. S. 04°55'40" E., 382.17 feet; Thence, S. 87°39'00" W., 2150 feet, along the South line of said A–529; Thence, N. 21°34' W., 2150 feet; Thence, N. 86°49'01" E., 3800 feet, to the Point of the Beginning.

Survey and Abstract No.: C.J.M. Sapp; A–597.

Portion: Part of A–597 described as follows: Beginning at angle point no. 131 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 35°10'38" E., 1300 feet, to angle point no. 132 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 86°49'01" W., 3800 feet, along the South line of said A–597; Thence, N. 21°34' W., 850 feet, to the Southeast corner of the W. D. Pearce Survey, A–520; Thence, N. 03°00' W., 300 feet; Thence, N. 86°49'01" E., 3350 feet, along the North line of said A–597 to the Point of Beginning.

Survey and Abstract No.: Solomon Bright, A–90.

Portion: Part of A–90 described as follows: Beginning at angle point no. 130 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 40°06'33" E., 2472.08 feet, to angle point no. 131 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 86°49'01" W., 3350 feet, along the South line of said A–90; Thence, N. 03°00' W., 2250 feet, along the West line of said A–90; Thence, N. 87°00' E., 1900 feet, to the Point of Beginning.

Survey and Abstract No.: C. J. M. Sapp; A–599.

Portion: Part of A–599 described as follows: Beginning at angle point no. 129 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 26°28'58" W., 1333.25 feet, to angle point no. 130 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 87°00' W., 1900 feet, along the South line of said A–599; Thence, N. 03°00' W., 1200 feet, along the West line of said A–599; Thence, N. 87°00' E., 2400 feet, to the Point of Beginning.

Survey and Abstract No.: W. D. Pearce; A–520.

Portion: Part of A–520 described as follows: Beginning at the Northeast corner of said A–520; Thence, S. 03°00' E., 2500 feet, along the East line of said A–520; Thence, S. 87°00' W., 1700 feet; Thence, N. 03°00' W., 2500 feet; Thence, N. 87°00' E., 1700 feet, along the North line of said A–520, to the Point of Beginning.

Survey and Abstract No.: Josiah Wheat; A–661.

Portion: Part of A–661 described as follows: Beginning at angle point no. 128 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 17°39'17" W., 2665 feet, to angle point no. 129 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 87°00' E., 4100 feet, along the South line of said A–661; Thence, N. 06°19' W., 2000 feet; Thence, N. 26°28' W., 750 feet; Thence, N. 87°19'20" E., 5900 feet, along the North line of said A–661, to the Point of Beginning.

Survey and Abstract No.: James H. Fulgham; A–256.

Portion: Part of A–256 described as follows: Beginning at angle point no. 125 on the Westerly line of the Upper Neches River Corridor Unit; Thence, along the Westerly line of the Upper Neches River Corridor Unit the following 3 courses: 1. S. 65°03'35" E., 2077.79 feet; to angle point no. 126; 2. S. 04°00' E., 1254.69 feet, to angle point no. 127; 3. S. 06°53'46" W., 1840.95 feet to angle point no. 128; Thence, S. 87°19'20" W., 4100 feet, along the South line of A–256; Thence, N. 25°30' W., 1450 feet; Thence, N. 08°45' W., 1900 feet; Thence N. 27°30' W., 500 feet; Thence, S. 86°33'27" W., 3600 feet, along the North line of said A–25, to the Point of Beginning.

Survey and Abstract No.: Jackson Williams; A–660.

Portion: Part of A–660 described as follows: Beginning at angle point no. 124 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 18°36'52" E., 1899.72 feet, to angle point no. 125 on the Westerly line of the Upper Neches River Corridor Unit; Thence, S. 86°33'27" W., 3600 feet, along the South line of said A–660; Thence, N. 27°30' W., 400 feet; Thence, N. 44°30' W., 400 feet; Thence, N. 58°30' W., 1300 feet; Thence, N. 31°00' W., 450 feet; Thence, N. 87°21'38" E., 4500 feet, to the Point of Beginning.

[FR Doc. 94–1023 Filed 1–13–94; 8:45 am]
BILLING CODE 4310–70–P

Bureau of Land Management

[UT–080–4210–04; UTU–65199]

Realty Action; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands, Serial Number UTU–65199.

SUMMARY: The following described public lands, located in Uintah County, Utah have been found suitable for disposal by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of October 21, 1976 (43 U.S.C. 1716):

Salt Lake, Meridian, Utah

T. 1 N., R. 23 E.,
Sec. 1: NW¼SE¼.
T. 1 S., R. 23 E.,
Sec. 8: SE¼SW¼;
Sec. 22: SE¼SE¼;
Sec. 23: SE¼SW¼, SW¼SE¼;
Sec. 24: NW¼NW¼;
Sec. 26: Lot 1, N½NE¼, NE¼NW¼;
Sec. 27: E½NE¼.
T. 1 S., R. 24 E.,
Sec. 29: S½SW¼;
Sec. 30: Lot 5 through 7, SE¼NE¼, E½SE¼;
Sec. 31: Lots 5 through 14.
T. 2 S., R. 24 E.,
Sec. 5: S½NW¼, N½SW¼, SE¼;
Sec. 6: Lot 1 through 3, S½NE¼, SE¼NW¼, E½SE¼.
T. 3 S., R. 19 E.,
Sec. 26: SW¼NW¼, SW¼;
Sec. 27: Lots 1 through 3, NE¼NW¼;
Sec. 28: Lots 1 and 2;
Sec. 29: Lot 1.
T. 4 S., R. 22 E.,
Sec. 12: W½NE¼;
Sec. 13: NE¼NE¼, E½E½NW¼SW¼, NE¼SE¼, S½SE¼;
Sec. 24: W½NW¼, W½NE¼NW¼SW¼, W½NW¼SW¼, SE¼NW¼SW¼, SW¼SW¼;
Sec. 25: E½E½NW¼NW¼, E½E½SW¼NW¼, W½NE¼SW¼NW¼, W½SW¼NW¼, W½SE¼SW¼NW¼.
T. 5 S., R. 22 E.,
Sec. 3: N½SE¼, SE¼SE¼;
Sec. 10: NE¼NE¼, N½SE¼NE¼, NE¼SW¼SE¼NE¼, SE¼SE¼NE¼;
Sec. 11: NE¼SW¼, E½SE¼SW¼, N½NW¼SE¼SW¼, SE¼NW¼SE¼SW¼;
Sec. 25: W½NW¼NW¼, W½SE¼NW¼NW¼.
T. 6 S., R. 22 E.,
Sec. 17: NW¼NE¼, SE¼NE¼, NE¼NW¼.
T. 6 S., R. 25 E.,
Sec. 13: Lots 7 and 12;
Sec. 15: SE¼NE¼;
Sec. 24: Lots 1, 6 and 7.
Containing 3,206.94 acres, more or less.

In exchange for the lands selected from the public land exchange pool, described above, the United States would acquire fee title to private land owned by the Rocky Mountain Elk Foundation chosen from the private land exchange pool described below:

Salt Lake, Meridian, Utah

T. 12 S., R. 24 E.,
Sec. 13: S½NE¼, SE¼NW¼, N½SE¼;
Sec. 34: NE¼SE¼;
Sec. 35: NW¼SW¼;
Sec. 36: All.
T. 12 S., R. 25 E.,
Sec. 18: SW¼NE¼, S½NW¼, SW¼;
Sec. 19: NW¼.
T. 13 S., R. 24 E.,
Sec. 3: N½SW¼;
Sec. 35: E½SW¼, SW¼SE¼.
T. 14 S., R. 24 E.,
Sec. 1: SW¼SW¼, SE¼SW¼;
Sec. 2: Lot 2, SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 12: SW¼NE¼, N½NW¼, SE¼NW¼, W½SE¼, SE¼SE¼;
Sec. 13: N½NE¼, SE¼NE¼.
T. 14 S., R. 25 E.,
Sec. 12: E½SE¼;
Sec. 13: N½NE¼, SE¼NE¼;
Sec. 15: SW¼NE¼, NW¼SE¼, SW¼SE¼;
Sec. 18: Lots 2 & 5;
Sec. 19: E½SW¼;
Sec. 21: SE¼NE¼, N½SE¼;
Sec. 22: NW¼NE¼, N½NW¼, SW¼NW¼;
Sec. 23: SW¼NW¼, SW¼, N½SE¼, SE¼SE¼;
Sec. 24: SW¼SW¼;
Sec. 25: NW¼NE¼, S½NE¼, N½NW¼, E½SE¼.
Sec. 27: SW¼NE¼
Sec. 30: NW¼NE¼, NE¼NW¼,N½SE¼, SE¼SE¼;
Sec. 31: NE¼NE¼.
T. 14 S., R. 26 E.,
Sec. 18: Lot 2, SW¼NW¼.
T. 15 S., R. 25 E.,
Sec. 5: Lot 8, NE¼SW¼, SW¼SE¼;
Sec. 8: NW¼NE¼, SW¼NE¼, N½SE¼, SE¼SE¼;
Sec. 17: E½E½;
Sec. 20: N½NE¼, SW¼NE¼;
Sec. 21: W½NW¼, SE¼NW¼, E½SW¼;
Sec. 33: SW¼NE¼.
T. 15 S., R. 26 E.,
Sec. 30: Lots 1 through 8.
T. 14 S., R. 26 E.,
Sec. 30: Lot 1, 2 & 3, NW¼NW¼, SW¼NW¼, NW¼SW¼.
Containing 5,129.19 acres, more or less.

Note: Publication of this Notice of Realty Action (NORA) terminates and replaces the NORA published under serial number UTU–65199 on November 23, 1992, in Vol. 57, No. 220, Pages 53927 & 53928 of the **Federal Register**.

The purpose of the land exchange is to acquire private land located in the Book Cliffs region of southeastern Uintah County, Utah in exchange for public land. The offered private land, known locally as the Cripple Cowboy Ranch, is needed to consolidate public land ownership within the Book Cliffs. Acquisition of the offered ranch property will enhance resource management objectives to preserve crucial Rocky Mountain elk calving areas; protect habitat for mule deer, black bear, and other wildlife species; improve and protect riparian habitat; enhance native fisheries and provide for public access and recreational opportunities for future generations in the Book Cliffs region.

The public land will be used to equalize land values for the offered private lands within the Book Cliffs pursuant to the exchange agreement between RMEF and BLM. The exchange would proceed until such time as the values of the public and private lands reach full equalization.

In addition to acquiring part of the Cripple Cowboy Ranch via land exchange, riparian lands and associated water rights for portions of the offered ranch property may be removed from the above described pool of private lands to allow direct purchase by the United States.

Disposal of the selected public lands would be subject to the following reservations and third party rights:

Federal Reservations

1. A right-of-way for ditches or canals to the United States in accordance with 43 U.S.C. 945.

2. Those rights for the 138 kV electric power transmission line granted to the Western Area Power Administration, its successors or assigns, by R/W grant, U–0144547, pursuant to the Act of December 5, 1924 (43 Stat. 672).

3. A reservation of oil and gas to the United States for those public lands with moderate to high potential for oil and gas minerals together with the right to explore, prospect for, mine, and remove same under applicable law and regulations.

Third Party Rights

1. Those rights for an access road granted to Robert Young by right-of-way (R/W) grant, UTU–53930.

2. Those rights for electric powerline purposes granted to Moon Lake Electric Association by R/W grants, UTU–50821 and UTU–53079.

3. Those rights for telephone line purposes granted to the Mountain States Telephone and Telegraph Company by R/W grant, UTU–53097.

4. Those rights for a buried water pipeline granted to Sunshine Irrigation Company by R/W grant, UTU–65121.

5. Those rights for a buried water pipeline granted to Jensen Water District by R/W grant, UTU–53937.

6. Those rights for an access road granted to Leonard Heeney by R/W grant, UTU–47456.

7. Those rights for a road granted to Uintah County by R/W grant, UTU–71236.

Oil & Gas Leases

Those rights granted to the holders of oil and gas (O&G) leases, described below, pursuant to the Act of February 25, 1920 (41 Stat. 437; 30 U.S.C. 181, as amended):

1. O&G lease, U–65924, leased to Beard Oil Company, Myers W. Lockyard, and Petrowest Exploration, Incorporated.

2. O&G leases, U–67262 & U–66075, leased to Atlantic Richfield and Beard Oil Company, respectively.

3. O&G lease, U–66823, leased to Atlantic Richfield.

Grazing Permits

The privilege of existing grazing permittees to graze their livestock on public lands encumbered by such permits would expire two years from the date of publication of the Notice of Realty Action in the **Federal Register**, unless the permittees choose to waive their grazing privileges earlier.

Floodplain

Conveyance of these lands by the Secretary of the Interior shall not exempt the patent holder or subsequent owners of title from compliance with applicable Federal or State law and compliance with State or local land use plans, including floodplain management restrictions.

The offered private land will be acquired subject to the following third party rights and reservations:

1. A Class "D" Road Resolution executed by the Uintah County Commission recorded April 22, 1992 as Entry #92002016 in Book 527 at Page 211 of official records of Uintah County, Utah.

2. Any oil, gas, and mineral rights not reserved to the United States of America.

3. Rights-of-way and easements for roads, ditches, transmission and utility lines, now existing on, over, under or across said premises.

4. An easement in favor of Northwest Pipeline Corporation, recorded September 19, 1979, as entry No. 171200, in the official records of Uintah County, Utah.

Publication of this notice in the **Federal Register** will segregate the public lands from the operation of the public land laws and the mining laws, except for mineral leasing. The segregative effect will end upon issuance of patent or two (2) years from the date of publication, whichever occurs first.

For a period of 45 days from the publication date of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Vernal District Office, 170 South 500 East, Vernal, Utah 84078.

FOR FURTHER INFORMATION CONTACT: Peter Kempenich, Natural Resource Specialist, Phone (801) 781–4432.

Dated: December 20, 1993.
David E. Little,
District Manager.
[FR Doc. 94–5 Filed 1–13–94; 8:45 am]
BILLING CODE 4310–DQ–M

National Park Service

Chickasaw National Recreation Area; Park Boundary

AGENCY: National Park Service, Interior.
ACTION: Notice; correction of park boundary.

Public Law 94–235 established Chickasaw National Recreation Area on March 17, 1976. The legislation specified that the total acreage of the recreation area may not exceed 10,000 acres. On December 9, 1991, a notice of a change in the boundary was published in the **Federal Register**, Vol. 56, No. 236, page 64272. This notice revised the boundaries of the area as depicted on a map entitled "Boundary Map, Chickasaw National Recreation Area," Drawing No. 107/80027, dated April 1991.

During the process of transferring jurisdiction from the Bureau of Reclamation to the National Park Service in accordance with the 1965 Memorandum of Agreement, three errors were made in mapping the original boundary and these errors were perpetuated in subsequent mapping. The three areas requiring correction are described as follows:

Boundary Area "A" is located in the NW¼ of section 6, Township 1 South, Range 3 East, Indian Meridian, Murray County, Oklahoma. The original boundary is revised so as to exclude 41.16 acres which were never acquired by the Bureau of Reclamation from H.H. Thomas or C.W. Purtle. This parcel was never intended to be a part of the Arbuckle Reservoir Project according to the Memorandum of Agreement and the deed records for the project.

Boundary Area "B–1" is located in the NE¼ of section 6, Township 1 South, Range 3 East, Indian Meridian, Murray County, Oklahoma. The original boundary is revised so as to delete 10.10 acres that were conveyed to Glenn Haines by the United States of America, as recorded on May 27, 1966, in Book 159, page 619, of the deed records of Murray County, Oklahoma.

Boundary Area "B–2" is located in the NE¼ of section 6, Township 1 South, Range 3 East, Indian Meridian, Murray County, Oklahoma. The original boundary is revised so as to include 10.00 acres that were conveyed to the United States of America by Glenn Haines and Janetta Haines, as recorded on May 27, 1966, in Book 159, page 617, of the deed records of Murray County, Oklahoma.

In summary, one change will add 10.00 acres and 2 changes will delete 51.26 acres, creating a net decrease of 41.26 acres. With these corrections made to the recreation area boundary, the current total acreage is 9,888.83. The authority for implementing this action is Public Law 94–235 (90 Stat. 235.)

Therefore, notice is hereby given that the boundary of Chickasaw National Recreation Area should be revised as described above and delineated on a map entitled "Boundary Map, Chickasaw National Recreation Area," numbered 107/80,030 and dated January 1993. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior, the Office of the Southwest Region, National Park Service, and the Office of the Superintendent, Chickasaw National Recreation Area.

Dated: September 23, 1993.
John E. Cook,
Regional Director, Southwest Region.
[FR Doc. 94–1024 Filed 1–13–94; 8:45 am]
BILLING CODE 4310–70–P

Bureau of Reclamation

Coachella Canal Lining Project, Riverside and Imperial Counties, CA

AGENCY: Bureau of Reclamation, Interior.
ACTION: Notice of availability of the draft environmental impact statement/draft environmental impact report: INT DES–94–03.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, as amended, and section 21002 of the California Environmental Quality Act, Reclamation and the Coachella Valley Water District (Coachella) have issued a joint draft environmental impact statement/draft environmental impact report (DEIS/DEIR) on a proposed canal lining project. The project involves lining the remaining unlined sections of the 70-foot-wide Coachella Canal between Siphons 7 and 14, and Siphons 15 and 32, while the canal continues to deliver irrigation water. The canal, which delivers Colorado River water to Coachella, lies in Riverside and Imperial Counties. The preferred alternative in the DEIS/DEIR is to line the existing canal while diverting the waterflow around the construction area by temporary pipes.

Public Law 100–675 authorizes the Secretary of the Interior (Secretary) to allow lining the unlined sections of canal in order to make the conserved water available in California. No Federal funds have been authorized for the project. In accordance with Public Law 100–675, Coachella and the Metropolitan Water District of Southern California may provide non-Federal funding for the project under contract with the Secretary. Lining the canal would reduce seepage by approximately 31,000 acre-feet per year.

Mitigation of impacts to wetlands habitat could require approximately 5,000 acre-feet per year from the canal, resulting in a net amount of approximately 26,000 acre-feet of conserved water per year.

DATES: A 60-day public review period commences with the publication of this notice. Written comments on the document may be submitted to the regional director at the address below within the 60-day review period.

ADDRESSES: Single copies of the DEIR/DEIS may be obtained on request to the regional director at the address below:

- Regional Director, Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Attention: LC–150, Boulder City, NV 89006–1470; telephone: (702) 293–8560.

Copies of the DEIS/DEIR are also available for public inspection and review at the following locations:

- Bureau of Reclamation, Technical Liaison Division, U.S. Department of the Interior, 1849 C Street, NW., Washington, DC 20240; telephone: (202) 208–4662.
- Bureau of Reclamation, Denver Office Library, Building 67, room 167, Denver Federal Center, 6th and Kipling, Denver, CO 80225; telephone: (303) 236–6963.
- Bureau of Reclamation, Yuma Projects Office, 7301 Calle Agua Salada, Yuma, AZ 85366; telephone: (602) 343–8100.
- Metropolitan Water District of Southern California, 1111 Sunset Boulevard, Los Angeles, CA 90012; telephone: (213) 250–6518.
- Coachella Valley Water District, corner of Highway 111 and Avenue 52, Coachella, CA 92236; telephone: (618) 398–2651.

Libraries: Public libraries located in Coachella, El Centro, Imperial, Indio, San Diego, Brawley, and Los Angeles (Main Library), California; and in Yuma, Arizona.

FOR FURTHER INFORMATION CONTACT: Regional Environmental Officer, Bureau of Reclamation, Lower Colorado Region, PO Box 61470, Attention: LC–150, Boulder City, NV 89006–1470; telephone: (702) 293–8510, or Dr. Richard Thiery, Coachella Valley Water District, PO Box 1058, Coachella, CA 92236; telephone: (619) 398–2651.

Dated: December 23, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 94–984 Filed 1–13–94; 8:45 am]

BILLING CODE 4310–94–M

INTERSTATE COMMERCE COMMISSION

Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Mountaire Corporation, 204 E. 4th Street, P.O. Box 5726, North Little Rock, AR 72119, State of Incorporation: Arkansas.
2. Wholly-owned subsidiaries which will participate in the operations and states of incorporation: (i) Mountaire Farms of Delmarva, Inc. State of Incorporation: Delaware. (ii) Royal Quality Foods, Inc. State of Incorporation: Maryland.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1012 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–M

[Finance Docket No. 32431]

Patrick D. Broe—Continuance in Control Exemption—Central Kansas Railway, Limited Liability Co.

Patrick D. Broe (Mr. Broe), a noncarrier, has filed a notice of exemption to continue in control of Central Kansas Railway, Limited Liability Company (CKRLLC), upon CKRLLC's becoming a rail carrier.

CKRLLC, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32430, Central Kansas Railway, Limited Liability Company—Acquisition and Operation Exemption—Central Kansas Railway, Inc., and Certain Incidental Line Segments of The Atchison, Topeka and Santa Fe Railway Company and Burlington Northern Railroad Company, to acquire and operate: (1) All of the rail lines of Central Kansas Railway, Inc. (CKR), located in Kansas and Oklahoma; (2) two rail lines in Kansas from The Atchison, Topeka and Santa Fe Railway Company (Santa Fe); (3) one rail line in Kansas from the Burlington Northern Railroad Company; and (4) incidental trackage rights over six segments of track owned by Santa Fe, one segment of track owned by Union Pacific Railroad Company, one segment of track owned by Missouri Pacific Railroad Company, and one segment of track owned by St. Louis Southwestern Railway Company. The parties intended to consummate that transaction on December 28, 1993, or later.

Mr. Broe is a noncarrier individual who will directly control CKRLLC upon its becoming a carrier. Mr. Broe also directly controls Panhandle Northern Railroad Company (exempted in Finance Docket No. 32377), The Broe Companies, Inc., a holding company that directly controls CKR, and noncarriers Great Western Railway Company (Great Western) and Railco, Inc. (Railco). Great Western directly controls rail carriers, Great Western Railway of Colorado, Inc., Great Western Railway Company of Iowa, Inc., and Great Western Railway of Oregon, Inc. Railco controls noncarrier Chicago West Pullman Transportation Company, which in turn, controls six class III railroads: Chicago West Pullman & Southern Railroad Company, Georgia Woodlands Railroad Company, Newburgh & South Shore Railroad Company, Chicago Rail Link, Manufacturers' Junction Railway Company, and Kansas Southwestern Railway Company. The existing common control relationship among these carriers is discussed in Finance Docket No. 32362.

This is a transaction within a corporate family of the type specifically exempted from prior review and approval under 49 CFR 1180.2(d)(3). It will not result in adverse changes in service levels, significant operational changes, or a change in the competitive balance with carriers outside the corporate family. The purpose of this transaction is to have the assets of CKR transferred to CKRLLC, a limited liability corporation, for estate planning purposes.

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Karl Morell, Taylor, Morell & Gitomer, suite 210, 919 18th St., NW., Washington, DC 20006.

Decided: January 6, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1013 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167; Sub-No. 1125]

Consolidated Rail Corporation—Abandonment—Between Warsaw and Valparaiso, In Kosciusko, Marshall, Starke, La Porte and Porter Counties, IN

The Commission has found that the public convenience and necessity permit Consolidated Rail Corporation (Conrail), to abandon its 61-mile rail line known as the Fort Wayne Line, from milepost 363.0 near Warsaw to milepost 424.0 near Valparaiso, in Kosciusko, Marshall, Starke, La Porte and Porter Counties, IN.

A certificate will be issued authorizing abandonment unless within 15 days after publication of this notice the Commission finds that: (1) A financially responsible person has offered financial assistance (through subsidy or purchase) to enable rail service to continue; and (2) it is likely that such assistance would fully compensate Conrail.

Requests for public use conditions must be filed with the Commission and Conrail within 10 days after publication.

Any offers of financial assistance must be filed with the Commission and Conrail no later than 10 days from the date of publication of this Notice. The following notation must be typed in bold face on the lower left-hand corner of the envelope containing the offer: "Section of Legal Counsel, AB-OFA". Any offer previously made must be remade within this 10-day period.

Information and procedures regarding financial assistance for continued rail service are contained in 49 U.S.C. 10905 and 49 CFR 1152.27. Requests for public use conditions must conform with 49 CFR 1152.28(a)(2).

Decided: December 21, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips and Philbin. Chairman McDonald commented with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1105 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32441]

Peter A. Gilbertson, Et al.—Continuance in Control Exemption—Louisville & Indiana Railroad Co.

Peter A. Gilbertson, H. Terry Hearst, Bruce A. Lieberman, R. Lawrence McCaffrey, Jr., and Harold F. Parmly, noncarrier individuals, have filed a notice of exemption to continue in control of Louisville & Indiana Railroad Company (LIRC) when it becomes a carrier.

LIRC concurrently filed a notice of exemption in Louisville & I. R. Co.—Acq. and Oper. Exemp.—Consolidated Rail Corp., Finance Docket No. 32440, to acquire and operate approximately 115 miles of rail line owned by Consolidated Rail Corporation in Indiana and Kentucky. LIRC expects to consummate the transaction on or about March 12, 1994.

Four of the filing parties are officers or directors of the Chicago, SouthShore & South Bend Railroad (CSS), a class III rail carrier operating in Indiana and Illinois. All are minority shareholders in CSS's corporate general partner, SouthShore Corporation (a noncarrier), and three are officers and directors of that entity as well. The parties state that: (1) The railroads will not connect with each other or with any railroads in their corporate family; (2) the continuance in control is not part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., suite 800, 1350 New York Avenue, NW., Washington, DC 20005–4797.

Decided: January 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1014 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32439]

Summit View Corp.—Continuance in Control Exemption—The Warren & Trumbull Railroad Co.

Summit View Corporation (Summit), a noncarrier holding company, has filed a notice of exemption to continue in control of the Warren & Trumbull Railroad Company (WTRM), upon WTRM becoming a class III rail carrier.

WTRM has concurrently filed a notice of exemption in The Warren & Trumbull Railroad Company—Operation Exemption—Rail Line in Trumbull County, OH, Finance Docket No. 32438, to operate over 5.28 miles of rail line under contract with the Mahoning Valley Economic Development Rail Corporation (EDRC). The parties intend to consummate the transaction on or soon after the effective date of the exemption.

Summit controls three other nonconnecting class III rail carriers operating in Ohio: Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc. and the Youngstown & Austintown Railroad, Inc.

Summit states that: (1) The properties operated by these four carriers do not connect with each other; (2) the continuance in control is not a part of a series of transactions that would connect the four railroads with each other or any other railroad currently controlled by Summit; and (3) the transaction does not involve a class I carrier. Therefore, the transaction is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed by with the Commission and served on: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

Decided: January 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1015 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32438]

The Warren & Trumbull Railroad Co.—Operation Exemption—Rail Line in Trumbull County, OH

Warren & Trumbull Railroad Company (WTRM), a noncarrier, has filed a notice of exemption to operate over 5.28 miles of rail line between milepost 89.10 at Deforest Junction, OH and milepost 94.38 at North Warren, OH, under a contract with the Mahoning Valley Economic Development Rail Corporation (EDRC). The parties intend to consummate the transaction on or soon after the effective date of the exemption.

The subject line, currently owned by CSX Transportation, Inc. (CSXT), was approved for abandonment by the Commission in CSX Transportation, Inc.—Abandonment—Between Deforest Junction and North Warren in Trumbull County, OH, Docket No. AB–55 (Sub-No. 449), (ICC served Feb. 12, 1993). EDRC, a quasi-public regional economic development entity, will purchase the line from CSXT prior to WTRM's commencement of rail carrier service. WTRM will operate over the line as a common carrier by rail serving shippers local to the line, and will interchange traffic with CSXT at Deforest Junction.

The transaction is related to a notice of exemption concurrently filed in Summit View Corporation—Continuance in Control Exemption—The Warren & Trumbull Railroad Company, Finance Docket No. 32439 wherein Summit View Corporation (Summit) seeks to continue in control of WTRM and three other class III railroads upon WTRM becoming a class III rail carrier.[1]

Any comments must be filed with the Commission and served on: Kelvin J. Dowd, Esq., Slover & Loftus, 1224 Seventeenth Street, NW., Washington, DC 20036.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: January 7, 1994.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 94–1016 Filed 1–13–94; 8:45 am]

BILLING CODE 7035–01–P

[1] WTRM is a subsidiary of Summit, a noncarrier holding company which controls Ohio Central Railroad, Inc., Ohio Southern Railroad, Inc. and the Youngstown & Austintown Railroad, Inc., none of which would connect with WTRM.

DEPARTMENT OF JUSTICE

Notice of Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA")

In accordance with Departmental policy, notice is hereby given that a proposed consent decree in *United States* v. *Wauconda Sand & Gravel Co.*, was lodged on December 23, 1993 with the United States District Court for the Northern District of Illinois. The proposed consent decree would resolve civil claims that the United States has asserted against 17 defendants under Section 107 of CERCLA, 42 U.S.C. 9607, for reimbursement of response costs incurred in connection with the Wauconda Sand & Gravel Site in Lake County, Illinois.

The proposed consent decree requires defendants to pay $566,448.15 to the Hazardous Substances Superfund as reimbursement for response costs incurred at the Site through March 31, 1989. Under the proposed decree, this sum will be paid in two installments, the last of which is due within 180 days after entry of the consent decree. The proposed consent decree also requires defendants to reimburse oversight costs incurred by the United States Environmental Protection Agency ("U.S. EPA") after March 31, 1992 in monitoring compliance with a December 19, 1989 administrative order issued pursuant to section 106 of CERCLA, 42 U.S.C. 9606. In addition, the proposed consent decree provides that defendants will reimburse any costs incurred by the United States in enforcing terms of the decree.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Wauconda Sand & Gravel Co.*, No. 93–C–7637 (N.D. Ill.) and DOJ Ref. No. 90–11–2–153A.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney, Northern District of Illinois, 219 South Dearborn Street, Chicago Illinois 60604; (2) the Region V office of U.S. EPA, 77 West Jackson Blvd., Chicago, Illinois 60604–3590; and (3) the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th floor, Washington, DC 20005. In requesting a copy please enclose a check in the amount of $75.75 (25 cents per page reproduction costs) payable to "Consent Decree Library."

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 94–929 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—EHC Technologies Consortium—Electrical Energy-Source Alternatives

Notice is hereby given that, on October 18, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), SouthWest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research project entitled "EHC Technologies Consortium—Electrical Energy-Source Alternatives." The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Centro Ricerche Fiat—Motori, Torino, Italy; BMW of North America, Inc., Montvale, NJ; Honda R&D Co., Ltd., Hagamachi, Japan; and Emitec GmbH, Lohmar, Germany. The general areas of planned activities are the definition of electrically heated catalysts (EHC) parameters, acquisition and the bench testing of EHC energy sources, as well as the development of energy source devices and finally on-vehicle application and EHC evaluation; in order to evaluate deep-cycle lead-acid battery, bipolar lead-acid battery, nickel-cadmium battery and ultracapacitors for use in EHC and further evaluate the status of other advanced battery technologies so as to select battery candidates which can provide the necessary energy requirements repetitively to heat the catalytic converter at engine start-up to substantially reduce cold-start emissions.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–933 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 93–02

Correction

In notice document 93–23322 appearing on page 49530 in the issue of Thursday, September 23, 1993, in the third column, in the first paragraph, in the twenty-second (22nd) line, "Exxon Research and Engineering Company, Florham Park, NJ" should be inserted before "and BP Research, Cleveland, OH".

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–931 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993—Spinal Implant Manufacturers Group

Notice is hereby given that, on December 8, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Spinal Implant Manufacturers Group ("SIMG") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are AMS, Hayward, CA; AcroMed Corporation, Cleveland, OH; American Medical Electronics, Inc., Richardson, TX; Aesculap, Robin, CA; Stryker Instruments, Kalamazoo, MI; Acufex Microsurgical, Inc., Mansfield, MA; Advanced Spine Fixation Systems, Inc., Cypress, CA; Cross Medical Products, Inc., Columbus, OH; Osteotech, Inc., Shrewsbury, NJ; Ace Medical Company, Los Angeles, CA; Synthes U.S.A., Paoli, PA; Electro-Biology, Inc., Parsippany, NJ; Smith & Nephew Richards, Inc., Memphis, TN; and Sofamor Danek Group, Inc., Memphis, TN. The SIMG was formed to promote the development, safety and effectiveness, and regulatory approvals of medical devices known as spinal implants through a variety of activities, including research and the collection, analysis, and dissemination of information related to spinal implants.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–934 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

Pursuant to the National Cooperative Research and Production Act of 1993 Feasibility of Catalytic Preheating Using Latent Heat Energy Storage

Notice is hereby given that, on October 18, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Southwest Research Institute ("SwRI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objective of the research project. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Daimler Benz, Stuttgart, Germany; Nissan Motor Company, Ltd., through Nissan Research and Development, Inc., Farmington, MI; and Nippon Shokubai, Hyogo, Japan. The objective of the research project is to investigate the feasibility of preheating on automotive exhaust catalytic converter using stored thermal exhaust energy through the evaluation of several reactor designs using various storage media such as packed beds and phase change materials, so as to define the medium's operating conditions; obtain and analyze potential media; design and evaluate a variety of storage beds; examine insulation and heat transfer aspects of the storage medium and container design; and outline a prototype system for implementation on a vehicle. Membership in the project remains open, and the parties intend to file additional written notification disclosing all changes in membership to the group research project.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 94–932 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum

Notice is hereby given that, on October 27, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), the Petroleum Environmental Research Forum ("PERF") Project No. 91–05, titled "Basic Principles and Control of Refinery Emulsion Formation—Part 2", has filed written notification simultaneously with the Attorney General and the Federal Trade Commission disclosing a membership change. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Petro Canada, Calgary, Alberta T2P 3E3 Canada has become a participant in PERF Project No. 91–05.

No other changes have been made in either membership or the planned activities of the group research project. Membership in this group research project remains open, and the participants intend to file additional written notification disclosing all changes in membership.

On March 16, 1992, the participants filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on April 30, 1992 (57FR 18528).

The last notification was filed with the Department on July 10, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 21, 1992 (57 FR 38067).

Information regarding participation in this project may be obtained from William J. Tracy, Mobil Research and Development Corporation, P.O. Box 480, 600 Billingsport Road, Paulsboro, NJ 08066–0480.

Joseph H. Widmar,

Director of Operations Antitrust Division.

[FR Doc. 94–930 Filed 1–13–94; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in

accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination—Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume II

Wisconsin:
WI930035 (Jan. 14, 1994)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Kentucky:
KY930001 (Feb. 19, 1993)
KY930002 (Feb. 19, 1993)
KY930003 (Feb. 19, 1993)
KY930004 (Feb. 19, 1993)
KY930005 (Feb. 19, 1993)
KY930006 (Feb. 19, 1993)
KY930007 (Feb. 19, 1993)
KY930025 (Feb. 19, 1993)
KY930027 (Feb. 19, 1993)
KY930028 (Feb. 19, 1993)
KY930029 (Feb. 19, 1993)
KY930032 (Feb. 19, 1993)
KY930035 (Feb. 19, 1993)
KY930054 (Sept. 10, 1993)
Massachusetts:
MA930001 (Feb. 19, 1993)
New York:
NY930007 (Feb. 19, 1993)
West Virginia:
WV930003 (Feb. 19, 1993)

Volume II

Iowa:
IA930002 (Feb. 12, 1993)
Minnesota:
MN930007 (Feb. 12, 1993)
MN930008 (Feb. 12, 1993)
MN930015 (Feb. 12, 1993)
New Mexico:
NM930001 (Feb. 12, 1993)
Texas:
TX930081 (Jul. 7, 1993)

Volume III

Colorado:
CO930018 (Aug. 13, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon Act And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 7th day of January 1994.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 94–801 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–29,065, TA–W–29,066]

Penetrators, Inc., Midland and Houston, Texas; Negative Determination on Reconsideration

On December 13, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the subject firm. This notice was published in the **Federal Register** on December 27, 1993 (58 FR 68440).

The former workers stated that the workers produced crude oil and natural gas and should be certified.

New findings on reconsideration show that the workers perform downhole drilling and stimulation services to rejuvenate new and existing oil wells. These services are provided to unaffiliated production firms in the oil and gas industry. The predominate portion of their services is performed on old wells. Only a small portion of their work is performed on new wells. Accordingly, the workers do not meet the on-site requirements for drilling exploration services necessary for a worker group certification.

Further, the price of oil is not a worker group eligibility criterion for certification under the Trade Act of 1974. Accordingly, a decline in the price of crude oil, in itself, would not form a basis for a worker group certification.

The Trade Act was not intended to provide TAA benefits to everyone who is in some way affected by increased imports but only to those who experienced a decline in sales or production and employment and an increase in imports of like or directly competitive products which contributed importantly to declines in sales or production and employment.

Conclusion

After reconsideration, I affirm the original notice of negative determination of eligibility to apply for adjustment assistance to workers and former workers of Penetrators, Inc., in Midland, Texas and Houston, Texas.

Signed at Washington, DC, this 4th day of January 1994.

Robert O. Deslongchamps,

Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 94–990 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,968]

Plains Petroleum Operating Co., Southern District, Midland, Texas; Revised Determination on Reconsideration

On December 22, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of the Plains Petroleum Operating Company, Southern District, in Midland, Texas. The notice will soon be published in the **Federal Register**.

Investigation findings show that the company submitted corporate sales and production data instead of data for the Southern District of Plains Petroleum Operating Company in Midland, Texas.

The new findings on reconsideration show that crude oil and natural gas sales and production decreased in the 12 month period ending in July 1993 compared to the same period in 1992.

Other findings on reconsideration show substantial worker separations in 1993.

U.S. imports of crude oil and natural gas increased in 1992 compared to 1991 and in the first six months of 1993 compared to the same period in 1992.

The Department's survey showed major customers reducing their purchases of crude oil from the Midland facility and increasing their purchases of imported crude oil.

Conclusion

After careful consideration of the new facts obtained on reconsideration it is concluded that increased imports of articles like or directly competitive with the production of crude oil and natural gas in the Southern District of Plains Petroleum Operating Company in Midland, Texas contributed importantly to the total or partial separation of workers at the Plains Petroleum Operating Company. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of the Plains Petroleum Operating Company Southern District, in Midland, Texas who became totally or partially separated from employment on or after August 3, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC., this 27th day of December 1993.

Mary Ann Wyrsch,

Director, Unemployment Insurance Service.

[FR Doc. 94–991 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 7th day of December 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[11/01/93 to 11/30/93]

CEO-name/facility name/address	State	Approval date
Mr. Wenceslao P. Javier, WPJ Health Care Recruiter, 849 Lehigh Avenue, Chula Vista 91913, 619–421–1526	CA	11/01/93
Mr. Guy R. Seaton, St. Luke's Subacute Care Hospital & Nursing Centre, San Leandro, 04578, 510–357–5351	CA	11/01/93
Ms. Judy Williams, International Nurses Who Care Inc., Woodland 95695, 916–661–1493	CA	11/02/93
Mr. Steven Dunton, Pleasant View Conval. Hosp., 22590 Voss Avenue, Cupertino 95014, 408–253–9034	CA	11/05/93
Mr. Jesus Ramirez, Monterey Park Dialysis Ctr., Inc., Monterey Park 91754, 213–780–8787	CA	11/08/93
Ms. Marlene Z. Robertson, Golden Cross Health Care of Santa Cruz, San Diego, 92127, 408–479–6958	CA	11/16/93
Ms. Kelly C. Morgan, Mercy Hospital and Health Services, Merced 95340, 209–384–6523	CA	11/16/93
Mr. Robert V. Duckett, Competent Care, P.O. Box 984, Carmel Valley 93924, 408–659–3896	CA	11/16/93
Mr. Kent Berkey, North Valley Nursing Ctr., 7660 Wyngate Street, Tujunga 91042, 818–352–1454	CA	11/16/93
Mr. Richard A. Gold, Granada Hills Community Hospital, 10445 Balboa Blvd., Granada Hills 91344, 818–360–1021.	CA	11/16/93
Ms. June Hernandez, Cloverleaf Healthcare Ctr., c/o 17199 W Bernardo Dr. A–108, San Diego 92127, 909–658–9441.	CA	11/22/93
Ms. Marietta V. Trasmonte, Nurse Well & Care, 723 N. Gramercy Place #2, Los Angeles 90038, 213–469–5505	CA	11/22/93
Mr. Jeffrey K. Sladnik, Community & Mission Hospitals of Huntington Park, Huntington Park 90255, 213–583–1931.	CA	11/23/93
Mr. Robert C. Shaw, Irvine Medical Center, 10200 Sand Canyon Avenue, Irvine 92718, 714–753–2000	CA	11/26/93
Ms. June Hernandez, Cloverleaf Enterprises, c/o 17199 W Bernardo Dr., San Diego 92127, 909–845–1606	CA	11/29/93
Mr. Michael S. Schrader, Bridgeport Hospital, 267 Grant Street, Bridgeport 06610, 203–384–3005	CT	11/22/93
Mr. Peter Madden, Fairview Health Care Facility, 181 Clifton Street, New Haven 06513, 203–467–1666	CT	11/30/93
Mr. Mark Chastang, District of Columbia General Hospital, Washington 20003, 202–675–5039	DC	11/29/93
Mr. Duncan Moore, Tallahassee Memorial Reg'l. Medical Ctr., Tallahassee 32308, 904–681–5250	FL	11/01/93
Mr. C. Scott Campbell, Highlands Reg'l. Med. Ctr., P.O. Drawer 2066, Sebring 33871, 813–385–6101	FL	11/02/93
Ms. Alice Dessasau, The Ambrosia Home, 1709 Taliaferro Avenue, Tampa 33602, 813–223–4623	FL	11/05/93
Mr. Jeffrey P. Winger, Plantation General Hosp., 401 NW 42nd Avenue, Plantation 33317, 305–797–6450	FL	11/10/93
Ms. Sharon L. Roush, Palm Beaches Medical Ctr., 2201 45th Street, West Palm Beach, 33407, 407–863–3820	FL	11/10/93
Ms. Joyce E. Plourde, Heartland Health Care Ctr., Miami Lakes, Hialeah 33015, 305–625–9857	FL	11/10/93
Ms. Maxcine Darville, Okeechobee Council on Aging, Inc., Pahokee 33476, 407–924–5561	FL	11/15/93
Mr. Fe A. Hanvivatpong, Ultimate Care, Inc., 5241 Jog Lane, Delray Beach 33484, 407–496–7993	FL	11/16/93
Mr. Richard P. Blinn, Hillhaven Rehabilitation Ctr., 2629 Delprado Blvd., Cape Coral 33904, 813–574–4434	FL	11/17/93
Mr. Richard P. Blinn, Menorah House-Hillhaven, 945 Central Park Blvd., North, Boca Raton 33428, 407–483–0498.	FL	11/17/93
Mr. Richard P. Blinn, Orlando Memorial Conv. Ctr., The Hillhaven Corp., Orlando 32806, 407–423–1612	FL	11/17/93
Mr. Isaac Mizrahi, Jackson Manor Nursing Home, Inc., Miami 33136, 305–314–0280	FL	11/19/93
Mr. Isaac Mizrahi, Snapper Creek Nursing Home, 9200 SW 87 Avenue, Miami 33156, 305–271–1313	FL	11/19/93
Mr. Isaac Mizrahi, El Ponce De Leon Conval. Ctr., Eastman Rehab Ctr., Inc., Miami 33130, 305–545–5417	FL	11/19/93
Mr. Gary W. deVane, Center for Infertility & Reproductive Medicine, Orlando 32804, 407–740–0909	FL	11/23/93
Ms. Marian Shaw, Deltona Healthcare Ctr., 1851 Elkcam Blvd., Deltona 32725, 904–789–3769	FL	11/29/93
Mr. Emil P. Miller, Metropolitan General Hospital, Florida CHS, Inc., Pinellas Park 34665, 813–545–7300	FL	11/29/93
Mr. William J. Byron, Good Samaritan Medical Ctr., Flagler Dr. at Palm Bch. Lakes Blvd., West Palm Beach 33402, 407–655–5511.	FL	11/29/93
Mr. Doug White, HCA Medical Ctr. of the Port St. Lucie, Port St. Lucie 34952, 407–335–4000	FL	11/29/93
Mr. Donald F. Snell, Grady Health System, The Fulton-Dekalb Hosp. Authority, Atlanta 30335, 404–616–1900	GA	11/22/93
Mr. Gary T. Johanson, The Washington and Jane Smith Home, Chicago 60643, 312–779–8010	IL	11/01/93
Mr. Howard D. Geller, Garden View Home, Inc., 6450 N. Ridge, Chicago 60626, 312–743–8700	IL	11/09/93
Mr. Blaine Fox, Villas of Shannon, P.O. Box 86, Shannon 64078, 815–864–2425	IL	11/12/93
Mr. Nicholas Stavropoulos, Medi-Search International, Inc., 240 East Lake Street, Suite 206, Addison 60101, 708–941–8341.	IL	11/17/93
Ms. Rose Marie Betz, Carlton at the Lake, Inc., 725 W. Montrose Avenue, Chicago 60613, 312–929–1700	IL	11/18/93
Ms. Cheryl Wadzinski, Beacon Hill Retirement Community, Lombard 60148, 708–620–5850	IL	11/19/93
Ms. Agustina T. Artates, Midwest Quality Nursing Services, Westmont 60559, 708–960–1529	IL	11/23/93
Mr. Richard Haskell, Terracom, c/o Richton Crossing, Richton Park 60471, 708–747–6120	IL	11/29/93
Mr. Dan Shabat, Deauville Health Care Ctr., 7445 N. Sheridan Rd., Chicago 60626, 312–338–3300	IL	11/29/93
Sister M. Elizabeth, Holy Family Health Center, 2380 E. Dempster Street, Des Plaines 60016, 708–296–3335	IL	11/29/93
Mr. Terryll H. Brown, Regency Health Care Ctr., 400 South Rogers, Olathe 66062, 913–782–3350	KS	11/01/93
Mr. David Stroud, Natchitoches Manor, 720 Keyser Avenue, Natchitoches 71457, 318–352–8296	LA	11/15/93
Mr. Lawrence Dorsey, University Medical Ctr., Post Office Box 4016–C, Lafayette 70502, 318–261–6390	LA	11/16/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[11/01/93 to 11/30/93]

CEO-name/facility name/address	State	Approval date
Mr. Allen Tuten, Administrator, Lincoln General Hospital, P.O. Drawer 1368, Ruston 71273, 318–254–2100	LA	11/29/93
Ms. Doris C. Henry, Visiting Nurse Assoc. of Greater Lynn, Inc., Lynn 01901, 617–639–1370	MA	11/08/93
Mr. Joseph O'Grady, O'Grady Peyton International USA, Inc., Boston 02210, 617–482–5655	MA	11/30/93
Mr. Morton I. Rapoport, University of Maryland Medical System, Baltimore 21201, 410–328–2756	MD	11/22/93
Mr. Pierce Morton, Anglin Extended Care Ctr., 19175 Anglin, Detroit 48234, 313–892–3600	MI	11/09/93
Ms. Linda Yarbough, Humphreys County Nursing Home, Belzoni 39038, 601–247–1821	MS	11/01/93
Mr. Jeff Finch, Dialysis Facilities, Inc., 1828 Raymond Rd., Jackson 39204, 601–373–7897	MS	11/01/93
Mr. Edward Crow, Adams County Nursing Ctr., 587 John R. Junkin Drive, Natchez 39120, 10/26/93	MS	11/01/93
Mr. Myren Hughes, Attala County Nursing Home, 326 Highway 12 West, Kosciusko 39090, 601–289–1200	MS	11/08/93
Mr. Robert Crook, North Sunflower County Hosp., 840 North Oak Avenue, Ruleville 38771, 601–756–2711	MS	11/10/93
Ms. Patricia G. Webb, Wake Medical Center, 3000 New Bern Avenue, Raleigh 27610, 919–250–8138	NC	11/15/93
Ms. Suzanne L. Jones, Nurses, Rx, Inc., 9801 W. Kincey Ave., Huntersville 28078, 704–875–9233	NC	11/22/93
Mr. Larry Lake, Britthaven of Raleigh, 3609 Bond Street, Raleigh 27604, 919–231–8113	NC	11/29/93
Mr. Berel D. Tennenbaum, Perth Amboy Nursing Home, 303 Elm Street, Perth Amboy 08861, 908–442–9540	NJ	11/05/93
Mr. Thomas Bejgrowicz, Harborview Healthcare Ctr., 178–198 Ogden Avenue, Jersey City 07307, 201–963–1800	NJ	11/10/93
Ms. Martha R. Zeltner, Cranford Hall Nursing Home, 600 Lincoln PKE, Cranford 07016, 908–276–7100	NJ	11/10/93
Ms. Maria Lapid, Green Acres Manor, 1931 Lakewood Road (Route 9), Toms River 08755, 201–286–2323	NJ	11/15/93
Mr. John Dandridge, United Hospitals Med. Ctr., 15 South Ninth Street, Newark 07107, 201–268–8576	NJ	11/15/93
Ms. Maria Lapid, Abbott Manor Conval. Ctr., 810 Central Avenue, Plainfield 07060, 210–757–0696	NJ	11/15/93
Ms. Polly Pine, Cibola General Hospital Corp., 1212 Bonita, Grants 87020, 505–287–4448	NM	11/10/93
Mr. William H. Zacher, Williamsville Suburban, 193 South Union Road, Williamsville 14221, 716–632–6152	NY	11/05/93
Mr. David Putterman, Ocean Promenade H.R.F., 140 Beach 113 Street, Rockaway Beach 11694, 718–945–6350	NY	11/10/93
Mr. Herbert Freeman, Bialystoker Nursing Home, 228 East Broadway, New York 10002, 212–475–7755	NY	11/16/93
Ms. Marie Ferrara, SS Joachim & Anne Residence, 2720 Surf Avenue, Brooklyn 11224, 718–714–4800	NY	11/22/93
Mr. Erie Chapman, Riverside Methodist Hospitals, 3535 Olentangy River Road, Columbus 43214, 614–566–5196	OH	11/15/93
Mr. W. Eugene Baxter, Bass Memorial Baptist Hospital, 600 S. Monroe, Enid 73701, 405–233–2300	OK	11/29/93
Mr. Glenn Jones, Byerly Hospital, 413 East Carolina Avenue, Hartsville 29550, 803–339–2100	SC	11/09/93
Mr. Ray White, P.H.E.O. Medical Ctr., Inc., 1400—18th Avenue South, Nashville 37212, 615–383–4715	TN	11/22/93
Mr. David Parmer, Baptist Hospital of SE Texas, College & 11th Street, Beaumont 77704, 409–835–3187	TX	11/05/93
Mr. Nedro G. Parker, Health Network Int'l, Inc., 4506 La Branch, Houston 77004, 713–522–2443	TX	11/23/93
Total Attestations: 81		

[FR Doc. 94–989 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–30–M

Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, room S3502, 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202–219–5263 (this is not a toll-free number).

Regarding the Complaint Process

Questions regarding the complaint process for the H–1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202–219–7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H–1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and

documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC., this 11th day of January 1994.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[12/01/93 to 12/31/93]

CEO-name/facility name/address	State	Approval date
Mr. Joseph W. McKinley, Meridian Point Rehab. Hosp., Rehab Systems Co., Scottsdale 85260, 602–860–0671	AZ	12/03/93
Sister St. Joan Willert, Carondelet Health Care Corp. of Arizona, Tucson 85745, 602–740–6020	AZ	12/22/93
Mr. Jerry A. Levine, Jewish Home for the Aged, Hebrew Home for the Aged Disabled, San Francisco 94112, 415–334–2500.	CA	12/01/93
Ms. June Hernandez, Santa Rosa Conval. Care Ctr., c/o 17199 W. Bernardo Dr., A–108, San Diego 92127, 602–795–1610.	CA	12/03/93
Ms. Janine Castano, Heart of Sonoma, TLC Hospitals, Inc., Sonoma 95476, 707–939–0900	CA	12/20/93
Ms. Bernice Schrabeck, South Gate Care Center, 8455 State Street, South Gate 90280, 213–565–7761	CA	12/21/93
Mr. William L. Summers, Patton State Hospital, 3102 E. Highland Avenue, Patton 92369, 909–425–7000	CA	12/21/93
Ms. Bernice Schrabeck, Walnut Whitney Conval. Hospital, Sierra Medical Enterprises, Carmichael 95608, 916–488–8601.	CA	12/21/93
Ms. Ellen L. Kuykendall, Roseville Convalescent Hospital, 1161 Cirby Way, Roseville 95661, 916–782–1238	CA	12/21/93
Ms. Maria Boire, Cornerstone House of Santa Barbara, Santa Barbara 93108, 805–969–1569	CA	12/22/93
Ms. Adelaida Q. Gerbery, International Medical Relocators, San Diego 92114, 619–472–6605	CA	12/22/93
Mr. Todd E. Johnson, Medical Express, Inc., 1650 38th Street, Boulder 80301, 303–449–7470	CO	12/22/93
Arno Nash, Arno Nash, 4819 Hutchins Pl. NW., Washington, DC 20007, 202–333–0262	DC	12/22/93
Ms. Martha Garcia, Golden Glades Reg'l Medical Ctr., Miami 33169, 305–652–4200	FL	12/06/93
Andre Oravec, HCA New Port Richey, 205 High Street, New Port Richey 34656, 813–845–9117	FL	12/08/93
Mr. Ronald A. Cass, Hospital Staffing Services, I, 6245 N. Federal Highway, Ft. Lauderdale 33308, 305–771–0500.	FL	12/08/93
Ms. Carmen Velez, Healthsouth Regional Rehab. Ctr., Miami 33189, 305–251–3800	FL	12/15/93
Ms. Margaret Brock, Calhoun-Liberty Hospital Association, Blountstown 32424, 904–674–5411	FL	12/21/93
Ms. Jo Anne Annichiarico, West Gables Rehab. Hosp. and Health Care Ctr., Miami 33135, 305–262–6800	FL	12/22/93
Ms. Eula King, Health Care Multi Services Corporation, Lilburn 30226, 404–908–7452	GA	12/06/93
Mr. Jerry W. Adams, Sumter Regional Hospital, 100 Wheatley Drive, Americus 31709, 912–924–6011	GA	12/08/93
Mr. John D. Good, Piedmont Hospital, 1968 Peachtree Road, NW., Atlanta 30309, 404–605–5000	GA	12/15/93
Ms. Joy King, Toccoa Nursing Ctr., PO. Box 1129, Toccoa 30577, 706–886–8491	GA	12/22/93
Mr. Charles E. Windsor, St. Mary's Hospital of East St. Louis, Inc., East St. Louis 62201, 618–274–1900	IL	12/01/93
Sr. M. Jacqueline, St. Patrick's Residence, 1400 Brookdale Road, Naperville 60563, 708–416–6565	IL	12/06/93
Mr. Richard Blackburn, Ashwood Health Care Center, 134 North McLean Boulevard, Elgin 60123, 708–742–8822	IL	12/06/93
Ms. Virginia G. Leavitt, Valley Hi Nursing Home for McHenry County, Woodstock 60098, 815–338–0312	IL	12/08/93
Mr. Ronald Shabat, Peterson Park Health Care Ctr., 6141 N. Pulaski, Chicago 60646, 312–478–2000	IL	12/08/93
Mr. Michael Gillman, Deerbrook Nursing Centre, 306 N. Larkin Avenue, Joliet 60435 815–744–5560	IL	12/15/93
Mr. Michael Gillman, Holt Healthcare Centre, 707 W. Riverside Blvd., Rockford 61103, 815–877–5752	IL	12/15/93
Mr. Michael Gillman, Countryside Healthcare Centre, 2330 W. Galena Blvd., Aurora 60506, 708–896–4686	IL	12/15/93
Mr. Bill Brotzman, Maplewood Care, Inc., 50 N. Jane Dr., Elgin 60123, 708–697–3750	IL	12/15/93
Mr. Michael Gillman, Westshire Care Center, 5825 W. Cermak Road, Cicero 60650, 708–656–9120	IL	12/15/93
Mr. Michael Gillman, Northwoods Healthcare Centre, 2250 Pearl Street, Belvidere 61008, 815–544–0358	IL	12/15/93
Ms. Jeanette Fox, Crestwood Heights Nursing Centre, Crestwood 60445, 708–371–0400	IL	12/20/93
Mr. Mark Hollander, Glenview Terrace Nursing Ctr., 1511 Greenwood Road, Glenview 60025, 708–729–9090	IL	12/20/93
Mr. Edward J. Novak, Sacred Heart Hospital, Westside Community Hospital, Inc., Chicago 60624, 312–722–3020	IL	12/21/93
Mr. Benn Greenspan, Mt. Sinai Hospital Medical Ctr., California Ave. at 15th St., Chicago 60608, 312–257–6653	IL	12/21/93
Mr. William Wagmann, Brentwood North Nursing and Rehab. Ctr., Riverwoods 60015, 708–459–1200	IL	12/22/93
Mr. Nanjean Painter, Lake Cook Terrace Nursing Ctr., 222 Dennis Drive, Northbrook 60062, 708–564–0505	IL	12/22/93
Mr. Neal Kjos, North Shore Terrace, 2222 West 14th, Waukegan 60085, 708–249–2400	IL	12/22/93
Mr. Larry Banks, Capitol View Care Center, 707 Armstrong, Lansing 48911, 517–393–5680	MI	12/08/93
Mr. John Dubis, St. Mary's Health Ctr., 100 St. Mary's Medical Plaza, Jefferson City 65101, 314–635–7642	MO	12/22/93
Ms. Wanda Fleming, Claiborne County Hospital, 123 McComb Avenue, Port Gibson 39150, 601–437–5141	MS	12/07/93
Ms. Su Modlin James, Britthaven of Davidson, 706 Pinewood Rd., Thomasville 27360, 919–475–9116	NC	12/03/93
Mr. Glenn Potter, Britthaven, Inc., 1211 Highway 258 N, Kinston 28502, 919–523–9094	NC	12/08/93
Ms. Debra W. Neill, Britthaven of Charlotte, 2623 Cranbrook Lane, Charlotte 28207, 704–332–1161	NC	12/20/93
Ms. Nancy Tofani, Stone Arch Health Care Ctr., Road 1, Pittstown 08867, 908–735–6600	NJ	12/06/93
Ms. Clara Kim, International Nurses Registry, 3 VanAllen Court, Wayne 07470, 201–633–8591	NJ	12/20/93
Mr. James M. Toomey, El Jen Convalescent Hospital, 5538 West Duncan Drive, Las Vegas 89130, 702–645–2606.	NV	12/21/93
Mr. Gary Gambuti, St. Luke's-Roosevelt Hosp. Ctr., Amsterdam Ave. & 114th St., New York 10019, 212–523–2162.	NY	12/20/93
Ms. Estrella Krish, Professional Healthcare Associates, Inc., Bronxville 10708, 914–337–0705	NY	12/20/93
Mr. John Quirk, General Healthcare Resources, Inc., Wayne 19807, 215–993–2800	PA	12/06/93
Ms. Marie V. Fraser, VNA Home Health Services, 218 E. Market Street, York 17403, 717–846–9900	PA	12/21/93
Mr. Jack C. Bailey, Memorial Medical Ctr. of East Texas, Lufkin 75902, 409–639–7789	TX	12/03/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued

[12/01/93 to 12/31/93]

CEO-name/facility name/address	State	Approval date
Mr. Robert V. Deen, Polk County Memorial Hosp., 602 E. Church Street, Livingston 77351, 409–327–4381	TX	12/03/93
Mr. Mike Spurlock, HCA Arlington Medical Ctr., 3301 Matlock Road, Arlington 76015, 817–472–4829	TX	12/03/93
Ms. Luci Micu, Medical Insights & Care Unlimited, Houston 77074, 713–774–6428	TX	12/03/93
Mr. Chuck Schuetz, Heights Hospital, 1917 Ashland, Houston 77008, 713–802–8252	TX	12/03/93
Mr. David Buchmueller, Providence Memorial Hospital, 2001 North Oregon, El Paso 79902, 915–546–2810	TX	12/06/93
Mr. Nedro G. Parker, Allied Health Network, Inc., 4506 La Branch, Houston 77004, 713–522–2443	TX	12/08/93
Mr. John Mims, McAllen Medical Center—UHS, 301 W. Expressway 83, McAllen 78503, 210–632–4000	TX	12/15/93
Ms. Dora Horton, St. Mary's Hospital, Third Street, NE., Norton 24273, 703–679–9100	VA	12/20/93
Mr. Phillip G. Fogg, Rose Vista Care Center, Prestige Care Venture I, Vancouver 98661, 206–696–0161	WA	12/20/93

Total Attestations: 64

[FR Doc. 94–992 Filed 1–13–94; 8:45 am]

BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Humanities Panel; Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applications. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of Title 5, United States Code.

1. *Date:* February 1, 1994
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1994.
2. *Date:* February 2, 1994
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for the projects in Cultural Studies in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after July 1, 1994.
3. *Date:* February 3, 1994
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1994.
4. *Date:* February 3–4, 1994
   Time: 8:30 a.m. to 5 p.m.
   Room: M–14
   Program: This meeting will review applications for Humanities Projects in Museums and Historical Organizations program received during the December 3, 1993 deadline, submitted to the Division of Public Programs, for projects beginning after July 1, 1994.
5. *Date:* February 4, 1994
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for the National Heritage Preservation Program Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.
6. *Date:* February 4, 1994
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for projects in History in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after July 1, 1994.
7. *Date:* February 7, 1994
   Time: 8:30 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.
8. *Date:* February 8, 1994
   Time: 9 a.m. to 5 p.m.
   Room: 315
   Program: This meeting will review applications for Elementary and Secondary Education, submitted to the Division of Education Programs, for projects beginning after September 1, 1994.
9. *Date:* February 14, 1994
   Time: 8:30 a.m. to 5 p.m.
   Room: M–14
   Program: This meeting will review applications for Documentation of Humanities Collections Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.
10. *Date:* February 14, 1994
    Time: 9 a.m. to 5 p.m.
    Room: 315
    Program: This meeting will review applications for projects in Literature and Humanities Studies of the Fine Arts in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after July 1, 1994.
11. *Date:* February 18, 1994
    Time: 8:30 a.m. to 5 p.m.
    Room: M–14
    Program: This meeting will review

applications for Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.

12. *Date:* February 25, 1994
Time: 8:30 a.m. to 5 p.m.
Room: M–07
Program: This meeting will review applications in Library an Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.

13. *Date:* February 28, 1994
Time: 8:30 a.m. to 5 p.m.
Room: M–07
Program: This meeting will review applications in Library and Archival Preservation and Access Projects, submitted to the Division of Preservation and Access, for projects beginning after July 1, 1994.

David C. Fisher,
Advisory Committee Management Officer.
[FR Doc. 94–1034 Filed 1–13–94; 8:45 am]
BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–443; License No. NPF–86]

North Atlantic Energy Service Corp.; Seabrook Station, Unit No. 1; Order Approving Transfer of License

I

Vermont Electric Generation and Transmission Cooperative, Inc., (Vermont) is the holder of a 0.41259-percent ownership share in Seabrook Station, Unit No. 1. Vermont's interest in Seabrook Station, Unit No. 1, is governed by License No. NPF–86 issued by the U.S. Nuclear Regulatory Commission (the NRC) pursuant to 10 CFR part 50 on March 15, 1990, in Docket No. 50–443. Under this license, only North Atlantic Energy Service Corporation (North Atlantic), acting as agent and representative of 12 joint owners listed in the license, has the authority to operate Seabrook Station, Unit No. 1. Seabrook Station, Unit No. 1, is located in Rockingham County, New Hampshire.

II

By letter dated August 27, 1993, North Atlantic proposed an amendment to License No. NPF–86 which would change the license to reflect the transfer of Vermont's 0.41259-percent ownership share in Seabrook Station, Unit No. 1, to North Atlantic Energy Corporation (NAEC).

In 1990, Vermont filed a claim against Public Service Company of New Hampshire (PSNH) with the United States Bankruptcy Court which was then hearing a petition from PSNH for reorganization under Chapter II of the United States Bankruptcy Code. Vermont's claim sought redress for damages that were alleged to have been incurred while PSNH had been the managing agent for the Seabrook Station. In November 1990, the two parties reached a settlement which included an agreement by PSNH or its designee to purchase Vermont's share of the Seabrook Station, Unit No. 1, subject to obtaining the necessary approvals from all regulatory agencies. In December 1990, the Bankruptcy Court issued an order approving the stipulation that PSNH and Vermont had filed describing the settlement.

In June 1992, in accordance with the Plan of Reorganization for PSNH that was confirmed by the Bankruptcy Court, Northeast Utilities (NU) acquired PSNH in merger transactions and, after receipt of NRC approval, NAEC (a weekly formed and wholly owned subsidiary of NU) acquired PSNH's interest in Seabrook Station, Unit No. 1. The transfer of Vermont's ownership share in Seabrook to NAEC will consummate the settlement entered into by Vermont and PSNH.

The transfer of rights under License No. NPF–86 is subject to the NRC's approval under 10 CFR 50.80(a). After reviewing information submitted in the August 27, 1993, letter and other information before the Commission, the NRC staff has determined that the transfer of Vermont's interest in Seabrook Station, Unit No. 1 to NAEC (which is already a licensee) does not affect NAEC's technical or financial qualifications to be a holder of License No. NPF–86, and the license transfer is otherwise consistent with applicable provisions of law, regulations, and orders issued by the Commission.

III

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact was published in the **Federal Register** on January 5, 1994 (59 FR 605). Accordingly, based upon the environmental assessment, the Commission has determined that issuance of this order will not have a significant effect on the quality of the human environment.

Accordingly, pursuant to Sections 161b and 161i of the Atomic Energy Act of 1954 (as amended), 42 U.S.C. 2201, and 10 CFR 50.80, *it is hereby ordered* that the transfer of control of Vermont Electric Generation and Transmission Cooperative, Inc.'s 0.41259-percent undivided ownership interest in Seabrook Station, Unit No. 1, to North Atlantic Energy Corporation is approved subject to the following: (1) Should the transfer not be completed by May 30, 1994, this Order will be null and void and (2) on application and for good cause shown, this Order may be extended for a short period beyond May 30, 1994.

Dated at Rockville, MD, this 7th day of January 1994.

For the Nuclear Regulatory Commission.
Thomas E. Murley,
Director, Office of Nuclear Reactor Regulation.
[FR Doc. 94–951 Filed 1–13–94; 8:45 am]
BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Rel. No. 20007; 811–3377]

Gradison U.S. Government Trust; Application for Deregistration

January 10, 1994.
AGENCY: Securities and Exchange Commission ("SEC").
ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: Gradison U.S. Government Trust.
RELEVANT ACT SECTION: Section 8(f).
SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.
FILING DATE: The application was filed on December 13, 1993.
HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 4, 1994 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.
ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549.

Applicant, 580 Walnut Street, Cincinnati, Ohio 45202.
FOR FURTHER INFORMATION CONTACT: James M. Curtis, Senior Counsel, at (202) 504–2406, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).
SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On January 15, 1992, applicant filed a notification of registration pursuant to section 8(1) of the Act and a registration statement under section 8(b) of the Act and under the Securities Act of 1933. The registration statement was declared effective on April 13, 1982, and applicant commenced its initial public offering on that date.

2. On June 14, 1993, applicant's board of trustees approved, subject to shareholder approval, an Agreement and Plan or Reorganization and Liquidation (the "Reorganization") providing for the transfer of all or substantially all of the assets and liabilities of applicant to Gradison Cash Reserves Trust (the "Acquiring Fund") in exchange for shares of the Gradison-McDonald U.S. Government Reserves Series of Gradison Cash Reserves Trust ("GM–US Shares") and the assumption of liabilities. According to a registration statement filed by the Acquiring Fund on July 1, 1993, containing a proxy statement/prospectus, the Board of Trustees of applicant, including the trustees who are not "interested persons" of applicant as that term is defined in the Act, concluded that the Reorganization would be in the best interests of the shareholders of applicant, and that the interests of applicant's shareholders would not be diluted as a result.

3. The registration statement on Form N–14 and the proxy statement/prospectus contained therein was furnished to applicant's shareholders on or about August 15, 1993. At a special meeting of shareholders held on September 15, 1993, the holders of at least a majority of the outstanding voting shares of applicant approved the Reorganization.

4. On September 24, 1993, 24,964,000 shares of applicant were outstanding at a net asset value of $1.00 per share. At such date, aggregate net assets of applicant were $24,964,000. As of September 24, 1993, GM–US Shares were distributed to applicant's shareholders. Each shareholder received the proportion of GM–US Shares received by applicant that the number of applicant shares owned by each such shareholder bore to the number of outstanding applicant shares.

5. Applicant's investment adviser paid expenses incurred in the reorganization totalling $54,222.

6. As of the date of the application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.
Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 94–998 Filed 1–13–94; 8:45 am]
BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended January 7, 1994

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.
Docket Number: 49349.
Date filed: January 5, 1994.
Parties: Members of the International Air Transport Association.
Subject: COMP Telex 033f—Cargo Currency Adjustment in Hungary.
Proposed Effective Date: February 1, 1994.
Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–1003 Filed 1–13–94; 8:45 am]
BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended January 7, 1994

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.
Docket Number: 49348.
Date filed: January 5, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 2, 1994.
Description: Application of Delta Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations applies to renew its certificate of public convenience and necessity to permit Delta to continue to provide scheduled air transportation of persons, property and mail over the following route segments: 1. Between the terminal point Atlanta, Georgia, and the terminal point Mexico City, Mexico; 2. Between the terminal point Dallas/Ft. Worth, and the terminal point Mexico City, Mexico.
Docket Number: 49354.
Date filed: January 7, 1994.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: February 4, 1994.
Description: Application of United Air Lines, Inc., pursuant to section 401 of the Act and subpart Q of the Regulations, applies for renewal of segments 1, 2, 3 and 9 of its Certificate of Public Convenience and Necessity for Route 566 authorizing services between San Francisco, CA and Mexico City, Mexico; Chicago, IL and Mexico City, Mexico; Washington DC and Mexico City, Mexico; and Orlando, Florida and Mexico City, Mexico, respectively. This authority is due to expire on July 13, 1994.
Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 94–1002 Filed 1–13–94; 8:45 am]
BILLING CODE 4910–62–P

Federal Highway Administration

Environmental Impact Statement; Asotin County, WA

AGENCY: Federal Highway Administration (FHWA), DOT.
ACTION: Recission of notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that, based on environmental studies and comments received during the scoping process and public information meetings for the proposed project, it has been decided to prepare an

Environmental Assessment (EA) in lieu of an Environmental Impact Statement. The Notice of Intent which appeared in the **Federal Register** /Vol. 58, No. 149/ Thursday, August 5, 1993, regarding a proposed highway project in Asotin County, Washington, is hereby rescinded.

FOR FURTHER INFORMATION CONTACT: Lynn Porter, Area Engineer, Federal Highway Administration, 711 S. Capitol Way, Evergreen Plaza Bldg., suite 501, Olympia, Washington 98501–1284, Telephone: (206) 753–2120.

SUPPLEMENTARY INFORMATION: An EA for the proposed project was approved for circulation on December 28, 1993. Subsequent distribution included State and Federal agencies and interested parties identified during project planning and scoping. The EA discusses a proposal (build alternative) to construct a new 1.1 mile Fleshman Way roadway on a route north of 16th Avenue in Asotin County, Washington. The proposed improvements would also involve the reconstruction of the existing 15th Street between 16th Avenue and Bridge Street (U.S. Highway 12) for a distance of about 1.5 miles. It would also include a new interchange or intersection in the vicinity of 13th Street and a new intersection on 16th Avenue and Fleshman Way.

Improvements to the corridor are considered necessary to address existing traffic operations problems, to meet projected traffic demand and to improve safety. Existing deficient features include lane and shoulder widths, horizontal and vertical alignments, and pavement structure. The proposed project is included in the Asotin County and the City of Clarkston Comprehensive Plans as a link between U.S. Highway 12 west of Clarkston and the Southway Bridge, and provides a southern connection between the Cities of Clarkston and Lewiston.

Several alternatives were evaluated as part of the environmental studies conducted for the project. However, only one build alternative and the no-build are under consideration at present. The build alternative includes a four-lane roadway on a new location, generally north of 16th Avenue, as described above, and intersecting 15th Street south of Highland Avenue. It also includes widening 15th Street to three lanes (two travel lanes and a continuous left-turn lane).

Letters describing the proposed action and soliciting comments, have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in the proposal. A series of public meetings were held in Asotin County between January and August 1993. A public hearing has been scheduled for January 27, 1994. The EA is currently available for review and comments.

Comments on the EA and the proposed action will be accepted until ten days after the public hearing. To ensure that the full range of issues related to this proposed action are addressed and any significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EA should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal Programs and activities apply to this program.)

Issued on: January 4, 1993.

Jose M. Miranda,

Environmental Program Manager, Olympia.

[FR Doc. 94–938 Filed 1–13–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Contra Costa County and Solano County, CA

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a Draft Environmental Impact Statement will be prepared for a proposed highway project in Contra Costa County and Solano County, California.

FOR FURTHER INFORMATION CONTACT: Mr. John Schultz, Chief, District Operations "A", Federal Highway Administration, 980 9th Street—Suite 400, Sacramento, California 95814–2724, Telephone: (916) 551–1314.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the California Department of Transportation (Caltrans), will prepare a supplement to the Draft Environmental Impact Statement (DEIS) on a proposal to construct a new toll bridge across the Carquinez Strait at Interstate 680 between the City of Benicia and the City of Martinez. The proposed new toll bridge will be parallel to the existing Benicia-Martinez Bridge. The original DEIS for the Benicia-Martinez Bridge System (FHWA–CA–EIS–91–03–D) was approved October 17, 1991. The proposed improvements will provide a new five-lane bridge, including one auxiliary lane and one slow-vehicle lane, a new toll plaza and new freeway-to-freeway connectors between I–680 and I–780. These are considered necessary to improve operation and safety, relieve freeway congestion and accommodate projected traffic volumes.

The proposed project limits include I–680, from 2000 feet south of the Marina Vista Interchange in Contra Costa County to Bayshore Road in Solano County, and I–780, from East 5th Street to include the I–680/I–780 Interchange in Solano County. The scope of the traffic study includes: (1) I–680 from Route 4 to I–80, (2) I–780 between I–680 and I–80, (3) I–80 between Red Top Road and the Route 12 East Interchange, (4) Freeway-to-freeway as well as local interchanges, and (5) Freeway ramp-end and local street intersections potentially affected by proposed improvements. Modifications to the I–680/Marina Vista Interchange and the I–680/I–780 Interchange will be required, and will be considered in the preliminary engineering and environmental studies.

A Draft EIR/EIS for the Benicia-Martinez Bridge System Project was circulated and a public hearing was held in December 1991. One hundred thirty (130) written comments were received. Substantial comments involved: (1) Matching the scope of the project with the available funding, (2) providing for future rail transit on the new bridge, (3) location of the new bridge and toll plaza, (4) the direction of toll collection, and (5) construction impacts. Based on this information the decision was made to down-scope the project to the current proposal and prepare a Supplemental Draft Environmental Impact Statement.

Alternatives under consideration include: (1) Taking no action, (2) providing for mass transit and (3) providing for multi-modal transportation modes including bicycle and pedestrian facilities. Incorporated into the studies with the build alternatives will be design variations of grade and alignment.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A public meeting (open house/map display) will be held to provide information and discuss features of the project. In addition, a public hearing will be held. Public notice will be given of the time and place of the meeting and hearing. The Supplemental Draft EIS will be available for public and agency review and comment prior to the public hearing. No formal scoping meeting will be held.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address previously provided in this document.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 6, 1994.

Patrick A. Bauer,

Transportation Engineer, Sacramento, California.

[FR Doc. 94–939 Filed 1–13–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Johnson County, KS

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project located in Johnson County, Kansas, Cass County, Missouri, and Jackson County, Missouri.

FOR FURTHER INFORMATION CONTACT: Johnny R. Dahl, Operations Engineer, FHWA, 3300 South Topeka Boulevard, suite 1, Topeka, Kansas 66611–2237, Telephone: (913) 267–7284. Donald L. Neuman, Programs Engineer, FHWA, P.O. Box 1787, Jefferson City, Missouri 65102, Telephone: (314) 636–7104. Warren Sick, P.E., Chief of Bureau of Design, Kansas Department of Transportation, Docking State Office Building, Topeka, Kansas 66612, Telephone: (913) 296–3525. Bob Sfreddo, Division Engineer—Design, Missouri Highway and Transportation Department, P.O. Box 270, Jefferson City, Missouri 65102, Telephone: (314) 751–2876. James F. Pilley, P.E., Johnson County Engineer, 1800 West 56 Highway, Olathe, Kansas 66061, Telephone: (913) 782–2640.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Kansas Department of Transportation, Missouri Highway and Transportation Department, Cass County, and Johnson County will prepare an EIS for a proposed highway project known as the 21st Century Transportation Corridor. If constructed, the project would be primarily on new location and developed initially as a two-lane road (ultimately as a four-lane roadway). The study corridor begins at the existing K–7/Shawnee Mission Parkway interchange, passes to the east side of DeSoto, extends southerly along the west side of the Cedar Creek development and the Johnson County Industrial Airport, extends southeasterly to U.S. 169 north of Spring Hill, and then extends easterly across the southern part of Johnson County passing south of Stilwell and intersecting the State Line in the vicinity of 195th Street. The corridor will then enter Cass County, Missouri, and connect with Highway 71 south of Belton; a distance of approximately 74 kilometers (46 miles).

The project is intended to provide relief for projected traffic demands in western and southern Johnson County, Kansas, northern Cass County, Missouri, and southern Jackson County, Missouri. Several alternatives will be considered including the no build. Also incorporated into the study will be various alignments within the corridor.

One public information and two *Citizen's Group* meetings have been held to keep the local citizens informed of the study. These meetings have provided early coordination with appropriate Federal, State, local agencies, and private organizations who have expressed interest in this proposed project.

Public hearing(s) will be held during the development of the EIS. Public notice will be given for the time and place of the hearing(s) and the location of where the Draft EIS will be available for review and comment.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning this proposed action and the EIS should be directed to the FHWA, Johnson County, or the Kansas Department of Transportation at the addresses provided.

Issued on: January 4, 1994.

Johnny R. Dahl,

Operations Engineer, Kansas Division, Federal Highway Administration, Topeka, Kansas.

[FR Doc. 94–982 Filed 1–13–94; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Miller County, AR

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project in Miller County, Arkansas.

FOR FURTHER INFORMATION CONTACT: Wendall L. Meyer, Environmental and Design Specialist, Federal Highway Administration, 3128 Federal Office Building, Little Rock, Arkansas 72201–3298, telephone: (501) 324–6430; or Reid Beckel, Consultant Coordinator, Chief Engineer, Arkansas State Highway and Transportation Department, P.O. Box 2261, Little Rock, Arkansas 72203, Telephone: (501) 569–2163.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arkansas State Highway and Transportation Department and Louisiana Department of Transportation, will prepare an environmental impact statement (EIS) on a proposal to construct a four-lane, divided, fully controlled access highway facility located on new alignment. The proposed project along U.S. 71, from Texarkana, Arkansas-Texas south to the Louisiana State Line, includes several alternatives based on new location corridors and varying termini. The approximate length of the project is 53.1 kilometers (33.0 miles).

The proposed improvements would improve the capacity of the existing route and increase regional mobility along a proposed ultimate route extending from Kansas City, Missouri to Shreveport, Louisiana. This project is one of several projects identified as "high priority corridors" on the National Highway System that would provide a transportation corridor of national significance from Kansas City to Shreveport. The proposed improvements will draw new traffic through southwest Arkansas, northwest Louisiana, and northeast Texas and serve as both a short-term and long-term economic stimulus, promoting development in this currently rural area. Major metropolitan areas lying along this "high priority corridor" include Kansas City, Kansas-Missouri; Joplin, Missouri; Fayetteville, Arkansas, Fort Smith, Arkansas; Texarkana, Arkansas-Texas; and Shreveport, Louisiana.

The northern terminus of the proposed improvements will connect to the proposed Loop 151/245 in Texarkana, Arkansas-Texas. Loop 151/

245 is currently being designed and/or constructed around the south side of Texarkana, Arkansas-Texas. The southern terminus will be at the Louisiana state line, and its location determined based on existing and new location U.S. 71 corridors.

Alternatives to be considered are:

(1) The "Do-Nothing" Alternative, where roads are constructed according to the regional plan with the exception of the proposed facility;

(2) The "Reconstruction" Alternative, where existing U.S. 71 and roads on the regional plan are upgraded to handle traffic forecast for the proposed facility, but with less than full control of access; and

(3) The "New Location" Alternative, considering several different alignments and full control of access.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies and to private organizations, including conservation groups and groups of individuals who have expressed interest in the project in the past, and to major Arkansas, Louisiana and northeast Texas newspapers. A series of public involvement sessions will be held in the areas to be affected. In addition, a formal public hearing will be held. Public notice will be given of the time and place of the public involvement sessions and the public hearing. The draft Environmental Impact Statement (EIS) will be available for public and agency review and comment prior to the public hearing. An agency scoping meeting was held on December 7, 1993 at the Arkansas State Highway and Transportation Department offices in Little Rock, Arkansas.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Issued on: January 3, 1994.

Wendall L. Meyer,

Environmental and Design Specialist, FHWA, Little Rock, Arkansas.

[FR Doc. 94-983 Filed 1-13-94; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Multiple Counties, Alabama

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that two Environmental Impact Statements will be prepared for a proposed highway that will traverse the northern section of the State of Alabama.

FOR FURTHER INFORMATION CONTACT: Mr. Joe D. Wilkerson, Division Administrator, Federal Highway Administration, 500 Eastern Boulevard, suite 200, Montgomery, Alabama 36117-2018, Telephone (205)223-7370.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the State of Alabama Department of Transportation, will prepare two Environmental Impact Statements (EIS's) for Project DPS-A002(001). The proposal is to construct a multi-lane, limited access roadway that will function as a major segment of a Memphis to Atlanta transportation corridor. The facility will provide a direct link between the two metropolitan areas.

The facility, approximately 273.58 kilometers (170 miles) in length, will be divided into two segments for location studies and assessment of environmental impacts. Two Environmental Impact Statements will be prepared, one for the western part of the route, approximately 120.7 kilometer (75 miles) in length, from the Alabama/Mississippi State line and extending to an undermined point near Interstate Highway 65 near the center of Alabama and the second Impact Statement written for the eastern part of the project, approximately 152.9 kilometers (95 miles) in length, beginning at an undetermined point near Interstate Highway 65 near Huntsville, Alabama, and extending to the Alabama/Georgia border. There will be coordination in the location and environmental studies to establish a common location at I-65.

Alternatives under consideration include: (1) Alternate route locations, (2) a no action alternative, and (3) postponing the action Alternative.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have previously expressed or are known to have an interest in this proposal. A series of public meetings will be held beginning in early 1994. In addition, public hearings will also be held. Public notice will be given of the time and place of the meetings and hearings. The Draft Environmental Impact Statements will be available for public and agency review and comment prior to the public hearings.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS's should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Joe D. Wilkerson,

Division Administrator, Montgomery, Alabama.

[FR Doc. 94-940 Filed 1-13-94; 8:45 am]

BILLING CODE 4910-22-M

Environmental Impact Statement: Pitt County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project within the City of Greenville and Pitt County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, Federal Highway Administration, suite 410, 310 New Bern Avenue, Raleigh, North Carolina 27601, Telephone (919) 856-4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on a proposed Greenville Southwest Bypass in the City of Greenville and Pitt County. The proposed action will be the construction of a multilane divided controlled access highway on new location from NC 11-903 south of Greenville around the southern and western portions of the city to US 264 west of Greenville. This proposed facility is a portion of a planned complete bypass facility which ultimately will provide for travel around Greenville and will relieve existing traffic congestion along NC 11-903 through Greenville. The proposed action is part of the 1990 Greenville Thoroughfare Plan.

Alternatives under consideration include: (1) The "no-build" alternative, (2) improve existing facilities, and (3) a controlled access highway on new location.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. Citizens Informational Workshops and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the workshops and hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comment at the time of the hearing.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: January 7, 1994.

Roy C. Shelton,

Operations Engineer, Raleigh, NC.

[FR Doc. 94-941 Filed 1-13-94; 8:45 am]

BILLING CODE 4910-22-M

Federal Railroad Administration

Application for Approval of Discontinuance or Modification of a Railroad Signal System or Relief From the Requirements of 49 CFR Part 236

Pursuant to 49 CFR part 235 and 49 U.S.C. App. 26, the following railroads have petitioned the Federal Railroad Administration (FRA) seeking approval for the discontinuance or modification of the signal system or relief from the requirements of 49 CFR part 236 as detailed below.

Block Signal Application (BS-AP)-No. 3273

Applicant: Buffalo & Pittsburgh Railroad, Inc., Mr. R. T. Haley, Signal Supervisor C&S, 201 North Penn Street, Punxsutawney, Pennsylvania 15767.

The Buffalo & Pittsburgh Railroad, Inc., seeks approval of the proposed discontinuance and removal of the signal system, on the single main track, between Macklin, milepost 282.4 and Eidenau, milepost 303.5, near Butler, Pennsylvania, on the Butler Branch.

The reason given for the proposed changes is to retire facilities no longer required for present operation.

Rules Standards & Instructions Application (RS&I-AP)-No. 1089

Applicant: Consolidated Rail Corporation, Mr. J. F. Noffsinger, Chief Engineer—C&S, 2001 Market Street, P.O. Box 41410, Philadelphia, Pennsylvania 19101-1410.

Consolidated Rail Corporation (Conrail) seeks relief from the requirements of § 236.566 (49 CFR 236.566) of the Rules, Standard and Instructions to the extent that they be allowed to operate nonequipped locomotives in automatic cab signal territory, on the two main tracks between "CP Jacks," milepost 191.3 and "CP Gray," milepost 223.3, on the Pittsburgh Line, Harrisburg Division, for the following operations:

1. Wire trains, work trains, wreck trains, and ballast cleaners to and from work;

2. Engines and diesel cars moving to and from shops; and

3. Engines used in switching and transfer service, with or without cars, not exceeding 20 miles per hour.

The reason given for the proposed changes is that exemptions are already authorized for operation of nonequipped locomotives under the same circumstances in cab signal territory at other locations on Conrail, and that this relief request would be an extention of those already existing exemptions.

RS&I-AP-No. 1090

Applicants: Union Pacific Railroad Company, and Missouri Pacific Railroad Company, Mr. E. J. McCaddon, Director of Locomotive Maintenance Operations, Harriman Dispatching Center, 850 Jones Street, Omaha, Nebraska 68102-2920.

The Union Pacific Railroad Company and Missouri Pacific Railroad Company (UP&MP) jointly seek relief from the requirements of Section 236.590 (49 CFR 236.590) of the Rules, Standard and Instructions for all locomotives owned, leased, or operated under contract by the UP&MP, equipped with Automatic Train Control Systems (including automatic train control, automatic train stop, and coded cab signals), to the extent that the carrier be permitted to extend the current 2 year time limit (736 days) to 3 years, for change out or removal and cleaning of the following pneumatic valves associated with Automatic Train Control Systems:

1. "EBPS"—Engine Brake Pressure Switch 35/20 PSI.

2. "SBPS"—Service Brake Pressure Switch 35/20 PSI.

3. ATC—Magnet Valve.

4. CCS—Magnet Valve.

Applicant's justification for relief: To allow easier scheduling of air brake work since time limits would coincide with other locomotive valves, providing improved inventory control, reducing required inventory, and reducing locomotive down-time. The carrier also states the failure frequency is less than air brake valves currently changed and cleaned on a 3 year basis.

Any interested party desiring to protest the granting of an application shall set forth specifically the grounds upon which the protest is made, and contain a concise statement of the interest of the protestant in the proceeding. The original and two copies of the protest shall be filed with the Associate Administrator for Safety, FRA, 400 Seventh Street, SW., Washington, DC 20590 within 45 calendar days of the date of issuance of this notice. Additionally, one copy of the protest shall be furnished to the applicant at the address listed above.

FRA expects to be able to determine these matters without oral hearing. However, if a specific request for an oral hearing is accompanied by a showing that the party is unable to adequately present his or her position by written statements, an application may be set for public hearing.

Issued in Washington, DC on January 7, 1994.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 94-901 Filed 1-13-94; 8:45 am]

BILLING CODE 4910-06-P

DEPARTMENT OF THE TREASURY

Office of the Secretary

Notice of Call for Redemption

Washington, January 11, 1994.

To Holders of 8½ Percent Treasury Bonds of 1994-99, and Others Concerned

1. Public notice is hereby given that all outstanding 8½ percent Treasury Bonds of 1994-99 (CUSIP No. 912810 BR 8) dated May 15, 1974, due May 15, 1999, are hereby called for redemption at par on May 15, 1994, on which date interest on such bonds will cease.

2. Full information regarding the presentation and surrender of such bonds held in coupon and registered form for redemption under this call will be found in Department of the Treasury Circular No. 300, Revised, dated March 4, 1973. Coupon bonds must have all unmatured coupons attached to the

security upon presentation for redemption at par. If any coupons for the interest payment dates of November 15, 1994, through May 15, 1999, are missing, the full face amount of the missing coupons will be deducted from the par value.

3. Such bonds held in book-entry form will be paid automatically on May 15, 1994, whether held on the books of the Federal Reserve Banks or in TREASURY DIRECT accounts.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 94-1081 Filed 1-12-94; 8:45 am]

BILLING CODE 4810-40-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Degas Landscapes" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about January 19, 1994 to on or about April 4, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register.**

Dated: January 10, 1994.

Les Jin,

General Counsel.

[FR Doc. 94-947 Filed 1-13-94; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619-6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

DEPARTMENT OF VETERANS AFFAIRS

Poverty Threshold

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: The Department of Veterans Affairs (VA) is hereby giving notice of the weighted average poverty threshold in 1992 for one person (unrelated individual) as established by the Bureau of the Census.

DATES: The 1992 poverty threshold is for consideration effective October 8, 1993, the date on which we notified our regional offices of such amount.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233-3005.

SUPPLEMENTARY INFORMATION: VA published a final regulation amending 38 CFR 4.16(a) in the **Federal Register** of August 3, 1990, pages 31579-80. The amendment provided that marginal employment generally shall be deemed to exist when a veteran's earned annual income does not exceed the amount established by the Bureau of the Census as the poverty threshold for one person. VA noted that the weighted average poverty threshold in 1988 for one person (unrelated individual) as established by the Bureau of the Census was $6,024 and stated we would publish subsequent poverty threshold figures as notices in the **Federal Register.**

The Bureau of the Census recently published the weighted average poverty thresholds for 1992. The threshold for one person (unrelated individual) is $7,143.

Dated: January 4, 1994.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 94-898 Filed 1-13-94; 8:45 am]

BILLING CODE 8320-01-M

Sunshine Act Meetings

Federal Register

Vol. 59, No. 10

Friday, January 14, 1994

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 10:03 a.m. on Tuesday, January 11, 1994, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to the Corporation's corporate activities.

In calling the meeting, the Board determined, on motion of Mr. Stephen R. Steinbrink, acting in the place and stead of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(2), (c)(4), (c)(6), (c)(9)(B), and (c)(10)).

The meeting was held in the Board Room of the FDIC Building located at 550-17th Street, NW., Washington, DC.

Dated: January 11, 1994.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Acting Deputy Executive Secretary.

[FR Doc. 94-1084 Filed 1-12-94; 8:54 am]

BILLING CODE 6714-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10 a.m., Wednesday, January 19, 1994.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: January 12, 1994.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 94-1108 Filed 1-12-94; 1:06 pm]

BILLING CODE 6210-01-P

Corrections

Federal Register
Vol. 59, No. 10
Friday, January 14, 1994

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. RP94-35-003]

Colorado Interstate Gas Co., Compliance Filing

Correction

In notice document 93-31874 appearing on page 69358 in the issue of Thursday, December 30, 1993, the docket number should read as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-920-4210-06; NMNM 2074]

Proposed Continuation of Withdrawal; New Mexico

Correction

In notice document 93-30079 appearing on page 64778 in the issue of Thursday, December 9, 1993, make the following corrections:

1. In the third column, in the second paragraph, in the first line, "trip" should read "strip".

2. In the same column, in land description T. 9 N., R. 6 E., "Sec. 92" should read "Sec. 19".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NM-060-04-4760-01-(604); NM-89726]

Realty Action; Direct Sale of Public Lands in Lea County, NM

Correction

In notice document 93-30076 beginning on page 64777 in the issue of Thursday, December 9, 1993, in the second column, in land description T. 14 S., R. 38 E., in Sec. 5, after "NE¼" insert a comma.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ASW-46]

Proposed Modification of Class E Airspace: Stillwater, OK

Correction

In proposed rule document 93-29300 beginning on page 63125 in the issue of Tuesday, November 30, 1993, make the following correction:

§ 71.1 [Corrected]

1. On page 63126, in the third column, in § 71.1, under ASW OK E, in the second line, "3'" should read "'36'".

BILLING CODE 1505-01-D

federal register

Friday
January 14, 1994

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 3280 and 3282
Manufactured Home Construction and Safety Standards on Wind Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Parts 3280 and 3282

[Docket No. R-93-1632; FR-3380-F-02]

RIN 2502-AF91

Manufactured Home Construction and Safety Standards on Wind Standards

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: HUD is amending the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to improve the resistance of manufactured homes to wind forces in areas prone to hurricanes. Under this rule, manufactured homes will have to be designed to withstand wind speeds of up to 110 miles an hour in hurricane-prone areas, in accordance with design provisions of the American Society of Civil Engineers Standard ANSI/ASCE 7-88. Also, the Department is making certain other changes to the standards to ensure that structural assemblies, components, windows, connectors, and fasteners will be adequate for the area in which the home is to be placed. The revised standard also requires exterior roof and wall coverings to be fastened adequately to sheathing and framing members, to resist higher design wind pressures.

The purpose of this rule is to increase the safety of manufactured homes, thereby reducing deaths and injuries and extensive property damage losses in areas where wind-induced damage is a particular hazard and risk.

EFFECTIVE DATE: July 13, 1994, except that §§ 3280.403(b) and (e) and 3280.404(b) and (e) will become effective January 17, 1995. The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of July 13, 1994, except that the incorporation by reference of publications listed in §§ 3280.403(b) and (e) and 3280.404(b) and (e) will become effective January 17, 1995.

FOR FURTHER INFORMATION CONTACT: G. Robert Fuller, Director, Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., ATTN: Mailroom B-133, Washington, DC 20410-8000. Telephones: (voice) (202) 755-7430; (TDD) (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Background

Developmental History

The purpose of the National Manufactured Housing Construction and Safety Standards Act of 1974 (42 U.S.C. 5401-5426, at 5401) (the Act) is to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents, and to improve the quality and durability of manufactured homes. Section 604 of the Act confers authority on the Secretary of HUD to issue, amend, or revoke any Federal manufactured home construction or safety standard.

Following Hurricane Andrew, the Department conducted field investigations of the damage experienced in the hurricane by manufactured housing units, as part of a full-scale review of the Federal manufactured home standards. The goal of these investigations and the review of materials and recommendations was to ensure that the Federal standards provide adequate protection to manufactured home occupants during high wind conditions. On April 14, 1993, the Department published a proposed rule (58 FR 19536) that reported the preliminary conclusions of the Department's efforts, and sought public comment on changes that the Department was considering for the Federal standards. The Department also contacted each of the members of the National Manufactured Home Advisory Council (Advisory Council), individually, in order to solicit their individual comments on the proposed wind standards rule, because the proposed timetable for final publication did not permit convening the Advisory Council. The individual responses of the Advisory Council members have been considered as public comments and included in the docket file for this rule.

On June 9, 1993, the Department announced (58 FR 32316) that the comment period would be extended to July 9, 1993. The Department has continued to receive and consider comments well after that date, while this final rule was being developed. Because the timeframe originally proposed for the implementation of standard changes was postponed as a result of public comments and the extension of the comment deadline, the Department consulted with the National Manufactured Home Commission and convened the Advisory Council for consultation and to seek recommendations from the Advisory Council as a whole (see the notice published at 58 FR 34586 (June 28, 1993)). The Advisory Council met in Washington, DC, on July 13 and 14, 1993, to discuss wind standards and other proposals for changes to the standards for manufactured housing.

The recommendations of the Advisory Council as a whole were included in a resolution. The resolution questioned the sufficiency of the evidence to support adoption of the proposed rule and recommended that: (1) The Department undertake negotiated rulemaking or other comparable process for this standard; (2) the costs of any rule be considered, both cumulatively and by zones; (3) the Department examine its legal and regulatory authority with respect to installation, if it finds that an installation standard would be an appropriate means of increasing wind safety; (4) the Department consider all nationally recognized model codes; (5) the Department make available documents relating to the development of new wind standards; (6) the Advisory Council be reconvened to review public comments and the Department's analysis; (7) the Department should promptly complete the process of updating the wind standards, considering the issues and questions raised by the Advisory Council and in public comments; and (8) the Department should prepare an adequate regulatory impact analysis upon which it can support the decisions to be made on implementation of new standards.

The Department has considered the conclusions and recommendations of the Advisory Council in developing this final rule and the final regulatory impact analysis. The regulatory impact analysis is responsive to several of the Advisory Council's concerns, while this preamble addresses other points raised by the Advisory Council.

With respect to the other points raised by the Advisory Council, many commenters also suggested that installation is a crucial factor in the safety of manufactured homes. The Department agrees that the installation of manufactured housing units may be an important factor in the safety of such housing and is initiating a review of the Department's authority and ability to influence tiedown requirements.

However, the Department does not believe there is any significant advantage in, or that the public interest would be served by, reconvening the Advisory Council for the purpose of reviewing the public comments or the Department's compliance with its statutory responsibilities in the development of these standards. Nor does the Department believe there is any advantage to the public interest in undertaking negotiated rulemaking for these standards because they have been subject to an extensive notice and comment period and have been discussed with the Advisory Council, a body representative of the manufactured housing industry, government, and consumers.

Major Differences From Proposed Rule

As a result of the Department's review of public comments and consultation with the Advisory Council, at this time the Department has decided not to pursue substantial changes to the standards in areas of the country not generally subject to hurricanes (Wind Zone I). However, the Department recognizes that in many areas of the country the Federal standards applicable to the design and construction of manufactured housing are far below standards specified for site-built and modular housing by State and local codes. Thus, the Department shall initiate a new review of the standards for the rest of the country, and it expects to publish proposals for these areas next year.

The Department has also decided not to include in the final rule the following items that were in the proposed rule:

(1) Maximum dimension of 12" for roof overhangs;

(2) Lower load duration factor than provided in the 1991 National Design Specification for Wood Construction (NDS);

(3) Requirement for a 1.5 safety factor to calculate resistance of anchoring and foundation systems to higher design forces in Wind Zones II and III;

(4) Manufacturer's design and details for a permanent foundation system (certified by a registered professional engineer or architect) applicable to each manufactured home design; and

(5) Shortened period for implementation of the standards after publication.

Relationship to Energy Rule

On October 25, 1993, the Department published a final rule amending the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to include preemptive standards significantly upgrading the existing energy conservation requirements (58 FR 54975) (Energy Rule). The effective date of that rule is October 25, 1994.

Several of the provisions to be affected by the Energy Rule are also affected by the rule published today. Because of the earlier effective date for those provisions in today's rule, the Department will publish technical amendments to the Energy Rule, before the effective date of that rule, that also will reflect the new requirements imposed under today's rule. In some minor instances, the changes adopted in today's rule already include requirements that otherwise would have been imposed upon the effective date of the Energy Rule. Those changes are identified further in the section-by-section analysis later in this preamble.

Problem To Be Addressed

Each year significant damage to manufactured housing is produced by straight winds, hurricanes, and tornadoes. Damage is primarily in the form of roof failure, loss of roof diaphragm material, connection failures, and tiedown/foundation failures. The most predictable areas for wind damage to manufactured housing are those subject most directly to hurricanes. Last year Hurricanes Andrew and Iniki provided dramatic examples of the destruction faced by housing in hurricane-prone areas.

The damage to manufactured homes by Hurricane Andrew was so extensive that many were rendered unrecognizable. Ninety-seven percent of all manufactured homes in Dade County were totally destroyed, while only eleven percent of single-family homes were destroyed. The American Red Cross reported that of the 1,176 licensed and registered manufactured homes in Homestead, Florida, 1,167 were completely destroyed. The American Red Cross and FEMA have also reported a total of 11,213 manufactured homes destroyed in Florida and Louisiana in Hurricane Andrew, and an additional 3,016 manufactured homes experienced major damage. Almost 36% of all housing units destroyed during Hurricane Andrew were manufactured homes.

The loss of these units had implications extending beyond the loss of the homes and possessions of their owners. These homes, shredded by the winds, also became dangerous flying missiles, inflicting more property damage on neighboring structures.

In its October 1992 report on Hurricane Andrew, the Federal Emergency Management Agency (FEMA) stated that, "in all areas, mobile homes (manufactured housing) were most susceptible to damage or destruction. Many mobile homes imploded from the wind loads of Hurricane Andrew. In coastal areas, where mobile homes were properly 'cradled' and elevated, the cradled foundations remained intact, but the mobile homes mounted to these foundations were often heavily damaged or destroyed."

Concerns for potential losses during high winds in coastal and other areas were identified previously in a May 1991 report by the Federal Emergency Management Agency (FEMA), which predicted that the United States can expect more hurricanes of greater intensity during the 1990s and early 2000s than it has experienced in recent years. Furthermore, estimates suggest that by the year 2010 the population density on Florida's coasts will have increased about 130 percent from the 1988 level. Moreover, as the national population ages, an increasing percentage of coastal inhabitants will probably be older individuals, a group more likely to occupy manufactured houses. The American Association of Retired Persons (AARP) reports that 40 percent of the purchasers of new manufactured homes are at least 50 years old. The elderly can be more difficult to evacuate and may be more prone to be injured during periods of extreme high winds.

The technology for achieving economical wind resistant designs in housing is available. It involves calculations of risk for extreme wind-prone coastal areas and the establishment of construction standards based upon these risk calculations. Through use and implementation of this approach, risks of injury and death can be minimized and economic loss limited to acceptable levels in coastal areas subject to high winds.

In determining a course of action to address these issues, the Department had to balance two competing concerns: (1) The need to raise manufactured housing standards, to protect individuals, their homes, and their neighbors from future high winds; and (2) the need to preserve the affordability of a key source of low-cost housing. This rule is the result of the Department's decision to improve protection of homeowners in hurricane-prone areas as soon as possible, but to delay making changes to the standards in lower wind-risk areas, in order to give adequate consideration to cost factors. Although the changes are expected to increase costs to consumers in the high-wind areas, the Department has concluded that the increases are justified, because the improved standards will significantly reduce future losses to occupants and the public by strengthening the features that make manufactured homes vulnerable to damage and destruction in high

winds. Perhaps more importantly, the improved standards may help avoid the inestimable costs of devastation to people's lives and emotional health and to the communities, in the likelihood that another powerful hurricane hits a community of manufactured homes in the hurricane-prone regions of the country.

Field Investigations—Hurricane Andrew

Among the major deficiencies contributing to manufactured housing damage in Hurricane Andrew were inadequate connections between exterior roof or wall coverings and supporting sheathing or framing and between walls, roofs and floors. In particular, losses of roof coverings were widespread, and were considered by some to be the first mode of failure for manufactured homes damaged in Hurricane Andrew. Other roof-related damage was due to loss of sheathing, failure of connections, or a combination of these problems. Numerous failures of uplift straps also occurred, when the staples pulled out through the metal straps, permitting the straps to tear away from the members to which they had been fastened. In some cases, entire sections of roofs were blown away.

Another common area of failure was loss of exterior wall siding. Metal or plastic siding used in manufactured housing was readily damaged or penetrated by flying debris during the high winds in Hurricane Andrew. Loss of roof or wall cladding allows the building to be penetrated by the weather and has far-reaching consequences beyond the area of envelope integrity.

As a result of these losses, and damage to windows and doors, there was significant water damage and deterioration to many manufactured homes. In addition, failure of coverings or attachments to the manufactured home structure also caused missile-type damage to other homes.

Other losses were precipitated by prior deterioration around windows and doors that had allowed moisture to enter, thereby weakening the resistance of surrounding wood framing and floor decking. Apparently this deterioration was a result of inadequate design or enforcement practices, or a combination of both. In some manufactured homes the loss of opening protection resulted in increased internal pressures within the buildings, which contributed to the failure of interior components including ceilings. In other cases, entire sections of sliding glass doors on leeward walls were literally sucked out of their frames because of inadequate resistance of the combined assembly to the wind forces imposed during Hurricane Andrew.

Edges and corners of roofs and endwalls of manufactured homes appeared to have been particularly vulnerable to the high wind forces, according to the damage typically reported in these areas. Structural failures of endwalls also occurred, but the presence of nearby interior shearwalls prevented further losses (though not all designs are provided with interior shearwalls in the vicinity of the endwall). However, in many other cases, the entire superstructure was completely removed from the floor system.

Numerous anchor system failures were reported in the areas subjected to the highest wind speeds. Many of the systems failed due to improper installation or the type of anchor used. In addition, anchor capacity appeared to have been reduced further because of the saturated condition of the soil.

Summary of NIST Report

As part of its review of the adequacy of the Federal Manufactured Housing Construction and Safety Standards (FMHCSS), the Department contracted for a study by Dr. Richard D. Marshall of the National Institute of Standards and Technology (NIST) (Report NISTIR 5189, May 1993). According to Dr. Marshall and several other investigative reports, damage to manufactured homes in Hurricane Andrew ranged from loss of roofing to total destruction. In general, HUD-labeled units suffered less damage than did pre-HUD units. However, conventional residential construction adjacent to manufactured home parks performed better, in some instances significantly better, than did manufactured homes. Based on wind speed assessments and damage surveys, it appears that HUD-labeled manufactured homes began to experience damage to roof and wall coverings at fastest-mile wind speeds of up to 95 mph (43 m/s), and significant structural damage at wind speeds of from 100 to 120 mph (45 to 54 m/s).

Commonly observed failures included loss of roof membranes and blow-off of roof sheathing, failure of uplift straps at truss-to-wall connections where staple crowns pulled through the strap, loss of cladding on endwalls and near corners where large negative (suction) pressures developed, loss of appurtenances with resultant missile damage and damage to the primary house unit at connection points, complete separation of the superstructure from the floor and chassis frame, and loss of the complete unit because of the failure of tiedown straps or the withdrawal of soil anchors. The NIST report also pointed out that the capacity of the anchors appeared to have exceeded the marginal resistance of the superstructure, and that if the superstructure separation failures had not occurred, the number of anchor systems failures could have been much more widespread.

In almost every case in Florida, some form of anchoring had been installed. Outside the area of strongest winds, there were relatively few anchor failures. Within the radius of strongest winds, anchor failures that were observed involved 2 ft. (610 mm) helical ground anchors (some embedded in about 3 cu.ft. (0.8 cu.m) of concrete) or rock anchors into coral. No failures of 4 ft. (1.2 m) helical anchors were noted. However, it is not clear that any anchors of that length were actually installed in the area subjected to the highest winds.

Dr. Marshall of NIST compared wind load provisions of the current FMHCSS with the American Society of Civil Engineers (ASCE) Standard ANSI/ASCE 7–88, the South Florida Building Code, the Standard Building Code, and wind design provisions proposed by the Manufactured Housing Institute. Based on these comparisons of design loads for manufactured housing units of typical dimension and geometry, considering the rationale for using importance factors and unreduced pressure coefficients, and in view of the fact that it is a true consensus standard, Dr. Marshall concluded that ANSI/ASCE 7–88 should be the basis for updating the wind load requirements for manufactured housing. In addition, since the NIST study only addressed design loads, in the interest of safety and economy, it was also recommended that prescriptive requirements of the proposed standard be consistent with the specified design loads and that testing and analysis to assure this consistency be conducted.

ASCE 7–88: Consensus Procedures for Development and Adoption

The ASCE, founded in 1852, is the oldest civil engineering organization in the United States and has a membership of more than 110,000. The ANSI/ASCE Standard 7–88, Minimum Design Loads for Buildings and Other Structures (November 1990) (ASCE 7–88, in this preamble), was developed by ASCE based on studies conducted at academic and research institutions in the United States and other parts of the world.

ASCE 7–88 is the only truly consensus minimum design load standard currently available in the United States. The ASCE rules, approved by the American National Standards Institute (ANSI), require all standards committees to have a membership balanced between

producers, consumers, building officials, and general interest groups. Each of these groups represents between 20% to 40% of the committee membership. At the time ASCE 7–88 was adopted, 89 members were on the standards committee.

The approval or revision of an ASCE standard is an elaborate process, which involves extensive balloting and resolution of all negative votes. When a standard is to be adopted, the standards committee is broken down by expertise into task committees. Those task committees draft the standard and present it to the full standards committee for balloting. All objections within the standards committee are satisfied by one of three ways: (1) the objector agrees to withdraw the objection; (2) by a vote of 75%, the full committee accepts the objection and changes the standard; or (3) by a vote of 75%, the full committee rejects the objection. The full committee then votes on the standard.

In order for the standard to pass the full standards committee, at least 65% of the committee membership must vote and 75% of those votes must be in the affirmative. Moreover, the affirmative votes cannot be less than 55% of the approved voting membership. After the standard passes the standards committee, it is issued to the public for further comment. As in the standards committee, all objections are individually considered and processed in the same manner (i.e., withdrawn or accepted or rejected by a vote of 75% of the standards committee). After a certain cutoff date and after all objections are addressed, the standard is published as an ASCE consensus standard.

ASCE 7–88: Wind Load Provisions in Model Codes

Building codes in each State or local jurisdiction control the design and construction of buildings and structures in that jurisdiction. Most communities in the United States adopt, in large part, one of the three model building codes: the National Building Code of the Building Officials and Code Administrators International (BOCA); the Standard Building Code (SBC) of the Southern Building Code Congress International, Inc. (SBCCI); or the Uniform Building Code (UBC) of International Conference of Building Officials (ICBO). Wind load provisions in these model building codes are based on the ASCE 7–88 standard, but with some modifications.

The ASCE 7–88 standard considers all of the factors that influence the magnitude of wind loads on a building. In addition to wind speed, those factors include: (1) Terrain surrounding the building, (2) shape of the building, and (3) desired safety of the building frame and components. The model building codes use most of these factors from ASCE 7–88, but modify some of the factors based on experience; because of tradition, other factors are not considered.

Some provisions of model building codes are adopted from industry manuals. The use, adoption, and modification of wind-load factors by the model building codes result from an attempt to simplify the wind-load provisions and react to the concerns of affected industries and special interest groups. In general, these modifications by model code agencies result in lower design requirements for wind forces than would be required under ASCE 7–88.

Even with these modifications, final wind loads for most buildings are fairly consistent in all model building codes. All three of the major model building codes incorporate the basic wind speed map of ASCE 7–88, and reference the ASCE standard in whole or in part, but either modify the standard or require additional prescriptive design and construction provisions. In addition, all three provide the use of ASCE 7–88 as an alternative to be applied at the discretion of the designer.

However, the model building codes do not cover the design or construction of manufactured housing. The only control local governments have over manufactured housing and mobile (manufactured) home parks is through certain zoning regulations, or anchoring, set-up, or installation requirements. As noted by one commenter (150) and discussed in the next section of this preamble, incorporation of the ASCE 7–88 standard will be critical to ensuring continued acceptance of manufactured housing by local jurisdictions in high wind areas.

Building Codes in Southern Florida

Generally, the local jurisdictions in Florida have adopted modifications of the SBC or South Florida Building Code (SFBC). As one of its primary recommendations in the aftermath of Hurricane Andrew, the 18-member Dade County, Florida, Grand Jury stated that the 35-year-old South Florida Building Code must be rewritten to duplicate the tougher, national wind standard of ASCE 7–88. The Grand Jury recognized ASCE 7–88 as a standard that more adequately reflects the design strength necessary for windows and doors. In acknowledgment of the Grand Jury's recommendations, the Dade County Building Code Committee adopted (effective January 1, 1994) the Wind Loads section of ASCE 7–88, using Exposures C and D, only. The Grand Jury further recommended that Dade County officials issue a moratorium on the permanent replacement of manufactured homes until officials could be assured that the replacement homes meet the ASCE 7–88 standards. Further, noting that lower standards are applied to manufactured housing than to conventional housing, the 1992 Fall Term Grand Jury asserted that "the low standard amounted to discrimination against those persons unable to afford the costs of conventional housing."

In its Final Report, filed August 4, 1993, the Dade County Grand Jury referenced the initial Grand Jury findings regarding the engineering advantages of the ASCE 7–88 standard and commended its adoption into the SFBC. The Grand Jury reported that:

> [T]his additional and essential modification of the SFBC should provoke a wide-ranging improvement of most of our building designs, methods and products. It should also result in the building of structures that will provide greater safety and security during a hurricane.

In order to protect those living in and near manufactured homes, the Grand Jury has reiterated the recommendation that a moratorium be instituted on the installation in the County of any new mobile homes that do not meet the wind-loading standards of ASCE 7–88.

In addition, the SBCCI, after assessing the damage caused by Hurricane Andrew, concluded that standards applicable to manufactured housing need to be reviewed to bring them up to the level of other construction types, unless society is willing to consider manufactured homes to be expendable. The SBCCI said that even if manufactured homes are considered expendable, the issue of the hazard they present to neighboring buildings and structures needs to be addressed. Accordingly, they further concluded that steps need to be taken to strengthen the structural frame, enforce tiedown provisions, and assure that the installation of homes is done by those who are knowledgeable in the requirements of the code. Unless these issues are addressed, the SBCCI believes there will continue to be great costs associated with hurricane damage.

Improved Anchoring and Foundation Systems

Enforcement of anchoring and tie-down systems for manufactured housing construction has generally been considered a State or local government and their building officials'

responsibility. Section 3282.303 of the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282) urges, but does not require, State Administrative Agencies to monitor installation of manufactured homes. Thus, standards for foundations and anchorings and enforcement of those standards are not uniform among the States, and in some States are nonexistent. For example, the State of Florida has statewide laws related to installation, but enforcement of those laws is left to local building officials, while Louisiana is one of 23 States that does not regulate installation of manufactured homes at all.

The National Conference of Building Codes and Standards (NCSBCS), under contract with the Department, sent a team to inspect manufactured homes damaged or destroyed by Hurricane Andrew. Their report, dated September 25, 1992 (Rev. October 1, 1992), evaluated anchoring systems used in Florida and Louisiana. The team found that virtually all manufactured homes they saw in Florida had been anchored, but anchors had failed in most destroyed homes.

Some of the systems that failed were anchors embedded only two feet into the soil, which were pulled out of the ground by the force of the storm. Other systems that failed included short anchors embedded in concrete or driven into the coral. In Louisiana, most manufactured homes the team saw had no anchoring systems at all, or only had two or three anchors on each side; less than one-half the number generally specified by manufacturers' instructions for hurricane zones. Also, where anchors were installed, most had been installed incorrectly; often embedded only partially in the ground with 12" or more protruding above finished grade.

While the majority of anchoring system failures appeared to result from improper installation, the NCSBCS Team observed several cases where the holding capacity of anchors appeared to have been reduced because of water saturated soil. In order to determine the adequacy of anchoring systems installed in soil that might be exposed to heavy rainfall and hurricane force winds, further investigating and testing of anchors will be conducted by the Department.

Numerous failures reported after Hurricanes Andrew and Hugo and other previous wind storms support the Department's concerns over anchoring systems for manufactured housing that are inadequate to resist probable high wind forces. In addition, as the NIST Report indicated: "[i]f superstructure failures had not occurred [in Hurricane Andrew], the number of anchor system failures might well have been greater * * *."

Some field and laboratory testing of commercially available ground anchor and steel strapping systems has been conducted under a HUD contract with Wiss, Janney, & Elstner, Inc. (See WJE Report No. 901798, July 26, 1991, HUD USER—HUD–0005823). The initial test results indicate that anchors have a significantly lower load resistance capacity than even the levels required by the current standard. Resistance or capacity would be even lower if anchors are not installed in accordance with anchor manufacturer's and home manufacturer's installation instructions or under saturated soil conditions.

The Department has also been conducting laboratory tests to evaluate the resistance of manufactured home support and anchoring systems to lateral wind and seismic forces. After the results of the laboratory data have been evaluated and compared to the field data, the Department may propose changes to lower allowable anchor system resistance values.

In the interim, the Department cautions home and anchor manufacturers, installers, retailers, insurance companies, lenders, and State and local government agencies that anchoring should be rated for specific soil, loading, and installation conditions for which the anchor is acceptable. Failure to do so may result in anchoring and tiedown systems which have inadequate ultimate capacity to resist probable design wind forces.

II. Analysis of Public Comments

Characterization of Commenters

The Department received 1,116 comments in response to the proposed rule and the notice extending the comment period. Although approximately 235 of these comments are included in file of the Rules Docket Clerk as being received under the extended deadline, many of these were delayed in receipt in the Rules Docket Clerk office because they were sent first to other offices within the Department.

The great majority of the comments were duplicative or identical form letters (of the 1,116 total comments, only 75 to 100 included distinctive comments). The commenters generally can be characterized as follows:

— Businesses (including retailers, manufacturers, suppliers, finance companies, park owners, etc.)—704
—Industry groups (including State and national associations)—24
—Members of Congress (including original correspondence and transmittals of constituent letters)—245
—Other governmental agencies and representatives (Federal, State, and local agencies or representatives)—77
—Members of the National Manufactured Home Advisory Council (individually)—15
—Individuals (including consumers, engineers and other experts, salespersons, etc., in individual capacities)—80
—Private standards groups—6
—Consumer groups—2
—Tenants groups—1
—Insurance industry—3
—National Commission on Manufactured Housing—1
—DAPIA (Design Approval Primary Inspection Agency)—2
—Correspondence forwarded from White House—2
—Law firms—3
—Other national associations—1

Many of the comments received by the Department and addressed in the following discussion were common to numerous commenters. Other less universal comments addressed in the discussion may be referenced by number in parentheses following a statement. These numbers correspond to the number given the comment in the file maintained by the Rules Docket Clerk. Comments filed as received in response to the original comment period are referenced as numbers 1–882 (#817 was inadvertently skipped in the numbering sequence), while those in response to the extended comment period are referenced as numbers $1_{(2)}-235_{(2)}$.

Comments, Generally

A number of commenters acknowledged the need to update the Department's standards for manufactured housing. One commenter (77) welcomed the better publicity and reputation the industry would enjoy as a result of updated standards. However, many of these commenters also stated opposition to the specific standards proposed by the Department.

About two dozen commenters, including consumer and insurance industry groups, standards organizations, government agencies, and engineers, generally supported the basic standard proposed (e.g., 17, 55, 76, 137, 145, 150, 197, 633, $12_{(2)}$, $204_{(2)}$, $207_{(2)}$), although several of these commenters also expressed concern about specific cost items. Supporting comments emphasized the importance of affordable, safe housing, rather than merely affordable housing (17), and characterized ASCE 7–88 as the only consensus wind standard in the Country (76, and others).

Procedural Comments

Comment: The 30-day comment period allowed in the proposed rule did not permit sufficient consideration of the rule and development of public comments. In addition, the justification for the shortened effective date that the proposed rule had indicated would apply to the final rule was not justified by the need to implement regulatory changes before the 1993 hurricane season.

Response: Because of the numerous requests for longer response periods from both the public and members of Congress, and because it was apparent that a rule could not be in place in time for the 1993 hurricane season, the Department has allowed additional time for public comments and implementation of the final rule. The proposed rule was published on April 14, 1993, and the comment period was extended to July 9, 1993.

Because of the Department's desire to consider the full extent of public response on this rule, the Department has continued to receive comments regularly while the final rule and regulatory impact analysis were being prepared and has continued to log and review those comments. Therefore, in effect, the comment period for this rule has been approximately 5 months.

To alleviate the concerns relating to the industry's need for ample time to redesign homes and retool manufacturing facilities, the Department has decided to extend the effective date originally proposed for this rule. Accordingly, the rule provides for an effective date of, at least, 180 days from today's date of publication. Thus, the concerns of the commenters in these regards have been addressed by the Department.

Comment: The National Manufactured Housing Advisory Council should be convened, as required by law, to consider the standards proposed by the Department.

Response: Despite the infeasibility of convening the Advisory Council within the timeframe originally proposed for the implementation of improved standards, the Department made an extraordinary effort to consult with the individual members of the Advisory Council. The responses of a number of the individual members of the Advisory Council have been considered and included in the docket file for this rulemaking.

Later, because of the Department's extension of the comment period and recognition that a final rule could not be in place in time for the 1993 hurricane season, the Department immediately convened the Advisory Council so that it could discuss the proposal as a panel. The resulting recommendations of the Advisory Council, as a panel, also have been considered carefully in determining both the scope and the specific requirements of this final rule. Additional discussion of the proceedings of the Advisory Council can be found elsewhere in this preamble.

Comment: Several commenters questioned the impact of the rule on families, in the context of Executive Order 12606, which requires consideration of the impact of a regulation on family formation, maintenance, and general well-being.

Response: In the proposed rule, the Department indicated that the rule was not subject to review under the Executive Order. The commenters questioned this position based on information that some potential consumers would be unable to purchase manufactured homes if the prices of those homes were raised to cover the costs of the new standards. To the extent that production cost increases resulting from this rule will be passed on to consumers, one effect of the rule is expected to be the loss of marginal consumers from the market. Some of these marginal consumers will have to find less expensive, rental housing; some will opt for comparably priced site-built housing. However, the significance of this result is not a loss of housing, but a redistribution of the kinds of housing available. Although as a result some families may lose an ownership option, the general well-being of families, and society, is served better by ensuring adequate quality standards for such housing.

Although the Department does not believe this final rule implicates family concerns within the spirit of the Executive Order, the Department has analyzed the rule as required under the Order. Therefore, in the paragraph on Executive Order 12606 under the "Other Matters" section of this preamble, the Department certifies that the requirements of the Order have been met in the issuance of this rule.

Comment: The proposed rule indicated that manufacturers should anticipate the contents of the final rule and should prepare to comply with the more stringent standards soon after publication of the final rule. This schedule for implementation of the new standards fails to recognize the need for lead time to design, test, and seek approval of changes necessitated by the standard changes. In addition, while personnel resources are concentrated on the redesign requirement, production personnel may have to be laid off. This problem is compounded by the possibility that another redesign will be necessary as a result of the new Federal energy standards.

Response: To a large extent, the Department already has been responsive to the concerns expressed in this comment by conceding that the rule will not become effective for 180 days. The Department is sensitive to the procedural requirements that a manufacturer faces when undertaking design changes. However, there is no doubt that by the time this rule becomes effective, all aspects of the industry should have had sufficient advance notice of the necessary product improvements to prepare for implementation of the new standards.

Innovative solutions and safer products generally depend on some commercial incentive. The Department believes, based on the knowledge of its technical staff, the reports they have reviewed, and some of the comments received, that those parties involved in the production, sales, and siting of manufactured housing will be able to comply with these standards reasonably quickly, when continued sales depend on such compliance.

Cost Considerations

Comment: The cost impact of the standard changes should be analyzed, as required by Executive Order 12291 and 42 U.S.C. 5403(f), and a regulatory impact analysis should be prepared.

Response: As stated in the "Other Matters" section of the preamble of the proposed rule (57 FR 19539), the Department agreed that it would prepare and submit a regulatory impact analysis before publication of the final rule, in accordance with established Office of Management and Budget (OMB) guidance. Although many of the benefits, and some costs, of increased standards are difficult to quantify for purposes of such an economic analysis (e.g., loss of life, uninsured costs, insurance deductibles, and injuries), the Department has complied with the requirements of Executive Order 12866 (September 30, 1993) and OMB. As noted under "Significant Regulatory Action" in the "Other Matters" section of this preamble, a final regulatory analysis based on the provisions in this final rule is available to the public.

However, while economic concerns have always been an important component of the Department's decisionmaking process and, in this case, resulted in modification of the rule, the Department stresses that its

statutory mandate to reduce the number of personal injuries and deaths and the amount of insurance costs and property damage resulting from manufactured home accidents, and to improve the quality and durability of manufactured homes, requires that the Department look beyond affordability issues. In promoting homeownership opportunities for lower-income persons, the Department strongly believes that such housing must also be safe. The concern with safety extends beyond the occupants of the housing, to all those who may be affected by the failure of such housing to meet minimum performance standards under reasonably foreseeable conditions. For example, in a Federal Emergency Management Agency (FEMA) report on "Building Performance: Hurricane Andrew in Florida" (FIA–22, 2/93), cited by commenter 76,

> It was observed that the breakup of corrugated metal siding and roofed buildings such as manufactured homes and pre-engineered metal frame buildings contributed significantly to the generation of airborne debris. This was evident from debris damage to nearby downwind structures.

As stated by another commenter ($205_{(2)}$): "The prospect of reducing the loss of life and property and reducing the cost of disaster relief efforts from such losses as Hurricane Andrew would certainly be to the benefit of the entire housing industry and the individual and corporate citizen taxpayers of the United States." In addition, the upgrades required under this rule also would increase the ability of the homes to withstand damage during transportation and installation of the units, and the improved windows would be more energy efficient (see comment 150).

The Department recognizes the viability of manufactured housing as a source of affordable housing for many people and will continue to work with the industry to ensure a quality product at a reasonable cost. However, the Department will also continue to exercise all of its statutory responsibilities relating to housing and its occupants in a manner that serves the optimal societal interests. This final rule is evidence that the Department agrees with those commenters that said the savings in storm damage repair, loss of personal property, and potential personal injury or loss of life, in addition to other expected benefits, exceeds the cost differential for these new standards. The Department has also reviewed cost impact figures provided by numerous commenters during the development of the final regulatory impact analysis.

Comment: The increased cost of manufactured housing that will be the result of the more stringent standards may price many consumers out of the market for unsubsidized housing. A home manufactured to the new standards will require a higher downpayment, and potential consumers will find it more difficult to qualify for financing. The level of regulation proposed would limit consumer choice and would deny consumers the right to match housing to their budgets (1).

Response: The Department is concerned about the effect of these standards on the ability of consumers to afford and purchase manufactured housing. However, because the standards are, for the most part, performance standards and do not prescribe methods of construction, the manufactured housing industry can, and the Department expects will, approach this problem by developing innovative designs, components, and construction techniques that meet the standards but maintain the affordability of manufactured homes. The Department has also removed some of the proposed prescriptive requirements. These changes from the proposed rule should help maintain the affordability of manufactured housing while still assuring safety.

As stated by one commenter ($215_{(2)}$), sacrificing a minimum reasonable wind standard for manufactured housing so that it can be more affordable makes as much sense as allowing a car to be sold without brakes for the same reason. A similar opinion was expressed by a consumer, who commented ($117_{(2)}$):

> If tougher standards increase the cost of a mobile home by a fair percentage I believe people will be willing to pay a little more for better protection. Most of these homes are not second homes but the principal residence of retirees.

Earlier in the preamble the Department acknowledges the legitimate concern with affordability, but also notes the importance of safe housing that protects other societal interests.

Conversely, as noted by commenter 145 (FEMA), "[t]he disruption of lives and families resulting from the damage to manufactured housing often happens to those least able to fully recover." Therefore, the financial impact of insufficient standards also may fall most heavily on those least able to absorb that impact. The Department agrees with commenter $215_{(2)}$ that the poor should not have to accept a lower safety factor against catastrophic failure of housing than the rest of society.

Finally, a commenter representing a number of insurance carriers (17) noted that builder/developer estimates of cost increases for building code improvements for site-built structures have far exceeded documented incremental cost increases in the past. The commenter observed that cost estimates with respect to manufactured housing and the higher standards proposed by the Department may contain similar exaggerations. This possibility is discussed by the Department in the regulatory impact analysis prepared in connection with this final rule.

Comment: In looking at storm damage estimates for purposes of a cost-benefit analysis, the Department should distinguish damage to manufactured homes that complied with existing HUD standards from damage to pre-HUD homes.

Response: As previously discussed, both manufactured homes built before the imposition of HUD standards and those built after the standards became effective experienced significant damage during Hurricane Andrew. Therefore, the numerical breakdown between pre- and post-HUD standards is not a determinative factor in the Department's process with respect to the final content of this rule.

However, in its comments on this rule, the AARP (commenter #150) noted that "[w]hile more than half of the manufactured homes destroyed were built prior to implementation of the HUD standards, many of these older homes were constructed in accordance with American National Standards Institute (ANSI) Standard A119.1, which had the same wind load resistance requirements as the current HUD standards."

Comment: As a practical matter, manufacturers will build their homes to the most stringent standards that would apply to their sales areas. Therefore, those manufacturers that would build homes for more than one zone will build all their homes to accommodate the highest wind load requirements, and the cost of compliance with the new standards will actually be higher than the estimates that are based on numbers of units per Zone (12).

Response: The Department does not discourage voluntary compliance with standards that are higher than those required. However, the Department believes that the decision to comply voluntarily with higher standards will be controlled by the cost of such compliance and the manufacturer's market demands. Accordingly, such compliance is questionable and cannot

be considered in the regulatory impact analysis.

Comment: The implementation of new standards will adversely affect the marketability of existing homes not built to those standards (87), leading to increased defaults and credit losses (139).

Response: The standards implemented by this rule will not affect manufactured homes already occupied by consumers. Thus, the resale market for these existing units generally should not be affected, except to the extent that prospective purchasers have the financial resources, realize the construction limitations of the existing units, and choose to purchase units meeting the new standard or other housing options. Because prospective purchasers of used manufactured housing are likely to be in lower income brackets, however, the Department expects little or no impact on the resale market for manufactured homes already occupied by consumers.

Comment: The additional cost attributable to increased costs for lumber is of particular concern (639).

Response: As noted above, the Department is concerned about all additional costs and the affordability of homes constructed to the new standards. Any specific concern with lumber costs has been alleviated because of recent changes in market conditions, which have shown that high prices being charged for lumber earlier this year were an aberration. Lumber costs have significantly reduced since original cost estimates were prepared. In addition, the final rule will permit the use of the 1991 NDS without exception, which lowers earlier manufactured housing industry projections of the lumber changes and estimated costs for complying with the new standards.

Scope of Requirements

Comment: The prescriptive standards in the proposed rule would eliminate the ability of manufacturers to be innovative in developing safer and more attractive homes.

Response: A number of the prescriptive standards in the proposed rule have been removed in the final rule. For those that remain, manufacturers can utilize 24 CFR 3282.14, to take advantage of the Department's policy encouraging innovation through alternative construction.

Comment: Because the proposed rule was largely justified as a response to damages incurred in hurricane-prone areas, the standards and time frames contained in the proposed rule should not be applied to other zones subject to lower wind speeds.

Response: At this time the Department has deleted the proposed changes to Zone I from the final rule. Therefore, homes designated to be sited in Zone I must comply with the previous wind standard for those areas. However, many commenters and the Advisory Council indicated that the Department should strive to bring the Federal standards to a level of comparability with conventional housing standards. The Department will review existing wind standards in the remaining areas of the country for possible future action.

Choice of Standard

Comment: The Department has not demonstrated that ASCE 7–88 is the appropriate standard to be adopted for the higher wind loading requirements. For example, the Standard Building Code may be a more appropriate standard for the purposes of this rule.

Response: A number of engineers have written in support of the ASCE 7–88 standard, noting that the standard was developed based on scientific studies performed in wind tunnels, which were subsequently verified by tests on full-scale structures. By adopting the Southern Florida Building Code (SFBC), which incorporates the Standard Building Code, the people of south Florida thought they were protected by one of the toughest building codes, with respect to wind. However, the wind load requirements of the SFBC now have been surpassed by other codes that are based on recent research. For example, the SFBC does not reflect peak gusts or use pressure coefficients as high as are now considered suitable. As a result, the SFBC design wind speed of 120 mph would only correspond to a design wind speed of less than 100 mph for many elements of the construction. As previously noted in this preamble, Dade County has adopted (effective January 1, 1994) the wind loads section of ASCE 7–88, using Exposures C and D, only.

Comment: No model code has adopted the ASCE 7–88 standard. The Department does not justify its attempt to impose more stringent standards for manufactured housing than are applied to site-built homes. It is an abuse of Federal authority to impose standards that go well beyond any State building code currently in existence (87).

Response: The relationship between the model codes and ASCE 7–88 is discussed earlier in the preamble in the section on Development and Adoption of ASCE 7–88. In addition, the Department notes that the ASCE 7–88 standard already is incorporated into its Minimum Property Standards (24 CFR part 200, subpart S), which apply to certain site-built housing within the Department's jurisdiction.

The current wind load requirements for manufactured housing for high wind zones correspond to a wind speed of 80 mph; other types of housing are subject to much higher design wind speed requirements in the same high wind areas. Therefore, as noted by the AARP in its comments (150), adoption of ASCE 7–88 actually will ensure substantial equivalence of wind design requirements between manufactured and site-built housing.

Furthermore, Dade, Broward, and Palm Beach Counties in Florida have adopted ASCE 7–88 (with the 110 mph wind load) for site-built homes, and the Department believes other coastal jurisdictions will follow. Model codes also have adopted or are moving toward the adoption of the ASCE 7–88 standard. In fact, by not including the higher standards for the remainder of the country (Zone I), a majority of manufactured homes produced in this country will comply to a standard well below the building codes currently in existence for site-built housing.

Comment: The Department should recognize "deemed-to-comply" standards.

Response: The Department considered the deemed-to-comply standards, but determined that a performance standard would allow manufacturers flexibility to be innovative in their approach to compliance with the standards. Such innovation will reduce the cost associated with strict adherence to the deemed-to-comply standards.

Comment: The rule expands the ASCE 7–88 definition of "components and cladding" to include exterior coverings and fastenings, and the limited availability of these materials may make compliance difficult (221).

Response: The Department has made alternative provisions in the standard for adequate resistance of exterior coverings to specified design wind pressure requirements.

Enforcement

Comment: The proposed rule did not address testing issues. The Department does not specify whether the proposed structural design changes have been subjected to destruction testing. (144) Although there is no agreement on a testing protocol, truss suppliers will need time to retest their many truss designs. (8, 16, and incorporated by reference in others) The need to test many types of siding, siding gauges (thicknesses), and accessories, fasteners,

and fastener patterns also may lead to tooling changes, which will require more time. (9)

Response: Testing will continue to be evaluated under the DAPIA review process, which is not revised by this rule. However, the Department has extended, to 180 days (or, for some provisions, one year) from today's publication of the rule, the implementation schedule for the new requirements, in order to give producers sufficient time to comply with the standards.

Comment: The existence of multiple wind zones and corresponding requirements within a single State creates difficulties with respect to enforcement, as well as with production. It is not clear who bears the responsibility for monitoring the placement of homes within a wind zone for which they are intended (87, 91, 92, 610).

Response: The Department appreciates the difficulties of enforcing the standards when multiple zones exist in a single State. Accordingly, the Department has specifically listed those local governments in the higher wind zones in each State. Depending on the facts surrounding the sale of a manufactured home, both the manufacturer and the dealer will be responsible for assuring that the home will be in compliance with the standards by siting the home in the proper zone. The State Administrative Agencies (SAAs) will be informed of the changes resulting from this rule and will assist the Department in discovering homes that are sited in noncompliance with these standards.

Anchoring and Tie-Downs

Comment: The change in lease communities could be revolutionary, as homes become more permanent in nature (122) and homes are taxed more as real, rather than personal, property. Generally, lessors are required to restore the site to its original condition when they move. This requirement, and the relocation of utility connections, would be made more difficult with more permanent foundations. In addition, the FHA Title II allowance for installation would not be sufficient for the additional costs of permanent foundations (146, and others).

Response: The Department has evaluated these comments and has removed the design requirement for a permanent foundation. However, the Department remains concerned that some form of strengthened tiedown system may be necessary to protect homes adequately in high wind areas. Thus, the Department will be reviewing the issue of permanent foundations and other strengthened anchoring systems in conjunction with regulatory action on wind resistant design and construction requirements for the remainder of the country.

Comment: The impact of the new Wind Standards can be adversely effected if there is inadequate enforcement and monitoring of the placement of homes to assure that only homes that have been designed for the wind load requirements of the Zone are permitted to be sited. There is a need for better local inspection; the home is only as good as its anchoring system (149). There is compelling evidence that much of the damage from Hurricane Andrew was attributable to the lax enforcement of State and local building codes, including anchoring requirements, rather than to inadequate standards (80, 122). Similarly, the main problem with manufactured homes is the proper installation of anchoring equipment, which the Department cannot regulate (100).

Response: Although the use of tiedowns was widespread in the areas affected by Hurricane Andrew, indicating some attempt to comply with codes, the tiedowns generally performed very poorly. None of the tiedowns observed was certified in accordance with code requirements. The Department is reviewing the authority to regulate installation of manufactured homes and is exploring ways to encourage States and localities to adopt and enforce more stringent anchoring requirements. The Department also is reviewing appropriate methods, including a disclosure requirement, to inform consumers about the installation of the home in a manner that achieves the highest wind protection performance for the home's design.

Meanwhile, the Department will be contacting the Governors of all States, and in particular States where the wind risk is the greatest, to advise the Governors of the changes in the wind standards and the need for each State to establish installation standards and a system of enforcement and monitoring.

Comment: Typical ground anchors performed adequately in Hurricane Andrew ($14_{(2)}$-$17_{(2)}$, $73_{(2)}$, $88_{(2)}$, and others). If given enough time, ground anchor manufacturers can develop an anchoring system that is comparable to a permanent foundation system (29).

Response: With very few exceptions, manufactured homes in the path of Hurricane Andrew were destroyed by the resulting wind forces. The lack of adequate attachment of single or double-wide units to ground anchors was a major factor in loss of units. The chassis of some units could be found some distance away from their original site. However, in some cases the anchors did hold the floor of the unit down while the "box" of the structure was torn away by the high winds. For this reason, there is justification for increasing the strength of the structure by this final rule.

The effective date of these new requirements will now be at least 180 days from today. The Department agrees that innovative anchoring systems comparable to permanent foundations systems can be developed; however, anchor manufacturers are cautioned regarding the resistance capacity of auger-type anchors presently used for installing manufactured homes, when those anchors are subject to high winds and ensuing saturated soil conditions. The Department's tests show substantially less resistance than required by 24 CFR 3280.306(f), even when tested under dry soil conditions.

Comment: Substantially increased siting requirements would be a problem especially for retirees in land-lease communities and for minority owners who reside on "heir property" and cannot secure clear title to their site (672).

Response: Alternative anchoring systems that are expected to provide the required resistance to high wind forces are already available in the market. The Department believes that if siting requirements are increased by State and local governments, the manufactured housing industry will likely develop ways to accommodate siting in land-lease communities.

Technical Comments

Comment: The Department has not justified its proposal to require a lower load duration factor for designing wood members and fastenings to resist wind forces than is specified in the 1991 edition of the National Design Specification for Wood Construction (NDS) published by the American Forest and Paper Association (AFPA).

Response: The Department agrees that the higher factor of 1.6 in the NDS has been justified by research completed by AFPA for wood members subjected to short duration loads of 10 minutes or less. This is generally recognized as the maximum period for exposure of structures to wind forces. In addition, the 1991 NDS has already been adopted without exception by certain model code agencies. However, cyclic testing to evaluate fasteners and connectors has not yet been completed. Preliminary results suggest that a higher load duration factor may be appropriate. Therefore, the Department will accept the higher load duration factor of 1.6 on an interim basis and will recognize the 1991 NDS without exception in this final rule. The Department intends to monitor this research and may propose a different load duration factor for fasteners and connectors in the future, subject to the research and test results.

Comment: There is no basis for the 12" limitation and prescriptive requirements for eave and cornice projections; their implementation would inhibit design innovations.

Response: While longer eave and overhang projections will subject trusses, fasteners, and connectors to significant increases in design loads, and thereby increase their likelihood of failure under extreme wind conditions, the Department agrees that the provision should be removed because it does restrict innovation, and truss and home manufacturers are capable of designing roof systems and connections to resist the higher wind forces. However, manufacturers that use larger projections than 12 inches are cautioned to review their designs carefully to assure that all components and fastenings are adequate to resist the design pressures specified in ASCE 7–88 or the table in § 3280.304.

Comment: The prescriptive requirements for sidewall-to-roof and floor connections using steel strapping or brackets should be replaced with performance criteria that permit the use of alternative methods of connection, such as structural sheathing that overlaps the roof and floor.

Response: In general, the Department agrees that the use of performance-based standards is preferred. However, on-site investigations of the damage from Hurricane Andrew revealed that current designs using 30 gage straps failed. Based on the above information, the Department has retained the prescriptive requirement for strapping in high wind areas, but will permit to be used a combination of strapping and structural sheathing that overlaps the roof or floor, instead of only steel straps or brackets, provided the sheathing and its fastenings are demonstrated by calculations or tests to have equivalent strength and resistance to the design wind uplift forces.

Comment: The use of the 1.5 factor of safety for design of anchoring systems is not consistent with ASCE 7–88.

Response: The Department concurs that there is no provision in the ASCE 7–88 standard for increasing the wind pressures for the design of anchoring systems to resist overturning and sliding forces. Therefore, the anchoring design provisions for Wind Zones II and III, which are based on the ASCE 7–88 requirements, will not require the application of the 1.5 factor of safety to be applied to the design wind drag and uplift pressures. However, the 1.5 factor of safety will continue to be required for calculating the required resistance of anchoring systems for Wind Zone I, since the design lateral and uplift wind forces remain based on the current standard, which is lower than all model building codes.

Comment: The Department should clarify whether new wind uplift design loads in the Table (in § 3280.305) are gross or net uplift loads.

Response: The uplift wind loads in the table are the full or "gross" loads. Gravity or dead loads may be deducted from these loads when calculations are prepared using the design pressures in the table.

Comment: Existing truss testing procedures in § 3280.402(c)(2) should be clarified as to: (1) The acceptability of existing inverted truss testing procedures for evaluating new wind uplift design loads; (2) whether vertical live and gravity roof load testing must still be conducted with trusses in the upright position when uplift forces are higher than downward loads; and (3) whether eave loads are to be applied simultaneously with roof uplift loads.

Response: (1) The inverted test method may continue to be used on an interim basis while the Department evaluates results of an industry study to compare results of the existing test method, which applies load to the bottom chord of the truss, to results obtained from applying the load to the top chord of the truss. (2) Testing must continue to be conducted in the upright position, because the loads are applied to different members (chords) of the truss. (3) Uplift loads are to be applied to truss eave projections when uplift loads are applied to the truss bottom chords during each loading phase required by § 3280.402(c)(2).

Comment: A new provision should be added requiring a professional engineer to prepare and certify wind load designs and calculations.

Response: The Department will consider this suggestion for future rulemaking on wind load requirements.

Comment: Special standards should be required for asphalt shingle performance in high wind areas, because of the large number of failures that occurred in Hurricane Andrew and ensuing structural and water damage caused by these failures.

Response: The asphalt shingle industry research is not yet completed in this area. As an interim step, this final rule requires each shingle to be secured with two additional fasteners and underlayment to be cemented to the roof decking.

Comment: Testing requirements should be specified for windows and doors to avoid missile damage in high winds. Safety standards can be enhanced without affecting affordability, by requiring operating shutters and proper anchoring (88$_{(2)}$).

Response: The Department encourages manufacturers to provide shutters or protective devices for homes in Wind Zones II and III. Under this rule manufacturers will be required, at a minimum, to provide instructions for an appropriate method of shutter or cover installation to protect the home, and to include shutter information on the data plate. The instructions must provide a method for protecting the windows and doors that is capable of withstanding design wind pressures without taking the home out of conformance with the standards. The application of shutters does not do away with the need for testing the doors or windows they protect.

Comment: A requirement should be added for the use of perforated metal straps at the marriage line of the roof, between sections of doublewides, to transfer wind forces from the windward to the leeward side of the roof.

Response: As part of its continuing evaluation of wind design requirements, the Department will assess the merits of this proposal.

Comment: The Department needs to establish standards to regulate the addition of appurtenances to manufactured homes, such as porches, carports, and canopies, which experienced a large number of failures in Hurricane Andrew. The danger to occupants is further increased because the rule does not address the effect of dangerous appurtenances (52, 65, 122).

Response: Under 24 CFR 3282.8(j) the standards currently do not govern add-ons, as long as the add-on doesn't affect the ability of the home to comply with the standards. However, as noted in that section, the Secretary has authority to promulgate standards for some add-ons. Accordingly, the Department is examining its authority in this area and may establish requirements in the future. In the interim, HUD encourages all States to establish standards covering the construction and attachment of these kinds of appurtenances to manufactured homes.

Comment: Exposure D in ASCE 7–88 should be used for coastal shoreline areas.

Response: Under this rule manufacturers are required to include on the date plate a statement that units designed to meet the minimum

standards in this rule should not be located within 1500 feet of the coastline in Zones II and III. By this statement, the consumer is alerted that only units designed and anchored according to the higher design standards specified for coastal areas in ASCE 7–88 should be placed along the coastline.

Comment: "Wind safety" is a misnomer; the science of weather forecasting allows ample notice of dangerous storms to permit evacuation (296–314). Homeowner safety is better served by evacuation in high winds than from protection afforded by the manufactured home structure. If a manufactured home is purported to be designed and constructed to withstand higher wind speeds, occupants may be less likely to evacuate the homes at the approach of a dangerous storm.

Response: The Department agrees that if it is safe to do so, homeowners should attempt to reach a shelter capable of resisting high winds. However, without the imposition of these enhanced Wind Safety Standards, the numbers of deaths and injuries attributable to the inadequate performance of manufactured homes in high winds will continue unabated. In addition to reducing deaths and injuries, the Department's statutory responsibilities require the implementation of higher wind standards to reduce the insurance cost and amount of property damage resulting from manufactured home accidents and improvement of the quality and durability of manufactured homes. The Department believes that these higher wind standards will fulfill those responsibilities.

Comment: The NIST study cited by the Department does not fault the performance of trusses; increasing the uplift requirements would not improve the quality of assembly. The problems associated with manufactured housing are related more to fasteners and tiedowns ($13_{(2)}$).

Response: The field studies referenced in the NIST Report identified numerous roof system failures that were generally due to failure of the end connections between the trusses and the sidewalls. However, even if the trusses had been properly connected to the manufactured home structure, the Department believes that trusses not designed to resist the uplift pressures referenced in this rule still may have failed. Therefore, in this final rule the Department has retained the proposed increased design requirements for roof trusses.

Other Specific Comments

Comment: The Department is encouraged to coordinate this rule with a review of seismic and flood loads, especially with respect to foundation and attachment designs (25).

Response: The requirements in the proposed rule for a permanent foundation design have been eliminated in this final rule. However, as the Department continues to review the issue of adequate anchoring/foundation systems for manufactured homes, it will also review these other considerations.

Comment: There are not enough DAPIA personnel in the HUD system to review and approve design changes within the time provided for the effectiveness of this rule (83, 124, 136, 179).

Response: The Department has agreed to delay the effectiveness of the new requirements for 180 days, which should allow sufficient time for the DAPIA process, as well.

Comment: The Department should consider requiring the DAPIA approval stamp on all pages of a manufacturer's installation instructions (48).

Response: The final rule continues to require that the manufacturer provide installation instructions certified by a registered professional engineer indicating at least one acceptable system of anchoring (24 CFR 3280.306(b)). However, the Department will consider the suggestion to require a DAPIA approval stamp on each page of the manufacturers' installation instructions when developing future revisions to the Manufactured Home Procedural and Enforcement Regulations (24 CFR part 3282).

Comment: Some explanation is needed about the effect of the new standards on "B" letters, interpretative bulletins, and compliance determinations (122).

Response: This new standard supersedes any portions of "B" letters, interpretative bulletins, and compliance determinations that are in conflict with this standard.

Comment: If the higher standards are adopted, manufacturers will prefer to build modular homes that meet the necessary State standards.

Response: Manufacturers are free to channel their activities in any way that best responds to market forces. In the development of the regulatory impact analysis, the Department has accounted for the cost of potential lost business. To the extent that manufacturers could redirect their production to alternative housing, the costs of the higher standards would be lessened. However, as noted above, the Department believes that the trend in State standards also will be to stricter wind standards. Therefore, while manufactured homes may experience a price increase because of these standards, they will be affordable relative to site-built homes meeting the higher State-imposed standards.

Comment: The Department should prepare a brochure on hurricane awareness and windstorm protection.

Response: As noted in the discussion on Improved Anchoring and Foundation Systems earlier in the preamble, the Department is reviewing what would be an appropriate consumer information disclosure requirement on installation. As part of that review, the Department may consider requirements on the disclosure of general information relating to high winds and hurricanes, and may coordinate with FEMA on the development of a brochure on hurricane awareness and protection for occupants of manufactured homes.

(NOTE: Other specific comments that have become moot as a result of the decision not to proceed with changes in Wind Zone I and requirements relating to a permanent foundation system are not addressed in this preamble.)

III. Description of Changes to the Standards

Because of the risk of loss of life to building occupants and the extraordinary loss of property due to Hurricane Andrew, the Department has determined that it is necessary to amend the Federal Manufactured Home Construction and Safety Standards (FMHCSS) to raise the level of wind resistance standards, especially in areas subject to high winds. Specifically, the Department is amending the FMHCSS to include a Basic Wind Zone Map that is based on the map contained in the incorporated standard ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures."

The revised map contains a more concentrated area for the 100 mph wind zone than was specified in the current standard or the proposed rule. The boundary between Wind Zones I and II follows the 90 mph isotach on the ASCE 7–88 basic wind speed map, while the boundary between Wind Zones II and III remains the 100 mph isotach indicated in the proposed rule. The design wind speeds for high wind areas are designated as 100 mph for Wind Zone II and 110 mph for Wind Zone III. This rule does not change the current design wind speed for Wind Zone I.

Based on the revised map, this final rule enumerates the States, Territories, and local governments in which the more stringent standards will be applicable. The enumerated areas are those that the Department has determined to be at least partially within the higher wind zones demarcated on the revised map. The Department also will monitor local building code requirements and will consider adoption through rulemaking of requirements for manufactured homes that are comparable to any more stringent requirements established for site-built homes by a State or local building authority.

The current wind standard for manufactured housing is considered inadequate because it addresses only positive (external) design wind pressures for walls, components, windows, and cladding, without specifying that designs must take into account the effect of negative pressure (suction) on these building elements, as well as internal pressures on walls and roof/ceiling systems. The formulae used in ASCE 7–88 also include other factors, which account for higher uplift forces on roof eaves, ridges, overhangs, and corners. These and other issues are now addressed in high wind areas by requiring the manufactured home structure, components, and cladding to be designed to resist design wind forces for Exposure C, as specified in ASCE 7–88.

Requirements for structural assemblies, components, connectors, fasteners, and a number of other areas will be strengthened so that parts and portions of the home will be able to resist the same wind forces as required for site-built and modular housing. In addition, the increased wind loads required by this rule are applicable whether structural systems, components, or other aspects of the design are substantiated by engineering analysis or by suitable load tests (see subpart E of part 3280). The revised standards also require that the ground anchoring and foundation support systems continue to be designed by a registered engineer or architect in a manner adequate to withstand the higher wind forces specified.

III. Section-by-Section Analysis

The Secretary has determined that the following changes should be made to the standards:

(1) *Section 3280.4*—The American Society of Civil Engineers (ASCE) is added to the list of organizations issuing standards that are incorporated by reference. The street addresses are corrected for two other organizations listed.

(2) *Section 3280.5*—Technical and conforming corrections are made to standardize paragraph designations to Federal Register format and clarify the information to be included on data plates. The new requirements also incorporate changes to the data plate adopted in the Energy Rule (58 FR 54975, 55003) for effect in October 1994, in order to avoid having inconsistent requirements become effective within a short time.

The data plate is also being expanded to indicate that manufactured homes should not be located within 1500' of the coastline in Wind Zones II and III unless the home and its anchoring or foundation system are designed for the increased requirements of Exposure D in ASCE 7–88. The data plate will now also indicate whether the home has been equipped with storm shutters and, if shutters are not provided, will strongly recommend that the home be made ready for these devices in accordance with the method described in the installation instructions.

(3) *Sections 3280.302(a)(3); 3280.303(d), 3280.305(c)*—The definition and references to "hurricane resistive design" in these sections are deleted, in favor of the Wind Zone II and III designations in the revised Basic Wind Zone Map. These changes will result in the identification of design wind forces and wind speeds for which the home has been designed, rather than the designation of homes as "hurricane resistive."

(4) *Section 3280.304*—The incorporated standards are amended to require that the minimum design loads be based on ASCE 7–88, which replaces the obsolete ANSI A58.1–1982 standard currently referenced in this section.

In addition, the National Design Specification for Wood Members (NDS), incorporated by reference, is updated to the most current specification issued by the American Forest and Paper Association (AFPA). Because manufacturers will need to redesign the structure's resistance to wind forces, the redesign should be accomplished with the most current design values for wood. Accordingly, the 1991 NDS is incorporated in its entirety into the standards.

(5) *Section 3280.305(c)*—The standards are amended to require that for manufactured homes in high wind areas, the home and each wind resisting part, including components and cladding, be completely designed to resist the design wind pressures specified for a 50-year recurrence level by ASCE 7–88 or the pressures specified in a table of equivalent design wind load provisions. The Department has designated three wind zones: Zone I (current wind design requirements for Zone I); Zone II (design wind speed of 100 mph); and Zone III (design wind speed of 110 mph).

The Table of Design Pressures in the proposed rule is clarified and expanded. Editorial revisions to clarify the application of the uplift pressure requirements for exterior roof coverings, eaves and gables. In addition, footnotes are included to indicate:

- Distributional pressure effects between windward and leeward walls;
- The application of the Table is limited to roof slopes between 10 and 30 degrees and that horizontal drag pressures need not be considered for roof slopes under 20 degrees;
- The design uplift pressures are the same regardless of whether they are applied normal to the roof surface or to the horizontal projection of the roof; and
- Exterior roof and wall coverings (excluding glazing), sheathing, and fastenings need not be evaluated for the design pressures specified by the Table, when fastened to a 3/8" structural rated sheathing and the sheathing is oriented and secured to framing members in accordance with the fastening schedule specified in the Table.

The Basic Wind Zone Map is revised by delineating the boundary between Wind Zones I and II as the 90 mph isotach, and the boundary between Wind Zones II and III as the 100 mph isotach, on the ASCE 7–88 basic wind speed map. This change will result in certain areas of existing Wind Zone II being located in the modified Wind Zone I. The boundary between Wind Zones I and III in Alaska is now designated as the 90 mph isotach on the ASCE 7–88 map.

(6) *Section 3280.305(d)*—Interpretative Bulletin D–5–76, under which the Department has been operating since the late 1970s, is paraphrased as a new paragraph (2). It clarifies that the deflection limit for a cantilevered roof is 2 times the length divided by 180. Eaves and cornices shall be designed for a net uplift pressure of 2.5 times the design uplift wind pressure cited in § 3280.305(c)(1)(i) for Wind Zone I, and for the design pressures cited in § 3280.305(c)(1)(ii) for Wind Zones II and III. This change has already been issued in the Energy Rule (58 FR 54975, 55006), but is modified in this rule to reflect the standards established for the new Wind Zones.

(7) *Section 3280.305(e)*—The standards for fastening of roof framing to wall framing and wall to floor framing are changed to require the use of 26 gage minimum steel strapping, or those elements shall be connected by a combination of strapping and structural rated wall sheathing that overlaps the roof and floor. Investigations after Hurricane Andrew revealed that current designs allowed 30 gage straps with staples for connections of roofs to walls, and walls to floors; such straps were

inadequate to resist even moderate wind forces.

(7) *Section 3280.306(a)*—The wind design loads used for calculating resistance of support and anchoring systems to overturning and lateral movements are revised to include the simultaneous application of the horizontal drag and uplift forces determined in § 3280.305(c).

(8) *Section 3280.306(g)(2)*—The standards are amended to require that the manufacturer's instructions for anchoring equipment be certified in accordance with the testing procedures found in ASTM D3953–91, Standard Specification for Strapping, Flat Steel and Seals. The certification must be made by a registered engineer, architect, or independent third party testing agency. This is an updated standard for steel strapping that supersedes the standard originally referenced in the Federal standard.

(9) *Sections 3280.403 and 3280.404*—These sections are amended to require all primary windows, including egress windows and sliding glass doors, to resist the design exterior and interior wind pressures specified in § 3280.305(c)(1) for components and cladding. These requirements are effective one year from today's date of publication of this rule, as provided in the "DATES" section of this preamble. In addition, manufacturers are required to provide instructions for the installation of shutters or protective covers, to protect the windows and doors.

(10) *Section 3282.362*—Minor conforming changes regarding the data plate are made in paragraph (c)(3)(i). These changes are explained under § 3280.5.

V. Other Matters

Significant Regulatory Action

The Director of the Office of Management and Budget has indicated that this rule could constitute a "significant regulatory action" as that term is defined in section 3(f) of the Executive Order on Regulatory Planning and Review issued by the President on September 30, 1993. Because an estimation of the new requirements as proposed indicated that they might have an annual effect on the economy of $100 million or more, a regulatory impact analysis has been prepared for this final rule. This analysis concludes that the requirements that will be imposed by this final rule will have an effect on the economy of less than $100 million, and will have benefits that outweigh the costs of the additional requirements. This analysis is available for public inspection during regular business hours in room 10276, Rules Docket Clerk, Office of General Counsel, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. However, the regulatory impact analysis referenced in the preceding paragraph also provides relevant analysis and discussion of possible economic impact on businesses, including small businesses, that must comply with the provisions of this rule. The rule will establish additional safety standards for manufactured housing, and therefore would affect the design and construction requirements in specified areas of the country. The nature of the rule and its purpose do not present an opportunity for the Department to vary the rule's requirements so as to reduce burdens on small entities.

Environmental Impact

At the time of publication of the proposed rule, a finding of no significant impact with respect to the environment was made in accordance with HUD regulations in 24 CFR part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332). The proposed rule is adopted by this final rule without any change that would be significant for purposes of additional environmental impact. Accordingly, the initial finding of no significant impact remains applicable, and is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the office of the Rules Docket Clerk at the above address.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule have federalism implications, and are subject to review under the Order. Specifically, the rule provides for mandatory specifications for the construction of manufactured homes that exceed the standards currently permitted in certain areas of the country. States and local governments would no longer have the option of imposing separate requirements that exceed current standards, but are less stringent than these new standards. However, because the Federal standards already preempt local discretion in the construction of manufactured homes, this marginal degree of preemption is not believed to be significant for purposes of identifying federalism concerns.

Therefore, for these reasons and because of the health and safety aspects of this rule, the General Counsel has determined that the federalism implications are not sufficient to warrant the preparation of a federalism assessment under the Order.

Executive Order 12606, the Family

In the proposed rule, the Department indicated that the rule was not subject to review under Executive Order 12606, The Family. As addressed earlier in this preamble, some of the commenters were concerned about this position. Although the Department does not believe this final rule implicates family concerns within the spirit of the Executive Order, the Department has analyzed the rule as required under the Order.

The General Counsel, as the Designated Official under the Executive Order, has evaluated the potential of this rule to have a significant impact on family formation, maintenance, and general well-being. Although as a result of the more stringent construction requirements implemented by this rule, some families may lose an ownership option for housing, the general well-being of families, and society, is served better by ensuring minimal quality standards for such housing. The Secretary of Housing and Urban Development has certified that, to the extent permitted by law, the rule has undergone a Family Impact Assessment under the Executive Order.

Regulatory Agenda

This rule was listed as Item 1551 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56433) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.171.

List of Subjects

24 CFR Part 3280

Fire prevention, Housing standards, Incorporation by reference, Manufactured homes, Reporting and recordkeeping requirements.

24 CFR Part 3282

Administrative practice and procedure, Consumer protection, Incorporation by reference, Intergovernmental relations, Investigations, Manufactured homes, Reporting and recordkeeping requirements.

For the reasons stated in the preamble, parts 3280 and 3282 of title 24 of the Code of Federal Regulations are amended as follows.

PART 3280—MANUFACTURED HOME CONSTRUCTION AND SAFETY STANDARDS

1. The authority citation for part 3280 is revised to read as follows:

Authority: 42 U.S.C. 5403 and 5424; 42 U.S.C. 3535(d).

2. Section 3280.4(b) is amended by adding an additional organization in the listing of organizations issuing referenced standards immediately following the listing for the Air Conditioning and Refrigeration Institute (ARI), and revising the addresses for two previously listed organizations, to read as follows:

§ 3280.4 Incorporation by reference.

* * * * *

(b) * * *

AFPA [previously (N)FPA]—American Forest and Paper Association, 1250 Connecticut Avenue, NW., Washington, DC 20036 [previously named (N)FPA-National Forest Products Association].

* * * * *

ASCE—American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017–2398

* * * * *

SJI—Steel Joist Institute, 1205 48th Avenue North, Suite A, Myrtle Beach, SC 29577

* * * * *

3. Section 3280.5 is revised to read as follows:

§ 3280.5 Data plate.

Each manufactured home shall bear a data plate affixed in a permanent manner near the main electrical panel or other readily accessible and visible location. Each data plate shall be made of material what will receive typed information as well as preprinted information, and which can be cleaned of ordinary smudges or household dirt without removing information contained on the data plate; or the data plate shall be covered in a permanent manner with materials that will make it possible to clean the data plate of ordinary dirt and smudges without obscuring the information. Each data plate shall contain not less than the following information:

(a) The name and address of the manufacturing plant in which the manufactured home was manufactured.

(b) The serial number and model designation of the unit, and the date the unit was manufactured.

(c) The statement:

This manufactured home is designed to comply with the Federal Manufactured Home Construction and Safety Standards in force at the time of manufacture.

(d) A list of the certification label(s) number(s) that are affixed to each transportable manufactured section under § 3280.8.

(e) A list of major factory-installed equipment, including the manufacturer's name and the model designation of each appliance.

(f) Reference to the roof load zone and wind load zone for which the home is designed and duplicates of the maps as set forth in § 3280.305(c). This information may be combined with the heating/cooling certificate and insulation zone map required by §§ 3280.510 and 3280.511. The Wind Zone Map on the Data Plate shall also contain the statement:

This home has not been designed for the higher wind pressures and anchoring provisions required for ocean/coastal areas and should not be located within 1500' of the coastline in Wind Zones II and III, unless the home and its anchoring and foundation system have been designed for the increased requirements specified for Exposure D in ANSI/ASCE 7–88.

(g) The statement:

This home has—has not—(appropriate blank to be checked by manufacturer) been equipped with storm shutters or other protective coverings for windows and exterior door openings. For homes designed to be located in Wind Zones II and III, which have not been provided with shutters or equivalent covering devices, it is strongly recommended that the home be made ready to be equipped with these devices in accordance with the method recommended in the manufacturers printed instructions.

(h) The statement: "Design Approval by", followed by the name of the agency that approved the design.

§ 3280.302 [Amended]

4. Section 3280.302 is amended by removing and reserving paragraph (a)(8).

§ 3280.303 [Amended]

5. Section 3280.303 is amended by removing and reserving paragraph (d).

6. Section 3280.304 is amended by revising the last item listed under the heading "Steel:"; by revising the entry "National Design Specifications for Wood Construction" listed under the heading "Wood and Wood Products:"; and revising the entry under the heading "Unclassified:" in paragraph (b)(1), to read as follows:

§ 3280.304 Materials.

* * * * *

(b)(1) * * *

Steel:

* * * * *

Standard Specification for Strapping, Flat Steel and Seals—ASTM D3953–91.

Wood and Wood Products:

* * * * *

National Design Specifications for Wood Construction, 1991 Edition, With Supplement, Design Values for Wood Construction, AFPA.

* * * * *

Unclassified: American Society of Civil Engineers Minimum Design Loads for Buildings and Other Structures—ANSI/ASCE 7–88.

* * * * *

7. Section 3280.305 is amended by adding a new paragraph (b)(4) and by revising paragraphs (a), (b)(3), (c)(1) and (2); adding a heading for (c)(3) introductory text; and revising (c)(3)(iii), (c)(4), (d), and (e), to read as follows:

§ 3280.305 Structural design requirements.

(a) *General.* Each manufactured home shall be designed and constructed as a completely integrated structure capable of sustaining the design load requirements of this standard, and shall be capable of transmitting these loads to stabilizing devices without exceeding the allowable stresses or deflections. Roof framing shall be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as imposed by design loads in this part. Uncompressed finished flooring greater than 1/8 inch in thickness shall not extend beneath load-bearing walls that are fastened to the floor structure.

(b) *Design loads*— * * *

(3) When engineering calculations are performed, allowable unit stresses may be increased as provided in the documents referenced in § 3280.304 except as otherwise indicated in §§ 3280.304(b)(1) and 3280.306(a).

(4) Whenever the roof slope does not exceed 20 degrees, the design horizontal wind loads required by § 3280.305(c)(1) may be determined without including the vertical roof projection of the manufactured home. However, regardless of the roof slope of the manufactured home, the vertical roof projection shall be included when determining the wind loading for split level or clerestory-type roof systems.

(c) *Wind, snow, and roof loads*—(1) *Wind loads—design requirements.* (i) *Standard wind Loads (Zone I).* When a

manufactured home is not designed to resist the wind loads for high wind areas (Zone II or Zone III) specified in paragraph (c)(1)(ii) of this section, the manufactured home and each of its wind resisting parts and portions shall be designed for horizontal wind loads of not less than 15 psf and net uplift load of not less than 9 psf.

(ii) *Wind loads for high wind areas (Zone II and Zone III).* When designed for high wind areas (Zone II and Zone III), the manufactured home, each of its wind resisting parts (including, but not limited to, shear walls, diaphragms, ridge beams, and their fastening and anchoring systems), and its components and cladding materials (including, but not limited to, roof trusses, wall studs, exterior sheathing, roofing and siding materials, exterior glazing, and their connections and fasteners) shall be designed by a Professional Engineer or Architect to resist:

(A) The design wind loads for Exposure C specified in ANSI/ASCE 7–88, "Minimum Design Loads for Buildings and Other Structures," for a fifty-year recurrence interval, and a design wind speed of 100 mph, as specified for Wind Zone II, or 110 mph, as specified for Wind Zone III (Basic Wind Zone Map); or

(B) The wind pressures specified in the following Table:

TABLE OF DESIGN WIND PRESSURES

Element	Wind zone II design wind speed 100 MPH	Wind zone III design wind speed 110 MPH
Anchorage for lateral and vertical stability (See § 3280.306(a)):		
Net Horizontal Drag[1, 2]:	[3] ±39 PSF	[3] ±47 PSF
Uplift[4]:	[5] −27 PSF	−32 PSF
Main wind force resisting system:		
Shearwalls, Diaphragms and their Fastening and Anchorage Systems[1, 2]	±39 PSF	±47 PSF
Ridge beams and other Main Roof Support Beams (Beams supporting expanding room sections, etc.)	−30 PSF	−36 PSF
Components and cladding:		
Roof trusses[4] in all areas; trusses shall be doubled within 3'–0" from each end of the roof	[5] −39 PSF	[5] −47 PSF
Exterior roof coverings, sheathing and fastenings[4, 6, 7] in all areas except the following	[5] −39 PSF	[5] −47 PSF
Within 3'–0" from each gable end (overhang at end wall) of the roof or endwall if no overhang is provided	[5] −73 PSF	[5] −89 PSF
Within 3'–0" from the ridge and eave (overhang at sidewall) or sidewall if no eave is provided	[5] −51 PSF	[5] −62 PSF
Eaves (Overhangs at Sidewalls)	[5] −51 PSF	[5] −62 PSF
Gables (Overhangs at Endwalls)	[5] −73 PSF	[5] −89 PSF
Wall studs in sidewalls and endwalls, exterior windows and sliding glass doors (glazing and framing), exterior coverings, sheathing and fastenings[8]:	±48 PSF	±58 PSF
Within 3'–0" from each corner of the sidewall and endwall	.....	.....
All other areas	±38 PSF	±46 PSF

NOTES:

[1] The net horizontal drag of ±39 PSF to be used in calculating Anchorage for Lateral and Vertical Stability and for the design of Main Wind Force Resisting Systems is based on a distribution of wind pressures of +0.8 or +24 PSF to the windward wall and −0.5 or −15 PSF to the leeward wall.

[2] Horizontal drag pressures need not be applied to roof projections when the roof slope does not exceed 20 degrees.

[3] + sign would mean pressures are acting towards or on the structure; − sign means pressures are acting away from the structure; ± sign means forces can act in either direction, towards or away from the structure.

[4] 4. Design values in this "Table" are only applicable to roof slopes between 10 degrees (nominal 2/12 slope) and 30 degrees.

[5] The design uplift pressures are the same whether they are applied normal to the surface of the roof or to the horizontal projection of the roof.

[6] Shingle roof coverings that are secured with 6 fasteners per shingle through an underlayment which is cemented to a 3/8" structural rated roof sheathing need not be evaluated for these design wind pressures.

[7] 7. Structural rated roof sheathing that is at least 3/8" in thickness, installed with the long dimension perpendicular to roof framing supports, and secured with fasteners at 4" on center within 3'–0" of each gable end or endwall if no overhang is provided and 6" on center in all other areas, need not be evaluated for these design wind pressures.

[8] Exterior coverings that are secured at 6" o.c. to a 3/8" structural rated sheathing that is fastened to wall framing members at 6" on center need not be evaluated for these design wind pressures.

(2) *Wind loads—zone designations.* The Wind Zone and specific wind design load requirements are determined by the fastest basic wind speed (mph) within each Zone and the intended location, based on the Basic Wind Zone Map, as follows:

(i) *Wind Zone I.* Wind Zone I consists of those areas on the Basic Wind Zone Map that are not identified in paragraphs (c)(2)(ii) or (iii) of this section as being within Wind Zone II or III, respectively.

(ii) *Wind Zone II*.....100 mph. The following areas are deemed to be within Wind Zone II of the Basic Wind Zone Map:

Local governments: The following local governments listed by State (counties, unless specified otherwise):

Alabama: Baldwin and Mobile.

Florida: All counties except those identified in paragraph (c)(1)(i)(C) of this section as within Wind Zone III.

Georgia: Bryan, Camden, Chatham, Glynn, Liberty, McIntosh.

Louisiana: Parishes of Acadia, Allen, Ascension, Assumption, Calcasieu, Cameron, East Baton Rouge, East Feliciana, Evangeline, Iberia, Iberville, Jefferson, Jefferson Davis, LaFayette, La Fourche, Livingston, Orleans, Plaquemines, Pointe Coupee, St. Bernard, St. Charles, St. Helena, St. James, St. John the Baptist, St. Landry, St. Martin, St. Mary, St. Tammany, Tangipahoa, Terrabonne, Vermillion, Washington, West Baton Rouge, and West Feliciana.

Maine: Hancock and Washington.

Massachusetts: Barnstable, Bristol, Dukes, Nantucket, and Plymouth.

Mississippi: George, Hancock, Harrison, Jackson, Pearl River, and Stone.

North Carolina: Beaufort, Brunswick, Camden, Carteret, Chowan, Columbus, Craven, Currituck, Dare, Hyde, Jones, New Hanover, Onslow, Pamlico, Pasquotank, Pender, Perquimans, Tyrrell, and Washington.

South Carolina: Beaufort, Berkeley, Charleston, Colleton, Dorchester, Georgetown, Horry, Jasper, and Williamsburg.

Texas: Aransas, Brazoria, Calhoun, Cameron, Chambers, Galveston, Jefferson, Kenedy, Kleberg, Matagorda, Nueces, Orange, Refugio, San Patricio, and Willacy.

Virginia: Cities of Chesapeake, Norfolk, Portsmouth, Princess Anne, and Virginia Beach.

(iii) *Wind Zone III*.....110 mph. The following areas are considered to be within Wind Zone III of the Basic Wind Zone Map:

(A) *States and Territories:* The entire State of Hawaii, the coastal regions of Alaska (as determined by the 90 mph isotach on the ANSI/ASCE 7–88 map), and all of the U.S. Territories of American Samoa, Guam, Northern Mariana Islands, Puerto Rico, Trust Territory of the Pacific Islands, and the United States Virgin Islands.

(B) *Local governments:* The following local governments listed by State (counties, unless specified otherwise):

Florida: Broward, Charlotte, Collier, Dade, Franklin, Gulf, Hendry, Lee, Martin, Manatee, Monroe, Palm Beach, Pinellas, and Sarasota.

Louisiana: Parishes of Jefferson, La Fourche, Orleans, Plaquemines, St. Bernard, St. Charles, St. Mary, and Terrabonne.

North Carolina: Carteret, Dare, and Hyde.

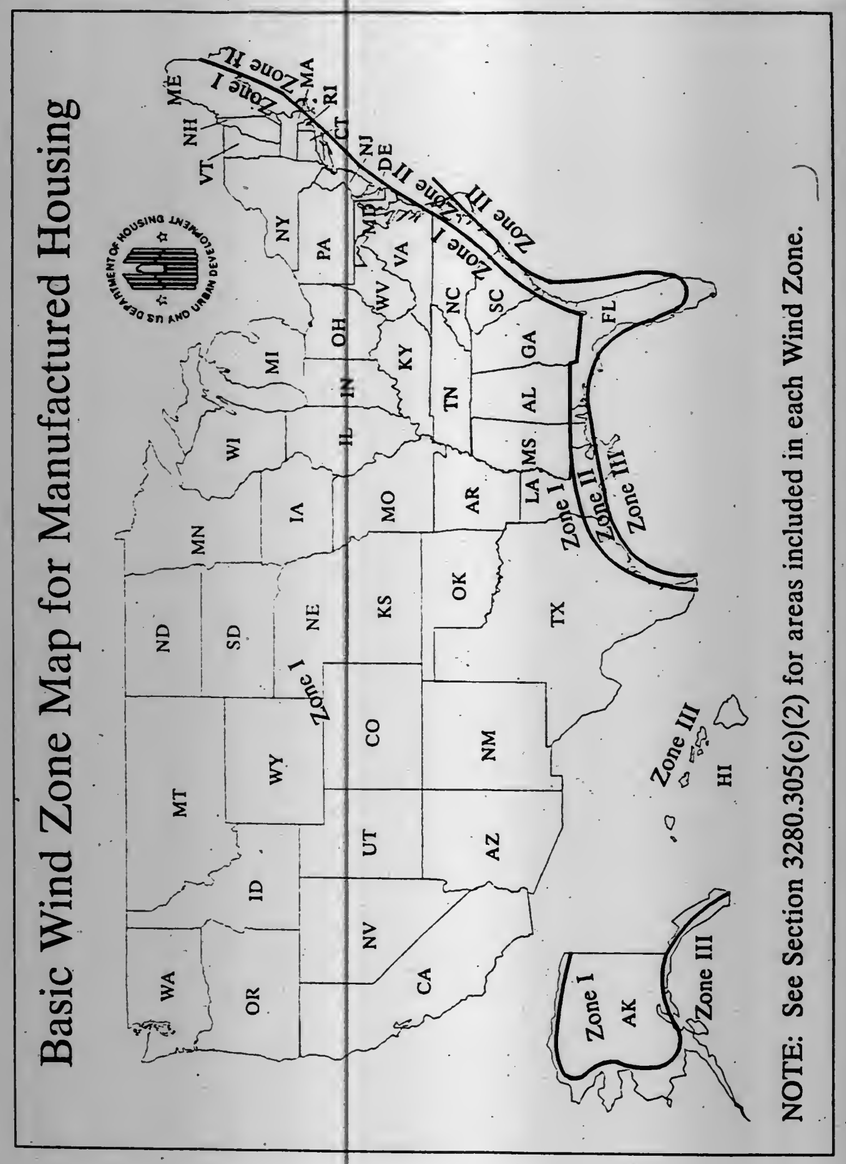
(iv) *Consideration of local requirements.* For areas where local building code requirements exceed the design wind speed requirements of these standards, the Department will consider the adoption through rulemaking of the more stringent requirements of the State or local building authority.

(3) *Snow and roof loads.* * * *

(iii) Eaves and cornices shall be designed for a net uplift pressure of 2.5 times the design uplift wind pressure cited in § 3280.305(c)(1)(i) for Wind Zone I, and for the design pressures cited in § 3280.305(c)(1)(ii) for Wind Zones II and III.

(4) *Data plate requirements.* The Data Plate posted in the manufactured home (see § 3280.5) shall designate the wind and roof load zones or, if designed for higher loads, the actual design external snow and wind loads for which the home has been designed. The Data Plate shall include reproductions of the Load Zone Maps shown in this section, with any related information. The Load Zone Maps shall be not less than either 3½ in. by 2¼ in., or one-half the size illustrated in the Code of Federal Regulations.

BILLING CODE 4210–27–P



BILLING CODE 4210-27-C

(d) *Design load deflection.* (1) When a structural assembly is subjected to total design live loads, the deflection for structural framing members shall not exceed the following (where L equals the clear span between supports or two times the length of a cantilever):
Floor—L/240
Roof and ceiling—L/180
Headers, beams, and girders (vertical load)—L/180
Walls and partitions—L/180

(2) The allowable eave or cornice deflection for uplift is to be measured at the design uplift load of 9 psf for Wind Zone I, and at the design uplift pressure cited in paragraph (c)(1)(ii) of this section for Wind Zones II and III. The allowable deflection shall be (2 x Lc)/180, where Lc is the measured horizontal eave projection from the wall.

(e) *Fastening of structural systems.* (1) Roof framing shall be securely fastened to wall framing, walls to floor structure, and floor structure to chassis to secure and maintain continuity between the floor and chassis, so as to resist wind overturning, uplift, and sliding as specified in this part.

(2) For Wind Zones II and III, roof trusses shall be secured to exterior wall framing members (studs), and exterior wall framing members (studs) shall be secured to floor framing members, with 26 gage minimum steel strapping or brackets or by a combination of 26 gage minimum steel strapping or brackets and structural rated wall sheathing that overlaps the roof and floor. Steel strapping or brackets shall be installed at a maximum spacing of 24" on center in Wind Zone II and at a maximum of 16" on center in Wind Zone III. The number and type of fasteners used to secure the steel straps or brackets or structural sheathing shall be capable of transferring all uplift forces between elements being joined.

* * * * *

8. Section 3280.306 is amended by revising paragraphs (a) introductory text and (b); adding a heading for paragraph (c) introductory text; revising paragraphs (c) (1) through (3) and (d) through (g) to read as follows:

§ 3280.306 Windstorm protection—support and anchoring systems.

(a) *Provisions for support and anchoring systems.* Each manufactured home shall have provisions for support/anchoring or foundation systems that, when properly designed and installed, will resist overturning and lateral movement (sliding) of the manufactured home as imposed by the respective design loads. For Wind Zone I, the design wind loads to be used for calculating resistance to overturning and lateral movement shall be the simultaneous application of the wind loads indicated in § 3280.305(c)(1)(i), increased by a factor of 1.5. The 1.5 factor of safety for Wind Zone I is also to be applied simultaneously to both the vertical building projection, as horizontal wind load, and across the surface of the full roof structure, as uplift loading. For Wind Zones II and III, the resistance shall be determined by the simultaneous application of the horizontal drag and uplift wind loads, in accordance with § 3280.305(c)(1)(ii). The basic allowable stresses of materials required to resist overturning and lateral movement shall not be increased in the design and proportioning of these members. No additional shape or location factors need to be applied in the design of the tiedown system. The dead load of the structure may be used to resist these wind loading effects in all Wind Zones.

(1) * * *

(b) *Contents of instructions.* (1) The manufacturer shall provide printed instructions with each manufactured home specifying the location and required capacity of stabilizing devices on which the design is based. The manufacturer shall provide drawings and specifications certified by a registered professional engineer or architect indicating at least one acceptable system of anchoring, including the details of required straps or cables, their end connections, and all other devices needed to transfer the wind loads from the manufactured home to an anchoring or foundation system.

(2) For anchoring systems, the instructions shall indicate:

(i) The minimum anchor capacity required;

(ii) That anchors should be certified by a professional engineer, architect, or a nationally recognized testing laboratory as to their resistance, based on the maximum angle of diagonal tie and/or vertical tie loading (see paragraph (c)(3) of this section) and angle of anchor installation, and type of soil in which the anchor is to be installed;

(iii) That ground anchors should be embedded below the frost line and be at least 12 inches above the water table; and

(iv) That ground anchors should be installed to their full depth, and stabilizer plates should be installed to provide added resistance to overturning or sliding forces.

(v) That anchoring equipment should be certified by a registered professional engineer or architect to resist these specified forces in accordance with testing procedures in ASTM Standard Specification D3963–91, Standard Specification for Strapping, Flat Steel and Seals.

(c) *Design criteria.* * * *

(1) The minimum number of ties provided per side of each home shall resist design wind loads required in § 3280.305(c)(1).

(2) Ties shall be as evenly spaced as practicable along the length of the manufactured home, with not more than two (2) feet open-end spacing on each end.

(3) Vertical ties or straps shall be positioned at studs. Where a vertical tie and a diagonal tie are located at the same place, both ties may be connected to a single anchor, provided that the anchor used is capable of carrying both loadings, simultaneously.

(4) * * * * *

(d) *Requirements for ties.* Manufactured homes in Wind Zone I require only diagonal ties. These ties shall be placed along the main frame and below the outer side walls. All manufactured homes designed to be located in Wind Zones II and III shall have a vertical tie installed at each diagonal tie location.

(e) *Protection requirements.* Protection shall be provided at sharp corners where the anchoring system requires the use of external straps or cables. Protection shall also be provided to minimize damage to siding by the cable or strap.

(f) *Anchoring equipment—load resistance.* Anchoring equipment shall be capable of resisting an allowable working load equal to or exceeding 3,150 pounds and shall be capable of withstanding a 50 percent overload (4,725 pounds total) without failure of either the anchoring equipment or the attachment point on the manufactured home.

(g) *Anchoring equipment—weatherization.* Anchoring equipment exposed to weathering shall have a resistance to weather deterioration at least equivalent to that provided by a coating of zinc on steel of not less than 0.30 ounces per square foot of surface coated, and in accordance with the following:

(1) Slit or cut edges of zinc-coated steel strapping do not need to be zinc coated.

(2) Type 1, Finish B, Grade 1 steel strapping, 1–1/4 inches wide and 0.035 inches in thickness, certified by a registered professional engineer or architect as conforming with ASTM Standard Specification D3953–91,

Standard Specification for Strapping, Flat Steel, and Seals.

* * * * *

9. Section 3280.403 is amended by revising paragraphs (b) and (e) introductory text and by adding new paragraph (f), to read as follows:

§ 3280.403 Standard for windows and sliding glass doors used in manufactured homes.

* * * * *

(b) *Standard.* By January 17, 1995, all primary windows and sliding glass doors shall comply with AAMA Standard 1701.2–1985, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing, except that the exterior and interior pressure tests for components and cladding shall be conducted at the design wind loads required by § 3280.305(c)(1).

* * * * *

(e) *Certification.* Except as otherwise indicated in paragraph (b) of this section, by January 17, 1995, all primary windows and sliding glass doors to be installed in manufactured homes shall be certified as complying with AAMA Standard 1701.2–1985 and design wind pressures specified in § 3280.305.

* * * * *

(f) *Protection of primary window and sliding glass door openings in high wind areas.* For homes designed to be located in Wind Zones II and III, manufacturers shall design exterior walls surrounding the primary window and sliding glass door openings to allow for the installation of shutters or other protective covers, such as plywood, to cover these openings. Although not required, the Department encourages manufacturers to provide the shutters or protective covers and to install receiving devices, sleeves, or anchors for fasteners to be used to secure the shutters or protective covers to the exterior walls. If the manufacturer does not provide shutters or other protective covers to cover these openings, the manufacturer must provide to the homeowner instructions for at least one method of protecting primary window and sliding glass door openings. This method must be capable of resisting the design wind pressures specified in § 3280.305 without taking the home out of conformance with the standards in this part. These instructions must be included in the printed instructions that accompany each manufactured home. The instructions shall also indicate whether receiving devices, sleeves, or anchors, for fasteners to be used to secure the shutters or protective covers to the exterior walls, have been installed or provided by the manufacturer.

10. Section 3280.404 is amended by revising paragraphs (b) and (e) and by adding a new paragraph (f), to read as follows:

§ 3280.404 Standard for egress windows and devices for use in manufactured homes.

* * * * *

(b) *Performance.* By January 17, 1995, egress windows including auxiliary frame and seals, if any, shall meet all requirements of AAMA Standard 1701.2–1985, Primary Window and Sliding Glass Door Voluntary Standard for Utilization in Manufactured Housing and AAMA Standard 1704–1985, Voluntary Standard Egress Window Systems for Utilization in Manufactured Housing, except as otherwise indicated in § 3280.403(b).

* * * * *

(e) *Certification of egress windows and devices.* Except as otherwise indicated by paragraph (b) of this section, by January 17, 1995, egress windows and devices shall be listed in accordance with the procedures and requirements of AAMA Standard 1704–1985 and design wind pressures specified in § 3280.305.

(f) *Protection of egress window openings in high wind areas.* For homes designed to be located in Wind Zones II and III, manufacturers shall design exterior walls surrounding the egress window openings to allow for the installation of shutters or other protective covers, such as plywood, to cover these openings. Although not required, the Department encourages manufacturers to provide the shutters or protective covers and to install receiving devices, sleeves, or anchors for fasteners to be used to secure the shutters or protective covers to the exterior walls. If the manufacturer does not provide shutters or other protective covers to cover these openings, the manufacturer must provide to the homeowner instructions for at least one method of protecting egress window openings. This method must be capable of resisting the design wind pressures specified in § 3280.305 without taking the home out of conformance with the standards in this part. These instructions must be included in the printed instructions that accompany each manufactured home. The instructions shall also indicate whether receiving devices, sleeves, or anchors, for fasteners to be used to secure the shutters or protective covers to the exterior walls, have been installed or provided by the manufacturer.

11. Section 3280.405 is amended by adding paragraph (f), to read as follows:

§ 3280.405 Standard for swinging exterior passage doors for use in manufactured homes.

* * * * *

(f) *Protection of exterior doors in high wind areas.* For homes designed to be located in Wind Zones II and III, manufacturers shall design exterior walls surrounding the exterior door openings to allow for the installation of shutters or other protective covers, such as plywood, to cover these openings. Although not required, the Department encourages manufacturers to provide the shutters or protective covers and to install receiving devices, sleeves, or anchors for fasteners to be used to secure the shutters or protective covers to the exterior walls. If the manufacturer does not provide shutters or other protective covers to cover these openings, the manufacturer must provide to the homeowner instructions for at least one method of protecting exterior door openings. This method must be capable of resisting the design wind pressures specified in § 3280.305 without taking the home out of conformance with the standards in this part. These instructions must be included in the printed instructions that accompany each manufactured home. The instructions shall also indicate whether receiving devices, sleeves, or anchors, for fasteners to be used to secure the shutters or protective covers to the exterior walls, have been installed or provided by the manufacturer.

PART 3282—MANUFACTURED HOME PROCEDURAL AND ENFORCEMENT REGULATIONS

12. The authority citation for part 3282 is revised to read as follows:

Authority: 42 U.S.C. 5424; 42 U.S.C. 3535(d).

13. Section 3282.362 is amended by revising paragraphs (c)(3)(i) (E) and (F) and adding a new paragraph (G), to read as follows:

§ 3282.362 Production inspection Primary Inspection Agencies (IPIAs).

* * * * *

(c) * * *

(3) * * *

(i) * * *

(E) Reference to the roof load zone and wind load zone for which the home is designed and duplicates of the maps as set forth in § 3280.305. This information may be combined with the heating/cooling certificate and insulation zone map required by §§ 3280.510 and 3280.511. The Wind Zone Map on the Data Plate shall also contain the statement:

This home has not been designed for the higher wind pressures and anchoring provisions required for ocean/coastal areas and should not be located within 1500' of the coastline in Wind Zones II and III, unless the home and its anchoring and foundation system have been designed for the increased requirements specified for Exposure D in ANSI/ASCE 7–88.

(F) The statement:

This home has ___ has not ___ (appropriate blank to be checked by manufacturer) been equipped with storm shutters or other protective coverings for windows and exterior door openings. For homes designed to be located in Wind Zones II and III, which have not been provided with shutters or equivalent covering devices, it is strongly recommended that the home be made ready to be equipped with these devices in accordance with the method recommended in the manufacturers printed instructions.

(G) The statement: "Design Approval by", followed by the name of the agency that approved the design.

* * * * *

Dated: January 4, 1994.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 94–825 Filed 1–13–94; 8:45 am]

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federal register

Friday
January 14, 1994

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710. of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Quechan Indian Tribe and the State of Arizona Gaming Compact of 1993, which was executed on October 22, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: January 7, 1994.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 94–976 Filed 1–13–94; 8:45 am]

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federal register

Friday
January 14, 1994

Part IV

Department of Education

34 CFR Parts 75 and 76

Direct Grant Programs and State-Administered Programs; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Parts 75 and 76

RIN 1880–AA50

Direct Grant Programs and State-Administered Programs

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the Department's regulations on direct grant programs and State-administered programs to clarify the requirements and procedures for establishing and applying indirect cost rates under programs administered by the Department.

DATES: Comments must be received on or before February 28, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Sherlyn Taylor, Grants and Contracts Service, U.S. Department of Education, 400 Maryland Avenue SW., room 3636, ROB–3, Washington, DC 20202–4700.

FOR FURTHER INFORMATION CONTACT: Glenn Riley, U.S. Department of Education, 400 Maryland Avenue SW., room 3636, ROB–3, Washington, DC 20202–4700. Telephone: (202) 708–7640. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: To improve the administration of discretionary grants and to clarify for grantees the procedures and requirements of the Department, the Secretary is proposing to revise sections in the Education Department General Administrative Regulations (EDGAR) on indirect cost rates.

A number of problems in this area of grants administration will be addressed by the proposed changes. For example, the use of a restricted indirect cost rate for programs with supplement-not-supplant language in their authorizing statutes is required by current regulations. However, State education agencies have incurred significant financial liabilities by using incorrect restricted indirect cost rates. The proposed changes clarify how these rates are calculated and so will reduce the likelihood of those errors recurring. In addition, the term "occupancy and space maintenance costs" as used in the computation of restricted indirect cost rates has not been clearly defined, resulting in grant recipients being reimbursed improperly for space costs. The inclusion of a definition in these proposed regulations will address this problem.

The absence of a training grant definition has led to disagreements between the Department and grant recipients over whether the training rate of eight percent, which is a lower rate than most recipients' negotiated rate, should be applied to certain grants. The proposed definition will alleviate this problem and improve the Department's ability to effectively administer these grants. Similarly, ambiguities in existing regulations on the use of indirect costs for matching or cost-sharing and on the reimbursement of indirect costs to groups of eligible parties has contributed to administrative problems between the Department and its grant recipients. The proposed changes will clarify for all parties how these special situations are to be handled.

The existing regulations in these sections are being revised and reorganized and new sections are being added. Specifically, the following sections are proposed for revision or addition:

Section 75.129—This section is revised to include a reference to a new requirement in § 75.564 on the determination of indirect costs for a grant to a group of eligible parties.

Section 75.560—This section is revised to include the requirements that a grantee claiming indirect costs must have a current indirect cost rate agreement, that the Secretary may establish a temporary indirect cost rate under certain circumstances, and that the Secretary may establish a restricted indirect cost rate for a grantee to satisfy the regulatory requirements of certain programs administered by the Department.

Section 75.561—This section is revised to clarify the approval period for indirect cost rates established by the Secretary.

Section 75.562—This section is revised and expanded to include a definition of a training grant, a statement that the Secretary decides which grants are training grants, a clarification of the base to which the training rate is applied, and a restatement of the existing requirement that indirect costs in excess of the eight percent limitation may not be charged directly or be used to satisfy matching or cost-sharing requirements. It also explains that a grantee must have documentation available to show that its negotiated indirect cost rate is at least eight percent.

Section 75.563—This section is revised to refer grantees subject to a restricted indirect cost rate to the new sections in part 76 on restricted rates.

Sections 75.564 through 75.568 are removed in order to transfer these sections on restricted indirect cost rates to part 76. Since most grants under restricted rate programs are made to agencies of State or local governments, or their subgrantees, the Secretary is proposing this change to clarify the applicability of these regulations.

Section 75.564—This is a new section that includes several requirements applicable to the reimbursement of indirect costs, including clarification on the use of indirect costs to satisfy matching or cost-sharing requirements and the reimbursement of indirect costs under a grant to a group of eligible parties. The exclusion of certain categories of grants from reimbursement for indirect costs is proposed, since these types of grants have very little overhead or administrative costs associated with them. This exclusion is consistent with the current policy of the Department of Health and Human Services.

Section 76.560—This section is revised to include the requirements that a grantee claiming indirect costs must have a current indirect cost rate agreement, that the Secretary may establish a temporary indirect cost rate under certain circumstances, and that the Secretary may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

Section 76.563 is revised to indicate the new sections in part 76 that apply to grantees subject to a restricted indirect cost rate.

Section 76.564—This new section incorporates the provisions of the current § 75.564 and also includes the requirement that indirect costs not recovered as a result of the restrictions may not be charged directly or charged to other Federal awards.

Section 76.565—This new section incorporates the provisions of the current § 75.565. The term "general management costs" is substituted for "administrative charges" to avoid confusion with the latter term as it is used in other regulations. The section explains that the term general management costs includes some occupancy and space maintenance costs. It also clarifies what is meant by the terms "chief executive officer," which is used in place of "chief administrative officer," and "component" as these terms are used in this section.

Section 76.566—This new section incorporates the provisions of the current § 75.566 and clarifies which fringe benefits may be used in determining fixed costs in a restricted rate calculation.

Section 76.567—This new section incorporates the provisions of the current § 75.567 and explains that the term "other expenditures" also includes some occupancy and space maintenance costs and costs related to chief executive officers and their offices.

Section 76.568—This is a new section that defines what is meant by occupancy and space maintenance costs in the computation of restricted indirect cost rates. The section also describes the limited circumstances in which those costs can be charged directly.

Section 76.569—This is a new section that revises the formula currently in § 75.568 for computing indirect costs under a restricted rate program to clarify the base to which the rate is applied.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently. Burdens specifically associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the *Paperwork Reduction Act of 1980.*

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs.

The Secretary has also determined that this regulatory action does not unduly interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities. For the most part these revisions are proposed to provide additional information to grantees and to clarify existing departmental procedures or requirements. The proposed revisions will not result in major changes in departmental policy that might have significant economic impact on small entities.

Paperwork Reduction Act of 1980

These proposed regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in room 3636, Regional Office Building No. 3, Seventh and D Streets SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects

34 CFR Part 75

Education Department, Grant programs—education, Grant administration, Incorporation by reference.

34 CFR Part 76

Education Department, Grant programs—education, Grant administration, Intergovernmental relations, State-administered programs.

(Catalog of Federal Domestic Assistance Number does not apply)

Dated: January 10, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend parts 75 and 76 of title 34 of the Code of Federal Regulations as follows:

PART 75—DIRECT GRANT PROGRAMS

1. The authority citation for part 75 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1) and 3474, unless otherwise noted.

2. Section 75.129 is amended by revising paragraphs (a) (1) and (2) and adding paragraph (a)(3), to read as follows:

§ 75.129 Legal responsibilities of each member of the group.

(a) * * *

(1) The use of all grant funds;

(2) Ensuring that the project is carried out by the group in accordance with Federal requirements; and

(3) Ensuring that indirect cost funds are determined as required under § 75.564(f).

* * * * *

3. Section 75.560 is amended by revising paragraph (b), adding new paragraphs (c) and (d), and revising the authority citation at the end of the section, to read as follows:

§ 75.560 General indirect cost rates; exceptions.

* * * * *

(b) A grantee must have a current indirect cost rate agreement to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to the cognizant Federal agency and negotiate an indirect cost rate agreement.

(c) The Secretary may establish a temporary indirect cost rate for a grantee that does not have an indirect cost rate agreement with its cognizant Federal agency.

(d) The Secretary accepts an indirect cost rate negotiated by a grantee's cognizant Federal agency, but may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

4. Section 75.561 is amended by revising paragraph (c), to read as follows:

§ 75.561 Approval of indirect cost rates.

* * * * *

(c) The Secretary generally approves indirect cost rate agreements annually. Indirect cost rate agreements may be approved for periods longer than a year if the Secretary determines that rates will be sufficiently stable to justify a longer rate period.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

5. Section 75.562 is revised to read as follows:

§ 75.562 Indirect cost rates for educational training projects.

(a) Educational training grants provide funding for training or other educational services. Examples of the work supported by training grants are

summer institutes, training programs for selected participants, the introduction of new or expanded courses, and similar instructional undertakings, including special research training programs, that are separately budgeted and accounted for by the sponsoring institution. These grants do not usually support activities involving research, development, and dissemination of new educational materials and methods. Training grants largely implement previously developed materials and methods and require no significant adaptation of techniques or instructional services to fit different circumstances.

(b) The Secretary determines which grants are educational training grants.

(c) Indirect cost reimbursement on a training grant is limited to the amount computed by applying the grantee's negotiated indirect cost rate or a rate of eight percent, whichever is less, to a modified total direct cost base determined by the Secretary.

(1) The eight percent limit also applies to cost-type contracts under grants, if these contracts are for training as defined in this section.

(2) The eight percent limit does not apply to agencies of State or local governments, including federally recognized Indian tribal governments, as defined in 34 CFR 80.3.

(3) Indirect costs in excess of the eight percent limit may not be charged directly, used to satisfy matching or cost-sharing requirements, or be charged to another Federal award.

(d) A grantee using the training rate of eight percent is required to have documentation available for audit that shows that its negotiated indirect cost rate is at least eight percent.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

6. Section 75.563 is revised to read as follows:

§ 75.563 Restricted indirect cost rate—programs covered.

If a grantee decides to charge indirect costs to a program that has a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds, the grantee shall use a restricted indirect cost rate computed under 34 CFR 76.564–76.569.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

7. Sections 75.564 through 75.568 are removed.

8. A new § 75.564 is added to read as follows:

§ 75.564 Reimbursement of indirect costs.

(a) Reimbursement of indirect costs is subject to the availability of funds and statutory or administrative restrictions. The extent to which indirect costs are reimbursed is a matter for determination between the Secretary and the grantee.

(b) The application of the rates and the determination of the direct cost base by a grantee must be in accordance with the indirect cost rate agreement approved by the grantee's cognizant Federal agency.

(c) Indirect cost reimbursement is not allowable under grants for—

(1) Fellowships and similar awards if Federal financing is exclusively in the form of fixed amounts such as scholarships, stipend allowances, or the tuition and fees of an institution;

(2) Construction grants;

(3) Grants to individuals;

(4) Grants to organizations located outside the territorial limits of the United States;

(5) Grants to Federal organizations; and

(6) Grants in support of conferences.

(d) Indirect cost reimbursement on grants received under programs with statutory restrictions or other limitations on indirect costs must be made in accordance with the restrictions in 34 CFR 76.564–76.569.

(e) Under programs with matching or cost-sharing requirements, indirect costs that are unallowable as charges to Federal funds may not be used to satisfy matching or cost-sharing requirements.

(f) Indirect costs for a group of eligible parties (see §§ 75.127–75.129) are limited to the amount derived by applying the rate of the applicant, or a restricted rate when applicable, to the grant in keeping with the terms of the applicant's indirect cost rate agreement.

(Authority: 20 U.S.C. 1221e–3(a)(1) and 3474)

PART 76—STATE-ADMINISTERED PROGRAMS

9. The authority citation for part 76 continues to read as follows:

Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474, unless otherwise noted.

10. Section 76.560 is amended by revising paragraph (b), adding new paragraphs (c) and (d), and revising the authority citation at the end of the section, to read as follows:

§ 76.560 General indirect cost rates; exceptions.

* * * * *

(b) A grantee must have a current indirect cost rate agreement to charge indirect costs to a grant. To obtain an indirect cost rate, a grantee must submit an indirect cost proposal to the cognizant Federal agency and negotiate an indirect cost rate agreement.

(c) The Secretary may establish a temporary indirect cost rate for a grantee that does not have an indirect cost rate agreement with its cognizant Federal agency.

(d) The Secretary accepts an indirect cost rate negotiated by a grantee's cognizant Federal agency, but may establish a restricted indirect cost rate for a grantee to satisfy the statutory requirements of certain programs administered by the Department.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

11. Section 76.563 is revised to read as follows:

§ 76.563 Restricted indirect cost rate—programs covered.

Sections 76.564–76.569 apply to agencies of State and local governments, and their subgrantees, that are grantees under programs with a statutory requirement prohibiting the use of Federal funds to supplant non-Federal funds.

(Authority: 20 U.S.C. 1221e(a)(1), 2831(a), 2974(b), and 3474)

12. A new § 76.564 is added to read as follows:

§ 76.564 Restricted indirect cost rate—formula.

(a) An indirect cost rate for a grant covered by § 76.563 or 34 CFR 75.563 is determined by the following formula:

Restricted indirect cost rate=(General management costs + Fixed costs) (Other expenditures)

(b) General management costs, fixed costs, and other expenditures must be determined under §§ 76.565–76.567.

(c) Under the programs covered by § 76.563, a subgrantee of an agency of a State or a local government (as those terms are defined in 34 CFR 80.3) or a grantee subject to 34 CFR 75.563 that is not a State or local government agency may use—

(1) An indirect cost rate computed under paragraph (a) of this section; or

(2) An indirect cost rate of eight percent unless the Secretary determines that the subgrantee or grantee would have a lower rate under paragraph (a) of this section.

(d) Indirect costs that are unrecovered as a result of these restrictions may not be charged directly or be charged to another Federal award.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

13. A new § 76.565 is added to read as follows:

§ 76.565 General management costs—restricted rate.

(a) As used in § 76.564, *general management costs* means the costs of activities that are for the direction and control of the grantee's affairs that are organization-wide. The term organization-wide does not include divisional administration or other activities that are limited to one activity, one component of the grantee, one subject, one phase of operations, or other single responsibility.

(b) General management costs include the costs of performing a service function, such as accounting, payroll preparation, or personnel management, that is normally at the grantee's level even if the function is physically located elsewhere for convenience or better management. The term also includes certain occupancy and space maintenance costs as determined under § 76.568.

(c) The term does not include expenditures for—

(1) The governing body of the grantee;

(2) Compensation of the chief executive officer of the grantee;

(3) Compensation of the chief executive officer of any component of the grantee; and

(4) Operation of the immediate offices of these officers.

(d) For purposes of this section—

(1) The chief executive officer of the grantee is the individual who is the head of the executive office of the grantee and exercises overall responsibility for the operation and management of the organization. The chief executive officer's immediate office includes any deputy chief executive officer or similar office along with immediate support staff of these individuals. The term does not include the governing body of the grantee, such as a board or a similar elected or appointed governing body; and

(2) Components of the grantee are those organizational units supervised directly or indirectly by the chief executive officer. These organizational units generally exist one management level below the executive office of the grantee. The term does not include the office of the chief executive officer or a deputy chief executive officer or similar position.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

14. A new § 76.566 is added to read as follows:

§ 76.566 Fixed costs—restricted rate.

As used in § 76.564, *fixed costs* means contributions of the grantee to fringe benefits and similar costs, but only those associated with salaries and wages that are charged as indirect costs, including—

(a) Retirement, including State, county, or local retirement funds, Social Security, and pension payments;

(b) Unemployment compensation payments; and

(c) Property, employee, health, and liability insurance.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

15. A new § 76.567 is added to read as follows:

§ 76.567 Other expenditures—restricted rate.

(a) As used in § 76.564, *other expenditures* means the grantee's total expenditures for its federally- and non-federally-funded activities in the most recent year for which data are available. The term also includes direct occupancy and space maintenance costs as determined under § 76.568 and costs related to the chief executive officers of the grantee and components of the grantee and their offices (see § 76.565(c) and (d)).

(b) The term does not include—

(1) General management costs determined under § 76.565;

(2) Fixed costs determined under § 76.566;

(3) Capital outlay;

(4) Debt service;

(5) Fines and penalties;

(6) Contingencies; and

(7) Election expenses. However, the term does include election expenses that result from elections required by a program statute.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

16. A new § 76.568 is added to read as follows:

§ 76.568 Occupancy and space maintenance costs—restricted rate.

(a) As used in the calculation of a restricted indirect cost rate, *occupancy and space maintenance costs* means such costs as—

(1) Building costs whether owned or rented;

(2) Janitorial services and supplies;

(3) Building, grounds, and parking lot maintenance;

(4) Guard services;

(5) Light, heat, and power;

(6) Depreciation and amortization; and

(7) All other related space costs.

(b) Occupancy and space maintenance costs associated with organization-wide service functions (accounting, payroll, personnel) may be included as general management costs if a space allocation or use study supports the allocation.

(c) Occupancy and space maintenance costs associated with functions that are not organization-wide must be included with other expenditures in the indirect cost formula. These costs may be charged directly to affected programs only to the extent that statutory supplanting prohibitions are not violated. This reimbursement must be approved in advance by the Secretary.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

17. A new § 76.569 is added to read as follows:

§ 76.569 Using the restricted indirect cost rate.

(a) Under the programs referenced in § 76.563, the maximum amount of indirect costs under a grant is determined by the following formula:

Indirect costs=(Restricted indirect cost rate)×(Total direct costs of the grant minus capital outlays, subgrants, and other distorting or unallowable items as specified in the grantee's indirect cost rate agreement)

(b) If a grantee uses a restricted indirect cost rate, the general management and fixed costs covered by that rate must be excluded by the grantee from the direct costs it charges to the grant.

(Authority: 20 U.S.C. 1221e–3(a)(1), 2831(a), 2974(b), and 3474)

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Part V

Department of Education

34 CFR Part 682
Federal Family Education Loan Program; Proposed Rule

DEPARTMENT OF EDUCATION

34 CFR Part 682

RIN 1840-AB83

Federal Family Education Loan Program

AGENCY: Department of Education.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary proposes to amend the regulations governing the Federal Family Education Loan (FFEL) Program. The FFEL Program consists of the Federal Stafford, Federal Supplemental Loans for Students (SLS), Federal PLUS, and the Federal Consolidation Loan programs. These amendments are needed to implement changes made to the Higher Education Act of 1965, as amended (HEA), by the Higher Education Amendments of 1992. The proposed regulations would amend the FFEL Program loan cancellation provisions and enhance the ability of lenders and guaranty agencies to service and collect FFEL Program loans.

DATES: Comments must be received on or before February 14, 1994.

ADDRESSES: All comments concerning these proposed regulations should be addressed to Pamela A. Moran, Acting Chief, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202-5449.

A copy of any comments that concern information collection requirements should also be sent to the Office of Management and Budget at the address listed in the Paperwork Reduction Act section of this preamble.

FOR FURTHER INFORMATION CONTACT: George Harris, Senior Program Specialist, Loans Branch, Division of Policy Development, Policy, Training, and Analysis Service, U.S. Department of Education, 400 Maryland Avenue, SW. (room 4310, ROB-3), Washington, DC 20202-5449. Telephone: (202) 708-8242. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1-800-877-8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION:

Background

The Secretary is proposing to revise 34 CFR part 682 to implement changes made to the HEA by the Higher Education Amendments of 1992 (Pub. L. 102-325), enacted July 23, 1992, as well as certain changes added by Public Law 103-208, enacted December 20, 1993. These regulations seek to improve the efficiency of federal student aid programs, and, by so doing, to improve their capacity to enhance opportunities for postsecondary education.

Summary of Comments From Regional Meetings

In compliance with section 492(a) of the HEA, the Secretary convened regional meetings during September 1992 to obtain public involvement in the development of proposed regulations. The purpose of the meetings was to "provide for a comprehensive discussion and exchange of information concerning the implementation" of certain parts of Public Law 102-325. In addition, attendees at the regional meetings were asked to nominate individuals to act as negotiators in the negotiated rulemaking process required by section 492(b) of the HEA.

The regional meetings were conducted for two days each in San Francisco, California; New York, New York; Atlanta, Georgia; and Kansas City, Missouri. Each participant at the regional meetings was assigned to one of six groups which were asked to discuss particular issue areas identified by the Department. Each group at the regional meetings prepared a report of its discussion and recommendations and those reports were presented to the Department for consideration during the preparation of the proposed regulations.

The issues addressed in this Notice of Proposed Rulemaking were discussed by one of the groups at each regional meeting. The specific recommendations made at those meetings are addressed below. The Secretary considered these comments in preparing draft proposed regulations.

1. Loan Discharge for Borrowers Attending Schools That Close

Public Law 102-325 added section 437(c) to the HEA to provide that loans will be canceled for student borrowers who are unable to complete their program of study because the school closed. The specific issues described below were discussed in connection with this section.

a. Criteria

The statute requires that, to qualify for a cancellation, the borrower must be "unable to complete his or her program" because the school closed. Participants at the San Francisco meeting recommended that the cancellation be available to student borrowers who are in attendance at the school at the time the school closes, or are on a leave of absence or left the school within 60 days prior to the school's closure because of deteriorating conditions at the school. The participants at the New York meeting agreed that students who are registered at the time the school closed should have their loans canceled but recommended that the benefit also be provided to borrowers who left within 90 days prior to the school's closure. Participants at the Kansas City meeting endorsed the 60-day time frame but also recommended that the regulations focus on the date of any announcement that the school is closing if that is earlier than the actual date that the school closed. Participants at the Atlanta meeting recommended that loan cancellation be provided to students who are in attendance or on a leave of absence at the time the school closed.

b. Prior Payments

Participants at all of the meetings agreed that any payments made by the borrower prior to discharge of the loan should be refunded.

c. Teach-Outs

Participants at the meetings discussed whether a loan made to a student who is offered a teach-out of the program in which the student was enrolled should be canceled. The participants at the Atlanta meeting concluded that a loan should not be discharged if the student completed a teach-out during the academic year for which the loan was made, but that the loan should be discharged if the borrower did not take or did not complete a teach-out during that time. Participants at the New York and Kansas City meetings concluded that a borrower should have the option of whether to accept a teach-out and should have the loan discharged if the student does not choose or does not complete a teach-out program. Attendees at the San Francisco meeting stated that they believed that teach-outs do not work well in practice and that loans should be canceled if a borrower does not choose to complete the program through a teach-out.

d. Extent of Cancellation

Attendees at each of the meetings also discussed whether loans should be canceled only for the academic term for which the borrower received the loan or whether all loans received for the program should be canceled. Attendees at the Atlanta meeting agreed that only the loan made for the period in which the school closed should be canceled. Participants at the meetings in New York and San Francisco (and a substantial minority in Atlanta) recommended that the regulations distinguish between students enrolled in certificate programs and students enrolled in degree programs. The attendees at those meetings believed that certificate students were unlikely to be able to transfer the credits earned at the closed school and should have all loans canceled, but that students attending degree-granting schools are likely to be able to transfer their credits and should only receive cancellation of the loan for the period in which the school closed.

e. Process and Documentation Requirements

Attendees at the San Francisco meeting recommended that the Secretary be responsible for notifying the guaranty agencies when a school closes and that the agencies would be responsible for notifying the lenders of the loans eligible for cancellation. The attendees at that meeting also recommended that collection activity be suspended on the affected loans and that public service announcements be used to notify possibly affected students but that the students not be required to complete any applications or paperwork to prove their entitlement. The attendees at the Atlanta meeting also recommended that the Secretary or a State agency be responsible for determining that a school has closed and that the agencies would notify the affected lenders. The attendees at that meeting also recommended that the borrower not be required to provide documentation and recommended that credit bureau reporting be suspended during the investigation of possibly affected loans. Attendees at the New York meeting recommended that the date of a school's closure be determined by the applicable State licensing authority and also recommended that the student not be required to provide documentation of eligibility for cancellation of the loan.

2. Discharge of Loans for Borrowers Whose Eligibility was Falsely Certified by the School

Section 437(c) to the HEA also provided that loans will be canceled for borrowers whose eligibility to borrow was falsely certified by the school. The specific issues described below were discussed in connection with this section.

a. Definition of "False Certification"

Participants at the San Francisco meeting recommended that the Department's regulations provide that the following situations should be considered "false certification:" a school certifies an application for a borrower who is not eligible because he or she does not have the ability to benefit from the training offered; there is fraud by the school in completing or certifying the loan application or the school cashes checks without the borrower's endorsement; or the school submits an incorrect budget, wrong expected family contribution, or other information vital to the determination of the borrower's eligibility. The participants at the Atlanta meeting recommended that the definition of "false certification" include forged checks, falsification of the student's program eligibility or eligibility for a particular loan amount, and falsification of the borrower's signature. Participants at the New York meeting recommended that the Department define "false certification" as including the situation in which the school falsely certifies that it is an eligible institution.

b. Need for Showing of Intent

Participants at the San Francisco meeting recommended that the regulations provide that "false certification" must relate to the school's intent to deceive and not include a clerical error. The participants at the New York meeting, who also discussed this issue, did not reach a consensus regarding the requirement for a showing of intent by the school.

c. Procedures

Only the attendees at the Atlanta meeting discussed the procedures that should be utilized in implementing the provision for discharge of loans in cases of false certification. Participants at the Atlanta meeting recommended that the regulations provide that the determination of a false certification can be made by the Department, the guaranty agency, or the courts. They also recommended that if the guaranty agency makes the decision, the regulations should allow the school to appeal that decision to the Secretary. Participants at that meeting also recommended that a lender be required to notify the guaranty agency within 30 days of receiving a complaint that a loan was falsely certified and that collection activity be suspended while the agency investigates the claim. The agency would be required to complete its investigation within 6 months.

3. Repayment of Bankruptcy Claims

Public Law 102-325 changed the procedure for payment of bankruptcy claims by the Department and requires the Secretary to repay the loan if collection of the loan is stayed under Title 11 of the Bankruptcy Code. Participants at all of the regional meetings recommended that the Department define "stay" in accordance with the current definition in the Bankruptcy Code. However, in response to the Department's question regarding the appropriate procedure for handling loans that are not ultimately discharged in bankruptcy, there were differences of opinion. The attendees at the San Francisco meeting recommended that if a loan was not likely to be discharged by the bankruptcy court, the guaranty agency should obtain the loan from the lender and hold it until the bankruptcy court action is completed and then return it to the lender. Attendees at the New York meeting recommended that lenders be permitted to file bankruptcy claims for payment directly to the Secretary and if the Secretary wanted the guaranty agency to service the account, the agency should be permitted to receive at least a portion of any repayment. They also recommended that the lender be given the option to repurchase any loan that is not discharged in bankruptcy. Participants at the Atlanta meeting recommended that lenders be required to repurchase any loans not discharged on which a claim was paid. Because this amendment has now been superseded by section 2(c)(63) of Public Law 103-208, which incorporated the provisions found in current FFEL Program regulations, these comments are now moot.

4. Garnishment

The last statutory provision reflected in these proposed regulations is section 488A of the HEA, which establishes a national wage garnishment law. That section was added by Public Law 102-164, the Emergency Unemployment Compensation Act of 1991, and was not discussed during the regional meetings or the negotiated rulemaking sessions.

Negotiated Rulemaking

After completion of the regional meetings, the Department prepared draft proposed regulations to implement the provisions of Public Law 102-325 relating to the FFEL Program. In accordance with the requirements of section 492(b) of the HEA, those regulations were submitted to a negotiated rulemaking process. During the weeks of January 4-8 and February 1-5, 1993, the Department met with negotiators selected from among individuals nominated by attendees at the regional meetings.

The discussion below of the proposed regulations reflects those areas where the negotiators reached a consensus and the proposed regulations reflect that agreement. The discussion below also

indicates where consensus was not reached during the negotiations. However, the negotiators did not choose to discuss every part of the proposed regulations. Accordingly, the discussion below of those issues not discussed during the negotiations reflects only the views of the Secretary.

Proposed Regulatory Changes

Section 682.202 Permissible Charges by Lenders to Borrowers

The proposed regulations would implement the requirements of section 427A of the HEA. The changes in this section include the creation of variable interest rates for new Stafford loan borrowers and the return of excess interest to certain Stafford loan borrowers.

The Secretary estimates that lenders collectively will need an additional 250,000 hours to comply with the requirement that excess interest be returned to certain Stafford loan borrowers. This requirement is taken directly from the HEA.

Section 682.208 Due Diligence in Servicing a Loan

The proposed regulations would implement the requirements of section 428(b)(2)(F) of the HEA. Under the regulations, in cases where the holder of the loan remains the same, but there is a servicing change that results in a change in the identity of the party to whom the borrower must send payments or direct communications, the Secretary would apply the same borrower notification requirements that are required by current regulations at 34 CFR 682.208(e) when a loan is sold or transferred.

The Secretary does not view this requirement as one that imposes any additional burden because lenders and servicers already notify borrowers, as a normal business practice, whenever there is a servicing change that results in a change in the identity of the party to whom the borrower must send payments or direct communications. This requirement is taken directly from the HEA.

Section 682.402 Death, Disability, Closed School, False Certification, and Bankruptcy Payments

The proposed regulations would implement the requirements of section 437 of the HEA. The regulations reflect the new statutory provision for cancellation of a parent's PLUS loan if the student for whom the parent borrowed died. This was not a subject of controversy at the regional meetings or during the negotiations.

The proposed regulations implement the requirements of the HEA with regard to the discharge of a borrower's liability on an FFEL Program loan if the student was unable to complete an educational program because of the closure of the school. In developing criteria to be used to determine a borrower's eligibility for a closed school loan discharge, the Secretary believes that a student who completed his or her educational program by transferring academic credits or hours earned at the closed school to another school, or who completed the program through a teach-out of the educational program at a different school, should not qualify for a loan cancellation. The Secretary believes that the closed school discharge was intended to benefit students who could not complete their education because their school closed, and does not believe that a student who was able to complete the educational program for which the loan paid should be able to avoid repaying that loan. The Secretary is particularly interested in receiving public comment as to the appropriate treatment of a borrower's loan obligations if the educational program for which the loan was obtained was a multi-year program and the student was able to complete one or more years of that program.

The Secretary also believes, contrary to the majority sentiment expressed at the regional meetings and by the negotiators, that a borrower should submit to the holder a sworn statement that demonstrates that the borrower is eligible for a closed school discharge to assist the Secretary or the Secretary's designees in pursuing claims against the closed school, and to secure the borrowers written commitment to the representations on which he or she seeks relief. The Secretary believes that an affidavit or sworn statement is essential in protecting the interests of the federal taxpayer, and therefore proposes that one be obtained from the student as a condition of loan discharge. By virtue of Federal law (28 U.S.C. 1746), this affidavit or statement need not be notarized, but the borrower must state in the document that the borrower makes the statement under penalty of perjury.

The Secretary agrees with the sentiment expressed at the regional meetings and by the negotiators that conditions at the school immediately preceding its closing may cause a deterioration in the educational program that would cause a student to withdraw. A student who withdraws under these circumstances should be deemed to have been unable to complete his or her educational program because of the school's closure. For purposes of considering the borrower eligible for loan discharge, and to balance the interests of the borrower and the federal taxpayers (who ultimately must pay the cost of each cancelled loan), the Secretary proposes to limit this withdrawal period to not more than 90 days prior to the date the school closed.

False Certification by a School of a Student's Eligibility To Borrow

Participants in the regional meetings and the negotiators offered a wide variety of different actions by the school or the borrower that they believed should be considered a false certification of eligibility to borrow; these included virtually every express or implied representation in any way related to the FFEL Program made by the student to the school, or by the school to the lender, guarantor, accrediting agency, state authority, or the Secretary. The Secretary has not adopted these views in the proposed regulations, because the language of the statute itself and its legislative history shows that the intended scope of the authority to discharge loan obligations is considerably narrower than these commenters suggest. The statute authorizes discharge only if the school made a false "certification of the student's eligibility," a term used only in the FFEL Program regulations, where it refers, only to those representations made by the school on the loan application itself regarding the status of the loan applicant (or the student for whom a parent wishes to obtain a PLUS loan) as an eligible student, 34 CFR 682.603; 682.201; and 668.7, and not to other written representations that relate to the borrower's request for a loan, the school's participation in the FFEL Program, or the quality of the schools program, facilities, or placement services. The legislative history further explains that this provision was intended to provide relief where the student was "left without the skills needed to obtain employment" because of the false certification of eligibility. H. R. Rep. No. 447, 102d Cong. 2d Sess. 52 (1991). The scope of the relief proposed by the Secretary here is guided by these two principles: that the false certification be that made by the school on the loan application regarding the borrower's eligibility, and that the falsity of the certification be directly related to the failure to provide necessary skills for employment.

Some negotiators urged that grounds for cancellation should include such falsifications as forgery of the borrower's signature on the loan application or on the loan disbursement check. However,

these representations are not part of the process of the "certification of the student's eligibility to borrow." Moreover, as a practical matter, a borrower victimized by a forged loan application can be injured only if the borrower's endorsement is then forged on the loan disbursement check, or the check is negotiated without the borrower's endorsement at all. In either case, the borrower is generally not liable because such a loan is generally not legally enforceable. Therefore, not only does forgery not constitute a falsification in the loan "certification" process, but the borrower who is the victim of a forgery and did not receive the proceeds of the loan already has a complete defense to repayment of the loan, and needs no cancellation relief under this new section.

Other negotiation participants suggested that erroneous school representations on a loan application regarding such matters as the borrower's (or student's) income, resources, family contribution, or recommended loan amount should be sufficient to constitute grounds for cancellation under this section. This kind of error could result in the borrower receiving a loan in a larger amount than he or she qualifies to receive. However, that student may nevertheless receive quality training at the school, and this kind of error or misrepresentation does not directly or invariably cause the borrower to be "left without the skills needed to obtain employment." In addition, errors or misstatements of the borrower's financial need frequently result in the borrower receiving a loan either that only marginally exceeds the amount for which he or she actually qualified, or that qualified only for reinsurance but not for interest subsidies. Section 437(c) directs the discharge of the "borrower's liability on the loan"—language that does not suggest that a partial discharge was contemplated or intended; discharging the borrower from financial obligation for the entire loan in such circumstances where the misstatement of financial need affects only part of the loan, or only the borrower's right to interest subsidies on all or part of that loan, is a remedy completely out of proportion to any injury suffered by the borrower as a result of the erroneous certification of his or her financial need. For these reasons, the Secretary concludes that erroneous representations of the borrower's financial need are not the kind of false certifications for which section 437 was intended to provide relief.

In general, participants at the regional meetings and the negotiations recognized that grounds for cancellation of a loan obligation under section 437 of the HEA should include a case where a student was unable to obtain employment after attending the school, and the school had falsely certified that the student had the ability to benefit from the school's training. This kind of falsification is both part of the loan certification process and results in a student being left without needed skills. Therefore, the proposed regulations focus on the school's false representation that the student had the ability to benefit as the grounds for cancellation under this new provision.

The statute and regulations have addressed the ability-to-benefit requirement for many years, and the proposed regulations reflect both the legal elements of that requirement and some enforcement perspectives developed in implementing it. For example, the school has always been required to test the ability to benefit only of those applicants who did not have a high school diploma, and the school therefore does not certify anything regarding the ability to benefit of high school graduates. Since 1987, students who had a general education diploma, or obtained one after enrolling, and students who lacked both a GED and a high school diploma but completed an institutionally prescribed remedial education program, have been deemed by Congress to have the ability to benefit, and the rule would incorporate that congressional judgement.

The regulations therefore would generally permit relief in the case of a student whom the school was required to test for ability to benefit, but either failed to test at all, or tested in disregard of the requirements for proper use of the test adopted. Schools have a continuing legal obligation to administer tests, subject to criteria developed by the school's accreditor, in compliance with test protocols. These criteria and protocols may include requirements related both to the accuracy of the test results as to the individual tested and to the continuing development and validation of the test mechanism. Non-compliance with testing requirements may warrant administrative sanctions against the school, but a false certification claim under this provision requires the Department to determine a different question.

A false certification claim depends not on whether the school met all its obligations with regard to testing, but on whether a test already given lacks credibility as a measure of the student's ability to benefit so that the Department should, in the absence of other evidence, regard the student as lacking that ability. The Secretary expects that practical, specific standards will be needed to help identify those deviations from testing requirements that support an inference that the student lacked ability to benefit. For example, use of photocopied versions of tests by the school or test administrator may violate the requirements of the test publisher, but may have no direct effect on the accuracy of the assessment of the student's ability to benefit. Use of an indefensibly low cutoff score by the school on an ability-to-benefit test does not discredit an assessment of the ability of those students who score above a legitimate cutoff score, such as those now published by the Secretary. Similarly, minor deviations from required time limits may have little effect on the validity of the test results. The Secretary intends to address these practical considerations in the final regulations, and invites public comment on the content of those standards or guidelines.

In applying these standards, moreover, the Secretary has consistently recognized that a student may actually have the ability to benefit from the school's training even though the school does not test that student's ability or does so improperly. The proposed regulations therefore recognize that a student who actually obtains employment in the occupation for which the school's program was designed to prepare him or her had the actual ability to benefit from that training without regard to whether the school falsified its test of ability to benefit.

A student not properly tested for ability to benefit who nevertheless completes the program of instruction can reasonably be considered to have found the training consistent with his or her aptitude, and the proposed regulations would provide for cancellation only if the a student had unsuccessfully tried to find employment in the occupation for which the program was designed to prepare him or her. Conversely, a student not properly tested who withdraws from the course can be reasonably regarded as having found the training not consistent with his or her aptitude, and the proposed regulations grant relief to this kind of student (or a parent PLUS borrower who borrowed on behalf of the student) unless the student actually obtained employment in that occupation.

Consistent with the approach that the student's ability to benefit should be evaluated realistically, the proposed regulations would recognize that those individuals admitted on the basis of

their ability to benefit who met one or more of the several statutory requirements would nevertheless be regarded as not having had that ability if they had a physical, mental, or personal impediment to employment in, or performance of the physical duties of, the occupation for which the program was designed. Individuals with certain kinds of criminal records or a history of mental illness may be barred from some positions for which the school proposed to train them, and these students could not benefit from the training even if they successfully completed a test sanctioned by both the industry and school's accrediting agency. Other students may lack the physical ability to perform a job for which their grades on an industry and accreditor-approved test might otherwise show an ability to perform. Both kinds of students would qualify (or qualify the parent PLUS borrower) for relief under these regulations.

A number of other kinds of falsification were considered as potential grounds for discharge of the loan under this provision, including a school's acceptance of a student into an ineligible program, but they were not adopted in these proposed regulations. As explained earlier, the statute uses fairly precise language to describe the grounds for discharge under this provision, and that language, by authorizing discharge where there has been a false certification "by the eligible institution," does not authorize relief where the falsity relates to the eligibility of the institution itself. Thus, although misrepresentations regarding the school's financial or administrative capability, including the school's placement services or the quality of the school's facilities, faculty, or equipment, may well have induced the individual to enroll at the school, those representations are not part of the process of "certification" of the student's eligibility to borrow, tend to constitute claims that the institution was in fact not an "eligible institution," and are not the kind of representations for which this statute authorizes relief. These proposed regulations therefore do not treat falsifications by the institution about itself as grounds for discharge.

For the vocational schools that are the primary focus of this statutory provision, representations about the eligibility of the institution include representations about the eligibility of its programs, and, under the statute and regulations, the institution is virtually defined in terms of the programs it offers. 20 U.S.C. 1088 (1992); 34 CFR 600.7, 668.7(a)(2)(v). Therefore, because the statute confines relief precisely to instances of false certifications regarding the eligibility of the student, not on representations that would tend to show that the institution itself was not eligible, the Secretary does not believe that the statute authorizes relief where the alleged misrepresentation goes to the eligibility of the program in which the student was enrolled. For these reasons, relief under the proposed regulations would not permit a borrower to secure cancellation by challenging the eligibility of the program or the school itself, but would require a demonstration by the student that the school failed to test (or tested improperly) his or her ability to benefit and that he or she did not secure employment in the occupation for which the school stated its program was designed to prepare the student.

Bankruptcy Claims

Section 437(a) of the HEA as amended by the Higher Education Amendments of 1992 allowed a lender to submit and receive payment on a bankruptcy claim on the date on which the borrower filed for relief in bankruptcy, an action that "stays collection" of the loan, rather than when the loan was discharged, as under prior law. The proposed regulations submitted to the negotiation process would have revised current regulations as needed to implement this change. Other features of current bankruptcy claim processing were to remain unchanged. Section 2(c)(63) of Public Law 103–208 reinstated standards for payment of bankruptcy claims consistent with those now found in FFEL Program regulations at 34 CFR 682.402(d)(5); pursuant to section 5 of Public Law 103–208, this most recent change took effect as if enacted as part of the 1992 amendments. Any regulations needed to implement this change, moreover, are not subject to negotiated rulemaking requirements of section 492. To implement the new law, the Secretary is here withdrawing those proposals found in 34 CFR 682.402(f)(5) and (g)(2) (iv) and (v) as presented to the negotiators prior to the enactment of Public Law 103–208, and will leave in effect the provisions of current 34 CFR 682.402(d)(5), redesignated here as § 682.402(g)(5), and current § 682.402(e)(2)(ii), redesignated here as § 682.402(g)(2)(iv).

By allowing a filing of a claim on the date "collection of the loan is stayed"—the date of the filing of the petition by the borrower, or, in a Chapter 13 case, by the endorser or the borrower—rather than the date a borrower receives a discharge, the statute might be read to permit claims to be submitted if an endorser files, rather than, as under prior law, only in borrower bankruptcies. Nothing in the amendments suggested that such a result was intended, and the proposed regulations would permit the submission of a bankruptcy claim only in the case of a borrower bankruptcy.

The proposed regulations would continue to require lenders to file proofs of claim in the bankruptcy proceeding, unless the guaranty agency directs otherwise or the holder is officially notified by the court that no assets are available for distribution. If the guaranty agency later receives notice that assets have become available, the guarantor must file a proof of claim at that point.

Participants in the negotiated rulemaking proceedings noted that a growing number of discharges were being received by borrowers who file sequential bankruptcy petitions, particularly those who first file for relief in Chapter 13. During the pendency of the prior bankruptcy case, loans in repayment less than seven years are non-dischargeable without proof of undue hardship, yet cannot be enforced by the holder according to their original terms; little or nothing may be paid on those loans during the proceeding. Rather than attempting to show that repayment would constitute an undue hardship, or negotiating an income-sensitive repayment arrangement with the holder, borrowers who complete their Chapter 13 proceeding may then file a second bankruptcy petition, making sure that the second is filed more than seven years after the loan entered repayment.

The Bankruptcy Code excludes the period of "any applicable suspension of the repayment period" from the seven-year period during which loans are dischargeable only for undue hardship. 11 U.S.C. 523(a)(8)(A). If the term "suspension of the repayment period" is read, as these borrowers contend, to include only forbearance or deferments granted by the holder of the loan, the reality of the forbearance imposed by virtue of the automatic stay in the prior bankruptcy—which barred enforcement of the loan according to its terms during the pendency of the bankruptcy—would be ignored, and borrowers who have neither made the required seven-year attempt to repay nor demonstrated undue hardship would obtain a discharge in the second bankruptcy. The Secretary does not consider this interpretation of the statute to be consistent with its purpose, and the only court that has addressed this precise issue has concluded that the period during which enforcement of a loan is stayed in a prior bankruptcy is an "applicable suspension of the repayment period" for purposes of computing the seven-year period for a subsequent bankruptcy. *In re Saburah*, 136 B.R. 246, 254 (Bankr. C.D. Cal. 1992).

In light of the above discussion, the Secretary proposes to interpret the term "applicable suspension of the repayment period" to include periods during which the automatic stay in a bankruptcy proceeding is in effect. The Secretary further recognizes that a borrower who in fact meets his or her obligation under the original repayment agreement during the bankruptcy has acted in a manner consistent with the intent of the statute, and this proposed interpretation would not regard the period of the first bankruptcy as a period of suspension of repayment for the borrower.

The death and bankruptcy requirements in proposed § 682.402 are taken directly from the HEA. There is no change to the current disability cancellation.

Closed School Cancellations

The closed school cancellation provision is taken, in large part, directly from the mandates of the HEA, although the proposed regulations reflect some areas of necessary interpretation. The discussion that follows is grouped into three major areas where the Secretary and the negotiators had discretion to interpret the statutory closed school cancellation provision:

1. Student Withdrawal Prior to the Closing of the School

There was unanimous agreement among the negotiators and the Secretary that it would be inequitable to strictly limit a closed school cancellation to only those students who were in attendance at the school on the date that the school officially closed. As discussed earlier, conditions at the school immediately preceding its closing may have caused a deterioration in the educational program that would have prompted a student to withdraw. Such a student should not lose entitlement to a loan cancellation because of his or her prescience or inability to tolerate the school's deterioration. To balance the interests of students and the federal taxpayers (who ultimately must pay the cost of each cancelled loan), the Secretary proposes to limit this withdrawal period to not more than 90 days prior to the date the school closed.

2. Student Use of Teach-out or Transfer of Academic Credits

As discussed earlier, the Secretary does not believe that a student who completed the educational program for which the loan was intended, even though the completion occurred through a teach-out at another school or by the student's transfer of academic credits earned at the closed school, should be able to avoid repaying that loan. The student is not required to transfer those credits or make use of a teach-out opportunity, but if the student chooses to do so, then the Secretary believes that, because the student was able to complete the educational program, it would be unfair to require the Federal taxpayer to pay the student's loan.

3. Student Statement Requirement

The Secretary believes that a statement made by the student under penalty of perjury demonstrating eligibility for a closed school discharge should be obtained from the student to assist the Secretary or the Secretary's designees in pursuing claims against the closed school. Without this statement, the Secretary's ability to protect the interests of the Federal taxpayer would be frustrated.

Section 682.410 Fiscal, Administrative, and Enforcement Requirements

The administrative wage garnishment requirements are taken directly from the HEA.

The proposed regulations provide an alternative to the prescribed collection requirements in § 682.410(b) if a guaranty agency uses collection agencies and administrative wage garnishment. Through these regulations, the Secretary expects to maximize default collections by the Department of Education, guaranty agencies, and the Internal Revenue Service.

The proposed regulations implement the national wage garnishment provision in section 488A of the HEA, under which guaranty agencies or the Secretary may garnish up to 10 percent of the wages of a borrower who has defaulted on an FFEL Program loan or who is not making required payments under a repayment agreement. Under the proposed regulations, at least 30 days before garnishment proceedings are initiated the borrower must be given written notice informing him or her of the nature and amount of the loan obligation to be collected, the intention of the guaranty agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights regarding the proposed action.

The proposed regulations provide the borrower with an opportunity to inspect and copy records related to the debt, establish a new repayment agreement, and receive a hearing concerning the existence or amount of the debt and the terms of a repayment schedule. In addition, no withholding of a debtor's wages may occur in the case of an individual who has been involuntarily separated from employment until that individual has been reemployed continuously for at least 12 months. These proposed regulations would replace current regulatory provisions that authorize wage garnishment by guaranty agencies in certain circumstances.

Section 488A of the HEA protects borrowers by prohibiting employers from taking disciplinary action against an individual based on the fact that the individual's wages are subject to garnishment. The statute permits a borrower to sue an employer who takes such an action, and authorizes the court to award attorneys' fees, punitive damages, back pay, reinstatement, or other remedies the court believes reasonably necessary.

Section 488A(a) of the HEA preempts state laws that might prohibit garnishment to collect student loan debts. The Secretary particularly requests comments on whether there are other state laws that might frustrate the purpose of section 488A and should be preempted. The Secretary asks commenters to provide specific information on those laws.

Section 682.411 Due Diligence by Lenders in the Collection of Guaranty Agency Loans

The proposed regulations implement the requirements of the HEA by requiring lenders to warn borrowers and endorsers about the possibility that their wages may be garnished by the guaranty agency if they default on their repayment obligations.

There are minimal burdens, if any, that will be associated with including a warning about possible wage garnishment in the delinquency letters that are already required to be sent to borrowers.

Executive Order 12866

These proposed regulations have been reviewed in accordance with Executive Order 12866. Under the terms of the order the Secretary has assessed the potential costs and benefits of this regulatory action.

The potential costs associated with the proposed regulations are those resulting from statutory requirements and those determined by the Secretary to be necessary for administering this program effectively and efficiently, as discussed in those sections of the preamble that relate to specific sections of the regulations. Burdens specifically

associated with information collection requirements, if any, are identified and explained elsewhere in this preamble under the heading

Paperwork Reduction Act of 1980

In assessing the potential costs and benefits—both quantitative and qualitative—of these proposed regulations, the Secretary has determined that the benefits of the proposed regulations justify the costs, and do not interfere with State, local, and tribal governments in the exercise of their governmental functions.

To assist the Department in complying with the specific requirements of Executive Order 12866, the Secretary invites comment on whether there may be further opportunities to reduce any potential costs or increase potential benefits resulting from these proposed regulations without impeding the effective and efficient administration of the program.

Regulatory Flexibility Act Certification

The Secretary certifies that these proposed regulations would not have a significant economic impact on a substantial number of small entities.

Certain reporting, recordkeeping, and compliance requirements are imposed on guaranty agencies, lenders, and schools by the regulations. These requirements, however, would not have a significant impact because they would not impose excessive regulatory burdens or require unnecessary Federal supervision.

Paperwork Reduction Act of 1980

Sections 682.208, 682.402, and 682.410 contain information collection requirements. As required by the Paperwork Reduction Act of 1980, the Department of Education will submit a copy of these sections to the Office of Management and Budget (OMB) for its review. (44 U.S.C. 3504(h))

These regulations affect the following types of entities that participate in the FFEL Program: Guaranty agencies, lenders, and schools. The Department needs and uses this information to properly carry out its responsibility to administer certain aspects of the HEA.

Annual public reporting burden for this collection of information is not expected to significantly increase. The collection and reporting of the information in §§ 682.208 and 682.410 reflect normal business practice, whereas the closed school cancellation provision of § 682.402 essentially substitutes a closed school claim for a default claim that normally would have occurred if the student did not repay a loan made for attendance at a school that closed.

Organizations and individuals desiring to submit comments on the information collection requirements should direct them to the Office of Information and Regulatory Affairs, OMB, room 3002, New Executive Office Building, Washington, DC 20503; Attention: Daniel J. Chenok.

Invitation To Comment

Interested persons are invited to submit comments and recommendations regarding these proposed regulations.

All comments submitted in response to these proposed regulations will be available for public inspection, during and after the comment period, in ROB–3, room 4310, 7th and D Streets, SW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Assessment of Educational Impact

The Secretary particularly requests comments on whether the proposed regulations in this document would require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Part 682

Administrative practice and procedure, Colleges and universities, Education, Loan programs-education, Reporting and recordkeeping requirements, Student aid, Vocational education.

(Catalog of Federal Domestic Assistance Numbers: 84.032 Federal Family Education Loan Program)

Dated: January 11, 1994.

Richard W. Riley,

Secretary of Education.

The Secretary proposes to amend title 34 of the Code of Federal Regulations by revising part 682 as follows:

PART 682—FEDERAL FAMILY EDUCATION LOAN PROGRAM

1. The authority citation for part 682 continues to read as follows:

Authority: 20 U.S.C. 1071 to 1087–2, unless otherwise noted.

2. Section 682.202 has been amended by revising paragraphs (a) introductory text, and (a)(1) through (a)(4); adding a new paragraph (e)(6); and revising paragraphs (c) and (d) to read as follows:

§ 682.202 Permissible charges by lenders to borrowers.

* * * * *

(a) *Interest.* The applicable interest rates for FFEL Program loans are given in paragraphs (a)(1) through (a)(4) of this section.

(1) *Stafford Loan Program.* (i) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a previous Stafford loan, the interest rate is the applicable interest rate on that previous Stafford loan.

(ii) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on any FFEL Program loan, and the first disbursement is made—

(A) Prior to October 1, 1992, for a loan covering a period of instruction beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter; or

(B) On or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(*1*) The bond equivalent rate of the 91-day Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(*2*) 9 percent.

(iii) For a Stafford loan for which the first disbursement is made before October 1, 1992—

(A) If the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning before July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning before July 1, 1988, the interest rate is 8 percent; or

(B) If the borrower, on the date the promissory note evidencing the loan is signed, has an outstanding balance of principal or interest on a PLUS or SLS loan made for a period of enrollment beginning on or after July 1, 1988, or on a Consolidation loan that repaid a loan made for a period of enrollment beginning on or after July 1, 1988, the interest rate is 8 percent until 48 months elapse after the repayment period begins, and 10 percent thereafter.

(iv) For a Stafford loan for which the first disbursement is made on or after October 1, 1992, if the borrower, on the date the promissory note evidencing the loan is signed, has no outstanding balance on a Stafford loan but has an outstanding balance of principal or interest on a PLUS, SLS, or Consolidation loan, the interest rate is 8 percent.

(2) *PLUS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under § 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 10 percent.

(3) *SLS Program.* (i) For a combined repayment schedule under § 682.209(d), the interest rate is the weighted average of the rates of all loans included under that schedule.

(ii) For a loan disbursed on or after July 1, 1987 but prior to October 1, 1992, and for any loan made under § 682.209 (e) or (f), the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.25 percent; or

(B) 12 percent.

(iii) For a loan disbursed on or after October 1, 1992, the interest rate is a variable rate, applicable to each July 1–June 30 period, that equals the lesser of—

(A) The bond equivalent rate of the 52-week Treasury bills auctioned at the final auction prior to the June 1 immediately preceding the July 1–June 30 period, plus 3.10 percent; or

(B) 11 percent.

(4) *Consolidation Program.* A Consolidation Program loan bears interest at the rate that is the greater of—

(i) The weighted average of interest rates on the loans consolidated, rounded to the nearest whole percent; or

(ii) 9 percent.

* * * * *

(6) *Refund of excess interest paid on Stafford loans.*

(i) For a loan with an applicable interest rate of 10 percent made prior to July 23, 1992, and for a loan with an applicable interest rate of 10 percent made from July 23, 1992 through September 30, 1992 to a borrower with no outstanding FFEL Program loans—

(A) If at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.25 percent, is less than 10 percent, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(i)(B) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(*1*) 10 percent minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.25 percent;

(*2*) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(*3*) Divided by 4.

(B) No later than 30 calendar days after the end of the calendar year, the holder of the loan shall apply any amounts computed under this paragraph to reduce the outstanding principal balance as of the date the holder adjusts the borrower's account, provided that the borrower's account was not more than 30 days delinquent on that December 31.

(ii) For a fixed interest rate loan made on or after July 23, 1992 to a borrower with an outstanding FFEL Program loan—

(A) If at the end of any calendar quarter, the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for that quarter, plus 3.10 percent, is less than the applicable interest rate, the lender shall calculate an adjustment and credit the adjustment to reduce the outstanding principal balance of the loan as specified under paragraph (a)(6)(ii)(C) of this section if the borrower's account is not more than 30 days delinquent on December 31. The amount of an adjustment for a calendar quarter is equal to—

(*1*) The applicable interest rate minus the sum of the average of the bond equivalent rates of the 91-day Treasury bills auctioned for the applicable quarter plus 3.10 percent;

(*2*) Multiplied by the outstanding principal balance of the loan (not including unearned interest added to principal);

(*3*) Divided by 4.

(B) For any quarter or portion thereof that the Secretary was obligated to pay interest subsidy on behalf of the borrower, the holder of the loan shall refund to the Secretary, no later than the end of the following quarter, any excess interest calculated in accordance with this paragraph.

(C) For any other quarter, the holder of the loan shall, within 30 days of the end of the calendar year, reduce the borrower's outstanding principal by the amount of excess interest calculated in paragraph (a)(6)(ii)(A) of this section, provided that the borrower's account was not more than 30 days delinquent as of December 31.

(D) Notwithstanding paragraphs (a)(6)(ii)(B) and (C) of this section, if the loan was disbursed during a quarter, the amount of any adjustment refunded to the Secretary or credited to the borrower for that quarter shall be prorated accordingly.

* * * * *

(c) *Fees for FFEL Program loans.* A lender—

(1) May charge a borrower an origination fee on a subsidized Stafford loan not to exceed the maximum rate specified by federal statute;

(2) Shall charge a borrower an origination fee or insurance premium on an unsubsidized Stafford loan of 6.5 percent of the principal amount of the loan;

(3) Shall charge a borrower an origination fee on an SLS or a PLUS loan of 5 percent of the principal amount of the loan;

(4) Shall deduct a pro rata portion of the fee from each disbursement; and

(5) Shall refund by a credit against the borrower's loan balance the portion of the fee previously deducted from the loan that is attributable to any portion of the loan that is—

(i) Returned by the school to the lender;

(ii) Repaid within 120 days of disbursement; or

(iii) Not delivered within 120 days of disbursement.

(d) Insurance Premium. Except in the case of an unsubsidized Stafford loan, a lender may charge the borrower the amount of the insurance premium paid by the lender to the guarantor up to 3 percent of the principal amount of the Stafford, SLS, or PLUS loan, if that charge is provided for in the promissory note.

* * * * *

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1082, 1087–1, 1091a)

3. Section 682.208 is amended by adding new paragraphs (e)(4), (e)(5), and (h) to read as follows:

§ 682.208 Due diligence in servicing a loan.

* * * * *

(e) * * *

(4) The assignor, or the assignee on behalf of the assignor, shall notify the guaranty agency that guaranteed the loan within 45 days of the date the assignee acquires a legally enforceable right to receive payment from the borrower on the loan of—

(i) The assignment; and

(ii) The name and address of the assignee, and the telephone number of the assignee that can be used to obtain information about the repayment of the loan.

(5) The requirements of this paragraph, as to borrower notification, apply if the borrower is in a grace period or has entered the repayment period.

* * * * *

(h) *Notifying the borrower about a servicing change.* If an FFEL Program loan has not been assigned, but there is a change in the identity of the party to whom the borrower must send subsequent payments or direct any communications concerning the loan, the holder of the loan shall, no later than 45 days after the date of the change, provide notice to the borrower of the name, telephone number, and address of the party to whom subsequent payments or communications must be sent. The requirements of this paragraph apply if the borrower is in a grace period or has entered the repayment period.

(Authority: 20 U.S.C. 1077, 1078, 1078–1, 1078–2, 1078–3, 1079, 1080, 1082, 1085)

4. Section 682.402 is amended by revising the heading; by revising paragraphs (a)(1) through (a)(3); by adding a new paragraph (a)(4); by revising paragraphs (b) and (c)(1); by redesignating paragraphs (d), (e), (e)(2)(ii), (f), (f)(2)(ii), (g), (h), (i), (i)(3), (j), and (k) as paragraphs (f), (g), (g)(2)(iv), (h), (h)(2)(iii), (i), (j), (k), (k)(5), (l), and (m), respectively; by adding new paragraphs (d), (e), (g)(1)(vi), (g)(1)(vii), (h)(1)(iii), (k)(4), and (m)(5); by revising redesignated paragraphs (f)(2) through (f)(3), (f)(4) introductory text, (g)(1) introductory text, (g)(1)(i), (g)(2), (h) introductory text, (h)(1)(iv), (h)(2)(ii), (h)(3)(i), (h)(3)(ii), (i)(2) introductory text, (i)(2)(iv), (j) introductory text, (j)(1) introductory text, (j)(2), (k)(2), (k)(5), (l), and (m) introductory text; by reserving paragraph (k)(3); by removing the word "and" at the end of paragraph (m)(3)(ii); and by removing the period at the end of paragraph (m)(4), and adding in its place, a semicolon, to read as follows:

§ 682.402 Death, disability, closed school, false certification, and bankruptcy payments.

(a) *General.* (1) Rules governing the payment of claims based on filing for relief in bankruptcy, and cancellation of loans due to death, total and permanent disability, attendance at a school that closes, and false certification by a school of a borrower's eligibility for a loan, are set forth in this section.

(2) If a PLUS loan was obtained by two parents as co-makers, or a Consolidation loan was obtained by a married couple, and only one of the borrowers dies, becomes totally and permanently disabled, has collection of his or her loan obligation stayed by a bankruptcy filing, or has that obligation discharged in bankruptcy, the other borrower remains obligated to repay the loan.

(3) A loan qualifies for payment under this section only to the extent that the loan is legally enforceable under applicable law by the holder of the loan.

(4) For purposes of this section—

(i) The legal enforceability of a loan is conclusively determined on the basis of a ruling by a court or administrative tribunal of competent jurisdiction with respect to that loan, or a ruling with respect to another loan in a judgment that collaterally estops the holder from contesting the enforceability of the loan;

(ii) A loan is conclusively determined to be legally unenforceable to the extent that the guarantor determines, pursuant to an objection presented in a proceeding prior to credit bureau reporting, tax refund offset, wage garnishment, or other administrative proceeding, that the loan is not legally enforceable; and

(iii) If an objection has been raised by the borrower or another party about the legal enforceability of the loan and no determination has been made under paragraph (a)(4) (i) or (ii) of this section, the Secretary may authorize the payment of a claim under this section under conditions the Secretary considers appropriate. If the Secretary determines in that or any other case that a claim was paid under this section with respect to a loan that was not a legally enforceable obligation of the borrower, the recipient of that payment must refund that amount of the payment to the Secretary.

(b) *Death.* (1) If an individual borrower dies, or the student for whom a parent received a PLUS loan dies, the obligation of the borrower and any endorser to make any further payments on the loan is canceled.

(2) In determining that a borrower (or student) has died, the lender may rely on a death certificate or other proof of death that is acceptable under applicable state law. If a death certificate or other acceptable proof of death is not available, the borrower's obligation on the loan can be canceled only if the guaranty agency determines that other evidence establishes that the borrower (or student) has died.

(3) After receiving information indicating that the borrower (or student) has died, the lender, if it believes the information to be reliable, shall suspend any collection activity against the borrower and promptly request that the borrower's representative (or the student's parent in the case of a PLUS loan) provide the documentation described in paragraph (b)(2) of this section. During the suspension of collection activity, which may not exceed 60 days, the lender shall diligently attempt to obtain documentation verifying the borrower's (or student's) death. If, despite diligent attempts, the lender is not able to confirm the borrower's (or student's) death within 60 days, the lender shall resume collection activity from the point that it had been discontinued and is deemed to have exercised forbearance as to repayment of the loan during the period when collection activity was suspended.

(4) Once the lender has determined under paragraph (b)(2) of this section that the borrower (or student) has died, the lender may not attempt to collect on the loan from the borrower's estate or from any endorser.

(5) The lender shall return to the sender any payments received from the estate or paid on behalf of the borrower after the date of the borrower's (or student's) death.

(c) *Total and permanent disability.* (1) If the lender determines that an individual borrower is totally and permanently disabled, the obligation of the borrower and any endorser to make any further payments on the loan is canceled. A borrower is not considered totally and permanently disabled on the basis of a condition that existed at the time he or she applied for the loan, unless the borrower's condition has substantially deteriorated later, so as to render the borrower totally and permanently disabled. In the case of a Consolidation loan, the borrower must certify that the condition did not exist prior to the time the borrower applied for each of the underlying loans, unless the condition has substantially deteriorated, so as to render the borrower totally and permanently disabled. If the condition existed prior to the date the Consolidation loan was made, the borrower must provide the

lender with the disbursement dates of the underlying loans.

* * * * *

(d) *Closed school.* (1) *General.* (i) The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan, if the borrower (or the student for whom a parent received a PLUS loan) could not complete the program of study for which the loan was intended because the school at which the borrower (or student) was enrolled, closed, or the borrower (or student) withdrew from the school not more than 90 days prior to the date the school closed.

(ii) For purposes of the closed school discharge authorized by this section—

(A) A school's closure date is the date that the school ceases to provide educational instruction in all programs, as determined by the Secretary or the designated agency in the state in which the school is located;

(B) The term "borrower" includes all endorsers on a loan; and

(C) A "school" means a main campus or any location or branch of the main campus.

(2) *Relief available pursuant to discharge.* (i) Discharge under paragraph (d) of this section relieves the borrower of an existing obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (d) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (d) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (d) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (d) of this section must be reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower eligibility for discharge.* A borrower qualifies for discharge of a loan under paragraph (d) of this section if the borrower submits to the holder of the loan a written request and sworn statement to the holder. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall state—

(i) Whether the student has made a claim with respect to the school's closing with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Did not complete the educational program at that school because the school closed while the student was enrolled or on an approved leave of absence in accordance with § 682.605(c), or the student withdrew from the school not more than 90 days before the school closed; and

(C) Did not complete the program of study through a teach-out at another school or by transferring academic credits or hours earned at the closed school to another school;

(iii) That the borrower agrees to provide, upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (d) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (d)(4) of this section, and to transfer any right to recovery against a third party pursuant to paragraph (d)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (d) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (d) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower of such fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of borrower's right of recovery against third parties.* (i) Upon discharge under paragraph (d) of this section, the borrower is deemed to have assigned to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private or public fund.

(ii) The provisions of paragraph (d) of this section applies notwithstanding any provision of State law that would otherwise restrict transfer of such rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities.* (i) *Procedures applicable to the period prior to the effective date of this regulation.*

(A) If a loan subject to paragraph (d) of this section was received for attendance at a school with a closure date after January 1, 1986 but prior to August 29, 1994, the loan may be discharged in accordance with the procedures specified in paragraph (d)(6)(i) of this section.

(B) If a loan subject to paragraph (d) of this section was discharged in part in accordance with the Secretary's "Closed School Policy" as authorized by section IV of Bulletin 89–G–159, the guaranty agency shall initiate the discharge of the remaining balance of the loan not later than September 28, 1994.

(C) A guaranty agency shall review its records and identify all schools that

appear to have closed after January 1, 1986 and prior to August 29, 1994, and shall identify all borrowers (or students) who appear to have been enrolled on the school closure date or who withdrew not more than 90 days prior to the closure date.

(D) If a guaranty agency determines (or is informed by the Secretary) that a participating school has closed, it shall, within 30 days of making that determination or being informed by the Secretary, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made, was enrolled at the school on the closing date, or withdrew not more than 90 days prior to the date the school closed.

(E) If a loan identified under paragraph (d)(6)(i)(C) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is known, the guaranty agency shall, within 30 days after identifying a borrower under paragraph (d)(6)(i)(C) of this section, mail a discharge application that meets the requirements of paragraph (d)(6)(ii)(C) of this section to the borrower.

(F) If a loan identified under paragraph (d)(6)(i)(C) of this section is held by the guaranty agency as a defaulted loan and the borrower's current address is unknown, the agency shall, by August 29, 1995, further refine the list of borrowers whose loans are potentially subject to discharge under paragraph (d) of this section by consulting with representatives of the closed school, the school's licensing agency, accrediting agency, and other appropriate parties. Upon learning the borrower's new address, the guaranty agency shall, within 30 days, mail a discharge application to the borrower.

(ii) *Procedures applicable to the period beginning on or after the effective date of this regulation.*

(A) A guaranty agency shall notify the Secretary immediately whenever it becomes aware of reliable information indicating a participating school may have closed. The designated agency in the state in which the school is located shall promptly investigate whether the school has closed, and whether a teach-out of the closed school's program was made available to students, and report the results of its investigation to the Secretary no later than 30 days after receiving the information.

(B) If a guaranty agency determines (or is informed by the Secretary) that a participating school has closed, it shall, within 30 days of making that determination or being informed by the Secretary, notify all lenders participating in its program to suspend collection efforts against individuals with respect to loans made for attendance at the closed school, if the student to whom (or on whose behalf) a loan was made was enrolled at the school on the closing date or withdrew not more than 90 days prior to the date the school closed.

(C) Within 30 days after receiving notice from the Secretary that a school has closed, a guaranty agency shall review its records of loans that it holds and identify all borrowers (or students) who appear to have been enrolled at the closed school on the closing date or who withdrew not more than 90 days prior to the date the school closed. If the guaranty agency knows the borrower's address, it shall, within 30 days after identifying a borrower under paragraph (d) of this section, mail a discharge application and an explanation of the information that must be included in the sworn statement (which may be combined) to the borrower. The application shall inform the borrower of the procedures and eligibility criteria for obtaining a discharge.

(D) If the guaranty agency determines that a borrower identified in paragraph (d)(6)(i)(C) of this section does not qualify for a discharge, the agency shall notify the borrower in writing of that determination and the reasons for it within 30 days after receiving the borrower's completed application and sworn statement.

(E) A borrower's request for discharge may not be denied solely on the basis of failing to meet any time limits set by the lender, guaranty agency, or the Secretary.

(7) *Lender responsibilities.* (i) If the lender is notified by a guaranty agency or the Secretary, or receives information it believes to be reliable from another source indicating that the borrower may be eligible for a loan cancellation under paragraph (d) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and, within 30 days of receiving the information or notification, inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (d)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a closed school claim with the guaranty agency in accordance with §682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (d)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a closed school claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(e) *False certification by a school of a student's eligibility to borrow.* (1) *General.* The Secretary reimburses the holder of a loan received by a borrower on or after January 1, 1986, and discharges the borrower's obligation with respect to the loan in accordance with the provisions of paragraph (e) of this section, if the borrower's (or the student for whom a parent received a PLUS loan) eligibility to receive the loan was falsely certified by an eligible school. For purposes of a false certification discharge, the term "borrower" includes all endorsers on a loan.

(2) *Relief available pursuant to dischorge.* (i) Discharge under paragraph (e) of this section relieves the borrower of an existing obligation to repay the loan and any charges imposed or costs incurred by the holder with respect to the loan that the borrower is otherwise obligated to pay.

(ii) A discharge of a loan under paragraph (e) of this section qualifies the borrower for reimbursement of amounts paid voluntarily or through enforced collection on a loan obligation discharged under paragraph (e) of this section.

(iii) A borrower who has defaulted on a loan discharged under paragraph (e) of this section is not regarded as in default on the loan after discharge, and is eligible to receive assistance under the Title IV, HEA programs.

(iv) A discharge of a loan under paragraph (e) of this section is reported by the loan holder to all credit reporting agencies to which the holder previously reported the status of the loan, so as to delete all adverse credit history assigned to the loan.

(3) *Borrower eligibility for discharge.* A borrower qualifies for discharge of a loan under paragraph (e) of this section if the borrower submits to the holder of the loan a written request and a sworn statement. The statement need not be notarized, but must be made by the borrower under penalty of perjury, and, in the statement, the borrower shall state—

(i) Whether the student has made a claim with respect to the school's false certification with any third party, such as the holder of a performance bond or a tuition recovery program, and if so, the amount of any payment received by the borrower (or student) or credited to the borrower's loan obligation;

(ii) That the borrower (or the student for whom a parent received a PLUS loan)—

(A) Received the proceeds of a loan on or after January 1, 1986 to attend a school;

(B) Was admitted to that school on the basis of ability to benefit from its training and did not meet the applicable requirements for admission on the basis of ability to benefit as described in paragraph (e)(8) of this section;

(C) Was certified by the school on the application for the loan as an eligible student; and

(D) Withdrew from the school and did not find employment in the occupation for which the program was intended to provide training, or completed the training program for which the loan was made and made a reasonable attempt to obtain employment in the occupation for which the program was intended to provide training, and—

(*1*) Was not able to find employment in that occupation; or

(*2*) Obtained employment in that occupation only after receiving additional training that was not provided by the school that certified the loan;

(iii) That the borrower agrees to provide upon request by the Secretary or the Secretary's designee, other documentation reasonably available to the borrower, that demonstrates, to the satisfaction of the Secretary or the Secretary's designee, that the student meets the qualifications in paragraph (e) of this section; and

(iv) That the borrower agrees to cooperate with the Secretary or the Secretary's designee in enforcement actions in accordance with paragraph (e)(4) of this section, and to transfer any right to recovery against a third party in accordance with paragraph (e)(5) of this section.

(4) *Cooperation by borrower in enforcement actions.* (i) In any judicial or administrative proceeding brought by the Secretary or the Secretary's designee to recover for amounts discharged under paragraph (e) of this section or to take other enforcement action with respect to the conduct on which those claims were based, a borrower who requests or receives a discharge under paragraph (e) of this section must cooperate with the Secretary or the Secretary's designee. At the request of the Secretary or the Secretary's designee, and upon the Secretary's or the Secretary's designee's tendering to the borrower the fees and costs as are customarily provided in litigation to reimburse witnesses, the borrower shall—

(A) Provide testimony regarding any representation made by the borrower to support a request for discharge; and

(B) Produce any documentation reasonably available to the borrower with respect to those representations and any sworn statement required by the Secretary with respect to those representations and documents.

(ii) The Secretary revokes the discharge, or denies the request for discharge, of a borrower who—

(A) Fails to provide testimony, sworn statements, or documentation to support material representations made by the borrower to obtain the discharge; or

(B) Provides testimony, a sworn statement, or documentation that does not support the material representations made by the borrower to obtain the discharge.

(5) *Transfer to the Secretary of right of recovery ogainst third parties.* (i) Upon discharge under paragraph (e) of this section, the borrower is deemed to have assigned to and relinquish in favor of the Secretary any right to a loan refund (up to the amount discharged) that the borrower (or student) may have, by contract or applicable law with respect to the loan or the enrollment agreement for the program for which the loan was received, against the school, its principals, affiliates and their successors, its sureties, and any private or public fund.

(ii) The provisions of paragraph (e) of this section apply notwithstanding any provision of State law that would otherwise restrict transfer of those rights by the borrower (or student), limit or prevent a transferee from exercising those rights, or establish procedures or a scheme of distribution that would prejudice the Secretary's ability to recover on those rights.

(iii) Nothing in this section shall be construed as limiting or foreclosing the borrower's (or student's) right to pursue legal and equitable relief regarding disputes arising from matters otherwise unrelated to the loan discharged.

(6) *Guaranty agency responsibilities.* (i) Upon receipt of a false certification discharge claim filed by a lender, or a request submitted by a borrower with respect to a loan held by the guaranty agency, the agency shall review the borrower's request and supporting sworn statement in the light of information available from the records of the agency and from other sources, including other guaranty agencies, state authorities, and cognizant accrediting associations.

(ii) In the case of a claim filed by a lender—

(A) If the guaranty agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall pay the claim in accordance with §682.402(h) not later than 90 days after the agency received the claim; or

(B) If, after examining the documentation in the claim file and considering relevant information available from other sources, the guaranty agency determines that the borrower does not qualify for a discharge, the agency shall, not later than 90 days after the agency received the claim, return the claim to the lender with an explanation of the reasons for its determination.

(iii) In the case of a request submitted by a borrower with respect to a loan held by the agency—

(A) If the guaranty agency determines that the borrower satisfies the requirements for discharge under paragraph (e) of this section, it shall notify the borrower not later than 90 days after the agency received the borrower's request; or

(B) If, after examining the documentation provided by the borrower and considering relevant information available from other sources, the guaranty agency determines that the borrower does not qualify for a discharge, the agency shall notify the borrower of the reasons for its determination not later than 90 days after the agency received the borrower's request.

(iv) If the guaranty agency receives information it believes to be reliable indicating that the borrower may be eligible for a cancellation of a loan under paragraph (e) of this section held by the agency, the agency shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments),

and inform the borrower of the procedures for requesting a discharge.

(v) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the guaranty agency shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date it suspended collection activity. The agency may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(vi) A borrower's request for discharge and sworn statement may not be denied solely on the basis of failing to meet any time limits set by the lender or the guaranty agency.

(7) *Lender Responsibilities.* (i) If the lender receives information it believes to be reliable indicating that the borrower may be eligible for a loan cancellation under paragraph (e) of this section, the lender shall immediately suspend any efforts to collect from the borrower on any loan received for the program of study for which the loan was made (but may continue to receive borrower payments), and inform the borrower of the procedures for requesting a discharge.

(ii) If the borrower fails to submit the written request and sworn statement described in paragraph (e)(3) of this section within 60 days of being notified of that option, the lender shall resume collection and shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity. The lender may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(iii) The lender shall file a false certification claim with the guaranty agency in accordance with § 682.402(g) no later than 60 days after the lender receives the borrower's written request and sworn statement described in paragraph (e)(3) of this section. If a lender receives a payment made by or on behalf of the borrower on the loan after the lender files a claim on the loan with the guaranty agency, the lender shall forward the payment to the guaranty agency within 30 days of its receipt. The lender shall assist the guaranty agency and the borrower in determining whether the borrower is eligible for discharge of the loan.

(iv) Within 30 days after receiving reimbursement from the guaranty agency for a false certification claim, the lender shall notify the borrower that the loan obligation has been discharged, and request that all credit bureaus to which it previously reported the status of the loan delete all adverse credit history assigned to the loan.

(v) Within 30 days after being notified by the guaranty agency that the borrower's request for a false certification discharge has been denied, the lender shall resume collection and notify the borrower of the reasons for the denial. The lender shall be deemed to have exercised forbearance of payment of principal and interest from the date the lender suspended collection activity, and may capitalize, in accordance with § 682.202(b), any interest accrued and not paid during that period.

(8) *Requirements for admission on the basis of ability to benefit.* (i) For periods of enrollment beginning between July 1, 1987 and June 30, 1991, a student who had a general education diploma or received one before the scheduled completion of the program of instruction is deemed to have the ability to benefit from the training offered by the school.

(ii) A student not described in paragraph (e)(8)(i) of this section is considered to have the ability to benefit from training offered by the school if the student—

(A) Achieved a passing grade on a test—

(*1*) Approved by the Secretary, for periods of enrollment beginning after July 1, 1991, or by the accrediting agency, for other periods; and

(*2*) Administered in accordance with the requirements for use of the test; or

(B) Successfully completed a program of developmental or remedial education provided by the school.

(iii) Notwithstanding paragraphs (e)(8)(i) and (ii) of this section, a student did not have the ability to benefit from training offered by the school if the student had, at the time of enrollment, a condition or status, including one based on a physical or mental condition, age, or criminal record, that would have prevented the student from satisfying the physical requirements or the legal requirements of the State in which the student resided when the loan was made for either acceptance into the educational program offered by the school or performance of the occupation for which the program of instruction was designed to prepare the student.

(f) * * *

(2) *Suspension of collection activity.* If the lender is notified that a borrower has filed a petition for relief in bankruptcy, the lender shall immediately suspend any collection efforts outside the bankruptcy proceeding against the borrower and—

(i) Against any co-maker or endorser if the borrower has filed for relief under Chapters 12 or 13; and

(ii) Against any co-maker or endorser who has filed for relief in bankruptcy.

(3) *Determination of filing.* The lender shall determine that a borrower has filed a petition for relief in bankruptcy on the basis of receiving a notice of the first meeting of creditors or other confirmation issued by the bankruptcy court.

(4) *Proof of claim.* Unless instructed otherwise by the guaranty agency, the lender shall file a proof of claim with the bankruptcy court within—

* * * * *

(g) *Claim procedures for a loan held by a lender.*

(1) *Documentation.* A lender shall provide the guaranty agency with the following documentation when filing a death, disability, closed school, false certification, or bankruptcy claim:

(i) The original promissory note, or, if the lender no longer has the original promissory note, a copy of the note certified by the lender as a true and accurate copy;

* * * * *

(vi) In the case of a closed school claim, the documentation described in paragraph (d)(3) of this section, or any other documentation as the Secretary may require;

(vii) In the case of a false certification claim, the documentation described in paragraph (e)(3) of this section.

(2) *Filing deadlines.* A lender shall file a death, disability, closed school, false certification, or bankruptcy claim within the following periods:

(i) Within 60 days of the date on which the lender determines that a borrower (or the student on whose behalf a parent obtained a PLUS loan) has died, or the lender determines that the borrower is totally and permanently disabled.

(ii) In the case of a closed school claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (d)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

(iii) In the case of a false certification claim, the lender shall file a claim with the guaranty agency no later than 60 days after the borrower submits to the lender the written request and sworn statement described in paragraph (e)(3) of this section or after the lender is notified by the Secretary or the Secretary's designee or by the guaranty agency to do so.

* * * * *

(h) *Payment of death, disability, closed school, false certification, and bankruptcy claims by the guaranty agency.*

(1) * * *

(iii) In the case of a closed school claim, the guaranty agency shall document its determination that the student was unable to complete the educational program as a result of the school's closure. On the same date that it pays a closed school claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(iv) In the case of a false certification claim, the guaranty agency shall document its determination that the borrower is eligible for cancellation under paragraph (e) of this section. On the same date that it pays a false certification claim to the lender, the agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower, less any school tuition refunds or payments received by the holder or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(2) * * *

(ii) The amount of loss payable on a closed school claim or on a false certification claim is equal to the sum of the remaining principal balance and interest accrued on the loan, collection costs incurred by the lender and applied to the borrower's account within 30 days of the date those costs were actually incurred, and unpaid interest determined in accordance with paragraph (h)(3) of this section.

(3) * * *

(i) During the period before the claim is filed, not to exceed the period provided for in paragraph (g)(2) of this section for filing the claim.

(ii) During a period not to exceed 30 days following the receipt date by the lender of a claim returned by the guaranty agency for additional documentation necessary for the claim to be approved by the guaranty agency.

* * * * *

(i) * * *

(2) *Response by a guaranty agency to plans proposed under Chapters 11, 12, and 13.* The guaranty agency shall take the following actions when a petition for relief in bankruptcy under Chapters 11, 12, or 13 is filed:

* * * * *

(iv) The agency shall monitor the debtor's performance under a confirmed plan. If the debtor fails to make payments required under the plan or seeks but does not demonstrate entitlement to discharge under 11 U.S.C. 1328(b), the agency shall oppose any requested discharge or move to dismiss the case if the costs of litigation together with the costs incurred for objections to the plan are not reasonably expected to exceed one-third of the amount of the loan to be discharged under the plan.

* * * * *

(j) *Mandatory purchase by a lender of a loan subject to a bankruptcy claim.* (1) The lender shall repurchase from the guaranty agency a loan held by the agency pursuant to a bankruptcy claim paid to that lender, unless the guaranty agency sells the loan to another lender, promptly after the earliest of the following events:

* * * * *

(2) The lender may capitalize all outstanding interest accrued on a loan purchased under paragraph (j) of this section to cover any periods of delinquency prior to the bankruptcy action through the date the lender purchases the loan and receives the supporting loan documentation from the guaranty agency.

(k) *Claims for reimbursement from the Secretary on loans held by guaranty agencies.*

* * * * *

(2) The Secretary pays a death, disability, bankruptcy, closed school, or false certification claim in an amount determined under § 682.402(k)(5) on a loan held by a guaranty agency after the agency has paid a default claim to the lender thereon and received payment under its reinsurance agreement. The Secretary reimburses the guaranty agency only if—

(i) The guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed for relief in bankruptcy, in accordance with the procedures in paragraphs (b) through (f) of this section, or the student was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school. For purposes of this paragraph, references to the "lender" and "guaranty agency" in paragraphs (b) through (f) of this section mean the guaranty agency and the Secretary respectively;

(ii) In the case of a Stafford, SLS, or PLUS loan, the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled since applying for the loan, or has filed the petition for relief in bankruptcy within 10 years of the date the borrower entered repayment, exclusive of periods of deferment or periods of forbearance granted by the lender that extended the 10-year maximum repayment period, or the borrower was unable to complete an educational program because the school closed, or the borrower's eligibility to borrow (or the student's eligibility in the case of a PLUS loan) was falsely certified by an eligible school.

(iii) In the case of a Consolidation loan, the guaranty agency determines that the borrower (or each of the co-makers) has died, become totally and permanently disabled since applying for the Consolidation loan, or has filed the petition for relief in bankruptcy within the maximum repayment period described in § 682.209(h)(2), exclusive of periods of deferment or periods of forbearance granted by the lender that extended the maximum repayment period.

(iv) The guaranty agency has not written off the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), except for closed school and false certification discharges; and

(v) The guaranty agency has exercised due diligence in the collection of the loan in accordance with the procedures established by the agency under § 682.410(b)(6)(x), until the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) has died, or the borrower (or each of the co-makers of a PLUS loan) has become totally and permanently disabled or filed a Chapter 12 or Chapter 13 petition, or had the loan discharged in bankruptcy, or for closed school and false certification claims, the guaranty agency receives a request for discharge from the borrower or another party.

(3) [Reserved]

(4) Within 30 days of receiving reimbursement for a closed school or false certification claim, the guaranty agency shall pay the borrower an amount equal to the amount paid on the loan by or on behalf of the borrower,

less any school tuition refunds or payments received by the holder, guaranty agency, or the borrower from a tuition recovery fund, performance bond, or other third-party source.

(5) The Secretary pays the guaranty agency a percentage of the outstanding principal and interest that is equal to the complement of the reinsurance percentage paid on the loan. This interest includes interest that accrues during—

(i) For death, disability, or bankruptcy claims, the shorter of 60 days or the period from the date the guaranty agency determines that the borrower (or the student for whom a parent obtained a PLUS loan, or each of the co-makers of a PLUS loan) died, became totally and permanently disabled, or filed a petition for relief in bankruptcy until the Secretary authorizes payment; or

(ii) For closed school or false certification claims, the period from the date on which the guaranty agency received payment from the Secretary on a default claim to the date on which the Secretary authorizes payment of the closed school or false certification claim.

(l) *Payments received after the Secretary's payment of a death, disability, closed school, false certification, or bankruptcy claim.* (1) If the guaranty agency receives any payments from or on behalf of the borrower on or attributable to a loan on which the Secretary previously paid a bankruptcy claim, the guaranty agency shall remit 100 percent of these payments to the Secretary.

(2) The guaranty agency shall remit to the Secretary all payments received from a tuition recovery fund, performance bond, or other third-party with respect to a loan on which the Secretary previously paid a closed school or false certification claim. The guaranty agency shall promptly return to the borrower or the borrower's representative, any payment on a discharged loan made by the borrower (or representative) and received after the Secretary pays a closed school or false certification claim. At the same time that the agency returns the payment, it shall notify the borrower (or representative) that there is no obligation to repay a loan discharged by virtue of death, disability, false certification, or closing of the school.

(3) If the guaranty agency has returned a payment to the borrower, or the borrower's representative, with the notice described in paragraph (l)(2) of this section, and the borrower (or representative) continues to send payments to the guaranty agency, the agency shall remit all of those payments to the Secretary.

(m) *Applicable suspension of the repayment period.* For purposes of this section and 11 U.S.C. 523(a)(8)(A) with respect to loans guaranteed under the FFEL Program, an applicable suspension of the repayment period—

* * * * *

(5) Includes the period between the filing of the petition for relief and the date on which the proceeding is completed or dismissed, unless payments have been made during that period in amounts sufficient to meet the amount owed under the repayment schedule in effect when the petition was filed.

(Authority: 20 U.S.C. 1078, 1078–1, 1078–2, 1078–3, 1082, 1087)

5. Section 682.410 is amended by revising paragraphs (b)(6)(i), (iii) introductory text, (iii)(A), (iv) introductory text, (iv)(B), (vii) (A) through (C), and (xii); and by adding a new paragraph (b)(10) to read as follows:

682.410 Fiscal, administrative, and enforcement requirements.

* * * * *

(b) * * *

(6) *Collection efforts on defaulted loans.* (i) Unless it initiates procedures to garnish the borrower's wages in accordance with paragraph (b)(10) of this section, a guaranty agency shall attempt annual IRS offset on all eligible loans and engage in at least the collection activities described in paragraphs (b)(6) (iii) through (xii) of this section on a loan on which it pays a default claim filed by a lender, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6) (iii) through (vi) of this section. If, after initiating wage garnishment procedures, the agency terminates those procedures for a particular borrower, the agency shall, within 30 days, commence collection efforts at least as forceful as those described in paragraphs (b)(6) (iii) through (xii) of this section. The agency's collection efforts shall begin with the same collection activities as those that immediately preceded the initiation of garnishment procedures, or, if no collection activities had been performed, the agency shall begin with the activities described in paragraph (b)(6)(iii) of this section, except that the agency may engage in the collection activities described in paragraph (b)(7) of this section in lieu of the activities described in paragraphs (b)(6) (iii) through (vi) of this section.

* * * * *

(iii) One-45 days: During this period, the agency shall—

(A) Send to the borrower the written notice described in paragraph (b)(5)(ii) of this section, or a written notice stating that the agency may garnish the borrower's wages to collect the amount that the borrower owes plus related collection costs; and

* * * * *

(iv) 46–180 days: During this period the agency shall—

* * * * *

(B) Send at least three written notices to the borrower forcefully demanding that the borrower immediately commence repayment of the loan, and informing the borrower that the default has been reported to all national credit bureaus (if that is the case) and that the borrower's credit rating may thereby have been damaged. The final notice also must indicate that it is the final notice the borrower will receive before the agency will take more forceful action, including the initiation of procedures to garnish the borrower's wages or instituting a civil suit to compel repayment of the amount that the borrower owes plus related collection costs.

* * * * *

(vii) 181–545 days:

(A) Except as provided in paragraphs (b)(6)(vii) (B), (C), and (D) of this section, during this period, but not sooner than 30 days after sending the notice described in paragraph (b)(5)(vi) of this section, the agency shall garnish the borrower's wages or institute a civil suit against the borrower for repayment of the loan.

(B) Except as provided in paragraph (b)(6)(vii)(C) of this section, in the case of a loan that was assigned to the Secretary prior to the 545th day and returned to the agency less than 180 days prior to the 545th day, the agency has 180 days from the date it receives the returned loan to garnish the borrower's wages or institute a civil suit.

(C) Except as provided in paragraph (b)(6)(vii)(D) of this section, in the case of a loan not assigned to the Secretary, during this period, but not sooner than 30 days after sending the final notice described in paragraph (b)(6)(iv) of this section, the agency shall garnish the borrower's wages or institute a civil suit against the borrower by the 225th day unless that loan is subsequently assigned to the Secretary by the deadline for the next available opportunity to collect by Internal Revenue Service (IRS) tax refund offset, or a payment is received from the borrower fewer than 120 days before the deadline for the next available opportunity to collect by IRS tax refund offset.

* * * * *

(xii) Not later than 10 days after its receipt of information indicating that it does not know the current address of a borrower on a loan on which the agency has neither declined to sue under paragraph (b)(6)(vii)(D) of this section nor discontinued semi-annual inquiries under paragraph (b)(6)(x) of this section, or the 60th day after its payment of a default claim on the loan, whichever is later, the agency shall attempt diligently to locate the borrower through the use of all available skip-tracing techniques, including, but not limited to, any skip-tracing assistance available from the IRS, credit bureaus, and state motor vehicle departments. A guaranty agency shall use any information provided by a school about a borrower's location in conducting skip-tracing activities.

* * * * *

(10) *Administrotive Garnishment.* (i) If a guaranty agency decides to garnish the disposable pay of a borrower who is not making payments on a loan held by the agency, on which the Secretary has paid a reinsurance claim, it shall do so in accordance with the following procedures:

(A) The employer shall deduct and pay to the agency from a borrower's wages an amount that does not exceed 10 percent of the borrower's disposable pay for each pay period, or the amount permitted by 15 U.S.C. 1673, unless the borrower provides the agency with written consent to deduct a greater amount. For this purpose, the term "disposable pay" means that part of the borrower's compensation from an employer remaining after the deduction of any amounts required by law to be withheld.

(B) At least 30 days before the initiation of garnishment proceedings, the guaranty agency shall mail to the borrower's last known address, a written notice of the nature and amount of the debt, the intention of the agency to initiate proceedings to collect the debt through deductions from pay, and an explanation of the borrower's rights.

(C) The guaranty agency shall offer the borrower an opportunity to inspect and copy agency records related to the debt.

(D) The guaranty agency shall offer the borrower an opportunity to enter into a written repayment agreement with the agency under terms agreeable to the agency.

(E) The guaranty agency shall offer the borrower an opportunity for a hearing in accordance with paragraph (b)(10)(i)(J) of this section concerning the existence or the amount of the debt and, in the case of a borrower whose repayment schedule is established other than by a written agreement under paragraph (b)(10)(i)(D) of this section, the terms of the repayment schedule.

(F) The guaranty agency shall sue any employer (including a borrower who is self-employed) for any amount that the employer, after receipt of the garnishment notice provided by the agency under paragraph (b)(10)(i)(H) of this section, fails to withhold from wages owed and payable to an employee under the employer's normal pay and disbursement cycle.

(G) The guaranty agency may not garnish the wages of a borrower whom it knows has been involuntarily separated from employment until the borrower has been reemployed continuously for at least 12 months.

(H) Unless the guaranty agency receives information that the agency believes justifies a delay or cancellation of the withholding order, it shall send a withholding order to the employer within 20 days after the borrower fails to make a timely request for a hearing, or, if a timely request for a hearing is made by the borrower, within 20 days after a final decision is made by the agency to proceed with garnishment.

(I) The notice given to the employer under paragraph (b)(10)(i)(H) of this section must contain only the information as may be necessary for the employer to comply with the withholding order.

(J) The guaranty agency shall provide a hearing, which, at the borrower's option, may be oral or written, if the borrower submits a written request for a hearing on the existence or amount of the debt or the terms of the repayment schedule. An oral hearing may, at the borrower's option, be conducted either in-person or by telephone conference. All telephonic charges must be the responsibility of the guaranty agency.

(K) If the borrower's written request is received by the guaranty agency on or before the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency may not issue a withholding order until the borrower has been provided the requested hearing. The guaranty agency shall provide a hearing to the borrower in sufficient time to permit a decision, in accordance with the procedures that the agency may prescribe, to be rendered within 60 days.

(L) If the borrower's written request is received by the guaranty agency after the 15th day following the borrower's receipt of the notice described in paragraph (b)(10)(i)(B) of this section, the guaranty agency shall provide a hearing to the borrower in sufficient time that a decision, in accordance with the procedures that the agency may prescribe, may be rendered within 60 days, but may not delay issuance of a withholding order unless the agency determines that the delay in filing the request was caused by factors over which the borrower had no control.

(M) A hearing may not be conducted by an individual under the supervision or control of the head of the guaranty agency, except that an agency may appoint an administrative law judge to conduct the hearing.

(N) The hearing official shall issue a final written decision at the earliest practicable date, but not later than 60 days after the guaranty agency's receipt of the borrower's hearing request.

(O) As specified in section 488A(a)(8) of the HEA, the borrower may seek judicial relief, including punitive damages, if the employer discharges, refuses to employ, or takes disciplinary action against the borrower due to the issuance of a withholding order.

(ii) References to "the borrower" in this paragraph include all endorsers on a loan.

* * * * *

6. Section 682.411 is amended by revising paragraph (d)(2) to read as follows:

§ 682.411 Due diligence by lenders in the collection of guaranty agency loans.

* * * * *

(d) *11–180 days delinquent (11–240 days delinquent for a loan repayable in installments less frequent than monthly).*

* * * * *

(2) At least two of the collection letters required under paragraph (d)(1) of this section must warn the borrower that if the loan is not paid, the lender will assign the loan to the guaranty agency that, in turn, will report the default to all national credit bureaus, and that the agency may institute a proceeding to garnish the borrower's wages and bring suit against the borrower to compel repayment of the loan.

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Part VI

Environmental Protection Agency

Notice of Proposed General NPDES Permit for Placer Mining in Alaska

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4826-9]

Proposed General NPDES Permit for Placer Mining in Alaska

AGENCY: Environmental Protection Agency, Region 10.

ACTION: Notice of a proposed general permit.

SUMMARY: This proposed general permit is intended to regulate placer mining activities in the state of Alaska. EPA, Region 10 has issued almost identical individual permits to these facilities in the past and intends to relieve some of the administrative burden of issuing individual permits by issuing this general permit. When issued, the proposed permit will establish effluent limitations, standards, prohibitions and other conditions on discharges from the covered facilities. These conditions are based on existing national effluent guidelines and material contained in the administrative record. A description of the basis for the conditions and requirements of the proposed general permit is given in the fact sheet published below.

DATES:

Public Comment Period: Interested persons may submit comments on the draft general permit to EPA, Region 10 at the address below. Comments must be received in the regional office by February 14, 1994.

Public Hearings: Public hearings on the permit conditions are scheduled in Anchorage and Fairbanks. The Anchorage hearing will be held on February 7, 1994, at the Federal Building, 222 W 7th, room 137, from 6:30 pm until all persons have been heard. The Fairbanks hearing will be held on February 9, 1994 at the Fairbanks North Star Borough (Noel Wien) Library, 1215 Cowles Street, also from 6:30 pm until all persons have been heard. Persons interested in obtaining information on the hearings should contact Cindi Godsey at the address below.

Request for Coverage: Written request for coverage and authorization to discharge under the general permit shall be provided to EPA, Region 10, as described in Part I.E. of the draft permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

ADDRESSES: Comments on the proposed general permit should be sent to Cindi Godsey; U.S. EPA, Region 10; 1200 Sixth Avenue WD-134; Seattle, Washington 98101.

FOR FURTHER INFORMATION CONTACT: Cindi Godsey at the Seattle address above or by telephone at (206) 553-1755.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The Office of Management and Budget has exempted this action from the review requirements of Executive Order 12866 pursuant to section 6 of that order.

Regulatory Flexibility Act

After review of the facts presented in the notice printed above, I hereby certify pursuant to the provision of 5 U.S.C. 605(b) that this general NPDES permit will not have a significant impact on a substantial number of small entities. Moreover, the permit reduces a significant administrative burden on regulated sources.

Dated: January 7, 1994.

Charles E. Findley,

Director, Water Division.

FACT SHEET

United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD-134, Seattle, Washington 98101, (206) 553-1214.

General Permit for Placer Miners No.: AKG-37-0000

Proposed Issuance of a General National Pollutant Discharge Elimination System (NPDES) Permit To Discharge Pollutants Pursuant to the Provisions of the Clean Water Act (CWA) for Alaska Placer Miners (Except Those Identified in Part III of This Fact Sheet)

This fact sheet includes (a) the tentative determination of the Environmental Protection Agency (EPA) to issue the permit, (b) information on public comment, public hearings and appeal, (c) the description of the industry and proposed discharges, (d) other conditions and requirements.

Persons wishing to comment on the tentative determinations contained in the proposed general permit may do so before the expiration date of the Public Notice. All written comments should be submitted to EPA as described in the Public Comments Section of the attached Public Notice.

After the expiration date of the Public Notice, the Director, Water Division, will make a final determination with respect to issuance of the permit. The tentative determination contained in the proposed general permit will become final conditions if no substantive comments are received during public comment period.

The permit will become effective 30 days after the final determination is made, unless a request for an evidentiary hearing is submitted within 30 days after receipt of the final determination. An evidentiary hearing request must meet all the requirements of 40 CFR 124.74 and set forth material issues of fact relevant to the permit issuance. The proposed NPDES general permit and other related documents are on file and may be inspected and copies made at the above address any time between 8:30 a.m. and 4 p.m., Monday through Friday. Copies and other information may be requested by writing to EPA at the above address to the attention of the Water Permits Section, or by calling (206) 553-8332. This material is also available from the EPA Alaska Operations Office, room 537, Federal Building, 222 West 7th Avenue, Anchorage, Alaska 99513-7588 or Alaska Operations Office, 410 Willoughby Avenue, suite 100, Juneau, Alaska 99801 or the Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, Alaska 99709.

Technical Information

I. Background Information

A. Permit Coverage

1. *General Permit.* a. Section 301(a) of the CWA provides that the discharge of pollutants is unlawful except in accordance with a National Pollutant Discharge Elimination System (NPDES) permit. Although such permits have been issued to individual dischargers, EPA's regulations do authorize the issuance of "general permits" to categories of discharges (40 CFR 122.28) when a number of point sources are:

(1) Located within the same geographic area and warrant similar pollution control measures;

(2) Involve the same or substantially similar types of operations;

(3) Discharge the same types of wastes;

(4) Require the same effluent limitations or operating conditions;

(5) Require the same or similar monitoring requirements; and

(6) In the opinion of the Director, are more appropriately controlled under a general permit than under individual permits.

b. Like individual permits, a violation of a condition contained in a general permit constitutes a violation of the Act and subjects the owner or operator of the permitted facility to the penalties specified in section 309 of the Act.

c. A Notice of Intent (NOI) to be covered under this General Permit is required (40 CFR 122.28(b)(2)(i)). The requirements are outlined in Part I.E. of the permit. An Annual Placer Mining Application would be acceptable if it contains all the items specified in the permit.

d. Coverage under this permit will expire five (5) years from the date of issuance. It is EPA's position (40 CFR 122.28(b)(1)) that an expired general permit continues in force and effect until a new general permit is issued. Only those facilities authorized to discharge under the expiring general permit and submit an NOI 90 days prior to the expiration of this general permit are covered by the continued permit.

2. *Types of Placer Mine Operations Covered by the Permit.* EPA is proposing to issue a General NPDES permit for Alaska placer mining operations which are facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore. This permit applies to all open-cut and mechanical dredge (not suction dredges) gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season and dredges that remove less than 50,000 cubic yards of placer ore per mining season. These operations are covered by the effluent guidelines and described in 40 CFR 440.140(b). EPA has completed a literature research project considering the environmental effects of all suction dredge operation and potential controls that could be placed on them. Based on this research, EPA has concluded that suction dredges with intake hoses of greater than 4 inches will be covered by this permit.

Operations utilizing hydraulic removal of overburden are covered by this permit.

This permit does not authorize discharges resulting from beneficiation methods utilizing cyanidation, froth flotation, heap or vat leaching and mercury amalgamation.

3. *Limitations on Coverage.* Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as a Conservation System Unit (CSU) by the federal government. Additional conditions may be required by the Alaska Department of Fish and Game in resident and anadromous fish streams. "The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish" lists the streams in the State which require a Habitat permit from the Alaska Department of Fish and Game. Because this permit does not relieve a permittee of the requirements of other applicable federal, state or local laws, permittees should contact the appropriate state or federal agencies to inquire about additional permits that may be required.

4. *Individual Permits.* Owners or operators authorized by a general permit may be excepted from coverage by a general permit by applying to the Director of the NPDES program for an individual permit. This request may be made by submitting an NPDES permit application, together with supporting documentation for the request no later than 90 days after publication by EPA of the final general permit in the **Federal Register**, or 180 days prior to the commencement of operation of a new source or new discharger. The Director may require any person authorized by a general permit to apply for and obtain an individual permit, or any interested person may petition the Director to take this action. The Director may consider the issuance of individual permits when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved; or

f. The requirements listed in the previous paragraphs are not met.

B. Description of the Industry

1. *Mechanical Operations (Traditional Sluicing).* Placer mining involves the mining and extraction of gold or other heavy metals and minerals primarily from alluvial deposits. These deposits may be in existing stream beds or ancient often buried stream deposits, i.e. paleo or fossil placers. Many Alaskan placer deposits consist of unconsolidated clay, sand, gravel, cobble and boulders that contain very small amounts of native gold or other precious metals. Most are stream deposits and occur along present stream valleys or on benches or terraces above existing streams. Beach placer deposits have been and continue to be important producers in Alaska. These deposits, most notable near Nome, include both submerged and elevated beach placer deposits.

Essential components of placer mining include overburden removal, mining of the gold placer gravels and processing (gold recovery).

a. *Overburden Removal.* Various types of overburden include barren alluvial gravels, broken slide rock or glacial deposits. In some parts of Alaska the pay gravels are overlaid by silty, organic-rich deposits of barren, frozen material generally comprised of wind-blown particles (loess). Particularly high ice content is common. Most facilities utilize mechanical methods for removal of overburden because they generally use the same excavating equipment for mining.

Overburden can also be removed by hydraulicking. Hydraulicking consists of the loosening of material by water delivered under pressure through a hydraulic giant (monitor). The material then flows, usually by gravity, to the sluice box if the overburden is to be processed with the mineral bearing material below. Overburden consisting of barren material may be directed away from the sluice box so that only mineral bearing material is processed in the sluice.

b. *Mining Methods.* Placer mining methods range from dredging systems to open-cut mining. Dredging systems are classified as hydraulic or mechanical, depending on the methods of digging. A floating dredge consists of a supporting hull with a mining control system, excavating and lifting mechanism, gold recovery circuits, and waste disposal system. They are all designed to work as a unit to dig, classify, beneficiate ores and dispose of waste. Suction dredges, the most common hydraulic dredging system, are quite popular in Alaska with the small or recreational gold placer miner.

A bucket-line dredge has been the traditional gold placer mechanical dredging tool in Alaska. Excavation equipment consists of a chain of buckets, traveling continuously around a truss or plate-girder ladder, that scoop up a load as they are forced against the mining face while pivoting around the lower tumbler and then dump as they pivot around the upper tumbler. The ladder is raised or lowered as required by a large hoisting winch through a system of cables and sheaves. About six placer miners operate bucket-line dredges in Alaska.

c. *Processing Methods.* A large percentage of the present gold placer mining operations use some type of sluice box to perform the primary processing function, beneficiation. An increasing number of jig plants are also being used. Many operations make use of feed size classification which

involves the physical separation of large rocks and boulders from smaller materials such as gravel and sand. The object of classification is to prevent the processing of large-sized material which is unlikely to contain gold values. Commonly used classification equipment includes: grizzlies, trommels and static or vibrating screens. The most common gold recovery method is sluicing. A sluice is a long, sloped trough into which water is directed to effectuate separation of gold from ore. A slurry of water and ore flows down the sluice and the gold, due to its relatively high density, is trapped in riffles along the sluice.

2. *Suction Dredging.* A suction dredge is a mechanical device which floats on the stream surface and which pumps stream water and stream bed material through a suction intake conduit to a sluice box from which gold or other minerals may be recovered.

The discharge from suction dredges consists totally of stream water and bed material. These discharges are becoming numerous in the state. The discharge limits and monitoring requirements are identical for the majority of these discharges. This category of discharges meets the qualifications of 40 CFR 122.59 for the issuance of General Discharge Permits. This general discharge permit will expedite processing the numerous applications and provide the same regulatory controls over the discharges as an individual permit would.

II. Effluent Characteristics

Discharges from placer mining operations consist of water and the naturally occurring materials found in the alluvial deposits (e.g. sand, silt, clay, trace minerals and metals, etc.). Some of the elements measured in placer mine effluent are derived principally from sulfide, oxide, carbonate, and silicate mineral species, and include antimony, arsenic, cadmium, copper, iron, lead, mercury, nickel, silver, and zinc. Most of these parameters are found in trace amounts and are of little significance.

Based on review of sampling data collected by EPA and upon evaluation of Alaska Water Quality Standards (WQS), EPA has concluded that the pollutants of primary concern are settleable solids, turbidity, and arsenic. Arsenic is the only toxic pollutant of concern due to its naturally occurring abundance in most Alaskan soils.

III. Basis for Effluent Limitations

A. Background

Effluent limits required in this permit for the control of pollutants are published in 40 CFR part 440, Subpart M—Gold Placer Mine Subcategory, which was promulgated May 24, 1988, in 53 FR 18764. Additional information regarding the basis for establishing the effluent limits is summarized in the EPA publication titled "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category—Gold Placer Mine Subcategory" (May 1988).

This final rule establishes effluent limitations guidelines and standards based on the best practicable control technology currently available (BPT), the best available technology economically achievable (BAT), and new source performance standards (NSPS) based on the best available demonstrated technology. The BAT and NSPS limitations represent the minimum technology required to be in place for all placer mining operations covered under 40 CFR part 440, subpart M.

Section 402(o) of the Act stipulates that NPDES permits may not be reissued to contain effluent limitations that are less stringent than comparable water quality standards and technology based effluent limitations in the previous permit. EPA has determined that this general permit complies with these anti-backsliding provisions of the Act.

B. Technology-Based Limitations

1. *Mechanical Operations.* The CWA requires industries to apply treatment technology representing BAT that is economically achievable. The BAT requirements specify the use of settling ponds plus total recirculation of process wastewater as the selected treatment technology. However, the regulation does allow the discharge of incidental waters (including waters that enter a mine through precipitation, snow melt, drainage water, ground water infiltration and the melting of permafrost) which have commingled with process waters, provided that these incidental waters are in excess of the make-up water required, are treated in settling ponds and do not exceed 0.2 ml/l settleable solids prior to discharge.

For the purpose of this permit, discharged wastewater consists of incidental waters commingled with process waters used to move the ore to and through the beneficiation process, water used to aid in classification, and water used in gravity separation. Pursuant to 40 CFR 440.143, BAT requirements are as follows:

a. The concentration of settleable solids in wastewater discharged from an open-cut mine plant or a dredge plant site must not exceed an instantaneous maximum of 0.2 ml/l.

b. The volume of wastewater which may be discharged from an open-cut mine plant or dredge plant site must not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

These technology-based requirements are specified in Parts II.A.1.a. and b. of the proposed permit.

The effect of requirement II.A.2. of the proposed permit is to prohibit the discharge of any wastewater during periods when new water is allowed to enter the plant site.

C. Water Quality Based Limits

In addition to the BAT effluent limitations, the permit includes effluent limitations which are required to ensure compliance with WQS (Alaska Regulations 18 AAC 70). These standards vary with the beneficial use they are established to protect. In water bodies with more than one designated beneficial use, the more restrictive criteria apply.

The WQS protect most fresh water sources for use in drinking, agriculture, aquaculture and industrial water supply, contact and secondary recreation, and the growth and propagation of fish, shellfish, and other aquatic life (Alaska Regulations 18 AAC 70.050). All permits being issued in this round of permitting must protect for all the above uses.

EPA has concluded, based on review of the WQS and available sampling data, that the parameters of turbidity and arsenic must be limited in order to meet the State WQS. Also, the sediment standard must be applied to discharges from operations utilizing the hydraulic removal of overburden. The arsenic, turbidity and sediment limits were established pursuant to section 301(b)(1)(C) of the CWA, which requires imposition of "* * * any more stringent limitation, including those necessary to meet water quality standards, * * * or required to implement any applicable water quality standard established pursuant to this Act." The NPDES regulations, at 40 CFR 122.44(d), require NPDES permits to include conditions to "Achieve water quality standards established under section 303 of CWA * * *."

1. *Turbidity:* a. Mechanical and Hydraulic Removal of Overburden According to the WQS, the most restrictive turbidity criteria applies to fresh water sources classified for water contact recreation uses. These criteria (18 AAC 70.020(b)(1)(B)(i)(4)) state that

turbidity * * * "Shall not exceed 5 NTU above natural conditions when the natural turbidity is 50 NTU or less; and more than 10% increase in turbidity when the natural condition is more than 50 NTU, not to exceed a maximum increase of 15 NTU." The proposed draft permit contains a turbidity limit that would assure compliance with water quality standards under worst case conditions. That is, the turbidity in the effluent must not exceed 5 NTUs above the background turbidity level in the receiving stream. This condition accounts for naturally occurring turbidity in the receiving water and allows the effluent to contain an additional 5 NTUs of turbidity where the receiving water is naturally turbid. The permit condition does not account for those situations where naturally occurring turbidity would allow an increase of up to 15 NTUs, nor does it account for the dilution effects of the receiving stream. The reason for assuming worst case conditions is that EPA does not have current site-specific information to establish end-of-pipe limitations for each of the permits being processed.

Although worst case conditions are assumed in the proposed draft permit, EPA will consider modifying the NTU limitation to account for the dilution effects of the receiving stream. EPA's approach in setting higher turbidity limitations is dependent upon receipt of the NOI with information from the permittee or from the Alaska Department of Natural Resources (ADNR) acting on behalf of the permittee demonstrating that the dilution effect of the receiving water justifies a less stringent limit. EPA is operating under the assumption that the permit applicant bears the burden of providing information necessary to issue the permit (40 CFR 124.85(a)(1)). Where the applicant does not provide the site-specific information that would justify a less stringent turbidity limit, the permit issued to a site will contain the turbidity limit proposed in the draft permit.

The procedures used to calculate a higher turbidity limit are the same as those used in the placer mining permits issued since 1986. The turbidity limit is based on utilizing a mass balance equation which relates upstream receiving water flow and turbidity to effluent flow and turbidity. The basic form of this equation is:

$$Q_1C_1+Q_2C_2=Q_3C_3,$$

where

C_1 = upstream turbidity;
C_2 = effluent turbidity;
C_3 = downstream turbidity after mixing where the allowable increase is 5 NTU above background (C_1+5 NTU);
Q_1 = stream flow downstream from any diversion and upstream from the discharge;
Q_2 = effluent flow *; and,
Q_3 = total stream flow downstream from discharge after complete mixing.

* A default value of 10 gallons per minute (GPM) will be used if the NOI states that zero discharge will be achieved. The information that must be submitted by the permittee to determine the appropriate turbidity limit for the facility is the effluent and receiving stream flow rates. The receiving stream flow rate must be measured upstream from the discharge point and downstream from any diversions. Receiving stream flow values can be obtained from the ADNR, Division of Mining, upon request by the permittee. ADNR methodology for determining upstream flow uses equations developed by Ashton and Carlson (1984). The maximum effluent discharge flow must be estimated by the permittee and must account for the effects of all excess incidental waters.

Permittees requesting a higher turbidity limitation must submit the necessary information to EPA with the NOI. This applies to all permittees, including those who have submitted this type of information in the past, in order to assure that all site-specific information is up-to-date.

b. *Suction Dredging.* The daily visual inspection during operation of an area downstream of the suction dredge is based on research published in the scientific literature (Griffith and Andrews 1981, Hassler et al. 1986, Harvey 1986, Huber and Blanchet 1992, Thomas 1985) and on monitoring done by Alaska Department of Environmental Conservation (ADEC) (Ron McAlister, ADEC, personal communication). In most cases, water quality recovered rapidly below the dredge. ADEC found that turbidity was elevated 1 to 4.5 NTU 500 feet downstream of an operating 10 inch dredge. The daily visual inspection during operation should assure that the water quality standard for turbidity is met.

2. *Arsenic—Mechanical and Hydraulic Removal of Overburden.* EPA has concluded, based on available sampling data, that arsenic is commonly associated with placer mining wastes. Locally, it is the most abundant toxic metal present. For this reason, EPA has determined that arsenic is a pollutant of concern. Additionally, although several studies by EPA have indicated a reduction in levels of arsenic in placer mining effluent as a result of reducing settleable solids to 0.2 ml/l, EPA has concluded that these reduced levels of arsenic are not consistently adequate to achieve WQS.

In establishing the arsenic limit, the "Amendments to the Water Quality Standards Regulation; Compliance with CWA section 303(c)(2)(B); Final Rule" (57 FR 6084, Tuesday, December 22, 1992) are used. This rulemaking promulgated the chemical-specific numeric criteria for priority toxic pollutants necessary to bring all States into compliance with the requirements of the CWA section 303(c)(2)(B). The primary focus of the rule is the inclusion of the federal water quality criteria for pollutant(s) in State standards as necessary to support water quality-based control programs (e.g. NPDES permits). The federal standard of 0.18 µg/l total recoverable arsenic is applicable to Alaska and this number has been used to derive the end-of-pipe limitation for the draft permits.

Mixing zones are allowed under the Alaska standards for some pollutant discharges. However, 18 AAC 70.032(a) states * * * "In applying the water quality criteria set out in this chapter, the department will, upon application and in its discretion, prescribe in its permits or certifications a volume of dilution for an effluent or substance within a receiving water unless pollutants discharged could bioaccumulate; concentrate or persist in the environment; cause carcinogenic, mutagenic, or teratogenic effects; or otherwise present a risk to human health * * *" Arsenic is a carcinogen. In a letter, dated March 24, 1992, from the Alaska Department of Environmental Conservation Commissioner, John Sandor, to EPA Water Division Director, Charles Findley, the State has interpreted this to mean that "* * * a mixing zone may be prescribed where there is no reasonable expectation of an adverse effect on human health or aquatic life, based on site-specific, chemical, physical and biological characteristics." EPA is not proposing a mixing zone for arsenic but would include a method for determining a mixing zone in the permit if the Department determines that such a mixing zone is appropriate and is in compliance with WQS.

Two options are given to the permittee to determine the arsenic limit. If the "natural" background is not measured, the effluent limit is set according to federal standard at 0.18 µg/l. The other option depends on the "natural" background levels of arsenic present in the receiving water. The

"natural" background is defined as the total recoverable arsenic level upstream from all mining and other man-made disturbances. The WQS, 18 AC 70.010(a), states that "[n]o person may conduct an operation that * * * contributes to a violation of the water quality standards * * *" If the "natural" background levels are already above the federal standard, any discharge at or below the "natural" background level will not elevate the existing concentrations in the stream thus not contributing further to a violation of WQS. The "natural" background data must be provided with the annual Discharge Monitoring Report (DMR).

Because the effluent limitation of 0.18 µg/L is not quantifiable using the EPA approved analytical method (206.2), EPA has set a reporting threshold to measure the highest acceptable quantification level for this parameter. When results cannot be quantified, values below the method detection level (1 µg/L) shall be report as zero and values above the method detection level but below the minimum level (4 µg/L) reported at ½ the minimum level or 2 µg/L. This reporting threshold does not authorize the discharge of this parameter in excess of the effluent limitation.

3. *Sediment.* The sediment standard (18 ACC 70.020) is a narrative standard which reads, "No increase in concentration of sediment, including settleable solids, above natural conditions." The method indicated for measuring sediments is the use of an Imhoff cone. The detection limit, the lowest measurable value, of an Imhoff cone is 0.2 ml/l. Therefore the maximum limit for sediment will be 0.2 ml/l measured as settleable solids for operations utilizing hydraulic removal of overburden.

IV. Basis for Monitoring and Reporting Requirements

A. *Monitoring:* All self-monitoring requirements considered the remoteness of the mining operations, the magnitude of the pollutants discharged, and the practicability of maintaining a valid quality assurance program.

1. The measurement of settleable solids is an indication of overall treatment efficiency. The permit requires monitoring for settleable solids once per day during periods of discharge. If there is a discharge to waters of the United States, permittees are required to sample for settleable solids on a daily basis, even if sluicing does not occur. This is required because the operator is responsible at all times for the condition of the wastewater entering the receiving stream. Also, the results from settleable solids sampling can give the operator an immediate indication of the overall effectiveness of the treatment system and thus allow advanced planning for treatment system maintenance.

2. EPA has concluded that the monitoring frequency for turbidity and arsenic will be once per season. Monitoring for these pollutants have been established at less frequent intervals because sampling and analysis for these parameters are more difficult and costly. Samples for monitoring purposes must be taken during sluicing or discharge at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are fairly constant.

3. Effluent flow monitoring is also required in the proposed permit. The purpose of this requirement is to assess the pollutant loading discharged into the receiving water.

4. The visual inspection provision in Part II.D.1. of the proposed permit is required to assure against discharges resulting from structural failure of berms, dikes, dams and other water control structures. A visual inspection is an effective tool for assuring proper operation and maintenance.

5. Monitoring provisions for turbidity, arsenic, settleable solids, and flow (in Parts II.D.1.c., d., e., and f., respectively) are included in the proposed permit. These provisions are included to explain how, when, and where to collect these samples.

B. *Reporting.* 1. Reporting of effluent violations is required in writing within a reasonable time period. This is found in Permit Part IV.G.2.c.

2. Reporting of visual violations from suction dredges is required in writing within a reasonable time period. This is found in Permit Part II.D.2.b.

3. The results of all monitoring or notice of no discharge must be reported to EPA by November 30 of each year. This is found in Permit Part IV.B.

V. Best Management Practices (BMPs)

A. Mechanical and Hydraulic Removal of Overburden

1. BMP conditions in Permit Parts III.A.1. to III.A.5. of the proposed permit were developed pursuant to section 304(e) of the CWA. These BMPs are established in 40 CFR 440.148 and are necessary for control and treatment of the drainage and infiltration water at gold placer mines and to prevent solids and toxic metals from being released to the receiving streams.

a. The intent of Permit Part III.A.1. is to avoid contamination of nonprocess water, reduce the volume of water requiring treatment and maximize the retention time and the settling capacity of the settling ponds. The diversion must totally circumvent any gold recovery units, treatment facilities, etc. Any mine drainage sources that pass through the actual mining area and are subject to transporting pollutants must be treated prior to discharge.

b. Permit Part III.A.2. is required to assure that water retention devices are constructed appropriately. This may be achieved by utilizing on-site material in a manner that the fine sealing material (such as clays) are mixed in the berms with coarser materials. Berms should be toed into the underlying earth, constructed in layers or lifts and each layer thoroughly compacted to ensure mechanical and watertight integrity of the berms. Other impermeable material such as plastic sheets or membranes may be used inside the berms when sealing fines are unavailable or in short supply. The side slope of berms should not be greater than the natural angle of repose of the materials used in the berms or a slope of 2:1, whichever is flatter.

c. The intent of Permit Part III.A.3 is to ensure that the investment in pollution control pay the maximum benefit in terms of reduced pollutant volumes reaching water of the United States. These measures may include location of the storage ponds and storage areas to assure that they will not be washed out by reasonably predictable flooding or by the return of a relocated stream to it original stream bed. Materials removed from settling ponds should be placed in bermed areas where liquids from the materials cannot flow overland to waters of the United States. It may be necessary, in some cases, to collect such liquids and pump or divert them back to the settling pond for treatment. This requirement applies both during the active mining season and at all other times until reclamation is completed.

d. Permit Part III.A.4. is required to assure that the amount of wastewater that is discharged is kept to a minimum.

e. The provisions of Permit Part III.A.5. will ensure that water control devices are adequately maintained. This specifies that structures should be inspected on a regular basis for any signs of structural weakness or incipient failure. Whenever such weakness or incipient failure becomes evident, repair or augmentation of the structure to reasonably ensure against catastrophic failure shall be made immediately.

2. BMP condition Permit Part III.A.6. of the proposed permit is required pursuant to 40 CFR 122.44(k)(3). The purpose of this requirement is to assure that all reasonable measures are taken to decrease the amount of pollutants being discharged to waters of the United States.

3. The same BMPs are required of operations utilizing hydraulic removal of overburden pursuant to 40 CFR 122.44(k)(3). The purpose of these requirements is to assure that reasonable measures are taken to decrease the amount of pollutants being discharged to waters of the United States.

B. Suction Dredging

The BMPs are required pursuant to 40 CFR 122.44(k)(3).

1. Dredging is permitted only in the active stream channel where the dredging spoils are relatively clean and will cause minimum turbidity when returned to the stream. The material that runs through a suction dredge flows downstream and settles among gravel and rocks in the streambed. Too much silt and sand make it difficult for the salmon to dig suitable gravel nests (redds) and can also smother fish eggs already deposited.

2. Wherever practicable, the dredge shall be set to discharge into a quiet pool where settling of dredge spoils can occur more rapidly. This will cause in-stream turbidity to be minimized and localized to the general area of the dredging activity.

3. The purpose of this requirement is to control the potential discharge of pollutants, resulting from fuel spills, from entering receiving waters.

4. Dredging is not permitted during the periods that fish eggs could be in the gravel at the dredge site. The greatest single effect a suction dredge has on the environment is the danger it poses to fish. The dredge pump forces water and gravel through the nozzle and hose. Fish eggs taken up with gravel cannot survive the shock, pressure, and battering and pounding that comes with moving through the hose and sluice. If a fish egg should somehow survive the hose and sluice, the chances for being buried in the gravel at the right depth and in the correct gravel composition necessary for incubation are nonexistent. "The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish" lists the streams in the State which require a Habitat permit from the Alaska Department of Fish and Game. This catalog is quite extensive but is available for viewing at many agencies including Alaska Department of Fish and Game, U.S. Fish and Wildlife Service, the National Marine Fisheries Service and the Anchorage Operations Office of EPA.

VI. Other Requirements

A. Spill Prevention Control and Containment (SPCC) Plan

Part III.C. of the proposed permit was established in accordance with 40 CFR 122.44(k)(3). The purpose of this requirement is to control the potential discharge of pollutants, resulting from fuel spills, from entering receiving waters.

B. Endangered Species

A species list was provided by the U.S. Fish and Wildlife Service for the state of Alaska. The recommended protection measures for the species of concern during the nesting period prohibits alterations of limited, high quality habitat which could detrimentally and significantly reduce prey availability. Since this general water discharge permit is written to protect aquatic life or human health criteria (whichever is more stringent), no alterations of habitat due to water discharges authorized by this permit should occur. Because of this, EPA has determined that formal consultation for section 7 of the Endangered Species Act is not necessary for existing facilities. Environmental Assessments will be completed for each new source discharge as is stated in Part I.A.3. of the permit. Any consultation necessary to comply with the Endangered Species Act will be performed at this time.

VII. Storm Exemption

Part III.D. of the proposed permit establishes a storm exemption provision which authorizes exceedences of technology-based effluent limitations and standards provided that the permittee meets certain design and operational criteria. This provision is required pursuant to 40 CFR 440.141(b).

This provision allows for the unavoidable exceedence of technology-based effluent limitations during storms of intensity greater than or equal to a 5-year, 6-hour storm event. The storm exemption will be allowed provided that (1) the settling ponds are designed, constructed, and maintained to contain the volume of process water generated during four hours of normal operation plus the drainage water resulting from a 5-year, 6-hour storm event, (2) the operator takes all reasonable steps possible to maintain treatment of the wastewater and minimize overflow from the settling ponds, (3) the permittee must be in compliance with the BMPs in Part III.A. of the proposed permit, and (4) the operator complies with all the notification requirements for bypasses and upsets as established in Parts III.G. and H. of the proposed permit. Part III.D. of the proposed permit establishes the specific conditions which must be met in order to be eligible for the storm exemption.

This exemption is designed to provide an affirmative defense to an enforcement action. Therefore, the operator has the burden of demonstrating to the appropriate authority that the above conditions have been met.

VIII. Prohibitions

A. Part I.C. has been incorporated into the proposed permit to further clarify the discharges that will be authorized under this permit.

B. Part II.A.2. of the proposed permit is required to assure compliance with the technology-based requirements established in Part II.A.1.a. of the proposed permit.

IX. New Source Performance Standards (NSPS)

Pursuant to section 301 of the CWA, NSPS (40 CFR 440.144) were promulgated for gold placer mine facilities. NSPS apply to new mines determined to be new sources by virtue of their activities occurring after promulgation of the rule (May 24, 1988). The NSPS for gold placer mining facilities are based on the same treatment technology as BAT, which consists of simple settling plus recirculation of all process water. Since BAT is based on the most stringent demonstrated technology that is available for treating gold placer mine wastewater, those mines which are new sources will not be subject to controls more stringent than those applicable to existing mines.

In accordance with section 511(c)(1) of the CWA, NPDES permits for new sources are subject to the provisions of the National Environmental Policy Act (NEPA). NEPA requires that, prior to the issuance of an NPDES permit to a new source facility, an Environmental Assessment (EA) must be prepared to determine the potential for any significant impacts on the quality of the human environment resulting from operation of the new source. Permit part I.E.1. requires that new facilities submit a notice of intent by January 1 of the year of discharge. This will allow adequate time to complete EAs for each new source prior to the mining season. If the EA indicates that significant adverse environmental impacts may occur, then the applicant must prepare an Environmental Impact Statement (EIS). However, if the EA indicates that significant impacts are not anticipated, a Finding of No Significant Impact (FNSI) shall be issued and the facility

will be covered by the existing general permit. The FNSI may be based, in part, on required permit conditions or mitigation measures necessary to make the recommended alternative environmentally acceptable.

X. State Certification

Section 301(b)(1)(C) of the Act requires that an NPDES permit contain conditions which ensure compliance with applicable State water quality standards or limitations. The limitations for turbidity and arsenic were established pursuant to WQS and federal standards, respectively. Section 401 requires that States certify that Federally issued permits are in compliance with State law. No permits can be issued until the requirements of Section 401 are satisfied.

These are permits for operations discharging to waters (inland waters) of the State of Alaska. EPA is requesting State officials to review and provide appropriate certification to these draft permits pursuant to 40 CFR 124.53.

XI. References

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U.S. Environmental Protection Agency. 1988. Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Ore Mining and Dressing Point Source Category—Gold Placer Mining Subcategory. U.S. Environmental Protection Agency, Office of Water Regulations and Standards, Industrial Technology Division, Washington, DC 20460. EPA 440/1–88–061.

*Literature cited in literature research project.

Finding of No Significant Impact

To all interested government agencies, public groups, and individuals:

In accordance with the Environmental Protection Agency (EPA) procedures for complying with the National Environmental Policy Act (NEPA), 40 CFR part 6, subpart F, EPA has completed an environmental review of the following proposed action: Issuance of a General National Pollutant Discharge Elimination System (NPDES) Permit No. AK–G–37–0000 for Alaskan Placer Miners.

The proposed action is issuance of a General NPDES Permit covering both existing and new source facilities in Alaska which mine and process, using gravity separation methods, gold placer ores. The proposed effluent limitations, monitoring provisions, and other conditions are specified in the draft General NPDES permit. The Fact Sheet, accompanying the draft permit, describes the basis for these requirements. The proposed General NPDES Permit would replace the existing individual NPDES permits.

An environmental assessment (EA) of this proposed action has been completed (enclosed). Based on the EA, and in accordance with the guidelines for determining the significance of proposed federal actions (40 CFR 1508.27) and EPA criteria for initiating an environmental impact statement (EIS) (40 CFR 6.605), EPA has concluded that the proposed General NPDES permit will not result in a significant effect on the human environment. The proposed permit will not significantly affect land use patterns or population, wetlands or floodplains, threatened or endangered species, farmlands, ecologically critical areas, historic resources, air quality, water quality, noise levels, fish and wildlife resources, nor will it conflict with local, regional, or state land use plans or policies. The proposed permit conforms with all applicable federal statutes and executive orders.

The proposed General Permit includes the same technology-based permit limits, established by regulation (40 CFR part 440, subpart M), as the individual permits currently do. The recirculation of process wastewater is required and the settleable solids concentration of the allowable discharge (i.e. excess water) is limited to 0.2 milliliters per liter. Water quality-based limits are also included in the proposed permit.

The proposed permit covers, in addition to conventional open-cut placer mining operations, placer mining operations utilizing hydraulic methods to remove overburden, and suction dredges. The proposed permit limits for the hydraulic overburden removal operations are based on the state sediment standard and best professional judgment and are the same as the limits for the conventional operations. The limits for the suction dredge operations would be based on best professional judgment.

The proposed General Permit would reduce the yearly administrative burden of EPA associated with the processing of numerous individual permits. Because the proposed General Permit and individual permits include essentially the same requirements, the primary impact related to permit type is expected to be administrative. No negative impacts to EPA, other agencies or operators are expected.

The proposed General NPDES Permit may contribute to an improvement in environmental conditions because it would reduce the permitting administrative workload thus making available limited time that could be used for higher priority activities, such as permit compliance and inspections. The inclusion of suction dredge operations in the General Permit will improve the monitoring and compliance of these operations.

Under the proposed action, the new source placer mining proposals requesting coverage under the General Permit would continue to be subject to individual NEPA reviews. This will enable EPA to evaluate the site-specific and cumulative impacts associated with the individual projects. Where an EA concludes that significant impacts are not anticipated, a Finding of No Significant Impact would be issued and the new source project would be granted coverage under the General Permit. If EPA determines that significant impacts from a proposed new source project may occur, an EIS would be prepared prior to EPA's final permit decision. Therefore the site-specific impacts of those projects would continue to be evaluated and considered prior to the permit actions. An individual permit may also be required by EPA in lieu of coverage under the General Permit.

For the above reasons EPA has determined that an EIS will not be prepared for the proposed action.

Comments pertaining to this Finding of No Significant Impact may be submitted to: Rick Seaborne, Environmental Protection Agency, Environmental Review Section, 1200 Sixth Avenue, WD–126, Seattle, WA 98101.

No administrative action will be taken for at least 30 days after the release of this Finding of No Significant Impact. EPA will fully consider all comments before taking final action.

Sincerely,

Charles E. Findley,

Director, Water Division.

Authorization To Discharge Under the National Pollutant Discharge Elimination System for Alaskan Placer Miners

[General Permit No.: AK–G–37–0000]

In compliance with the provisions of the Clean Water Act (CWA), 33 U.S.C. 1251 *et seq.*, as amended by the Water Quality Act of 1987, Public Law 100–4, the "Act", owners and operators of facilities engaged in the processing of placer gold are authorized to discharge to waters of the United States, in accordance with effluent limitation, monitoring requirements, and other conditions set forth herein.

A COPY OF THIS GENERAL PERMIT MUST BE KEPT AT THE SITE WHERE DISCHARGES OCCUR.

This permit shall become effective 30 days after final publication. This permit and the authorization to discharge shall expire 5 years after the effective date of the permit: Director, Water Division, Region 10, U.S. Environmental Protection Agency.

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Appendix A

I. Coverage Under This Permit

A. Coverage and Eligibility

1. *Existing Facilities:* Existing facilities (those facilities having individual NPDES permits) are authorized under the terms and conditions of this permit upon the submittal of a Notice of Intent (NOI) to gain coverage under this permit. Coverage will be granted according to Permit Part E.4.

2. *Pending Applications:* Upon submittal of an NOI all facilities which have submitted applications in accordance with 40 CFR 122.21(a) are authorized under the terms and conditions of this permit. Coverage will be granted according to Permit Part E.4.

3. *New Facilities:* New facilities that are determined to be new sources under the CWA will be required to have an Environmental Assessment (EA) completed pursuant to the National Environmental Policy Act (NEPA). A finding of no significant impact (FNSI) by EPA is necessary prior to receiving coverage under this permit. If there will be a significant impact, the facility will be required to submit, to EPA, an Environmental Impact Statement (EIS). Facilities determined to be new dischargers will be covered by the terms and conditions of this permit if they meet all the necessary requirements of the coverage.

4. *Expanding Facilities:* Facilities that contemplate expanding shall submit a new NOI that describes the new discharge. The old permit will be terminated and a new permit issued in its place if the facility meets all the necessary requirements of the coverage.

B. Types of Placer Mine Operations Covered

1. Facilities that mine and process gold placer ores using gravity separation methods to recover the gold metal contained in the ore.

a. Open-cut gold placer mines except those open-cut mines that mine less than 1,500 cubic yards of placer ore per mining season.

b. Mechanical dredge gold placer mines (not suction dredges) except those dredges that remove less than 50,000 cubic yards of placer ore per mining season.

2. Suction dredges with intake hoses of greater than 4 inches.

3. Operations utilizing hydraulic removal of overburden.

C. Limitations on Coverage

Many streams and stream reaches in Alaska have been designated as part of the federal wild and scenic rivers system or as Conservation System Units (CSUs) by the federal government. Permittees should contact the district offices of the federal agencies that administer the designated area for additional restrictions that may apply to operating within the area. Many streams in Alaska where placer mining occurs have been designated by Alaska Department of Fish and Game (ADFG) as needing an ADFG Habitat permit with additional restrictions. "The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish" lists the streams in the State which require a Habitat permit.

D. Prohibitions

Discharges from the following beneficiation processes are not authorized under this permit: Mercury amalgamation, cyanidation, froth floatation, heap and vat leaching.

E. Requiring an Individual Permit

1. The Regional Administrator may require any person authorized by this permit to apply for and obtain an individual National Pollutant Discharge Elimination System (NPDES) permit when:

a. The single discharge or the cumulative number of discharges is/are a significant contributor of pollution;

b. The discharger is not in compliance with the terms and conditions of the general permit;

c. A change has occurred in the availability of demonstrated technology or practices for the control or abatement of pollutants applicable to the point source;

d. Effluent limitations guidelines are subsequently promulgated for the point sources covered by the general permit;

e. A Water Quality Management plan containing requirements applicable to such point sources is approved; or

f. An Individual Control Strategy (ICS) is required under section 304(L) of the Act.

2. The Regional Administrator will notify the operator in writing that a permit application is required. If an operator fails to submit in a timely manner an individual NPDES permit application as required, then the applicability of this general permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

3. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2C or 2D) with reasons supporting the request to the Regional Administrator no later than 90 days after the effective date of the permit.

4. When an individual NPDES permit is issued to an owner or operator otherwise covered by this permit, the applicability of this permit to the facility is automatically terminated on the effective date of the individual permit.

5. When an individual NPDES permit is denied to an owner or operator otherwise covered to this permit, the permittee is automatically reinstated under this permit on the date of such denial, unless otherwise specified by the Regional Administrator. A new facility can receive coverage under this general permit by submitting a NOI. See Permit Part I.A.3. for details.

6. A source excluded from a general permit solely because it already has an individual permit may request that the individual permit be revoked and that it be covered by the general permit. Upon revocation of the individual permit, the general permit shall apply to the source.

F. Notification Requirements

1. Owners or operators of facilities authorized by this permit shall submit a NOI to be covered by this permit. The information required for a complete NOI is in appendix A of this permit. Notification must be made:

a. Within 90 days of issuance of this permit; or

b. By January 1 of the year of discharge from a new facility or a facility established since 1988 that has not previously been covered by a permit; or

c. Ninety (90) days prior to the expiration of an existing individual permit. Authorization to discharge requires written notification from EPA that coverage has been granted and that a specific permit number has been assigned to the operation.

2. The NOI shall be signed by the owner or other signatory authority in accordance with Part VI.H. (Signatory Requirements), and a copy shall be retained on site in accordance with Part IV.F. (Retention of Records) of this permit. The address for NOI submission to EPA is: United States Environmental Protection Agency, Region 10, 1200 Sixth Avenue, WD–134, Seattle, Washington 98101.

3. A copy of the NOI must also be sent to the regional office of the Alaska Department of Environmental Conservation (ADEC) that has jurisdiction over the mine. The addresses are:

Alaska Department of Environmental Conservation, 410 Willoughby, Suite 105, Juneau, Alaska 99801

Alaska Department of Environmental Conservation, Northern Regional Office, 610 University Avenue, Fairbanks, Alaska 99709

Alaska Department of Environmental Conservation, Central Regional Office, 3601 "C" Street, Suite 1350, Anchorage, Alaska 99503

4. A copy of the general permit will be sent to the permittee when it is determined that the facility can be granted coverage under this general permit. If it is determined that coverage cannot be granted under this permit, the applicant will be informed of this in writing.

G. Permit Expiration

Coverage under this permit will expire five (5) years from the date of issuance. For facilities submitting a new NOI 90 days prior to expiration of this general permit, the conditions of the expired permit continue in force until the effective date of a new permit.

II. Effluent Limitations

A. Mechanical Operation (Traditional Sluicing)

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations.

a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the beneficiation process.

b. The wastewater discharged shall not exceed the following:

Effluent characteristic	Instantaneous maximum
Settleable Solids	0.2 ml/L.
Turbidity	5 NTUs above natural background.
Arsenic, Total Recoverable.	(1) 0.18 >g/L. (2) Natural background *

* See Part II.D.4. for details.

2. Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

B. Hydraulic Removal of Overburden

During the term of this permit, no wastewater discharges are authorized except as specified below.

1. Effluent Limitations. a. The volume of wastewater which may be discharged shall not exceed the volume of infiltration, drainage and mine drainage waters which is in excess of the make-up water required for operation of the hydraulicking process.

b. The wastewater discharged shall not exceed the following:

Effluent characteristic	Instantaneous maximum
Settleable Solids	0.2 ml/L.
Turbidity	5 NTU above natural background.
Arsenic, Total Recoverable.	(1) 0.18 µg/L (2) natural background.*

* See Part II.D.4. for details.

2. Effluent discharges are prohibited during periods when new water is allowed to enter the plant site. Additionally, there shall be no discharge as a result of the intake of new water.

C. Suction Dredging

1. At any point in the receiving stream 500 feet downstream of the dredge's discharge point, the maximum allowable increase in turbidity over the natural receiving stream turbidity while operating is 5 NTUs.

2. A visual increase in turbidity (any cloudiness or muddiness) 500 feet downstream of the suction dredge during operations would be considered a violation of the 5 NTU limit.

3. If noticeable turbidity does occur 500 feet downstream of the work site, operation of the suction dredge must decrease or cease so that a violation as defined above does not exist.

D. Monitoring Requirements

1. Mechanical Operations and Hydraulic Removal of Overburden. a. During the period beginning on the effective date of this permit and lasting until the expiration date, the following monitoring shall be conducted:

Effluent characteristic	Monitoring location	Monitoring frequency	Sample type
Settleable Solids (ml/L)	Effluent	Once per day each day of discharge.	Grab.
Turbidity (NTU)	Effluent natural background	Once per season	Grab.
Arsenic (µg/L) Total recoverable ...	Effluent natural background *	Once per season	Grab.**
Flow (gpm)	Effluent	(***)	Instantaneous.

* Only when choosing Option (2).
** Analyzed by EPA Method 206.2 with a detection limit of 1 µg/L.
*** See Part II.D.1.f. for details.

b. Visual Inspection. The Permittee shall institute a comprehensive visual inspection program to facilitate proper operation and maintenance of the recycle system and the wastewater treatment system. The Permittee shall conduct an inspection of the site once per day during the mining season. The Permittee shall maintain records of all information resulting from any visual inspections. These records shall include, but are not limited to, an evaluation of the condition of all water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures, and dams. The records shall also include an assessment of the presence of sediment buildup within the settling ponds. The Permittee shall examine all ponds for the occurrence of short circuiting.

c. Turbidity Monitoring. The Permittee shall monitor the turbidity values of the effluent stream and the background turbidity values of the receiving stream then compare the two samples. The sample results shall be reported on the Annual Discharge Monitoring Report (DMR). The Permittee shall take one sample at a point that is representative of the discharge prior to entering the receiving stream. The Permittee shall take another sample above the discharge point at a location that is considered to be the "natural" background of the receiving stream as defined in permit part V.I. Both samples shall be taken within a reasonable time frame. Monitoring shall be conducted in accordance with accepted analytical procedures. See attachment 1 for sampling protocol.

d. Arsenic Monitoring. Arsenic samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Arsenic samples taken to determine "natural" background shall be representative of the receiving water upstream from any man-made disturbances. Monitoring shall be conducted in accordance with accepted analytical procedures. The Permittee shall report the sample results on the Annual DMR. See attachment 2 for sampling protocol.

The effluent limitation for total recoverable arsenic is not quantifiable using the EPA approved analytical method, EPA method 206.2. Thus, EPA has set forth reporting thresholds to measure the highest acceptable quantification level for this parameter. This reporting threshold does not authorize the discharge of this parameter in excess of the effluent limitation. For more information, see special conditions in Part IX. of this permit.

e. Settleable Solids Monitoring. Settleable solids samples shall be representative of the discharge and shall be taken at a point prior to entering the receiving stream. Monitoring shall be conducted in accordance with accepted analytical procedures (Standard Methods, 16th Edition, 1985). The Permittee shall report the sample results on the Annual DMR. See attachment 3 for sampling and analysis protocol.

f. Flow Monitoring. Effluent flow shall be measured at the discharge prior to entering the receiving water. Effluent flow shall be measured at least once per day, for continuous discharges, or once during each discharge event if discharges are intermittent. The flow shall be measured in gallons per minute (gpm). The flow measurements, the number of discharge events, and the duration of each discharge event shall be reported in the Annual DMR for each day of the mining season.

2. Suction Dredges. a. Suction Dredge operations shall visually monitor for turbidity as described in Part II.C. once per day of operation. The Permittee shall maintain records of all information resulting from any visual inspections.

b. The Permittee will report the period of suction dredging on the DMR. Visual violation occurrences will also be reported on the DMR along with the measures taken to comply with the provisions of Permit Part II.C.3.

III. Management Practices

A. Mechanical Operations and Hydraulic Removal of Overburden

1. The flow of surface waters (i.e., creek, river, or stream) into the plant site shall be interrupted and these waters diverted around and away to prevent incursion into the plant site.

2. Berms, including any pond walls, dikes, low dams, and similar water retention structures shall be constructed in a manner such that they are reasonably expected to reject the passage of water.

3. Measures shall be taken to assure that pollutant materials removed from the process water and wastewater streams will be retained in storage areas and not discharged or released to the waters of the United States.

4. The amount of new water allowed to enter the plant site for use in material processing shall be limited to the minimum amount required as makeup water for processing operations.

5. All water control devices such as diversion structures and berms and all solids retention structures such as berms, dikes, pond structures, and dams shall be maintained to continue their effectiveness and to protect from failure.

6. The operator shall take whatever reasonable steps are appropriate to assure that, after the mining season, all mine areas, including ponds, are in a condition which will not cause additional degradation to the receiving waters over those resulting from natural causes.

B. Suction Dredges

1. Dredging in waters of the United States is permitted only within the active stream channel.

2. Wherever practicable, the dredge shall be set to discharge into a quiet pool, where settling of dredge spoils can occur more rapidly.

3. Care shall be taken by the operator during refueling of the dredge to prevent spillage into public waters or to groundwater.

4. Dredging is not permitted during the periods that fish eggs could be in the gravel at the dredge site and harassment of fish in the stream is prohibited. "The Atlas to the Catalog of Waters Important for Spawning, Rearing or Migration of Anadromous Fish" lists the streams in the State which require a Habitat permit from the Alaska Department of Fish and Game.

C. Other Requirements—Mechanical Operations and Hydraulic Removal of Overburden

The operator shall maintain fuel handling and storage facilities in a manner which will prevent the discharge of fuel oil into the receiving waters or on the adjoining shoreline. A Spill Prevention Control and Countermeasure Plan (SPCC Plan) shall be prepared and updated as necessary in accordance with provisions of 40 CFR part 112 for facilities storing 660 gallons in a single container above ground, 1,320 gallons in the aggregate above ground, or 42,000 gallons below ground.

The permittee shall indicate on the DMR if an SPCC Plan is necessary and in place at the site and if changes were made to the Plan over the previous year.

D. Storm Exemption

The permittee may qualify for a storm exemption from the technology-based effluent limitations in Part II.A.1.b. of this NPDES general permit if the following conditions are met:

1. The treatment system is designed, constructed and maintained to contain the maximum volume of untreated process wastewater which would be discharged, stored, contained and used or recycled by the beneficiation process into the treatment system during a 4-hour operating period without an increase in volume from precipitation or infiltration, plus the maximum volume of water runoff (drainage waters) resulting from a 5-year, 6-hour precipitation event. In computing the maximum volume of water which would result from a 5-year, 6-hour precipitation event, the operator must include the volume which should result from the plant site contributing runoff to the individual treatment facility.

2. The operator takes all reasonable steps to maintain treatment of the wastewater and minimize the amount of overflow.

3. The source is in compliance with the Best Management Practices in Part III.A. of this permit.

4. The operator complies with the notification requirements of Parts IV.G. and H. of this permit.

IV. Monitoring and Reporting Requirements

A. Representative Sampling

All samples for monitoring purposes shall be representative of the monitored activity, 40 CFR 122.41 (j). To determine compliance with permit effluent limitations, "grab" samples shall be taken as established under Part II.D. of this permit. Specifically, effluent samples for settleable solids, turbidity, and arsenic shall be collected from the settling pond or other treatment systems outlet prior to discharge to the receiving stream. Additionally, turbidity samples shall also be taken above the discharge point at a location that is representative of the receiving stream. Samples for arsenic and turbidity monitoring must be taken during sluicing at a time when the operation has reached equilibrium. For example, samples should be taken when sluice paydirt loading and effluent discharge are constant.

B. Reporting of Monitoring Results

Monitoring results shall be summarized each month and reported on EPA Form 3320–1 (DMR). The DMR shall be submitted to the Environmental Protection Agency, Region 10, 1200 Sixth Avenue, Enforcement Section WD–135, Seattle, Washington 98101–3188, no later than November 30 each year.

If there is no mining activity during the year or no wastewater discharge to a receiving stream, the permittee shall notify EPA of these facts no later than November 30 of each year.

The DMR shall also be sent to the regional office of ADEC that has jurisdiction over the mine. The addresses can be found in permit part I.E.3.

C. Monitoring Procedures

Monitoring must be conducted according to test procedures approved under 40 CFR part 136, unless other test procedures have been specified in this permit.

D. Additional Monitoring by the Permittee

If the permittee monitors any pollutant more frequently than required by this permit, using test procedures approved under 40 CFR part 136 or as specified in this permit, the results of this monitoring shall be included in the calculation and reporting of the data submitted in the DMR. Such increased frequency shall also be indicated.

E. Records Contents.

Records of monitoring information shall include:

1. The date, exact place, and time of sampling or measurements;
2. The individual(s) who performed the sampling or measurements;
3. The date(s) analyses were performed;
4. The individual(s) who performed the analyses;
5. The analytical techniques or methods used; and
6. The results of such analyses.

F. Retention of Records

The permittee shall retain records of all monitoring information, including all calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports required by this permit, and records of all data used to complete the application for this permit, for a period of at least three years from the date of the sample, measurement, report or application. This period may be extended by request of the Director or ADEC at any time. Data collected on-site, copies of DMRs, and a copy of this NPDES permit must be maintained on-site during the duration of activity at the permitted location.

G. Notice of Noncompliance Reporting

1. Any noncompliance which may endanger health or the environment shall be reported as soon as the permittee becomes aware of the circumstance. A written submission shall also be provided in the shortest reasonable period of time after the permittee becomes aware of the occurrence.

2. The following occurrences of noncompliance shall also be reported in writing in the shortest reasonable period of time after the permittee becomes aware of the circumstances:

a. Any unanticipated bypass which exceeds any effluent limitation in the permit (see Part V.G., Bypass of Treatment Facilities.); or

b. Any upset which exceeds any effluent limitation in the permit (see Part V.H., Upset Conditions.).

c. Any violation of the effluent limitations in Permit Parts II.A. and II.B.

3. The written submission shall contain:

a. A description of the noncompliance and its cause;

b. The period of noncompliance, including exact dates and times;

c. The estimated time noncompliance is expected to continue if it has not been corrected; and

d. Steps taken or planned to reduce, eliminate, and prevent reoccurrence of the noncompliance.

4. The Director may waive the written report on a case-by-case basis if an oral report has been received within 24 hours by the Water Compliance Section in Seattle, Washington, by phone, (206) 553–1213.

5. Reports shall be submitted to the addresses in Part IV.B., Reporting of Monitoring Results.

H. Other Noncompliance Reporting

Instances of noncompliance not required to be reported in IV.G. above shall be reported at the time that monitoring reports for Part IV.B. are submitted. The reports shall contain the information listed in Part IV.G.3.

I. Inspection and Entry

The permittee shall allow the Director, ADEC, or an authorized representative (including an authorized contractor acting as a representative of the Administrator), upon the presentation of credentials and other documents as may be required by law, to:

1. Enter upon the permittee's premises where a regulated facility or activity is located or conducted, or where records must be kept under the conditions of this permit;

2. Have access to and copy, at reasonable times, any records that must be kept under the conditions of this permit;

3. Inspect at reasonable times any facilities, equipment (including monitoring and control equipment), practices, or operations regulated or required under this permit; and

4. Sample or monitor at reasonable times, for the purpose of assuring permit compliance or as otherwise authorized by the Act, any substances or parameters at any location.

V. Compliance Responsibilities

A. Duty to Comply

The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of the Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application. The permittee shall give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

B. Penalties for Violations of Permit Conditions

1. Administrative Penalty. The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to an administrative penalty, not to exceed $10,000 per day for each violation.

2. Civil Penalty. The Act provides that any person who violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be subject to a civil penalty, not to exceed $25,000 per day for each violation.

3. Criminal Penalties: a. Negligent Violations. The Act provides that any person who negligently violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or by both.

b. Knowing Violations. The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act shall be punished by a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or by both.

c. Knowing Endangerment. The Act provides that any person who knowingly violates a permit condition implementing sections 301, 302, 306, 307, 308, 318, or 405 of the Act, and who knows at that time that he thereby places another person in imminent danger of death or serious bodily injury, shall, upon conviction, be subject to a fine of not more than $250,000 or imprisonment of not more than 15 years, or both. A person which is an organization shall, upon conviction of violating this subparagraph, be subject to a fine of not more than $1,000,000.

d. False Statements. The Act provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under this Act or who knowingly falsifies, tampers with, or renders inaccurate any monitoring device or method required to be maintained under this Act, shall upon conviction, be punished by a fine of not more that $10,000, or by imprisonment for not more than 2 years, or by both.

Except as provided in permit conditions in Part V.G., Bypass of Treatment Facilities and Part V.H., Upset Conditions, nothing in this permit shall be construed to relieve the permittee of the civil or criminal penalties for noncompliance.

C. Need to Halt or Reduce Activity not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit which has a reasonable likelihood of adversely affecting human health or the environment.

E. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) which are installed or used by the

permittee to achieve compliance with the conditions of this permit. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. This provision requires the operation of back-up or auxiliary facilities or similar systems which are installed by a permittee only when the operation is necessary to achieve compliance with the conditions of the permit.

F. Removed Substances

Solids, sludges, or other pollutants removed in the course of treatment or control of wastewaters shall be disposed of in a manner so as to prevent any pollutant from such materials from entering waters of the United States.

G. Bypass of Treatment Facilities

1. Bypass not exceeding limitations. The permittee may allow any bypass to occur which does not cause effluent limitations to be exceeded, but only if it also is for essential maintenance to assure efficient operation. These bypasses are not subject to the provisions of paragraphs 2 and 3 of this section.

2. Notice:

a. Anticipated bypass. If the permittee knows in advance of the need for a bypass, it shall submit prior notice, if possible at least 10 days before the date of the bypass.

b. Unanticipated bypass. The permittee shall submit notice of an unanticipated bypass as required under Part III.G., Notice of Noncompliance Reporting.

3. Prohibition of bypass.

a. Bypass is prohibited and the Director or ADEC may take enforcement action against a permittee for a bypass, unless:

(1) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(2) There were no feasible alternatives to the bypass, such as the use of auxiliary treatment facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if adequate back-up equipment should have been installed in the exercise of reasonable engineering judgment to prevent a bypass which occurred during normal periods of equipment downtime or preventive maintenance; and

(3) The permittee submitted notices as required under paragraph 2 of this section.

b. The Director and ADEC may approve an anticipated bypass, after considering its adverse effects, if the Director and ADEC determine that it will meet the three conditions listed above in paragraph 3.a. of this section.

H. Upset Conditions

1. Effect of an upset. An upset constitutes an affirmative defense to an action brought for noncompliance with such technology based permit effluent limitations if the requirements of paragraph 2 of this section are met. An administrative review of a claim that noncompliance was caused by an upset does not represent final administrative action for any specific event. A determination is not final until formal administrative action is taken for the specific violation(s).

2. Conditions necessary for a demonstration of upset. A permittee who wishes to establish the affirmative defense of upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence that:

a. An upset occurred and that the permittee can identify the cause(s) of the upset;

b. The permitted facility was at the time being properly operated;

c. The permittee submitted notice of the upset as required under Part IV.G., Notice of Noncompliance Reporting; and

d. The permittee complied with any remedial measures required under Part V.D., Duty to Mitigate.

3. Burden of proof. In any enforcement proceeding, the permittee seeking to establish the occurrence of an upset has the burden of proof.

I. Toxic Pollutants

The permittee shall comply with effluent standards or prohibitions established under section 307(a) of the Act for toxic pollutants within the time provided in the regulations that establish those standards or prohibitions, even if the permit has not yet been modified to incorporate the requirement.

VI. General Requirements

A. Changes in Discharge of Toxic Substances

Notification shall be provided to the Director and ADEC as soon as the permittee knows of, or has reason to believe:

1. That any activity has occurred or will occur which would result in the discharge, on a routine or frequent basis, of any toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. One hundred micrograms per liter (100 µg/l);

b. Two hundred micrograms per liter (200 µg/l) for acrolein and acrylonitrile; five hundred micrograms per liter (500 µg/l) for 2,4-dinitrophenol and for 2-methyl-4, 6-dinitrophenol; and one milligram per liter (1 mg/l) for antimony;

c. Five (5) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

2. That any activity has occurred or will occur which would result in any discharge, on a non-routine or infrequent basis, of a toxic pollutant which is not limited in the permit, if that discharge will exceed the highest of the following "notification levels":

a. Five hundred micrograms per liter (500 µg/l);

b. One milligram per liter (1 mg/l) for antimony;

c. Ten (10) times the maximum concentration value reported for that pollutant in the permit application in accordance with 40 CFR 122.21(g)(7); or

d. The level established by the Director in accordance with 40 CFR 122.44(f).

B. Planned Changes

The permittee shall give notice to the Director and ADEC as soon as possible of any planned physical alterations or additions to the permitted facility. Notice is required only when:

1. The alteration or addition to a permitted facility may meet one of the criteria for determining whether a facility is a new source as determined in 40 CFR 122.29(b); or

2. The alteration or addition could significantly change the nature or increase the quantity of pollutants discharged. This notification applies to pollutants which are subject neither to effluent limitations in the permit, nor to notification requirements under part VI.A.1.

C. Anticipated Noncompliance

The permittee shall also give advance notice to the Director and ADEC of any planned changes in the permitted facility or activity which may result in noncompliance with permit requirements.

D. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance, does not stay any permit condition.

E. Duty to Reapply

If the permittee wishes to continue an activity regulated by this permit after the expiration date of this permit, the permittee must apply for and obtain a new permit. The application should be submitted at least 180 days before the expiration date of this permit.

F. Duty to Provide Information

The permittee shall furnish to the Director and ADEC, within a reasonable time, any information which the Director or ADEC may request to determine whether cause exists for modifying, revoking and reissuing, or terminating this permit, or to determine compliance with this permit. The permittee shall also furnish to the Director or ADEC, upon request, copies of records required to be kept by this permit.

G. Other Information

When the permittee becomes aware that it failed to submit any relevant facts in a permit application, or submitted incorrect information in a permit application or any report to the Director or ADEC, it shall promptly submit such facts or information.

H. Signatory Requirements

All applications, reports or information submitted to the Director and ADEC shall be signed and certified.

1. All permit applications shall be signed as follows:

a. For a corporation: by a responsible corporate officer.

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively.

c. For a municipality, state, federal, or other public agency: by either a principal executive officer or ranking elected official.

2. All reports required by the permit and other information requested by the Director or ADEC shall be signed by a person described above or by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director and ADEC, and

b. The authorization specified either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of plant manager, operator of a well or a well field, superintendent, position of equivalent responsibility, or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position.)

3. Changes to authorization. If an authorization under paragraph IV.H.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new authorization satisfying the requirements of paragraph VI.H.2. must be submitted to the Director and ADEC prior to or together with any reports, information, or applications to be signed by an authorized representative.

4. Certification. Any person signing a document under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gather and evaluate the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

I. Availability of Reports

Except for data determined to be confidential under 40 CFR part 2, all reports prepared in accordance with the terms of this permit shall be available for public inspection at the offices of the Director and ADEC. As required by the Act, permit applications, permits and effluent data shall not be considered confidential.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under section 311 of the Act.

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, or any exclusive privileges, nor does it authorize any injury to private property or any invasion of personal rights, nor any infringement of federal, state or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit, shall not be affected thereby.

M. State Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable state law or regulation under authority preserved by section 510 of the Act.

N. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this draft general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* The information collection requirements of this permit have already been approved by the Office of Management and Budget in submission made for the NPDES permit program under the provisions of the CWA.

VII. Reopener Clause

If effluent limitations or requirements are established or modified in an approved State Water Quality Management Plan or Waste Load Allocation and if they are more stringent that those listed in this permit or control a pollutant not listed in this permit, this permit may be reopened to include those more stringent limits or requirements.

VIII. Definitions

A. "Bypass" means the intentional diversion of waste streams around any portion of a treatment facility.

B. "Drainage Water" means incidental surface waters from diverse sources such as rainfall, snow melt or permafrost melt.

C. A "Grab" sample is a single sample or measurement taken at a specific time.

D. "Infiltration Water" means that water which permeates through the earth into the plant site.

E. "Instantaneous Maximum" means the maximum value measured at any time.

F. "Mine Drainage" means any water, not associated with active sluice water, that is drained, pumped or siphoned from a mine.

G. "Monitoring Month" means the period consisting of the calendar weeks which begin and end in a given calendar month.

H. "Natural Background" means the level upstream from all mining and other man-made disturbances.

I. "NTU" (Nephelometric Turbidity Unit) is an expression of the optical property that causes light to be scattered and absorbed rather than transmitted in a straight line through the water.

J. "Make-up Water" means that volume of water needed to replace process water lost due to evaporation and seepage in order to maintain the quantity necessary for the operation of the beneficiation process.

K. "New Water" means water from any discrete source such as a river, creek, lake or well which is deliberately allowed or brought into the plant site.

L. "Plant Site" means the area occupied by the mine, necessary haulage ways from the mine to the beneficiation process, the beneficiation area, the area occupied by the wastewater treatment storage facilities and the storage areas for waste materials and solids removed from the wastewaters during treatment.

M. "Receiving Water" means waters such as lakes, rivers, streams, creeks, or any other surface waters which receive wastewater discharges.

N. "Severe property damage" means substantial physical damage to property, damage to the treatment facilities which causes them to become inoperable, or substantial and permanent loss of natural resources which can reasonably be expected to occur in the absence of a bypass. Severe property damage does not mean economic loss caused by delays in production.

O. "Short circuiting" means ineffective settling ponds due to inadequate or insufficient retention characteristics, excessive sediment deposition, embankment infiltration/percolation, lack of maintenance, etc.

P. "Upset" means an exceptional incident in which there is unintentional and temporary noncompliance with technology-based permit effluent limitations because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Q. "Wastewater" means all water used in and resulting from the beneficiation process (including but not limited to the water used to move the ore to and through the beneficiation process, the water used to aid in classification, and the water used in gravity separation), mine drainage, and infiltration and drainage waters which commingle with mine drainage or waters resulting from the beneficiation process.

IX. Special Conditions—Effluent Limits Below Detection Levels

A. Reporting Levels

1. For purpose of reporting, the permittee shall use the reporting threshold equivalent to the minimum level (ML). The ML is defined as the concentration in a sample equivalent to the concentration of the lowest calibration standard analyzed in a specific analytical procedure, assuming that all the method-specified sample weights, volumes and processing steps have been followed. As such, the permittee must utilize a standards equivalent to the concentration of the ML for arsenic which is 4 µg/L.

2. For the purpose of reporting on the DMR, actual analytical results should be reported whenever possible. All analytical values at or above the ML shall be reported as the measured value. When the results cannot be quantified, values below the method detection limit (1 µg/L) shall be reported as zero (0 µg/L) and values above the method detection level and below the ML shall be reported as ½ the ML or 2 µg/L.

B. Reporting Details

In the "Comment" section of the DMR, the permittee shall report the lowest calibration standard used and the ML achieved.

Attachment 1

Turbidity Sampling Protocol

1. Grab samples shall be collected.
2. Samples shall be collected in a sterile one liter polypropylene or glass container.
3. Samples must be cooled to 4 degrees celsius (iced).
4. Samples must be analyzed within 48 hours of sample collection.

Attachment 2

Arsenic Sampling Protocol

1. Grab samples shall be collected.
2. Samples shall be collected in a sterile one liter polypropylene or glass container.
3. Samples must be cooled to 4 degrees celsius (iced).
4. Samples must be sent to a laboratory for analysis as soon as possible.
5. Samples must be acidified with nitric acid (HNO_3), to a pH less than 2, upon receipt at the laboratory.
6. Samples must be acidified for at least 16 hours prior to analysis.

Attachment 3

Settleable Solids Sampling Protocol

1. Grab samples shall be collected.
2. Samples shall be collected in a sterile one liter polypropylene or glass container.
3. Samples must be cooled to 4 degrees celsius (iced).
4. Samples must be analyzed within 48 hours of sample collection.

Settleable Solids Analysis Protocol

1. Fill an Imhoff cone to the liter mark with a thoroughly mixed sample.
2. Settle for 45 minutes, then gently stir the sides of the cone with a rod or by gently spinning the cone.
3. Settle 15 minutes longer, then record the volume of settleable matter in the cone as milliliters per liter. Do not estimate any floating material. The lowest measurable level on the Imhoff cone is 0.1 ml/l. Any settleable material below the 0.1 ml/l mark shall be recorded as trace.

Appendix A—Notice of Intent (NOI) Information

Permittee Name
Address & Phone Number (Summer)
Address & Phone Number (Winter)
Operator Name (if different that Permittee)
Address & Phone Number (Summer)
Address & Phone Number (Winter)
Facility Name
Facility Location (Nearest Town)
Mining District
Latitude and Longitude
Township, Section, Range
Previous NPDES permit number
Receiving Water
Maximum Effluent Flow
Lowflow stream flow
Type of Operation (Traditional, Suction Dredge, Hydraulicking)
Amount of Material processed
Signature and Date (certified according to permit part VI.H.4.)
A drawing or sketch of the operation

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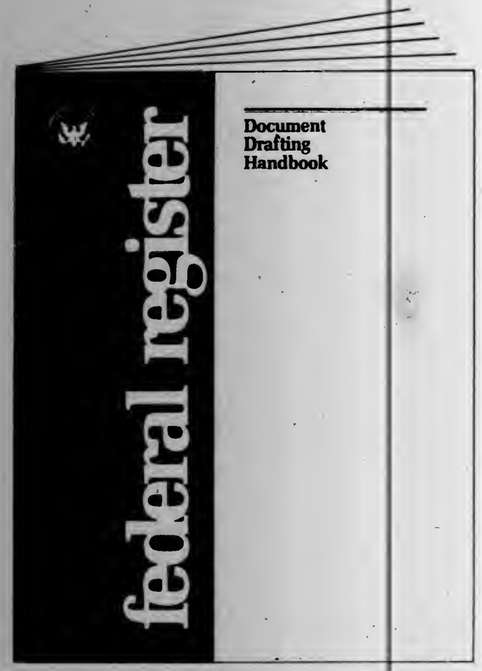
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LIST OF PUBLIC LAWS

Note: The list of Public Laws for the first session of the 103d Congress has been completed and will resume when bills are enacted into law during the second session of the 103d Congress, which convenes on January 25, 1994.

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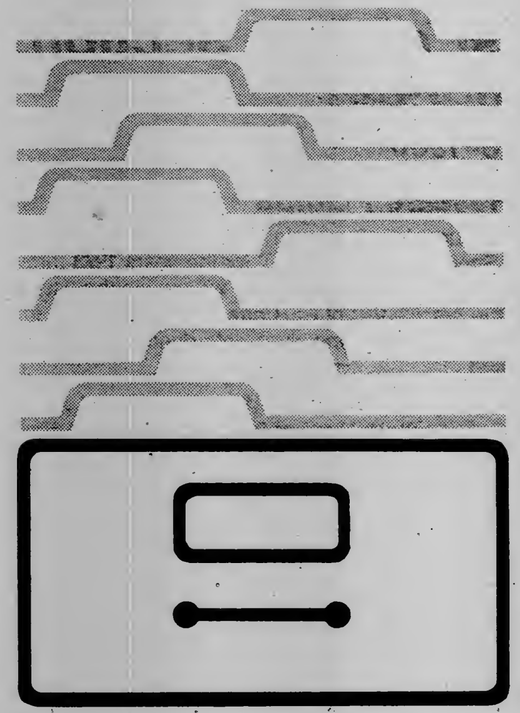
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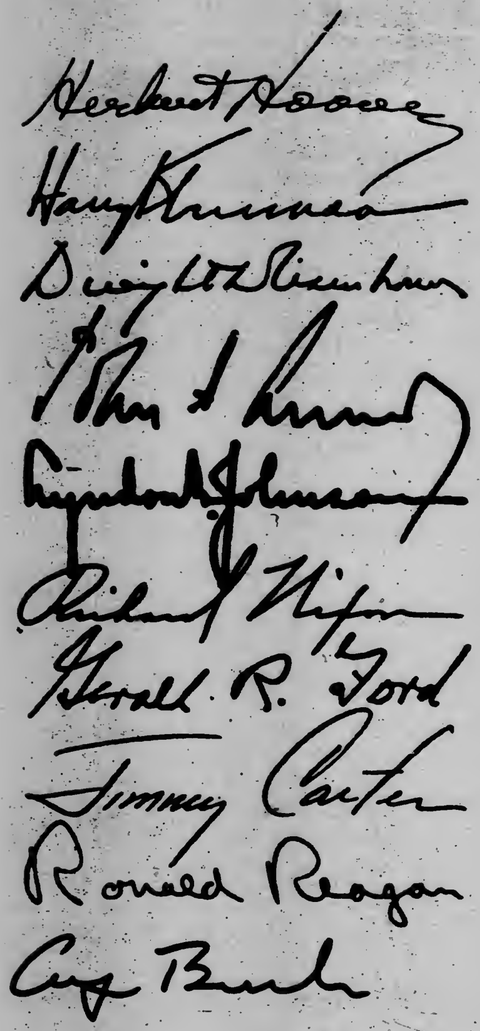
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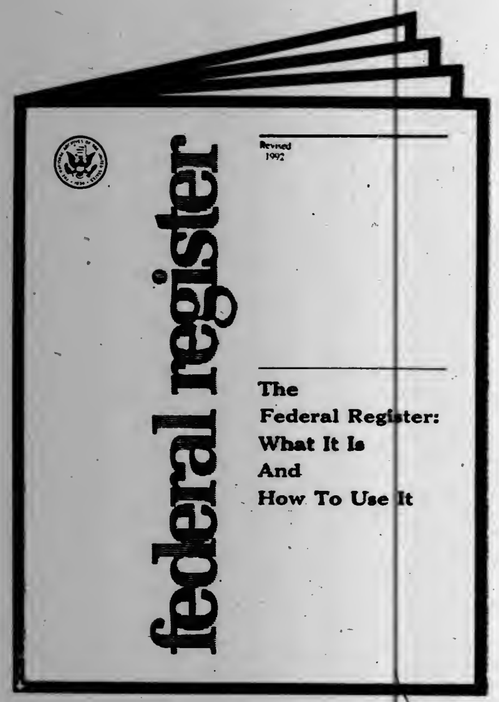
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